



Transport  
for NSW



Execution version

# Sydney Metro - Western Sydney Airport

Surface and Civil Alignment Works Design and  
Construction Deed

Contract No: WSA-300-SCAW

Sydney Metro

ABN 12 354 063 515

and

CPB Contractors Pty Limited

ABN 98 000 893 667

United Infrastructure Pty Limited

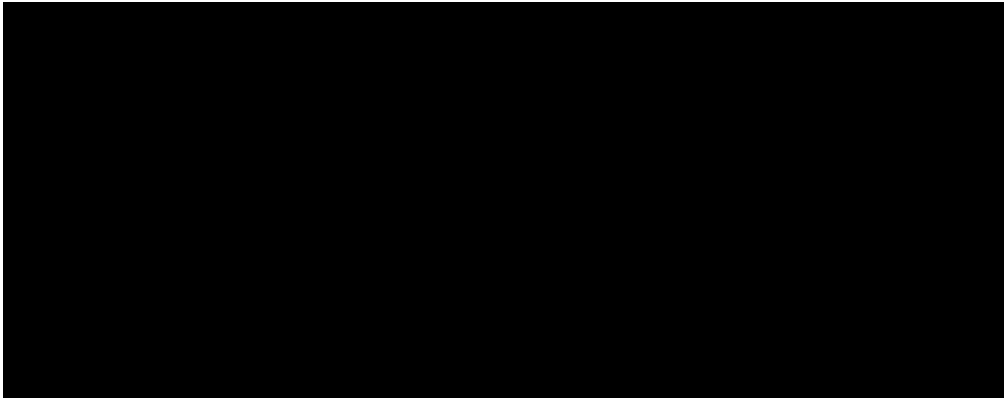
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## CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION .....	1
1.1 Definitions .....	1
1.2 Interpretation.....	60
1.3 Contra proferentem .....	64
1.4 Ambiguous terms.....	64
1.5 Order of precedence.....	65
1.6 Severability.....	66
1.7 Authorities .....	66
1.8 Electronic files .....	67
2. CONDITIONS PRECEDENT .....	67
2.1 Commencement of obligations.....	67
2.2 Satisfaction of conditions precedent .....	67
2.3 Waiver of conditions precedent.....	67
2.4 Condition Precedent Deadline Date .....	67
3. OBJECTIVES AND PROJECT VALUES .....	68
3.1 Objectives for Sydney Metro - Western Sydney Airport.....	68
3.2 Objectives for the Project Works, the Temporary Works and the SCAW Contractor's Activities.....	69
3.3 Achievement of the Project Values .....	69
4. GENERAL OBLIGATIONS .....	69
4.1 General .....	69
4.2 Acceptance of risk.....	70
4.3 Environmental requirements .....	71
4.4 Utility Services .....	73
4.5 Control of traffic .....	77
4.6 Collusive arrangements .....	77
4.7 Community relations .....	78
4.8 Media events.....	78
4.9 Special events .....	79
4.10 Cooperation and coordination with Interface Contractors .....	79
4.10A Cooperation and coordination with Airport Lessee and Airport Lessee Contractors .....	83
4.11 No Claims arising out of Interface Work or Airport Works.....	84
4.12 Liability under the NGER Legislation .....	85
4.13 Provision of Emissions and Energy Data to the Principal.....	86
4.14 Reporting Emissions and Energy Data .....	86
4.15 Indemnity .....	87
4.16 Sustainability .....	87
4.17 Environmental Management System .....	88
4.18 Master Interface Deed .....	88
4.19 Collateral Warranty Deed Poll .....	88
4.20 Australian Jobs Act.....	88
4.21 Workforce development and industry participation .....	89
5. SUBCONTRACTING.....	89
5.1 Subcontracting by the SCAW Contractor .....	89
5.2 Significant Subcontracts .....	90
5.3 Provisions to be included in Subcontracts.....	91
5.4 Nominated Subcontractors .....	91
6. SECURITY .....	92

6.1	Unconditional undertakings .....	92
6.2	Requirements for unconditional undertakings .....	92
6.3	Recourse to unconditional undertakings .....	93
6.4	Release of unconditional undertakings .....	93
6.5	Replacement of unconditional undertakings where the issuer ceases to have the Required Rating .....	95
6.6	No injunction.....	97
6.7	No interest.....	97
6.8	No trust.....	97
6.9	Parent Company Guarantees .....	97
7.	LAW AND APPROVALS .....	97
7.1	Compliance with Law.....	97
7.2	Approvals .....	98
7.3	Change in Law.....	99
7.4	Change in Codes and Standards .....	102
7.5	Changes to Planning Approvals.....	103
7.6	Legal challenge.....	105
7.7	Environment Protection Licence .....	105
7.8	Crown Building Work.....	105
7.9	Long service levy .....	106
7.10	Planning Approval Representatives.....	106
7.11	Not used.....	107
7.12	Native Title Claims.....	107
7.13	On-Airport Construction (Rail) Plan and Construction Environmental Management Plans.....	107
<b>8. WORK HEALTH AND SAFETY..... 111</b>		
8.1	Care of people, property and Environment .....	111
8.2	Work health and safety.....	112
8.3	Principal contractor .....	113
8.4	Project Health & Safety Risk Governance Plan .....	115
8.5	Sydney Metro Principal Contractor Health and Safety Standard.....	116
8.6	Rail safety .....	117
9.	ENGINEERING AUTHORISATION AND ASA COMPLIANCE .....	118
10.	PORTIONS .....	119
10.1	Principal's Representative may direct Portions .....	119
10.2	Interpretation of Portions.....	120
10.3	Occupation and use of partially completed Project Works .....	121
10.4	Reduction in entitlement.....	122
11.	PROJECT PLANS.....	123
11.1	General .....	123
11.2	Warranties in relation to Project Plans .....	123
11.3	Review of Project Plans.....	123
11.4	Update of Project Plans.....	124
11.5	Implementation and compliance .....	125
12.	LOCATION OF THE PROJECT WORKS .....	125
12.1	Early access to the Construction Site .....	125
12.2	Access.....	127
12.3	Not Used .....	131
12.4	Property Works.....	131
12.5	Control of Construction Site .....	133

12.6	Extra Land .....	134
12.7	Temporary Areas .....	136
12.8	Physical conditions.....	136
12.9	Information Documents .....	138
12.10	Geotechnical Reports.....	139
12.11	Notice of Site Investigation Location Difference .....	140



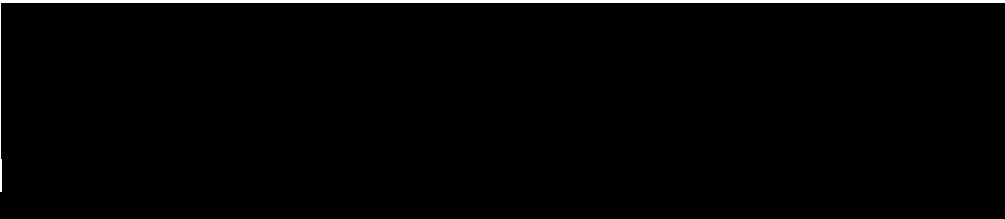
12.24	Interface with Third Parties .....	166
12.25	Adjoining Properties .....	168
12.26	Existing Operations .....	171
12.27	Not used.....	172




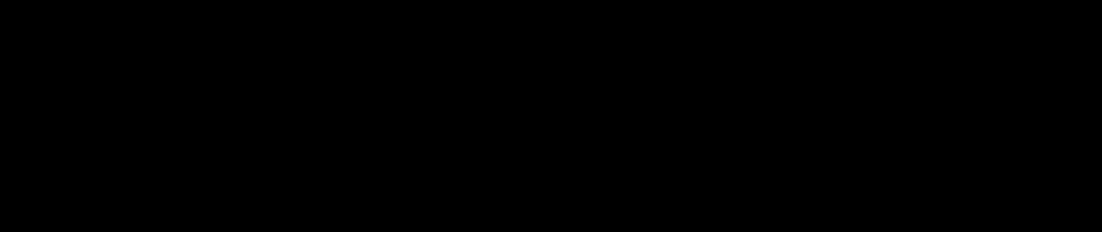
13.	QUALITY .....	173
13.1	Quality Management System .....	173
13.2	Independent Certifier .....	174
13.3	Proof Engineer.....	175
13.4	Quality management, verification and certification .....	176
13.5	Hold Points and Witness Points .....	177
13.6	Project quality non-conformance.....	178
13.7	Monitoring and audits by the Principal's Representative .....	178
13.8	Testing .....	178
13.9	No relief from obligations.....	179
14.	DESIGN AND DESIGN DOCUMENTATION.....	179
14.1	Design obligations.....	179
14.2	SCAW Contractor's Tender Design.....	179
14.3	Design warranties.....	181
14.4	Preparation, submission and review of Design Documentation .....	183
14.5	Network Assurance Committee .....	184
14.6	Ownership of documentation .....	184
14.7	Delivery up of Design Documentation .....	187
14.8	Initial Tender Design .....	188
14.9	Design Life.....	188
15.	CHANGES .....	191
15.1	Open Book.....	191
15.2	Proposed Changes .....	191
15.3	Change Orders .....	193
15.4	Notice of Change .....	194
15.5	Valuation .....	195
15.6	Omissions.....	196
15.7	SCAW Contractor may propose Change .....	197
15.8	Pre-Agreed Changes.....	199
15.9	SCAW Contractor's entitlements .....	200
15.10	Approvals for Changes.....	201



15A	VALUATION MECHANISM .....	201
16.	CONSTRUCTION .....	201
16.1	Construction .....	201
16.2	Early Works Activities.....	202
16.3	Performance of SCAW Contractor's Activities .....	202
16.4	Setting out.....	203
16.5	Principal's right to inspect and seek comments .....	205
16.6	All work included .....	205
16.7	The Principal's action.....	206
16.8	Incident management .....	206
16.9	Instructions from Authorities .....	207
16.10	Survey .....	207
16.11	Cleaning up.....	208
16.12	Work methods.....	208
16.13	Asset Management Information .....	208
16.14	Work as Executed Design Documentation .....	213
16.15	Training.....	215
17.	DEFECTS, INSPECTION AND REPAIR .....	215
17.1	Defects.....	215
17.2	Principal's Representative's Direction.....	215
17.3	Correction of Defect or Change.....	217
17.4	Acceptance of work or rectification by others.....	218
17.5	Changes under other contracts to overcome Defects .....	218
17.5A	Responsibility for Defects.....	219
17.6	Works .....	219
17.7	Local Area Works .....	219
17.8	Utility Service Works .....	220
17.9	Property Works.....	221
17.10	Rights not affected.....	222
17.11	Warranties by others.....	222
17.12	Use of defective facilities .....	223
17.13	Final inspections of Project Works .....	223
17.14	Disputes regarding Defects .....	223
18.	ADMINISTRATION OF THE PROJECT WORKS .....	224
18.1	Principal's Representative .....	224
18.2	SCAW Contractor's personnel .....	225
18.3	Design development meetings.....	226
18.4	Project Site meetings .....	227
18.5	Management Review Group.....	228
18.6	Management Review Group functions .....	228
18.7	Management Review Group meetings.....	229
18.8	Completion Steering Committee .....	229
18.9	Completion Working Group .....	230
18.10	No legal effect.....	231
18.11	SCAW Contractor's reporting obligations.....	231
18.12	Minimise disruption and complaints and notifications.....	231
18.13	Independent Property Impact Assessment Panel.....	233
18.14	Media requests.....	233
18.15	Industrial relations.....	233
18.16	Document management and transmission.....	234
18.17	Exchange of Information between Government agencies .....	234
18.18	Quarterly whole of project reviews .....	234
18.19	Early Warning .....	235
18.20	Relationship Manager (TPA) .....	236
18.21	Design Steering Committee.....	237

19.	TIME AND COMPLETION.....	239
19.1	Start and progress.....	239
19.2	SCAW Contractor's programming obligations.....	239
19.3	Dates for Substantial Completion and Completion.....	240
19.4	Importance of Completion on time.....	240
19.5	Risk and notice of delay.....	241
19.6	Extension of time.....	241
19.7	Corrective action.....	245
19.8	Suspension.....	246
19.9	Directions to change sequencing, accelerate, defer activities or make accessible.....	246
19.10	SCAW Contractor's delay costs.....	249
19.11	Liquidated damages for delay in reaching Substantial Completion.....	250
19.12	Substantial Completion.....	252
19.13	Completion.....	255
19.14	Effect of Notice of Substantial Completion or Notice of Completion.....	256
19.15	Access following Substantial Completion of a Portion.....	256
19.16	Transitional Handover Services and handover.....	256
19.17	Final Completion.....	257
20.	PAYMENT.....	257
20.1	Principal's payment obligation for design and construction.....	257
20.2	Payment claims.....	258
20.3	Effect of payment schedules and payments.....	261
20.4	Provision of documentation and other requirements.....	262
20.5	Payment of Subcontractors, workers compensation and payroll tax.....	262
20.6	Not used.....	263
20.7	Payment for unfixed Materials.....	263
20.8	SOP Act.....	264
20.9	Right of set-off.....	266
20.10	Interest.....	267
20.11	Title.....	267
20.12	Provisional Sum Work.....	267
20.13	Initial Payment.....	269
20.14	Post-Award Performance Incentive Payment Regime.....	271
20.15	Performance Amount.....	271
21.	GST.....	272
21.1	Interpretation.....	272
21.2	GST payable.....	272
21.3	Adjustments.....	272
21.4	Non-monetary consideration.....	272
21.5	Reimbursements.....	272
21.6	Recipient created tax invoices.....	273
21.7	No merger.....	273
22.	LIABILITY.....	273
		
22.8	Exclusion of proportionate liability scheme.....	278
22.9	SCAW Contractor not to apply proportionate liability scheme.....	278
22.10	Insurance requirements.....	278

22.11	Survival.....	278
<b>23. RISKS AND INSURANCE..... 280</b>		
23.1	Responsibility for care of the Project Works.....	280
<b>23.4 Principal's insurance..... 282</b>		
23.5	SCAW Contractor's insurance obligations .....	282
23.6	Workers compensation insurance.....	283
23.7	Asbestos liability insurance .....	283
<b>23.9 Construction Plant insurance .....</b>		
23.10	Motor vehicle insurance .....	283
23.11	Marine transit insurance .....	284
23.12	Marine hull insurance .....	284
23.13	Marine liability insurance .....	284
23.14	Periods of insurance.....	284
23.15	Evidence of policies.....	285
23.16	Provisions in policies .....	285
23.17	Premiums .....	286
23.18	Undertaking to inform .....	287
23.19	Notices and requirements of claims.....	287
23.20	Reinstatement.....	288
23.21	Application of insurance proceeds .....	288
23.22	Damage to property .....	289
23.23	Risk of deductibles or excesses.....	289
<b>24. TERMINATION BY PRINCIPAL..... 290</b>		
24.1	Notice of default .....	290
24.2	Contents of notice.....	290
24.3	Rights of the Principal following Default Notice .....	291
24.4	Termination or take out by the Principal for insolvency or breach.....	291
24.5	The Principal's entitlements after take out or termination.....	294
24.5A	The Principal's entitlements after take-out .....	295
24.6	SCAW Contractor's rights after repudiation or wrongful termination .....	295
24.7	Termination for convenience .....	296
24.8	Cost.....	296
24.9	Preservation of rights .....	297
24.10	Termination by Frustration.....	297
24.11	Codification of SCAW Contractor's entitlements .....	298
<b>25. DISPUTE RESOLUTION .....</b>		
25.1	Disputes generally .....	298
25.2	Independent Dispute Avoidance and Resolution Panel .....	298
25.3	Consultation.....	299
25.4	Recommendation.....	300
25.5	Expert determination.....	301
25.6	Notice of dissatisfaction .....	301
25.7	Final and binding decision .....	302
25.8	Litigation or arbitration.....	302
25.9	Arbitration rules .....	302
25.10	Exclusion from determination or award.....	303
25.11	Payments .....	303
25.12	SCAW Contractor to continue performing obligations.....	303
25.13	Urgent relief.....	303
25.14	Dispute under related contracts.....	304
25.14A	Dispute avoidance .....	304

25.15	Survive termination .....	305
26.	RESTRICTIONS, CHANGE IN CONTROL AND RESTRUCTURE EVENT .....	305
26.1	Restrictions relating to the SCAW Contractor Consortium Deed.....	305
26.2	Change in control of an entity that comprises the SCAW Contractor .....	305
26.3	Change in control of a SCAW Contractor Guarantor .....	306
		
		
28.	TRANSPORT FOR NSW STATEMENT OF BUSINESS ETHICS .....	313
29.	NSW INDUSTRIAL GUIDELINES: BUILDING AND CONSTRUCTION PROCUREMENT	313
29.1	NSW Guidelines .....	313
29.2	Primary Obligation .....	313
29.3	Access and information .....	313
29.4	Sanctions.....	314
29.5	Compliance .....	314
29.6	Workplace Relations Management Plan .....	315
30.	AUSTRALIAN GOVERNMENT REQUIREMENTS.....	315
31.	NOTIFICATION OF CLAIMS .....	317
31.1	Notice of other claims.....	317
31.2	Prescribed notices.....	317
31.3	Temporary waiver of notification requirements .....	318
31.4	Continuing events.....	319
31.5	Bar .....	320
31.6	Other provisions unaffected .....	320
32.	GENERAL .....	320
32.1	Notices .....	320
32.2	Governing Law and Jurisdiction.....	323
32.3	Cost .....	324
32.4	Taxes .....	324
32.5	Indemnities to survive.....	324
32.6	Amendment .....	325
32.7	Permitted disclosure.....	325
32.8	Vienna Convention .....	326
32.9	The Principal may act .....	326
32.10	Non reliance.....	326
32.11	Entire agreement.....	327
32.12	Counterparts .....	327
32.13	Unlimited discretion .....	327
32.14	Joint and several liability .....	328
32.15	Assignment.....	329
32.16	No agency, partnership, joint venture or other fiduciary relationship .....	329
32.17	Waiver .....	330
32.18	Further acts and documents .....	330
32.19	Provisions limiting or excluding liability.....	330
32.20	Survival of certain provisions .....	330
32.21	PPS Act .....	330
32.22	Transfer of functions or Public Transport Agency assets .....	331



**THIS DEED** is made on

1 March

2022

**BETWEEN:**

- (1) **Sydney Metro** ABN 12 354 063 515, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (the **Principal**); and
- (2) **CPB Contractors Pty Limited** (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney NSW 2060

and

**United Infrastructure Pty Limited** (ABN 39 634 541 807) of Suite 45, 26-32 Pirrama Rd, Pyrmont, New South Wales 2009

(together the **SCAW Contractor**).

**RECITALS:**

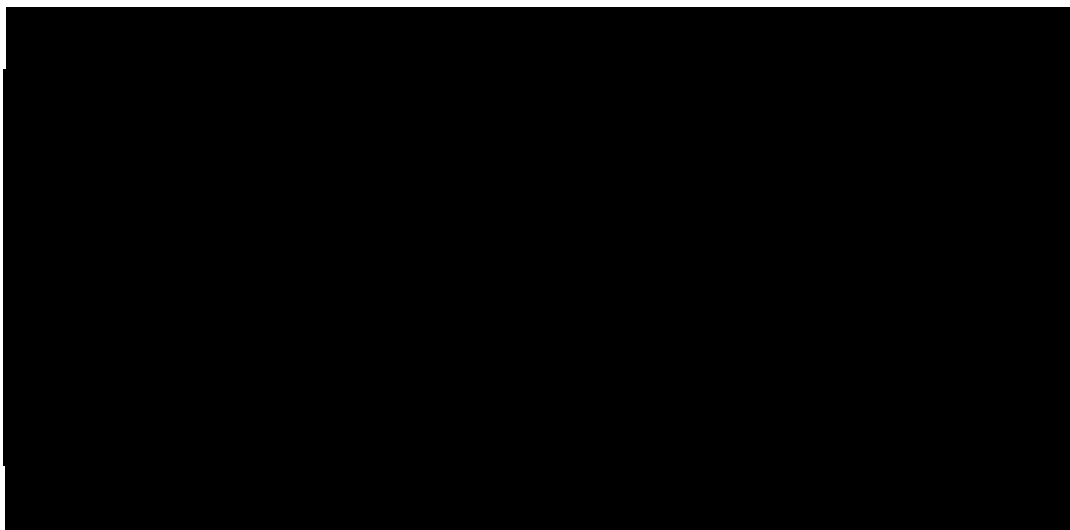
- (A) The Principal is procuring Sydney Metro - Western Sydney Airport on behalf of the Commonwealth and NSW governments and the people of New South Wales.
- (B) The Project Works are a critical component of Sydney Metro - Western Sydney Airport.
- (C) Following the completion of a tender process, the Principal selected the SCAW Contractor as the successful tenderer for the delivery of the Project Works.
- (D) The Principal and the SCAW Contractor now wish to enter into this deed to record the terms on which the Project Works will be designed, constructed, tested, commissioned and handed over by the SCAW Contractor to the Principal.

**THE PARTIES AGREE AS FOLLOWS:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document:



**Aboriginal Participation Plan** means the Project Plan referred to as the Aboriginal Participation Plan in section 2.9 of the General Specification, as updated from time to time in accordance with the SCAW Specification and clause 11.4.

**ABC Approval** means the approval of the Works by the Airport Building Controller which is made, given or issued under the Airports Act and the *Airports (Building Control) Regulations 1996* (Cth) from time to time.

**ABCC** means the body referred to in subsection 29(2) of the BCIIIP Act.

**ABC Commissioner** means the commissioner of the Australian Building and Construction Commission referred to in subsection 15(1) of the BCIIIP Act.

**Acceleration** has the meaning given in clause 19.9(a)(ii).

**Accepted Defect** means a Defect (other than a Minor Defect) in relation to which the Principal has issued a direction under clause 17.2(a)(iii), 17.2(a)(iv) or 17.2(a)(v) prior to the Date of Substantial Completion of any Portion.

**Access Licence (RID)** has the meaning given to the term "Access Licence" in the Airport Rail Integration Deed.

**Accessible** means, in relation to a part of the Construction Site, that such part is clean and clear and capable of safe use by the SCAW Contractor or an Interface Contractor for the purpose of carrying out the relevant works.

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

**Accredited Consultant** means a consultant that holds current certification in accordance with all relevant Laws and in the case of clause 12.13A, a consultant who is on the Defence Infrastructure Panel – Environmental, Heritage and Estate Engineer Services 2020-2025 within the Commonwealth Department of Defence.

**Accredited Person** means a Subcontractor who is authorised at Law and on the Defence Infrastructure Panel – Environmental, Heritage and Estate Engineer Services 2020-2025 within the Commonwealth Department of Defence to perform the relevant extraction works under clause 12.13A.



**Act of Prevention** means:

- (a) a breach of this deed by the Principal;
- (b) an act or omission by the Principal or its Associates and not being an act or omission:
  - (i) permitted or allowed by this deed including any Direction given by the Principal or the Principal's Representative (other than a matter referred to in paragraph (c)); or
  - (ii) which is within a timeframe permitted, or allowed by this deed (other than a matter referred to in paragraph (c)); or
  - (iii) to the extent the act or omission is caused or contributed to by a breach by the SCAW Contractor of this deed or any negligent, or unlawful, act or omission of the SCAW Contractor, or its Associates, including any breach, act

or omission in connection with the SCAW Contractor's obligations in respect of Interface Contractors; or

- (iv) being the exercise by the Principal of any of its functions and powers pursuant to any Law; or
- (c) subject to clause 17.3(a)(ii), a Change the subject of a Direction by the Principal's Representative except where the Change is approved under clause 15.7(d) or any other event or circumstance which is treated as a Change under this deed (subject to clause 12.13).



**Additional Third Party Agreement** has the meaning given in clause 12.24(a)(iv).

**Adjoining Owner** means a party with an interest in an Adjoining Property.

**Adjoining Property** means a property specified in Schedule D11.

**Adjoining Property Access Licence** means a licence on the terms set out at clause 2 of the Pro-forma Adjoining Property Owner Agreement.

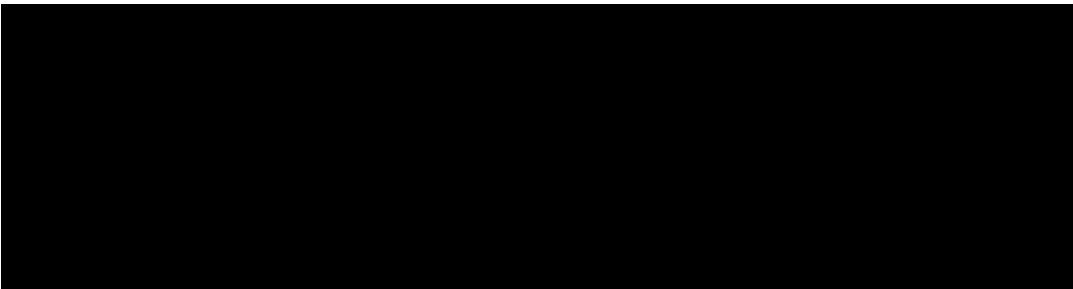
**Adjoining Property Easement** means an:

- (a) Easement for Crane Access;
- (b) Easement for Rock Anchors;
- (c) Easement for Scaffolding; or
- (d) Easement for Safety Structure,

and includes the Adjoining Property Easements contained in Schedule D12.

**Adjoining Property Extra Land** has the meaning given in clause 12.25(g)(i).

**Adjoining Property Owner Agreement** means an agreement with an Adjoining Owner substantially in the form of the Pro-forma Adjoining Property Owner Agreement (or such other form as the Principal may agree with any Adjoining Owner) and includes the Adjoining Property Owner Agreements contained in Schedule D8.



**AEO or Authorised Engineering Organisation** means a legal entity to whom the ASA has issued an ASA Authorisation.

**AFC Design Documentation** means any Design Documentation which:

- (a) the SCAW Contractor is entitled to use for construction in accordance with clause 6 of Schedule A26; or

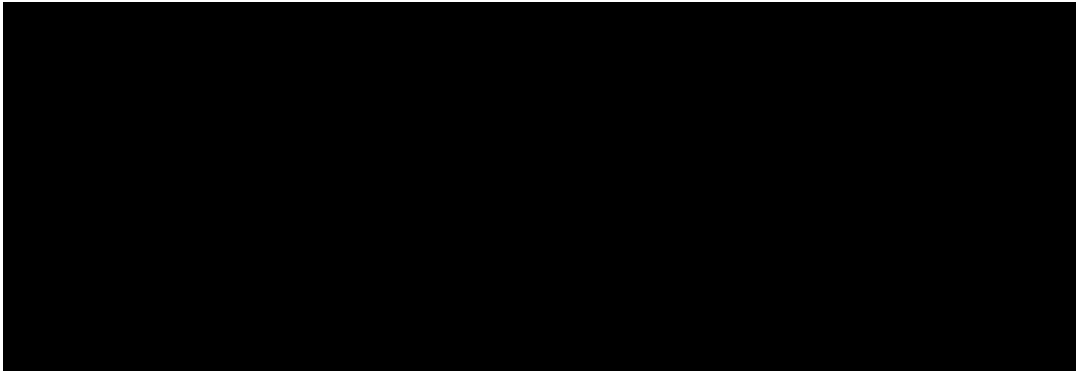


- (b) has been amended by a Change directed or approved by the Principal's Representative in accordance with clause 15.

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

- (a) the Principal, the SCAW Contractor and the Independent Certifier agree in writing; or
- (b) the Principal's Representative otherwise directs,

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



**Airport Building Controller** means Phillip Chun & Associates Pty Ltd or such replacement controller appointed under the Airports Act.

**Airport Lessee** means WSA Co Limited ACN 618 989 272.

**Airport Lessee Consent** means any Approval by the Airport Lessee of the SCAW Contractor's Activities required under the Airports Act and the *Airports (Building Control) Regulations 1996* (Cth) as a precondition to the ABC Approval.

**Airport Lessee Contractor** means each of the contractors engaged by the Airport Lessee each acting in connection with the design and construction of the Western Sydney Airport.

**Airports Act** means the *Airports Act 1996* (Cth).

**Airport Works** means any works or the provision of any materials, plant, equipment, machinery, systems or other infrastructure, or the provision of any operation or maintenance activities required for Western Sydney Airport, to be performed by an Airport Lessee Contractor.

**Airport Plan** means the Western Sydney Airport – Airport Plan determined pursuant to section 96B of the Airports Act, and as varied in accordance with section 96D of the Airports Act in September 2021 and includes all:

- (a) conditions to such approval; and
- (b) documents incorporated by reference,

(including the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans) as may be modified from time to time.

**Airport Rail Integration Deed (or RID)** means the deed titled 'Western Sydney International (Nancy-Bird Walton) Airport - Airport And Rail Integration Deed' between the Principal, Airport Lessee, TfNSW and Commonwealth of Australia as represented by the

Department of Infrastructure, Transport, Regional Development and Communications dated 19 August 2021.

**Appointed Principal Contractor** means CPB Contractors Pty Limited (ABN 98 000 893 557) of Level 18, 117 Pacific Highway, North Sydney NSW 2060.

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

- (a) to perform the SCAW Contractor's Activities;
  - (b) in connection with the Construction Site and any Extra Land prior to the Portion Handover Date (but only to the extent required for the performance of the SCAW Contractor's Activities);
  - (c) for the use and occupation of:
    - (i) any Portion (both individually and in combination with any earlier completed Portions) after Substantial Completion of the Portion; and
    - (ii) the Project Works after Substantial Completion of every Portion;
  - (d) for the use and occupation of:
    - (i) any Portion (both individually and in combination with any earlier completed Portions) after Completion of the Portion; and
    - (ii) the Project Works after Completion of every Portion; or
  - (e) otherwise to comply with Law,
- and for the avoidance of doubt includes:
- (f) the Planning Approvals; and
  - (g) any Environment Protection Licence issued in relation to the SCAW Contractor's Activities,
- but does not include:
- (h) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
  - (i) the exercise by the Principal of its rights under this deed.

[REDACTED]

[REDACTED]

[REDACTED]

**ASA** or **Asset Standards Authority** means the Transport for NSW Asset Standards Authority, an independent unit established within Transport for NSW, and is the network design and standards authority for NSW Transport Assets.

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

**ASA Charter** means the document which identifies the ASA's objectives, functions, powers and governance and the duties of Public Transport Agencies and AEOs in relation to the ASA (as amended from time to time), a copy of which can be found on [www.asa.transport.nsw.gov.au](http://www.asa.transport.nsw.gov.au).

**ASA Requirements** has the meaning assigned to it in the ASA Charter.

**Asbestos Removal Control Plan** means the *NSW Government Code of Practice – How to safely remove Asbestos*, amended from time to time, approved under section 274 of the WHS Act.

**Asbestos Work** has the meaning given in clause 23.7.

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

**Asset Lifecycle Services** means the aspects of the SCAW Contractor's Activities which relate to the Asset Lifecycle of Transport Assets.

**Asset Management Information** means the information and documents relating to the operation and maintenance of the assets forming the Project Works and Handover Works as required by section 7 of the General Specification.

**Associates** means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors, consultants or officers of the Principal and the Principal's Representative, but excludes:
  - (i) the Independent Certifier;
  - (ii) the Planning Approval Representatives;
  - (iii) not used;
  - (iv) the SCAW Contractor and its Subcontractors;
  - (v) any Interface Contractors and their respective subcontractors;
  - (vi) the Airport Lessee and the Airport Lessee Contractors; and
  - (vii) employees, agents, contractors, consultants and officers of the persons listed in paragraphs (i) to (vi) above; and
- (b) in respect of the SCAW Contractor, its Subcontractors, each entity that comprises the SCAW Contractor, the SCAW Contractor Guarantors and any of their respective employees, agents, contractors, consultants or officers (excluding the Independent

Certifier and its employees, agents, consultants and officers) each acting in connection with the Project Works or the SCAW Contractor's Activities.

**Assurance and Governance Plan** means the Project Plan referred to as the Assurance and Governance Plan in section 5.1.5 of the General Specification, as updated from time to time in accordance with clause 11.4.

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

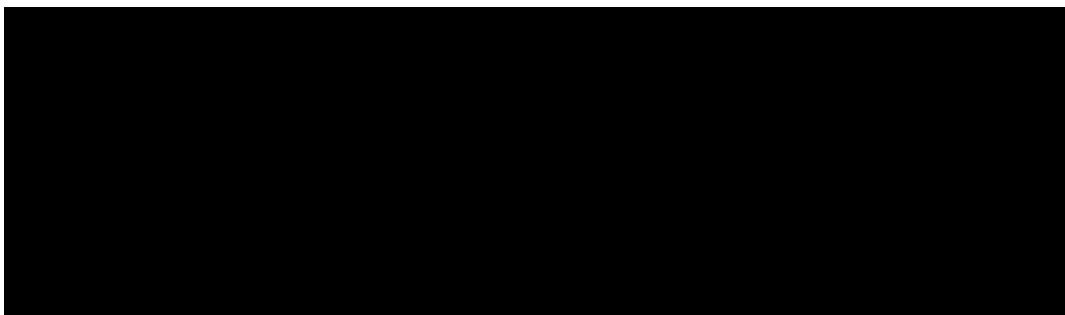
**Ausgrid** means the statutory state owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW).

**Authority** means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the SCAW Contractor's Activities; or
- (c) any other person having jurisdiction over, or ownership of Utility Services, the Utility Service Works, the Local Areas or the Local Area Works,

and, to avoid doubt, includes the Clean Energy Regulator and the Environmental Representative but excludes the Airport Lessee.

**Background IP Rights** has the meaning given in clause 14.6(b)(ii).



**Bank Bill** means a bill of exchange (under the *Bills of Exchange Act 1909* (Cth)) which has been accepted by any bank authorised under a Law of the Commonwealth or any State to carry on banking business.

**Bank Bill Rate** is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page BBSY (or any page which replaces that page) at about 10.30 am (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or
- (b) if there is a manifest error in the calculation of the average bid rate under paragraph (a) or if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a), the bid rate agreed in good faith by the SCAW Contractor and the Principal having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

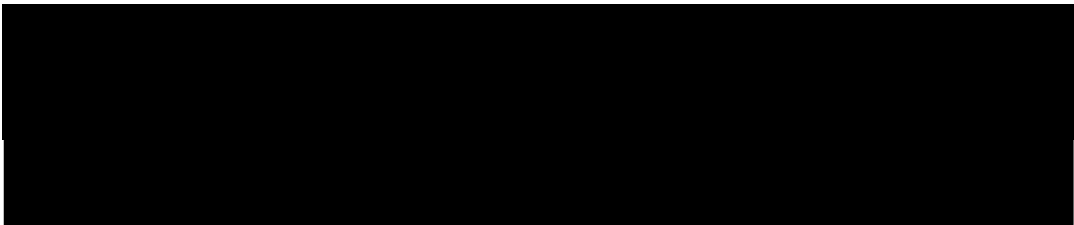
**BCIIP Act** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

**Building Code** means the *Code for Tendering and Performance of Building Work 2016* (Cth), or any subsequent code of practice which takes effect and supersedes that code.

**Building Work** has the meaning given to that term in subsection 3(4) of the Building Code.

**Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

**Call-off Services** means each of the categories of Nominated Subcontract Work described in Schedule A16.



**Certified Utility Services Design** means each certified approved for construction utility services works design specified in Schedule D22.

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

**Chair** has the meaning assigned to it in clause 25.3(b).

**Change** means any change or variation to the Project Works, the Temporary Works or the SCAW Contractor's Activities or the requirements of this deed for any of them, including:

- (a) additions, increases, decreases, omissions, deletions, substitutions or alterations;
- (b) changes to the character or quality, or demolition or removal, of any material or work;
- (c) changes to the levels, lines, positions or dimensions of any part of the Project Works or the Temporary Works;
- (d) changes to any sequence, method or timing of construction specified in this deed other than changes in programming requirements necessary for the SCAW Contractor to comply with its obligations under this deed; and
- (e) changes to the Construction Site.

**Change in Certified Utility Services Designs** means any direction by a relevant Authority to the SCAW Contractor to carry out Utility Services Works which are an enhancement or an upgrade or an increase in the scope of the original Utility Service Works set out in the relevant Certified Utility Services Design.

**Change in Codes and Standards** means a change in, or the introduction of new, Codes and Standards taking effect after the date of this deed but excludes:

- (a) a change which:



**Claim** includes any claim, action, demand or proceeding including for an increase in the Design Contract Sum or the Construction Contract Sum, for payment of money (including damages) or for an extension of time:

- (a) under, arising out of, or in any way in connection with, this deed;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the SCAW Contractor's Activities or either party's conduct prior to the date of this deed; or
- (c) otherwise at Law including:
  - (i) under or for breach of any statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution including restitution based on unjust enrichment.

**Clean Energy Regulator** means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

**Codes and Standards** means:

- (a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this deed, including any specified or required by this deed, including the SCAW Specification;
- (b) the Government Policies; and
- (c) the Sydney Metro Principal Contractor Health and Safety Standard.

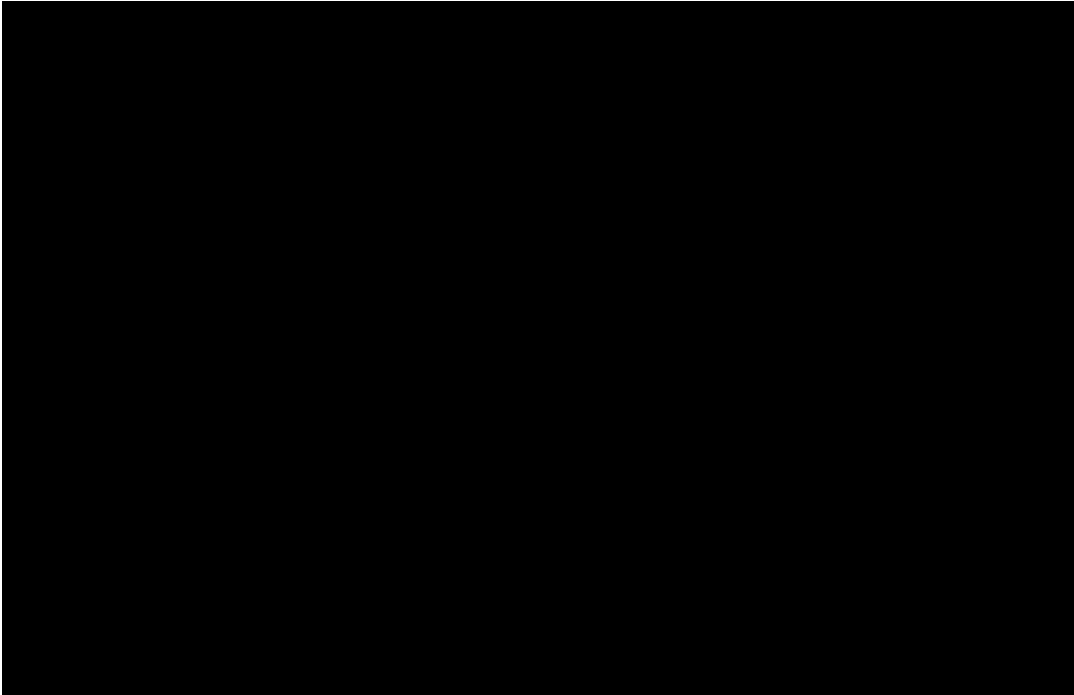
**Collateral Warranty Deed Poll** means a deed poll in substantially the same form as Schedule A12.

**Combined Design Stage 1 & 2** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part of element has been developed to satisfy the combined requirements of Design Stage 1 and Design Stage 2.

**Commonwealth** means the Commonwealth of Australia.

**Community Communications Strategy** means the Project Plan of that name referred to in section 5.1.10 of the General Specification, an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Community Complaints Mediator** means the person appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified in writing to the SCAW Contractor.



**Completed Portion** has the meaning given in clause 10.3(a).

**Completion** means the stage in the execution of the SCAW Contractor's Activities in respect of a Portion when:

- (a) Substantial Completion has been achieved in respect of the Portion;
- (b) the SCAW Contractor has executed a certificate in the form of Schedule B20 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (c) the SCAW Contractor has given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all:
  - (i) Asset Management Information in respect of the Project Works certified by the Independent Certifier under clause 16.13(j)(ii)(B)(bb); and
  - (ii) Work as Executed Design Documentation certified by the Independent Certifier under clause 16.14(c)(ii)(B);
- (d) the SCAW Contractor has corrected all Minor Defects and Agreed Defects that are listed in the Notice of Substantial Completion; and
- (e) to the extent specific Property Works were not required to be completed as a condition precedent to Substantial Completion in accordance with clause 12.4(h):
  - (i) those Property Works have been completed by the SCAW Contractor in accordance with clause 12.4; or
  - (ii) a Change has been directed by the Principal in respect of the specific Property Works in accordance with clause 12.4(i).

**Completion Steering Committee** means the group referred to in clause 18.8.

**Completion Working Group** means the group referred to in clause 18.9.



**Condition Precedent** means a condition precedent set out in Schedule A1.

**Condition Precedent Deadline Date** means the date which is 20 Business Days after the date of this deed or such other date agreed between the parties.

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

**Consequential Loss** means any:

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

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

**Construction Contract Sum** means the sum of [REDACTED] as adjusted in accordance with this deed.

**Construction Environmental Management Plan** means the Project Plan referred to as the 'Construction Environmental Management Plan' in section 5.1.12 of the General Specification, an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Construction Heritage Management Plan** means the 'Construction Heritage Management Plan' referred to in section 2.7.3 of the General Specification (which is a sub-plan to the Construction Environmental Management Plan), as updated from time to time in accordance with clause 11.4.

**Construction Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Construction Payment Schedule** means Schedule E2.

**Construction and Site Management Plan** means the Project Plan referred to as the 'Construction and Site Management Plan' in section 5.1.9 of the General Specification, an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Construction Plant** means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things used in the carrying out of the SCAW Contractor's Activities but not forming part of the Project Works.

**Construction Site** means the Project Site and the Temporary Areas.

**Construction Site Access Date** has the meaning given in clause 12.1(d).

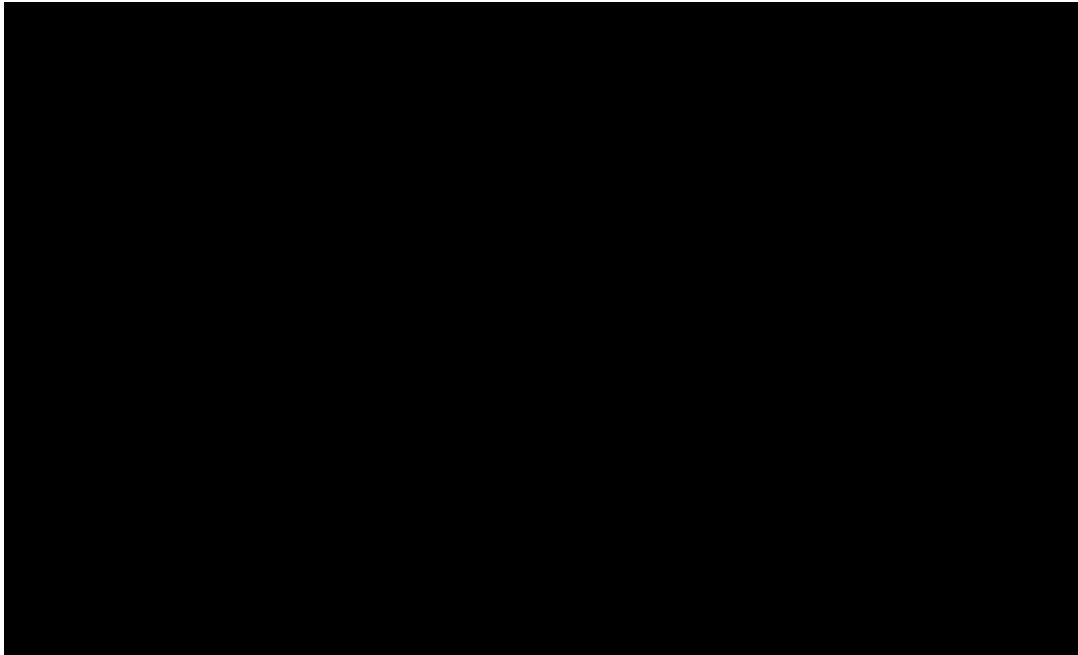
**Construction Site Interface Work** has the meaning given in clause 8.3(a)(ii).

**Construction Traffic Management Plan** means the 'Construction Traffic Management Plan' referred to in section 5.1.12.2 of the General Specification (which is a sub-plan to the 'Construction Environmental Management Plan'), an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Consultation** has the meaning given in clause 25.3(e).

**Contaminated Future Development Site** means:

- (a) the areas of the Construction Site identified in Schedule D16; or
- (b) such other parts of the Construction Site as may be directed by the Principal's Representative.



**Contract Documentation and Materials** has the meaning given in clause 14.6.

**Contractor Hazardous Material Investigation Documents** has the meaning given in clause 12.15(e).

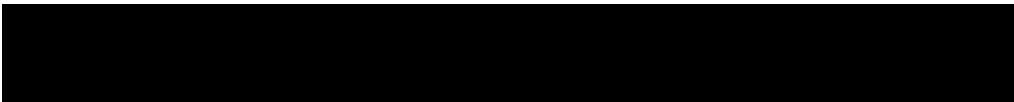
**Control** has the meaning in the Corporations Act.

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

**Corporate WHS Management System** has the meaning given in the WHS Management Systems and Auditing Guidelines.

**Cost Centre** means any cost centre specified in the Design Payment Schedule or the Construction Payment Schedule.

**Cost Item** means any cost item specified in the Design Payment Schedule or the Construction Payment Schedule.



**Council Interface Agreement** means the Penrith City Council Interface Agreement.

**Council Works** has the meaning given to the term "Handover Works" in the Penrith City Council Interface Agreement as applicable to SCAW.

**CPB** means CPB Contractors Pty Limited.

**CPB Website** means CPB's publicly available website address, being <https://www.cpbcon.com.au/>.

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

**Data** for the purposes of the definition of Emissions and Energy Data and clause 4.14(d)(i)(A), includes data, information, records and reports.

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

- (a) the date that is 90 days after the Date of Substantial Completion of the relevant Portion; or
- (b) where, in respect of that Portion an extension of time for Completion is granted by the Principal's Representative or by a determination under the Dispute Procedure or arbitration or litigation proceedings, the date resulting therefrom.

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

- (a) at the date of this deed, the applicable date specified for that Portion in Schedule A2; or
- (b) where, in respect of a Portion, an extension of time for Substantial Completion is granted by the Principal's Representative or by a determination under the Dispute Procedure or arbitration or litigation proceedings, the date resulting therefrom.

**Date of Completion** means, in respect of a Portion:

- (a) the date notified in a Notice of Completion as the date Completion was achieved; or
- (b) where another date is determined in a determination under the Dispute Procedure or arbitration or litigation proceedings as the date upon which Completion was achieved, that date.

**Date of First Passenger Service** means the date upon which a Certificate of Readiness for First Passenger Service (as defined in the SSTOM Project Deed) has been issued by the Independent Certifier in accordance with the SSTOM Project Deed.

**Date of Substantial Completion** means, in respect of a Portion:

- (a) the date notified in a Notice of Substantial Completion as the date Substantial Completion was achieved; or
- (b) where another date is determined under the Dispute Procedure or arbitration or litigation proceedings as the date upon which Substantial Completion was achieved, that date.

**Day 1 Clauses** means clauses 1, 2, 3.3, 4.6, 4.7, 4.8, 4.20, 4.21, 6, 7.1, 7.2, 12.9, 12.24(a)(vii), 12.24(a)(vi), 18.14, 22, 23.2, 23.4, 23.14(a), 25, 26, 27, 28, 29, 30, 31 and 32 and any other clauses or schedules required to have commenced in order to give effect to those clauses.

**Declaration of Compliance** means a declaration in substantially the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code.

**Deed of Disclaimer** means the deed of disclaimer signed by the SCAW Contractor in favour of the Principal, a copy of which appears in Schedule A20.

**Defect** means:

- (a) any defect, deficiency, fault, error or omission in the Project Works or Temporary Works; or
- (b) any:
  - (i) cracking, shrinkage, movement or subsidence in the Project Works or Temporary Works; or
  - (ii) other aspect of the Project Works, Temporary Works or the SCAW Contractor's Activities,

which is not in accordance with the requirements of this deed,

but does not include any damage caused to the Project Works after the Portion Handover Date other than damage that is caused or contributed to by the SCAW Contractor or its Associates.

**Defects Correction Period** means a period referred to in clauses 17.6, 17.7, 17.8 or 17.9.

**Deferred Activities** has the meaning given in clause 19.9(a)(iii).

**Delay Costs** means [REDACTED]

**Delay Costs Maximum Daily Amount** means the amount specified in Section 11 of Part 3 to Schedule E2.

**Delivery Site Integration Group** has the meaning given to it in the Master Interface Deed.

**Demolition and Construction Licence** means a licence on the terms set out at clause 6 of the Pro-forma Adjoining Property Owner Agreement.

**Demolition Structural Engineer** has the meaning given in section 1 of the Particular Specification.

**Demolition Temporary Works** has the meaning given in section 1 of the Particular Specification.

**Demolition Temporary Works Independent Checker** has the meaning given in section 1 of the Particular Specification.

**Demolition Works** has the meaning given in section 1 of the Particular Specification.

**Demolition Work Plan** has the meaning given in section 1 of the Particular Specification.

**Design Contract Sum** means the sum of [REDACTED] as adjusted in accordance with this deed.

**Design Documentation** means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models (including Digital Engineering or

any part thereof), samples, prototypes, calculations, drawings, shop drawings, digital design records and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, which are required for the performance of the SCAW Contractor's Activities, or which the SCAW Contractor or any other person on behalf of the SCAW Contractor creates in performing the SCAW Contractor's Activities (including the design of Temporary Works); and

- (b) computer software (including both source code and object code versions) where the computer software has been specifically created or specifically modified by or on behalf of the SCAW Contractor for the purposes of the SCAW Contractor's Activities.

**Design Life** has the meaning given in section 9.2 of the General Specification.

**Design Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Design Payment Schedule** means Schedule E1.

**Design Reference Documents** means Schedule 20 of the RID.

**Design Report** has the meaning given in section 1 of the Particular Specification.

**Design Review Period** means 20 Business Days commencing on the date on which the Principal's Representative is provided with any Design Documentation under clause 1(a) of Schedule A26.

**Design Re-Review Period** means, where the SCAW Contractor is required to re-submit any Design Documentation in accordance with Schedule A26:

- (a) in respect of any Design Documentation that is not RID Design Documentation:
  - (i) 5 Business Days (if the SCAW Contractor has taken 5 Business Days or less to re-submit the Design Documentation); or
  - (ii) 10 Business Days (otherwise); and
- (b) in respect of any RID Design Documentation, 10 Business Days.

**Design Stage** means each of Combined Design Stage 1 & 2, Design Stage 3 and each design stage under a Third Party Agreement.

**Design Stage 1** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element or component has been developed to a fixed design concept in relation to general details and any special details, including those details associated with foundation conditions, structure geometry and interfaces with adjacent land formations and infrastructure.

**Design Stage 2** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element includes all the design standards, design reports, specifications, models, calculations and drawings and shop drawings for the discrete design element or component, and is the stage at which the design analysis, design details and drawings demonstrate that the Design Documentation, when fully developed, will comply with and satisfy all the requirements of this deed.

**Design Stage 3** means that stage in the development of the Design Documentation at which the Design Documentation for any discrete design component, part or element is fully developed, including all design standards, design reports, specifications, models,

calculations and drawings and shop drawings, for the discrete design element or component.

**Design Steering Committee** means the group referred to in clause 18.21.

**Designated Significant Subcontract** means

[REDACTED]

[REDACTED]

**Developed IP Rights** has the meaning given in clause 14.6(b)(i).

**Digital Engineering** means a collaborative way of working, using digital processes, to enable more productive methods of planning, designing, constructing, operating and maintaining assets. This is achieved by aligning the management of computer-aided design (CAD), geographic information systems (GIS), building information models (BIM), documentation management systems and project controls.

**Digital Engineering Execution Plan** or **DEXP** means the Project Plan referred to as the DEXP in section 5.1.14 of the General Specification, as updated from time to time in accordance with clause 11.4.

**Direct Costs** means

[REDACTED]

**Direction** means any certificate, decision, demand, determination, direction, instruction, order, rejection, request or requirement.

**Dispute** has the meaning given to that term in clause 25.1.

**Dispute Avoidance Process** is the process set out in clause 7A of the IDAR Panel Agreement.

**Dispute Procedure** means the procedure for the resolution of Disputes set out in clause 25.

[REDACTED]

**Draft Third Party Agreement** has the meaning given in clause 12.24(a)(iii) and includes the Pro-forma Adjoining Property Owner Agreement.

[REDACTED]

**Early Site Access Date** means, in respect of a part of the Construction Site, the date specified as the "Early Site Access Date" for that part of the Construction Site in the Site Access Schedule.

**Early Site Access Payment** means the amount specified in paragraph 9 of Part 3 to Schedule E2.

**Early Works Activities** means those activities carried out by the SCAW Contractor in accordance with the Tender Process Deed and Early Works Notice prior to the date of this deed.

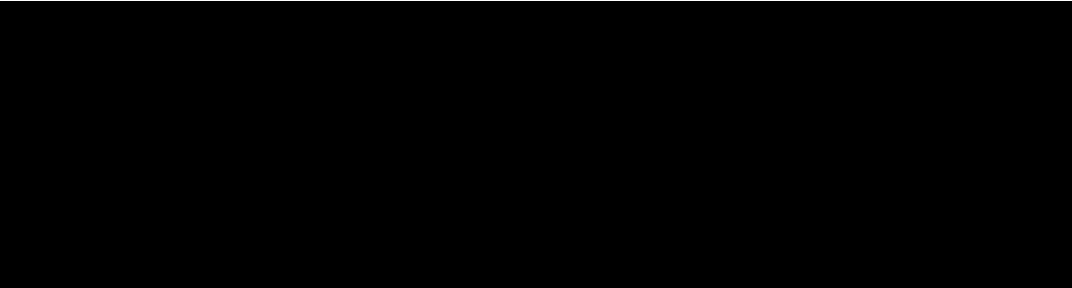
**Early Works Notice** means the notice issued by the Principal pursuant to clause 8 of the Tender Process Deed.

**Easement for Crane Access** means an easement for crane access in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Rock Anchors** means an easement for rock anchors in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Safety Structure** means an easement for the installation of a safety structure in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.

**Easement for Scaffolding** means an easement for scaffolding in respect of an Adjoining Property that the Principal has acquired by compulsory process under the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*.



**Emissions and Energy Data** means:

- (a) any Data of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) any Data of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) any other Data concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

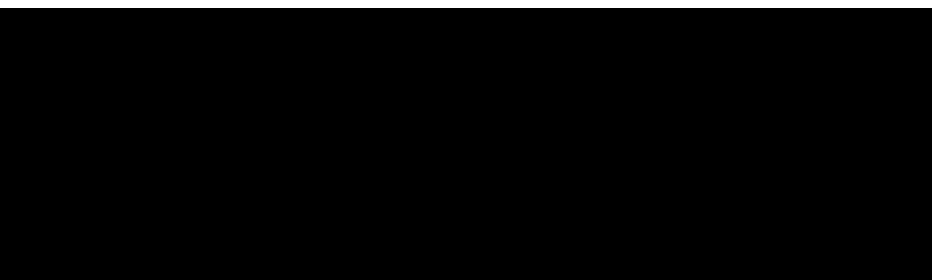
**Encumbrance** means a mortgage, charge, pledge, lien, security interest, lease, title retention, preferential right, trust arrangement, contractual right of set-off and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest.

**Enterprise Agreement** has the meaning given in the *Fair Work Act 2009* (Cth).

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

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

**Environment Protection Licence** means an environment protection licence granted under the *Protection of the Environment Operations Act 1997* (NSW).

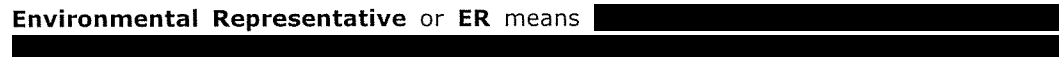


**Environmental Management System** means any environmental management systems required by the Sydney Metro Construction Environmental Management Framework (**CEMF**) (SM ES-ST-204).

**Environmental Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Environmental Notice** means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information issued by an Authority in respect of a matter concerning the Environment.

**Environmental Representative or ER** means



appointed by the Principal under a separate contract and any person appointed by the Principal as a replacement from time to time, as notified to the SCAW Contractor.

**EPA** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

**EPBC Act** means the *Environmental Protection and Biodiversity Conservation Act 1999* (Cth).

**EPBC Act Approval** means the Minister for the Environment's approval under the EPBC Act (EPBC reference: 2020/8687) dated 3 June 2021, a copy of which (as at the date of this deed) appears in Schedule D2 (*Approvals to be obtained by the Principal*) and includes all:

- (a) conditions to such approval; and
- (b) documents incorporated by reference,



as the approval may be modified from time to time.

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

**Excavated Natural Material (ENM)** means Waste which is excavated natural material in accordance with *The excavated natural material order 2014* (NSW EPA Resource Recovery Order under Part 9, clause 93 of the *Protection of the Environment Operations (Waste) Regulation 2014*).

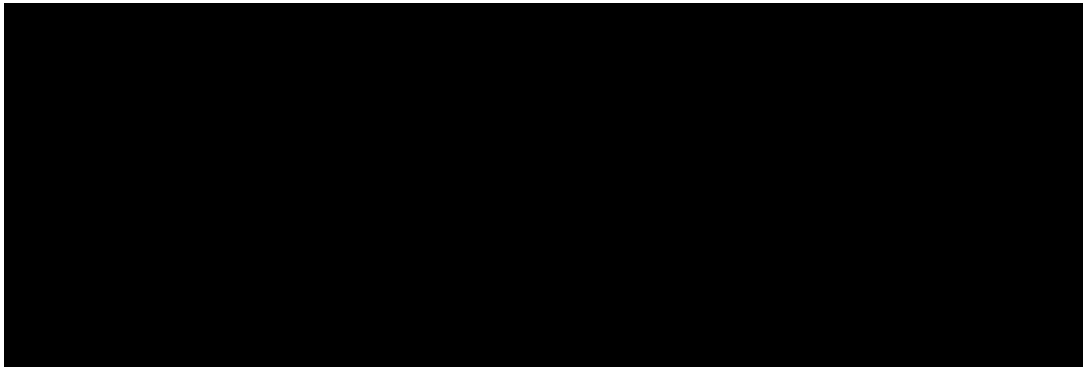
**Excavation Quantity Register** has the meaning given in clause 12.20(d)(ii).

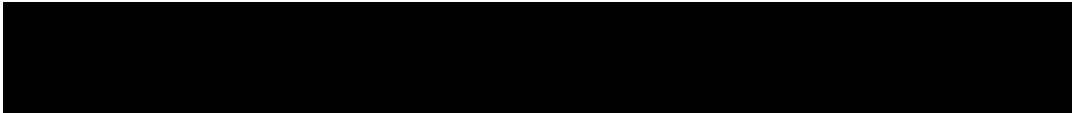
**Excepted Risk** means:

- (a) war (declared or undeclared), revolution, insurrection, civil commotion, military action, an act of public enemy or an act of sabotage, in each case occurring within Australia;
- (b) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia (other than a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth)); or
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, in each case occurring within Australia and only to the extent not caused by the SCAW Contractor or its Associates.

**Excluded Claim** means any Claim:

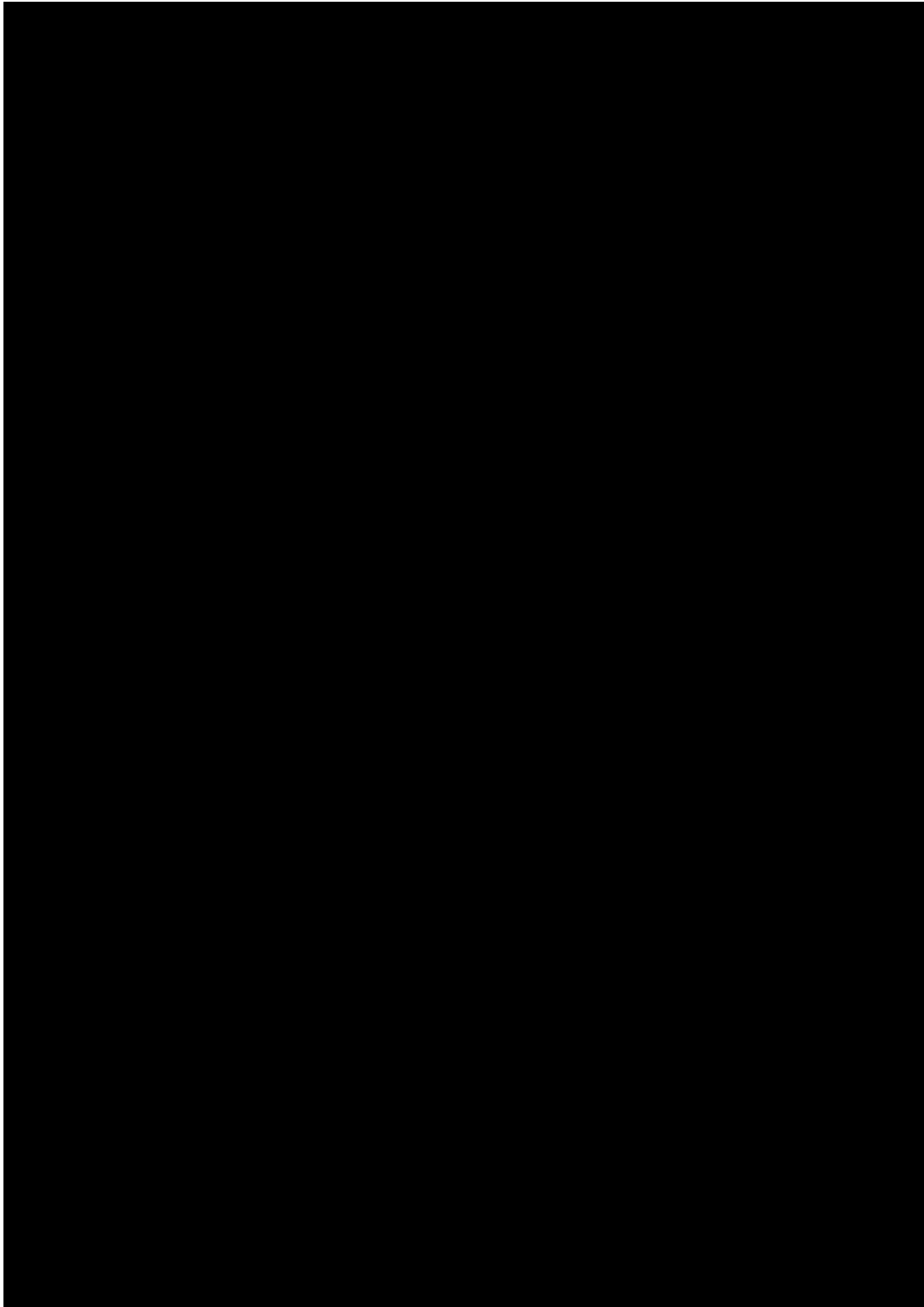
- (a) arising out of a Change in Law under clause 7.3(b);
- (b) for a Change directed by the Principal's Representative pursuant to clause 7.4(a)(ii)(B) arising out of a Change in Codes and Standards;
- (c) arising out of a change in the Planning Approvals under clause 7.5(b);
- (d) arising out of a Site Investigation Location Difference under clause 12.11(c);
- (e) for a Change to which clause 15.4 applies;
- (f) for an extension of time under clause 19.6;
- (g) for payment under clause 20 of any part of the original Project Contract Sum;
- (h) for a Change directed by the Principal's Representative pursuant to clause 4.4(d), 4.4(g) or 7.12; and
- (i) for payment of Provisional Sum Work pursuant to clause 20.12.

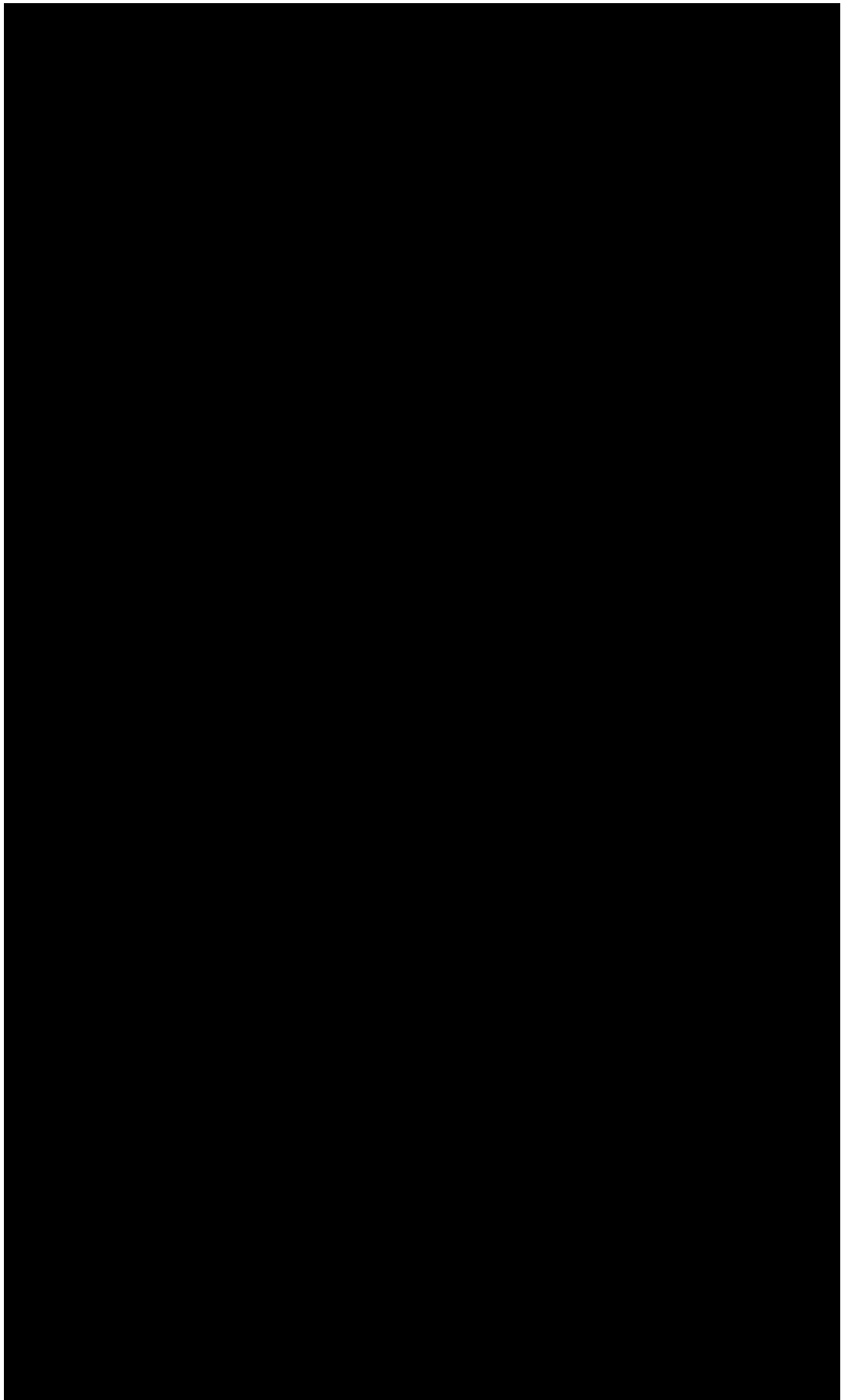




**Exclusion Sanction** has the meaning given to that term in subsection 3(3) of the Building Code.

**Excusable Cause of Delay** means:







**Existing Operations** means:

- (a) all infrastructure (including existing infrastructure, infrastructure that is under construction and Utility Services) which is owned, operated or under the control of an Existing Operator; and
- (b) the businesses and operations undertaken by an Existing Operator, on or in the vicinity of the Construction Site.

**Existing Operator** means:

- (a) Transport Asset Holding Entity;
- (b) Sydney Trains;
- (c) NSW Trains;
- (d) TfNSW;
- (e) Water NSW;
- (f) M12 Contractor;
- (g) Infrastructure NSW;
- (h) Place Management NSW;
- (i) Endeavour Energy;
- (j) Sydney Water;
- (k) Jemena;
- (l) TransGrid;
- (m) Telstra;
- (n) NBN Co;
- (o) Optus;
- (p) Planning Ministerial Corporation;
- (q) Penrith City Council and Liverpool City Council;
- (r) Western Parkland City Authority;

- (s) Airport Lessee and Airport Lessee Contractors; or
- (t) any other person who owns, operates or controls any infrastructure (including existing infrastructure, infrastructure that is under construction and the Utility Services) or undertakes any business or operation on or in the vicinity of the Construction Site,

and any of their related bodies corporate (as that term is defined in section 9 of the Corporations Act) and contractors.

**Expert** means a person(s) appointed to determine a Dispute pursuant to clause 25.5.

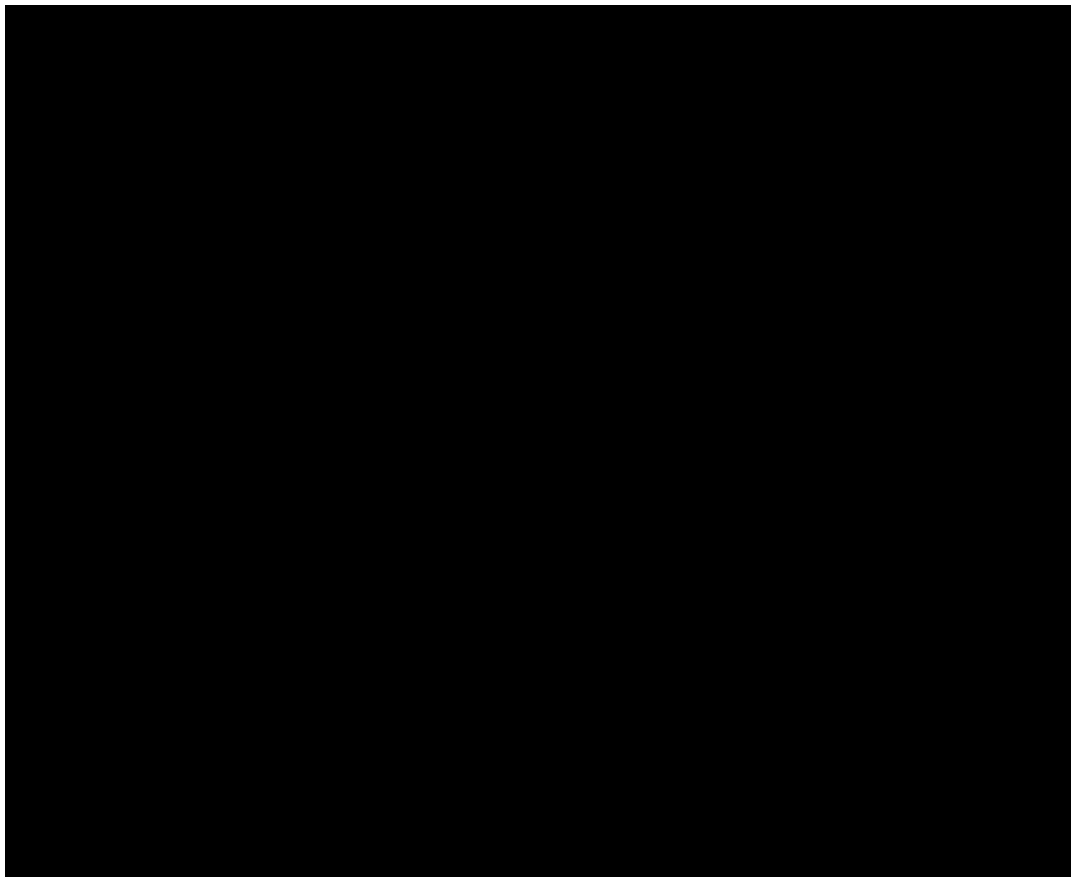
**Extra Land** means the land and buildings referred to in clause 12.6(a)(i) and includes any Adjoining Property Extra Land and any TPA Extra Land.

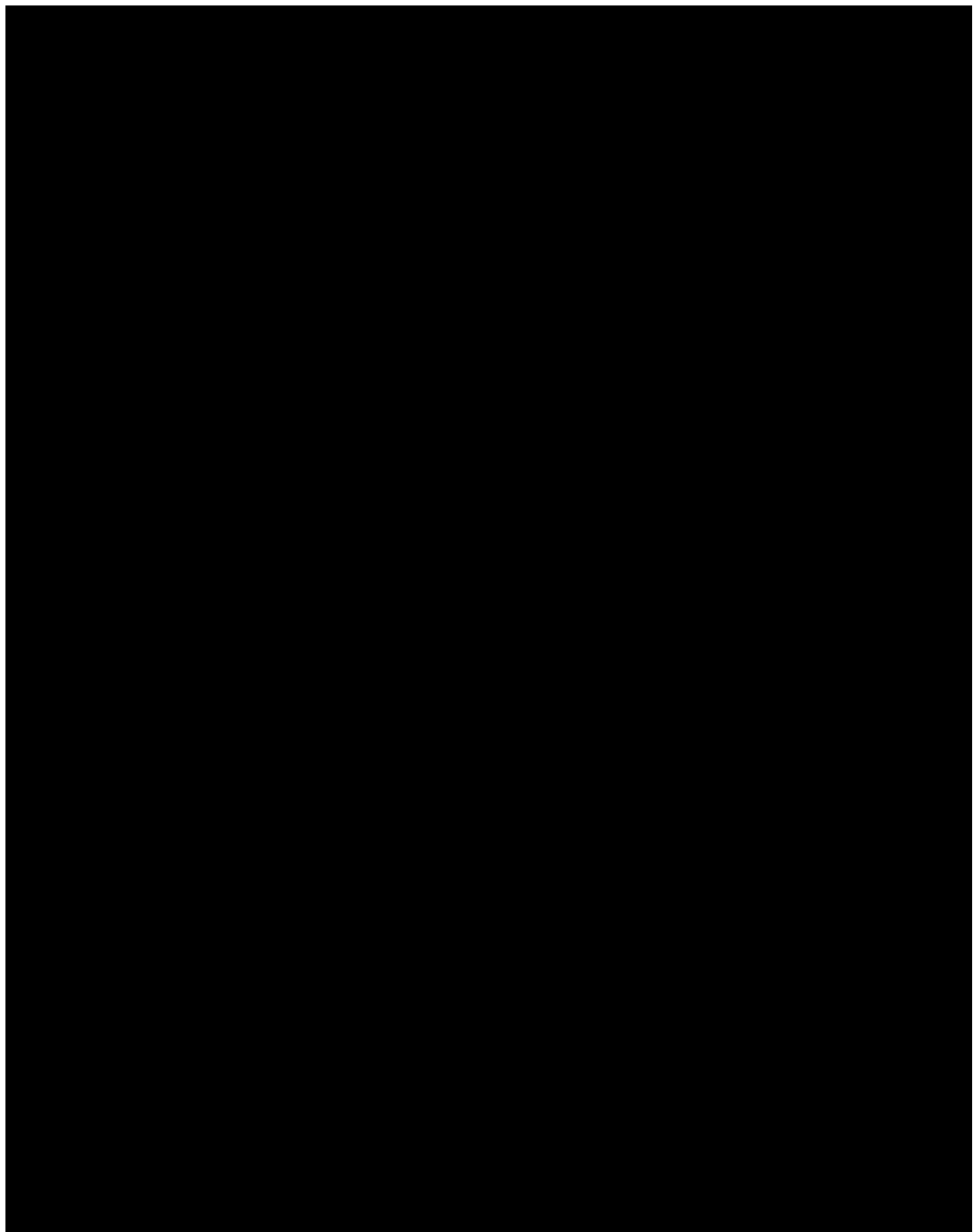
**Final Certificate** means the certificate issued by the Principal's Representative pursuant to clause 19.17(b).

**Final Completion** means that stage where:

- (a) all Defects Correction Periods have expired; and
- (b) all Defects that are the subject of a Direction by the Principal's Representative pursuant to clause 17.2(a) have either been accepted pursuant to clause 17.2(a)(iii) or otherwise rectified in accordance with clause 17.2(a).

**Final Inspection** has the meaning given in clause 17.13(a).





[REDACTED]

**Force Majeure Event** means any of the following:

- (a) an Excepted Risk;
- (b) a declared terrorist incident as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within Australia;
- (c) a terrorist act as defined in section 3 of the *Terrorism Insurance Act 2003* (Cth) occurring within a Key Plant and Equipment Manufacturing Country;
- (d) an earthquake, tsunami, typhoon, cyclone or hurricane occurring within Australia or a Key Plant and Equipment Manufacturing Country;
- (e) a flood which might at the date of this deed be expected to occur less frequently than once in every 100 years (based on the 1:100 year average recurrence interval flood event) occurring within Australia or a Key Plant and Equipment Manufacturing Country;
- (f) a fire or explosion resulting from an event referred to in:
  - (i) paragraphs (a) or (b) above occurring within Australia;
  - (ii) paragraph (c) above occurring within a Key Plant and Equipment Manufacturing Country; or
  - (iii) paragraphs (d) or (e) above in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country, or
- (g) a landslide resulting from an event referred to in paragraphs (d) or (e) above in each case occurring within Australia or a Key Plant and Equipment Manufacturing Country,

which:

- (h) is beyond the reasonable control of the SCAW Contractor and its Associates; and
- (i) prevents or delays the SCAW Contractor from performing an obligation under the SCAW Contract Documents, where that event or the consequence of that event does not arise from any act or omission of the SCAW Contractor or its Associates (including from any breach by the SCAW Contractor of a term of a SCAW Contract Document).

**Framework Principles** has the meaning given in the Master Interface Deed.

**General Solid Waste (Putrescible)** means Waste which is general solid waste (putrescible) as defined in the Waste Classification Guidelines.

**General Solid Waste (Non-Putrescible)** means Waste which is general solid waste (non-putrescible) as defined in the Waste Classification Guidelines.

**General Specification** means the section of the SCAW Specification of that name.

**Geotechnical Reports** means the geotechnical reports listed in Schedule A22.

**GIPA Act** means the *Government Information (Public Access) Act 2009* (NSW).

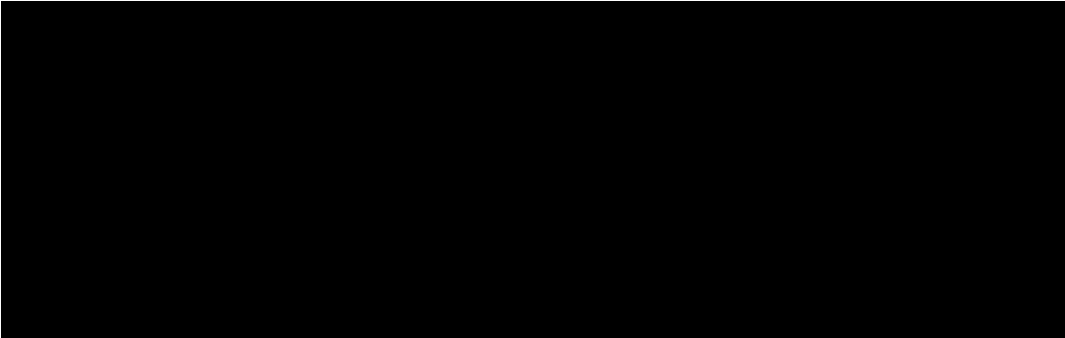
**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the SCAW Contractor or its Associates in Australia, as the case may be, under the same or similar circumstances as the performance of the SCAW Contractor's Activities and which includes compliance with all Laws, including in relation to the Environment and all guidelines made or approved by the EPA.

**Government Policies** means the NSW Guidelines, WHS Management Systems and Auditing Guidelines, Aboriginal Procurement Policy (January 2021), Environmental Management Systems Guidelines (4th edition) (December 2019), Quality Management Guidelines: Construction Procurement (December 2019), Government Resource Efficiency Policy (GREP), the NSW Government Supplier Code of Conduct, any policies and procedures published on the website "<https://www.transport.nsw.gov.au/about-us/access-to-information/policy-documents>" (or any replacement website established by the NSW Government to provide the same or similar information regarding approved policies and procedures) and any other NSW Government or Commonwealth Government guidelines, policies and requirements specified or required by this deed or by Law

**GST** has the same meaning as "GST" has in the GST Law.

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

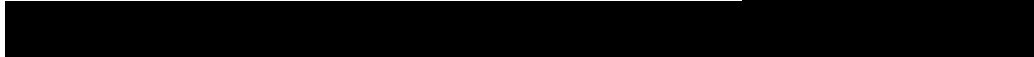
**Handover Works** means those works referred to as the 'Handover Works' in section 2.5.3 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).



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

**Hold Point** means a point beyond which a work process must not proceed without the authorisation or release of a designated authority.

**Human Health and Environment Risk Assessment** means



**IC Project Plans** means:

- (a) the Systems Engineering Management Plan;
- (b) the Assurance and Governance Plan;
- (c) the Construction and Site Management Plan;



- (d) the Construction Environmental Management Plan and sub-plans, including the Construction Heritage Management Plan and the Construction Traffic Management Plan;
- (e) the Digital Engineering Execution Plan; and
- (f) the Integration Management Plan,

which are to be provided to the Independent Certifier in accordance with clause 11.3(a).

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel to be constituted under the IDAR Panel Agreement, referred to in clause 25.

**IDAR Panel Agreement** means the agreement which appears in Schedule A17.

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

**Identified Utilities Register** means

- (a) the register of Utility Services referred to in Section A of Schedule D18; and
- (b) any investigation reports referred to in Section B of Schedule D18 and listed in Attachment 1 of Schedule D18.

**Incident** means any of the following incidents or events arising out of or in connection with the SCAW Contractor's Activities:

- (a) any work health and safety, environmental or security incident including:
  - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW, ONRSR, or other work health and safety regulator;
  - (ii) an occurrence or set of circumstances as a consequence of which pollution (air, water, noise or land) or an adverse environmental impact has occurred or is likely to occur;
  - (iii) any fire or dangerous event on the Construction Site or Extra Land;
  - (iv) a security breach;
  - (v) any unauthorised removal of trees;
  - (vi) any incident involving the community;
  - (vii) any accidents involving damage to persons or property occurring upon or in the vicinity of the Construction Site or any Extra Land or in the supply chain where the Chain of Responsibility Provisions apply;
  - (viii) a non-compliance with an Approval;
  - (ix) any public complaint; or
  - (x) any incident defined in the Sydney Metro Principal Contractor Health and Safety Standard; or

- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

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

**Incomplete Portion** has the meaning given in clause 10.3(a).

**Independent Auditor** means any independent auditor appointed by the Principal in accordance with the Planning Approvals and the Principal's obligations in Schedule D4 (*Approval Conditions*) and any person appointed by the Principal as a replacement from time to time, as notified to the SCAW Contractor.

**Independent Certifier** means the unincorporated joint venture of Systra 387 949 530 R.C.S of Paris of 72 Rue Henry Farman, 75015, Paris France and Kellogg Brown & Root Pty Ltd (ABN 91 007 660 317) of 186 Greenhill Road, Parkside SA 5063 or such other person(s) as may be engaged by the Principal, the SCAW Contractor and, if it accedes to the Independent Certifier Deed, OpCo in accordance with the Independent Certifier Deed.

**Independent Certifier Deed** means the deed entered into between the SCAW Contractor, the Principal, and the Independent Certifier and to which OpCo may accede, dated on or about the date of this deed and substantially in the form of Schedule A10.

**Independent Property Impact Assessment Panel** means the "Independent Property Impact Assessment Panel" established by the Principal for the purpose of Sydney Metro - Western Sydney Airport in accordance with the requirements of the Project Planning Approval.

**Indicative Combined Design Stage 1 & 2 Design Documentation List** means the list of Design Documentation set out in the annexure to Schedule A26.

**Information Document** means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which is:

- (a) referred to in Schedule A21; or
- (b) either:
  - (i) issued or made available by, or on behalf of, the Principal or the NSW Government to the SCAW Contractor or its Associates in connection with the Invitation for Expressions of Interest, Request for Tender, the Early Works Activities, the Project Works, the SCAW Contractor's Activities or Sydney Metro - Western Sydney Airport (including anything issued or made available through the Principal's website):
    - (A) which at the time of issue (or being made available) was expressly classified or stated to be an "Information Document"; or
    - (B) regardless of whether or not it was expressly classified or stated to be an "Information Document"; or
  - (ii) referred to, or incorporated by reference, in an Information Document,

unless such information, data, document or material is otherwise expressly stated to form part of this deed; and

whether issued or made available:

- (c) on, before or after the date of submission of the Tender (including any such information, data, document or material made available as part of the expression of interest phase); or
- (d) on, before or after the date of execution of this deed,

other than any information, data, document or material which the Principal is obliged by the terms of this deed to provide to the SCAW Contractor and the SCAW Contractor is expressly obliged by the terms of this deed to rely on.

**Infrastructure NSW** means the body corporate constituted by section 5 of the *Infrastructure NSW Act 2011* (NSW).

**Initial Tender Design** means the documents prepared by the Principal for Sydney Metro - Western Sydney Airport as provided to the SCAW Contractor as an Information Document, which are listed in Schedule A29.

**Initial Payment** means the initial payment of [REDACTED] to be made by the Principal to the SCAW Contractor in accordance with clause 20.13.

**Insolvency Event** means:

- (a) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
  - (ii) winding up or deregistering a person; or
  - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
  - (i) a moratorium of any debts of a person;
  - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
  - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;

- (e) as a result of the operation of section 459F(1) of the Corporations Act, a person is taken to have failed to comply with a statutory demand (as defined in the Corporations Act);
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

**Integration Management Plan** means the Project Plan referred to as the 'Integration Management Plan' in section 5.1.16 of the General Specification, as updated from time to time in accordance with clause 11.4.

**Intellectual Property Right** means all present and future rights conferred by law in or in relation to inventions, patents, designs, circuit layouts, copyright, confidential information, trade marks, designs, plant varieties, business and domain names and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights.

**Interface Contract** means a contract between the Principal and an Interface Contractor for Interface Works and includes the SBT Contractor, all Advanced and Enabling Works Contractors and the OpCo.

**Interface Contractor** means any contractor engaged by the Principal or its Associates to do Interface Work on or adjacent to the Construction Site (including their respective subcontractors all the way down the contracting chain) including:

- (a) OpCo;
- (b) SBT Contractor; and
- (c) all Advanced and Enabling Works Contractors,

but not including the SCAW Contractor and its Subcontractors or the Airport Lessee or Airport Lessee Contractors.

**Interface Works** means any works or design services or the provision of any materials, plant, equipment, machinery, systems or other infrastructure, or the provision of any operation or maintenance activities required for Sydney Metro - Western Sydney Airport.

[REDACTED]

**Investigative Authority** means any Authority having a statutory right to investigate:

- (a) the SCAW Contractor's Activities, the Project Works or Sydney Metro - Western Sydney Airport; or
- (b) any activities of the Principal which are affected by the SCAW Contractor's Activities, the Project Works or Sydney Metro - Western Sydney Airport,

including ATSB, ONRSR and OTSI.

**Jemena** means Jemena Limited ABN 95 052 167 405.

**Key Plant and Equipment** means [REDACTED]

**Key Plant and Equipment Manufacturing Country** means [REDACTED]

[REDACTED] to the extent that the SCAW Contractor or its Associates is manufacturing the Key Plant and Equipment in those countries as notified by the SCAW Contractor under clause 7A(c).

**Key Professional Services** means [REDACTED]

**Law** means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);

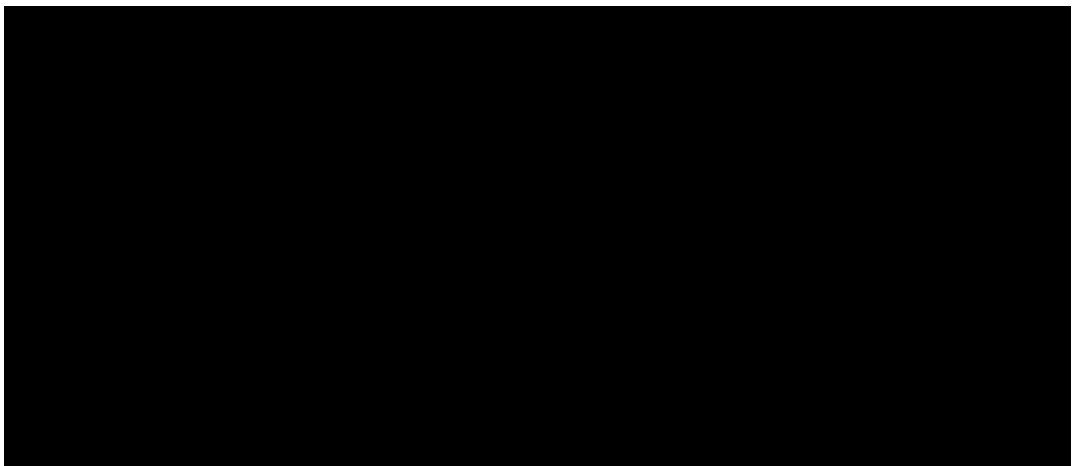
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent;
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;
- (f) under, arising out of, or in any way in connection with, this deed, including any Direction of the Principal's Representative;
- (g) arising out of, or in any way in connection with the Project Works or the SCAW Contractor's Activities or either party's conduct before or after the date of this deed; and
- (h) otherwise at Law including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; and
  - (iii) for restitution (as a result of unjust enrichment or otherwise).

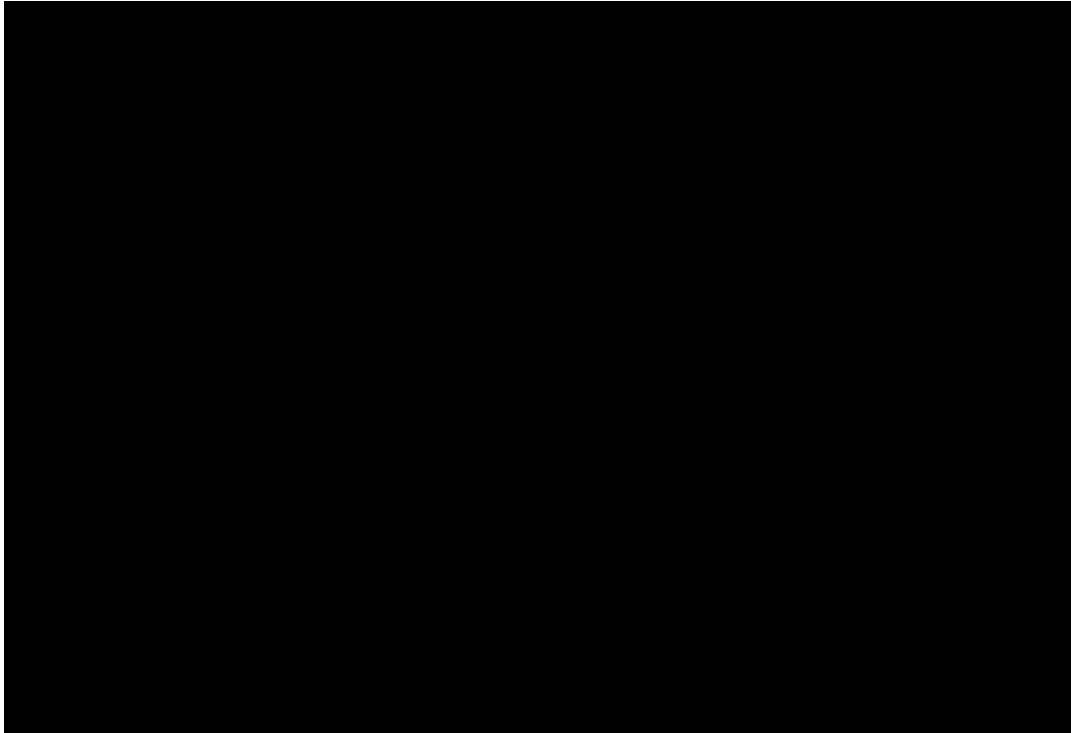
**Local Area Works** means:

- (a) the modification, reinstatement and improvement of Local Areas which the SCAW Contractor must design and construct and hand over to the Principal or the relevant Authority in accordance with this deed and the SCAW Specification (including section 2.3.2.2 of the Particular Specification); and
- (b) the Council Works and M12 Works (SMWSA Works),

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

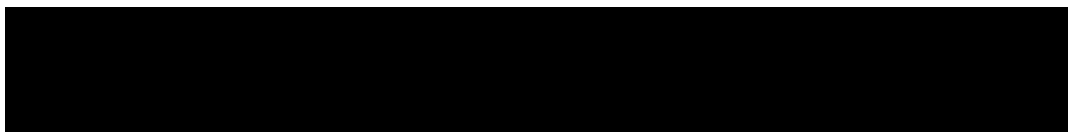
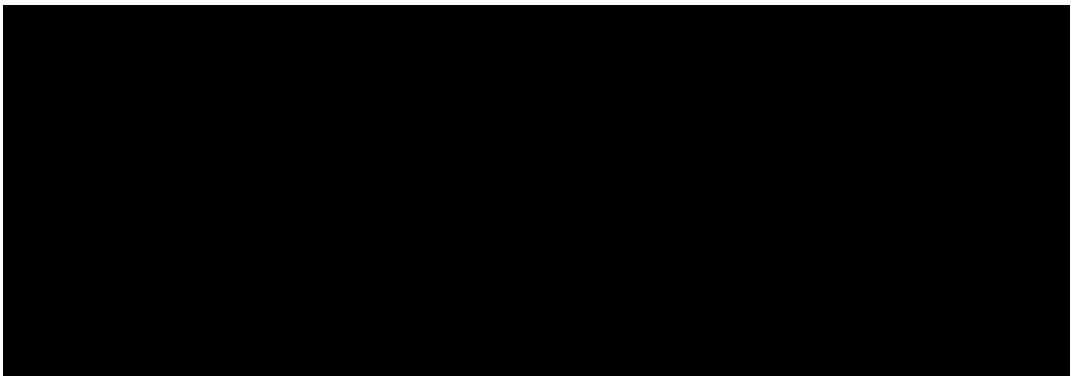
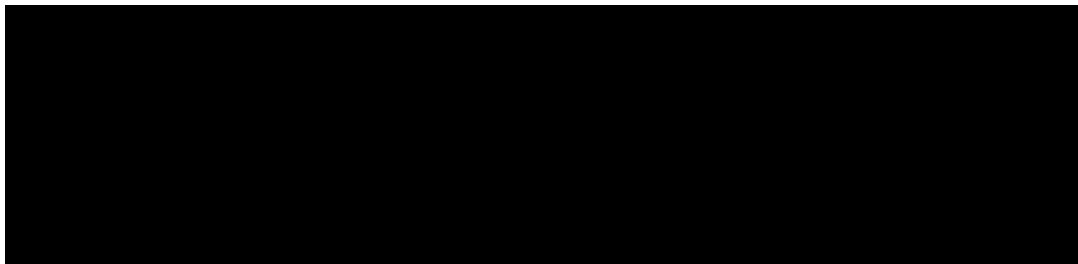
**Local Areas** means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which are adjacent to, connect to, intersect, cross, or are in any way affected by the Project Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.





**Loss** means any cost, expense, loss, damage, Liability, fine, penalty or other amount, whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential Loss.

**LRS** means Land Registry Services.





**Lump Sum Price Proposal** has the meaning given in clause 20.12(d).

**M12 Contractor** means the contractor to be appointed by TfNSW to construct the new east-west motorway between the M7 Motorway near Cecil Hills and The Northern Road at Luddenham, including a connection to the Western Sydney International Airport main access road.

**M12 Works (SMWSA Works)** has the meaning given to the term "SMWSA Works" in the TfNSW (M12) Interface Agreement.

**Major Australian Bank** means Australia and New Zealand Banking Group Limited, Westpac Banking Corporation, National Australia Bank Limited and Commonwealth Bank of Australia.

**Making Accessible** has the meaning given in clause 19.9(a)(iv).

**Management Review Group** means the group referred to in clause 18.5.

**Mandatory Defect** means a Defect which has been notified by the Principal's Representative under clause 17.2(a)(i) at any time before the date that is 28 days prior to the estimated Date of Substantial Completion specified in a notice given under clause 19.12(a)(iii) in respect of any relevant Portion but does not include an Accepted Defect, an Agreed Defect, or a Minor Defect that is not reasonably capable of correction within the 28 day period contemplated by this definition.

**Master Interface Deed** means a deed to be entered into between the Principal, the SBT Contractor, the SCAW Contractor, OpCo and such other party nominated by the Principal substantially in the form of Schedule A11.

**Material Impact** has the meaning given in the Master Interface Deed.

**Materials** means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts and other items incorporated or to be incorporated into the Project Works or the Temporary Works.

**Minor Defect** means a Defect which, at Substantial Completion:

- (a) is capable of being corrected:
  - (i) after the relevant part of the Construction Site has been handed over to the Principal; and
  - (ii) without causing delay or disruption to the activities that are to be performed by an Interface Contractor or Airport Lessee Contractor,  
  
within the relevant part of the Construction Site; and



- (b) the Independent Certifier determines the SCAW Contractor has reasonable grounds for not promptly correcting prior to handover of the relevant Portion to the Principal,

but does not include a Mandatory Defect, an Accepted Defect or an Agreed Defect.

**Minor Non-Compliance** means a minor error, minor omission or minor non-compliance which:

- (a) does not:
  - (i) prevent the Project Works or the Temporary Works from being at all relevant times fit for their intended purposes;
  - (ii) prevent the achievement of the performance requirements specified in the SCAW Specification; or
  - (iii) affect the safety of the Project Works or Temporary Works;
- (b) the Principal's Representative or the Independent Certifier (as applicable) determines (acting reasonably) that the SCAW Contractor has reasonable grounds for not promptly correcting prior to the certification required to be obtained under this deed; or
- (c) the parties agree is a Minor Non-Compliance.

**Monitoring Equipment** has the meaning given to that term in the Sydney Trains Transition Agreement.

**Moral Rights** means:

- (d) the right of attribution of authorship or performership;
- (e) the right not to have authorship or performership falsely attributed; and
- (f) the right of integrity of authorship or performership,

conferred by the *Copyright Act 1968* (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

**NAC Required Actions** has the meaning given in clause 8.2(b) of Schedule A26.

**NAC Requirements** means the requirements set out in the SCAW Specification, including section 5.1.5.3 of the General Specification.

**National Remediation Framework** means the National Remediation Framework (CRC CARE, 2020).

**Native Title Claim** means any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) or any similar Law.

**NBN Co** means the state owned corporation of that name incorporated under the *Corporations Act 2001* (Cth).

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

**Network Assurance Submission** or **NAS** means a package of documentation meeting the requirements set out in the SCAW Specification, including section 3.2.4.2 of the General Specification.

**NGER Legislation** means the *National Greenhouse and Energy Reporting Act 2007* (Cth) and the regulations and any other legislative instruments under that Act.

**Nominated Early IC Package** means the packages of Combined Stage 1 & 2 Design Documentation that the Independent Certifier is engaged to review pursuant to the Independent Certifier Deed which comprises of the:

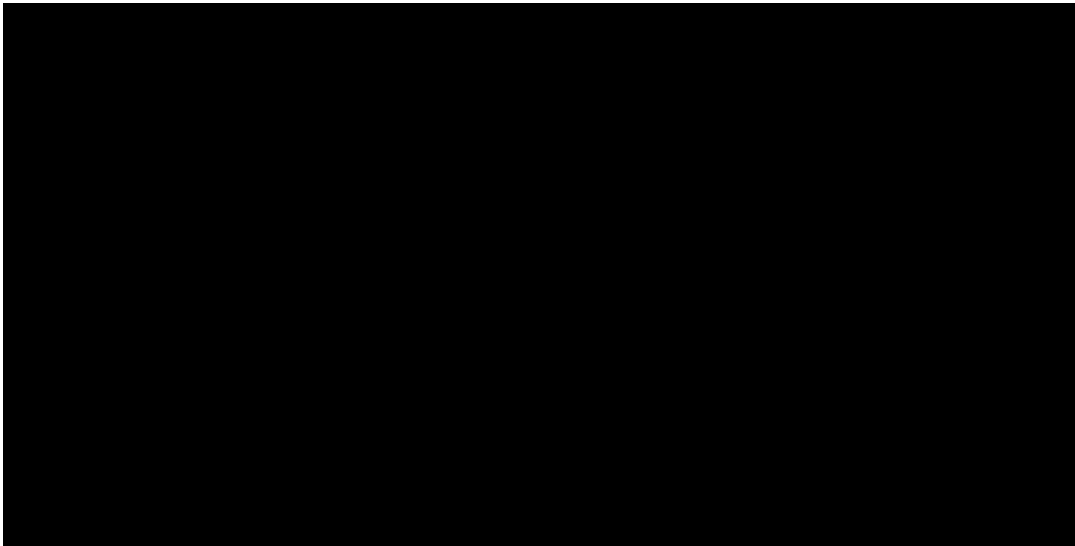
- (a) Indicative Combined Design Stage 1 & 2 Design Documentation List as amended by the Risk Assessment Process; and
- (b) the Combined Design Stage 1 & 2 Design Documentation identified in accordance with the Risk Assessment Process.

**Nominated Member** has the meaning given in clause 25.3(b).

**Nominated Subcontract** means the form of subcontract referred to in Schedule A16.

**Nominated Subcontract Work** means the SCAW Contractor's Activities to be performed by a Nominated Subcontractor which are described in Schedule A16.

**Nominated Subcontractor** means the nominated subcontractors and suppliers specified in Schedule A16.



**Non-Proof Engineered Temporary Works** means all Temporary Works that are not Proof Engineered Temporary Works.

**Notice of Completion** means a notice in the form of Schedule B21 issued by the Independent Certifier pursuant to clause 19.13(b)(i).

**Notice of Dispute** has the meaning given in clause 25.4(b).

**Notice of Dissatisfaction** means a notice given under clause 25.6(a).

**Notice of Issue** has the meaning given in clause 25.3(a).

**Notice of Substantial Completion** means a notice in the form of Schedule B14 issued by the Independent Certifier pursuant to clause 19.12(g)(i)(A).

**NSW Guidelines** means the NSW Industrial Relations Guidelines: Building and Construction Procurement (July 2013, updated September 2017), or any substitute for, or update to, such guidelines.

**NSW Trains** means NSW Trains (ABN 50 325 560 455), a NSW Government agency constituted by the Transport Administration Act 1988 (NSW).

[Redacted]

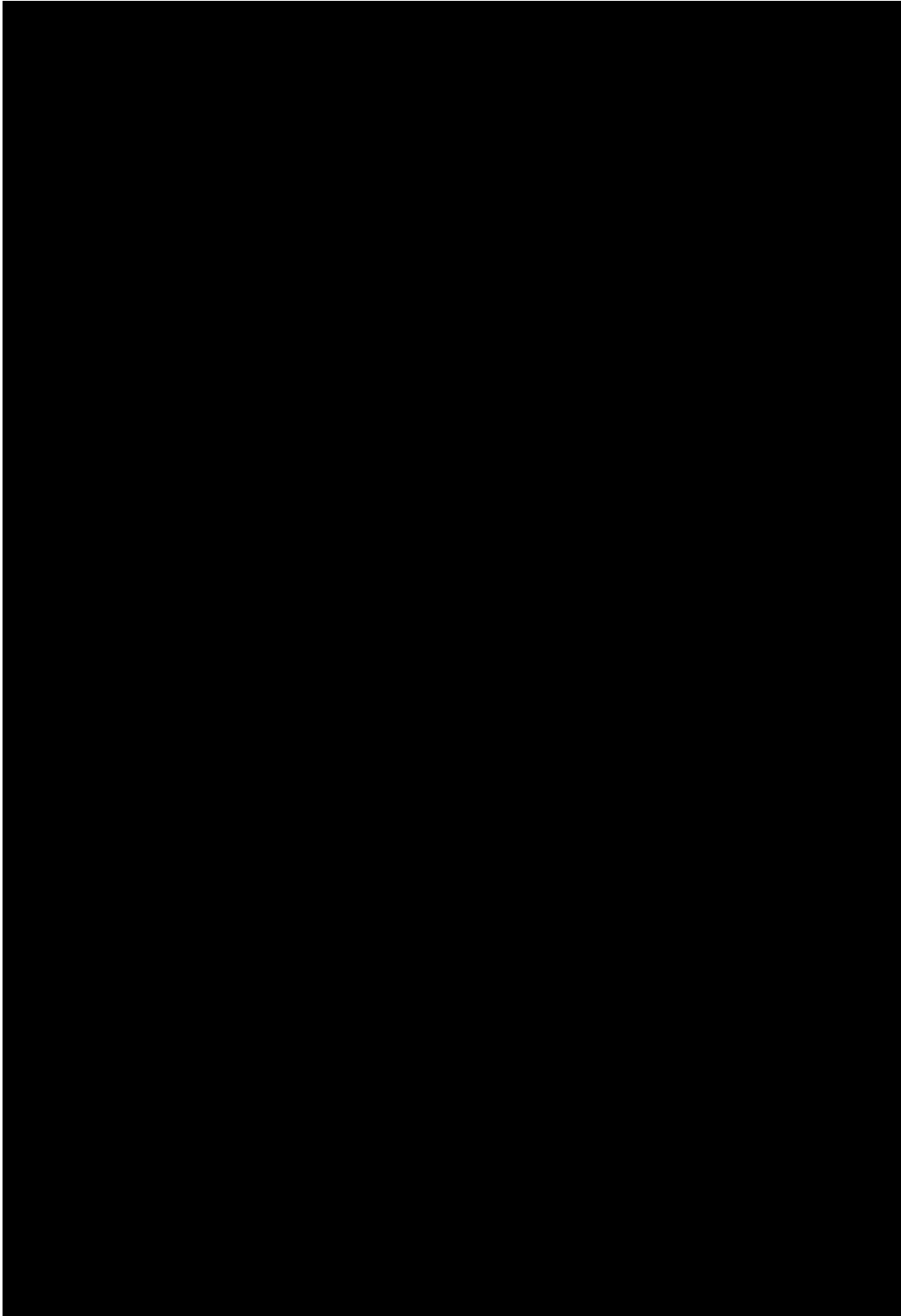
**Offsite Overheads** means:

[Redacted]

**On-Airport Construction (Rail) Plan and Construction Environmental Management Plans** means the 'On-Airport Construction (Rail) Plan' and 'Construction Environmental Management Plans' developed by the Principal for Sydney Metro – Western Sydney Airport in accordance with the Airport Plan, as amended from time to time.

**On-Site Overheads** means:

[Redacted]



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

**OpCo** means the entity selected by the Principal to perform the SSTOM Works under the SSTOM Project Deed.

**Open Book Basis** means

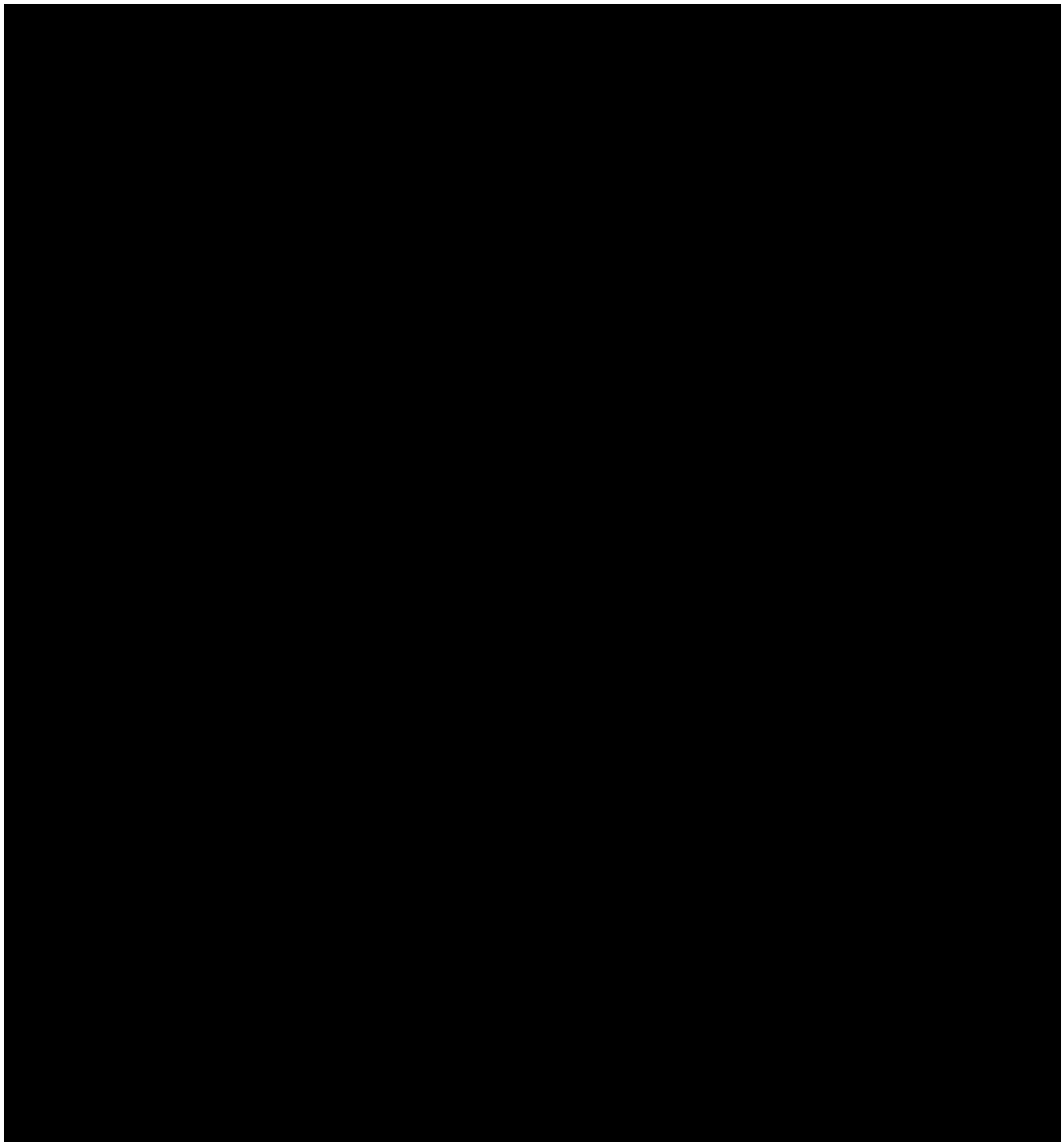
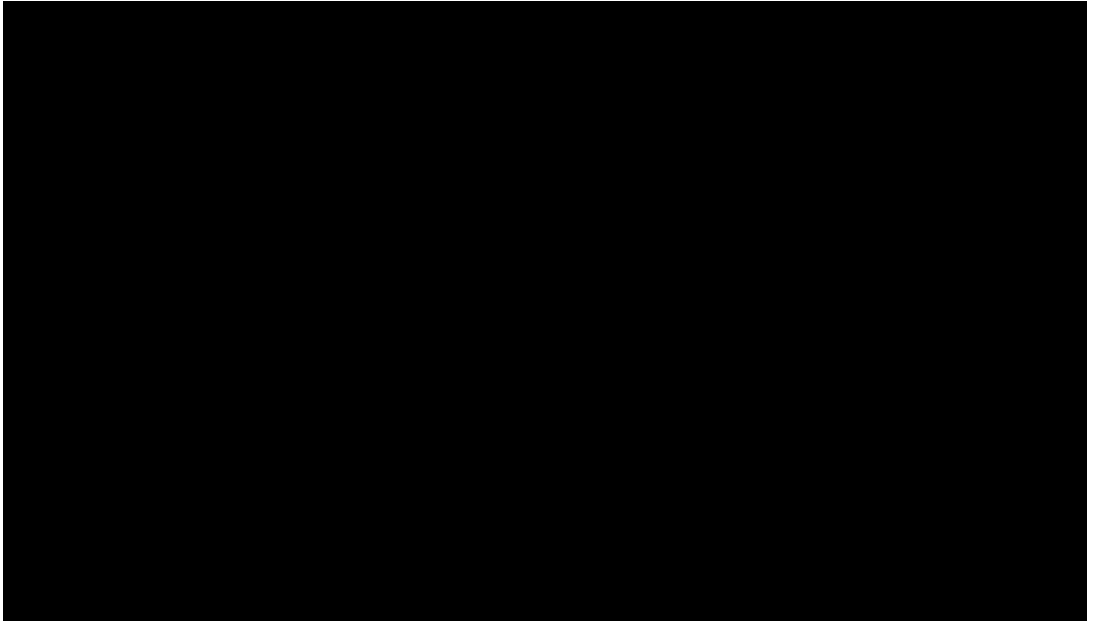


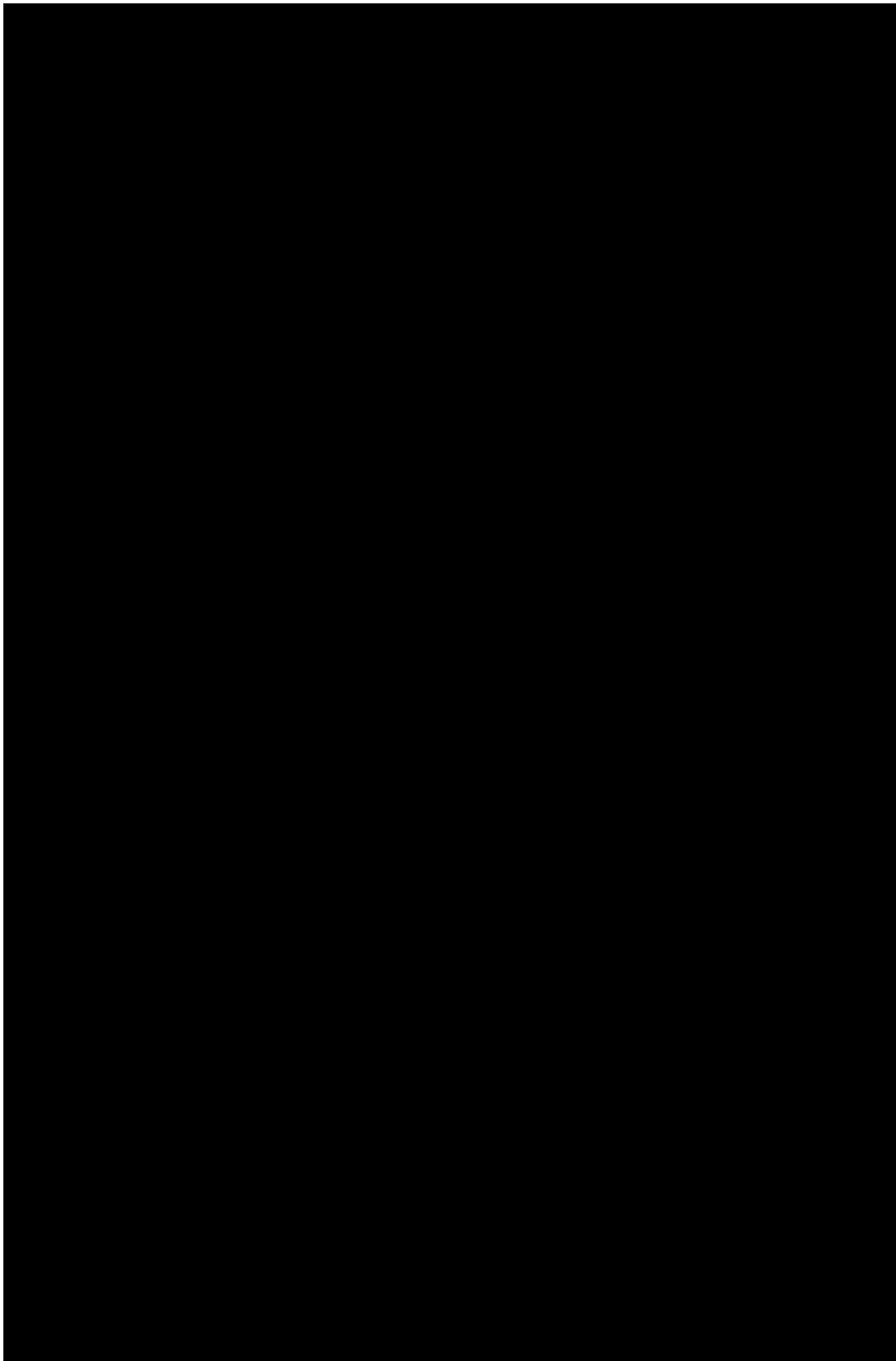
**OTSI** means the Office of Transport Safety Investigations constituted under the *Transport Administration Act 1988* (NSW).

**Overall D&C Program** means the overall program for design and construction activities which is contained in Schedule A23, as updated in accordance with clause 19.2.

**Overheads** means







**Parent Company Guarantee** means a deed of guarantee and indemnity substantially in the form of Schedule E5.

**Particular Specification** means the section of the SCAW Specification of that name.

**Party A** has the meaning given in clause 25.3(a).

**Party B** has the meaning given in clause 25.3(a).

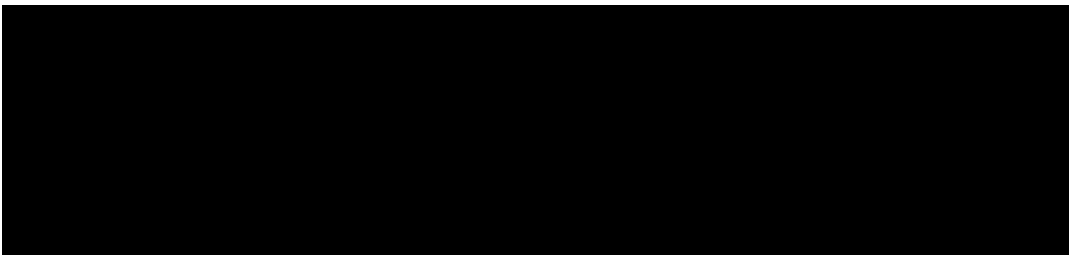
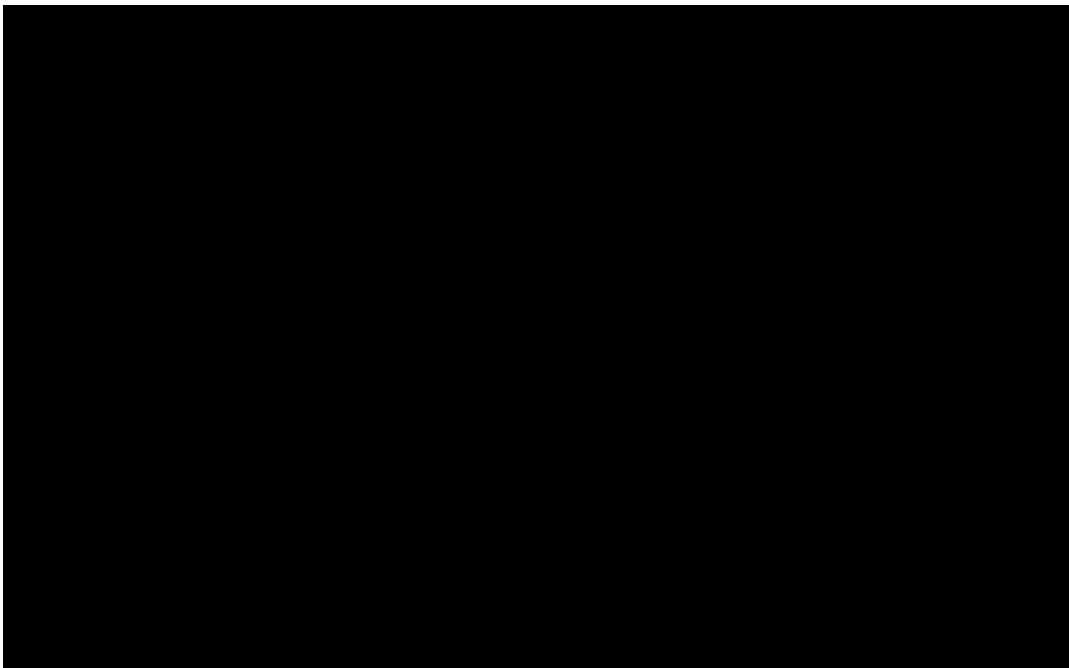
**PDCS** means the Principal's web based TeamBinder project document and control system, or such other electronic project data and collaboration system notified by the Principal's Representative under clause 32.1(b).

**Penrith City Council Interface Agreement** means the Third Party Agreement titled "Sydney Metro Western Sydney Airport – Council Interface Agreement (Penrith City Council) between the Principal and the Penrith City Council dated 23 November 2021 (as may be updated or replaced in accordance with clause 12.24).

**Permitted Use** means the investigation, design, construction, testing, commissioning and completion of the Project Works and the Temporary Works, the carrying out of the SCAW Contractor's Activities and the performance by the SCAW Contractor of its other obligations under this deed.

**Performance Amount** has the meaning given in the Performance Incentive Regime Schedule.

**Performance Incentive Regime Schedule** means Schedule E10.



**Place Management NSW** means the statutory corporation of that name established under the *Place Management NSW Act 1998* (NSW).



**Planning Approval Representatives** means the following persons to be engaged by the Principal in accordance with the Planning Approvals and Schedule D4 (*Approval Conditions*):

- (a) the Environmental Representative;
- (b) the Independent Auditor;
- (c) the Community Complaints Mediator; and
- (d) any other person engaged by the Principal under the Planning Approvals in accordance with the Principal's obligations in Schedule D4 (*Approval Conditions*).

**Planning Approvals** means:

- (a) the Project Planning Approval;
- (b) Airport Plan Variation;
- (c) the EPBC Act Approval; and
- (d) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Planning Approvals referred to in paragraphs (a) to (c) above from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

**Planning Ministerial Corporation** means the Planning Ministerial Corporation established under the EP&A Act and administered by the Office of Strategic Lands within the Department of Planning, Industry and Environment.

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

**Port Authority of NSW** means the statutory state owned corporation of that name established under the *State Owned Corporations Act 1989* (NSW) and *Ports and Maritime Administration Act 1995* (NSW).

**Portion** means a part of the Project Works and Handover Works described in the columns headed "Portion" and "Description of Infrastructure" in section 2 of Schedule A2 or as directed by the Principal's Representative under clause 10.1.

**Portion Handover Date** means, in respect of a Portion, the later of:

- (a) the day after the Date of Substantial Completion of the Portion; or
- (b) where the Principal's Representative gives written notice under clause 19.16(a) in respect of the Portion, the date notified in the corresponding notice given under clause 19.16(c) in respect of that Portion.

**Potential Matter** has the meaning given in clause 25.14A(b).

**PPS Act** means the *Personal Property Securities Act 2009* (Cth) and regulations made under that Act.

**PPS Register** has the meaning given to the term '*register*' in the PPS Act.

**Practical Completion (Council Works)** has the meaning given to the term "Practical Completion" in the Penrith City Council Interface Agreement.

**Pre-Agreed Change** means any of the Changes listed in Schedule A3.

**Preliminary Works** means works required for the initial establishment of the Construction Site including site clearance works, demolition, installation of services, devegetation, erection of work compounds and site offices and fencing to site boundaries.

[REDACTED]

**Principal Insurance Policy** means a policy of insurance required under clause 23.4.

**Principal's Accreditation** means the Principal's accreditation under Part 3 of the Rail Safety National Law as a Rail Infrastructure Manager or such other accreditation obtained under any regime replacing Part 3 of the Rail Safety National Law.

**Principal's Representative** means:

- (a) the person appointed by the Principal under clause 18.1(a)(i); or
- (b) any other person appointed from time to time by the Principal under clause 18.1(a)(ii),

and includes any appointee under clause 18.1(b) or 18.1(d).

**Profit Margin** means:

[REDACTED]

**Pro-forma Adjoining Property Owner Agreement** means the pro-forma adjoining property owner agreement set out in Schedule D9 (*Pro-forma Adjoining Property Owner Agreement*).

**Pro-forma Easement** means the pro-forma easement for crane access, rock anchors, scaffolding or safety structure (as appropriate) set out in Schedule D10.

**Project Contract Sum** means the sum of the following components:

- (a) the Design Contract Sum; and
- (b) the Construction Contract Sum.

**Project Contract Sum Adjustment Event** means [REDACTED]

**Project Director** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Project Health & Safety Risk Governance Plan** means the Project Plan of that name referred to in clause 8.4 and section 5.1.8 of the General Specification, an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Project Plan** means any plan of the kind referred to in clause 11.1 as that plan may be updated, amended and further developed under clause 11.4.

**Project Planning Approval** means the approval granted by the Minister for Planning under section 5.19 of the EP&A Act dated 23 July 2021, a copy of which (as at the date of this deed) appears in Schedule D3, and includes all:

- (a) conditions to such approval; and
- (b) documents incorporated by reference,

as the approval may be modified from time to time.

**Project Site** means the land described as the 'Project Site' in section 2 of the Site Access Schedule.

**Project Values** means the values that will guide the delivery of Sydney Metro - Western Sydney Airport, being:

- (a) safety and wellbeing;
- (b) collaboration;
- (c) integrity;
- (d) innovation;
- (e) excellence; and
- (f) achievement.

**Project Works** means the physical works which the SCAW Contractor must design, construct, complete and hand over under this deed (including, to the extent relevant to such works, Changes directed in accordance with this deed), including the Works and Third Party Works, but excluding Temporary Works.

**Proof Engineer** means the person or persons engaged from time to time by the SCAW Contractor in accordance with clause 13.3 to perform the role of the 'Proof Engineer'.

**Proof Engineered Temporary Works** means "Category 1" and "Category 2" Temporary Works described in section 3.2.2 of the Particular Specification.

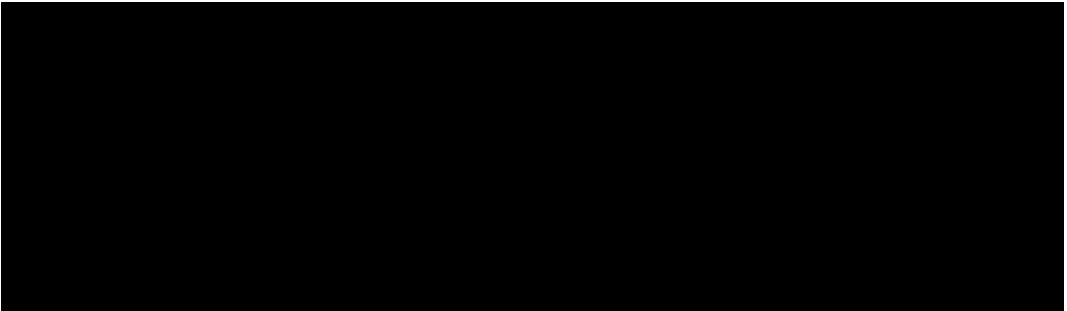
**Property Boundary** means the legal property boundary for the site access areas in Schedule D1.

**Property Works** means all works required to existing buildings and infrastructure or to and within properties arising out of the SCAW Contractor's Activities as described or specified in section 2.3.2.4 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).

**Provisional Sum Work** means those parts of the SCAW Contractor's Activities for which a provisional sum has been specified in the Design Payment Schedule or the Construction Payment Schedule.

**Public Affairs and Events Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Public Transport Agency** means the Principal, TfNSW (and each of its divisions), Transport Asset Holding Entity, Sydney Trains and NSW Trains.



**Quality and Systems Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed and any person appointed as a replacement under clause 18.2(b).

**Quality Management System** means a corporate system that details the organisational structure, policies, procedures, practices, recourses and responsibilities for quality management.

**Rail Infrastructure Manager** has the meaning given in the Rail Safety National Law.

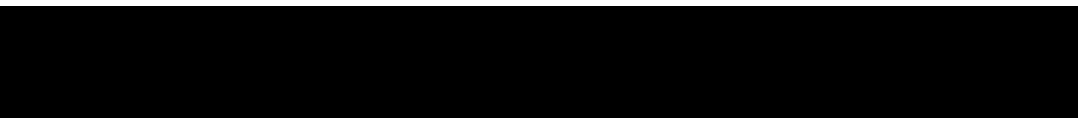
**Rail Safety National Law** means the *Rail Safety National Law 2012 No. 82a* (NSW).

**Rail Safety Regulations** means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012 No. 82a* (NSW).

**Rail Transport Agency** means TfNSW (and each of its divisions), Transport Asset Holding Entity, Sydney Trains and NSW Trains.

**Rail Transport Operator** has the meaning given in the Rail Safety National Law.

**Railway Operations** has the meaning given in the Rail Safety National Law.



**RCTI** has the meaning given in clause 21.6(a)(i).

**Recommendation** has the meaning given in clause 25.4(a).



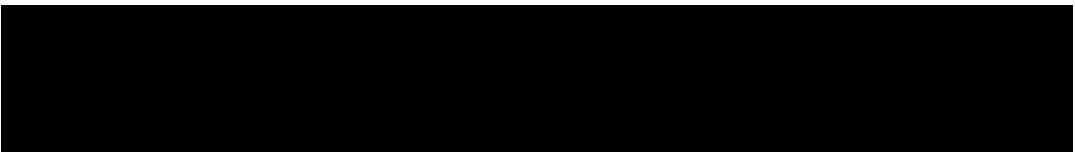
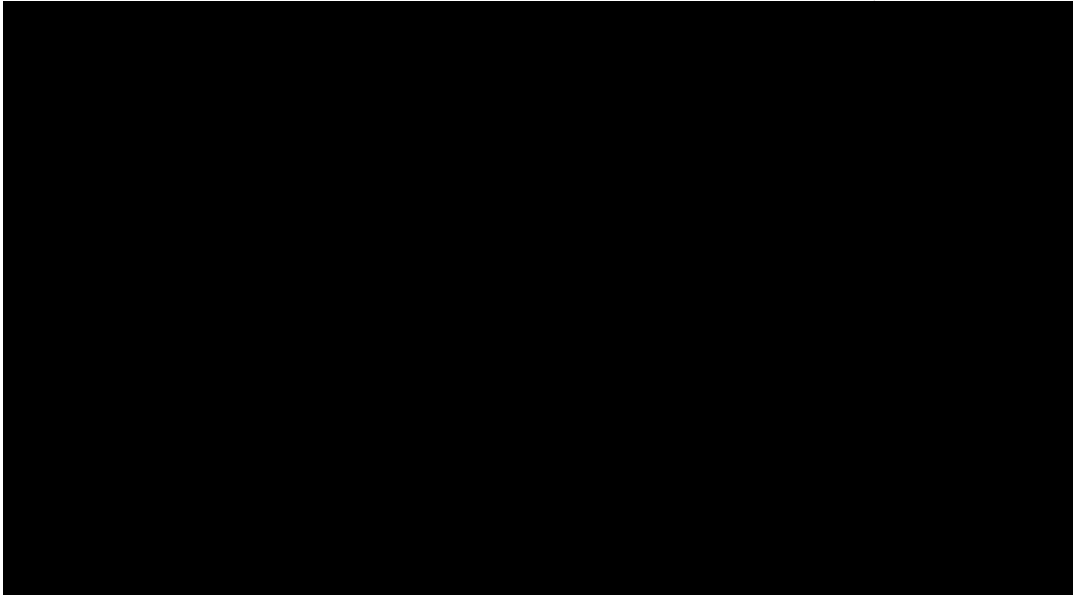
**Relationship Manager (TPA)** means:

- (a) the person appointed by the Principal under clause 18.20(a)(i); or
- (b) any other person appointed from time to time by the Principal's Representative under clause 18.20(a)(ii),

who shall be an employee of the Principal.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Reliance Letters** means the reliance letters contained in Schedule D13.



**Request for Tender** means the document titled "Request for Tender - Sydney Metro Western Sydney Airport - Surface and Civil Alignment Works" dated 17 May 2021, being a request for tenders for the "SCAW Works" component of Sydney Metro - Western Sydney Airport.

**Required Rating** means a credit rating of at least A by Standard and Poor's (Australia) Pty Limited or A2 by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

**Resequencing** has the meaning given in clause 19.9(a)(i).

**Resolution Institute** means the Resolution Institute, Australia.



**Restructure Event** means where there is one or more asset transfer or corporate restructure that:

- (a) results in any SCAW Contractor Guarantor or the SCAW Contractor (or any entity that comprises the SCAW Contractor) having a materially diminished financial capacity; or
- (b) adversely affects the ability of any SCAW Contractor Guarantor or the SCAW Contractor (or any entity that comprises the SCAW Contractor) to meet its obligations under the relevant Parent Company Guarantee or this deed (as relevant).

**Revised Allocation** has the meaning given in clause 12.24(c)(ii).

**RID Design Documentation** means the Design Documentation required to be prepared and submitted in accordance with the RID

**Risk Assessment Process** means the risk assessment process set out in the Independent Certifier Deed.

**Risk Register** means a register of risks which the parties have notified in accordance with clause 18.19.

**SBT Contract** means a deed to be entered into between the Principal and a SBT Contractor for works, including tunnels, cross passages, temporary station shafts and associated works of Sydney Metro – Western Sydney Airport.

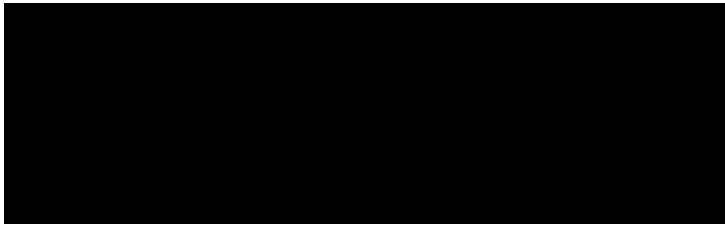
**SBT Contractor** means any entity selected by the Principal to design, construct, install and/or commission any physical works under a SBT Contract.

**SCAW Contract Documents** means:

- (a) this deed;
- (b) the Independent Certifier Deed;
- (c) the Master Interface Deed;
- (d) the Collateral Warranty Deed Poll;
- (e) each Parent Company Guarantee;
- (f) the IDAR Panel Agreement;
- (g) the Deeds of Disclaimer;
- (h) each deed of covenant provided under clause 5.1(c) in the form of Schedule A14;
- (i) not used;
- (j) any side deed entered into between the Principal, the SCAW Contractor and a Significant Subcontractor under this deed; and
- (k) any document which the Principal and the SCAW Contractor acknowledge in writing to be a SCAW Contract Document.

**SCAW Contractor Consortium Deed** means [REDACTED]

**SCAW Contractor Guarantor** means:



**SCAW Contractor Insurance Policy** means a policy of insurance required under clause 23.5.

**SCAW Contractor's Activities** means all things and tasks which the SCAW Contractor is, or may be, required to carry out or do under this deed to comply with its obligations under this deed, whether or not the performance of such things or tasks is subcontracted by the SCAW Contractor to another person, including designing and constructing the Project Works and Temporary Works and carrying out any required Transitional Handover Services.

**SCAW Contractor's Controlling Corporation** means CPB Contractors Pty Limited (ABN 98 000 893 667) in its capacity as a "controlling corporation" within the meaning of the NGER Legislation.

**SCAW Contractor's Emissions and Energy Data** means any Emissions and Energy Data relating to any aspect of the SCAW Contractor's Activities, or the activities of any Subcontractors engaged by the SCAW Contractor, in connection with the SCAW Contractor's Activities under this deed, including any such Emissions and Energy Data that:

- (a) the SCAW Contractor is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation under this deed;
- (b) the SCAW Contractor or the SCAW Contractor's Controlling Corporation is required at any time to keep or to provide to the Principal or to any Authority (or both) pursuant to an obligation at Law (including an obligation under the NGER Legislation); or
- (c) the SCAW Contractor or the SCAW Contractor's Controlling Corporation is entitled at any time to provide to the Clean Energy Regulator under the NGER Legislation concerning any greenhouse gas project.

**SCAW Contractor's Tender Design** means the tender design prepared by the SCAW Contractor and included at Attachment B of the Particular Specification at the date of this deed.

**SCAW Specification** means the specification for the SCAW Contractor's Activities set out in Schedule C1, comprising:

- (a) the General Specification; and
- (b) the Particular Specification.

**Security Interest** has the meaning given to that term in section 12 of the PPS Act.

**Sensitive Receiver** has the meaning given to 'Sensitive Land Use(s)' in the Project Planning Approval.

**Significant Subcontract** means:



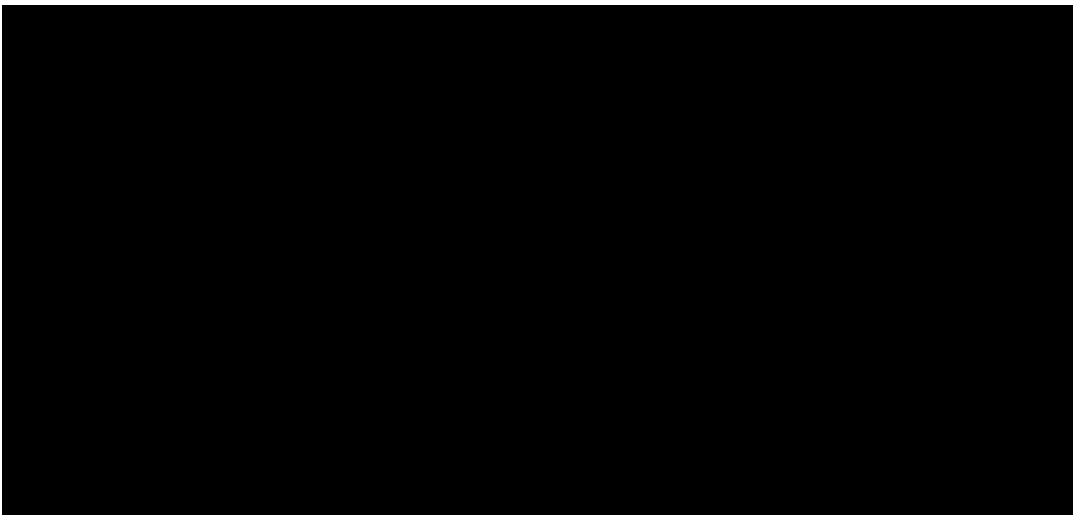


**Significant Subcontract Work** means any part of the SCAW Contractor's Activities that is identified in Schedule A6.

**Significant Subcontractor** means a party (other than the SCAW Contractor) to a Significant Subcontract.

**Site Access Expiry Date** means, in respect of a Temporary Area identified in Table 4a of the Site Access Schedule, the date specified as the "Site Access Expiry Date" for that Temporary Area.

**Site Access Schedule** means Schedule D1.



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



- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (d) surface water, ground water, ground water hydrology and the effects of any dewatering;



- (f) topography of the Construction Site and Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site or Extra Land;
- (g) geological, geotechnical and subsurface conditions or characteristics;



- (h) any underground strata;
- (i) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (j) the Environment, water and weather or climatic conditions, or the effects of the Environment, water and weather or climatic conditions, including rain, surface water runoff and drainage, floods, water seepage, wind blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions;
- (k) any latent conditions; and

**Site Investigation Location Difference** means a material difference between:

- (a) the actual location on the ground surface, at the time of collection, from which ground data included in the Geotechnical Report was collected; and
- (b) the location on the ground surface reported in the Geotechnical Report as being the location, at the time of collection, from which ground data included in the Geotechnical Report was collected.

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

**Special Event** means:

- (a) an event listed in Schedule A25 which recurs on an annual basis; and
- (b) any other major public event adjacent to or in the vicinity of any part of the Construction Site or any Extra Land that is:
  - (i) published on the website "<http://www.sydney.com/events>" (or any replacement website established by the NSW Government to provide the same or similar information regarding events in Sydney); or
  - (ii) notified to the SCAW Contractor in writing by the Principal's Representative.

**Special Waste (Asbestos)** means Waste which is classified as special waste (asbestos) in accordance with the Waste Classification Guidelines.

**Specific Contaminant Concentration** (or **SCC**) has the meaning described in *Test Methods for Evaluating Solid Waste, Physical / Chemical Methods* (USEPA 2007) as amended from time to time, as applied in accordance with the Waste Classification Guidelines.

**SSTOM Project Deed** means a deed to be entered into between the Principal and OpCo for the SSTOM Works.

**SSTOM Works** means the stations, systems, trains and operations and maintenance public-private partnership for the Sydney Metro Western Sydney Airport including:

- (a) the financing, design and construction of the stations, linewide systems, rail systems, railway infrastructure, stabling and maintenance facilities, operations control centre and trains; and
- (b) the operations and maintenance of the entire Sydney Metro Western Sydney Airport.

**Stakeholder and Community Engagement Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**State Indemnified Party** means:

- (a) the Principal; and
- (b) each other Public Transport Agency.



**Subcontract** means a contract between the SCAW Contractor and a Subcontractor and includes an agreement for supply of goods or services (including professional services and Construction Plant hire) or both.

**Subcontractor** means any person who enters into a contract in connection with the SCAW Contractor's Activities with the SCAW Contractor or whose subcontract is in connection with the SCAW Contractor's Activities and is in a chain of contracts where the ultimate contract is with the SCAW Contractor.

**Substantial Completion** means the stage in the execution of the SCAW Contractor's Activities in respect of a Portion when:

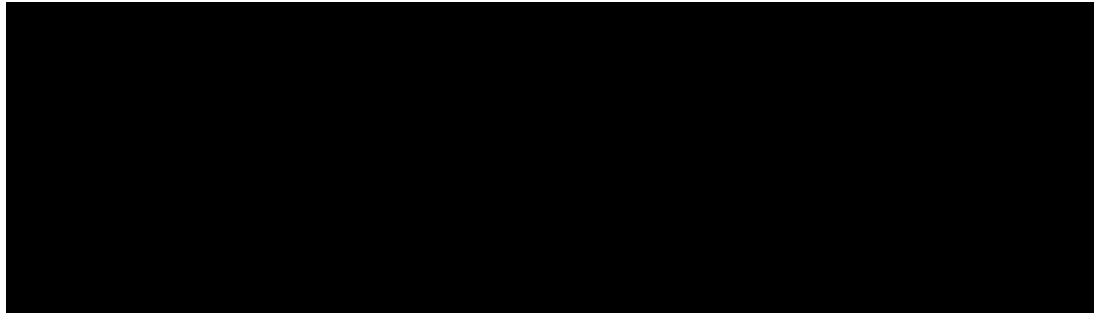
- (a) the Portion is complete in accordance with this deed except for any:
  - (i) Minor Defects;
  - (ii) Accepted Defects; and
  - (iii) Agreed Defects;
- (b) the SCAW Contractor has rectified all Mandatory Defects;
- (c) the SCAW Contractor has:
  - (i) carried out and passed all tests which:
    - (A) are required under this deed to be carried out and passed before the Portion reaches Substantial Completion; or
    - (B) must necessarily be carried out and passed before the Portion can be used for its intended purpose and to verify that the Portion is in the condition this deed requires it to be in at Substantial Completion;
  - (ii) obtained all Approvals that it is required under this deed (including a certificate of compliance from the Airport Building Controller) to obtain before Substantial Completion of the Portion and provided such Approvals to the Principal's Representative;
  - (iii) given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all documents or other information in

respect of the design, construction, testing, commissioning, completion, occupation, use and maintenance of the Portion which:

- (A) are required by this deed to be given to the Principal's Representative before Substantial Completion of the Portion; or
- (B) must necessarily be handed over before the Portion can be used for its intended purpose,

including copies of all documentation in accordance with the requirements of the SCAW Specification, but excluding all Work as Executed Design Documentation and Asset Management Information in respect of the Project Works;

- (iv) executed a certificate in the form of Schedule B1 for the Portion and provided it to the Principal's Representative and the Independent Certifier;
- (v) provided the training referred to in clause 16.15(a) to the reasonable satisfaction of the Principal's Representative;
- (vi) removed all Construction Plant from the parts of the Construction Site that relate to the Portion, other than:
  - (A) where the Principal's Representative has given a notice under clause 19.16(a) to carry out Transitional Handover Services in respect of the Portion, any Construction Plant required to carry out the Transitional Handover Services; and
  - (B) any Construction Plant necessary to facilitate the handover of the Portion to the Principal or retained on the Construction Site in accordance with clause 16.11(c) (where approved by the Principal's Representative in accordance with clause 16.11(d)); and
- (vii) in respect of the first Portion to achieve Substantial Completion only, executed the Collateral Warranty Deed Poll and provided it to the Principal's Representative;
- (d) the Quality and Systems Manager has executed a certificate in the form of Schedule B11 for the Portion and provided it to the Principal's Representative;
- (e) the SCAW Contractor has, in respect of any Extra Land occupied or used in connection with the Portion, provided the Principal's Representative with:
  - (i) properly executed releases on terms satisfactory to the Principal's Representative from all claims or demands from the owners or occupiers of the Extra Land and from other persons having interests in such land; or
  - (ii) statements under clause 12.6(a)(ii)(B)(bb); and
- (f) the SCAW Contractor has given to the Principal's Representative (with a copy to any Interface Contractor as required by the Principal) all Asset Management Information in respect of the Handover Works certified by the Independent Certifier under clause 16.13(j)(ii)(B)(bb); and
- (g) the SCAW Contractor has done everything else which is stated to be a condition precedent to Substantial Completion of the Portion or which the SCAW Contractor is otherwise expressly required by this deed to do before Substantial Completion of the Portion, including any additional conditions precedent to Substantial Completion specified in Schedule A2.



**Sustainability Manager** means the person appointed to that position under clause 18.2(b) as at the date of this deed or any person appointed as a replacement under clause 18.2(b).

**Sustainability Management Plan** means the Project Plan referred to as the 'Sustainability Management Plan' in section 5.1.7 of the General Specification, as updated from time to time in accordance with clause 11.4.

**Sydney Metro Australian Industry Participation Plan** means the "Australian Industry Participation Plan" (as defined in the *Australian Jobs Act 2013* (Cth)) developed by the Principal for Sydney Metro - Western Sydney Airport, as amended from time to time.

**Sydney Metro Principal Contractor Health and Safety Standard** means the document referred to as the "Sydney Metro Principal Contractor Health and Safety Standard (SM-20-00100838)" in sections 2.11.1 and 5.2.2.5 of the General Specification, as amended from time to time.

**Sydney Metro Unexpected Heritage Finds Procedure** means the document referred to as the "Sydney Metro Unexpected Heritage Finds Procedure" (SM-18-00105232), as amended from time to time.

**Sydney Metro - Western Sydney Airport** means the metro line from St Marys to Western Sydney Aerotropolis, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

**Sydney Metro Works** means the Project Works excluding the Third Party Works.

**Sydney Water** means Sydney Water Corporation (ABN 49 776 225 038).

**Sydney Trains** means Sydney Trains (ABN 38 284 779 682), a NSW Government agency constituted under the Transport Administration Act 1988 (NSW).

**Systems Engineering Management Plan** means the Project Plan referred to as the Systems Engineering Management Plan in section 5.1.4 of the General Specification, as updated from time to time in accordance with clause 11.4.

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

**Telstra** means Telstra Corporation Limited ABN 33 051 775 556.

**Temporary Areas** means the land described as the 'Temporary Areas' in clause 3 of the Site Access Schedule.

**Temporary Works** means any temporary physical works required for the purpose of the carrying out of the SCAW Contractor's Activities but which does not form part of the Project Works including:

- (a) any such works specified in section 3.2 of the Particular Specification; and
- (b) the Handover Works,

and including, to the extent relevant to such works, Changes directed in accordance with this deed.

**Tender** means the response provided by a Tenderer to undertake the SCAW Contractor's Activities.

**Tender Form** means the document entitled 'Tender Form' executed by the SCAW Contractor as part of its Tender.

**Tenderer** means an entity which submits a Tender for the SCAW Contractor's Activities in response to the Request for Tender.

**Tender Process Deed** means the contract titled "Sydney Metro – Western Sydney Airport - Surface and Civil Alignment Works - Tender Process Deed" between the Principal and the SCAW Contractor dated 26 May 2021.

**TfNSW** means Transport for NSW the NSW Government agency constituted by section 3C of the Transport Administration Act 1988 (NSW) (ABN 18 804 239 602).

**TfNSW (M12) Interface Agreement** means the Third Party Agreement titled "Sydney Metro – Western Sydney Airport – M12 Interface Deed" between the Principal and TfNSW attached to this deed in Schedule D8 (as may be updated or replaced in accordance with clause 12.24).

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

**Third Party Agreement** means:

- (a) an agreement referred to in Schedule D8 and any Adjoining Property Owner Agreement which has been, or will be, entered into by the Principal; and
- (b) any Draft Third Party Agreement or Additional Third Party Agreement which the SCAW Contractor must comply with pursuant to clause 12.24.

**Third Party Agreement Design Documentation** means any Design Documentation that is required to be submitted under or in connection with any Third Party Agreement.

**Third Party Works** means the Local Area Works, Property Works and Utility Service Works.

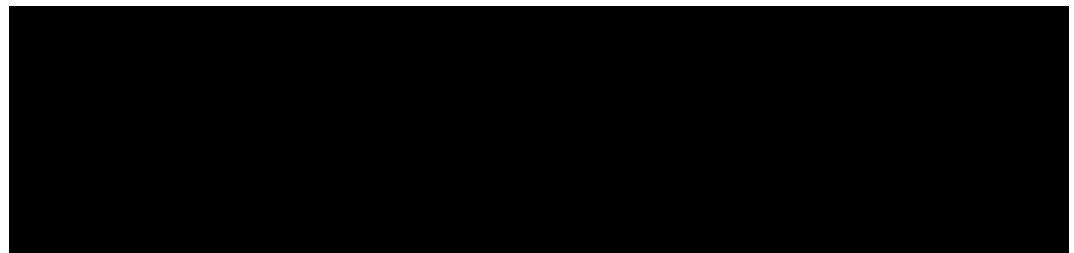
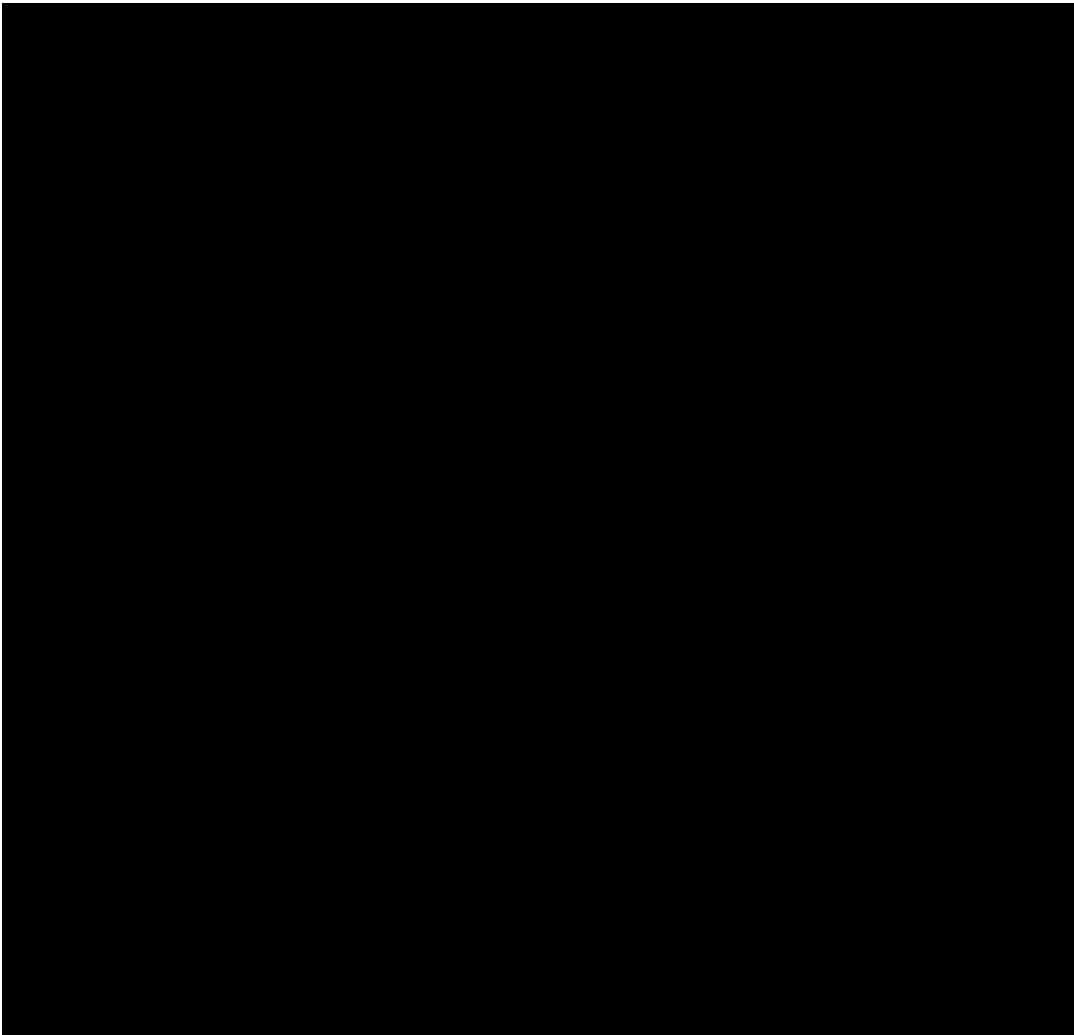
**TPA Extra Land** has the meaning given in clause 12.6(c)(iii).

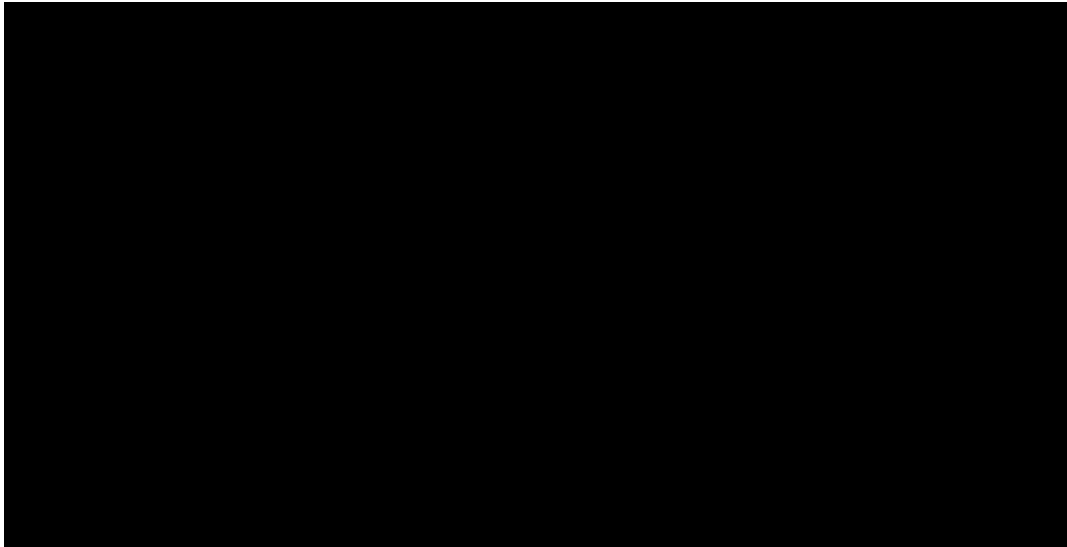
**Transitional Handover Services** means, in respect of any Portion for which the Principal's Representative gives a notice under clause 19.16(a), the relevant activities set out in Schedule A4 required to be performed after Substantial Completion of the Portion.

**Transitional Handover Services Payment Schedule** means Schedule E3.

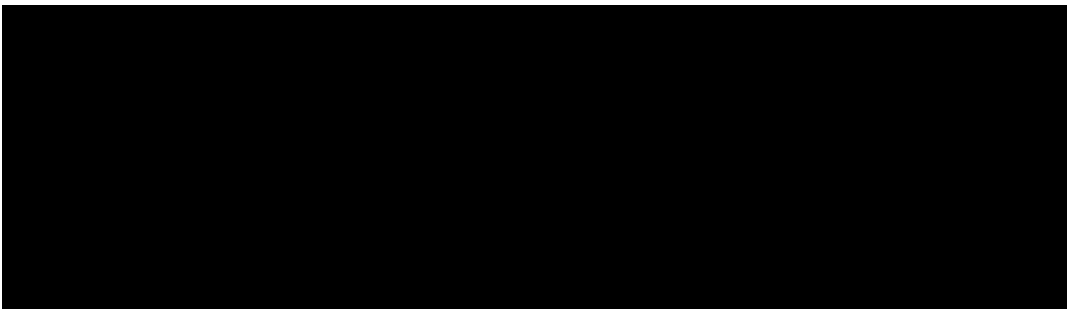
**Transport Asset Holding Entity** means Transport Asset Holding Entity of New South Wales as constituted by Part 2 of the *Transport Administration Act 1988* (NSW).

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



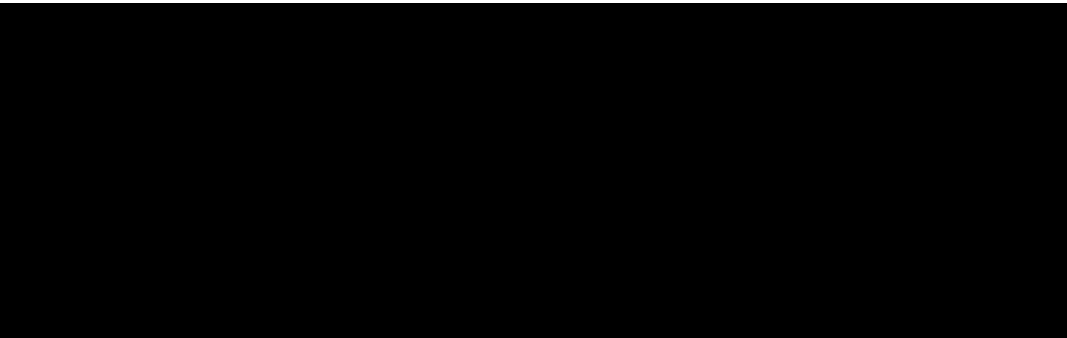


**Unowned Parcel** means a parcel of land and property of which the Principal is not the registered proprietor and in relation to which, or upon which, Property Works are to be undertaken.



**Utility Service** means any utility, service, facility or item of public (State or Federal) or private infrastructure, including railway systems, above ground and below ground utilities, services or facilities in a rail, pedestrian or vehicular corridor, water, electricity, gas, ethane, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service.

**Utility Service Works** means the construction, modification, or relocation of Utility Services all of which are to be designed and / or constructed by the SCAW Contractor and handed over to the Principal, an Authority or any other person in accordance with this deed including any such works specified in section 2.3.2.3 of the Particular Specification (and including, to the extent relevant to such works, Changes directed in accordance with this deed).



**Virgin Excavated Natural Material (VENM)** means Waste which is virgin excavated natural material as defined in the *Protection of the Environment Operations Act 1997* (NSW).

**Waste** has the meaning given in the *Protection of the Environment Operations Act 1997* (NSW).

**Waste Classification Guidelines** means the NSW EPA *Waste Classification Guidelines (2014)* as revised from time to time.

**Waste Management Plan** means the waste management plan that is detailed under Chapter 14 of the Metro Construction Environmental Management Framework (CEMF).

**WaterNSW Works** has the meaning given to the term "Works" in the WaterNSW Interface Agreement.

**WaterNSW Interface Agreement** means the Third Party Agreement titled "Water NSW Interface Agreement – Sydney Metro Western Sydney Airport " between the Principal and WaterNSW attached to this deed in Schedule D8 (as may be updated or replaced in accordance with clause 12.24).

**Western Sydney Airport** means Western Sydney International (Nancy-Bird Walton) Airport.

**WHS Accreditation Scheme** means the Australian Government Building and Construction WHS Accreditation Scheme established by the BCIIIP Act, or any scheme replacing it.

**WHS Codes of Practice** means the codes of practice published by SafeWork NSW on the website <https://www.safework.nsw.gov.au/resource-library/list-of-all-codes-of-practice/pre-whs-codes-accordion/whs-codes-of-practice> (or any replacement website established by SafeWork NSW to provide the same or similar information regarding approved codes of practice).

**WHS Management Systems and Auditing Guidelines** means the New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) September 2013 (updated May 2014), or any document issued from time to time which amends or replaces this document.

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

**WHS Legislation** means:

- (a) the WHS Act and the WHS Regulation; and
- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Project Works, the Temporary Works or the SCAW Contractor's Activities.

**WHS Regulation** means the *Work Health and Safety Regulation 2017* (NSW).

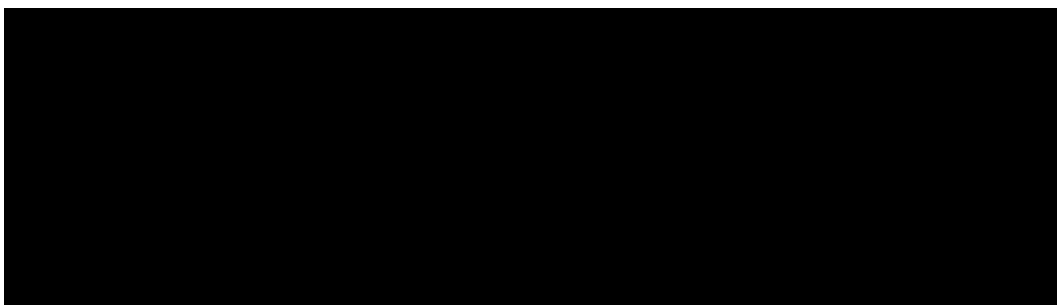
**Wilful Misconduct** means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the Loss claimed by the relevant party in respect of the breach but does not include errors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



**Witness Point** means a point in a work process for which the SCAW Contractor must give prior notice to the Principal's Representative to allow the Principal's Representative to attend and witness the point in the work process should it choose to do so.

**Work As Executed Design Documentation** has the meaning given in section 9.2 of the General Specification.

**Working Parameters** means:



**Workforce Development & Industry Participation Plan** means the Project Plan referred to as the Workforce Development and Industry Participation Plan in section 5.1.17 of the General Specification, as updated from time to time in accordance with clause 11.4.

**Workplace Relations Management Plan** means the Project Plan of that name referred to in clause 29.6 and section 5.1.18 of the General Specification, an initial version of which is included in Attachment C of the General Specification, as updated from time to time in accordance with clause 11.4.

**Works** means the physical works which the SCAW Contractor must design, construct, complete and hand over to the Principal in accordance with this deed (including, to the extent relevant to such works, Changes directed in accordance with this deed) but excluding the Third Party Works and the Temporary Works.

## 1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party is a reference to a party to this deed and includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (d) "includes" in any form is not a word of limitation;
- (e) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the

reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and

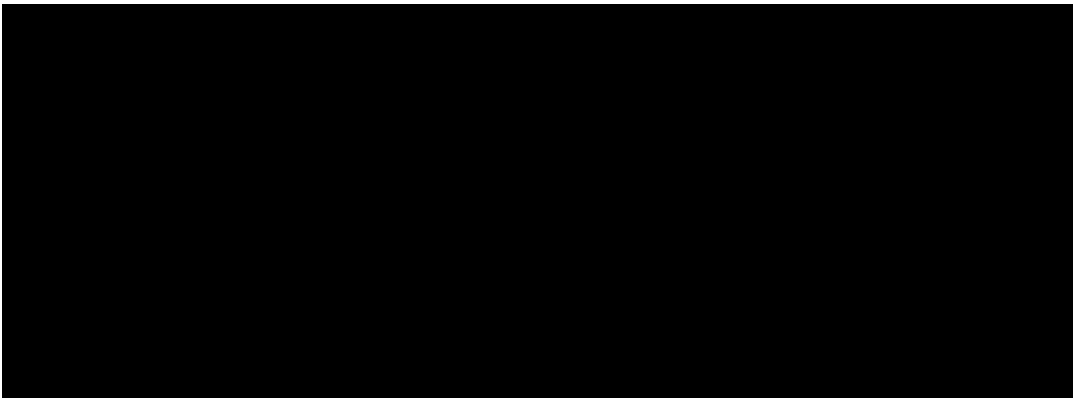
- (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or Code and Standard) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, clause, schedule, exhibit, attachment or annexure to or of this deed;
- (i) a reference to:
  - (i) this deed includes all schedules, exhibits (subject to clause 12.9(b)(ii)), attachments and annexures to it, including the SCAW Specification; and
  - (ii) a reference to the SCAW Specification includes all Appendices to the SCAW Specification;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) for the purposes of clauses 19.6 and 19.10:
  - (i) any extension of time stated in days; or
  - (ii) any reference to "day",  
  
will exclude days which are public holidays in Sydney and include only those days which are stated in the most recent Overall D&C Program submitted under clause 19.2(a) as working days;
- (m) for all purposes other than as set out in clause 1.2(l), "day" means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) a reference to a "month" is a reference to a calendar month;
- (q) a reference to "\$" or "dollar" is to Australian currency;

- (r) the Planning Approval Representatives will perform the functions of the Planning Approval Representatives under the Planning Approvals and this deed;
- (s) subject to clause 14.3(c), any reference to:
  - (i) the Project Works (including the Third Party Works);
  - (ii) the Temporary Works;
  - (iii) the Project Plans or the Asset Management Information;
  - (iv) the SCAW Specification;
  - (v) the General Specification;
  - (vi) the Particular Specification;
  - (vii) the Design Documentation; or
  - (viii) any other document or thing,  
or any part of any of them:
    - (ix) being fit for its purpose or for its intended purpose; or
    - (x) as having an intended use,  
(or any similar reference) will be read as referring to the purpose, intended purpose or intended use having regard to:
      - (xi) the Principal's intention that the Project Works will be used as an integral part of an operating rail system intended to provide frequent high speed mass transit services between St Marys and Western Sydney Aerotropolis and which may:
        - (A) be required to accommodate and utilise various rolling stock, railway track, rail systems and related equipment;
        - (B) be subject to continuous operation;
        - (C) be operated by either the State of New South Wales or by private operator(s) on its behalf;
        - (D) involve further development of rail stations, including station structures and fitout to the extent referred to in this deed;
        - (E) be upgraded, augmented, extended and expanded to the extent referred to in this deed;
        - (F) be connected to and/or integrated with other transport infrastructure to the extent referred to in this deed; and
        - (G) involve future construction and development of buildings and/or other infrastructure on, over or adjacent to railway stations to the extent referred to in this deed; and

- (A) in respect of the Works and the Temporary Works, on or prior to the Date of Substantial Completion of the relevant Portion; and
- (B) in respect of Third Party Works, on or prior to the date of handover to the relevant Authority or Owner,

from:

- (C) this deed, including:
    - (aa) the objectives referred to in clauses 3.2; and
    - (bb) the requirement that the Project Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation; or
  - (D) (to the extent relevant for determining the purpose, intended purpose or intended use in connection with a Change) any document provided by the Principal to the SCAW Contractor specifically in connection with the Change (excluding any information, data, document or material which is referred to in Schedule A21);
- (t) subject to clause 14.3(c), any reference to the Project Works or any part of any of them being capable of remaining at all relevant times fit for their purpose or for their intended purpose, will be read as being subject to the Principal, OpCo and their respective Associates operating and maintaining the Project Works in accordance with the operation and maintenance manuals forming part of the Asset Management Information (as described in section 7 of the General Specification);



- (v) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (w) any obligation of the SCAW Contractor under this deed with respect to:
  - (i) a Project Plan, will be read as an obligation with respect to the version of the relevant Project Plan last submitted by the SCAW Contractor to the Principal's Representative and the Independent Certifier under clause 11.3 in respect of which the Principal's Representative (or, when applicable, the Independent Certifier) has not given a notice under clause 11.3(b)(ii); or
  - (ii) the Asset Management Information will be read as an obligation with respect to the version of the relevant Asset Management Information last submitted by the SCAW Contractor to the Principal's Representative under clause 16.13:

- (A) which has not been rejected by the Independent Certifier under clause 16.13(j)(ii)(A); and
  - (B) in respect of which the Principal's Representative has not given a direction under clause 16.13(j)(iii);
- (x) if a Project Plan seeks to impose any obligation on the Principal, the SCAW Contractor will not be entitled to make any Claim against the Principal in respect of that obligation (unless that same obligation is expressly imposed on the Principal in a clause or schedule);
  - (y) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
  - (z) on the basis that the Principal is notionally liable to pay GST under the GST Law, a reference in this deed to a liability to pay GST or an entitlement to an input tax credit includes any notional GST liability or input tax credit entitlement;
  - (aa) if a person is a member of a GST group, references to GST which the person must pay and to input tax credits to which the person is entitled to claim include GST which the representative member of the GST group of which the party is a member must pay and input tax credits to which the representative member is entitled; and
  - (bb) any obligation of the SCAW Contractor under the SCAW Specification to "demonstrate" includes the SCAW Contractor exercising Good Industry Practice to provide:
    - (i) clear, concise and logical reasoning, including:
      - (A) pertinent background information;
      - (B) an analysis of the options considered (if any); and
      - (C) an analysis of why an option (if any) was chosen; and
    - (ii) sufficient reference documentation from reliable, published sources that are authorised from reputable, recognised organisations, including Standards Australia, Engineers Australia, TfNSW or their international counterparts to justify the SCAW Contractor's position or proposal.

### 1.3 **Contra proferentem**

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

### 1.4 **Ambiguous terms**

- (a) If the Principal's Representative considers, or if the SCAW Contractor notifies the Principal's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed (including in any schedules and exhibits), the Principal's Representative must, subject to clause 1.5, direct the interpretation of this deed which the SCAW Contractor must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, inadequacy or inconsistency in, or between, the documents comprising this deed.

- (c) Any direction which the Principal's Representative gives in accordance with clause 1.4(a):
  - (i) will not relieve the SCAW Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
  - (ii) will not entitle the SCAW Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law; and
  - (iv) must, in respect of a notice given by the SCAW Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.

### 1.5 Order of precedence

The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

- (a) subject to clause 1.5(b) to 1.5(d), to the extent the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
  - (i) this deed excluding the schedules and exhibits; and
  - (ii) the schedules and exhibits;
- (b) where there is an ambiguity, discrepancy or inconsistency in or between different codes, standards, specifications or guidelines with which the SCAW Contractor must comply, the order of precedence set out in section 9.1 of the General Specification will apply;
- (c) to the extent paragraph (b) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency is in or between different parts of the SCAW Specification and the Planning Approval, the part of the document which prescribes or requires the highest standard of compliance consistent with complying with all Approvals will prevail (unless directed otherwise by the Principal's Representative);
- (d) to the extent paragraphs (b) and (c) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to the required scope, quantum, quality, standard, safety or other requirement of the Project Works or the Temporary Works, the highest scope, quantum, quality, standard or other requirement on the SCAW Contract or the more onerous obligation specified will prevail; and
- (e) to the extent paragraphs (a) to (d) do not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy, or inconsistency is between figured and scaled dimensions, figured will prevail over the scaled dimensions.

The documents comprising this deed (including the SCAW Specification) are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.

## 1.6 Severability

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction (including the SOP Act), then:

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 1.6(b)(i), preserves to the maximum possible extent:
    - (A) the enforceability of the provision and the provisions of this deed; and
    - (B) the original effect and intent of this deed.

## 1.7 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal to exercise any of its functions and powers pursuant to any Law; or
  - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) The SCAW Contractor acknowledges and agrees that, without limiting clause 1.7(a), anything which the Principal or the ASA does, fails to do or purports to do pursuant to their respective functions and powers either as an AEO or under any Law or the ASA Charter will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed and will not entitle the SCAW Contractor to make any Claim against the Principal.
- (c) The parties agree that clauses 1.7(a) and 1.7(b) are taken not to limit any liability which the Principal would have had to the SCAW Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.7(a) and 1.7(b) of this deed.
- (d) The SCAW Contractor acknowledges and agrees that:
  - (i) there are many Authorities (other than the Principal) with jurisdiction over aspects of the SCAW Contractor's Activities, parts of the Construction Site and other areas affected by the SCAW Contractor's Activities (including Extra Land);
  - (ii) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the SCAW Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and

- (iii) except to the extent expressly stated otherwise in this deed, the SCAW Contractor bears the full risk of all occurrences of the kind referred to in clause 1.7(d)(ii) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

## 1.8 **Electronic files**

Where this deed (including the SCAW Specification) refers to an electronic file on a separate disc which forms part of this deed, such electronic files are contained in the disc or discs included in Schedule F1.

## 2. **CONDITIONS PRECEDENT**

### 2.1 **Commencement of obligations**

The rights and obligations of the parties under this deed will not commence unless and until each of the Conditions Precedent have been satisfied (or waived under clause 2.3), except for those under the Day 1 Clauses which will commence on the date of this deed.

### 2.2 **Satisfaction of conditions precedent**

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

### 2.3 **Waiver of conditions precedent**

A Condition Precedent is waived if, and only if:

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

### 2.4 **Condition Precedent Deadline Date**

- (a) If a Condition Precedent has not been satisfied (or waived under clause 2.3) by 5.00 pm on the relevant Condition Precedent Deadline Date, then the party listed as the "Benefiting Party" in Schedule A1 in respect of that Condition Precedent (or, if both parties are the "Benefiting Party" in respect of that Condition Precedent, either party) may give notice in writing to the other party that it is terminating this deed if the Condition Precedent in question is not satisfied (or waived under clause 2.3)



within the period specified in its notice (which must not be less than 2 Business Days).

- (b) If a party gives notice under clause 2.4(a) and the Condition Precedent in question is not satisfied (or waived under clause 2.3) within the period specified in that notice (or such longer period as the parties may agree) then this deed will terminate upon the expiry of that period.
- (c) If this deed is terminated pursuant to this clause 2.4(a):
  - (i) each of the other SCAW Contract Documents will be taken to have terminated at the time this deed is terminated;
  - (ii) the Principal must return all unconditional undertakings provided by the SCAW Contractor within 10 Business Days after the date of termination of this deed; and
  - (iii) no party will have any Claim against any other party under or in respect of the SCAW Contract Documents or in respect of the reimbursement of costs or expenses or otherwise in connection with Sydney Metro - Western Sydney Airport, except for any Claim in relation to a breach of any Day 1 Clause.

### **3. OBJECTIVES AND PROJECT VALUES**

#### **3.1 Objectives for Sydney Metro - Western Sydney Airport**

The Principal's objectives for Sydney Metro - Western Sydney Airport are to:

- (a) deliver easy, safe and accessible transport services that meet the needs of Sydney Metro's customers;
- (b) support the long-term success of the Western Sydney Airport and the Western Parkland City by optimising land use and development, transport and green infrastructure;
- (c) support Western Sydney's international competitiveness and productivity by supporting employment precincts and attracting knowledge-intensive jobs;
- (d) connect Western Sydney communities with an integrated transport network to maximise the 30-minute city catchment of the Western Parkland City and adjoining cities and regions;
- (e) facilitate the development of the Western Parkland City to create liveable, vibrant and environmentally sustainable precincts and places with a diverse mix of new dwellings;
- (f) ensure a value for money, sustainable and deliverable solution to support long-term growth of the Western Parkland City;
- (g) improve the resilience of the transport network;
- (h) improve the efficiency and cost effectiveness of the public transport system; and
- (i) implement a feasible solution recognising impacts, constraints and delivery risk.

### 3.2 **Objectives for the Project Works, the Temporary Works and the SCAW Contractor's Activities**

The Principal's objectives for the Project Works, the Temporary Works and the SCAW Contractor's Activities are to:

- (a) provide the surface and civil alignment works required for conveying passenger rolling stock over a 120-year Design Life between Orchard Hills Station and the Airport Business Park Station;
- (b) deliver the Project Works and the Temporary Works and perform the SCAW Contractor's Activities in a collaborative and cooperative manner to ensure the timely and effective delivery of Sydney Metro - Western Sydney Airport;
- (c) minimise impacts on the environment, including but not limited to noise and vibration, air quality, traffic and transport, heritage, waste, water and energy management and embodied environmental impacts;
- (d) maximise opportunities in relation to social sustainability, including workforce development and local procurement;
- (e) minimise disruption, delay and inconvenience to the affected public, road and public transport users, adjacent businesses, stakeholders and the community during the construction of the Project Works and the Temporary Works and the performance of the SCAW Contractor's Activities;
- (f) achieve a value-for-money outcome when viewed on the basis of effective risk management, certainty of delivery and whole-of-life cost; and
- (g) progressively hand over the completed Portions of the Project Works by the applicable Dates for Substantial Completion and in accordance with the requirements of this deed (including the SCAW Specification) to facilitate the Sydney Metro – Western Sydney Airport being operational by the Western Sydney Airport opening which is targeted for 24 December 2026.

Nothing in clause 3.2(a) amends or otherwise varies the SCAW Contractor's Design Life obligations as set out in the Particular Specification.

### 3.3 **Achievement of the Project Values**

The parties:

- (a) acknowledge that adherence to and upholding of the Project Values is of fundamental importance to the Principal; and
- (b) agree to:
  - (i) adhere to and uphold the Project Values; and
  - (ii) work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under this deed.

## 4. **GENERAL OBLIGATIONS**

### 4.1 **General**

The SCAW Contractor:

- (a) must carry out the SCAW Contractor's Activities (including any Transitional Handover Services (if applicable)), including investigating, designing, constructing, commissioning and handing over the Project Works and the Handover Works, in accordance with this deed;
- (b) must comply with all Directions of the Principal's Representative given under the SCAW Contract Documents;
- (c) warrants that the Project Works and the Handover Works will, upon Substantial Completion:
  - (i) be fit for their intended purposes; and
  - (ii) be capable of remaining at all relevant times fit for their intended purpose; and
- (d) warrants that the Temporary Works (other than the Handover Works, which are subject to clause 4.1(c)) will at all relevant times be fit for their intended purposes.

#### 4.2 **Acceptance of risk**

Subject to the express provisions of the SCAW Contract Documents, the SCAW Contractor:

- (a) accepts responsibility for and the risk of any Loss, delays or disruptions which it incurs or suffers arising out of or in any way in connection with, the performance of its obligations under this deed, including the following risks:
    - (i) the performance and cost of all Subcontractors;
    - (ii) the impact and interface with Interface Contractors under clause 4.10;
    - (iii) the impact and interface with Airport Lessee Contractors under clause 4.10A;
    - (iv) obtaining access to all areas other than the Construction Site under clause 12.5(c) and clause 12.25(h);
    - (v) the Site Conditions encountered including under clause 12.8;
    - (vi) all information provided or not provided by the Principal about the Project Works, the Temporary Works, Sydney Metro - Western Sydney Airport and the Construction Site;
- 
- (x) complying with Schedule D5, Schedule D6 and clause 12.24;
  - (xi) complying with Schedule D7 and clause 12.25;
  - (xii) congestion on roads to and from the Construction Site and any other difficulties with obtaining access to and from the Construction Site;
  - (xiii) complying with all Laws, Approvals and requirements of Authorities;
  - (xiv) the existence, location, condition and availability of Utility Services in respect of the SCAW Contractor's Activities;

- (xv) reliance upon or the use of the Initial Tender Design, Design Reference Documents or the SCAW Contractor's Tender Design;
  - (xvi) providing all Materials, Construction Plant, Utility Services and labour necessary for the SCAW Contractor's Activities under clause 16.6;
  - (xvii) industrial relations issues;
  - (xviii) foreign exchange movements in any currencies adverse to the SCAW Contractor;
  - (xix) increases in the costs of Materials, Construction Plant, Utility Services and labour required for the performance of the SCAW Contractor's Activities;
  - (xx) damage to the SCAW Contractor's Activities, Project Works, Temporary Works, Construction Site or any Extra Land under clause 23.1; and
  - (xxi) third party claims under clause 23.2; and
- (b) accepts responsibility for and the risk of all:
- (i) delay, disruption or additional cost; and
  - (ii) constructability issues or challenges,

which may arise out of or in connection with the alignment, location, position, level or dimensions of the Project Works and notwithstanding that any of these may have been specified in whole or in part by the Principal in the SCAW Specification.

#### 4.3 Environmental requirements

- (a) The SCAW Contractor must not use the Construction Site or any Extra Land, or allow its Associates to use the Construction Site or any Extra Land, so that:
- (i) [REDACTED] is abandoned or dumped on the Construction Site or any Extra Land;
  - (ii) [REDACTED] is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
  - (iii) [REDACTED] any other substance is released from, deposited to, or emanates from, the Construction Site or any Extra Land as a result of the SCAW Contractor's Activities such that a state of Contamination occurs, except to the extent such release, deposit, or emanation was an unavoidable consequence of performing the SCAW Contractor's Activities in accordance with Good Industry Practice and otherwise in accordance with the requirements of this deed.
- (b) The SCAW Contractor must at all times carry out, and ensure that its Associates carry out, the SCAW Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
- (c) The SCAW Contractor must, without limiting clause 7.1 or clause 7.2 but subject to clause 7.2(a)(ii):

- (i) comply with, and ensure that its Associates in performing the SCAW Contractor's Activities comply with:
    - (A) all Laws relating to the Environment;
    - (B) all Environmental Notices; and
    - (C) the Construction Environmental Management Plan and the Sustainability Management Plan; and
  - (ii) obtain and comply with all requirements of, and ensure that its Associates in performing the SCAW Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) The SCAW Contractor must carry out all parts of the SCAW Contractor's Activities that may impact upon Sensitive Receivers:
- (i) in accordance with:
    - (A) Good Industry Practice;
    - (B) Law and all guidelines made or approved by the EPA; and
    - (C) the Planning Approvals; and
  - (ii) in a manner that adopts all reasonable and feasible measures to minimise the impact of construction noise and vibration on Sensitive Receivers.
- (e) Unless otherwise specified in Schedule D4 and without limiting the SCAW Contractor's other obligations or express entitlements under this deed, and insofar as they apply to the Project Works, Temporary Works or SCAW Contractor's Activities, the SCAW Contractor must comply with, carry out and fulfil the conditions and requirements of the Planning Approvals, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Planning Approvals to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, Temporary Works or SCAW Contractor's Activities.
- (f) The SCAW Contractor must immediately notify the Principal in writing as soon as the SCAW Contractor:
- (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law or Approval regarding the Environment in the performance of the SCAW Contractor's Activities;
  - (ii) becomes aware of any information, fact or circumstance where, if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the SCAW Contractor in relation to the information, fact or circumstances); or
  - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the SCAW Contractor must provide to the

Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.

- (g) Any notice given by the SCAW Contractor under clause 4.3(f)(ii) must include such details and other information as the Principal would be required to provide to any relevant Authority pursuant to any Law relating to the Environment and must be in a format reasonably capable of provision to any such Authority.

#### 4.4 **Utility Services**

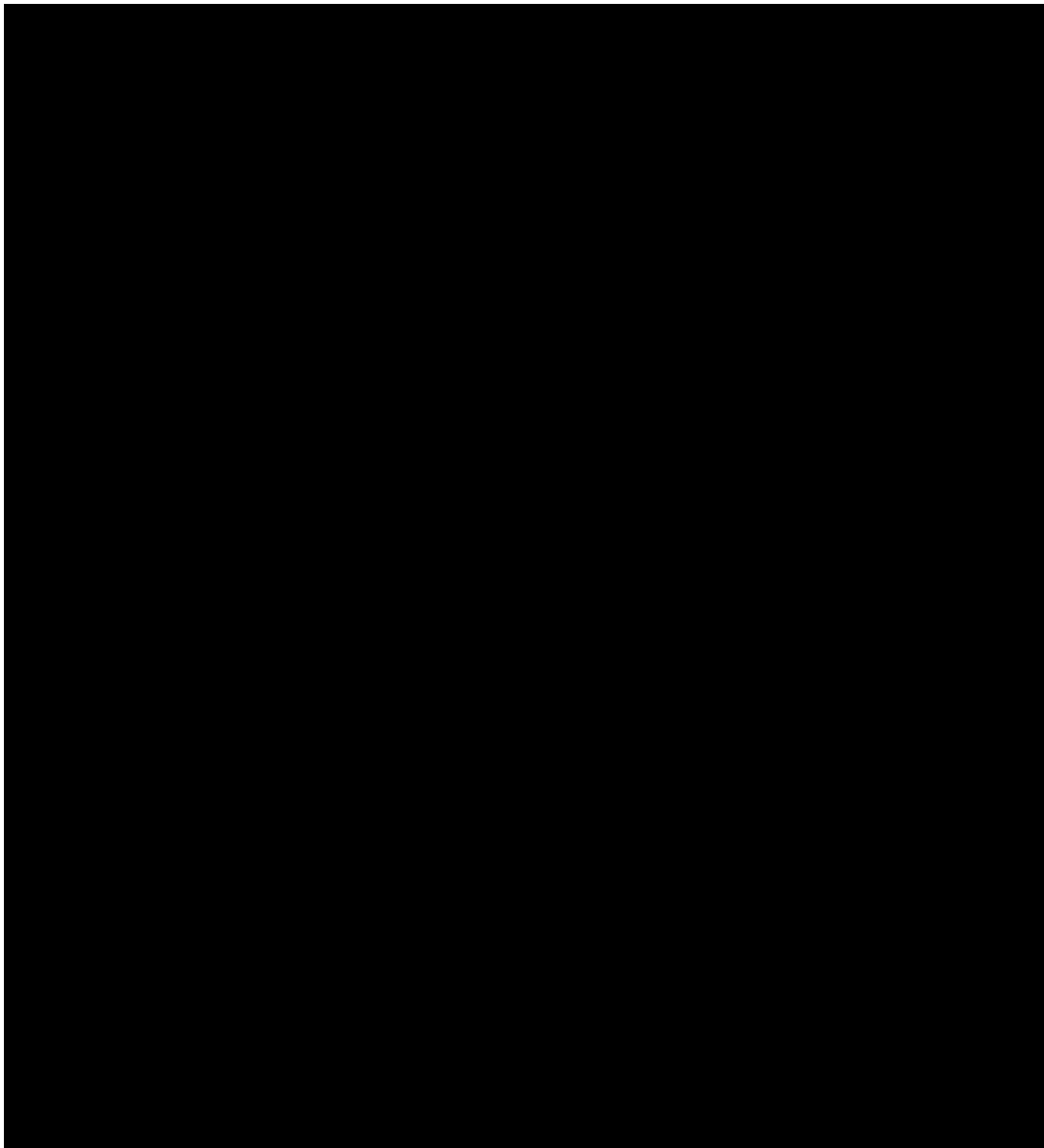
- (a) The SCAW Contractor:
  - (i) must obtain and pay for any Utility Services and, other than to the extent connections to Utility Services are expressly to be provided as Advanced Enabling Works, all connections for all Utility Services it needs to perform its obligations under this deed;
  - (ii) must investigate, protect, relocate, remove, modify, support, reinstate and provide for Utility Services necessary for the SCAW Contractor to comply with its obligations under this deed;
  - (iii) must not, without the Principal's Representative's prior written consent, obtain any Utility Services or connect any Utility Services to the Project Works that are not necessary to allow the SCAW Contractor to carry out the SCAW Contractor's Activities;
  - (iv) must obtain the Principal's Representative's prior written consent (such consent not to be unreasonably withheld or delayed) in respect of any new connections for Utility Services or changes or modifications to existing connections for Utility Services;
  - (v) must consult with and keep the Principal fully informed as to dealing with the Authorities and owners of Utility Services and, subject to clause 4.4(g)(ii)(A) comply fully with their requirements;
  - (vi) must ensure there are no unplanned disruptions to the Utility Services in carrying out the SCAW Contractor's Activities and that planned disruptions to the Utility Services are minimised and that otherwise no Utility Services are damaged, destroyed, disconnected, disrupted, interfered with or interrupted by reason of the performance of the SCAW Contractor's Activities;
  - (vii) must ensure that maintenance points for Utility Services are located within the Project Site in a location approved by the Principal's Representative in writing (such approval not to be unreasonably withheld or delayed);
  - (viii) except to the extent expressly provided otherwise by this deed, must contract for the provision of, acquire or otherwise procure or provide all Materials, Construction Plant and Utility Services (including electricity) required for the performance of its obligations under this deed; and
  - (ix) must, to the extent not prohibited by Law, indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in connection with:
    - (A) any damage to, disconnection or destruction of, disruption to or interference with or interruption to, any Utility Service arising out of or in connection with:

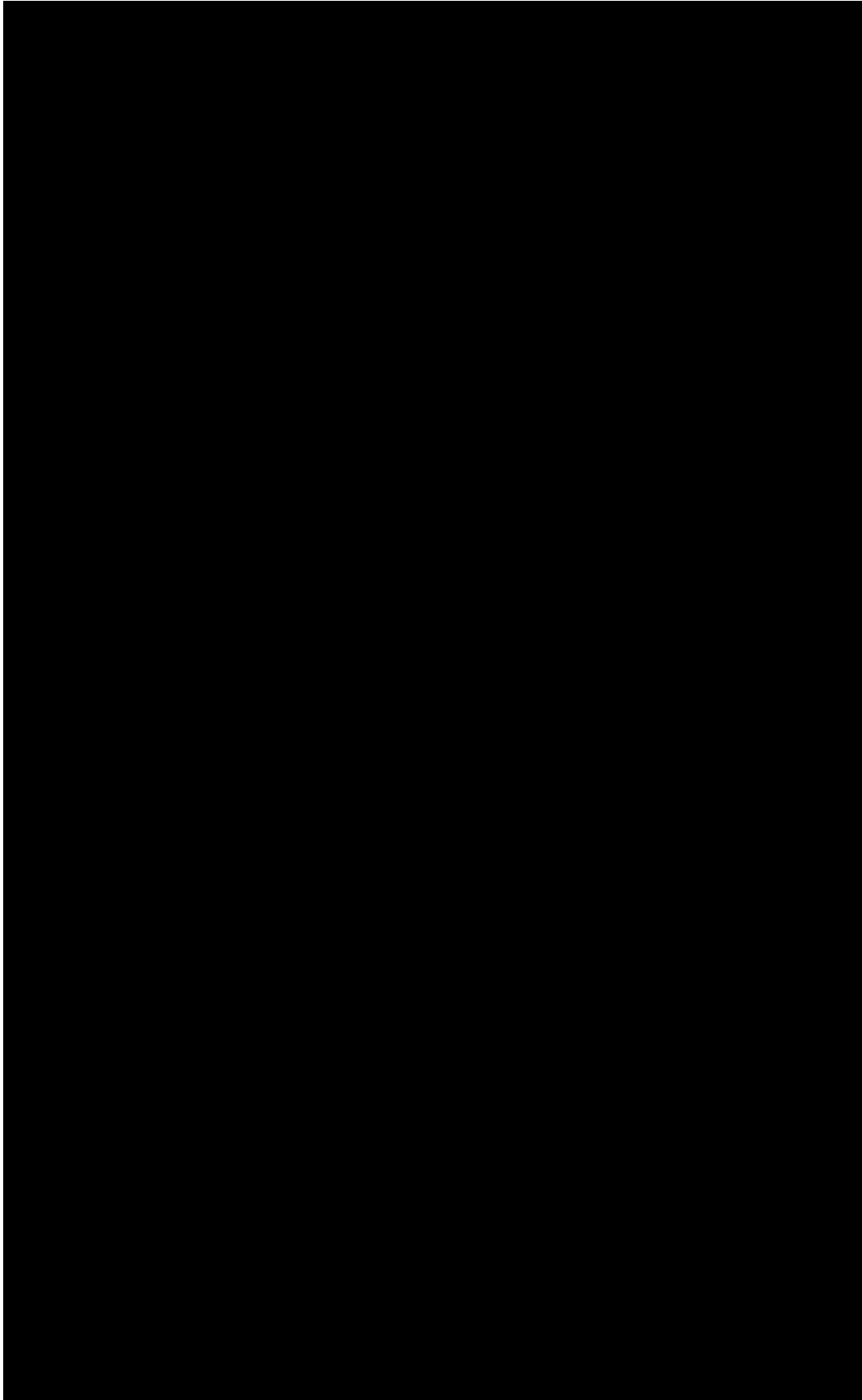
(aa) a failure by the SCAW Contractor to comply with any obligations under this deed; or

(bb) any act or omission of the SCAW Contractor or its Associates; or

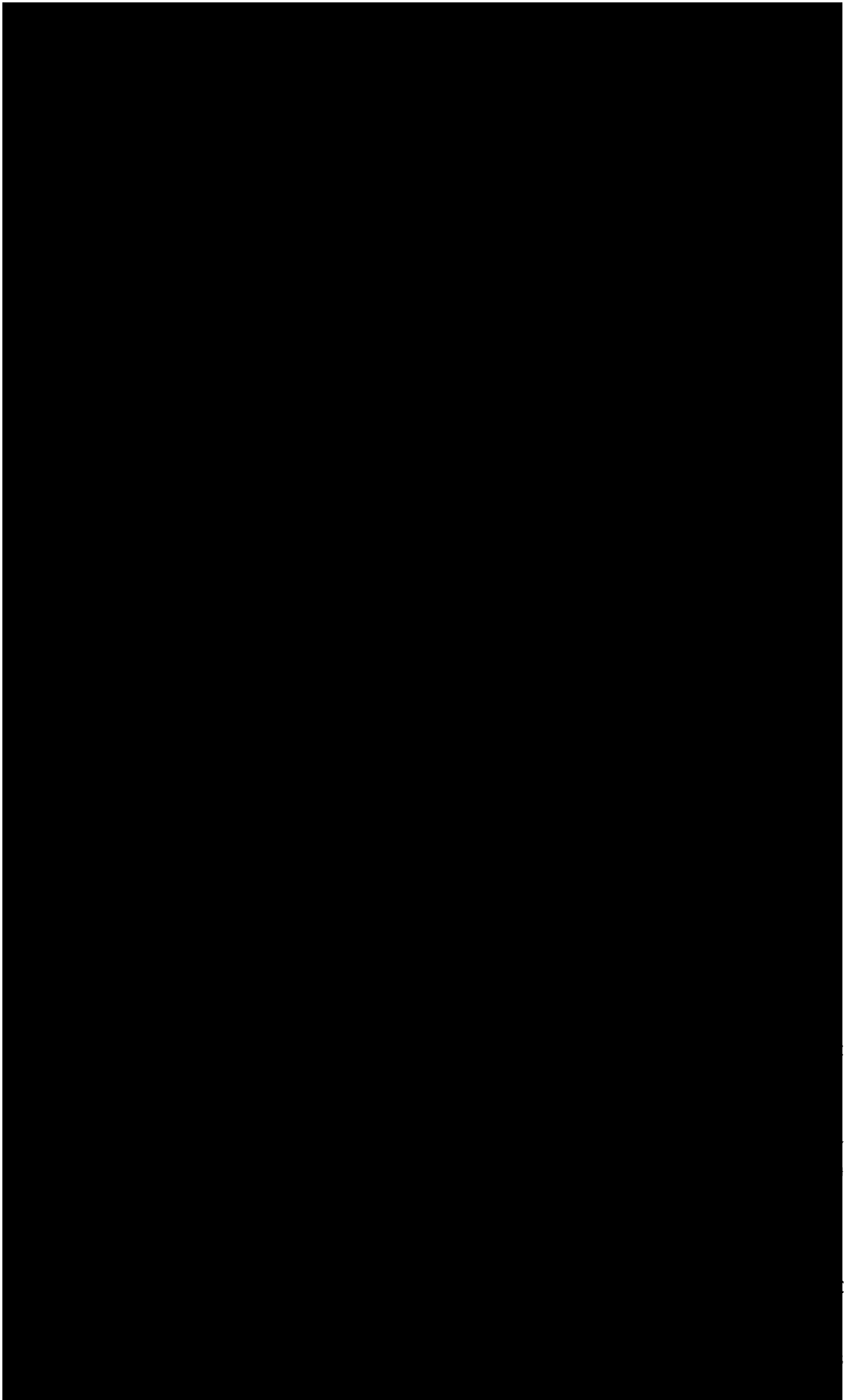
(B) a failure by the SCAW Contractor to comply with any obligation under this deed with respect to Utility Services or the Utility Service Works including the SCAW Contractor's obligations under the SCAW Specification (including sections 2.3.2.1 and 3.1 of the Particular Specification).

(b) [REDACTED] the SCAW Contractor is responsible for, and assumes the risk of all additional work, increased costs and any other Loss, Liability, claim, delay or disruption (including any delay in achieving Substantial Completion and Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Utility Services required for the execution of the SCAW Contractor's Activities.









#### 4.5 **Control of traffic**

The SCAW Contractor:

- (a) is responsible for the control, direction and protection of all road and pedestrian traffic, in any way affected by the carrying out of the SCAW Contractor's Activities;
- (b) must, without limiting clauses 4.5(c) and 4.5(d), manage all such traffic to ensure:
  - (i) its continuous, safe and efficient movement;
  - (ii) the traffic carrying capacity of Local Areas is maintained; and
  - (iii) that any delays and disruptions to road traffic and the movement of road traffic are minimised;
- (c) must at all times comply with the Construction Traffic Management Plan; and
- (d) must comply with the directions of any relevant Authority and the reasonable directions of the Principal's Representative with respect to such management.

#### 4.6 **Collusive arrangements**

- (a) The SCAW Contractor:
  - (i) warrants that, prior to the close of Tenders, the SCAW Contractor had no knowledge of the Tender price of any other Tenderer and had not directly or indirectly communicated the SCAW Contractor's Tender price to any other Tenderer;
  - (ii) warrants that except as disclosed in the Tender and as agreed with the Principal in writing, the SCAW Contractor:
    - (A) has not made any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:
      - (aa) the SCAW Contractor will pay money to or confer any benefit upon any of the unsuccessful Tenderers; or
      - (bb) the SCAW Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard fee) in respect of this deed;
    - (B) has not made any allowance in the SCAW Contractor's Tender price on account of a contract, arrangement or understanding of a kind referred to in clause 4.6(a)(ii)(A); and
    - (C) will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 4.6(a)(ii)(A); and
  - (iii) acknowledges that it is aware that the Principal entered this deed in reliance upon the warranties in clause 4.6(a)(i) and clause 4.6(a)(ii).
- (b) The Principal and the SCAW Contractor agree that if any matter warranted in clause 4.6(a)(i) or 4.6(a)(ii) is found not to be true or not to be correct, in addition to any other rights that the Principal may have, the SCAW Contractor:

- (i) will be in fundamental breach of this deed; and
- (ii) without limiting the Principal's rights under clause 24.3, must pay to the Principal as liquidated damages the sum equivalent to that paid or to be paid pursuant to any contract, arrangement or understanding referred to in clause 4.6(a)(ii).

#### 4.7 **Community relations**

The SCAW Contractor:

- (a) acknowledges that the areas where the SCAW Contractor's Activities are being carried out are of great importance to many people, including stakeholders, local residents and businesses; and
- (b) must manage and participate in all community relations and involvement programs and activities as:
  - (i) required by the SCAW Specification (including section 6 of the General Specification);
  - (ii) contained in the Sydney Metro Overarching Community Communications Strategy;
  - (iii) contained in the Community Communications Strategy; or
  - (iv) reasonably required by the Principal from time to time.

#### 4.8 **Media events**

- (a) The SCAW Contractor must:
  - (i) permit the Principal, the Commonwealth and the NSW Government to hold media events on the Construction Site:
    - (A) on or about the occurrence of each of the milestones specified in section 6.16.2 of the General Specification; and
    - (B) at such other times as may be reasonably requested by the Principal; and
  - (ii) cooperate with the Principal and provide all reasonable assistance that the Principal may request in connection with any such media event.
- (b) Where the Principal holds a media event:
  - (i) on or about the occurrence of a milestone specified in section 6.16.2 of the General Specification, the SCAW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with such media event; or
  - (ii) at any other time, the SCAW Contractor may claim the additional Direct Costs, Overheads plus Profit Margin that it incurs in connection with any such media event but otherwise the SCAW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in connection with any such media event.

#### 4.9 **Special events**

(a) The SCAW Contractor:

- (i) acknowledges that Special Events may be held in areas that are adjacent to or in the vicinity of parts of the Construction Site and Extra Land;
- (ii) must:
  - (A) perform the SCAW Contractor's Activities so as to minimise any interference with or disruption to any Special Event (or the planning and preparation for any Special Event);
  - (B) cooperate with the Principal and all relevant Authorities and emergency services in relation to any Special Event (and the planning and preparation for any Special Event);
  - (C) coordinate the SCAW Contractor's Activities with any Special Event (and the planning and preparation for any Special Event); and
  - (D) if requested by the Principal's Representative, attend any meeting relating to any Special Event (or the planning and preparation for any Special Event),

which is adjacent to or in the vicinity of any part of the Construction Site or any Extra Land.

(b) The SCAW Contractor:

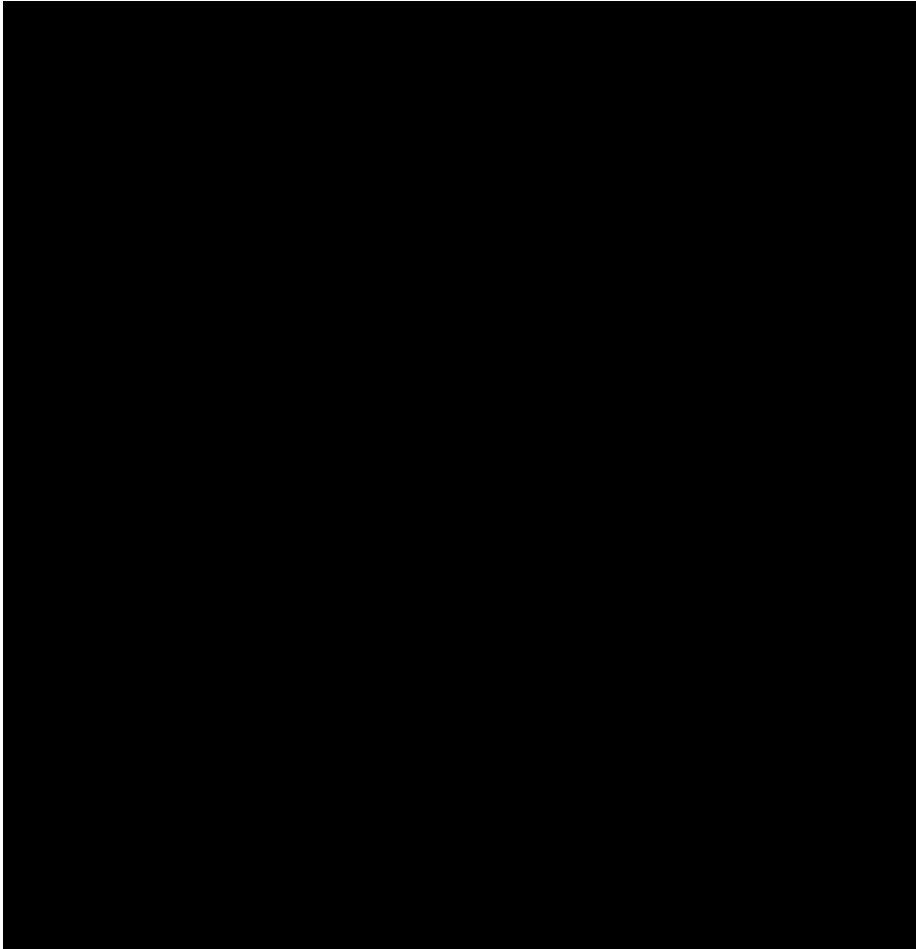
- (i) acknowledges and agrees that the Principal will not be liable upon any Claim by the SCAW Contractor arising out of or in any way in connection with any Special Event (or the planning and preparation for any Special Event); and
- (ii) warrants that the original Project Contract Sum (as at the date of this deed) and that the Overall D&C Program contains sufficient allowances for the assumption by the SCAW Contractor of the obligations and risks under this clause 4.9.

#### 4.10 **Cooperation and coordination with Interface Contractors**

Without limiting the SCAW Contractor's obligations under the Master Interface Deed, the SCAW Contractor:

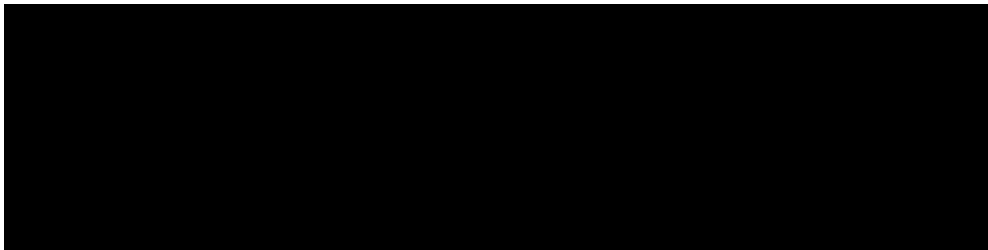
(a) acknowledges that:

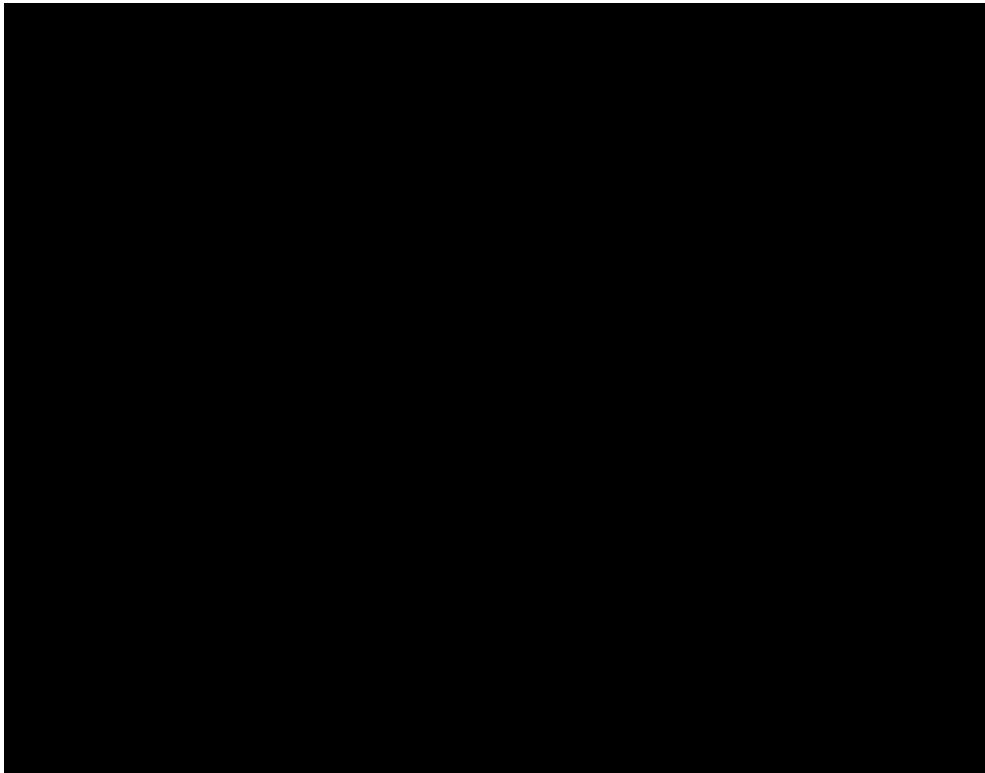
- (i) the Interface Work forms part of Sydney Metro - Western Sydney Airport;
- (ii) the SCAW Contractor's Activities interface with the Interface Work;
- (iii) Interface Contractors will be executing [REDACTED] on the Construction Site, at the same time as the SCAW Contractor is performing the SCAW Contractor's Activities;
- (iv) it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Project Works and Temporary Works with the Interface Work, [REDACTED]:



- (v) Interface Contractors may require the SCAW Contractor to provide information [redacted] to them to coordinate the design of the Interface Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by the SCAW Contractor; and
- (vi) any delay in the performance of the SCAW Contractor's Activities or in the SCAW Contractor providing information to, or cooperating and coordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the SCAW Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;

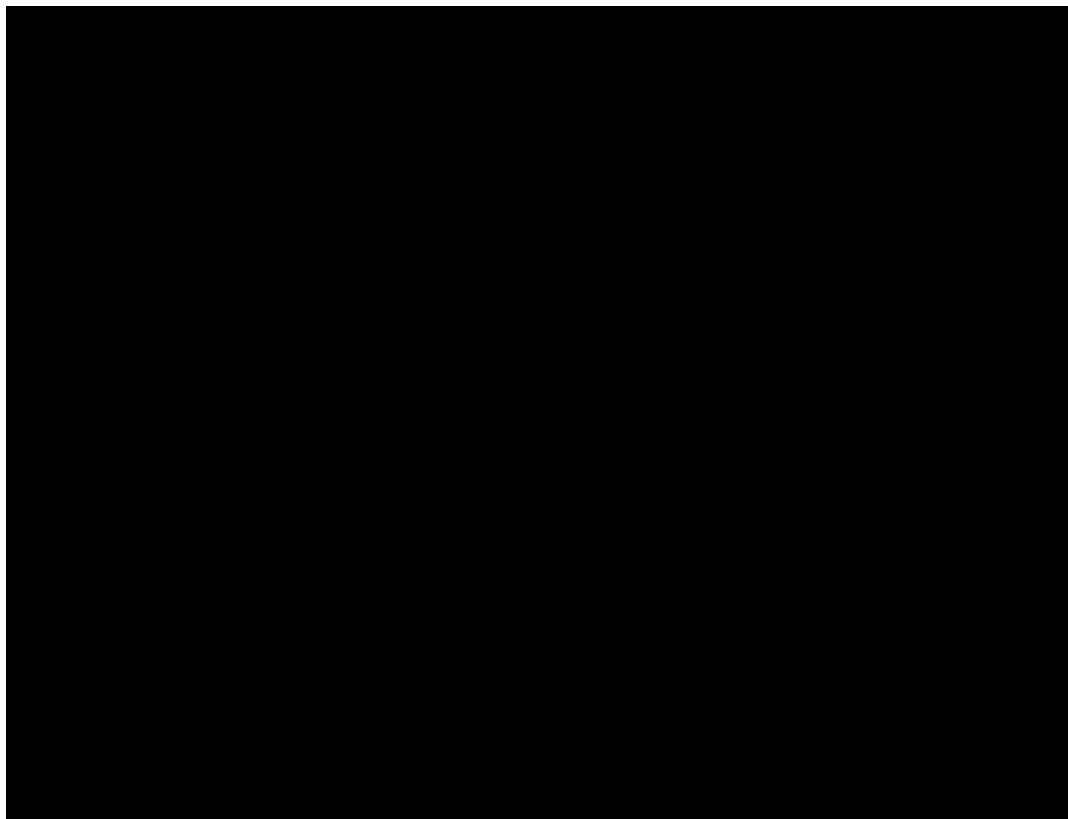
(b) must at all times:

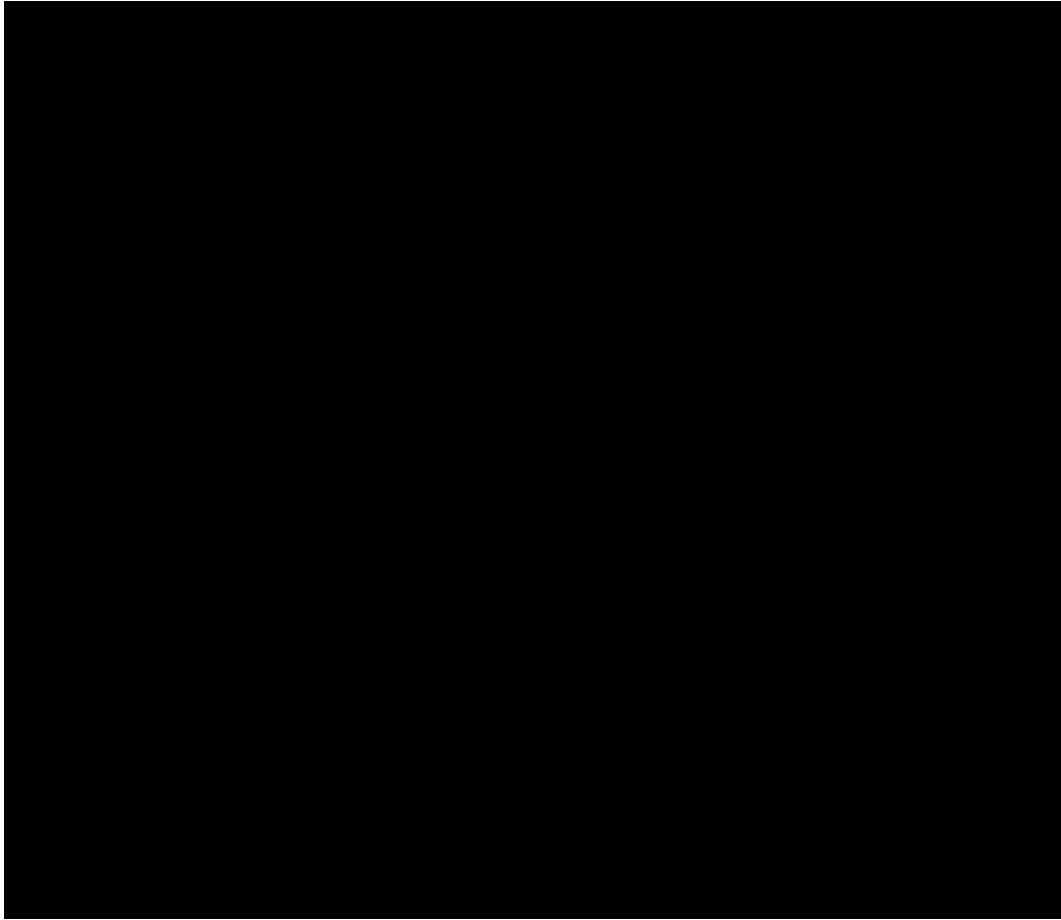




- (ii) protect the Project Works, Temporary Works and other improvements on the Construction Site or Extra Land from accidental damage by Interface Contractors [REDACTED]
- (iii) fully cooperate with Interface Contractors, and do everything reasonably necessary to:
  - (A) facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative; and
  - (B) ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Interface Work;
- (iv) carefully coordinate and interface the SCAW Contractor's Activities with the Interface Work and for this purpose;
  - (A) make proper allowance in all programs for the Interface Work;
  - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the SCAW Contractor's Activities and the interfaces of the Interface Work with the SCAW Contractor's Activities;
  - (C) monitor the progress or conduct of the Interface Work;
  - (D) notify the Principal's Representative of any interface or sequence of activities of which the SCAW Contractor is aware that may affect the commencement, progress or Substantial Completion of any Portion; and

- (E) provide the Interface Contractors with sufficient information about the current and expected SCAW Contractor's Activities to assist them to coordinate their Interface Work with the SCAW Contractor's Activities;
- (v) perform the SCAW Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (vi) be responsible for coordinating the SCAW Contractor's Activities, [REDACTED] with those affecting, and influenced by, Interface Contractors' personnel and work;
- (vii) without limiting clause 4.18(b), attend coordination meetings chaired by the Principal's Representative with Interface Contractors and others at such times as may be reasonably required by the Principal's Representative, to review current and future issues; and
- (viii) when any information is requested by the Principal or the Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Project Works or the SCAW Contractor's Activities:
  - (A) provide the information to the Principal's Representative or the Interface Contractor, with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the Interface Contractor, provided that this time is reasonable; and
  - (B) ensure and warrant that the information provided is accurate as at the date it is provided;
- (c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may have an adverse effect upon the SCAW Contractor's Activities; and





**4.10A Cooperation and coordination with Airport Lessee and Airport Lessee Contractors**

Without limiting the SCAW Contractor's obligations under clause 2 of Schedule D5, the SCAW Contractor:

- (a) acknowledges that:
  - (i) the SCAW Contractor's Activities interface with the Airport Works;
  - (ii) Airport Lessee Contractors will be executing work adjacent to the Construction Site, at the same time as the SCAW Contractor is performing the SCAW Contractor's Activities;
  - (iii) it may require certain design and work methodology input from the Airport Lessee and Airport Lessee Contractors to coordinate the design of the Project Works and Temporary Works with the Airport Works;
  - (iv) Airport Lessee and Airport Lessee Contractors may require the SCAW Contractor to provide information [REDACTED] to them to coordinate the design of the Airport Work with the Project Works and the Temporary Works, and this must be provided in a timely manner by the SCAW Contractor; and
  - (v) any delay in the performance of the SCAW Contractor's Activities or in the SCAW Contractor providing information to, or cooperating and coordinating with any Airport Lessee Contractor, may adversely impact upon, delay or disrupt any one or more Airport Lessee Contractors or the SCAW Contractor's



Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;

- (b) must in accordance with the requirements of Schedule D5 (as applicable):
  - (i) permit Airport Lessee Contractors to execute the Airport Works on any adjacent property to the Construction Site and for this purpose ensure they have safe, clean and clear access to those parts of the Construction Site, or property adjacent to the Construction Site [REDACTED] [REDACTED] required by them for the purpose of carrying out their work;
  - (ii) fully co-operate with Airport Lessee Contractors, and do everything reasonably necessary to:
    - (A) facilitate the execution of work by Airport Lessee Contractors; and
    - (B) ensure the effective coordination of the design and construction of the Project Works and the Temporary Works with the design and construction of the Airport Work;
  - (iii) carefully coordinate and interface the SCAW Contractor's Activities with the Airport Work and for this purpose:
    - (A) make proper allowance in all programs for the performance of the Airport Work;
    - (B) notify the Principal's Representative of any interface or sequence of activities of which the SCAW Contractor is aware that may affect the commencement, progress or Substantial Completion of any Portion; and
    - (C) upon request, provide the Airport Lessee Contractors with sufficient information about the current and expected SCAW Contractor's Activities to assist them to coordinate their Airport Works with the SCAW Contractor's Activities;
  - (iv) attend coordination meetings chaired by the Principal's Representative or the Airport Lessee with Airport Lessee Contractors and others at such times as may be reasonably required, to review current and future issues; and
  - (v) when any information [REDACTED] is requested by the Principal or the Airport Lessee Contractors, provide that information to the Principal's Representative or the Airport Lessee Contractor, with a copy to the Principal's Representative (as the case may be), within the time requested by the Principal or the Airport Lessee Contractor, provided that this time is reasonable; and
- (c) must promptly advise the Principal's Representative of all matters arising out of the liaison with Airport Lessee Contractors that may have an adverse effect upon the SCAW Contractor's Activities.

**4.11 No Claims arising out of Interface Work or Airport Works**

The SCAW Contractor:

- (a) acknowledges and agrees that:

- (i) no act or omission by an Interface Contractor or Airport Lessee Contractor will, whether or not it causes any delay, disruption or interference to the SCAW Contractor's Activities, constitute an Act of Prevention; and
- (ii) except as expressly provided in this deed, the Principal will not be liable upon any Claim by the SCAW Contractor arising out of or in any way in connection with:
  - (A) the Interface Contractors carrying out Interface Work;
  - (B) the Airport Lessee Contractors carrying out Airport Works; or
  - (C) any act or omission of an Interface Contractor or an Airport Lessee Contractor; and
- (b) warrants that the original Project Contract Sum (as at the date of this deed) and that the Overall D&C Program contains sufficient allowances for the assumption by the SCAW Contractor of the obligations and risks under clauses 4.10, 4.10A and this clause 4.11, including the cost of all the design iterations required to accommodate Interface Work and Airport Works.

#### 4.12 Liability under the NGER Legislation

- (a) Without limiting any other clause in this deed, the SCAW Contractor acknowledges and agrees that, if the SCAW Contractor's Activities constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and the SCAW Contractor will comply with any obligations arising in respect of the SCAW Contractor's Activities under the NGER Legislation.
- (b) If, for the purpose of the NGER Legislation, the SCAW Contractor is not taken to have operational control of the facility or facilities referred to in clause 4.12(a):
  - (i) the SCAW Contractor must comply with any obligations arising under the NGER Legislation in respect of the SCAW Contractor's Activities as if it was the person with operational control of such facility or facilities; and
  - (ii) where section 11B(1) of the *National Greenhouse and Energy Reporting Act 2007* (Cth) applies, the SCAW Contractor agrees that upon written request by the Principal the parties will, for the purposes of the NGER Legislation, jointly nominate the SCAW Contractor as the person with operational control of such facility or facilities (with such nomination continuing until the completion of the SCAW Contractor's Activities) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms).
- (c) If, despite the operation of clauses 4.12(a) and 4.12(b), the Principal incurs, or but for this clause 4.12 would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the SCAW Contractor's Activities, and the NGER Legislation provides:
  - (i) that such liability can be transferred by the Principal to the SCAW Contractor; or
  - (ii) for a declaration or other mechanism by which the SCAW Contractor can become the person with such liability under the NGER Legislation,

the SCAW Contractor must, upon written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms).

#### 4.13 **Provision of Emissions and Energy Data to the Principal**

- (a) The SCAW Contractor must provide the SCAW Contractor's Emissions and Energy Data to the Principal's Representative:
  - (i) at such times as may be agreed by the Principal and the SCAW Contractor, or, if no such agreement is reached within 10 Business Days of receiving written notice from the Principal indicating that it requires the SCAW Contractor's Emissions and Energy Data to be provided; and
  - (ii) on each occasion that the SCAW Contractor is required to provide the SCAW Contractor's Emissions and Energy Data to an Authority under the NGER Legislation or any other applicable Law.
- (b) The SCAW Contractor acknowledges and agrees that the Principal may use the SCAW Contractor's Emissions and Energy Data for any purpose as it sees fit.

#### 4.14 **Reporting Emissions and Energy Data**

- (a) This clause 4.14 applies if, despite the operation of clause 4.12, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the SCAW Contractor's Activities.
- (b) If the Principal notifies the SCAW Contractor in writing that the SCAW Contractor is required to provide SCAW Contractor's Emissions and Energy Data to the Principal, then the SCAW Contractor must:
  - (i) provide the SCAW Contractor's Emissions and Energy Data to the Principal's Representative in the same manner, form and level of detail, based on the same methods and at the same times:
    - (A) as if the SCAW Contractor was obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;
    - (B) in accordance with the requirements or approvals of any Authority and any directions by the Principal's Representative; and
    - (C) without limiting clauses 4.14(b)(i)(A) or 4.14(b)(i)(B), as may be required to enable the Principal:
      - (aa) to discharge, as and when they fall due, any obligations that it may have to provide the SCAW Contractor's Emissions and Energy Data to any Authority; and
      - (bb) to provide to the Clean Energy Regulator, any SCAW Contractor's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) keep all such SCAW Contractor's Emissions and Energy Data as may be required to enable it to discharge its obligations under clause 4.14(b)(i);
  - (iii) retain records of its activities that are the basis of its SCAW Contractor's Emissions and Energy Data for any financial year, for a period of not less than

7 years from the end of the year in which the relevant activities take place; and

- (iv) permit the SCAW Contractor's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and cooperate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clauses 4.14(b)(ii) and 4.14(b)(iii) and answering questions.
- (c) Without limiting clause 4.14(b), the SCAW Contractor must assist the Principal to comply with the NGER Legislation in relation to any aspect of the SCAW Contractor's Activities.
- (d) The SCAW Contractor acknowledges and agrees that:
  - (i) the SCAW Contractor's Emissions and Energy Data is provided to the Principal:
    - (A) to discharge any obligations that the Principal may have to provide such Data to an Authority; and
    - (B) so that the Principal may provide to the Clean Energy Regulator any SCAW Contractor's Emissions and Energy Data concerning any greenhouse gas project;
  - (ii) the Principal may provide or otherwise disclose the SCAW Contractor's Emissions and Energy Data to any applicable Authority; and
  - (iii) nothing in this clause 4.14 is to be taken as meaning that the Principal has agreed to perform on behalf of the SCAW Contractor, any obligation that the SCAW Contractor itself may have under any Law regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

#### 4.15 **Indemnity**

The SCAW Contractor must at all times indemnify the Principal and its Associates from and against any claims against the Principal, or Loss suffered or incurred by the Principal or its Associates, arising out of or in connection with:

- (a) the SCAW Contractor's breach of its obligations; and
  - (b) any inaccuracy or omission in information provided to the Principal,
- under clauses 4.12, 4.13 and 4.14.

#### 4.16 **Sustainability**

- (a) The SCAW Contractor must comply with the requirements of and achieve the sustainability ratings set out in section 2.8 of the General Specification.
- (b) Without limiting 4.16(a), in order to achieve the ratings referred to in section 2.8 of the General Specification the SCAW Contractor must:
  - (i) register with the Infrastructure Sustainability Council of Australia for the purposes of obtaining the ratings;

- (ii) cooperate and liaise with the Infrastructure Sustainability Council of Australia as required; and
- (iii) provide any documentation required by the Infrastructure Sustainability Council of Australia.

#### 4.17 **Environmental Management System**

The SCAW Contractor must implement an Environmental Management System in accordance with the applicable requirements of the SCAW Specification, including section 2.5.4 of the General Specification.

#### 4.18 **Master Interface Deed**

- (a) The SCAW Contractor must:
  - (i) on or before the Condition Precedent Deadline Date, provide to the Principal the Master Interface Deed, duly executed by the SCAW Contractor in the number of counterparts required by the Principal;
  - (ii) at all relevant times comply with the terms of the Master Interface Deed; and
  - (iii) update the Integration Management Plan as required to reflect the interface between the SCAW Contractor's Activities and the activities to be performed by each relevant Interface Contractor.
- (b) The SCAW Contractor must ensure that the Interface and Integration Manager (as referred to in Schedule A9) attends and participates in all relevant Governance Forums (as that term is defined in the Master Interface Deed) established in accordance with the Master Interface Deed.
- (c) The Principal will procure that each Interface Contractor which is a member of a Delivery Site Integration Group to which the SCAW Contractor is also a member under the terms of the Master Interface Deed accedes to the Master Interface Deed in accordance with its terms.
- (d) If:
  - (i) the Framework Principles are amended or replaced in accordance with clause 10.5(b) of the Master Interface Deed; and
  - (ii) compliance with the amended or replacement Framework Principles will have a Material Impact on the SCAW Contractor,then such amendment will be treated as a Change.

#### 4.19 **Collateral Warranty Deed Poll**

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

#### 4.20 **Australian Jobs Act**

The SCAW Contractor must:

- (a) take reasonable steps to ensure that Australian companies have full, fair and reasonable opportunities to bid for the supply of key goods and services that the SCAW Contractor requires in order to perform the SCAW Contractor's Activities; and
- (b) without limiting clause 7.1, cooperate with the Principal in relation to:
  - (i) compliance with the requirements of the *Australian Jobs Act 2013* (Cth); and
  - (ii) the implementation of the Sydney Metro Australian Industry Participation Plan.

#### 4.21 **Workforce development and industry participation**

- (a) The SCAW Contractor together with its Subcontractors must:
  - (i) comply with the requirements of section 2.9, 5.1.17 and 5.2.2.10 of the General Specification;
  - (ii) achieve the "Workforce Development and Industry Participation Outputs" required by section 2.9.3 of the General Specification; and
  - (iii) at all times comply with the requirements of the Aboriginal Participation Plan and the Workforce Development & Industry Participation Plan that the SCAW Contractor is permitted to use in accordance with clause 11.5.
- (b) Without limiting clause 4.21(a), the SCAW Contractor and its Subcontractors must, and must procure that its Subcontractors (but only in respect of the Subcontractor's works):
  - (i) cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to the implementation of its workforce development and industry participation initiatives for Sydney Metro - Western Sydney Airport;
  - (ii) attend and participate in working groups and forums established by the Principal in relation to its workforce development and industry participation initiatives for Sydney Metro - Western Sydney Airport;
  - (iii) maintain records evidencing the SCAW Contractor's compliance with the requirements of sections 2.9 and 5.1.17 of the General Specification; and
  - (iv) make available all records maintained in accordance with clause 4.21(b)(iii) to the Principal or its nominees.
- (c) Without limiting its other obligations under this clause 4.21, the SCAW Contractor must maximise opportunities for its Subcontractors to contribute to the SCAW Contractor's achievement of the "Workforce Development and Industry Participation Outputs" required by section 2.9.3 of the General Specification.

### 5. **SUBCONTRACTING**

#### 5.1 **Subcontracting by the SCAW Contractor**

- (a) Subject to this clause 5, the SCAW Contractor may enter into Subcontracts for the performance of the SCAW Contractor's Activities or any part of them.
- (b) The SCAW Contractor will be liable to the Principal for the acts and omissions of Subcontractors in connection with the SCAW Contractor's Activities as if such acts or omissions were acts or omissions of the SCAW Contractor.

- (c) The SCAW Contractor must, where a Subcontractor is to carry out Key Professional Services, procure that the Subcontractor execute a deed in the form of Schedule A14 and provide this to the Principal's Representative within 5 Business Days of the engagement of that Subcontractor.
- (d) Subcontracting by the SCAW Contractor of any obligation under the SCAW Contract Documents will not relieve the SCAW Contractor of, or otherwise affect, any obligation or Liability it has to the Principal under the SCAW Contract Documents.

5.2 **Significant Subcontracts**

- (a) The SCAW Contractor must not:
  - (i) other than with a Subcontractor named in Schedule A6 (with respect to the corresponding Significant Subcontract Work for that Subcontractor) or unless otherwise approved in writing by the Principal's Representative (which approval must not be unreasonably withheld or delayed), enter into; or
  - (ii) unless the Principal's Representative otherwise approves in writing (which approval must not be unreasonably withheld or delayed):
    - (A) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of);
    - (B) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in; or
    - (C) where it may impact the rights or increase the liabilities or obligations of the Principal:
      - (aa) make or permit any amendment to, or replacement of or waiver of a provision of, or
      - (bb) enter into any agreement or arrangement which affects the operation or interpretation of,

a Significant Subcontract.

- (b) The SCAW Contractor must:
  - (i) use its best endeavours to ensure that each Significant Subcontractor:
    - (A) is solvent and reputable;
    - (B) does not have any interest or duty which conflicts in a material way with the interests of the Principal and is not involved in any business or activity which is incompatible with, or inappropriate in relation to, the SCAW Contractor's Activities; and
    - (C) has sufficient expertise and ability, and is of sufficiently high financial and commercial standing, to properly carry out the obligations of the SCAW Contractor which are being subcontracted to it; and
  - (ii) immediately upon becoming aware that a Significant Subcontractor does not satisfy the requirements of clause 5.2(b)(i), [REDACTED] use its best endeavours

██████████ the Significant Subcontractor to do whatever is necessary to promptly satisfy the requirements of clause 5.2(b)(i).

- (c) The SCAW Contractor must:
  - (i) use its best endeavours to ensure that each Significant Subcontractor complies with the terms of its Significant Subcontract; and
  - (ii) immediately notify and thereafter keep the Principal informed of:
    - (A) any material breach of a Significant Subcontract; or
    - (B) any dispute which is notified as such under a Significant Subcontract.
- (d) The SCAW Contractor must provide the Principal with:
  - (i) details of each Subcontract which has a contract value of ██████████ or more, including the name of the Subcontractor and the goods or services being provided under the Subcontract; and
  - (ii) a copy of each Significant Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provisions" as that term is defined in the GIPA Act).
- (e) If required by the Principal, the SCAW Contractor must procure that a Significant Subcontractor and if a parent company guarantee is provided to the SCAW Contractor by the Significant Subcontractor in respect of the relevant Significant Subcontract, its parent company, enters into a side deed with the Principal in the form of Schedule A15 (or such other form reasonably required by the Principal).
- (f) The SCAW Contractor must at all relevant times comply with the terms of any side deed entered into in accordance with clause 5.2(e).

### 5.3 Provisions to be included in Subcontracts

The SCAW Contractor must (unless otherwise approved in writing by the Principal's Representative having regard to the nature and location of the Subcontractor) ensure that:

- (a) except where a form of Nominated Subcontract is set out in Schedule A16, each Subcontract that it enters into in connection with the SCAW Contractor's Activities, regardless of its value, includes the provisions required by section 1 of Schedule A5; and
- (b) without limiting clause 5.3(a), each Significant Subcontract that it enters into in connection with the SCAW Contractor's Activities includes the provisions required by sections 1 and 2 of Schedule A5.

### 5.4 Nominated Subcontractors

- (a) The SCAW Contractor acknowledges that the Principal's existing contracts with the Nominated Subcontractors have been provided to the SCAW Contractor as Information Documents on or before the date of this deed.
- (b) If the Principal directs the SCAW Contractor to perform any Nominated Subcontractor Work in accordance with section 6.17.2.2 of the General Specification, the SCAW Contractor must:



- (i) enter into a contract (Nominated Subcontract) with the relevant Nominated Subcontractor on terms which are no more onerous to the Nominated Subcontractor than those contained in the existing contract between the Principal and the Nominated Subcontractor;
  - (ii) provide the Principal with a copy of each Nominated Subcontract (subject to removal, exclusion or redaction of any "commercial-in-confidence provision" as that term is defined in the GIPA Act); and
  - (iii) ensure that Nominated Subcontract Work is carried out by the Nominated Subcontractors pursuant to the relevant Nominated Subcontract.
- (c) The SCAW Contractor will be liable to the Principal for the acts and omissions of the Nominated Subcontractors in connection with the SCAW Contractor's Activities as if such acts or omissions were acts or omissions of the SCAW Contractor.
  - (d) The Principal will have no Liability to the SCAW Contractor and the SCAW Contractor will not be entitled to make any Claim, arising out of or in connection with any Nominated Subcontractor or Nominated Subcontract Work including the management and interface with Nominated Subcontractors other than any adjustment to the Project Contract Sum for Provisional Sum Work and/or Call-off Services.
  - (e) The provisions of clause 5.2(a), clause 5.2(b)(ii), clause 5.2(c) and clause 5.2(d) apply as if each Nominated Subcontract is a Significant Subcontract.

## 6. SECURITY

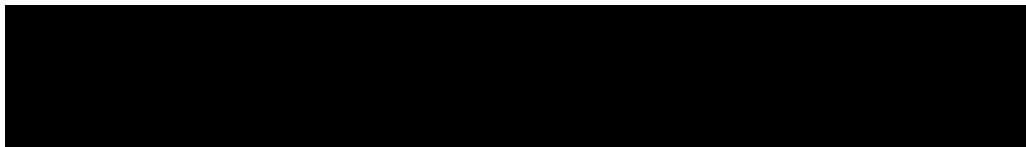
### 6.1 Unconditional undertakings

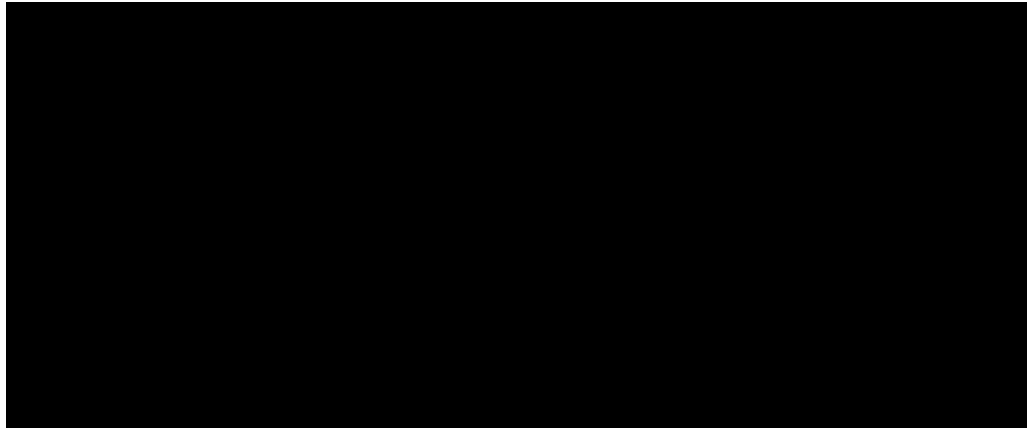
- (a) On or before the Condition Precedent Deadline Date the SCAW Contractor must give the Principal:
  - (i) an unconditional undertaking for ■■■ of the Project Contract Sum;
  - (ii) an unconditional undertaking for ■■■ of the Project Contract Sum; and
  - (iii) an unconditional undertaking for ■■■ of the Project Contract Sum.
- (b) The unconditional undertakings provided under clause 6.1(a) are provided for the purposes of ensuring the due and proper performance by the SCAW Contractor of its obligations under this deed and to provide for the bearing of risk of financial burden during the time of any unresolved dispute or difference to be borne by the SCAW Contractor.

### 6.2 Requirements for unconditional undertakings

Each unconditional undertaking provided under clause 6.1(a), 20.7 or 20.13 (and any replacement unconditional undertaking provided under clause 6.4 or 6.5) must be:

- (a) a bank guarantee or insurance bond in the form of Schedule E4 (or such other form approved by the Principal in its absolute discretion) ■■■■■

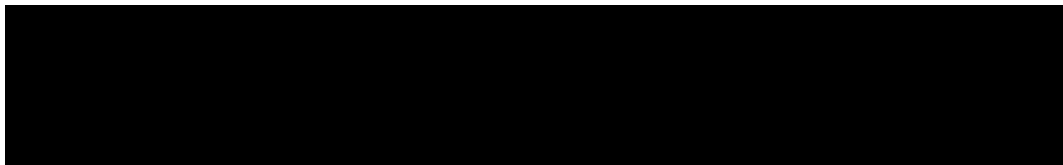




- (b) in favour of the Principal;
- (c) provided by a financial institution or insurance company that:
  - (i) is regulated by the Australian Prudential Regulation Authority; and
  - (ii) subject to clause 6.5(b), at all times maintains the Required Rating; and
- (d) payable at an office of the issuer in Sydney (or such other place approved by the Principal).

**6.3 Recourse to unconditional undertakings**

- (a) The Principal may have recourse to any unconditional undertaking provided under clause 6.1(a), 20.7 or 20.13 (and any replacement unconditional undertaking provided under clause 6.4 or 6.5 or 6.5A) at any time.



**6.4 Release of unconditional undertakings**

- (a) Subject to clause 6.4(d) and to the Principal's rights to have recourse to the unconditional undertakings and to the cash proceeds if one or more of the unconditional undertakings are converted into cash, the Principal must:
  - (i) within 20 Business Days after the Date of Substantial Completion of the last Portion to achieve Substantial Completion, release the unconditional undertaking provided by the SCAW Contractor under clause 6.1(a)(i) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash);
  - (ii) subject to clause 6.4(b), within 20 Business Days of the date which is 18 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion, release the unconditional undertaking provided by the SCAW Contractor under clause 6.1(a)(ii) (or the remaining proceeds of the unconditional undertaking if it has been converted into cash); and
  - (iii) subject to clause 6.4(b), within 20 Business Days after the issuance of the Final Certificate by the Principal's Representative, release the unconditional undertaking provided by the SCAW Contractor under clause 6.1(a)(iii) (or the

remaining proceeds of the unconditional undertaking if it has been converted into cash).

(b) If, prior to the date that is:

(i) 18 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion; or

(ii) [REDACTED]

the Principal has required the SCAW Contractor:

(iii) to correct one or more Defects pursuant to clause 17.2(a)(i); or

(iv) to carry out one or more Changes to overcome one or more Defects pursuant to clause 17.2(a)(ii),

and the SCAW Contractor has not corrected such Defects or carried out such Changes by:

(v) the date specified in clause 6.4(a)(ii) for release of the unconditional undertaking referred to in clause 6.1(a)(ii); or

(vi) the date specified in clause 6.4(a)(iii) for release of the unconditional undertaking referred to in clause 6.1(a)(iii),

as applicable, the Principal's entitlement to such unconditional undertaking will, from the date specified in clause 6.4(a)(ii) or 6.4(a)(iii) (as applicable), be reduced to an amount which represents [REDACTED] of the reasonable cost of completing the rectification of the relevant Defects and carrying out the relevant Changes (as determined by the Principal's Representative) (**Outstanding Defect Cost Amount**). The Principal's entitlement to the unconditional undertaking referred to in clause 6.1(a)(ii) or 6.1(a)(iii) (as applicable) will cease 20 Business Days after all the relevant Defects have been corrected and all the relevant Changes have been carried out (as applicable) after which the Principal must release the unconditional undertaking to the SCAW Contractor.

(ba) The Principal must promptly notify the SCAW Contractor of the Date of First Passenger Service.

(c) Where clause 6.4(b) applies:

(i) the SCAW Contractor may by written notice to the Principal elect to exchange the unconditional undertaking referred to in clause 6.1(a)(ii) or clause 6.1(a)(iii) (as applicable) for an unconditional undertaking equal to the Outstanding Defect Cost Amount that satisfies the requirements of clause 6.2 (**Outstanding Defect Undertaking**);

(ii) within 20 Business Days of the SCAW Contractor giving notice under clause 6.4(c)(i), the Principal must surrender the unconditional undertaking referred to in clause 6.1(a)(ii) or clause 6.1(a)(iii) (as applicable) to the SCAW Contractor in exchange for the issue of an Outstanding Defect Undertaking; and

(iii) the Principal must release the relevant Outstanding Defect Undertaking (or the remaining proceeds of such unconditional undertaking if it has been converted into cash) within 20 Business Days after all relevant Defects have been corrected and all relevant Changes have been carried out (as applicable).

- (d) Despite any other provision of this deed to the contrary, where this deed is terminated by the Principal either pursuant to clause 24 or by reason of the SCAW Contractor repudiating this deed otherwise at law, the Principal may continue to hold any unconditional undertakings after the termination of this deed to the extent of any claim which the Principal may have against the SCAW Contractor arising out of, or in any way in connection with, this deed or the SCAW Contractor's Activities whether for damages (including liquidated damages) or otherwise. [REDACTED]

- (e) The SCAW Contractor acknowledges and agrees that, where the Principal is required to 'return', 'release' or 'surrender' any unconditional undertaking held by it under this deed, it may do so, in its absolute discretion, by:

- (i) providing a written notice in the form set out in Schedule E11 to the relevant institution (with a copy to the SCAW Contractor) stating that the unconditional undertaking is no longer required and is thereby released; or
- (ii) returning the original copy of the unconditional undertaking to the SCAW Contractor.

**6.5 Replacement of unconditional undertakings where the issuer ceases to have the Required Rating**

- (a) If the issuer of any unconditional undertaking provided under this deed ceases to have the Required Rating and, at that time, another bank regulated by the Australian Prudential Regulation Authority acceptable to the Principal maintains the Required Rating, then the SCAW Contractor must:

- (i) promptly notify the Principal of that circumstance; and
- (ii) within 20 Business Days of being requested to do so, procure the issue to the Principal of a replacement unconditional undertaking which must have a face value equal to that of the unconditional undertaking being replaced and must satisfy the requirements of clause 6.2,

and the Principal must surrender the original unconditional undertaking to the SCAW Contractor in exchange for the issue of the replacement unconditional undertaking.

- (b) If the issuer of any unconditional undertaking ceases to have the Required Rating and, at that time, no Major Australian Bank has the Required Rating, then:

- (i) if the current issuer of the unconditional undertaking has a rating of less than the second highest rated Major Australian Bank, the SCAW Contractor must procure the issue to the Principal of a replacement unconditional undertaking from an issuer which has a rating equal to or higher than the second highest rated Major Australian Bank which otherwise satisfies the requirements of clause 6.2;
- (ii) the SCAW Contractor must monitor the credit rating of the issuer of the replacement unconditional undertaking and the credit rating of the Major Australian Banks and procure a replacement unconditional undertaking from an issuer which has the Required Rating within 20 Business Days after any Major Australian Bank regains a rating equal to or greater than the Required Rating; and

- (iii) the Principal must surrender the original unconditional undertaking to the SCAW Contractor in exchange for the replacement unconditional undertaking.

**6.5A Replacement of expiring unconditional undertaking**

- (a) If any unconditional undertaking provided under this deed has an expiry date:
  - (i) the SCAW Contractor must, if the Principal has not returned the relevant unconditional undertaking in accordance with this clause 6:
    - (A) give the Principal's Representative at least 30 Business Days' prior written notice of the date on which it intends to provide a replacement unconditional undertaking under clause 6.5A(a)(i)(B); and
    - (B) no later than 20 Business Days prior to the relevant expiry date, provide the Principal with a replacement unconditional undertaking for the same amount as the unconditional undertaking that it is to replace and which satisfies the requirements of clause 6.2; and
  - (ii) promptly following receipt of such replacement unconditional undertaking, the Principal must deliver to the SCAW Contractor the unconditional undertaking that has been replaced.
- (b) If the SCAW Contractor fails to provide the Principal with a replacement unconditional undertaking as required by clause 6.5A(a)(i)(B), the Principal:
  - (i) may call on the full amount of the relevant unconditional undertaking which was required to be replaced without notice to the SCAW Contractor;
  - (ii) must hold the amount of that unconditional undertaking as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the Principal (**Cash Deposit Account**);
  - (iii) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:
    - (A) in accordance with clause 6.3 as if the Cash Deposit were the amount secured by the relevant unconditional undertaking; and
    - (B) to pay all costs, charges, expenses and Taxes payable in connection with that Cash Deposit Account; and
  - (iv) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by the Principal under clause 6.5(b)(iii)) to the SCAW Contractor:
    - (C) following receipt of a replacement unconditional undertaking subsequently provided by the SCAW Contractor (if any) which satisfies the requirements of clause 6.2; or
    - (D) if the SCAW Contractor does not provide a replacement unconditional undertaking, in accordance with clause 6.4 as if the amount in that Cash Deposit Account were the relevant unconditional undertaking.
- (c) The SCAW Contractor must repeat compliance with this clause 6.5A at all times and in respect of each unconditional undertaking provided under clause 6.1(a), 20.7 or 20.13 (and any replacement unconditional undertaking provided under clause 6.4, 6.5 or this clause 6.5A) until such time as each relevant unconditional undertaking is released in accordance with this deed.

6.6 **No injunction**

The SCAW Contractor must not take any steps to injunct or otherwise restrain:

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

6.7 **No interest**

The Principal is not obliged to pay the SCAW Contractor interest on any unconditional undertaking or the proceeds of any unconditional undertaking.

6.8 **No trust**

The Principal does not hold the proceeds of any unconditional undertaking on trust for the SCAW Contractor.

6.9 **Parent Company Guarantees**

On or before the Condition Precedent Deadline Date the SCAW Contractor must:

- (a) provide to the Principal a Parent Company Guarantee duly executed by each SCAW Contractor Guarantor in favour of the Principal; and
- (b) ensure that all stampings, registrations and filings required by Law (or by the law of any foreign jurisdiction) or the Principal's Representative in relation to each Parent Company Guarantee have been completed in a form and substance satisfactory to the Principal.

7. **LAW AND APPROVALS**

7.1 **Compliance with Law**

Subject to clause 7.2(a)(i), the SCAW Contractor must in carrying out the SCAW Contractor's Activities:

- (a) comply with, and ensure that the Project Works and Temporary Works comply with, all applicable Law;
- (b) comply with and provide the Principal's Representative copies of any requirement, notice, order or direction, received from or given by any Authority including any infringement notice, fine or penalty given or made in respect of the SCAW Contractor's Activities;
- (c) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this deed;
- (d) give the Principal's Representative at least 10 Business Days' prior written notice of any date on which the SCAW Contractor will submit an application for an Approval (or for any change to an Approval), which notice must include details of the information the SCAW Contractor will provide to the Authority and the date it will be provided;

- (e) give the Principal's Representative notices, reports and submissions it gives to Authorities in respect of the SCAW Contractor's Activities at the time it submits such notices, reports and submissions together with responses from, and details of any consultations or other communications with, Authorities;
- (f) give the Principal's Representative copies of all documents (including Approvals and other notices) that Authorities issue to it in respect of the SCAW Contractor's Activities as soon as possible;
- (g) give the Principal's Representative copies of any other material communications between the SCAW Contractor (or its Associates) and an Authority promptly following the giving or receiving of such communications;
- (h) subject to clause 7.4(a)(ii)(A), at all times conform and comply with all Codes and Standards; and
- (i) not engage in any fraud, bribery or corruption.

## 7.2 Approvals

- (a) The SCAW Contractor must:
  - (i) obtain all Approvals except for those specified in Schedule D2 which either:
    - (A) were obtained by the Principal prior to the date of this deed; or
    - (B) will be obtained by the Principal after the date of this deed if required;

provided that, without limiting the SCAW Contractor's obligation to obtain Approvals in respect of the use or occupation of the Project Works after Substantial Completion of a Portion, nothing in this clause 7.2(a) will require the SCAW Contractor to obtain any Approvals required by an Interface Contractor to perform the Interface Contractor's works or any activities after Substantial Completion of a Portion;
  - (ii) unless otherwise expressly specified in Schedule D4, comply with, satisfy, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the SCAW Contractor or the Principal) including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Approvals specified in Schedule D4 to comply with, satisfy, carry out and fulfil;
  - (iii) as a condition precedent to Substantial Completion of any Portion, ensure that it has (as applicable to the relevant Portion):
    - (A) obtained all Approvals it is required to obtain under this deed including those which are required for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1;
    - (B) complied with, satisfied, carried out and fulfilled all conditions and requirements of all Approvals it is required to comply with, carry out, satisfy and fulfil under this deed including those which must be satisfied for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Substantial Completion); and
    - (C) without limiting clauses 7.2(a)(iii)(A) and 7.2(a)(iii)(B), complied with, carried out, satisfied and fulfilled all conditions and requirements of the Planning Approvals which it is required to comply with, satisfy,

carry out and fulfil (including the obtaining of the approval of any person for anything) under this deed insofar as this is necessary including for the purposes set out in paragraph (c) of the definition of Approval in clause 1.1 (unless the condition or requirement requires the performance of activities which can only be performed after the Date of Substantial Completion); and

(iv) in respect of any:

- (A) Approvals which are to be obtained by the Principal after the date of this deed; or
- (B) conditions and requirements of Approvals which pursuant to Schedule D4 are to be satisfied or fulfilled by the Principal,

without limiting the requirements of Schedule D4, provide the Principal with such reasonable assistance as may be required by the Principal to enable the Principal to obtain the Approvals or satisfy or fulfil the conditions and requirements.

(b) The Principal must comply with, satisfy, carry out and fulfil the conditions and requirements of those Approvals for which the Principal is stated to have responsibility to the extent specified in Schedule D4.

(c) Without limiting clause 7.8 and Schedules D4 and D8, in respect of any submissions, surveys, investigations, reports, studies or other documents:

- (i) required to be submitted to obtain an Airport Lessee Consent, by a term of the Planning Approvals or ABC Approval; or
- (ii) proposed to be submitted by the SCAW Contractor to obtain an Airport Lessee Consent, in support of any application to amend the Planning Approvals or an ABC Approval,

the SCAW Contractor:

(iii) must prepare, carry out and provide to the Principal any submissions, surveys, investigations, reports, studies or other documents:

- (A) requested by the Principal's Representative;
- (B) to the standard directed by the Principal's Representative; and
- (C) within the time directed by the Principal's Representative;

(iv) must provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative; and

(v) agrees that any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approvals or ABC Approval does not constitute an Act of Prevention.

### 7.3 Change in Law

(a) Where there is a Change in Law, the SCAW Contractor must:

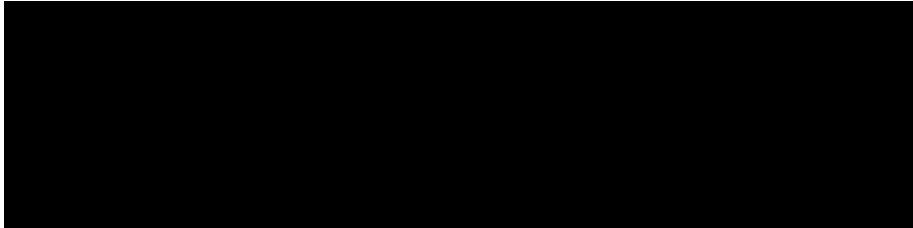
- (i) within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Law:



(A) give a written notice to the Principal and the Principal's Representative:

(aa) containing details of the Change in Law; and

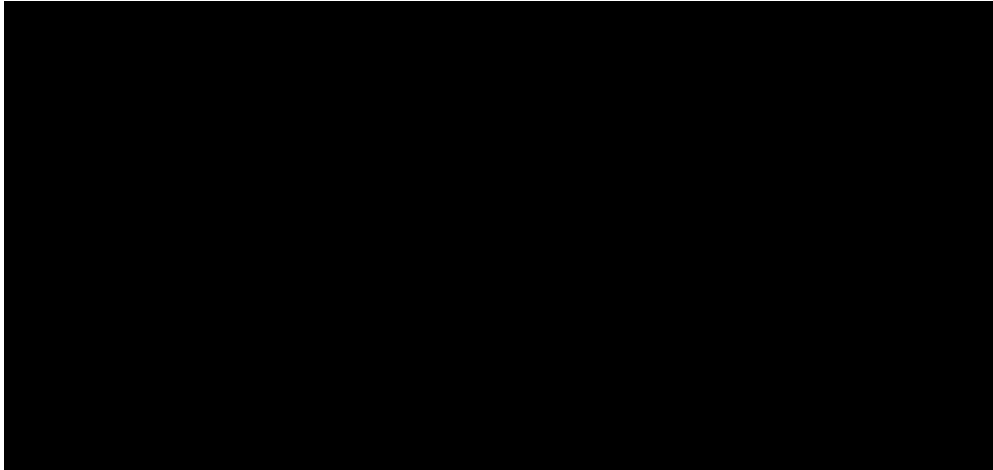
(bb) where it believes that the Change in Law will cause a delay to the SCAW Contractor's Activities that will entitle it to an extension of time pursuant to clause 19.6 (and without limiting its obligation to give any notices required by clause 19.6), such notice must be given within the time, and must contain the details, required by clause 19.6(b); and



(ii) subject to clause 7.3(b), comply with the Change in Law at its cost.

(b) Where there is:

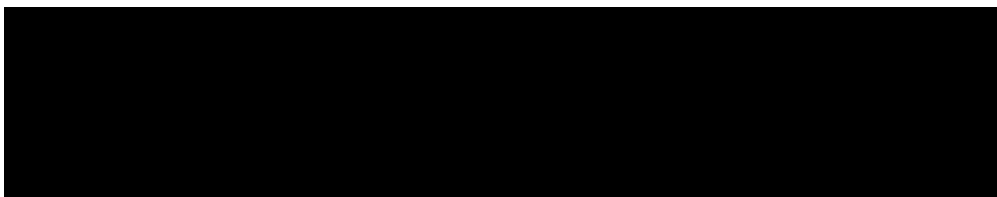
(i) a Change in Law comprising any amendment, repeal or change to any legislation or introduction of new legislation imposing an effective carbon price on liquid and gaseous fuels;



(iii) any other Change in Law which:

(A) results in a change to, an addition to or omission from the Project Works, the Temporary Works or the Transitional Handover Services or a direct change to the SCAW Contractor's work methodology as reflected in the IC Project plans; and

(B) directly results in an increase or decrease in the SCAW Contractor's costs of carrying out the SCAW Contractor's Activities; or



[REDACTED]

and either the Principal or the SCAW Contractor wishes to claim an increase or decrease to the Project Contract Sum on account of the Change in Law:

(v) the party wishing to claim the increase or decrease must:

- (A) if the party is the SCAW Contractor, give a written notice to the Principal's Representative within 15 Business Days of the notice provided under clause 7.3(a)(i); or
- (B) if the party claiming the increase or decrease is the Principal, give a written notice to the SCAW Contractor,

which:

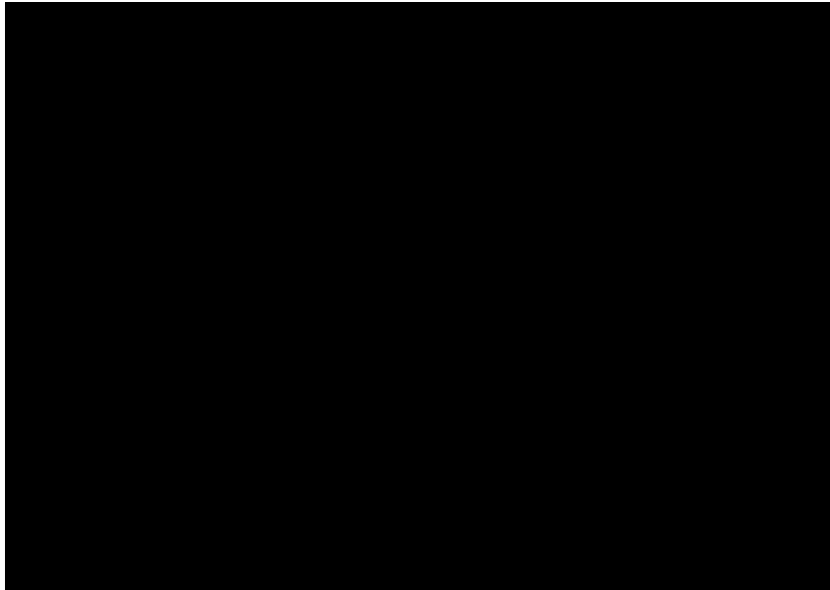
- (C) states that the party is claiming an increase or decrease to the Project Contract Sum on account of a Change in Law;
- (D) contains details of the Change in Law; and
- (E) sets out that party's estimate of the increase or decrease (as the case may be) in the SCAW Contractor's Direct Costs, Overheads and Delay Costs that are directly attributable to it complying with the Change in Law, including sufficient information to support the estimate. [REDACTED]

(c) The SCAW Contractor must provide the Principal with copies of and access to all pricing, costing and other financial information which in any way relates to a claim under clause 7.3(b) on an Open Book Basis.

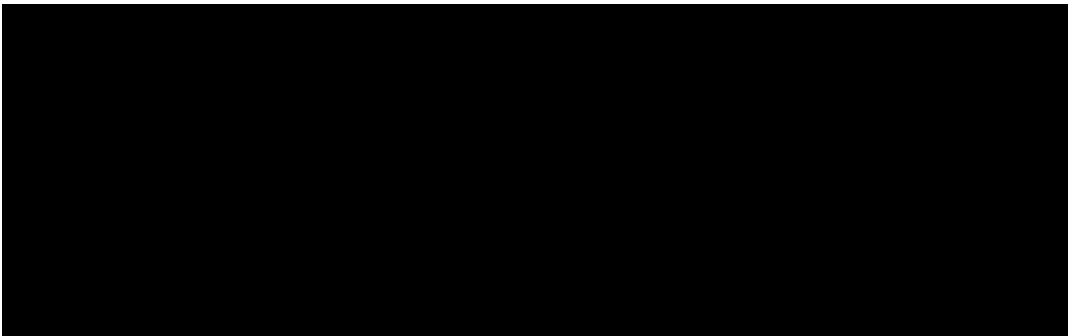
(d) If a party serves a notice under clause 7.3(b)(v):

- (i) the Principal and the SCAW Contractor must meet within 20 Business Days of a notice being given under clause 7.3(b)(v) and will negotiate and endeavour to agree to any increase or decrease to the Project Contract Sum (as the case may be) on account of the increase or decrease in the SCAW Contractor's Direct Costs plus the Overheads and Profit Margin that are directly attributable to the SCAW Contractor complying with the Change in Law;
- (ii) where agreement is reached under clause 7.3(d)(i), the relevant component or components of the Project Contract Sum will be so increased or decreased (as appropriate); and
- (iii) if the Principal and the SCAW Contractor cannot reach agreement under clause 7.3(d)(i) within 20 Business Days (or such other period as may be approved by the Principal or Principal's Representative) of a notice being given under clause 7.3(b)(v):
  - (A) the Project Contract Sum will be increased or decreased (as appropriate) by a reasonable amount:

- (aa) in the case of a Change of Law under clause 7.3(b)(i) or 7.3(b)(iii), on account of the increase or decrease in the SCAW Contractor's Direct Costs and Overheads and Profit Margin that are directly attributable to the SCAW Contractor complying with the Change in Law; or



as stated by the Principal's Representative.



- (f) The SCAW Contractor must comply with all Changes in Law.

**7.4 Change in Codes and Standards**

- (a) Subject to clause 8.5(d), where there is a Change in Codes and Standards:
  - (i) the SCAW Contractor must give a written notice to the Principal's Representative within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Change in Codes and Standards containing:
    - (A) details of the Change in Codes and Standards; and
    - (B) an estimate of the increase or decrease (as the case may be) in the SCAW Contractor's Direct Costs, Overheads and Delay Costs that are directly attributable to it complying with that Change in Codes and Standards, including sufficient information to support the estimate; and

- (ii) if a notice is given by the SCAW Contractor which complies with clause 7.4(a), then within 10 Business Days of the notice being given, the Principal's Representative will either:
  - (A) to the extent compliance with the relevant Codes and Standards is not required by Law or to obtain a relevant Approval required under this deed, direct the SCAW Contractor to disregard the Change in Codes and Standards; or
  - (B) direct a Change under clause 15.3(a) in respect of the Change in Codes and Standards after which, subject to clause 7.4(c), the relevant adjustments will be made under clause 15.5.
- (b) If the Principal's Representative gives a notice under clause 7.4(a)(ii)(A), the SCAW Contractor will not be regarded as being in breach of this deed to the extent that it disregarded the relevant Change in Codes and Standards.
- (c) Subject to clauses 7.4(d) and 14.3(c), if the Principal gives a notice under clause 7.4(a)(ii)(B), the SCAW Contractor will not be entitled to any increase in the Project Contract Sum:
  - (i) except to the extent that the relevant Design Documentation which would need to be amended for the relevant Change in Codes and Standards, before such notice under clause 7.4(a)(ii)(B), complied, or would have complied, with the requirements of this deed at such time; or
  - (ii) to the extent that, notwithstanding the Change in Codes and Standards, the SCAW Contractor would have had to make a change to the Project Works or the Temporary Works or a change to the methods of construction used in carrying out the Project Works or the Temporary Works, in order that the Project Works and the Temporary Works comply with the relevant requirements of the deed at such time.
- (d) Clause 7.4(c)(i) will not disentitle the SCAW Contractor to an increase in the Project Contract Sum where the relevant non-compliance in the Design Documentation is a Minor Non-Compliance that is capable of correction without the need for any significant redesign of the relevant part of the Project Works or the Temporary Works.

## 7.5 Changes to Planning Approvals

- (a) Where a change in the Project Planning Approval, Airport Plan Variation or the EPBC Act Approval occurs after the date of this deed (other than a change arising from or in connection with a breach of this deed by the SCAW Contractor or a wrongful act or omission of the SCAW Contractor or its Associates or a change made in response to a request by the SCAW Contractor) which necessitates:
  - (i) a Change to the Project Works or the Temporary Works;
  - (ii) a reduction in the working hours, working days, or noise or vibration limits permitted by the Project Planning Approval, Airport Plan Variation or the EPBC Act Approval (as applicable) for the SCAW Contractor's Activities as at the date of this deed; or
  - (iii) a change in the permitted Working Parameters for the SCAW Contractor's Activities,

the SCAW Contractor must, within 20 Business Days of earlier of the date on which the SCAW Contractor becomes aware or ought reasonably to have first become

aware of the change taking effect, notify the Principal's Representative in writing with detailed particulars of the reason why the change in the Project Planning Approval, Airport Plan Variation or the EPBC Act Approval (as applicable) necessitates one or more of the circumstances in subclauses (i), (ii) or (iii) above.

- (b) If the SCAW Contractor gives a notice under clause 7.5(a) and the change necessitates a Change to the Project Works or the Temporary Works or a reduction in the permissible working hours, working days or noise or vibration limits for the SCAW Contractor's Activities or a change in the permitted Working Parameters for the SCAW Contractor's Activities:
  - (i) in the case where the change necessitates a Change to the Project Works or the Temporary Works, the Principal's Representative will direct a Change under clause 15.3(a) after which relevant adjustments will be made under clause 15.5; and
  - (ii) in the case where the change necessitates a reduction in the permissible working hours, working days, or noise or vibration limits for the SCAW Contractor's Activities or a change in the permitted Working Parameters for the SCAW Contractor's Activities, the SCAW Contractor will be entitled to an increase in the Project Contract Sum for the amount of the additional Direct Costs incurred by the SCAW Contractor plus Overheads and Profit Margin arising out of the reduction in the permissible working hours, working days or noise or vibration limits for the SCAW Contractor's Activities or a change in the permitted Working Parameters for the SCAW Contractor's Activities.
- (c) Except to the extent expressly stated otherwise in this clause 7.5, the SCAW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a change in the Planning Approvals.
- (d) The SCAW Contractor:
  - (i) acknowledges that:
    - (A) only the Principal can apply for modification to the Planning Approvals;
    - (B) the Principal may, in its absolute discretion, refuse to seek such modification or discontinue or withdraw or change an application for such modification at any time; and
    - (C) the Principal need not apply for any modification to the Planning Approvals on behalf of the SCAW Contractor unless the SCAW Contractor first submits its proposal for modification to the Principal's Representative for its review and the Principal's Representative consents to the modification, which consent it may give or withhold in its absolute discretion;
  - (ii) must not seek to modify or apply for any modification to the Planning Approvals other than via the Principal; and
  - (iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, a modification under clause 7.5(d)(i)(C).
- (e) For the purpose of this clause 7.5, the parties agree that any changes to the Planning Approvals in Schedule D2 made pursuant to this clause 7.5 will be determined by reference to the version of the Planning Approvals included in Schedule D3 at the date of this deed.

## 7.6 **Legal challenge**

If there is a legal challenge in relation to the assessment or determination of, or otherwise in relation to, Sydney Metro - Western Sydney Airport under the:

- (a) EP&A Act;
- (b) *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
- (c) any other Law,

the SCAW Contractor must continue to perform its obligations under this deed unless, as a result of that legal challenge, it is otherwise:

- (d) ordered by a court or tribunal; or
- (e) directed by the Principal's Representative.

## 7.7 **Environment Protection Licence**

The SCAW Contractor must:

- (a) obtain an Environment Protection Licence in respect of the SCAW Contractor's Activities to cover each Portion from the date on which the SCAW Contractor is given access to that part of the Construction Site to which the Portion relates (or any part thereof) pursuant to clauses 12.1 and 12.2;
- (b) hold an Environment Protection Licence in respect of the SCAW Contractor's Activities to cover each Portion until the Portion Handover Date for that Portion; and
- (c) ensure that:
  - (i) from each Portion Handover Date, the SCAW Contractor's Environment Protection Licence is varied so as to exclude that part of the Construction Site to which the Portion relates; or
  - (ii) the SCAW Contractor's Environment Protection Licence is surrendered on and from the Portion Handover Date for the last Portion to be handed over by the SCAW Contractor,

so as to allow any applicable Interface Contractor to obtain an Environment Protection Licence for the relevant part of the Construction Site.

This clause 7.7 does not apply to a Portion to the extent that Portion comprises land owned by the Commonwealth.

## 7.8 **Crown Building Work**

- (a) The SCAW Contractor must, in relation to any part of the Project Works or Temporary Works that is Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the EP&A Act.
- (b) Any certification under clause 7.8(a) will not lessen or otherwise affect:
  - (i) the SCAW Contractor's other liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law.

## 7.9 Long service levy

Before commencing any construction work under this deed, the SCAW Contractor must:

- (a) pay (or procure payment) to the Long Service Corporation or that body's agent all amounts due and payable for the long service levy in respect of the SCAW Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 7.9(a).

## 7.10 Planning Approval Representatives

- (a) The SCAW Contractor acknowledges that:
    - (i) the Principal will engage the Planning Approval Representatives as required by Schedule D4 (*Approval Conditions*); and
    - (ii) the Planning Approval Representatives:
      - (A) are independent of the parties;
      - (B) are required to discharge certain functions as identified in the Planning Approvals; and
      - (C) are required to advise the Principal and the Principal's Representative on the SCAW Contractor's compliance with the Planning Approvals.
  - (aa) Without limiting clause 7.10(a), the SCAW Contractor acknowledges and agrees that the Environmental Representative is required to oversee the implementation of all environmental management plans and monitoring programs required under the Project Planning Approval and will advise the Principal upon achievement of the outcomes contemplated in the Project Planning Approval.
  - (b) The SCAW Contractor must, and must ensure that its Associates engaged in or in connection with the SCAW Contractor's Activities must, co-operate with the Planning Approval Representatives and:
    - (i) provide the Planning Approval Representatives with all information and documents (including licences and approvals relating to environmental performance and environmental impacts);
    - (ii) allow the Planning Approval Representatives:
      - (A) to attend meetings;
      - (B) access to such premises; and
    - (iii) allow the Environmental Representative to insert Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points,
- all as may be:
- (iv) necessary or reasonably required by the Planning Approval Representatives or the Principal's Representative to allow each Planning Approval Representative to perform its functions in connection with this deed or the Planning Approvals; or

- (v) lawfully requested by the Planning Approval Representative or directed by the Principal's Representative.
- (c) The SCAW Contractor must, and must ensure that its Associates engaged in or in connection with the SCAW Contractor's Activities must:
  - (i) comply with the lawful requirements of the Planning Approval Representatives, including so as to allow the Planning Approval Representatives to discharge any functions of the Planning Approval Representatives provided for in the Planning Approvals; and
  - (ii) not interfere with or improperly influence any Planning Approval Representative in the performance of any of its functions in connection with this deed.
- (d) Nothing that a Planning Approval Representative does or fails to do pursuant to the purported exercise of its functions in connection with this deed or the Planning Approvals will entitle the SCAW Contractor to make any Claim against the Principal.

**7.11 Not used**

**7.12 Native Title Claims**

- (a) If, as a result of a Native Title Claim, the SCAW Contractor is required to change the method, sequencing or timing of construction of the Project Works, Temporary Works, or Handover Works from that in the Planning Approval to overcome or mitigate the impact of the Native Title Claim, the SCAW Contractor must give a written notice to the Principal's Representative within the earlier of 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the Native Title Claim containing:
  - (i) details of the Native Title Claim and the change to the method, sequencing or timing of construction from that in the Planning Approval required to mitigate the impact of the Native Title Claim; and
  - (ii) an estimate of the SCAW Contractor's increased or decreased Direct Costs plus Overheads and Profit Margin of carrying out the SCAW Contractor's Activities that result directly from mitigating the impact of the Native Title Claim, including sufficient information to support the estimate.
- (b) If a notice is given by the SCAW Contractor which complies with clause 7.12(a), then within 10 Business Days after the notice being given, the Principal's Representative will direct a Change under clause 15.3(a) in respect of the change to the method, sequencing or timing of construction of the Project Works or Temporary Works from that in the Planning Approval after which the relevant adjustments will be made under clause 15.5.

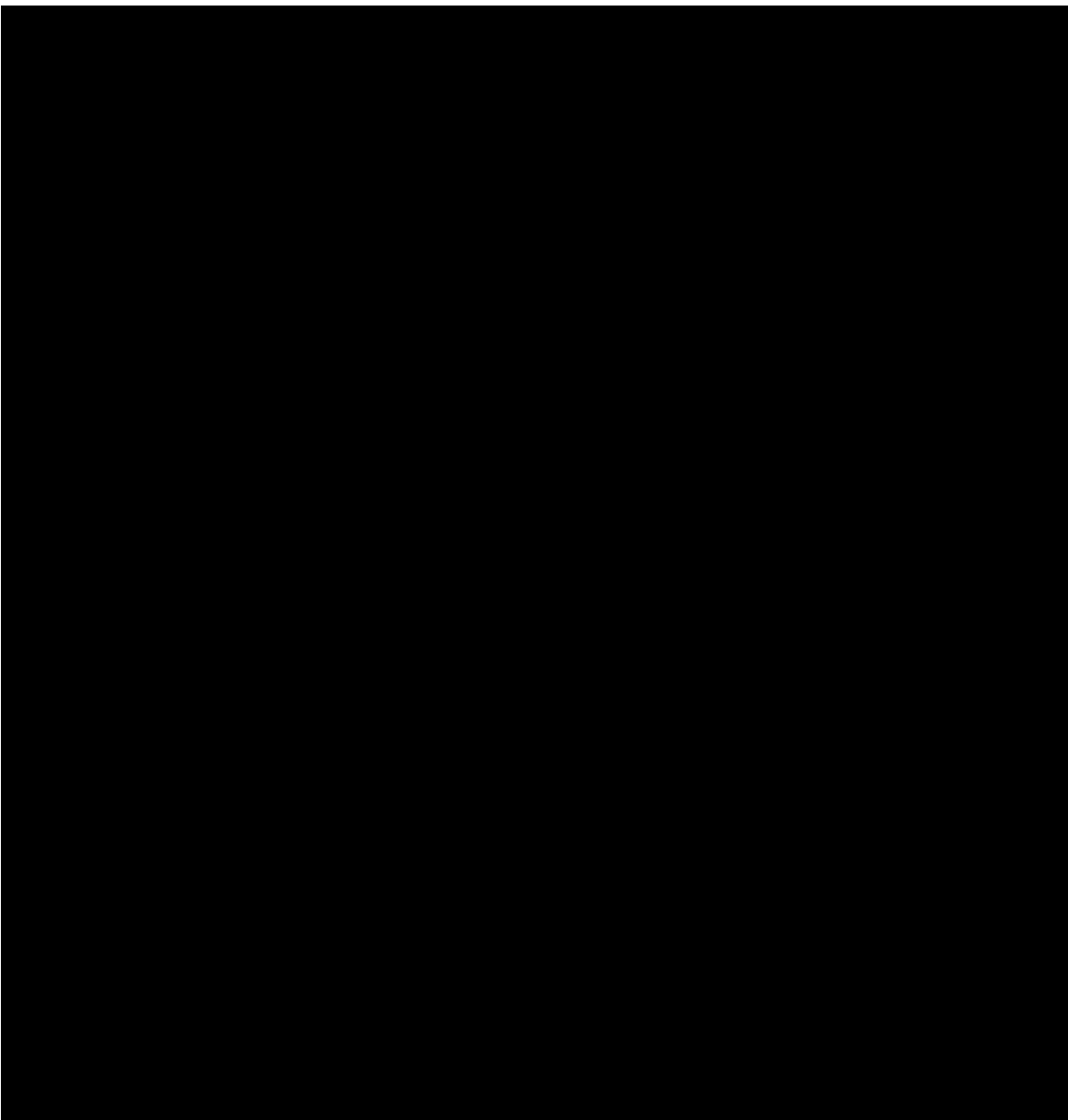
**7.13 On-Airport Construction (Rail) Plan and Construction Environmental Management Plans**

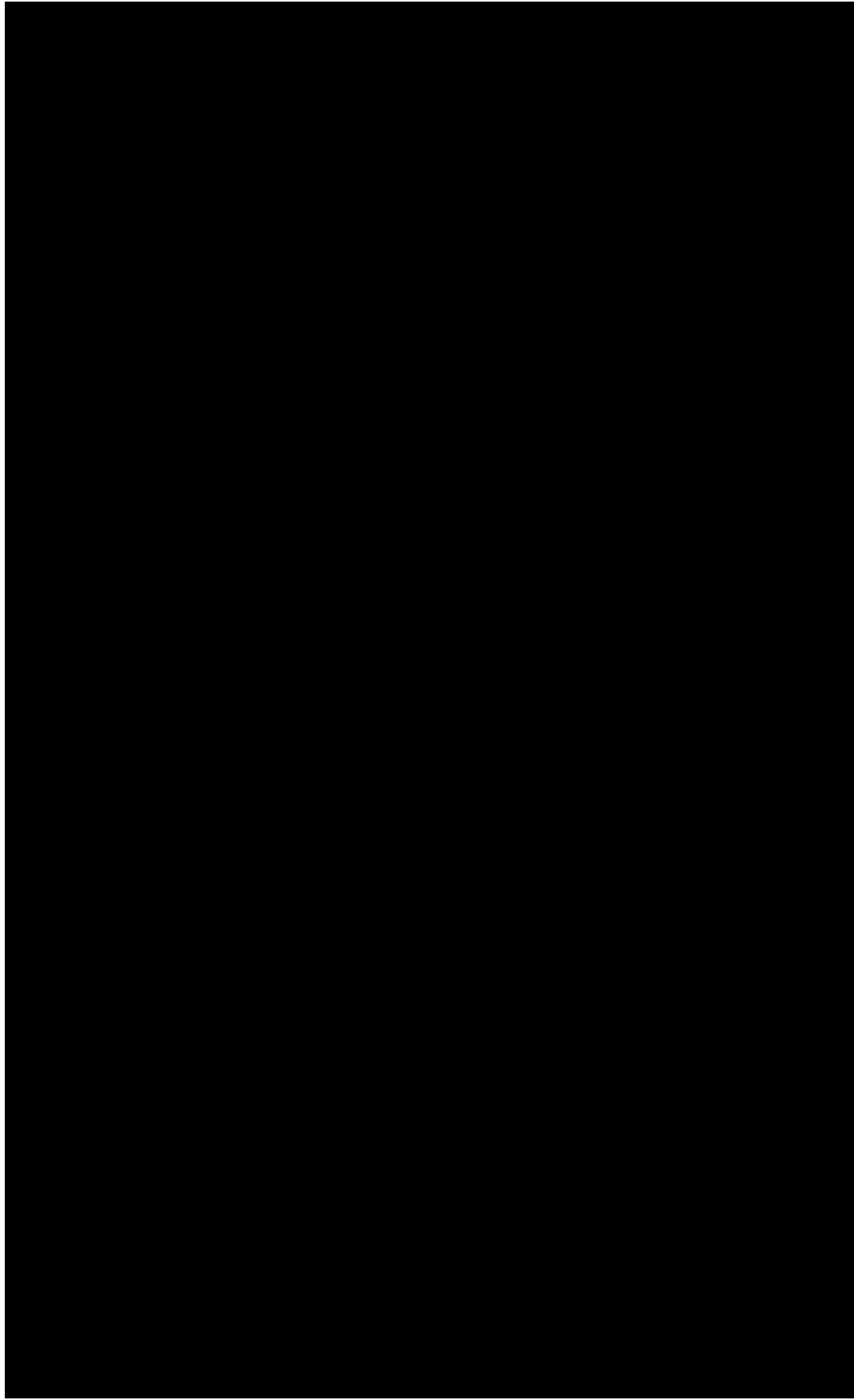
- (a) The SCAW Contractor warrants that it has reviewed and carefully considered the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans provided by the Principal prior to the date of this deed and that they are proper, fit and adequate for the purpose of enabling the SCAW Contractor to carry out the SCAW Contractor's Activities in accordance with this deed.
- (b) Except to the extent otherwise expressly specified in Schedule D4 (Approval Conditions), the SCAW Contractor must, in performing the SCAW Contractor's Activities, comply with, carry out and fulfil, and ensure that its Associates comply

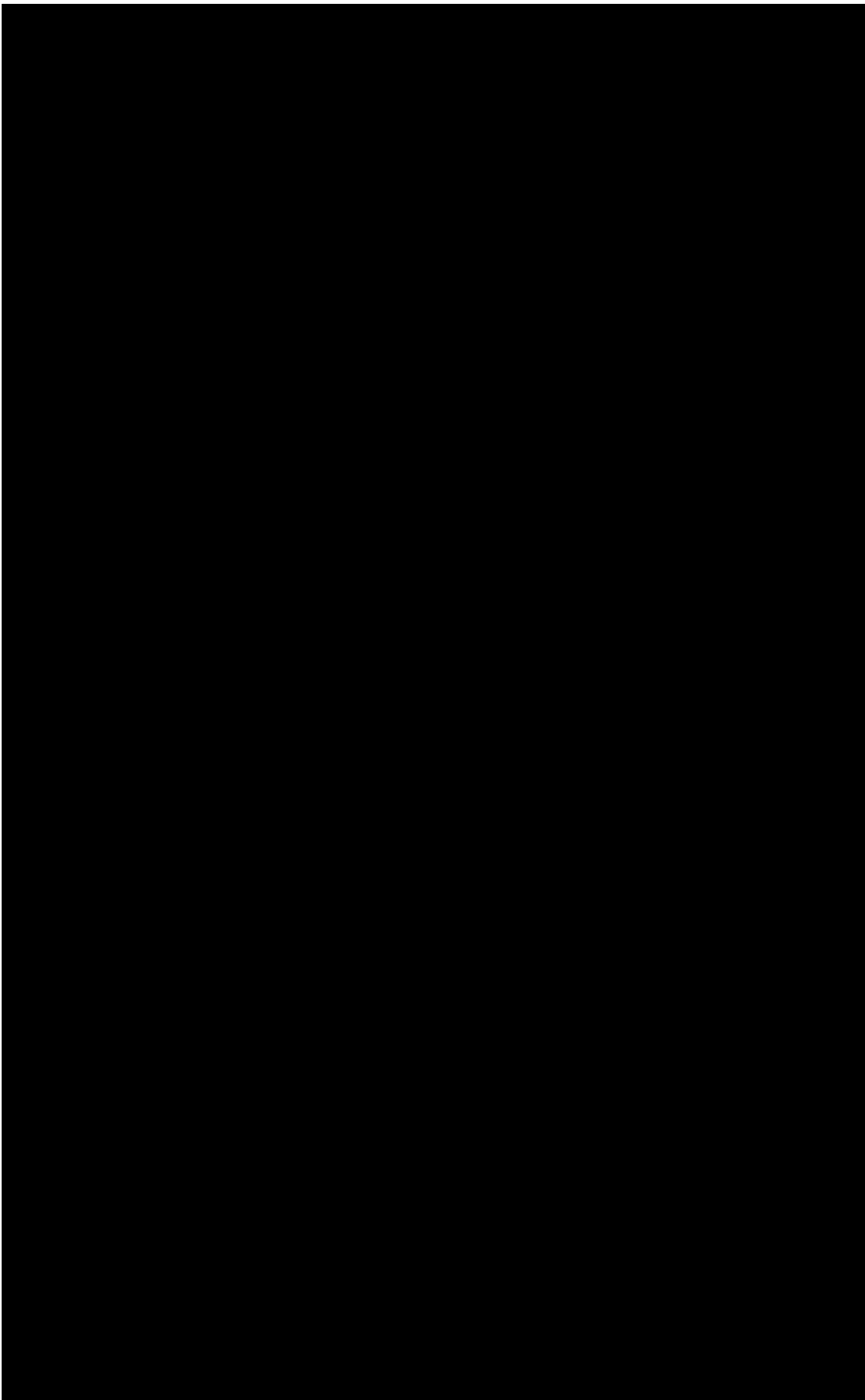


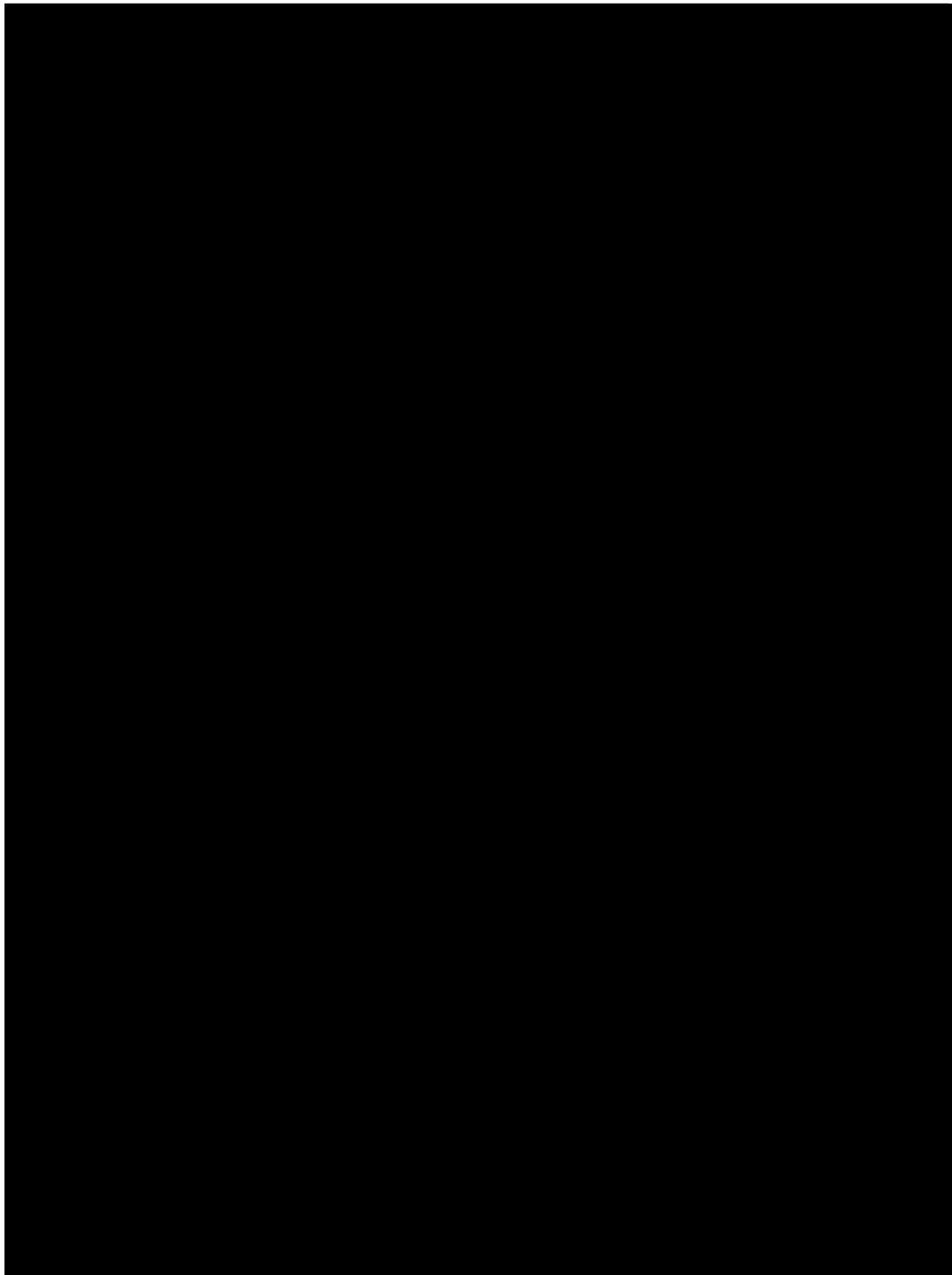
with, carry out and fulfil, the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans.

- (c) Subject to clause 7.5, the Principal will not be liable upon any Claim by the SCAW Contractor arising out of or in any way in connection with the On-Airport Construction (Rail) Plan and Construction Environmental Management Plans.









8. **WORK HEALTH AND SAFETY**

8.1 **Care of people, property and Environment**

- (a) The SCAW Contractor must carry out the SCAW Contractor's Activities in a manner that:
  - (i) does not put the health or safety of persons at risk and prevents injury or death;
  - (ii) protects and prevents damage to property and the Environment; and

- (iii) protects and prevents damage to:
  - (A) the Project Works, the Temporary Works and the SCAW Contractor's Activities; and
  - (B) any Interface Work on or in the vicinity of the Construction Site.
- (b) If the Principal's Representative considers there is a risk to the health or safety of people or damage to property arising from the SCAW Contractor's Activities:
  - (i) the Principal's Representative may direct the SCAW Contractor to change its manner of working or to cease working; and
  - (ii) the SCAW Contractor must, at its cost, comply with any direction by the Principal's Representative under clause 8.1(b)(i).

## 8.2 Work health and safety

- (a) The SCAW Contractor must:
  - (i) ensure that in carrying out the SCAW Contractor's Activities under this deed:
    - (A) it complies with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice, Australian standards and other requirements of this deed for work health, safety and rehabilitation management;
    - (B) all Subcontractors, contractors or consultants engaged by the SCAW Contractor, comply with their respective obligations under all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and the Heavy Vehicle National Law), WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and
    - (C) it complies with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
  - (ii) have a Corporate WHS Management System which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines;
  - (iii) notify the Principal's Representative in accordance with the Sydney Metro Principal Contractor Health and Safety Standard of all work health and safety Incidents and notify the Principal's Representative within 12 hours of any other work health and safety matter arising out of, or in any way in connection with, the SCAW Contractor's Activities;
  - (iv) following commencement of construction on the Construction Site and at the end of March, June, September and December of each year, provide the Principal's Representative with written assurances from:
    - (A) the SCAW Contractor about the SCAW Contractor's ongoing compliance; and
    - (B) all Subcontractors [REDACTED] about each Subcontractor's ongoing compliance,

with all applicable Laws, Codes and Standards and Australian Standards and other requirements of this deed for work health and safety and rehabilitation management;

- (v) provide the Principal's Representative with written reports on any work health and safety and rehabilitation matters connected with the SCAW Contractor's Activities as the Principal's Representative may require from time to time;
  - (vi) consult, cooperate and coordinate its activities with all Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
  - (vii) carry out the SCAW Contractor's duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws; and
  - (viii) at the Principal's request, attend, and ensure all relevant Subcontractors, contractors or consultants (as requested by the Principal) attend, each work health and safety related meeting convened by the Principal.
- (b) The SCAW Contractor must provide strong safety leadership and continuously promote safety as a core value.
  - (c) The SCAW Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard.
  - (d) The SCAW Contractor:
    - (i) warrants that it is accredited under the WHS Accreditation Scheme; and
    - (ii) must comply with all requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 6 of the BCIIIP Act) is carried out.

### 8.3 Principal contractor

- (a) In this clause 8.3, the terms "principal contractor", "workplace", "construction project" and "construction work" have the meaning given to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed, subject to clause 8.3(c)(ii):
  - (i) the construction work involved in the SCAW Contractor's Activities; and
  - (ii) any construction work carried out on the Construction Site by an Interface Contractor, the Principal or any other person which is performed during any period in which the Appointed Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),are taken to be part of the same "construction project".
- (b) Subject to clause 12.1(g), the parties acknowledge and agree that from the date on which the SCAW Contractor is given access to a part of the Construction Site in accordance with this deed:
  - (i) to the extent that the SCAW Contractor's Activities or any Construction Site Interface Work includes construction work, the Principal:

- (A) engages the Appointed Principal Contractor as the principal contractor in respect of the SCAW Contractor's Activities and the Construction Site Interface Work;
  - (B) authorises the Appointed Principal Contractor to have management and control of each workplace at which the SCAW Contractor's Activities and the Construction Site Interface Work are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
  - (C) must give the Appointed Principal Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and
  - (D) must provide the Appointed Principal Contractor and the SCAW Contractor with executed deed polls in favour of the Appointed Principal Contractor in the form set out in Schedule 4 to the Master Interface Deed from each Interface Contractor engaged by the Principal undertaking Construction Site Interface Work; and
- (ii) the Appointed Principal Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation and this deed.
- (c) The Appointed Principal Contractor's engagement and authorisation as a principal contractor will continue:
    - (i) subject to clause 8.3(c)(ii), until the earlier of:
      - (A) the termination of this deed;
      - (B) in respect of each Portion, the Portion Handover Date;
      - (C) in respect of a Temporary Area for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule, the date on which the SCAW Contractor vacates that Temporary Area; and
      - (D) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed; and
    - (ii) during the period that any rectification work which is construction work carried out under clause 17.1 unless an Interface Contractor has possession of the relevant part of the Construction Site at the time the rectification work is carried out, in which case:
      - (A) the SCAW Contractor's engagement and authorisation as principal contractor under clause 8.3(b) will end immediately before any such construction work commences;
      - (B) the relevant Interface Contractor or its nominated entity will be the principal contractor for any construction project that the construction work comprises; and
      - (C) clause 17.3(a)(i)(G) and the relevant provisions of the Master Interface Deed will apply to such a construction project.
  - (d) If requested by the Principal or required by the WHS Legislation, the SCAW Contractor must produce evidence of any approvals, certificates, authorisations,

licences, prescribed qualifications or experience or any other information relevant to work health and safety (as the case may be) to the reasonable satisfaction of the Principal before the SCAW Contractor or a Subcontractor (as the case may be) commences such work.

- (e) If the engagement of the Appointed Principal Contractor as principal contractor under this clause 8.3 is not effective for any reason, the SCAW Contractor agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged and authorised as principal contractor under clause 8.3(b).
- (f) To the extent not prohibited by Law, the SCAW Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure of:
  - (i) the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation; or
  - (ii) the SCAW Contractor to otherwise comply with all Laws (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law), WHS Codes of Practice, Australian standards and other requirements of this deed for work health, safety and rehabilitation management or clauses 8.1, 8.2 and 8.3.

#### 8.4 **Project Health & Safety Risk Governance Plan**

- (a) The SCAW Contractor acknowledges that preparation of the Project Health & Safety Risk Governance Plan in accordance with clause 11 is a condition precedent to the Principal's obligations under clause 12.1 and 12.2.
- (b) Without limiting any requirement of the WHS Legislation or this deed, the Project Health & Safety Risk Governance Plan must:
  - (i) set out in adequate detail the policies and procedures the SCAW Contractor will implement to manage the SCAW Contractor's Activities from a work health and safety perspective;
  - (ii) describe how the SCAW Contractor proposes to ensure that the SCAW Contractor's Activities are performed consistently with:
    - (A) all Laws concerning work health and safety (including the WHS Legislation, Rail Safety National Law, Rail Safety Regulations and Heavy Vehicle National Law); and
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;
  - (iii) address the matters specified in:
    - (A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety; and
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management;
  - (iv) comply with the requirements applicable to a "Safety Management Plan" set out in the Sydney Metro Principal Contractor Health and Safety Standard; and



- (v) comply with the requirements applicable to a "Project Safety Plan" or "Project WHS Management Plan" set out in the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and the WHS Management Systems and Auditing Guidelines.
- (c) Without limiting clause 11, the SCAW Contractor must:
  - (i) continue to correct any defects in or omissions from the Project Health & Safety Risk Governance Plan (whether identified by the Principal's Representative or the SCAW Contractor); and
  - (ii) regularly review and, as necessary, revise the Project Health & Safety Risk Governance Plan in accordance with:
    - (A) the WHS Legislation, Rail Safety National Law, Rail Safety Regulations, Heavy Vehicle National Law and any other Law concerning work health and safety;
    - (B) the WHS Codes of Practice and Australian standards for work health, safety and rehabilitation management; and
    - (C) the Sydney Metro Principal Contractor Health and Safety Standard,
 and submit an amended draft of its Project Health & Safety Risk Governance Plan to the Principal's Representative and the Independent Certifier, after which clause 11 will reapply (to the extent applicable).
- (d) The SCAW Contractor must document and maintain detailed records of inspections or audits undertaken as part of the Project Health & Safety Risk Governance Plan.
- (e) The SCAW Contractor must carry out the SCAW Contractor's Activities in accordance with, and otherwise implement, the latest Project Health & Safety Risk Governance Plan.

#### 8.5 **Sydney Metro Principal Contractor Health and Safety Standard**

- (a) The SCAW Contractor must comply with the Sydney Metro Principal Contractor Health and Safety Standard, as amended from time to time, as if it was a principal contractor for the purposes of that standard.
- (b) The Principal may update and amend the Sydney Metro Principal Contractor Health and Safety Standard from time to time, including to address work health and safety issues relating to the SCAW Contractor's Activities and Sydney Metro - Western Sydney Airport.
- (c) Subject to clause 8.5(d), the Principal will have no Liability to the SCAW Contractor and the SCAW Contractor will not be entitled to make any Claim, arising out of or in any way in connection with any act or omission of the Principal in relation to the Sydney Metro Principal Contractor Health and Safety Standard (including any failure of the Principal to do anything specified in the Sydney Metro Principal Contractor Health and Safety Standard as the obligation of the Principal or an Associate of the Principal).
- (d) If the Principal updates the Sydney Metro Principal Contractor Health and Safety Standard this will be treated as a Change in Codes and Standards to which clause 7.4 applies, except to the extent that such update is made by the Principal because of a:

- (i) change to the WHS Legislation or any other Law or any code of practice or Australian Standard relating to work health or safety that the SCAW Contractor is required to comply with pursuant to any Law [REDACTED] or [REDACTED]
- (ii) breach of this deed by the SCAW Contractor or a wrongful act or omission of the SCAW Contractor or its Associates.

**8.6 Rail safety**

- (a) Without limiting clause 7.1, the SCAW Contractor must comply with the Rail Safety National Law and Rail Safety Regulations.
- (b) The SCAW Contractor must ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the Rail Safety National Law or the Rail Safety Regulations.
- (c) The SCAW Contractor acknowledges that:
  - (i) the SCAW Contractor's Activities and the Project Works are being undertaken for the purpose of constructing a railway; and
  - (ii) to the extent that the SCAW Contractor's Activities comprise Railway Operations, for the purposes of the Rail Safety National Law it carries out those SCAW Contractor's Activities for and on behalf of the Principal under the Principal's Accreditation.
- (d) The SCAW Contractor must:
  - (i) carry out the SCAW Contractor's Activities so as not to put the Principal in breach of its obligations as a Rail Infrastructure Manager under the Rail Safety National Law and Rail Safety Regulations;
  - (ii) comply with all reasonable requirements of the Principal in relation to compliance with the Principal's Accreditation; and
  - (iii) not do anything (or fail to do anything) which jeopardises the Principal's Accreditation.
- (e) The SCAW Contractor must ensure that its Associates engaged in or in connection with the SCAW Contractor's Activities comply with the same obligations as are imposed upon the SCAW Contractor under clauses 8.6(a) to 8.6(d) as if they had been imposed upon the Associate.
- (f) The SCAW Contractor acknowledges that:
  - (i) the Principal holds accreditation under the Rail Safety National Law as a Rail Infrastructure Manager; and
  - (ii) to the extent that, in carrying out the SCAW Contractor's Activities, the SCAW Contractor carries out any Railway Operations for which accreditation is required under the Rail Safety National Law and which are not permitted by the Principal's Accreditation, the SCAW Contractor must obtain any necessary accreditation or other Approval required to enable it to comply with all applicable Law.
- (g) The SCAW Contractor acknowledges that OpCo will be reliant upon information and documentation received from the SCAW Contractor to obtain or extend its accreditation under the Rail Safety National Law.

- (h) The SCAW Contractor must liaise and cooperate with the Principal, OpCo and any other Rail Transport Operator and provide any reasonable assistance and documentation the Principal, OpCo or any other Rail Transport Operator may require in relation to safety matters, including in relation to OpCo obtaining or extending its accreditation under the Rail Safety National Law.
- (i) Without limiting clause 8.6(h), the SCAW Contractor must provide the Principal with copies of all notices, reports and other correspondence given or received by the SCAW Contractor or its Associates under or in connection with the Rail Safety National Law and the Rail Safety Regulations:
  - (i) relating to the SCAW Contractor's Activities or the Project Works; or
  - (ii) which may adversely affect the ability of the SCAW Contractor or its Associates to perform the SCAW Contractor's Activities,

promptly after such notices are given or received (but in any event no later than 5 Business Days after they are given or received by the SCAW Contractor or its Associates).
- (j) Without limiting clause 7.1, the SCAW Contractor must ensure that all persons engaged by the SCAW Contractor (or by any Associate of the SCAW Contractor) in or in connection with the SCAW Contractor's Activities:
  - (i) are competent to carry out the work for which they are engaged for the purposes of section 52 of the Rail Safety National Law; and
  - (ii) comply with their obligations under the Rail Safety National Law (including under section 56 of the Rail Safety National Law).
- (k) The SCAW Contractor must and must ensure that its Associates:
  - (i) promptly give all Investigative Authorities such access to premises and information as any Investigative Authority lawfully requests, within the time requested;
  - (ii) cooperate with and respond to any lawful requests made by any Investigative Authority, within the time requested; and
  - (iii) not hinder or delay any Investigative Authority in carrying out its duties.
- (l) Compliance by the SCAW Contractor with its obligations under this clause 8.6:
  - (i) does not discharge or excuse the SCAW Contractor from complying with its other obligations under this deed; and
  - (ii) is not evidence of compliance by the SCAW Contractor with its other obligations under this deed.

9. **ENGINEERING AUTHORISATION AND ASA COMPLIANCE**

- (a) The SCAW Contractor represents and warrants that the SCAW Contractor (or an entity that comprises the SCAW Contractor) is an AEO and has obtained ASA Authorisation to carry out the Asset Lifecycle Services.
- (b) Without limiting or otherwise restricting clauses 9(c) and 9(d), the SCAW Contractor must:

- (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the SCAW Contractor's Activities are carried out; and
  - (ii) comply (and must ensure that its Subcontractors and all personnel for which the SCAW Contractor is responsible comply) with the conditions of the ASA Authorisation held by the SCAW Contractor (or the relevant entity that comprises the SCAW Contractor).
- (c) The SCAW Contractor must (and must ensure that its Subcontractors and all personnel for which the SCAW Contractor is responsible):
- (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
  - (ii) immediately notify the Principal's Representative in writing of any non-compliance with this clause 9;
  - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
  - (iv) provide access to premises and resources as required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
  - (v) comply with the directions, instructions and requirements issued by the ASA;
  - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;
  - (vii) provide the ASA with any information relating to its activities or any documents or other things required by the ASA in the exercise of its functions; and
  - (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The SCAW Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the performance of any of its obligations under this clause 9.

## 10. PORTIONS

### 10.1 Principal's Representative may direct Portions

- (a) In addition to the Portions identified in Schedule A2, the Principal's Representative may at any time by written notice to the SCAW Contractor direct additional Portions by way of a Change Order under clause 15.3(a).
- (b) Any Change Order given by the Principal's Representative pursuant to clause 10.1(a) must, for each Portion, include details of:
  - (i) the Project Works and Temporary Works;
  - (ii) the Date for Substantial Completion; and
  - (iii) respective amounts of liquidated damages,

all as determined by the Principal's Representative (acting reasonably), provided that the sum of the daily rates of liquidated damages applicable to each Portion created pursuant to clause 10.1(a) is equal to the daily rate of liquidated damages that:

- (iv) previously applied to the Portion; or
- (v) in aggregate previously applied to the Portions,  
affected by the Principal's Representative direction under clause 10.1(a).

## 10.2 Interpretation of Portions

The interpretations of:

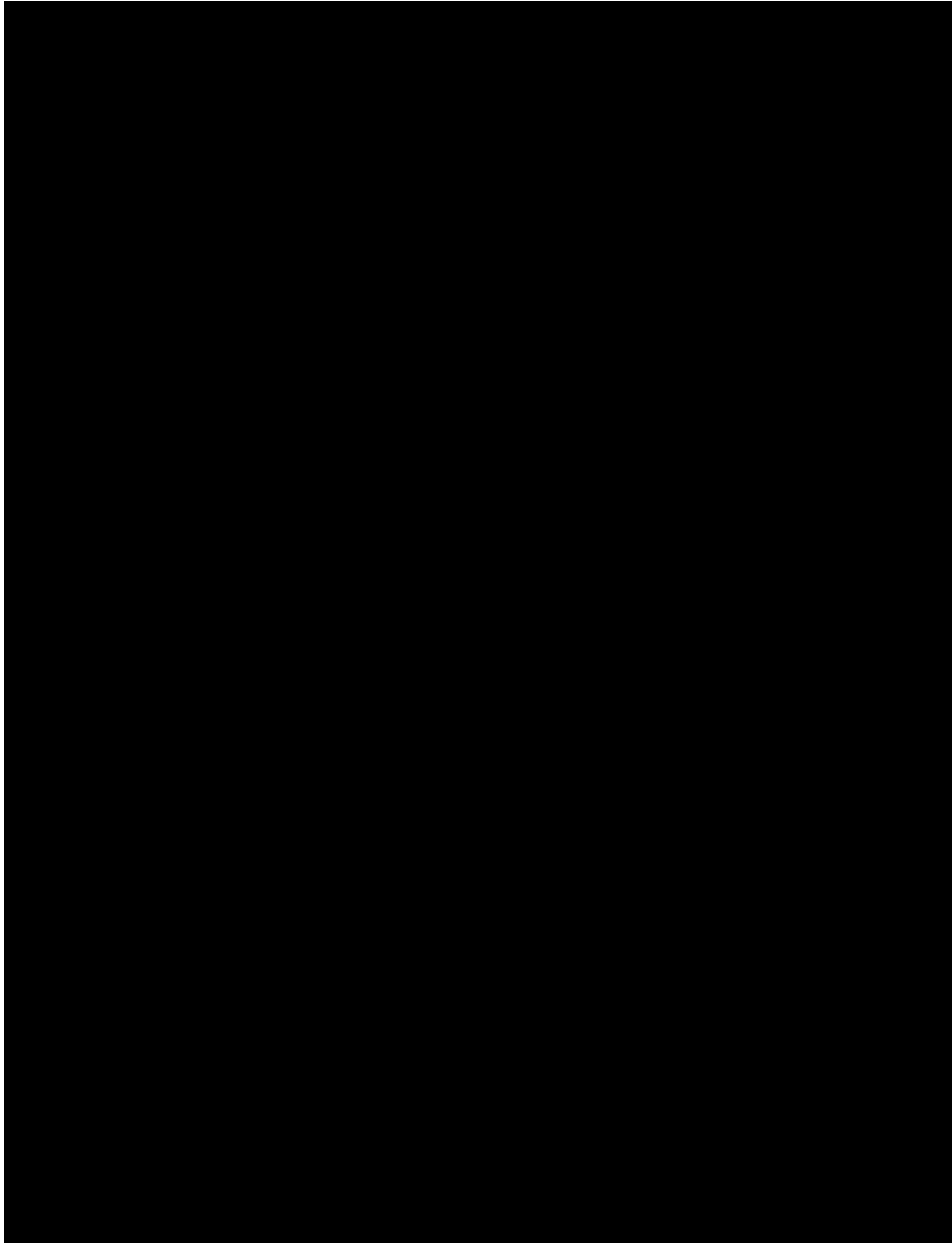
- (a) SCAW Contractor's Activities;
- (b) Project Works;
- (c) Temporary Works;
- (d) Works;
- (e) Handover Works;
- (f) Third Party Works;
- (g) Local Area Works;
- (h) Property Works;
- (i) Utility Service Works;
- (j) Project Site;
- (k) Construction Site;
- (l) Temporary Areas;
- (m) Substantial Completion;
- (n) Date for Substantial Completion;
- (o) Date of Substantial Completion;
- (p) Completion;
- (q) Date for Completion;
- (r) Date of Completion; and
- (s) Defects Correction Period,

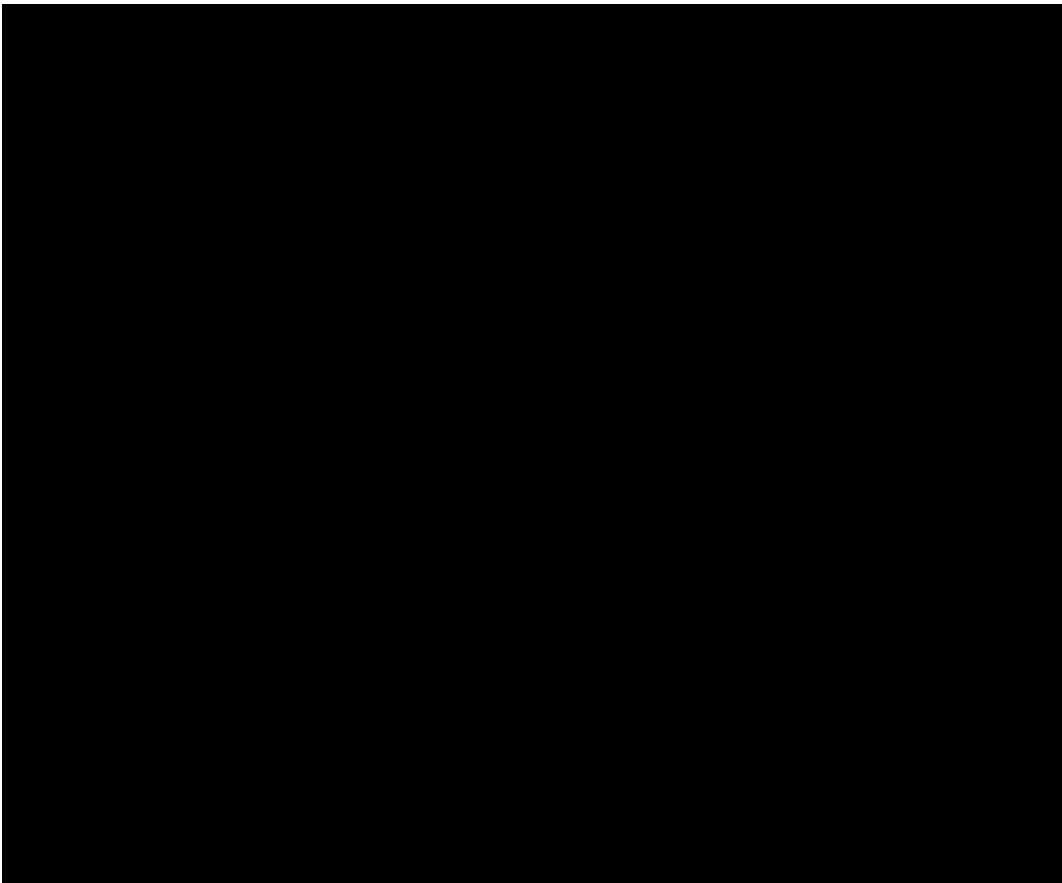
and clauses 12.1 to 12.6, 12.25(h), 14.3(a)(xi), 15.2(a)(ii), 16.8, 16.11, 16.13, 16.14, 17, 19, 20.2, 23.1, 23.5, 23.6 and 23.20, and the SCAW Specification (including its appendices) will apply separately to each Portion (including any Portion determined under clause 10.1 or clause 10.3) and references therein to any of the terms in paragraphs (a) - (s) above will mean so much of the SCAW Contractor's Activities, Project Works, Temporary Works, Works, Handover Works, Third Party Works, Local Area Works, Property Works, Utility Service Works, Project Site, Construction Site, Temporary Areas, Substantial Completion,

Date for Substantial Completion, Date of Substantial Completion, Completion, Date for Completion, Date of Completion and Defects Correction Period as is comprised in, or associated with, the relevant Portion.

10.3 **Occupation and use of partially completed Project Works**

- (a) Without limiting the generality of clause 10.1, if a part of a Portion has reached a stage equivalent to Substantial Completion (**Completed Portion**) but another part of a Portion has not yet reached such stage (**Incomplete Portion**), the Principal's Representative may by giving written notice to the SCAW Contractor direct by way of a Change Order under clause 15.3(a):





10.4 **Reduction in entitlement**

The SCAW Contractor's entitlement to an extension of time or to an adjustment to the Design Contract Sum and/or Construction Contract Sum as a result of a Change Order issued by the Principal's Representative pursuant to clause 10.1 [REDACTED] will be reduced to the extent that:

- (a) the need for the Change Order arises out of or in connection with any breach of this deed by the SCAW Contractor (for example, a failure to reach Substantial Completion of a Portion by the Date for Substantial Completion of that Portion); or
- (b) the Change Order is:
  - (i) in effect:
    - (A) a direction to the SCAW Contractor to perform the SCAW Contractor's Activities in accordance with this deed (other than clause 10) or consistently with this deed; or
    - (B) a direction to the SCAW Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or
  - (ii) related to the rectification of a Defect [REDACTED]

**11. PROJECT PLANS**

**11.1 General**

- (a) The SCAW Contractor must prepare the Project Plans including as specified in section 5 of the General Specification.
- (b) Each Project Plan must:
  - (i) where an initial plan exists for the relevant Project Plan and is contained in Attachment C of the General Specification, be based upon that initial plan;
  - (ii) whether or not an initial plan exists for the relevant Project Plan, be prepared and further developed in accordance with this clause 11 and section 5 of the General Specification; and
  - (iii) contain any relevant contents required under this deed, including as specified in section 5 of the General Specification.

**11.2 Warranties in relation to Project Plans**

The SCAW Contractor:

- (a) acknowledges and agrees that an intended purpose of each Project Plan is for the SCAW Contractor to provide a detailed description of how the SCAW Contractor intends to carry out the SCAW Contractor's Activities in accordance with the requirements of this deed with respect to the subject matter of each Project Plan; and
- (b) warrants that each Project Plan will be fit for its intended purpose and that compliance by it with the Project Plans will enable it to fulfil its various obligations under this deed.

**11.3 Review of Project Plans**

- (a) Each Project Plan must be initially submitted to the Principal's Representative and the Independent Certifier within any relevant time period specified in this deed (including as specified in section 5 of the General Specification).
- (b) The Principal's Representative (and the Independent Certifier with respect to any IC Project Plan) may:
  - (i) review any Project Plan submitted under this clause 11.3; and
  - (ii) if the Project Plan submitted does not comply with this deed, notify the SCAW Contractor within 15 Business Days of the initial submission of the Project Plan providing reasons for the non-compliance.
- (c) If the SCAW Contractor receives a notice under clause 11.3(b)(ii), the SCAW Contractor must promptly submit an amended Project Plan, or relevant part or component of it, to the Principal's Representative and the Independent Certifier and the process in this clause 11.3 will reapply.
- (d) The Principal's Representative or the Independent Certifier owes no duty to the SCAW Contractor to review any Project Plan submitted by the SCAW Contractor for errors, omissions or compliance with this deed.
- (e) No review of, comments upon, notice in respect of any Project Plan or any other act or omission of the Principal's Representative or the Independent Certifier (including



a direction under clause 11.4(b)) about any Project Plan will lessen or otherwise affect:

- (i) the SCAW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
- (ii) the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law.

#### 11.4 **Update of Project Plans**

(a) The SCAW Contractor:

(i) acknowledges and agrees that the Project Plans will require ongoing development, amendment and updating throughout the duration of the SCAW Contractor's Activities to take into account:

- (A) Changes;
- (B) Changes in Law;
- (C) the commencement of new phases or stages of design and construction as shown in the Overall D&C Program;
- (D) those events or circumstances expressly identified for each Project Plan including as specified in section 5 of the General Specification;
- (E) any direction given by the Principal's Representative under clause 10.1(a); and
- (F) any other events or circumstances which occur or come into existence and which have, or may have, any effect on the manner in which the SCAW Contractor carries out the SCAW Contractor's Activities; and

(ii) must continue to develop and promptly amend or update the Project Plans:

- (A) to take into account:
  - (aa) the circumstances and events referred to in clause 11.4(a)(i) as those circumstances and events occur or come into existence; and
  - (bb) any breach or potential breach of the warranties referred to in clause 11.2(b); and
- (B) as otherwise specified in the SCAW Specification, including section 5 of the General Specification,

and promptly submit each further Project Plan to the Principal's Representative and to the Independent Certifier as it is further developed, amended or updated.

(b) Without limiting clause 17, if:

- (i) any Project Plan does not comply with the requirements of this deed; or
- (ii) the SCAW Contractor has not further developed, updated or amended any Project Plan in accordance with the requirements of clause 11.4(a)(ii),

the Principal's Representative or the Independent Certifier with respect to any IC Project Plan may by written notice direct the SCAW Contractor to further develop, update or amend the Project Plan so that the Project Plan will comply with the requirements of this deed, specifying:

- (iii) the reasons why such development, updating or amending is required; and
- (iv) the time within which such development, updating or amending must occur, and the SCAW Contractor must:
  - (v) further develop, update or amend the Project Plan as directed by the Principal's Representative and/or the Independent Certifier so that it complies with the requirements of this deed; and
  - (vi) submit the further developed, updated or amended Project Plan to the Principal's Representative and to the Independent Certifier within the time specified under clause 11.4(b)(iv).

## 11.5 **Implementation and compliance**

- (a) The SCAW Contractor:
  - (i) must comply with each Project Plan which has been submitted to the Principal's Representative and to the Independent Certifier under clause 11.3 and in respect of which the Principal's Representative and, if applicable, the Independent Certifier, has not given a notice under clause 11.3(b)(ii); and
  - (ii) agrees that compliance by it with any Project Plan will not in any way lessen or affect:
    - (A) its liabilities or responsibilities under this deed or otherwise according to Law; or
    - (B) the Principal's rights against it, whether under this deed or otherwise according to Law.
- (b) The SCAW Contractor must comply with the restrictions upon the carrying out of the SCAW Contractor's Activities specified in section 5 of the General Specification.
- (c) The SCAW Contractor must not decrease or otherwise reduce the scope of any Project Plan, or the scope of work or level of effort or expertise required by a Project Plan, or the number of personnel or extent of surveillance required, including any initial Project Plan and any revision of a Project Plan, without the prior written approval of the Principal's Representative (which must not be unreasonably withheld).
- (d) To the extent they are relevant to the operation or maintenance of the Project Works or the Handover Works, all relevant components of the Project Plans must be incorporated into the Asset Management Information.

## 12. **LOCATION OF THE PROJECT WORKS**

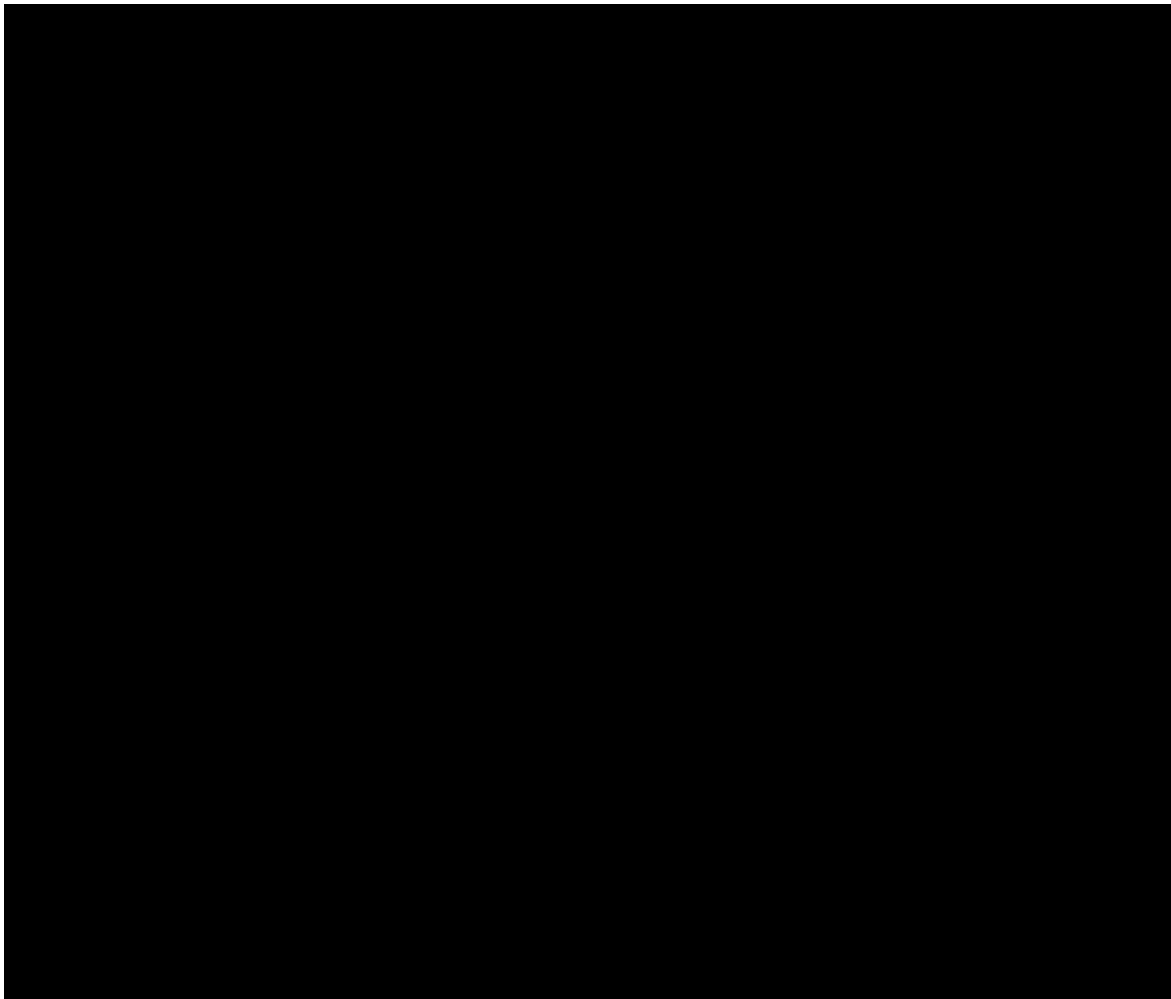
### 12.1 **Early access to the Construction Site**

- (a) The Principal may, but is not obliged to, grant the SCAW Contractor access prior to the relevant Site Access Dates set out in the Site Access Schedule to the whole or part of the Construction Site in accordance with this clause.

- (b) The purpose of granting early access to the Construction Site under this clause 12.1 is to allow the SCAW Contractor to commence the SCAW Contractor's Activities early so as to mitigate any delays the SCAW Contractor may incur in reaching Substantial Completion or Completion of a Portion and, subject to clauses 12.1(f) and 12.1(g), the SCAW Contractor must use that access to the Construction Site to commence the SCAW Contractor's Activities and optimise the additional time.
- (c) Grant of early access given under clause 12.1(a) or deemed to be given under clause 12.1(f):
- (i) subject to clause 19.6(h)(iii), will be taken into account when making an assessment under clause 19.6 of claims by the SCAW Contractor for extensions of time; and
  - (ii) except to the extent set out in clause 12.1(c)(i), will not affect any Dates for Substantial Completion or Dates for Completion.
- (d) To the extent the Principal intends to grant early access under this clause, the Principal must give the SCAW Contractor one or more written notices specifying a date or dates (**Construction Site Access Date**) on which a part of the Construction Site will be Accessible that is prior to the relevant Site Access Date set out in the Site Access Schedule. Any such notice must:
- (i) specify the date or dates on which early access will be granted; and
  - (ii) be given at least 10 Business Days prior to the date on which the relevant part of the Construction Site will be Accessible.
- (e) If the Principal gives the SCAW Contractor a notice under clause 12.1(d) with respect to a part of the Construction Site, and the SCAW Contractor is not given access to that part of the Construction Site, or access is granted but that part of the Construction Site is not Accessible, on the date specified in the notice, the SCAW Contractor will be entitled to the additional costs properly and reasonably incurred directly as a result of not being given access to that part of the Construction Site or that part of the Construction Site not being Accessible, as stated by the Principal's Representative and provided that the SCAW Contractor will have no entitlement for any such costs incurred prior to the date on which the SCAW Contractor is deemed to have accepted early access in accordance with clause 12.1(f).
- (f) If a Construction Site Access Date is:
- (i) after the Early Site Access Date, the SCAW Contractor will be deemed to have accepted early access to that part of the Construction Site on the Construction Site Access Date; or
  - (ii) prior to the Early Site Access Date, the SCAW Contractor will be deemed to have accepted early access to that part of the Construction Site on the earlier to occur of:
    - (A) the date on which the SCAW Contractor (by notice in writing to the Principal) accepts early access to the Construction Site; and
    - (B) the Early Site Access Date,
 in which case the SCAW Contractor acknowledges and agrees that its access to the relevant part of the Construction Site will be subject to the requirements set out under clause 12.2, as applicable in the circumstances.

- (g) Where the Principal gives the SCAW Contractor a notice under clause 12.1(d) stating that a part of the Construction Site will be Accessible from a specified date, the SCAW Contractor will not be required to accept, or be deemed to have accepted, early access in respect of that part of the Construction Site where the date specified in the notice is prior to the Early Site Access Date.
- (h) The SCAW Contractor will be entitled to claim the applicable Early Site Access Payment in respect of each day during the period:
  - (i) commencing on the date on which the SCAW Contractor is granted early access for each relevant Portion in accordance with clause 12.1(f); and
  - (ii) ending on the Site Access Date for the relevant part of the Construction Site for each relevant Portion,

such Early Site Access Payment being in full satisfaction for the Direct Costs, Overheads and profit in respect of the SCAW Contractor having to comply with its obligations under clauses 12.2 and 12.5 in respect of the relevant part of the Construction Site.



**12.2 Access**

- (a) Subject to clauses 12.2(b) to 12.2(h) and any other provision of this deed affecting access, the Principal must:

- (i) give, or ensure the SCAW Contractor has, access to each area of the Construction Site specified in the Site Access Schedule by the relevant dates set out in the Site Access Schedule (and if a period is specified in relation to access to a part of the Construction Site, then by the last day of that period); and
  - (ii) thereafter continue to allow, or ensure that the SCAW Contractor is continued to be allowed, access to each such area of the Construction Site.
- (b) The SCAW Contractor acknowledges that its access to the Construction Site is subject to:
  - (i) any conditions to access set out in the Site Access Schedule;
  - (ii) this clause 12.2; and
  - (iii) any other provision of this deed relating to access (including the conditions in clause 2 of Schedule D5).
- (c) Without prejudice to the generality of clause 12.2(b), the SCAW Contractor acknowledges and agrees that the SCAW Contractor's access to the Construction Site is also subject to:
  - (i) the terms of the Master Interface Deed;
  - (ii) the requirements of the Third Party Agreements for which the SCAW Contractor is responsible under Schedule D5;
  - (iii) in the case of the part of the Construction Site subject to an Access Licence (RID), the terms of the relevant Access Licence (RID); and
  - (iv) the appointment and obligations of the Appointed Principal Contractor under clause 8.3.
- (d) The SCAW Contractor acknowledges and agrees that access to the Construction Site or any part thereof will confer on the SCAW Contractor a right to such management and control as is necessary to enable:
  - (i) the SCAW Contractor to execute the SCAW Contractor's Activities in accordance with this deed and to discharge its responsibilities under the WHS Legislation; and
  - (ii) CPB Contractors Pty Limited to discharge its responsibilities as principal contractor.
- (e) The Principal is not obliged to give the SCAW Contractor access to any area of the Construction Site in accordance with clause 12.2(a), until the SCAW Contractor has:
  - (i) complied with clauses 6.1(a) and 6.9;
  - (ii) submitted the Project Health & Safety Risk Governance Plan to the Principal's Representative and the Independent Certifier and the Principal's Representative has had 15 Business Days to review the Project Health & Safety Risk Governance Plan and has not rejected the Project Health & Safety Risk Governance Plan;
  - (iii) effected the insurance policies required by clause 23.5 (other than the insurances referred to in clauses 23.7 (unless required under clause 23.7), 23.12 and 23.13 of this deed); and

- (iv) complied with clause 23.15(a) with respect to each insurance.
- (f) The SCAW Contractor acknowledges and agrees that:
  - (i) it will be given non-exclusive access to the Construction Site;
  - (ii) subject to clause 12.2(ka), the Principal may, without limiting its obligations under clause 4.10, engage Interface Contractors to perform Construction Site Interface Work on the Construction Site;
  - (iii) it will (and must ensure that its Associates) cooperate with the Interface Contractors and Airport Lessee Contractors and coordinate the SCAW Contractor's Activities with the Construction Site Interface Work and Airport Works in accordance with clauses 4.10 and 4.10A; and
  - (iv) access to the Construction Site or any part thereof will be subject to the SCAW Contractor's compliance with clause 12.2(j).
- (g) The Principal's obligation to give access under this clause 12.2 in respect of:
  - (i) the parts of the Construction Site identified in Schedule A2 in the column headed "Part of Construction Site" will cease upon the relevant Portion Handover Date; and
  - (ii) any Temporary Area for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule, will cease upon the relevant Site Access Expiry Date.
- (h) Failure by the Principal to give access as required by clause 12.2(a) will not be a breach of this deed but will entitle the SCAW Contractor to:
  - (i) an extension of time to any relevant Date for Substantial Completion or Date for Completion under clause 19 if the requirements of that clause are satisfied; and
  - (ii) be paid by the Principal any Delay Costs arising from the Principal's failure to give the SCAW Contractor access as required by clause 12.2(a), in accordance with clause 19.10.
- (i) The SCAW Contractor's entitlement under clause 12.2(h)(ii) will be its only right to payment of money arising out of or in any way in connection with the Principal's failure to give access as required by clause 12.2(a).
- (j) The SCAW Contractor must:
  - (i) not use the Construction Site for any purpose other than the Permitted Use without the prior written consent of the Principal's Representative; and
  - (ii) comply with:
    - (A) any access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule;
    - (B) the terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening or benefitting the land contained in the Construction Site as recorded in the register maintained by Land and Property Information New South Wales under the *Real Property Act 1900* (NSW); and

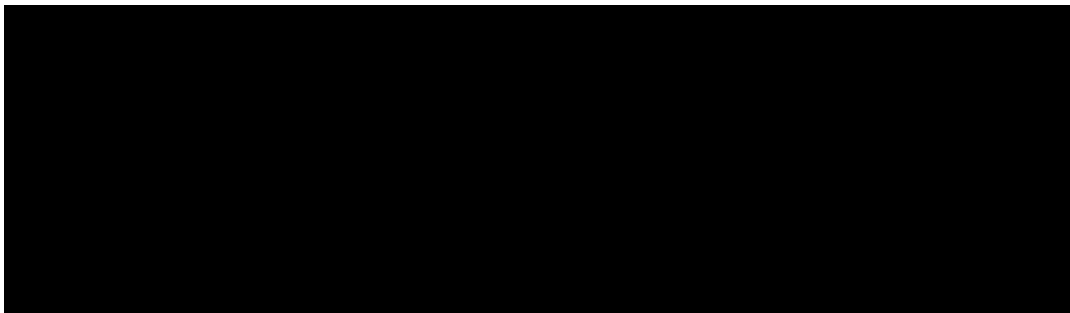
(C) in the case of the part of the Construction Site subject to an Access Licence (RID), the terms of the relevant Access Licence (RID).

(k) Without limiting clauses 12.2(l)(i) and 13.2(f), the SCAW Contractor must ensure that at all times:

- (i) on reasonable prior written notice (unless specified otherwise below in clause 12.2(k)(vii) or clause 12.2(k)(viii)) (including during out of hour periods when the SCAW Contractor is performing work); or
- (ii) where directed by the Principal's Representative as a Change Order under clause 15.3(a), at the times required by the Principal's Representative,

the Principal's Representative, any person authorised by the Principal (including OpCo, Airport Lessee, any Interface Contractor, Airport Lessee Contractor, the Airport Building Controller, the Relationship Manager (TPA), visitors invited by the Principal and other contractors and consultants who are to perform work on the Construction Site) and the Independent Certifier have safe, convenient and unimpeded access to:

- (iii) the Construction Site and any other areas affected by the SCAW Contractor's Activities (with such access rights to commence in accordance with the notice provided under clause 12.2(k)(i) or the Change Order provided under clause 12.2(k)(ii) (as applicable));
- (iv) the Project Works and the Temporary Works;
- (v) any other place where any part of the SCAW Contractor's Activities is being carried out (including Extra Land);
- (vi) the SCAW Contractor's Activities;
- (vii) the Design Documentation at all times without notice; and
- (viii) any other documentation created for the purposes of the SCAW Contractor's Activities at all times without notice.



(l) The SCAW Contractor must provide:

- (i) the Principal's Representative, the Planning Approval Representatives, Independent Certifier and the Principal's nominated safety representative (from time to time) with unfettered access to the Construction Site at all times provided that they have completed the Contractor's safety site induction; and
- (ii) the Principal, the Principal's Representative, the Planning Approval Representatives and the Independent Certifier with every reasonable facility necessary for the inspection of the SCAW Contractor's Activities.

- (m) When accessing any area or thing referred to in clause 12.2(k), the Principal must:
  - (i) comply with; and
  - (ii) use best endeavours to ensure that any persons authorised by it to access that area or thing comply with,  
  
the SCAW Contractor's reasonable occupational, health, environmental and safety requirements.
- (n) The SCAW Contractor acknowledges that:
  - (i) the Site Access Expiry Dates in respect of the Temporary Areas identified in Table 4a of the Site Access Schedule are fixed and will not be extended for any reason; and
  - (ii) the SCAW Contractor must vacate those Temporary Areas on the relevant Site Access Expiry Dates.
- (o) The SCAW Contractor must arrange the sequence of work so that the SCAW Contractor's Activities which must be performed on the Temporary Areas referred to in clause 12.2(n)(i) are completed prior to the relevant Site Access Expiry Dates.

12.3 **Not Used**

12.4 **Property Works**

- (a) The SCAW Contractor must:
  - (i) carry out the Property Works:
    - (A) in accordance with the SCAW Specification (including section 2.3.2.4 of the Particular Specification); and
    - (B) so that upon completion of the relevant Property Works, they are fit for their intended purpose;
  - (ii) after completion of the Property Works with respect to an Unowned Parcel, including the work described in clause 12.4(f), provide to the Principal's Representative:
    - (A) a certificate in the form of Schedule B16, duly executed by the owner or owners of any part of the Unowned Parcel; or
    - (B) a statement signed by the SCAW Contractor to the effect that such owner or owners have failed or refused to sign a certificate in the form of Schedule B16 within 15 Business Days of it being provided by the SCAW Contractor to the owner or owners following completion of the Property Works including the work described in clause 12.4(f); and
  - (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or owners of any part of an Unowned Parcel where:
    - (A) such owner or owners have not duly signed a certificate in the form of Schedule B16; and



- (B) the claim or Loss arises out of or in any way in connection with a wrongful act or omission of the SCAW Contractor or its Associates in connection with the Property Works or a failure by the SCAW Contractor to comply with its obligations under this deed relating to the Property Works.
- (b) The acceptance of a certificate or statement provided by the SCAW Contractor under clause 12.4(a)(ii) by the Principal's Representative is not approval by the Principal or the Principal's Representative of the SCAW Contractor's performance of its obligations under this clause 12.4.
- (c) Where any Property Works are required to be carried out on an Unowned Parcel, the SCAW Contractor must give a written notice to the owner or owners of the property (with a copy to the Principal's Representative) which:
  - (i) describes the Property Works to be carried out;
  - (ii) requests access for the purpose of carrying out the Property Works; and
  - (iii) specifies the intended date for commencement of the Property Works,
 not less than 10 Business Days prior to the day which the SCAW Contractor intends to commence the Property Works.
- (d) If the owner or owners of a property do not provide the SCAW Contractor with sufficient access to carry out the Property Works from either:
  - (i) the date notified in the notice under clause 12.4(c); or
  - (ii) such other date as may be agreed between the SCAW Contractor and the owner or owners,
 the SCAW Contractor must:
  - (iii) give the Principal's Representative a notice stating this; and
  - (iv) not carry out the Property Works until the Principal's Representative gives the SCAW Contractor a notice specifying that the owner or owners of the property have agreed to give access, in which event clause 12.4(c) will reapply.
- (e) Upon being given access to any property for the purpose of carrying out any Property Works, the SCAW Contractor must promptly carry out those Property Works in a manner which minimises inconvenience and disruption to the owners, occupiers and users of the Unowned Parcel.
- (f) The SCAW Contractor must:
  - (i) rehabilitate any part of an Unowned Parcel to the state agreed with the owner of such Unowned Parcel prior to commencing the work or, if no such agreement is reached, the state it was in immediately prior to the SCAW Contractor obtaining access; and
  - (ii) otherwise repair any damage or degradation to such a part arising out of or in any way in connection with the performance of its obligations under this clause 12.4.
- (g) Subject to clauses 12.4(h) and 12.4(i), the following are conditions precedent to Substantial Completion of a Portion:

- (i) completion of all Property Works under this clause 12.4 that form part of the Portion, including all relevant work under clause 12.4(f); and
  - (ii) provision of all certificates or statements (as the case may be) to the Principal's Representative as required under clause 12.4(a)(ii) in respect of Property Works that form part of the Portion.
- (h) If:
- (i) the SCAW Contractor is not required to carry out any specific Property Works that form part of a Portion in accordance with clause 12.4(d);
  - (ii) the SCAW Contractor has otherwise complied with its obligations under this clause 12.4; and
  - (iii) the SCAW Contractor has otherwise achieved the requirements for Substantial Completion of the relevant Portion,

the SCAW Contractor will not be required to complete those specific Property Works as a condition precedent to Substantial Completion of the relevant Portion, and the Principal may specify a reasonable period after Substantial Completion within which those specific Property Works must be completed.

- (i) If clause 12.4(h) applies but the owner or owners of the relevant Unowned Parcel do not provide the SCAW Contractor with sufficient access to carry out the relevant Property Works prior to the date which is 12 months after the Date of Substantial Completion of the relevant Portion, the Principal must direct a Change under clause 15.3(a) to omit those Property Works and there will be a reduction to the Project Contract Sum.

## 12.5 Control of Construction Site

- (a) At all times after being given access to the Construction Site or a part of the Construction Site under clause 12.1 or clause 12.2 until the relevant Portion Handover Date, the SCAW Contractor must:
  - (i) without limiting any right of the Principal or the Principal's Representative under this deed, be responsible for the management and control of the Construction Site;
  - (ii) control access to, and the security and maintenance of, and must ensure public safety on, and, to the extent required by Law for the performance of the SCAW Contractor's Activities, adjacent to, the Construction Site or that part;
  - (iii) provide for the continuous safe passage of the public and road users on existing public spaces, parks, footpaths, pedestrian ways, pedal cycle paths, roads and other access ways affected by the SCAW Contractor's Activities in accordance with this deed;
  - (iv) minimise delay or disruption to the movement of the public and all road users; and
  - (v) subject to clause 12.5(c), comply with (and must ensure that its Associates comply with) all directions of any relevant Authority and Directions of the Principal's Representative with respect to the management of such access, safe passage and movement at all times.

- (b) The SCAW Contractor and the Principal acknowledge that nothing in this deed including the right to inspect pursuant to clause 16.5 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:
  - (i) the Principal has any management or control over the SCAW Contractor's Activities or the Construction Site or Extra Land; or
  - (ii) the Principal has any responsibility for any act or omission by the SCAW Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Approvals, Third Party Agreements, Adjoining Property Easements or this deed.
- (c) Subject to clauses 4.9, 16.8 or 16.9 where a direction of an Authority or the Principal's Representative referred to in clause 12.5(a)(v) (other than a direction arising from or in connection with a breach of this deed by the SCAW Contractor or a wrongful act or omission of the SCAW Contractor or its Associates or a direction made in response to a request by the SCAW Contractor) necessitates a reduction in the permissible working hours or working days for the SCAW Contractor's Activities or a change to the Working Parameters permitted for the SCAW Contractor's Activities:
  - (i) the SCAW Contractor will be entitled to an extension of time to any relevant Date for Substantial Completion under clause 19 if the requirements of that clause are satisfied; and
  - (ii) the Project Contract Sum will be adjusted for the increased or decreased Direct Costs and Overheads and Profit Margin incurred by the SCAW Contractor as a direct result of the direction of an Authority or the Principal's Representative, as stated by the Principal's Representative.

#### 12.6 **Extra Land**

- (a) The SCAW Contractor must:
  - (i) 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 Construction Site, which is necessary or which it requires for the execution of the SCAW Contractor's Activities (which may include additional land or buildings required for the Third Party Works, the underpinning of any structure or for the insertion of rock bolts), [REDACTED]  
[REDACTED]; and
  - (ii) as a condition precedent to Substantial Completion of any Portion in which the SCAW Contractor has had to procure occupation or use of or relevant rights over any Extra Land:
    - (A) rehabilitate any Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons; and
    - (B) provide to the Principal's Representative:
      - (aa) a properly executed release on terms satisfactory to the Principal's Representative from all claims from the owner or occupier of, and from any other person having an interest in the Extra Land; or
      - (bb) if the SCAW Contractor is unable to obtain such a release despite using its best endeavours to do so, a statement from

the SCAW Contractor to the effect that such owner or occupier, or other person having an interest in the Extra Land, has failed or refused to execute such a release within 15 Business Days of it being provided by the SCAW Contractor to the owner, occupier or other person following completion of the work on the Extra Land; and

- (iii) indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner or occupier of any part of the Extra Land where:
  - (A) such owner or occupier has not executed such a release; and
  - (B) the claim or Loss arises out of or in connection with the SCAW Contractor's Activities.
- (b) The SCAW Contractor acknowledges that:
  - (i) integration of the requirements for access to Extra Land is at the sole risk of the SCAW Contractor; and
  - (ii) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the SCAW Contractor arising out of or in any way in connection with:
    - (A) identifying and obtaining access to Extra Land; or
    - (B) any delay, additional costs or other effects on the SCAW Contractor's Activities related to the ability of the SCAW Contractor or its Subcontractors to obtain access to Extra Land or approval to use Extra Land.
- (c) If, at any time after the date of this deed, the SCAW Contractor notifies the Principal in writing that:
  - (i) it requires the occupation or use of or relevant rights over any land or buildings in addition to the Construction Site, which is necessary or which it requires for the execution of the SCAW Contractor's Activities; and
  - (ii) the owner of, occupier of, and/or relevant interest holder in respect of such land or buildings is not willing to enter into a Third Party Agreement directly with the SCAW Contractor in respect of the relevant land or buildings,

the parties agree that the Principal may, in its absolute discretion and subject to any conditions the Principal requires, elect to enter into a Third Party Agreement with the relevant owner, occupier, and/or interest holder, and if the Principal elects to do so, then without limiting any other provision in this clause 12.6:

  - (iii) the land or buildings the subject of the relevant Third Party Agreement will be treated as Extra Land under this deed (**TPA Extra Land**);
  - (iv) the SCAW Contractor must comply with the terms of any Revised Allocation arising out of the execution of any Third Party Agreement relating to the TPA Extra Land at its own cost and risk, and the SCAW Contractor will not be entitled to make a claim pursuant to clause 12.24(e) in respect of such Third Party Agreement;
  - (v) the SCAW Contractor will not be required to comply with clause 12.6(a)(ii)(B) in relation to such TPA Extra Land; and

- (vi) the SCAW Contractor must indemnify the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a claim by the owner, occupier and/or relevant interest holder of any part of the TPA Extra Land where the claim or Loss arises out of or in connection with the SCAW Contractor's Activities.

#### 12.7 Temporary Areas

The SCAW Contractor must, as a condition precedent to Substantial Completion of any Portion where the SCAW Contractor has occupied or made use of a Temporary Area in connection with that Portion, reinstate the Temporary Area to a condition at least equivalent to the condition existing before that occupation or use except for such parts of the Temporary Area:

- (a) that are required by this deed (including section 2.5.3 of the Particular Specification) to contain any Handover Works; or
- (b) which this deed (including section 2.5.3 of the Particular Specification) specifies need not be reinstated (including where the SCAW Contractor is required to demolish buildings on the Temporary Area).

#### 12.8 Physical conditions

- (a) Without limiting clauses 12.9(c) or 32.10, the SCAW Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this deed, the SCAW Contractor:
  - (i) examined this deed, those parts of the Construction Site to which it was entitled access and its surroundings, the Information Documents and any other information that was made available in writing by the Principal, or any other person on the Principal's behalf, to the SCAW Contractor during the tender period;
  - (ii) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this deed;
  - (iii) satisfied itself as to the correctness and sufficiency of its Tender and that it has made adequate allowance for the costs of complying with all of its obligations under this deed and of all matters and things necessary for the due and proper performance and completion of the SCAW Contractor's Activities;
  - (iv) informed itself of:
    - (A) all matters relevant to the employment of labour at the Construction Site; and
    - (B) all industrial matters relevant to the Construction Site;
  - (v) was given the opportunity during the tender period to itself undertake, and to request others to undertake, tests, enquiries and investigations:
    - (A) relating to the subject matter of Information Documents; and
    - (B) for design purposes and otherwise;

- (vi) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, the Deed of Disclaimer, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this deed; and
  - (vii) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this deed and assume the obligations and potential risks and liabilities which it imposes on the SCAW Contractor.
- (b) Without limiting or otherwise affecting clauses 12.8(c), 12.8(d) and 12.9, the Principal makes no representation and gives no warranty to the SCAW Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the SCAW Contractor's Activities or otherwise in respect of the condition of:
    - (A) the Construction Site, Extra Land or their surroundings;
    - (B) any structure or other thing on, under, above or adjacent to the Construction Site or Extra Land;
  - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Construction Site or Extra Land; or
  - (iii) the condition or characteristics of any Adjoining Property.
- (c) Subject to clauses 4.4, 12.11(c), 12.13(d), 12.13(e), 12.13(f), 12.13A(e), 12.15(m), 12.17(c), [REDACTED] and 19.6, the SCAW Contractor accepts:
- (i) the Construction Site, the Adjoining Properties and any Extra Land; and
  - (ii) any structures or other thing on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site and any Extra Land,
- in their present condition subject to all defects and Site Conditions and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
  - (iv) any adverse effect on the Project Works or the Temporary Works,
- arising out of, or in any way in connection with the Site Conditions encountered in performing the SCAW Contractor's Activities and does so notwithstanding that the Principal may have in whole or in part specified the alignment, location, position, level or dimensions for the Project Works in the SCAW Specification.
- (d) The SCAW Contractor must investigate, design and construct the Project Works and Temporary Works in accordance with this deed and will not be relieved of its obligations under this deed, irrespective of:
- (i) the Site Conditions encountered in performing the SCAW Contractor's Activities;

- (ii) whatever may be the condition or characteristics (including all sub-surface conditions) of:
  - (A) the Construction Site, the Adjoining Properties or any Extra Land, the Environment or their surroundings; or
  - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Adjoining Properties, the Construction Site or any Extra Land, the Environment or their surroundings; and
- (iii) any assumptions, projections, estimates, contingencies or otherwise that the SCAW Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in subparagraph (ii),

and notwithstanding that the Principal may have in whole or in part specified the alignment, location, position, level or dimensions for the Project Works in the SCAW Specification.

- (e) Nothing in clauses 12.8 or 12.9 limits the operation of clauses 4.4, 12.11(c), 12.13(d), 12.13(e), 12.13(f), 12.13A(e), 12.15(m), 12.17(c), [REDACTED] and 19.6.

#### 12.9 Information Documents

- (a) Prior to the date of this deed the SCAW Contractor signed the Deed of Disclaimer and provided it to the Principal in respect of Information Documents provided by the Principal to the SCAW Contractor.
- (b) Without limiting or otherwise affecting clause 12.9(c) or the warranties or acknowledgements in the Deed of Disclaimer:
  - (i) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents;
  - (ii) whether or not an Information Document or any part thereof forms an exhibit to this deed, the SCAW Contractor acknowledges that:
    - (A) the Information Document or part thereof does not form part of this deed and that clause 12.9(c) applies to the Information Document or part thereof; and
    - (B) where an Information Document or any part thereof forms an exhibit to this deed, it does so only for the purposes of identification of that document or part thereof; and
  - (iii) insofar as is permitted by Law, the Principal will not be liable upon any Claim by the SCAW Contractor arising out of or in any way in connection with:
    - (A) the provision of, or the purported reliance upon, or use of the Information Documents to or by the SCAW Contractor or any other person to whom the Information Documents are disclosed; or
    - (B) a failure by the Principal to provide any information to the SCAW Contractor.
- (c) The SCAW Contractor:
  - (i) subject to clause 12.10, warrants that it did not in any way rely upon:

- (A) any information, data, representation, statement or document made by, or provided to the SCAW Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
  - (B) the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
- for the purposes of entering into this deed or carrying out the SCAW Contractor's Activities but nothing in this subparagraph will limit or otherwise affect the SCAW Contractor's obligations under this deed;
- (ii) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
    - (A) the warranties, acknowledgements and agreements in clauses 12.9(c)(i) and 12.9(c)(ii); and
    - (B) the warranties and acknowledgements in the Deeds of Disclaimer and the Tender Form submitted by the SCAW Contractor as part of its Tender.
- (d) Subject to clause 12.11(c), the SCAW Contractor releases and indemnifies the Principal from and against:
- (i) any Claim against the Principal by, or Liability of the Principal to, any person; or
  - (ii) (without being limited by clause 12.9(d)(i)) any Loss suffered or incurred by the Principal,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the SCAW Contractor or any other person to whom the Information Documents are disclosed by the SCAW Contractor;
  - (iv) any breach by the SCAW Contractor of this clause 12.8(e); or
  - (v) the Information Documents being relied upon or otherwise used by the SCAW Contractor or its Associates in the preparation of any information or document.
- (e) Subject to clause 12.11(c), the SCAW Contractor releases the Principal from any Claim against the Principal by, or Liability of the Principal to, the SCAW Contractor, arising out of or in any way in connection with a failure by the Principal to provide any information to the SCAW Contractor (except to the extent the Principal is expressly required to provide such information under this deed).

#### 12.10 Geotechnical Reports

The parties acknowledge and agree that:

- (a) prior to the date of this deed the Principal procured:



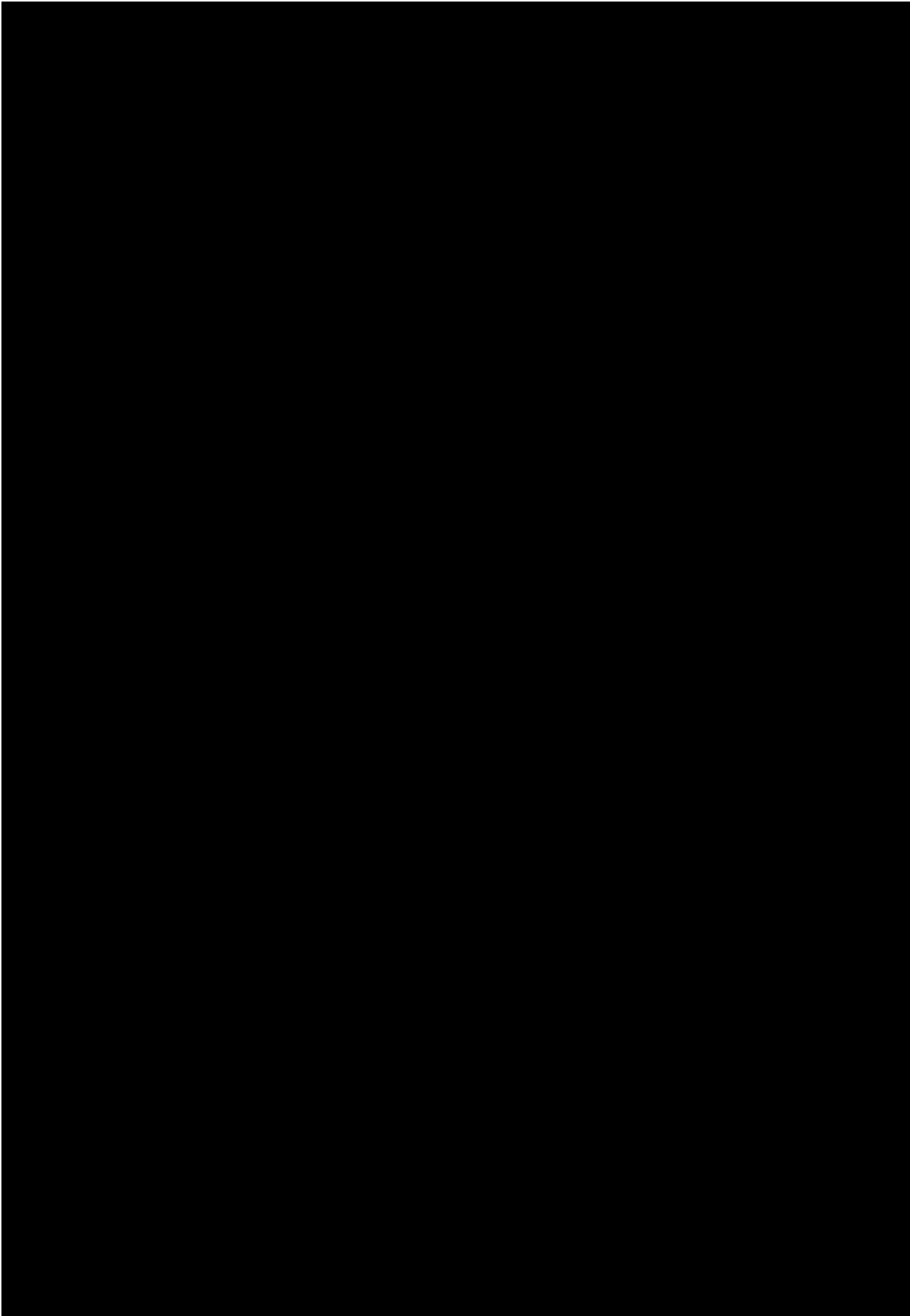
- (i) the Geotechnical Reports for the benefit of the Principal and the SCAW Contractor; and
  - (ii) the Reliance Letters from the authors of the Geotechnical Reports; and
- (b) while the SCAW Contractor may rely on each Geotechnical Report to the extent provided by the Reliance Letters, subject to clause 12.11 the SCAW Contractor is not entitled to make any Claim against the Principal (and the Principal will not be liable upon any Claim by the SCAW Contractor) arising out of or in connection with any Geotechnical Report or the accuracy of any information contained within any Geotechnical Report.

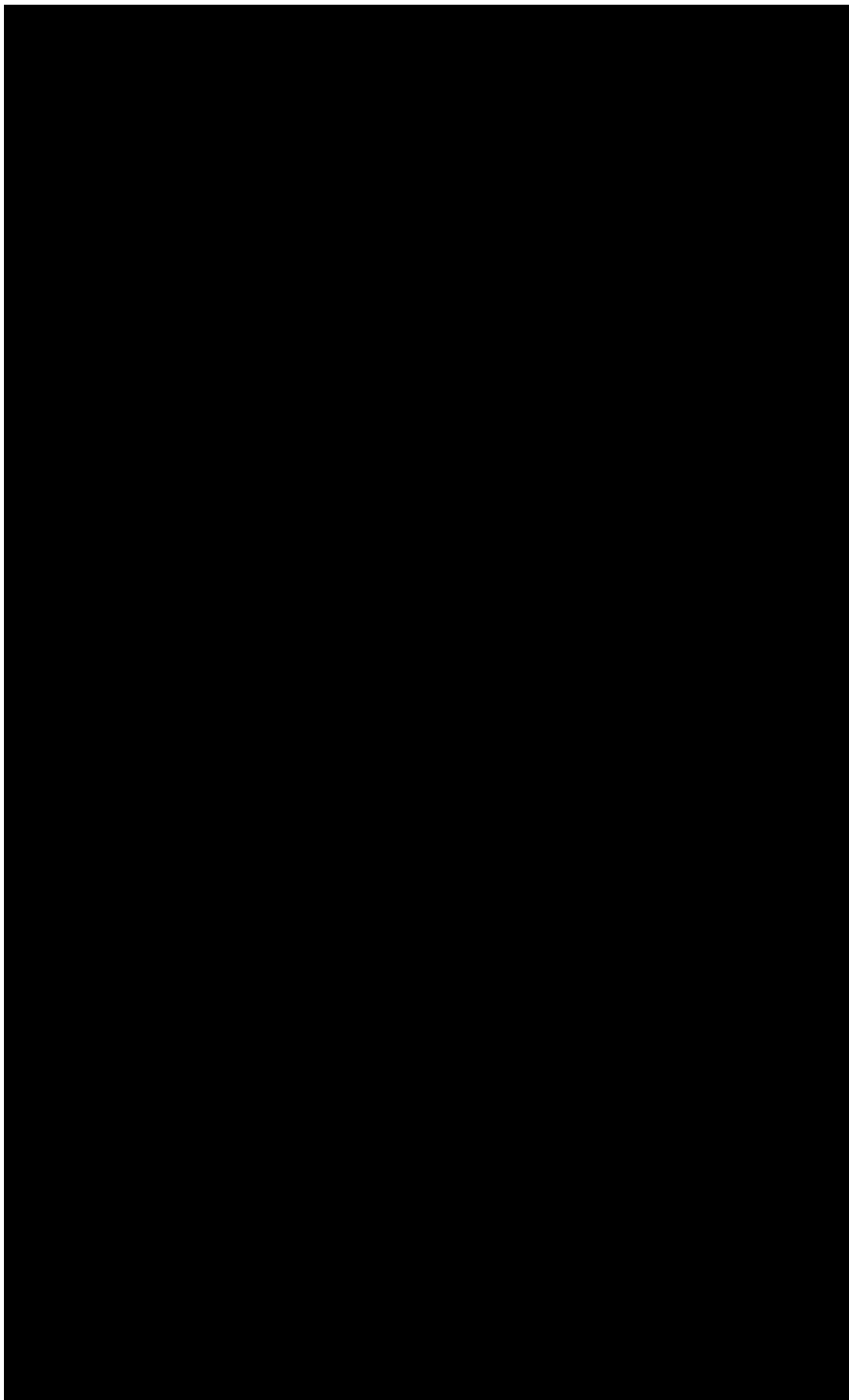
**12.11 Notice of Site Investigation Location Difference**

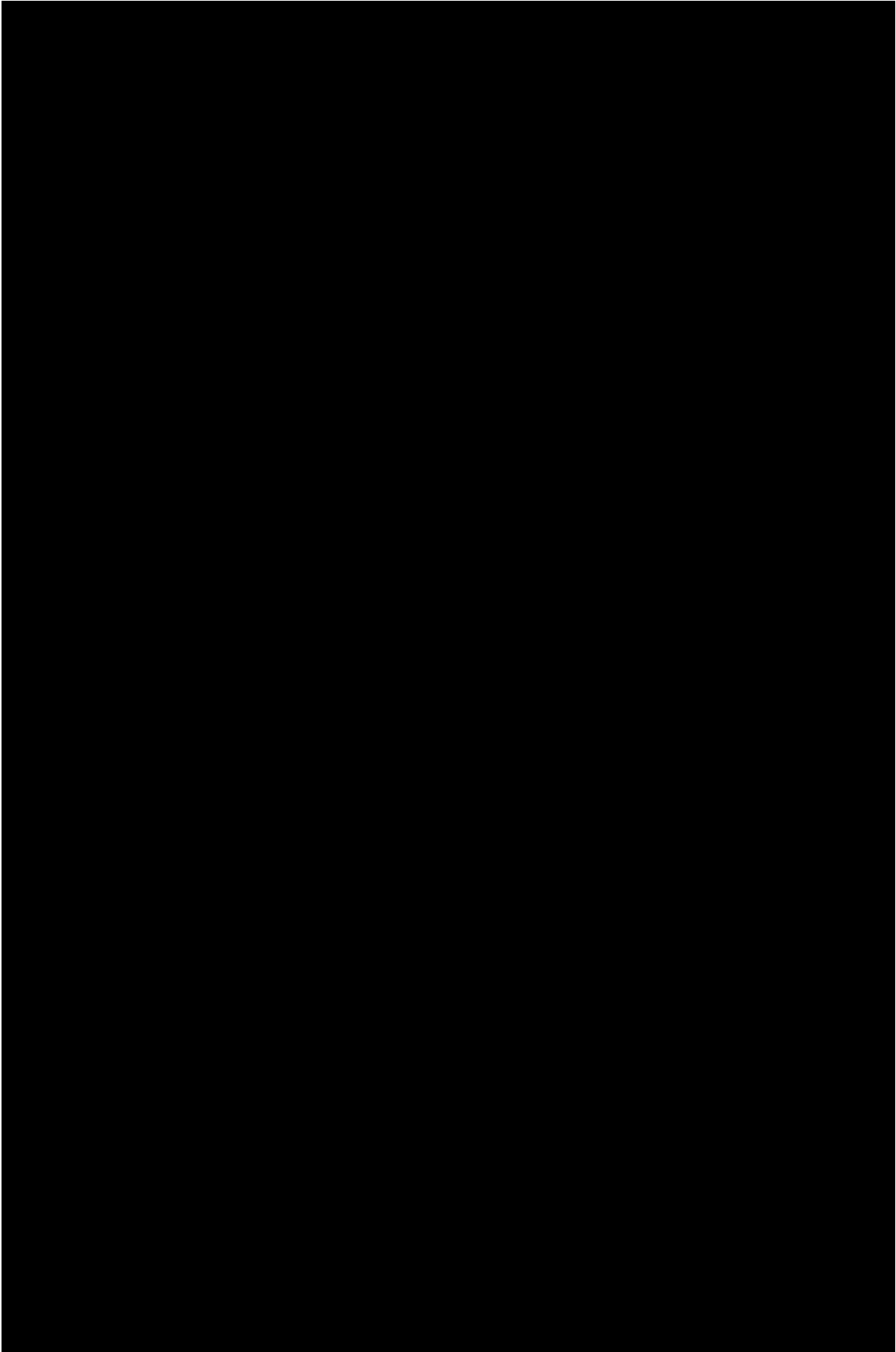
- (a) If, during the execution of the SCAW Contractor's Activities, the SCAW Contractor becomes aware of a Site Investigation Location Difference, it must immediately give the Principal's Representative notice in writing.
- (b) Within 10 Business Days of giving a notice under clause 12.11(a), the SCAW Contractor must give the Principal's Representative a written statement of:
- (i) the Site Investigation Location Difference and in what respects it will have a material impact upon the SCAW Contractor's Activities;
  - (ii) the additional work and resources which the SCAW Contractor estimates to be necessary to deal with the Site Investigation Location Difference;
  - (iii) the time the SCAW Contractor anticipates will be required to deal with the Site Investigation Location Difference and the expected delay in achieving Substantial Completion of any Portion;
  - (iv) the SCAW Contractor's estimate of the Direct Costs of the measures necessary to deal with the Site Investigation Location Difference; and
  - (v) other details reasonably required by the Principal's Representative.
- (c) If the Site Investigation Location Difference causes the SCAW Contractor to:
- (i) carry out additional work;
  - (ii) use additional Construction Plant; or
  - (iii) incur additional Direct Costs (excluding the costs of any delay or disruption arising out of or in any way in connection with the Site Investigation Location Difference or the additional work required to deal with the Site Investigation Location Difference),

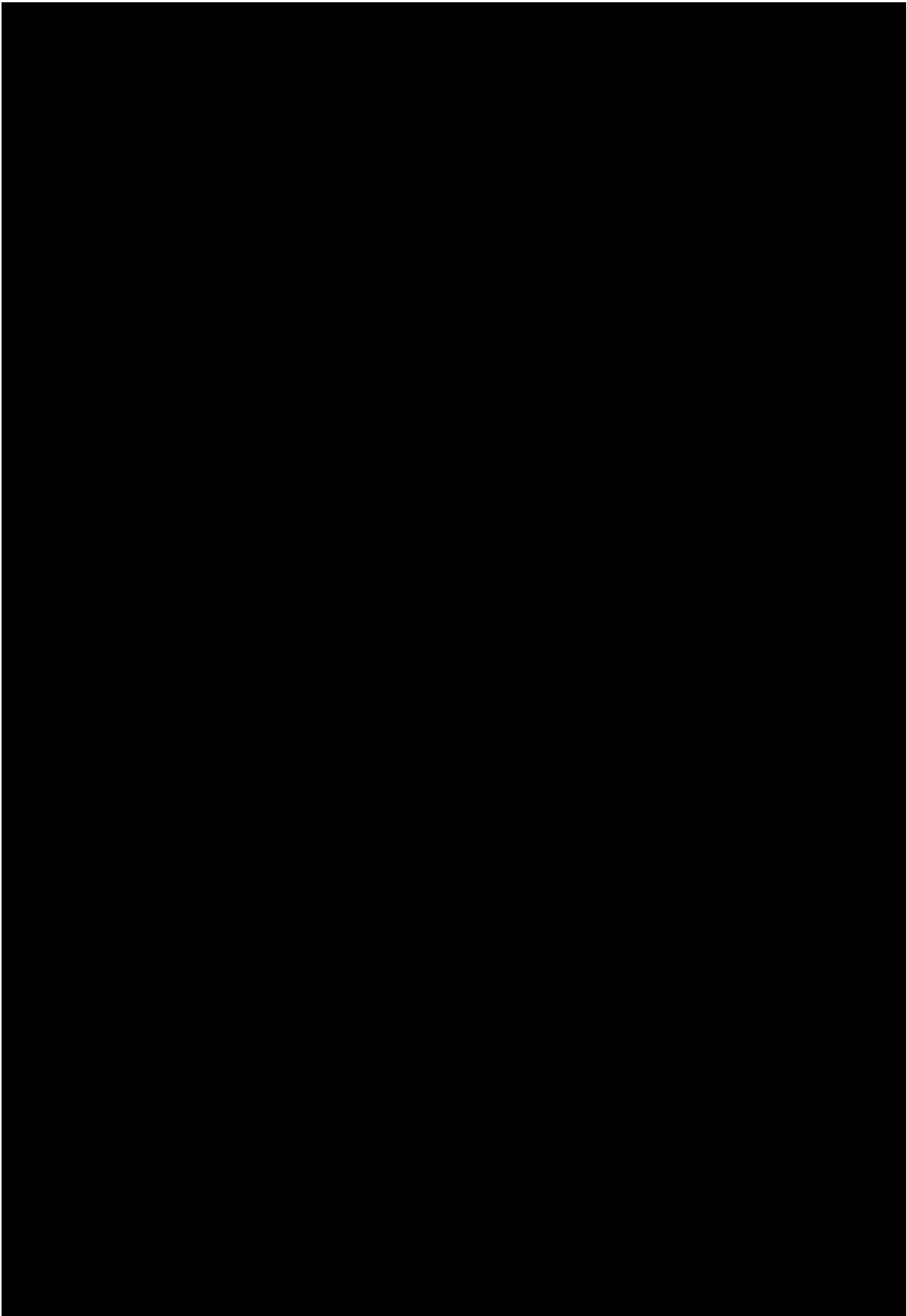
which a competent and experienced contractor having done those things it is deemed to have done by clause 12.8(a) could not have avoided or mitigated, and could not reasonably have anticipated at the date of this deed, the Principal will pay the SCAW Contractor any additional Direct Costs incurred by the SCAW Contractor after the date the SCAW Contractor gives the written notice required by clause 12.11(a) for carrying out such work, plus Overheads and Profit Margin.

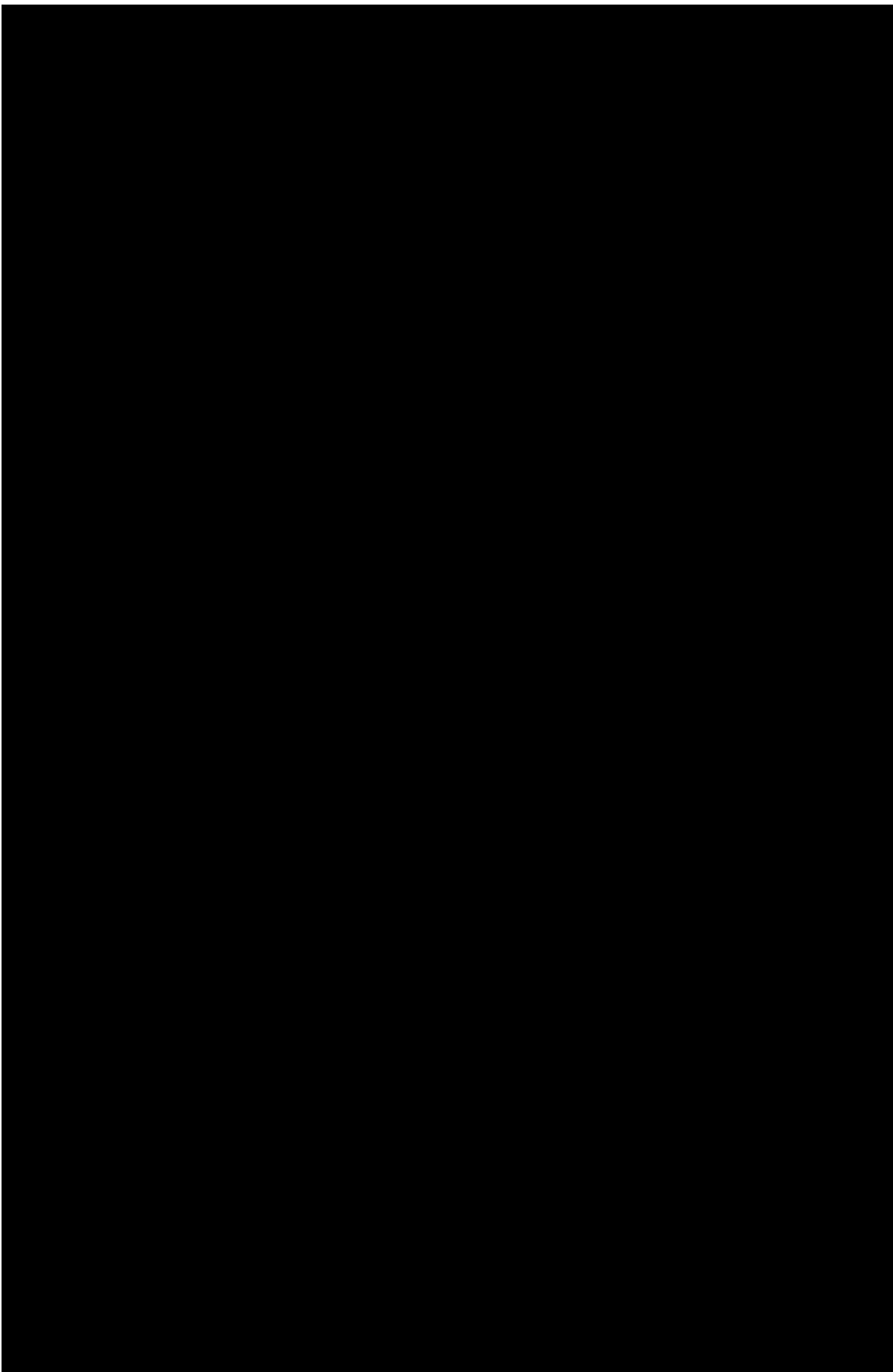
- (d) The SCAW Contractor's entitlement under clause 12.11(c) will be reduced to the extent that the SCAW Contractor or its Associates have not taken all reasonable steps to mitigate any extra costs incurred by it as a result of the Site Investigation Location Difference.

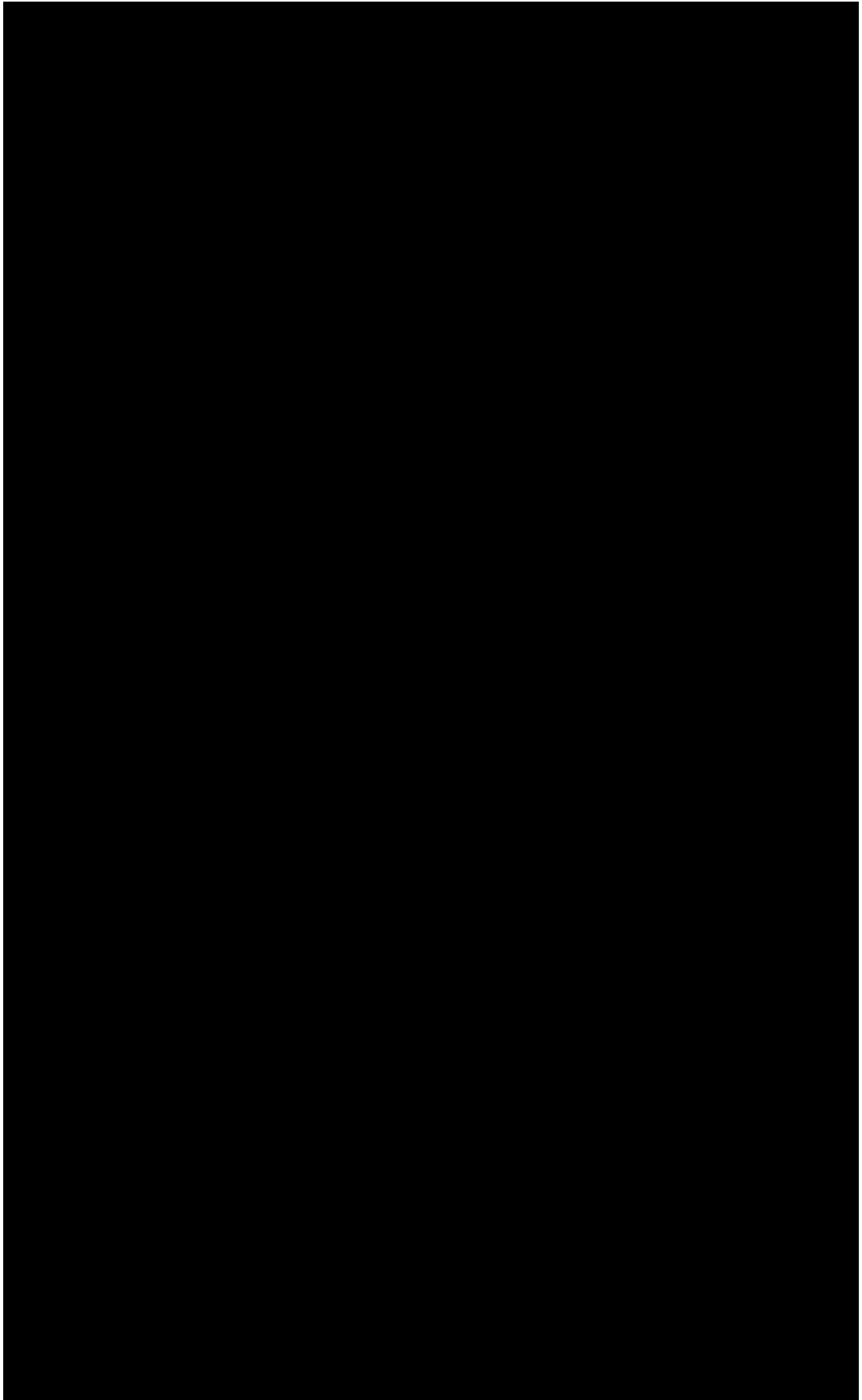


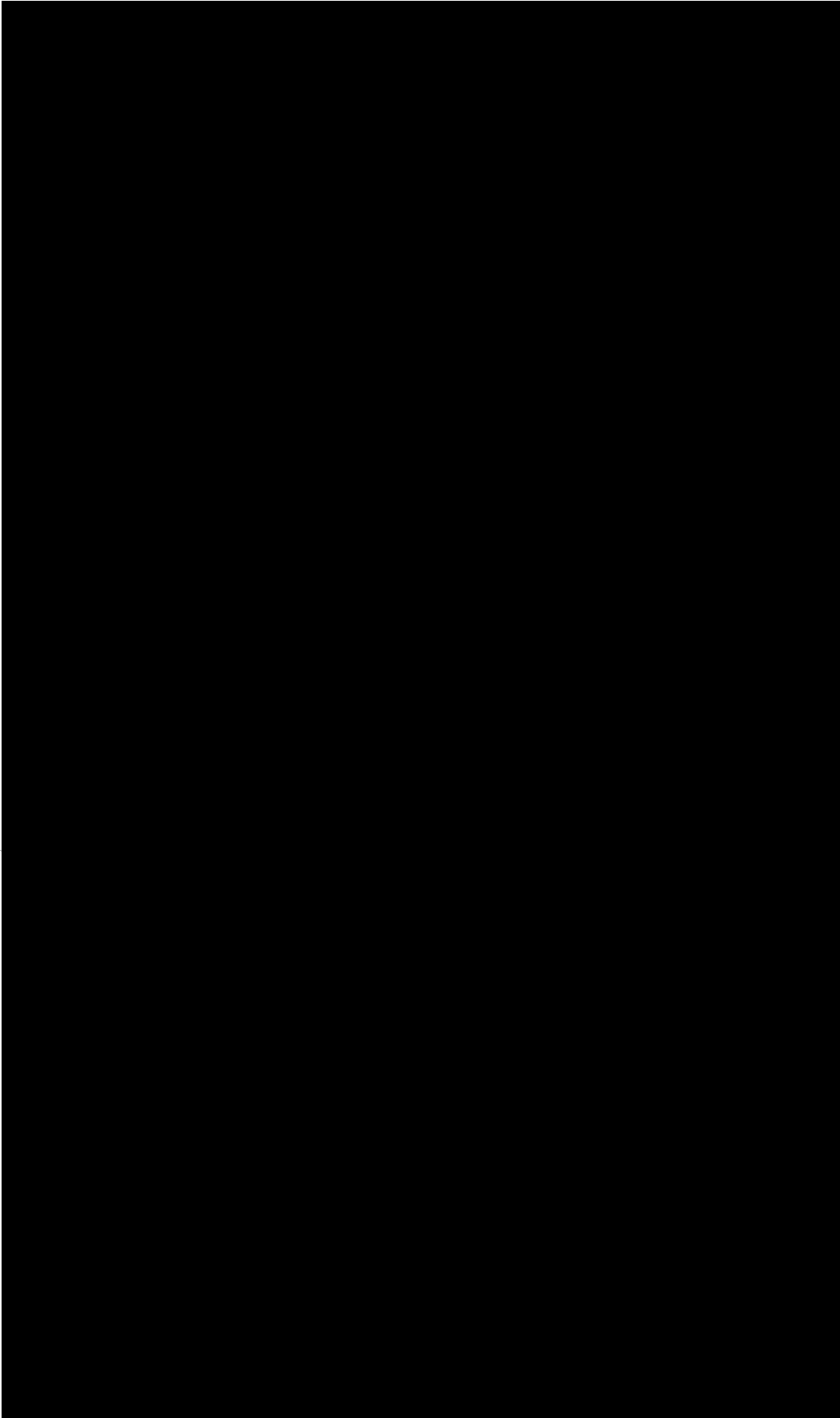




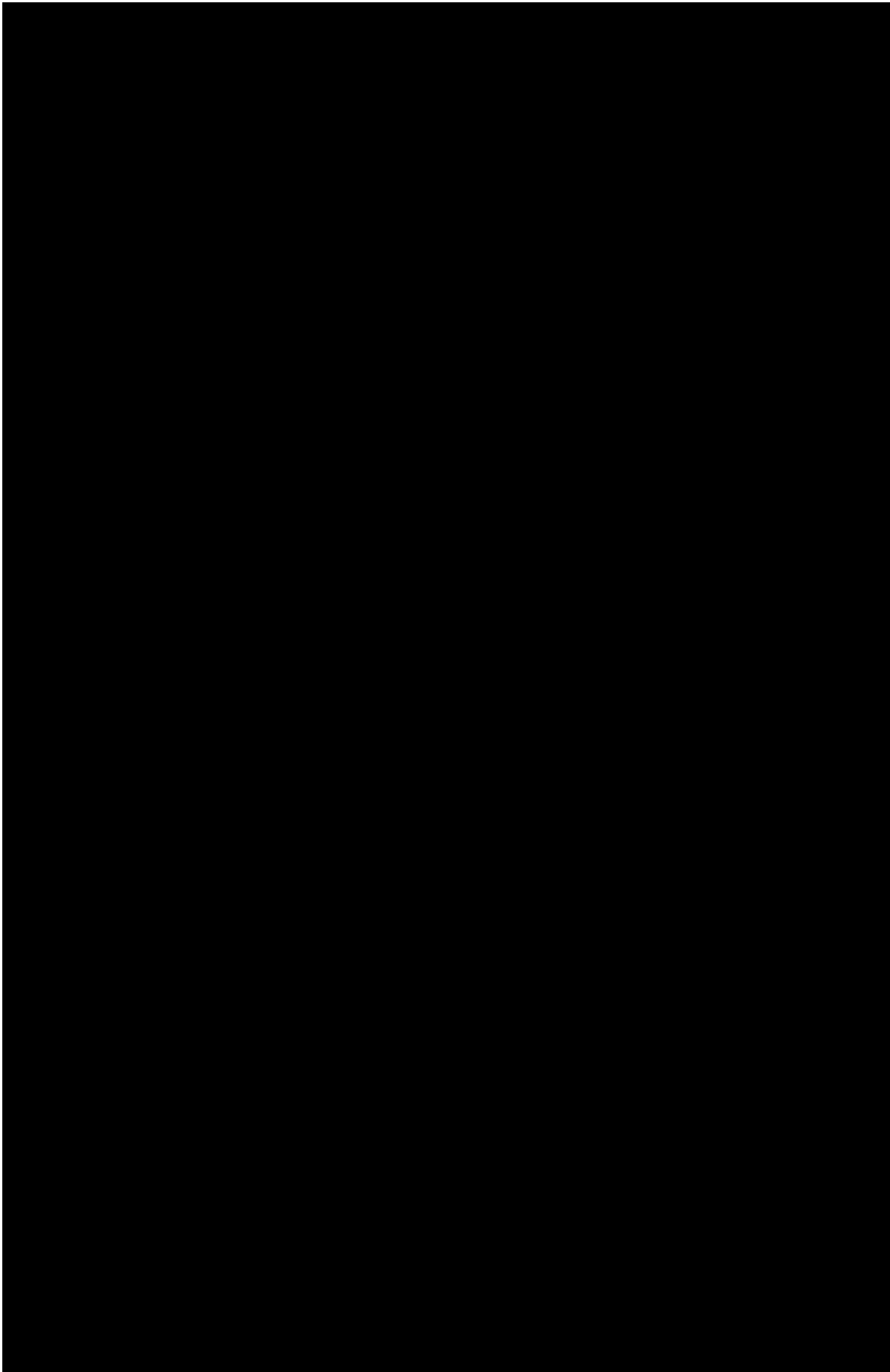


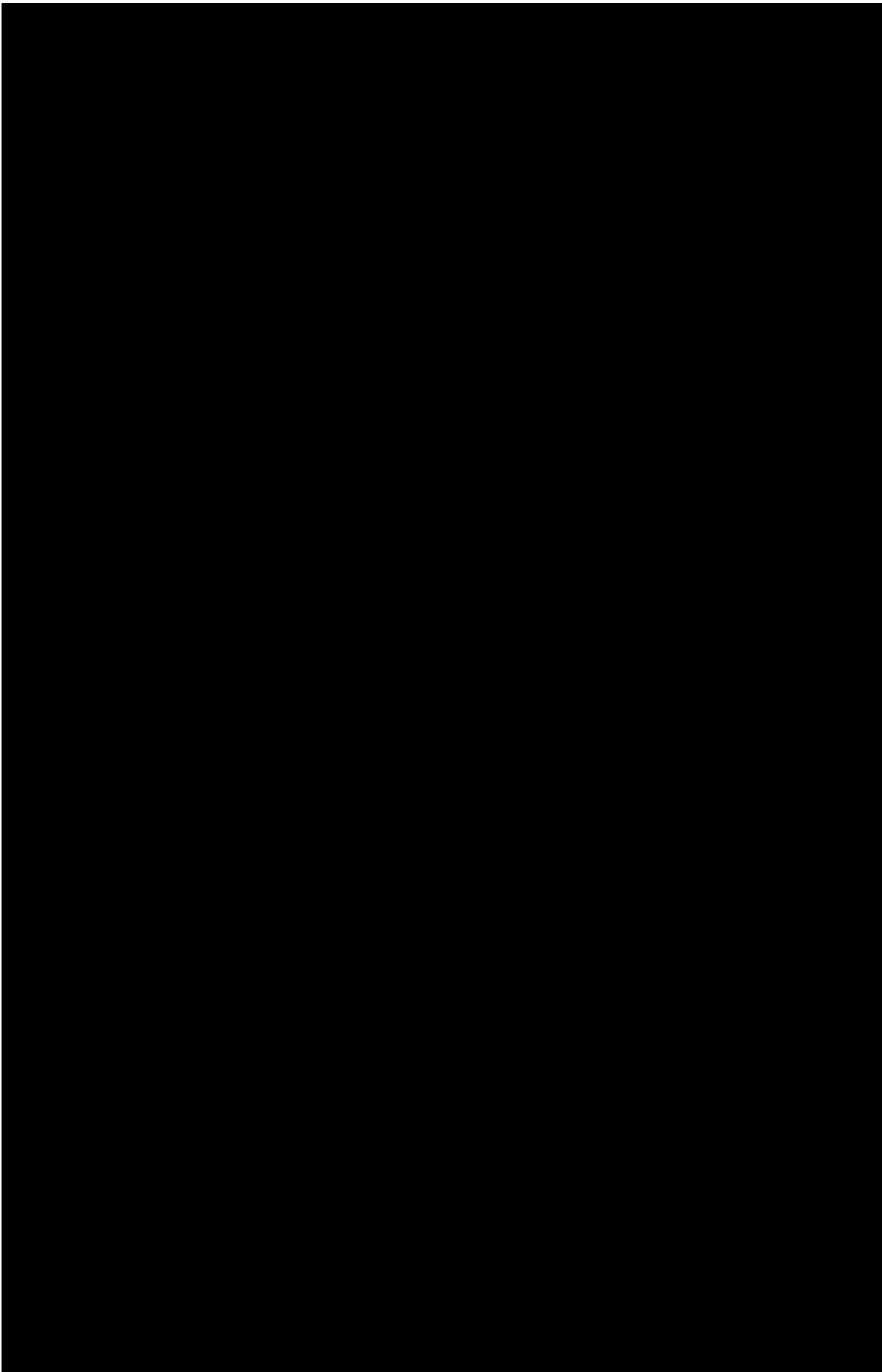


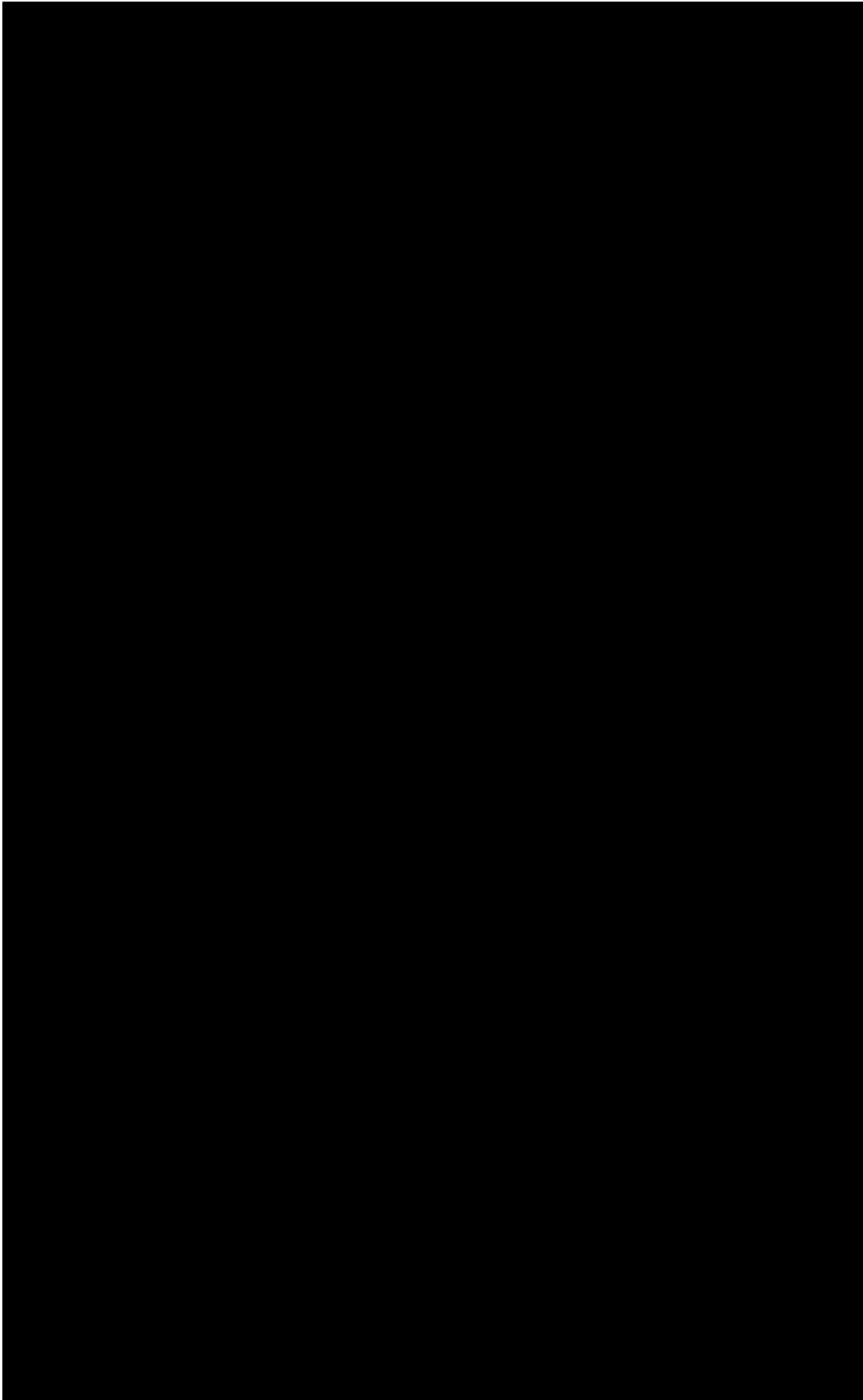


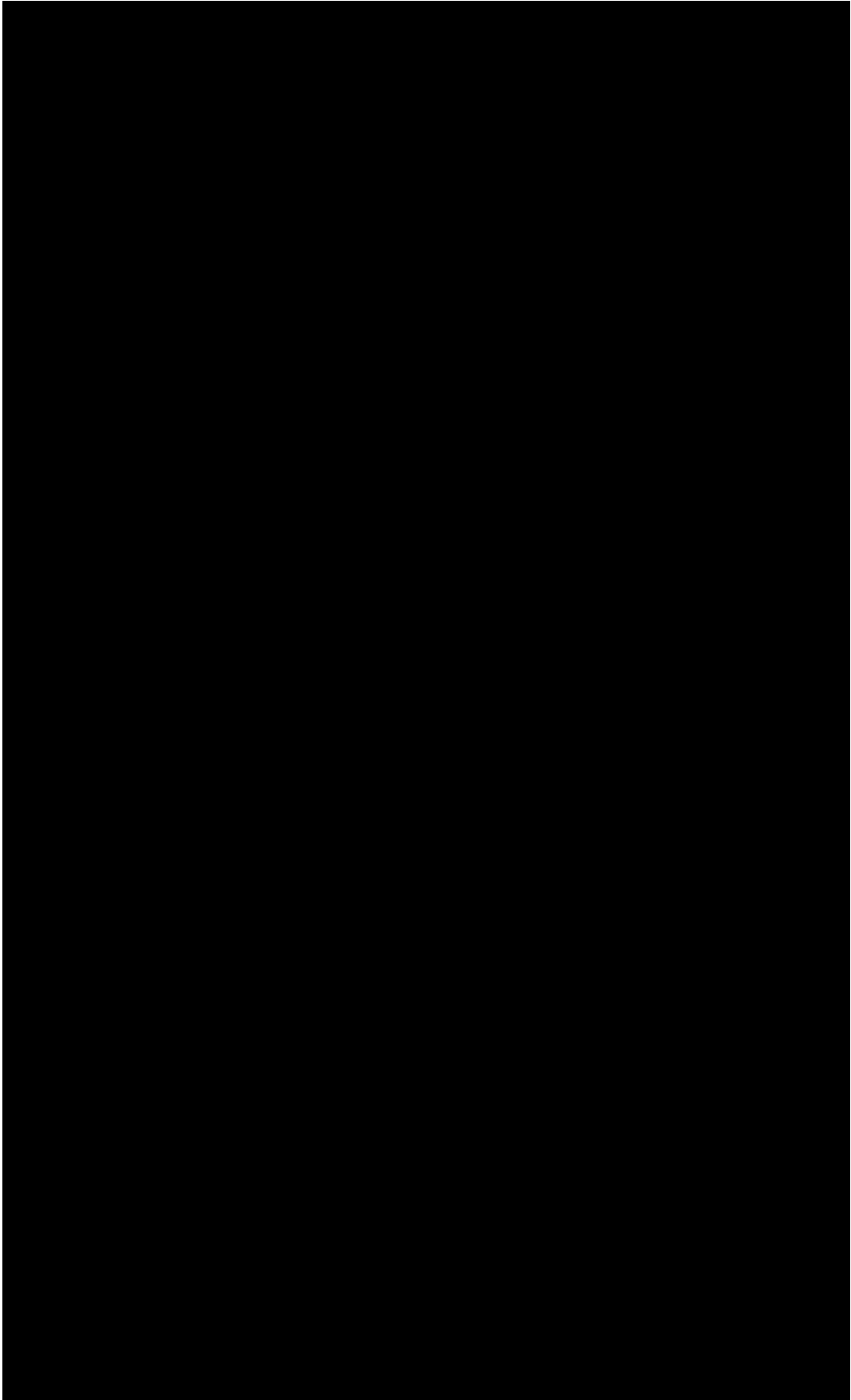


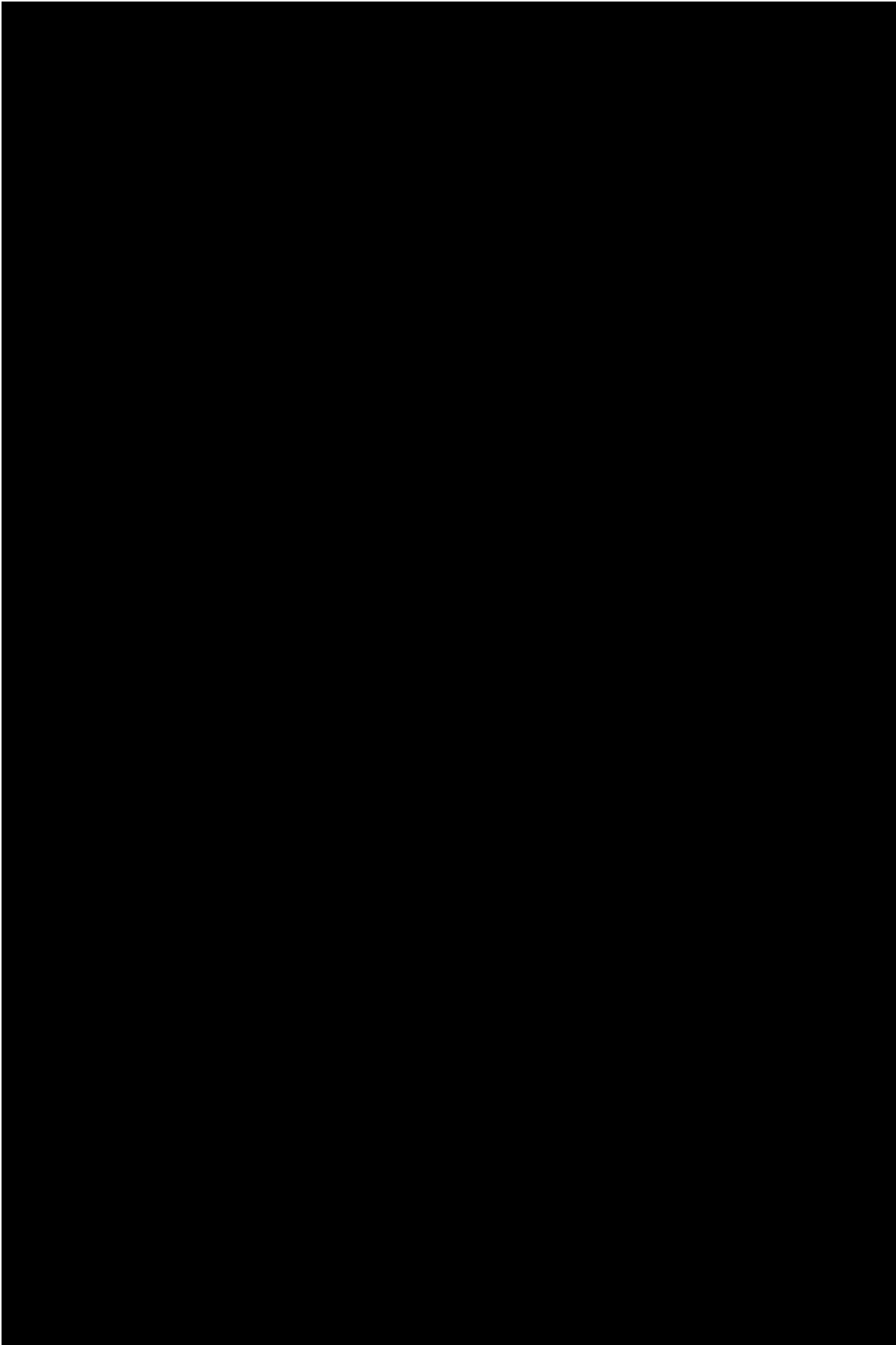


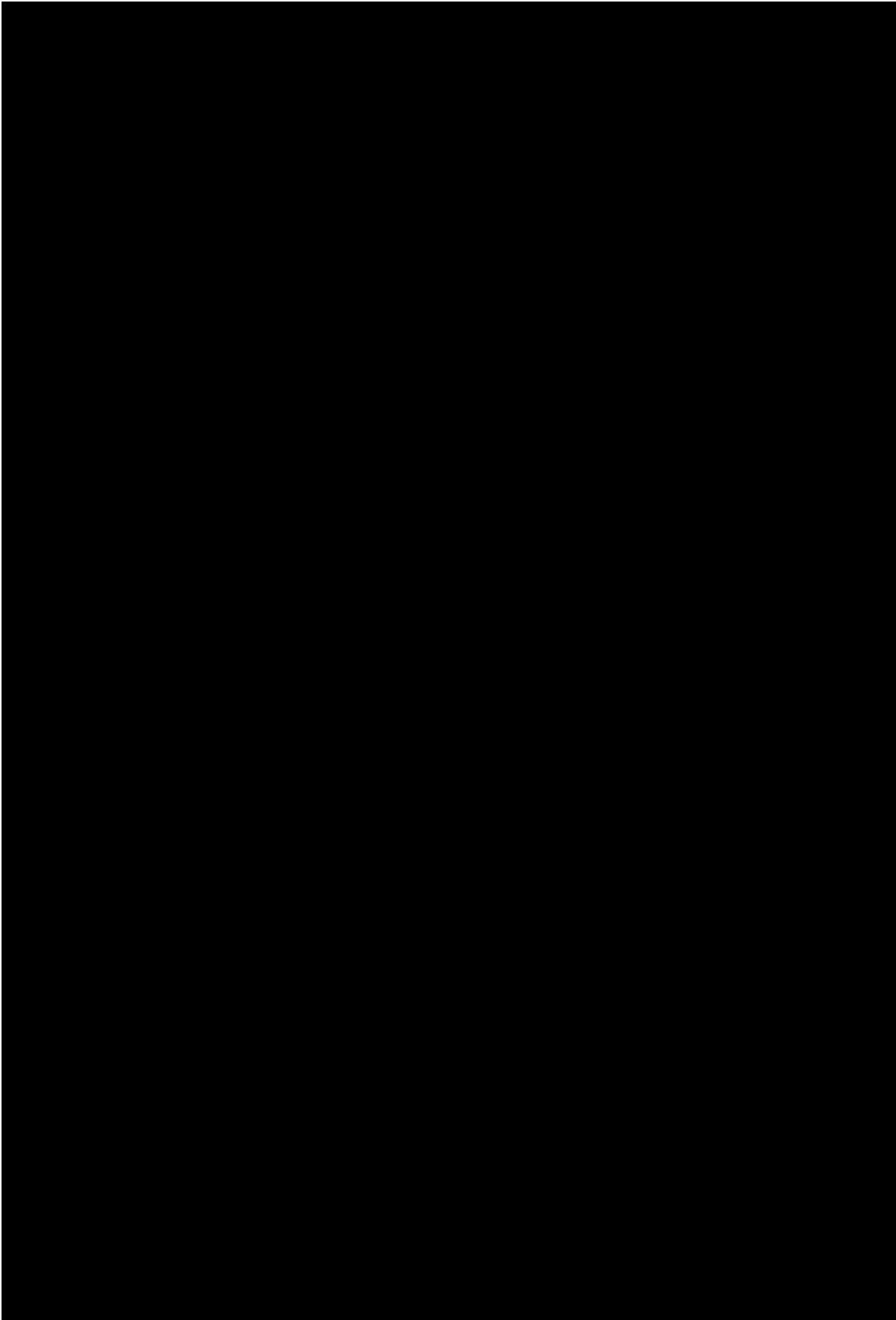


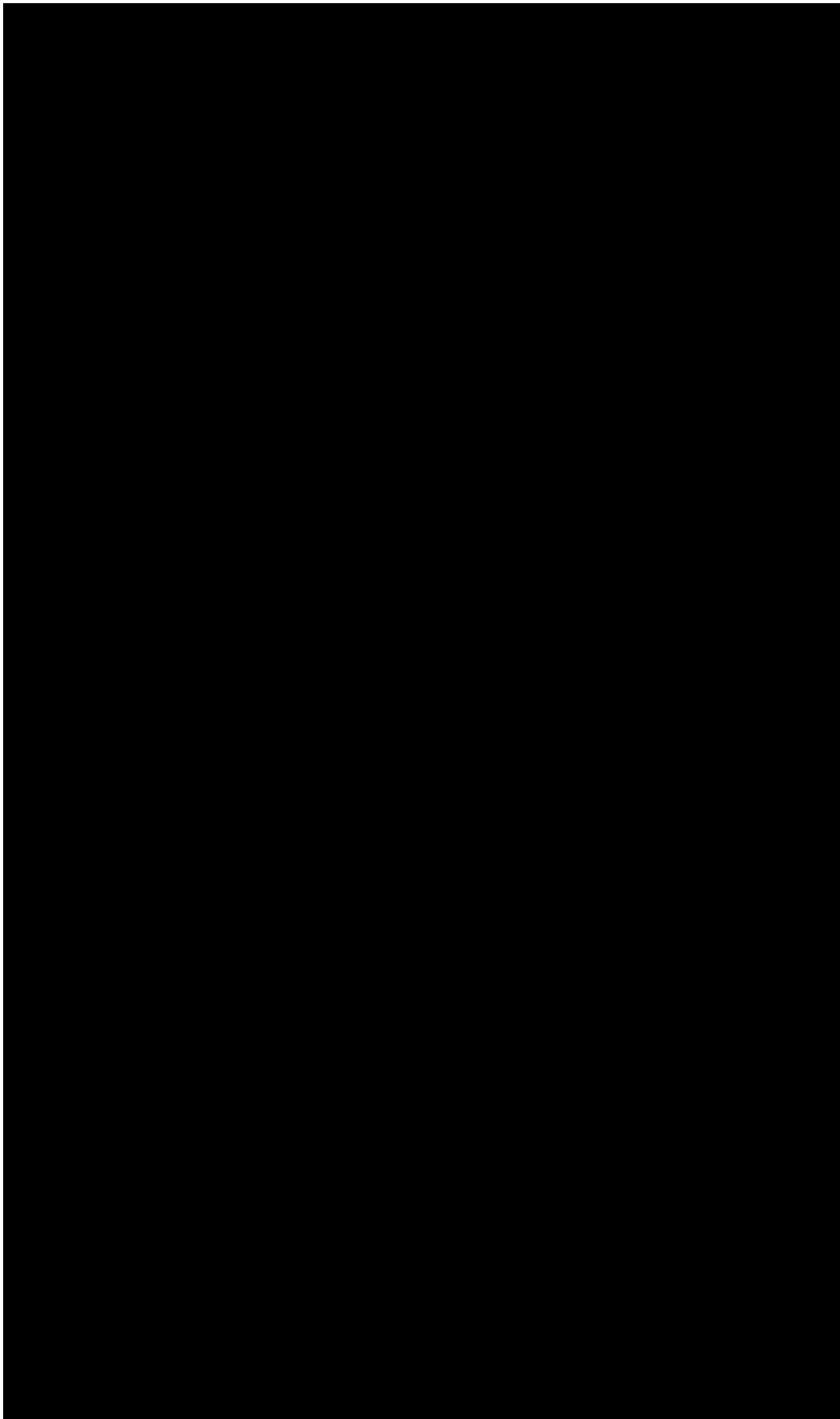


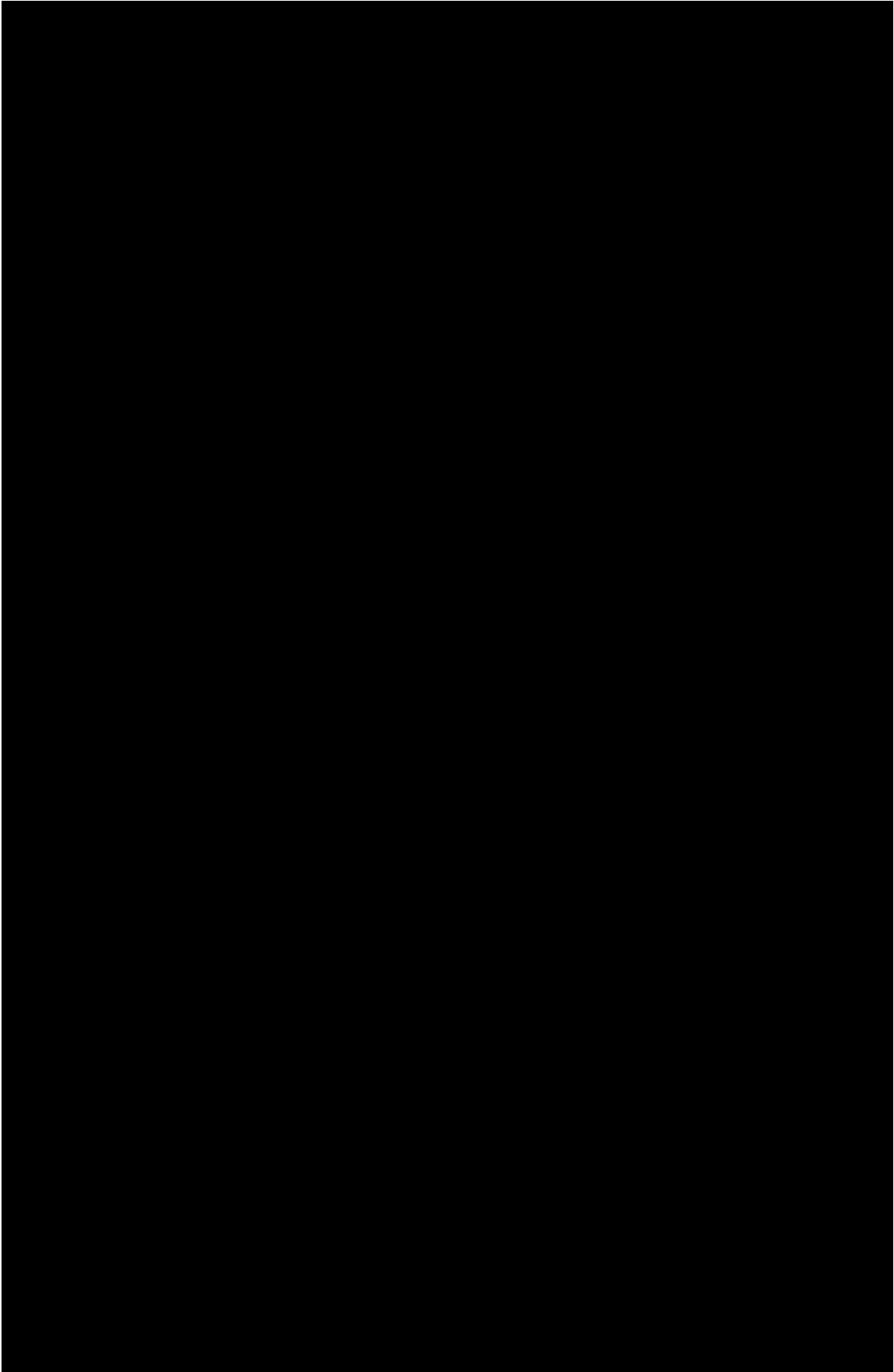




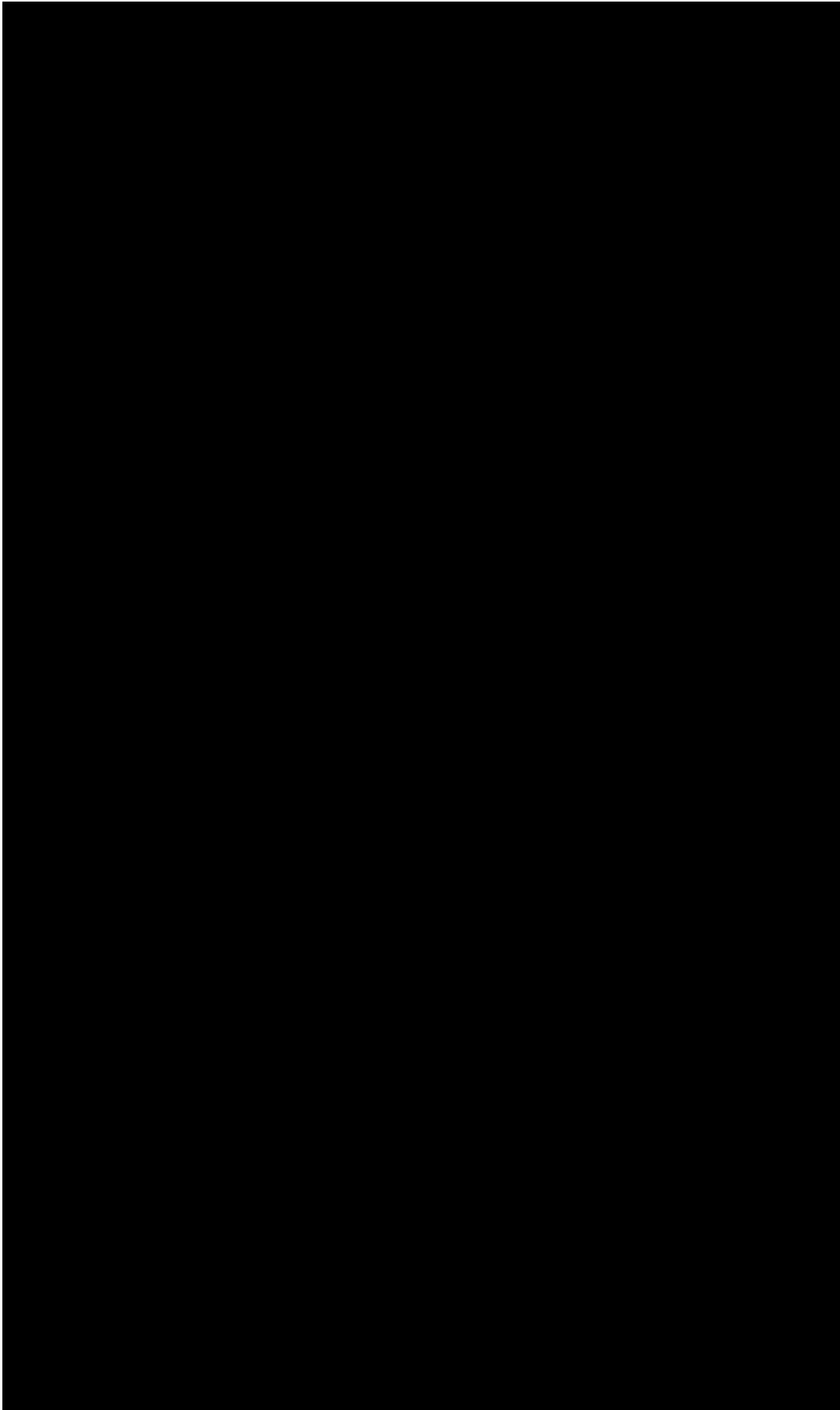


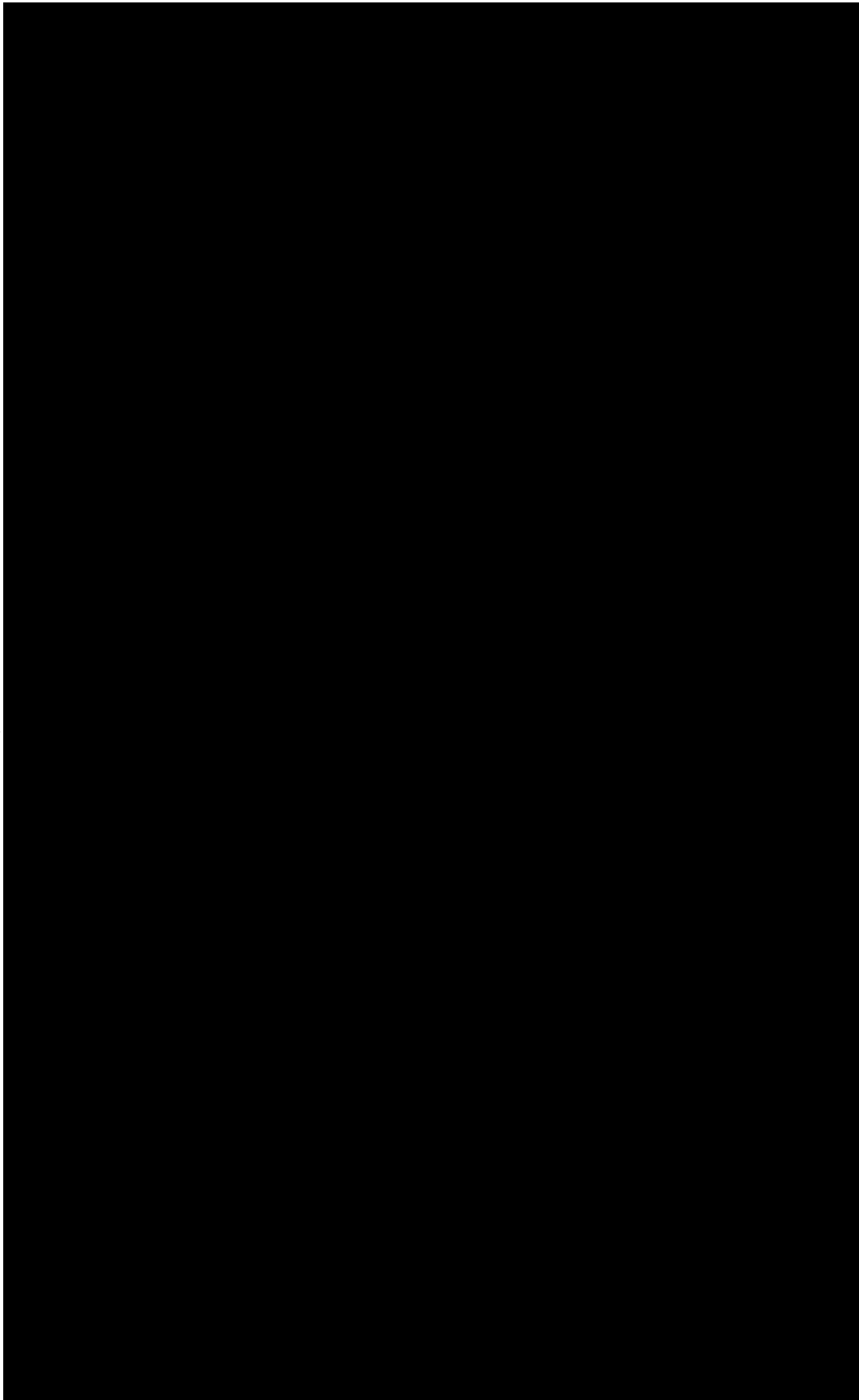


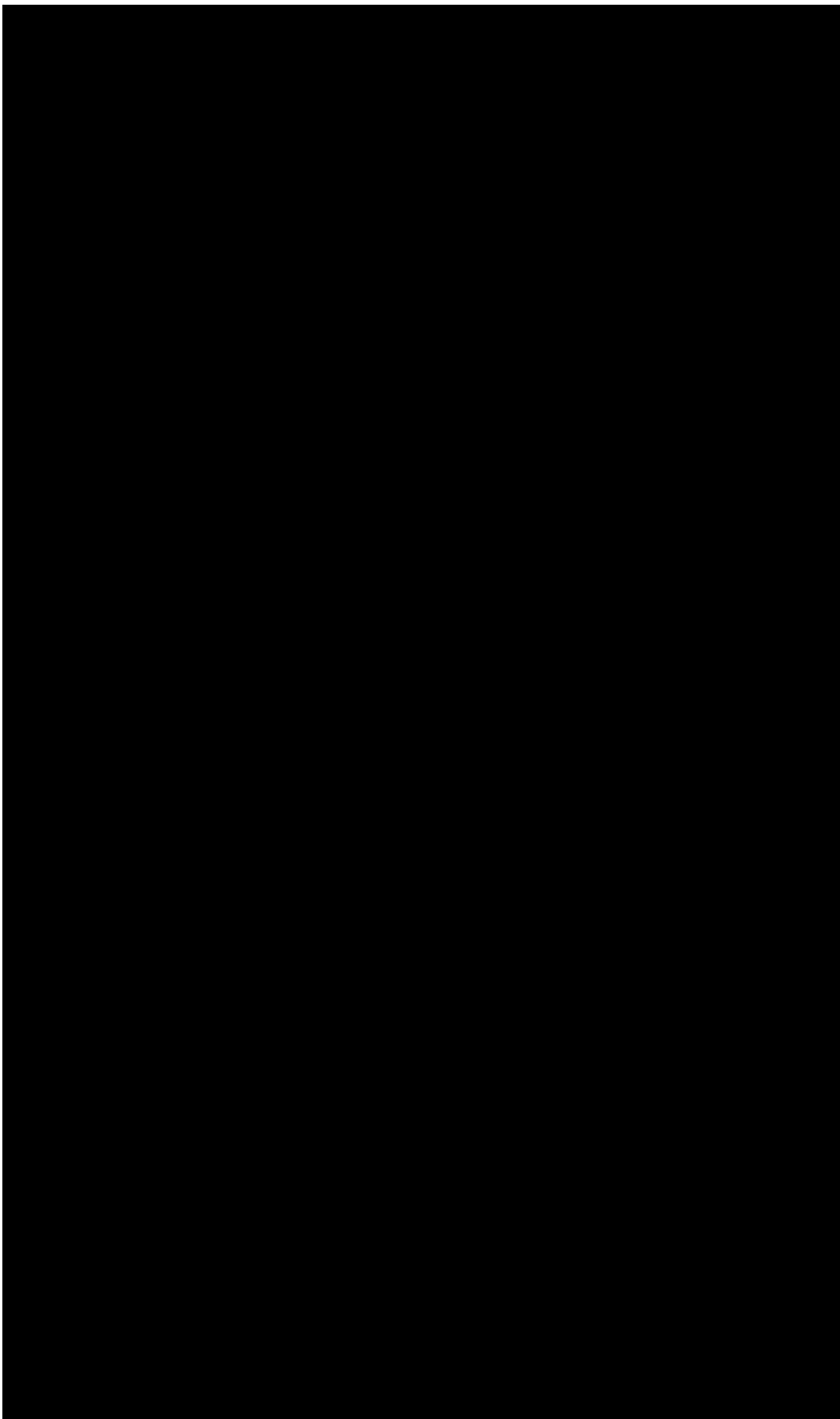


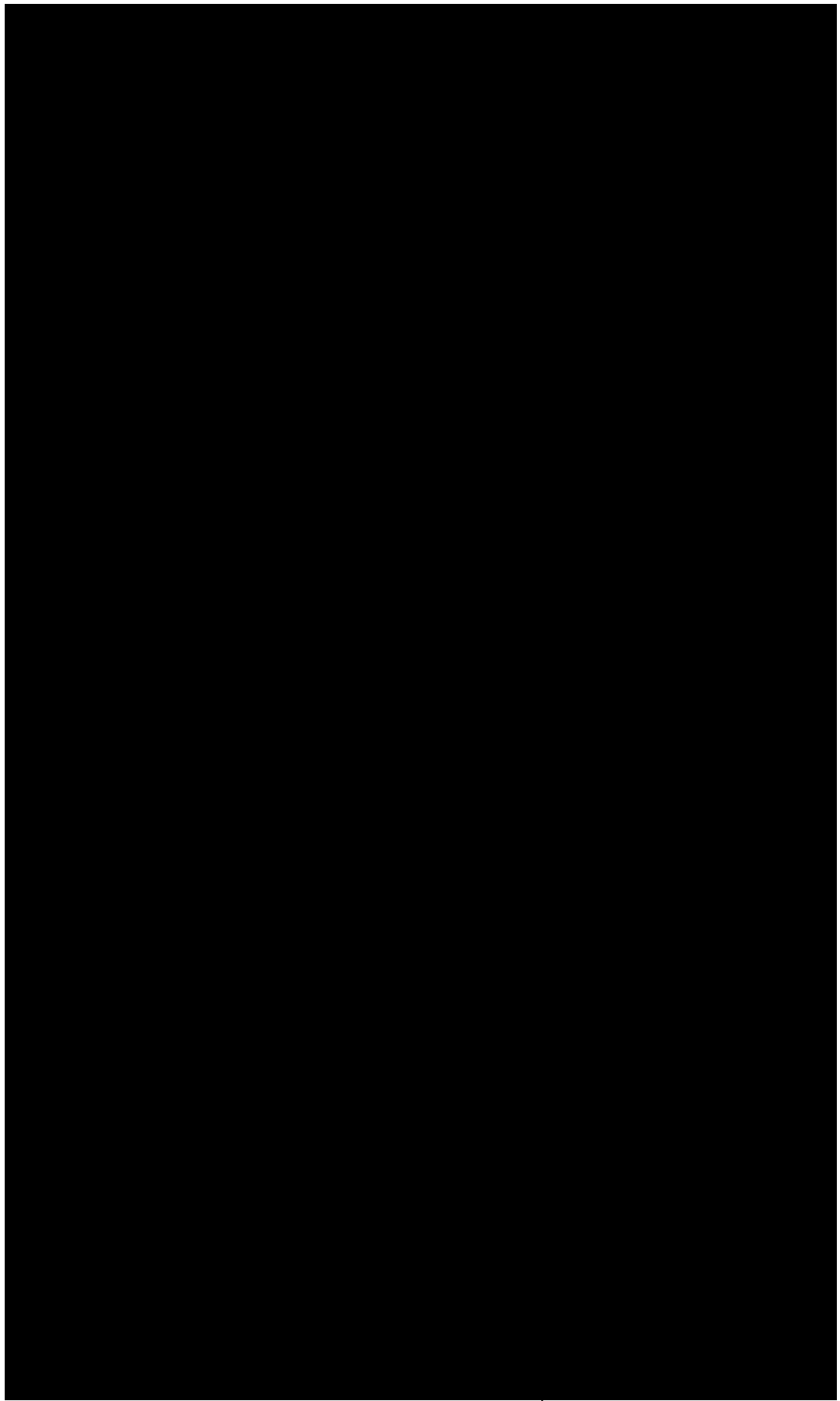


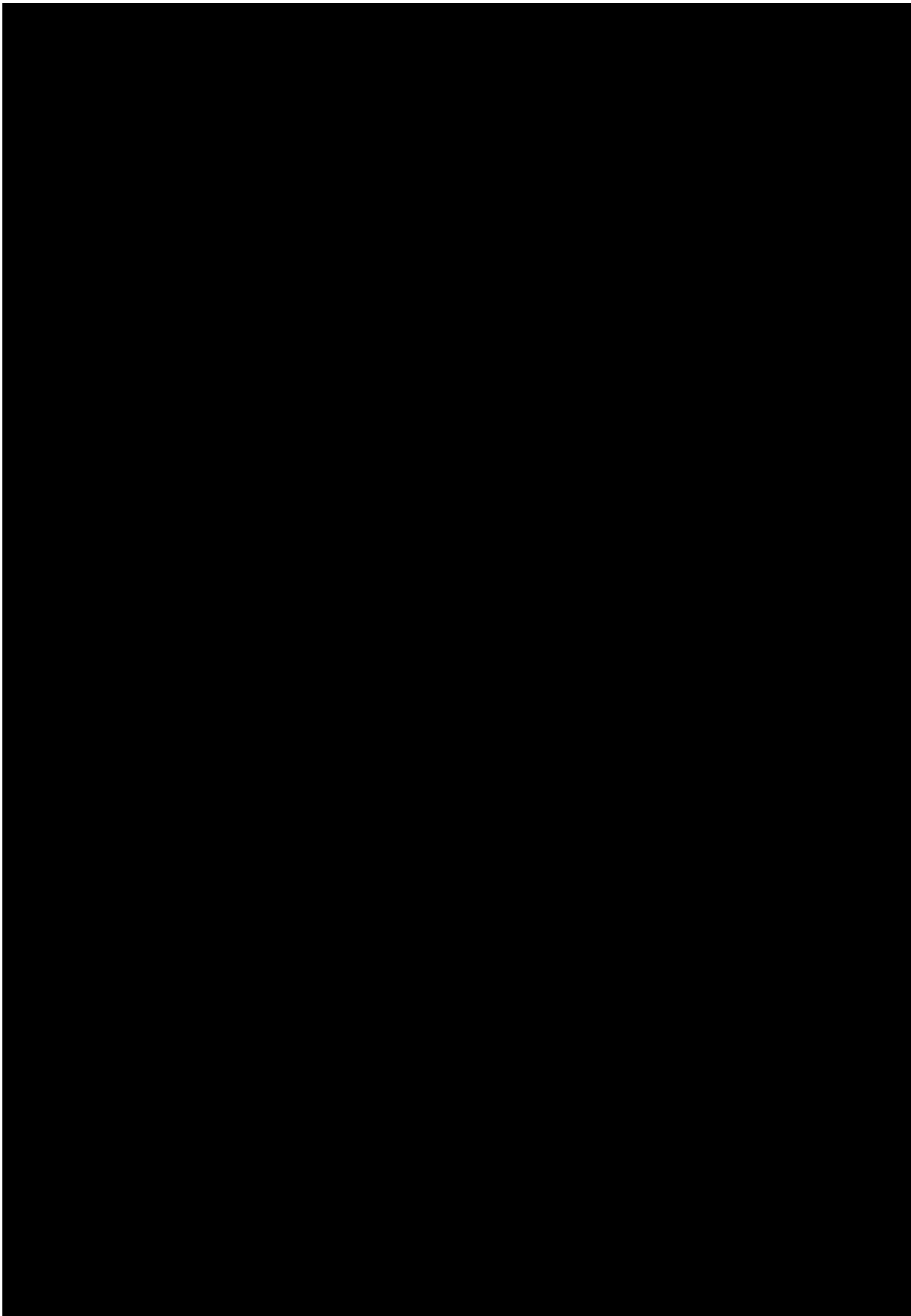


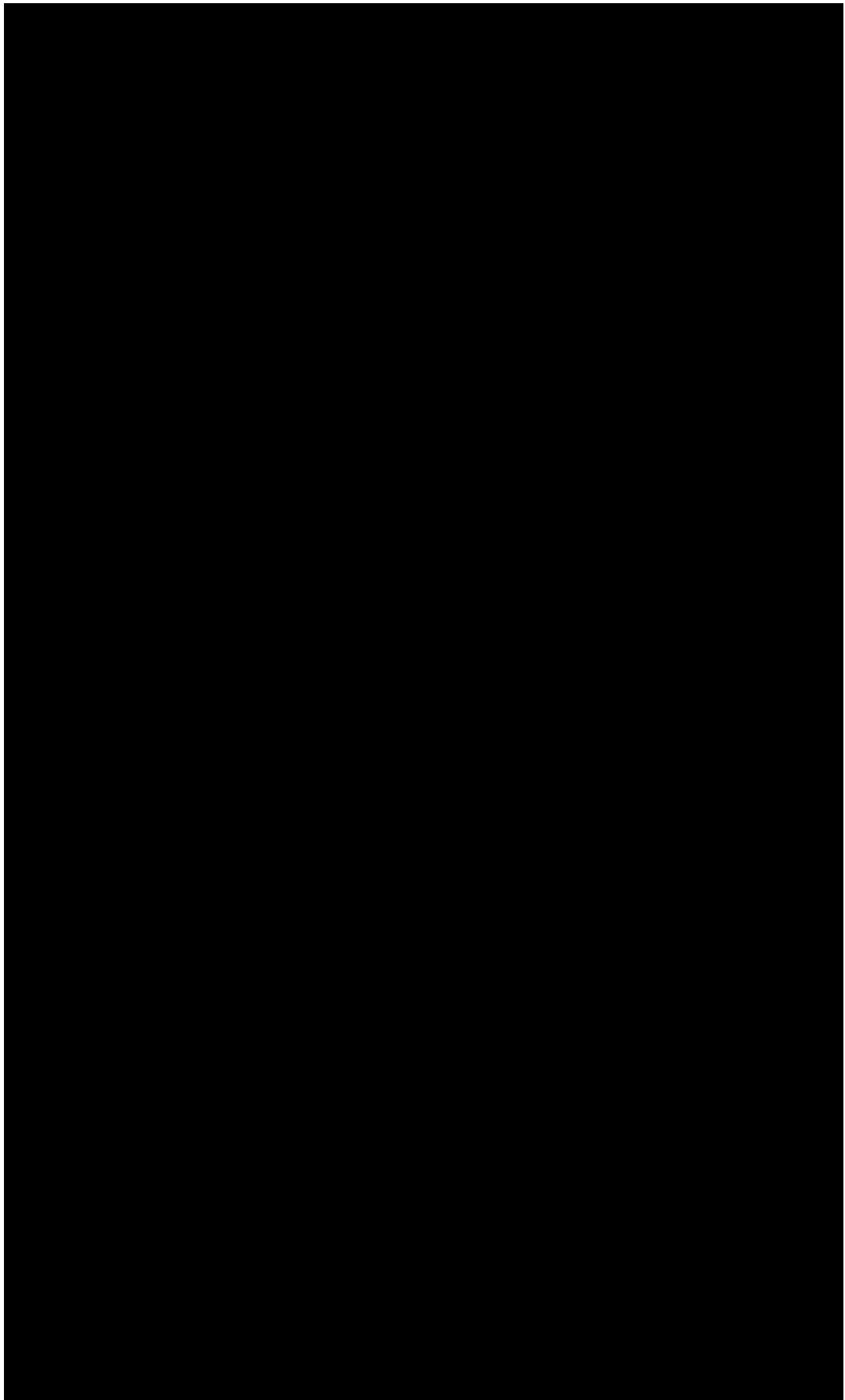


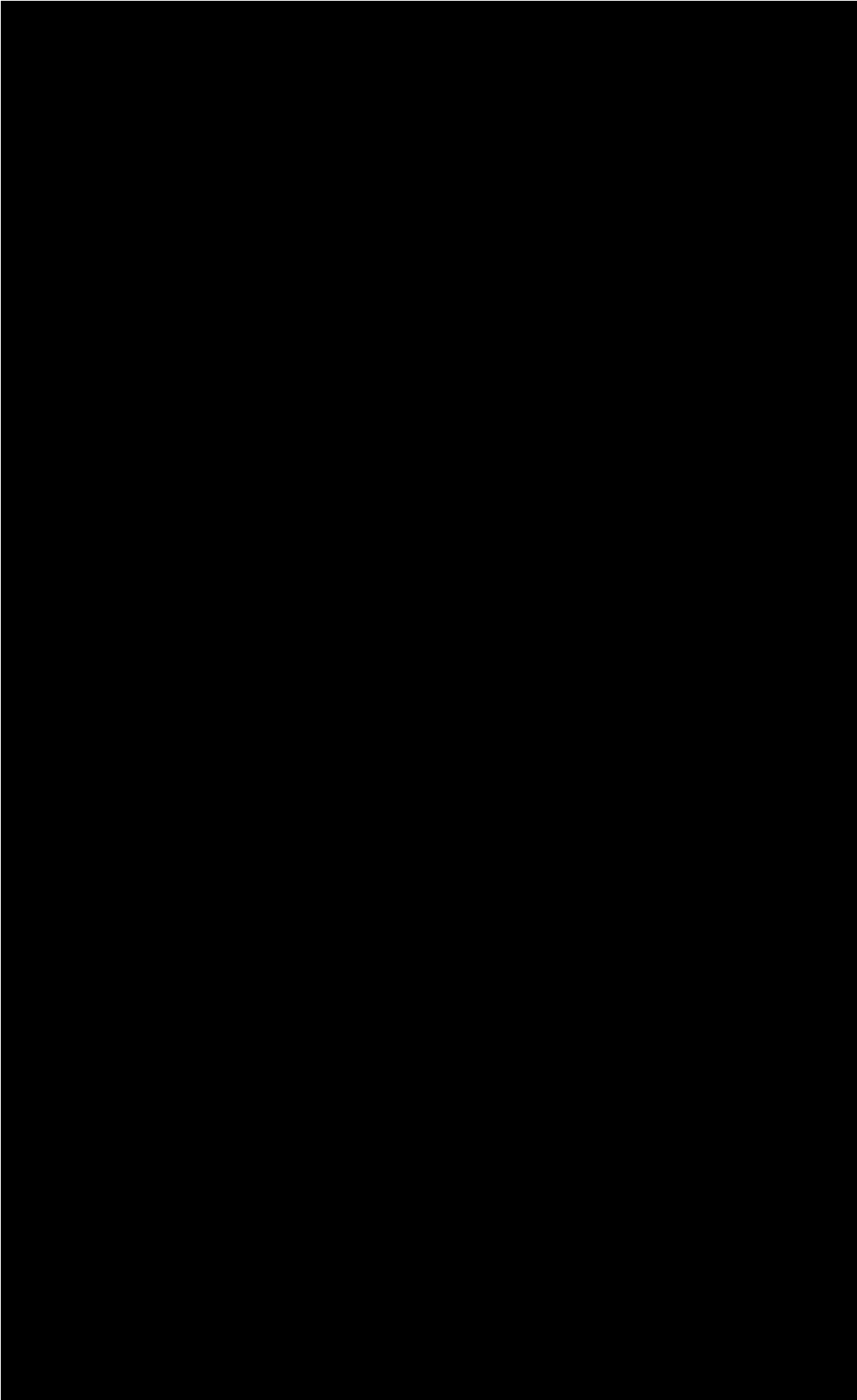


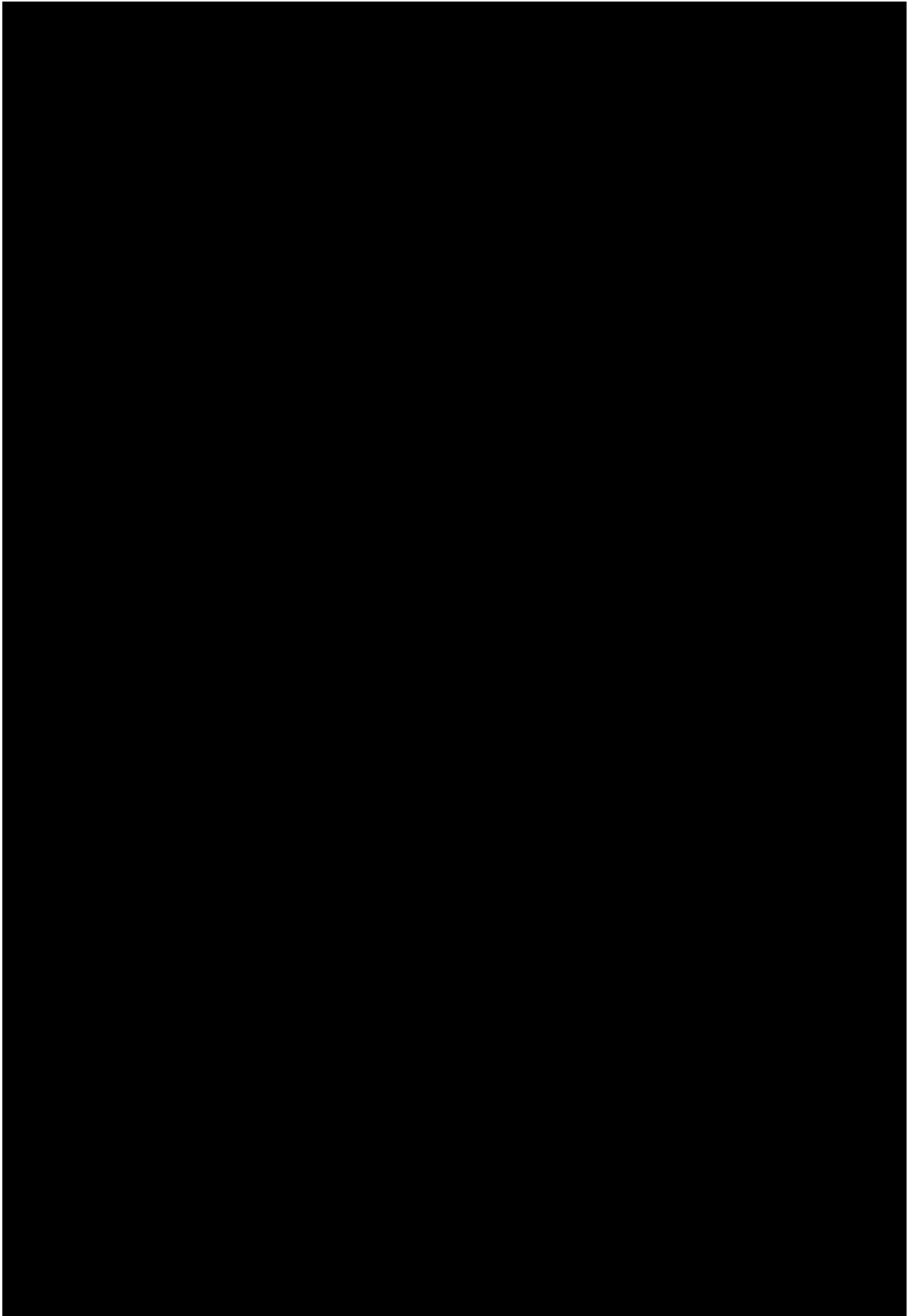




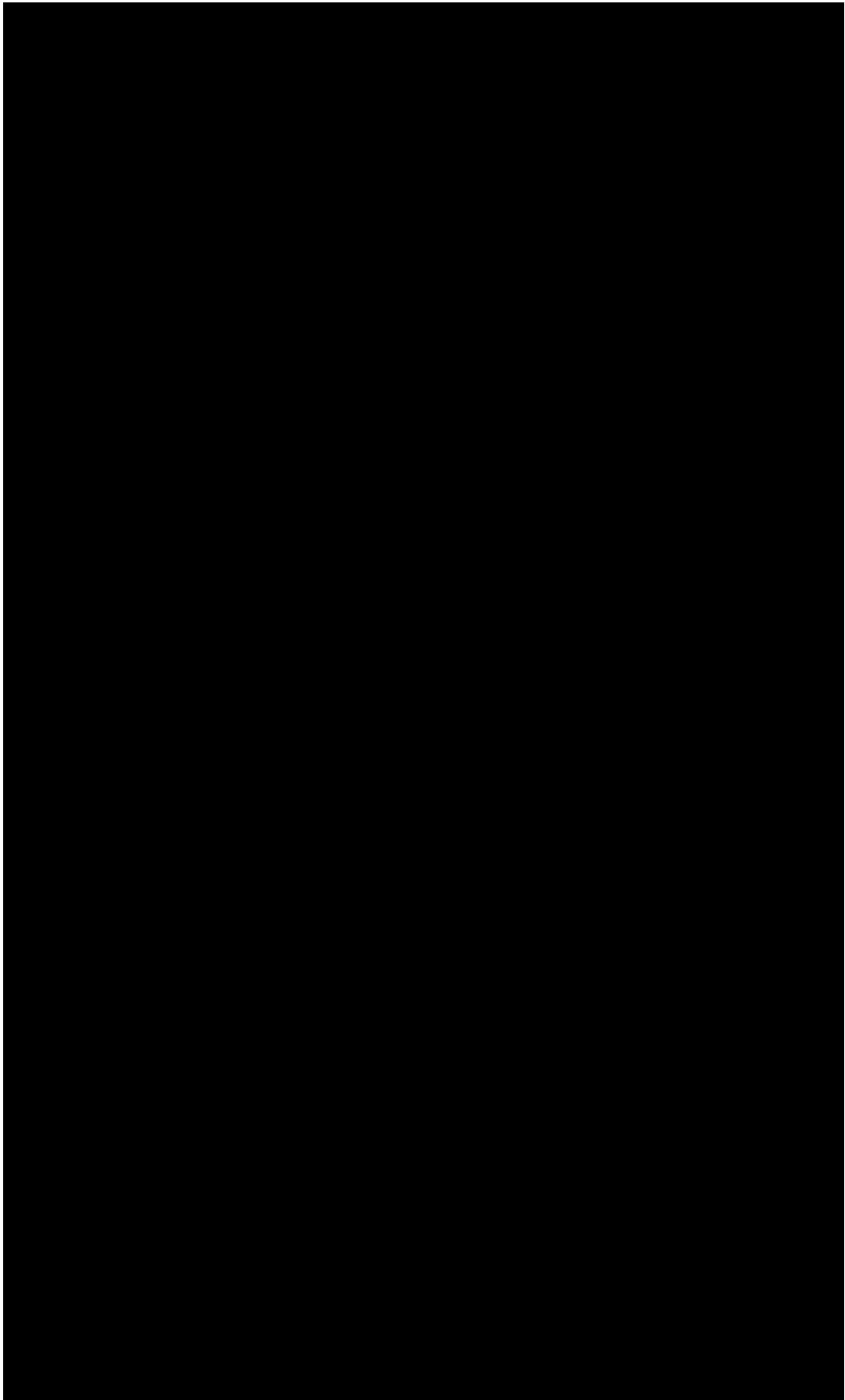


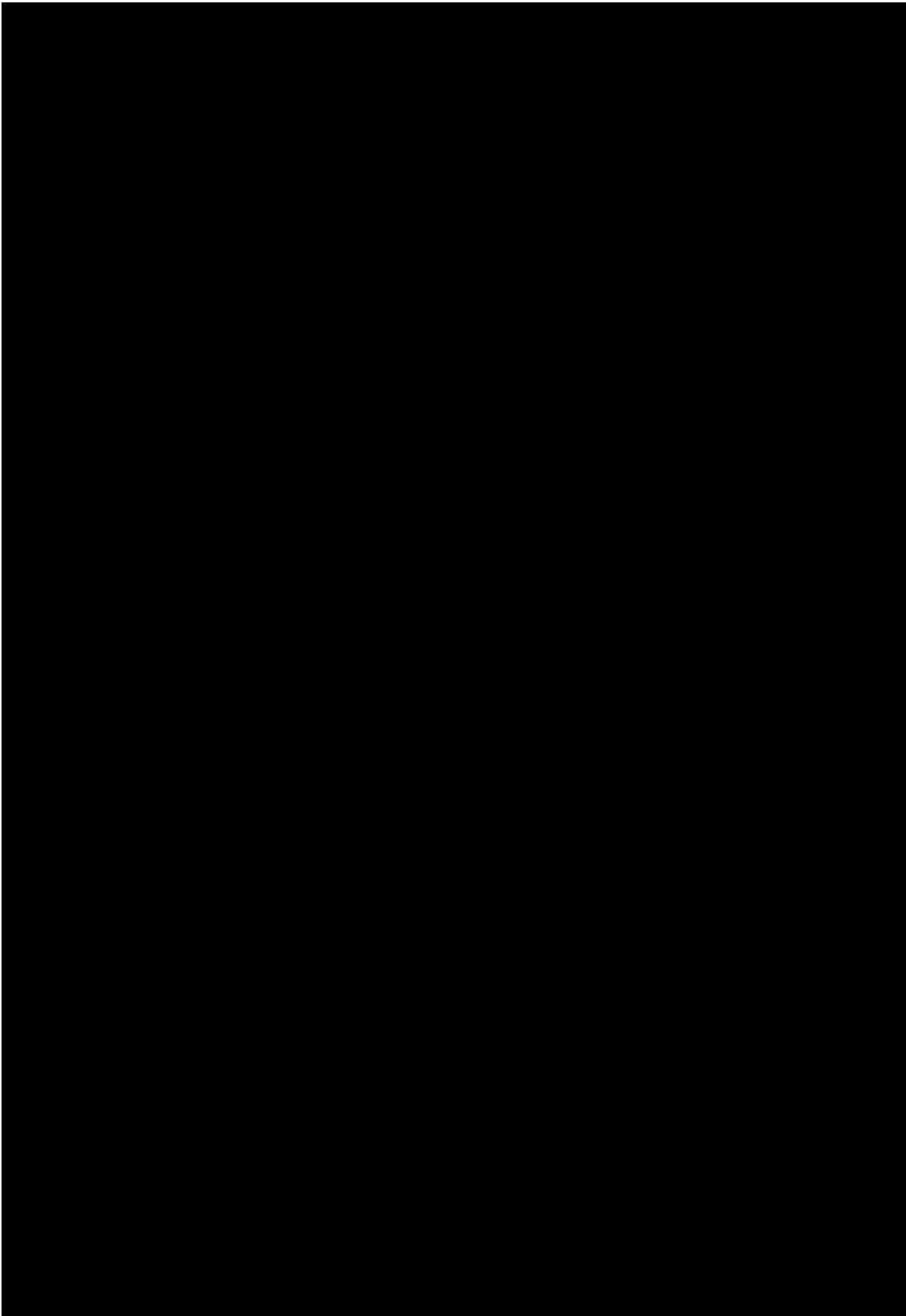




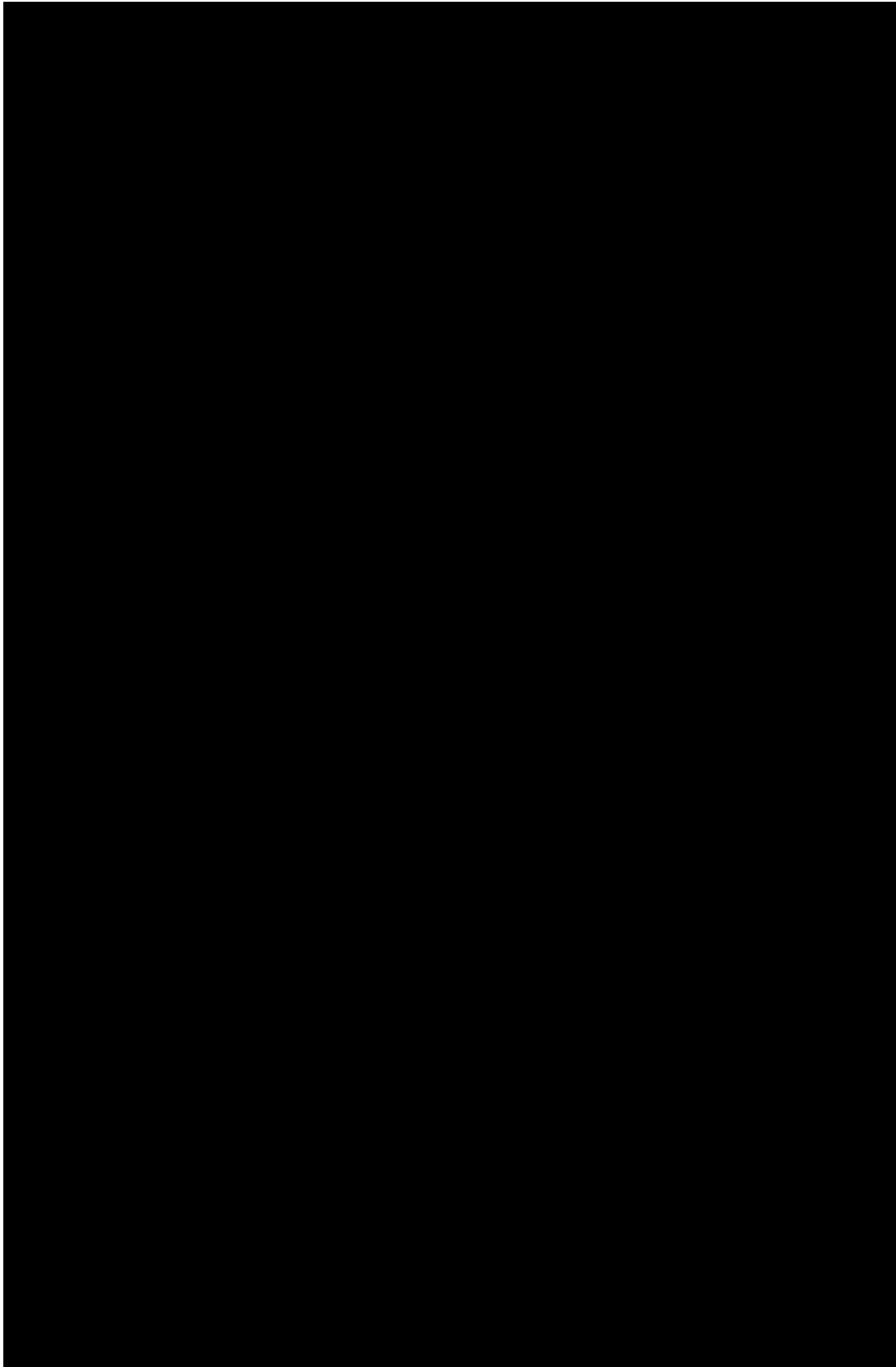


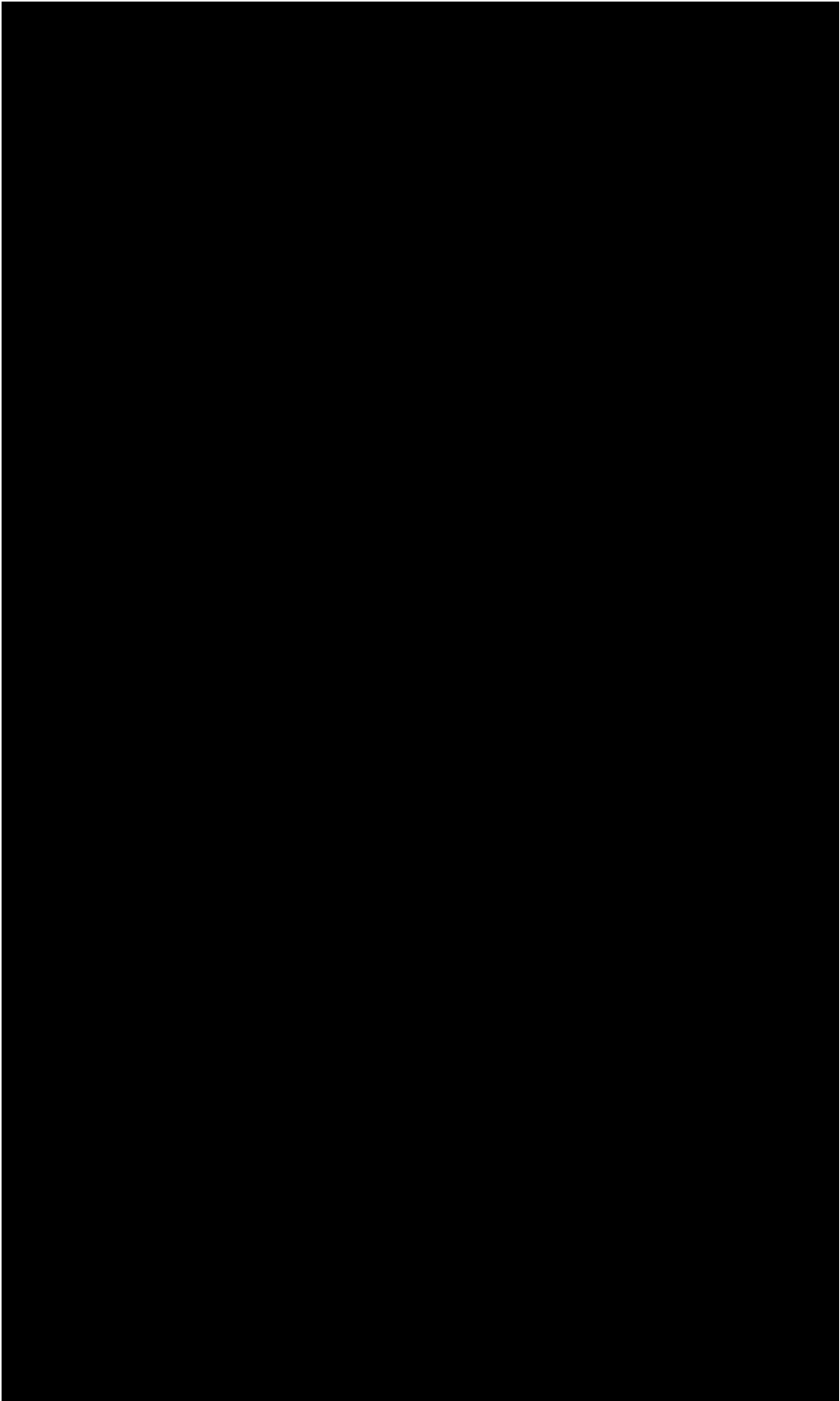






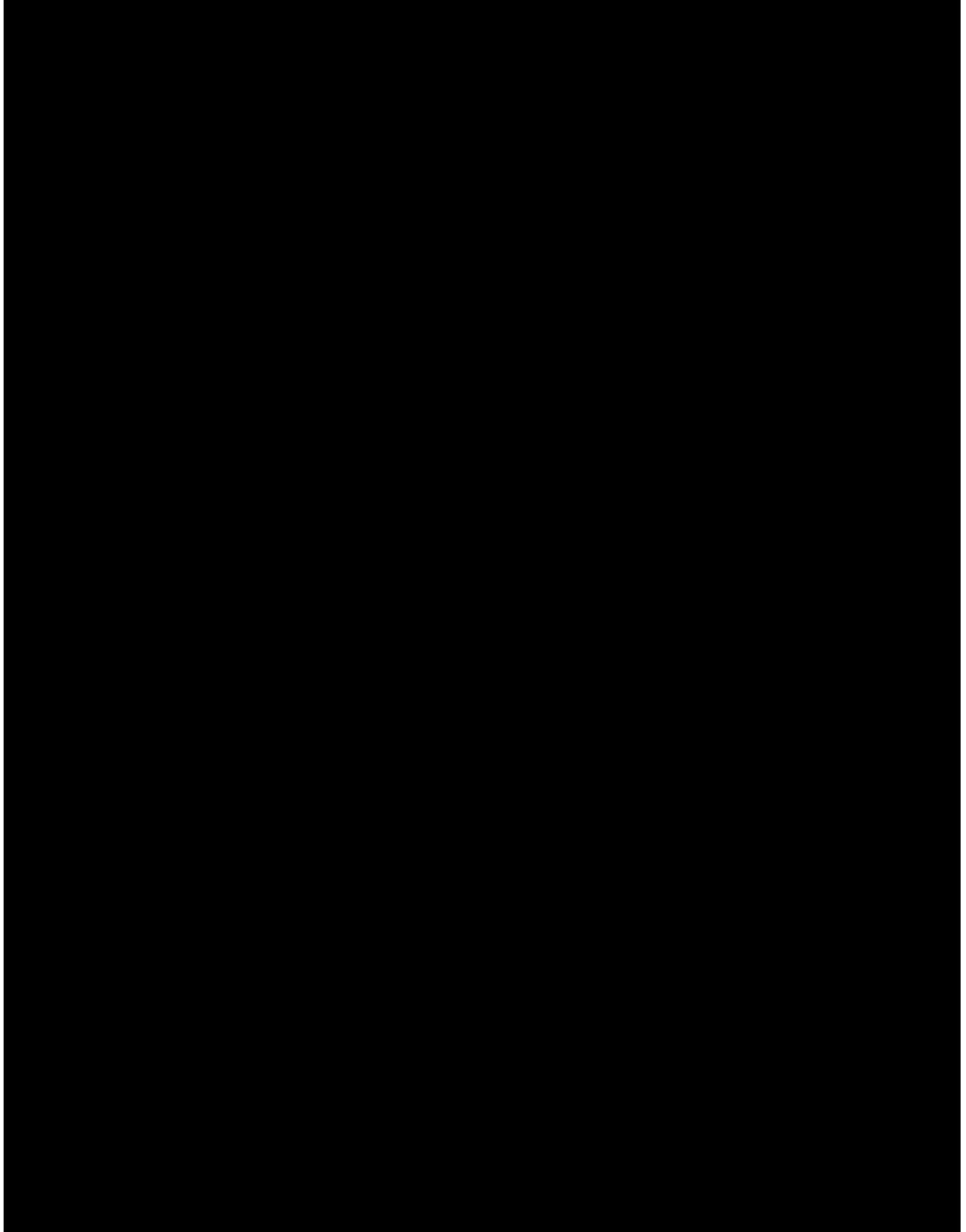
12.24 **Interface with Third Parties**

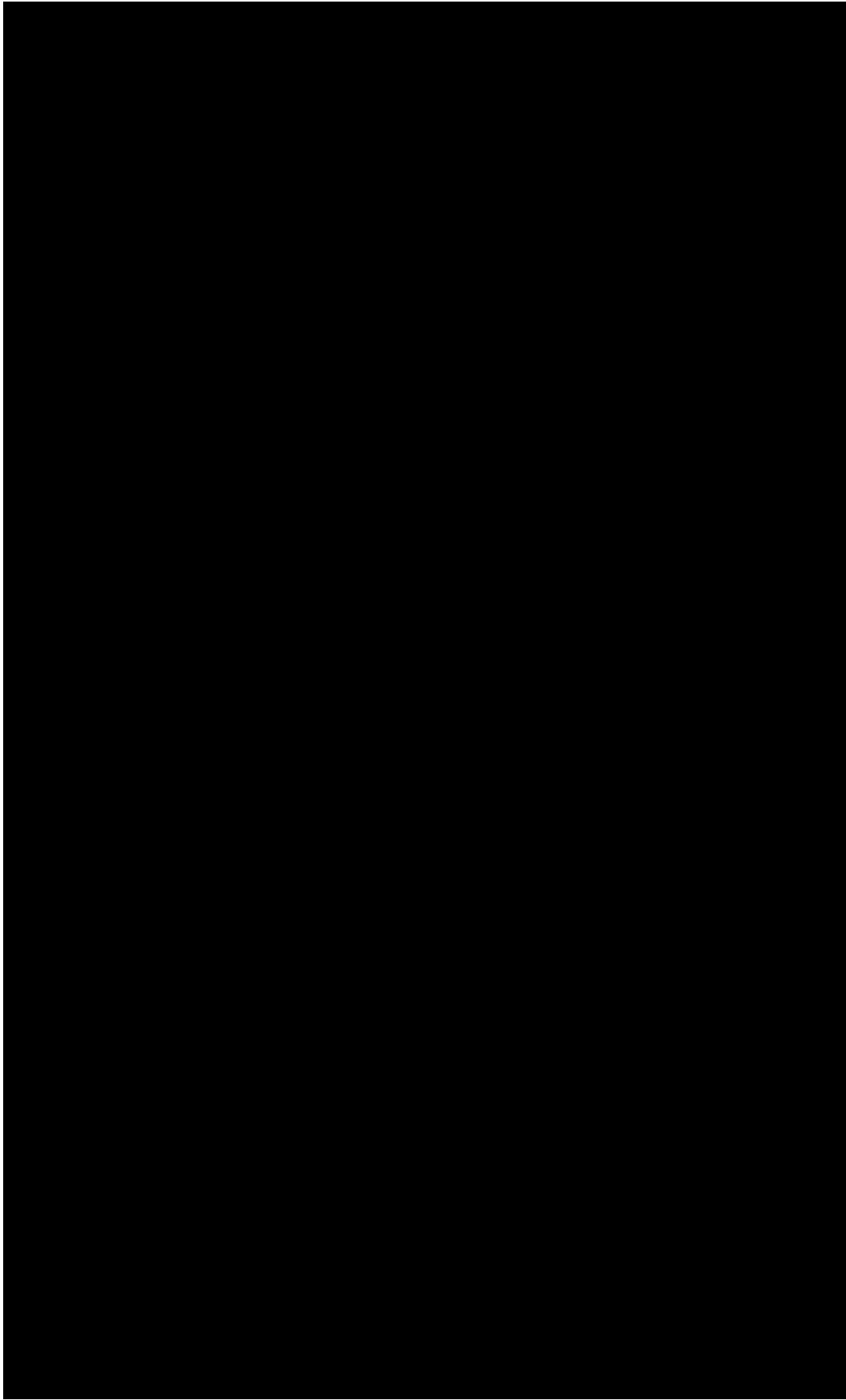


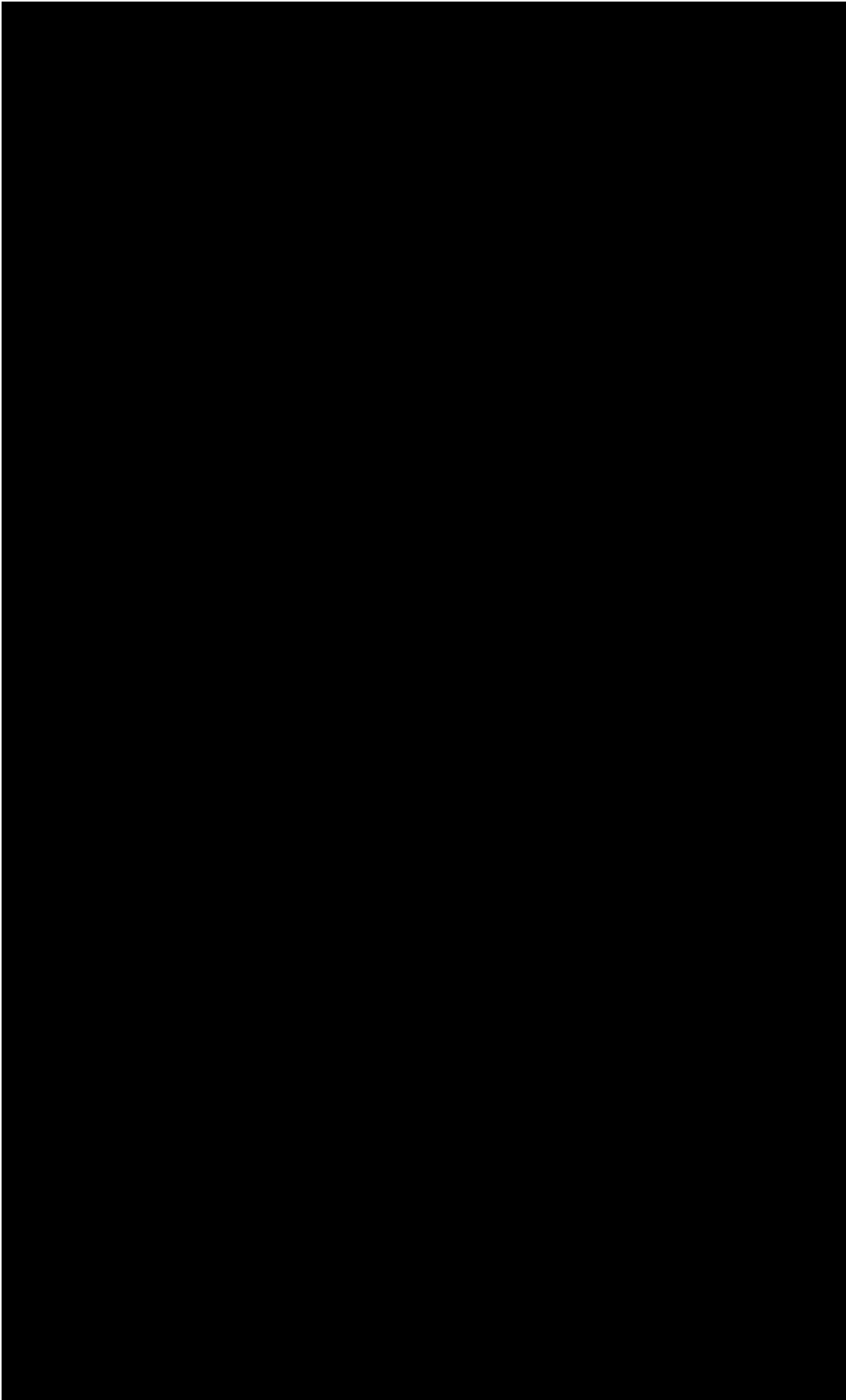




12.25 **Adjoining Properties**







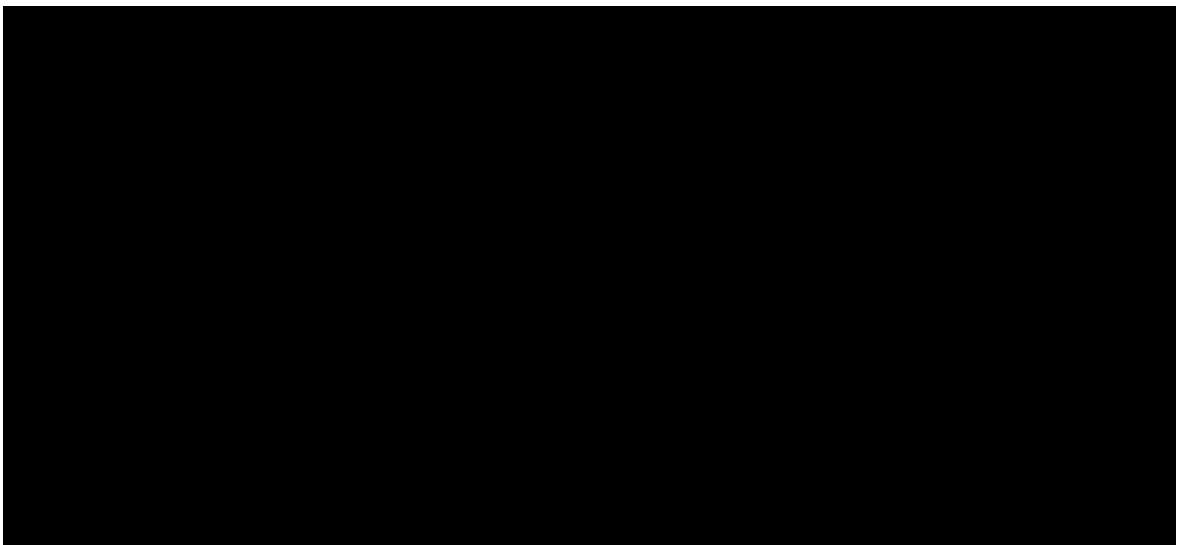
## 12.26 Existing Operations

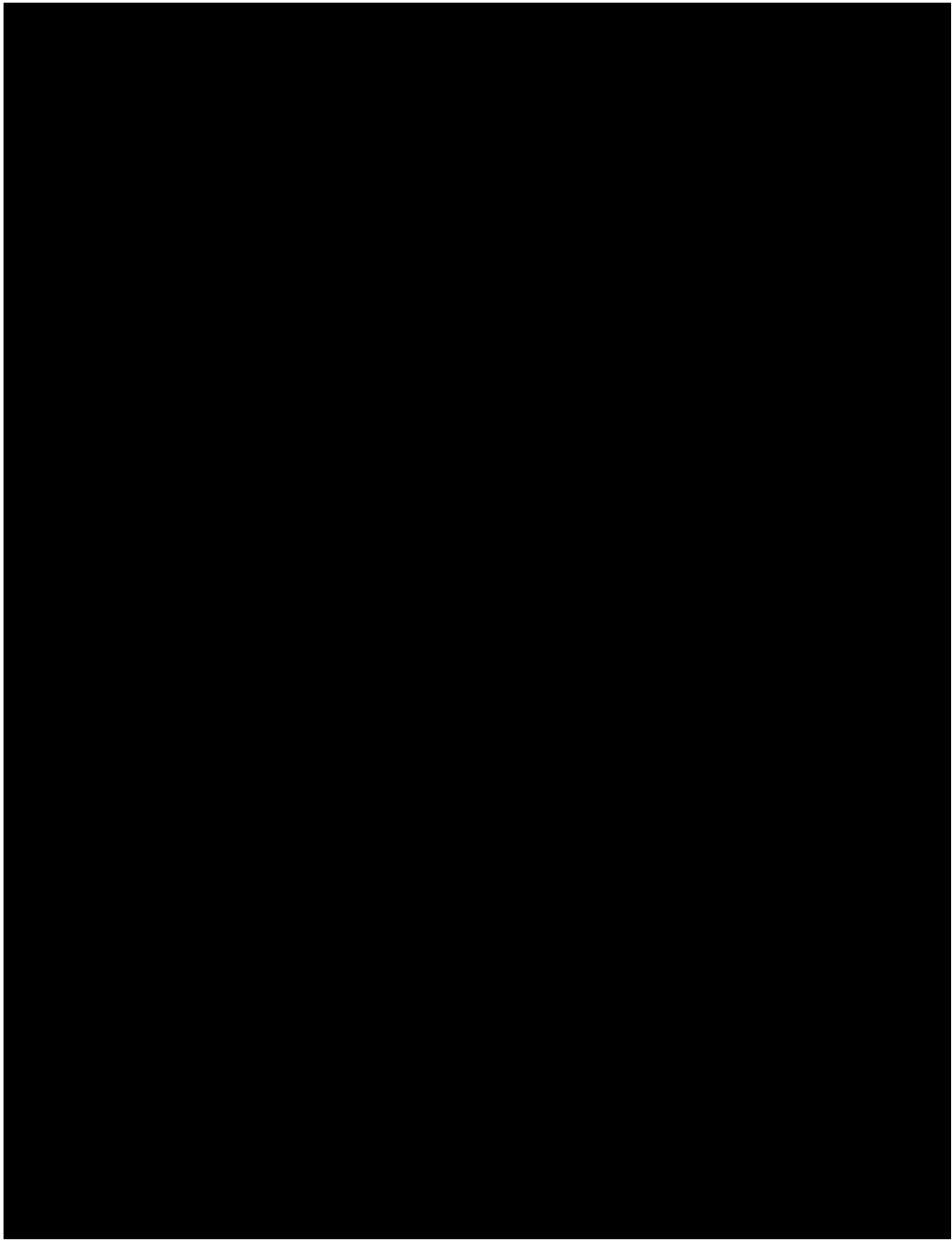
- (a) The SCAW Contractor acknowledges that:
  - (i) Existing Operators and any other persons must continue their Existing Operations during the course of the carrying out of the SCAW Contractor's Activities;
  - (ii) the access ways to the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the SCAW Contractor; and
  - (iii) in using these access ways the SCAW Contractor must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The SCAW Contractor bears the risk of:
  - (i) coordinating its access to the Construction Site with any other relevant party (including Existing Operators) that use the access ways to the Construction Site; and
  - (ii) any delay and disruption to the SCAW Contractor's Activities that arise from any Existing Operations on or in the vicinity of the Construction Site.
- (c) Without limiting any other obligations of the SCAW Contractor, the SCAW Contractor must:
  - (i) minimise interference with the free movement of traffic (vehicular, pedal cycle and pedestrian) into and out of, adjacent to, around, on or about the Construction Site or the Existing Operations and not block or impair access to any premises, carparks, roadways, pedestrian ways, public spaces, parks, pedal cycle paths, or other facilities associated with the Existing Operations and comply with the Principal's reasonable directions in relation to them;
  - (ii) comply with the:
    - (A) Principal's reasonable directions in connection with the Existing Operations (including access to and use of the Construction Site); and
    - (B) Principal's directions in connection with workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to workplace health and safety;
  - (iii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
  - (iv) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of Law applying to the Existing Operations on the Construction Site;
  - (v) ensure that in carrying out and completing the SCAW Contractor's Activities, the Project Works and Handover Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Project Works and Handover Works, when completed, to fully comply with the requirements of this deed; and
  - (vi) immediately:



- (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the SCAW Contractor's Activities; and
  - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 12.26(c) are complied with.
- (d) The SCAW Contractor must:
  - (i) minimise disruption, interruption, interference, nuisance and inconvenience to the Existing Operations; and
  - (ii) program and coordinate the SCAW Contractor's Activities under this deed using design and construct best practices and so as to minimise the effect that the carrying out of the SCAW Contractor's Activities under this deed has on the Existing Operations.
- (e) The SCAW Contractor must ensure that its Associates at all times comply with this clause 12.26.
- (f) Subject to clauses 4.9, 16.8 or 16.9, where a direction of the Principal referred to in clause 12.26(c)(ii)(A) (other than a direction arising from or in connection with a breach of this deed by the SCAW Contractor or a wrongful act or omission of the SCAW Contractor or its Associates or a direction made in response to a request by the SCAW Contractor) necessitates a reduction in the permissible working hours or working days or in the permissible noise and vibration limits for the SCAW Contractor's Activities or a change in the Working Parameters permitted for the SCAW Contractor's Activities:
  - (i) the SCAW Contractor will be entitled to an extension of time to any relevant Date for Substantial Completion of a Portion under clause 19 if the requirements of that clause are satisfied; and
  - (ii) the Project Contract Sum will be adjusted for the increased or decreased Direct Costs and Overheads incurred or saved by the SCAW Contractor as a direct result of the direction of the Principal plus Profit Margin, as stated by the Principal's Representative.

12.27 **Not used**





13. **QUALITY**

13.1 **Quality Management System**

The SCAW Contractor must implement a Quality Management System for the management of all aspects of the SCAW Contractor's obligations under this deed including in accordance with the applicable requirements of the SCAW Specification, including sections 2.4, 5.1 and 5.2 of the General Specification and the Assurance and Governance Plan.

### 13.2 Independent Certifier

- (a) The Independent Certifier is to be engaged on the terms of the Independent Certifier Deed.
- (b) The Independent Certifier's role is to, amongst other things:
  - (i) without limiting the rights or obligations of the parties under this deed, independently certify in accordance with the Independent Certifier Deed that the Project Works comply with the requirements of this deed; and
  - (ii) make determinations on matters that this deed expressly requires be determined by the Independent Certifier.
- (c) Without limiting the effect which the determinations of the Independent Certifier will have upon the rights and obligations of the parties under this deed, the Independent Certifier does not have any power to give any Directions to the SCAW Contractor.
- (d) The Independent Certifier is obliged to act independently of the SCAW Contractor, the Principal and any of their Associates, and is not an employee, agent, contractor or consultant of the Principal or the SCAW Contractor.
- (e) The parties acknowledge that:
  - (i) the Independent Certifier has been engaged by the parties prior to the Principal electing whether to engage OpCo in relation to the SSTOM Works or any other Interface Contractor in relation to Interface Works;
  - (ii) the Principal intends that if it engages OpCo, OpCo will accede to the Independent Certifier Deed;
  - (iii) the Independent Certifier is obliged to act independently of OpCo;
  - (iv) the Independent Certifier may (after receiving the prior written consent of the Principal which may be withheld or granted in its absolute discretion) be engaged by OpCo as independent certifier (upstream or downstream) but not in any other role, in relation to the SSTOM Works but must demonstrate to the satisfaction of the parties that it has sufficient separation procedures in place to permit it to perform its services under the Independent Certifier Deed independently of OpCo, notwithstanding its engagement by OpCo as independent certifier (upstream or downstream) in relation to the SSTOM Works;
  - (v) the SCAW Contractor may not make any Claim against the Principal arising out of or in any way in connection with the Independent Certifier being engaged by OpCo or any other Interface Contractor in relation to the SSTOM Works or any other Interface Works; and
  - (vi) neither party may challenge a decision of the Independent Certifier on the basis that the Independent Certifier lacks independence because it is engaged by OpCo or any other Interface Contractor in relation to the SSTOM Works or any other Interface Works.
- (f) The SCAW Contractor must provide the Independent Certifier with all information and documents and allow the Independent Certifier:
  - (i) to attend design meetings;

- (ii) access to all premises where the SCAW Contractor's Activities are being carried out; and
- (iii) to recommend to the Principal's Representative the insertion of Hold Points or Witness Points in the Project Plans and the nominated authority to release the Hold Points,

all as may be:

- (iv) necessary or reasonably required by the Independent Certifier or the Principal's Representative, to allow the Independent Certifier to perform its obligations under the Independent Certifier Deed; or
  - (v) requested by the Independent Certifier or (subject to clause 13.2(h)) reasonably directed by the Principal's Representative.
- (g) The Principal's Representative may provide comments to the Independent Certifier in respect of the SCAW Contractor's Activities (with a copy to the SCAW Contractor).
  - (h) The Principal's Representative may direct the insertion of additional Hold Points or Witness Points in the Project Plans and designate the nominated authority to release the Hold Points.
  - (i) If the Principal becomes liable to the Independent Certifier for any additional costs pursuant to section 4(a) of Schedule 2 of the Independent Certifier Deed and the fact, matter or thing which gives rise to the liability pursuant to section 4(a) of Schedule 2 of the Independent Certifier Deed arose out of or in connection with an act of omission of the SCAW Contractor, such costs will be a debt due and payable by the SCAW Contractor to the Principal.

### 13.3 **Proof Engineer**

- (a) The SCAW Contractor must:
  - (i) engage the Proof Engineer at the SCAW Contractor's cost; and
  - (ii) must not replace the Proof Engineer without the prior written consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) The SCAW Contractor warrants that the Proof Engineer and any replacement Proof Engineer has:
  - (i) at least the qualifications, experience and expertise described in Schedule A24; and
  - (ii) the requisite experience and skill to undertake the role of Proof Engineer in accordance with this clause 13.3 and the other requirements of this deed.
- (c) The Proof Engineer's role is to, amongst other things:
  - (i) in respect of the Proof Engineered Temporary Works:
    - (A) undertake a full and independent assessment, without exchange of calculations or similar information, of the Proof Engineered Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;

- (B) provide to the SCAW Contractor, with copies to the Principal's Representative, a comprehensive report on the assessment required under clause 13.3(c)(i)(A); and
- (C) independently certify that the Proof Engineered Temporary Works:
  - (aa) are adequate and suitable for their intended purpose; and
  - (bb) comply with the requirements of this deed (including section 3.2 of the Particular Specification),
 and issue the certification required by clause 2(b)(ii) of Schedule A26.
- (d) The parties acknowledge and agree that:
  - (i) the Proof Engineer is obliged to act independently of the SCAW Contractor, the Principal and any of their Associates;
  - (ii) the Proof Engineer must not be an employee of the SCAW Contractor, the Principal, the Independent Certifier or any of their Associates; and
  - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer to the SCAW Contractor must be in writing and must be made available to the Principal's Representative, upon request.
- (e) The SCAW Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
  - (i) to attend design meetings; and
  - (ii) access to the Construction Site and all places at which the SCAW Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the SCAW Contractor given in relation to work health and safety,
 all as may be:
  - (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its role under this deed; and
  - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (f) Nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the SCAW Contractor to make any Claim against the Principal.

#### 13.4 **Quality management, verification and certification**

- (a) The Principal and the SCAW Contractor acknowledge that the design and construct project delivery method chosen for the Project Works and the Temporary Works:
  - (i) requires the SCAW Contractor to assume responsibility for all aspects of quality for the SCAW Contractor's Activities and for the durability of the Project Works and the Temporary Works; and
  - (ii) allows the Principal's Representative to monitor compliance of the SCAW Contractor's Activities with the requirements of this deed.

- (b) The SCAW Contractor must ensure a Quality and Systems Manager is engaged who must:
  - (i) independently certify the effectiveness and integrity of the SCAW Contractor's quality system in achieving conformance with the requirements of this deed;
  - (ii) report to the Principal's Representative on quality issues in accordance with the requirements of this deed; and
  - (iii) have the requisite experience and ability described for the Quality and Systems Manager in Schedule A9.
- (c) The SCAW Contractor must provide to the Principal's Representative a certificate executed by the Quality and Systems Manager in the form of:
  - (i) Schedule B9 within 3 months of the date of this deed;
  - (ii) Schedule B10 every 3 months from the date of this deed until the Date of Substantial Completion of the last Portion to achieve Substantial Completion;
  - (iii) Schedule B11 as a condition precedent to Substantial Completion of any relevant Portion; and
  - (iv) Schedule B12 upon the issue of a notice of Final Completion under clause 19.17(a).
- (d) The SCAW Contractor must provide to the Principal's Representative a certificate executed by the Environmental Manager in the form of Schedule B5 every 3 months from the date of this deed until the Date of Substantial Completion of the last Portion to achieve Substantial Completion.

**13.5 Hold Points and Witness Points**

- (a) The SCAW Contractor must comply with the Hold Point and Witness Point procedures required by this deed, including as set out in section 2.4 of the General Specification and the Assurance and Governance Plan or inserted in Project Plans or other applicable documents by the Environmental Representative pursuant to clause 7.10(b)(iii) or by the Principal's Representative pursuant to clause 13.2(h).
- (b) The insertion of any additional Hold Point:
  - (i) in a Project Plan or another applicable document by the Environmental Representative pursuant to clause 7.10(b)(iii); or
  - (ii) by the Principal's Representative pursuant to clause 13.2(h),
 will be treated as a Change, except where the need for such Hold Point:
  - (iii) is already contemplated by this deed or the Planning Approvals;
  - (iv) arises out of or in connection with any breach of this deed by the SCAW Contractor or a wrongful act or omission of the SCAW Contractor or its Associates; or
  - (v) is related to rectification of a Defect.

### 13.6 **Project quality non-conformance**

- (a) The SCAW Contractor must comply with the procedure for non-conformances set out in section 3.2.5 of the General Specification and the Assurance and Governance Plan. Further to the provisions of clause 8.3(b) of AS/NZS ISO 9001-2008 and without limiting clause 17.4, the use, release or acceptance of nonconforming work can only be given by the Principal's Representative, in its absolute discretion and without being under any obligation to do so.
- (b) In addition to the procedure for non-conformances referred to in clause 13.6(a), and without limiting clause 17.3, if the SCAW Contractor has not complied with this deed including section 3.2.5 of the General Specification, the Principal's Representative may give written notice to the SCAW Contractor of the SCAW Contractor's failure to comply and requiring compliance within a reasonable time specified in the notice.
- (c) If the SCAW Contractor does not comply with the notice referred to in clause 13.6(b), the Principal may, subject to clause 32.9(b), employ others to carry out the direction.
- (d) The amount of any Loss the Principal suffers or incurs in taking action contemplated in clause 13.6(c) or as a result of the SCAW Contractor's failure to comply with clause 13.6(b) will be a debt due from the SCAW Contractor to the Principal.
- (e) Corrective actions implemented under the SCAW Contractor's quality system must comply with the requirements of this deed including section 3.2.5 of the General Specification.
- (f) The SCAW Contractor must promptly issue all documents relating to quality non-conformances to the Principal's Representative.

### 13.7 **Monitoring and audits by the Principal's Representative**

- (a) The SCAW Contractor acknowledges that the Principal's Representative may, at any time up to the Date of Substantial Completion of the last Portion to achieve Substantial Completion, arrange monitoring and audits (including testing) to see if the SCAW Contractor is complying with this deed (including the Assurance and Governance Plan, Construction Environmental Management Plan, Project Health & Safety Risk Governance Plan and the other Project Plans).
- (b) The SCAW Contractor must:
  - (i) make arrangements to ensure that the Principal's Representative (and its nominee) has access to all facilities, documentation, records and personnel (including those of Subcontractors) that are needed by the Principal's Representative for the carrying out of the monitoring and audits referred to in clause 13.7(a); and
  - (ii) ensure that the Quality and Systems Manager, the Environmental Manager, the SCAW Contractor's work health and safety representatives and the Contractor's personnel responsible for the Chain of Responsibility Provisions are available, as necessary, to discuss details of quality matters with the Principal's Representative during the above monitoring and audits.

### 13.8 **Testing**

- (a) The SCAW Contractor must carry out all tests required:
  - (i) by this deed; or
  - (ii) otherwise directed by the Principal's Representative.

- (b) The additional Direct Costs and Overheads plus Profit Margin connected with a test which is directed by the Principal's Representative and which is not otherwise required by this deed will be borne by the Principal unless the test detects a Defect or is upon a Defect which the SCAW Contractor is liable for or obliged to correct or rectify under this deed (subject to clause 1.2(u)) (in which case all such costs will be borne by the SCAW Contractor).

### 13.9 **No relief from obligations**

The SCAW Contractor will not be relieved from any of its liabilities or responsibilities under this deed (including under clause 17) or otherwise according to Law nor will the rights of the Principal whether under this deed or otherwise according to Law be limited or otherwise affected by:

- (a) the implementation of, and compliance with, any quality system or the Assurance and Governance Plan by the SCAW Contractor;
- (b) subject to clause 13.5(b), compliance with any Hold Point and Witness Point procedures;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the SCAW Contractor proceeding past any Hold Point or Witness Point or as otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect whilst participating in any Hold Point or Witness Point procedure including where such failure is the result of a negligent act or omission; or
- (e) any monitoring or audit arranged by the Principal's Representative under clause 13.7 or any discussions between the Quality and Systems Manager and the Principal's Representative as contemplated under clause 13.7(b)(ii).

## 14. **DESIGN AND DESIGN DOCUMENTATION**

### 14.1 **Design obligations**

The SCAW Contractor must design the Project Works and the Temporary Works in accordance with:

- (a) the SCAW Specification;
- (b) any Change:
  - (i) directed by the Principal by a Change Order; or
  - (ii) otherwise approved by the Principal under the terms of this deed; and
- (c) the other requirements of this deed.

### 14.2 **SCAW Contractor's Tender Design**

- (a) The SCAW Contractor acknowledges that prior to the date of this deed it prepared the SCAW Contractor's Tender Design. The SCAW Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the SCAW Contractor of, or the reliance by the SCAW Contractor upon, the SCAW Contractor's



Tender Design in performing the SCAW Contractor's Activities and that such use and reliance will not limit any of its obligations under this deed.

(b) Subject to any express entitlements under this deed, the SCAW Contractor is responsible for, and assumes the risk of, any Loss it suffers or incurs arising out of or in connection with:

(i) the design and construction of the Project Works and the Temporary Works using the SCAW Contractor's Tender Design costing more than the Project Contract Sum or taking longer than anticipated; and

(ii) any differences between the Project Works and the Temporary Works which the SCAW Contractor is required to design and construct (ignoring for this purpose any differences which are the subject of a Change Order) and the SCAW Contractor's Tender Design including:

(A) differences necessitated by any Site Conditions encountered; and

(B) differences required to ensure that:

(aa) the Project Works and the Temporary Works satisfy the requirements of this deed;

(bb) upon Substantial Completion the Project Works are, and will be capable of remaining at all relevant times, fit for their intended purposes; and

(cc) the Temporary Works will be and remain fit for their intended purposes,

and irrespective of any assumptions, projections, estimates, contingencies or otherwise that the SCAW Contractor may have made in relation to any of the matters set out in clauses 14.2(b)(i) to 14.2(b)(ii) above.

(c) The SCAW Contractor may make changes to the SCAW Contractor's Tender Design but only to the extent that:

(i) the changes will not adversely impact the:

(A) durability;

(B) whole of life performance;

(C) environment and sustainability performance;

(D) functional performance;

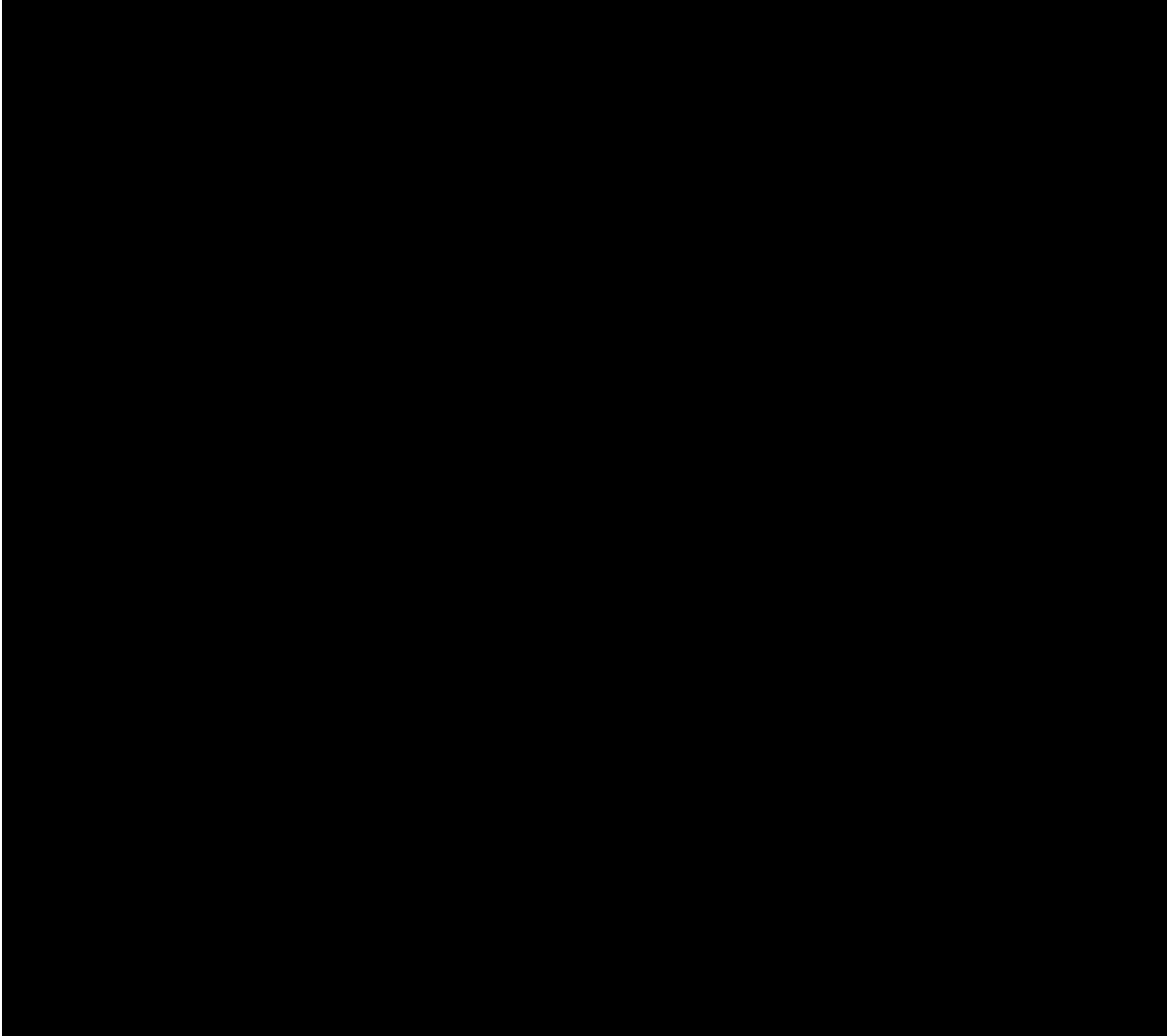
(E) safety; or

(F) whole of life costs associated with any part of the Project Works including the costs of operation and maintenance,

depicted or achieved by the SCAW Contractor's Tender Design;

(ii) the SCAW Contractor has notified the Principal's Representative of the proposed change setting out in the notice the reason for the change and a detailed analysis of the impact on the matters referred to in this clause 14.2(c); and

- (iii) the SCAW Contractor has obtained the consent in writing of the Principal's Representative to the change (with such consent not to be unreasonably withheld and the parties agree that it will be reasonable for the Principal to withhold its consent where the change will increase the Principal's liability to an Interface Contractor or adversely affect or delay the Interface Works).



**14.3 Design warranties**

- (a) The SCAW Contractor warrants to the Principal that:
  - (i) the SCAW Contractor's Tender Design has been prepared by the SCAW Contractor;
  - (ii) the SCAW Contractor's Tender Design is not inconsistent with the 'Design Reference Documents';
  - (iii) it remains responsible for ensuring that the Project Works and the Temporary Works will satisfy the requirements of this deed despite the SCAW Contractor's Tender Design;
  - (iv) if the Project Works and the Temporary Works are designed and constructed using the SCAW Contractor's Tender Design, the Project Works and the Temporary Works will satisfy the requirements of this deed but nothing in this

- clause 14.3(a)(iv) affects or limits clauses 14.2(a) or 14.2(b), which will prevail to the extent of any inconsistency;
- (v) it will carry out and complete the SCAW Contractor's Activities using the SCAW Contractor's Tender Design but nothing in this clause 14.3(a)(v) affects or limits clauses 14.2(a), 14.2(b) or 14.3(c), which will prevail to the extent of any inconsistency;
  - (vi) it will not make any adjustment or change to the SCAW Contractor's Tender Design which is not in accordance with clause 14.2(c);
  - (vii) without limiting any express entitlement of the SCAW Contractor under this deed, it has checked, examined, analysed and carefully considered the SCAW Specification and the Planning Approvals and that:
    - (A) it has satisfied itself as to the completeness, correctness, accuracy, appropriateness, suitability and adequacy of the SCAW Specification;
    - (B) it has satisfied itself that there are no omissions, ambiguities, discrepancies or inconsistencies in or between the SCAW Specification and the Planning Approvals;
    - (C) the SCAW Specification is proper, adequate and fit for its intended purpose including for the purpose of enabling the SCAW Contractor to carry out the SCAW Contractor's Activities in accordance with, and to ensure that the Project Works and the Temporary Works comply with, this deed including the other warranties in this clause 14.3;
    - (D) it will be fully and exclusively responsible and liable for the design of the Project Works and the Temporary Works (including the Design Documentation), including any submitted or re-submitted to the Independent Certifier or to the Principal's Representative in accordance with this deed;
    - (E) it will be fully and exclusively responsible and liable for all risks howsoever they may arise as a result of the use by the SCAW Contractor of, or reliance upon, the SCAW Specification; and
    - (F) the use of, or reliance upon, the SCAW Specification does not affect any of its obligations under this deed or entitle the SCAW Contractor to make any Claim against the Principal arising out of or in any way in connection with the SCAW Specification;
  - (viii) the Design Documentation will:
    - (A) be prepared using Good Industry Practice;
    - (B) satisfy the requirements of the SCAW Specification and the other requirements of this deed;
    - (C) be and will remain at all relevant times fit for its intended purpose; and
    - (D) be prepared, certified, verified, completed and used in accordance with the requirements of this deed;
  - (ix) construction will be carried out in accordance with the Design Documentation which the SCAW Contractor is entitled to use for construction purposes in accordance with clause 6 of Schedule A26;

- (x) construction carried out in accordance with the Design Documentation which the SCAW Contractor is entitled to use in accordance with clause 6 of Schedule A26 will satisfy the requirements of this deed; and
- (xi) each Portion (both individually and in combination with any earlier completed Portions), the Project Works as a whole and the Handover Works, will:
  - (A) be completed in accordance with, and satisfy the requirements of, this deed;
  - (B) upon Substantial Completion, be fit for their intended purposes; and
  - (C) thereafter be capable of remaining at all relevant times fit for their intended purposes.
- (b) The SCAW Contractor agrees that its obligations under, and the warranties given in, clause 14.2 and this clause 14.3 will remain unaffected and that it will bear and continue to bear full liability and responsibility for the design (including the Design Documentation), construction, commissioning, testing and completion of the Project Works and the Temporary Works notwithstanding:
  - (i) any design work carried out by others prior to the date of this deed and incorporated in this deed;
  - (ii) subject to clause 15.3(f)(ii), any Change the subject of a Direction by the Principal's Representative; or
  - (iii) the termination (for any reason) of this deed.
- (c) Despite any provision to the contrary in this deed, the SCAW Contractor will not be regarded as being in breach of any obligation under this deed in respect of or relating to any requirement that:
  - (i) the alignment, locations, dimensions and clear openings for the Project Works (including the Third Party Works) and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the alignment, locations, dimensions and clear openings of the Project Works (including the Third Party Works) and any related Design Documentation complies with the alignment, locations, dimensions and clear openings documented in Attachment A – Particular Specification Drawings, section 8.1 of the Particular Specification; or
  - (ii) the Works and any related Design Documentation be fit for their purpose, intended purpose or intended use (or any similar reference) or not contain or constitute a Defect, by reason alone that the SCAW Contractor has relied on the load cases specified in section 4 of the Particular Specification for the purpose of designing the Works.

#### 14.4 **Preparation, submission and review of Design Documentation**

- (a) The SCAW Contractor must prepare and submit Design Documentation in accordance with the requirements of:
  - (i) Schedule A26; and
  - (ii) the SCAW Specification.

- (b) All Design Documentation submitted by the SCAW Contractor under clause 14.4(a) will be reviewed in accordance with the process set out in Schedule A26.
- (c) The SCAW Contractor must:
  - (i) cooperate with the Principal's Representative and, if applicable, the Independent Certifier, to procure the review of the Design Documentation; and
  - (ii) make qualified personnel available to explain Design Documentation as reasonably required by the Principal's Representative and provide any further information required by the Principal's Representative and the Independent Certifier in relation to the Design Documentation.

#### 14.5 Network Assurance Committee

The SCAW Contractor must:

- (a) comply with the requirements of section 3.2 of the General Specification in relation to the NAC assurance process; and
- (b) without limiting clause 14.5(a):
  - (i) submit to the Principal's Representative each NAS in accordance with clause 8.1 of Schedule A26; and
  - (ii) cooperate with and provide all reasonable assistance to the Principal and its Associates to facilitate the review of each NAS in accordance with the process set out in clause 8 of Schedule A26.

#### 14.6 Ownership of documentation

- (a) Documents (including Design Documentation) supplied by or on behalf of the SCAW Contractor will be the Principal's property.
- (b) The SCAW Contractor (irrevocably for all time and despite any termination of this deed for any reason):
  - (i) to the fullest extent permitted by Law, assigns to the Principal all of the SCAW Contractor's right, title and interest, including all Intellectual Property Rights in or relating to:
    - (A) the Design Documentation; and
    - (B) the materials, documents, images, photographs and software relevant to the SCAW Contractor's Activities (other than processes and methods of working),

(collectively called the **Contract Documentation and Materials**) prepared or created by the SCAW Contractor [REDACTED] for or in connection with the SCAW Contractor's Activities, the Project Works or the Handover Works (other than the Temporary Works) (**Developed IP Rights**) worldwide, which assignment is effective automatically and immediately from the time it is prepared or created; and
  - (ii) in respect of all other Intellectual Property Rights in or relating to:
    - (A) the Contract Documentation and Materials; and

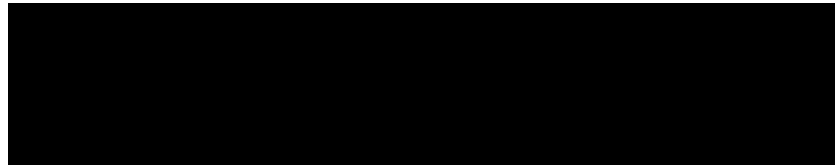
(B) the Temporary Works (other than the Handover Works) and the processes and methods of working relevant to the SCAW Contractor's Activities (collectively called the **Contract Processes**),

(**Background IP Rights**) grants to the Principal an irrevocable, royalty free, perpetual and fully assignable licence to use, reproduce, modify, adapt, vary and alter (and to sublicense others to use, reproduce, modify, adapt, vary and alter) the same for:

(C) the purposes of completing the construction, commissioning and testing of, using, operating, duplicating, extending, maintaining, upgrading, altering or otherwise dealing with the whole or any part of the SCAW Contractor's Activities or the Project Works and the Temporary Works;

(D) any purpose associated with further development of the Construction Site; and

(E) any other purpose connected with:



which licence for Background IP Rights is effective immediately from the date of this deed and will survive termination of this deed on any basis.

(c) The SCAW Contractor:

(i) warrants that the use of the Contract Documentation and Materials, or any other work provided by the SCAW Contractor under this deed by the Principal, its licensees, successors in title and their licensees, and anyone authorised by any of them, will not infringe any author's Moral Rights; and

(ii) must indemnify the Principal against any claims against, or costs, expenses, losses or damages suffered or incurred by the Principal arising out of, or in any way in connection with, any actual or alleged infringement of any author's Moral Rights in connection with the Project Works, the Temporary Works, the SCAW Contractor's Activities or the Contract Documentation and Materials.

(d) For the purposes of clause 14.6(c), "use" of the Contract Documentation and Materials by the Principal, its licensees or successors in title or their licensees, or anyone authorised by any of them, includes the right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or Material or part of the Project Works or Temporary Works to which the Contract Documentation or Material or any other work provided by the SCAW Contractor under this deed relates:

(i) with or without attribution of authorship;

(ii) in any medium; and

(iii) in any context and in any way it sees fit.

(e) The SCAW Contractor agrees to, and agrees to procure the cooperation of any third parties to, execute such further documents, including an irrevocable and unconditional consent, and do such further things (including assisting in relation to

any litigation commenced by or brought against the Principal or its licensees, assignees or successors and their licensees, or any other person authorised by any of them) as reasonably requested by the Principal to give full effect to the provisions of this deed and to allow or assist the Principal (and its licensees, assignees and successors and their licensees, and any other person authorised by any of them) to obtain, perfect, assert, enforce or defend its (or their) interest in, rights and consents to the assigned or licensed Intellectual Property Rights (as the case may be) or any adaptation of it (or any part of the assigned Developed IP Rights or licensed Background IP Rights (as the case may be) or of any such adaptation) or to prevent or obtain other remedies from others infringing any of those rights, interests and consents anywhere in the world.

- (f) The SCAW Contractor irrevocably appoints the Principal as its attorney to execute any document and do any act or thing which may be necessary to comply with the provisions of this clause 14.6 if the SCAW Contractor fails to execute the document or do the relevant act or thing within 10 Business Days of a written request by the Principal's Representative.
- (g) The Principal grants to the SCAW Contractor a royalty free licence for the duration of this deed to use the Developed IP Rights assigned to the Principal under clause 14.6(b)(i) for the sole purpose of executing the SCAW Contractor's Activities.
- (h) The SCAW Contractor warrants that:
  - (i) the:
    - (A) assignment to the Principal and any use, reproduction, modification, adaption, variation or alteration of the Developed IP Rights assigned under this clause 14.6; and
    - (B) use, reproduction, modification, adaption, variation or alteration of the Background IP Rights licensed under this clause 14.6 pursuant to the terms of this deed,does not and will not infringe the rights, including Intellectual Property Rights and Moral Rights, of or duties owed to any person;
  - (ii) were it not for the assignments effected by this deed, the SCAW Contractor would be the absolute and unencumbered legal and beneficial owner of the Developed IP Rights referred to in clause 14.6(b)(i); and
  - (iii) the SCAW Contractor is either:
    - (A) the absolute and unencumbered legal and beneficial owner of the Background IP Rights referred to in clause 14.6(b)(ii); or
    - (B) able to grant the licence granted in clause 14.6(b)(ii).
- (i) Without limiting clause 14.6(h), where any action or claim for infringement or alleged infringement of any Intellectual Property Rights results in the use, reproduction, modification, adaptation, variation, alteration or enjoyment by the Principal or its licensees, assignees or successors or their licensees, or other person authorised by any of them, of any Contract Documentation and Materials, the Contract Processes, the SCAW Contractor's Activities and/or the Project Works or any part of them, being disrupted, impaired or adversely affected, the SCAW Contractor must at its own expense and at the Principal's option:
  - (i) procure for the benefit of the Principal and its licensees, assignees and successors and their licensees and any other person authorised by any of

them the right to continue to use and exploit the Intellectual Property Rights assigned or licensed pursuant to this clause 14.6, in accordance with this deed; or

- (ii) modify or replace the Contract Documentation and Materials, the Contract Processes, the SCAW Contractor's Activities or the Project Works or relevant part of them, in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 14.6, so that no further infringement will occur and so that the modified or replaced Contract Documentation and Materials, the Contract Processes, the SCAW Contractor's Activities or the Project Works or relevant part of them in respect of which Intellectual Property Rights are assigned or licensed pursuant to this clause 14.6 will:
  - (A) comply with the requirements of this deed; and
  - (B) not limit or otherwise affect the Principal's rights, or the SCAW Contractor's ability to comply with its obligations, under this deed or otherwise according to Law.
- (j) The SCAW Contractor indemnifies, and agrees to keep indemnified, the Principal from and against any claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with:
  - (i) a breach by the SCAW Contractor of any warranty set out in this clause 14.6; or
  - (ii) any actual or alleged infringement of an Intellectual Property Right in connection with the Contract Documentation and Materials, the Contract Processes, the SCAW Contractor's Activities or the Project Works or any part of them.
- (k) The SCAW Contractor:
  - (i) acknowledges that the Principal may provide Interface Contractors with copies of any documents (including Design Documentation) provided to the Principal, the Independent Certifier or the Principal's Representative by or on behalf of the SCAW Contractor in any way in connection with this deed, the Project Works, the Temporary Works or the SCAW Contractor's Activities, provided that the Principal redacts any pricing information contained in such documents before providing them to an Interface Contractor; and
  - (ii) must, upon request by the Principal's Representative, provide to the Principal's Representative copies of any Contract Documentation or Materials that any Interface Contractor may reasonably require.

#### 14.7 **Delivery up of Design Documentation**

If this deed is terminated whether pursuant to clause 24 or otherwise at Law:

- (a) the SCAW Contractor must:
  - (i) subject to clause 14.7(b), immediately deliver the original and all sets and copies of all Design Documentation (whether complete or not and including any Design Documentation stored electronically) then in existence to the Principal; and
  - (ii) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Design Documentation; and

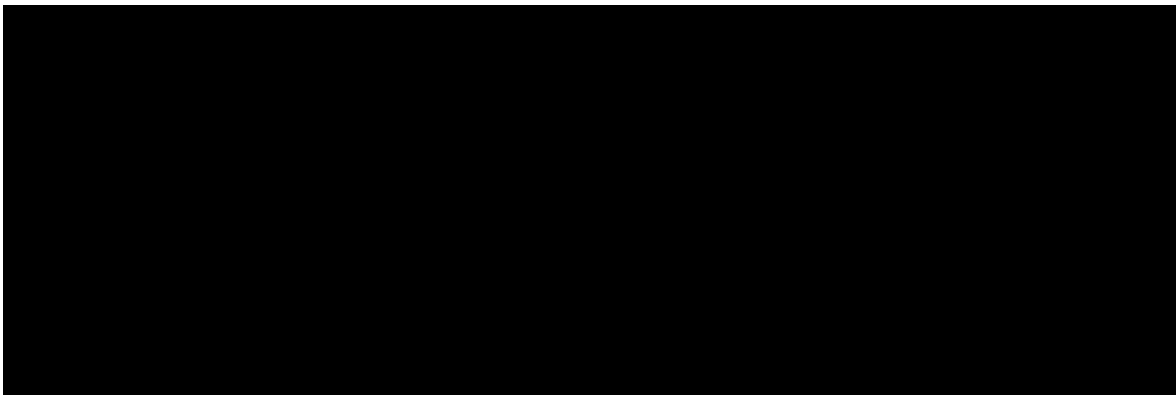
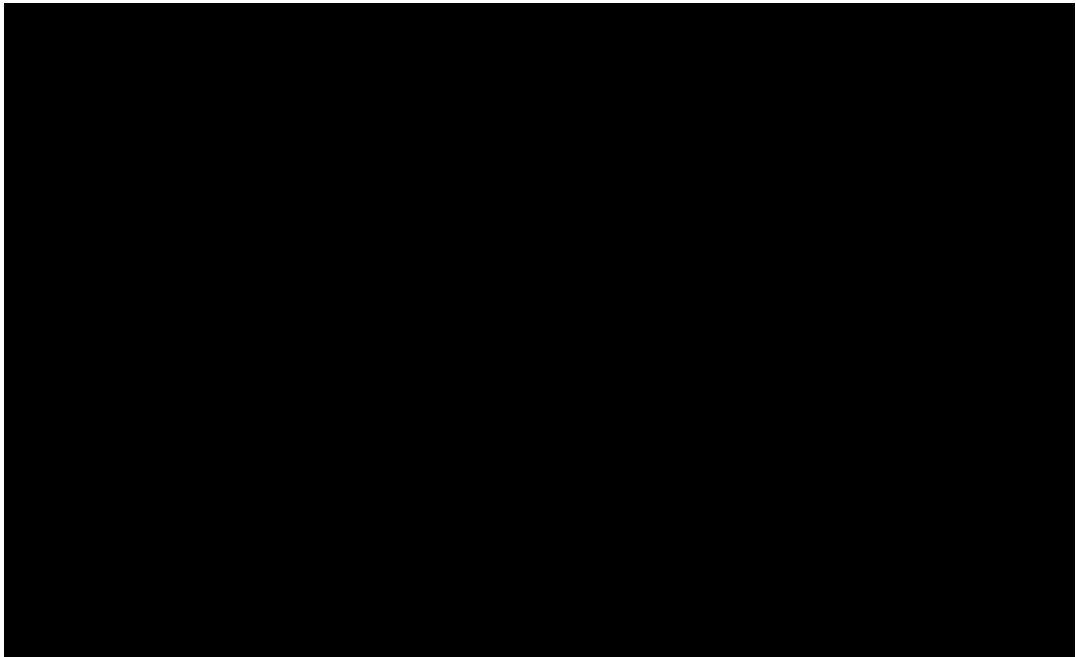


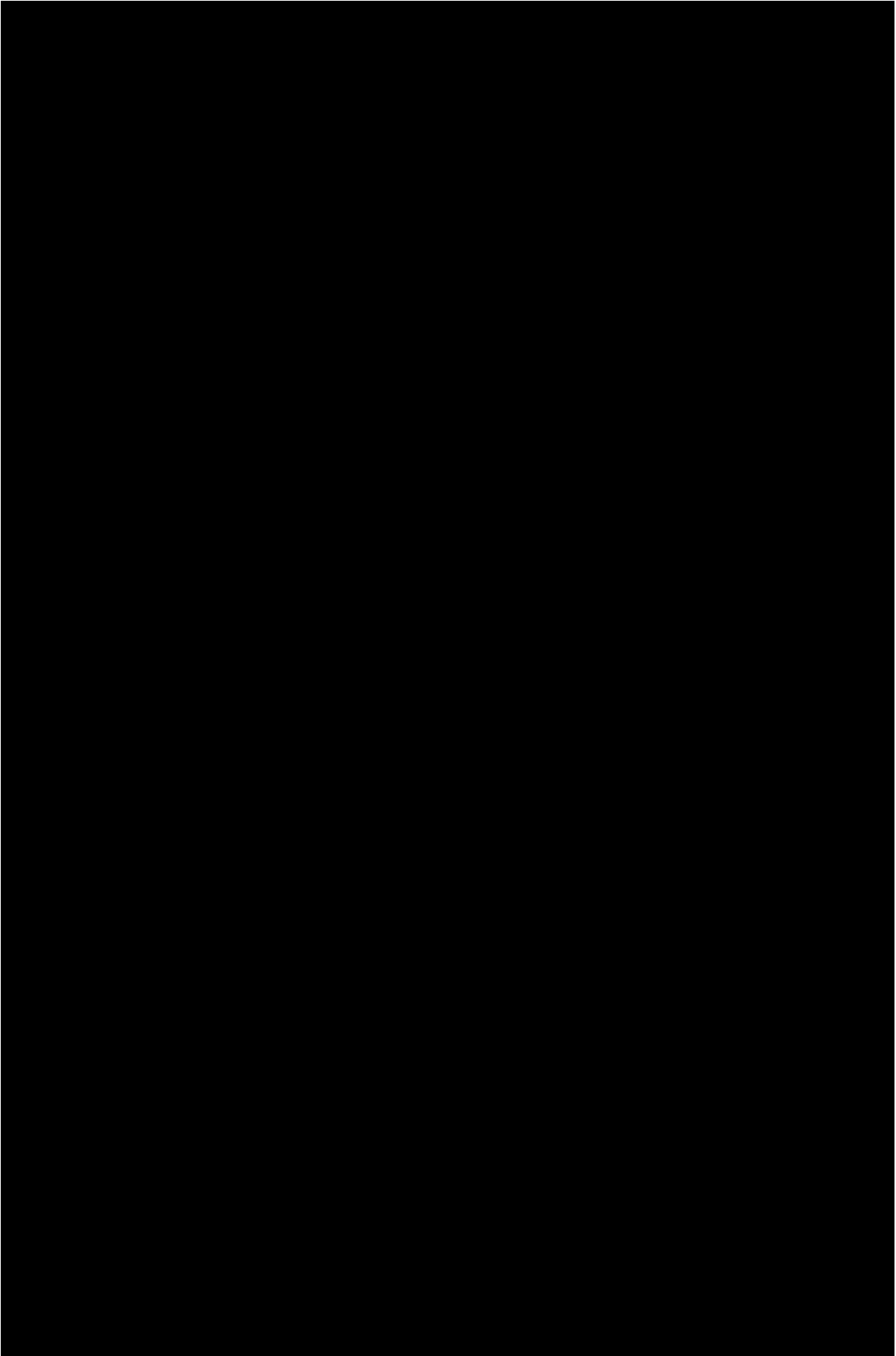
- (b) the SCAW Contractor and each Subcontractor may retain a copy of all such Design Documentation.

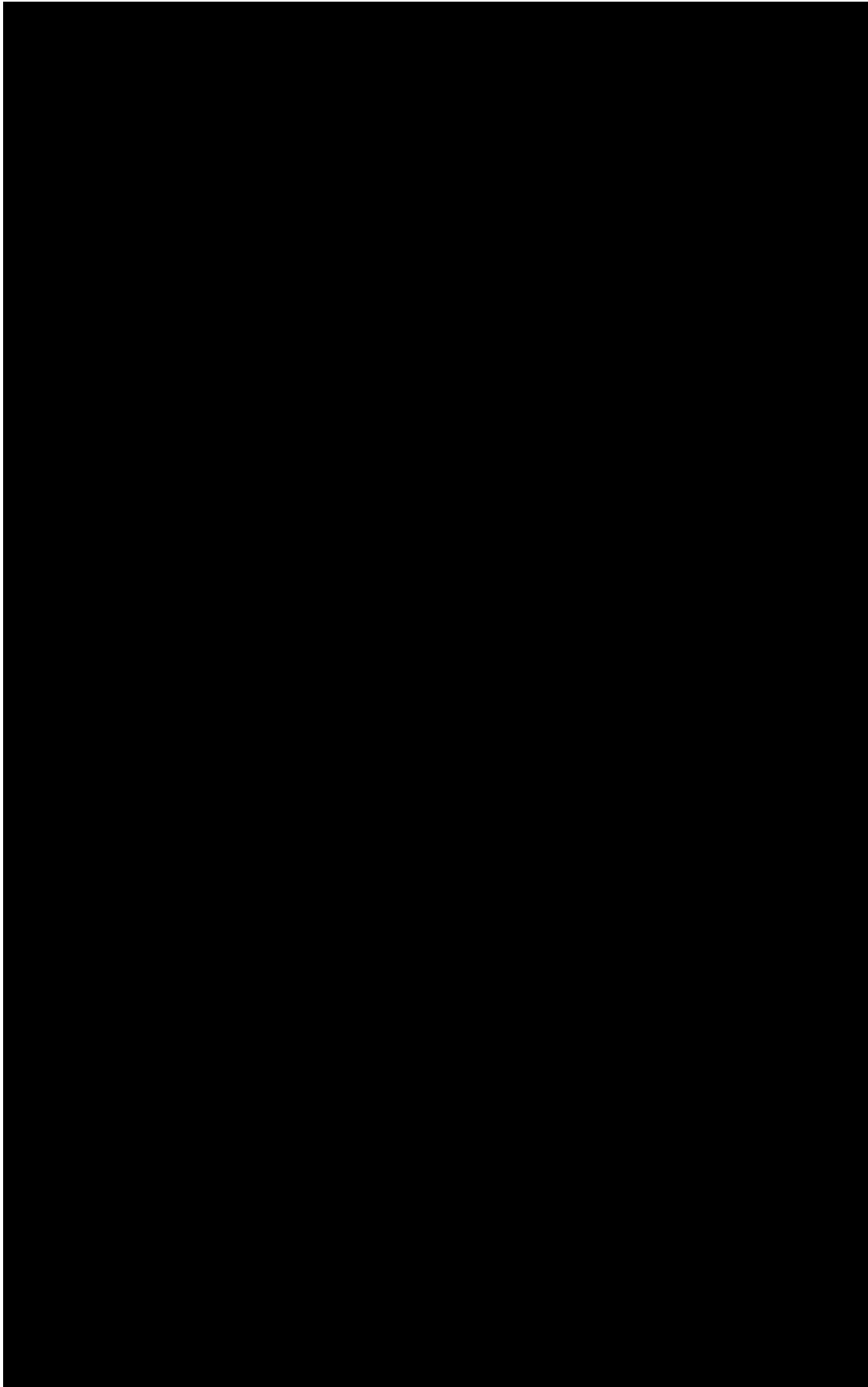
**14.8 Initial Tender Design**

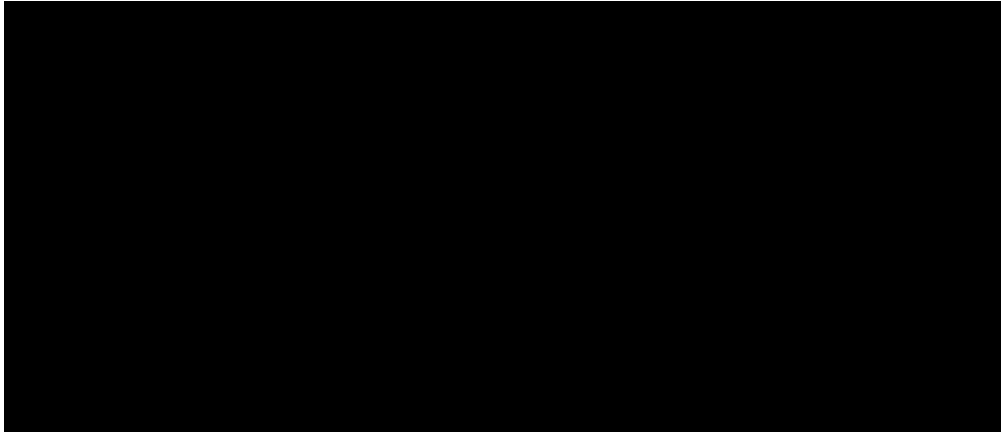
- (a) The SCAW Contractor acknowledges that prior to the date of this deed the Principal prepared the Initial Tender Design, a copy of which was provided to the SCAW Contractor as an Information Document.
- (b) The Initial Tender Design will not form part of this deed and is subject to the provisions of this deed and the Deeds of Disclaimer concerning Information Documents.
- (c) The SCAW Contractor agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the SCAW Contractor of, or the reliance by the SCAW Contractor on, the Initial Tender Design and the existence of the Initial Tender Design will not limit any of the SCAW Contractor's obligations under this deed, including that the SCAW Contractor remains responsible for ensuring that the Project Works and the Temporary Works satisfy the requirements of this deed.

**14.9 Design Life**









15. **CHANGES**

15.1 **Open Book**

All documentation and information provided by the SCAW Contractor under this clause 15 (including any documentation or information prepared by a Significant Subcontractor) must be provided on an Open Book Basis provided that these Open Book Basis principles will not require the SCAW Contractor to re-open any prices, rates, unit costs or margins set out in the Design Payment Schedule or the Construction Payment Schedule.

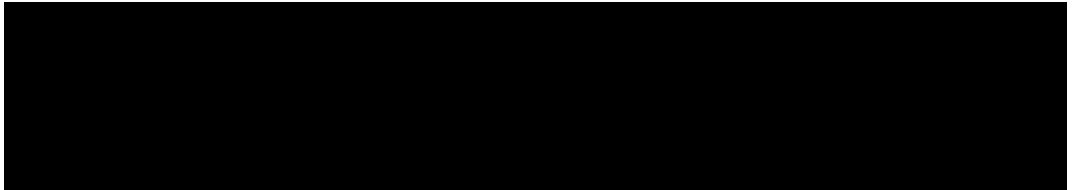
15.2 **Proposed Changes**

- (a) The Principal's Representative may at any time issue to the SCAW Contractor a written document titled "Change Proposal Request" notifying the SCAW Contractor of a proposed Change that the Principal is considering (**Change Proposal Request**). Within 15 Business Days (but using its best endeavours to do so within 10 Business Days) of receipt of a Change Proposal Request (or such longer period as the Principal's Representative may direct), the SCAW Contractor must, at its cost, provide the Principal's Representative with a written notice containing the following details:
  - (i) the effect which the SCAW Contractor anticipates the Change will have on:
    - (A) the Design Contract Sum and the Design Payment Schedule;
    - (B) the Construction Contract Sum and the Construction Payment Schedule and any potential impacts on the costs of maintaining and using the Project Works, Temporary Works and the Handover Works;
    - (C) the Overall D&C Program and the SCAW Contractor achieving Substantial Completion and Completion (as applicable) of each Portion and if the proposed Change would entitle the SCAW Contractor to an extension of time, the amount of its entitlement under clause 19.6 arising from that extension of time;
    - (D) the land or property rights that are required to construct the Project Works and the Temporary Works and whether the SCAW Contractor considers any additional land or property rights are required to carry out the proposed Change;
    - (E) the performance of the SCAW Contractor's Activities, the Project Works and the Temporary Works (including specific details of the work that will be affected and how and to what extent it will be affected); and

- (F) the functionality or integrity of the elements of the SCAW Contractor's Activities, the Project Works and the Temporary Works and the quality or performance standards required by this deed, including specific details of:
  - (aa) the elements of the SCAW Contractor's Activities, the Project Works and the Temporary Works that will be affected;
  - (bb) how and to what extent the functionality or integrity of those elements will be affected;
  - (cc) the quality or performance standards affected and how and to what extent they will be affected; and
  - (dd) any adverse effect which the Change will have on the SCAW Contractor's ability to satisfy its obligations under this deed (including any warranties the SCAW Contractor is required to give under this deed); and
- (ii) any other information concerning the proposed Change which the Principal's Representative reasonably requires including:
  - (A) sufficient details to allow the Principal to reconsider the need for the Change;
  - (B) the direct net costs that the SCAW Contractor anticipates would be incurred by it if a direction was given under clause 19.9(a)(ii) to accelerate the performance of the SCAW Contractor's Activities to overcome part or all of any delay in achieving Substantial Completion of a relevant Portion by the relevant Date for Substantial Completion caused by the Change specified in the Change Proposal Request;
  - (C) whether any land in addition to the Construction Site is required to implement the Change; and
  - (D) reasonably available source documents required for the Principal's Representative to verify the information provided by the SCAW Contractor on an Open Book Basis; and



- (b) The Principal will not be obliged to proceed with any proposed Change the subject of a Change Proposal Request.
- (c) Except as directed in a Change Order, the SCAW Contractor will not be entitled to vary or change the Project Works or the Temporary Works.





15.3 **Change Orders**

- (a) Whether or not the Principal's Representative has issued a Change Proposal Request under clause 15.2(a), the Principal's Representative may at any time, by a written document titled "Change Order", direct the SCAW Contractor to carry out a Change as specified in the Change Order.

The Principal's Representative will in the Change Order state one of the following:

- (i) where the SCAW Contractor has provided a notice under clause 15.2(a) with respect to the Change, whether any one or more of the following will be adjusted as set out in the SCAW Contractor's notice under clause 15.2(a):
  - (A) the Design Contract Sum and the Design Payment Schedule;
  - (B) the Construction Contract Sum and the Construction Payment Schedule;
  - (C) a relevant Date for Substantial Completion;
  - (D) any other obligations of the SCAW Contractor under this deed (including adjustments required, if any, to any warranties the SCAW Contractor is required to give under this deed); and
  - (E) if applicable, any other matters set out in the SCAW Contractor's notice under clause 15.2(a); or
- (ii) where the Principal's Representative's notice under subparagraph (i) states that the Principal's Representative does not agree with the SCAW Contractor's notice under clause 15.2(a), or where no Change Proposal Request has been issued under clause 15.2(a), that any adjustment to:
  - (A) the Design Contract Sum and the Design Payment Schedule; and
  - (B) the Construction Contract Sum and the Construction Payment Schedule,

will be made under clause 15.5(d).

- (b) Where the SCAW Contractor receives a Change Order, it must perform its obligations under this deed in accordance with the Change specified in the Change Order.
- (c) There is no limitation on the power of the Principal's Representative to direct a Change, and no Change or direction to carry out a Change will invalidate this deed.
- (d) Where the SCAW Contractor receives a Change Order but the Principal's Representative has not issued a Change Proposal Request under clause 15.2(a), the SCAW Contractor may, within 10 Business Days of receipt of the Change Order (or such longer period as the Principal's Representative may direct), provide the Principal's Representative with a notice setting out the details specified in clauses 15.2(a)(i)(D), 15.2(a)(i)(E) and 15.2(a)(i)(F). Without limiting the parties'

rights under clause 25, the Principal is not required to take any action with respect to the SCAW Contractor's notice provided under this clause 15.3(d).

- (e) Without limiting clause 17, the Principal's Representative may issue a Change Order at any time up to Substantial Completion of the last Portion to reach Substantial Completion.
- (f) If the Principal directs the SCAW Contractor to implement a Change by issuing a Change Order:
  - (i) the SCAW Contractor must promptly implement the Change on the basis of the Change Order irrespective of:
    - (A) the nature, extent or value of the work the subject of the Change;
    - (B) the location or timing (including the impact on any Date for Substantial Completion or Date for Completion) of the work involved in the Change; or
    - (C) any Dispute related to the Change;
  - (ii) the SCAW Contractor will be relieved of its obligations under this deed to the extent specified in the Change Order (or as otherwise determined under clause 25); and
  - (iii) the Design Contract Sum and/or the Construction Contract Sum, as applicable, will be adjusted in accordance with clause 15.5.
- (g) The SCAW Contractor's entitlement (if any) to an extension of time arising out of or in connection with a Change will be dealt with under clause 19.6.

#### 15.4 Notice of Change

- (a) If the SCAW Contractor believes any Direction of the Principal's Representative, other than the issuing of a Change Order, constitutes or involves a Change it must, if it wishes to make a Claim against the Principal arising out of or, or in any way in connection with, the Direction:
  - (i) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction or otherwise complying with, the Direction, give notice to the Principal's Representative that sets out:
    - (A) that it considers the Direction constitutes or involves a Change;
    - (B) details of the relevant Direction;
    - (C) details of why it considers the Direction constitutes or involves a Change; and
    - (D) that the SCAW Contractor proposes to make a Claim in connection with the Direction; and
  - (ii) subject to clause 31.3, within 20 Business Days of giving the notice under clause 15.4(a)(i) (or such longer period as the Principal's Representative may direct), submit a written Claim to the Principal's Representative which includes detailed particulars of:
    - (A) why the SCAW Contractor believes the Direction constitutes or involves a Change;

- (B) the details specified in clause 15.2(a)(i);
- (C) the Direction, including the date or dates of the Direction and any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
- (D) the provisions of this deed or other legal basis upon which the Claim is based; and
- (E) the amount claimed and how it has been calculated,

failing which the SCAW Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with the Principal's Representative's Direction.

- (b) Despite the fact that the SCAW Contractor considers that a Direction by the Principal's Representative constitutes or involves a Change, the SCAW Contractor must continue to carry out the SCAW Contractor's Activities in accordance with this deed including any work connected with the Direction of the Principal's Representative in respect of which notice has been given under clause 15.4(a).
- (c) If the SCAW Contractor issues a notice under clause 15.4(a)(i) or a Claim under clause 15.4(a)(ii), the Principal may:
  - (i) confirm that the Direction constitutes or involves a Change, or entitles the SCAW Contractor to make a Claim, by the giving of a notice under this clause 15.4(c)(i);
  - (ii) deny that the Direction constitutes or involves a Change, or entitles the SCAW Contractor to make a Claim, by the giving of a notice under this clause 15.4(c)(ii), in which case the SCAW Contractor:
    - (A) may within 10 Business Days issue a Notice of Issue under clause 25.3; and
    - (B) unless otherwise directed by the Principal's Representative, must comply with the Direction irrespective of any Claim or Dispute in relation to the Direction or any part of it; or
  - (iii) withdraw the Direction by giving a notice under this clause 15.4(c)(iii).
- (d) If within 20 Business Days after first receipt of the notice under clause 15.4(a)(i), the Principal's Representative has not taken any action under clause 15.4(c), the Principal's Representative will be deemed to have given a notice under 15.4(c)(ii).

## 15.5 Valuation

Subject to clauses 15.4, 15.7(h), 15.8(c)(ii)(A), 17.3 and 31, one or more of the following will, to the extent required by this deed, be adjusted for all Changes which have been the subject of a Direction by the Principal's Representative:

- (a) the Design Contract Sum and the Design Payment Schedule; and
  - (b) the Construction Contract Sum and the Construction Payment Schedule,
- by:
- (c) to the extent that clause 15.3(a)(i) applies, the agreed amount specified in the Change Order; or



- (d) to the extent clause 15.3(a)(ii) applies or where this deed contemplates that any additional work will be treated as a Change:
- (i) the net cost of the work (including Materials) to be added and/or omitted as a result of the Change, valued:
    - (A) where applicable, on the basis of the relevant schedule of prices and rates set out in the Design Payment Schedule and the Construction Payment Schedule; and
    - (B) where relevant, on the basis of any other appropriate data including, where work is directed to be carried out (or, if applicable, omitted or deleted) by a direction given by the Principal's Representative under clause 15.8(a) after the relevant date set out in Schedule A3 and to the extent it is reasonable to use it in respect of a Pre-Agreed Change, the details in Schedule A3 relevant to that Pre-Agreed Change plus Overheads and Profit Margin (except to the extent the relevant rates and prices are inclusive of Overheads and Profit Margin); or
    - (C) otherwise on the basis of the Direct Costs plus the Overheads and the Profit Margin which will, subject to clause 15.5(d)(ii), be in total satisfaction of all the SCAW Contractor's Overheads, preliminaries (including administrative costs, site supervision, establishment costs and attendance) and profit,such value to be as stated by the Principal's Representative; and
  - (ii) if the Change includes an extension to a Date for Substantial Completion of a Portion, any Delay Costs the SCAW Contractor will incur due to the delay or disruption that the Change will cause in the carrying out of the SCAW Contractor's Activities, with the amount of such Delay Costs to be as stated by the Principal's Representative. In the case of a Change issued pursuant to clauses 4.18(d), 7.4(a)(ii)(B), 8.5(d), 10.1(a), 10.3(a), 12.4(i), 12.17(f), 12.24(e), 13.5(b), 17.2(a)(ii) and 17.3(a)(i), such Delay Costs must not exceed on a per day basis the Delay Costs Maximum Daily Amount, provided however that where the Principal's Representative has issued a Change Proposal Request, the SCAW Contractor's entitlement under this clause will not exceed any amount set out in the SCAW Contractor's notice under clause 15.2(a).

The parties acknowledge and agree that:

- (e) the principles set out in clauses 3(a), (b), (f), (g), (h) and (i) of Schedule E9 will apply to the valuing of any Changes by the Principal's Representative in accordance with clause 15.5(d) (with any consequential changes necessary to take into account the nature of clause 15.5(d)); and
- (f) the Principal will not be liable, and the SCAW Contractor is not entitled to claim payment in any circumstances, for any fines, penalties or bid costs.

#### 15.6 Omissions

If the Principal's Representative directs a Change omitting or deleting any work from the SCAW Contractor's Activities:

- (a) the Principal may thereafter either perform this work itself or employ or engage another person or persons to carry out and execute the omitted or deleted work;

- (b) the Principal will not (other than pursuant to this clause 15 and clause 19.6) be liable upon any Claim (insofar as is permitted by Law) by the SCAW Contractor as a result of any work being omitted or deleted from the SCAW Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages another person or persons to carry out and execute the omitted or deleted work; and
- (c) except for work omitted or deleted by a direction by the Principal's Representative made under clause 15.8(a) by the relevant date set out in Schedule A3, the work which has been omitted or deleted shall be valued in accordance with clause 15.5.

**15.7 SCAW Contractor may propose Change**

- (a) The Principal and the SCAW Contractor acknowledge that:
  - (i) the design and construct project delivery method chosen is intended, among other things, to allow the SCAW Contractor to identify:
    - (A) Changes which may enhance the quality of the SCAW Contractor's Activities; and
    - (B) Changes which may permit project cost savings while maintaining or enhancing the quality of the SCAW Contractor's Activities; and
  - (ii) it is their intention that any cost savings should benefit the Principal and the SCAW Contractor equally.
- (b) The SCAW Contractor may propose a Change by giving written notice to the Principal's Representative with details of the proposed Change.
- (c) On receiving a notice under clause 15.7(b), the Principal's Representative may give written notice to the SCAW Contractor requiring it to give the Principal's Representative:
  - (i) details of:
    - (A) the proposed Change in addition to those provided in accordance with clause 15.7(b);
    - (B) the reason for the proposed Change;
    - (C) the effect of the proposed Change on the SCAW Contractor's Activities;
    - (D) the effect of the proposed Change on the Overall D&C Program and the Dates for Substantial Completion or Dates for Completion of the Portions;
    - (E) the effect of the proposed Change (if any) on the land or property rights that are required to construct the Project Works and the Temporary Works and whether the SCAW Contractor considers any additional land or property rights are required to carry out the proposed Change; and
    - (F) the cost effect of assessing and carrying out the proposed Change, including:
      - (aa) where the proposed Change will involve additional costs, any increased costs;

- (bb) where the proposed Change will lead to cost savings, proposals for any cost savings arising from the Change; and
  - (cc) an estimate of the effect the proposed Change will have on operating and maintenance costs, using its best endeavours and having regard to Good Industry Practice;
- (ii) a written statement stating that the proposed Change:
- (A) will not adversely affect the functional integrity of any of the elements of the SCAW Contractor's Activities and the performance standards required by this deed;
  - (B) will not adversely affect the quality standards required under this deed; and
  - (C) is consistent with and complies with the conditions and requirements of the Planning Approvals; and
- (iii) any other information and supporting documentation the Principal's Representative reasonably requires.
- (d) Subject to clause 15.7(e), the Principal's Representative:
- (i) (in its absolute discretion) may, by notice in writing, approve or reject any Change the SCAW Contractor proposes; and
  - (ii) will be under no obligation to approve any such Change for the convenience of, or to assist, the SCAW Contractor.

Prior to giving any direction under this clause 15.7(d), the Principal's Representative may seek to negotiate with the SCAW Contractor over the level of cost increase or savings arising from the proposed Change. If the parties agree in writing upon a different level of cost increase or savings, the SCAW Contractor's notice will be deemed to be amended by the inclusion of this different level of cost increase or savings in place of the original cost increase or savings notified by the SCAW Contractor.

- (e) If a Change proposed by the SCAW Contractor relates solely to Non-Proof Engineered Temporary Works (not including the Handover Works), the Principal's Representative will not unreasonably withhold its approval to any such proposed Change.
- (f) If the Principal's Representative gives a direction under clause 15.7(d) approving a Change proposed by the SCAW Contractor, the SCAW Contractor must perform its obligations under this deed in accordance with the approved Change.
- (g) With respect to any Change approved by the Principal's Representative pursuant to a direction under clause 15.7(d), the Project Contract Sum will be:
  - (i) if the Change gives rise to a cost increase, increased by the cost increase notified by the SCAW Contractor under clause 15.7(c)(i)(F); or
  - (ii) if the Change gives rise to cost savings, decreased by [REDACTED] of the cost savings notified by the SCAW Contractor under clause 15.7(c)(i)(F),

or such other increased or decreased amount (as appropriate) as may be agreed between the Principal and the SCAW Contractor pursuant to clause 15.7(d) and prior to the Principal's Representative's direction under clause 15.7(d) provided always that the SCAW Contractor must bear all costs and expenses (including compensation

payable to third parties) that are incurred by the Principal in acquiring any additional land or property rights that are required to carry out the Change.

(h) The SCAW Contractor will:

(i) bear all costs:

- (A) associated with proposing a Change under clause 15.7(b);
- (B) associated with providing details under clause 15.7(c); and
- (C) reasonably incurred by:
  - (aa) the Principal (or the Principal's Representative); or
  - (bb) any Interface Contractor,

in assessing the proposed Change with all such costs (including the costs of any Interface Contractor) to be a debt due from the SCAW Contractor to the Principal;

(ii) where a proposed Change is approved by the Principal's Representative:

- (A) bear all costs and expenses (including any compensation payable to third parties) incurred by the Principal in acquiring any additional land or property rights that are required to carry out the proposed Change with all such costs and expenses to be a debt due from the SCAW Contractor to the Principal; and
- (B) bear the risk of any delay or disruption that may arise out of or in connection with the need to acquire any additional land or property rights that are required to carry out the proposed Change; and

(iii) unless otherwise agreed and except as provided for in clause 15.7(g)(i):

- (A) where a proposed Change is approved by the Principal's Representative, bear all costs associated with assessing and carrying out the proposed Change (including any additional costs arising out of or in connection with additional access to the Construction Site and/or with any rights required for such access); and
- (B) not be entitled to make any Claim against the Principal arising out of or in connection with the Change.

#### 15.8 Pre-Agreed Changes

- (a) The Principal's Representative may, in its absolute discretion and without being under any obligation to do so, direct by way of Change any Pre-Agreed Change by giving written notice to the SCAW Contractor.
- (b) The Principal and the SCAW Contractor agree that if a notice pursuant to clause 15.8(a) is given in respect of a Pre-Agreed Change by the relevant date specified in Schedule A3, this deed, including any relevant components of the Project Contract Sum, will be deemed to be amended in accordance with the relevant amendments set out in Schedule A3 from the date the SCAW Contractor receives such notice.

- (c) Where the Principal's Representative directs a Pre-Agreed Change by giving written notice to the SCAW Contractor by the relevant date referred to in clause 15.8(b), the SCAW Contractor, in respect of that Pre-Agreed Change:
- (i) must carry out its obligations under this deed as amended by clause 15.8(b); and
  - (ii) acknowledges that:
    - (A) any adjustment of the components of the Project Contract Sum made pursuant to clause 15.8(b) will be full compensation for any Loss or delay it suffers or incurs arising out of or in connection with the issue of such a notice, including any matters that would otherwise constitute Delay Costs, and no further adjustment will be made to the components of the Project Contract Sum under clause 15.5; and
    - (B) the SCAW Contractor is not entitled to make any Claim for:
      - (aa) any acceleration, compression, re-ordering or re-sequencing to the SCAW Contractor's Activities which the SCAW Contractor must perform at any time in order to achieve Substantial Completion of any relevant Portion by its applicable Date for Substantial Completion or Completion of any relevant Portion by its applicable Date for Completion; or
      - (bb) any extension of time for any delay to the carrying out of the SCAW Contractor's Activities,
- in connection with the issue of such a notice or the amendment of this deed pursuant to clause 15.8(b).
- (d) Nothing in this clause prevents the Principal's Representative from:
- (i) issuing a Change Proposal Request as referred to in clause 15.2(a); or
  - (ii) directing a Change by issue of a Change Order,
- that involves the same (or similar) changes to the Project Works as a Pre-Agreed Change after the relevant date for giving notice of the Pre-Agreed Change specified in Schedule A3.
- (e) If the Principal's Representative:
- (i) issues a Change Proposal Request as referred to in clause 15.2(a); or
  - (ii) directs a Change by issue of a Change Order,
- which involves the same or similar changes to the Project Works as are required by a Pre-Agreed Change and which is issued or directed (as relevant) after the relevant date in Schedule A3 for that Pre-Agreed Change, the Principal and the SCAW Contractor agree that the Change will be valued in accordance with the process in clauses 15.1, 15.3 and 15.5.

#### 15.9 **SCAW Contractor's entitlements**

This clause 15 is an exhaustive code of the SCAW Contractor's rights in any way in connection with any Change. The SCAW Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 15 otherwise than in accordance with the terms of this deed.

## 15.10 Approvals for Changes

- (a) Subject to clause 15.10(b), the SCAW Contractor must apply for and obtain all:
  - (i) necessary amendments or modifications to any existing Approval; and
  - (ii) new Approvals that may be,  
required for the execution of a Change.
- (b) Where the amendment or modification to any Approval required for the execution of the Change relates to any Approval specified in Schedule D2, the SCAW Contractor must:
  - (i) carry out and provide to the Principal all surveys, investigations, reports, studies:
    - (A) requested by the Principal's Representative;
    - (B) to the standard directed by the Principal's Representative; and
    - (C) within the time directed by the Principal's Representative; and
  - (ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Approval.
- (c) The SCAW Contractor must implement the Change once the Approvals referred to in this clause 15.10 have been amended, modified, or granted to permit the Change to be implemented.

## 15A VALUATION MECHANISM

### 15A.1 Project Contract Sum Adjustment Event

Schedule E9 will apply to the valuation of any Project Contract Sum Adjustment Event which will be added to or deducted from the Project Contract Sum, as the case may be.

## 16. CONSTRUCTION

### 16.1 Construction

- (a) The SCAW Contractor must construct the Project Works and the Temporary Works:
  - (i) in accordance with the requirements of this deed including:
    - (A) the SCAW Specification;
    - (B) subject to clause 16.1(c), any Design Stage 3 Design Documentation which it is entitled to use for construction under clause 6 of Schedule A26; and
    - (C) any Direction of the Principal's Representative given or purported to be given under a provision of this deed, including any Change directed by the Principal's Representative by a Change Order;
  - (ii) using good workmanship and Materials which are:
    - (A) free of Defects and other imperfections; and

- (B) of the quality specified in the SCAW Specification;
- (iii) so that, upon Substantial Completion, they are and will be capable of remaining at all relevant times fit for their intended purposes; and
- (iv) so that:
  - (A) the Project Works are within the boundaries of the Project Site; and
  - (B) all Temporary Works are within:
    - (aa) the boundaries of the Construction Site; or
    - (bb) areas permitted by the terms of any relevant Adjoining Property Owner Agreement or Adjoining Property Easement.
- (b) The SCAW Contractor warrants that each Portion will upon Substantial Completion:
  - (i) be fit for its intended purpose; and
  - (ii) be capable of remaining, at all relevant times, fit for its intended purpose.
- (c) If there is any ambiguity, discrepancy or inconsistency between this deed on the one hand or any Design Stage 3 Design Documentation or AFC Design Documentation, the requirements of this deed will prevail.

#### 16.2 **Early Works Activities**

- (a) Prior to the date of this deed, the SCAW Contractor carried out the Early Works Activities in accordance with the Tender Process Deed.
- (b) The parties agree that from the date of this deed, the Early Works Activities form part of the SCAW Contractor's Activities and will be treated as though they had been performed by the SCAW Contractor under this deed, notwithstanding that the Early Works Activities were performed prior to the date of this deed by the SCAW Contractor under the Tender Process Deed.

#### 16.3 **Performance of SCAW Contractor's Activities**

- (a) Without limiting clause 16.1, in performing the SCAW Contractor's Activities, the SCAW Contractor must:
  - (i) keep the Construction Site clean and tidy and regularly remove from any place where the SCAW Contractor's Activities are being performed any waste or surplus material (including Materials) arising from such performance;
  - (ii) in respect of Construction Plant used in performing the SCAW Contractor's Activities:
    - (A) use any Construction Plant which this deed prescribes or otherwise requires the SCAW Contractor to use including any Construction Plant referred to in a Project Plan;
    - (B) ensure such Construction Plant complies with, and is maintained by the SCAW Contractor in accordance with, all relevant Laws;
    - (C) not remove Key Plant and Equipment from the Construction Site without the Principal's Representative's prior written consent; and

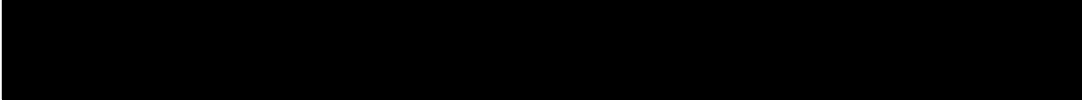
- (D) provide the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not the SCAW Contractor) held or used by the SCAW Contractor under an agreement with the owner of the Construction Plant;
- (iii) act in a timely and expeditious manner;
- (iv) once it has commenced any construction activities on the Construction Site, regularly and diligently proceed with the construction of the Project Works and take all steps reasonably available to it (including re-sequencing and re-scheduling the commencement of other SCAW Contractor's Activities) to minimise any disruption to, impact of the performance of the SCAW Contractor's Activities on, or compromising the safety of other users of:
  - (A) the Existing Operations;
  - (B) Local Areas; or
  - (C) Utility Services;
- (v) give priority to the safety of persons, vehicles using the Existing Operations or otherwise affected by the performance of the SCAW Contractor's Activities;
- (vi) without limiting clause 4.5, coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or operations of Authorities;
- (vii) do all things and take all measures necessary to protect people and property; and
- (viii) minimise nuisance, noise, vibration and disturbance and comply with the requirements of Authorities.
- (b) Without limiting clause 16.1, the SCAW Contractor warrants that it will perform the SCAW Contractor's Activities using the workmanship and Materials required by this deed and which are fit for their intended purposes.
- (c) The SCAW Contractor must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Utility Services arising out of the performance of the SCAW Contractor's Activities.
- (d) The SCAW Contractor must not commence construction of the Works under the relevant Third Party Agreement until all relevant preconditions to commencement of those works in the Third Party Agreement have respectively have been satisfied.

#### 16.4 **Setting out**

- (a) The SCAW Contractor must:
  - (i) set out the Project Works in accordance with the requirements of this deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the SCAW Contractor that are suitable for their purposes;
  - (ii) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and



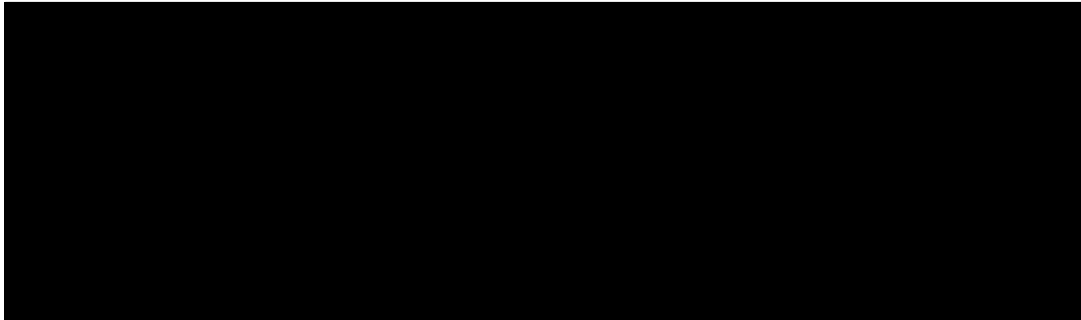
(iii) for this purpose keep all survey marks in their true positions.



(b) If the SCAW Contractor:

(i) discovers an error in the position, level, dimensions or alignment of any part of the Project Works, the SCAW Contractor must immediately notify the Principal's Representative and, subject to clause 16.4(c) and unless the Principal's Representative otherwise directs, the SCAW Contractor must at its cost rectify the error;





**16.5 Principal's right to inspect and seek comments**

- (a) The Principal, the Principal's Representative (and any other persons nominated by the Principal), any Interface Contractor and the Independent Certifier may at any time:
  - (i) inspect the SCAW Contractor's Activities on the Construction Site; and
  - (ii) seek comments from others in respect of the SCAW Contractor's Activities,and the Principal, the Principal's Representatives and any Interface Contractor may at any time provide comments to the Independent Certifier in respect of the SCAW Contractor's Activities (with a copy to the SCAW Contractor).
- (b) An Interface Contractor may only inspect the SCAW Contractor's Activities on the Construction Site when accompanied by a representative of the Principal or the Independent Certifier.
- (c) Neither the Principal, the Principal's Representative, any Interface Contractor nor any of the persons nominated by the Principal pursuant to paragraph (a) above, owes any duty to the SCAW Contractor to:
  - (i) inspect the SCAW Contractor's Activities; or
  - (ii) review any construction or repair for errors, omissions or compliance with the requirements of this deed if it does so inspect.
- (d) No inspection or review of the SCAW Contractor's Activities or of any construction or repair by the Principal, the Principal's Representative, any Interface Contractor or any person nominated by the Principal pursuant to paragraph (a) above will in any way lessen or otherwise affect:
  - (i) the SCAW Contractor's obligations under this deed (including its obligations under clause 16.1(a)) or otherwise according to Law; or
  - (ii) the Principal's rights against the SCAW Contractor whether under this deed or otherwise according to Law.

**16.6 All work included**

- (a) Subject to any express term of this deed to the contrary, the SCAW Contractor must, without adjustment to any component of the Design Contract Sum or the Construction Contract Sum, provide all services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work necessary for the SCAW Contractor's Activities whether or not they are:

- (i) expressly mentioned in this deed or the Design Documentation prepared by the SCAW Contractor which the SCAW Contractor is entitled to use for construction purposes under clause 1.1 of Schedule A26; or
  - (ii) anticipated by the SCAW Contractor.
- (b) Such services, labour, Materials, Utility Services, Temporary Works, Construction Plant and other work form part of the SCAW Contractor's Activities and must be undertaken and provided by the SCAW Contractor at its own cost and will not constitute a Change or otherwise entitle the SCAW Contractor to make a Claim against the Principal.

**16.7 The Principal's action**

- (a) Without limiting clause 32.9, the Principal's Representative may take any action necessary to protect, or to prevent or minimise risks to, the SCAW Contractor's Activities, the Environment, other property or the health and safety of people which the SCAW Contractor must take under this deed but does not take.
- (b) The amount of any Loss the Principal suffers or incurs arising out of or in connection with:
- (i) taking the action contemplated in clause 16.7(a); or
  - (ii) the SCAW Contractor's failure to take that action,
- will, except to the extent prohibited by Law, be a debt due from the SCAW Contractor to the Principal.

**16.8 Incident management**

- (a) The SCAW Contractor must identify clear guidelines for responding to any Incident arising from the performance of the SCAW Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) Should an Incident occur which is reportable under any relevant Law, the SCAW Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative.
- (c) In relation to any environmental or safety Incident involving Contamination, ██████████ or Waste that arises during the performance of the SCAW Contractor's Activities, the SCAW Contractor must:
- (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination, Hazardous Material or Waste arising from the Incident in accordance with the requirements of this deed;
  - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
  - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) Without prejudice to the Principal's other rights under this deed, if the Principal's Representative forms the view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the SCAW Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the

risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the SCAW Contractor as a debt due from the SCAW Contractor to the Principal.

- (e) Without prejudice to the Principal's other rights under this deed, the Principal's Representative may issue an immediate stop work order in the event of any Incident, or the imminent risk of any Incident, involving:
  - (i) a significant spill of Contamination [REDACTED];
  - (ii) any actual damage to the Environment or a significant risk of harm to the Environment; or
  - (iii) a fatality or injury to any person including any Incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator.
- (f) The Principal will not be liable upon any Claim by the SCAW Contractor for any Loss arising out of or in connection with any work stoppage due to a stop work order referred to in clause 16.8(e) or for the failure by the Principal's Representative to issue such a stop work order.
- (g) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any stop work order referred to in clause 16.8(e) in relation to the SCAW Contractor's, its agents' or its Subcontractors' acts or omissions in performing the SCAW Contractor's Activities as a debt due from the SCAW Contractor to the Principal.

#### 16.9 Instructions from Authorities

Notwithstanding any other provision of this deed, the SCAW Contractor:

- (a) must not restrict, close, interfere with or obstruct the free flow of the public in public spaces, parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, contrary to the instructions of the New South Wales Police Service or any other Authority; and
- (b) in restricting, closing, interfering with or obstructing the free flow of the public in public spaces or parks, pedestrian ways or pedal cycle paths, or traffic on any lane or shoulder of the existing road network, including Local Areas, must act in accordance with any instructions of the New South Wales Police Service or any other Authority including to cease any of the SCAW Contractor's Activities and to re-open the road, public space, park, pedestrian way, pedal cycle path, lane or shoulder.

#### 16.10 Survey

The SCAW Contractor must, as a condition precedent to Substantial Completion of each Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative a survey certificate (within the meaning of that term in the *Surveying and Spatial Information Regulation 2017* (NSW)) signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) who is approved by the Principal's Representative stating that:

- (a) the whole of the Portion is within the relevant boundaries of the Project Site stipulated in this deed, except only for parts of the Portion specifically required by this deed to be outside those boundaries (including any Handover Works which this deed specifically states may be left in a Temporary Area at Substantial Completion);

- (b) the elements of the Portion are in the positions and within the tolerances required by this deed;
- (c) the survey information included in the Asset Management Information provided by the SCAW Contractor pursuant to clause 16.13 complies with the requirements of this deed; and
- (d) any other matter identified by the Principal's Representative complies with the requirements of this deed.

#### 16.11 **Cleaning up**

Without limiting clause 16.3, in carrying out the SCAW Contractor's Activities, the SCAW Contractor must:

- (a) keep the Construction Site, Extra Land and the Project Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material (including Materials) from the Construction Site and Extra Land;
- (c) prior to vacating any Temporary Areas for which a Site Access Expiry Date is specified in Table 4a of the Site Access Schedule, remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works from the relevant Temporary Areas; and
- (d) as a condition precedent to Substantial Completion of a Portion, remove all rubbish, surplus materials (including Materials), Construction Plant and Temporary Works (other than the Handover Works) from the relevant parts of the Construction Site and Extra Land relevant to that Portion except where the retention of any of these are required for the correction of Defects during the Defects Correction Period and this is approved in writing by the Principal's Representative.

#### 16.12 **Work methods**

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 or the Principal's Representative, the fact that any work method that the SCAW Contractor adopts or proposes to adopt is impractical or impossible or that the SCAW Contractor, with or without the approval of the Principal's Representative, uses another work method will:

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

#### 16.13 **Asset Management Information**

- (a) As a condition precedent to Substantial Completion of each Portion, the SCAW Contractor must prepare and submit the Asset Management Information for that Portion in respect of the Handover Works.
- (b) As a condition precedent to Completion of each Portion, the SCAW Contractor must prepare and submit the Asset Management Information for that Portion in respect of the Project Works.
- (c) Each set of Asset Management Information must contain the contents required by section 7 of the General Specification.

- (d) The SCAW Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier an initial draft of the Asset Management Information for the Portion which is not intended to differ in substance from the final draft (including the initial submission of the Asset Management Information but excluding the incorporation of the other Project Plans required by clause 11.5(d)) but for minor details:
  - (i) no less than 180 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;
  - (ii) no less than 180 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works;
  - (iii) if either:
    - (A) with respect to the Asset Management Information in respect of the Handover Works:
      - (aa) the Principal's Representative reasonably anticipates that the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
      - (bb) it is otherwise reasonably apparent that the anticipated Date of Substantial Completion of the Portion will be earlier than the applicable Date for Substantial Completion, no less than 180 days prior to the reasonably anticipated Date of Substantial Completion of the Portion; or
    - (B) with respect to the Asset Management Information in respect of the Project Works:
      - (aa) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 180 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
      - (bb) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 180 days prior to the reasonably anticipated Date of Completion of the Portion; or
  - (iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the SCAW Contractor to submit an initial draft of the Asset Management Information for the Portion within either of the time periods required by clauses 16.13(d)(i), 16.13(d)(ii) or 16.13(d)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.
- (e) The SCAW Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier a final draft of the Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 11.5(d)):

- (i) no less than 90 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;
- (ii) no less than 90 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works; or
- (iii) if either:
  - (A) with respect to the Asset Management Information in respect of the Handover Works:
    - (aa) the Principal's Representative reasonably anticipates that the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
    - (bb) it is otherwise reasonably apparent that the anticipated Date of Substantial Completion of the Portion will be earlier than the applicable Date for Substantial Completion, no less than 90 days prior to the reasonably anticipated Date of Substantial Completion of the Portion; or
  - (B) with respect to the Asset Management Information in respect of the Project Works:
    - (aa) the Principal's Representative reasonably anticipates that the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 90 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
    - (bb) it is otherwise reasonably apparent that the anticipated Date of Completion of the Portion will be earlier than the applicable Date for Completion, no less than 90 days prior to the reasonably anticipated Date of Completion of the Portion; or
- (iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the SCAW Contractor to submit a final draft of the Asset Management Information for the Portion within either of the time periods required by clauses 16.13(e)(i), 16.13(e)(ii) or 16.13(e)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.
- (f) The SCAW Contractor must, for each Portion, submit to the Principal's Representative and the Independent Certifier the final Asset Management Information for the Portion (including incorporation of the Project Plans required by clause 11.5(d)):
  - (i) no less than 30 days prior to the Date for Substantial Completion of the Portion for Asset Management Information in respect of the Handover Works;
  - (ii) no less than 30 days prior to the Date for Completion of the Portion for Asset Management Information in respect of the Project Works;
  - (iii) if the Principal's Representative reasonably anticipates that:

- (A) with respect to the Asset Management Information in respect of the Handover Works, the Date of Substantial Completion of the Portion will be prior to the applicable Date for Substantial Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Substantial Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
- (B) with respect to the Asset Management Information in respect of the Project Works, the Date of Completion of the Portion will be prior to the applicable Date for Completion, no less than 30 days prior to the Principal's Representative's reasonably anticipated Date of Completion for the Portion, provided that the Principal's Representative gives the SCAW Contractor 35 days' notice of the required date for submission; or
- (iv) if the Principal's Representative has given a direction under clause 10.1(a) and it is not possible for the SCAW Contractor to submit the final Asset Management Information for the Portion within either of the time periods required by clauses 16.13(f)(i), 16.13(f)(ii) or 16.13(f)(iii) (as applicable), within such other reasonable period of time directed by the Principal's Representative.
- (g) The SCAW Contractor acknowledges and agrees that the Principal's Representative and Independent Certifier may review any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k) or 16.13(q).
- (h) The Principal's Representative may:
  - (i) provide copies of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k) or 16.13(q) to; and
  - (ii) seek comments in respect of any Asset Management Information, or any draft of any Asset Management Information from,
 

any Interface Contractor.
- (i) The SCAW Contractor acknowledges and agrees that:
  - (i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the SCAW Contractor; and
  - (ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the SCAW Contractor) to the Independent Certifier,
 

in respect of any Asset Management Information, or any draft of any Asset Management Information, submitted under clause 16.13(d), 16.13(e), 16.13(f), 16.13(k) or 16.13(q).
- (j) The Principal and the SCAW Contractor acknowledge and agree that:
  - (i) the Independent Certifier may, within 15 Business Days of the submission of a set of Asset Management Information or a draft thereof, reject the Asset Management Information or the draft for a failure to comply with the requirements of this deed;



- (ii) the Independent Certifier must, within 15 Business Days of the submission of the final set of Asset Management Information under clause 16.13(f) (**Final Submission**), either:
  - (A) reject the Final Submission for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Final Submission is required (together with reasons) and a time within which this must occur; or
  - (B) certify the Final Submission by:
    - (aa) including a notation on the Final Submission; and
    - (bb) providing to the Principal's Representative, the SCAW Contractor and, if required by the Principal's Representative, OpCo a document signed by the Independent Certifier in the form in Schedule B6; and
- (iii) the Principal's Representative may at any time (including after the Independent Certifier has certified a Final Submission pursuant to clause 16.13(j)(ii)(B)) direct the SCAW Contractor to make amendments to the Asset Management Information so that the Asset Management Information complies with the requirements of this deed.
- (k) If a set of Asset Management Information or any draft is rejected or if the Principal's Representative directs the SCAW Contractor to amend a set of Asset Management Information under clause 16.13(j), clause 16.13(q) shall apply.
- (l) Where any Asset Management Information that is relevant to more than one Portion has previously been:
  - (i) submitted by the SCAW Contractor for another Portion under clause 16.13(d), 16.13(e) or 16.13(f); or
  - (ii) certified by the Independent Certifier pursuant to clause 16.13(j)(ii)(B),
 the SCAW Contractor will not be required to re-submit such Asset Management Information for subsequent Portions provided that:
  - (iii) for each subsequent Portion the SCAW Contractor clearly identifies that the relevant Asset Management Information has already been submitted for a previous Portion; and
  - (iv) the relevant Asset Management Information:
    - (A) is still current and has not been amended by the SCAW Contractor;
    - (B) does not require amendment to:
      - (aa) reflect the impact of any Change directed by the Principal's Representative; or
      - (bb) otherwise comply with the requirements of this deed; and
    - (C) has not been the subject of a direction given by the Principal's Representative under clause 16.13(j)(iii).

- (m) The Principal's Representative owes no duty to the SCAW Contractor to review any Asset Management Information or any draft submitted by the SCAW Contractor for errors, omissions or compliance with this deed.
- (n) No review of, comments upon or rejection of any Asset Management Information or any draft by the Principal's Representative or the Independent Certifier, nor any other Direction by the Principal's Representative (including a direction under clause 16.13(q)) in respect of any Asset Management Information or any draft, will lessen or otherwise affect:
  - (i) the SCAW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law.
- (o) The SCAW Contractor acknowledges and agrees that in addition to the purposes of the Project Plans to be incorporated into the Asset Management Information under clause 11.5(d), a purpose of each set of Asset Management Information is for the SCAW Contractor to provide a detailed description of how the Principal (or any nominee of the Principal) should maintain the relevant Portion.
- (p) The SCAW Contractor warrants that each set of Asset Management Information will be fit for its intended purpose, including for the purpose of enabling the Principal (or any nominee of the Principal) to maintain the relevant Portion.
- (q) Without limiting clause 17, where a draft of a set of Asset Management Information is rejected by the Independent Certifier or the Principal's Representative directs the SCAW Contractor to amend a set of Asset Management Information under clause 16.13(j), the SCAW Contractor must:
  - (i) further develop, update or amend the Asset Management Information to address the matters raised by the rejection by the Independent Certifier under clause 16.13(j) or the Principal's Representative direction under clause 16.13(j)(iii) (as applicable); and
  - (ii) submit the further developed, updated or amended Asset Management Information to the Principal's Representative and the Independent Certifier within the time specified under clause 16.13(j)(ii)(A),
 and the process in clauses 16.13(g) to 16.13(q) will be reapplied to the further developed, updated or amended Asset Management Information.

**16.14 Work as Executed Design Documentation**

- (a) As a condition precedent to Completion of each Portion, the SCAW Contractor must prepare and submit Work as Executed Design Documentation for the relevant Portion.
- (b) All Work as Executed Design Documentation must:
  - (i) comply with the requirements of this deed including section 7.8.5 of the General Specification; and
  - (ii) be accompanied by a certificate in the form of Schedule B19 from:
    - (A) the SCAW Contractor; and
    - (B) if prepared by a Subcontractor, the Subcontractor,

certifying that the Work as Executed Design Documentation complies with all requirements of this deed, including section 7.8.5 of the General Specification.

- (c) The Principal and the SCAW Contractor acknowledge and agree that the Independent Certifier must, within 15 Business Days of the submission of the Work as Executed Design Documentation for a Portion, either:
  - (i) reject the Work as Executed Design Documentation for a failure to comply with the requirements of this deed, which rejection must specify what development, updating and amendment of the Work as Executed Design Documentation (together with reasons) and a time within which this must occur; or
  - (ii) certify the Work as Executed Design Documentation by:
    - (A) including a notation on the Work as Executed Design Documentation; and
    - (B) providing to the Principal's Representative, the SCAW Contractor and, if required by the Principal's Representative, Opco, a document signed by the Independent Certifier in the form in Schedule B7.
- (d) If the Work as Executed Design Documentation for a Portion are rejected by the Independent Certifier, the SCAW Contractor must update and resubmit the Work as Executed Design Documentation and clause 16.14(c) shall re-apply except that the reference to "15 Business Days" will be deemed to be a reference to "5 Business Days".
- (e) The SCAW Contractor acknowledges and agrees that:
  - (i) the Principal's Representative and the Independent Certifier may (but are not obliged to) make comments to the SCAW Contractor; and
  - (ii) the Principal's Representative may (but is not obliged to) make comments (with a copy to the SCAW Contractor) to the Independent Certifier,in respect of any Work as Executed Design Documentation submitted under clause 16.14(a) or clause 16.14(d).
- (f) The Principal's Representative may:
  - (i) provide copies of any Work as Executed Design Documentation to; and
  - (ii) seek comments in respect of any Work as Executed Design Documentation, from,any Interface Contractor.
- (g) The Principal's Representative owes no duty to the SCAW Contractor to review any Work as Executed Design Documentation submitted by the SCAW Contractor for errors, omissions or compliance with this deed.
- (h) No review of, or comments upon or rejection of any Work as Executed Design Documentation by the Principal's Representative, nor any other Direction by the Principal's Representative in respect of any Work as Executed Design Documentation, will lessen or otherwise affect:
  - (i) the SCAW Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or

- (ii) the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law.

#### 16.15 **Training**

- (a) For each Portion, during the final 3 months prior to the Date for Substantial Completion of the Portion or such earlier date reasonably specified by the Principal's Representative, the SCAW Contractor must train personnel as nominated by the Principal's Representative (which may include personnel of any Interface Contractor) in all aspects of the maintenance of the Works, the Temporary Works and the Handover Works comprised in that Portion to a level of competency that will allow those personnel to operate, manage and maintain those Works, Temporary Works and Handover Works after the Date of Substantial Completion of the Portion.
- (b) The SCAW Contractor must ensure that it has competent and experienced personnel available to consult with the Principal (and any nominee of the Principal) on any aspect of the operation, maintenance and repair of the Works, the Temporary Works and the Handover Works at any time until the date 12 months after the Date of Substantial Completion of the last Portion to achieve Substantial Completion.

#### 17. **DEFECTS, INSPECTION AND REPAIR**

##### 17.1 **Defects**

- (a) The SCAW Contractor must promptly give the Principal's Representative and, if required by the Principal's Representative, or OpCo, a detailed written report of:
  - (i) any Defect it detects; and
  - (ii) all action proposed to correct that Defect, including the estimated time required.

The SCAW Contractor must correct all Defects arising prior to the expiry of the Defects Correction Period whether or not the Principal's Representative or the Independent Certifier notifies the SCAW Contractor of them, including correcting any Defects identified in a Notice of Substantial Completion, including any Minor Defects and Agreed Defects.

- (b) Without limiting any other obligation of the SCAW Contractor to correct Defects, the SCAW Contractor must:
  - (i) correct all Mandatory Defects as a pre-condition to the achievement of Substantial Completion of the relevant Portion;
  - (ii) use its best endeavours to correct all Minor Defects and Agreed Defects identified in a Notice of Substantial Completion within thirty (30) days of the Date of Substantial Completion of the relevant Portion; and
  - (iii) correct all Minor Defects and Agreed Defects identified in a Notice of Substantial Completion as a pre-condition to the achievement of Completion of the relevant Portion.

##### 17.2 **Principal's Representative's Direction**

- (a) If prior to or during the applicable Defects Correction Period the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 17.1(a), the Principal's Representative may, without prejudice to any other rights which the Principal may have under this deed or otherwise at Law, give

the SCAW Contractor a direction specifying the Defect and doing one or more of the following:

- (i) requiring the SCAW Contractor to correct the Defect or a part of it and specifying the reasonable time within which this must occur, unless [REDACTED] the SCAW Contractor is in breach of clauses 8 or 9 in which case the Principal may specify the time within which this must occur;
  - (ii) requiring the SCAW Contractor to carry out a Change to overcome the Defect or a part of it and specifying the reasonable time within which this must be carried out, unless [REDACTED] the SCAW Contractor is in breach of clauses 8 or 9 in which case the Principal may specify the time within which this must be carried out;
  - (iii) advising the SCAW Contractor that the Principal will accept the work or a part of it despite the Defect;
  - (iv) advising the SCAW Contractor that the Principal will direct an Interface Contractor to carry out a change or variation under its Interface Contract or other contract with the Principal (as applicable) to overcome (but not correct) the Defect or a part of the Defect; or
  - (v) in respect of any Defect:
    - (A) to which clause 17.3(b) applies; or
    - (B) subject to clause 17.2(c), discovered during a Defects Correction Period,  
  
advising the SCAW Contractor that an Interface Contractor or other contractor will correct (or has corrected) the Defect, or any part of it.
- (b) In determining the times at which the SCAW Contractor is required to correct a Defect or carry out a Change for the purposes of this clause 17.2, the Principal's Representative is entitled to have regard to the need to minimise the interference, delay and disruption to the activities which:
- (i) any Interface Contractor may be carrying out in discharge of its obligations under its relevant Interface Contract;
  - (ii) any Airport Lessee Contractor may be carrying out in performance of the Airport Works; or
  - (iii) OpCo may be carrying out in discharge of its obligations under the SSTOM Project Deed.
- (c) Unless [REDACTED] the SCAW Contractor is in breach of clauses 8 or 9, the Principal's Representative may not direct an Interface Contractor or other contractor to rectify or overcome a Defect, or any part of a Defect, pursuant to clause 17.2(a)(iv) or 17.2(a)(v)(B) or require a Change to overcome the Defect or a part of it, pursuant to clause 17.2(a)(ii) unless the Principal's Representative has first given the SCAW Contractor a direction under clause 17.2(a)(i) and the SCAW Contractor has:
- (i) failed to comply with such direction; or
  - (ii) otherwise failed to comply with its obligations under clause 17.3(a)(i).

- (d) Where [REDACTED] the SCAW Contractor is in breach of clauses 8 or 9, the Principal's Representative may give the SCAW Contractor a direction under clause 17.2(a)(v)(B) whether or not a direction has first been given under clause 17.2(a)(i).

### 17.3 Correction of Defect or Change

- (a) If a direction is given under clause 17.2(a)(i) or 17.2(a)(ii) at any time prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works (whether before or after Substantial Completion), the SCAW Contractor:
- (i) must correct the Defect (or the part of it) or carry out the Change (as the case may be):
    - (A) within the time specified in the Principal's Representative's direction;
    - (B) at times notified by the Principal's Representative;
    - (C) in accordance with the requirements of any relevant Authority;
    - (D) so as to minimise the impact on the use of the relevant part of the Project Works and/or Airport Works;
    - (E) in a manner which causes as little inconvenience as possible to the activities which:
      - (aa) any Interface Contractor or Airport Lessee Contractor may be carrying out in discharge of its obligations; and
      - (bb) to users of the Works, a Local Area, a Utility Service or any access and the adjacent community;
    - (F) at the SCAW Contractor's risk in respect of any restrictions on access;
    - (G) if an Interface Contractor has taken possession of the relevant part of the Construction Site for the purposes of designing and constructing any Interface Works, in accordance with the requirements of the relevant Interface Contractor in relation to access and site safety;
    - (H) in accordance with its obligations under the Master Interface Deed; and
    - (I) regardless of the existence of a Dispute as to whether the Principal's Representative's notice is valid or whether the subject matter of the notice is a Defect; and
  - (ii) will be entitled to:
    - (A) receive an extension of time (if relevant); and/or
    - (B) claim an increase to have any component of the Project Contract Sum, on account of correcting the Defect (or the part of it) or carrying out the Change, but only to the extent that:
      - (C) it complies with clause 19.6 or clause 31 (as the case may be); and

[REDACTED]

- (b) If the SCAW Contractor does not comply with clause 17.3(a)(i), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the SCAW Contractor with respect to the Defect under this deed or otherwise at Law, give the SCAW Contractor a direction under clause 17.2(a)(v) and have the correction or Change work carried out at the SCAW Contractor's expense, and the cost of the correction or Change work incurred by the Principal will be a debt due from the SCAW Contractor to the Principal.

**17.4 Acceptance of work or rectification by others**

- (a) [REDACTED], if a direction is given under clause 17.2(a)(iii) or 17.2(a)(v)(B) prior to the expiration of the Defects Correction Period applicable to the relevant part of the Project Works, the reasonable cost of correcting a Defect [REDACTED] [REDACTED] such amount to be as stated by the Principal's Representative, will be a debt due and payable from the SCAW Contractor to the Principal.

[REDACTED]

**17.5 Changes under other contracts to overcome Defects**

[REDACTED]

- (a) the SCAW Contractor must indemnify the Principal from and against any Liability or claim that the Principal suffers or incurs arising out of or in connection with the change or variation directed by the Principal under the relevant Interface Contract or other contract (as applicable) to the extent necessary to overcome the Defect (or the part of it); and
- (b) clause 17.4 will not apply,

[REDACTED]


17.6 **Works**

- (a) Subject to clause 17.6(b), the Works within a Portion have:
  - (i) a Defects Correction Period which begins on the Date of Substantial Completion of the Portion and ends on [REDACTED] and
  - (ii) in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) during the Defects Correction Period which is carried out on or after [REDACTED] a further Defects Correction Period which begins on the date of the correction of the Defect (or the part of it) or completion of the Change and continues for 12 months.
- (b) No Defects Correction Period for the Works (or any part of them) within a Portion will extend beyond [REDACTED]

17.7 **Local Area Works**

- (a) Each discrete part of the Local Area Works has:
  - (i) a Defects Correction Period of 12 months, which begins when the relevant works are complete (being the date when the relevant condition precedents are satisfied in accordance with clause 17.7(d)); and
  - (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Local Area Works) during the Defects Correction Period, which begins on the date of the correction of the Defect (or the part of it) or completion of the Change,

provided that no Defects Correction Period for any discrete part of the Local Area Works will extend beyond the date that is 24 months after the date when the relevant condition precedents are satisfied in accordance with clause 17.7(d) as the date on which the relevant part of the Local Area Works were completed.

- (b) The completion of the Local Area Works will be assessed on an area by area basis either:
  - (i) in accordance with this clause 17.7;



- (ii) in the case of the Council Works, in accordance with the procedure in the relevant Council Interface Agreement in relation to Practical Completion (Council Works); or
- (c) When the SCAW Contractor considers that a discrete part of the Local Area Works is complete, it must notify the Principal's Representative in writing and the Principal's Representative, the Project Director and the representative of any relevant Authority must jointly inspect the relevant Local Area Works at a mutually convenient time.
- (d) Each discrete part of the Local Area Works will not be regarded as complete and it is a condition precedent:
  - (i) to the commencement of the Defects Correction Period for a discrete part of the Local Area Works that:
    - (A) the SCAW Contractor provide the Principal's Representative with a written notice from each Authority with jurisdiction over the discrete part stating that the Authority is satisfied that the discrete part is complete;
    - (B) if the SCAW Contractor is unable to obtain a notice required under clause 17.7(d)(i)(A) despite having used its best endeavours to do so, the SCAW Contractor provide the Principal's Representative with a statement from the SCAW Contractor to the effect that:
      - (aa) the discrete part of the Local Area Works is complete and the SCAW Contractor has notified the relevant Authority of this matter; and
      - (bb) the relevant Authority has failed or refused to provide the written notice required under clause 17.7(d)(i)(A) despite being given 15 Business Days to provide the notice requested by the SCAW Contractor;
    - (C) to the extent that the discrete part of the Local Area Works constitutes Council Works, the Independent Certifier has executed and provided to the Principal's Representative and the relevant Council a certificate in the form of Schedule 8 to the Penrith City Council Interface Agreement with respect to the discrete part of the Local Area Works;
    - (D) to the extent that the discrete part of the Local Area Works constitutes M12 Works (SMWSA Works), the Independent Certifier has executed and provided to the Principal's Representative and TfNSW a certificate in the form of Schedule 10 to the TfNSW (M12) Interface Agreement with respect to the discrete part of the Local Area Works; and
  - (ii) to Substantial Completion of a Portion that the written notices or statements required under clauses 17.7(d)(i)(A) or 17.7(d)(i)(B) have been provided to the Principal's Representative for all discrete parts of the Local Area Works that form part of that Portion.

#### 17.8 **Utility Service Works**

- (a) Each discrete part of the Utility Service Works has:
  - (i) a Defects Correction Period of 12 months, which begins when:
    - (A) the relevant Utility Service Authority which has jurisdiction in respect of the Utility Service gives written notice that the work is complete; or

- (B) if the SCAW Contractor is unable to obtain a notice required under clause 17.8(a)(i)(A) despite having used its best endeavours to do so, a written statement from the SCAW Contractor to the effect that:
  - (aa) the discrete part of the Utility Service Works is complete and the SCAW Contractor has notified the relevant Utility Service Authority of this matter; and
  - (bb) the relevant Utility Service Authority has failed or refused to provide the written notice required under 17.8(a)(i)(A) despite being given 15 Business Days to provide the notice requested by the SCAW Contractor,

and the Principal's Representative has been provided with a copy of the notice or statement; and
- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Utility Service Works) during the Defects Correction Period, which begins:
  - (A) when the relevant Utility Service Authority gives written notice that the Defect (or the part of it) has been corrected or the Change completed and the Principal's Representative has been provided with a copy of the notice; or
  - (B) if the relevant Utility Service Authority fails or refuses to give the notice required under clause 17.8(a)(ii)(A), when the Principal's Representative determines that the Defect (or the part of it) has been corrected or the Change completed,

provided that no Defects Correction Period for any discrete part of the Utility Service Works will extend beyond the date that is 24 months after the date of the applicable notice or statement given under clause 17.8(a)(i).

- (b) It is a condition precedent to Substantial Completion of a Portion, that:
  - (i) a written notice of the kind referred to in clause 17.8(a)(i) has been given for each discrete part of the Utility Service Works that form part of that Portion and the Principal's Representative has been provided with a copy of each such notice; or
  - (ii) the SCAW Contractor has:
    - (A) used best endeavours to obtain and provide the Principal's Representative with a written notice of the kind referred to in clause 17.8(a)(i)(A); and
    - (B) provided the Principal's Representative with a written statement of the kind referred to in clause 17.8(a)(i)(B).

#### 17.9 **Property Works**

- (a) Subject to clause 17.9(b), each discrete part of the Property Works has:
  - (i) a Defects Correction Period of 12 months, which begins upon:
    - (A) the completion of the Property Works; or

- (B) submission by the SCAW Contractor of a certificate or signed statement (as the case may be) to the Principal's Representative under clause 12.4(a)(ii),

whichever is the later; and

- (ii) a further Defects Correction Period of 12 months in respect of any work the subject of a direction under clause 17.2(a)(i) or 17.2(a)(ii) (relating to the discrete part of the Property Works) during the Defects Correction Period, which begins on the date of correction of the Defect (or the part of it) or completion of the Change.
- (b) No Defects Correction Period for any discrete part of the Property Works will extend beyond the date that is 24 months after the date of the applicable certificate or signed statement given under clause 12.4(a)(ii).

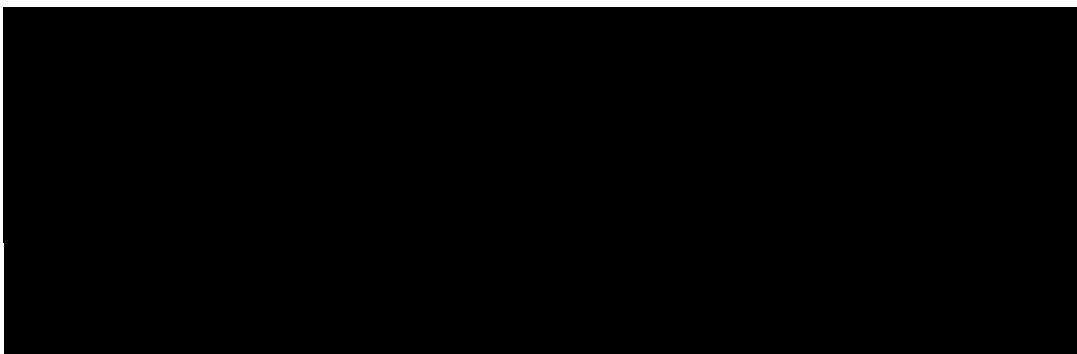
**17.10 Rights not affected**

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 17 or any other provision of this deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any direction of the Principal's Representative under clause 17.2.

**17.11 Warranties by others**

- (a) Subject to clauses 17.11(ba) and (bb), the SCAW Contractor must, as a condition precedent to Substantial Completion of the last Portion to reach Substantial Completion, procure and provide each of the Principal and OpCo, with all warranties required by Schedule A7, from the relevant Subcontractors undertaking or supplying the work or items the subject of the warranty.
- (b) These warranties must be in favour of the Principal and OpCo on the terms of the deed in Schedule A8.



- (c) The provision of those warranties will not derogate from any rights which the Principal may have against the SCAW Contractor in respect of the subject matter of those warranties.

**17.12 Use of defective facilities**

The SCAW Contractor must not allow the use of any part of the Project Works or Temporary Works which the SCAW Contractor knows is defective or unsafe and which threatens the health or safety of people.

**17.13 Final inspections of Project Works**

- (a) The SCAW Contractor, the Principal's Representative, the Independent Certifier and, other than for Third Party Works, OpCo, will carry out a final inspection of the Project Works 6 months before the end of the Defects Correction Period (**Final Inspection**).
- (b) Within 5 Business Days of the Final Inspection, the Principal's Representative and OpCo may give the Independent Certifier written notice of any Defects which they observed during the Final Inspection or of which they are otherwise aware.
- (c) Within 10 Business Days of the Final Inspection, the Independent Certifier must give the Principal's Representative and OpCo a list of Defects (taking into account any notice received from the Principal's Representative or OpCo under clause 17.13(b)).
- (d) If the Independent Certifier notifies the parties of any Defects pursuant to clause 17.13(c), the Principal may give a notice under clause 17.2 in respect of such Defect.

**17.14 Disputes regarding Defects**

- (a) Where, during the Defects Corrections Period:
  - (i) the Principal gives a direction to the SCAW Contractor under clause 17.2 in respect of a Defect in a Portion (including where any such direction is given by the Principal in respect of an alleged Defect originally notified to the Principal by the OpCo); and
  - (ii) the SCAW Contractor wishes to dispute that the alleged Defect the subject of the direction is:
    - (A) a Defect; or
    - (B) a Defect for which the SCAW Contractor is responsible under the terms of this deed,

the SCAW Contractor must within 20 Business Days of receiving the Principal's direction give written notice to the Principal's Representative, the Independent Certifier (with a copy to the OpCo):

- (C) stating that it disputes that the alleged Defect the subject of the direction is a Defect or a Defect for which it is responsible under the terms of this deed; and
- (D) providing detailed particulars of why it believes this to be the case.

Such a dispute must be determined by the Independent Certifier within 20 Business Days of receipt of the notice from the SCAW Contractor (or such other time period which the parties may agree (acting reasonably and having regard to the nature of the dispute)).

The determination of the Independent Certifier under this clause 17.14(a) is final and binding, in the absence of manifest error, [REDACTED]



- (b) Where, after the expiration of the Defects Correction Period but prior to the applicable date from which clause 32.5 applies:
  - (i) the Principal gives a written notice to the SCAW Contractor that a Defect exists and setting out details of work which it alleges is a Defect (including where any such direction is given by the Principal in respect of an alleged Defect originally notified to the Principal by the OpCo); and
  - (ii) the SCAW Contractor wishes to raise any dispute, difference, controversy or claim in respect of the alleged Defect which is the subject of the Principal's notice (or in respect of the SCAW Contractor's responsibility for the Defect),

the SCAW Contractor must, within 20 Business Days after receiving the Principal's notice referred to in this clause 17.14, give written notice to the Principal's Representative (with a copy to the OpCo), that it wishes to refer a dispute in respect of the Defect to expert determination under clause 25.5, which notice must include details of the SCAW Contractor's reasons for being dissatisfied and the position which the SCAW Contractor believes is correct.

Clause 25.6 will not apply and the determination of the Expert is final and binding, in the absence of manifest error.

## 18. ADMINISTRATION OF THE PROJECT WORKS

### 18.1 Principal's Representative

- (a) The Principal:
  - (i) must appoint a person to be the Principal's Representative for the purposes of this deed;
  - (ii) may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative; and
  - (iii) must give written notice of all appointments under clauses 18.1(a)(i) and 18.1(a)(ii) to the SCAW Contractor.
- (b) The Principal's Representative may:
  - (i) by written notice to the SCAW Contractor appoint persons to exercise any of the Principal's Representative's functions under this deed;
  - (ii) not appoint more than one person to exercise the same function under this deed; and
  - (iii) revoke any appointment under clause 18.1(b)(i) by notice in writing to the SCAW Contractor.
- (c) The Principal's Representative may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 18.1(b).
- (d) An appointee of the Principal's Representative under clause 18.1(b) may:

- (i) by written notice to the SCAW Contractor appoint persons to exercise any of the appointee's functions under this deed;
  - (ii) not appoint more than one person to exercise the same function under this deed; and
  - (iii) revoke any appointment under clause 18.1(d)(i) by notice in writing to the SCAW Contractor.
- (e) The Principal and the SCAW Contractor acknowledge and agree that:
- (i) [REDACTED] the Principal's Representative acts at all times as the servant or agent of the Principal, is subject to the directions of the Principal and will act solely in the interests of the Principal; [REDACTED]
- [REDACTED]
- (f) The SCAW Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of this deed. Only the Principal's Representative or an appointee of the Principal's Representative under clause 18.1(b) is authorised to give any Direction to the SCAW Contractor pursuant to this deed. The SCAW Contractor must not comply with any Direction purporting to be made or given by any person on behalf of the Principal, other than the Principal's Representative or an appointee of the Principal's Representative under clause 18.1(b).

**18.2 SCAW Contractor's personnel**

- (a) The SCAW Contractor must:
  - (i) provide experienced and skilled personnel to perform its obligations under this deed; and
  - (ii) ensure that its personnel (including those referred to in clause 18.2(b)) as a team carry out the SCAW Contractor's Activities in a manner that is courteous and co-operative and recognises the interests and needs of the local community.
- (b) The SCAW Contractor must:
  - (i) employ those personnel specified in Schedule A9 (or where the personnel are employees of a Subcontractor or sub-subcontractor, the SCAW Contractor must ensure they are so employed) in the positions and for the periods specified in Schedule A9;
  - (ii) subject to clause 18.2(b)(iii), not replace the personnel referred to in clause 18.2(b)(i) (or where the personnel are employees of a Subcontractor or sub-subcontractor, the SCAW Contractor must ensure they are not replaced) without the Principal's Representative's prior written approval; and
  - (iii) if any of the personnel referred to in clause 18.2(b)(i):
    - (A) dies;
    - (B) becomes seriously ill;

(C) resigns from the employment of the SCAW Contractor or resigns from the employment of a Subcontractor or a sub-subcontractor (as applicable); or

(D) becomes the subject of a direction under clause 18.2(e),

replace them (or where they are employees of a Subcontractor or sub-subcontractor, the SCAW Contractor must use best endeavours to ensure they are replaced) with personnel of at least equivalent experience, ability, competency and expertise (including in addition to the experience, ability and expertise required by Schedule A9, the same level of experience set out in the curriculum vitae of the relevant person being replaced, which are included in Schedule F1 as electronic files) approved by the Principal's Representative (with such approval not to be unreasonably withheld).

(c) The personnel referred to in clause 18.2(b) (including any replacements) must:

(i) have the qualifications, skills and experience specified in Schedule A9 (except to the extent the Principal's Representative, in its absolute discretion, elects to waive any such requirements by written notice to the SCAW Contractor);

(ii) carry out the functions and be given the authorities and responsibilities specified for them in this deed;

(iii) be physically based in Australia; and

(iv) be available for consultation with the Principal's Representative when the Principal's Representative reasonably requires.

(d) As required by Schedule A9 SCAW Contractor must ensure that the person appointed to the position of "Project Director" (including any replacement):

(i) at all times has the authority to act on behalf of and to bind the SCAW Contractor in respect of the SCAW Contractor's Activities;

(ii) has full authority to promptly execute directions of the Principal or the Principal's Representative and to promptly make decisions in relation to the SCAW Contractor's Activities; and

(iii) without limiting clause 18.2(d)(i) or 18.2(d)(ii), has delegated authority to bind the SCAW Contractor in relation to any matter relating to the SCAW Contractor's Activities which has a financial impact of [REDACTED] or less without the need to obtain any additional internal or corporate approvals from the SCAW Contractor or any entity that comprises the SCAW Contractor.

(e) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the SCAW Contractor to remove any person (including a person referred to in clause 18.2(b)) from the Construction Site or the SCAW Contractor's Activities.

(f) The SCAW Contractor must ensure that any person the subject of a direction under clause 18.2(e) is not again employed in the SCAW Contractor's Activities, or on the Construction Site.

### 18.3 Design development meetings

(a) The SCAW Contractor must hold regular meetings of its design team including its designers and, where relevant, the Proof Engineer (and in any event at Combined

Design Stage 1 & 2 of each discrete design part or element in the SCAW Contractor's Activities).

- (b) The SCAW Contractor must give reasonable notice to the Principal's Representative of those meetings and of any other meetings at which design issues are to be discussed, including with respect to safety issues, to enable the Principal's Representative, its delegate and any representatives of an Interface Contractor to attend. The Principal may request the SCAW Contractor to ensure the presence at the meeting of any relevant persons from any of the SCAW Contractor's Subcontractors involved in the design of any part of the Project Works.
- (c) The SCAW Contractor must give the Principal's Representative:
  - (i) an agenda prepared in consultation with or as directed by the Principal's Representative for each design meeting no less than 48 hours prior to each meeting (which must include an accurate schedule of all design issues, including safety issues, as at the date of issue of the agenda); and
  - (ii) minutes of each design meeting within 48 hours after each meeting.

The SCAW Contractor agrees that no such agenda or minutes of meeting shall be relied upon by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.

#### 18.4 **Project Site meetings**

- (a) The SCAW Contractor must convene meetings on the Construction Site, or such other place or places as the Principal's Representative may direct, at weekly intervals (or such longer period as may be required by the Principal's Representative) prior to the Date of Substantial Completion of the last Portion to achieve Substantial Completion.
- (b) The meetings referred to in clause 18.4(a) will be attended by:
  - (i) the Project Director (or his or her delegate);
  - (ii) the Principal's Representative (or its delegate); and
  - (iii) any other person required by the Principal's Representative (including any Subcontractor or a representative of any Interface Contractor).
- (c) The SCAW Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting under clause 18.4(a) no less than 48 hours prior to each meeting.
- (d) The role of chairperson for meetings under clause 18.4(a) will be held by the Principal's Representative (or its delegate).
- (e) The chairperson of a meeting under clause 18.4(a) must give the Principal's Representative and all other persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 48 hours after the meeting. The minutes of the meeting may not be relied on by either party as a document constituting or evidencing the giving or receipt of a notice required to be given under or in accordance with this deed.
- (f) The purpose of the meetings under clause 18.4(a) includes the review of (at least) the matters set out in the reports referred to in clause 18.11 and any other matter as required by the Principal's Representative.



#### 18.5 **Management Review Group**

The Management Review Group comprises:

- (a) the Principal's Representative;
- (b) any nominees of the Principal's Representative;
- (c) the following SCAW Contractor's personnel:
  - (i) the Project Director; and
  - (ii) the Design Manager;
- (d) representatives of any of the SCAW Contractor's Subcontractors which the Principal's Representative reasonably requires; and
- (e) any other person the Principal's Representative reasonably requires from time to time.

#### 18.6 **Management Review Group functions**

Management Review Group functions include reviewing:

- (a) the progress of the SCAW Contractor's Activities in relation to the Overall D&C Program and the performance of the SCAW Contractor;
- (b) issues arising out of community relations and community concerns, including cumulative impacts resulting from interfaces with the community;
- (c) issues arising out of the quality of the SCAW Contractor's Activities;
- (d) matters arising from the Design Documentation, including any proposed design changes;
- (e) value engineering opportunities and potential cost savings consistent with maintaining quality and enhancing life cycle costing;
- (f) potential impact of design and construction outcomes on operation and maintenance requirements;
- (g) environmental issues (including sustainability issues);
- (h) issues arising out of the interface with any Interface Contractor;
- (i) issues arising out of the subject of the Third Party Agreements;
- (j) issues arising out of the subject of the Adjoining Property Easements;
- (k) safety issues;
- (l) workforce development and industry participation;
- (m) issues in connection with the Chain of Responsibility Provisions;
- (n) potential Claims that the parties have agreed to temporarily waive the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable), provided that the Management Review Group has no authority to waive those requirements itself;

- (o) risks included on the Risk Register and the actions that are being taken to avoid or mitigate such risks; and
- (p) any other matters determined or directed by the Principal's Representative.

**18.7 Management Review Group meetings**

- (a) The Management Review Group must meet:
  - (i) on a regular monthly basis prior to Substantial Completion of the last Portion to achieve Substantial Completion or such other regular period as the Principal and the SCAW Contractor agree in writing;
  - (ii) in accordance with this clause 18.7; and
  - (iii) at other times which the Principal's Representative or the SCAW Contractor requires.
- (b) The SCAW Contractor must provide the Principal's Representative with an agenda prepared in consultation with the Principal's Representative for each meeting of the Management Review Group no less than 48 hours prior to each meeting.
- (c) The role of chairperson for meetings of the Management Review Group will alternate between the Project Director and the Principal's Representative with the Principal's Representative to chair the first such meeting.
- (d) The chairperson of a meeting of the Management Review Group must give all members of the Management Review Group (and any other person nominated by the Principal's Representative) minutes of the meeting within 5 Business Days after the meeting.
- (e) The members of the IDAR Panel may, by invitation of either party, attend a Management Review Group meeting but will not be members of the Management Review Group.

**18.8 Completion Steering Committee**

- (a) Within 3 months of the date of this deed, the parties must establish a Completion Steering Committee.
- (b) The Completion Steering Committee will consist of:
  - (i) the Principal's Representative;
  - (ii) the SCAW Contractor's Project Director;
  - (iii) the Independent Certifier; and
  - (iv) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Steering Committee is to:
  - (i) provide leadership on matters relating to completion and handover of the Project Works and the Handover Works;
  - (ii) approve processes and procedures prepared by the Completion Working Group;
  - (iii) consider issues referred to it by the Completion Working Group; and

- (iv) such other roles and functions as may be agreed by the parties.
- (d) The Completion Steering Committee must meet:
  - (i) at least once every 2 months; and
  - (ii) at such other times as the parties may agree,until the achievement of Substantial Completion of the last Portion.

#### 18.9 **Completion Working Group**

- (a) Within 3 months of the date of this deed, the parties must establish a Completion Working Group.
- (b) The Completion Working Group will consist of:
  - (i) the Principal's Representative;
  - (ii) any nominees of the Principal's Representative;
  - (iii) the Project Director;
  - (iv) any nominees of the Project Director; and
  - (v) such other persons as the parties may agree from time to time.
- (c) The role of the Completion Working Group is to:
  - (i) provide a collaborative forum through which the parties can:
    - (A) plan and agree procedures for completion and handover of the Project Works and the Handover Works;
    - (B) plan and agree the process for the progressive submission of records and documentation required for Substantial Completion and Completion of each Portion;
    - (C) monitor the status of activities and tasks that must be completed in order to achieve Substantial Completion and Completion of each Portion; and
    - (D) identify issues which may adversely impact upon the achievement of Substantial Completion or Completion of any Portion by the applicable Date for Substantial Completion or Date for Completion (as applicable);
  - (ii) report to the Completion Steering Committee on matters relating to completion and handover of the Project Works and the Handover Works; and
  - (iii) such other roles and functions as may be agreed by the parties.
- (d) The Completion Working Group must meet:
  - (i) at least once each month; and
  - (ii) at such other times as the parties may agree,until the achievement of Substantial Completion of the last Portion.

18.10 **No legal effect**

The Management Review Group, the Completion Steering Committee and the Completion Working Group are consultative and advisory only and nothing which occurs during a meeting of any such group will:

- (a) affect the rights or obligations of either party under the SCAW Contract Documents;
- (b) entitle a party to make any Claim against the other;
- (c) relieve a party from, or alter or affect, a party's liabilities or responsibilities whether under this deed or otherwise according to law;
- (d) prejudice a party's rights against the other whether under this deed or otherwise according to law; or
- (e) be construed as a Direction by a party to do or not do anything.

18.11 **SCAW Contractor's reporting obligations**

- (a) The SCAW Contractor must provide reports to the Principal and the Principal's Representative as required by the SCAW Specification or as otherwise reasonably requested by the Principal's Representative.
- (b) The Principal may provide any such reports and the Overall D&C Program to any Interface Contractor.

18.12 **Minimise disruption and complaints and notifications**

- (a) The SCAW Contractor must and must ensure that its Associates (acting consistently with all Laws and Approvals and exercising Good Industry Practice), in carrying out the SCAW Contractor's Activities, minimise:
  - (i) interference with the passage of people, vehicles, traffic; and
  - (ii) disturbance to the occupants of the Adjoining Properties, the Airport Lessee Contractors and the occupants of any other land adjoining the Construction Site or located in the vicinity of the Construction Site.
- (b) The SCAW Contractor must immediately notify the Principal in writing if any:
  - (i) complaint is made or any proceedings are instituted or threatened;
  - (ii) letter of demand is issued; or
  - (iii) order or direction is made,  
  
by anyone (including any Authority or any landowner, lessee or licensee on or near the Construction Site or any Extra Land) against the SCAW Contractor or any of its Associates in respect of any aspect of the carrying out of the SCAW Contractor's Activities, including:
    - (iv) Contamination, [REDACTED] noise or vibration arising out of, or in any way in connection with, the SCAW Contractor's Activities;
    - (v) the SCAW Contractor's non-compliance with any Planning Approval (or condition or requirement thereunder), any ABC Approval, any Project Plan, any Third Party Agreement, any Adjoining Property Easement or any Law regarding the Environment;

- (vi) the SCAW Contractor's use or occupation of the Construction Site or any Extra Land;
  - (vii) the supply chain for the SCAW Contractor's Activities, including the bringing to and removal from the Construction Site or any Extra Land of items that require transport services; or
  - (viii) loss or damage of the kind referred to in clause 23.22.
- (c) Without limiting the SCAW Contractor's obligations under section 6 of the General Specification, the SCAW Contractor must (at its own cost):
- (i) deal proactively with any complaint, proceedings, letter of demand, order or direction referred to in clause 18.12(b);
  - (ii) take all reasonable measures to resolve those matters as soon as possible (including defending any proceedings or participating in any meeting of the Independent Property Impact Assessment Panel); and
  - (iii) keep a register of all complaints, proceedings, orders, letters of demand and directions referred to in clause 18.12(b), which:
    - (A) contains full details of:
      - (aa) each complaint, proceedings, letter of demand, order and direction; and
      - (bb) the action taken by the SCAW Contractor with respect to each complaint, proceedings, letter of demand, order and direction;
    - (B) is promptly updated to take into account any developments with respect to any complaint, proceedings, letter of demand, order or direction; and
    - (C) may be inspected by the Principal's Representative whenever the Principal's Representative reasonably requires.
- (d) Where the SCAW Contractor receives a notification or complaint which relates to damage to any Adjoining Property or any other land or property adjoining the Construction Site or located in the vicinity of the Construction Site which arises out of or in connection with the SCAW Contractor's Activities, the SCAW Contractor must:
- (i) respond to the notification or complaint within 24 hours;
  - (ii) visit the relevant property to inspect the damage that is the subject of the notification or complaint within 5 Business Days of receipt of the notification or complaint; and
  - (iii) where the cost of repairing such damage is:
    - (A) less than or equal to ██████ complete the repair of such damage within 10 Business Days (or such longer period permitted by the Principal's Representative) of the inspection referred to in clause 18.12(d)(ii); or
    - (B) more than ██████ complete the repair of such damage within a reasonable time as notified by the Principal's Representative after the inspection referred to in clause 18.12(d)(ii).

- (e) The SCAW Contractor must notify anyone who may be adversely affected by the SCAW Contractor's Activities before the relevant work is carried out including notification of:
  - (i) the likely duration of that work; and
  - (ii) Sydney Metro - Western Sydney Airport 24 hour telephone number, postal address and email address, established by the Principal in case any person wishes to make a complaint.

**18.13 Independent Property Impact Assessment Panel**

- (a) The SCAW Contractor acknowledges that the Principal has established an Independent Property Impact Assessment Panel for Sydney Metro - Western Sydney Airport in accordance with the requirements of the Project Planning Approval.
- (b) The SCAW Contractor must (at its cost):
  - (i) cooperate with the Independent Property Impact Assessment Panel and provide the Independent Property Impact Assessment Panel with any assistance, information or documentation that the Independent Property Impact Assessment Panel may reasonably require in order to carry out its functions;
  - (ii) permit the Independent Property Impact Assessment Panel to access the Construction Site and inspect the SCAW Contractor's Activities provided that the SCAW Contractor is given reasonable prior written notice and the members of the Independent Property Impact Assessment Panel comply with the SCAW Contractor's reasonable work health and safety procedures; and
  - (iii) attend any meeting of the Independent Property Impact Assessment Panel that it is requested to attend by the Principal's Representative or the chairperson of the Independent Property Impact Assessment Panel provided that the SCAW Contractor is given reasonable prior written notice of any such meeting.

**18.14 Media requests**

The SCAW Contractor must not issue any information, publication, document or article for publication concerning the SCAW Contractor's Activities in any media without the prior written approval of the Principal's Representative. In granting approval, the Principal's Representative may make such approval subject to any conditions which it may determine.

If the SCAW Contractor receives a direct request from the media for comment in respect of any aspect of the SCAW Contractor's Activities, it must promptly provide details of such request to the Principal's Representative.

**18.15 Industrial relations**

The SCAW Contractor must in carrying out the SCAW Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the SCAW Contractor's Activities;
- (b) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues which affect or are likely to affect the carrying out of the SCAW Contractor's Activities; and

- (c) without limiting clause 7.1, comply with the Construction and Site Management Plan, the Workplace Relations Management Plan and the NSW Guidelines.

#### **18.16 Document management and transmission**

- (a) Without limiting clause 32.1, the SCAW Contractor must manage and transmit documents, including using an electronic medium (such as the PDCS) where required by the Principal's Representative, in accordance with the processes, procedures and systems in section 2.6 of the General Specification or as otherwise required by the Principal's Representative.
- (b) Documents supplied to the SCAW Contractor will remain the property of the Principal and must be returned by the SCAW Contractor to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the SCAW Contractor's Activities.
- (c) The SCAW Contractor must keep all the SCAW Contractor's records relating to the SCAW Contractor's Activities in a secure and fire proof storage.
- (d) The SCAW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 18.16.
- (e) The SCAW Contractor must ensure that any Contract Documentation and Materials that it provides to the Principal in computer readable form contains no virus or computer software code which is intended or designed to:
  - (i) permit access to or use of a computer system by a third person not authorised by the Principal; or
  - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

#### **18.17 Exchange of Information between Government agencies**

- (a) The SCAW Contractor authorises the Principal, its employees and agents to make information concerning the SCAW Contractor available to Commonwealth and NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the SCAW Contractor to the Principal and any information relating to the SCAW Contractor's performance under this deed.
- (b) The SCAW Contractor acknowledges that any information about the SCAW Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal, Commonwealth and NSW government departments and agencies in considering whether to offer the SCAW Contractor future opportunities for Commonwealth and NSW government work.
- (c) The SCAW Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the SCAW Contractor's performance under this deed and that it will participate in the Principal's Contractor Performance Reporting process.

#### **18.18 Quarterly whole of project reviews**

- (a) In each quarter in a calendar year at any time prior to Final Completion, the Principal may require that the SCAW Contractor attend and participate in one or more meetings with the Principal and its other contractors for Sydney Metro - Western Sydney Airport. The purpose of these meetings is for the Principal, the SCAW

Contractor and the Principal's other contractors to work together in good faith on a co-operative and collaborative basis to identify and consider:

- (i) issues and potential issues that have, or which may have, an adverse impact upon the successful delivery of Sydney Metro - Western Sydney Airport or any part of Sydney Metro - Western Sydney Airport;
  - (ii) solutions to such issues or potential issues which may mitigate, remedy or avoid any adverse impact upon the successful delivery of Sydney Metro - Western Sydney Airport or any part of Sydney Metro - Western Sydney Airport;
  - (iii) improvements that can be implemented to save time, reduce cost or improve the quality of Sydney Metro - Western Sydney Airport or any part of Sydney Metro - Western Sydney Airport;
  - (iv) the manner in which any such solutions and improvements can be implemented; and
  - (v) any other matters that the Principal may require.
- (b) If the Principal requires the SCAW Contractor to attend and participate in any meeting contemplated by clause 18.18(a), the Principal's Representative must provide the SCAW Contractor with at least 10 Business Days prior written notice of any such meeting.
- (c) If the Principal's Representative provides the SCAW Contractor with a notice under clause 18.18(b), the SCAW Contractor must ensure that the following personnel attend and participate in the meeting:
- (i) the SCAW Contractor's Project Director;
  - (ii) representatives of any of the SCAW Contractor's Subcontractors which the Principal's Representative reasonably requires; and
  - (iii) any other person directed by the Principal's Representative.

**18.19 Early Warning**

- (a) The SCAW Contractor must enter any early warning on the Risk Register as soon as it becomes aware of any fact, matter or thing which may give rise to a risk of:
- (i) a delay to Substantial Completion of any Portion;
  - (ii) a delay to Completion of any Portion;
  - (iii) a delay or an adverse effect on the performance of the SCAW Contractor's Activities or the Project Works;
  - (iv) a party being in breach of any term of this deed; or
  - (v) a Claim by the SCAW Contractor.
- (b) Each early warning entered on the Risk Register must include a description of the risk and the actions which are to be taken to avoid or mitigate the risk.
- (c) The SCAW Contractor must provide the Principal with real time access to the Risk Register or as otherwise directed by the Principal's Representative.



- (d) The Principal may in its absolute discretion and without any obligation to do so, provide an early warning in relation to any fact, matter or thing described under clause 18.19(a) by entering the risk the subject of the early warning on the Risk Register.
- (e) The SCAW Contractor must attend risk management meetings with the Principal's Representative on a monthly basis or as otherwise directed by the Principal's Representative. At risk management meetings, the parties agree to:
  - (i) review the current Risk Register;
  - (ii) develop proposals and seek solutions for avoiding or mitigating the risks listed on the Risk Register and the SCAW Contractor must inform the Principal if it considers any such proposal or solution would give rise to a Change or otherwise give rise to a Claim by the SCAW Contractor;
  - (iii) decide upon any specific action to be taken by the parties in response to the risks listed on the Risk Register; and
  - (iv) remove from the Risk Register those risks which have been avoided or passed.
- (f) A notification, record or action under this clause 18.19 will not relieve the SCAW Contractor from or alter its rights, liabilities or obligations under this deed, including any and all other notification obligations under this deed.

**18.20 Relationship Manager (TPA)**

- (a) The Principal:
  - (i) must appoint a person to be the Relationship Manager (TPA) for the purposes of this deed;
  - (ii) may at any time appoint a replacement Relationship Manager (TPA); and
  - (iii) must give written notice of all appointments under clauses 18.20(a)(i) and 18.20(a)(ii) to the SCAW Contractor.
- (b) The Relationship Manager (TPA) may:
  - (i) by written notice to the SCAW Contractor appoint persons to exercise any of the Relationship Manager (TPA)'s functions under this deed;
  - (ii) not appoint more than one person to exercise the same function under this deed; and
  - (iii) revoke any appointment under clause 18.20(b)(i) by notice in writing to the SCAW Contractor.
- (c) The Relationship Manager (TPA) may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 18.20(b).
- (d) The parties acknowledge and agree that:
  - (i) the purpose of the Relationship Manager (TPA) is to:
    - (A) manage relationships and emerging issues between the parties relating to Third Parties and Third Party Agreements to ensure expeditious resolution;

- (B) facilitate the development of solutions in relation to issues regarding Third Parties, Third Party Agreements and Third Party Works;
  - (C) manage issues between the SCAW Contractor and a Third Party (or multiple Third Parties) noting the role of the Relationship Manager (TPA) will be to coordinate issues between the SCAW Contractor, Principal and Third Parties;
  - (D) subject to clause 25 and notwithstanding the parties' other obligations and rights in this deed, facilitate forums for the resolution of issues identified in this clause 18.20(d)(i) and make recommendations, and provide assistance, to the Principal and SCAW Contractor where appropriate;
  - (E) have regard to the Principal's objectives and Project Values in clause 3.1 and 3.3 in relation to Third Party Agreements; and
  - (F) be consultative and advisory only;
- (ii) the Relationship Manager (TPA) does not have authority to issue any Direction under a provision of this deed or any Third Party Agreement;
  - (iii) no decision or determination by the Relationship Manager (TPA) will (unless the Principal's Representative issues a Direction to give effect to the decision or determination of the Relationship Manager):
    - (A) be legally binding on the SCAW Contractor, the Principal, any Third Party or any other party;
    - (B) entitle the SCAW Contractor to make any Claim against the Principal;
    - (C) limit or otherwise affect the obligations of the SCAW Contractor under this deed or otherwise according to Law, including with respect to its interface and integration obligations; and
    - (D) be construed as:
      - (aa) a Direction by the Principal or the Principal's Representative to do or not do anything under any Project Contract; or
      - (bb) an act or omission of the Principal.

**18.21 Design Steering Committee**

- (a) The Design Steering Committee comprises:
  - (i) a senior representative of the Principal;
  - (ii) a senior representative of the SCAW Contractor;
  - (iii) the SCAW Contractor's director of design and engineering or equivalent;
  - (iv) the Independent Certifier;
  - (v) a senior representative of the Airport Building Controller;
  - (vi) a senior representative of the Airport Lessee; and

- (vii) any other person the senior representative of the Principal reasonably requires from time to time.
- (b) The persons referred to in clause 18.21(a) may appoint delegates (of an equivalent level of seniority or experience) to attend Design Steering Committee meetings in their absence.
- (c) The role of the Design Steering Committee is to:
  - (i) provide a forum to discuss progress, issues and solutions with respect to the Design Documentation;
  - (ii) assist in mitigating delays in the design review process;
  - (iii) provide leadership on matters arising from, or relating to, design and the Design Documentation, including any proposed changes to the design or Design Documentation;
  - (iv) consider the potential impacts, including impacts on time and cost, arising from or relating to the Design Documentation, or proposed changes to the Design Documentation;
  - (v) consider, track and manage the progress of the SCAW Contractor's Activities relating to design;
  - (vi) have regard to the Principal's objectives and Project Values in clause 3.1 and 3.3 in relation to design and the Design Documents; and
  - (vii) be consultative and advisory only.
- (d) The Design Steering Committee must meet:
  - (i) unless otherwise agreed, at least once every week; and
  - (ii) at other times which the senior representative of the Principal requires,  
until AFC Design Documentation is available in respect of all aspects of the Project Works and Temporary Works and all required Approvals have been obtained.
- (e) The SCAW Contractor must provide the senior representative of the Principal with an agenda prepared in consultation with the senior representative of the Principal for each meeting of the Design Steering Committee no less than 48 hours prior to each meeting.
- (f) The role of chairperson for meetings of the Design Steering Committee will alternate between the senior representative of the SCAW Contractor and the senior representative of the Principal with the senior representative of the Principal to chair the first such meeting.
- (g) The chairperson of a meeting of the Design Steering Committee must give all members of the Design Steering Committee (and any other person nominated by the senior representative of the Principal) minutes of the meeting within 5 Business Days after the meeting.
- (h) The parties acknowledge and agree that:
  - (i) the Design Steering Committee does not have authority to issue any Direction under a provision of this deed; and

- (ii) no decision or determination by the Design Steering Committee will (unless the Principal's Representative issues a Direction to give effect to the decision or determination of the Design Steering Committee):
  - (A) be legally binding on the SCAW Contractor, the Principal or any other party;
  - (B) entitle the SCAW Contractor to make any Claim against the Principal;
  - (C) limit or otherwise affect the obligations of the SCAW Contractor under this deed or otherwise according to Law, including with respect to its design obligations; and
  - (D) be construed as a Direction by the Principal or the Principal's Representative to do or not do anything under this deed.

19. **TIME AND COMPLETION**

19.1 **Start and progress**

- (a) The SCAW Contractor must:
  - (i) start to perform its obligations under this deed from the date of this deed; and
  - (ii) regularly and diligently progress the SCAW Contractor's Activities in accordance with this deed to ensure that:
    - (A) Substantial Completion of each Portion is achieved by the Date for Substantial Completion for the Portion; and
    - (B) Completion of each Portion is achieved by the Date for Completion for the Portion.
- (b) Without limiting its rights under the SOP Act, the SCAW Contractor must not suspend the progress of the whole or any part of the SCAW Contractor's Activities except where directed by a court or by the Principal's Representative under clauses 7.6(e) or 19.8, or as otherwise required by Law.
- (c) Without limiting clause 19.1(d) or clause 19.2(d), the SCAW Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the SCAW Contractor to carry out the SCAW Contractor's Activities in accordance with this deed.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions, earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this deed.

19.2 **SCAW Contractor's programming obligations**

- (a) The SCAW Contractor must prepare the Overall D&C Program required by section 2.2 of the General Specification which must contain the details required by section 2.2 of the General Specification.
- (b) The SCAW Contractor must:
  - (i) update the Overall D&C Program and report against it:

- (A) in accordance with the SCAW Specification and section 2.2 of the General Specification; and
    - (B) if the Principal gives early access under clause 12.1(a) or early access is deemed to be given under clause 12.1(f);
  - (ii) provide the reports and updated Overall D&C Program in accordance with sections 2.2 of the General Specification; and
  - (iii) give the Independent Certifier and the Principal's Representative the reports required by the SCAW Specification and section 2.2 of the General Specification in an electronic form approved by the Principal.
- (c) No submission of or Direction relating to, or review of or comment upon, the Overall D&C Program prepared by the SCAW Contractor, by the Principal or the Principal's Representative in connection with the Overall D&C Program nor the inclusion of the Overall D&C Program as a schedule to this deed, will:
- (i) relieve the SCAW Contractor from or alter its liabilities or obligations under this deed, especially (without limitation) the obligations under clause 19.3;
  - (ii) evidence or constitute notification of a delay or the claiming of or the granting of, an extension of time to any Date for Substantial Completion or Date for Completion, or a Direction by the Principal's Representative to accelerate, disrupt, prolong or vary any, or all, of the SCAW Contractor's Activities; or
  - (iii) affect the time for performance of the Principal's or the Principal's Representative's obligations under this deed, including obliging the Principal or the Principal's Representative to do anything earlier than is necessary to enable the SCAW Contractor to achieve Substantial Completion of a Portion by the Date for Substantial Completion of the Portion or Completion of a Portion by the Date for Completion of the Portion.
- (d) if the SCAW Contractor chooses to compress the SCAW Contractor's Activities or otherwise accelerate progress:
- (i) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the SCAW Contractor to achieve Substantial Completion of a Portion before the Date for Substantial Completion of the Portion or Completion of a Portion before the Date for Completion of the Portion; and
  - (ii) the time for the carrying out of the Principal's or the Principal's Representative's obligations will not be affected.

### 19.3 **Dates for Substantial Completion and Completion**

The SCAW Contractor must achieve:

- (a) Substantial Completion of each Portion by the Date for Substantial Completion of the relevant Portion; and
- (b) Completion of each Portion by the Date for Completion of the relevant Portion.

### 19.4 **Importance of Completion on time**

The SCAW Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 19.3 to enable:

- (i) Interface Contractors to carry out and complete the Interface Works within the time required by their respective Interface Contracts; and
  - (ii) OpCo to carry out the work required under the SSTOM Project Deed in order that operations of Sydney Metro - Western Sydney Airport may commence, including so as to allow the Principal to pursue improved public transport in Sydney.
- (b) The Date for Substantial Completion or the Date for Completion of any Portion will only be extended as set out in:
- (i) clause 19.6;
  - (ii) a Change Order issued by the Principal's Representative; or
  - (iii) a determination under the Dispute Procedure or arbitration or litigation proceedings.

**19.5 Risk and notice of delay**

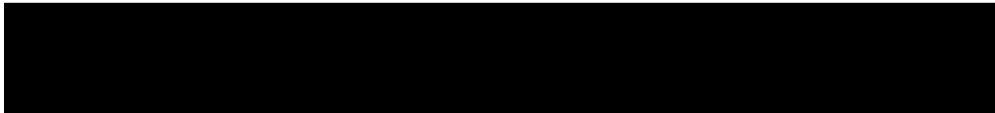
- (a) Except as expressly provided for in clauses 19.6 and 19.10, the SCAW Contractor accepts the risk of all delays in, and disruption to, the carrying out of the SCAW Contractor's Activities and performance of its obligations under this deed both before and after any Date for Substantial Completion or any Date for Completion (as applicable) of a Portion.
- (b) The SCAW Contractor must within 5 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an Excusable Cause of Delay which has, or is likely to, give rise to a delay in achieving Substantial Completion or Completion of a Portion, give the Principal's Representative written notice of:
  - (i) reasonable details of the Excusable Cause of Delay; and
  - (ii) the SCAW Contractor's estimate of how Substantial Completion or Completion of each relevant Portion (as applicable) has or is likely to be delayed.

**19.6 Extension of time**

- (a) If the SCAW Contractor is, or will be, delayed by an Excusable Cause of Delay, in a manner that will delay it from achieving Substantial Completion or Completion of a Portion, the SCAW Contractor may claim an extension of time to the relevant Date for Substantial Completion or Date for Completion (as applicable).
- (b) To claim an extension of time the SCAW Contractor must:
  - (i) subject to clause 19.6(b)(ia), within 20 Business Days of becoming aware of (or when it ought reasonably to have first become aware of) the commencement of an Excusable Cause of Delay which has or will give rise to a delay in achieving Substantial Completion or Completion of a Portion, submit a written claim to the Principal's Representative for an extension of time to the Date for Substantial Completion or Date for Completion of the Portion (as applicable), specifying:
    - (A) the number of days claimed;
    - (B) details of the Excusable Cause of Delay and why the Excusable Cause of Delay actually caused or will cause a delay in achieving Substantial Completion or Completion of a Portion (as applicable), including a



statement of the facts and the provisions of this deed on which the claim is based;

- (C) detailed evidence in satisfaction of the requirements of this clause 19.6;
- (D) critical path analysis in the same format as the Overall D&C Program for the period of the delay; and
- (E) if early access to the Construction Site was given, or deemed to be given under clause 12.1(f), details of the extent (if any) to which the SCAW Contractor's use of Accessible parts of the Construction Site has mitigated the delay (or details of why such use has not mitigated the delay) or to the extent the SCAW Contractor did not use the parts of the Construction Site made Accessible, why the delay would not have been mitigated had it used such early access; and



- (ii) if the effects of the delay continue for more than 20 Business Days after the date of commencement of the Excusable Cause of Delay and the SCAW Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative containing the information required by clause 19.6(b)(i) and clause 19.6(b)(ia) (as applicable):
  - (A) every 15 Business Days after the first written claim made under clause 19.6(b)(i) (or such other period as approved by the Principal's Representative); and
  - (B) until 5 Business Days after the cessation of the Excusable Cause of Delay,

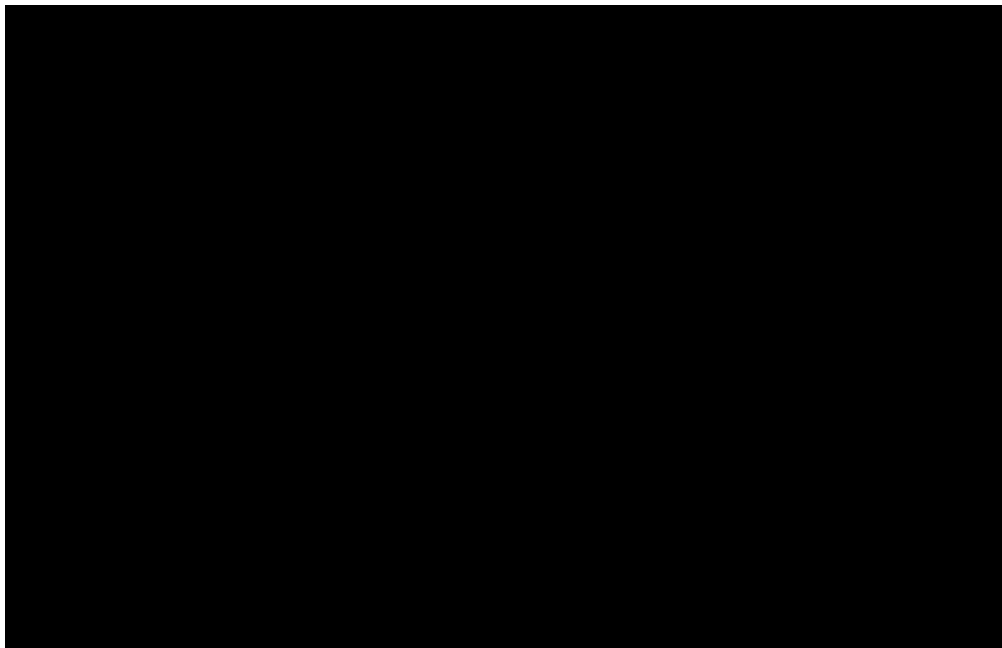
provided that the SCAW Contractor is not required to submit a further written claim in respect of the further delay if it does not wish to amend the written claim initially submitted to the Principal's Representative and notifies the Principal's Representative in writing to this effect.

- (c) The Principal's Representative may, within 10 Business Days of receiving the SCAW Contractor's claim or further claim for an extension of time for Substantial Completion or Completion of a Portion, by written notice to the SCAW Contractor, request additional information in relation to the claim or further claim. The SCAW Contractor must, within 10 Business Days of receiving such request, provide the Principal's Representative with the information requested.
- (d)  it is a condition precedent to the SCAW Contractor's entitlement to an extension of time that:
  - (i) the SCAW Contractor gives the claims required by clause 19.6(b) as required by that clause;
  - (iii) the SCAW Contractor has been, or will be, delayed in achieving Substantial Completion or Completion of a Portion (as applicable) by one or more Excusable Causes of Delay; and

- (iv) subject to clause 19.6(f)(ii)(B), the SCAW Contractor has not been given a direction to accelerate under clause 19.9(a)(ii) with respect to the whole of the delay the subject of the claim under clause 19.6(b).
- (e) If the SCAW Contractor fails to comply with any of the conditions precedent in clause 19.6(d):
  - (i) the Principal will not be liable upon any Claim by the SCAW Contractor; and
  - (ii) the SCAW Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with any delay or disruption that arises from the relevant Excusable Cause(s) of Delay.

- (f) Subject to clauses 19.6(h) and 19.9(j), if the conditions precedent in clause 19.6(d) have been satisfied, the Principal's Representative must determine the reasonable extension of time to the Date for Substantial Completion or Date for Completion of a Portion (as applicable) to which the SCAW Contractor is entitled either:



- (iii) where the Principal's Representative has given the SCAW Contractor a direction to accelerate under clause 19.9(a)(ii) with respect to all or part of a delay the subject of the SCAW Contractor's claim under clause 19.6(b) and subsequently issues a notice under clause 19.9(g) withdrawing the direction to accelerate, within 15 Business Days after the date of issue of the notice withdrawing the acceleration,

by giving the SCAW Contractor:

- (iv) written notice of the determination which includes the extension of time granted and the adjusted Date for Substantial Completion or Date for Completion (as applicable), with adequate reasons where the extension of time granted is for a shorter period of time than that claimed by the SCAW Contractor; or
- (v) if no extension is granted, written notice of that decision, with adequate reasons.



- (g) A failure of the Principal's Representative to grant an extension of time in accordance with clause 19.6(f) will not cause time to be set at large, but nothing in clause 19.6(f) or this clause 19.6(g) will prejudice any right of the SCAW Contractor to claim damages.
- (h) Without limiting clause 7A(h), in respect of each claim for an extension of time under clause 19.6(b), the SCAW Contractor's entitlement to an extension of time will be reduced to the extent that:
  - (i) the SCAW Contractor or any of its Associates caused or contributed to the delay or the Excusable Cause of Delay was within the reasonable control of the SCAW Contractor;
  - (ii) the SCAW Contractor failed to take all reasonably practicable steps to preclude the cause of the delay or to avoid or minimise the consequences of the delay, including, without limitation:
    - (A) the expenditure of reasonable sums of money to accommodate the cause of delay and the SCAW Contractor's Activities affected by the delay; or
    - (B) taking reasonable steps to reschedule or resequence activities within the Overall D&C Program;
  - (iii) having regard to (without limitation) clause 19.6(b)(i)(E), the cause of the delay could practicably have been precluded or its consequences could practicably have been avoided or minimised if the SCAW Contractor had utilised any early access to the Construction Site that was given under clause 12.1(a) (or deemed to be given under clause 12.1(f)) to the extent that the relevant part of the Construction Site to which early access was given was Accessible, but where such early access was given or deemed to be given it was not utilised by the SCAW Contractor;
  - (iv) a delay caused by an Excusable Cause of Delay and a delay caused other than by an Excusable Cause of Delay occurred at the same time and the SCAW Contractor would have been delayed even if the Excusable Cause of Delay had not occurred; or
  - (v) the SCAW Contractor has been given a direction to Accelerate under clause 19.9(a)(ii) to overcome part of any delay.
- (i) The Principal's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the SCAW Contractor and the Principal unilaterally extend the Date for Substantial Completion or Date for Completion of a Portion (as applicable) by any period specified in a notice to the SCAW Contractor and the Principal. The power to extend the Date for Substantial Completion or Date for Completion of a Portion under this clause 19.6(i):
  - (i) may be exercised whether or not the SCAW Contractor has made, or is entitled to make, a claim for an extension of time to any Date for Substantial Completion or Date for Completion, or is entitled to be, or has been, granted an extension of time to any relevant Date for Substantial Completion or Date for Completion, under this clause 19.6;
  - (ii) subject to clause 19.6(i)(iii), may only be exercised by the Principal's Representative and the Principal's Representative is not required to exercise its discretion under this clause 19.6(i) for the benefit of the SCAW Contractor;

- (iii) without limiting clause 18.1(e), may be exercised or not exercised (as the case may be) by the Principal's Representative in accordance with the directions of the Principal;
  - (iv) shall include an obligation on the Principal to pay any Delay Costs that the SCAW Contractor would otherwise have been entitled under clause 19.10 in respect of the period by which the relevant Date for Substantial Completion of a Portion is unilaterally extended pursuant to this clause 19.6(i); and
  - (v) is not a Direction which can be the subject of a Dispute pursuant to clause 25 or in any other way opened up or reviewed by any other person (including the IDAR Panel or any arbitrator or court).
- (j) If the Principal's Representative gives the SCAW Contractor a direction to accelerate under clause 19.9(a)(ii) and the direction only applies to part of the delay, the SCAW Contractor's entitlement to any extension of time which it otherwise would have had will be reduced to the extent that the direction to accelerate requires the SCAW Contractor to accelerate to overcome the delay.
- (k) The SCAW Contractor acknowledges and agrees that, when determining the SCAW Contractor's entitlement to claim an extension of time pursuant to clause 19.6(a):
- (i) where the SCAW Contractor is delayed by reason of the cause set out in paragraph (h) of the definition of Excusable Cause of Delay, the SCAW Contractor's entitlement to claim an extension of time will be reduced to the extent that the SCAW Contractor failed to cooperate with the Principal and provide any assistance or documentation that the Principal may reasonably require in relation to that Native Title Claim;
  - (ii) where the SCAW Contractor is delayed by reason of the cause set out in paragraph (a) of the definition of Excusable Cause of Delay, the SCAW Contractor will only be entitled to claim an extension of time in respect of each day of delay that occurs after the 10 day aggregate period referred to in paragraph (i) of the definition of Excusable Cause of Delay has elapsed; and
  - (iii) not used.

**19.7 Corrective action**

- (a) If at any time the progress of the SCAW Contractor's Activities has fallen behind that shown in the Overall D&C Program or otherwise is not in accordance with this deed, the SCAW Contractor must at its own cost take the necessary corrective action so as to ensure that progress is maintained in accordance with this deed. Such corrective action may include the working of overtime and additional shifts, the application of more resources to carry out the work and the adjustment and rescheduling of activities and any proposals for the creation of additional Portions. The Principal's Representative from time to time may direct the SCAW Contractor to provide details of the corrective action it plans to take under this clause 19.7(a).
- (b) If the SCAW Contractor fails to take corrective action in accordance with clause 19.7(a), the Principal's Representative may direct the SCAW Contractor as to the corrective action it is to take (which may include the creation of additional Portions as contemplated by clause 10.1 or clause 10.3) and the SCAW Contractor must comply with that direction at its own cost and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with that direction.
- (c) No direction by the Principal's Representative will be taken to constitute a direction under clause 19.7(a) unless the direction is in writing, is signed by the Principal's Representative and expressly states that it is a direction under clause 19.7(a).

## 19.8 Suspension

- (a) The Principal's Representative may direct the SCAW Contractor to:
  - (i) suspend the progress of the SCAW Contractor's Activities or any part of them for such time or times as the Principal may think fit; and
  - (ii) subsequently recommence any suspended part of the SCAW Contractor's Activities.
- (b) To the extent the suspension arises as a result of:
  - (i) the SCAW Contractor's failure to carry out its obligations under this deed (including under clause 9 or where the SCAW Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this deed or where any process, procedure, test method, calculation, analysis or report required by this deed has resulted in or will result in a non-conformance), the SCAW Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
  - (ii) a cause other than the SCAW Contractor's failure to perform its obligations under this deed:
    - (A) a direction to suspend under this clause 19.8 will entitle the SCAW Contractor to:
      - (aa) be paid by the Principal its additional Direct Costs plus Overheads and Profit Margin, as stated by the Principal's Representative; and
      - (bb) an extension of time to the Date for Substantial Completion of any Portion, where it is otherwise so entitled under clause 19.6; and
    - (B) the SCAW Contractor must take all reasonable steps possible to mitigate the additional Direct Costs and Overheads incurred by it and any delay in achieving Substantial Completion of any Portion as a result of the suspension.
- (c) The SCAW Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under clause 19.8(b)(ii).

## 19.9 Directions to change sequencing, accelerate, defer activities or make accessible

- (a) The Principal's Representative may, by notice in writing expressly referring to this clause 19.9(a), direct the SCAW Contractor:
  - (i) in what order and at what time stages or parts of the SCAW Contractor's Activities must be performed (**Resequencing**);
  - (ii) to complete the SCAW Contractor's Activities in advance of the dates for completion of those activities shown on the Overall D&C Program, including to:
    - (A) achieve Substantial Completion or Completion of any Portion prior to the relevant Date for Substantial Completion or Date for Completion (as applicable); or

(B) overcome or minimise the extent and effects of some or all of a delay that is the subject of a claim by the SCAW Contractor under clause 19.6(b) irrespective of whether or not the cause of delay for which the SCAW Contractor has made its claim under clause 19.6(b) entitles the SCAW Contractor to an extension of time to the relevant Date for Substantial Completion or Date for Completion;

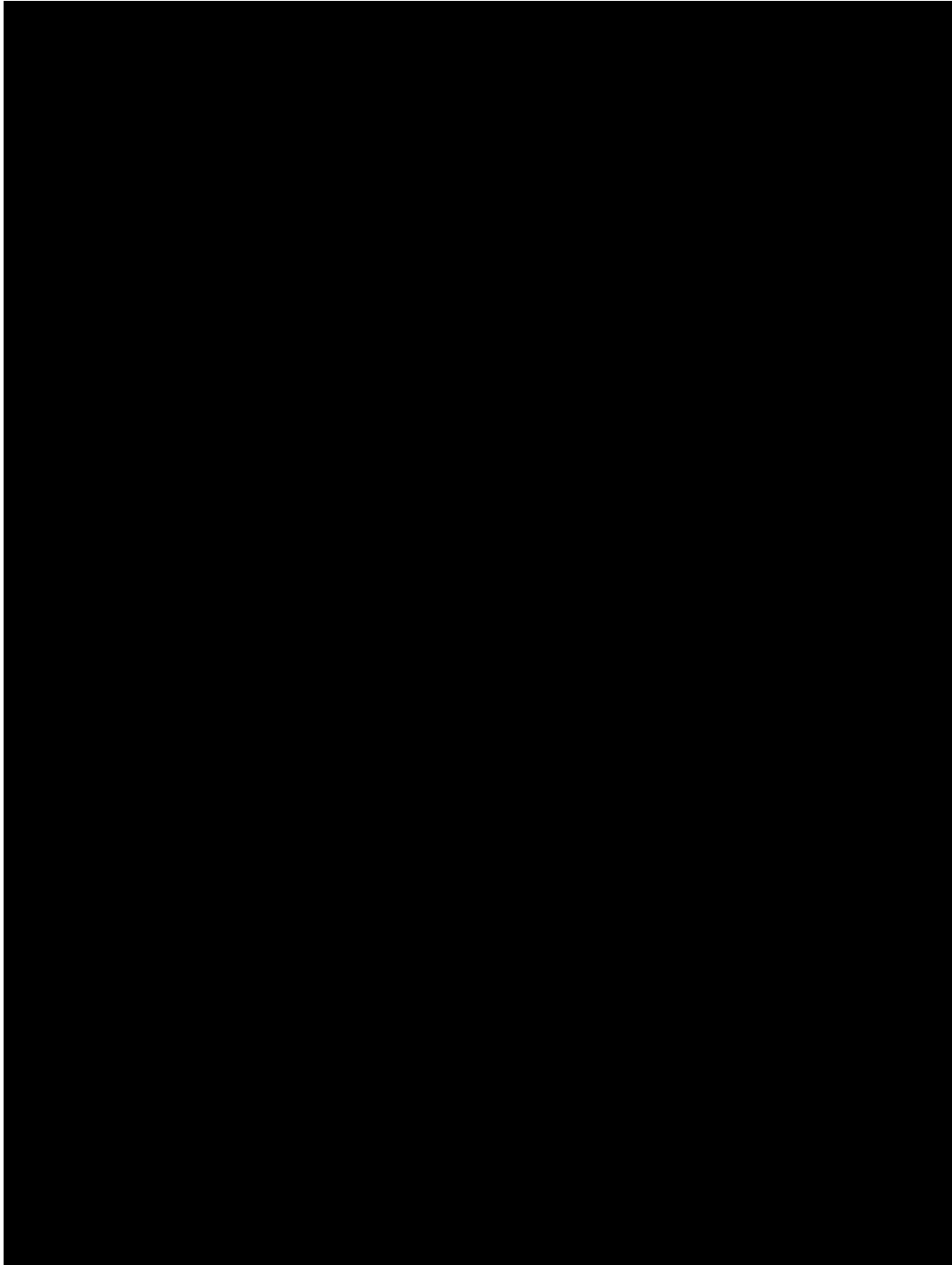
**(Acceleration);**

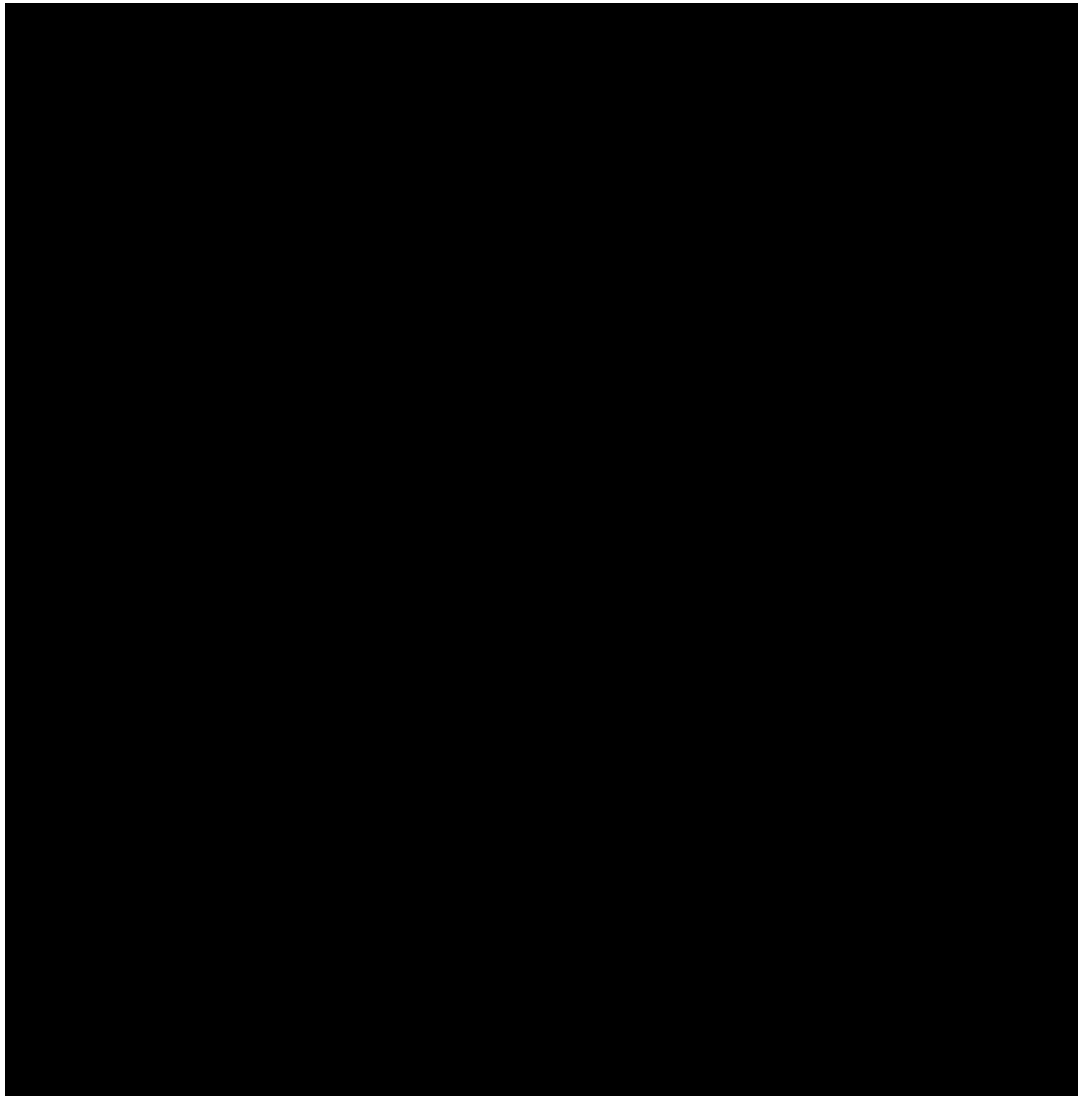
- (iii) to defer performance of any part of the SCAW Contractor's Activities until after Substantial Completion (**Deferred Activities**) in which case the SCAW Contractor will not be required to complete the Deferred Activities as a condition precedent to Substantial Completion of the relevant Portion, and the Principal must specify a reasonable time period after Substantial Completion within which Deferred Activities must subsequently be performed; or
  - (iv) to promptly make a work space ready for an Interface Contractor to perform work even if Substantial Completion for that work space has not been reached (**Making Accessible**).
- (b) The Principal's Representative may request that, prior to implementing any direction given under clause 19.9(a), the SCAW Contractor provide details of the estimated:
- (i) impacts on the Design Contract Sum, Design Payment Schedule, Construction Contract Sum and Construction Payment Schedule;
  - (ii) impact on the Overall D&C Program; and
  - (iii) impact on any Date for Substantial Completion or Date for Completion (if any),
- arising from the direction and the SCAW Contractor must provide such details within 15 Business Days of the Principal's Representative's request, and must use best endeavours to provide such details within 10 Business Days of the Principal's Representative's request.
- (c) A direction under clause 19.9(a) may specify a revised Date for Substantial Completion or Date for Completion for a Portion as a consequence of the Resequencing, Acceleration, Deferred Activities or Making Accessible. The revised Date for Substantial Completion or Date for Completion may be earlier than the then current Date for Substantial Completion or Date for Completion (as applicable). [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (d) The SCAW Contractor must comply with a direction given under clause 19.9(a)(iii) and clause 19.9(a)(iv).
- (e) The SCAW Contractor must comply with a direction given under clause 19.1(a)(i) and 19.1(a)(ii) except to the extent:
- (i) it is not reasonably possible or safe for the SCAW Contractor to perform the proposed Acceleration or Resequencing; and
  - (ii) the SCAW Contractor, in a notice required under clause 15.4(a)(i), gives a detailed explanation of the reasons why it is not reasonably possible or safe for the SCAW Contractor to perform the proposed Acceleration or Resequencing.

- (f) If a direction has been given under clause 19.9(a), the Principal's Representative will, subject to clause 19.9(j), adjust the affected Date for Substantial Completion or Date for Completion (as applicable):
  - (i) to the new date(s) identified in the direction given under clause 19.9(a); or
  - (ii) if the SCAW Contractor has delivered a notice under clause 19.9(e)(ii), earlier dates determined by the Principal's Representative, having regard to what is reasonably possible and safe.
- (g) The Principal's Representative may, at any time, by notice in writing to the SCAW Contractor withdraw a direction given under 19.9(a) provided that, if:
  - (i) the SCAW Contractor has taken steps to comply with such direction, the withdrawal will be treated as a new direction given under clause 19.9(a) to which clause 19.9(h) also applies; and
  - (ii) the direction was given under clause 19.9(a)(ii) to overcome or minimise the extent and effects of some or all of a delay which was the subject of a claim by the SCAW Contractor under clause 19.6(b), the SCAW Contractor will be entitled to any extension of time to which it may otherwise have been entitled but reduced to the extent that any acceleration by the SCAW Contractor prior to the withdrawal of the direction has mitigated the delay, as stated by the Principal's Representative.
- (h) Where the SCAW Contractor considers that a direction given under clause 19.9(a) constitutes a Change, the SCAW Contractor must give the Principal's Representative notice under and in accordance with clause 15.4(a)(i).
- (i) If the SCAW Contractor does not give notice strictly in accordance with clause 19.9(b) (if applicable) or 15.4(a)(i) it will have no Claim against the Principal in connection with a direction given under clause 19.9(a).
- (j) The SCAW Contractor will have no entitlement to an extension of time or to claim an adjustment to the Design Contract Sum and/or Construction Contract Sum for a Direction under clause 19.9(a) to the extent that:
  - (i) the need for Acceleration, Resequencing, Deferred Activities or Making Accessible arises out of or in connection with any breach of this deed by the SCAW Contractor (for example, a failure to reach Substantial Completion of a Portion by the Date for Substantial Completion of that Portion); and
  - (ii) the direction for Acceleration, Resequencing, Deferred Activities or Making Accessible is:
    - (A) in effect:
      - (aa) a direction to the SCAW Contractor to perform the SCAW Contractor's Activities in accordance with this deed (other than this clause), or consistently with this deed; or
      - (bb) a direction to the SCAW Contractor to take corrective action to rectify any non-compliance with the requirements of this deed; or
    - (B) related to rectification of a Defect [REDACTED]  
[REDACTED]  
[REDACTED]

- (k) Except to the extent set out in clauses 19.6(d), 19.9(i) and 19.9(j), this clause 19.9 does not impact the SCAW Contractor's entitlement under this deed to an extension of time.
- (l) The Principal's right to liquidated damages under clause 19.11(d) and where applicable, common law damages pursuant to clause 19.11(i)(ii), for a failure by the SCAW Contractor to achieve Substantial Completion of a Portion by the Date for Substantial Completion of the Portion will not be affected by a Direction given by the Principal's Representative under this clause 19.9.

**19.10 SCAW Contractor's delay costs**





**19.11 Liquidated damages for delay in reaching Substantial Completion**

- (a) The Principal and the SCAW Contractor agree and acknowledge that the Principal is pursuing a policy of building Sydney Metro - Western Sydney Airport and the Project Works for purposes that include achieving the objectives set out in clauses 3.1 and 3.2.
- (b) The SCAW Contractor and the Principal acknowledge and agree that the SCAW Contractor's Activities represents a most important element of the building of Sydney Metro - Western Sydney Airport, as a major new public transport link which, together with Sydney Metro West, Sydney Metro City & Southwest and Sydney Metro Northwest (and their integration), will service the needs of Sydney, including the needs of its workforce and its economy, and will provide frequent rapid transit services to handle projected population increases, create employment both during and after the SCAW Contractor's Activities, improve the efficiency of the Sydney public transport network and improve the local environment.
- (c) The SCAW Contractor acknowledges and agrees that its failure to achieve Substantial Completion of the Portions by the required Dates for Substantial Completion will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve its policy objectives to the immediate detriment of the Principal and of those on whose behalf the policy objectives are pursued. The loss arising from

this failure of the Principal to achieve its policy objectives is not capable of easy or precise calculation.

- (d) The SCAW Contractor agrees that if it does not achieve Substantial Completion of a Portion by the Date for Substantial Completion of the Portion, it must pay the Principal the applicable amount of liquidated damages for that Portion set out in section 2 of Schedule A2 (each of which is exclusive of GST) for every day after the Date for Substantial Completion of the Portion up to and including:
  - (i) the Date of Substantial Completion of the applicable Portion; or
  - (ii) the date that this deed is validly terminated,whichever first occurs.
- (e) The parties agree that the liquidated damages provided for in clause 19.11(d):
  - (i) represent proper, fair and reasonable amounts recoverable by the Principal arising from the failure of the SCAW Contractor to achieve Substantial Completion of the Portion by the Date for Substantial Completion of the Portion (as applicable) and do not constitute, and are not intended to be, a penalty and have been freely agreed to by the SCAW Contractor; and
  - (ii) will be recoverable by the Principal from the SCAW Contractor as a debt due and payable.
- (f) The Principal and the SCAW Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this deed.
- (g) The SCAW Contractor agrees to pay the liquidated damages under clause 19.11(d) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (h) The SCAW Contractor entered into the obligation to pay the amounts specified in clause 19.11(d) with the intention that it is a legally binding, valid and enforceable contractual provision against the SCAW Contractor in accordance with its terms.
- (i) The SCAW Contractor agrees:
  - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
  - (ii) that if this clause 19.11 (or any part of this clause 19.11) is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Works) as a result of the SCAW Contractor failing to achieve Substantial Completion of a relevant Portion by its Date for Substantial Completion, but the SCAW Contractor's liability for such damages (whether per day or in aggregate) will not be any greater than the liability which it would have had if the clause had not been void, invalid or otherwise inoperative.



- (j) The Principal's Representative, when issuing a payment schedule pursuant to clause 20.2(c) or 20.2(d) after the Date for Substantial Completion of a relevant Portion (as applicable), may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 19.11(d) to the date of the payment schedule (despite Substantial Completion of that Portion (as applicable) not having occurred).
- (k) The Principal and the SCAW Contractor agree that the aggregate of the amount payable under clauses 19.11(d) and 19.11(i)(ii) is:
  - (i) limited as set out in clauses 22.1(b) and 22.1(c); and
  - (ii) will be the Principal's sole financial remedy against the SCAW Contractor for:
    - (A) failing to achieve Substantial Completion of any Portion by the relevant Date for Substantial Completion;
    - (B) or breach of clause 19.3;
    - (C) breach of clause 4.10 or 4.10A but only to the extent that such breach is due to a failure by the SCAW Contractor to achieve Substantial Completion of a Portion by the relevant Date for Substantial Completion and not in any other circumstances; or
    - (D) a claim for indemnification under clause 23.2 but only to the extent that such claim is due to a failure by the SCAW Contractor to achieve Substantial Completion of a Portion by the relevant Date for Substantial Completion and not in any other circumstances,

and the Principal will not be entitled to make, nor will the SCAW Contractor be liable upon, any Claim in these circumstances other than for the amount for which the SCAW Contractor is liable under this clause 19.11 (including where applicable common law damages under clause 19.11(i)(ii)).

- (l) The sole remedy provided in clause 19.11(k)(ii) relates to the delay itself and does not limit the Principal's rights with respect to an event giving rise to a delay or the consequences of that event (other than the delay) or limit or reduce the SCAW Contractor's liability for any other acts, omissions or default (including the Principal's entitlement to damages other than liquidated damages) with respect to an event giving rise to delay or the consequences of that event (other than the delay), including where this deed is terminated by the Principal under clause 24 or otherwise at Law.
- (m) The SCAW Contractor acknowledges and agrees that the payment of liquidated damages pursuant to clause 19.11(d) and where applicable, the payment of common law damages pursuant to clause 19.11(i)(ii), will not relieve the SCAW Contractor of any of its obligations under this deed.

#### 19.12 Substantial Completion

- (a) The SCAW Contractor must, in respect of each Portion, give the Principal's Representative:
  - (i) 6 months;
  - (ii) 3 months;
  - (iii) 1 month; and

(iv) 1 week,

written notice of the estimated Date of Substantial Completion of the Portion.

- (b) Subject to clause 19.12(i), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the notice referred to in clause 19.12(a)(ii) jointly inspect the SCAW Contractor's Activities at a mutually convenient time.
- (c) Within 2 Business Days of the joint inspection referred to in clause 19.12(b), the Independent Certifier must give the SCAW Contractor and the Principal a notice either:
  - (i) containing a list of items which it believes must be completed before Substantial Completion of the Portion is achieved; or
  - (ii) stating that it believes the SCAW Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to issue a list as contemplated in clause 19.12(c)(i).
- (d) The SCAW Contractor must copy the Principal's Representative into all correspondence with the Airport Building Controller (or if communicating via an online portal, provide copies of all communications with the Airport Building Controller) in relation to completion of the Works and obtaining a certificate of compliance from the Airport Building Controller with respect to a Portion and invite the Principal's Representative to attend all meetings with the Airport Building Controller.
- (e) When the SCAW Contractor considers it has achieved Substantial Completion of the Portion, the SCAW Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B1. Notwithstanding the foregoing, the parties acknowledge that the Principal's Representative may also issue a written notice to the Independent Certifier and the SCAW Contractor if it considers, in its absolute discretion, that the SCAW Contractor has achieved Substantial Completion of a Portion.
- (f) Following the issuance of a notice by the SCAW Contractor or the Principal's Representative under clause 19.12(e), and subject to clause 19.12(i), the Principal's Representative, the Project Director and the Independent Certifier must jointly inspect the SCAW Contractor's Activities at a mutually convenient time.
- (g) Following the joint inspection under clause 19.12(f), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 19.12(e), or of receipt of a notice under clause 19.12(h):
  - (i) if Substantial Completion of the Portion has been achieved:
    - (A) provide to the Principal's Representative, OpCo and the SCAW Contractor a document signed by the Independent Certifier in the form in Schedule B14; and
    - (B) additionally:
      - (aa) if the relevant Portion includes any Council Works, provide to the Principal's Representative and the relevant Council a certificate in the form of Schedule 8 to the Council Interface Agreement with respect to the relevant Council Works;

- (bb) if the relevant Portion includes any M12 Works (SMWSA Works), provide to the Principal's Representative and TfNSW a certificate in the form of Schedule 10 to the TfNSW (M12) Interface Agreement; or
  - (cc) if the relevant Portion includes any WaterNSW Works, provide to the Principal's Representative and WaterNSW a certificate in the form of Part 2 of Schedule 6 to the WaterNSW Interface Agreement.
- (ii) if Substantial Completion of the Portion has not been achieved, issue a notice to the SCAW Contractor and the Principal in which it states:
  - (A) the items which remain to be completed before Substantial Completion of the Portion; or
  - (B) that the SCAW Contractor is so far from achieving Substantial Completion of the Portion that it is not practicable to notify the SCAW Contractor of the items which remain to be completed as contemplated by clause 19.12(g)(ii)(A).
- (h) If the Independent Certifier issues a notice under clause 19.12(g)(ii) the SCAW Contractor must proceed with the SCAW Contractor's Activities and thereafter when it considers it has achieved Substantial Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 19.12(e) and 19.12(g) will reapply.
- (i) The SCAW Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 19.12, including representatives of any Interface Contractor; and
  - (ii) the Principal's Representative, the Airport Lessee and any Interface Contractor may provide comments to the Independent Certifier (with a copy to the SCAW Contractor) in relation to any non-compliance of the SCAW Contractor's Activities with this deed.
- (j) Without limiting the Principal's rights or the SCAW Contractor's obligations under this clause 19.12, the SCAW Contractor acknowledges and agrees that:
  - (i) the Principal's Representative may provide a copy of the notice provided by the SCAW Contractor under clause 19.12(a)(ii) to an Interface Contractor;
  - (ii) if required by the Principal's Representative the SCAW Contractor, Principal's Representative and any Interface Contractor must jointly agree three dates at mutually convenient times prior to Substantial Completion for any Interface Contractor to inspect the SCAW Contractor's Activities;
  - (iii) the SCAW Contractor must permit any such Interface Contractor to visit the Site for the purpose of Site familiarisation only;
  - (iv) if the Interface Contractor elects to exercise its right to attend any joint inspection at the dates agreed under clause 19.12(j)(ii), the Principal's Representative must procure that the Interface Contractor provides at least 5 Business Days' notice prior to the first proposed site inspection date and that such notice confirms the Interface Contractor's intention of the site inspection and other relevant details, including who will be in attendance; and

- (v) any site inspection in accordance with this clause 19.12(j) must be attended by the SCAW Contractor and the Principal's Representative.
- (k) Without affecting the SCAW Contractor's obligation to achieve Substantial Completion of each Portion by the relevant Date for Substantial Completion the parties acknowledge that:
  - (i) no separate Date for Substantial Completion of the Project Works is specified in this deed;
  - (ii) Substantial Completion of the Project Works is achieved by achieving Substantial Completion of all Portions;
  - (iii) Substantial Completion of the Project Works will be taken to have occurred once Substantial Completion of all Portions has occurred; and
  - (iv) the Date of Substantial Completion of the Project Works will be taken to be the Date of Substantial Completion of the last Portion to reach Substantial Completion.

### 19.13 Completion

- (a) When the SCAW Contractor considers it has achieved Completion of the Portion, the SCAW Contractor must notify the Principal's Representative and the Independent Certifier in writing and provide them with an executed certificate in the form of Schedule B20. Thereafter, and subject to clause 19.13(d), the Principal's Representative, the Project Director and the Independent Certifier must, within 5 Business Days of receipt of the SCAW Contractor's written notice, jointly inspect the SCAW Contractor's Activities at a mutually convenient time.
- (b) Following the joint inspection under clause 19.13(a), the Independent Certifier must within 5 Business Days of receipt of a notice under clause 19.13(a), or of receipt of a notice under clause 19.13(c):
  - (i) if Completion of the Portion has been achieved, provide to the Principal's Representative, OpCo and the SCAW Contractor a document signed by the Independent Certifier in the form in Schedule B21; or
  - (ii) if Completion of the Portion has not been achieved, issue a notice to the SCAW Contractor and the Principal in which it states:
    - (A) the items which remain to be completed before Completion of the Portion; or
    - (B) that the SCAW Contractor is so far from achieving Completion of the Portion that it is not practicable to notify the SCAW Contractor of the items which remain to be completed as contemplated by clause 19.13(b)(ii)(A).
- (c) If the Independent Certifier issues a notice under clause 19.13(b)(ii) the SCAW Contractor must proceed with the SCAW Contractor's Activities and thereafter when it considers it has achieved Completion of the Portion it must give the Principal's Representative and the Independent Certifier written notice to that effect after which clauses 19.13(a) and 19.13(b) will reapply.
- (d) The SCAW Contractor acknowledges and agrees that:

- (i) the Principal's Representative may invite any other person to attend any joint inspection provided for by this clause 19.13, including representatives of any Interface Contractor; and
  - (ii) the Principal's Representative, any Interface Contractor may provide comments to the Independent Certifier (with a copy to the SCAW Contractor) in relation to any non-compliance of the SCAW Contractor's Activities with this deed.
- (e) Without affecting the SCAW Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion the parties acknowledge that:
- (i) no separate Date for Completion of the Project Works is specified in this deed;
  - (ii) Completion of the Project Works is achieved by achieving Completion of all Portions;
  - (iii) Completion of the Project Works will be taken to have occurred once Completion of all Portions has occurred; and
  - (iv) the Date of Completion of the Project Works will be taken to be the Date of Completion of the last Portion to reach Completion.

**19.14 Effect of Notice of Substantial Completion or Notice of Completion**

- (a) A Notice of Substantial Completion or Notice of Completion (as applicable) will not:
- (i) constitute approval by the Principal or the Principal's Representative of the SCAW Contractor's performance of its obligations under this deed;
  - (ii) be taken as an admission or evidence that the Project Works or the Handover Works comply with this deed; or
  - (iii) prejudice any rights or powers of the Principal or the Principal's Representative.
- (b) Without limiting clause 19.14(a), the parties agree that, in the absence of manifest error by the Independent Certifier, the Independent Certifier's certification as set out in a Notice of Substantial Completion or Notice of Completion (as applicable) is final and binding on the parties for the purposes only of establishing that Substantial Completion or Completion (as applicable) of the relevant Portion has occurred.

**19.15 Access following Substantial Completion of a Portion**

Following Substantial Completion of each Portion, the Principal must procure that each relevant Interface Contractor provides the SCAW Contractor with such access to the Construction Site as may be reasonably required by the SCAW Contractor in order to perform any Deferred Activities and to rectify any Defects (including Minor Defects and Agreed Defects identified in a Notice of Substantial Completion), subject to the SCAW Contractor complying with the requirements of the Master Interface Deed.

**19.16 Transitional Handover Services and handover**

- (a) The Principal's Representative may give written notice to the SCAW Contractor at least 5 Business Days before the SCAW Contractor's estimated Date of Substantial Completion of a Portion (which has been notified in accordance with clause 19.12(a)) that Transitional Handover Services must be carried out in respect of the Portion.

- (b) If the Principal's Representative gives such a notice:
  - (i) in respect of a Portion, the SCAW Contractor must carry out the Transitional Handover Services in respect of the Portion from the relevant Date of Substantial Completion until the date specified in a notice given by the Principal pursuant to clause 19.16(c); and
  - (ii) the SCAW Contractor is entitled to be paid for the Transitional Handover Services in respect of the Portion in accordance with the Transitional Handover Services Payment Schedule.
- (c) At any time after issuing a notice under clause 19.16(a) in respect of a Portion, the Principal's Representative may give further written notice to the SCAW Contractor that the SCAW Contractor is to cease performance of the Transitional Handover Services in respect of the Portion on the date specified in the further notice, which date must be at least 3 Business Days after the date on which the SCAW Contractor receives the further notice.
- (d) On the Portion Handover Date:
  - (i) the SCAW Contractor must:
    - (A) hand control of the Portion to the Principal; and
    - (B) provide the Principal with all spare parts, consumables and special tools as required by the SCAW Specification (including section 7.6.1 of the General Specification); and
  - (ii) there must not be any Encumbrances over the Handover Works.

**19.17 Final Completion**

- (a) When the SCAW Contractor considers that Final Completion has been reached, it must give the Principal's Representative notice in writing and deliver a final payment claim which complies with the requirements of clause 20.2(k).
- (b) If the Principal's Representative considers that Final Completion has been reached, it will issue a Final Certificate with the payment schedule issued pursuant to clause 20.2(c).
- (c) The Final Certificate is without prejudice to any of the Principal's rights under this deed and is not evidence of accord and satisfaction of the SCAW Contractor's Activities or the Project Works.

**20. PAYMENT**

**20.1 Principal's payment obligation for design and construction**

- (a) Subject to clauses 20.9 and 25.11 and to any other right to set-off which the Principal may have under this deed, the Principal must pay the SCAW Contractor the Project Contract Sum and any other amount payable by the Principal to the SCAW Contractor under this deed in accordance with this clause 20, the Design Payment Schedule, the Construction Payment Schedule, and the Transitional Handover Services Payment Schedule, the Performance Incentive Regime Schedule and Schedule E7 for the progressive completion of the SCAW Contractor's Activities.
- (b) The Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Regime Schedule and the Transitional Handover Services Payment Schedule may set out (among other things):

- (i) those parts of the SCAW Contractor's Activities which must be completed before the SCAW Contractor may claim a progress payment with respect to that part;
- (ii) the payment the SCAW Contractor may claim for each progress payment;
- (iii) any limitations or other constraints on the SCAW Contractor's ability to make claims for payment; and
- (iv) the restrictions (if any) on the timing and sequencing of the SCAW Contractor's Activities with which the SCAW Contractor must comply.

In addition to the Design Payment Schedule, the Construction Payment Schedule, the Performance Incentive Regime Schedule and the Transitional Handover Payment Schedule, clause 20.2(i) sets out further payment constraints that are to apply.

- (c) The Design Contract Sum, the Construction Contract Sum, the Performance Incentive Regime Schedule and the rates set out in the Transitional Handover Services Payment Schedule are not subject to rise and fall.

#### 20.1A Monthly payment claim forecasting

- (a) No later than the twenty-second day of each month (or if this day is not a Business Day, the next Business Day after this day), the SCAW Contractor must provide the Principal's Representative with its estimate of the magnitude of its end of month progress claim, for that month (**Progress Claim Forecast**).
- (b) The Progress Claim Forecast must include a 1 page summary detailing the magnitude of the payment and assumptions used to determine the amount including specifically assumptions of forecast work to be complete up to the end of the month.

#### 20.2 Payment claims

- (a) The SCAW Contractor must give the Principal's Representative a progress claim, with respect to the Project Contract Sum, the Performance Amount and any other amount payable by the Principal to the SCAW Contractor under this deed (including any amounts payable under clause 19.16(b)(ii) and Schedule E7):
  - (i) on the twenty-fifth day of each month (or if this day is not a Business Day, the next Business Day after this day); and
  - (ii) thirty (30) Business Days after:
    - (A) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and
    - (B) the issue of a notice of Final Completion under clause 19.17(a).
- (b) For each claim made under clause 20.2(a) and clause 20.13, the SCAW Contractor must:
  - (i) give the Principal's Representative:
    - (A) a claim in a format required by the Principal's Representative (including electronic format) showing the amount the SCAW Contractor claims (including a breakdown of the amount of work completed and the amounts payable in respect of Sydney Metro Works, each category of Third Party Works and any specific assets notified by the Principal to the SCAW Contractor, including evidence of the relevant completion

date of each category of Third Party Works and any such specific assets (as the case may be)); and

- (B) where the Principal has given notice under clause 21.6(a)(iv), a valid tax invoice for any taxable supplies to which the payment relates; and
- (ii) in the case of the payment claims issued after:
  - (A) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and
  - (B) the issue of a notice of Final Completion under clause 19.17(a),  
comply with clause 20.2(k).
- (c) The Principal's Representative must, on behalf of the Principal, within 10 Business Days of receipt of the SCAW Contractor's claim under clause 20.2(a), issue to the SCAW Contractor and the Principal, a payment schedule stating the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the SCAW Contractor under this deed and which the Principal proposes to pay to the SCAW Contractor or the amount which the Principal's Representative believes to be then payable by the SCAW Contractor to the Principal, including details of the calculation of the progress amount.

In issuing a payment schedule the Principal's Representative:

- (i) may deduct from the amount which would otherwise be payable to the SCAW Contractor any amount which the Principal is entitled to retain, deduct, withhold or set-off under this deed, including any amount which the Principal is entitled to set-off or withhold under clause 20.9; and
- (ii) must if the payment schedule shows an amount less than the amount claimed by the SCAW Contractor in the progress claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Principal has retained, deducted withheld or set-off payment for any reason, the reason for the retention, deduction, withholding or setting-off of payment.
- (d) If the SCAW Contractor does not give the Principal's Representative a progress claim at a time required by clause 20.2(a), the Principal's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a progress claim was made at the time required.
- (e) A payment schedule issued under clause 20.2(c) or 20.2(d) will separately identify the sum of the amounts due on account of the Design Contract Sum, the Construction Contract Sum, the Performance Amount and any other amount payable by the Principal to the SCAW Contractor or by the SCAW Contractor to the Principal under this deed.
- (f) Where the Principal has given notice under clause 21.6(a)(iv), if the amount set out in a payment schedule issued under clause 20.2(c) is different to the amount in the SCAW Contractor's progress claim or if the Principal's Representative issues a payment schedule under clause 20.2(d), the SCAW Contractor must, within 2 Business Days of receiving the payment schedule, issue a revised tax invoice or adjustment note (as the case may be) to the Principal to reflect the amount in the payment schedule.



- (g) Within 15 Business Days of the date of the SCAW Contractor's progress claim in accordance with clause 20.2(a) or within 5 Business Days of the issue of a payment schedule in accordance with clause 20.2(d):
  - (i) where the payment schedule provides that an amount is payable by the Principal to the SCAW Contractor, but subject to clauses 20.4, 20.5, 20.7 and 25.11 and the Design Payment Schedule and the Construction Payment Schedule, the Principal must pay the SCAW Contractor the progress payment due to the SCAW Contractor as certified in the payment schedule; and
  - (ii) where the payment schedule provides that an amount is payable by the SCAW Contractor to the Principal, the SCAW Contractor must pay the Principal the amount due to the Principal as certified in the payment schedule.
- (h) If the SCAW Contractor lodges a progress claim earlier than at the times specified under clause 20.2(a), the Principal's Representative will not be obliged to issue the payment schedule in respect of that progress claim earlier than it would have been obliged had the SCAW Contractor submitted the progress claim in accordance with this deed.
- (i) Despite any other provisions of this deed to the contrary, the amount of any progress claim to which the SCAW Contractor is entitled in relation to this deed and the amount to be allowed by the Principal's Representative in any payment schedule issued under clause 20.2(c) as the amount payable to the SCAW Contractor arising out of or in any way in connection with this deed will:
  - (i) not include the following amounts:
    - (A) any amount which this deed provides cannot be claimed or is not payable because of the failure by the SCAW Contractor to take any action (including to give any notice to the Principal or the Principal's Representative);
    - (B) any amount which represents unliquidated damages claimed against the Principal (whether for breach of contract, in tort or otherwise);
    - (C) any amount which this deed provides is not payable until certain events have occurred or conditions have been satisfied, to the extent those events have not occurred or those conditions have not been satisfied (including any events identified in the Design Payment Schedule or the Construction Payment Schedule);
    - (D) any amount in respect of which the obligation of the Principal to make payment has been suspended under this deed;
    - (E) any amount in respect of which the SCAW Contractor has failed to provide supporting information as required by this deed; or
    - (F) any amount for work which is not in accordance with this deed;
  - (ii) deduct the following amounts:
    - (A) any amounts which have become due from the SCAW Contractor to the Principal under this deed; and
    - (B) any amounts which the Principal is entitled under this deed to retain, deduct, withhold or set-off against the progress claim, including under clauses 20.4, 20.5 or 20.9;

- (iii) in determining amounts to be excluded or deducted under subparagraphs (i) and (ii), have regard to matters or circumstances occurring at any time before the date that the determination is being made; and
  - (iv) be determined having regard to the Project Contract Sum (with additions or deductions, if any, provided for by this deed).
- (j) Failure by the Principal's Representative to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the SCAW Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this deed.
- (k) The SCAW Contractor must include in the payment claim lodged by it after:
- (i) the issue of a Notice of Substantial Completion for the last Portion to reach Substantial Completion; and
  - (ii) the issue of a notice of Final Completion under clause 19.17(a),
- all Claims that the SCAW Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the SCAW Contractor's Activities, the Project Works or this deed which occurred:
- (iii) in the case of the payment claim referred to in subparagraph (i), prior to the date of that payment claim; and
  - (iv) in the case of the payment claim referred to in subparagraph (ii), in the period between the date of the payment claim referred to in subparagraph (i) and the date of the payment claim.

The SCAW Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the SCAW Contractor's Activities, the Project Works or this deed that occurred prior to the date of submission of the relevant payment claim referred to in subparagraphs (i) or (ii), except for any claim which:

- (v) has been included in the relevant payment claim which is given to the Principal's Representative within the time required by, and in accordance with, clause 20.2(a); and
- (vi) has not been barred under another provision of this deed.

### 20.3 **Effect of payment schedules and payments**

Neither the issue of a payment schedule under clause 20.2(c), nor the making of any payment pursuant to any such payment schedule, will:

- (a) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
- (b) constitute evidence of the value of any work or an admission of liability or evidence that work has been executed or completed in accordance with this deed; or
- (c) prejudice the right of either party to dispute under clause 25 whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under clause 25 or as otherwise agreed, of the amount properly due and payable, the Principal or the SCAW Contractor, as the case

may be, will be liable to pay the difference between the amount of such payment and the amount which is properly due and payable),

and any payments made pursuant to a payment schedule are payments on account only.

#### 20.4 **Provision of documentation and other requirements**

- (a) Subject to clause 20.4(c), the Principal is not obliged to pay the SCAW Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless and until the SCAW Contractor has:
- (i) effected and is maintaining all insurances that the SCAW Contractor is required to effect and maintain under clause 23 and has complied with clause 23.15;
  - (ii) complied with clauses 5.1(c), 6.1(a) and 6.9;
  - (iii) complied with its obligations under clause 4.18(a)(i);
  - (iv) provided a statement by the Quality and Systems Manager in the form of Schedule B13 that the parts of the SCAW Contractor's Activities in respect of which any payment is claimed comply with the requirements of this deed;
  - (v) where clause 20.8(q) applies, provided the Principal's Representative with the statement and evidence (if any) required to be provided by the SCAW Contractor pursuant to that clause;
  - (vi) provided the Principal's Representative with a statutory declaration in the form of Schedule B15 which has been duly executed:
    - (A) by a representative of the SCAW Contractor who is in a position to know the facts declared; and
    - (B) on the date the relevant payment claim was issued; and
  - (vii) where the Principal has given notice under clause 21.6(a)(iv), provided the Principal's Representative with a tax invoice, revised tax invoice or adjustment note (as applicable) as required under clause 20.2(b)(i)(B) and clause 20.2(f).
- (b) Subject to clause 20.4(c), the Principal is not obliged to pay the SCAW Contractor any more than [REDACTED] of the amount that the Principal's Representative would otherwise have set out in any payment schedule unless the SCAW Contractor has provided the updated Overall D&C Program required by clause 19.2.
- (c) This clause 20.4 does not apply to the Initial Payment.

#### 20.5 **Payment of Subcontractors, workers compensation and payroll tax**

- (a) If a worker or a Subcontractor, obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials (including Materials) supplied for, or work performed with respect to, the SCAW Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the GST exclusive amount of the order and costs included in the order to the worker or Subcontractor, and the amount paid shall be a debt due from the SCAW Contractor to the Principal.

- (b) If the Principal receives notices of:
  - (i) the SCAW Contractor being placed under administration; or
  - (ii) the making of a winding up order in respect of the SCAW Contractor,the Principal will not make any payment to a worker or Subcontractor without the concurrence of the administrator, provisional liquidator or liquidator, as the case may be.
- (c) Nothing in this clause 20.5 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) and section 127(5) of the *Industrial Relations Act 1996* (NSW).

20.6 **Not used**

20.7 **Payment for unfixed Materials**

- (a) The value of unfixed Materials intended for incorporation in the Project Works but not yet incorporated are not to be included in a payment schedule under clause 20.2(c) and the Principal is under no obligation to pay for such Materials unless the following conditions precedent have been satisfied:
  - (i) the SCAW Contractor:
    - (A) has provided to the Principal at the same time as its progress claim under clause 20.2(a) an unconditional undertaking that complies with the requirements of clause 6.2, for an amount equal to the payment claimed for the Materials; and
    - (B) gives the Principal's Representative such evidence as may be required by the Principal's Representative that title to the unfixed Materials will vest in the Principal upon payment;
  - (ii) the Materials are clearly marked as the property of the Principal and are on the Project Site or Temporary Areas or available for immediate delivery to the Project Site or Temporary Areas;
  - (iii) the Materials are properly stored in a place approved by the Principal's Representative; and
  - (iv) there is evidence (in a form satisfactory to the Principal) that the SCAW Contractor has registered a Security Interest in favour of the Principal in the unfixed Materials.
- (b) Upon payment of a payment schedule which includes an amount in respect of unfixed Materials, title in the unfixed Materials will vest in the Principal.
- (c) If the SCAW Contractor provides an unconditional undertaking for payment for unfixed Materials, the Principal must release the unconditional undertaking to the SCAW Contractor within 5 Business Days of those Materials:
  - (i) being incorporated into the Project Works; and
  - (ii) complying with the requirements of this deed.

## 20.8 SOP Act

- (a) Expressions defined or used in the SOP Act have the same meaning for the purposes of this clause (unless the context otherwise requires).
- (b) The SCAW Contractor must ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to the Principal's Representative at the same time.
- (c) In responding to the SCAW Contractor under the SOP Act, the Principal's Representative also acts as the agent of the Principal.
- (d) If, within the time allowed by the SOP Act for the service of a payment schedule by the Principal, the Principal does not:
  - (i) serve the payment schedule itself; or
  - (ii) notify the SCAW Contractor that the Principal's Representative does not have authority from the Principal to issue the payment schedule on its behalf,

then a payment schedule issued by the Principal's Representative under this deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).

- (e) Without limiting paragraph (c), the Principal authorises the Principal's Representative to issue payment schedules on its behalf (without affecting the Principal's right to issue a payment schedule itself).
- (f) For the purposes of this deed, the amount of the progress payment to which the SCAW Contractor is entitled under this deed will be the amount certified by the Principal's Representative in a payment schedule under clause 20.2 less any amount the Principal may elect to retain, deduct, withhold or set off in accordance with this deed.
- (g) The SCAW Contractor agrees that:
  - (i) the date prescribed by clause 20.2(a) as the date on which the SCAW Contractor is entitled to make a progress claim is, for the purposes of the SOP Act (including section 13 of the SOP Act), the date on which a payment claim may be served; and
  - (ii) a progress claim is not a document notifying an obligation on the Principal to make any payment and the Principal will have no liability to make a payment of any amount in respect of a progress claim unless the amount has been included in a payment schedule issued by the Principal's Representative in accordance with clause 20.2(c) or 20.2(d).
- (h) Nothing in this deed will be construed to:
  - (i) make any act or omission of the Principal in contravention of the SOP Act (including failure to pay an amount becoming due under the SOP Act), a breach of this deed (unless the Principal would have been in breach of this deed if the SOP Act had no application); or
  - (ii) subject to paragraph (i)(i), give to the SCAW Contractor rights under this deed which extend or are in addition to rights given to the SCAW Contractor by the

SOP Act in respect of any act or omission of the Principal in contravention of the SOP Act.

- (i) If the SCAW Contractor suspends the whole or part of the SCAW Contractor's Activities pursuant to the SOP Act:
  - (i) the suspension will be an Act of Prevention for the purposes of this deed; and
  - (ii) except to the extent (if any) expressly provided under the SOP Act and subparagraph (i), the Principal will not be liable for and the SCAW Contractor is not entitled to Claim any Loss suffered or incurred by the SCAW Contractor as a result of the suspension.
- (j) The SCAW Contractor must indemnify and keep indemnified the Principal against all Loss suffered or incurred by the Principal arising out of:
  - (i) a suspension by a Subcontractor of work which forms part of the SCAW Contractor's Activities pursuant to the SOP Act; or
  - (ii) a failure by the SCAW Contractor to comply with its obligations under paragraph (b).
- (k) The SCAW Contractor agrees that for the purposes of section 17(3) of the SOP Act:
  - (i) it has irrevocably chosen the Resolution Institute as the authorised nominating authority to which any adjudication application under the SOP Act in respect of the SCAW Contractor's Activities is to be made; and
  - (ii) the SCAW Contractor must make any adjudication application under the SOP Act to that authorised nominating authority (unless the Principal in its absolute discretion consents to any alternative nominating authority).
- (l) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the SCAW Contractor:
  - (i) the amount will be taken into account by the Principal's Representative in issuing a payment schedule under clause 20.2(c);
  - (ii) if it is subsequently determined pursuant to this deed that the SCAW Contractor was not entitled under this deed to payment of some or all of the adjudicated amount that was paid by the Principal (**overpayment**), the overpayment will be a debt due and payable by the SCAW Contractor to the Principal which the SCAW Contractor must pay to the Principal upon demand and in respect of which the SCAW Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
  - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the SCAW Contractor to the Principal upon demand and in respect of which the SCAW Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
  - (iv) the Principal's Representative:
    - (A) is not bound by the adjudication determination;
    - (B) may reassess the value of the work that was valued by the adjudicator; and

- (C) may, if it disagrees with the adjudication determination, express its own valuation in any payment schedule.
- (m) Without limiting clause 20.9, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (n) If the Principal withholds from money otherwise due to the SCAW Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
  - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the SCAW Contractor from the Principal; and
  - (ii) the period during which the Principal retains money due to the SCAW Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
    - (A) any period for which money owed by the Principal to the SCAW Contractor has been unpaid; and
    - (B) the date by which payment of money owed by the Principal to the SCAW Contractor must be made.
- (o) The SCAW Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
- (p) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the SCAW Contractor to the Principal.
- (q) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the SCAW Contractor:
  - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
  - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the SCAW Contractor must so notify the Principal within 5 Business Days of the occurrence of the event in clause 20.8(n)(i) or 20.8(n)(ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

## 20.9 **Right of set-off**

The Principal's Representative may (on behalf of the Principal) in any payment schedule issued under clauses 20.2(c) or 20.2(d) withhold, set-off or deduct from the money which would otherwise be certified as payable to the SCAW Contractor or the Principal may at any time withhold, set-off or deduct from moneys otherwise due to the SCAW Contractor under this deed:

- (a) any debt or other moneys due from the SCAW Contractor to the Principal (including any debt due from the SCAW Contractor to the Principal pursuant to section 26C of the SOP Act);

- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act;
- (c) any amount that the Principal is entitled to withhold under clause 20.4; or
- (d) any bona fide claim to money which the Principal may have against the SCAW Contractor whether for damages (including liquidated damages) or otherwise,

under or arising out of or in connection with this deed or the SCAW Contractor's Activities and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

This clause 20.9 will survive the termination of this deed.

**20.10 Interest**

The Principal will pay simple interest at the rate of ■■■ above the Bank Bill Rate on any:

- (a) amount which has been set out as payable by the Principal's Representative in a payment schedule under clause 20.2(c), but which is not paid by the Principal within the time required by this deed;
- (b) damages; and
- (c) amount which is found after the resolution of a Dispute to be payable to the SCAW Contractor, and which has not been paid by the Principal,

from the date such amount was first due and payable until the date such amount is paid.

This will be the SCAW Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

**20.11 Title**

Title in all items forming part of the Project Works and the Handover Works will pass progressively to the Principal on the earlier of payment for, or installation of, such items to the Construction Site. Risk in all such items remains with the SCAW Contractor in accordance with clause 23.

**20.12 Provisional Sum Work**

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the SCAW Contractor a direction either requiring the SCAW Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.
- (b) Subject to clause 20.12(f), where the Principal's Representative gives the SCAW Contractor a notice requiring the SCAW Contractor to proceed with an item of Provisional Sum Work, the Project Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
  - (i) the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule; and
  - (ii) any of:
    - (A) an amount agreed between the SCAW Contractor and the Principal's Representative; or



- (B) otherwise, an amount determined by the Principal's Representative having regard to:
    - (aa) where there are relevant rates and prices, the cost estimate provided by the SCAW Contractor, the relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices plus Overheads and Profit Margin (except to the extent the relevant rates and prices are inclusive of Overheads and Profit Margin); or
    - (bb) the SCAW Contractor's Direct Costs, Overheads and Profit Margin,and the difference will be added to or deducted from the Project Contract Sum.
- (c) Where the Principal's Representative gives the SCAW Contractor a direction deleting an item of Provisional Sum Work:
  - (i) the Project Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule;
  - (ii) the Principal may thereafter either carry out the Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
  - (iii) the Principal will not be liable upon any Claim by the SCAW Contractor arising out of the deletion of the item of Provisional Sum Work.
- (d) If the Principal provides the SCAW Contractor with such further information as is reasonably required for the SCAW Contractor to provide a fixed lump sum price for any relevant item of Provisional Sum Work, the SCAW Contractor must, within 10 Business Days of being requested to do so, submit to the Principal's Representative a fixed lump sum price proposal for the relevant item of Provisional Sum Work which includes a reasonable cost breakdown for the lump sum price (**Lump Sum Price Proposal**).
- (e) Following the SCAW Contractor's submission of a Lump Sum Price Proposal, the Principal's Representative will adjust the Project Contract Sum by the difference between:
  - (i) the amount allowed for the item of Provisional Sum Work in the Design Payment Schedule or the Construction Payment Schedule; and
  - (ii) any of:
    - (A) an amount agreed between the SCAW Contractor and the Principal's Representative; or
    - (B) otherwise, an amount valued by the Principal's Representative having regard to:
      - (aa) where there are relevant rates and prices, the Lump Sum Price Proposal, the relevant rates and prices included in the Design Payment Schedule or the Construction Payment Schedule and any other relevant market rates and prices plus Overheads and

Profit Margin (except to the extent the relevant rates and prices are inclusive of Overheads and Profit Margin); or

- (bb) the SCAW Contractor's Direct Costs, Overheads and Profit Margin,

and the difference will be added to or deducted from the Project Contract Sum and thereafter clauses 20.12(b) and 20.12(c) will not apply.

- (f) In the case of any item of Provisional Sum Work that is also a Call-off Service, the SCAW Contractor:
  - (i) must carry out such services when directed by the Principal's Representative under this deed;
  - (ii) will, subject to clause 20.12(f)(iii) and clause 20.12(g), be paid for the performance of such services in accordance with the relevant rates set out in the relevant Nominated Subcontract; and
  - (iii) will be entitled to claim payment under clause 20.2 in respect of such services.
- (g) Where the aggregate amount payable by the Principal under this deed in respect of any Call-off Service:
  - (i) has exceeded in total the provisional sum allowed for that Call-off Service in the Design Payment Schedule or the Construction Payment Schedule, the amount will be added to the Design Contract Sum or Construction Contract Sum (as applicable); or
  - (ii) is in total less than the relevant provisional sum allowed in the Design Payment Schedule or the Construction Payment Schedule, the difference will be deducted from the Design Contract Sum or Construction Contract Sum (as applicable) and will be a debt due and payable from the SCAW Contractor to the Principal.
- (h) The parties acknowledge and agree that the principles set out in clauses 3(a), (b), (f), (g), (h) and (i) of Schedule E9 will apply to the valuing of any adjustment to the Project Contract Sum under clauses 20.12(b)(ii)(B), 20.12(e)(ii)(B) and 20.12(g) by the Principal's Representative (with any consequential changes necessary to take into account the nature of these clauses).

### 20.13 Initial Payment

- (a) The Principal will pay to the SCAW Contractor the Initial Payment on the later of:
  - (i) 15 Business Days after the satisfaction (or waiver under clause 2.3) of all Conditions Precedent;
  - (ii) receipt by the Principal of:
    - (A) the unconditional undertakings in accordance with clause 6.1(a); and
    - (B) an unconditional undertaking for an amount equal to [REDACTED] of the Initial Payment which complies with the requirements of clause 6.2; and
  - (iii) receipt by the Principal of the Parent Company Guarantee in accordance with clause 6.9.

- (b) The SCAW Contractor must submit to the Principal a payment claim for the Initial Payment in accordance with clause 20.2.
- (c) The parties acknowledge and agree that:
  - (i) the Initial Payment:
    - (A) is an advance payment that is intended to assist the SCAW Contractor with its cash-flow during the early stages of the SCAW Contractor's Activities;
    - (B) is made on an on-account basis; and
    - (C) may be applied by the Principal in satisfaction of the Project Contract Sum and any other amount owed by the Principal to the SCAW Contractor under this deed; and
  - (ii) the payment of the Initial Payment or the application of any part of the Initial Payment by the Principal in accordance with clause 20.13(c)(i)(C) will not:
    - (A) constitute the approval of any work or other matter or prejudice any Claim by the Principal or the Principal's Representative;
    - (B) constitute evidence of the value of any work or an admission of Liability or evidence that work has been executed or completed in accordance with this deed; or
    - (C) prejudice the right of either party to dispute whether any amount certified as payable in a payment schedule is the amount properly due and payable under this deed.
- (d) In each of the [REDACTED] immediately following the month that the SCAW Contractor submits its payment claim for the Initial Payment in accordance with clause 20.13(b), the amount payable to the SCAW Contractor in connection with the payment claim made by the SCAW Contractor under clause 20.2 for that respective month will be reduced by [REDACTED] of the value of the Initial Payment.
- (e) If this deed is terminated, for any reason, prior to the date falling [REDACTED] after the date of payment by the Principal of the Initial Payment in accordance with clause 20.13(a), then the SCAW Contractor must repay to the Principal the amount equal to the difference between:
  - (i) the value of the Initial Payment; and
  - (ii) the aggregate of the amounts deducted in accordance with clause 20.13(d) of this deed from the payment claims made by the SCAW Contractor in each of the months immediately following the month that the SCAW Contractor submitted its payment claim for the Initial Payment up until the date that this deed was terminated.
- (f) If the SCAW Contractor does not pay the amount contemplated in clause 20.13(e) within 5 Business Days of the date of termination of this deed, the Principal may have recourse to any of the unconditional undertakings provided under clause 6.1(a) or clause 20.13(a).
- (g) Subject to the Principal's rights to have recourse to the unconditional undertaking and to the cash proceeds if the unconditional undertaking is converted into cash, the Principal's entitlement to the unconditional undertakings provided under clause 20.13(a) will cease on the date which is 20 Business Days after the date on which

the Payment Claims submitted by the SCAW Contractor cease to be reduced in accordance with clause 20.13(d).

**20.14 Post-Award Performance Incentive Payment Regime**

- (a) The Principal's Representative may, after the date of this deed, in its absolute discretion and without being under any obligation to do so, direct the implementation of a performance incentive payment regime by giving written notice to the SCAW Contractor.
- (b) Any notice issued by the Principal's Representative under clause 20.14(a) will set out detailed particulars of:
  - (i) the key performance indicators, measurement criteria and benchmarks;
  - (ii) the calculation of the relevant performance incentive payments and the process for payment; and
  - (iii) any other information that is necessary for the implementation of the performance incentive payment regime.
- (c) Any performance incentive payment regime which is the subject of a notice under clause 20.14(a) will not:
  - (i) relieve the SCAW Contractor from or alter its liabilities or obligations under this deed or otherwise according to Law;
  - (ii) entitle the SCAW Contractor to make (nor will it make the Principal liable upon) any Claim (including any Change) arising out of or in any way in connection with the direction; and
  - (iii) limit or otherwise affect the Principal's rights against the SCAW Contractor, whether under this deed or otherwise according to Law.
- (d) No payment made by the Principal, if any, pursuant to a performance incentive payment regime contemplated by this clause 20.14 will:
  - (i) constitute approval of any work or other activities performed by the SCAW Contractor or prejudice any Claim by the Principal whether under this deed or otherwise at Law; or
  - (ii) constitute evidence of the value of any work or other activities, an admission of liability or evidence that any work or other activities have been performed in accordance with the requirements of this deed.
- (e) Any performance incentive payment made by the Principal under this clause 20.14, if any, will be additional to the Project Contract Sum.

**20.15 Performance Amount**

The SCAW Contractor will be entitled to claim the Performance Amount, if any, in accordance with the Performance Incentive Regime Schedule.

## 21. GST

### 21.1 Interpretation

- (a) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 20.13(f).
- (b) Unless otherwise expressly stated, all consideration to be provided under this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 20.13(f).

### 21.2 GST payable

- (a) If GST is or will be payable in relation to a supply made by a party (the **Supplier**) under or in connection with this deed, then the party who is the recipient of the supply (the **Recipient**) must pay an additional amount to the Supplier equal to the amount of GST payable on the supply (**GST Amount**) at the same time as any other consideration is to be first provided for that supply.
- (b) Subject to clause 21.6, the Supplier must provide a tax invoice to the Recipient for the supply no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 21.2(a).

### 21.3 Adjustments

- (a) If the GST Amount payable in relation to a supply made under or in connection with this deed varies from the GST Amount paid by the Recipient under clause 21.2(a), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient subject to the issue of an adjustment note (except where the Recipient is required to issue a recipient created adjustment note).
- (b) If an adjustment event occurs in relation to a supply made under or in connection with this deed, the Supplier must give the Recipient an adjustment note as soon as reasonably practicable after the Supplier becomes aware of the adjustment event, but no later than 28 days after the adjustment event.

### 21.4 Non-monetary consideration

- (a) To the extent that the consideration provided for a taxable supply to which clause 21.2(a) applies is a taxable supply made by the Recipient to the Supplier in the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 21.2(a) shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) Subject to clause 21.6, the Recipient must issue to the Supplier a tax invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 21.2(a).

### 21.5 Reimbursements

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this deed must exclude the amount of GST referable to the cost to the extent to which an entitlement arises to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

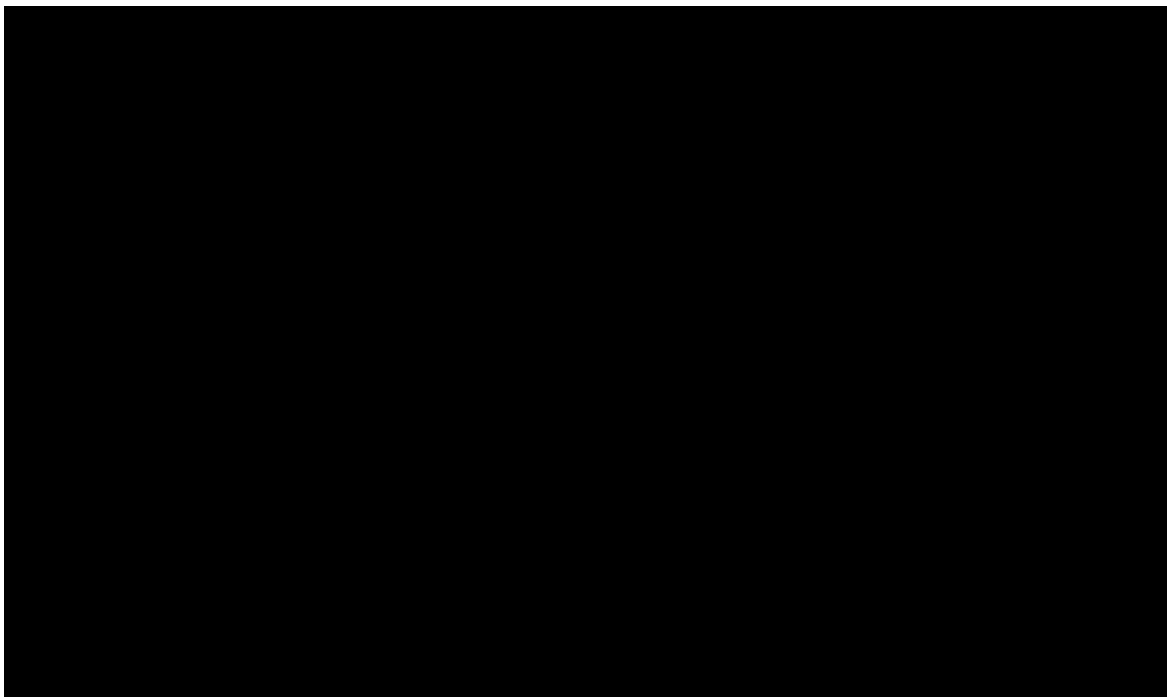
21.6 **Recipient created tax invoices**

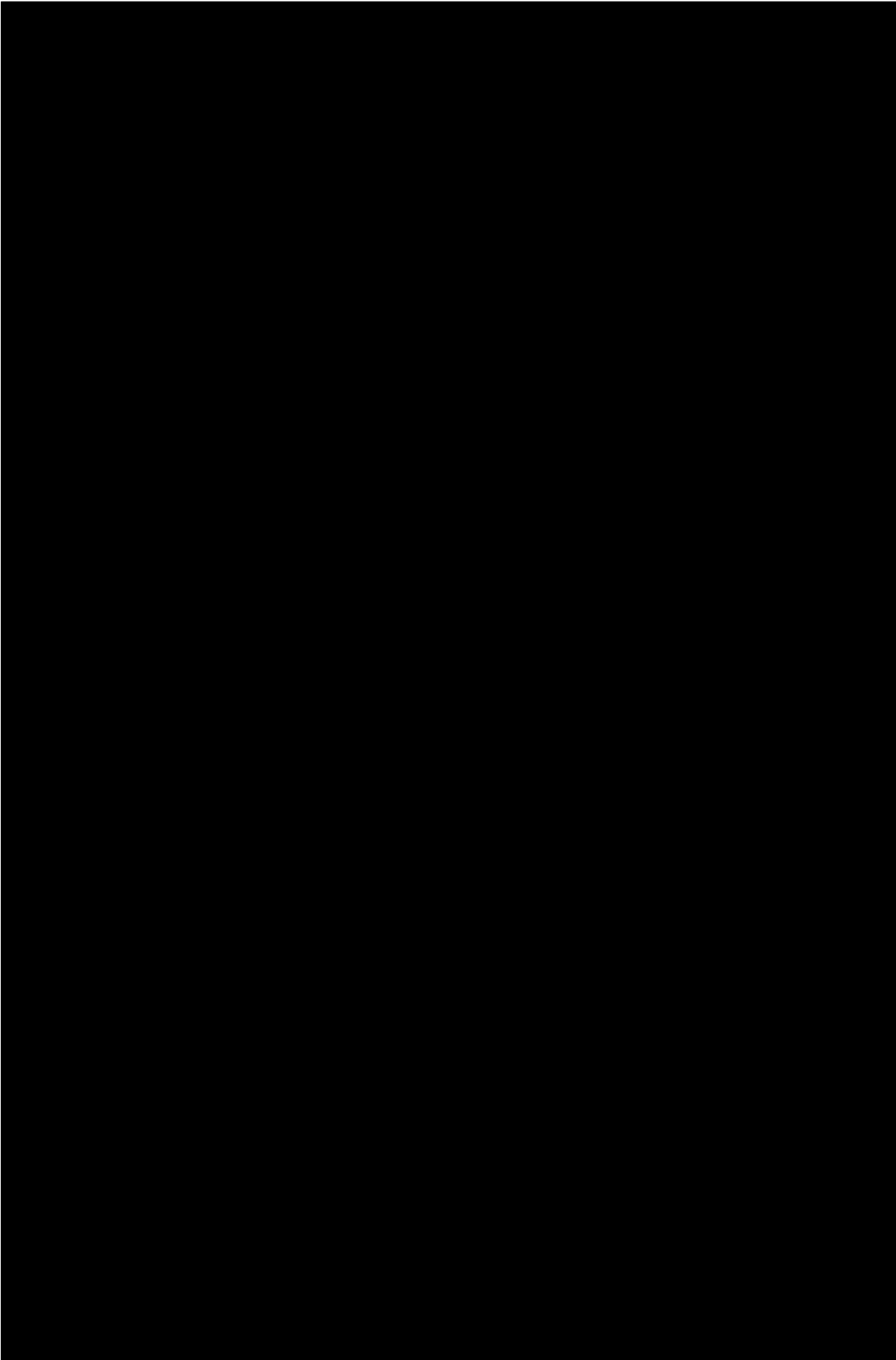
- (a) The parties agree that unless and until otherwise agreed in writing, the following will apply to all taxable supplies made by the SCAW Contractor to the Principal under or in connection with this deed:
  - (i) the Principal will issue to the SCAW Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the SCAW Contractor to the Principal under this deed;
  - (ii) the Principal will issue to the SCAW Contractor a recipient created adjustment note for any adjustment event;
  - (iii) the SCAW Contractor will not issue a tax invoice or adjustment note in respect of any taxable supply it makes to the Principal; and
  - (iv) the Principal may notify the SCAW Contractor that it will no longer issue a RCTI or recipient created adjustment note for each taxable supply made by the SCAW Contractor under this deed, in which case, from that point in time, the Principal will not be required to issue RCTIs and recipient created adjustment notes in respect of such supplies and the SCAW Contractor will be required to issue tax invoices and adjustment notes to the Principal in respect of any such taxable supply.
- (b) Each party acknowledges and warrants that at the time of entering into this deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

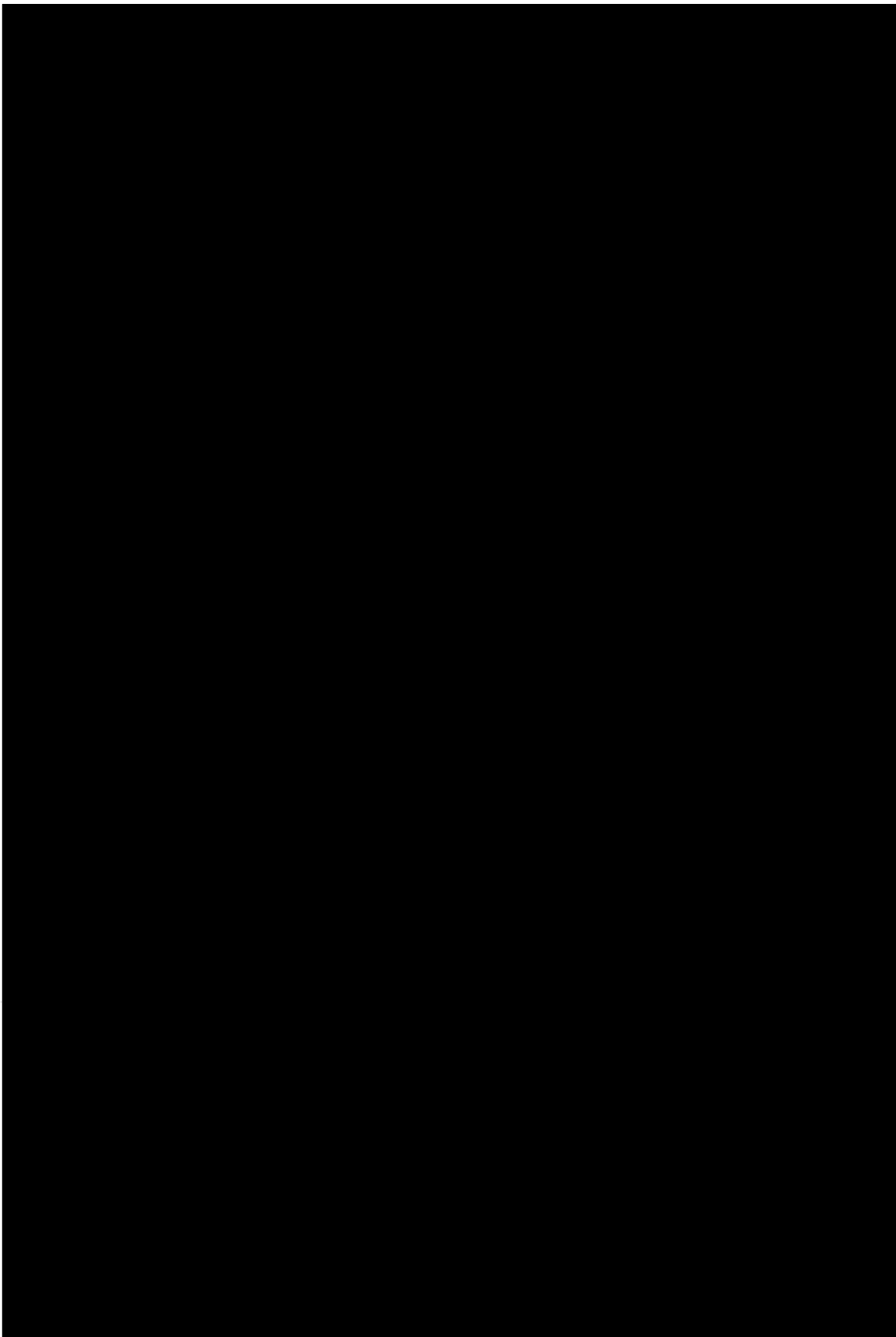
21.7 **No merger**

This clause 21 will not merge on completion or termination of this deed.

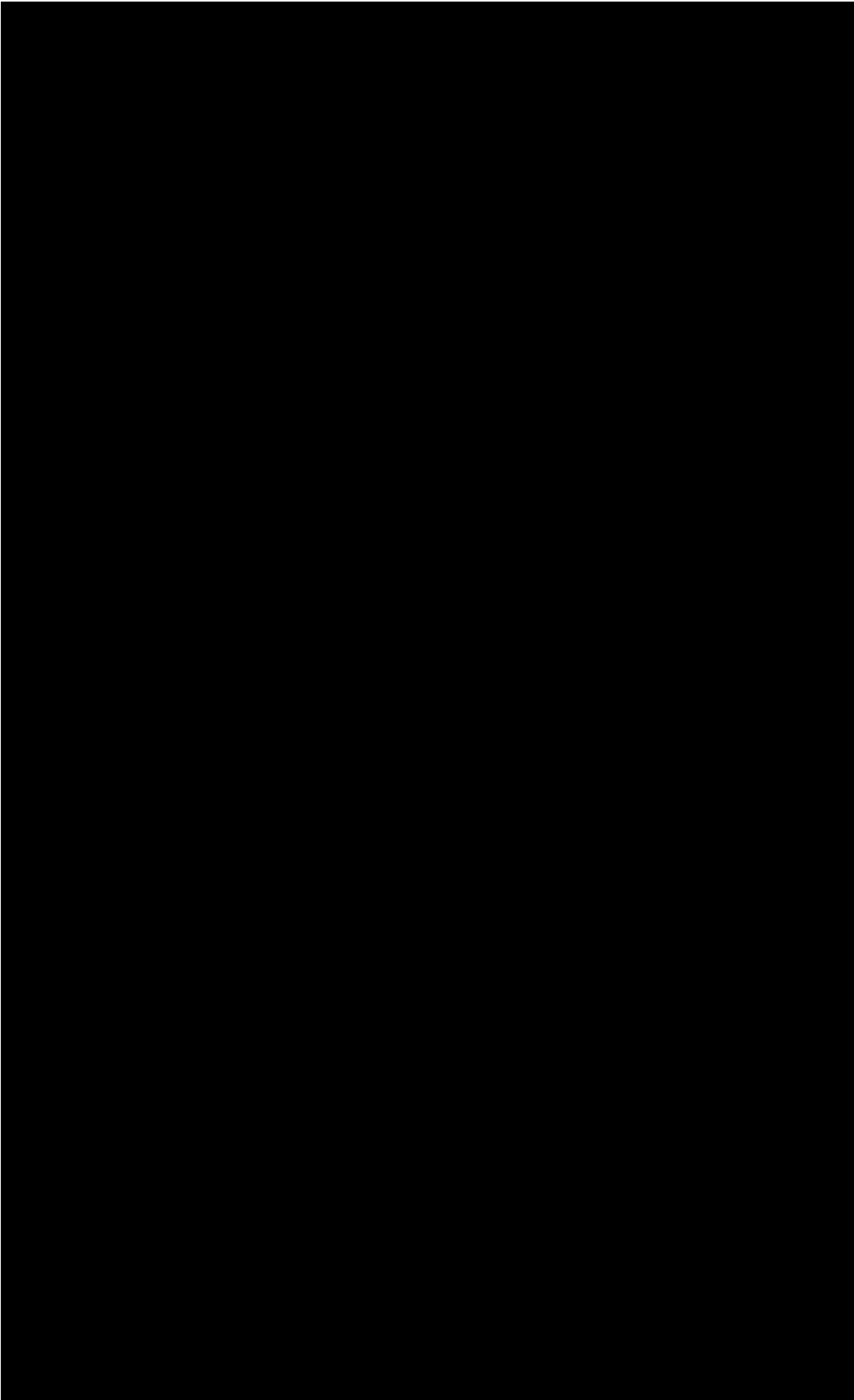
22. **LIABILITY**

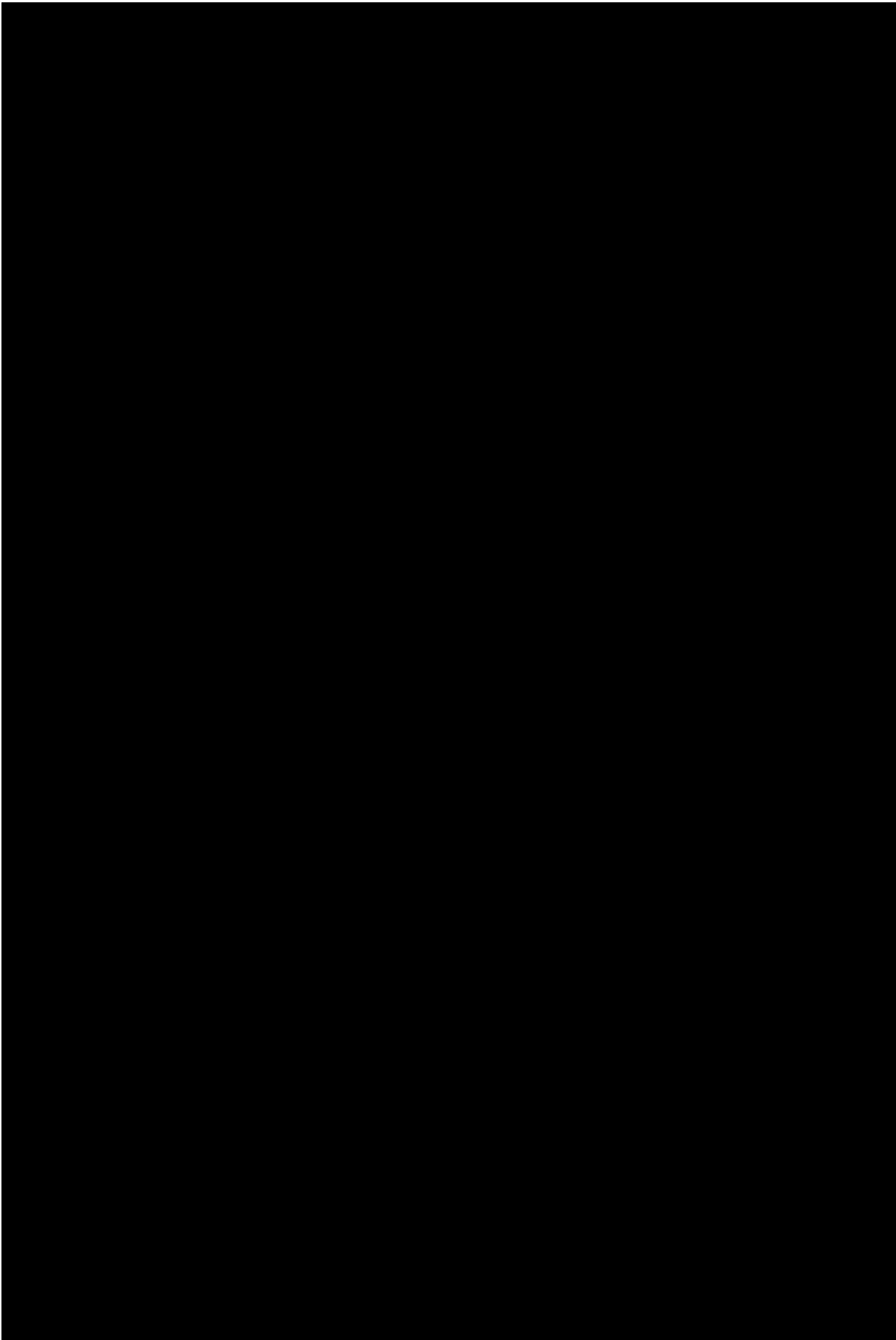


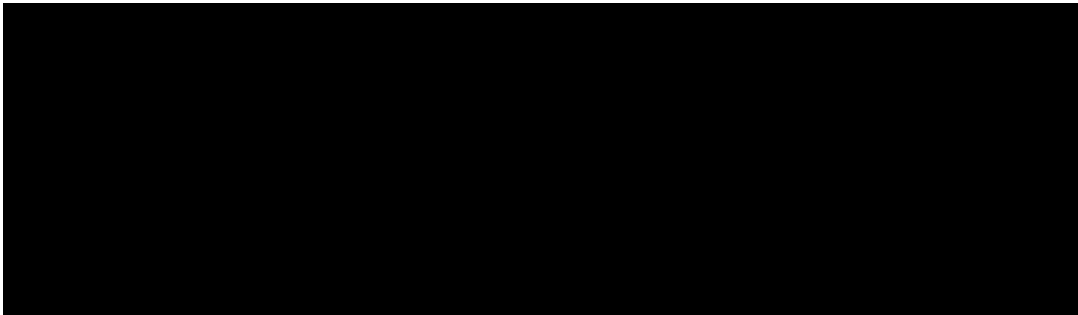












22.8 **Exclusion of proportionate liability scheme**

To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the Principal and the SCAW Contractor under this deed with respect to proportionate liability are as specified in this deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

22.9 **SCAW Contractor not to apply proportionate liability scheme**

To the extent permitted by Law:

- (a) the SCAW Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the SCAW Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against the SCAW Contractor (whether in contract, tort or otherwise), the SCAW Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the SCAW Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

22.10 **Insurance requirements**

The SCAW Contractor must ensure that all policies of insurance covering third party liability which it is required by this deed to effect or maintain (including the asbestos liability insurance policy referred to in clause 23.7, the motor vehicle policy referred to in clause 23.10 and the marine hull insurance policy referred to in clause 23.12):

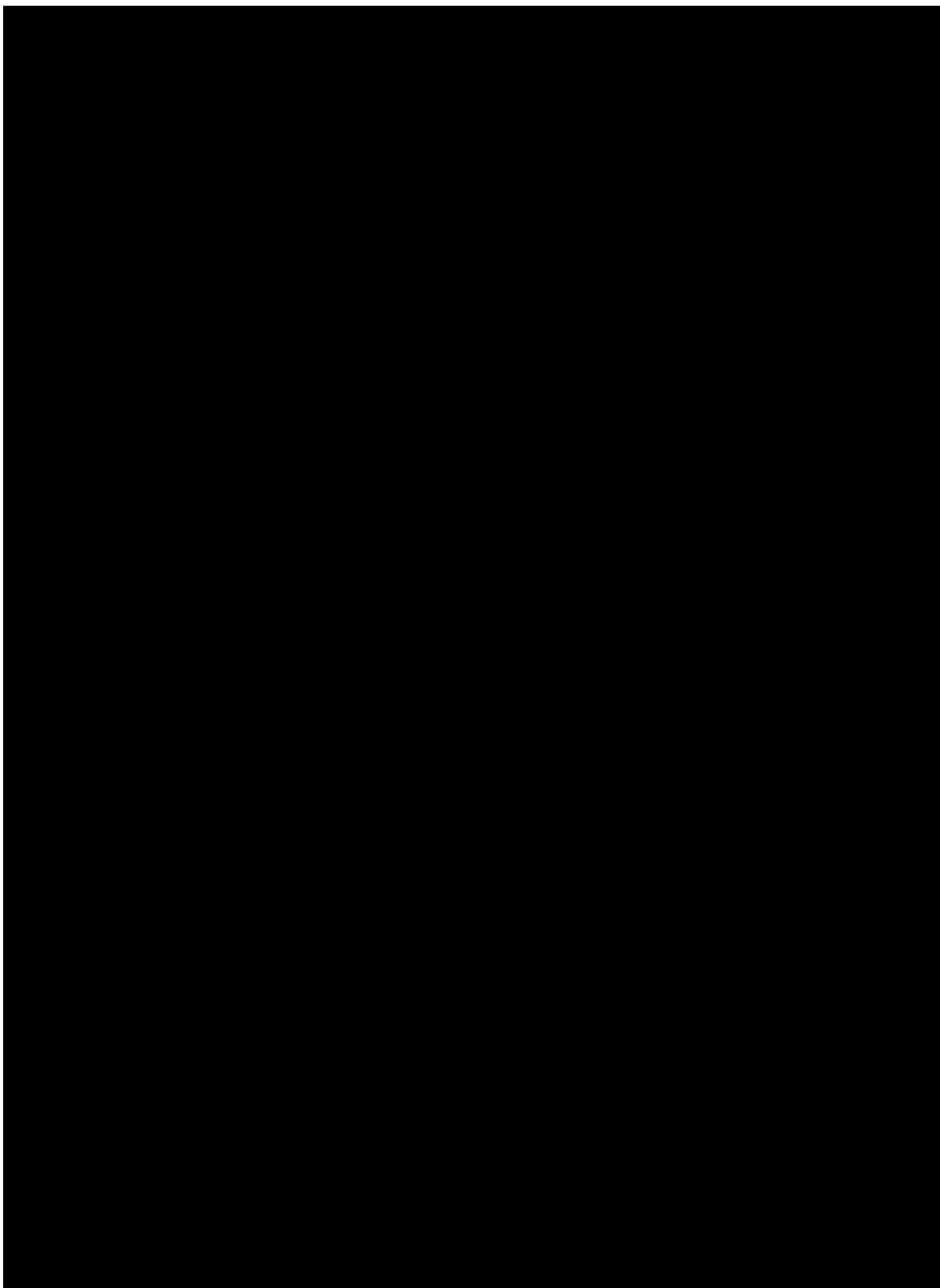
- (a) cover the SCAW Contractor for potential liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
- (b) do not exclude any potential liability the SCAW Contractor may have to the Principal under or by reason of this deed.

22.11 **Survival**

This clause 22 applies:

- (a) notwithstanding and survives any termination of this deed (including a termination as result of a default or an Insolvency Event in relation to the SCAW Contractor);
- (b) notwithstanding any other provision of this deed; and

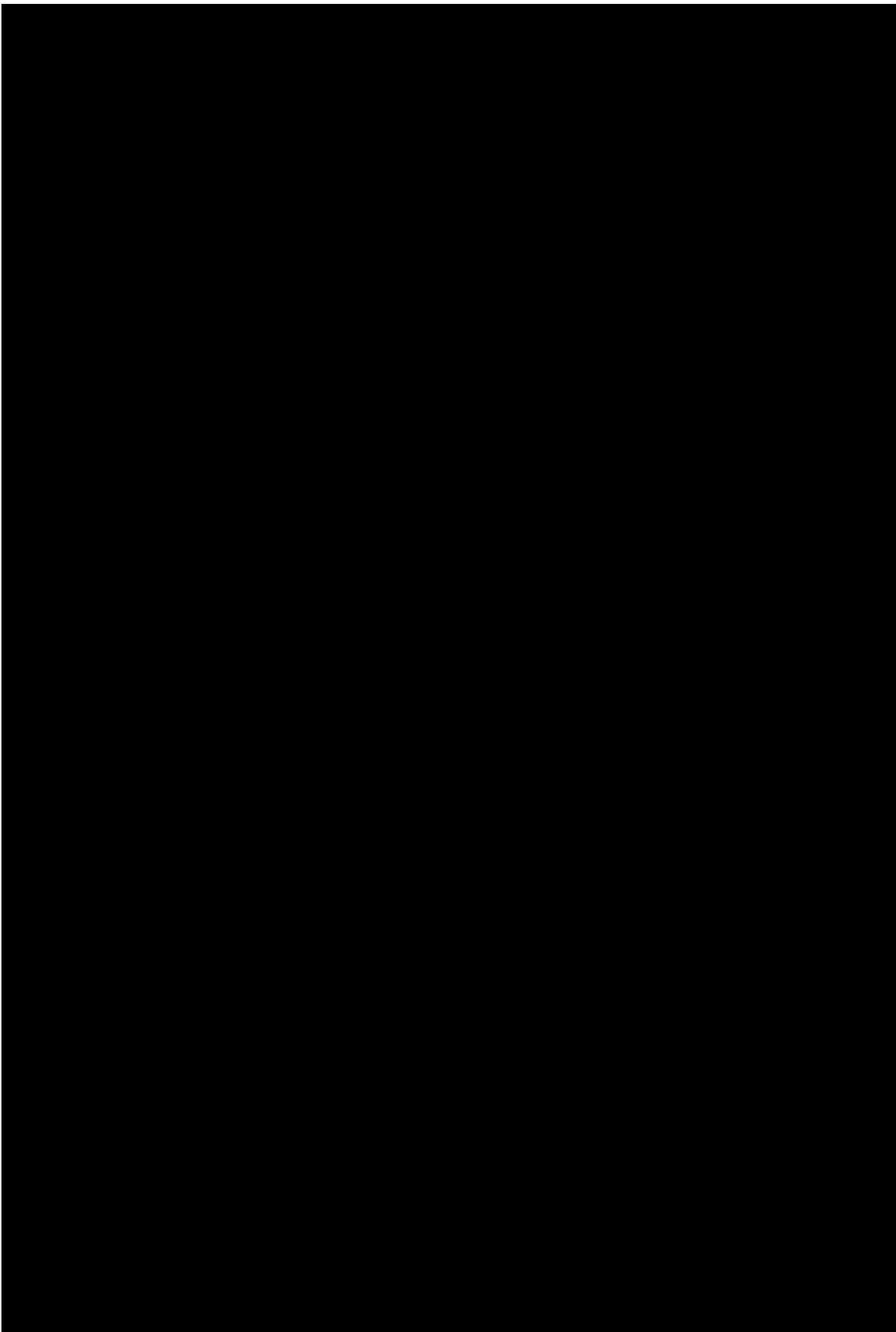
- (c) to the maximum extent permitted by Law (present or future) and subject to clause 32.19.

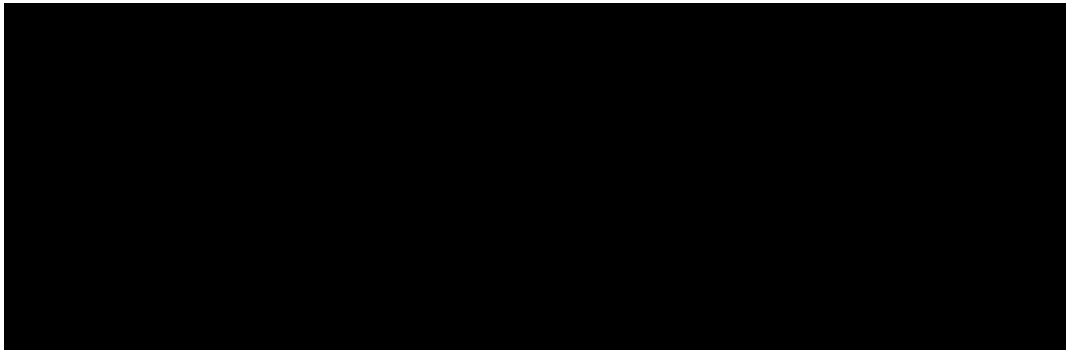


23. **RISKS AND INSURANCE**

23.1 **Responsibility for care of the Project Works**

- (a) Subject to clause 23.1(d), the SCAW Contractor is, in respect of each Portion, responsible for the care of, and bears the risk of destruction, loss or damage to:
- (i) the SCAW Contractor's Activities, the Project Works and the Temporary Works and any Extra Land, from the date of this deed; and
  - (ii) the relevant parts of the Construction Site, from the date on which access is granted under clause 12.1 or 12.2(a)(i),
- which occurs up to and including:
- (iii) in respect of each discrete part of the Third Party Works, the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with the requirements of this deed; and
  - (iv) otherwise, the Portion Handover Date for the relevant Portion.
- (b) Subject to clause 23.1(d), the SCAW Contractor will also bear the risk of any destruction, loss of or damage to a part of the Project Works or any other thing referred to in clause 23.1(a) caused by, arising out of or in any way in connection with the performance of those SCAW Contractor's Activities (including the rectification of any Defect) occurring:
- (i) in respect of each discrete part of the Third Party Works, after the point in time when the relevant discrete part of the Third Party Works has been completed in accordance with the requirements of this deed; or
  - (ii) otherwise, after the Portion Handover Date for the relevant Portion.
- (c) Subject to clause 23.1(d), the SCAW Contractor must:
- (i) in accordance with clause 23.20, (at its own cost) promptly make good destruction, loss or damage to anything caused during the period the SCAW Contractor is responsible for its care; and
  - (ii) indemnify the Principal against such destruction, loss or damage.
- (d) This clause 23.1 does not apply to the extent that any destruction, loss or damage for which the SCAW Contractor would otherwise have been responsible or bears the risk of or is obliged to indemnify the Principal against under this clause results from an Excepted Risk.
- (e) Where any destruction, loss or damage arises to any extent from an Excepted Risk or to the extent from a wrongful act or omission of the Principal or its Associates, or a breach of this deed by, the Principal or its Associates, the Principal's Representative must direct the SCAW Contractor either to make good or repair in whole or in part, or not to make good or repair in whole or in part, the destruction, loss or damage in which event such direction will, to the extent the destruction, loss or damage arises from an Excepted Risk or to the extent from a wrongful act or omission of the Principal or its Associates, or a breach of this deed by, the Principal or its Associates, be treated as if it were a Change the subject of a direction by the Principal's Representative and clause 15 applies.





**23.4 Principal's insurance**

- (a) The Principal must:
  - (i) on or before [REDACTED] effect and maintain the project specific professional indemnity insurance on the terms of the policy set out in Schedule E6; and
  - (ii) on or before the Condition Precedent Deadline Date, effect and maintain all other insurances on the terms of the policies set out in Schedule E6.
- (b) Such insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies and the SCAW Contractor must:
  - (i) satisfy itself of the nature and extent of the cover provided by these insurance policies; and
  - (ii) acknowledge that the Principal's insurances do not cover every risk to which the SCAW Contractor might be exposed and are subject to deductibles and limits and the SCAW Contractor may, if it chooses to do so, at its cost effect insurance for any risk or liability which is not covered by the Principal's insurances.
- (c) The Principal may in its discretion have other insureds named or included in the policy or policies referred to in clause 23.4, including the Commonwealth, Airport Lessee and any Authority or Third Party with an interest in the Project Works, the Temporary Works, the Construction Site or any other areas affected by the SCAW Contractor's Activities.

**23.5 SCAW Contractor's insurance obligations**

The SCAW Contractor must effect and maintain the following insurance:

- (a) workers compensation insurance referred to in clause 23.6;
- (b) asbestos liability insurance referred to in clause 23.7;
- [REDACTED]
- (d) Construction Plant insurance referred to in clause 23.9;
- (e) motor vehicle insurance referred to in clause 23.10;
- (f) marine transit insurance referred to in clause 23.11;
- (g) marine hull insurance referred to in clause 23.12; and

(h) marine liability insurance referred to in clause 23.13.

**23.6 Workers compensation insurance**

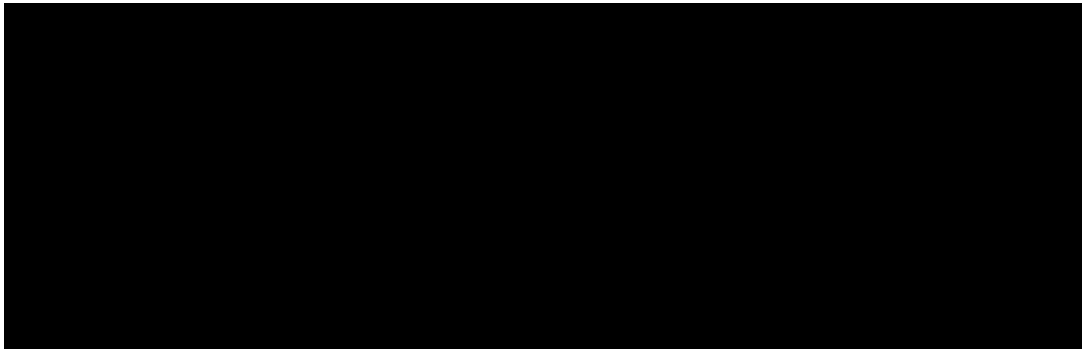
(a) The SCAW Contractor must effect and maintain workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:

- (i) for the maximum amount required by Law; and
- (ii) in the name of the SCAW Contractor and (if legally possible) extended to indemnify the Principal for its statutory liability to persons employed or deemed to be employed by the SCAW Contractor.

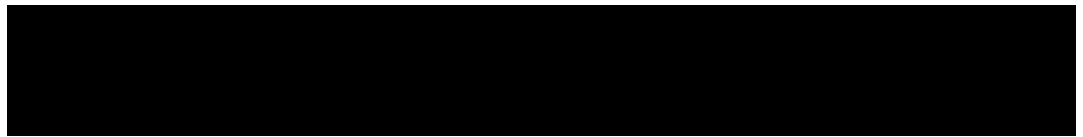
(b) The SCAW Contractor must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:

- (i) for the maximum amount required by Law; and
- (ii) in the name of the Subcontractor and (if legally possible) extended to indemnify the Principal and the SCAW Contractor for their statutory liability to persons employed or deemed employed by the Subcontractor.

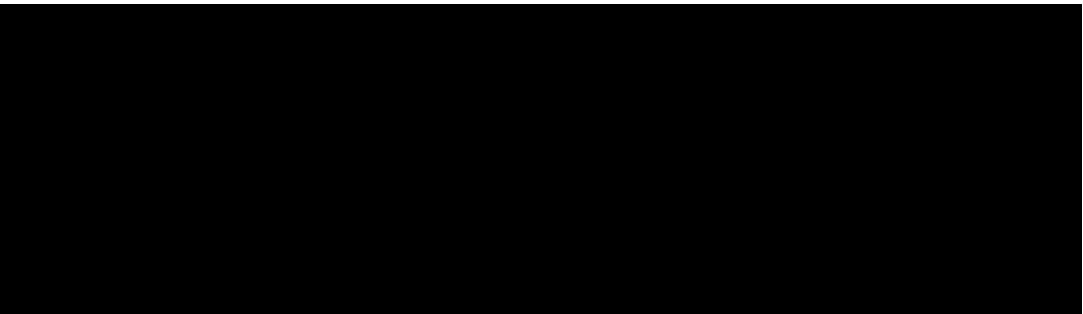
**23.7 Asbestos liability insurance**



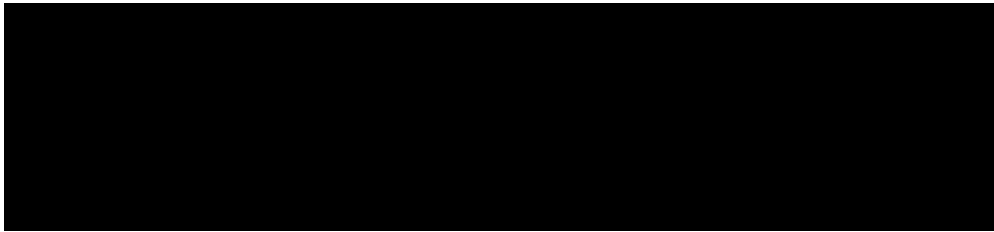
**23.9 Construction Plant insurance**



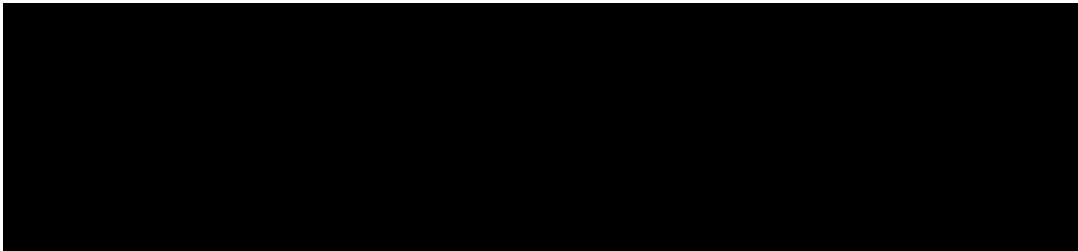
**23.10 Motor vehicle insurance**



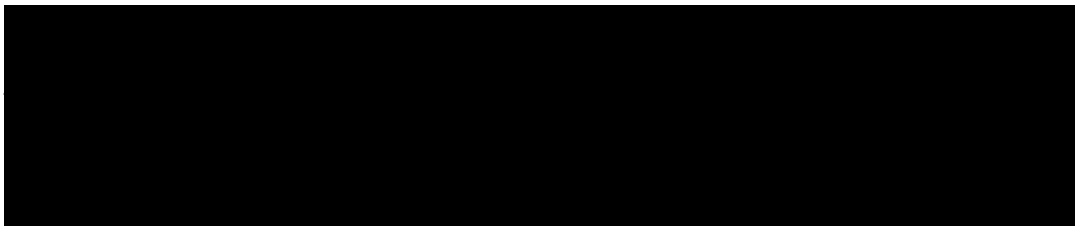




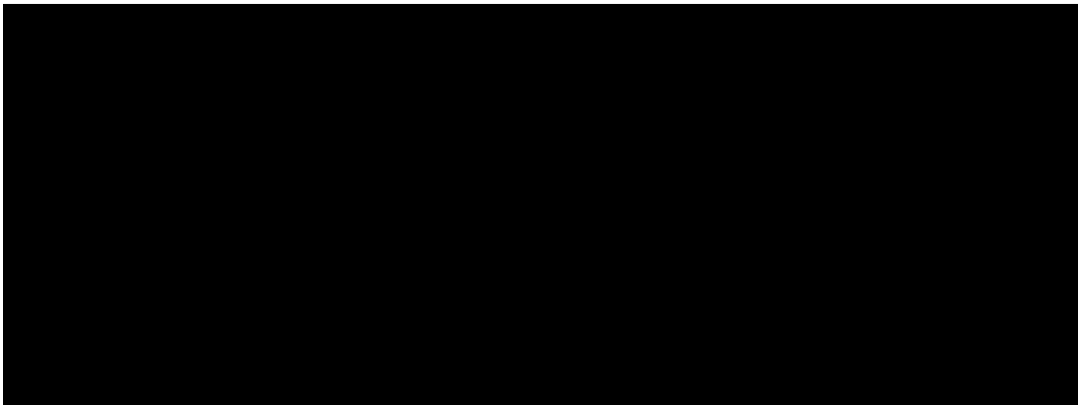
23.11 **Marine transit insurance**



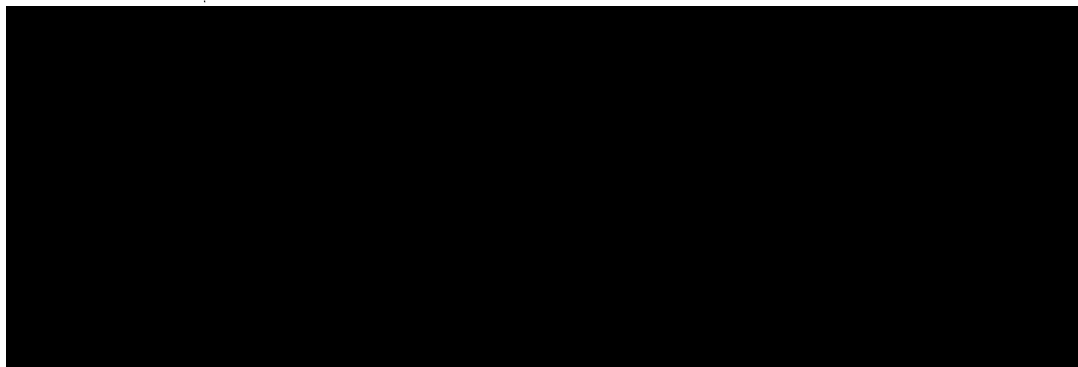
23.12 **Marine hull insurance**

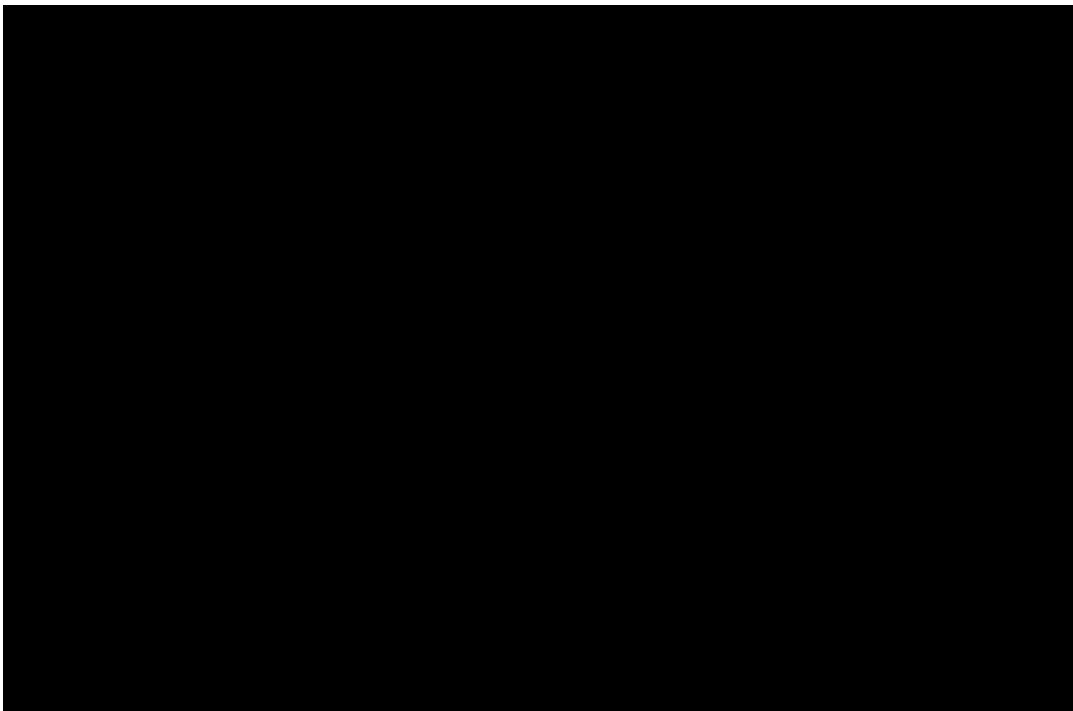


23.13 **Marine liability insurance**

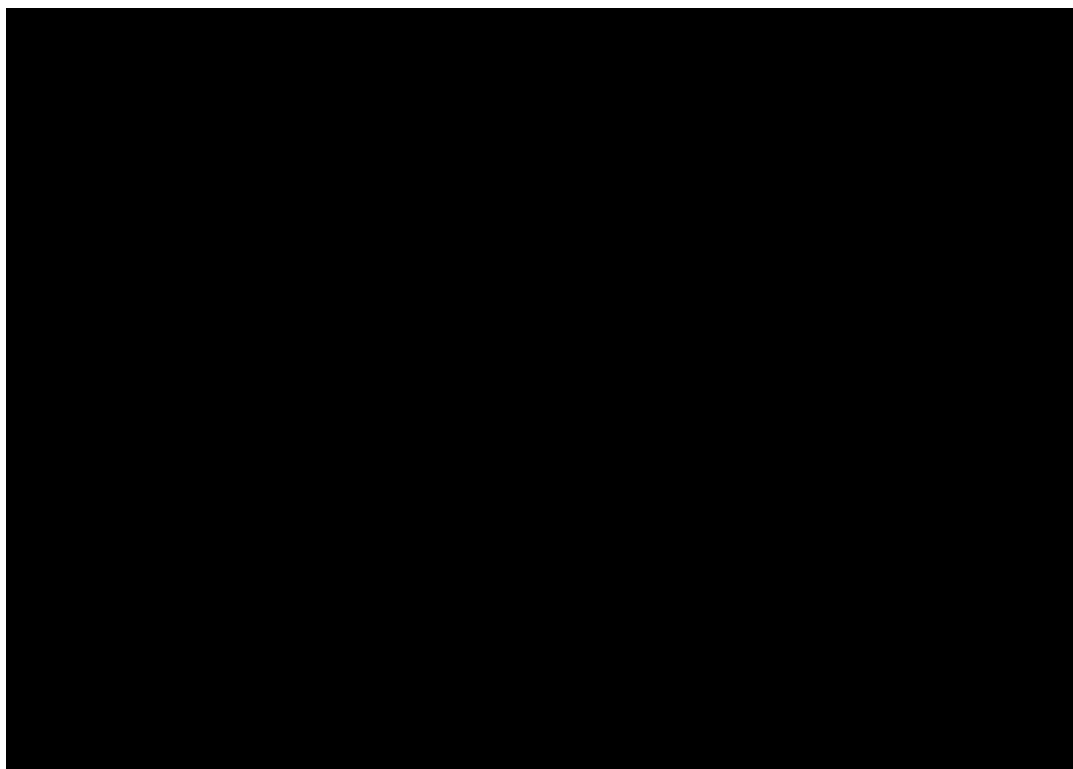


23.14 **Periods of insurance**



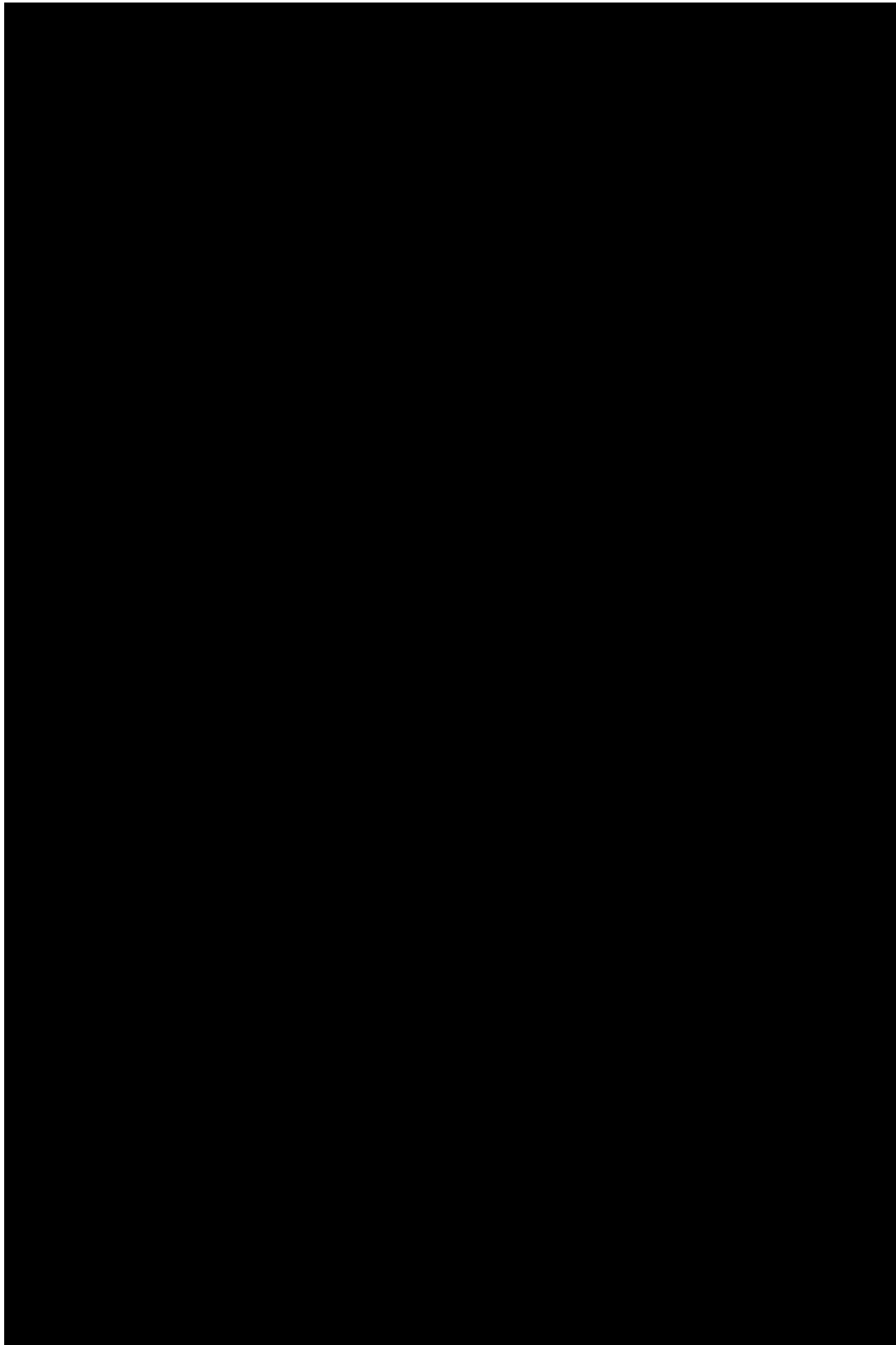


23.15 **Evidence of policies**

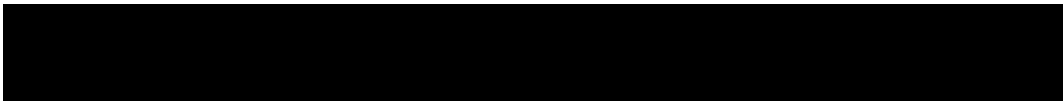


23.16 **Provisions in policies**



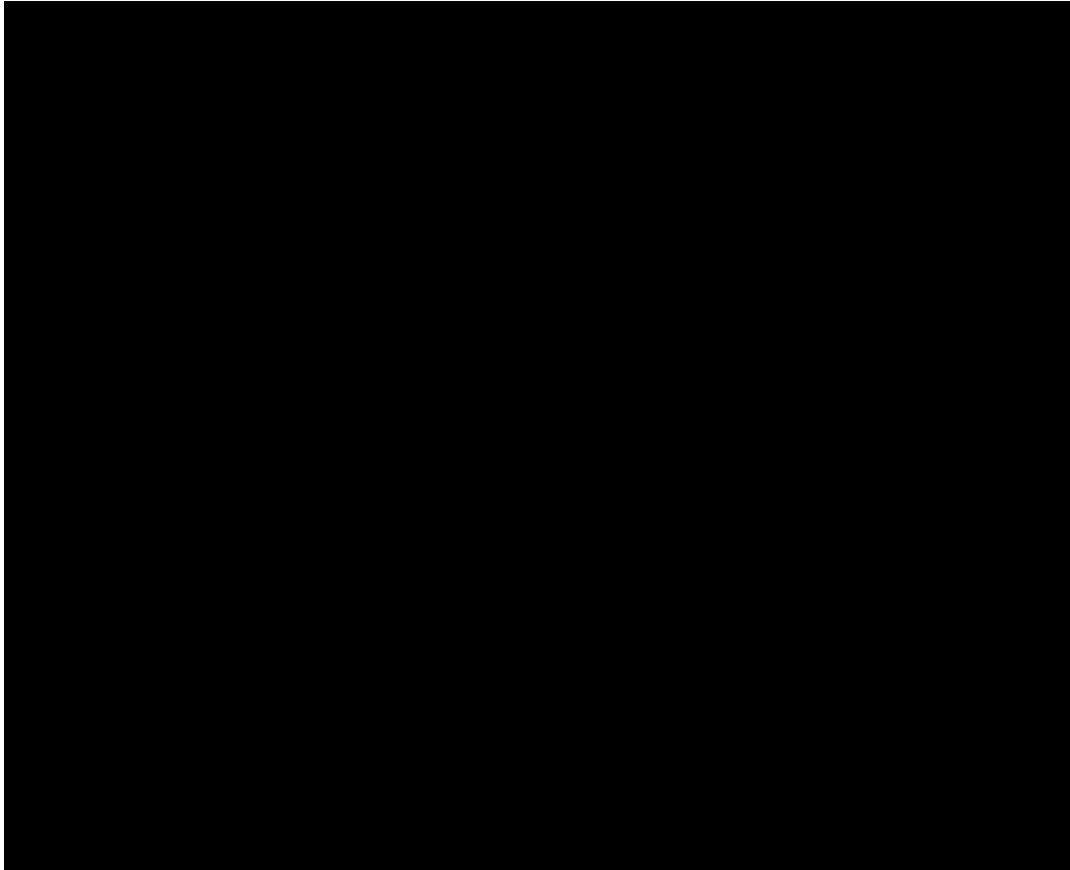


23.17 **Premiums**

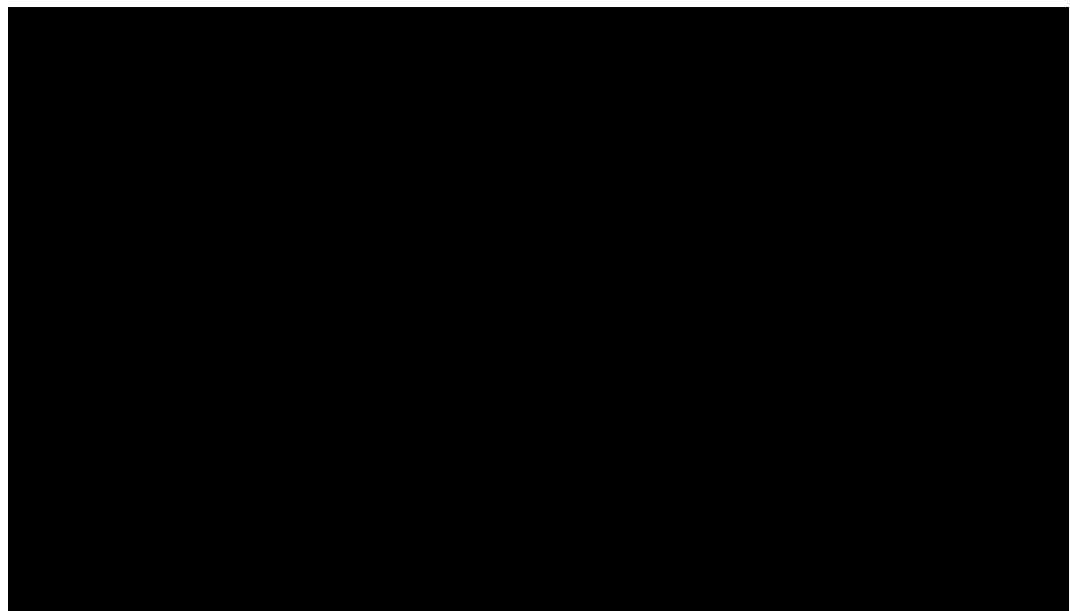




23.18 **Undertaking to inform**



23.19 **Notices and requirements of claims**



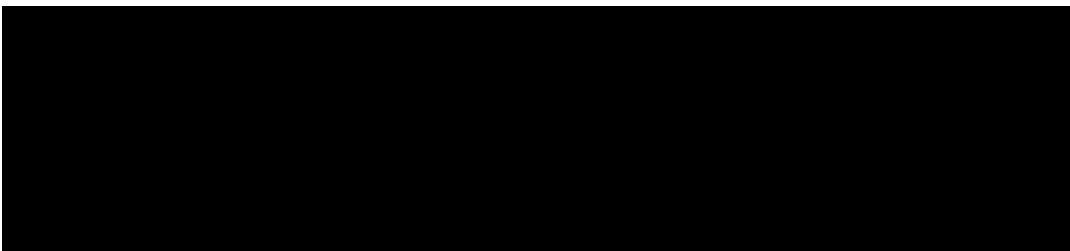


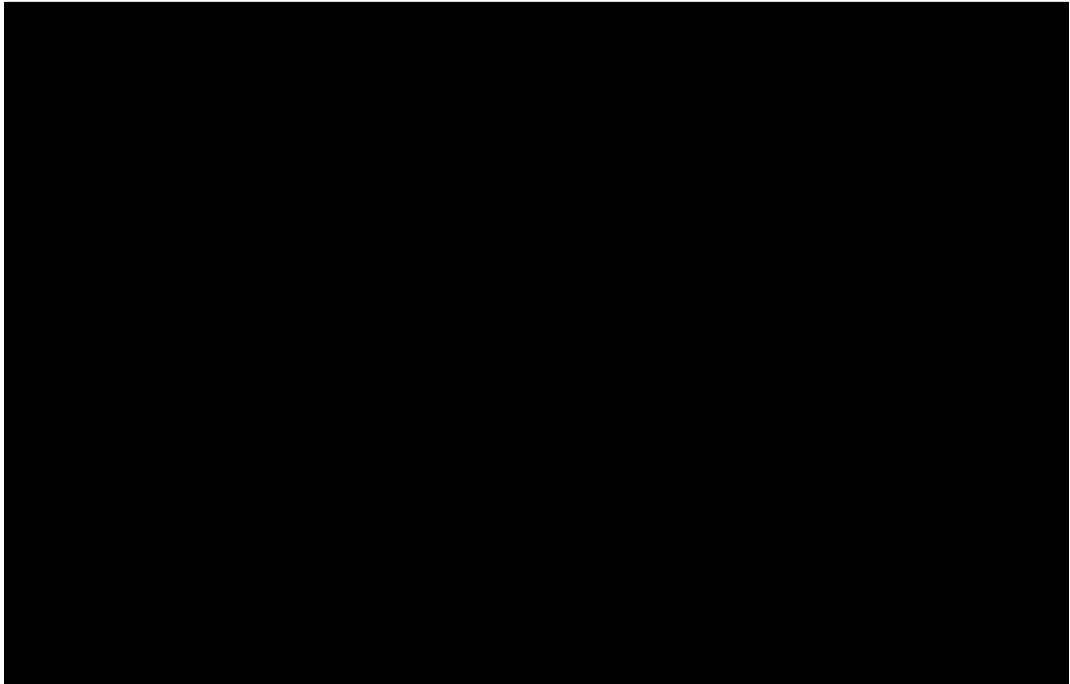
**23.20 Reinstatement**

If, prior to the time the SCAW Contractor ceases to be responsible under clause 23.1(a) for the care of a part of the Project Works or the Temporary Works or any other thing referred to in clause 23.1(a), any destruction, damage or loss occurs to the Project Works or the Temporary Works, the SCAW Contractor must:

- (a) make secure the Project Works and the Temporary Works and the parts of the Construction Site which are still under the control of the SCAW Contractor in accordance with clause 12.5;
- (b) notify:
  - (i) appropriate Authorities, emergency services and the like; and
  - (ii) the insurers for assessment,and comply with their instructions;
- (c) promptly consult with the Principal to agree on steps to be taken to ensure:
  - (i) the prompt repair or replacement of the destruction, loss or damage so that:
    - (A) it complies with the SCAW Specification; and
    - (B) there is minimal disruption to the Project Works or the Temporary Works; and
  - (ii) that, to the greatest extent possible, the SCAW Contractor continues to comply with its obligations under this deed;
- (d) subject to clause 23.1(e), manage all repair and replacement activities so as to minimise the impact on the Project Works or the Temporary Works; and
- (e) keep the Principal's Representative fully informed of the progress of the repair and replacement activities.

**23.21 Application of insurance proceeds**



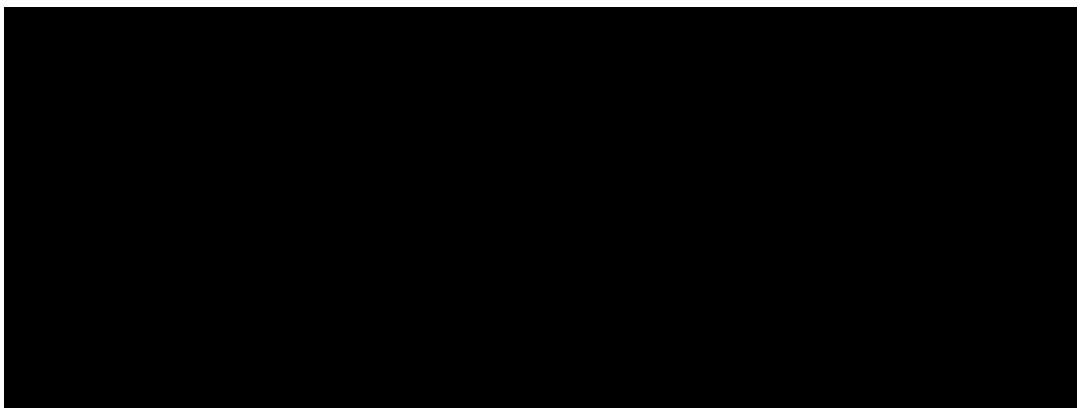


**23.22 Damage to property**

- (a) Subject to clause 23.22(c), where any loss of or destruction or damage to real or personal property or the Environment (including any Utility Services but excluding the Project Works or the Temporary Works) occurs arising out of, or in any way in connection with, the carrying out by the SCAW Contractor of the SCAW Contractor's Activities or a failure by the SCAW Contractor to comply with its obligations under this deed, the SCAW Contractor must, at its cost, promptly repair and make good any such loss, destruction or damage.
- (b) If the SCAW Contractor fails to carry out any repair work under clause 23.22(a), the Principal may carry out such work or engage others to carry out such work and any Loss suffered or incurred by the Principal will be a debt due and payable from the SCAW Contractor to the Principal.
- (c) This clause 23.22 does not apply where the owner of the real or personal property does not agree to the SCAW Contractor carrying out the work under clause 23.22(a).
- (d) Nothing in this clause 23.22 limits the operation of the indemnity in clause 23.2(a).



**23.23 Risk of deductibles or excesses**



24. **TERMINATION BY PRINCIPAL**

24.1 **Notice of default**

The Principal may give a written notice to the SCAW Contractor if the SCAW Contractor is in breach of this deed in that it:

- (a) does not commence the performance of its obligations in accordance with the requirements of this deed;
- (b) does not progress the SCAW Contractor's Activities in accordance with clause 19.1;
- (c) suspends the SCAW Contractor's Activities (except to the extent required by this deed or permitted by Law);
- (d) fails to provide any unconditional undertaking in accordance with clause 6.1 or 20.7(a)(i)(A);
- (e) fails to provide any Parent Company Guarantee in accordance with clause 6.9;
- (f) fails to effect and maintain any insurances required to be effected and maintained by the SCAW Contractor, or fails to provide evidence of such insurances, in accordance with clause 23;
- (g) commits a material breach of clause 7.1, 7.2 or 7.3;
- (h) commits a material breach of clause 8.6;
- (i) fails to comply with its obligations under the Independent Certifier Deed and this results in the termination of the Independent Certifier Deed;
- (j) does not comply with any Direction of the Principal's Representative made in accordance with this deed;
- (k) knowingly provides a statutory declaration or documentary evidence which contains a statement that is untrue;
- (l) fails to pay a sum of money due and owing to the Principal in accordance with this deed and the sum remains unpaid 20 Business Days after the Principal has made a written demand for payment;
- (m) fails to provide access in accordance with clause 12.2(k)(iii); or
- (n) is otherwise in breach of a material or substantial term of, or obligation under, this deed,

**(Default Notice).**

24.2 **Contents of notice**

The notice under clause 24.1 must state:

- (a) that it is a notice under clause 24.1;
- (b) the breach relied upon; and
- (c) that the Principal requires the SCAW Contractor to:
  - (i) remedy the breach or overcome its effects; or

- (ii) where the breach cannot be remedied, make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the notice (which period must not be less than 15 Business Days from the date of the notice).

#### 24.3 **Rights of the Principal following Default Notice**

Subject to clause 24.9, if:

- (a) the SCAW Contractor fails:
  - (i) subject to clause 24.4(d), to remedy a breach of this deed the subject of a Default Notice or overcome its effects within the period of time specified in the Default Notice; or
  - (ii) where a breach of this deed the subject of a Default Notice cannot be remedied, to make other arrangements to the satisfaction of the Principal within the period of time specified in the Default Notice,

then the Principal may, by notice in writing to the SCAW Contractor:

- (b) take out of the hands of the SCAW Contractor the whole or part of the work remaining to be completed; or
- (c) terminate this deed.

#### 24.4 **Termination or take out by the Principal for insolvency or breach**

- (a) Subject to clause 24.9, if:
  - (i) an Insolvency Event occurs in relation to:
    - (A) the SCAW Contractor; or
    - (B) where the SCAW Contractor comprises more than one person, any one of those persons; or
    - (C) [REDACTED], any SCAW Contractor Guarantor, whether or not the SCAW Contractor is then in breach of this deed;
  - (ii) the SCAW Contractor is in fundamental breach as contemplated in clause 4.6(b)(i);
  - (iii) [REDACTED] one or more of the Parent Company Guarantees provided under clause 6.9 becomes void or voidable or otherwise ceases to be in full force and effect;
  - (iv) the SCAW Contractor is in breach of clause 9;
  - (v) the SCAW Contractor abandons [REDACTED] its obligations under this deed;
  - (vi) a Change in Control occurs in respect of an entity that comprises the SCAW Contractor without the prior written consent of the Principal (other than a Change in Control permitted under clause 26.2(c));

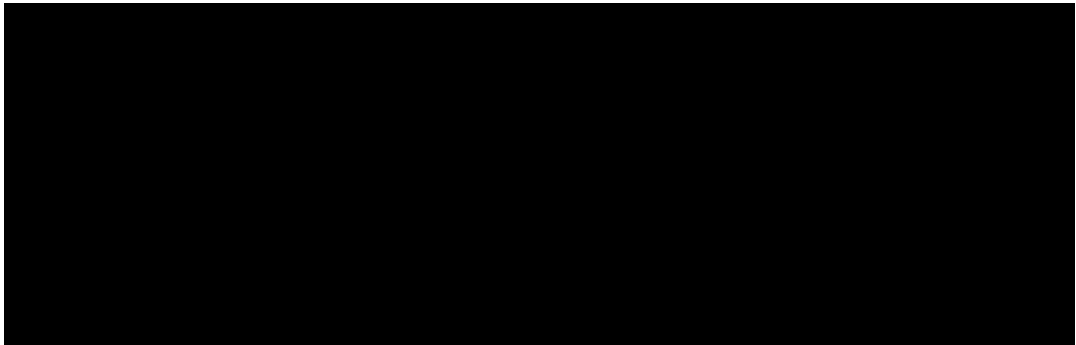


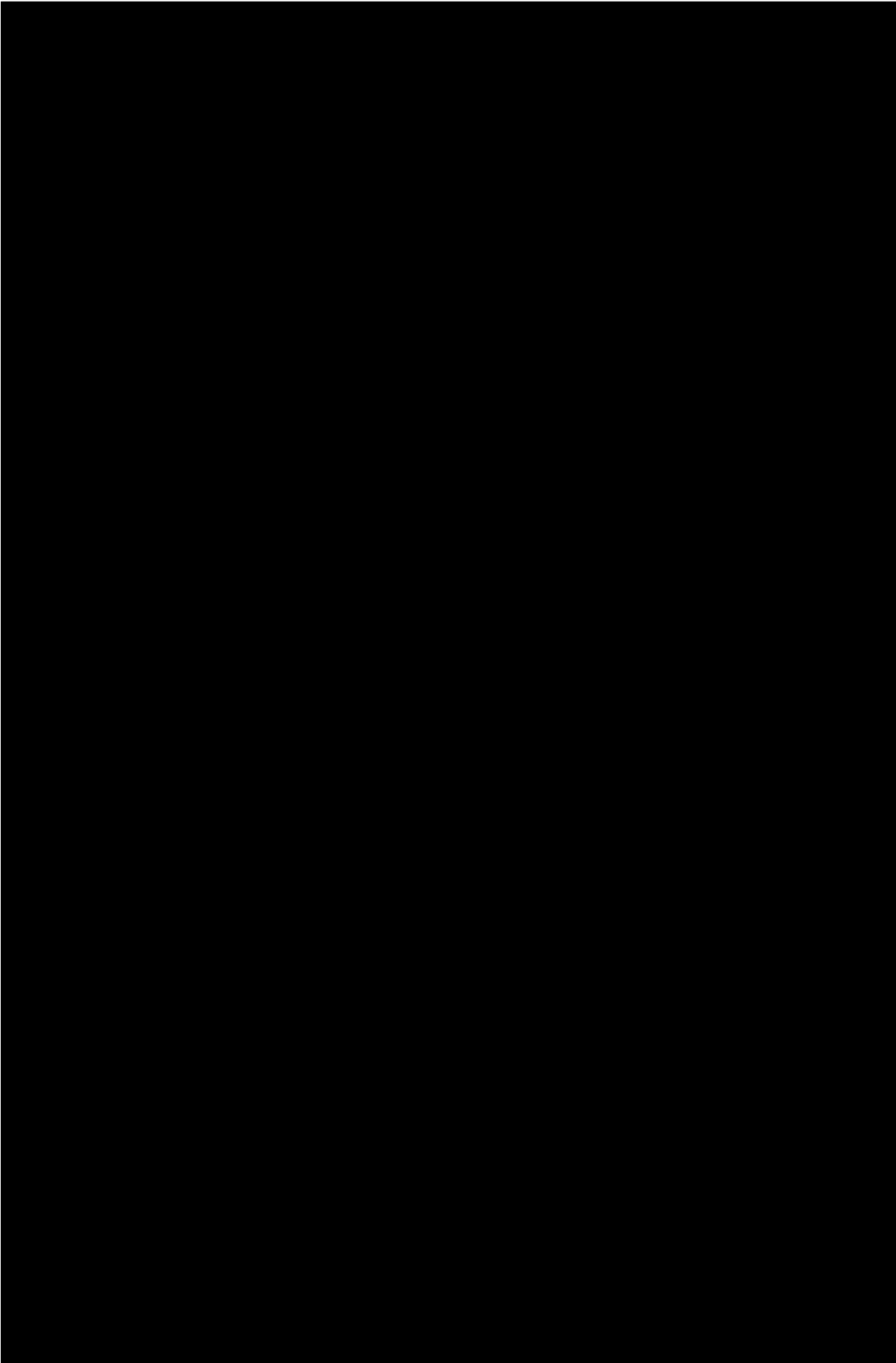
- (vii) a Change in Control occurs in respect of a SCAW Contractor Guarantor without the prior written consent of the Principal (other than a Change in Control permitted under clause 26.3(c));
- (viii) [REDACTED] a Restructure Event occurs;
- (ix) the aggregate liability of the SCAW Contractor under or in connection with the SCAW Contract Documents is equal to or exceeds [REDACTED] of the Project Contract Sum;
- (x) the aggregate liability of the SCAW Contractor to the Principal under or in connection with any one or more of clauses 19.11(d) and 19.11(i)(ii) is equal to or exceeds [REDACTED] of the Project Contract Sum; or
- (xi) Substantial Completion of a Portion has not occurred by the date that is 10 months after the Date for Substantial Completion of that Portion,

the Principal may, whether or not the SCAW Contractor is then in breach of this deed and without giving a notice under clause 24.1, exercise a right under clause 24.3(b) or clause 24.3(c).

- (b) Notwithstanding clause 24.4(a)(i), the Principal may not terminate this deed pursuant to clause 24.3(c) in respect of events provided for in clause 24.4(a)(i)(A) or clause 24.4(a)(i)(B) where:
  - (i) the SCAW Contractor comprises more than one person and an Insolvency Event occurs to one, but not all, of those persons; and
  - (ii) the SCAW Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal that it is still able to carry out the SCAW Contractor's Activities in a manner which will enable it to comply with its obligations under the deed.
- (c) Notwithstanding clauses 24.4(a)(i), 24.4(a)(viii) and 26.4(d), the Principal may not terminate this deed pursuant to clause 24.3(c) in respect of events provided for in:
  - (i) clause 24.4(a)(i)(C), where the SCAW Contractor demonstrates (and continues to demonstrate to the satisfaction of the Principal); or
  - (ii) clause 24.4(a)(viii) or 26.4(d) where the SCAW Contractor demonstrates (and continues to demonstrate) to the satisfaction of the Principal (acting reasonably),

that the remaining or replacement entities comprising the SCAW Contractor or SCAW Contractor Guarantors (as relevant) are of sufficient commercial and financial standing to meet its obligations under this deed or the relevant Parent Company Guarantee (as relevant).





24.5 **The Principal's entitlements after take out or termination**

- (a) If the Principal exercises a right under clause 24.3(b) or clause 24.3(c), the Principal:
- (i) may without payment of compensation to the SCAW Contractor:
    - (A) take possession of, and use (and permit others to use), the Key Plant and Equipment, the Construction Plant, Materials, Utility Services, the Temporary Works and other things on or in the vicinity of the Construction Site and Extra Land as were used by the SCAW Contractor (and, for this purpose, the SCAW Contractor must ensure that the Principal has access to the Extra Land in which the Principal has no interest);
    - (B) contract with such of the Subcontractors; and
    - (C) take possession of, and use (and permit others to use), such of the Design Documentation and other information in the possession of the SCAW Contractor,  
  
as are reasonably required by the Principal to facilitate completion of the SCAW Contractor's Activities (as the case may be) remaining to be completed under this deed as at the date of termination (**Remaining Work**);
  - (ii) may engage third parties to carry out and complete the whole or any part of the Remaining Work;
  - (iii) may exclude from the Construction Site the SCAW Contractor and any other person concerned with the carrying out and completion of the SCAW Contractor's Activities; and
  - (iv) will be entitled to have recourse to any unconditional undertaking held under clause 6.1 or 20.7.
- (b) If the Principal takes possession of Construction Plant and Materials, the Principal must maintain them in good working order and, subject to paragraph (c), on completion of the Remaining Work, the Principal shall return the Construction Plant and Materials that are surplus.
- (c) If the Principal exercises a right under clause 24.3(b) or clause 24.3(c) and the SCAW Contractor is indebted to the Principal, the SCAW Contractor grants to the Principal a lien over the Key Plant and Equipment, Construction Plant, Temporary Works or other things taken under clause 24.5(a)(i)(A) such that the Principal may retain that property until the debt is met. If after reasonable notice, the SCAW Contractor fails to pay the debt, the Principal may sell the Key Plant and Equipment, Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the SCAW Contractor.
- (d) The SCAW Contractor must do all things (including executing all documents) reasonably required by the Principal to enable the Principal to lawfully register any Security Interest in the Construction Plant or other things taken under paragraph (a) so as to ensure the Principal's rights under this clause 24.5 are not adversely affected.

- (e) If the Principal terminates this deed under clause 24.3(c), the Principal will be entitled to recover from the SCAW Contractor any Loss suffered or incurred by the Principal arising out of or in any way in connection with the breach, Insolvency Event or termination of this deed and until the Principal's rights in this regard are satisfied, Principal will not be obliged to make any further payments to the SCAW Contractor, including any money the subject of a progress claim under clause 20.2(a) or a payment schedule under clause 20.2(c) or 20.2(d).

**24.5A The Principal's entitlements after take-out**

- (a) If the Principal exercises the right under clause 24.3(b), the SCAW Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the SCAW Contractor unless a payment becomes due to the SCAW Contractor under this clause 24.5A.
- (b) When all of the work taken out of the hands of the SCAW Contractor under clause 24.3(b) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate to the SCAW Contractor certifying the amount. If the cost incurred by the Principal is greater than the amount that would have been paid to the SCAW Contractor if the SCAW Contractor had completed the work, the difference will be a debt due from the SCAW Contractor to the Principal.
- (c) Without limiting clause 24.5A(b), if the Principal exercises the right under clause 24.3(b), the Principal will be entitled to recover from the SCAW Contractor any Loss incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.

**24.6 SCAW Contractor's rights after repudiation or wrongful termination**

- (a) If the Principal:
  - (i) repudiates this deed and the SCAW Contractor terminates this deed; or
  - (ii) wrongfully:
    - (A) exercises or attempts to exercise any right or power conferred on it by clause 24.3; or
    - (B) determines or purports to determine this deed at common law,then the:
  - (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 24.7 and the SCAW Contractor's sole rights in such circumstances will be those set out in clause 24.8; and
  - (iv) the SCAW Contractor:
    - (A) will not be entitled to the payment of damages;
    - (B) will not be entitled to any payment on a quantum meruit basis; and
    - (C) waives all other rights it has to make a Claim in such circumstances.
- (b) This clause 24.6 will survive the termination of this deed.

#### 24.7 Termination for convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this deed, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the SCAW Contractor terminate this deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the SCAW Contractor; and
- (b) thereafter either itself or by a third party complete the uncompleted part of the SCAW Contractor's Activities.

#### 24.8 Cost

If the Principal terminates this deed under clause 24.7, without prejudice to any of the Principal's other rights, entitlements or powers under this deed (including its right of set-off under clause 20.9), the SCAW Contractor will be entitled to payment of the following amounts:

- (a) for work carried out prior to the date of termination, the amount which would have been payable if this deed had not been terminated and the SCAW Contractor had been entitled to submit a payment claim under clause 20.2 for work carried out to the date of termination;
- (b) the cost of Materials or other items reasonably ordered by the SCAW Contractor for the SCAW Contractor's Activities and for which it is legally bound to pay provided that:
  - (i) the value of the Materials and other items have not been previously paid or included in the amount payable under clause 24.8(a); and
  - (ii) title in the Materials will vest in the Principal upon payment;
- (c) the reasonable cost of making the Project Site safe and removing from the Project Site and the Temporary Areas all Construction Plant, Materials and Temporary Works and other things used in the performance of the SCAW Contractor's obligations;
- (d) the reasonable costs incurred by the SCAW Contractor as a result of terminating Subcontracts;
- (e) where termination occurs prior to Substantial Completion of the last Portion to achieve Substantial Completion, [REDACTED] of the unpaid balance (if any) of the Construction Contract Sum (after taking into account the amount payable under clause 24.8(a)) as that balance stands at the date of termination; and
- (f) the costs reasonably incurred by the SCAW Contractor in the expectation of completing the whole of the SCAW Contractor's Activities and not included in any other payment by the Principal,

such amounts to be as stated by the Principal's Representative.

The SCAW Contractor must:

- (g) take all reasonable steps to mitigate the costs referred to in clauses 24.8(b), 24.8(c), 24.8(d) and 24.8(f); and
- (h) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other reasonable things to enable

the Principal to complete the design and construction of the Project Works and the Temporary Works.

The SCAW Contractor and each of its Subcontractors may retain one copy of the information, documents and records referred to in clause 24.8(h).

To the extent it has not had recourse to them, the Principal will, subject to clause 6.4(c), return the unconditional undertakings then held by it under clauses 6.1 or 20.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the SCAW Contractor has complied with its obligations under this clause.

Upon payment of the amount payable under this clause 24.8 title in the Materials referred to in clause 24.8(b) will vest in the Principal.

The amount to which the SCAW Contractor is entitled under this clause 24.8 will be a limitation upon the Principal's liability to the SCAW Contractor arising out of, or in any way in connection with, the termination of this deed and the Principal will not be liable to the SCAW Contractor upon any Claim arising out of, or in any way in connection with, the termination of this deed other than for the amount payable under this clause 24.8.

This clause 24.8 will survive the termination of the deed under clause 24.7.

#### 24.9 **Preservation of rights**

Nothing in this clause 24 or that the Principal does or fails to do pursuant to this clause 24 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 20.9) which it may have, including where the SCAW Contractor breaches (including repudiates) this deed.

#### 24.10 **Termination by Frustration**

If under the Law this deed is frustrated:

- (a) the Principal will:
  - (i) pay the SCAW Contractor the following amounts as determined by the Principal's Representative:
    - (A) an amount calculated in accordance with clause 24.8(a) for work carried out prior to the date of frustration;
    - (B) the costs calculated in accordance with the terms of, and subject to the conditions in, clause 24.8(b); and
    - (C) the costs calculated in accordance with the terms of clauses 24.8(c) and 24.8(f); and
  - (ii) to the extent it has not had recourse to them, return all unconditional undertakings then held by it under clause 6.1 or 20.7 (or the remaining proceeds of the unconditional undertakings if they have been converted into cash) when the SCAW Contractor has complied with its obligations under this clause; and
- (b) the SCAW Contractor must:
  - (i) take all reasonable steps to mitigate the costs referred to in clause 24.10(a)(i)(B) and clause 24.10(a)(i)(C); and

- (ii) hand over to the Principal's Representative all information, documents and records (including all Design Documentation) and do all other things to enable the Principal to complete the design and construction of the Project Works and the Temporary Works.
- (c) Upon payment of the amount payable under this clause 24.10, title in the Materials the subject of the costs payable in respect of clause 24.10(a)(i)(B) will vest in the Principal.
- (d) The amount to which the SCAW Contractor is entitled under this clause 24.10 will be a limitation upon the Principal's liability to the SCAW Contractor arising out of, or in any way in connection with, the frustration of this deed and the Principal will not be liable to the SCAW Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this deed other than for the amount payable under this clause 24.10.
- (e) Without limiting any other provision of this deed, this clause 24.10 will survive the frustration of this deed.

#### 24.11 **Codification of SCAW Contractor's entitlements**

This clause 24 is an exhaustive code of the SCAW Contractor's rights arising out of or in any way in connection with any termination and the SCAW Contractor:

- (a) cannot otherwise terminate, rescind or treat this deed as repudiated; and
  - (b) waives all rights at Law to terminate, rescind or treat this deed as repudiated,
- otherwise than in accordance with this clause 24.

### 25. **DISPUTE RESOLUTION**

#### 25.1 **Disputes generally**

Subject to clause 25.14, any dispute, difference, controversy or any dispute in relation to a Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with the Project Works, the Temporary Works, the SCAW Contractor's Activities, Sydney Metro - Western Sydney Airport, this deed (including any questions relating to the existence, validity or termination of this deed), but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with this clause 25.

#### 25.2 **Independent Dispute Avoidance and Resolution Panel**

- (a) The IDAR Panel will be constituted under the IDAR Panel Agreement.
- (b) The SCAW Contractor must, within 5 Business Days of receipt of a request from the Principal, execute the IDAR Panel Agreement Accession Deed Poll.
- (c) Each party must:
  - (i) following execution of the IDAR Panel Agreement Accession Deed Poll (if applicable), at all times comply with the terms of the IDAR Panel Agreement;
  - (ii) attend meetings with the IDAR Panel as required pursuant to the IDAR Panel Agreement or this deed; and
  - (iii) provide all reasonable assistance to the IDAR Panel in fulfilling its function(s) in respect of the SCAW Contractor's Activities, including providing all information it reasonably requests.

### 25.3 Consultation

- (a) The Dispute must be notified to the IDAR Panel by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the IDAR Panel and the other party (**Party B**). The Notice of Issue must provide brief particulars of the issues in Dispute.
- (b) Within 2 Business Days of the Notice of Issue, the parties must agree upon a member of the IDAR Panel (**Nominated Member**) to review the Dispute. If:
  - (i) the parties fail to reach such agreement within 2 Business Days; or
  - (ii) the Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,the chairperson of the IDAR Panel, as appointed under the IDAR Panel Agreement from time to time (**Chair**) must, based on the nature of the issue in Dispute, nominate a suitable replacement Nominated Member within a further 2 Business Days.
- (c) If a replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must nominate a further replacement Nominated Member within a further 2 Business Days. The Chair cannot nominate itself as the Nominated Member.
- (d) If a further replacement Nominated Member declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 25.3(c) will be reapplied until there are no IDAR Panel members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.
- (e) Within 3 Business Days of the appointment of the Nominated Member, the Nominated Member must convene at least one meeting (**Consultation**) to facilitate genuine and good faith negotiations with a view to:
  - (i) resolving the Dispute; and
  - (ii) clarifying and narrowing the issues in Dispute, in the event that the Dispute is not resolved.
- (f) Each Consultation will be attended by:
  - (i) the Nominated Member;
  - (ii) the Principal's Representative;
  - (iii) the SCAW Contractor's Project Director; and
  - (iv) other persons as agreed between the Principal's Representative and the SCAW Contractor's Project Director.
- (g) The Consultation process must conclude within 15 Business Days of the first Consultation, or such other period as the parties may agree. The Nominated Member will advise the parties in writing when the Consultation process has concluded.
- (h) A failure to comply with clause 25.3(a) will be treated as a breach of this deed by the relevant party.



#### 25.4 Recommendation

- (a) Within 5 Business Days of the conclusion of Consultation, the Nominated Member must notify the parties in writing of its non-binding recommendation as to:
- (i) the formulation of the issues in Dispute;
  - (ii) the most appropriate Expert(s) to be appointed to determine the Dispute pursuant to clause 25.5; and
  - (iii) whether the Dispute is not suitable for expert determination and should be determined in accordance with clause 25.8,

**(Recommendation).**

- (b) Subject to clause 25.4(d), if the Dispute is not resolved within the later of:
- (i) 5 Business Days of the Recommendation; and
  - (ii) 15 Business Days of the Notice of Issue,

Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (with a copy to the IDAR Panel) within 20 Business Days after the later of (i) and (ii) above or such other period of time as agreed between the parties (**Notice of Dispute**).

- (c) The Notice of Dispute must:
- (i) be in writing;
  - (ii) state that it is a Notice of Dispute under this clause 25.4(c); and
  - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute including:
    - (A) references to any:
      - (aa) provisions of this deed; and
      - (bb) acts or omissions of any person, relevant to the Dispute;
    - (B) the relief sought and the basis for claiming the relief sought; and
    - (C) copies of, or relevant extracts from, any documents in support of the claim.
- (d) If the Nominated Member makes a Recommendation:
- (i) under clause 25.4(a)(ii), the parties may accept the recommendation or clause 25.5(a) will apply; or
  - (ii) under clause 25.4(a)(iii) that the Dispute is not suitable for expert determination, the parties may agree to have the Dispute determined in accordance with clause 25.8, however if the parties have not so agreed within 5 Business Days of the Recommendation, clause 25.5 will apply.

## 25.5 Expert determination

- (a) Any Dispute which is referred to expert determination by a Notice of Dispute will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A19.
- (b) Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) The parties agree that, to the extent permitted by law:
  - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
  - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.
- (d) Within:
  - (i) in respect of any Dispute referred to expert determination in accordance with clause 5.3(b) or 5.3(c) of Schedule A26, 20 Business Days after the Expert has been appointed (or such longer period as the Expert (acting reasonably) considers is necessary having regard to the scope and complexity of the Dispute); or
  - (ii) in respect of all other Disputes referred to expert determination, 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 25.5. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this clause 25.

## 25.6 Notice of dissatisfaction

- (a) If:
  - (i) either party is dissatisfied with a determination made by an Expert under clause 25.5, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
  - (ii) an Expert fails to give its decision within a period referred to in clause 25.5(d) (or within such other period as may be proposed by the Expert and approved by both parties) then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

**(Notice of Dissatisfaction).**
- (b) A Notice of Dissatisfaction issued under this clause 25.6 must:
  - (i) state that it is given under this clause 25.6; and

- (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) Except as stated in clause 25.4(d), neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 25.6.

**25.7 Final and binding decision**

- (a) If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 25.6, within 10 Business Days after it received the Expert's determination, then the determination will become final and binding upon both parties.
- (b) Once a decision of an Expert has become final and binding under clause 25.7(a), neither party will be entitled to challenge the determination on any basis.

**25.8 Litigation or arbitration**

Where this clause applies, the Principal in its absolute discretion, may within 5 Business Days:

- (a) after issuing or receiving a Notice of Dissatisfaction; or
- (b) of reaching an agreement under clause 25.4(d)(ii),

(as applicable) issue a notice to the SCAW Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

**25.9 Arbitration rules**

- (a) Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) The seat of the arbitration will be Sydney, Australia.
- (c) The language of the arbitration will be English.
- (d) The parties agree:
  - (i) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
  - (ii) that any arbitration conducted pursuant to this clause shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
  - (iii) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
    - (A) the number of written submissions that will be permitted;
    - (B) where appropriate, the length of written submissions;
    - (C) the extent of document discovery permitted, if any;
    - (D) the consolidation of proceedings, when requested;

- (E) the joinder of parties, when requested;
  - (F) the length of any hearing, if any; and
  - (G) the number of experts, if any, each party is permitted to appoint.
- (e) The parties agree that:
- (i) subject to clause 25.10, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
  - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (f) The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.
- (g) Any award of the arbitral tribunal will be final and binding upon the parties.
- (h) This arbitration agreement is governed by and must be construed according to the Law applying in New South Wales.

**25.10 Exclusion from determination or award**

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this clause 25.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

**25.11 Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

**25.12 SCAW Contractor to continue performing obligations**

Despite the existence of any Dispute the SCAW Contractor must:

- (a) continue to perform the SCAW Contractor's Activities; and
- (b) perform its other obligations under this deed.

**25.13 Urgent relief**

Nothing in this clause 25 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or

- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

#### 25.14 **Dispute under related contracts**

The parties acknowledge and agree that:

- (a) the provisions of this clause 25 will not apply to any dispute, difference, controversy or claim between the parties and the Independent Certifier which is to be resolved under the provisions of the Independent Certifier Deed;
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to the Independent Certifier Deed; and
- (c) where the Dispute is a Common Dispute, as that term is defined in clause 8 of Schedule D7, clause 3 of Schedule D6 then this clause 25 will apply subject to the provisions of clause 8 of Schedule D7 or clause 3 of Schedule D6 (as relevant).

#### 25.14A **Dispute avoidance**

The parties acknowledge and agree that:

- (a) they will seek to minimise the incidence of Disputes;
- (b) in order to achieve this, at any time prior to a Dispute arising and provided that a Notice of Issue has not been issued in respect of the Potential Matter:
  - (i) a party may notify the IDAR Panel and the other party; or
  - (ii) a Member of the IDAR Panel may notify the parties (acting in accordance with the IDAR Panel Agreement),

of a matter which it considers may, or has the potential to, give rise to a Dispute (**Potential Matter**). The notice of a Potential Matter must be in writing and provide brief particulars of the Potential Matter;

- (c) within 10 Business Days after a notice of a Potential Matter has been issued by either a party or a member of the IDAR Panel, the parties may elect to participate in the Dispute Avoidance Process with the IDAR Panel in order to seek to avoid a Dispute arising from or in connection with the Potential Matter;
- (d) the IDAR Panel shall not proceed with the Dispute Avoidance Process under this clause 25.14A in respect of a Potential Matter unless both parties have elected to participate in it;
- (e) the role of the IDAR Panel under this clause 25.14A is purely consultative and advisory, and no advice, view, direction, statement or comment by a Member as part of the Dispute Avoidance Process under this clause 25.14A shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute;
- (f) nothing in this clause 25.14A shall in any way effect the operation or effect of any other provision in clause 25. For the avoidance of doubt, engaging in the clause 25.14A Dispute Avoidance Process:
  - (i) is voluntary; and

- (ii) shall not be a precondition to the issue of a Notice of Issue, Notice of Dispute or the commencement of expert determination, litigation or arbitration under clause 25 in respect of a Dispute that is the subject of a Potential Matter; and
- (g) notwithstanding clause 25.14A(f), with respect to a Potential Matter identified under this clause 25.14A, where a party:
  - (i) elects not to participate in the Dispute Avoidance Process; or
  - (ii) elects to participate in the Dispute Avoidance Process but fails to participate in the Dispute Avoidance Process in good faith,

and the Potential Matter subsequently becomes a Dispute, the other party may disclose these matters to the IDAR Panel, an Expert, an arbitral tribunal, a court or other tribunal with respect to any such Dispute.

**25.15 Survive termination**

This clause 25 will survive termination of this deed.

**26. RESTRICTIONS, CHANGE IN CONTROL AND RESTRUCTURE EVENT**

**26.1 Restrictions relating to the SCAW Contractor Consortium Deed**

The SCAW Contractor must not:

- (a) terminate, surrender, rescind or accept the repudiation of;
- (b) permit the novation, assignment, transfer or substitution of the whole or part of any party's right, obligation or interest in; or
- (c) where it may impact the rights or increase the liabilities or obligations of the Principal or may adversely affect the SCAW Contractor's ability to perform the SCAW Contractor's Activities:
  - (i) make or permit any amendment to, replacement of or waiver of a provision of or any supplement or agreement collateral to; or
  - (ii) enter into any agreement or arrangement which affects the operation or interpretation of,

the SCAW Contractor Consortium Deed without the Principal's written consent (which consent will not be unreasonably withheld or delayed).

**26.2 Change in control of an entity that comprises the SCAW Contractor**

- (a) Subject to the terms of this clause 26.2, the SCAW Contractor must ensure that there is no Change in Control of any entity that comprises the SCAW Contractor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The SCAW Contractor must notify the Principal in writing of any Change in Control of any entity that comprises the SCAW Contractor, and provide:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and

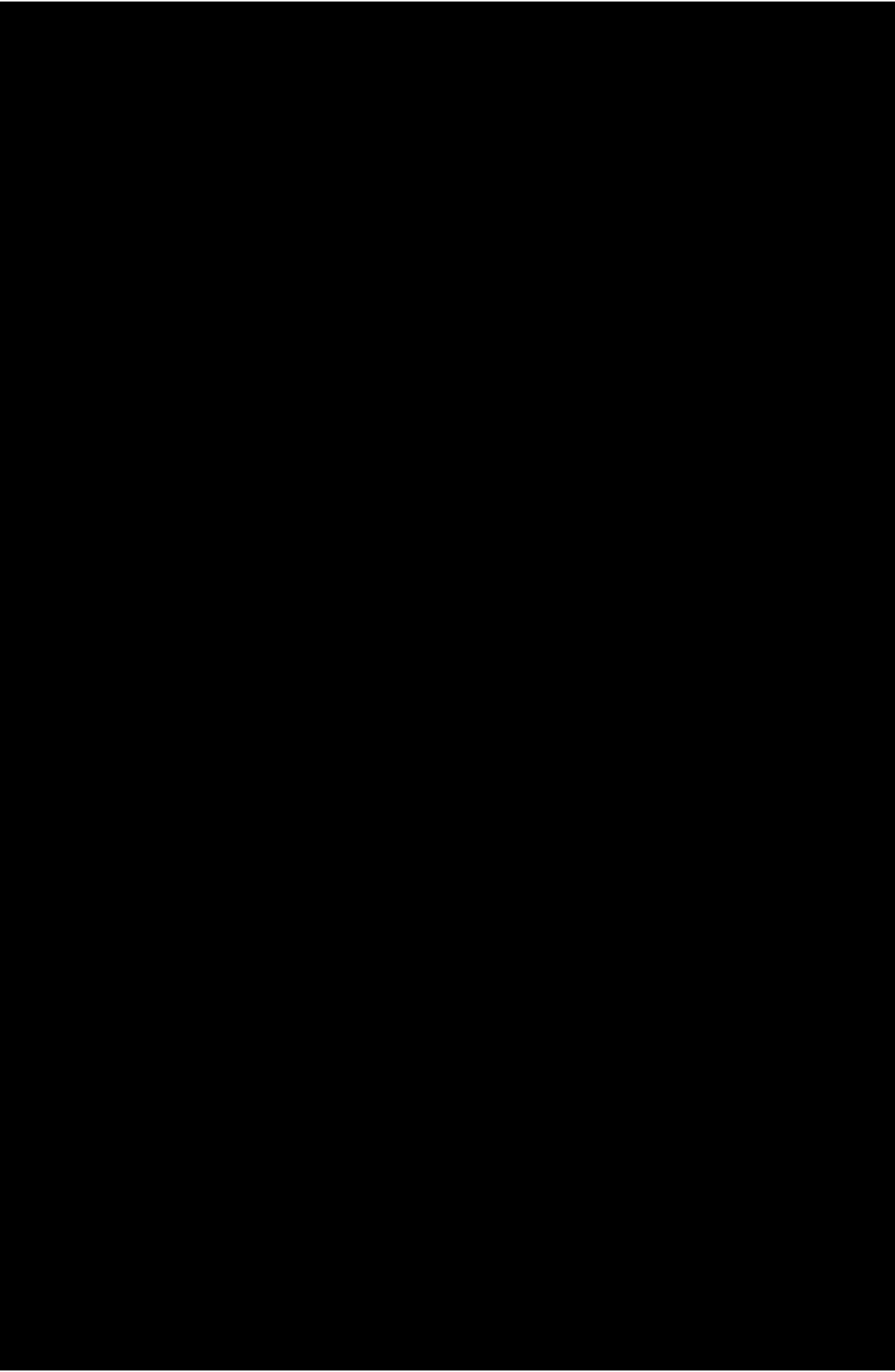
- (ii) all other information necessary for the Principal to determine whether to exercise its rights under clauses 26.2(d) and 26.2(e), in relation to the Change in Control of the relevant entity that comprises the SCAW Contractor.
- (c) The Principal's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the SCAW Contractor gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the SCAW Contractor where the Principal is of the reasonable opinion that:
  - (i) the person or entity which will exercise Control of the SCAW Contractor or the relevant entity that comprises the SCAW Contractor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro - Western Sydney Airport; or
  - (ii) as a result of the Change in Control, the SCAW Contractor will no longer:
    - (A) have sufficient expertise and ability; or
    - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the SCAW Contractor under this deed.
- (e) If a Change in Control of any entity that comprises the SCAW Contractor occurs without the permission of the Principal (other than a Change in Control permitted under clause 26.2(c)), the SCAW Contractor acknowledges that the Principal may terminate this deed by notice in writing to the SCAW Contractor.
- (f) The Principal's approval of a Change in Control of any entity that comprises the SCAW Contractor will not relieve the SCAW Contractor of any of its obligations under this deed.

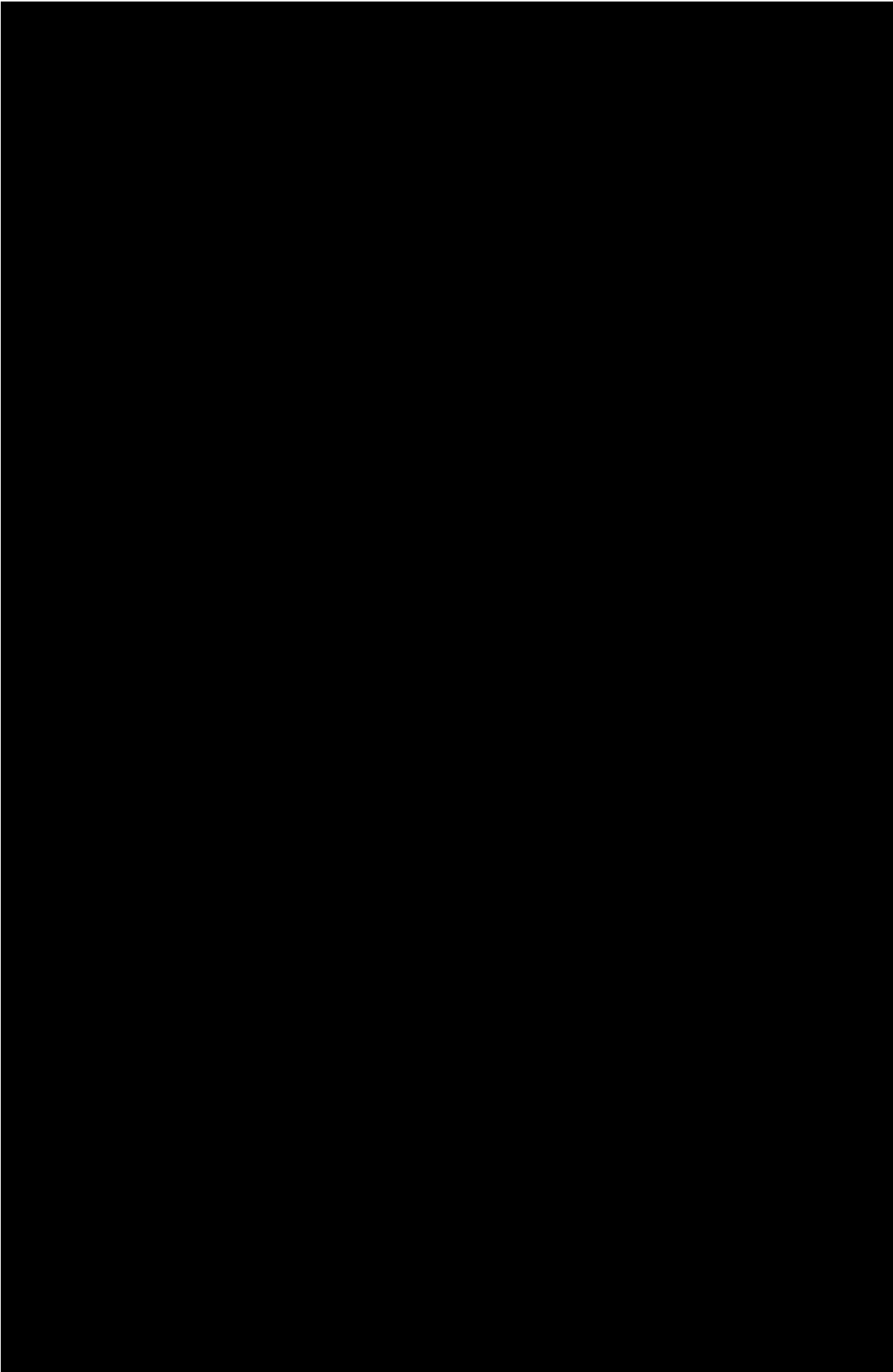
**26.3 Change in control of a SCAW Contractor Guarantor**

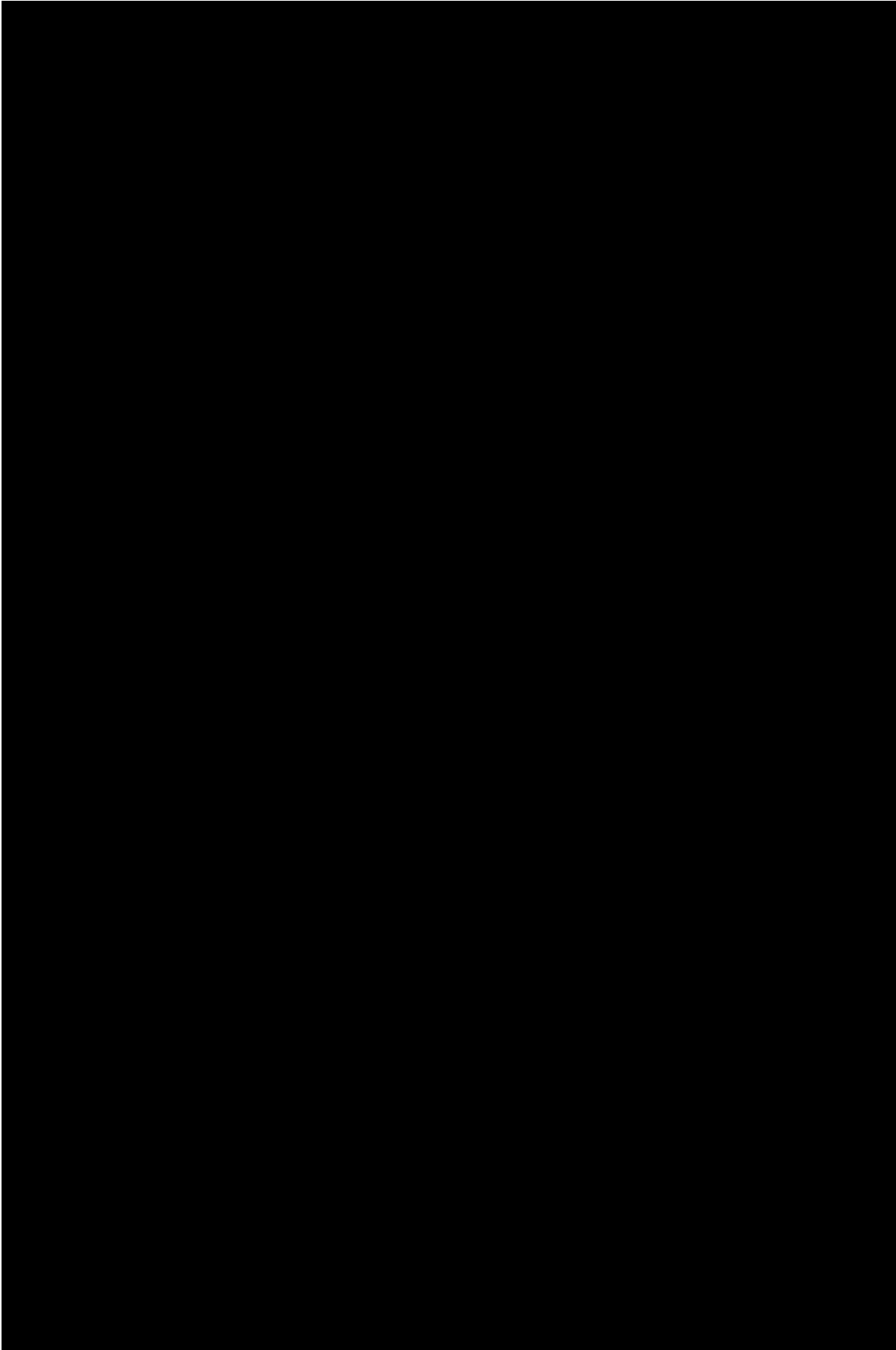
- (a) Subject to the terms of this clause 26.3, the SCAW Contractor must ensure that there is no Change in Control of a SCAW Contractor Guarantor without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The SCAW Contractor must notify the Principal in writing of any Change in Control of a SCAW Contractor Guarantor, and provide:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and

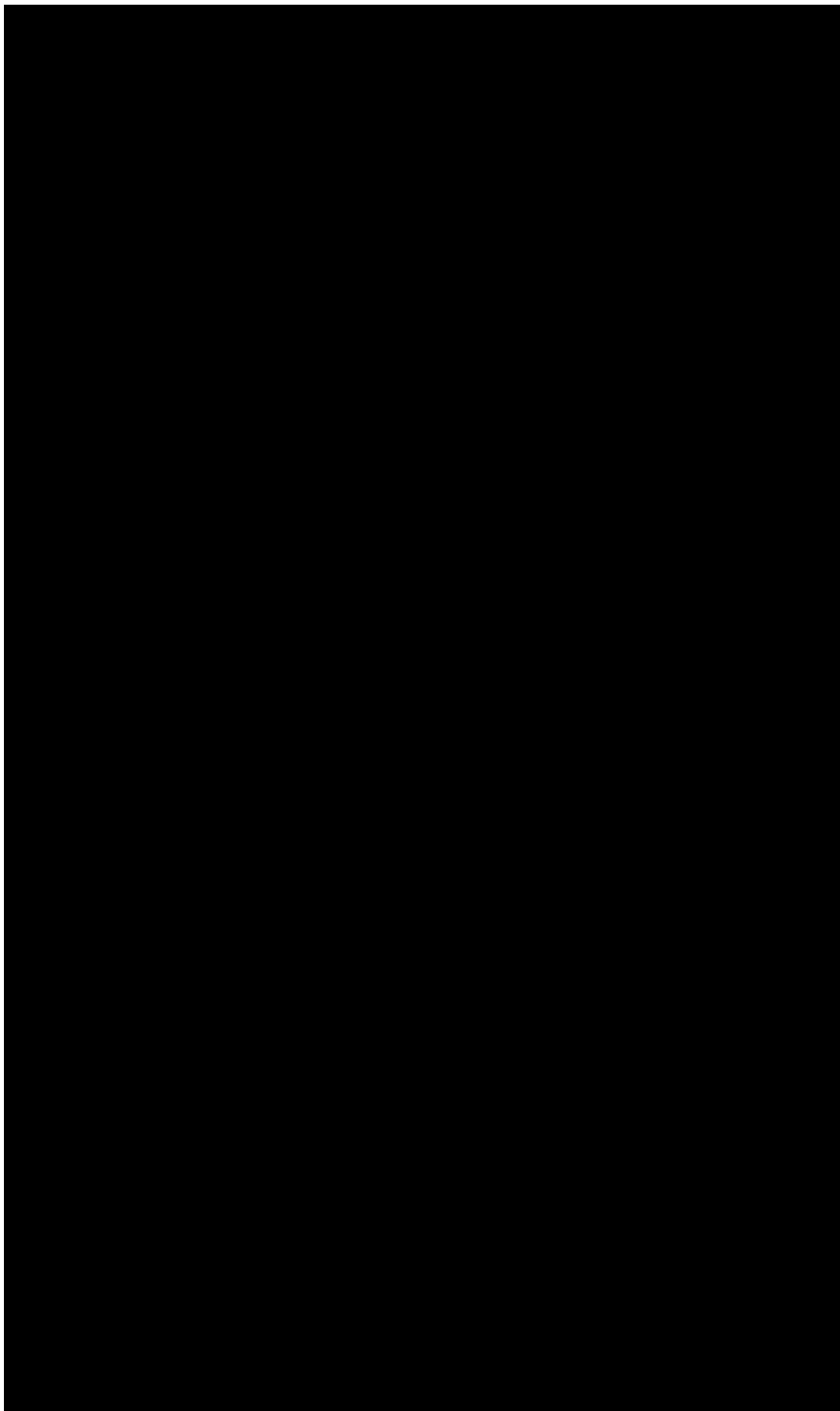
- (ii) all other information necessary for the Principal to determine whether to exercise its rights under clauses 26.3(d) and 26.3(e), in relation to the Change in Control of that SCAW Contractor Guarantor.
- (c) The Principal's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the SCAW Contractor gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of a SCAW Contractor Guarantor where the Principal is of the reasonable opinion that:
  - (i) the person or entity which will exercise Control of the relevant SCAW Contractor Guarantor:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to Sydney Metro - Western Sydney Airport; or
  - (ii) as a result of the Change in Control, the relevant SCAW Contractor Guarantor will no longer:
    - (A) have sufficient expertise and ability; or
    - (B) be of sufficiently high financial and commercial standing,to properly carry out the obligations of the SCAW Contractor Guarantor under the relevant Parent Company Guarantee.
- (e) If a Change in Control of a SCAW Contractor Guarantor occurs without the permission of the Principal (other than a Change in Control permitted under clause 26.3(c)), the SCAW Contractor acknowledges that the Principal may terminate this deed by notice in writing to the SCAW Contractor.
- (f) The Principal's approval of a Change in Control of a SCAW Contractor Guarantor will not relieve the SCAW Contractor of any of its obligations under this deed.

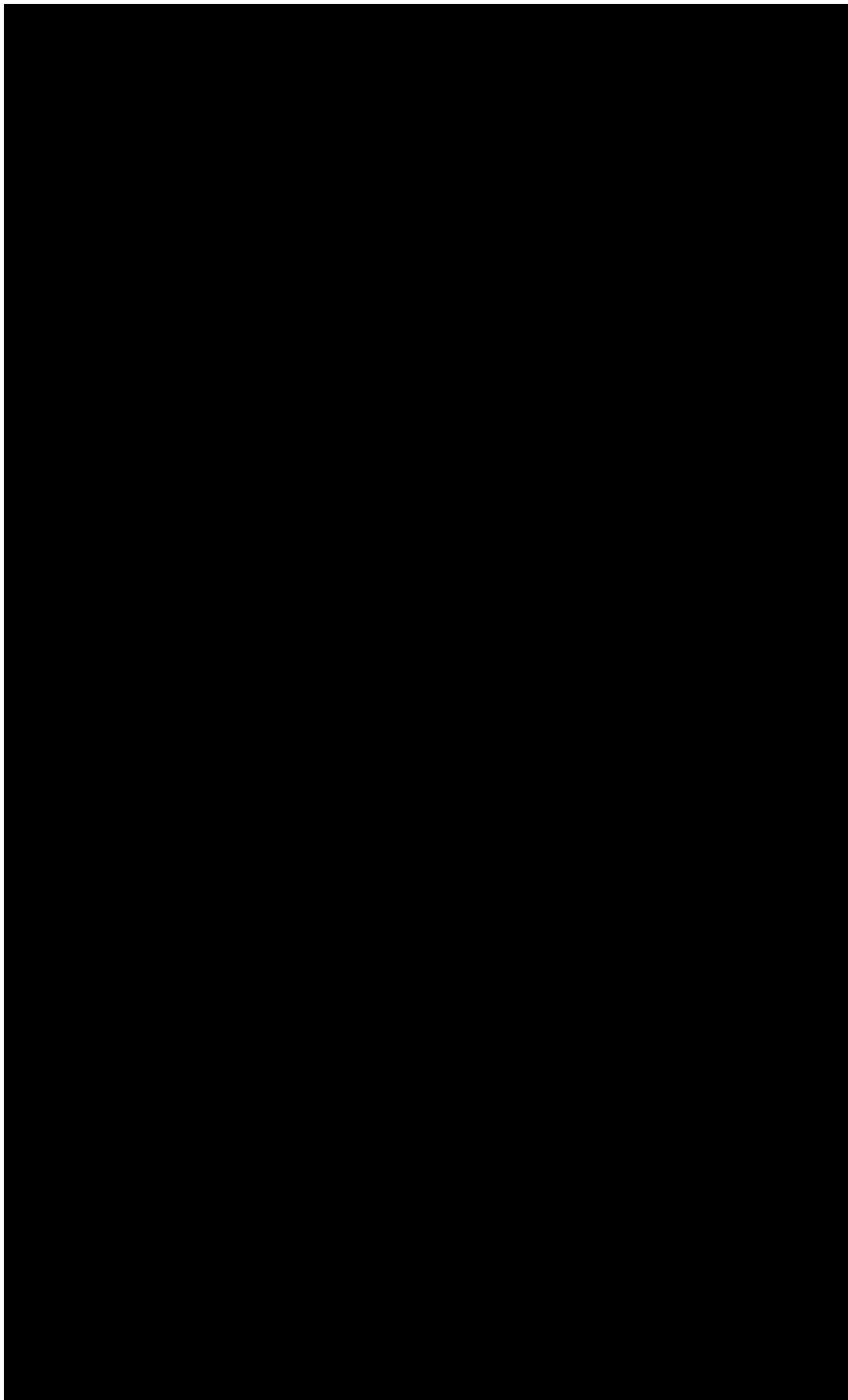


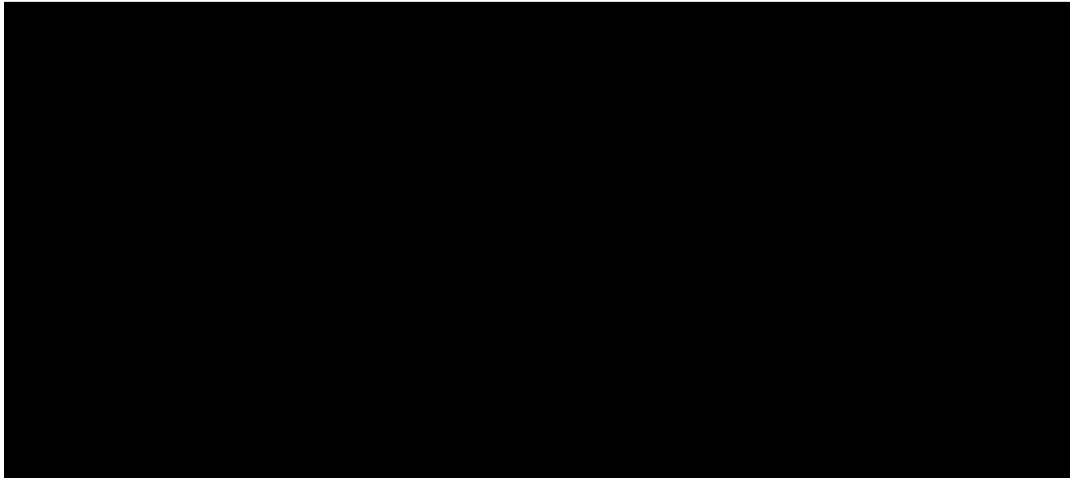












28. **TRANSPORT FOR NSW STATEMENT OF BUSINESS ETHICS**

- (a) The SCAW Contractor must at all times comply with the Transport for NSW Statement of Business Ethics, a copy of which is available at [www.transport.nsw.gov.au](http://www.transport.nsw.gov.au).
- (b) Prior to the engagement of any Subcontractor by the SCAW Contractor, the SCAW Contractor must obtain a written acknowledgement from such Subcontractor that it has received, read, understood and will comply with the Transport for NSW Statement of Business Ethics.

29. **NSW INDUSTRIAL GUIDELINES: BUILDING AND CONSTRUCTION PROCUREMENT**

29.1 **NSW Guidelines**

In addition to terms defined in this deed, terms used in this clause 29 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

29.2 **Primary Obligation**

- (a) The SCAW Contractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (b) The SCAW Contractor must notify the Construction Compliance Unit (**CCU**) and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the SCAW Contractor engages a Subcontractor, the SCAW Contractor must ensure that the contract with the Subcontractor imposes on the Subcontractor equivalent obligations to those in this clause 29, including that the Subcontractor must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (d) The SCAW Contractor must not appoint or engage another party in relation to the SCAW Contractor's Activities where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

29.3 **Access and information**

- (a) The SCAW Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors and related entities.

- (b) The SCAW Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
  - (i) enter and have access to sites and premises controlled by the SCAW Contractor, including but not limited to the Construction Site;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the SCAW Contractor's Activities;
  - (v) have access to personnel; and
  - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines by the SCAW Contractor, its Subcontractors and related entities.
- (c) The SCAW Contractor, and its related entities, must agree to, and comply with, any request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

#### 29.4 **Sanctions**

- (a) The SCAW Contractor warrants that at the time of entering into this deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the SCAW Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (c) Where a sanction is imposed:
  - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
  - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
    - (A) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
    - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the SCAW Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.

#### 29.5 **Compliance**

- (a) The SCAW Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The SCAW Contractor is not entitled to make, and the Principal and the State of NSW will not be liable upon, any Claim against the Principal or the State of NSW arising out of or in any way in connection with the SCAW Contractor's compliance with the NSW Guidelines.

- (b) Compliance with the NSW Guidelines does not relieve the SCAW Contractor from responsibility to perform the SCAW Contractor's Activities or any other obligation under this deed, or from liability for any Defect in the Project Works or Temporary Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a Change is proposed, and that Change may, or may be likely to, affect compliance with the NSW Guidelines, the SCAW Contractor must immediately notify the Principal (or nominee) of the Change, or likely Change and specify:
  - (i) the circumstances of the proposed Change;
  - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the Change;
  - (iii) what steps the SCAW Contractor proposes to take to mitigate any adverse impact of the Change (including any amendments it proposes to the Workplace Relations Management Plan or the Project Health & Safety Risk Governance Plan),

and the Principal will direct the SCAW Contractor as to the course it must adopt within 10 Business Days of receiving notice.

#### 29.6 **Workplace Relations Management Plan**

The SCAW Contractor must, within 20 Business Days of the date of this deed:

- (a) prepare a Workplace Relations Management Plan which addresses the matters set out in section 6 of the NSW Guidelines; and
- (b) submit the Workplace Relations Management Plan to the Principal's Representative for review in accordance with clause 11.3.

#### 30. **AUSTRALIAN GOVERNMENT REQUIREMENTS**

- (a) The SCAW Contractor:
  - (i) declares as at the date of this deed; and
  - (ii) must ensure during the term of this deed,  
  
that, in relation to the Project Works and Temporary Works, it and its Subcontractors, consultants and each related entity:
    - (iii) complies with, and acts consistently with, the Building Code;
    - (iv) meets the requirements of section 11 of the Building Code;
    - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
    - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCIIP Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);



- (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a building contractor or building industry participant (as those terms are defined in the BCIIP Act);
  - (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
  - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
  - (x) will comply with any Workplace Relations Management Plan which has been approved by the ABCC in accordance with Part 6 of the Building Code.
- (b) The SCAW Contractor acknowledges and agrees that compliance with the Building Code does not relieve the SCAW Contractor from any responsibility or obligations under this deed, or from liability for any Defect arising from compliance with the Building Code.
- (c) The SCAW Contractor must promptly:
- (i) notify the ABCC of:
    - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach, and advise the ABCC of the steps proposed to be taken by the SCAW Contractor to rectify the breach; and
    - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 30(c)(i)(A); and
  - (ii) give the Principal a copy of any notification given by the SCAW Contractor to the ABCC under clause 30(c)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (d) The SCAW Contractor acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIIP Act and the Building Code and must ensure that it (and must procure that its Subcontractors and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIIP Act;
  - (ii) to interview any person under section 74 of the BCIIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIIP Act; and
  - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (e) The SCAW Contractor must not enter into a Subcontract for any aspect of the SCAW Contractor's Activities unless:
- (i) the Subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the SCAW Contractor agrees is substantially in the same form as the

model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and

- (ii) the Subcontract with the Subcontractor includes an equivalent clause to this clause 30.
- (f) The SCAW Contractor must provide the Commonwealth with any Subcontractor's Declaration of Compliance referred to in clause 30(e) promptly upon request.
- (g) The SCAW Contractor must maintain adequate records of the compliance with the Building Code by:
  - (i) the SCAW Contractor;
  - (ii) its Subcontractors and consultants; and
  - (iii) any related entity of the SCAW Contractor.
- (h) The SCAW Contractor must ensure as far as is reasonably practicable that Subcontractors that are engaged by the SCAW Contractor in respect of the Project Works take remedial action to rectify non-compliant behaviour.
- (i) For the purposes of this clause 30, "related entity" has the meaning given to that term in subsection 3(2) of the Building Code.

### 31. **NOTIFICATION OF CLAIMS**

#### 31.1 **Notice of other claims**

If the SCAW Contractor wishes to make a Claim (other than an Excluded Claim) against the Principal in respect of any Direction of the Principal or the Principal's Representative or other event, circumstance, act, omission, fact, matter or thing (including a breach of this deed by the Principal) under, arising out of, or in any way in connection with, this deed, the SCAW Contractor's Activities or the Project Works, including anything in respect of which:

- (a) the SCAW Contractor is otherwise given an express entitlement under this deed; or
- (b) this deed expressly provides that:
  - (i) costs are to be paid to the SCAW Contractor, or
  - (ii) the Project Contract Sum, the Design Contract Sum or the Construction Contract Sum will be increased or adjusted,

by an amount stated by the Principal's Representative,

the SCAW Contractor must give the Principal's Representative the notice required by clause 31.2(a) and a Claim in accordance with clause 31.2(b).

#### 31.2 **Prescribed notices**

- (a) Any written notice referred to in clause 31.1 must:
  - (i) be provided not later than 15 Business Days after the later of:
    - (A) the first occurrence of; or
    - (B) when the SCAW Contractor first became aware of, or ought reasonably to have first become aware of,

the Direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and

- (ii) expressly specify:
  - (A) that the SCAW Contractor proposes to make a Claim; and
  - (B) the Direction, event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.

(b) Subject to clause 31.3, any written Claim referred to in clause 31.1 must:

- (i) be provided not later than 20 Business Days after giving the written notice under clause 31.2(a); and
- (ii) include:
  - (A) detailed particulars, including the date or dates, of the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
  - (B) the legal basis for the Claim, whether based on a term of this deed or otherwise, and if based on a term of this deed, clearly identifying the specific term;
  - (C) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
  - (D) details of the amount claimed and how it has been calculated.

### 31.3 Temporary waiver of notification requirements

- (a) Within 5 Business Days after receipt of a written notice referred to in clause 31.2(a) or 15.4(a)(i) (as applicable), the Principal's Representative may notify the SCAW Contractor in writing that the Principal wishes to temporarily waive the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) in relation to the proposed Claim that is the subject of the SCAW Contractor's notice.
- (b) If the Principal's Representative issues a notice under clause 31.3(a), the parties must within 2 Business Days (or such longer period agreed between the parties) meet to discuss the proposed Claim and seek to agree:
  - (i) the period for which the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) will not apply in relation to the proposed Claim; and
  - (ii) the next steps (if any) that the parties wish to take in relation to the proposed Claim.
- (c) If, at a meeting under clause 31.3(b), the parties agree a period for which the requirements of clause 31.2(b) or clauses 15.4(a)(ii) and 15.4(c) (as applicable) will not apply, the Principal's Representative will promptly confirm such period by notice in writing to the SCAW Contractor.
- (d) A meeting under clause 31.3(b) may be held in person, by phone, by video conference or by any other means of instantaneous communication agreed between the parties.
- (e) Where the Principal's Representative has given a written notice under clause 31.3(a):

- (i) in response to a notice from the SCAW Contractor referred to in clause 31.2(a), if the parties:
  - (A) agree a period for which the requirements of clause 31.2(b) will not apply, the SCAW Contractor must provide a written Claim including the details required by clause 31.2(b)(ii) no later than 20 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 31.3(c) (or such longer period as the parties may subsequently agree in writing); or
  - (B) fail to agree such period, the SCAW Contractor must provide a written Claim including the details required by clause 31.2(b)(ii) no later than 20 Business Days after the date of the meeting held under clause 31.3(b); or
- (ii) in response to a notice from the SCAW Contractor referred to in clause 15.4(a)(i), if the parties:
  - (A) agree a period for which the requirements of clauses 15.4(a)(ii) and 15.4(c) will not apply, the SCAW Contractor must provide a written Claim under clause 15.4(a)(ii) no later than 10 Business Days after the expiry of that period as stated in a notice issued by the Principal's Representative under clause 31.3(c) (or such longer period as the parties may subsequently agree in writing) and the parties may thereafter exercise their respective rights under clause 15.4(c); or
  - (B) fail to agree such period, the SCAW Contractor must provide a written Claim the SCAW Contractor must provide a written Claim under clause 15.4(a)(ii) no later than 10 Business Days after the date of the meeting held under clause 31.3(b) and the parties may thereafter exercise their respective rights under clause 15.4(c).
- (f) The SCAW Contractor must maintain and keep an updated register of potential Claims that have been the subject of a notice issued by the Principal under clause 31.3(c) and provide a copy of this register to the Principal's Representative at least 3 Business Days in advance of each meeting of the Management Review Group. This register must be in a form acceptable to the Principal and must include, for each potential Claim, the claim number, a brief description, the date of the potential Claim, the date of the Principal's notice under clause 31.3(a), the date of the meeting under clause 31.3(b), the expiry date of the period notified under clause 31.3(c), any agreed next steps and the status of such next steps.
- (g) A notice under clause 31.3(a) does not constitute acceptance that the relevant notice given under clause 31.2(a) or 15.4(a)(i) (as applicable) is valid and does not prejudice in any way the Principal's rights under clause 31.5 in respect of any notice under clause 31.2(a) or 15.4(a)(i) (as applicable).

#### 31.4 Continuing events

If the Direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim referred to in clause 31.1 is based, is continuing, or if the consequences of the Direction, event, circumstance, act, omission, fact matter or thing are continuing, the SCAW Contractor must continue to give the information required by clause 31.2(b) every 20 Business Days after the written Claim under clause 31.2(b) was submitted or given, until after the Direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

### 31.5 **Bar**

If the SCAW Contractor fails to comply with clauses 4.4(c), 4.4(g), 7.1, 7.2, 7.3, 7.4, 7.5, 7.12, 12.10, 12.11, 15.4, 16.2, 19.6, 19.9(b), 19.9(j), 31.1, 31.2 or 31.4:

- (a) the Principal will not be liable upon any Claim (insofar as is permitted by Law) by the SCAW Contractor; and
- (b) the SCAW Contractor will be barred from making any Claim against the Principal, arising out of or in any way in connection with the relevant Direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

### 31.6 **Other provisions unaffected**

Nothing in clauses 31.1 to 31.5 will limit the operation or effect of any other provision of this deed which requires the SCAW Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

## 32. **GENERAL**

### 32.1 **Notices**

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time the Principal's Representative may notify the SCAW Contractor that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
  - (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the SCAW Contractor to use the PDCS; and
  - (iv) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) Each Notice must:
  - (i) before the date referred to in clause 32.1(b)(ii):
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the SCAW Contractor, to the Principal's Representative; or
      - (bb) in the case of a Notice from the Principal, to the Project Director;
    - (C) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and

(D) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

(aa) to the Principal:

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]

(bb) to the Principal's Representative:

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]

(cc) to the SCAW Contractor:

Name: [REDACTED]

Address: Level 2, 177 Pacific Highway  
North Sydney NSW 2060

Email: [REDACTED]

Attention: [REDACTED]

(dd) to the Project Director:

Name: [REDACTED]

Address: Level 2, 177 Pacific Highway  
North Sydney NSW 2060

Email: [REDACTED]

Attention: [REDACTED]

(ii) on and from the commencement date for use of the PDCS referred to in clause 32.1(b)(ii):

(A) be sent through the PDCS in accordance with the requirements set out in clause 32.1(e) and:

(aa) in the case of a Notice from the SCAW Contractor, be addressed to the Principal's Representative; or

- (bb) in the case of a Notice from the Principal, be addressed to the Project Director; or
  - (B) in circumstances where the PDCS is temporarily disabled or not operating for a period in excess of 2 hours, be issued in accordance with clause 32.1(c)(i).
- (d) Subject to clause 32.1(d)(v), a communication is taken to be received by the addressee:
  - (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
  - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
  - (iii) (in the case of international post) 7 Business Days after the date of posting;
  - (iv) (in the case of delivery by hand) on delivery; and
  - (v) (in the case of email):
    - (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
    - (B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.
- (e) With respect to Notices sent through the PDCS:
  - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
  - (ii) only the text in any Notice, or subject to paragraph 32.1(e)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
  - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
    - (A) pdf format;
    - (B) a format compatible with Microsoft Office; or
    - (C) such other format as may be agreed between the parties in writing from time to time.
- (f) The SCAW Contractor warrants that it will:
  - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
  - (ii) ensure that relevant personnel log on and use the PDCS and check whether Notices have been received on each Business Day;
  - (iii) comply with any user guide and protocol with respect to the PDCS provided by the Principal to the SCAW Contractor from time to time;

- (iv) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
  - (v) advise the Principal's Representatives of which personnel require access to the PDCS;
  - (vi) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
  - (vii) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 32.1(c)(ii)(B) to the Principal's Representative through the PDCS.
- (g) If the SCAW Contractor is an unincorporated joint venture and one of the joint venturers is, a foreign company (as defined in the Corporations Act), the SCAW Contractor must:
- (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
  - (ii) obtain the process agent's consent to the appointment.
- (h) The Principal has no liability for any Losses the SCAW Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the SCAW Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the SCAW Contractor's access to or use of the PDCS or any failure of the PDCS.
- (i) Wherever this deed requires the SCAW Contractor to provide any documents, notices or other communications to an Interface, the SCAW Contractor must address such communications to the relevant Interface Contractor:
- (i) at the address notified to the SCAW Contractor by the Principal; or
  - (ii) if required by the Principal, by way of the PDCS.

### 32.2 **Governing Law and Jurisdiction**

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Where the Principal issues a notice under clause 25.8 referring to a Dispute to litigation or where clause 25.13 applies, each party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 32.2(b)(i).



### 32.3 **Cost**

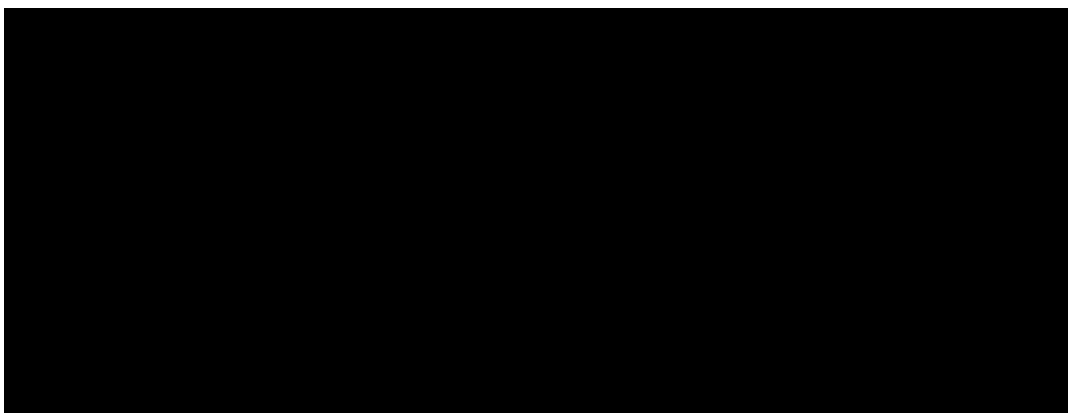
- (a) Subject to clause 32.3(b), a party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.
- (b) The SCAW Contractor must:
  - (i) pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed; and
  - (ii) indemnify the Principal against any liability arising from failure to comply with clause 32.3(b)(i).
- (c) The SCAW Contractor is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

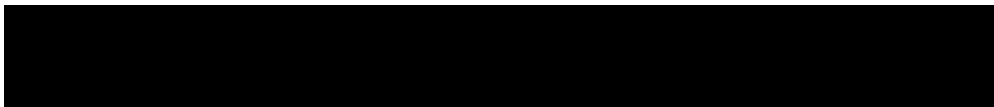
### 32.4 **Taxes**

- (a) Without limiting clauses 7.1, 7.2 or 7.3, the SCAW Contractor must pay all Taxes which may be payable in respect of the SCAW Contractor's Activities, including any customs duty, tariffs and primage applicable to imported materials (including Materials) or Construction Plant.
- (b) The SCAW Contractor indemnifies the Principal against, and must pay on demand the amount of, all Losses, liabilities and Taxes incurred as a result of the SCAW Contractor, any subcontractor or any person engaged by the SCAW Contractor or any subcontractor being deemed to be an employee of the Principal (including but not limited to payroll taxes, fringe benefits taxes, superannuation guarantee charge liabilities, and any related interest or penalties).

### 32.5 **Indemnities to survive**

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





32.6 **Amendment**

This deed may only be amended, varied or replaced by written agreement executed by or on behalf of each party.

32.7 **Permitted disclosure**

(a) Subject to any express provisions otherwise in this deed, the Principal may publish (on the internet or otherwise) or disclose, including to its Associates, any Interface Contractor:

- (i) the terms and conditions of any SCAW Contract Document, including this deed; and
- (ii) any document or information arising under, out of or in connection with any SCAW Contract Document, including this deed, or relating to the performance of any SCAW Contract Document, including this deed.

(b) The SCAW Contractor acknowledges and agrees that disclosures regarding the Project Works by the Principal, the Commonwealth, the State of New South Wales or any Authority may be required:

- (i) under the GIPA Act or any similar or replacement legislation;
- (ii) by Law; or
- (iii) to satisfy the disclosure requirements of the Auditor General or to satisfy the requirements of Parliamentary accountability,

**(Public Disclosure Obligations).**

(c) The SCAW Contractor must, at its own cost and expense, use all reasonable endeavours to assist the Principal, the Commonwealth, the State of New South Wales or an Authority in meeting its Public Disclosure Obligations.

(d) Subject to clause 32.7(e), the SCAW Contractor must:

- (i) keep confidential the SCAW Contract Documents and any information relating to the Project Works, the SCAW Contractor's Activities and any discussions concerning the SCAW Contract Documents; and
- (ii) ensure that each of its Associates comply with the terms of clause 32.7(d)(i).

(e) The SCAW Contractor is not obliged to keep confidential any information:

- (i) which is in the public domain through no default of the SCAW Contractor; or
- (ii) the disclosure of which is:
  - (A) required by Law;
  - (B) given with the written consent of the Principal; or
  - (C) given to a court in the course of proceedings to which the SCAW Contractor is a party.

- (f) The parties acknowledge that:
- (i) the Principal will notify the SCAW Contractor of any proposed disclosure of the SCAW Contract Documents by the Principal under the GIPA Act no later than 15 Business Days before the proposed date of disclosure;
  - (ii) following notification by the Principal in accordance with clause 32.7(f)(i), the Principal will take reasonable steps to consult with the SCAW Contractor before disclosing any part of the SCAW Contract Documents that the SCAW Contractor considers to be commercial-in-confidence (as defined in the GIPA Act); and
  - (iii) nothing in this clause 32.7 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

### 32.8 **Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this deed.

### 32.9 **The Principal may act**

- (a) If the SCAW Contractor fails to perform an obligation under this deed, then, subject to clause 32.9(b), the Principal may take such action as may be necessary to remedy the failure by the SCAW Contractor and the Principal may for this purpose enter the Construction Site, any Extra Land and any other land upon which the SCAW Contractor's Activities are being carried out.
- (b) Except where the Principal is taking action in the circumstances referred to in clause 16.7, the Principal may only take action as referred to in clause 13.6(c) or clause 32.9(a) where the Principal's Representative has given the SCAW Contractor 5 Business Days' prior written notice of the SCAW Contractor's failure to perform an obligation under this deed and that the Principal intends to take action to remedy the failure.
- (c) The Loss suffered or incurred by the Principal in so performing such an obligation of the SCAW Contractor will be a debt due and payable from the SCAW Contractor to the Principal.
- (d) Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
  - (i) direct or instruct the SCAW Contractor to; or
  - (ii) itself step in to,take any action or omit to take any action, it is not obliged to exercise that power or issue that Direction or instruction and it may do so in its absolute discretion.
- (e) Where the Principal or the Principal's Representative does exercise any such right or power, the SCAW Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the SCAW Contractor's Activities, the Project Works and the Temporary Works.

### 32.10 **Non reliance**

Without limiting clauses 12.8 and 12.9, the SCAW Contractor:

- (a) warrants that it did not in any way rely upon any information, representation, statement or documentation, whether forming part of this deed or not, made by or provided to the SCAW Contractor by the Principal or anyone on behalf of the Principal for the purposes of entering into this deed;
- (b) warrants that it enters into this deed based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into this deed relying upon the warranties in clauses 32.10(a) and 32.10(b).

**32.11 Entire agreement**

To the extent permitted by Law, this deed and the other SCAW Contract Documents:

- (a) embody the entire understanding of the parties and constitute the entire terms agreed upon between the parties; and
  - (b) supersede any prior written or other agreement of the parties,
- in relation to the subject matter of this deed.

**32.12 Counterparts**

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

**32.13 Unlimited discretion**

- (a) Except as expressly otherwise provided in this deed (including in clause 32.13(c)), no procedural or substantive limitation or requirement (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this deed.
- (b) Without limiting clause 32.13(a):
  - (i) except as expressly provided in this deed (including in clause 32.13(c)), neither the Principal nor the Principal's Representative will be:
    - (A) constrained in the manner in which it exercises; or
    - (B) under any obligation to exercise,

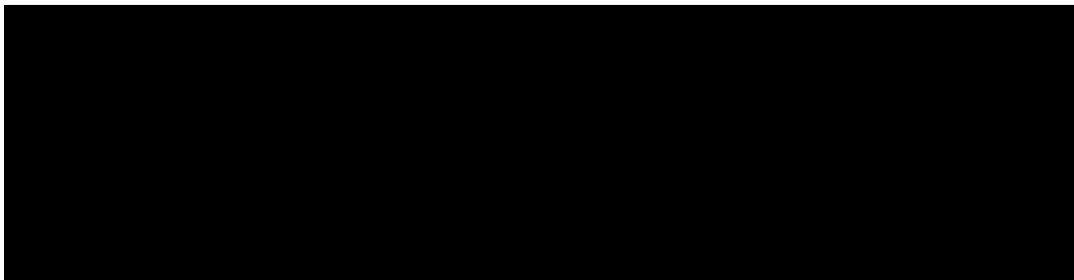
any discretion, power or entitlement conferred by this deed because of the operation of any legal doctrine which in any way limits or otherwise affects the construction or effect of express words used in the provision of this deed which confers the discretion, power or entitlement;
  - (ii) any approval or consent referred to in, or required under, this deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) thinks fit, unless this deed expressly provides otherwise;
  - (iii) a Direction (including an absolute or sole discretion) or power of the Principal's Representative is validly and properly exercised or made for the purposes of

this deed if exercised or made (or if it is not exercised or made) by the Principal's Representative whether it is exercised or made:

- (A) independently;
  - (B) after consultation with the Principal and its advisers; or
  - (C) as directed by the Principal;
- (iv) any control or influence exercised by the Principal over the Principal's Representative does not:
- (A) affect the valid and proper exercise of any power or Direction (including an absolute or sole discretion) by the Principal's Representative; or
  - (B) entitle the SCAW Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the Direction (including an absolute or sole discretion) or power; and
- (v) subject to any express provision in this deed to the contrary, a provision of this deed which says that the Principal or the Principal's Representative may do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing.
- (c) Nothing in this clause 32.13 will prevent the implication of a term into this deed where the implication of the term is required to ensure that this deed (or a part of this deed) is not void or voidable due to uncertainty or any other legal principle.

#### **32.14 Joint and several liability**

- (a) The obligations of the SCAW Contractor, if more than one person, under this deed, are joint and several and each person constituting the SCAW Contractor 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 Principal may proceed against any one or all of them.
- (b) The rights of the SCAW Contractor, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting the SCAW Contractor (and not severally or jointly and severally).
- (c) Any payment by the Principal under this deed to any account nominated in writing by the SCAW Contractor, or failing such nomination, to any one or more persons constituting the SCAW Contractor, will be deemed to be payment to all persons constituting the SCAW Contractor.
- (d) The SCAW Contractor may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting the SCAW Contractor.



**32.15 Assignment**

- (a) Without limiting clause 32.22, the Principal may:
  - (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the SCAW Contractor's prior approval, provided that the assignee, novate or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is whole owned or controlled by the State;
  - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the SCAW Contractor's prior written consent (which must not be unreasonably withheld or delayed); and
  - (iii) disclose to a proposed assignee, novate or transferee any information in the possession of the Principal relating to the SCAW Contractor.
- (b) In the case of a novation by the Principal under this clause:
  - (i) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the SCAW Contractor against one another under this deed will cease;
  - (ii) the novated deed will be on the same terms as this deed, such that the incoming party and the SCAW Contractor will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 32.15(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and
  - (iii) the SCAW Contractor consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.
- (d) The SCAW Contractor must not:
  - (i) assign, novate or otherwise transfer (at law, in equity, absolutely, by way of security, pursuant to a factoring arrangement or otherwise) any of its rights, interests, liabilities or obligations under this deed; or
  - (ii) enter into or facilitate, and must procure that its Subcontractors do not enter into, any agreement or arrangement that constitutes or involves reverse factoring with respect to payments to a Subcontractor or a Subcontractor's right to receive payments under a Subcontract,without the prior written consent of the Principal.

**32.16 No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of either the Principal or the SCAW Contractor to enter into any commitment on behalf of the other or otherwise to act as the other's agent; or

- (b) constituting the relationship between the Principal on one hand and the SCAW Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

**32.17 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 Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this deed.
- (b) Any waiver or consent given by the Principal under this deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
  - (i) a breach of any term of this deed; or
  - (ii) any other failure by the SCAW Contractor to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of:

- (iii) another breach of that term or of a breach of any other term of this deed; or
- (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

**32.18 Further acts and documents**

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

**32.19 Provisions limiting or excluding liability**

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

**32.20 Survival of certain provisions**

- (a) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination of this deed and any rights arising on termination shall survive, including any caps on or exclusions of liability, warranties, guarantees, licences or indemnities given under this deed.
- (b) No provision of this deed which is expressed to survive the termination of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination of this deed.

**32.21 PPS Act**

The SCAW Contractor acknowledges and agrees that:

- (a) if and to the extent that the Principal at any time forms a belief on reasonable grounds that the Principal is, or will become, a secured party arising out of or in

connection with this deed or any transaction contemplated by this deed, the Principal may at the SCAW Contractor's expense take all steps that the Principal considers advisable to:

- (i) perfect, protect, record, register, amend or remove the registration of, the Principal's Security Interest in any relevant personal property that is the subject of this Security Interest (relevant personal property); and
  - (ii) better secure the Principal's position in respect of the relevant personal property under the PPS Act;
- (b) it will do all things reasonably necessary to assist the Principal to take the steps described in paragraph (a);
  - (c) it irrevocably and unconditionally waives its right to receive any verification statement in respect of any financing statement or financing change statement relating to any Security Interests of the Principal in the relevant personal property;
  - (d) if, and only if, the Principal is or becomes a secured party in relation to relevant personal property, and to the extent only that Chapter 4 of the PPS Act would otherwise apply to an enforcement of a Security Interest in relevant personal property, the SCAW Contractor and the Principal agree that, pursuant to section 115 of the PPS Act, the following provisions of the PPS Act do not apply in relation to those Security Interests to the extent, if any, mentioned in section 115: section 117, section 118, section 120, subsection 121(4), section 125, section 129, section 130, subsection 132(3)(d), subsection 132(4), section 142, and section 143;
  - (e) subject to section 275(7) of the PPS Act, it will not disclose the contents of this deed, the amount or performance obligation secured by the Principal's Security Interest in relevant personal property and the other information mentioned in section 275(1) of the PPS Act pursuant to section 275(4) of the PPS Act;
  - (f) it must immediately notify the Principal if the SCAW Contractor becomes aware of any person other than the Principal taking steps to register, or registering, a financing statement in relation to relevant personal property; and
  - (g) it must arrange for the removal or cessation of any registration of any Security Interest that affects the priority of the Principal's interest in relevant personal property.

For the purposes of this clause 32.21, registration, secured party, verification statement, financing statement, personal property and financing change statement each have the meaning given to those terms in the PPS Act.

### **32.22 Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
  - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
  - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted,

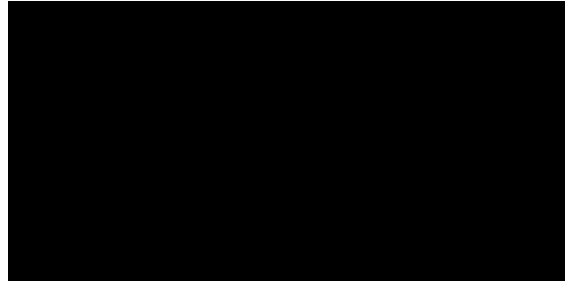
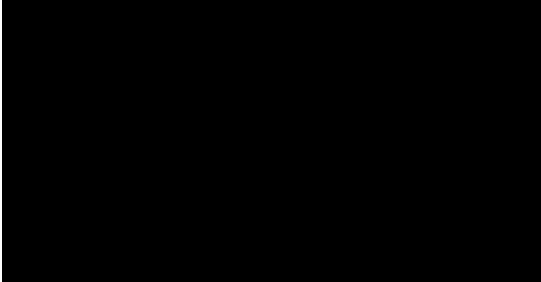


renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and

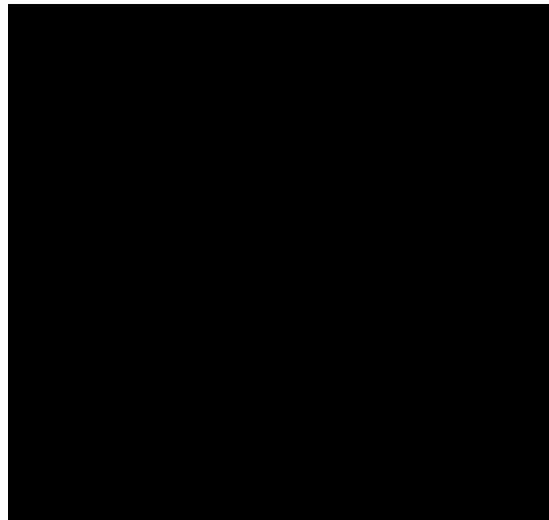
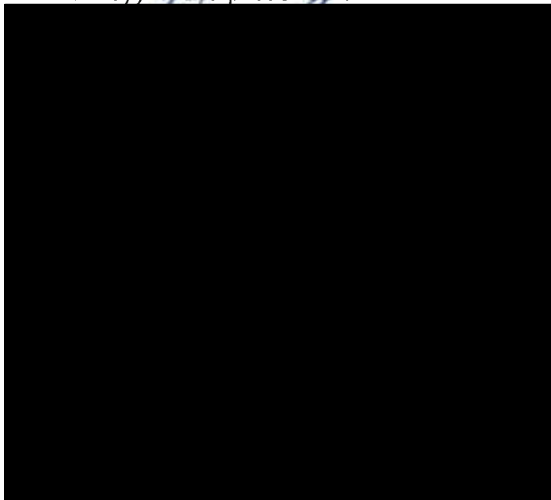
- (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The SCAW Contractor acknowledges and agrees that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The SCAW Contractor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 32.22.
- (d) For the purposes of this clause 32.22, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

**EXECUTED** as a deed.

**SIGNED** for **SYDNEY METRO** ABN 12 354 063 515 by its duly authorised delegate, in the presence of:



**SIGNED, SEALED AND DELIVERED** for and on behalf of **CPB CONTRACTORS PTY LIMITED** (ABN 98 000 893 667) by its Attorneys under a Power of Attorney dated 21 October 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:



**EXECUTED** by **UNITED**  
**INFRASTRUCTURE PTY LIMITED** ABN  
39 634 541 807 in accordance with  
section 127 of the Corporations Act 2001  
(Cth):

