
Attachment H - Form of Deed of Amendment

Deed of Amendment

Transport for NSW (ABN 18 804 239 602)

Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)

UGL Regional Linx Pty Ltd ACN 646 771 011

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DETAILS

1 **Date**

2 **Parties**

3 **Name** **Transport for NSW (ABN 18 804 239 602)**

Short form name **TfNSW**

Address 231 Elizabeth Street, Sydney NSW 2000

Attention

Email

4 **Name** **Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)**

Short form name **TAHE**

Address 470 Pitt Street, Haymarket NSW 2000

Attention

Email

5 **Name** **UGL Regional Linx Pty Ltd**

ACN 646 771 011

Short form name **Service Provider**

Address Level 8, 40 Miller Street, North Sydney NSW 2060

Attention

Email

BACKGROUND

- A The Principal and the Service Provider are parties to the Operations and Maintenance Deed dated [insert date of contract] [as amended by [a] deed[s] of amendment dated [xxx]] (**Contract**).
- B The Principal and the Service Provider have agreed to amend the Contract from the Effective Date in accordance with the terms of this Deed.

TERMS

1 Interpretation

1.1 Definitions

The following words have the following meanings in this document, unless the context requires otherwise.

Contract means the Operations and Maintenance Deed dated on or about [insert date] between the Principal and the Service Provider.

Deed means this Deed of Amendment and includes all schedules and annexures to it.

Effective Date means the date of this Deed.

Government Agency means any authority, government, government department or government agency, a governmental semi-governmental or judicial person or a person (whether autonomous or not) charged with administration of any applicable Law.

Law means the common law and equity together with any legislation, delegated legislation, regulations, statutory instruments, statutory notices and statutory directions.

Principal means TfNSW and TAHE, jointly and severally.

Schedule means the Schedule setting out the amendments to the Contract as attached to this Deed.

1.2 Definitions in the Contract

The definitions in the Contract apply in this Deed unless the context requires otherwise.

1.3 Interpretation

The following apply in the interpretation of this Deed, unless the context requires otherwise:

- (a) a reference to this agreement, this Deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires;
- (b) a reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it;

- (c) a reference to the singular includes the plural number and vice versa;
- (d) a reference to a gender includes a reference to each gender;
- (e) a reference to a party means a person who is named as a party to this Deed;
- (f) a person includes a firm, corporation, body corporate, unincorporated association and a governmental authority;
- (g) a reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Deed, their substitutes and assigns;
- (h) includes means includes but without limitation;
- (i) where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning;
- (j) a reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document;
- (k) a reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Deed; and
- (l) a heading is for reference only and does not affect the meaning or interpretation of this Deed.

2 Amendments to the Contract

2.1 Amendments

The parties agree that, in accordance with clause 30.7 of the Contract, on and from the Effective Date, the Contract is amended as set out in the Schedule.

2.2 Confirmation of the Contract

Subject only to the amendments referred to in the Schedule, the parties acknowledge that they are, and continue to be, bound by the terms of the Contract, which will remain in full force and effect as amended by this Deed.

2.3 No other amendments

The parties further agree that, other than as outlined in this Deed, there are no other amendments to the Contract.

3 Representations and warranties

Each party represents and warrants for the benefit of the other party that:

- (a) **(authority)** it has full power and authority to enter into and perform its obligations under this Deed;
- (b) **(authorisations)** it has taken all necessary actions to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
- (c) **(binding obligations)** this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

4 General

4.1 Further action

Each party agrees, at its own cost, to promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the amendments, covenants and arrangements recorded in this Deed.

4.2 Further amendment

A provision of this Deed can only be amended by a later written document executed by or on behalf of the parties.

4.3 Confidentiality

The contents of this Deed will be treated as Confidential Information for the purposes of clause 31.1 of the Contract and the parties must comply with their obligations under clause 31.1 of the Contract accordingly.

4.4 Severability

A term or part of a term of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining terms or parts of the term of this Deed continue in force.

4.5 Entire Agreement

This Deed and the Contract:

- (a) record the entire agreement between the parties; and
- (b) supersede all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Deed and the Contract.

4.6 Costs

Each party must pay ~~for its own~~ legal costs and disbursements of and incidental to the negotiation, preparation, completion and signing of this Deed.

4.7 Counterparts

This Deed may consist of a number of copies each signed by one or more parties to the Deed. If so, the signed copies are treated as making up the one document.

4.8 Governing Law and jurisdiction

This Deed is governed by New South Wales law and the parties agree to submit to the non-exclusive jurisdiction of the courts of New South Wales.

Schedule: Amendments to the Contract

On and from the Effective Date, the Contract is amended as follows:

EXECUTED AS A DEED ON

[20XX]

**Signed by Transport for NSW (ABN 18
804 239 602), by its Authorised Delegate:**

Signature of Authorised Delegate

Signature of Witness

Name of Authorised Delegate (print)

Name of Witness (print)

**Signed by Transport Asset Holding Entity
of New South Wales (ABN 59 325 778
353), by its Authorised Delegate:**

Signature of Authorised Delegate

Signature of Witness

Name of Authorised Delegate (print)

Name of Witness (print)

**Executed by UGL Regional Linx Pty Ltd
(ACN 646 771 011) in accordance with
section 127 of the *Corporations Act 2001***

Signature of Director

Signature of Director/Company Secretary
(Please delete as applicable)

Name of Director (Print)

Name of Director/Company Secretary (Print)

Attachment I – Deed Poll

This deed poll ("Deed Poll") made the day of 20 .

By: **UGL Regional Linx Pty Ltd (ACN 646 771 011)** of Level 8, 40 Miller Street, North Sydney NSW 2060 ("**Service Provider**")

in favour of: **[insert details of relevant beneficiary] ("**Beneficiary**")**

Recitals

- A. Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 231 Elizabeth Street, Sydney NSW 2000, and Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) a corporation constituted under section 4 of the *Transport Administration Act 1988* (NSW) immediately before its substitution by the *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) and continued by section 4 of the *Transport Administration Act 1988* (NSW), of 470 Pitt Street, Haymarket NSW 2000 (jointly and severally the "**Principal**"), entered into an Operations and Maintenance Deed ("**CRN O&M Deed**") with the Service Provider in respect of the Country Regional Network.
- B. The CRN O&M Deed purports to grant certain rights to the Beneficiary and this Deed Poll is intended to perfect such rights and otherwise grant rights to the Beneficiary.
- C. It is a condition of the CRN O&M Deed that the Service Provider executes this Deed Poll.

This deed witnesses that the Service Provider hereby covenants, warrants and agrees with and for the benefit of the Beneficiary as follows:

1. If the Beneficiary is a Rail Transport Agency, the Minister for Regional Transport and Roads or the Crown in Right of the State of New South Wales, it will comply with its obligations under the CRN O&M Deed.
2. Where the CRN O&M Deed provides that the Service Provider grants an indemnity or release in favour of the Beneficiary, the Service Provider agrees that such indemnity or release applies as if it were set out in full in this Deed Poll.
3. The aggregate of the Service Provider's liability to the Beneficiary under this Deed Poll, any liability of the Service Provider to any other beneficiary of a deed poll executed in accordance with **clause 20.3** of the CRN O&M Deed and the Service Provider's liability to the Principal under the CRN O&M Deed:
 - (a) will not exceed the liability which the Service Provider would have had under the CRN O&M Deed if the CRN O&M Deed had named, in place of the Principal, the Beneficiary, each such other beneficiary and the Principal jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the CRN O&M Deed.
4. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Service Provider is to be construed as doing so only to the extent permitted by law.
5. The Beneficiary may assign or charge the benefits and rights accrued under this Deed Poll.
6. This Deed Poll is governed by the laws of the State of New South Wales.

7. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiary and the Principal.
8. Where terms used in this Deed Poll are defined in the CRN O&M Deed, those terms have the meaning given to them in the CRN O&M Deed.

Executed as a deed poll.

Signed sealed and delivered for and on behalf of **UGL Regional Linx Pty Ltd** (ACN 646 771 011) by its Attorney under a Power of Attorney dated **21 January 2021** (and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney) in the presence of:

Signature of witness

Name of witness in full

Signature of Attorney

Name of Attorney

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Attachment J – Parent Company Deed Poll

This deed poll made the day of 20

By: **CIMIC Group Limited (ACN 004 482 982)** of Level 25, 177 Pacific Highway, North Sydney NSW 2060 ("**Guarantor**")

in favour of: **[insert details of relevant beneficiary] ("**Beneficiary**")**

Recitals

- A. Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 231 Elizabeth Street, Sydney NSW 2000, and Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) a corporation constituted under section 4 of the *Transport Administration Act 1988* (NSW) immediately before its substitution by the *Transport Administration Amendment (Transport Entities) Act 2017* (NSW) and continued by section 4 of the *Transport Administration Act 1988* (NSW), of 470 Pitt Street, Haymarket NSW 2000 (jointly and severally the "**Principal**"), entered into an Operations and Maintenance Deed ("**CRN O&M Deed**") with the Service Provider in respect of the Country Regional Network.
- B. Pursuant to the Deed, the Service Provider executed a deed poll in favour of the Beneficiary.
- C. The Guarantor has agreed on the following terms and conditions to guarantee to the Beneficiary all of the Obligations and to indemnify the Beneficiary against any loss arising from any failure by the Service Provider to perform the Obligations.
- D. The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

This deed witnesses that the Guarantor hereby covenants, warrants and agrees with and for the benefit of the Beneficiary as follows:

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Deed means this deed poll and includes all schedules and annexures to it.

Guaranteed Money means all money the payment or repayment of which from time to time forms part of the Obligations.

Insolvency Provision means any law relating to insolvency, sequestration, liquidation or bankruptcy (including any law relating to the avoidance of conveyances in fraud of creditors or of preferences, and any law under which a liquidator or trustee in bankruptcy may set aside or avoid transactions), and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person.

Obligations means all the liabilities and obligations of the Service Provider to the Beneficiary under or arising out of or in any way in connection with the Service Provider Deed Poll or the work to be carried out or performed by the Service Provider under the Service Provider Deed Poll, and includes any liabilities or obligations which:

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;
- (d) relate to the payment of money or the performance or omission of any act; or
- (e) sound in damages only,

and irrespective of:

- (f) whether the Service Provider is liable or obligated solely, or jointly, or jointly and severally with another person;
- (g) the circumstances in which the Beneficiary comes to be owed each liability or obligation and in which each liability or obligation comes to be secured by this Deed, including any assignment of any liability or obligation or of this Deed; or
- (h) the capacity in which the Service Provider and the Beneficiary comes to owe or be owed such liability or obligation,

and **Obligation** means any liability or obligation forming part of the Obligations.

Power means any right, power, authority, discretion, remedy or privilege conferred on the Beneficiary by the Service Provider Deed Poll, by statute, by law or by equity.

Security means a mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity, letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

Service Provider means UGL Regional Linx Pty Ltd (ACN 646 771 011).

Service Provider Deed Poll means the deed poll executed by the Service Provider in favour of the Beneficiary pursuant to a requirement of the CRN O&M Deed.

Specified Rate means the rate which is [REDACTED] above the rate expressed as a percentage per annum:

- [REDACTED]
- [REDACTED]

1.2 Defined terms

Terms used in this Deed which are not otherwise defined will have the meaning given to them in the Service Provider Deed Poll.

1.3 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";

- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (1) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (2) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (1) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (2) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) a reference to:
 - (1) a party or clause is a reference to a party or clause of or to this Deed; and
 - (2) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part; and
- (n) 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.

2. Guarantee

2.1 Guarantee

The Guarantor irrevocably and unconditionally guarantees to the Beneficiary the due and punctual performance by the Service Provider of all the Obligations.

2.2 Payment by Guarantor

If the Service Provider does not pay the Guaranteed Money when due, the Guarantor must, within 5 Business Days of the Beneficiary providing written notice to the Guarantor, pay to the Beneficiary the Guaranteed Money which is then due and unpaid.

2.3 Perform Obligations

If the Service Provider defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Guarantee, on written notice from time to time by the Beneficiary, immediately perform any of the Obligations then required to be performed by the Service Provider in the same manner as the Service Provider is required to perform the Obligations.

2.4 Guarantor will have same entitlements as the Service Provider

Where performing Obligations of the Service Provider under the Service Provider Deed Poll, the Guarantor:

- (a) is entitled to rely on all defences, limitations and exclusions (including any set-off and counterclaims) available to the Service Provider under the Service Provider Deed Poll; and
- (b) will not be required to perform any Obligations under the Service Provider Deed Poll in a manner any different than that required of the Service Provider under the Service Provider Deed Poll had the Guarantor not assumed the Service Provider's Obligations under the Service Provider Deed Poll.

3. Indemnity

As a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiary against any loss or damage suffered by the Beneficiary arising out of or in connection with:

- (a) any failure by the Service Provider to perform the Obligations duly and punctually; or
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Service Provider for any reason, and whether or not the Beneficiary knew or ought to have known of that reason.

4. Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Service Provider or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (1) any person, whether named as a party or not, does not execute this Deed;
 - (2) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (3) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or to reduce the Guarantor's liability under this Deed, including any of the following:

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Service Provider or the Guarantor;
- (b) the receipt by the Beneficiary of any payment, dividend or distribution under any Insolvency Provision in relation to the Service Provider or the Guarantor;
- (c) the Service Provider Deed Poll or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (d) the Beneficiary accepting or declining to accept any Security from any person at any time;
- (e) the Beneficiary granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Service Provider or the Guarantor;
- (f) the Beneficiary not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Service Provider Deed Poll or any Obligation;
- (g) any laches, acquiescence or other act, neglect, default, omission or mistake by the Beneficiary;
- (h) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Beneficiary or the Service Provider or the Guarantor of the Service Provider Deed Poll or any Obligation;
- (i) any variation to the Service Provider Deed Poll or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Service Provider or the Guarantor;
- (j) the full, partial or conditional release or discharge by the Beneficiary or by operation of law, of the Service Provider or the Guarantor from the Service Provider Deed Poll or any Obligation;
- (k) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Service Provider or the Guarantor is a member;
- (l) the transfer, assignment or novation by the Beneficiary or the Service Provider or the Guarantor of all or any of its rights or obligations under the Service Provider Deed Poll or under any other Obligation or any matter referred to in clause 9(b);
- (m) any failure by the Beneficiary to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Beneficiary relating to or affecting the Service Provider or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Beneficiary was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Service Provider;
- (n) the Beneficiary agreeing with the Service Provider or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Service Provider or the Guarantor;
- (o) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor; or
- (p) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:

- (1) the enforcement of this Deed against any Guarantor; or
- (2) any claim for contribution against any Guarantor.

5.3 No merger

- (a) This Deed is in addition to and does not merge with, postpone, lessen or otherwise prejudicially affect the Service Provider Deed Poll or any other Power of the Beneficiary.
- (b) The Beneficiary will hold any judgment or order obtained by it against any person in respect of the Guaranteed Money or the Obligations collaterally with this Deed, and this Deed will not merge in that judgment or order.

5.4 No obligation to gain consent

No consent is required from any Guarantor nor is it necessary for the Guarantor to or be made aware of any event referred to in clause 5.2, any transaction between the Beneficiary and the Service Provider, or any particulars concerning any Obligation.

5.5 Appropriation

- (a) The Beneficiary is under no obligation to marshal or appropriate in favour of any Guarantor, or to exercise, apply, transfer or recover in favour of any Guarantor, any Security or any funds or assets that the Beneficiary holds, has a claim on, or has received or is entitled to receive, but may do so in the manner and order as the Beneficiary determines in its absolute discretion.
- (b) The Beneficiary may hold in a suspense account (without liability to pay interest) any money which it receives from the Guarantor, or which it receives on account of the Guarantor's liability under this Deed, and which the Beneficiary may, at its discretion, appropriate in reduction of the Guarantor's liability under this Deed.

5.6 Void or voidable transactions

If:

- (a) the Beneficiary has at any time released or discharged:
 - (1) the Guarantor from its obligations under this Deed; or
 - (2) any assets of the Guarantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Beneficiary; or
- (b) any payment or other transaction to or in favour of the Beneficiary has the effect of releasing or discharging:
 - (1) the Guarantor from its obligations under this Deed; or
 - (2) any assets of the Guarantor from a Security,

and

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Beneficiary,

then:

- (e) the Beneficiary will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Beneficiary may reasonably require to restore to the Beneficiary all those rights; and

- (g) the Guarantor must indemnify the Beneficiary against costs, losses and expenses suffered or incurred by the Beneficiary in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 Limitation

Despite any other provision of this Deed or the Service Provider Deed Poll, the aggregate liability of the Guarantor under this Deed in respect of any Obligation will not exceed the aggregate liability of the Service Provider under the Service Provider Deed Poll in respect of that Obligation. Nothing in this Deed is intended to, and does not, render the Guarantor and the Service Provider liable for the same loss twice.

5.7A Discharge of Obligations

Payment or performance by either the Service Provider or the Guarantor, or both the Service Provider and the Guarantor, will be deemed good discharge against the Beneficiary for that Obligation. The Guarantor's Obligations under this Deed expire when the Service Provider's Obligations under the Service Provider Deed Poll expire.

5.8 Claim on the Guarantor

Except where an Insolvency Event applies to the Service Provider, the Beneficiary must make a claim or demand on the Service Provider prior to demanding payment of the Guaranteed Money or demanding performance of the Obligations from the Guarantor under this Deed. If the Service Provider does not pay the Guaranteed Money or perform the Obligations within 5 Business Days of the claim or demand made in accordance with this clause, then the Beneficiary may make the claim or demand against the Guarantor.

5.9 No representation by Beneficiary etc.

The Guarantor acknowledges that it has not entered into this Deed as a result of any representation, promise, statement or inducement to the Guarantor by or on behalf of the Beneficiary, the Service Provider or any other person.

6. Representations and Warranties

6.1 General representations and warranties

The Guarantor or, if there is more than one Guarantor, each Guarantor represents and warrants to the Beneficiary:

- (a) this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) the execution, delivery and performance of this Deed by the Guarantor does not breach any law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;
- (c) no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, may have a material adverse effect on the business assets or financial condition of the Guarantor;
- (d) all information relating to the Guarantor provided to the Beneficiary in connection with this Deed is true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

The Guarantor, or if there is more than one Guarantor, each Guarantor, that is or purports to be a body corporate, further represents and warrants to the Beneficiary that:

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate.

6.3 Representations and warranties repeated

Each representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor within 5 Business Days' written notice by the Beneficiary and paid in immediately available funds to the account and in the manner notified by the Beneficiary to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Beneficiary on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the benefit of any money received or recovered by the Beneficiary or any Security, until the Beneficiary has been paid 100 cents in the dollar in respect of the Guaranteed Money.

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Beneficiary pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3.

7.4 Merger

If the liability of the Guarantor to pay to the Beneficiary any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order. However, nothing in this Deed is

intended to, and does not, render the Guarantor liable for interest twice despite clauses 7.3 and 7.4.

7.5 No set-off or deduction

All payments by the Guarantor to the Beneficiary under this Deed must be:

- (a) free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Beneficiary), then the Guarantor must:

- (c) pay to the Beneficiary any additional amounts necessary to enable the Beneficiary to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Beneficiary if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Beneficiary for any Taxes and interest or penalties to which the Beneficiary may become liable consequent on the failure of the Guarantor to pay those Taxes; and
- (e) deliver to the Beneficiary, promptly on request from the Beneficiary, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.6 Currency indemnity

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.
- (b) If for any reason any amount payable by the Guarantor under or in connection with this Deed is received by the Beneficiary in a currency (Payment Currency) other than the currency (Agreed Currency) in which that amount is required to be paid under this Deed (whether as a result of any judgment or order, the liquidation of the Guarantor or otherwise), and the amount obtained (net of charges) by the Beneficiary on its conversion of the amount of the Payment Currency received into the Agreed Currency is less than the amount payable under this Deed in the Agreed Currency, then the Guarantor will, as an independent and additional obligation, indemnify the Beneficiary for that deficiency and for any loss sustained as a result of that deficiency.

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Beneficiary for and keep the Beneficiary indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Beneficiary in connection with:

- (a) any consent, agreement, approval, waiver or amendment to this Deed requested by the Guarantor or Service Provider; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

- (a) The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties, financial institutions duty and debits tax which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment, receipt or other transaction contemplated by this Deed.
- (b) The Guarantor must indemnify the Beneficiary against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

9. Assignment

The Beneficiary may assign, novate or otherwise transfer all or any part of its rights under this Deed to the same party to whom it may assign, novate or transfer its rights under the Service Provider Deed Poll or any other party with the consent of the Guarantor (not to be unreasonably withheld) and may disclose to a proposed assignee or transferee any information in the possession of the Beneficiary relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably 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 proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.9 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including any question relating to the existence, validity or termination of this Deed) must be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

Section 24 of the *International Arbitration Act 1974* (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of the Guarantor or the Beneficiary, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. The Guarantor hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the Guarantor.

10.8 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) and Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) are not conferred on an arbitral tribunal appointed in accordance with this clause 10.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) and Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this deed referred to the arbitral tribunal.

10.9 Urgent relief

Nothing in this clause 10 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

11. Miscellaneous

11.1 Continuing obligation

Subject to clauses 2.4, 5.7 and 5.8, this Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Beneficiary will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.2 Further assurance

The Guarantor must immediately on the request of the Beneficiary, and at the cost of the Guarantor, do and perform all further acts and things and execute and deliver all further documents as the Beneficiary reasonably requires, or as are required by law, to perfect or to give effect to the rights and powers of the Beneficiary created, or intended to be created, by this Deed.

11.3 Form of written notice

A written notice served on the Guarantor for payment under this Deed may be in the form and contain any information as the Beneficiary determines, but must state that it is made under this Deed, and where applicable, identify the amount being claimed and the reason for the claim. It

need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

11.4 Entire agreement

This Deed will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the Guarantor and the Beneficiary in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the Guarantor and the Beneficiary prior to the date of this Deed and that are not expressly included in this Deed.

11.5 Joint and several liability

The obligations of the Guarantor, if more than one person, under this Deed, are joint and several. Each person constituting the Guarantor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of the other as if those acts or omissions were its own and the Beneficiary may proceed against any or all of them. This Deed binds each person who signs as a "Guarantor" even if another person who was intended to become a "Guarantor" does not become a "Guarantor" or is not bound by this Deed.

11.6 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 enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

11.7 Remedies cumulative

Each Power is cumulative and in addition to each other Power available to the Beneficiary.

11.8 Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under this Deed by the Beneficiary will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under this Deed.
- (b) Any waiver or consent given by the Beneficiary under this Deed will only be effective and binding on the Beneficiary if it is given or confirmed in writing by the Beneficiary.
- (c) No waiver by the Beneficiary of:
 - (1) a breach of any term of this Deed; or
 - (2) any other failure by the Guarantor to comply with a requirement of this Deed, will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

11.9 Consents

Any consent of the Beneficiary referred to in, or required under, this Deed may be given or withheld, or may be given subject to any conditions, as the Beneficiary (in its absolute discretion) thinks fit, unless this Deed expressly provides otherwise.

11.10 Moratorium legislation

To the fullest extent permitted by law, the provisions of all laws operating directly or indirectly to lessen or affect in favour of the Guarantor any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise of any Power, are expressly waived.

11.11 Variations

This Deed may only be varied with the written consent of the Beneficiary.

11.12 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of the Beneficiary or the Guarantor is to be construed as doing so only to the extent permitted by law.

11.13 Notices

(a) Any notices contemplated by this Deed must be in writing and delivered to the relevant address or sent to the email address as set out below (or to any new address or email address that a party notifies to the others).

(1) to the Guarantor:

Attention: Company Secretary

Address: Level 25, 177 Pacific Highway, North Sydney NSW 2060

Email: [REDACTED]

(2) to the Beneficiary:

Attention: [insert details of relevant beneficiary]

c/o the Principal's Representative

Address: 231 Elizabeth Street, Sydney NSW 2000

Email: [REDACTED]

(b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.

(c) A notice sent by email will be taken to have been received on the earlier of:

- (i) receipt by the sender of an email acknowledgement from the recipient's information system showing that the notice has been delivered to the email address stated above;
- (ii) the time that the notice enters an information system which is under the control of the recipient; and
- (iii) the time that the notice is first opened or read by an employee or officer of the recipient,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day or is later than 4:00pm (Sydney time) it will be taken to have been duly given or made at the start of business on the next Business Day.

Executed as a deed poll.

Signed sealed and delivered for and on behalf of **CIMIC Group Limited** (ACN 004 482 982) by its Attorneys under a Power of Attorney dated **9 February 2021** (and the Attorneys declare that the Attorneys have not received any notice of the revocation of such Power of Attorney) in the presence of:

Signature of Attorney

Name of Attorney

Signature of witness

Name of Witness in full

Signature of Attorney

Name of Attorney

Signature of witness

Name of Witness in full

Attachment K – Form of Variation Impacts Statement

VARIATION IMPACTS STATEMENT

Clause [insert]

This Variation Impacts Statement is issued in respect of the following [Modification / Adjustment Event / proposed Modification / alleged Adjustment Event]:

[insert full details of the relevant Modification or Adjustment Event, including reasons why the Service Provider believes that it constitutes a Modification or Adjustment Event and, if clause 14.3(a) applies, reasons why the Service Provider proposes the Modification]

In respect of the [Modification / Adjustment Event / proposed Modification / alleged Adjustment Event]:

- [the schedule and expected timeline to commence and complete capital works]
- [the Variation Impacts proposed by the Service Provider and the Payment Periods each of the Variation Impacts will apply to]
- [the details of any actual or likely claim under an insurance policy]
- [the details of any actual or likely insurance proceeds]
- we propose the application of [Variation Capital Works Milestone Payments / Variation Capital Works Progress Payments];
- [we attach the proposed Modification Scope;]
- [*include in respect of Modifications*] [we confirm that the Modification Scope:
 - (i) is consistent with and otherwise incorporates (as required by the Principal's Representative) any documentation provided by;
 - (ii) complies with any requirements notified by the Principal's Representative; and
 - (iii) is fit for its Intended Purposes and sufficient to enable the potential Modification, if proceeded with, to be carried out in accordance with the Operations and Maintenance Deed;]
- [*include in respect of Enhancement Activities*] we confirm that the Modification comprises Enhancement Activities and propose the following Enhancement Activities Particulars:

Date for Completion	[insert]
Total value of security required for the purposes of clause 2.3(a) of the Enhancement Activities Terms and Conditions	[insert]
Additional events (if any) for which the Service Provider will be entitled to an extension of time to the Date for Completion for the purposes of clause 7.6(a) of the Enhancement Activities Terms and Conditions	[insert]
Rate of liquidated damages that will apply for the purposes of clause 8.6(a) of the Enhancement Activities Terms and Conditions	[insert]
Statement as to whether the Building Code 2016 (and clause 10 of the Enhancement Activities Terms and Conditions) applies and, if yes, whether a Workplace Relations Management Plan is required for the purposes of clause 10 of the Enhancement Activities Terms and Conditions	[insert]

- *[in respect of Modifications comprising Contamination Management Works, include all information required under paragraph (h) of the definition of Variation Impacts Statement];*
- [our proposal for obtaining any further Approvals]
- [our proposal for community, customer and stakeholder engagement]
- [the impact on the 3MWP, 10MSP, 50AMP and Organisation Structure]
- we *[agree/disagree]** with the amendments (including additions) to the terms and conditions in **Schedule 12** of the Operations and Maintenance Deed proposed by the Principal's Representative; and *[if disagreeing, set out the extent of the disagreement and any alternatives to those amendments proposed]*
- the additional information requested by the Principal's Representative is as follows:

[insert as required]

The Service Provider acknowledges and agrees that, notwithstanding anything in this Variation Impacts Statement, the Variation Impacts for the relevant Modification or Adjustment Event will be determined in accordance with the Operations and Maintenance Deed.

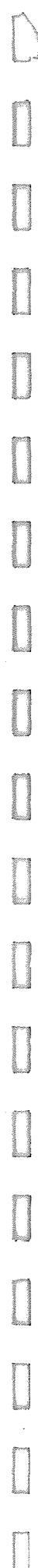
Yours sincerely,

[insert name of Service Provider's Representative]

[Insert Service Provider]

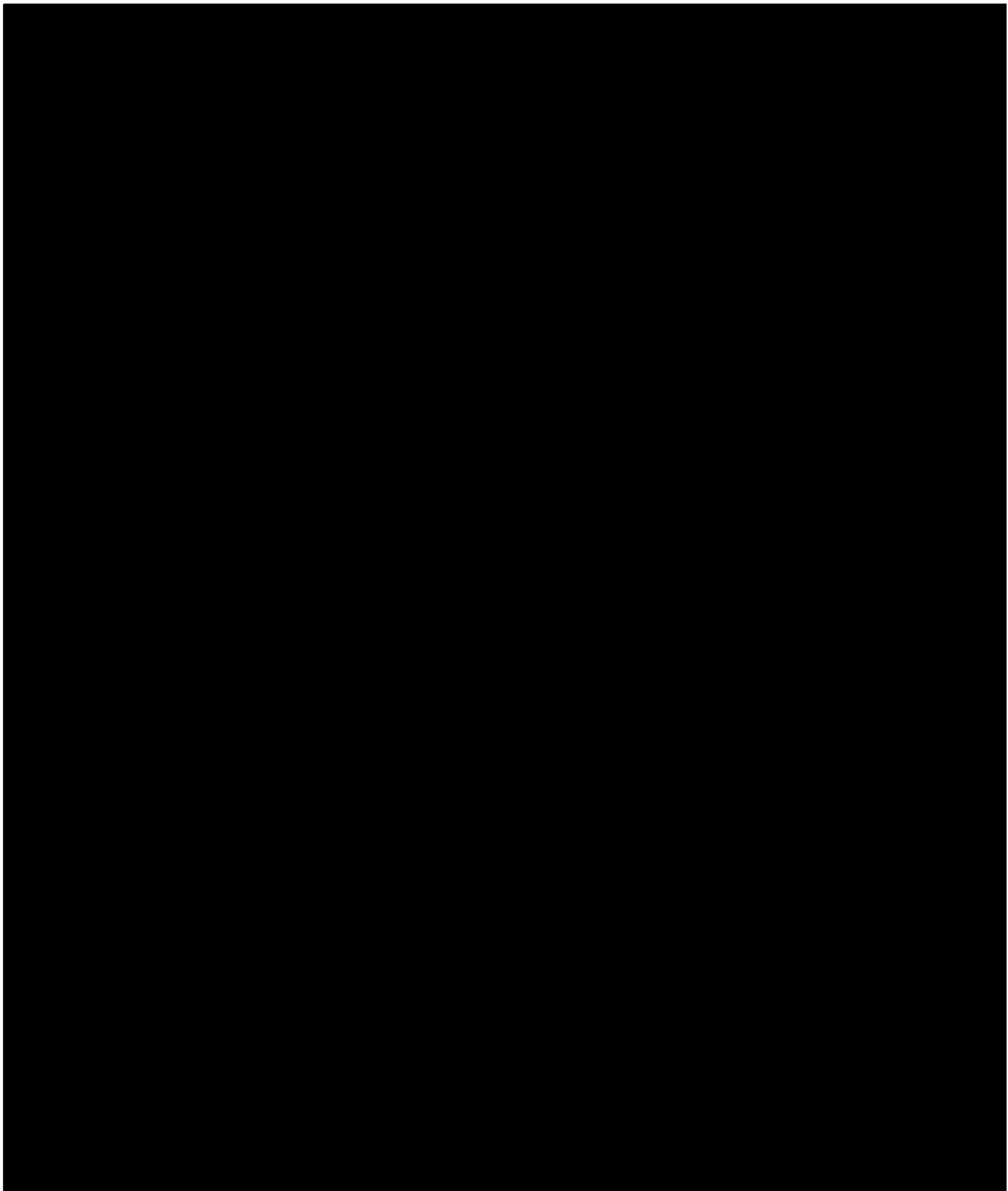
Attachments: [insert]

*delete as appropriate



[REDACTED]

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Attachment N – ARA DDA Exemption Application

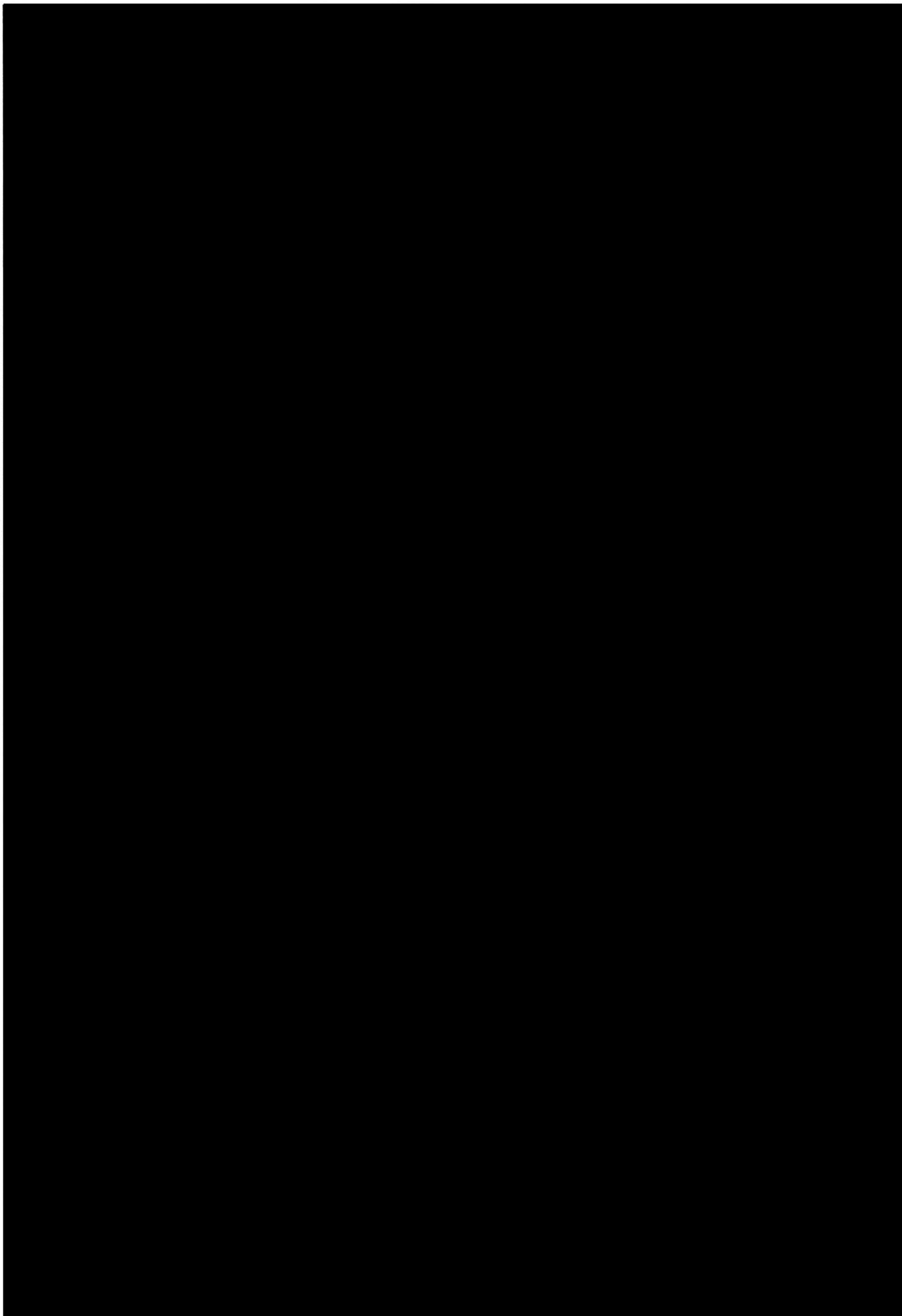
Attachment N comprises the documents listed below, which the Service Provider acknowledges and agrees were provided to the Service Provider by the Principal on or about the date of this Deed via the hard drive labelled “Hard Drive - CRN Operations and Maintenance Deed” in the subfolder on that hard drive labelled “Attachment N – ARA DDA Exemption Application”.

1. Australasian Railway Association Application to The Human Rights Commission for Temporary Exemptions to the *Disability Standards for Accessible Public Transport 2002 (Cth)* and the *Disability (Access to Premises – Buildings) Standards 2010 (Cth)*.
2. Australasian Railway Association Application to The Australian Human Rights Commission – A Supplementary Submission to public submissions made regarding the ARA Temporary Exemptions Application to the *Disability Standards for Accessible Public Transport 2002 (Cth)* and the *Disability (Access to Premises – Buildings) Standards 2010 (Cth)*.

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

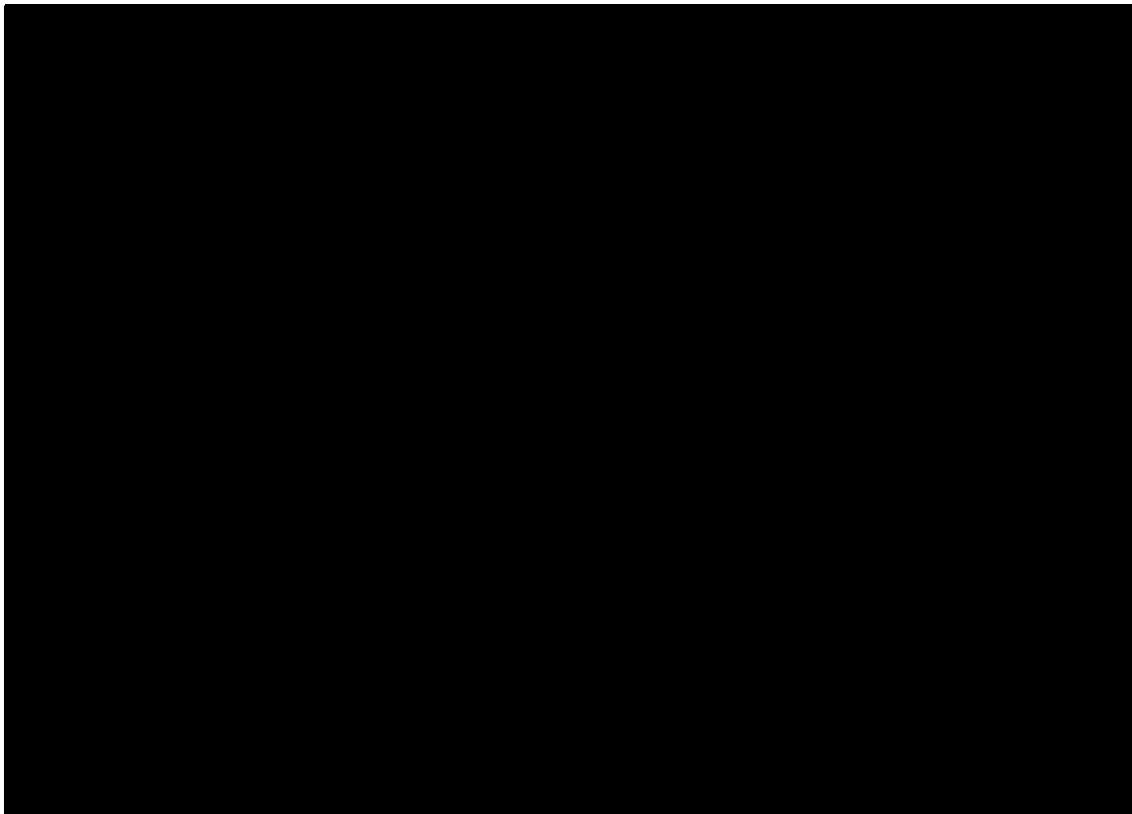
Part 2: Variation Impacts for Modifications

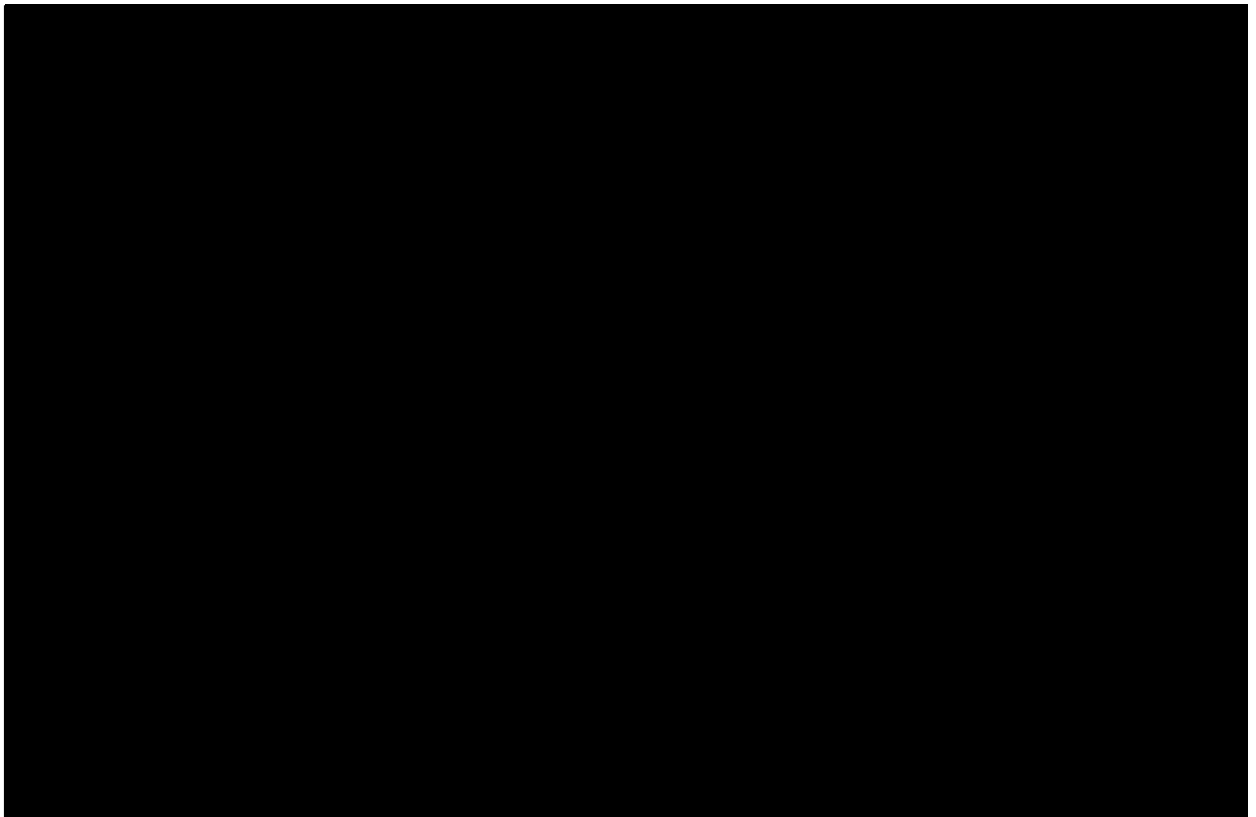
1 Variation Impacts for Modifications

1.1 Impact on Pricing

- (a) Subject to any provision of this Deed limiting or excluding any entitlement of the Service Provider (including **clauses 16(b), 29.4 and 29.5** of the General Conditions), if a Modification is directed by the Principal's Representative under **clause 14.1(a)** of the General Conditions or approved by the Principal's Representative under **clause 14.3(b)** of the General Conditions, then:
 - (i) to the extent the Modification involves changes in the Mobilisation Activities (other than the Redeployment Activities), the Redeployment Activities or the Transition Out Activities, for the purposes of **Appendix 1, Appendix 2 or Appendix 13** (as applicable) of the **Payment Schedule**, the Mobilisation Payments, Redeployment Costs Payments or Transition Out Costs (as applicable) will be increased or decreased (as applicable) by an amount equal to:
 - (A) increase in costs that have been, or will be, directly and reasonably incurred by the Service Provider; or
 - (B) decrease in costs that have been, or will be, incurred by the Service Provider,

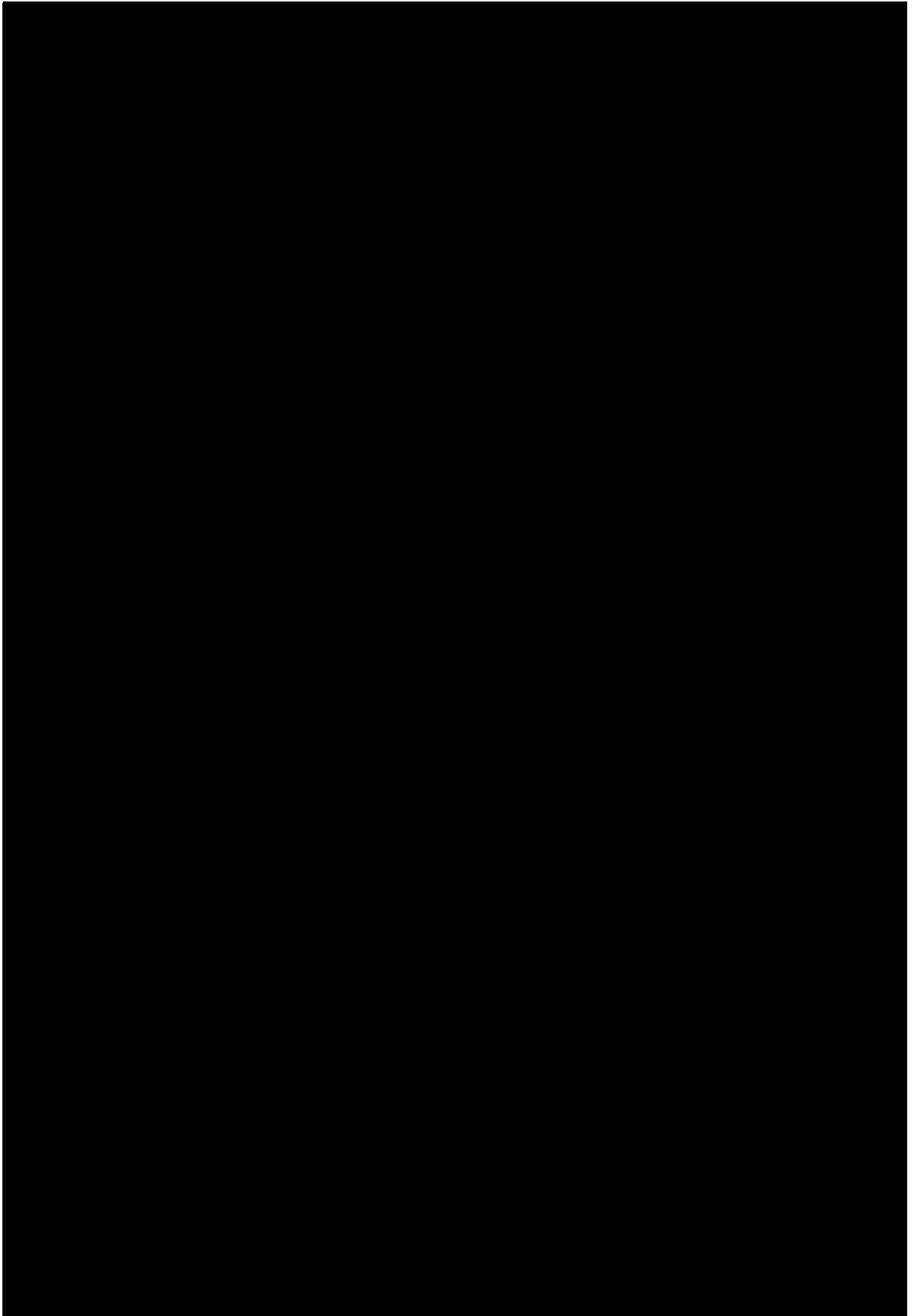
in carrying out the Mobilisation Activities (other than the Redeployment Activities), the Redeployment Activities or the Transition Out Activities (as applicable) in accordance with this Deed as a result of the Modification (plus, in either case, an amount on account of profit), as determined by the Principal's Representative as follows:

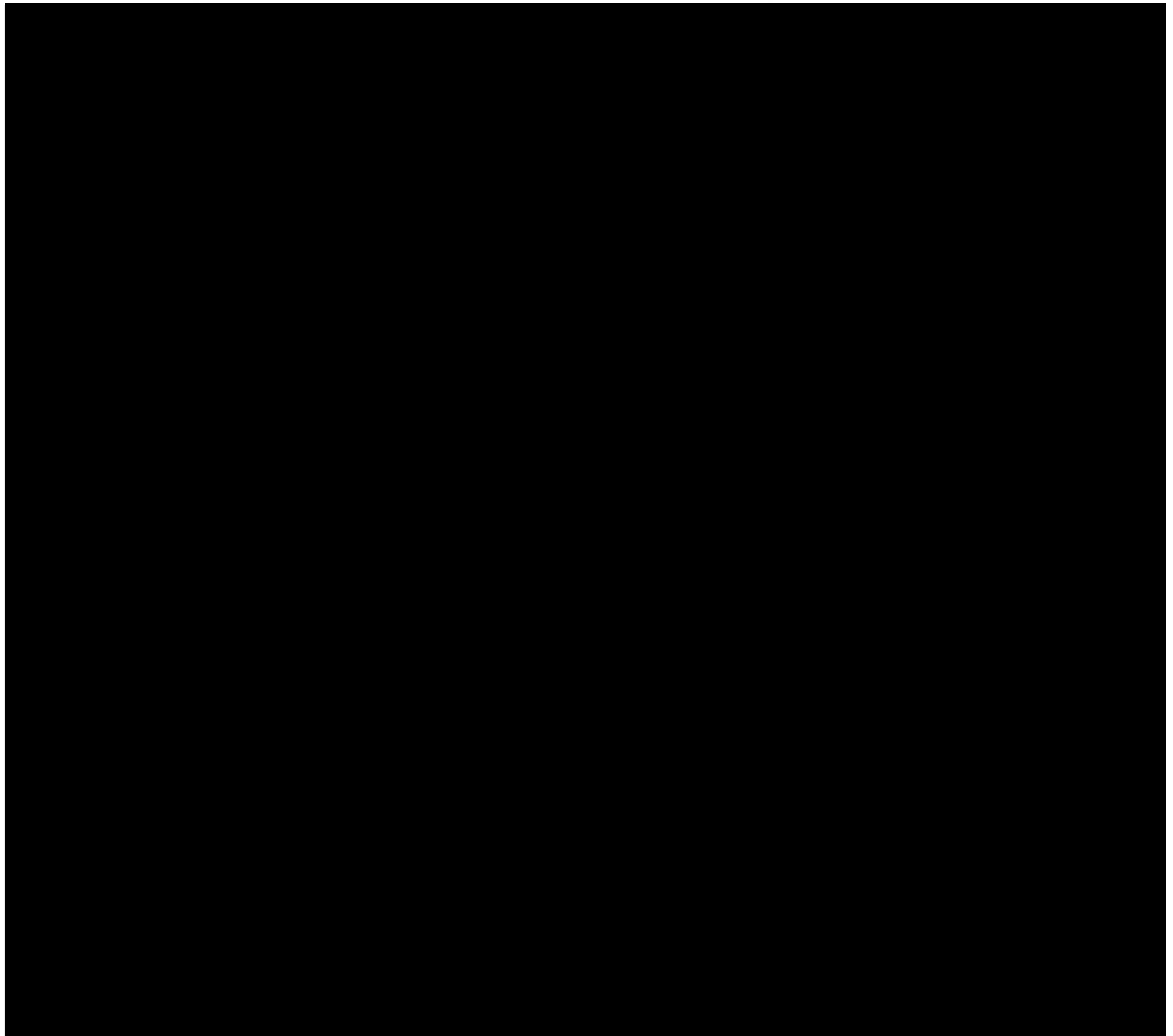




- (ii) to the extent the Modification involves changes in the Services (other than the Mobilisation Activities, the Redeployment Activities or the Transition Out Activities), for the purposes of **Section 9.1** of the **Payment Schedule**:
- (A) either:
- (1) if Variation Capital Works Milestone Payments are agreed between the parties, the Variation Capital Works Milestone Payments; or
- (2) if Variation Capital Works Milestone Payments are not agreed between the parties, the Variation Capital Works Progress Payments (Lump Sum), with the Service Provider acknowledging that Variation Capital Works Milestone Payments will not apply except to the extent agreed by the Principal;
- (B) the Variation Capital Works Monthly Payments; and
- (C) the Variation Recurring Expenditure Monthly Payments,
- for that Modification will be determined by the Principal's Representative based on the:
- (D) increase in costs that have been, or will be, directly and reasonably incurred by the Service Provider; or
- (E) decrease in costs that have been, or will be, incurred by the Service Provider,

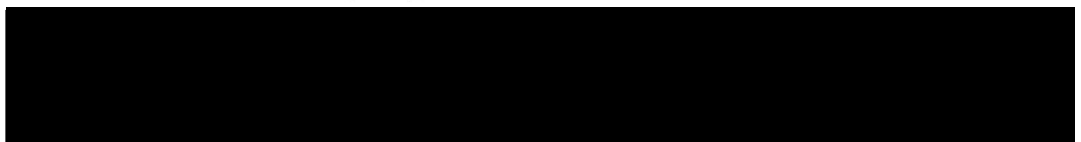
in carrying out the Services (other than the Mobilisation Activities, the Redeployment Activities or the Transition Out Activities) in accordance with this Deed as a result of the Modification (including, in either case, an amount on account of profit and overheads), as follows:

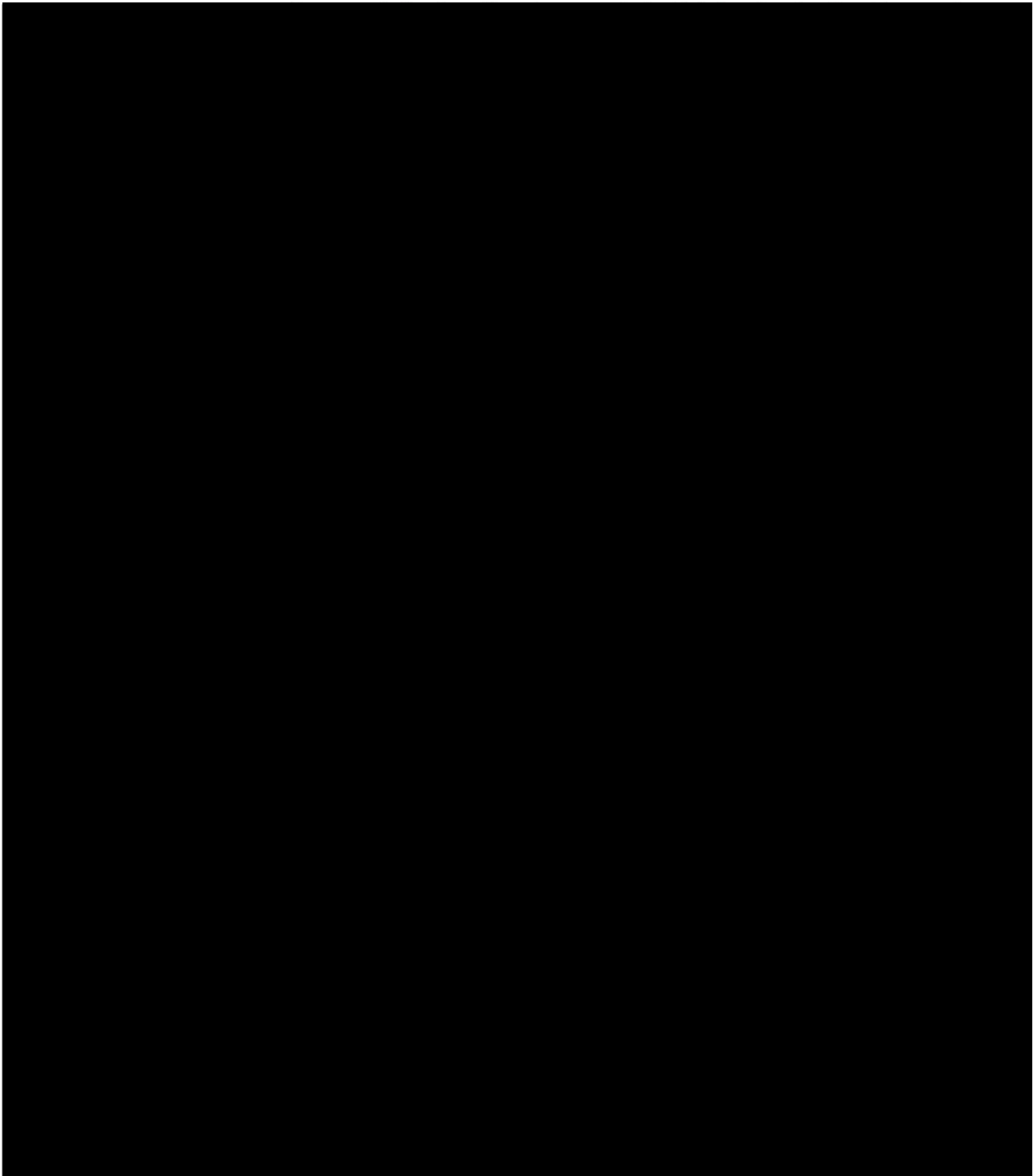




- (iii) subject to **clause 1.1(d)** of this **Part 2** of the **Variations Schedule**, to the extent the Modification results in:
 - (A) an increase in costs that have been, or will be, directly and reasonably suffered or incurred by the Service Provider; or
 - (B) a decrease in costs that have been, or will be, suffered or incurred by the Service Provider,

in carrying out the Property Management Services, the CRN Non-Operational Scope of Works, the State Road Overbridge Maintenance Services, the Overbridge Maintenance Services, the ARTC Lease State Road Overbridge Maintenance Services, the Level Crossing Closure Services, the Turnout Rationalisation Services or the Structures Disposal Services (as applicable), the Principal's Representative will determine adjustments to the amounts specified in **Appendices 5, 6, 7, 8, 9, 10, 11 and 12** (as applicable) of the **Payment Schedule** based on such increase or decrease in costs (plus, in either case, an amount on account of profit), as follows:





- (b) The Principal's Representative must promptly notify the Service Provider in writing of any determination made in accordance with **clause 1.1(a)** of this **Part 2** of the **Variations Schedule** and the Payment Periods in respect of which the relevant amounts the subject of that determination will (subject to the provisions of this Deed) be payable.
- (c) For the avoidance of doubt:
 - (i) the Principal's Representative may (in its absolute discretion) make a determination in accordance with **clause 1.1(a)** of this **Part 2** of the **Variations Schedule**:

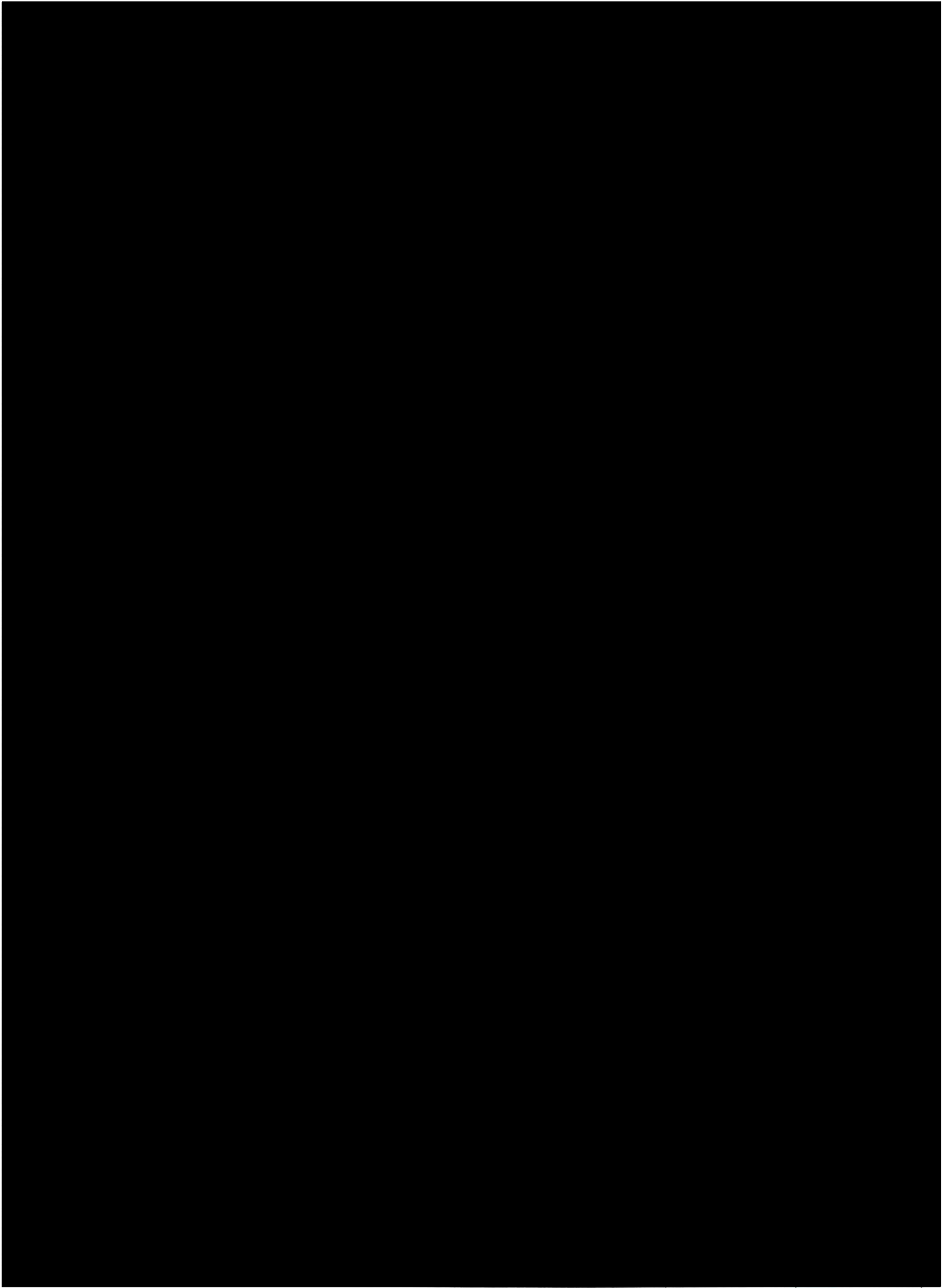
- (A) for the benefit of the Principal; or
- (B) which has retrospective effect based on the date of the relevant direction or approval; and
- (ii) the Service Provider will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any Modification referred to in the table in **Part 1** of the **Variations Schedule**, to the extent such Claim relates to any matter, cost or payment falling within the relevant threshold specified in the table in **Part 1** of the **Variations Schedule**.
- (d) **Clause 1.1(a)(iii)** of this **Part 2** of the **Variations Schedule** will not apply:
 - (i) if the Principal's Representative has already exercised the relevant Option in accordance with **clause 14.2(a)** of the General Conditions; or
 - (ii) after:
 - (A) in respect of Option 1, Option 2, Option 3A, Option 3B or Option 3C, the date that is 2 years after the Services Commencement Date; or
 - (B) in respect of Option 4, Option 5 or Option 6, the Services Commencement Date.

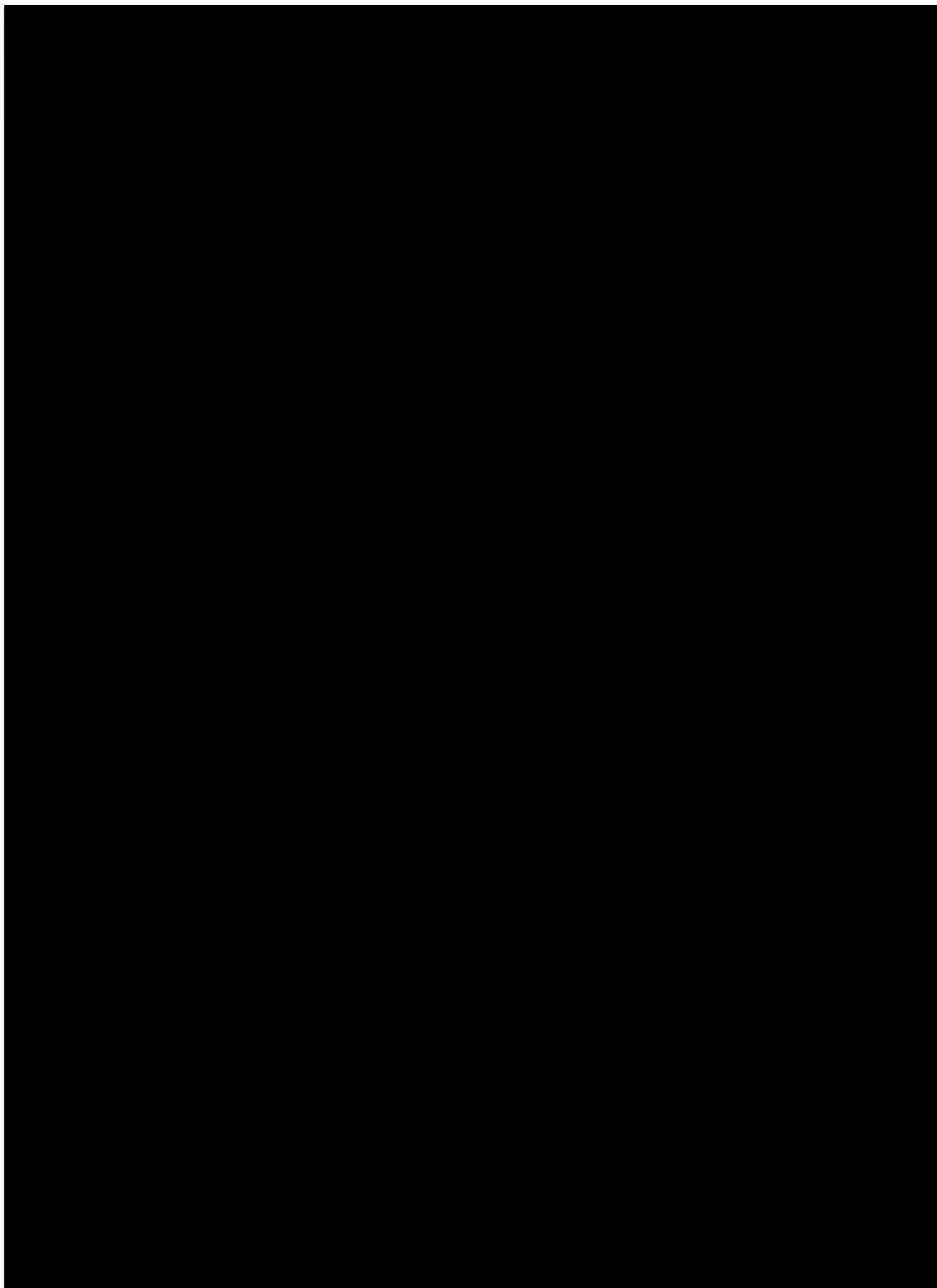
1.3 Variation Impacts Statement

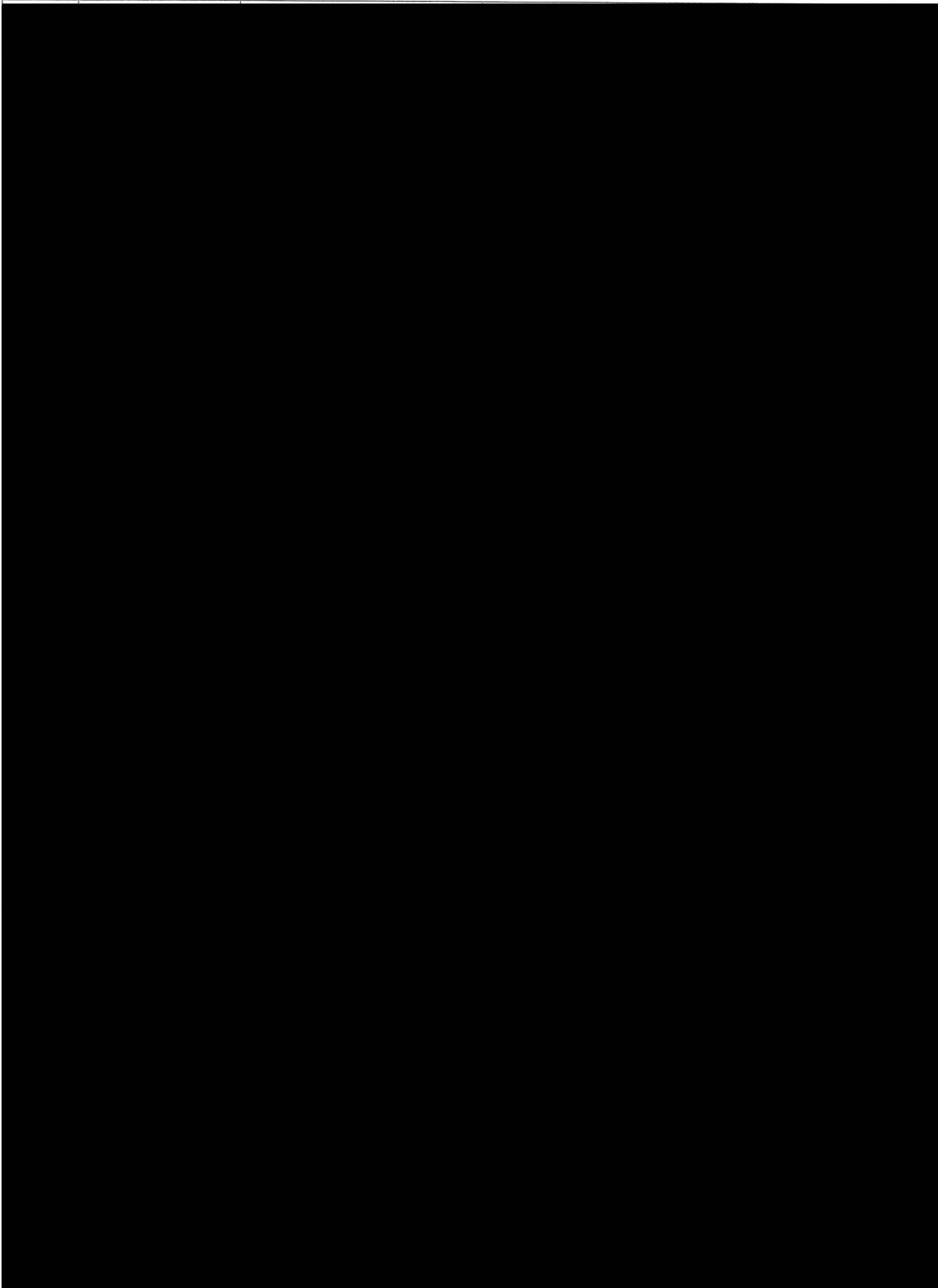
- (a) Despite any other provision of this Deed, the Service Provider's entitlements in respect of Variation Impacts associated with any Modification must not exceed the Variation Impacts proposed by the Service Provider in any Variation Impacts Statement submitted under this Deed.

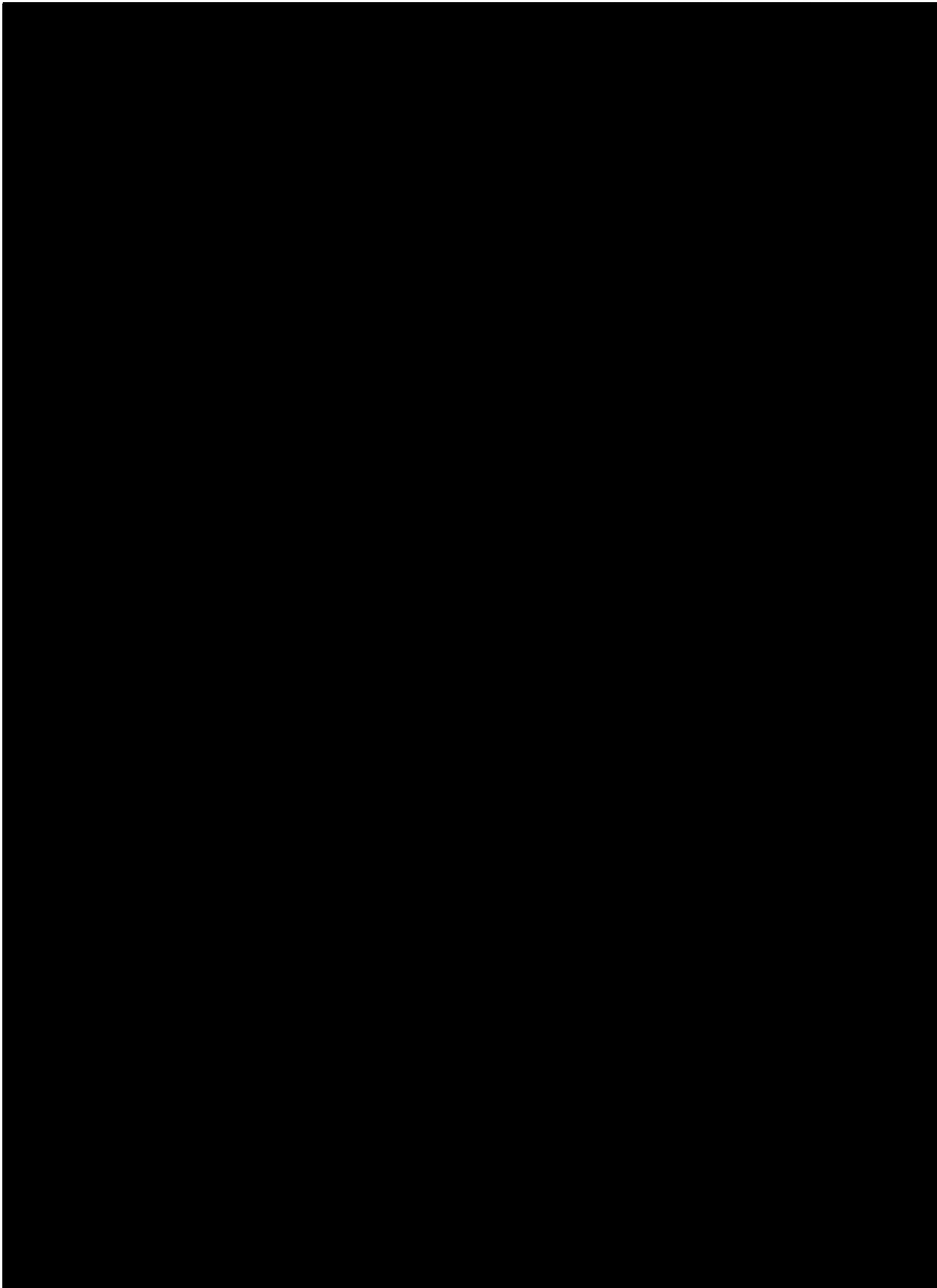
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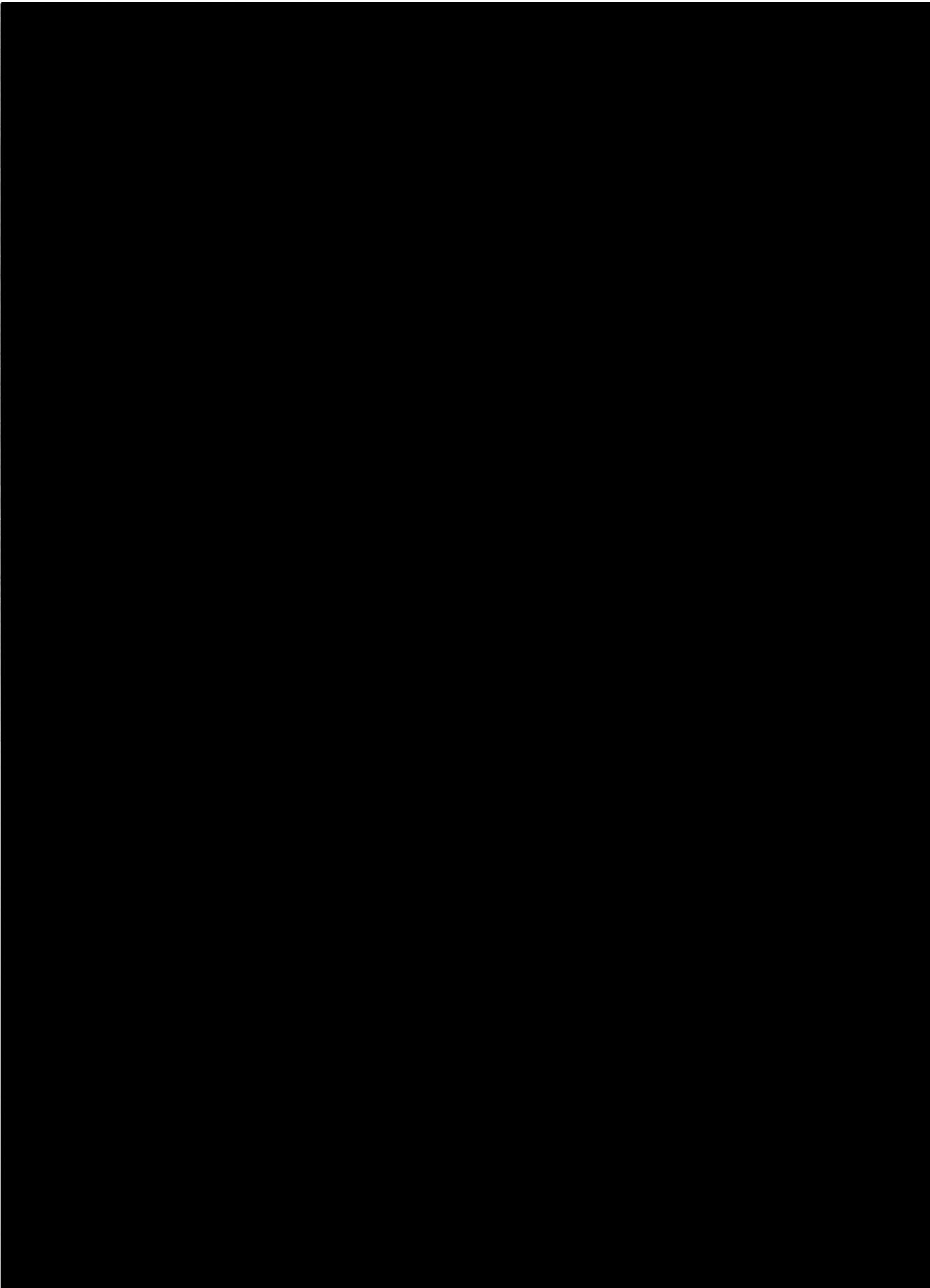
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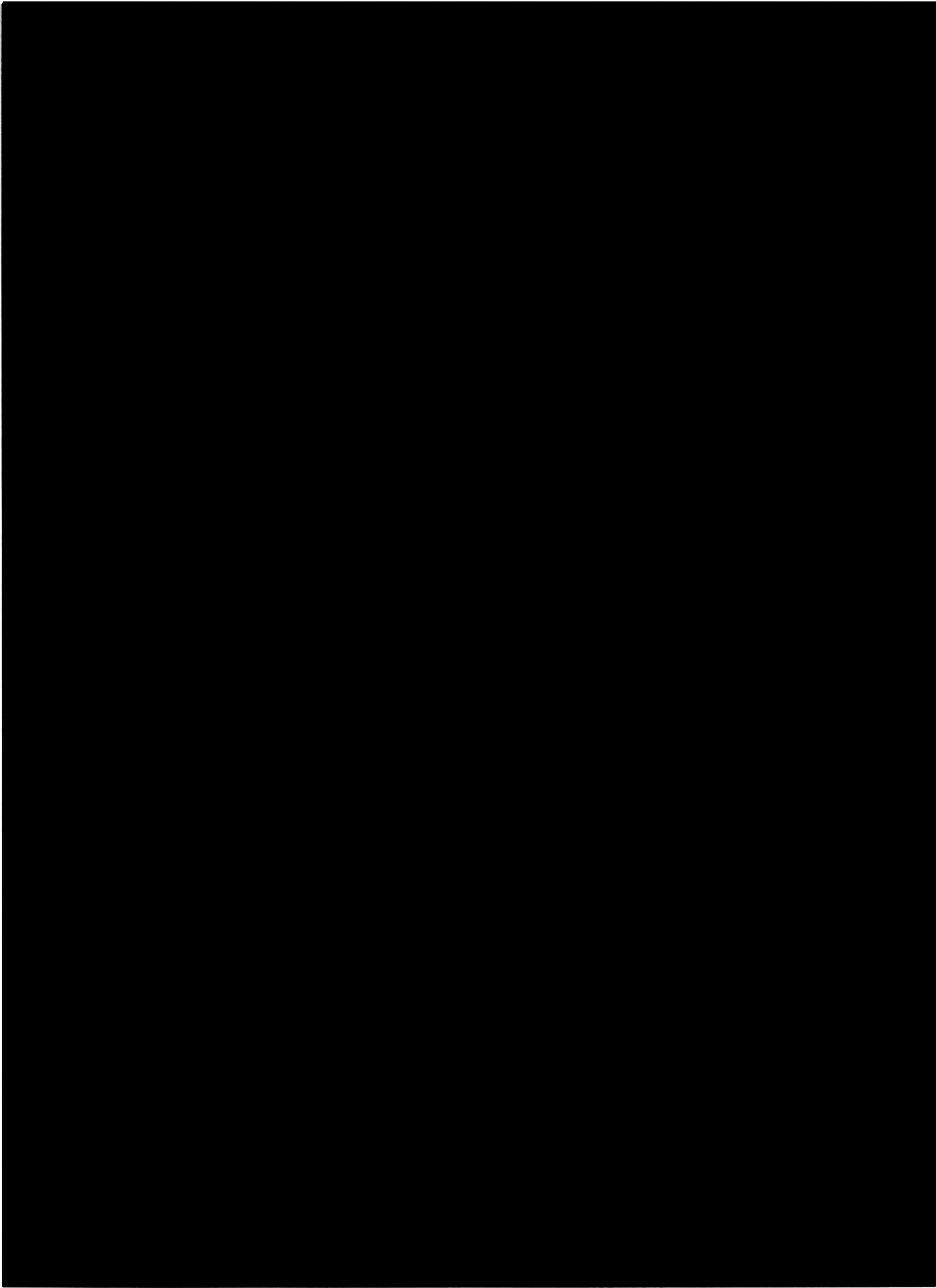


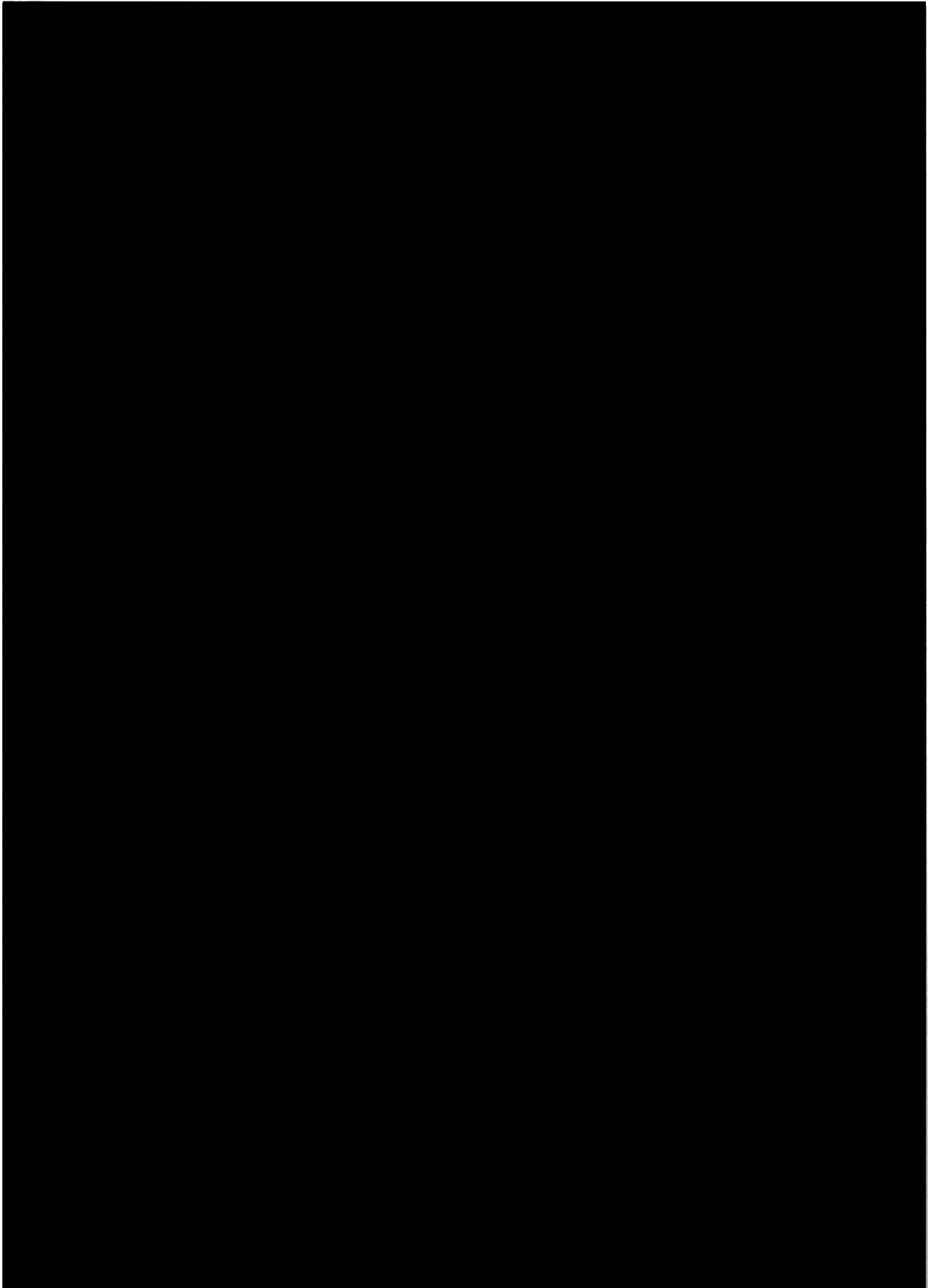


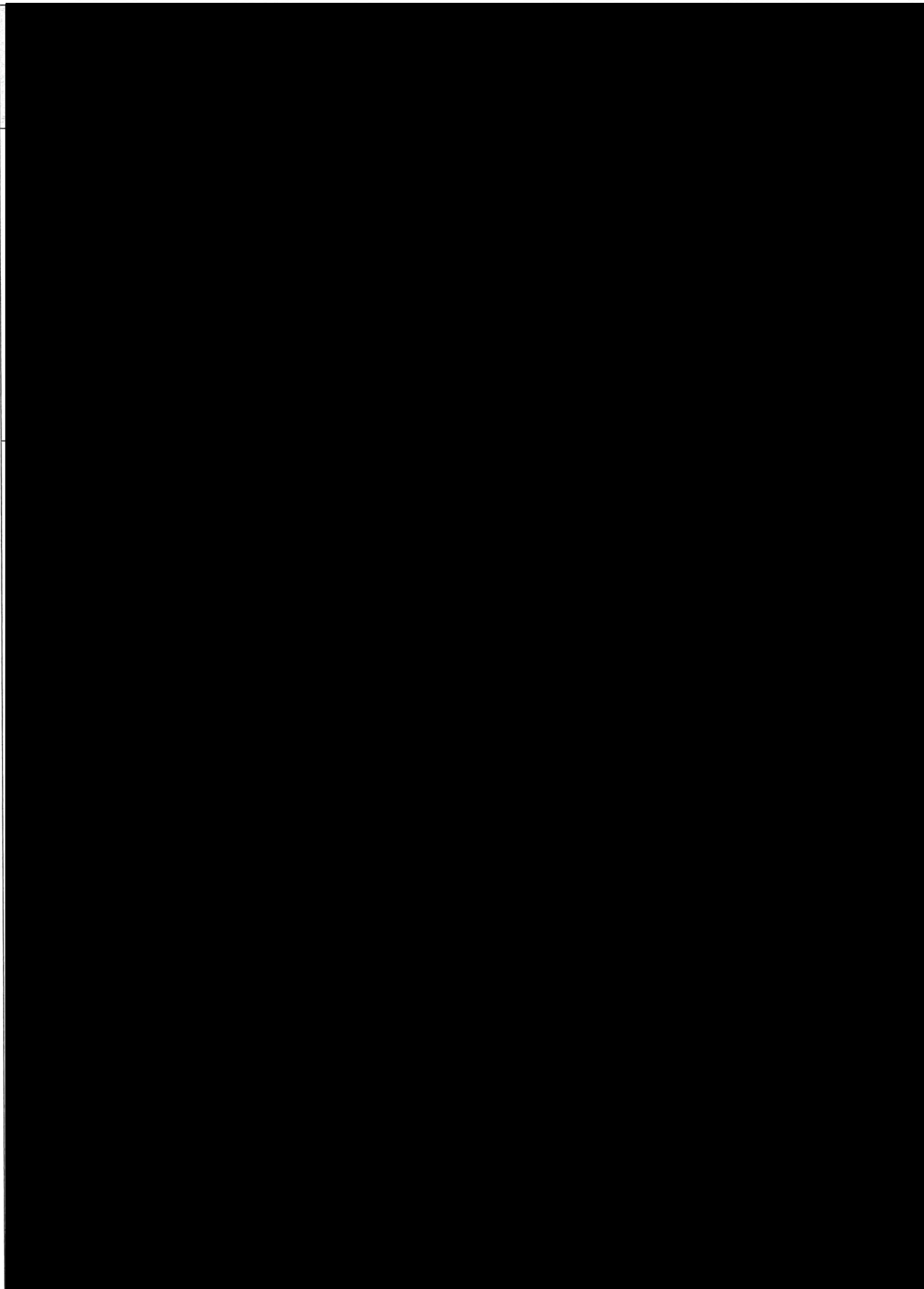


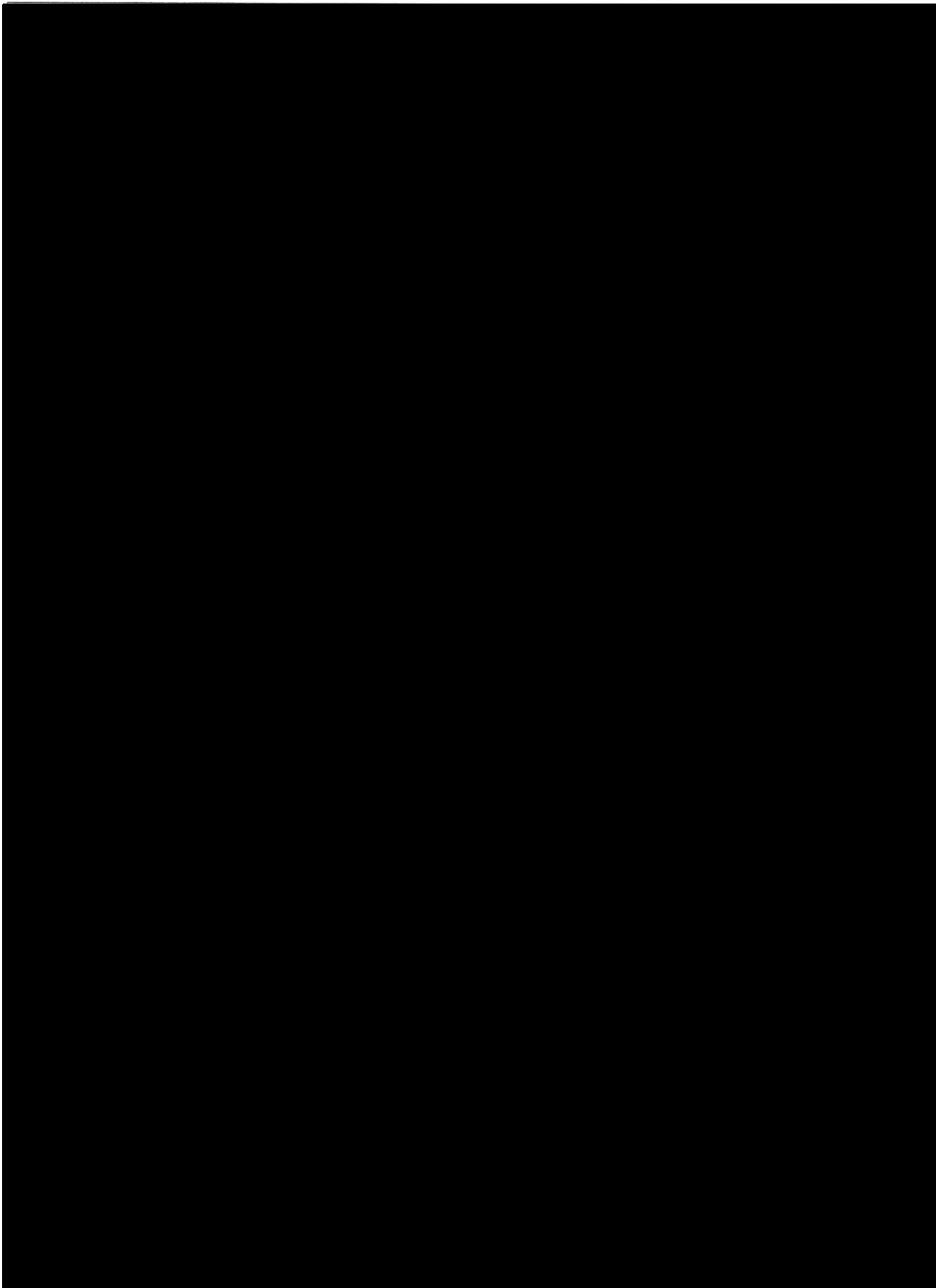


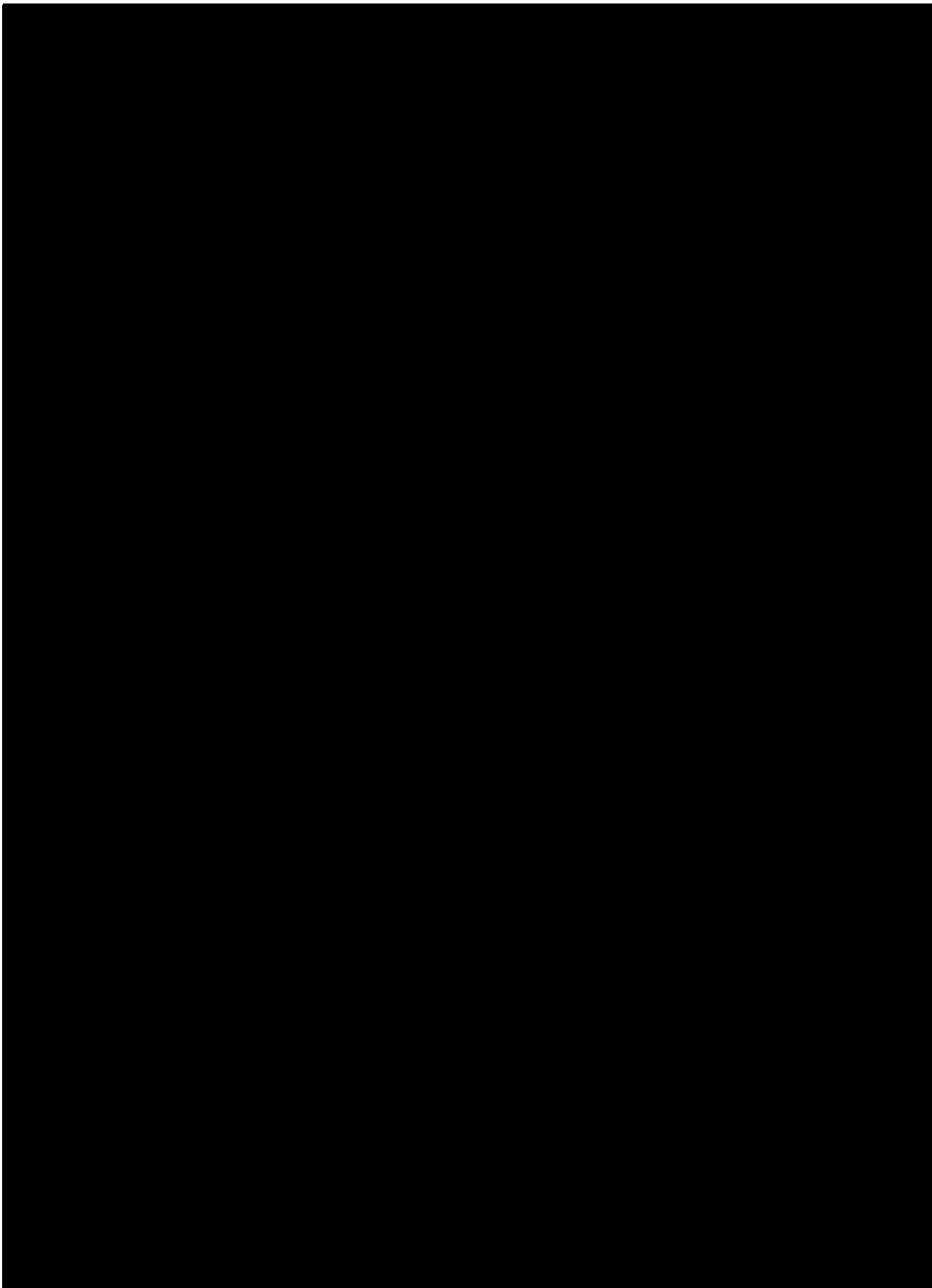














1 Variation Impacts for Adjustment Events

1.1 Thresholds and conditions

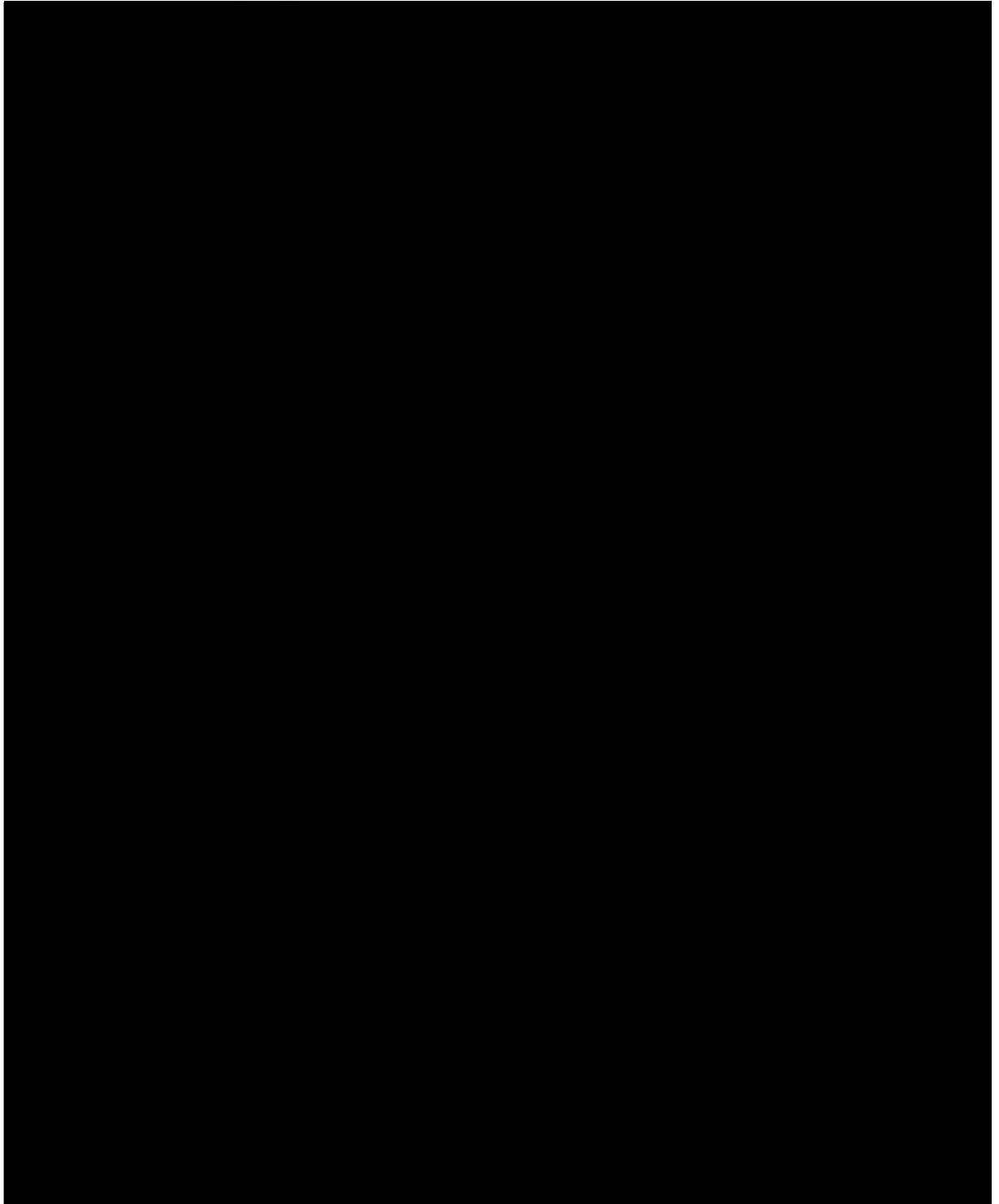
- (a) The provisions of **clauses 1.2(a) and 1.3(a)** of this **Part 3** of the **Variations Schedule** will only apply if (and to the extent that) each of the relevant thresholds and conditions specified in column B of the above table are exceeded or satisfied (as applicable). For the avoidance of doubt, the Service Provider will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any Adjustment Event, to the extent such Claim relates to any matter, cost or payment falling within the relevant threshold specified in column B of the above table.
- (b) Except to the extent expressly stated in **clauses 1.2 and 1.3** of this **Part 3** of the **Variations Schedule**, the Service Provider will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any event or circumstance referred to in the above table.

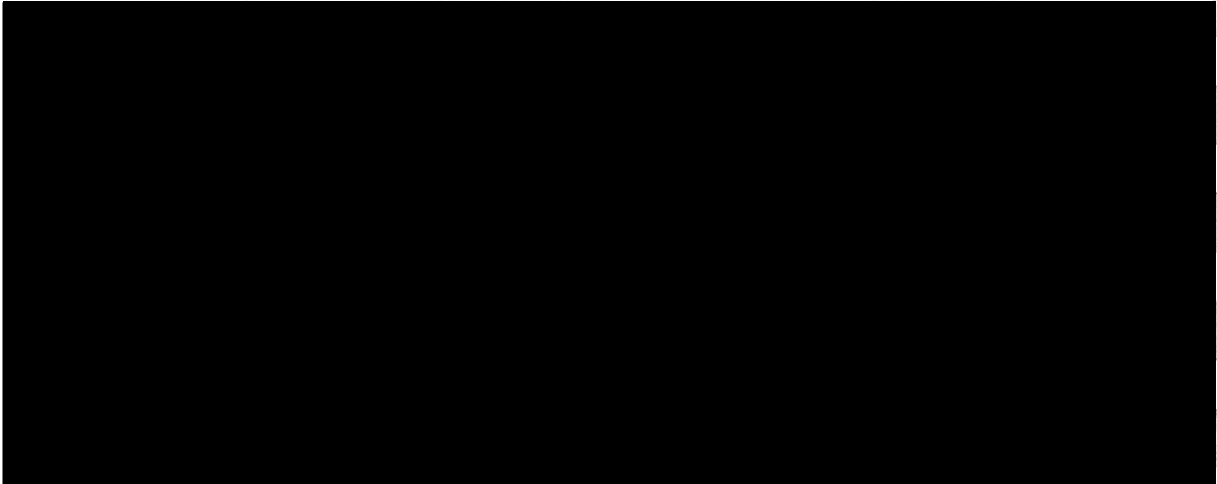
1.2 Impact on Pricing

- (a) Subject to any provision of this Deed limiting or excluding any entitlement of the Service Provider (including **clauses 16(b), 29.4 and 29.5** of the General Conditions), if an Adjustment Event arises then:
- (i) to the extent provided for that Adjustment Event in column C of the table above, for the purposes of **Section 9.1** of the **Payment Schedule**:
- (A) either:
- (1) if Variation Capital Works Milestone Payments are agreed between the parties, the Variation Capital Works Milestone Payments; or
- (2) if Variation Capital Works Milestone Payments are not agreed between the parties, the Variation Capital Works Progress Payments (Lump Sum), with the Service Provider acknowledging that Variation Capital Works Milestone Payments will not apply except to the extent agreed by the Principal;
- (B) the Variation Capital Works Monthly Payments; and
- (C) the Variation Recurring Expenditure Monthly Payments,
- for that Adjustment Event will be determined by the Principal's Representative based on the:

- (D) increase in costs that have been, or will be, directly and reasonably incurred by the Service Provider; or
- (E) decrease in costs that have been, or will be, incurred by the Service Provider,

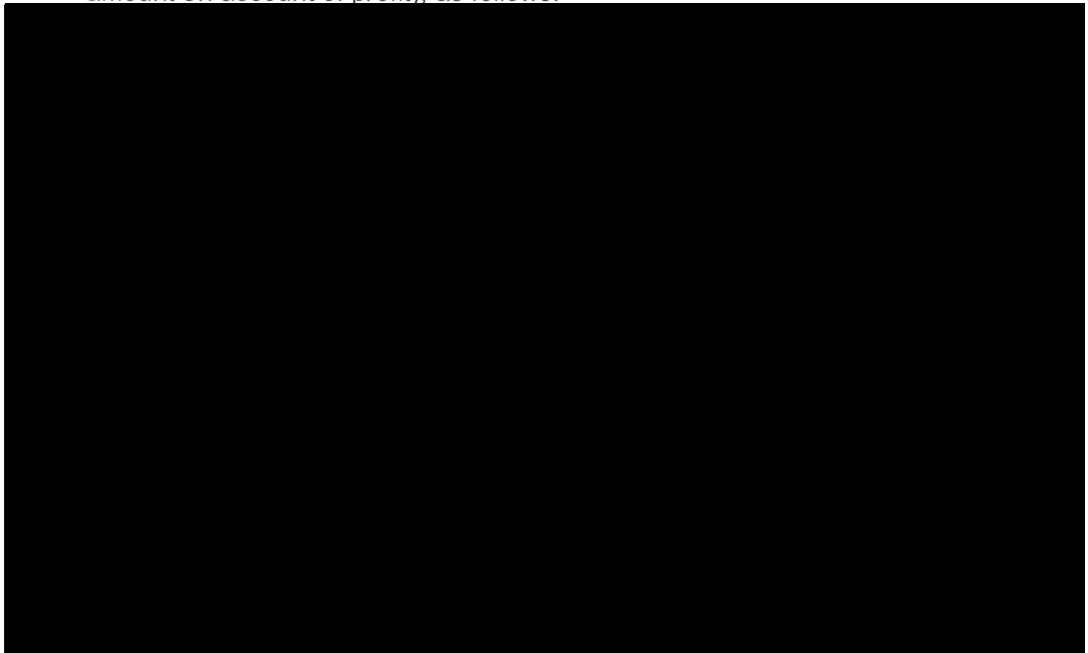
in carrying out the Services (other than the Mobilisation Activities, the Redeployment Activities or the Transition Out Activities) in accordance with this Deed as a result of that Adjustment Event (plus, in either case, an amount on account of profit), as follows:

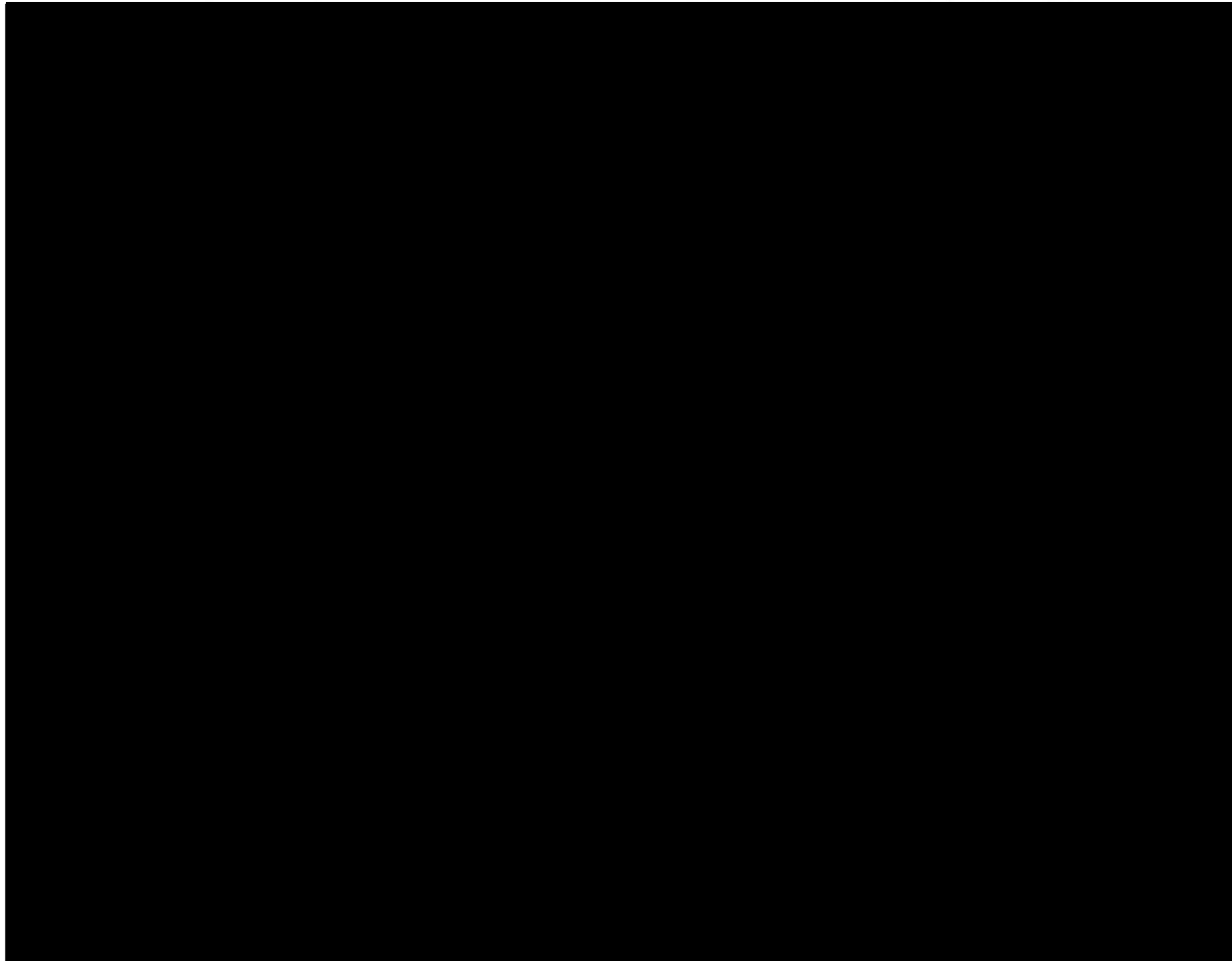




- (ii) to the extent provided for that Adjustment Event in column D of the table above, subject to **clause 1.2(d)** of this **Part 3** of the **Variations Schedule**, to the extent the Adjustment Event results in:
 - (A) an increase in costs that have been, or will be, suffered or incurred by the Service Provider; or
 - (B) a decrease in costs that have been, or will be, suffered or incurred by the Service Provider,

in carrying out the Property Management Services, the CRN Non-Operational Scope of Works, the State Road Overbridge Maintenance Services, the Overbridge Maintenance Services, the ARTC Lease State Road Overbridge Maintenance Services, the Level Crossing Closure Services, the Turnout Rationalisation Services or the Structures Disposal Services (as applicable), the Principal's Representative will determine adjustments to the amounts specified in **Appendices 5, 6, 7, 8, 9, 10, 11 and 12** (as applicable) of the **Payment Schedule** based on such increase or decrease in costs (plus, in either case, an amount on account of profit), as follows:



- 
- (b) The Principal's Representative must promptly notify the Service Provider in writing of any determination made in accordance with **clause 1.2(a)** of this **Part 3** of the **Variations Schedule** and the Payment Periods in respect of which the relevant amounts the subject of that determination will (subject to the provisions of this Deed) be payable.
- (c) For the avoidance of doubt, the Principal's Representative may (in its absolute discretion) make a determination in accordance with **clause 1.2(a)** of this **Part 3** of the **Variations Schedule**:
- (i) for the benefit of the Principal, including where the Service Provider has failed to notify the Principal's Representative of the Adjustment Event in accordance with **clause 14.4(a)** of the General Conditions; or
 - (ii) which has retrospective effect based on the date on which the relevant Adjustment Event occurred.
- (d) **Clause 1.2(a)(ii)** of this **Part 3** of the **Variations Schedule** will not apply:
- (i) if the Principal's Representative has already exercised the relevant Option in accordance with **clause 14.2(a)** of the General Conditions; or
 - (ii) after:
 - (A) in respect of Option 1, Option 2, Option 3A, Option 3B or Option 3C, the date that is 2 years after the Services Commencement Date; or
 - (B) in respect of Option 4, Option 5 or Option 6, the Services Commencement Date.



1.4 Variation Impacts Statement

- (a) Despite any other provision of this Deed, the Service Provider's entitlements in respect of Variation Impacts associated with any Adjustment Event must not exceed the Variation Impacts proposed by the Service Provider in any Variation Impacts Statement submitted under this Deed.

Schedule 4 – KPI Schedule

1 List of terms

3 Year Maintenance Works Plan Completion Rate – means, in respect of each Contract Year, the rate calculated in accordance with Section 6.2 of this Schedule 4 – KPI Schedule.

3 Year Maintenance Works Plan Delivery Abatement – means, in respect of each Contract Year, the abatement calculated in accordance with Section 6.2 of this Schedule 4 – KPI Schedule.

Abatement Adjustment – means, in respect of each Payment Period, the adjustment calculated in accordance with Section 3.1 of this Schedule 4 – KPI Schedule.

Aboriginal and Torres Strait Islander Jobs Employment Rate – means the rate calculated in accordance with Section 7.3(b) of this Schedule 4 – KPI Schedule.

Aboriginal Participation Plan – has the meaning given to it in Section 1 of the Scope of Works.

Actual Activity Volumes – has the meaning given to it in the Payment Schedule.

Actual Delivery Date – means, in respect of each Scope of Works Deliverable, the date that the Scope of Works Deliverable is delivered by the Service Provider to the Principal or the Principal's Representative (as applicable) in an accurate and complete state and that otherwise complies with the requirements of this Deed.

Actual Possession Hours – means, in respect of each Payment Period, the actual Possession Hours that occurred.

Ad Hoc Train Path Request – has the meaning given to it in Section 1 of the Scope of Works.

Asset Condition Adjustment – means, in respect of each Payment Period, the amount calculated as such in accordance with Section 6.1 of this Schedule 4 – KPI Schedule.

Average Indexed – has the meaning given to it in Schedule 3 – Indexation Schedule.

Bedding-In Adjustment – means, in respect of each Payment Period, the amount calculated as such in accordance with Section 9.1 of this Schedule 4 – KPI Schedule.

Cancelled Scheduled Trains – means a Train Path held or scheduled for use by a Rolling Stock Operator that has been cancelled by the Service Provider.

Category A Notifiable Occurrence means either –

- (a) a Category A Notifiable Occurrence as defined in Regulation 57 of the Rail Safety National Law National Regulations 2012 (NSW); or
- (b) any Serious Injury.

Category B Selected Occurrence – means any Category B Notifiable Occurrence except for:

- (a) an incident in which a vehicle or vessel strikes an associated railway track structure;
- (b) an accident or incident where rolling stock exceeds the limits of authorised movement given in a proceed authority;
- (c) any slip, trip or fall by a person on railway premises;
- (d) a person being caught in the door of any rolling stock;
- (e) any situation where a load affects, or could affect, the safe passage of trains or the safety of people, or cause damage to adjoining property;
- (f) an accident or incident involving dangerous goods that affects, or could affect, the safety of railway operations or the safety of people, or cause damage to property;

- (g) the detection of an irregularity in any rolling stock that could affect the safety of railway operations;
- (h) a fire or explosion on, in, or near, rail infrastructure or rolling stock that endangers the safety of railway operations or the safety of 1 or more people, or causes service terminations or track or station closures;
- (i) any incident on railway property where a person inflicts, or is alleged to have inflicted, an injury on another person;
- (j) a suspected attempt to suicide;
- (k) the notification that a rail safety worker, when required to do so under the drug and alcohol management program of a rail transport operator, has failed to submit to a test in accordance with the testing regime set out in the operator's drug and alcohol management program;
- (l) the notification that a rail safety worker has returned a result to a test undergone by the worker in accordance with the testing regime set out in the drug and alcohol management program of a rail transport operator that suggests that the worker was in breach of the operator's drug and alcohol management program at a relevant time;
- (m) the infliction of wilful or unlawful damage to, or the defacement of, any rail infrastructure or rolling stock that could affect the safety of railway operations or the safety of people; and
- (n) a security incident associated with railway premises that affects the safety of railway operations, including an act of trespass, vandalism, sabotage or theft that could affect the safety of railway operations.

Category B Notifiable Occurrence – has the meaning given to it in Regulation 57 of the Rail Safety National Law National Regulations 2012 (NSW).

Class 1 KPIs – means the KPIs listed in Table 2 in Section 2.4 of this Schedule 4 – KPI Schedule.

Class 2 KPIs - means the KPIs listed in Table 3 in Section 2.4 of this Schedule 4 – KPI Schedule.

Class 2 KPI Failure Trend – means, in respect of each Payment Period and each Class 2 KPI, an instance where the Service Provider has failed to achieve the relevant Class 2 KPI (over and above any relevant tolerance level specified in Table 3 in Section 2.4 of this Schedule 4 – KPI Schedule) in that Payment Period and any two or more prior Payment Periods over the rolling period of the last 6 Payment Periods (comprising the current relevant Payment Period plus the five Payment Periods immediately prior).

CRN CM 003 – Defect Management Guidelines – means the civil engineering manual of the same name as referred to in Appendix B of the Scope of Works.

CRN CM 203 – Track Inspection – means the civil engineering manual of the same name as referred to in Appendix B of the Scope of Works.

CRN CM 211 – Track Geometry & Stability – means the civil engineering manual of the same name as referred to in Appendix B of the Scope of Works.

CRN CS 100 – Civil Technical Maintenance Plan – means the civil engineering standard of the same name as referred to in Appendix B of the Scope of Works.

CRN-S-P001 Procedure for Incident and Failure Notification – means the TfNSW procedure for reporting incident and failures as referred to in Appendix A of the Scope of Works.

Customer Focus Adjustment – means, in respect of each Payment Period, the amount calculated as such in accordance with Section 5.1 of this Schedule 4 – KPI Schedule.

Daily Train Plan – means the documents comprising all the advices which are prepared for each day in accordance with relevant procedures by the Service Provider and which, taken together, show all the Train Paths on the CRN for a particular day.

Due Date – means, in respect of each Scope of Works Deliverable, the date by which that Scope of Works Deliverable is required to be provided by the Service Provider to the Principal or the Principal's Representative (as applicable) as specified in Appendix H of the Scope of Works.

EHB Non-Compliance Instance – means:

- (a) an instance where there is an obligation on the Service Provider, the Principal or any of their respective Associates to report to a relevant Authority; or
- (b) a notice or notices are issued by any relevant Authority to the Service Provider, the Principal or any of their respective Associates,

as a result of, or in respect of, any breach of any Environmental Law or Heritage Law arising out of, or in any way in connection with, the Services or the CRN Assets.

Emergency and Priority Defects – means the E1, E2 and P1 defects specified for each asset class as defined in *CRN CM 203 – Track Inspection*.

Emergency Incident – has the meaning given to it in *CRN-S-P001 Procedure for Incident and Failure Notification*.

Failure Report – means a report that details the relevant KPI failure or Non-Compliance and includes a detailed explanation and root cause analysis of the KPI failure or Non-Compliance.

Freight Train Service – means a train service that is operating on any part of the CRN that is transporting goods including grain stock.

Heritage Law – means any of the *Heritage Act 1977* (NSW), the *Heritage Act 2004* (ACT) and any other Law relating to the protection or preservation of heritage assets.

Inadequate Aboriginal and Torres Strait Islander Employment Abatement – means the abatement calculated in accordance with Section 7.3 of this Schedule 4 – KPI Schedule.

Inadequate Aboriginal and Torres Strait Islander Participation Abatement – means the abatement calculated in accordance with Section 7.4 of this Schedule 4 – KPI Schedule.

Inadequate Regional Employment Abatement – means the abatement calculated in accordance with Section 7.2 of this Schedule 4 – KPI Schedule.

Key Performance Indicator (or KPI) – means each of the indicators specified in Table 2 and Table 3 of this Schedule 4 – KPI Schedule.

Late and/or Inaccurate Scope of Works Deliverable Abatement – means the abatement for Scope of Works Deliverables where the Actual Delivery Date does not occur by the Due Date, referred to as 'LIRA' in Section 8.1 of this Schedule 4 – KPI Schedule.

Late Train Service – means a:

- (a) Passenger Train Service which originates within or traverses any part of the CRN, and either:
 - (i) crosses into a network adjacent to the CRN at the relevant Network Border later than its scheduled time by a duration that exceeds 5 minutes; or
 - (ii) arrives at a Train Path Destination within the CRN later than its scheduled time by a duration that exceeds 5 minutes; or
- (b) Freight Train Service which originates within or traverses any part of the CRN, and either:
 - (i) crosses into a network adjacent to the CRN at the relevant Network Border later than its scheduled time by a duration that exceeds 5 minutes; or
 - (ii) arrives at a Train Path Destination within the CRN later than its scheduled time by a duration that exceeds 10 minutes.

Leases and Licenses – means all current and expired leases and licenses that are the subject of the Services.

Major Incident – has the meaning given to it in *CRN-S-P001 Procedure for Incident and Failure Notification*.

Minor Incident – has the meaning given to it in *CRN-S-P001 Procedure for Incident and Failure Notification*.

Monthly Report – has the meaning given to it in Section 1 of the Scope of Works.

Monthly Services Fee – means, in respect of each Payment Period, the amount calculated as such in accordance with Section 3.1 of Schedule 2 – Payment Schedule.

Network Borders – has the meaning given to it in Section 1 of the Scope of Works.

Non-Compliance – has the meaning given in the General Conditions, but (for the purposes of this Schedule 4 – KPI Schedule only and without limiting the provisions of this Schedule 4 – KPI Schedule in respect of KPI failures) excludes a KPI failure.

Passenger Train Service – means a train service that is operating on any part of the CRN that is carrying passengers.

Permanent Speed Restriction – means a reduction in maximum allowable track speed applied to a section of the CRN, undertaken as a configuration change to the TOC Manual that is current as at the Services Commencement Date.

Planned Activity Volumes – has the meaning given to it in the Payment Schedule.

Planned Possession Hours – means, in respect of each Payment Period, the forecast Possession Hours for that Payment Period set out in the Possessions Plan that is submitted as part of the 3MWP.

Possession Hours – means the total period in hours that all or any part of the CRN is the subject of a Track Possession, provided that any concurrent or overlapping Track Possessions will count separately towards that total.

Rectification Plan – means a plan which:

- (a) specifies the relevant KPI failure or Non-Compliance;
- (b) details how the Service Provider will address the relevant KPI failure or Non-Compliance, including proposed actions (and timings), including for the Service Provider to ensure that the same or similar KPI failure or Non-Compliance does not occur in the future; and
- (c) complies with the requirements of this Deed and is otherwise satisfactory to the Principal's Representative.

Rectification Plan Non-implementation – means a failure by the Service Provider to implement or comply with a Rectification Plan.

Regional Jobs Employment Rate – means the rate calculated in accordance with Section 7.2 of this Schedule 4 – KPI Schedule.

Reportable Incident – means any of the following incidents that occur in respect of the Services or the CRN Assets during the Term:

- Emergency Incident;
- Major Incident;
- Minor Incident; or

- any other incident as notified by the Principal's Representative from time to time during the Term.

Reporting and Submission Adjustment – means, in respect of each Payment Period, the amount calculated in accordance with Section 8.1 of this Schedule 4 – KPI Schedule.

Routine Maintenance – has the meaning given to it in Section 1 of the Scope of Works.

Safety Adjustment – means, in respect of each Payment Period, the amount calculated in accordance with Section 4.1 of this Schedule 4 – KPI Schedule.

Safety Incident – means any incident involving any member of the public, any customer, any Associate, the Service Provider or any counterparty to a Relevant Document resulting in death, arising out of, or in any way in connection with, the Services or the CRN Assets.

Scope of Works Deliverable – means a deliverable required to be provided by the Service Provider as specified in Appendix H of the Scope of Works.

Serious Injury – has the meaning given to “serious injury or illness of a person” in section 36 of the *Work Health and Safety Act 2011* (NSW).

Stakeholder – means any person, including passenger and freight customers, Rolling Stock Operators, neighbours on properties adjacent to any CRN Asset or other Rail Infrastructure Managers and Authorities, that has a connection with, interest in or is otherwise affected by, the CRN or the Services.

Stakeholder Management Plan – has the meaning given to it in Section 1 of the Scope of Works.

Standard Working Timetable – has the meaning given to it in Section 1 of the Scope of Works.

Sustainability and Social Adjustment – means, in respect of each Payment Period, the adjustment calculated in accordance with Section 7.1 of this Schedule 4 – KPI Schedule.

Technical Maintenance Plan – has the meaning given to it in Section 1 of the Scope of Works.

Temporary Speed Restriction – has the meaning given to it in Section 1 of the Scope of Works .

TfNSW Regional and Outer Metropolitan Areas – means the area outside the areas specified as “Greater Sydney” as per the map in this link: <https://www.stayinformed.com.au/boundaries>.

Theoretical Time Lost – means the amount of time in minutes lost as a result of a Temporary Speed Restriction or Permanent Speed Restriction as reported by the TrackSpeed System, however does not include any time lost as a result of a WOLO speed restriction that has been applied in accordance with *CRN CM 211 – Track Geometry & Stability*.

Track Condition Index – has the meaning of the index calculated based on a number of parameters of track geometry, top twist, line and gauge as measured by a track recording vehicle in accordance with *CRN CS 100 – Civil Technical Maintenance Plan*.

TrackSpeed System - means the system used by TfNSW to manage and record Temporary Speed Restrictions and Permanent Speed Restrictions on the CRN.

Train Path – means an entitlement for a train to operate on any part of the CRN along a given route, incorporating origin, destination and intermediate timing points at a day and time nominated in the Standard Working Timetable and/or Daily Train Plan.

Train Path Destination – means the destination as recorded in the relevant Train Path.

Train Service – means a passenger and/or freight train service operating on any part of the CRN.

Unscheduled Overbridge Closure – means the closure by or on behalf of the Service Provider of an overbridge forming part of the CRN Assets, where such closure does not occur as scheduled in accordance with the 3 Year Maintenance Works Plan.

2 Key Performance Indicators

2.1 KPI Principles

- (a) The Service Provider acknowledges and agrees that:
- (i) the purpose of the KPI regime is to incentivise the Service Provider for the purposes of ensuring that the Services are carried out so as to meet the Principal's requirements, with a focus on critical service areas and on performance improvement where the Service Provider fails to carry out the Services in accordance with the Principal's requirements;
 - (ii) unless otherwise specified in this Schedule or directed by the Principal's Representative, KPIs apply from the Services Commencement Date;
 - (iii) the Service Provider must accurately self-report on its performance in carrying out the Services and achieving the KPIs;
 - (iv) without limiting **clauses 6.3 and 6.4** of the General Conditions, the Service Provider must ensure that data evidencing the Service Provider's performance in respect of KPIs is readily available at the request of the Principal's Representative, in a format that is satisfactory to the Principal's Representative and at no additional cost to the Principal; and
 - (v) without limiting clause 6.12(h) of the General Conditions, the rights of the Principal, and the obligations and liabilities of the Service Provider, under this Schedule are in addition to, and do not limit or otherwise affect, any other rights of the Principal, or obligations or liabilities of the Service Provider, arising out of, or in any way in connection with, this Deed, the Services or the CRN Assets, including in respect of any failure by the Service Provider to carry out the Services in accordance with this Deed.
- (b) Where an Abatement Adjustment (or any element of an Abatement Adjustment) calculated in accordance with this Schedule is not applied in the Payment Period to which it relates (including where the events or circumstances giving rise to the Abatement Adjustment (or element of the Abatement Adjustment) are not known to the Principal's Representative at the time), the Principal's Representative may (in its absolute discretion) apply such Abatement Adjustment (or such element of an Abatement Adjustment) in any subsequent Payment Period.

2.2 KPI Reporting

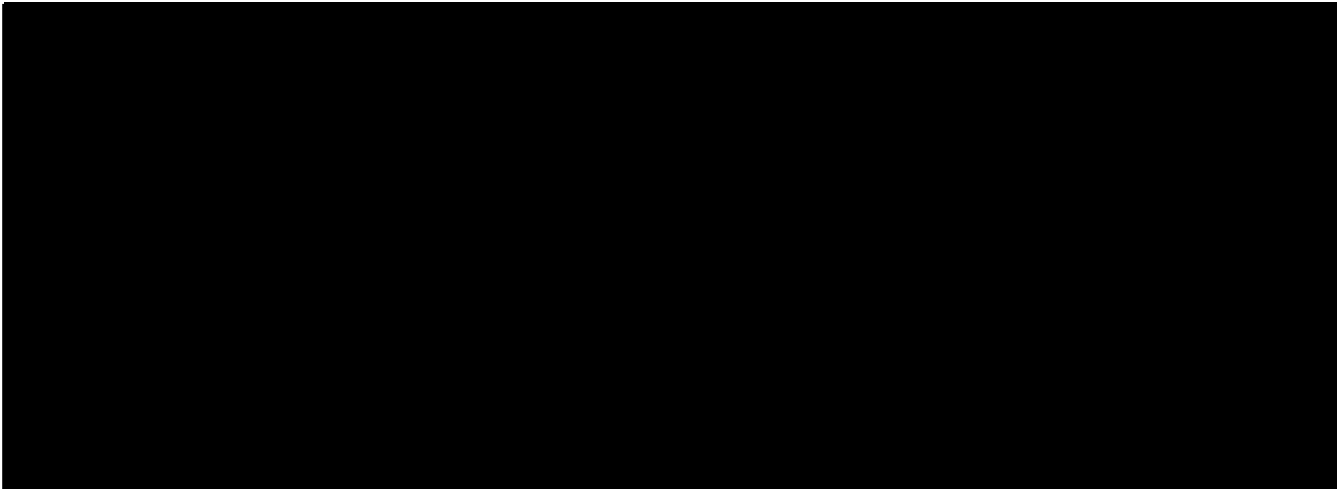
- (a) In accordance with Appendix H of the Scope of Works and as part of the Monthly Report, the Service Provider must provide a written report to the Principal's Representative regarding its performance in respect of the KPIs containing, at a minimum, the following information:
- (i) numerical data and graphical presentation setting out the KPI performance in respect of the period for which each KPI is measured against similar data for the preceding 12 months;
 - (ii) a summary table demonstrating historic performance for each KPI from the Services Commencement Date to the current Payment Period;
 - (iii) commentary explaining any performance variations and performance trends;

- (iv) in respect of each current Rectification Plan, the status of the actions required by that Rectification Plan and an explanation of any relationship between the Rectification Plan and current performance; and
 - (v) the total amount of Abatement Adjustments as calculated by the Service Provider during the Payment Period.
- (b) Where, in respect of a Payment Period, there is a KPI failure, the Service Provider must for each KPI failure, with the exception of Class 1 KPI 20 as per Table 2:
 - (i) prepare a Failure Report and provide it to the Principal's Representative for its review;
 - (ii) calculate the related Abatement Adjustment (if applicable); and
 - (iii) prepare a Rectification Plan and provide it to the Principal's Representative for its review, unless, pursuant to Section 2.2(d) of this Schedule 4 – KPI Schedule, the Principal's Representative has notified the Service Provider in writing that a Rectification Plan is not required.
- (c) Where, in respect of a Payment Period, there is a Non-Compliance in respect of which the Principal's Representative has not issued a Direction under **clause 5.5(a)(ii)(A)** of the General Conditions, then the Service Provider must for each Non-Compliance:
 - (i) prepare a Failure Report and provide it to the Principal's Representative for its review; and
 - (ii) prepare a Rectification Plan and provide it to the Principal's Representative for its review, unless, pursuant to Section 2.2(d) of this Schedule 4 – KPI Schedule, the Principal's Representative has notified the Service Provider in writing that a Rectification Plan is not required.
- (d) To the extent that the Service Provider demonstrates through the Failure Report to the satisfaction of the Principal's Representative, acting reasonably, that the KPI failure or Non-Compliance:
 - (i) was not caused or contributed to by any act or omission of the Service Provider or its Associates;
 - (ii) not used,then, upon request by the Service Provider, the Principal's Representative must notify the Service Provider in writing that:
 - (iii) the KPI failure or Non-Compliance is not to be considered for the purposes of application of Tables 2 and 3 and Sections 3 to 9 inclusive of this Schedule 4 – KPI Schedule;
 - (iv) a corresponding Rectification Plan is not required to be developed by the Service Provider; and/or
 - (v) the relevant Abatement Adjustment will not apply for that Payment Period (or, to the extent that the Abatement Adjustment has already been included in the determination of the Monthly Services Fee for a previous Payment Period, will be reimbursed in a subsequent Payment Period).
- (e) The Service Provider must implement and diligently comply with any Rectification Plan.

- (f) The Service Provider must include such other information in the reports required by this Schedule to be provided to the Principal or the Principal's Representative as is specified in this Schedule.
- (g) The Principal's Representative may, from time to time, notify the Service Provider of changes in the requirements for KPI reporting or request additional material to be provided by the Service Provider for any KPI, and the Service Provider must (at its own cost) comply with its obligations regarding KPI reporting on the basis of such change and comply with any such request. Nothing in this paragraph (g) will be interpreted as effecting a change to the actual KPIs specified.
- (h) Any Abatement Adjustment the subject of a request under Section 2.2(d) of this Schedule 4 – KPI Schedule will not apply until the Principal's Representative provides its determination under that section.

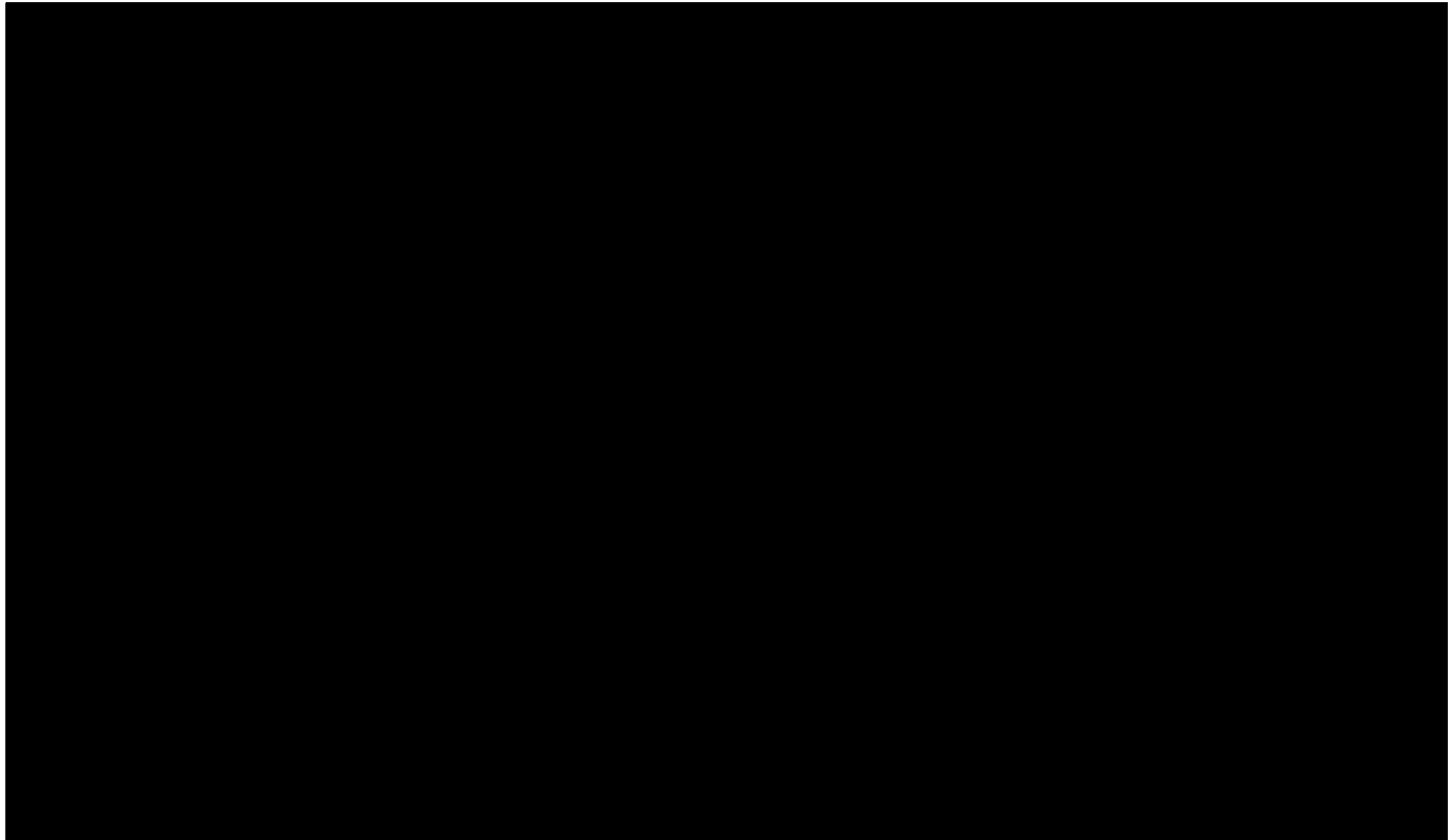
2.3 KPI Classes

- (a) The parties acknowledge and agree that KPIs are classified into KPI classes as defined in the [Table 1](#) below:



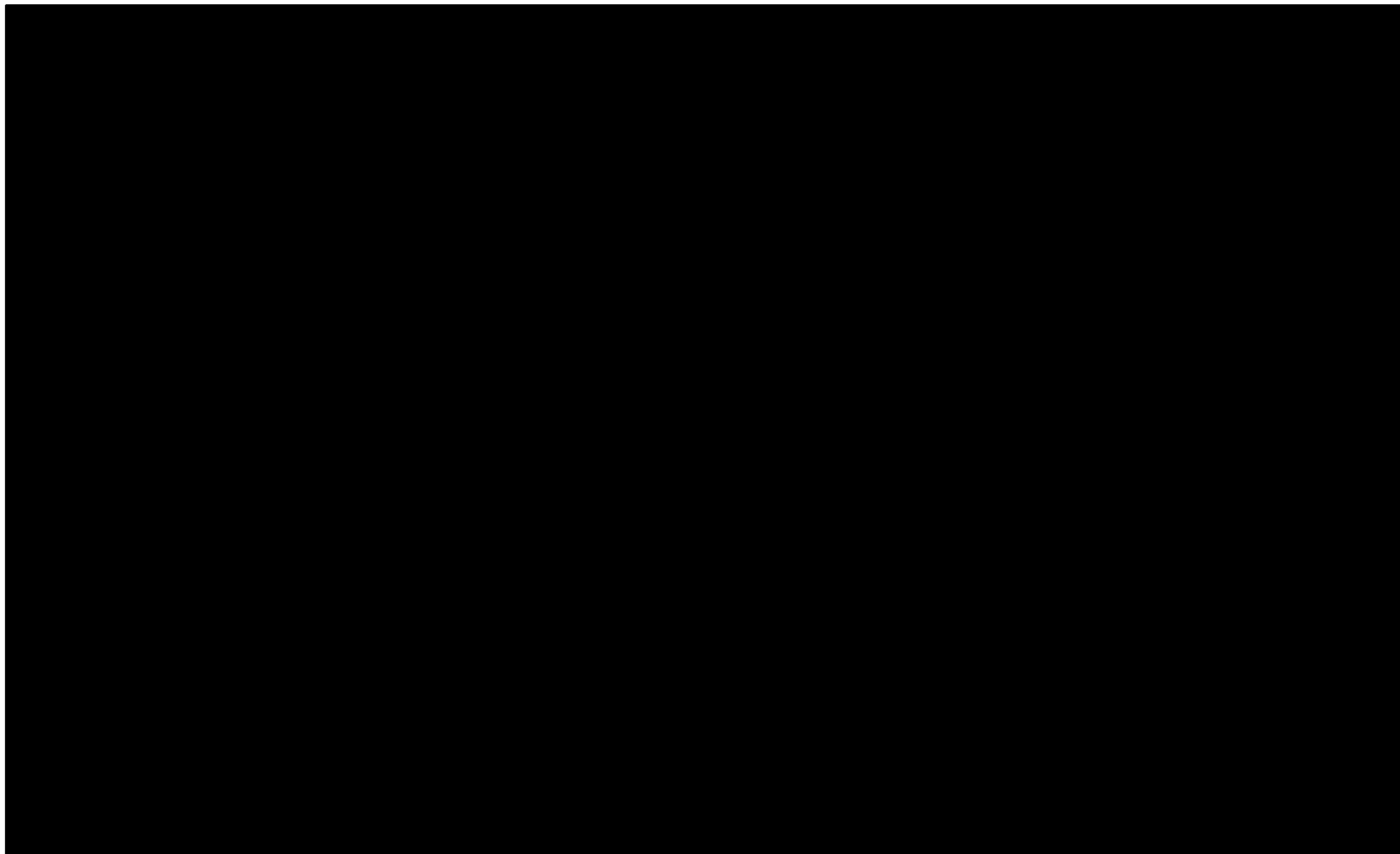


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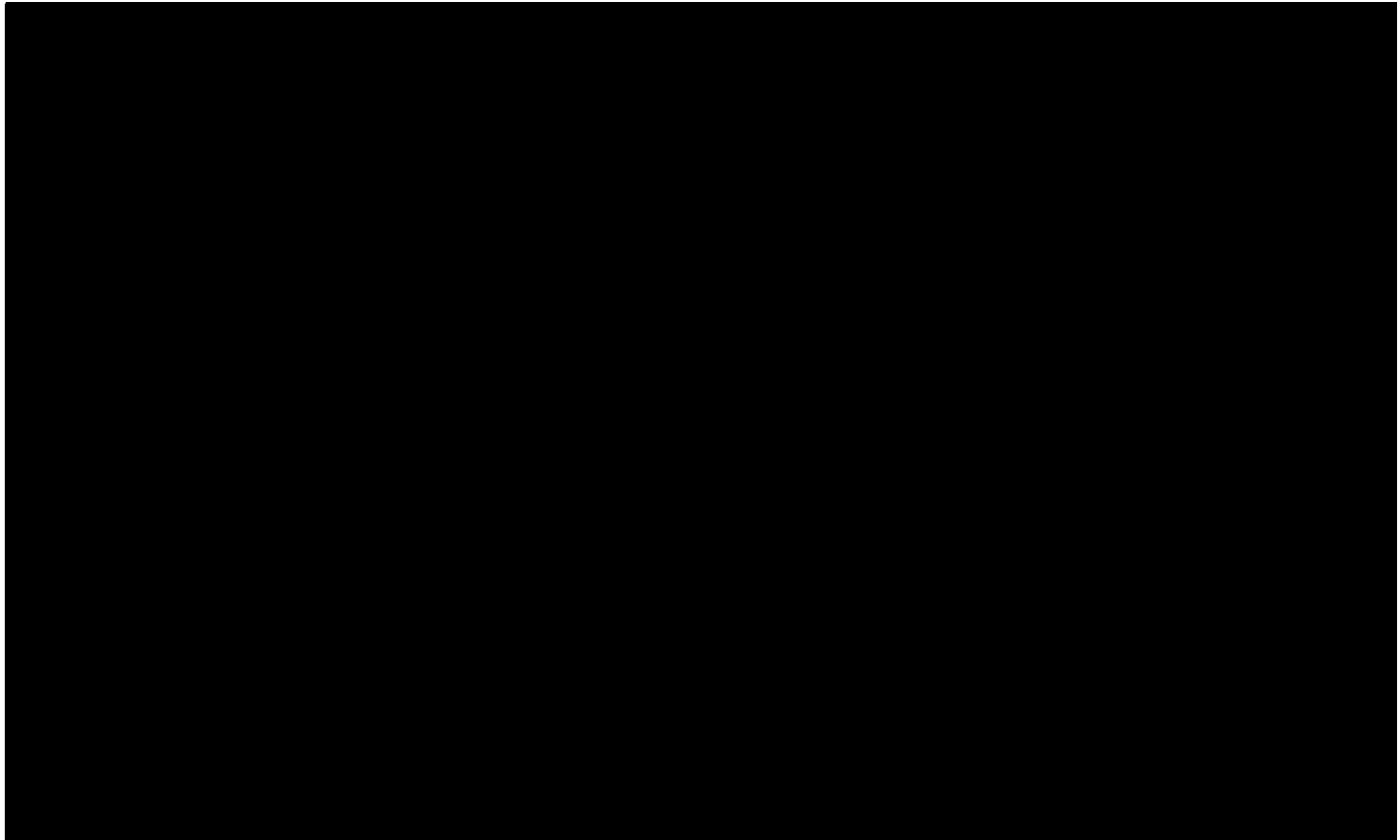


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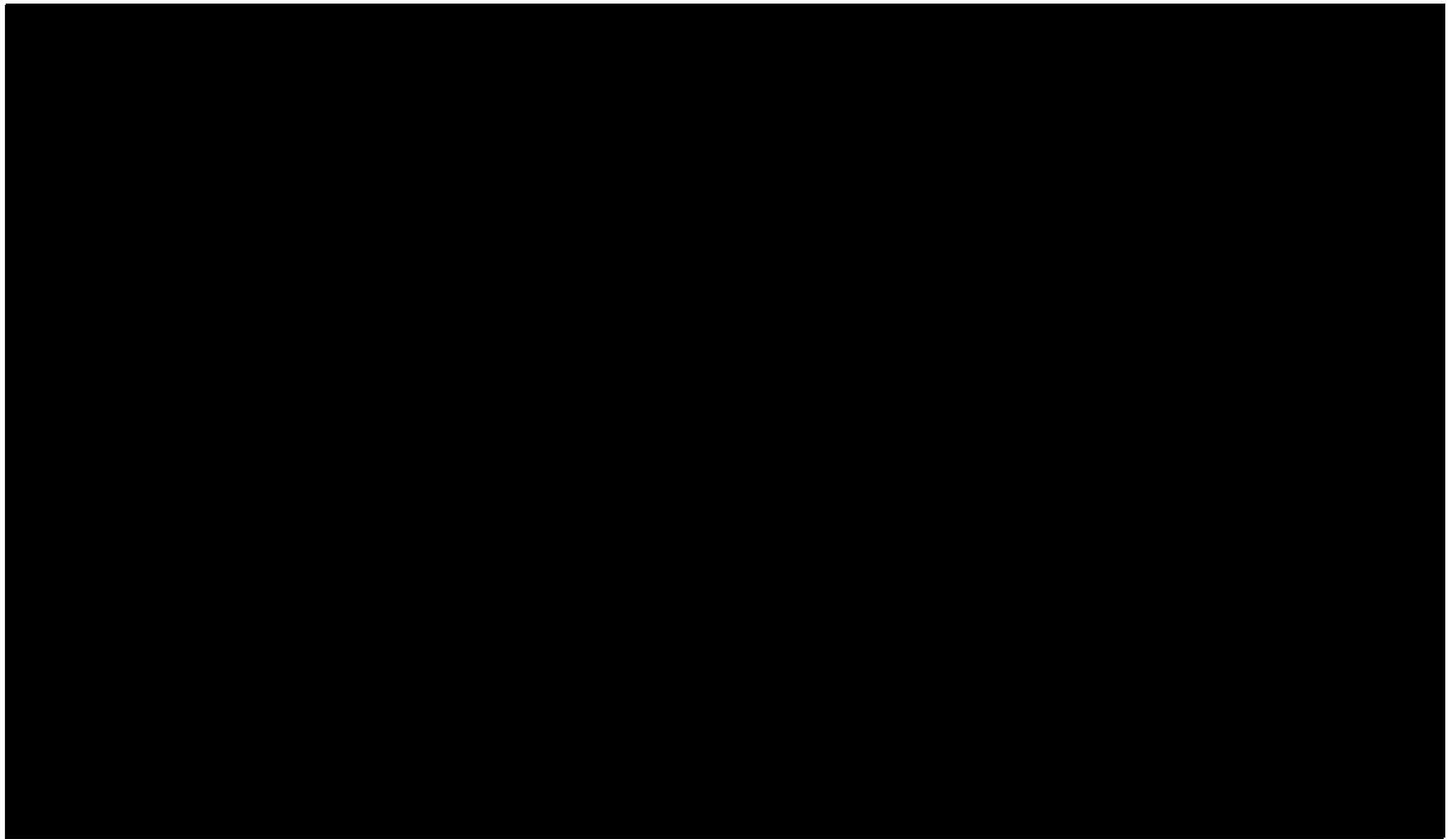
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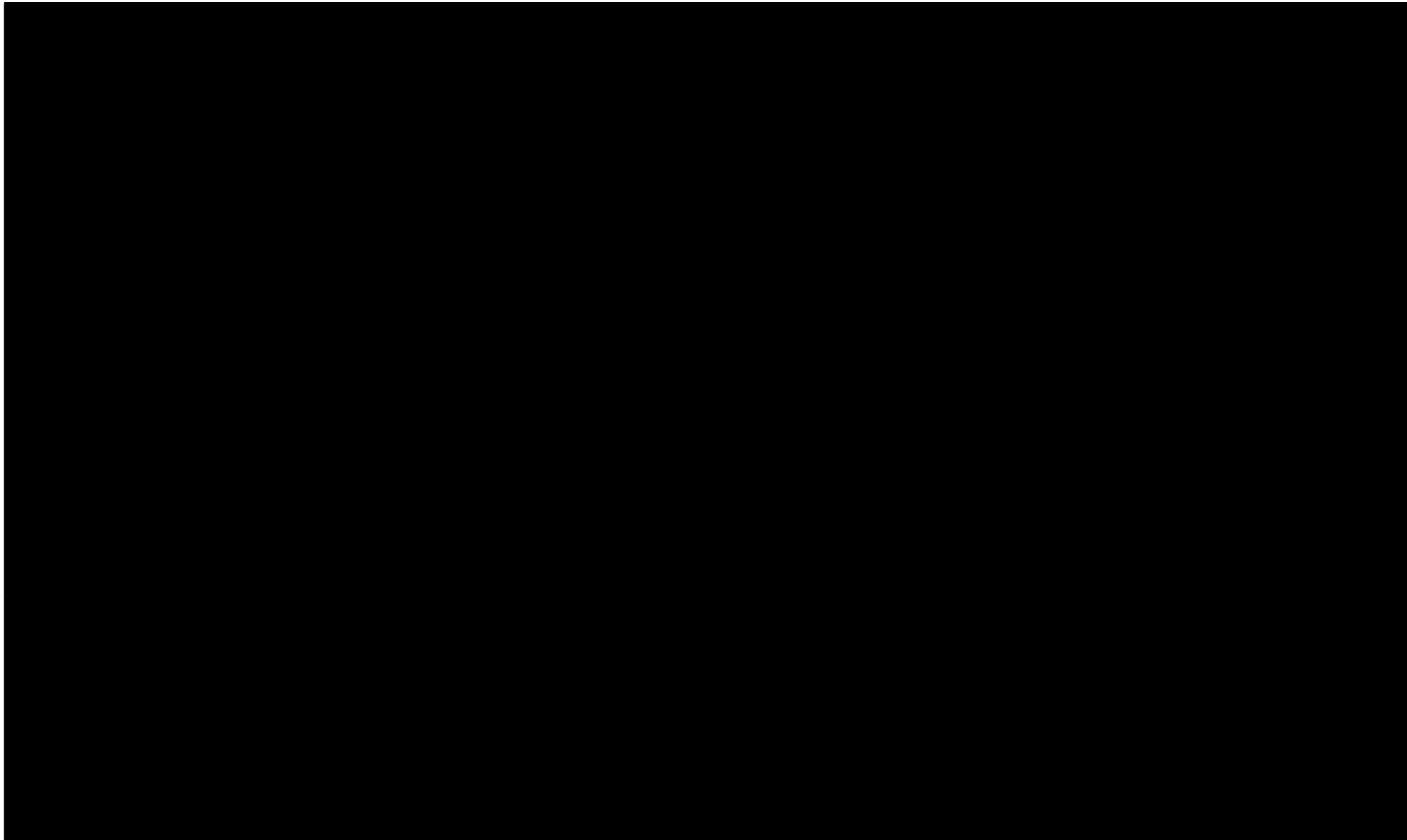
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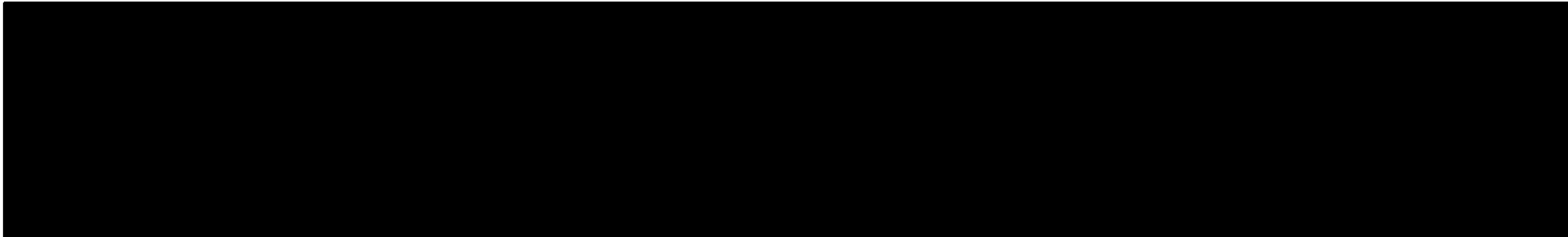
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3 Abatement Adjustment

3.1 Calculation of the Abatement Adjustment

(a) [REDACTED]
[REDACTED]
[REDACTED] The AA for each Payment
Period will be calculated as follows:

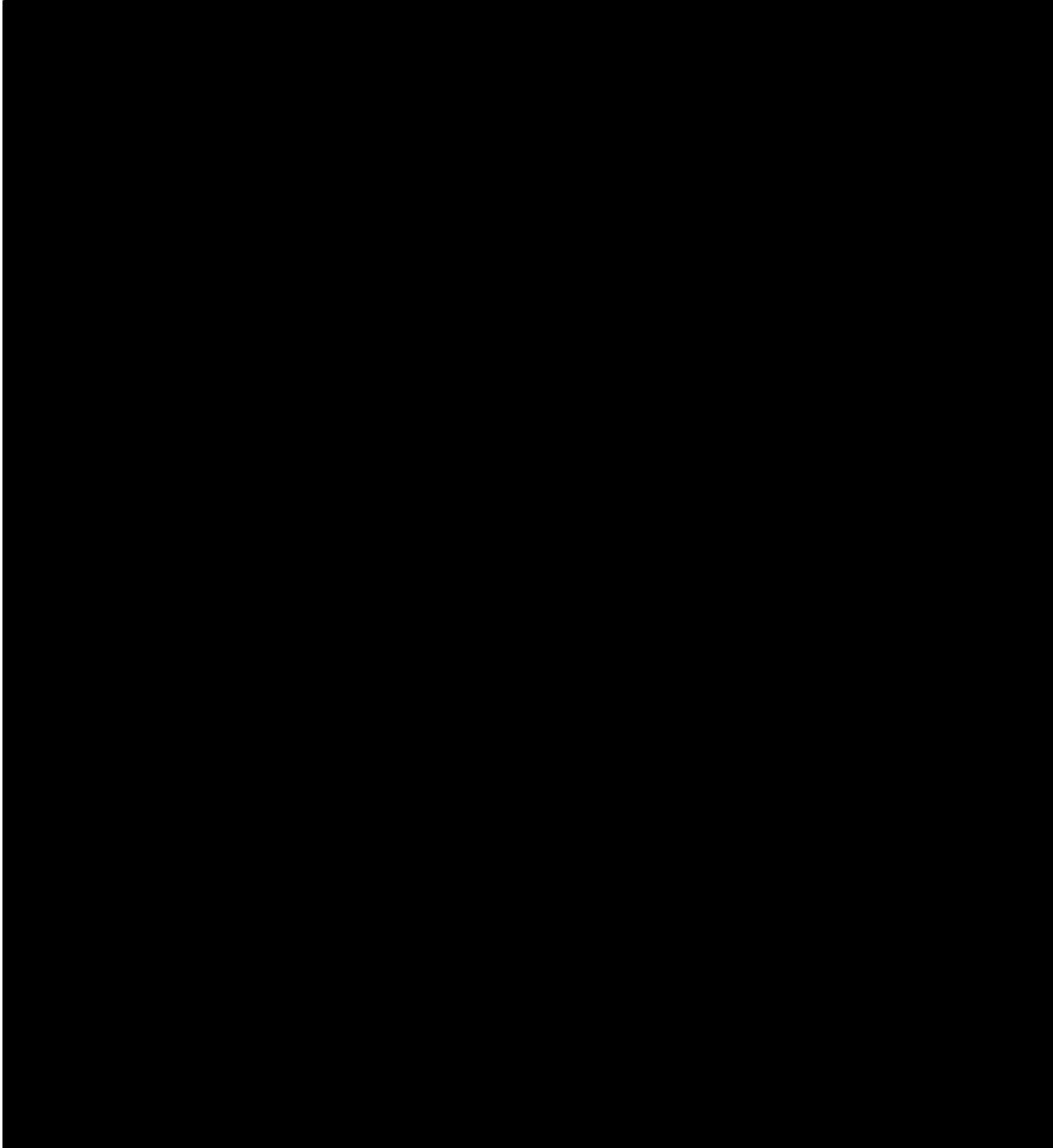
[REDACTED]

- (b) Where two or more adjustments would otherwise occur as a result of a single event, only the adjustment which attracts the highest dollar amount will apply, with the exception of the Late and/or Inaccurate Scope of Works Deliverable Abatement as part of the Reporting and Submission Adjustment. The Late and/or Inaccurate Scope of Works Deliverable Abatement can apply irrespective of whether a single event has triggered two or more adjustments (and in addition to another highest dollar amount adjustment associated with the single event). Notwithstanding the foregoing, the Service Provider shall remedy all KPI failures triggered by the related event.
- (c) For the avoidance of doubt, for the purposes of section 3.1(b), a KPI failure and any subsequent failure to implement or comply with the associated Rectification Plan will be considered separate events, and adjustments will be applied for each event.

4 Safety Adjustment

4.1 Calculation of the Safety Adjustment

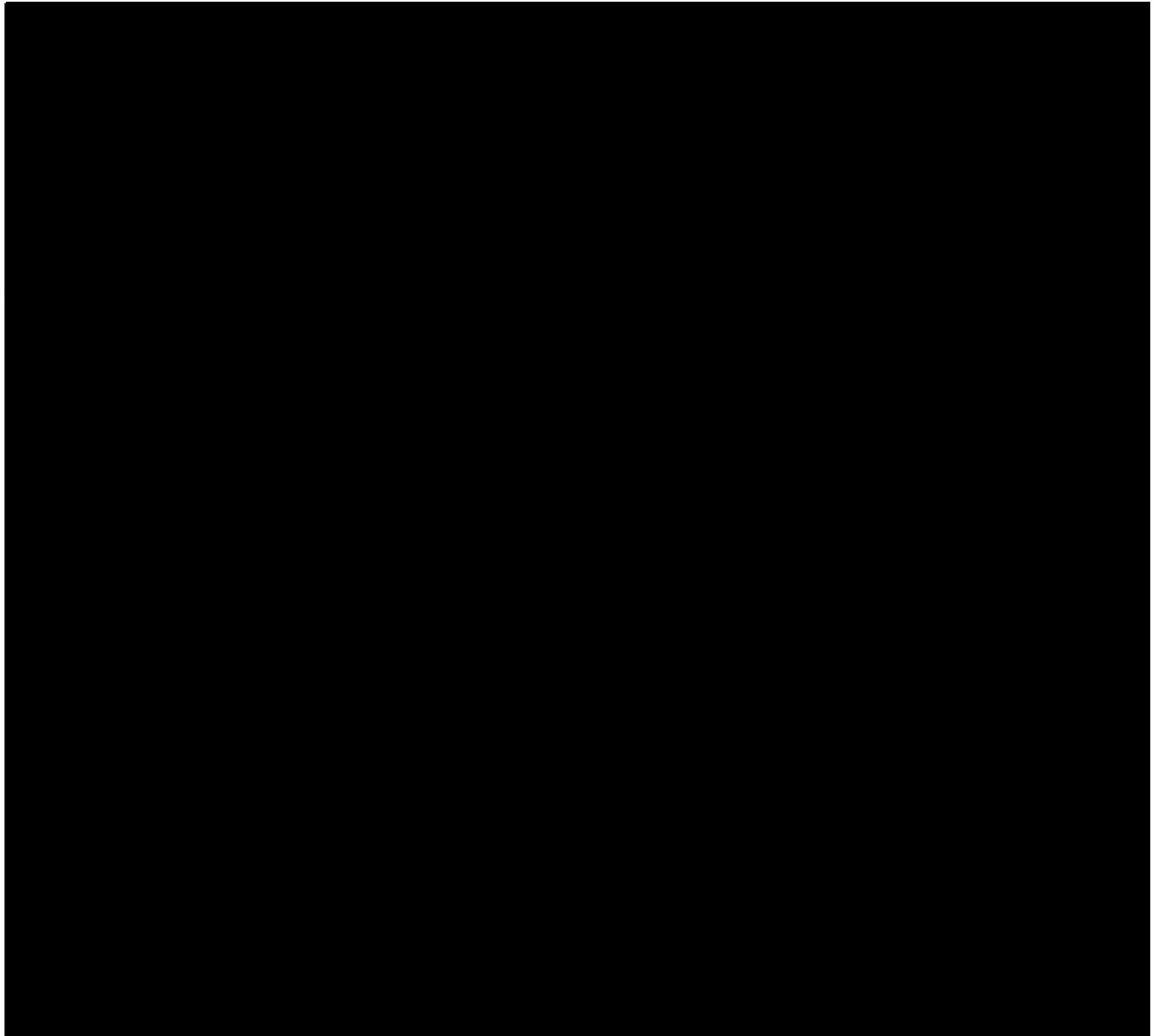
(a) The Safety Adjustment (SA) for each Payment Period will be calculated as follows:



5 Customer Focus Adjustment

5.1 Calculation of the Customer Focus Adjustment

- (a) The Customer Focus Adjustment (CFA) for each Payment Period will be calculated as follows:



5.2 Calculation of the Train Delay Abatement

- (a) The Train Delay abatement (TDA) for the relevant Payment Period is calculated with reference to the number of Late Train Services during that Payment Period that are above the Train Delay Tolerable Limit for the relevant Train Service.
- (b) For the avoidance of doubt, the number of Late Train Services will only be measured for:
- a. Train Services that commence their journey within the CRN; or

- b. Train Services that arrived at or earlier than the scheduled arrival time into the CRN.
- (c) The Train Delay Tolerable Limit for each Train Service is set out in Table 4, where the tolerable limit is defined as the acceptable number of Late Train Services during that Payment Period that fall below or are equal to the set percentage tolerable limits for each Train Service as measured at the end of the Payment Period. In the event that the acceptable number of Late Train Services, as calculated with reference to the set percentage, is not a whole number, the applied acceptable number of Late Train Services should be rounded down to the nearest whole number.

For the avoidance of doubt and by way of example:

- (i) if during the Payment Period there are 100 Passenger Train Services (that have commenced their journey within the CRN or that arrived at or earlier than the scheduled arrival time into the CRN) then the tolerable limit of Late Train Services that would not incur an abatement is 5 Late Train Services of a Passenger Train Service. Subsequently a Train Delay Abatement would be applied from the 6th Late Train Service of a Passenger Train Service that occurred during the related Payment Period; and
- (ii) if during the Payment Period there are 90 Freight Train Services (that have commenced their journey within the CRN or that arrived at or earlier than the scheduled arrival time into the CRN) then the tolerable limit of Late Train Services that would not incur an abatement is 13 Late Train Services of a Freight Train Service. Subsequently a Train Delay Abatement would be applied from the 14th Late Train Service of a Freight Train Service that occurred during the related Payment Period.

Table 4: Train Delay Tolerable Limits by Train Service

Train Service	Train Delay Tolerable Limit
Passenger Train Service	█ of Passenger Train Services, as measured at the end of the Payment Period, are allowed to be Late Train Services
Freight Train Service	█ of Freight Train Services, as measured at the end the Payment Period, are allowed to be Late Train Services

- (d) The number of Late Train Services that are above the Train Delay Tolerable Limit are counted at the end of each Payment Period, which determines the corresponding TDA that is applicable, as set out in Table 5.

Table 5: Train Delay abatement levels

Number of Late Train Services above the Train Delay Tolerable Limit	Train Delay abatement
█	█
█	█
█	█

5.3 Calculation of the Speed Restrictions Abatement

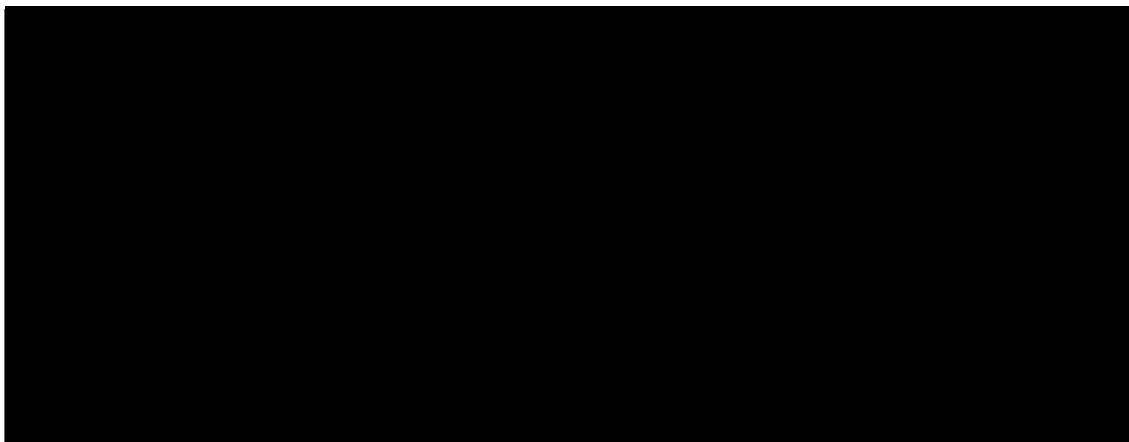
- (a) The Speed Restrictions abatement (SRA) for the Payment Period is calculated by reference to the number of instances in the relevant Payment Period where the Theoretical Time Lost for either a Line Type, individual Train Line or Train Line grouping (determined in accordance with Appendix 1) is above the tolerance levels as set out in Appendix 1 and determined in accordance with *Table 6*.
- (b) For the purposes of calculating the Theoretical Time Lost in the first 6 Payment Periods from the Services Commencement Date, the Theoretical Time Lost in this period does not include any time lost as a result of a Temporary Speed Restriction that was pre-existing from the Services Commencement Date. For the avoidance of doubt the Theoretical Time Lost additionally does not include any time lost as a result of a WOLO speed restriction that has been applied in accordance with *CRN CM 211 – Track Geometry & Stability*.
- (c) For the avoidance of doubt from the 7th Payment Period after the Services Commencement Date, the Theoretical Time Lost will include all time lost as a result of a Temporary Speed Restriction or Permanent Speed Restriction as reported by the TrackSpeed System including any Temporary Speed Restriction that was pre-existing from the Services Commencement Date. However, consistent with the definition of Theoretical Time Lost, this does not include any time lost as a result of a WOLO speed restriction that has been applied in accordance with *CRN CM 211 – Track Geometry & Stability*.

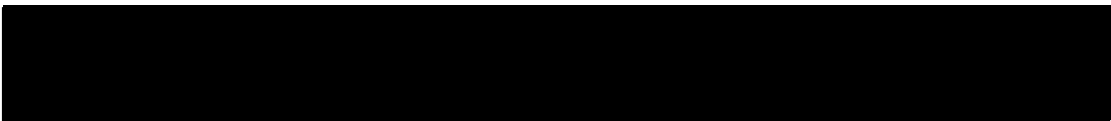
Table 6: Speed Restrictions abatement level

Number of instances where the Theoretical Time Lost exceeds the tolerance limit	Speed Restrictions abatement
[REDACTED]	[REDACTED]

5.4 Calculation of the Lease and Licenses Abatement

- (a) The Leases and Licenses abatement (LLA) is determined by reference to *Table 7*, and the Expired Leases and Licenses Rate (ELLR), which is calculated in accordance with the following formula:





- (b) The LLA is determined by reference to the ELLR and relevant abatement levels set out in Table 7. Note that the LLA will not be applied in the first 18 Payment Periods from the Services Commencement Date, however the Service Provider is still required to report the ELLR for every Payment Period commencing from the Services Commencement Date.
- (c) For the purposes of determining the Σ ELL, this abatement calculation does not include any expired Leases and Licenses that are the subject of a legal process, third party administrative delays and disputed ownership for a period of up to 6 months from the end date of the related lease or license, provided that during the 6 months the Service Provider actively pursues agreeable terms between the tenant/licensee and the Principal. If a new lease or license has not been executed or the existing tenant/licensee has not yet vacated the premises by the end of the 6 months, the existing expired lease or license will be included in the Σ ELL abatement calculation.

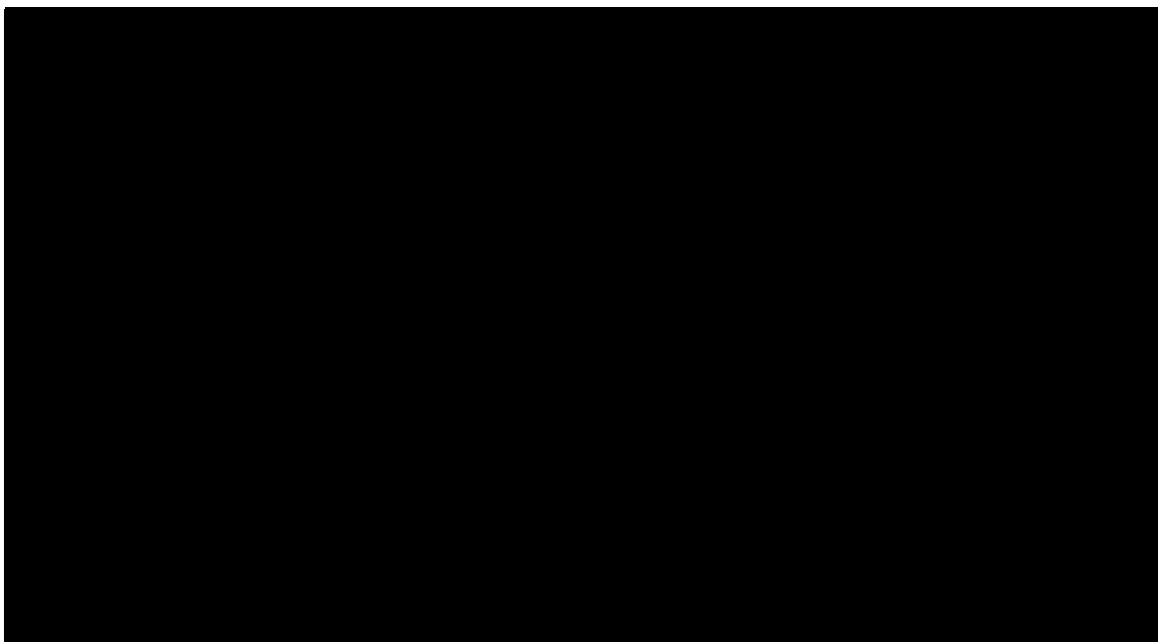
Table 7: Leases and Licenses abatement levels

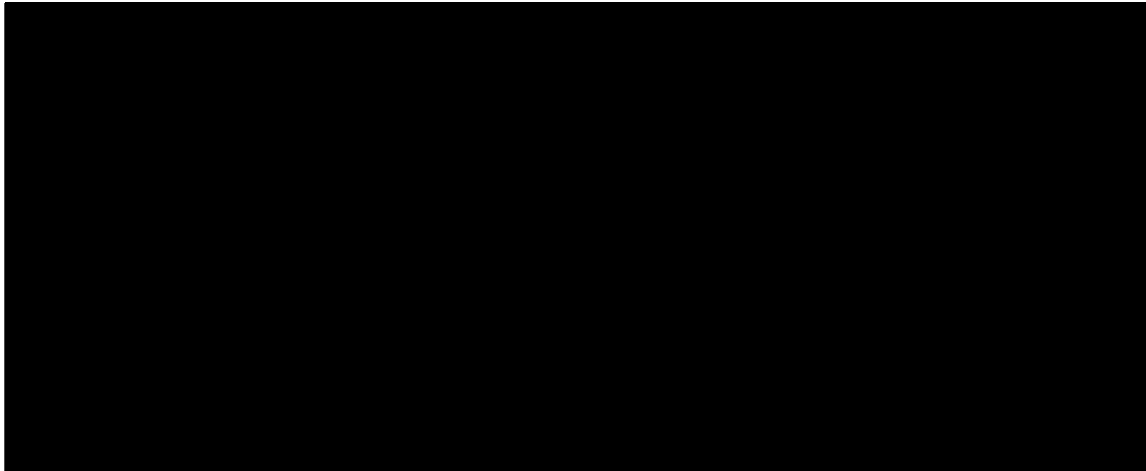
Expired Lease and Licenses Rate (ELLR)	Leases and Licenses abatement (LLA)

6 Asset Condition Adjustment

6.1 Calculation of the Asset Condition Adjustment

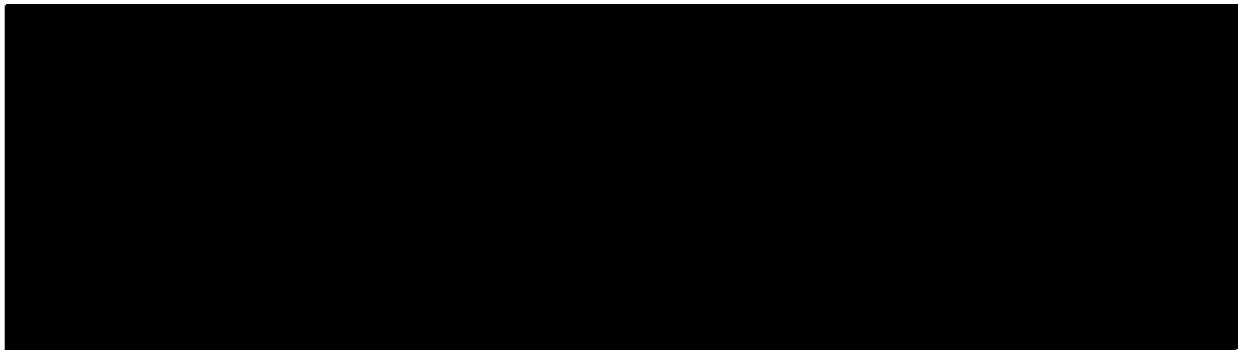
- (a) The Asset Condition Adjustment (ACA) for each Payment Period will be calculated as follows:





6.2 Calculation of the 3 Year Maintenance Works Plan Delivery Abatement

- (a) The 3MWPDA is measured per Contract Year and applies in the last Payment Period of each Contract Year.
- (b) The 3MWPDA is determined by reference to the 3 Year Maintenance Works Plan Completion Rate (3MWPCR), which is calculated in accordance with the following formula:



- (c) The 3MWPDA is determined by reference to the 3MWPCR and the abatement levels set out in Table 8.

Table 8: 3 Year Maintenance Works Plan Delivery Abatement levels

3 Year Maintenance Works Plan Completion Rate (3MWPCR)	3 Year Maintenance Works Plan Delivery Abatement (3MWPDA)
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

- (d) For the avoidance of doubt, if the Service Provider achieves a greater number of AAV for any individual planned number of projects or services as scoped in the current Contract Year's allocation of the 3 Year Maintenance Works Plan the additional numbers do not contribute to the overall total 3MWPCR and as a result the 3MWPCR cannot exceed 100%.
- (e) In the event that the Service Provider has not satisfactorily completed 100% of the PAV, in addition to the 3 Year Maintenance Works Plan Delivery Abatement, a '3

Year Maintenance Works Plan Adjustment Clawback' will be applied in accordance with Section 7.1 of Schedule 2 – Payment Schedule.

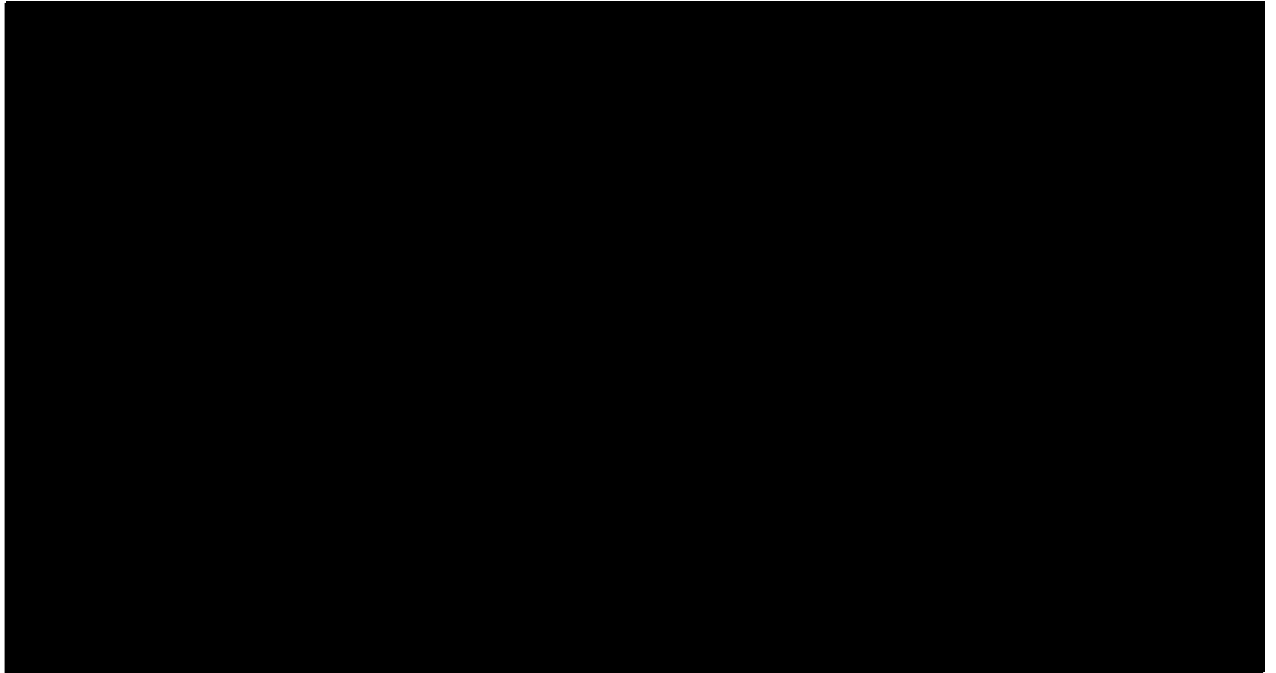
6.3 Calculation of the Routine Maintenance Delivery Abatement

- (a) The Routine Maintenance delivery abatement (RMDA) is measured at the end of each Payment Period.
- (b) The RMDA is [REDACTED] and is applied if the Service Provider has not carried out all the Routine Maintenance as set out in the Technical Maintenance Plan during the relevant Payment Period.

7 Sustainability and Social Adjustment

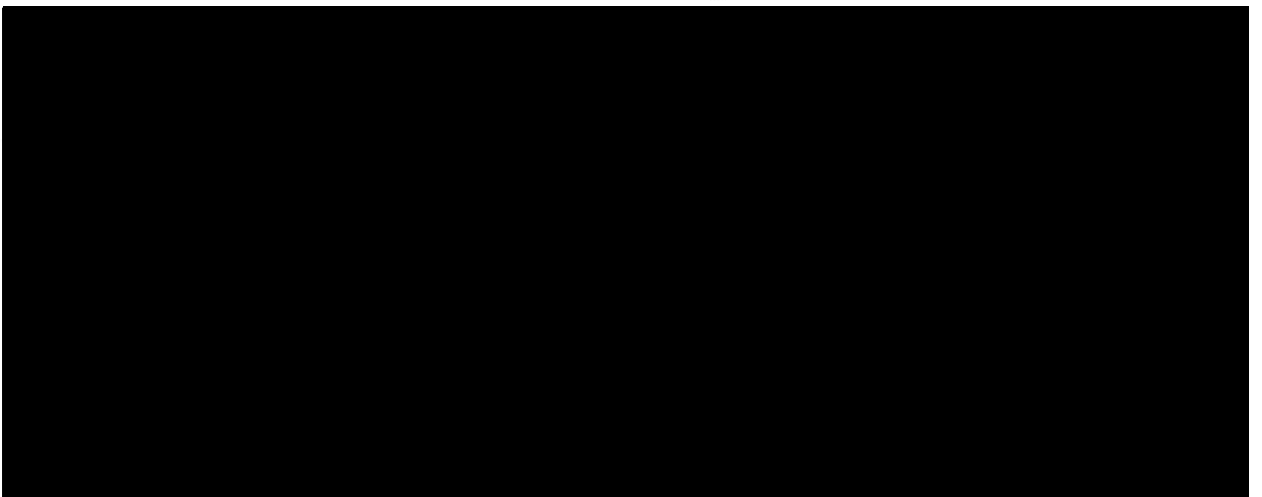
7.1 Calculation of the Sustainability and Social Adjustment

- (a) The Sustainability and Social Adjustment (SSA) for each Payment Period will be calculated as follows.



7.2 Inadequate Regional Employment Abatement

- (a) The Inadequate Regional Employment Abatement (IREA) is measured per Contract Year and applies in the last Payment Period of each Contract Year.
- (b) The IREA is determined by reference to the Regional Jobs Employment Rate (RJER), which is calculated in accordance with the following formula:



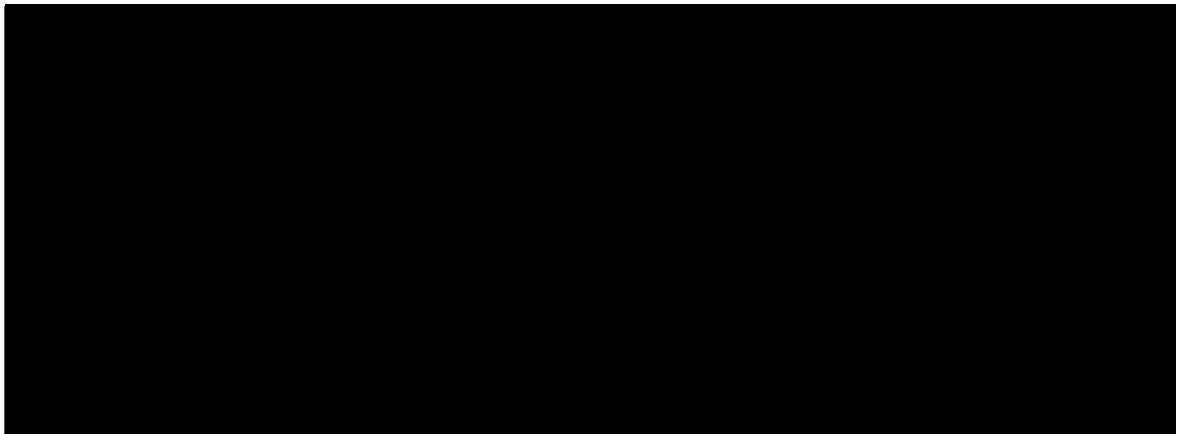
- (c) The IREA is determined by reference to the RJER and the abatement levels set out in Table 9.

Table 9: Inadequate Regional Employment Abatement levels

Regional Jobs Employment Rate (RJER)	Inadequate Regional Employment Abatement (IREA)
[REDACTED]	[REDACTED]

7.3 Inadequate Aboriginal and Torres Strait Islander Employment Abatement

- (a) The Inadequate Aboriginal and Torres Strait Islander Employment Abatement (IAEA) is measured per Contract Year and only applies in the last Payment Period of each Contract Year.
- (b) The IAEA is determined by reference to the Aboriginal and Torres Strait Islander Jobs Employment Rate (AJER), which is calculated in accordance with the following formula:



- (c) The IAEA is determined by reference to the AJER and the abatement levels set out in Table 10.

Table 10: Inadequate Aboriginal and Torres Strait Islander Employment Abatement levels

Aboriginal and Torres Strait Islander Jobs Employment Rate (AJER)	Inadequate Aboriginal and Torres Strait Islander Employment Abatement (IAEA)
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

7.4 Inadequate Aboriginal and Torres Strait Islander Participation Abatement

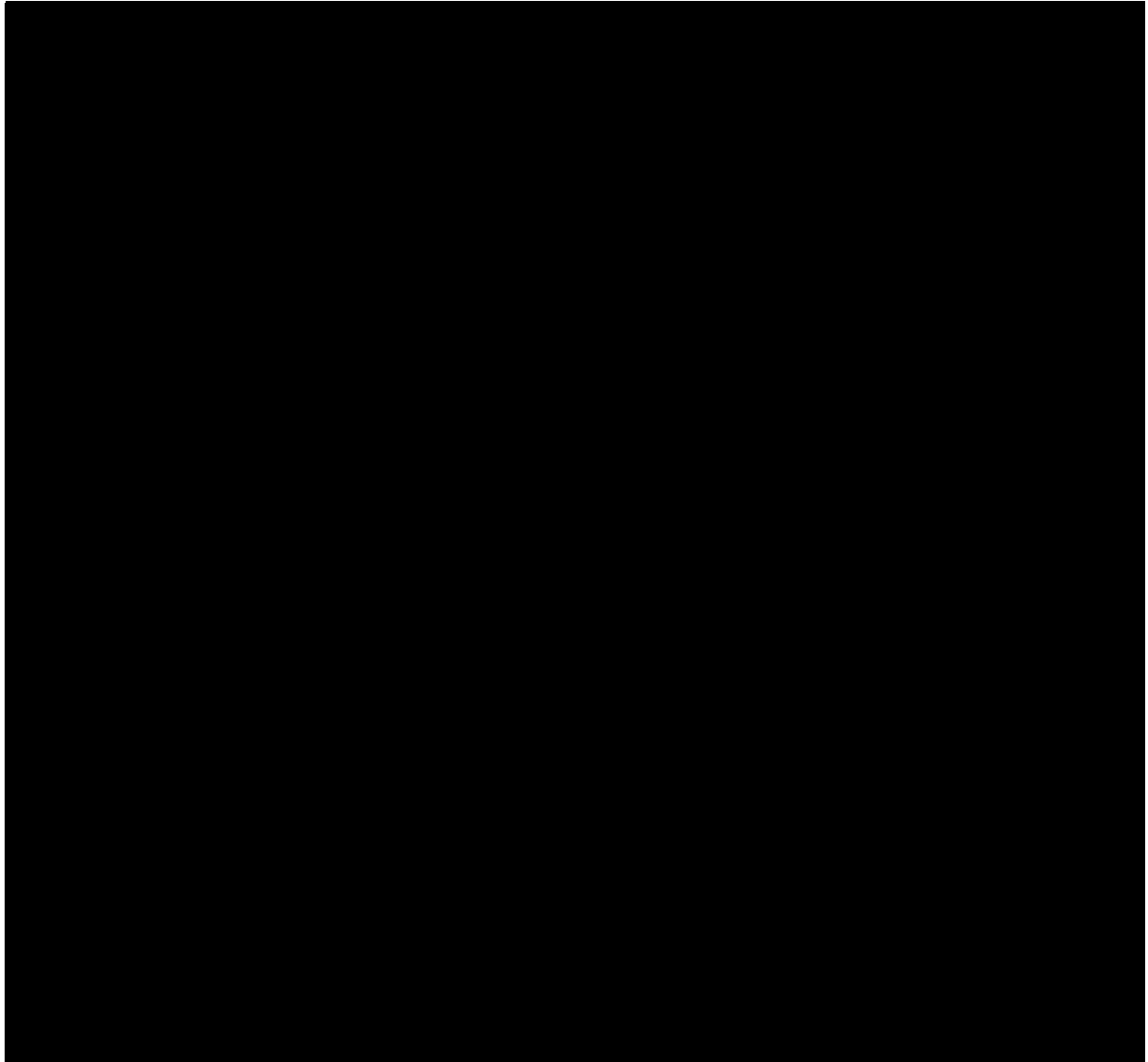
- (a) The Inadequate Aboriginal and Torres Strait Islander Participation Abatement (IAPA) is measured per Contract Year and applies in the last Payment Period of each Contract Year.

- (b) The IAPA is [REDACTED] and is applied if the Service Provider has not complied with the Aboriginal Participation Plan during the Contract Year.

8 Reporting and Submission Adjustment

8.1 Calculation of the Reporting and Submission Adjustment

- (a) The Reporting and Submission Adjustment (RSA) for each Payment Period will be calculated as follows:



- (b) For the avoidance of doubt and without limiting the definition of ADD, if it is revealed either through self-admission by the Service Provider or detected by the Principal or the Principal's Representative that a Scope of Works Deliverable that was delivered to the Principal or the Principal's Representative is inaccurate or incomplete or does not otherwise comply with the requirements of this Deed, then the LIRA will apply for every day between the original DD and the ADD of the revised Scope of Works Deliverable that is in an accurate and complete state and otherwise compliant with the requirements of this Deed, unless the Principal's Representative determines (acting reasonably) that each such inaccuracy, incompleteness or non-compliance with the requirements of this Deed:

-
- (i) is minor in nature (such as being a minor grammatical or other error in form which does not affect the substance of the relevant Scope of Works Deliverable); and
 - (ii) has not had, and will not have, a materially adverse effect on the CRN or the Services.
- (c) If there is a Minor Incident that eventually leads to a Major Incident or a Major Incident that leads to an Emergency Incident, the Service Provider must report these as separate Reportable Incidents.

9 Bedding-In Adjustment

9.1 Calculation of the Bedding-In Adjustment

- (a) The Bedding-In Adjustment (BIA) for each Payment Period will be:
- (i) in respect of the first [REDACTED] Payment Periods from the Services Commencement Date, [REDACTED]; and
 - (ii) in respect of all other Payment Periods, [REDACTED]

Appendix 1 – Speed Restrictions tolerance levels

CRN AK Car Track Code	Description		Indicative Line Type	Indicative Length (KM)
714310	Joppa Jct - Canberra	Single line	Passenger & Freight	99.01
714711	Junee - Yanco	Single line	Passenger & Freight	120.049
717510	Yanco Griffith	Single line	Passenger & Freight	54.404
721011	Bathurst - Newbridge	Single line	Passenger & Freight	33.832
721012	Murrobo - Spring Hill	Single line	Passenger & Freight	21.133
721013	Orange East Fork - Molong	Single line	Passenger & Freight	39.847
721014	Molong - Goobang Junction	Single line	Passenger & Freight	86.29
721021	Wallerawang - Bowenfels	Up main	Passenger & Freight	12.676
721022	Bathurst - Tarana	Up main	Passenger & Freight	40.765
721023	Murrobo - Newbridge	Up main	Passenger & Freight	14.088
721024	Orange East Fork - Spring Hill	Up main	Passenger & Freight	12.367
721031	Bowenfels - Wallerawang	Down main	Passenger & Freight	12.676
721032	Wallerawang - Bathurst	Down main	Passenger & Freight	67.904
721033	Newbridge - Murrobo	Down main	Passenger & Freight	14.088
721034	Spring Hill - Orange East Fork	Down main	Passenger & Freight	12.38

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CRN AK Car Track Code	Description		Indicative Line Type	Indicative Length (KM)
721610	Stuart Town - Dubbo	Single line	Passenger & Freight	81.89
721630	Orange East Fork - Stuart Town	Single line	Passenger & Freight	58.187
735210	Armidale - Werris Ck (ARTC boundary)	Single line	Passenger & Freight	167.699
717010	Stockinbingal - Temora	Single line	Freight	34.527
717111	Temora - Griffith	Single line	Freight	151.287
721511	Kandos - Wallerawang	Single line	Freight	77.505
726711	Narromine (ARTC boundary) to Nyngan	Single line	Freight	124.691
726712	Nyngan to Cobar	Single line	Freight	131.98

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Appendix 2 – Track Condition Index tolerance levels

CRN AK Car Track Code	Description		Indicative Line Type	Indicative Length (KM)
714310	Joppa Jct - Canberra	Single line	Passenger & Freight	99.01
714711	Junee - Yanco	Single line	Passenger & Freight	120.049
717510	Yanco - Griffith	Single line	Passenger & Freight	54.404
721011	Bathurst - Newbridge	Single line	Passenger & Freight	33.832
721012	Murrobo - Spring Hill	Single line	Passenger & Freight	21.133
721013	Orange East Fork - Molong	Single line	Passenger & Freight	39.847
721014	Molong - Goobang Junction	Single line	Passenger & Freight	86.29
721021	Wallerawang - Bowenfels	Up main	Passenger & Freight	12.676
721022	Bathurst - Tarana	Up main	Passenger & Freight	40.765
721023	Murrobo - Newbridge	Up main	Passenger & Freight	14.088
721024	Orange East Fork - Spring Hill	Up main	Passenger & Freight	12.367
721031	Bowenfels - Wallerawang	Down main	Passenger & Freight	12.676
721032	Wallerawang - Bathurst	Down main	Passenger & Freight	67.904
721033	Newbridge - Murrobo	Down main	Passenger & Freight	14.088
721034	Spring Hill - Orange East Fork	Down main	Passenger & Freight	12.38
721610	Stuart Town - Dubbo	Single line	Passenger & Freight	81.89
721630	Orange East Fork - Stuart Town	Single line	Passenger & Freight	58.187

CRN AK Car Track Code	Description		Indicative Line Type	Indicative Length (KM)
735210	Armidale - Werris Ck (ARTC boundary)	Single line	Passenger & Freight	167.699
717010	Stockinbingal - Temora	Single line	Freight	34.527
717111	Temora - Griffith	Single line	Freight	151.287
721511	Kandos - Wallerawang	Single line	Freight	77.505
726711	Narromine (ARTC boundary) to Nyngan	Single line	Freight	124.691
726712	Nyngan to Cobar	Single line	Freight	131.98
714910	The Rock - Boree Creek	Single line	Grain	56.625
717011	Temora -Barmedman	Single line	Grain	36.427
717012	Barmedman - West Wyalong	Single line	Grain	31.54
717013	West Wyalong - Ungarie	Single line	Grain	40.41
717014	Ungarie - Lake Cargelligo	Single line	Grain	71.36
717112	HILLSTON - GRIFFITH	Single line	Grain	107.33
717410	Ungarie - Naradhan	Single line	Grain	60.439
721910	Tottenham - Bogan Gate ARTC/CRN Boundary	Single line	Grain	111.39
726610	Coonamble - Troy Junction ARTC/CRN Boundary	Single line	Grain	149.245
726810	Nevertire to Warren	Single line	Grain	20.24
735015	WEEMELAH to CAMURRA	Single line	Grain	83.46
735512	Burren Junction to Narrabri W	Single line	Grain	83.27
735513	Walgett to Burren Junction	Single line	Grain	87.52
735610	MERRYWINEBONE - BURREN JCT	Single line	Grain	51.92

Schedule 5 – Governance Schedule

1. Introduction

1.1 Definitions and Interpretation

In this Schedule:

- (a) all terms that have defined meanings in the Deed (including the Scope of Works) have the same meaning in this Schedule as they do in the Deed (including the Scope of Works);
- (b) a reference to a clause is a reference to a Clause in the General Conditions;
- (c) a reference to a Section is a reference to a Section in the Scope of Works; and
- (d) a reference to a paragraph is a reference to a paragraph in this Schedule.

In this Schedule, the following words have the following meanings:

Annual Contract Meeting means the annual forum which will focus on the matters set out at Sections 3.9.20 to 3.9.23 of the Scope of Works.

Monthly Contract Meeting means the monthly forum which will focus on the matters set out in at Section 3.9.11 to 3.9.15 of the Scope of Works.

Quarterly Contract Review Meeting means the quarterly forum which will focus on the matters set out at Sections 3.9.16 to 3.9.19 of the Scope of Works.

1.2 General Requirements

The Service Provider must:

- (a) provide effective governance for its own team to ensure the Services are delivered in accordance with the Deed;
- (b) ensure that the governance model used is compatible with and, where appropriate, integrated with the Principal's business model;
- (c) pursuant to the Deed, take sole responsibility and accountability for the performance of all Subcontractors it engages in connection with the conduct of the Services. Such Subcontractors are not expected to attend the governance forums described in this Schedule, however the Service Provider is fully accountable to address matters arising out of Subcontractor performance at any forums;
- (d) make available for any of the contract meetings any team members with the related discipline or responsibility as the Principal's Representative may require; and
- (e) accurately respond to queries and/or issues raised relating to the carrying out of the Services at the Monthly Contract Meeting, Quarterly Contract Review Meeting or Annual Contract Meeting, as applicable.

Nothing in this Schedule or any meeting, document or discussion arising out of, or in any way in connection with, this Schedule will limit or otherwise affect any obligation of the Service Provider under this Deed.

2. Governance Regime

2.1 Contract Forums and Reviews

There are a number of forums and reviews the parties will utilise to manage the relationship and measure the Service Provider's compliance with the Deed (including its objectives). In addition to these forums and reviews, the Service Provider must attend ad-hoc meetings with the Principal and its nominees as required by the Principal's Representative, including specific root cause analysis reviews, operational meetings, status meetings, informal discussions and any other meetings required for the performance of the Services.

The Service Provider must also meet in a forum with other service providers or any Rail Transport Operator, should the Principal's Representative require.

2.2 Scheduled Contract meetings:

Unless otherwise notified in writing by the Principal's Representative, the following scheduled contract meetings will take place:

(a) Monthly Contract Meeting

The Monthly Contract Meetings will focus on all issues set out in the Monthly Report, the Quarterly Report and any other relevant items provided by the Service Provider during the month prior to the meeting in accordance with the Scope of Work Deliverables Schedule. Matters that will be discussed may include, the ongoing delivery of the Services as required under the Deed, proposed Variations, KPI performance, deductions, and disputes and any other matter set out in the Monthly Report (the details of which are set out in the Scope of Work Deliverables Schedule).

The Monthly Contract Meeting will typically take place by the end of the third week of each month and, unless otherwise determined by the Principal's Representative and notified in writing, the attendees will be:

Principal Attendees	Service Provider Attendees
Principal's Representative	Service Provider's Representative
(TBC by Principal's Representative)	(TBC by Principal's Representative)
(TBC by Principal's Representative)	(TBC by Principal's Representative)

Other attendees may be required to attend upon request by the Principal's Representative. Such request will be in writing and be sent to the Service Provider (if applicable) no later than 5 Business Days prior to the meeting.

The Service Provider must ensure that its attendees at the Monthly Contract Meeting are prepared to address the following, as required:

- (i) the detailed report on the status of the Services;
- (ii) project and business management;
- (iii) performance measurement;
- (iv) asset management;
- (v) Engineering Services;
- (vi) integrated logistics support;
- (vii) network operations;
- (viii) rail infrastructure maintenance;
- (ix) Property Management Services;
- (x) environmental management and sustainability;
- (xi) transition management;
- (xii) progress of any audits including final reports and recommendations;
- (xiii) update of current works program;
- (xiv) information system security compliance;
- (xv) safety performance, including in relation to employees and Subcontractors;
- (xvi) Non-Compliances – corrective actions and Rectification Plans;

- (xvii) Asset disposal information and revenue from same;
- (xviii) breaches of probity or ethics;
- (xix) report on delivery of works plan;
- (xx) performance measurement trend information;
- (xxi) engineering infrastructure & maintenance defects & trends;
- (xxii) report on Risk Register;
- (xxiii) results or reports from any Incident investigations;
- (xxiv) community and stakeholder complaints;
- (xxv) review of any Final Cure Plan;
- (xxvi) status of any disputes;
- (xxvii) KPI performance; and
- (xxviii) any other matter as required by the Principal's Representative.

All reports addressing the above items and the agenda for the meeting must be delivered by the Service Provider to the Principal's Representative prior to each Monthly Contract Meeting as set out in the Scope of Works Deliverables Schedule (unless otherwise agreed by the Principal's Representative).

The Principal's Representative may, at its absolute discretion, add or remove any item from the agenda and if it does so, the Principal's Representative will circulate an updated agenda no later than 5 Business Days prior to the Monthly Contract Meeting (unless otherwise agreed by the parties).

(b) Quarterly Contract Review Meeting

The Quarterly Contract Review Meeting will focus on the ongoing relationship between the Principal and the Service Provider, the alignment of the Service Provider and the Deed to the Principal's business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Quarterly Contract Review Meeting will involve discussions of any matter raised in the most recent Quarterly Report or Monthly Report (submitted in accordance with the Scope of Works Deliverables Schedule). The Quarterly Contract Review Meeting will typically take place within a month of the end of the relevant Quarter (on an exact date and time to be determined by the Principal's Representative in its absolute discretion). Unless otherwise determined by the Principal's Representative and notified in writing, the attendees at the Quarterly Contract Review Meeting will be:

Principal Attendees	Service Provider Attendees
Principal's Representative	Service Provider's Representative
(TBC by Principal's Representative)	Managing Director/CEO
(TBC by Principal's Representative)	(TBC by Principal's Representative)

Other attendees may be required to attend upon request by the Principal's Representative. Such request will be in writing and be sent to the Service Provider (if applicable) no later than 5 Business Days prior to the meeting.

The attendees at the Quarterly Contract Review Meeting may address the following matters:

- (i) analysis of KPI performance and trends (since the Services Commencement Date), including performance in respect of any proposed new KPIs, review of Rectification Plans prepared or involving work during the quarter and any proposed amendments to any plans to improve service quality;
- (ii) the quarterly rail safety report to include a summary of the Service Provider's SMS performance including detailed analysis of trends, causal factors and risk management activities;
- (iii) Asset additions and disposals; and
- (iv) any other matter as required by the Principal's Representative.

Reports addressing the above items and the agenda for the meeting must be delivered by the Service Provider to the Principal's Representative prior to each Quarterly Contract Review Meeting as set out in the Scope of Works Deliverables Schedule (unless otherwise agreed by the Principal's Representative).

The Principal's Representative may, at its absolute discretion, add or remove any item from the agenda and if it does so, the Principal's Representative will circulate an updated agenda no later than 5 Business Days prior to the Quarterly Contract Review Meeting (unless otherwise agreed by the parties).

(c) Annual Contract Meetings

The Annual Contract Meeting will focus on the ongoing relationship between the Principal and the Service Provider, the alignment of the Service Provider and the Deed to the Principal's business strategies and objectives, performance management, the management of escalated issues and continuing alignment to the governance requirements.

The Annual Contract Meeting will consider any matter raised in the Annual Contract Report (including the outstanding works identified in the Budget to Actual 3MWP Financial Report) and any other annual reports or audits submitted in accordance with the Scope of Works Deliverables Schedule.

The Annual Contract Meeting will be held within a month of the end of the relevant Contract Year. Unless otherwise determined by the Principal's Representative and notified in writing, the attendees will be:

Principal Attendees	Service Provider Attendees
Executive Director (TBC)	Managing Director/CEO
Principal's Representative	Service Provider's Representative
(TBC by Principal's Representative)	Head of Operations
(TBC by Principal's Representative)	Head of Finance
(TBC by Principal's Representative)	Representative of Parent Company (if applicable)
(TBC by Principal's Representative)	Head of Assets

Other attendees may be required to attend upon request by the Principal's Representative. Such request will be in writing and be sent to the Service Provider (if applicable) no later than 5 Business Days prior to the meeting.

The attendees at the Annual Contract Meeting will address the following matters (as required):

- (i) all of the audits conducted throughout the Contract Year;
- (ii) Aboriginal employment and participation outcomes;
- (iii) regional employment;
- (iv) Intellectual Property being used in the carrying out of the Services or otherwise on, or in connection with, the CRN Assets, including any changes;
- (v) any performance trend information (including KPI outcomes);
- (vi) effectiveness of Asset Maintenance Services (including any changes to Asset Management Planning Documents);
- (vii) compliance with requirements of RNSL; and
- (viii) any other matter as required by the Principal's Representative.

Reports addressing the above items and the agenda for the meeting must be delivered by the Service Provider to the Principal's Representative prior to each Annual Contract Meeting as set out in the Scope of Works Deliverables Schedule (unless otherwise agreed by the Principal's Representative).

The Principal's Representative may, at its absolute discretion, add or remove any item from the agenda and if it does so, the Principal's Representative will circulate an updated agenda no later than 5 Business Days prior to the Annual Contract Meeting (unless otherwise agreed by the parties).

(d) Conduct of meetings

All meetings must be conducted in accordance with the following:

- (i) the Principal's Representative will be responsible for publishing the final agenda and scheduling the meeting;
- (ii) the Principal's Representative will record the minutes and action items from each meeting and distribute (which may be with the agenda for the next meeting);
- (iii) action items not resolved within the agreed timeframe will be escalated from the Monthly Contract Meeting to the Quarterly Contract Review Meeting;
- (iv) each party will bear its own costs for attending meetings; and
- (v) the Principal's Representative may require the Service Provider to provide further information on matters discussed at any of the Monthly Contract Meeting, Quarterly Contract Review Meeting or Annual Contract Meeting. The Service Provider shall respond and provide such information in a timely manner.

Schedule 6 – Relevant Documents

(clause 5.7)

Schedule 6 comprises the documents and agreements listed below, which the Service Provider acknowledges and agrees were provided to the Service Provider by the Principal on or about the date of this Deed via the hard drive labelled “Hard Drive - CRN Operations and Maintenance Deed” in the subfolder on that hard drive labelled “Schedule 6 - Relevant Documents” (other than the Specific Relevant Documents).

Document	Version / Date
TfNSW's NSW Rail Access Undertaking	
Deed of Licence ACT Infrastructure originally entered into between Rail Infrastructure Corporation, the Australian Capital Territory and the Planning and Land Authority (for and on behalf of the Commonwealth of Australia)	15 January 2007
Deed of novation of Deed of Licence ACT Infrastructure from Transport for NSW to Rail Corporation New South Wales	Executed by Transport for NSW and Rail Corporation New South Wales on 29 June 2020 and by the Australian Capital Territory on 2 June 2020
Previous CRN Deed	16 December 2010
Extension of previous CRN Deed	11 December 2019
[REDACTED]	
Ice Radio NTCS Contract between ARTC, Sydney Trains and Transport for NSW (and subsequently vested to Rail Corporation New South Wales, now TAHE)	8 May 2017
The ARTC Lease (as amended from time to time)	4 June 2004
Agreement between oOH! Media Regional Pty Ltd (formerly, Sports and Outdoor Media Pty Ltd) and Rail Infrastructure Corporation (and subsequently vested to Rail Corporation New South Wales, now TAHE), as amended.	20 November 2006

Extension to agreement between oOH! Media Regional Pty Ltd (formerly, Sports and Outdoor Media Pty Ltd) and TAHE, as amended	28 September 2020
Phoenix Agreement between Ansaldo STS Australia Pty Ltd and TAHE (as successor in title to the Country Rail Infrastructure Authority)	24 January 2012
TRIMS Vizirail Licence between ICG Transport System Pty Ltd and TAHE (as successor in title to the Country Rail Infrastructure Authority)	9 September 2011
Access Agreements	
Siding & Connection Agreements	
Loading Deeds	
Leases and Licences over CRN Assets, set out in the tenancy schedule (as updated from time to time) and updated property templates.	See tenancy schedule
Level Crossing licences	
Master Access Deeds for access to CRN Land between TAHE (or any of its predecessors in title) and third parties and updated template Master Access Deed.	
Heritage Operator Licences for the CRN between TAHE (or any of its predecessors in title) and heritage operators	

Schedule 7 – Expert Determination Agreement

This Agreement is made on [insert date]

Parties

- 1 Transport for NSW (ABN 18 804 239 602), of 231 Elizabeth Street, Sydney NSW 2000 (**TfNSW**).
- 2 Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353), of 470 Pitt Street, Haymarket NSW 2000 (**TAHE**).
- 3 UGL Regional Linx Pty Ltd (ACN 646 771 011) registered in Australia incorporated in Australia of Level 8, 40 Miller Street, North Sydney NSW 2060 (**Service Provider**).
- 4 [insert name of Expert as agreed between the parties or appointed pursuant to clause 28.5(b)] [(ABN [*]) (registered in [*]) (incorporated in [*]) of [*]) (**Expert**).

Recitals

- A TfNSW and TAHE (jointly and severally the **Principal**) and the Service Provider (together the Parties and each a Party) are parties to a deed (the **Contract**) under which the Service Provider has agreed to manage and maintain the NSW Country Regional Network.
- B By written notice dated [to be inserted], [insert the Principal or the Service Provider as applicable] has required that the matter described in Annexure 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 28.5 of the Contract (the **Matter**).
- C Pursuant to clause 28 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Deed.

It is agreed as follows.

1 Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Deed and the Expert accepts the appointment on the basis set out in this Deed.
- (b) The Parties agree that:
 - (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Deed is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination; and
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Annexure 2 to this Deed.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Deed.

2 Confidentiality

- (a) All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.
- (b) The Parties agree that, despite clause 2(a) above, the Principal may disclose any information or material relevant to the dispute to:
- (i) any financial, legal or technical advisers providing assistance in relation to the expert determination process; or
 - (ii) any New South Wales Government entity.

3 Costs and fees

- (a) As between the Parties and the Expert, the Principal and the Service Provider are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3 to this Deed. The Parties agree to comply with any Direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) The Parties agree as between themselves that:
- (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3 to this Deed; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Deed and their participation in the determination.

4 Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Deed. The Principal and the Service Provider jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Deed.

5 Cooperation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and Directions of the Expert in relation to the conduct of the determination.

6 Governing Law

This Deed is governed by and is to be construed in accordance with the laws in force in New South Wales.

7 Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

Executed as a Deed in [Insert Location] on [insert date]

Signed by Transport for NSW (ABN 18 804 239 602), by its Authorised Delegate:

In the presence of:

Signature of Authorised Delegate

Signature of Witness

Name of Authorised Delegate (print)

Name of Witness (print)

Signed by Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353), by its Authorised Delegate:

In the presence of:

Signature of Authorised Delegate

Signature of Witness

Name of Authorised Delegate (print)

Name of Witness (print)

Signed by UGL Regional Linx Pty Ltd ACN 646 771 011 in accordance with s127 of the *Corporations Act 2001*

Signature of Director

Signature of Director/Company Secretary
(Please delete as applicable)

Name of Director (print)

Name of Director/Company Secretary (print)

Signed by **[Expert]**

in the presence of:

Expert Signature

Witness Signature

Name of Expert (print)

Name of Witness (Print)

Annexure 1

The Matter

[To be inserted when it comes time for expert determination]

Annexure 2

Rules for Expert Determination Process

1 Commencement

The expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules.

2 Written Submissions

- 2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice under clause 28.5(a) of the Contract) must, in addition to any particulars provided by Party A in its notice under clause 28.5(a) of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in rule 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in rule 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.
- 2.5 The Expert must disclose to both Parties all information and documents received.
- 2.6 If a Party fails to make a written submission, the Expert may continue with the process.

3 Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in either Newcastle or Sydney (at the discretion of the Principal).
- 3.2 At least 5 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under rule 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
 - (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural Directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4 General

- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.
- 4.2 Subject to rule 3.3, meetings and discussions with the Expert must only take place in the presence of both Parties.
- 4.3 The Expert must:
- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
 - (b) upon making any disclosure under this rule 4.3, unless and until the Parties agree otherwise, terminate the proceedings.

5 The Determination

- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:
- (a) determine the Matter between the Parties; and
 - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert must:
- (a) be in writing stating the Expert's determination and giving reasons;
 - (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (c) meet the requirements of the Contract.
- 5.3 Subject to rule 5.4 and clause 28.5(f)(ii) of the Contract, to the extent permitted by law, the Expert's determination will be final and binding on the Parties.
- 5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6 Costs

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any Direction of the Expert.

7 Modification

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

Appendix to Rules for Expert Determination Process - Code of Conduct for an Expert

- 1 The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
- 2 The Expert will receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
- 3 The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
- 4 The Expert must disclose to both Parties all information and documents received.
- 5 If a Party fails to make a written submission, the Expert may continue with the process.
- 6 Subject to rule 3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

Annexure 3

The Expert's Fees and Disbursements

[To be inserted when it comes time for expert determination]

Schedule 8 – Carry-Over Works

Project Description
Bumberry Loop Extension – Design and Construction
Junee to Griffith Upgrade to 25 TAL - Construction
Temora To Calleen Upgrade to 25 TAL – Scoping, Design and Construction
Main West Bi-Directional Upgrade - Scoping, Design and Construction
Junee North Fork Design Detailed Design
Kerrs Creek Loop – Design
Main West Development Projects – Concept and Design
Coolamon Loop Extension – Scoping, Design and Construction
25TAL Upgrade for 5 corridors – Scoping and Design only
Wumbulgal Siding – Scoping and Design only
Tarago Loop Extension – Contaminated Spoil Disposal

Schedule 9 – Statutory Declaration

<i>Statutory Declaration</i>	<i>Oaths Act (NSW) Ninth Schedule</i>												
<p>I,</p> <p>of</p> <p>.....</p>	<p><i>insert full name of Declarant</i></p>												
<p>do solemnly and sincerely declare that:</p>	<p><i>insert address</i></p>												
<p>1. I am the representative of:</p> <p>.....</p> <p>("Service Provider")</p> <p>in the Office Bearer capacity of:</p> <p>.....</p>	<p><i>insert name of Service Provider, and ACN if applicable</i></p>												
<p>2. The Service Provider has a contract with TfNSW and TAHE:</p> <p>.....</p> <p>("the Deed").</p>	<p><i>insert position title of Declarant</i></p>												
<p>3. I personally know the facts which I have set out in this declaration.</p>	<p><i>insert name of Deed</i></p>												
<p>4. All employees who have at any time been engaged by the Service Provider for work done under the Deed:</p> <p>(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Service Provider in respect of their employment on work under the Deed; and</p> <p>(b) have otherwise had accrued to their account all benefits to which they are entitled from the Service Provider as at the date of this declaration in respect of their employment on work under the Deed pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p>	<p><i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave and payments and superannuation entitlement etc.</i></p>												
<table border="0"> <thead> <tr> <th data-bbox="268 1662 400 1695"><i>Employee:</i></th> <th data-bbox="759 1662 1134 1695"><i>Amount unpaid or not accrued:</i></th> </tr> </thead> <tbody> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </tbody> </table>	<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>	
<i>Employee:</i>	<i>Amount unpaid or not accrued:</i>												
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<p>except for the following subcontractors to the Service Provider who have failed to provide such a declaration:</p> <p>Subcontractor: _____ Due amount unpaid: _____</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Service Provider in respect of this claim</p>
<p>9. Where a subcontractor to the Service Provider has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:</p> <p>Employee, subcontractor or supplier: _____ Amount unpaid or not accrued: _____</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>	<p>insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.</p>
<p>10. In relation to the statutory declaration provided by each subcontractor to the Service Provider, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.</p>	
<p>11. Attached to and forming part of this declaration, as Annexure B, is a 'Subcontractor's Statement' given by the Service Provider in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Payroll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:</p> <ul style="list-style-type: none"> (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation; (b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation. 	
<p>12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.</p>	

<p>(ii) any person having authority to administer an oath in that place.</p>	
<p>And as a witness, I certify the following matters concerning the person who made this statutory declaration (the declarant):</p> <p>1. I saw the face of the declarant.</p> <p>[OR]</p> <p>I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.</p> <p>2. I have known the declarant for at least 12 months.</p> <p>[OR]</p> <p>I have confirmed the declarant's identity using the following identification document:</p> <p>[insert description of ID document]</p> <p>.....</p> <p>(Signature of witness)</p>	

ANNEXURE A**Supporting statement by head contractor regarding payment to subcontractors**

This statement must accompany any payment claim served on a principal to a construction contract by a head contractor.

For the purposes of this statement, the terms “principal”, “head contractor”, “subcontractor”, and “construction contract” have the meanings given in section 4 of the *Building and Construction Industry Security of Payment Act 1999*.

Head contractor: *[business name of head contractor]*

ABN: *[ABN]*

* 1. has entered into a contract with: *[business name of subcontractor]*

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

* 2. has entered into a contract with the subcontractors listed in the attachment to this statement.

* *[Delete whichever of the above does not apply]*

This statement applies for work between *[start date]* and *[end date]* inclusive (the construction work concerned), subject of the payment claim dated *[date]*.

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature: Date:

Full name: Position/Title:

Attachment

Schedule of subcontractors paid all amounts due and payable				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

Schedule of subcontractors for which an amount is in dispute and has not been paid				
Subcontractor	ABN	Contract number/ identifier	Date of works (period)	Date of payment claim (head contractor claim)

ANNEXURE B

SUBCONTRACTOR'S STATEMENT

Note to the parties
 For the purpose of this Statement:

- - "the subcontractor" is the Service Provider; and
- - "the principal contractor" is the Principal.

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1-see back of form)**

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW), and s127 *Industrial Relations Act 1996* (NSW) where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT (Refer to the back of this form for Notes, period & Statement retention, and Offences under various Acts.

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:

(Business name of principal contractor)

(Note 2)

Contract number/identifier

(Note 3)

This Statement applies for work between/...../..... and/...../..... inclusive,

(Note 4)

subject of the payment claim dated/...../.....

(Note 5)

I, a Director or a person authorised by the

Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box.

(Note 6)

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....

(Note 7)

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid.

(Note 8)

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement.

(Note 9)

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

(f) Signature Full name

(g) Position/Title Date/...../.....

NOTE: Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the *Workers Compensation Act 1987* (NSW).

NOTES

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 *Payroll Tax Act 2007* (NSW) and section 127 of the *Industrial Relations Act 1996* (NSW). If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

Section 127(6) of the *Industrial Relations Act 1996* (NSW) defines remuneration as 'remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the *Industrial Relations Act 1996*, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

- (a) the person is the subcontractor;
- (b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
- (c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the *Payroll Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au, or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Schedule 11 – Principal Supplied Assets

Asset	Location at which it will be provided	Date by which it will be provided	Terms on which it will be provided
Nil	Not applicable	Not applicable	Not applicable

Schedule 12 – Enhancement Activities Terms and Conditions

1. Definitions and Interpretation

1.1 Definitions

In this **Schedule 12** (in addition to any definition set out in **clause 1.1** of the General Conditions), unless the context otherwise indicates, the following definitions will apply:

ABCC means the Australian Building and Construction Commission referred to in subsection 29(2) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

ABC Commissioner means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Code 2016 means the *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Contractor has the same meaning as in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Industry Participant has the same meaning as in the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Work has the same meaning as in subsection 3(4) of the Building Code 2016.

Commonwealth Funded Building Work means Building Work in items 1-8 of Schedule 1 of the Building Code 2016, other than Building Work to which item 10 of that Schedule applies.

Completion means the stage in the execution of the Enhancement Activities when:

- (a) the Modification Assets are, or a Portion is, complete in accordance with this Deed except for minor Non-Compliances:
 - (i) that do not prevent the Modification Assets or the Portion from being reasonably capable of being used for the Intended Purpose of the Modification Assets or the Portion;
 - (ii) that can be rectified without prejudicing the convenient intended use of the Modification Assets or the Portion; and
 - (iii) in respect of which the Service Provider has reasonable grounds for not promptly rectifying;
- (b) the Service Provider has:
 - (i) carried out and passed all tests that are required under this Deed to be carried out and passed before the Modification Assets or a Portion reaches Completion; and

- (ii) obtained all Approvals that it is required under this Deed to obtain before Completion of the Modification Assets or a Portion; and
- (c) the Service Provider has done everything else that it is required to do under this Deed before Completion of the Modification Assets or a Portion.

Construction Plant means equipment, appliances, machinery and things used in the execution of the Enhancement Activities but not forming part of the Modification Assets.

Crown Building Work has the meaning given in section 6.1 of the *Environmental Planning and Assessment Act 1979* (NSW).

Date for Completion means, in respect of the Modification Assets or a Portion, the date, or the last day of the period of time, determined in accordance with **clause 16(f)(i)** of the General Conditions for the Modification Assets or that Portion, as adjusted under this Deed by an extension of time determined by the Principal's Representative or pursuant to any binding dispute resolution process.

Date of Completion means:

- (a) the date of Completion of the Modification Assets or a Portion, set out in a notice under **clause 8.2(d)(i)** of this **Schedule 12**; or
- (b) where another date is determined in any binding dispute resolution process as the date upon which Completion was achieved, that date.

Enterprise Agreement has the same meaning as in the *FW Act*.

Exclusion Sanction has the same meaning as in subsection 3(3) of the Building Code 2016.

Extra Land means the land referred to in **clause 3.2(a)** of this **Schedule 12**.

Other Contractor means any contractor, consultant, artist, tradesperson or other person engaged by the Principal or others to do work, other than the Service Provider and its Subcontractors.

Portion means a part of the Enhancement Activities or Modification Assets, as described in the Modification Scope or as determined under **clause 8.5** of this **Schedule 12**.

Preliminary Design means any preliminary design set out, or referred to, in the Modification Scope.

Related Entity has the same meaning as in subsection 3(2) of the Building Code 2016.

Service Provider Program means the program prepared and provided by the Service Provider in accordance with **clause 7.2** of this **Schedule 12**, as developed and updated in accordance with **clause 7.2** of this **Schedule 12** from time to time.

Site means the lands and places made available to the Service Provider by the Principal for the purposes of carrying out the Enhancement Activities.

Site Conditions means any physical conditions encountered in the execution of the Enhancement Activities above, upon, under, or over the surface, or in the vicinity, of the Site or any Extra Land.

Subcontract means an agreement between the Service Provider and a Subcontractor.

Temporary Works means any temporary works required to be carried out or provided by the Service Provider for the purpose of the execution of the Enhancement Activities but not forming part of the Modification Assets.

WHS means work health and safety.

WHS Accreditation Scheme means the Work Health and Safety Accreditation Scheme in force pursuant to section 43 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

WHS Guidelines means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition), updated May 2014.

1.2 Interpretation

A reference in these **Enhancement Activities Terms and Conditions** to:

- (a) “this Deed” will be interpreted as a reference to the Operations and Maintenance Deed between the Principal and the Service Provider pursuant to which these **Enhancement Activities Terms and Conditions** came into effect, as well as these **Enhancement Activities Terms and Conditions**;
- (b) the “Modification Scope” will be interpreted as a reference to the Modification Scope to which the relevant Enhancement Activities relates;
- (c) “Modification Assets” will be interpreted as a reference to the Modification Assets created in the carrying out of the relevant Enhancement Activities; and
- (d) **Schedule 12** means **Schedule 12** as may be particularised and amended in accordance with this Deed, including any amendments proposed by the Principal’s Representative under **clause 16(e)(ii)** of the General Conditions which are agreed to by the Service Provider.

2. Service Provider’s obligations

2.1 General

The Service Provider:

- (a) must only carry out any Enhancement Activities in accordance with the General Conditions and the Terms and Conditions of this **Schedule 12**;
- (b) warrants that the Modification Assets and the Temporary Works will upon Completion be, and remain, fit for their Intended Purposes; and
- (c) must, if applicable, comply with all requirements of and maintain accreditation under the WHS Accreditation Scheme.

2.2 Crown Building Work

The Service Provider must, in relation to any part of the Modification Assets that is Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).

2.3 Unconditional Undertakings

- (a) The Service Provider must, within 5 Business Days after the Reference Date, provide to the Principal two unconditional and irrevocable undertakings, payable on

demand, in favour of the Principal, each for [REDACTED] of the total value of security determined in accordance with **clause 16(f)(i)** of the General Conditions and which otherwise satisfy the requirements of **clause 3.8(b)** of the General Conditions, except that such undertakings must not have an expiry date (**Supplementary Security**).

- (b) **Clauses 3.8 to 3.12 and 3.15** of the General Conditions will apply to Supplementary Security as if they were "Security" for the purposes of those clauses.
- (c) Subject to its rights to have recourse to the Supplementary Security, the Principal must:
 - (i) within 20 Business Days after the Date of Completion of the Modification Assets or the last Portion to reach Completion, release so much of the Supplementary Security as may be then held by the Principal, so that it then holds Supplementary Security amounting to [REDACTED] of the total value of Supplementary Security originally provided; and
 - (ii) within 20 Business Days after the date that is 12 months after the Date of Completion, release the balance of the Supplementary Security as may be then held by the Principal.

3. The Site and location of the Modification Assets

3.1 Temporary Works

The Service Provider must carry out all Temporary Works required to execute the Enhancement Activities so that the Modification Assets are fit for their Intended Purposes.

3.2 Land in Addition to the Site

The Service Provider must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by any Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the Enhancement Activities;
- (b) at its own cost carry out all activities and procure all utilities necessary to make the land or buildings suitable for use by the Service Provider;
- (c) as a condition precedent to Completion of the Modification Assets or any Portion:
 - (i) rehabilitate any land of the kind referred to in paragraph (a) in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed release on terms satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such land; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in, land of the kind referred to in paragraph (a), provided that the Service Provider's liability to indemnify the Principal will be reduced proportionally to the extent that the event

otherwise giving rise to the obligation to indemnify is caused by an Act of Prevention of the Principal.

3.3 Site Conditions

The Service Provider:

- (a) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any Loss or delay (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with; and
- (b) must investigate, design and construct the Modification Assets and Temporary Works in accordance with this Deed, and will not be relieved of its obligations under this Deed, irrespective of,

any of the following:

- (c) the Site Conditions encountered in carrying out the Enhancement Activities;
- (d) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (i) the Site or any Extra Land, the Environment or their surroundings; or
 - (ii) any Asset or other thing on, above or adjacent to, or under the surface of, the Site or any Extra Land, the Environment or their surroundings; and
- (e) any assumptions, projections, estimates, contingencies or otherwise that the Service Provider may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in subparagraph (d).

3.4 Things of Value Found

All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site are, and will as between the Service Provider and the Principal be and remain, the property of the Principal.

The Service Provider must:

- (a) immediately notify the Principal's Representative if any such thing is found;
- (b) ensure that it is protected and not lost, removed, disturbed or damaged; and
- (c) comply with any directions of the Principal's Representative in relation to the thing.

3.5 Works to be constructed within Site

The Service Provider must ensure that the Modification Assets are constructed within the relevant boundaries of the Site stipulated in the Modification Scope.

3.6 Principal not in Control

The Service Provider and Principal acknowledge that nothing in this Deed or the Modification Scope will be construed to mean or imply that:

- (a) the Principal has any operational control over the Enhancement Activities or the Site; or
- (b) the Principal has any responsibility for any act or omission by the Service Provider or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals or the Modification Scope.

4. Compliance

4.1 Quality of Work

The Service Provider must use the materials and standard of workmanship required by this Deed, and otherwise comply with this Deed in the execution of the Enhancement Activities. In the absence of any other requirement, the Service Provider must use suitable new materials and ensure that all workmanship and materials are fit for their Intended Purpose.

4.2 Modification Scope

The Service Provider must comply with the requirements of the Modification Scope.

5. Design and Design Documentation

5.1 Service Provider's Design Obligations

The Service Provider:

- (a) must prepare and complete the design of the Modification Assets and Temporary Works (including the Design Documentation), so that it is fit for its Intended Purpose and otherwise complies with the requirements of this Deed; and
- (b) warrants that:
 - (i) it has examined and carefully checked the Preliminary Design and that such Preliminary Design is suitable, appropriate and fit for its Intended Purpose and that:
 - A. it remains responsible for ensuring that the Modification Assets and the Temporary Works will satisfy the requirements of this Deed despite the Preliminary Design;
 - B. if the Modification Assets and the Temporary Works are designed and constructed in accordance with the Preliminary Design, the Modification Assets and the Temporary Works will satisfy the requirements of this Deed; and
 - C. the Service Provider will carry out and complete the Enhancement Activities in accordance with the Preliminary Design; and
 - (ii) construction in accordance with the completed design of the Modification Assets and the Temporary Works will satisfy the requirements of the Modification Scope, the Preliminary Design and the other requirements of this Deed.

5.2 Design Documentation

The Service Provider must:

- (a) submit all Design Documentation progressively to the Principal's Representative in accordance with the requirements of this Deed and the Modification Scope;
- (b) upon each submission of the Design Documentation to the Principal's Representative for review (including at the completion of the design of each design package), ensure that the Design Documentation is accompanied by the following documents:
 - (i) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Deed (all records being duly completed and signed);
 - (ii) a register of any outstanding design non-conformities and unresolved issues;
 - (iii) a register of deficiency notices and evidence of their close out; and
 - (iv) a register of concessions granted for non-conforming Design Documentation;
- (c) submit all such Design Documentation at the times and in the number of copies set out in the Modification Scope (or, if not set out in the Modification Scope, as directed by the Principal's Representative); and
- (d) not commence any Enhancement Activities to which any Design Documentation applies unless:
 - (i) the Principal's Representative has notified the Service Provider under **clause 6.8(b)(iii) or 6.8(d)(i)** of the General Conditions that it has no (or has no further) comments to make; or
 - (ii) the relevant period of time in **clause 6.8(b)** of the General Conditions has expired and the Principal's Representative has not rejected the Design Documentation, made any comments on the Design Documentation or made a request referred to in **clause 6.8(b)(ii)** of the General Conditions in respect of the Design Documentation and the Design Documentation is not otherwise deemed to be rejected in accordance with **clause 6.8** of the General Conditions.

6. Construction
6.1 Construction

The Service Provider must construct the Modification Assets and the Temporary Works:

- (a) in accordance with:
 - (i) subject to **clause 6.1(b)** of this **Schedule 12**, the Modification Scope, the Preliminary Design and any Design Documentation that has been prepared by the Service Provider in accordance with the requirements of this Deed, submitted to the Principal's Representative under **clause 6.8** of the General Conditions and in respect of which:
 - A. the Principal's Representative has issued the notice referred to in **clause 6.8(b)(iii) or 6.8(d)(i)** of the General Conditions; or

- B. the relevant period of time in **clause 6.8(b)** of the General Conditions of this Deed has expired and the Principal's Representative has not rejected it, made comments on it or made a request referred to in **clause 6.8(b)(ii)** of the General Conditions in respect of it and the Design Documentation is not otherwise deemed to be rejected in accordance with **clause 6.8** of the General Conditions;
- (ii) any direction of the Principal's Representative given or purported to be given under a provision of this Deed; and
- (iii) the other requirements of this Deed; and
- (b) so that they are fit for their Intended Purposes.

6.2 All Work Included

The Service Provider:

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

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the Enhancement Activities, whether or not expressly mentioned in this Deed or anticipated by the Service Provider, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the Enhancement Activities.

6.3 Work Method

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

- (a) not entitle the Service Provider to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this Deed to be frustrated.

6.4 Co-operation with Other Contractors

The Service Provider must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors; and
- (c) carefully coordinate and interface the Enhancement Activities with the work carried out or to be carried out by Other Contractors.

6.5 Construction Plant and Materials Removal

Except for the purpose of achieving Completion, the Service Provider must not remove from the Site or the Enhancement Activities any:

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

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

7. Time and Progress

7.1 Rate of Progress

- (a) The Service Provider must:
 - (i) proceed with the Enhancement Activities with due expedition and without delay; and
 - (ii) achieve Completion of the Modification Assets and each Portion by the relevant Date for Completion.
- (b) Without limiting the Service Provider's rights under the Security of Payment Act (NSW) or the Security of Payment Act (ACT), the Service Provider must not suspend the progress of the whole or any part of Enhancement Activities.
- (c) Without limiting **clause 7.1(d), 7.1(e) or 7.4** of this **Schedule 12**, the Service Provider must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Service Provider.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the Reference Date.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this **clause 7.1** of this **Schedule 12**, direct in what order and at what time the various stages or parts of the Enhancement Activities must be carried out. If the Service Provider can reasonably comply with the direction, the Service Provider must do so. If the Service Provider cannot reasonably comply, the Service Provider must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this **clause 7.1** of this **Schedule 12** unless the direction is in writing and expressly states that it is a direction under this **clause 7.1** of this **Schedule 12**.

7.2 The Service Provider's Programming Obligations

- (a) The Service Provider must:
 - (i) prepare and provide a Service Provider Program including the details required by this Deed and any requirements of the Principal's Representative;

- (ii) sequence and arrange the Enhancement Activities to meet each Date for Completion;
- (iii) submit to the Principal's Representative for its review in accordance with **clause 6.8** of the General Conditions the Service Provider Program within 45 Business Days of the Reference Date;
- (iv) submit to the Principal's Representative:
 - A. for its review in accordance with **clause 6.8** of the General Conditions a copy of the initial Service Provider's working programs within 15 Business Days of the Reference Date; and
 - B. a copy of all subsequent revisions within 2 Business Days after their preparation;
- (v) when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Enhancement Activities within 5 Business Days of receipt of such a direction;
- (vi) update, revise and submit to the Principal's Representative an updated Service Provider Program:
 - A. to allow for delays, extensions of time granted by the Principal's Representative to any Date for Completion, the actual progress made by the Service Provider and any changes to the Enhancement Activities but excluding claims for extensions of time to any Date for Completion which have been submitted by the Service Provider to the extent that they have not been granted by the Principal's Representative; and
 - B. on a monthly basis or whenever directed to do so by the Principal's Representative;
- (vii) prepare and provide for the Principal's Representative's information only versions of all Service Provider Programs prepared in accordance with **clause 7.2(a)(vi)** of this **Schedule 12** that also allow for those claims for an extension of time to any Date for Completion that have been made by the Service Provider in accordance with **clause 7.7** of this **Schedule 12** but to which the Principal's Representative has not yet responded in accordance with **clause 7.9** of this **Schedule 12**;
- (viii) comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs; and
- (ix) comply with the current version of the Service Provider Program and any working programs that have been submitted to the Principal's Representative under **clause 6.8** of the General Conditions and in respect of which:
 - A. the Principal's Representative has issued the notice referred to in **clause 6.8(b)(iii)** or **6.8(d)(i)** of the General Conditions; or
 - B. the relevant period of time in **clause 6.8(b)** of the General Conditions has expired and the Principal's Representative has

not rejected it, made comments on it or made a request referred to in **clause 6.8(b)(ii)** of the General Conditions in respect of it and is not otherwise deemed to be rejected in accordance with **clause 6.8**.

- (b) All programs and schedules provided in accordance with this **clause 7.2** of this **Schedule 12** must be provided as A3 sized paper prints in colour and must also be provided to the Principal's Representative in an unlocked native electronic format accompanied by all associated files so that they can be reproduced by the Principal's Representative using the software specified by the Principal's Representative.

7.3 Service Provider not Relieved

Without limiting **clause 6.10** of the General Conditions, no submission of, review of or comment upon, approval or rejection of, or any failure to review or comment upon, approve or reject, a program (including the Service Provider Program) prepared by the Service Provider, by the Principal's Representative in connection with the program, will:

- (a) evidence or constitute the granting of an extension of time to any Date for Completion or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Enhancement Activities; or
- (b) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Deed.

7.4 Compression by Service Provider

If the Service Provider chooses to compress the Enhancement Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Service Provider to achieve Completion before any Date for Completion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Service Provider does so at its own cost and risk.

7.5 Risk and Notice of Delay

- (a) Except as expressly provided for in **clause 7.9** of this **Schedule 12**, the Service Provider accepts the risk of all delays in, and disruption to, the carrying out of the Enhancement Activities.
- (b) The Service Provider must within 5 days of the commencement of an occurrence causing any delay to the carrying out of the Enhancement Activities, give the Principal's Representative written notice of the delay, details of the cause and how any Date of Completion is likely to be affected (if at all).

7.6 Entitlement to Claim Extension of Time

- (a) If the Service Provider is, or will be, delayed prior to the Date for Completion of the Modification Assets or a Portion, [REDACTED]

██████████ in a manner that will prevent it from achieving Completion of the Modification Assets or the Portion by the relevant Date for Completion, the Service Provider may claim an extension of time to the relevant Date for Completion.

- (b) If the Service Provider is, or will be, delayed after the Date for Completion of the Modification Assets or a Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of this Deed or Modifications directed by the Principal's Representative under **clause 14.1(a)** of the General Conditions) in a manner which will delay it in achieving Completion of the Modification Assets or the Portion, the Service Provider may claim an extension of time to the relevant Date for Completion.

7.7 Claim for Extension of Time

- (a) To claim an extension of time the Service Provider must:
- (i) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion, which:
- A. gives detailed particulars of:
- 1) the delay and the occurrence causing the delay; and
 - 2) the activities that are critical to the maintenance of progress in the execution of the Enhancement Activities; and
- B. states the number of days extension of time claimed together with the basis of calculating that period, including evidence that the:
- 1) conditions precedent to an extension of time in **clause 7.8** of this **Schedule 12** have been met; and
 - 2) occurrence will delay it in achieving Completion in the manner described in **clause 7.6** of this **Schedule 12**; and
- (ii) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Service Provider wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
- A. every 14 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
- B. containing the information required by paragraph (a).
- (b) The Principal's Representative may, within 14 days of receiving the Service Provider's claim or further claim for an extension of time for Completion, by written notice to the Service Provider, request additional information in relation to the claim or further claim.

- (c) The Service Provider must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

7.8 Conditions Precedent to Extension of Time

- (a) It is a condition precedent to the Service Provider's entitlement to an extension of time to any relevant Date for Completion that:
- (i) the Service Provider gives the notices and claims required by **clauses 7.5(b) and 7.7** of this **Schedule 12** as required by those clauses;
 - (ii) the Service Provider complies with any request for additional information under **clause 7.7** of this **Schedule 12** within the time required;
 - (iii) the cause of the delay is beyond the reasonable control of the Service Provider; and
 - (iv) the Service Provider is actually, or will be, delayed in the manner described in **clause 7.6** of this **Schedule 12**.
- (b) If the Service Provider fails to comply with the conditions precedent in this **clause 7.8** of this **Schedule 12**:
- (i) the Principal will not be liable upon any Claim by the Service Provider; and
 - (ii) the Service Provider will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

7.9 Extension of Time

- (a) Subject to **clause 7.10** of this **Schedule 12**, if the conditions precedent in **clause 7.8** of this **Schedule 12** have been satisfied, the relevant Date for Completion will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Service Provider within 28 days after the latest of the:
- (i) Service Provider's written claim under **clause 7.7** of this **Schedule 12**; and
 - (ii) provision by the Service Provider of any additional information regarding the claim required under **clause 7.7** of this **Schedule 12**.
- (b) A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion or to grant an extension of time to any Date for Completion within the relevant 28 day period will not cause an affected Date for Completion to be set at large, but nothing in this paragraph will prejudice any right of the Service Provider to damages.

7.10 Reduction in Extension of Time

The Principal's Representative will reduce any extension of time to the relevant Date for Completion it would otherwise have determined under **clause 7.9** of this **Schedule 12** to the extent that the Service Provider:

- (b) contributed to the delay; or
- (c) failed to take all steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.

7.11 Unilateral Extensions

- (a) Whether or not the Service Provider has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion, under **clause 7.9** of this **Schedule 12**, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Service Provider and the Principal, unilaterally extend any Date for Completion by any period specified in a notice to the Service Provider and the Principal.
- (b) The Principal's Representative is not required to exercise its discretion under this **clause 7.11** of this **Schedule 12** for the benefit of the Service Provider.
- (c) The discretion to grant an extension of time under this **clause 7.11** of this **Schedule 12** may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a dispute or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

7.12 Sole Remedy

The entitlement of the Service Provider to an extension of time will be a limitation upon the Principal's liability to the Service Provider for any delay or disruption that the Service Provider encounters in carrying out the Enhancement Activities, and the Service Provider will not be entitled to make, nor will the Principal be liable upon, any Claim for any such delay or disruption other than for an extension of time.

7.13 Suspension

The Principal's Representative may direct the Service Provider to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Enhancement Activities.

8. Completion

8.1 Service Provider to Notify

- (a) The Service Provider must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Modification Assets or a Portion.
- (b) The Service Provider must prepare a detailed procedure for the progressive inspection by the Principal's Representative of the Modification Assets or that Portion following the issue by the Service Provider of a notice under this **clause 8.1** of this **Schedule 12**.
- (c) This procedure must be submitted to the Principal's Representative and prior to the inspection under **clause 8.2(a)** of this **Schedule 12** must, if required by the Principal's Representative, be amended to ensure that the procedure provides the Principal's Representative with sufficient time to properly carry out this progressive inspection and the final inspection which the Principal's Representative is required

to undertake under **clause 8.2** of this **Schedule 12** to determine whether Completion of the Modification Assets or a Portion (as the case may be) has occurred.

8.2 Inspection before Completion

- (a) If required by the Principal's Representative, the Principal's Representative and the Service Provider's Representative must, within 20 Business Days of receipt by the Principal's Representative of the notice referred to in **clause 8.1** of this **Schedule 12**, jointly inspect the Modification Assets or the Portion at a mutually convenient time.
- (b) Following the joint inspection under **clause 8.2(a)** of this **Schedule 12** (or, if the joint inspection is not required by the Principal's Representative, following receipt by the Principal's Representative of the notice referred to in **clause 8.1** of this **Schedule 12**), the Principal's Representative must issue a notice to the Principal and the Service Provider either:
- (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Modification Assets or the Portion is achieved; or
 - (ii) stating that it believes the Service Provider is so far from achieving Completion of the Modification Assets or the Portion that it is not practicable to issue a list as contemplated in **clause 8.2(b)(i)** of this **Schedule 12**.
- (c) When the Principal's Representative issues a notice under either **clause 8.2(b)(i)** or **8.2(b)(ii)** of this **Schedule 12**, the Service Provider must continue to proceed to bring the Modification Assets or the Portion to Completion and thereafter when the Service Provider considers it has achieved Completion of the Modification Assets or the Portion, the Service Provider must notify the Principal's Representative in writing.
- Thereafter, if required by the Principal's Representative, the Principal's Representative and the Service Provider's Representative must jointly inspect the Enhancement Activities at a mutually convenient time.
- (d) The Principal's Representative must within 20 Business Days of receipt of a notice under **clause 8.2(c)** of this **Schedule 12**, or of receipt of a notice under **clause 8.2(e)** of this **Schedule 12** (but in any event after any joint inspection under **clause 8.2(c)** of this **Schedule 12**), issue a notice to the Principal and the Service Provider:
- (i) if satisfied that Completion of the Modification Assets or the Portion has been achieved:
 - A. stating the date on which the Principal's Representative determines Completion of the Modification Assets or the Portion was achieved; and
 - B. containing a list of any minor Non-Compliances, of the type described in paragraph (a) of the definition of "Completion" in **clause 1.1** of this **Schedule 12**, that are apparent; or
 - (ii) if not satisfied that Completion of the Modification Assets or the Portion has been achieved:

- A. containing a list of the items that are apparent and it believes must be completed before Completion of the Modification Assets or the Portion is achieved; or
 - B. stating that it believes the Service Provider is so far from achieving Completion of the Modification Assets or the Portion that it is not practicable to issue a list as contemplated by **clause 8.2(d)(ii)A** of this **Schedule 12**.
- (e) If the Principal's Representative issues a notice under either **clause 8.2(d)(ii)A** or **8.2(d)(ii)B** of this **Schedule 12**, the Service Provider must continue to proceed to bring the Modification Assets or the Portion to Completion and thereafter when it considers it has achieved Completion of the Modification Assets or the Portion, the Service Provider must notify the Principal's Representative by notice in writing, after which the second paragraph of **clause 8.2(c)**, **clause 8.2(d)** and this **clause 8.2(e)** of this **Schedule 12** will reapply.

8.3 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Service Provider to the Principal's Representative under either of **clauses 8.2(c)** or **8.2(e)** of this **Schedule 12** is not given by the Service Provider yet the Principal's Representative is of the opinion that Completion of the Modification Assets or a Portion has been achieved, the Principal's Representative may issue a notice under **clause 8.2(d)(i)** of this **Schedule 12** for the Modification Assets or the Portion.

8.4 Hand Over upon Completion

The Service Provider acknowledges that the Principal will require a progressive handover of the Modification Assets and that this handover will take place by the Service Provider handing over each Portion once that Portion has reached Completion.

8.5 Part of the Modification Assets or a Portion

If a part of the Modification Assets has reached Completion but another part of the Modification Assets has not reached Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions.

The Principal may, after the Service Provider is given written notice by the Principal's Representative, occupy or use any part of the Modification Assets or a Portion although the whole of the Modification Assets or the Portion has not reached Completion.

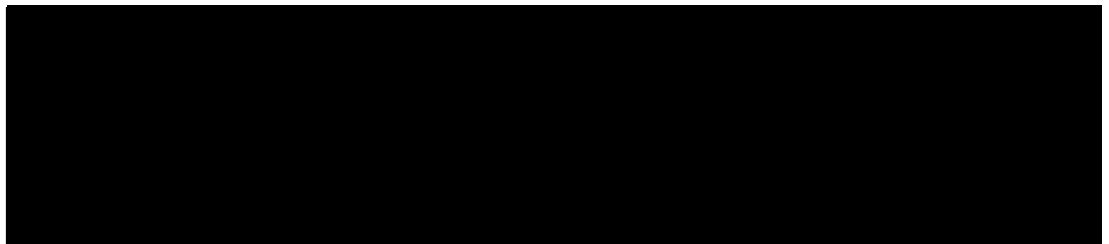
If the Principal's Representative gives any such notice, this will not otherwise limit or affect the obligations of the parties under this Deed, including the obligation of the Service Provider to achieve Completion of the Modification Assets or the relevant Portion of which the area being occupied or used forms part, by the relevant Date for Completion.

The interpretations of the terms Date for Completion, Date of Completion and Completion, and **clauses 7** and **9** of this **Schedule 12**, will apply separately to each Portion and references therein to the Modification Assets and to the Enhancement Activities will mean so much of the Modification Assets and the Enhancement Activities as is comprised in the relevant Portion.

8.6 Liquidated Damages for Delay in Reaching Completion

- (a) If Completion of the Modification Assets or a Portion has not occurred by the Date for Completion for the Modification Assets or the Portion, the Service Provider must pay the Principal liquidated damages at the rates determined in accordance with **clause 16(f)(i)** of the General Conditions for every day after the Date for Completion up to and including:

- (i) the Date of Completion; or
 - (ii) the date that this Deed is terminated,
- whichever is first.
- (b) The Service Provider acknowledges that it has freely agreed that the liquidated damages provided for by **clause 8.6(a)** of this **Schedule 12** represent proper, fair and reasonable amounts recoverable by the Principal for its loss arising from the failure of the Service Provider to achieve Completion of the Modification Assets or a Portion by the relevant Date for Completion.
 - (c) **If clause 8.6(a)** of this **Schedule 12** is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover common law damages as a result of the Service Provider failing to achieve Completion by the Date for Completion, but the Service Provider's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which the Service Provider would have had if **clause 8.6(a)** of this **Schedule 12** had not been void, invalid or otherwise inoperative.
 - (d) The parties acknowledge and agree that:



- (ii) nothing in this **clause 8.6** of this **Schedule 12** limits or otherwise affects the Principal's rights and remedies, or the Service Provider's liabilities and obligations, under **clause 23** of the **General Conditions** or **Schedule 10**.

8.7 Effect of Notice of Completion

A notice issued under **clause 8.2(d)(i)** of this **Schedule 12** will not:

- (a) constitute approval by the Principal or the Principal's Representative of the Service Provider's performance of its obligations under this Deed;
- (b) be taken as an admission or evidence that the Modification Assets or the Portion complies with the requirements of this Deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

9. Insurance

9.1 Works Insurance

Before commencing the Enhancement Activities, the Service Provider must insure the Modification Assets against loss or damage resulting from any cause until the Service Provider ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance must cover the Service Provider's liability for care of the Modification Assets and things in storage off site and in transit to the site but may exclude:

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

The insurance cover must be for an amount not less than the full reinstatement value of the Modification Assets, plus [REDACTED]

[REDACTED]

10. Building Code 2016

- (a) This **clause 10** of this **Schedule 12** will apply where determined in accordance with **clause 16(f)(i)** of the General Conditions. Otherwise, this **clause 10** of this **Schedule 12** will have no application.
- (b) The Service Provider declares as at the Reference Date in relation to the Commonwealth Funded Building Work that forms part of the Enhancement Activities, that it:
 - (i) is not subject to an Exclusion Sanction;
 - (ii) is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
 - (iii) has not had an adverse decision, direction or order made by a court or tribunal for a breach of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), a designated building law, work health and safety law or competition and consumer law which has not been stayed or revoked and for which the period for compliance has expired without it having complied with the decision, direction or order; and
 - (iv) unless approved otherwise by the ABC Commissioner, is not excluded from performing Building Work funded by a State or Territory Government.

- (c) The Service Provider:
- (i) declares as at the Reference Date; and
 - (ii) must ensure that at all times,

in relation to the Commonwealth Funded Building Work that forms part of the Enhancement Activities, that it and its subcontractors (who are either "Building Contractors" or "Building Industry Participants" for the purposes of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth)):
 - (iii) comply with the Building Code 2016;
 - (iv) will only use products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
 - (v) if a Workplace Relations Management Plan is required (as determined in accordance with **clause 16(f)(i)** of the General Conditions), comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code 2016.
- (d) Compliance with the Building Code 2016 does not relieve the Service Provider from responsibility to perform this Deed, or from liability for any Non-Compliance arising from compliance with the Building Code 2016.
- (e) The Service Provider must:
- (i) notify the ABCC of any breach or suspected breach of the Building Code 2016 as soon as practicable but no later than two business days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach; and
 - (ii) if it notifies the ABCC of a breach or a suspected breach of the Building Code 2016 under subparagraph (i), immediately notify the Principal in writing.
- (f) The Service Provider acknowledges the powers and functions of the ABC Commissioner and the ABCC under the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and the Building Code 2016 and will ensure that it and its subcontractors comply with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests for entry under section 72 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), requests to interview any person under section 74 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth), requests to produce records or documents under sections 74 and 77 of the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth) and requests for information concerning matters relating to the Building Code 2016 under subsection 7(c) of the Building Code 2016.
- (g) The Service Provider must only enter into a subcontract for any of the Commonwealth Funded Building Work that forms part of the Enhancement Activities where:
- (i) the subcontractor is not subject to an Exclusion Sanction or excluded from undertaking work funded by a State or Territory Government unless approval to do so is provided by the ABC Commissioner;

- (ii) the subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code 2016;
- (iii) the subcontractor has submitted a declaration of compliance, including the further information outlined in the attachment to the declaration of compliance, in a form satisfactory to the Principal's Representative;
- (iv) the subcontract contains provisions relating to the Building Code 2016 in a form satisfactory to the Principal's Representative;
- (v) the subcontractor has advised, prior to entering into a subcontract with the Service Provider, whether the subcontractor has within the preceding three year period:
 - A. had an adverse decision, direction or order made by a court or tribunal for a breach of a designated building law, work health and safety law or the *Migration Act 1958* (Cth); or
 - B. been required to pay any amounts under an adjudication certificate (provided in accordance with a law relating to the security of payments that are due to persons in respect of Building Work) or owed any unsatisfied judgement debts (including by any Related Entity) to a Building Contractor or a Building Industry Participant; and
- (vi) the subcontractor has agreed to update the advice referred to in subparagraph (v) every six months for the duration of the subcontract between the Service Provider and the subcontractor.
- (h) The Service Provider must provide the Principal with any declaration of compliance referred to in **clause 10(g)(iii)** of this **Schedule 12** on request.
- (i) The Service Provider must as soon as practicable notify the Principal and the ABCC when:
 - (i) a dispute arises regarding a payment claim submitted by a subcontractor; or
 - (ii) there is a delay in payment of a payment claim submitted by a subcontractor, after the date on which payment of that payment claim falls due.
- (j) For the purposes of **clause 10(i)** of this **Schedule 12** a disputed or delayed progress payment claim means a dispute or claim about:
 - (i) the Service Provider failing to pay a subcontractor all moneys due and payable in accordance with the terms of the relevant subcontract;
 - (ii) an amount specified in a payment statement/notice of dispute issued under the relevant security of payment legislation resulting in a subcontractor not being paid by the Service Provider by the date prescribed by those laws;
 - (iii) the Service Provider:

- A. failing to issue a payment statement/notice of dispute under the relevant security of payment legislation to a subcontractor in response to a valid payment claim; and
 - B. failing to pay all moneys due and payable by the date prescribed in the relevant security of payment legislation regarding the payment claim referred to in sub paragraph A;
- (iv) the Service Provider failing to pay the adjudicated amount to a subcontractor following a determination by an adjudicator under the relevant security of payment legislation by the date prescribed in those laws;
- (v) the Service Provider failing to pay a subcontractor following a binding determination by a third party such as a court, arbitrator, or expert in accordance with the relevant determination; or
- (vi) any other disputed or delayed payment claim required to be notified to the Principal or the ABCC to ensure compliance with the Building Code 2016.
- (k) For the purposes of **clause 10(i)** of this **Schedule 12**, the Service Provider must notify the Principal and ABCC in the form of the Security of Payment Reporting Form available from the ABCC at <https://www.abcc.gov.au/building-code/security-payments>.

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Schedule 14 – Renewal Requirement Auditor Deed

Date / /

Renewal Requirement Auditor Deed

Country Regional Network

Transport for NSW
and

Transport Asset Holding Entity of New South Wales
and

UGL Regional Linx Pty Ltd
and

[insert auditor's details]

Renewal Requirement Auditor Deed

Dated / /

Parties

Name	Transport for NSW
Address	[insert address]
Email	[insert]
Contact	[insert]
Short name	TfNSW

Name	Transport Asset Holding Entity of New South Wales
Address	[insert address]
Email	[insert]
Contact	[insert]
Short name	TAHE

Name	UGL Regional Linx Pty Ltd
Address	[insert address]
Email	[insert]
Contact	[insert]
Short name	Service Provider

Name	[insert certifier's details]
Address	[insert address]
Email	[insert]

Contact		[insert]
Short name		Renewal Requirement Auditor

Background

- A. The Principal and the Service Provider have entered into the CRN O&M Deed under which the Service Provider has agreed to perform the Services.
- B. The CRN O&M Deed Parties wish to appoint the Renewal Requirement Auditor to perform the Obligations specified in this Deed.
- C. By entering into this Deed, the Renewal Requirement Auditor confirms its acceptance of its appointment on the terms set out in this Deed and the assumption of the Obligations to the CRN O&M Deed Parties.
- D. The CRN O&M Deed Parties consent to the appointment of the Renewal Requirement Auditor in accordance with the terms of this Deed.

This Deed Witnesses

1. Definitions and Interpretation

1.1 Definitions

In this Deed, unless the context otherwise requires, expressions defined in the CRN O&M Deed will have the corresponding meaning in this Deed and:

Claim includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

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

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

CRN O&M Deed means the CRN O&M Deed between the CRN O&M Deed Parties dated on or about [insert].

CRN O&M Deed Parties means TfNSW, TAHE and the Service Provider and "CRN O&M Deed Party" means any one of them.

Deed means this deed and the Schedules.

Fee means the fee set out in Schedule 2.

Key Person means the person named as the key person in Schedule 2, or any other person subsequently appointed as the Key Person pursuant to clause 6.2.

Obligations means the obligations of the Renewal Requirement Auditor set out in Schedule 1.

Payment means:

- (a) the amount of any monetary consideration (other than a GST Amount payable under clause 12); and
- (b) the GST Exclusive Market Value of any non-monetary consideration,

paid or provided by a party for any Supply made under or in connection with this Deed and includes any amount payable by way of indemnity, reimbursement, compensation or damages.

Principal means TfNSW and TAHE, jointly and severally.

Relevant Documents means the CRN O&M Deed and any other documents necessary for the Renewal Requirement Auditor to carry out its obligations pursuant to this Deed.

1.2 Interpretation

In this Deed, unless the context otherwise requires:

- 1.2.1 headings are for convenience only and do not affect the interpretation of this Deed;
- 1.2.2 words importing the singular include the plural and vice versa;

- 1.2.3 words importing a gender include any gender;
- 1.2.4 an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any authority;
- 1.2.5 a reference to a clause, party or Schedule is a reference to (respectively) a clause of, a party to and a Schedule to this Deed;
- 1.2.6 "including" and similar expressions are not words of limitation;
- 1.2.7 a reference to statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws varying, consolidating or replacing them, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- 1.2.8 no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it;
- 1.2.9 a covenant or agreement on the part of two or more persons binds them jointly and severally;
- 1.2.10 a reference to an association or body which has ceased to exist includes the organisation established in the place of the association or body to serve substantially the same purposes;
- 1.2.11 a reference to an officer of an association or body which has ceased to exist includes the most senior officer of the organisation established in the place of the association or body to serve substantially the same purposes;
- 1.2.12 a reference to liquidation includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, compromise or arrangement with creditors, insolvency, bankruptcy, or similar procedure;
- 1.2.13 where in this Deed a period of time dating from a given day, act or event is specified or allowed for any purpose, the time must be reckoned exclusive of that day or of the date on which the act or event occurred but inclusive of the day on which that period expires;
- 1.2.14 any notice or other communication or moneys which is or are received on a day which is not a Business Day or after 4.30 pm on a Business Day are, for the purposes of this Deed, deemed to be received on the next occurring Business Day; and
- 1.2.15 where the day on or by which any thing is to be done is not a Business Day, such thing must be done on or by the immediately following Business Day.

1.3 Jurisdiction

This Deed will be governed by and interpreted according to the laws of the State of New South Wales and each party hereto submits irrevocably to the non-exclusive jurisdiction of the Courts of the State of New South Wales.

1.4 Act, matters or things

A reference to an act, matter or thing includes the whole or any part of that act, matter or thing and a reference to a group of acts, matters or things or persons includes each act, matter or thing or person in that group.

2. Appointment of Renewal Requirement Auditor

2.1 Terms of appointment

2.1.1 The CRN O&M Deed Parties hereby appoint the Renewal Requirement Auditor to perform the Obligations, and the Renewal Requirement Auditor agrees to perform the Obligations, on the terms of this Deed.

2.1.2 The Renewal Requirement Auditor's appointment commences on the date of this Deed and terminates on the earlier of:

- (a) the date on which the Obligations have been completed in full; and
- (b) the date on which this Deed is terminated under the terms of this Deed.

2.1.3 The Renewal Requirement Auditor warrants and acknowledges that:

- (a) it has received a copy of each of the Relevant Documents;
- (b) it has read and will be deemed to have informed itself fully of the requirements of:
 - (i) the Relevant Documents, including the CRN O&M Deed; and
 - (ii) all technical requirements, and other such documents and materials as may become relevant from time to time insofar as they relate to the Obligations so as to be in a position to perform the Obligations; and
- (c) it has and will be deemed to have informed itself completely of the nature of the work necessary for the performance of the Obligations and as to the correctness and sufficiency of description of the Obligations and that the fee payable to it covers the cost of it complying with the Obligations and of all matters and things necessary or ancillary to the due and proper performance of the Obligations.

2.1.4 Subject to clause 2.1.5, the Renewal Requirement Auditor acknowledges and agrees that each of the CRN O&M Deed Parties is entitled to correspond with the Renewal Requirement Auditor in regard to the Obligations, including by providing documents and submissions in respect of any of the Obligations. The Renewal Requirement Auditor must give due consideration to all correspondence sent to it by an CRN O&M Deed Party.

2.1.5 Each CRN O&M Deed Party must:

- (a) not interfere with or attempt to improperly influence the Renewal Requirement Auditor in the performance of any of the Obligations; and
- (b) provide a copy of any correspondence, information, documents or particulars to the other CRN O&M Deed Parties at the same time it sends it to the Renewal Requirement Auditor.

2.2 Co-operation and Assistance

2.2.1 The CRN O&M Deed Parties must each co-operate with each other and the Renewal Requirement Auditor, and act in good faith and use their reasonable endeavours (without being obliged to pay money), to assist the Renewal Requirement Auditor to enable it to satisfy the Obligations.

2.2.2 The Renewal Requirement Auditor must:

- (a) fully co-operate with the CRN O&M Deed Parties;
- (b) co-ordinate the performance of the Obligations with the activities being performed by the CRN O&M Deed Parties under the CRN O&M Deed or in relation to the Services; and
- (c) not cause any unnecessary interference, disruption or delay to the Services or any of the other transactions contemplated by the CRN O&M Deed.

2.2.3 The Renewal Requirement Auditor may from time to time give a notice to an CRN O&M Deed Party requiring the provision of further information, documents or particulars. If such information, documents or particulars is necessary for the performance of the Obligations, the relevant CRN O&M Deed Party must, subject to clause 2.1.5, provide such information, documents or particulars to the Renewal Requirement Auditor at its own cost.

2.3 Provision of Information

Where an CRN O&M Deed Party is obliged under a Relevant Document to provide information to the Renewal Requirement Auditor to assist the Renewal Requirement Auditor in the performance of its Obligations, the CRN O&M Deed Party must, subject to clause 2.1.5, provide such information to the Renewal Requirement Auditor within the time limits imposed by such document.

2.4 Information provided to Renewal Requirement Auditor

2.4.1 The Renewal Requirement Auditor will be entitled to rely upon information provided to it by an CRN O&M Deed Party as being true and correct in all material respects, unless the trueness or correctness of the relevant information is a matter that the Renewal Requirement Auditor must determine for the proper performance of the Obligations in accordance with this Deed, such information is manifestly incorrect, is provided on a qualified basis or the relevant CRN O&M Deed Party subsequently informs the Renewal Requirement Auditor of any change to information provided to it. Before relying on any information provided by an CRN O&M Deed Party the Renewal Requirement Auditor must give the other CRN O&M Deed Parties a reasonable opportunity to respond to, or otherwise provide submissions in respect of, that information.

2.4.2 The Renewal Requirement Auditor must provide to an CRN O&M Deed Party:

- (a) copies of any correspondence information or documents it receives from the other CRN O&M Deed Parties;
- (b) copies of any correspondence, information or documents at the same time it sends it to the other CRN O&M Deed Parties; and
- (c) a copy of any document or other information reasonably requested in writing by that CRN O&M Deed Party provided that:
 - (i) a copy of the request has been sent to the other CRN O&M Deed Parties; and
 - (ii) the Renewal Requirement Auditor complied with clauses 2.4.2(a) and (b) when sending the document or information to the relevant CRN O&M Deed Party.

2.5 Certification Final and Binding

The CRN O&M Deed Parties acknowledge and agree that any determination or certificate given by the Renewal Requirement Auditor pursuant to the CRN O&M Deed and this Deed will, in the absence of fraud, gross negligence or a manifest error, be final and binding on the CRN O&M Deed Parties under the CRN O&M Deed and this Deed.

2.6 Access

The CRN O&M Deed Parties must use their reasonable endeavours to provide the Renewal Requirement Auditor with access to the Relevant Assets, at its own risk, for the purposes of enabling it to carry out its Obligations under this Deed, after reasonable prior notice and subject to compliance by it with the reasonable safety requirements of the Principal and the Service Provider.

3. Remuneration

3.1 Payment to the Renewal Requirement Auditor

- 3.1.1 In consideration of the Renewal Requirement Auditor performing the Obligations under this Deed, the Service Provider will be liable to, and will, pay to the Renewal Requirement Auditor the Fee.
- 3.1.2 The Renewal Requirement Auditor must give the Service Provider claims for payment on account of the Fee:
 - (a) monthly on the last Business Day of the month;
 - (b) in the format the Service Provider reasonably requires; and
 - (c) which include:
 - (i) evidence as reasonably required by the Service Provider of the Obligations completed in accordance with this Deed and the amount of the Fee claimed; and

- (ii) a report setting out those matters in respect of the Obligations that the Service Provider reasonably require from time to time.

3.1.3 The Service Provider must, within 10 Business Days, assess the payment claim and issue the Renewal Requirement Auditor with a payment schedule, which sets out the Service Provider's determination as to:

- (a) the value of Obligations completed in accordance with the Deed;
- (b) the amount already paid to the Renewal Requirement Auditor; and
- (c) the amount then payable by the Service Provider to the Renewal Requirement Auditor on account of the Fee under the Deed,

together with any reasons for any difference in the amount set out as then payable from the amount in the Renewal Requirement Auditor's claim.

3.1.4 The Renewal Requirement Auditor must, following receipt of a payment schedule under clause 3.1.3, provide the Service Provider with a tax invoice for the sum assessed in the payment schedule as payable to the Renewal Requirement Auditor.

3.1.5 The issue of a payment schedule by the Service Provider does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Obligations covered by the payment schedule has been satisfactorily carried out in accordance with the Deed.

3.1.6 Subject to subclause 3.1.7, the Service Provider must within the latter of:

- (a) 10 Business Days after receipt of correct tax invoices under clause 3.1.4; or
- (b) 10 Business Days after the Renewal Requirement Auditor has effected the insurance required by clause 5. and provided evidence of that insurance to the CRN O&M Deed Parties,

pay the Renewal Requirement Auditor the amount set out as payable in the tax invoices provided under clause 3.1.4.

3.1.7 Any payment made under subclause 3.1.6 is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Deed;
- (b) an admission of liability; or
- (c) approval by the CRN O&M Deed Parties of the Renewal Requirement Auditor's performance or compliance with the Deed,

but it is only to be taken as payment on account.

3.1.8 The Principal must reimburse the Service Provider for any fees paid under this provision in accordance with Schedule 13 of the CRN O&M Deed.

3.2 Payment by the Principal

If the Service Provider fails to pay to the Renewal Requirement Auditor any amount which it is required to pay under clause 3.1 within the time required by clause 3.1, the Principal may, but is not obliged to:

- 3.2.1 pay to the Renewal Requirement Auditor the unpaid amount; and
- 3.2.2 recover that amount as a debt due and payable from the Service Provider.

3.3 Variations

The CRN O&M Deed Parties may jointly direct a variation to the Renewal Requirement Auditor's Obligations. Any such direction will not vitiate the Deed, and must be in writing entitled "Variation Direction" and be signed by representatives of both the Principal and the Service Provider. Any such variation will be valued by agreement between the parties or failing agreement by the Principal using the rates set out in Schedule 2 or (to the extent the rates set out in Schedule 2 are not applicable) reasonable rates or prices.

3.4 Specialist Advice

- 3.4.1 The Renewal Requirement Auditor may, from time to time, with the CRN O&M Deed Parties prior written approval (which approval will not be unreasonably withheld, but may be given subject to reasonable conditions) engage specialist advisory service providers to enable it to perform any Obligation that the Renewal Requirement Auditor does not perform in the ordinary course of its business.
- 3.4.2 The Renewal Requirement Auditor must, before engaging a specialist advisory service provider:
 - (a) notify the CRN O&M Deed Parties of the reasons for the proposed engagement; and
 - (b) provide in that notice the identity and relevant specialist experience, skill and ability of the proposed service provider.
- 3.4.3 The Renewal Requirement Auditor remains responsible for the performance of its Obligations in accordance with this Deed despite any engagement of a specialist advisory service provider under this clause 3.4 or otherwise.

4. Performance of Renewal Requirement Auditor's obligations

4.1 Standard of Performance

In performing the Obligations and its other duties under this Deed, the Renewal Requirement Auditor must (and must ensure that all of its representatives and personnel engaged in the performance of the Obligations):

- 4.1.1 act in accordance with the terms of this Deed;
- 4.1.2 act as an expert and not an arbitrator;
- 4.1.3 perform all of the Obligations in a timely manner and in accordance with the required times set out in the CRN O&M Deed, or where no time is specified, within a reasonable time;

- 4.1.4 arrive at a reasonable determination;
- 4.1.5 act in good faith, diligently, reasonably and with the degree of professional skill, care and diligence which may be reasonably expected of an expert professional provider of the Obligations experienced in the performance of the same or similar services;
- 4.1.6 act honestly, impartially and fairly;
- 4.1.7 comply with all laws; and
- 4.1.8 take into consideration the CRN O&M Deed and all documents, information and other written and oral material provided to the Renewal Requirement Auditor by any CRN O&M Deed Party.

4.2 No Conflict of Interest

- 4.2.1 The Renewal Requirement Auditor warrants and agrees that:
 - (a) at the date of this Deed it has no conflict of interest with respect to the carrying out of the Obligations and it reasonably believes that no conflict of interest is likely to arise during the performance of the Obligations;
 - (b) it owes duties to each of the CRN O&M Deed Parties in connection with the performance of the Obligations;
 - (c) the CRN O&M Deed Parties are each relying on its independence;
 - (d) it will not accept any role in relation to the Obligations, the Services or for any of the CRN O&M Deed Parties in relation to any other project other than that expressly set out in this Deed except with the prior written consent of the CRN O&M Deed Parties, which consent will not be unreasonably withheld; and
 - (e) it will comply with all agreed procedures that are satisfactory to the CRN O&M Deed Parties from time to time and which are implemented to prevent a conflict or risk of conflict arising in connection with the performance of the Obligations.
- 4.2.2 If during the term of this Deed a conflict of interest or risk of a conflict of interest referred to in clause 4.2.1 does arise:
 - (a) the Renewal Requirement Auditor must immediately notify the CRN O&M Deed Parties in writing, giving sufficient details of the nature of the perceived conflict of interest; and
 - (b) the parties must negotiate in good faith to agree on how the conflict or risk of conflict can be properly managed. If the parties are not able to agree on how the conflict or risk of conflict is to be managed within 5 Business Days, the Renewal Requirement Auditor must take such action as is reasonably required by the CRN O&M Deed Parties to remove the conflict or risk of conflict.

4.3 Nature of Relationship

The Renewal Requirement Auditor is an independent contractor and not an employee or agent of any CRN O&M Deed Party.

4.4 Authority to Act

The Renewal Requirement Auditor:

- 4.4.1 is not and must not purport to be, a partner, joint venturer or agent of an CRN O&M Deed Party;
- 4.2.2 other than as expressly set out in this Deed, has no authority to give directions to an CRN O&M Deed Party or their officers, employees, contractors, consultants or agents; and
- 4.4.3 has no authority to waive or alter any terms of the CRN O&M Deed, or to discharge or release a party from any of its Obligations under the CRN O&M Deed.

4.5 Quality Assurance System

The Renewal Requirement Auditor must comply with any quality assurance system referred to in the Relevant Documents (but not so as to relieve it from any responsibilities it otherwise has in respect of the Obligations).

5. Insurance and Indemnity

5.1 Own Risk

The Renewal Requirement Auditor carries out its Obligations and duties under this Deed entirely at its own risk.

5.2 Effect and Maintain Insurances

From the date of this Deed, the Renewal Requirement Auditor must effect and maintain, at its own Cost, the following policies of insurance in such form as the CRN O&M Deed Parties reasonably require:

5.2.1 a professional indemnity policy [REDACTED]

5.2.2 a public liability policy [REDACTED]

5.2.3 such other insurance as may reasonably be required by an CRN O&M Deed Party.

5.3 Workers Compensation

The Renewal Requirement Auditor must maintain a workers' compensation policy in respect of all workers employed by it in relation to the Obligations with unlimited common law cover.

5.4 Cancellation

The insurance policies specified in clause 5.2 must provide that the policies may not be cancelled or avoided or allowed to lapse or altered without at least 30 days' prior notice to each CRN O&M Deed Party.

5.5 Notice of Matter Affecting Insurance

The Renewal Requirement Auditor must give notice to the CRN O&M Deed Parties immediately:

- 5.5.1 if an event occurs which may affect its insurance policies, or may result in any of its insurance policies lapsing or being cancelled; or
- 5.5.2 if any insurance policy is cancelled, avoided or lapses.

5.6 Copies of Policies

The Renewal Requirement Auditor must deliver to each of the CRN O&M Deed Parties:

- 5.6.1 on the date of this Deed and within a reasonable time of request by an CRN O&M Deed Party, copies of all insurance policies (except the professional indemnity insurance policy), and certificates of currency for all insurance policies (including the professional indemnity insurance policy), effected under this clause 5.; and
- 5.6.2 during the term of this Deed, receipts for the payment of premiums for all such policies before the due date for payment of the premiums and within a reasonable time of request by an CRN O&M Deed Party.

5.7 Periods of Insurance

The Renewal Requirement Auditor must keep:

- 5.7.1 the professional indemnity insurance policy referred to in clause 5.2.1 current for [REDACTED] after the date of completion of the Obligations or any earlier date on which this Deed is terminated;
- 5.7.2 the public liability and workers compensation insurance policies referred to in clauses 5.2.2 and 5.3 current until the date of completion of the Obligations or any earlier date on which this Deed is terminated; and
- 5.7.3 any other insurances referred to in clause 5.2.3 current for such period as may reasonably be required by the CRN O&M Deed Parties.

5.8 Indemnity

The Renewal Requirement Auditor must indemnify each CRN O&M Deed Party against any Claim that the CRN O&M Deed Party may suffer or incur arising out of or as a consequence of:

- 5.8.1 any breach by the Renewal Requirement Auditor of its obligations under this Deed; or
- 5.8.2 any loss of or damage to property, or personal injury or death or loss of or damage to any other property, arising out of or in consequence of any act or omission of the Renewal Requirement Auditor, its employees, agents or subcontractors,

but the Renewal Requirement Auditor's liability to indemnify an CRN O&M Deed Party will be reduced proportionally to the extent that any negligent act of that CRN O&M Deed Party or the employees, agents or subcontractors of that CRN O&M Deed Party contributes to the Claim.

6. Warranties of the Renewal Requirement Auditor

6.1 Representations and Warranties

The Renewal Requirement Auditor represents and warrants to each of the CRN O&M Deed Parties that:

- 6.1.1 it is a corporation as that expression is defined in the Corporations Law having limited liability, incorporated (or taken to be incorporated) or registered and validly existing under the Corporations Law;
- 6.1.2 it has the corporate power to own its assets and to carry on its business as it is now being conducted;
- 6.1.3 it has full power and authority to enter into this Deed and perform the Obligations;
- 6.1.4 it has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms;
- 6.1.5 the Obligations constitute legal, valid and binding obligations and, subject to any necessary stamping and registration, are enforceable in accordance with the terms of this Deed;
- 6.1.6 the execution, delivery and performance by it of this Deed do not and will not violate, breach, or result in a contravention of:
 - (a) any law, regulation or authorisation;
 - (b) its memorandum and articles of association or other constituent documents; or
 - (c) any encumbrance or document which is binding upon it or any of its assets;
- 6.1.7 it has the appropriate qualifications to undertake all of the certification and dispute resolution requirements forming part of the Obligations; and
- 6.1.8 it and all of its representatives and personnel engaged in the performance of the Obligations will be and remain adequately and appropriately experienced and properly qualified to perform the Obligations with the required degree of professional skill, care and diligence.

The Renewal Requirement Auditor acknowledges that:

- 6.1.9 the CRN O&M Deed Parties are relying on the skill and expertise of the Renewal Requirement Auditor in the performance of the Obligations; and
- 6.1.10 the CRN O&M Deed Parties may suffer loss if the Renewal Requirement Auditor does not perform the Obligations in accordance with the terms of this Deed.

6.2 Undertaking

- 6.2.1 The Renewal Requirement Auditor must at all times provide sufficient competent, professional and qualified personnel to perform the Obligations.

- 6.2.2 The Renewal Requirement Auditor must ensure the Key Person is provided and is available to perform the Obligations.
- 6.2.3 The Renewal Requirement Auditor must not provide any person other than the Key Person for the purposes of carrying out the Obligations without the prior written consent of each of the CRN O&M Deed Parties.
- 6.2.4 If:
- (a) a Key Person dies, becomes seriously ill, ceases to be employed by the Renewal Requirement Auditor or is otherwise no longer capable of carrying out the Obligations in the reasonable opinion of the CRN O&M Deed Parties; or
 - (b) at any time during the term of this Deed the CRN O&M Deed Parties jointly consider the conduct of the Key Person is prejudicial to either or both of their interests or the interests of the Services,

the Renewal Requirement Auditor must appoint an alternative Key Person approved by in writing by representatives of both the Principal and the Service Provider.

7. Suspension of obligations

- 7.1.1 The CRN O&M Deed Parties may, at any time by written notice to the Renewal Requirement Auditor to that effect, elect to suspend the performance of all or part of the Obligations. If the CRN O&M Deed Parties give a notice under this clause 7, the Renewal Requirement Auditor must not carry out the Obligations specified in the notice unless and until a further notice is given by the CRN O&M Deed parties asking it to carry out such Obligations.
- 7.1.2 The Renewal Requirement Auditor must continue to carry out any Obligations not suspended under this clause 7.
- 7.1.3 The Renewal Requirement Auditor is not entitled to make any Claim against any CRN O&M Deed Party in connection with any suspension under this clause 7.

8. Termination

8.1 Right to Terminate

The CRN O&M Deed Parties may, without giving advance notice, jointly terminate this Deed by giving notice in writing to the Renewal Requirement Auditor if:

- 8.1.1 an Insolvency Event occurs in relation to the Renewal Requirement Auditor, whether or not there has been a breach of this Deed by the Renewal Requirement Auditor;
- 8.1.2 the CRN O&M Deed is terminated (other than as set out below);
- 8.1.3 the Renewal Requirement Auditor commits a substantial breach of this Deed; or
- 8.1.4 the CRN O&M Deed Parties jointly elect at any time to terminate the appointment of the Renewal Requirement Auditor for any reason.

If the CRN O&M Deed is terminated as a consequence of a default by any of the CRN O&M Deed Parties, a non-defaulting party may unilaterally terminate this Deed by giving written notice to the Renewal Requirement Auditor to that effect.

8.2 Rights on Termination

8.2.1 Upon termination of the appointment of the Renewal Requirement Auditor under clause 8.1, the Renewal Requirement Auditor will be entitled to payment of all amounts due to it under clause 3. up to and including the date of termination.

8.2.2 The termination of this Deed will not affect any rights or liabilities of the parties which may have accrued prior to the termination.

8.3 Return of Records

On termination or completion of its appointment the Renewal Requirement Auditor must:

8.3.1 deliver to the CRN O&M Deed Parties or, at the direction of the CRN O&M Deed Parties, copies of all books, records, plans, specifications and other documents relating to the Obligations or the Services in the possession or control of the Renewal Requirement Auditor; and

8.3.2 use its reasonable endeavours to ensure the representative of the Renewal Requirement Auditor, its agents and sub-contractors deliver such material to the CRN O&M Deed Parties or, at the direction of the CRN O&M Deed Parties, to a replacement Renewal Requirement Auditor. For the avoidance of doubt the Renewal Requirement Auditor will not seek to exercise any lien against any of the documentation referred to in this clause 8.3.

The Renewal Requirement Auditor acknowledges that the CRN O&M Deed Parties, and any other auditor appointed by the CRN O&M Deed Parties, has the right to use such books, records, plans, specifications and other documents for the purposes of the Services and carrying out any activities in relation to the CRN O&M Deed.

8.4 Reasonable Assistance

If this Deed is terminated, the Renewal Requirement Auditor must provide all reasonable assistance requested by the CRN O&M Deed Parties, and any subsequent auditor appointed by the CRN O&M Deed Parties, to assist the CRN O&M Deed Parties in connection with the Services and the auditor in performing its obligations.

8.5 No Prejudice

Termination of this Deed will not affect any rights which any party may have in respect of any breach of this Deed before termination.

9. General provisions

9.1 Notices

Any notice or other communication including any request, demand, consent, determination or approval, to or by a party under this Deed:

- 9.1.1 must be in legible writing and in English addressed as shown at the commencement of this Deed or as specified to the sender by any party by notice;
- 9.1.2 where the sender is the Renewal Requirement Auditor, must be signed by the Key Person;
- 9.1.3 must be sent to the address of the relevant party set out in Schedule 2, or such other address notified by the relevant party from time to time; and
- 9.1.4 will be deemed to have been given and received:
 - (a) if delivered, on receipt;
 - (b) if posted, 3 Business Days after posting; or
 - (c) if by facsimile transmission, upon confirmation of correct transmission of the facsimile provided however:
 - (i) if the time of completion of transmission is after 4.00 pm, the document will be deemed to have been issued or given on the next Business Day; and
 - (ii) if the transmission is incomplete in any way or, though complete, illegible, and notice in writing to that effect is given by the recipient to the other party within one working day, service is deemed to have been ineffective.

9.2 Whole Agreement

This Deed and the rights and obligations of each party will be absolute and unconditional and will not be abrogated, prejudiced or affected by anything not contained in this Deed (subject to variation of this Deed agreed to by all the parties in writing) and which but for this clause 9.2 might operate to release or exonerate a party from its obligations in whole or in part.

9.3 Non-merger

None of the terms or conditions of this Deed nor any act matter or thing done under or by virtue of or in connection with this Deed will operate as a merger of any of the rights and remedies of the Parties under this Deed all of which will continue in full force and effect until the respective rights and obligations of the parties under this Deed have been fully performed and satisfied.

9.4 Moratorium

Unless application is mandatory by law, no statute, ordinance, proclamation, order, regulation or moratorium present or future will apply to this Deed so as to abrogate, extinguish, impair, diminish, fetter, delay or otherwise prejudicially affect any rights, powers, remedies or discretions given or accruing to any of the parties under this Deed.

9.5 Severability of Provisions

Any provision of this Deed which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Deed or affecting the validity or enforceability of such provision in any other jurisdiction.

9.6 Counterparts

This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

9.7 Costs

Except as otherwise provided under a Relevant Document, each party must bear its own legal fees and expenses in connection with the negotiation, execution and enforcement of this Deed.

9.8 No fetter

Nothing in this Deed operates to restrict or otherwise affect the unfettered discretion of the Principal to exercise any of its functions and powers under any law.

10. Assignment

10.1 Renewal Requirement Auditor

The Renewal Requirement Auditor may not:

- 10.1.1 dispose of, deal with or part with possession of any interest in this Deed or rights or benefits in connection with this Deed; or
- 10.1.2 create or allow to come to existence any encumbrance which affects the interests of the Renewal Requirement Auditor under this Deed.

10.2 CRN O&M Deed Parties

Each CRN O&M Deed Party may assign or novate its rights and obligations under this Deed to any party to which it assigns its rights under the CRN O&M Deed in accordance with its rights under the CRN O&M Deed. The parties must enter into any deed of assignment or novation reasonably required to document any such assignment or novation.

11. Confidentiality

- 11.1.1 The Renewal Requirement Auditor agrees and undertakes to keep and maintain confidential all the terms covenants and conditions of this Deed together with any information supplied by one party to another under this Deed and not to disclose those terms, covenants and conditions or any part of them or any information or part of that information to any person, company or organisation except as provided in this clause 11.
- 11.1.2 Nothing in this clause 11 will prohibit the Renewal Requirement Auditor from disclosing any term, covenant or condition of this Deed or other confidential information:
 - (a) which it believes in good faith is required to be disclosed by law or by the ASX Listing Rules;
 - (b) which was already in the lawful possession of the recipient in written form;
 - (c) which is generally available to the public otherwise than by disclosure in breach of the terms of this clause 11; or

- (d) to any specialist advisory service provider approved by the CRN O&M Deed Parties under clause 3.4, provided that the Renewal Requirement Auditor ensures that such provider keeps the information confidential.

11.1.3 The Renewal Requirement Auditor and the Service Provider acknowledge and agree that the Principal may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any Law, including *the Government Information (Public Access) Act 2009* (NSW).

12. GST

12.1 Definitions

Capitalised expressions which:

12.1.1 are used in this Deed and not defined in this clause 12; or

12.1.2 are used in the definitions of GST Amount and Payment in this clause 12 and are not defined in clause 1.1,

but which have a defined meaning in the GST Law have the meaning given to them under GST Law.

12.2 Payment of GST

The parties agree that:

12.2.1 all Payments have been set or determined without regard to the impact of GST;

12.2.2 if the whole or any part of a Payment is the consideration for a Taxable Supply for which the payee is liable to GST, the GST Amount in respect of the Payment must be paid to the payee as an additional amount, either concurrently with the Payment; and

12.2.3 the payee will provide to the payer a Tax Invoice.

12.3 Input tax credit

Despite any other provision of this Deed, if a Payment due under this Deed is a reimbursement or indemnification by one party of an expense, loss or liability incurred or to be incurred by the other party, the Payment will exclude any part of the amount to be reimbursed or indemnified for which the other party can claim an Input Tax Credit.

Signing Page

Executed by the parties as a Deed

EXECUTED by Transport for NSW by)
[] in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Signature of [])

EXECUTED by Transport Asset)
Holding Entity of New South Wales by)
[] in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Signature of [])

Executed by UGL Regional Linx Pty Ltd)
ACN 646 771 011 in accordance with section)
127(1) of the *Corporations Act 2001* (Cth) by)
being signed by authorised persons for the)
company:)

.....)
Director

.....)
Director (or Company Secretary)

.....)
Full name

.....)
Full name

.....)
Usual address

.....)
Usual address

Executed by [Renewal Requirement Auditor] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by being signed by authorised persons for the company:)
)
)
)

.....
Director	Director (or Company Secretary)
.....
Full name	Full name
.....
Usual address	Usual address

Schedule 1 Obligations

The Renewal Requirement Auditor must perform all of the functions, tasks and obligations of the "Renewal Requirement Auditor" as set out in the CRN O&M Deed, including the performance of the "Renewal Requirement Audit" and any other functions, tasks and obligations contained in Schedule 13 of the CRN O&M Deed.

Schedule 2 Details

Fee (clause 1.1)

[to be inserted – fee should be itemised for each separate obligation]

Variation Rates (clause 3.3)

[to be inserted]

Key Person (clause 1.1)

[to be inserted]

Addresses for Service (clause 9.1)

Principal

[to be inserted]

Attention: *[to be inserted]*

Service Provider

[to be inserted]

Attention: *[to be inserted]*

Renewal Requirement Auditor

[to be inserted]

Attention: *[to be inserted]*

Schedule 15- Scope of Works

Schedule 15 comprises the folders labelled "Country Regional Network Scope of Works Volume 1 of 2" and "Country Regional Network Scope of Works Volume 2 of 2", which the Service Provider acknowledges and agrees were provided to the Service Provider by the Principal on the date of this Deed.