

~~October 2019~~ 21 November 2019

STRICTLY CONFIDENTIAL

**Sydney Metro City & Southwest –Deed of Novation and Variation
Continuation of Early Works Letter (Trains and CBTC)**

BETWEEN:

- (1) **Sydney Metro** ABN 12 354 063 515, a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Sydney Metro**);
- (2) **MTR Corporation (Sydney) SMCSW Pty Limited** ACN 615 158 122 of 2 Riverside Quay, Southbank VIC 3006 (**Integrator**); and
- (3) **Alstom Transport Australia Pty Limited** ABN 68 165 157 451 of 16 Giffnock Avenue, Macquarie Park, NSW 2113 (**Significant Contractor**).

We refer to:

- (a) the deed titled "Sydney Metro City & Southwest Significant Contract Early Works Subcontract" entered into between the Integrator and the Significant Contractor dated 22 January 2019 (**Early Works Subcontract (Trains and CBTC)**); and
- (b) the deed constituted by the letter titled "Sydney Metro City & Southwest – Significant Contract Early Works Subcontract Trains and CBTC" entered into between Sydney Metro and the Significant Contractor dated 28 August 2019 as amended by letter dated 19 September 2019 (**Continuation of Early Works Letter (Trains and CBTC)**), a copy of which is set out at Schedule 1.

Sydney Metro, the Integrator and the Significant Contractor have agreed to the novation of the Continuation of Early Works Letter (Trains and CBTC) pursuant to clause 8(a) of the Continuation of Early Works Letter (Trains and CBTC) and on the terms of this letter.

The Significant Contractor and the Integrator have also agreed to regulate the treatment of the works performed under the Continuation of Early Works Letter (Trains and CBTC) and payments associated with such works by amending the terms of the Early Works Subcontract (Trains and CBTC) on the terms of this letter.

Sydney Metro, the Integrator and the Significant Contractor agree as follows:

1. Definitions and Interpretation

- (a) The following definitions apply in this letter.

Checkpoint Milestone (SM) has the meaning given in the Continuation of Early Works Letter (Trains and CBTC).

Early Works Activities has the meaning given in the Early Works Subcontract (Trains and CBTC).

OTS2 Early Works Deed means the deed titled "OTS2 Early Works Deed" entered into between Sydney Metro and the Integrator dated 7 December 2018.

OTS2 Early Works Deed Variation Letter means a letter from Sydney Metro to the Integrator under which the parties agree to amend the terms of the OTS2 Early Works Deed to provide that, among other things, the SM Early Works constitute 'Early Works' (as that term is defined in the OTS2 Early Works Deed).

SM Early Works has the meaning given in the Continuation of Early Works Letter (Trains and CBTC).

SM Early Works Activities has the meaning given in the Continuation of Early Works Letter (Trains and CBTC).

- (b) Capitalised terms used but not otherwise defined in this letter will have the meaning given to them in the Early Works Subcontract (Trains and CBTC).
- (c) Clause 1.3 of the Early Works Subcontract (Trains and CBTC) will apply in interpreting this document.

2. Novation

Notwithstanding clause 7 of the Continuation of Early Works Letter (Trains and CBTC), the parties acknowledge and agree that the Continuation of Early Works Letter (Trains and CBTC) will not terminate and is novated with effect from the original date of the Continuation of Early Works Letter (Trains and CBTC) as if:

- (a) the Integrator was an original party to the Continuation of Early Works Letter (Trains and CBTC);
- (b) the Integrator shall enjoy the same rights against and owes the same obligations to Alstom in connection with the Continuation of Early Works Letter (Trains and CBTC) and Alstom has the same rights against and owes the same obligations to the Integrator in connection with the Continuation of Early Works Letter (Trains and CBTC) as if the Integrator was named, in the Continuation of Early Works Letter (Trains and CBTC), as Sydney Metro;
- (c) each reference in the Continuation of Early Works Letter (Trains and CBTC) to Sydney Metro is to be read as a reference to the Integrator;
- (d) any act or omission of or payment to or benefit conferred on Sydney Metro relevant to the matters the subject of the Continuation of Early Works Letter (Trains and CBTC) was an act or omission of or payment to or benefit conferred on the Integrator;
- (e) all existing and future liabilities of, and Claims against, Sydney Metro arising from the conduct of Sydney Metro under the Continuation of Early Works Letter (Trains and CBTC) were the liabilities of, and Claims against, the Integrator;
- (f) the Integrator must comply with the terms of the Continuation of Early Works Letter (Trains and CBTC) in favour of the Significant Contractor as it relates to Sydney Metro; and
- (g) the Significant Contractor must comply with the terms of the Continuation of Early Works Letter (Trains and CBTC) in favour of the Integrator.

3. Amendments to Early Works Subcontract (Trains and CBTC)

- (a) The Integrator and the Significant Contractor agree that:
 - (i) the Early Works Subcontract (Trains and CBTC) is amended with effect on and from the date of this letter as set out in Schedule 2 (*Early Works Subcontract (Trains and CBTC) Amendments*);
 - (ii) paragraph 3(a)(i) does not affect any right or obligation of either party that arises before the date of this letter; and

(iii) except as expressly amended by this letter, no changes to the Early Works Subcontract (Trains and CBTC) are to be inferred or implied, and in all other respects the Early Works Subcontract (Trains and CBTC) is confirmed and remains in full force and effect.

(b) Not used.

4. Checkpoint Milestones (SM) performed under the Continuation of Early Works Letter (Trains and CBTC) and certified by Sydney Metro

(a) The parties acknowledge and agree that, as at the date of this letter the Significant Contractor:

(i) has achieved the Checkpoint Milestones (SM) set out in Schedule 3 (*Checkpoint Milestones (SM) achieved*) in accordance with the requirements of the Continuation of Early Works Letter (Trains and CBTC); and

(ii) Sydney Metro has certified those Checkpoint Milestones (SM) for payment.

5. Checkpoint Milestones (SM) performed under the Continuation of Early Works Letter (Trains and CBTC) but not certified by Sydney Metro

(a) The parties acknowledge and agree that, as at the date of this letter:

(i) the Significant Contractor has achieved the Checkpoint Milestones (SM) set out in Schedule 4 (*Checkpoint Milestones (SM) achieved but not certified*) in accordance with the requirements of the Continuation of Early Works Letter (Trains and CBTC); and

(ii) Sydney Metro has not certified those Checkpoint Milestones (SM) for payment.

(b) Sydney Metro must pay any outstanding amounts from Schedule 4 (*Checkpoint Milestones (SM) achieved but not certified*) to the Integrator under the OTS2 Early Works Deed (as amended by the OTS2 Early Works Deed Variation Letter), and the Integrator must pay those outstanding amounts to the Significant Contractor under the Early Works Subcontract (Trains and CBTC) (as amended by this letter).

(c) Not used

6. Outstanding Checkpoint Milestones (SM) under the Continuation of Early Works Letter (Trains and CBTC)

(a) The parties agree that the Checkpoint Milestones (SM) set out in Schedule 5 (*Outstanding Checkpoint Milestones (SM)*) have not been achieved by the Significant Contractor.

(b) The Significant Contractor must, continue to perform the SM Early Works, and achieve the Checkpoint Milestones (SM) set out in Schedule 5 (*Outstanding Checkpoint Milestones (SM)*), in accordance with the requirements of the Continuation of Early Works Letter (Trains and CBTC).

(c) The parties acknowledge that in respect of each Checkpoint Milestone (SM) set out in Schedule 5 (*Outstanding Checkpoint Milestones (SM)*), Sydney Metro will pay the Integrator the amount payable on account of that Checkpoint Milestone (SM) under the OTS2 Early Works Deed (as amended by the OTS2 Early Works Deed Variation Letter) once the Checkpoint Milestone (SM) is confirmed to have been achieved, and the

Integrator must make payment to the Significant Contractor under the Early Works Subcontract (Trains and CBTC) (as amended by this letter).

7. Release

- (a) The Significant Contractor acknowledges and agrees that on and from the date of this letter, the Significant Contractor releases Sydney Metro from:
 - (i) any accrued obligations and liabilities under the Continuation of Early Works Letter (Trains and CBTC), including those arising out of the novation of the Continuation of Early Works Letter (Trains and CBTC); and
 - (ii) any obligations and liabilities which expressly or impliedly continue after novation of the Continuation of Early Works Letter (Trains and CBTC).
- (b) The Significant Contractor acknowledges and agrees that as at the date of this letter, the Significant Contractor is not aware after making all due enquiries of any claim, dispute, demand or proceeding against the Integrator or Sydney Metro prior to the date of this letter which remains outstanding in relation to the Continuation of Early Works Letter (Trains and CBTC) except for:
 - (i) claims for outstanding amounts referred to in clause 5(b);



8. Giving effect to this document

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

9. 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 letter.
- (b) Each Notice must:
 - (i) be in writing;
 - (ii) be addressed:
 - (A) in the case of a Notice to Sydney Metro, to the Principal's Representative (any Notice in relation to a Claim or a Dispute must also be addressed to the General Counsel - Sydney Metro and sent to [redacted] or
 - (B) in the case of a Notice to the Integrator, to [redacted] or
 - (C) in the case of a Notice to the Significant Contractor, to [redacted];
 - (iii) 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

- (iv) be delivered or posted to the relevant address shown below (or to any new address notified by the intended recipient):

Sydney Metro

Name: Sydney Metro, a New South Wales Government agency
Address: Level 43, 680 George Street, Sydney NSW 2000
For the attention of: Principal's Representative

Integrator

Name: MTR Corporation (Sydney) SMCSW Pty Limited
Address: c/o MTR Corporation Limited, MTR Headquarters Building Telford Plaza, Kowloon Bay, Hong Kong
For the attention of: MTR's Representative

Significant Contractor

Name: Alstom Transport Australia Pty Limited ABN 68 165 157 451
Address: 16 Giffnock Ave, North Ryde NSW 2113
For the attention of: Significant Contractor's Representative

- (c) A communication is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (ii) (in the case of international post) 7 Business Days after the date of posting;
 - (iii) (in the case of delivery by hand) on delivery;
 - (iv) (in the case of an email) if it is transmitted:
 - (A) by 5.00pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) after 5.00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
 - (v) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

10. Amendment

This document can only be amended or replaced by another document signed by the parties.

11. Counterparts

This document may be executed in counterparts.

12. Governing Law

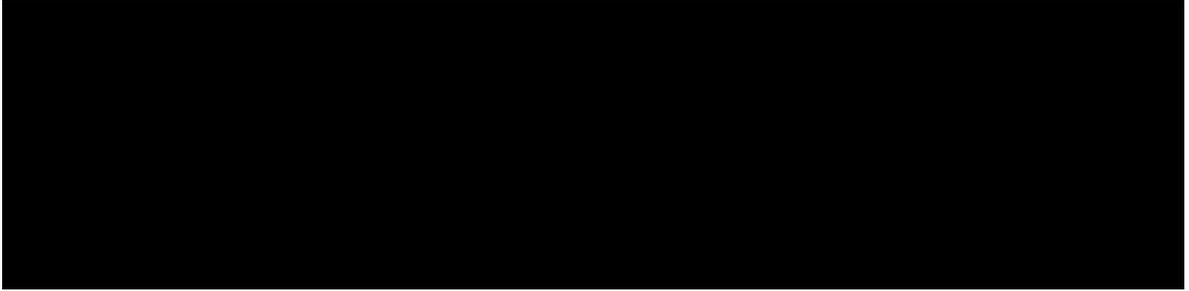
This letter is governed by the laws of New South Wales.

Yours sincerely,

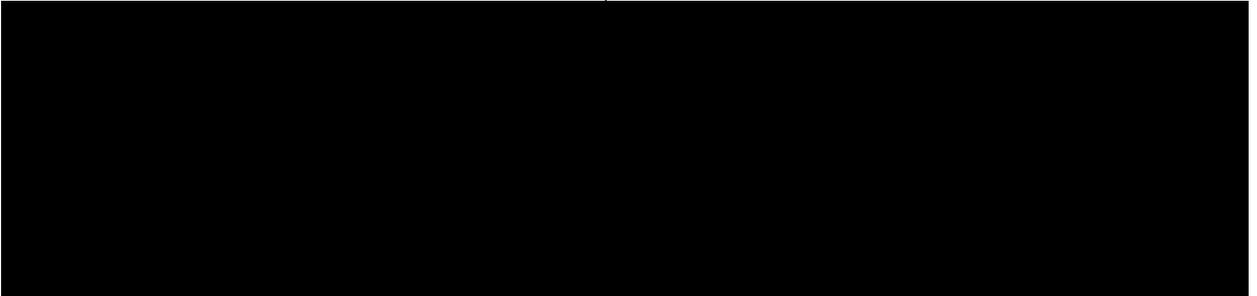
For and on behalf of **the Integrator**

Executed and delivered as a deed.

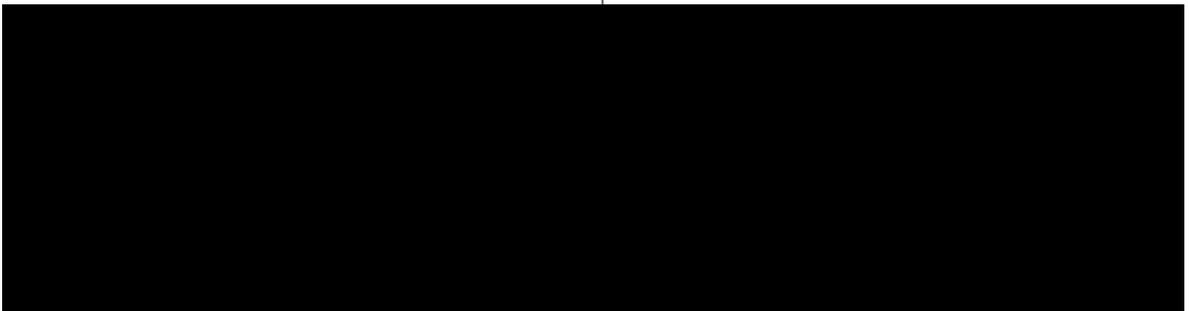
Executed by Sydney Metro ABN 12 354 063 515 by its authorised delegate, in the presence of:



Signed, sealed and delivered for and on behalf of **MTR Corporation (Sydney) SMCSW Pty Limited** ACN 615 158 122 under power of attorney dated 23 September in the presence of: 2019



Executed by Alstom Transport Australia Pty Limited ABN 68 165 157 451 in accordance with section 127 of the Corporations Act:



SCHEDULE 1

Continuation of Early Works Letter (Trains and CBTC)

See attached.



28 August 2019

STRICTLY CONFIDENTIAL

Alstom Transport Australia Pty Ltd
Level 4, 16 Giffnock Avenue
North Ryde, NSW 2113
Australia

Dear [REDACTED]

**Sydney Metro City & Southwest – Significant Contract Early Works Subcontract
Trains and CBTC**

We refer to the deed titled "Significant Contract Early Works Subcontract" entered into between MTR Corporation (Sydney) SMCSW Pty Limited (ACN 615 158 122) (MTR) and Alstom Transport Australia Pty Limited (ACN 165 157 451) (Significant Contractor) dated January 2019, a copy of which is attached to this letter as Schedule 3 (*Early Works Subcontract*) (MTR Early Works Subcontract).

The Significant Contractor is performing the scope of the Early Works set out in Schedule 2 (*Scope of Early Works*) of the MTR Early Works Subcontract.

In order to provide greater certainty that the programme objectives for the works to be performed under the proposed OTS2 Project Deed will be met, the Significant Contractor will enter into this letter agreement with Sydney Metro and perform the SM Early Works in accordance with the provisions of this letter.

This letter has been executed by both parties as a deed.

Sydney Metro and the Significant Contractor agree as follows:

1. **Interpretation**

1.1 **Definitions**

Alstom Requirements means the key Interface requirements, including dimensions, loads, locations and other relevant interface requirements for the OTS2 Works (Trains and CBTC).

Checkpoint Milestone (SM) means each of the milestones set out in Schedule 4 (*Checkpoint Milestones (SM)*).

Date for Checkpoint Milestone (SM) Achievement means in respect of a Checkpoint Milestone (SM), the date specified as the 'Date for Achievement' in Schedule 4 (*Checkpoint Milestones (SM)*).

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Sydney Metro
Level 43, 680 George Street, Sydney NSW 2000 | PO Box K658, Haymarket NSW 1240
T 02 8265 9400 | sydneymetro.info | ABN 12 354 063 515



Key Alstom Interface Design means design documents prepared by Sydney Metro, MTR or third parties (including relevant design documents provided under Foundation Infrastructure Works Contracts that have been awarded as at the date of this letter or that are to be awarded after the date of this letter) that:

- (a) has been identified as containing design elements that interface with the OTS2 Works (Trains and CBTC); and
- (b) is provided to the Significant Contractor.

MTR means MTR Corporation (Sydney) SMCSW Pty Limited ACN 615 158 122.

MTR Early Works Subcontract Variation Letter means a letter from MTR to the Significant Contractor under which the parties agree to amend the terms of the MTR Early Works Subcontract to provide that, among other things, the SM Early Works constitute "Early Works" (as that term is defined in the MTR Early Works Subcontract).

OTS2 Early Works Deed means the deed titled "OTS2 Early Works Deed" entered into between Sydney Metro and MTR dated 7 December 2018.

OTS2 Early Works Deed Variation Letter means a letter from Sydney Metro to MTR under which the parties agree to amend the terms of the OTS2 Early Works Deed to provide that, among other things, the SM Early Works constitute "Early Works" (as that term is defined in the OTS2 Early Works Deed).

SM CP Satisfaction Data means the date Sydney Metro notifies the Significant Contractor that all conditions precedent to the commencement of the SM Trains and Signalling Contract have been satisfied or waived.

SM Early Works means the works which are necessary to maintain the Date for Practical Completion of Phase 1 and the Date for Practical Completion of Phase 2 including the services and deliverables the Significant Contractor must perform and/or deliver as set out in Schedule 1 (*Scope of SM Early Works*) and all other services and deliverables that the Significant Contractor must perform and/or deliver in order to achieve each Checkpoint Milestone (SM).

SM Early Works Activities means all activities that the Significant Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under this letter, whether or not the performance of such things or tasks is subcontracted to a Significant Contractor's Contractor.

SM Early Works Payments means a payment set out in Schedule 2 (*SM Early Works Payments*) that is payable by Sydney Metro following Checkpoint Milestone Completion of a relevant Checkpoint Milestone (SM), as adjusted for any Modification to the SM Early Works agreed or directed by Sydney Metro.

SM Indicative Delivery Programme means the Indicative Delivery Programme as set out in and amended under Schedule 6 of this letter.

SM Trains and Signalling Contract means a contract with Sydney Metro or its nominee for the delivery of the OTS2 Works (Trains and CBTC).

Sydney Metro's Representative means [REDACTED] or any other person appointed by Sydney Metro for such role.



Total SM Early Works Payments means the aggregate of all amounts set out in Schedule 2 (*SM Early Works Payments*), being [REDACTED] as adjusted for any Modification to the SM Early Works agreed or directed by Sydney Metro.

1.2 MTR Early Works Subcontract Defined Terms

Subject to clause 2(a), capitalised terms used but not otherwise defined in this letter will have the meaning given to them in the MTR Early Works Subcontract.

2. Performance of SM Early Works

(a) Each of Sydney Metro and the Significant Contractor will, in respect of the SM Early Works, be bound by, and will have the same rights and obligations as set out in, the terms of the MTR Early Works Subcontract as if Sydney Metro was named as a party to the MTR Early Works Subcontract in place of MTR but on the basis that references in the MTR Early Works Subcontract to:

- (i) "Integrator" were to "Sydney Metro";
- (ii) "Integrator's Representative" were to "Sydney Metro's Representative";
- (iii) "Early Works" were to "SM Early Works";
- (iv) "Early Works Activities" were to "SM Early Works Activities";
- (v) "Total Early Works Payments" were to "Total SM Early Works Payments";
- (vi) "Date for Checkpoint Milestone Achievement" were to "Date for Checkpoint Milestone (SM) Achievement";
- (vii) "Checkpoint Milestone" were to "Checkpoint Milestone (SM)";
- (viii) "Indicative Delivery Programme" were to "SM Indicative Delivery Programme";
- (ix) "Schedule 2 (*Scope of Early Works*)" were a reference to "Schedule 1 (*Scope of SM Early Works*)";
- (x) "Schedule 5 (*Early Works Payments*)" were a reference to "Schedule 2 (*SM Early Works Payments*)"; and
- (xi) "this subcontract" were a reference to this letter,

and the provisions in the MTR Early Works Subcontract set out in Schedule 5 (*Excluded and amended provisions*) do not apply as between Sydney Metro and the Significant Contractor.

(b) Without limiting paragraph (a) above, the Significant Contractor undertakes to Sydney Metro to carry out the SM Early Works and perform the SM Early Works Activities in accordance with the requirements of this letter.

(c) The parties acknowledge and agree that:

- (i) Sydney Metro has engaged MTR to manage the Significant Contractor in relation to the performance of the SM Early Works;



- (ii) MTR may issue directions in relation to the SM Early Works and, provided that such direction is given in accordance with this letter, the Significant Contractor must comply with any such direction issued by MTR;
- (iii) the SM Early Works may not be varied without the prior written consent of MTR; and
- (iv) copies of all communications given and received by Sydney Metro under this letter will be provided to MTR and MTR will be entitled to attend meetings between Sydney Metro and the Significant Contractor in relation to the SM Early Works.

3. Treatment of Early Works

- (a) If:
 - (i) the Significant Contractor enters into the Executed Significant Contract with MTR or the SM Trains and Signalling Contract, any SM Early Works performed by the Significant Contractor pursuant to this letter will form part of the OTS2 Works (Trains and CBTC) and will, from the CP Satisfaction Date or the SM CP Satisfaction Date (as applicable), be treated as having been performed by the Significant Contractor under the Executed Significant Contract or the SM Trains and Signalling Contract (as applicable); or
 - (ii) the Significant Contractor and MTR have entered into the MTR Early Works Subcontract Variation Letter and the Significant Contractor receives notice from Sydney Metro that Sydney Metro has entered into the OTS2 Early Works Deed Variation Letter, any SM Early Works performed by the Significant Contractor pursuant to this letter will form part of the Early Works (as defined under the MTR Early Works Subcontract) and will be treated as having been performed by the Significant Contractor under the MTR Early Works Subcontract.
- (b) To the extent that the SM Early Works also constitute Early Works (as defined under the MTR Early Works Subcontract) and the Significant Contractor performs those Early Works under and in accordance with the MTR Early Works Subcontract, the Significant Contractor will be deemed to have discharged its corresponding obligations to perform the SM Early Works under this letter.
- (c) Notwithstanding clause 14.6 of the MTR Early Works Subcontract but subject to clause 4(b), on and from the date of termination of this letter under clause 7, each party releases the other party from:
 - (i) any accrued obligations and liabilities under this letter, including those arising out of the termination of this letter; and
 - (ii) any obligations and liabilities which expressly or impliedly continue after termination of this letter, including those referred to in clause 17.2 of the MTR Early Works Subcontract.

except to the extent of any accrued obligations and liabilities arising out of a payment obligation that remains unpaid under clause 4 of this letter.



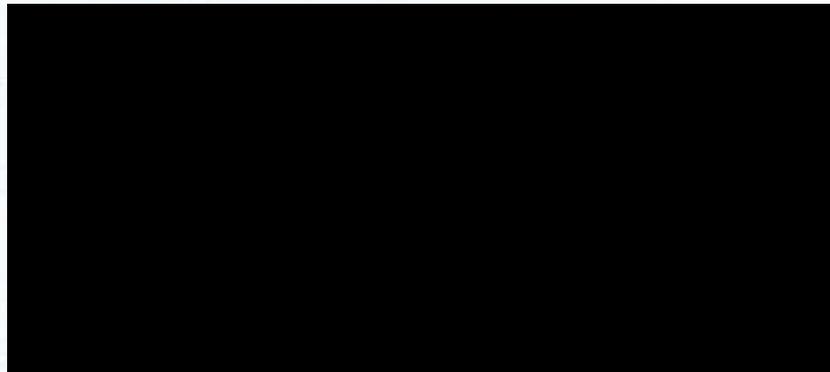
- (d) Subject to clause 3(e), the parties agree that if prior to entering into the Executed Significant Contract, the SM Trains and Signalling Contract or the MTR Early Works Subcontract Variation Letter (whichever is the first to occur), an event occurs after the date of this letter which is equivalent to a Compensation Event or Relief Event (PPP) (each as defined in the Draft Significant Contract), the parties will in good faith seek to agree any amendments necessary to the relevant price and programme to reflect the impact of that event prior to execution of the relevant documents.
- (e) The Significant Contractor must promptly after the occurrence of an event described in clause 3(d) notify Sydney Metro and MTR of such event and must, if requested, provide such information in relation to that event as Sydney Metro or MTR may require.

4. **Payment**

- (a) Subject to clauses 5(b), 5(b) and 9 of this letter, Sydney Metro will pay the Significant Contractor the payments set out in Schedule 2 (*SM Early Works Payments*) in accordance with this letter.
- (b) If Checkpoint Milestone Completion in respect of any Checkpoint Milestone (SM) is not achieved prior to termination of this letter but is achieved after termination of this letter by the performance of the relevant SM Early Works by the Significant Contractor under any one of:
 - (i) the Executed Significant Contract with MTR;
 - (ii) the SM Trains and Signalling Contract with Sydney Metro; or
 - (iii) if this letter is terminated under clause 7(b), the MTR Early Works Subcontract as amended by the MTR Early Works Subcontract Variation Letter,

the Significant Contractor's entitlement to claim payment in respect of that Checkpoint Milestone (SM) will arise under and be paid in accordance with this letter.

5.





6. Confirmation

- (a) Sydney Metro and the Significant Contractor acknowledge that the obligations and liabilities under this letter are separate and independent to the MTR Early Works Subcontract.
- (b) The Significant Contractor:
 - (i) confirms that Sydney Metro is not responsible in any way for any obligations or liabilities of MTR under the MTR Early Works Subcontract howsoever arising; and
 - (ii) acknowledges and agrees that it continues to be responsible for all its obligations and liabilities under the MTR Early Works Subcontract.

7. Term

This letter will terminate on the earlier to occur of:

- (a) the CP Satisfaction Date or the SM CP Satisfaction Date (as applicable);
- (b) the date on which the following conditions are satisfied:
 - (i) the Significant Contractor and MTR have entered into the MTR Early Works Subcontract Variation Letter; and
 - (ii) the Significant Contractor receives notice from Sydney Metro that Sydney Metro has entered into the OTS2 Early Works Deed Variation Letter; and
- (c) the date of termination of the provisions of this letter in accordance with the procedure set out in clause 14 (*Termination*) of the MTR Early Works Subcontract as modified pursuant to clause 2 (*Performance of SM Early Works*) of this letter.

8. Assignment and novation

- (a) Except as expressly permitted in clause 8(b) of this letter, Sydney Metro may not assign, novate or otherwise deal with its rights or obligations under this letter without the Significant Contractor's prior written consent.
- (b) Sydney Metro may assign its rights under this letter, without the Significant Contractor's prior written consent, provided that the proposed assignee:
 - (i) employs persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub contracts) which are sufficient to enable it to perform the obligations of the Principal in relation to this letter; and
 - (ii) is not a direct competitor of the Significant Contractor.

9. Survival of certain provisions

- (a) Clauses 3(c) and 4 of this letter and clauses 9.1, 10.1 and 10.4 of the MTR Early Works Subcontract as amended by clause 2 of this letter will survive rescission, termination or expiration of this letter (**Surviving Provisions**).

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Sydney Metro
Level 43, 680 George Street, Sydney NSW 2000 | PO Box K659, Haymarket NSW 1240
T 02 8265 9400 | sydneymetro.info | ABN 12 354 063 515



(b) If this letter is rescinded or terminated, a party will not be liable to the other party except:

- (i) under the Surviving Provisions; or
- (ii) in respect of any breach of this letter occurring before such rescission or termination.

10. **Governing Law**

This letter is governed by the laws of New South Wales.

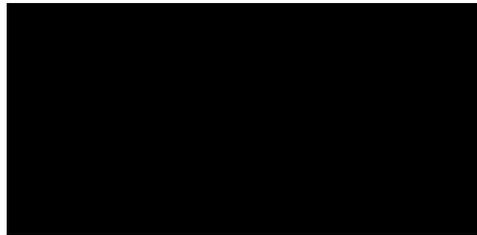
Yours sincerely,

For and on behalf of **SYDNEY METRO**



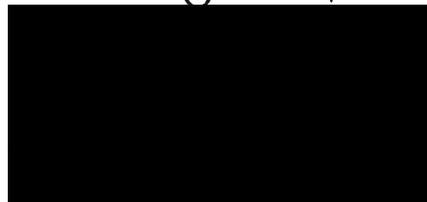
Executed and delivered as a deed.

EXECUTED by **SYDNEY METRO** ABN 12 354 063 515 by its duly authorised delegate, in the presence of:



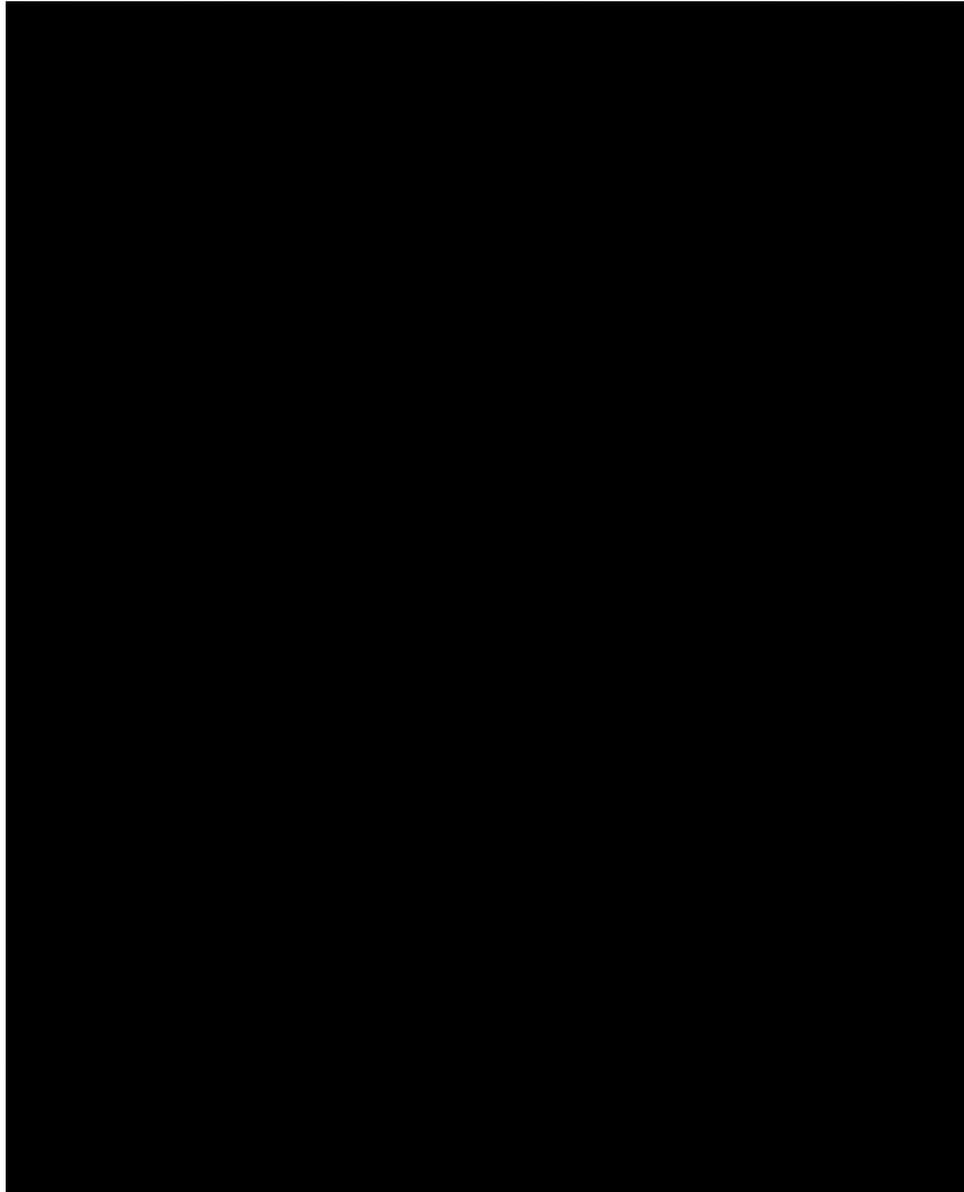
EXECUTED by **ALSTOM TRANSPORT AUSTRALIA PTY LIMITED** ACN 165 157 451 ~~In accordance with Section 127 of the Corporations Act 2001~~ in the presence of:

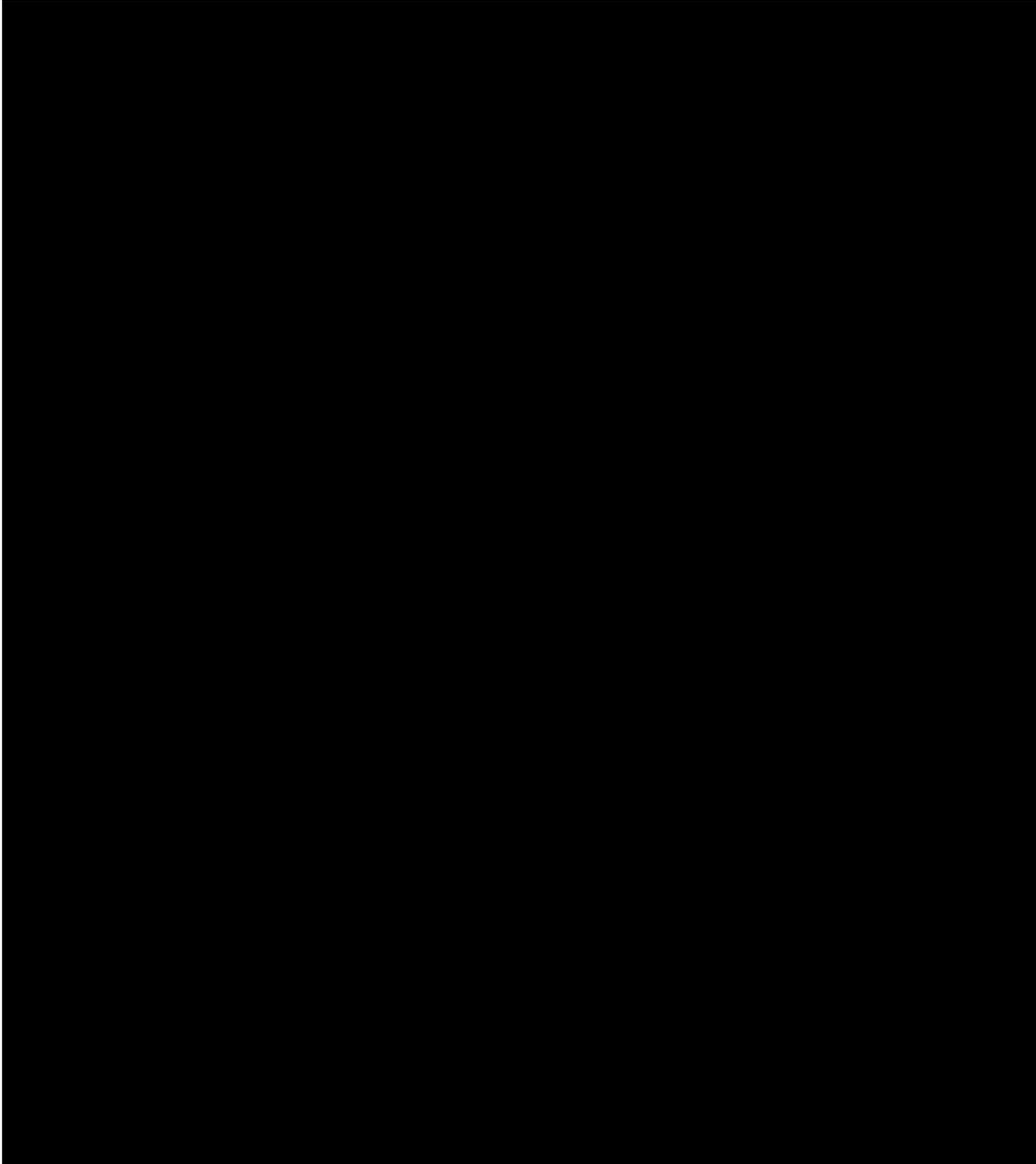
by its attorney in the presence of

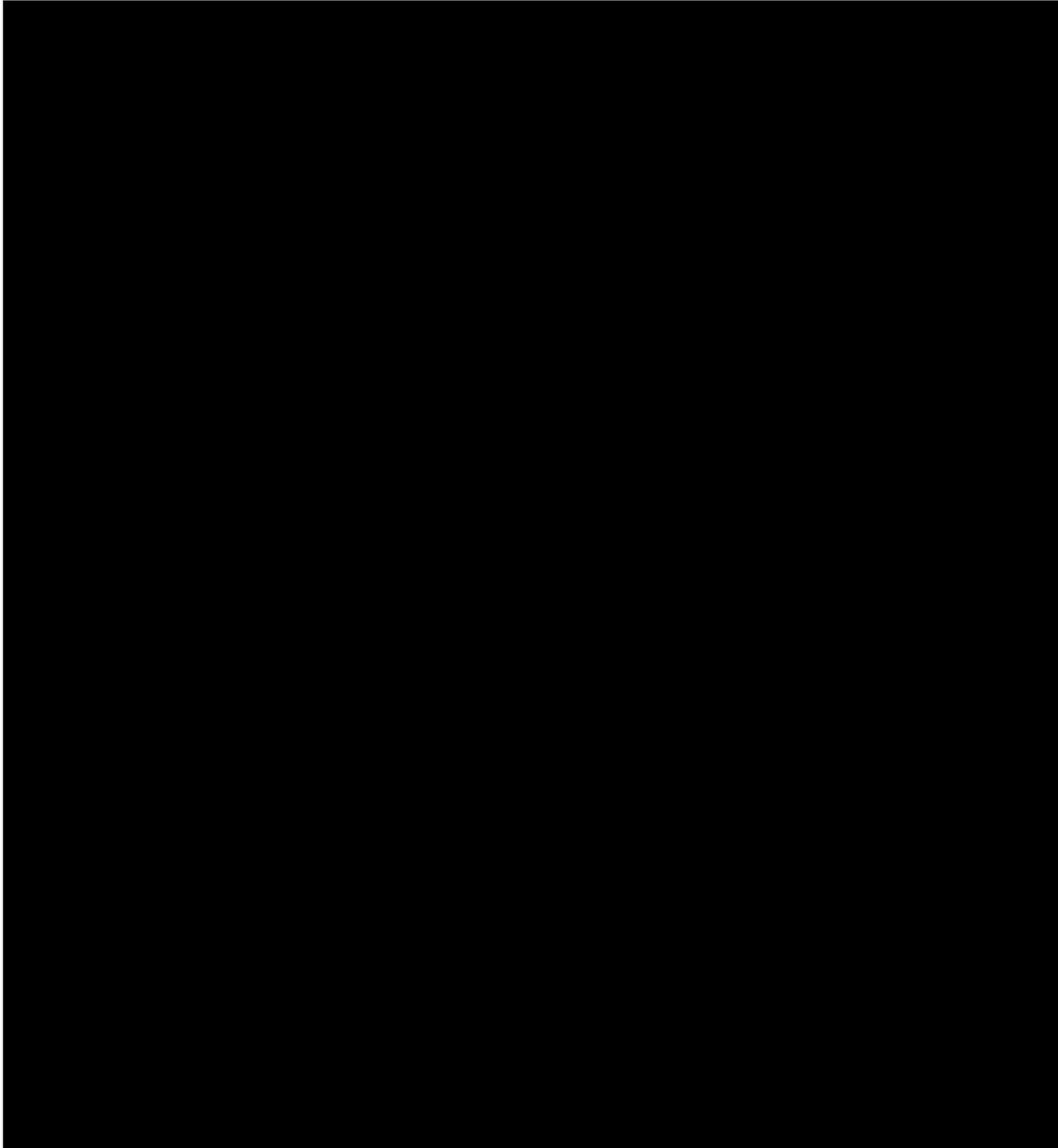




SCHEDULE 1

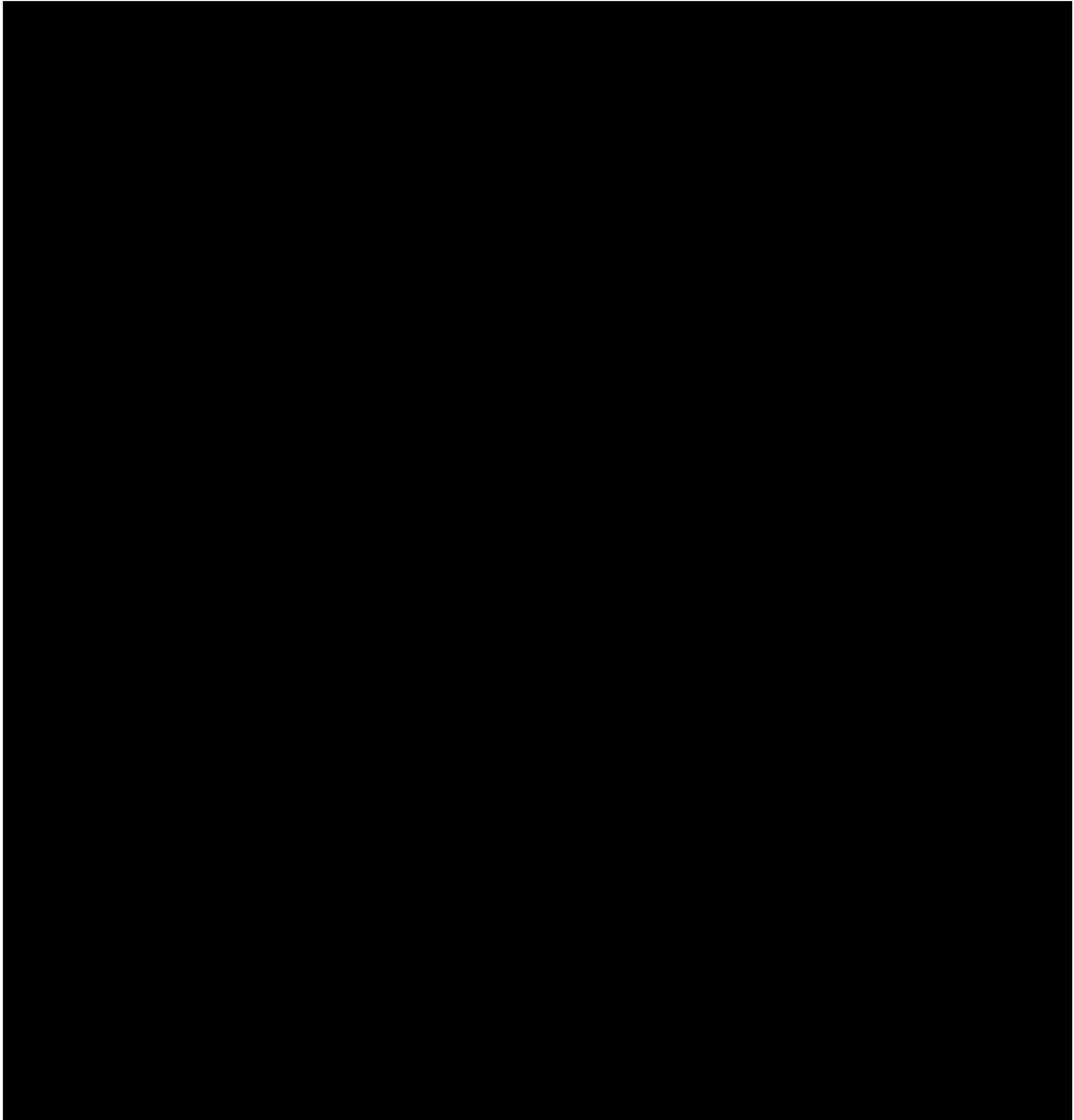








SCHEDULE 2





SCHEDULE 3
MTR Early Works Subcontract



Sydney Metro City & Southwest Significant Contract Early Works Subcontract

MTR Corporation (Sydney) SMCSW Pty Limited
ACN 615 158 122

and

Alstom Transport Australia Pty Limited
ACN 165 157 451

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THIS SUBCONTRACT is made on January 2019

BETWEEN:

- (1) MTR Corporation (Sydney) SMCSW Pty Limited ACN 615 158 122 of 2 Riverside Quay, Southbank VIC 3006 (Integrator); and
- (2) Alstom Transport Australia Pty Limited of 16 Giffnock Avenue, Macquarie Park, NSW 2113 (Significant Contractor).

RECITALS AND OVERVIEW

- (A) In September 2014, Transport for NSW and OpCo entered into the OTS Project Deed to deliver the OTS PPP as part of Sydney Metro Northwest. Sydney Metro Northwest includes 13 stations between Cudgong Road and Chatswood and is currently under construction. Sydney Metro Northwest is expected to become operational in 2019.
- (B) The OTS Project Deed contains provisions providing for Transport for NSW and OpCo to establish a cooperative and consultative process by which they can discuss and work together on the project definition, planning, development and delivery of an augmentation of Sydney Metro Northwest.
- (C) On 7 December 2017, Transport for NSW, the Integrator and Alstom entered into the Subcommitment Deed to record the terms agreed by Transport for NSW, the Integrator and the Significant Contractor with respect to the Augmentation and the OTS2 Works (Trains and CBTC).
- (D) All assets, rights and liabilities of Transport for NSW arising from or in connection with the Project (including from or in connection with the OTS Project Deed) were transferred to, and became assets, rights and liabilities of, the Principal on 1 July 2018 under section 94 of the Transport Administration Act following the establishment of the Principal as a NSW Government agency under the *Transport Administration Amendment (Sydney Metro) Act 2018 (NSW)*.
- (E) In order to provide greater certainty that the time objectives for the OTS2 Works (Trains and CBTC) set out in the Initial Delivery Program (and otherwise required for the delivery of the works under the Draft Significant Contract) will be met, the Significant Contractor will perform the Early Works Activities on the basis set out in this subcontract.
- (F) The Significant Contractor acknowledges and agrees that it is the intention that from the CP Satisfaction Date the Early Works will form part of the OTS2 Works (Trains and CBTC) and, from the CP Satisfaction Date, will be treated as having been performed by the Significant Contractor under the Executed Significant Contract.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

Capitalised terms used in this subcontract, including in the Recitals and Overview, have the meaning given to them in clause 1.1 (*Definitions*) of the Draft Significant Contract, unless otherwise defined in this subcontract. The following definitions apply in this subcontract.

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

Checkpoint Milestone means those milestones specified in section 6.1 of Schedule 2 (*Scope of Early Works*) and any additional Checkpoint Milestone agreed pursuant to clause 9.7 (*Update to Early Works Payments*).

Checkpoint Milestone Completion has the meaning given in clause 5.2(b).

Checkpoint Milestone Completion Notice means a notice referred to in clause 5.5(a) substantially in the form of Part B of Schedule 9 (*Checkpoint Milestone Completion Notice*).

Date for Checkpoint Milestone Achievement means in respect of a Checkpoint Milestone, the date specified as the 'Date for Achievement' in section 6.1 of Schedule 2 (*Scope of Early Works*).

Date for Milestone Completion means the date for completion for each Milestone specified in Schedule 53A (*Milestones, Practical Completion and liquidated damages*) to the Draft Significant Contract, as may be extended in accordance with the Draft Significant Contract.

Date for Milestone (Principal) Completion means the date for completion of each Milestone (Principal) as set out in Schedule 10 (*Milestones (Principal)*) to the Draft Significant Contract, as may be extended in accordance with the Draft Significant Contract.

Dispute Resolution Mechanism means the dispute resolution mechanism incorporated into this subcontract pursuant to clause 3.3 (*Incorporation by reference*).

Draft OTS2 Project Deed means the project deed titled "OTS2 Project Deed" in respect of Phase 1 of the Project, which is proposed to be entered into between the Principal and OpCo2.

Draft Significant Contract means the significant contract in respect of Phase 1 of the OTS2 PPP (Trains and CBTC), to be entered into between the Integrator and the Significant Contractor, the form of which as at the date of this subcontract is set out in Schedule 1 (*Alstom D&C Significant Contract (Phase 1)*) of the Alstom Significant Contracts Finalisation Deed.

Early Works means:

- (a) the services and deliverables that the Significant Contractor must perform and/or deliver as set out Schedule 2 (*Scope of Early Works*);
- (b) all other services and deliverables that the Significant Contractor must perform and/or deliver in order to comply with the Indicative Delivery Program and achieve:
 - (i) the Checkpoint Milestones set out in Schedule 2 (*Scope of Early Works*);
 - (ii) the Milestones (Principal) set out in Schedule 10 (*Milestones (Principal)*) to the Draft Significant Contract by the relevant Date for Milestone (Principal) Completion; and

- (iii) the Milestones set out in Schedule 53A (*Milestones, Practical Completion and liquidated damages*) to the Draft Significant Contract by the relevant Date for Milestone Completion,

until the earlier of:

- (iv) the CP Satisfaction Date; and
- (v) the date of termination of this subcontract under clause 14 (*Termination*); and

- (c) any Modifications directed or approved in accordance with clause 6 (*Modifications*).

Early Works Activities means all activities that the Significant Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under this subcontract, whether or not the performance of such things or tasks is subcontracted to a Significant Contractor's Contractor.

Early Works Payment means a payment set out in Schedule 5 (*Early Works Payments*) that is payable following Checkpoint Milestone Completion of a Checkpoint Milestone.

Early Works Termination Event means the termination events set out in clause 14.1 (*Early Works Termination Events*).

Early Works Termination Payment means the payment determined in accordance with clause 14.6 (*Consequences of termination*).

Executed Significant Contract means the executed form of the significant contract in respect of the OTS2 PPP (Trains and CBTC), to be entered into between the Integrator and the Significant Contractor.

Indicative Delivery Program means the program of Delivery Activities which is Exhibit 3 to the Draft Significant Contract.

Initial Delivery Program means the initial delivery program and set out in Exhibit 4 of the Draft OTS2 Project Deed.

Integrator's Representative means [REDACTED] or any other person appointed by the Integrator.

Milestone means each of the milestones set out in Schedule 53A (*Milestones, Practical Completion and liquidated damages*) to the Draft Significant Contract.

Milestone (Principal) means each of the milestones set out in Schedule 10 (*Milestones (Principal)*) to the Draft Significant Contract.

Modification means any change to the requirements of this subcontract for:

- (a) the Early Works; or
- (b) the Early Works Activities,

Including any addition, reduction, increase, decrease or omission to or from them or any suspension by the Integrator pursuant to clause 13(b)(ii).

OTS2 Early Works Deed means the contract titled "Sydney Metro City & Southwest OTS2 Early Works Deed" between the Principal and the Integrator dated 7 December 2018.

PDCS means the Principal's web based TeamBinder project data and collaboration system, or such other electronic project data and collaboration system notified to the Significant Contractor by the Integrator's Representative.

Significant Contractor's Contractor means a contractor, sub-contractor, sub-sub-contractor and so on right down the contracting chain (including all suppliers, tradespersons and consultants) of the Significant Contractor involved in performing the Early Works Activities.

Significant Contractor's Representative means [REDACTED] or any other person appointed by the Significant Contractor to be its representative for the purpose of the Early Works.

Significant Contractor Parent Company Guarantee means the parent company guarantee in the form set out in Schedule 7 (*Significant Contractor Parent Company Guarantee*) dated on or about the date of this subcontract between [REDACTED] as guarantor and the Integrator as beneficiary under which [REDACTED] guarantees the performance of the obligations of the Significant Contractor under this subcontract.

Supply of Trains has the meaning given to that term in the Alstom Significant Contracts Finalisation Deed.

Total Early Works Payment means the aggregate of all Early Works Payments set out in Schedule 5 (*Early Works Payments*) as adjusted for any Modification agreed or directed by the Integrator.

[REDACTED]
UAP Part B has the meaning given to that term in the Alstom Significant Contracts Finalisation Deed.

1.2 Rules for Interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this subcontract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement (including this subcontract), or a provision of a document or agreement (including this subcontract), including any document or agreement (or provisions thereof) which exists in draft form, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) the parties means the parties to this subcontract at the relevant time;
 - (iv) a party means a party to this subcontract;
 - (v) a party to this subcontract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;

- (vi) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (vii) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A reference to any authority, institute, association or body is:
 - (i) if that authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that authority, institute, association or body.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.
- (h) The expression this subcontract includes the agreement, arrangement, understanding or transaction recorded in this subcontract.
- (i) A reference to dollars or \$ is to an amount in Australian currency.

1.3 Non Business Days

If the day on or by which a person must do something under this subcontract is not a Business Day:

- (a) if the act involves a payment that is due on demand, the person must do it on or by the next Business Day; and
- (b) in any other case, the person must do it on or by the previous Business Day.

1.4 The rule about "contra proferentem"

This subcontract is not to be interpreted against the interests of a party merely because that party proposed this subcontract or some provision in it or because that party relies on a provision of this subcontract to protect itself.

1.5 **Representations and warranties**

The Significant Contractor represents and warrants that:

- (a) It is duly registered and remains in existence;
- (b) the execution, delivery, performance of this subcontract does not violate any law or any document or agreement to which it is a party or which is binding on it or any of its assets;
- (c) it subsists and is properly constituted;
- (d) it does not have any immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (e) it is not aware of any material facts or circumstances that have not been disclosed to the Integrator and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this subcontract; and
- (f) no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect upon it or its ability to perform its financial or other obligations under this subcontract.

1.6 **Not used**

2. **PURPOSE**

The purpose of this subcontract is to record the terms agreed by the Integrator and the Significant Contractor in respect of the Early Works and delivery of the Early Works Activities.

3. **EARLY WORKS AND SIGNIFICANT CONTRACT**

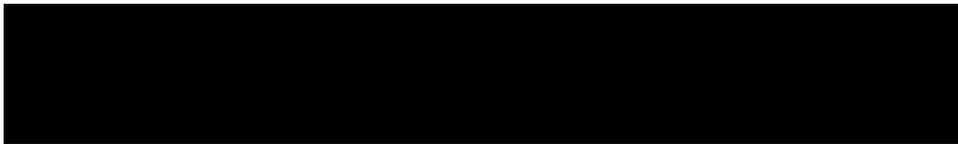
3.1 **Early Works**

The Significant Contractor must carry out the Early Works in accordance with the requirements of this subcontract.

3.2 **Scope of Early Works**

The Significant Contractor acknowledges and agrees that it has reviewed Schedule 2 (*Scope of Early Works*), Schedule 5 (*Early Works Payments*) and the Indicative Delivery Program, and that subject to clause 3.2A (*Options*), the Early Works Payments allow for the performance of the Early Works and all activities and all resources required during the term of this subcontract in order for the Significant Contractor to comply with the Indicative Delivery Program and achieve:

- (a) the Checkpoint Milestones set out in Schedule 2 (*Scope of Early Works*);
- (b) the Milestones (Principal) set out in Schedule 10 (*Milestones (Principal)*) to the Draft Significant Contract by the relevant Dates for Milestone (Principal) Completion; and
- (c) the Milestones set out in Schedule 53A (*Milestones, Practical Completion and Liquidated Damages*) to the Draft Significant Contract by the relevant Dates for Milestone Completion.



3.3 Incorporation by reference

The clauses of and schedules and exhibits to the Draft Significant Contract set out in Schedule 1 (*Draft Significant Contract clauses, schedules and exhibits incorporated by reference*) are incorporated by reference into this subcontract as if references in the Draft Significant Contract to:

- (a) not used;
- (b) the Significant Contractor's Activities were to Early Works Activities;
- (c) OTS2 Works (Trains and CBTC) were to Early Works;
- (d) not used; and
- (e) "this deed" or "Significant Contractor Project Agreement" were to this subcontract.

3.4 Early Works Activities prior to the date of this subcontract

The parties acknowledge and agree that from the date of this subcontract:

- (a) any Early Works Activities carried out by the Significant Contractor before the date of this subcontract will be treated as though they had been performed by the Significant Contractor under this subcontract; and
- (b) any payments made by the Integrator to the Significant Contractor before the date of this subcontract in respect of Early Works Activities form part of the Early Works Payments paid under this subcontract.

4. TERM

(a) Subject to clause 4(b), the rights and obligations of the Integrator and the Significant Contractor under this subcontract begin on the date of this subcontract and terminate on the earlier to occur of:

- (i) the CP Satisfaction Date; and
- (ii) the date of termination of this subcontract under clause 14 (*Termination*),

(b) If this subcontract is terminated:

(i) In accordance with clause 4(a)(i);, the rights of the Integrator and any liabilities of the Significant Contractor in relation to the Early Works performed under this subcontract which have accrued prior to the date of termination will be taken to have accrued under the Executed Significant Contract rather than this subcontract, notwithstanding that:

- (A) the Early Works have been performed by or on behalf of the Significant Contractor; and
- (B) any acts or omissions in respect of the Early Works will have occurred prior to the CP Satisfaction Date; and

- (II) In accordance with clause 4(a)(I) or (II), such termination is without prejudice to the rights and obligations of the parties which have accrued prior to the date of termination (including amounts due but not yet payable).
- (c) The parties acknowledge that the Integrator has agreed to pay the Significant Contractor under this subcontract up to the Total Early Works Payment to perform the Early Works Activities under the Early Works Deed.
- (d) The parties agree that if at the CP Satisfaction Date:
 - (I) the Significant Contractor has not completed the Early Works Activities as originally contemplated under this subcontract; or
 - (II) the Significant Contractor has completed the Early Works Activities as originally contemplated under this subcontract but the requirements for payment of the Early Works Payment under clause 9 has not yet been satisfied; and
 - (III) as a result the Integrator has not paid to the Significant Contractor the full amount of the Early Works Payment,

then the difference between the amount paid by the Integrator to the Significant Contractor under this subcontract and the Total Early Works Payment will be carried forward to the Significant Contract and such works not performed under this subcontract have to be performed by the Significant Contractor under the Significant Contract.

5. TIME

5.1 Commencement

The Significant Contractor must promptly commence performance of, and regularly and diligently progress, the Early Works Activities following execution of this subcontract.

5.2 Dates for Checkpoint Milestone Achievement

- (a) The Significant Contractor must use its best endeavours to achieve Checkpoint Milestone Completion for each Checkpoint Milestone by the relevant Date for Checkpoint Milestone Achievement or as soon as possible thereafter.
- (b) Checkpoint Milestone Completion (Checkpoint Milestone Completion) in respect of a Checkpoint Milestone will be achieved when:
 - (I) the Checkpoint Milestone is complete and complies with the requirements of this subcontract; and
 - (II) the Integrator's Representative has issued a Checkpoint Milestone Completion Notice in respect of the Checkpoint Milestone in accordance with clause 5.5 (Checkpoint Milestone Completion Notice).

5.3 Not used

5.4 Notice of Checkpoint Milestone Completion

The Significant Contractor must give the Integrator's Representative:

- (a) not used; and

- (b) a written request for a Checkpoint Milestone Completion Notice when it believes a Checkpoint Milestone Completion has been achieved.

5.5 Checkpoint Milestone Completion Notice

Within 9 Business Days of receipt of the request under clause 5.4(b), the Integrator's Representative must determine whether Checkpoint Milestone Completion has been achieved (acting consistently with a corresponding determination of the Principal under the OTS2 Early Works Deed) and either:

- (a) Issue a Checkpoint Milestone Completion Notice; or
- (b) Issue a notice to the Significant Contractor stating that Checkpoint Milestone Completion has not been achieved and the items remaining to be achieved, and The Significant Contractor must continue with the Early Works Activities to achieve Checkpoint Milestone Completion and clause 5.4 (*Notice of Checkpoint Milestone Completion*) and clause 5.5 (*Checkpoint Milestone Completion Notice*) will reapply.

5.6 Effect of Checkpoint Milestone Completion Notice

- (a) A Checkpoint Milestone Completion Notice will not:
 - (i) constitute approval by the Integrator or the Integrator's Representative of the Significant Contractor's performance of its obligations under this subcontract or, following the CP Satisfaction Date, of the Significant Contractor's obligations under the Executed Significant Contract;
 - (ii) be taken as an admission or evidence that the Early Works comply with this subcontract or, following the CP Satisfaction Date, the Executed Significant Contract; or
 - (iii) prejudice any rights or powers of the Integrator or the Integrator's Representative under this subcontract or, following the CP Satisfaction Date, under the Executed Significant Contract.
- (b) Not used.

6. MODIFICATIONS

6.1 Proposed Modifications

- (a) At any time prior to the CP Satisfaction Date the Integrator's Representative may issue a document titled "Modification Proposal Request" to the Significant Contractor, which will set out details of a proposed Modification that the Integrator is considering.
- (b) Within 8 Business Days of the receipt of a "Modification Proposal Request", or such other time as agreed between the parties acting reasonably, the Significant Contractor must provide the Integrator's Representative with a written notice in which the Significant Contractor sets out such details as may be reasonably required by the Integrator's Representative (including any time impact or adjustments to the Early Works Payments).
- (c) The Integrator will not be obliged to proceed with any proposed Modification that is the subject of a "Modification Proposal Request".

6.2 Modification Orders

- (a) Whether or not the Integrator's Representative has issued a "Modification Proposal Request" under clause 6.1(b), the Integrator's Representative may at any time prior

to the CP Satisfaction Date direct the Significant Contractor to carry out a Modification to the Early Works by issuing a written document titled "Modification Order", in which the Integrator's Representative will state one of the following:

- (i) that the proposed adjustments to the Early Works Payments set out in the Significant Contractor's notice under clause 6.1 (*Proposed Modifications*) are agreed and the Early Works Payments will be adjusted accordingly; or
 - (ii) that any adjustment to the Early Works Payments will be determined under clause 6.3(b).
- (b) Not used.
- (c) The Significant Contractor must comply with a "Modification Order" Irrespective of:
- (i) the nature, extent or value of the work the subject of the Modification;
 - (ii) the location or timing (including the impact on any Date for Practical Completion of Phase 1) of the work involved in the Modification; or
 - (iii) any Dispute related to the Modification,

provided the "Modification Order" is in relation to the OTS2 Works (Trains and CBTC).

6.3 Valuation of Modifications

Subject to the Dispute Resolution Mechanism and the notification of claims provision incorporated into this subcontract pursuant to clause 3.3 (*Incorporation by reference*), the Early Works Payments will be adjusted for all Modifications that have been directed by the Integrator's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Modification Order; and
- (b) to the extent that clause 6.2(a)(ii) applies:
 - (i) an amount in respect of the Modification to be determined by the Integrator's Representative on the basis of Schedule 5 (*Early Works Payments*);
 - (ii) not used; or
 - (iii) to the extent clause 6.3(b)(i) does not apply, an amount determined by the Integrator's Representative on the basis of reasonable prices and rates (including any rates included in the Draft Significant Contract or otherwise agreed between the parties under the Alstom Significant Contracts Finalisation Deed).

6.4 Omissions

- (a) If a Modification the subject of a direction by the Integrator's Representative requires the omission or deletion of any part of the Early Works Activities, the Integrator:
 - (i) not used; and
 - (ii) will not be liable upon any Claim under this subcontract by the Significant Contractor arising out of or in any way in connection with any work being omitted or deleted from the Early Works Activities, but without prejudice to clause 16.2 of the Alstom Significant Contracts Finalisation Deed.

(b) The Integrator may only omit or delete any part of the Early Works Activities under this clause 6.4 (*Omissions*):

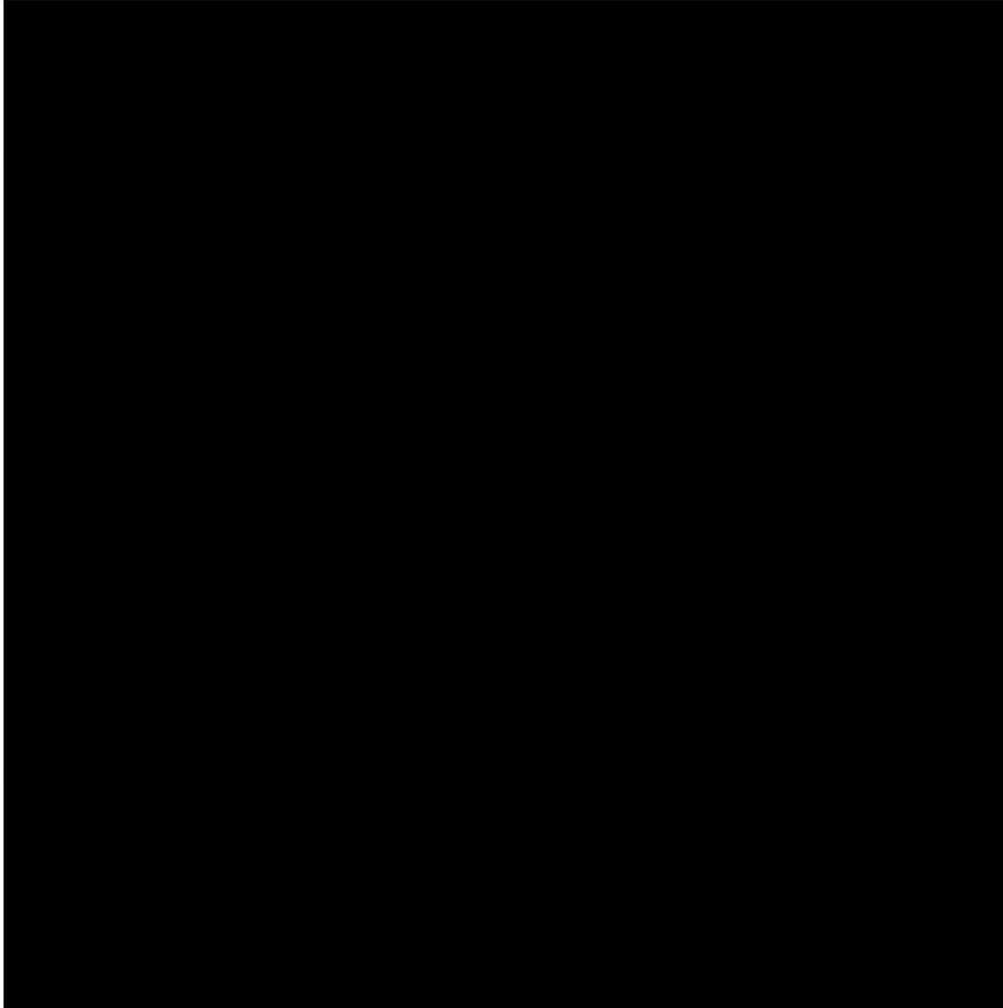
(i) to the extent that it receives a corresponding Modification (as that term is defined under the OTS2 Early Works Deed) under the OTS2 Early Works Deed in response to a corresponding Modification (as that term is defined under the OTS2 Early Works Deed) under the OTS2 Early Works Deed; or

(ii) not used.

6.5 Significant Contractor entitlements

This clause 6 (*Modifications*) is an exhaustive code of the Significant Contractor's rights in any way in connection with any Modification under this subcontract. The Significant Contractor waives all rights at law to make any Claim against the Integrator in any way in connection with any of the matters set out in this clause 6 (*Modifications*) otherwise than in accordance with the terms of this subcontract, but without prejudice to clause 16.2 of the Alstom Significant Contracts Finalisation Deed.





8. INSURANCE

8.1 Significant Contractor Insurance obligations

The Significant Contractor must effect and maintain (or cause to be effected and maintained) the following insurances for amounts not less than, and with deductibles not more than, those set out in Part A (*Significant Contractor's Insurances*) of Schedule 6 (*Insurances*):

- (a) a professional indemnity insurance policy covering the liability of the Significant Contractor in respect of any breach of a duty owed in a professional capacity by the Significant Contractor in relation to the Early Works Activities;
- (b) workers' compensation insurance as required by law; and

- (c) such other Insurance as the Significant Contractor is required to maintain in accordance with Legislation or (to the extent the Principal has made an equivalent direction under the OTS2 Early Works Deed) as directed by the Integrator in connection with the Early Works Activities. Any such direction shall be deemed to be a Modification, and clause 6 (*Modifications*) will apply.

8.2 Periods of the Significant Contractor's Insurances

The Significant Contractor must maintain:

- (a) the professional indemnity insurance policy referred to in clause 8.1(a) from the date of this subcontract for a period of not less than 6 years; and
- (b) the workers' compensation insurance referred to in clause 8.1(b) from the date of this subcontract until the expiry or earlier termination of this subcontract.

8.3 Principal's Insurances

- (a) Where reference is made in Schedule 1 (*Draft Significant Contract clauses, schedules and exhibits incorporated by reference*) to clause 38.1 of the Draft Significant Contract regarding the Principal effecting and maintaining insurance this shall apply to the following Insurances and to the extent of the Early Works only:
 - (i) contract works; and
 - (ii) public and products liability.
- (b) The parties acknowledge that the Principal will effect and maintain the policies required in accordance with clause 8.3(a) on the terms of the policies set out in Part B (*Principal's Insurances*) of Schedule 6 (*Insurances*).

9. EARLY WORKS PAYMENTS

9.1 Integrator's payment for Early Works

- (a) The Integrator must pay the Significant Contractor the Early Works Payments in accordance with Schedule 5 (*Early Works Payments*) and this clause 9 (*Early Works Payments*) for the achievement of each Checkpoint Milestone Completion.
- (b) If the requirements of this clause 9 (*Early Works Payments*) are complied with in respect of a payment claim, the Integrator must pay the amount of such claim into the Significant Contractor's nominated bank account.
- (c) In no circumstances shall:
 - (i) the Integrator's total aggregate liability in respect of the Early Works Payments exceed the Total Early Works Payment;
 - (ii) the Integrator be liable under this subcontract to make an Early Works Payment for Early Works Activities not performed or completed by the Significant Contractor; or
 - (iii) the Integrator be required to make an Early Works Payment unless Checkpoint Milestone Completion has been achieved for the relevant Checkpoint Milestone(s) to which the Early Works Payment relates.
- (d) If Checkpoint Milestone Completion in respect of any Checkpoint Milestone is achieved prior to the relevant Date for Checkpoint Milestone Achievement, the Significant Contractor's entitlement to claim payment in respect of that Checkpoint

Milestone will not arise until the Date for Checkpoint Milestone Achievement for that Checkpoint Milestone.

9.2 Early Works payment claims

- (a) The Significant Contractor must give the Integrator's Representative a payment claim, with respect to the Early Works Payments:
 - (i) on the 20th day of each month (or if this day is not a Business Day (SOP), the next Business Day (SOP) after this day); and
 - (ii) not used.
- (b) For each payment claim made under clause 9.2(a), the Significant Contractor must give the Integrator's Representative, a claim:
 - (i) in a format required by the Integrator's Representative (including electronic format) showing the amount the Significant Contractor claims in respect of each relevant Checkpoint Milestone Completion that has been achieved; and
 - (ii) which is a valid tax invoice for any taxable supplies to which the payment relates.
- (c) The Integrator's Representative must, on behalf of the Integrator, within 10 Business Days (SOP) of receipt of the Significant Contractor's payment claim under clause 9.2(a), issue to the Significant Contractor and the Integrator a payment schedule stating:
 - (i) the amount (if any) which the Integrator's Representative believes to be then payable by the Integrator to the Significant Contractor and which the Integrator proposes to pay to the Significant Contractor; or
 - (ii) the amount which the Integrator's Representative believes to be then payable by the Significant Contractor to the Integrator,

including details of the calculation of the payment amount. In issuing a payment schedule the Integrator's Representative:
 - (iii) may deduct from the amount which would otherwise be payable to the Significant Contractor any amount which the Integrator is entitled to retain, deduct, withhold or set-off under this subcontract, including under clause 9.4 (*Provision of documentation and other requirements*), clause 9.5 (*Payment of subcontractors, workers compensation and payroll tax*) and clause 56.15 (*Payments*) of the Draft Significant Contract; and
 - (iv) must, if the payment schedule shows an amount less than the amount claimed by the Significant Contractor in the payment claim, set out in the payment schedule why the amount is less and if the reason for the difference is that the Integrator 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 Significant Contractor does not give the Integrator's Representative a payment claim at a time required by clause 9.2(a), the Integrator's Representative may nevertheless (but is not obliged to) issue a payment schedule as if a payment claim was made at the time required.
- (e) A payment schedule issued under clause 9.2(c) or clause 9.2(d) will separately identify the sum of the amounts due.

- (f) If the amount set out in a payment schedule issued under clause 9.2(c) is different to the amount in the Significant Contractor's payment claim or if the Integrator's Representative issues a payment schedule under clause 9.2(d), the Significant Contractor must, within 1 Business Day (SOP) of receiving the payment schedule, issue a revised tax invoice, adjustment note or tax invoice (as the case may be) to the Integrator to reflect the amount in the payment schedule.
- (g) Within 30 Business Days (SOP) of the date of the Significant Contractor's payment claim in accordance with clause 9.2(a) or within 10 Business Days (SOP) of the issue of a payment schedule in accordance with clause 9.2(d):
 - (i) where the payment schedule provides that an amount is payable by the Integrator to the Significant Contractor, the Integrator must pay the Significant Contractor the progress payment due to the Significant Contractor as certified in the payment schedule; and
 - (ii) where the payment schedule provides that an amount is payable by the Significant Contractor to the Integrator, the Significant Contractor must pay the Integrator the amount due to the Integrator as certified in the payment schedule.
- (h) Despite any other provisions of this subcontract to the contrary, the amount of any payment claim to which the Significant Contractor is entitled in relation to an Early Works Payment and the amount to be allowed by the Integrator's Representative in any payment schedule issued under clause 9.2(c) as the amount payable to the Significant Contractor arising out of or in any way in connection with the Early Works will:
 - (I) not include the following amounts:
 - (A) any amount which this clause 9 (*Early Works Payments*) provides cannot be claimed or is not payable because of the failure by the Significant Contractor to take any action (including to give any notice to the Integrator or the Integrator's Representative);
 - (B) not used;
 - (C) any amount which this clause 9 (*Early Works Payments*) 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;
 - (D) any amount in respect of which the obligation of the Integrator to make payment has been suspended under this subcontract;
 - (E) any amount in respect of which the Significant Contractor has failed to provide supporting information as required by this clause 9 (*Early Works Payments*); or
 - (F) any amount for the Early Works for which payment has already been claimed or which is otherwise not in accordance with this subcontract;
 - (II) deduct the following amounts:
 - (A) any amounts which have become due from the Significant Contractor to the Integrator under this subcontract; and
 - (B) any amounts which the Integrator is entitled under this subcontract to retain, deduct, withhold or set-off against the payment claim, including

under clause 9.4 (*Provision of documentation and other requirements*), clause 9.5 (*Payment of subcontractors, workers compensation and payroll tax*) and clause 25.11(a) of the Draft Significant Contract which is incorporated into this subcontract pursuant to clause 3.3 (*Incorporation by reference*);

- (iii) In determining amounts to be excluded or deducted under clause 9.2(h)(i) and clause 9.2(h)(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 Early Works Payments (with additions or deductions, if any, provided for by this subcontract).
- (i) The Significant Contractor must include in the payment claim lodged by it after Checkpoint Milestone Completion of the final Checkpoint Milestone was achieved, all Claims that the Significant Contractor wishes to make against the Integrator in respect of the Early Works which occurred prior to the date of that payment claim.

9.3 Effect of payment schedules and payments

- (a) Neither the issue of a payment schedule under clause 9.2(c) or clause 9.2(d), nor the making of any payment pursuant to any such payment schedule, will:
- (i) constitute the approval of any work or other matter or prejudice any Claim by the Integrator or the Integrator's Representative with respect to the Early Works;
 - (ii) constitute evidence of the value of any work or an admission of liability or evidence that the Early Works have been executed or completed in accordance with this subcontract; or
 - (iii) prejudice the right of either party to dispute under the Dispute Resolution Mechanism whether any amount certified as payable in a payment schedule is the amount properly due and payable (and on determination, whether under the Dispute Resolution Mechanism or as otherwise agreed, of the amount properly due and payable, the Integrator or the Significant 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.
- (b) The Integrator's Representative may at any time correct, modify or amend any payment schedule.

9.4 Provision of documentation and other requirements

The Integrator is not obliged to pay the Significant Contractor any more than [REDACTED] of the amount that the Integrator's Representative would otherwise have set out in any payment schedule unless and until the Significant Contractor has:

- (a) effected and is maintaining all insurances it is required to effect and maintain under this subcontract;
- (b) complied with clause 11 (*Significant Contractor Parent Company Guarantee*); and
- (c) provided the Integrator's Representative with a statutory declaration in the form of Schedule 8 (*Statutory Declaration*) which has been duly executed:

- (I) by a representative of the Significant Contractor who is in a position to know the facts declared; and
- (II) on the date the relevant payment claim was issued.

9.5 Payment of subcontractors, workers compensation and payroll tax

- (a) If a worker or a subcontractor of the Significant Contractor, obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Early Works, and produces to the Integrator the court order and a statutory declaration that it remains unpaid, the Integrator may (but is not obliged to) pay the 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 Significant Contractor to the Integrator.
- (b) Not used.
- (c) If the Integrator receives notices of:
 - (i) the Significant Contractor being placed under administration; or
 - (ii) the making of a winding up order in respect of the Significant Contractor,
 the Integrator 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.
- (d) Nothing in this clause 9.5 (*Payment of subcontractors, workers compensation and payroll tax*) limits or otherwise affects the Integrator'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).

9.6 Release after final payment claim

Subject to clause 4(b) and without prejudice to clause 16.2 of the Alstom Significant Contracts Finalisation Deed, the Significant Contractor releases the Integrator from any Claim in respect of the Early Works or this subcontract that occurred prior to the date of submission of the final payment claim for the Early Works, except for:

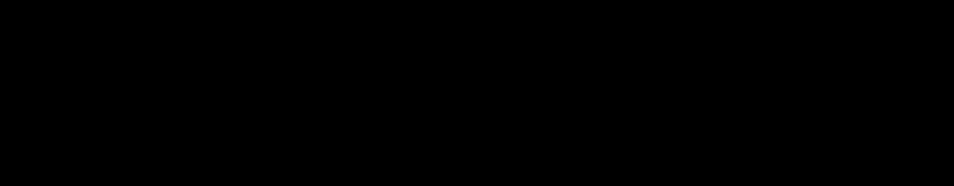
- (a) any Claim which has been notified to the Integrator's Representative in accordance with the requirements of clause 57 of the Draft Significant Contract, incorporated into this subcontract pursuant to clause 3.3 (Incorporation by reference); and
- (b) any Claim that the Significant Subcontractor could not have been reasonably aware of.

9.7 Update to Early Works Payment

- (a) The parties acknowledge that certain of the payment amounts referred to in the tables in Schedule 5 (*Early Works Payments*) may not have a Checkpoint Milestone attributable to them as the relevant Checkpoint Milestone remains to be confirmed. The parties agree that they will work together in good faith after the date of this subcontract to agree the Checkpoint Milestone (which may be a milestone not currently contemplated) for a payment amount where it is indicated as 'TBC' with the objective of replicating the expected cash payment profile set out in such schedule.

- (b) Once agreement is reached on the inclusion of additional Checkpoint Milestones as described above, the parties will record in writing the agreed update to Schedule 5 (*Early Works Payments*) which will then be deemed to be updated accordingly.

10. LIABILITY AND INDEMNITY



10.2 Indemnity from the Significant Contractor

The Significant Contractor must indemnify the Integrator from and against:

- (a) any Loss incurred by the Integrator in respect of:
 - (i) damage to, loss or destruction of, or loss of use of (whether total or partial), any real or personal property belonging to the Integrator, OpCo2, the Principal or the State; or
 - (ii) any claim against the Integrator (including by OpCo2, the Principal or the State) in respect of:
 - (A) any illness, personal injury to, or death of, any person; or
 - (B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,caused by, arising out of, or in any way in connection with the Early Works Activities; or
- (b) any Loss incurred by the Integrator arising out of or in any way in connection with:
 - (i) any breach or failure to comply with the terms of this subcontract by the Significant Contractor; or
 - (ii) any fraudulent, negligent or other wrongful act or omission by the Significant Contractor.

10.3 Exclusions from indemnity

The Significant Contractor's liability under clause 10.2 (*Indemnity from the Significant Contractor*) will be reduced to the extent that the Loss arises from:

- (a) any act or omission of the Integrator or its Associates;
- (b) a third party claim for pure economic loss arising solely as a result of:
 - (i) the decision by the State or the Principal to proceed with the Sydney Metro; or
 - (ii) the existence or location of the Sydney Metro; or
- (c) loss of use of or access to (whether total or partial), any real or personal property, to the extent the Significant Contractor has not received the proceeds of insurance

(provided the Significant Contractor has complied with its insurance obligations under this subcontract and has diligently pursued all insurance claims under the insurances available to it).

10.4 Consequential or Indirect Loss

- (a) Subject to clause 10.5 (*Other exclusions*), but otherwise despite any other provision of this subcontract:
 - (i) the Significant Contractor has no liability to the Integrator (whether in contract, tort (including negligence) or otherwise, including under clause 10.2 (*Indemnity from the Significant Contractor*), nor will the Integrator be entitled to make any Claim against the Significant Contractor, in respect of Consequential or Indirect Loss incurred or sustained by the Integrator as a result of any act or omission of the Significant Contractor (whether negligent or otherwise); and
 - (ii) the Integrator has no liability to the Significant Contractor (whether in contract, tort or otherwise), nor will the Significant Contractor be entitled to make any Claim against the Integrator, in respect of Consequential or Indirect Loss incurred or sustained by the Significant Contractor as a result of any act or omission of the Integrator (whether negligent or otherwise).

10.5 Other exclusions – Significant Contractor

- (a) Nothing in this subcontract including clause 10.1 (*Limitation of Liability*) limits the Significant Contractor's liability in respect of liability which:
 - (i) cannot be limited or excluded at law;
 - (ii) arises under the indemnities in clause 10.2(a) (*Indemnity from the Significant Contractor*);
 - (iii) is due to any Wilful Breach of this subcontract by the Significant Contractor;
 - (iv) is due to any Wilful Misconduct, fraud or criminal conduct of the Significant Contractor;
 - (v) arises in connection with the Significant Contractor's abandonment of its obligations under this subcontract; or
 - (vi) to the extent that the Significant Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability if it had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this subcontract,

and those liabilities will not be included in any calculation of the Significant Contractor's total aggregate liability under clause 10.1 (*Limitation of Liability*).
- (b) Clause 10.4 (*Consequential or Indirect Loss*) does not limit the Significant Contractor's liability:
 - (i) In respect of liability which:

- (A) cannot be limited at law;
- (B) is in respect of any liability of the Integrator to a third party (including OpCo2, the Principal or the State), except to the extent such liability arises in contract;
- (C) is due to the Significant Contractor's Wilful Misconduct, fraud or criminal conduct;
- (D) arises in connection with the Significant Contractor's abandonment of its obligations under this subcontract; or
- (E) for Loss incurred by the Integrator to a third party, in respect of:
 - (aa) any illness, personal injury to, or death of, any person; or
 - (bb) damage to, or loss or destruction of (whether total or partial), any real or personal property,
 - caused by, or arising out of, or in any way in connection with, any Early Works Activities;
- (ii) to the extent that the Significant Contractor is entitled to be indemnified for that liability under a policy of insurance, or would have been entitled to be indemnified for that liability if it had:
 - (A) diligently pursued a claim under that policy of insurance;
 - (B) complied with the terms and conditions of that policy of insurance; or
 - (C) complied with its insurance obligations under this subcontract; and
- (iii) for Loss in respect of any liability of the Integrator to a third party.

10.6 Other exclusions – Integrator

Clause 10.4 (*Consequential or Indirect Loss*) does not limit the Integrator's liability in respect of liability which:

- (a) cannot be limited at law;
- (b) is due to the Integrator's Wilful Misconduct, fraud or criminal conduct;
- (c) arises in connection with the Integrator's abandonment of its obligations under this subcontract; or
- (d) arises under this subcontract for payment of any amount due to the Significant Contractor.

11. SIGNIFICANT CONTRACTOR PARENT COMPANY GUARANTEE

The Significant Contractor must simultaneously with the execution by the Significant Contractor of this subcontract procure that the Significant Contractor Guarantor executes the Significant Contractor Parent Company Guarantee.

12. ASSIGNMENT AND SUBCONTRACTING

12.1 General

- (a) The Significant Contractor may not, without the prior written approval of the Integrator, assign, transfer or novate any of its rights or obligations under this subcontract.
- (b) Subject to clause 14.9, the Integrator may not, without the prior written approval of the Significant Contractor (such approval not to be unreasonably withheld), assign, transfer or novate any of its rights or obligations under this subcontract.
- (c) Not used.
- (d) Subcontracting does not relieve the Significant Contractor of any obligation under this subcontract.

12.2 Not used

13. SUSPENSION

- (a) The Integrator's Representative may direct the Significant Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Early Works Activities.
- (b) If the suspension under this clause 13 (*Suspension*):
 - (i) arises as a result of the Significant Contractor's failure to carry out its obligations in accordance with this subcontract, the Significant Contractor will not be entitled to make, and the Integrator will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
 - (ii) does not arise as a result of the Significant Contractor's failure to carry out its obligations in accordance with this subcontract then the Integrator must direct any suspension by means of a Modification pursuant to clause 6 (*Modifications*). The Significant Contractor must take all reasonable steps to mitigate the extra costs incurred by it as a result of the suspension.

14. TERMINATION

14.1 Early Works Termination Events

Each of the following events is an **Early Works Termination Event**:

- (a) the Significant Contractor does not commence or does not progress the Early Works Activities in accordance with the requirements of clause 5.1 (*Commencement*) and fails to do so within 8 Business Days after receipt of a notice from the Integrator directing it to do so;
- (b) the Significant Contractor does not effect and maintain (or cause to be effected and maintained) an insurance in breach of clause 8 (*Insurance*);
- (c) the Significant Contractor fails to provide the Significant Contractor Parent Company Guarantee in breach of clause 11 (*Significant Contractor Parent Company Guarantee*) or the Significant Contractor Parent Company Guarantee ceases to be in full force and effect;

- (d) an Insolvency Event occurs in relation to the Significant Contractor or the Significant Contractor Guarantor, whether or not there has been a breach of this subcontract; and
- (e) the occurrence of any of the following events:
 - (I) the Significant Contractor or a Significant Contractor's Contractor ceases to hold an Approval, breaches a law or (other than in respect of the events in clause 14.1(a) and clause 14.1(c) above) breaches a term of this subcontract and such failure or breach is, in the reasonable opinion of the Integrator, material to the performance of the Significant Contractor's obligations under this subcontract and where the failure or breach is:
 - (A) capable of being remedied, it is not remedied within 16 Business Days of the date on which the Integrator notifies the Significant Contractor of the failure or breach; or
 - (B) not capable of remedy, and the Significant Contractor has not satisfied the Integrator that it is able to implement and comply with a satisfactory implementation plan to address the Integrator's requirements; and
 - (II) it is or becomes unlawful for the Significant Contractor or a Significant Contractor's Contractor to perform any of its obligations under the subcontract, and such event is not remedied within 16 Business Days of the Significant Contractor becoming aware of the relevant event occurring.

14.2 Not used

14.3 Termination for Early Works Termination Event

Upon the occurrence of an Early Works Termination Event, the Integrator may (acting consistently with a corresponding notice from the Principal under the OTS2 Early Works Deed or if the Principal directs the Integrator to):

- (a) suspend payments to the Significant Contractor until the date upon which the Significant Contractor remedies the breach or makes arrangements satisfactory to the Integrator; and
- (b) by notice in writing to the Significant Contractor terminate this subcontract.

14.4 Voluntary termination by the Integrator

The Integrator may, acting consistently with an equivalent action of the Principal under the OTS2 Early Works Deed, at any time for its sole convenience and without giving reasons, terminate this subcontract by no less than 8 Business Days written notice to the Significant Contractor with effect from the date stated in the notice (which date must not precede the date the notice is received by the Significant Contractor).

14.5 Automatic termination

If the Alstom Significant Contracts Finalisation Deed is terminated in accordance with its terms then this subcontract shall automatically terminate on the date of termination of the Alstom Significant Contracts Finalisation Deed.

14.6 Consequences of termination

Upon expiry or termination of this subcontract:

- (a) the rights and obligations of the parties under this subcontract will cease except for:
 - (i) any accrued rights and obligations under this subcontract, including those arising out of the termination of this subcontract; and
 - (ii) any rights and obligations which expressly or impliedly continue after termination of this subcontract, including those referred to in clause 17.2 (*Survival of certain provisions: no merger*);
- (b) the Significant Contractor must, subject to the limitations in respect of Train and Signalling Intellectual Property (Northwest) and Train and Signalling Intellectual Property (Sydney Metro) set out in Schedule 34 (*Intellectual Property*) of the Draft Significant Contract, deliver to the Integrator or the Integrator's nominee (or both, if required) all documents and information concerning the Early Works Activities which is required for the efficient transfer of responsibility for their performance, including:
 - (i) all Data (Sydney Metro) (as defined in Schedule 34 (*Intellectual Property*) of the Draft Significant Contract) and any documentation or programs required to be provided under Schedule 34 (*Intellectual Property*) of the Draft Significant Contract; and
 - (ii) any other documentation specified in this subcontract;
- (c) not used;
- (d) not used;
- (e) not used; and
- (f) In the case of termination pursuant to clause 14.3(b), the Integrator will not be obliged to make any further payments to the Significant Contractor.

14.7 Early Works Termination Payment

- (a) If this subcontract is terminated under this clause 14 (*Termination*), the Integrator must pay to the Significant Contractor for work carried out prior to the date of termination, the amount which would have been payable if this subcontract had not been terminated and the Significant Contractor submitted a payment claim under clause 9 (*Early Works Payments*) for work carried out to the date of termination (*Early Works Termination Payment*).
- (b) The Early Works Termination Payment will be a limitation upon the Integrator's liability to the Significant Contractor arising out of, or in any way in connection with, the termination of this subcontract and the Integrator will not be liable to the Significant Contractor upon any Claim arising out of, or in any way in connection with, the termination of this subcontract other than for the Early Works Termination Payment.
- (c) In the calculation of an Early Works Termination Payment under this clause 14.7, there will not be any double counting of any amounts, whether such amounts are referred to in clause 14.6 (*Consequences of termination*) or elsewhere in this subcontract.

14.8 No other termination rights

Despite any rule of law or equity to the contrary, this subcontract may not be terminated other than as provided for in this subcontract.

14.9 Termination of OTS2 Early Works Deed

If the OTS2 Early Works Deed is terminated for any reason:

- (a) the Integrator and the Significant Contractor must, after the Principal has given a direction to do so, promptly (and within 10 Business Days) execute a deed of novation in a form acceptable to the Principal; and
- (b) If the Principal has not provided a direction as contemplated by clause 14.9(a), this subcontract will terminate automatically.

15. NO COLLUSION

The Significant Contractor may not engage in any collusive tendering, anti-competitive conduct or any other similar conduct with any other person in relation to this subcontract or the planning, development or delivery of the Early Works.

16. 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 subcontract.
- (b) At any time and from time to time the Integrator may notify the Significant Contractor that a PDCS will be used for giving Notices under or in connection with this subcontract. The Integrator's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the parties to use the PDCS; 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 16(b)(ii):
 - (A) be in writing;
 - (B) be addressed:
 - (aa) In the case of a Notice from the Integrator, to [REDACTED] or
 - (bb) In the case of a Notice from the Significant Contractor, to [REDACTED]
 - (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 shown below (or to any new address notified by the intended recipient):

Integrator

Name: MTR Corporation (Sydney) SMCSW Pty Limited
Address: c/o MTR Corporation Limited, MTR Headquarters Building, Telford Plaza, Kowloon Bay, Hong Kong
For the attention of: Integrator's Representative

Significant Contractor

Name: Alstom Transport Australia Pty Limited
Address: 16 Giffnock Ave, North Ryde NSW 2113
For the attention of: Significant Contractor's Representative

- (II) on and from the commencement date for use of the PDCS referred to in clause 16(b)(II):
- (A) be sent through the PDCS in accordance with the requirements set out in clause 16(e) and:
- (aa) in the case of a Notice from the Integrator, be addressed to [REDACTED] or
- (bb) in the case of a Notice from the Significant Contractor, be addressed to [REDACTED] or
- (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 16(c)(I).
- (d) A communication is taken to be received by the addressee:
- (i) (In the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
- (ii) (In the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
- (iii) (in the case of international post) 7 Business Days after the date of posting;
- (iv) (in the case of delivery by hand) on delivery;
- (v) (In the case of an email) if it is transmitted:
- (A) by 5.00pm (Sydney time) on a Business Day – on that Business Day; or
- (B) after 5.00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day; and
- (vi) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent,

provided that if the communication would be deemed to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is deemed to be received at 9.00am on the next Business Day.

- (e) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any Notice, or subject to clause 16(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.

17. GENERAL

17.1 Governing law and jurisdiction

- (a) This subcontract is governed by and must be construed according to the law applying in New South Wales.
- (b) Subject to the Dispute Resolution Mechanism, each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this subcontract.

17.2 Survival of certain provisions; no merger

- (a) Clauses 1 (*Interpretation*), 3.3 (*Incorporation by reference*), 4 (*Term*), 10 (*Liability and Indemnity*), 11 (*Significant Contractor Parent Company Guarantee*), 12 (*Assignment and Subcontracting*), 14.6 (*Consequences of Termination*), 14.7 (*Early Works Termination Payments*), 16 (*Notices*), 17 (*General*), the Dispute Resolution Mechanism, clauses 11.2 (*Information Documents*), 25.11 (*Set off*), 45.1 (*Records*), 47 (*Disclosure, confidentiality and publicity*), 48 (*Intellectual Property*) and Schedule 34 (*Intellectual Property*), 57 (*Notice of Claims*), 60 (*Proportionate liability*), 61 (*Taxes*) and the relevant parts of clause 62 referenced in Schedule 1 (*Draft Significant Contract clauses, schedules and exhibits incorporated by reference*), the representations, warranties and indemnities given by the Significant Contractor under this subcontract and any other provisions which are expressed to survive termination (together, the **Surviving Clauses**) will survive rescission, termination or expiration of this subcontract.
- (b) If this subcontract is rescinded or terminated, a party will not be liable to the other party except:
 - (i) under the **Surviving Clauses**; or
 - (ii) in respect of any breach of this subcontract occurring before such rescission or termination.

- (c) No right or obligation of any party will merge on completion of any transaction under this subcontract. All rights and obligations under this subcontract survive the execution and delivery of any transfer or other agreement which implements any transaction under this subcontract.

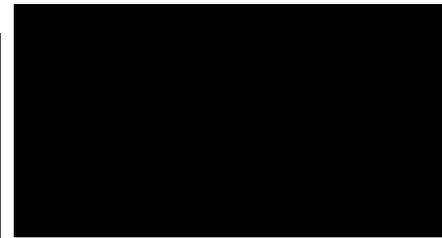
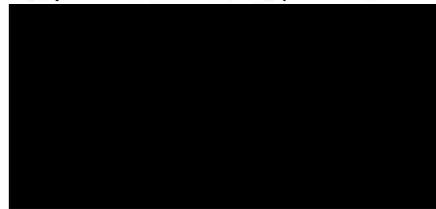
17.3 Not used

EXECUTED as an agreement.

**Executed by MTR CORPORATION
(SYDNEY) SMCSW PTY LIMITED ACN 615
158 122 in accordance with Section 127 of
the Corporations Act 2001 in the presence of**



**Executed by ALSTOM TRANSPORT
AUSTRALIA PTY LIMITED ACN 165 157
451 in accordance with Section 127 of the
Corporations Act 2001 in the presence of**



SCHEDULE 1

Draft Significant Contract clauses, schedules and exhibits incorporated by reference

clauses 1.2 (*SPR and PS definitions*), 1.3 (*Schedule definitions*), 1.5 (*Resolution of ambiguities*), 1.6 (*National Public Private Partnership Policy and Guidelines*), 1.9 (*Excluding liability*), 1.12 (*Authorities*) and 1.14 (*Standards*);

clauses 4.1 (*Objectives for the Sydney Metro*), 4.2 (*Objectives for the OTS2 PPP*), 4.3 (*Customer is at the centre*), 4.3A (*Achievement of Project Values*), 4.4 (*Significant Contractor's primary obligations*), 4.6 (*Project risks*) and 4.7 (*Integrator's rights don't affect risk allocation*);

clauses 5.1 (*Integrator's Representative*), 5.2 (*Appointees of the Integrator's Representative*) and 5.3 (*Significant Contractor's Representative*);

clauses 6.1 (*Compliance with laws*);

clauses 6.2 (*Approvals*);

clause 7.1 (*Principal's Accreditation*), 7.2 (*Significant Contractor to assist*), 7.3 (*Significant Contractor's rail safety obligations*) and 7.4 (*Staff*);

clause 9.1 (*All work included*);

clause 9.2(e) (*Authorisations and licences*);

clause 9.3 (*Protection of persons and property*);

clause 9.4 (*Work health and safety*);

clause 9.8 (*Industrial relations*);

clause 9.18 (*Project Documentation*);

clause 9.21 (*Sustainability*);

clause 10 (*NSW Code and NSW Guidelines*);

clauses 11.1 (*Physical conditions*), 11.2 (*Information Documents*) and 11.3 (*Condition of the Sydney Metro Site, Sydney Metro Northwest and structures*);

clause 13;

clause 16(a) (*Quality*);

clause 25.10 (*Interest*);

clause 25.11 (*Set off*);

clause 38.1 (*Principal's Insurances*), clause 38.4 (*Periods of Significant Contractor's Insurance*), clause 38.8 (*Insurance requirements generally*), clause 38.9 (*Premiums*), clause 38.10 (*Evidence of Insurance*), clause 38.11 (*Failure to produce proof of evidence*), clause 38.12 (*Significant Contractor's obligations not limited*), clause 38.13 (*General insurance obligations*) and clause 38.14 (*Claims under Insurances*);

clause 45.1 (*Records*);

clause 45.10 (*Privacy*);

clause 47 (*Disclosure, Confidentiality and Publicity*);

clause 48 (*Intellectual Property*) and Schedule 34 (*Intellectual Property*);

clause 54 (*Subcontracting*);

clauses 56.3 (*Notice of Dispute*), 56.3A (*Referral to Director Negotiators*), 56.4 (*Executive Negotiation*), 56.5 (*Expert determination*), 56.6 (*Notice of dissatisfaction*), 56.7 (*Final and binding*), 56.8 (*Failure to comply with an Expert's decision*), 56.9 (*Amicable settlement*), 56.11 (*Arbitration rules*), 56.12 (*Exclusion from determination or award*), 56.15 (*Payments*), 56.16 (*Parties to continue performing obligations*), 56B (*Linked Claims and Linked Disputes*) and 56.17 (*Urgent relief*);

clause 57 (*Notice of Claims*);

clause 60 (*Proportionate Liability*);

clause 61 (*Taxes*);

clauses 62.2 (*Cost of performing obligations*), 62.4 (*Amendments*), 62.5 (*Waiver*), 62.7 (*Further acts and documents*), 62.8 (*Consents*), 62.9 (*No representation or reliance*), 62.10 (*Severance*), 62.12 (*Entire agreement*), 62.13 paragraphs (a), (b) and (c) (*Indemnities*), 62.14 (*Counterparts*) and 62.17 (*Contract documents to be in English*);]

Part 3 of Schedule 2 (*Contract Price*);

Schedule 5 (*Environmental Documents and Planning Approval conditions*);

Schedule 10 (*Milestones (Principal)*);

Schedule 11A (*Significant Contractor Form of Design Certification - Design Stages 1 & 2*);

Schedule 30 (*Pre-Agreed Options*);

Schedule 33 (*Commercially Sensitive Information*);

Schedule 38 (*Material Contracts*);

Schedule 42 (*Modification to the IAMA Expert Determination Rules*);

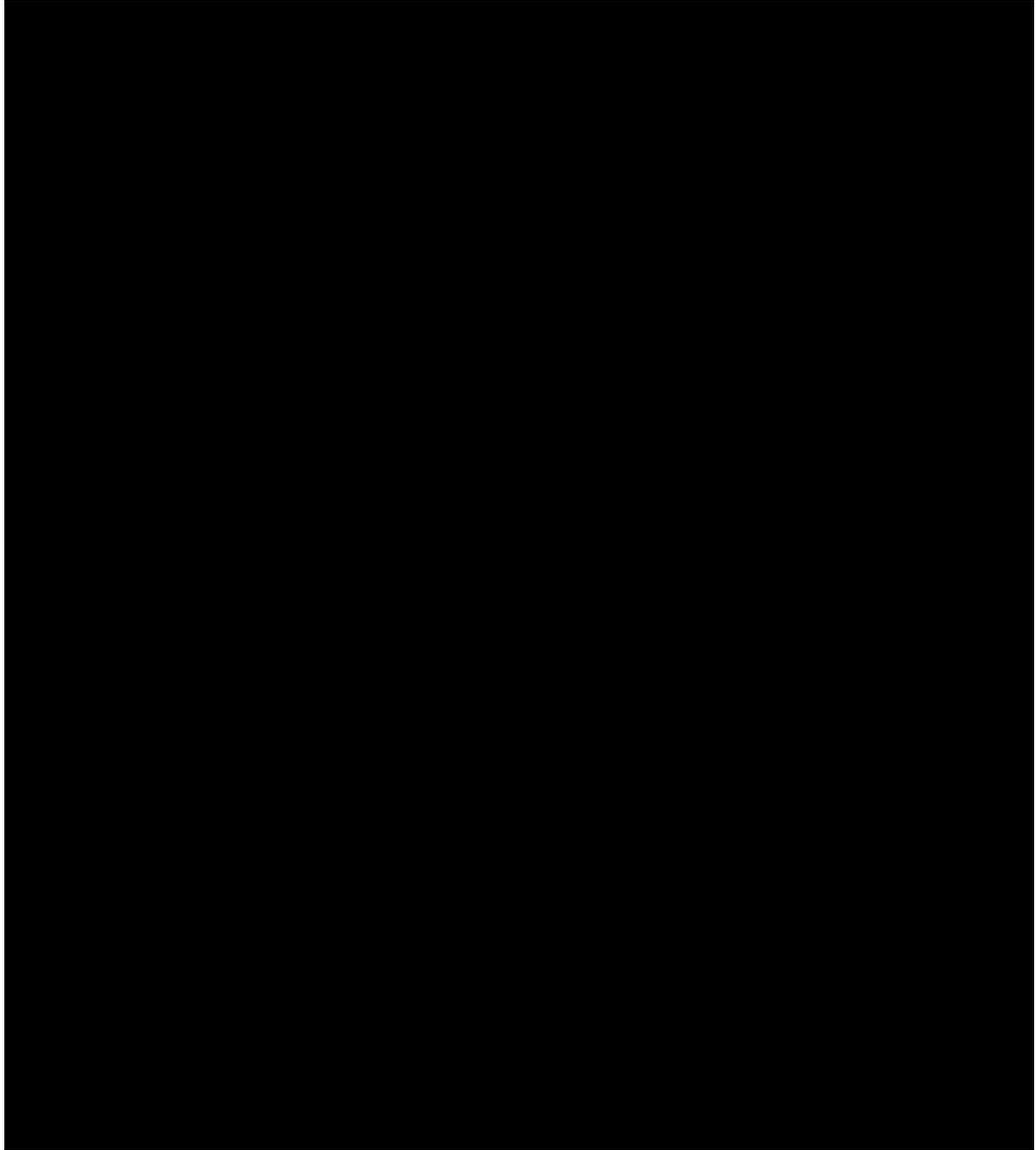
Schedule 53A (*Milestones, Practical Completion and Liquidated damages*);

Exhibit 1A (*SPR*);

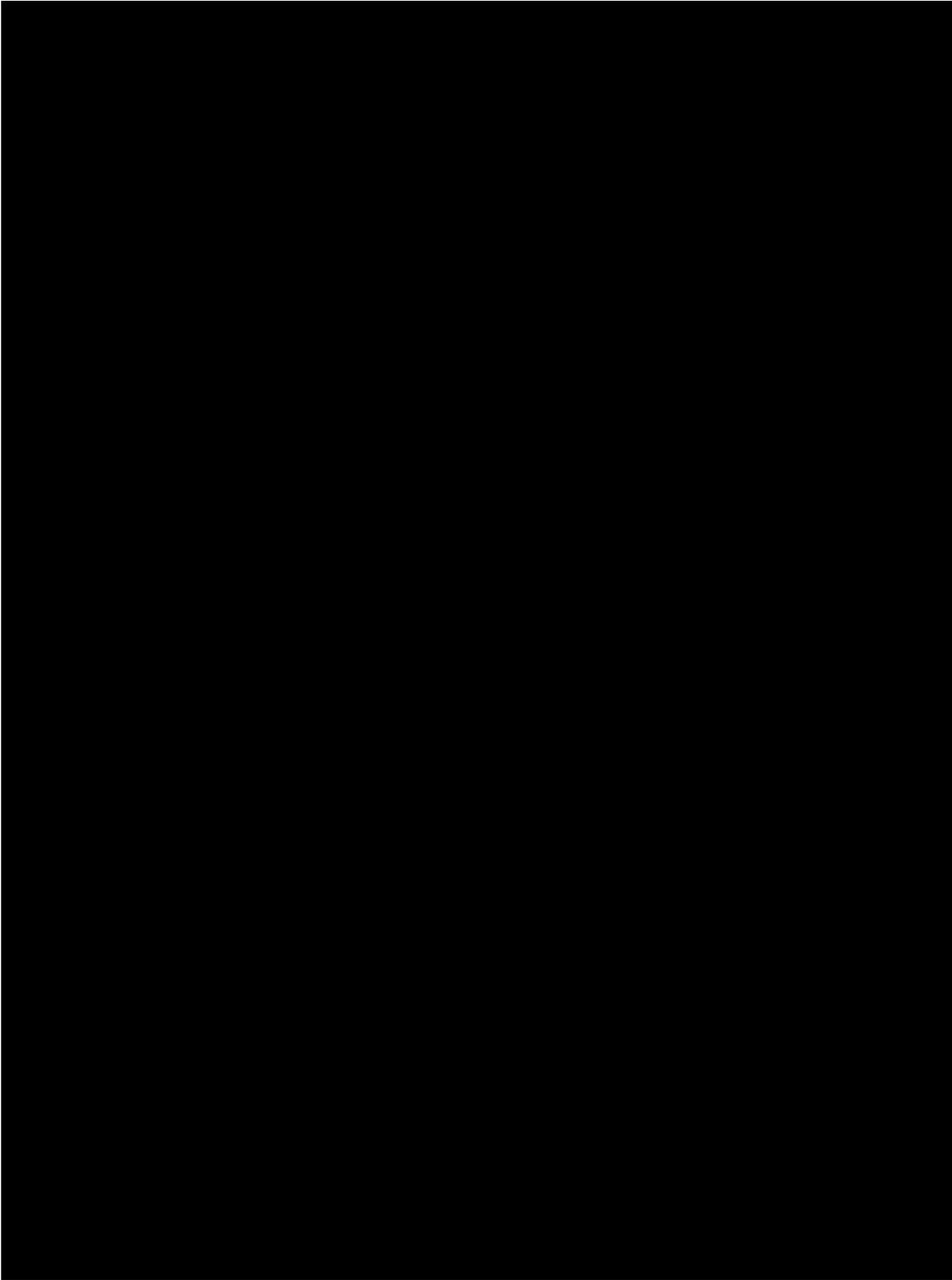
Exhibit 1B (*Particular Specification*); and

Exhibit 3 (*Initial Delivery Program*).

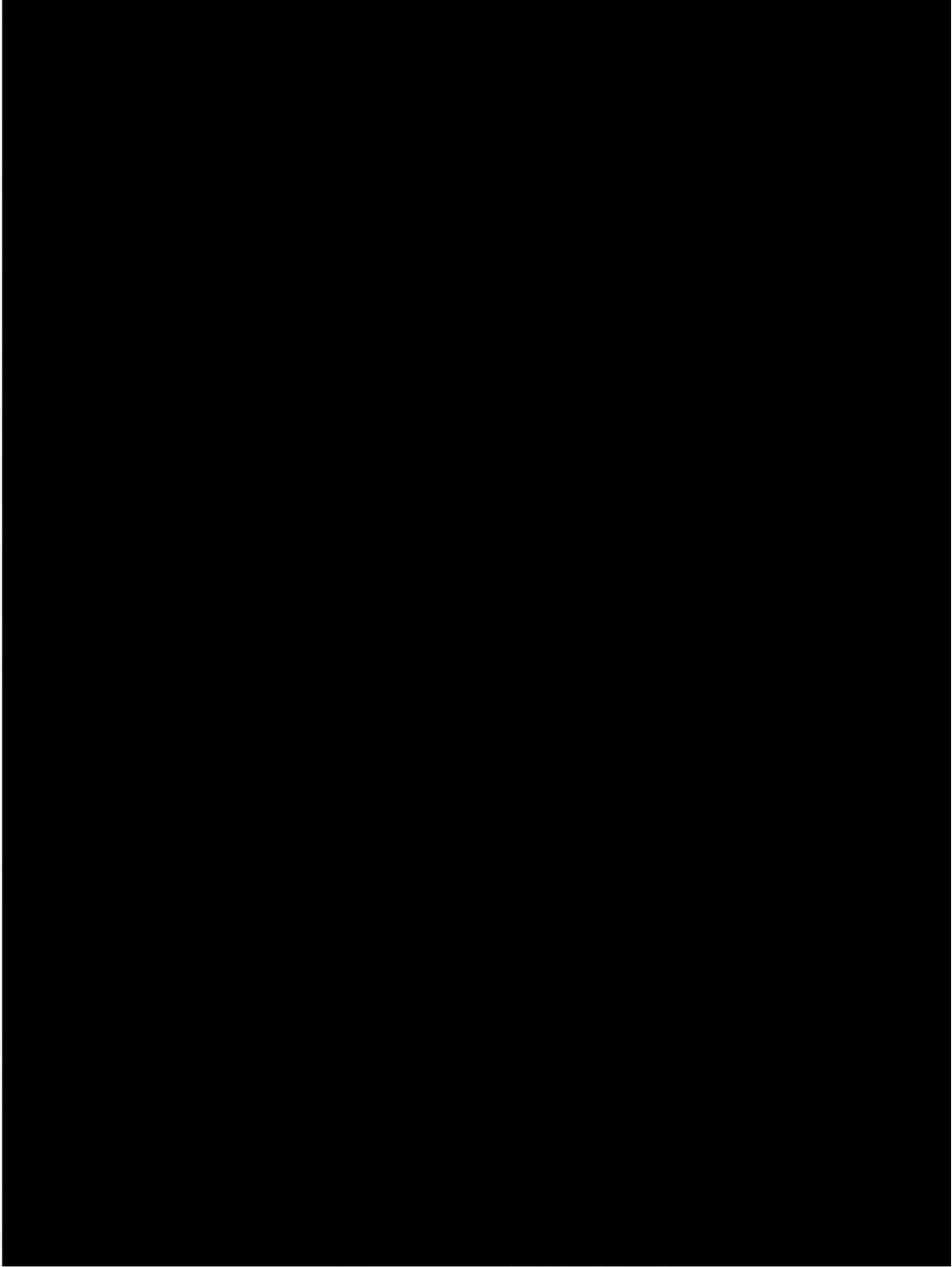
SCHEDULE 2



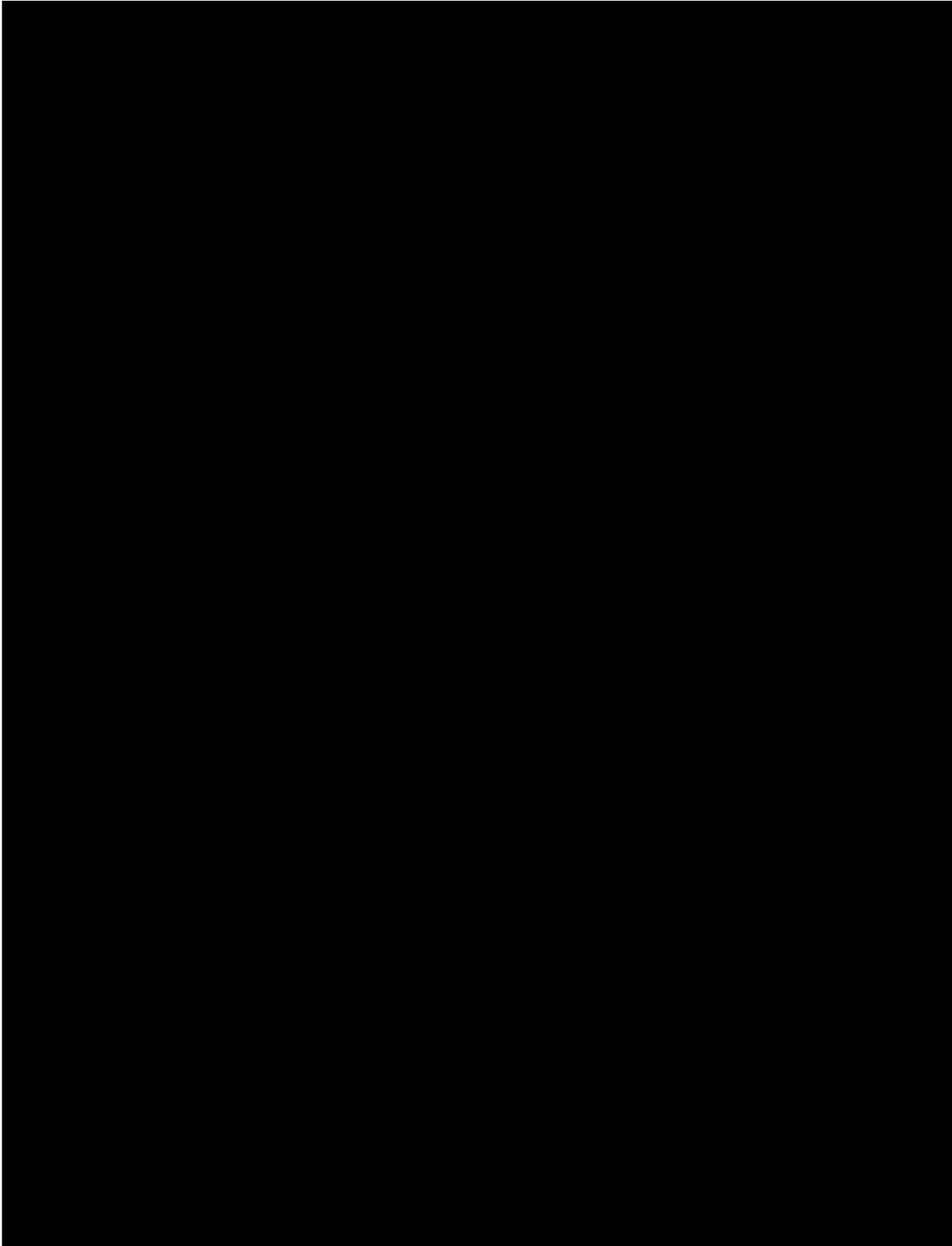
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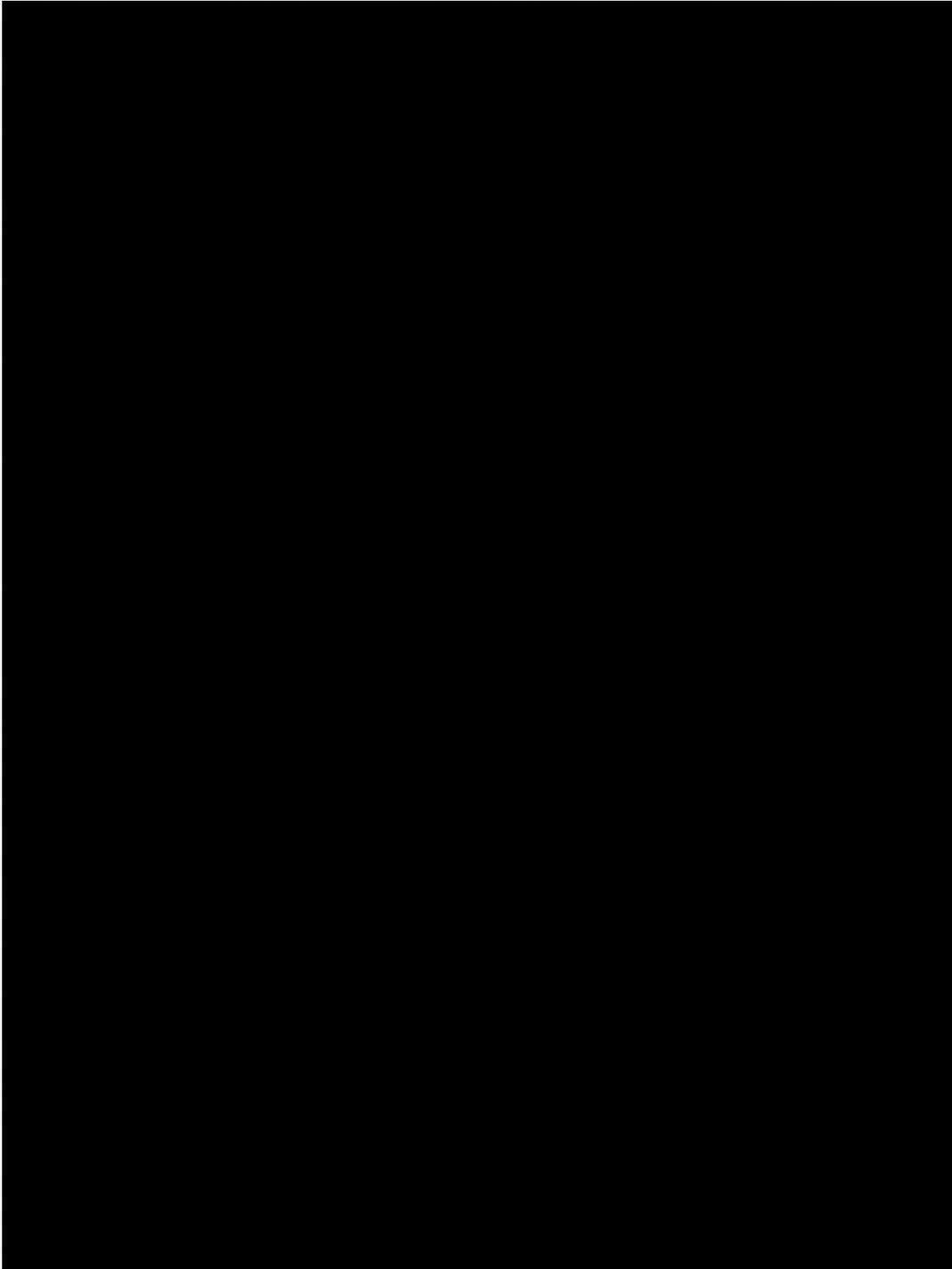


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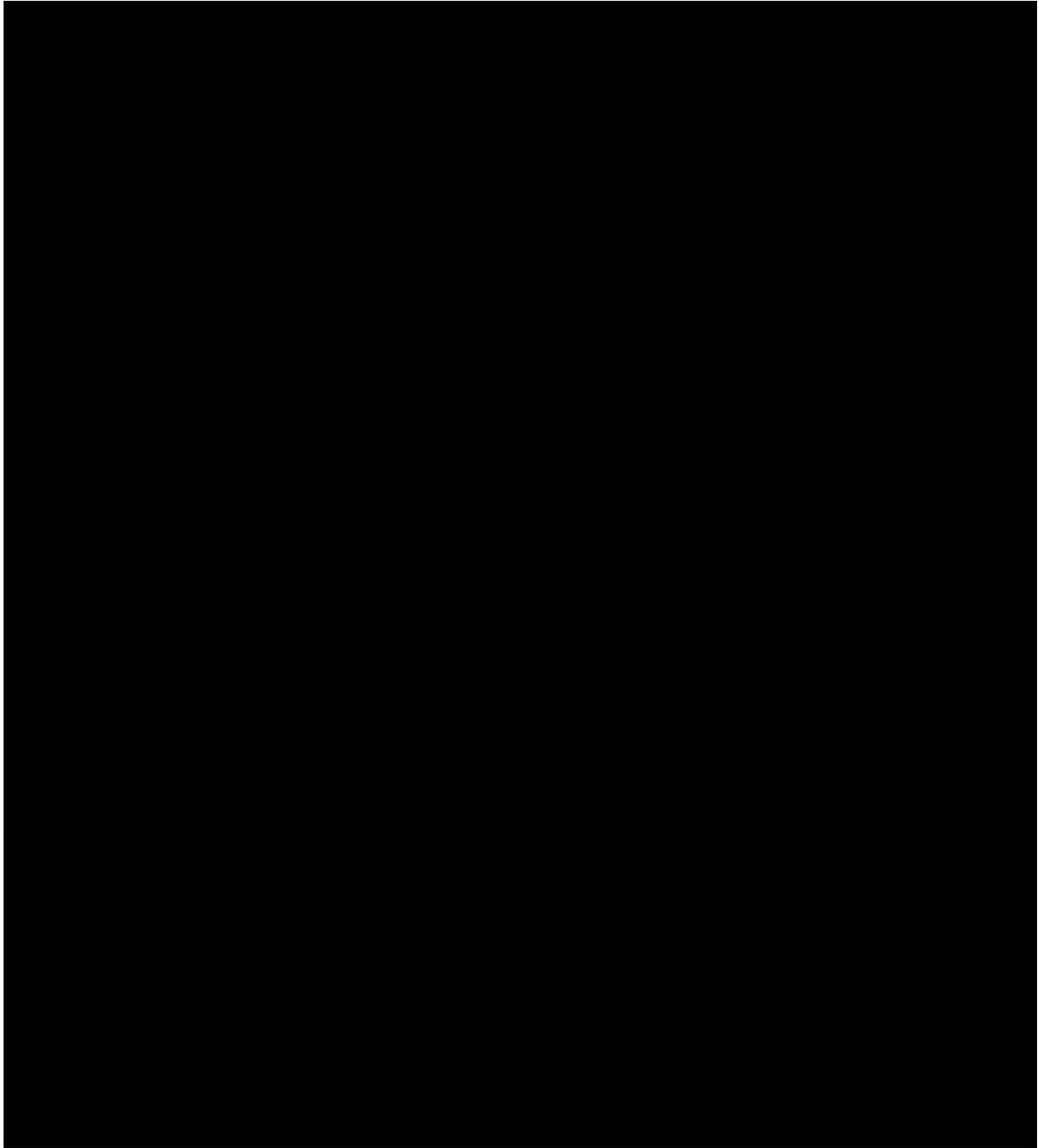


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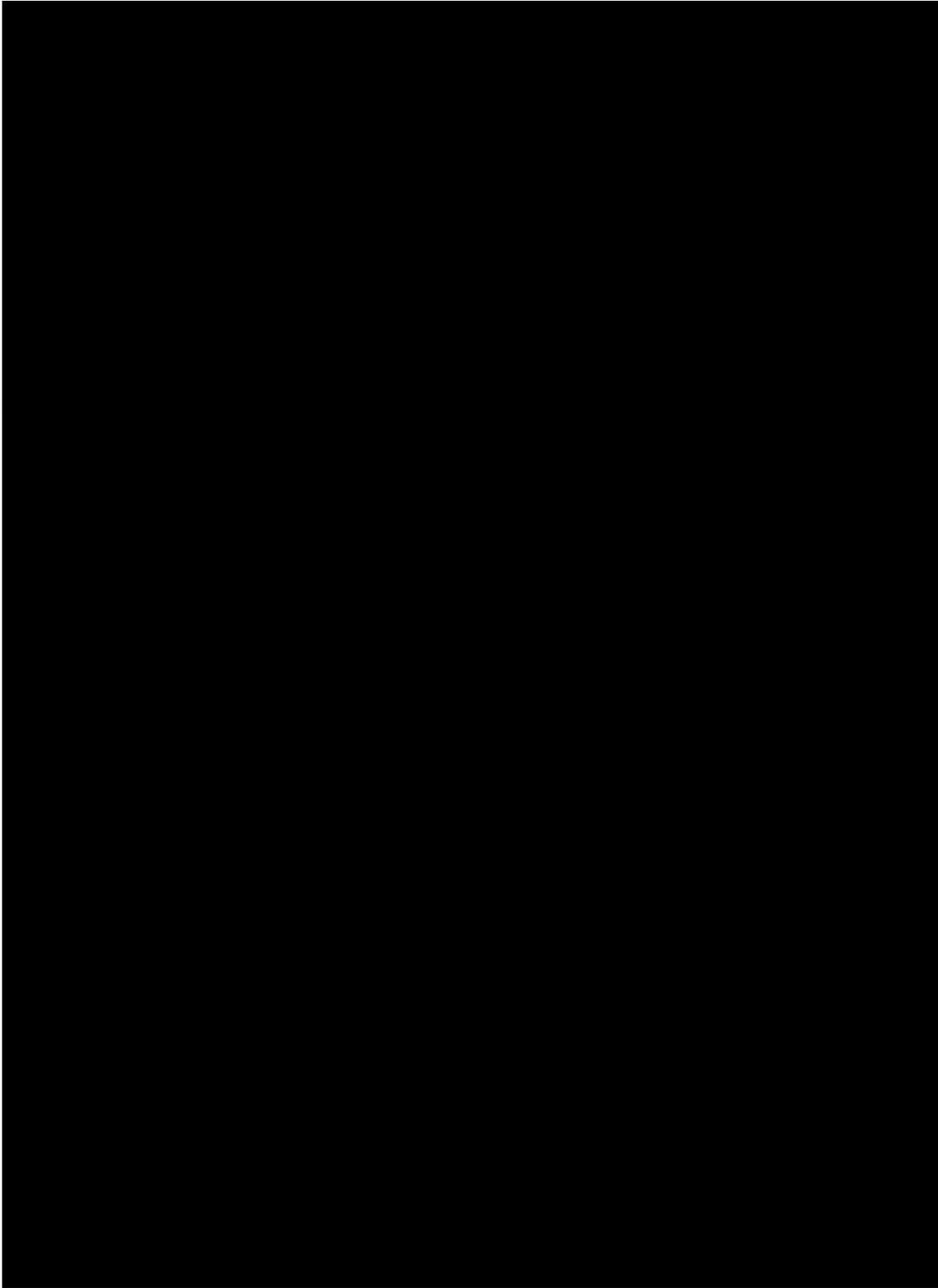
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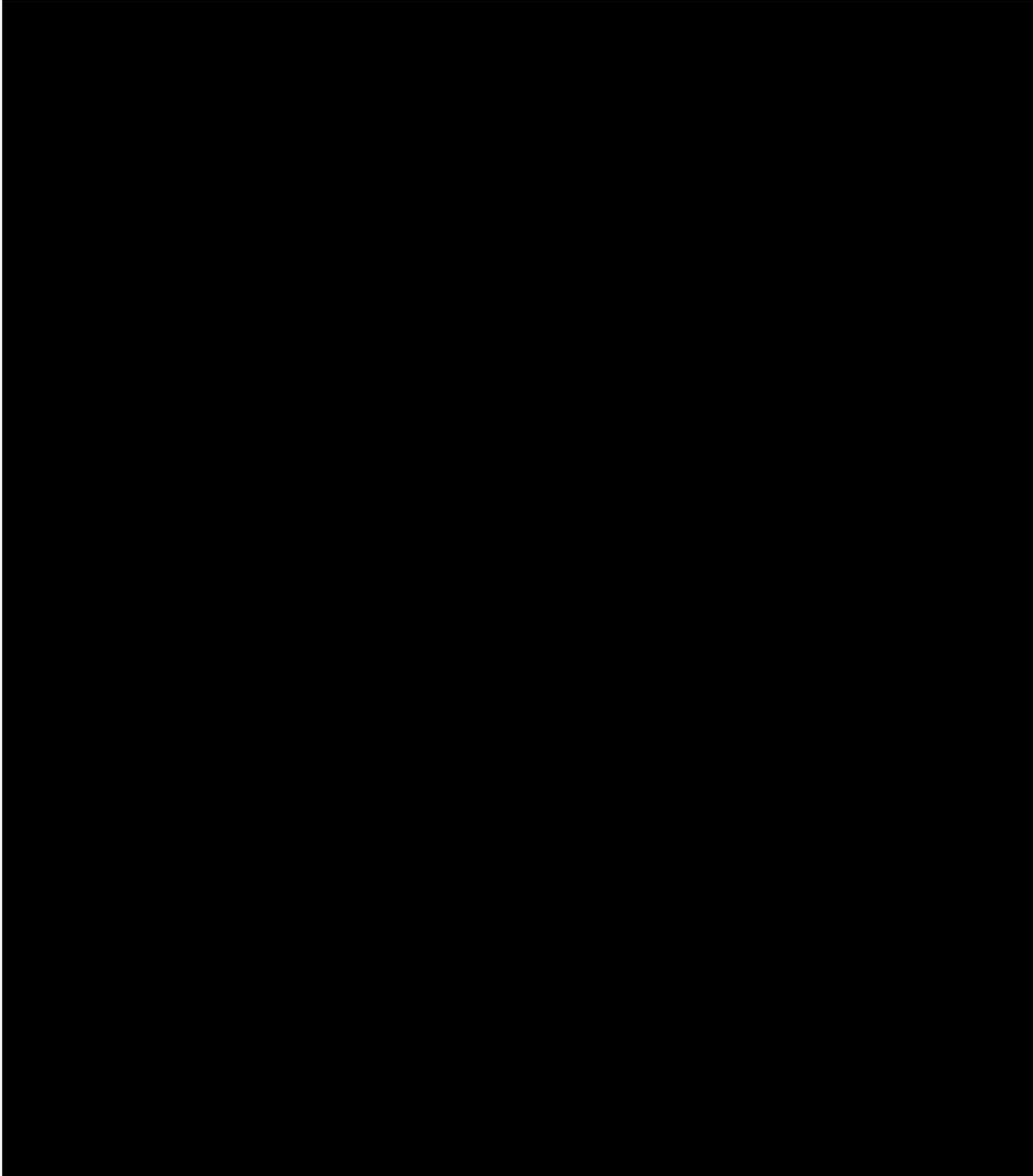


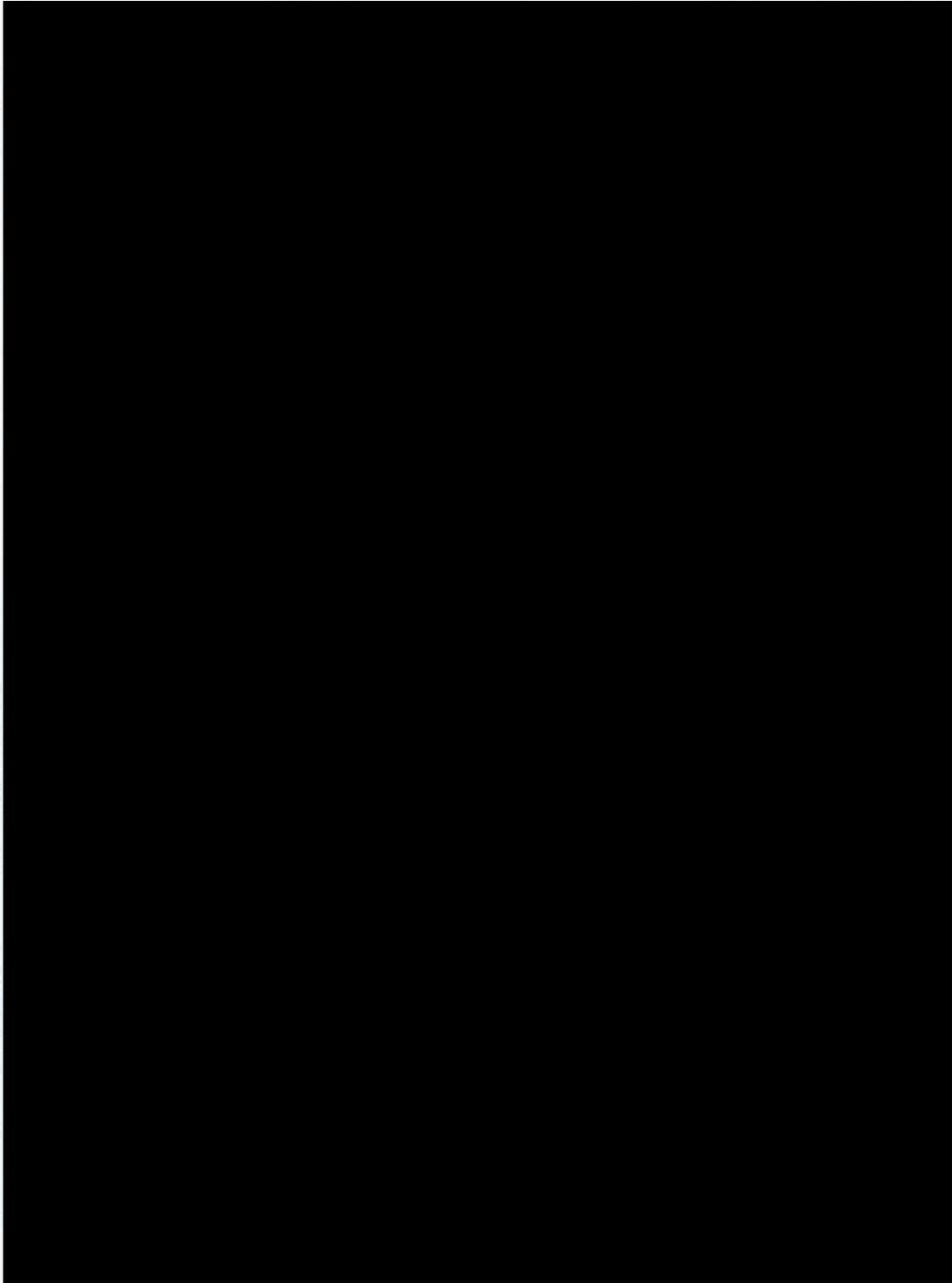
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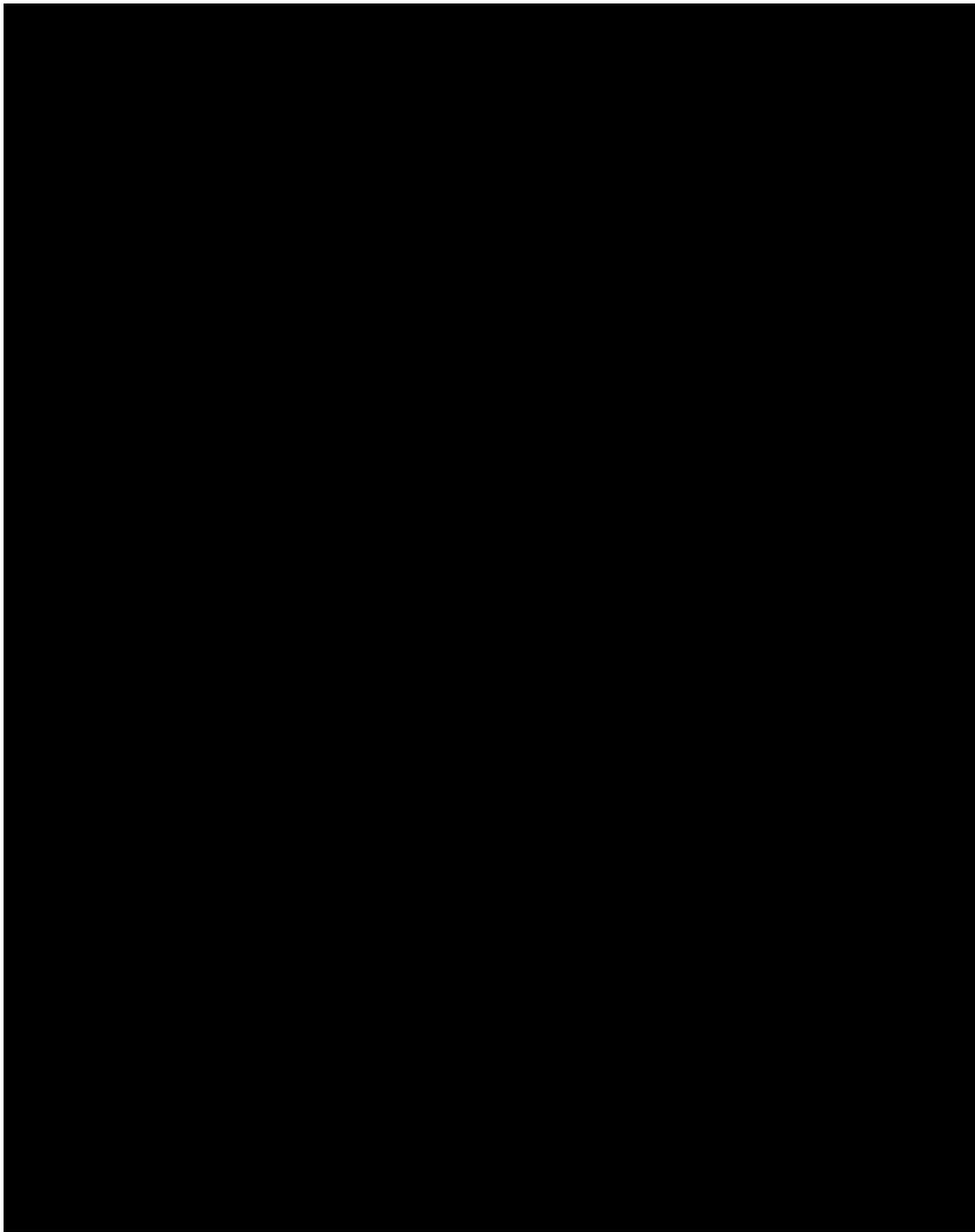
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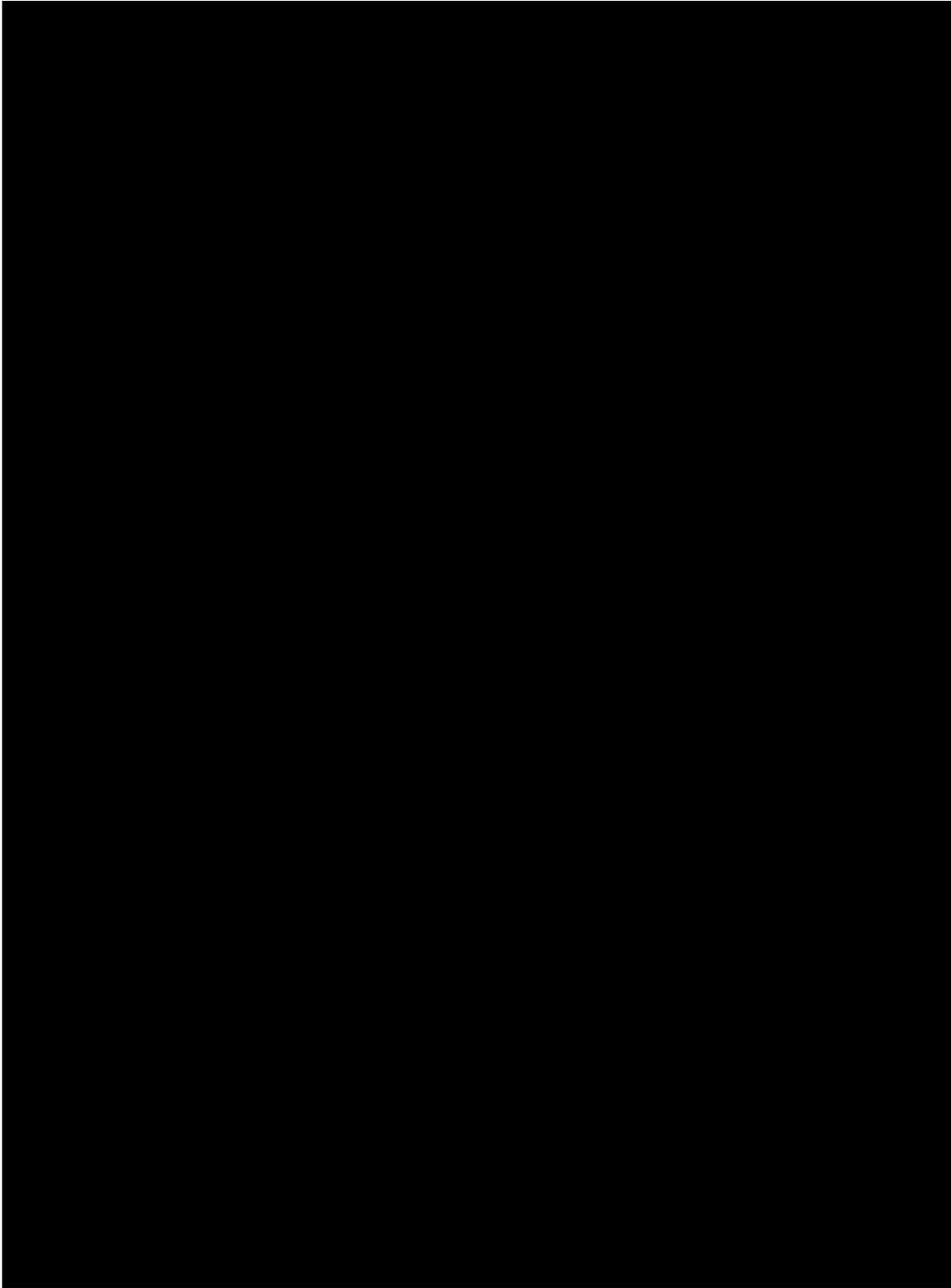
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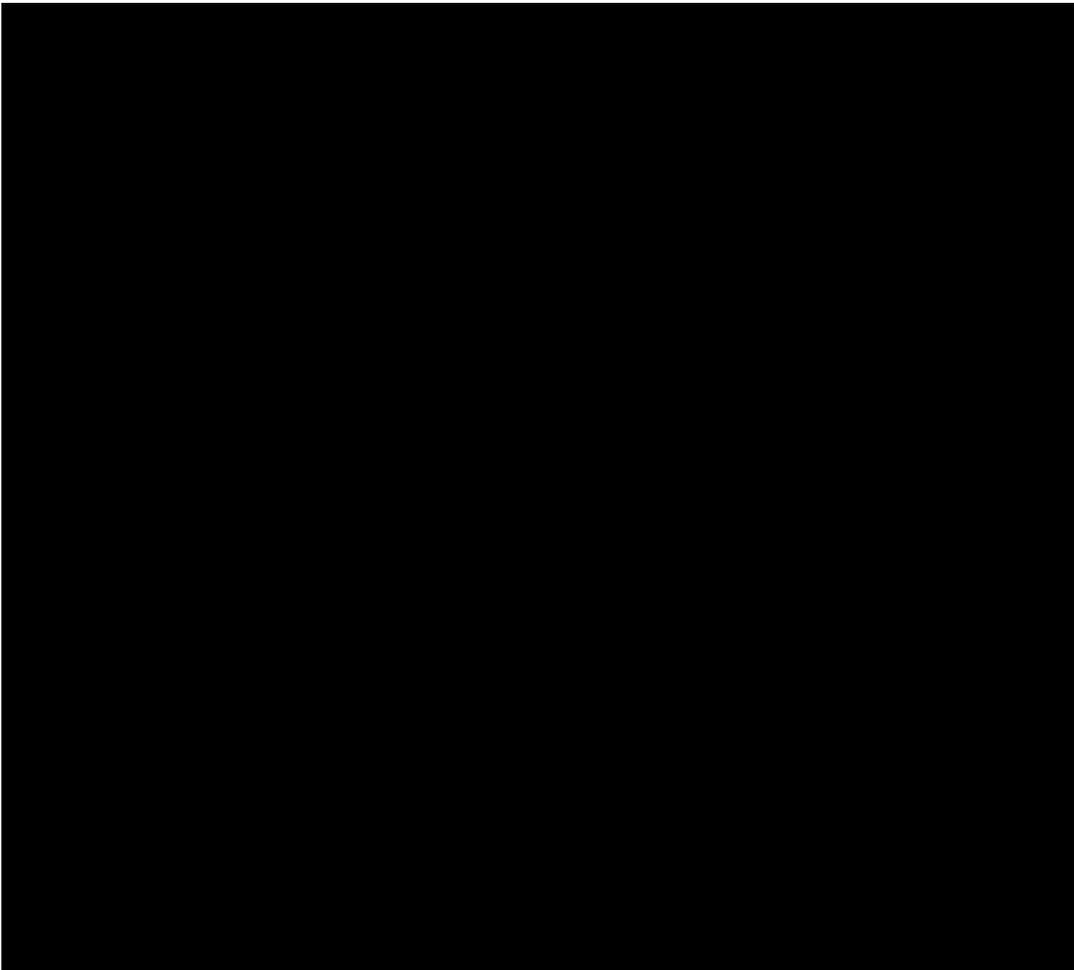












Sydney Metro City & Southwest Significant Contract: Early Works Subcontract - Alstom
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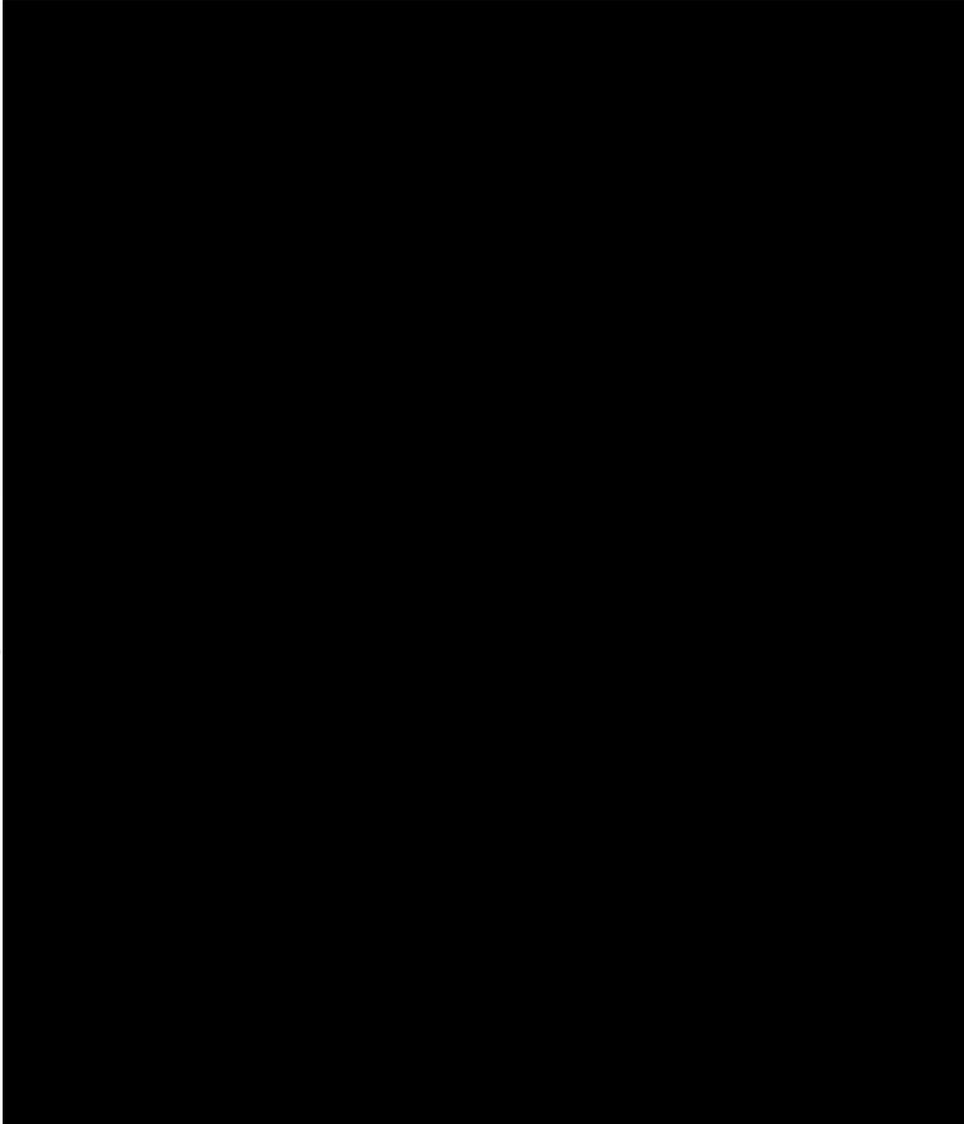
SCHEDULE 3

Not used

SCHEDULE 4

Not used

SCHEDULE 5



SCHEDULE 6

Insurances

Part A – Significant Contractor's Insurances

Insurance	Cover
Professional Indemnity	[REDACTED]
Workers Compensation and employers liability	As required by law

Part B – Principal's Insurances

This Part B of Schedule 6 includes the following attachments:

- (a) Insurance Policy: Project Construction Risks – Contract Works (Transport for NSW – Sydney Metro City & South West) dated July 2017; and
- (b) Insurance Policy: Project Construction Risks – Public & Products Liability (Transport for NSW – Sydney Metro City & South West) dated July 2017.

SCHEDULE 8
Statutory Declaration
(Clause 9.4(c))

<i>Statutory Declaration</i>	<i>Oaths Act (NSW) Ninth Schedule</i>
I,	<i>insert full name of Declarant</i>
of	<i>insert address</i>
<i>do solemnly and sincerely declare that:</i>	
1. I am the representative of:	<i>insert name of Contractor, and ACN if applicable</i>
(<i>"the Contractor"</i>)	
In the Office Bearer capacity of:	<i>insert position title of Declarant</i>
2. The Contractor has a contract with the [.....]:	
(<i>"the Contract"</i>)	<i>insert name of Contract</i>
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee:	<i>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and</i>
Amount	
unpaid or not accrued:	
5. All subcontractors and suppliers to the Contractor have been paid all moneys which as at the date of this declaration have been claimed by them to the Contractor for the performance of work under the Contract (as	

applicable) and the supply of materials for use in work under the Contract, with the exception of the subcontractors and suppliers and the respective unpaid amounts listed below:

Subcontractor or supplier:
Amount unpaid:

.....
.....
.....
.....

superannuation entitlement etc.

Insert names and addresses of the unpaid

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

subcontractors and suppliers, the amounts owing and whether in respect of materials supplied, work performed etc.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

(b) that all their employees and subcontractors, as at the date of the making of such a declaration:

i) have been paid all remuneration and benefits due and payable to them by; or

ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any, and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:
Due amount unpaid:

.....
.....
.....

Insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in

-

9. *Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:*
- Employee, subcontractor or supplier:
 Amount unpaid or not accrued:*
-

10. *In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.*
11. *Attached to and forming part of this declaration is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:*
- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;*
 - (b) under Schedule 2 Part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and*
 - (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.*
12. *I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.*
13. *All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:*
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and*
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.*
14. *I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.*

respect of this claim

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at on

(place) (day) (month) (year)

.....
(Signature of Declarant)

Before me:

.....
(Signature of person before whom the declaration is made)

.....
(Name of the person before whom the declaration is made)

.....
(Title* of the person before whom the declaration is made)

* The declaration must be made before one of the following persons:

- where the declaration is sworn within the State of New South Wales:

(i) a justice of the peace of the State of New South Wales;

(ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or

(iii) a notary public.

- where the declaration is sworn in a place outside the State of New South Wales:

(i) a notary public; or

(ii) any person having authority to administer an oath in that place.

And as a witness, I certify the following matters concerning the person who made this affidavit (the deponent):

1. I saw the face of the deponent.

[OR]

I did not see the face of the deponent because the deponent was wearing a face covering, but I am satisfied that the deponent had a special justification for not removing the covering.

2. I have known the deponent for at least 12 months.

[OR]

I have confirmed the deponent's identity using the following identification document:

[Insert description of ID document]

.....
Signature of witness

SCHEDULE 9

Checkpoint Milestone Completion Notice

(Clause 5.5(a))

[ON INTEGRATOR'S LETTERHEAD]

[insert date]

Significant Contractor
[insert address]

Dear [insert name]

CHECKPOINT MILESTONE COMPLETION NOTICE
Significant Contract Early Works Subcontract- Checkpoint Milestone [insert number]

This Checkpoint Milestone Completion Notice is given in accordance with the "Sydney Metro City – Significant Contract Early Works Subcontract" dated [insert] (Early Works Subcontract). Words defined in the Early Works Subcontract have the same meaning in this notice.

In accordance with clause 5.5(a) of the Early Works Subcontract, the Integrator confirms that Completion of the Checkpoint Milestone [insert number] has been achieved. The Date of Checkpoint Milestone Completion of the Checkpoint Milestone is [insert date].

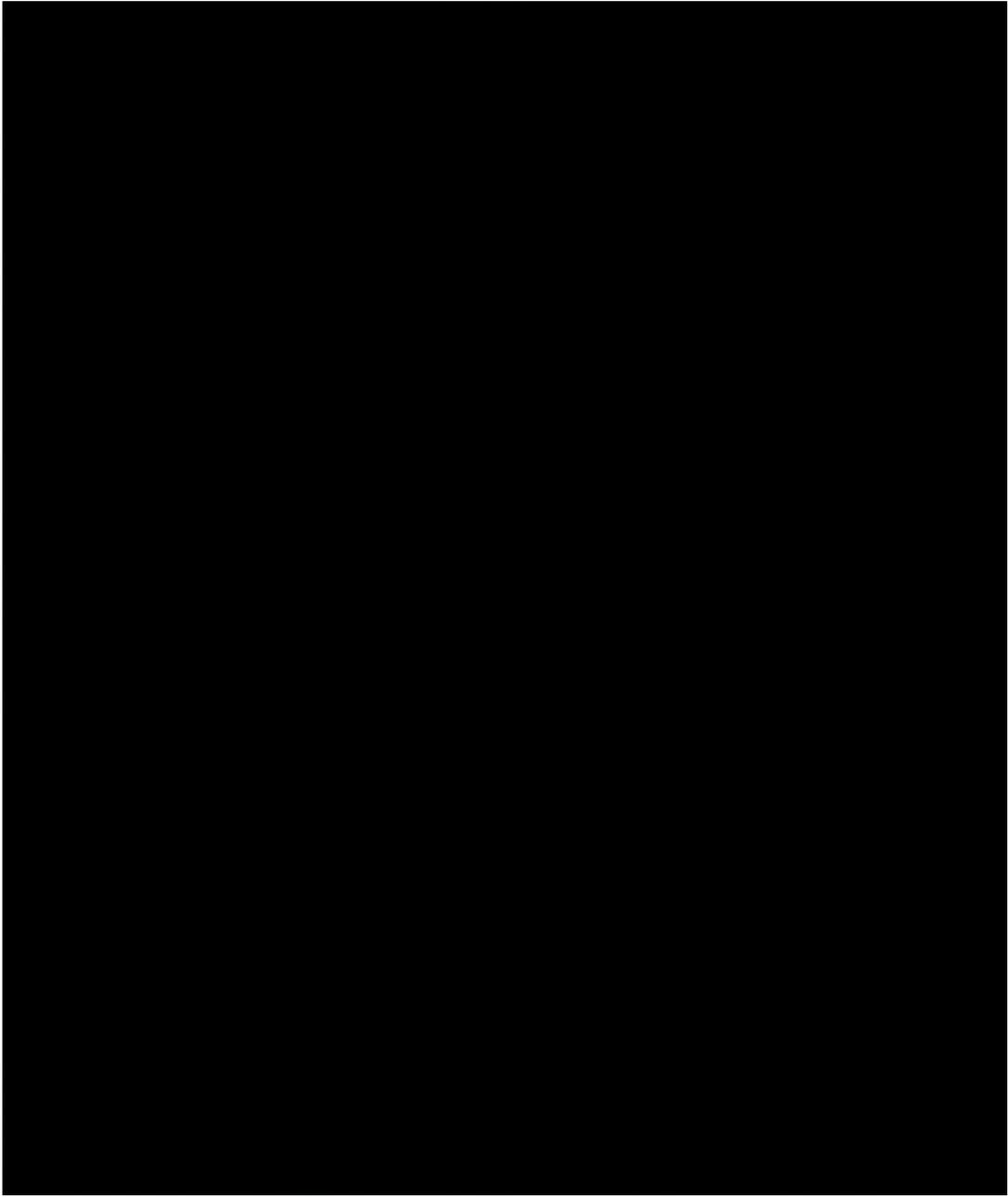
Yours sincerely

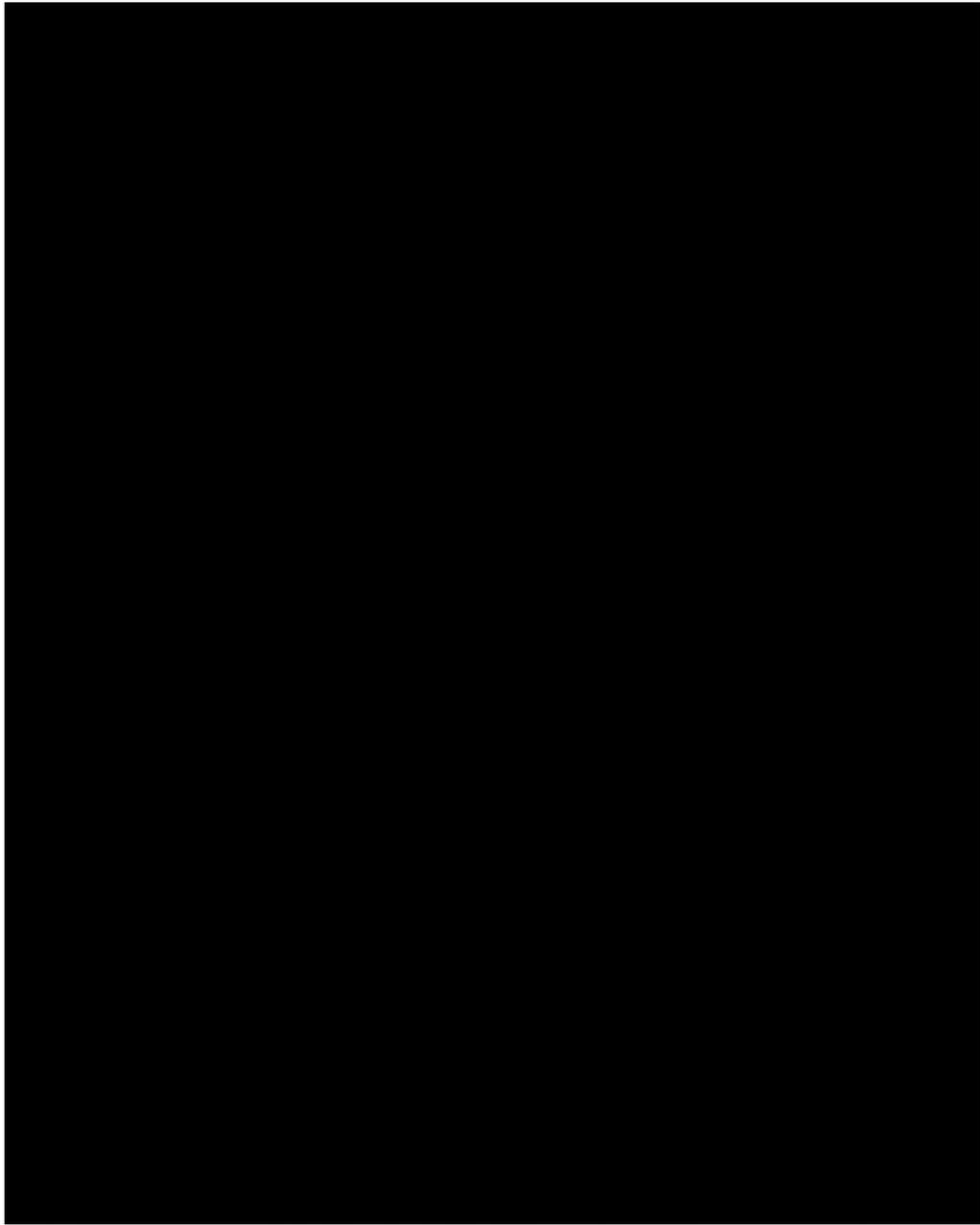
.....
[insert name]

for and on behalf of the Integrator



SCHEDULE 4











SCHEDULE 5

Excluded and amended provisions

- (a) Clause 3.2A
- (b) Clause 3.4(a) and (b);
- (c) Clause 4(b);
- (d) Clause 6.4(b);
- (e) Clause 7.1;
- (f) Clause 7.2;
- (g) Clause 8.1(c) is amended by deleting the reference to "(to the extent the Principal has made an equivalent direction under the OTS2 Early Works Deed)";
- (h) In clause 9.2(g), the reference to:
 - (i) "30 Business Days (SOP)" is amended to refer to "15 Business Days"; and
 - (ii) "10 Business Days (SOP)" is amended to refer to "5 Business Days (SOP)";
- (i) Clause 9.4(b), clause 11, clause 14.1(c) and Schedule 7;
- (j) Clause 9.7;
- (k) Clause 12.1(b);
- (l) Clause 14.3 is amended by deleting the reference to "acting consistently with a corresponding notice from the Principal under the OTS2 Early Works Deed or if the Principal directs the Integrator to";
- (m) Clause 14.4 is amended by deleting the reference to "(acting consistently with an equivalent action of the Principal under the OTS2 Early Works Deed)";
- (n) Clause 14.9; and
- (o) Clause 16(c) in respect of the Integrator notice details only, which are replaced with the following:

Sydney Metro

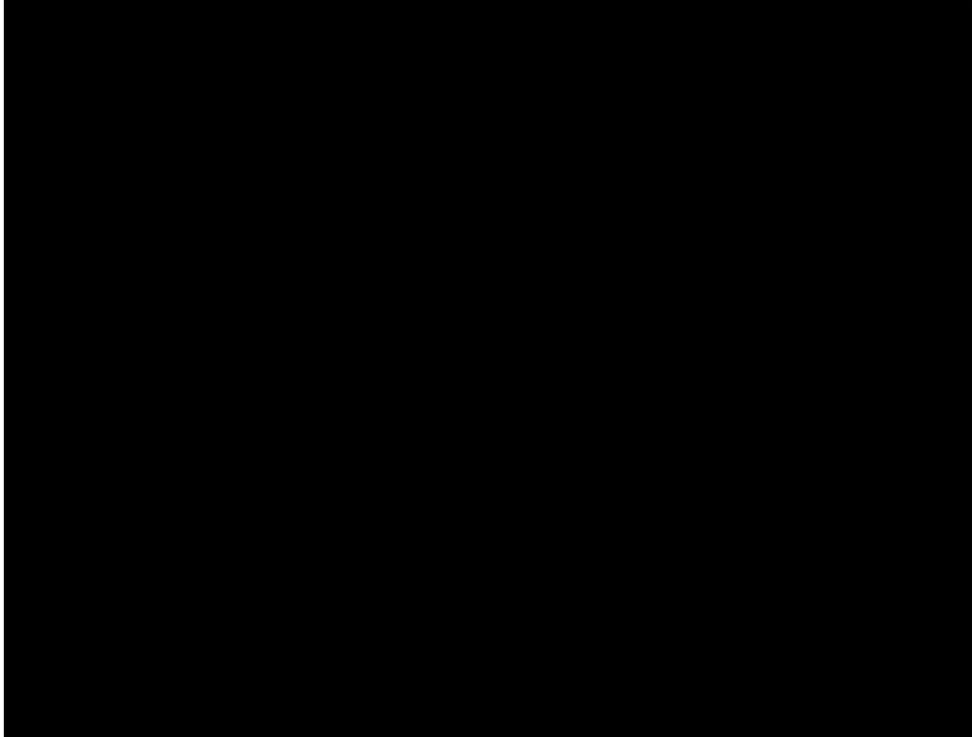
Name: Sydney Metro, a New South Wales Government agency

Address: Level 43, 680 George Street, Sydney NSW 2000

For the attention of: Sydney Metro's Representative (any notice in relation to a Claim or a dispute must also be addressed to the General Counsel - Sydney Metro and sent to



SCHEDULE 6





19 September 2019

STRICTLY CONFIDENTIAL

Alstom Transport Australia Pty Ltd
Level 4, 16 Giffnock Avenue
North Ryde, NSW 2113
Australia

Attention: [REDACTED]

Dear [REDACTED]

Sydney Metro City & Southwest – Variation to the Significant Contract Early Works Subcontract - Trains and CBTC

We refer to the deed titled "Significant Contract Early Works Subcontract – Trains and CBTC" entered into between Sydney Metro (ABN 12 354 063 515) (**Sydney Metro**) and Alstom Transport Australia Pty Limited (ACN 165 157 451) (**Significant Contractor**) dated 28 August 2019 (**Significant Contractor EWD**). Capitalised terms used but not otherwise defined in this letter will have the meaning given to them in the Significant Contractor EWD.

Sydney Metro and the Significant Contractor agree that the Significant Contractor EWD is amended with effect on and from the date of this letter as follows:

Total SM Early Works Payments means the aggregate of all amounts set out in Schedule 2 (SM Early Works Payments), being [REDACTED] as adjusted for any Modification to the SM Early Works agreed or directed by Sydney Metro.

This amendment does not affect any right or obligation of either party that arises before the date of this letter. Except as expressly amended by this letter, no changes to the Significant Contractor EWD are to be inferred or implied, and in all other respects the Significant Contractor EWD is confirmed and remains in full force and effect.

This letter has been executed by both parties as a deed. This letter may be executed in counterparts.

This letter is governed by the laws of New South Wales.

Yours sincerely,

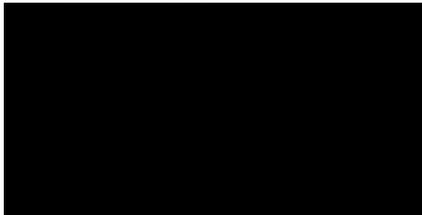
For and on behalf of **SYDNEY METRO**



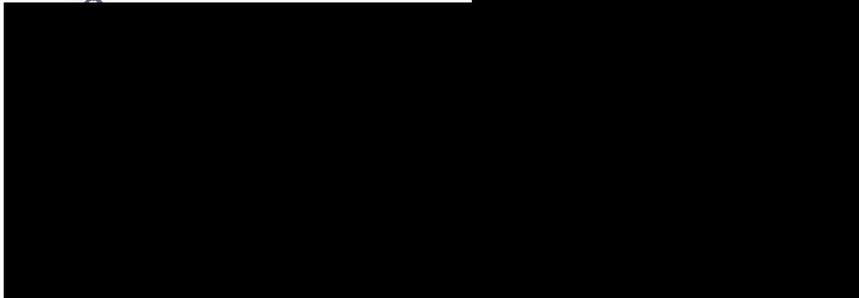
Executed and delivered as a deed.

Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED by SYDNEY METRO ABN 12 354 063 515 by its duly authorised delegate, in the presence of:



SIGNED, SEALED and DELIVERED for ALSTOM TRANSPORT AUSTRALIA PTY LIMITED ACN 165 157 451 under power of attorney in the presence of:



SCHEDULE 2

Early Works Subcontract (Trains and CBTC) Amendments

The Early Works Subcontract (Trains and CBTC) is amended with effect on and from the date of this letter as set out below:

1. Clause 1.1 (*Definitions*):

- (a) A new definition of "Continuation of Early Works Letter (Trains and CBTC)" is inserted as follows:

Continuation of Early Works Letter (Trains and CBTC) means the deed constituted by the letter titled "Sydney Metro City & Southwest – Significant Contract Early Works Subcontract Trains and CBTC" entered into between Sydney Metro (ABN 12 354 063 515) (Sydney Metro) and the Significant Contractor dated 28 August 2019.

- (b) The definition of "Early Works Activities" is amended as follows:

Early Works Activities means:

(a) all activities that the Significant Contractor performs, or is required to perform, to exercise its rights or comply with its obligations under this subcontract, whether or not the performance of such things or tasks is subcontracted to a Significant Contractor's Contractor-;

(b) all SM Early Works Activities performed or were required to be performed by the Significant Contractor under the Continuation of Early Works Letter (Trains and CBTC).

- (c) A new definition of "SM Early Works" is inserted as follows:

SM Early Works has the meaning given in the Continuation of Early Works Letter (Trains and CBTC).

- (d) A new definition of "SM Early Works Activities" is inserted as follows:

SM Early Works Activities has the meaning given in the Continuation of Early Works Letter (Trains and CBTC).

SCHEDULE 3

Checkpoint Milestones (SM) achieved and certified

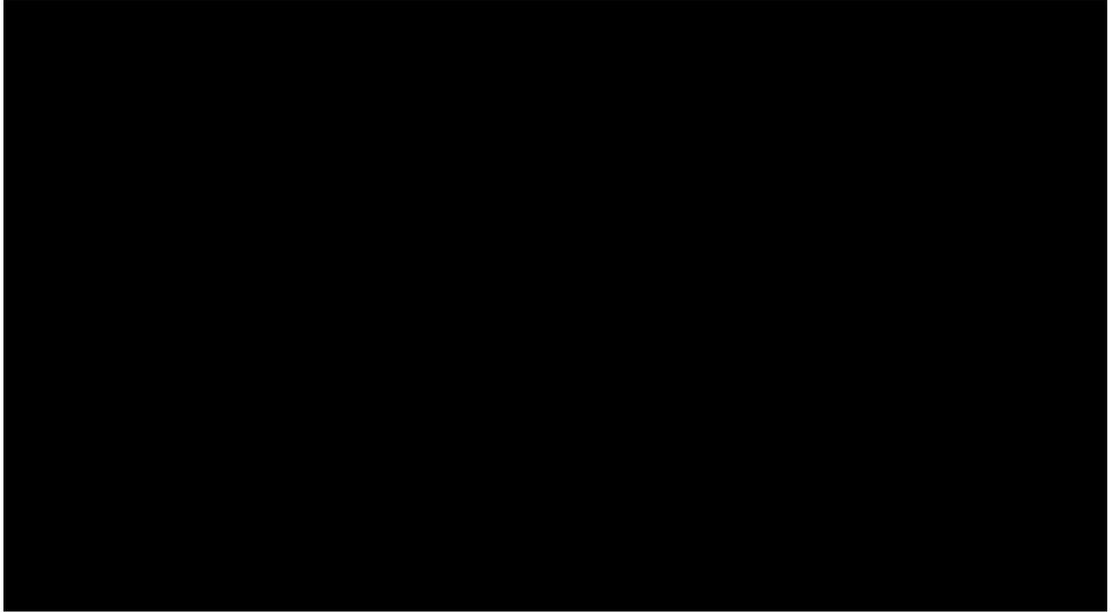
At the date of this letter, the Checkpoint Milestones (SM) achieved by the Significant Contractor under the Continuation of Early Works Letter (Trains and CBTC) and certified for payment by Sydney Metro, and the corresponding amounts paid or payable by Sydney Metro directly to the Significant Contractor are:



SCHEDULE 4

Checkpoint Milestones (SM) achieved but not certified

At the date of this letter, the Checkpoint Milestones (SM) achieved by the Significant Contractor under the Continuation of Early Works Letter (Trains and CBTC) but not certified by Sydney Metro, and the corresponding outstanding amounts are:



SCHEDULE 5

Outstanding Checkpoint Milestones (SM)

At the date of this letter, the Checkpoint Milestones (SM) not achieved by the Significant Contractor under the Continuation of Early Works Letter (Trains and CBTC) or certified for payment by Sydney Metro, and the corresponding outstanding amounts to be paid by MTR to the Significant Contractor are:

