
MANAGING CONTRACTOR CONTRACT
Contract Number: IPD-20-9088
DIGITAL TRAIN RADIO SYSTEM MODIFICATIONS

Between

Transport for NSW

[PRINCIPAL]

ABN 18 804 239 602

and

UGL Engineering Pty Ltd

[CONTRACTOR]

ABN 96 096 365 972

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Parties	
1.	Transport for NSW (ABN 18 804 239 602), a corporation constituted by section 3C of the <i>Transport Administration Act 1988</i> (NSW), of 7 Harvest Street, Macquarie Park NSW 2113 (Principal).
2.	UGL Engineering Pty Limited (ACN 096 365 972) incorporated in Australia of Level 8, 40 Miller Street, North Sydney, NSW 2060 (the Contractor).
Recitals	
A	Transport for NSW is a corporation constituted by section 3C of the <i>Transport Administration Act 1988</i> (NSW), and is responsible for developing certain major railway systems and other major projects.
B	Transport for NSW is undertaking a program known as the Digital Systems Program to implement a system to replace legacy signalling and train control on the heavy rail network with a modern, intelligent, internationally proven, integrated rail signalling system utilising an onboard and trackside ETCS Level 2 system (Digital Systems Program).
C	The Works comprise the design, construction, commissioning, integration and handover of modifications to the Principal's digital train radio system to, amongst other things, enable the implementation of the Digital Systems Program.
D	The Digital Systems Program involves multiple packages of trackside, train-borne and control systems to be undertaken contemporaneously by Other Contractors and Rail Transport Agencies, as well as interfaces between various subsystems. It is critical to the success of the Digital Systems Program and delivery of the Works that all packages of work forming part of the Digital Systems Program, including the Works, are delivered in an integrated and seamless manner.
E	The Principal has engaged the Contractor, and the Contractor has agreed, to undertake the Contractor's Activities for the Principal in accordance with this Contract.
F	The DTRS Subsystem will be upgraded in stages. On the date of this Contract, the Contractor is required to undertake the Contractor's Activities described in SOW 1. In addition the Principal may, by directing a New SOW under this Contract during the Term, request the Contractor to undertake a range of other works, activities or services in connection with the DTRS Subsystem.

It is agreed as follows

1. Definitions and Interpretation

1.1 Definitions

In this Contract, unless the context otherwise indicates:

"Aboriginal Participation Plan" means a plan of that name prepared in accordance with the Aboriginal Procurement Policy.

"Aboriginal Procurement Policy" means the NSW Government policy so entitled dated January 2021.

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

"Additional Track Possession" means a Track Possession that is not listed in Schedule 33.

"Approved Subcontract Agreement" means an agreement which is entered into by the Contractor with a Subcontractor on the terms which have been approved in writing by the Principal's Representative under clause 7.7(a)(i).

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

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

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

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

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

"Asset Standards Authority" or "ASA" means the unit within Transport for NSW the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle. Information about the ASA and the network and asset standards can be found on www.asa.transport.nsw.gov.au

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

"Authority" includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public

authority, agency, Minister, statutory corporation or instrumentality (and includes ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Works or the Contractor's Activities.

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

- (a) carry out the Contractor's Activities including for the avoidance of doubt all things required for conducting work within the Rail Corridor or affecting rail operations and all things required for dealing with, transporting and disposing of Contamination, Hazardous Material or waste; or
- (b) occupy and use for its intended purpose the completed Works or a completed Portion,

and for the avoidance of doubt includes:

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

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

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

"Change in Authority Approval" means:

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

"Change in Codes and Standards" means a change in the Codes and Standards taking effect:

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

- (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
- (iii) for restitution, including restitution based on unjust enrichment.

"Codes and Standards" means:

- (a) the relevant building codes (including the Building Code of Australia), Standards Australia codes, standards, specifications, guidelines, rules, procedures or other publications (including the Disability (Access to Premises – Buildings) Standards 2010), including any specified or required by this Contract current at the date of this Contract in the case of SOW 1, or in the case of a New SOW at the date of issue of the New SOW Date;
- (b) the standards listed in the SSRS for the DTRS Subsystem or otherwise specified or required by the Works Brief; and
- (c) the Aboriginal Procurement Policy (January 2021), NSW Guidelines, Environmental Management Systems Guidelines (April 2020), WHS Management Guidelines Edition 6, NSW Government Procurement Guideline Skills and Training in the Construction Industry, Quality Management Guidelines - Construction Procurement Edition 4 (December 2019), Government Resource Efficiency Policy (February 2019), the Supplier Code of Conduct (Version 1.1) (November 2019), the NSW Procurement Policy Framework (February 2021), any applicable directions of the NSW Procurement Board, and any other NSW Government guidelines and requirements specified or required by this Contract.

"Collaboration Participants" has the meaning given in clause 2.17(c).

"Collaboration Principles" has the meaning given in clause 2.17(c).

"Commissioning" has the meaning given to that term in the TfNSW Standard Requirements.

"Commonwealth" means the Commonwealth of Australia.

"Completion" means the stage in the execution of the Contractor's Activities in relation to a Portion (or, where there are no Portions for a SOW, in relation to the Works for the SOW), when:

- (a) the Works are, or a Portion is, complete in accordance with this Contract except for minor Defects:
 - (i) that do not prevent the Works or the Portion from being reasonably capable of being used for the intended purpose of the Works or the Portion;
 - (ii) that can be rectified without prejudicing the convenient and intended use of the Works or the Portion; and
 - (iii) which the Contractor has reasonable grounds for not promptly rectifying;
- (b) the Contractor has:

- (i) carried out and passed all tests that:
 - A. are required under this Contract to be carried out and passed before the Works or a Portion reaches Completion; or
 - B. must necessarily be carried out and passed to verify that the Works or a Portion is in the condition this Contract requires the Works or Portion (as the case may be) to be in at Completion;
- (ii) without limiting clause 2.2(d)(iv), obtained all Authority Approvals that it is required under this Contract to obtain before Completion of the Works or a Portion and provided such Authority Approvals to the Principal's Representative;
- (iii) given to the Principal's Representative all other documents and information:
 - A. required (including in accordance with the TfNSW Standard Requirements and the Works Brief) for the use, operation, maintenance and repair of the Works or a Portion; and
 - B. that are to be handed over to the Principal's Representative before Completion of the Works or a Portion;
- (iv) complied with all performance requirements that this Contract requires to be verified before Completion of the Works or a Portion;
- (v) provided the Principal's Representative with the Contractor's Certificate of Completion in the form of Schedule 21 for the Works or a Portion; and
- (vi) complied with all requirements in respect of asset handover in accordance with section 3.10 of the Works Brief; and
- (c) the Contractor has done everything else that it is required to do under this Contract before Completion of the Works or a Portion including those things referred to in Schedule 1.

"Confidential Information" means information that:

- (a) is by its nature confidential;
- (b) is communicated by the discloser of the information (**Discloser**) to the recipient of the information (**Recipient**) as confidential;
- (c) the Recipient knows or ought to know is confidential; or
- (d) relates to or comprises:
 - (i) Principal Data;

- (ii) the Contract, the Contractor's Activities, Design Work or the Design Documentation;
- (iii) the financial, corporate and commercial information of any party;
- (iv) the affairs of a third party (provided the information is non-public); or
- (v) the strategies, practices and procedures of the State and any information in the Contractor's possession relating to an Authority,

but excludes information:

- (e) in the public domain, unless it came into the public domain due to a breach of confidentiality;
- (f) independently developed by the Recipient; or
- (g) in the possession of the Recipient without breach of confidentiality by the Recipient or other person.

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

"Confirmed" means that a Submitted Document has been submitted for Review and:

- (e) has been returned marked by the Principal with a statement "no comment" in accordance with section 4.1 of Schedule 34;
- (f) the Principal has notified the Contractor under section 4.2 of Schedule 34 that it does not intend to comment;
- (g) is deemed under the Review Procedures to have been returned marked "no comment"; or
- (h) has been returned by the Principal with minor comments that the Principal has agreed to allow the Contractor to address as part of a subsequent Review in accordance with section 7.1 of Schedule 34.

"Construction Environmental Management Plan" means the plan which forms part of the Contract Management Plan which is required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements.

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

"Consultant" means a person referred to in Schedule 1 who is to be engaged by the Contractor to perform the Design Work.

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

Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

"Contemporaneous Work" means work carried out:

- (a) by Other Contractors on or after the date of this Contract;
- (b) on or adjacent to the Site; and
- (c) upon or by which the proper execution of the Contractor's Activities is dependent or may be appreciably affected by it being unsuitable, unsatisfactory or detrimental in any way.

"Contract" means the contract between the Principal and the Contractor in respect of the Works constituted by the documents referred to in Schedule 1.

"Contract Documentation" means all items, materials, documentation in computer readable or written forms (including the Design Documentation and any Preliminary Design, any Software and any plans, drawings, manuals and specifications) and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Contractor's Activities for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the date of this Contract, including the Works Brief.

"Contract Management Plan" means the documents required to be provided and implemented by the Contractor pursuant to the TfNSW Standard Requirements as developed, amended or updated from time to time in accordance with the Contract.

"Contract Price" means, in respect each SOW , the sum of:

- (a) the Design Fee for the relevant SOW;
- (b) the Management Fee for the relevant SOW;
- (c) the Preliminaries Fee for the relevant SOW; and
- (d) the Reimbursable Costs for the relevant SOW.

"Contractor" means the person named as the Contractor in Schedule 1.

"Contractor's Activities" means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Contract (including under any New SOW), including:

- (a) the Design Work, the Preliminaries, the Reimbursable Work and the correction of Defects; and
- (b) without limiting paragraph (a):
 - (i) the design, construction, commissioning and hand-over of the Works;
 - (ii) the provision of Temporary Works and Construction Plant;
 - (iii) Commissioning and Operational Readiness; and

- (iv) anything incidental or ancillary to the obligations in paragraphs (i) to (iii).

"Contractor's Representative" means the person notified to the Principal's Representative in accordance with clause 9.4(a) as being the Contractor's Representative.

"COVID-19 Pandemic" means the pandemic declared in the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020 dated 18 March 2020 and by the World Health Organisation on 12 March 2020.

"Crown Building Work" has the meaning given to that term in sections 6.1 and 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).

"Date for Completion" means in respect of a Portion (or where there are no Portions for a SOW, in relation to the Works for the SOW) the date, or the last day of the period of time, specified in Schedule 1 for the Works in respect of that SOW or that Portion, as adjusted under this Contract by an extension of time determined by the Principal's Representative or pursuant to any determination by an expert or any arbitration pursuant to clause 15.

"Date of Completion" means:

- (a) the date of Completion of a Portion (or where there are no Portions for a SOW, in relation to the Works for the SOW), set out in a Notice of Completion; or
- (b) where another date is determined in any determination by an expert or any arbitration pursuant to clause 15 as the date upon which Completion was achieved, that date.

"Date of Final Completion" means:

- (a) the date determined in accordance with clause 12.8(e)(i) as the date Final Completion was achieved in respect of a SOW; or
- (b) where another date is determined in any determination by an expert or any arbitration pursuant to clause 15 as the date upon which Final Completion was achieved in respect of a SOW, that date.

"Defect" means any:

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

"Defects Rectification Period" means the period stated in Schedule 1, as extended by clause 8.6.

"Derived Requirement" has the meaning given in clause 2.21(a).

"Design Documentation" means all design documentation (including design standards, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, drawings, digital records, Software and all other relevant data) in computer readable and written forms, or stored by any other means required by this Contract or necessary to be produced by the Contractor to design and construct the Works and the Temporary Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Contract, and includes any Preliminary Design.

"Design Fee" means the lump sum payable to the Contractor for performing the Design Work set out in Schedule 1, covering the matters specified in Part D of Schedule 2, as adjusted by any Fee Adjustment in respect of the Design Fee.

"Design Work" means the design work to be carried out by the Contractor or its subcontractors in designing the Works.

"Digital Systems Program" has the meaning given in the Recitals.

"Disaster" means any disaster, accident, emergency, degradation, damage, interruption or other event or circumstance which impacts on the continuity of the Contractor's Activities.

"Dispute" has the meaning given to that term in clause 15.1.

"DTRS Subsystem" means the digital train radio system operated by Sydney Trains, which enables operationally critical communications.

"Electronic Portal" means the electronic portal or document management system (if any) referred to in a notice by the Principal's Representative under clause 18.1(a).

"Environment" means components of the earth, including:

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

"Environmental Representative" means the person identified in Schedule 1 as the environmental manager appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

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

"Equipment" means the goods or equipment (or part thereof) to be incorporated into the Works by the Contractor in performing the Contractor's Activities.

"ETCS" means European Train Control System.

"Excepted Risk" means any one of:

[REDACTED]

[REDACTED]

[REDACTED]

"Excluded Claim" means any claim:

- (a) for a Variation directed in accordance with clause 6.2 or a direction by the Principal's Representative to which clause 16.1 applies;
- (b) for an extension of time to any Date for Completion or LD Milestone Date under clause 10.8; or
- (c) for payment under clause 11, including claims under clauses 11.9 and 11.11.

"Extra Land" means the land referred to in clause 3.4(a).

"Fee Adjustment" means any increases or decreases to the Design Fee and the Management Fee in accordance with clauses 3.5(c) (if Alternative 2 in clause 3.5 applies), 6.3, 6.4 or 3.6A.

"Final Authorisation" means a final authorisation issued by the ASA to a legal entity which authorises that entity to carry out the class of Asset Lifecycle work specified in the final authorisation, subject to any conditions of the authorisation.

"Final Completion" means the stage in the execution of the Contractor's Activities in respect of a SOW when:

- (a) all Defects Rectification Periods (including any extension under clause 8.6) in respect of that SOW have expired and the Contractor has rectified all Defects in accordance with the Contract;
- (b) the Contractor has:
 - (i) carried out and passed all tests which:
 - A. are required under this Contract to be carried out and passed before the Works in respect of that SOW reach Final Completion; or
 - B. must necessarily be carried out and passed to verify that the Works in respect of that SOW are in the condition this Contract requires them to be in at Final Completion;
 - (ii) obtained all Authority Approvals that it is required under this Contract to obtain which:

- A. were not obtained before Completion of the Works or the last Portion to reach Completion; or
 - B. are to be obtained prior to Final Completion, and provided such Authority Approvals to the Principal's Representative;
- (iii) given to the Principal's Representative all other documents or information referred to in this Contract:
 - A. which are required for the use, operation, maintenance and repair of the Works in respect of that SOW but which were not obtained before Completion of the Works or the last Portion in respect of that SOW to reach Completion; or
 - B. which are required to be handed over to the Principal's Representative before Final Completion; and
- (iv) complied with all performance requirements under this Contract that must be verified before Final Completion; and
- (c) the Contractor has done everything else which it is required to do under this Contract before Final Completion.

"Force Majeure Event"

"Gainshare" has the meaning given in clause 11.17(b).

"General Conditions" means clauses 1 to 18 of this Contract.

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

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

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

"GREP" means the NSW Government Resource Efficiency Policy.

"Hazardous Material" means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints and water treatment chemicals.

"Incident" means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
 - (i) a fatality or injury to any person including any incident which must be reported to SafeWork NSW;
 - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
 - (iii) any fire or dangerous event on the Site or Extra Land;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) a non-compliance with an Authority Approval; or
 - (vii) any public complaint; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment,

and includes:

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

"Information Documents and Materials" means:

- (a) the items specified in Schedule 9;
- (b) the Reports; and
- (c) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor unless expressly identified as forming part of this Contract,

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

"Insolvency Event" means when:

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

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

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

"Institution" means any:

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

"Intellectual Property Rights" means

[REDACTED]



"Interface Agreement" means the Third Party Agreement of that name set out in Exhibit I.

"Interface Contractor" means an Other Contractor listed in Schedule 1 or otherwise identified by the Principal's Representative as an Interface Contractor that is carrying out, or that will carry out, Interface Work.

"Interface Contractor Matrix" means the table set out in Schedule 32, as updated from time to time.

"Interface Control Document" or **"ICD"** means a document detailing a technical interface relevant to the DTRS Subsystem. The Interface Control Documents will be developed in accordance with the Works Brief and this Contract based on the Interface Specification Documents and the draft versions of the Interface Control Documents set out in Exhibit L.

"Interface Specification Document" or **"ISD"** means the document in Exhibit L.

"Interface Work" means any work or activities undertaken by any Interface Contractor that will:

- (a) interface or integrate with or affect or be affected by the Contractor's Activities or the Works; or
- (b) require the Contractor to interface or co-ordinate works with the Interface Contractor,

including:

- (a) the interface and integration of any Interfacing System;
- (b) the work or activities relating to any Interfacing Works;
- (c) any other such work described in any SOW, the Works Brief, the Interface Contractor Matrix, the ICDs or ISDs.

"Interfacing Systems" means:

- (a) each Subsystem with which the DTRS Subsystem is required to interface or integrate; and
- (b) each other system, solution, hardware, network or software, including legacy or new, with which the DTRS Subsystem is required to interface or integrate,

as set out in any SOW, the Works Brief or the Interface Contractor Matrix.

"Interfacing Works" means any physical works carried out by Interface Contractors that will interface or integrate with or affect or be affected by the Contractor's Activities or the Works.

"Latent Conditions" has the meaning given in clause 3.5.

"Law" means:

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

"LD Milestone" means the milestones set out in Schedule 35.

"LD Milestone Date" means each date specified in Schedule 35, as adjusted under this Contract by an extension of time determined by the Principal's Representative or pursuant to any determination by an expert or arbitrator pursuant to clause 15.

"Lead Supplier" means, in respect of a technical interface, the entity identified as the "Lead Supplier" in any SOW, the Works Brief, the Interface Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

"Management Fee" means the lump sum amount set out in Schedule 1, covering the matters specified in Part E of Schedule 2.

"Maximum Monthly P&C Payment" means, for each month in the P&C Payment Period, the amount calculated as follows:

- (a) the Total Potential P&C Payments; divided by
- (b) the number of months in the P&C Payment Period (rounding up to a whole number of months).

"Mitigation Measure" means a measure, action, standard or precaution to mitigate the impact of the Works.

"Monument" has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

"Moral Rights" means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886, being "droit moral" or other analogous rights arising under any applicable Law that exists or may come to exist anywhere in the world.

"New SOW" has the meaning given to that term in clause 6.8(a)(i) and includes any Schedules and Exhibits to the New SOW.

"New SOW Date" means the date of issue of a New SOW by the Principal in accordance with clause 6.8(a)(i).

"New SOW Particulars" means the particulars forming part of a New SOW, the draft form of which is set out in Schedule 29.

"New SOW Proposal" has the meaning given to that term in clause 6.7(a).

"New SOW Response" has the meaning given to that term in clause 6.7(b).

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

"Nokia" means [REDACTED]

"Notice of Completion" means a notice issued under clause 12.3(d)(i) by the Principal's Representative stating that Completion of the Works in respect of a SOW or a Portion has been achieved.

"NSW Guidelines" has the meaning given in clause 9.17(a).

"NSW Trains" means the corporation by that name constituted by Part 3C of the *Transport Administration Act 1988* (NSW).

"Operation And Maintenance Manual" means the manual of that name which is required to be provided by the Contractor, Reviewed and Confirmed by the Principal and implemented by the Contractor pursuant to the TfNSW Standard Requirements.

"Operational Outage Window" means a period during which the Contractor has access to the 'live' DTRS Subsystem, or the relevant part of it, for the purposes of carrying out the Contractor's Activities, and which must be arranged by the Contractor in accordance with clause 7.25.

"Operational Readiness" has the meaning given to that term in the Works Brief.

"Option" means an option referred to in Schedule 14.

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

"Other Contractor Work" means the works to be undertaken by an Other Contractor on a part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site.

"Overall Program" has the meaning given to that term in clause 10.2(a)(i).

"P&C Payment" has the meaning given in clause 11.18(a).

"P&C Payment Period" means the following period, as determined as at the date of this Contract in the case of SOW 1 or the New SOW Date in the case of a New SOW:

- (a) if the Date for Completion is specified in Schedule 1 to be a period from the date of this Contract or the New SOW Date of the New SOW (as applicable), that period; or
- (b) if the Date for Completion is specified in Schedule 1 to be a date, the period between the date of this Contract or the New SOW Date of the New SOW (as applicable) and the Date for Completion.

"Painshare" has the meaning given in clause 11.17(b).

"Parent Company Guarantee" means the deed which appears in Schedule 16.

"Participating Supplier" means, in respect of a technical interface, an entity identified as a "Participating Supplier" in any SOW, the Works Brief, the Interface

Contractor Matrix or otherwise in the relevant ISD in respect of that technical interface.

"Payment Claim Date" means the latter of:

- (a) the date when the Contractor has complied with the requirements in clause 11.6; and
- (b) the following dates:
 - (i) prior to the time for submission of the Final Payment Claim, upon the 6th Business Day of each month;
 - (ii) for the Completion Payment Claim within the time required by clause 11.9; and
 - (iii) for the Final Payment Claim within the time required by clause 11.11.

"Personal Information" means information or an opinion recorded in any form about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

"Planning Approval" means:

- (a) the Authority Approval set out in Exhibit D as it may be modified from time to time, and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning (acting in their capacity as determining authority) under the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Works; and
- (b) any Mitigation Measures and statement of commitments that are required to be complied with or fulfilled in the documents referred to in paragraph (a).

"Pollution" has the meaning given to "pollution" in the Dictionary to the *Protection of the Environment Operations Act 1997* (NSW).

"Portion" means a part of the Contractor's Activities or Works, as described in Schedule 1 or as determined under clause 12.6(a) or directed under clause 12.6(d).

"Power Isolation" means a power isolation required for the performance of the Contractor's Activities.

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

"PPS Law" means:

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

"Pre-existing IPR" in respect of a party means:

- (a) any Intellectual Property Rights belonging to that party that are pre-existing as at the date of this Contract, but does not include any Intellectual Property Rights developed by or on behalf of the Contractor for the purposes of, or in anticipation of, carrying out the Contractor's Activities; or
- (b) any Intellectual Property Rights that are brought into existence by or on behalf of that party, other than as a result of the performance of that party's obligations under this Contract,

and used by a party in performing its obligations under this Contract.

"Preliminaries" means that part of the Contractor's Activities other than the Design Work or the Reimbursable Work, including those tasks or matters specified in Schedule 17. **"Preliminaries Fee"** means the lump sum payable to the Contractor for performance of the Preliminaries, set out and described as such in Schedule 1, as adjusted in accordance with clause 2.11(b)(vi)C.1), 3.5(c) (if Alternative 2 in clause 3.5 applies), 3.6A, 6.3, 6.4, 10.13 or 10.14(b)(iii).

"Preliminary Design" means the preliminary design of the Works included in Exhibit H.

"Principal" means TfNSW.

"Principal Data" means all data and information relating to the Principal or its operations, facilities, clients, customers, personnel, assets and programs (including Personal Information) in whatever form that information may exist, and whether entered into, stored in, generated by or processed through software or equipment, or produced as part of the performance of the Contractor's Activities.

"Principal Supplied Items" means the items listed in Schedule 27.

"Principal's Representative" means:

- (a) the person nominated in Schedule 1; or
- (b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

"Privacy Laws" means all applicable laws relating to privacy and Personal Information, including the Privacy and Personal Information Protection Act 1998 (NSW), Privacy Act 1988 (Cth) and any applicable principles, codes or directions issued under those Acts.

"Prohibited Subcontractor" means:

- (a) any subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in,

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

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

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

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

"Rail Transport Agency" means Transport for NSW (and each of its divisions), TAHE, Sydney Metro, Sydney Trains and NSW Trains.

"Reimbursable Cost Adjustment" means:

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

(a) in respect of:

- (i) Reimbursable Work other than Self-Performed Reimbursable Work, all amounts properly and actually incurred and payable by the Contractor to Subcontractors for the performance of Reimbursable Work in accordance with the Approved Subcontract Agreements; and
- (ii) Self-Performed Reimbursable Work (if any):
 - A. to the extent that the Contractor and the Principal's Representative have agreed that the Self-Performed Reimbursable Work will be subject to a fixed price (which must exclude any amount for off-site Overheads or profit), that agreed amount; and
 - B. otherwise, subject to clause 7.14(a), the sum ascertained by multiplying the number of hours the

labour resource or Construction Plant is employed in the execution of the Self-Performed Reimbursable Work for any given period under the Contract by:

- 1) the applicable rate agreed between the parties in writing prior to execution of the Reimbursable Work; or
- 2) where there is no applicable agreed rate in writing, a reasonable rate (which must exclude any amount for off-Site overheads or profit) as determined by the Principal's Representative,

excluding:

- (iii) any amounts in respect of any Latent Condition, delay or disruption, suspension, Option, Variation or the circumstances contemplated in clause 2.11(b)(vii) and 2.11(b)(viii);
 - (iv) amounts incurred in correcting Defects, including amounts paid or payable by the Contractor to any Subcontractors for correcting Defects;
 - (v) amounts (including damages) paid or payable by the Contractor to any Subcontractors by reason of any breach of contract or other wrongful act or omission by the Contractor including a breach by the Contractor of the Contract, except to the extent that such breach or wrongful act or omission was directly caused by any breach of contract or other wrongful act or omission of the Principal;
 - (vi) amounts incurred in carrying out any replacement, making good or repair under clause 13.3 (including any excesses and deductibles under any insurances and any amounts paid or payable by the Contractor to any Subcontractors);
 - (vii) any legal, expert or other consultants costs incurred by the Contractor arising out of or in connection with any Approved Subcontractor Agreement other than as provided in clause 7.11;
 - (viii) other amounts not properly incurred in respect of the execution of the Reimbursable Work or which the Contract provides are to be borne by the Contractor or to be a debt due from the Contractor to the Principal or which are payable by the Contractor to the Principal under any indemnity; and
 - (ix) other amounts stated in any other provision of this Contract to not be "Reimbursable Costs";
- (b) any Reimbursable Cost Adjustments;
 - (c) any amount agreed under clause 7.14(a); and
 - (d) any other amount stated in this Contract to be "Reimbursable Costs",

less, in respect of any Defect which is the subject of an instruction under clause 8.2(a)(ii), the amount determined by the Principal's Representative pursuant to clauses 8.5(a) or 8.5(b)(i).

"Reimbursable Work" means the entirety of the Contractor's Activities (including those directed under a New SOW) other than the Design Work and the Preliminaries.

"Related Body Corporate" has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

"Reliance Material" means in respect of any SOW, the information and documents identified in Schedule 1.

"Required Rating" means a credit rating of at least A- by Standard & Poor's (Australia) Pty. Ltd. or A3 by Moody's Investors Service, Inc.

"Review" means to review a Submitted Document in accordance with the Review Procedures.

"Reviewing Party" means the Principal.

"Review Period" has the meaning given to that term in section 2.3 of Schedule 34.

"Review Procedures" means the procedures outlined in Schedule 34.

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

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

"Schedule of Rates" means the schedules of rates specified in Schedule 2.

"Security and Data Protection Plan" means the plan prepared by the Contractor and approved by the Principal in accordance with clause 17.5.

"Security Incident" means:

- (a) any incident, event or issue that causes or has the intent or potential to cause a privacy or security breach or any loss of, unauthorised access to, or use, modification, disclosure or other misuse of, Principal Data, Personal Information or the Principal's Confidential Information; or
- (b) any similar events relating to the Principal's Data, Personal Information or Confidential Information which trigger or are likely to trigger reporting obligations to an Authority or which would require a response or action at Law or under any of the Codes and Standards.

"Security Interest" has the meaning given to that term in clause 18.26(a).

"Self-Performed Reimbursable Work" means the part of the Reimbursable Work to be performed by the Contractor itself or a Related Body Corporate of the Contractor as described in Schedule 1 or approved by the Principal's Representative under clause 7.14(a).

"Service" includes any service facility or item of public or private infrastructure, including railway systems, pedestrian and vehicular corridors, water, electricity, gas, fuel, telephone, existing drainage, sewerage, industrial waste disposal and electronic communications service.

"SIC NAC" means the System Integration Committee Network Assurance Committee established by the Principal to manage configuration changes for the Digital Systems Program in accordance with the Configuration Management Framework.

"Significant Project Plans" means the plans contained in Exhibit K.

"Site" means:

- (a) the lands and other places described in Schedule 1; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Contract.

"Site Conditions" means any physical conditions above, upon, under or over the surface, or in the vicinity, of the Site or Extra Land and includes:

- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below the Site or Extra Land, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
- (c) topography of the Site or Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site or Extra Land;
- (d) climatic and weather conditions including rain, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;
- (e) all existing systems and Services, above or below ground level and all facilities with which such systems and Services are connected;
- (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (g) any Contamination, Hazardous Materials or other spoil or waste; and
- (h) underground strata forming part of the Site or Extra Land.

"Software" means any software, firmware, computer code or configuration files provided, developed or modified or required to be provided, developed or modified, by the Contractor to or for the Principal in connection with the Contractor's Activities, the Works or the DTRS Subsystem (including any developments, modifications, enhancements, adaptations or derivative works made in respect of those items).

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

"Source Code" means, in respect of any software, firmware, computer code or configuration files (**Computer Programs**), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all compilers, tools, language, documentation necessary to operate, maintain and modify the executable code copy of that Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

"SOW" means SOW 1 or any New SOW (as applicable).

"SOW 1" means the document in Exhibit B.

"SOW Cost Overrun" means the amount (if any) by which the Contract Price for a SOW (excluding any Provisional Sum Work directed to be performed under clause 11.20 that is specified under clause 11.20(b)(iii) not to be within the Target Budget) exceeds the Target Budget for the SOW.

"SOW Cost Saving" means the amount (if any) by which the Contract Price for a SOW (excluding any Provisional Sum Work directed to be performed under clause 11.20 that is specified under clause 11.20(b)(iii) not to be within the Target Budget) is less than the Target Budget for the SOW.

"SOW Program" has the meaning given to that term in clause 10.2(b)(i).

"Special Conditions" means the Special Conditions to SOW 1 as set out in Schedule 36 and the Special Conditions to any New SOW as set out in Exhibit N to each New SOW.

"Statement of Business Ethics" means TfNSW's Statement of Business Ethics, which may be obtained from TfNSW and is located at: www.transport.nsw.gov.au.

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

"Subcontract Proposal" means a document issued by the Contractor under clause 7.2.

"Subcontract Tender Documentation" in relation to a Subcontract Proposal, means:

- (a) the Design Documentation, which the Contractor is entitled to use for tendering purposes under clause 7.3, relevant to the part of the Reimbursable Work to be subcontracted;
- (b) the conditions of the subcontract agreement which must, unless otherwise expressly directed in writing by the Principal's Representative, be on the terms approved by the Principal's Representative;
- (c) if the Principal's Representative so directs, a request for tender; and
- (d) any other documentation necessary for that part of the Reimbursable Work to be subcontracted.

"Subcontractor" means any person (including a supplier) engaged by the Contractor to perform any part of the Reimbursable Work.

"Submitted Document" has the meaning given to that term in clause 9.8.

"Subsystem" means the components of the System, and includes:

- (a) the DTRS Subsystem;
- (b) the traffic management system;
- (c) the trackside ETCS (level 2) subsystem including the deployment on the Network of trackside elements and signalling equipment;
- (d) the ETCS (level 2) components to be implemented on board rolling stock, including data radios;
- (e) the fixed telecommunications network subsystem;
- (f) the subsystem comprising components permitting interoperability with the advanced train management system (ATMS), operated by the Australian Rail Track Corporation; and
- (g) any other components notified by the Principal from time to time.

"Subsystem Requirements Specification" or "SSRS" means each specification for each Subsystem. The SSRS for the DTRS Subsystem is as set out in the Works Brief.

"Survey Certificate" has the meaning given to that term in the *Surveying and Spatial Information Regulation 2017* (NSW).

"Survey Plan" has the meaning given to that term in the *Surveying and Spatial Information Act 2002* (NSW).

"Sydney Metro" means Sydney Metro ABN 12 354 063 515, a NSW Government agency constituted by Part 3D of the Transport Administration Act 1988 (NSW).

"Sydney Trains" means the corporation by that name constituted by Part 3B of the *Transport Administration Act 1988* (NSW).

"System" means the signalling and train control system being implemented by the Principal comprising:

- (a) cab signalling;
- (b) a traffic management system;
- (c) automated train operations grade of automation 2 (once automated train operations has been incorporated into the System by the Principal); and
- (d) relevant Subsystems (including the DTRS Subsystem),

and which is ETCS (level 2) compliant.

"TAHE" means the corporation by the name Transport Asset Holding Entity of New South Wales ABN 59 325 778 353, constituted by Part 2 Division 1 of the *Transport*

Administration Act 1988 (NSW), known, prior to 1 July 2020, as Rail Corporation New South Wales.

"Target Budget" means, in respect of each SOW, the amount so described as set out in Schedule 1 (a detailed breakdown of which is set out in Exhibit J), which amount will only be adjusted for:

- (a) any increase in the Preliminaries Fee in accordance with clause 2.11(b)(vi)C.1), 3.5(c) (if Alternative 2 in clause 3.5 applies), 6.3, 6.4, 10.13 or 10.14(b)(iii);
- (b) Fee Adjustments;
- (c) Reimbursable Cost Adjustments; and
- (d) Provisional Sum Work, where applicable under clause 11.20.

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

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

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

"Tender Program" means the program of the Contractor's Activities for SOW 1 submitted by the Contractor to the Principal as part of its Tender and set out in Exhibit M.

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

"Tendering Probity Plan" means the tendering probity plan prepared by the Contractor and Reviewed in accordance with the Review Procedures, which must set out in adequate detail all procedures the Contractor will implement to ensure the probity and competitiveness of the tender process for Reimbursable Work is maintained including:

- (a) the matters specified in Schedule 1; and
- (b) any other matters required by the Principal's Representative.

"Term" means the period specified in Schedule 1.

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

"TfNSW Dependency" means the activities and tasks that TfNSW, a Rail Transport Agency, an Interface Contractor or an Other Contractor is required to perform that are expressly identified as a TfNSW Dependency in Schedule 37.

"TfNSW Standard Requirements" or "TSRs" means the documents which appear as Exhibit A to this Contract.

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

"Third Party Agreement" means an agreement which appears in Exhibit I.

"Third Party Intellectual Property" means all third party Intellectual Property Rights (other than Third Party Software) incorporated in the Equipment or the Works, or that the Contractor uses in carrying out the Contractor's Activities or to otherwise comply with its obligations under the Contract.

"Third Party Licences" means all contracts for, or related to, any Third Party Intellectual Property or Third Party Software.

"Third Party Software" means all Software sourced from persons other than the Contractor (including commercial off the shelf Software).

"Total Potential P&C Payments" [REDACTED]

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

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

"Unconditional Undertaking" has the meaning given to that term in clause 2.6(c).

"Variation" means any change to the Works or the Temporary Works including:

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

but it excludes any changes to the Works or the Temporary Works that are required as a result of the exercise of an Option by the Principal's Representative under clause 6.3.

"WHS" means work health and safety.

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

"WHS Legislation" means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the Work Health and Safety Regulation 2017 (NSW); and

- (b) any legislation in other States and Territories of Australia addressing work health and safety which applies to the Works.

"Works" means the whole of the works in respect of each SOW, including:

- (a) any changes to the Works that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3; and
- (b) all Variations to the Works,

that the Contractor must design, construct, commission, integrate and hand-over to the Principal (or its nominee) under this Contract.

"Works Brief" means the Principal's written requirements for the Works described in:

- (a) SOW 1; and
- (b) where the Principal has issued a New SOW, the statement of work or works brief forming part of the relevant New SOW.

1.2 Interpretation

In this Contract unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Contract includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Contract or to any other deed, agreement, document or instrument is deemed to include a reference to this Contract or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:

- (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Contract;
- (i) a reference to:
 - (i) a party, clause, New SOW, Schedule or Exhibit is a reference to a party, clause, New SOW, Schedule or Exhibit of or to this Contract; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) subject to clause 3.6, a reference to this Contract includes all Schedules and Exhibits;
- (k) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) where under this Contract:
 - (i) a direction is required to be given or must be complied with;
 - (ii) payment of money must be made;
 - (iii) an Unconditional Undertaking must be released; or
 - (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (m) for the purposes of clauses 10.10, 10.11, 10.12 and 10.13:
 - (i) any extension of time to any Date for Completion or LD Milestone Date stated in days; or
 - (ii) any reference to "day",

will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (n) for all purposes (other than as set out in clauses 1.2(l) and 1.2(m), or where otherwise designated as a Business Day), "day" means calendar day;

- (o) for the avoidance of doubt, a reference to an Other Contractor includes an Interface Contractor;
- (p) a reference to "\$" is to Australian currency;
- (q) a reference to "direction" in the definition of "Claim" in clause 1.1 or in any of clauses 2.1(a)(vii), 7.16(a)(i)B, 9.1, 15, 16 and Schedule 34 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a Submitted Document;
- (r) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Contract or any part;
- (s) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (t) the interpretations of the terms Date for Completion, Date of Completion and Completion, and clauses 8, 9.13, 12 and 13, will apply separately to each Portion (and, where there are no Portions for a SOW, the SOW) and references therein to the Works and to the Contractor's Activities will mean so much of the Works and the Contractor's Activities as is comprised in the relevant Portion or SOW (as applicable);
- (u) the word "subcontractor" will include subcontractors, suppliers, Consultants and Subcontractors, and the word "subcontract" will include a contract with a subcontractor (including an Approved Subcontract Agreement); and
- (v) any reference to "intended purpose" in:
 - (i) the definition of "Completion" in clause 1.1; or
 - (ii) clauses 1.4, 2.1, 2.2(d), 2.21(b)(i)C, 3.2, 4.1, 5.1, 5.2, 7.16 or 11.7,

will be read as referring to the intended use or intended purpose having regard to any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Contract (including any New SOW) including the requirement that the Works, when completed will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation.

1.3 Ambiguous terms

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

- (b) The Principal's Representative, in giving a direction in accordance with clause 1.3(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Contract.

1.4 Order of Precedence

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

1.5 Deed Poll by Contractor

If required by Schedule 1 the Contractor must:

- (a) within 10 days of the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 15 in favour of the persons named in Schedule 1;
- (b) where the Interface Agreement is identified in Schedule 1 as a "Draft" Third Party Agreement, promptly following execution of the Interface Agreement, and as a condition precedent to any obligation of the Principal to pay the Contractor any amount which becomes due under clause 11.4 following execution of the Interface Agreement, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1; and
- (c) where the Interface Agreement has been executed as at the date of this Contract, on or before the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 24 in favour of the persons named in Schedule 1.

1.6 Authorities

- (a) This Contract will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:

- (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the ASA to exercise any of its functions and powers pursuant to the ASA Charter.
- (b) Without limiting clause 1.6(a), anything the Principal, any other Rail Transport Agency or ASA do, or fail to do or purport to do, pursuant to their respective functions and powers either as an AEO or under any legislation or the ASA Charter, will be deemed not to be an act or omission by the Principal under this Contract.

1.7 Interface with through life support of DTRS Subsystem

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2. Contractor's obligations

2.1 General

- (a) The Contractor:
- (i) must execute the Contractor's Activities, including design, construct, commission and hand-over the Works and each Portion, in accordance with this Contract;
 - (ii) warrants that it will use its best endeavours to ensure that it achieves Completion of the Works in accordance with the relevant Target Budget and so that the Contract Price for the relevant SOW does not exceed the relevant Target Budget;
 - (iii) warrants that it will ensure that the Reimbursable Work is performed:
 - A. in a proper and workmanlike manner;
 - B. so that it is fit for its intended purpose;
 - C. in compliance with clause 4.1; and
 - D. with the degree of skill, care and diligence to be reasonably expected of a properly qualified contractor

experienced in performing works and services which are the same or similar in nature to the Contractor's Activities;

- (iv) warrants that the Temporary Works will at all reasonable times be fit for their intended purposes;
- (v) warrants that the Works and each Portion will upon Completion be, and remain, fit for their intended purposes;
- (vi) warrants that it will exercise a duty of the utmost good faith to the Principal in performing the following obligations under the Contract:
 - A. the preparation of the Subcontract Tender Documentation for the Reimbursable Work and in all post-tender communications (verbal or otherwise) with tenderers prior to the entry of an Approved Subcontract Agreement (where applicable);
 - B. the administration of Approved Subcontract Agreements including all negotiations concerning Variations and extensions of time; and
 - C. in making payment claims under clause 11.2;
- (vii) must commence and progress the Contractor's Activities expeditiously and in accordance with any directions of the Principal and achieve:
 - A. Completion by the Date for Completion; and
 - B. completion of each LD Milestone Date by the relevant LD Milestone Date;
- (viii) must use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Contractor's Activities;
- (ix) must liaise, cooperate and confer with others as directed by the Principal;
- (x) must ensure that the Contractor's Activities at no time adversely affect the ability of the Rail Transport Agencies to operate the DTRS Subsystem:
 - A. with its full intended functionality; or
 - B. in a safe manner,

except with the prior written consent of the Principal's Representative or during an Operational Outage Window; and
- (xi) warrants that, on and from the Date of Completion:

- A. the elements of the DTRS Subsystem will be, separately and together, fit for their intended purposes and will thereafter remain at all times fit for their intended purposes;
 - B. any elements of the DTRS Subsystem introduced, modified or impacted by the Contractor's Activities will operate seamlessly with the existing elements of the DTRS Subsystem; and
 - C. the DTRS Subsystem will comply with the SSRS for the DTRS Subsystem.
- (b) Without limiting the generality of the Contractor's obligations, the Contractor will be responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the planning, design, commencement, construction, commissioning, completion and handover of the Works including:
 - (i) the performance of the Design Work and the Preliminaries; and
 - (ii) the engagement, supervision, control, co-ordination and direction of all subcontractors and the execution of the Reimbursable Work.

2.2 Compliance with Law

- (a) Subject to clause 2.2(d)(i), the Contractor must in carrying out the Contractor's Activities:
 - (i) comply with, and ensure that the Works and the Temporary Works comply with, all applicable Law;
 - (ii) give all notices and pay all fees, bonds and other amounts which it is required to pay in respect of the performance of its obligations under this Contract and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
 - (iii) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
 - (iv) at all times conform and comply with, and ensure that the Works and the Temporary Works conform and comply with, all Codes and Standards; and
 - (v) not engage in any fraud, bribery or corruption.
- (b) Where there is a Change in Codes and Standards:
 - (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the Change in Codes and Standards containing:

- A. details of the Change in Codes and Standards; and
 - B. an estimate of the Contractor's increased or decreased costs of complying with the Change in Codes and Standards including sufficient information to support the estimate; and
 - (ii) if a notice is given by the Contractor which complies with clause 2.2(b)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - A. direct the Contractor to disregard the Change in Codes and Standards; or
 - B. direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which clause 6.4 will apply.
- (c) If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards:
 - (i) the Contractor must give a written notice to the Principal's Representative within 20 Business Days of the change in Codes and Standards containing details of the change in Codes and Standards; and
 - (ii) if a notice is given by the Contractor under clause 2.2(c)(i), then within 10 Business Days of the notice being given, the Principal's Representative will either:
 - A. direct the Contractor to disregard the change in Codes and Standards; or
 - B. direct the Contractor to comply with the change in Codes and Standards, in which case the Contractor must comply but will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.
- (d) The Contractor must:
 - (i) obtain all Authority Approvals required for the execution of the Contractor's Activities and the occupation and use of the completed Works (and for that purpose prepare and submit all applications and associated documents to relevant Authorities), except for those Authority Approvals specified in Schedule 1 that either:
 - A. were obtained by the Principal prior to the date of this Contract in the case of SOW 1 or in the case of a New SOW, prior to the New SOW Date; or

- B. will be obtained by the Principal where required, after the date of this Contract in the case of SOW 1 or in the case of a New SOW, after the New SOW Date;
- (ii) unless otherwise expressly specified in Schedule 1, comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, including the Planning Approval, to comply with, satisfy, carry out and fulfil;
- (iii) in respect of any:
 - A. Authority Approvals which are to be obtained by the Principal after the date of this Contract in the case of SOW 1 or after the New SOW Date in the case of a New SOW; or
 - B. conditions and requirements of Authority Approvals which pursuant to Schedule 1 are to be satisfied or fulfilled by the Principal,

provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;
- (iv) for the purpose of obtaining all Authority Approvals as required by clause 2.2(d)(i), prepare all associated studies and reports required because of the design of the Works or Temporary Works proposed by the Contractor; and
- (v) as a condition precedent to Completion of the Works in respect of a SOW or a Portion (as applicable), ensure that it has:
 - A. obtained all Authority Approvals it is required to obtain under this Contract;
 - B. complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Contract;
 - C. without limiting clauses 2.2(d)(v)A and 2.2(d)(v)B, complied with, carried out and fulfilled all conditions and requirements of the Planning Approval which it is required to comply with, carry out and fulfil (including obtaining the approval of any person for anything) under this Contract; and
 - D. unless it is included in Schedule 1 as an Authority Approval which the Principal will obtain, obtained and supplied to the Principal's Representative certification that the Works or the Portion, as designed and built,

comply with the requirements of the Building Code of Australia to the extent applicable,

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

- (e) Where there is a Change in Law:
 - (i) if either party considers that the Change in Law necessitates a Variation, then that party must, within 14 days of the Change in Law, give a written notice to the other and the Principal's Representative with detailed particulars of the reason why the Change in Law necessitates a Variation;
 - (ii) if such a notice is given and the Change in Law does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a); and
 - (iii) the Contractor must comply with the Change in Law.
- (f) If a Change in Authority Approval occurs which necessitates a Variation, the Contractor must:
 - (i) if the relevant Authority Approval was obtained by the Principal, within 14 days of the date on which the Contractor becomes aware or ought reasonably to have become aware of the Change in Authority Approval taking effect; or
 - (ii) otherwise within 14 days of the Change in Authority Approval taking effect,

notify the Principal's Representative in writing with detailed particulars of the reason why the Change in Authority Approval necessitates a Variation. If the Contractor gives such a notice and the Change in Authority Approval does necessitate a Variation the Principal's Representative will direct a Variation under clause 6.2(a).
- (g) Other than as set out in clause 2.2(f), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
 - (i) any Change in Authority Approval;
 - (ii) an Authority Approval obtained or issued or which otherwise takes effect:
 - A. in the case of SOW 1, after the date of this Contract;
 - B. in the case of a New SOW, after the New SOW Date;
 - (iii) a change in an Authority Approval:
 - A. in the case of SOW 1, after the date of this Contract;

- B. in the case of a new SOW, after the New SOW Date; or
 - (iv) any:
 - A. assumptions the Contractor makes; or
 - B. failure by the Contractor to adequately satisfy itself, as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.
- (h) Without limiting the Contractor's obligations under any other clause of this Contract, insofar as the Contractor, in carrying out the Contractor's Activities, is:
 - (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011* (NSW) applies;
 - (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011* (NSW) applies; or
 - (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011* (NSW) applies,

the Contractor must comply with the applicable obligations under the WHS Legislation.
- (i) Without limiting the Contractor's obligations under any other clause of this Contract, the Contractor must:
 - (i) ensure that, if any Law, including in the State or Territory in which the Works are situated or the Works are carried out (as the case may be), require that:
 - A. a person:
 - 1) be authorised or licensed (in accordance with the WHS Legislation) to carry out any work at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - 2) has prescribed qualifications or experience or, if not, is to be supervised by a person who has

prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or

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

2.3 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities or the Works, or compliance with any Authority Approval under:
 - (i) the *Environmental Planning and Assessment Act 1979* (NSW);
 - (ii) the *Protection of the Environment Operations Act 1997* (NSW);
 - (iii) the *Environment Protection and Biodiversity Conservation Act 1999* (Cth); or
 - (iv) any other Law,

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

 - (v) ordered or directed by an Authority;
 - (vi) ordered by a court or tribunal; or
 - (vii) directed by the Principal or the Principal's Representative.
- (b) The Contractor will not be entitled to make any Claim against the Principal for any costs, expenses, losses, damages, delay or disruption suffered or incurred by the Contractor arising out of or in any way in connection with:
 - (i) an Authority order referred to in clause 2.3(a)(v);
 - (ii) a court order referred to in clause 2.3(a)(vi); or

- (iii) a direction by the Principal referred to in clause 2.3(a)(vii),
- except to the extent provided in clause 10. The Contractor will not be entitled to any Fee Adjustment on account of any such additional costs.

2.4 Services

The Contractor must:

- (a) obtain and pay for any Service it needs to perform its obligations under this Contract;
- (b) relocate, remove, modify, support, protect, reinstate and provide all Services necessary for the Contractor to comply with its obligations under this Contract;
- (c) subject to clause 3.5, assume the risk of the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities;
- (d) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Contract, including any such devices reasonably required by the Principal's Representative;
- (e) despite any other provision in the Contract to the contrary, ensure that no Services are:
 - (i) damaged or destroyed; or
 - (ii) disconnected, disrupted, interfered with or interrupted during normal operating hours,by reason of the performance of the Contractor's Activities;
- (f) cooperate and coordinate with the owners of all Services, notify their requirements to the Principal's Representative and, unless otherwise directed by the Principal's Representative, implement their requirements as part of the Contractor's Activities; and
- (g) indemnify the Principal against any claim, damages, expense, costs, loss, liability, fine or penalty the Principal suffers or incurs arising out of or in any way in connection with any disconnection, interference with, interruption or disruption to any Service arising out of or in any way in connection with the Contractor's Activities, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim, damages, expense, costs, loss, liability, fine or penalty.

Subject to clause 3.5, the Contractor agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with the existence, location, condition and availability of all Services required for the execution of the Contractor's Activities.

2.5 Crown Building Work

- (a) The Contractor must, in relation to any part of the Works that is a Crown Building Work, certify (on behalf of the Principal) as required by section 6.28 of the *Environmental Planning and Assessment Act 1979* (NSW).
- (b) Any certification under clause 2.5(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Contract or otherwise according to law; or
 - (ii) the Principal's rights against the Contractor, whether under this Contract or otherwise according to law.

2.6 Unconditional Undertakings and Parent Company Guarantee

- (a) Without limiting clause 2.6(e), the Unconditional Undertakings to be provided under this clause 2.6 are for the purpose of ensuring the due and proper performance by the Contractor of its obligations under this Contract.

■

[REDACTED]

■

[REDACTED]

■

[REDACTED]

- (c) The unconditional undertakings given by the Contractor to the Principal under this clause 2.6 or otherwise under this Contract must be:
 - (i) in the form of Schedule 7 (or such other form as may be approved by the Principal);
 - (ii) in favour of the Principal;
 - (iii) issued by an Institution approved by the Principal that maintains the Required Rating; and
 - (iv) where required by Law, duly stamped,

(Unconditional Undertaking).

■

[REDACTED]

■

[REDACTED]

- [REDACTED]
- (e) The Principal:
- (i) may have recourse to any Unconditional Undertaking provided under this clause 2.6 or clause 11.7 at any time;
 - (ii) is not obliged to pay the Contractor interest on:
 - A. any Unconditional Undertaking; or
 - B. the proceeds of any Unconditional Undertaking if it is converted into cash; and
 - (iii) does not hold the proceeds referred to in clause 2.6(e)(ii)B on trust for the Contractor.
- (f) The Contractor must not take any steps to injunct or otherwise restrain:
- (i) any issuer of any Unconditional Undertaking provided under this clause 2.6 or clause 11.7 from paying the Principal pursuant to the Unconditional Undertaking;
 - (ii) the Principal from taking any steps for the purposes of making a demand under any Unconditional Undertaking provided under this clause 2.6 or clause 11.7 or receiving payment under any such Unconditional Undertaking; or
 - (iii) the Principal using the money received under any Unconditional Undertaking provided under this clause 2.6 or clause 11.7.
- (g) The Contractor must within 10 days of the date of this Contract give the Principal a guarantee duly executed by the person referred to in Schedule 1 in favour of the Principal in the form of the Parent Company Guarantee and which is, where required, duly stamped.
- (h) Despite any other provision of this Contract to the contrary, where this Contract may otherwise require the Principal to release an Unconditional Undertaking or this Contract is terminated by the Principal either pursuant to clause 14 or by reason of the Contractor repudiating this Contract (or otherwise at law), the Principal may continue to hold the Unconditional Undertaking after the date for its release or the termination of this Contract to the extent of any claim which the Principal may have against the Contractor arising out of, or in any way in connection with, this Contract or the Contractor's Activities whether for damages (including liquidated damages) or otherwise.
- (i) If the Principal holds an Unconditional Undertaking that contains an expiry date which is earlier than the date upon which the Principal is required to return the Unconditional Undertaking to the Contractor, the Contractor must, on or before the date that is 20 Business Days prior to the expiry date for

that Unconditional Undertaking, provide the Principal with a replacement Unconditional Undertaking in exchange for the Unconditional Undertaking that is being replaced.

- (j) If paragraph (i) applies in respect of any Unconditional Undertaking and the Principal has not received from the Contractor a replacement Unconditional Undertaking at least 20 Business Days prior to the expiry date of the Unconditional Undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the Unconditional Undertaking, the Principal may make a demand under the Unconditional Undertaking for the entire amount payable under that Unconditional Undertaking and thereafter retain the proceeds.
- (k) Subject to the Principal's rights under the Contract to use the proceeds of any Unconditional Undertaking, the proceeds from any demand made by the Principal pursuant to paragraph (j) will be paid to the Contractor at the same time as the Principal would have been required to return the Unconditional Undertaking from which the proceeds were obtained.

2.7 Long Service Leave Levy

Where the Contractor is specified in Schedule 1 as being responsible for payment of the long service leave levy, then, before commencing any construction work under this Contract (including any construction of Temporary Works), the Contractor must:

- (a) pay to the Long Service Corporation or that body's agent all amounts payable for the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW); and
- (b) produce to the Principal's Representative the documents evidencing payment of the amounts referred to in clause 2.7(a).

2.8 Co-operation with Interface Contractors

- (a) Without limiting clause 2.8A, the Contractor:
 - (i) acknowledges the importance of active co-operation and collaboration with Interface Contractors to facilitate the overall delivery of the System; and
 - (ii) agrees to provide such co-operation and assistance to Interface Contractors and do everything reasonably possible to ensure, where relevant, interconnection and compatibility between the DTRS Subsystem and Interfacing Systems, and between the Works and Interfacing Works.
- (b) The Contractor must comply with the Principal's reasonable requests to co-operate and collaborate with Interface Contractors, including in connection with the effective and efficient delivery of the System.
- (c) The Contractor must at all times:

- (i) carefully coordinate and interface the Contractor's Activities with the Interface Work and for this purpose:
 - A. make proper allowance in all programs for the Interface Work;
 - B. review all programs provided by Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - C. monitor the progress of the Interface Work;
 - D. notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Completion of the Works or any Portion; and
 - E. provide the Interface Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Work with the Contractor's Activities;
- (ii) work directly with the Interface Contractors where required to complete the design of the Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interfacing Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the Works Brief;
- (iii) work in accordance with:
 - A. the Contract Management Plan that has been submitted for Review in accordance with the Review Procedures and has been Confirmed; and
 - B. the TfNSW Standard Requirements;
- (iv) attend interface coordination meetings chaired by the Principal's Representative with Interface Contractors and others every 14 days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions, and newly identified interfaces;
- (v) when information is required from an Interface Contractor, provide reasonable written notice which must be at least 10 days (except in special circumstances) or any longer period of notice required under the Works Brief to that Interface Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;

- (vi) ensure that any written notice given under clause 2.8(c)(v) provides the Interface Contractor with the longest possible time for the provision of the information;
- (vii) when any information is requested by Interface Contractors, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work with the Works or the Contractor's Activities:
 - A. provide the information to the Interface Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor provided that this time is reasonable;
 - B. ensure that such information is provided to Interface Contractors by the requested dates; and
 - C. ensure and warrant that the information provided is accurate; and
- (viii) use its best endeavours to resolve any problems, and work closely and iteratively, with Interface Contractors, including providing design options, iterations, and work methodologies, to achieve the best solution to such problems, related to:
 - A. the provision of information;
 - B. the obtaining of information;
 - C. the adequacy of information provided to, or received from, Interface Contractors;
 - D. the compatibility of the Works and Temporary Works with the Interface Work;
 - E. coordination in accordance with this clause 2.8; and
 - F. technical issues with the information provided to, or received from, Interface Contractors;
- (ix) in the event that despite using its best endeavours, and working closely and iteratively with the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:
 - A. give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
 - B. attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem; and

- (x) promptly advise the Principal's Representative of all matters arising out of the liaison with Interface Contractors that may involve a change to design or construction work under this Contract or otherwise have an adverse effect upon the Contractor's Activities.
- (d) The Contractor acknowledges that conditions similar to those in this clause 2.8 applying to the Contractor will apply to most Interface Contractors engaged by the Principal in respect of the Digital Systems Program, whether working on the Site or on any other site.

2.8A Interfacing Systems

- (a) The Contractor acknowledges that the Works Brief, the TfNSW Standard Requirements and the SOWs include processes and requirements with respect to technical interfaces and integration between the DTRS Subsystem and Interfacing Systems (each a "technical interface" for the purposes of this clause 2.8A). Some of these processes and requirements apply to either the Lead Supplier or the Participating Supplier in respect of each technical interface.
- (b) The Contractor must comply with these requirements where the Contractor is the Lead Supplier or a Participating Supplier for each such technical interface.
- (c) In respect of any technical interface between the DTRS Subsystem and any Interfacing System, where the Lead Supplier is the Contractor or a Related Body Corporate of the Contractor and the Participating Supplier is also the Contractor or a Related Body Corporate of the Contractor, no defect or error in the ICD or technical interface or delay, disruption or interference to the Contractor's Activities arising from that ICD or technical interface will entitle the Contractor to a Reimbursable Cost Adjustment or Fee Adjustment or otherwise entitle the Contractor to make a Claim against the Principal and the Principal will not be liable upon any Claim by the Contractor arising out of or in connection with that technical interface.
- (d) Where the Contractor or a Related Body Corporate of the Contractor is the Lead Supplier, but none of them are also the Participating Supplier, in respect of any technical interface between the DTRS Subsystem and any Interfacing System:
 - (i) the Contractor is liable for any defect or error in the ICD for that technical interface, except to the extent that:
 - A. the relevant defect or error was directly caused by incorrect information provided by a Participating Supplier; and
 - B. the Contractor could not have known that the information provided by the relevant Participating Supplier was incorrect, having exercised the care, skill, diligence, prudence and foresight reasonably and ordinarily expected of a competent, qualified, skilled and

- experienced contractor undertaking similar activities;
and
- (ii) the Contractor must ensure that, if:
 - A. the Interfacing System is built by the Participating Supplier(s) in accordance with the ICD and its SSRS; and
 - B. the DTRS Subsystem complies with the Works Brief, the Interfacing System and the DTRS Subsystem will be fully integrated and compatible with each other to the extent stated in the ICD; and
 - (iii) no defect or error in the ICD or failure of the DTRS Subsystem to comply with the ICD or the ISD will entitle the Contractor to a Reimbursable Cost Adjustment, a Fee Adjustment or otherwise entitle the Contractor to make a Claim against the Principal.
 - (e) Where the Contractor or a Related Body Corporate of the Contractor is a Participating Supplier, but none of them are also the Lead Supplier, in respect of any technical interface between the DTRS Subsystem and any Interfacing System:
 - (i) if a defect or error in, or variation to, the ICD not caused or contributed to by the Contractor causes the Contractor to incur additional costs, the Contractor will be entitled to a Reimbursable Cost Adjustment, as determined by the Principal's Representative (acting reasonably) as if the additional costs were the result of a Variation directed by the Principal; and
 - (ii) the Contractor is liable for any defect or error in the technical interface to the extent caused by the DTRS Subsystem not complying with the ICD, this Contract or the Works Brief and, except as outlined in paragraph (i), the Principal will not be liable upon any Claim by the Contractor arising out of or in connection with that technical interface.

2.8B Interfacing Works

- (a) In respect of any Contractor's Activities undertaken on the Site, the Contractor:
 - (i) acknowledges that:
 - A. the Contractor's Activities interface with the Interfacing Works;
 - B. Interface Contractors will be executing work on parts of the Site, or Extra Land, or adjacent to the Site or Extra Land, at the same time as the Contractor is performing the Contractor's Activities;

- C. the timing of the Interfacing Works will be as discovered by the Contractor;
- D. it may require certain design and work methodology input from Interface Contractors to coordinate the design of the Works and Temporary Works with the Interfacing Works;
- E. Interface Contractors may require the Contractor to provide design and work methodology information to them to coordinate the design of the Interfacing Works with the Works and Temporary Works, and this must be provided in a timely manner by the Contractor; and
- F. any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, losses and damages; and

(ii) must at all times:

- A. permit Interface Contractors to execute the Interfacing Works on the applicable parts of the Site or Extra Land, or on any adjacent property to the Site or Extra Land:
 - 1) at the same time as the Contractor is performing the Contractor's Activities; and
 - 2) at the times agreed with the Interface Contractor, or failing agreement at the times determined by the Principal's Representative,

and for this purpose ensure they have safe, clean and clear access to those parts of the Site or Extra Land, or property adjacent to the Site or Extra Land, required by them for the purpose of carrying out their work;
- B. protect the Works, Temporary Works and other improvements on the Site or Extra Land from accidental damage by Interface Contractors and provide means of receiving, storing and protecting goods and equipment supplied by Interface Contractors;
- C. co-operate with Interface Contractors, and do everything reasonably necessary to facilitate the execution of work by Interface Contractors, including providing Interface Contractors with such assistance as may be directed by the Principal's Representative;

- D. cooperate, meet with, liaise and share information so that the Contractor and the relevant Interface Contractor each comply with the provisions of the relevant EPL (if applicable);
- E. perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- F. be responsible for coordinating the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative copies of working method statements for those parts of the Works or Temporary Works which are adjacent to or interface with any Interfacing Works, at least 15 Business Days prior to commencing the work described in the work method statement;
- G. provide for the purposes of clause 2.8B(a)(ii)F (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;
- H. work directly with Interface Contractors where required to complete the design of the Works and Temporary Works and provide all necessary information to Interface Contractors in respect of the Works and Temporary Works to permit the Interface Contractors to complete the design of the Interfacing Works so that they are acceptable to the Principal and otherwise comply with this Contract, including the Works Brief;

(b) The Contractor:

(i) acknowledges and agrees:

- A. no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the Contractor's Activities, constitute an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
- B. that except where the Principal's Representative directs a Variation in circumstances where the Contractor has fully complied with clauses 2.8 - 2.8B, the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - 1) the Interface Contractors carrying out their work; or

- 2) any act or omission of an Interface Contractor;
and
- (ii) warrants that for each SOW, each element of the Contract Price, the Target Budget and the SOW Program contain sufficient allowances for the assumption by the Contractor of the obligations and risks under clauses 2.8 - 2.8B, including the cost of all the design iterations required to accommodate Interfacing Works.

2.9 Incident Management Reporting

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident in accordance with the TfNSW Standard Requirements.
- (b) Should an Incident occur which:
 - (i) is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the TfNSW Standard Requirements; and
 - (ii) relates to rail safety, the Contractor must notify the Principal and any relevant Rail Transport Agency management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Hazardous Material, Contamination, Pollution or other waste that arises during the performance of the Contractor's Activities, the Contractor must:
 - (i) at its own cost promptly take all appropriate action to manage and dispose of all Hazardous Material, Contamination, Pollution or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) at its own cost manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.
- (d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, the Principal, may without prejudice to any other right it has under this Contract, immediately terminate the Contract by written notice to the Contractor.
- (e) Without prejudice to the Principal's other rights under this Contract, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future, the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident. If the Principal

takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.

- (f) Without prejudice to the Principal's other rights under this Contract and without limiting the Contractor's rights under clause 3.5, the Principal's Representative may issue a direction under clause 10.14 requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:
- (i) of any Incident involving:
 - A. a significant spill of Contamination;
 - B. any accident or release of Contamination which it believes may pose a danger to health, life or property; or
 - C. any actual damage or harm to the Environment or a significant risk of harm to the Environment; or
 - (ii) any safety incident occurs which leads to, or has the potential to lead to, a fatality or injury to person (including any incident which must be reported to SafeWork NSW) or damage to property.

The Principal will not be liable upon any Claim by the Contractor for any cost, expense, loss, delay, disruption or penalty arising out of or in connection with:

- (iii) any suspension due to a direction to suspend issued, or for the failure to issue a notice to suspend, in the circumstances set out in this clause 2.9(f); and
 - (iv) complying with a direction issued under clause 2.9(g), including complying with the steps which Principal's Representative directs that the Contractor must take before the Principal's Representative will issue a direction to recommence the Contractor's Activities.
- (g) If the Principal's Representative issues a notice to suspend in the circumstances set out in:
- (i) clause 2.9(f)(i), the Contractor may not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend; or
 - (ii) clause 2.9(f)(ii) the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.14 permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these

circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.9(g) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.

- (h) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.9(f), as a debt due and payable from the Contractor to the Principal.

2.10 Principal Contractor

- (a) In this clause 2.10 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation.

For the purpose of the WHS Legislation and the Contract, the Works and any Other Contractor Work is taken to be part of the same construction project.

- (b) If the Contractor is specified in Schedule 1 as being the principal contractor:
 - (i) the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractor Work carried out on the Site;
 - (ii) the Principal authorises the Contractor to have management and control over the Site and of each workplace at which the Contractor's Activities and the Other Contractor Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.
- (c) To the extent not prohibited by law, the Contractor must indemnify the Principal against any damage, expense, loss (including reasonable legal fees) or liability suffered or incurred by the Principal arising out of or in connection with the Contractor's failure to discharge the duties imposed on a principal contractor by the WHS Legislation that the Contractor is required to discharge in accordance with this clause 2.10.
- (d) Where the Contractor is not specified in Schedule 1 to be the principal contractor, the Contractor:
 - (i) acknowledges that the person who is specified in Schedule 1 is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that Site during the period which that person is specified as being the principal contractor in Schedule 1; and

- (ii) must comply with any exercise by the person referred to in sub-paragraph (i) of such authority as is necessary to enable that person to discharge the responsibilities imposed on a principal contractor by the WHS Legislation.
- (e) Without limiting anything else in this clause 2.10, the Contractor must, in respect of any construction work carried out on all or part of the Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.

2.11 Third Party Agreements

- (a) The Contractor:
 - (i) acknowledges that the Principal has entered or will enter into the Third Party Agreements;
 - (ii) must:
 - A. unless otherwise expressly specified in Schedule 1, comply with, satisfy, carry out and fulfil the conditions and requirements of all Third Party Agreements, including those conditions and requirements that the Principal is required, under the terms of the Third Party Agreements, to comply with, satisfy, carry out and fulfil; and
 - B. comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in Schedule 1 that are additional to or more stringent or onerous than the conditions and requirements described in clause 2.11(a)(ii)A;
 - (iii) must assist the Principal in any way that the Principal reasonably requires to enable the Principal to perform the obligations identified for the Principal to perform in Schedule 1;
 - (iv) must comply with any reasonable directions of the Principal's Representative (who will have regard to any reasonable submissions made by the Contractor to the Principal's Representative) in relation to compliance with the relevant conditions and requirements of each Third Party Agreement;
 - (v) must, where a Third Party Agreement provides for the Principal to provide a document, notice or information to the Third Party, provide such document, notice or information to the Principal (and not to the Third Party) within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the Third Party within the time period required by a Third Party Agreement;
 - (vi) must, in carrying out the Contractor's Activities:

- A. ensure that no act or omission of the Contractor constitutes, causes or contributes to any breach by the Principal of its obligations to the Third Party under the Third Party Agreement; and
 - B. otherwise act consistently with the terms of the Third Party Agreement;
- (vii) agrees that whenever, pursuant to the terms of a Third Party Agreement, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to the Third Party under any clause of the Third Party Agreement then, subject to what is provided in Schedule 1 and the other terms of this Contract, the Contractor is deemed to make the same acknowledgement or give the same release or warranty, indemnity or covenant to the Principal on the same terms and conditions as the acknowledgement, release or warranty, indemnity or covenant made or given by the Principal under a Third Party Agreement in the same way as if the relevant terms of the acknowledgement, release or warranty, indemnity or covenant were set out in full in this Contract; and
- (viii) acknowledges that to the extent that a Third Party Agreement contains a provision pursuant to which the Third Party is stated to make no representation as to a state of affairs, the Contractor agrees that the Principal similarly makes no representation to the Contractor in respect of that state of affairs in the same way as if the relevant terms of the Third Party Agreement were set out fully in this Contract.
- (b) The parties acknowledge that:
 - (i) as at the date of this Contract in the case of SOW 1 or the New SOW Date in the case of a New SOW:
 - A. the terms and conditions of the Third Party Agreements identified in Exhibit I of this Contract or New SOW as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **"Draft Third Party Agreement"**); and
 - B. certain Third Party Agreements may need to be replaced with new agreements on different terms (each a **"Replacement Third Party Agreement"**);
 - (ii) the Contractor has reviewed the Third Party Agreements executed at the date of this Contract in the case of SOW 1 or the New SOW Date in the case of a New SOW and the Draft Third Party Agreements and has included in the relevant Target Budget an amount for all of its costs (including the cost of all physical works and allowance for any delay or disruption) in complying with its obligations under clause 2.11(a) and the Principal's obligations under the Third Party Agreements executed at the date of this Contract in the case of SOW 1 or the New SOW Date in the case

of a New SOW and the Draft Third Party Agreements other than those identified in Schedule 1 for the Principal to perform;

(iii) following:

- A. finalisation of any Draft Third Party Agreement; or
- B. the execution of any Replacement Third Party Agreement,

after the date of this Contract in the case of SOW 1 or after the New SOW Date in the case of a New SOW, the Principal must promptly give the Contractor a copy of the:

- C. executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable), together with (in the case of a Replacement Third Party Agreement) details of the Third Party Agreement that is replaced; and
- D. amendments (if any) specified in Schedule 1 arising out of the execution of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable) ("**Revised Allocation**");

(iv) within 28 days of receipt of an executed copy of a Draft Third Party Agreement or a Replacement Third Party Agreement (as applicable), and the associated Revised Allocation, the Contractor must notify the Principal's Representative in writing if any terms and conditions of:

- A. the executed version of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); or
- B. the associated Revised Allocation,

are substantially more onerous than those:

- C. contained in the relevant Draft Third Party Agreement or the Third Party Agreement which has been replaced with the Replacement Third Party Agreement (as applicable); and
- D. specified in Schedule 1, ("**Difference in Conditions**") and
- E. where the Difference in Conditions or Revised Allocation will result in additional administration, details of such additional administration costs to be incurred by the Contractor;
- F. where the Difference in Conditions or Revised Allocation will result in additional physical works:

- 1) not forming part of the Contractor's Activities;
and
 - 2) which is otherwise in addition to any physical works contemplated by the Third Party Agreements executed at the date of this Contract in the case of SOW 1 or the New SOW Date in the case of a New SOW and the Draft Third Party Agreements,

details of such additional physical works and the cost of carrying out such additional physical works; and
- G. where the Difference in Conditions or Revised Allocation alters the Contractor's risk profile under this Contract and creates a contingent liability which the Contractor did not previously bear and which may convert to an actual liability on the happening of another event ("**Trigger Event**"), details of the altered risk profile, contingent liability and Trigger Event and a notice of intention to claim;
- (v) if the Principal does not receive a notice from the Contractor under clause 2.11(b)(iv) within the 28 day period:
- A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
 - 1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - 2) Revised Allocation,

under clause 2.11(b)(iii); and
 - B. the Contractor must carry out its obligations under this Contract on the basis of:
 - 1) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and
 - 2) the Revised Allocation,

without any adjustment to any element of the Contract Price or any entitlement to make any other Claim;
- (vi) if the Principal's Representative receives a notice from the Contractor under clause 2.11(b)(iv) within the 28 day period, then:

- A. Schedule 4 is amended in accordance with the Revised Allocation as and from the date of receipt by the Contractor of the:
 - 1) executed copy of the Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - 2) Revised Allocation,
under clause 2.11(b)(iii);
- B. the Contractor must carry out its obligations under this Contract on the basis of:
 - 1) the executed version of the Draft Third Party Agreement or Replacement Third Party Agreement (rather than the Third Party Agreement that is replaced) (as applicable); and
 - 2) the Revised Allocation;
- C. the Principal's Representative must:
 - 1) where the Contractor has provided the details referred to in clause 2.11(b)(iv)E, give the Contractor a notice setting out the Principal's Representative's determination of the reasonable, additional administration costs incurred or to be incurred by the Contractor in complying with the executed version of the Draft Third Party Agreement, the Replacement Third Party Agreement or Revised Allocation and the Preliminaries Fee will be increased by that amount; and
 - 2) where the Contractor has provided the details referred to in clause 2.11(b)(iv)F, if the terms of any executed version of a Draft Third Party Agreement, the relevant Replacement Third Party Agreement or Revised Allocation require the Contractor to carry out any physical work which:
 - a) does not form part of the Contractor's Activities; and
 - b) is additional to any physical works contemplated by the Third Party Agreements executed at the date of this Contract in the case of SOW 1 or the New SOW Date in the case of

a New SOW and the Draft Third
Party Agreements,

direct the Contractor to carry out such
physical work as a Variation under clause 6.2
and clause 6.4 will apply; and

- D. where the Contractor has provided the details referred to in clause 2.11(b)(iv)G, the Principal's Representative's obligation to make a determination in relation to the altered risk profile or contingent liability referred to in clause 2.11(b)(iv)G is deferred until the Trigger Event occurs;

(vii) if:

- A. the Contractor issues a notice under clause 2.11(b)(iv) and provides the details referred to in clause 2.11(b)(iv)G; and
- B. a Trigger Event occurs during the implementation of:
- 1) the executed Draft Third Party Agreement or the Replacement Third Party Agreement (as applicable); and
 - 2) the Revised Allocation,

the Contractor may issue a notice to the Principal's Representative providing details of the reasonable costs incurred or which may be incurred in satisfying the actual liability which has arisen;

(viii) if the Principal's Representative receives a notice under clause 2.11(b)(vii), the Principal's Representative must give the Contractor a notice setting out the Principal's Representative's determination of:

- A. the reasonable, additional Reimbursable Costs;
- B. the reasonable, additional costs in respect of the Preliminaries; and
- C. the reasonable, additional costs in respect of Design Work,

incurred or which may be incurred by the Contractor in satisfying the actual liability which has arisen and those additional costs will be a Reimbursable Cost Adjustment; and

(ix) notwithstanding the provisions of this clause 2.11(b), the amount of any additional costs which are incurred or may be incurred by the Contractor as a result of the circumstances referred to in clause this 2.11(b) will not adjust the Preliminaries Fee, the Management Fee or be treated as a Reimbursable Cost

Adjustment unless the Contractor has taken all proper and reasonable measures to:

- A. avoid the Trigger Event; and
- B. avoid or minimise the extra costs resulting from such circumstances.

(c) The Contractor:

(i) must indemnify the Principal from and against:

- A. any claim by a Third Party against the Principal; or
- B. any liability of the Principal, to a Third Party,

arising out of or in any way in connection with a Third Party Agreement (including a Draft Third Party Agreement or a Replacement Third Party Agreement executed after the date of this Contract in the case of SOW 1 or the New SOW Date in the case of a New SOW) to the extent that the claim or liability arises out of or in any way in connection with the Contractor's Activities, provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the claim or liability; and

(ii) agrees that it:

- A. bears the full risk of:
 - 1) complying with the obligations under this clause 2.11; and
 - 2) any acts or omissions of Third Parties; and
- B. will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the risks referred to in clause 2.11(c)(ii)A.

2.12 Commissioning and Operational Readiness

The Contractor acknowledges that:

- (a) Commissioning and Operational Readiness are part of the Contractor's Activities; and
- (b) Commissioning and Operational Readiness must be completed as a condition precedent to Completion.

2.13 Contemporaneous Work

- (a) This clause applies if so stated in Schedule 1.

- (b) The Contractor must:
- (i) inspect all Contemporaneous Work within the periods set out in Schedule 1 after the Principal's Representative gives written notice to the Contractor to do so;
 - (ii) if it discovers any defects, omissions or other matters in or connected with any Contemporaneous Work that in its opinion will render or are likely to render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way to the proper execution of the Works or carrying out of the Contractor's Activities, within 10 Business Days of the Inspection notify the Principal's Representative in writing providing:
 - A. full particulars of the defects, omissions or other matters identified; and
 - B. the reasons for the opinion formed by it in respect to the defects, omissions or matters identified;
 - (iii) not commence or continue with the execution of any part of the Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work that is the subject of the notice referred to in clause 2.13(b)(ii), until the Principal's Representative issues a Variation Order under clause 2.13(c)(i) or issues a direction under clause 2.13(c)(ii); and
 - (iv) commence or continue with all other parts of the Contractor's Activities and mitigate any additional costs and delays resulting from the matters notified.
- (c) On receipt of the Contractor's notice under clause 2.13(b)(ii), the Principal's Representative will investigate the Contemporaneous Work that is the subject of the Contractor's notice, and within 10 Business Days of the receipt of the notice:
- (i) if the Principal's Representative agrees that the defect, omission or other matter in relation to the Contemporaneous Work necessitates a Variation in order for the proper execution of the Works and carrying out of the Contractor's Activities, issue a Variation Order to the Contractor pursuant to clause 6.2 directing it to carry out a Variation; or
 - (ii) if the Principal's Representative disagrees with the Contractor, issue a direction to the Contractor to commence or continue with the Contractor's Activities, whereupon the Contractor must nevertheless take such steps as may be necessary to ensure that the part of the Works or Contractor's Activities dependent upon or appreciably affected by the Contemporaneous Work complies with the requirements of this Contract.
- (d) If the Contractor fails to:

- (i) inspect any Contemporaneous Work as required by this clause 2.13; or
- (ii) notify the Principal's Representative of any defects, omissions or other matters that should have been detected at the time of such Inspection by a competent and experienced contractor and that may render the Contemporaneous Work unsuitable, unsatisfactory or detrimental in any way for the proper execution of the Works or for carrying out the Contractor's Activities,

and the Contemporaneous Work subsequently proves to be unsuitable, unsatisfactory or detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities, then:

- (iii) any work that is required to be executed in order to render the Contemporaneous Work suitable, satisfactory and non-detrimental for the proper execution of the Works or the carrying out of the Contractor's Activities must be performed by the Contractor at its own cost and expense and will not form part of the Reimbursable Costs; and
- (iv) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any work carried out or to be carried out by the Contractor under clause 2.13(d)(iii).

2.14 Aboriginal Procurement Policy

The Contractor must:

- (a) comply with and implement the Aboriginal Procurement Policy;
- (b) submit its Aboriginal Participation Plan for review to the Principal's Representative within 15 Business Days of the date of this Contract; following which the Principal's Representative may:
 - (i) review and approve the Aboriginal Participation Plan; or
 - (ii) review and reject the Aboriginal Participation Plan, in which case the Contractor must continue to submit its Aboriginal Participation Plan until it is approved under clause 2.14(b)(i);
- (c) base its Aboriginal Participation Plan on the draft Aboriginal Participation Plan submitted with the Contractor's Tender;
- (d) comply with the requirements of the approved Aboriginal Participation Plan and the requirements set out in Schedule 1;
- (e) report quarterly to the Principal on its progress towards the requirements in its approved Aboriginal Participation Plan, in accordance with the Aboriginal Procurement Policy;

- (f) provide a final report to the Principal's Representative at the completion of the Contractor's Activities, which is to include a final reconciliation against the Aboriginal participation requirements, and submit the report to:
 - (i) the Principal and,
 - (ii) any other person directed by the Principal's Representative; and
- (g) support and cooperate with audits of its Aboriginal Participation Plan and reporting, including by:
 - (i) the Principal;
 - (ii) the NSW Procurement Board; and
 - (iii) any other person nominated by the Principal's Representative.

If, following submission of the final report to the Principal under paragraph (f), the Principal's Representative (acting reasonably) determines that the Contractor has not complied with the requirements in Schedule 1, the Contractor must pay the Principal any outstanding balance not spent in accordance with Schedule 1 for the Principal to distribute in accordance with the Aboriginal Procurement Policy.

2.15 Significant Project Plans

The Contractor acknowledges and agrees that:

- (a) the systems integrator engaged by the Principal in respect of the Digital Systems Program has developed the Significant Project Plans; and
- (b) the Contractor must comply with the Significant Project Plans when undertaking the Contractor's Activities.

2.16 Digital Systems Program

The Contractor acknowledges that:

- (a) the DTRS Subsystem is only one component of the System and cannot be delivered or implemented in isolation from the other components of the System;
- (b) it is critical to the success of the Digital Systems Program that all components of the System, including the DTRS Subsystem, are delivered in an integrated and seamless manner, so as to ensure the successful delivery of the overall System; and
- (c) it will perform its obligations under this Agreement in the manner which best supports and enables the Principal in achieving the objective in paragraph (b).

2.17 Collaboration

- (a) The Contractor acknowledges that both TfNSW and certain other Rail Transport Agencies have in place agreements, and may enter into further

agreements, with a number of Other Contractors for works, goods or services in relation to the Digital Systems Program.

- (b) In order for TfNSW and other Rail Transport Agencies to receive the full benefit of the System and the Digital Systems Program, the Contractor must cooperate and coordinate its performance of the Contractor's Activities with TfNSW, Other Contractors, any Third Parties involved in the delivery of the Digital Systems Program.
- (c) The Contractor acknowledges that it is intended that the parties, together with the Interface Contractors and any other persons as determined by TfNSW from time to time (the **Collaboration Participants**), operate under and in accordance with:
 - (i) collaboration principles which set out the basis on which the Collaboration Participants will collaborate and cooperate in respect of the Digital Systems Program, and which will form the basis of an agreed collaboration charter and agreed ways of working to be developed between the Collaboration Participants and TfNSW during the delivery phase of the Digital Systems Program; and
 - (ii) the Digital Systems Team Charter set out in Schedule 28, (together with the agreed collaboration charter and ways of working, once developed, the **Collaboration Principles**). The version of the Collaboration Principles in force as at the date of this Contract is set out in Schedule 28.
- (d) Nothing in the Collaboration Principles changes or in any way affects the rights or obligations of either party under this Contract, unless the parties agree in writing to change them.
- (e) The Contractor must within 10 days of the date of this Contract and as a condition precedent to any obligation of the Principal to pay the Contractor any amount under clause 11.4, provide to the Principal's Representative an executed deed poll in the form set out in Schedule 31.

2.18 Meetings with Subcontractors and Subcontractor information

- (a) The Contractor must, if requested by the Principal, make available to the Principal personnel of any subcontractor to discuss any matter relating to the Contractor's Activities or the DTRS Subsystem. The Principal must, when issuing a request for a meeting or discussion under this paragraph (a), notify the Contractor of the matters to be discussed.
- (b) The Contractor acknowledges that the Principal may invite any Other Contractor to attend and participate in a meeting or discussion arranged under this clause 2.18, including any systems integrator engaged in connection with the System, the DTRS Subsystem or any other Subsystem, application, system or equipment.
- (c) The meetings or discussions referred to in paragraph (a) must be arranged by the Contractor, in consultation with the Principal, within the timeframe nominated by the Principal in a request made under paragraph (a). At the

Contractor's discretion, personnel of the Contractor may also attend any meeting or discussion arranged under this clause 2.18.

- (d) The subcontractor personnel made available by the Contractor for the purposes of this clause 2.18 must have relevant and appropriate knowledge to discuss the matters notified by the Principal under paragraph (a).
- (e) The Contractor must provide any information requested by the Principal that is held by a subcontractor in relation to the DTRS Subsystem or the Contractor's Activities and, if necessary, the Contractor must procure the requested information from the relevant subcontractor.

2.19 Operations

The Contractor must:

- (a) ensure that:
 - (i) the performance of the Contractor's Activities; and
 - (ii) any other acts or omissions of the Contractor or its personnel, do not adversely affect or otherwise interfere with:
 - (iii) the operations of any Rail Transport Agency or of the rail network;
 - (iv) the activities of business or persons occupying land on, adjacent to or in the vicinity of the Site; or
 - (v) the use of the rail network by any member of the public including any interference with the clear passage of persons in or around the rail network;
- (b) arrange work to minimise nuisance to occupants and users of the Site and the rail network, to ensure their safety and comfort;
- (c) should the Contractor become aware of such effect or interference, promptly notify the Principal of any such adverse effect or interference and comply with any direction of TfNSW in respect of managing the effect or interference; and
- (d) consult and co-operate with the Principal's Representative and the Principal and attend meetings as required by the Principal's Representative in relation to the interface between the operations of the Rail Transport Agencies and the performance of the Contractor's Activities.

2.20 Reporting in relation to Equipment

The Contractor must submit to the Principal a monthly report and any other information reasonably required by the Principal in relation to the status of the procurement, manufacture and delivery of all components and parts of the Equipment being sourced both inside and outside of Australia and how the Contractor is mitigating any risks associated with such procurement, manufacture and delivery.

2.21 Unforeseeable Derived Requirements

- (a) Subject to paragraph (b), the Contractor must comply with requirements that arise from stakeholder engagements required under Exhibit A (TfNSW Standard Requirements), to the extent required in that Exhibit A (**Derived Requirements**).
- (b) If the Contractor considers that a Derived Requirement:
 - (i) is not otherwise required under this Contract, including by reference to:
 - A. the Works Brief;
 - B. the Codes and Standards; or
 - C. the requirements that the Works be fit for their intended purpose; and
 - (ii) would not have been reasonably foreseen by a party experienced and competent in the delivery of works and services similar to the Works or the Contractor's Activities,

the Contractor may treat a requirement to comply with the Derived Requirement as a direction by the Principal's Representative for the purposes of clause 16.1.

3. The Site and location of the Works

3.1 Access

- (a) The Contractor must, at least 20 Business Days (or such longer period as may be required under this Contract or, where accessing land or premises controlled by another Rail Transport Agency, the period required by that Rail Transport Agency) prior to commencing work on, or requiring access to, a Site notify the Principal of the date the Contractor proposes to commence such work, or require such access, and the expected duration of the work or access required.
- (b) The Contractor may only access each Site at the times and for the period of time notified in writing by the Principal's Representative or as otherwise set out in Schedule 1.
- (c) The Contractor acknowledges and agrees that:
 - (i) access to the Site or any part thereof will only confer on the Contractor a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities in accordance with this Contract and to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor (where applicable);
 - (ii) the Principal is not obliged to give the Contractor access to any part of the Site until:

- A. the Contractor has complied with clause 2.6(b) of this Contract;
 - B. the Project Work Health and Safety Management Plan, the Construction Environmental Management Plan and the Construction and Site Management Plan, as required by the TfNSW Standard Requirements, have been Reviewed in accordance with the Review Procedures and have been Confirmed;
 - C. the Contractor has effected the insurance policies required under clauses 13.4, 13.5 and 13.6;
 - D. the Contractor has complied with clauses 13.4, 13.5 and 13.6 with respect to each insurance policy; and
 - E. the Contractor has complied with the matters set out in Schedule 1;
- (iii) the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to the Site;
 - (iv) it must comply with the requirements of any Rail Transport Agency when accessing any Site;
 - (v) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain access to the Site or carry out the Contractor's Activities; and
 - (vi) the Principal and others will engage Other Contractors to work upon or in the vicinity of the Site and Extra Land at the same time as the Contractor.

3.2 Temporary Works

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

3.3 Management and Control of the Site

- (a) At all times while accessing the Site or a part of the Site the Contractor, unless the Principal's Representative directs otherwise:
 - (i) without limiting any right of the Principal or the Principal's Representative under this Contract, and subject to clause 2.10, will be responsible for the management and control of the Site;
 - (ii) must control access to, and the security and maintenance of, the Site or that part;
 - (iii) must ensure public safety on and adjacent to the Site or that part;

- (iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths access ways, cycleways and Rail Tracks affected by the Contractor's Activities in accordance with this Contract;
- (v) must, subject to clauses 3.1 and 3.8 and the TfNSW Standard Requirements, and any relevant Law, limit access to the Site to its employees, subcontractors and their employees and subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
- (vi) must not impede access or Services to private property without the consent of the Principal's Representative and the relevant owner or occupier; and
- (vii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.

3.4 Land in Addition to the Site

The Contractor must:

- (a) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purposes of carrying out the Contractor's Activities;
- (b) at its own cost carry out all activities and procure all Services necessary to make the Extra Land suitable for use by the Contractor;
- (c) as a condition precedent to Completion of the Works or any Portion:
 - (i) rehabilitate any Extra Land of the kind referred to in paragraph (a) in accordance with the requirements of all relevant Authorities and other relevant persons; and
 - (ii) unless not required by the Principal's Representative, provide to the Principal's Representative a properly executed certificate in the form of Schedule 12 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons having an interest in, such Extra Land; and
- (d) indemnify the Principal against any damage, expense, loss, cost or liability suffered or incurred by the Principal arising out of or in any way in connection with a claim by the owner or occupier of, or any other person having any interest in any Extra Land, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal contributed to the damage, expense, loss, cost or liability.

3.5 Site Conditions - Alternative 1

This alternative applies if so stated in Schedule 1.

- (a) Without limiting or otherwise affecting clause 3.6(c), the Contractor warrants and for all purposes it will be deemed to be the case that, in respect of SOW 1, prior to the date of this Contract, or in relation to a New SOW, prior to the New SOW Date, the Contractor:
 - (i) examined, and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender, the development of the Target Budget and its obligations under this Contract and which was obtainable by the making of reasonable enquiries;
 - (ii) was given the opportunity to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - A. relating to the subject matter of Information Documents and Materials and the Site Conditions; and
 - B. for design purposes and otherwise;
 - (iii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Contract, the Information Documents and Materials or the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the development of the Target Budget, the performance of its obligations and its potential liabilities under this Contract; and
 - (iv) undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision about whether or not to enter into this Contract and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) Without limiting or otherwise affecting clause 3.6, the Principal makes no representation and gives no warranty to the Contractor in respect of:
 - (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - A. the DTRS Subsystem, the Site, Extra Land or their surroundings; or
 - B. any structure or other thing on, under, above or adjacent to the Site or Extra Land;
 - (ii) the existence, location, condition or availability of any Service on, under, above, adjacent to or related to the Site or Extra Land; or

- (iii) the feasibility or fitness for purpose of the Preliminary Design including, in respect of the constructability of the Preliminary Design, having regard to the conditions and characteristics of the DTRS Subsystem, the Site or Extra Land.

(c) The Contractor accepts:

- (i) the DTRS Subsystem, the Site and Extra Land; and
- (ii) any structures or other thing on, under or adjacent to the Site and Extra Land, and any Site Conditions,

in their existing condition subject to all conditions and defects, and:

- (iii) agrees it is responsible for, and assumes the risk of all additional work, increased costs and any damages, expense, loss, liability, delay or disruption (including any delay in achieving Completion) it suffers or incurs arising out of or in any way in connection with; and
- (iv) must investigate, design and construct the Works and Temporary Works and perform the Contractor's Activities in accordance with this Contract, and will not be relieved of its obligations under this Contract irrespective of,

any of the following:

- (v) the Site Conditions encountered in performing the Contractor's Activities;
- (vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - A. the DTRS Subsystem, the Site or any Extra Land, the Environment or their surroundings; or
 - B. any structure or other thing on, above or adjacent to, or under the surface of, the Site or any Extra Land, the Environment or their surroundings; and
- (vii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions or the conditions or the characteristics of any of the matters referred to in sub-paragraph (vi),

including:

- (viii) the existence of any Contamination or any decontamination;
- (ix) the suitability or otherwise of any material or condition upon, under, over or in any way associated with the DTRS Subsystem, Site or Extra Land for use in the Contractor's Activities;

- (x) water, atmospheric, sub-surface and other conditions or characteristics or aspects; and
- (xi) all existing systems, subsystems and Services, above or below ground level and the location of all facilities with which such systems, subsystems and Services are connected.

3.5 Site Conditions - Alternative 2

This alternative applies if so stated in Schedule 1.

- (a) Subject to the last paragraph of this clause 3.5(a), Latent Conditions are:
 - (i) physical conditions on the Site or its surroundings (including artificial things, Contamination and Hazardous Materials) which differ materially from the physical conditions which should reasonably have been anticipated by a competent and experienced contractor at the date of this Contract for SOW 1 or the relevant New SOW Date for a New SOW if such a contractor had:
 - A. examined all information made available in writing by the Principal to the Contractor for the purpose of tendering (including the Reports);
 - B. examined all information (including the Reports) relevant to the risks, contingencies and other circumstances having an effect on the Tender and the development of each Target Budget and obtainable by the making of reasonable enquiries; and
 - C. inspected the DTRS Subsystem, the Site and its surroundings;
 - (ii) any Services on the Site which are:
 - A. not identified in the Reports;
 - B. not capable of otherwise having been anticipated by the Contractor at the date of this Contract for SOW 1 or the relevant New SOW Date for a New SOW if it had done the things referred to in clause 3.5(a)(i)A, B and C; and
 - C. discovered only after the Contractor has undertaken potholing of the Services identified in the Works Brief, including drawings and specifications, or Reports to confirm their exact location.

Latent Conditions exclude weather conditions or physical conditions which are a consequence of weather conditions at the Site.

- (b) If during the execution of the Contractor's Activities, the Contractor becomes aware of a Latent Condition the Contractor must:

- (i) promptly; and
- (ii) where possible before the physical conditions are disturbed,
give written notice thereof to the Principal's Representative.

The Contractor must provide in that notice to the Principal's Representative a statement specifying:

- (iii) the conditions encountered and in what respects the Contractor considers they constitute a Latent Condition;
- (iv) the additional work and additional resources which the Contractor estimates to be necessary to deal with the Latent Condition;
- (v) the time the Contractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion (if any) as a result of dealing with the Latent Condition;
- (vi) the Contractor's estimate of the cost of the measures necessary to deal with the Latent Condition and any applicable Reimbursable Cost Adjustment, Fee Adjustment or increase to the Preliminaries Fee, calculated in accordance with clause 6.4; and
- (vii) other details reasonably required by the Principal's Representative.

(c) Subject to clauses 3.5(d) and 3.5(e), if a Latent Condition:

- (i) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (ii) directly results in an increase in the Contractor's costs of carrying out the Contractor's Activities,

which a competent and experienced contractor could not have avoided or mitigated, and could not reasonably have anticipated at the date of this Contract in the case of SOW 1 or as at the New SOW Date in the case of a New SOW:

- (iii) the Principal's Representative will determine the Reimbursable Cost Adjustment, Fee Adjustment and increase to the Preliminaries Fee as a result of the Latent Condition in accordance with clause 6.4, as if the increased costs were the result of a Variation directed by the Principal; and
- (iv) a Reimbursable Cost Adjustment and Fee Adjustment will apply for, and the Preliminaries Fee will be increased by, the applicable amounts determined.

(d) In making a valuation pursuant to clause 3.5(c) or determining an extension of time under clause 10, regard will not be had to any Contractor's Activities, additional costs or delays suffered or incurred more than 14 days before the

date on which the Contractor gives the written notice required by clause 3.5(b).

- (e) Despite clause 3.5(c), the Contractor will not be entitled to Fee Adjustment as a result of any Latent Condition which is Contamination on the Site or its surroundings.

3.6 Information Documents and Materials

- (a) Whether or not any Information Documents and Materials or any part thereof form an Exhibit to this Contract, the Contractor acknowledges that:
 - (i) the Information Documents and Materials or part thereof do not form part of this Contract and that clause 3.6(c) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form an Exhibit to this Contract, they do so only for the purposes of identification of that document or part thereof.
- (b) Without limiting clause 3.6(c):
 - (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Contract;
 - (ii) subject to clause 3.5(c) (if alternative 2 applies), the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with:
 - A. the provision of, or the purported reliance upon, or use of the Information Documents and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - B. a failure by the Principal to provide any other information, data or documents to the Contractor.
- (c) The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - A. any information, data, representation, statement or document made, or provided to the Contractor, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or

- B. the accuracy, adequacy, suitability or completeness of such information, data, representation, statement or document,
- for the purposes of entering into this Contract except to the extent that any such information, statement or document forms part of this Contract;
- (ii) warrants that it enters into this Contract based on its own investigations, interpretations, deductions, information and determinations; and
 - (iii) acknowledges that it is aware that the Principal has entered into this Contract relying upon the warranties, acknowledgements and agreements in clauses 3.6(c)(i) and 3.6(c)(ii).
- (d) Subject to clause 3.5(c) (if alternative 2 applies), the Contractor releases and indemnifies the Principal from and against:
- (i) any claim against them by, or liability of them to, any person; or
 - (ii) (without being limited by clause 3.6(d)(i)) any costs, expenses, losses or damages suffered or incurred by them,
- arising out of or in any way in connection with:
- (iii) the provision of, or the purported reliance upon, or use of the Information Documents and Materials, as referred to in clauses 3.6(b) and 3.6(c)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed or a failure by the Principal to provide any information, data or documents to the Contractor (other than any information, data or documents which the Principal is required to provide to the Contractor by the terms of this Contract);
 - (iv) any breach by the Contractor of this clause 3.6; or
 - (v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" (within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation).

3.6A Reliance Material

To the extent that:

- (a) any Reliance Material is inaccurate or misleading;
- (b) the Contractor relies on such inaccurate or misleading Reliance Material; and

- (c) the Contractor's reliance on the inaccurate or misleading Reliance Material requires the Contractor to alter the performance of the Contractor's Activities,

the Contractor will be entitled to:

- (d) make a Claim for an extension of time under clause 10.7 (and any such Claim will be determined in accordance with clause 10.7); and
- (e) a Reimbursable Cost Adjustment, Fee Adjustment or increase to the Preliminaries Fee, each valued in accordance with clause 6.4.

3.7 Things of Value Found

All valuable minerals, fossils, coins, articles or objects of value or antiquity, and other remains or things of geological, archaeological, anthropological or other special interest found on the Site (all "**Valuable Finds**") are, and will as between the Contractor and the Principal be and remain, the property of the Principal.

The Contractor must:

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

The Contractor will not be entitled to make any Claim against the Principal for any costs, expenses, losses, damages, delay or disruption suffered or incurred by the Contractor arising out of or in any way in connection with:

- (d) any Valuable Find; or
- (e) the Contractor's compliance with any direction of the Principal's Representative under clause 3.7,

except to the extent provided in clause 10.

3.8 Principal's Right to Access and Inspect

Subject to clause 3.12, the Contractor must:

- (a) without limiting clauses 3.3 and 3.4, minimise disruption or inconvenience to:
 - (i) the Principal, occupiers (including railway system or rail passengers and other users), tenants and potential tenants of the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land or a part thereof in their occupation or use of, or attendance upon, any part of the Site or Extra Land, including any occupation or use of the Works, a Portion or a part thereof under clause 12.6; and

- (ii) others having a right of access to the Site, Extra Land or any other land or buildings on or adjacent to the Site or any Extra Land; and
- (b) at all times:
 - (i) give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to:
 - A. the Works;
 - B. the Site; or
 - C. any other areas where the Contractor's Activities are being carried out,

including unobstructed vehicular access through the Site; and
 - (ii) provide the Principal and the Principal's Representative with every reasonable facility necessary for the Inspection of the Contractor's Activities, including the Contractor's compliance with the Authority Approvals.

3.9 Works to be constructed within Site

The Contractor must ensure that the Works are constructed within the relevant boundaries of the Site stipulated in Schedule 1.

3.10 Condition Surveys

The Principal has undertaken a condition survey of the properties listed in Schedule 1. The Contractor may undertake further condition surveys of these properties.

The Contractor must:

- (a) identify and prepare a condition survey of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval;
- (b) prepare this condition survey a minimum of two weeks prior to commencing any work on the Site, or on any other land which is necessary for performing the Contractor's Activities or undertaking the Works, where that work could damage property on or off the Site; and
- (c) in preparing this condition survey must use suitably skilled, qualified, and experienced personnel or subcontractor.

3.11 Waste Disposal

- (a) The Contractor must remove from the Site and Extra Land and dispose of any Hazardous Material, Contamination or other waste pursuant to its obligations under this Contract to a licensed waste facility in accordance with all relevant Law and Authority Approvals.
- (b) The Contractor must:

- (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Hazardous Material, Contamination or other waste from the Site holds all relevant Authority Approvals that are necessary; and
- (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Hazardous Material, Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Contractor must indemnify the Principal against any claim, damage, expense, loss, liability, fine or penalty suffered or incurred by the Principal arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this clause, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal, Other Contractors or an agent of the Principal may have contributed to the claim, damage, expense, loss, liability, fine or penalty.

3.12 Principal not in Control

The Contractor and Principal acknowledge that nothing in this Contract including the right to inspect pursuant to clause 3.8 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

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

4. Compliance

4.1 Quality of Work

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

4.2 TfNSW Standard Requirements

The Contractor must comply with the requirements of the TfNSW Standard Requirements.

4.3 Environmental Management

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of TfNSW Standard Requirements for so long as any Contractor's Activities are carried out;
- (b) as part of the Contract Management Plan, document, implement and maintain a contract specific Construction Environmental Management Plan for the management of environmental matters in accordance with the TfNSW Standard Requirements;
- (c) carry out the Contractor's Activities in accordance with the Construction Environmental Management Plan;
- (d) supervise subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and TfNSW Standard Requirements in relation to environmental management on the Site and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles (including any TfNSW sustainability initiatives) in the design and construction of the Works, Temporary Works and all other Contractor's Activities.

4.4 WHS Management

The Contractor must:

- (a) hold and maintain an WHS management system for so long as any Contractor's Activities are carried out that complies with the WHS Guidelines and the TfNSW Standard Requirements;
- (b) as part of the Contract Management Plan, develop, document and implement a contract specific Project Work Health and Safety Management Plan in accordance with the WHS Guidelines and TfNSW Standard Requirements;
- (c) carry out the Contractor's Activities in accordance with the Project Work Health and Safety Management Plan;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any subcontractor's activities and ensure that they are complying with all relevant Law, Authority Approvals and the TfNSW Standard Requirements in relation to the WHS management on the Site and Extra Land.

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Contract (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Contract or otherwise according to Law be limited or otherwise affected, by:

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

4.6 Engineering Authorisation

- (a) The Contractor represents and warrants that:
 - (i) if it or any of its subcontractors will carry out Asset Lifecycle Services that they are either:
 - A. an AEO and have obtained ASA Authorisation to carry out the Asset Lifecycle Services; or
 - B. have been granted Project Limited Authorisation for the Contractor's Activities; and
 - (ii) any Project Limited Authorisation granted by the ASA was granted based on true and accurate information provided by the Contractor and its subcontractors, including the procedures of, and undertakings given by, the Contractor and its subcontractors as set out in the Contractor's Tender.
- (b) If Project Limited Authorisation has been granted, the Contractor acknowledges and agrees that:
 - (i) it is limited to the Contractor's Activities; and
 - (ii) the Contractor must make an application to the ASA to become an AEO within 45 Business Days (or a longer period agreed by the parties) of the date of this Contract, unless otherwise directed in writing by the Principal to the Contractor.

4.7 ASA Compliance

- (a) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if a Project Limited Authorisation has been granted, the Contractor must:
 - (i) ensure that the Project Limited Authorisation is held and maintained for so long as the Contractor's Activities are carried out;
 - (ii) provide to the ASA any document, information or other things reasonably required by the ASA under, out of or in connection with the Project Limited Authorisation within any time period required by the ASA (acting reasonably); and
 - (iii) comply (and must ensure that its subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable Project Limited Authorisation.
- (b) Without limiting or otherwise restricting clauses 4.7(c) and 4.7(d), if the Contractor or its subcontractors have ASA Authorisation to carry out the Asset Lifecycle Services or obtain that ASA Authorisation prior to Completion, the Contractor must:
 - (i) ensure that ASA Authorisation to carry out the Asset Lifecycle Services is held and maintained for so long as the Contractor's Activities are carried out; and
 - (ii) on and from the date that ASA Authorisation was granted, comply (and must ensure that its subcontractors and all personnel for which the Contractor is responsible comply) with the conditions of the applicable ASA Authorisation.
- (c) The Contract must (and must ensure that its subcontractors and all personnel for which the Contractor is responsible):
 - (i) implement and comply with any ASA Requirements applicable to the Asset Lifecycle Services;
 - (ii) immediately notify the Principal's Representative in writing of any non-compliance with clauses 4.6 and 4.7;
 - (iii) cooperate fully with the ASA in the performance of the ASA's functions;
 - (iv) provide access to premises and resources as reasonably required by the ASA, including so that the ASA can effectively carry out its review, surveillance and audit functions;
 - (v) comply with the directions, instructions and requirements issued by the ASA;
 - (vi) notify the ASA of any matter that could reasonably be expected to affect the exercise of the ASA's functions;

- (vii) provide the ASA with any information relating to its activities or any documents or other things reasonably required by the ASA in the exercise of its functions; and
- (viii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the ASA and to implement and comply with ASA Requirements.
- (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the ASA will be liable upon) any Claim arising out of or in connection with the requirements to obtain, or any delays or failure by the ASA in granting the Contractor or its subcontractors, Project Limited Authorisation or ASA Authorisation or the obligation to comply with ASA Requirements with respect to Project Limited Authorisation or ASA Authorisation.

5. Design and Design Documentation

5.1 Contractor's Design

The Contractor:

- (a) must prepare and complete the design of the Works and the Temporary Works (including the Design Documentation), so that it is fit for its intended purpose and otherwise complies with the requirements of this Contract;
- (b) is responsible for co-ordinating the work of its Consultants, including by providing and directing all necessary personnel to administer, supervise, inspect, coordinate and control these Consultants in a manner and at a rate of progress so that the Contractor complies with its obligations under the Contract; and
- (c) warrants that:
 - (i) it has fully and carefully reviewed the Works Brief;
 - (ii) the completed design of the Works and the Temporary Works as represented in the Design Documentation will:
 - A. satisfy the requirements of the Works Brief and the other requirements of this Contract; and
 - B. be fit for their intended purposes; and
 - (iii) construction in accordance with the completed design of the Works and the Temporary Works will satisfy the requirements of the Works Brief and the other requirements of this Contract.

5.2 Prior Design Work

- (a) When directed by the Principal, the Contractor, without being entitled to compensation, shall promptly execute a Deed of Novation in the form of Schedule 25, such deed being between the Principal, the Contractor and

each Consultant referred to in Schedule 1 as a Consultant that is stated to be a "Novated Consultant".

For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Principal's Representative to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.

- (b) Without limiting clause 5.1, the Contractor:
- (i) acknowledges and agrees that:
 - A. prior to the date of this Contract it was engaged by the Principal pursuant to a separate professional services contract entitled "Contract No. IBP-20-8746 Technical Advisor - Digital Train Radio System - Digital Systems Program" (**Prior PSC**);
 - B. the Preliminary Design was created by the Contractor pursuant to the Prior PSC and it is aware that the Preliminary Design is incomplete and may contain ambiguities, errors, inconsistencies, discrepancies or omissions;
 - (ii) warrants that it checked and carefully reviewed and considered the Preliminary Design to ensure that it complied with the requirements of the Contract, including that it was fit for the intended purpose of the Works;
 - (iii) acknowledges that it must continue to develop the Preliminary Design in preparing the Design Documentation (subject to this clause 5.2); and
 - (iv) acknowledges and agrees that:
 - A. the Contractor's design obligations under clause 5 and the Contractor's warranties (including under clause 5.1), obligations and liabilities under the Contract and at law, remain unaffected; and
 - B. the Contractor's obligations to carry out the Contractor's Activities and complete the Works in accordance with this Contract remain unaffected by, and it will bear and continue to bear full liability and responsibility for the carrying out of the Contractor's Activities and the completion of the Works in accordance with this Contract,
- notwithstanding any one or more of the following:
- C. that design work (including the Preliminary Design) has been carried out by or on behalf of the Principal (including by the Contractor under the Prior PSC);

- D. that the Contractor has entered into a novation of any prior contract between the Principal and a Consultant referred to in Schedule 1 as a Consultant that is stated to be a "Novated Consultant" under clause 5.2(a) and thereafter has retained that consultant in connection with the Contractor's Activities;
 - E. that any ambiguities, errors, inconsistencies, discrepancies or omissions exist in the Preliminary Design; or
 - F. that any part of the Preliminary Design is described or represented by the Principal as having been completed to any particular design stage (including "Approved for Construction", "Preliminary Design Review", "System Concept Review", "Critical Design Review" or otherwise) (the "**Relevant Design Stage**"), and despite any such description or representation:
 - 1) an ambiguity, error, inconsistency, discrepancy or omission exists in the Preliminary Design which is inconsistent with the Preliminary Design having achieved the Relevant Design Stage; or
 - 2) the Contractor is otherwise required to perform work which is required to be undertaken in order for the Preliminary Design to satisfy the requirements of the Relevant Design Stage, whether or not that work has been undertaken prior to the date of this Contract for SOW 1 and prior to the New SOW Date for a New SOW.
- (c) The Contractor may not bring, and the Principal will not be liable upon any Claim in respect of any ambiguities, errors, inconsistencies, discrepancies or omissions in the Preliminary Design (including as a result of the Contractor's breach of the Prior PSC).

5.3 Design Documentation

- (a) The Contractor must submit all Design Documentation:
 - (i) progressively to the Principal's Representative in accordance with the Contract Management Plan and the Review Procedures; and
 - (ii) at the times set out in:
 - A. the Works Brief;
 - B. the TfNSW Standard Requirements;
 - C. the Overall Program; and

D. each SOW Program.

- (b) The Contractor must upon each submission of the Design Documentation to the Principal's Representative for Review in accordance with the Review Procedures (including at the completion of the design of each design package) ensure that the Design Documentation is accompanied by the following documents:
- (i) the Contractor's Certificate of Design Compliance in the form of Schedule 18;
 - (ii) a corresponding certificate from each Consultant in the form of the Consultant's Certificate of Design Compliance in the form of Schedule 20;
 - (iii) a register of records of design verification and reviews applicable to the design package and other compliance records required by this Contract (all records being satisfactorily completed and signed);
 - (iv) a register of any outstanding design non-conformities and unresolved issues;
 - (v) a register of deficiency notices and evidence of their close out; and
 - (vi) a register of concessions (if any) granted for non-conforming Design Documentation.

5.4 Review of Design Documentation

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

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5.5 Copies of Design Documentation

- (a) The Contractor must, in accordance with clause 5.3, progressively submit to the Principal's Representative the number of copies specified in Schedule 1 of all Design Documentation, whether complete or work in progress, which it intends to use for design or construction purposes.
- (b) The Contractor must give the Principal's Representative the number of copies specified in Schedule 1 of:
 - (i) all survey information used in the design of the Works and the Temporary Works; and
 - (ii) all final Design Documentation.

5.6 Availability of Design Documentation

The Contractor must keep available for the use of the Principal's Representative and any person authorised by the Principal's Representative at any area on or off the Site where the Contractor's Activities are being carried out, at least one complete set of:

- (a) all Design Documentation that has been Confirmed and that the Contractor is entitled to use for construction purposes pursuant to clause 5.4 and the Review Procedures; and

5.7 Ownership of Contract Documentation and Methods of Working

- [illegible]

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

5.8 Delivery Up of Contract Documentation

If this Contract is frustrated or terminated the Contractor must:

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

5.9 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Design Documentation or the Works to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the licences granted by clauses 5.7(b) and 5.7(f) without infringing any Moral Rights.

5.10 Cost Control

The Contractor must:

- (a) use its best endeavours to ensure that it achieves Completion of the Works so that the Contract Price for each SOW does not exceed the Target Budget for the relevant SOW;

- (b) without limiting clause 5.10(a), periodically review the Target Budget with the Principal's Representative as the Contractor's Activities proceed, to:
 - (i) ensure that the cost of construction of the design is in accordance with the relevant Target Budget; and
 - (ii) advise the Principal's Representative how the design should or can be modified to ensure that the cost of the design is in accordance with the relevant Target Budget; and
- (c) without limiting clause 5.10(a):
 - (i) institute a system of cost control;
 - (ii) periodically reconcile the actual Reimbursable Costs against the relevant Target Budget;
 - (iii) together with the Principal's Representative, periodically review and, where approved by the Principal's Representative, amend the relevant Target Budget:
 - A. to take account of any item affecting or likely to affect any component of the Target Budget; and
 - B. without limiting clause 5.10(c)(iii)A, to include additional detail in cost breakdown structures as the preparation of the Design Documentation proceeds;
 - (iv) advise the Principal's Representative as to the alternative steps available where:
 - A. the tenders for any part of the Reimbursable Work exceed the amount included for that work in the Target Budget; or
 - B. the Reimbursable Costs incurred under any Approved Subcontract Agreement exceed (or appear likely to exceed) the amount allowed for that particular Approved Subcontract Agreement in the Target Budget;
 - (v) periodically:
 - A. review the actual Reimbursable Costs which have been made and the Reimbursable Costs which are forecast to be payable in order to achieve Completion against the relevant Target Budget; and
 - B. forecast the anticipated Gainshare or Painshare; and
 - (vi) where requested by the Principal in writing, provide to the Principal's Representative details of any reconciliation, review or forecasting referred to in this clause 5.10.

5.11 Third Party Software

- (a) The Contractor must, if and to the extent required by the Principal, sublicense or assign the Contractor's rights under, or cause a novation of the Contractor's rights and obligations under, or assist the Principal or its nominee to obtain direct rights to, Third Party Licences to the Principal or its nominee:
 - (i) on termination or expiry of this Contract for whatever reason; or
 - (ii) at the Principal's request during the Term.
- (b) In respect of any such sublicense, assignment, novation, or any such direct rights obtained:
 - (i) each party will bear its own costs of effecting the assignment or novation, or obtaining direct rights, except for any fee charged by a relevant third party which will be paid by the Principal (provided that the Contractor must procure that such third party fee does not exceed the direct, reasonable and substantiated costs of that third party arranging and administering the entry into the applicable assignment or novation);
 - (ii) the Principal or its nominee will pay all costs and expenses under such Third Party Licences referable to any period after the date of their assignment or novation;
 - (iii) except to the extent otherwise consented to by the Principal (in its sole discretion), the Contractor must procure that any sublicense, assignment, novation or obtaining of direct rights is performed on a basis and in a manner that the rights received by the Principal or its nominee are not reduced from the rights held by the Contractor under the applicable Third Party Licence(s) as they existed prior to such assignment, novation or obtaining of direct rights;
 - (iv) without derogating from clause 5.7, the Contractor must do all acts and things reasonably requested by the Principal to enable the Principal or its nominee to:
 - A. obtain copies of, and otherwise be appraised of all of the terms of, and communications and information concerning, the Third Party Licences and their performance;
 - B. exercise, perform and enforce all rights and obligations under the Third Party Licences, as if named as the Contractor; and
 - C. receive full benefits accruing to the Contractor under the Third Party Licences;
 - (v) on and from the date of the assignment or novation of, or obtaining direct rights to, such Third Party Licences, the Principal

will assume all obligations of the Contractor under such Third Party Licences that arise on and from such date; and

- (vi) on request by the Principal, the Contractor must use best endeavours to procure that the Third Party enters into an escrow deed with the Principal or its nominee and an escrow agent:
 - A. on terms reasonably satisfactory to the Principal (and terms generally consistent with the form of escrow deed set out in Schedule 30); and
 - B. in respect of, and under which the Third Party places into escrow, any and all Source Code relating to any Software and associated programming documentation supplied by or on behalf of the Third Party under this Contract or a Third Party Licence.
- (c) The Contractor must do all things necessary to perfect the licences granted to the Principal pursuant to this clause 5.11 and otherwise to give effect to the Contractor's obligations regarding Third Party Software under this clause 5.11.
- (d) The Contractor irrevocably appoints the Principal, or such other person as the Principal nominates from time to time, as the Contractor's attorney to do such acts and things, in the Contractor's name, as the Principal reasonably requires in order to exercise its rights under this clause 5.11.

6. Variations and New SOWs

6.1 Proposed Variations

At any time during the Term, the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.

The Contractor must immediately take all action required under the relevant subcontract in relation to each subcontractor that would be involved in carrying out the proposed Variation.

Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) any proposed Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee carry out the Proposed Variation; and
- (b) the effect (if any) that the carrying out of the proposed Variation will have on the Overall Program and each SOW Program, including the achievement of each Date for Completion and each LD Milestone Date.

The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time during the Term, direct the Contractor to carry out a Variation by issuing a written document titled "Variation Order", in which the Principal's Representative will state one of the following:
 - (i) the proposed Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee as set out in the Contractor's notice under clause 6.1 (if any) are agreed and will be made; or
 - (ii) any Reimbursable Cost Adjustments, Fee Adjustments or increase to the Preliminaries Fee will be determined under clause 6.4(a)(ii).
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Contract.
- (c) The Contractor must comply with a "Variation Order" irrespective of:
 - (i) the nature, extent or value of the work the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Completion or LD Milestone Date) of the work involved in the Variation; or
 - (iii) any Dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and delay costs arising out of or in connection with a Variation will be dealt with under clause 10 and not this clause 6. The valuation of Variations under clause 6.4 will exclude any amount for costs incurred by the Contractor as a result of any delay or disruption caused by the Variation.

6.3 Options

The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 14, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Contract on the basis that there will be a Fee Adjustment, Reimbursable Cost Adjustment and adjustment to the Preliminaries Fee in accordance with and to the extent set out in Schedule 14 for the relevant Option.

For the avoidance of doubt:

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

any Option.

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

The exercise of an Option by the Principal's Representative under this clause 6.3 will not:

- (c) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Contract);
- (d) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Contract); or
- (e) entitle the Contractor to an extension of time,

whether under this Contract or otherwise according to any Law.

6.4 Valuation

Subject to clauses 15 and 16, the amounts payable to the Contractor under the Contract will be adjusted for all Variations that have been directed by the Principal's Representative as follows:

- (a) where the Variation requires more or less Reimbursable Work, the Reimbursable Cost Adjustment will be valued as follows:
 - (i) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
 - (ii) to the extent that clause 6.2(a)(ii) applies:
 - A. in accordance with the rates or prices included in any schedule of rates or schedule of prices under any relevant Approved Subcontract Agreement, or in this Contract if and insofar as the Principal's Representative determines that those rate or prices are applicable to the Variation; or
 - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative (which in the case of any Self-Performed Reimbursable Work approved by the Principal's Representative will be calculated consistently with paragraph (a)(ii) of the definition of "Reimbursable Costs");
- (b) where the Variation requires more or less Design Work, the Fee Adjustments in respect of the Design Fee will be valued as follows:
 - (i) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;

- (ii) to the extent that clause 6.2(a)(ii) applies:
 - A. in accordance with the rates or prices included in any schedule of rates or schedule of prices in the Contract, if and insofar as the Principal's Representative determines that those rate or prices are applicable; or
 - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative;
- (c) the Fee Adjustment in respect of the Management Fee will be valued as an amount determined by multiplying the Management Fee percentage stated in Schedule 1 by the sum of the relevant:
 - (i) Fee Adjustment in respect of the Design Fee;
 - (ii) increase or decrease in the Preliminaries Fee; and
 - (iii) Reimbursable Cost Adjustment; and
- (d) where the Variation results in a material increase or decrease in:
 - (i) the scope of the Preliminaries; and
 - (ii) the resources required for, and the costs of, performing the Preliminaries,

which a prudent, competent and experienced contractor would not have anticipated as at the date of this Contract in the case of SOW 1 or as at the New SOW Date in the case of a New SOW, the Preliminaries Fee will be increased or decreased (as applicable) by the following amount:

 - (iii) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order; or
 - (iv) to the extent that clause 6.2(a)(ii) applies:
 - A. in accordance with the rates or prices included in any schedule of rates or schedule of prices in the Contract, if and insofar as the Principal's Representative determines that those rate or prices are applicable; or
 - B. to the extent sub-paragraph (A) does not apply, the amount of the cost properly and actually incurred or saved, or which ought reasonably to have been incurred or saved, by the Contractor as determined by the Principal's Representative.

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Works (including Works under a New SOW):

- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted work;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any work being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter performs this work itself or employs or engages any other person or persons to carry out and complete the omitted or deleted work; and
- (c) the adjustment to the amounts payable to the Contractor under the Contract arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4.

6.6 Contractor's Entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Contract.

6.7 New SOW Proposal

- (a) The Principal's Representative may, at any time during the Term, issue a document titled "New SOW Proposal" to the Contractor which will set out particulars of a proposed New SOW (which may include draft New SOW Particulars substantially in the form of Schedule 29 or another form determined by the Principal's Representative) which the Principal is considering, including:
 - (i) details of the works, services or activities to which the New SOW Proposal relates;
 - (ii) the scope of the Contractor's Activities under the proposed New SOW;
 - (iii) the proposed timing of, and Dates for Completion for, the Contractor's Activities under the proposed New SOW;
 - (iv) the proposed application of P&C Payments in respect of the proposed New SOW, including the proposed:
 - A. P&C Payment Value and respective performance and incentive goal achievement; and
 - B. performance category and respective incentive goals;that will apply to the proposed New SOW;

- (v) any elements that will be priced in accordance with a schedule of rates or any other rates and prices;
- (vi) any special conditions that will apply to the proposed New SOW; and
- (vii) any other matters which the Principal considers are relevant to the preparation of the proposed New SOW,

(New SOW Proposal).

- (b) Within 20 Business Days of the receipt of a "New SOW Proposal" , or such later time as the Principal's Representative may reasonably determine, the Contractor must provide the Principal's Representative with a written notice **(New SOW Response)** in which the Contractor sets out:

- (i) the proposed Target Budget that will apply to the proposed New SOW calculated in accordance with the Contract, providing a breakdown of the calculation of the proposed Target Budget (including the proposed Design Fee, Preliminaries Fee, Management Fee and Reimbursable Costs);
- (ii) the Contractor's proposed resourcing (including key personnel and any nominated subcontractors) for performing the Contractor's Activities the subject of the New SOW; and
- (iii) the Contractor's proposed methodology for performing the Contractor's Activities the subject of the New SOW; and
- (iv) any other information requested by the Principal's Representative in the New SOW Proposal.

- (c) The Contractor must prepare any New SOW Response:

- (i) in a transparent, open book manner, working collaboratively with the Principal and its advisers, including in relation to pricing and resources;
- (ii) in a manner that:
 - A. is sufficiently detailed to enable analysis of each component of cost making up the proposed Target Budget for the Contractor's Activities the subject of the proposed New SOW;
 - B. fully discloses all assumptions, decisions, costings, contingencies and variances in the proposed Target Budget for the Contractor's Activities the subject of the New SOW; and
 - C. maximises value for money to the Principal in the performance of the Contractor's Activities;

- (iii) using rates and prices that do not exceed the rates and prices applicable to SOW 1 or as set out in this Contract;
- (iv) so that the proposed Management Fee is calculated by applying the percentage in Schedule 1 to the sum of the proposed:
 - A. Design Fee;
 - B. Preliminaries Fee; and
 - C. Reimbursable Costs;
- (v) on the basis that the proposed Target Budget is inclusive of provisions for escalation or exchange rates; and
- (vi) if the Principal has issued a draft New SOW as part of its "New SOW Proposal" under paragraph (a), by including in the notice an updated draft New SOW, addressing any outstanding matters in the draft New SOW (including the draft New SOW Particulars).
- (d) The Contractor must:
 - (i) provide any information or documents reasonably requested by the Principal's Representative in relation to New SOW Response or the proposed New SOW; and
 - (ii) cooperate with and provide any information or documents reasonably requested by any independent estimator or other person engaged by the Principal to assist in evaluating the Contractor's New SOW Response.
- (e) The Contractor must negotiate with the Principal in good faith to agree any changes requested by the Principal to the New SOW Response or the proposed New SOW.

6.8 New SOW

- (a) Following receipt of the New SOW Response under clause 6.7(b), the Principal's Representative may, at any time during the Term as the Principal's Representative may reasonably determine:
 - (i) issue a written document to the Contractor titled "New SOW", substantially in the form of Schedule 29 or such other form determined by the Principal's Representative, in which the Principal's Representative will state:
 - A. the Contractor's Activities that must be performed under the New SOW and the timeframes for their performance;
 - B. whether P&C Payments will apply under the New SOW and, if so, details of such P&C Payments;

- C. that the Target Budget for the New SOW as set out in the New SOW Response is agreed; and
 - D. any other adjustments required to give effect to the New SOW;
- (ii) reject the Contractor's notice; or
- (iii) request the Contractor to submit an amended New SOW Response.
- (b) If the Principal's Representative issues a New SOW under clause 6.8(a)(i), the Contractor must:
 - (i) countersign and return the New SOW within 5 Business Days of its issue; and
 - (ii) perform the Contractor's Activities as described in the New SOW.
- (c) If the Principal requests an amended New SOW Response, the Contractor must prepare a further New SOW Response within 5 Business Days or such other period as the Principal's Representative may agree (acting reasonably), in which case clause 6.7(e) and 6.8(a) will reapply.
- (d) The Contractor must not proceed with the Contractor's Activities the subject of a proposed New SOW unless and until the Principal has issued the Contractor with a New SOW under clause 6.8(a)(i) and the Contractor has countersigned the New SOW.
- (e) No New SOW will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the New SOW.
- (f) Nothing in clauses 6.7 or 6.8 limits any rights of the Principal or obligations of the Contractor under clauses 6.1 to 6.6.
- (g) The Contractor is responsible for all costs it incurs arising out of, or in connection with, the procedures contemplated by clauses 6.6 and 6.7, and the Contractor is not entitled to make, and the Principal will not be liable upon, any Claim in respect of such costs.

6.9 No commitment as to exclusivity or volume of New SOW

The Contractor acknowledges and agrees that:

- (a) by executing this Contract no representation has been made by the Principal or the Principal's Representative as to the number, volume or value of any New SOWs that the Principal may issue;
- (b) the Principal is not restricted in any way from carrying out, or engaging any person to carry out, any works or other activities:
 - A. of any type, including work, services or other activities similar to the work, services or other activities which may be required of the Contractor under this Contract; or

- B. at any location where, or in respect of any Contractor's Activities that, the Contractor may be required to perform works, services or other activities; and
- (c) the Principal may seek proposals from other persons (including any Other Contractor) and may engage such other person(s) in relation to any works, services or other activities being considered or carried out by the Principal (including any work, services or activities that were the subject of a New SOW Proposal under this Contract or that relate to the DTRS Subsystem).

7. Reimbursable Work

7.1 Restrictions on Reimbursable Work

- (a) Subject to clause 7.14, Reimbursable Work must, unless otherwise agreed by the Principal's Representative in writing, be performed by Subcontractors under Approved Subcontract Agreements which will be made between the Contractor and Subcontractors in accordance with the procedure in this clause 7.
- (b) The Contractor must not include any of the work which forms part of the Design Work or the Preliminaries in the scope of any part of the Reimbursable Work or in any Subcontract Proposal.
- (c) The Contractor must not enter into any Subcontract with a Prohibited Subcontractor.
- (d) The Contractor must ensure that all Subcontract Tender Documentation is prepared and all tender processes for Reimbursable Work are conducted:
 - (i) on terms which maximise value for money for the Principal; and
 - (ii) with the highest standards of probity, fairness and equal opportunity and in accordance with the Tendering Probity Plan.

7.2 Subcontract Proposal

- (a) The Contractor must: advise the Principal and the Principal's Representative on (and obtain the consent of the Principal's Representative to) how the Reimbursable Work should be divided into packages for the purposes of facilitating the calling of tenders for Subcontractors, which must be in accordance with the procurement plan in place in respect of the Works;
- (b) before inviting tenders for the performance of Reimbursable Work by Subcontractors, issue a document titled "Subcontract Proposal" to the Principal's Representative for approval which will set out particulars of:
 - (i) the part of the Reimbursable Work to be the subject of the tender;
 - (ii) the amount included for this work in the Target Budget;
 - (iii) how the Contractor will ascertain the tender list for the part of the Reimbursable Work to be the subject of the tender, including:

- A. if an expression of interest process is to be used - details of the criteria (with weightings) for the assessment of each expression of interest; or
 - B. if an expression of interest process is not to be used - details of, and justification for the manner in which the tender list will be established;
- (iv) how the Contractor will select the preferred tenderer including details of the criteria (with weightings) for the assessment of tenders;
- (v) the method of delivery for the work;
- (vi) details of the proposed conditions of subcontract which the Contractor proposes to use to enter into the subcontract; and
- (vii) the proposed date for calling of tenders and for tender responses;
- (c) subject to paragraph (d), for the purposes of paragraph (b)(iii), if the tender list is to be ascertained by an expression of interest process, do all things necessary to carry out the expression of interest process including:
 - (i) preparing and arranging advertising;
 - (ii) preparing and distributing briefing documents;
 - (iii) evaluating responses from prospective tenderers; and
 - (iv) making a recommendation to the Principal's Representative for the purposes of clause 7.4;
- (d) obtain the prior written approval of the Principal's Representative to all advertisements and briefing documents prior to requesting expressions of interest or invitations to tender; and
- (e) pay for all advertising (local, State, Territory and national) in respect of all expressions of interest and invitations to tender. The Contractor will not be entitled to payment or reimbursement of any such costs by the Principal (whether as Reimbursable Costs or otherwise).

7.3 Subcontract Tender Documentation

- (a) After the Principal's Representative has approved the Subcontract Proposal, the Contractor must:
 - (i) prepare the Subcontract Tender Documentation and submit a copy of it to the Principal's Representative for approval at least 21 days before tenders are to be invited; and
 - (ii) subsequently amend the Subcontract Tender Documentation as required by the Principal's Representative.
- (b) The Contractor must not:

- (i) issue any Subcontract Tender Documentation to tenderers for; or
- (ii) commence construction of,

any part of the Works to which any Subcontract Tender Documentation submitted to the Principal's Representative applies unless the Principal's Representative has had 15 Business Days to review the Subcontract Tender Documentation and has not rejected the Subcontract Tender Documentation or made any comments on the Subcontract Tender Documentation (except in the case where the Contractor has responded to the Principal's Representative's comments in a manner satisfactory to the Principal's Representative).

7.4 Tendering

The Contractor must:

- (a) subject to clause 7.4(c)(ii), recommend to the Principal's Representative those persons which in the Contractor's opinion are suitable for inclusion in the tender list for the part of the Reimbursable Work to be subcontracted;
- (b) subject to clause 7.4(c)(ii), subsequently finalise the tender list in consultation with the Principal's Representative who may (in the Principal's Representative's absolute discretion, without the necessity to give reasons) remove or add any person from or to the tender list subject to the Contractor not making a reasonable objection to any person which the Principal's Representative may remove from or add to the tender list;
- (c) call tenders from:
 - (i) subject to clause 7.4(c)(ii), the persons in the tender list finalised with the Principal's Representative; or
 - (ii) for the trade packages listed in Schedule 1 - the persons listed in Schedule 1,

in sufficient time to avoid delays or disruption to the progress of the Works; and
- (d) if so requested by the Principal's Representative, promptly provide a copy of each tender to the Principal's Representative.

7.5 Consideration of Tenders

The Contractor must:

- (a) examine and analyse all tenders received;
- (b) recommend to the Principal's Representative which tenderer, if any, should be accepted by the Contractor (which recommendation will be deemed to include a warranty by the Contractor that the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the Contractor knows of no

reason why that tenderer's tender should not be accepted and that the tenderer's tender will provide value for money for the Principal); and

- (c) submit together with any such recommendation:
 - (i) an evaluation report detailing the Contractor's assessment of tenders against the evaluation criteria;
 - (ii) the work to be covered and executed under the proposed subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3;
 - (iii) the time for commencement and completion of that work and confirmation that these times are in accordance with the Overall Program and all SOW Programs;
 - (iv) the proposed subcontract price (including any amount allowed for contingency) and the amounts tendered by other tenderers;
 - (v) any proposed amendments to the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3;
 - (vi) the proposed tenderer's contact details;
 - (vii) if any Law in the State or Territory in which the Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the proposed tenderer is so registered or licensed; and
 - (viii) any other details which may be required by the Principal's Representative.

7.6 Post Tender Negotiations

If required by the Principal's Representative, the Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.

7.7 Subcontracts

- (a) The Principal's Representative will consider the recommended tenderer and (in its absolute discretion) approve or disapprove the Contractor's recommendation. If the Principal's Representative approves the Contractor's recommended tenderer, the Contractor must:
 - (i) promptly enter into an agreement with the approved tenderer on the basis of:
 - A. the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3 with only such

- amendments as the Principal's Representative may have approved in writing; and
- B. the subcontract price approved by the Principal's Representative;
- (ii) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed subcontract agreement including the Works Brief or Design Documentation relevant to that agreement;
- (iii) ensure that each subcontractor executes a Confidentiality Undertaking in the form of Schedule 3 and provides this to the Principal's Representative within 7 days of the engagement of that subcontractor;
- (iv) where a subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative (either by notification by the Principal or as specified in Schedule 1), procure that subcontractor to execute a Deed in the form of Schedule 5 and provide this to the Principal's Representative within 7 days of the engagement of that subcontractor; and
- (v) procure that each subcontractor:
- A. engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
- B. in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),
- executes a deed in the form of Schedule 13 and provides this to the Principal's Representative within 7 days of being engaged by the Contractor.
- (b) The Contractor must in respect of all subcontracts in which it holds retention money from the subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Regulation 2020* (NSW).
- (c) Without limiting clause 7.7(a)(i)A, the Contractor must ensure that each subcontract contains provisions which bind the subcontractor to participate in any novation required by the Principal under clause 14.5(d)(i).

7.8 Procedure on Disapproval

If the Principal's Representative disapproves the Contractor's recommended tenderer and the Principal's Representative directs the Contractor to accept the tender of another tenderer, the Contractor must:

- (a) promptly enter into an agreement with the approved tenderer on the basis of:

- (i) the subcontract agreement contained in the Subcontract Tender Documentation approved by the Principal's Representative under clause 7.3 with only such amendments as the Principal's Representative may have approved in writing; and
 - (ii) the subcontract price approved by the Principal's Representative; and
- (b) if required by the Principal's Representative, provide the Principal's Representative with a copy of the executed subcontract agreement including the Design Documentation relevant to that agreement.

7.9 Subcontractor Warranties

As a condition precedent to Completion of a Portion (or, where there are no Portions for a SOW, Completion of the Works in respect of the SOW), the Contractor must procure and provide the Principal with the warranties described in Schedule 1 or elsewhere in this Contract:

- (a) from the relevant subcontractor undertaking or supplying the work or item the subject of the warranty;
- (b) in favour of, and directly enforceable by, the Principal and any other entity nominated by the Principal's Representative from time to time against the relevant subcontractor; and
- (c) in the form set out in Schedule 10.

No warranty from a subcontractor will be construed in any way to modify or limit any of the rights, powers or remedies of the Principal against the Contractor whether under the Contract or otherwise.

If the Contractor is unable to or fails for any reason to provide any warranty from a subcontractor required by this Contract:

- (d) the Contractor is deemed to have provided the subcontractor warranty itself on like terms;
- (e) the Principal will be entitled to elect to take an assignment of all the right, title and interest in the Contractor's rights against the subcontractor in relation to the Contractor's Activities; and
- (f) for the purpose of paragraph (e), the Contractor irrevocably appoints the Principal as its lawful attorney to execute any instrument necessary to give effect to the assignment.

No assignment under this clause will be construed in any way to modify or limit any of the rights, powers or remedies of against the Contractor whether under the Contract or otherwise.

7.10 Co-ordination of subcontractors

The Contractor must:

- (a) administer, supervise, inspect, co-ordinate and control the work of all subcontractors engaged by it;
- (b) provide and direct all necessary personnel to administer, supervise, inspect, co-ordinate and control the Approved Subcontract Agreements and all subcontractors engaged by it;
- (c) appoint a duly qualified person to exercise the functions of the Contractor's Representative under the Approved Subcontract Agreements and otherwise ensure the Approved Subcontract Agreements are administered in accordance with:
 - (i) the terms of the Approved Subcontract Agreements; and
 - (ii) the directions of the Principal's Representative; and
- (d) at all times co-ordinate the Contractor's Activities and ensure execution and completion of the Approved Subcontract Agreements in a proper and workmanlike manner according to:
 - (i) the Design Documentation which has been Reviewed in accordance with the Review Procedures; and
 - (ii) the obligations of the respective subcontractors.

7.11 Disputes with subcontractors

If the Contractor has a dispute with a subcontractor in respect of any aspect of the Contractor's Activities and either the Contractor or the subcontractor pursues any court action, arbitration or adjudication application under the SOP Act, then:

- (a) the Contractor will be responsible for carriage of the dispute, provided it must:
 - (i) keep the Principal's Representative fully informed of all aspects of the dispute; and
 - (ii) act in accordance with the reasonable instructions of the Principal's Representative (including in respect of lodging any appeals against any decisions made in respect of the dispute);
- (b) subject to:
 - (i) the Principal's Representative prior written approval (which may be given or withheld at the Principal's Representative's absolute discretion); and
 - (ii) the Contractor complying with all reasonable directions of the Principal's Representative in relation to the dispute, then

any external legal, expert or consultants costs incurred by the Contractor arising out of the defence of any court action, arbitration or adjudication will form part of the Reimbursable Costs; and

- (c) the Contractor's own internal costs of administering the court action, arbitration or adjudication application will not form part of the Reimbursable Costs.

7.12 Responsibility for subcontractors

- (a) The Contractor will:
 - (i) not be relieved from any of its liabilities or obligations under the Contract; and
 - (ii) remain responsible for all subcontractors and for all work which is or may be subcontracted as if it was itself executing the work, whether or not any subcontractors default or otherwise fail to observe or comply with the requirements of the relevant subcontract,

despite:

 - (iii) subcontracting any part of the Design Work, the Preliminaries or the Reimbursable Work;
 - (iv) any comments upon, consent to or review, approval or disapproval of:
 - A. a Subcontract Proposal under clause 7.2; or
 - B. a tenderer recommended by the Contractor under clause 7.5(b),

by the Principal or the Principal's Representative;
 - (v) the Principal listing the persons from whom tenders are to be obtained under clause 7.4(c)(ii) for the trade packages listed in Schedule 1;
 - (vi) any direction by the Principal's Representative under clause 7.7 to accept the tender of a tenderer other than that recommended by the Contractor; or
 - (vii) any other act or omission of the Principal or the Principal's Representative in connection with the subcontracting of any part of the Design Work, the Preliminaries or the Reimbursable Work.
- (b) Subject to clause 7.13 but otherwise without limitation, if the Contractor terminates an Approved Subcontract Agreement:
 - (i) the Contractor must complete the work the subject of the terminated Approved Subcontract Agreement; and
 - (ii) bear the extra costs incurred by the Contractor in completing this work, and such costs will not form part of the Reimbursable Costs.

7.13 Subcontractor Insolvency

Where an Insolvency Event occurs in relation to a subcontractor, the Contractor must:

- (a) promptly notify the Principal's Representative of this fact; and
- (b) if the Contractor terminates the Approved Subcontract Agreement:
 - (i) promptly notify the Principal's Representative of this; and
 - (ii) engage another person as subcontractor in accordance with this clause 7 to complete the work the subject of the terminated Approved Subcontract Agreement.

7.14 Reimbursable Work by Contractor or Related Body Corporate

- (a) The Contractor or a Related Body Corporate of the Contractor must not itself carry out any part of the Reimbursable Work other than the Self-Performed Reimbursable Work described in Schedule 1 unless:
 - (i) the prior written approval of the Principal's Representative is obtained; and
 - (ii) the Contractor and the Principal's Representative agree upon a fixed price or rates, or a combination of a fixed price and rates, for the work prior to the Contractor or the Related Body Corporate of the Contractor commencing the work (which prices and rates must exclude any amounts for off-Site overheads or profit).
- (b) The Principal's Representative will not object to the Contractor performing the Self-Performed Reimbursable Work described in Schedule 1.
- (c) The Contractor must not commence any part of the Self-Performed Reimbursable Work until written approval is received from the Principal's Representative.
- (d) Prior to receiving approval from the Principal's Representative pursuant to clause 7.14(c) the Contractor must provide to the Principal's Representative the following particulars in writing:
 - (i) a detailed scope of the proposed work to be undertaken as Self-Performed Reimbursable Work;
 - (ii) a detailed methodology addressing the following:
 - A. a description of the resource methodology that will be used to undertake the proposed works;
 - B. details of how the Contractor will ensure that the quality of the proposed works complies with the Contract and ensure compliance with ASA Requirements;

- C. a statement as to how the Contractor will ensure the proposed works are carried out in an efficient manner; and
 - D. a description of the information and particulars the Contractor will provide to the Principal's Representative supporting any progress claim made by the Contractor for carrying out the proposed works;
- (iii) the target budget (including contingency) for the proposed works broken down into sufficient detail and reconciled against the Target Budget including details of the applicable rate or rates from the schedule of rates that will apply to the work, or if there are no applicable rate or rates, explaining why the rates in the schedule of rates do not apply and providing details of its proposed rate (which must be exclusive of any amount for off-Site overheads or profit);
- (iv) the cash flow for the proposed works;
- (v) the time for commencement and completion of the proposed works and confirmation that these times are in accordance with the then current program;
- (vi) the proposed project team to undertake the proposed works including all construction workers, managerial and technical personnel;
- (vii) the number of resources (man power) and the anticipated total hours to carry out the proposed works onsite and offsite;
- (viii) the cost of any materials and Equipment the Contractor intends to purchase as part of the Self-Performed Reimbursable Work for use in the proposed works; and
- (ix) the type and number of construction plant and the anticipated total hours/days the construction plant will be used to carry out the proposed works.
- (e) If required by the Principal's Representative the Contractor must provide further particulars prior to the Principal's Representative giving approval for the proposed works to commence.
- (f) In carrying out the Self-Performed Reimbursable Work the Contractor must:
 - (i) carry out the Self-Performed Reimbursable Work in an efficient manner;
 - (ii) carry out the Self-Performed Reimbursable Work so as to avoid interfering with, disrupting or delaying the work of subcontractors and Other Contractors;
 - (iii) not vary the work which is the subject of the Self-Performed Reimbursable Work unless the Principal's Representative has

- directed a Variation under clause 6 and that Variation relates directly to the work the subject of the Self-Performed Reimbursable Work; and
- (iv) each day provide the Principal's Representative with details of all resources, labour and construction plant, used by the Contractor in the execution of the Self-Performed Reimbursable Work which identifies as a minimum:
 - A. the part of the Self-Performed Reimbursable Work being performed by the Contractor;
 - B. the name of each person performing the work for each part of the Self-Performed Reimbursable Work with details of their labour category, the time when the person started and finished work, the number of hours being claimed for each person and whether those hours are at normal time, time and a half or double time; and
 - C. details of the type of plant being used for each part of the Self-Performed Reimbursable Work and the number of hours being claimed.
 - (g) The Principal's Representative may direct the manner in which the matters described in clause 7.14(f)(iv) are to be recorded.
 - (h) The Contractor represents and warrants to the Principal that it holds and will continue to hold all relevant licences to legally execute the Self-Performed Reimbursable Work.
 - (i) The Self-Performed Reimbursable Work is to be undertaken on an "open book" basis and will be subject to an independent third party audit as required by the Principal's Representative which audit will include ensuring that the amount payable for Self-Performed Reimbursable Work excludes any amount for off-Site overhead or profit. The Contractor must cooperate in facilitating any such audit including by making available all necessary records and documents to the Principal's Representative and the auditor to enable an audit to be conducted of the amount properly incurred and payable pursuant to this clause 7.14.

7.15 Tendering Probity

The Contractor must:

- (a) prepare the Tendering Probity Plan and submit it for Review in accordance with the Review Procedures;
- (b) carry out the tender processes for Reimbursable Work:
 - (i) so as to ensure the probity and competitiveness of the tender process; and
 - (ii) in accordance with the Tendering Probity Plan; and

- (c) comply with any direction by the Principal's Representative concerning the probity and competitiveness of the tender processes for Reimbursable Work.

The Contractor will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise according to law as a result of any direction of the Principal's Representative or the Principal's probity auditor concerning the probity and competitiveness of the tender process for Reimbursable Work.

7.16 Construction

- (a) The Contractor must supply, construct and handover to the Principal the Works and construct the Temporary Works:
 - (i) in accordance with:
 - A. subject to clause 7.16(b), the Works Brief and any Design Documentation that has been prepared by the Contractor in accordance with the requirements of the Contract and that has been Confirmed;
 - B. any direction of the Principal's Representative given or purported to be given under a provision of this Contract; and
 - C. the other requirements of this Contract; and
 - (ii) so that they are fit for their intended purposes.
- (b) If there is any ambiguity, discrepancy or inconsistency between this Contract (including the Works Brief) and any Design Documentation which has been prepared by the Contractor and has been Confirmed, then, unless otherwise directed by the Principal's Representative, the requirements of this Contract will prevail.
- (c) At monthly intervals during the construction work and at the Completion of the Works or each Portion, the Contractor must submit to the Principal's Representative a Contractor's Certificate of Construction Compliance in the form of Schedule 19.

7.17 Co-operation with Other Contractors

Without limiting or being limited by clauses 2.8 - 2.8B, the Contractor must:

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

The Principal shall procure that each of its Other Contractors that undertakes work on part of the Site during any period in which the Contractor has been engaged as principal contractor in respect of that part of the Site executes a deed poll in favour of the Contractor, as principal contractor, and the Principal in the form set out in Schedule 23 and provide the Contractor with an executed copy of each such deed poll.

7.18 Setting Out

The Contractor must:

- (a) set out the Works in accordance with the requirements of this Contract, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error and shall not be entitled to include any costs incurred as a result in the Reimbursable Costs.

7.19 Survey

The Contractor must, as a condition precedent to Completion of the Works or any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) for its Review in accordance with the Review Procedures a Survey Plan for the Works or the relevant Portion that:
 - (i) has regard to the setback requirements in the Building Code of Australia;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (v) shows all internal title boundaries;
 - (vi) shows all easements; and
 - (vii) shows the location of the Works and all Services; and

- (b) a Survey Certificate which complies with all Law addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:
 - (i) the whole of the Works or the Portion has been constructed within the relevant boundaries of the Site stipulated in Schedule 1;
 - (ii) the elements of the Works or the Portion are in the positions and within the tolerances required by Law and this Contract;
 - (iii) the survey information included in the configuration materials provided pursuant to the TfNSW Standard Requirements complies with the requirements of this Contract; and
 - (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Contract.

The Contractor must ensure that none of the work required under clauses 7.19(a) and 7.19(b) is performed as Reimbursable Work under Approved Subcontract Agreements and agrees that it has included an allowance in the Design Fee or Preliminaries Fee for such work.

7.20 Cleaning Up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site, Extra Land and the Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site and Extra Land; and
- (c) as a condition precedent to Completion of the Works or a Portion, remove all rubbish, surplus materials, Construction Plant and Temporary Works from the Site and Extra Land or the part of the Site or Extra Land relevant to the Works or the Portion.

7.21 Safety

- (a) The Contractor must ensure that the Contractor's Activities are carried out:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.

If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.

- (b) The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities:

- A. it complies with all Law, including the WHS Law, and other requirements of this Contract for work health, safety and rehabilitation management;
 - B. all subcontractors comply with the requirements referred to in this clause 7.21 and their respective obligations under the WHS Legislation; and
 - C. it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (ii) notify the Principal's Representative immediately (and in the event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities, unless otherwise directed by the Principal;
 - (iii) institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with clause 9.5, on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.21), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (vi) consult, cooperate and coordinate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Works to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.21.

- (c) Without limiting clause 18.14 the Principal may take any action necessary to protect or to prevent or minimise risks to, the Works, the Environment, other property or the health or safety of people.

If the action taken by the Principal is action which the Contractor was required to take under this Contract but did not take, the amount of any penalty, fine, damage, expense, cost (including any reasonable legal fees), loss or liability that the Principal suffers or incurs arising out of or in any way in connection with:

- (i) taking the action contemplated in this clause 7.21(c); or
- (ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

7.22 Construction Plant and Materials Removal

Except for the purpose of achieving Completion as contemplated by clause 7.20(c), the Contractor must not remove from the Site or the Contractor's Activities any:

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

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

7.23 Principal Supplied Items

- (a) The Principal must:
 - (i) make available the Principal Supplied Items to the Contractor:
 - A. at its own cost;
 - B. at the respective places referred to in Schedule 27; and
 - C. by the respective date referred to in Schedule 27; and
 - (ii) use its best endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) The Contractor:
 - (i) agrees that, in respect of Principal Supplied Items, the:
 - A. Contractor:
 - 1) warrants that it has reviewed the Works Brief and any relevant specification, and made whatever other enquiries and investigations it

- considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Contract;
- 2) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10 if a Principal Supplied Item is not made available by the relevant date set out in Schedule 27; and
- 3) is not relieved from and remains liable for complying with, all of its obligations under this Contract, despite the Principal making available the Principal Supplied Items; and
- B. *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 7.23(a) and the Principal makes no representation as to the quality, performance, merchantability or fitness of the Principal Supplied Items; and
- (ii) must:
 - A. at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 27 to the Site or Extra Land (as applicable); and
 - B. as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Works.

7.24 Rail Safety

- (a) In carrying out any part of the Contractor's Activities which require Accreditation as a Rail Infrastructure Manager, the Contractor:
 - (i) must comply with all conditions of the Principal's Accreditation as a Rail Infrastructure Manager and the Principal's Safety Management System;
 - (ii) must not do anything that may cause the Principal to breach its obligations under the Rail Safety National Law; and
 - (iii) must ensure that the Contractor's subcontractors engaged in or in connection with the Contractor's Activities, comply with clauses 7.24(a)(i) and 7.24(a)(ii).
- (b) In carrying out any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator, the Contractor must:

- (i) ensure that the Contractor, or one of the Contractor's subcontractors, holds the necessary Accreditation for that part of the Contractor's Activities; and
- (ii) comply with the conditions of that Accreditation.
- (c) Without limiting or otherwise affecting any other provision under this Contract, the Contractor must, and must ensure that the Contractor's subcontractors, comply with all obligations under the Rail Safety National Law including entering into interface agreements required by Part 3 of the Rail Safety National Law in respect of any part of the Contractor's Activities which require Accreditation as a Rolling Stock Operator.
- (d) To the extent not prohibited by Law, the Contractor must indemnify the Principal against any damage, expense, loss or liability suffered or incurred by the Principal arising out of or in any way in connection with the Contractor's failure to comply with this clause 7.24.

7.25 Track Possessions, Power Isolations and Operational Outage Windows

- (a) Schedule 33 identifies the available Track Possessions.
- (b) The Principal will liaise with any relevant Rail Transport Agency to procure for the benefit of the Contractor the Track Possessions set out in Schedule 33, at the Principal's cost.
- (c) The Contractor acknowledges that it will not have exclusive access to any track the subject of a Track Possession and must:
 - (i) without limiting clauses 2.8 - 2.8B or 7.17, coordinate the Contractor's Activities with any other persons sharing the relevant Track Possession; and
 - (ii) allow any relevant Rail Transport Agency and Other Contractors to pass through any track the subject of the relevant Track Possession.
- (d) If the Contractor requires an Additional Track Possession or a Power Isolation for the performance of the Contractor's Activities and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than:
 - (i) 26 weeks prior written notice to the Principal in respect of each Additional Track Possession or Power Isolation that falls on a weekend; or
 - (ii) 20 weeks prior written notice in respect of each Additional Track Possession or Power Isolation that falls on a weeknight or which requires a Power Isolation only,

and identify whether a Power Isolation is required during a requested Additional Track Possession.

- (e) If the Contractor requires an Operational Outage Window for the performance of the Contractor's Activities and requires the Principal to liaise with the relevant Rail Transport Agency in this regard, it must provide no less than 8 weeks prior written notice to the Principal, and the planned date for the commencement of the Operational Outage Window must be no less than 2 weeks later than the date of the presentation to the SIC NAC of the Design Documentation relating to the Contractor's Activities to be undertaken in the proposed Operational Outage Window.
- (f) Following receipt of a request under paragraphs (d) or (e), the Principal may assist the Contractor to obtain the requested Additional Track Possession, Power Isolation or Operational Outage Window, but is under no obligation to do so and in no way guarantees that the requested Additional Track Possession, Power Isolation or Operational Outage Window will be granted by any relevant Rail Transport Agency.
- (g) The Contractor must comply with all applicable processes of any relevant Rail Transport Agency in respect of any application for an Additional Track Possession, a Power Isolation or an Operational Outage Window.
- (h) If an Additional Track Possession, Power Isolation or Operational Outage Window is granted by a Rail Transport Agency, the Contractor must make the necessary arrangements for the Additional Track Possession, Power Isolation or Operational Outage Window with the relevant Rail Transport Agency.
- (i) The Contractor must effectively and efficiently utilise each Track Possession.
- (j) The Contractor acknowledges and agrees that:
 - (i) the Principal or any relevant Rail Transport Agency may alter or cancel any access to the Rail Track, Track Possession, Additional Track Possession, Power Isolation or Operational Outage Window at any time; and
 - (ii) its only remedy in respect of:
 - A. any failure by the Principal to procure Track Possession under clause 7.25(b); or
 - B. the cancellation of a Track Possession, Additional Track Possession, Power Isolation or Operational Outage Window,
 is under clauses 10.7 and 10.13.
- (k) Without limiting the Contractor's obligations under the deed poll in Schedule 15, the Principal will pay any charges imposed by a Rail Transport Agency for the use of any Track Possessions, Additional Track Possessions, Power Isolations or Operational Outage Windows.

8. Defects

8.1 Defects Liability

Subject to clause 8.2, the Contractor must rectify all Defects whether or not they are identified and notified by the Principal's Representative.

Without limiting the previous paragraph, the Contractor must rectify any Defects in the Works or any Portion which existed at Completion of the Works or that Portion as soon as possible after Completion of the Works or that Portion.

When rectifying Defects which existed at Completion, the Contractor must do so at times and in a manner which causes as little inconvenience to the occupants or users of the Works or Other Contractors as is reasonably possible.

8.2 Defect Notification

- (a) If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Completion of the Works or any Portion), the Principal's Representative discovers or believes there is a Defect, the Principal's Representative may give the Contractor a direction which identifies the Defect and does one or more of the following:
 - (i) requires the Contractor to rectify the Defect, or any part of it, and specifying the time within which this must occur;
 - (ii) advises the Contractor that the Principal will accept the work, or any part of it, despite the Defect; or
 - (iii) in respect of any Defect to which clause 8.3(b) applies, advises the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it, or carry out (or has carried out) a Variation to overcome the Defect, or any part of it.
- (b) Without limiting clause 8.3, if the Contractor has complied with a direction given under clause 8.2(a)(i) and the relevant Defect was caused by a failure by the Principal or Sydney Trains to maintain the Works in accordance with the Operation And Maintenance Manual for the Works, the Contractor will be entitled to submit a claim for the cost of such rectification work incurred by the Contractor.

8.3 Rectification of Defect

If a direction is given under clause 8.2(a)(i):

- (a) the Contractor must rectify the Defect (or the part of it notified):
 - (i) within the times specified in the Principal's Representative's direction, which will generally be limited to the periods during which the rectification work will cause minimal or no inconvenience to the operators, including any Rail Transport Agency (where relevant), and occupants of the Works; and
 - (ii) if after Completion of the Works or relevant Portion:

- A. at other times otherwise agreed with the Principal's Representative;
 - B. in accordance with the requirements of the operators of the Works, including any Rail Transport Agency (where relevant), and any other relevant Authority;
 - C. so as to minimise the impact on the use of the Works or the Portion; and
 - D. in a manner which causes as little inconvenience as possible to users of the Site, the Works or the Portion or the public, any Service or any access to the Works or the Portion; and
- (b) if the Contractor does not comply with clause 8.3(a), the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Contract or otherwise at Law, give the Contractor a direction under clause 8.2(a)(iii) and have the rectification work carried out at the Contractor's expense, and the cost of the rectification work incurred by the Principal will be a debt due from the Contractor to the Principal.

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

8.4 No Claim for Correction of Defect

Where a direction is given under clause 8.2(a)(i), the Contractor will not be entitled to make a Claim against the Principal for rectifying the Defect (or the part notified) and must bear all costs, losses and expenses suffered or incurred in rectifying the Defect.

8.5 Acceptance of Work

If a direction is given under clause 8.2(a)(ii):

- (a) where the value to the Principal of the Works is reduced (which will include having regard to any additional operating or maintenance costs) arising out of or in any way in connection with the Defect (or the part notified) a negative Reimbursable Cost Adjustment will apply, the value of which will be determined by the Principal's Representative as the higher of the cost of rectifying the Defect (or the part notified) and the diminution in the value to the Principal of the Works; or
- (b) where the value to the Principal of the Works increases because of the acceptance of the Defect (or the part notified):
 - (i) the Principal's Representative will determine an amount by subtracting the cost of rectifying the Defect from the increased value of the Works; and
 - (ii) there will be:

- A. a negative Reimbursable Cost Adjustment determined by the Principal's Representative, where the amount determined under clause 8.5(b)(i) is negative; and
- B. no Reimbursable Cost Adjustment where the amount determined under clause 8.5(b)(i) is positive.

8.6 Extension of Defects Rectification Period

If:

- (a) the Principal's Representative gives the Contractor a notice under clause 8.2(a)(i) during any Defects Rectification Period; and
- (b) the Contractor rectifies the Defect (or the part notified),

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

8.7 Defect Rectification by Other Contractor

Where a direction is given under clause 8.2(a)(iii):

- (a) without limiting or otherwise affecting clauses 2.8 or 7.17, the Contractor must not impede the Other Contractor from having sufficient access to the Site or Extra Land to rectify the Defect or carrying out the Variation; and
- (b) any costs, losses or damages suffered or incurred by the Principal arising out of or in any way in connection with, the Other Contractor rectifying the Defect or carrying out the Variation, will be a debt due from the Contractor to the Principal.

8.8 Rights Not Affected

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

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause 8 or any other provision of this Contract;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under clause 8.2.

9. Administration

9.1 Principal's Representative

- (a) The Principal must ensure that at all times during the Term there is a Principal's Representative. The Contractor acknowledges and agrees that

the Principal's Representative will give directions and carry out all its other functions under this Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

A discretion (including an absolute or sole discretion), power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Contract if exercised or made (or if it is not exercised or made) by the Principal's Representative:

- (i) independently;
- (ii) after consultation with the Principal and its advisers; or
- (iii) as directed by the Principal.

Any control or influence exercised by the Principal over the Principal's Representative does not:

- (iv) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
- (v) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power, or decision.

The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Contract.

Except where this Contract otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.

- (b) The Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any such direction by the Principal's Representative in circumstances where it is incorrect, subsequently overturned pursuant to clause 15 or is unreasonable (other than in accordance with the corrected determination). The Contractor acknowledges and agrees that its sole means of redressing any errors contained in or associated with any such direction by the Principal's Representative is by giving a notice of dispute in accordance with clause 15.1.

9.2 Replacement of the Principal's Representative

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

Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of Functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under this Contract;
 - (ii) not appoint more than one person to exercise the same function under this Contract; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Contract despite appointing another person to exercise the function under clause 9.3(a)(i).
- (c) All references in this Contract to the Principal's Representative include a reference to an appointee appointed under clause 9.3(a)(i).

9.4 Contractor's Personnel

- (a) The Contractor must notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Contract is the relevant person listed in Schedule 1) and of any subsequent changes.
- (b) The Contractor must:
 - (i) employ the individuals nominated by the Contractor and listed in Schedule 1 in the positions specified in Schedule 1 or equivalent positions;
 - (ii) subject to clause 9.4(b)(iii), not replace the individuals referred to in clause 9.4(b)(i) without the Principal's Representative's prior written approval which will not be unreasonably withheld; and
 - (iii) if any of the individuals referred to in clause 9.4(b)(i):
 - A. dies;
 - B. becomes unable to continue in their positions due to illness;
 - C. resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))); or
 - D. becomes the subject of a direction under clause 9.4(c),replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative.

- (c) The Principal's Representative may, at its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.4(a) or clause 9.4(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (d) The Contractor must ensure that any person the subject of a direction under clause 9.4(c) is not again employed in the Contractor's Activities or on the Site.
- (e) Any direction under clause 9.1(a) will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor.

9.5 Site Meetings

The Contractor must in respect of each SOW, convene meetings on the Site or such other place (or places) as the Principal's Representative may direct at:

- (a) prior to the Date of Completion of the Works or the last Portion to reach Completion, weekly or such longer intervals as may be directed in writing by the Principal's Representative; and
- (b) monthly intervals after the Date of Completion of the Works or the last Portion to reach Completion until all Defects Rectification Periods (including any extension under clause 8.6), have expired or at such other intervals as may otherwise be agreed between the parties.

9.6 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal has appointed or will appoint the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) shall have the authority and independence to:
 - A. direct the Contractor as to; or

B. advise the Principal's Representative to direct the Contractor as to,

reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;

- (c) it must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(b)(iv); and
- (d) it bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.6(c) and none of the Principal, the Principal's Representative or the Environmental Representative will be liable upon any Claim arising out or in any way in connection with such directions.

9.7 Industrial Relations

The Contractor must in carrying out the Contractor's Activities:

- (a) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
- (b) ensure all subcontractors manage all aspects of the industrial relations with their employees appropriately;
- (c) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
- (d) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities and Other Contractors' activities;
- (e) without limiting clauses 2.2 and 9.17, comply with all the requirements of the NSW Guidelines;
- (f) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Contract Management Plan, in accordance with the TfNSW Standard Requirements and in accordance with the Review Procedures;
- (g) prepare, document and implement a project Workplace Relations Management Plan which must be based on the draft outline Industrial Relations Management Plan (if any) submitted with the Contractor's Tender;
- (h) not commence any work on the Site or Extra Land until the Workplace Relations Management Plan has been submitted for Review in accordance with the Review Procedures and has been Confirmed;
- (i) submit to the Principal's Representative, before beginning work on the Site or Extra Land, a statement detailing:

- (i) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (ii) the names of each award or enterprise agreement that is likely to cover the Contractor and subcontractors involved in the Contractor's Activities; and
 - (iii) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
- (j) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
- (k) before beginning work on the Site or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (i) payment of remuneration to employees;
 - (ii) annual leave provisions;
 - (iii) Long Service Leave Payment Scheme registration;
 - (iv) obligations to register workers under the Building and Construction Industry Long Service Payments Act 1986 (NSW);
 - (v) workers' compensation insurance, including self-insurance arrangements;
 - (vi) superannuation fund membership and contributions; and
 - (vii) over-award payments such as redundancy fund contributions; and
- (l) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.

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

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

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

9.8 Review of Submitted Documents

Subject to clause 7.3, where the Contractor is required to submit to the Principal's Representative for review under this Contract any documents, plans, processes, programs, manuals, samples, mock-ups, models, approvals or conditions in any format, or any other document or thing (including a resubmission of that document or thing) (**Submitted Document**), it must do so in accordance with the Review Procedures.

9.9 Work Method

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

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

9.10 Exchange of Information between Government Agencies

The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 9.11) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Contract.

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

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

9.11 Financial Assessment

Without limiting or otherwise restricting clause 9.10, the Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of the Contract, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments ("**Financial Assessment**") of the Contractor and any subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the date of commencement of the Works; and

it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.12 Not used

9.13 Waste Reduction and Purchasing Policy

The Contractor must:

- (a) use its best endeavours to reduce wastage and increase the use of recycled materials in accordance with the GREP;
- (b) address as part of the Construction Environment Management Plan the measures to be taken to reduce wastage and increase the use of recycled materials in the areas of paper products, office consumables, vegetation and landscaping materials, and construction and demolition materials; and
- (c) provide reports to the Principal's Representative in such format and within such times as may be required by the Principal's Representative for the use by the Principal in complying with its GREP obligations to report performance.

9.14 Training Management

- (a) Subject to the express provisions of the Contract, the Contractor must comply with the NSW Government "Skills and Training in the Construction Industry", July 2020.
- (b) Training management requirements specified in the Contract and the NSW Government "Skills and Training in the Construction Industry" may be in addition to, but are not in substitution for, any training obligations of the Contractor under statute, industrial award, enterprise or workplace agreement, or other workplace arrangements approved under Federal or NSW law.
- (c) The Contractor must:
 - (i) achieve specified targets for the engagement of apprentices or trainees;
 - (ii) have processes which actively support their employees completing apprenticeships and traineeships;
 - (iii) demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under this clause 9.14; and
 - (iv) systematically manage its training management processes in accordance with the systems, plans, standards and codes specified in the Contract.

9.15 National Greenhouse and Energy Reporting Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's personnel, in connection with the Contractor's Activities (the "**Relevant Matters**") constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.15(a), the Principal incurs, or (but for this clause) would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with any of the Relevant Matters, and the NGER Legislation provides that such liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the liability is transferred to the Contractor;
- (c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time;
- (d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.15, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment, producing and giving access to documents and answering any relevant questions);

- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.15 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.15 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.16 TfNSW's Statement of Business Ethics

- (a) The Contractor must at all times comply with TfNSW's Statement of Business Ethics, a copy of which is available at www.transport.nsw.gov.au.
- (b) Prior to the engagement of any subcontractor by the Contractor, the Contractor must obtain a written acknowledgement from such subcontractor that it has received, read, understood and will comply with TfNSW's Statement of Business Ethics.

9.17 NSW Guidelines

- (a) In addition to terms defined in this document, terms used in this clause 9.17 have the same meaning as is attributed to them in the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement : Building and Construction ("**NSW Guidelines**") (as published by the NSW Treasury July 2013, updated in September 2017 and updated from time to time). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.
- (b) The Contractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (c) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (d) Where the Contractor engages a subcontractor, the Contractor must ensure that the contract imposes on the subcontractor equivalent obligations to those in this clause 9.17, including that the subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (e) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.
- (f) The Contractor must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.
- (g) The Contractor must maintain adequate records of compliance with the NSW Guidelines by it, its subcontractors and related entities.
- (h) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

- (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;
- (ii) inspect any work, material, machinery, appliance, article or facility;
- (iii) access information and documents;
- (iv) inspect and copy any record relevant to the Works;
- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the Contractor, its subcontractors and related entities.

- (i) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.
- (j) The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (k) If the Contractor does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (l) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the NSW Guidelines apply.
- (m) The Contractor bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.

- (n) Compliance with the NSW Guidelines does not relieve the Contractor from responsibility to perform the Contractor's Activities and any other obligation under the Contract, or from liability for any Defect in the Works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (o) Where a change in the Contract or the Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the Contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan),and the Principal will direct the Contractor as to the course it must adopt within 10 Business Days of receiving notice.

9.18 Audit of records

At any time until the end of the Term, the Contractor must provide:

- (a) detailed breakdowns of any Reimbursable Costs which have been aggregated on a monthly basis; and
- (b) the Principal and its nominees the right to:
 - (i) audit the:
 - A. process by which Reimbursable Costs are incurred and recorded by the Contractor; and
 - B. the Reimbursable Costs claimed by the Contractor;
 - (ii) have access at all reasonable times to the personnel and records of the Contractor that are related to Reimbursable Costs (such access not to be unreasonably withheld); and
 - (iii) reproduce any records referred to in clause 9.18(b)(ii).

9.19 Independent Estimator

The Contractor acknowledges and agrees that:

- (a) the Principal will engage an independent estimator to:
 - (i) work with the Contractor in an embedded estimating team to develop any Target Budgets for any New SOW Response;

- (ii) confirm that any rates and prices proposed by the Contractor for any proposed Self-Performed Reimbursable Work are reasonable and are exclusive of on-site overheads and off-site overheads and profit;
 - (iii) review any proposed adjustments to elements of the Contract Price or to a Target Budget to ensure that they are reasonable, represent value for money and that the proposed prices are (at all times) no less favourable to the Principal to the fees and charges offered by the Contractor and its subcontractors to any other customer for similar works or services; and
 - (iv) provide any other services required by the Principal from time to time in connection with this Contract; and
- (b) it must cooperate with and provide any information or documents reasonably requested by the independent estimator in performing its services for the Principal.

10. Time and Progress

10.1 Rate of Progress

The Contractor must:

- (a) immediately commence, and thereafter regularly and diligently progress the Contractor's Activities;
- (b) proceed with the Contractor's Activities with due expedition and without delay;
- (c) achieve Completion of the Works in respect of each SOW and each Portion by the relevant Date for Completion; and
- (d) complete each LD Milestone by the relevant LD Milestone Date.

Without limiting the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of Contractor's Activities except where directed by the Principal's Representative under clause 10.14.

Without limiting the next paragraphs of this clause 10.1 or clause 10.4, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Contract.

The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Contract.

The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. If the Contractor can reasonably comply with the direction, the Contractor must do so. If the Contractor cannot

reasonably comply, the Contractor must notify the Principal's Representative in writing, giving reasons. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.

If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to incur more or less cost than otherwise would have been incurred, the difference will be dealt with and valued as if it were a Variation except where the direction was necessary because of, or arose out of or in any way in connection with, a failure by the Contractor to comply with its obligations under this Contract.

Such costs shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 The Contractor's programming obligations

(a) The Contractor must:

- (i) within 10 Business Days of the date of this Contract, submit to the Principal's Representative a program of the Contractor's Activities, which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs (**Overall Program**) provided that, in respect of SOW 1 only, the Overall Program, unless otherwise agreed by the Principal, reflects the work methodology and sequencing described in the Tender Program;
- (ii) update the Overall Program within 10 Business Days of the Principal issuing any New SOW under this Contract, to take account the Contractor's Activities in respect of:
 - A. the relevant New SOW; and
 - B. each other SOW; and
- (iii) submit copies of the Overall Program (including any updates to the Overall Program) for Review in accordance with the Review Procedures.

(b) The Contractor must for each SOW:

- (i) prepare and provide a program that complies with and includes the details required by this Contract and any requirements of the Principal's Representative (**SOW Program**);
- (ii) submit each SOW Program for Review in accordance with the Review Procedures within the earlier of:
 - A. 20 Business Days of the date of:
 - 1) this Contract in the case of SOW 1; or

- 2) the New SOW in the case of a New SOW; or
- B. any time required by the TfNSW Standard Requirements,
- provided that the SOW Program for SOW 1 to be submitted under clause 10.2(b)(ii)A.1), unless otherwise agreed by the Principal, reflects the work methodology and sequencing described in the Tender Program.
- (iii) The Contractor must:
- A. when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction;
 - B. update, revise and submit to the Principal's Representative an updated Overall Program or SOW Program (as applicable):
 - 1) to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Completion or LD Milestone Date, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Completion or LD Milestone Date which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative; and
 - 2) on a monthly basis or whenever directed to do so by the Principal's Representative;
 - C. prepare and provide for the Principal's Representative's information only versions of the Overall Program and all SOW Programs prepared in accordance with clause 10.2(b)(iii)B that also allow for those claims for an extension of time to any Date for Completion or LD Milestone Date that have been made by the Contractor in accordance with clause 10.8 but to which the Principal's Representative has not yet responded in accordance with clause 10.10;
 - D. comply with the requirements of the Principal's Representative and its other obligations under this Contract in preparing and using programs, including the requirement to submit the Overall Program and SOW Programs for Review in accordance with the Review Procedures; and

- E. not depart from the current version of the Overall Program and each New SOW Program that has been Reviewed in accordance with the Review Procedures and Confirmed.

10.3 Contractor not Relieved

Without limiting Schedule 34, no submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Overall Program or a SOW Program) prepared by the Contractor, by the Principal's Representative in connection with the program, nor the inclusion of the Tender Program as an exhibit to this Contract, will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Contract, including the obligation under clause 10.1;
- (b) evidence or constitute notification of a delay or the claiming of or the granting of an extension of time to any Date for Completion or LD Milestone Date or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Contract.

10.4 Compression by Contractor

If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:

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

10.5 Importance of Completion on Time

The Contractor acknowledges:

- (a) the importance of complying with its obligations under clause 10.1; and
- (b) that a Date for Completion or LD Milestone Date will only be extended in accordance with clause 10.10 or clause 10.12, or when so determined under clause 15.

10.6 Risk and Notice of Delay

- (a) Except as expressly provided for in clause 10.10, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's

Activities and performance of its obligations under this Contract both before and after any Date for Completion.

- (b) The Contractor must within 5 days of the commencement of an occurrence causing any delay or which is likely to cause delay, give the Principal's Representative written notice of any delay or likely delay to the carrying out of the Contractor's Activities, details of the cause and how any Date of Completion is likely to be affected (if at all).

10.7 Entitlement to Claim Extension of Time

- (a) If the Contractor is, or will be, delayed on or prior to the Date for Completion of the Works or a Portion or on or prior to an LD Milestone Date, by reason of:
 - (i) an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative); or
 - (ii) a cause set out in Schedule 1,
 in a manner that will prevent it from achieving Completion of the Works or the Portion by the relevant Date for Completion or completion of an LD Milestone by the relevant LD Milestone Date (as applicable), the Contractor may claim an extension of time to the relevant Date for Completion or LD Milestone Date.
- (b) If the Contractor is, or will be, delayed after the Date for Completion of the Works or a Portion or an LD Milestone Date, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Variation directed by the Principal's Representative) in a manner which will delay it in achieving Completion of the Works or a Portion, or completion of an LD Milestone, the Contractor may claim an extension of time to the relevant Date for Completion or the relevant LD Milestone Date.

10.8 Claim for Extension of Time

To claim an extension of time the Contractor must:

- (a) within 14 days of the commencement of the occurrence causing the delay, submit a written claim to the Principal's Representative for an extension of time to the relevant Date for Completion or LD Milestone Date, which:
 - (i) gives detailed particulars of the:
 - A. delay and the occurrence causing the delay; and
 - B. activities that are critical to the maintenance of progress in the execution of the Contractor's Activities; and
 - (ii) states the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that the:

- A. conditions precedent to an extension of time in clause 10.9 have been met; and
 - B. occurrence will delay it in achieving Completion in the manner described in clause 10.7; and
- (b) if the effects of the delay continue beyond the period of 14 days after the commencement of the occurrence causing the delay and the Contractor wishes to claim an extension of time in respect of the further delay, submit a further written claim to the Principal's Representative:
- (i) every 14 days after the first written claim, or such other period as may be approved by the Principal's Representative in writing, until after the end of the effects of the delay; and
 - (ii) containing the information required by clause 10.8(a).

The Principal's Representative may, within 14 days of receiving the Contractor's claim or further claim for an extension of time for Completion, by written notice to the Contractor, request additional information in relation to the claim or further claim. The Contractor must, within 14 days of receiving such request, provide the Principal's Representative with the information requested.

10.9 Conditions Precedent to Extension of Time

It is a condition precedent to the Contractor's entitlement to an extension of time to any relevant Date for Completion or LD Milestone Date that:

- (a) the Contractor gives the notices and claims required by clauses 10.6(b) and 10.8 as required by those clauses;
- (b) the Contractor complies with any request for additional information under clause 10.8 within the time required;
- (c) the cause of the delay is beyond the reasonable control of the Contractor; and
- (d) the Contractor is actually, or will be, delayed:
 - (i) on or prior to the Date for Completion of the Works or the Portion or the LD Milestone Date, by reason of one or more of the causes set out in clause 10.7(a) in the manner described in clause 10.7(a); or
 - (ii) after the Date for Completion of the Works or the Portion, by reason of an act or omission of the Principal or the Principal's Representative (including any breach of Contract or Change directed by the Principal's Representative) in the manner described in clause 10.7(b).

If the Contractor fails to comply with the conditions precedent in this clause 10.9:

- (e) the Principal will not be liable upon any Claim by the Contractor; and

- (f) the Contractor will be absolutely barred from making any Claim against the Principal,

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

10.10 Extension of Time

Subject to clause 10.11, if the conditions precedent in clause 10.9 have been satisfied, the relevant Date for Completion or LD Milestone Date will be extended by a reasonable period determined by the Principal's Representative, and notified to the Principal and the Contractor within 28 days after the latest of the:

- (a) Contractor's written claim under clause 10.8; and
- (b) provision by the Contractor of any additional information regarding the claim required under clause 10.8.

A failure of the Principal's Representative to grant a reasonable extension of time to any Date for Completion or LD Milestone Date or to grant an extension of time to any Date for Completion or LD Milestone Date within the relevant 28 day period will not cause an affected Date for Completion or LD Milestone Date to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.

10.11 Reduction in Extension of Time

The Principal's Representative will reduce any extension of time to the relevant Date for Completion or LD Milestone Date it would otherwise have determined under clause 10.10 to the extent that the Contractor:

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

10.12 Unilateral Extensions

Whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to any relevant Date for Completion or LD Milestone Date, or is entitled to be, or has been, granted an extension of time to any relevant Date for Completion, under clause 10.10, the Principal's Representative may, in its absolute discretion, for any reason and at any time, from time to time by written notice to the Contractor and the Principal, unilaterally extend any Date for Completion or LD Milestone Date by any period specified in a notice to the Contractor and the Principal.

The Principal's Representative is not required to exercise its discretion under this clause 10.12 for the benefit of the Contractor.

The discretion to grant an extension of time under this clause 10.12 may only be exercised by the Principal's Representative and the exercise or failure to exercise that discretion is not a "direction" which can be the subject of a Dispute pursuant to clause 15 or in any other way opened up, reviewed or exercised by any other person in any forum (including in any expert, arbitration or litigation proceedings).

[illegible]

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

Contractor's Activities. Nothing in this clause limits the Principal's rights under clause 2.9.

If the suspension under this clause 10.14 arises in the circumstance set out in clause 2.9(f) then clauses 2.9(f) and 2.9(g) will apply, otherwise where it arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with this Contract (including under clause 4.6 or clause 4.7 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or ASA compliance in accordance with this Contract or where any process, procedure, test method, calculation, analysis or report required by this Contract has resulted in or will result in a non-conformance):
 - (i) the Reimbursable Costs will not include the costs incurred as a result of the suspension;
 - (ii) there will be no Reimbursable Cost Adjustment, Fee Adjustment or adjustment to the Preliminaries Fee as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to perform its obligations in accordance with this Contract:
 - (i) a direction to suspend under this clause 10.14 will entitle the Contractor to an extension of time to any relevant Date for Completion or LD Milestone Date where it is otherwise so entitled under clause 10;
 - (ii) the Principal's Representative will determine any extra Reimbursable Costs reasonably incurred by the Contractor as a direct result of the suspension and a Reimbursable Cost Adjustment will apply for the amount determined;
 - (iii) the Preliminaries Fee will be increased by the amount of any extra on-Site overhead costs reasonably incurred by the Contractor as a direct result of the suspension, as determined by the Principal's Representative;
 - (iv) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (v) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.14(b).

11. Payment

11.1 Progressive Payments

Subject to clause 18.12 and to any other right to set-off that the Principal may have, the Principal will pay the Contractor in progressive payments as follows:

- (a) the Reimbursable Costs in monthly instalments based on the Contract value of the Reimbursable Work which has been carried out and any applicable Reimbursable Cost Adjustments in the relevant month; and
- (b) the:
 - (i) Design Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2 for SOW 1 or the relevant New SOW for a New SOW;
 - (ii) Preliminaries Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2 for SOW 1 or the relevant New SOW for a New SOW;
 - (iii) Management Fee will be paid in monthly instalments in accordance with the provisions of Schedule 2 for SOW 1 or the relevant New SOW for a New SOW; and
 - (iv) P&C Payment, in accordance with clause 11.18.

11.2 Payment Claims

The Contractor may give the Principal's Representative a claim for payment on account of all amounts then payable by the Principal to the Contractor under the Contract on each Payment Claim Date.

Each claim for payment must:

- (a) be in such form as the Principal's Representative reasonably requires;
- (b) show separately the amounts (if any) claimed on account of:
 - (i) the Reimbursable Costs payable to:
 - A. Subcontractors; and
 - B. the Contractor,including any Reimbursable Cost Adjustment which must be identified separately;
 - (ii) the Design Fee;
 - (iii) the Preliminaries Fee;
 - (iv) the Management Fee;

- (v) the relevant P&C Payment for that month; and
- (vi) other amounts payable under the Contract; and
- (c) set out or attach sufficient details, calculations, supporting documentation and other information in respect of all amounts claimed by the Contractor:
 - (i) to enable the Principal's Representative to fully and accurately determine (without needing to refer to any other documentation or information) the amounts then payable by the Principal to the Contractor under the Contract; and
 - (ii) including any such documentation or information which the Principal's Representative may by written notice from time to time require the Contractor to set out or attach, whether in relation to a specific payment.

The Contractor may not include in any payment claim under this clause 11 any amount in respect of a Claim:

- (d) which is barred by clause 16.6 or any other provision of this Contract; or
- (e) for Reimbursable Costs incurred more than 4 months prior to the date on which the relevant Contractor's Activities were performed, unless the Principal's Representative approves otherwise in relation to a particular Reimbursable Cost.

11.3 Payment Statements

The Principal's Representative must (on behalf of the Principal), within 10 Business Days of receiving a Progress Claim which complies with the requirements of clause 11.2, a Completion Payment Claim under clause 11.9 or a Final Payment Claim under clause 11.11, issue to the Contractor and the Principal a payment statement which, identifies the Progress Claim, Completion Payment Claim or Final Payment Claim to which it relates, and which sets out:

- (a) the Contractor's total value of entitlement under the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under this Contract;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of all amounts payable in accordance with the Contract and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
- (e) if the amount in paragraph (d) is less than the amount claimed in the Progress Claim, Completion Payment Claim or Final Payment Claim:

- (i) the reason why the amount in paragraph (d) is less than the amount claimed in the relevant Progress Claim, Completion Payment Claim or Final Payment Claim; and
- (ii) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Works or Contractor's Activities covered by the payment statement has been satisfactorily carried out in accordance with this Contract.

Failure by the Principal's Representative to set out in a payment statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Contract.

The Contractor agrees that the amount referred to in the payment statement in respect of paragraph (d) above for the purposes of section 9 and 10 of the SOP Act, is the amount of the "progress payment" (as defined in the SOP Act) calculated in accordance with the terms of this Contract to which the Contractor is entitled in respect of this Contract.

Where the Principal has notified the Contractor in accordance with clause 11.19(g)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must, within 2 Business Days after receipt of the payment statement issued by the Principal's Representative give the Principal's Representative a tax invoice (which complies with the GST Legislation) for the amount of the payment statement.

11.4 Payment

- (a) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.2, 11.6, 11.8, 14.3, 14.7(a) and 18.12, the Principal must, within 15 Business Days of receipt of the payment claim to which the payment statement relates pay the Contractor the amount set out in the payment statement referred to in clause 11.3.
- (b) Where, pursuant to clause 11.3(d), the Principal's Representative sets out in a payment statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the payment statement under clause 11.3, pay the Principal the amount set out in the payment statement referred to in clause 11.3.

11.5 Payment on Account

A payment of moneys under clause 11.4(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Contract,

but is only to be taken as payment on account.

11.6 Payment Claim Requirements

Prior to submitting a payment claim, the Contractor must have:

- (a) complied with clauses 1.5 and 2.17(e);
- (b) provided the Principal with the Unconditional Undertakings and the Parent Company Guarantee (if any) required under clause 2.6;
- (c) provided the Principal's Representative with:
 - (i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 11, made out not earlier than the date of the payment claim;
 - (ii) a Contractor's Certificate of Design Compliance and a Contractor's Certificate of Construction Compliance, in the forms of Schedule 18 and Schedule 19;
 - (iii) each Consultant Certificate of Design Compliance in the form of Schedule 20; and
 - (iv) where clause 11.15(g) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause; and
- (d) effected or procured to be effected the insurances required to be effected by the Contractor by clauses 13.4, 13.5 and 13.6 and (if requested) provided evidence of this to the Principal's Representative.

Unless the Contractor has complied with the conditions set out above the Contractor will have no entitlement to submit a payment claim under clause 11.2.

11.7 Unfixed Equipment, Plant and Materials

The Contractor is only entitled to make a claim for payment for Equipment, plant or materials intended for incorporation in the Works but not yet incorporated, and the Principal is only obliged to make payment for such Equipment, plant or materials in accordance with clause 11.4(a) if:

- (a) in respect of Equipment, plant or materials listed in Schedule 1:
 - (i) the Contractor's claim for payment does not exceed the amount stated in Schedule 1; and

- (ii) security acceptable to the Principal in the form of an Unconditional Undertaking in an amount equal to the payment claimed for the Equipment, plant and materials has been provided by the Contractor to the Principal; or
- (b) in respect of Equipment, plant or materials:
 - (i) not listed in Schedule 1; or
 - (ii) listed in Schedule 1 but where the claim for payment is for an amount in excess of the value stated in Schedule 1,

the following apply:

 - (iii) the Contractor provides evidence of:
 - A. ownership of the Equipment, plant or materials;
 - B. identification and labelling of the Equipment, plant and materials as the property of the Principal; and
 - C. adequate and secure storage and protection;
 - (iv) in respect of Equipment, plant or materials listed in Schedule 1, security acceptable to the Principal in the form of an Unconditional Undertaking in an amount equal to the payment claimed for the Equipment, plant and materials has been provided by the Contractor to the Principal;
 - (v) the Equipment, plant and materials are on the Site or at another location in metropolitan Sydney acceptable to the Principal's Representative;
 - (vi) the condition of the Equipment, plant and materials has been confirmed in an inspection by the Principal's Representative, provided that the condition of the Equipment, plant and materials will be deemed to be confirmed by the Principal's Representative for the purposes of this clause if either:
 - A. the Principal's Representative notifies the Contractor that it does not intend to inspect the Equipment, plant and materials; or
 - B. the Principal's Representative does not inspect the Equipment, plant and materials within 5 Business Days of receiving written notice from the Contractor that they are available for inspection;
 - (vii) if the PPS Law applies, the Contractor has registered a Security Interest in the plant or materials in favour of the Principal in accordance with clause 18.26; and
 - (viii) the Equipment, plant or materials to be allowed for in the payment statement have become or (on payment) will become the property

of the Principal. Upon a payment against a payment statement that includes amounts for such Equipment, plant and materials, title to the Equipment, plant and materials included will vest in the Principal.

Any security provided in accordance with this clause 11.7 will be released once the applicable Equipment, plant and materials are incorporated into the Works.

11.8 Payment of Employees and Subcontractors

- (a) When submitting any Progress Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's Representative a statutory declaration in accordance with clause 11.6(c)(i).
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.6(c)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a subcontractor obtains a court order in respect of the moneys payable to him, her or it in respect of his, her or its employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor the Principal will not make any payment to an employee or subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.8 limits or otherwise affects the Principal's right under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

11.9 Completion Payment Claim

No later than 28 days after the issue of the Notice of Completion for the Works or the last Portion to reach Completion in respect of a SOW, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating all amounts which the Contractor claims from the Principal on account of all amounts payable under the Contract.

The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Completion Payment Claim the Contractor must lodge with the Principal's Representative a First Statement of Outstanding Claims. The First Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way

in connection with, the Contractor's Activities, the Works or this Contract which occurred prior to the date of submission of the Completion Payment Claim.

The Completion Payment Claim and First Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and First Statement of Outstanding Claims.

11.10 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract in respect of the relevant SOW that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which:

- (a) has been included in the Completion Payment Claim or First Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.9; and
- (b) has not been barred under another provision of this Contract.

11.11 Final Payment Claim

No later than 28 days after the expiration of the last Defects Rectification Period for a SOW, but subject to clause 11.6 the Contractor may lodge with the Principal's Representative a payment claim marked "Final Payment Claim" stating all amounts which the Contractor claims from the Principal on account of all amounts payable under the Contract in respect of that SOW (including, the Gainshare or Painshare, if any).

The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.

With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or this Contract in respect of the relevant SOW which occurred prior to the date of submission of the Final Payment Claim. The Final Payment Claim and Second Statement of Outstanding Claims must not identify any Claims from which the Contractor releases the Principal in accordance with clause 11.10.

The Final Payment Claim and Second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor's Activities, the Works or this Contract in respect of the relevant SOW up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and Second Statement of Outstanding Claims.

11.12 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in respect of the relevant SOW in any way in connection with,

the Contractor's Activities, the Works or this Contract that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which:

- (a) has been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.11; and
- (b) has not been barred under another provision of this Contract.

11.13 Interest

If any moneys due to either party remain unpaid after the date upon which, or the expiration of the period within which, they should have been paid, then interest will be payable thereon from but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.

The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.

This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.14 Correction of Payment Statements

The Principal's Representative may, in any payment statement:

- (a) correct any error; and
- (b) modify any assumptions or allowances made,

in any previous payment statement issued by the Principal's Representative.

11.15 Security of Payment Act

- (a) When an adjudication occurs under the SOP Act and the Principal has paid an adjudicated amount to the Contractor:
 - (i) the amount will be taken into account by the Principal's Representative in issuing a payment statement under clause 11.3;
 - (ii) if it is subsequently determined pursuant to the Contract that the Contractor was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or

- exercise any set-off, counterclaim, deduction or similar right of defence;
- (iv) the Principal's Representative:
 - A. is not bound by the adjudication determination;
 - B. may reassess the value of the work that was valued by the adjudicator; and
 - C. may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and
 - (v) the payment statement referred to in clause 11.15(a)(iv)C will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 15.
- (b) For the purposes of section 17(3) of the SOP Act the Contractor irrevocably chooses the Resolution Institute, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Contract.
 - (c) Without limiting clauses 11.8 or 18.12, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
 - (d) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by the Principal to the Contractor has been unpaid; and
 - B. the date by which payment of money owed by the Principal to the Contractor must be made.
 - (e) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act.
 - (f) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Contractor to the Principal.

- (g) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act and the Contractor:

- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
- (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

then the Contractor must so notify the Principal within 5 days of the occurrence of the event in sub-paragraph (i) or (ii) above (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

11.16 Title

Title in all items forming part of the Works will pass progressively to the Principal on the earlier of payment for or delivery of such items to the Site or the Principal. Risk in all such items remains with the Contractor until Completion.

11.17 Gainshare / Painshare

In respect of each SOW:

- (a) the Principal's Representative must, within 30 days after the Date of Final Completion, notify the Contractor in writing of the Gainshare or Painshare for this Contract, as determined by the Principal's Representative in accordance with clause 11.17(b);
- (b) if the Contract Price for the relevant SOW (excluding any Provisional Sum Work directed to be performed under clause 11.20 that is specified under clause 11.20(b)(iii) not to be within the Target Budget) is:
 - (i) less than the Target Budget for the relevant SOW, then the **Gainshare** will be the amount determined by applying the percentage stated in Schedule 1 to the SOW Cost Saving, capped at a maximum of the Management Fee payable for that SOW; or
 - (ii) greater than the Target Budget for the relevant SOW, then the **Painshare** will be the amount determined by applying the percentage stated in Schedule 1 to SOW Cost Overrun, capped at a maximum of the Management Fee payable for that SOW;
- (c) the Principal will not be liable upon any Claim by the Contractor arising out of or in connection with any act, omission or breach of Contract by the Principal or the Principal's Representative, to the extent that this may have contributed to preventing the Contractor from maximising the amount it otherwise would have been entitled to under this clause 11.17;
- (d) the Gainshare or Painshare (as applicable) must be included in the Final Payment Claim issued by the Contractor under clause 11.11 and must be paid by the Principal to the Contractor by or on the date at which the

Principal is required to make its final payment in respect of the Final Payment Claim; and

- (e) the payment of any Gainshare or Painshare (as the case may be) under this clause 11.17 is not:
 - (i) an admission or evidence of the value or quality of work performed by the Contractor under this Contract;
 - (ii) an admission of liability; or
 - (iii) approval by the Principal or the Principal's Representative of the Contractor's performance under this Contract; and
- (f) if the Contract Price exceeds the Target Budget and, in the Principal's Representative's reasonable opinion, it becomes likely that the Contractor will be required to pay Painshare to the Principal, the Principal may retain from any payment made by the Principal any amount up to, but not exceeding, the amount of Painshare likely to be payable by the Contractor to the Principal in respect of the relevant SOW.

11.18 Performance and Compliance (P&C) Payments

- (a) This clause 11.18 applies if so stated in Schedule 1.
- (b) The Principal's Representative must, within 10 Business Days after the end of each month during the P&C Payment Period, notify the Contractor in writing of the performance and compliance payment for this Contract for that month ("**P&C Payment**"), as determined by the Principal's Representative, in its absolute discretion, having regard to:
 - (i) the performance in that month of the Contractor's Activities;
 - (ii) the requirements tabulated in Part B of Schedule 2 for SOW 1 and in accordance with the New SOW for a New SOW; and
 - (iii) any other factors the Principal's Representative deems (in its absolute discretion) to be relevant to the performance categories and indicators mentioned in that table.
- (c) Each monthly P&C Payment will be determined as either 0, 50, or 100 percent of the Maximum Monthly P&C Payment.
- (d) Without limiting the Principal's Representative's discretion under clause 11.18(a), where the Principal's Representative determines a P&C Payment which is less than 100 percent of the Maximum Monthly P&C Payment, the Principal must include in its notice under clause 11.18(a) a summary of the reasons for its determination.
- (e) The parties acknowledge and agree that there will be no P&C Payment determined for any months after the end of the P&C Payment Period.
- (f) The P&C Payments payable under this Contract will not be limited or otherwise affected by Gainshare or Painshare.

11.19 General Provisions Relating to GST

- (a) Unless otherwise stated, all amounts set out in this Contract are GST exclusive.
- (b) Subject to paragraphs (c) and (d), where any supply occurs under or in connection with the Contract or the Works for which GST is not otherwise provided, the party making the supply ("**Supplier**") will be entitled to increase the amount payable for the supply by the amount of any applicable GST.
- (c) Reimbursable Costs payable by the Contractor to Subcontractors will not be reduced for any input tax credits and will be paid in full to the Contractor. In consideration of this, the Contractor is not entitled to any additional amount in respect of GST on those Reimbursable Costs.
- (d) Where an amount is payable to the Supplier for a supply under or in connection with the Contract or the Works (other than on account of Reimbursable Costs payable by the Contractor to Subcontractors) which is based on the actual or reasonable costs incurred by the Supplier, the amount payable for the supply will be reduced by the amount of any input tax credits available to the Supplier (or a representative member on the Supplier's behalf) in respect of such costs before being increased for any applicable GST under paragraph (b).
- (e) As a condition precedent to any amount on account of GST being due from the recipient to the Supplier in respect of a taxable supply, the Supplier must provide a tax invoice to the recipient in respect of that supply.
- (f) If the amount paid to the Supplier in respect of the GST (whether because of an adjustment or otherwise):
 - (i) is more than the GST on the supply, then the Supplier shall refund the excess to the recipient; or
 - (ii) is less than the GST on the supply, then the recipient shall pay the deficiency to the Supplier.
- (g) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with this Contract:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the Contractor to the Principal under this Contract;
 - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under this

Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 11.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect of any such taxable supply.

- (h) Each party acknowledges and warrants that at the time of entering into this Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) In this clause, clause 11.3 and Schedule 2 and any payment schedule applicable to a New SOW:
 - (i) **"GST"** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation.

11.20 Provisional Sum Work

- (a) For each item of Provisional Sum Work, the Principal's Representative will give the Contractor a direction either requiring the Contractor to proceed with the item of Provisional Sum Work or deleting the item of Provisional Sum Work.
- (b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work:
 - (i) the value of the Provisional Sum Work set out in Schedule 1 will not be payable;
 - (ii) the Principal will notify the Contractor of the method for valuing the Provisional Sum Work which could include:
 - A. valuation in accordance with clause 6.4; or
 - B. another method notified by the Principal; and
 - (iii) the Principal will notify the Contractor whether or not the Provisional Sum Work will be included in the Target Budget or whether it will be separately payable without forming part of the Target Budget.
- (c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:

- (i) the Principal may thereafter either carry out the Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
- (ii) the Principal will not be liable upon any Claim by the Contractor arising out of the deletion of the item of Provisional Sum Work.

12. Completion

12.1 Progressive Inspection and Testing

At any time prior to Completion of the Works or a Portion, the Principal's Representative may direct that any materials or work forming part of the Contractor's Activities in respect of the Works or that Portion be tested. The Contractor must provide such assistance, documentation, records, personnel (including subcontractors) and samples and make accessible such parts of the Contractor's Activities or Works as may be required. On completion of any test the Contractor must make good the Contractor's Activities or Works so that they fully comply with this Contract.

The Principal's Representative may direct that any part of the Contractor's Activities or the Works must not be covered up or made inaccessible without the Principal's Representative's prior approval.

The tests prescribed in this Contract must be conducted by the Contractor as and when provided for in this Contract, or may be conducted by the Principal's Representative or a person (that may include the Contractor) nominated by the Principal's Representative.

Any testing required to be done by an independent authority must be carried out by an authority recognised by the Joint Accreditation System of Australia and New Zealand.

Unless otherwise stated in this Contract before conducting a test under this Contract the Principal's Representative or the Contractor must give not less than two Business Days' notice in writing to the other of the time, date and place of the test. If the other party does not then attend, the test may nevertheless proceed.

Without prejudice to any other rights or remedies under this Contract, if the Contractor or the Principal's Representative delays in conducting a test, the other, after giving reasonable notice in writing of intention to do so, may conduct the test.

Each party must promptly make the results of tests available to the other and to the Principal's Representative.

Where the Principal's Representative directs that materials or work be tested, the costs of and incidental to testing must be valued under clause 6.4 and must be borne by the Principal or paid by the Principal to the Contractor unless:

- (a) this Contract provides that the Contractor must bear the costs or the test is one which the Contractor was required to conduct other than pursuant to a direction under clause 12.1;
- (b) the test shows that the material or work is not in accordance with this Contract;

- (c) the test is in respect of a part of the Contractor's Activities or the Works covered up or made inaccessible without the Principal's Representative's prior approval where such was required; or
- (d) the test is consequent upon a failure of the Contractor to comply with a requirement of this Contract.

Where the extra costs are not to be borne by the Principal, they will be borne by the Contractor and will be a debt due from the Contractor to the Principal or paid by the Contractor to the Principal on demand.

12.2 Contractor to Notify

- (a) The Contractor must give the Principal's Representative written notice 21 days before it anticipates achieving Completion of the Works or a Portion.
- (b) Following the issue by the Contractor of a notice under clause 12.2(a) the Contractor must:
 - (i) prepare a detailed procedure for the progressive inspection by the Principal's Representative of the Works or that Portion; and
 - (ii) unless otherwise required under the TfNSW Standard Requirements, provide a draft defects management plan (without identifying any defects in respect of the Works or that Portion).
- (c) The procedure and draft defects management plan referred to in clause 12.2(b) must be submitted to the Principal's Representative and, prior to the inspection under clause 12.3(a) must, if required by the Principal's Representative, be amended to ensure that the:
 - (i) procedure provides the Principal's Representative with sufficient time to properly carry out this progressive inspection and the final inspection which the Principal's Representative is required to undertake under clause 12.3 to determine whether Completion of the Works or a Portion (as the case may be) has occurred; and
 - (ii) draft defects management plan fully addresses the matters the Principal's Representative directs.

12.3 Inspection before Completion

- (a) The Principal's Representative and the Contractor's Representative must, within 7 days of receipt by the Principal's Representative of the notice referred to in clause 12.2(a), jointly inspect the Works or the Portion at a mutually convenient time.
- (b) Following the joint inspection under clause 12.3(a), the Principal's Representative must issue a notice to the Principal and the Contractor either:
 - (i) containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or

- (ii) stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated in clause 12.3(b)(i).
- (c) When the Principal's Representative issues a notice under either clause 12.3(b)(i) or clause 12.3(b)(ii), the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when the Contractor considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Completion in the form of Schedule 21.

Thereafter the Principal's Representative and the Contractor's Representative must jointly inspect the Contractor's Activities at a mutually convenient time.
- (d) Following the joint inspection under clause 12.3(c), the Principal's Representative must within 21 days of receipt of a notice under clause 12.3(c), or of receipt of a notice under clause 12.3(e), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Completion of the Works or the Portion has been achieved:
 - A. stating the date on which the Principal's Representative determines Completion of the Works or the Portion was achieved; and
 - B. containing a list of any minor Defects, of the type described in paragraph (a) of the definition of "Completion" in clause 1.1, that are apparent; or
 - (ii) if not satisfied that Completion of the Works or the Portion has been achieved:
 - A. containing a list of the items that are apparent and it believes must be completed before Completion of the Works or the Portion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Completion of the Works or the Portion that it is not practicable to issue a list as contemplated by clause 12.3(d)(ii)A.
- (e) If the Principal's Representative issues a notice under either clause 12.3(d)(ii)A or clause 12.3(d)(ii)B, the Contractor must continue to proceed to bring the Works or the Portion to Completion and thereafter when it considers it has achieved Completion of the Works or the Portion, the Contractor must notify the Principal's Representative by notice in writing, after which the second paragraph of clause 12.3(c), clause 12.3(d) and this clause 12.3(e) will reapply.

- (f) Where there are Portions, for the purposes of this Contract and without affecting the Contractor's obligation to achieve Completion of each Portion by the relevant Date for Completion of each Portion:
 - (i) no separate Date for Completion of the Works is specified in this Contract;
 - (ii) Completion of the Works is achieved by achieving Completion of all Portions;
 - (iii) Completion of the Works will be taken to have occurred once Completion of all Portions has occurred; and
 - (iv) the Date of Completion of the Works will be taken to be the Date of Completion of the last Portion to reach Completion.

12.4 Unilateral Issue of Notice of Completion

If at any time a notice required to be given by the Contractor to the Principal's Representative under either of clauses 12.3(c) or 12.3(e) is not given by the Contractor yet the Principal's Representative is of the opinion that Completion of the Works or a Portion has been achieved, the Principal's Representative may at any time and for any reason in its absolute discretion issue a Notice of Completion under clause 12.3(d)(i) for the Works or the Portion.

12.5 Hand Over upon Completion

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

12.6 Part of the Works or a Portion

- (a) If part of the Works or a Portion has reached a stage equivalent to Completion but another part of the Works or the Portion has not reached Completion and the parties cannot agree upon the creation of new Portions, the Principal's Representative may determine that the respective parts will be Portions.
- (b) Without limiting clause 12.6(a), the Principal may, after the Contractor is given written notice by the Principal's Representative, occupy or use any part of the Works or a Portion although the whole of the Works or the Portion has not reached Completion.
- (c) If the Principal's Representative gives a notice under clause 12.6(b):
 - (i) the Principal must allow the Contractor reasonable access to the part of the Works or the Portion referred to in the notice and being occupied or used by the Principal, to enable the Contractor to bring the Works or the relevant Portion of which the area being occupied or used forms part to Completion; and
 - (ii) this will not otherwise limit or affect the obligations of the parties under this Contract, including the obligation of the Contractor to achieve Completion of the Works or the relevant Portion of which

the area being occupied or used forms part, by the relevant Date for Completion.

- (d) Without limiting clause 12.6(a), further Portions may be created by the Principal's Representative by issuing a written direction to the Contractor which clearly identifies for each, the:
- (i) portion of the Works;
 - (ii) Date for Completion;
 - (iii) any LD Milestones and LD Milestone Dates; and
 - (iv) respective amounts for security, delay damages and liquidated damages (each of which will be a reasonable amount as determined by the Principal's Representative having regard to any previously existing amounts for security, delay damages and liquidated damages relevant to the part of the Works or the part of a Portion out of which any new Portion is created and the contract value of any new Portion).

12.7 Liquidated Damages for Delay in Reaching Completion or failure to complete LD Milestone

■	
■	
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containing a list of the items of the relevant SOW that are apparent and it believes must be completed before Final Completion is achieved.

- (d) If the Principal's Representative issues a notice under clause 12.8(c), the Contractor must continue to bring the Works to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 22. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Works at a mutually convenient time.
- (e) Following the joint inspection under clause 12.8(d), the Principal's Representative must within 21 days of receipt of a notice under clause 12.8(d), or of receipt of a notice under clause 12.8(f), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved; or
 - (ii) if not satisfied that Final Completion has been achieved:
 - A. containing a list of the items which it believes must be completed before Final Completion is achieved; or
 - B. stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.8(e)(ii)A.
- (f) If the Principal's Representative issues a notice under clause 12.8(e)(ii)A or clause 12.8(e)(ii)B, the Contractor must continue to proceed to bring the Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.8(d), clause 12.8(e) and this clause 12.8(f) will reapply.

12.9 Effect of Notice of Completion or Final Completion

A notice issued under clause 12.3(d)(i) or 12.8(e)(i) will not:

- (a) constitute approval by the Principal or the Principal's Representative of the Contractor's performance of its obligations under this Contract;
- (b) be taken as an admission or evidence that the Works or the Portion comply with the requirements of this Contract; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

13. Care of the Works, Risks and Insurance

13.1 Care of the Works

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor:

- (a) when accessing, or while it has care, custody and control of, any Site will be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to any Works on that Site;
- (b) from the date of commencement of work until the Date of Completion of the Works or the last Portion to reach Completion will:
 - (i) be responsible for the care of and will bear the risk of, and indemnify the Principal against any loss of, or damage to:
 - A. the Contractor's Activities;
 - B. Temporary Works;
 - C. Construction Plant;
 - D. Equipment, unfixed plant and materials (whether on or off the Site) the value of which has been included in a payment statement under clause 11.3; and
 - E. things entrusted to the Contractor by the Principal or brought onto the Site by a subcontractor for the purpose of carrying out the Contractor's Activities; and
 - (ii) provide the storage and protection necessary to preserve these things; and
 - (iii) where the Contractor's Activities involve the refurbishment, overhaul or repair of, or any other work in relation to, any parts, plant, equipment or goods owned by the Principal, such parts, plant, equipment or goods while they are in the care, custody or control of the Contractor; and
- (c) after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Works or any other thing referred to in subparagraph 13.1(b)(i), will bear the risk of, and indemnify the Principal against, any loss of or damage to that part of the Works or other thing, arising from:
 - (i) any act or omission of the Contractor during the Defects Rectification Period (including any extension under clause 8.6) or any other Contractor's Activities; or
 - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Works or other thing under paragraph (b) in connection with the Contractor's Activities.

13.2 Indemnity

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

13.3 Reinstatement

During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13.1, the Contractor must:

- (a) subject to paragraph (b), promptly replace or otherwise make good the loss or repair the damage; and
- (b) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with paragraph (a) to the extent directed by the Principal's Representative.

The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.4 applied.

13.4 Works Insurance - Alternative 1

This alternative applies if so stated in Schedule 1.

The Principal will effect and maintain insurances on the terms of the summary which is included in Exhibit C. This insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted in Exhibit C, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that prior to the date of this Contract it reviewed and examined Exhibit C and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Exhibit C do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Exhibit C; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised in Exhibit C or any insurance taken out under this clause 13.4 and any such amounts will not form part of the Reimbursable Costs.

13.4 Works Insurance - Alternative 2

This alternative applies if so stated in Schedule 1.

Before commencing the Contractor's Activities, the Contractor must insure all the things referred to in clause 13.1 against loss or damage resulting from any cause until the Contractor ceases to be responsible for their care.

Without limiting the generality of the obligation to insure, such insurance must cover the Contractor's liability under clause 13.3 and things in storage off site and in transit to the site but may exclude:

- (a) the cost of making good fair wear and tear or gradual deterioration, but shall not exclude the loss or damage resulting therefrom;
- (d) the cost of making good faulty workmanship and materials, but shall not exclude the loss or damage resulting therefrom;
- (e) consequential loss of any kind, but shall not exclude loss of or damage to the Works;
- (f) damages for delay in completing or for the failure to complete the Works;
- (g) loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel resulting from any cause; and

- (h) loss or damage resulting from the Excepted Risk referred to in paragraph (a) of the definition of Excepted Risk.

The insurance cover must be for an amount not less than the aggregate of the:

- (i) Target Budget;
- (j) provision in Schedule 1 to provide for costs of demolition and removal of debris;
- (k) provision in Schedule 1 for consultants' fees and Principal's consultants' fees;
- (l) value in Schedule 1 of any materials or things to be supplied by the Principal for the purposes of the Contractor's Activities; and
- (m) additional amount or percentage in Schedule 1 of the total of the items referred to in sub-paragraphs (i) to (l) of this paragraph.

Insurance shall be in the joint names of the parties, must cover the parties and subcontractors whenever engaged in the Contractor's Activities for their respective rights, interests and liabilities and, except where the Contract otherwise provides, must be with an insurer and in terms both approved in writing by the Principal (which approvals must not be unreasonably withheld).

13.5 Public Liability Insurance – Alternative 1

This alternative applies if so stated in Schedule 1.

The Principal will effect and maintain insurance on the terms of the summary which is included in Exhibit C. The insurance will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.

This insurance is subject to the exclusions, conditions and excesses noted on the policies, and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees prior to the date of this Contract it reviewed and examined Exhibit C and:

- (a) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
- (b) acknowledges that the policies of insurance summarised in Exhibit C do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance summarised in Exhibit C; and
- (c) where it bears the risk of the relevant loss or damage, or is required to indemnify the Principal, agrees to bear the cost of any excesses in the insurance policies summarised Exhibit C, or any insurance taken out under this clause 13.5 and any such amounts will not form part of the Reimbursable Costs.

13.5 Public Liability Insurance – Alternative 2

This alternative applies if so stated in Schedule 1.

Before commencing the Contractor's Activities, the Contractor must effect and maintain for the duration of the Contract, a public liability policy.

The policy must:

- (a) be in the joint names of the parties;
- (d) cover the:
 - (i) respective rights and interests; and
 - (ii) liabilities to third parties,of the parties, the Principal's Representative and subcontractors from time to time, whenever engaged in the Contractor's Activities;
- (e) cover the parties' respective liability to each other for loss or damage to property (other than property required to be insured by clause 13.4 Alternative 2) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance policy);
- (f) be endorsed to cover the use of any Construction Plant not covered under a comprehensive or third party motor vehicle insurance policy;
- (g) provide insurance cover for an amount in respect of any one occurrence of not less than the sum in Schedule 1; and
- (h) be with an insurer and otherwise in terms both approved in writing by the Principal (which approvals must not be unreasonably withheld).

13.6 Contractor's Other Insurance Obligations

The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Contract.

The Contractor must, or in the case of asbestos liability insurance, either the Contractor or its specialist asbestos removal subcontractor must (if required by clause 13.6(a)(iii) below), before the Contractor commences the Contractor's Activities or as otherwise required by this Contract:

- (a) effect and have in place the following insurance with insurers of the Required Rating:
 - (i) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
 - (ii) an insurance policy covering physical loss or damage to the Construction Plant;

- (iii) if the Contractor's Activities include any work involving asbestos or asbestos decontamination, including stripping, encapsulation or removal, asbestos liability insurance;
- (iv) professional indemnity insurance;
- (v) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
 - A. insurance against personal injury or death, as required under all applicable Laws; and
 - B. in addition to the public liability insurance required under this Contract, insurance for third party property damage and personal injury or death;
- (vi) where specified in Schedule 1 as being required, if the things the care of which the Contractor is responsible for under clause 13.1 are in transit (including storage and transshipment) from any place outside of Australia, marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition;
- (vii) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law; and
- (viii) where specified in Schedule 1 as being required, appropriate insurance (for replacement value) in respect of all Equipment and materials being or to be fabricated overseas for the Works and any other insurance that the Principal may reasonably require the Contractor to obtain,

for the amounts (if any) referred to in Schedule 1;

- (b) ensure the Construction Plant insurance, motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the law), asbestos liability insurance:
 - (i) are policies which extend the benefit of cover to the Principal as an "Insured" or "Additional Insured" (as defined in the policy), and cover the Principal, the Principal's Representative (including any appointee under clauses 9.2 or 9.3), the Contractor and all its subcontractors, for their respective rights and interests, and their liabilities to third parties and liability to each other;
 - (ii) cover physical loss or damage to property (other than property described in clause 13.1) and the death of or injury to any person (other than liability which the law requires to be covered under a workers compensation insurance or similar insurance policy),

- arising out of, or in any way in connection with, the Contractor's Activities;
- (iii) includes a cross-liability clause in accordance with clause 13.10; and
 - (iv) is for an amount in respect of any occurrence referred to in Schedule 1;
- (c) ensure the asbestos liability insurance is in place before any work involving asbestos or asbestos decontamination work commences;
- (d) ensure that any insurance policy required by sub-paragraph (a)(vii) is in place before the Contractor's Activities covered by such policies commence;
- (e) ensure the professional indemnity insurance:
- (i) covers the Contractor's civil liability for claims for breach of professional duty (whether owed in contract or otherwise) by the Contractor or its subcontractors in carrying out the Contractor's Activities;
 - (ii) covers the Contractor for liability to the Principal arising from errors or omissions in:
 - A. design or documentation of the Works or the Temporary Works; or
 - B. other professional services,
 carried out by the Contractor or any of its subcontractors; and
 - (iii) provides:
 - A. cover for an amount in respect of any one claim of ;
 - B. cover for an amount in the aggregate of; and
 - C. subject to clause 13.12, for an excess not greater than, the amount stated in Schedule 1;
- (f) ensure that each subcontractor that performs any professional services (including Design Work) forming part of the Contractor's Activities:
- (i) maintains professional indemnity insurance which:
 - A. covers the subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the subcontractor or its subcontractors in carrying out the work under the relevant subcontract;
 - B. covers the subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;

- C. unless the subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - D. remains in place at least until the expiration of a 7 year period from completion of the relevant Subcontract works or professional services; and
- (ii) is obliged under the relevant Subcontract to comply with clause 13.7(c) of this Contract in relation to the insurance referred to in sub-paragraph (i);
- (g) in relation to the workers compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;
 - (ii) ensure that each of its subcontractors has such workers compensation insurance or similar insurance covering the subcontractor's employees; and
 - (iii) ensure it insures against liability for death of or injury to persons employed by the Contractor or its subcontractors as required by any Law for the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law;
- (h) in relation to marine transit insurance (if required), ensure that the policy:
 - (i) includes a cross-liability clause in accordance with clause 13.10; and
 - (ii) includes a delayed unpacking clause and a 50:50 clause.

13.7 General Insurance Requirements

The Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which this Contract requires the Contractor to procure to be effected by a subcontractor) which it is required to effect or procure to be effected, pursuant to this Contract and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with a certificate of currency demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), or (where relevant) a licence as a self-insurer or other proof of being a self-insurer under the *Workers Compensation Act 1987* (Cth),
- (b) ensure that (except for professional indemnity or workers compensation or similar insurance):

- (i) the Principal receives at least 30 days' notice of any cancellation or material change of any insurance policy effected under clause 13.4, 13.5 or 13.6;
 - (ii) a notice of claim given to the insurer by the Principal, the Contractor or a subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the subcontractor, and
 - (iii) upon becoming aware of any fact, matter or thing entitling the insurer to cancel the policy, give immediate notice in writing to the Principal about that fact, matter or thing at least 30 days prior to the insurer giving any notice of cancellation; and
- (c) in respect of the insurances required under this Contract, ensure that it:
- (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy if it lapses;
 - (iv) does not:
 - A. cancel or vary an insurance policy such that it no longer complies with the Contract; or
 - B. allow an insurance policy to lapse,
 without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

If the Contractor fails to:

- (d) provide copies of certificates of currency for any insurance policy (including an insurance policy which this Contract requires the Contractor to procure a subcontractor to effect) which the Contractor is required to effect together with evidence to the Principal's Representative that the policy is current; or
- (e) effect or procure to be effected insurance which is with insurers of the Required Rating and on terms satisfactory to the Principal's Representative,

as required by clauses 13.4, 13.5, 13.6 or this clause 13.7, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.

The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 13.4, 13.5 and 13.6 to the satisfaction of the Principal. The rights given by this clause 13.7 are in addition to any other right.

13.8 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

- (a) in the case of the works and public liability insurance policy required by clauses 13.4 and 13.5 so as to provide cover until the latest to occur of:
 - (i) Contractor ceases to be responsible under clause 13.1 for the care of anything; and
 - (ii) the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion in respect of the last Portion was achieved;
- (b) in the case of the Construction Plant insurance:
 - (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13.1; and
 - (ii) at any time it is being used in connection with the Contractor's Activities;
- (c) in the case of the workers compensation insurance and motor vehicle insurances, until the Principal's Representative issues a notice under clause 12.8(e)(i) stating the date on which Final Completion in respect of the last Portion was achieved;
- (d) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.6(e) until at least the period specified in Schedule 1 after the last Date of Final Completion;
- (e) in the case of asbestos liability insurance, marine transit insurance (if required) and insurance required under clause 13.6(a)(viii) (if required), for so long as there is a risk that an event covered by the insurance may occur in relation to the Works or the Contractor's Activities; and
- (f) in the case of insurance required under clause 13.6(a)(vii), during the period required by any Law.

13.9 Notice of Potential Claim

Except where the Principal has or makes a claim against the Contractor, the Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by this Contract;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.10 Cross Liability

Where this Contract requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.11 Risk of Deductibles

- (a) The Contractor must pay all insurance deductibles or excesses in respect of any event and claim made under a policy referred to in this clause 13 and any such amounts will not form part of the Reimbursable Costs.
- (b) The Contractor will not be required to pay the insurance deductibles or excesses specified in paragraph (a) to the extent that the event giving rise to the relevant claim is caused directly by a breach of the Contract by the Principal or an act or omission of the Principal or an Other Contractor (provided that the Contractor has complied with its obligations under 2.8B(a)(ii)B).

13.12 Maximum Excess

- (a) If, when the Contractor seeks to renew its professional indemnity insurance policy, it is unable to obtain an excess or deductible (or equivalent) that does not exceed the amount specified in Schedule 1 (**Maximum Excess**):
 - (i) at all; or
 - (ii) on commercially reasonable terms,

the Contractor must, as soon as possible (but prior to the renewal), give the Principal written notice, including:

- (iii) separate quotations for a renewed professional indemnity insurance policy from three insurers with the Required Rating on terms which include an excess or deductible (or equivalent) no greater than the Maximum Excess; or
- (iv) if it is not possible to obtain three quotations of the type referred to in clause 13.12(a)(iii):
 - A. three quotations comprising as many quotations on the terms specified in clause 13.12(a)(iii) as can be obtained (if any) together with quotations on terms which include an excess or deductible (or equivalent) as close as possible to the Maximum Excess; and
 - B. written confirmation from the Contractor's insurance broker that it has sought but been unable to obtain the quotations referred to in clause 13.12(a)(iii) for the Contractor, including details about the markets approached and proposed coverage terms for those quotations.
- (b) If the Contractor gives notice under paragraph (a) and the Principal agrees (acting reasonably) that the Maximum Excess is not available in the market for professional indemnity insurance policies at all or on commercially reasonable terms, the Principal must:
 - (i) waive the requirement for the professional indemnity policy to have the Maximum Excess; or
 - (ii) give a written notice to the Contractor specifying a higher excess or deductible amount to replace the Maximum Excess (for a specified period of time or indefinitely), being an amount that the Principal (acting reasonably) considers could be obtained by the Contractor on commercially reasonable terms.
- (c) Upon the Principal giving a written notice in accordance with clause 13.12(b)(ii), the higher excess or deductible amount specified in the written notice shall replace the Maximum Excess specified in Schedule 1 for the period of time specified in the notice or, if no period is specified, for the remainder of the Term.

14. Default or Insolvency

14.1 Contractor's Default

If the Contractor commits a breach of this Contract referred to below, the Principal may give the Contractor a written notice.

The breaches by the Contractor to which this clause applies are:

- (a) not commencing or not progressing the Contractor's Activities regularly and diligently in accordance with the requirements of this Contract, in breach of clause 10.1;
- (b) suspension of work, or failing to proceed with the Contractor's Activities with due expedition and without delay, in breach of clause 10.1;
- (c) failing to provide the security, in breach of clause 2.6;
- (d) failing to provide evidence of insurance, in breach of clause 13;
- (e) failing to use the materials or standards of workmanship required by this Contract, in breach of clause 4.1;
- (f) not complying with any direction of the Principal's Representative made in accordance with this Contract, in breach of clause 9.1(a);
- (g) not complying with the requirements of this Contract regarding the Contract Management Plan in a material respect;
- (h) not complying with its obligations under:
 - (i) the TfNSW Standard Requirements with regard to the Contract Management Plan; or
 - (ii) the TfNSW Standard Requirements TSR T - Technical Management;
- (i) not complying with its environmental obligations under this Contract;
- (j) not complying with its obligations under this Contract regarding work health and safety;
- (k) the failure to comply with all applicable Law, including the failure to comply with, carry out and fulfil the conditions and requirements of all Authority Approvals in breach of clause 2.2; or
- (l) any other failure to comply with a material obligation under the Contract.

14.2 Contents of Notice

A written notice under clause 14.1 must:

- (a) state that it is a notice under clause 14.1 or clause 14.3 (as the case may be);
- (b) specify the alleged breach;
- (c) require the Contractor to remedy the breach or, in the case of a notice by the Principal where the breach is not capable of being remedied, make other arrangements satisfactory to the Principal; and

- (d) specify the time and date by which the Contractor must remedy the breach or make other arrangements satisfactory to the Principal (which time must not be less than 21 clear days after the notice is given).

14.3 Rights of the Principal Following Notice

- (a) Upon giving a notice under clause 14.1, the Principal may suspend payments to the Contractor until the date upon which the Contractor remedies the breach or makes arrangements satisfactory to the Principal, provided that the amount of any payment suspended under this paragraph (a) is proportionate to the loss that the Principal has suffered or is likely to suffer as a result of the Contractor's breach (as reasonably determined by the Principal).
- (b) If, by the time specified in a notice under clause 14.1, the Contractor fails to remedy the breach or make arrangements satisfactory to the Principal, the Principal may, by notice in writing to the Contractor:
 - (i) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
 - (ii) terminate this Contract.

14.4 Immediate Termination on Take-Out

If:

- (a) an Insolvency Event occurs:
 - (i) to the Contractor;
 - (ii) where the Contractor comprises more than one person, any one of those persons; or
 - (iii) to a person specified in Schedule 1; or
- (b) the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified as set out in clause 2.9(d),

then, whether or not the Contractor is then in breach of this Contract, the Principal may, without giving a notice under clause 14.1, exercise the right under clause 14.3(b)(i) or 14.3(b)(ii).

14.5 Principal's Common Rights After Take-Out or Termination

If:

- (a) the Principal:
 - (i) exercises its rights under clause 14.3(b)(i); or
 - (ii) terminates this Contract under clauses 14.3(b)(ii), 14.4 or 14.9;

- (b) the Contractor repudiates this Contract and the Principal otherwise terminates this Contract; or
 - (c) this Contract is frustrated under the Law,
- then:
- (d) the Contractor:
 - (i) must novate to the Principal or the Principal's nominee those Subcontracts between the Contractor and its subcontractors that the Principal directs;
 - (ii) irrevocably appoints (for valuable consideration) the Principal and any authorised representative of the Principal to be the Contractor's attorney to:
 - A. execute, sign, seal and deliver all notices, deeds and documents; and
 - B. undertake actions in the name of the Contractor,
 for the purposes referred to in clause 14.5(d)(i); and
 - (iii) must immediately hand over to the Principal's Representative all copies of:
 - A. any documents provided by the Principal to the Contractor;
 - B. all Contract Documentation prepared by the Contractor to the date on which the Principal exercises its rights under clauses 14.3(b)(i), 14.3(b)(ii), 14.4 or 14.9 (whether complete or not); and
 - C. any other documents or information in existence that is to be provided to the Principal under the terms of this Contract; and
 - (e) the Principal:
 - (i) will be entitled to require the Contractor to remove from the Site or any area affected by the Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Works;
 - (ii) may complete that work;
 - (iii) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site or Extra Land as are owned by the Contractor and are reasonably required by the Principal to facilitate completion of the work; and
 - (iv) must, if it takes possession of the items referred to in clause 14.5(e)(iii):

- A. for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined pursuant to clause 15; and
- B. maintain the Construction Plant, Temporary Works or other things and, subject to clause 14.6, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 14.5(e)(iii) which are surplus.

This clause 14.5 will survive the termination or frustration of this Contract.

14.6 Principal's Entitlements after Take-Out

- (a) If the Principal exercises the right under clause 14.3(b)(i), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 14.6.
- (b) When work taken out of the hands of the Contractor under clause 14.3(b)(i) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will issue a certificate certifying the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 14.6(c), if the Principal exercises the right under clause 14.3(b)(i), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 14.5 such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

14.7 Principal's Rights after Termination

Subject to clause 14.11, if the Principal terminates this Contract under clauses 14.3 or 14.4, or if the Contractor repudiates this Contract and the Principal otherwise terminates this Contract the Principal will:

- (a) not be obliged to make any further payments to the Contractor, including any money that is the subject of a payment claim under clause 11.2 or a payment statement under clause 11.3;
- (b) be absolutely entitled to call upon, convert and have recourse to and retain the proceeds of any Unconditional Undertaking held under clause 2.6; and
- (c) be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination.

This clause 14.7 survives the termination of this Contract.

14.8 Contractor's Rights after Repudiation or Wrongful Termination

- (a) If the Principal:
 - (i) repudiates this Contract and the Contractor terminates this Contract; or
 - (ii) wrongfully:
 - A. exercises or attempts to exercise any right or power conferred on it by clauses 14.3, 14.4 or 14.9; or
 - B. determines or purports to determine this Contract at common law,

then the:

 - (iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 14.9 and the Contractor's sole rights in such circumstances will be those set out in clause 14.10; and
 - (iv) Contractor:
 - A. will not be entitled to the payment of damages;
 - B. will not be entitled to any payment on a quantum meruit basis; and
 - C. waives all other rights it has to make a Claim in such circumstances.

- (b) This clause 14.8 will survive the termination of this Contract.

14.9 Termination for Convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Contract, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Contract effective from the time stated in the

notice or if no such time is stated, at the time the notice is given to the Contractor; and

- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Works either itself or by engaging Other Contractors.

14.10 Payment for Termination for Convenience

If the Principal terminates this Contract under clause 14.9, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
 - (i) for work carried out prior to the date of termination, the amount which would have been payable if this Contract had not been terminated and the Contractor submitted a payment claim under clause 11.2 for work carried out to the date of termination;
 - (ii) the cost of Equipment, plant and materials reasonably ordered by the Contractor for the Works and for which it is legally bound to pay provided that:
 - A. the value of the plant or materials have not been previously paid or included in the amount payable under sub-paragraph (a)(i); and
 - B. title in the Equipment, plant and materials vests in the Principal upon payment;
 - (iii) the reasonable cost of removing from the Site all labour, Construction Plant, Temporary Works (where required by the Principal) and other things used in the Contractor's Activities that are not part of, or to be part of, the Works; and
 - (iv) the amount specified in Schedule 1, for all overheads and profit associated with, and to the extent not included in, the work and costs determined under sub-paragraphs 14.10(a)(i), (a)(ii) , and (a)(iii); and
- (b) must take all steps possible to mitigate the costs referred to in sub-paragraphs (a)(ii),(a)(iii) and (a)(iv).

To the extent it has not had recourse to them, the Principal will return all Unconditional Undertakings then held by it under clause 2.6 when the Contractor has complied with all its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.10 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the termination of this Contract other than for the amount payable under this clause 14.10.

This clause 14.10 will survive the termination of this Contract by the Principal under clause 14.9.

14.11 Preservation of Rights

Subject to clauses 14.8, nothing in this clause 14 or that the Principal does or fails to do pursuant to this clause 14 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 18.12) which it may have where the Contractor breaches (including repudiates) this Contract.

14.12 Termination by Frustration

If under the law this Contract is frustrated the Principal will:

- (a) pay the Contractor the following amounts as determined by the Principal's Representative:
 - (i) an amount calculated in accordance with clause 14.10(a)(i) for work carried out prior to the date of frustration;
 - (ii) the costs calculated in accordance with the terms of, and subject to the conditions in, clauses 14.10(a)(ii); and
 - (iii) the costs calculated in accordance with the terms of clause 14.10(a)(iii); and
- (b) to the extent it has not had recourse to them, return all Unconditional Undertakings then held by it under clause 2.6 when the Contractor has complied with its obligations under this clause.

The amount to which the Contractor is entitled under this clause 14.12 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the frustration of this Contract and the Principal will not be liable to the Contractor upon any Claim arising out of, or in any way in connection with, the frustration of this Contract other than for the amount payable under this clause 14.12.

Without limiting any other provision of this Contract, this clause 14.12 will survive the frustration of this Contract.

14.13 Codification of Contractor's Entitlements

This clause 14 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Contract as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Contract as repudiated,

otherwise than in accordance with this clause 14.

15. Disputes

15.1 Notice of Dispute

- (a) If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Works or the Contract, or either party's conduct before the Contract, **(Dispute)** the Dispute must be determined in accordance with the procedure in this clause 15.
- (b) Where such a Dispute arises, either party may give a notice in writing **(Notice of Dispute)** to the Principal's Representative and the other party specifying:
 - (i) the Dispute;
 - (ii) particulars of the party's reasons for being dissatisfied; and
 - (iii) the position which the party believes is correct.
- (c) Where the notice is given by the Contractor, if the Contractor fails to provide sufficient particulars of the Dispute to enable the Principal's Representative to properly consider the matter, then the Principal's Representative may request the Contractor to provide further particulars of the Dispute in which event the Contractor must provide the further particulars within 10 Business Days of receipt of the request to provide the further particulars.

15.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 10 Business Days of a notice being given under clause 15.1, meet and discuss the Dispute.

15.3 Executive negotiation

Whether or not discussions have taken place under clause 15.2, if the Dispute is not resolved within 20 Business Days after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and discuss the Dispute; and
- (b) if they cannot resolve the Dispute, endeavour to agree upon a procedure to resolve the Dispute.

15.4 Expert determination

Whether or not discussions have taken place under clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the Dispute within 25 Business Days after a notice is given under clause 15.1, either party may submit the Dispute to an expert determination.

15.5 The expert

The expert determination under clause 15.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

15.6 Not arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.7 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the Dispute;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.8 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.9 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one half of the expert's costs.

15.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

15.11 Agreement with expert

- (a) The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.
- (b) The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 26 or such other terms as the parties and the expert may agree.

15.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant direction of the Principal's Representative (if applicable); and
 - (ii) final and binding,unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and
- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration

- (a) If:
 - (i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or
 - (ii) a notice of appeal is given under clause 15.12,the Dispute will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
 - (i) agreed between the parties; or
 - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.

- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive termination

This clause 15 will survive any termination of the Contract.

15.15 Continuation of Contractor's Activities

Despite the existence of a Dispute between the parties, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under the Contract.

16. Notification of Claims

16.1 Notice of Variation

If a direction by the Principal's Representative, other than a "Variation Order" under clause 6.2 or a New SOW, constitutes or involves a Variation, the Contractor must, if it wishes to make a Claim against the Principal arising out of, or in any way in connection with, the direction:

- (a) within the time specified in Schedule 1 of receiving the direction and before commencing work on the subject matter of the direction, give notice to the Principal's Representative, that it considers the direction constitutes or involves a Variation;
- (b) within the time specified in Schedule 1 of giving the notice under clause 16.1(a) submit a written Claim to the Principal's Representative, which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Contractor's Activities in accordance with this Contract and all directions of the Principal's Representative, including any direction in respect of which notice has been given under this clause 16.1.

16.2 Notice of Other Claims

If the Contractor wishes to make any Claim (other than an Excluded Claim) against the Principal in respect of any direction of the Principal's Representative or any other event, circumstance, act, omission, fact, matter or thing (including a breach of this Contract by the Principal) under, arising out of, or in any way in connection with, this Contract, the Contractor's Activities or the Works, including anything in respect of which:

- (a) it is otherwise given an express entitlement under this Contract; or
- (b) this Contract expressly provides that:

- (i) specified costs are to be added to any component of the Contract Price for a SOW; or
- (ii) any component of the Contract Price for a SOW will be otherwise increased or adjusted,

as determined by the Principal's Representative, the Contractor must give the Principal's Representative the notice required by clause 16.3(a) and a Claim in accordance with clause 16.3(c).

16.3 Prescribed Notices

- (a) Any written notice referred to in clauses 16.1(a) and 16.2 must:
 - (i) be provided not later than the time specified in Schedule 1 after the first occurrence of the direction, event, circumstance, act, omission, fact, matter or thing which gave rise to the alleged entitlement; and
 - (ii) expressly specify:
 - A. that the Contractor proposes to make a Claim; and
 - B. the direction event, circumstance, act, omission, fact, matter, or thing, which gave rise to the alleged entitlement in the Claim.
- (b) Any written Claim referred to in clause 16.1(b) must include:
 - (i) detailed particulars, including the date or dates, of the direction, including any related event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - (ii) the provisions of this Contract or other legal basis upon which the Claim is based; and
 - (iii) details of the amount claimed and how it has been calculated.
- (c) Any written Claim referred to in clause 16.2 must:
 - (i) be provided not later than the time specified in Schedule 1 of giving the written notice under clause 16.3(a); and
 - (ii) include:
 - A. detailed particulars, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which the Claim is based;
 - B. the legal basis for the Claim, whether based on a term of this Contract or otherwise, and if based on a term of this Contract, clearly identifying the specific term;
 - C. the facts relied upon in support of the Claim in sufficient detail to permit verification; and

- D. details of the amount claimed and how it has been calculated.

16.4 Submission of Claims

Claims submitted by the Contractor under clauses 16.1(b) and 16.2 will be considered in the first instance by the Principal's Representative who may accept or reject the Claim in part or in full.

If within 28 days after first receipt of a Claim the Principal's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected on that 28th day.

16.5 Continuing Events

If the direction, event, circumstance, act, omission, fact, matter or thing upon which a Claim is based, or their consequences are continuing, the Contractor must continue to give the information required by clause 16.3(b) or 16.3(c) every 28 days after the written Claim under clause 16.1(b) or 16.2 (as the case may be) was submitted or given to the Principal's Representative, until after the direction, event, circumstance, act, omission, fact, matter or thing or the consequences thereof have ceased.

16.6 Bar

If the Contractor fails to comply with clauses 2.2(e), 16.1, 16.2, or 16.5:

- (a) the Principal will not be liable upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) to which those clauses apply.

16.7 Other Provisions Unaffected

Nothing in clauses 16.1 to 16.6 will limit the operation or effect of any other provision of this Contract that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

17. Privacy, security and the protection of Principal Data

17.1 Privacy

Where the Contractor or its personnel (including subcontractors) are provided with, or has access to, any Personal Information in connection with the Contractor's Activities or this Contract, the Contractor must:

- (a) not do any act or engage in any practice that would breach the Privacy Laws, or which if done or engaged in by the Principal, would be a breach of the Privacy Laws;

- (b) not access, use or disclose any Personal Information other than for the sole purpose of carrying out its obligations under this Contract, except with the prior written approval of the Principal;
- (c) ensure that Personal Information is protected against loss and unauthorised access, use, modification or disclosure and other misuse;
- (d) comply with the NSW Privacy Commissioner's (or any other applicable Authority's) directions and requirements with respect to the investigation of, or inquiry into, any Security Incident or privacy related matter provided that such directions and requirements are within the statutory power of the NSW Privacy Commissioner (or of the relevant Authority); and
- (e) comply with such other privacy obligations or policies as the Principal reasonably notifies the Contractor of in writing from time to time.

17.2 No restrictions on privacy obligations

Nothing in this clause is intended to limit any obligations that the Contractor has at Law with respect to privacy and the protection of Personal Information.

17.3 Principal Data

- (a) The Contractor does not obtain any right, title or interest with respect to any Principal Data, other than a right to use Principal Data for the sole purpose of carrying out the Contractor's obligations under this Contract.
- (b) The Contractor must not (and must ensure that its personnel, including subcontractors, do not):
 - (i) use any Principal Data other than for the purpose of carrying out its obligations under this Contract;
 - (ii) attempt to sell, assign or commercially exploit any Principal Data;
 - (iii) remove, transfer or send Principal Data from the Contractor's systems or facilities, the Principal's systems or facilities or any other location or system unless it has received the Principal's prior written consent to do so; or
 - (iv) remove, transfer, send or disclose any Principal Data outside NSW, Australia unless it has received the Principal's prior written consent to do so.
- (c) A consent under paragraph (b) may be given or withheld in the Principal's sole discretion and subject to such conditions that the Principal reasonably determines.
- (d) The Contractor must:
 - (i) ensure that all Principal Data is handled and processed in accordance with the Principal's data classification policies, standards and controls, including any policies, standards or controls specified in the Works Brief;

- (ii) properly authenticate its personnel's (including subcontractors') access to Principal Data;
- (iii) transmit Principal Data securely and in accordance with the requirements specified in the Works Brief;
- (iv) segregate the Principal Data from the Contractor's own data and the data of the Contractor's other customers, unless the Principal has provided its prior written consent to use of a common infrastructure. In all cases where non-Principal Data resides on common infrastructure, the Principal Data must be clearly and logically segregated from non-Principal Data; and
- (v) do all things that a reasonable and prudent entity would do to safeguard and protect Principal Data in the Contractor's or its personnel's (including subcontractors') possession or control and to prevent a Security Incident.

17.4 Security

The Contractor must:

- (a) have and maintain physical and information security measures in accordance with the security standards and requirements under this Contract and all relevant Codes and Standards;
- (b) monitor, audit, detect, identify, report and protect against Security Incidents or any other threats or hazards to the security or integrity of any part of the Contractor's Activities in accordance with the security standards and requirements under this Contract;
- (c) properly define and document the roles and responsibilities of its personnel (including subcontractors), including to:
 - (i) ensure that only persons carrying out obligations under this Contract and who have a genuine need to access Principal Data to carry out those obligations have access to the Principal's systems and Principal Data; and
 - (ii) prevent one person from controlling all key aspects of a critical transaction or business process;
- (d) not share any access codes or passwords provided by, or generated on behalf of, the Principal for use in accessing the Principal's systems and Principal Data and secure all such access codes and passwords in accordance with relevant industry standards;
- (e) ensure that the development, test and production environments are separated to reduce the risk of unauthorised access or changes to the production system;
- (f) manage any potential security risks in the Contractor's supply chains;

- (g) comply with all security policies, requirements and standards with respect to the Contractor's Activities, Principal Data and the Principal's Confidential Information as specified in this Contract or as may be reasonably notified by the Principal to the Contractor from time to time; and
- (h) demonstrate, and supply evidence of, the Contractor's compliance with the above obligations at the Principal's request.

17.5 Security and Data Protection Plan

- (a) The Contractor must prepare and maintain a Security and Data Protection Plan.
- (b) The Security and Data Protection Plan must:
 - (i) set out the physical and information security measures for how the Contractor will:
 - A. comply with the Privacy Laws and the Contractor's obligations of privacy, security and confidentiality under this Contract;
 - B. train its personnel (including subcontractors) on how to classify and manage Security Incidents;
 - C. protect Principal Data, Personal Information and the Principal's Confidential Information; and
 - D. prevent, respond to and mitigate against, any Security Incidents;
 - (ii) document the roles and responsibilities of its personnel (including subcontractors) in relation to security and the protection of Principal Data, Personal Information and the Principal's Confidential Information;
 - (iii) be consistent with the Privacy Laws and the privacy and security requirements, standards and policies required by this Contract; and
 - (iv) cover such other matters as reasonably required by the Principal.

17.6 Notification of Security Incidents

The Contractor must:

- (a) immediately notify the Principal upon becoming aware of any Security Incident or actual or suspected breach of the Contractor's and its personnel's (including subcontractors') obligation under this clause 17;
- (b) fully cooperate with any investigation relating to a Security Incident or breach of this clause 17 that is carried out by, or on behalf of, the Principal; and

- (c) comply with the Principal's reasonable directions with respect to addressing and resolving such Security Incidents and breaches.

17.7 Right to suspend or discontinue

Without limiting its rights or remedies at Law or under this Contract, the Principal reserves the right, in its sole discretion, to suspend or discontinue the Principal's or its personnel's access and connectivity to the Principal's network, Principal Data, Personal Information or Confidential Information in the event that that the Principal or its personnel causes or contributes to a Security Incident or a breach of this clause 17.

17.8 Personnel

The Contractor must ensure that its personnel (including subcontractors) are made aware of, trained in and comply with, the obligations under clause 17.

17.9 Evidence of compliance

- (a) On each anniversary of the date of this Contract or at such other times as reasonably required by the Principal, the Contractor must submit to the Principal's Representative a written statement (in a form approved by the Principal's Representative in writing) that the Contractor has complied with:
 - (i) all of its privacy, security and confidentiality obligations under this Contract; and
 - (ii) any Security and Data Protection Plan prepared in accordance with clause 17.5,

(Compliance Statement).
- (b) The Compliance Statement must be signed and certified as true by the Contractor's duly authorised representative.
- (c) Without limiting clauses 17.9(a) and 17.9(b), at the reasonable request of the Principal, the Contractor must, within the timeframe stated in the Principal's request, provide the Principal with evidence that demonstrates to the satisfaction of the Principal that the Contractor and its subcontractors have:
 - (i) complied with the privacy, security and confidentiality obligations under this Contract and any Security and Data Protection Plan; and
 - (ii) all necessary procedures, processes and systems (including training) in place to comply with such obligations.

17.10 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with any breach by the Contractor or its personnel (including subcontractors) of clause 17 or any:

- (a) any actual or alleged infringement of any Privacy Laws; or
- (b) Security Incident,

arising out of or in connection with the Contractor's Activities or any breach by the Contractor of clause 17.

17.11 Business Continuity and Disaster Recovery

- (a) The Contractor and its subcontractors must prepare, establish and maintain adequate business continuity and disaster recovery measures in accordance with this Contract (including the Works Brief) and best industry practice.
- (b) The business continuity and disaster recover measures must:
 - (i) be designed to reduce interruption to the Principal's business and operations and the Contractor's Activities;
 - (ii) ensure, to the extent fully practicable, business continuity in the event of any Disaster or other business interruption event;
 - (iii) mitigate and lessen the impact of any Disasters and other business interruption events; and
 - (iv) cover all necessary backup, testing and restoration activities of the Principal's Data in alignment with the requirements of this Contract.
- (c) On the occurrence of a Disaster or other event that has the potential to impact the Principal's business or operations, the Contractor must immediately:
 - (i) notify the Principal's Representative of the event; and
 - (ii) implement any measures set out in the Business Continuity Plan (or such other measures as reasonably required by the Principal) to respond to and mitigate the event.

17.12 Business Continuity Plan

- (a) Within 20 Business Days following the date of this Contract, the Contractor must prepare and submit to the Principal's Representative for approval a Business Continuity Plan.
- (b) The Business Continuity Plan must, at a minimum:
 - (i) set out the protocols for establishing whether a Disaster or business interruption has occurred;
 - (ii) specify the procedures and plans to avoid, remedy and mitigate internal or external events and circumstances (including Disasters) that may have an adverse effect on the Contractor's Activities;

- (iii) set out how the Contractor will recover or restore any lost data due to the Disaster or other business interruption event;
 - (iv) set out the Contractor's procedure for testing and verifying the capabilities of its business continuity and Disaster recovery processes and procedures; and
 - (v) include such other details as specified in the Works Brief or as otherwise reasonably required by the Principal.
- (c) The Contractor must:
 - (i) periodically review; and
 - (ii) annually test,

the sufficiency of its Business Continuity Plan and Disaster recovery measures.
- (d) The Contractor must provide the results of the review and test of its Business Continuity Plan and Disaster recovery measures to the Principal's Representative on request.

18. General

18.1 Notices

- (a) At any time and from time to time the Principal's Representative may notify the Contractor of an electronic portal or document management system to be used for the purposes of this Deed. The Principal's Representative's notice will set out:
 - (i) the relevant electronic portal or document management system;
 - (ii) the commencement date for the use of the electronic portal or document management system;
 - (iii) any password, login details or similar information required for the Contractor to use the electronic portal or document management system;
 - (iv) address details for the Principal, the Principal's Representative and the Contractor; and
 - (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this Deed must be in writing and must:
 - (i) before the date referred to in clause 18.1(a)(ii), be delivered or posted to the relevant address or sent to the email address shown in Schedule 1 (or to any new address or email address notified by the intended recipient); and

- (ii) on and from the date referred to in clause 18.1(a)(ii):
 - A. in the case of notices by the Contractor:
 - 1) without limiting clause 18.1(b)(ii)A.2), be sent to the Electronic Portal address of the Principal or the Principal's Representative (as applicable); and
 - 2) under clauses 10, 11, 12, 14, 15 or 16 or concerning a claim for payment, in addition to the copy of the notice sent pursuant to clause 18.1(b)(ii)A.1), also be delivered or posted to the relevant address or sent to the email address shown in Schedule 1 (or to any new address or email address notified by the intended recipient); and
- (iii) in the case of notices by the Principal or the Principal's Representative:
 - A. be delivered or posted to the relevant address or sent to the email address shown in Schedule 1 (or to any new address or email address notified by the intended recipient); or
 - B. except in relation to notices by the Principal under clauses 14.3, 14.4, 14.9 or 15.1, be sent to the Electronic Portal address of the intended recipient.
- (c) For the avoidance of doubt, no notice referred to in clause 18.1(b)(ii)A.2) shall be effective unless delivered in accordance with both clauses 18.1(b)(ii)A.1) and 18.1(b)(ii)A.2).
- (d) Subject to clause 18.1(g), a notice sent by the Electronic Portal will be taken to have been received on the date recorded on the notice on which it was registered on the Electronic Portal.
- (e) Subject to clause 18.1(g), a notice sent by post will be taken to have been received:
 - (i) in the case of international post, 7 Business Days after the date of posting; and
 - (ii) in the case of posting within Australia, 2 Business Days after the date of posting.
- (f) Subject to clause 18.1(g), a notice sent by email will be taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000 (NSW)* were to apply in respect of the email.
- (g) Where clause 18.1(b)(ii)A.2) applies, the relevant notice will be taken to have been received on the later of:

- (i) the date determined in accordance with clause 18.1(d); and
- (ii) the date determined in accordance with clause 18.1(e) or 18.1(f) (as the case may be).

18.2 Governing Law

This Contract is governed by and will be construed according to the Laws of New South Wales.

18.3 No Waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Contract by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Contract.
- (b) Any waiver or consent given by the Principal under this Contract will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.
- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Contract; or
 - (ii) any other failure by the Contractor to comply with a requirement of this Contract, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Contract or failure to comply with any other requirement of this Contract.

18.4 Assignment

The Contractor cannot assign, transfer or novate any of its rights or liabilities under this Contract without the prior written consent of the Principal and except on such terms and conditions as are determined in writing by the Principal.

18.5 Entire Agreement

This Contract constitutes the entire agreement and understanding between the parties in relation to the subject matter of this Contract and will take effect according to its tenor despite, and supersede:

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

18.6 Joint and Several Liability

The rights and obligations of the Principal and the Contractor, if more than one person, under this Contract, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Contract) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.

18.7 Severability

If at any time any provision of this Contract is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Contract.

18.8 Indemnities to Survive

Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Contract.

Nothing in this clause 18.8 prevents any other provision of this Contract, as a matter of interpretation also surviving the termination of this Contract.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Contract.

18.9 Stamp Duty and Other Fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Contract and the performance of its obligations in respect of this Contract.

18.10 Taxes

Without limiting clause 2.2 but subject to clause 11.19, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and Equipment required for the Contractor's Activities.

18.11 Confidentiality

- (a) Subject to clause 18.11(b), the Contractor must:
 - (i) keep confidential this Contract and any information relating to the Contractor's Activities and any discussions concerning this Contract;

- (ii) not use the information referred to in sub paragraph (a)(i) except as necessary for the performance of the Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - A. required by Law;
 - B. consented to in writing by the Principal; or
 - C. given to a court in the course of proceedings to which the Contractor is a party.
- (c) The Contractor must:
 - (i) execute and submit to the Principal within 14 days of this Contract a Confidentiality Undertaking in the form in Schedule 3;
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each subcontractor, including suppliers and Consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The Contractor acknowledges that the Principal may disclose this Contract (and information concerning the terms of this Contract) under or in accordance with any one or more of the following:
 - (i) the *Government Information (Public Access) Act 2009* (NSW);
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability; and
 - (iii) any other Law.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under the items referred to in clause 18.11(d).

18.12 Right of Set-Off

The Principal may at any time withhold, set-off or deduct from moneys otherwise due to the Contractor:

- (a) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act);
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of the SOP Act; or
- (c) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under:

- (d) this Contract; or
- (e) otherwise at Law.

If those moneys are insufficient, the Principal can have recourse to the security held under clause 2.6.

18.13 Entire Contract

Despite any progress payments that may be made to the Contractor under clause 11.4, this Contract is an entire contract.

18.14 Principal May Act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Contract that the Contractor was obliged to perform but which it failed to perform. The costs, losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
- (b) Where the Principal or the Principal's Representative is entitled under this Contract to exercise any right or power to:
 - (i) direct or instruct the Contractor to; or
 - (ii) itself step in to,

take any action or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.

Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the Works.

18.15 Process Agent

If the Contractor is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Contractor must:

- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Contract. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

18.16 Indemnity

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

18.17 Variations

Subject to clause 6.3, this Contract may only be varied by a document signed by or on behalf of both the Principal and the Contractor.

18.18 Provisions Limiting or Excluding Liability

Any provision of this Contract which seeks to limit or exclude a liability of the Principal or the Contractor is to be construed as doing so only to the extent permitted by Law.

18.19 Limit of Contractor's Liability

Subject to clause 18.21, the liability of the Contractor to the Principal, whether arising under or in connection with this Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability), in tort (for negligence or otherwise) or on any basis in Law or equity, is limited to the amount that is equal to:

- (a) in respect of SOW 1, the Target Budget for SOW 1; or
- (b) in respect of each New SOW, the Target Budget for that SOW.

18.20 Economic or Consequential Loss

[REDACTED]

18.21 Qualification on Limitation of Liability

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

18.22 Proportionate Liability

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

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

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Contract will be deemed to be governed by the provisions of this Contract and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Contract in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Contract.

18.24 Design Life

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 109ZK of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the design lives of the asset elements referred to in section 2.2 in Appendix D of the Works Brief where those design lives are for periods longer than those provided for in those Acts.
- (b) If the waiver referred to in clause 18.24(a) is held to be without effect or otherwise unenforceable, or if it is severed from this Contract, the Contractor shall indemnify and keep the Principal indemnified at all times from and against all costs that the Principal may suffer or incur out of the Principal's loss of the benefit of the waiver.
- (c) The indemnity in clause 18.24(b) is to continue and remain in full force and effect until the expiration of the last of the design lives referred to in section 3.8 of the Works Brief.
- (d) The parties agree that any action by the Principal on the indemnity in clause 18.24(b) is not a "building action" for the purposes of section 109ZI of the *Environmental Planning and Assessment Act 1979* (NSW).
- (e) Where the design life specified in the Works Brief for a component of the DTRS Subsystem is less than the design life specified in the Works Brief for the DTRS Subsystem as a whole, the relevant component must be designed and installed so as to facilitate its end of life replacement and allow it to be undertaken with minimal disruption to the rail network and no outages to the DTRS Subsystem or the rail network unless scheduled in advance with the Principal.

18.25 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

18.26 Personal Property Securities Act

- (a) By signing this Contract, the Contractor acknowledges and agrees that if this Contract and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law ("**Security Interest**"), the Contractor shall do anything (including amending this Contract or any other document, executing any new terms and conditions or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Law for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or

- (iii) enabling the Principal to exercise rights in connection with the Security Interest and this Contract.
- (b) If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Contractor agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) The Contractor:
 - (i) acknowledges that the Security Interests created under or pursuant to this Contract relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by law, it waives any right to receive a verification statement under the PPS Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Law.
- (e) The Contractor agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.

18.27 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Contract.

Schedule 1 - Contract Particulars

**Conditions Precedent to
Completion:**
 (Clause 1.1)

[REDACTED]

Contract Documents:
 (Clause 1.1)

[REDACTED]

Contractor:
 (Clause 1.1)

[REDACTED]

Consultant:
 (Clause 1.1)

Consultant

Discipline

[REDACTED]

[REDACTED]

Date for Completion:
 (Clause 1.1)

[REDACTED]

Defects Rectification Period:
 (Clause 1.1)

[REDACTED]

Design Fee
(Clause 1.1)

[REDACTED]

Environmental Representative:
(Clause 1.1)

[REDACTED]

Other Excepted Risk:
(Clause 1.1)

[REDACTED]

Interface Contractors:
(Clause 1.1)

[REDACTED]

Management Fee:
(Clause 1.1)

[REDACTED]

Portions:
(Clause 1.1)

[REDACTED]

Preliminaries Fee
 (Clause 1.1)

[REDACTED]

Principal's Representative:
 (Clause 1.1)

[REDACTED]

Provisional Sum Work:
 (Clauses 1.1 and 11.20)

[REDACTED]

Reliance Material
 (Clause 1.1)

[REDACTED]

Reports:
 (Clause 1.1)

[REDACTED]

Self-performed Reimbursable Work

(Clause 1.1, 7.14(f)(iv)A)

[REDACTED]

Target Budget:
 (Clause 1.1)

[REDACTED]

Tendering Probity Plan:
 (Clause 1.1)

[REDACTED]

Working days:
(Clause 1.2(m))

Order of Precedence:
 (Clause 1.4)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Are Deed Polls in Schedule 15
 and Schedule 24 required**
 (Clause 1.5)

[REDACTED]

**Names of persons in whose
 favour the Deed Poll in Schedule
 15 and Schedule 24 are required**
 (Clause 1.5)

[REDACTED]

Authority Approvals
 (Clause 2.2(d)(i), 2.2(d)(v)D)

[REDACTED]

[REDACTED]

**Action in Complying with
 Planning Approval and Third
 Party Agreements**

(Clause 2.2(d)(ii), 2.2(d)(iii)B,
 2.11(a)(ii)A, 2.11(a)(ii)B, 2.11(a)(iii),
 2.11(a)(vii), 2.11(b)(ii), 2.11(b)(iii)D,
 2.11(b)(iv)D)

[REDACTED]

[REDACTED] S.

Parent Company Guarantor:
 (Clause 2.6(g))

[REDACTED]

**The party responsible for
 payment of the Long Service
 Leave Levy is**
 (Clause 2.7)

[REDACTED]

**Number and form of copies of the
work method statements:**
(Clause 2.8B(a)(ii)G)

[REDACTED]

**The principal contractor under
the WHS legislation is:**
(Clause 2.10)

[REDACTED]

[REDACTED]

Contemporaneous Work
(Clause 2.13)

[REDACTED]

**Period after notice for inspection
of Contemporaneous Work:**
(Clause 2.13(b)(i))

[REDACTED]

**Minimum Aboriginal Participation
Requirements:**
(Clause 2.14)

[REDACTED]

Site access dates:
(Clause 3.1(b))

Site access preconditions:
(Clause 3.1(c)(ii)E)

Site Conditions:
(Clause 3.5)

Alternative applying

**Parts of the Site within which the
Works must be located:**
(Clauses 3.9 and 7.19(b)(i))

**Condition Surveys exist for the
following properties:**
(Clause 3.10)

Consultants to be novated:
 (Clause 5.2(a))

[REDACTED]
 [REDACTED]
 [REDACTED]

**Number of copies of Design
Documentation and survey
information:**
 (Clause 5.5)

[REDACTED]

Escrow deed:
 (Clause 5.7(j))

[REDACTED]
 [REDACTED]

**Management Fee as a percentage
of Design Fee, Preliminaries Fee
and Reimbursable Costs:**
 (Clause 6.4(c) and 6.7(c)(iv))

[REDACTED]

**Trade packages and
Subcontractors:**
 (Clauses 7.4(c)(ii) and 7.12)

[REDACTED]	
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

**Subcontractors not required by
the Principal's Representative to
execute a Deed in the form of
Schedule 5**
(clause 7.7(a)(iv))

[REDACTED]

**Subcontractors required to
execute deed in form of Schedule
13:**
(Clause 7.7(a)(v)A)
(Clause 7.7(a)(v)B)

[REDACTED]

**Warranties required from
subcontractors:**
(Clause 7.9)

[REDACTED]

New Defects Rectification Period:
(Clause 8.6)

[REDACTED]

Contractor's personnel
(Clauses 9.4(a) and 9.4(b)(i))

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Causes of delay entitling
Contractor to extension of time:**
(Clause 10.7(a))

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

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

**Rates and prices to be used in
determining Reimbursable Cost
Adjustment as a direct result of
delay in accordance with clause
10.13:**

(Clause 10.13)

[REDACTED]

Cap on delay damages:

(Clause 10.13)

[REDACTED]

**Unfixed Equipment, Plant and
Materials:**

(Clause 11.7)

■ [REDACTED]

I [REDACTED]

[REDACTED]

[REDACTED]

Gainshare - percentage to be applied:
(Clause 11.17(b)(i))

[REDACTED]

[REDACTED]

Painshare - percentage to be applied:
(Clause 11.17(b)(ii))

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Performance and Compliance Payments (Clause 11.18)

[REDACTED]

[REDACTED]

Rates for Systems Integration Testing Activities:
(Clause 11.20(b))

[REDACTED]

[REDACTED]

Liquidated damages:
(Clauses 12.7(a) and 12.7(b))

[REDACTED]

[REDACTED]

**Limit of liability for liquidated
damages or general damages:**
(Clause 12.7(e))

[REDACTED]

Insurance of the Works
(Clause 13.4)

Alternative applying

[REDACTED]

Public liability insurance
(Clause 13.5)

Alternative applying

[REDACTED]

**Amount of Contractor's
insurance:**
(Clauses 13.6(a) and 13.6(g)(iii))

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

**Minimum amount of professional
indemnity insurance required:**
(Clause 13.6(f))

[REDACTED]

[REDACTED]

[REDACTED]

Period for Professional Indemnity Insurance:
(Clause 13.8(d))

[REDACTED]

Person in Insolvency Event:
(Clause 14.4(a)(iii))

[REDACTED]

Amount for termination for convenience:
(Clause 14.10(a)(iv))

[REDACTED]

Time for giving notices:
(Clauses 16.1(a) and 16.3(a))

[REDACTED]

Time for written Claims:
(Clauses 16.1(b), 16.3(b) and 16.3(c))

[REDACTED]

Addresses:
(Clause 18.1(b))

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Schedule 2 - Payment Schedule

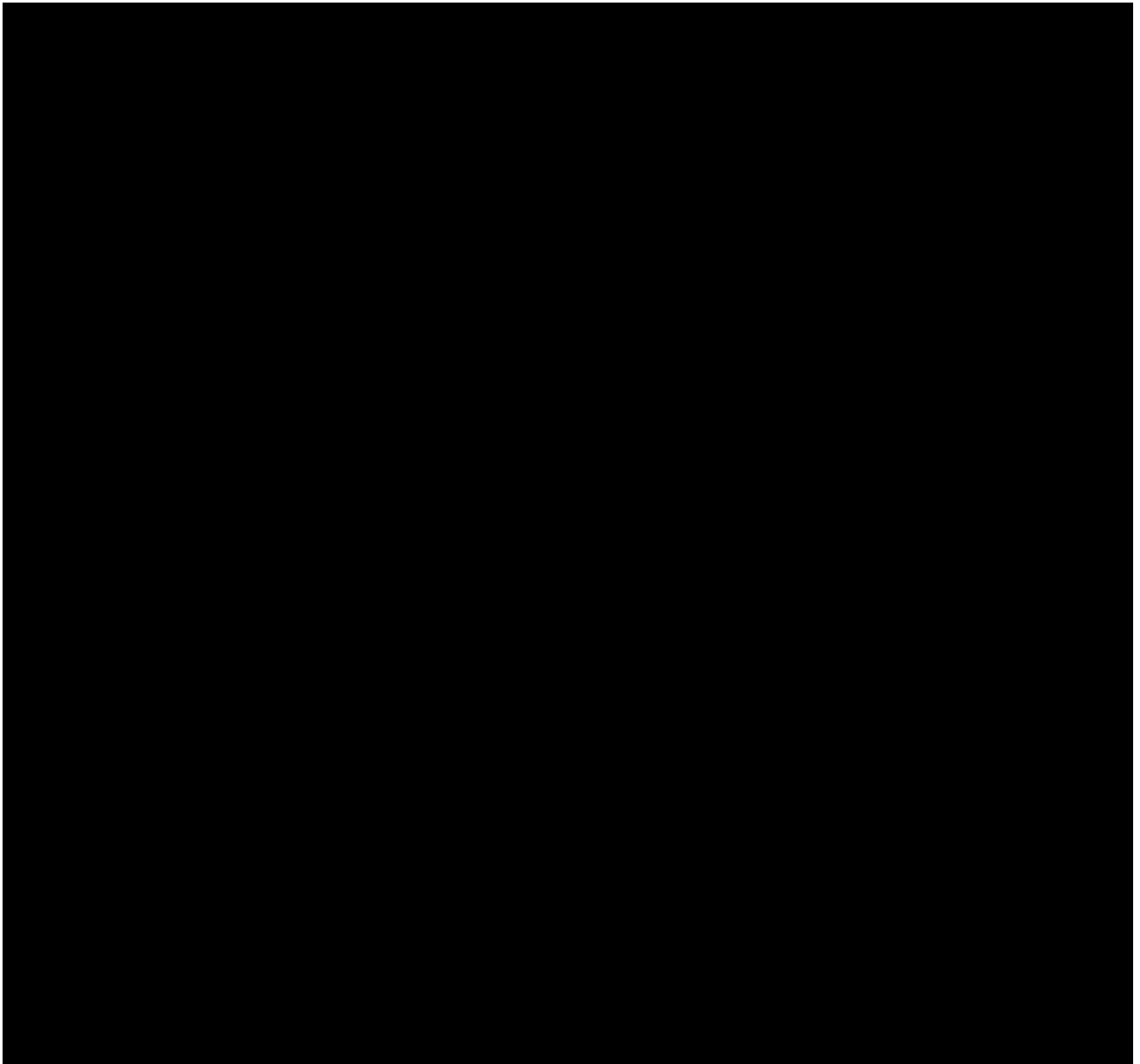
(Clauses 1.1 and 11)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



I [REDACTED]

I [REDACTED]

[REDACTED]

PART B - P&C PAYMENT FOR SOW 1

[REDACTED]

[REDACTED]

[REDACTED]

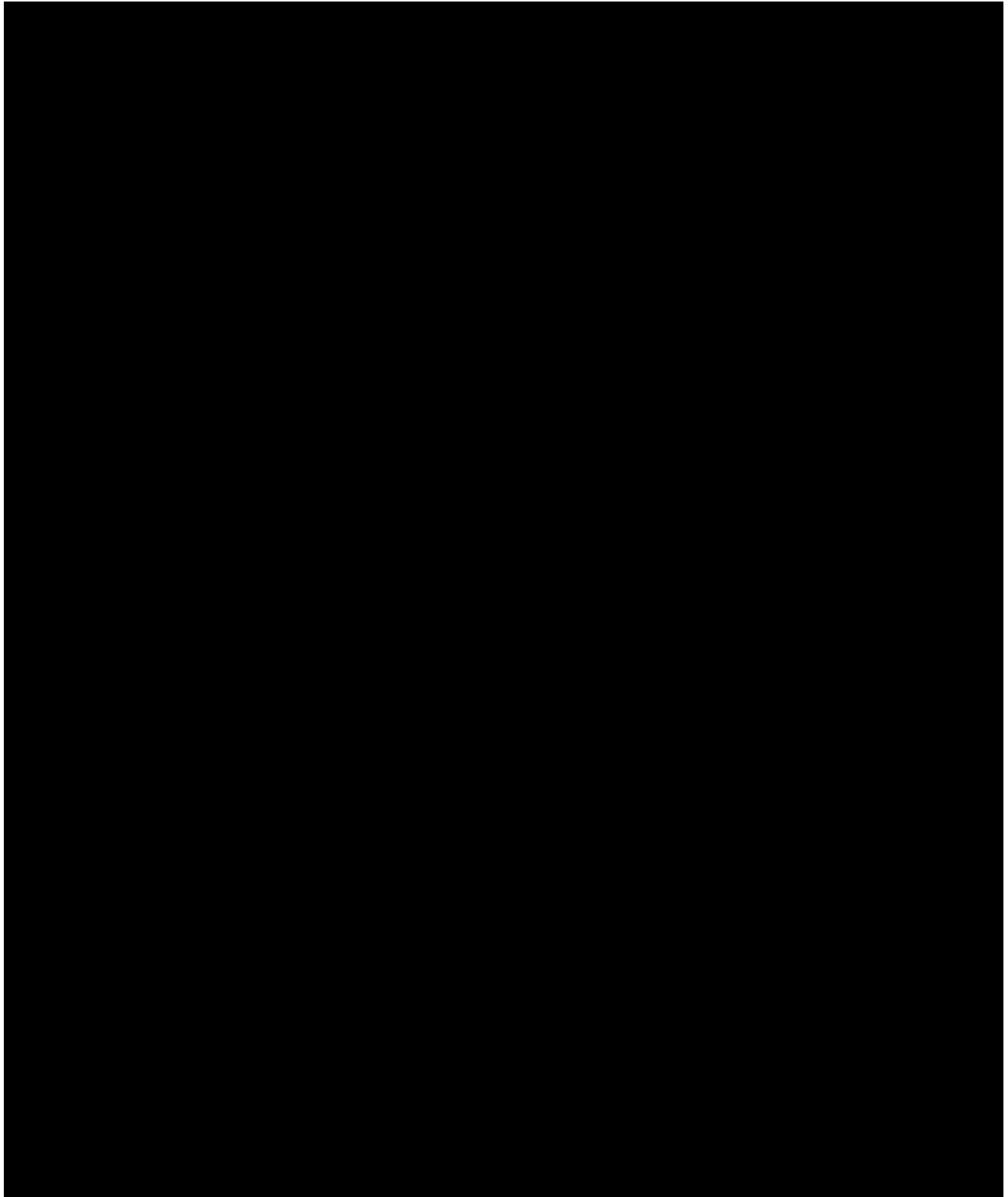
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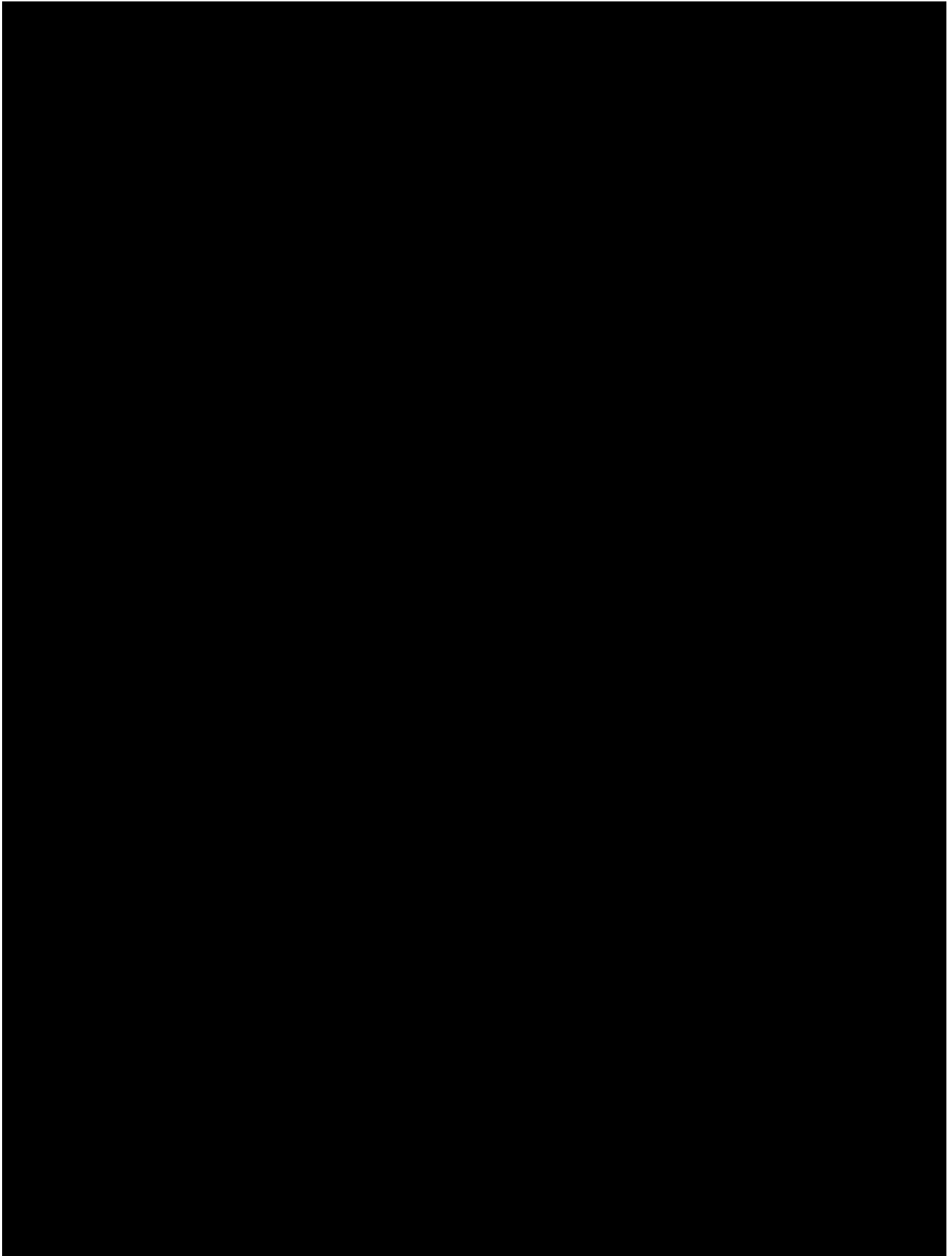
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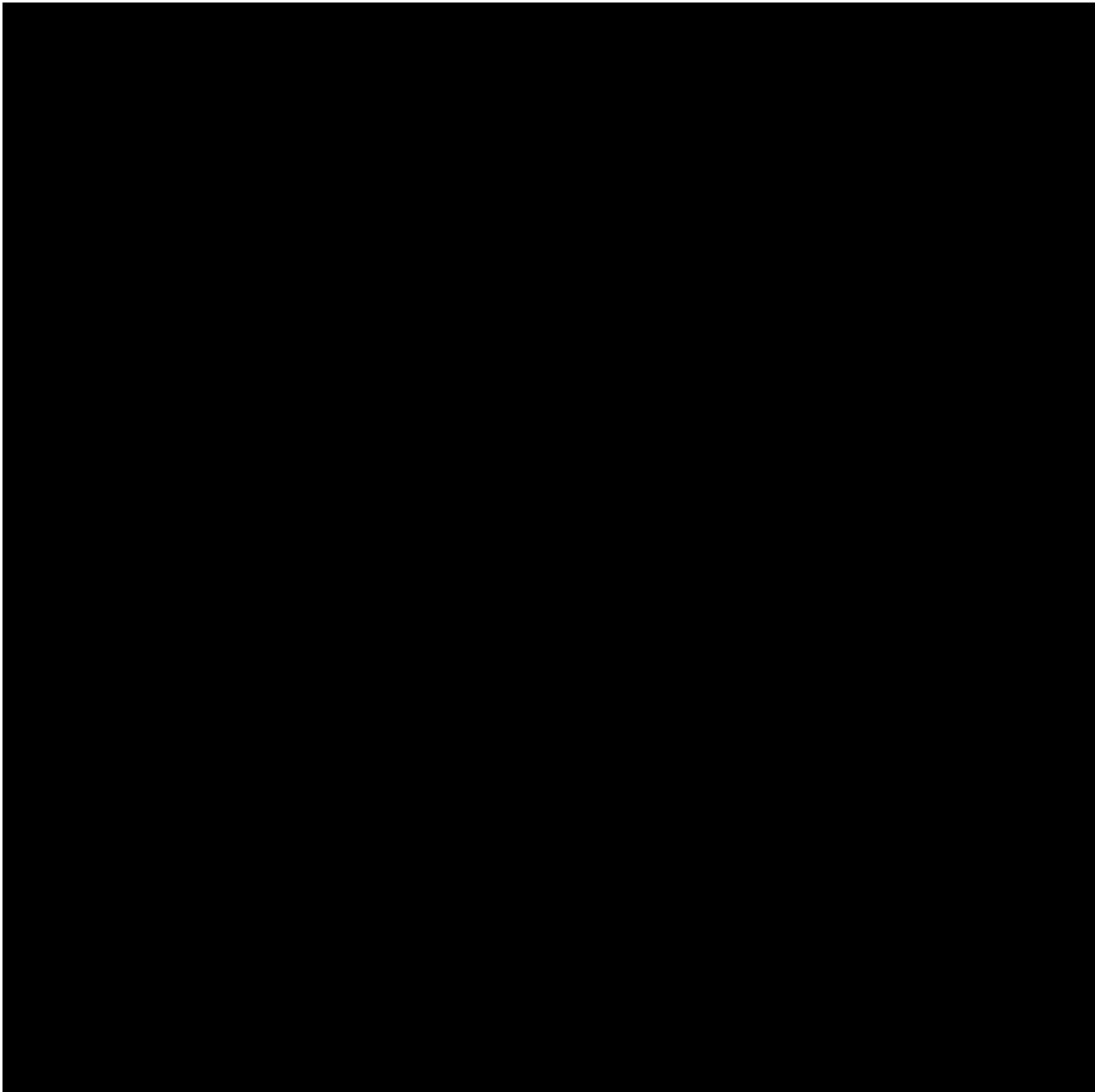
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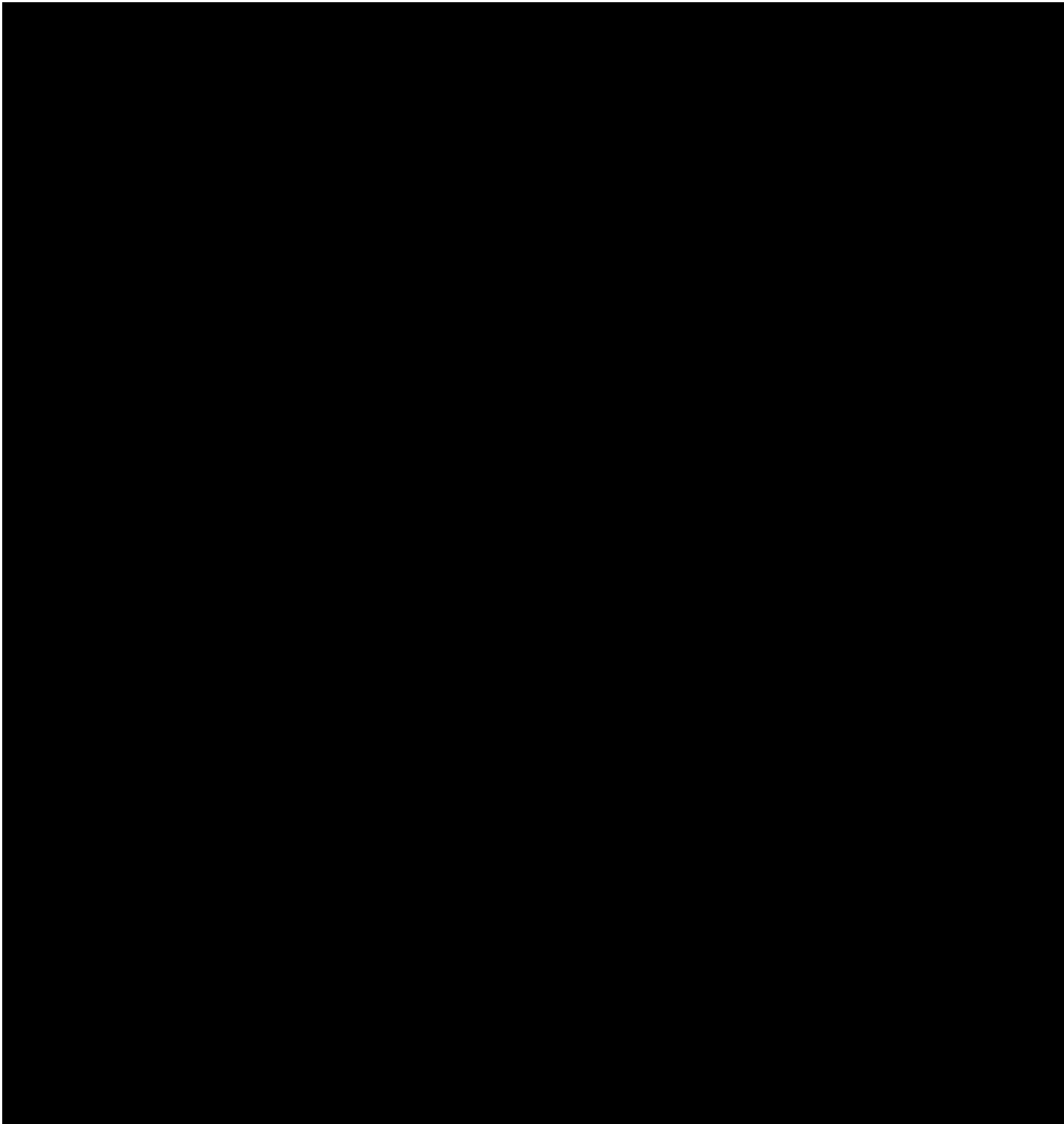
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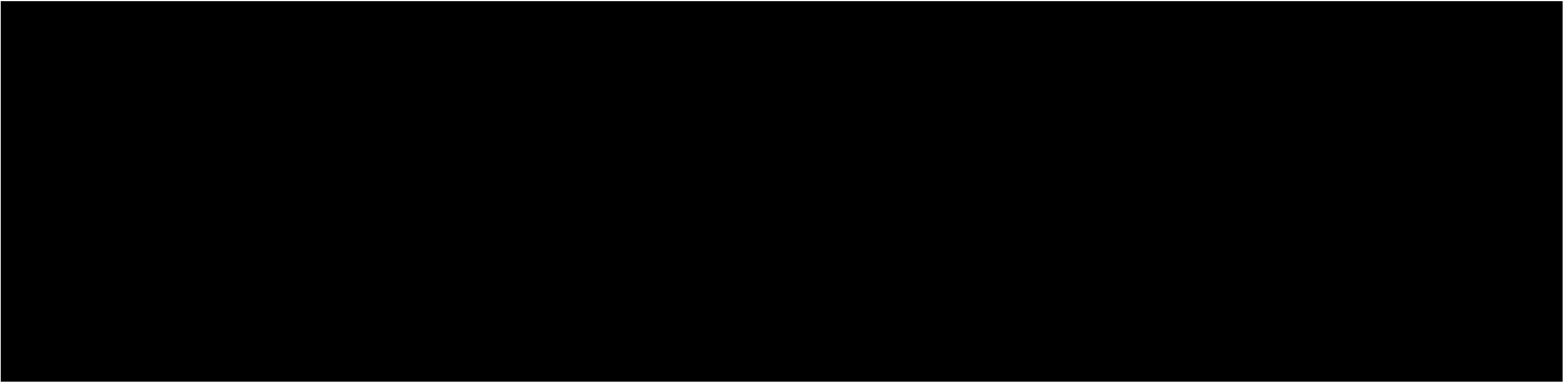
PART C - SCHEDULE OF RATES APPLICABLE TO SOW 1

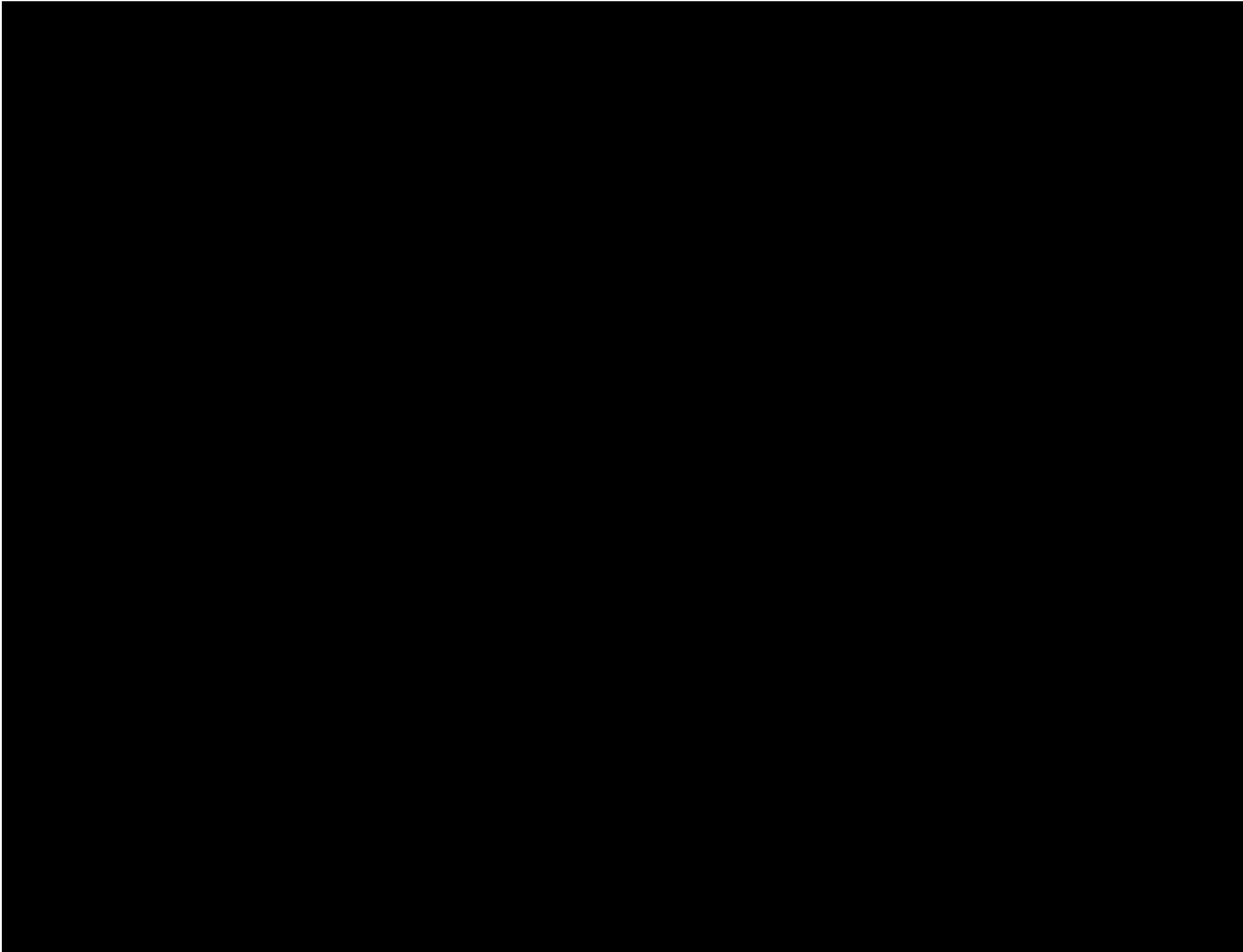


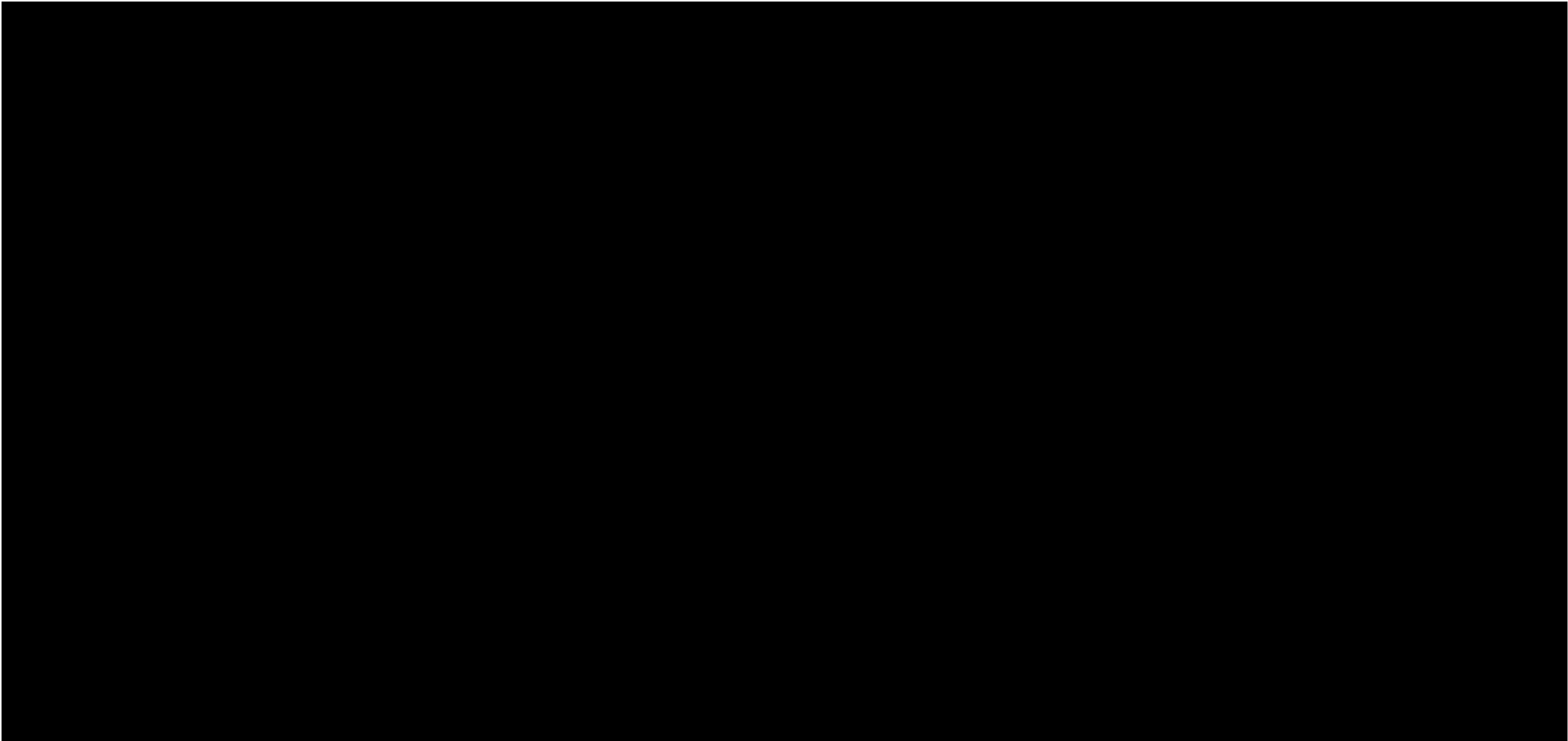












PART D - COMPONENTS OF DESIGN FEE

[REDACTED]

[REDACTED]

[REDACTED]

PART E - COMPONENTS OF MANAGEMENT FEE

[REDACTED]

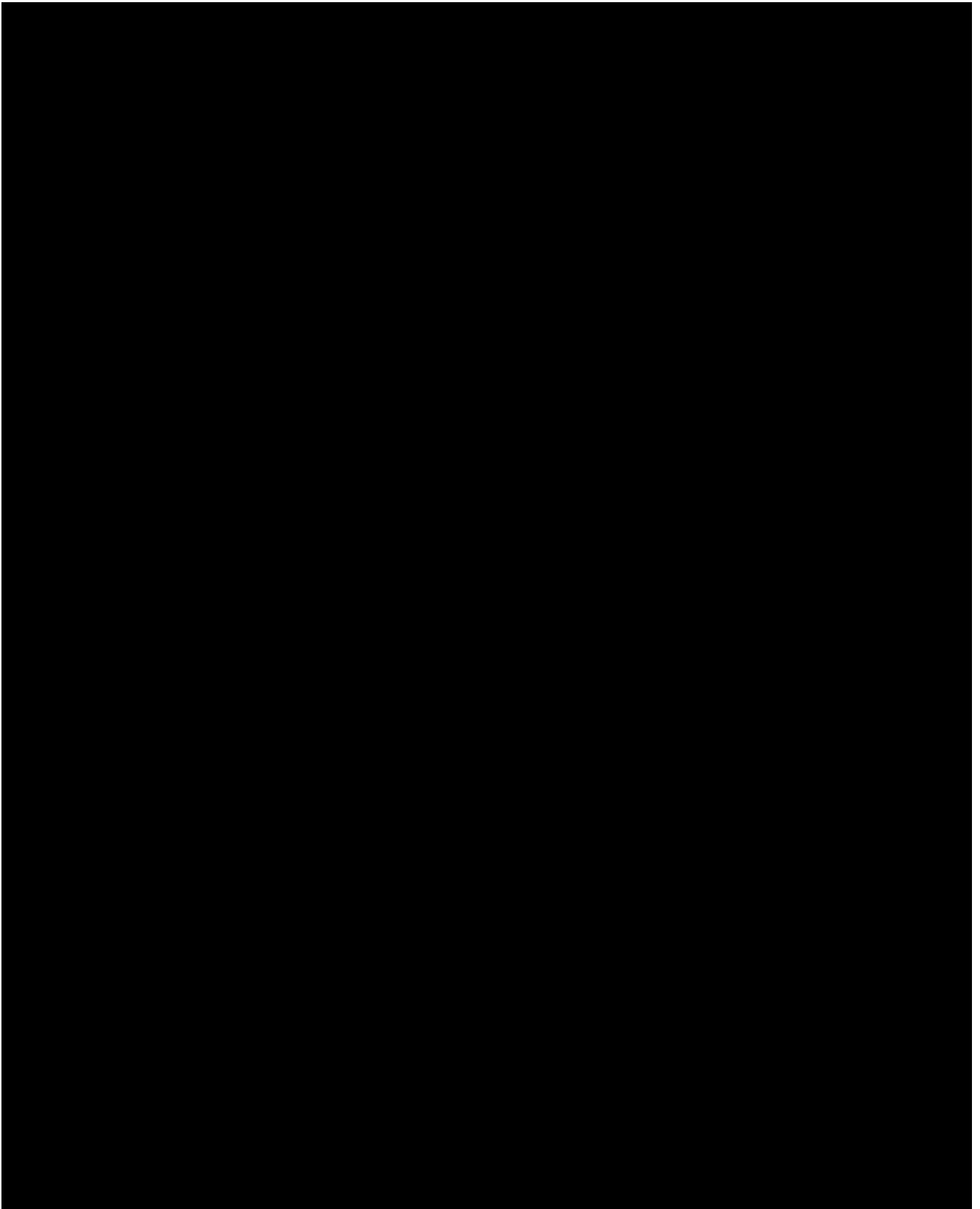
[REDACTED]

[REDACTED]

PART F - COMPONENTS OF PRELIMINARIES FEE

[REDACTED]

[REDACTED]



PART G - COMPONENTS OF REIMBURSABLE COSTS

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 3 - Form of Confidentiality Undertaking

(Clauses 7.7(a)(iii) and 18.11(c)(i))

To: []

We the
engaged Consultant/Supplier/Contractor/Subcontractor body, undertake to treat as confidential
all information received/generated from Transport for NSW (ABN 18 804 239 602)
(Principal) in respect of work performed by the Principal.

The Consultant/Supplier/Contractor/Subcontractor hereby undertakes:

- (a) To disclose information to its employees only on a need-to-know basis;
- (b) Not to disclose information to any other person without first obtaining the written consent of the Principal;
- (c) To ensure that its employees to whom information is disclosed will comply with (a) and (b) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant/Supplier/Contractor/Subcontractor, its employees or agents) or which was already known to the Consultant/Supplier/Contractor/Subcontractor.

Any breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant/Supplier/Contractor/Subcontractor and at the direction of the Principal the Consultant/Supplier/Contractor/Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant/Supplier/Contractor/Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant/Supplier/Contractor/Subcontractor also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issues arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated:

SIGNED for and on behalf of:

.....
(Print Company Name)

By:
(Print Name)

.....
(Signature)

in the presence of:

.....
(Print Name)

.....
(Signature)

Schedule 4 - Action in Complying with Planning Approval and Third Party Agreements

(Clauses 2.2(d) and 2.11(a))

For SOW 1, as specified in this schedule. For a new SOW, as specified for the relevant New SOW Particulars.

Part A Planning Approval

The Contractor must fulfil all the conditions and requirements of the Planning Approval, except to the extent that the following tables allocate responsibilities to the Principal. Nothing specified in this table as being a responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the Contract. The Contractor may apply to have any part of any of the Approvals listed below modified. The Contractor acknowledges and agrees that it is solely responsible for any such modification.

Conditions of Approval

Planning Approval Condition Number	Extent of Principal's responsibility for the Planning Approval condition specified
Exempt Development Checklist under SEPP (Infrastructure) 2007: Digital Train Rail System (DTRS) Communications and Equipment Room Fitout (Erskineville, Homebush & Central)	None

Part B Additional Environmental Requirements

The Contractor must in addition to fulfilling the requirements of the Planning Approval, carry out the following in relation to the Planning Approval:

Planning Approval Condition Number	Further obligations of Contractor
Not applicable	Not applicable

Part C Third Party Agreements

Agreement and Clause No	Extent of Principal's responsibility for clause specified
Global Safety Interface Agreement between Transport for NSW and Sydney Trains dated 28 June 2013	The Contractor must comply with all the Principal's obligations under the agreement that are relevant to the Contractor's Activities or the Works.

Schedule 5 - Consultant Deed of Covenant

(Clause 7.7(a)(iv))

This deed poll is made the _____ **day of** _____ **20**

To: **Transport for NSW (ABN 18 804 239 602)** of 7 Harvest Street, Macquarie Park NSW 2113 (the "**Principal**")

By: [] ("Consultant")

Recitals

- A. The Principal has engaged [] ("**Contractor**") to carry out certain works for the Principal by a contract dated [] ("**Contract**").
- B. The Contractor has engaged the Consultant by agreement dated [] ("**Subcontract**") to carry out the professional services to be performed under the Subcontract ("**Professional Services**") for the purposes of the performance of the Contractor's obligations under the Contract as they relate those design services.
- C. Under the Contract, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal.

Operative

1. Duty of Care

- (a) The Consultant:
- (i) warrants to the Principal that:
 - A. in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in and expert in the provision of the type of professional services required by the Principal;
 - B. the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the Works Brief, which is an annexure to the Contract; and
 - C. the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;
 - (ii) acknowledges that:
 - A. in performing the Professional Services it will owe a duty of care to the Principal; and
 - B. it is aware that the Principal will be relying upon the skill and judgment of the Consultant in performing the Professional Services and the warranties given by the Consultant in this deed poll; and
 - (iii) must act in good faith and in the best interests of the Principal and promptly advise the Principal about any matter in which the Consultant has been instructed by the Contractor to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including without limitation:

- A. where the Contractor's instructions in relation to design are not consistent with the Contract or may result in the Works not being fit for their intended purpose; or
 - B. where the Contractor's instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Contract have not been satisfied.
- (b) The Consultant must:
 - (i) fully cooperate with each other consultant, contractor, artist, tradesperson or other person engaged by the Principal to do work other than the Contractor and its subcontractors ("**Other Contractor**");
 - (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
 - (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
 - (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
 - (v) ensure title to and intellectual property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Contract in the Principal;
 - (vi) obtain an assignment to the Principal from any third party who owns any intellectual property right in the Professional Services;
 - (vii) if any intellectual property rights in or in relation to documents, designs and computer programs created for the purposes of the Contract is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
 - (viii) ensure that the intellectual property created for the purposes of the Contract is not used, adapted or reproduced other than for the purposes of the Contract without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (c) The Consultant must indemnify the Principal from and against:
 - (i) any liability to or claim by any other person; and
 - (ii) all claims against, and costs, expenses, losses and damages, suffered or incurred by the Principal arising out of, or in any way in connection with:
 - (iii) the Consultant's breach of a term of, or warranty under, this deed poll provided that the Consultant's liability to indemnify the Principal under this clause 1(c)(iii) will be reduced proportionally to the extent that an act or omission of the Principal, an Other Contractor or an agent of the Principal may have contributed to the liability, claim costs, losses, damages, fines or penalties; or

- (iv) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.
- (d) Subject to clause 1(e) of this deed poll, the liability of the Consultant to the Principal, whether arising under or in connection with this Contract or the performance or non-performance thereof or anything incidental thereto, and whether by way of indemnity, by statute (to the extent that it is possible to exclude such liability) or on any basis in law or equity, is limited to the amount that is equal to the greater of:
 - (i) ***\$[insert total amount paid or payable by the Principal to the Consultant in respect of the Professional Services under the Subcontract];*** and
 - (ii) \$20 million.
- (e) Clause 1(d) of this deed poll does not apply to limit or restrict in any way:
 - (i) any liability to the extent to which the Consultant is (or will be) entitled to be indemnified pursuant to an insurance policy in respect of that liability;
 - (ii) any liability for which, but for a failure by the Consultant to:
 - A. effect and maintain any insurance policy required under the Contract; or
 - B. comply with its obligations under the Subcontract or under an insurance policy,

the Contractor would have received payment or been indemnified under an insurance policy effected in accordance with the Contract or the Subcontract (as the case may be);
 - (iii) the Consultant's liability to indemnify the Principal under clause 1(c)(iv) of this deed poll;
 - (iv) the Consultant's liability for:
 - A. any loss of or damage to property of the Principal;
 - B. any liability to or claims by a third party in respect of loss of or damage to property, the loss of use of or access to property, or injury to or death of persons; or
 - C. without limiting or otherwise affecting paragraph (A), any loss or damage to existing property in or upon which the Professional Services are being carried out;
 - (v) the Consultant's liability for costs, losses and damage caused by the malicious or fraudulent acts of employees of the Consultant or its subcontractors or agents;
 - (vi) the Consultant's liability where it abandons the performance of its obligations under the Subcontract;
 - (vii) liability out of which by law the Consultant cannot contract; or
 - (viii) liability of the Consultant under any other agreement with the Principal.

2. Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address or sent to the email address shown below (or to a party's new address or email address which that party notifies to the others):
 - (i) to the Principal: c/o **[insert details]**
Email: **[insert details]**
 - (ii) to the Consultant: **[Insert details]**
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by email will be taken to have been received on at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000 (NSW)* were to apply in respect of the email.
- (d) If the Consultant is a foreign company (as defined in the *Corporations Act*), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

3. Miscellaneous

- (a) This deed poll will be construed in accordance with the law of the State of New South Wales and the Consultant irrevocably submits to the jurisdiction of the Courts of that State.
- (b) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Schedule

[INSERT DESCRIPTION OF PROFESSIONAL SERVICES] as more particularly described in the Subcontract.

Executed as a deed poll.

Signed Sealed and Delivered)
by the Consultant)
[] by or in the presence of:) (Signature)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

Schedule 6 - Authority Approvals to be obtained by the Principal

[REDACTED]

[REDACTED]

Schedule 7 - Form of Unconditional Undertaking

(Clause 2.6)

This deed poll ("Undertaking") made the day of 20

In favour of: **Transport for NSW (ABN 18 804 239 602)** of 7 Harvest Street, Macquarie Park NSW 2113 ("**Principal**")

Given by: [] ("**Institution**")

Recitals:

- A. By a contract dated [] ("**Contract**") between [] ("**Contractor**") and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Contract).
- B. Under the provisions of the Contract, the Contractor is required to provide this Undertaking to the Principal.

Operative:

1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$).
2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required or until this Undertaking is returned to the Institution.
3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Contract or the Contractor's Activities or acts or things to be executed, performed and done under the Contract or by reason of any breach or breaches of the Contract by the Contractor or the Principal.
4. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)
by [] being signed)
sealed and delivered by its duly constituted) (Signature)
Attorney [] under)
Power of Attorney No. in the)
presence of:)

.....
(Signature of Witness)

.....
(Name of Witness in Full)

Schedule 8 - Self-Performed Reimbursable Work

(Clauses 1.1 and 7.14)

[Redacted]

[Redacted]

Schedule 9 - Information Documents and Materials

[REDACTED]

[REDACTED]

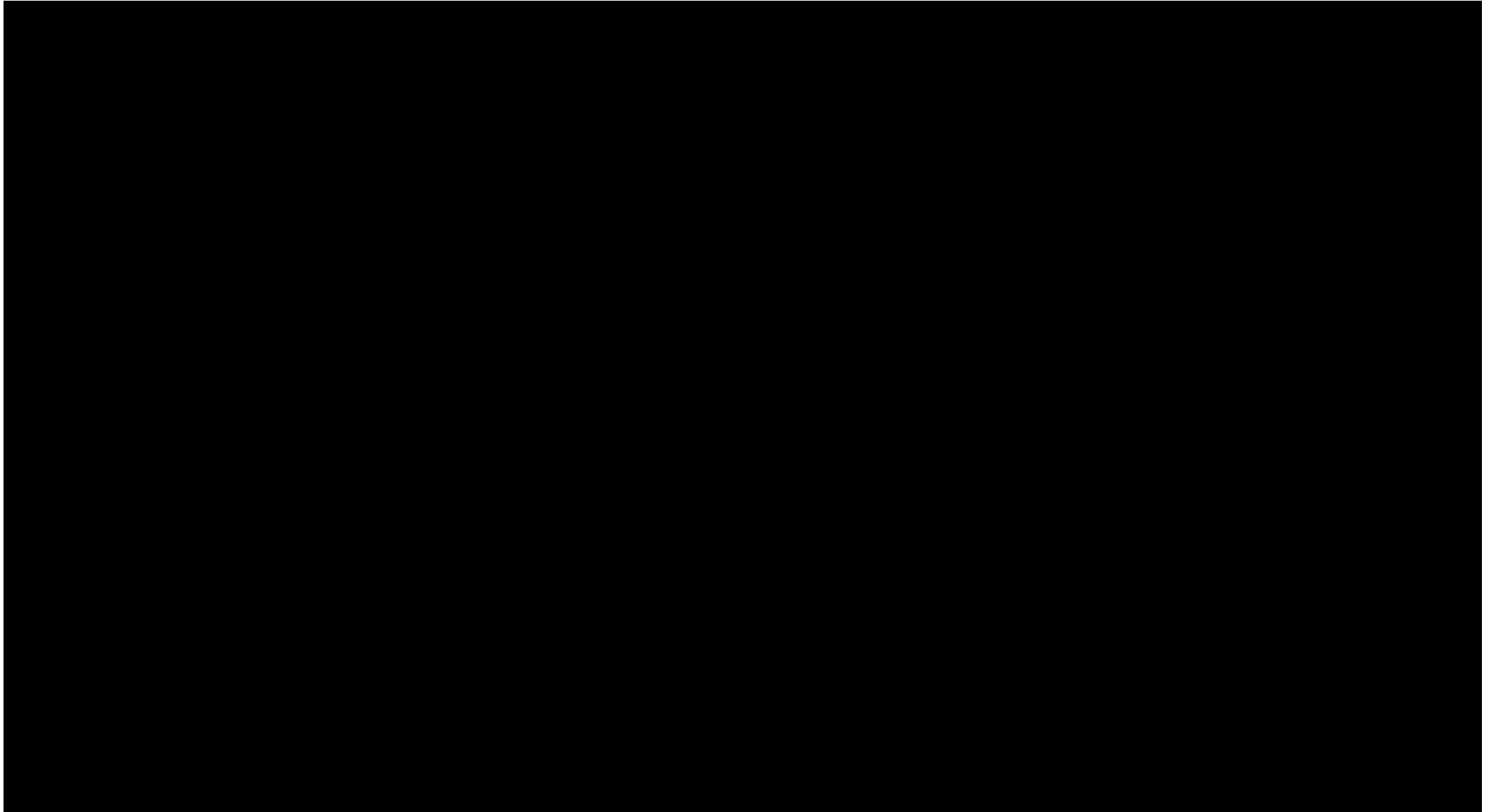
[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Schedule 10 - Form of Warranty

(Clause 7.9)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Age Group	Percentage
18-29	90%
30-49	88%
50-69	85%
70+	82%

[REDACTED]



██████████



[REDACTED]

Schedule 11 - Form of Statutory Declaration

(Clause 11.6(c)(i))

Statutory Declaration	<i>Oaths Act (NSW) Ninth Schedule</i>								
<p>I,</p> <p>of ■</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>.....</p> <p>("the Contractor")</p> <p>in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The Contractor has a contract with the [.....]:</p> <p>.....</p> <p>("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p style="margin-left: 20px;">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</p> <p style="margin-left: 20px;">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,</p> <p style="margin-left: 20px;">with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table style="width: 100%; border: none;"> <tr> <td style="width: 50%;">Employee:</td> <td style="width: 50%;">Amount unpaid or not accrued:</td> </tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> <tr><td>.....</td><td>.....</td></tr> </table> <p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>.....</p> <p>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.</p> <p>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.</p>	Employee:	Amount unpaid or not accrued:	
Employee:	Amount unpaid or not accrued:								
.....								
.....								
.....								

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 work under the Contract, and
 - (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(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 respect of this claim

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:

.....

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

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Pay-Roll Tax Act 1971 and Industrial Relations Act 1996) which is a written statement:

- (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
- (b) under section 18(6) of schedule 2 of part 5 of the Pay-Roll 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 Pay-Roll 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.

<p><i>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.</i></p> <p>Declared at on (place) (day) (month) (year)</p> <p>..... (Signature of Declarant)</p> <p>Before me:</p> <p>..... (Signature of person before whom the declaration is made)</p> <p>..... (Name of the person before whom the declaration is made)</p> <p>..... (Title* of the person before whom the declaration is made)</p>	
<p>And as a witness, I certify the following matters concerning the person who made this declaration (declarant):</p> <p><i>[*strike out the text that does not apply]</i></p> <p>1. *I saw the face of the declarant. OR *I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.</p> <p>2. *I have known the declarant for at least 12 months. OR *I confirmed the declarant's identity using the following identification document:</p> <p>..... Identification document relied on (may be original or certified copy)</p> <p>..... Signature of person before whom the declaration is made</p> <p>Before me:</p> <p>..... (Signature of person before whom the declaration is made)</p> <p>..... (Name of the person before whom the declaration is made)</p> <p>..... (Title* of the person before whom the declaration is made)</p> <p>* The declaration must be made before one of the following persons:</p> <ul style="list-style-type: none"> - where the declaration is sworn within the State of New South Wales: <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) a notary public; or (ii) any person having authority to administer an oath in that place. 	

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

ABN: *[ABN]*

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

ABN: *[ABN]*

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

OR

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

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

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

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

Signature:

Date:

Full name:

Position/Title:

Attachment

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

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

Annexure B

SUBCONTRACTOR'S STATEMENT

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

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

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

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

Subcontractor: ABN:

.....

(Business name)

of

(Address of subcontractor)

has entered into a contract with

ABN:.....

(Business name of principal contractor)

(Not

e 2)

Contract number/identifier (Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)

subject of the payment claim dated:/...../..... (Note 5)

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

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../.....(Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its

subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature Full
name.....

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

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

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor. A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 12 - Property Owner's Certificate

(Clause 3.4(c)(ii))

This deed poll is made the _____ day of _____ 20**To:** **Transport for NSW (ABN 18 804 239 602)** of 7 Harvest Street, Macquarie Park NSW 2113 ("**Principal**")**By:** [_____].**Property Address:**

1. I/We confirm that the following works has been carried out and completed on my/our property to my/our satisfaction:

[Insert description of works on property and property]

2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.
4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.

Executed as a deed poll.**Signed sealed and delivered**by _____ in the presence
of: __________
Signature_____
Signature of Witness_____
Name of Witness in full

Schedule 13 - Form of Subcontractor Deed

(Clause 7.7(a)(v))

THIS DEED POLL is made on, 20..... by

..... ACN..... of

..... (the "**Subcontractor**").

RECITALS:

- A. **Transport for NSW (ABN 18 804 239 602)** of 7 Harvest Street, Macquarie Park NSW 2113 (the "**Principal**") has entered into a contract with [] ("**Contractor**") for the construction of [] ("**Works**").
- B. The Subcontractor has an agreement (the "**Subcontract**") with the Contractor for the execution and completion of the [] (the "**Subcontract Works**") for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
3. The Subcontractor:
 - (a) must if required by a written notice by the Principal to sign a deed in the form of the attached Deed of Novation (Attachment 1) with such substitute contractor as the Principal may nominate; and
 - (b) for this purpose irrevocably appoints the Principal to be its attorney with full power and authority to complete the particulars in and sign the attached Deed of Novation.
4. This Deed Poll is governed by the laws of the State of New South Wales.
5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
6. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has already paid money to or performed work for the Contractor in respect of that breach.

PERSONS NAMED IN THE SCHEDULE TO THE DEED POLL

Transport for NSW (ABN 18 804 239 602)

Transport Asset Holding Entity of New South Wales ABN 59 325 778 353, constituted by Part 2 Division 1 of the *Transport Administration Act 1988* (NSW)

Sydney Trains, ABN 38 284 779 682, constituted by Part 3B of the Transport Administration Act 1988 (NSW)

EXECUTED AS A DEED POLL.

Executed by [insert name] (ABN [insert ABN]) by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Attachment 1 (to Schedule 13)

THIS DEED OF NOVATION is made on [] 20[] between the following parties:

1. [] ("**Substitute Contractor**")
2. [] ("**Original Contractor**")
3. [] ("**Subcontractor**").

RECITALS:

- A. By deed dated [] (the "**Deed**") between:
- (i) **Transport for NSW (ABN 18 804 239 602)** of 7 Harvest Street, Macquarie Park NSW 2113 (the "**Principal**"); and
 - (ii) Original Contractor,
- the Principal engaged the Original Contractor to undertake the Works (as defined in the Deed).
- B. The Original Contractor has entered into an agreement ("**Subcontract**") with the Subcontractor for the execution and completion of the [] ("**Subcontract Works**") as part of the Works.
- C. The Principal has terminated the Deed and has engaged Substitute Contractor to complete the Works.
- D. The Principal and Substitute Contractor wish to effect a novation of the Subcontract.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of Original Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if Substitute Contractor was originally named in the Subcontract in place of Original Contractor.
3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED by the parties as a deed:

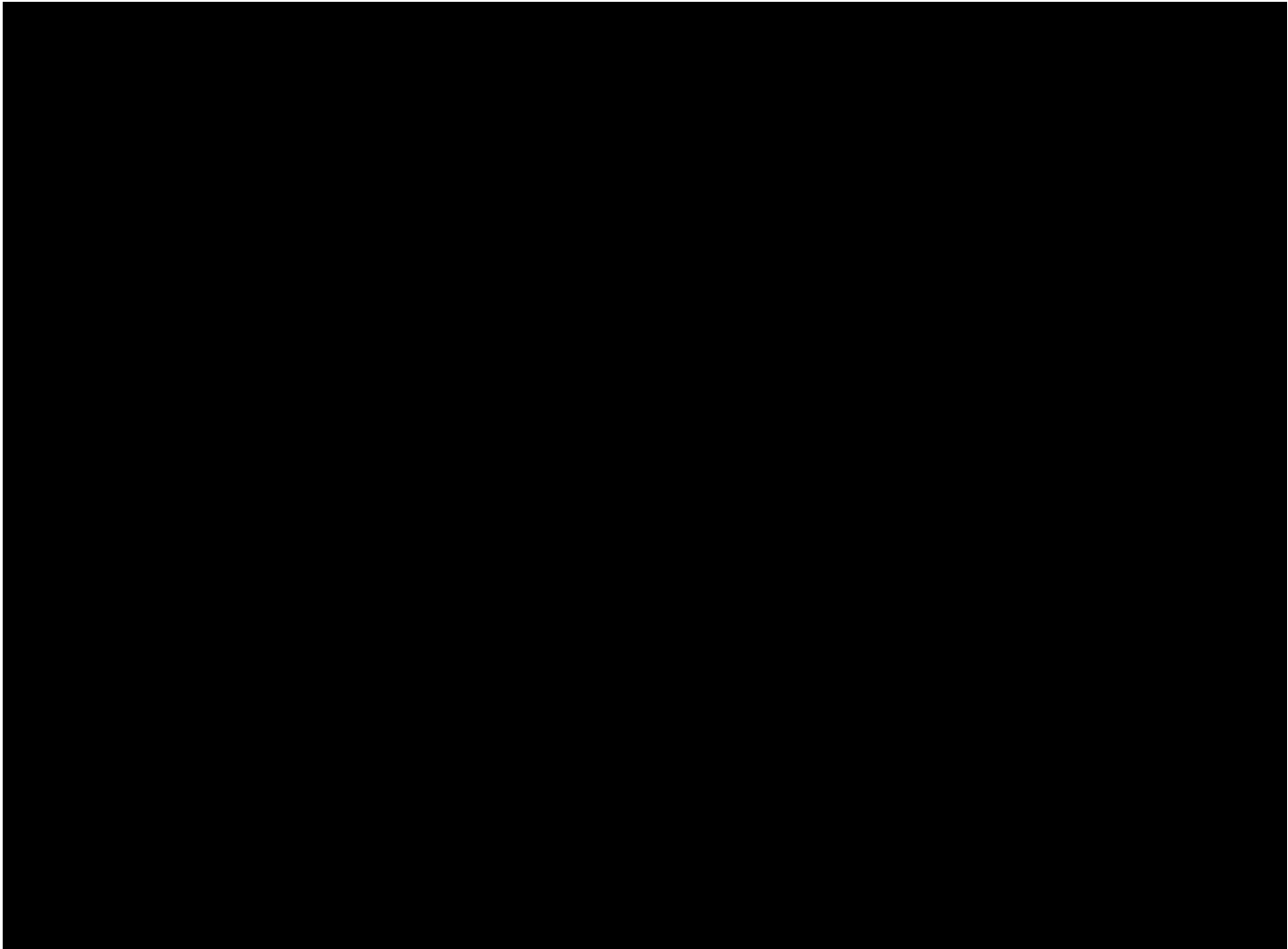
[Insert appropriate execution clauses]

Schedule 14 - Options

[REDACTED]

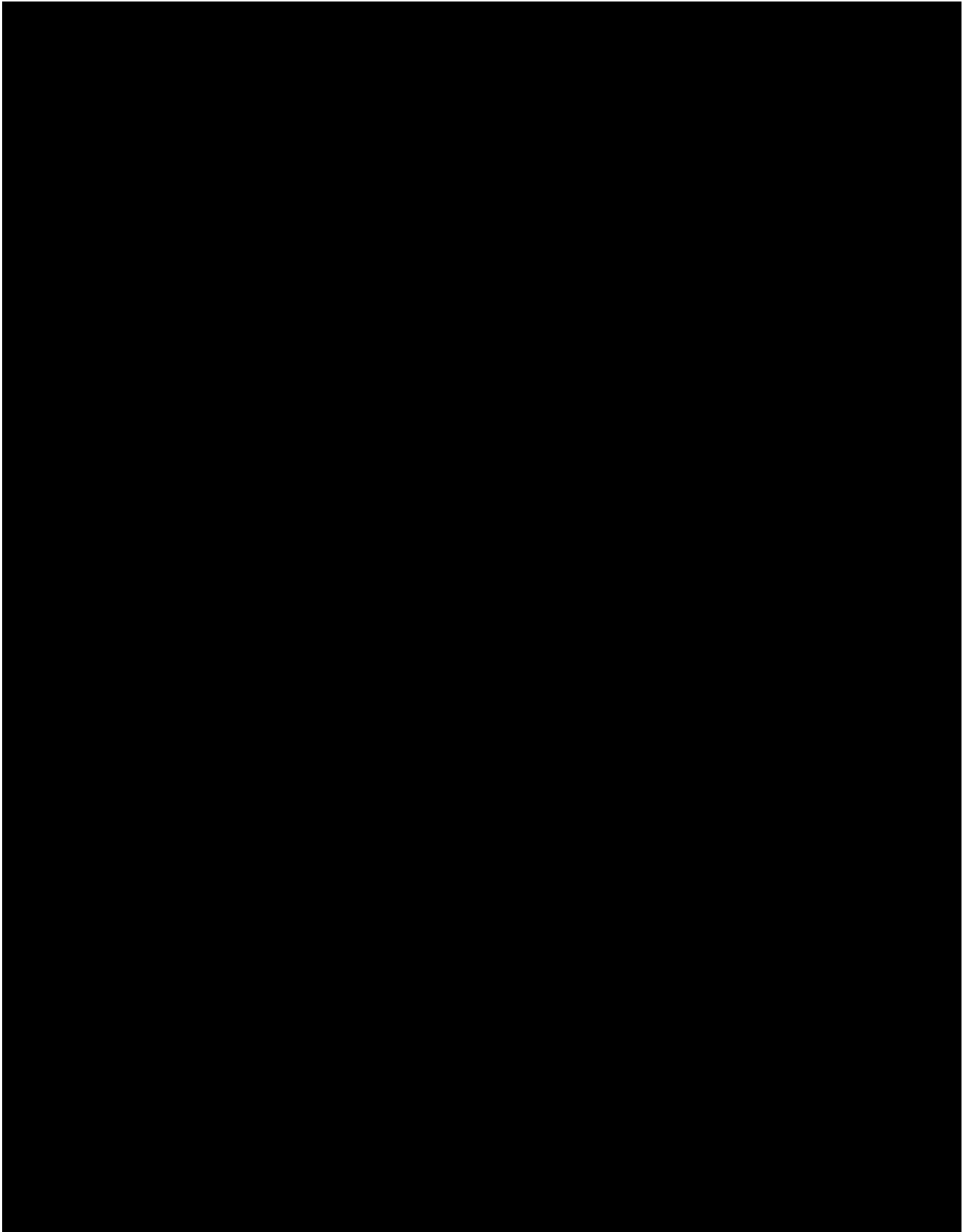
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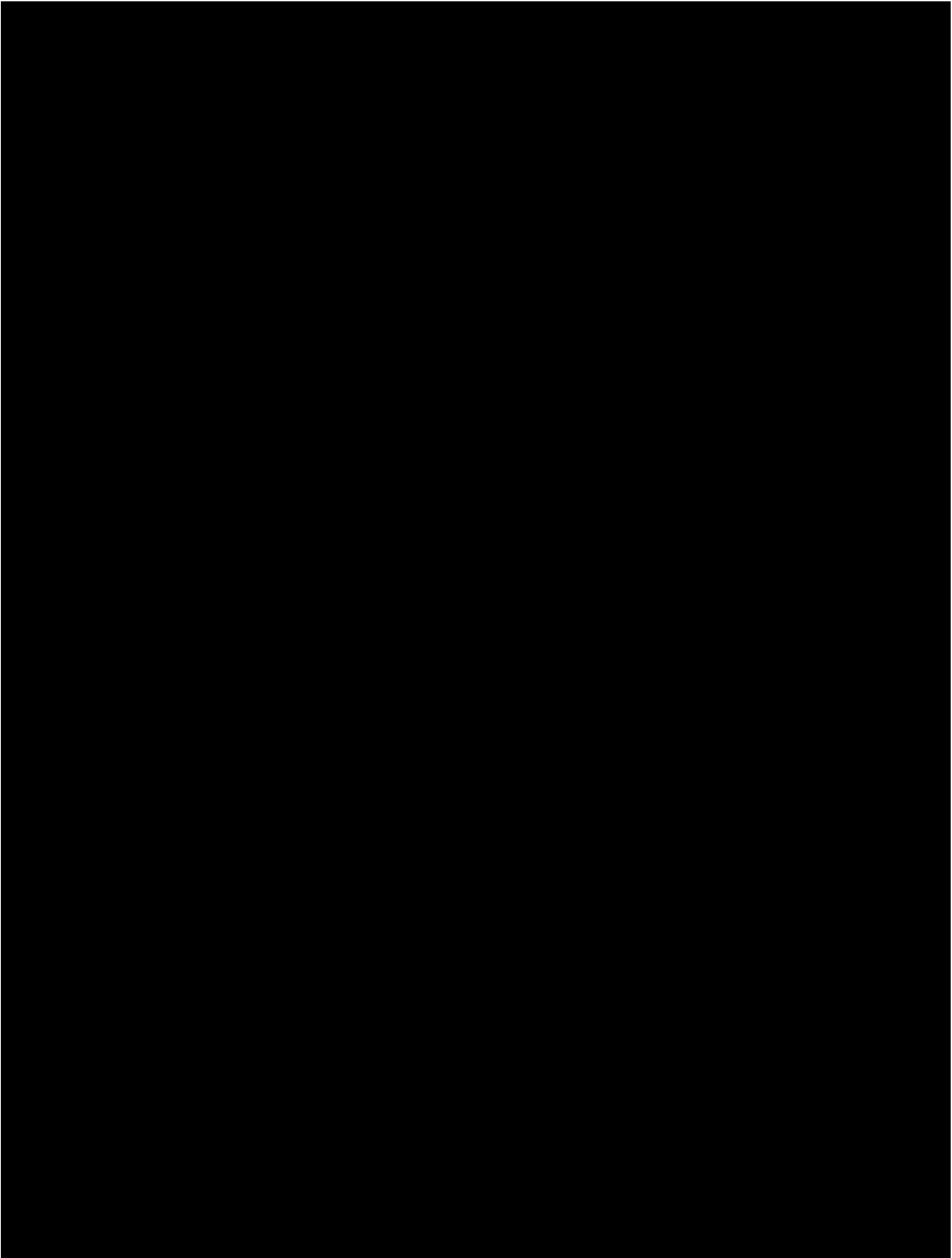
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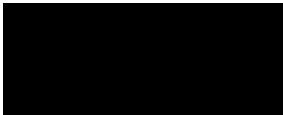


Annexure A to Schedule 14







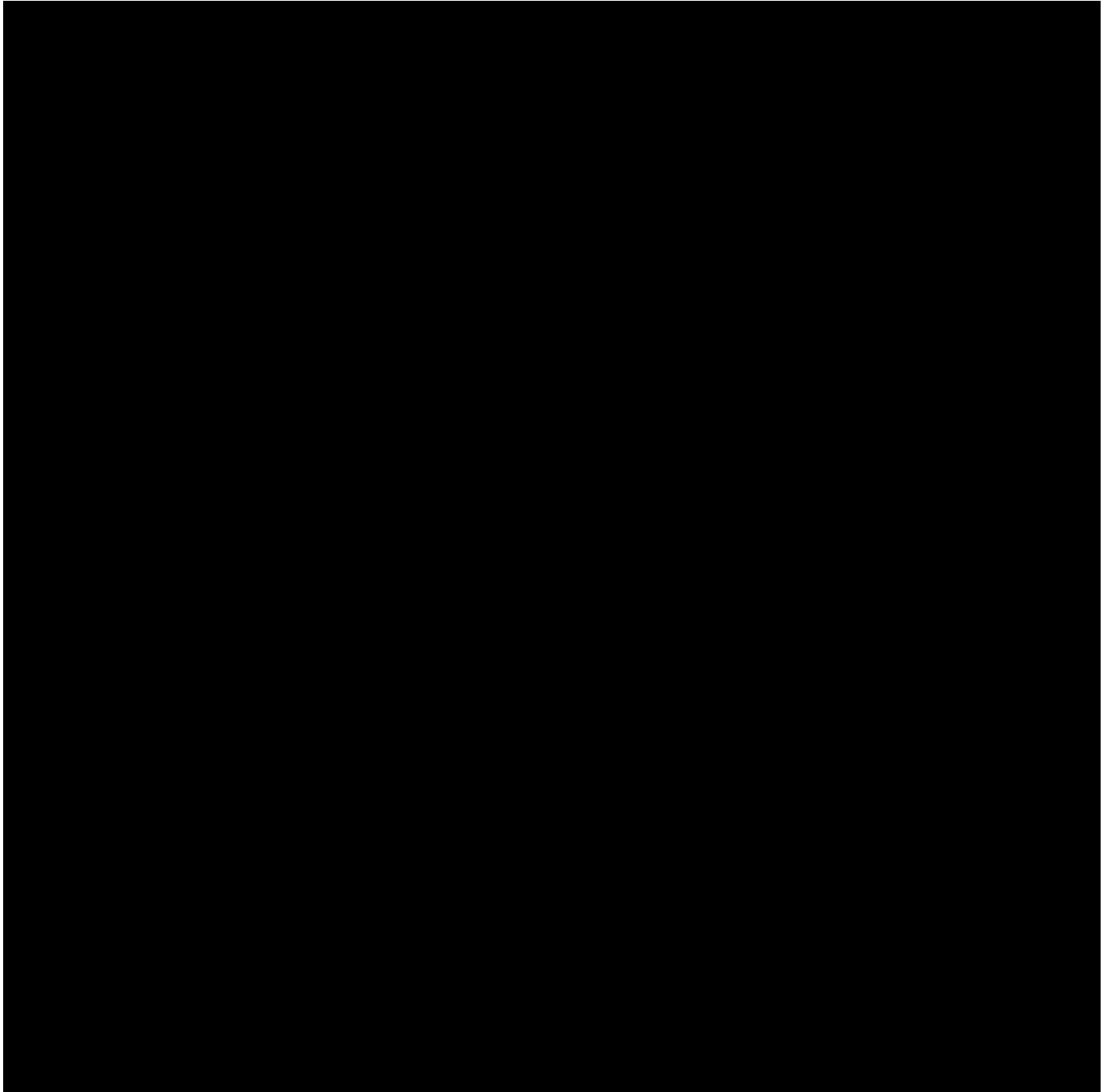


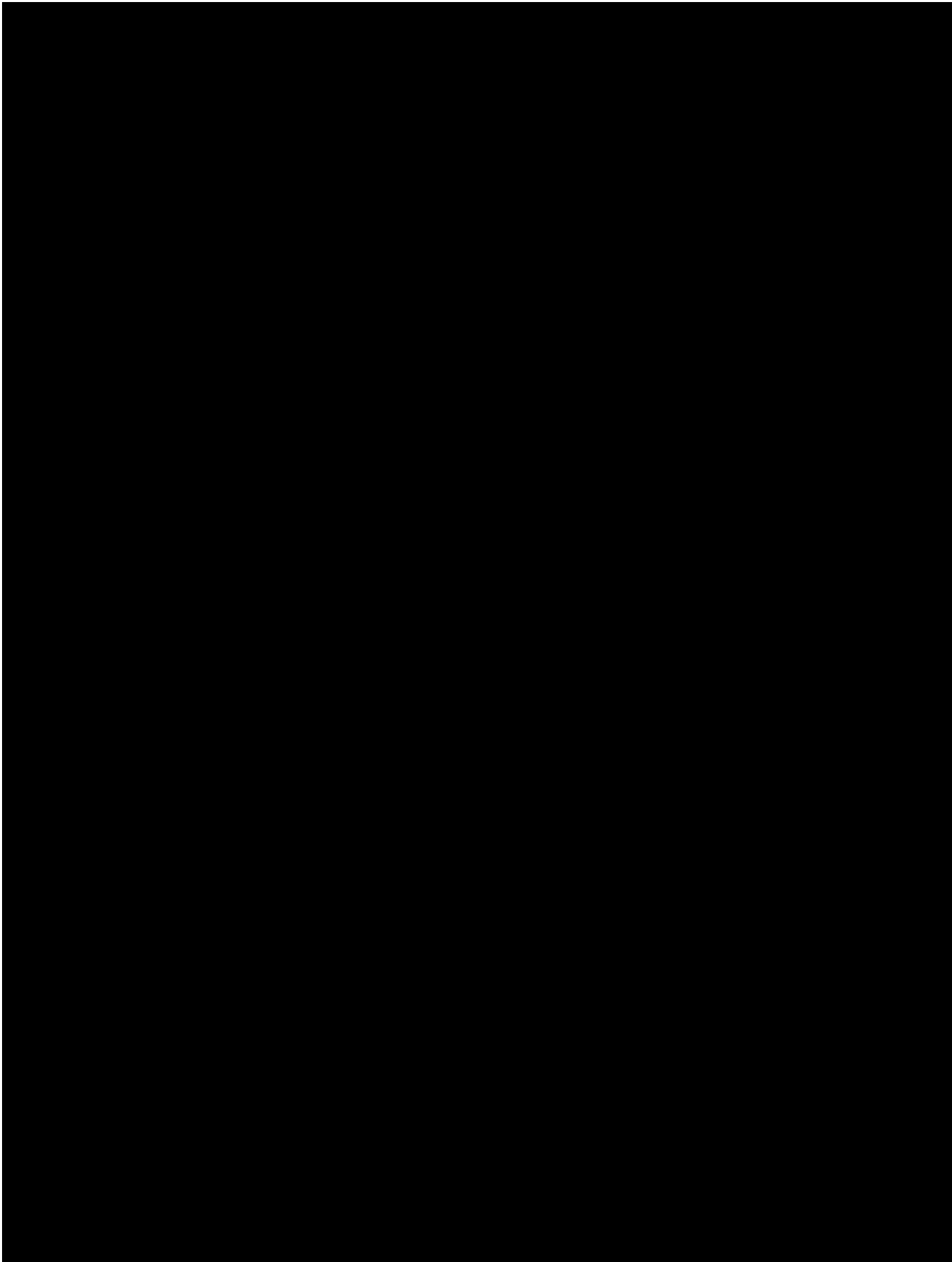
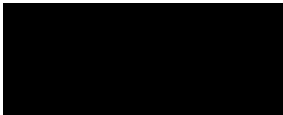
- I [REDACTED]
 - [REDACTED]
 - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

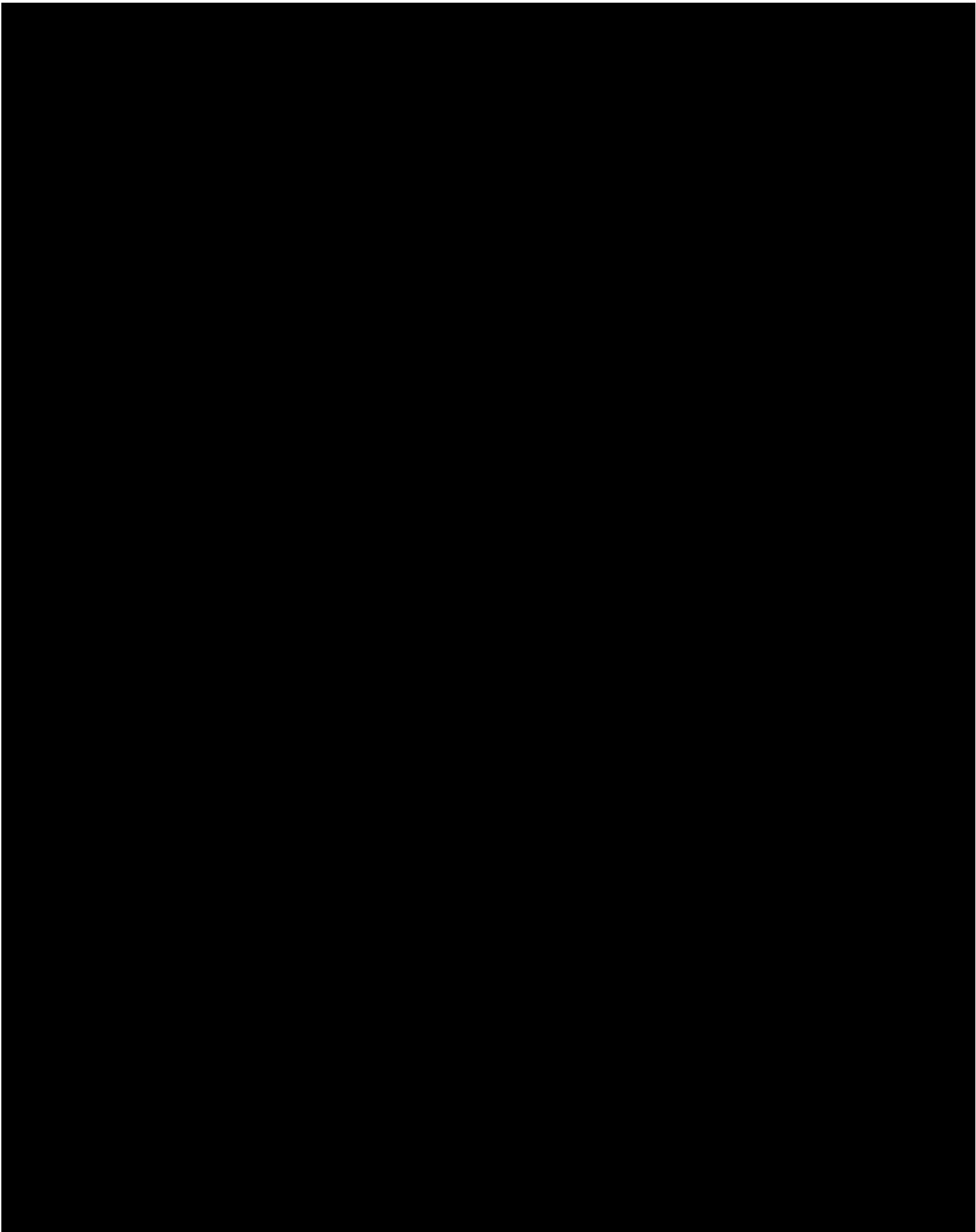
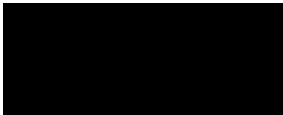


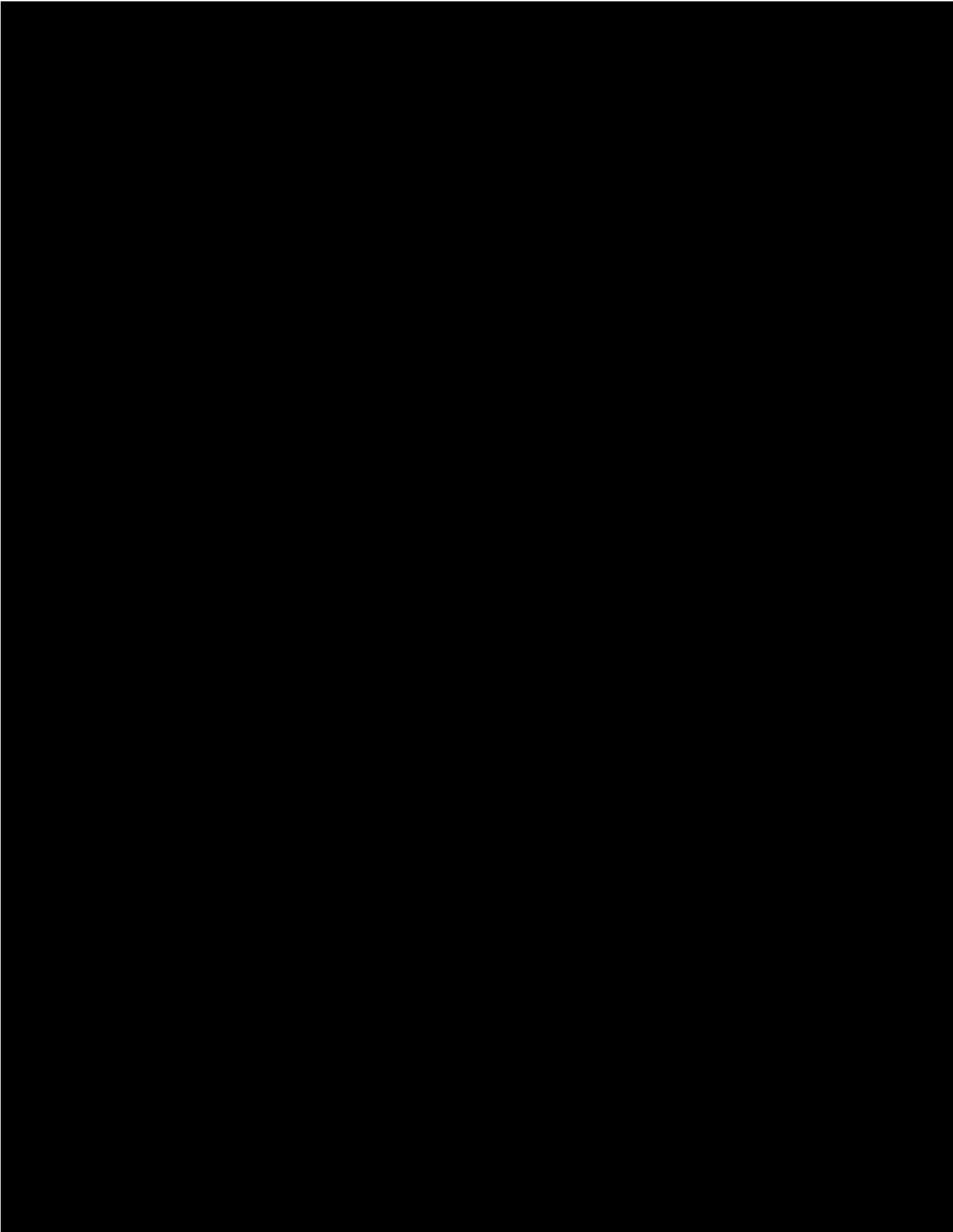
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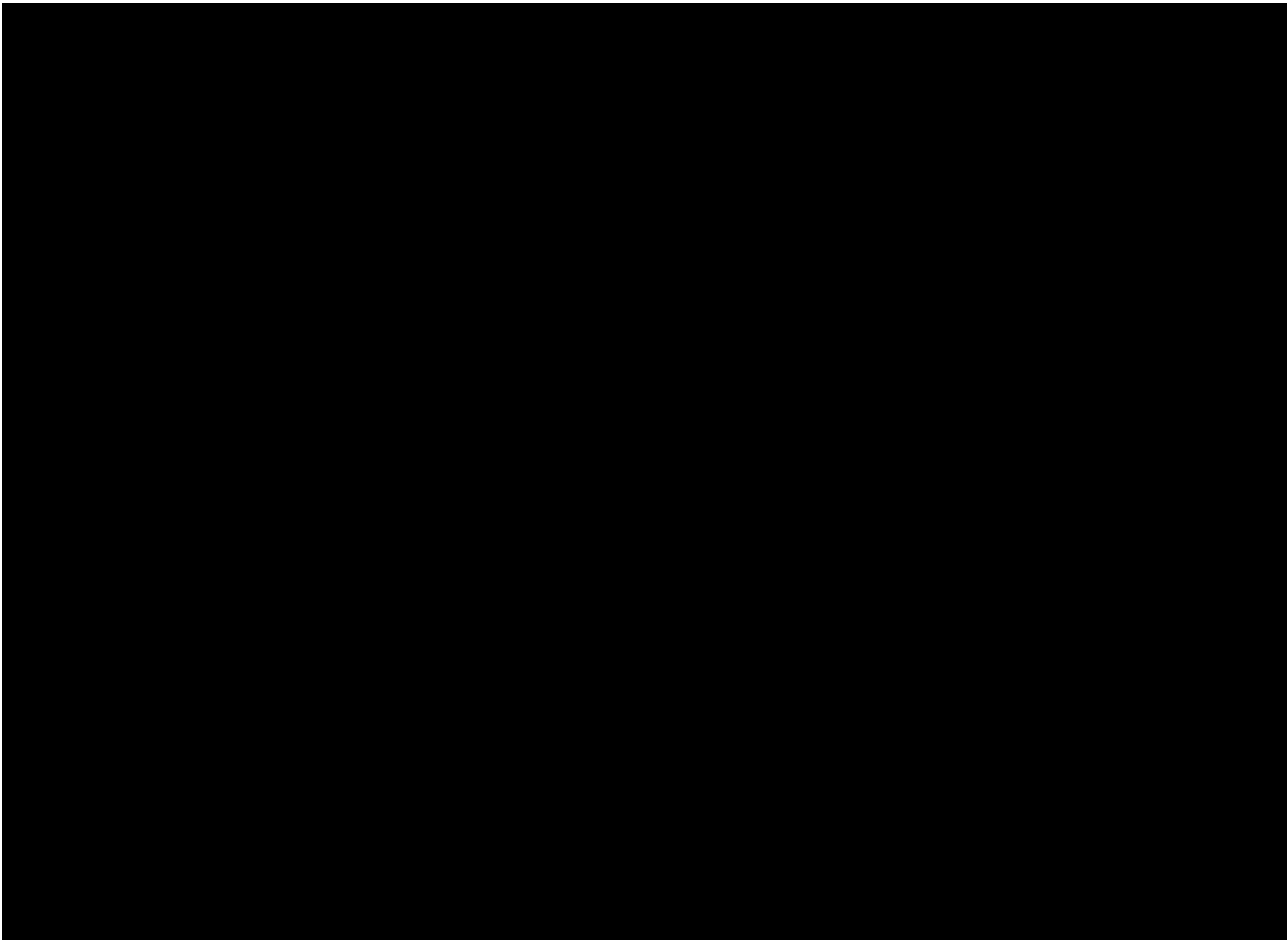


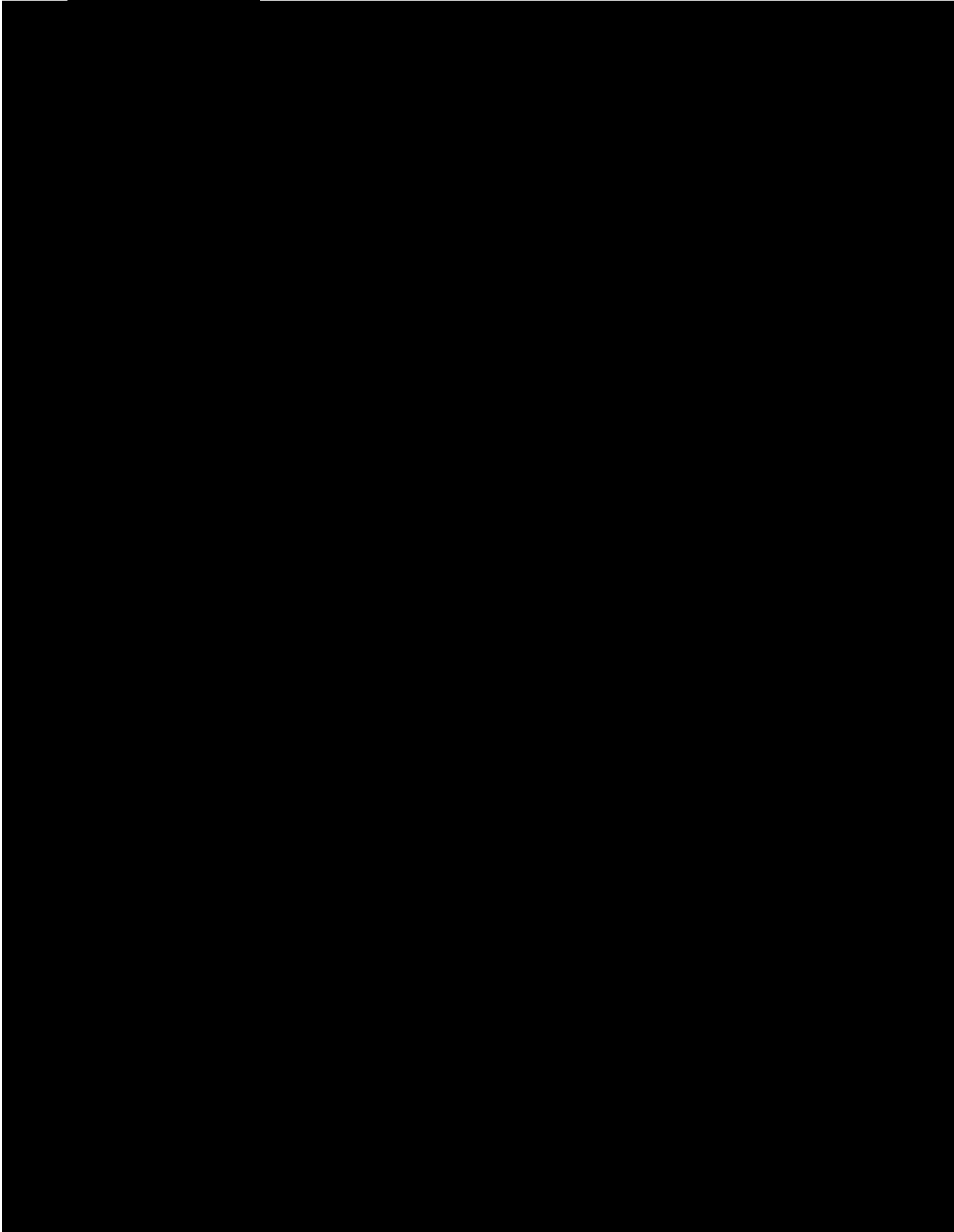


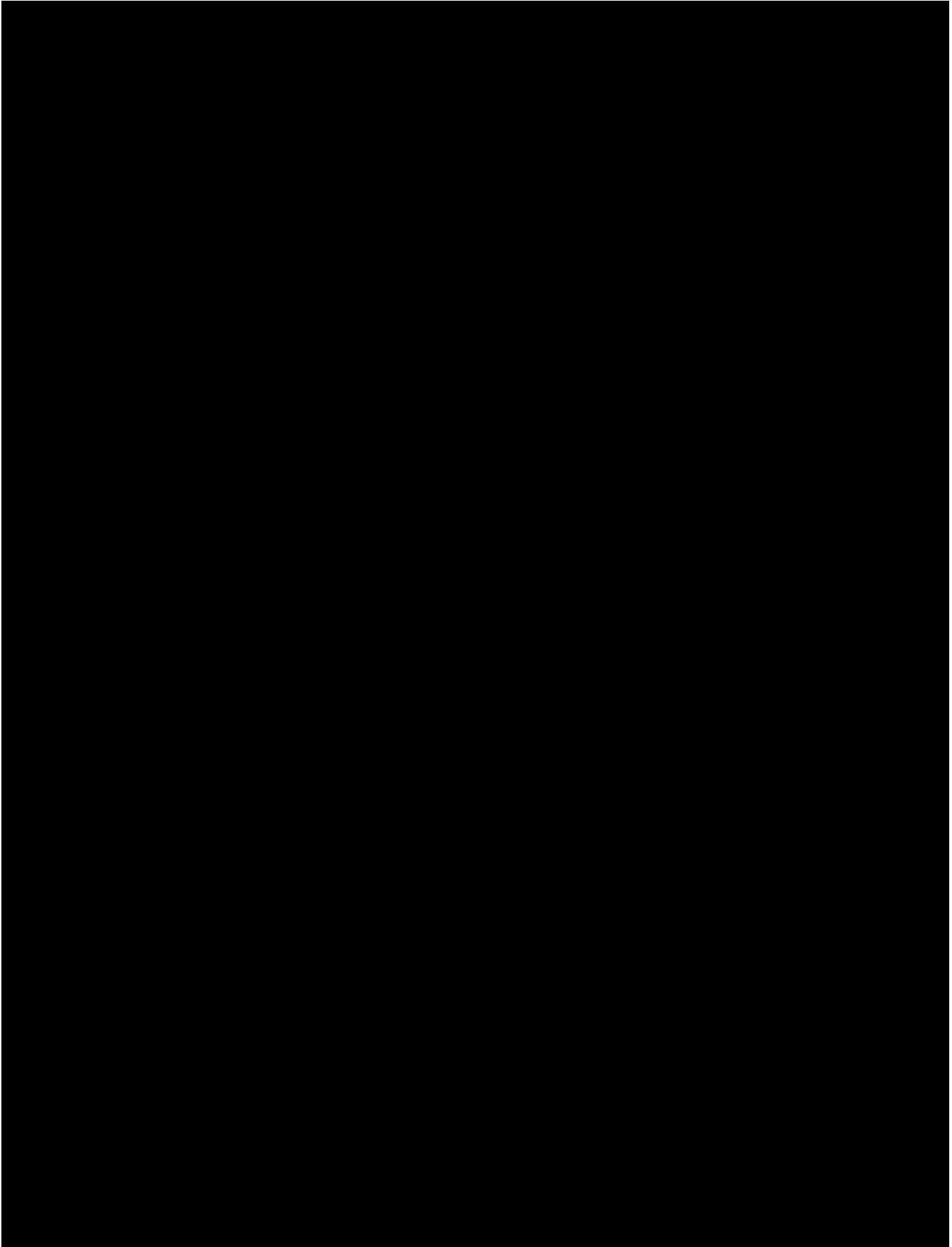
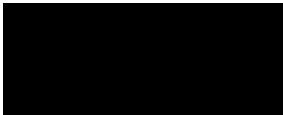


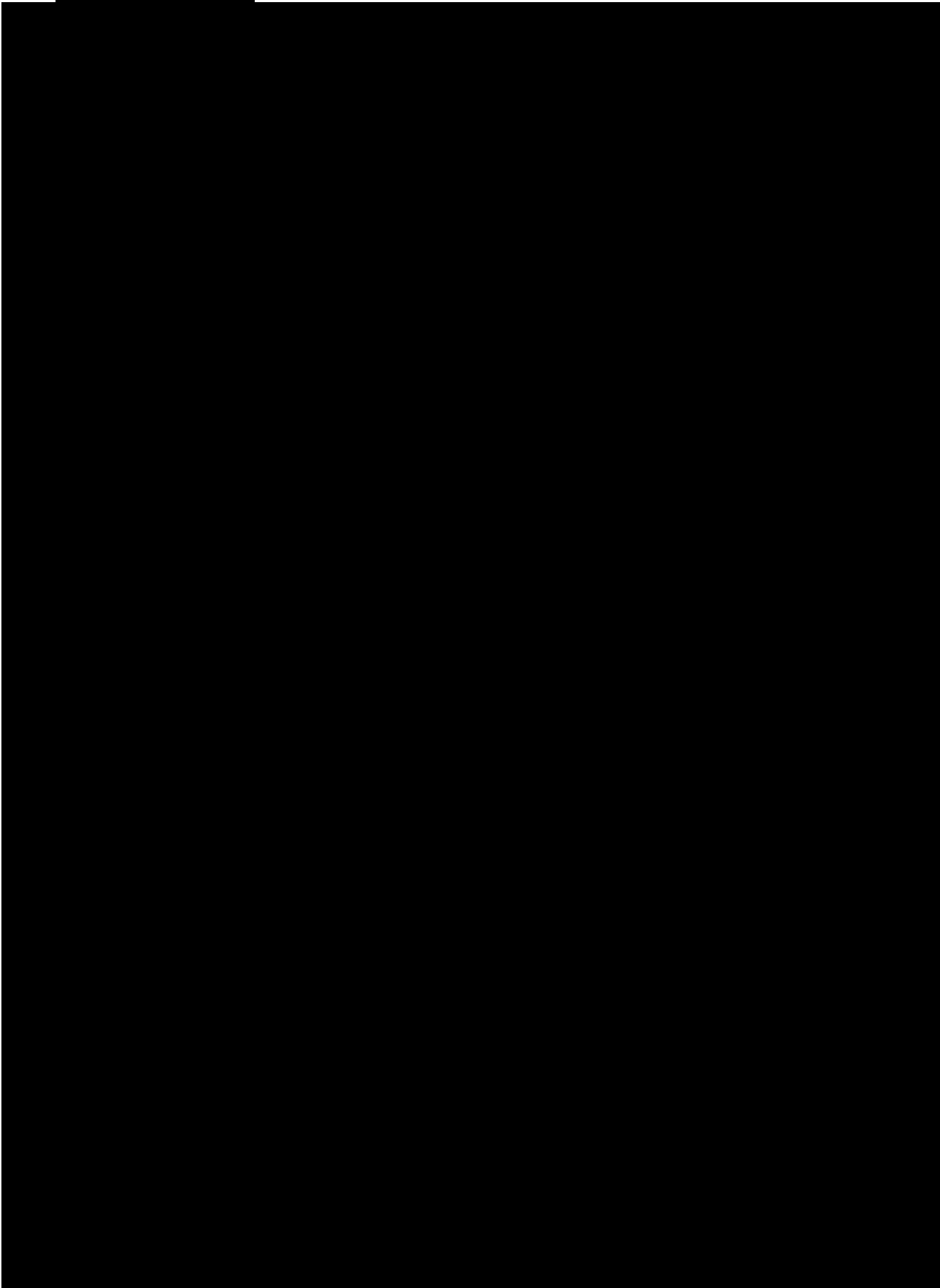


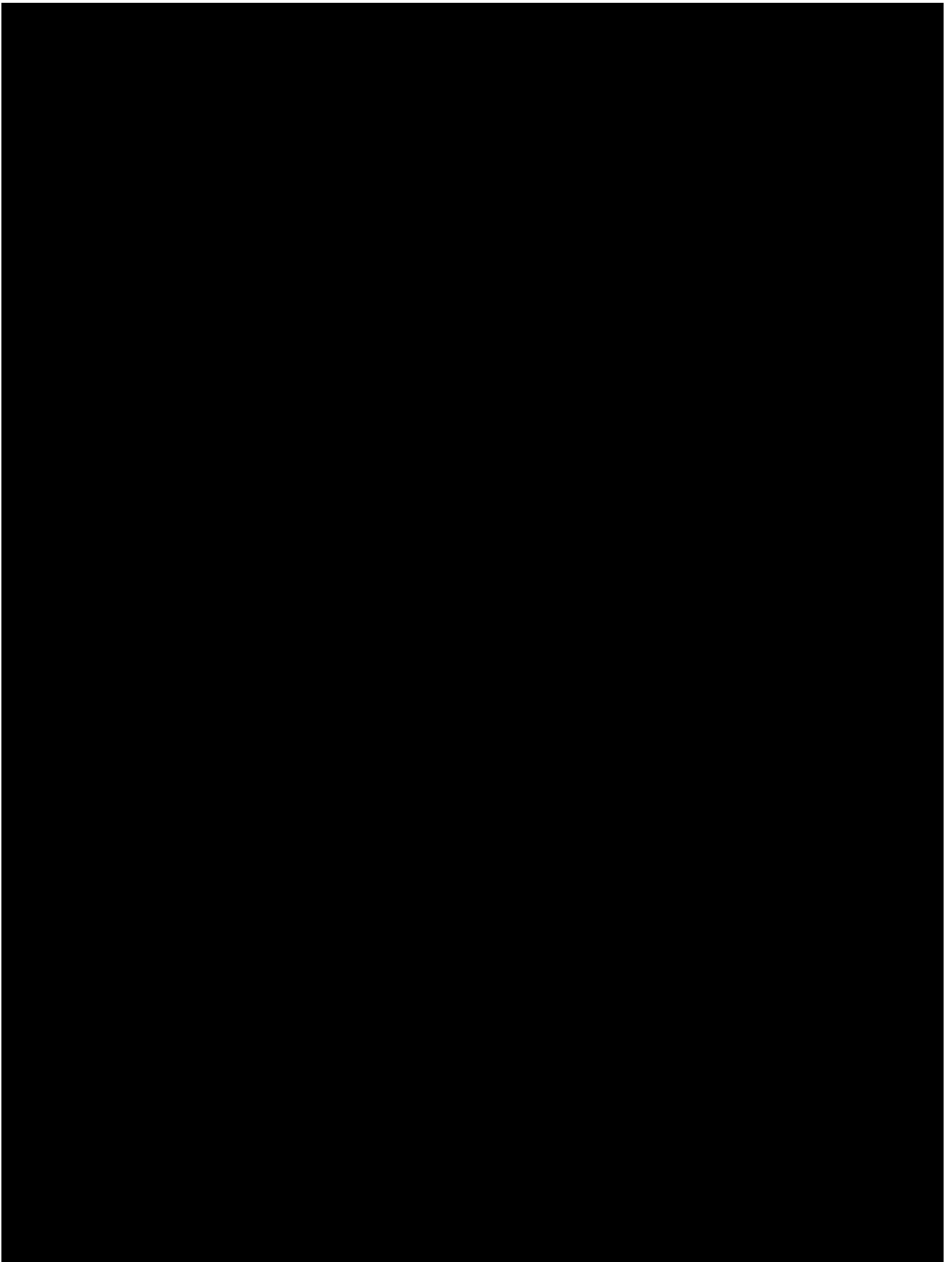
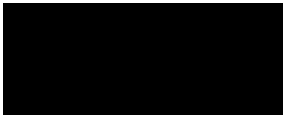


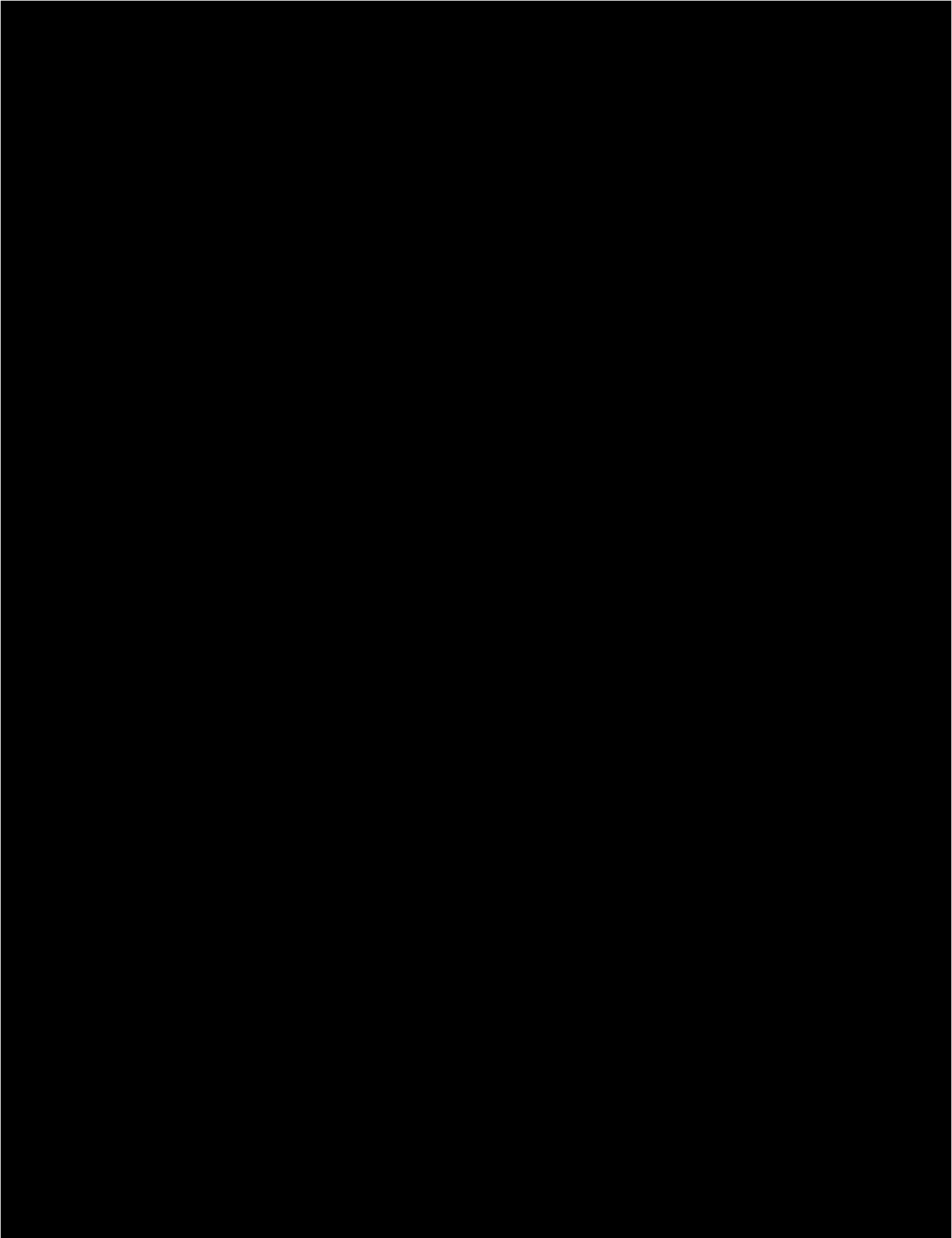


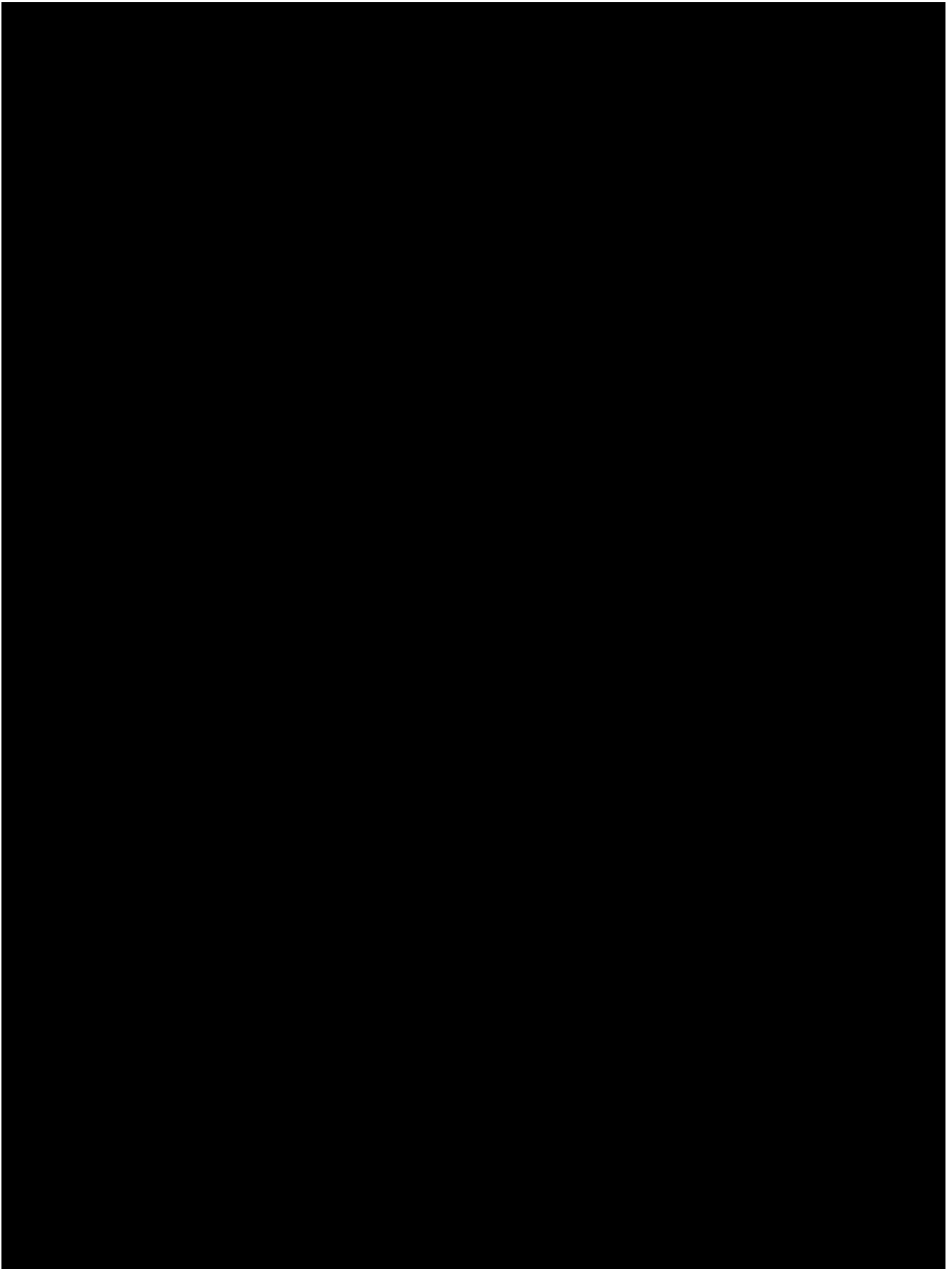


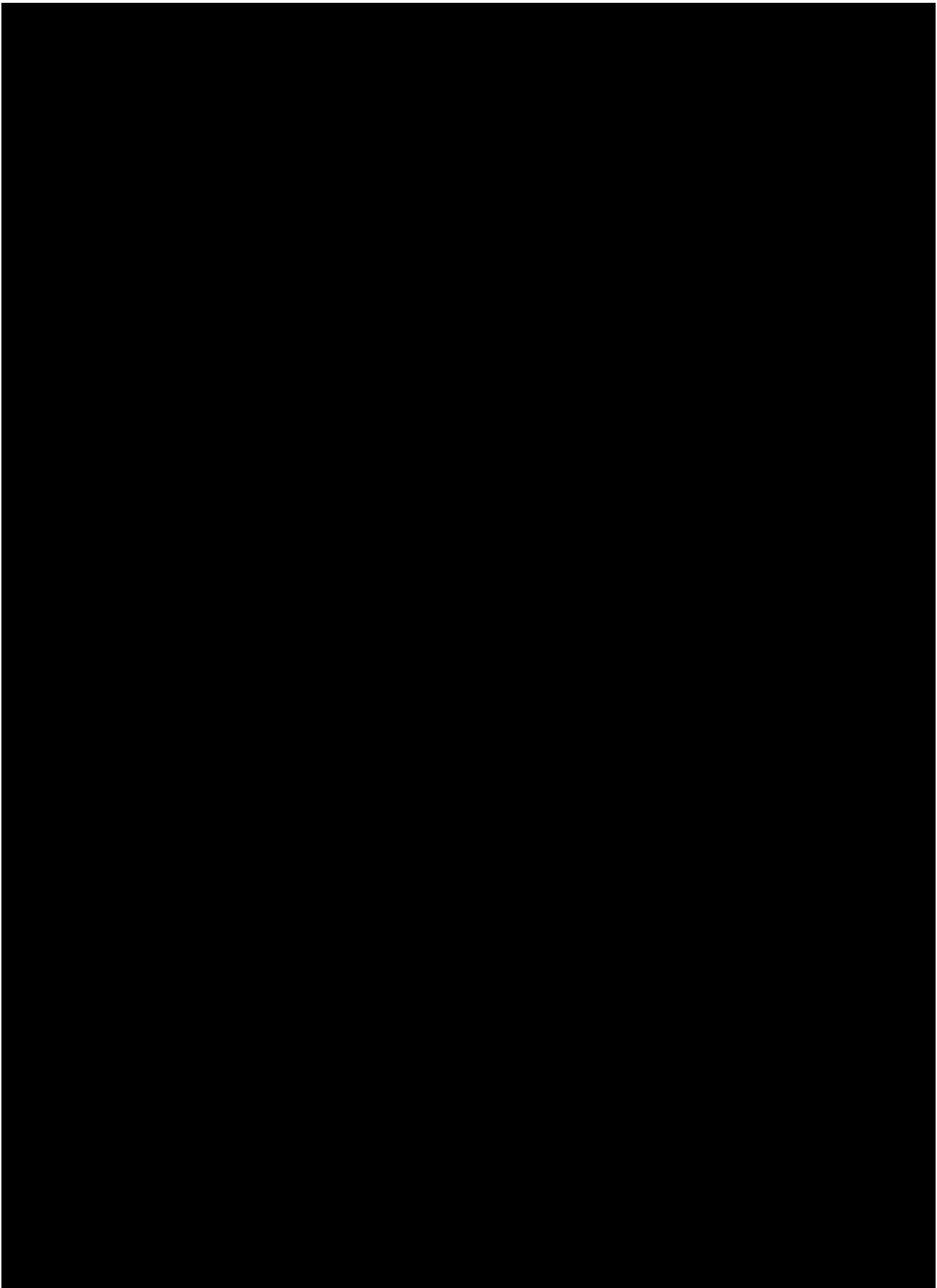
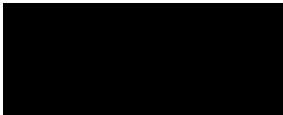


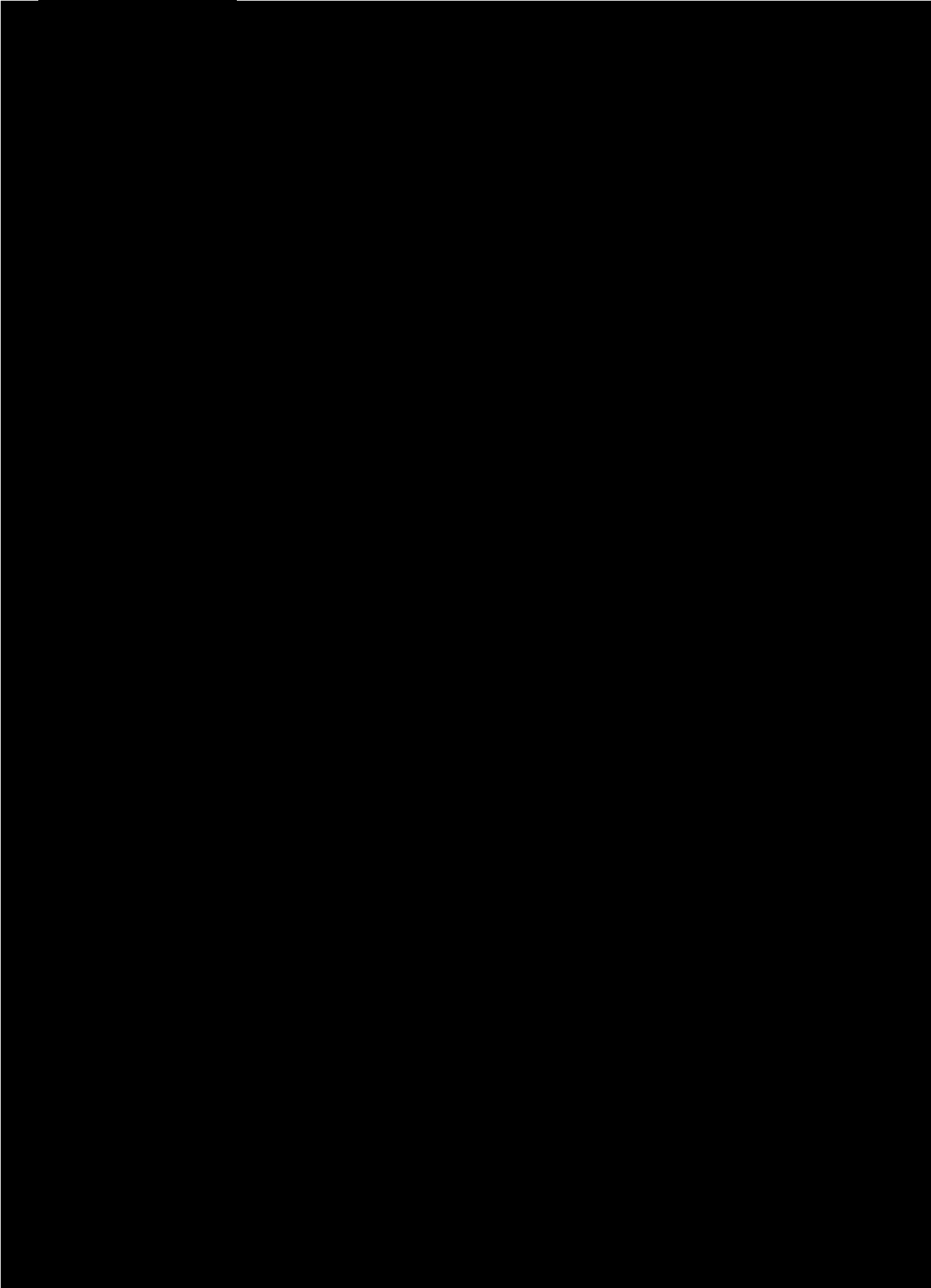


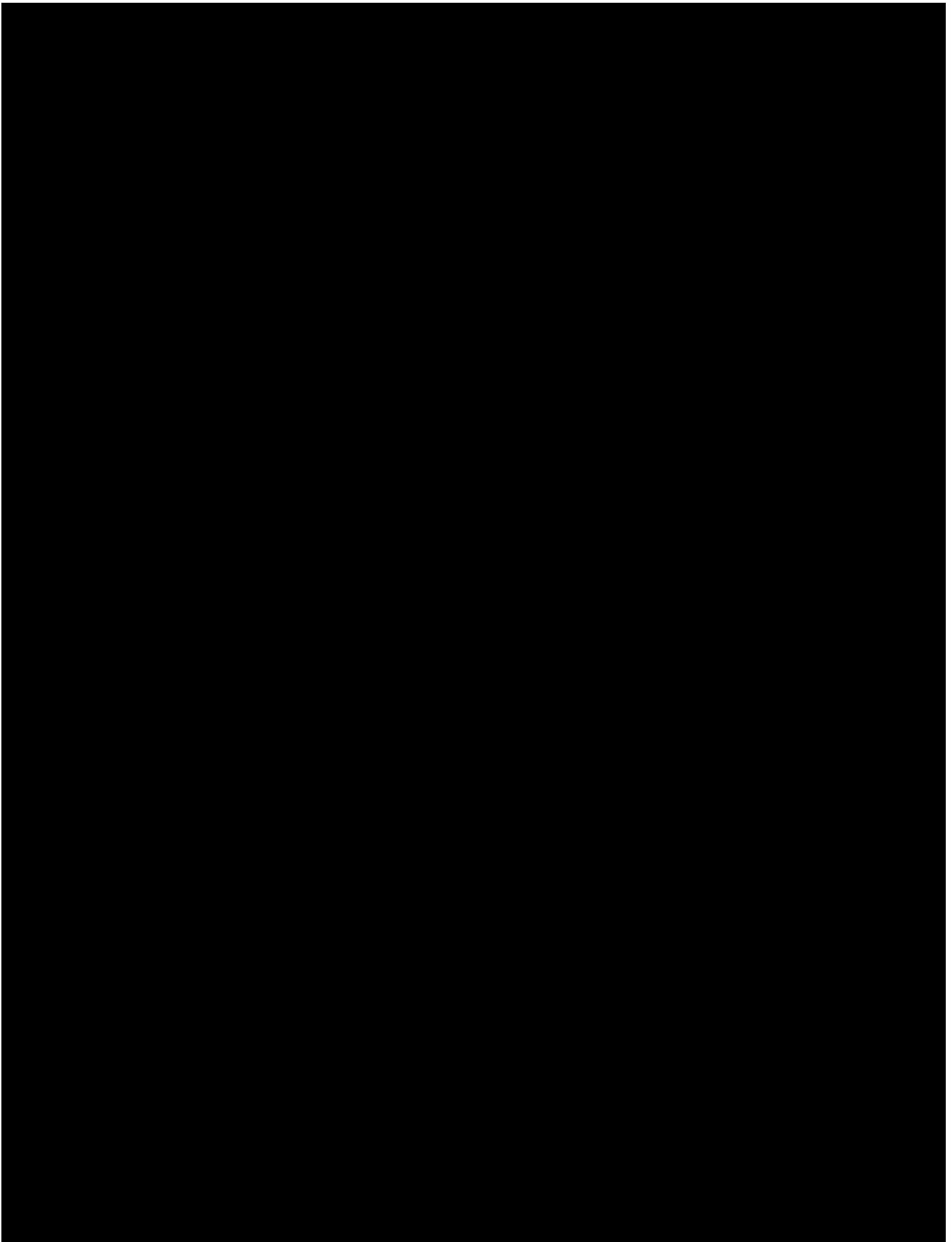
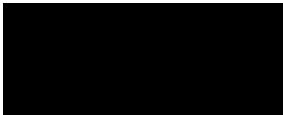


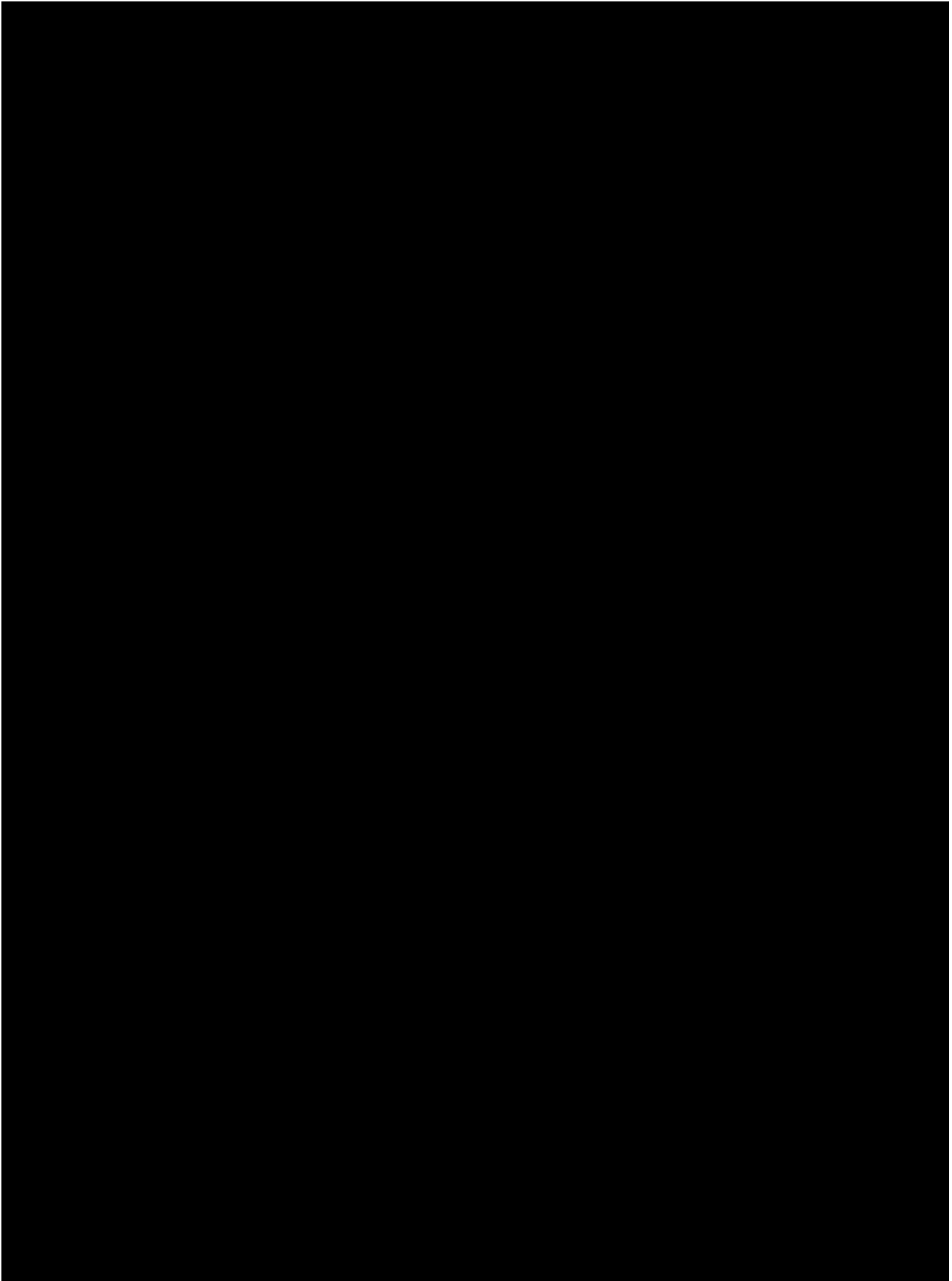


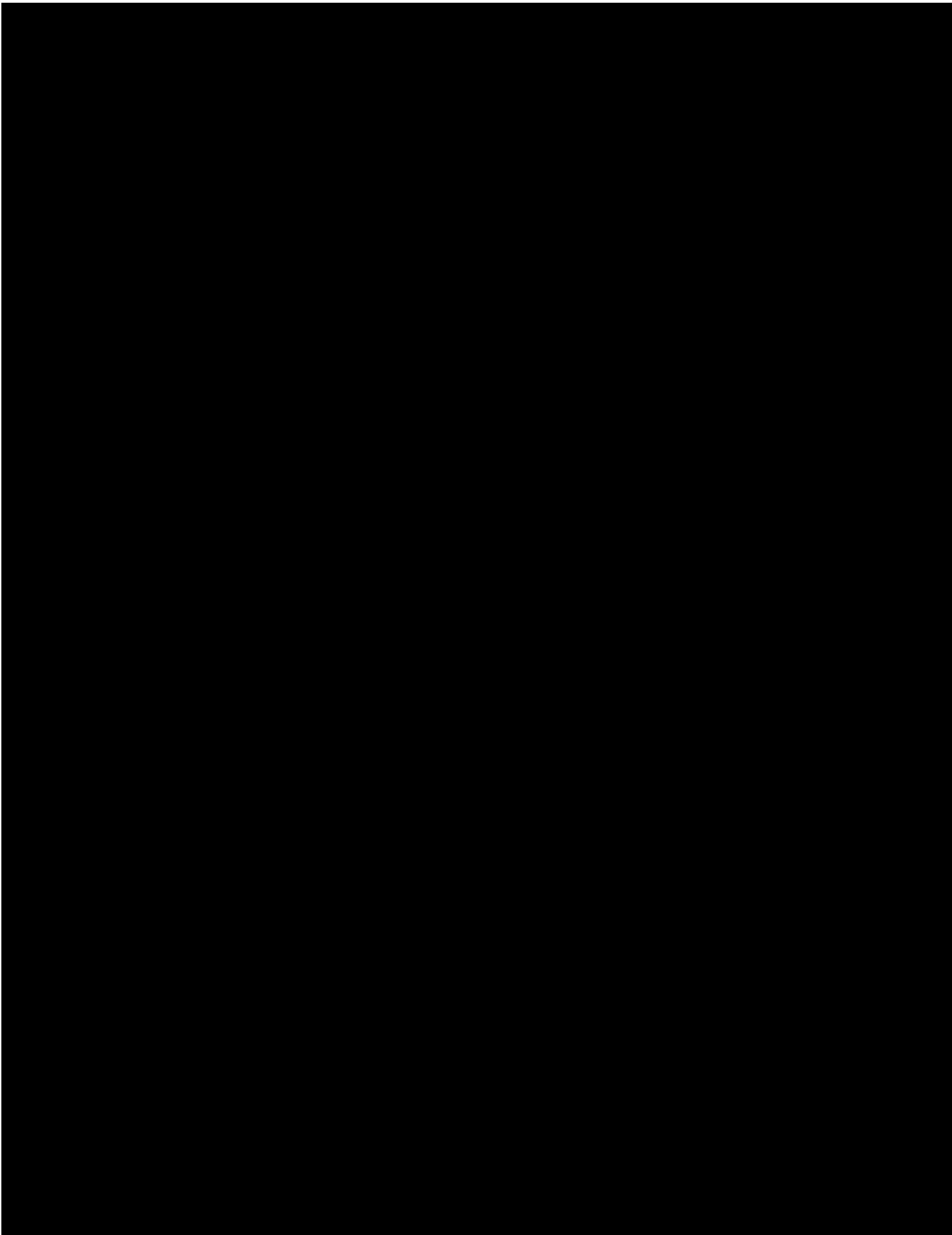
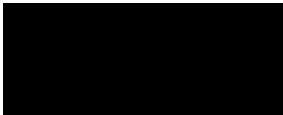


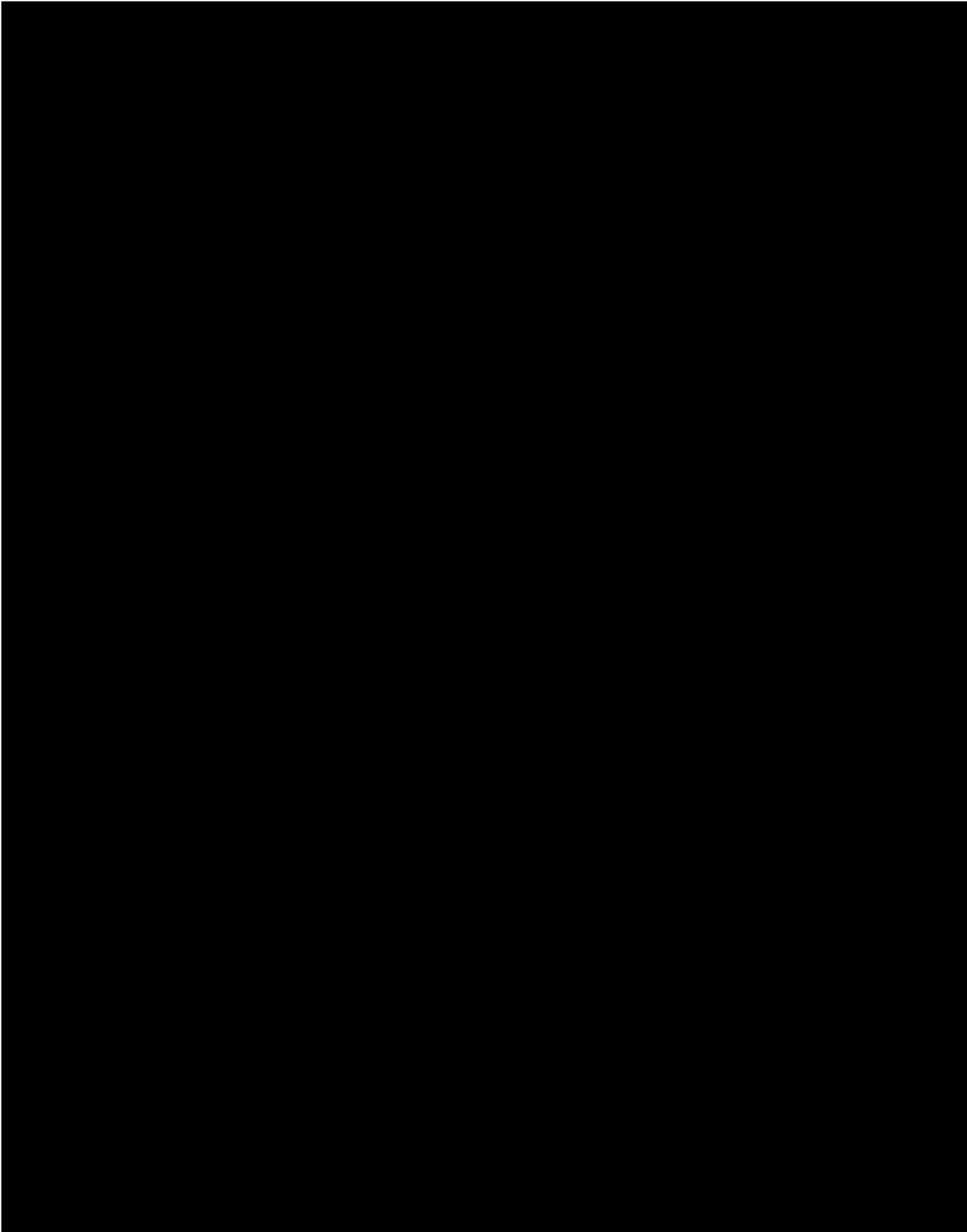


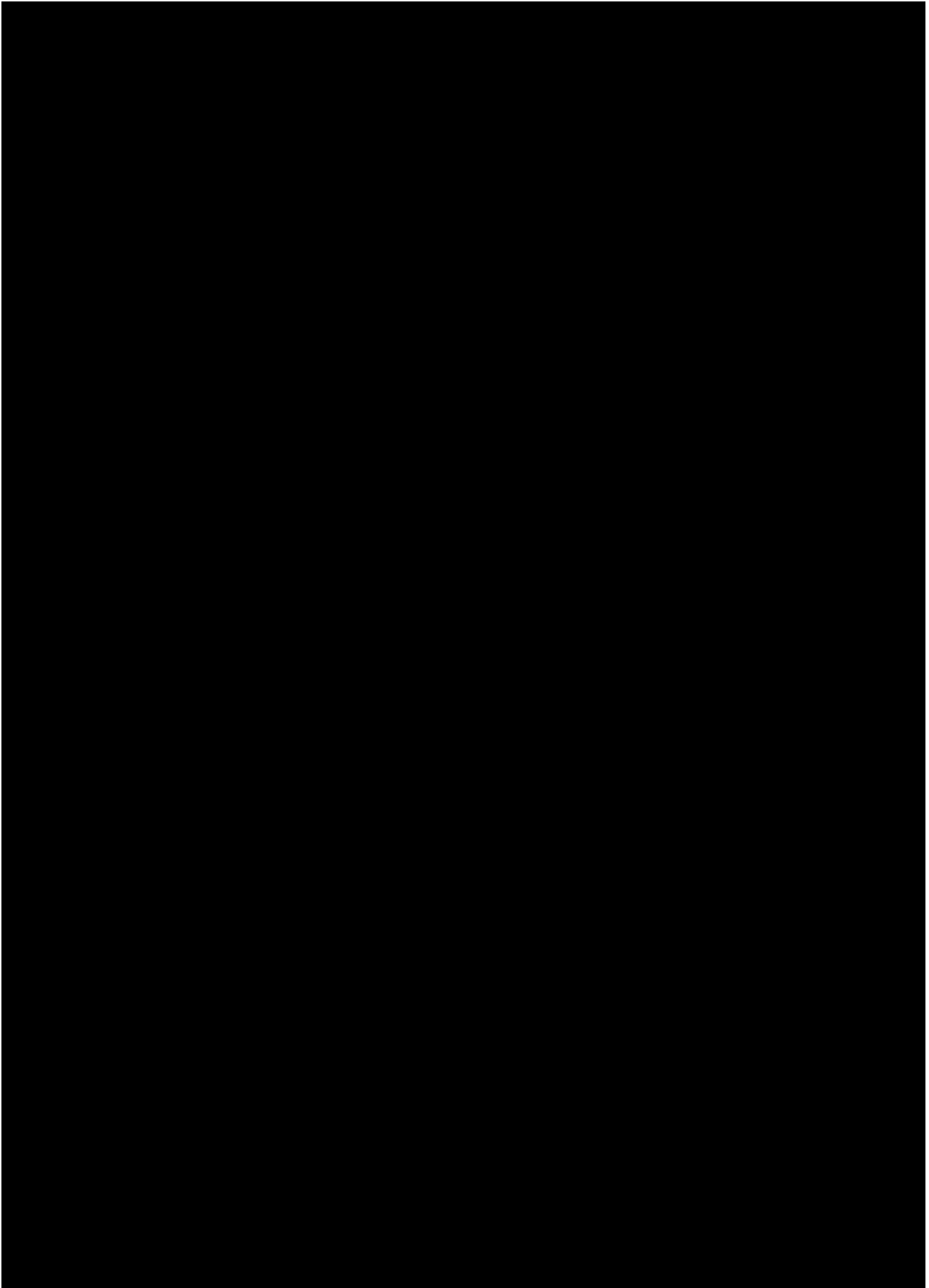
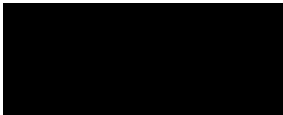


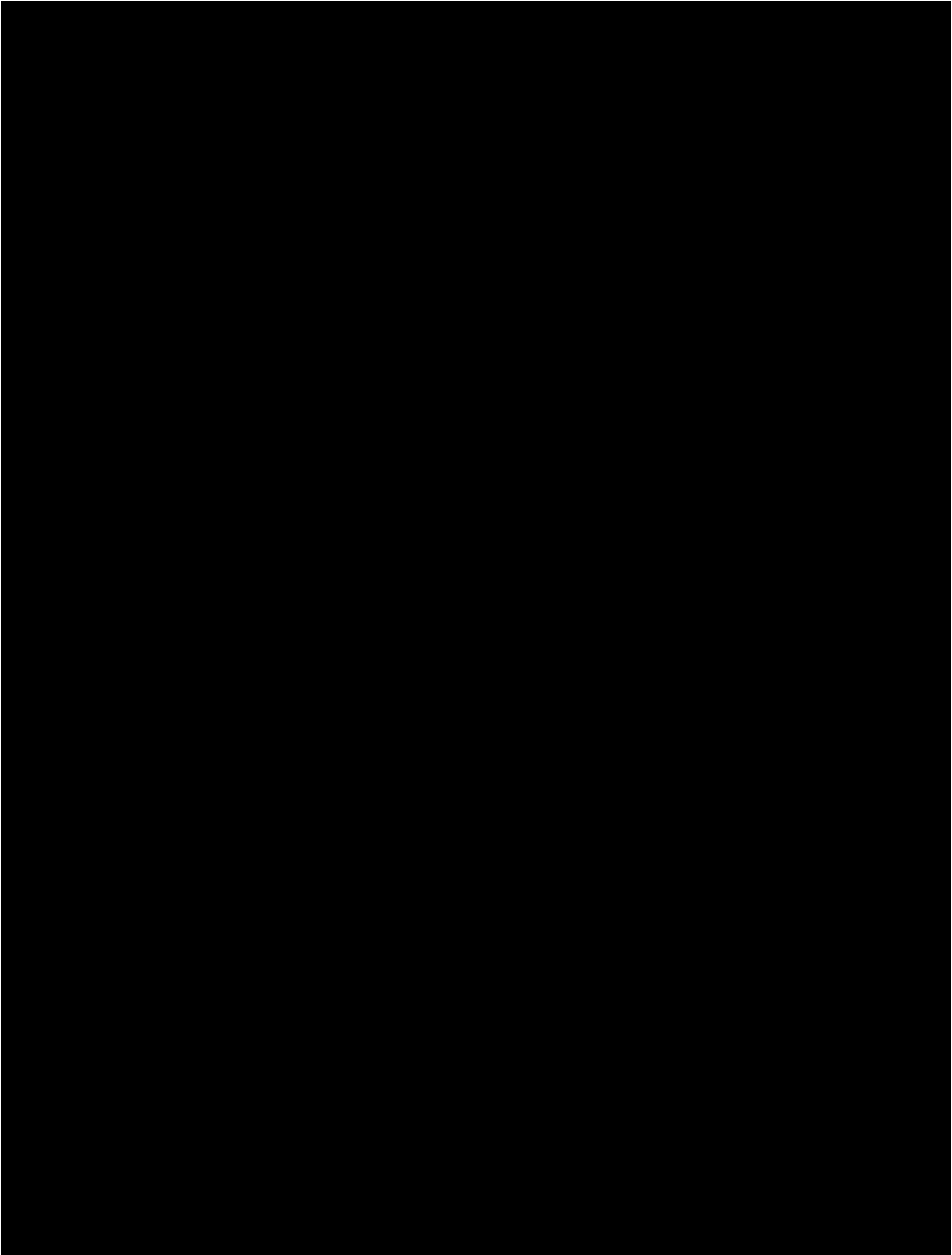
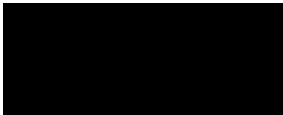


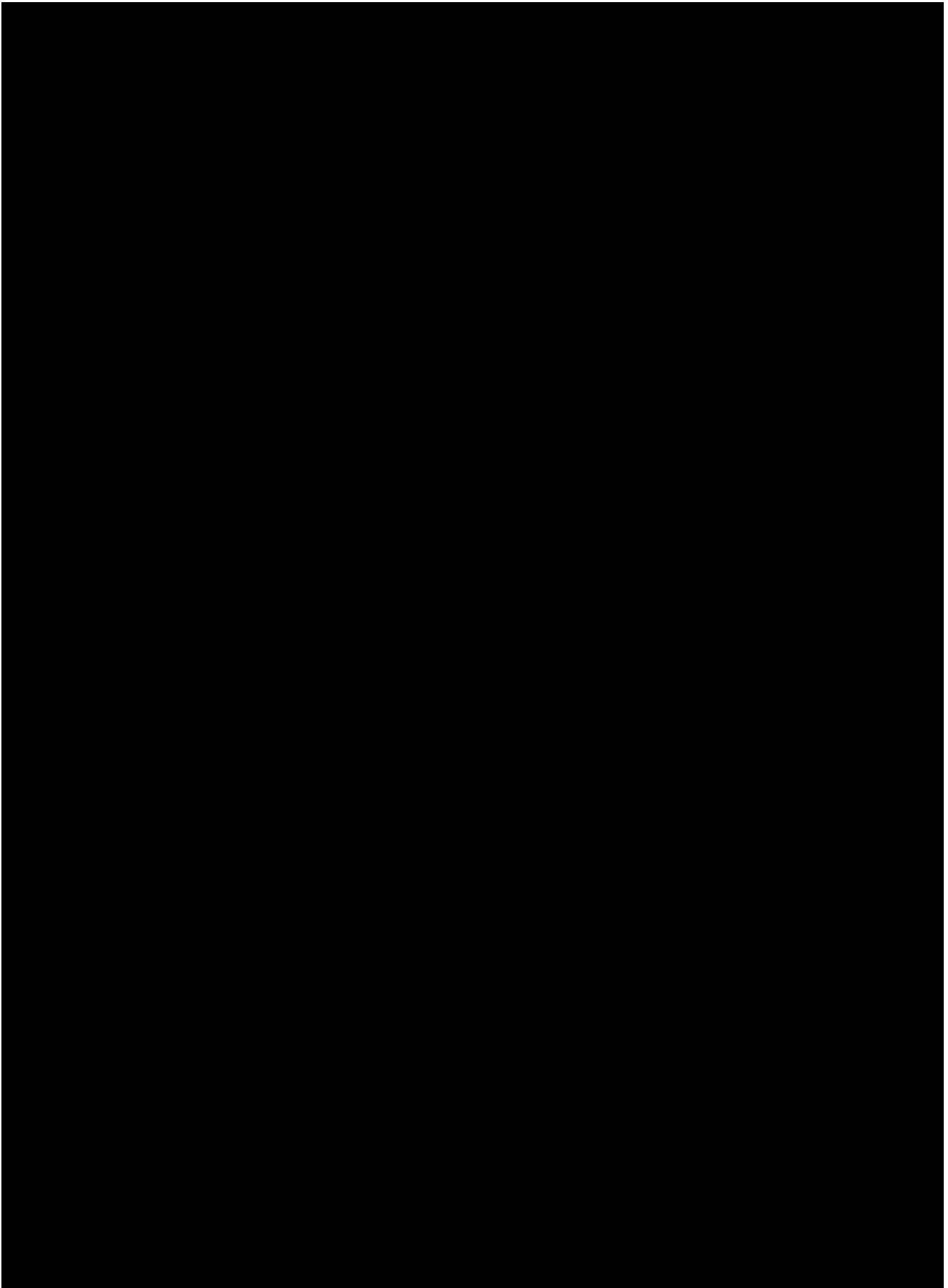


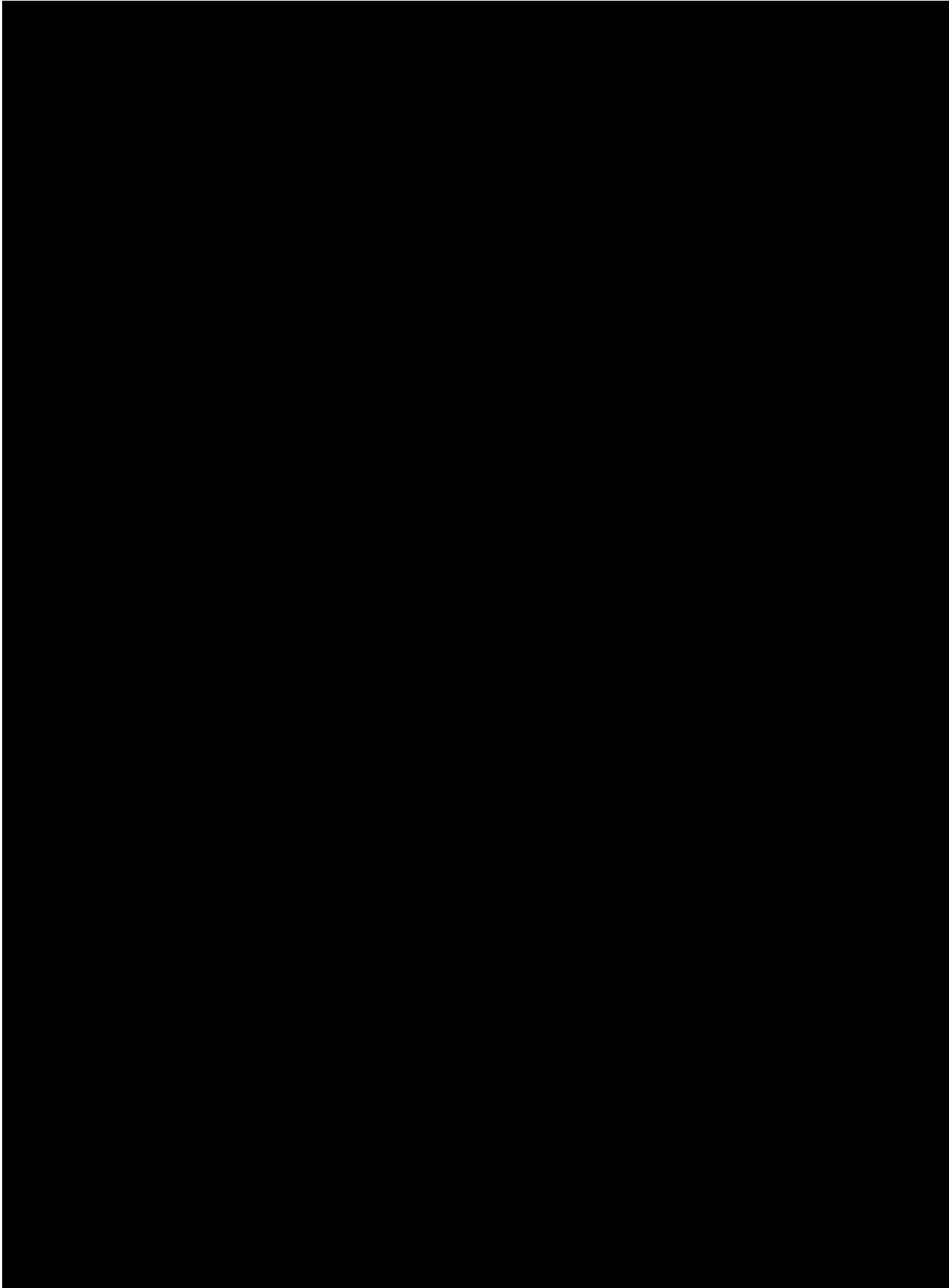


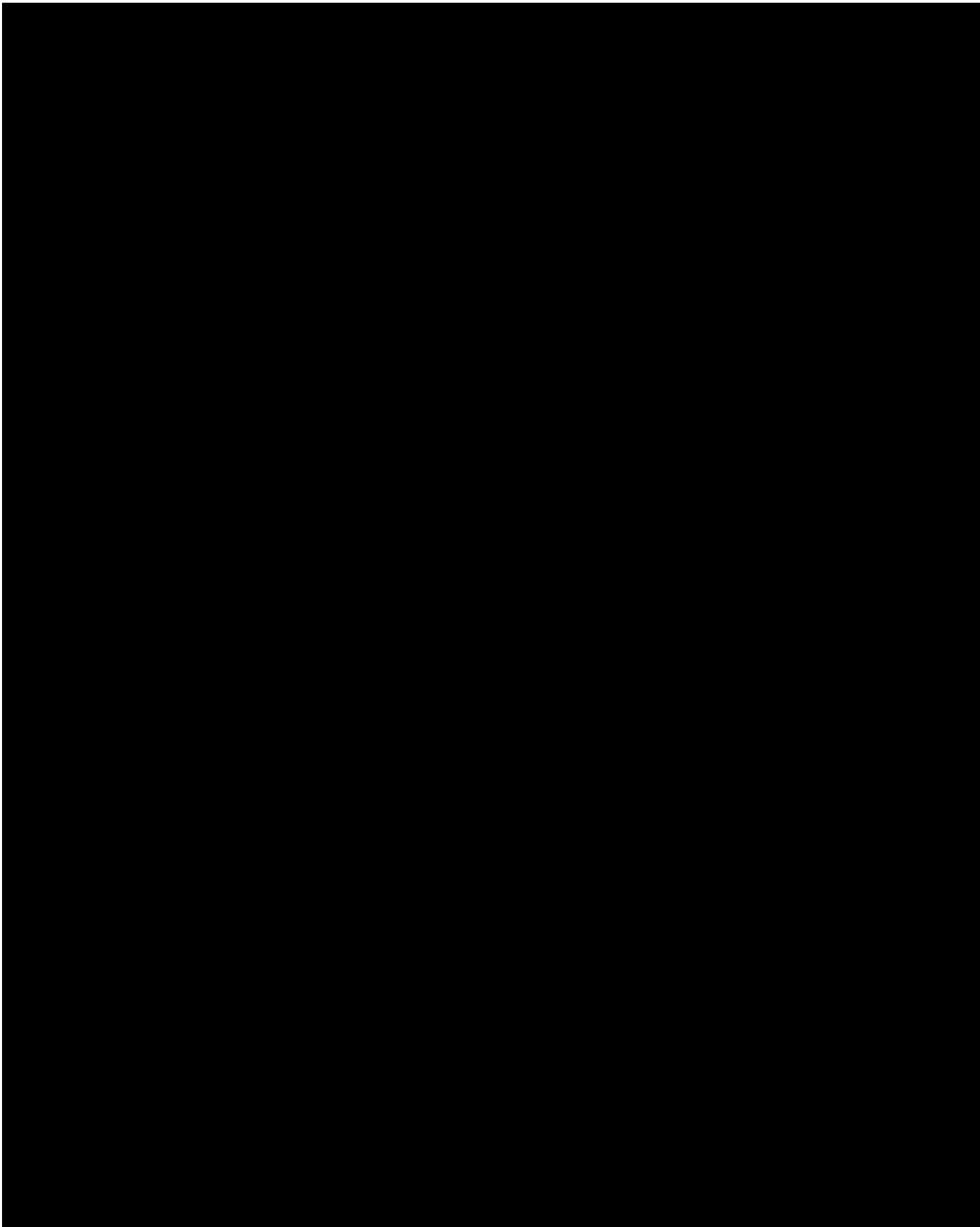
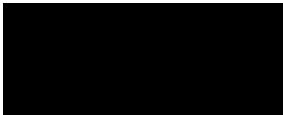


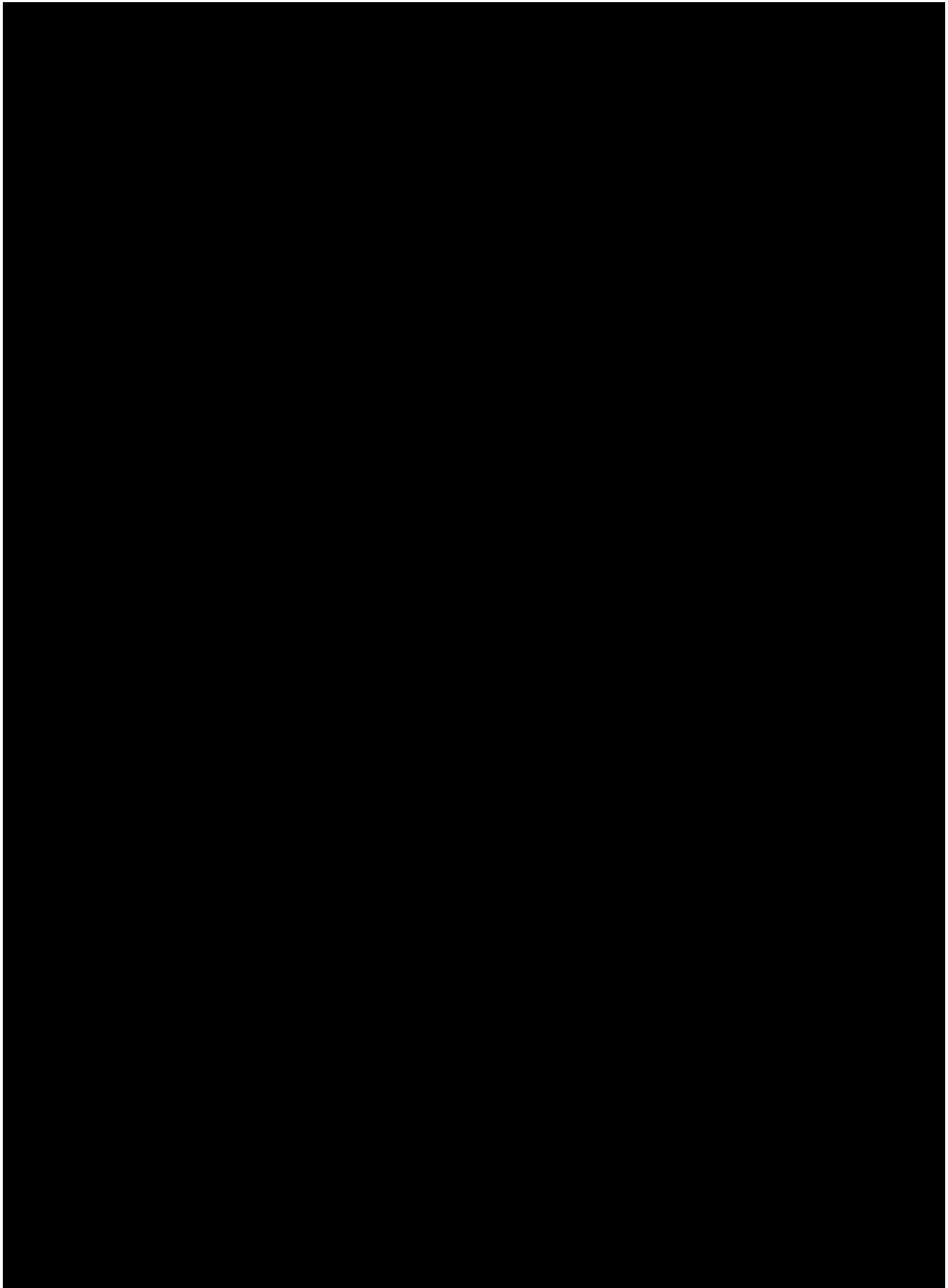


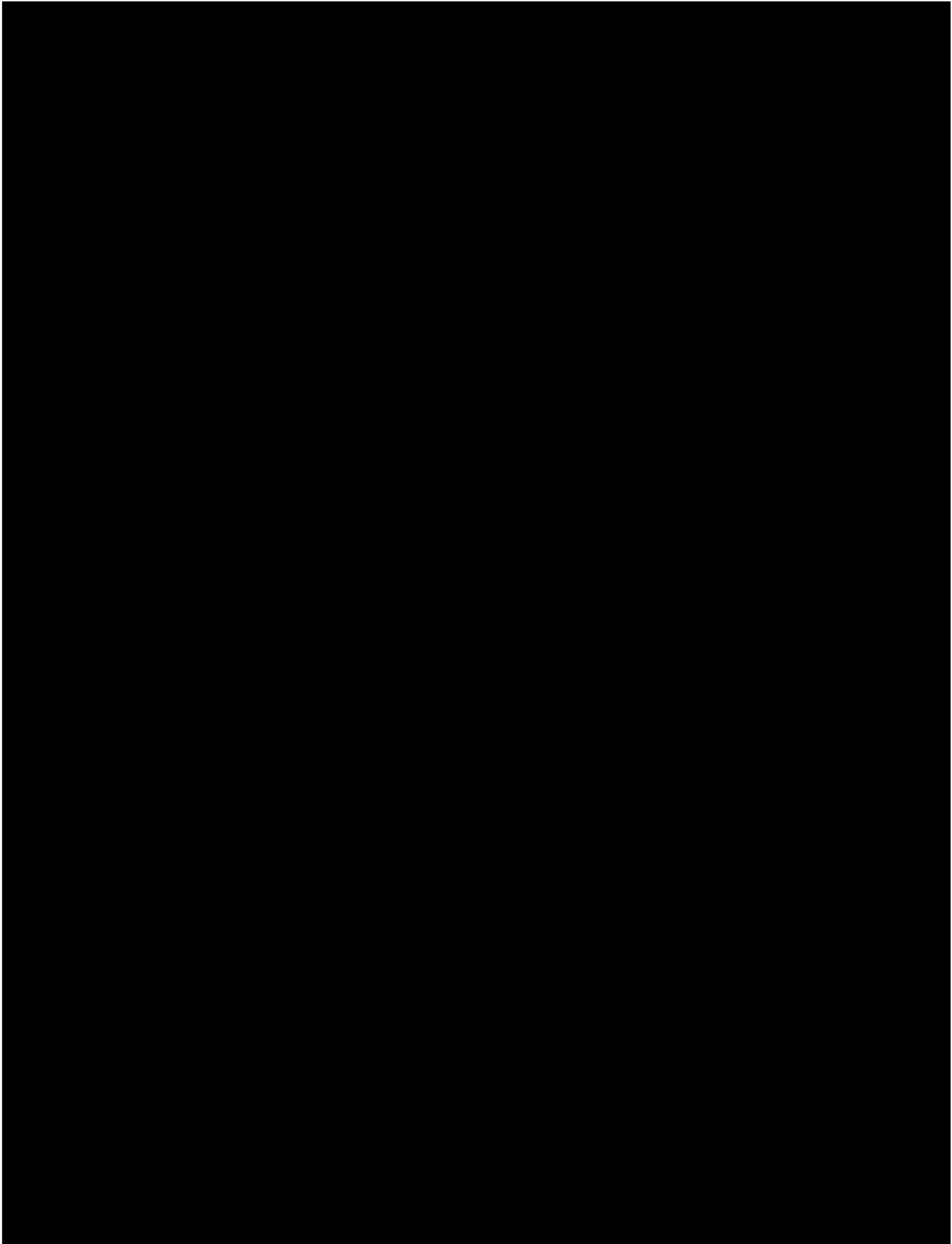


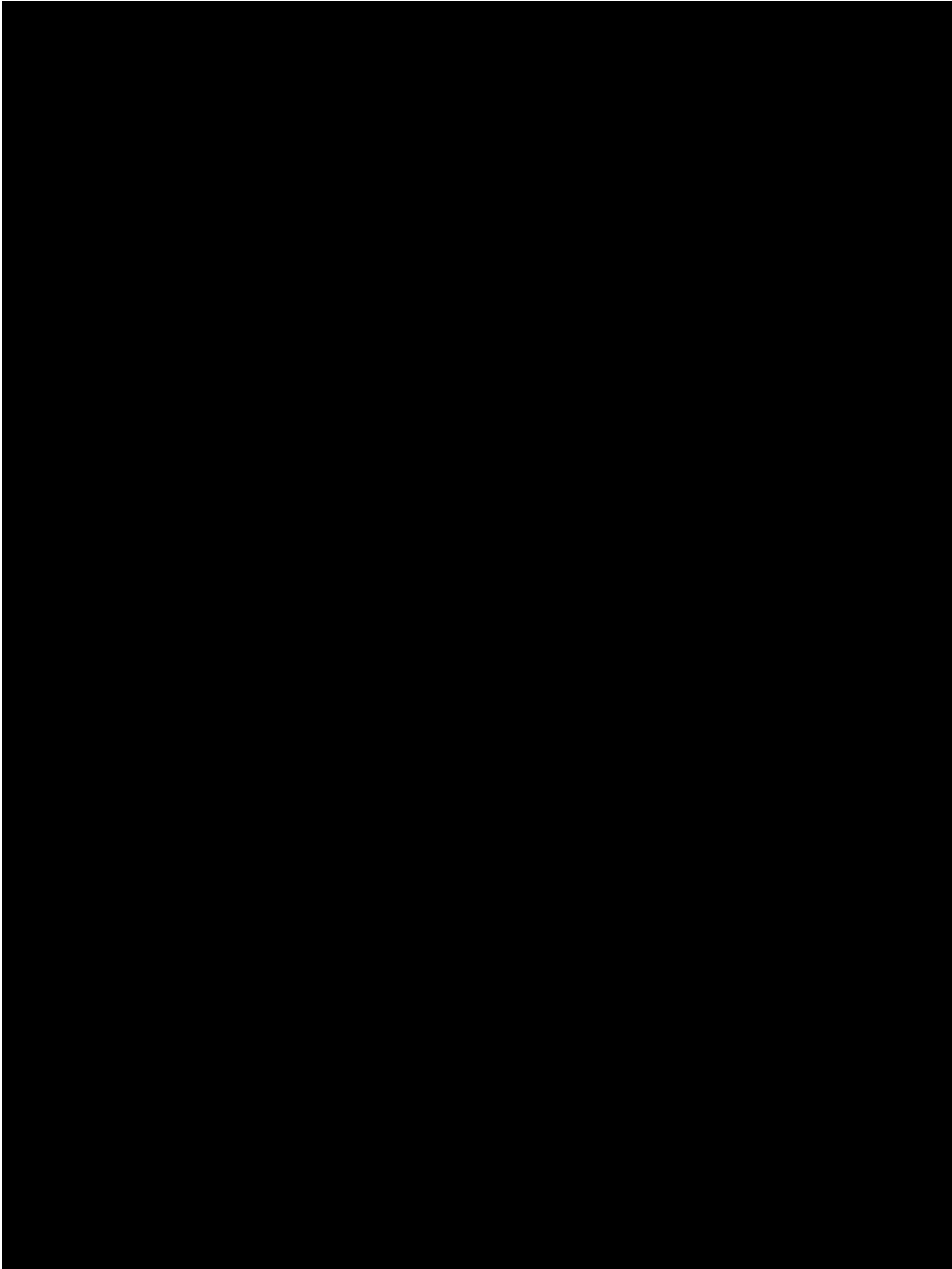


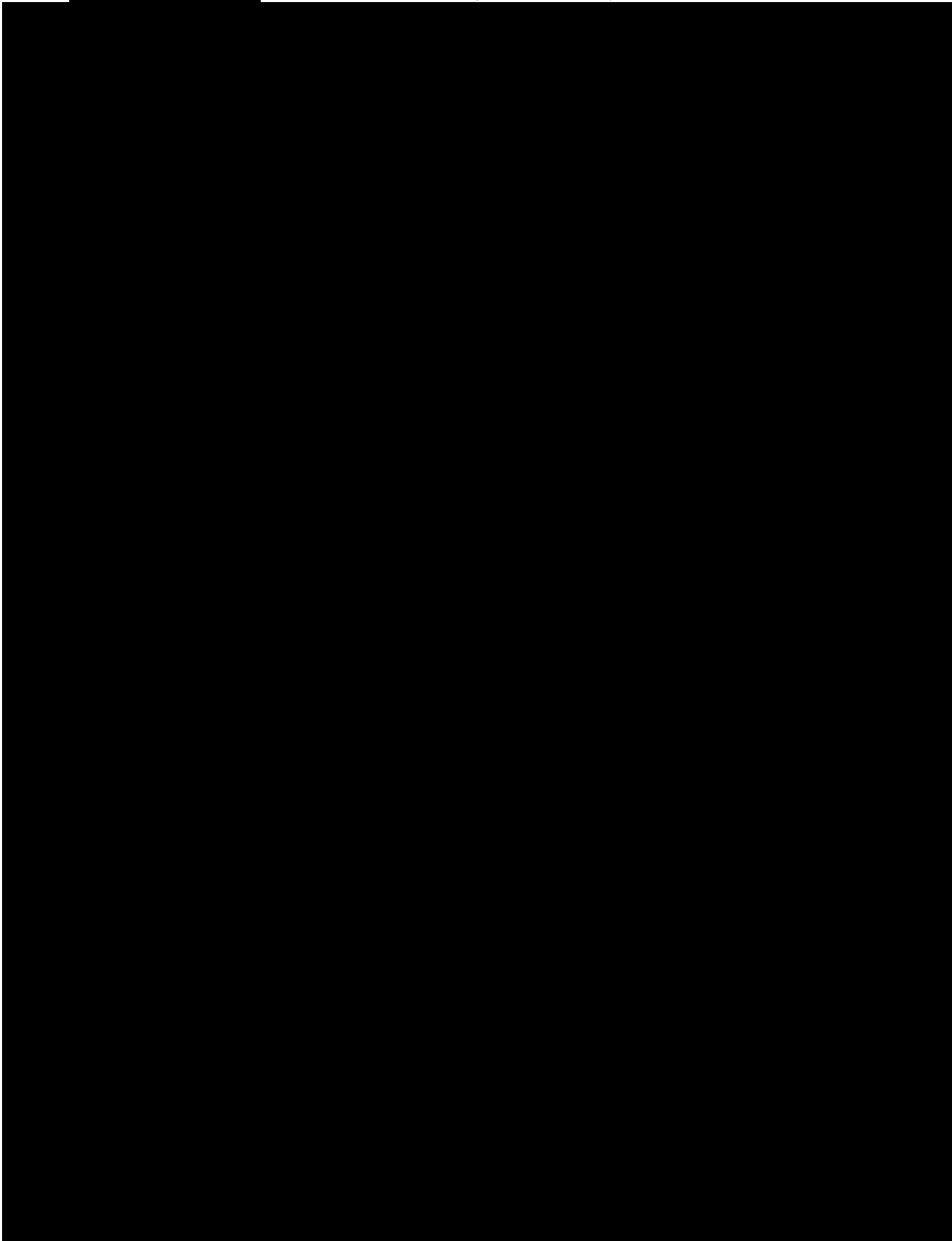


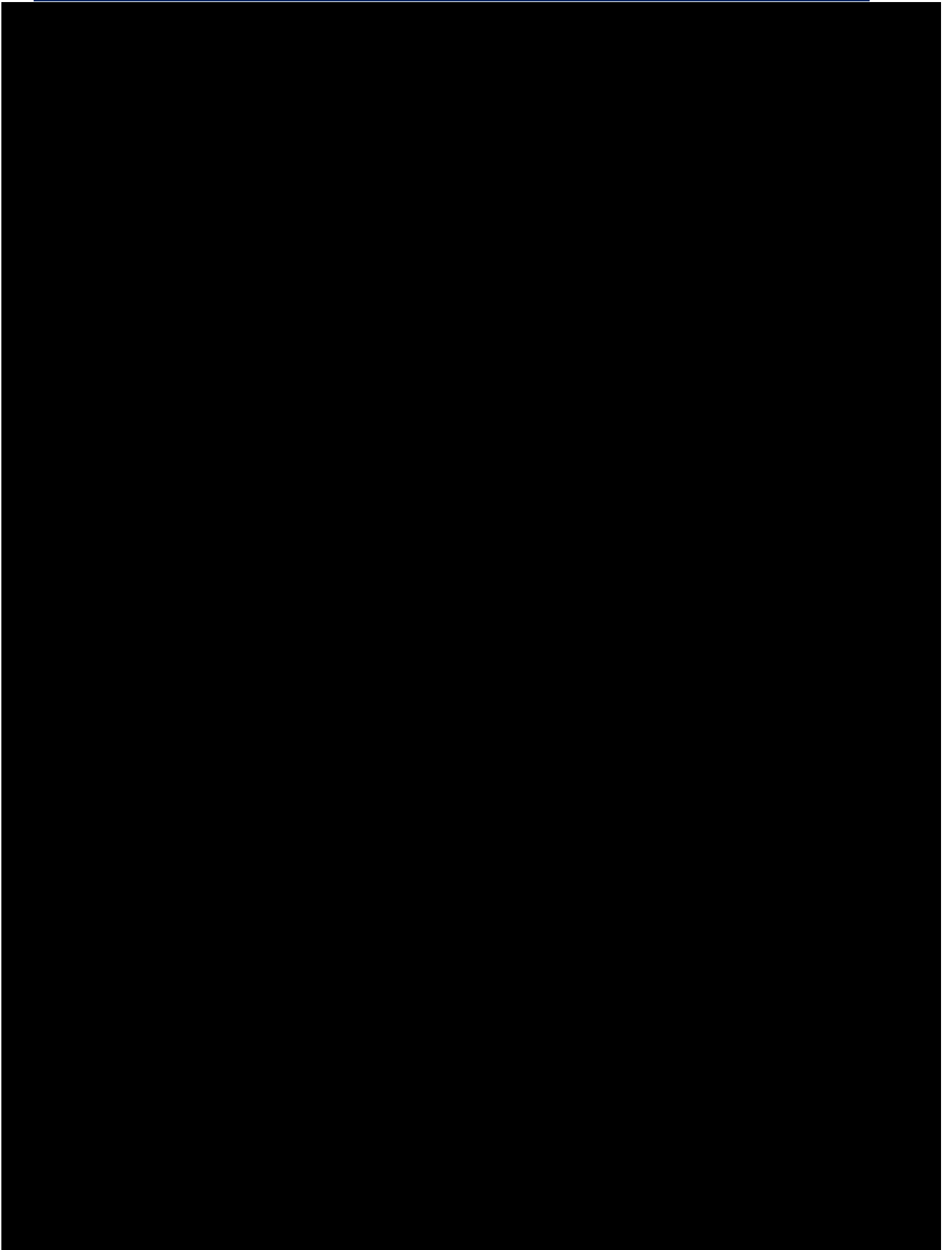


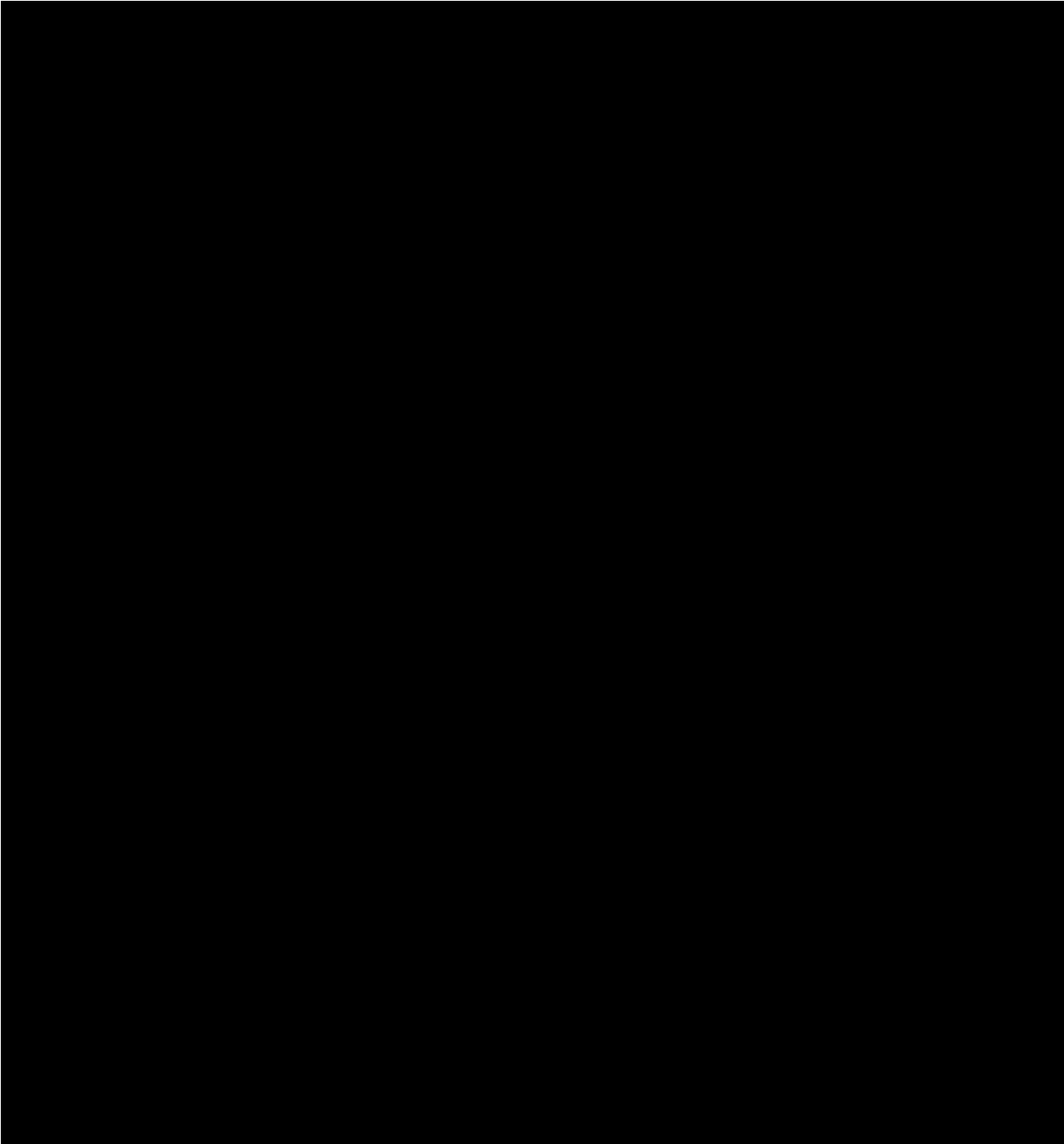


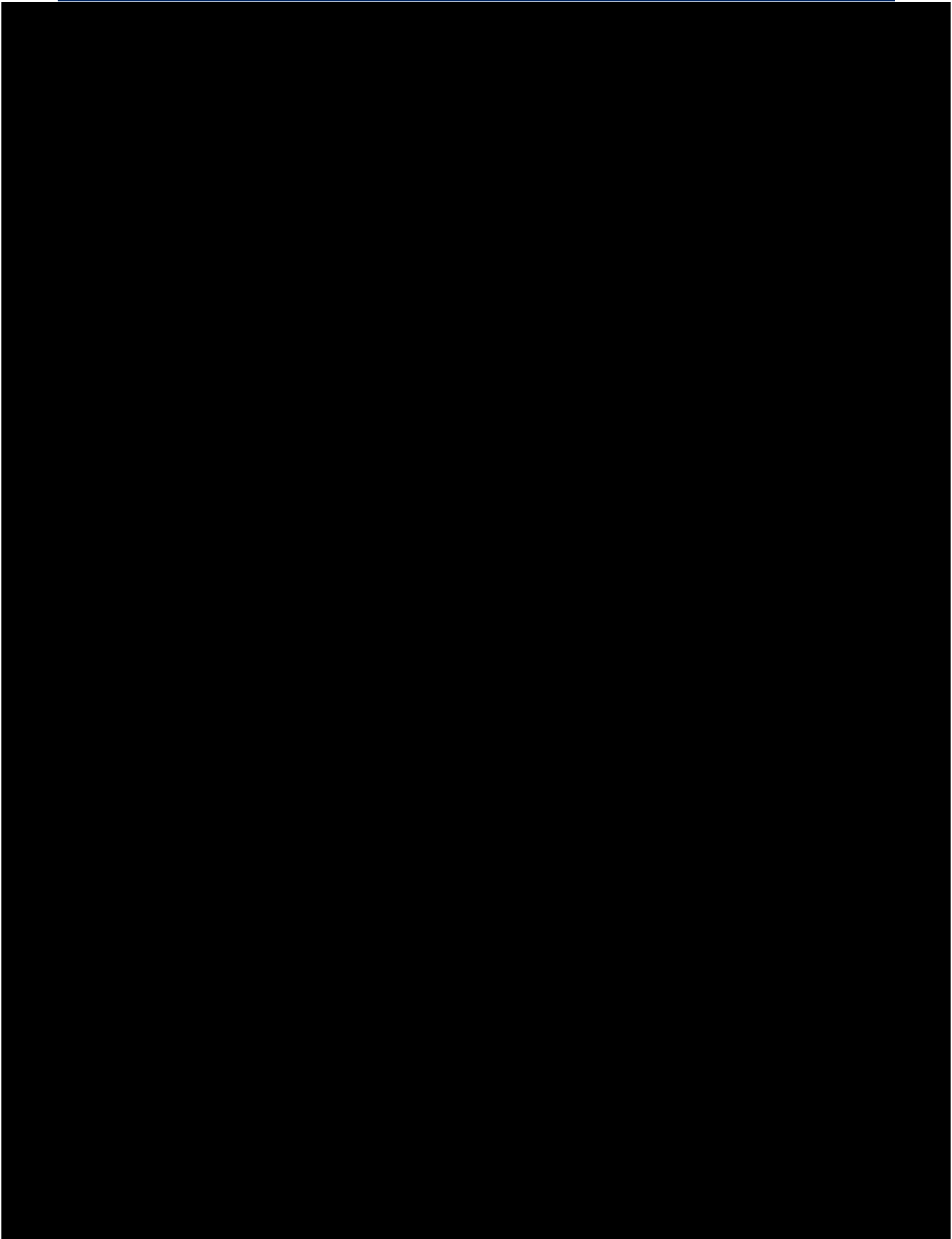


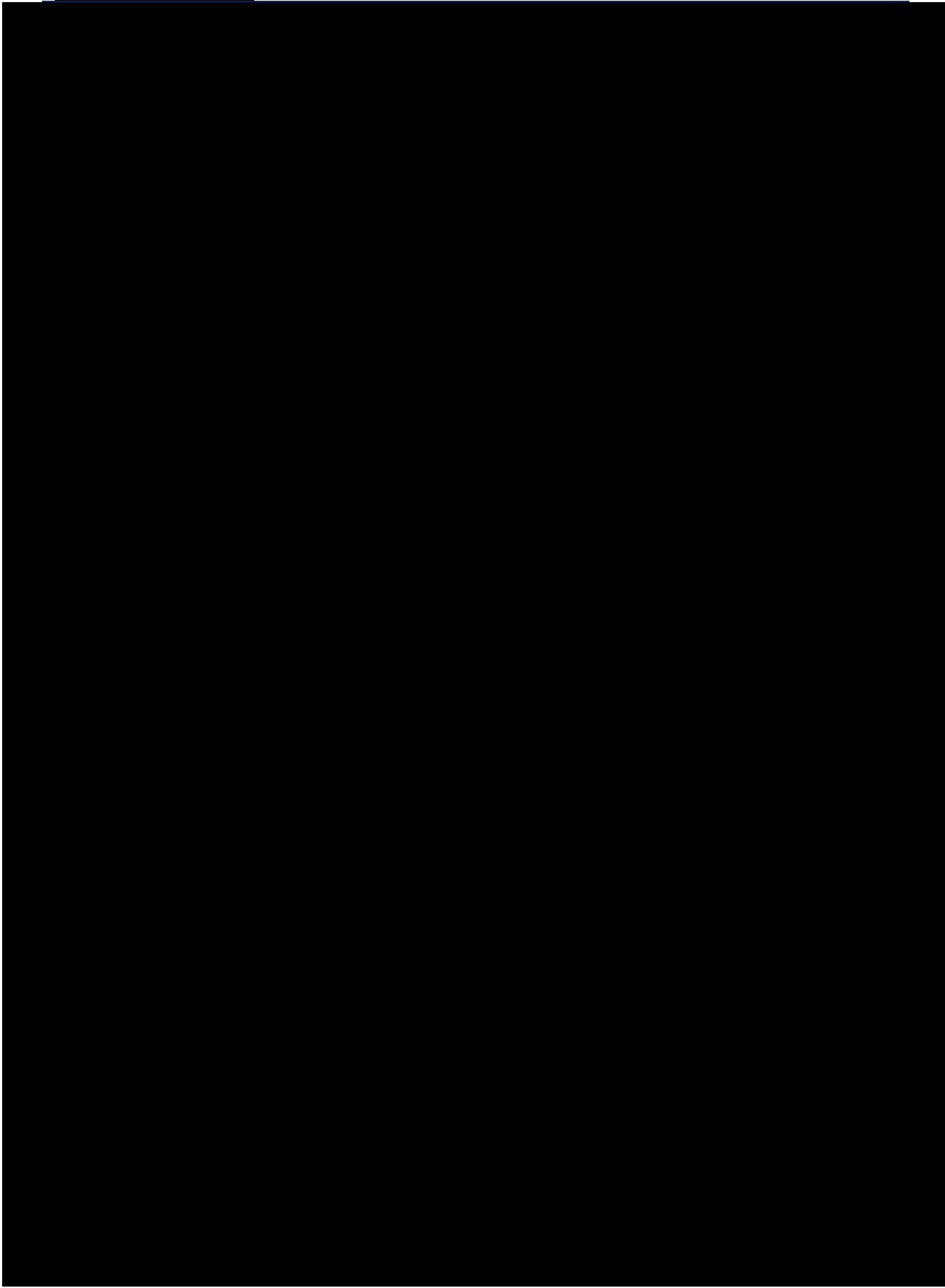


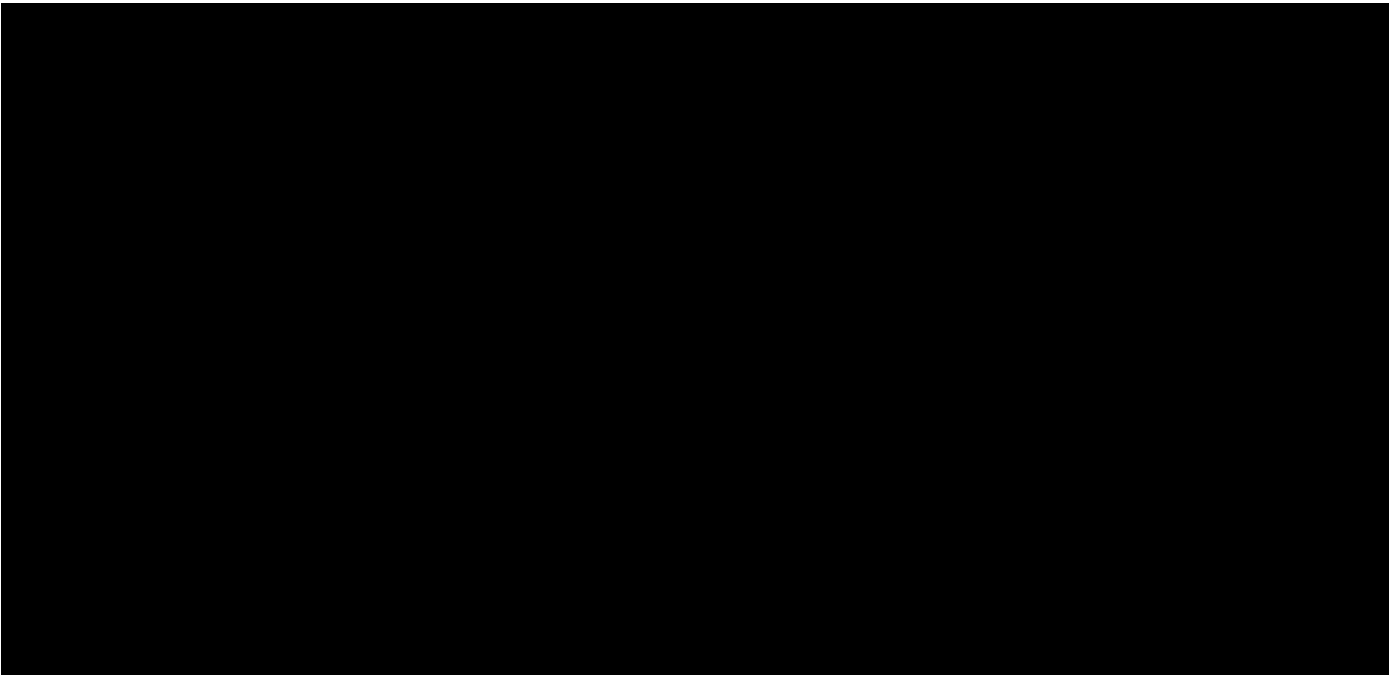


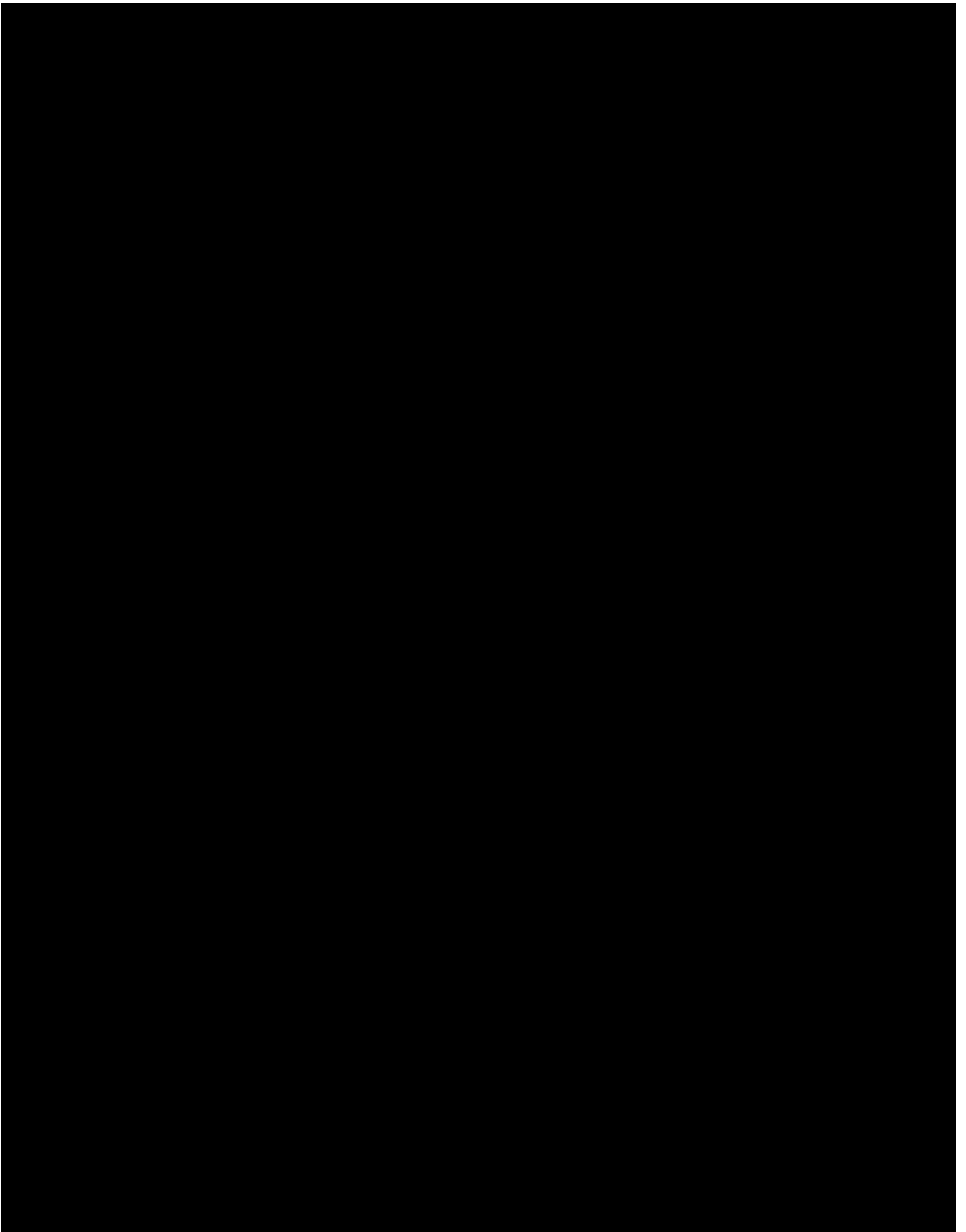
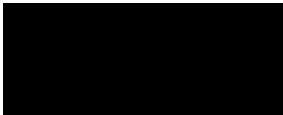


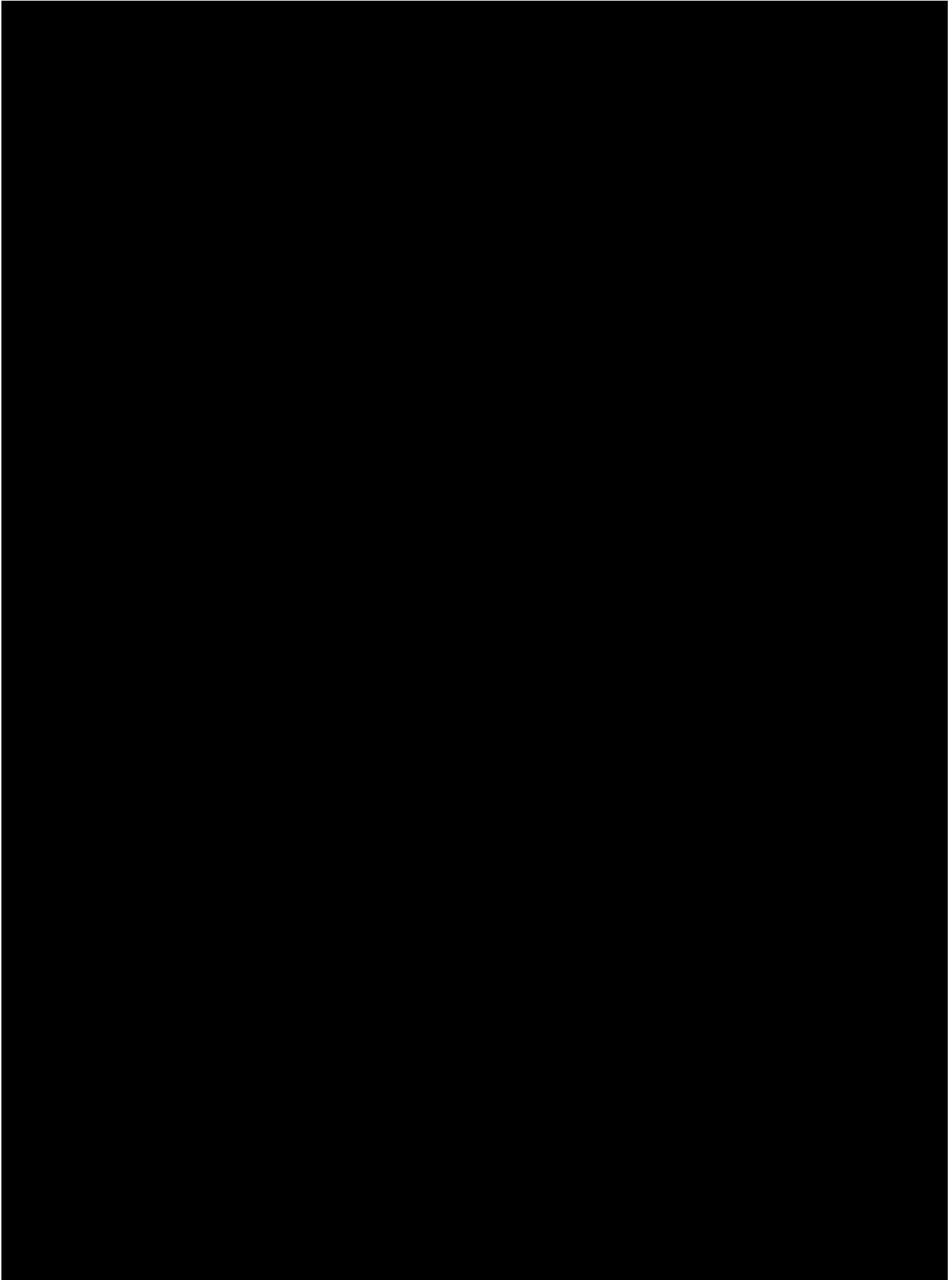


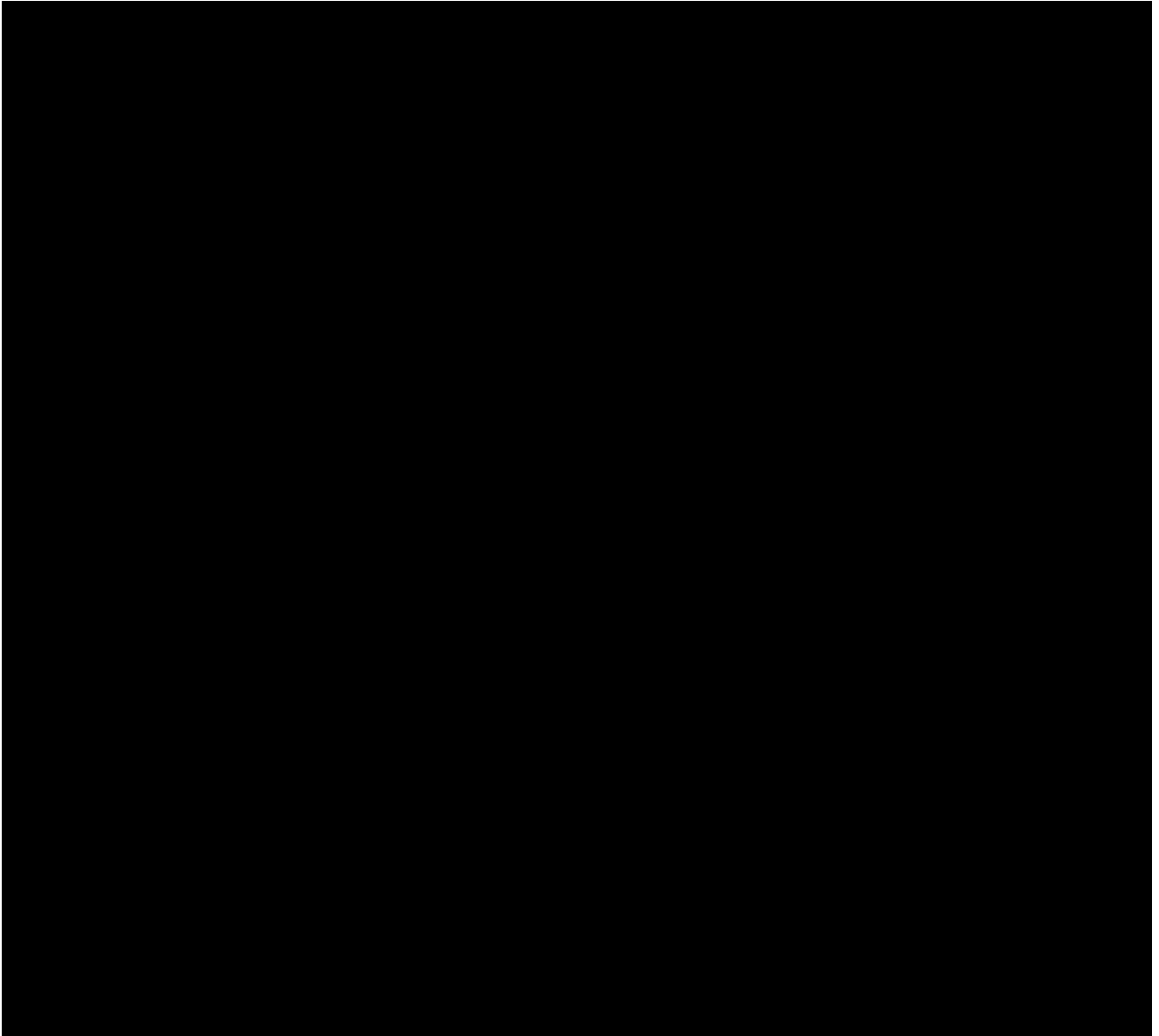


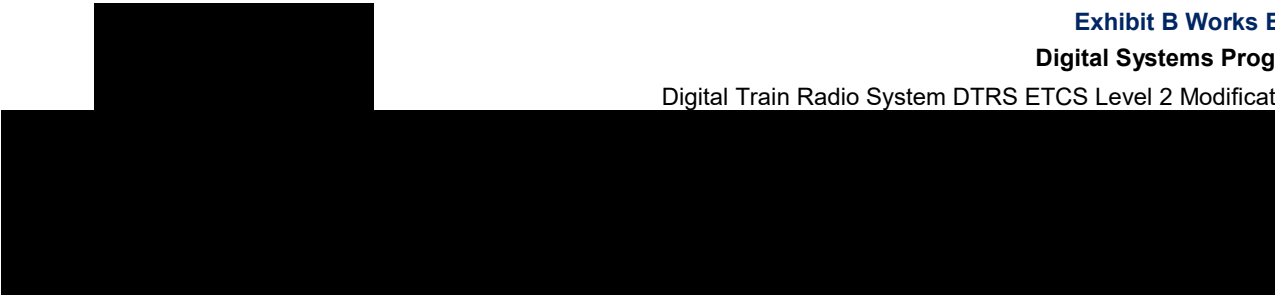


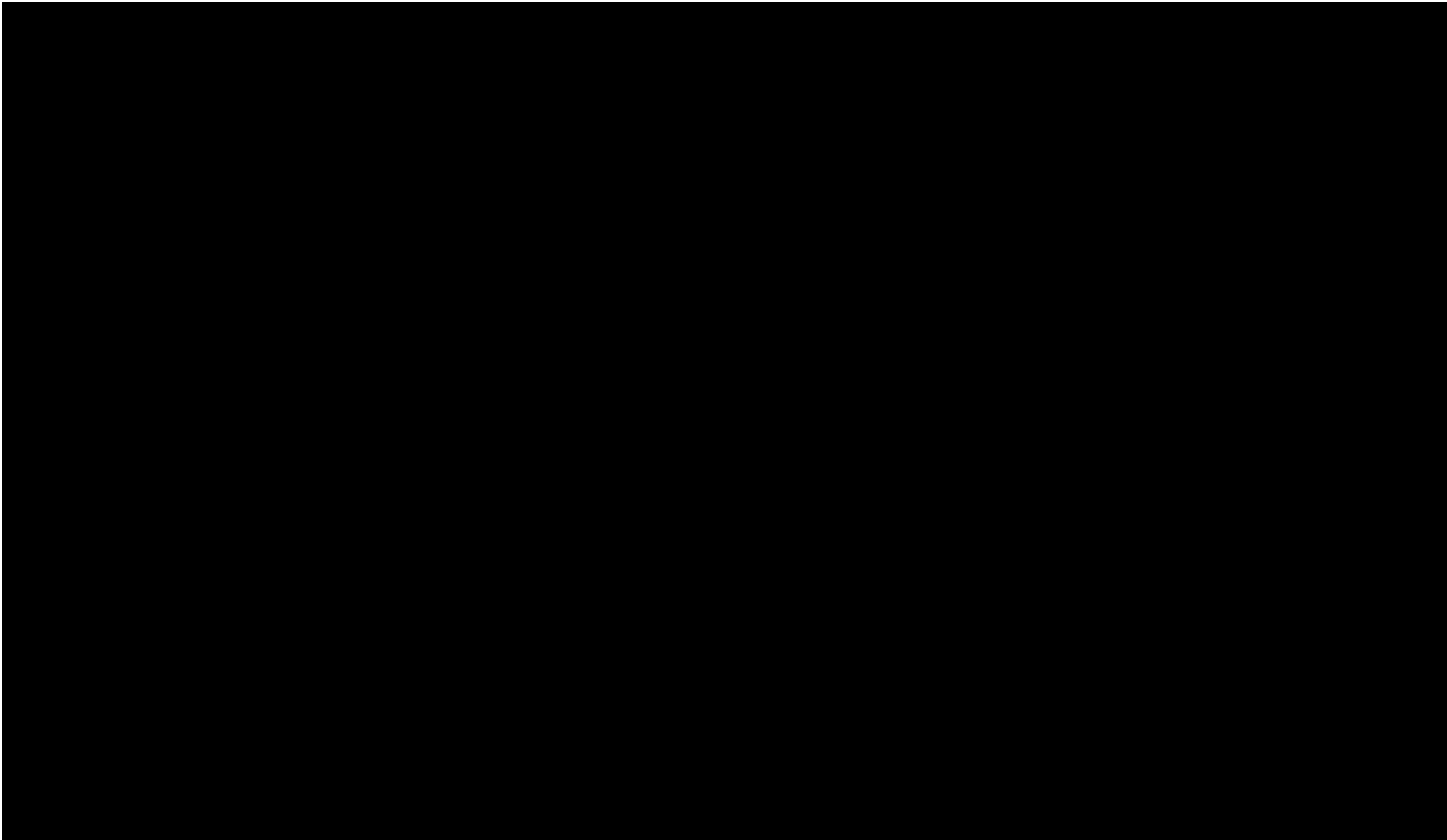


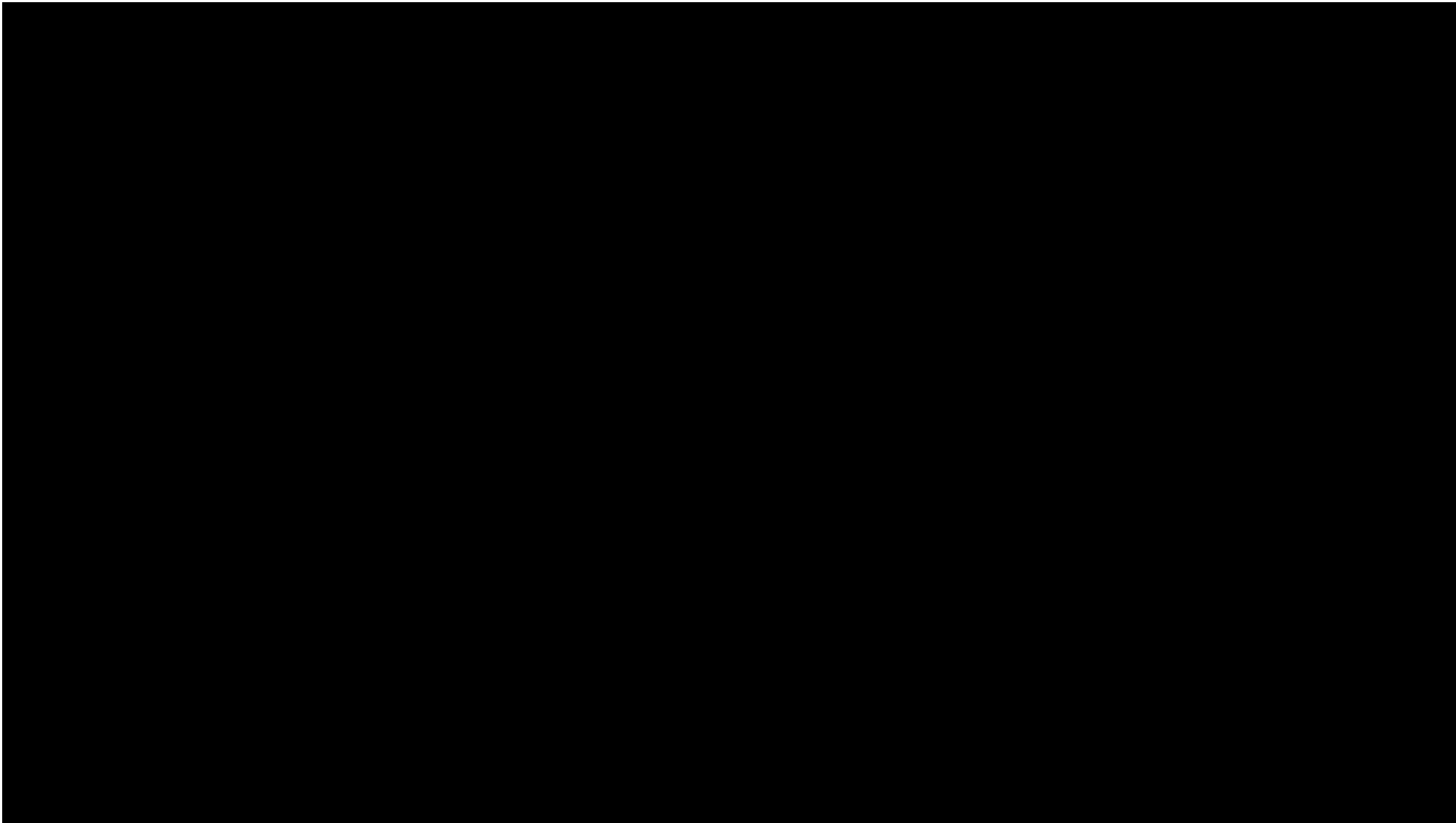


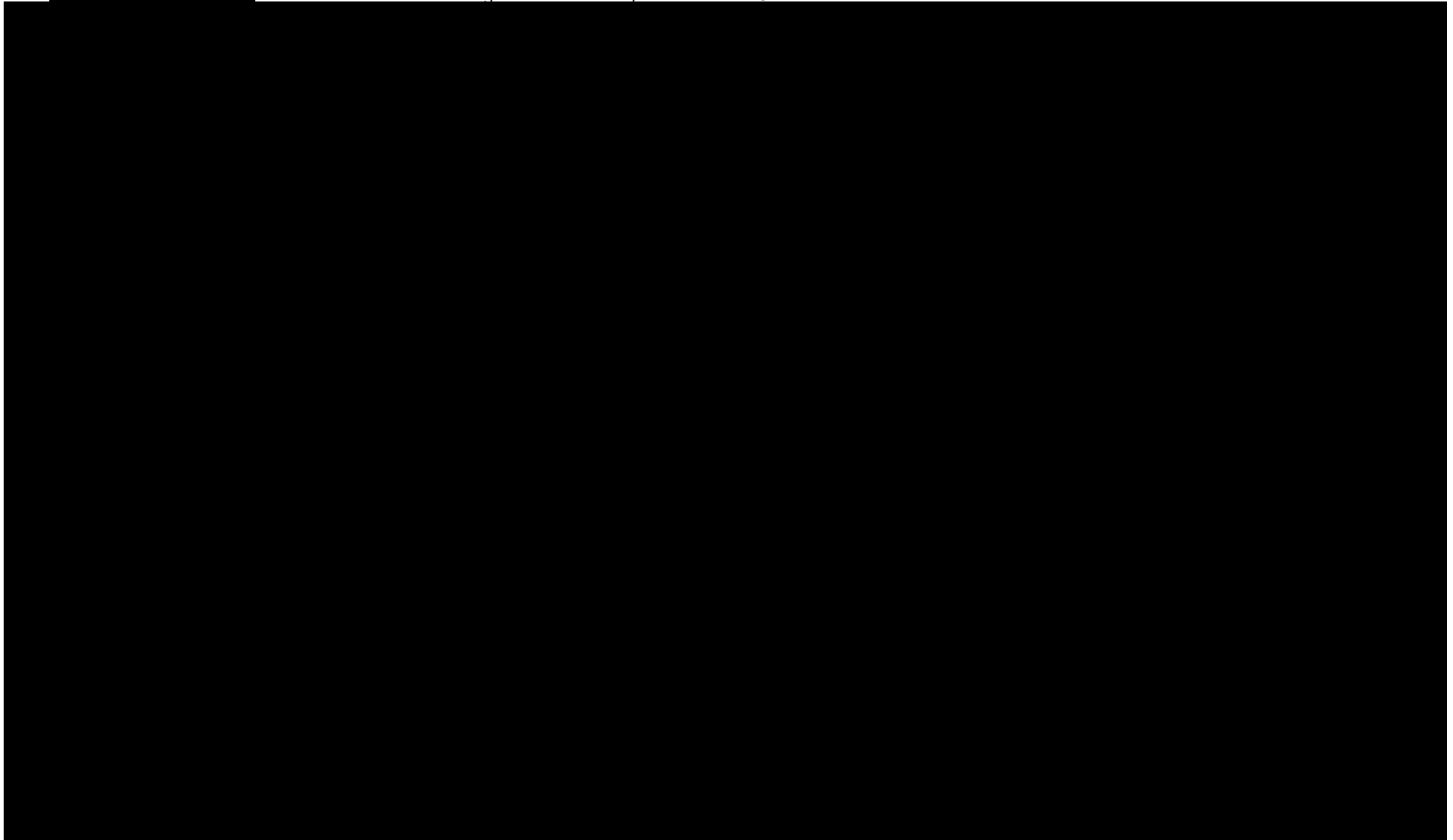


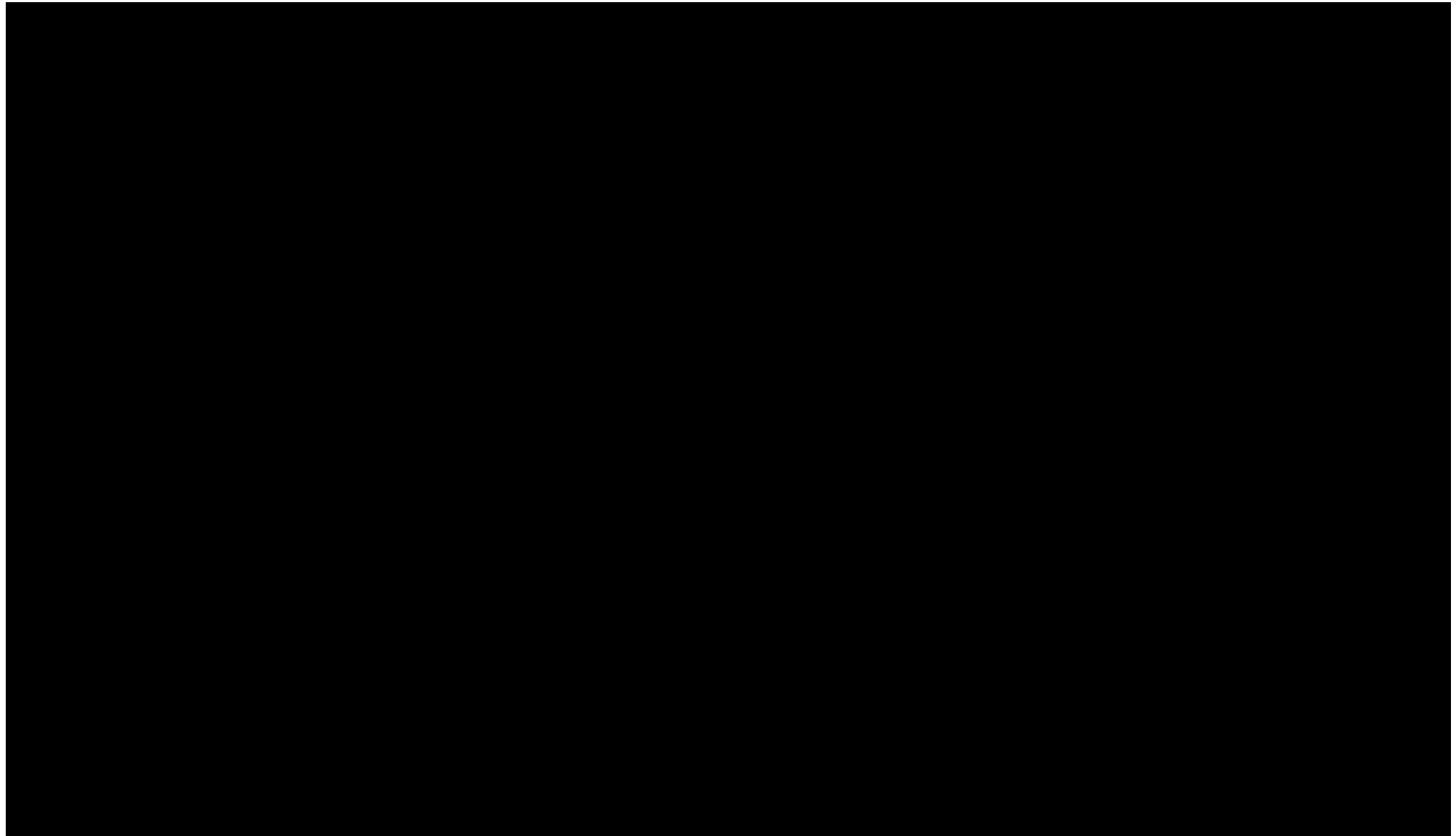


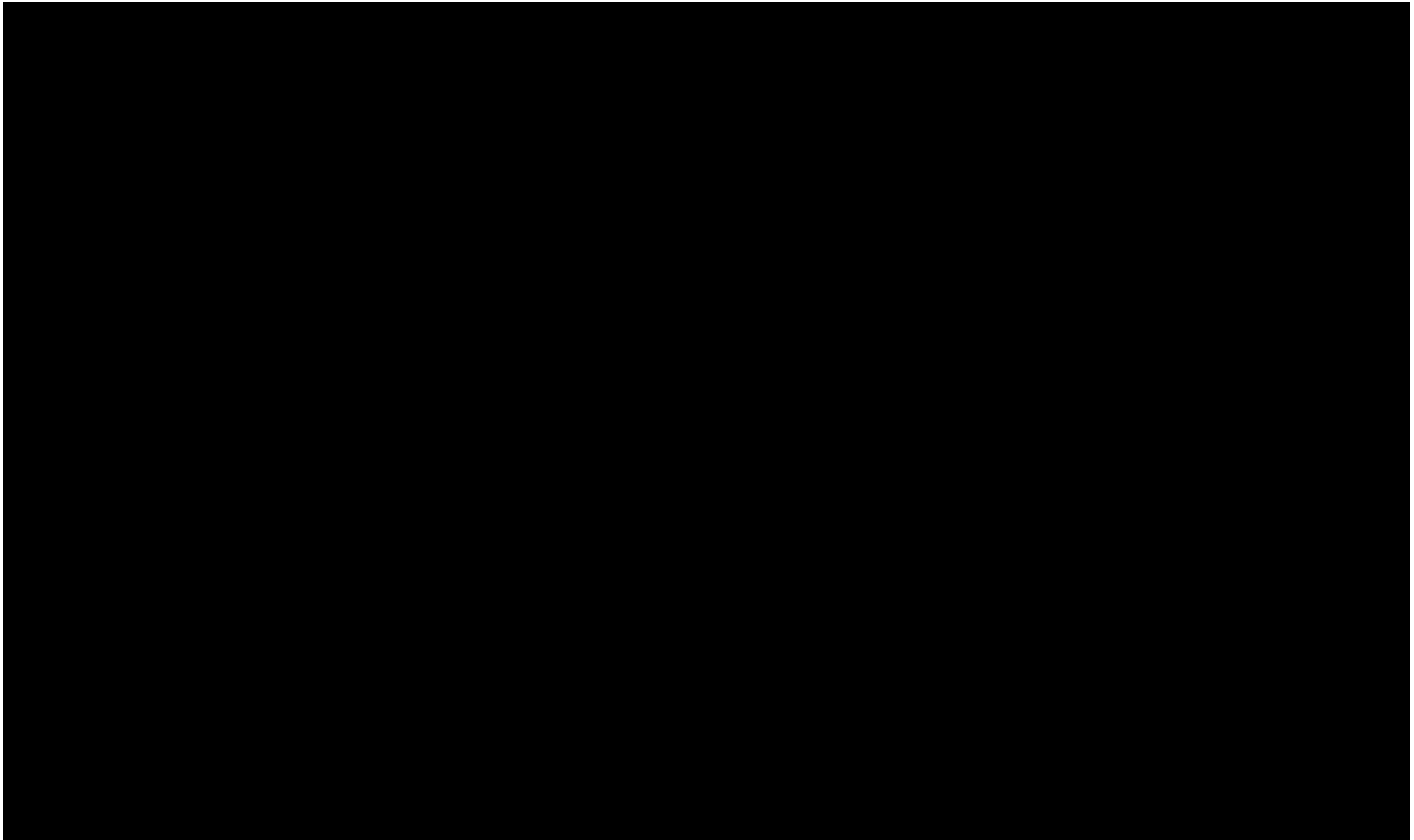


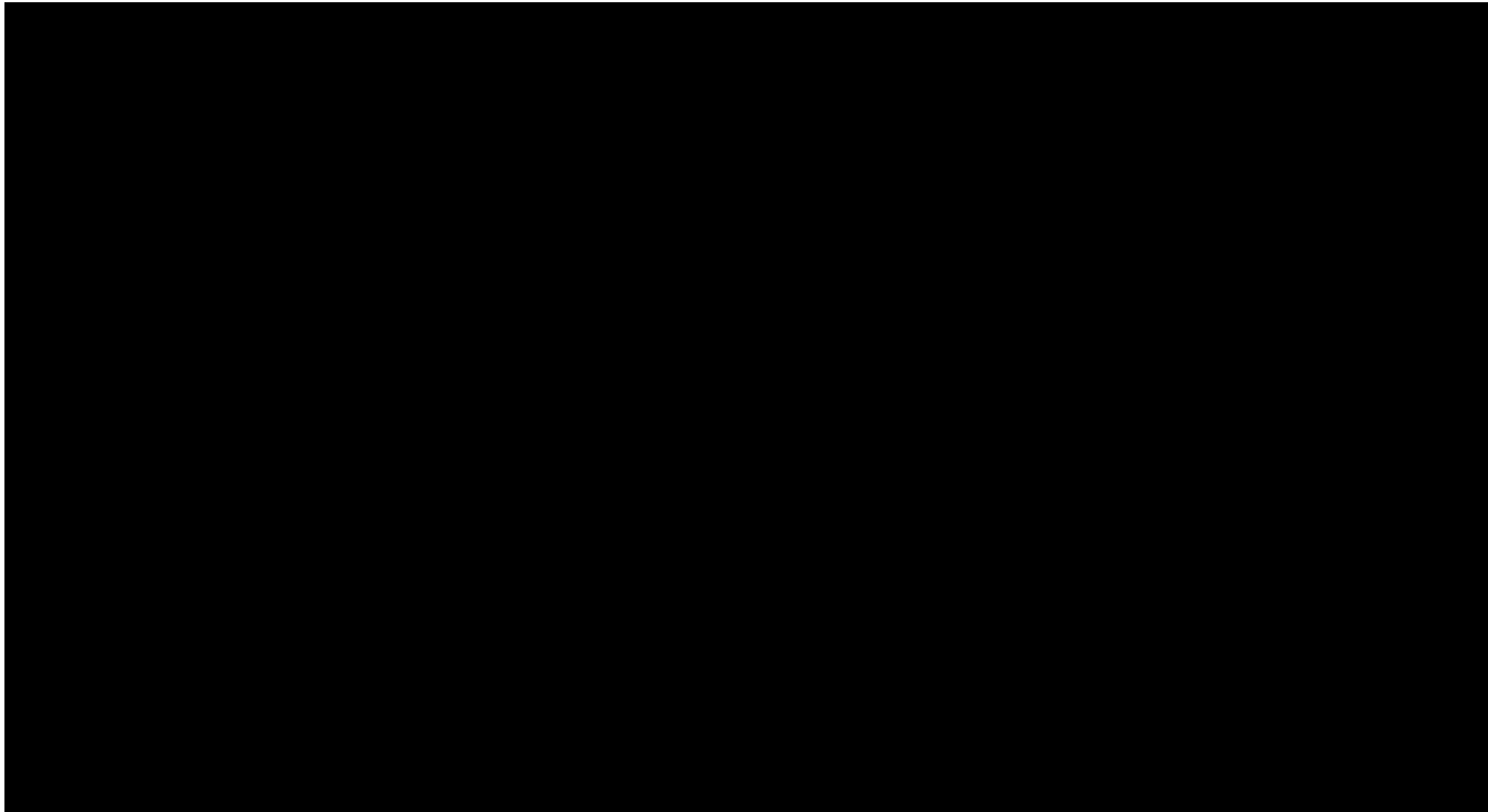


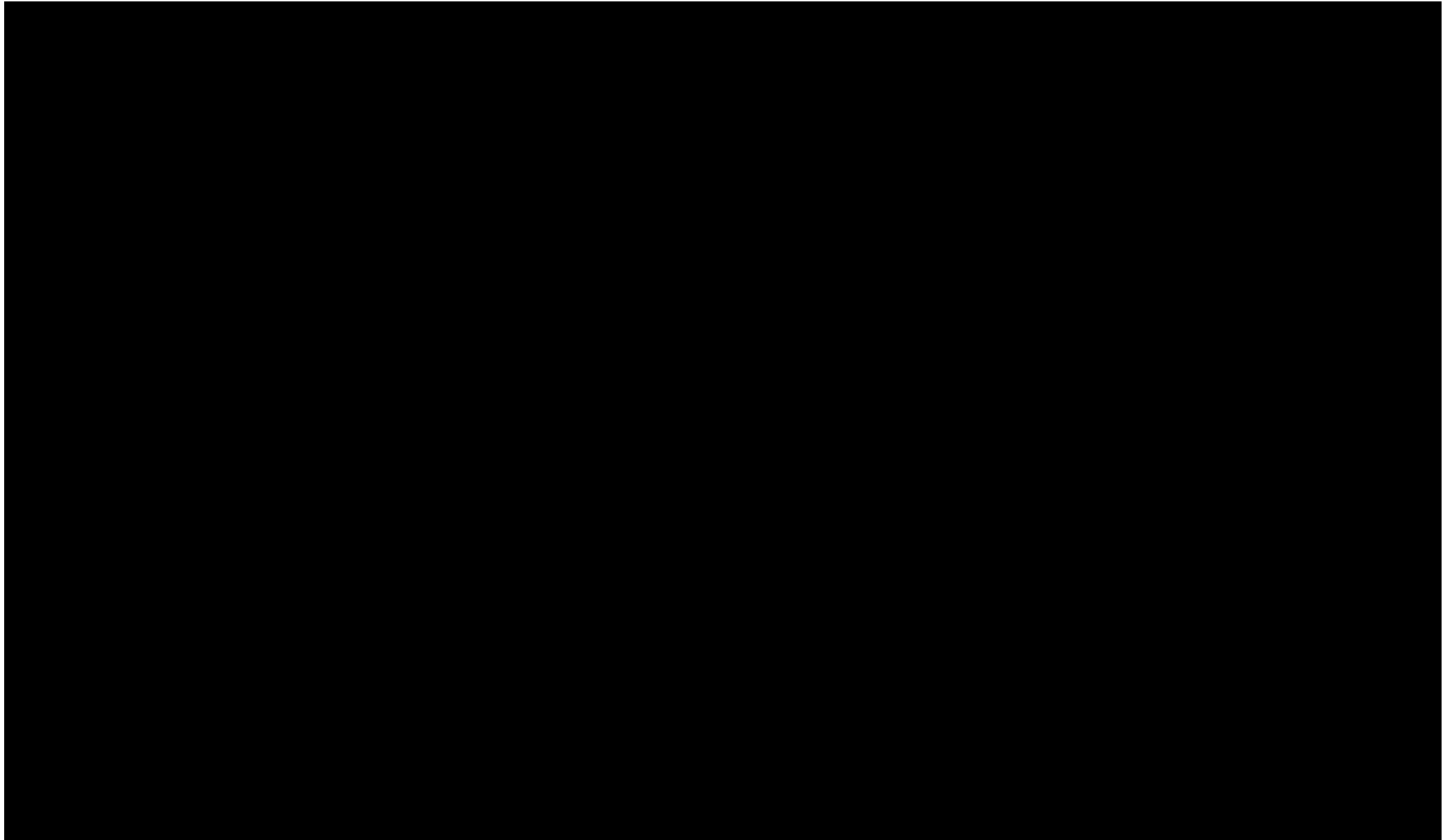




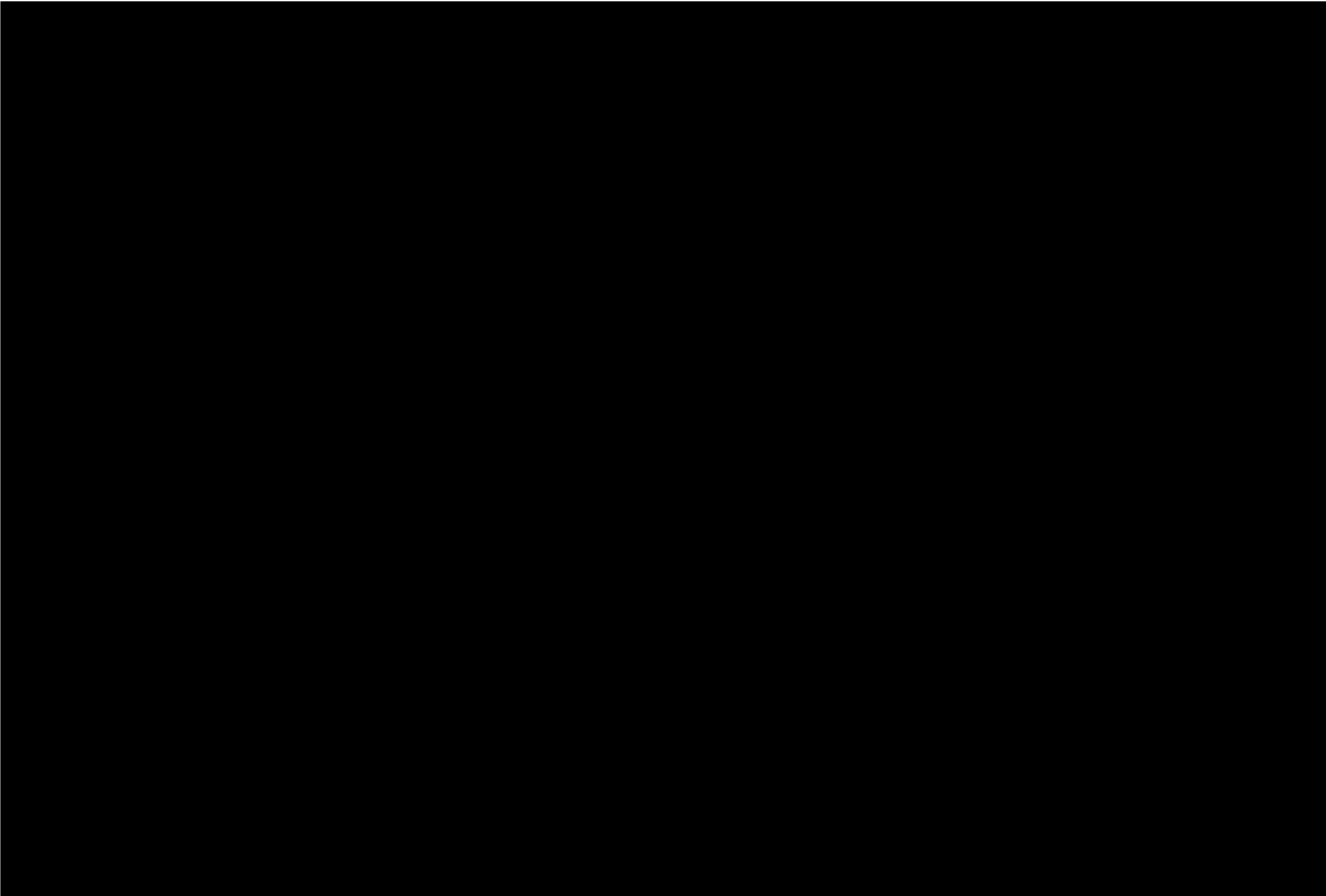




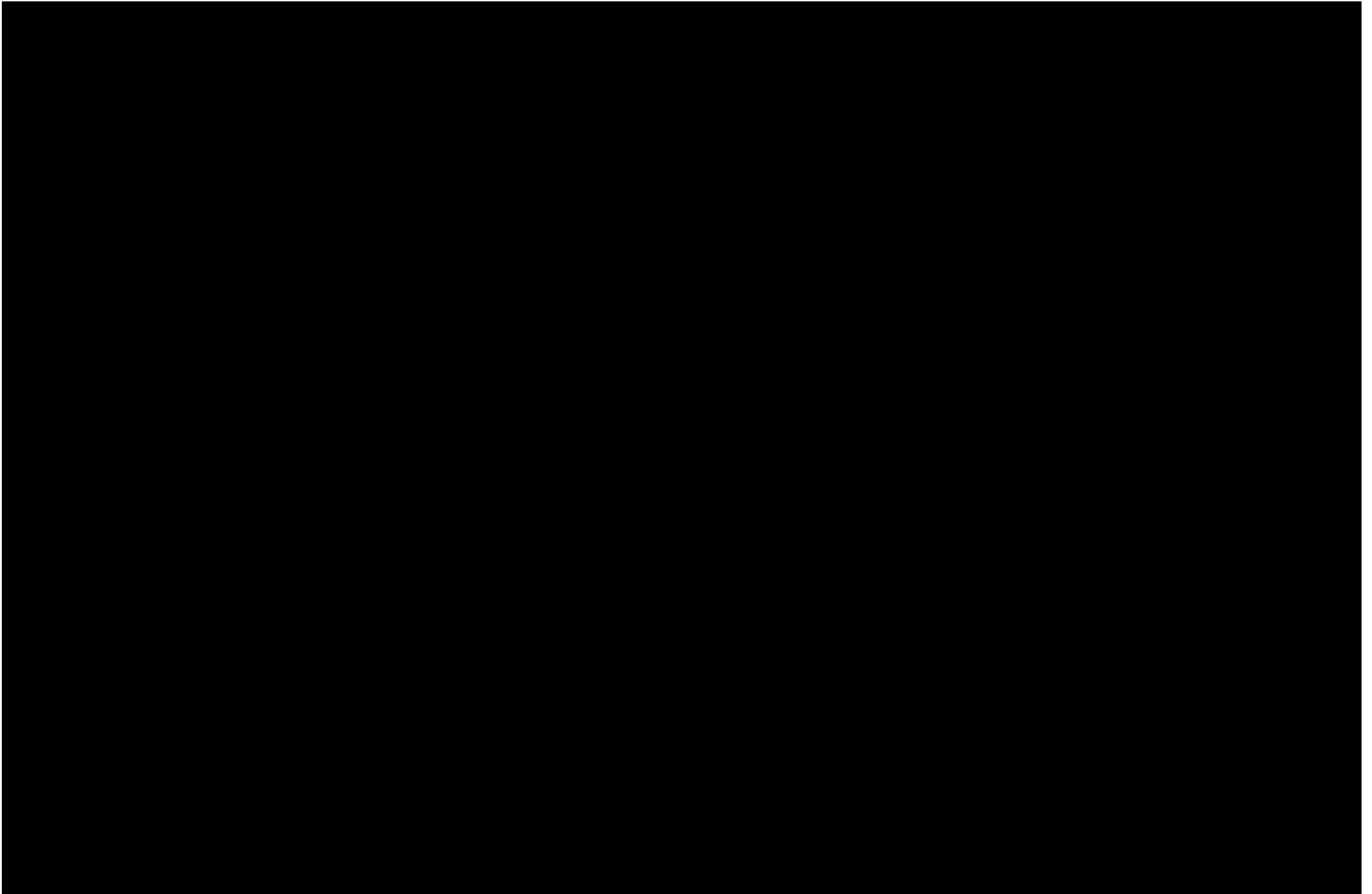


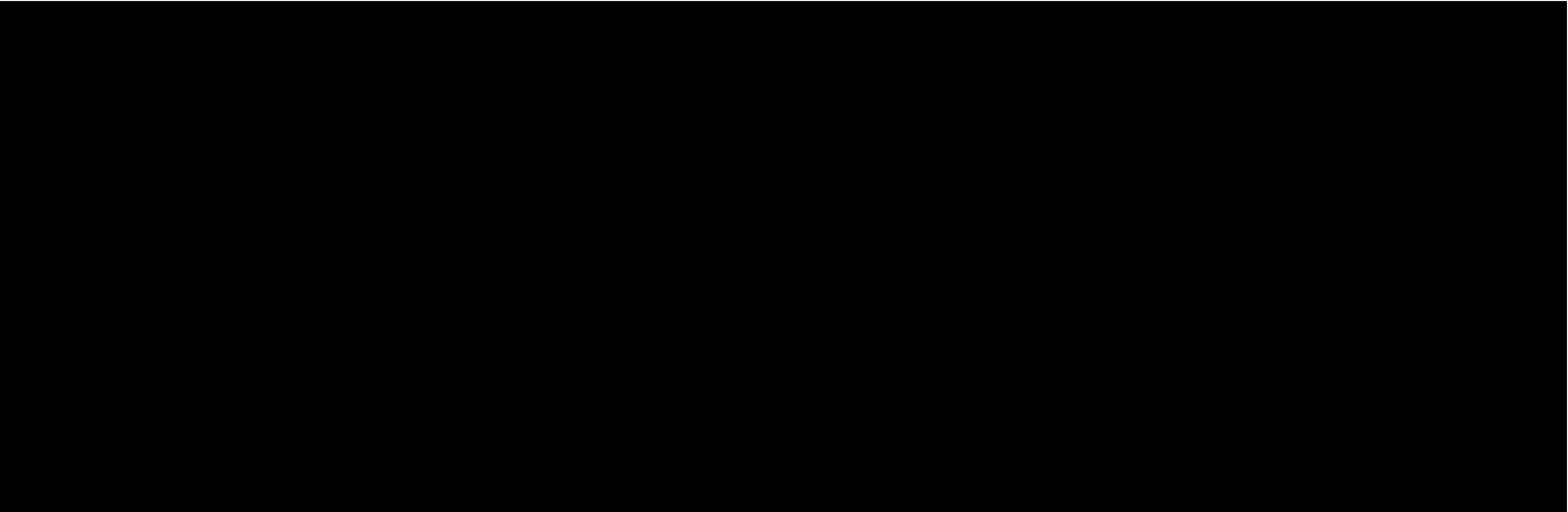




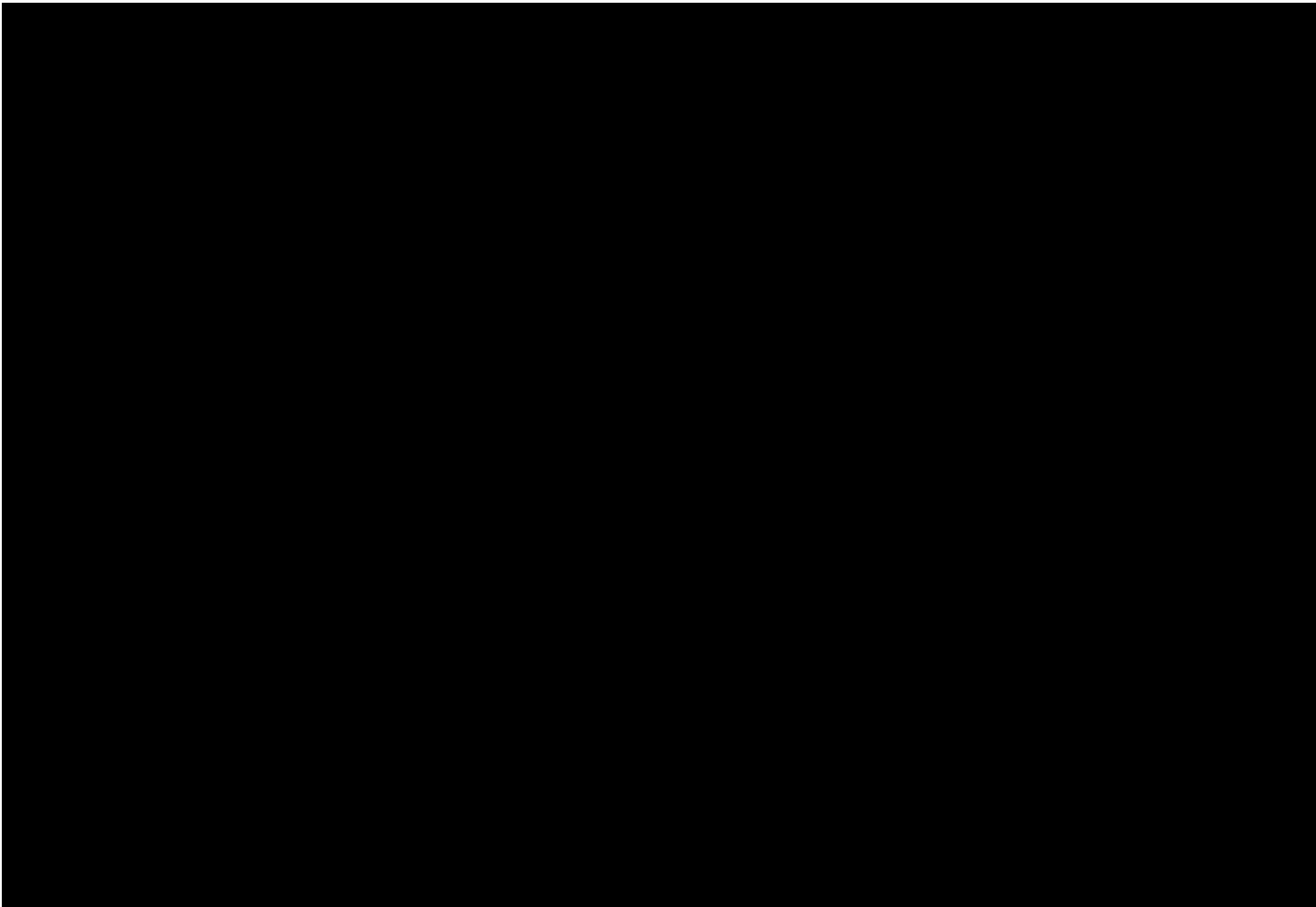


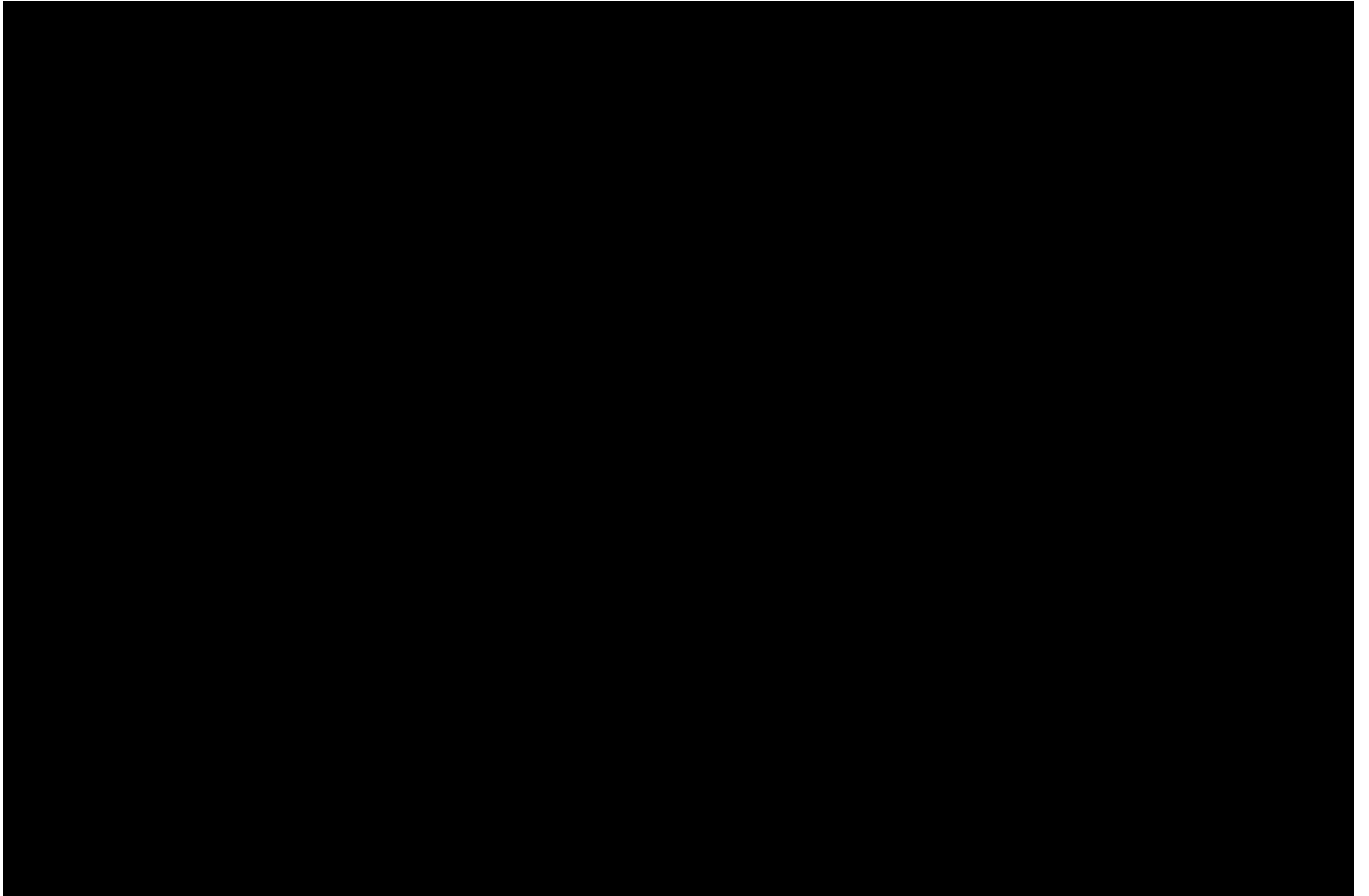
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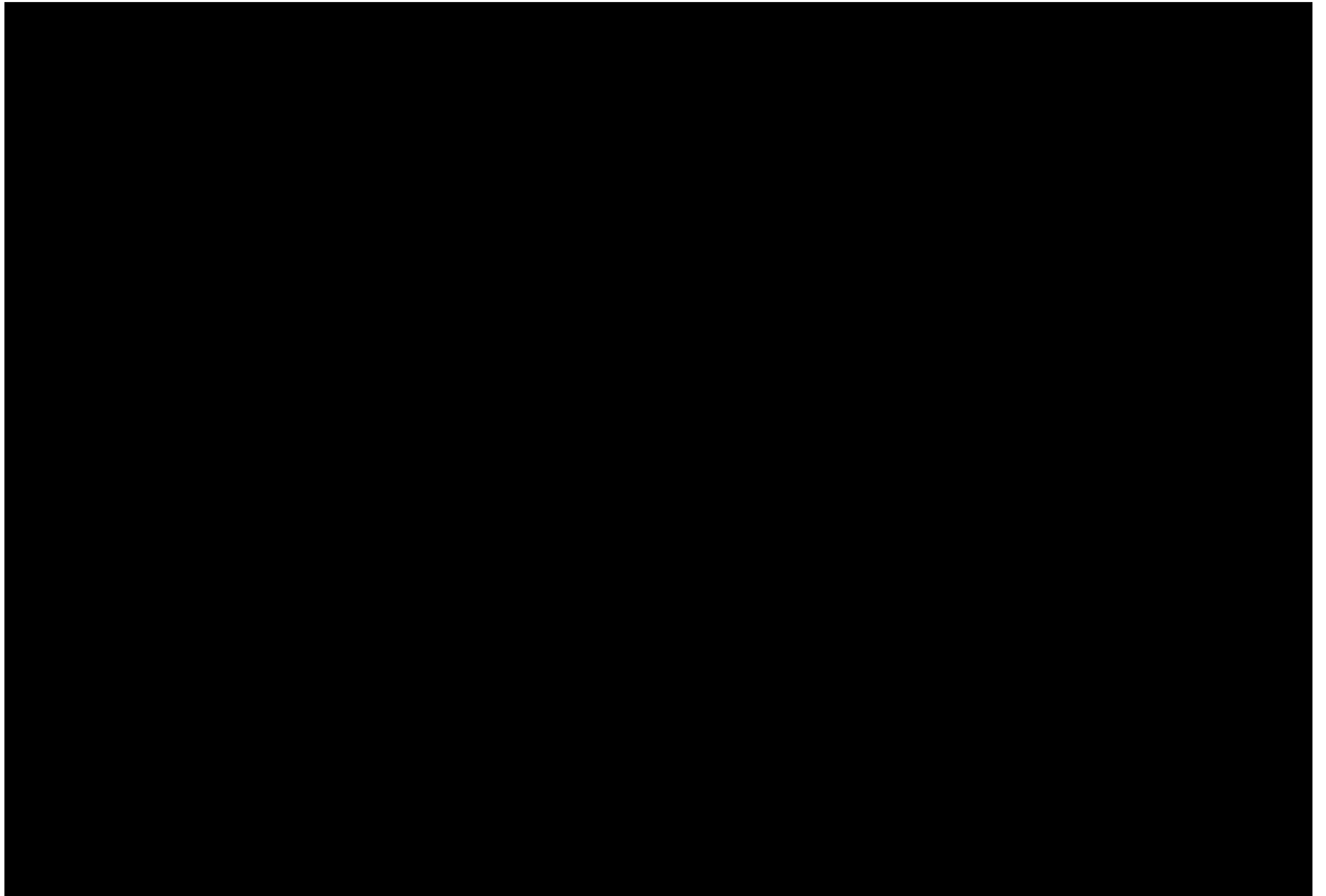


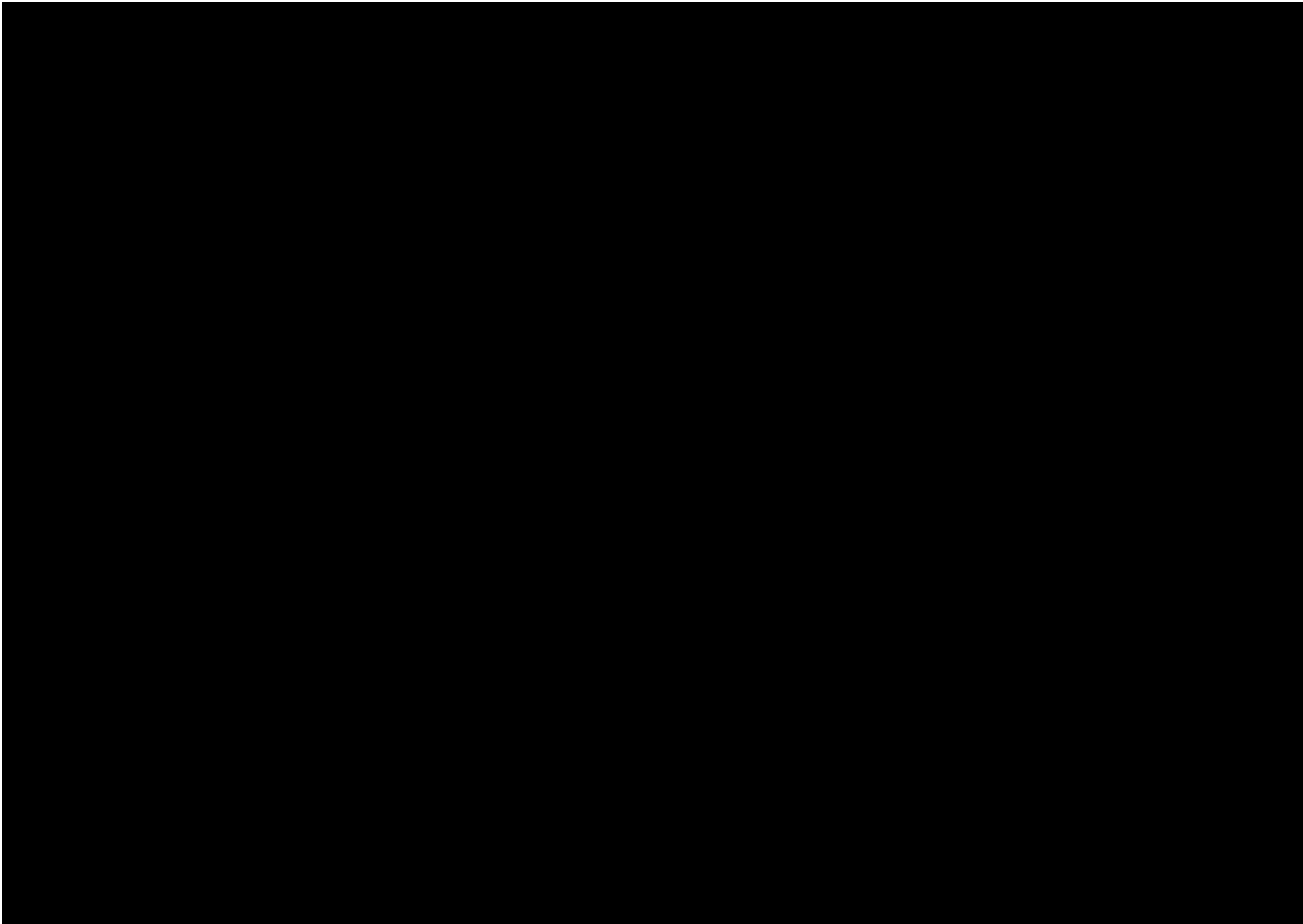


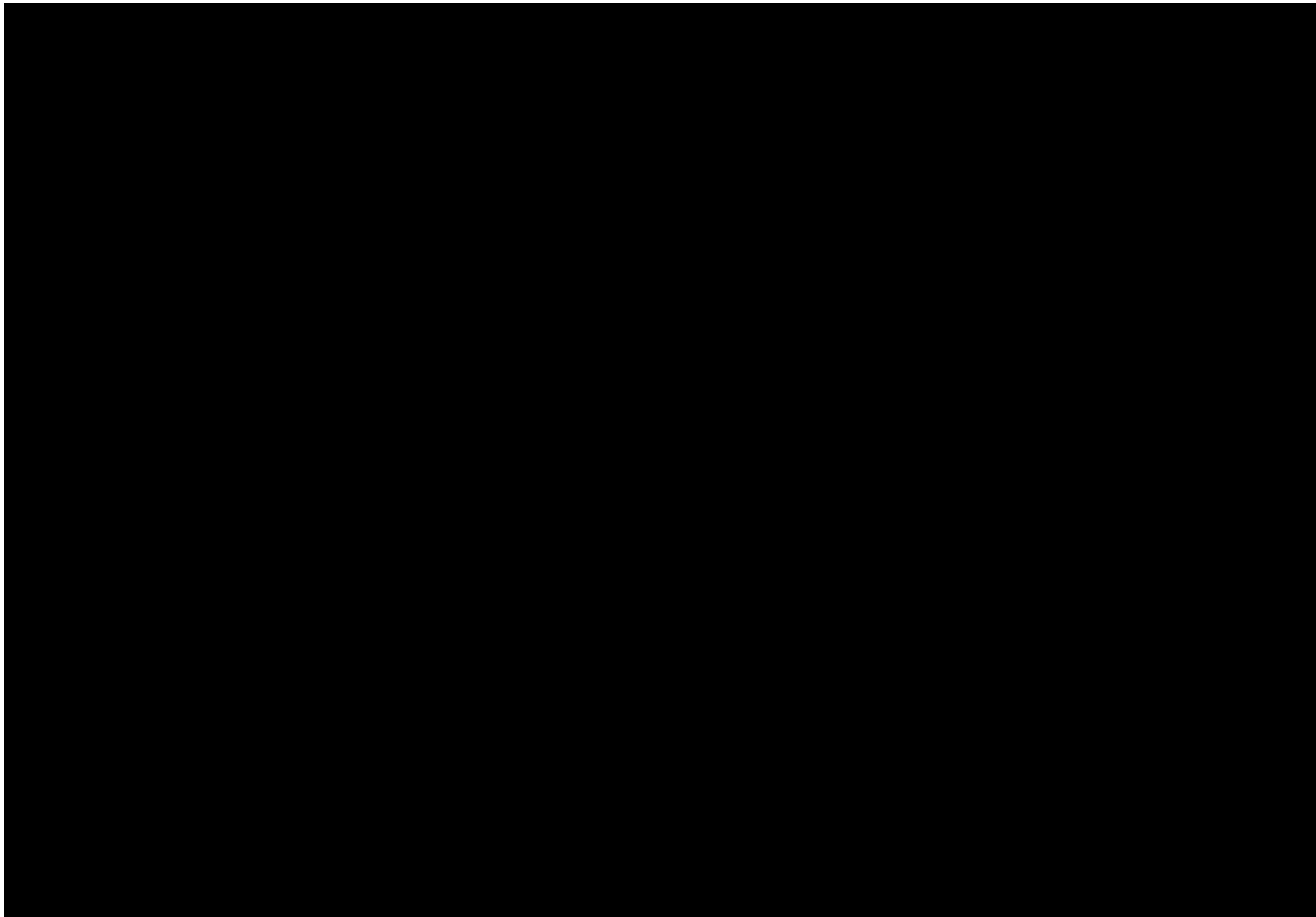




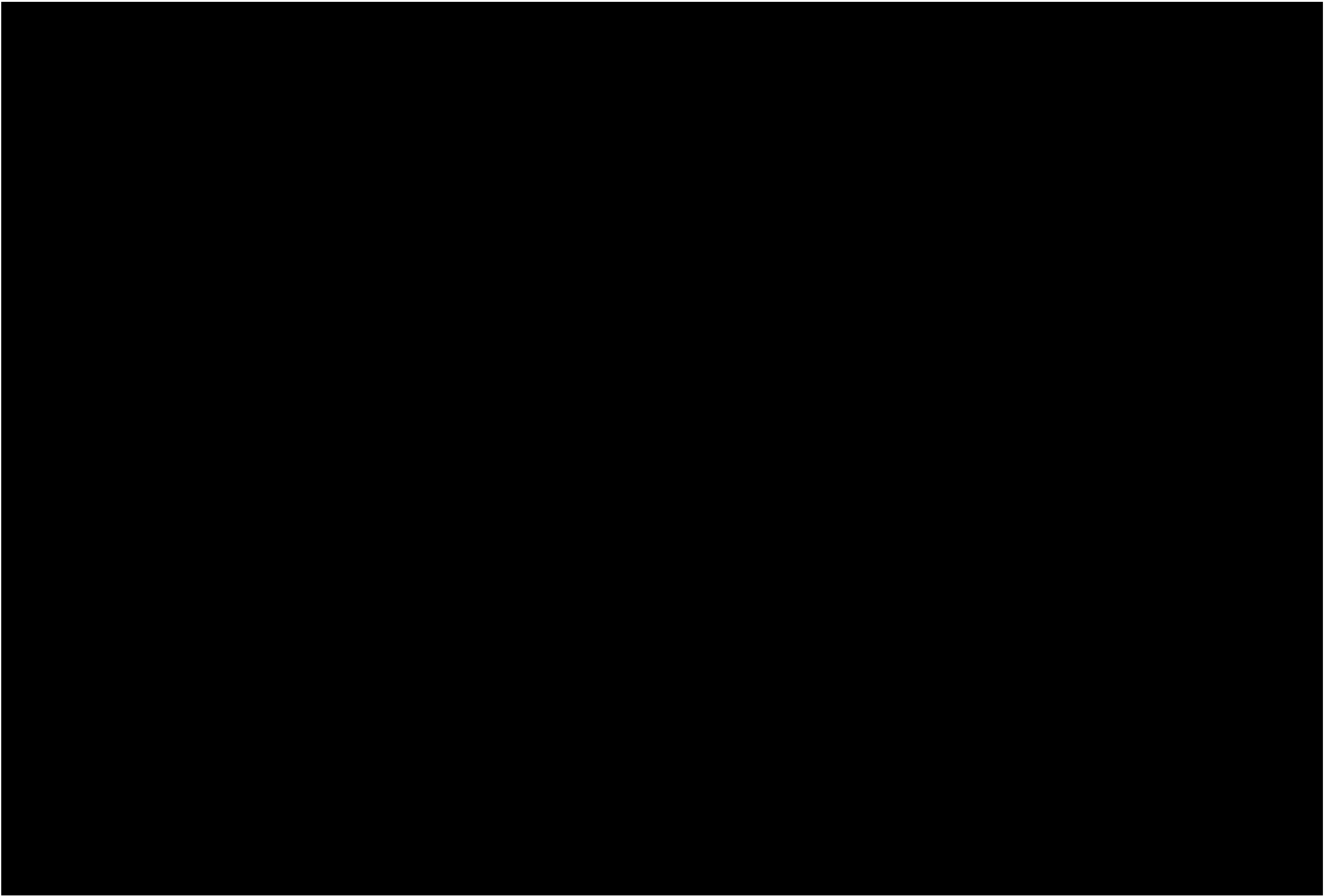


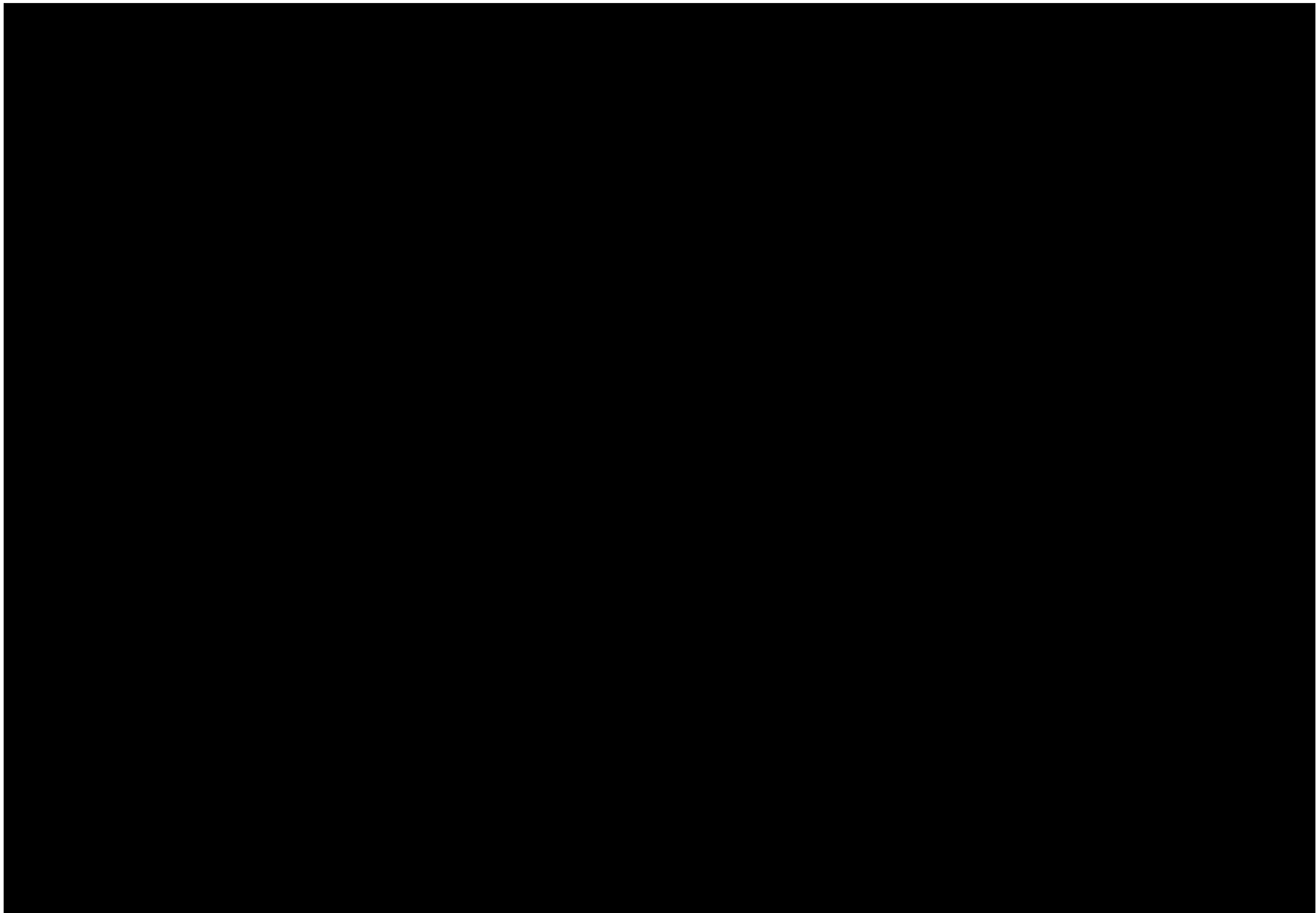


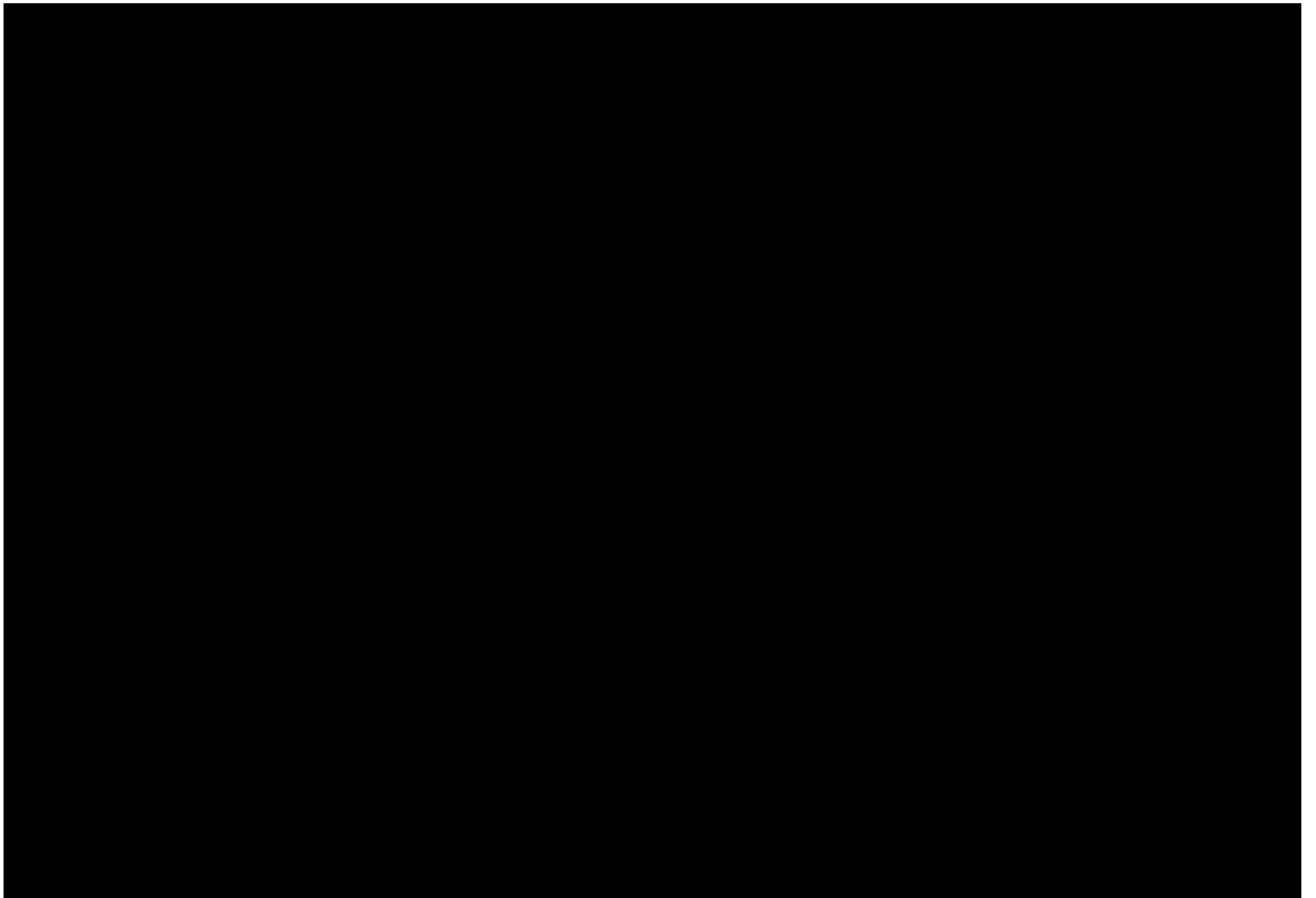


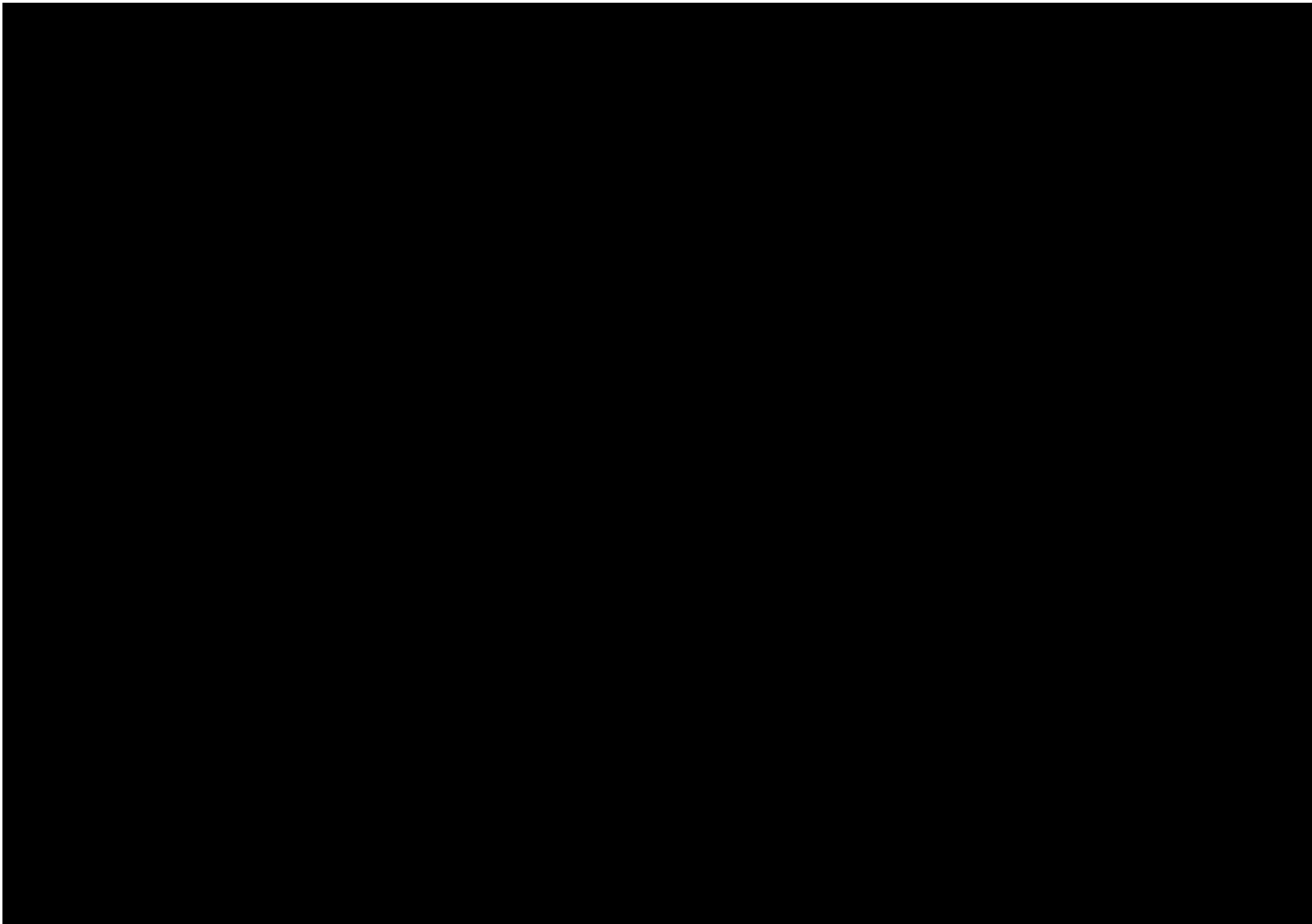


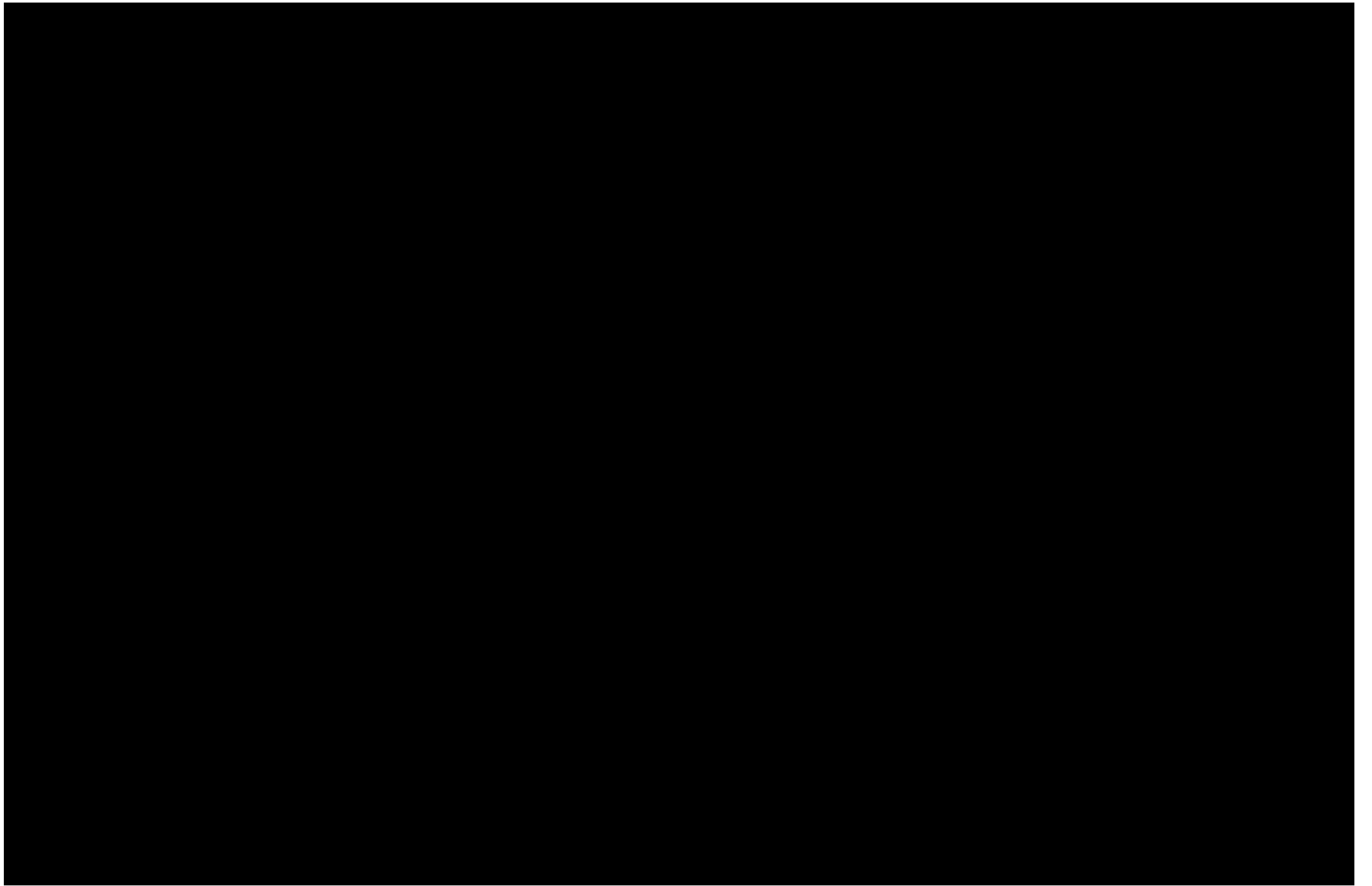


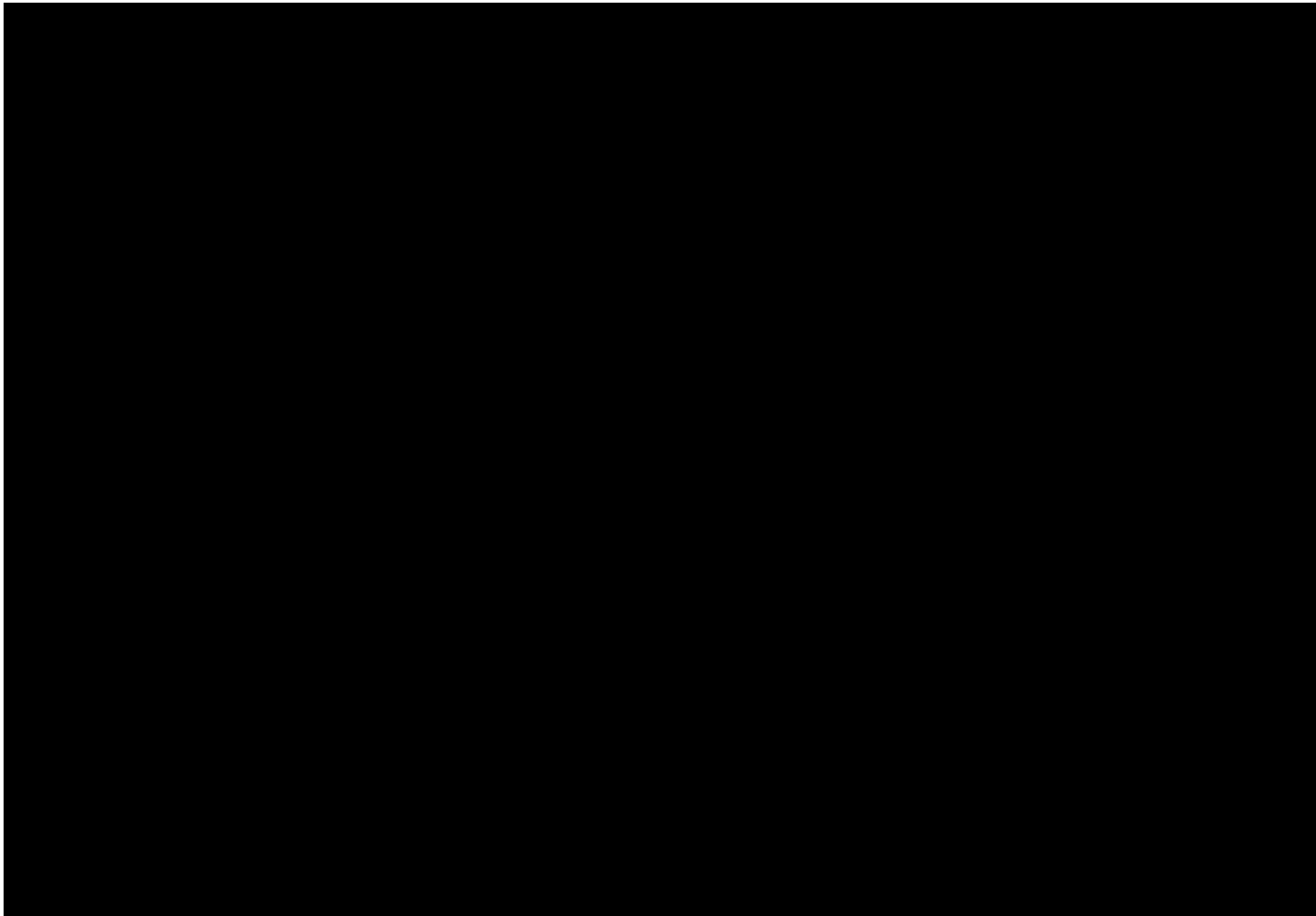


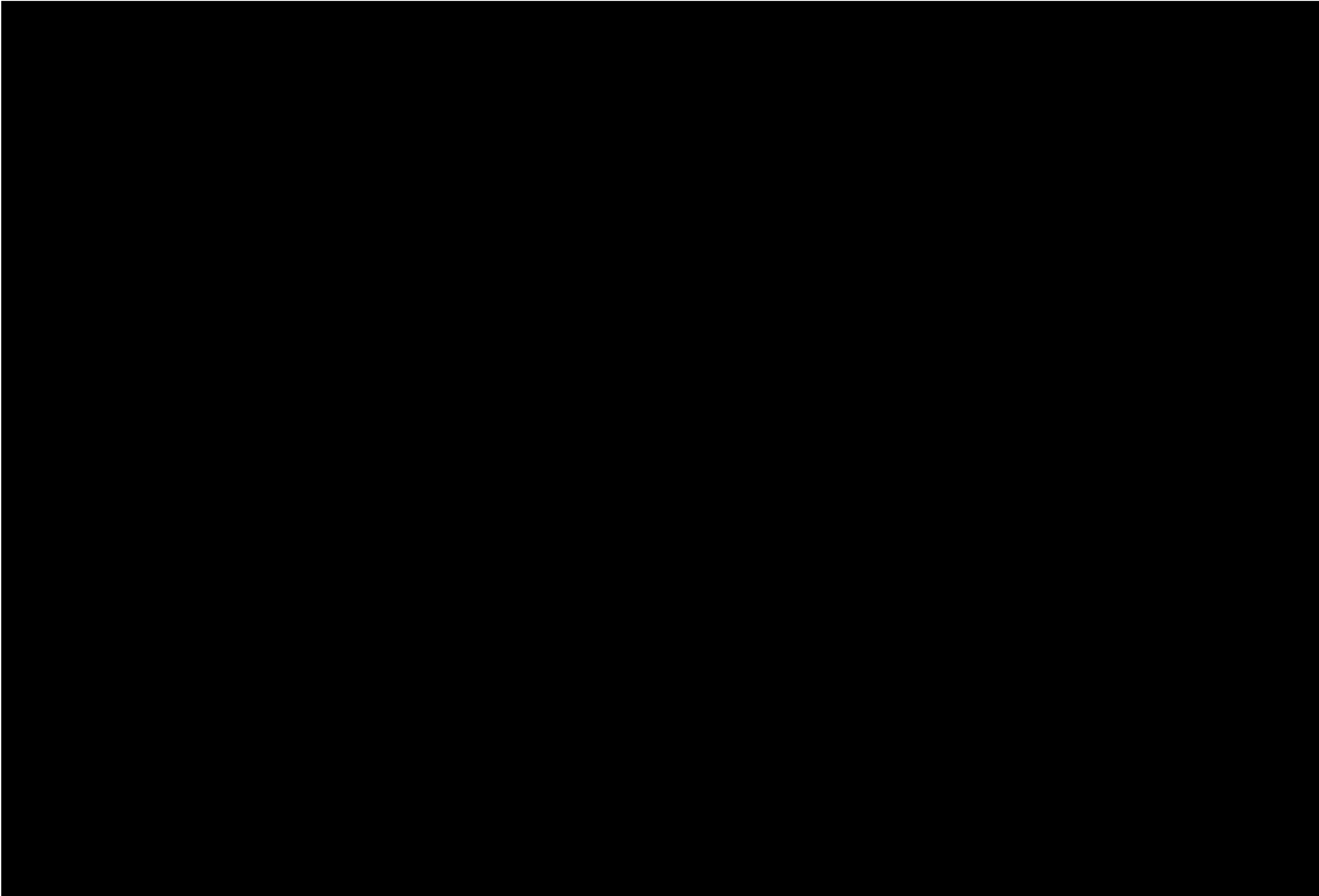


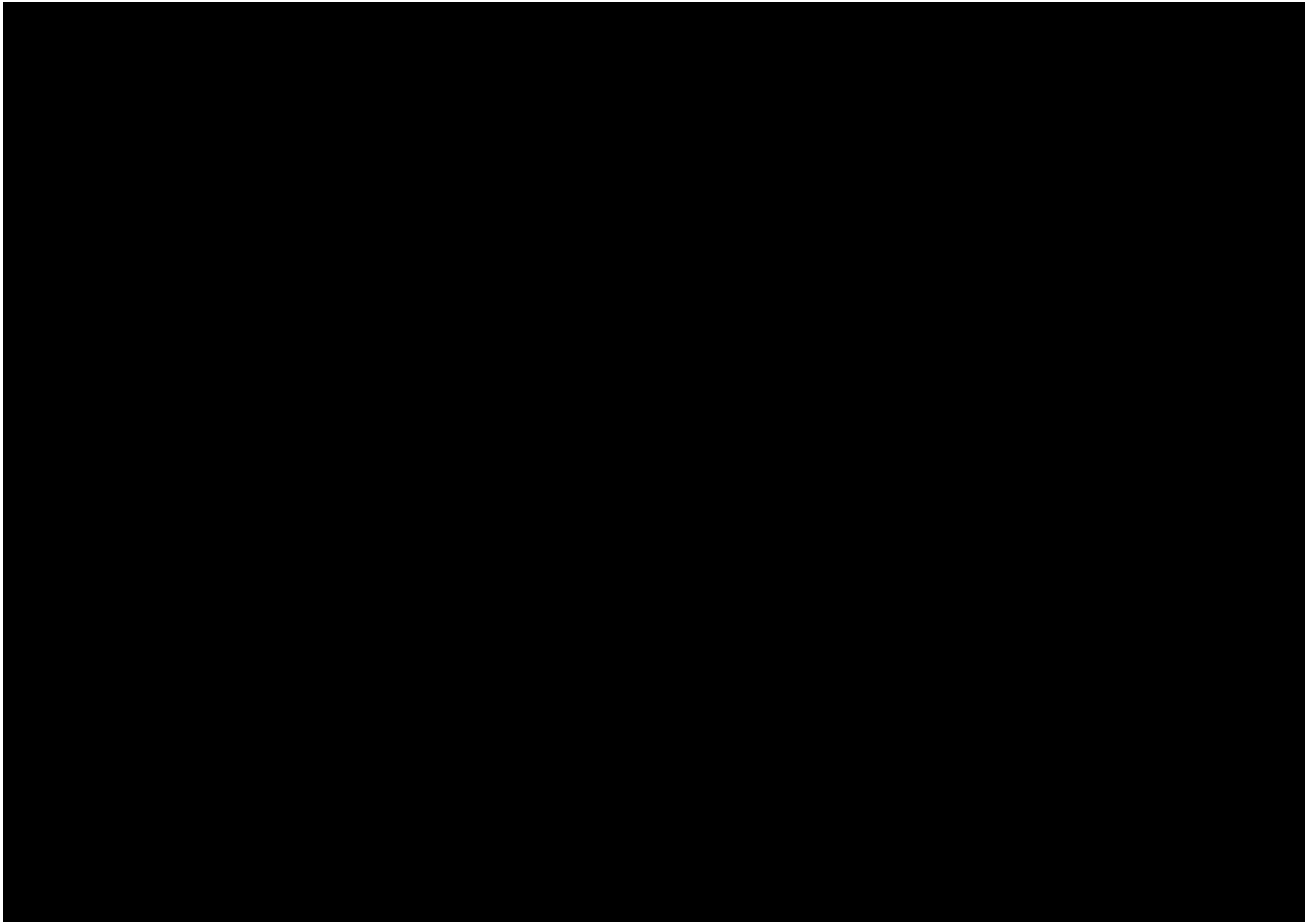


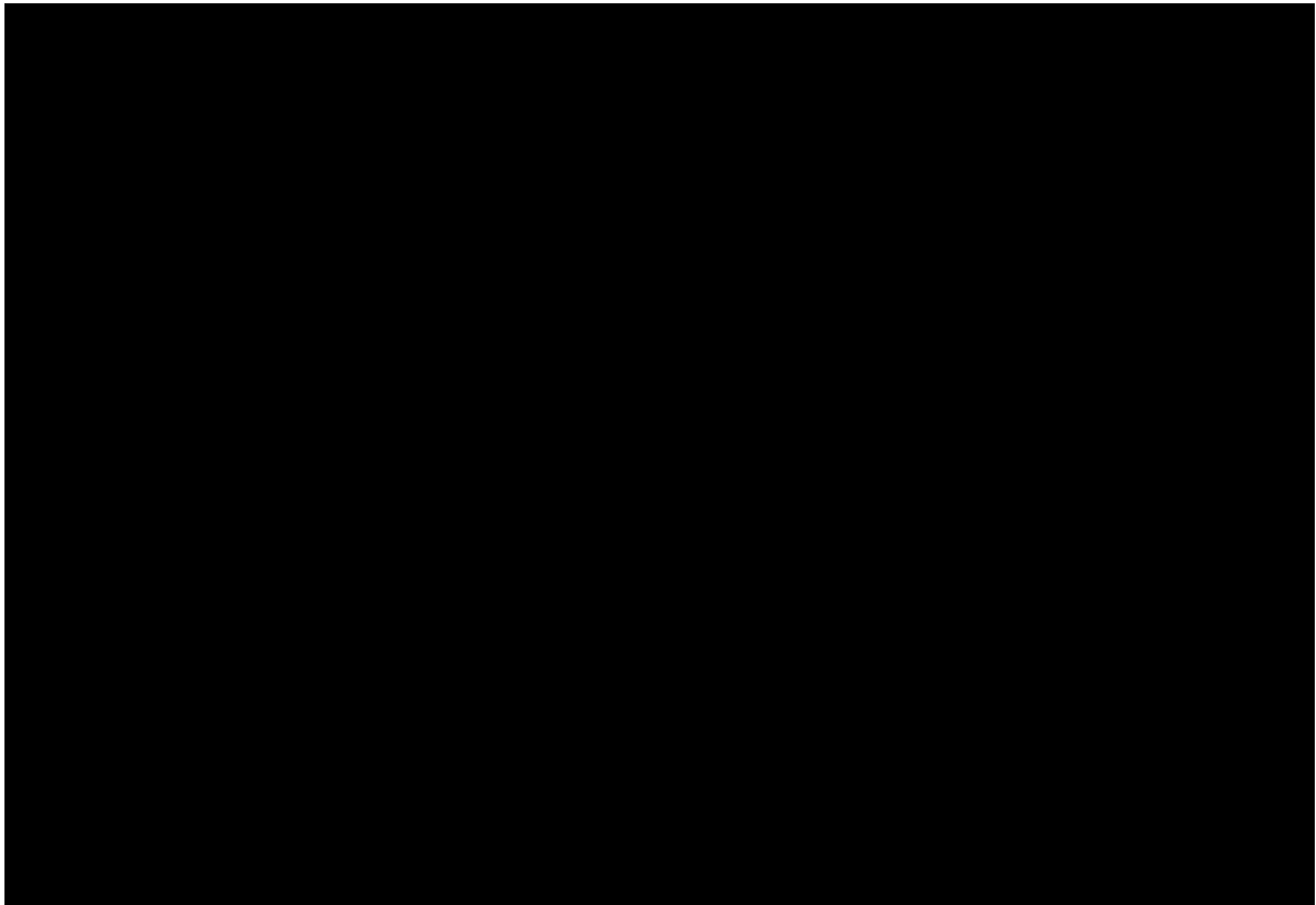


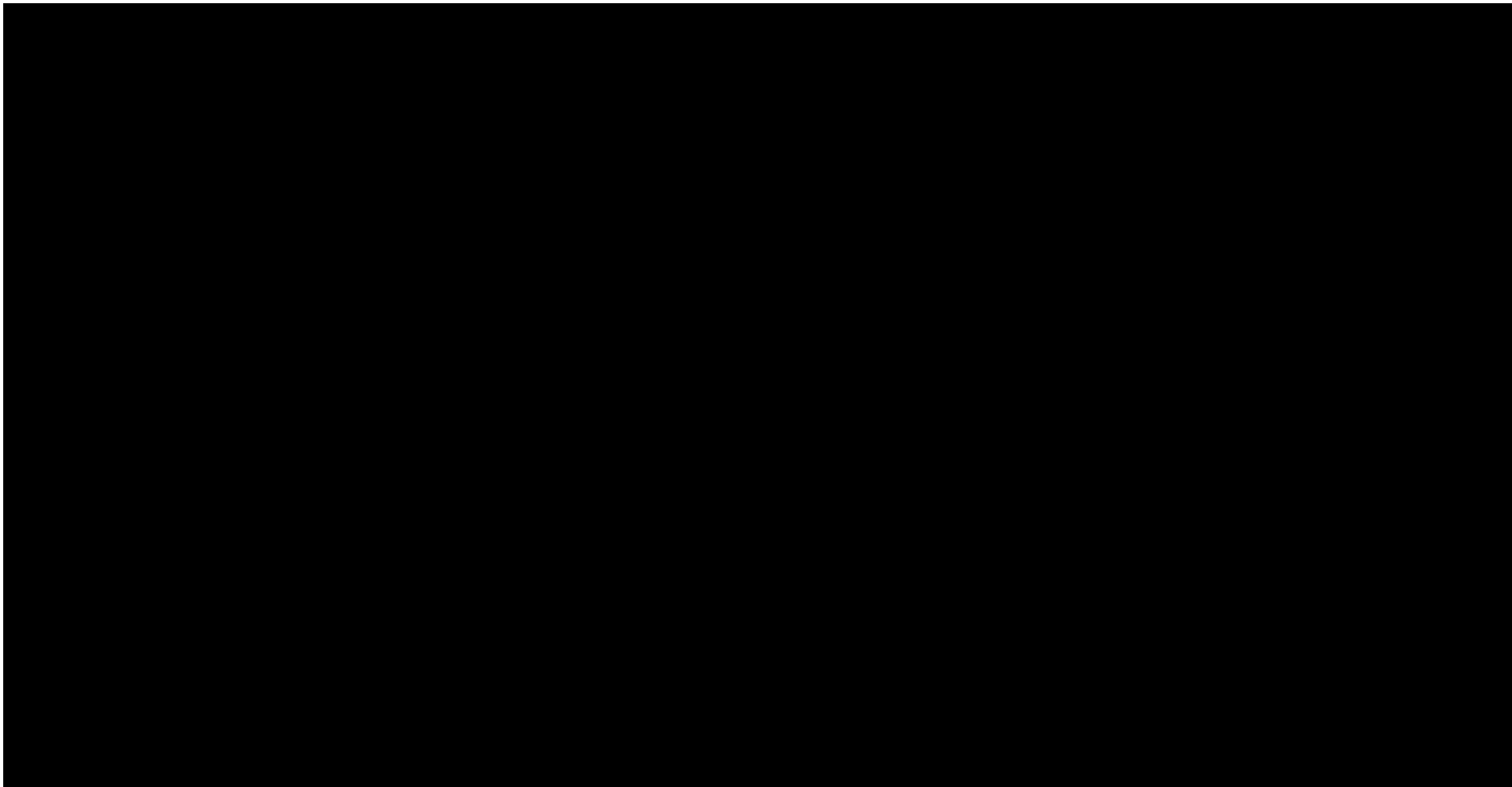


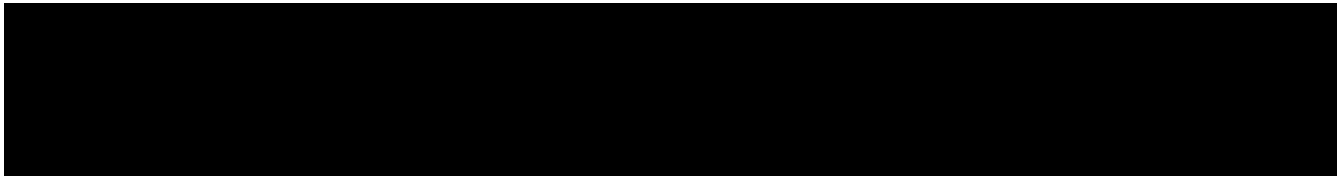
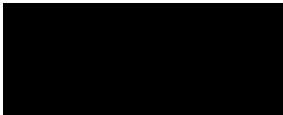


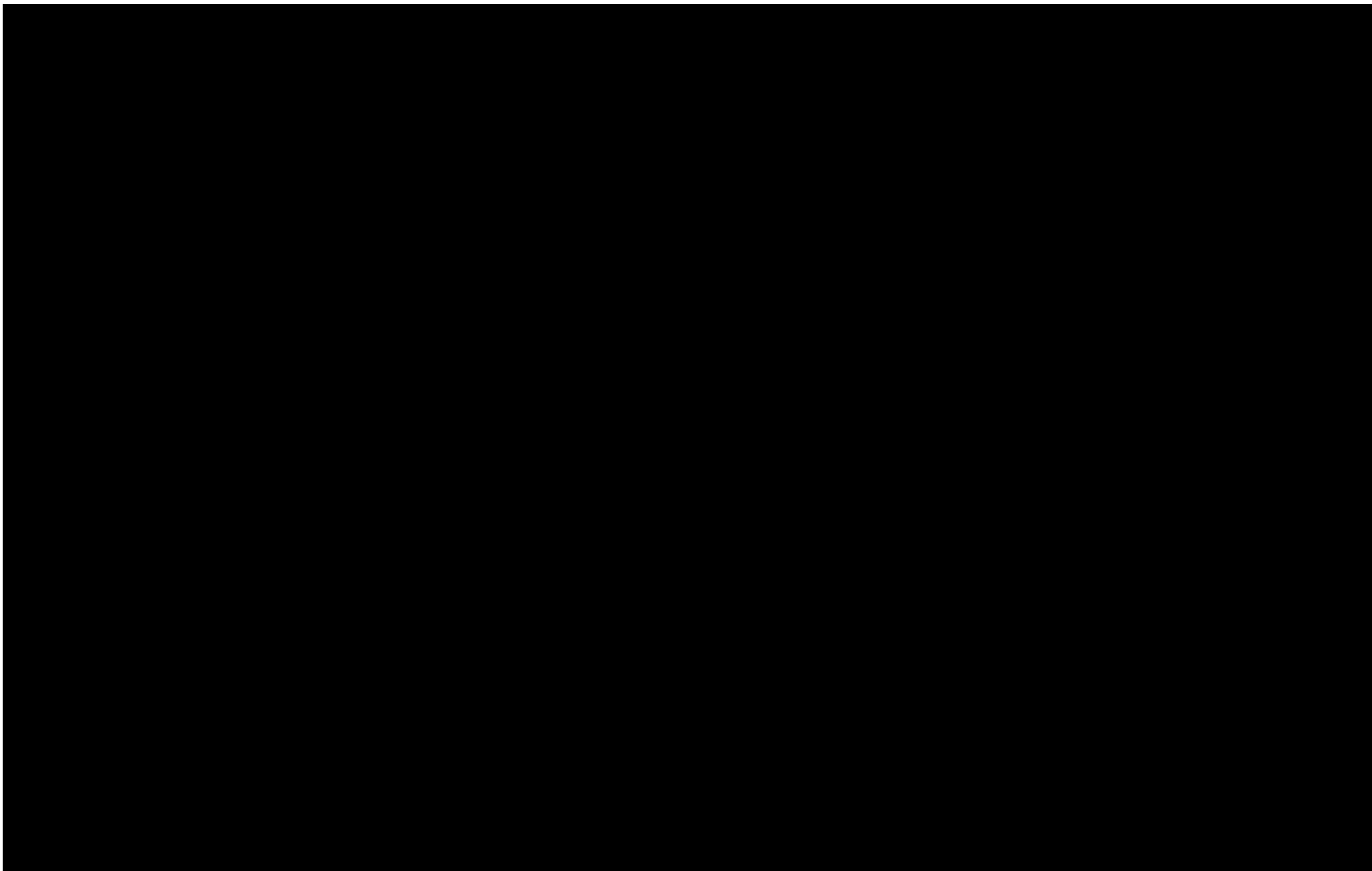


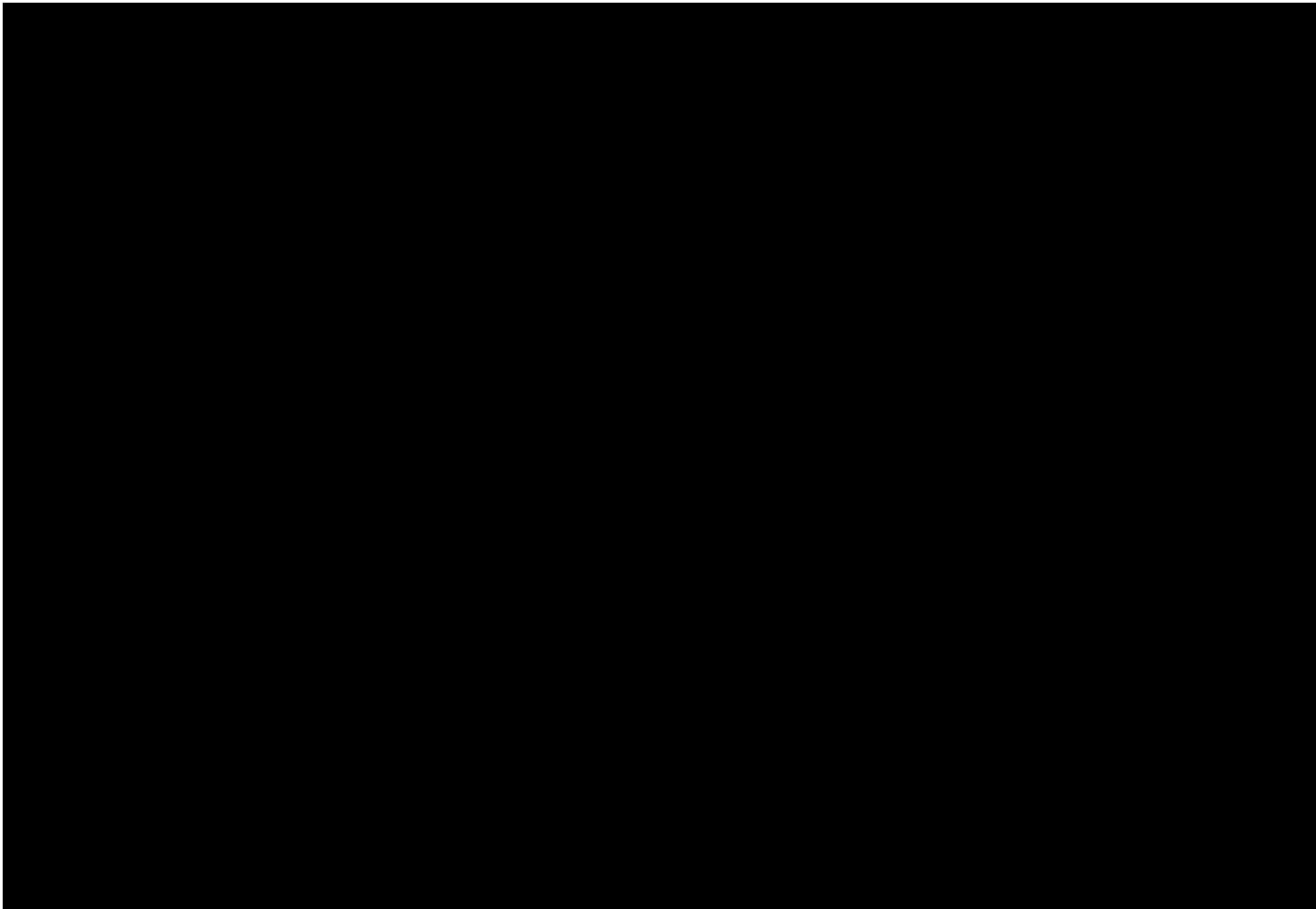


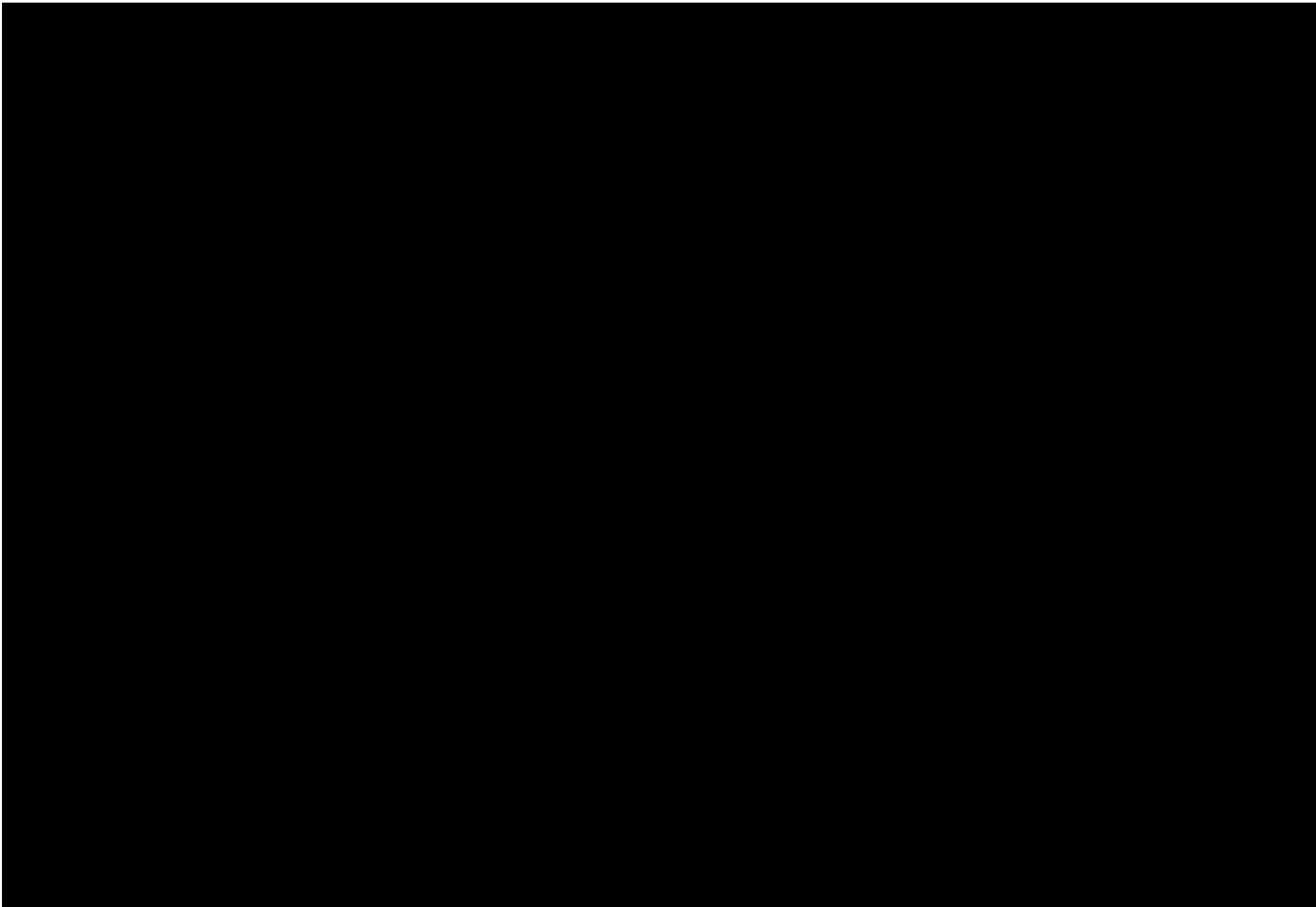


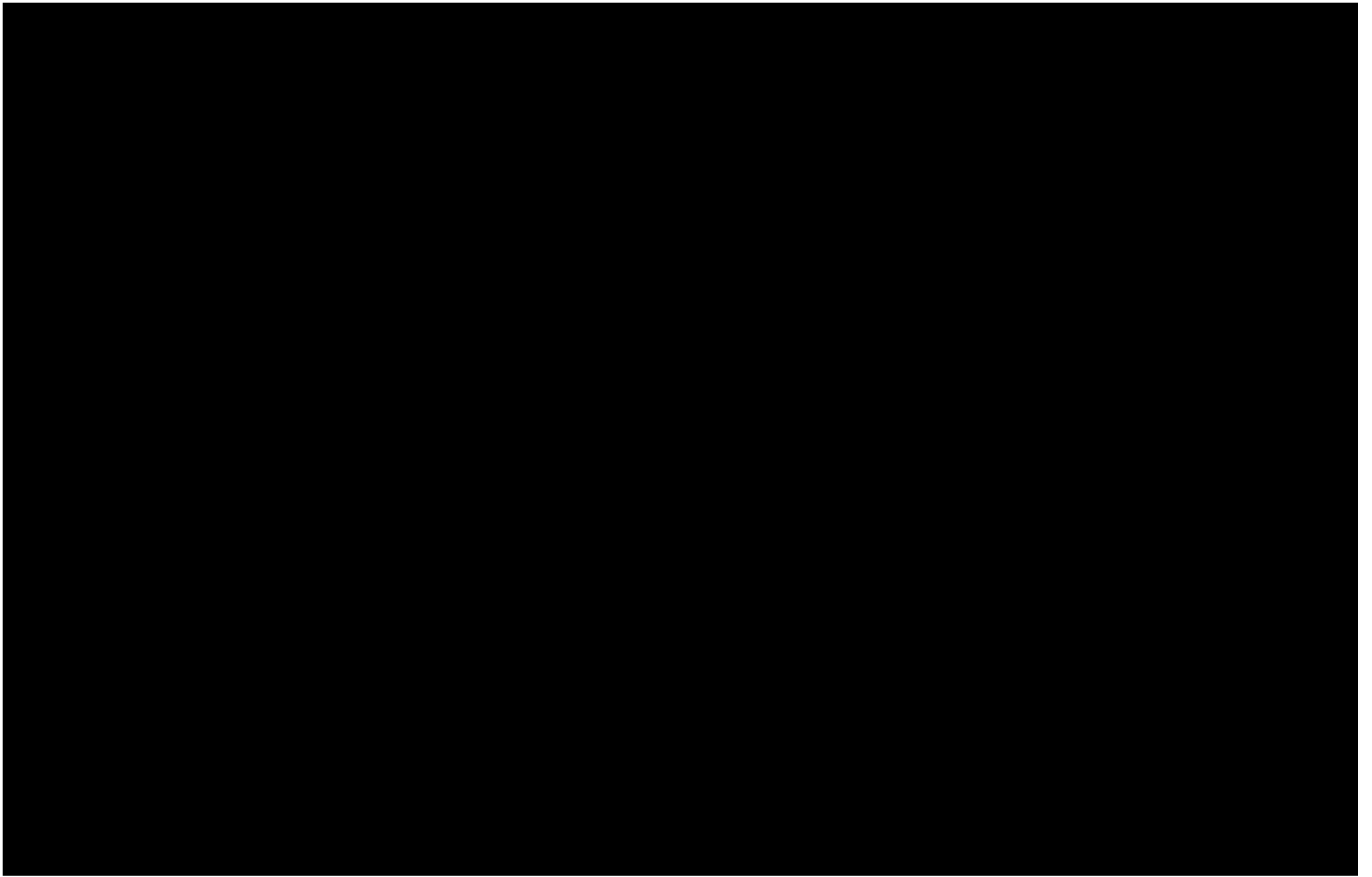


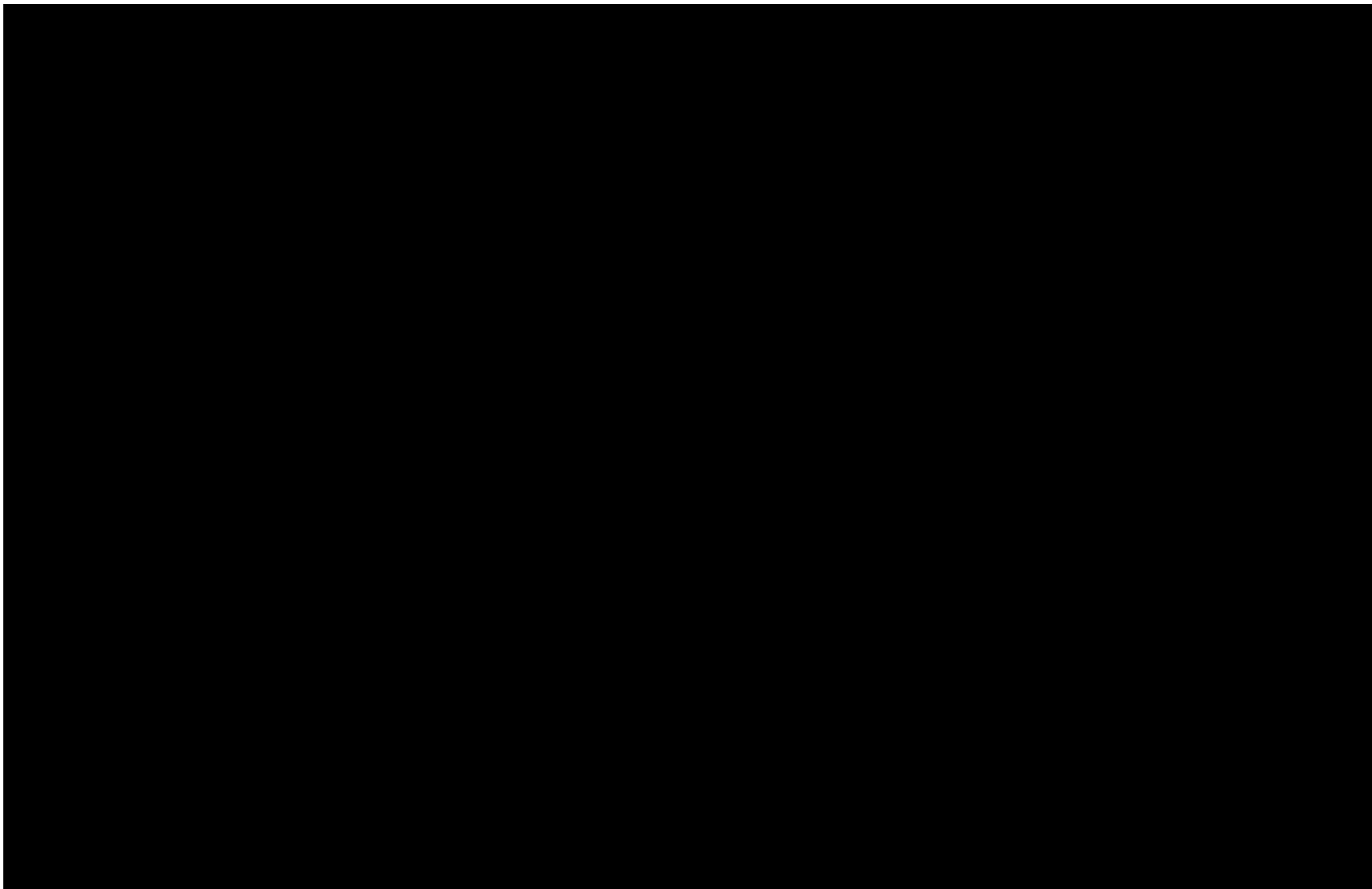


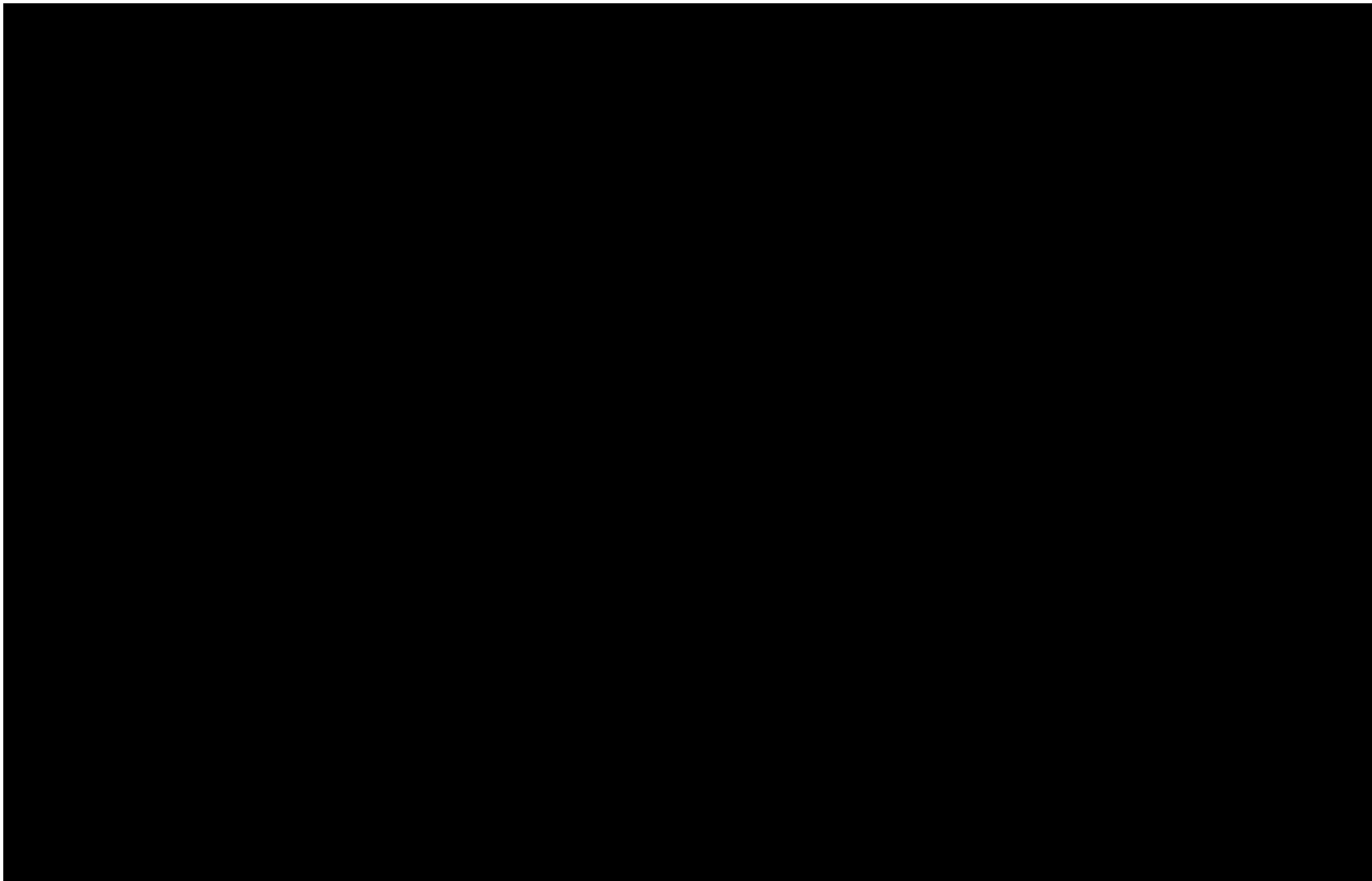


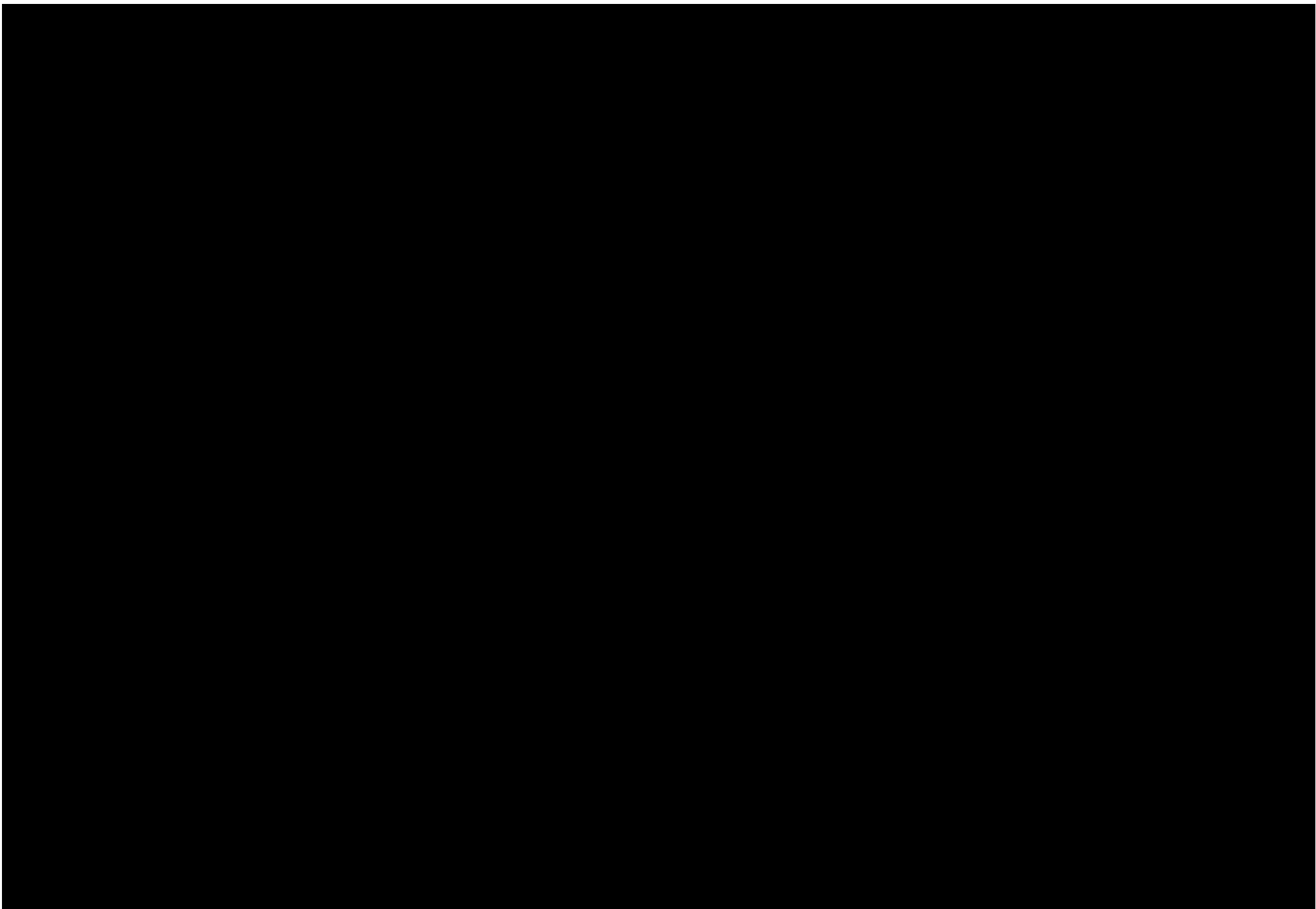


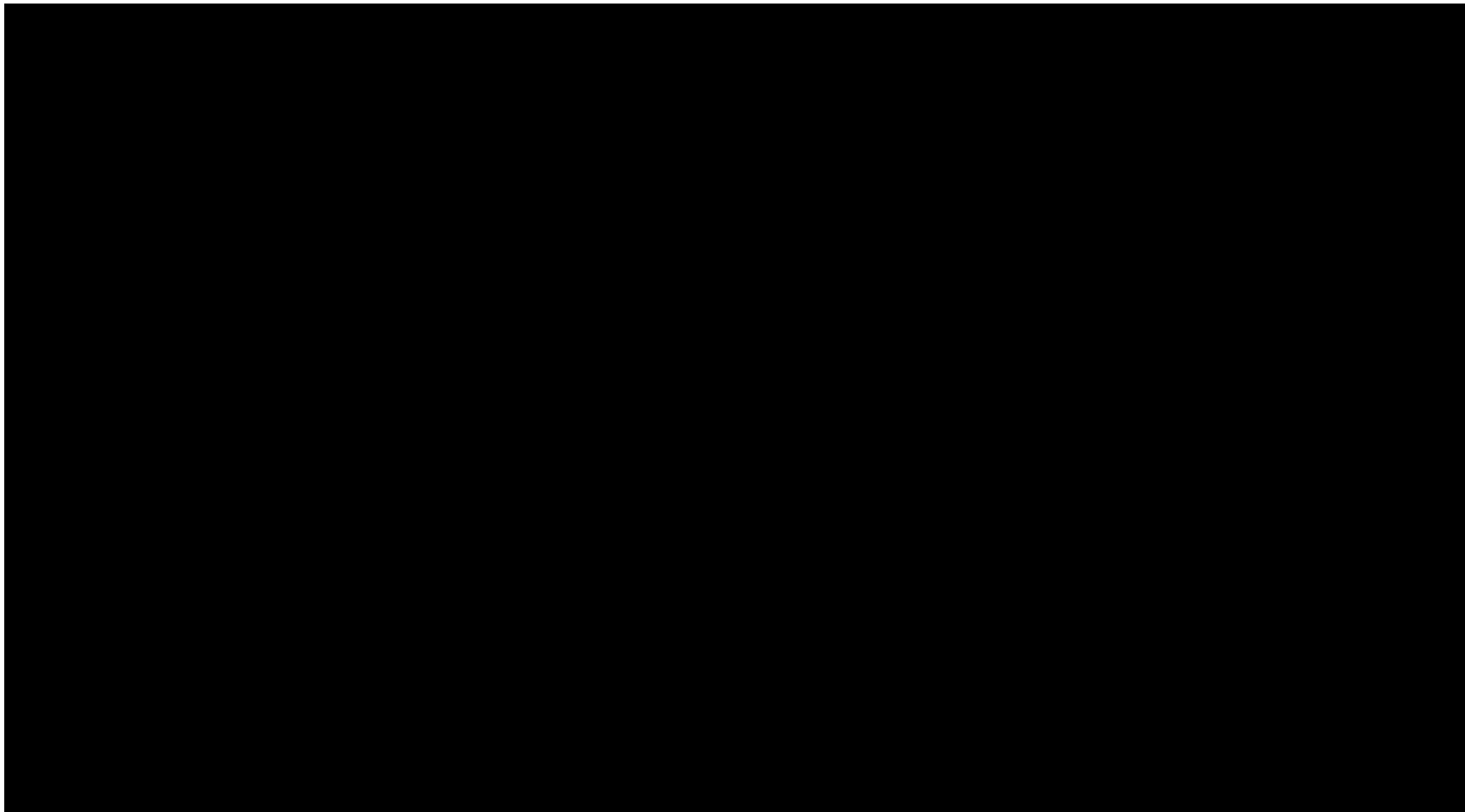














the 1990s, the number of people in the UK who are employed in the public sector has increased by 1.5 million (1990–1999) (Department of Health 2000).

There is a growing emphasis on the importance of the public sector in the provision of health care services, and the need to ensure that the public sector is able to meet the needs of the population. This has led to a number of initiatives aimed at improving the efficiency and effectiveness of the public sector, including the introduction of performance targets and the establishment of public sector bodies. The aim of this paper is to review the literature on the public sector and to discuss the implications for the future of the public sector in the UK.

The paper is organized as follows. Section 2 discusses the role of the public sector in the provision of health care services. Section 3 discusses the challenges facing the public sector in the 1990s. Section 4 discusses the initiatives aimed at improving the efficiency and effectiveness of the public sector. Section 5 discusses the implications for the future of the public sector in the UK. The paper concludes with a discussion of the need for a new approach to the management of the public sector.

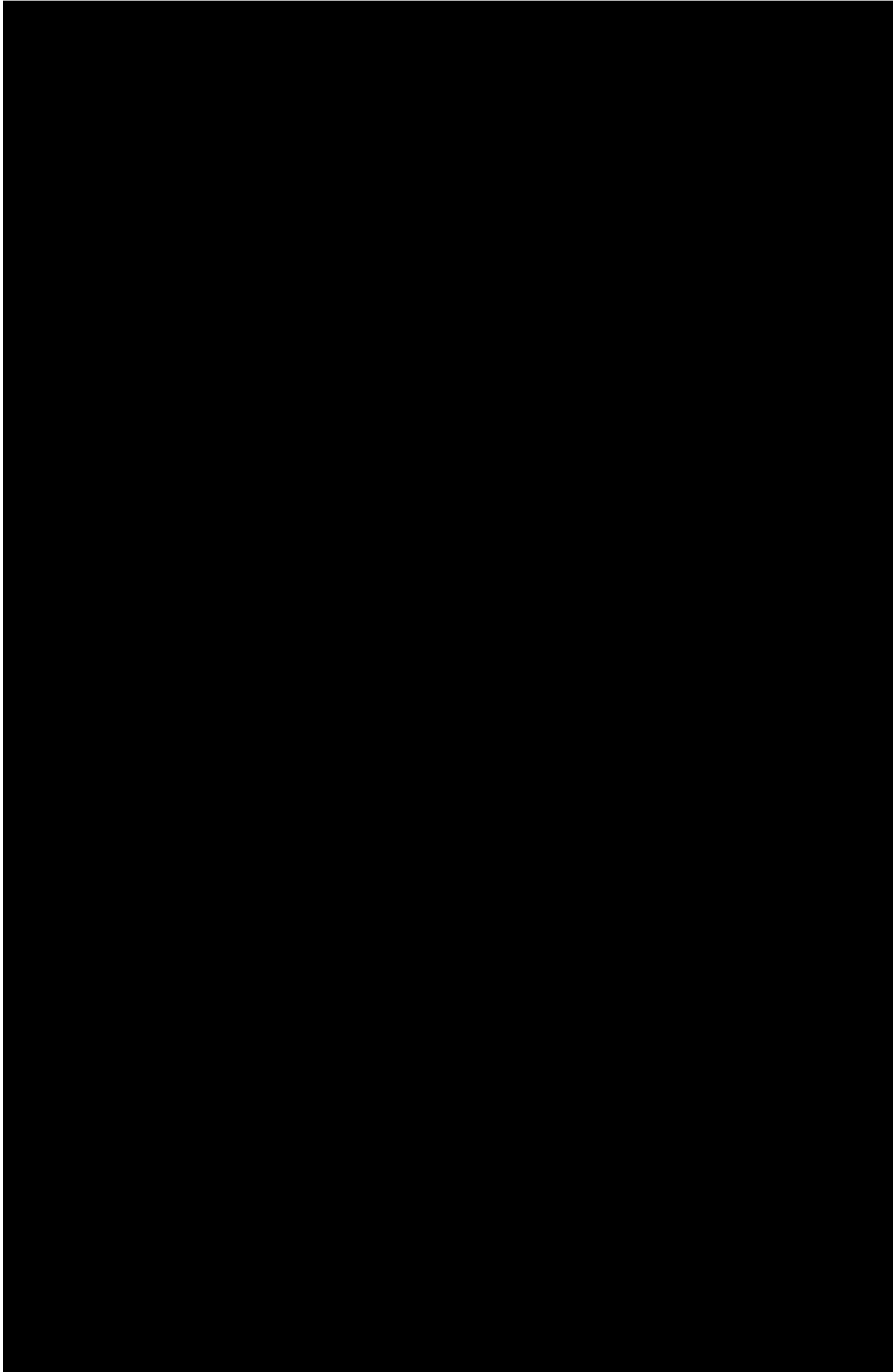
The role of the public sector in the provision of health care services is a complex one. The public sector is responsible for a wide range of services, including the provision of primary care, secondary care, and tertiary care. The public sector is also responsible for the regulation of the health care system and for the provision of health care services to the most vulnerable members of the population.

The challenges facing the public sector in the 1990s are many and varied. These include the need to improve the efficiency and effectiveness of the public sector, the need to ensure that the public sector is able to meet the needs of the population, and the need to ensure that the public sector is able to provide a high quality of care. The initiatives aimed at improving the efficiency and effectiveness of the public sector are many and varied, including the introduction of performance targets and the establishment of public sector bodies.

The implications for the future of the public sector in the UK are many and varied. These include the need to ensure that the public sector is able to meet the needs of the population, the need to ensure that the public sector is able to provide a high quality of care, and the need to ensure that the public sector is able to improve the efficiency and effectiveness of the public sector. The need for a new approach to the management of the public sector is clear.

The public sector is a complex and challenging environment. The public sector is responsible for a wide range of services, including the provision of primary care, secondary care, and tertiary care. The public sector is also responsible for the regulation of the health care system and for the provision of health care services to the most vulnerable members of the population. The challenges facing the public sector in the 1990s are many and varied, including the need to improve the efficiency and effectiveness of the public sector, the need to ensure that the public sector is able to meet the needs of the population, and the need to ensure that the public sector is able to provide a high quality of care.

The initiatives aimed at improving the efficiency and effectiveness of the public sector are many and varied, including the introduction of performance targets and the establishment of public sector bodies. The implications for the future of the public sector in the UK are many and varied, including the need to ensure that the public sector is able to meet the needs of the population, the need to ensure that the public sector is able to provide a high quality of care, and the need to ensure that the public sector is able to improve the efficiency and effectiveness of the public sector.



The first part of the paper discusses the importance of the research and the objectives of the study. It then presents a literature review of the existing research on the topic. The second part of the paper describes the methodology used in the study, including the data collection and analysis techniques. The third part of the paper presents the results of the study, and the fourth part discusses the conclusions and implications of the findings.

The research was conducted using a quantitative approach, and the data was collected from a sample of participants. The results of the study show that there is a significant relationship between the variables being studied. The findings have important implications for the field of research, and they provide valuable insights into the topic.

In conclusion, the study has shown that the research objectives have been achieved, and the findings are consistent with the hypotheses. The results of the study have important implications for the field of research, and they provide valuable insights into the topic.

the 1990s, the number of people in the UK who are employed in the public sector has increased by 1.5 million (1990-1999) (Department of Health 2000).

There is a growing emphasis on the need to improve the efficiency of the public sector, and to ensure that the public sector is able to deliver the best possible value for money. This has led to a number of initiatives, including the introduction of competition, the restructuring of public sector organisations, and the introduction of performance measures.

The aim of this paper is to explore the impact of these initiatives on the public sector, and to identify the factors that are likely to influence the success of these initiatives.

The paper is structured as follows. Section 2 discusses the background to the initiatives, and Section 3 discusses the impact of the initiatives on the public sector.

Section 4 discusses the factors that are likely to influence the success of the initiatives, and Section 5 discusses the conclusions of the paper.

Section 6 discusses the implications of the findings for the public sector, and Section 7 discusses the implications for the future.

Section 8 discusses the implications for the public sector, and Section 9 discusses the implications for the future.

Section 10 discusses the implications for the public sector, and Section 11 discusses the implications for the future.

Section 12 discusses the implications for the public sector, and Section 13 discusses the implications for the future.

Section 14 discusses the implications for the public sector, and Section 15 discusses the implications for the future.

Section 16 discusses the implications for the public sector, and Section 17 discusses the implications for the future.

Section 18 discusses the implications for the public sector, and Section 19 discusses the implications for the future.

Section 20 discusses the implications for the public sector, and Section 21 discusses the implications for the future.

Section 22 discusses the implications for the public sector, and Section 23 discusses the implications for the future.

Section 24 discusses the implications for the public sector, and Section 25 discusses the implications for the future.

Section 26 discusses the implications for the public sector, and Section 27 discusses the implications for the future.

Section 28 discusses the implications for the public sector, and Section 29 discusses the implications for the future.

Section 30 discusses the implications for the public sector, and Section 31 discusses the implications for the future.

Section 32 discusses the implications for the public sector, and Section 33 discusses the implications for the future.

Section 34 discusses the implications for the public sector, and Section 35 discusses the implications for the future.

Section 36 discusses the implications for the public sector, and Section 37 discusses the implications for the future.

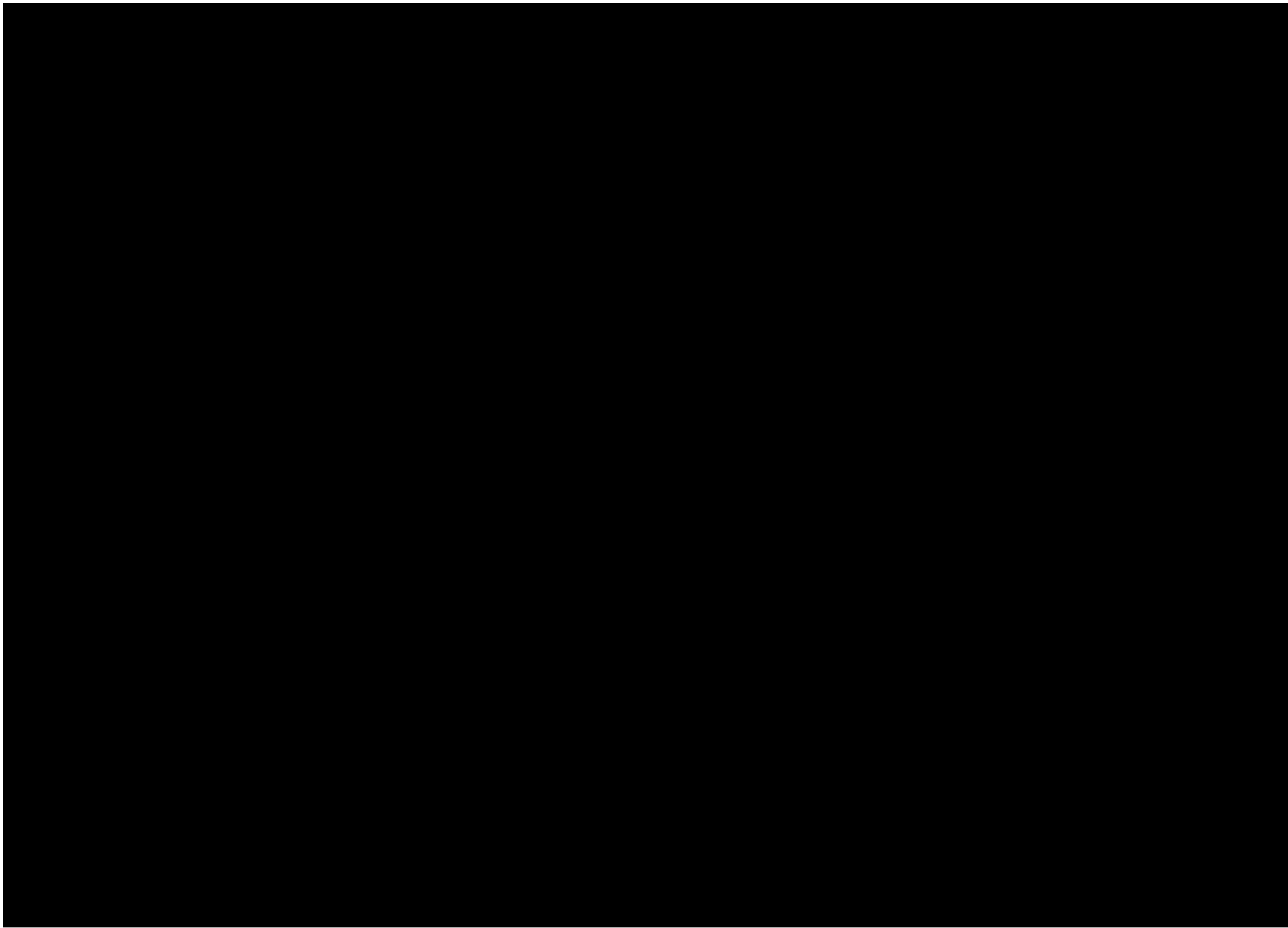
Section 38 discusses the implications for the public sector, and Section 39 discusses the implications for the future.

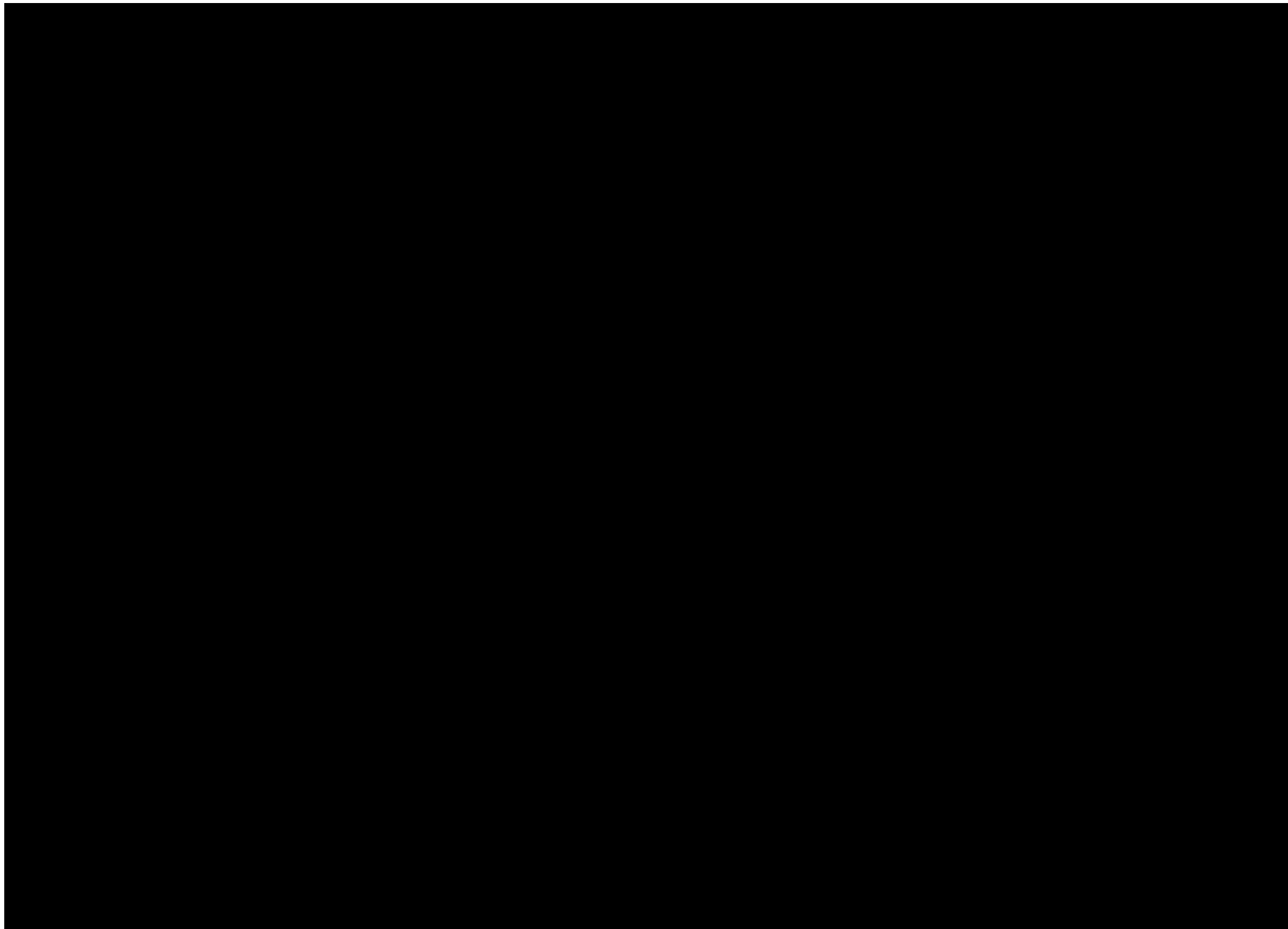
Section 40 discusses the implications for the public sector, and Section 41 discusses the implications for the future.

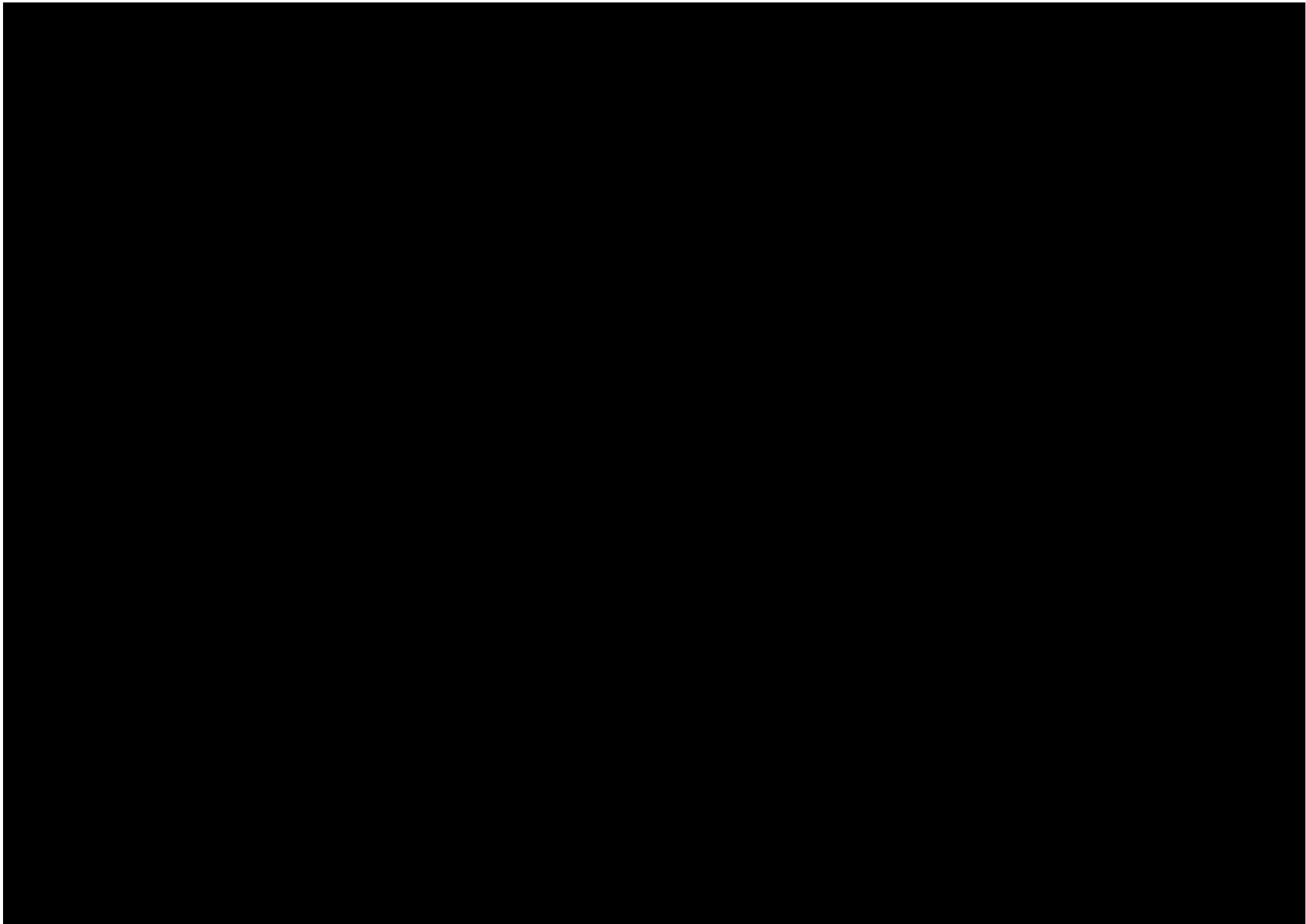
Section 42 discusses the implications for the public sector, and Section 43 discusses the implications for the future.

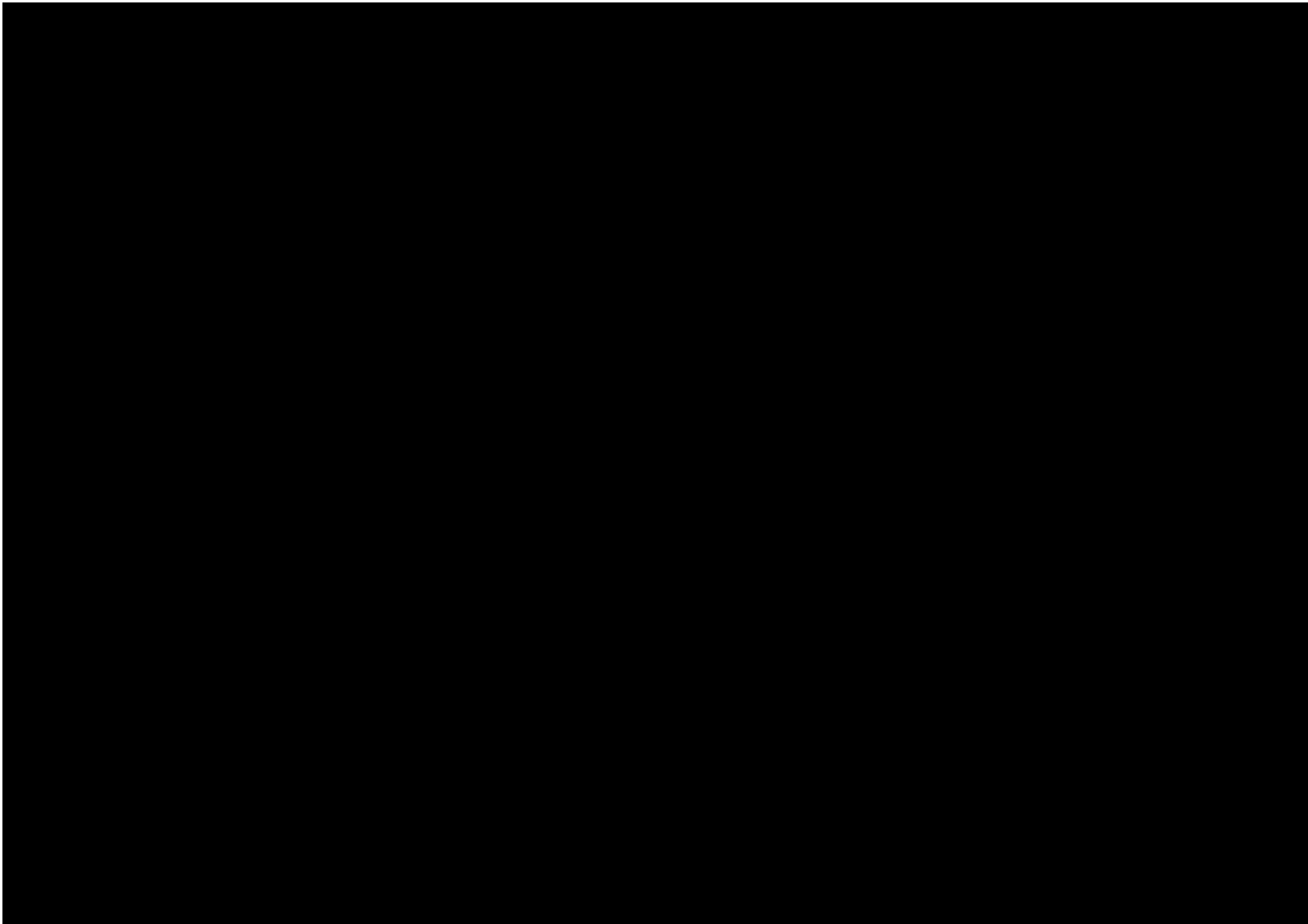
Section 44 discusses the implications for the public sector, and Section 45 discusses the implications for the future.

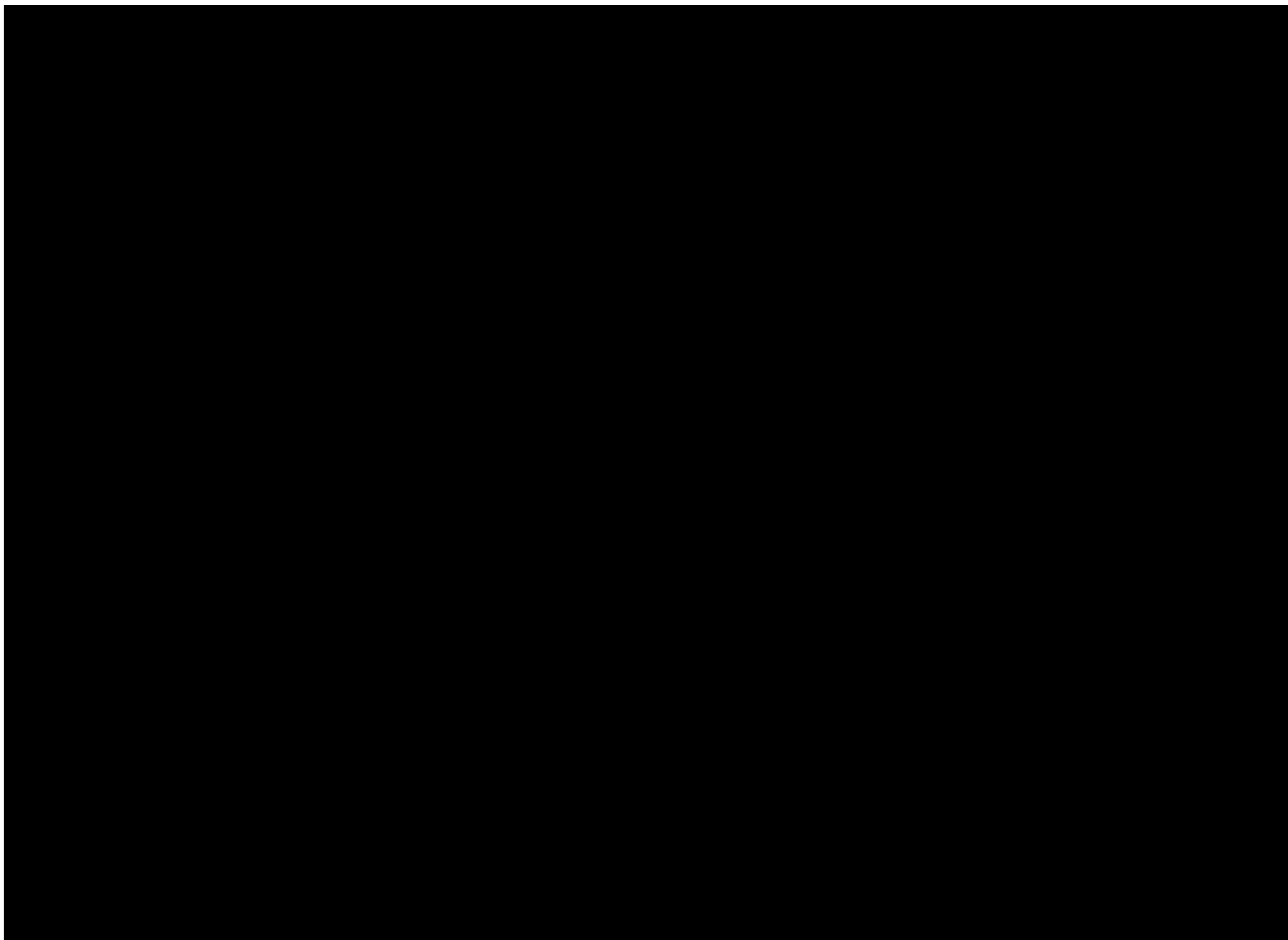
Section 46 discusses the implications for the public sector, and Section 47 discusses the implications for the future.

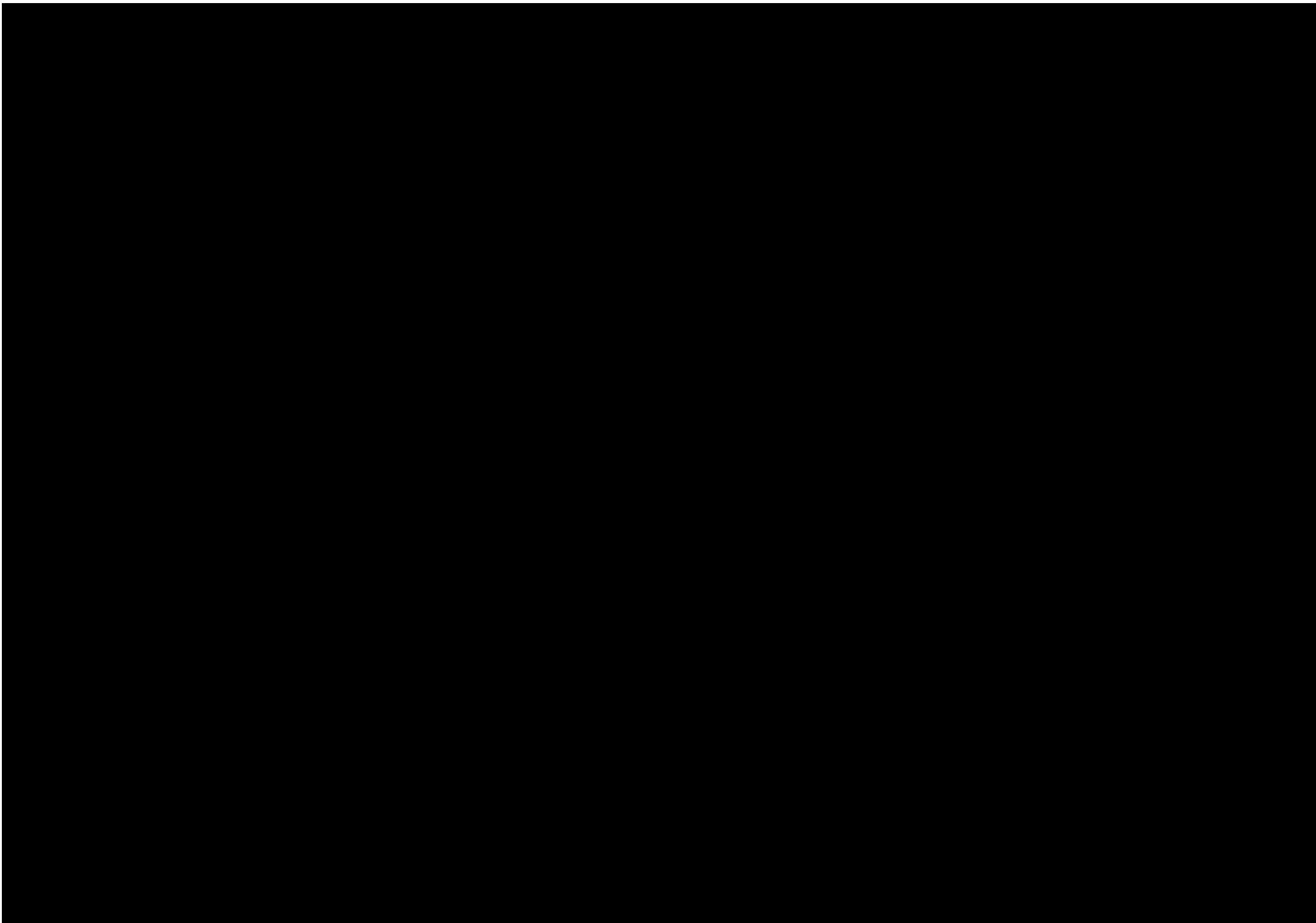


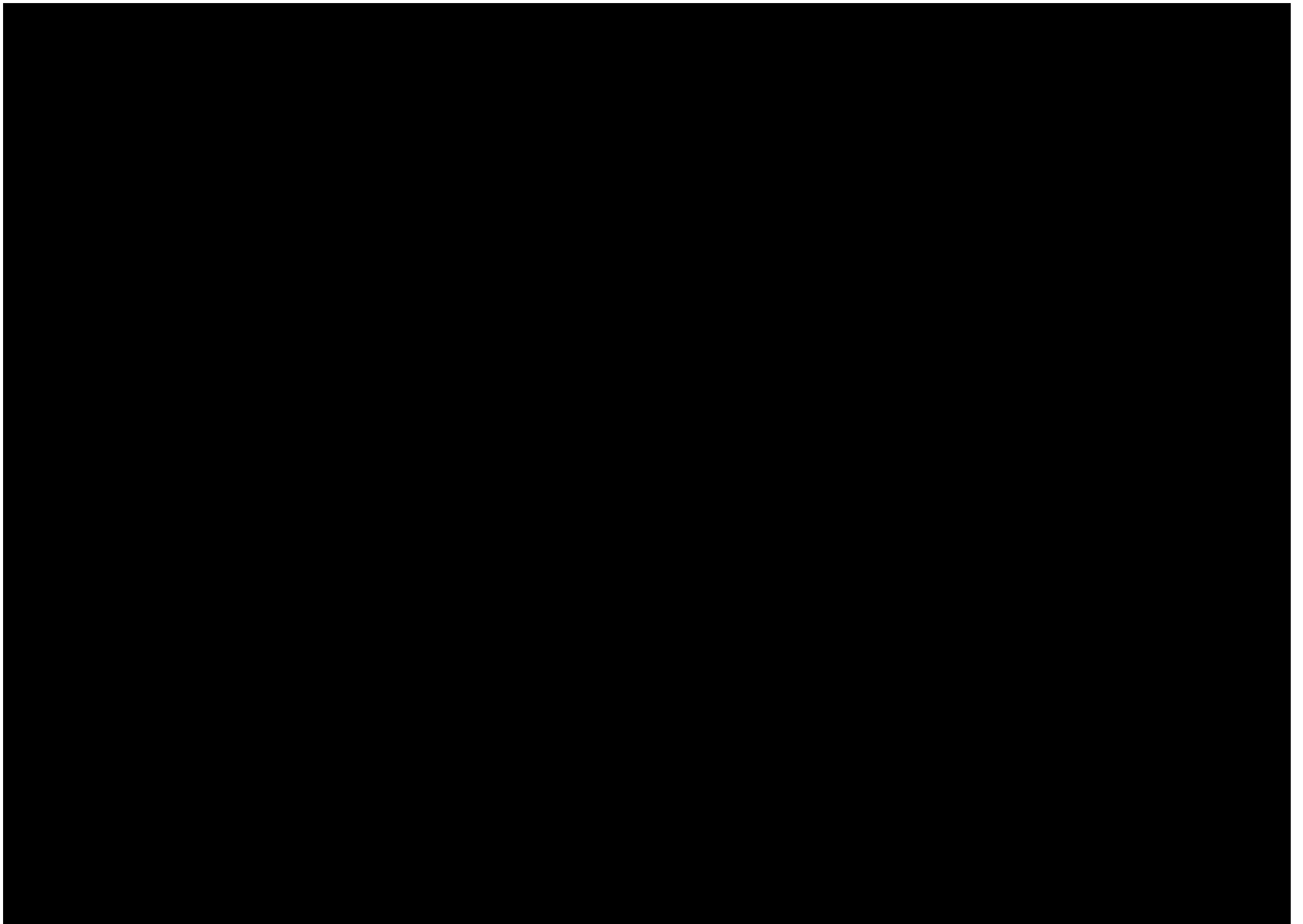


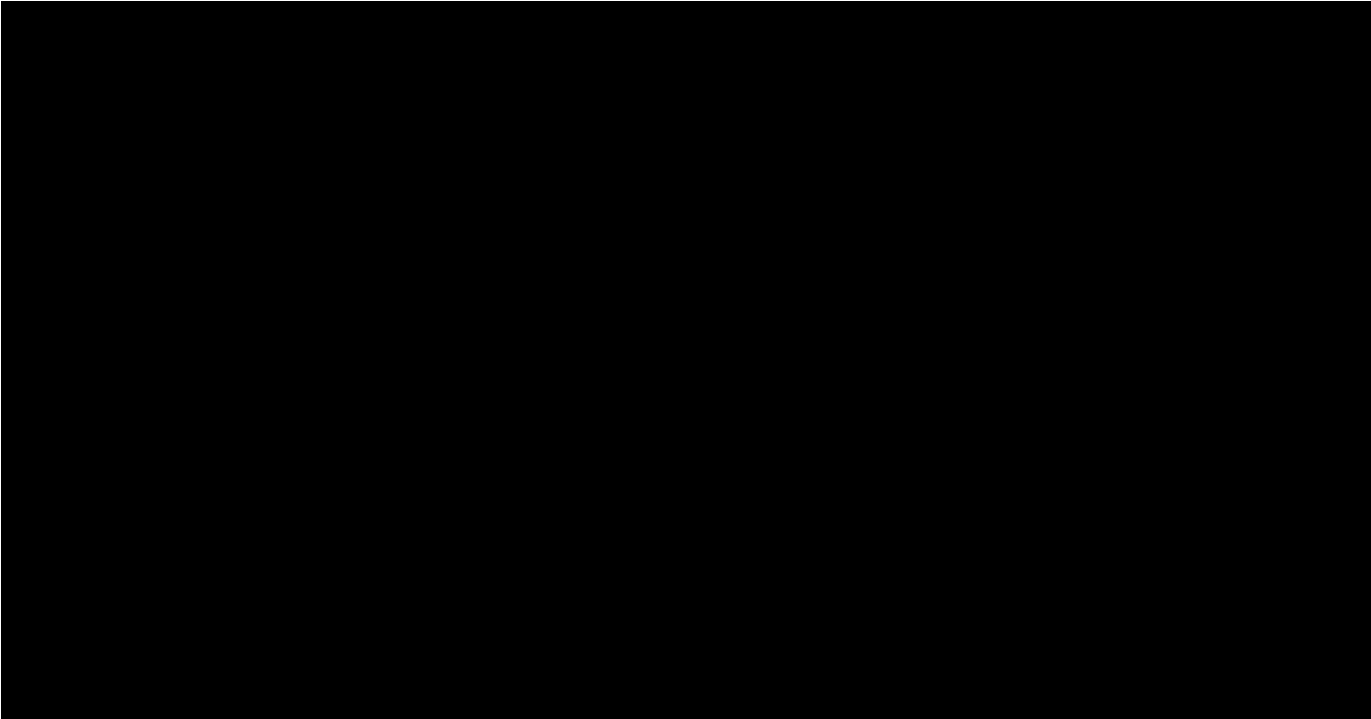












Schedule 15 - Form of Contractor Deed Poll

(Clause 1.5)

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

By: **[insert name of Contractor] (ABN [insert Contractor's ABN])** of [insert Contractor's address] ("**Contractor**"),

in favour of:

Sydney Trains ABN 38 284 779 682 of Level 8, 231 Elizabeth Street Sydney NSW 2000 (**Sydney Trains**)

Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353) (formerly known as **Rail Corporation New South Wales**) of 477 Pitt Street, Sydney NSW 2000 (**TAHE**)

NSW Trains (ABN 50 325 560 455) of Level 8, 231 Elizabeth Street Sydney NSW 2000 (**NSW Trains**)

Sydney Metro (ABN12 354 063 515) of Level 43, 680 George Street, Sydney NSW 2000 (**Sydney Metro**)

(**"Owners"**).

RECITALS

- A. Transport for NSW ("**TfNSW**") of 7 Harvest Street, Macquarie Park NSW 2113, is responsible for undertaking the digital systems program to modernise signalling and train control systems, ("**Program**").
- B. As part of the Program, TfNSW is responsible for procuring the execution and completion of certain works in respect of the digital train radio system (the "**Works**") on behalf of the Owners and the New South Wales Government, or that will be handed over to one or more of the Owners, to own, operate or maintain, and has entered into a contract ("**Main Contract**") with the Contractor to achieve this.
- C. The Owners are relying on TfNSW to procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- D. The Owners will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Main Contract.
- E. It is a condition of the Main Contract that the Contractor executes this Deed Poll.

THIS DEED POLL WITNESSES THAT THE CONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the Owners as follows:

- 1. It will comply with its obligations under the Main Contract, including with respect to achieving Completion of each Portion and, where a SOW does not have any Portions, the Works by the relevant Date for Completion.
- 2. Upon Completion of the Works, the Works will satisfy the requirements of the Main Contract.

3. This clause 3 only applies to Sydney Trains and NSW Trains. In consideration of Sydney Trains or NSW Trains (as the case may be) making available to the Contractor Track Possessions or Operational Outage Windows the Contractor agrees that it must indemnify Sydney Trains and NSW Trains against all costs, expenses, losses or damages suffered or incurred by Sydney Trains and NSW Trains in respect of any delay to rail services or late return of Track Possessions or Operational Outage Windows arising out of or in connection with the Contractor's Activities.

The maximum liability which the Contractor will have to Sydney Trains and NSW Trains pursuant to this clause for each event resulting in delay to rail services or for late return of a Track Possession or Operational Outage Window will be determined on the basis of the maximum period by which any train was delayed by the event or late return of a Track Possession or Operational Outage Window calculated by applying the following rates:

Period in which delay occurs	Rate per hour or part thereof
During peak hours	\$30,000
During all other hours	\$15,000

4. The aggregate of the Contractor's liability to the Owner under this Deed Poll and the Contractor's liability to TfNSW under the Main Contract:
- (a) will not exceed the liability which the Contractor would have had under the Main Contract if the Main Contract had named, as Principal, the Owner and TfNSW jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Main Contract.
5. Any provision of this Deed Poll which seeks to limit or exclude a liability of the Contractor is to be construed as doing so only to the extent permitted by law.
6. The Owner may assign or charge the benefits and rights accrued under this Deed Poll.
7. This Deed Poll is governed by the laws of the State of New South Wales.
8. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Owner.
9. Where terms used in this Deed Poll are defined in the Main Contract, those terms have the meaning given to them in the Main Contract.

Executed as a deed poll.

**Executed by [insert Contractor's name]
ABN [insert Contractor's ABN] by or in the
presence of:**

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Schedule 16 - Deed of Guarantee and Indemnity

(Clause 2.6)

Not used

Schedule 17 - Preliminaries

(Clauses 1.1 and 2.1(b)(i))

Preliminaries that may be associated with the Contractor's Activities include the matters and activities identified below for SOW 1. For the avoidance of any doubt, the examples below do not constitute an exhaustive list of Preliminaries that may be required.

For SOW 1, as specified in Schedule 2. For a new SOW, as specified for the relevant New SOW Particulars.

Schedule 18 - Contractor's Certificate of Design Compliance

(Clauses 5.3(b)(i) and 11.6(c)(ii))

CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE											
CONTRACTOR:											
<table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black; padding: 5px;"><u>DESIGN PACKAGE</u></th> <th style="text-align: left; border-bottom: 1px solid black; padding: 5px;">DESCRIPTION</th> </tr> </thead> <tbody> <tr><td style="border-bottom: 1px solid black; height: 20px;"></td><td style="border-bottom: 1px solid black; height: 20px;"></td></tr> <tr><td style="border-bottom: 1px solid black; height: 20px;"></td><td style="border-bottom: 1px solid black; height: 20px;"></td></tr> <tr><td style="border-bottom: 1px solid black; height: 20px;"></td><td style="border-bottom: 1px solid black; height: 20px;"></td></tr> <tr><td style="border-bottom: 1px solid black; height: 20px;"></td><td style="border-bottom: 1px solid black; height: 20px;"></td></tr> </tbody> </table>	<u>DESIGN PACKAGE</u>	DESCRIPTION									
<u>DESIGN PACKAGE</u>	DESCRIPTION										
<i>(Attach schedule of work packages if insufficient space)</i>											
<p>I certify that the design for the packages or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and complies with the requirements of the Contract, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the design packages.</p> <div style="display: flex; justify-content: space-between; margin-top: 20px;"> <div style="width: 45%;"> <p>SIGNATURE: _____ <i>(Contractor's Representative)</i></p> <p>DATE: _____</p> </div> <div style="width: 45%;"> <p>SIGNATURE: _____ <i>(Contractor's Subcontractor/Designer)</i></p> <p>DATE: _____</p> </div> </div>											

Schedule 19 - Contractor's Certificate of Construction Compliance

(Clauses 7.16(c) and 11.6(c)(ii))

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE	
CONTRACTOR:	
<p><u>WORK PACKAGE</u></p> <hr/> <hr/> <hr/>	<p><u>DESCRIPTION</u></p> <hr/> <hr/> <hr/>
<p><i>(Attach schedule of work packages if insufficient space)</i></p>	
<p>I certify that the procurement/construction of the work packages or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non conformance and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>NAME: _____ SIGNATURE: _____ DATE: / /</p> <p style="text-align: center;"><i>(Contractor's Representative)</i></p>	
<p>THIS SECTION MUST BE COMPLETED BY THE RELEVANT CONTRACTOR'S SUBCONTRACTOR/DESIGNER</p> <p>I certify that the procurement/construction of the work packages (one certificate per work package) or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Contract between the Principal and _____, and comply with the requirements of the Contract, subject to the register of outstanding minor construction non-conformances and unresolved issues attached.</p> <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the work packages.</p> <p>SIGNATURE: _____</p> <p style="text-align: center;"><i>(Contractor's Subcontractor/Designer)</i></p> <p>DATE: _____</p>	

Schedule 20 - Consultant Certificate of Design Compliance

(Clauses 5.3(b)(ii) and 11.6(c)(iii))

CONSULTANT'S CERTIFICATE OF DESIGN COMPLIANCE	
CONSULTANT: CONSULTANCY AGREEMENT:	
<p>I certify that all design carried out by the Consultant has been completed in accordance with the requirements of the Consultancy Agreement, and complies with the requirements of the Consultancy Agreement.</p> <p>I further certify that, the construction of the works under the [insert name of contract] dated [insert] between the Transport for NSW (ABN 18 804 239 602) and [insert name of Contractor] have been completed in accordance with the design carried out by the Consultant, subject to the register of outstanding minor design non-conformances and unresolved issues attached.</p>	
SIGNATURE: _____ <i>(Consultant's Representative)</i>	SIGNATURE: _____ <i>(Consultant's Subcontractor/Designer)</i>
DATE: _____	DATE: _____

Schedule 21 - Contractor's Certificate of Completion

(Definition of "Completion" in Clause 1.1 and Clause 12.3(c))

CONTRACTOR'S CERTIFICATE OF COMPLETION	
CONTRACTOR:	
Description of Portion or Works: _____ _____ _____	
<p>I certify that the Completion of the above Portion/the Works has/have been achieved in accordance with the requirements of the Contract between the Principal and _____, complies with the requirements of the Contract, subject to the register of unresolved issues attached.</p> <p>I further certify that:</p> <ul style="list-style-type: none"> (a) All Variation Orders (including concessions) are listed in the attached compliance register. (b) All identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out. (c) All required documentation has been submitted. (d) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the Contract reflect the true status of the Portion/the Works.</p>	
SIGNATURE: _____ (Contractor's Representative)	SIGNATURE: _____ (Contractor's Subcontractor/Designer)
DATE: _____	DATE: _____

Schedule 22 - Contractor's Certificate of Final Completion

(Clause 12.8(d))

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION	
CONTRACTOR:	
<p>I hereby certify that Final Completion has been achieved by[the Contractor] in accordance with the requirements of the Deed (including all Variation orders detailed in (a) below) between the Principal and the Contractor.</p> <p>I further certify that:</p> <ul style="list-style-type: none">(a) All Variation Orders (including concessions) are listed in the attached compliance register.(b) All identified Defects (including any non-conformities have been satisfactorily rectified and their documentation closed out.(c) All required documentation has been submitted.(d) All notices regarding system deficiencies have been satisfactorily closed out. <p>I further certify that the attached compliance records as required by the Deed reflect the true status of the Portion/the Works.</p> <p>SIGNATURE: _____ DATE: / / </p> <p style="text-align: center;"><i>(Contractor's Representative)</i></p>	

Schedule 23 - Form of Other Contractor Deed Poll

(Clause 7.17)

This Deed Poll made the day of 20

In favour of: **[insert details]** (ABN **[insert details]**) of **[insert details]**

("Contractor") and

Transport for NSW (ABN 18 804 239 602) of 7 Harvest Street, Macquarie Park
NSW 2113
("Principal")

Given by: **[insert details]** (ABN **[insert details]**) of **[insert details]**

("Other Contractor")

Recitals

- A. By a contract dated [*insert date*] ("**Contract**") between the Principal and the Contractor, the Contractor agreed to design and construct certain works ("**Works**"), on the land more particularly described in the Contract (the "**Site**").
- B. The Other Contractor has been appointed under a contract ("**Other Contract**") to undertake certain works on the Site ("**Other Contractor Works**").
- C. For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the "**WHS Legislation**"), the Works and the Other Contractor Works are a 'construction project' within the meaning of the WHS Legislation.
- D. Under the Contract, the Principal engaged the Contractor as principal contractor and authorised the Contractor to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- E. Under the provisions of the Contract, the Principal is required to procure the provision of this Deed Poll from each Other Contractor that undertakes Other Contractor Works (as that term is defined in the Contract).

This Deed Poll Provides

1. In consideration of the Contractor accepting this Deed Poll, the Other Contractor agrees that
 - (a) the Other Contractor, its subcontractors and their respective personnel while they are on the Site, will comply with Site safety regulations, any Site rules or regulations and with all directions of the Contractor with respect to work health and safety;
 - (b) the Other Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Contractor so that the Contractor discharges its obligations as principal contractor;

- (c) the Other Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;
 - (d) the Other Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Contractor while on Site;
 - (e) the Contractor may exclude the Other Contractor, any of its subcontractors and their respective personnel from the Site for work health and safety reasons;
 - (f) the Contractor may direct the Other Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
 - (g) where high risk construction work is to be carried out in the performance of the Other Contractor Works, the Other Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to the Principal and the Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Contractor, suspend the performance of any high risk construction work;
 - (h) the Other Contractor shall in carrying out the work under the Other Contract, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
 - (i) in its contracts with subcontractors, the Other Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Other Contractor under this Deed Poll.
2. The Other Contractor indemnifies the Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Contractor as a result of:
- (a) any failure by the Other Contractor to comply with any direction given by the Contractor in accordance with this Deed Poll; or
 - (b) any breach by the Other Contractor, any of its subcontractors or their respective personnel of:
 - (i) their respective contractual or legislative work health and safety obligations; or
 - (ii) the provisions of this Deed Poll.

3. This Deed Poll will be governed by and construed in accordance with the law for the time being of New South Wales.

Executed as a Deed Poll.

Executed by **[Other Contractor]** by or in
the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 24 - Form of Interface Agreement Deed Poll in favour of Rail Transport Agency and Transport for NSW

(Clause 1.5(b) and (c))

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

By: **[Contractor]** (ABN.....) of
.....("Contractor"),

in favour of: **[Insert details of relevant Rail Transport Agency]** ("Rail Transport Agency") and

Transport for NSW (ABN 18 804 239 602) a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113 ("**TfNSW**")

Recitals

- A. Rail Transport Agency operates the commuter rail system in Sydney, where the Works (the "**Project**") are to be undertaken by the Contractor and others.
- B. TfNSW is responsible for developing certain major railway systems and other major transport projects.
- C. TfNSW is responsible for procuring the execution and completion of the Project, and has entered into a safety interface agreement dated **[insert date]** for **[Insert details of Project/Program]** ("**Interface Agreement**") with Rail Transport Agency to cover the Project.
- D. Rail Transport Agency is relying on TfNSW to procure the Contractor (with others) to execute and complete the Project in accordance with the Contract to ensure that Rail Transport Agency will satisfy, among other things, its obligation to provide an operating commuter rail system.
- E. Rail Transport Agency will suffer loss if TfNSW does not procure the Contractor to execute and complete the Works in accordance with the Contract and the Interface Agreement.

This deed witnesses that the Contractor hereby covenants, warrants and agrees with and for the benefit of Rail Transport Agency and TfNSW as follows:

- 1. It will comply with its obligations under the Interface Agreement.
- 2. During and upon Completion of the Project, the Contractor's Activities will satisfy the requirements of the Interface Agreement.
- 3. Rail Transport Agency and TfNSW may assign or charge the benefits and rights accrued under this Deed Poll.
- 4. This Deed Poll is governed by the laws of the State of New South Wales.
- 5. This Deed Poll may not be revoked or otherwise modified without the prior written consent of Rail Transport Agency and TfNSW.

6. Where terms used in this Deed Poll are defined in the Contract or the Interface Agreement, those terms have the meaning given to them in the Contract or the Interface Agreement.

Executed as a deed poll.

Executed by [Contractor]
(ABN.....) by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Schedule 25 - Deed of Novation (Principal, Contractor and Consultant)

(Clause 5.2(a))

Deed of Novation

[
ABN []]

[
ABN []]

[
ABN []]

Deed of Novation made at _____ **on** _____

Parties **[insert name] ABN [insert] of [insert] (Retiring Party)**
 [Insert name] ABN [insert] of [insert] (Continuing Party)
 [Insert name] ABN [insert] of [insert] (Substitute Party)

Recitals

- A The Retiring Party and the Continuing Party are parties to the Contract.
- B The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- C The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

This deed provides

1. Definitions and interpretation

1.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

"Claim" means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

"Contract" means the agreement between the Retiring Party and the Continuing Party described in the Schedule.

"Effective Date" means **[insert date]**.

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

"Liability" means all liabilities, losses, Claims, damages, outgoing, costs and expenses of whatever description.

"Related Entity" has the meaning ascribed to that term in section 9 of *the Corporations Act 2001* (Cth).

1.2 Interpretation

In this deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

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

2. Condition Precedent to Novation

Clause 3 of this deed will have no force and effect until the Effective Date.

3. Novation

3.1 Novation

- (a) The parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract.
- (b) Any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.

3.2 Assumptions of rights and obligations

- (a) The Substitute Party:
 - (i) will be bound by and must comply with the terms of the Contract and will enjoy the rights and benefits conferred on the Retiring Party under the Contract; and
 - (ii) will assume the obligations and Liability of the Retiring Party under the Contract,

in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.

- (b) The Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

3.3 Release by Continuing Party

- (a) The Continuing Party releases the Retiring Party from:
 - (i) any obligation or Liability under or in respect of the Contract; and
 - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract.
- (b) This release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the Contract.

3.4 Insurance

As from the Effective Date:

- (a) the Substitute Party must replace any insurances effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party will take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under of the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

4. Ongoing Rights of Retiring Party

4.1 Direct Enquiries

In addition to any other rights which the Retiring Party may have, the Continuing Party and the Substitute Party each agree that the Retiring Party may make enquiries directly of the Continuing Party for the purpose of establishing whether the Continuing Party is complying with its obligations under the Contract.

4.2 Retiring Party to have benefit of Promises

- (a) The Continuing Party warrants in favour of the Retiring Party that in performing the Services it will comply with its obligations under the Contract and that the Retiring Party will continue to have the benefit of all promises, undertakings, covenants and warranties made or given by the Continuing Party under the Contract as if the Retiring Party remained a party to the Contract.
- (b) Without limiting the above, the Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence in performing the Services including in issuing any certificates it is required to issue under the Contract and further acknowledges that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in issuing those certificates and acknowledges that:

- (i) in performing the Services it will owe a duty of care to the Retiring Party; and
- (ii) it is aware that the Retiring Party will be relying upon the skill and judgment of the Continuing Party in performing the Services and the warranties given by the Continuing Party in this deed.

4.3 Report by Continuing Party

The Continuing Party undertakes to the Retiring Party that it will exercise all reasonable skill, care and diligence to ensure that the design intent of the Works as contained in the Design Documentation in existence at the date of execution of this deed, is reflected in the completion of the Design Documentation and in the execution of the Works.

Without limiting the above, the Continuing Party must conduct such inspections of the Works at such times and in such detail as may reasonably be expected of a consultant engaged in a project of the size and complexity of the Works.

The Continuing Party must act in good faith and in the best interests of the Retiring Party and promptly advise the Retiring Party about any matter in which the Continuing Party has been instructed by the Substitute Party to provide the Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Contract, including:

- (a) any instruction or direction which it receives, or any work or services it becomes aware of, which in the reasonable opinion of the Continuing Party, is not in accordance with any provision of the Contract including where the Substitute Party's instructions:
 - (i) in relation to design are not consistent with the Contract or may result in the Works to be constructed not being fit for their intended purpose; or
 - (ii) require the Continuing Party to issue a certificate under the Contract where the conditions for the issue of that certificate under the Contract have not been satisfied; and
- (b) any non-conformity of any Design Documentation produced pursuant to the Contract, or to the Design Documentation in existence at the date of this deed, upon becoming aware of the non-conformity.

5. Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

6. Representations and warranties

6.1 Authority

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

6.2 Authorisations

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

6.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

7. Duties, costs and expenses

7.1 Stamp duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

7.2 Costs

Each Party must pay its own legal costs and expenses in negotiating, preparing and executing this deed.

7.3 GST

The parties agree that:

- (a) with any payment of amounts payable under or in connection with this deed including without limitation, by way of indemnity, reimbursement or otherwise, the party paying the amount must also pay any GST in respect of the taxable supply to which the amount relates;
- (b) the party receiving the payment will provide a tax invoice; and
- (c) the payment of any amount referred to in paragraph (a) which is a reimbursement or indemnification of a cost, expense, loss or liability will exclude any part of the amount for which the other party can claim an input tax credit.

8. General

8.1 Governing law

This deed is governed by and must be construed according to the laws of the State or Territory stated in Schedule 1.

8.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State or Territory stated in Schedule 1, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.2(a).

8.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

8.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

8.5 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

8.6 Severance

If at any time a provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

8.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

8.8 Assignment

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

Schedule 1

Contract
(Clause 1.1)

.....
.....

**Governing Law and
Jurisdiction**
(Clause 1.1 and 8.1)

.....
.....

Executed as a deed.

Executed by [Retiring Party and ABN] by
or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in
full

Executed by [Continuing Party and ABN]
by or in the presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in
full

Executed by [Substitute Party and ABN]
by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in
full

Schedule 26 - Expert Determination Agreement

(Clause 15.11(b))

Expert Determination Agreement made at _____ on _____

Parties [_____] (Principal)
[Insert name and address of Contractor] (Contractor)
[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [to be inserted] of the Contract] (Expert)

Background

- A. The Principal and the Contractor (together "**the Parties**" and each "**a Party**") are parties to a contract (**Contract**) for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert the Principal or Contractor as applicable]* has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15.5 of the Contract (**Matter**).
- C. Pursuant to clause 15.5 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. Appointment of Expert

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

the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. Costs and Fees

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

4. Exclusion of Liability and Indemnity

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

5. Co-operation of the Parties

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

6. Governing Law

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

7. Jurisdiction

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

Schedule 1 - The Matter

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

Schedule 2 - Rules for Expert Determination Process

1. Commencement

- 1.1 Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written Submissions

- 2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.
- 3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
- (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the Contract.

- 4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:
- (a) with the prior consent of the Parties;
 - (b) as may be required by law; or
 - (c) as may be required in order to enforce the determination of the Expert.

- 4.3 The Expert must:
- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,
 - (iv) immediately upon becoming aware of any such circumstances; and
 - (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. The Determination

- 5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:
- (a) determine the Matter between the Parties; and
 - (b) notify the Parties of that determination.
- 5.2 The determination of the Expert must:
- (a) be in writing stating the Expert's determination and giving reasons;
 - (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
 - (c) meet the requirements of the Contract.

- 5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a notice of appeal is given in accordance with clause 15.12 of the Contract.

- 5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Costs

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

7. Modification

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

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS**Code of Conduct for an Expert**

1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

Schedule 3 - The Expert's Fees and Disbursements

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

Signed as an agreement.

Signed for and on behalf of the Principal by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed for and on behalf of the Contractor by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed by the Expert **[insert name]** in the
presence of:

[Signature]

[Name of witness]

[Signature of witness]

Schedule 27 - Principal Supplied Items

(Clause 7.23)

For SOW 1, as specified in this schedule. For a new SOW, as specified for the relevant New SOW Particulars.

Nil - there are no Principal Supplied Items for SOW1.

Schedule 28 - Collaboration Principles

Part A - Digital Systems Team Charter

Digital Systems Team Charter

TEAM STATEMENT WHO WE ARE

We are a diverse, authentic team driven by a clear purpose. We are committed to learning and growing together.

VISION

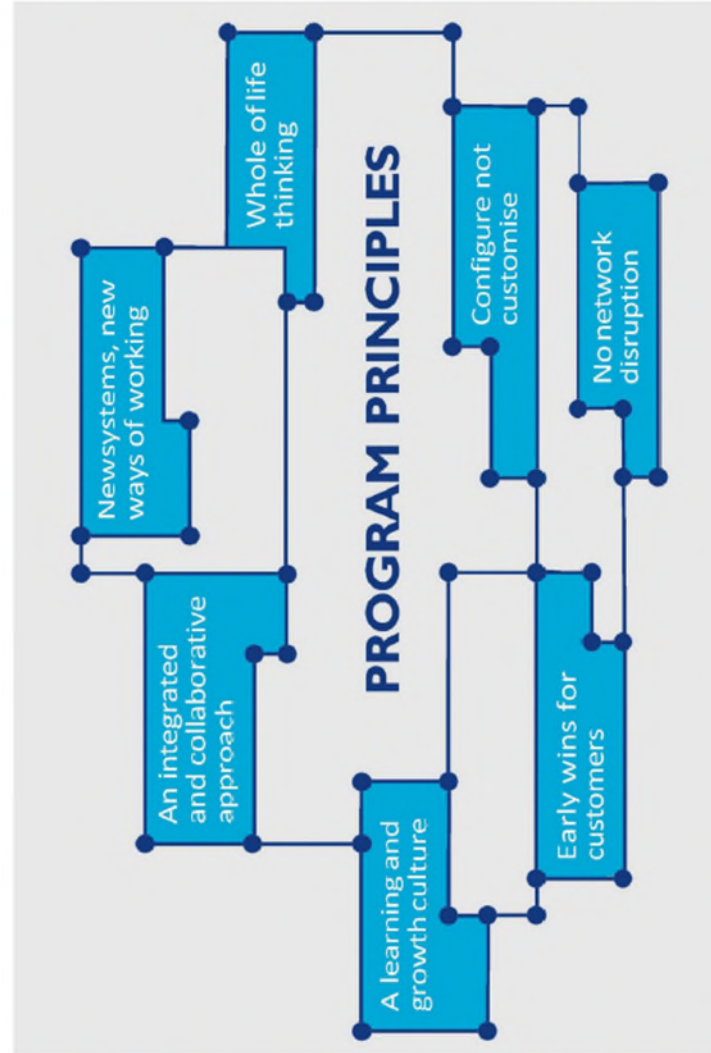
Seamless digital transformation of Sydney's rail network

MISSION

Modernising Sydney's rail systems with world class ETS-L2 cab signalling, automatic train operation and traffic management

PROGRAM BENEFITS

- Better customer information
- Lower energy consumption
- Reduced journey times
- Higher capacity for current and future demand
- More reliable services
- Lower capex and opex costs
- Safer and more efficient operation and maintenance



VALUES & BEHAVIOURS

- GROWTH**
We are committed to a culture of learning and growth. We actively contribute and generate opportunities to share information and best practice, creating an ecosystem of knowledge across the cluster and industry.
- COLLABORATION**
We support and work together towards common goals. We foster connections across the cluster, industry, and other rail networks. We leverage international expertise to deliver world-class results.
- INTEGRITY**
We are trusted professionals who do what we say, keep our promises and are honest. We are transparent and fair. We take personal responsibility for our work and actions.
- CREATIVITY**
We welcome diverse views and innovate to solve problems with the courage to speak up and challenge. We actively seek out new, better ways of working.
- WELL-BEING**
We embrace diversity and create a safe, respectful working environment and celebrate our differences. We believe that a flexible approach leads to good work-life balance.

Part B - Draft Collaboration Principles

Collaboration Principles

1. Purpose

- 1.1 Due to the complexity of the Digital Systems Program, collaboration between differing parties working on the Digital Systems Program is required to ensure the Digital Systems Program is successful.
- 1.2 Lessons learned from similar projects from around the world demonstrate that by actively encouraging collaboration between different parties, managing the complexity, risks and issues is possible.
- 1.3 Collaboration is *the process of two or more people or organisations working together to complete a task or achieve a goal¹*.

2. Collaboration Principles

The Collaboration Principles, and their respective meaning and expectation for the Digital Systems Program are set-out in Table 1. The intent of this Collaboration Principles schedule is for it to be jointly developed in consultation with Collaboration Participants as part of the collaboration framework established for management of the Digital Systems Program and may be updated from time to time.

Table 1:

	Principle	What does this mean?	Expectation
1.	Program first (best for Digital Systems Program)	<ul style="list-style-type: none"> Shifting the perspective from self-interest (individual party's interest) to joint interests Understand that all parties win or lose together (reputation risk of all parties needs to be managed) 	<ul style="list-style-type: none"> Commitment of all parties to the success of the Digital Systems Program (signing of Collaboration Charter) Each party must not only take ownership of its own individual work and inputs but also the outcomes of the whole Digital Systems Program The parties will work together to overcome great challenges and make the Digital Systems Program a success for all participants The parties will celebrate the Digital Systems Program successes
2.	Be open (information sharing)	<ul style="list-style-type: none"> Communicating openly, freely and honestly at all levels in the Digital Systems Program and freely sharing information appropriate to enable positive Digital Systems Program outcomes, whilst respecting 	<ul style="list-style-type: none"> Communicate regularly, honestly, openly, and skilfully – including when conflicts arise Maintain open risk and opportunity registers (without prejudice)

¹ Insert reference Holding definition (agree definition)

	Principle	What does this mean?	Expectation
		<p>each other's confidential information and intellectual property</p> <ul style="list-style-type: none"> Proactive communication and information sharing is key to Digital Systems Program success Good communications enable good relationships and efficient operations 	<ul style="list-style-type: none"> Proactively share information in the spirit of collaboration, efficiency, that may assist other parties in successful delivery and support of the achievement of common goals
3.	Respect and understanding for all people on the Digital Systems Program	<ul style="list-style-type: none"> In order to achieve collaboration all parties must individually and collectively respect and be understanding of the perspectives of each party 	<ul style="list-style-type: none"> Listen to and acknowledge the different views and perspectives and give fair consideration to those views and perspectives in the context of success of the whole Accept that there may be a need for trade-offs in order to ensure the success of the Digital Systems Program and the subsequent success of all parties involved Endeavour to create safe spaces for open dialogue where parties can trust that their vulnerabilities will not be exploited and their ideas will be considered, valued and respected Have brave and honest discussions that will facilitate innovation in approach and delivery of the Digital Systems Program
4.	Raising issues early without blame and shame		<ul style="list-style-type: none"> Each party will own its mistakes and seek to remedy them quickly Accept that things don't always go to plan and that all parties will need to proactively support each other in the resolution of issues or the remedy of errors Adopt a 'win-win' mindset and ensure those involved in administering agreements between parties have the skills required for 'win-win' outcomes
5.	Work through uncertainty by building on each other's ideas		<ul style="list-style-type: none"> Participate in collaborative discussions and ensure that the right people within each party's respective organisations are involved

	Principle	What does this mean?	Expectation
			and informed in a timely manner

3. **Collaboration Charter**

- 3.1 A structured approach to establishing collaboration is required so all parties understand what is and expectations are of collaboration on the Digital Systems Program.
- 3.2 A jointly developed commitment to collaboration between TfNSW and Collaboration Participants will be encapsulated in an agreed collaboration charter to be developed during the delivery phase of the Digital Systems Program.
- 3.3 The agreed collaboration charter will include two levels:

Level 1 – Strategic overview

This includes the agreed vision of Digital Systems Program outcomes, strategic goals with measurements, integrated, and identification of collaboration governance.

Level 2 – Processes and behaviours to support the collaborative commitment

This includes a collaborative issue resolution process, interface management and collaborative behaviours.

4. **Collaborative Ways of Working**

- 4.1 The agreed collaboration charter will be supported by agreed collaborative ways of working on the Digital Systems Program developed during the delivery phase. These will include a commitment by each Collaborative Participant to:
- its leadership belief in and promotion of collaboration;
 - a co-located office space;
 - sharing of risk and issue registers;
 - use of TeamBinder for document management;
 - use of collaborative tools to present project management information and evidence of issues; and
 - training of team to support the agreed collaborative behaviours.

Schedule 29 - Form of New SOW Particulars

(Clause 6.7)

Description		
New SOW description:	<i>[Insert title description of this New SOW]</i>	
Scope of Contractor's Activities (including the Works) that must be performed under this New SOW:	As stated in Exhibit B to these New SOW Particulars. <i>[Describe in Exhibit B to these New SOW Particulars the scope of work that the Contractor must carry out under this New SOW]</i>	
Other particulars relating to New SOW		
Conditions Precedent to Completion (Clause 1.1)	<i>[insert]</i>	
Date for Completion of New SOW (Clause 1.1)	<i>[insert. If Portions apply to this SOW, specify the Date for Completion of each Portion]</i>	
Design Fee (Clause 1.1)	As specified in Schedule 2 to these New SOW Particulars.	
Interface Contractors (Clause 1.1)	As specified in Exhibit B to the New SOW Particulars.	
Management Fee (Clause 1.1)	As specified in Schedule 2 to these New SOW Particulars.	
Portions (Clause 1.1, 12.6)	Do Portions apply to this New SOW: <i>[yes/no]</i> . If yes, the following Portions apply to this New SOW: <i>[Specify Portions applicable to this New SOW]</i>	
Preliminaries Fee (Clause 1.1)	As specified in Schedule 2 to these new SOW Particulars.	
Provisional Sum Work (Clauses 1.1 and 11.20)	Description of Work	Provisional Value
	<i>[insert]</i>	<i>[insert]</i>
	<i>[insert]</i>	<i>[insert]</i>
Reliance Material (Clause 1.1)	Applicable: <i>[yes/no]</i> . If applicable, the following Reliance Material applies to this New SOW: <i>[insert]</i> . If nothing is stated, no Reliance Material applies to this New SOW.	
Reports (Clause 1.1)	As specified in Exhibit F to these New SOW Particulars.	
Self-performed Reimbursable Work (Clause 1.1, 7.14(f)(iv)A)	As specified in Schedule 8 to these New SOW Particulars.	
Target Budget (Clause 1.1)	The Target Budget in respect of this New SOW is: <i>[insert Target Budget]</i> . A detailed breakdown of the Target Budget is outlined in Exhibit J.	
The Site (Clause 1.1)	The Site for the purposes of this New SOW is as described in Exhibit E to these New SOW Particulars (or as otherwise advised by the Principal's Representative from time to time).	

Third Party Agreements: (Clauses 1.1 and 2.11(b))	As specified in Exhibit I to these New SOW Particulars.
Authority Approvals (Clause 2.2(d)(i), 2.2(d)(v)D)	As specified in Schedule 6 to these New SOW Particulars.
Action in Complying with Planning Approval and Third Party Agreements (Clause 2.2(d)(ii), 2.2(d)(iii)B, 2.11(a)(ii)A, 2.11(a)(ii)B, 2.11(a)(iii), 2.11(a)(vii), 2.11(b)(ii), 2.11(b)(iii)D, 2.11(b)(iv)D))	As specified in Schedule 4 to these New SOW Particulars.
Principal contractor under WHS Legislation (Clause 2.10)	Principal contractor under WHS Legislation for the purposes of this New SOW: <i>[Contractor/ Principal/Other]</i> . The period of appointment of the principal contractor will be from the New SOW Date until the date on which all defects rectification work for the relevant New SOW has been completed by the Contractor.
Contemporaneous Work (Clause 2.13)	Applicable for this New SOW: <i>[yes/no]</i>
Minimum Aboriginal Participation Requirements: (Clause 2.14)	<p>Applicable: <i>[yes/no]</i></p> <p><u>If applicable, the minimum requirements for this New SOW are as follows:</u></p> <p>The Contractor must ensure that at least 1.5% of the:</p> <ul style="list-style-type: none"> a) Contract Price (excluding the value of any Equipment and any Contractor's Activities performed outside of Australia) is subcontracted to Aboriginal businesses*; b) Contractor's Australian based workforce (FTE, as relevant to the industry in which the Contractor operates) that directly contribute to the Contract are Aboriginal** employees; or c) Contract Price (excluding the value of any Equipment and any Contractor's Activities performed outside of Australia) is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the Contract. <p>The Contractor must achieve the 1.5% Aboriginal participation requirement by complying with any one, or a combination of, a), b) and c).</p> <p>*Aboriginal business is defined in the Aboriginal Procurement Policy.</p> <p>**The process for confirmation of Aboriginal or Torres Strait Islander heritage must align with the guidance available in the Aboriginal Procurement Policy.</p>

	<i>[Requirements to be confirmed in respect of each New SOW]</i>
Site access dates (Clause 3.1(b))	As specified in Exhibit E of these New SOW Particulars.
Site access preconditions (Clause 3.1(c)(ii)E)	The Contractor must comply with all: <ul style="list-style-type: none"> • requirements under the Contract relating to Track Possessions and Operational Outage Windows; and • Sydney Trains processes and requirements to obtain access to any Site (including a control room). • <i>[Insert any other Site access preconditions applicable to this New SOW].</i>
Parts of Site within which the Works must be located (Clauses 3.9 and 7.19(b)(i))	As specified in Exhibit E to these New SOW Particulars.
Condition surveys exist for the following properties (Clause 3.10)	For this New SOW: <i>[insert or state "not applicable"]</i>
Consultants to be novated (Clause 5.2(a))	<i>[Insert]</i>
Escrow deed (Clause 5.7(j))	Required: <i>yes/no</i> . If yes, specify when the Contractor is required to enter into the escrow deed: <i>[insert]</i>
Trade packages and Subcontractors (Clauses 7.4(c)(ii) and 7.12)	Trade Package Subcontractor 1. <i>[insert]</i> 1. <i>[insert]</i>
Subcontractors required to execute deed in form of Schedule 13 (Clause 7.7(a)(v)B)	If applicable, the following categories: <i>[insert or state "not applicable"]</i>
Warranties required from Subcontractors (Clause 7.9)	As specified in Exhibit G to these New SOW Particulars.
Contractor's personnel (Clauses 9.4(a) and 9.4(b)(i))	<i>[insert]</i> . If nothing is stated, the Contractor's personnel will be the persons specified in Schedule 1 for SOW 1.
Rates and prices to be used in determining Reimbursable Cost Adjustment as a direct result of delay in accordance with clause 10.13 (Clause 10.13)	As specified in Schedule 2 to these New SOW Particulars.
Cap on delay damages (Clause 10.13)	<i>[\$[insert]]</i> per day <i>[specify amount per Portion if applicable]</i> .
Unfixed Equipment, Plant and Materials: (Clause 11.7)	For this New SOW: <i>[insert or state "not applicable"]</i>
Performance and Compliance Payments (Clause 11.18)	Applicable for this New SOW: <i>[yes/no]</i> . If yes, as specified in Schedule 2 to these New SOW Particulars.

Rates for Systems Integration Testing Activities (Clause 11.20(b))	As specified in Schedule 2 to these New SOW Particulars.
Liquidated damages (Clause 12.7(a) and 12.7(b))	As specified in Schedule 35 to these New SOW Particulars.
Minimum amount of professional indemnity insurance required (Clause 13.6(f))	<i>[Insert minimum amount of professional indemnity insurance required from subcontractors under this New SOW. If nothing is stated, the minimum amount of professional indemnity insurance required in Schedule 1 for SOW 1 will apply].</i>

Schedules and Exhibits attached to this New SOW (all other schedules and exhibits 'not used'):

Schedule 2 - Payment Schedule

Schedule 4 - Action in Complying with Planning Approval and Third Party Agreements

Schedule 6 - Authority Approvals to be obtained by the Principal

Schedule 8 - Self-Performed Reimbursable Work

Schedule 9 - Information Documents and Materials

Schedule 14 - Options

Schedule 17 - Preliminaries

Schedule 27 - Principal Supplied Items

Schedule 32 - Interface Contractor Matrix

Schedule 33 - Track Possessions

Schedule 35 - LD Milestones

Exhibit B - Works Brief

Exhibit C - Principal's insurance policies

Exhibit D - Planning Approval

Exhibit E - Contract specific requirements

Exhibit F - Reports

Exhibit G - List of warranties required from Subcontractors

Exhibit H - Preliminary Design

Exhibit I - Third Party Agreements

Exhibit J - Target Budget Breakdown

Exhibit K - Significant Project Plans

Exhibit L - Interface Specification Document

Exhibit N - Special Conditions applicable to this New SOW

Schedule 2 to New SOW Particulars: Payment Schedule

PART A - PAYMENT PROFILE FOR DESIGN FEE, PRELIMINARIES FEE, REIMBURSABLE COSTS AND MANAGEMENT FEE APPLICABLE TO NEW SOW

The following table sets out the Design Fee, Preliminaries Fee, Reimbursable Costs allowance and Management Fee for which the Contractor is entitled to claim payment each month in respect of this New SOW:

MONTH	DESIGN MILESTONE	DESIGN FEE (\$)	PRELIMINARIES FEE (\$)	MANAGEMENT FEE (\$)	TOTAL CUMULATIVE (\$)
Month 1		\$[Insert]	\$[Insert]	\$[Insert]	\$[Insert]
Month 2		\$[Insert]	\$[Insert]	\$[Insert]	\$[Insert]
Month 3		\$[Insert]	\$[Insert]	\$[Insert]	\$[Insert]
[Insert rows as required]		\$[Insert]	\$[Insert]	\$[Insert]	\$[Insert]
SUBTOTAL		\$[Insert]	\$[Insert]	\$[Insert]	\$[Insert]
REIMBURSABLE COSTS		N/A			\$[Insert]
TARGET BUDGET		N/A			\$[Insert]

PART B - P&C PAYMENT APPLICABLE TO NEW SOW

Period of Portion <input checked="" type="checkbox"/> Completion where P&C Payment applies	P&C amount payable	Percentage of Target Budget
[insert]	\$[insert]	[insert]%
[insert]	\$[insert]	[insert]%
[insert]	\$[insert]	[insert]%
[insert]	\$[insert]	[insert]%
[insert]	[insert]	[insert]%

[Note to user: insert Performance and Compliance mechanism that will apply to the relevant New SOW, including Performance Categories and Incentive Goals for this New SOW.]

PART C- SCHEDULE OF RATES APPLICABLE TO THIS NEW SOW

[Note to user: insert schedules of rates applicable to this New SOW including for design fees, preliminaries fees, delay costs and Variations

Include mechanism for indexation of rates

Or, if applicable, refer to Schedule of Rates for SOW 1]

PART D - COMPONENTS OF DESIGN FEE

The following activities are included in the Design Fee payable to the Contractor under the Contract. For the avoidance of doubt, the examples below do not constitute an exhaustive list of the Design Fee components.

[Insert]

PART E - COMPONENTS OF MANAGEMENT FEE

The following activities are included in the Management Fee payable to the Contractor under the Contract. For the avoidance of doubt, the examples below do not constitute an exhaustive list of the Management Fee components.

[Insert]

PART F - COMPONENTS OF PRELIMINARIES FEE

The following activities are included in the Preliminaries Fee payable to the Contractor under the Contract. For the avoidance of doubt, the examples below do not constitute an exhaustive list of the Preliminaries Fee components.

[Insert]

PART G - COMPONENTS OF REIMBURSABLE COSTS

The following activities are included in the Reimbursable Costs payable to the Contractor under the Contract. For the avoidance of doubt, the examples below do not constitute an exhaustive list of the Reimbursable Costs components.

Schedule 4 of New SOW Particulars: Action in Complying with Planning Approval and Third Party Agreements

(Clauses 2.2(d) and 2.11(a))

Part A Planning Approval

Under this New SOW, the Contractor must fulfil all the conditions and requirements of the Planning Approval, except to the extent that the following tables allocate responsibilities to the Principal. Nothing specified in this table as being a responsibility of the Principal will relieve the Contractor from complying with any obligation set out elsewhere in the Contract. The Contractor may apply to have any part of any of the Approvals listed below modified. The Contractor acknowledges and agrees that it is solely responsible for any such modification.

Conditions of Approval

Planning Approval Condition Number	Extent of Principal's responsibility for the Planning Approval condition specified
	<i>[Insert details]</i>

Mitigation Measures

Mitigation Measure Number	Extent of Principal's responsibility for the Mitigation Measure specified in Section [insert] of the Submissions Report
	<i>[Insert details]</i>
	<i>[Insert details]</i>

Part B Additional Environmental Requirements

For this New SOW, the Contractor must in addition to fulfilling the requirements of the Planning Approval, carry out the following in relation to the Planning Approval:

Planning Approval Condition Number	Further obligations of Contractor
	<i>[Insert details]</i>

Part C Third Party Agreements

Agreement and Clause No	Extent of Principal's responsibility for clause specified
	[Insert details]

Schedule 6 to New SOW Particulars: Authority Approvals to be obtained by the Principal

(Clause 2.2(d)(i))

[Note to user: insert Authority Approvals to be obtained by the Principal under this New SOW]

Schedule 8 to New SOW Particulars: Self-Performed Reimbursable Work

(Clauses 1.1 and 7.14)

[Note to user: outline Self-Performed Reimbursable Work that Contractor may perform for this New SOW]

Schedule 9 to New SOW Particulars: Information Documents and Materials

(Clauses 1.1 and 3.6)

List of Information Documents and Materials

Item	Description	Author / Source	Date	Format
	Part A – XXXX			
A1				
	Part B – XXXX			
B1				
B2				
B3				
	Part C – XXXX			
C1				
C2				
	Part D – XXXX			
D1				
D2				
D3				
D4				
D5				

Schedule 14 to New SOW Particulars: Options

(Clause 14)

OPTION	
Description:	
Adjustment to amounts payable under the Contract:	
Adjustment to the Target Budget:	
Period for exercising the Option:	
Works Brief Amendments:	
Drawing Amendments:	
Other Contract Amendments	

Schedule 17 to New SOW Particulars: Preliminaries

(Clauses 1.1 and 2.1(b)(i))

[Insert Preliminaries applicable to New SOW or, if applicable, specify that they are as per SOW 1]

Schedule 27 to New SOW Particulars: Principal Supplied Items

[Insert Principal Supplied Items applicable to this New SOW]

Schedule 32 to New SOW Particulars: Interface Contractor Matrix

Technical Interface	Applicable to SOW	Contractor's Role	Interface Contractor(s)	Interface Contractor's Role

Schedule 33 to New SOW Particulars: Track Possessions

[Note: Track Possessions available to the Contractor to be listed here.]

Schedule 35 to New SOW Particulars: LD Milestones

[Note: Any milestones to which liquidated damages attach to be listed here.]

Description of LD Milestone	LD Milestone Date	Liquidated Damages Rate
		[\$insert] per day
		[\$insert] per day
		[\$insert] per day

Liquidated damages for delay in reaching Completion of a Portion or the Works

For the purposes of clause 12.7(a):

For [Portion 1]: [\$insert] per day.

For [Portion 2]: [\$insert] per day.

OR

Where there are no Portions, for the Works:

[\$insert] per day.

Exhibit B to New SOW Particulars: Works Brief

For this New SOW, the Works Brief comprises the following documents:

[Insert]

Exhibit C to New SOW Particulars: Principal's insurance policies

[Note to user: insert Principal's insurance policies applicable to this New SOW or state "As per SOW 1"]

Exhibit D to New SOW Particulars: Planning Approval

[insert]

Exhibit E to New SOW Particulars: Contract Specific Requirements

[insert]

Exhibit F to New SOW Particulars: Reports

[insert]

Exhibit G to New SOW Particulars: List of Warranties required from Subcontractors

List of warranties required from Subcontractors under this New SOW:

[insert or state "As per SOW 1"]

Exhibit H to New SOW Particulars: Preliminary Design

[insert]

Exhibit I to New SOW Particulars: Third Party Agreements

[insert]

Exhibit J to New SOW Particulars: Target Budget breakdown

[Insert detailed breakdown of Target Budget]

Exhibit K to New SOW Particulars: Significant Project Plans

[insert or state "As per SOW 1"]

Exhibit L to New SOW Particulars: Interface Specification Document

[insert (if any)]

Exhibit N to New SOW Particulars: Special Conditions

[insert (if any)]

[Drafting note: The Special Conditions for the first New SOW to be issued (i.e. SOW2) will include a Special Condition that for SOW1 and SOW2, the cap will be the aggregate of the Target Budgets for those SOWs.]

Schedule 30 - Escrow Deed

(Clause 5.7(j))

Between **[[Name]]** of **[[Address]]** **[[ABN [*]]]** (**Escrow Holder**).

and **[[Name]]** of **[[Address]]** **[[ABN [*]]]** (**Contractor**); and

and **Transport for NSW** (ABN 18 804 239 602), a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113 (**TfNSW**).

RECITALS

- A. The Contractor has agreed to deposit with the Escrow Holder a copy of the Source Code Material and to allow TfNSW to access and use the Source Code Material under certain circumstances.
- B. The Escrow Holder agrees to deal with the Source Code Material on the terms and conditions of this deed.

1. Interpretation

1.1 Definitions

Unless otherwise specified, words and phrases used in this deed have the same meaning as that which is given to them under the Contract. In this deed:

Annual Fee means the annual fees set out in section 1 of the Information Schedule.

Corporations Act means the Corporations Act 2001 (Cth).

Contract means the Contract entitled **[[Insert]]** between TfNSW and **[[Insert]]**, dated **[[insert]]**.

CPI means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

Escrow Deposit Specification Form means the form set out in Schedule 2.

Establishment Fee means the establishment fee set out in section 1 of the Information Schedule.

Government Agency means any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Information Schedule means Schedule 1 to this deed.

Insolvency Event means in relation to a party to the Contract, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or any

foreign law equivalent or other person with similar power is appointed to the party;

(c) the party:

- (i) becomes bankrupt or insolvent within the meaning of section 95A of the Corporations Act or under any bankruptcy, insolvency or analogous Law;
- (ii) would be presumed by a court to be insolvent under section 459C(2) of the Corporations Act;
- (iii) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act) and fails to remedy that failure within 7 days after being required in writing to do so by the party issuing the statutory demand;
- (iv) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
- (v) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
- (vi) commences any proceeding, files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
- (vii) resolves to, consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
- (viii) files a petition or otherwise commences any proceeding seeking to enter into any compromise, reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition, or commencement of such proceedings; or

(d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

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

Software Application means the software application(s) specified in section 2 of the Escrow Deposit Specification Form.

Source Code means, in respect of any software, firmware, computer code or configuration files (**Computer Programs**), the human readable code of such Computer Programs, and includes associated software including scripts and applets (collectively

comprised in a complete copy of all of the foregoing in executable code) and all compilers, tools, language, documentation necessary to operate, maintain and modify the executable code copy of that Computer Program including all technical documentation and specifications in respect of that Computer Program, including any other information necessary for a reasonably skilled computer programmer to understand the program logic of the software, firmware, computer code or configuration files and to perform any of those acts in relation to it.

Source Code Material means all Source Code for the then currently implemented version of the Software Application, reasonably detailed associated developer commentary regarding that Source Code and all other software, information, documentation and other material described in section 2 of the Information Schedule.

Tax Invoice has the same meaning as in the GST Legislation.

Taxable Supply has the same meaning as in the GST Legislation.

Update means any material update, new release, modification or new version of the computer programs or computer interfaces provided by the Contractor.

1.2 References to certain general terms

In the deed:

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

and unless the context indicates a contrary intention:

- (b) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes a party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to a document (including the deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause schedule, exhibit, attachment or annexure to or of the deed, and a reference to the deed includes all schedules, exhibits, attachments and annexures to it;

- (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the deed, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
- (j) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (k) "includes" in any form is not a word of limitation;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body.

2. Contractor's deposit obligations

2.1 Contractor to make deposits

The Contractor must deposit the then currently implemented version of the Source Code Material, accompanied by a completed Escrow Deposit Specification Form, with the Escrow Holder:

- (a) within 14 days of the date of this deed;
- (b) as a condition precedent to completion of the Contractor's Activities; and
- (c) within 14 days after any update or material change is made to the implemented version of any Source Code then held by the Escrow Holder.

2.2 TfNSW may test deposits

TfNSW may, after providing the Contractor with at least seven days' notice, conduct tests on the Source Code Material to determine whether the Contractor has met its obligations under clause 2.1.

2.3 Escrow Holder to provide access

The Escrow Holder will provide TfNSW with access to the Source Code Material to enable testing under clause 2.2 to be carried out and will, in the presence and with the oversight of the Contractor, allow TfNSW to:

- (a) remove the Source Code Material from the custody of the Escrow Holder;

- (b) install, download or copy the Source Code Material onto such computer system or hardware as TfNSW may reasonably specify; and
- (c) analyse and conduct reasonable tests in relation to the Source Code Material as provided for under clause 2.2.

Following the testing, TfNSW will (in the presence of and with the oversight of the Contractor) ensure that all copies of the Source Code Material are deleted from the computer system or hardware referred to in clause 2.3(b), and the material referred to in clause 2.3(a) is promptly returned to the Escrow Holder.

2.4 Support to provide assistance with testing

The Contractor must, at TfNSW's request and at no charge, give TfNSW all reasonable assistance to enable TfNSW to carry out the tests referred to in clause 2.2.

2.5 Failure to deposit correct version in escrow

If testing by TfNSW reveals that the Source Code Material does not contain the correct version of the computer programs or computer interfaces, the Contractor must, at no charge, deliver a copy of the correct version of the Source Code Material to the Escrow Holder within 2 Business Days of the completion of testing.

3. Escrow Holder's obligations

3.1 Obligations

The Escrow Holder must:

- (a) accept each deposit of the Source Code Material and, subject to the terms and conditions of this deed, hold it on behalf of the Contractor and TfNSW;
- (b) take all reasonably necessary steps to ensure the preservation, care, safe custody and security of the Source Code Material whilst it is in the possession, custody or control of the Escrow Holder;
- (c) only use, access, copy and release the Source Code Material to the extent necessary to enable the Escrow Holder to comply with its obligations under this deed;
- (d) establish and maintain a register of deposits of the Source Code Material (Register) showing deposit and release dates and to whom each deposit was released;
- (e) allow the Contractor or TfNSW to examine the Register at any time during regular business hours; and
- (f) provide the Contractor or TfNSW with a copy of the Register within seven days of receiving a request to do so.

3.2 Limit on obligations

The Escrow Holder has no obligation to and is not responsible for:

- (a) verifying the nature, completeness or accuracy of Source Code Material; or
- (b) any transaction between the parties, other than the performance of the Escrow Holder's obligations under this deed.

4. Confidentiality

The Escrow Holder must not disclose to any person:

- (a) any part of the Source Code Material;
- (b) any information about the Source Code Material; or
- (c) any information about this deed,

other than as permitted by this deed or as required by Law.

5. Release to TfNSW

5.1 TfNSW may request release

If one of the following circumstances occurs:

- (a) an Insolvency Event occurs to the Contractor;
- (b) the Contractor ceases to carry on business;
- (c) the Contractor has ceased for any reason to maintain or support a Software Application;
- (d) the Contractor breaches the terms of this deed;
- (e) the Contract is terminated for the Contractor's breach; or
- (f) the Contractor assigns copyright in a Software Application to a third party,

then TfNSW may notify the Escrow Holder and the Contractor of this event and request that the Escrow Holder release the Source Code Material to TfNSW (**TfNSW Notice**).

5.2 Contractor may dispute release

If the Contractor disputes the TfNSW Notice, then it may notify the Escrow Holder and TfNSW that it objects to release of the Source Code Material on the basis that the event relied on by TfNSW does not exist and the Contractor has provided substantial evidence to support its objection (**Contractor Objection**).

5.3 Release of Source Code Material to TfNSW

Unless otherwise ordered by a court the Escrow Holder must release the Source Code Material to TfNSW:

- (a) if no Contractor Objection is received, within 2 Business Days after the Escrow Holder receives a TfNSW Notice; or
- (b) if a Contractor Objection is received, within 7 days after the Contractor Objection is received.

5.4 Grant of licence

If the Source Code Material is released to TfNSW under this clause 5, then the Contractor grants TfNSW an irrevocable, perpetual, royalty-free, worldwide, non-exclusive licence in relation to that Source Code Material to use it for all purposes in connection with the Contractor's Activities and the purposes described in clause 5.7 of the Contract.

6. Release to Contractor

6.1 Release of Source Code Material to Contractor

If TfNSW has given the Escrow Holder written notice of its consent to the release of the Source Code Material to the Contractor, then the Contractor may request that the Escrow Holder release the Source Code Material to the Contractor, and the Escrow Holder must immediately release the Source Code Material to the Contractor.

6.2 No other release to Contractor is permitted

Other than as provided for in clause 6.1 and clause 7, the Escrow Holder must not release any Source Code Material to the Contractor.

7. Release by agreement or by court order

7.1 Release by agreement

Within five days after receipt of a joint notice from the Contractor and TfNSW requesting release of the Source Code Material, the Escrow Holder must release the Source Code Material in accordance with that notice.

7.2 Release by court order

Each party acknowledges that the Escrow Holder must release the Source Code Material in accordance with any court order requiring the Escrow Holder to do so.

7.3 Notice to TfNSW

The Escrow Holder must immediately notify TfNSW if it receives a court order (or any document that refers to a court order being sought) in relation to the Source Code Material.

8. Fees and charges

8.1 Payment of fees

TfNSW must pay the Establishment Fee and Annual Fee to the Escrow Holder within 30 days of TfNSW's receipt of the invoices referred to in clause 8.3.

8.2 Annual Fee subject to change

The Escrow Holder may increase the Annual Fee for any year by giving 30 days' notice to TfNSW. An increase must not exceed the increase in the CPI for the previous year.

8.3 Invoices

The Escrow Holder may issue invoices as follows:

- (a) for the Establishment Fee, on or after the date of this deed, to TfNSW;
- (b) for the Annual Fee, on or after each anniversary of the date of this deed, to TfNSW; and
- (c) for reasonable delivery costs incurred by the Escrow Holder in releasing the Source Code Material, to the party that requested the release.

All invoices issued by the Escrow Holder must state the basis on which fees are charged and, in respect of amounts invoiced pursuant to sub-clause (c) above, must attach evidence justifying the amounts claimed.

8.4 GST inclusive prices

Unless otherwise stated, the fees include GST.

9. GST

9.1 GST gross up

Subject to clauses 9.2, 9.3 and 9.4, if GST is imposed on any Taxable Supply made by a party under this deed (**Supplying Party**), then the party receiving the Taxable Supply (**Receiving Party**) must pay, in addition to any consideration payable or to be provided under this deed for the supply, an additional amount calculated by multiplying the prevailing GST rate by the consideration for the relevant Taxable Supply payable, or to be provided, by the Receiving Party under any other clause in this deed.

9.2 Tax invoice

Payment for Taxable Supplies is conditional upon the issue of a Tax Invoice. Each Tax Invoice must provide full details of the Taxable Supply, the subject of the Tax Invoice, including any details the payer of the fee may specifically require and such other details required to ensure that it is a Tax Invoice.

9.3 Adjustment

If the amount of GST recovered by the Supplying Party from the Receiving Party differs from the amount of GST payable at Law by the Supplying Party (or an entity grouped with the Supplying Party for GST purposes) in respect of the supply, the amount payable by the Receiving Party to the Supplying Party will be adjusted accordingly.

9.4 Reimbursements

Where one party (**Payer**) is liable to reimburse another party (**Payee**) for any expenditure incurred by the Payer (**Expenditure**), the amount reimbursed by the Payer shall be the

GST exclusive Expenditure plus any GST payable to the Payee by the Payer pursuant to clause 9.1.

10. Ownership and risk

10.1 Acknowledgements

Each party acknowledges that:

- (a) nothing in this deed assigns any Intellectual Property Rights in the Source Code Material;
- (b) title in the physical media on which the Source Code Material is stored passes from the Contractor to TfNSW on release of the Source Code Material to TfNSW under clause 5 or clause 7; and
- (c) risk of loss of, or damage to, the Source Code Material and associated media remains with the Contractor.

10.2 Loss or damage to Source Code Material

Without limiting any rights or remedies that any of the parties may have, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control:

- (a) the Escrow Holder must promptly notify each other party; and
- (b) the Contractor must provide the Escrow Holder with replacement Source Code Material within 2 Business Days or receiving such notice from the Escrow Holder.

10.3 Warranty

The Contractor warrants and represents that it has the necessary authority to comply with its obligations under this deed (including the right to grant the licence in clause 5.4).

10.4 Act or omission of Escrow Holder

Notwithstanding any other provision of this deed, if any of the Source Code Material or associated media is lost, damaged or destroyed while in the Escrow Holder's control, and that loss, damage or destruction is caused by:

- (a) the Escrow Holder's breach of this deed; or
- (b) the negligent, wilful or unlawful act or omission of the Escrow Holder,

then the Escrow Holder must, at its own expense, reimburse the Contractor for the reasonable cost of replacing the relevant part or parts of the Source Code Material.

11. Termination

11.1 Upon insolvency

This deed terminates immediately if an Insolvency Event occurs to the Escrow Holder.

11.2 Upon release of Source Code Material

This deed terminates immediately if the Source Code Material is released to TfNSW or the Contractor under this deed, except such termination will not affect those parts of this deed referenced in clause 14.14 (**Survival**).

11.3 Upon provision of notice

This deed may be terminated by:

- (a) the Escrow Holder giving 90 days written notice to the Contractor and TfNSW, subject to a pro-rata refund by the Escrow Holder to TfNSW of any advance payment of the Annual Fee; or
- (b) TfNSW giving 90 days written notice to the Contractor and the Escrow Holder.

11.4 By TfNSW or the Contractor

Either the Contractor or TfNSW may, by giving notice to the Escrow Holder (with a copy to TfNSW or the Contractor, as applicable), terminate this deed with immediate effect if:

- (a) the Escrow Holder commits a material breach of this deed; and
- (b) the breach is not remedied within 14 days of the Escrow Holder receiving a notice detailing the breach and requiring that it be rectified.

11.5 Consequences of an Escrow Holder termination event

Within 14 days after the termination of this deed under clause 11.1, 11.2, 11.3 or 11.4, the Contractor must, at the direction of TfNSW (and TfNSW must, if the Contractor so requests), enter into another agreement between the Contractor, TfNSW and a new escrow service provider in a form substantially similar to this deed.

11.6 Return of Source Code Material on termination

- (a) If this deed terminates for any reason other than under clause 11.2 and 11.3(b), then, unless a new escrow deed is entered into within 14 days in accordance with clause 11.5, the Escrow Holder must, within a further 20 days, deliver the Source Code Material to TfNSW.
- (b) If this deed terminates under clause 11.3(b), then the Escrow Holder must within 7 days deliver the Source Code Material to the Contractor.

12. Notices

- (a) Any notices contemplated by this deed must be in writing and delivered to the relevant address as set out below (or to any new address that a party notifies to the others):
 - (i) to TfNSW: 7 Harvest Street, Macquarie Park NSW 2113
 - (ii) to the Escrow Holder: [to be completed]
 - (iii) to the Contractor: [to be completed]

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

13. No assignment

The Contractor and the Escrow Holder must not assign or otherwise deal with all or any of its rights or obligations under this deed without the written consent of the other parties.

14. General

14.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

14.2 Partial exercise of rights

If a party does not exercise a right or remedy at a given time, the party may still exercise it later.

14.3 Approvals and consents

By giving its approval or consent a party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

14.4 Remedies cumulative

The rights and remedies provided in this deed are in addition to other rights and remedies given by Law independently of this deed.

14.5 Operation of Law

Rights given to the parties under this deed and the parties' liabilities under it are not affected by anything which might otherwise affect them by Law.

14.6 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.

Nothing in this clause 14.6 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.

It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this deed.

14.7 No partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as constituting the relationship between TfNSW, the Contractor and the Escrow Holder as that of partners, joint venturers or any other fiduciary relationship.

14.8 Entire agreement

This deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersedes:

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

14.9 Joint and several liability

- (a) The obligations of the Escrow Holder, if more than one person, under this deed, are joint and several. Each person constituting the Escrow Holder acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and TfNSW may proceed against any or all of them.
- (b) The obligations of the Contractor, if more than one person, under this deed, are joint and several. Each person constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and TfNSW may proceed against any or all of them.

14.10 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed.

14.11 Provisions limiting or excluding liability

Any provision of this deed which seeks to limit or exclude a liability of TfNSW, the Contractor or the Escrow Holder is to be construed as doing so only to the extent permitted by Law.

14.12 Variations

This deed may only be varied by a document signed by or on behalf of TfNSW, the Contractor and the Escrow Holder.

14.13 Waiver

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

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

14.14 Survival

Clauses 3.1(e) and 3.1(f) ("Obligations"), 4 ("Confidentiality"), 5.4 ("Grant of licence"), 8.4 ("GST inclusive prices"), 9 ("GST"), 10.3 ("Warranty"), 11.5 ("Consequences of an Escrow Holder termination event"), 11.6 ("Return of Source Code Material on termination"), 14 ("General"), 14.15 ("Governing Law and jurisdiction") and 1 ("Interpretation") survive the termination (for any reason) of this deed.

14.15 Governing Law and jurisdiction

- (a) This deed shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed, and waives any right it might have to claim that those courts are an inconvenient forum.

Schedule 1 to Escrow Deed - Information Schedule**1. Fees and charges**

Establishment Fee: (first year) \$[] plus GST

Annual Fee: (first year and subsequent years) \$[] plus GST
(subject to increases under clause 8.2)

2. Source code material

- (a) the Source Code which incorporates computer programs or computer interfaces;
- (b) all documentation relating to the material referred to in (a) which a reasonably qualified programmer would require for understanding, maintaining, modifying such material; and
- (c) media on which that Source Code is stored or deposited:

[insert description of media, eg DVD]

Schedule 2 to Escrow Deed - Escrow Deposit Specification Form

1. Depositor information

Company Name:

Technical Contact:

Email:

Telephone:

2. Software Application information

Product Names(s)/Version(s)

Modules:

Product Names(s)/Version(s)	
Modules:	
Product Names(s)/Version(s)	
Modules:	

3. Media information

Medium	Quantity	Label

4. Escrow deposit details**4.1 Compilation**

(a) What hardware is required to compile the Software Application?

|

(b) What operating system and version is used in the compilation process?

|

(c) What operating system and version is used in the compilation process?

|

(d) What development environment (compilers/linkers/other tools) is necessary to compile the Software Application?

|

(e) List all third party libraries/components that are required to compile the software (brand name, version & Contractor) and indicate which (if any) are not included in the deposit?

|

(f) List all non-third party libraries/components that are required to compile the software.

|

- (g) Detail the steps to follow to compile the source code and produce a version of the Software Application that runs.

|

- (h) List all of the files that are created by the compilation process and are needed to successfully run the Software Application.

|

4.2 Running the application

- (a) What hardware is required to successfully run the Software Application (if identical to item 4.1(a) please leave blank)?

|

- (b) What software (in addition to the operating system) is required to successfully run the Software Application?

|

4.3 Documentation

- (a) Please provide an overview of the technical documentation.

|

- (b) Please provide an overview of the user documentation.

|

- (c) Please include a short description on the layout of the deposit.

|

- (d) Please include a full directory listing of the contents of the deposit media.

|

4.4 General information

- (a) What are the main functions performed by the Software Application?

|

- (b) List the additional material (reports, databases, etc.) included with the deposit.

|

- (c) Is a copy of the development environment (compilers & third party software) included with the deposit?

|

- (d) Does your company use a formal coding convention (please provide a brief description of the convention used).

|

5. Remarks

|

6. Signature

Date:

Signature:

Name (please print):
For and on behalf of the Contractor

The Contractor warrants that the details set out above are correct and complete.

Executed and delivered as a Deed in Sydney**Signed** for and on behalf of **Transport
for NSW** (ABN 18 804 239 602):_____
Signature of Authorised Delegate_____
Signature of Witness_____
Print Name
(block letters)_____
Print Name
(block letters)_____
Position held_____
Position held**Executed** as a deed in accordance with
section 127 of the Corporations Act 2001
by **[* Limited]**:_____
Director Signature_____
Director/Secretary Signature_____
Print Name_____
Print Name**Executed** as a deed in accordance with
section 127 of the Corporations Act 2001
by **[* Limited]**:_____
Director Signature_____
Director/Secretary Signature_____
Print Name_____
Print Name

Schedule 31 - Form of Confidentiality and Intellectual Property Deed Poll

(Clause 2.17(e))

Deed Poll made at _____ on: ____/____/____

By:

Name: [Insert] (ABN [Insert]) (the **Participant**)

Address: [Insert]

This deed poll is made in favour of each Other Participant

1. Background

The Participant has or may have a role in connection with TfNSW's "Digital Systems Program" to implement a system to replace legacy signalling and train control on the Sydney Trains rail network (the **Program**).

In connection with the Program, the Participant has received or may receive Confidential Information and other Materials of Other Participants in the Program. Similarly, the Participant has disclosed or may disclose or provide its own Confidential Information or Materials to Other Participants in the Program.

Given the criticality of appropriately protecting Confidential Information and Intellectual Property Rights, the Participant has been requested to execute this deed poll in favour of each Other Participant.

2. Confidentiality**2.1 Obligations of confidence**

(a) The Participant must:

- (i) use the Confidential Information of each Other Participant solely for the purposes of performing its obligations in connection with the Program; and
- (ii) keep all the Confidential Information of each Other Participant confidential and not disclose it to any third party except as:
 - A. otherwise permitted under this deed; and
 - B. provided for in section 2.2 (Permitted disclosures).

(b) These obligations of confidence extend to any Confidential Information provided to or obtained by the Participant in connection with the Program prior to its entry into its respective Service Agreement or this deed and whether or not that Confidential Information was provided to or obtained directly from the relevant Other Participant, or through TfNSW or another Other Participant.

2.2 Permitted disclosures

- (a) Subject to paragraphs (b) and (d), the Participant may only disclose Confidential Information of an Other Participant for the exercise of rights or the performance of obligations in connection with the Program.
- (b) The Participant may disclose Confidential Information of an Other Participant:
 - (i) with the prior consent of the relevant Other Participant; or
 - (ii) to its officers, agents, professional advisers (including lawyers), employees, contractors, sub-contractors and insurers for purposes in connection with the Program; or
 - (iii) to any auditor, expert, mediator or arbitrator appointed in connection with the Program; or
 - (iv) to TfNSW and any Other Participants for purposes in connection with the Program.
- (c) If the Participant discloses Confidential Information pursuant to paragraph (b)(i) or (ii) it must ensure that such information is kept confidential by the recipients and only used by the recipients on the basis set out in this section 2 (Confidentiality).
- (d) Notwithstanding anything to the contrary in this deed, the Participant may disclose the Confidential Information of an Other Participant where such Confidential Information:
 - (i) is required to be disclosed by applicable law, by a court or by a Government Authority, provided that, prior to disclosing any such Confidential Information, the Participant making the disclosure has promptly notified the relevant Other Participant to allow that Other Participant to take all reasonable steps to maintain such Confidential Information in confidence; or
 - (ii) is required to be disclosed in accordance with the rules of any stock exchange upon which the securities of the Participant making the disclosure are listed.
- (e) Further, the Participant acknowledges and agrees that:
 - (i) it consents to the disclosure of all its Confidential Information (other than in respect of fees) by TfNSW to each Other Participant subject to any restrictions on disclosure agreed between TfNSW and the Participant in a Service Agreement; and
 - (ii) all Confidential Information so disclosed by TfNSW is deemed to be disclosed directly by the Participant to that Other Participant (and not by TfNSW) and the relevant Participant's sole remedies in respect of any unauthorised use or disclosure of that information by that Other Participant are directly with that Other Participant and not TfNSW.

2.3 Security

The Participant must take reasonable steps to protect the Confidential Information of each Other Participant from unauthorised use or disclosure, and in any event steps no less protective than those taken to protect its own Confidential Information.

2.4 Return of information

Where the Participant no longer requires for the purposes of the Program:

- (a) any documentation; or
- (b) any information (including all copies of such information stored in any written or electronic form),

which constitutes or incorporates the Confidential Information or otherwise is the property of an Other Participant, it must ensure that it is returned to the relevant Other Participant within thirty (30) days, except where the Other Participant that disclosed or owns such information requests that the information may be securely disposed of, in which case the Participant must immediately securely delete or destroy such information, except for information stored on the Contractor's electronic back-up tapes which is unable to be deleted.

3. Intellectual Property

3.1 No impact on Service Agreements

Nothing in this deed is intended to impact on, or otherwise limit, TfNSW's rights concerning ownership and licensing of Intellectual Property Rights under any Service Agreement.

3.2 Pre-existing Intellectual Property Rights

Notwithstanding anything else contained in this deed, this deed does not operate to assign any Pre-Existing IPR of:

- (a) TfNSW to the Participant;
- (b) the Participant to TfNSW or an Other Participant; or
- (c) an Other Participant to TfNSW or the Participant.

3.3 Licence to Participant Material

- (a) The Participant grants to each Other Participant a fully paid up, royalty-free, non-exclusive licence to use the Participant Material solely for the purpose of performing its obligations in connection with the Program.
- (b) The right and licence granted by the Participant to each Other Participant under paragraph (a):
 - (i) may be sub-licensed by that Other Participant to its Personnel for the purposes of performing that Other Participant's obligations in connection with the Program; and
 - (ii) will terminate in respect of a particular item of Participant Material, if that item ceases to be required for the performance of that Other Participant's obligations in connection with the Program.
- (c) Further, and without limiting the above, the Participant acknowledges and agrees that:

- (i) it consents to the provision by TfNSW of all of its Participant Material to each Other Participant subject to any restrictions on disclosure agreed between TfNSW and the Participant in a Service Agreement; and
- (ii) all Participant Material so provided by TfNSW to any Other Participant is deemed to be licensed directly by the Participant to that Other Participant under this deed, and not under sub-licence by TfNSW. Consequently, the Participant's sole remedies in respect of any unauthorised use of that Participant Material by that Other Participant are directly with that Other Participant, and not TfNSW.

3.4 Moral Rights

The Participant must procure from each of its Personnel who are authors of any copyright material assigned, licensed or otherwise supplied to any Other Participant under this deed, a grant of consent and waiver of any Moral Rights in favour of the Participant to the extent required to enable the Other Participant to fully exercise, exploit and enjoy its licence rights (as the case may be) granted to it under this deed.

3.5 Indemnity

- (a) The Participant indemnifies each of the Indemnified Persons against any Loss suffered or incurred by them in connection with any Infringement Claim. This indemnity does not apply to the extent that the Infringement Claim directly results from:
 - (i) the Indemnified Persons' use of the Participant Material, contrary to this deed (unless such use was authorised by the Participant); or
 - (ii) any modification of the Participant Material made by the Indemnified Persons (unless such modification is otherwise authorised by the Participant).
- (b) The indemnity referred to in paragraph (a) will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (c) An Indemnified Person must take all reasonable steps to minimise the Loss it has suffered, or is likely to suffer, as a result of an event giving rise to an indemnity under this deed. If the Indemnified Person does not take reasonable steps to minimise such Loss then the amount payable by the indemnifying party will be reduced proportionately in each case.
- (d) A party's liability to an Indemnified Person under an indemnity in this deed will be reduced proportionally to the extent that an act or omission of the Indemnified Person has contributed to the Loss.

4. General

4.1 Continuing obligations

The obligations of the Participant under this deed are continuing and, for clarity, continue after the completion or termination of the relevant Service Agreement to which the Participant is a party and the Participant's engagement with TfNSW and the Program.

4.2 Non-waiver

The failure of the Participant or Other Participant to enforce any of the provisions of this deed or the granting at any time of any other indulgence is not to be construed as a waiver of that provision or of the right of the Participant or Other Participant to enforce that or any other provision at a later date.

4.3 Jurisdiction

This deed is governed by and subject to the laws of New South Wales.

4.4 No modification

This deed may not be modified without the prior written consent of the Participant and each Other Participant.

5. Definitions and interpretation

5.1 Definitions

For the purposes of this deed, capitalised terms have the following meanings:

Associates means, in relation to a person that is a corporation, any “Related Body Corporate” (as that term is defined in the *Corporations Act 2001* (Cth)) of that person, and any of their respective Personnel, and in the case of the Participant and an Other Participant, includes their subcontractors and their Personnel but only insofar as each is acting in connection with the Program.

Confidential Information, in relation to a person, means all information relating to the business or affairs of the person disclosed, communicated or delivered to, learnt by, developed by or which otherwise comes to the knowledge of or into the possession of, another person under or in connection with this deed, any Service Agreement or the Program, but excludes any information which:

- (a) is in the public domain other than as a result of breach of confidence;
- (b) was independently developed by the Recipient; or
- (c) was rightfully received by the Recipient from a third party who is under no obligation of confidentiality in respect of that information and who has not obtained that information either directly or indirectly as a result of a breach of any duty of confidence owed to the disclosure of that Confidential Information.

Government Authority includes any governmental or semi-governmental or local government authority, administrative or judicial board, tribunal or court, department, commission, public authority, minister, statutory corporation, authority or instrumentality (and includes the ASA) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Program.

Indemnified Persons means each Other Participant and each of their Associates.

Infringement Claim means any claim alleging that the Participant Material, or its exploitation or possession by any Participant or Other Participant, infringes the Intellectual Property Rights of any person.

Intellectual Property Rights includes any and all industrial and intellectual property rights of any nature both in Australia and throughout the world, and includes any patents, registered designs and domain names, copyright (including future copyright), trade or service marks (whether registered or unregistered), trade secrets, know-how, rights in relation to circuit layouts, or other proprietary right or right to registration of such rights.

Loss means all liability, loss, damage, cost, and expense, charge, outgoing or payment including reasonable legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties, for which a person is liable, whether or not yet paid or met by that person.

Material means any material in any form, including documents, reports, deliverables, equipment, information, data, software and software tools.

Moral Rights means the rights conferred by Part IX of the *Copyright Act 1968* (Cth).

Other Participant means each person who has executed a version of this deed poll or one substantially similar to it and who TfNSW notifies the Participant is an Other Participant for purposes of this deed.

Participant Material means any Material provided or made available by the Participant to any Other Participant under this deed or to TfNSW under a Service Agreement.

Personnel of a person means the officers, employees, consultants, agent, contractors and subcontractors of that person and also includes the Personnel of its subcontractors.

Pre-existing IPR means a person's Intellectual Property Rights existing prior to their entry into this deed, or subsequently brought into existence other than in the course of performing this deed, the Program or its obligations under its relevant Service Agreement.

Recipient means, in respect of the Confidential Information of a person, the other person in receipt of that Confidential Information.

Representative means, in respect of a person, any person acting for or on behalf of the party and includes any director, officer, employee, contractor or professional adviser of that person.

Service Agreement means an individual agreement between TfNSW and the Participant for services in connection with the Program.

TfNSW means Transport for New South Wales (ABN 18 804 239 602).

5.2 Interpretation

In this deed, the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this deed;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

- (d) the words 'such as', 'including', 'particularly' and similar expressions are not used as nor are intended to be interpreted as words of limitation;
- (e) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a person (including a Participant) includes their successors and permitted assigns; and
 - (iii) a document includes all amendments or supplements to that document; and
 - (iv) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this deed or any part of it.

Executed as a deed poll

By the Participant:

Signed, sealed and delivered by [Insert] **ABN** [Insert] in accordance with section 127 of the *Corporations Act 2001* (Cth) and by:

Signature of director

Signature of director/secretary

Name of director (print)

Name of director/secretary (print)

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 33 - Track Possessions

For SOW 1, not applicable.

For a new SOW, as specified for the relevant New SOW Particulars.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

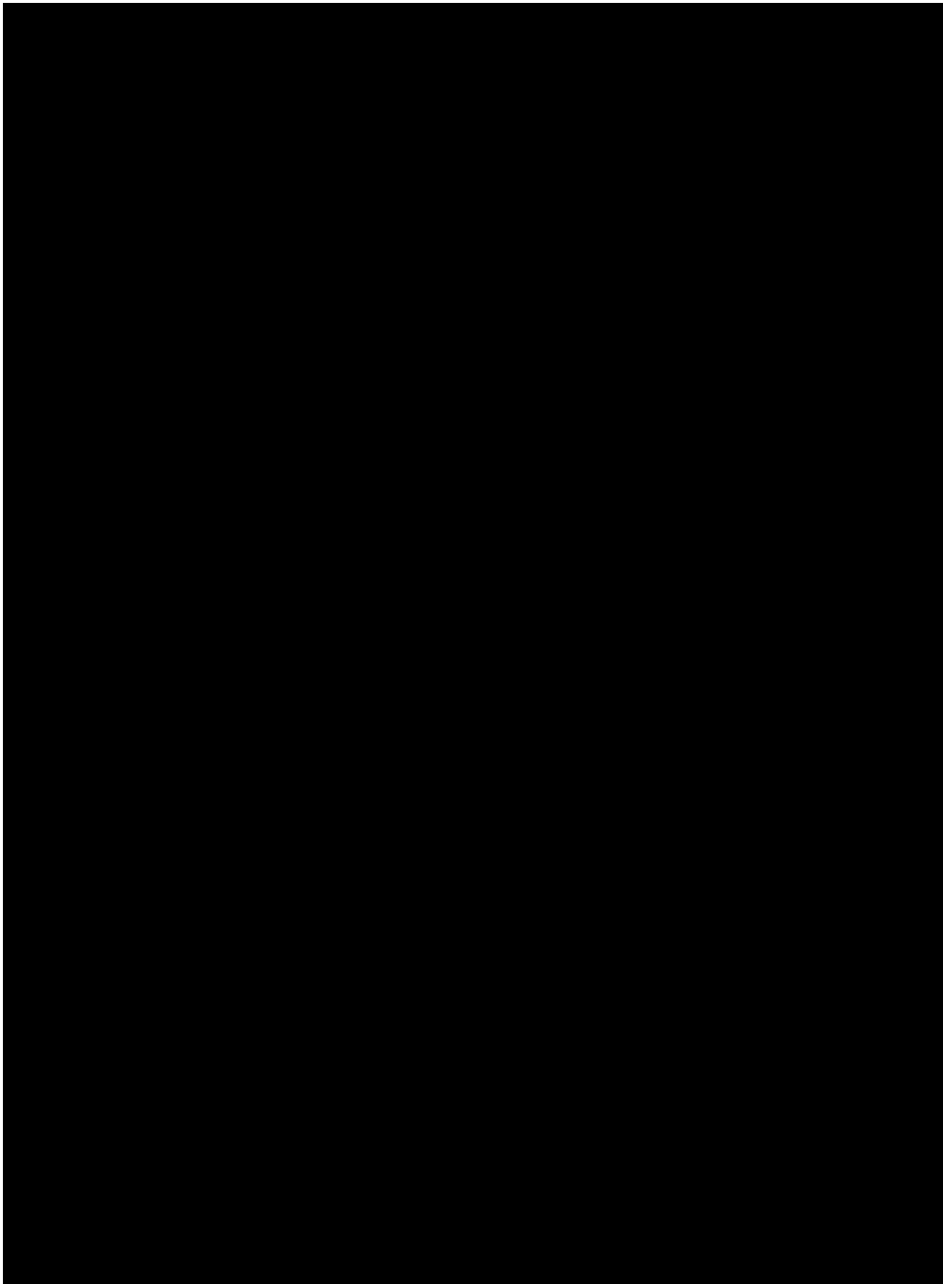
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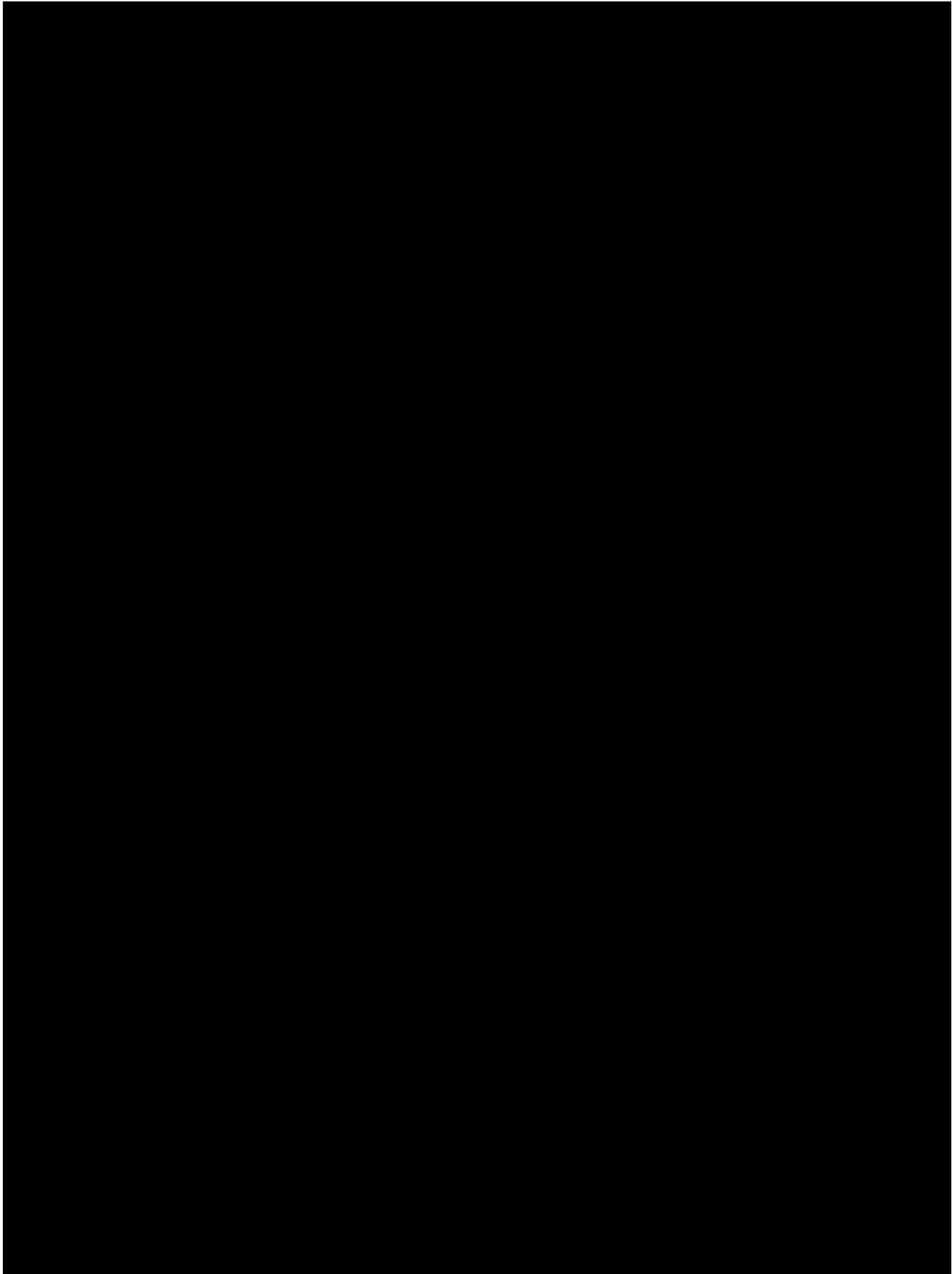
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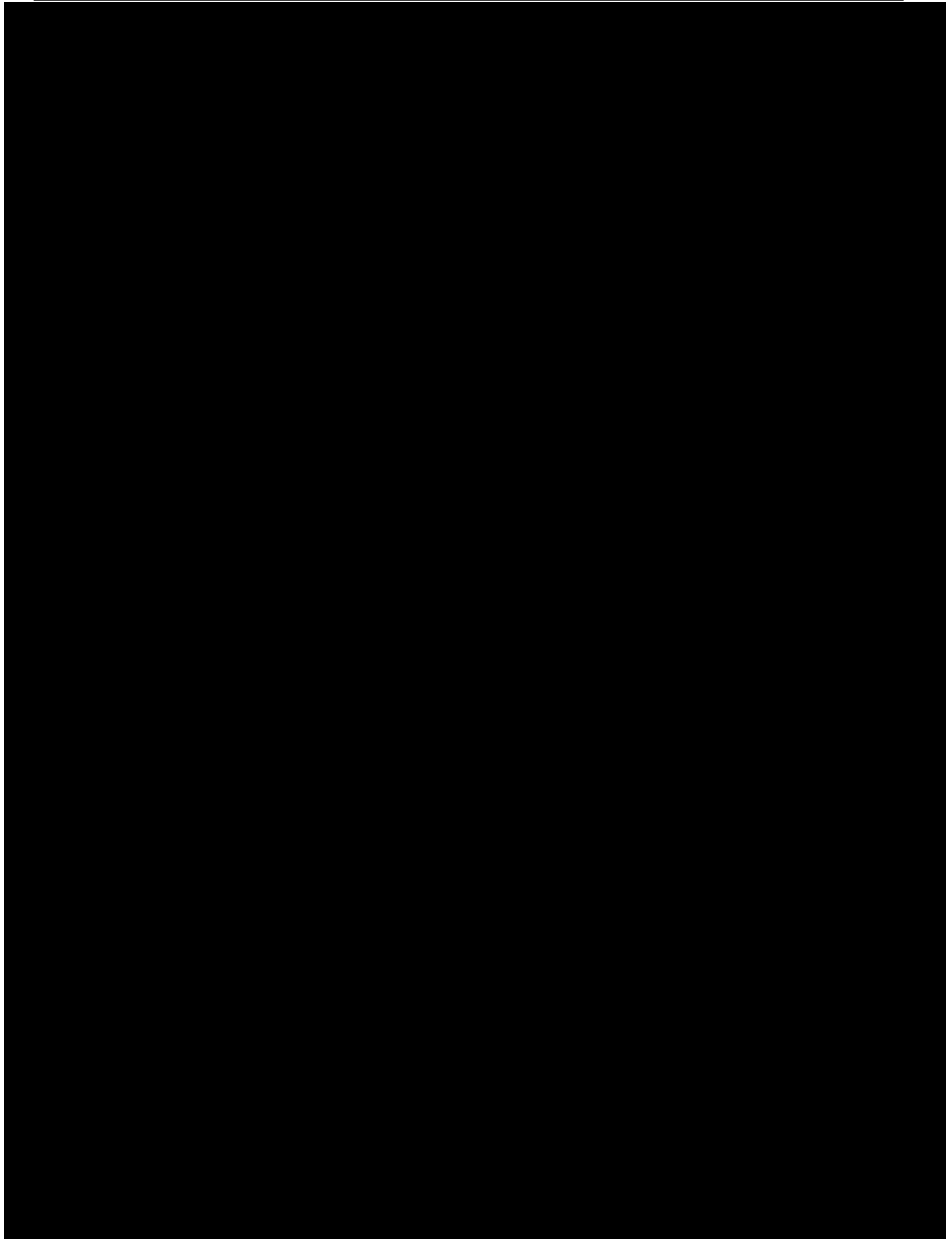
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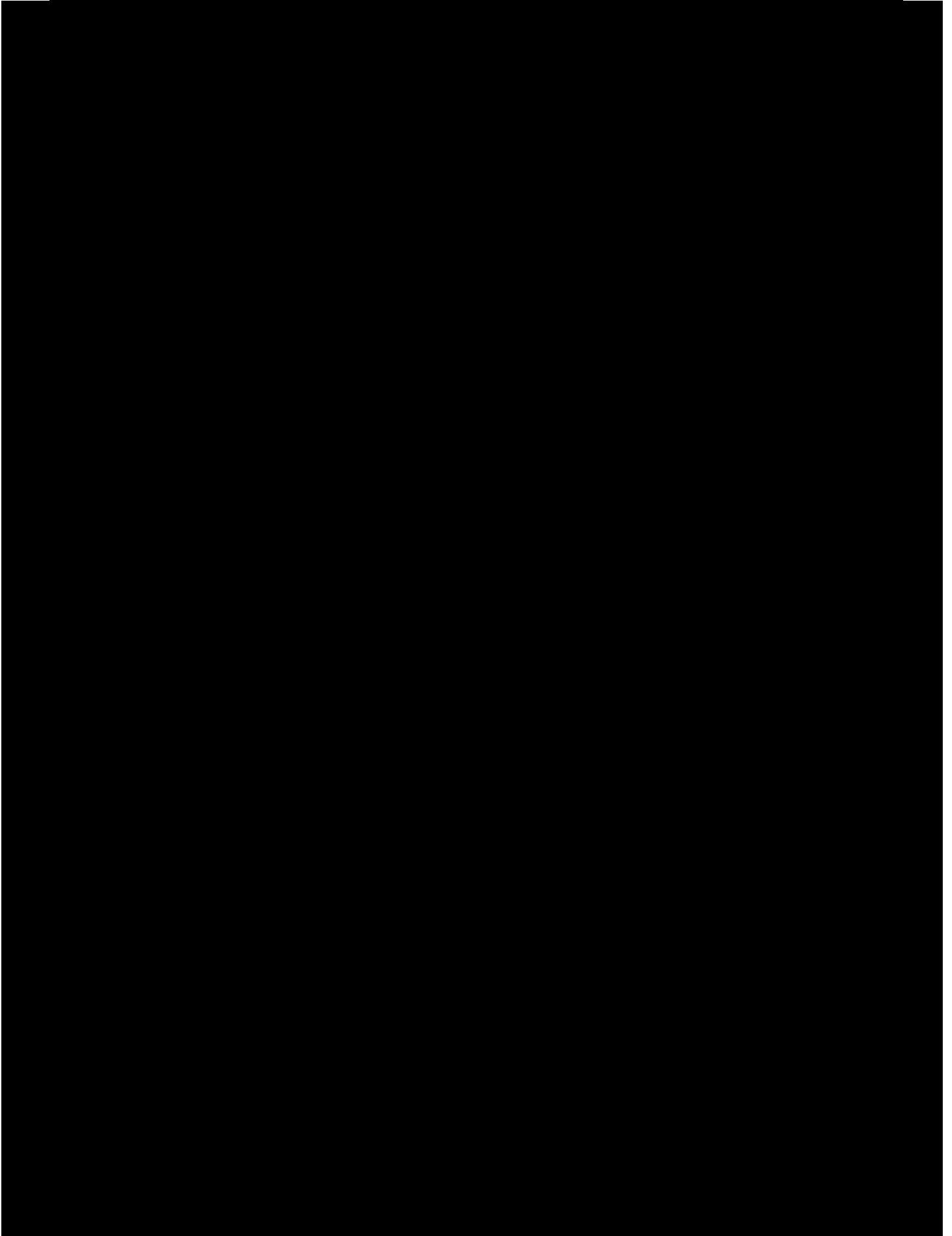
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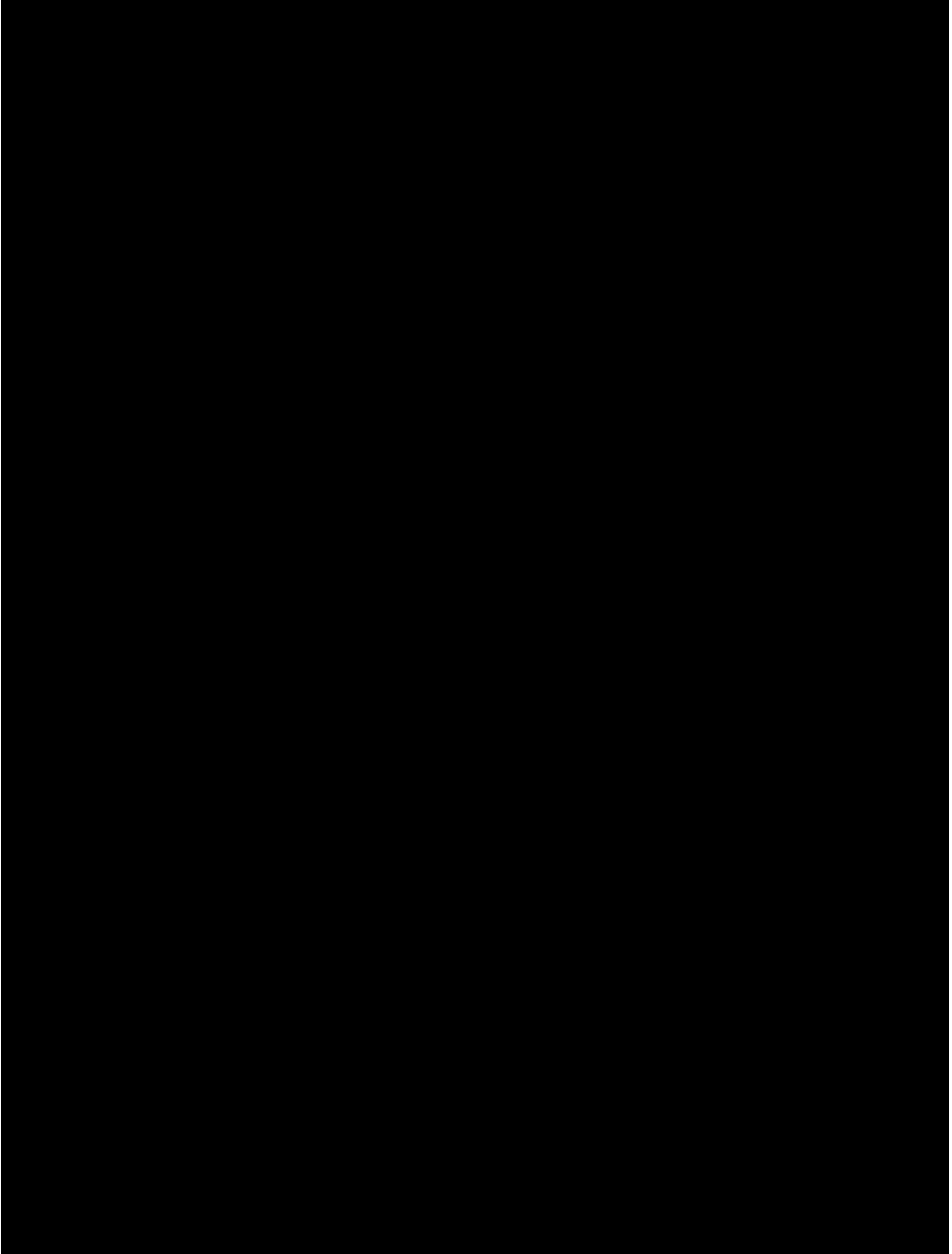
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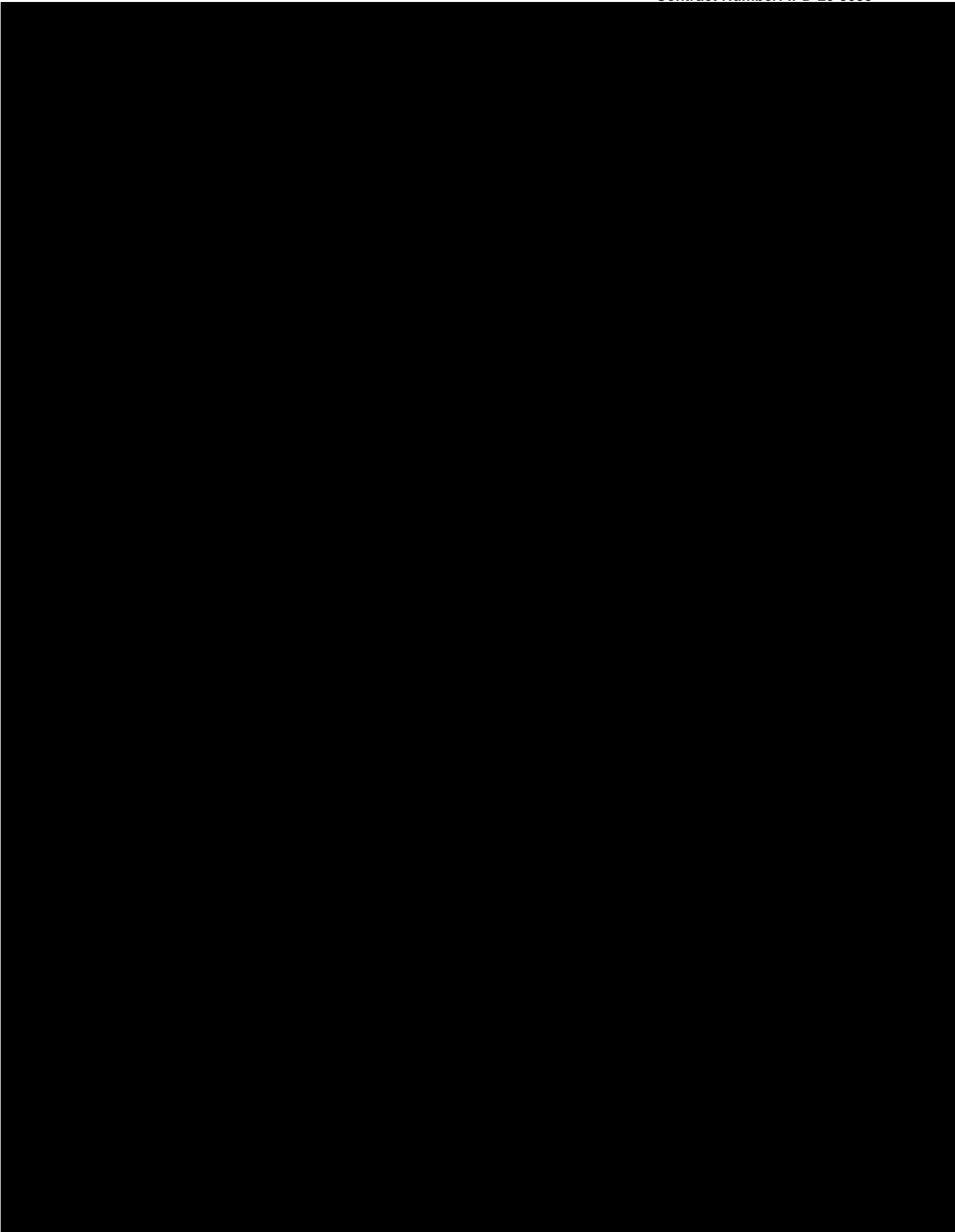


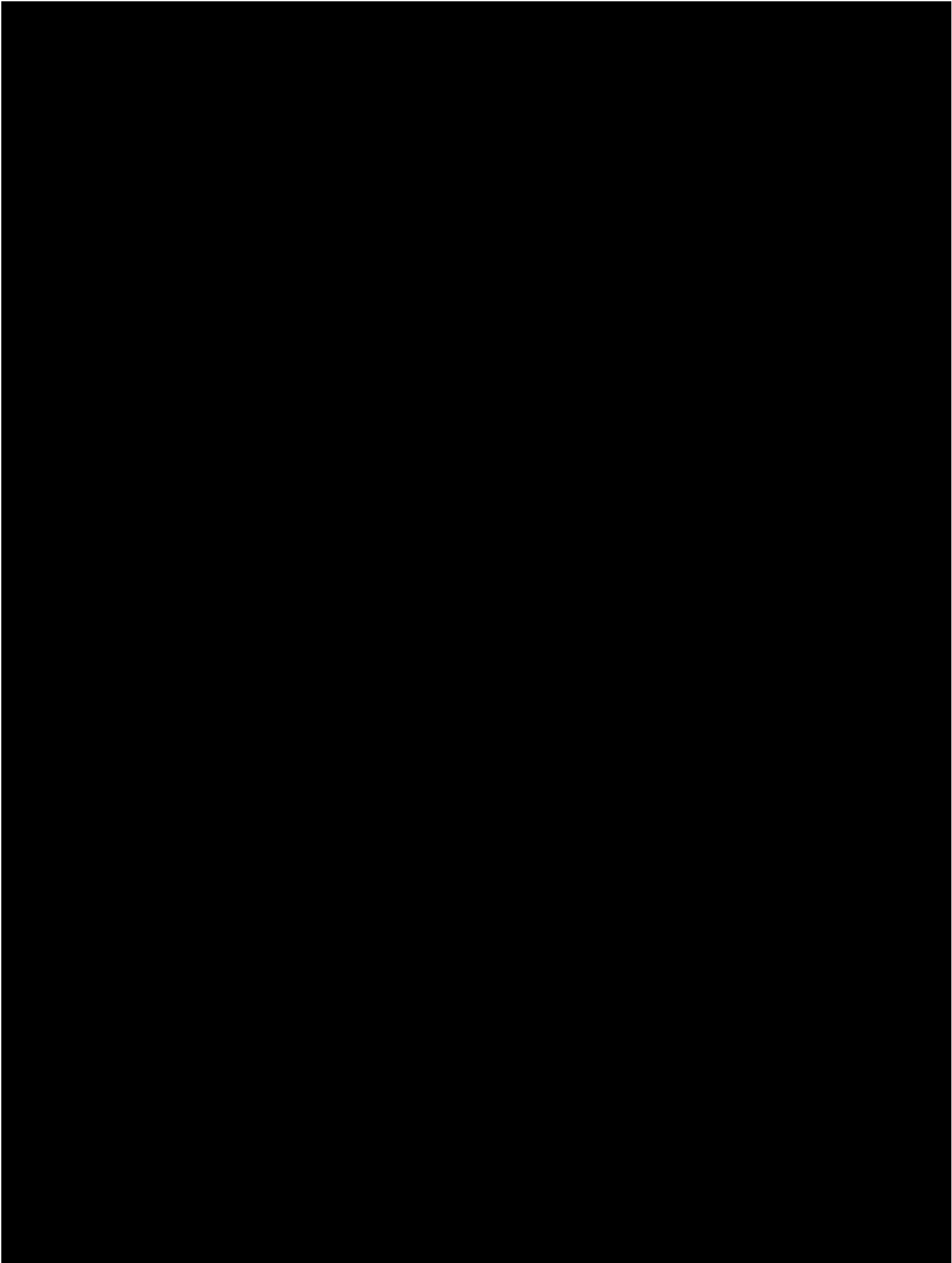












Schedule 35 - LD Milestones

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[illegible]

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

Contract Number: IPD-20-9088

[illegible]

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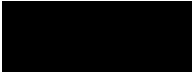
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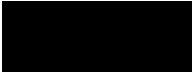
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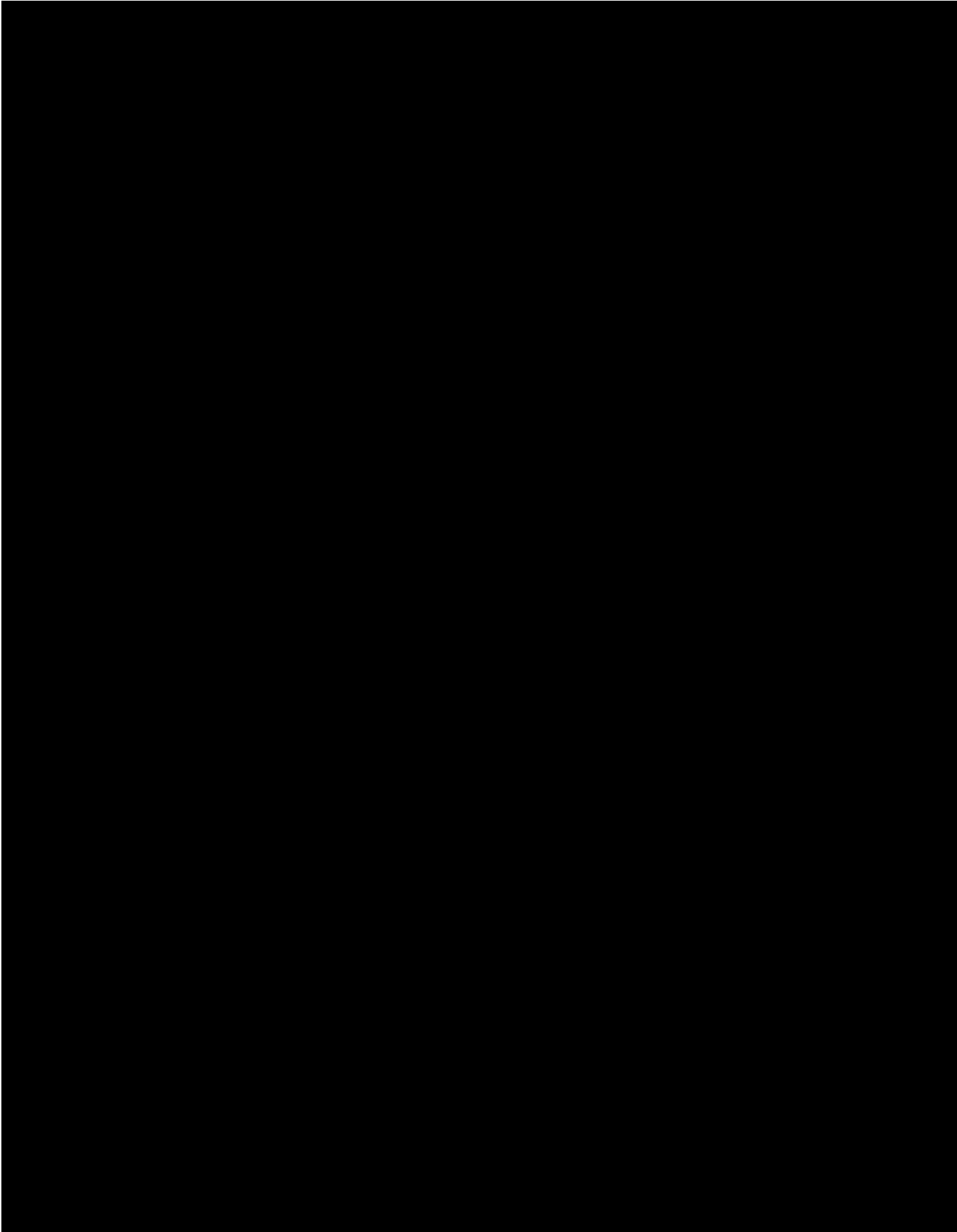
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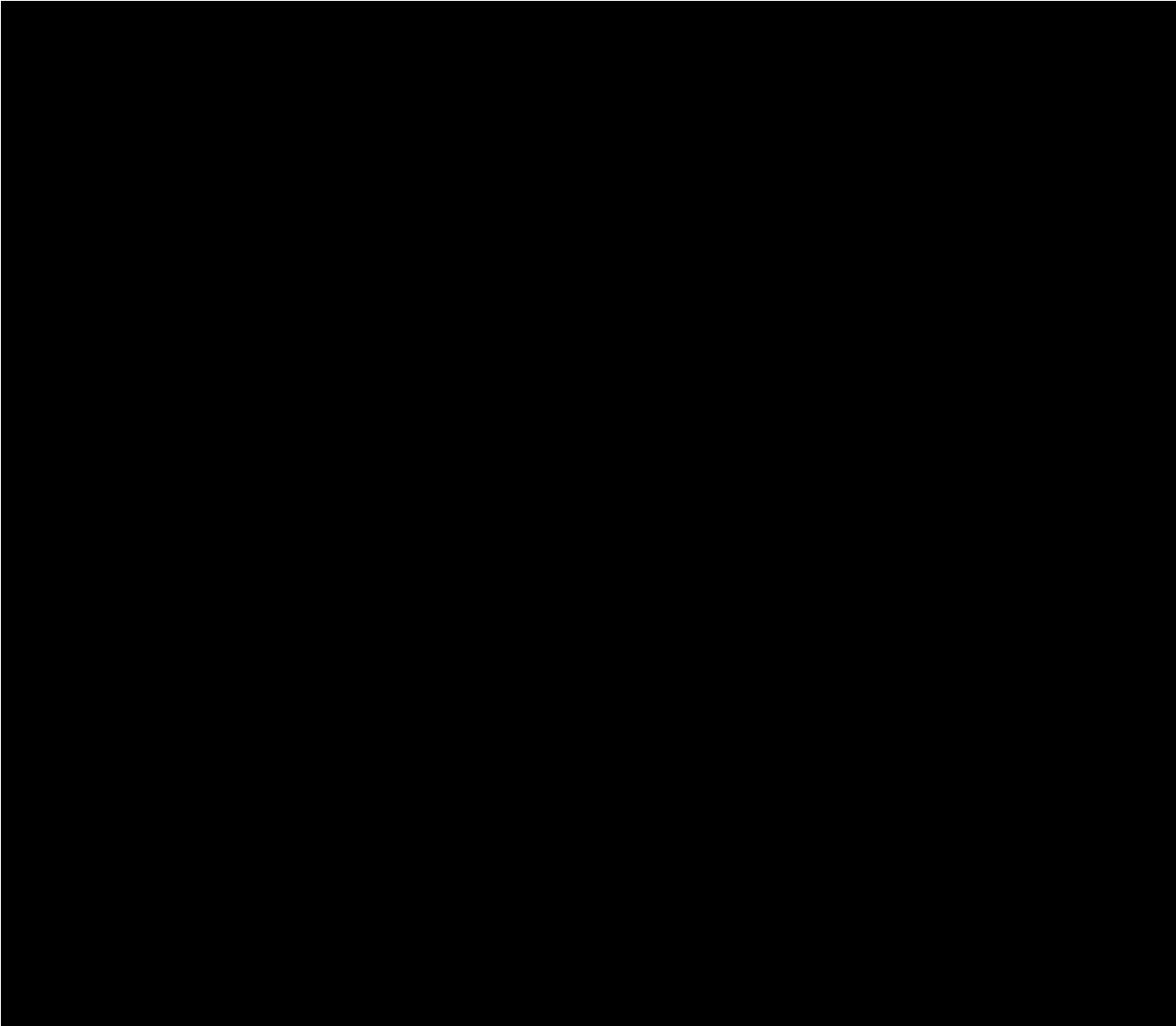
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Schedule 37 - TfNSW Dependencies





Contract Execution Page

DATED The date that the last party has executed this Contract

Executed and delivered as a Deed in Sydney

Signed, sealed and delivered for and
on behalf of **Transport for NSW** (ABN

10 004 000 000) in the presence of

Signature of Witness

Signature of Authorised Delegate

Name

Name

Signed by **UGL ENGINEERING PTY
LIMITED ABN 96 096 365 972** in
accordance with section 127 of the
Corporations Act 2001 (Cth):

Signature of director

Signature of company
secretary/director

Full name of director

Full name of company
secretary/director

EXHIBIT A – TfNSW STANDARD REQUIREMENTS

For SOW 1: The TfNSW Standard Requirements comprises the following documents:

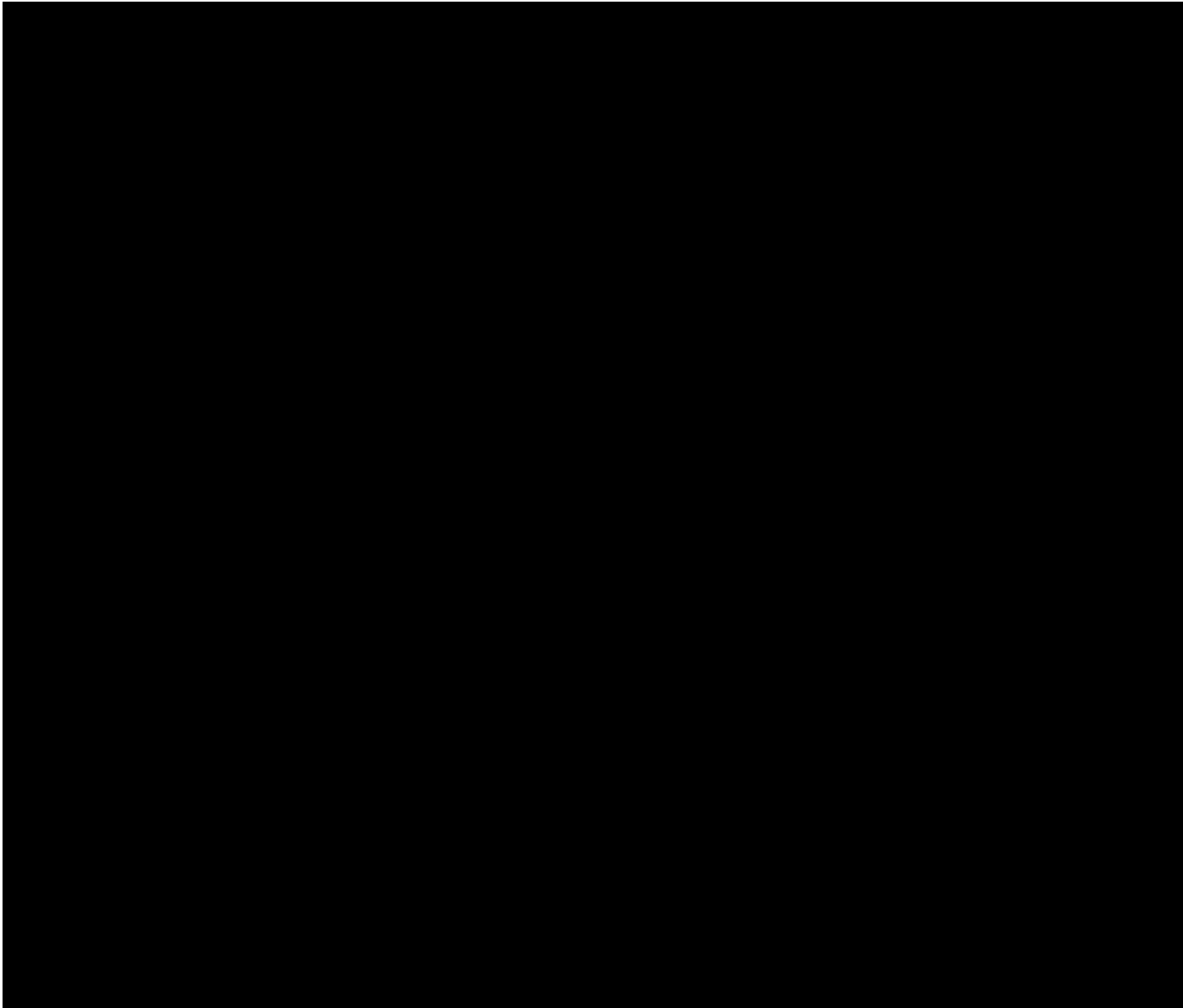
- a) TfNSW Standard Requirements, document reference DMS-FT-425/5.0;
- b) TfNSW Standard Requirements ANNEXURE A – Additional Project Requirements, document reference DMS-FT-426/5.0.

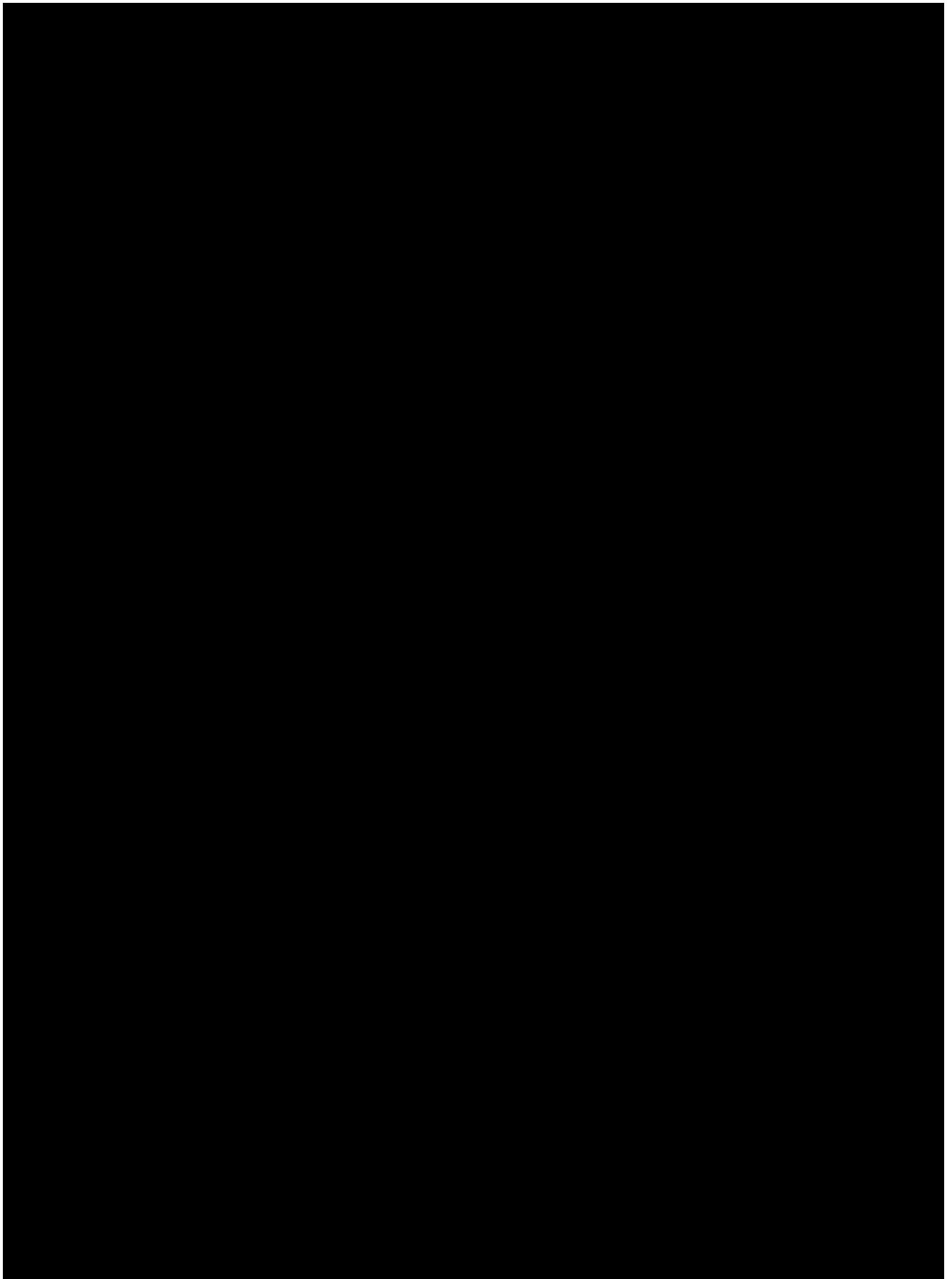
TfNSW Standard Requirements (Works Contracts)

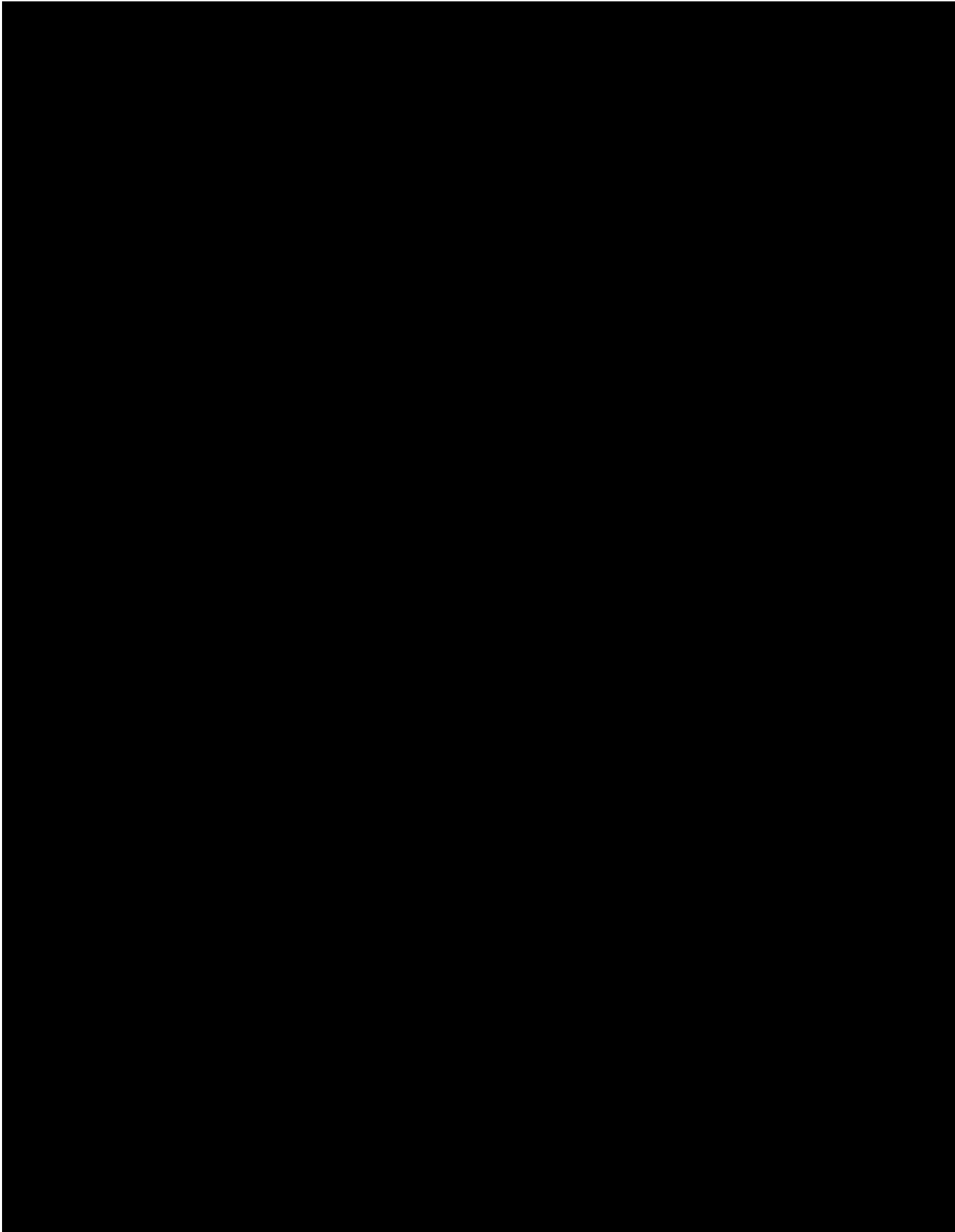
Applicable to Infrastructure and Place

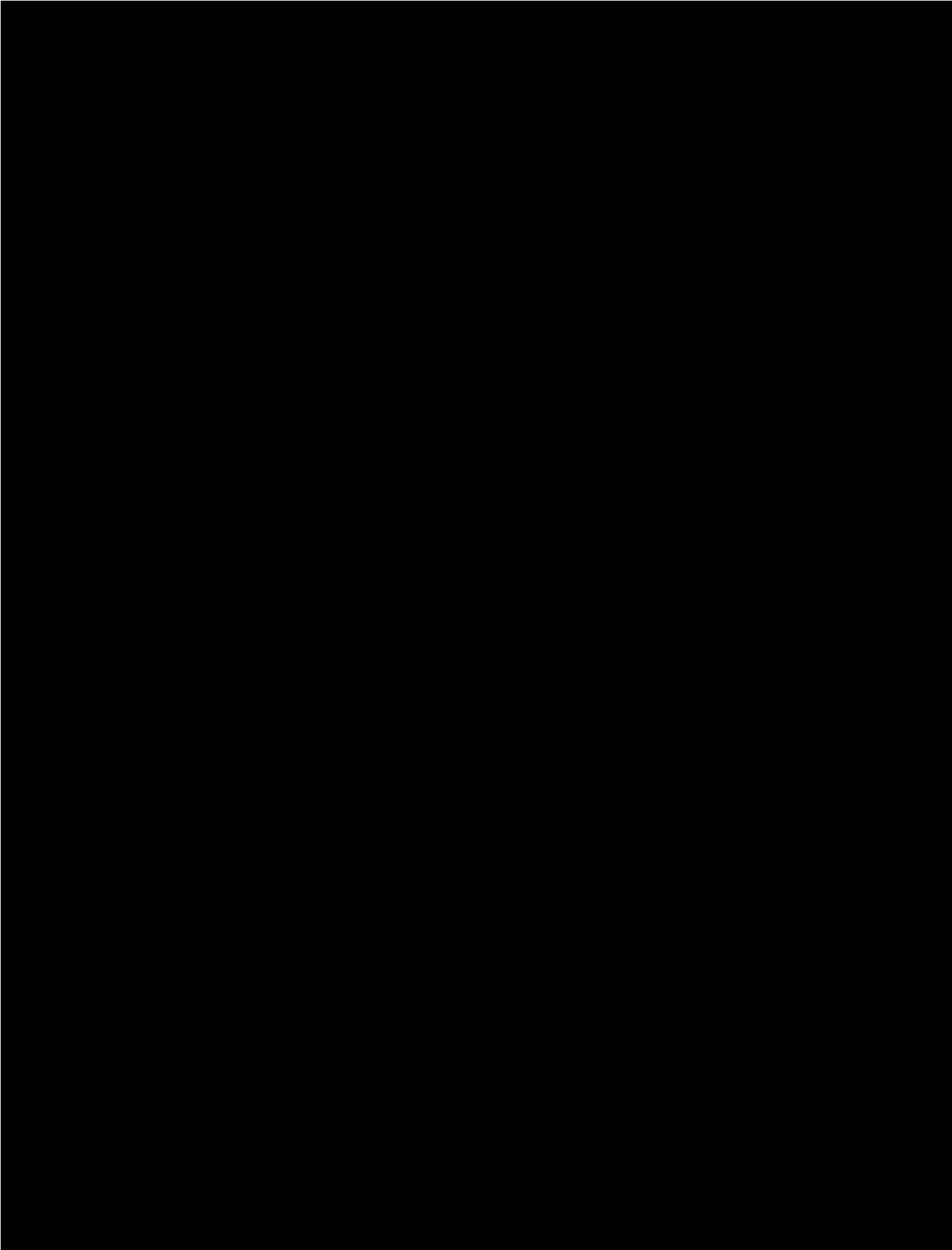
Divisional Management System

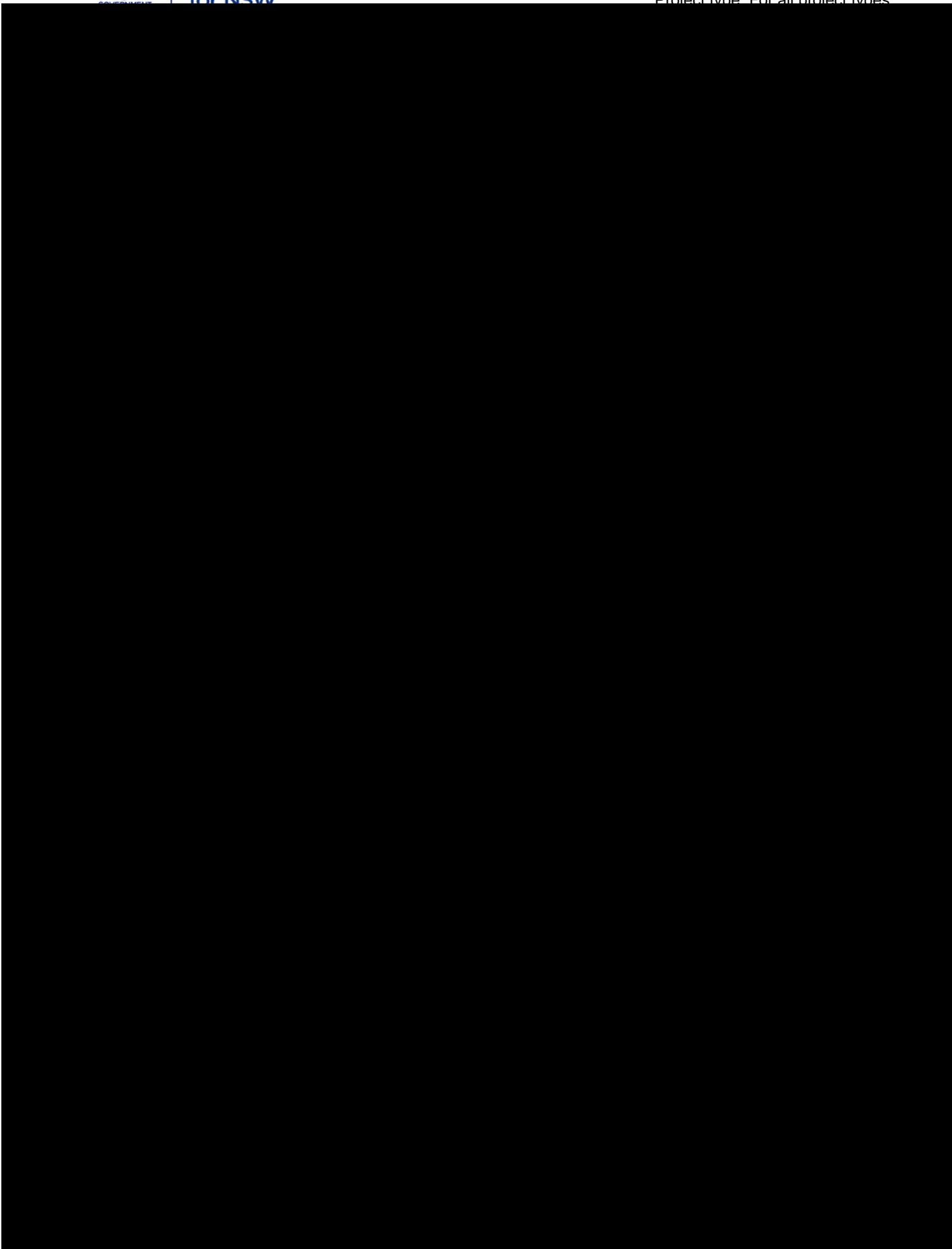
Status:	Approved
Version:	5.0
Section:	Commercial
Business unit:	Procurement
Date of issue:	29 January 2021
Review date:	29 January 2024
Audience:	Project Delivery/For use with the Contract templates
Asset classes:	<input checked="" type="checkbox"/> Heavy Rail; <input checked="" type="checkbox"/> Light Rail; <input checked="" type="checkbox"/> Multi Sites; <input checked="" type="checkbox"/> Systems; <input checked="" type="checkbox"/> Fleets
Project delivery model:	Project/Alliance
Project type:	For all project types
Project lifecycle:	<input type="checkbox"/> Feasibility; <input type="checkbox"/> Scoping; <input checked="" type="checkbox"/> Definition; <input checked="" type="checkbox"/> Construction readiness; <input checked="" type="checkbox"/> Implementation; <input type="checkbox"/> Finalisation; <input type="checkbox"/> Not applicable
Process owner:	Director Commercial

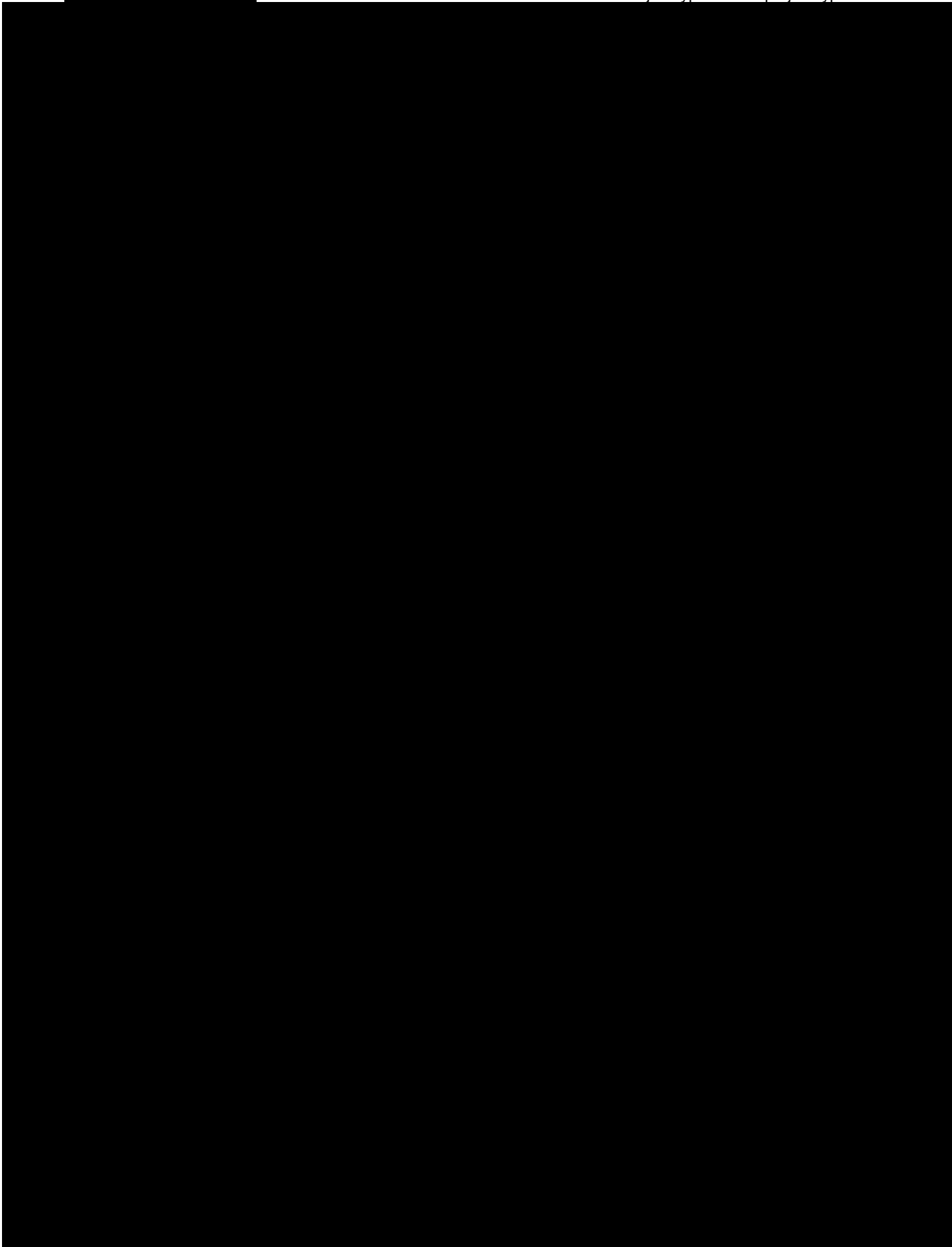


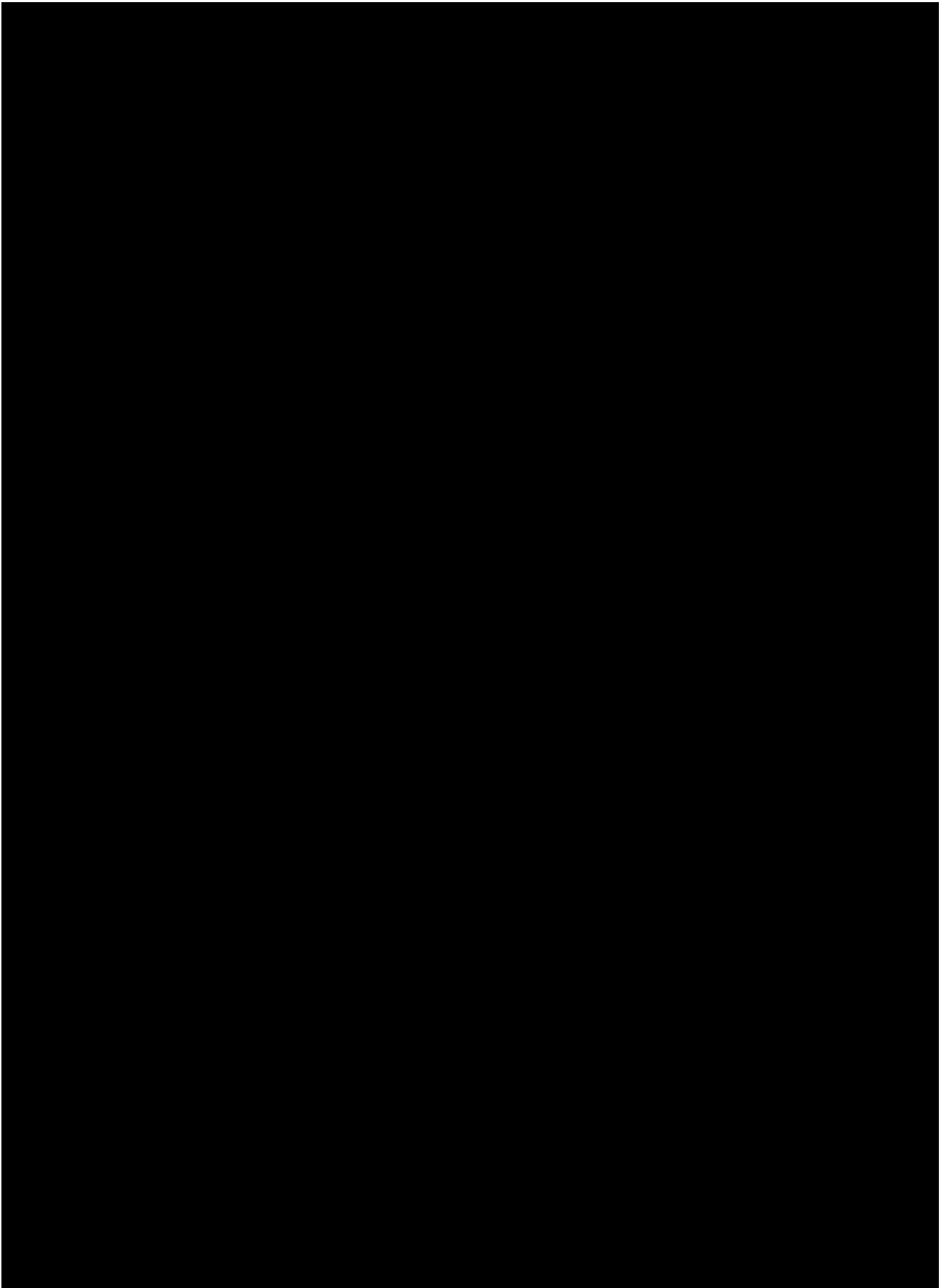


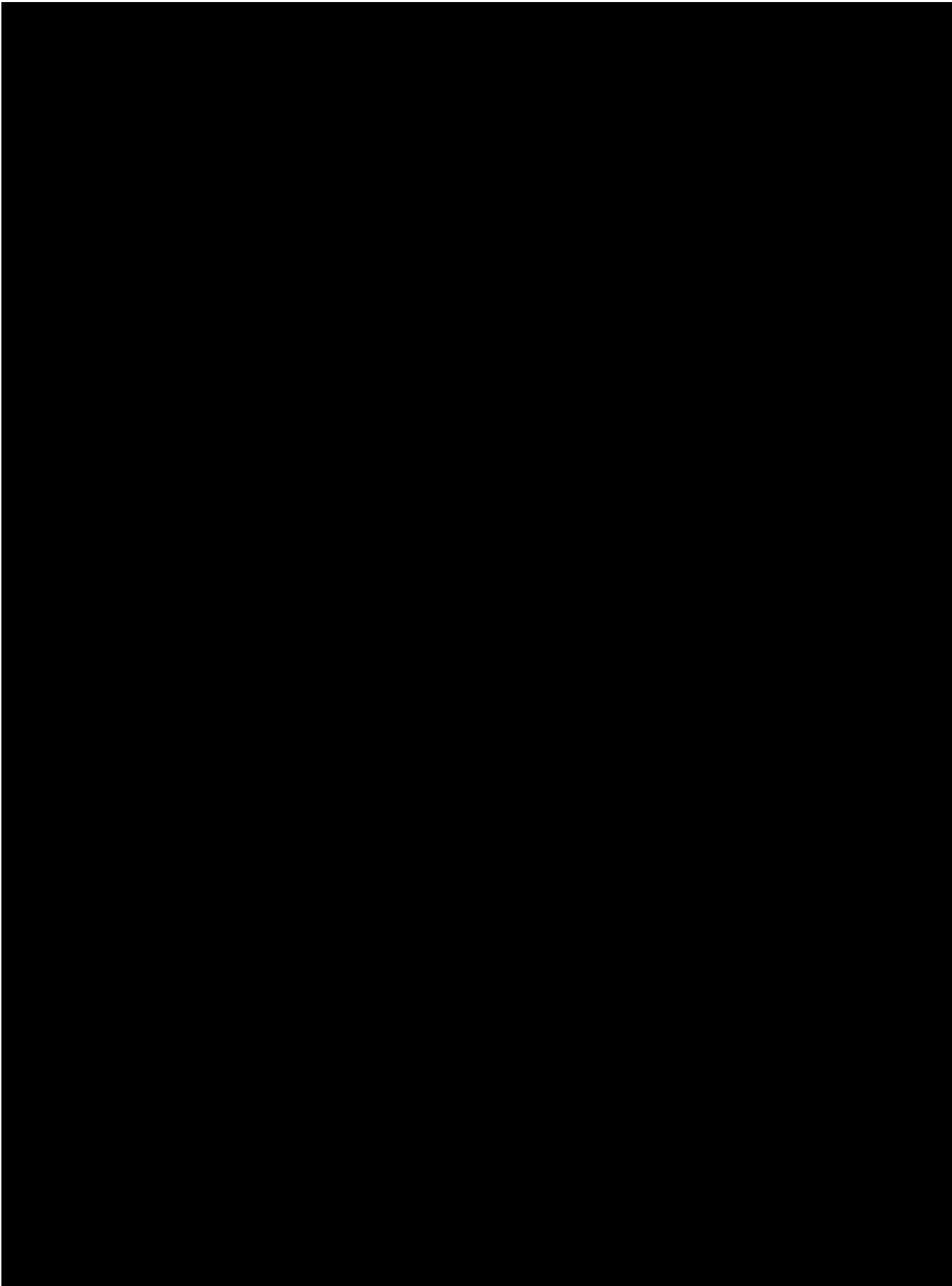


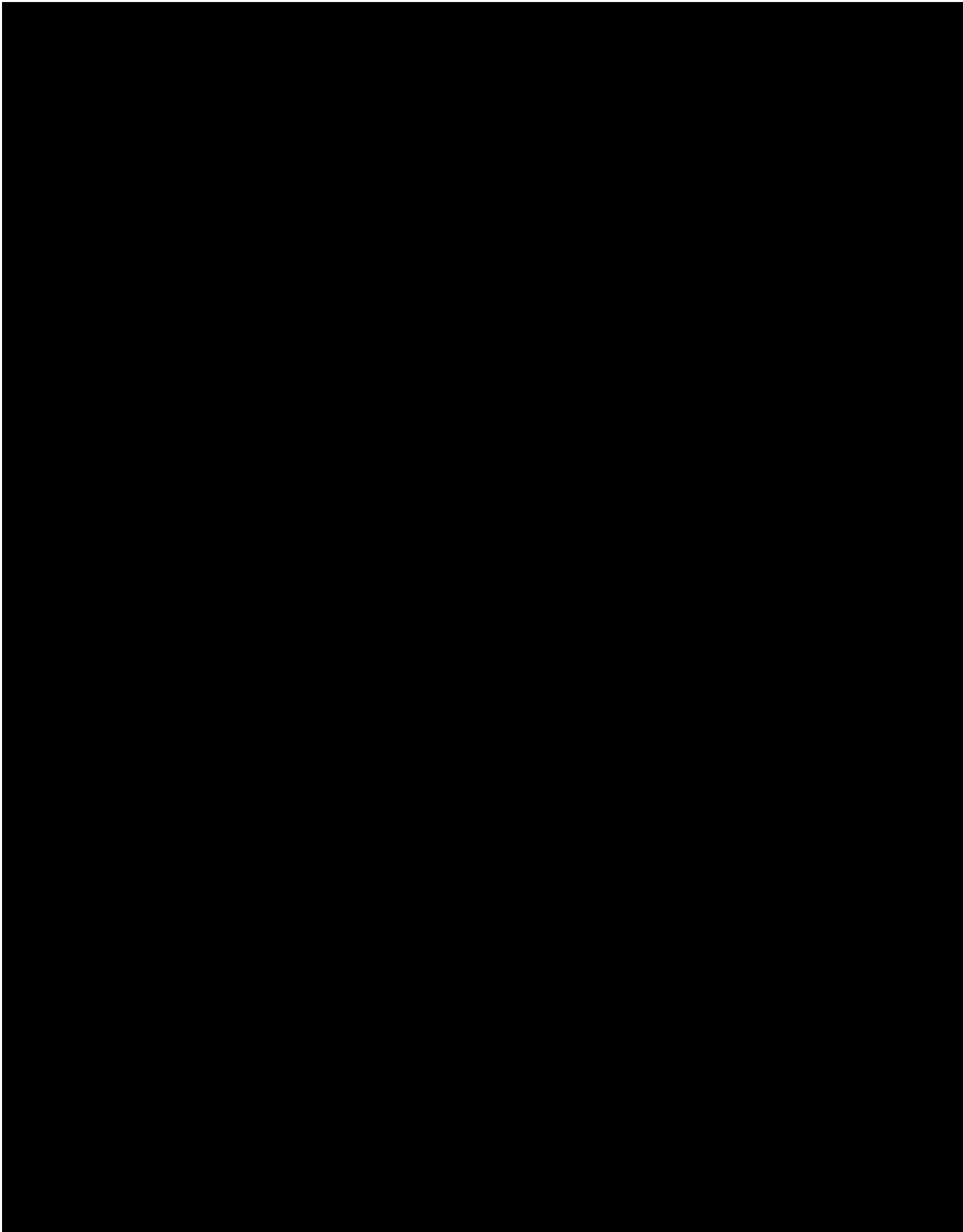


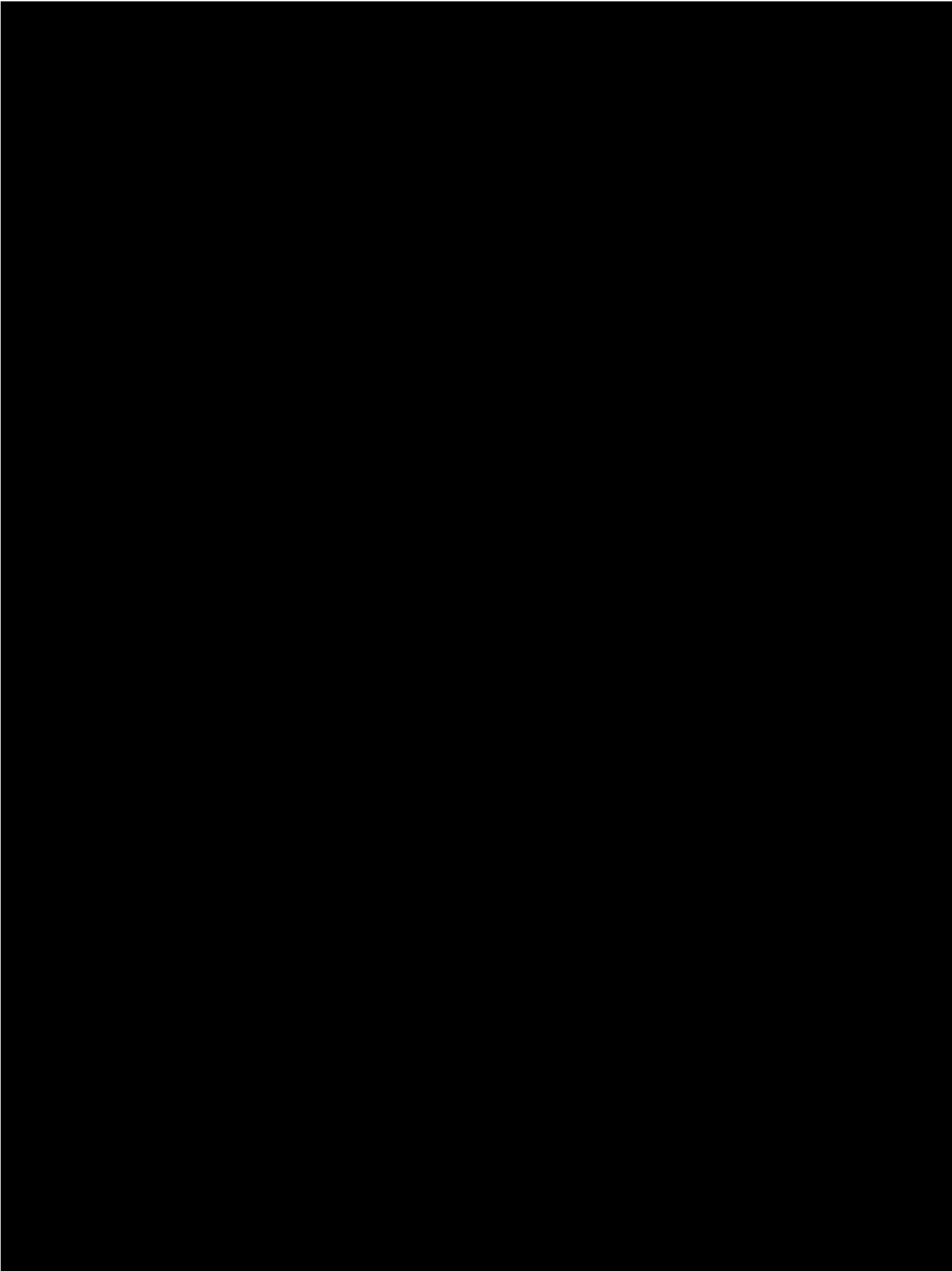


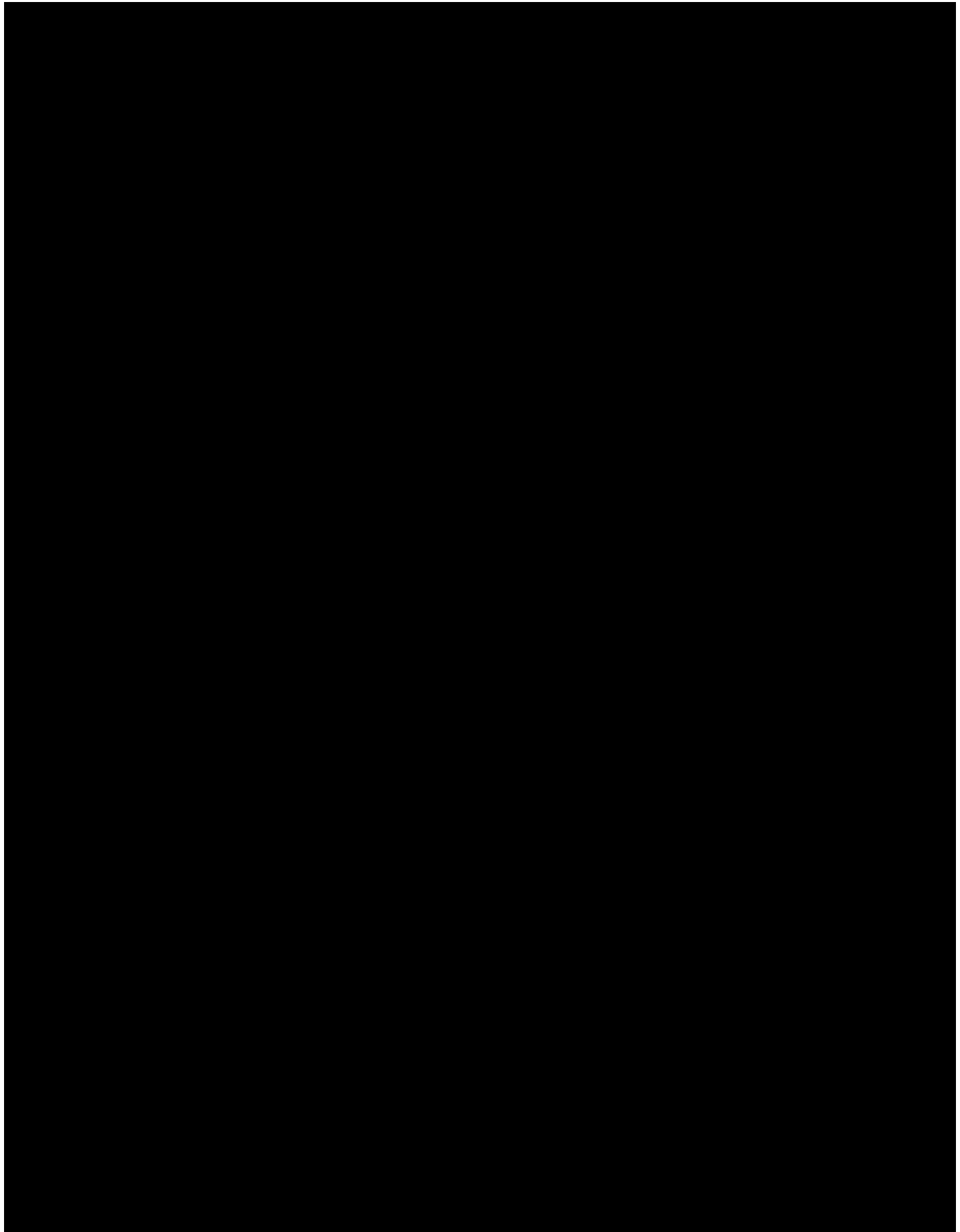


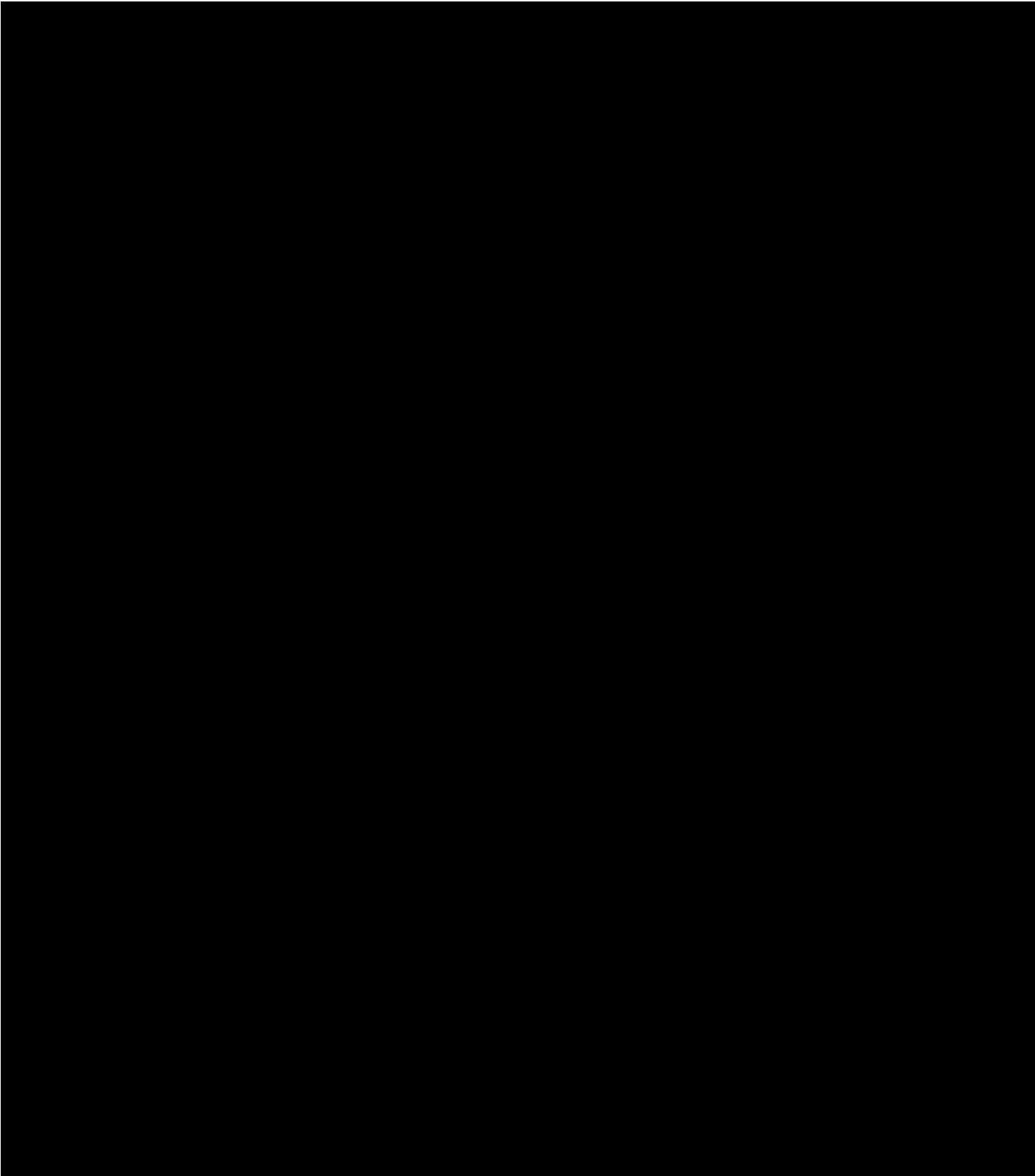


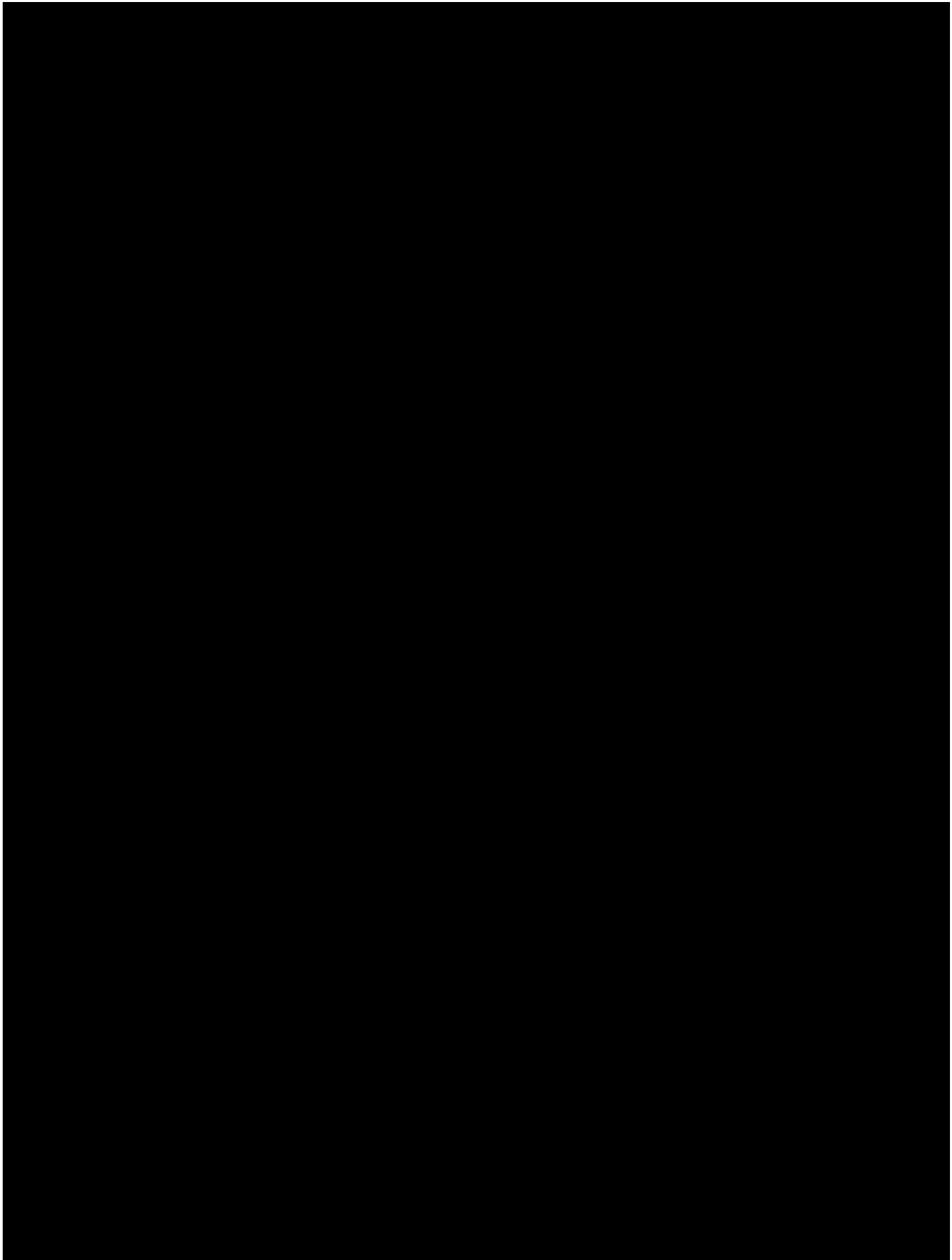


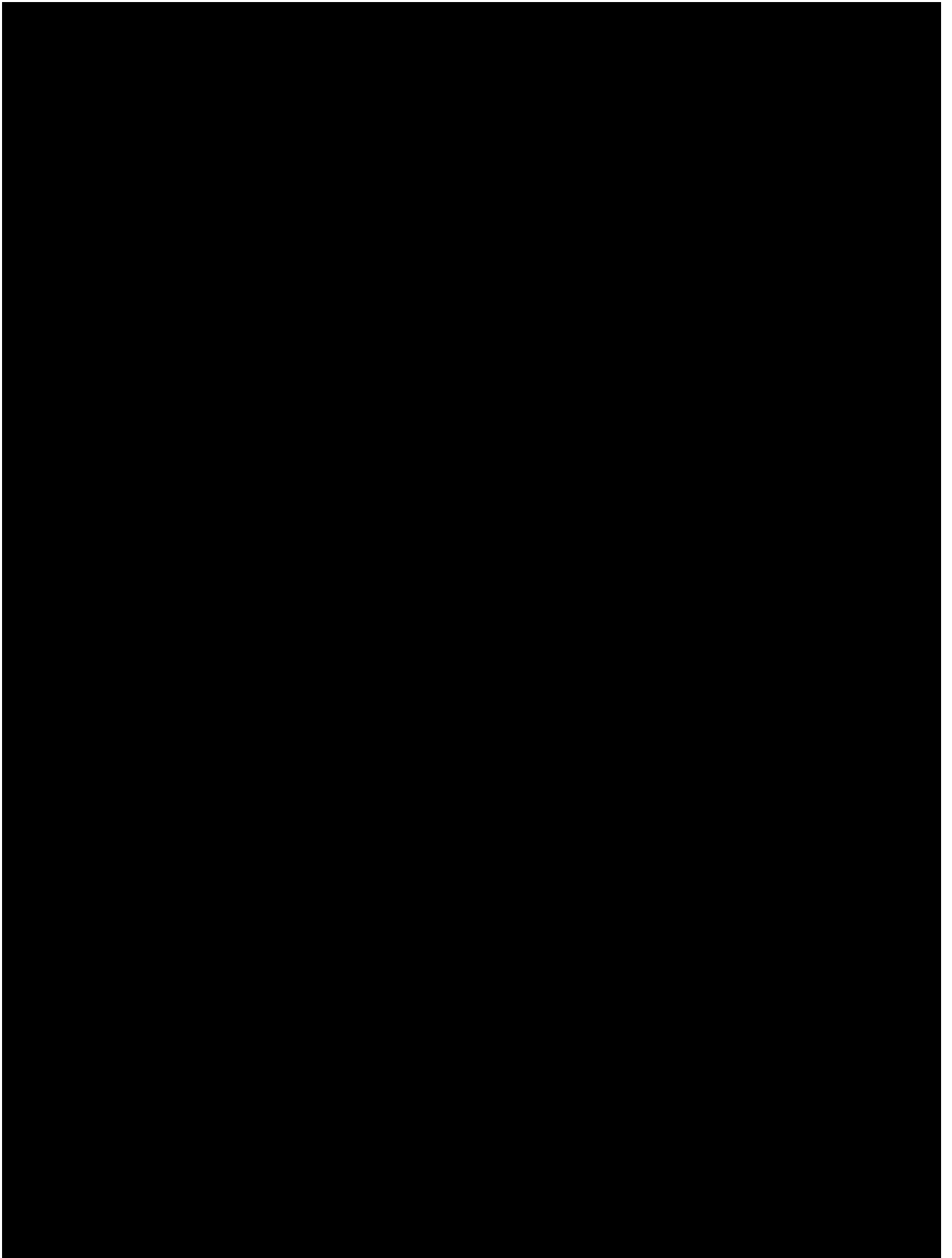


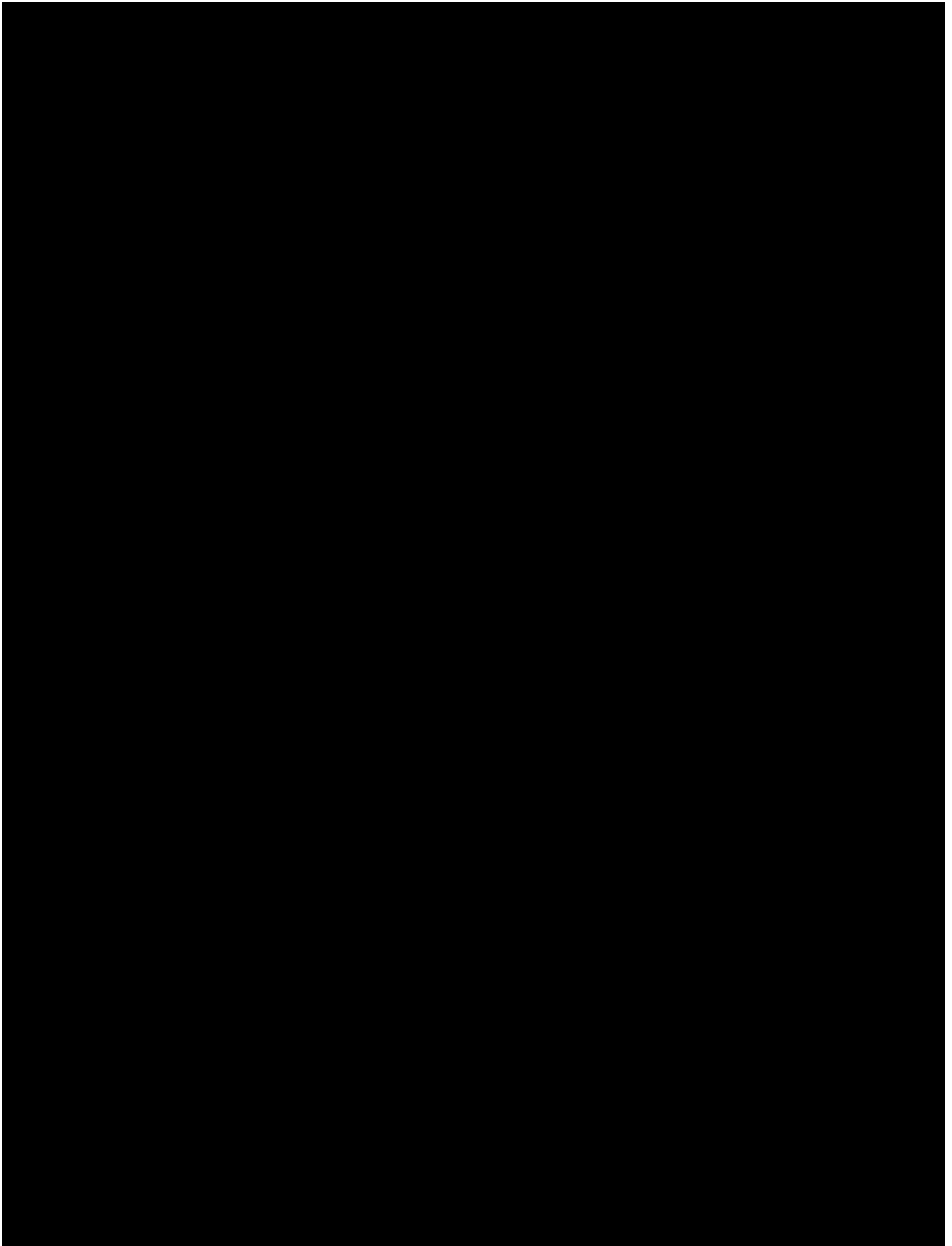


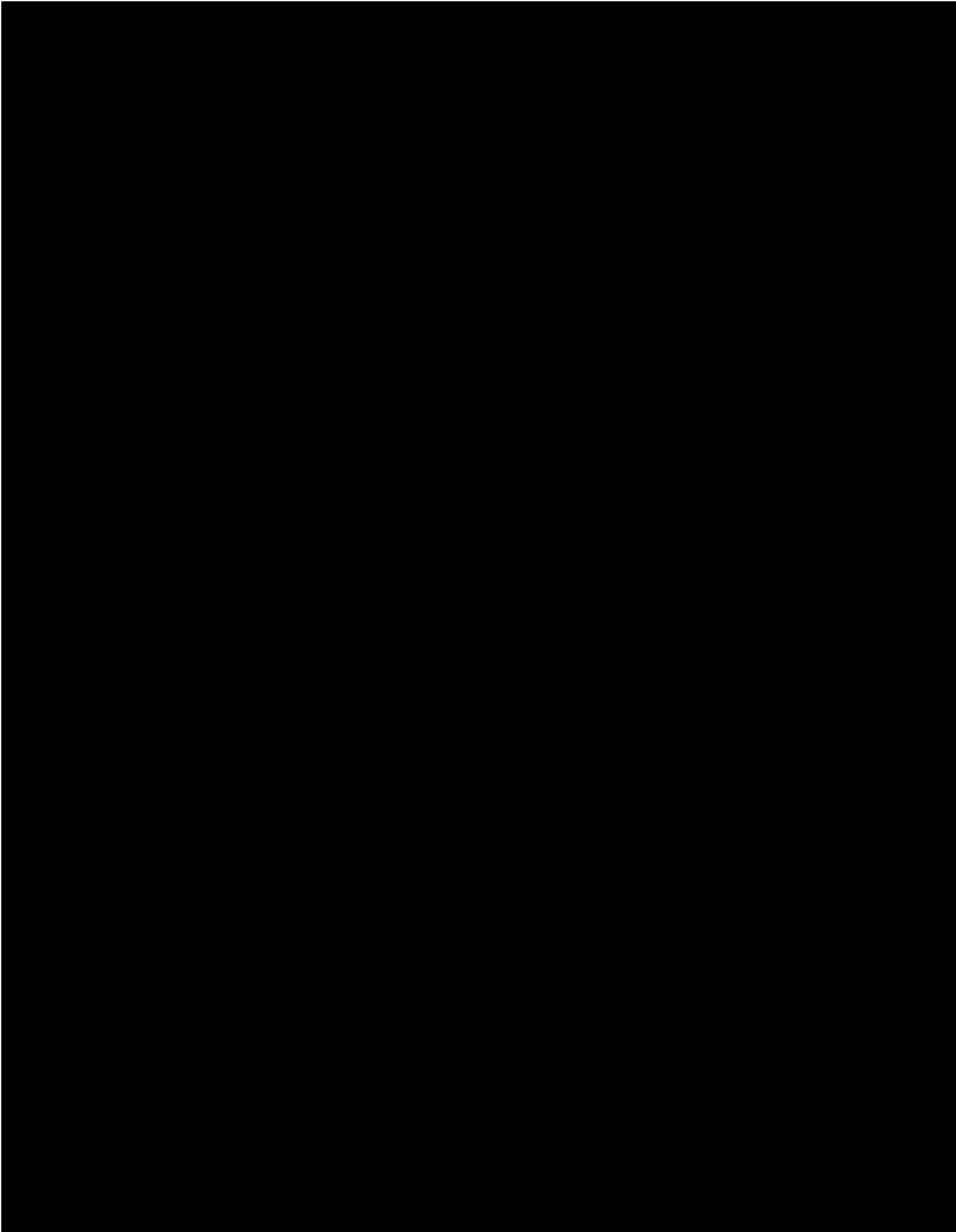


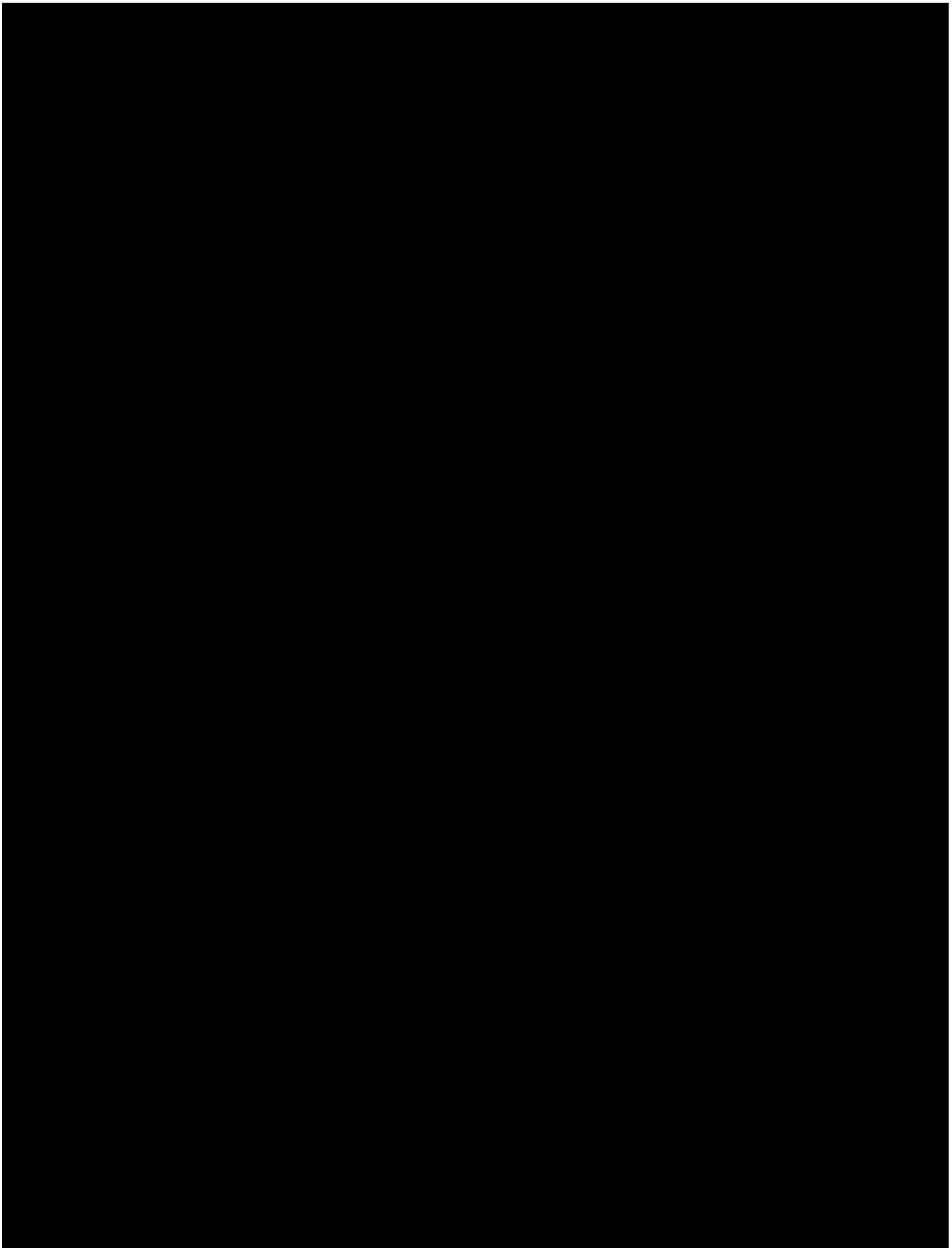


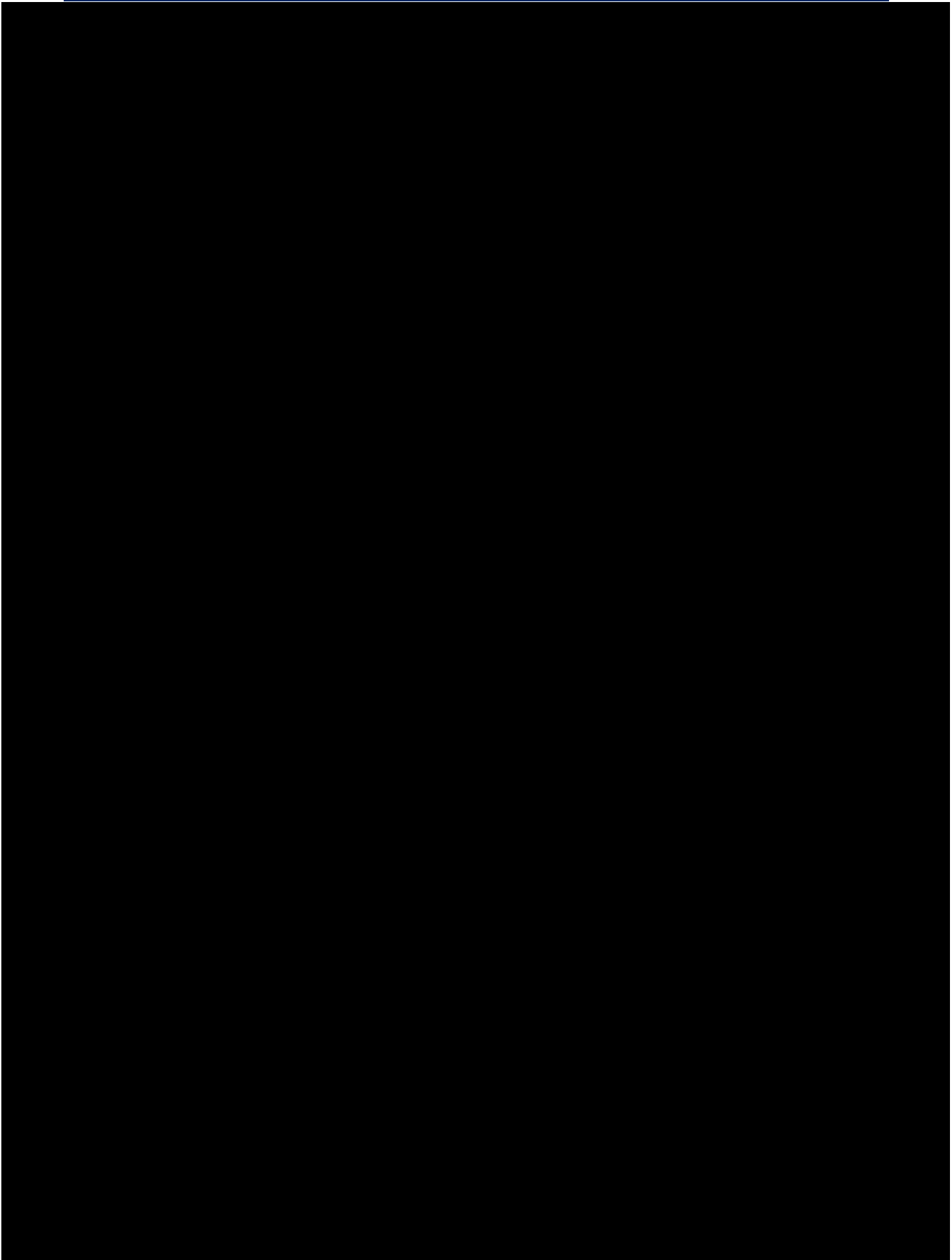


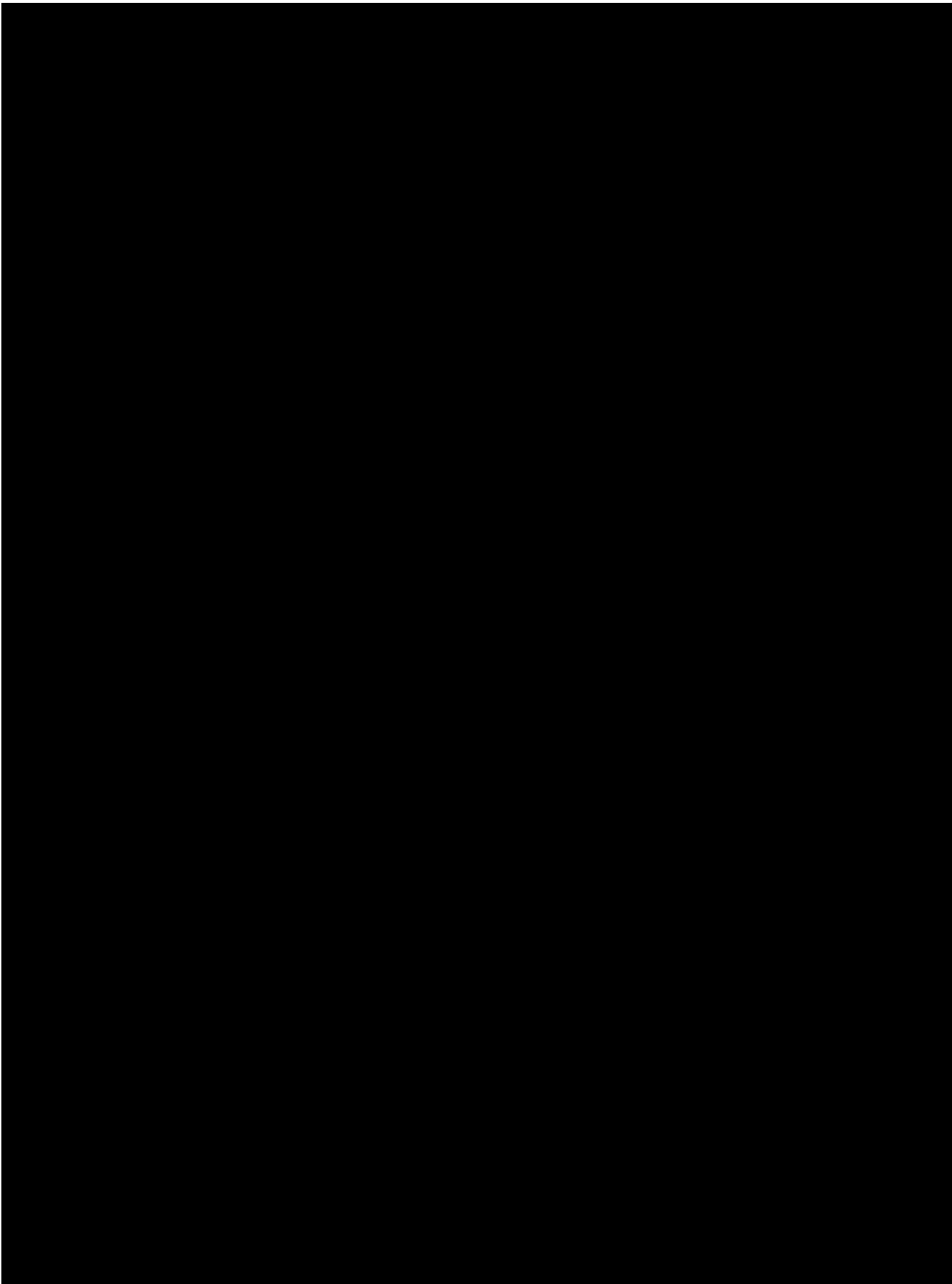


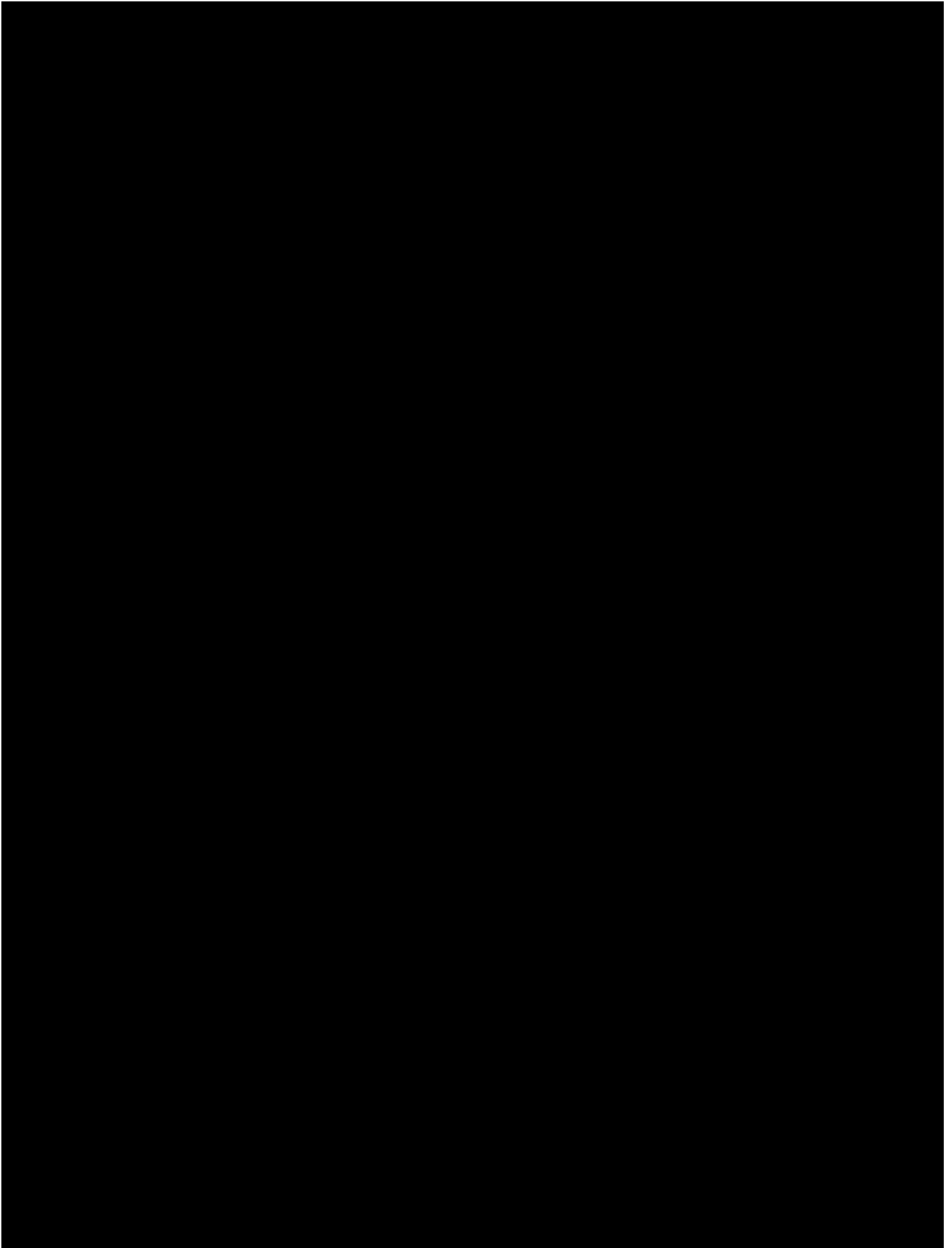


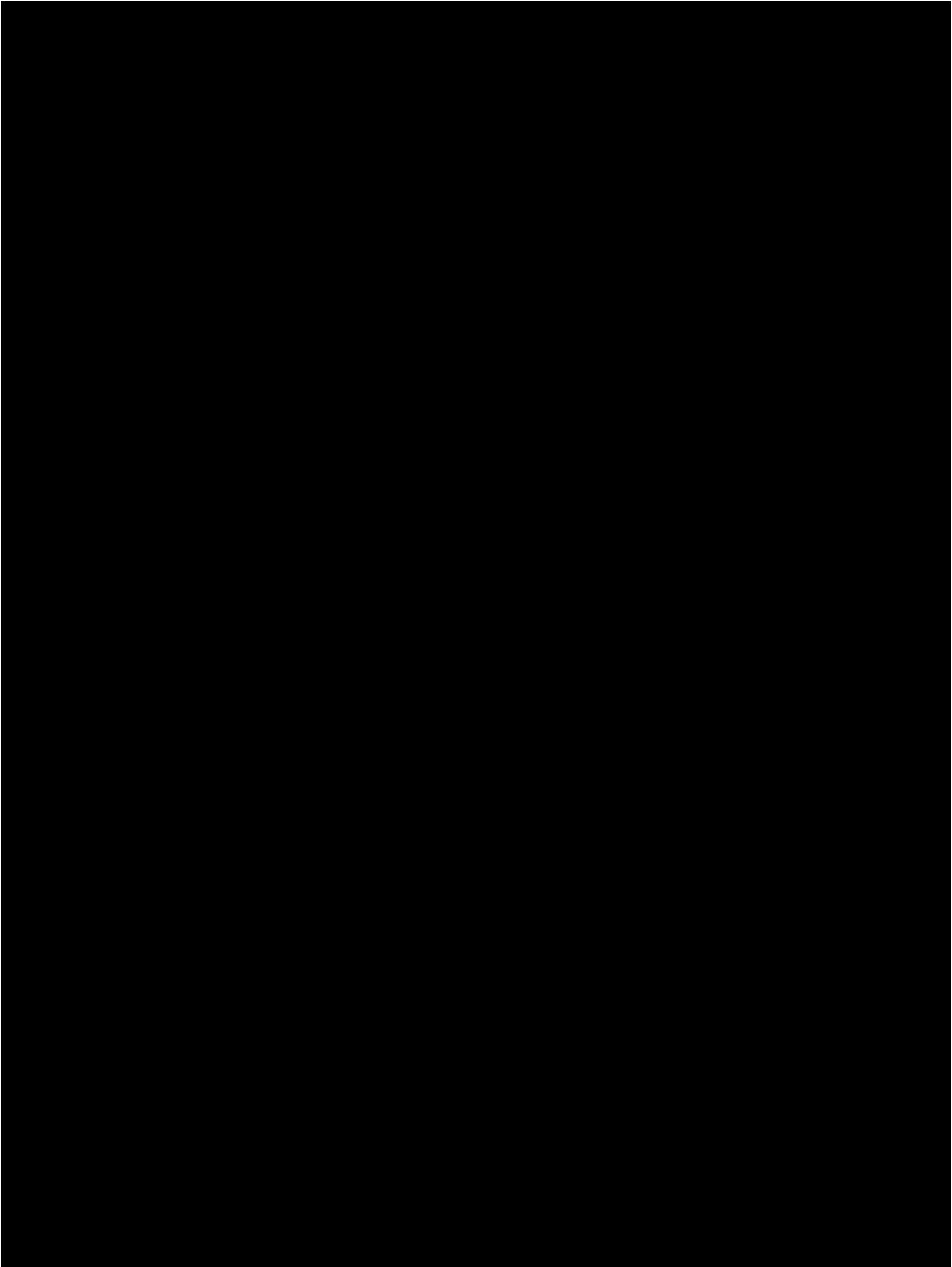


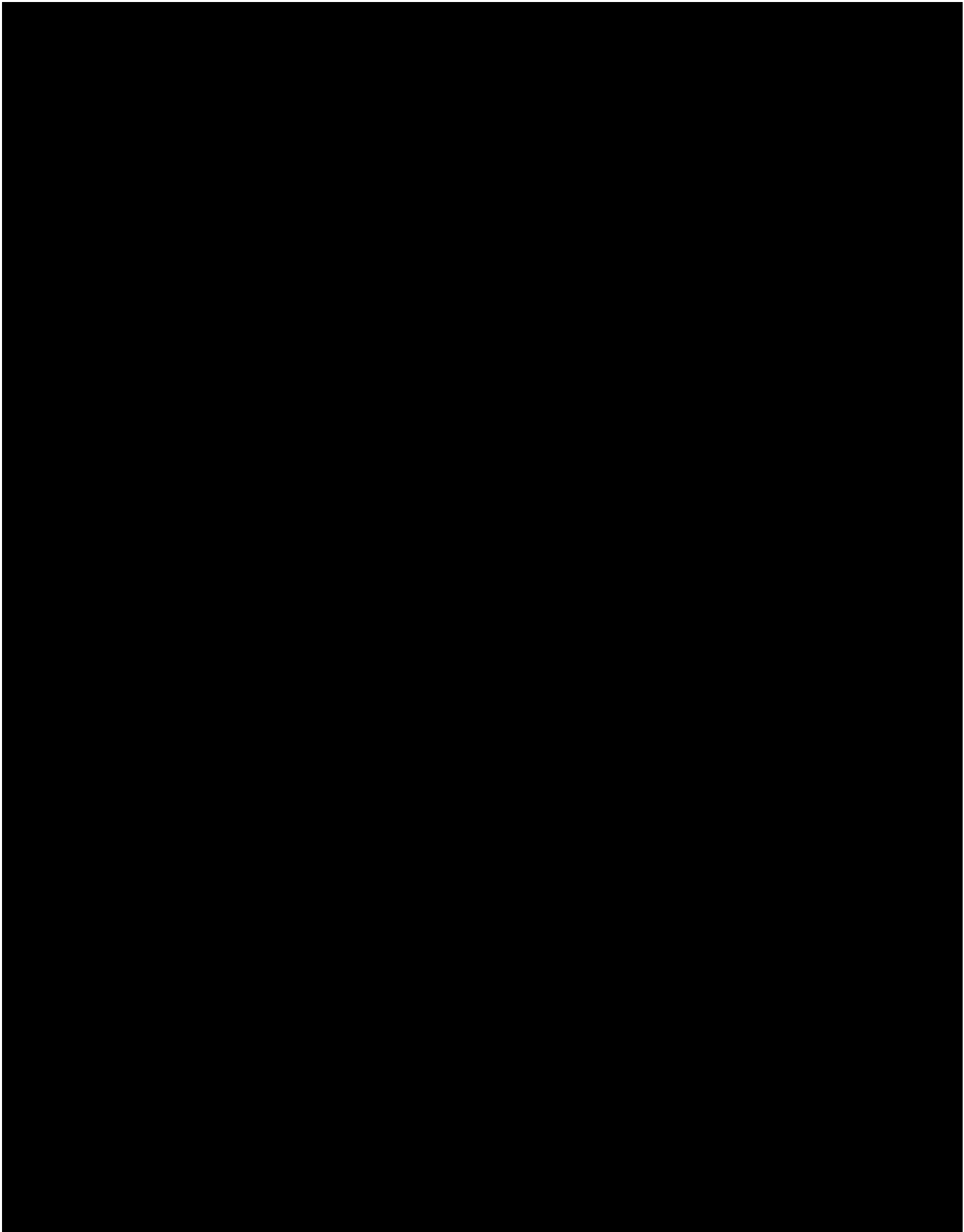


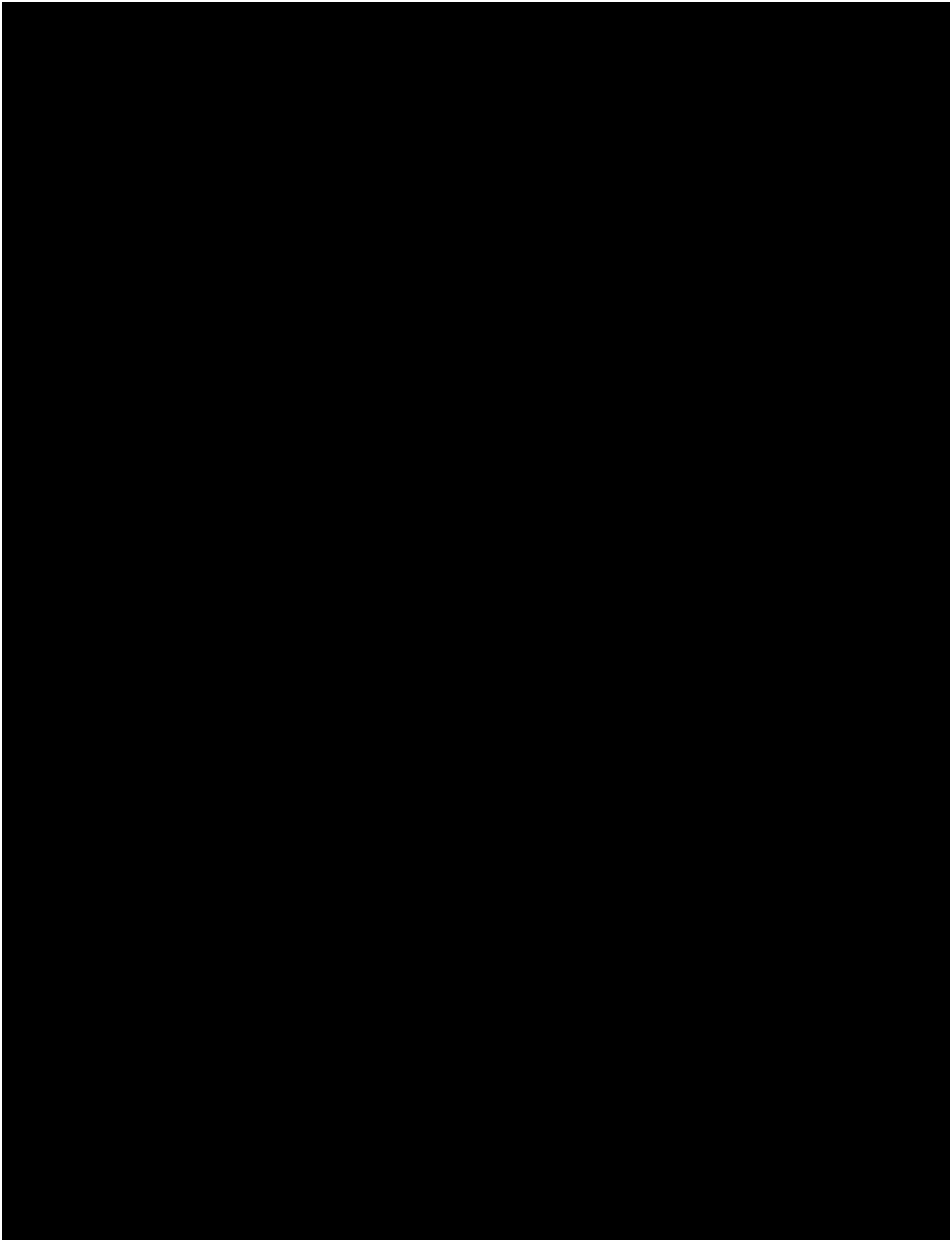


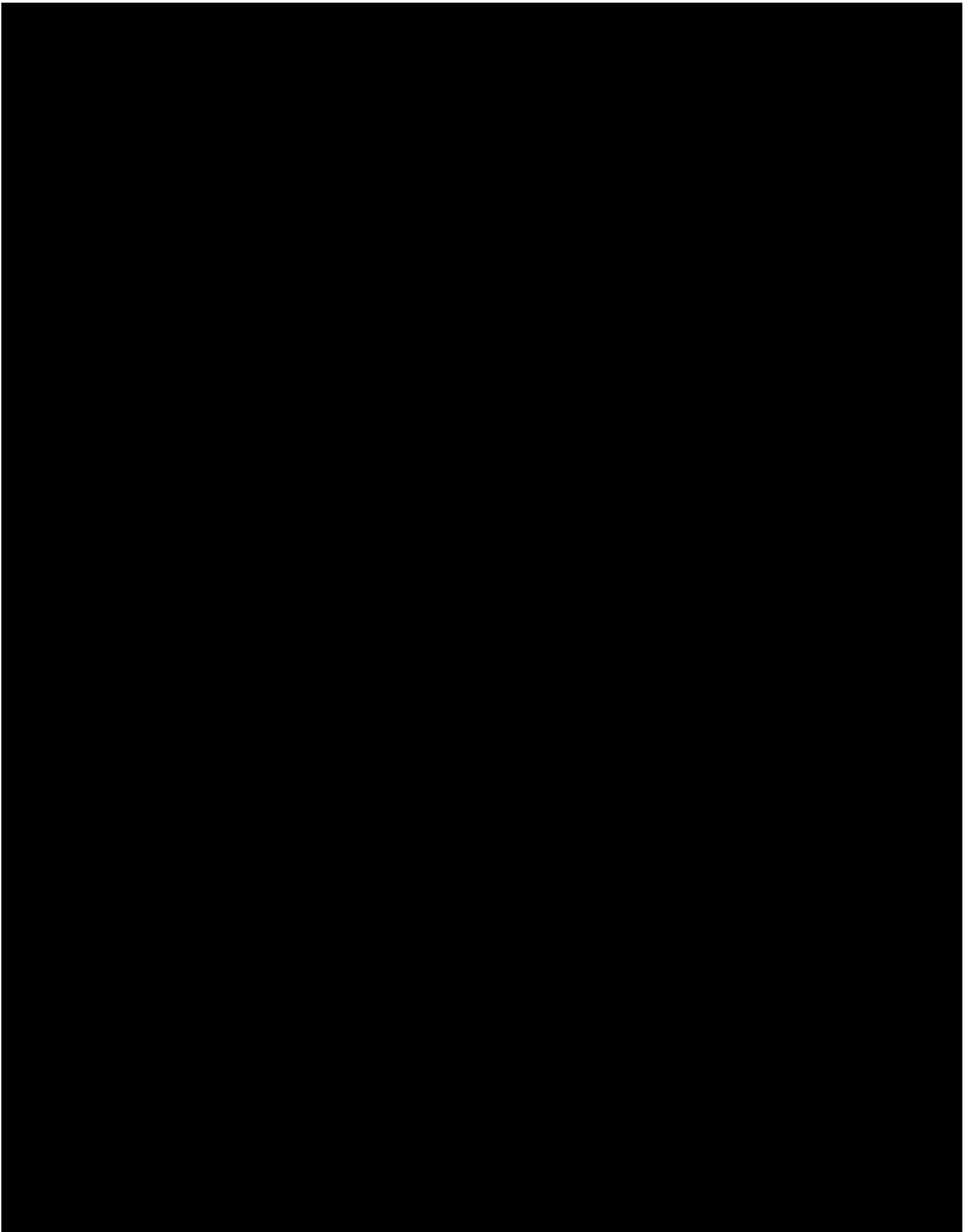


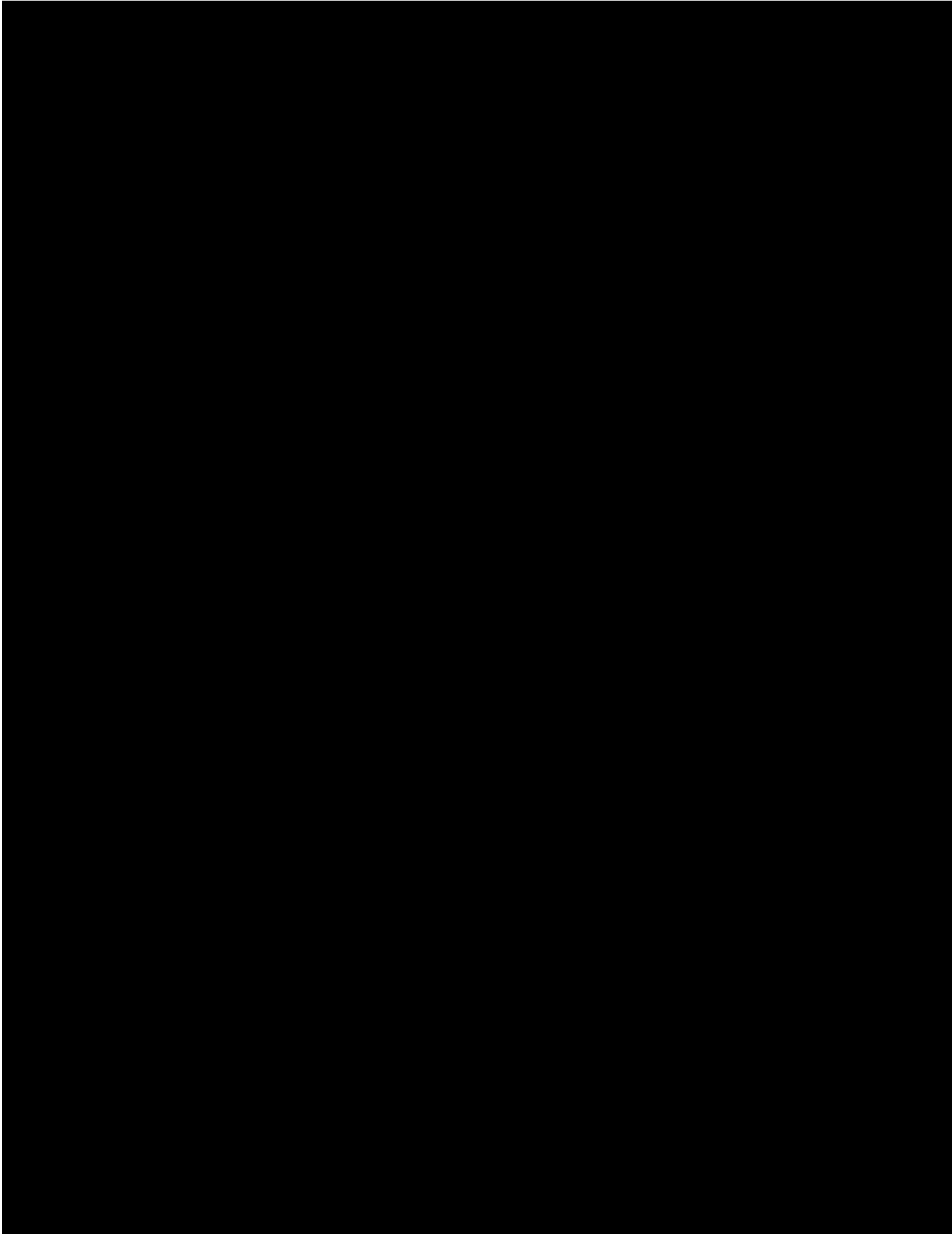


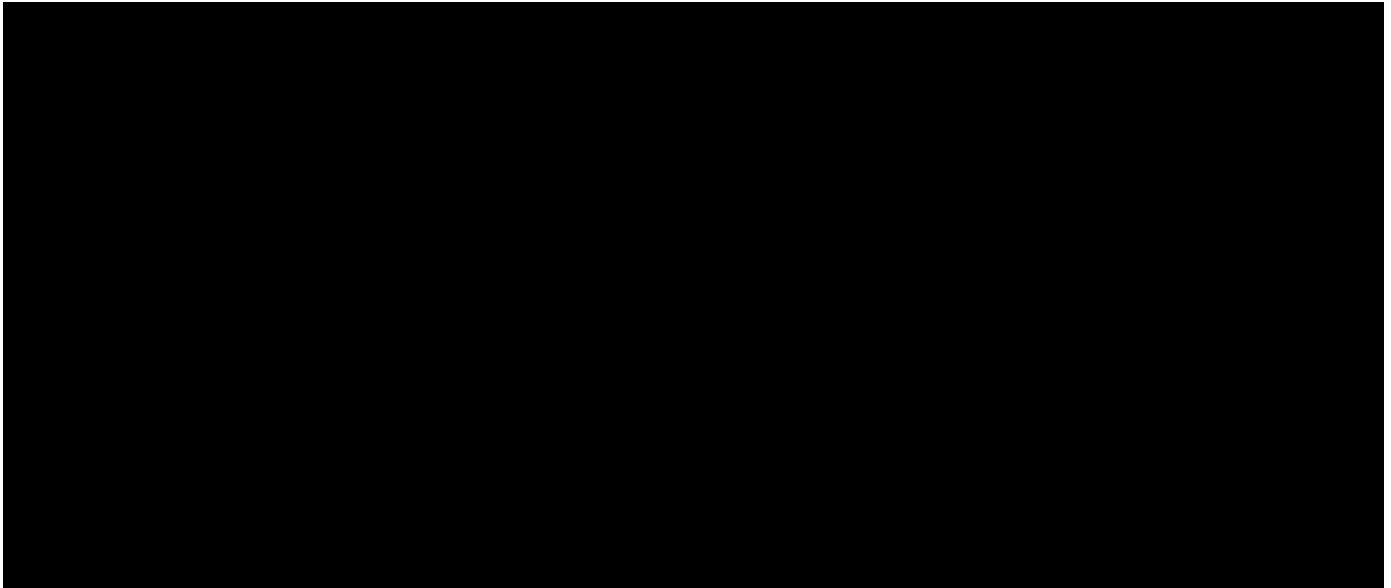






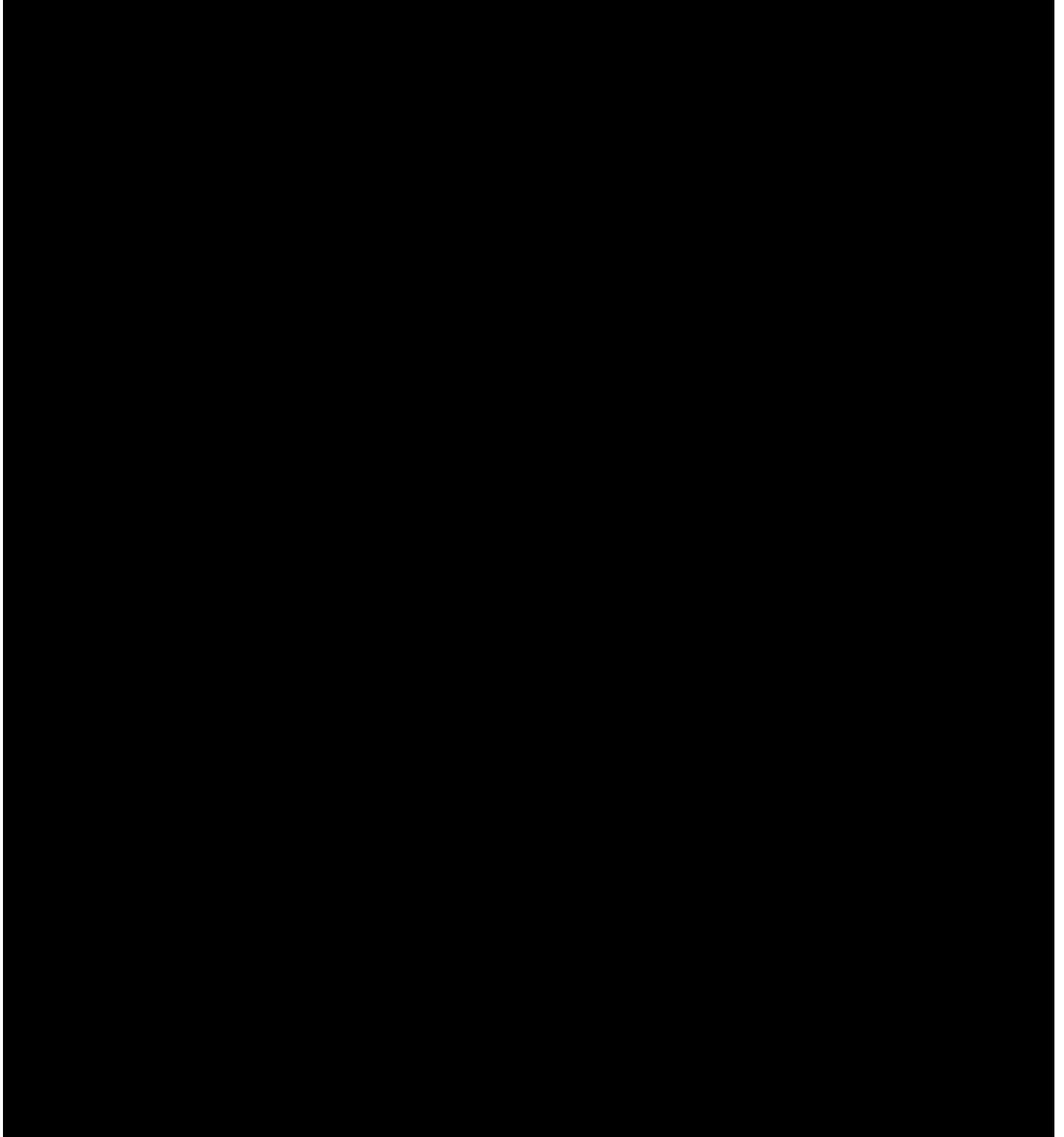


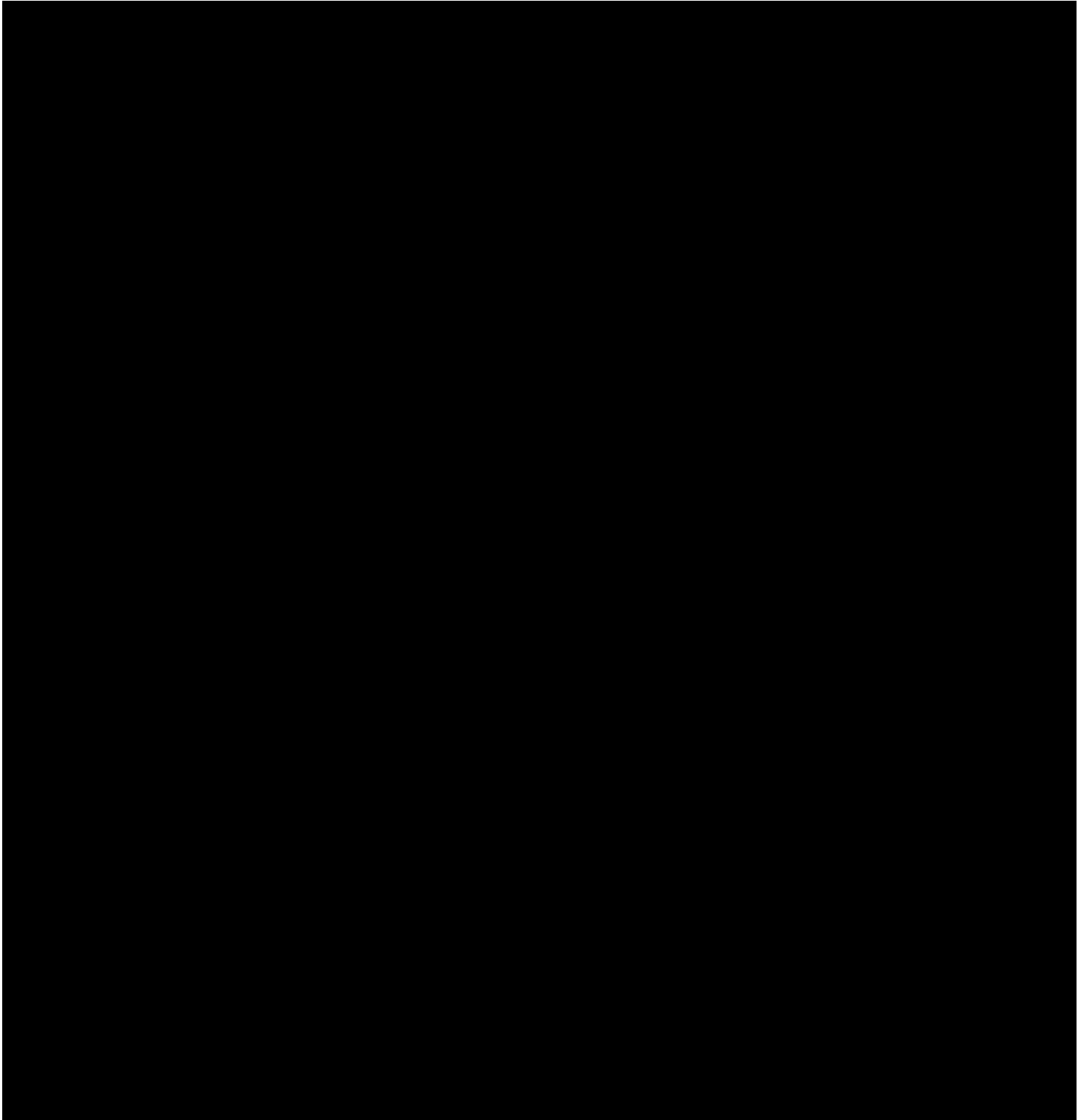


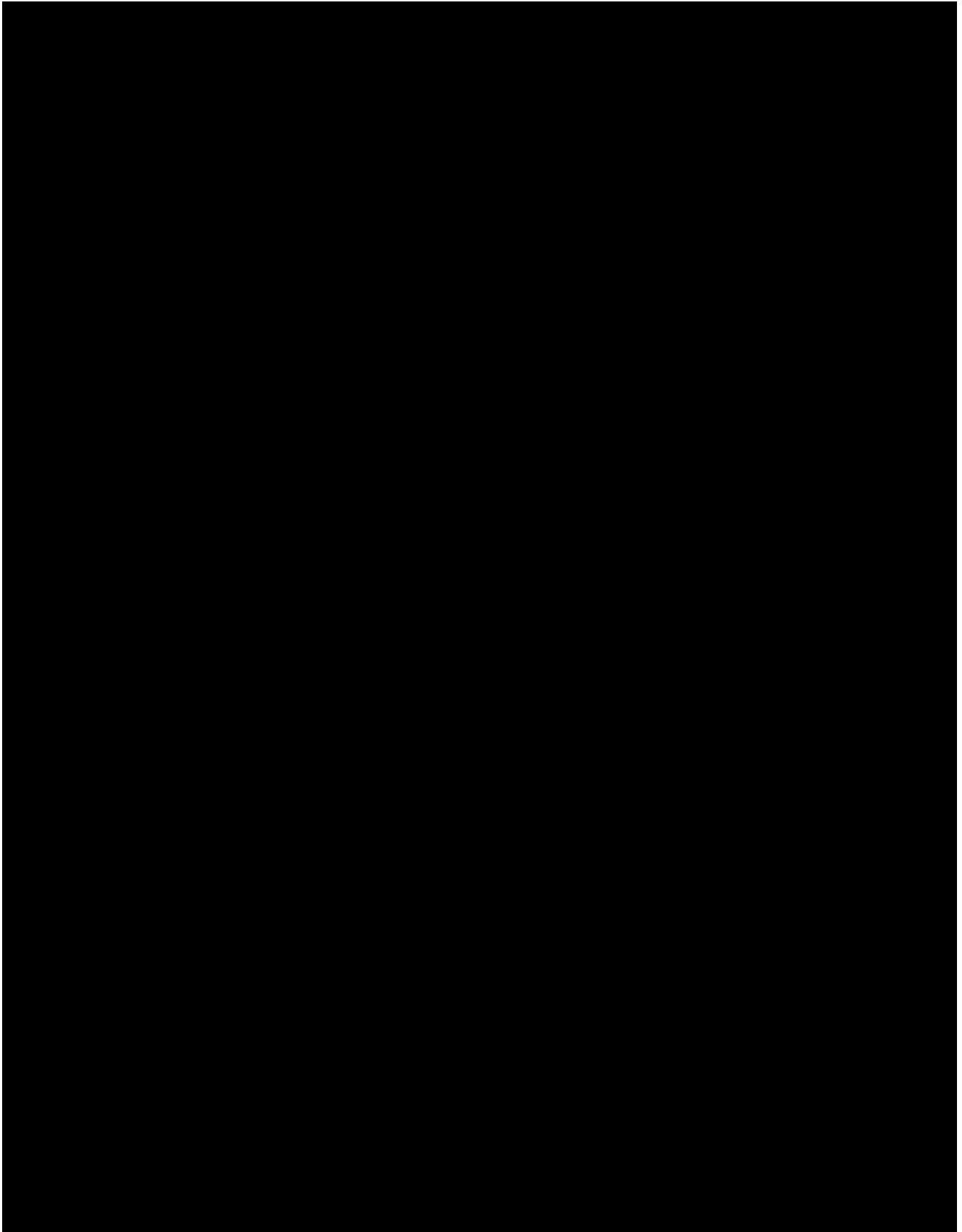


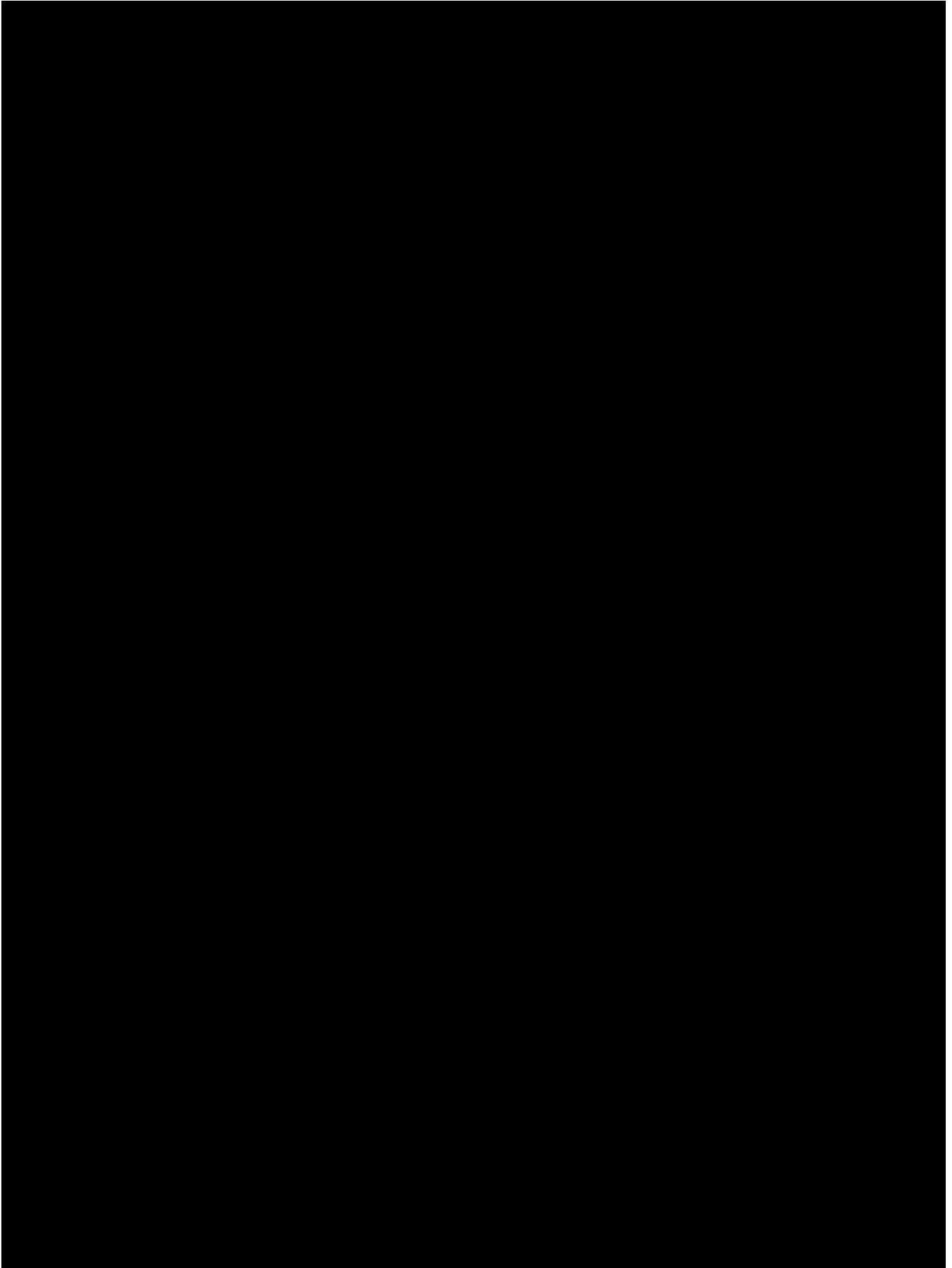


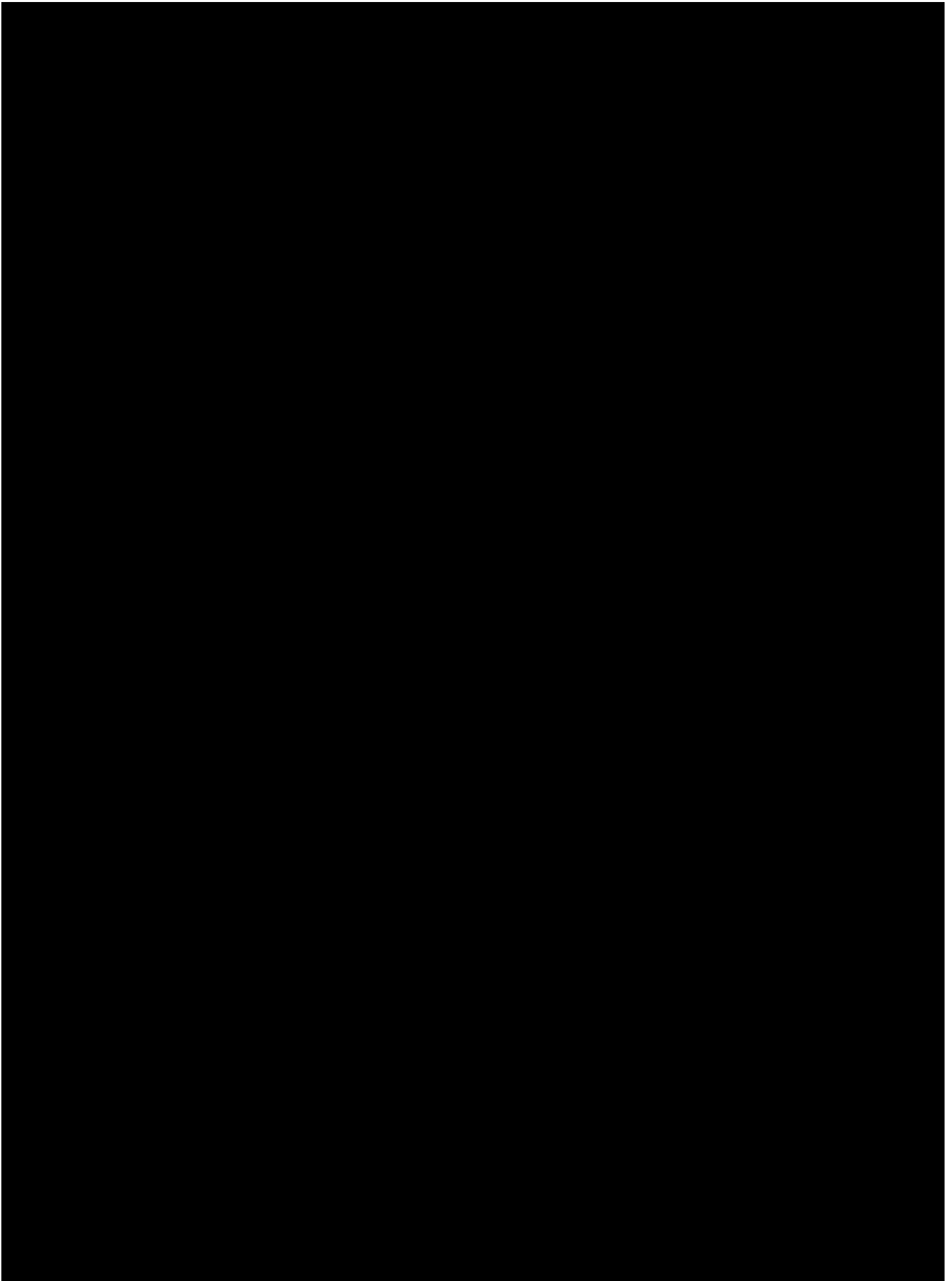
Transport
for NSW

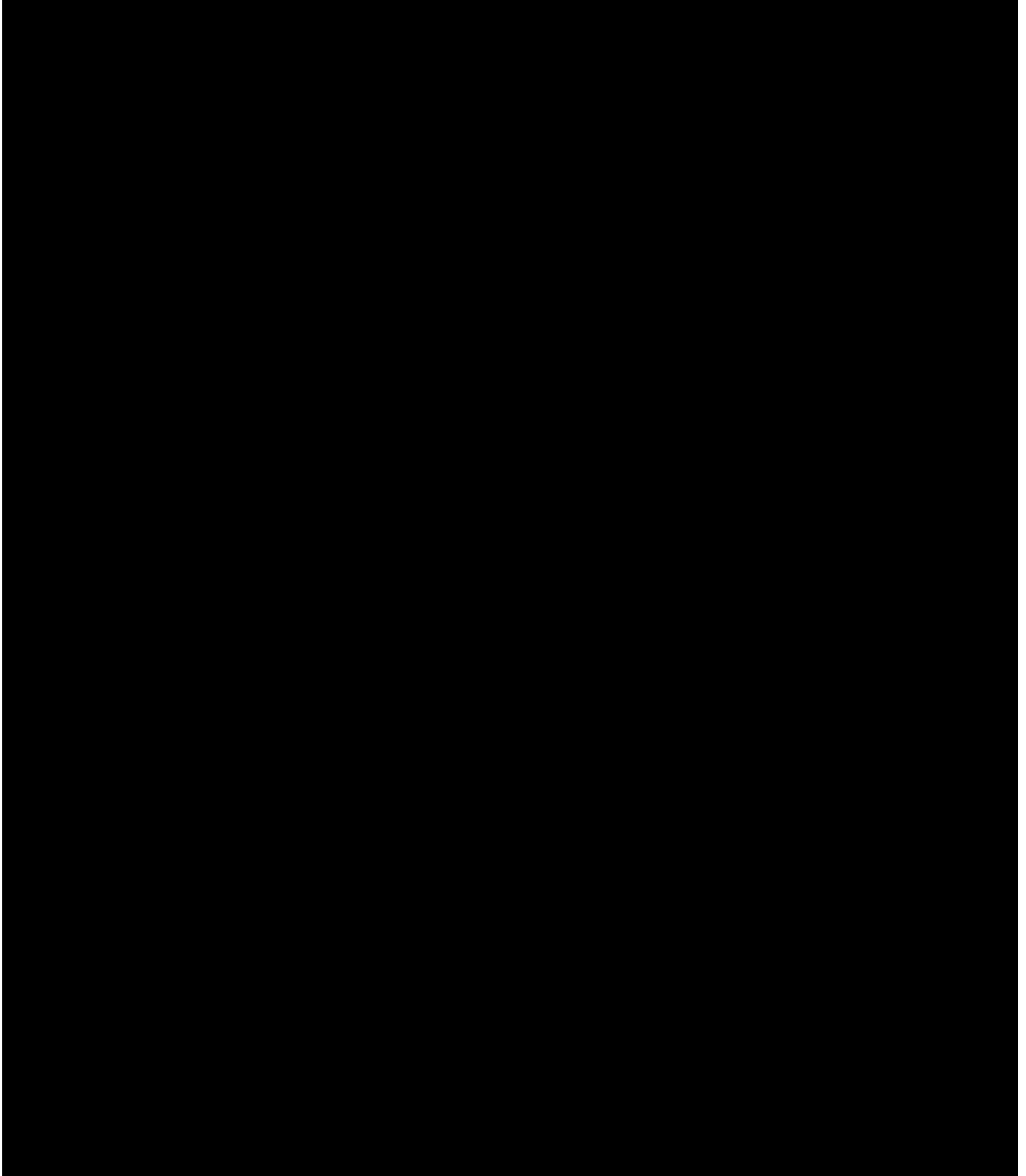


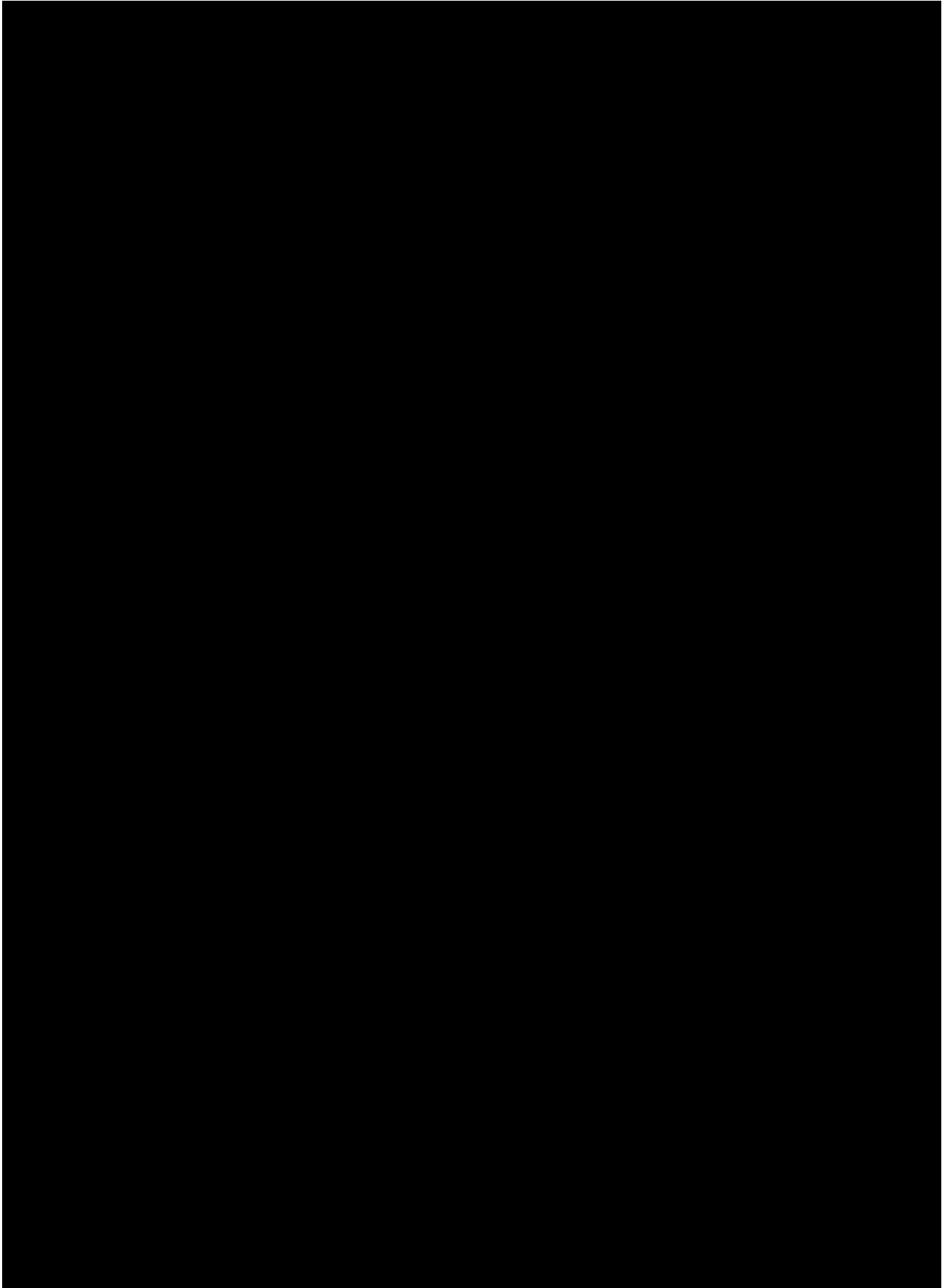


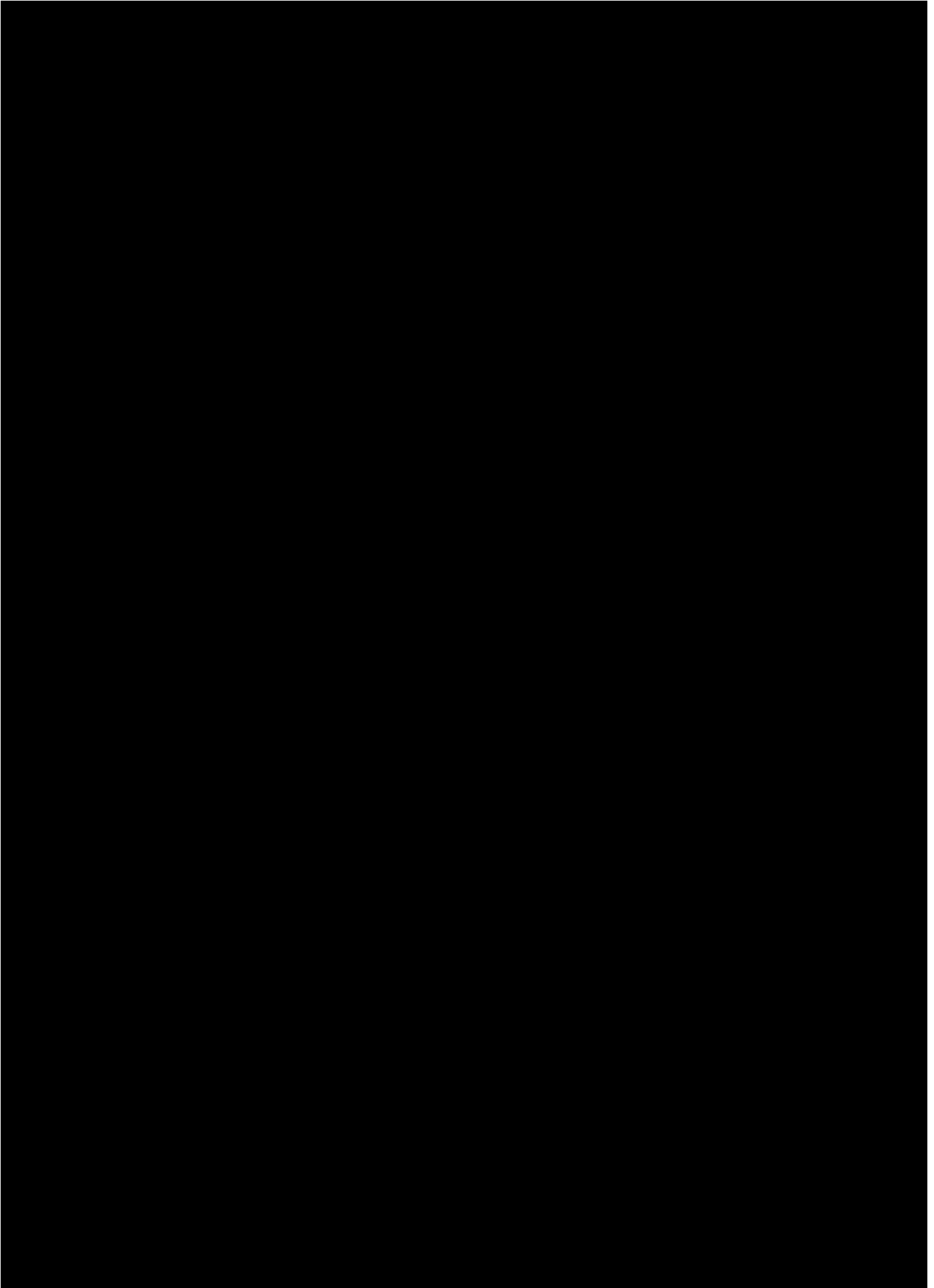


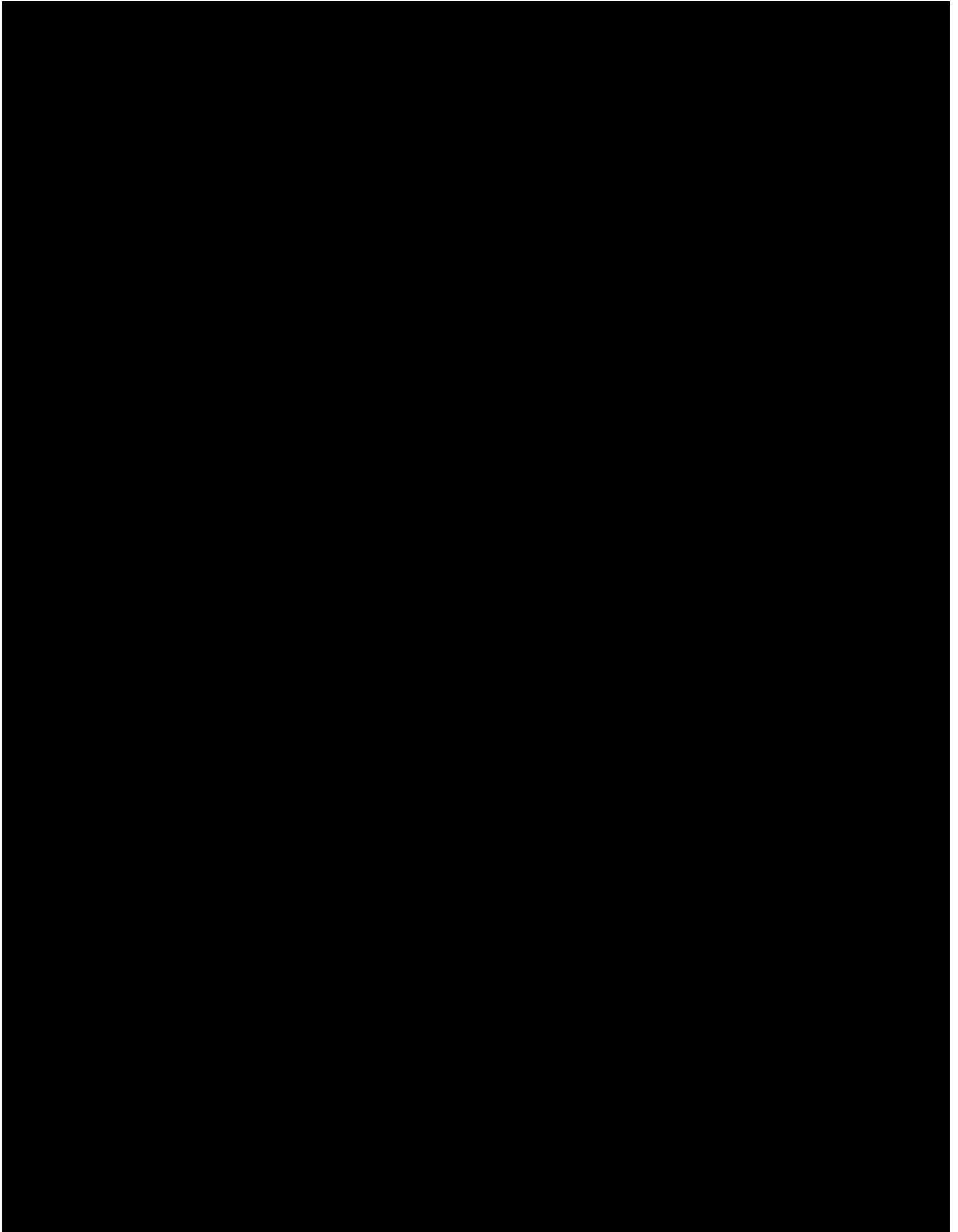


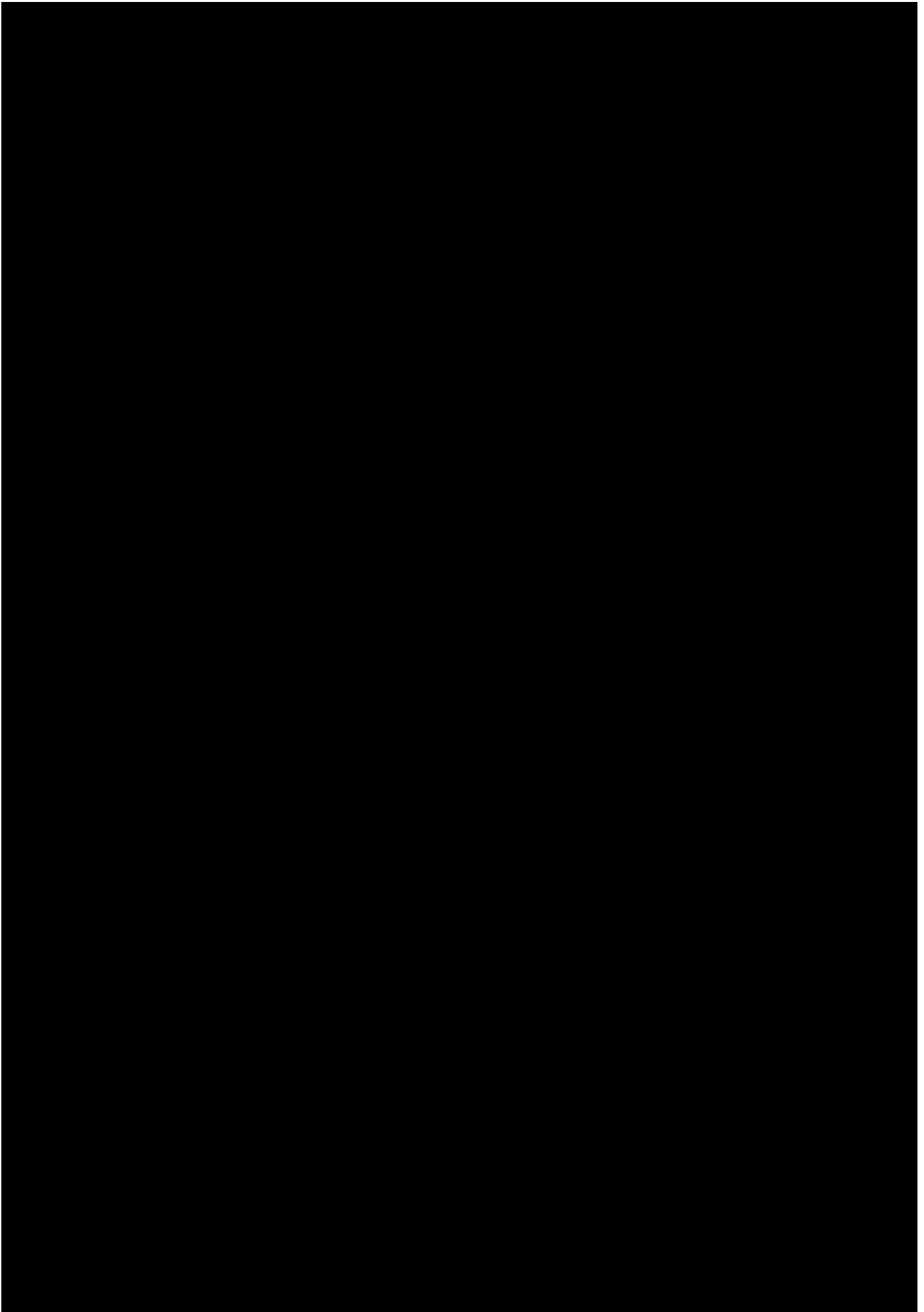


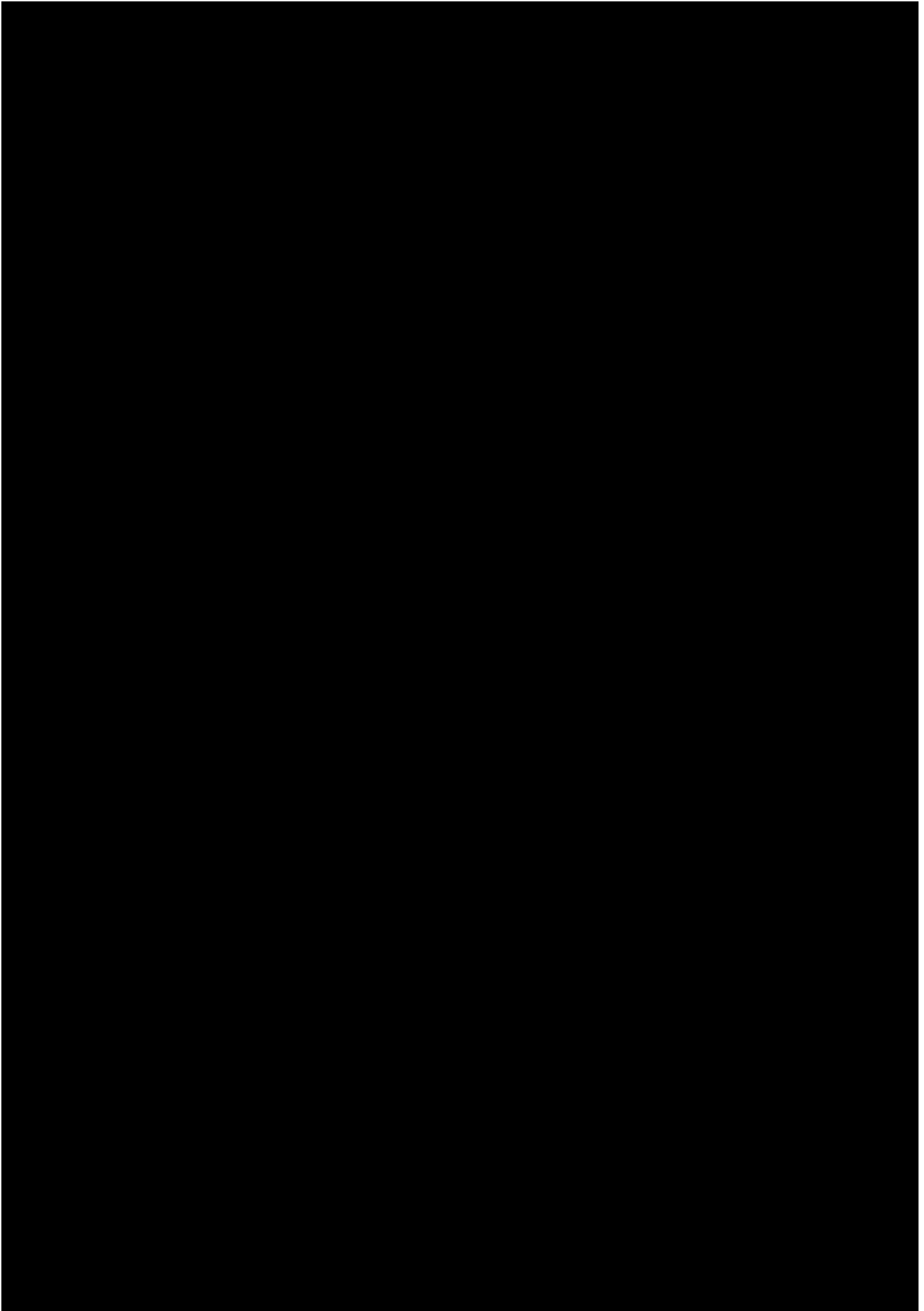


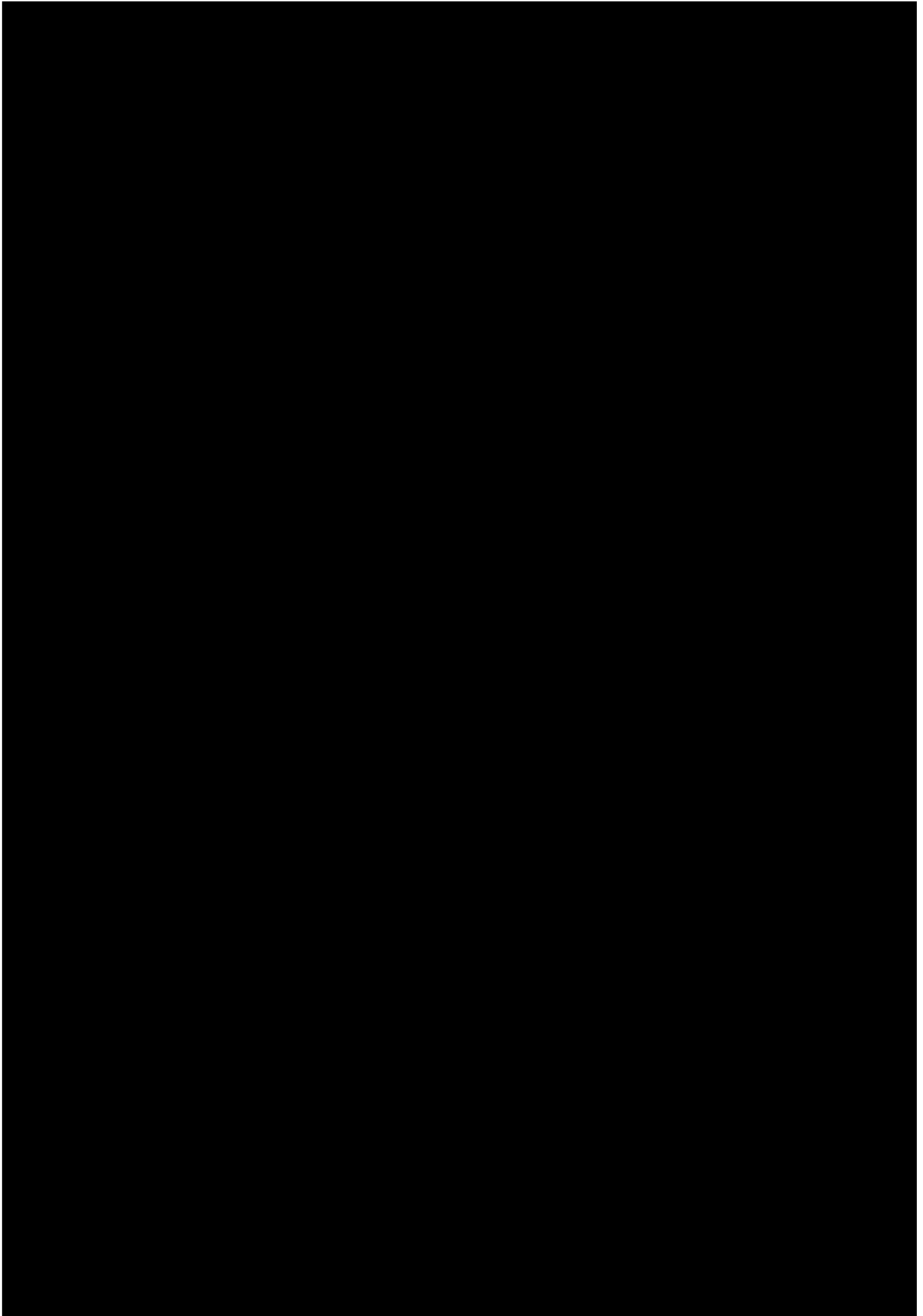


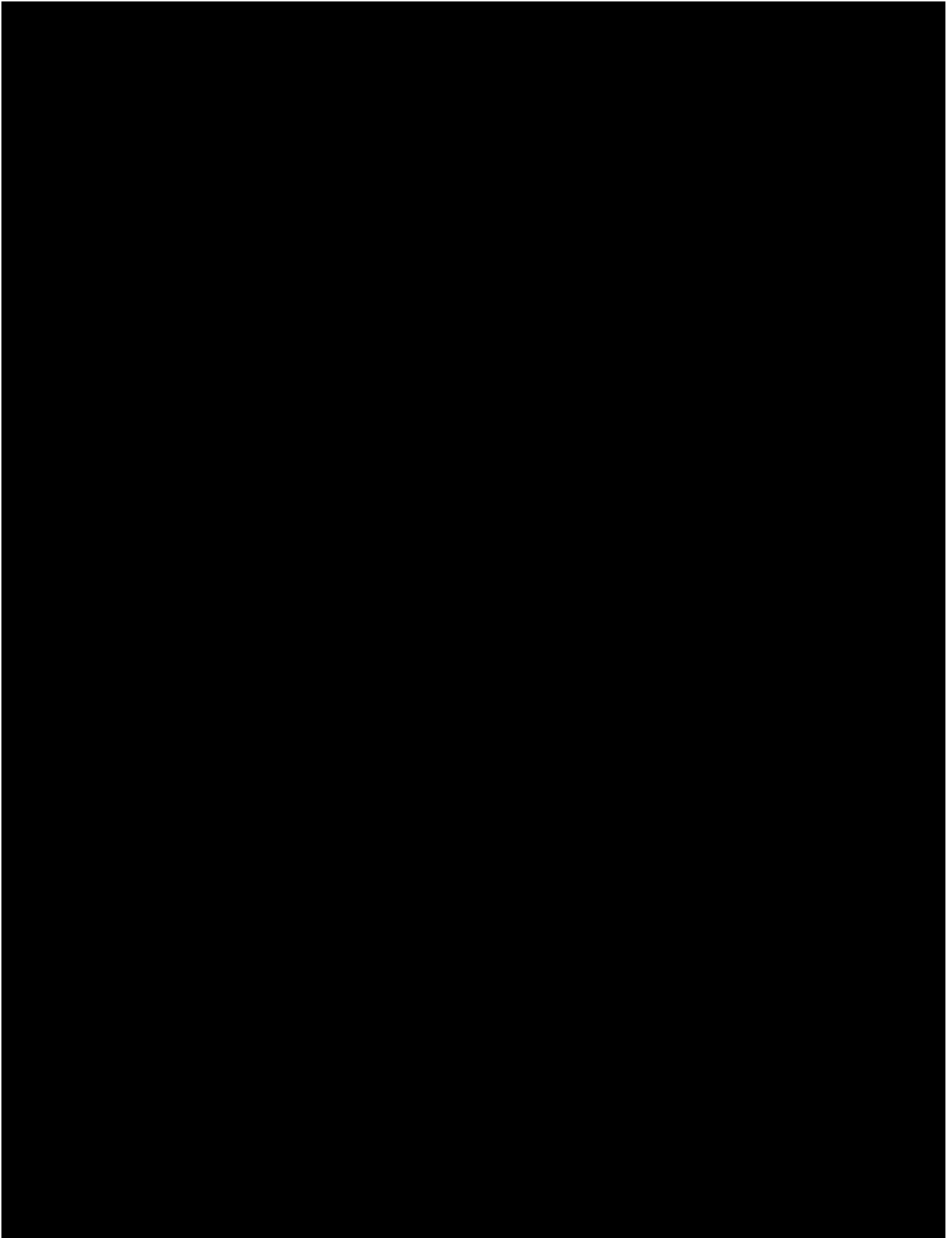


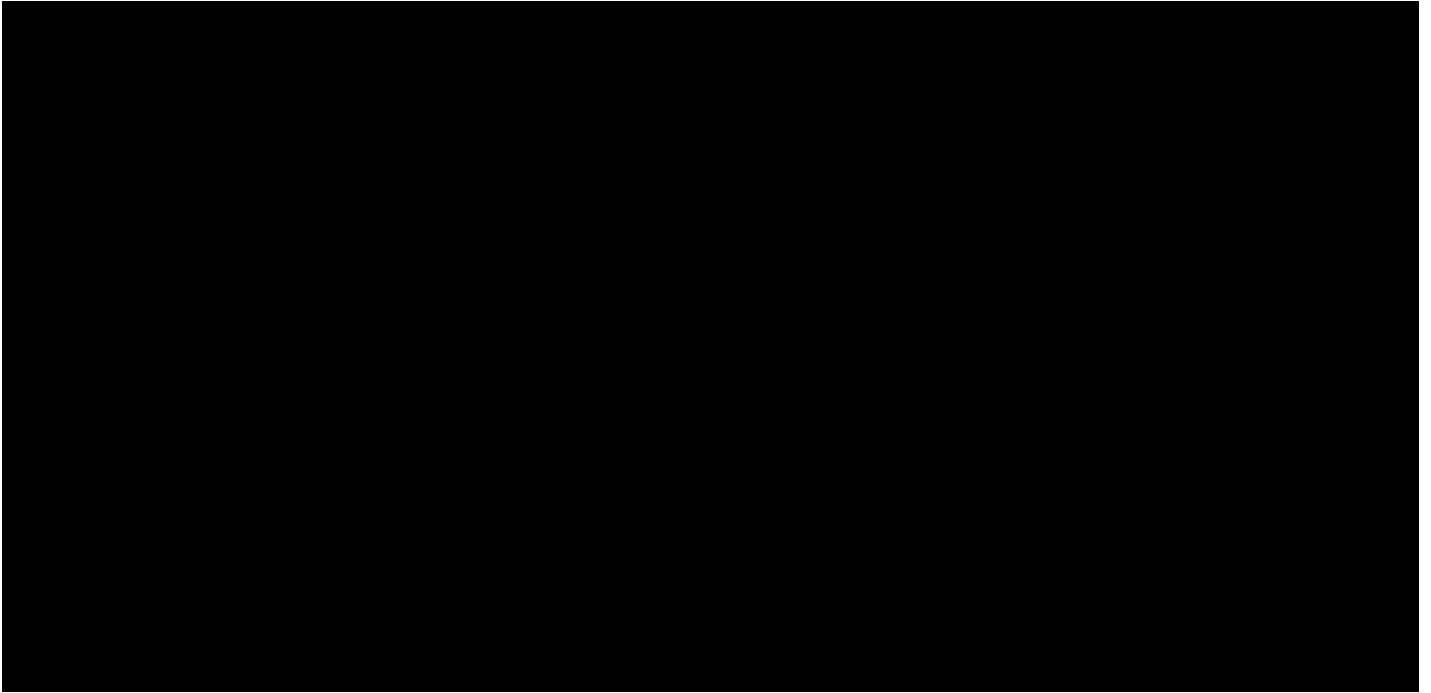


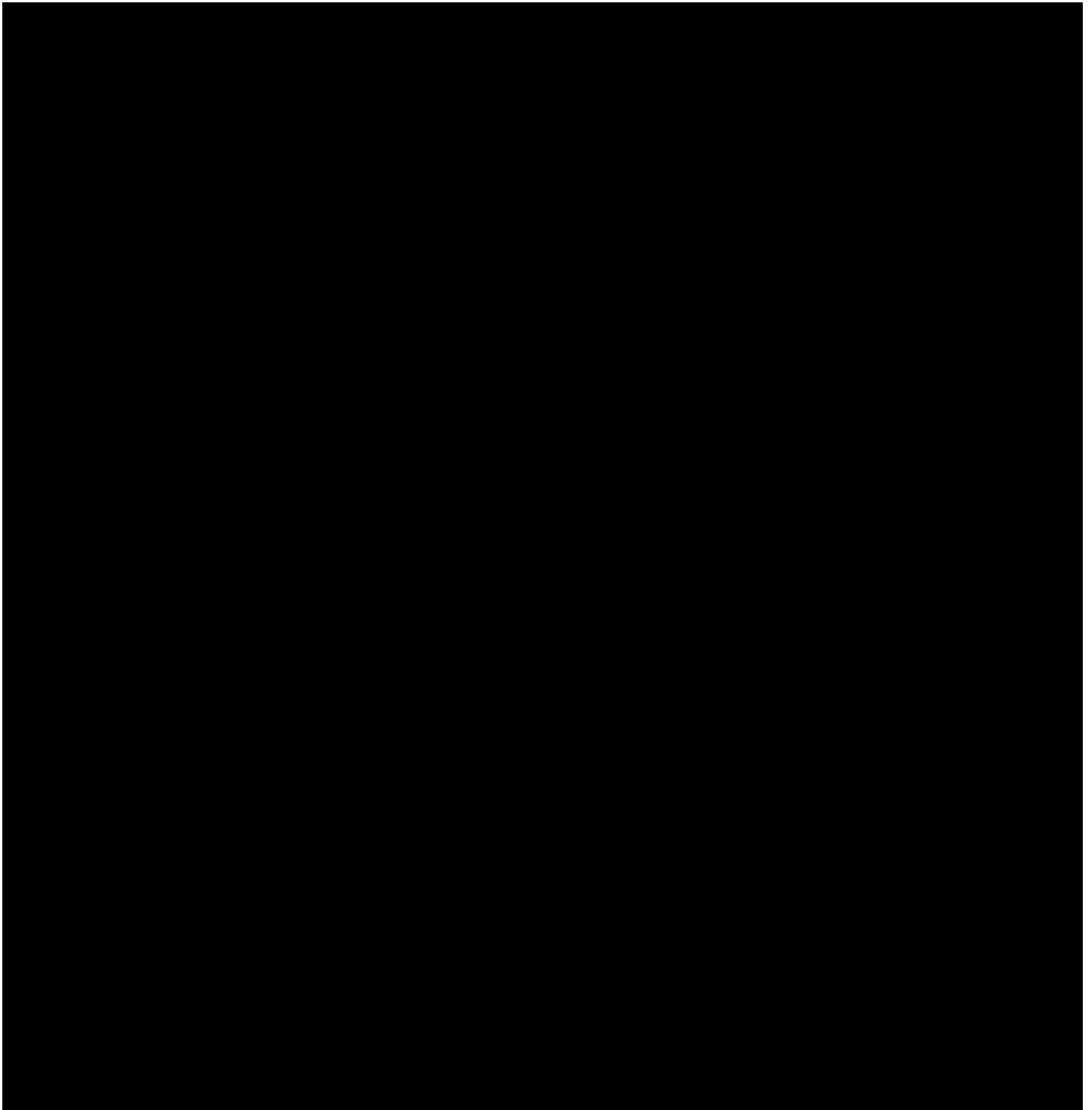


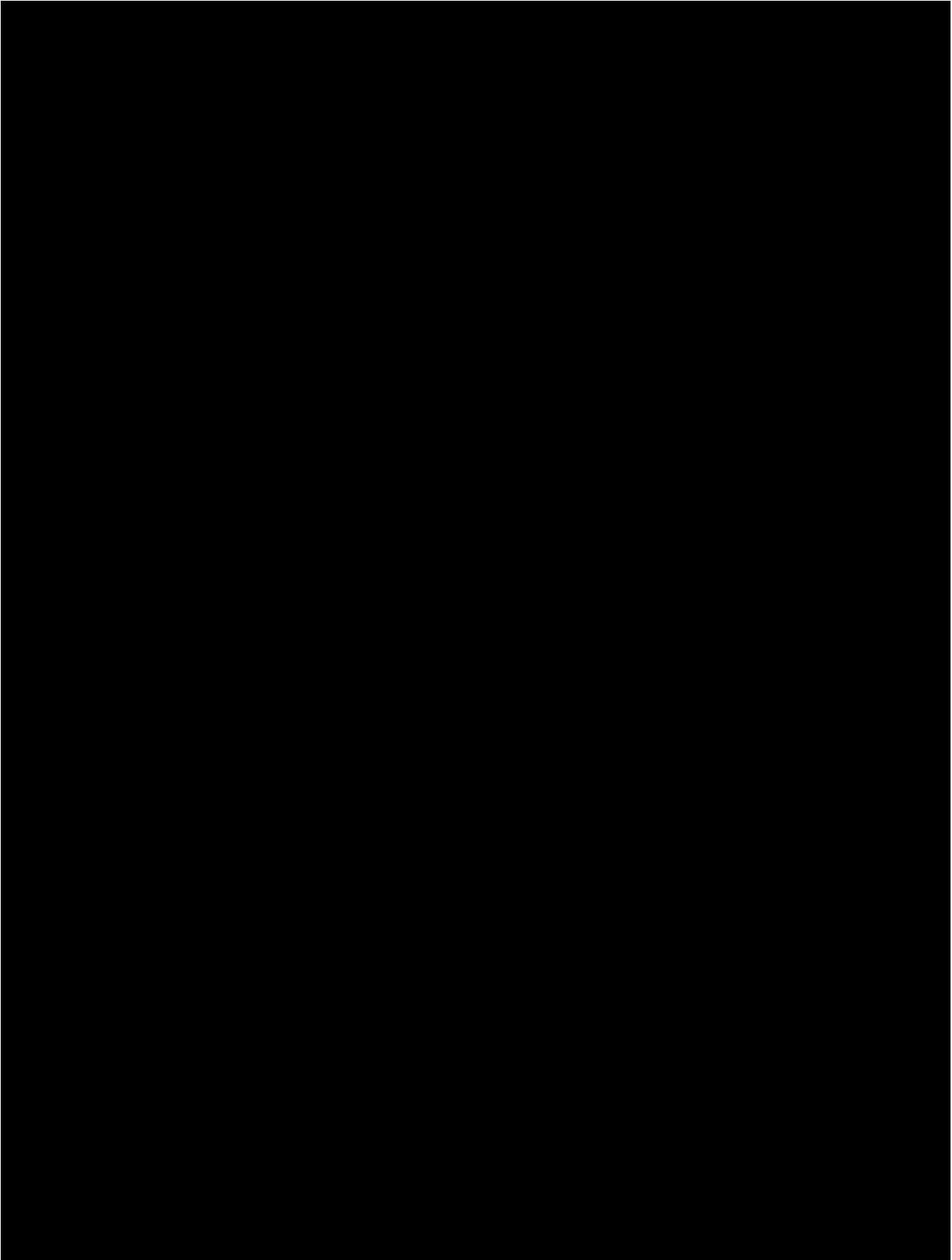


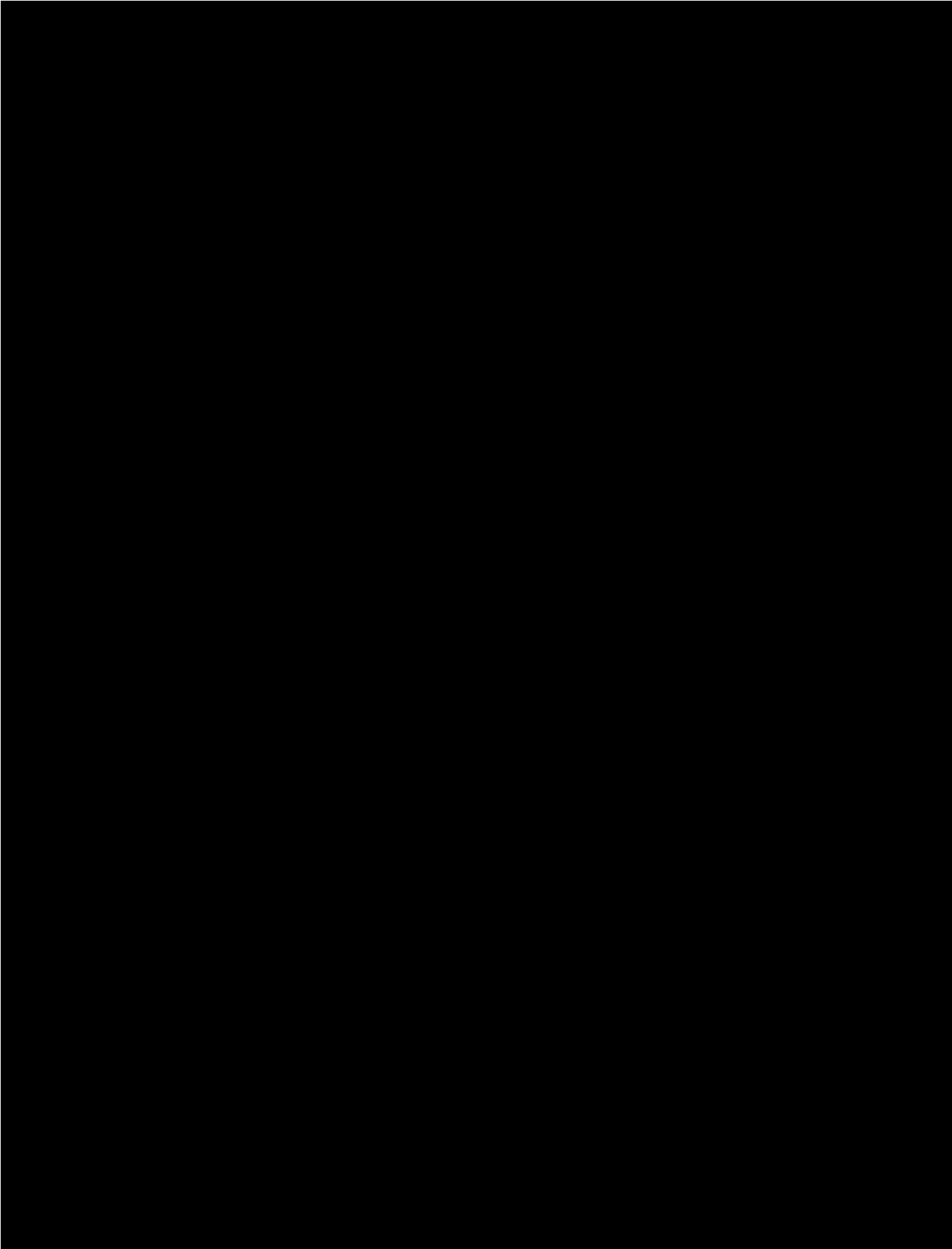


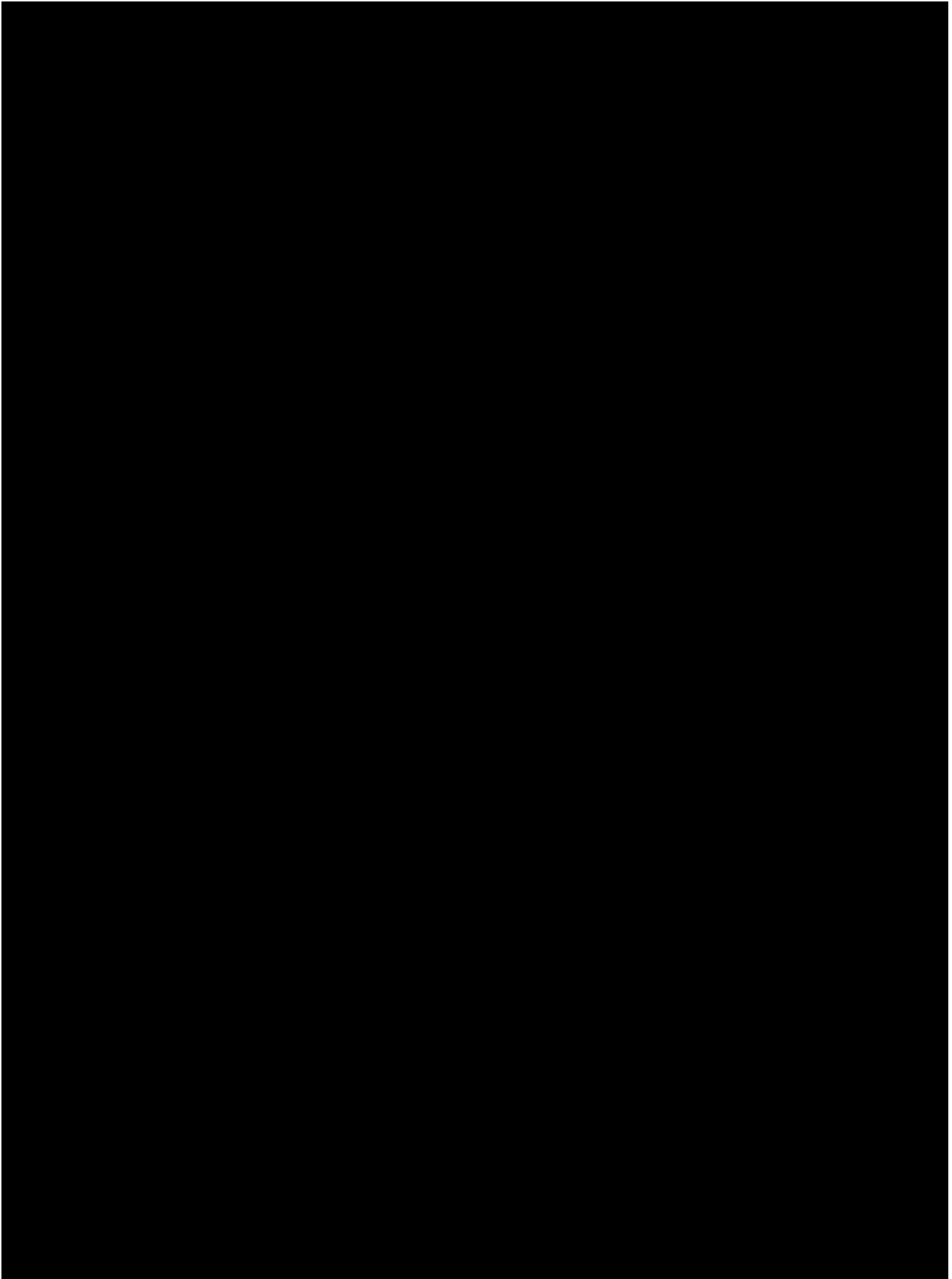


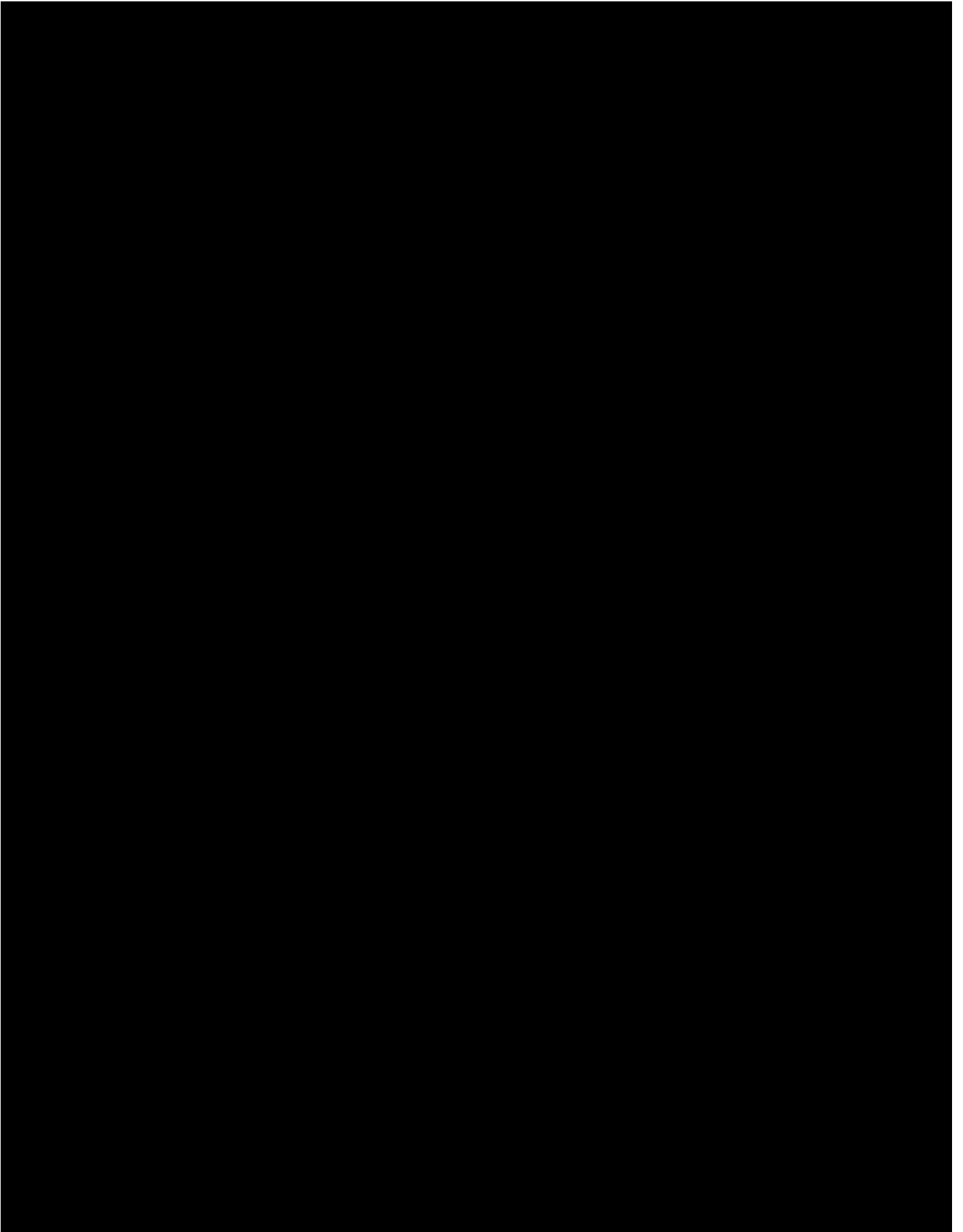


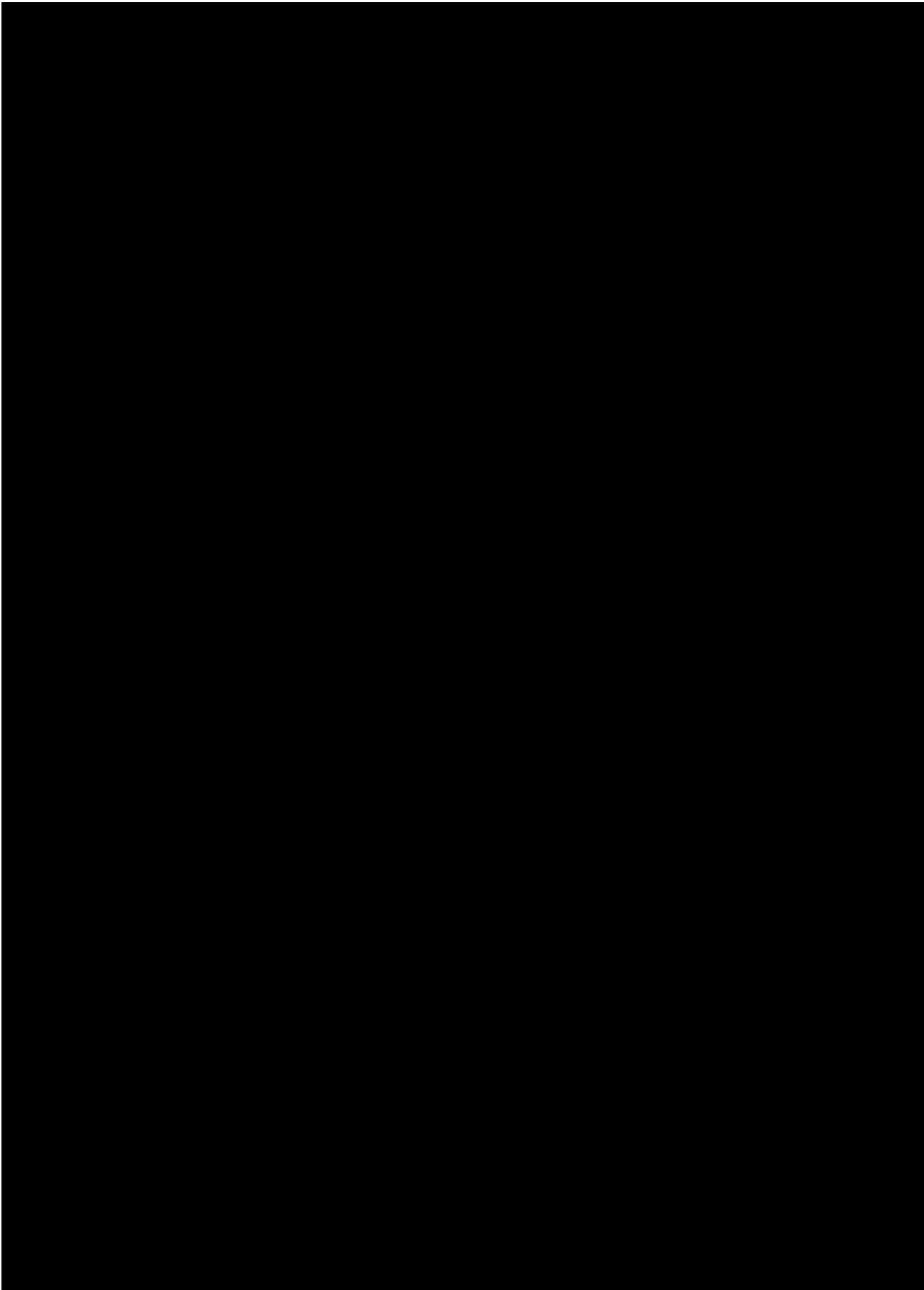


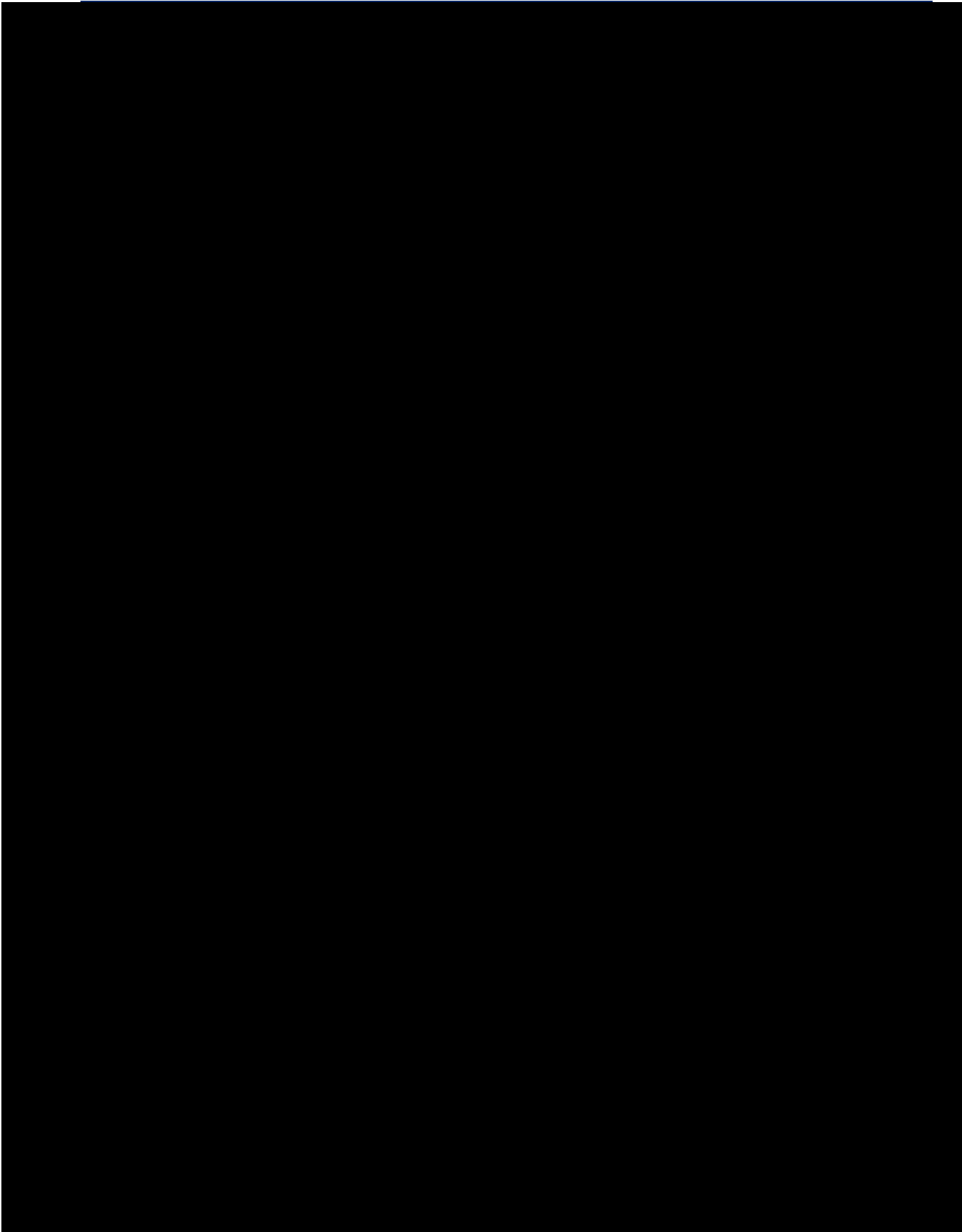


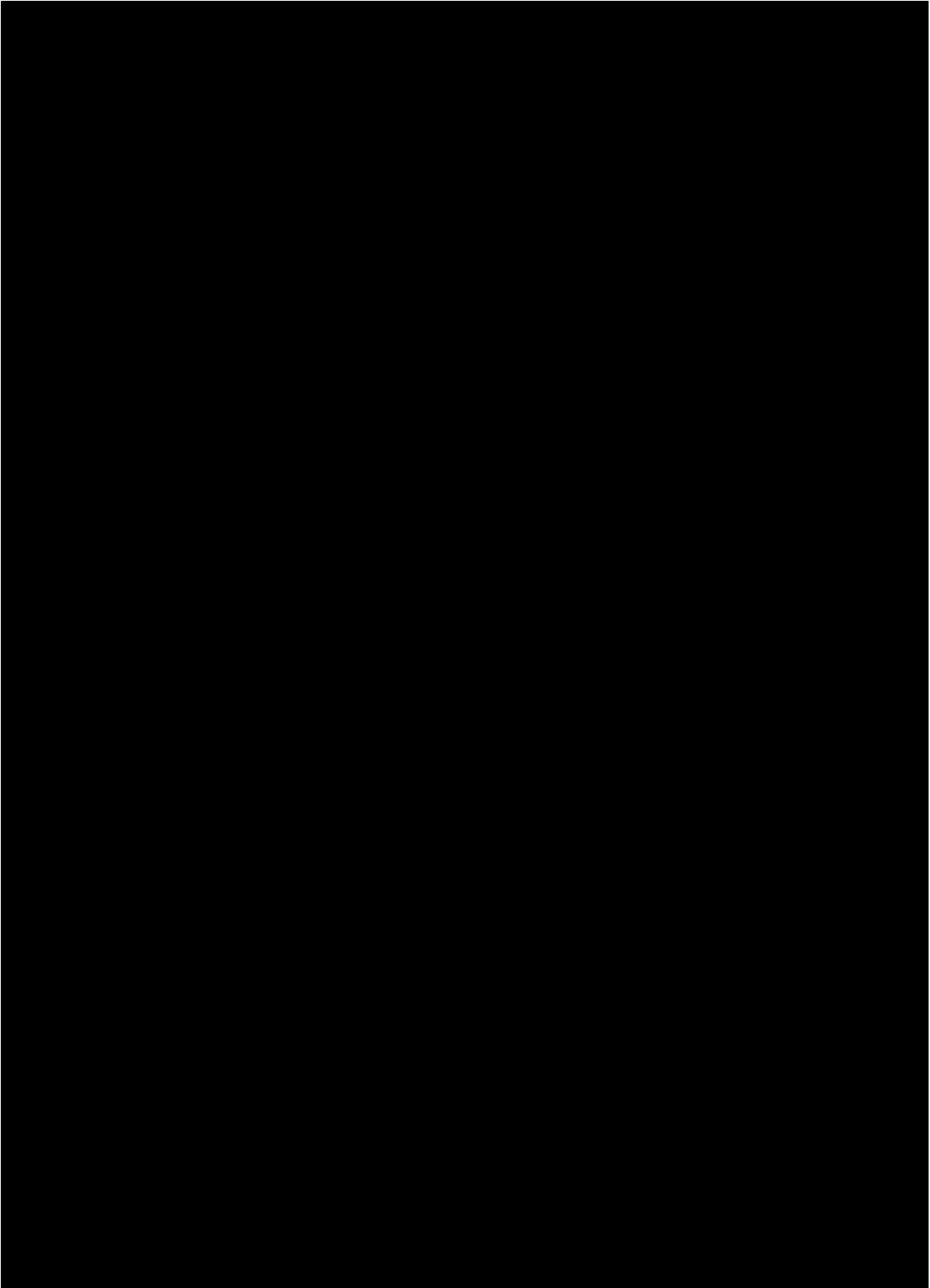


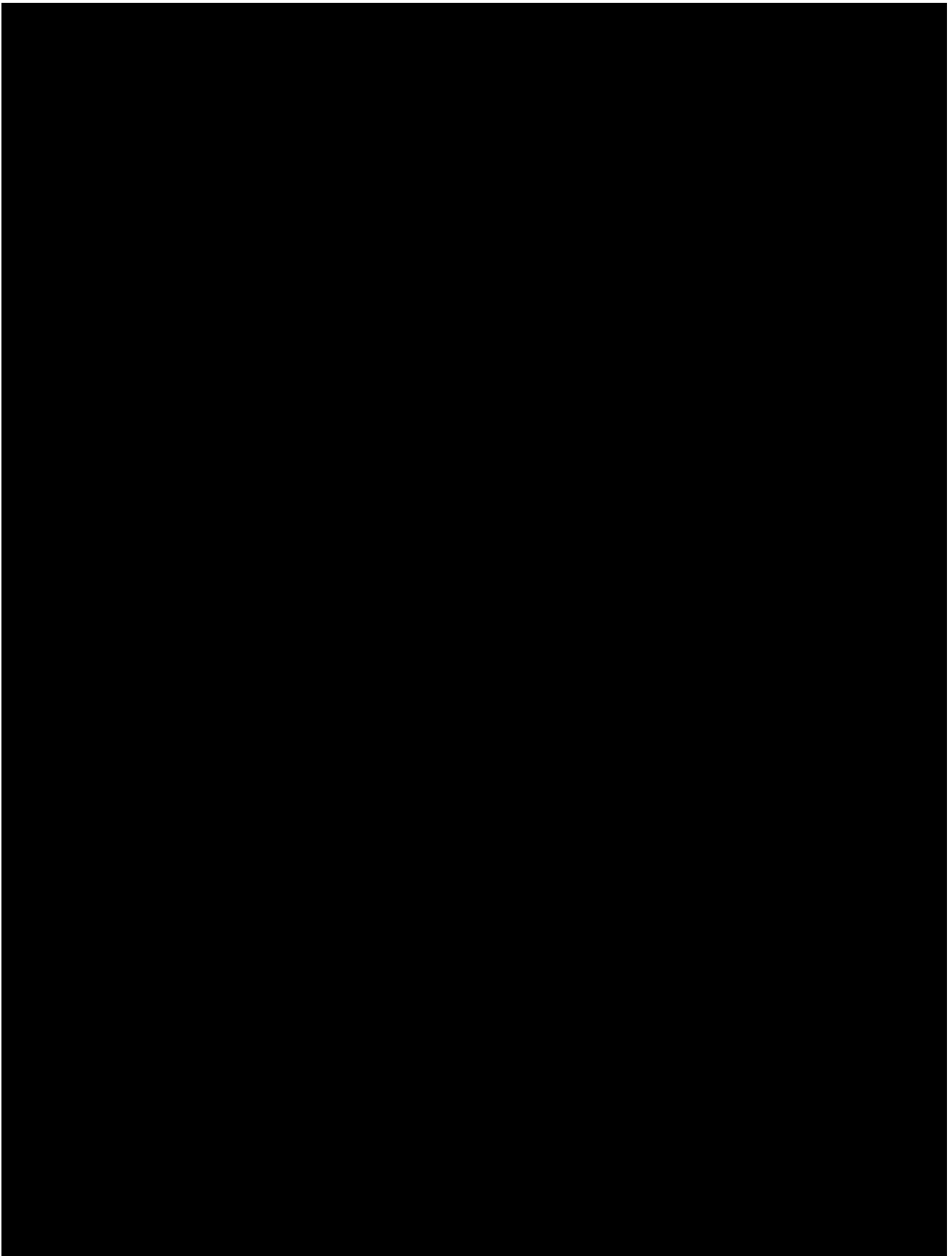


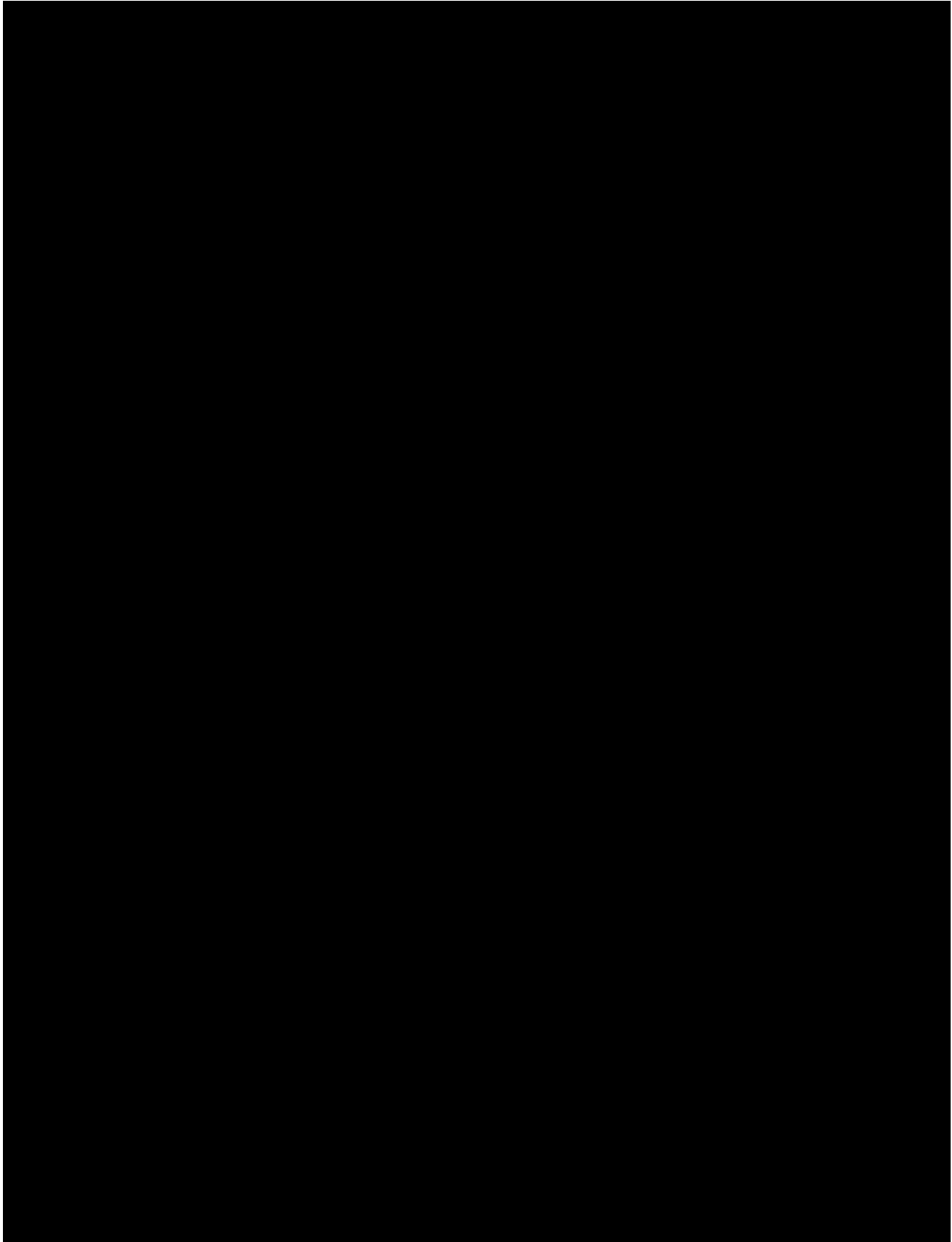


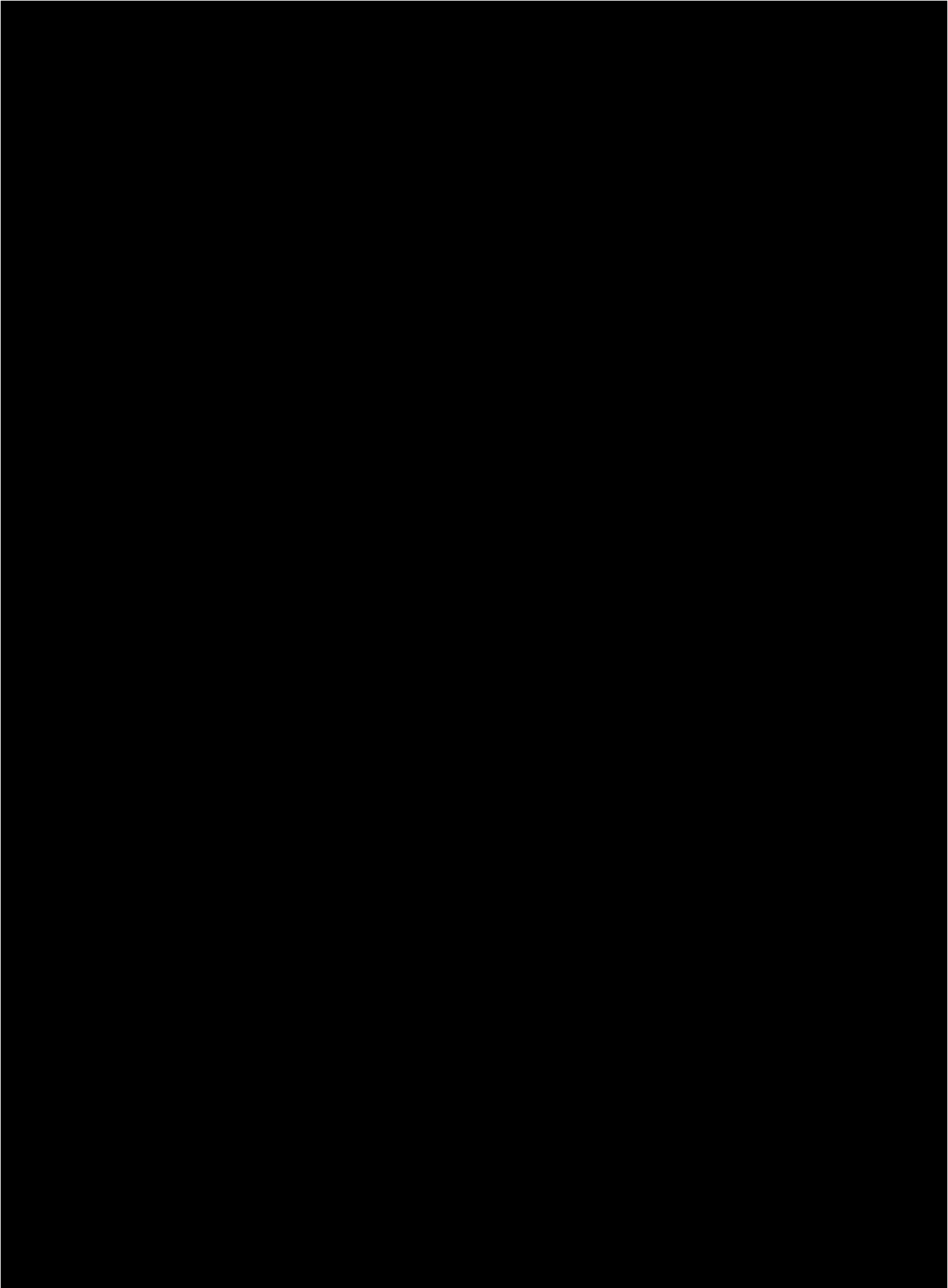


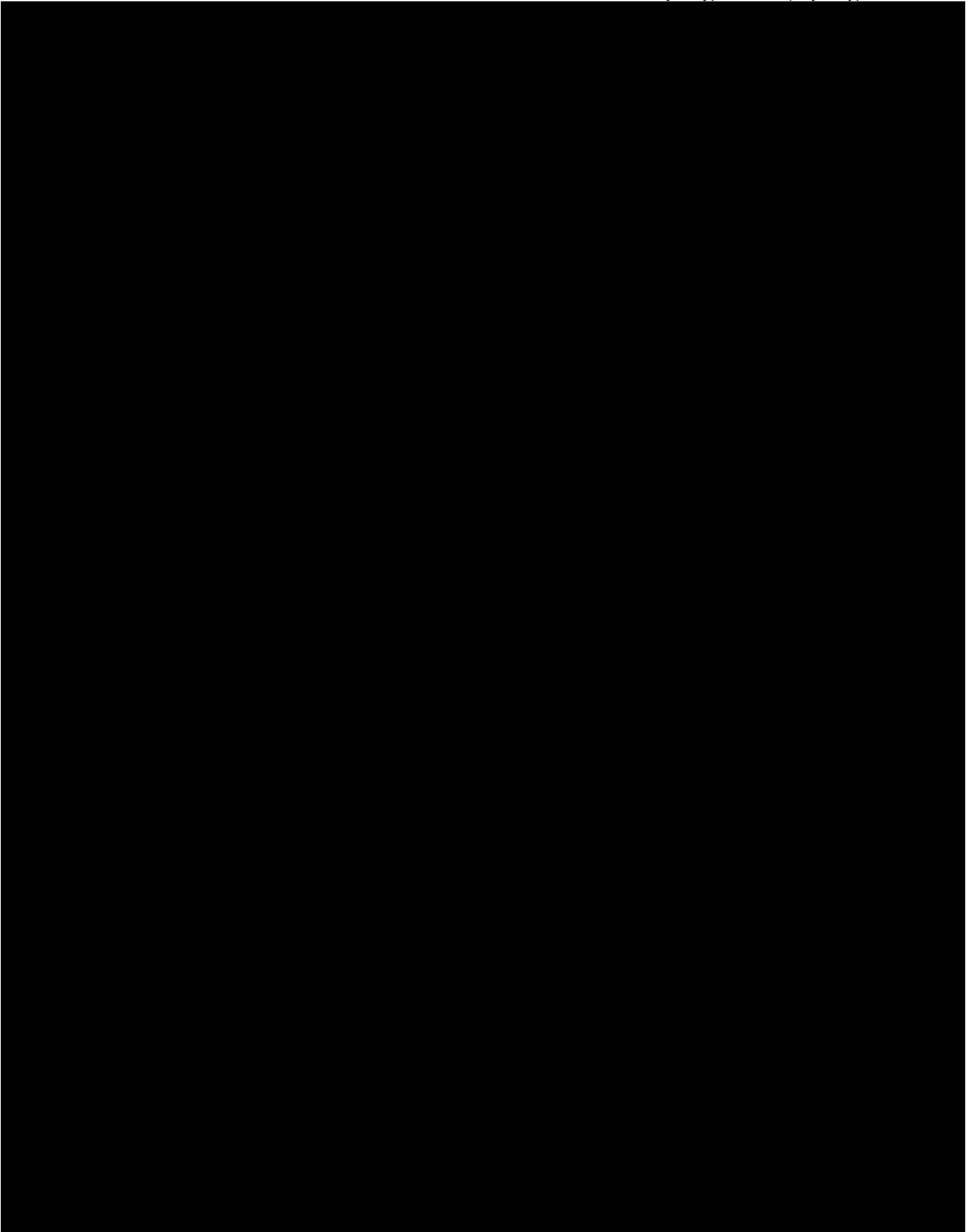


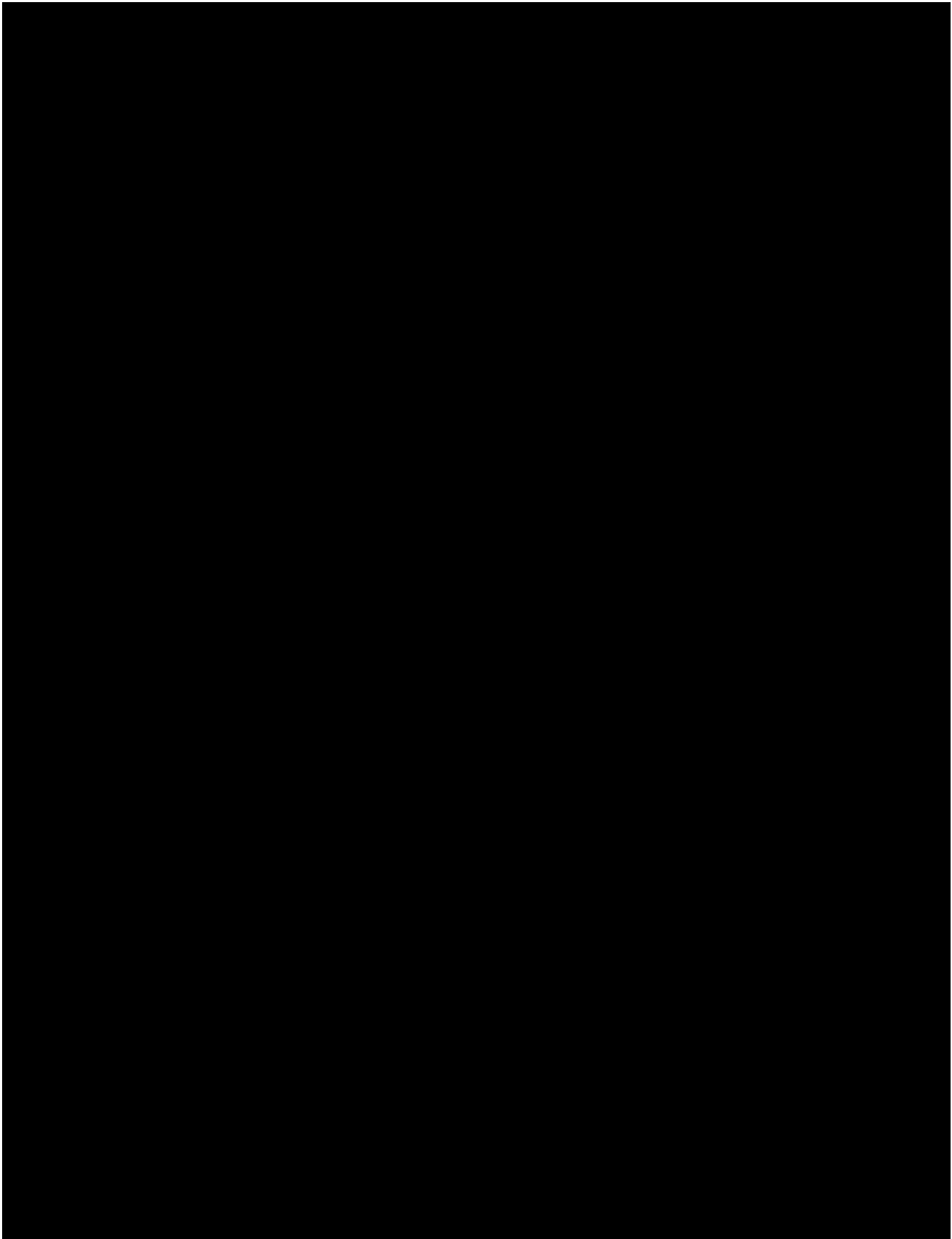


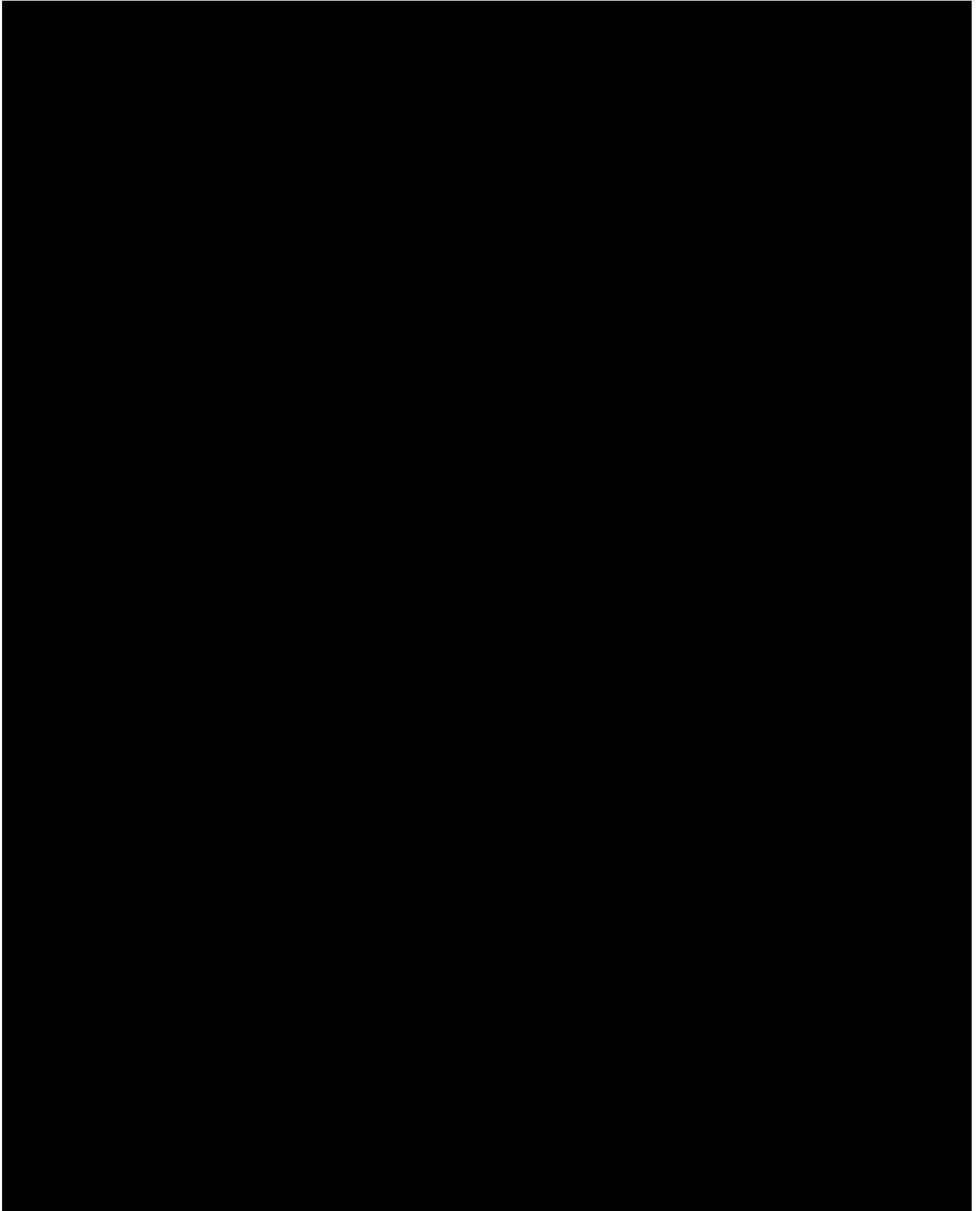












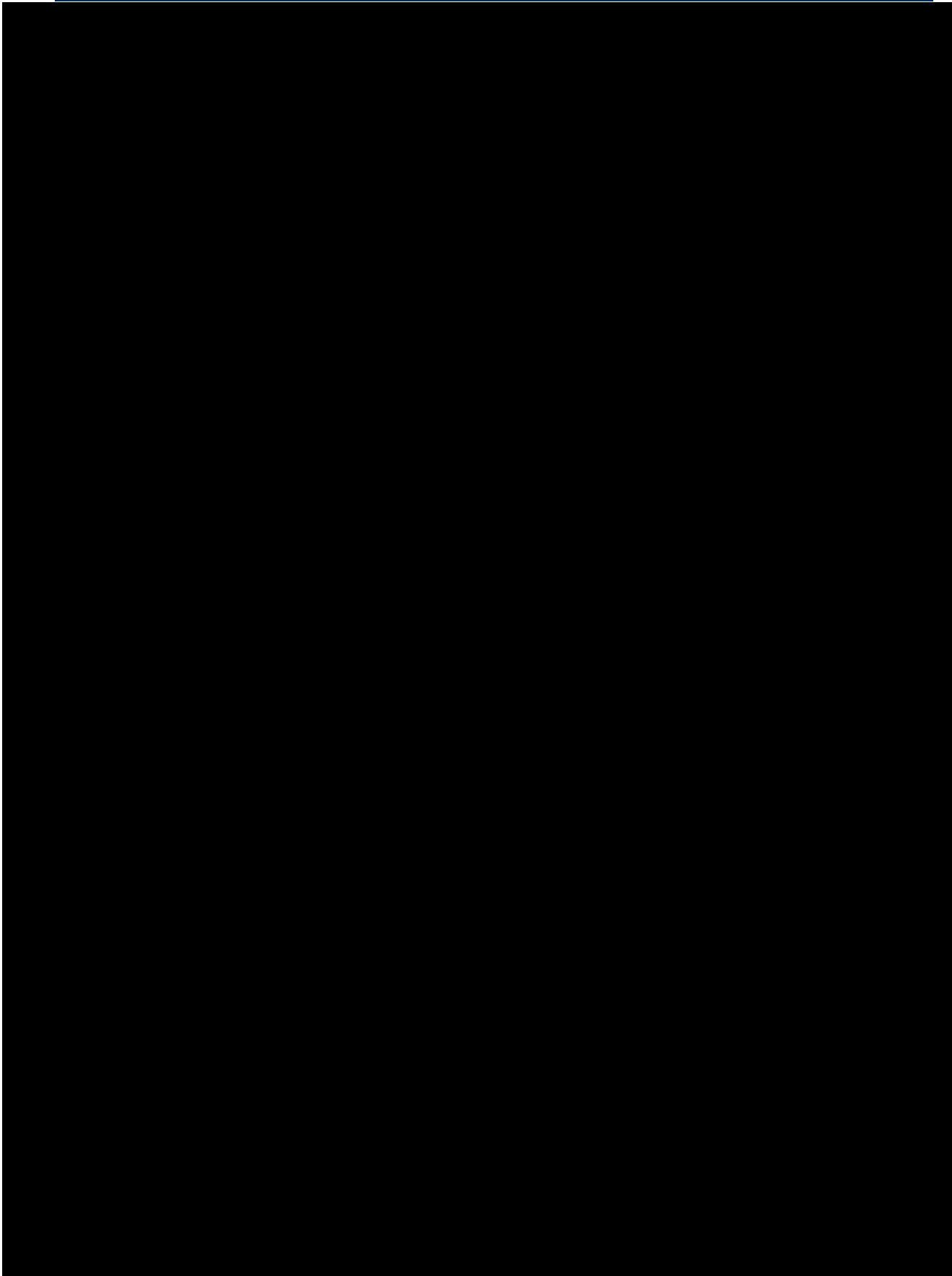


EXHIBIT C – PRINCIPAL'S INSURANCE POLICIES

For SOW 1, the Principal's insurance policies are:

For a New SOW, the Principal's insurance policies will be those specified in the relevant New SOW Particulars.

Contract Works Material Damage Insurance Policy

Project Insurance



Policy Details

Policy Number:

Project:

Period:

Principal Insured:

Transport for NSW

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DRAFT

Contract Works Material Damage Insurance Policy

Project Insurance

i Introduction

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurer agrees to indemnify the Insured to the extent provided herein subject always to the Limits of Liability and Sub-limits of Liability of this Policy.

This Policy incorporates the Introduction, Reinsuring Clauses, Schedule, Sections, Definitions and Interpretation, Conditions, Extensions, Exclusions, Endorsements and any other terms herein contained, which are to be read together. The Insurer agrees that this Policy and any subsequent attaching Endorsements are accepted as their own.

The liability of the Insurer will in no case exceed the Limits of Liability and Sub-limits stated in the Schedule or elsewhere in this Policy.

Signed for and on behalf of the Insurer:

Insurer	Policy No.	Proportion	Signature	Place	Date
Self Insurance Corporation of NSW					

→ Schedule

Policy Number:

Named Insured:

Transport for NSW
All for their respective rights, interests and liabilities.

Insured:

This Policy also insures other parties as specified in the definition of the Insured herein

Insured Project:

All works of any kind or description undertaken by or on behalf of the Named Insured during the Policy Period in respect of the following project:

Contract No.:

Construction Period:

From:
To:
Both dates at 4:00pm local time in Sydney, NSW

Defects Liability Period:

12 months in respect of the initial Defects Liability Period

Performance Testing Period:

1 month

Geographical Scope:

Anywhere in the Commonwealth of Australia (and overseas locations but only if agreed by the Insurer prior to risk being covered)

Limits of Liability:

Contract Works:	
Existing Property:	Not Insured
Construction Plant and Equipment (any one item):	Not Insured
Escalation Percentage:	15%

Sub Limits of Liability:

The liability of the Insurer will be further limited in respect of any one Occurrence at any one situation as set out in the Sub-limits below. These Sub-limits will apply in addition to the above Limits of Liability.

Removal of Debris:	15% of the ECV with a minimum of \$5,000,000
Expediting Expenses:	15% of the ECV with a minimum of \$2,000,000
Professional Fees:	10% of the ECV with a minimum of \$500,000
Mitigation Expenses:	7.5% of the ECV with a minimum of \$2,000,000
Search & locate costs:	7.5% of the ECV with a minimum of \$2,000,000
Claims Preparation Costs:	\$1,000,000
Government Costs:	7.5% of the ECV with a minimum of \$5,000,000
Inflation Protection :	7.5% of the ECV
Sue and Labour:	\$2,000,000

The Following Sub-limits are included within the Limits of Liability

Property Insured whilst in Transit:	\$10,000,000.00
Offsite Fabrication:	\$10,000,000.00
Offsite Storage:	\$10,000,000.00

Basis of Settlement:	Contract Works	Reinstatement Value
	Existing Property	Indemnity Value
	Construction Plant and Equipment (If Insured)	Indemnity Value
Nominee for Legal Service:	icare 321 Kent Street, Sydney NSW 2000 Postal: GPO Box 4052, Sydney NSW 2001	
Loss Adjuster(s):	The Insurer authorises the following companies to adjust any claim under this Policy, or as otherwise agreed by the Insurer and the Insured: <ul style="list-style-type: none"> • Cunningham Lindsay • Charles Taylor Adjusting • Crawford & Company • Harrison Gray • McLaren's 	
Loss Payee:	Insured	
Currency:	Australian dollars	
Excess:	Losses in connection with Exclusion 1 (b) Defects (LEG3/06) - \$250,000.00 each & every Occurrence All other losses - \$250,000.00 each & every Occurrence	
Premium:	As agreed	



We are here to help

If you have any questions, you can contact us at any time:

Phone: (02) 7922 5085

Email: cpai@icare.nsw.gov.au

Website: www.icare.nsw.gov.au

Definitions and Interpretation

The following Definitions will apply to this Policy.

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Computer Virus means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. Computer Virus includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

Contract means any contract, agreement or undertaking by or on behalf of the Named Insured in connection with the Insured Project.

Contract Types

Where appearing in this Policy, the following Contract Type definitions apply.

Contract Types

- (a) **Civil Works** means any works where the greater proportion of the works involves earthworks, the construction of bridges, dams and the like, but excluding works involving the construction of a building, electrical and mechanical plant.
- (b) **Dams**, means dams, weirs and hydroelectric projects involving the construction of dams or weirs.
- (c) **Horizontal Directional Drilling** means micro-tunnelling work for the construction of tunnels utilising surface based horizontal directional drilling equipment.
- (d) **Off-Shore Works** means works which are not land based or not to be connected to land on completion and which are located in excess of 500 Metres from nearest land. The term shall include oil rigs and oil platforms (but not including oil platforms when connected to the land on completion). The term shall not apply to pre-fabrication works on land associated with an Off-Shore Works Contract.
- (e) **Pipelines**, which term shall exclude offshore pipelines and Horizontal Directional Drilling.
- (f) **Tunnels**, means the construction of underground passageways, subways and/or roads used for the movement of pedestrians or vehicular traffic that is open at both ends, and is constructed by boring, drilling, excavating or digging through the earth, but shall not include Horizontal Directional Drilling Contracts, or work to existing tunnels which do not involve the above construction techniques.
- (g) **Underground Mining** means any works performed underground. The term shall not include contracts involving alluvial, open cut or hydraulic mining or quarrying.
- (h) **Wet Risks** means any works where more than fifteen (15) percent of its value is in, under or over water or is below the high water mark of any tidal body of water. The term shall include contracts for the construction of wharves, piers, marinas, causeways, breakwaters, jetties, dry docks and offshore pipelines when connected directly to on-shore facilities and canal developments. Wet Risk Contracts exclude Off-Shore Contracts.
- (i) **All Other Works** shall mean any other works not referred to above.

In the event of a Contract or project comprising more than one Contract Type, the Contract Type shall be deemed the Contract Type with the largest contract and materials value but for the purpose of complying with the Excluded Contracts provision each contract type shall be considered separately.

Contract Value means the total value of work and construction costs incurred by or on behalf of the Named Insured in respect of the Contract Works. It includes the value of principal supplied and other free supplied materials if required to be insured under this Policy. The Named Insured may reduce the Contract Value by the value of non-recurring construction costs (in whole or in part).

Period of Insurance means:

(1) **Construction Period** means

the period commencing with the entering into of each Contract or commencement of work whichever is the earlier, provided such Contract is entered into or work commenced during the Policy Period, until at the option of the Insured:

- i. the Contract Works have been formally accepted in their entirety by the principal or owner as having achieved practical completion and completed any relevant Performance Testing Period, notwithstanding the fact that portions of the Contract(s) may have been handed over, or accepted by the principal or owner prior to that time, including any relevant Performance Testing Period; or
- ii. with respect to each separable portion of the Contract Works, the time it is taken over and put into use by the principal or owner, including any relevant Performance Testing Period, or;
- iii. the expiry of the Construction Period in the Schedule.

(2) **Defects Liability Period** means

the period described in any Contract during which an Insured is legally obliged to rectify defects, shrinkages, errors, omissions or other faults and/or to complete its obligations under such Contract (the initial Defects Liability Period), which may include the requirement for a further period, following rectification of defects under the initial period.

The initial Defects Liability Period shall not exceed the Defects Liability Period stated in the Schedule in respect of any one Contract.

Where the contract provides for the defects liability period to be extended upon repair or rectification of a defect, coverage under section 2 shall be extended for a further period as required by the Contract up to a maximum of an additional 36 months only in respect of Property Insured (which has been rectified or repaired) for which the contractual extension of the defects liability period applies.

Damage means physical loss, destruction or damage with the word Damaged having a corresponding meaning.

Electronic Data means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

Indemnity Value means:

- (a) where the Damage to property can be repaired, the Insurers will pay the cost necessarily incurred to restore the property to its former state of serviceability, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs. Deductions will not be made for depreciation in respect of parts replaced, but the salvage value of such parts shall be taken into account;
- (b) where the Insured Property is totally destroyed, lost or stolen, abandoned or cannot be satisfactorily repaired at a cost not exceeding the market value immediately before the Damage, the Insurers will pay the market value of the item at the time of the Event. If due to the nature of the Insured property, it is not possible to readily ascertain a market value, the basis of settlement shall be the replacement cost of the damaged property less due allowance for depreciation taking into consideration the anticipated useful life of the property and the nature of its usage;
- (c) if the Insured Property is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with clause i.

Insured Project means the project referred to in the Schedule

Insured means:

- (a) The Government Agency and/or department for all contracts declared to icare - Insurance for NSW for the purpose of this insurance, herein after known as the Named Insured.
- (b) Any Government Agency and/or department of the Named Insured, or any other government or non-government organisation under the control of the above party (a) and over which it is exercising active management, hereinafter also known as the Named Insured.

Construction Risk Insurance

- (c) Any parent or subsidiary company (including subsidiaries thereof) of the Named Insured and any other organisation under the control of the Named Insured and over which it is exercising active management, whether now or hereafter incorporated;
- (d) If not a Named Insured, any of the following persons or entities for whom or for which the insured parties above are obliged to arrange insurance by virtue of a Contract or assumption of responsibility, but only to the extent required by such Contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy; any:
- i. principal or owner or agent of the principal or owner or joint venture partner;
 - ii. construction manager or project manager;
 - iii. contractor or sub-contractor of any tier subject to the limitations in iv. and v.;
 - iv. architect, engineer or other consultant, but only in respect of their on-site, manual activities;
 - v. vendor or manufacturer, but only in respect of their on-site, manual activities;
 - vi. lessor, financier, mortgagee or trustee;
 - vii. government body not included in i to v. above;
 - viii. other party with an insurable interest in the Insured Project not included in the above
 - ix. alliance partners in respect of works undertaken under alliance agreements;

For the purposes of this policy those Insured's specified in iv. and v. above are not considered to be included under any other Insured definition.

- (e) Any director, executive officer, employee, partner, contract staff, or member of any safety, security or medical facility of any of the Insured's whilst acting as such;
- (f) Any office bearer or member of any social, sporting, or welfare facility of any of the Insured's whilst acting as such; and all for their respective rights and interests.

all for their respective rights and interests.

Insurer means Insurance and Care NSW (icare) on behalf of Self Insurance Corporation of NSW

Local Time means the Official Government Time set on Co-ordinated Universal Time (UCT) (which includes daylight savings time where observed) at the designated place stated in the Schedule.

Major Peril means a loss caused by earthquake, landslip, subterranean fire or volcanic eruption, subsidence, collapse, storm and/or tempest and/or rainwater and/or flood and/or tsunami and/or named cyclone.

Occurrence means an event or series of events consequent upon or attributable to one source or original cause.

Offsite Fabrication means locations where pre-fabrication, repair, remedial or any other work is undertaken in connection with the Insured Project away from the Project Site. The term does not include any location where the Property Insured is being manufactured under a contract of supply or manufacture, in the course of transit or in storage.

Offsite Storage means materials, components and equipment to be incorporated into the Contract Works whilst in storage off site within the Commonwealth of Australia during the Construction Period.

Performance Testing Period means the period for the testing and/or commissioning of the Contract Works or any of its component parts which:

- (a) begins when 'live load' is introduced, including the use of feedstock or other materials for processing or other media to simulate working conditions and in the case of electrical motors, electrical generating, transforming, converting or rectifying plant or machinery, connection to a grid or other load circuit or as more particularly described in a Contract, and
- (b) ends at the completion of testing and commissioning under the Contract, but in no case exceeding the Performance Testing Period shown in the Schedule.

Any testing and/or commissioning that exceeds the Performance Testing Period stated in the Schedule will continue to be covered only after the Insurer's prior approval is obtained.

Construction Risk Insurance

If as a result of a peril insured it becomes necessary to repeat any test and/or commissioning or to carry out subsequent test(s) and/or commissioning, the Insurer herein will bear the cost of any such repeated and/or test or commissioning subject to the Policy limits, it being within the cover provided by the Policy and which forms part of the Sum Insured. For the avoidance of doubt, The Insurer will only bear the cost of 2 repeated tests.

Where Performance Testing is performed in stages, any period between the application of 'live load' is not considered to form part of the Performance Testing Period. Any simple functionality test without the application of 'live load' is also not considered to form part of the Performance Testing Period.

Policy Period means the period stated in the Schedule and shall include any subsequent period for which the Insurer agrees to renew this Policy.

Project Site means any location where the Insured is performing the works and includes all surrounding areas in connection with the Insured Project.

Property Insured means:

- (a) **Contract Works** being property of every description used or to be used in part of or incidental to or having any connection whatsoever with the Insured Project. It shall include but not be limited to:
 - i. the whole of the works, whether permanent or temporary works, travelling forms, structures, materials and supplies including free supplied materials;
 - ii. temporary buildings, camp buildings and all other project buildings and their contents;
 - iii. formwork, falsework, scaffolding, access platforms, hoardings, mouldings, and the like, whether the foregoing be consumable or reusable;
 - iv. consumables, drawings and other documents and Electronic Data; but excluding Construction Plant and Equipment and Existing Property not specified above.
- (b) **Existing Property** being existing buildings, structures, plant, contents and real property of every description, but only in respect of Occurrences during the course of undertaking the Insured Project., Existing Property is specifically excluded under this Policy unless an amount is specified against this item in the Schedule or a specific endorsement to this Policy is issued to include Existing Property.
- (c) **Construction Plant and Equipment** being:
 - i. all construction plant, tools and equipment of every description including spare parts, but excluding subcontractors plant, tools and equipment;
 - ii. employees' tools, equipment and personal property

Construction Plant and Equipment is specifically excluded under this Policy.

- (d) Property described in clauses a, b and c above shall refer to property owned by the Insured or for which they are responsible or have assumed responsibility prior to any event for which a claim may be made hereunder, or for which the Insured has agreed to insure, or in which the Insured has an insurable interest.

Reinstatement Value means:

- (a) where the property is lost or destroyed, the cost of replacement thereof by similar property in a condition equal to, but not better nor more extensive than, its condition when new;
- (b) where the property is Damaged and can be repaired, the cost necessarily incurred to restore the property to a condition substantially the same as, but not better nor more extensive than its condition when new, plus the cost of dismantling and re-erection incurred for the purpose of effecting the repairs.

Interpretation

The following Interpretation will apply to this Policy.

Headings

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

Singular/Plural

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

Insuring Clauses

The Insurer will indemnify the Insured as follows:

1. Construction Period

Damage not specifically excluded to the Property Insured in accordance with the Basis of Settlement, happening within the Geographical Scope stated in the Schedule including whilst in Offsite Fabrication, Offsite Storage or in transit or transshipment including loading and unloading or elsewhere during the Construction Period.

2. Defects Liability Period

Damage not specifically excluded to the Property Insured in accordance with the Basis of Settlement, provided Damage:

- (a) occurs during the Defects Liability Period; and
- (b) originates from:
 - (i) a cause prior to the commencement of the Defects Liability Period; or
 - (ii) an act or omission of any of the Insured parties or some other cause occurring in connection with an Insured party complying with the provisions of the Contract during the Defects Liability Period.
 - (iii) Where the contract provides for the defects liability period to be extended upon repair or rectification of a defect, coverage under section 2 shall be extended for a further period as required by the Contract up to a maximum of an additional 36 months only in respect of Property Insured (which has been rectified or repaired) for which the contractual extension of the defects liability period applies.

3. Basis of settlement

In the event of Damage to Property Insured the amount payable shall be in accordance with the Basis of Settlement stated in the Schedule in respect of the property designated therein.

(a) Reinstatement Value

Where the Basis of Settlement is 'Reinstatement Value' the following provisions shall apply.

- (i) The work of rebuilding, replacing, repairing or restoring as the case may be (which may be carried out upon any other site(s) and in any manner suitable to the requirements of the Named Insured, but subject to the liability of the Insurer not being thereby increased), must be commenced and carried out with reasonable dispatch;
 - (ii) Where Property Insured has been Damaged and where the Named Insured elects not to reinstate such Property Insured, the Insurer will pay to the Named Insured an amount equal to the cost necessary to replace, repair or rebuild the Property Insured to a condition substantially the same as but not better nor more extensive than its condition at the time the Damage occurred;
 - (iii) If the Property Insured is reasonably abandoned because the cost of recovery would exceed the amount payable under this Policy in respect of such property, it shall be deemed to be a constructive total loss and settlement shall be made in accordance with the above provisions (as applicable).
- (b) The total amount payable by Insurer will also include any additional amounts as provided in Insuring clauses 4 to 6 (as applicable).
 - (c) In all cases, (except as is excluded by (d) below), the cost of reinstatement (including the provisions of paragraph (ii) herein), shall refer to the final cost to the Named Insured after completion of the repair, reinstatement or replacement work, if required by the Named Insured, the cost of transporting the item to the place where the Damage occurred and including a reasonable margin for profit administration costs and overheads where such work is carried out in whole or in part by the Insured.

- (d) In the event that the financier elects to have a cash payment rather than reinstatement, the cash settlement shall be for the amount equivalent to the Reinstatement Value as described, less any margin for profit that would have been payable to the Insured had the Damage to the Property Insured been reinstated.

4. Local authorities clause

The indemnity provided by this clause 4 shall, subject to the Sub-limit of Liability stated in the Schedule (if any), extend to include the extra costs (including demolition or dismantling) of Damaged Property Insured necessarily incurred to comply with the requirements of any government department, local government or other statutory authority, provided that the indemnity under this clause shall only apply as a result of Damage.

5. Undamaged foundations

In the event of Damage to the Property Insured but the foundations are not destroyed, and due to the exercising of statutory powers and/or delegated legislation and/or authority by any government or authority, the reinstatement or replacement of the Property Insured is required to be carried out upon another site, then the abandoned foundations will be considered as being lost or destroyed. If the presence of the abandoned foundations increases the resale value of the original site, then such increase in resale value shall be regarded as salvage and the amount thereof shall be deducted from the payment to the Named Insured. The term "foundations" is deemed to include services such as, but not limited to, conduits, pipes, cables and wiring built into the footings and foundations (including concrete floor slabs).

6. Output replacement

If any item(s) of the Property Insured having a measurable output is Damaged (in whole or in part) and which is capable of replacement with a new item(s) which performs a similar function, then the amount payable by the Insurer in respect of such property shall be on the following basis.

- (a) If any lost or destroyed Property Insured is to be replaced by an item(s) which has the same or a lesser total output, then the amount payable thereof is the new installed cost of such replacement item(s) as would give the same total output as the Damaged item(s).
- (b) If any Damaged Property Insured is to be replaced by an item(s) which has a greater total output and the replacement value is no greater than the value of the Damaged item(s) then the amount payable shall be the cost of the replacement item(s) and no deduction shall be made due to improved output.
- (c) If any Damaged Property Insured is to be replaced by an item(s) which has a greater total output and the replacement value is greater than the value of the Damaged item(s) then the insurable value thereof is that proportion of the new installed cost of the replacement item(s) as the output of the Damaged item(s) bears to the output of the replacement item(s). The difference between the insurable value as defined and the new installed cost of the replacement item(s) shall be borne by the Insured.
- (d) This clause does not apply if the Basis of Settlement against the relevant property is stated in the Schedule as Indemnity Value.

Extensions applying to this Policy

The following Extensions apply to this Policy:

1. Additional Costs and Expenses

The Insurer shall, in addition to the Limits of Liability, pay the following extra costs and expenses incurred by or on behalf of the Insured (over and above those already included in the Contract Value), subject to the Sub-limits of Liability stated in the Schedule (if any):

1.1 Removal of Debris and Other Costs

(a) Debris

Costs or expenses reasonably and necessarily incurred in removing, clearing, dismantling or demolishing debris, materials, Property Insured, or other property, ponded water or other substances (including the removal, clearance or demolition of any of the Property Insured, which is no longer fit for the purpose for which it was intended), and clearing drains, sewers service mains and the like including dewatering affecting the Project arising out of Damage or other event Insured by this Policy.

(b) Shoring, Propping and Temporary Protection

Costs and expenses necessarily incurred by or on behalf of the Insured:

(i) for shoring up, propping, underpinning or for the removal of and/or the carrying out of temporary repairs for the protection or safety of Property Insured or injury;

(ii) in the purchasing and/or hiring and in the erection and dismantling of hoardings, barriers, fences and any other forms of protection which the Insured must provide in order to comply with the requirements of any government department, local government or other statutory authority.

The indemnity under this clause 1.1(b) shall only apply where the costs and expenses are incurred as a result of actual or imminent Damage or are necessary to prevent Damage.

1.2 Expediting Expenses

Costs and expenses incurred in connection with or incidental to expediting the commencement, carrying out or completion of the repair, reinstatement or replacement of the Property Insured consequent upon Damage or any other event Insured by this Policy. Such costs and expenses shall include but not be limited to:

- (a) express or chartered carriage, delivery or freight (including by sea or air);
- (b) chartered and/or other travel (including by sea or air) of the Insured's directors, employees, agents, sub-contractors, consultants or representatives;
- (c) overtime or penalty rates of wages and other related allowances and payments;
- (d) hire of additional labour, plant, equipment, materials, expertise or services;
- (e) the cost of earlier than usual delivery or manufacture and/or the cost of purchasing additional resources;
- (f) accommodation and boarding costs (including meals and other costs associated therewith);
- (g) additional administrative and/or overhead expenses.

1.3 Professionals' Fees

Salaries, expenses, fees and other costs of clerks of works, project managers, architects, surveyors, quantity surveyors, project coordinators, engineers, legal and other consultants for estimates, plans, designs, specifications, quantities, tenders and supervision necessarily incurred in reinstatement consequent upon Damage to the Property Insured, but excluding fees for the preparation of any claim under this Policy.

1.4 Mitigation Expenses

Reasonable costs and expenses incurred by or on behalf of the Insured in respect of the mitigation, containment, elimination or suppression of an actual or imminent threat to life or actual or imminent Damage to the Property Insured. Such costs and expenses shall include but not be limited to:

- (a) the payment for additional labour (including the Insured's employees), services or resources;
- (b) the cost of replenishing fire fighting appliances or systems and costs and charges incurred for the purpose of shutting off the supply of water or any other substance following the accidental discharge or escape from intended confines of any such substance, whether from fire protection equipment or otherwise.

1.5 Search and Locate Costs

Leak search and other costs incurred following irregularities discovered in the results of a hydrostatic or other testing procedure. Such costs will include but not be limited to:

- (a) the cost of hiring, operating and transporting apparatus;
- (b) the cost of all associated earthworks;

and are payable notwithstanding that Damage may not have occurred to the affected item.

1.6 Claim Preparation Costs

Reasonable costs and expenses as may be payable by the Insured and not otherwise recoverable in connection with or incidental to preparing, collating, auditing and/or qualifying claims under this Policy.

1.7 Government Costs

- (a) Any fee, contribution or other impost (excluding fines and/or penalties) payable to any government department, local government or other statutory authority, where payment of such fee, contribution or impost is a condition precedent to the obtaining of consent to reinstate Property Insured.
- (b) Any fee contribution or other impost (excluding fines and/or penalties) payable to any government department, local government or other statutory authority for services rendered or equipment supplied for the purpose of helping to prevent, mitigate or confine further actual Damage at or in the vicinity of a Project Site.

1.8 Inflation Protection

In the event of delay in completion of any reinsured Contract (or part thereof) being incurred solely by reason of Damage to Property Insured which is indemnified hereunder, this Policy shall indemnify the Insured in respect of the amount by which the ultimate cost of construction of those parts of the project not suffering such Damage and being unbuilt or incomplete at the date of the Damage should exceed the cost of construction had no such Damage or consequent delay occurred.

Provided always that:

- (a) The indemnity provided by this Extension shall apply to the net increase in costs caused by the inflationary effect of escalation in the costs of labour, materials and services which the Insured shall prove to be a direct result of the delay consequent upon indemnifiable Damage.
- (b) No indemnity is given under this Extension in respect of increased construction costs incurred:
 - (i) in consequence of any other delay not referred to above;
 - (ii) by reason of any improvement or change in methods of working or construction;
 - (iii) in redesigning the project, or incurred as a result of such redesign;
 - (iv) for the acceleration of the progress of the contract or work or to expedite repairs or to construct the project at a faster rate than previously achieved.
- (c) No indemnity is provided in respect of the payment of penalties or liquidated damages, nor in respect of costs incurred to avoid such payment.

- (d) Furthermore, the Insurer's obligation to indemnify the Insured in accordance with this Extension will be reduced to the extent that the net increase in construction cost is recovered by the Insured from another party.

1.9 Sue and labour

Sue and labour and other costs incurred for general average contributions, the salvage, rescue, recovery or retrieval of Property Insured, together with the cost of dismantling and transportation of property to an appropriate place for assessment of any Damage including any transportation costs returning the Property Insured to the Project Site or storage yard once it has been repaired or replaced. Such costs and expenses shall be covered notwithstanding the fact that the loss may not have arisen from physical damage to the item affected.

For the purpose of claims for general average contributions and salvage charges recoverable hereunder, the Property Insured shall be deemed to be Insured for its full contributory value.

2. Plot ratio indemnity

In the event of Damage to Property Insured and as a result of the exercise of statutory powers and/or authority by any government authority, the reinstatement or replacement of such Property Insured is prohibited or is only permissible subject to a reduced floor space ratio index and/or to the payment of certain fees and contributions as a prerequisite to reinstatement or replacement, then the Insurer agrees to pay to the Insured in addition to any amount otherwise payable:

- (a) the difference between the actual cost of reinstatement or replacement incurred in accordance with a reduced floor space ratio index and the cost of reinstatement or replacement which would have been incurred had a reduced floor space ratio index not been applicable;
- (b) the amount of any fees, contributions or other impost payable to any government department, local government or other statutory authority where such fee, contribution or impost is a condition precedent to consent being given to the reinstatement or replacement of such property;
- (c) the amount of any additional costs and expenses incurred by or on behalf of the Insured as a result of alterations to the specifications of such property brought about by the reduced floor space ratio index as aforesaid.

In arriving at the amount payable under clause (a) above, any amount paid by the Insurer shall include any extra costs of reinstatement or replacement as are reinsured under Insuring clause 4.

3. Civil authority

This Policy is extended to include loss resulting from Damage by civil authority during a conflagration or other catastrophe incurred for the purpose of retarding the same.

Exclusions applying to this Policy

This Policy does not provide indemnity in respect of:

1. Defective Work

At the option of the Insured at the time of Damage giving rise to a claim under this Policy either:

(a) Defects (LEG 2/96)

all costs rendered necessary by defects of material, workmanship, design, plan or specification and should Damage occur to any portion of the Property Insured containing any of the said defects the cost or replacement or rectification which is hereby excluded is that cost which would have been incurred if replacement or rectification of the Property Insured had been put in hand immediately prior to the said damage.

OR

(b) Defects (LEG 3/06)

all costs rendered necessary by defects of material, workmanship, design, plan or specification, however should Damage (which for the purposes of this Exclusion 1 shall include any patent detrimental change in the physical condition of the Property Insured) occur to any portion of the Property Insured containing the said defects the cost of replacement or rectification which is hereby excluded is that cost incurred to improve the original material, workmanship, design, plan or specification.

For the purpose of this Policy, and not merely this Exclusion 1, it is understood and agreed that any portion of the Property Insured shall not be regarded as Damaged solely by virtue of the existence of any defect of material, workmanship, design, plan or specification.

2. Consequential loss

Liquidated damages or penalties for non-completion of or delay in completion of the Contract or non-compliance with contract conditions or consequential loss, other than as specifically provided under this Policy.

3. Corrosion, wear and tear

Damage directly caused by:

- (a) normal wear and tear;
- (b) rust, oxidation, corrosion or gradual deterioration, in each case when due to normal atmospheric conditions or other gradual causes;

but this Exclusion 3, shall be limited to the smallest component part of the Property Insured which is Damaged and shall not apply to any other part(s) lost or damaged in consequence thereof.

4. Aircraft or waterborne craft

Aircraft or waterborne craft or plant and equipment permanently mounted thereon exceeding 12 metres in length.

5. Disappearance or shortage

Loss due to disappearance or revealed by inventory shortage alone, unless the shortage can be reasonably attributed to burglary, theft, pilferage or like dishonesty of persons other than the Insured.

6. Money

Damage to cash, bank notes, treasury notes, cheques, postal orders, money orders, stamps or securities bills of exchange, bonds, deeds, manuscripts, promissory notes, tokens and vouchers.

7. Transits outside Australia

Damage to Property Insured in the course of ocean marine shipment between countries or transit by air between countries, but in no case shall this Exclusion 7 exclude Australian coastal transits.

8. Radioactive

Any loss, damage, liability or expense directly or indirectly caused by or contributed to by or arising from:

- (a) ionizing radiation from or contamination by radioactivity from any nuclear fuel or from any nuclear waste or from the combustion of nuclear fuel;
- (b) radioactive, toxic, explosive or other hazardous or contaminating properties of any nuclear installation, reactor or other nuclear assembly or nuclear component thereof;
- (c) any weapon, operation or device employing atomic or nuclear fission and/or fusion or other like reaction or radioactive force or matter; or
- (d) the radioactive, toxic, explosive or other hazardous or contaminating properties of any radioactive matter
- (e) the use of any nuclear reactor, atomic piles, particle accelerators, generators or similar devices
- (f) the use, handling, transportation of any radioactive material.

This exclusion does not apply to radioactive isotopes or radium or radium compounds which have reached the final stage of fabrication, when used and/or stored away from the place where such are made or produced and when used exclusively incidentally to ordinary industrial, educational, scientific medical or research pursuits.

9. Electronic Data and Software

This Policy does not insure, loss, damage, destruction, distortion, erasure, corruption or alteration of Electronic Data from any cause whatsoever (including but not limited to Computer Virus) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

However, in the event that a peril listed below results from any of the matters described in paragraph above, this Policy, subject to all its terms, conditions and exclusions will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril. Listed Perils: Fire, Water Damage, Explosion

Electronic Data Processing Media Valuation

Should Electronic Data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the Electronic Data from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such Electronic Data. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However, this Policy does not insure any amount pertaining to the value of such Electronic Data to the Assured or any other party, even if such Electronic Data cannot be recreated, gathered or assembled.

10. War

Any loss or damage occasioned by or through or in consequence directly or indirectly of any of the following occurrences:

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power;

This Exclusion also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

Conditions applying to this Policy

The following Conditions apply to this Policy.

1. Limits of Liability

- (a) The liability of the Insurer for any one Occurrence at any one situation shall not exceed the Limits of Liability and the cumulative amounts of the Sub-limits of Liability stated in the Schedule.
- (b) The Limits of Liability and Sub-limits of Liability shall apply in excess of the amount of any relevant Excess.

2. Escalation

If during the Construction Period, the anticipated final Contract Value of a Contract or series of Contracts in connection with one project exceeds the Limit of Liability for the Contract Works, then the Limit of Liability for Contract Works shall be increased by the percentage that the amount the anticipated final Contract Value for such Contract(s) exceeds the estimated Contract Value at commencement of the Construction Period of the Contracts(s). The total amount of all such increases shall not exceed the amount of the Escalation Percentage stated in the Schedule multiplied by the amount set against the Limit of Liability for Contract Works.

3. Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess stated in the Schedule in respect of each Occurrence. If a series of claims are made under this Policy arising out of the one Occurrence then only one Excess shall apply.
- (b) Non-aggregation of Excesses
- (c) 72 Hour clause

For the purpose of the application of any Excess, all Damage resulting from fire, earthquake, cyclone, flood, storm and/or tempest, occurring during each period of 72 consecutive hours shall be considered as one Occurrence where such peril is sporadic in its sweep and scope. The Insured shall select the time from which any such period shall commence but no two selected periods shall overlap.

Any one Occurrence which exceeds 72 hours in duration shall be deemed to be one Occurrence in respect of application of any Excess.

- (d) Inland transit

If a transit Excess is specified in the Schedule, such Excess shall apply to Property Insured in the course of loading of the Property Insured, whilst in transit, including any incidental storage and until unloaded at the final destination.

4. Claims procedure

The Named Insured shall upon becoming aware of an event or loss giving rise or likely to give rise to a claim under this Policy:

- (a) give notice thereof as soon as reasonably practicable to the Insurer;
- (b) at the expense of the Insurer take all such steps as are reasonable to mitigate the actual or potential amount of the claim;
- (c) as soon as reasonably practicable thereafter submit a claim in writing to the Insurer;
- (d) produce to the Insurer or to any person officially designated by it all such details, proof and particulars as may be reasonably required by it and permit extracts and copies of such documentation to be made and retained;
- (e) The Insured will also maintain accurate claims data in respect of all claims under the Excess payable in respect of the Policy.

It is understood and agreed that any Insured shall be entitled to take immediate action to avoid danger to persons or property and/or undertake interim repairs to allow Insured Project to continue and that such action shall in no way prejudice or invalidate the relevant Insured's position or entitlement with respect to any claim hereunder.

5. Insurers' rights and subrogation

- (a) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurer shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (b) The Insured shall, at the request and the expense of the Insurer, do and agree to doing all acts and things as the Insurer may reasonably require to preserve and enforce any rights the Insured may have against anyone in respect of Damage to Property Insured.

6. Multiple Insured's clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 6), cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurer to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The Insured parties' will, to the extent allowed under Contract, at all times preserve the various contractual rights and agreements entered into by the Insured parties and contractual remedies of such parties in the event of loss or Damage.
- (c) The Insurer shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this clause 6 as a "Vitiating Act".
- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Policy Period, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurer agrees to waive all rights of subrogation that they may have or acquire against:
 - (i) any Insured other than those defined in the Insured definition (d)iv and (d)v in circumstances where indemnity is not provided to that Insured under this;
 - (ii) at the option of the Insured any other parties or persons, subject to the Insured waiving rights of subrogation prior to the loss, but only when required to do so under Contractexcept where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurer may enforce such rights against the party committing the Vitiating Act.

7. Non Contribution

The Insurer agrees that despite the existence of other policy/ies which may provide cover for the same risk being held by any number of Insured parties, that they will not seek contribution in respect of losses paid by this insurance. It is understood that Insurer will be unable to seek contribution under section 76 or section 45 of the Insurance Contracts Act 1984.

8. Notices

- (a) The Named Insured shall address all notices or communications required by this Policy to the Insurer. The Insurer shall address all notices or communications required by this Policy to the Named Insured.
- (b) The Insurer will accept notice of a claim by any Insured as notice by all Insured's under this Policy. Where the Insured is required under contract to include a provision that the Insurer provide any notice under this Policy to all Insured's, the Insurer agrees to be bound by this undertaking.

- (c) If a Nominee for Insurer Notices is shown in the Schedule, the Insurer agrees to give the nominee 30 business days prior notice in the event of:
- (i) the cancellation or expiry of this Policy before completion of the Defects Liability Period due to non payment of premium or for any other cause;
 - (ii) the Insurer giving any notice under this Policy.

9. Declarations and Premium payment

As soon as is practicable following the completion of the Insured Project, the Named Insured will declare to the Insurer the total final Contract Value for work completed during the Policy Period. The premium will be calculated in respect of the Insured Project, by applying the agreed rate on the difference between the estimated and final and projected (as applicable) total Contract Value for the Insured Project;

The premium paid to the Insurer is a minimum and deposit premium, and as such the Insurer shall not be called upon to return any premium under this Policy due to a difference in final and project Contract Values.

10. Extension to Construction Period

Despite any Construction Period limitation stated in the Schedule the Insurer agrees to automatically grant an extension to a Contract's Construction Period, provided at the commencement of the Contract, the Named Insured's anticipated Construction Period did not exceed such period and provided that the Construction Period does not exceed 36 Months in Total.

After first becoming aware that the completion date will exceed the Construction Period limitations stated in the Schedule, the Named Insured agrees to notify the Insurer as soon as possible (but no later than the Construction Period limitation stated in the Schedule or any revised period agreed by Endorsement), the revised estimated completion date.

Extensions to the estimated Construction Period of up to 30 days shall be at no additional cost. For extensions beyond 30 days, the Insurer shall be entitled to charge the Named Insured an additional premium, but in no case shall the additional premium charged be greater than pro-rata of the premium for the particular Contract. Extensions to the estimated Construction Period do not automatically extend the Performance Testing Period or the estimated Defects Liability Period, any request for extension to these periods will only be considered at terms and Conditions to be agreed by the Insurer.

Notwithstanding the above, the Construction Period and Defects Liability Period will not exceed 60 months in total duration.

11. Insolvency or bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurer from any of their obligations assumed under this Policy.

12. Assignment

If required, the Insurer will consider the assignment of this Policy to another party upon application by the Named Insured. Such agreement shall not be unreasonably withheld.

13. Hold harmless agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any indemnifiable event under this Policy, this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurer.

14. Cancellation or non-renewal of this Policy

- (a) By the Insurer

Subject to Condition 6 and 8(c), the Insurer may cancel this Policy in accordance with Section 60 of the Insurance Contracts Act 1984 (Cth) by serving on the Named Insured sixty (60) days' notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium.

- (b) By the Named Insured

The Named Insured (on behalf of itself and all other Insured's, unless otherwise specified) may cancel:

- (i) this Policy; at any time by giving notice in writing to the Insurer.

- (c) Premium adjustment

After cancellation by the Named Insured, the Premium will be adjusted in accordance with Condition 9. The Named Insured will be obliged to supply to the Insurer such information as is necessary to adjust the Premium.

15. Alterations in material fact, error or omission

- (a) Each Insured shall be covered as if it made its own proposal for this insurance;
- (b) Any declaration, statement or representation made in any proposal or submission will be construed as a separate declaration, statement or representation by each Insured; and
- (c) Any knowledge possessed by any Insured shall not be imputed to the other Insured(s).
- (d) Any fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty by any individual Insured party shall not prejudice or invalidate the rights of the other parties comprising the Insured who are themselves not guilty of such fraud, misrepresentation, misdescription, non-disclosure or breach of Condition or warranty.
- (e) The Named Insured undertakes to immediately notify the Insurer as soon as the alteration or omission becomes known to them, and the Insurer shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurer and the Insured.

16. Progress payments

Provided that indemnity has been admitted under this Policy, progress payments on account of any claim shall be made to the Named Insured or as they direct, at such intervals and for such amounts as may be agreed upon production of an acceptable report by the Loss Adjuster (if appointed), provided quantum has reasonably been established and such payments shall be deducted from the amount finally determined upon final adjustment of the claim.

17. Appointment of Loss Adjuster

- (a) Loss adjusters appointed to investigate and quantify losses that are potentially indemnifiable under this Policy are agents of the Insurer and their fees and related expenses shall be payable by the Insurer. The Insurer is authorised to appoint a loss adjuster from the panel of Loss Adjusters stated in the Schedule.
- (b) The Insurer agrees that the agreed Loss Adjuster's documents, transcripts, reports (verbal and written) shall be made available to the Named Insured.
- However, where indemnity under this Policy has not been admitted by the Insurer, the Insurer shall be entitled to direct the agreed Loss Adjuster to:
- (i) remove any information from such documents that pertains to whether or not the Insurer should admit liability to indemnify the Named Insured; or to the quantum of the Insurers liability to the Named Insured; and
- (ii) provide a separate confidential report to the Insurer in respect to the matters outlined in Condition 17(b)(i)

unless such matters are discoverable at law.

18. Claim payments

Any claim under this Policy shall be settled with and paid to the Loss Payee stated in the Schedule or as they may direct.

19. Currency

All monetary amounts expressed in this Policy are in the denomination stated in the Schedule. The Premium and losses shall be paid in such currency or as otherwise agreed between the Insurer and the Insured.

20. Jurisdiction and Service of Suit

The Insurer agrees that:

- (a) this Policy is governed by the laws of Australia;
- (b) in the event of a dispute arising under this Policy, at the request of the Named Insured, the Insurer will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court;
- (c) any summons notice or process to be served upon the Insurer may be served upon the Nominee for Legal Service stated in the Schedule. Such nominee has authority to accept service and to enter an appearance on the Insurer's behalf. If directed by the Insured, the nominee shall give a written undertaking that the nominee will enter an appearance on the Insurer's behalf.

21. Master and Agreed Rate Contracts

For the purpose of applying the Construction Period, Contract Value and other Policy provisions, each Contract or project undertaken under a separate Contract or work order or purchase order or similar arrangement, will be deemed to be a separate Contract, irrespective of the existence of a service agreement or agreed rate or similar Contract or master agreement that applies over more than one Contract.

22. Cessation of Work

Any cessation of work exceeding 90 consecutive days, or immediately following abandonment shall be notified to the Insurer. The Insurer reserves the right to alter the terms and Conditions of this Policy, including cancellation after the 90 consecutive days.

23. Marine/Non Marine Loss Sharing

The Insured undertakes to examine each item of the Property Insured as soon as practicable after arrival at the Project Site for possible Damage sustained during transit.

In the case of packed items which are to be left in their packaging until a later date, the packaging is to be individually visually examined for signs of possible Damage and where such Damage is visible, the items are to be unpacked and inspected and any Damage discovered reported to any other applicable marine cargo/transit insurer.

Notwithstanding the above, in the event of Damage to the Property Insured being discovered after the risk has terminated under any marine cargo/transit insurance or any subsequent period of discovery attaching thereto (whichever shall be the later), and after proper investigation it is not possible to ascertain whether the cause of such Damage happened prior to termination of the marine venture or subsequently, the Insurer shall contribute 50% of the loss provided that marine cargo /transit insurers also agree to contribute 50% of such loss. Any such settlement will be without prejudice to the subsequent final apportionment of the loss agreed between the Insurer and the marine cargo /transit insurers.

Should the Insurer settle a claim as described by the provisions of this clause, the applicable Excess shall be reduced proportionally to the contribution made by the Insurer to the total loss.

24. Tunnelling Code of Practice

In relation to Tunnel Works, the Insured shall use all reasonable endeavours to comply with the principles of the edition of the “Code of Practice for Risk Management of Tunnel Works” current at the commencement of this Policy.

The Insurer shall have the right to appoint a representative who shall have the right – at reasonable times and with reasonable advance notice – to enter the site of the Tunnel Works and to review documentation for confirming the Insured’s compliance with this Condition.

In the event of the Insurer becoming aware of what the Insurer consider to be a failure to maintain the levels of best practice, the Insurer may (but shall not be required to) inform the Named Insured of the nature of their failure specifying the remedial measures required by the Insurer and provide a reasonable period within which these shall be completed. The Insured will then ensure that their representatives, all relevant consultants, sub-contractors and other project participants are made aware promptly of the relevant breach and that the remedial measures are carried out within the period stipulated by the Insurer.

25. Dispute Resolution

Where any dispute of difference between the parties arising out of or in connection with this Policy, including formation and validity and whether arising during or after the Period of Insurance, has not been settled through negotiation, both parties agree to try in good faith to settle such dispute by non-binding mediation, before resorting to arbitration in the manner set out below.

26. Arbitration

Any dispute or difference whatsoever arising in connection with this Policy shall be referred to the arbitration of three arbitrators. One arbitrator shall be chosen by each party and the third arbitrator, who shall act as chairperson, shall be a nominee of the President, for the time being, of the Institute of Arbitrators and Mediators Australia. The chairperson shall have the deciding vote in the absence of a majority. The arbitrators may determine any question that arises for determination in the course of the proceedings by reference to consideration of general justice and fairness. The arbitrations shall be held in Sydney, New South Wales in accordance with and subject to the provisions of the relevant Commercial Arbitration Act.

Endorsements applying to this Policy

It is hereby agreed and declared that the following Endorsements attach to and form part of this Policy:

1. Incomplete Trenches

The Insurer will indemnify the Insured against an Insured Occurrence for all Incomplete Trenches only up to a maximum combined length of 3km any one section / 10km in the aggregate any one Insured Occurrence.

The Definition of Incomplete Trenches being partially or completely excavated trenches (including any shafts or pits) with or without pipes, ducts or cables laid therein. This definition will apply at any stage of construction prior to completion of backfill and final compaction.

SUPPLEMENTARY EXCLUSIONS

The Insurer will not indemnify the Insured against:

- (a) the cost of rectification of subsidence of completed backfill regardless of the cause of subsidence;
- (b) clearing and cleaning of pipes, the ends of which have not been sealed by the end of each working day to prevent penetration by water and/or detritus;
- (c) displacement of pipes or ducts by water unless such pipes or ducts have been secured by the end of each working day by backfilling placed in a manner intended to counteract pipe buoyancy.

This Endorsement is subject otherwise to the terms Exclusions and Conditions of this Policy to which it is attached.

2. Radiography of Welds

Notwithstanding the Conditions, provisions and other Endorsements of this Policy with respect to pipes with welded steel joints greater than 2,000 metres in length only. The Insurer will not indemnify the Insured for any Damage to steel pipelines unless 100% of all welds are subjected to radiography.

3. Unsealed Roads

The Insurer's liability for any Occurrence in respect of incomplete roads will not exceed the cost of repairs to 1km any one section and an Aggregate Length of 5km of Incomplete Roadwork.

The Definition of Incomplete Roadwork being Roadwork's including cuts, fills, batters, berms, shoulders, kerbs, gutters and drains at any stage of construction between commencement of initial excavation or grading and acceptance by the Principal of the final surface.

The Definition of Section of Incomplete Roadwork being all work along the path of the road between the point of initial excavation or grading of previously undisturbed ground and the point of completion of the final road surface.

The Definition of Aggregate Length of Incomplete Roadwork being the total length of all Section of Incomplete Roadwork anywhere on the construction site at the time of loss or damage.

This Policy does not cover:

- a. Damage caused by, or the aggravation of Damage caused by, the passage of road vehicles or construction plant and equipment over incomplete work.
- b. The cost of rectification of subsidence of road or paving surfacing or backfill regardless of the cause of subsidence.
- c. Any cost of removal of water, silt, other detritus or collapsed excavation wall material exceeding the amount shown in the Policy Schedule as the Sum Insured for the cost of Removal of Debris and Other Costs.

If the actual Aggregate Length of Incomplete Roadwork lost or damaged in any one Occurrence exceeds the indemnifiable Aggregate Length limit stated above, the Insured must select the Sections of Incomplete Roadwork which will comprise the indemnifiable limit.

This Endorsement is subject otherwise to the terms, Conditions and Exclusions of this Policy to which it is attached.

4. Directional Drilling

Subject to the terms, Exclusions, Conditions and provisions contained in the Policy or endorsed thereon, the Insurer will indemnify the Insured up to the Limit of Liability shown in the Schedule for Damage arising during horizontal directional drilling operations below rivers, railway embankments, motorways, only if a soil analysis (soil samples, test borings, sieve analyses) required for proper drilling operations in accordance with technical standards has been carried out prior to the commencement of work and if the contractor is familiar with the drilling technique.

The Insurer shall not indemnify the Insured for losses or damage caused by or resulting from:

- (a) missing the target point of the drilling, deviations from the scheduled direction;
- (b) loss of or change in the drilling mud (e.g. bentonite);
- (c) damage to the outer insulation of pipeline in the area of horizontal directional drilling.

5. Normal action of the sea

Subject to the terms, Exclusions, Conditions and provisions contained in the Policy or endorsed thereon:

Exclusions:

The Insurer shall not indemnify the Insured in respect of costs incurred for:

- (a) loss or damage to berths, wharves, jetties and the likes caused by their subsidence or sinking,
- (b) normal action of the river/sea,
- (c) loss of or damage to more than 200m of uncompleted or unprotected seawall, quay or other marine structure,
- (d) loss damage or liability due to soil erosion,
- (e) dredging or re-dredging,
- (f) lost or damaged fill material,
- (g) replacing or rectifying piles or retaining wall elements:
 - (i) which have become misplaced or misaligned or jammed during their construction,
 - (ii) which are lost or abandoned or Damaged during driving or extraction, or
 - (iii) which have become obstructed by jammed or Damaged piling equipment or casings,
- (h) rectifying disconnected or declutched sheet piles,
- (i) rectifying any leakage or infiltration of material of any kind,
- (j) as a result of piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity,
- (k) for reinstating profiles or dimensions,
- (l) any floating and other equipment such as caissons, barges and the like and liabilities there from,
- (m) any mobilisation/ demobilisation and /or other costs which arise for the standby/waiting on weather of offshore construction equipment,
- (n) loss or Damage to pulling wires, anchors, chains and buoys,
- (o) loss or Damage due to impact of shipping,
- (p) marine liability.

Definitions:

Normal action of the sea means the state of the sea, which manifests itself up to No.8 on the Beaufort scale, or the state of the tides, current and wave action of the sea, which must be statistically expected to occur once during a 20 year period, whichever is the more onerous.

Warranties:

Subject otherwise to the terms, Exclusions, Conditions and provisions contained in the Policy or endorsed thereon, the Insured shall;

- (a) Receive weekly weather updates from the local meteorological office during the Construction Period and make regular contact to the local meteorological office within 12 hours' notice of an imminent storm.
- (b) Make the navigational distance of public traffic to the Project Site a minimum of 200m.

6. Piling Foundation and Retaining Wall Works

Subject to the terms, Exclusions, provisions and Conditions contained in the Policy or endorsed thereon, the Insurer shall not indemnify the Insured in respect of expenses incurred;

- (a) for replacing or rectifying piles or retaining wall elements:
 - (i) which have become misplaced or misaligned or jammed during their construction,
 - (ii) which are lost or abandoned or Damaged during driving or extraction, or
 - (iii) which have become obstructed by jammed or Damaged piling equipment or casings,
- (b) for rectifying disconnected or declutched sheet piles,
- (c) for rectifying any leakage or infiltration of material of any kind,
- (d) for filling voids or for replacing lost bentonite,
- (e) as a result of any piles or foundation elements having failed to pass a load bearing test or otherwise not having reached their designed load bearing capacity,
- (f) for reinstating profiles or dimensions.

This Endorsement shall not apply to loss or Damage caused by natural hazards.

7. Over Topping Of Cofferdams

Notwithstanding the Conditions, provisions and other Endorsements of this Policy the Insurer shall only indemnify the Insured for loss of or Damage to the Contract Works arising from the over-topping of cofferdams caused directly by precipitation, flood or inundation if adequate safety measures have been taken in the design and execution of the coffer dam.

For the purposes of this Endorsement adequate safety measures shall mean that at all times during the Construction Period, allowance is made for precipitation, flood or inundation to a minimum return period of 20 years for the Project Site on the basis of the statistics prepared by the meteorological agencies or other agencies agreed to by the Insurer.

8. Dams And Water Reservoirs

Subject to the terms, Exclusions, provisions and Conditions contained in the Policy or endorsed thereon, the Insurer shall not indemnify the Insured in respect of:

- (a) grouting of soft rock areas and/or other additional safety measures even if their necessity arises only during construction,
- (b) expenses incurred for dewatering even if the quantities of water originally expected are substantially exceeded,
- (c) loss or Damage due to breakdown of the dewatering system if such breakdown could have been avoided by sufficient stand-by facilities,
- (d) expenses incurred for additional sealing or waterproofing and additional facilities for the discharge of run-off and/or underground water,
- (e) loss or Damage due to subsidence if caused by insufficient compacting,
- (f) cracks and leakage.

General, Products and Environmental Liability Insurance Policy

Project Insurance



Policy Details

Policy Number:

Project:

Period:

Principal Insured:

Transport for NSW

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General, Products and Environmental Liability Insurance Policy

Project Insurance

i Introduction

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurer agrees to indemnify the Insured to the extent provided herein subject always to the Limits of Liability and Sub-limits of Liability of this Policy.

This Policy incorporates the Introduction, Reinsuring Clauses, Schedule, Sections, Definitions and Interpretation, Conditions, Extensions, Exclusions, Endorsements and any other terms herein contained, which are to be read together. The Insurer agrees that this Policy and any subsequent attaching Endorsements are accepted as their own.

The liability of the Insurer will in no case exceed the Limits of Liability and Sub-limits stated in the Schedule or elsewhere in this Policy.

Signed for and on behalf of the Insurer:

Insurer	Policy No.	Proportion	Signature	Place	Date
Self Insurance Corporation of NSW					

→ **Schedule**

Policy Number:

Named Insured: Transport for NSW
All for their respective rights, interests and liabilities.

Insured:

This Policy also insures other parties as specified in the definition of the Insured herein

Insured Project: All works of any kind or description undertaken by or on behalf of the Named Insured during the Policy Period in respect of the following project:

Contract No.:

Construction Period: From:
To:
Both dates at 4:00pm local time in Sydney, NSW

Defects Liability Period: 12 months in respect of the initial Defects Liability Period

Performance Testing Period: 1 month

Completed Operations Hazard Period: 12 months

Geographical Scope: Anywhere in the Commonwealth of Australia (and overseas locations but only if agreed by the Insurer prior to risk being covered)

Limits of Legal Liability: For Public Liability, Limit of Liability each Occurrence not limited by the number of Occurrences during the Period of Insurance:

\$250,000,000.00

And

For Product Liability, Limit of Liability each Occurrence and in the aggregate during the Period of Insurance for all Occurrences:

\$250,000,000.00

Clause 4 - Defence Costs and other costs are in addition to these limits

Limit of Covered Operations and Completed Operations Liability: Limit of Liability each Incident and in the aggregate during the Period of Insurance: \$20,000,000.00

(Insuring Clauses 2 & 3)

Clause 5 - Defence Costs and other costs are within these limits

Nominee for Legal Service:

icare
321 Kent Street, Sydney NSW 2000
Postal: GPO Box 4052, Sydney NSW 2001

Loss Adjuster(s): The Insurer authorises the following companies to adjust any claim under this Policy, or as otherwise agreed by the Insurer and the Insured:

- Cunningham Lindsay
- Charles Taylor Adjusting
- Crawford & Company
- Harrison Gray
- McLarens

Currency: Australian dollars

Excess:	Insuring Clause	Defence and other Costs	Excess
	Insuring Clause 1	Exclusive of Defence and other costs	\$250,000.00
	Worker to Worker claims	Inclusive of Defence and other costs	\$250,000.00
	Insuring Clause 2	Exclusive of Defence and other costs	\$250,000.00
	Insuring Clause 3	Exclusive of Defence and other costs	\$250,000.00

Premium: As agreed



We are here to help

If you have any questions, you can contact us at any time:

Phone: (02) 7922 5085

Email: cpai@icare.nsw.gov.au

Website: www.icare.nsw.gov.au

Definitions**Definitions applying to Insuring Clause 1 of this Policy****Advertising Injury** means:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of title or of slogan;
- (c) piracy or unfair competition or idea misappropriation under an implied contract; or
- (d) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Named Insured's advertising activities or any advertising activities conducted on behalf of the Named Insured, in the course of advertising the Contract, Business, goods or services.

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Business means the Insured Project stated in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's Employees, first aid, security, fire and ambulance services and maintenance of the Insured's premises and provided in connection with the Insured Project.

Contract means any contract, agreement or undertaking by or on behalf of the Named Insured in connection with the Insured Project.

Occurrence means an event including continuous or repeated exposure to conditions that result in Personal Injury, Property Damage, or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured.

Personal Injury includes:

- (a) bodily injury, illness, disease, shock, fright, loss of consortium and loss of amenities, mental anguish or mental injury, including any resultant death;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) the publication or utterance of libel or slander, or of other defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
 - i. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - ii. when any such publication or utterance is made in the course of or is related to advertising, broadcasting, telecasting or publishing activities conducted by or on behalf of the Insured
- (d) nuisance, wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- (e) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Products means anything after it has left the custody or control of the Insured, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes the Insured Project or other works performed by the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products. Works shall be deemed to be a Product only after expiry of the Construction Period and after they have left the custody or control of the Insured.

Property Damage means:

- (a) physical loss or destruction of or damage to tangible property including the loss of use (total or partial) or any consequential loss resulting therefrom; or

Construction Risk Insurance

- (b) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like.

Worker to Worker Liability means:

- (a) legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- (b) a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer.

solely in respect of workers undertaking work on the Insured Project.

Definitions applying to Insuring Clauses 2 & 3 of this Policy

Biological Contaminants means mould, mildew, fungi, or bacterial matter including any substance produced by, emanating from, or arising out of any such biological contaminants.

Bodily Injury means

- (a) physical injury, sickness or disease sustained by a person, including death resulting therefrom, and solely with respect to Covered Operations (Environmental) Liability item 2.a, any accompanying medical monitoring; and;
- (b) mental anguish or emotional distress.

Clean-up Costs means costs, charges and expenses including reasonable and necessary legal expense incurred with the Insurer's written consent (which shall not be unreasonably withheld or delayed) to investigate, neutralise, remove, remediate, monitor or dispose of Pollutants to the extent required by Environmental Laws or costs, charges and expenses that have actually been incurred by any governmental entity duly acting under the authority of Environmental Laws, or that have actually been incurred by third parties. "Clean-up Costs" also includes Restoration Costs and Emergency Response Costs.

Emergency Response Costs means reasonable and necessary expenses, including legal expenses for the remediation of soil, surface water, groundwater, or other contamination in connection with any Loss for which the Insured is indemnified by this Policy. The Insurer shall not be liable for reasonable and necessary expenses for Emergency Response Costs, including legal expenses, where indemnity is not provided by the Policy or where the Insurer's consent or subsequent agreement (not to be unreasonably withheld or delayed) have not been given.

Environmental Damage means the injurious presence of Pollutants resulting (or which may result) in Clean-up Costs.

Environmental Laws means any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which the Insured Project or activities are being or have been performed.

Excess means the amount specified as the Excess in the Schedule for each and every Occurrence or Incident indemnified by this Policy, and retained by the Insured.

First Incurred means;

- (a) In the case of Bodily Injury, the date of the first exposure of any person to the Pollutants; and
- (b) In the case of Environmental Damage or Property Damage, the date of the first discharge, dispersal, seepage, migration, release or escape of the Pollutants.

If the date of first exposure as described above is before the inception date of the first Policy issued to the Insured by the Insurer providing coverage for Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions resulting from the Insured Project, or cannot be immediately determined, but the progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage continues in fact to exist during the Construction Period, the date of first exposure will be deemed to have occurred only on the inception date of the first Policy issued to the Insured by the Insurer that is applicable to the Insured Project or activities from which the Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions arose.

Construction Risk Insurance

Loss means:

- (a) Monetary awards or settlements of compensatory damages arising out of Bodily Injury or Property Damage, and where allowable by law punitive, exemplary, aggravated, liquidated or multiple damages for such Bodily Injury and Property Damage;
- (b) Civil fines, civil penalties where allowable by law;
- (c) Clean-up Costs;
- (d) Environmental Damage;
- (e) Emergency Response Costs; or
- (f) Defence Costs

Incident means an event giving rise to Pollution Conditions that result in Loss regardless of where such Loss is neither expected nor intended from the standpoint of the Insured.

Mitigation Expense means

- (a) Reasonable and necessary costs incurred to mitigate Pollution Conditions constituting an emergency situation whereby in the absence of such mitigation, Bodily Injury or Property Damage to third parties is imminent;
or
- (b) Clean Up Costs which are incurred pursuant to Environmental Laws.

Natural Resources means land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Commonwealth, any state or local government, any foreign government, or any native tribe.

Pollutants means any solid, liquid, gaseous, thermal irritant or contaminant or poisonous, noxious or polluting matter, including but not limited to smoke, vapour, soot, fumes, odours, acids, alkalis, Biological Contaminants, chemicals including PCB's, low level radioactive materials, electromagnetic fields and waste. Waste includes materials to be recycled, reconditioned or reclaimed, medical including infectious and pathological waste materials; and abandoned or illicit materials. This includes, in any form and of any kind, any goods, products, materials, structures or buildings containing asbestos, asbestos fibres, asbestos dust and asbestos containing materials.

Pollution Conditions means the emission, discharge, dispersal, migration, release or escape of Pollutants. This includes Biological Contaminants including growth thereof. If the Pollutants are naturally occurring, these Pollutants only constitute Pollution Conditions to the extent they are exacerbated by the Insured Project or activities. The entirety of any such emission, discharge, release or escape or any series of interrelated, associated, repeated, or continuous emissions, discharges, releases or escapes shall be deemed to be one Pollution Condition.

Property Damage means:

- (a) physical damage to or destruction of Natural Resources and other tangible property of parties (other than the Insured the subject of legal liability under this policy) including all resulting loss of use and diminution in value of that property; or
- (b) loss of use but not diminution in value of Natural Resources and other tangible property of parties (other than the Insured the subject of legal liability under this policy) that is not physically damaged.

Property Damage does not include Environmental Damage.

Responsible Insured means:

- (a) an officer director or partner or any Insured; or
- (b) the manager or supervisor of any Insured responsible for environmental affair or compliance.

Restoration Costs means reasonable and necessary costs incurred by the Insured with the Insurer's consent, which shall not be unreasonably withheld or delayed, to restore, repair or replace Natural Resources and other tangible property of third parties to substantially the same condition it was in prior to being damaged during work performed in the course of incurring Clean-up Costs. However such restoration shall not exceed the net present value of such property immediately prior to incurring Clean-up Costs or include costs associated with improvements or betterments.

General Definitions applying to this Policy

Contract Types

Where appearing in this Policy, the following Contract Type definitions apply.

Dams, means dams, weirs and hydroelectric projects involving the construction of dams or weirs.

Horizontal Directional Drilling means micro-tunnelling work for the construction of tunnels utilising surface based horizontal directional drilling equipment. This definition does not include tunnels of the type and/or use defined in Tunnel Works.

Off-Shore Works means works which are not land based or not to be connected to land on completion and which are located in excess of 5 kilometres from the nearest land. The term shall include oil rigs and oil platforms (but not including oil platforms when connected to the land on completion). The term shall not apply to pre-fabrication works on land associated with an Off-Shore Works Contract.

Tunnel Works means the construction of underground passageways, subways and/or roads used for the movement of pedestrians or vehicular traffic that is open at both ends, and is constructed by boring, drilling, excavating or digging through the earth, but shall not include Horizontal Directional Drilling Contracts, or work to existing tunnels which do not involve the above construction techniques.

Underground Mining means works specifically related to underground mining. The term shall not include contracts involving alluvial, open cut or hydraulic mining or quarrying.

All Other Works shall mean any other works not referred to above.

In the event of a Contract or project comprising more than one Contract Type, the Contract Type shall be deemed the Contract Type with the largest contract and materials value.

Contract Value means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Insured Project. It includes the value of principal supplied and other free supplied materials if liability for such work is required to be insured under this Policy. The Named Insured and/or Insured may reduce the Contract Value by subtracting the non-recurring construction costs.

Claim means a written demand received by the Insured seeking a remedy or asserting liability or responsibility on the part of the Insured for Loss and includes any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured.

Data means any corporate or personal information in any format and includes, but is not limited to, records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information, contact information, account numbers, account histories, passwords or credit or debit card details, whether or not in electronic form, and whether or not belonging to the Insured.

Defence Costs means fees charged by any lawyer designated by the Insurer and agreed to by the Insured, and all other fees, costs and expenses resulting from the investigation, defence, negotiation, settlement or appeal of any Claim. Defence Costs shall not include the wages, overtime, travel or accommodation costs of the Insured's employees.

Employee means any person under a contract of service or apprenticeship with the Insured.

Insured means:

- (a) the Named Insured stated in the Schedule.
- (b) the Government Agency and/or department for all contracts declared to the Insurer for the purpose of this insurance.
- (c) any Government Agency and/or department of any Named Insured, or any other government or non-government organisation under the control of any insured party and over which it is exercising active management.
- (d) any parent or subsidiary company (including subsidiaries thereof) of any insured party and any other organisation under the control of the Insured and over which it is exercising active management, whether now or hereafter incorporated;

Construction Risk Insurance

- (e) if not a Named Insured, any of the following persons or entities for whom or for which the insured parties above are obliged to arrange insurance by virtue of a Contract or assumption of responsibility, but only to the extent required by such Contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy;
- i. principal or owner or agent of the principal or owner or joint venture partner;
 - ii. construction manager or project manager;
 - iii. contractor or sub-contractor of any tier subject to the limitations in iv. and v.;
 - iv. architect, engineer or other consultant, but only in respect of their on-site, manual activities;
 - v. vendor or manufacturer, but only in respect of their on-site, manual activities;
 - vi. lessor, financier, mortgagee or trustee;
 - vii. government body not included in i to v. above;
 - viii. other party with an insurable interest in the Insured Project not included in the above
 - ix. alliance partners in respect of works undertaken under alliance agreements;

For the purposes of this policy those Insured's specified in iv. and v. above are not considered to be included under any other Insured definition.

- (f) any director, executive officer, Employee, partner, contract staff, or member of any safety, security or medical facility of any of the Insured's whilst acting as such;
- (g) any office bearer or member of any social, sporting, or welfare facility of any of the Insured's whilst acting as such; and

all for their respective rights and interests.

Insurer means Insurance and Care NSW (icare) on behalf of Self Insurance Corporation of NSW

Local Time means the Official Government Time set on Co-ordinated Universal Time (UCT) (which includes daylight savings time where observed) at the designated place stated in the Schedule.

Period of Insurance means the Construction Period and, where defined in applicable Insuring Clause, the Defects Liability Period or Completed Operations Hazard Period.

Construction Period means the period commencing with the entering into of each Contract, provided such Contract is entered into during the Policy Period, until at the option of the Insured:

- (a) the Contract Works have been formally accepted in their entirety by the principal or owner as having achieved practical completion under the relevant Contract and completed any relevant commissioning and/or performance testing periods, notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use or accepted by the principal or owner prior to that time; or
- (b) with respect to each separable portion of the Contract Works, the time it is taken over and put into use by the principal or owner and completed any relevant commissioning and/or performance testing periods.

Defects Liability Period means the period described in any Contract during which an Insured is legally obliged to rectify defects, shrinkages, errors, omissions or other faults and/or to complete its obligations under such Contract (the initial Defects Liability Period), which includes a further period, following rectification of defects under the initial period.

Completed Operations Hazard Period means the Period stated in the Policy Schedule starting at the earlier of the expiration date or the date on which the policy is cancelled, if applicable, or otherwise in accordance with Insuring clause 3(a), 3(b) or 3(c).

Policy Period means the period stated in the Schedule, and shall include any subsequent periods for which the Insurer has agreed to renew this Policy.

Underlying Insurance means a policy of insurance arranged by or on behalf of an Insured either voluntarily or pursuant to a contract (which may include a policy(ies) arranged by joint venture partners, principals, contractors, etc.) that provides cover to the Insured for a risk, which save for the Underlying Insurance, would be covered by this Policy. Underlying Insurance includes but is not limited to those policies identified in the Schedule.

Vehicle means any type of machine on wheels or intended to be propelled by other than manual or animal power and any trailer made or intended to be drawn by any such machine whilst attached thereto.

Watercraft means any vessel, craft or thing in excess of 12 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

Interpretation

The following Interpretation will apply to this Policy.

Headings

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

Singular/Plural

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

Insuring Clauses

1. Legal Liability

The Insurer will indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of a Claim for:

- (a) Personal Injury;
 - (b) Property Damage; or
 - (c) Advertising Injury,
- sustained:

- i. during the Construction Period or Defects Liability Period in respect of the Insured Project; or
- ii. during the Period of Insurance in respect of the Insured's Products,

2. Covered Operations (Environmental) Liability

The Insurer will indemnify the Insured against the Insured's legal liability (or any entity for which the Insured is legally liable) to pay for Loss arising from an Incident in connection with the Insured Project.

This cover provided under this insuring clause only applies to Loss for:

- (a) Bodily Injury, Environmental Damage or Property Damage that are First Incurred or occur during the Construction Period and Defects Liability Period; and
- (b) Emergency Response Costs, Restoration Costs, or Clean-up Costs that are First Incurred by the Insured during the Construction Period and Defects Liability Period.

Progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage that occurs over a period of days, weeks, months or longer caused by Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions. The date of first exposure is:

- i. In the case of Bodily Injury, the date of the first exposure of any person to the Pollutants; and
- ii. In the case of Environmental Damage or Property Damage, the date of the first discharge, dispersal, seepage, migration, release or escape of the Pollutants.

If the date of first exposure as described above is before the inception date of the first Policy issued to the Insured by the Insurer providing coverage for Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions resulting from Covered Operations, or cannot be immediately determined, but the progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage continues in fact to exist during the Period of Insurance, the date of first exposure will be deemed to have occurred only on the inception date of the first Policy issued to the Insured by the Insurer that is applicable to the Covered Operations from which the Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions arose. Further, provided this policy responds, no other policy issued to the Insured by the Insurer will be applicable to the Covered Operations from which the Bodily Injury, Environmental Damage, or Property Damage caused by Pollution Conditions arose.

3. Completed Operations Hazard

The Insurer will indemnify the Insured for those sums the Insured become legally obliged to pay for Loss arising from an Incident connected with the Insured Project and incurred within the Completed Operations Hazard Period. The Completed Operations Hazard Period is as per the period noted in the Policy Schedule and will commence:

- (a) When all of the Insured Project or activities called for in the contract have been completed; and/or
- (b) When all of the Insured Project or activities to be done at the job site have been completed if the contract calls for Insured Project or activities to be rendered at more than one job site; and/or
- (c) When that part of the Insured Project or activities done at a job site have been put to its intended use by any person or organisation other than another contractor or subcontractor working on the same project.

4. Defence Costs and other Costs and Expenses Insuring Clause 1

In addition to the Limit of Legal Liability the Insurer will pay:

- (a) Defence Costs incurred by or on behalf of the Insured provided that such amounts are incurred in connection with the:
 - i. investigation, defence, negotiation or settlement of any Claim made against the Insured with the consent of the Insurer (which shall not be unreasonably withheld or delayed) including but not limited to any appeals against any judgements against the Insured;
 - ii. investigation, defence, negotiation or settlement of any prosecution (criminal or otherwise) of the Insured or attendance by any of the Insured at any official investigation, examination, coroner's inquest, inquiry or other proceedings provided that the Insurer shall not be liable for any fines or penalties imposed against the Insured;
- (b) reasonable costs and expenses incurred by or on behalf of the Insured provided that such amounts are incurred in connection with the:
 - i. provision of immediate medical, surgical or other aid to any person;
 - ii. protection of property, including but not limited to temporary repairs and/or shoring up, the purchasing and/or hiring and the erection and dismantling of hoardings, barriers, fences and any other form of temporary protection (including but not limited to such temporary protection which the Insured must provide in order to comply with the requirements of any statutory authority);
 - iii. mitigation, containment, elimination or suppression of actual or possible Loss; or
 - iv. any other reasonable cost or expense which is recoverable by any claimant from the Insured.

5. Defence Costs and other Costs and Expenses Insuring Clause 2 & 3

Within the Limit of Liability of Covered Operations (Environmental) Liability and Operations Hazard the Insurer will pay:

- (a) Defence Costs incurred by or on behalf of the Insured provided that such amounts are incurred in connection with:
 - i. investigation, defence, negotiation or settlement of any Claim made against the Insured with the consent of the Insurer (which shall not be unreasonably withheld or delayed) including but not limited to any appeals against any judgements against the Insured; or
 - ii. investigation, defence, negotiation or settlement of any prosecution (criminal or otherwise) of the Insured or attendance by any of the Insured at any official investigation, examination, coroner's inquest, inquiry or other proceedings imposed against the Insured;
- (b) reasonable costs and expenses incurred by or on behalf of the Insured provided that such amounts are incurred in connection with:
 - i. provision of immediate medical, surgical or other aid to any person;
 - ii. protection of property, including but not limited to temporary repairs and/or shoring up, the purchasing and/or hiring and the erection and dismantling of hoardings, barriers, fences and any other form of temporary protection (including but not limited to such temporary protection which the Insured must provide in order to comply with the requirements of any statutory authority);
 - iii. mitigation, containment, elimination or suppression of actual or possible loss; or
 - iv. any other reasonable cost or expense which is recoverable by any claimant from the Insured.

Exclusions applying to Insuring Clause 1 of this Policy

Notwithstanding anything to the contrary to anything in Insuring Clause 2 or 3, the Insurer will not pay for any amounts insured under Clause 1 of this Policy for, arising out of or in connection with:

1. Aircraft and Watercraft

liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this clause 1 shall not apply to:

- (a) Aircraft or Watercraft which are not owned or operated by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master and crew supplied;
- (b) liability arising out of construction plant or equipment mounted upon or operating from any Watercraft;
- (c) the use or existence of explosives on or from any Watercraft whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on Watercraft.

2. Loss of use

loss of use of tangible property that forms part of a Contract, which has not been physically damaged or destroyed, resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract or agreement.

3. Defective Product

liability for the cost of replacing or repairing any defective Product but this clause 3 shall apply only to that Part which is in itself defective and shall not apply to any other part(s) of the Product, works or any other property which may be lost or damaged as a consequence.

For the purposes of this clause 3, it is agreed that wherever the word "Part" appears it means that individual piece or fragment of the structure, plant, machine or equipment which is defective.

4. Recall

the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement, or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use solely because of any known or suspected defect or deficiency therein.

5. Pollution and contamination

- (a) liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this clause 5(a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured;
- (b) any costs and expenses incurred in the prevention, removing, nullifying or cleaning up of Pollutants, but this clause 5(a) does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured, which results in Property Damage and/or Personal Injury.

For the avoidance of doubt, clause 5 shall not apply to clauses 2 and/or 3 of this Policy, or any amounts insured under these clauses 2 and 3.

6. Asbestos liability

claims directly or indirectly caused by, contributed to, by or arising from asbestos or materials containing asbestos.

For the avoidance of doubt, clause 6 shall not apply to Clause 2 and/or 3 of this Policy, or any amounts insured under these clauses 2 and 3.

7. Fines and penalties

liability arising from or attributable to any fine or penalty, including but not limited to any civil penalty, but this clause 7 does not apply to civil awards in the nature of compensatory damages.

8. Insuring Clause 2 and/or 3

Any Claim(s), Liability, Defence Costs, costs and expenses paid or payable under Insuring Clause 2 and/or 3 of this Policy.

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Exclusions applying to Insuring Clause 2 & 3 of this Policy

Notwithstanding anything to the contrary to anything in Clause 1, the Insurer will not pay for any amounts insured under Clause 2 or Clause 3 of this Policy for, arising out of or in connection with:

1. Contractual Liability

Loss arising from the Insured's assumption of liability in a contract or agreement. This exclusion does not apply to liability for loss:

- (a) assumed in a contract or agreement pertaining to the Insured's business (including without limitation any written contract or agreement between the Insured and any person for the purposes of carrying out works or providing services in relation to the Insured Project) under which the Insured assumes the tort liability of another party to pay for Bodily Injury, Environmental Damage, Property Damage or Clean-Up Costs to a third party organisation, provided the Bodily Injury, Environmental Damage, Property Damage or Clean-Up Costs occur subsequent to the execution and before the termination of the contract or agreement. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or
- (b) that the Insured would have in the absence of the contract or agreement.

2. Products Liability

Loss arising from the Insured's Product. This exclusion does not apply to liability for Loss arising from the performance of Insured Project or activities involving the fabrication, assembly or installation of goods or materials provided by the Insured.

3. Related or Affiliated Entities

Loss arising from activities performed as part of the Insured Project or Covered Operations by or on behalf of any business enterprise that wholly or partly owns the Insured or which to any extent controls, operates, or manages the Insured, or that is wholly or partly owned by an Insured, or in which an Insured is an officer, partner or Employee, or which is to any extent controlled, operated, or managed by the Insured.

4. Intentional and Illegal Acts

Loss arising from any dishonest, criminal, fraudulent, malicious, intentional or illegal act or omission of any Responsible Insured.

5. Criminal Fines and Penalties

liability arising from or attributable to any criminal fine or criminal penalty.

6. Known Circumstances and Non-Disclosure

Loss arising from any Pollution Conditions caused by Insured Project or activities which occurred prior to the Period of Insurance if any Responsible Insured knew or could have reasonably foreseen that such Pollution Conditions would give rise to a Claim and the Insured did not disclose such Pollution Conditions to the Insurer.

7. Non-compliance

Loss arising from any Responsible Insured's intentional, wilful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body.

General Exclusions applying to this Policy

Notwithstanding anything to the contrary to anything in this Policy the Insurer will not pay for any amounts for, arising out of or in connection with:

1. Workers compensation/employers' liability

liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy, except in respect of:

- (a) any amount in excess of any limits applicable under any such policy which has been effected in a country to comply with legal requirements. Coverage provided under this clause 1(a) shall not apply in respect of Personal Injury sustained by any Employee, to the extent that it is the subject of indemnity under any of the Insured's workers' compensation or employer's liability policies or any policy issued in substitution thereof;
- (b) any liability of others which has been assumed by the Insured under contract;
- (c) any liability arising out of the infringement by the Insured of the Competition and Consumer Act 2010 (Cth) as amended from time to time, or any Fair Trading legislation of a State or Territory of the Commonwealth of Australia.

2. Vehicles

liability caused by the ownership, possession or use by the Insured of any Vehicle where such liability at the time and place of the Occurrence giving rise to a claim under this Policy is insured by virtue of any legislation governing the use of motor vehicles. This clause 2 shall not apply to liability in respect of:

- (a) the loading or unloading of or the delivery or collection of goods to or from any Vehicle;
- (b) a Vehicle whilst situated or being used on or adjacent to any site or the premises of the Insured;
- (c) Personal Injury to the extent that indemnity is not provided by a compulsory third party bodily injury liability insurance.

3. Professional liability

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this clause 3 does not apply to:

- (a) Personal Injury or Property Damage arising therefrom, provided that no indemnity is available in respect of any architects, engineers or consultants; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured to provide first aid and other medical services on the Insured's premises or sites and provided in connection with the Insured Project.

4. Property owned by or in care, custody or control of the Insured

damage to property:

- (a) owned by the Insured; or
- (b) held in trust or in the custody or control of the Insured,

but only for which and to the extent that indemnity is provided under the Insured's construction (material damage) insurance policy or other similar policy covering such property.

5. Trade sanctions

where cover provided by this Policy would be in violation of any United Nations resolutions or the economic or trade sanctions, laws or regulations of the European Union, United Kingdom, Australia or the United States of America, such coverage shall be null and void and the Insurer shall have no obligation to pay any amounts insured under the Policy if to do so would breach of that sanction or law.

6. Nuclear risks

liability directly or indirectly caused by or contributed to, by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this clause 6(a) only, combustion shall include any self-sustaining process of nuclear fission;

(b) nuclear weapons materials.

This clause 6 shall not apply to liability resulting from the use of commercial radioactive isotopes.

7. War

liability occasioned by or through or in consequence directly or indirectly of any of the following occurrences:

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power;

This Exclusion also excludes liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

8. Uninsurable Amounts

amounts uninsurable at law.

9. Data Risk

The Insurer shall not be liable in respect of liability arising out of or in any way connected with the modification, corruption, loss, destruction, theft, collection, misuse, extortion of, illegitimate or unauthorized access, restricted or inability to access, or unlawful or unauthorised processing or disclosure of Data or the loss, destruction or theft of any computer, electronic device, hardware or component thereof which contains Data.

Conditions applying to Insuring Clause 1 of this Policy

The following Conditions apply to Clause 1 of this Policy.

1. Limits of Liability

- (a) The liability of the Insurer under this Policy in respect of each Occurrence shall not exceed the Limits of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.
- (b) The Limits of Liability shall apply in excess of the amount of the Excess.
- (c) The total aggregate liability of the Insurer for all claims arising out of Products shall not exceed the Limit of Liability stated in the Schedule for each Policy Period.

2. Alterations in material fact, error or omission

- (a) The Insured will not be prejudiced under this Policy in the event of any alteration in material fact or otherwise regarding construction methods or procedures, an unintentional or inadvertent error, omission or mis-description or any other information contained or omitted from any underwriting information supplied to the Insurer.
- (b) The Named Insured undertakes to immediately notify the Insurer as soon as the alteration or omission becomes known to them, and the Insurer shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurer and the Named Insured.

3. Claims procedure

The Insured shall upon becoming aware of an event or loss giving rise or likely to give rise to a claim exceeding the Excess under this Policy:

- (a) give notice thereof as soon as reasonably practicable to the Insurer;
- (b) at the expense of the Insurer take all reasonable steps to mitigate the actual or potential amount of the claim;
- (c) as soon as reasonably practicable thereafter submit a claim in writing to the Insurer.
- (d) produce to the Insurer or to any person officially designated by it all such details, proof and particulars as may be reasonably required by it and permit extracts and copies of such documentation to be made and retained;
- (e) notwithstanding the foregoing any Insured shall be entitled to take immediate action to avoid danger to persons or property and that such action shall in no way prejudice or invalidate the relevant Insured's position or entitlement with respect to any claim hereunder; and
- (f) the Insured will also maintain accurate claims data in respect of all claims under the Excess payable in respect of this Policy.

4. Hold harmless agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any indemnifiable event under this Policy, this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that the indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurer.

Conditions applying to Insuring Clauses 2 & 3 of this Policy

The following Conditions apply to Clause 2 and Clause 3 of this Policy.

1. Limits of Liability

- (a) The liability of the Insurer under this Policy in respect of each Incident shall not exceed the Limits of Liability stated in the Schedule. Progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage that occurs over a period of days, weeks, months or longer caused by Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions (i.e. when First Incurred).
- (b) This Policy provides different scopes of cover for different circumstances of loss. Such losses will be subject to individual limits as specified in the Schedule.
- (c) The Limits of Liability shall apply in excess of the amount of the Excess.
- (d) The total aggregate liability of the Insurer for all claims arising out of Covered Operations (Environmental) and Completed Operations (Hazard) coverage shall not exceed the Limit of Liability stated in the Schedule for each Period of Insurance.

2. Discharge of Liability

The Insurer may at any time discharge its total liability to the Insured in respect of any one Claim or series of Claims arising from one Pollution Condition by paying to or on behalf of the Insured up to the Policy Aggregate Limits as stated in the Schedule:

- (a) The total amount in respect of such Claim to which the Insured is entitled to indemnity under this Policy;
- (b) The total amount sought by the claimant for such Claim; or
- (c) The total amount for which such Claim can be settled.

In such an event, the Insurer will pay defence costs incurred up to the date of payment of any Claim or series of Claim. That payment together with the Claim payment will not exceed the applicable Policy Aggregate Limit.

Upon such payment, the Insurer shall relinquish conduct or control of such Claim and be under no further liability under this Policy in connection with such Claim including but not limited to defence costs.

3. Duties in the Event of Pollution Conditions or Claim

- (a) The Insured must notify the Insurer in writing as soon as reasonably practicable of any Pollution Conditions. To the extent possible, such written notification must include:
 - i. How, when and where the Pollution Conditions took place;
 - ii. The names and addresses of any injured persons and of any witnesses; and
 - iii. The nature and location of any injury or damage arising out of the Pollution Conditions.
- (b) The Insured must as soon as reasonably practicable:
 - i. Immediately send to the Insurer copies of any demand, notice, summons or legal paper received in connection with the Claim;
 - ii. Authorise the Insurer in writing to obtain records and other information;
 - iii. Cooperate with the Insurer in the investigation, settlement or defence of the Claim; and
 - iv. Assist the Insurer in the enforcement of any right against any person or organisation which may be liable to the Insured because of Bodily Injury, Property Damage, or Environmental Damage to which this Policy may also apply.
- (c) The Insured shall have the duty to incur Mitigation Expense and to clean up Pollution Conditions to the extent required by Environmental Laws by retaining competent professionals or contractors mutually acceptable to the Insurer and the Named Insured. The Insurer shall have the right but not the duty to review and approve all such actions. The Named Insured shall notify the Insurer of actions and measures taken pursuant to this paragraph.

- (d) When Emergency Response Costs have been incurred, the Insured shall forward to the Insurer as soon as reasonably practicable all information including but not limited to: the cause and location of the Pollution Conditions, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such Emergency Response Costs.

4. Rights of the Insurer in the Event of Pollution Condition

Provided the Insured is unable, the Insurer shall have the right but not the duty to clean-up or mitigate Pollution Conditions upon receiving written notice as provided in clause 3 of this Policy.

Any sums expended by the Insurer under the preceding paragraph will be deemed incurred or expended by the Insured, shall be subject to the applicable Deductible and shall reduce the Limits.

5. Voluntary Payments

No Insured will, except at their own cost, voluntarily make a payment, assume any obligation to make a payment or incur any expense, other than for first aid, under this Policy with respect to the Insured Project without the Insurer's written consent (which shall not be unreasonably withheld or delayed).

General Conditions applying to this Policy

The following General Conditions apply to this Policy.

1. Application of Excess

- (a) The Insured shall be liable to pay the amount of the Excess stated in the Schedule in respect of each Occurrence or Incident. If a series of claims are made arising out of the one Occurrence or Incident then only one Excess shall apply.
- (b) The Excess shall also apply to Defence and other costs as described in Insuring Clause 4 and 5 and clause 30 once these costs have been established.
- (c) Worker to Worker claims are subject to the excess appearing in the Schedule.

2. Investigation and Defence

The Insurer has the right to:

- (a) defend any Claim in the name of the Insured;
- (b) conduct the defence or settlement of any Claim;
- (c) to prosecute in the name of the Insured for its own benefit any claim for indemnity or damages or otherwise; and

and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim.

The Insured must:

- (a) not agree to any waiver, limitation of or delay as to its rights of recovery against any other party,
- (b) not admit liability, negotiate any settlement or incur any Defence Costs without the prior written consent of the Insurer (which consent shall not be unreasonably withheld or delayed);
- (c) provide the Insurer with all the information and assistance as the Insurer may reasonably require for the purpose of investigating the cause and consequences, liability and defence or settlement of any Claim or the investigation, conduct of any matter or claim insured under the Policy.

The Insurer will defend any Claim brought against the Insured which is covered under the Policy (or would be if the Claim was sustained) even if the allegations are groundless, false or fraudulent.

In the event the Insured is a party to a demand, legal proceeding, inquiry or hearing which is covered only in part by this Policy, the Insured and the Insurer will use their best efforts to agree upon a fair and reasonable allocation of Defence Costs or any other amount insured under this Policy which relates solely to what is covered under this Policy.

In the event that an agreement on reasonable prospects for success cannot be reached between the Insurer and the Insured, a Senior Counsel (to be mutually agreed upon by the Insurer and the Insured) shall, as an expert and not an arbitrator, make a determination on the prospects for success. Until the Senior Counsel has made a determination the Insurer may, in its absolute discretion, pay such Defence Costs or any other amount insured under this Policy as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

All the Insurer's duties under this Policy end when the applicable limits are exhausted. This applies to Claims pending at the time and those filed thereafter.

3. Representations

By accepting this Policy, the Insured agrees that:

- (a) Statements in the Insurer's Risk Declaration and any material submitted in connection with such Declaration are the Insured's agreements and representations;
- (b) This Policy is issued upon the truth of such representations; and
- (c) This Policy embodies all agreements between the Insured and the Insurer relating to this insurance.

4. Appointment of Loss Adjuster

- (a) Loss Adjusters appointed to investigate and quantify losses that are potentially indemnifiable under this Policy are agents of the Insurer and their fees and related expenses shall be payable by the Insurer. The Insurer is authorised to appoint a loss adjuster from the Panel of Loss Adjusters stated in the Schedule.
- (b) The Insurer agrees that all documents, transcripts, reports (verbal and written) shall be made available to the Insurer and the Insured.

5. Insurer's rights and subrogation

- (a) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurer shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (b) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurer (which shall not be unreasonably withheld or delayed) who will take over and conduct in the name of the Insured the defense or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise, and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurer shall discuss the conduct, defense, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement.
- (c) The Insurer may pay to the Insured, the amount of the applicable Limit of Liability of the Insurer or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurer shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurer are liable hereunder incurred prior to the date of such payment.
- (d) Any claim amount recovered shall be applied in the following order of priority:
 - i. firstly to reimburse the Insured for the uninsured proportion of the loss, which includes any Excess paid by the Insured;
 - ii. secondly, to reimburse the Insurer of any excess insurance over the indemnity by this Policy as their interest may appear;
 - iii. thirdly, to reimburse the Insurer to the extent of their actual payment under this Policy;
 - iv. fourthly, if any balance then remains unpaid, to reimburse the Insurer of any primary or Underlying Insurance as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by the Insurer, they shall bear the expenses thereof.

6. Multiple Insured's clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity then (save as provided in this clause 6, cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurer to all of the insured parties collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The insured parties' will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the insured parties and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurer shall be entitled to avoid liability to or (as may be appropriate) claim damages from an insured party in circumstances of such insured party committing fraud, misrepresentation, material non-disclosure or breach of any warranty or Condition of this Policy referred to in this clause 6 as a "Vitiating Act".

- (d) However a Vitiating Act or any other act or neglect committed by one insured party, either at the time of entering this contract or during the Period of Insurance, shall not prejudice the right to indemnity of any other insured party who has an insurable interest and who has not committed a Vitiating Act.
- (e) The Insurer agrees to waive all rights of subrogation that they may have or acquire against:
 - i. any Insured or any individual or organisation affiliated or associated with a parent of or a subsidiary of any Insured;
 - ii. any other parties or persons, subject to the Insured waiving rights of subrogation under contract prior to the loss occurring;except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurer may enforce such rights against the party committing the Vitiating Act.

7. Extension to Construction Period

The Insurer agrees to automatically grant an extension to a Contract's Construction Period, provided at the commencement of the Contract, the Named Insured's anticipated Construction Period did not exceed such period and provided that the Construction Period does not exceed 36 Months in Total.

After first becoming aware that the completion date will exceed the Construction Period limitations stated in the Schedule, the Named Insured agrees to notify the Insurer as soon as possible (but no later than the Construction Period limitation stated in the Schedule or any revised period agreed by Endorsement), the revised estimated completion date.

Extensions to the estimated Policy Period of up to 30 days shall be at no additional cost. For extensions beyond 30 days, the Insurer shall be entitled to charge the Named Insured an additional premium, but in no case shall the additional premium charged be greater than pro-rata of the premium for the particular Contract. Extensions to the estimated Construction Period do not automatically extend the Performance Testing Period or the estimated Defects Liability Period, and any request for extension to these periods will only be considered at terms and conditions to be agreed by the Insurer (acting reasonably).

Notwithstanding the above, the total Construction Period and Defects Liability Period will not exceed 60 months in duration.

8. Notices

- (a) The Insured shall address all notices or communications required by this Policy to the Insurer. The Insurer shall also address all notices or communications required by this Policy to the Insured.
- (b) The Insurer will accept notice of a claim by any Insured as notice by all Insured's under this Policy. Where the Insured is required under contract to include a provision that the Insurer provide any notice under this Policy to all Insured's, the Insurer agree to be bound by this undertaking.
- (c) If a Nominee for Insurer Notices is shown in the Schedule, the Insurer agree to give such nominee 60 business days prior notice in the event of:
 - i. the cancellation or expiry of this Policy before completion of the Defects Liability Period for any reason, including non payment of premium;
 - ii. the Insurer giving any notice under this Policy.

9. Declarations and Premium payment

As soon as is practicable following the expiry of the Policy Period, the Named Insured will declare to the Insurer:

- (a) the total final Contract Value of the Insured Project commenced and completed during the Policy Period. Subject to any minimum premium applicable, the provisional Premium will be adjusted by payment to the Insurer of an additional premium or by allowance to the Named Insured of a return premium, as the case may be, calculated by applying the agreed rate on the difference between the estimated and:
- (b) in respect of the Insured Project, the final and projected (as applicable) Contract Values.

10. Resolution of a dispute over values

In the event of any dispute or difference between the Insurer and the Named Insured as to the quantum of declared values, then for the purposes of this clause 10 and other provisions of this Policy, both parties agree that such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne by the Insurer.

11. Insolvency or bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurer from any of their obligations assumed hereunder.

12. Assignment

If required, the Insurer will consider the assignment of this Policy to another party upon application by the Insured. Such agreement shall not be unreasonably withheld or delayed.

13. Cancellation or non-renewal of this Policy

(a) By the Insurer

Subject to General Condition 5 and 8(c) the Insurer may cancel this Policy in accordance with Section 60 of the Insurance Contracts Act 1984 (Cth) by serving on the Named Insured sixty (60) days' notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium.

(b) By the Named Insured

The Named Insured (on behalf of itself and all other Insured's unless otherwise specified) may cancel:

i. this Policy;

at any time by giving notice in writing to the Insurer.

14. Currency

All monetary amounts expressed in this Policy are in the denomination stated in the Schedule.

15. Jurisdiction and service of suit

The Insurer agrees that:

(a) this Policy is governed by the laws of Australia;

(b) in the event of a dispute arising under this Policy, at the request of the Named Insured, the Insurer will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court;

(c) any summons notice or process to be served upon the Insurer may be served upon the Nominee for Legal Service stated in the Schedule. Such nominee has authority to accept service and to enter an appearance on the Insurer's behalf. If directed by the Named Insured, the nominee shall give a written undertaking that the nominee will enter an appearance on the Insurer's behalf.

16. Non Contribution Clause

The Insurer agrees that irrespective of the existence of other policy/ies which may provide cover in part or in full in respect of any liability or expense incurred by this Policy, the Insurer will not seek contribution in respect of liability or expense indemnified by this insurance. It is understood that the Insurer will be unable to seek contribution under section 76 or section 45 of the Insurance Contracts Act 1984.

EXHIBIT E – CONTRACT SPECIFIC REQUIREMENTS

For SOW 1:

Not used

For a New SOW, as specified in the relevant New SOW Particulars.

EXHIBIT F – REPORTS

The following reports apply to SOW 1:

Nil

The reports for a New SOW are as specified in the relevant New SOW Particulars.

EXHIBIT G – LIST OF WARRANTIES REQUIRED FROM SUBCONTRACTORS

List of Warranties Required From subcontractors in respect of SOW 1 are those specified below to the extent relevant to the Contractors Activities under SOW 1.

The warranties required from subcontractors in respect of a New SOW are as specified in the relevant New SOW Particulars.

Item	Warranty Period	Scope of Warranty
Structural works		
Structural concrete columns, floors, concrete shafts, walls and similar structural concrete items	25 years	Structural Integrity
Roof Structural Elements	25 years	Structural Integrity
Structural Steel - all elements	25 years	Structural Integrity
Masonry - load and non-load bearing columns, walls, shafts and similar masonry elements	25 years	Structural Integrity
Architectural and Building works		
Ceilings/soffit linings including support structure - all types	Manufacturer's standard warranty period	General integrity including against corrosion, perforation and delamination of finish
Membranes / Tanking / Waterproofing	Liquid membranes 10 years Sheet membranes 15 years Torch on membranes 15 years	Performance of waterproofing function
Architectural grade steelwork including screens, framing systems, custom balustrades, handrails, and fabricated metalwork such as access walkways	10 years	General integrity including against corrosion, perforation and delamination of finish
Profiled metal roofing including flashings, gutters and downpipes	25 years	General integrity including against corrosion, perforation of the base material and delamination of finish
External louvres	20 years	General integrity including against corrosion, perforation and delamination of finish
Glazed roof	10 years	Structural integrity, transparency and water tightness
Dry wall/plasterboard and fibre cement linings	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Resilient materials (including vinyl finishes other than flooring)	Manufacturer's standard warranty period	Manufacturer's standard warranties apply

Non-fire rated doors and hardware	5 years	Structural integrity
Fire rated doors, frames and hardware	5 years	Structural integrity
Door seals	2 years	General integrity
Joinery and carpentry	2 years	Structural integrity
Custom wall systems, cladding and panelling	Manufacturer's standard warranty period minimum 2 years	Structural integrity and colour fastness
Floor and wall tiling including grouting and fixing materials	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Timber flooring	2 years	Structural integrity
Aluminium window frames	10 years	General integrity including against corrosion, perforation and delamination of finish
Timber window frames	10 years	General integrity
Window glazing	10 years	Structural integrity and transparency
Curtain walls	15 years	Structural and general integrity including against corrosion, perforation and delamination of finish.
- including framing system, glazed and metal panels, louvers excluding seals and sealants forming the wall		
- seals and sealants	10 years	Structural integrity
Anti-throw screens, sun screens and canopies	15 years	Structural and general integrity including against corrosion, perforation and delamination of finish
Carpet and vinyl flooring	7 years	Bonding, colour fastness, wear resistance
Civil works		
Paving, concrete and clay pavers	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
External tiling to walkways including grouting and fixing materials	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Mechanical		
Mechanical ventilation plant and equipment	5 years	Against failure of non-consumable elements

Air conditioning plant and equipment	5 years	Against failure of non-consumable elements
Electrical		
Uninterrupted power supply including batteries	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Electrical equipment and fittings including light fittings	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Electrical and data cables	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hydraulic		
Sanitary fittings	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Tapware	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hot water unit	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Fire protection		
Fire extinguishers	5 years	Against corrosion
Smoke and heat detectors	5 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Services and systems		
Building systems and services	Manufacturer's standard warranty period	Manufacturer's standard warranties apply
Fall arrest system	20 years	Against corrosion
Surface Finishes		
Interior paint finish	10 years	Adhesion, film integrity and colour retention
Exterior paint finishes including painting to structural steel and clear sealer/anti-graffiti coating	10 years	Adhesion, film integrity and colour retention
Steel coatings other than paintwork including powder coating	10 years subject to manufacturer's conditions	Manufacturer's standard warranties apply
Hot dip galvanising	20 years	Structural integrity

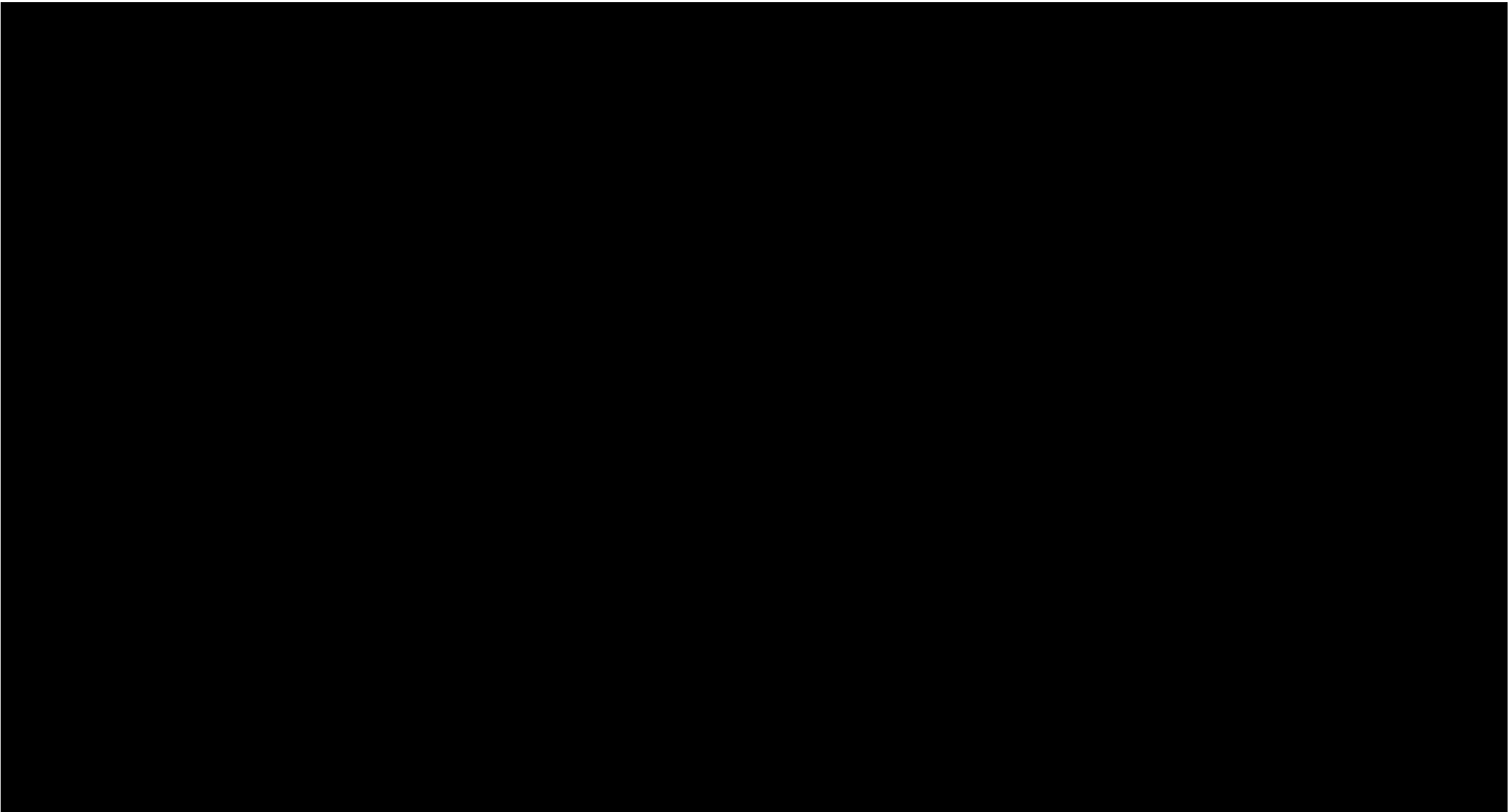
EXHIBIT H – PRELIMINARY DESIGN

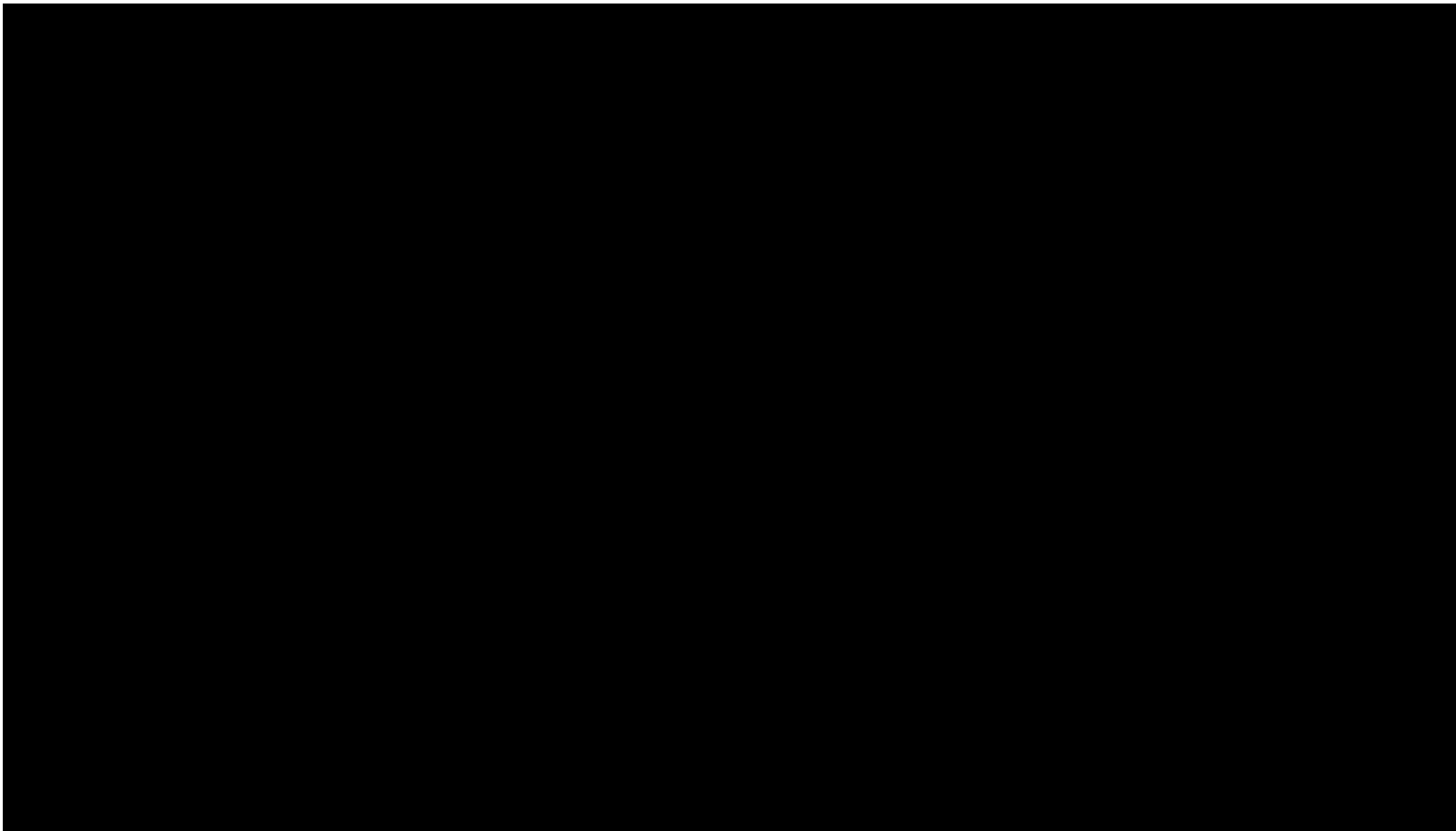
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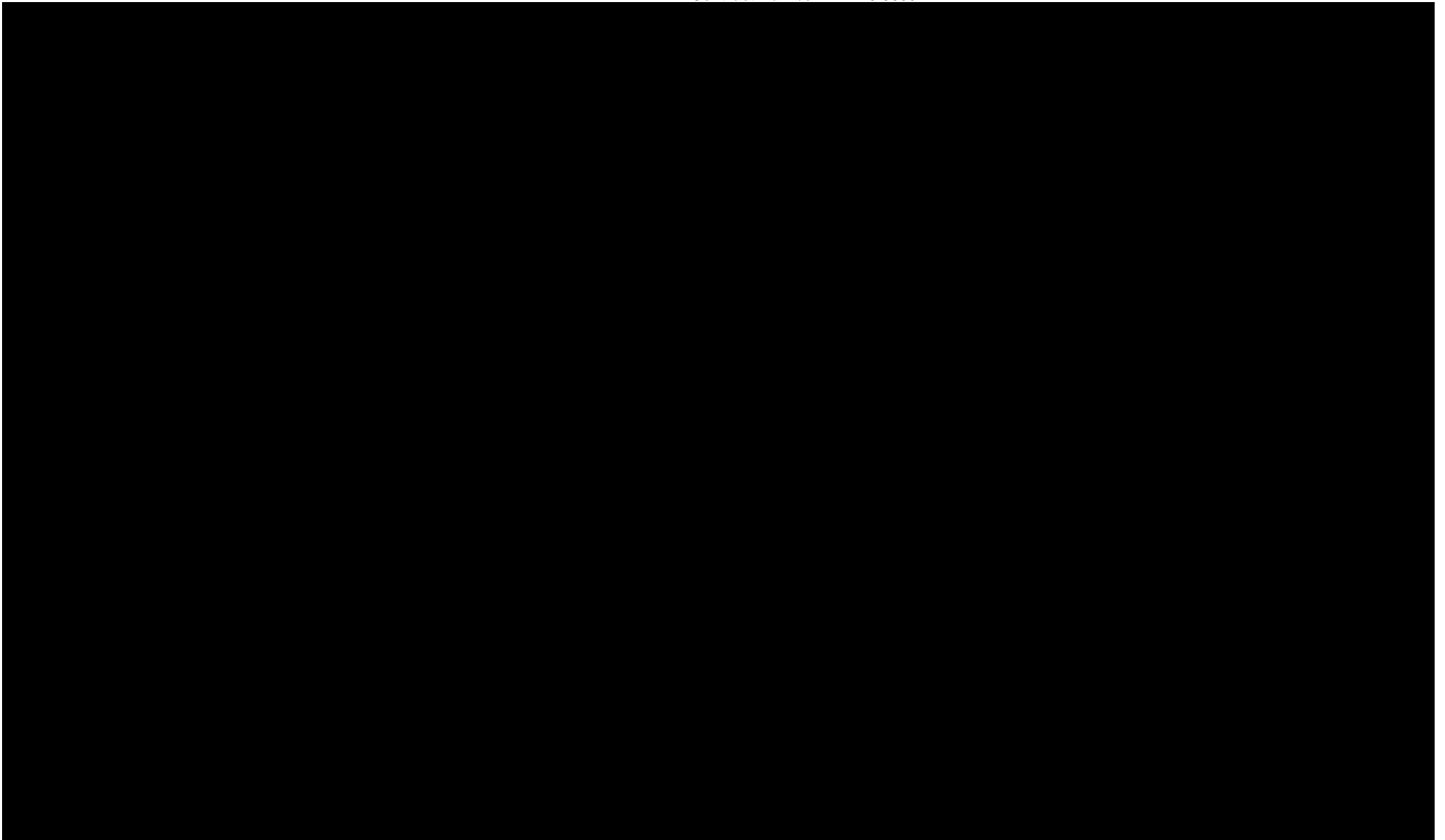
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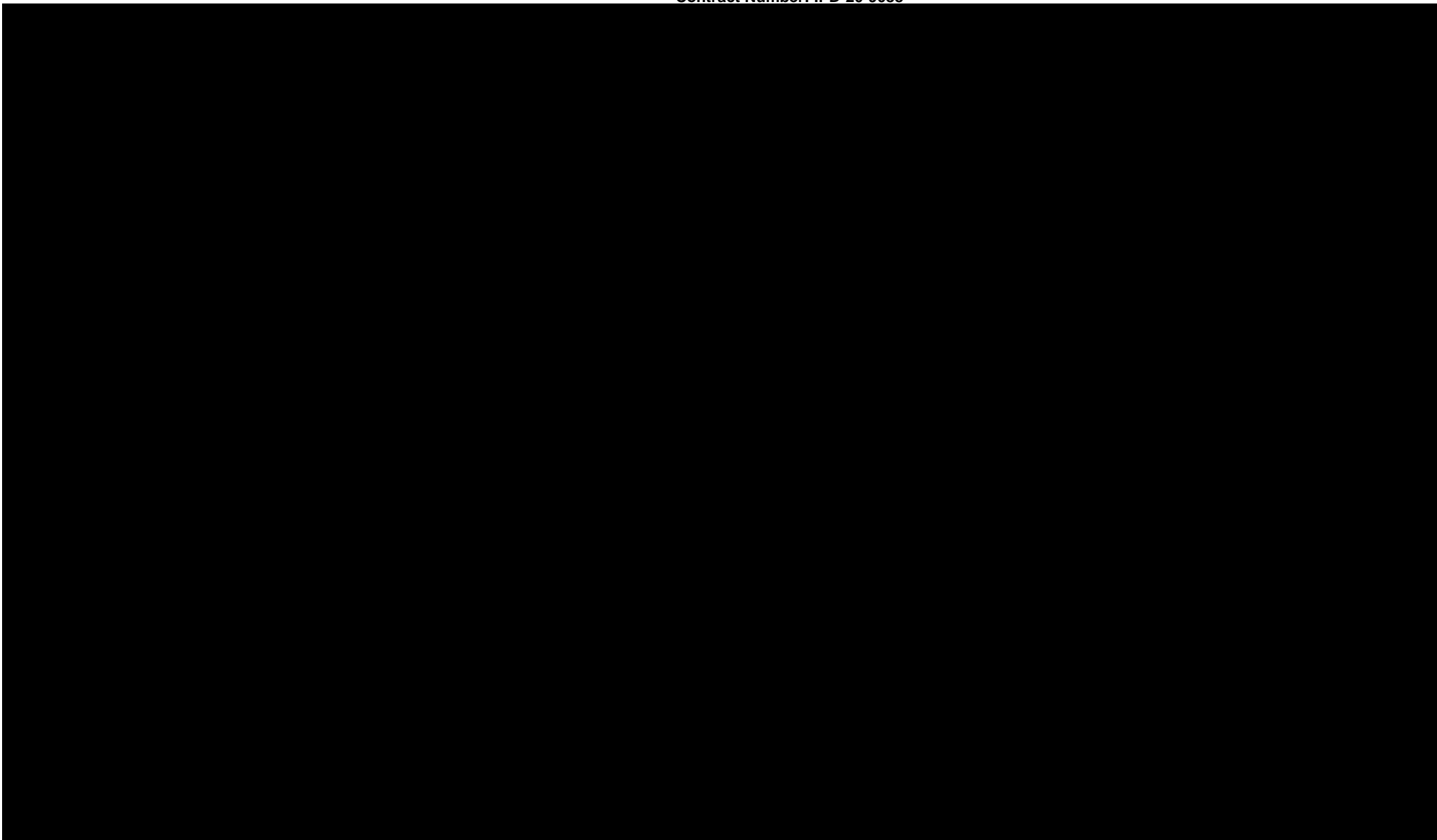
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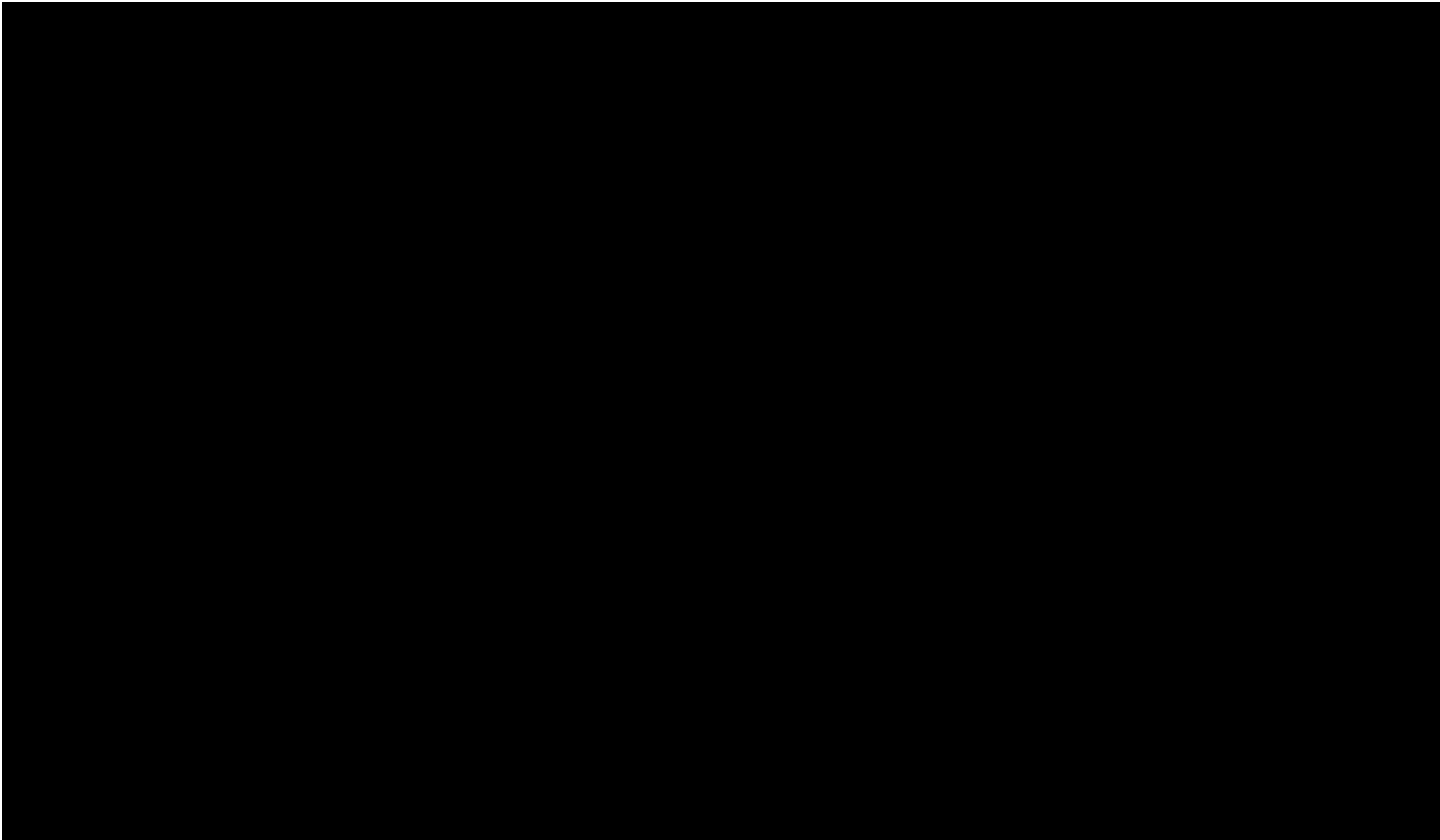
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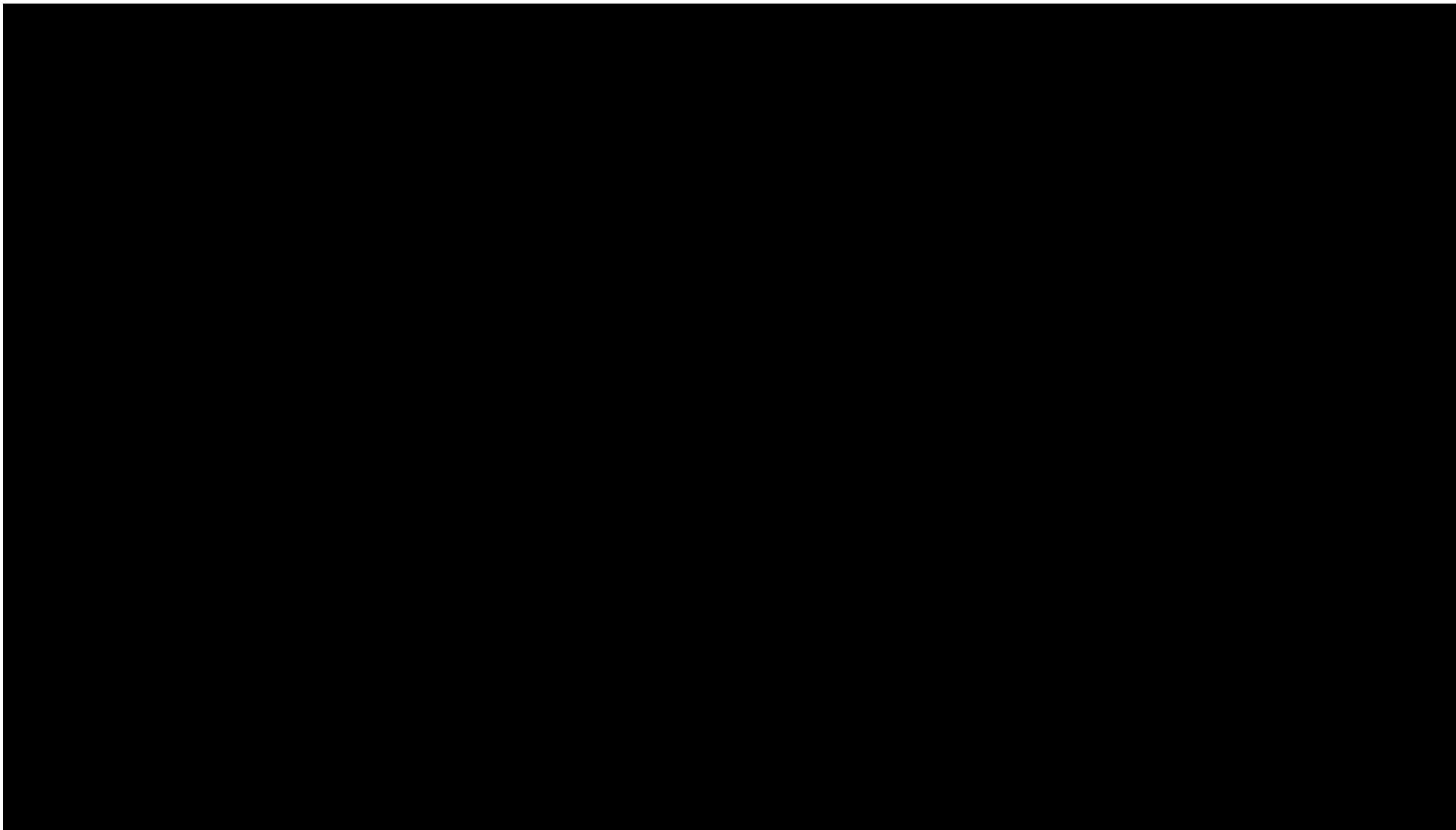


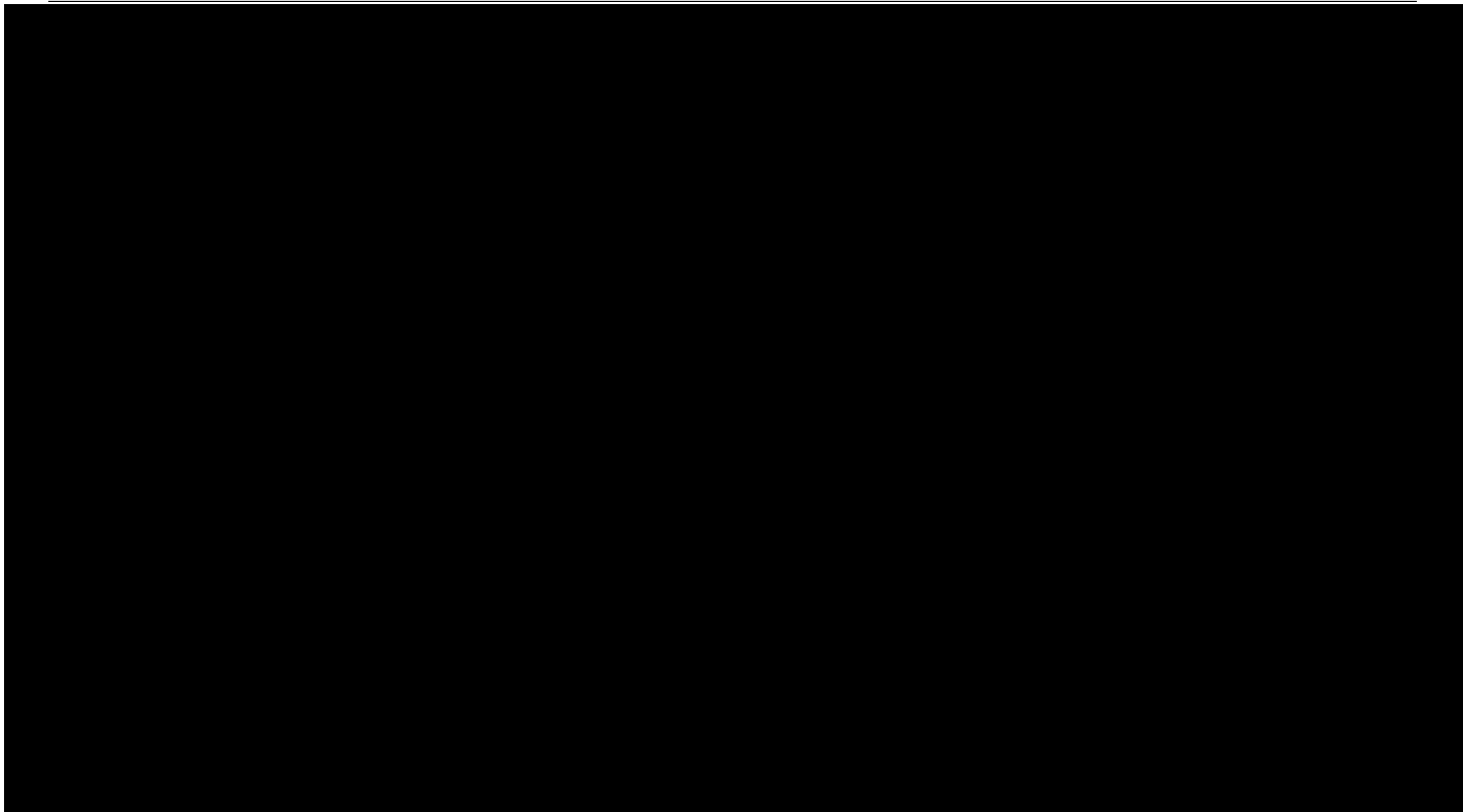












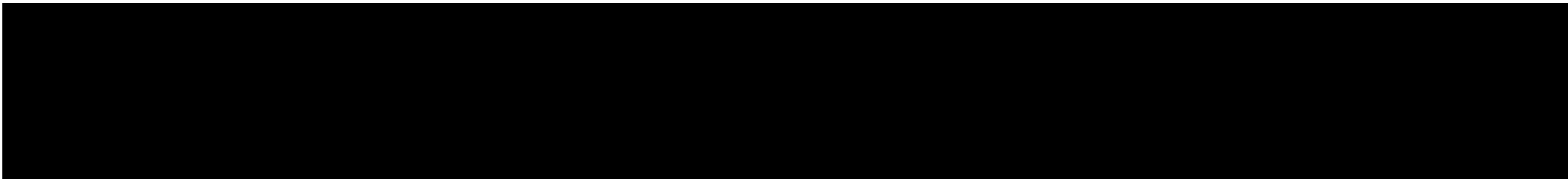


EXHIBIT I – THIRD PARTY AGREEMENTS

For SOW 1, as specified in this exhibit. For a New SOW, as specified in the New SOW Particulars.

Global Safety Interface Agreement between Transport for NSW and Sydney Trains dated 28 June 2013



Global Safety Interface Agreement

Transport for NSW

ABN 18 804 239 602

Sydney Trains

ABN 38 284 779 682

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KEY DETAILS

1	Date	See Execution on page 9
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2	Parties
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TfNSW	
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Name	Transport for NSW
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ABN 18 804 239 602

Address	18 Lee Street Chippendale
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Attention	General Manager Safety and Quality, Policy and Regulation
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or such other person as may be notified by TfNSW from time to time.

Sydney Trains	
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Name	Sydney Trains
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ABN 38 284 779 682

Address	477 Pitt Street Sydney
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Attention	Director Safety, Environment, Quality and Risk or such
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other person as may be notified by Sydney Trains from time to time.

BACKGROUND

- A The Rail Safety National Law requires Rail Transport Operators to:
- (a) identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of that Rail Transport Operator and that may be caused wholly or partly by Railway Operations carried out by or on behalf of any other Rail Transport Operator;
 - (b) manage such risks as far as reasonably practicable; and
 - (c) for the purposes of managing those risks, seek to enter into an Interface Agreement with the other Rail Transport Operator.
- B This Agreement is an Interface Agreement for the purposes of the Rail Safety National Law.
- C The parties are Rail Transport Operators who will satisfy the above requirements by applying their Safety Management Systems to manage risks in accordance with this Agreement.

TERMS

1 Interpretation

1.1 Definitions

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

Business Day means a day other than a Saturday, Sunday or a public holiday as gazetted in NSW.

Contractors means any person engaged by a party to provide any works required by, or perform any obligation under, this Agreement including any further person engaged by such a person to carry out any such work or obligation.

Date of this Agreement means the date on which this Agreement has been executed by both parties.

Interface Agreement means an interface agreement required under section 106 of the Rail Safety National Law.

National Safety Regulator means the Office of the National Rail Safety Regulator established under Part 2 Division 1 of the Rail Safety National Law.

Personnel means officers, employees, agents, Contractors, and officers, employees and agents of Contractors.

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

Rail Transport Operator has the meaning given to that term under the Rail Safety National Law.

Railway Operations has the meaning given to that term under the Rail Safety National Law.

Safety Management System means a person's safety management system which:

- (a) complies with the Rail Safety National Law;
- (b) has been accepted and approved by the National Safety Regulator for use by a person for Railway Operations for which that person holds rail safety accreditation under the Rail Safety National Law,

as amended from time to time.

1.2 Interpretation

The following apply in the interpretation of this document, unless the context requires otherwise.

- (a) A reference to this Agreement, this deed, this document or a similar term means either the agreement set out in this document or the document itself, as the context requires.
- (b) A reference to any statute, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Agreement.
- (f) **Person** includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns.
- (h) **Includes** means includes but without limitation.
- (i) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (j) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (k) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.

- (l) A heading is for reference only. It does not affect the meaning or interpretation of this Agreement.

1.3 Schedules

Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule, the clause of this Agreement prevails.

2 Term

- (a) This Agreement commences on the Date of this Agreement and continues until it is terminated by a party under clause 2(b).
- (b) A party may terminate this Agreement by providing the other party with no less than 6 months' written notice. If a party provides a notice under this clause 2(b) that it wishes to terminate this Agreement and Interface Agreements under the Rail Safety National Law are still required between the parties, the parties must negotiate in good faith to enter into a replacement agreement for this Agreement prior to the date on which the termination of this Agreement will take effect.

3 Risks arising from Railway Operations

3.1 Identifying and assessing risks

- (a) The parties must identify and assess, so far as is reasonably practicable, risks to safety that may arise from Railway Operations carried out by or on behalf of on party, as a Rail Transport Operator, and that may be caused wholly or partly by Railway Operations carried out by or on behalf of the other party, as a Rail Transport Operator.
- (b) Unless otherwise agreed by the parties, TfNSW's Safety Management System will apply to the assessment of risk required under this clause 3.1.
- (c) The parties may agree to participate in joint risk workshops to perform their obligations under this clause 3.1.
- (d) Subject to clause 3.1(c), each party may undertake the identification and assessment of risks to safety individually or jointly through the use of risk workshops. A party may adopt a risk assessment conducted by the other party.
- (e) Each party must provide the other party with any information reasonably requested by the other party to enable the party requesting the information to perform its obligations under this clause 3.1.

3.2 Managing risks

- (a) Each party must:
 - (i) determine measures to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1 in accordance with clause 3.2(b); and
 - (ii) implement those measures for which it is responsible determined in accordance with clause 3.2(b).
- (b) Schedule 1 sets out how each party's Safety Management System will be applied to determine each party's responsibilities in respect of risks identified and assessed under clause 3.1 including:
 - (i) each party's responsibility for implementation and maintenance of the safety risk management measures;
 - (ii) where appropriate, the timetable for implementation of safety risk management measures;
 - (iii) any other details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1; and
 - (iv) the communication details required to manage, so far as is reasonably practicable, each risk identified and assessed under clause 3.1.

3.3 Changes to risks

- (a) The parties must consult with each other regarding any planned alteration to infrastructure, operations, or circumstances which may impact on safety risks arising from their Railway Operations.
- (b) If a party becomes aware of:
 - (i) a risk that is not being managed to the extent reasonably practicable; or
 - (ii) a new safety risk;then:
 - (iii) that party must provide the other party with notice of that risk; and
 - (iv) clauses 3.1 and 3.2 will again apply.

3.4 Notification of incidents

Each party must notify the other party in accordance with the communication requirements of that party's Safety Management System as soon as reasonably practicable after becoming aware of any safety incident or accident which is related to rail safety on the other party's Railway Operations.

3.5 Register of interface agreements

Each party must record this Agreement in that party's register of interface agreements.

4 Access

- (a) If a party, or any of its Personnel, require access to the other party's infrastructure or land for the purposes of meeting its obligations under this Agreement, the party seeking access must:
 - (i) provide the other party with details of the access sought including the locations, times and Personnel; and
 - (ii) comply, and ensure that its Personnel comply, with all relevant instructions, obligations and safety plans as advised by the other party, and/or any that parties nominee.
- (b) TfNSW must provide Sydney Trains with notice as soon as reasonably practicable if TfNSW may require a track possession to perform any of its obligations under this Agreement.
- (c) Sydney Trains must provide TfNSW with notice as soon as reasonably practicable if Sydney Trains may require a track possession to perform any of its obligations under this Agreement and that track possession impacts upon any work being carried out by or on behalf of TfNSW.

5 Dispute resolution

- (a) If a party:
 - (i) discovers any non-compliance with this Agreement;
 - (ii) otherwise wishes to raise a dispute in relation to this Agreement,(together referred to as an **Issue**)

that party must as soon as reasonably practicable, provide the other party with notice of the Issue.
- (b) If a party provides a notice under clause 5(a):
 - (i) representatives from the parties with appropriate delegations must attempt to resolve the Issue within [10] Business Days;
 - (ii) if the Issue is not resolved by the parties' representatives under clause 5(b)(i), it must referred to a representative from each party who is responsible for that party's safety operations and that representative must attempt to resolve the Issue within [5] Business Days.

6 Miscellaneous

6.1 Notices

- (a) Any notice given in connection with this Agreement must be in writing and must be addressed to that party and either:
 - (i) hand delivered to, or sent by post to, the party's registered office, principal place of business or any other address the party notifies for the service of notices;
 - (ii) sent by fax to any fax number the party notifies for the service of notices; or
 - (iii) sent by email to any email address the party notifies for the service of notices.
- (b) A notice is taken to have been given:
 - (i) in the case of being hand delivered, on the date on which it is delivered;
 - (ii) in the case of being sent by post, on the third (seventh if sent to an address in another country) day after the date of posting;
 - (iii) in the case of being sent by fax, at the time of dispatch as confirmed by a transmission report by the sending machine; and
 - (iv) in the case of delivery by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

6.2 Costs

Each party will be responsible for its own costs in complying with this Agreement.

6.3 Proportionate liability

This Agreement does not affect or derogate from the parties' rights and obligations under the Civil Liability Act 2002 (NSW) or their functions and powers under other laws.

6.4 Government authorities

If a party is reconstituted, renamed, replaced or if the powers and functions are transferred to another organisation, a reference under this Agreement to that party includes the reconstituted, renamed or replaced organisation or the organisation to which the powers of functions are transferred (as the case may be).

6.5 Variation

No provision of this Agreement nor any right conferred by such agreements can be varied except in writing signed by the parties.

6.6 Entire agreement

This Agreement:

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

in relation to the subject matter of this Agreement.

6.7 Waiver

A waiver is effective only if in writing and signed by or on behalf of the party to be bound and is effective to the extent that the party giving it expressly states in writing.

6.8 Governing law

This Agreement is governed by the law in force in New South Wales and the parties submit to the jurisdiction of its courts.

EXECUTION

Signed as a deed on

28 June

2013

SIGNED for and on behalf of **Transport for NSW** by its authorised officer in the presence of



Signature of Witness

HELEN VICKERS

Name of Witness (print)

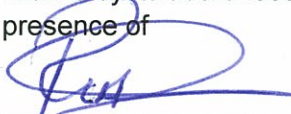


Signature of Authorised Officer

Leslie Robert Wieling

Name of Authorised Officer (print)

SIGNED for and on behalf of **Sydney Trains** by its authorised officer in the presence of



Signature of Witness

Rita Carruthers

Name of Witness (print)



Signature of Authorised Officer

ROB MASON

Name of Authorised Officer (print)

A/CE,

Schedule 1 - Rail Safety Interface Risks Between Sydney Trains and TfNSW

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Safety Requirements/ Standards	Safety risk associated with delivered asset cannot be demonstrated to be reduced SFAIRP	Standards used as baseline for design do not represent best/good practice (Standards out of date) CMC acceptance process not carried out adequately throughout the project lifecycle before handing over to the operator	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset does not achieve an acceptable minimal safety standard	Standards incorrect/fail to define minimum safety standards	- Network incident with safety consequences	ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101 Network Standards Governance	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Fail safe modes for systems not clearly defined	Fail safe modes for systems not clearly defined in safety requirements/requirements (should be based on standards)	- System fails in an unsafe way leading to safety incident	PPD specify high level requirements in transport planning. ASA to undertake development and maintenance of asset standards in accordance with best practice - see ASA 4SA-ST-101	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				Network Standards Governance. TPD to include relevant fail safe requirements in tendering/contract/design in information prior to procurement of AEO to design and construct	
Contracts	Asset does not meet end user safety requirements	<ul style="list-style-type: none"> - AEO contracted to deliver asset does not have relevant system knowledge - Design not subject to appropriate stakeholder consultation - Stakeholder/end user not included in acceptance/approval process for design choices - Asset solutions imposed on Sydney Trains - Focus on delivery against time/budget 	<ul style="list-style-type: none"> - Network incident with safety consequences 	<p>ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits.</p> <p>TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. The RSC requires all parties to work collaboratively and the RSC provides for SYD Trains to have input into designs, user requirements, etc.</p>	<p>ST Operational Readiness Manager role to provide user input into the design process</p> <p>ST to notify CMC/ASA if not able to provide Safety Assurance for Operational Readiness.</p>
	Contractor delivers substandard work	<ul style="list-style-type: none"> - AEO fails to adequately assure the suitability of its subcontractors 	<ul style="list-style-type: none"> - Network incident with safety consequences 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS</p>	<p>ST will advise TfNSW of safety concerns based on past data or current operational experience</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		<ul style="list-style-type: none"> - Contractor does not adequately implement/follow its own quality management processes - AEO assumes contractor will deliver good work 		<ul style="list-style-type: none"> - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management. TPD management of AEO via contract ASA being responsible for engineering governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment 	
	Sydney Trains as a Contractor/AEO to TfNSW delivers substandard work	<ul style="list-style-type: none"> - Sydney Trains fails to assure its work - Sydney Trains fails to use competent resource 	<ul style="list-style-type: none"> - Network incident with safety consequences 	<p>ASA AEO audit and surveillance process - see 4SA-ST-201 ASA Framework for AEO Assessment Audits and Surveillance audits.</p> <p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.</p> <p>TPD management of AEO via project agreement/contract.</p> <p>ASA being responsible for engineering</p>	<p>ST will advise TfNSW of safety concerns based on past data or current operational experience.</p> <p>ST internal assurance processes</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				governance through the implementation of CMC framework, development and maintenance of engineering standards and AEO assessment	
	Delivered Asset does not satisfy key (but undefined) safety requirements	Asset contract specification fails to adequately address system safety requirements (safety requirements not defined)	- Unsafe Asset released into service	PPD to specify defined requirements during concept design. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS - including TPD Safety Requirements TfNSW Standard Requirements TSR S1 - Safety Management Role of ASA in development and maintenance of engineering standard.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Consultation	Asset not correctly integrated into network	Lack of clarity as to when ASA need to be consulted on design matters (deviation from standards unclear) Process for handover and integration unclear	- Network incident with safety consequences	ASA Standards Waiver process 4SA-PR-106 Implementation of the CMC process and AEO management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Safety/Risk	No direct communication	- Unsafe Asset released	TPD Engineering and	ST Operational

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	misunderstanding between parties leading to poor design choices	between Sydney Trains and AEO delivering asset (Intermediary TfNSW prevents direct communication)	into service	<p>Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO has responsibility to ensure safety risks in the system have been mitigated to SFAIRP. CMC process to check that this has been</p>	Readiness Manager role to provide user input into the design process

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Design Approval/Acceptance	Design not compliant with operating environment, configuration requirements, standards and/or waivers	Proposed risk mitigation options not accepted/approved by TfNSW	- Unsafe Asset released into service	carried out. TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Design failings go unnoticed	AEO's work is not independently assured/verified (AEO)	- Unsafe Asset released into service - Latent issue released	TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		approves own designs) Failure of the CMC process and failure of TPD assurance process.	leading to safety incident on network	TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	operational experience
	Sydney trains accept asset that is deficient from a safety perspective	Sydney Trains assured by TfNSW that asset is fit for purpose and safe, based on AEO's assurance (No assurance from Sydney Trains)	- Network incident with safety consequences	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.	Sydney trains accept asset that is deficient from a safety perspective

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Construction	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<p>Failure of the CMC process and failure of TPD assurance process.</p> <ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 	<ul style="list-style-type: none"> - Unauthorised entry of train into/through worksite leading to safety incident in worksite - Unauthorised exit of works train from worksite leading to safety incident on network 	<p>TfNSW (and it's contractors) compliance with Sydney Trains Network Rules and Procedures.</p> <p>TPD worksite audit and review presence.</p> <p>AEO audit and surveillance process.</p>	ST Network rules and procedures for worksite protection
Commissioning	Testing does not validate all safety aspects of asset	<ul style="list-style-type: none"> - Lack of experience in developing testing and commissioning plans - Planned testing and commissioning not carried out according to the plan 	<ul style="list-style-type: none"> - Unsafe asset released into service - Safety incident on network 	<p>ASA surveillance of AEO performing testing and commissioning.</p> <p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.</p> <p>AEO audit and surveillance process.</p> <p>ASA configuration management process</p>	ST will advise TfNSW of safety concerns based on past data or current operational experience
Assurance	Safety assurance aspects of project poorly undertaken including operational constraints are not clearly specified/communicated	<p>AEO does not fully appreciate the requirements of system safety</p> <p>Safety and assurance requirements not</p>	<ul style="list-style-type: none"> - Unsafe Asset released into service 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.</p> <p>TPD Quality Management System</p>	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		adequately specified during procurement process		(QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. AEO audit and surveillance process. ASA configuration management process	
	Operational readiness requirements do not align with asset being delivered	Asset documentation does not appropriately reflect asset	<ul style="list-style-type: none"> - Safety incident on the network - Specific risks may go un-identified/mitigated 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains	ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed.	
Delays into Service	Old trains retained in service beyond life expiry	New trains delayed delivery into service Long term asset planning does not reflect asset condition	Safety incident on network	NOTE: TfNSW is limited in controls that can be deployed in this circumstance: ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW. PPD control owner with	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				respect to long term asset planning.	
	Life expired assets required to be used beyond their design life	Delivery of asset delayed <ul style="list-style-type: none"> - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements Long term asset planning does not reflect asset condition	Safety incident on network	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS PPD control owner with respect to long term asset planning. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Operational Efficiency	Asset delivered has negative impact on operational efficiency/safety	<ul style="list-style-type: none"> - Design not optimised for operational efficiency/safety - Design choices do not adequately address ongoing reliability requirements of asset Long term asset planning does not reflect asset condition	<ul style="list-style-type: none"> - Failure in service leading to network disruption - Failure in service leading to safety incident 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services	ST Operational Readiness Manager role to provide user input into the design process ST will advise TfNSW of safety concerns based on past data or current operational experience.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. PPD control owner with respect to long term asset planning.	
Asset Performance	Assets considered safer/more reliable than they actually are	Asset performance incorrectly predicted through design or poor reporting	Safety incident on network	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Maintenance	Maintainability not addressed within design	Failure of design process	<ul style="list-style-type: none"> - Asset unable to be maintained unless taken offline - Asset maintenance introduces unnecessary safety risk for maintenance staff - Asset not maintained to required standard but continues to be operated - safety incident occurs 	<p>parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process</p> <p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires</p>	ST to notify TfNSW that it is not able to demonstrate operational (Maintenance) readiness

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.	
	Asset responsibility handed over without all appropriate/necessary documentation (including safety assurance)	Failure of design process	<ul style="list-style-type: none"> - Asset unable to be operated/maintained as "intended/required" - Latent condition leading to safety incident 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation. See Schedule 13 and 14 of the Rail Services Contract. The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the	ST unable to demonstrate Operational Readiness to CMC

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA configuration management process.	
	Contracts awarded by TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure	Failure of third party maintenance process	<ul style="list-style-type: none"> - Network configurations falls out of synch - Latent conditions propagated leading to safety incident - Maintenance activities interfere with the safe operation of trains 	ASA configuration management process	ST will advise TfNSW of safety concerns based on past data or current operational experience
Access agreements	Access agreements influenced by TfNSW		<ul style="list-style-type: none"> - Unsafe trains/operators allowed onto network - Safety incident on network 	Access seekers must comply with minimum standards; ST as network control manager can prevent operators from accessing network if safety of operations is compromised.	Network access process managed by ST ST not to allow access without positive confirmation of suitability received from TfNSW (ASSUMED POSITION BASED ON CURRENT KNOWLEDGE)
Sydney Trains/NSW Trains (as a Rolling Stock Operator) operating on TfNSW (as a Rail Infrastructure	Track structures/infrastructure not fit for purpose	<ul style="list-style-type: none"> - Ineffective maintenance regime (Minimum standards set too low) 	<ul style="list-style-type: none"> - Train Collision - Train derailment - Train hits object/structure infringing kinematic 	TfNSW SMS requirements for managing safeguarding and infrastructure, including:	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Maintainer) network			envelope	Rail Safeworking Standard 4TP-ST-014/2.0 Minimum Rolling Stock Requirements 4TP-ST-098/4.0 Rail Safeworking Arrangements Procedure 4TP-PR-106/2.0	
	TfNSW rail corridor worksite incorrectly setup and/or maintained/managed	<ul style="list-style-type: none"> - Interface risks not clearly identified/evaluated before worksite setup - Worksite protection controls not in place - Ineffective communication between worksite and RMC 		TfNSW (and its contractors) recognises and complies with ST Network Rules and Procedures for worksite protection. AEO audit and surveillance process.	ST Network rules and procedures for worksite protection
Emergency Response	TfNSW directly involved in emergency response coordination activities		<ul style="list-style-type: none"> - Confusion and re-prioritisation of tasks - Safety incidents escalate 	TfNSW recognition of ST incident response accountabilities	Incident response is the responsibility of ST
Decommissioning	TfNSW fails to decommission assets when required		<ul style="list-style-type: none"> - Infrastructure loses structural integrity and impacts rail safety (collapsing onto trains) - Rollingstock used beyond life leading to safety incident 	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract. TPD Engineering and Safety Assurance processes as per	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				TfNSW SMS/TPD QMS, including that for decommissioning. NOTE: ST retains responsibility for maintenance and inspection of extant assets, including identifying condition of current operational assets and reacting accordingly by imposing CAN (Condition Affecting the Network) arrangements.	
	Re-commissioning of de-commissioned rolling stock	Delivery of asset delayed - AEO scope of work excludes commissioning - AEO not able to comply with ASA standards - AEO fails to deliver project on time TfNSW fails to respond in a timely manner to infrastructure/asset safety requirements	- Asset not fit for service - Safety incident on network	TfNSW relationship with Sydney Trains as per provisions of the Rail Services Contract TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Old trains not retired when beyond life expiry		Safety incident on network	TfNSW relationship with Sydney Trains as per	ST will advise TfNSW of safety concerns based

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				provisions of the Rail Services Contract ST as the accredited operator/maintainer must ensure trains entering and remaining in revenue service meet minimum safety standards, not TfNSW.	on past data or current operational experience
Configuration Management	Real world asset configuration out of sync with configuration register	<ul style="list-style-type: none"> - Configuration documents inadequately managed/controlled - Network configuration issues not/inadequately communicated to stakeholders - ASA too far removed from the "asset" to be able to adequately provide configuration control - Configuration Control Board (CCB) fails to provide traceability and assurance to TfNSW that all configuration changes within the responsibility of the CCB have been properly managed - Contracts awarded by 	<ul style="list-style-type: none"> - Unsafe (incorrectly integrated) asset released into service leading to safety incident - Latent conditions propagated leading to safety incident 	ASA Configuration Management control process. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		TfNSW to parties other than Sydney Trains for maintenance/renewal of Sydney Trains operated infrastructure			
	Governance arrangements for systems integration and configuration control not adhered to by all relevant parties/stakeholders		- Unsafe asset released into service	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Software configuration inadequately managed/controlled		- Software release leads to system failure leading to operational impact - Software release results in unsafe operation of asset leading to safety incident - Software update cannot be rolled back in event release fails leading to operational impact	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA to ensure standards reflect current requirements. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Configuration Management Committee (CMC) influenced by government to deliver/release assets on time		- Unsafe assets released into service leading to safety incident	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. ASA Configuration Management control	ST is to assist development of CMC assurance evidence

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Compatibility	Procured rolling stock out of gauge for network (too big or too small)	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Infrastructure damaged - Gap between rollingstock and platforms too big 	process TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Rolling stock not compatible with network systems	Delivered Asset does not satisfy key (but undefined) safety requirements	<ul style="list-style-type: none"> - Rolling stock fails to trip track circuits - Rolling stock cannot be integrated with ATP - Rolling stock cannot be integrated with comms systems (voice and data) 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS AEO audit and surveillance process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
	Asset incompatible with network	Project integration fails to address all relevant interfaces	<ul style="list-style-type: none"> - Safety systems compromised - Automated systems need to be manually overridden 	TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS. AEO audit and surveillance process. ASA Configuration Management control process.	ST will advise TfNSW of safety concerns based on past data or current operational experience
Organisational Functions	Safety function of TfNSW/Sydney Trains not clearly defined		<ul style="list-style-type: none"> - Critical safety functions/responsibilities not undertaken - Safety Incident on network 	Rail Services Contract, Safety Interface agreement and project agreements stipulate the various accountabilities	Safety functions identified within Rail Service Contract Safety function and responsibilities identified

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
					within the ST SMS ST accredited as an Rail Operator
Funding	Failure to adequately fund MPM programme		<ul style="list-style-type: none"> - Asset maintenance/renewal compromised - Safety incident on network 	<p>Rail Services Contract retains mechanisms for ST to notify of safety concerns.</p> <p>The SYD Trains RSC requires all parties to work collaboratively to resolve issues, and requires SYD Trains to notify TfNSW of any material issues. An intent of the RSC is to work together collaboratively. If a dispute arises, the RSC provides an agreed dispute resolution process to be followed. ASA inputs to Sydney Train's Technical Maintenance Plans.</p>	ST retains ability to notify TfNSW of problems or significant flaws based on past data or current operational experience.
Competence	Lack of assurance that staff are competent	<ul style="list-style-type: none"> - Line managers remote to training delivery Lack of ST understanding (as the informed purchaser) of the competence 	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
		requirements for staff. - Sydney trains assumes TfNSW responsible for training/competency		Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	within Safety Risk Register)
	Poor quality training	- Training delivered by resources who do not meet Trainer/Assessor requirements - Rail safety training outsourced - Trainers not following quality process	Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				<p>the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes assurance functions built within it, to:</p> <ul style="list-style-type: none"> - Capturing Trainer/ Assessor competence requirements (including currency) - Ensuring rostered /brokered resources meet requirements (internal and external) - identify and address sub-standard training delivery. 	
	Rail safety worker competence system does not align with Sydney Trains competency requirement	ST competency requirements are not clear/provided to inform RSW competence system.	<ul style="list-style-type: none"> - Safety incident on network - Increase in human error 	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management</p>	<p>ST SMS requirements for competence assurance</p> <p>ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)</p>

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, RSW competence system design and monitoring delivery and effectiveness.	
	Competency programme only focuses on initial training requirement	- ST competency requirements are not clear/provided to inform RSW competence system.	- Safety incident on network	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program design and monitoring delivery and effectiveness.	
	Refresher training not triggered by competency system	- ST competency requirements are not clear/provided to inform RSW competence system.	- Rail Safety Worker competency erodes over time - Safety incident	TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services). The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify and have input into capability requirements, program	ST SMS requirements for competence assurance ST 'qualified worker controls' assurance mechanisms (as defined within Safety Risk Register)

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
				design and monitoring delivery and effectiveness.	
	Sydney Trains assumes all Rail Safety Worker card holders are competent (including contractors) and they are not	<ul style="list-style-type: none"> - Rail Safety Worker Cards qualifies person as competent without reference to the supporting system - Card issued incorrectly 	Card holder uses authorisation but not competent leading to safety incident	<p>TfNSW SMS manages safety risk controls for TfNSW staff and for the functions that are performed by TfNSW (ie in the provision of Organisational Development Services).</p> <p>The TfNSW Quality Training Management System (QTMS) outlines the processes and governance required to ensure services are delivered that meet customer needs (ie ST). This includes the requirement for Sydney Trains to specify the business rules for the issuing of Rail Safety Worker cards and monitoring delivery and effectiveness.</p>	<p>ST SMS requirements for competence assurance</p> <p>ST 'qualified worker controls' assurance mechanisms as defined within Safety Risk Register</p>
Timetable	Standard working timetable not compatible	<ul style="list-style-type: none"> - Existing network weaknesses 	<ul style="list-style-type: none"> - Safety incident on network due to more 	TfNSW timetable change process as	ST to provide inputs to and comments on the

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
	with network assets	Increase in / improvement to services	customers at different locations - Increased asset utilisation in places	articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.
	Standard working timetable increases traffic throughput	Existing network limitations and constraints Increase in / improvement to services	- Increased asset utilisation in places - Increased network congestion in places	TfNSW timetable change process as articulated in the Rail Services Contract (Schedule 8) specifies requirements for review of timetable changes and roles and responsibilities for TfNSW and ST.	ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, Asset maintainability and safety integrity view. ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.

Category	Hazard	Cause	Consequence	TfNSW Controls	Sydney Trains Controls
Fleet allocation	Train fleets inappropriately assigned to Sydney Trains	<ul style="list-style-type: none"> - Existing fleet limitations and constraints - Introduction of new fleet to services - Reallocation of fleet to services 	<ul style="list-style-type: none"> - Fleet not compatible with network and/or operating model - Safety incident on network 	<p>TPD Engineering and Safety Assurance processes as per TfNSW SMS/TPD QMS.</p> <p>TPD Quality Management System (QMS) contains requirements for stakeholder/end user consultation.</p> <p>See Schedule 13 and 14 of the Rail Services Contract.</p> <p>The ST RSC requires all parties to work collaboratively to resolve issues and requires ST to notify TfNSW of any material issues. The intent of the RSC is to resolve any issues collaboratively. If a dispute arises, both parties will follow the dispute resolution process outlined in the RSC.</p>	<p>ST to provide inputs to and comments on the Timetable Change Documentation produced by TfNSW for the Timetable change from an operational, resourcing, asset maintainability and safety integrity view.</p> <p>ST will advise TfNSW of safety concerns based on past data or current operational experience and work collaboratively to resolve the issue.</p>

EXHIBIT J – TARGET BUDGET BREAKDOWN

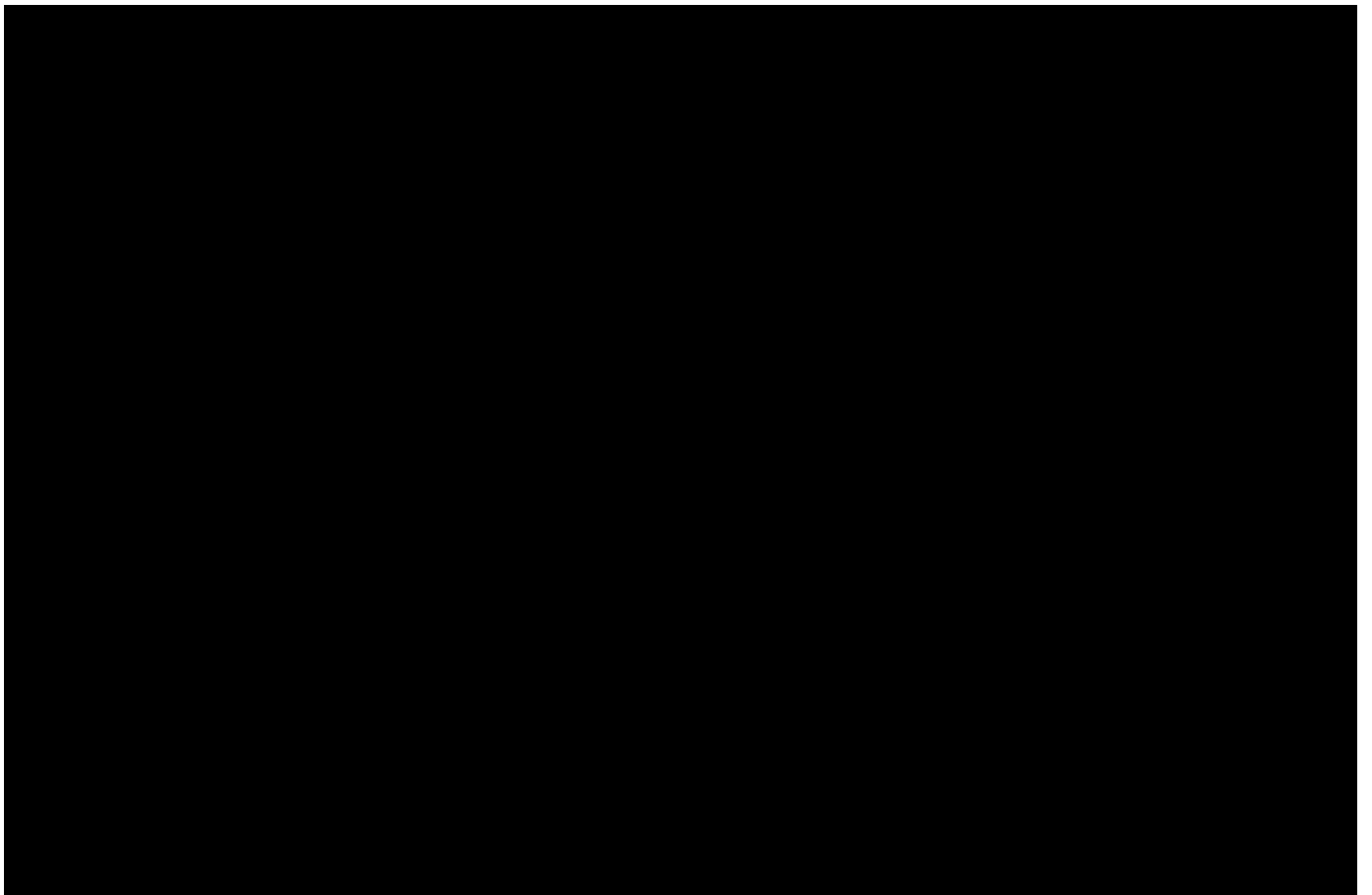
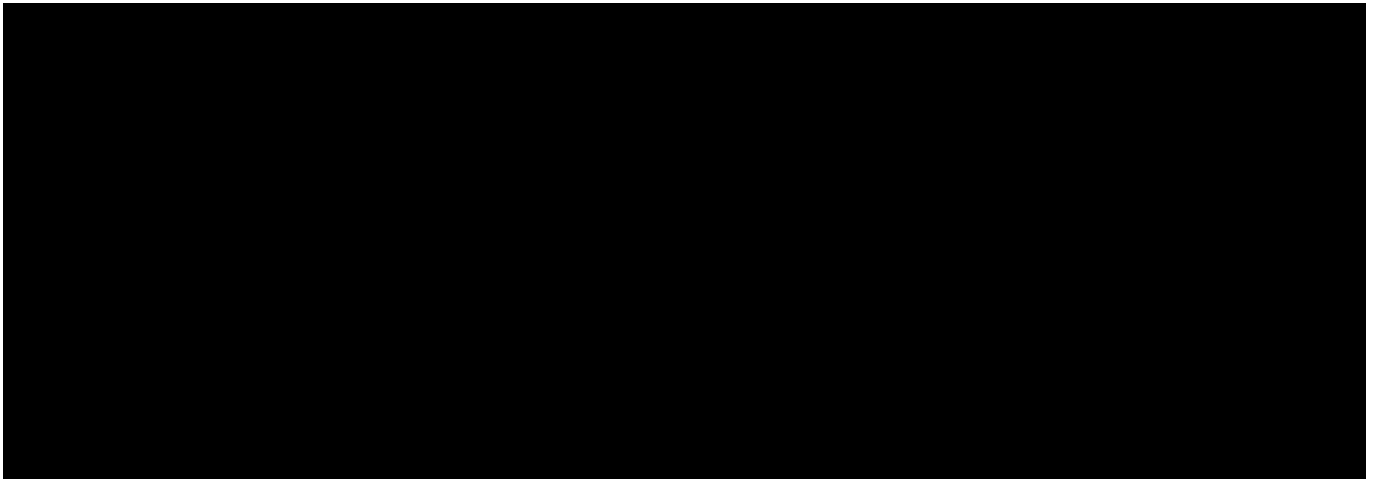


EXHIBIT K – SIGNIFICANT PROJECT PLANS



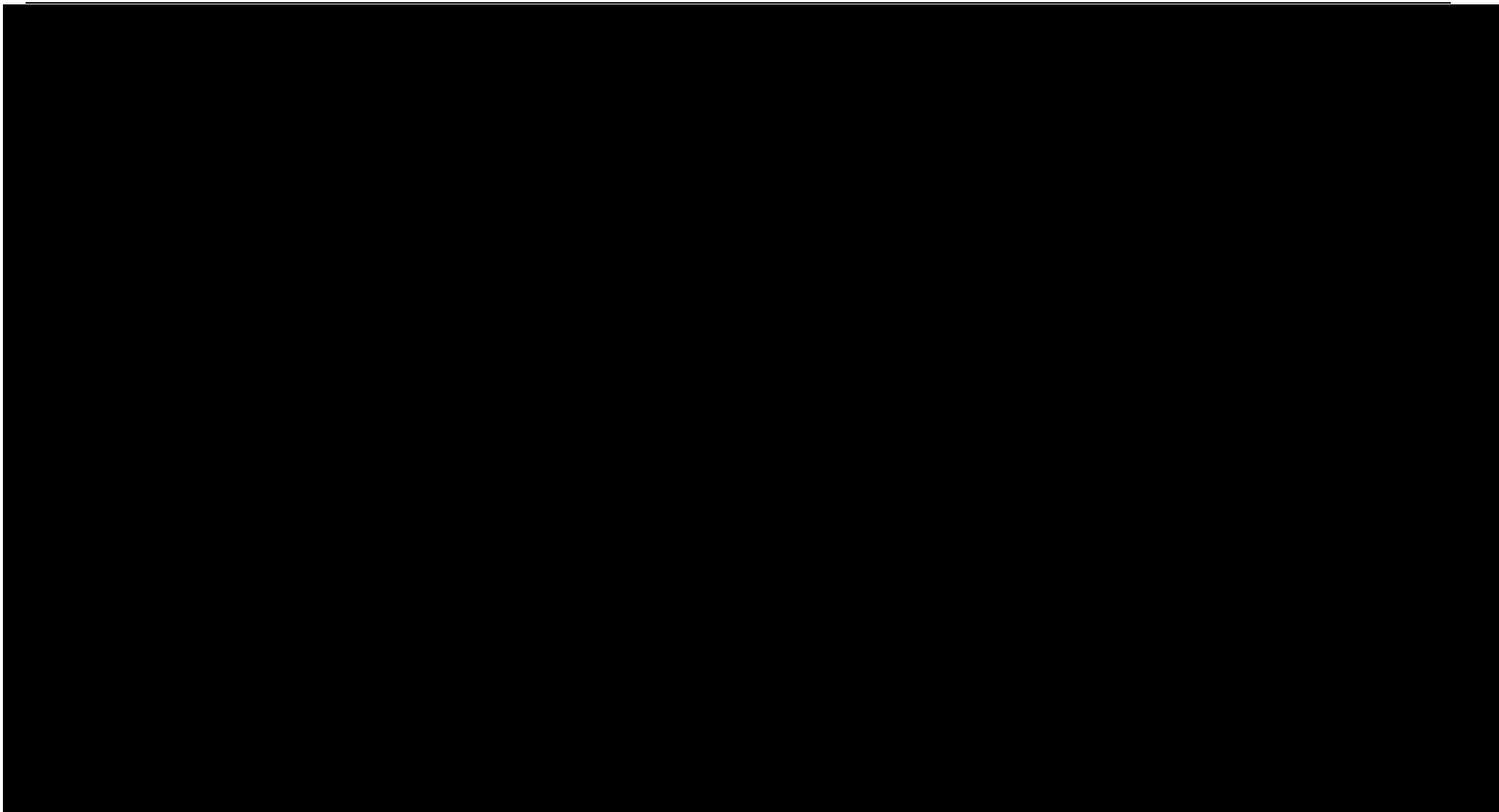




EXHIBIT L – INTERFACE SPECIFICATION DOCUMENTS AND INTERFACE CONTROL
DOCUMENTS

