



Transport  
for NSW

# **Design and Construct Deed Schedules Coffs Harbour Bypass**

EXECUTION VERSION

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## Contract Information

Item	Clause	Insert information
1.	Contractor (Clause 23.2: Definition)	<p>The unincorporated joint venture comprising:</p> <p>Name: Ferrovia Construction (Australia) Pty Ltd</p> <p>ABN: ABN 98 150 820 116</p> <p>Address: Level 9, 65 Berry Street, North Sydney NSW 2060</p> <p>Registered and head office address: Level 9, 65 Berry Street, North Sydney NSW 2060</p> <p>and</p> <p>Name: Gamuda Berhad (ARBN 632 738 768) a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T)</p> <p>Address: Suite 26.01, 100 Miller Street, North Sydney NSW 2060</p> <p>Registered and head office address: Menara Gamuda, PJ Trade Centre, No. 8, Jalan PJU 8/8A, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor, Malaysia</p>
1A.	Contractor PC (Clause 23.2: Definition)	Ferrovia Construction (Australia) Pty Ltd (ABN 98 150 820 116)
2.	Construction Contract Sum (Clause 23.2: Definition)	\$ [REDACTED] (excluding GST)
3A.	Date for Opening Completion (Clause 23.2: Definition)	[REDACTED]
3B.	Date for Completion (Clause 23.2: Definition)	[REDACTED]
4.	Design Contract Sum (Clause 23.2: Definition)	\$ [REDACTED] (excluding GST)
5.	Environmental Representative (Clause 23.2: Definition)	<p>Name: The Trustee for GEOLINK UNIT TRUST</p> <p>ABN: 79 896 839 729</p> <p>Address: PO Box 119 LENNOX HEAD NSW 2478</p> <p>(Subject to approval in accordance with the Planning Approval)</p>
6.	Acoustics Adviser (Clause 23.2: Definition)	<p>Name: Hutchison Weller Pty Ltd</p> <p>ABN: 734 603 174 518</p> <p>Address: 13 357 Military Road, MOSMAN NSW 2088</p>
7.	Parent Company Guarantor (Clause 23.2: Definition)	[REDACTED]

Item	Clause	Insert information
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8.	Planning Approval (Clause 23.2: Definition)	<p>The approval under s5.19 of the Environmental Planning and Assessment Act 1979 (NSW) issued by the Minister for Planning and Public Spaces dated <b>2 November 2020</b> in respect of the Project (Instrument of Approval SSI 7666).</p> <p>The approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) (<i>EPBC Act</i>) dated 8 December 2020 (EPBC 2017/8005)</p>
9.	Proof Engineer (Clause 2.9(c) and clause 23.2: Definition)	<p>Name: Cardno (NSW/ACT) Pty Ltd</p> <p>ABN: 95 001 145 035</p> <p>Address: Level 9, The Forum, 203 Pacific Highway, St Leonards, NSW 2065</p>
10.	Independent Certifier (Clause 23.2: Definition)	To be retained
11.	Principal Insurer (Clause 23.2: Definition)	<p>Self Insurance Corporation of NSW through Insurance and Care NSW (icare) ABN 16 759 382 489</p> <p>Level 15, 321 Kent Street</p> <p>Sydney NSW 2000</p> <p>Telephone: 61 2 9216 3852</p> <p>Email: <a href="mailto:cpai@icare.nsw.gov.au">cpai@icare.nsw.gov.au</a></p>
12.	Separable Portions (Clause 2.10 and Clause 23.2: Definition)	<p>The portions of the Project Works are:</p> <ol style="list-style-type: none"> <li>1) Separable Portion 1, which comprises: <ol style="list-style-type: none"> <li>a) the new motorway between its bridges 2 and 17; and</li> <li>b) all infrastructure connecting the above with the existing Pacific Highway at both ends that allow for the safe, efficient and unimpeded passage of vehicles in both directions;</li> </ol> </li> <li>2) Separable Portion 2, which comprises the balance of the Project Works not stated as being part of any other Separable Portion.</li> </ol>
13.	Sunset Date (Clause 23.2: Definition)	<div style="background-color: black; height: 15px; width: 100%;"></div>
14.	Elements of the Project Works and the Temporary Works to be assessed and verified by Proof Engineer (Clause 2.5(d)(ii) and clause 12.2.(e)(iv))	<p>The role of the Proof Engineer is to act as an independent reviewer who certifies that designs can be constructed safely and meet the specified performance requirements. For the purpose of this deed, a Proof Engineer must assess and verify all Complex Structures, which are structures that have any of the following features:</p> <ul style="list-style-type: none"> <li>• any span exceeding 37 m;</li> <li>• retaining walls with an effective retained height greater than 6 m;</li> <li>• cable stayed or suspension bridges;</li> <li>• steel orthotropic decks;</li> </ul>

Item	Clause	Insert information	
		<ul style="list-style-type: none"> <li>• bascule span bridges;</li> <li>• post-tensioned concrete structures;</li> <li>• skew exceeding 35 degrees;</li> <li>• precast arch structures; and</li> <li>• bridges with a superstructure consisting of precast prestressed concrete girders and cast -insitu deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure.</li> </ul>	
15.	Subcontractors (Clauses 2.9(c) and 2.9(e))	<b>Part of the Contractor's Activities</b>	<b>Subcontractor</b>
16.	Aboriginal participation (Clause 3.7 and Clause 23.2 Definition of Minimum Aboriginal Participation Spend)	1) The Aboriginal Participation Project Category is: Category 2. 2) The Minimum Aboriginal Participation Spend amount at the date of this deed is: \$ (excl GST) 3) Is the Contractor required to submit an Aboriginal Participation Plan and Aboriginal Participation Reports? Yes 4) The frequency of submission of the Aboriginal Participation Report is: Quarterly	
17.	Notice details for the Principal (Clause 3.10(a)(i))	Address for notices: 20-44 Ennis Road Milsons Point NSW 2061  Attention: Transport for NSW Coffs Harbour Bypass Project Director	
18.	Notice details for the Principal's Representative (Clause 3.10(a)(i))	Address for notices: 20-44 Ennis Road Milsons Point NSW 2061  Attention: Transport for NSW Coffs Harbour Bypass Project Director	
19.	Notice details for Contractor (Clause 3.10(a)(ii))	Address for notices: Level 9, 65 Berry Street, North Sydney NSW 2060  Registered and head office address: Level 9, 65 Berry Street, North Sydney NSW 2060	

Item	Clause	Insert information			
		Attention: [REDACTED]			
20.	Notice - electronic platform  (Clause 3.10 and Clause 23.2 Definition of PDCS)	InEight or any other electronic platform notified by the Principal's Representative from time to time.			
21.	Australian Industry Participation Plan (Clause 5.18)	Is the Contractor required to implement and comply with the Certified AIP Plan?  Yes			
21A.	Critical Domestic Materials  (Clause 5.22(d)(i) and Clause 23.2 Definition of Critical Domestic Materials)	[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]			
22.	Workers compensation insurance (Clause 7.5(a)(i))	Minimum cover:	As required by Law		
		Insurer:	As per certificate of currency		
		Policy number:	As per certificate of currency		
		Period of cover:	Until the end of all Defects Correction Periods		
23.	Motor vehicle / third party property insurance (Clause 7.5(a)(ii))	Minimum cover:	\$ [REDACTED] for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.		
		Insurer:	As per certificate of currency		
		Policy number:	As per certificate of currency		
		Period of cover:	Until the end of all Defects Correction Periods		
24.	Not used	Not used			
25.	Categories of Subcontractors, levels of cover of Subcontractors' professional indemnity insurance (Clause 7.5(b)(ii))	Subcontractor	Discipline	Level of cover	Period of cover  Until the expiration of 10 years following the end of all Defects Correction Periods.
26.	Not used	Not used			
27.	Plant and equipment insurance (Clause 7.5(a)(iii))	Minimum cover:	The full replacement or reinstatement market value of the plant and equipment		
		Insurer:	As per certificate of currency		
		Policy number:	As per certificate of currency		
		Period of cover:	Until the end of all Defects Correction Periods		

Item	Clause	Insert information
28.	Not used	Not used
29.	Marine liability and marine protection and indemnity insurance (Clause 7.5(c))	<p><i>Marine liability</i></p> <p>Minimum cover: For any work to which clause 7.5(c) applies, \$ [REDACTED] for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.</p> <p>Insurer: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).</p> <p>Policy number: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).</p> <p>Period of cover: The whole of the period of use of waterborne craft of 12 or more metres in length on work for or in connection with this deed</p> <p><i>Marine protection and indemnity</i></p> <p>Minimum cover: For any work to which clause 7.5(c) applies, \$ [REDACTED] for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.</p> <p>Insurer: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).</p> <p>Policy number: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(b).</p> <p>Period of cover: The whole of the period of use of waterborne craft of 12 or more metres in length on work for or in connection with this deed</p>
30.	Compulsory Third Party (CPT) Insurance (Clause 7.5(a)(iv))	<p>Minimum cover: As required by Law</p> <p>Insurer: As per certificate of currency</p> <p>Policy number: As per certificate of currency</p> <p>Period of cover: Until the end of all Defects Correction Periods</p>
31.	Site Conditions (Clause 10.6)	[REDACTED]

Item	Clause	Insert information

Item	Clause	Insert information	
32.	Not used	Not used	
33.	Not used	Not used	
34.	Cap on delay costs (Clause 17.6(c))		
		<b>Period during the Contractor's Activities when the relevant delay occurs</b>	<b>Delay costs rate (\$/day) (excl GST)</b>
		1. Delay occurring in connection with the Contractor's Activities prior to commencement of construction activities on the Construction Site.	\$ per day
		2. Delay occurring in connection with the Contractor's Activities, subject to (3), after commencement of construction activities on the Construction Site:	
		a. prior to the Date of Opening Completion	\$ per day
		b. after the Date of Opening Completion and prior to the Date of Completion	\$ per day
		3. Delay caused by a breach or failure to give access by the Principal, occurring in connection with the Contractor's Activities after commencement of construction activities on the Construction Site:	
		a. during the first quarter of the construction activities associated with the Contractor's Activities	\$ per day
b. during the second quarter of the construction activities associated with	\$ per day		

Item	Clause	Insert information	
			the Contractor's Activities
		c.	during the third quarter of the construction activities associated with the Contractor's Activities
		d.	during the final quarter of the construction activities associated with the Contractor's Activities
35.	Liquidated Damages – Opening Completion (Clause 7A.3(d)(iii))	\$ [REDACTED] per day (excluding GST)	
36.	Liquidated Damages – Completion (Clause 7A.3(d)(iv))	\$ [REDACTED] per day (excluding GST)	
37.	References to Scope of Works and Technical Criteria		
	(Clause 2.8(d)(ii)B)	Appendix C.2	
	(Clause 3.3(a))	Appendix C.1	
	(Clause 3.3(b)(i))	Appendix C.1	
	(Clause 3.3(b)(ii))	Appendix C.1	
	(Clause 3.3(c))	Appendix C.1	
	(Clause 3.3(h)(ii)D)	Appendix C.1	
	(Clause 3.3(h)(ii)G)	Appendix C.1	
	(Clause 3.3(l))	Appendix C.1	
	(Clause 3.4(b))	SWTC Main Body	
	(Clause 5.5(a)(i))	Appendix C.9	
	(Clause 10.6(e))	SWTC Main Body and Site Access Schedule	
	(Clause 11.1(a))	Appendix C.7	
	(Clause 11.1(b))	Appendix C.1	
	(Clause 13.2(j))	Appendix E.2	
	(Clause 16.7(e))	Appendix C.6	
	(Clause 17.1(c)(i))	Appendix C.2	
	(Clause 18.10(e))	N/A	
	(Definition of 'Baseline ROL Change')	Appendix C.4	
	(Definition of 'Baseline ROL Schedule')	Appendix C.4	
	(Definition of 'Biosecurity Management Plan')	Appendix C.1	

Item	Clause	Insert information
	(Definition of 'Communication Management Plan')	Appendix C.1
	(Definition of 'Construction Environmental Management Plans')	Appendix C.1
	(Definition of 'Construction Management Plan')	Appendix C.1
	(Definition of 'Contractor's Concept Design')	Appendices E.3 and E.4
	(Definition of 'Contractor Documentation Schedule')	Appendix C.2
	(Definition of 'COVID-19 Management and Safety Plan')	Appendix C.1
	(Definition of 'Design Plan')	Appendix C.1
	(Definition of 'Earthworks and Spoil Management Plan')	Appendix C.1
	(Definition of 'Eligible Properties')	Appendix D.1
	(Definition of 'Environmental Documents')	Appendix D.1
	(Definition of 'Local Area Works')	SWTC Main Body and Site Access Schedule
	(Definition of 'O&M Manual')	SWTC Main Body
	(Definition of 'Operations and Maintenance Plan')	SWTC Main Body
	(Definition of 'Panama Disease Management Plan')	Appendix C.1
	(Definition of 'Property Works')	Appendix E.2
	(Definition of 'Provisional Sum Work')	N/A

Item	Clause	Insert information
	(Definition of 'Quality Plan')	Appendix C.1
	(Definition of 'Quality Management Plan')	Appendix C.1
	(Definition of 'Road Occupancy')	Appendix C.4
	(Definition of 'ROL Application Requirements')	Appendix C.4
	(Definition of 'Traffic Management and Safety Plan')	Appendix C.1
	(Definition of 'Tunnel System Works')	Appendix B.3
	(Definition of 'WHS Management Plan')	Appendix C.1
	(Definition of 'Workplace Relations Management Plan')	Appendix C.1
38.	References to Exhibits	
	(Clause 23.1(a)(x)A)	Exhibits A to V
	(Definition of 'Confidentiality Deed Poll')	Exhibit D
	(Definition of 'Contract Program')	Exhibit C
	(Definition of 'Scope of Works and Technical Criteria')	Exhibit A
	(Definition of 'Site Access Schedule')	Exhibit B
	(Definition of 'Third Party Agreements')	Exhibit H
39.		
40.		

## ATTACHMENT 1

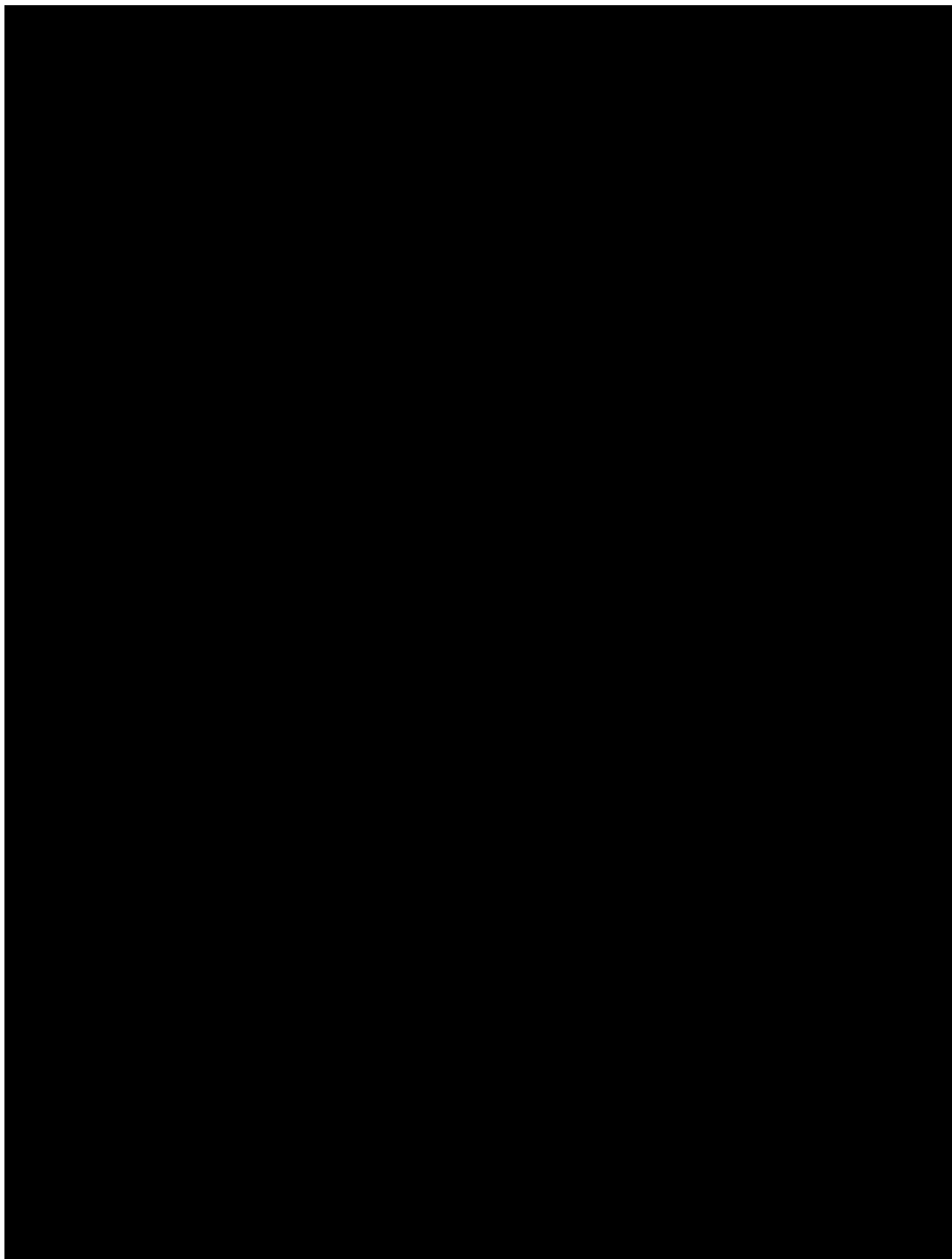


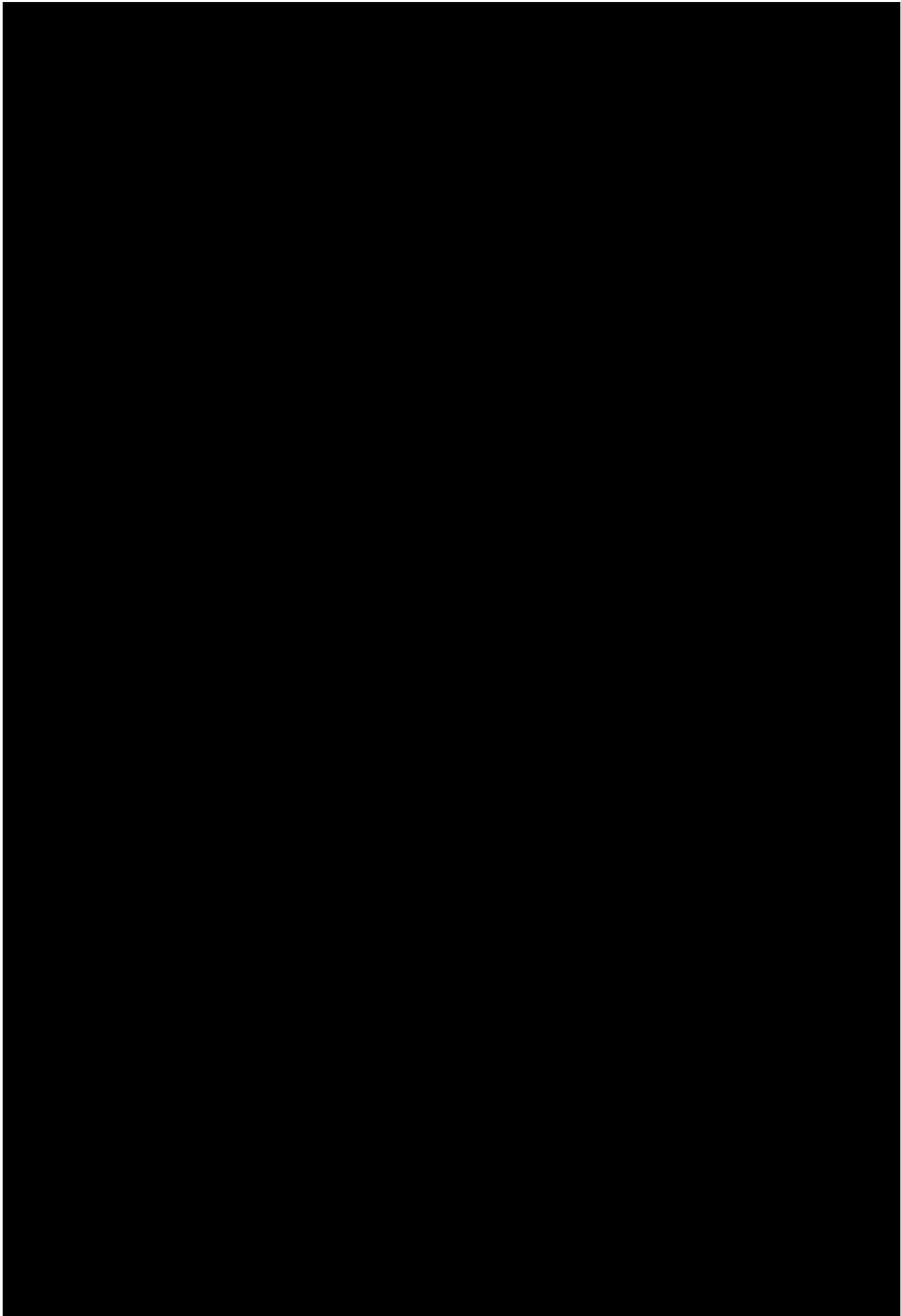
Schedule 2 - **D&C Payment Schedule**

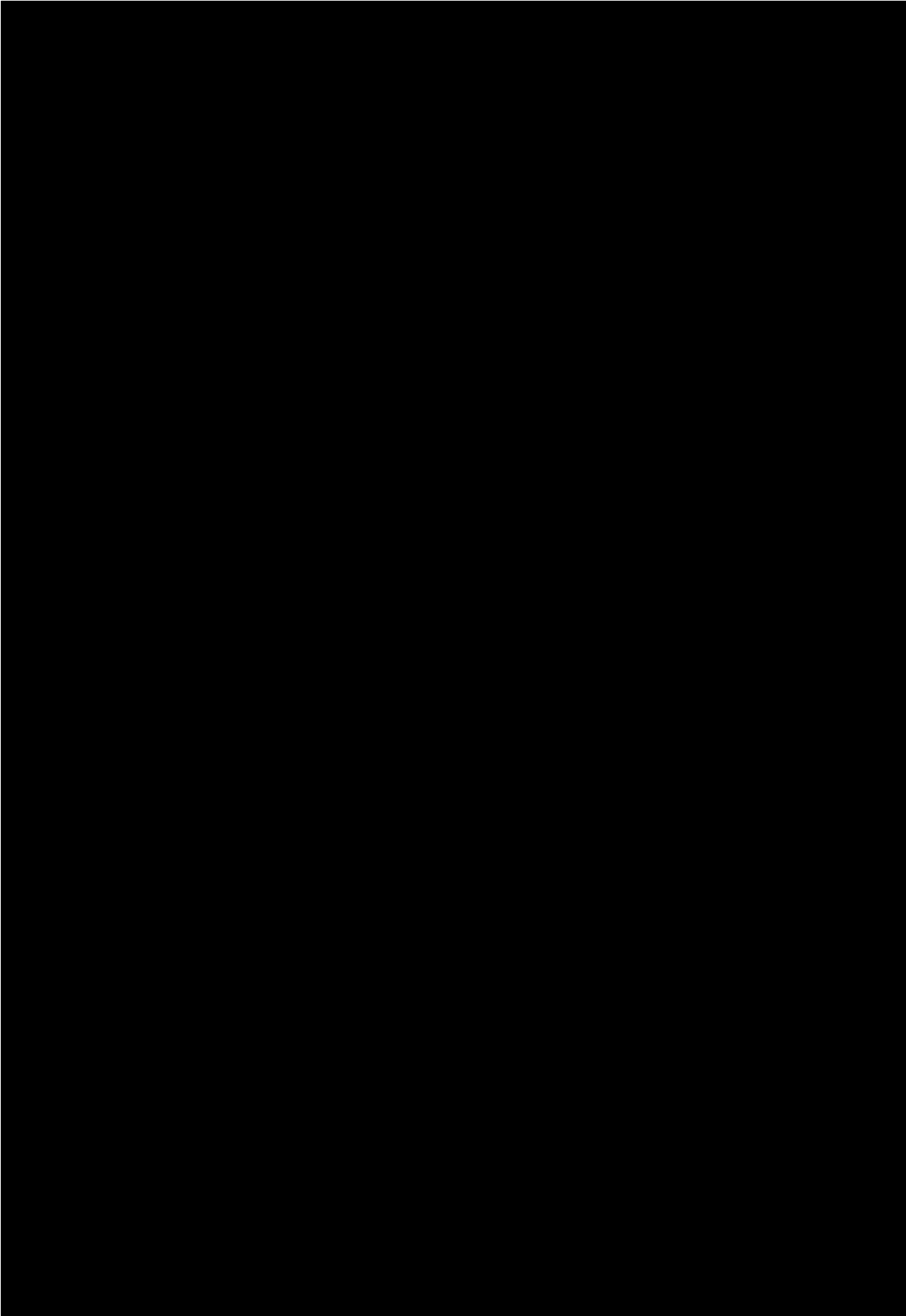
## **D&C Payment Schedule**

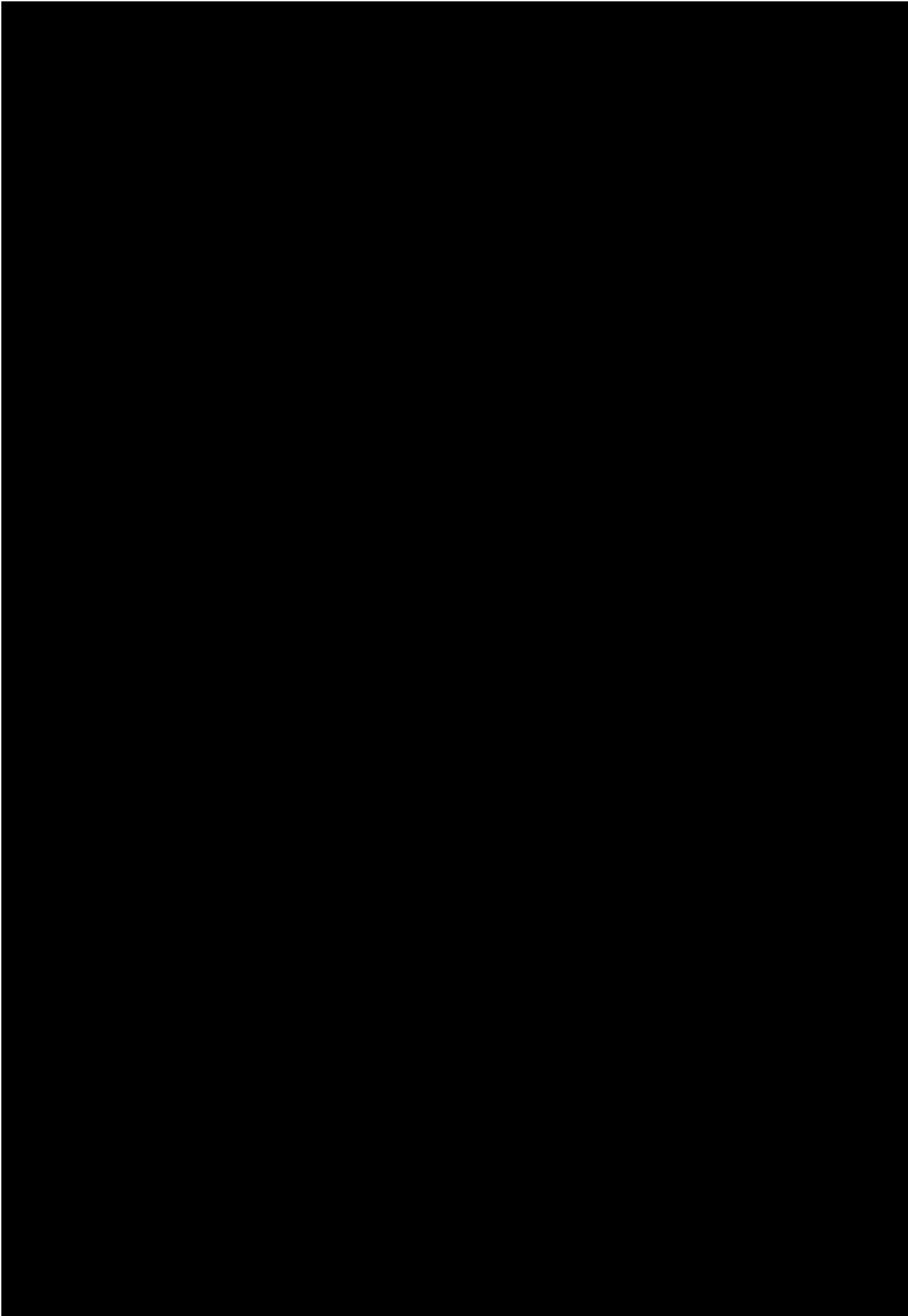
(Clause 23.2 (definition of "D&C Payment Schedule"))

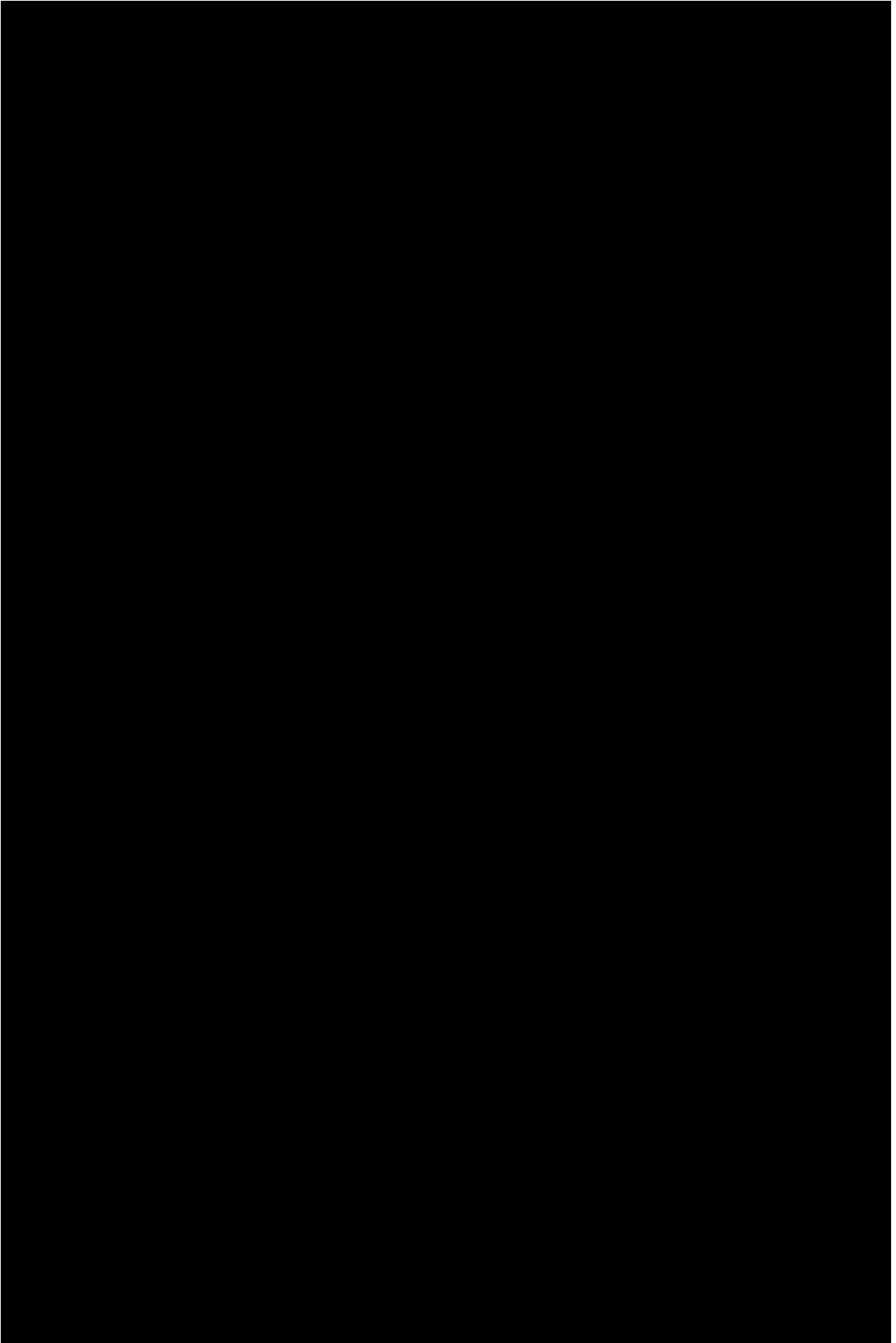
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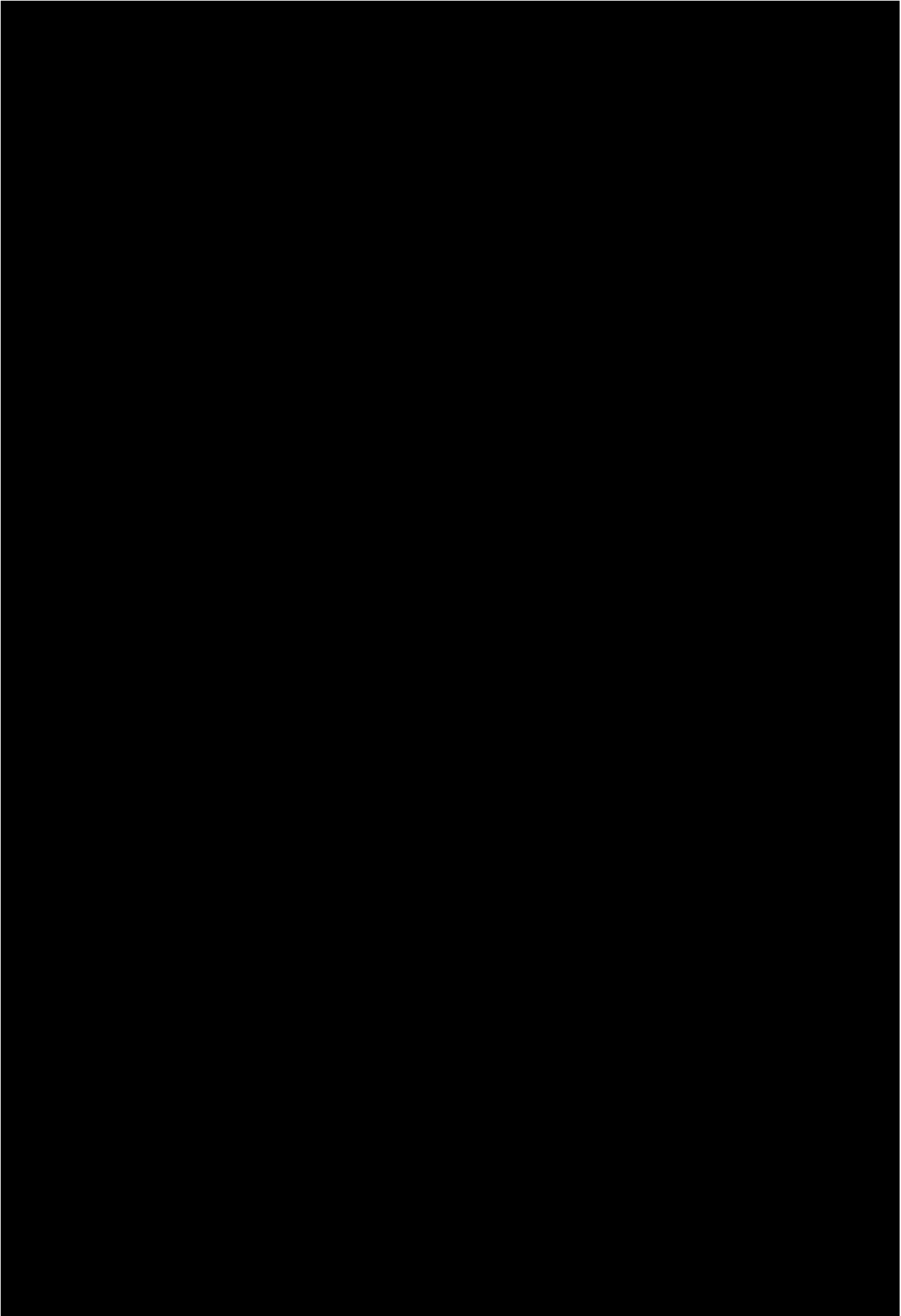


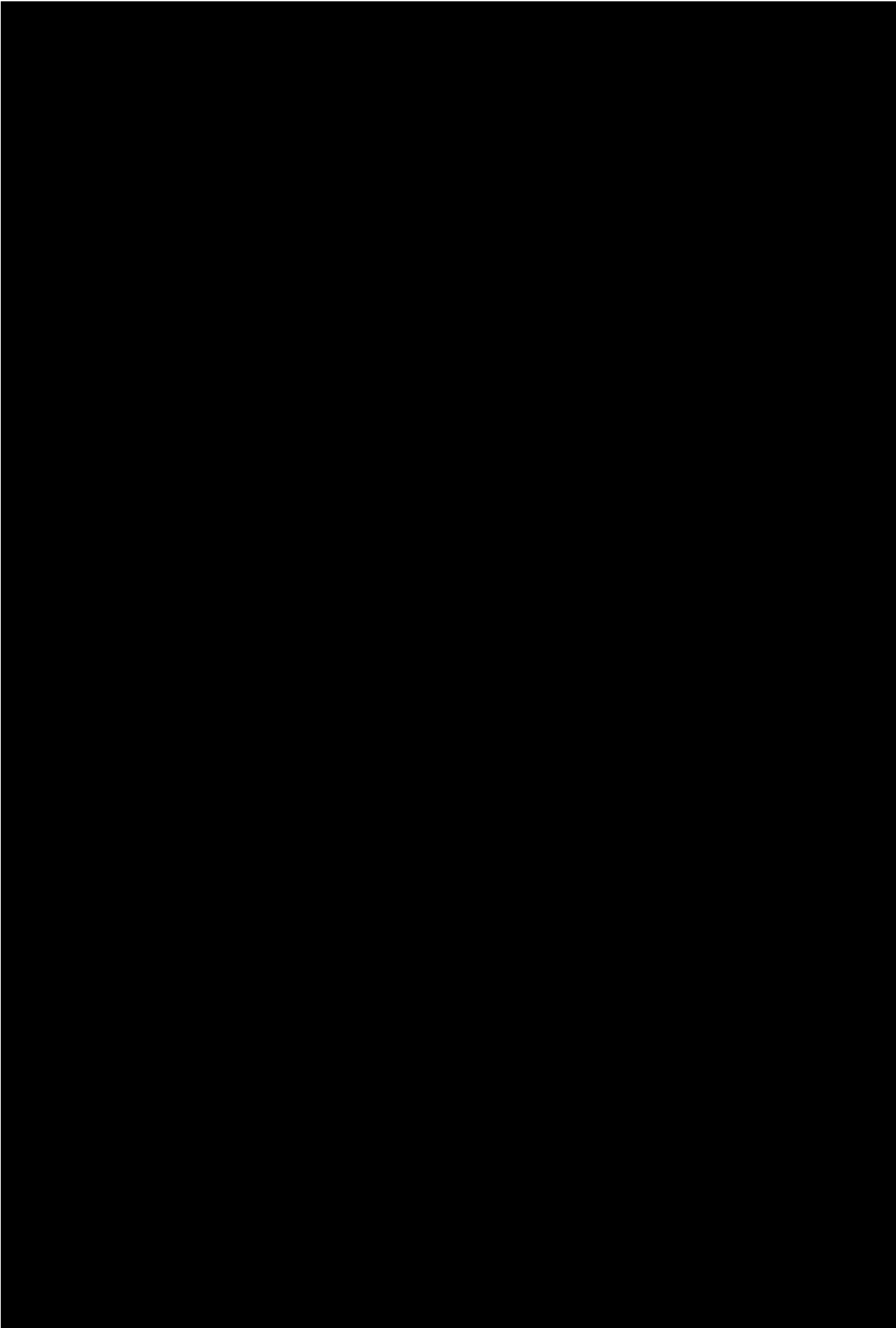


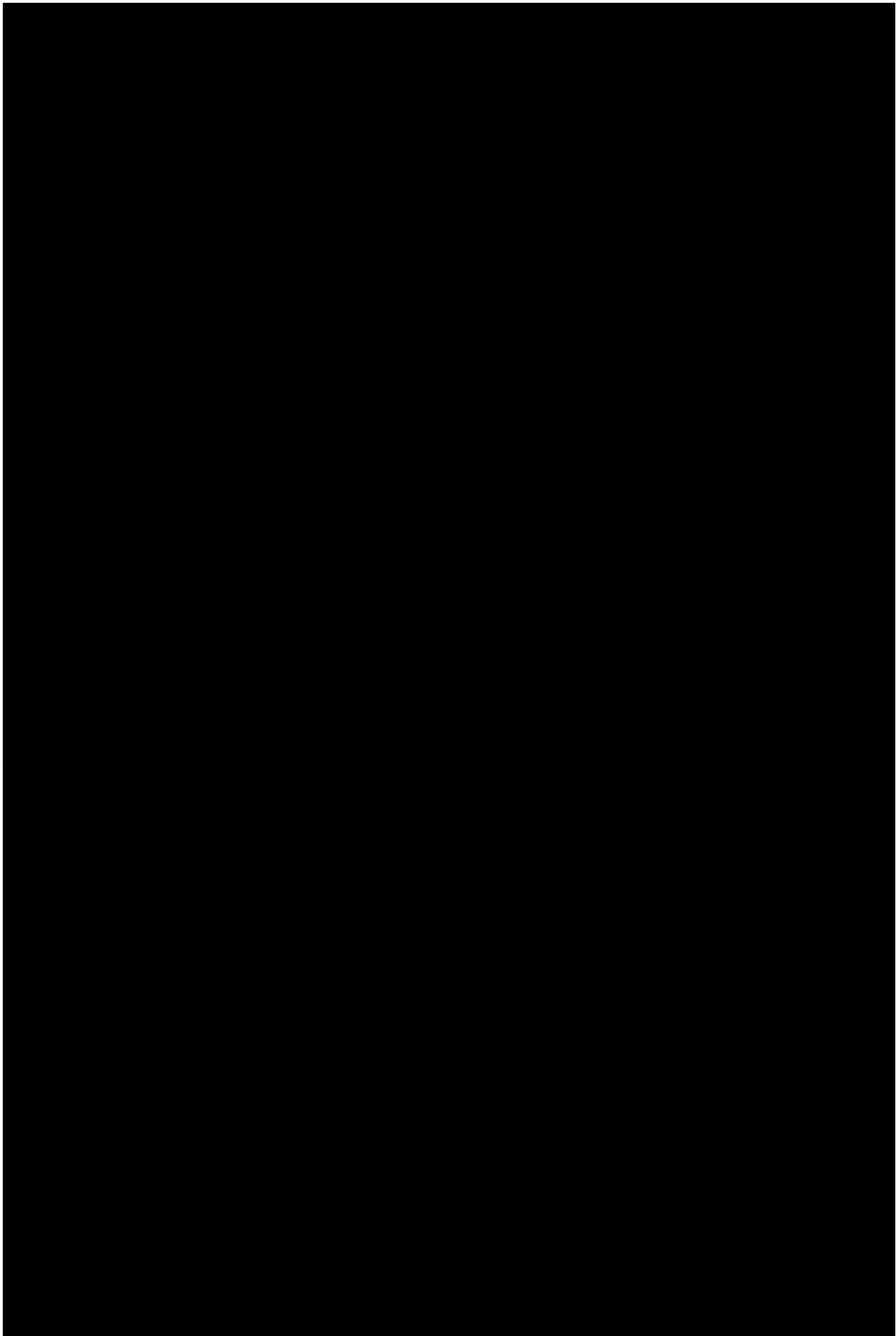


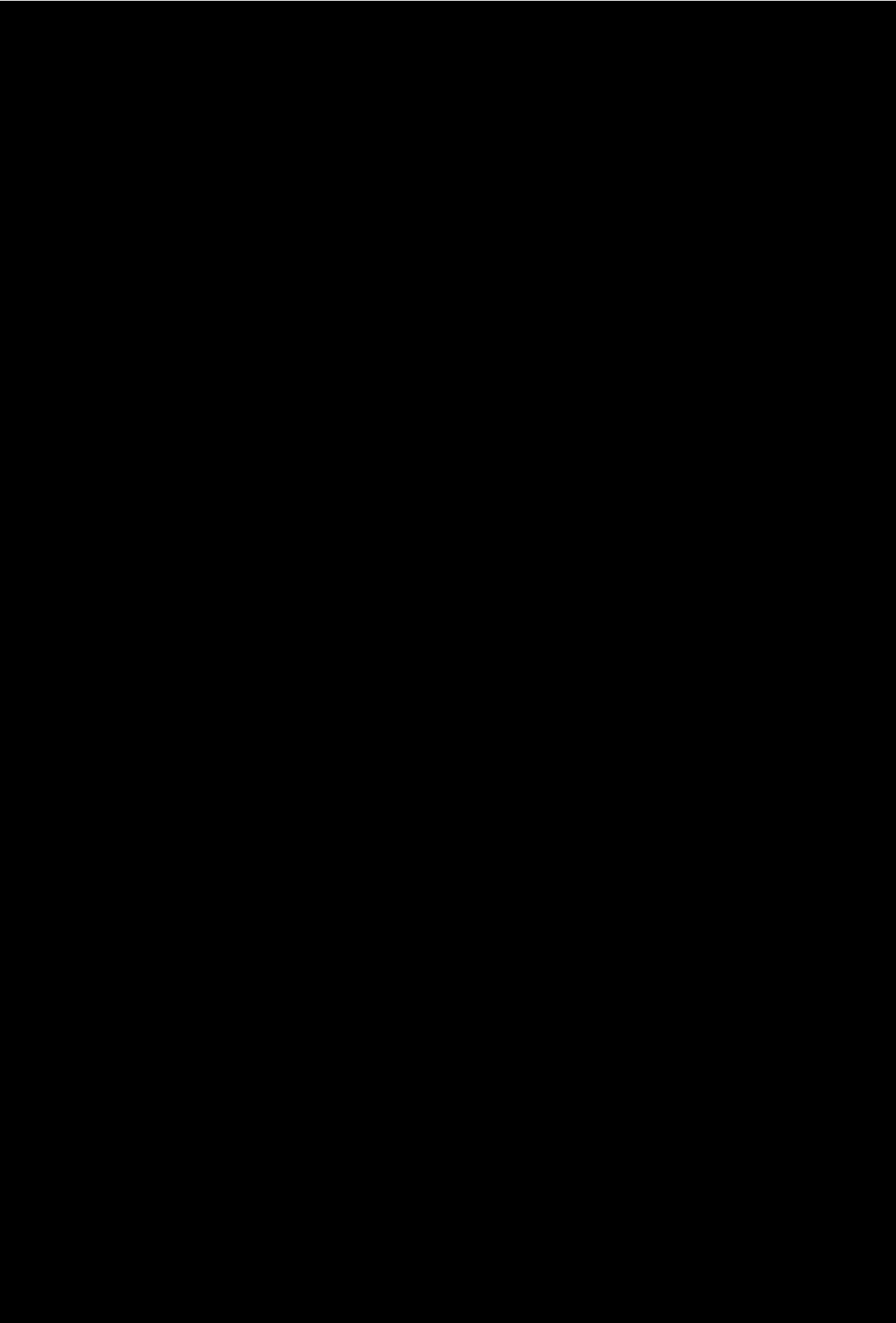


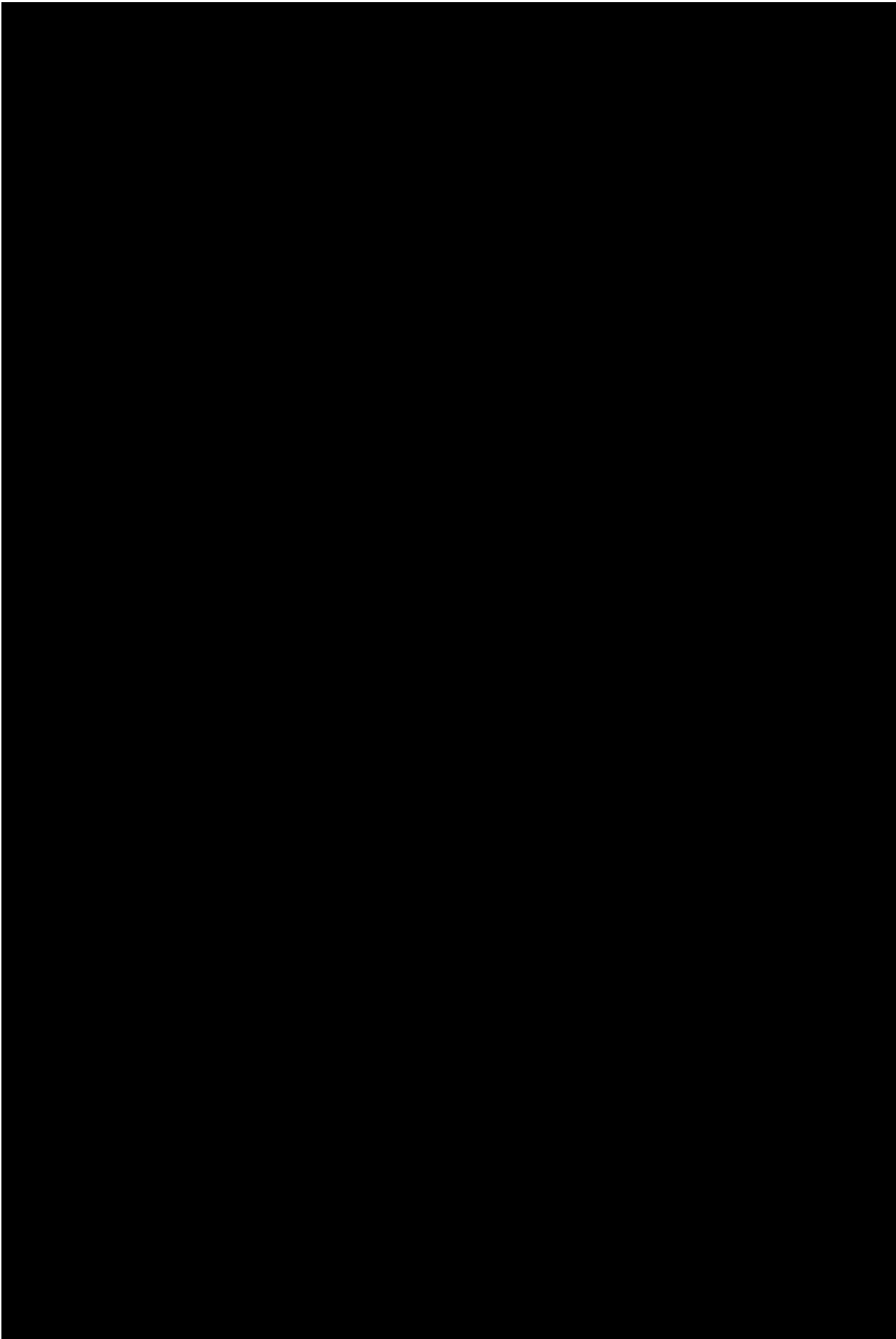


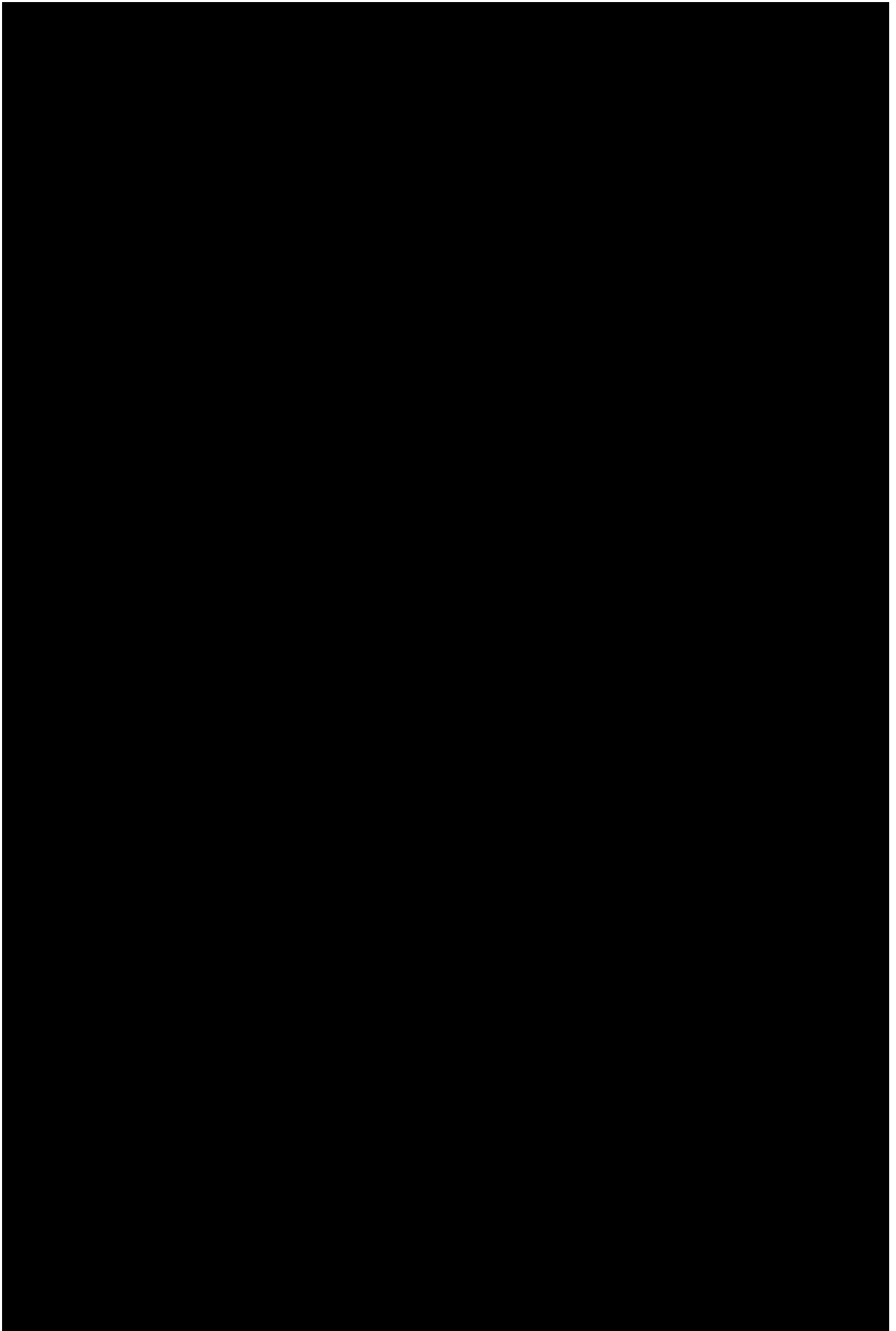


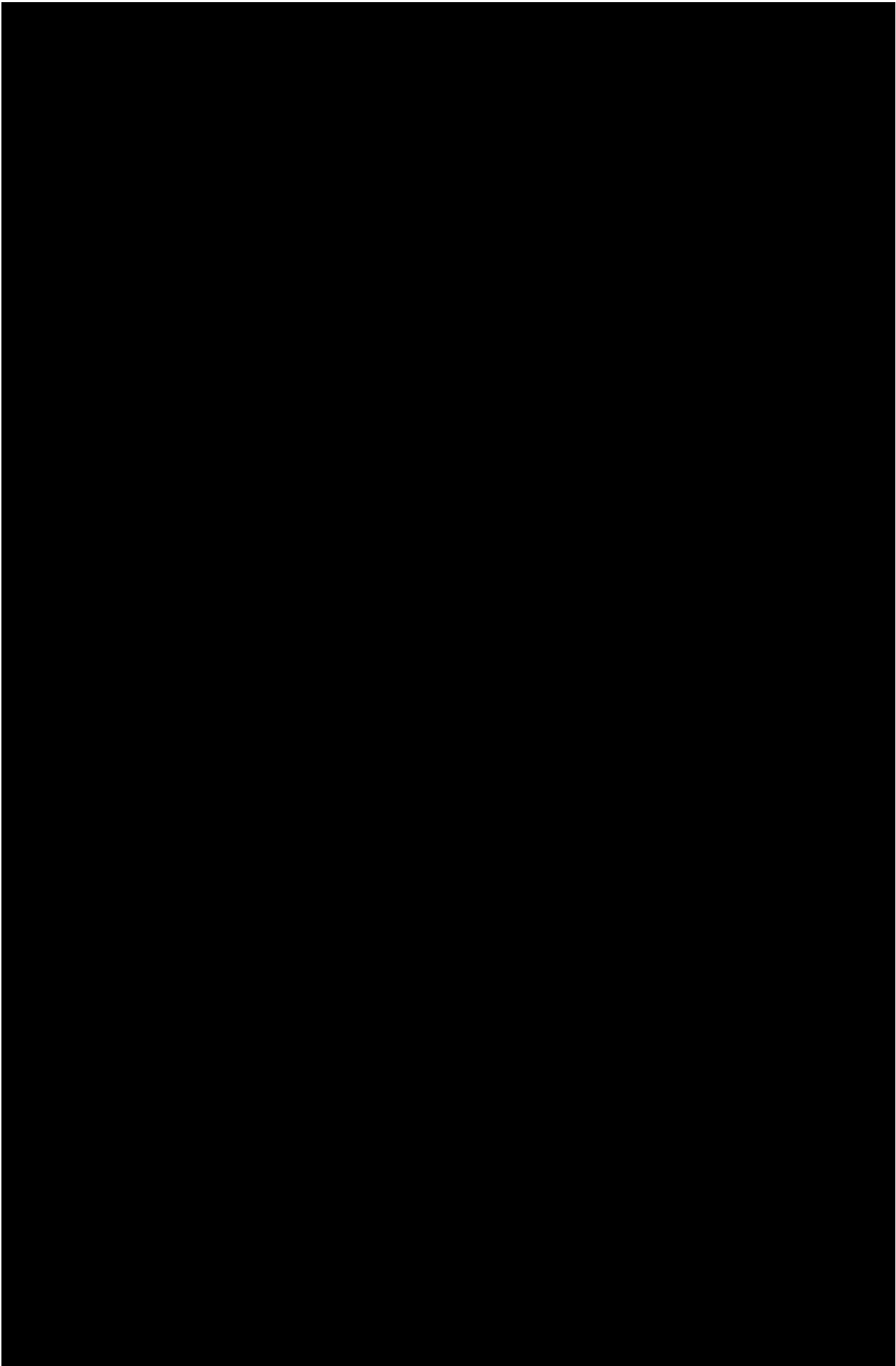


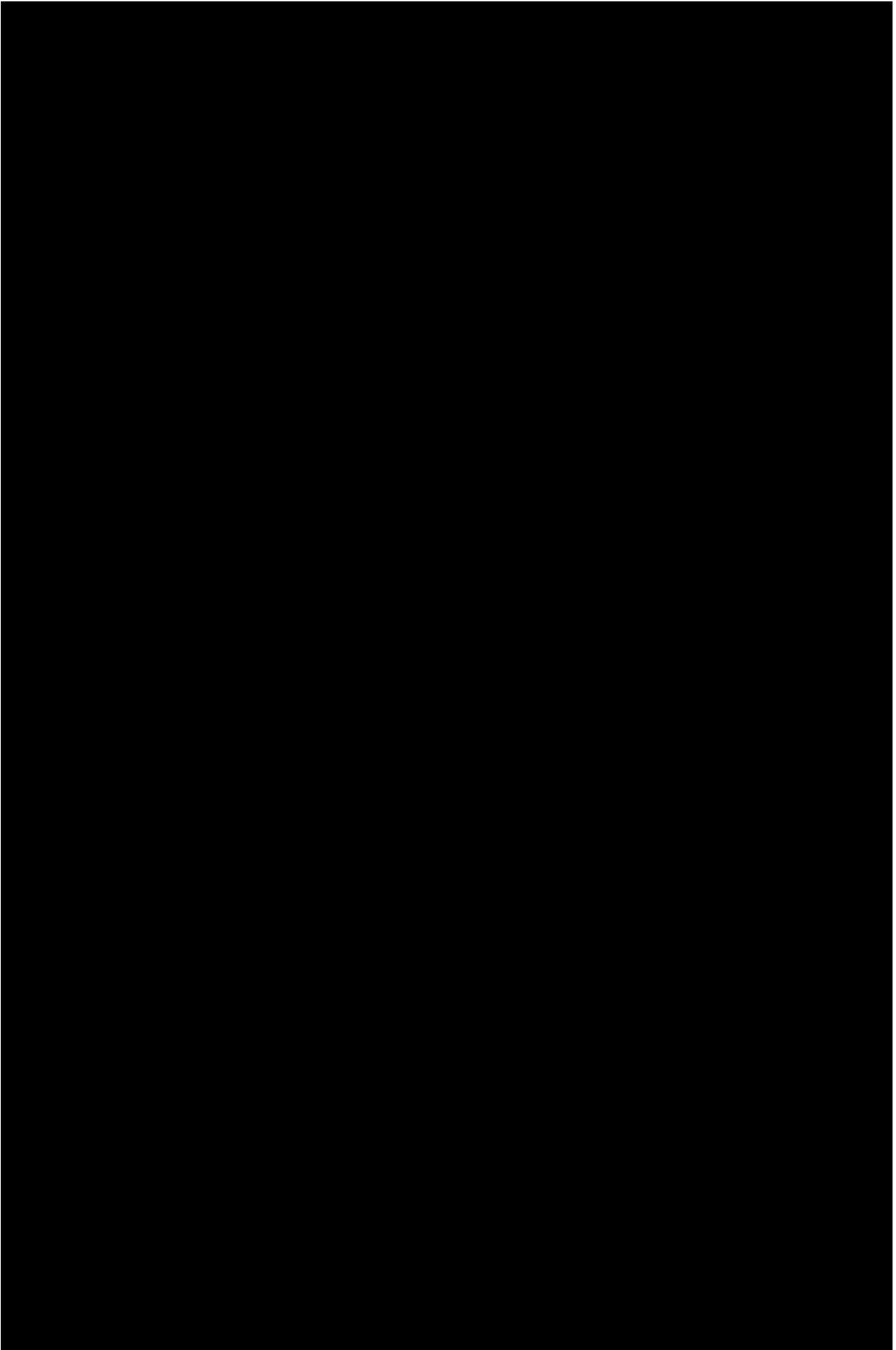


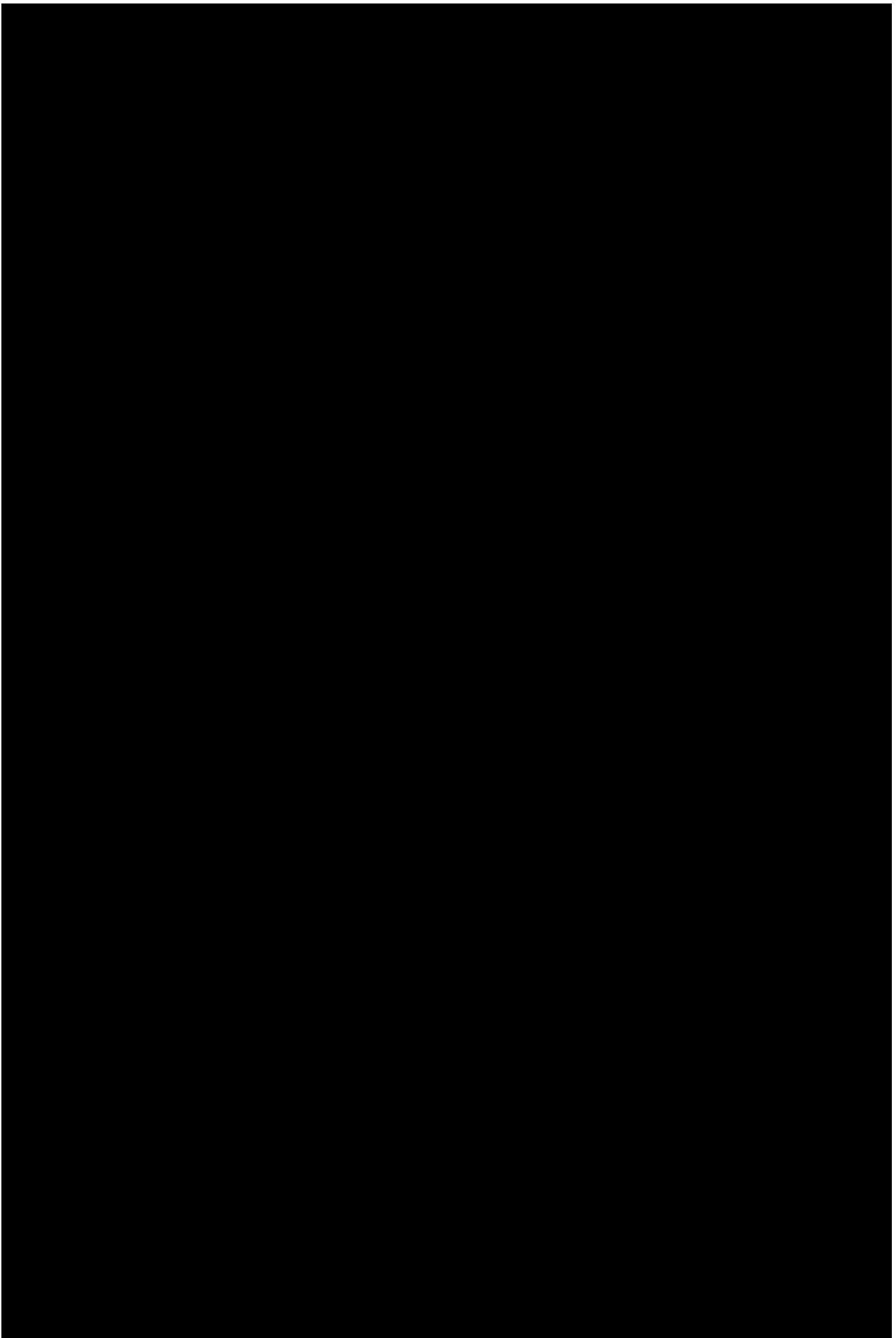


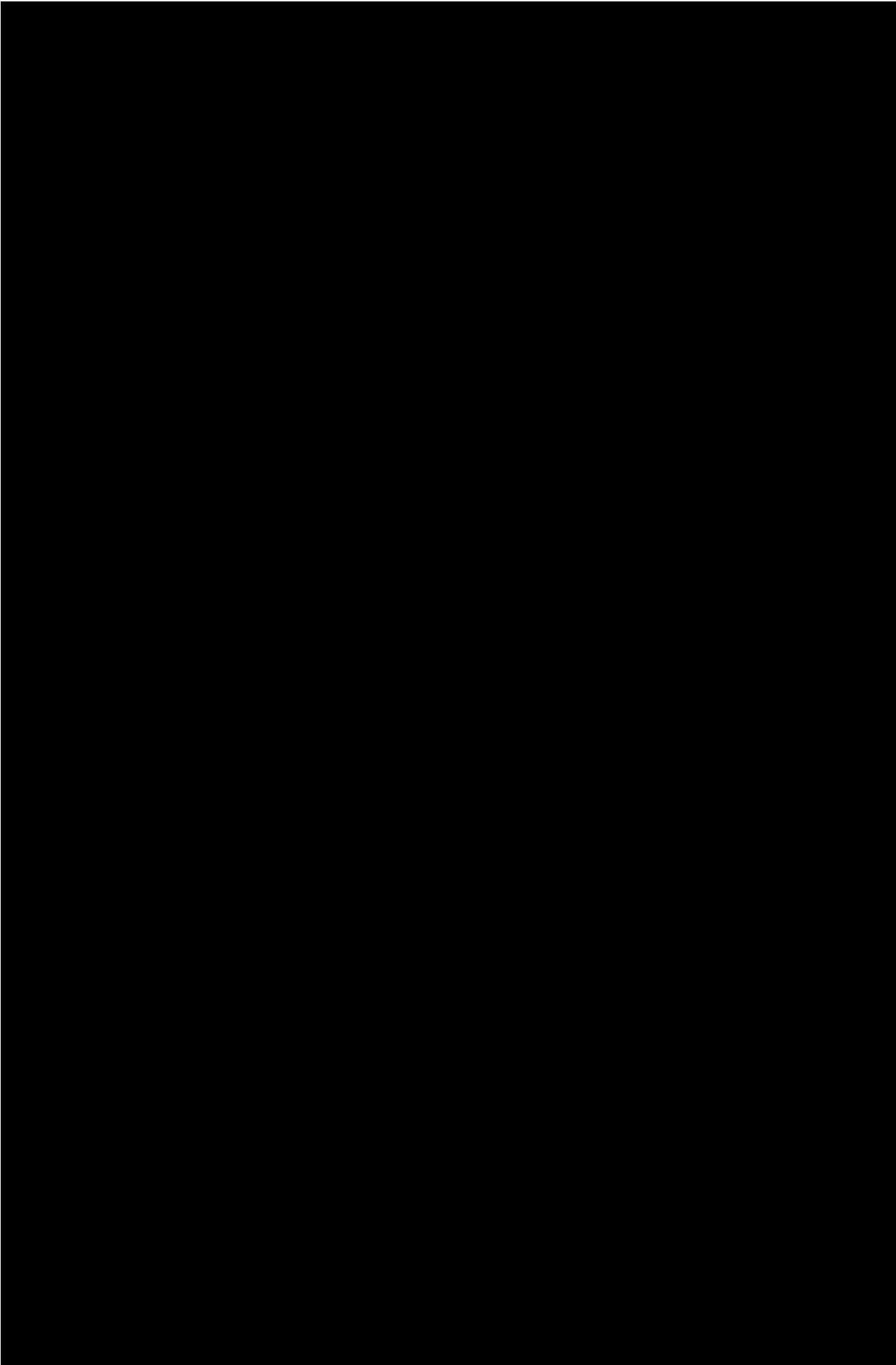


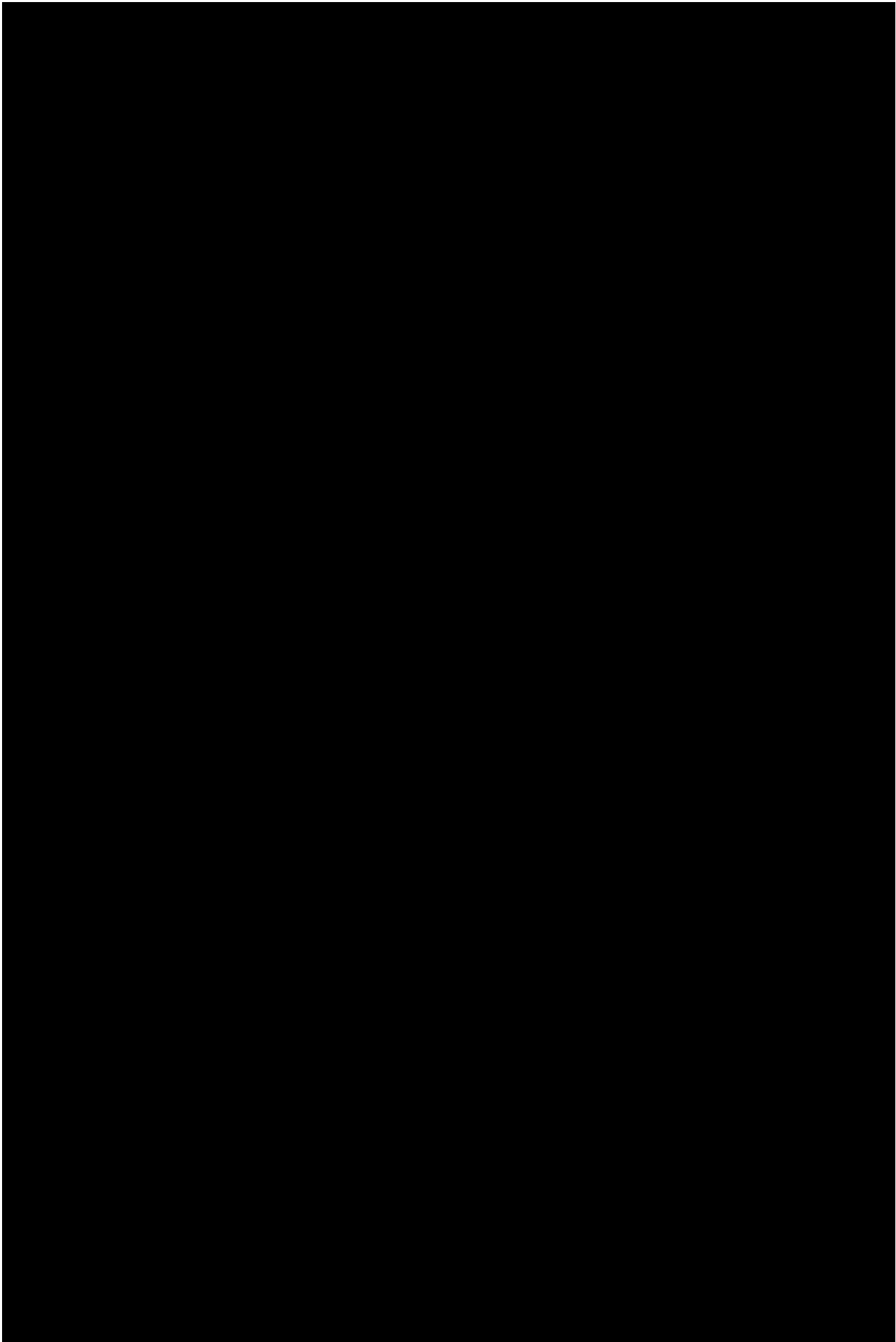


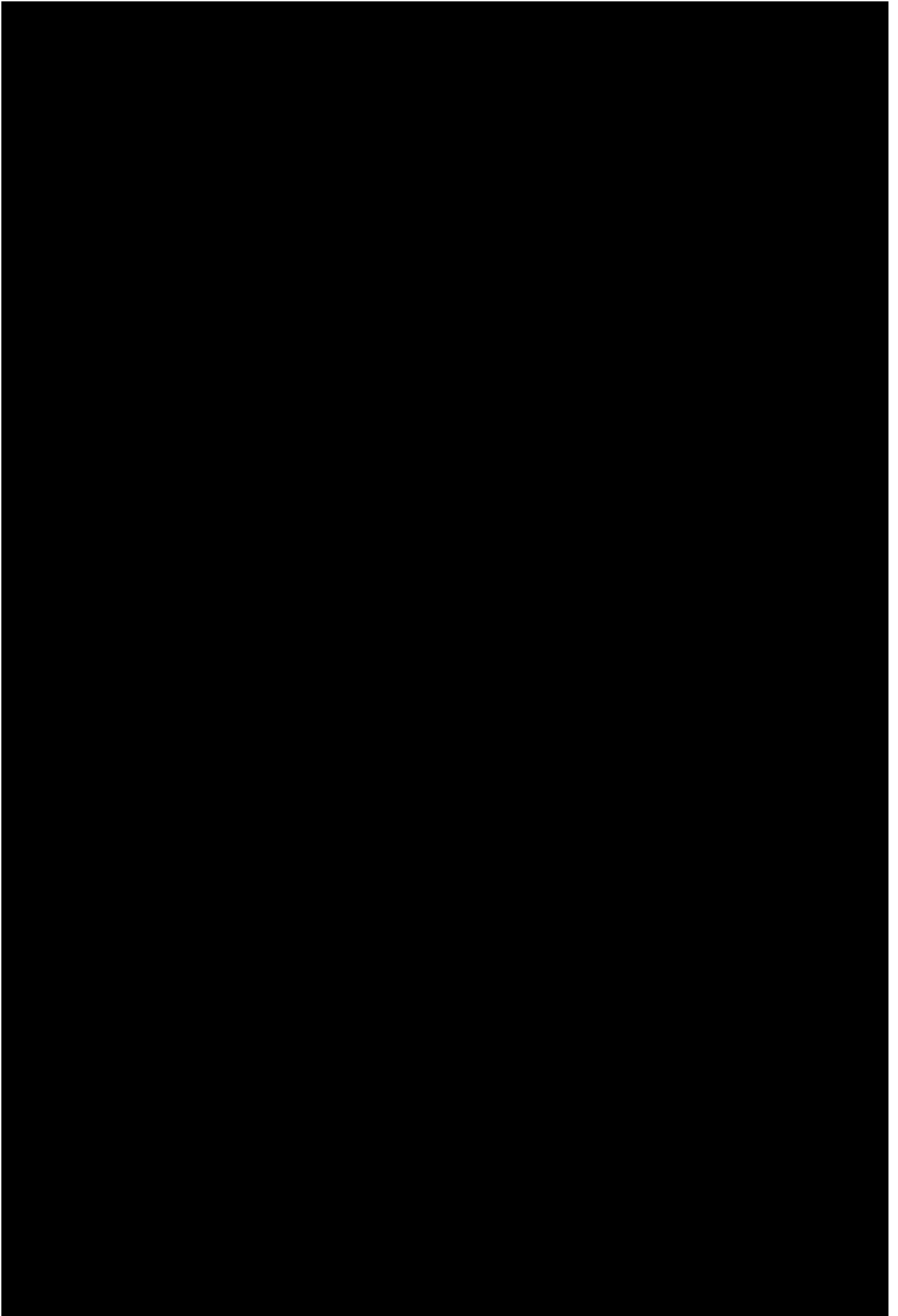


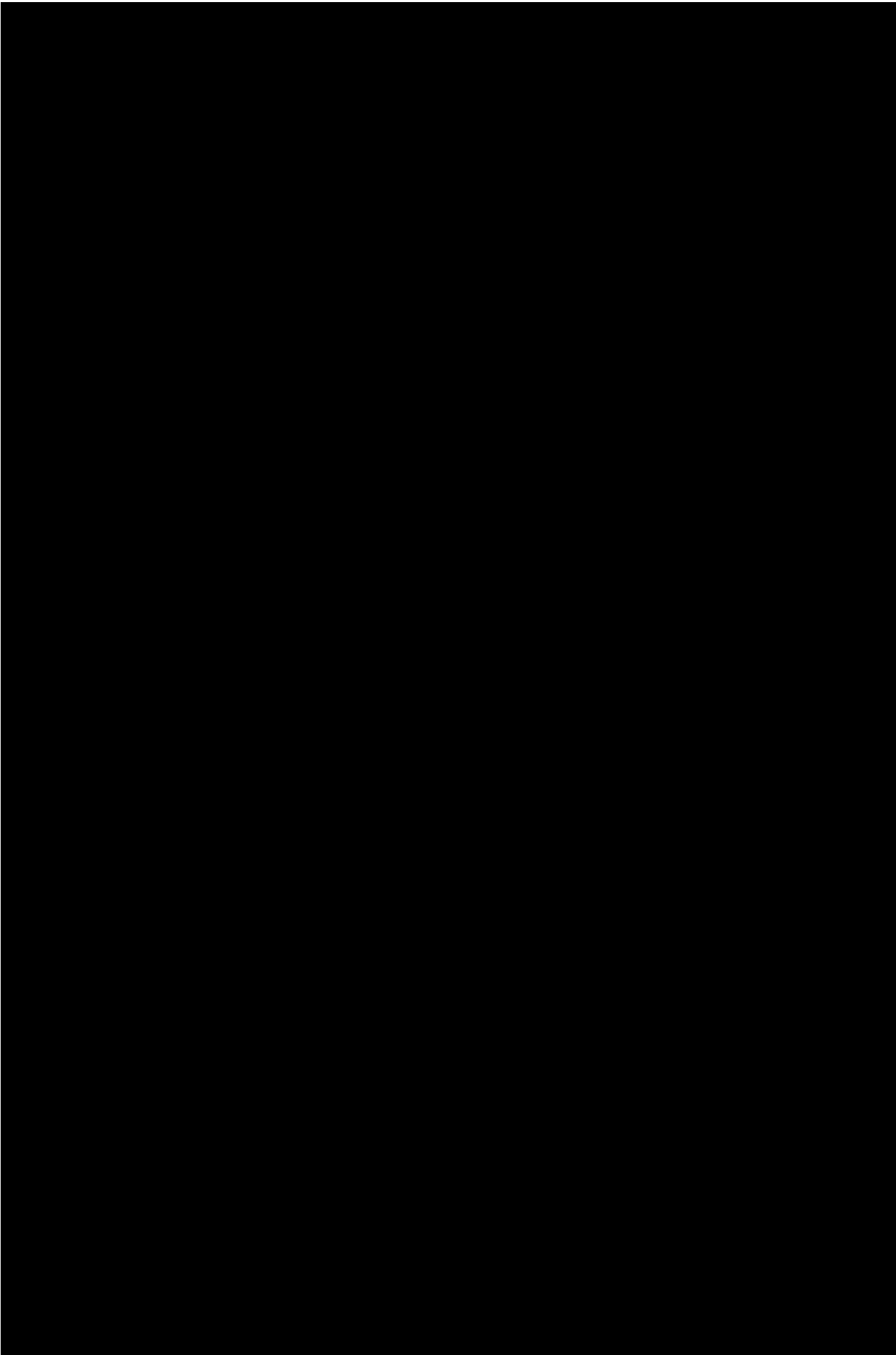


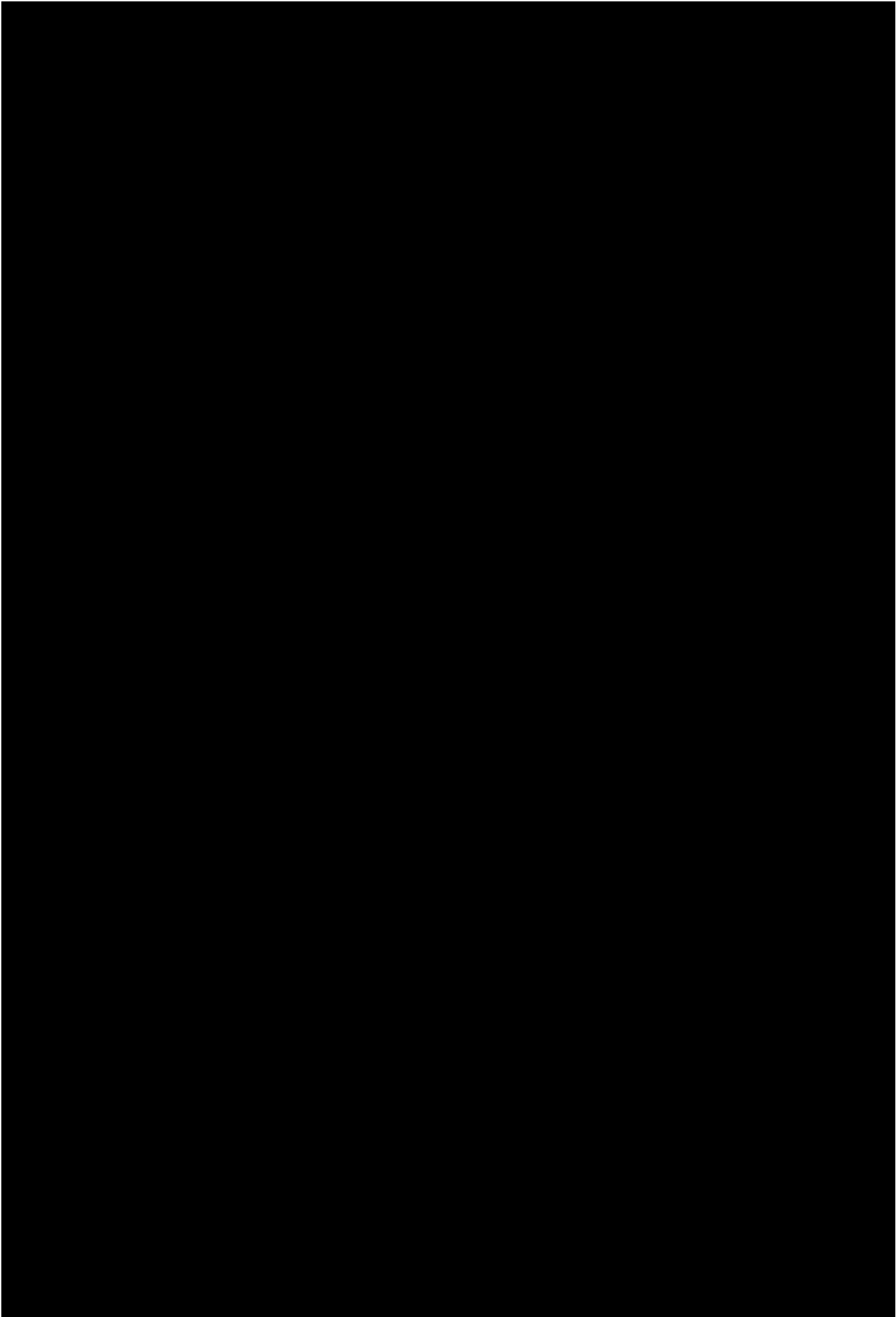




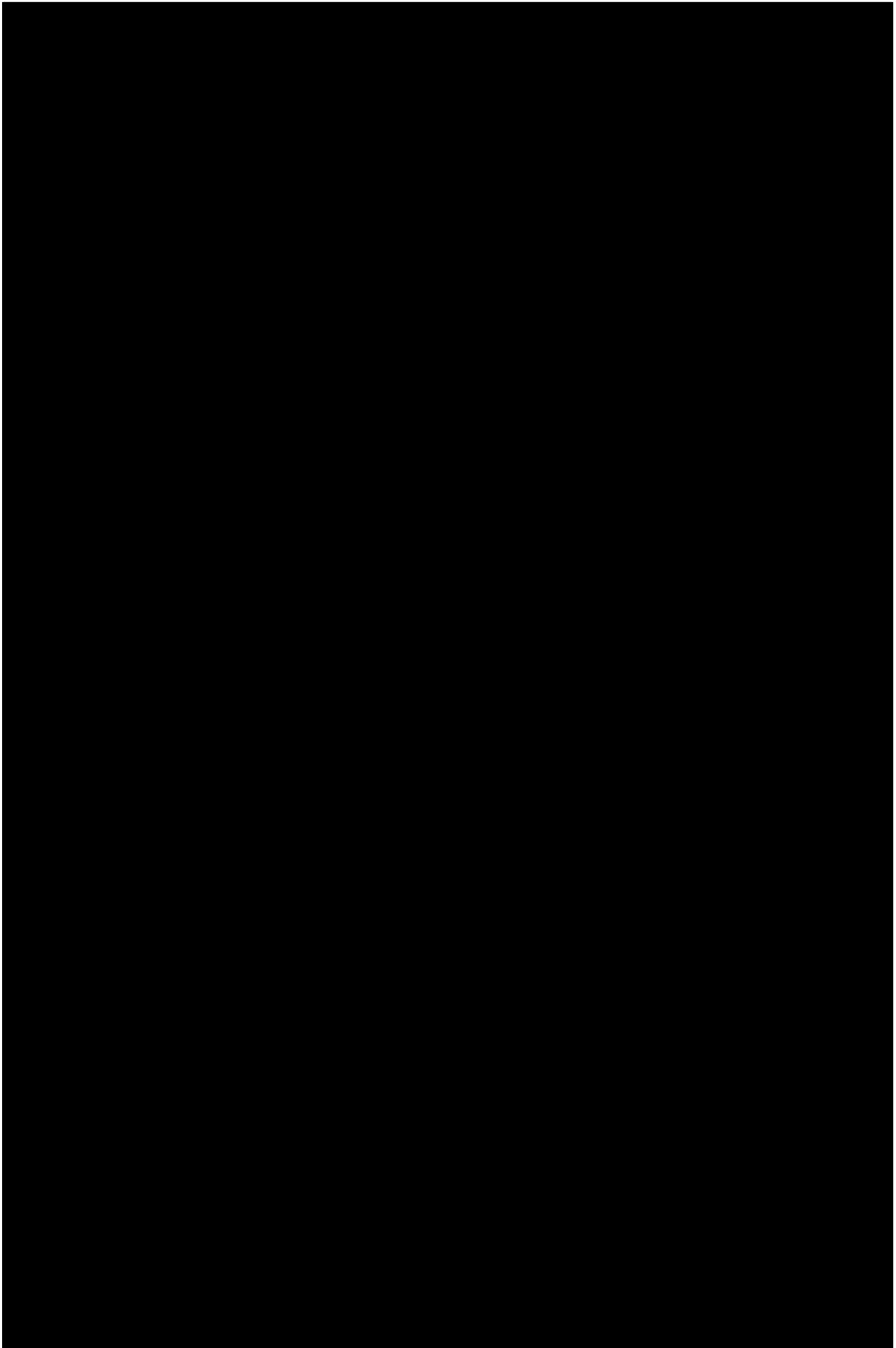


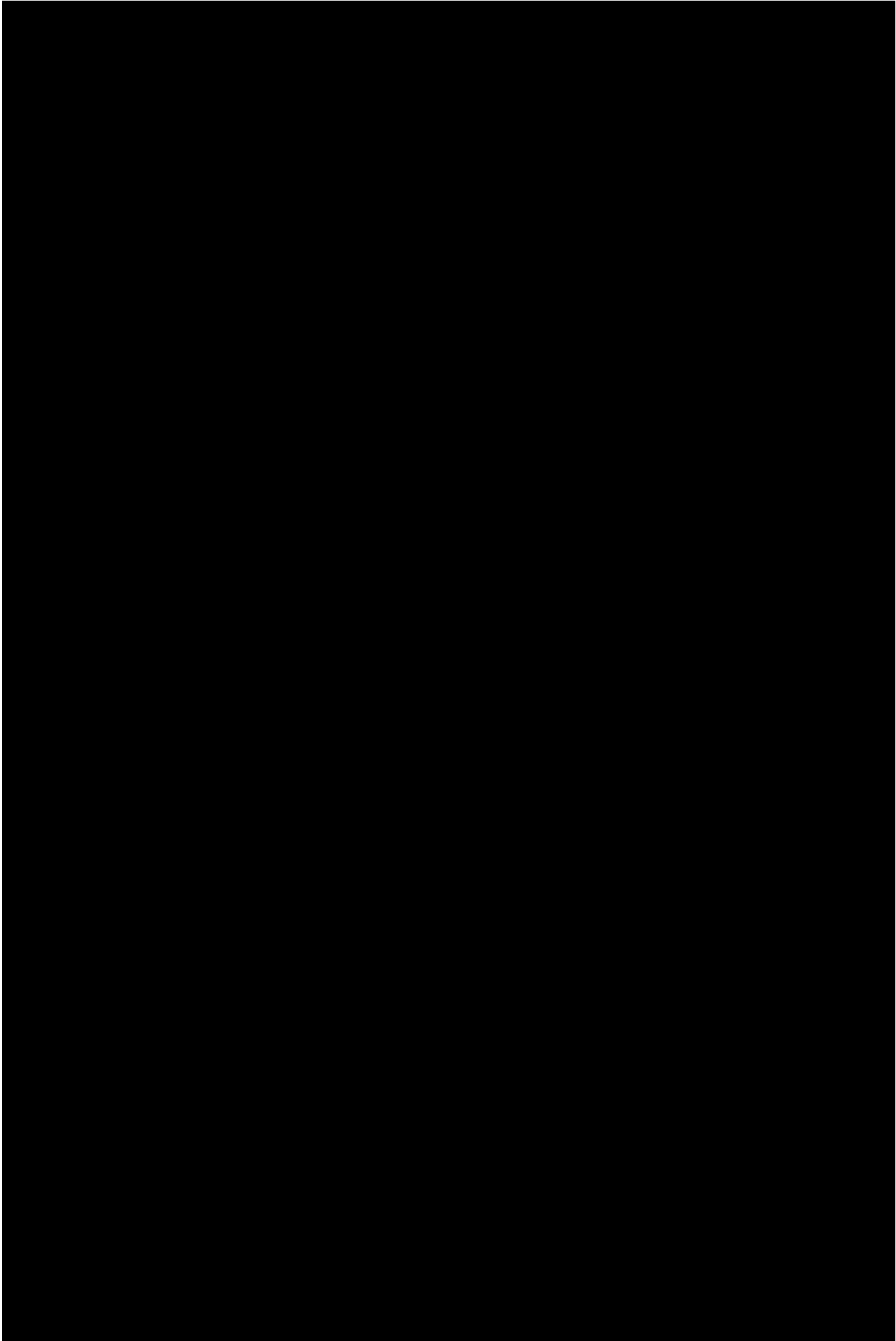






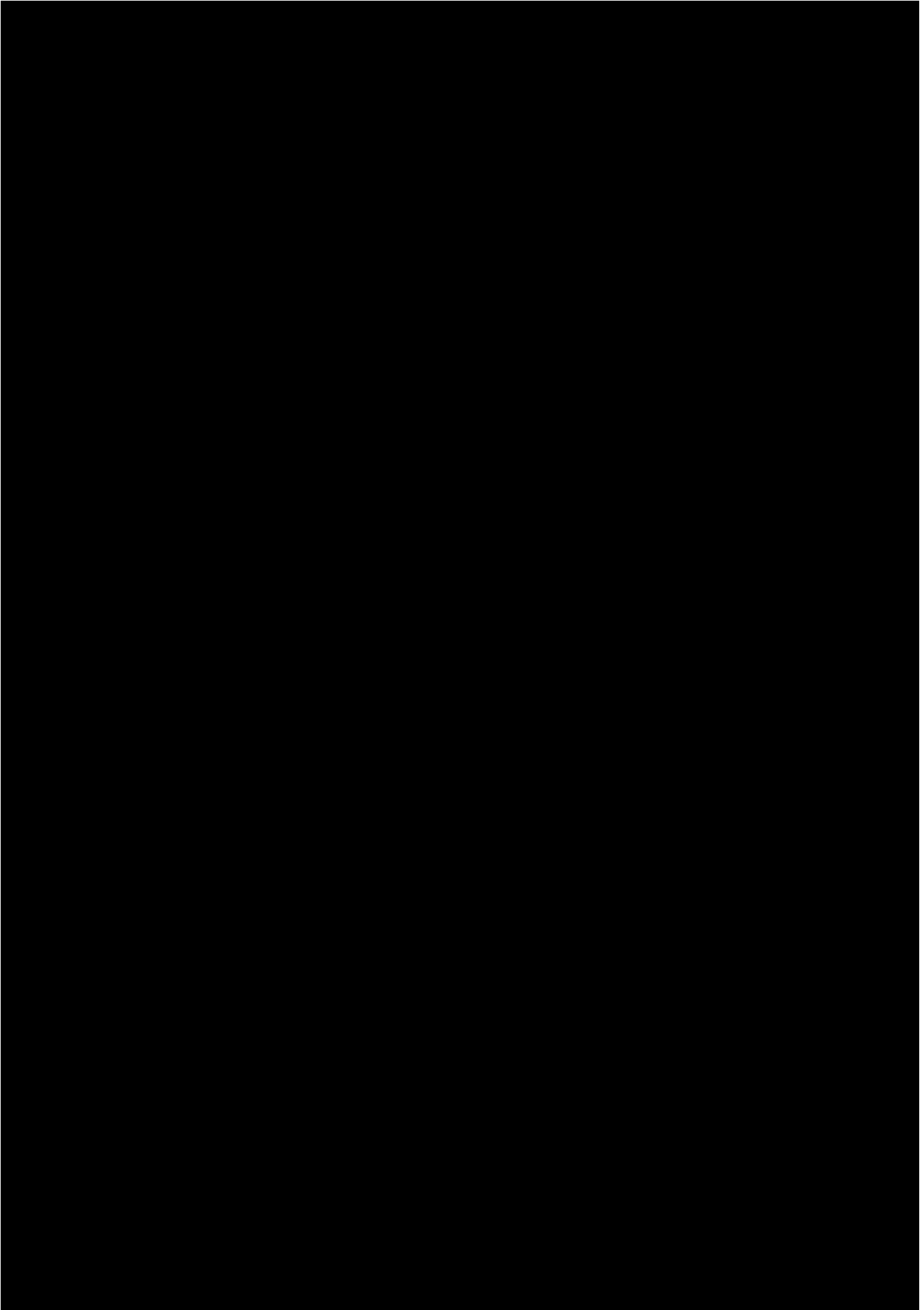


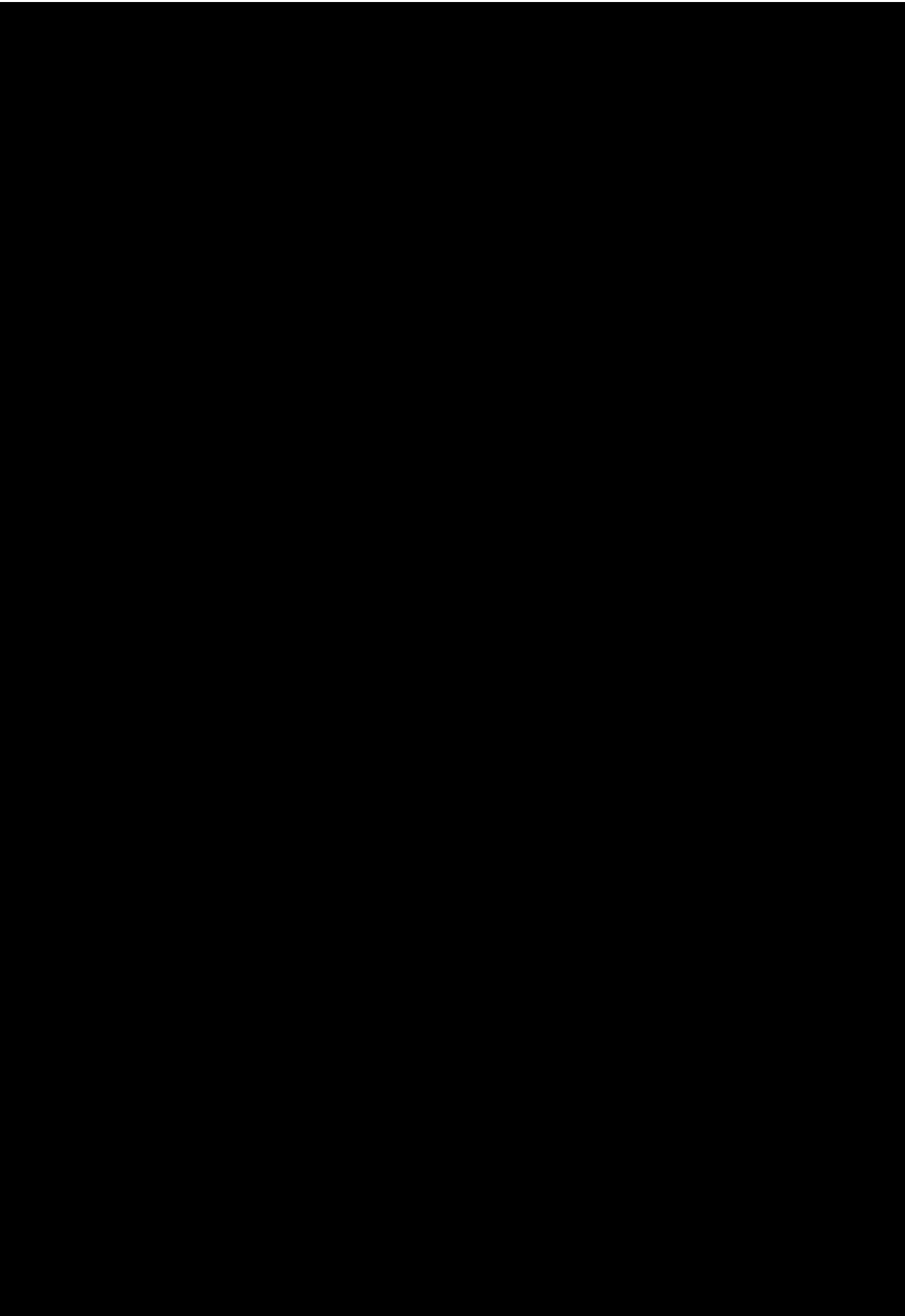


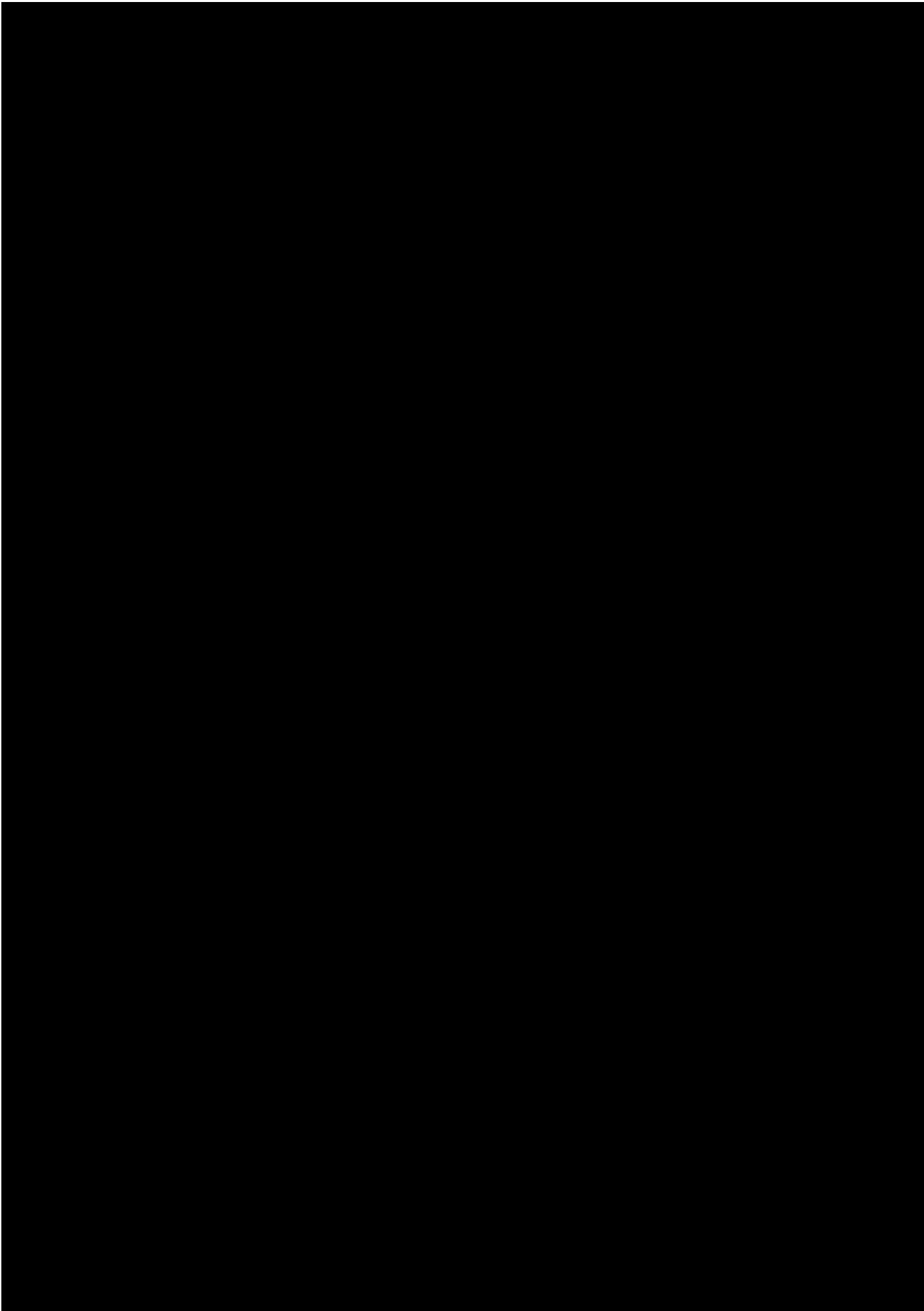


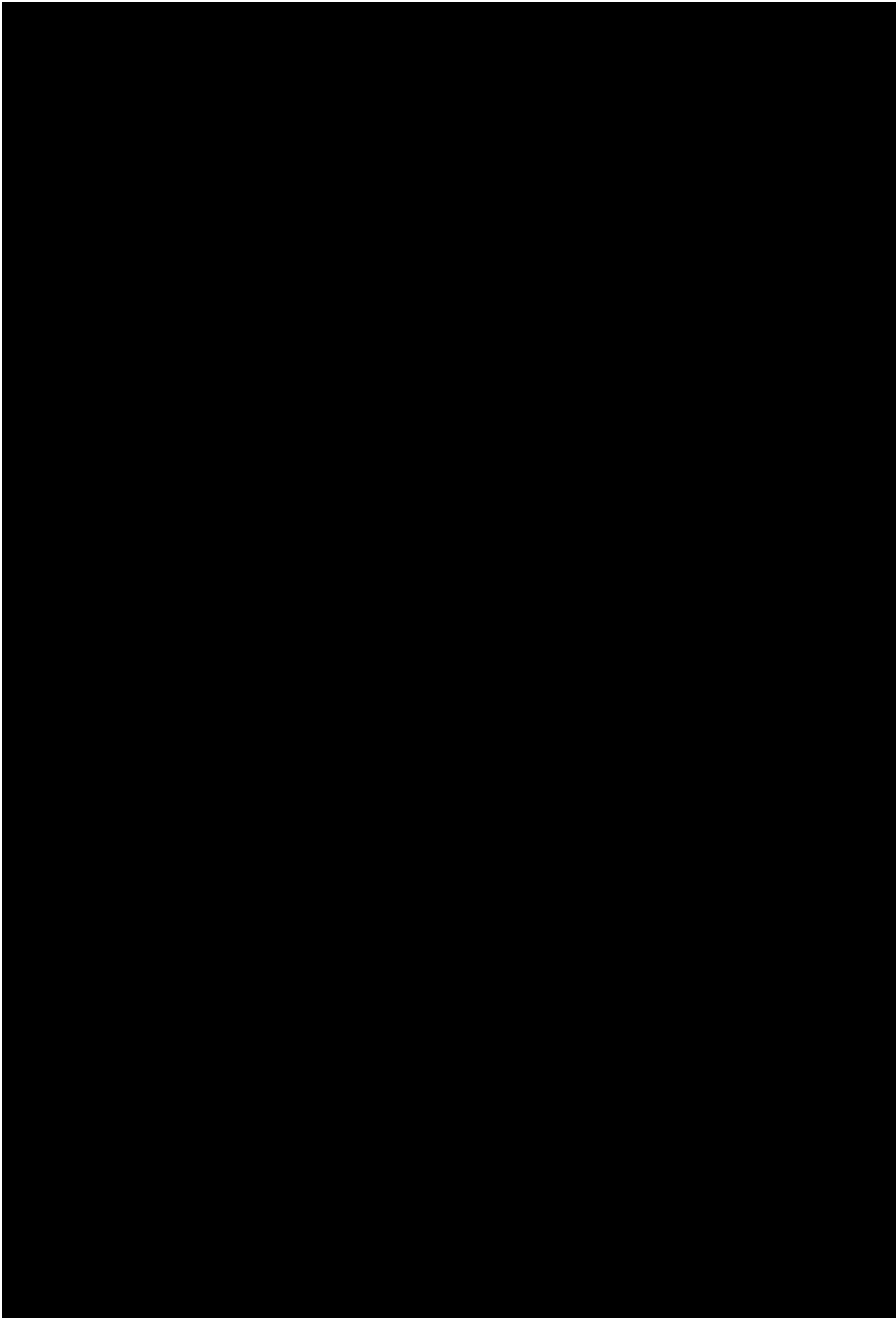




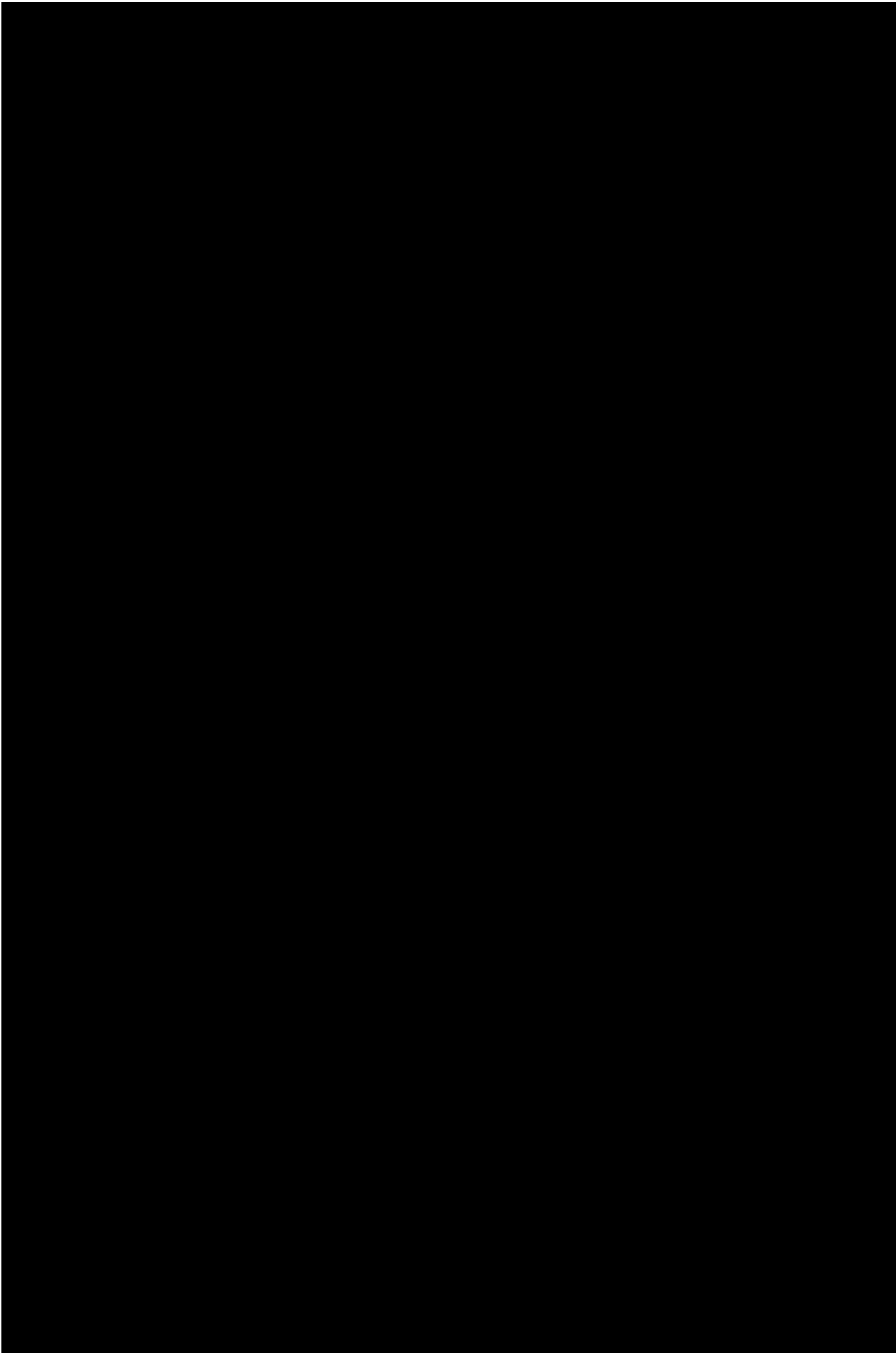


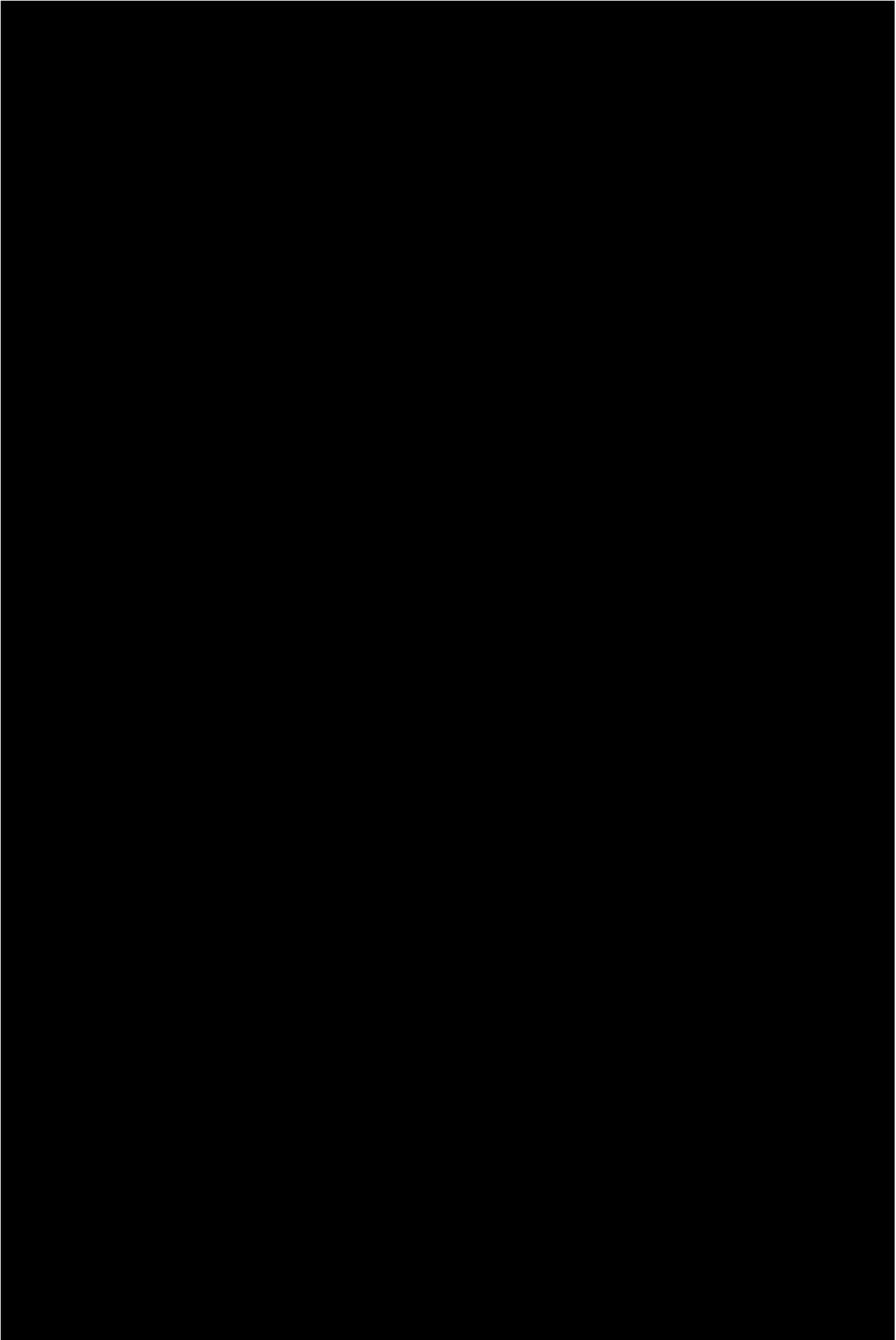


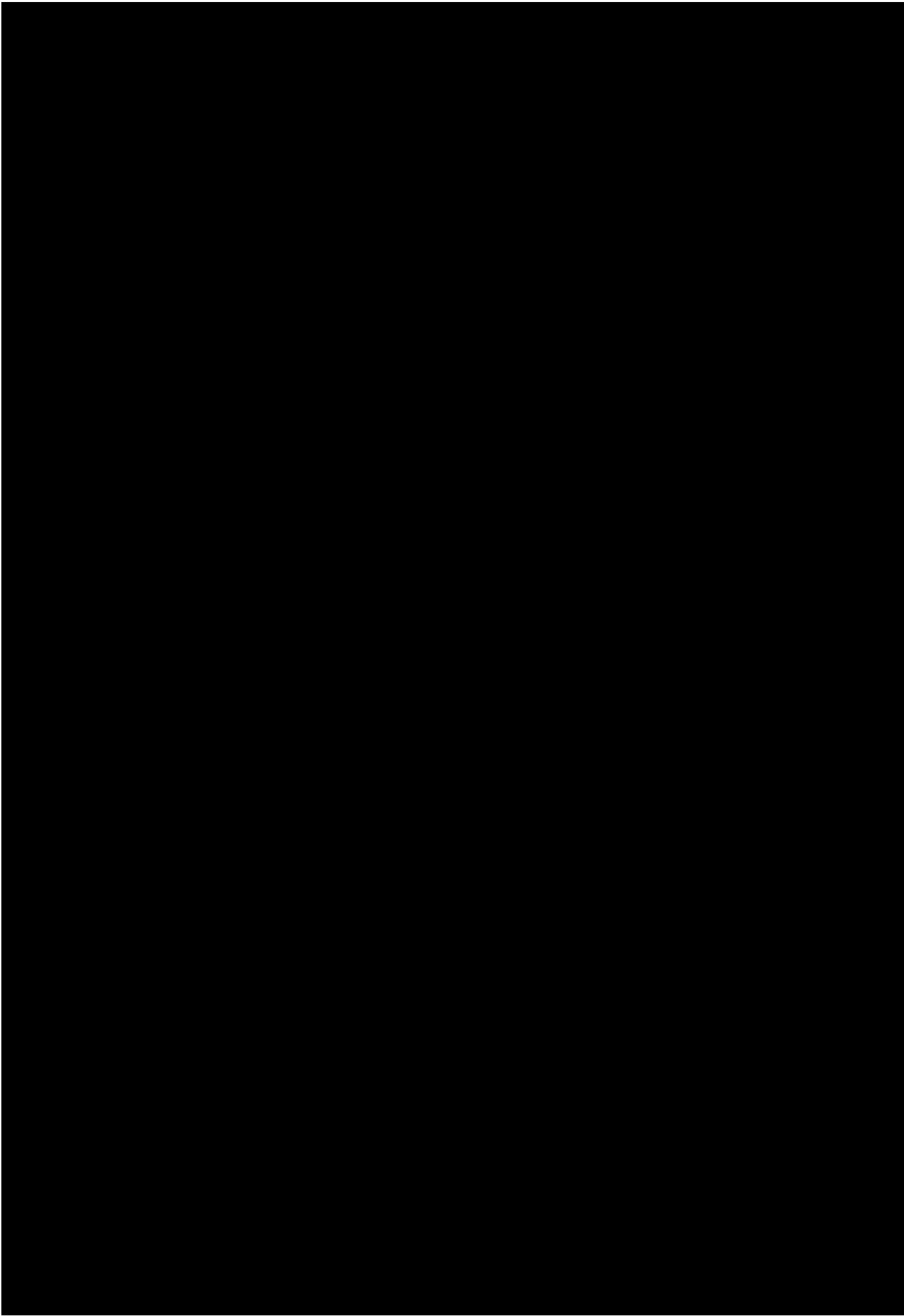


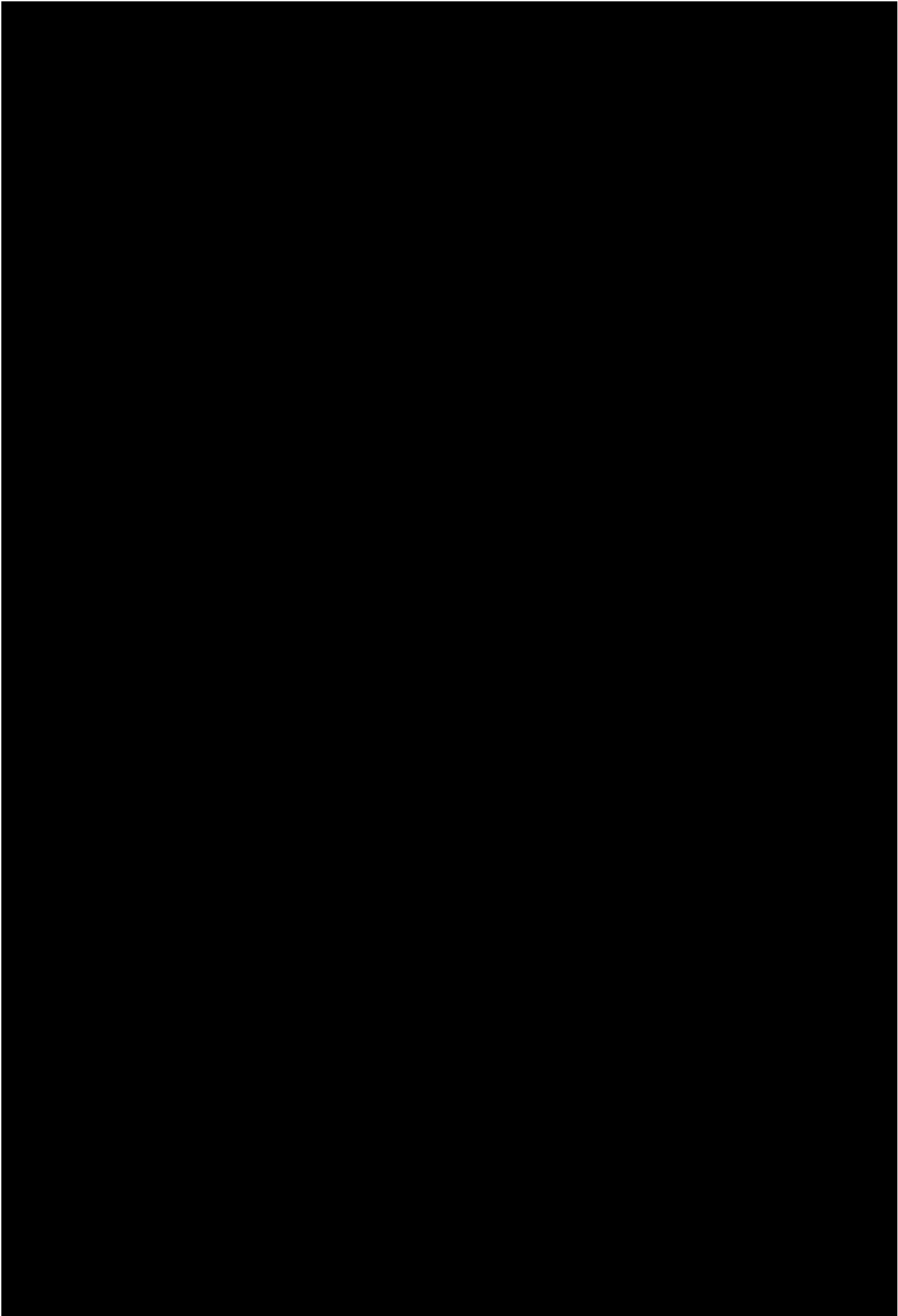


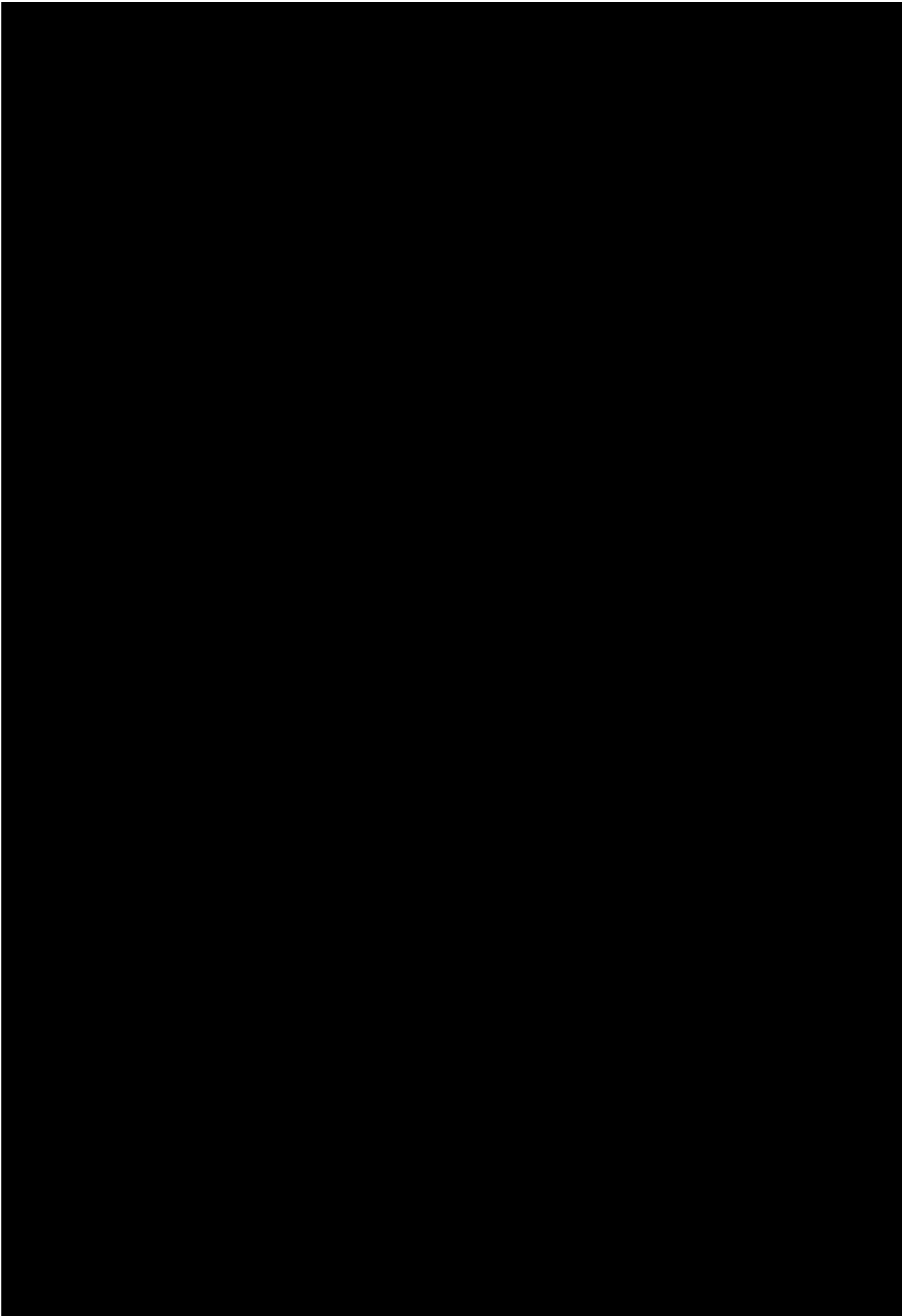


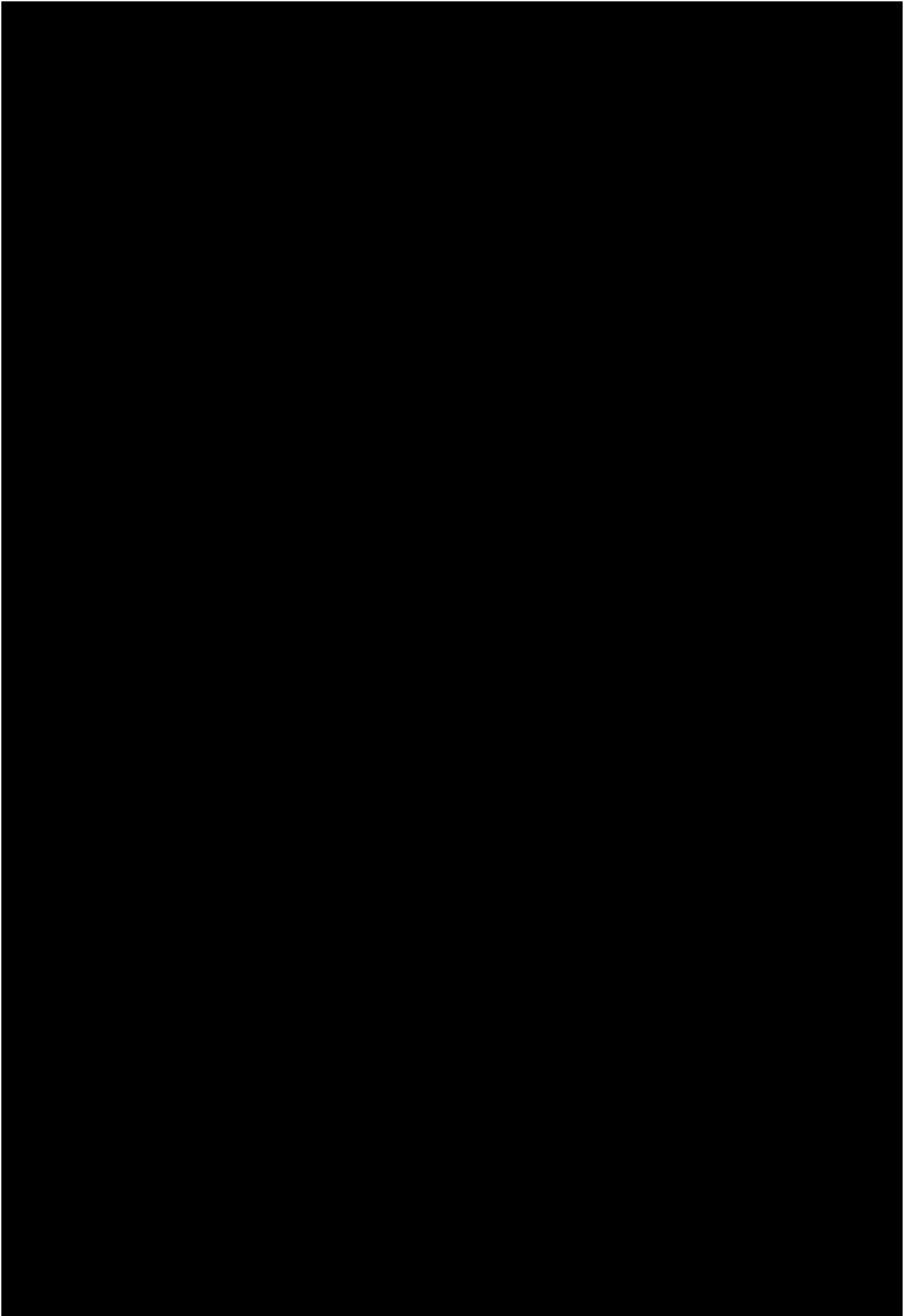












# Confidentiality Obligations

(Clauses 22.6 and 23.2 (definition of "Confidentiality Obligations"))

## 1. Dictionary and interpretation

### 1.1 Definitions

The following words have these meanings in this Schedule unless the contrary intention appears:

**Approved Purpose** means the design and construction of the Project Works under the Design and Construct Deed Coffs Harbour Bypass.

**Confidential Information** means all Information obtained by the Contractor from the Principal or disclosed to the Contractor by the Principal, any Representative of the Principal, or any person acting on the Principal's behalf, for or in connection with the Approved Purpose and all Information created by the Contractor in the course of carrying out the Approved Purpose, including:

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal, or a third party to whom the Principal owes an obligation of confidentiality;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; and
- (c) trade secrets or information which is capable of protection at Law or equity as confidential information,
- (d) whether the information:
- (e) was disclosed orally, in writing or in electronic or machine readable form;
- (f) was disclosed or created before, on or after the date of this deed;
- (g) was disclosed as a result of discussions between the parties concerning or arising out of the Approved Purpose; or
- (h) was disclosed by the Principal, any of its Representatives or by a person acting on the Principal's behalf.

**Excluded Information** means Confidential Information:

- (a) which is in or becomes part of the public domain otherwise than through breach of the Confidentiality Obligations or an obligation of confidence owed to the Principal;
- (b) which the Contractor can prove by contemporaneous written documentation was already known to it at the time of disclosure by the Principal, its Representative or a person acting on the Principal's behalf, unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality; or
- (c) which the Contractor acquires from a source other than the Principal, a Representative of the Principal or a person acting on the Principal's behalf where such source is entitled to disclose it.

**Government Agency** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

**Information** means all information regardless of its Material Form, relating to or developed in connection with:

- (a) the business, technology or other affairs of the Principal or any other Government Agency;
- (b) the Approved Purpose; or
- (c) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs, (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information, owned or used by, or licensed to the Principal or any other Government Agency.

**Material Form** in relation to Information, includes any form (whether visible or not) of storage from which the Information can be reproduced and any form in which the Information is embodied or encoded.

**Representative of the Principal or the Contractor** includes their employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer, contractor, sub-contractor or insurer.

## **1.2 Confidential Information not in public domain**

Confidential Information will not be regarded as being in the public domain by reason only of the fact that some portion of it is public or that information is publicly available which, together with other information, could be used to produce any Confidential Information.

## **2. Disclosure**

### **2.1 No obligation to disclose information**

The Contractor acknowledges that nothing in the Confidentiality Obligations obliges the Principal, its Representatives or any person acting on the Principal's behalf to disclose any particular information to the Contractor or its Representatives. The Contractor acknowledges that the Principal has an absolute discretion as to the information, which it chooses to disclose.

### **2.2 No representations or warranties given**

The Contractor acknowledges that neither the Principal, nor any of its Representatives, nor any person acting on the Principal's behalf:

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, content, legality or completeness of the Confidential Information;
- (b) is under any obligation to notify the Contractor or provide any further information to the Contractor if it becomes aware of any inaccuracy, incompleteness or change in the Confidential Information; or
- (c) has made nor makes any representation or warranty, express or implied that the Confidential Information does not infringe the intellectual property rights or any other right of any person.

### **2.3 Contractor to make its own assessment**

The Contractor agrees and acknowledges that:

- (a) it will rely solely on its own investigations and analysis in evaluating the Information disclosed by the Principal or its Representatives or any person acting on the Principal's behalf; and
- (b) any forecasts or estimates in the Information disclosed by the Principal or its Representatives or any person acting on the Principal's behalf may not prove correct or be achieved.

## **3. Obligation of confidence**

### **3.1 Confidential discussions**

The Contractor undertakes not to disclose to any person without the prior written consent of the Principal or except as it may be required to disclose by any Law or order of any Government Agency or the rules of any stock exchange:

- (a) the existence of and contents of this deed and any other instruments entered into or to be entered into in connection with this deed;
- (b) the contents of any discussions between the parties relating to the Approved Purpose; or
- (c) the fact that any discussions between the parties relating to the Approved Purpose have taken place or will or may take place.

### **3.2 Contractor to maintain confidence**

The Contractor must:

- (a) maintain the confidential nature of the Confidential Information;
- (b) not, without the prior written consent of the Principal, disclose any of the Confidential Information to any person other than those of its Representatives who need it for the Approved Purpose;
- (c) not use or disclose or reproduce any of the Confidential Information for any purpose other than the Approved Purpose;

- (d) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure and use the same degree of care a prudent person would use to protect that person's confidential information; and
- (e) immediately notify the Principal of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information.

### **3.3 Contractor to inform the Principal before disclosure**

Before disclosing any of the Confidential Information to any of its Representatives for the Approved Purpose, the Contractor must:

- (a) inform the Principal of the name and title of the Representatives to whom it is to be disclosed;
- (b) ensure that each Representative is made fully aware of the confidential nature of all Confidential Information prior to obtaining access to it;
- (c) cause each Representative to sign an undertaking in the form set out in Attachment A; and
- (d) deliver the signed undertaking to the Principal.

### **3.4 Contractor's Representatives leaving its employ**

The Contractor agrees to notify the Principal promptly if any of its Representatives who have had access to the Confidential Information leave the employ or engagement of the Contractor.

### **3.5 Contractor's control of Confidential Information**

The Contractor's obligation of non-disclosure under this deed includes keeping the Confidential Information out of any computer, database, or other electronic means of data or information storage except for a computer, database, or other electronic means of data or electronic storage exclusively controlled by the Contractor.

## **4. Contractor's Representatives**

### **4.1 Contractor's responsibility for Representatives' conduct**

The Contractor must procure that its Representatives (whether or not still employed or engaged by the Contractor) do not do or omit to do anything, which if done or omitted to be done by the Contractor, would be a breach of the Confidentiality Obligations.

### **4.2 Contractor to assist in the Principal's action**

The Contractor must give the Principal all assistance it requires to take any action or bring any proceedings for breach of the undertaking delivered under clause 3.3.

## **5. Acknowledgements**

### **5.1 Confidential Information belongs to the Principal**

The Contractor acknowledges that:

- (a) the Confidential Information constitutes valuable and proprietary information of the Principal or its Representatives; and
- (b) this deed does not grant to the Contractor any licence or other right in relation to the Confidential Information except as expressly provided in the Confidentiality Obligations.

### **5.2 Injunctive relief**

The Contractor acknowledges that damages are not a sufficient remedy for the Principal and its Representatives for any breach of this deed and the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Contractor, in addition to any other remedies available to it at Law or in equity.

## **6. Indemnity**

### **6.1 Contractor indemnifies the Principal**

The Contractor undertakes to indemnify the Principal and its Representatives and all persons acting on the Principal's behalf, against all liability or loss arising directly or indirectly from, and any costs, charges and expenses incurred in connection with:

- (a) any breach by the Contractor of the Confidentiality Obligations; or

- (b) any act or omission by any of its Representatives which, if done or omitted to be done by the Contractor, would be a breach of the Confidentiality Obligations.

## **6.2 No set-off**

The Contractor undertakes to pay to the Principal and its Representatives and all persons acting on the Principal's behalf any sum due under clause 6.1 without any deduction or set-off (and irrespective of any counterclaim) whatsoever.

## **7. Exclusions**

### **7.1 Excluded Information**

Clauses 3.2, 3.3, 3.4 and 3.5 do not apply to the Excluded Information.

### **7.2 Disclosure required by Law**

Subject to compliance with clause 7.4, the obligations in clause 3 do not apply to the disclosure of any Confidential Information to the extent that it is required to be disclosed by the Contractor under any Law or the listing rules of ASX Limited or other recognised stock exchange.

### **7.3 Disclosure in the course of a dispute**

Subject to compliance with clause 7.4, the obligations in clause 3 do not apply to the disclosure of any Confidential Information to the extent the Confidential Information is given to a court in the course of proceedings to which the Contractor is a party or to a member of the Dispute Avoidance Board or an arbitrator appointed under this deed.

### **7.4 Limitation of disclosure**

Before the Contractor discloses any Confidential Information under any Law, order or rule of the kind referred to in clause 7.2, or in the course of a dispute referred to in clause 7.3, to the extent reasonably practicable the Contractor must provide the Principal with:

- (a) sufficient notice to enable it to seek a protective order or other remedy; and
- (b) all assistance and co-operation which the Principal considers necessary to prevent or minimise that disclosure of the Confidential Information.

## **8. Return of Confidential Information**

### **8.1 Return of Confidential Information**

The Contractor must (at its own expense):

- (a) return to the Principal or at the option and direction of the Principal destroy all documents and other materials in any medium in the possession, power or control of the Contractor or any of its Representatives which contain or refer to any Confidential Information (whether or not those documents and other materials were created by the Principal or its Representatives or any person acting on the Principal's behalf); and
- (b) delete any Confidential Information that has been entered into a computer, database or other electronic means of data or information storage,

on the earlier of:

- (c) demand by the Principal; or
- (d) the time the documents and other materials are no longer required for the Approved Purpose.

### **8.2 No release from obligations**

The return, destruction or deletion of the documents and other materials referred to in clause 8.1 does not release the Contractor or its Representatives from their obligations under the Confidentiality Obligations.

## **9. Privacy**

The Confidential Information may include Personal Information. In addition to any other obligations it may have under any Law or under this deed, the Contractor agrees to:

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed is protected against loss and unauthorised access, use, modification or disclosure; and

- (b) comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as though the Contractor were a public sector agency as defined in that Act.

## Progress Claim

Pursuant to Clause 18.2(c)(i) of the D&C Deed the Contractor claims payment as summarised below:

[illegible]

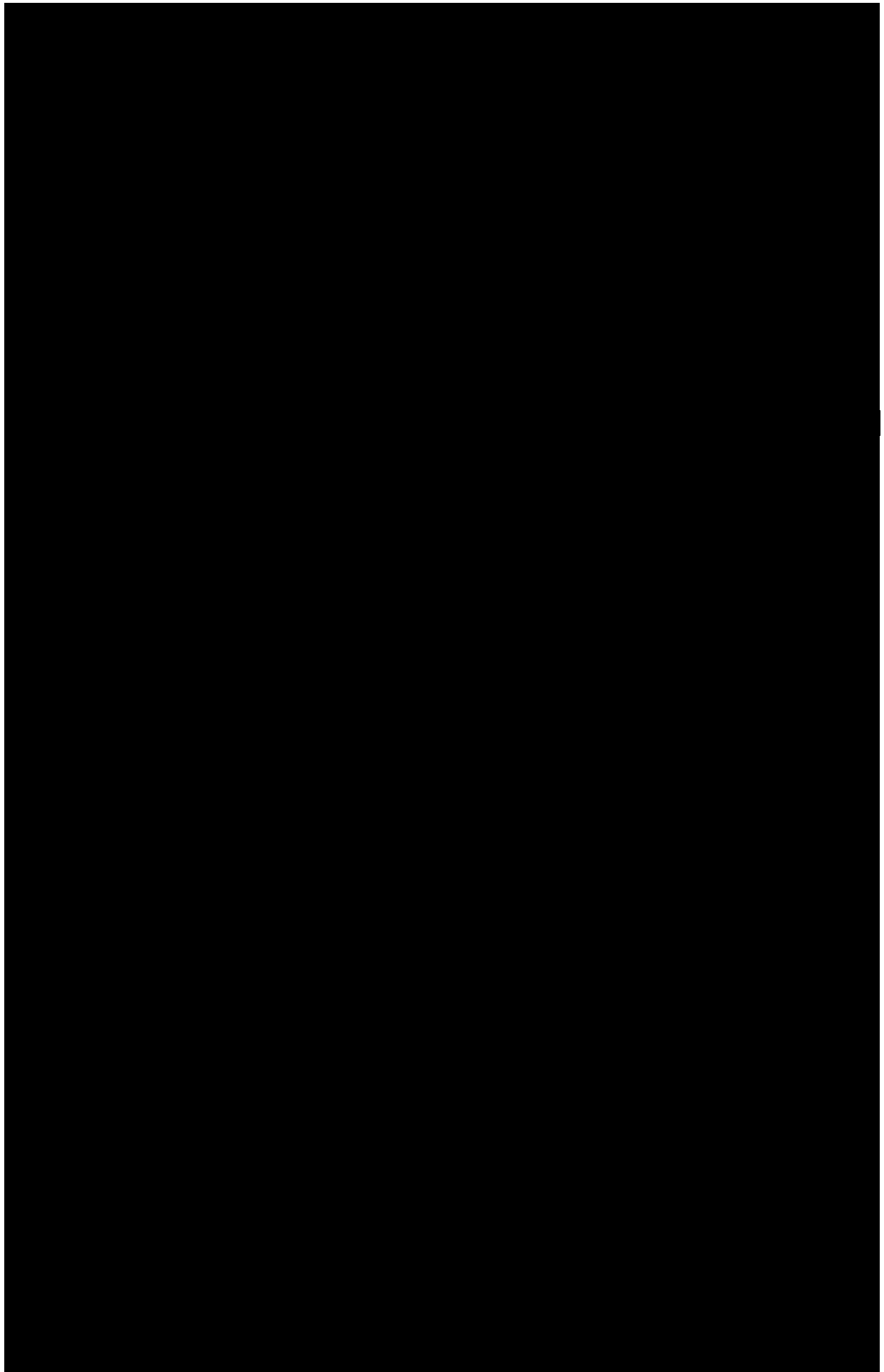
**Schedule 4A**

[Redacted]

[Redacted]








## Schedule 5 - Contractor Statement and Supporting Statement

# Contractor Statement and Supporting Statement


(Clauses 18.2(a)(ii)C and 23.2 (definition of "Contractor Statement and Supporting Statement"))

### Contractor's Statement

WCA and Sch 2 Part 5 clause 18(8) of the PTA.

 <p><b>Transport for NSW</b></p>	<h2>Contractor Statement</h2> <p>Payment of Workers, Payroll Tax &amp; Worker's Compensation Premiums</p>
-----------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------

All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 *overleaf*).

Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt 

**Details**

Contractor's Legal Name:

Contractor's Trading / Business Name:

Contractor's ABN:  Contractor's ACN:

Contractor's Address:

TfNSW Contract No:  Project/Contract Title:

Description of Works:

Period of Work this Statement applies to (see Note 3): From:  To:

Invoice or Payment Claim Numbers this applies to:

Invoice or Payment Claim Dates this Statement applies to:

### Declaration

Tick one  
in each row

I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:

• All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements.	
• All workers compensation insurance premiums have been paid and <b>attached</b> is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; <b>or</b>	<input type="checkbox"/>
• the Contractor is an exempt employer for workers compensation purposes (see Note 6);	<input type="checkbox"/>
• The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; <b>or</b>	<input type="checkbox"/>
• the Contractor is not required to be registered;	<input type="checkbox"/>
• The Contractor has not engaged any subcontractors for the works the subject of this Statement; <b>or</b>	<input type="checkbox"/>
• The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true	<input type="checkbox"/>
• I am authorised to make this declaration and I am in a position to know the truth of its contents	

Signature of Authorised Person:

Name of Signatory (*print*):

Date:

Position / Job Title of Signatory (*print - see Note 4*):

(Electronic copy is available at: <http://home.rta.nsw.gov.au/forms/categories/contractandroadworks/45062893.pdf>)

(see Notes on page 2)

Catalogue No. 45062893, Form No. 921 (12/2019)

**UNCLASSIFIED  
SENSITIVE: NSW GOVERNMENT**

Page 1 of 2

## Notes for Contractor's Statement

1. A Contractor is any person or company who carries out work under a contract of any kind for any business of the Principal. References to "Subcontractor" and "Principal Contractor" in the legislation mentioned below have been changed in this Statement to "Contractor" and "Principal" respectively to avoid confusion.
2. This form is prepared for the purposes of section 127 of the *Industrial Relations Act 1996* ("IRA"), section 175B of the *Workers Compensation Act 1987* ("WCA") and Schedule 2 Part 5 of the *Payroll Tax Act 2007* ("PTA"). These provisions allow the Principal to withhold payment from a Contractor without any penalty unless and until the Contractor provides to the Principal a Statement declaring that:
  - a. all 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; and
  - b. all remuneration payable to relevant employees for work under the contract has been paid; and
  - c. all payroll tax payable relating to the work undertaken has been paid.
3. Section 127 of the IRA says that the Statement must state the period to which it relates. For sequential statements ensure that the dates provide continuous coverage.
4. The person signing this declaration must be a person who is authorised by the Contractor either to sign this Statement (or to sign statements of this kind) and must be a person who is in a position to know the truth of the statements. The Contractor's principal accounting/financial officer may be appropriate. An individual project manager will normally not be appropriate. If the Contractor is a company then the person signing should be a director unless the company has delegated the power to sign such statements to another person (e.g. the principal accounting officer).
5. A Statement is not required where the Principal is making payment to a receiver, liquidator or trustee in bankruptcy (see section 127(10) of the IRA, section 175B(12) of the WCA and Sch 2 Part 5 (20) of the PTA).
6. Section 127(6) of the IRA says that references to payments to workers means all types of remuneration to which they are entitled.
7. As of 30 June 2011, an employer is exempt from taking out workers compensation insurance if the employer pays less than \$7500 annually on wages, does not employ an apprentice or trainee and is not a member of a group for workers compensation purposes.

## Generic Version of Statement

This form has been specially adapted for use specifically for Contractors working for the Principal. Generic versions of this Statement for non-the Principal use can be obtained at: [https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/forms/employers-and-claims/subcontractors\\_statement\\_5483.pdf](https://www.sira.nsw.gov.au/resources-library/workers-compensation-resources/forms/employers-and-claims/subcontractors_statement_5483.pdf); or <https://www.revenue.nsw.gov.au/help-centre/resources-library/opt011.pdf>.

## Record Retention

The Principal will keep a copy of this Statement for 7 years. If the Contractor obtains a similar statement from its subcontractor then the Contractor must keep that statement for 7 years.

## Offences for False Statement

Knowingly giving a false statement may be an offence under section 127(8) of the IRA, section 175B of the WCA and Sch 2 Part 5 clause 18(8) of the PTA.

## Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, visit the SIRA website <https://www.sira.nsw.gov.au/>, Office of State Revenue website <https://www.revenue.nsw.gov.au/>, or NSW Industrial Relations website <https://www.industrialrelations.nsw.gov.au/about-us/>. 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](http://www.legislation.nsw.gov.au).

## Supporting Statement

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*.

The Contractor is a "head contractor" in terms of the *Building and Construction Industry Security of Payment Act 1999*, and makes relevant statements below accordingly.

This Statement must be signed by the Contractor (or by a person who is authorised, or held out as being authorised, to sign the statement by the Contractor).

Relevant legislation includes *Building and Construction Industry Security of Payment Regulation 2020* cl 18.

## Main Contract

Head contractor:

*(Business name of the head contractor)*

ABN

ACN

Of

*(Address of Contractor)*

has entered into a contract with **Transport for NSW**

Contract description

Contract number/identifier

## Subcontracts

The head contractor has entered into a contract with the subcontractors listed in the attachment to this Statement

## Period

This Statement applies for work between: \_\_\_\_\_ and \_\_\_\_\_ inclusive,

subject of the progress claim dated: \_\_\_\_\_

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 to the Supporting Statement

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

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

### Notes for Supporting Statement

#### Offences for False Statement

In terms of s 13(8) of the Building and Construction Security of Payment Act 1999 a head contractor who serves a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances is guilty of an offence.

#### Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. Copies of relevant legislation can be found at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).

## Schedule 5A - Subcontractors Proof of Payment Process

# Subcontractors Proof of Payment Process

(Clause 2.9)

Day each Month	Action	Documents Required
25th day of the month	Contractor issues a progress claim	Contractor's Statement and Supporting Statement (Refer Schedule 5)
Within 10 Business Days of receipt of the progress claim	Principal issues payment schedule	
15 Business Days after progress claim is made	Principal pays Contractor the Progress Payment	
18 Business Days after progress claim is made	Contractor must issue Subcontractors Payments List, Accounts Payable Retention Summary and Accounts Payable Statement reconciled to the instalment Progress Payment	<ul style="list-style-type: none"><li>• Subcontractors Payments List (Refer Attachment 1)</li><li>• Accounts Payable Retention Summary (Refer Attachment 2)</li><li>• Accounts Payable Statement for total value of completed work due for payment (Refer Schedule 5 and Attachment 3)</li></ul>
20 Business Days after progress claim is made	Contractor must issue Payment Details and Banker's Statement no later than 5 Business Days after payment of instalment Payment Amount reconciled to Subcontractors Payments List	<ul style="list-style-type: none"><li>• Payment Details (Refer Attachment 4)</li><li>• Banker's Statement evidencing payment of each item on the Accounts Payable Statement (Refer Attachment 3)</li></ul>

**\*Note:**

The Subcontractors Proof of Payment Process is indicative of a work flow predicated on progress claims being issued on the 25<sup>th</sup> day of each month. The Principal and the Contractor must align the Subcontractors Proof of Payment Process with the agreed date for making progress claims as set out in clause 18.2(a).

Documents are to be provided as an electronic media document in a form acceptable to the Principal.

**Attachment 1**  
**Subcontractors Payments List**

Project: » .....  
 Contractor: 1. » ..... Contractor's » .....  
 ABN » ..... Bank:  
 A/C Name: » .....  
 Date: » .....  
 Progress Claim: » ..... Period: » .....

The Contractor will pay monies to Subcontractors in accordance with this Payment List.

**Subcontract Retentions (*Refer Accounts Payable Retention Summary*)**

	Amount (incl GST)
Total Retentions for current period	\$ » .....
Less Total Retentions for previous period	\$ » .....
<b>Payment to Contractor for held retentions</b>	\$ » .....

**Payments by Contractor to Subcontractors**

	Scheduled Amount (incl GST)
Payments to Subcontractors (Refer Accounts Payable Statement)	\$ » .....
Payment to Contractor for held retentions	\$ » .....
Payment to Contractor	\$ » .....
<b>PAYMENT OF CERTIFIED CLAIM AMOUNT</b>	\$ » .....

**Signed by:**

***Contractor***

Name: » .....  
 Signature: » .....  
 Date: » .....

**Attachment 2**  
**AP Retentions Summary**  
**(GST inclusive)**

Contractor Name:

ABN:

Progress Claim:

Date:

Month	Trans	Invoice Date	AP Ref	Description	Total Retention	Held Retention	Released Retention	Retention Paid
Subcontractor								
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
<b>Total for Subcontractor</b>					» .....	» .....	» .....	» .....
Subcontractor								
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
<b>Total for Subcontractor</b>					» .....	» .....	» .....	» .....
Subcontractor								
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
<b>Total for Subcontractor</b>					» .....	» .....	» .....	» .....
Subcontractor								
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....	» .....
<b>Total for Subcontractor</b>					» .....	» .....	» .....	» .....
<b>Total for Project</b>					» .....	» .....	» .....	» .....
<b>Total for Contractor</b>					» .....	» .....	» .....	» .....
<b>Grand Totals</b>					» .....	» .....	» .....	» .....

**Attachment 3**  
**Accounts Payable Statement**

<b><u>AP Ref</u></b>	<b>Subcontractor Name</b>	<b>Total Amount Owing</b>
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....
» .....	» .....	» .....

**Grand Total:**

## Attachment 4 Payment Details

Month: » .....

Project: » .....

Contract: » .....

Payment  
Method\*

Payment  
Method\*

Payment  
Method\*

Payment  
Method\*

Date:

» .....

» .....

» .....

» .....

Subcontractors listed on the Supporting Statement and Contractor's  
Statement

Progress  
Claim No

Progress  
Claim No

Progress  
Claim No

Progress  
Claim No

» .....

» .....

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**Payment Batch Totals**

» .....

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» .....

**\*Note:**

State in each case whether payment was by EFT, credit card, cheque or other method.

## Schedule 6 - Unconditional Undertaking

# Unconditional Undertaking

(Clauses 8.1(a), 18.6(b)(i) and 18.6A(b)(i))

---

### This deed poll ("Undertaking")

made the

day of

20

in favour of:

TRANSPORT FOR NSW, (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, NSW 2061, a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("the Principal")

given by:

[Insert name of Financial Institution] ("Financial Institution")

The Contractor:

» [Insert Contractor's name]

ABN:

» [Insert Contractor's ABN]

Security Amount:

» \$.....

The Contract:

The D&C Deed between the Principal and the Contractor *Contract Title(s)*: »  
[Insert project description]

Contract Number(s):

» [Insert contract number]

Other words and phrases in this Undertaking have the meanings given in the D&C Deed.

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## Undertaking

At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.

The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor or each Contract and despite any notice from the Contractor not to pay.

The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.

This Undertaking continues until one of the following occurs:

- i. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
- ii. this Undertaking is returned to the Financial Institution; or
- iii. the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.

At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

**SIGNED** as a deed poll.

**Signed sealed and delivered** for and on behalf of [*Insert name of Financial Institution*] by its Attorney under a Power of Attorney dated [*insert date*], and the Attorney declares that the Attorney has not received any notice of the revocation of such Power of Attorney, in the presence of:

\_\_\_\_\_  
Signature of Attorney

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

\_\_\_\_\_  
Name of Attorney in full

\_\_\_\_\_  
Name of Witness in full

## Parent Company Guarantee

(Clause 8.2)

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**Deed of Guarantee and Indemnity made at** \_\_\_\_\_ **on** \_\_\_\_\_ **20** \_\_\_\_\_

**between** **TRANSPORT FOR NSW** (ABN 18 804 239 602), a NSW Government agency and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 20-44 Ennis Road Milsons Point (**Principal**)

**and** [insert Guarantor's name] (ABN [insert Guarantor's ABN]) of [insert Guarantor's address] (**Guarantor**)

### Recitals

- A The Principal has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provide this Guarantee.
- B The Guarantor has agreed on the following terms and conditions to guarantee to the Principal all of the Obligations and to indemnify the Principal against any loss arising from any failure by the Contractor to perform the Obligations.
- C The Guarantor considers that by providing this guarantee there will be a commercial benefit flowing to it.

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### This Deed provides

## 1. Definitions

### 1.1 Definitions and Interpretation

In this Deed:

**Contract** means the Coffs Harbour Bypass D&C Deed between the Principal and the Contractor dated on or about the date of this Deed.

**Contractor** means [Insert details].

**Deed** means this deed of guarantee and indemnity between the Principal and the Guarantor.

**Event of Default** means any event which constitutes a breach of, or is duly and properly declared to be an event of default (howsoever described) by, the Contract.

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

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

**Legal Opinion** means a legal opinion:

- (a) from lawyers to the Guarantor, authorised to practice in the place of incorporation of that Guarantor, stating that this deed is binding and enforceable against that Guarantor;
- (b) which states that it may be relied upon by the Principal; and

- (c) in a form reasonably satisfactory to the Principal.

**Obligations** means all the liabilities and obligations of the Contractor to the Principal under or arising out of or in any way in connection with the Contract and each other Transaction Document or the work to be carried out or performed by the Contractor under the Contract and each other Transaction Document, and includes any liabilities or obligations which:

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

and irrespective of:

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

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

**Personal Property Securities Register** has the meaning given in the PPS Law.

**Power** means any right, power, authority, discretion, remedy or privilege conferred on the Principal by the Contract, by statute, by law or by equity.

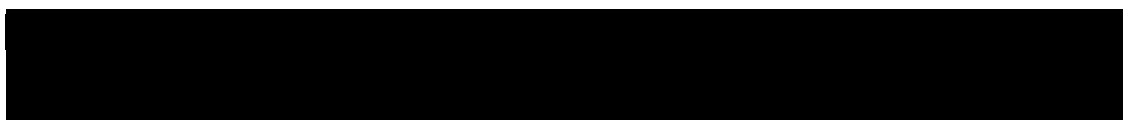
**PPS Law** means:

- (a) the *Personal Property Securities Act 2009* (Cth) (“**PPSA**”) and any regulation made at any time under the PPSA, including the *Personal Property Securities Regulations 2010* (Cth) (each as amended from time to time); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a) of this definition.

**Relevant Person** means the Contractor, the Guarantor and any person who has executed a Security in favour of the Principal.

**Security** means a ‘security interest’ (as that term is defined in the PPS Law), mortgage, charge, pledge, lien, hypothecation, guarantee (including this Deed), indemnity (including the indemnity under this Deed), letter of credit, letter of comfort, performance bond, contractual right of set-off or combination or other assurance against loss which secures the Guaranteed Money or the performance of any other Obligation, and whether existing at the date of this Deed or at any time in the future.

**Specified Rate** means the rate which is 2% above the rate expressed as a percentage per annum:



- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 12:00pm on the relevant date referred to in paragraph (a) of this definition for bills accepted by such banks having a tenor of 30 days.

**Transaction Document** means each of:

- (a) this Deed;
- (b) the Contract;
- (c) any other document which the Guarantor and the Principal so designate in writing;
- (d) each other document contemplated by or required by any of the above or the transactions they contemplate; and
- (e) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

## **1.2 Defined terms**

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

## **1.3 Interpretation**

In this Deed, headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this Deed and unless the context otherwise requires:

- (a) an obligation or liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (b) 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), a trust or a partnership;
- (c) anything (including an amount) is a reference to the whole and each part of it and the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (d) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation and in the case of a trustee, includes a substituted or additional trustee;
- (e) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (f) a reference to a document (including this Deed) is to that document as amended, novated, supplemented, varied or replaced from time to time;
- (g) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:

- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under that statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a word importing the singular include the plural (and vice versa) and a word indicating a gender includes every other gender;
- (i) a reference to:
  - (i) a party or clause is a reference to a party or clause of or to this Deed;
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears; and
  - (iii) the Deed includes all attachments and annexures to it;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" or "dollar" is to Australian currency;
- (m) no term or provision of the Deed will be construed against a party on the basis that the Deed or the term in question was put forward or drafted by or on behalf of that party; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## **2. Guarantee**

### **2.1 Guarantee**

The Guarantor irrevocably and unconditionally guarantees to the Principal the due and punctual performance by the Contractor of all the Obligations.

### **2.2 Payment by Guarantor**

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must within 5 business days of demand by the Principal pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

### **2.3 Perform Obligations**

If the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor must, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Principal, immediately perform any of the Obligations then required to be performed by the Contractor in the same manner as the Contractor is required to perform the Obligations.

## **3. Indemnity**

██████████ as a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Principal and at all times to keep the Principal indemnified against any loss or damage suffered by the Principal arising out of or in connection with:

- (a) any failure by the Contractor to perform the Obligations;

- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Contractor for any reason, and whether or not the Principal knew or ought to have known of that reason; or
- (c) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or any other applicable laws.

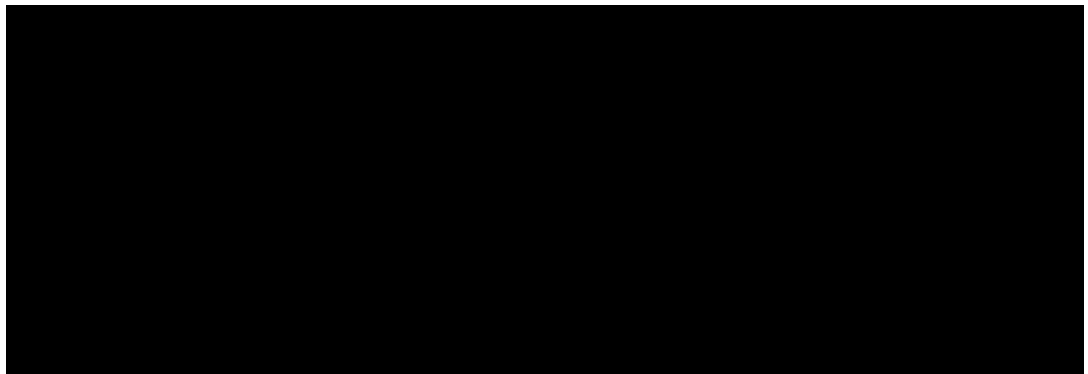
## **4. Liability**

### **4.1 Liability of Guarantor**

- (a) A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed.
- (b) The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.
- (c) The provisions of this Deed which preserve the liability of the Guarantor as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this Deed.

### **4.2 Limit of liability**

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
  - (i) the [REDACTED] liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract if the Guarantor had been named as Contractor under the Contract (assuming that the Contract is valid, binding and enforceable in accordance with its terms);
  - (ii) payment by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment;



- (b) The limitation of liability under this clause 4.2 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed, liability to pay any GST in accordance with clause 8.3 of this Deed, or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Contractor would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

## **5. Nature and preservation of liability**

## **5.1 Absolute liability**

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

## **5.2 Unconditional liability**

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

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) any Security or any Transaction Document being terminated or discharged (whether by any party thereto or by operation of law) or being or becoming void, voidable or unenforceable for any reason, or the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;

- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;
- (p) (where the Guarantor is an individual) the death or mental incapacity of the Guarantor;
- (q) the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
  - (i) the enforcement of this Deed against any Guarantor; or
  - (ii) any claim for contribution against any Guarantor;
- (r) the Principal enforcing, releasing, disposing of, surrendering, wasting, impairing, destroying, abandoning, prejudicing, or failing or delaying to perfect, maintain, preserve, realise or enforce any Transaction Document or any Security, whether negligently or otherwise;
- (s) any breach by the Principal of any term of any Transaction Document or Security or any other act or omission (negligent or otherwise) of the Principal with regard to any Transaction Document, any Security or any Relevant Person which is prejudicial to the interests of the Guarantor;
- (t) any claim by any person that a payment to, receipt by, or other transaction in favour of the Principal in or towards satisfaction of the Guaranteed Money is void, voidable or capable of being set aside under any law relating to bankruptcy, insolvency or liquidation being upheld, conceded or compromised;
- (u) the transfer, assignment or novation by the Principal or any Relevant Person of all or any of its rights or obligations under any Transaction Document or Security to which it is a party; or
- (v) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

### **5.3 No merger**

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

### **5.4 No obligation to gain consent**

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

### **5.5 Appropriation**

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

## **5.6 Void or voidable transactions**

If:

- (a) the Principal has at any time released or discharged:
  - (i) the Guarantor from its obligations under this Deed; or
  - (ii) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
  - (i) the Guarantor from its obligations under this Deed; or
  - (ii) any assets of the Guarantor from a Security;
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

## **5.7 Not used**

## **5.8 Claim on the Guarantor**

The Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

## **5.9 No representation by Principal etc.**

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

### **5.10 No contribution**

The Guarantor must not make a claim under or enforce any right of contribution it may have against any other Relevant Person unless and until the Obligations have been paid, discharged or recovered by the Principal in full.

## **6. Representations and Warranties**

### **6.1 General representations and warranties**

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

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

### **6.2 Corporate representations and warranties**

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

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed;
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law and all of those filings and registrations are current, complete and accurate;
- (e) the execution of this Deed is in the best commercial interests of the Guarantor;
- (f) this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (g) it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments*

*Commission Act 2001* (Cth) ('ASC Law'), or the subject of an investigation under, or taken to be under, the ASC Law;

- (h) this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (i) its financial statements current as at the date of this Deed have been prepared in accordance with the laws of Australia [REDACTED] and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a material effect on it, or on it and its subsidiaries on a consolidated basis;
- (j) the written information and reports (if any) which it has given to the Principal in connection with the negotiation and preparation of this Deed:
  - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
  - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (k) it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any government agency or that any Taxes be paid.

### **6.3 Representations and warranties repeated**

The Guarantor acknowledges that the Principal entered into the Contract in reliance on the representations and warranties in this clause 6.

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

### **6.4 No representations to Guarantor**

The Guarantor confirms that it has not executed this Deed as a result of or in reliance upon any promise, representation, statement or information of any kind or nature whatever given or offered to it by or on behalf of the Principal whether in answer to any inquiry by or on behalf of the Guarantor or not.

## **7. Payments**

### **7.1 On demand**

All money payable by the Guarantor under this Deed must be paid by the Guarantor within [REDACTED] Business Days of a demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

### **7.2 Payment in gross**

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

### **7.3 Interest**

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

[REDACTED]. Nothing in this Deed is intended to render the Contractor and the Guarantor liable to pay interest twice for the same failure to pay an unpaid amount. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

### **7.4 Merger**

If the liability of the Guarantor to pay to the Principal any money under this Deed becomes merged in any judgment or order, then, as an independent obligation, the Guarantor will pay interest on the amount of that money at the rate which is the higher of that payable under clause 7.3 and that fixed by or payable under the judgment or order.

### **7.5 No set-off or deduction**

[REDACTED] all payments by the Guarantor to the Principal under this Deed must be made without any set-off or counterclaim.

### **7.6 No deduction for Taxes**

- (a) All payments by the Guarantor under this Deed will be without deduction or withholding for or on account of any present or future Taxes, unless the Guarantor is compelled by law to deduct or withhold the same.
- (b) If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:
  - (i) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
  - (ii) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
  - (iii) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

### **7.7 Certificate of the Principal**

Without limiting clause 12.4, a certificate in writing of the Principal certifying the amount payable by the Contractor or the Guarantor to the Principal or stating any other act, matter or thing relating to this Deed [REDACTED] will be prima facie evidence of the contents of the certificate.

### **7.8 Currency indemnity**

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.

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

## **8. Expenses and stamp duties**

### **8.1 Expenses**

- (a) The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all reasonable expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:
- (i) any subsequent consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
  - (ii) any successful exercise or enforcement, attempted exercise or enforcement or preservation of any rights under this Deed.
- (b) Each party must pay its own expenses incurred in negotiating and executing this Deed.

### **8.2 Stamp duties**

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

### **8.3 Goods and Services Tax**

If the Principal is or becomes liable to pay any GST (including any penalty) in respect of any supply it makes under, or in connection with, this Deed (“**GST Liability**”) then:

- (a) to the extent that an amount is payable by the Guarantor to the Principal under this Deed for that supply - the amount will be increased by the full amount of the GST Liability; and
- (b) otherwise - the Guarantor will indemnify and keep the Principal indemnified for the full amount of the GST Liability.

## **9. PPSA**

The parties agree that the terms of this Deed may constitute one or more 'security interests' (as that term is defined in the PPSA) (“**Security Interest**”) for the purpose of the PPS Law and that:

- (a) to perfect any such Security Interest the Principal may register a financing statement(s) on the Personal Property Securities Register;
- (b) the Guarantor will have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPS Law;

- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPS Law is contracted out of if that Part would apply by virtue of section 116(2) of the PPS Law;
- (d) the Guarantor waives its right to receive notice of a verification statement under section 157 of the PPS Law;
- (e) for the purposes of section 275(6) of the PPS Law, the parties agree not to disclose information of the kind mentioned in section 275(1) of the PPS Law in respect of the Security Interest;
- (f) the Guarantor agrees that the Principal may seize any collateral subject to the Security Interest and/or dispose of any such collateral in such manner and generally on such terms and conditions as the Principal thinks desirable, and otherwise do anything that the Guarantor could do in relation to that collateral; and
- (g) the Guarantor must, promptly on request by the Principal, provide any such information and execute and deliver any such documents as the Guarantor may reasonably require to protect the Securities granted to the Principal by the Guarantor under or in relation to this Deed.

## **10. Assignment**

- (a) The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.
- (b) The Guarantor must not assign, novate or otherwise transfer all or any part of its rights or obligations under this Deed without the prior written consent of the Principal.

## **11. Governing law, jurisdiction and arbitration**

### **11.1 Governing law**

This Deed and where applicable, the arbitration reference contained in clause 11.3, is governed by and will be construed according to the laws of New South Wales.

### **11.2 Jurisdiction**

- (a) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (b) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (a) of this clause.

### **11.3 Dispute resolution**

Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including any question relating to the existence, validity or termination of this Deed) may be referred to, at the absolute discretion of the Principal:

- (a) court proceedings; or
- (b) arbitration in accordance with either:
  - (i) the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules); or
  - (ii) the Australian Centre for International Commercial Arbitration Expedited Arbitration Rules (ACICA Expedited Arbitration Rules),

which rules the parties agree will be modified and amended as required to the extent that the rules conflict with the requirements of this Deed.

#### **11.4 Arbitration**

If a dispute is referred to arbitration under clause 11.3(b), then:

- (a) notwithstanding any provision of the ACICA Expedited Arbitration Rules to the contrary, if:
  - (i) a party considers that a dispute about a matter may be resolved in accordance with the ACICA Expedited Arbitration Rules and that party wishes to progress the dispute in accordance with the ACICA Expedited Arbitration Rules, that party must give the other party notice that it considers that the dispute may be resolved in accordance with the ACICA Expedited Arbitration Rules (Arbitration Expedition Notice); and
  - (ii) the other party agrees (in writing) that the matter in dispute is suitable to be resolved in accordance with the ACICA Expedited Arbitration Rules, the other party must advise the party that provided the Arbitration Expedition Notice that the proposed use of the ACICA Expedited Arbitration Rules is accepted in writing within 2 Business Days of receipt of the Arbitration Expedition Notice,then the dispute will be referred to and finally resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules;
- (b) the seat of the arbitration will be Sydney;
- (c) the number of arbitrators will be one
- (d) the language of the arbitration will be English;
- (e) the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages;
- (f) the parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations;
- (g) the arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration; and
- (h) any arbitral award will be final and binding upon the parties.

#### **11.5 Guarantor incorporated outside Australia**

If the Guarantor is incorporated outside of Australia, a Legal Opinion must be provided by the Guarantor to the Principal, on the date of execution of this Deed.

#### **11.6 Joinder and consolidation with Contractor disputes**

If the Principal commences proceedings against the Contractor (whether in court or arbitration) in relation to any dispute, difference or claim arising out of, relating to, or in connection with the Contract or the conduct of the Principal and the Contractor in relation to the Contract and requests:

- (a) the Guarantor to join any proceedings between the Principal and the Contractor; and
- (b) that any proceedings between the Principal and the Guarantor based upon, arising out of, relating to or in connection with this Deed be consolidated with any proceedings between the Principal and the Contractor (whether in court or arbitration),

then:

- (c) the Guarantor must agree to such request and must execute all documents reasonably necessary to effect such joinder or consolidation (including if the request is at a time when separate proceedings have already commenced between the Principal and the Contractor); and
- (d) where applicable, any proceedings on foot between the Principal and the Guarantor prior to an election by the Principal to join the Guarantor to proceedings between the Principal and the Guarantor will be stayed.

### **11.7 Guarantor's involvement in subsequent disputes**

Where the Principal and the Contractor have participated in a Dispute Avoidance Board process in respect of which a notice of dissatisfaction is delivered, the Guarantor consents to being named in any related subsequent arbitration or court proceedings despite the fact that it was not a party to the Dispute Avoidance Board process.

## **12. Miscellaneous**

### **12.1 Notices**

- (a) Any notices contemplated by this Deed must be in legible writing and delivered to the relevant address or sent to the email address as set out below (or to any new address or email address that a party notifies to the others):
  - (i) to the Principal: Transport for NSW Coffs Harbour Bypass Project Director  
Address: 20-44 Ennis Road, Milsons Point, NSW 2061  
Email: [REDACTED]
  - (ii) to the Guarantor: [Insert details]  
Address: [Insert details]  
Email: [Insert]
- (b) 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.
- (c) Where the Guarantor is domiciled in a country other than Australia, without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of notices under this Deed. The Guarantor appoints the Contractor (whose address for service is as at set out in the Contract) as its agent to accept service of process under or in connection with this Deed, and the Guarantor warrants that the Contractor has accepted the appointment. The appointment may not be revoked without the Principal's consent. The Guarantor agrees that service of documents on its process agent is sufficient service on the Guarantor, and that failure by a process agent to notify the Guarantor of any document in an action in connection with the project contemplated by this Deed and the Contract and will not invalidate the action concerned.

### **12.2 Continuing obligation**

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, a disclaimer of any contract or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

### **12.3 Further assurance**

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

### **12.4 Form of demand**

A demand on the Guarantor for payment under this Deed may be in writing in the form and contain any information as the Principal determines. Where the demand relates to the payment of Guaranteed Money, it must specify the amount of the Guaranteed Money and the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

### **12.5 Entire agreement**

This Deed constitutes the entire agreement and understanding between the parties 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 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.

### **12.6 Joint and several liability**

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

### **12.7 Severance**

If, at any time, any provision of this Deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction (including the *Building and Construction Industry Security of Payment Act 1999* (NSW)), then:

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this Deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 12.7(b)(1) above, preserves to the maximum possible extent:
    - A. the enforceability of the provision and the provisions of this Deed; and
    - B. the original effect and intent of this Deed.

### **12.8 Transfer of functions or Public Transport Agency assets**

- (a) The parties acknowledge that:
  - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
  - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this Deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
  - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Guarantor acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this Deed, or any replacement agreement or agreements for this Deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Guarantor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 12.8.
- (d) For the purposes of this clause 12.8, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

## **12.9 Remedies cumulative**

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

## **12.10 Waiver**

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

## **12.11 Consents**

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

#### **12.12 Moratorium legislation**

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

#### **12.13 Set-off**

- (a) The Principal may (without prior notice at any time) set off any obligation then due and payable by the Guarantor under this Deed against any obligation (whether or not due and payable) by the Principal to the Guarantor, regardless of the place or currency of payment of either obligation or the office or branch through which either obligation is booked. If the obligations are in different currencies, the Principal may convert either obligation into the currency of the other obligation at a market rate of exchange determined by it for the purpose of the set-off. If either obligation is unliquidated or unascertained, the Principal may affect the set off in an amount estimated by it in good faith to be the amount of that obligation.
- (b) The Principal is not obliged to exercise any right of set off pursuant to clause 12.13(a), which is in addition to its other rights of combination of account, set-off or lien (by contract or operation of law).
- (c) On its exercise of any set off pursuant to clause 12.13(a) against the Guarantor, the Principal will promptly notify the Guarantor of details of that set-off.

#### **12.14 Variations**

This Deed may only be amended, varied or replaced by a document signed by or on behalf of both the Principal and the Guarantor.

#### **12.15 Provisions limiting or excluding liability**

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

#### **12.16 Counterparts**

- (a) This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes an original of this Deed, and all together constitute one agreement.
- (b) A party who has executed a counterpart of this Deed may exchange that counterpart with another party by emailing the counterpart executed by it to that other party and, upon request by that other party, will thereafter promptly deliver by hand or post to that party the executed counterpart so exchanged by email, but delay or failure by that party to so deliver a counterpart of this Deed executed by it will not affect the validity of this Deed.

#### **12.17 Vienna Convention**

The United Nations Convention on Contracts for the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986* (NSW) does not apply to this Deed.

#### **12.18 Execution by less than all parties**

This Deed binds each of the persons executing it notwithstanding:

- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or

- (b) that the Principal may not execute or may only subsequently execute this Deed.

#### **12.19 Civil Liability Act**

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 12.19(a), it is further agreed that the rights, obligations and liabilities of the Principal and the Guarantor (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

**Executed as a deed.**

**Executed by [insert Guarantor's name and ABN]** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

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

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

**Executed for and on behalf of Transport for NSW (ABN 18 804 239 602)** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

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

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

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name of authorised delegate

## Joint Venture provisions

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**Explanatory Note:** If the Contractor is a joint venture, the following amendments to the Deed apply:

- (a) the definition of 'Relevant Person' is amended to read:

**Relevant Person** means the Contractor, each Guarantor and any person who has executed a Security in favour of the Beneficiary.

clause 2.2 is amended to read:

### **2.2 Payment of Guaranteed Money**

- (a) Subject to clause 2.2(b), if the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and payable.
- (b) The Guarantor shall not be liable to pay to the Principal any part or parts of the Guaranteed Money which have been paid to the Principal by another Guarantor.

clause 2.3 is amended to read:

### **2.3 Perform obligations**

- (a) Subject to 2.3(b), if the Contractor defaults in the performance or observance of any of the Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Principal, immediately perform (or procure the performance of) any of the Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Obligations.
- (b) The Guarantor shall not be responsible for performing the Obligations to the extent the relevant Obligations have been performed by another Guarantor.

the first paragraph of clause 5.2 is amended to read:

### **5.2 Unconditional liability**

Except to the extent of a reduction in the Guarantor's liability expressly provided for in clauses 2.2(b) or 2.3(b), the liability of the Guarantor under this Deed will not be affected by any act, omission, matter or thing which, but for this clause 5.2, might operate in law or in equity to release the Guarantor from that liability or reduce that liability under this Deed, including but not limited to:

clause 11.7 is amended to read:

### **11.7 Award final and binding**

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on each of the Guarantors and a Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

## Quality Manager's Certificate – Payment Claim

(Clause 18.2(c)(ii))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Quality Manager's name] ("Quality Manager")**

---

In accordance with the terms of clause 18.2(c)(ii) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, I hereby certify that all work the subject of the attached progress claim by the Contractor for **[insert month]** **[insert year]** has been executed and is in accordance with the requirements of the deed, subject to the following:

**[If applicable, insert details of any exceptions]**

.....  
Signed by

**[Insert Quality Manager's name]**

## Quality Manager's Certificate - Quality

(Clause 11.2(c)(i))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Quality Manager's name] ("Quality Manager")**

---

In accordance with the terms of clause 11.2(c)(i) of the deed between Transport for NSW and **[Insert contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, I hereby certify that between the following dates **[Insert dates of preceding 3 month period]**:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with TfNSW Specification D&C Q6 and AS/NZS ISO 9001:2016 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2016;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Principal's Representative and the Independent Certifier in accordance with the deed.

.....  
Signed by

**[Insert Quality Manager's name]**

**Schedule 9A - Quality Manager's Certificate – Progressive and at end of Landscaping Maintenance Period**

## **Quality Manager's Certificate - Progressive and at end of Landscaping Maintenance Period**

(Clauses 11.2(c)(ii) 13A.5(d)(i) and 23.2 (definition of "Final Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Quality Manager's name] ("Quality Manager")**

---

In accordance with the terms of clause 11.2(c)(ii) and clause 13A.5(d)(i) of the deed between Transport for NSW and **[Insert contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, I hereby certify that between the following dates **[Insert dates of preceding 3 month period]**:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with TfNSW Specification D&C Q6 and AS/NZS ISO 9001:2016 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2016;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Principal's Representative and the Independent Certifier in accordance with the deed.

.....  
Signed by

**[Insert Quality Manager's name]**

## Quality Manager's Certificate – Opening Completion / Completion

(Clauses 11.2(c)(iii) and 23.2 (definition of "Opening Completion" and "Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Quality Manager's name] ("Quality Manager")**

---

In accordance with the terms of clauses 11.2(c)(iii) and 23.2 (definition of ["Opening Completion" | "Completion"]) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.6 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

.....  
Signed by

**[Insert Quality Manager's name]**

## Quality Manager's Certificate – Final Completion

(Clauses 11.2(c)(iv) and 23.2 (definition of "Final Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Quality Manager's name] ("Quality Manager")**

---

In accordance with the terms of clauses 11.2(c)(iv) and 23.2 (definition of "Final Completion") of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, I hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.6 of the deed;
- (c) the release of all Hold Points has been undertaken in accordance with the deed; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

.....  
Signed by

**[Insert Quality Manager's name]**

## Deed of Appointment of Independent Certifier

(Clauses 1.4, 2.4 and 23.2 (definition of "Deed of Appointment of Independent Certifier"))

### This Deed made at Sydney on

#### Parties

[Insert Contractor's name]

(ABN [Insert Contractor's ABN]) of [Insert Contractor's address] ("Contractor")

Transport for NSW

(ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061 ("Principal")

[Insert Independent Certifier's name]

(ABN [Insert Independent Certifier's ABN]) of [Insert Independent Certifier's address]

("Independent Certifier")

*[Principal to insert details above when awarding the contract, in accordance with the successful Tenderer's tender]*

#### Recitals

- A. On or about the date of this Deed, the Contractor entered into the D&C Deed with the Principal in respect of the Project.
- B. The Independent Certifier represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of works similar to the Project Works and offers its expertise in those fields.
- C. The D&C Deed and the ARTC Agreements (as applicable) contemplate that the Independent Certifier will discharge those functions set out in Attachment 2 to this Deed.
- D. The Independent Certifier will perform its obligations on the terms and conditions of this Deed.

### This Deed provides:

## 1. Definitions and interpretation

### 1.1 Definitions

In this Deed words and expressions which have a defined meaning in the D&C Deed have the same meaning in this Deed, except where otherwise expressly defined in this Deed, and:

**Aboriginal Business** means a business that has at least 50 per cent Aboriginal or Torres Strait Islander ownership and that is recognised as such by Supply Nation, the NSW Indigenous Chamber of Commerce or a similar acceptable Indigenous business verification organisation.

**Aboriginal Employee** means an employee of the Independent Certifier, who is a person of Aboriginal or Torres Strait Islander descent as verified by the Independent Certifier in accordance with guidance provided under the Aboriginal Procurement Policy.

**Aboriginal Participation Plan** means a plan that satisfies the requirements for an 'Aboriginal Participation Plan' described in the Aboriginal Procurement Policy.

**Aboriginal Participation Report** means a report that satisfies the reporting requirements in the Aboriginal Procurement Policy.

**Acoustic Advisor** means Hutchison Weller Pty Ltd ACN 603 174 518.

**Acoustic Advisor Deed of Appointment** means the contract between the Principal and the Acoustic Advisor titled Professional Services Contract (Construction Industry) Acoustic Advisor (Contract Number 20.0000302555.2406) dated 27 October 2021, attached to this Deed at Schedule 1 to Attachment 14, which is to be novated in accordance with clause 3.11(c).

**Additional Services** has the meaning given in clause 6A.

**ARTC Agreements** means the Project Documents referred to in Item 3 and Item 4 of Attachment 1.

**Comment** has the meaning given in section 3 of the Contractor Documentation Schedule.

**Commercially Sensitive Information** means any information the Principal identifies as:

- (a) information relating to the Principal's, the Contractor's or the Independent Certifier's cost structure or profit margins;
- (b) information relating to any of the Principal's, the Contractor's or the Independent Certifier's Intellectual Property Rights; or
- (c) information which is commercially sensitive in that it provides a competitive advantage or has a unique characteristic to the Principal, the Contractor or the Independent Certifier or any of their shareholders, financiers or subcontracts,

which, in respect of the information contained in this Deed, is the information listed in Attachment 15.

**Construction Verification Services** means all Services relating to the verification of the construction of the Project Works, the Temporary Works and the performance by the Contractor of its construction obligations under the D&C Deed.

**D&C Deed** means the deed between the Principal and the Contractor dated on or about the date of this Deed.

**Design Verification Services** means all Services relating to the verification of the design of the Project Works, the Temporary Works and the performance by the Contractor of its design obligations under the D&C Deed, including those specified in clause 12 of the D&C Deed.

**Environmental Representative** means The Trustee for GEOLINK UNIT TRUST ABN 79 896 839 729.

**Environmental Representative Deed of Appointment** means the contract between the Principal and the Environmental Representative titled Professional Services Contract (Construction Industry) Environmental Representative (Contract Number 20.0000302555.1831) dated 23 July 2021, attached to this Deed at Schedule 1 to Attachment 13, which is to be novated in accordance with clause 3.11(b).

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

**GST, GST law** and other terms used in clause 8.3 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, except "GST law" also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 8.3) includes any GST payable by the representative member of any GST group of which the Supplier is a member.

**Independent Certifier's Representative** means the relevant person referred to in clause 3.3(c)(i) or clause 3.3(c)(ii) and any person holding that position in accordance with clause 3.3(b).

**Information from Tenderer's Returnable Schedules** means the Tenderer's Returnable Schedules in Part 1 of Attachment 4 to this Deed.

**Minimum Aboriginal Participation Requirements** means one or a combination of the following:

- (a) at least 1.5 per cent of the value of the Fee as at the date of this Deed is subcontracted to Aboriginal Businesses;
- (b) at least 1.5 per cent of the Independent Certifier's Australian based workforce (full time equivalent) directly contributing to the Services are Aboriginal Employees; or
- (c) at least 1.5 per cent of the value of the Fee as at the date of this Deed is applied to the cost of education, training or capability building for Aboriginal Employees or Aboriginal Businesses directly contributing to the Services.

**Minimum Requirements** means the minimum requirements for the Verification and Monitoring Plan, as set out in Attachment 6 to this Deed.

**Minimum Resources Commitment** means the minimum level of resources to be provided by the Independent Certifier for the performance of the Services, as set out in clause 1 of Attachment 9 to this Deed.

**Minimum Surveillance** is the minimum level of continual attendance, monitoring and verification of the status of a product, and analysis of records to ensure that product requirements are being met, as set out in Attachment 5 to this Deed.

**Monthly Progress Report** means the report referred to in clause 3.8 of this Deed.

**NCR** means a non-conformity report.

**Nominated Personnel** means the person or persons nominated in accordance with clause 3.3(c), or any replacement personnel nominated in accordance with clause 3.3(b).

**Other Parties** means the Principal and the Contractor.

**Payment Schedule** means Attachment 3 to this Deed.

**Principal Contractor** means the Contractor acting in its capacity as 'principal contractor' for the purposes of the WHS Laws in accordance with the D&C Deed.

**Project** means the design and construction of the [*Insert project description*] as set out in the D&C Deed.

**Project Documents** means those agreements and other documents described in Attachment 1 to this Deed, and includes the Planning Approval.

**Quarter** means:

- (a) in the case of the first Quarter, the period commencing on the date of this Deed and ending on the day immediately prior to the first Quarterly Date occurring thereafter;
- (b) each 3 month period commencing on a Quarterly Date thereafter; and
- (c) in the case of the last Quarter, the period commencing on the last Quarterly Date occurring prior to the expiry of the last Defects Correction Period and ending on the date of expiry of the last Defects Correction Period.

**Quarterly Date** means 1 January, 1 April, 1 July and 1 October in any year in the period commencing on the date of this Deed and expiring on the date of expiry of the last Defects Correction Period.

**Quarterly KPI Report** means the report referred to in clause 3.8A of this Deed.

**Response** has the meaning given in section 3 the Contractor Documentation Schedule.

**Services** means those services listed in Attachment 2 to this Deed.

**Verification and Monitoring Plan** means the plan the Independent Certifier is required to prepare in accordance with clause 3.6, and in respect of which the Principal and the Contractor have not issued a notice under clause 3.6(b)(ii), as that plan is updated from time to time in accordance with clause 3.7 of this Deed.

**Working Day** means an aggregate period of 8 hours.

## 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 liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;

- (c) the expression "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 any party includes that party's executors, administrators, successors and permitted assignees, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where 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) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

### **1.3 Governing Law**

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

### **1.4 Ambiguous terms**

- (a) If the Principal's Representative considers, or the Independent Certifier or Contractor notifies the Principal's Representative in writing that it considers, that there is an ambiguity, discrepancy or inconsistency in this Deed (including in any attachments), the Principal's Representative must direct the interpretation of this Deed which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.4(a), is not required to state whether or not there is an ambiguity, inconsistency or discrepancy in respect of the terms of this Deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.4(a):
  - (i) will not relieve the Independent Certifier or the Contractor from or alter its liabilities or obligations under this Deed, under the Project Documents (in the case of the Contractor), or otherwise according to Law;
  - (ii) will not entitle the Independent Certifier or the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
  - (iii) will not limit or otherwise affect the Principal's rights against the Independent Certifier or the Contractor, whether under this Deed, under the Project Documents (in the case of the Contractor), or otherwise according to Law; and
  - (iv) must, in respect of a notice given in clause 1.4(a) by the Independent Certifier or the Contractor, be given within 25 Business Days of receipt of that notice.

### **1.5 Principal as an Authority**

- (a) Subject to clause 1.5(b), the Contractor and the Independent Certifier acknowledge and agree that:
  - (i) nothing in this Deed or in any of the Project Documents will in any way unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law; and
  - (ii) without limiting clause 1.5(a)(i), anything that the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this Deed and will not entitle the Contractor or the Independent Certifier to make any Claim against the Principal arising out of the subject matter of this Deed and the other Project Documents to which the Principal is a party.
- (b) The parties agree that clause 1.5(a) is taken not to limit any liability which the Principal would have had to the Contractor or the Independent Certifier under this Deed, or any other Project Document to which the Principal is a party, as a result of a breach by the Principal of a term of this Deed or any other Project Document to which the Principal is a party but for clause 1.5(a).

## **2. Appointment of the Independent Certifier**

### **2.1 Appointment**

- (a) Each of the Other Parties appoints the Independent Certifier under this Deed to perform the Services.
- (b) The Independent Certifier confirms its acceptance of the appointment referred to in clause 2.1(a).

### **2.2 Payment**

The Principal will pay the Independent Certifier the Fee in accordance with the Payment Schedule.

### **2.3 Nature of Services**

The Independent Certifier and the Other Parties acknowledge and agree that the Verification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Certifier's obligations under the Deed.

## **3. Independent Certifier's obligations**

### **3.1 Acknowledgement**

The Independent Certifier acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the:
  - (i) "Independent Certifier" under the Project Documents set out in Item 1 and Item 2 of Attachment 1; and
  - (ii) "Project Verifier" under the Project Documents set out in Item 3 and Item 4 of Attachment 1.

### **3.2 Further acknowledgements and warranties**

The Independent Certifier:

- (a) acknowledges that each of the Other Parties:
  - (i) are relying upon the knowledge, skill, expertise and experience of the Independent Certifier in the performance of its obligations under this Deed; and
  - (ii) may suffer loss if the Independent Certifier does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and the Project Documents, and where no time is prescribed, within a reasonable time, and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Certifier under or pursuant to this Deed or the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that:
  - (i) it will carry out and perform the Services in accordance with this Deed; and
  - (ii) without limiting subparagraph (i), to the extent the Verification and Monitoring Plan is not inconsistent with:
    - (A) the Project Documents; or
    - (B) the nature of the Services,it will carry out and perform the Services in accordance with the Verification and Monitoring Plan;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's Activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport on site for the use of its site personnel;
- (h) must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the Project Works, the Temporary Works and the Contractor's Activities:

- (i) when appropriate or necessary to do so (including for the purpose of determining whether Opening Completion and Completion has been achieved by the Contractor; or
- (ii) when reasonably requested by the Principal or the Contractor,  
in a manner which satisfies or exceeds the requirements ascertainable from Attachment 5 by Independent Certifier during the Contractor's Activities and the Verification and Monitoring Plan (including surveillance levels and resources) and will invite and permit the Principal and the Contractor to accompany it on all such inspections;
- (i) must carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Contractor) except where it is the unavoidable consequence of performing the Services;
- (j) in undertaking the Services will comply with all the safe working requirements of the Contractor;
- (k) acknowledges that a reference in sections 2 and 3 of Appendix D.4 of the SWTC to the "Project Verifier" is to be read as a reference to the Independent Certifier; and
- (l) must nominate itself as the 'nominated authority' for the release of all Hold Points and Witness Points documented within Attachment D4.1 of Appendix D.4 of the SWTC and any Hold Points or Witness Points inserted by the Independent Certifier as contemplated by clause 2.4(e) of the D&C Deed.

### 3.3 Independent Certifier's Organisation and Personnel

- (a) The Independent Certifier must provide a dedicated management team and personnel who are engaged under an effective organisation structure and have appropriate and a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed. The organisation structure must clearly identify positions, roles, skills, expertise, experience levels, tasks, resourcing levels, delegated authorities and responsibilities and internal and external lines of authority, communication and reporting, including those with the Principal's Representative and the Contractor.
- (b) The Independent Certifier must ensure that the Nominated Personnel:
  - (i) perform the services required of their respective positions;
  - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the Nominated Personnel are removed:
    - (A) they must be replaced by people of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Attachment 9 to this Deed); and
    - (B) prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
  - (iii) are available for consultation as any party may reasonably require from time to time.
- (c) The people required to perform the Services are:
  - (i) *[Insert name]* as Independent Certifier's Representative for the Design Verification Services;
  - (ii) *[Insert name]* as Independent Certifier's Representative for the Construction Verification Services;
  - (iii) *[Insert name]* as Independent Certifier's project director; and
  - (iv) the other persons listed in clause 2 of Attachment 9 to this Deed.

***[Note to Tenderers: Principal to insert details above when awarding the contract, in accordance with the successful Tenderer's tender.]***
- (d) The Other Parties may direct the Independent Certifier to remove from the performance of the Services any of the Nominated Personnel and the Independent Certifier must comply with any such direction.
- (e) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Attachment 2 which the Independent Certifier is required to execute as part of the Services (being Schedules 13 (Independent Certifier's Certificate - Payment Claim), 14 (Independent Certifier's Certificate - Quality), 15 (Independent Certifier's Certificate - Design Documentation), 16 (Independent Certifier's Certificate - Opening Completion and Completion), 17 (Independent Certifier's Certificate - Nominated Defects), 17A (Independent Certifier's Certificate - As-Built documentation) and 18 (Independent Certifier's Certificate - Final Completion) of the D&C Deed). The Independent Certifier must ensure that these certificates and documents are signed by the person or persons so notified.

### 3.4 Subcontracting

- (a) Subject to clause 3.3, the Independent Certifier may not subcontract the performance of any of the Services without the prior written consent of the Other Parties.
- (b) The Independent Certifier remains responsible for the performance of the Services in accordance with this Deed, notwithstanding any such subcontracting, and will be liable for the acts and omissions of any subcontractor as if they were acts and omissions of the Independent Certifier.
- (c) Unless the Other Parties otherwise approve in writing, the Independent Certifier must contract with the subcontractors set out below in respect of the relevant part of the Services set out below:

Name of subcontractor	Relevant Services
<i>[Tenderer to nominate in its Tender]</i>	<i>[Tenderer to nominate in its Tender]</i>
<i>[Note to Tenderers: Principal to insert details above when awarding the contract, in accordance with the successful Tenderer's tender.]</i>	

### 3.5 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with ISO 9000 and ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The Independent Certifier will not be relieved of any requirement to perform any obligation under this Deed as a result of:
  - (i) compliance with the quality assurance requirements of this Deed; or
  - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Verification and Monitoring Plan or any audit under clause 3.9.

### 3.6 Verification and Monitoring Plan

- (a) The Independent Certifier must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Verification and Monitoring Plan" which must:
  - (i) be based on the Minimum Requirements;
  - (ii) at the Principal's discretion, be based on the level of service identified in Part 1 and Part 2 of Attachment 4 to this Deed; and
  - (iii) comply with the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Attachment 9 to this Deed.
- (b) The Principal may:
  - (i) review the Verification and Monitoring Plan submitted under clause 3.6(a); and
  - (ii) if the Verification and Monitoring Plan does not comply with this Deed, or if the Principal believes that the Verification and Monitoring Plan does not comply with the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment or clause 2 of Attachment 9 to this Deed, notify the Independent Certifier with details of the non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.6(b)(ii), the Independent Certifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clause 3.6(b) will reapply.
- (d) If the Independent Certifier does not receive a notice under clause 3.6(b)(ii) within 15 Business Days after the submission of the relevant Verification and Monitoring Plan, the relevant Verification and Monitoring Plan submitted will be the Verification and Monitoring Plan with which the Independent Certifier must comply (as it is updated from time to time under and in accordance with clause 3.7).

### 3.7 Revisions to the Verification and Monitoring Plan

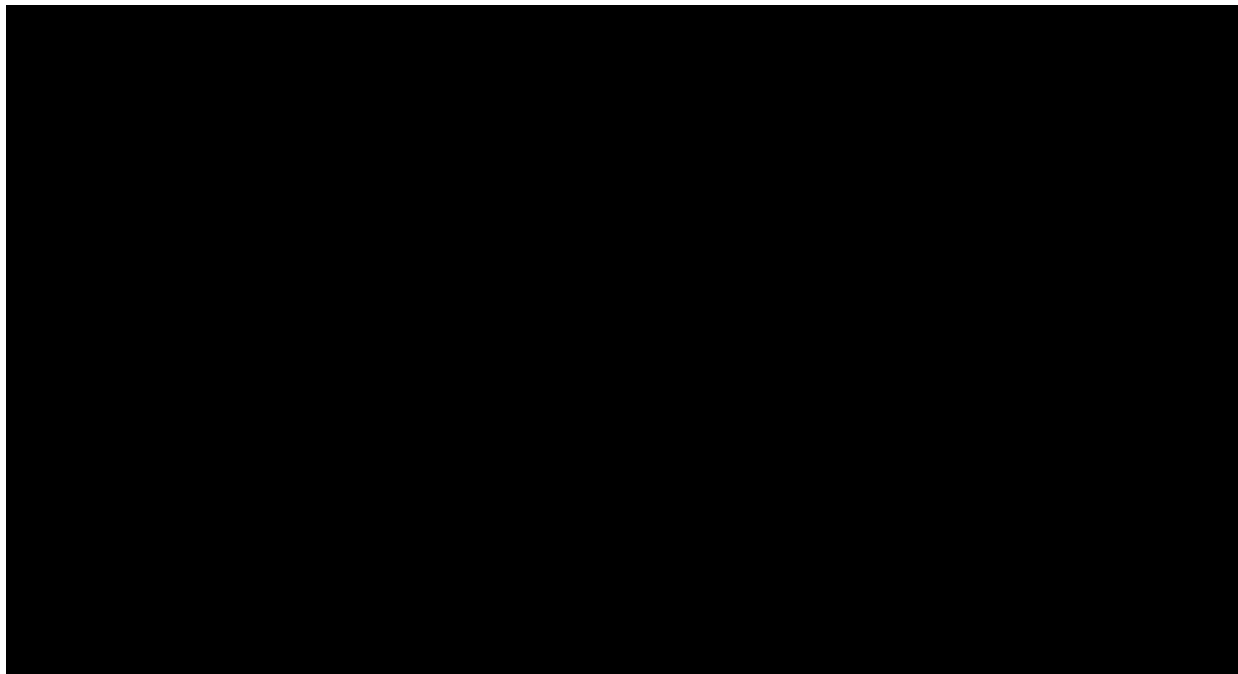
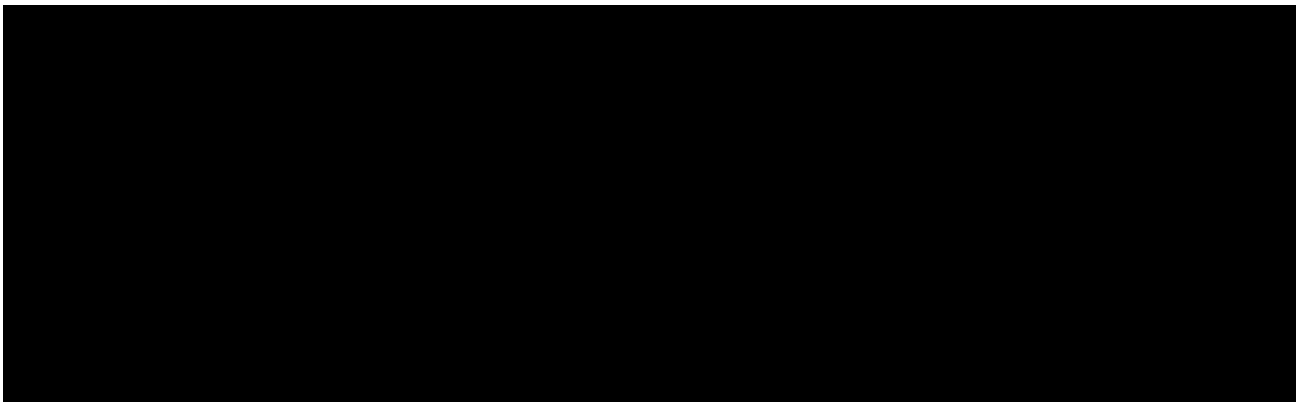
- (a) The Independent Certifier must:
    - (i) Within:
      - (A) six months of the date of this Deed; or
      - (B) if the Project Plans have not been submitted by the Contractor under clause 3.3 of the D&C Deed within six months after the date of this Deed, within 20 Business Days after the date the Project Plans are submitted by the Contractor under clause 3.3 of the D&C Deed,
- amend, update and develop the Verification and Monitoring Plan as necessary to reflect the Project Plans as submitted by the Contractor under clause 3.3 of the D&C Deed;

- (ii) progressively amend, update and develop the Verification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Activities, and Variations under the D&C Deed and any changes in the manner of performing the Services;
  - (iii) ensure that any amendments, updates or developments of the Verification and Monitoring Plan under clause 3.7(a)(i) or clause 3.7(a)(ii) are consistent with, and comply with, the Minimum Requirements, the Minimum Surveillance, the Minimum Resources Commitment and clause 2 of Attachment 9 to this Deed; and
  - (iv) submit each revision of the Verification and Monitoring Plan to the Other Parties.
- (b) The Principal may:
- (i) review the Verification and Monitoring Plan submitted under clause 3.7(a); and
  - (ii) if the Verification and Monitoring Plan does not comply with this Deed, including that the revised Verification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in Attachment 4 (Information from Tenderer's Returnable Schedules),  
 notify the Independent Certifier with details of the non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.7(b)(ii), the Independent Certifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clauses 3.7(a) to 3.7(c) will re-apply.
- (d) The Principal owes no duty to the Independent Certifier to review the Verification and Monitoring Plan for errors, omissions or compliance with this Deed.
- (e) Without limiting clause 3.2(e), the Independent Certifier must not, either in the preparation of the Verification and Monitoring Plan required by clause 3.6(a) or the amending, updating and development of the Verification and Monitoring Plan required by clause 3.7(a)(i), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise contained in Attachment 4 (Information from Tenderer's Returnable Schedules) without the prior written approval of the Principal's Representative.
- (f) The Independent Certifier must not amend the Verification and Monitoring Plan other than in accordance with this clause 3.7.

### **3.8 Monthly Progress Reports by the Independent Certifier**

During the period from the date of this Deed until the end of the Defects Correction Period, the Independent Certifier must provide a monthly progress report in electronic form (and if requested by the Principal, in hard copy) to each of the Principal's Representative, and the Contractor by the fifth Business Day of the following month and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) a description of the verification activities undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period;
- (c) a summary of key risks and issues relating to the Services;
- (d) the Independent Certifier's current and planned resources and staffing levels;
- (e) details of any Contractor non-conformities raised by the Independent Certifier or the Principal and details on the verification of the rectification by the Contractor of non-conformities;
- (f) details of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Certifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (g) details of the current version of the Verification and Monitoring Plan and a summary of any amendments, updates and developments to the Verification and Monitoring Plan during the reporting period;
- (h) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services, together with detailed particulars on how the Independent Certifier is dealing or proposes to deal with any such act, matter or thing;

- 
- (j) a description of how the Contractor has satisfied the Minimum Surveillance, including a description of the completed surveillance activities, and evidence demonstrating that the Independent Certifier has satisfied the Minimum Surveillance.
- 

### **3.9 Audit and surveillance**

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

### **3.10 Access to records**

- (a) From the date of this Deed and for a period of seven years following completion of the Services, the Independent Certifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents prepared or generated by or on behalf of the Independent Certifier arising out of or in connection with the carrying out the Services.
- (b) Digital media records are to be provided in both native format and formats with the greatest potential for long term survival such as Portable Document Format specialised for the preservation of electronic documents (PDF/A-1) or equivalent.

### **3.11 Deeds**

The Independent Certifier must, within 5 Business Days of the date of this Deed, provide the Principal with:

- (a) a duly executed deed poll in favour of ARTC in the form of Attachment 11;
- (b) a duly executed Deed of Novation in the form of Attachment 13, in respect of the Environmental Representative Deed of Appointment; and
- (c) a duly executed Deed of Novation in the form of Attachment 14, in respect of the Acoustic Advisor Deed of Appointment.

### **3.12 Aboriginal participation in construction**

- (a) The Independent Certifier acknowledges and agrees that, prior to the date of this Deed, it prepared and submitted to the Principal a draft Aboriginal Participation Plan which has not been approved by the Principal as at the date of this Deed.
- (b) The Independent Certifier acknowledges that it must prepare and submit within 20 Business Days of the date of this Deed an updated Aboriginal Participation Plan prepared in accordance with the Aboriginal Procurement Policy and in the format prescribed by the NSW Procurement Board (as defined in the Aboriginal Procurement Policy) which shows how the Independent Certifier intends to meet the Minimum Aboriginal Participation Requirements for the Principal's review and approval.
- (c) The Principal will review the Aboriginal Participation Plan submitted under clause 3.12(b) and either:
  - (i) approve the updated Aboriginal Participation Plan; or
  - (ii) if the updated Aboriginal Participation Plan does not comply with the requirements of clause 3.12(b), notify the Independent Certifier of that non-compliance.
- (d) If the Independent Certifier receives a notice under clause 3.12(c)(ii), the Independent Certifier must promptly amend the updated Aboriginal Participation Plan to resolve the issues identified by the Principal and submit such revised updated Aboriginal Participation Plan to the Principal, after which clause 3.12(c) will reapply.
- (e) The Independent Certifier must comply with the Aboriginal Participation Plan approved by the Principal under the process set out in clause 3.12(b) to clause 3.12(d) (inclusive).
- (f) The Independent Certifier must prepare and submit to the Principal:
  - (i) each quarter, an Aboriginal Participation Report, providing details of the implementation of the Aboriginal Procurement Policy and achievement targets; and
  - (ii) prior to the completion of Services, the final Aboriginal Participation Report, describing and explaining:
    - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
    - (B) what actual outcomes have been achieved; and
    - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (g) If the Minimum Aboriginal Participation Requirements have not been met by the Independent Certifier prior to the Independent Certifier's final Payment Claim, the Principal may direct the remaining balance of the required spend to Training Services NSW programs that focus on training for Aboriginal people or capacity building for Aboriginal-owned businesses.
- (h) Templates are, at the date of this Deed, available at:  
<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>.

### **3.13 Performance Regime**

The Principal and the Independent Certifier must comply with Attachment 10.

## **4. Independence and Confidentiality**

### **4.1 Independent Certifier to be independent**

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

- (a) subject to clause 6A, independently of the Other Parties;
- (b) honestly, diligently and reasonably;
- (c) with the degree of professionalism, knowledge, skill, expertise, experience and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the time prescribed under this Deed or the Project Documents or as anticipated by the Contract Program.

## 4.2 Confidentiality

The Independent Certifier must keep confidential details of this Deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Project or the Project Documents and not provide, disclose or use the information or documents except:

- (a) to the Other Parties;
- (b) for the purposes of performing the Services;
- (c) where required by law or to obtain legal advice on this Deed; or
- (d) with the prior written consent of the Other Parties.

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

## 4.3 Exclusivity

- (a) The Independent Certifier must not, and must procure that:
  - (i) any related body corporate (as defined in section 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
  - (ii) any employees, agents, subcontractors and consultants that are involved in the provision of Services,  
do not, from the date of execution of this Deed until the earlier of completion of the Services or termination in accordance with clause 7:
  - (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
    - (A) with the Contractor or any of its contractors, consultants or providers; or
    - (B) in any work being carried out under the Project Documents; or
  - (iv) provide services to or advise any other person in relation to the Project Documents or the work being carried out under the Project Documents,  
other than the provision of the Services under this Deed, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion.
- (b) The Independent Certifier agrees that:
  - (i) having regard to the Project Documents and the Services, clause 4.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project Documents and to ensure the best value for money of the Project Documents; and
  - (ii) damages may not be sufficient remedy for a breach of clause 4.3 and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.

## 4.4 Publicity

- (a) The Independent Certifier must not issue any information, publication, document or article for publication concerning the Project or the Services to any media (or permit any third party to do so) without the prior written approval of the Principal's Representative (acting reasonably) and only in a manner approved by the Principal's Representative (acting reasonably).
- (b) If the Independent Certifier or any of its subcontractors receives a direct request from the media for comment in respect of any aspect of the Project or the Services, that party must promptly provide details of such request to the Principal's Representative.

## 5. Obligations of the Other Parties

### 5.1 No Interference or Influence

- (a) Subject to clause 6A, the Other Parties will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services. The parties acknowledge that any communication allowed by this Deed will not of itself constitute a breach of this clause.
- (b) Clause 5.1(a) does not prevent the Other Parties from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the Contractor's Activities.

### 5.2 Co-operation by Contractor

Without limiting or otherwise affecting any of the Contractor's obligations under this Deed or the Project Documents, the Contractor must:

- (a) co-operate with and provide the Independent Certifier with all information and documents necessary or reasonably required by the Independent Certifier, or otherwise requested by the Independent Certifier or directed by the Principal;
- (b) allow the Independent Certifier to attend all design meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by the Principal, including allowing access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Independent Certifier must comply with the reasonable directions of the Principal Contractor;
- (c) ensure that Hold Points and Witness Points are included in the Project Plans as required by the Independent Certifier to enable the Independent Certifier to perform the Services;
- (d) establish, provide, maintain, operate, service and remove, at the Contractor's cost, the site facilities required by the Independent Certifier for use by the Independent Certifier's personnel. The Independent Certifier's site facilities must be a separate building that adjoins the Contractor's main site administration facilities and must be provided by the Contractor to the satisfaction of the Independent Certifier, including requirements for all weather car parking, covered walkways, office fit out, furnishings, air conditioning, fencing and gates, security systems, information technology and communications infrastructure (including network computers). The Independent Certifier's site facilities must be available for use at least two months prior to the commencement of construction activities on the Construction Site and until four months after the Date of Opening Completion; and
- (e) allow the Independent Certifier and the Independent Certifier's personnel to perform the Services during the hours of work permitted under the Planning Approval.

### **5.3 Principal to have no liability**

- (a) Each party acknowledges that the Principal is not, nor will be taken to have a liability, or to have assumed or become (on enforcement of any of their powers or otherwise), liable:
  - (i) to any party to this Deed by reason of the Principal being a party to this Deed; or
  - (ii) for the performance of or failure to perform, any obligation of the Contractor or the Independent Certifier under this Deed, the Project Documents or otherwise.
- (b) Without limiting clause 5.3(a), each party acknowledges and agrees that the Independent Certifier does not have the authority to authorise any non-compliance with the Project Documents.

## **6. Liability, insurance and indemnity**

### **6.1 Limitation of liability**

Subject to clause 6.2, the Independent Certifier's total liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to \$20 million.

### **6.2 Exclusions**

- (a) The limitation of liability in clause 6.1 does not apply to:
  - (i) any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:
    - (A) fraud or criminal conduct;
    - (B) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
    - (C) gross negligence being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed, and
  - (ii) limit or exclude the Independent Certifier's liability in respect of:
    - (A) liability to the extent to which the Independent Certifier is (or will be or ought to be) entitled to be paid or indemnified pursuant to a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance policy required under this Deed in respect of that liability; or
    - (B) liability for which, but for a failure by the Independent Certifier to comply with its obligations under this Deed or under a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance

policy required under this Deed, the Independent Certifier would have (or ought to have) been entitled to receive payment or been indemnified under the insurance policy.

- (b) The Independent Certifier's total liability under this Deed in respect of all claims arising out of or in connection with the:
  - (i) Acoustic Advisor and the Acoustic Advisor Deed of Appointment will be limited to \$ [REDACTED], subject to the exclusions set out in the Acoustic Advisor Deed of Appointment; and
  - (ii) Environmental Representative and the Environmental Representative Deed of Appointment will be limited to \$ [REDACTED], subject to the exclusions set out in the Environmental Representative Deed of Appointment.

### **6.3 Insurances**

- (a) The Principal has effected an insurance policy as referred to in Item 1 of Attachment 7 and clause 7.1(a) of the D&C Deeds.
- (b) The Independent Certifier must from the date of the D&C Deed effect and maintain the policies of insurance listed in Attachment 7 to this Deed:
  - (i) on the terms;
  - (ii) for the types;
  - (iii) for the periods; and
  - (iv) for the sums,specified in Attachment 7 to this Deed.
- (c) The Independent Certifier acknowledges and agrees that:
  - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Attachment 8 (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) of the D&C Deed and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in this Deed and is aware that those insurance policies will not provide cover to the Independent Certifier against all the risks assumed by the Independent Certifier under this Deed;
  - (ii) the obtaining of insurance by the Principal in accordance with clause 7.1(a) of the D&C Deed does not limit or otherwise affect the Independent Certifier's obligations under this Deed; and
  - (iii) the policies of insurance referred to in clause 7.1(a) of the D&C Deed have been obtained at the Principal's cost.
- (d) The Independent Certifier is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) D&C Deed and may effect insurance to cover the amount of that excess at its own cost.

### **6.4 Notice of matter affecting insurance**

The Independent Certifier must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim, as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such event or circumstance.

### **6.5 Provision of information**

- (a) Before the Independent Certifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Independent Certifier must supply proof that all insurance policies which the Independent Certifier is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.
- (b) If a notification is made pursuant to clause 6.4 of this Deed, the Independent Certifier must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

### **6.6 Subcontractors insurance**

The Independent Certifier must ensure that any subcontractor engaged by the Independent Certifier who is not covered by the professional indemnity policy of insurance effected and maintained by the Independent

Certifier, effects and maintains a professional indemnity policy of insurance on terms, for the period and for the sum specified in Attachment 7 to this Deed.

## **6.7 Obligations unaffected by insurance**

The requirement to effect and maintain insurance in this clause 6 does not limit the liability or other obligations of the Independent Certifier under this Deed.

## **6.8 Indemnity**

Subject to clause 6.1, the Independent Certifier is liable for and indemnifies each Other Party against any liability, loss, claim, expense or damage which they may pay, suffer or incur in respect of any:

- (a) breach of this Deed; or
- (b) damage to or loss of property; or
- (c) death of or injury to any person,

insofar as the liability, loss, claim, expense or damage arises out of the breach or negligent act, error or omission of the Independent Certifier, its employees, agents, subcontractors or consultants.

## **6A Additional Services**

- (a) The parties acknowledge that:
  - (i) the Principal may direct the Independent Certifier in writing to carry out any additional services in relation to the Project from time to time (**Additional Services**); and
  - (ii) Additional Services directed under clause 6A(a)(i) may include:
    - (A) advising the Principal on claims for extension of time, by engaging a specialist subcontractor approved by the Principal with experience in assessing extensions of time; and
    - (B) any other services required by the Principal in respect of the Project.
- (b) The Other Parties:
  - (i) consent to the Independent Certifier performing the Additional Services for the benefit of Principal (as applicable); and
  - (ii) acknowledge that the Contractor will not receive copies of any documents or notices to or from the Independent Certifier in connection with the Additional Services (unless the Principal's Representative so determines, in its absolute discretion).
- (c) Without limiting clause 6A(a), the Principal (after prior consultation with the Contractor) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.
- (d) The Other Parties may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

## **7. Termination of appointment**

### **7.1 Notice of termination**

The Other Parties may jointly terminate this Deed by notice in writing served on the Independent Certifier if:

- (a) the Independent Certifier is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the Independent Certifier is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 5 Business Days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the Independent Certifier a notice of termination of this Deed, on a date specified in the notice, being not less than 15 Business Days after the date of issue of the notice.

### **7.2 Prior agreement on replacement**

Prior to serving a notice under clause 7.1, the Principal, and the Contractor must have agreed upon another person to act as a replacement for the Independent Certifier.

### **7.3 Termination**

Where a notice is served on the Independent Certifier under clause 7.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 7.1; or
- (b) the appointment of a replacement for the Independent Certifier.

#### **7.4 Delivery of documents**

Upon the date of termination of the appointment of the Independent Certifier, the Independent Certifier:

- (a) must deliver up to the Other Parties or to such other person as the Other Parties may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services; and
- (b) acknowledges that the Other Parties have the right to use all such documents for the purposes of the Project Documents and the Project.

#### **7.5 Reasonable assistance**

Where the Other Parties give a notice of termination under clause 7.1, the Independent Certifier must provide full assistance to the Other Parties and any replacement for the Independent Certifier appointed in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

#### **7.6 Payment until date of termination**

Where this Deed is terminated under clause 7.1(d), the Independent Certifier is only entitled to be paid by the Principal the proportion of the Fee for Services performed up to the date of the termination.

#### **7.7 Termination without payment**

Termination of this Deed will be without prejudice to any claim which one or both of the Other Parties may have in respect of any breach of the terms of this Deed which occurred prior to the date of termination.

#### **7.8 Survive termination**

This clause 7 will survive the termination of this Deed by the Other Parties under clause 7.1.

#### **7.9 Rights upon Termination**

If this Deed is terminated pursuant to clauses 7.1(a) to 7.1(c), the parties' remedies, rights and liabilities will be the same as they would have been under the Law governing the Deed had the Independent Certifier repudiated the Deed and the Other Parties elected to treat the Deed as at an end and recover damages.

### **8. Expenses, Stamp Duty and GST**

#### **8.1 Expenses**

Except as otherwise provided in this Deed, each party will pay its own costs and expenses in connection with the negotiation, preparation, execution, and performance of this Deed.

#### **8.2 Stamp Duties**

- (a) The Contractor must:
  - (i) pay all stamp duties (apart from financial institutions duties or bank account debit taxes which will lie between the parties as they fall) and any related fines and penalties in respect of this Deed, the performance of this Deed and each transaction effected by or made under or pursuant to this Deed; and
  - (ii) indemnify each other party against any liability arising from failure to comply with clause 8.2(a)(i).
- (b) The Contractor is authorised to make any application for and retain the proceeds of any refund due in respect of any stamp duty paid under this clause.

#### **8.3 GST**

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (the "Supplier") under or in connection with this Deed:
  - (i) any amount payable or consideration to be provided under this Deed for that supply ("Agreed Amount") is exclusive of GST;
  - (ii) an additional amount will be payable by the party to whom that supply is made (the "Recipient"), equal to the amount of GST payable on that supply as calculated by the Supplier

in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and

- (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause (b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 10 Business Days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.
- (d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

## 9. Miscellaneous

### 9.1 Further acts

Each party will promptly do and perform 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 any other party to give effect to this Deed.

### 9.2 Notices

Any notices contemplated by this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Name: Transport for NSW  
Address: [Insert]  
For the attention of: [Insert]

Name: Principal's Representative  
Address: [Insert]  
Email: [Insert Principal's Representative's Email address]  
For the attention of: [Insert Principal's Representative's name]

Name: [Insert Contractor's name]  
Address: [Insert Contractor's address]  
Email: [Insert Contractor's Email address]  
For the attention of: [Insert contact name]

Name: [Insert Independent Certifier's name]  
Address: [Insert Independent Certifier's address]  
Email: [Insert Independent Certifier's Email address]  
For the attention of: [Insert contact name]

(or as otherwise notified by that party to the other party from time to time);

**[Note to Tenderers: Principal to insert details above when awarding the contract, in accordance with the successful Tenderer's tender.]**

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;

- (d) must be delivered or posted by prepaid express post to the relevant address of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
  - (i) (in the case of prepaid express post) on the second Business Day after the date of posting to an address within Australia, and on the fourth Business Day after the date of posting to an address outside Australia; and
  - (ii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.
- (f) Any notice contemplated by this deed to be given to the Principal must be delivered to the Principal address in accordance with clause 9.2(b).
- (g) Subject to clause 9.2(f), the party making the communication may give any notice contemplated by this deed to be given to other parties by email, to the relevant email address in accordance with clause 9.2(b) or to a new email address which one party notifies to the other parties in writing from time to time.
- (h) A notice given by email is 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.

### **9.3 Jurisdiction**

- (a) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (b) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within clause 9.3(a).

### **9.4 Amendments**

This Deed may only be varied by a document signed by or on behalf of each of the parties.

### **9.5 Assignment**

No party to this Deed may assign, novate or otherwise transfer any of its rights or obligations under this Deed without the prior written consent of each other party to this Deed.

### **9.6 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 any party 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 any party under this Deed will only be effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of any term of this Deed will operate as a waiver of any breach of that term or of a breach of any other term of this Deed.

### **9.7 Consents**

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

### **9.8 Counterparts**

- (a) This Deed may be executed in any number of counterparts, each of which may be executed by one or more parties, may be executed electronically or in handwriting (including a print out of the electronic form) and will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document. Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this Deed, this shall be taken to be the same, and have the same effect, as if the signature on the counterparts were on a single copy of this Deed.
- (b) Executed counterparts of this Deed may be exchanged by email.

### **9.9 Indemnities**

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

### **9.10 Entire agreement**

To the extent permitted by law, in relation to the subject matter of this Deed, this Deed:

- (a) embodies the entire understanding of the parties and constitutes the entire terms agreed upon between the parties; and
- (b) supersedes any prior agreement (whether or not in writing) between the parties.

### **9.11 No representation or reliance**

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

### **9.12 Relationship of the parties**

- (a) The relationship between and among the parties to this Deed will not be that of partners or joint venturers and nothing herein contained will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) It is understood that the Independent Certifier is acting as an independent contractor for the Other Parties and therefore, the Independent Certifier is not authorised to enter into any binding obligations on behalf of either or both of the Other Parties.

### **9.13 Replacement Body Interpretation**

If an authority or body referred to in this Deed:

- (a) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or
- (b) ceases to exist,

this Deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body.

### **9.14 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.

### **9.15 Moratorium Legislation**

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Deed, or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this Deed or otherwise, are expressly waived.

### **9.16 Civil Liability Act**

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 9.16(a) it is further agreed that the rights, obligations and liabilities of the parties (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.

### **9.17 Modern Slavery**

- (a) The Independent Certifier warrants that it:

- (i) is not aware of (including through the making of reasonable inquiries) any Modern Slavery practices being used in its operations or supply chains (or in those of any entity it owns or controls); and
- (ii) has never been convicted of a Modern Slavery Offence, and nor has any entity it owns or controls.
- (b) The Independent Certifier must not at any time engage or be complicit in any Modern Slavery practice, and must immediately notify the Principal if it suspects or becomes aware of any Modern Slavery practice occurring in connection with the Project Works.
- (c) If the Independent Certifier is a 'reporting entity' for the purposes of any Modern Slavery Law, it must provide the Principal with a copy of any report it is required to prepare under that Modern Slavery Law promptly upon the Principal's request.
- (d) For the purposes of this clause 9.17:
  - (i) **Modern Slavery** has the same meaning as in the Modern Slavery Laws and includes slavery, servitude, forced labour, human trafficking, debt bondage, organ trafficking, forced marriage and the exploitation of children;
  - (ii) **Modern Slavery Laws** includes, as applicable, the *Modern Slavery Act 2018* (NSW) and the *Modern Slavery Act 2018* (Cth); and
  - (iii) **Modern Slavery Offence** has the same meaning as in the *Modern Slavery Act 2018* (NSW).

### 9.18 Change in Control

- (a) Subject to the terms of this clause 9.18, the Independent Certifier must ensure that there is no Change in Control of any entity that comprises the Independent Certifier without the prior written consent of the Principal (which must not be unreasonably withheld).
- (b) The Independent Certifier must notify the Principal in writing of any Change in Control of any entity that comprises the Independent Certifier, and provide:
  - (i) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
  - (ii) all other information necessary for the Principal to determine whether to exercise its rights under clause 9.18(a)(iv), in relation to the Change in Control of the relevant entity that comprises the Independent Certifier.
- (c) The Principal's approval is not required for a Change in Control arising from:
  - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
  - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Independent Certifier gives the Principal prior written notice of the transfer.
- (d) The Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Independent Certifier where the Principal is of the reasonable opinion that:
  - (i) the person or entity which will exercise Control of the Independent Certifier or the relevant entity that comprises the Independent Certifier:
    - (A) is not solvent and reputable;
    - (B) has an interest or duty which conflicts in a material way with the interests of the Principal; or
    - (C) is involved in a business or activity which is incompatible, or inappropriate, in relation to the Project;
  - (ii) as a result of the Change in Control, the Independent Certifier will no longer:
    - (A) have sufficient expertise and ability; or
    - (B) be of sufficiently high financial and commercial standing,
 to properly carry out the obligations of the Independent Certifier under this Deed.
- (e) The Principal's approval of a Change in Control of any entity that comprises the Independent Certifier will not relieve the Independent Certifier of any of its obligations under this Deed.

### 9.19 Commonwealth Building Code

- (a) In this clause 9.19:
  - (i) **ABC Commissioner** means the Australian Building and Construction Commissioner referred to in section 15(1) of the BCIP Act;

- (ii) **ABCC** means the body referred to in section 29(2) of the BCIP Act;
  - (iii) **Building Code** means the Code for the Tendering and Performance of Building Work 2016 (Cth), which is available at <https://www.legislation.gov.au/Details/F2019C00289>, as amended from time to time;
  - (iv) **Building Contractor** has the same meaning as in the BCIP Act;
  - (v) **Building Industry Participant** has the same meaning as in the BCIP Act;
  - (vi) **Building Work** has the same meaning as in subsection 3(4) of the Building Code;
  - (vii) **Commonwealth Funded Building Work** means Building Work in items 1-8 of Schedule 1 of the Building Code;
  - (viii) **Exclusion Sanction** has the same meaning as in subsection 3(3) of the Building Code;
  - (ix) **Related Entity** has the same meaning as in the Corporations Act;
  - (x) **Subcontractor** means a Building Contractor or Building Industry Participant who Project Co has entered, or proposes to enter, into a subcontract with to undertake any of the Works; and
  - (xi) **Works** means Commonwealth Funded Building Work that is the subject of this Deed.
- (b) The Independent Certifier:
- (i) declares as at the date of this Deed; and
  - (ii) must ensure during the term of this Deed, that, in relation to the Services, it and its subcontractors, consultants and each related entity:
    - (iii) complies with, and acts consistently with, the Building Code;
    - (iv) meets the requirements of section 11 of the Building Code;
    - (v) is not subject to an Exclusion Sanction;
    - (vi) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia; and
    - (vii) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government.
- (c) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this Deed.
- (d) The Independent Certifier must promptly:
- (i) notify the ABCC of:
    - (A) any breach or suspected breach of the Building Code as soon as practicable, but no later than 2 Business Days after becoming aware of the breach or suspected breach, and advise the ABCC of the steps proposed to be taken by the Independent Certifier to rectify the breach; and
    - (B) the steps taken to rectify any breach of the Building Code within 14 days of providing a notification under clause 9.19(d)(i)(A); and
  - (ii) give the Principal a copy of any notification given by the Independent Certifier to the ABCC under clause 9.19(d)(i) and respond to any requests for information by the Principal concerning matters related to the Building Code so as to enable the Principal to comply with its obligations under section 28 of the Building Code.
- (e) The Independent Certifier acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCIP Act and the Building Code and must ensure that it (and must procure that its subcontractors, consultants and each related entity) complies with any requests made by the ABCC and the ABC Commissioner within those powers and functions, including requests:
- (i) for entry under section 72 of the BCIP Act;
  - (ii) to interview any person under section 74 of the BCIP Act;
  - (iii) to produce records or documents under sections 74 and 77 of the BCIP Act; and
  - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (f) The Independent Certifier must not enter into a subcontract for any aspect of the Services unless:
- (i) the subcontractor has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the Independent Certifier agrees is substantially in the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code; and
  - (ii) the subcontract with the subcontractor includes an equivalent clause to this clause 9.19.

- (g) The Independent Certifier must provide the Commonwealth with any subcontractor's Declaration of Compliance referred to in clause 15(f) promptly upon request.
- (h) The Independent Certifier must maintain adequate records of the compliance with the Building Code by:
  - (i) the Independent Certifier;
  - (ii) the subcontractors;
  - (iii) the Independent Certifier's consultants; and
  - (iv) any related entity of the Independent Certifier.

## **9.20 Disclosure by Principal**

- (a) The Independent Certifier and the Contractor acknowledge that:
  - (i) this Deed will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
  - (ii) information concerning this Deed will be tabled in Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
  - (iii) this Deed and information concerning this Deed will be published on the Principal's contracts register in accordance with the GIPA Act (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed in the contract register under the GIPA Act); and
  - (iv) the Principal and the Principal's Representative may make this Deed available to any person as required by any applicable Law.
- (b) Nothing in this clause 9.20 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

## **10. DISPUTE RESOLUTION**

### **10.1 Procedure for resolving disputes**

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 10.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clauses 10.2, 10.3 and 10.4.

### **10.2 Negotiation**

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective senior officer with the authority to resolve the dispute of those parties to the dispute.
- (b) A notice under clause 10.2(a) must:
  - (i) be in writing;
  - (ii) state that it is a notice under this clause 10.2; and
  - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 10.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 10.2(a) is received.
- (d) The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in this clause 10.2(c) and will be contractually binding on the parties to the dispute.
- (e) The 10 Business Days referred to in clause 10.2(c) may be extended by agreement of the parties to the dispute in writing.
- (f) If the Dispute is not fully resolved by the Dispute Representatives within 10 Business Days (or such longer period as the parties agree) after the date the notice under clause 10.2(a) is received:
  - (i) a party to the dispute may by giving notice in writing to the other parties, refer the dispute to expert determination in accordance with clause 10.3; or
  - (ii) the parties may agree to have the dispute determined by litigation.

### 10.3 Expert Determination

- (a) Any dispute which is referred to expert determination under clause 10.2(f)(i) will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Schedule A13 of the WFU Deed.
- (b) The parties must promptly make available to the Expert all such additional information, access to the Construction Site, any Extra Land and all areas where the Works are being performed (including any relevant Local Areas) and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the dispute.
- (c) The parties agree that, to the extent permitted by Law:
  - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* NSW are not conferred on the Expert; and
  - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* NSW (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by the parties to the dispute, the Expert must give its determination in writing to both parties, which must be reasoned and must state that it is given under this clause 10.3.
- (e) Without limiting clause 10.1(b), the determination of the Expert will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment made in court proceedings.

### 10.4 Notice of dissatisfaction

- (a) If:
  - (i) a party is dissatisfied with a determination made by an Expert under clause 10.3, then that party may, within 10 Business Days after receiving the determination, give notice to the other parties of its dissatisfaction; or
  - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by the parties to the dispute), then any party to the dispute may, within 10 Business Days after the relevant period has expired, give a notice to the other parties of its dissatisfaction,(each a **Notice of Dissatisfaction**).
- (b) A Notice of Dissatisfaction issued under clause 10.4(a) must:
  - (i) state that it is given under this clause 10.4; and
  - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (c) No party will be entitled to commence court proceedings in respect of any dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 10.4.

### 10.5 Final and binding decision

- (a) If:
  - (i) an Expert has made a determination as to a dispute; and
  - (ii) no Notice of Dissatisfaction has been given by any party under clause 10.4 within 10 Business Days after it received the Expert's determination,then the determination will become final and binding upon all parties, who must give effect to it.
- (b) Once a determination of an Expert has become final and binding under clause 10.5(a), no party will be entitled to challenge the determination on any basis.

### 10.6 Continue to perform

Notwithstanding the existence of a dispute, each of the Other Parties and the Independent Certifier must continue to perform their obligations under this deed.

### 10.7 Urgent relief

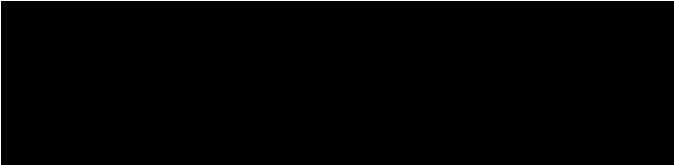
- (a) Nothing in this clause 10 will prevent:
  - (i) a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or

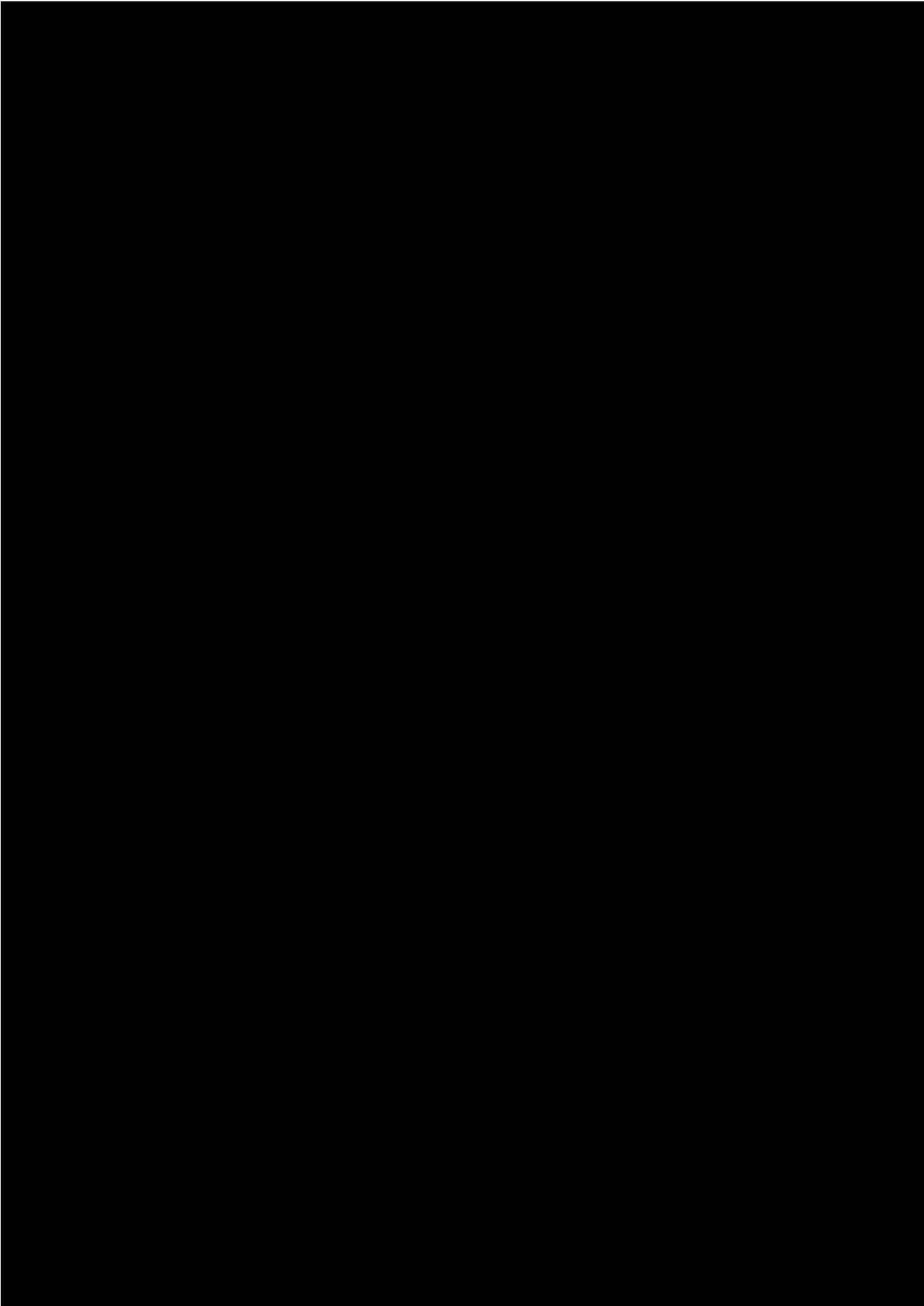
- (ii) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, or an equivalent provision under any Law.

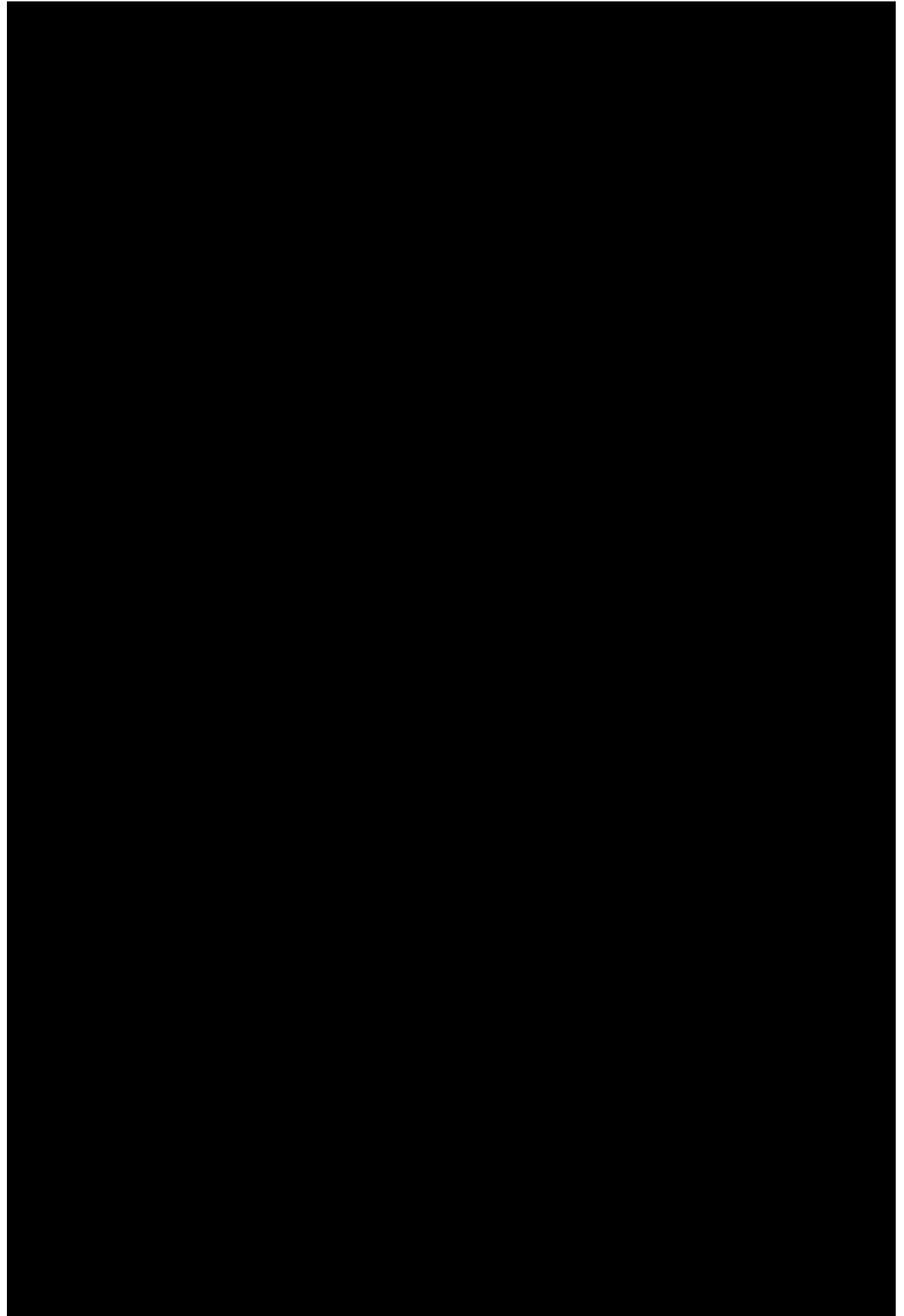
#### **10.8 Survive termination**

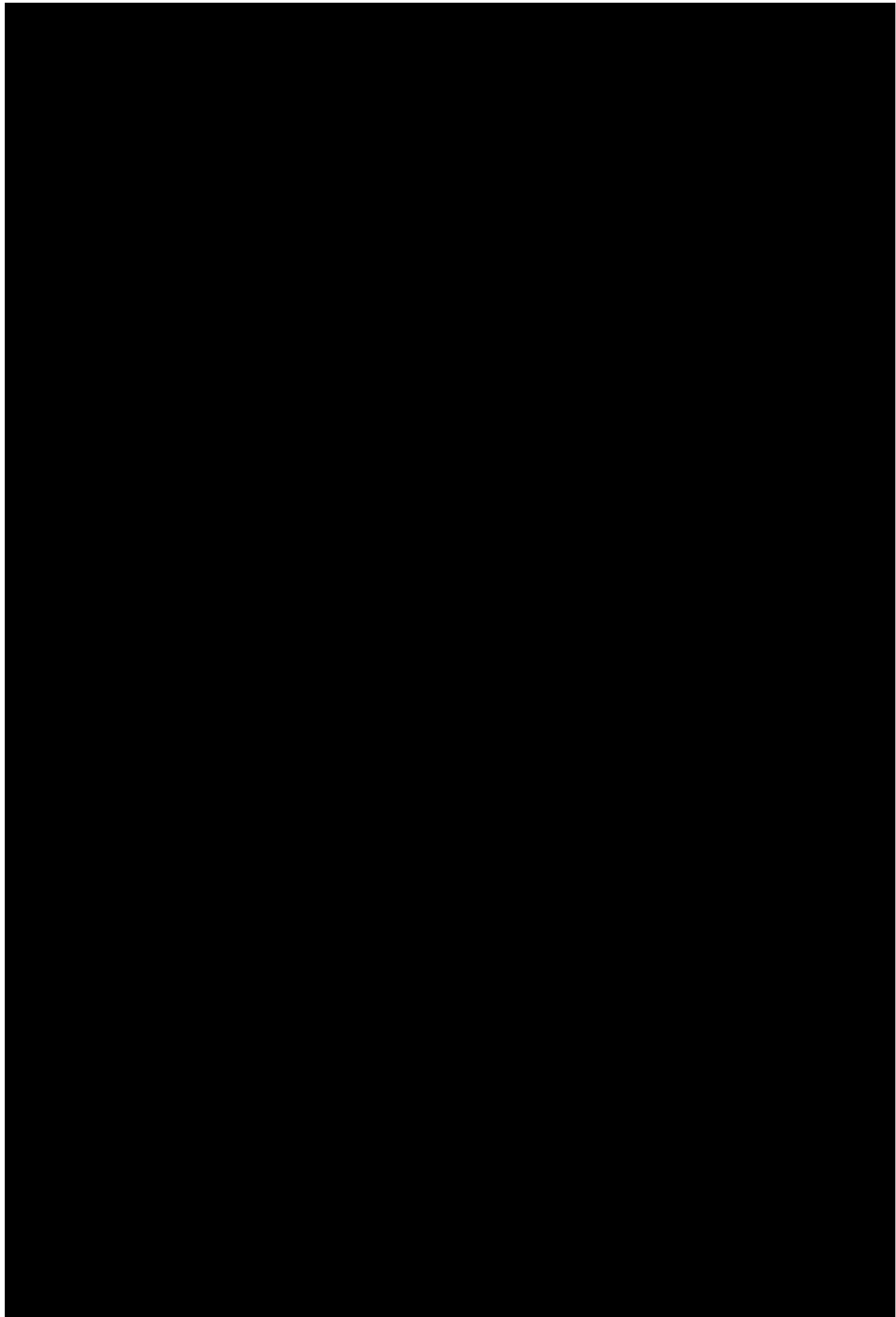
This clause 10 will survive the termination of this deed.

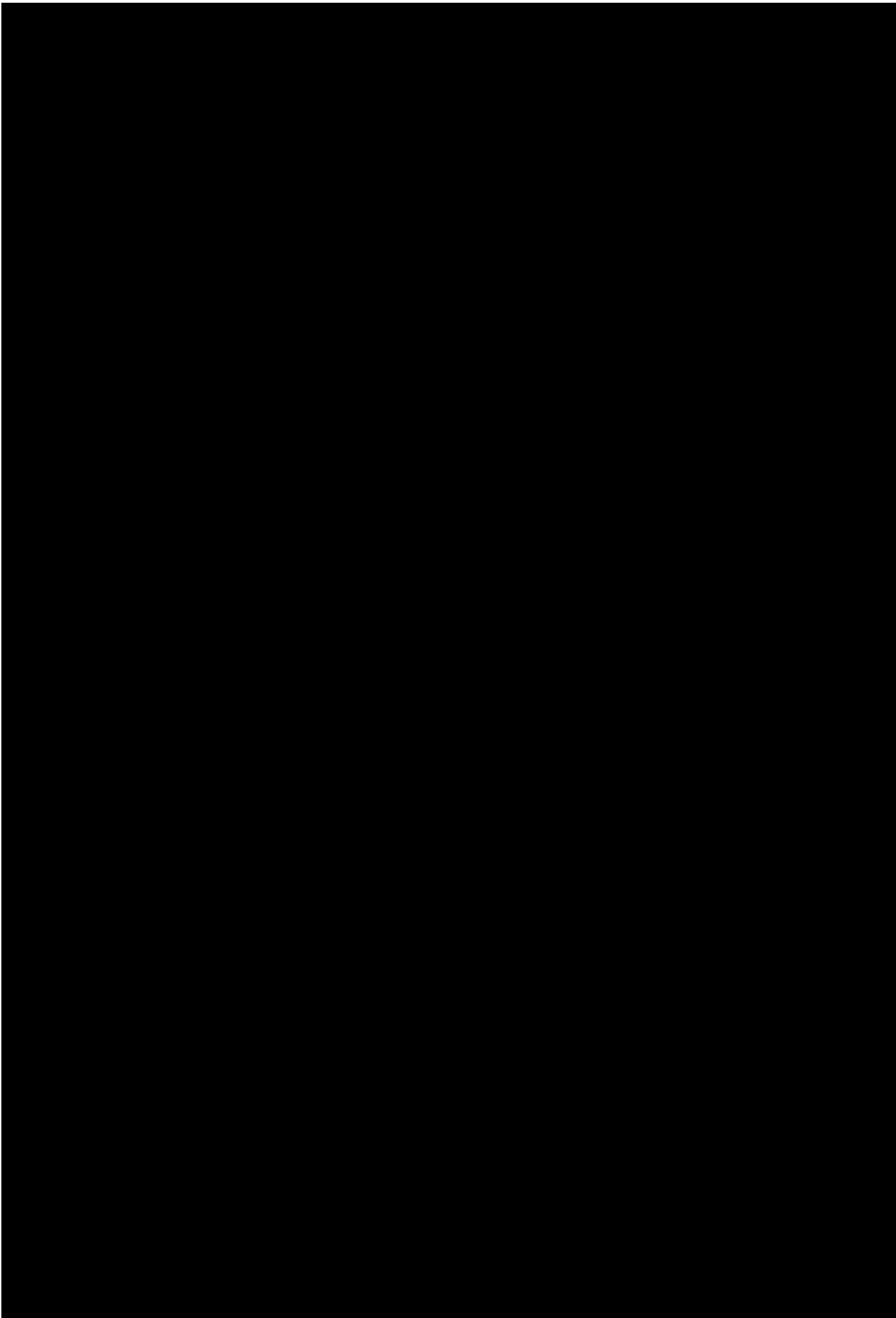
## Attachment 1 - Project Documents

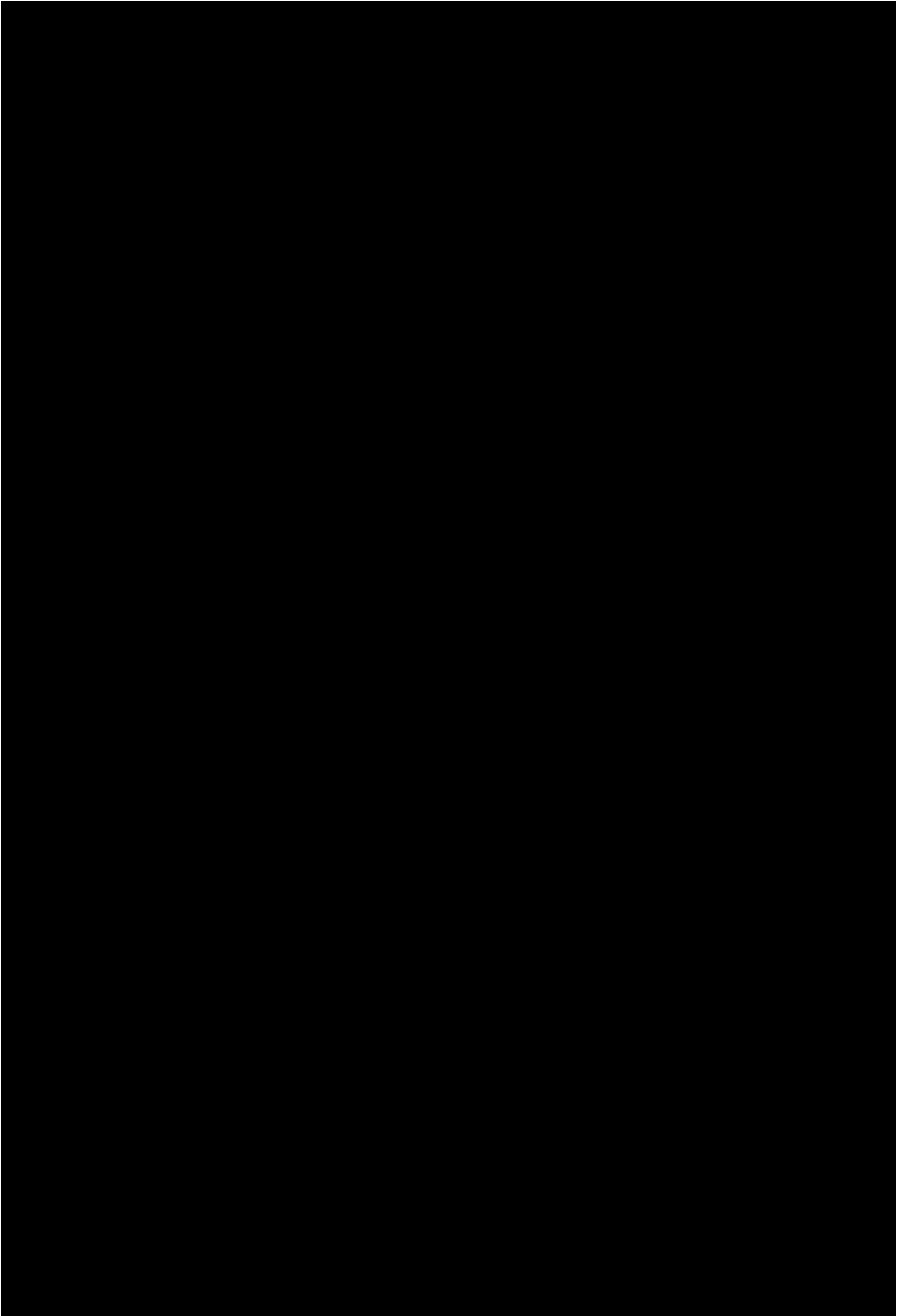
	Contract Name and Parties	Contract Date
1	D&C Deed and Schedules	
2	Exhibits to the D&C Deed	
3	ARTC Deed of Lease between the Principal and ARTC	
		













## Attachment 3 - Payment Schedule

### 1. Payment claim

- (a) At the end of each month after the date of the D&C Deed, the Independent Certifier must submit to the Principal a claim for payment on account of the Fee:
  - (i) setting out the value of the Services performed in accordance with this Deed during the relevant month;
  - (ii) calculated in accordance with this Payment Schedule;
  - (iii) in such form and with such details and supporting documentation as the Principal may reasonably require; and

[REDACTED]

(Payment Claim).

### 2. Payment

The Principal must, within 15 Business Days after receipt of the Payment Claim for the month, pay the Independent Certifier that portion of the Fee attributable to the Services performed during the month.

### 3. Notification of disputed amounts

The Principal must pay the Independent Certifier any amount included in a Payment Claim which it does not dispute. If the Principal disagrees with an amount included in the Payment Claim, the Principal must within 10 Business Days after receipt of the relevant Payment Claim notify the Independent Certifier in writing of the reasons for any amount which is disputed.

### 4. The Fee

- (a) The Fee consists of the following components:
  - (i) a lump sum of \$[ insert] exclusive of GST for the Design Verification Services;
  - (ii) a lump sum of \$[ insert] exclusive of GST for the Construction Verification Services;

[REDACTED]

subject to adjustment in accordance with clauses 4(b) or 4(c) below (as the case may be).

- (b) Adjustments will be made to the lump sums and costs referred to in clause 4(a) in accordance with:
  - (i) the appropriate rates set out in the Schedule of Rates in clause 5 of this Payment Schedule; and
  - (ii) the disbursements set out in clause 6 of this Payment Schedule,for reasonable increases or decreases in the cost to the Independent Certifier of performing the Design Verification Services and/or the Construction Verification Services which arise as a result of (without double counting):
  - (iii) a Variation directed by the Principal's Representative under the D&C Deed;
  - (iv) any re-verification of previously certified design packages due to changes in Design Documentation. In relation to the re-verification of any design packages during the provision of the Construction Verification Services, adjustments will be made to the lump sum for the Design Verification Services referred to in clause 4(a)(i) only to the extent that the time involved in undertaking the re-verification work, and addressing non-conformities, by the Independent Certifier exceeds [REDACTED] hours in total; [**Note to Tenderer: Principal to confirm during alignment process with preferred D&C Tenderer.**]
  - (v) a delay to the performance of the Design Verification Services and/or Construction Verification Services due to an extension to the Contract Program of not less than 60 working days, but only to the extent that:
    - (A) such delay results in the Independent Certifier undertaking the review and verification of more than [REDACTED] design packages in total; and/or [**Note to Tenderer: Principal to confirm subject to discussions with preferred D&C Tenderer.**]

- (B) the Independent Certifier incurs reasonable additional costs associated with ensuring resources are available over a longer duration to meet the Contractor's varied Contract Program;
- (vi) the review and verification of more than [REDACTED] design packages in total; or [*Note to Tenderer: Principal to confirm subject to discussions with preferred D&C Tenderer.*]
- (vii) any additional services jointly directed in writing by the Other Parties or as directed under clause 6A of the Deed, as required by paragraph (b) under the heading "General" in Attachment 2 to this Deed.

In this clause, a "design package" means each submission of the Design Documentation to the Independent Certifier and other information required by clause 12.2 of the D&C Deed or the Contractor Documentation Schedule relating to each discrete design element of the Contractor's Activities and includes the Design Documentation that is produced for each of the Developed Concept Design Stage, Substantial Detailed Design Stage, Final Design Documentation Stage and Issue for Construction Design Documentation.

- (c) The Independent Certifier acknowledges that (except as described in and payable under clause 6 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from the Construction Site and excluding provision of the Independent Certifier site facilities referred to in clause 5.2(d) of this Deed), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

## 5. Schedule of Rates

### Design Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]
[REDACTED]	[Insert]	[Insert]

[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]

#### Construction Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted] orks	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]
[Redacted]	[Insert]	[Insert]

These rates contain allowances for the provision of all labour, materials, plant, equipment and work, including telecommunications, vehicles, accommodation, disbursements and any other costs necessary for and arising out of or in connection with the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this Deed, excluding disbursements described in and payable under clause 6 of this Payment Schedule and reasonable costs for transport.

When claiming payment for any Services for which the Independent Certifier is to be paid on a Schedule of Rates basis the Independent Certifier must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a Schedule of Rates basis.

#### 6. Disbursements

- (a) If the Independent Certifier incurs disbursements in the course of carrying out the Services for which the Independent Certifier is to be paid on a Schedule of Rates basis under this Deed, the Independent Certifier will be entitled to reimbursement of its actual direct costs only if those disbursements:
  - (i) have been reasonably and properly incurred for the sole purpose of performing Services for which the Independent Certifier is to be paid on a Schedule of Rates basis in accordance with this Deed and do not fall into the category of one of the disbursements described in clause 6(b);
  - (ii) were approved in writing by the Contractor and the Principal's Representative prior to being incurred where they exceed \$[Redacted]; and
  - (iii) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (b) The Independent Certifier is not entitled to reimbursement of costs relating to vehicles, car parking, computers, insurance, general office consumables and telecommunications.
- (c) If the Independent Certifier incurs disbursements in the course of carrying out the Services for which the Independent Certifier is to be paid on a lump sum basis under this Deed, the Independent Certifier will be entitled to reimbursement of its actual direct costs only if those disbursements:

- (i) were not possible to be identified at the tender stage;
  - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Activities at and in the vicinity of the Construction Site;
  - (iii) were approved in writing by the Contractor, the Principal's Representative prior to being incurred where they exceed \$ [redacted]; and
  - (iv) are supported by documentation provided to the Contractor which is satisfactory to the Contractor and the Principal's Representative.
- (d) The Independent Certifier will not be entitled to make any claim against the Contractor arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 6(a) and 6(c) above.

## 7. Monthly payment schedule for lump sums

The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sums (excluding disbursements) is set out in the following table:

Month after date of the D&C Deed	Payment (\$ excluding GST)
1	[Insert]
2	[Insert]
3	[Insert]
4	[Insert]
5	[Insert]
6	[Insert]
7	[Insert]
8	[Insert]
9	[Insert]
10	[Insert]
11	[Insert]
12	[Insert]
13	[Insert]
14	[Insert]
15	[Insert]
Etc	[Insert]
Etc	[Insert]
[Insert last payment number]	[Insert]
<b>TOTAL</b>	[Insert]

## 8. GST

All lump sums, rates and amounts in this Payment Schedule exclude GST.

## **Attachment 4 - Information from Tenderer's Returnable Schedules**

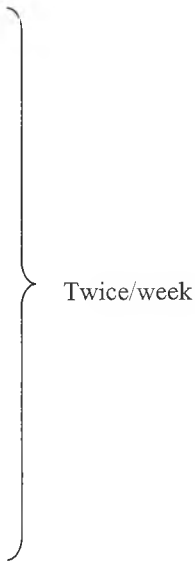



### **Part 1**



*[Placeholder for Tenderer's Returnable]*

### **Part 2**









*[Principal to insert matters to be addressed]*

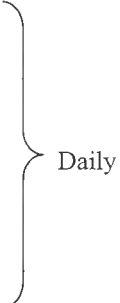

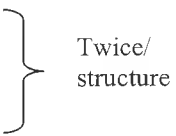
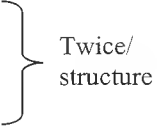
## Attachment 5 - Minimum Surveillance by Independent Certifier during the Contractor's Activities

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
<b>Environmental Surveillance</b> Monitor for the implementation of controls, for day and night work, for: <ul style="list-style-type: none"> <li>• noise and vibration;</li> <li>• dust;</li> <li>• mud, dirt and debris on roadways;</li> <li>• water pollution;</li> <li>• stormwater;</li> <li>• property accesses;</li> <li>• temporary pedestrian pathways;</li> <li>• working within the approved hours;</li> <li>• spoil stockpiling and disposal;</li> <li>• acid sulphate soil;</li> <li>• soil erosion;</li> <li>• contaminated lands;</li> <li>• waste management and recycling;</li> <li>• indigenous heritage;</li> <li>• Panama Disease;</li> <li>• European heritage; and</li> <li>• threatened species.</li> </ul>		
<b>Traffic Surveillance</b> Monitor traffic management and traffic controls to assess compliance with the conditions of Road Occupancy Licences, including: <ul style="list-style-type: none"> <li>• as-built layouts for compliance with approved traffic control plans, including sign maintenance and delineation;</li> <li>• provisions for cyclists, pedestrians, disabled persons and buses;</li> <li>• timing and duration of road occupancies;</li> <li>• qualifications of traffic control personnel;</li> <li>• haulage routes off the Construction Site; and</li> <li>• night inspections of roadworks.</li> </ul> Monitor traffic management and traffic controls to assess compliance with the conditions of property access provisions.	 Weekly  Immediately after each traffic switch and monthly thereafter  Daily	 Weekly  Immediately after each traffic switch and monthly thereafter  Daily

<b>Surveillance Activity</b>	<b>Minimum Frequency for Type A Category of the Contractor's Activities</b>	<b>Minimum Frequency for Type B Category of the Contractor's Activities</b>
<b>Work Health and Safety Surveillance</b> Inspect and monitor the Contractor's Activities on the Construction Site for compliance with the work, health and safety provisions of the D&C Deed. Monitor: <ul style="list-style-type: none"> <li>the Contractor's safety inspections;</li> <li>interfaces between different work groups on the Construction Site;</li> <li>the preparation and induction of job safety analyses;</li> <li>Construction Site vehicle and plant movements; and</li> <li>the security of the public from the Contractor's Activities.</li> </ul>	Daily   Twice/Week	Daily   Twice/Week
<b>Construction Surveillance</b> Monitor the Contractor's obligation to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.	Monthly	Monthly
Monitor on-site design changes.	All changes	All changes
Check that Contractor's Activities including in tunnel alignment, tunnel excavations, service facility shafts, cross passages with sumps and construction work is within the relevant design tolerance.	Weekly	Weekly
Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with clauses 12.2 to 12.6 of the D&C Deed.	50% of design lots	50% of design lots
Check that durability requirements of the Project Works are being addressed and satisfied.	20% of design lots	20% of design lots

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
<p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> <li>• all operations management and control systems and infrastructure;</li> <li>• use of materials, plant and equipment that differs from accepted industry practices;</li> <li>• concrete including in-situ concrete and precast elements;</li> <li>• sprayed concrete;</li> <li>• waterproofing systems;</li> <li>• water collection, treatment and discharge systems;</li> <li>• rock bolts/ground anchors;</li> <li>• tunnel and cavern lighting and ventilation systems;</li> <li>• concrete and AC pavements; and</li> <li>• blasting.</li> </ul>	<p>Each trial and test</p>	<p>Each trial and test</p>
<p>Witness the construction of the Project Works and Temporary Works including</p> <ul style="list-style-type: none"> <li>• Tunnel excavation;</li> <li>• Cross Passages;</li> <li>• Bridge and structures;</li> <li>• Ground support and treatment;</li> <li>• Waterproofing;</li> <li>• Permanent structural concrete linings;</li> <li>• Tunnel portal, headwall and wing walls;</li> <li>• Slope protection and retaining walls;</li> <li>• Flood protection including sump and drainage systems;</li> <li>• Crossover cavern;</li> <li>• Structural connections;</li> <li>• Groundwater collection, treatment and drainage systems;</li> <li>• Shaft excavation;</li> <li>• Concrete blinding layer;</li> <li>• Soil and rock bolts and anchors;</li> </ul> <p>Mechanical and Electrical works;</p>	<p>Daily</p>	<p>Daily</p>

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Record general and detailed work in progress and non-conformances using photographs and video recording of significant activities (time and GPS referenced).	200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.	200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.
<b>Quality Management Surveillance</b> Inspect work in progress for compliance with the requirements of the D&C Deed.	Daily	Daily
Inspect Construction Site circumstances where significant non-conformities are or are likely to be reported.	Each occurrence	Each occurrence
Check compliance with method statements	Daily	Daily
Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> <li>• testing frequencies;</li> <li>• test methods;</li> <li>• test result verifications; and</li> <li>• release of hold points.</li> </ul>	 Daily	 Daily
Monitor the implementation of significant approved NCR dispositions.	All dispositions	All dispositions
<b>Quality Product Surveillance</b> Monitor and inspect foundation and subgrade preparation and treatments, including: <ul style="list-style-type: none"> <li>• structure foundations;</li> <li>• pavement subgrades;</li> <li>• cast-in-place pile foundations; and</li> <li>• inaccessible drainage foundations.</li> </ul>	 Initial preparation and treatment and twice/week thereafter	 Initial preparation and treatment and twice/week thereafter
Monitor and inspect compaction of earthworks and reinforced soil.	Daily	Daily
Monitor and inspect: <ul style="list-style-type: none"> <li>• water testing and grouting.</li> </ul>	 Initial testing, grouting and stressing and twice/week thereafter	 Initial testing, grouting and stressing and twice/week thereafter
Monitor and inspect: <ul style="list-style-type: none"> <li>• preparation and testing of grout test specimens; and</li> <li>• bolt anchorage testing of rock bolts.</li> </ul>	 Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter	 Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.
Monitor and inspect preparation of shotcrete test specimens	Monthly	Monthly

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Monitor and inspect concrete supply, including: <ul style="list-style-type: none"> <li>audits of each batch plant;</li> <li>reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and</li> <li>monitoring of supplied mixes compared with mix designs.</li> </ul>	Monthly Each mix  Monthly	Monthly Each mix  Monthly
Monitor and inspect concreting associated works including: <ul style="list-style-type: none"> <li>preparation;</li> <li>production conformity records</li> <li>formwork (including certification);</li> <li>bracing;</li> <li>reinforcement (including heating and welding);</li> <li>placing;</li> <li>finishing;</li> <li>curing; and</li> <li>stripping formwork.</li> </ul>		
Monitor and inspect: <ul style="list-style-type: none"> <li>water testing and grouting; and</li> <li>stressing operation, of post-tensioned concrete.</li> </ul>		
Monitor and inspect casting, transport, delivery and storage of: <ul style="list-style-type: none"> <li>precast structures, reinforced concrete pipes and reinforced concrete box culverts</li> <li>Pretensioned precast structures</li> </ul>	Initial unit and twice weekly thereafter Initial member then weekly thereafter	Initial unit and twice weekly thereafter Initial member then weekly thereafter
Monitor and inspect concrete pavement subbases and bases, including: <ul style="list-style-type: none"> <li>thickness, levels, relative density, curing, cracking and surface profile for rideability;</li> <li>pavement strengths prior to trafficking by vehicular traffic; and</li> <li>conditions for trafficking of pavements by heavy (off road) vehicles.</li> </ul>	Twice/week Twice/week  Initial conditions	Daily Daily  Initial conditions
Monitor and inspect asphaltic concrete supply, including: <ul style="list-style-type: none"> <li>audits of each batch plant;</li> <li>reviews of AC mix designs; and</li> <li>monitoring of supplied mixes compared with mix designs.</li> </ul> Monitor and inspect the laying of asphaltic concrete, including: <ul style="list-style-type: none"> <li>thickness, levels, relative density; and</li> <li>surface profile for rideability.</li> </ul>	Monthly  Each mix Weekly  Twice/week Each procedure	Monthly  Each mix Weekly  Daily Each procedure

<b>Surveillance Activity</b>	<b>Minimum Frequency for Type A Category of the Contractor's Activities</b>	<b>Minimum Frequency for Type B Category of the Contractor's Activities</b>
Monitor and inspect steel fabrication, including: <ul style="list-style-type: none"> <li>reviews of welding procedures; and</li> <li>monitoring of the fabrication and welding processes for major members (off-site).</li> </ul>	Each procedure Twice/week	Each procedure Twice/week
Monitor protective treatment systems (off-site).	Twice/week	Twice/week
Monitor the interfaces of civil and electrical works, including: <ul style="list-style-type: none"> <li>backfilling of cabling conduit trenches.</li> </ul>	Initial backfilling and daily thereafter	Initial backfilling and daily thereafter
Monitor landscaping preparation and implementation	Daily	Daily

For the purposes of this Attachment 5 to this Deed:

- (a) "Type A Category of the Contractor's Activities" is the Contractor's Activities associated with the Local Area Works, Property Works and Service Works; and
- (b) "Type B Category of the Contractor's Activities" is the Contractor's Activities associated with the Works and Temporary Works.

## Attachment 6 - Minimum Requirements

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

- (a) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the Construction Site and the roles and tasks of the nominated personnel and subcontractors;
- (b) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (c) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the Principal and the Contractor;
- (d) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (e) the proposed timing of progressive performance of the Services to meet the requirements of the D&C Deed, including the timing for conducting audits of Project Plans and other aspects of the Contractor's Activities;
- (f) Hold Point and Witness Point requirements, including the identification of all Witness Points and Hold Points required by the Independent Certifier, in the form of a schedule which identifies all Hold Points to be released by the Independent Certifier;
- (g) the Independent Certifier's comprehensive plans for:
  - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Contractor's compliance with design and construction obligations, including methodology for certification of Design Documentation;
  - (ii) without limiting paragraph (g)(i), continual observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the Works to determine, verify and ensure the Contractor's compliance with the requirements of the D&C Deed;
  - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
  - (iv) off-site surveillance of critical activities, including precast yards, concrete and asphalt production plants, steel fabrication and specialist materials such as bridge bearings and tunnel OMCS hardware;
- (h) the Independent Certifier's strategies, processes, methodologies and procedures for:
  - (i) reviewing and assessing the Project Plans;
  - (ii) reviewing and assessing environmental protection, outcomes and performance;
  - (iii) audit, surveillance and monitoring of the Contractor's design and construction activities, including the processes used for determining the levels and scope of surveillance of the Contractor's design and construction activities, including in relation to occupational health and safety;
  - (iv) identifying and managing the Independent Certifier's work to be subcontracted, including quality, reporting and communication aspects of the work;
  - (v) ensuring that the Contractor has addressed all issues of review, comment and consultation with the Principal in relation to Design Documentation and construction; and
  - (vi) risk management of activities such that the work covered by items (ii), (iii) and (iv) above meet the requirements of the D&C Deed;
- (i) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied to achieve and satisfy the following requirements:
  - (i) verification of the quality of work the subject of Payment Claims made by the Contractor in order to provide the certificate in the form of Schedule 13;
  - (ii) verification of the Contractor's processes for ongoing checking of testing, calibration and parallel testing to check compliance and test error;
  - (iii) verification of the Contractor's interface issues between processes and elements and Project Plans;
  - (iv) verification of the Contractor's processes for the control of Subcontractors;
  - (v) verification of the Contractor's processes for environmental monitoring and protection;
  - (vi) verification of the Contractor's processes to address safety in design issues;
  - (vii) verification of the Contractor's processes to ensure that durability is incorporated into all aspects of the design and construction of the Project Works;
  - (viii) verification of the Contractor's processes to address constructability issues; and

(ix) verification of the rectification by the Contractor of non-conformities.

## Attachment 7 - Insurance Schedule

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
<b>Principal Arranged Insurance (TfNSW)</b> The details of the policy below is provided in the icare policy documents. A copy of these may be provided upon request. Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
1. <b>Broad form Public Liability and Product Liability</b>	Public and Products Liability: \$ [REDACTED] Each and every occurrence	Maintained from the date of the D&C Deed until the Date of Completion [REDACTED]		The Principal has arranged policies of third party liability insurance.
<b>Independent Certifier Arranged Insurances</b>				
1. <b>Motor Vehicle Comprehensive</b>	\$20 million For any single occurrence	Annually from the date of the D&C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier).	(a) Is with an Approved Insurer; (b) Covers motor vehicles owned or used by the Independent Certifier or its subcontractors directly or indirectly engaged in performance of the Services; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	Only required if the Independent Certifier will use a motor vehicle in the course of providing the Services or if the Independent Certifier will use or park their motor vehicles on premises owned or occupied by the Principal.

2. <b>Professional Indemnity</b>	\$ [REDACTED] any one claim and in the annual aggregate, maximum excess of \$ [REDACTED]	<p>From the date of the D&amp;C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier)</p> <p>plus [REDACTED] years following the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier).</p> <p>The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the D&amp;C Deed.</p>	<p>(a) Is with an Approved Insurer;</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.</p>	
3. <b>Workers Compensation</b>	As per the relevant Workers Compensation legislation.	Annually from the date of the D&C Deed until the Date of Completion (or the date of termination of the Deed of Appointment of Independent Certifier, whichever is earlier).	<p>(a) Is with an Approved Insurer; and</p> <p>(b) Is as per relevant Workers Compensation legislation.</p>	

**Definitions and Notes:**

1. In this Attachment 7 (Insurance Schedule), "Approved Insurer" means:
  - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
  - (b) Lloyds Underwriters; or
  - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
  - (d) the NSW Self Insurance Corporation (ABN 97 369 689 650); or

(e) the Comcover insurance scheme for the Australian Federal Government.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).

2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurer agrees to waive all rights of subrogation that they may have or acquire against the Principal where required to do so under the contract.

## **Attachment 8 - Insurance Policy Wording**

*[Note to Tenderers: Policy wording to be inserted once confirmed]*

## 1. Minimum Resources Commitment

References to “days” exclude public holidays and include only those days which are stated in the Contract Program as working days.

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

[illegible]




[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			
[REDACTED]			

## 1.2 Construction Verification

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

**[Note to Tenderers: IC Tenderers are required to provide the Names; Principal to insert relevant names in the table below when awarding the contract, in accordance with the successful Tenderer's tender]**

Position	Name	Minimum Commitment
Independent Certifier's Representative, Construction	<i>[insert name]</i>	Full time during the performance of the Contractor's Activities, and to be based on the Construction Site full time Monday to Saturday inclusive during the construction of the Project Works and Temporary Works
Senior Project Engineer – Civil, Tunnel and Structural Works Construction	<i>[insert name]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil, structural and tunnel works components of the Project Works and Temporary Works.
Project Engineer – Civil Works Construction	<i>[insert name(s)]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works
Project Engineer – Structural Works Construction	<i>[insert name(s)]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]


Surveillance Officer – Structural Works Construction	<i>[insert name(s)]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
		
Document Controller/Site Administrative assistant (1 No.)	<i>[insert name]</i>	Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works

## 2. Minimum Ability, Knowledge, Skill, Expertise and Experience of Independent Certifier's Personnel


### 2.1 Independent Certifier's project director

- The Independent Certifier's project director must possess a recognised qualification relevant to the position and the Services and have extensive experience in the project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities.
- The Independent Certifier's project director must at all times have authority to act on behalf of the Independent Certifier in respect of the Services.

### 2.2 Independent Certifier's Representative for the Design Verification Services

The Independent Certifier's Representative for the Design Verification Services must possess a recognised qualification relevant to the position and the Services and have at least five years' experience in the design project verification of large projects similar to the Project Works, Temporary Works and Contractor's Work and at least 20 years of experience in the design of major road projects 

### 2.3 Independent Certifier's Representative for the Construction Verification Services

The Independent Certifier's Representative for the Construction Verification Services must possess a recognised qualification relevant to the position and the Services, a Chartered Engineer registered with Engineers Australia and have at least five years' experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 20 years of experience in construction including strong experience in road 

### 2.4 Senior Project Engineer – Civil, Tunnel and Structural Works Construction

The senior project engineer – civil, tunnel and structural works construction must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 15 years of experience in construction including strong experience in road, tunnel and bridge construction.

### 2.5 Project Engineer – Civil Works Construction

The project engineer – civil works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years of experience in civil construction including strong experience in road construction.

### 2.6 Project Engineer – Structural Works Construction

The project engineer – structural works construction must possess a recognised qualification relevant to the position and the Services and have experience in construction project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities and at least 10 years of experience in the construction of

structures.

[REDACTED]

## **2.8 Surveillance Officer – Civil Works Construction**

The surveillance officer – civil works construction must have at least 15 years of experience in the civil engineering construction industry [REDACTED] and at least 10 years in surveillance of roadworks construction, including rigid and flexible pavements, drainage, earthworks, asphaltting, and spray sealing.

## **2.9 Surveillance Officer – Structural Works Construction**

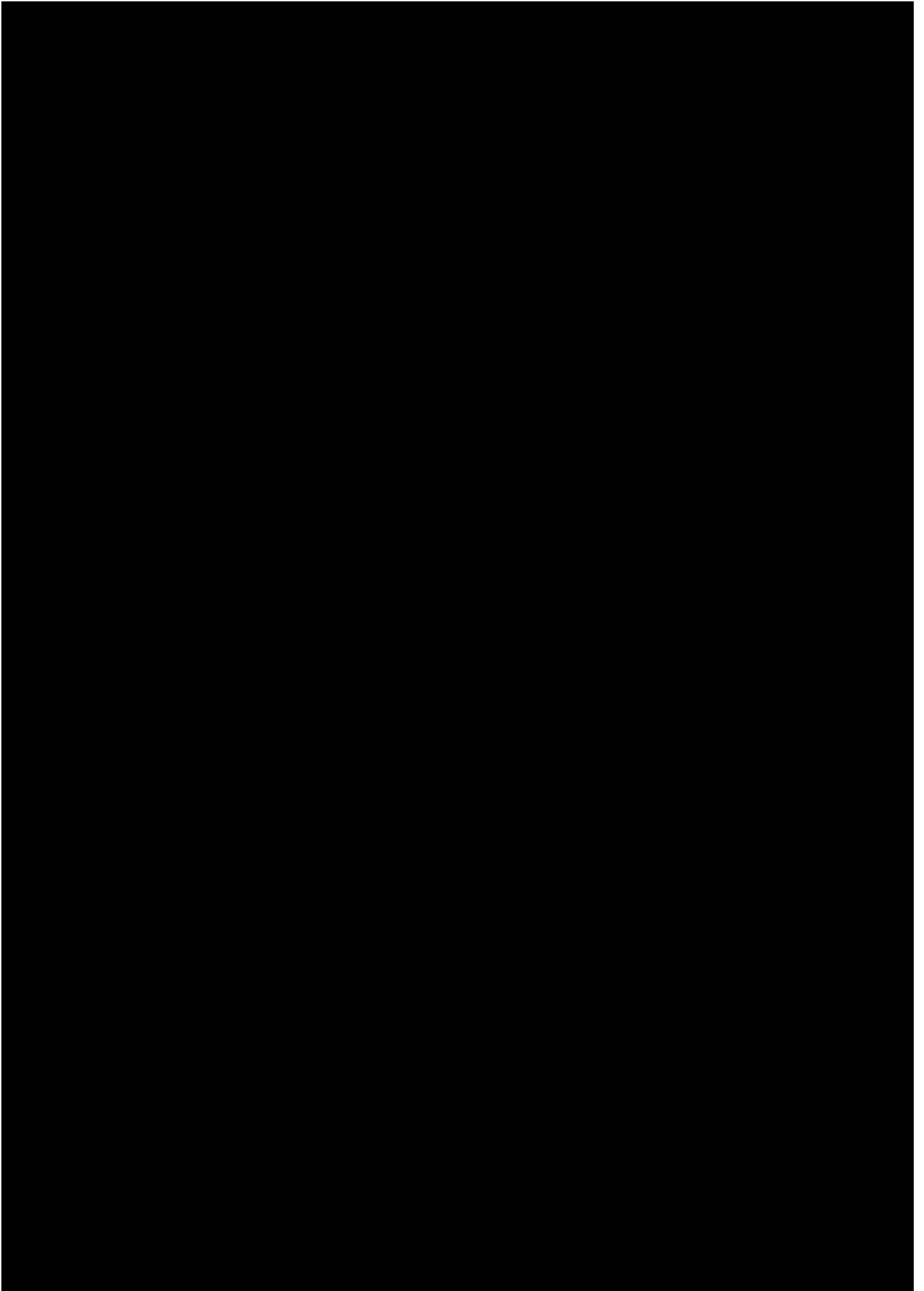
The surveillance officer - structural works construction must have at least 15 years of experience in the civil engineering construction industry [REDACTED] and at least 10 years in surveillance of the construction of structures, including piling, concrete work, precasting, prestressing, steel fabrication and erection.

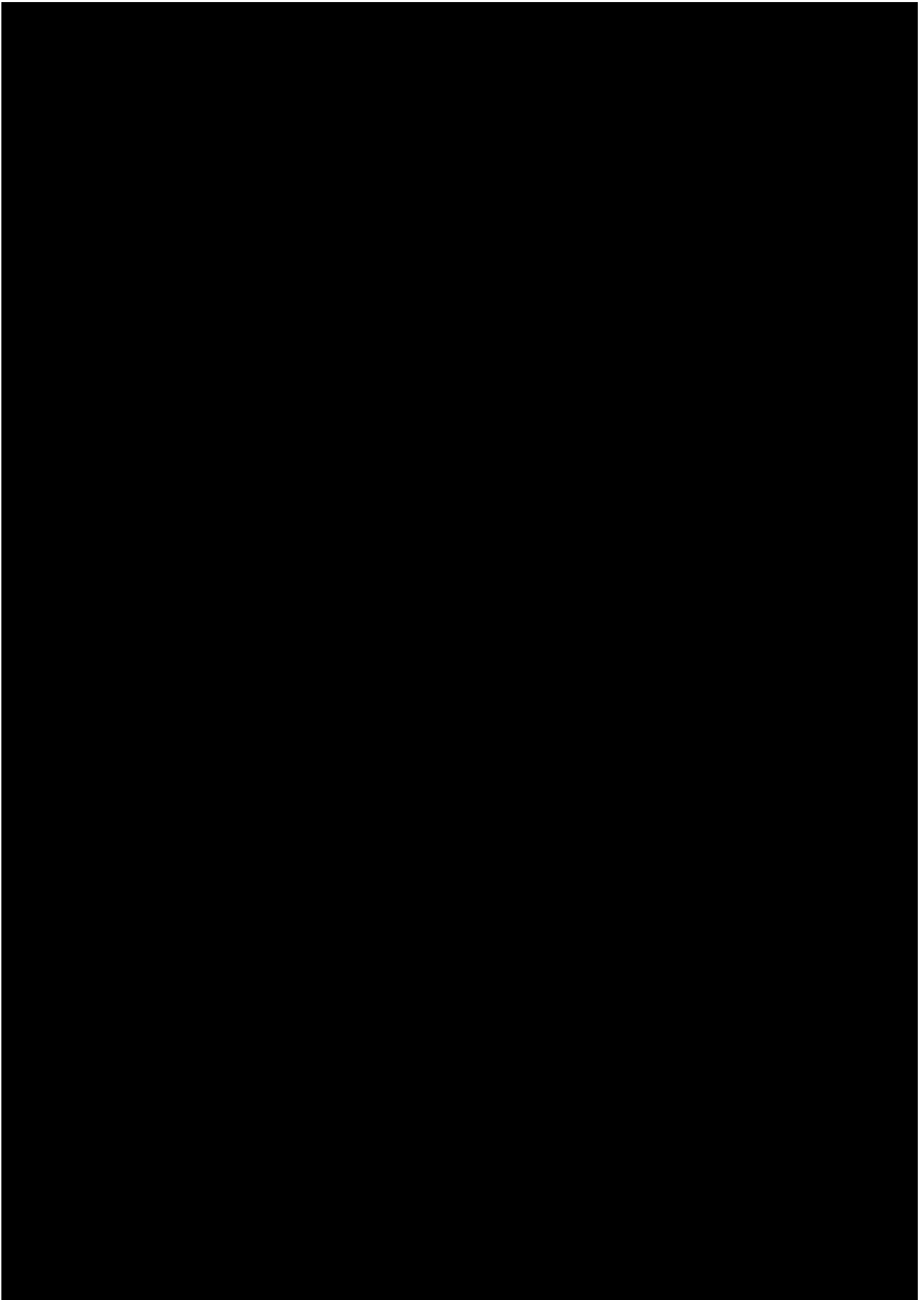
[REDACTED]

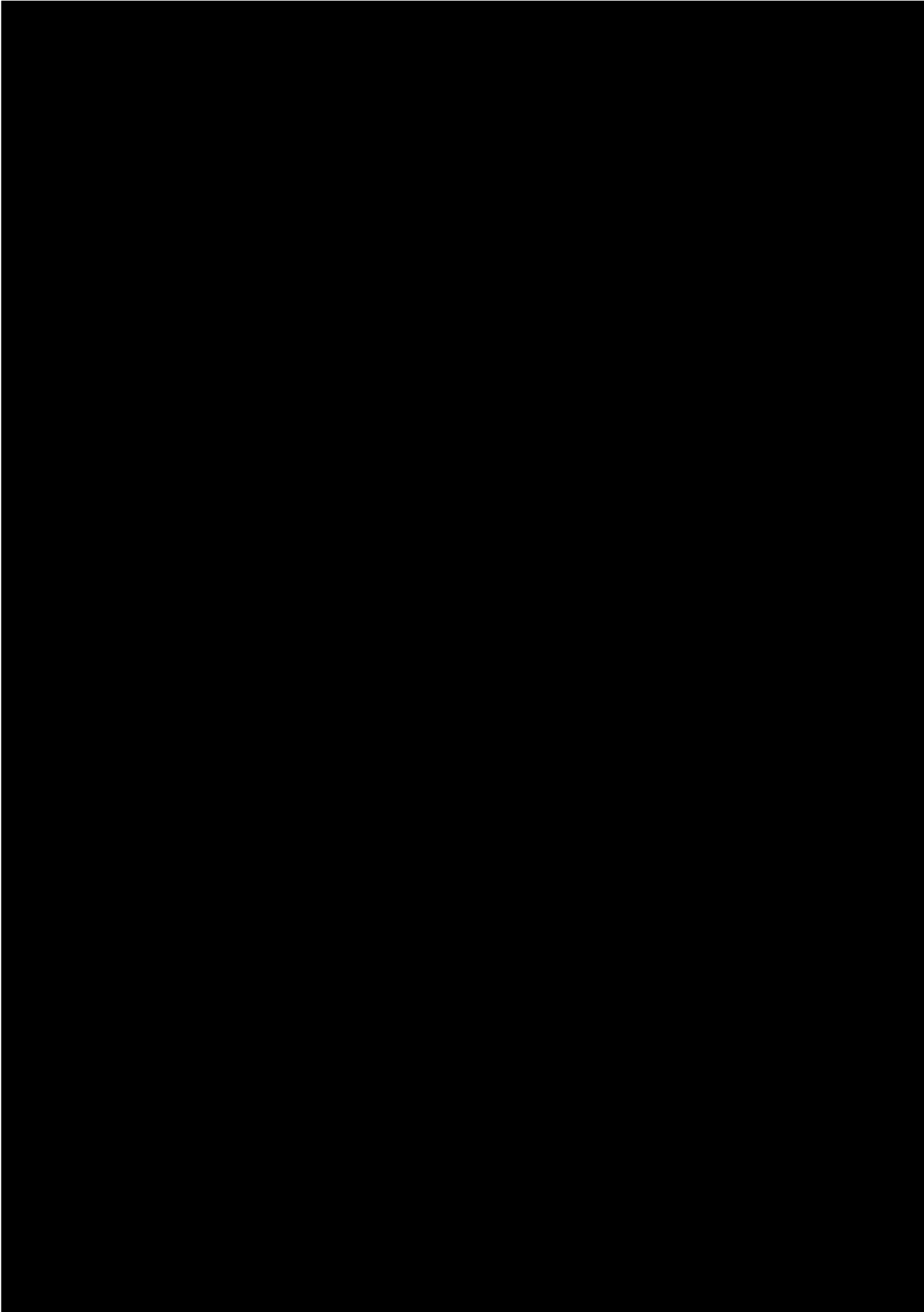
## **2.11 Document Controller/Site Administrative Assistant**

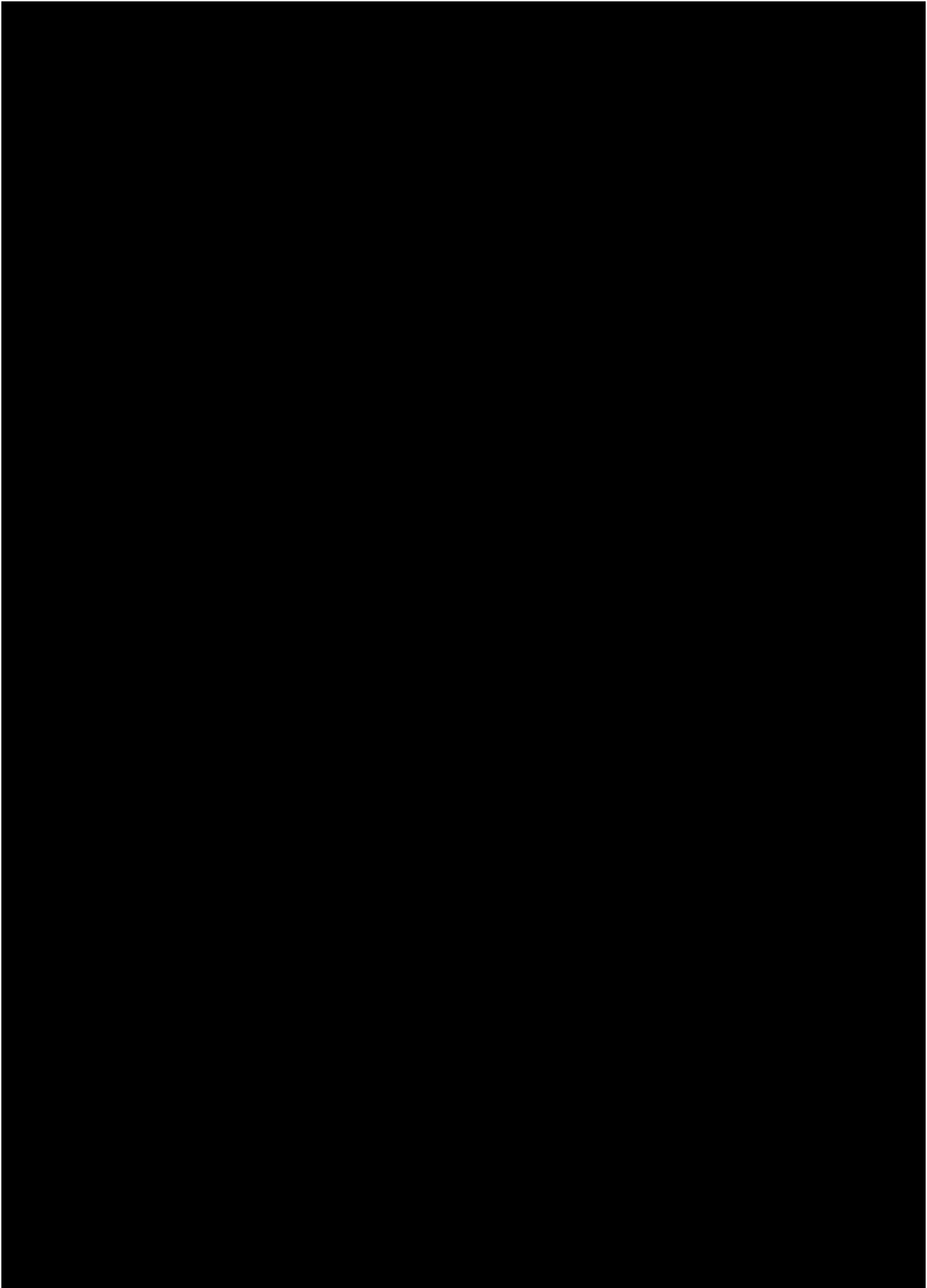
The Document Controller/Site Administrative assistant must have experience in document control and site administration on major civil engineering projects.

[REDACTED]

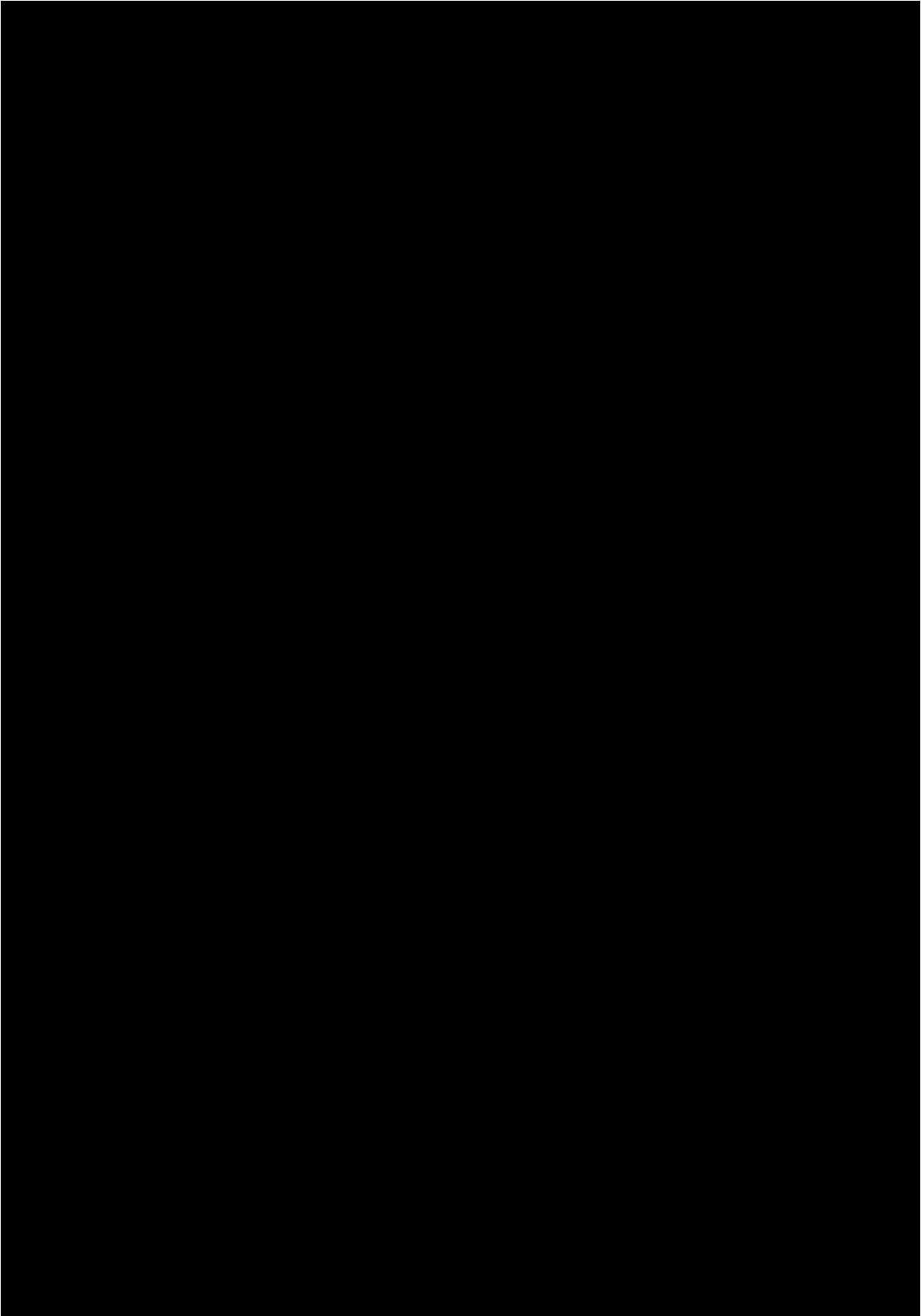


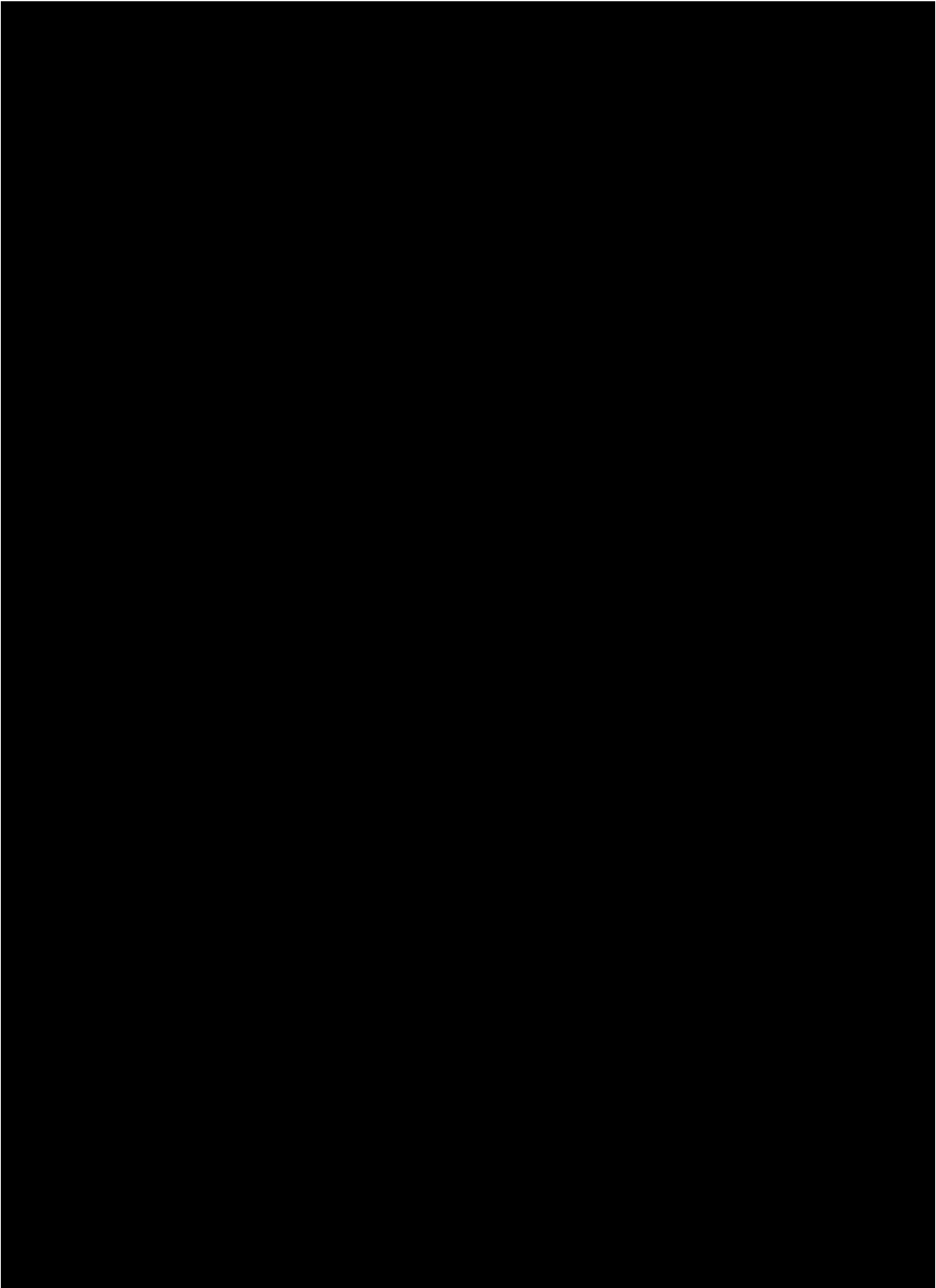


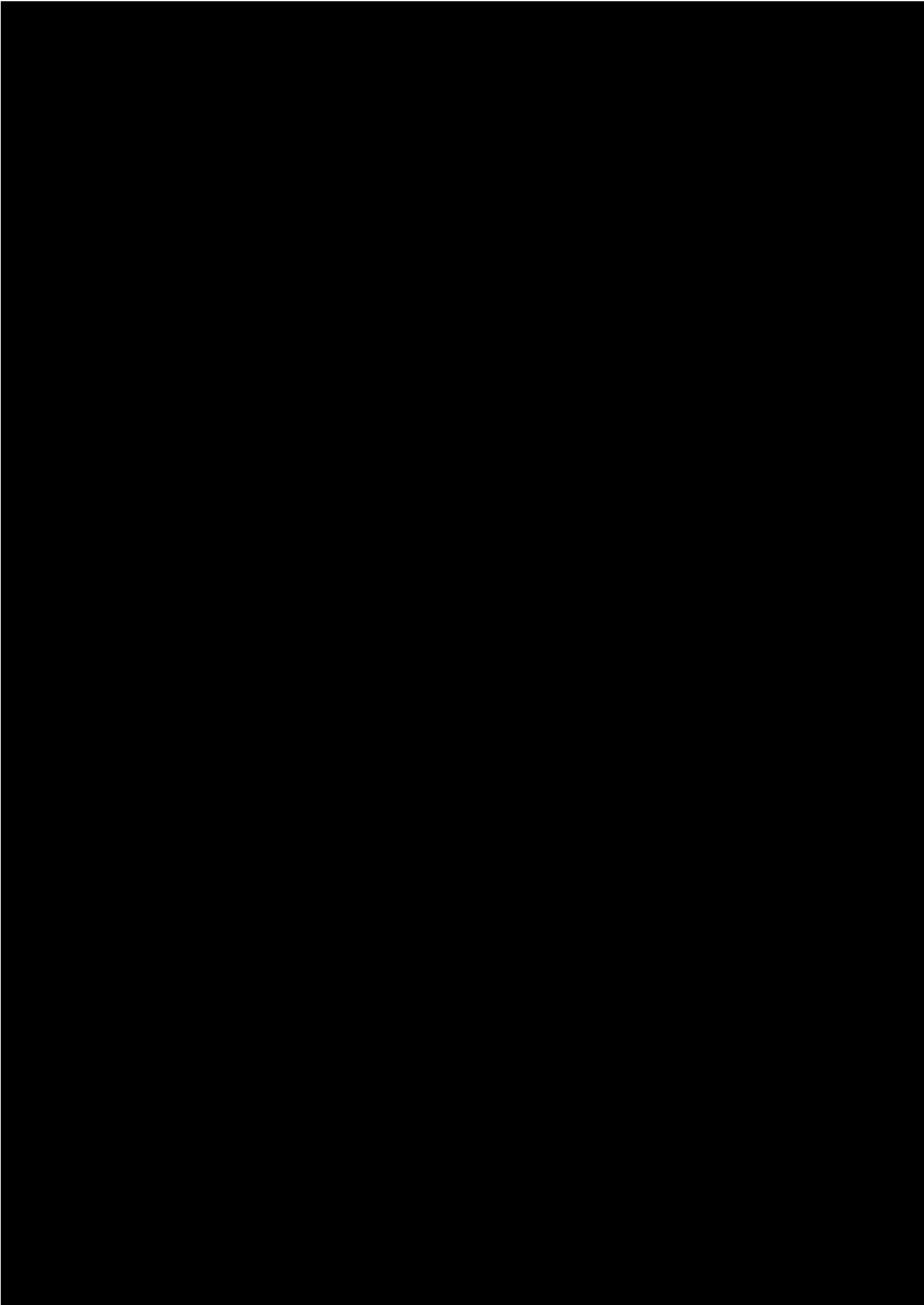


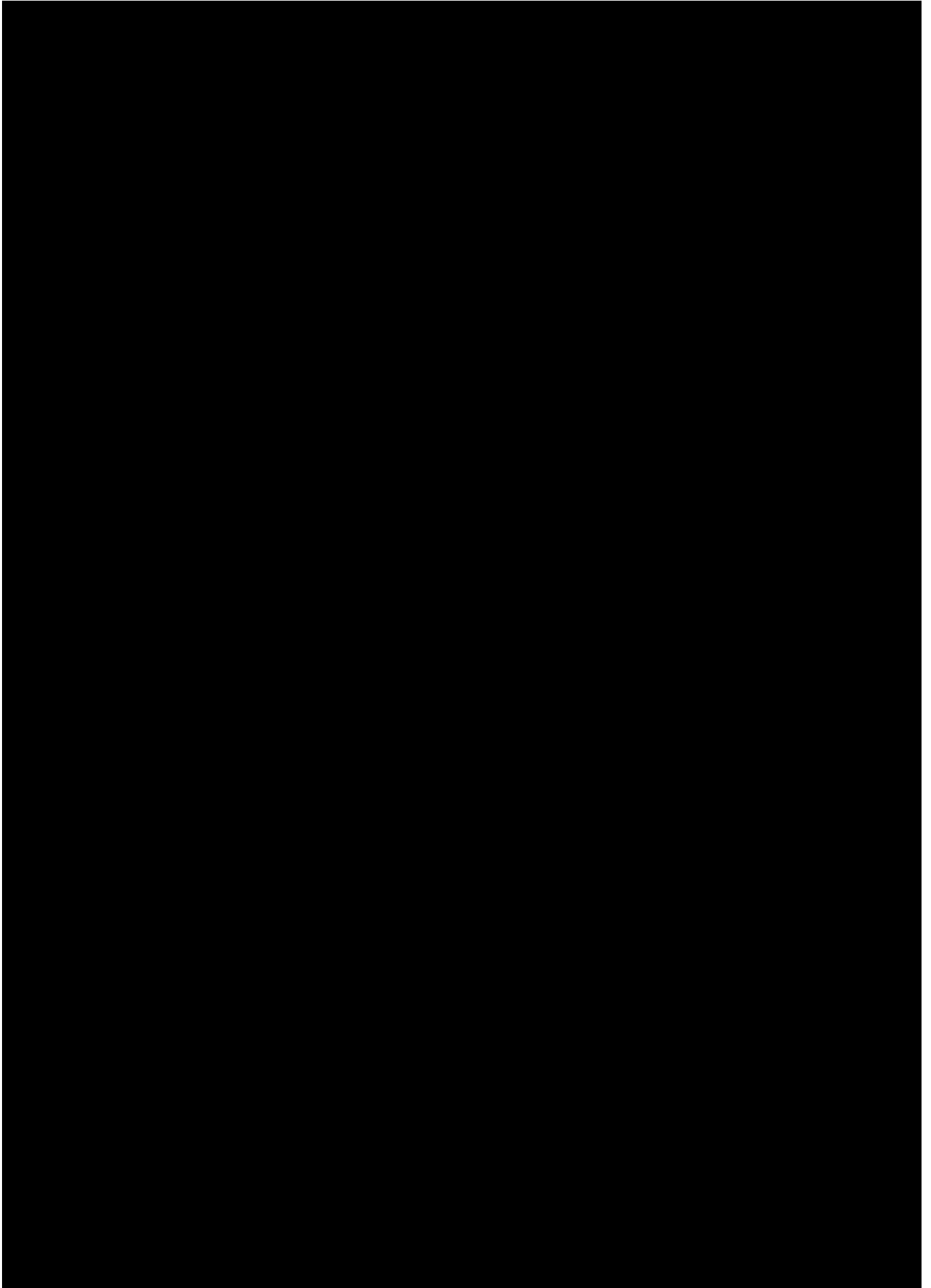


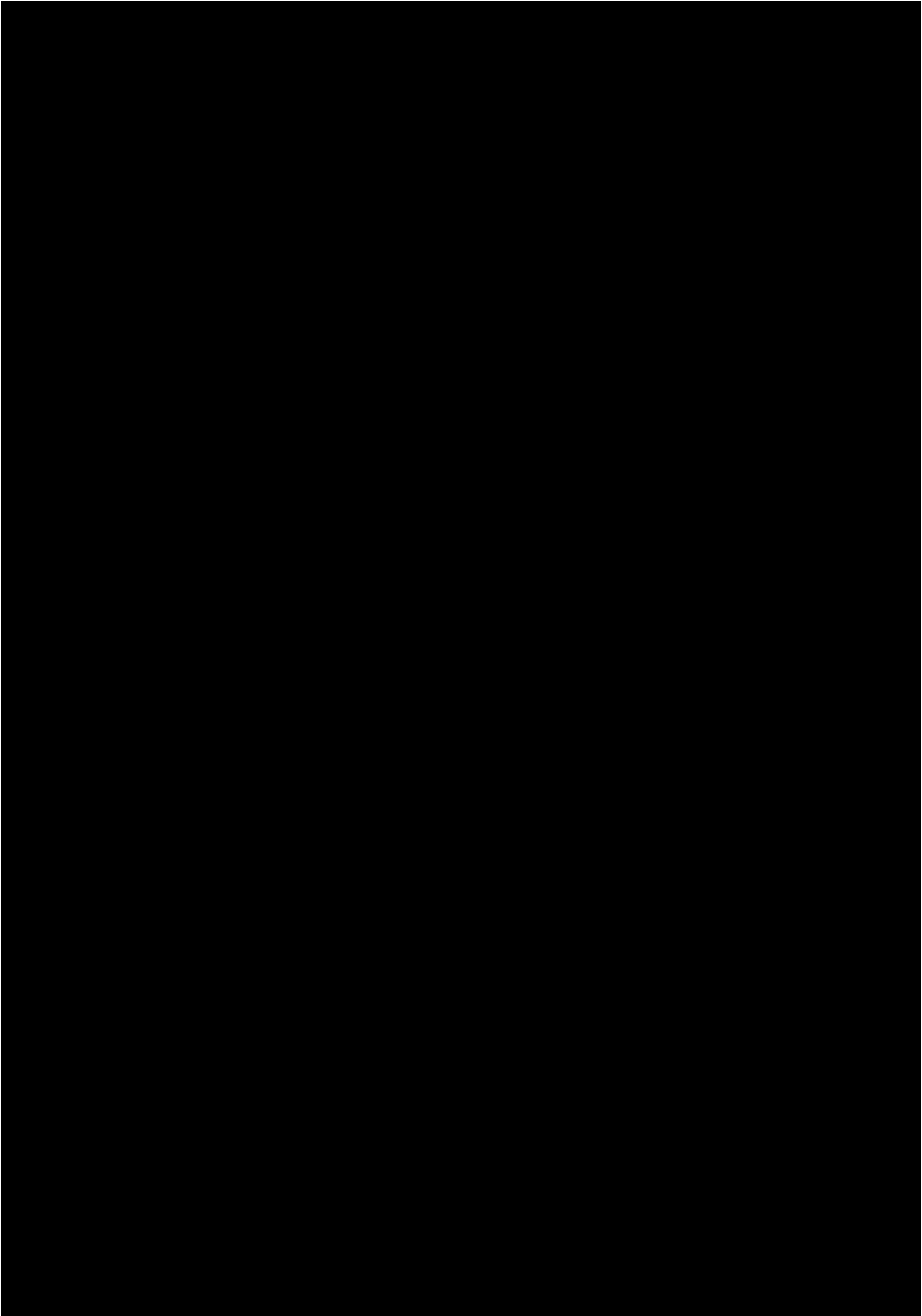


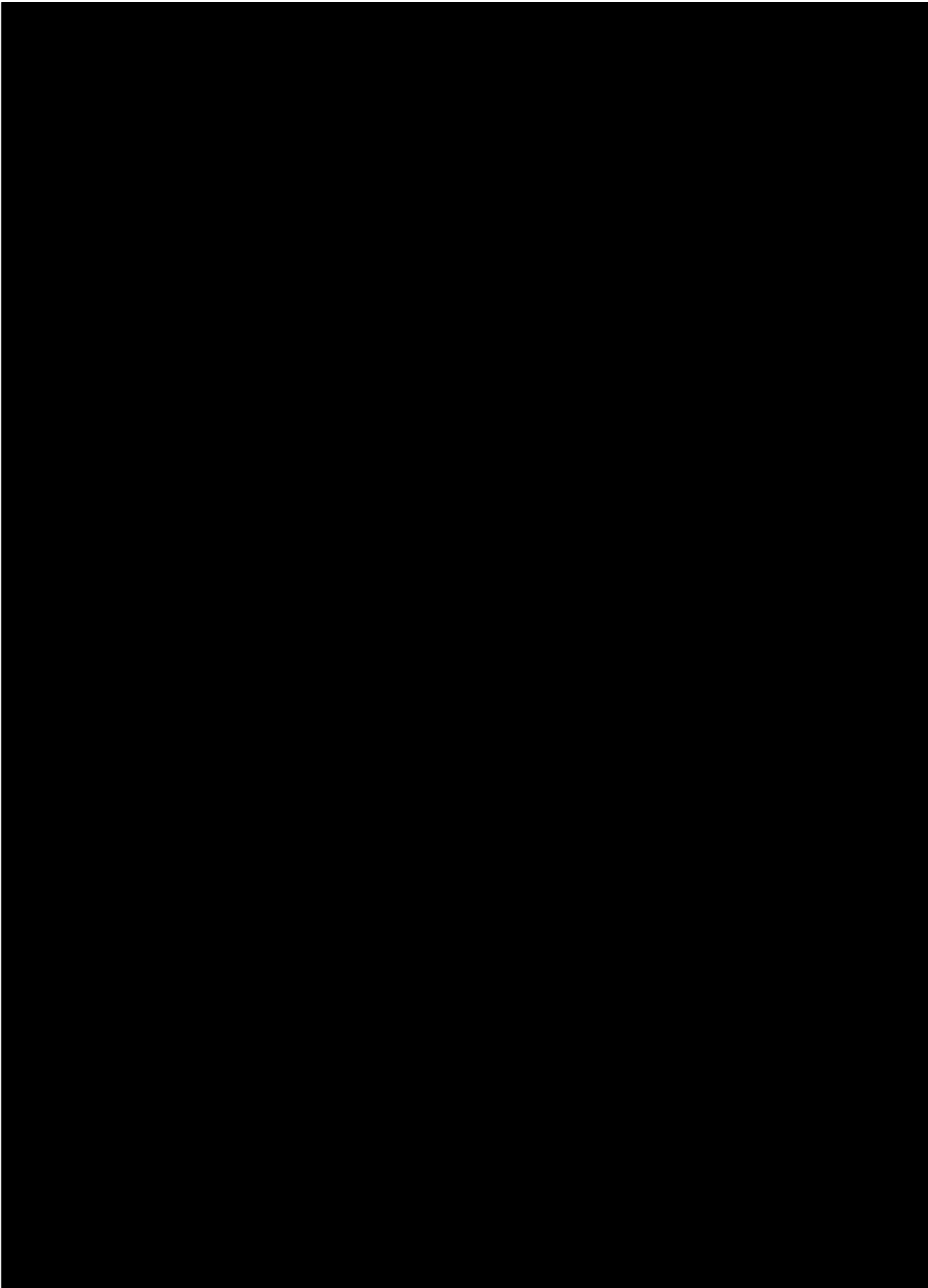


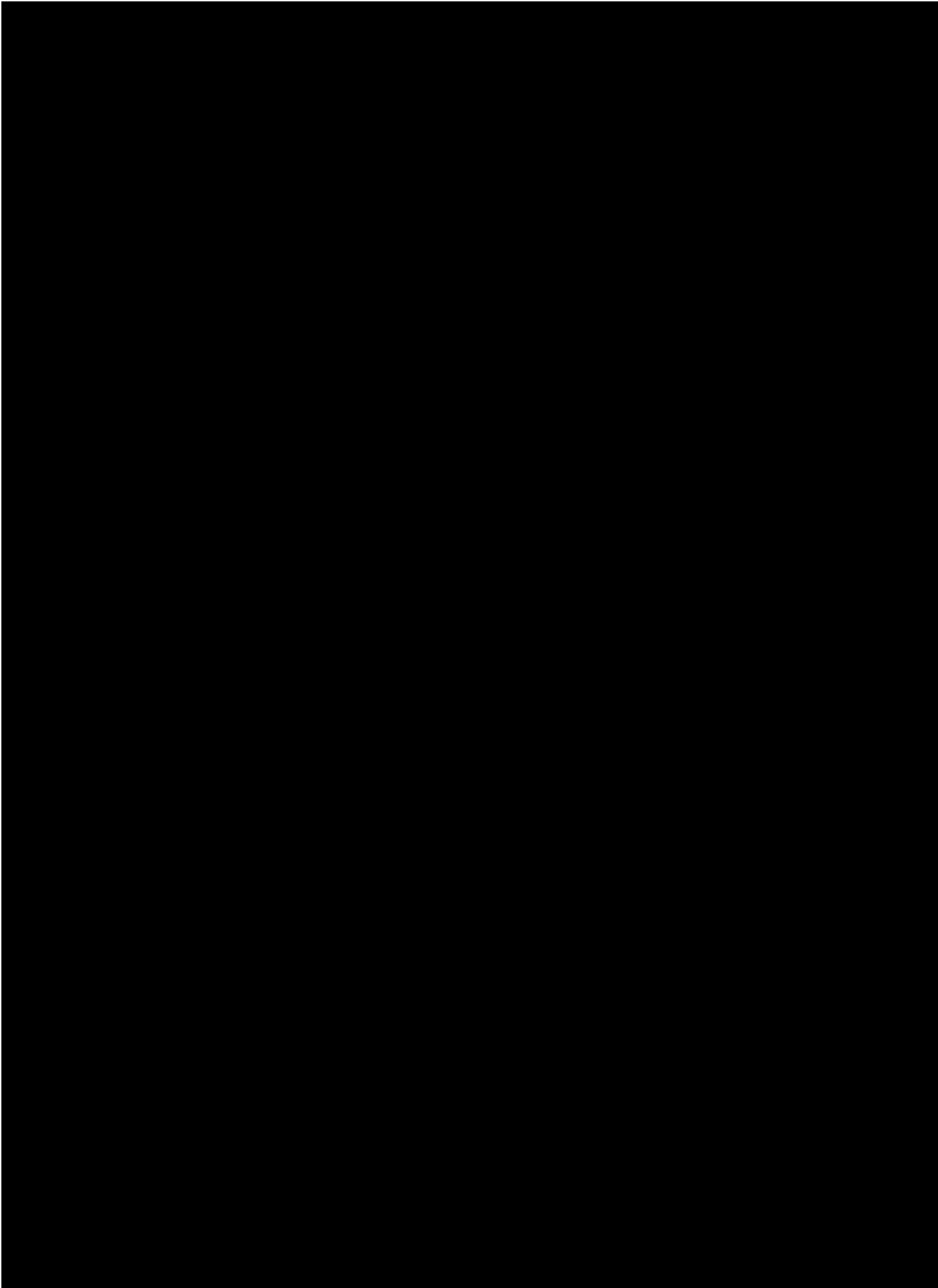




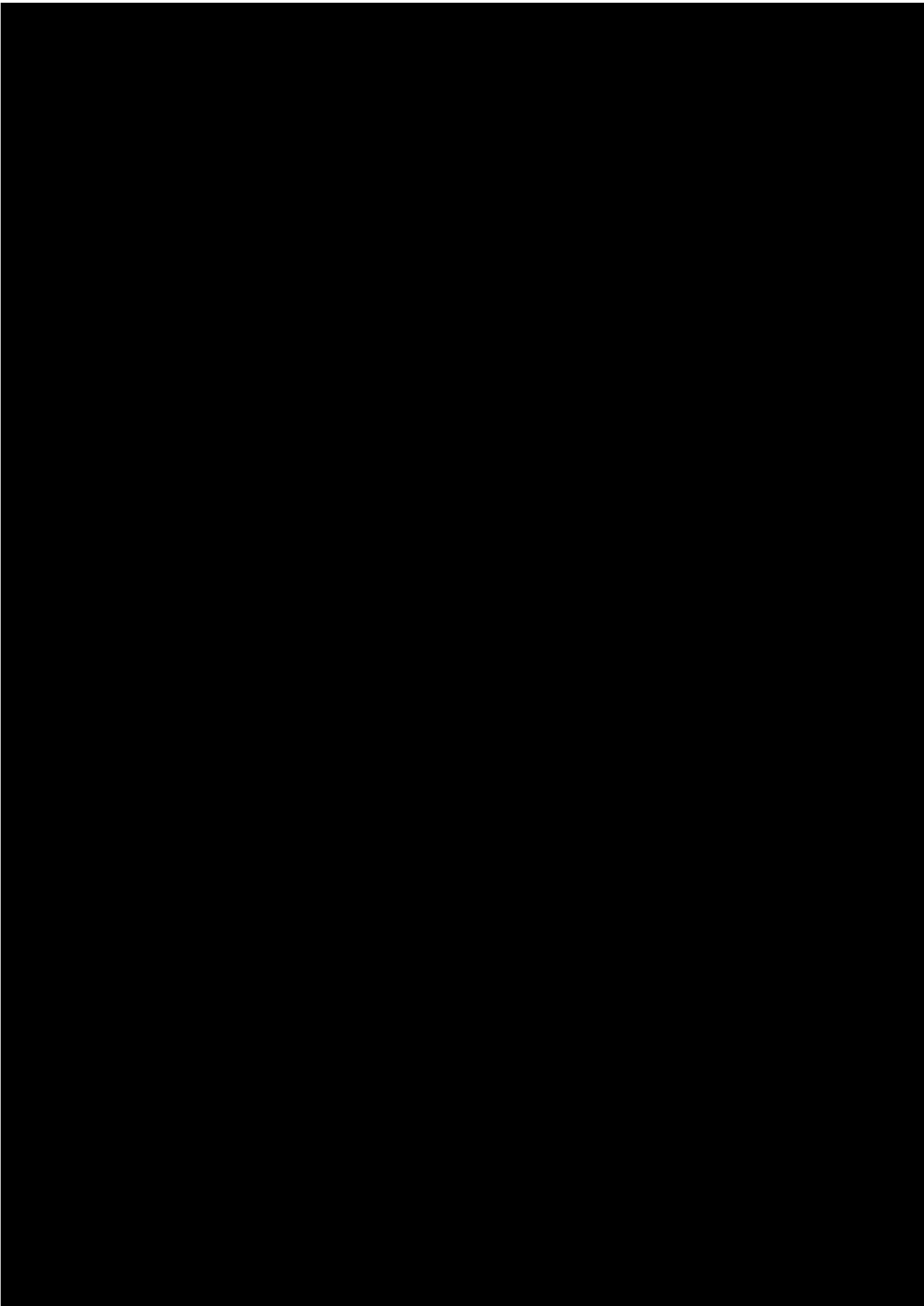


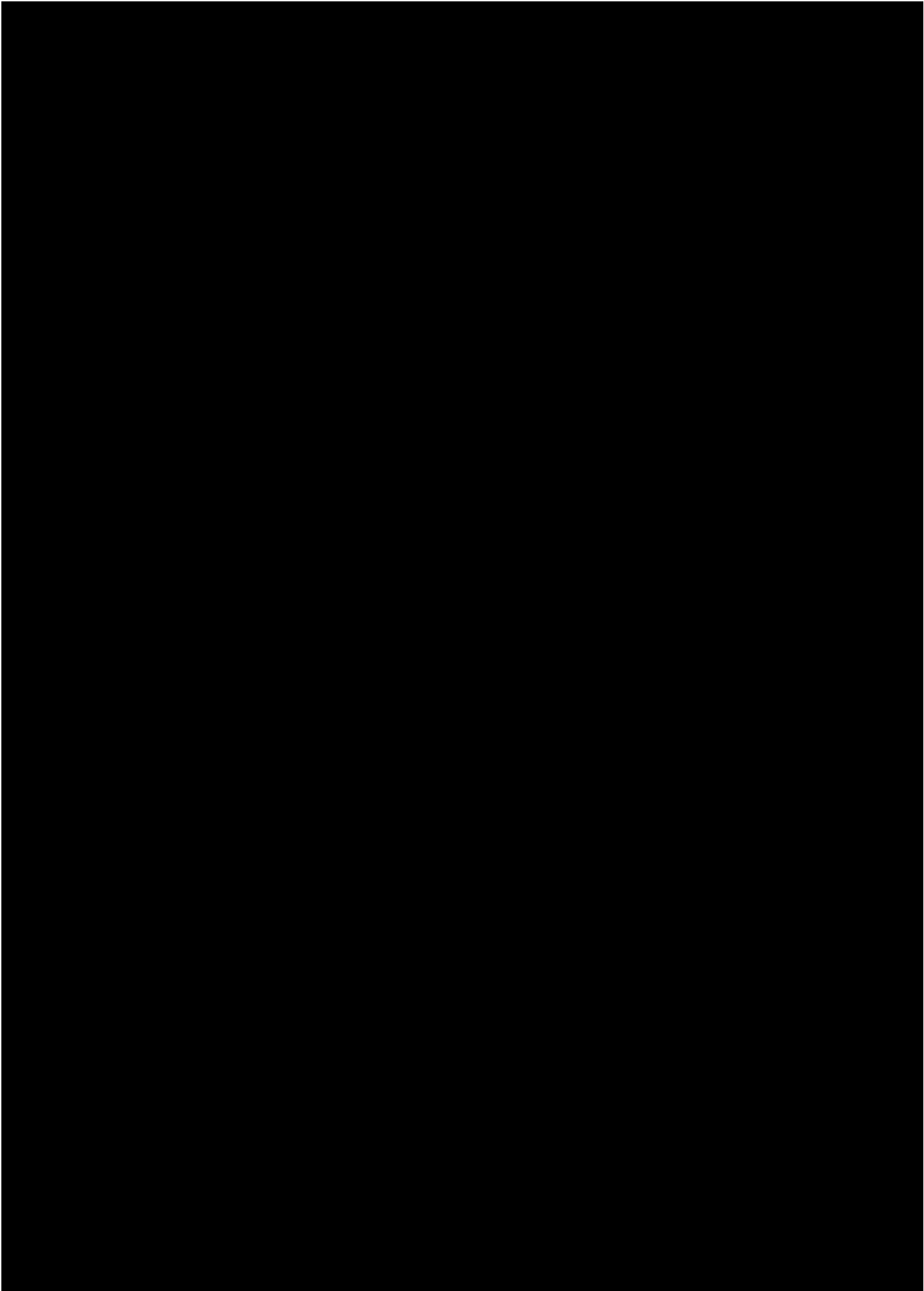




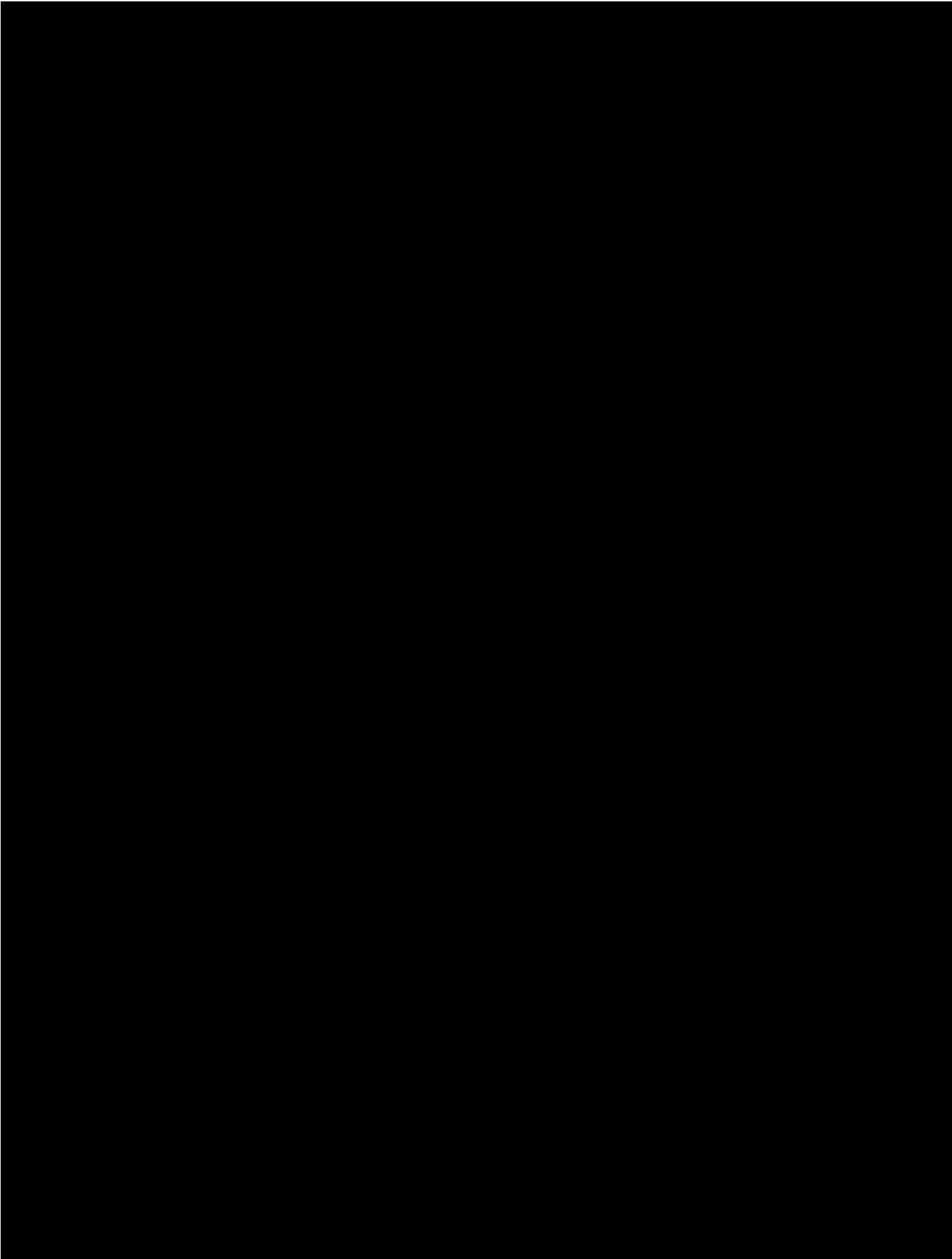










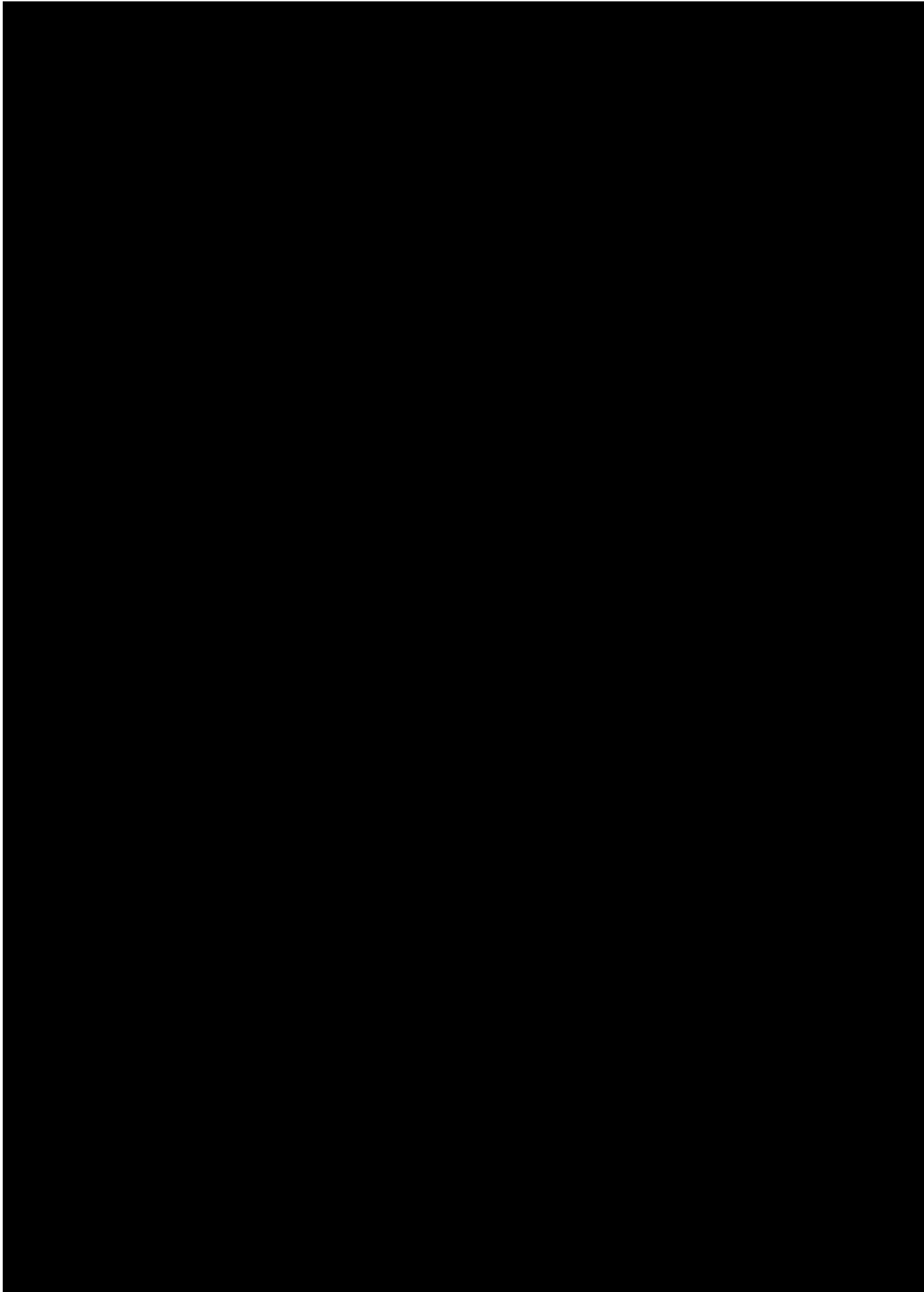


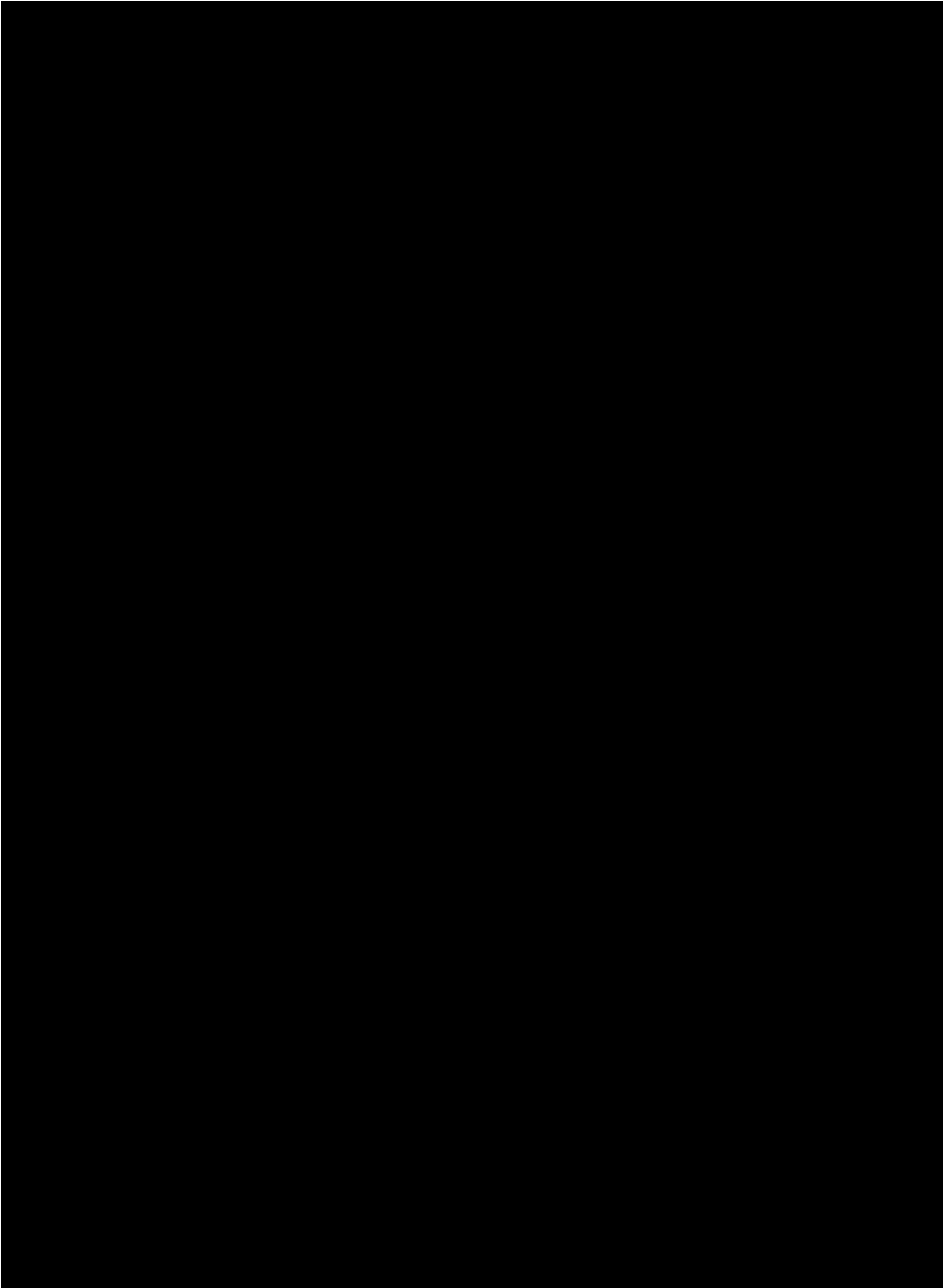














**Executed** as a deed.

**Signed** for and on behalf of **Transport for New South Wales (ABN 18 804 239 602)** by its duly authorised signatory in the presence of:

---

Signature of Witness

---

Signature of authorised signatory

---

Name of Witness in full

---

Name of authorised signatory in full

**Executed** by [*insert Contractor's name*] (ABN [*insert Contractor's ABN*]) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**Executed** by [*Insert Independent Certifier's name*] (ABN [*Insert Independent Certifier's ABN*]) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

## Independent Certifier's Certificate – Payment Claim

(Clauses 2.4(j)(i) and 18.2(c)(iii))

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**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]** (ABN **[Insert Independent Certifier's ABN]**) ("Independent Certifier")

---

In accordance with the terms of clauses 2.4(j)(i) and 18.2(c)(iii) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that all work the subject of the attached progress claim by the Contractor for **[insert month][insert year]** has been executed and is in accordance with the requirements of the deed, including the SWTC, subject to the following:

**[If applicable, insert details of any exceptions]**.

.....  
Signed for and on behalf of  
**[Insert Independent Certifier's name]**

## Independent Certifier's Certificate – Quality

(Clause 2.4(j)(ii))

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### Independent Certifier's Certificate – Progressive

[*Insert Project description*] ("Project")

**To:** Principal's Representative

**From:** [*Insert Independent Certifier's name*]  
(ABN [*Insert Independent Certifier's ABN*])  
("Independent Certifier")

---

In accordance with the terms of clause 2.4(j)(ii) of the deed between Transport for NSW and [*Insert Contractor's name*] (ABN [*Insert Contractor's ABN*]) ("Contractor") dated [*insert date*] with respect to the Project, we hereby certify that to the extent any of the activities referred to below occurred, or should have occurred, between the following dates [*insert date*]:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with the TfNSW D&C Specification Q6 and AS/NZS ISO 9001:2016 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (c) the Subcontractors' quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2016;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC; and
- (f) that documentation has been recorded and submitted to the Principal's Representative in accordance with the deed.

.....  
Signed for and on behalf of  
[*Insert Independent Certifier's name*]

**Schedule 14A - Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period**

## **Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period**

(clause 2.4(j)(iii), clause 13A.5(d)(ii) (when applicable) and clause 23.2 (definition of "Final Completion"))

---

**Independent Certifier's Certificate – Progressive**

**[Insert Project description]** ("Project")

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]**  
(ABN **[Insert Independent Certifier's ABN]**)  
("Independent Certifier")

---

In accordance with the terms of clause 2.4(j)(iii) [and clause 13A.5(d)(ii)] of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that to the extent any of the activities referred to below occurred, or should have occurred, between the following dates **[insert date]**:

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with the TfNSW D&C Specification Q6 and AS/NZS ISO 9001:2016 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (c) the Subcontractors' quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2016;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (f) **[(strike out if not applicable)]** the Landscaping Maintenance undertaken by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (g) **[(strike out if not applicable)]** the Landscaping Maintenance has been completed in accordance with the deed, including the SWTC, and the areas where the Landscaping Maintenance has been performed are ready to be handed over to the Principal; and
- (h) that documentation has been recorded and submitted to the Principal's Representative in accordance with the deed.

.....  
Signed for and on behalf of  
**[Insert Independent Certifier's name]**

## Independent Certifier's Certificate – Design Documentation

(Clauses 2.4(j)(iv) and 12.2(e)(i))

---

### [Insert project description] ("Project")

**To:** Principal's Representative

**From:** [Insert Independent Certifier's name]  
(ABN [Insert Independent Certifier's ABN])  
("Independent Certifier")

---

In accordance with the terms of clauses 2.4(j)(iv) and 12.2(e)(i) of the deed between Transport for NSW and [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor") dated [insert date] with respect to the Project, we hereby certify that the attached Design Documentation:

- (a) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements in section 5.8 of the SWTC; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects).
- (c) [subject to the satisfaction of following comments or conditions:
  - insert comments or conditions]

**[Note: this qualification wording can only be included in this certificate in relation to the Substantial Detailed Design Stage and must not be included in relation to Final Design Documentation Stage].**

.....

Signed for and on behalf of  
[Insert Independent Certifier's name]

## Independent Certifier's Certificate – Opening Completion and Completion

(Clauses 2.4(j)(v) and 23.2 (definitions of "Opening Completion" and "Completion"))

**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]**  
(ABN **[Insert Independent Certifier's ABN]**)  
("Independent Certifier")

In accordance with the terms of clauses 2.4(j)(v) and 23.2 (definition of ["Opening Completion"/"Completion"]) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that:

- (a) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clause 12.2 of the deed and the Contractor Documentation Schedule;
- (c) the release of all Hold Points has been undertaken in accordance with the deed;
- (d) all documentation has been recorded and submitted to the Principal's Representative in accordance with the deed;
- (e) the design used by the Contractor for construction purposes is in accordance with the requirements of the deed, including the SWTC;
- (f) the construction complies with the requirements of the deed, including the SWTC, [REDACTED];
- (g) each of the following designs:
  - (i) structural design;
  - (ii) pavement design;
  - (iii) geometric road design;
  - (iv) environmental works design;
  - (v) urban and landscape design;
  - (vi) geotechnical design;
  - (vii) Services design;
  - (viii) stormwater and drainage design (both permanent and temporary);
  - (ix) safety design;
  - (x) durability design;
  - (xi) operation and maintenance design;
  - (xii) signage, furniture and roadside furniture design; and
  - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor,

is in accordance with the requirements of the deed, including the SWTC.

This certificate of **[Opening Completion/Completion]** does not relieve the Contractor of its obligation to rectify

defects under clause 16 of the deed and to complete other outstanding obligations under the deed.

.....  
Signed for and on behalf of  
**[Insert Independent Certifier's name]**

## Independent Certifier's Certificate – Nominated Defects

(Clause 2.4(j)(vi))

---

**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]** (ABN **[Insert Independent Certifier's ABN]** ("Independent Certifier"))

---

In accordance with the terms of clause 2.4(j)(vi) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that between the following dates **[insert dates]**, the rectification of all Defects nominated by the Principal's Representative under clause 16.2 of the deed, including all design, construction, inspection, repairs and monitoring by the Contractor, has been undertaken in accordance with the deed, including the SWTC.

.....  
Signed for and on behalf of  
**[Insert Independent Certifier's name]**

## Independent Certifier's Certificate – As-Built documentation

(Clauses 2.4(j)(vii) and 18.1(c)(ii))

---

**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]** (ABN **[Insert Independent Certifier's ABN]**) ("Independent Certifier")

---

In accordance with the terms of clauses 2.4(j)(vii) and 18.1(c)(ii) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("**Contractor**") dated **[insert date]** with respect to the Project, we hereby certify that the attached As-Built documentation complies with all requirements of the deed, including the SWTC, and in particular the requirements of section 3.8 of Contractor Documentation Schedule.

.....  
Signed for and on behalf of

**[Insert Independent Certifier's name]**

## Independent Certifier's Certificate – Final Completion

(Clauses 2.4(j)(viii) and 23.2 (definition of "Final Completion"))

---

**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]**  
(ABN **[Insert Independent Certifier's ABN]**)  
("Independent Certifier")

---

In accordance with the terms of clauses 2.4(j)(viii) and 23.2 (definition of "Final Completion") of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that as at the date of the expiration of the last "Defects Correction Period" as defined in the deed:

- (a) the release of all Hold Points has been undertaken in accordance with the deed;
- (b) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) all design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (d) all documentation, reports, submissions, notices, approvals and the like have been submitted to the Principal's Representative in accordance with the deed; and
- (e) each of the following designs:
  - (i) structural design;
  - (ii) pavement design;
  - (iii) geometric road design;
  - (iv) environmental works design;
  - (v) urban and landscape design;
  - (vi) geotechnical design;
  - (vii) Services design;
  - (viii) stormwater and drainage design (both permanent and temporary);
  - (ix) safety design;
  - (x) durability design;
  - (xi) operation and maintenance design;
  - (xii) signage, furniture and roadside furniture design; and
  - (xiii) all other elements of the Project Works and Temporary Works carried out by the Contractor,

is in accordance with the requirements of the deed, including the SWTC.

.....  
Signed for and on behalf of

**[Insert Independent Certifier's name]**

## **Contractor's Personnel**

(Clauses 2.2(b), 2.7(a) and 11.2(b)(iii))

---

### **General**

To the extent this schedule refers to a minimum number of years' experience, the Contractor must ensure the Contractor's personnel comply with this requirement, unless capability and suitability for the role is otherwise demonstrated by the Contractor, and agreed to by the Principal (in its absolute discretion).

### **Project Director**

- (a) The Project Director must:
  - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works;
  - (ii) at all times have authority to act on behalf of the Contractor in respect of the Contractor's Activities;
  - (iii) have a minimum 20 years' experience delivering major civil infrastructure projects;
  - (iv) be available full-time during the design phase;
  - (v) be available full-time in attendance on or around the Construction Site during the construction phase; and
  - (vi) have delegated authority from the Contractor of not less than \$ [REDACTED].
- (b) At the date of this deed, the Project Director is [REDACTED].

### **Commercial Manager**

- (a) The Commercial Manager must:
  - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a senior commercial role responsible for procuring and managing multi-disciplined contracts on large projects similar to the Project Works and Temporary Works;
  - (ii) have a minimum 15 years' project delivery experience, with extensive experience in the commercial management of major road projects delivered in NSW; and
  - (iii) have demonstrated experience working with NSW Government representatives in a collaborative manner to resolve commercial matters.
- (b) At the date of this deed, the Commercial Manager is [REDACTED].

### **Design Manager**

- (a) The Design Manager must:
  - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works;
  - (ii) manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Contract Program and the Subsidiary Contract Programs); and
  - (iii) have a minimum 15 years' experience managing multi-disciplinary designs on complex road (and rail) infrastructure projects.
- (b) At the date of this deed, the Design Manager is [REDACTED].

### **Construction Managers**

- (a) The Construction Managers must:

- (i) possess recognised qualifications relevant to the position and the Contractor's Activities and have at least 15 years' experience in the overall management of construction on major road (and rail) infrastructure projects similar to the Project Works and Temporary Works; and
  - (ii) be available full-time on or around the Construction Site during the construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities.
- (b) At the date of this deed, the Construction Managers are [REDACTED].

### **Quality Manager**

- (a) The Quality Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and verified relevant experience in quality management systems within the construction industry;
  - (ii) be available full-time on or around the Construction Site during the construction phase of the Contractor's Activities with responsibilities limited to quality management of the Contractor's Activities;
  - (iii) have experience on projects similar to the Project Works and Temporary Works;
  - (iv) be available as the Principal's primary contact with the Contractor on matters of quality;
  - (v) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels; and
  - (vi) be given authority by the Contractor to act freely and independently and to stop the progress of the relevant part of the Contractor's Activities when any non-conformity with the quality requirements of this deed is identified and at specified Hold Points.
- (b) With relation to completions management, the Quality Manager must:
- (i) develop and handover/completions plan;
  - (ii) lead the Completions Working Group;
  - (iii) provide progress updated to Senior Management;
  - (iv) escalate issues for resolution;
  - (v) provide mitigations once issues identified that may impact successful completion;
  - (vi) develop and implement a training plan for project personnel;
  - (vii) develop and implement a familiarisation for TfNSW Asset Owners and Operational staff;
  - (viii) develop a robust integration process that recognises the multiple internal and external stakeholders and their needs;
  - (ix) demonstrate that all deliverable and handover artefacts can be efficiently transferred and are compatible with TfNSW systems (records from PDCS, AAIT, GIS, BIS etc); and
  - (x) promote innovation in the Completion process.
- (c) At the date of this deed, the Quality Manager is [REDACTED].

### **Communications and Stakeholder Manager**

- (a) The Communications and Stakeholder Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have experience in community involvement on projects similar to the Project Works and Temporary Works and an understanding of the community and business attitudes and needs in relation to the Project Works and Temporary Works;
  - (ii) have a minimum of 10 years communications/community relations experience with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;

- (iii) experience in the preparation and implementation of community and business involvement plans and strategies;
- (iv) experience and understanding of government public affairs processes; and
- (v) must be available full-time on or around the Construction Site during the construction phase of the Contractor's Activities and be available at all times:
  - A. to take a proactive role in the community relations processes relating to the Contractor's Activities as set out in this deed; and
  - B. for contact by local residents, businesses and other community representatives to answer questions and deal with complaints relating to the Contractor's Activities.
- (b) At the date of this deed, the Communications and Stakeholder Manager is [REDACTED].

### **Environmental Manager**

- (a) The Environmental Manager must:
  - (i) possess a recognised tertiary qualification which includes Environmental Science, Environmental Engineering, Planning or Natural Resources and have recent relevant experience in an environmental management position on large projects similar to the Project Works and Temporary Works;
  - (ii) have a minimum 15 years environmental management experience, with extensive experience in the preparation and implementation of environmental management plans and environmental systems and overseeing contamination experts in the preparation of remedial action plans;
  - (iii) have extensive experience working under both the State and Commonwealth approvals process;
  - (iv) experience in regulatory liaison and consultation;
  - (v) facilitate an induction and training programme for all persons involved in construction activities;
  - (vi) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the environmental requirements of this deed is identified; and
  - (vii) be available full-time on or around the Construction Site during the execution of the Contractor's Activities until the Date of Opening Completion with responsibility to develop and implement the Construction Environmental Management Plans.
- (b) At the date of this deed, the Environmental Manager is [REDACTED].

### **Health & Safety Manager**

- (a) The Health & Safety Manager must:
  - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in work health and safety management on large projects similar to the Project Works and Temporary Works;
  - (ii) have a minimum 15 years' experience as a site safety manager on major civil projects of similar size and complexity within operating transport environments;
  - (iii) facilitate a work health and safety induction and training programme for all persons involved in construction activities;
  - (iv) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the work health and safety requirements of this deed is identified; and
  - (v) be available full-time on or around the Construction Site during the execution of the Contractor's Activities until the Date of Opening Completion with responsibility to develop and implement the Work Health and Safety Management Plan.

(b) At the date of this deed, the Health & Safety Manager is [REDACTED].

### **Traffic Manager**

(a) The Traffic Manager must:

- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in a traffic management position on large projects similar to the Project Works and Temporary Works;
- (ii) have a minimum 15 years traffic management experience, with extensive experience in the preparation and implementation of traffic management plans and traffic control plans for road projects in highly congested urban road / motorway environments in NSW;
- (iii) have experience in regulatory liaison and consultation, particularly with the Transport Management Centre;
- (iv) facilitate a traffic management and safety induction and training programme for all persons involved in construction activities;
- (v) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the traffic management requirements of this deed is identified; and
- (vi) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Activities with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Activities and be available at all times for matters regarding Road Occupancy Licences.

(b) At the date of this deed, the Traffic Manager is [REDACTED].

### **Collaboration Manager**

(a) The Collaboration Manager must:

- (i) possess a recognised qualification relevant to the position and to the Contractor's Work;
- (ii) have a knowledge and understanding of the Contractor's overall leadership plan and Transport for NSW's values and objectives in relation to the Contractor's Work;
- (iii) have a minimum of 10 years performance coaching experience, with extensive experience in coaching a major contractor's organisation, teams and personnel, or similar, on large projects similar to the Project Works and Temporary Works;
- (iv) be available part-time during all phases of the Project Works and Temporary Works to assist, implement and manage the Contractor's implementation and operation of its overall leadership plan and processes for the alignment of the Contractor's team's culture with Transport for NSW's values and objectives in relation to Project Works and Temporary Works, including:
  - A. taking a proactive role in performance coaching of the Contractor's personnel;
  - B. reporting on the Contractor's performance against its leadership strategy and alignment with Transport for NSW's values and objectives; and
  - C. assisting with the development of improvement plans to improve the performance of the Contractor and its key personnel; and
- (v) manage and be responsible for the Collaboration Management Plan in SWTC Appendix C.1.

(b) At the date of this deed, the Collaboration Manager is [REDACTED].

### **Tunnelling Construction Manager**

(a) The Tunnelling Construction Manager must:

- (i) possess recognised qualifications relevant to the position and the Contractor's Activities and have at least 15 years' experience in the overall management of construction on major mined tunnel infrastructure projects similar to the Project Works and Temporary Works; and

- (ii) be available full-time on or around the Construction Site during the tunnel construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities.
- (b) At the date of this deed, the Tunnelling Construction Manager is [REDACTED].

### **Lead Design Consultants**

- (a) The Lead Design Consultant(s) must include the following personnel:
  - (i) Tunnel Design Lead;
  - (ii) Geotechnical Design Lead; and
  - (iii) Structures Design Lead.
- (b) The Lead Design Consultants(s) must:
  - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have at least 15 years' experience in design management positions on similar road, bridge and tunnel projects similar to the Project Works and Temporary Works in their nominated discipline;
  - (ii) have strong project management and leadership skills;
  - (iii) have a strong understanding of environmental, urban design and landscaping issues associated with the geotechnical design of road, bridge and tunnel projects; and
  - (iv) have the ability to work as part of a multi-disciplinary team and develop innovative solutions.
- (c) At the date of this deed, the Lead Design Consultants are [REDACTED].

## Contractor's Certificate - Design Documentation

(Clause 12.2(e)(iii))

**[Insert project description] ("Project")**

**To:** Principal's Representative  
**From:** **[Insert Contractor's name]**  
(ABN **[Insert Contractor's ABN]**)  
("Contractor")

In accordance with the terms of clause 12.2(e)(iii) of the deed between Transport for NSW and the Contractor dated **[insert date]** with respect to the Project, the Contractor hereby certifies that:

- (a) the attached Design Documentation:
  - (i) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements of section 5.8 of the SWTC;
  - (ii) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects); and
  - (iii) does not involve or constitute a Variation which has not been the subject of a Variation Order under clause 15.2, or a notice under clauses 15.6(d) or 15.7(c) approving the Variation; and
- (b) all issues of review, comment and consultation with the Principal in respect of the Design Documentation have been addressed as required by the deed.

.....  
Signed for and on behalf of  
**[Insert Contractor's name]**

## **Contractor's Certificate - Opening Completion and Completion**

(Clause 23.2 (definitions of "Opening Completion" and "Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Contractor's name]**  
(ABN [Insert Contractor's ABN])  
("Contractor")

---

In accordance with the terms of clause 23.2 (definition of "Opening Completion") of the deed between Transport for NSW and the Contractor dated [insert date] with respect to the Project (**D&C Deed**), we hereby certify that Opening Completion/Completion has been achieved by the Contractor on [insert date] in accordance with the terms and conditions of the D&C Deed.

.....  
Signed for and on behalf of  
[Insert Contractor's name]

## Contractor's Certificate – End of Landscaping Maintenance Period

(Clause 13A.5(d)(iii) and 23.2 (definition of "Final Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Contractor's name]**  
(ABN [Insert Contractor's ABN])  
("Contractor")

---

In accordance with the terms of clause 13A.5(d)(iii) of the deed between Transport for NSW and the Contractor dated **[insert date]** with respect to the Project (**D&C Deed**), we hereby certify that Landscaping Maintenance has been completed by the Contractor on **[insert date]** in accordance with the terms and conditions of the D&C Deed.

.....

Signed for and on behalf of  
**[Insert Contractor's name]**

## Contractor's Certificate – Final Completion

(Clause 23.2 (definition of "Final Completion"))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Contractor's name]**  
(ABN **[Insert Contractor's ABN]**  
("Contractor"))

---

In accordance with the terms of clause 23.2 (definition of "Final Completion") of the deed between Transport for NSW and the Contractor dated **[insert date]** with respect to the Project (**D&C Deed**), we hereby certify that Final Completion has been achieved by the Contractor on **[insert date]** in accordance with the terms and conditions of the D&C Deed.

.....  
Signed for and on behalf of

**[Insert Contractor's name]**

## Principal Subcontractor Pre-Qualification

(Clause 2.9(b))

---

Subcontractors for the following categories of work must be pre-qualified or registered in accordance with the Principal's procedures including to the appropriate level for the contract sum of the Subcontract:

1. **Pre-qualified categories of work:**
    - (a) Roadworks;
    - (b) Bridgeworks;
    - (c) Concrete Paving (Machine Placed);
    - (d) Asphalt Paving (Machine Placed);
    - (e) Pretensioned Concrete;
    - (f) Steel Fabrication;
    - (g) Protective Treatment (Field); and
    - (h) Traffic Signals.
  2. **Registered categories of work (Registered Scheme for Construction Industry Contractors):**
    - (a) D – Drainage;
    - (b) E – Earthworks
    - (c) F – Formwork;
    - (d) P – Provision of Traffic Control;
    - (e) L1 – Construction laboratories [REDACTED];
    - (f) L2 – Construction laboratories [REDACTED];
    - (g) L3 – Construction laboratories [REDACTED];
    - (h) S1 – Erosion, Sedimentation and Soil Conservation Consultancy Services (R1 to R4);
    - (i) S2 – Erosion, Sedimentation and Soil Conservation Consultancy Services (unrestricted);
    - (j) CC2 – Steel Items to Construction Category 2;
    - (k) U – Urban Design Services;
    - (l) X – Demolition of Buildings;
    - (m) Z1 – Stabilisation (insitu method); and
    - (n) Z2 – Stabilisation (stationary plant).
  3. **Registered categories of design work (Technical Services Registration Scheme):**
    - (a) BD1 – Standard Bridge Design;
    - (b) BD2 – Complex Bridge Design;
    - (c) BD3 – Bridge Rehabilitation Design;
    - (d) RD1 – Standard Road Design; and
    - (e) RD2 – Complex Road Design.
-

## Terms to be included in Subcontracts

(Clauses 2.9(f) and 2.9(g)(ii))

---

The following terms must be included in each Subcontract referred to in clause 2.9(f) of this deed.

- A. Options as to form of security
  - A clause which allows the Subcontractor to lodge an unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
  - A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, any retention moneys or other cash security then held will be promptly released to the Subcontractor.
- B. Trust for Cash Security and Retention Moneys
  - A clause which has the effect that:
    - (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into a trust account with a bank within 24 hours of receipt or conversion;
    - (b) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract; and
    - (c) the security holder must account to the security provider for the trust moneys.
- C. Payment Provisions
  - A clause which has the effect:
    - (a) of requiring the Contractor to pay the Subcontractor for work for which payment is claimed by the Subcontractor no later than 20 Business Days after a payment claim was made by the Subcontractor for such work;
    - (b) that states nothing in the clause referred to in paragraph (a) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
    - (c) that if anything in the clause referred to in paragraph (a) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.
  - A clause which prescribes an interest rate for overdue payments which is not less than the interest rate specified in clause 22.5 of this deed.
  - A clause on the same terms as clauses 2.9(f)(ii), 2.9(h), 2.9(i) and 2.9(j) of this deed requiring the Subcontractor to implement the Subcontractors Proof of Payment Procedure and comply with requirements relating to the Subcontractors Proof of Payment Procedure.
- D. Alternative Dispute Resolution
  - A clause incorporating expert determination procedures which are the same as the procedures which apply in this deed.
  - A clause making it optional for the Subcontractor to comply with the expert determination process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.
- E. Documents to be provided to Subcontractors
  - A clause which requires the Contractor to provide the Subcontractor with copy extracts from this deed before the Subcontractor starts work under the Subcontract. The extracts which are required to be provided are:

- (a) clause 18 (Payment);
  - (b) clause 20 (Dispute avoidance and dispute resolution); and
  - (c) clause 22.5 (Interest).
- F. Civil Liability Act
  - A clause that complies with the requirements set out in clause 22.7(c).
- G. Personal Property Securities Act
  - A clause substantially the same as clause 8.4, except that references to 'the Contractor' must be replaced with references to 'the Subcontractor' and references to 'the Principal or 'the Principal's Representative' must be replaced with references to 'the Contractor'.
- H. Work Health and Safety Obligations
  - A clause requiring the Subcontractor to comply with all reasonable directions of the Principal Contractor.
- I. TfNSW's Australian Industry Participation Plan Obligations
  - A clause requiring the Subcontractor to comply with the Certified AIP Plan.
- J. Building Code
  - Clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the Building Code.
- K. WHS Accreditation Scheme
  - Clauses in substantively the same form as the model contract clauses applicable to contractors and subcontractors in relation to the WHS Accreditation Scheme.

## Subcontractor's Certificate - Design Documentation

(Clause 12.2(e)(ii))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Subcontractor's name]**  
(ABN **[Insert Subcontractor's ABN]**)  
("Subcontractor")

---

In accordance with the terms of clause 12.2(e)(ii) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that the attached Design Documentation:

- (a) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements of section 5.8 of the SWTC; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects).

.....  
Signed for and on behalf of

**[Insert Subcontractor's name]**

## Independent Checking Engineer's Certificate - Design Documentation

(Clause 12.2(e)(v))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Checking Engineer's name]**  
(ABN **[Insert Independent Checking Engineer's ABN]**  
("Independent Checking Engineer"))

---

In accordance with the terms of clause 12.2(e)(v) of the deed between Transport for NSW and **[insert Contractor's name]** (ABN **[insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project (**D&C Deed**), we hereby:

- (a) confirm that we have undertaken the check required under, and in accordance with, clause 2.8(d)(ii) of the D&C Deed; and
- (b) confirm that those elements of the Category 2 Temporary Works identified in the attached Category 2 Temporary Works Design Documentation:
  - (i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the D&C Deed; and
  - (ii) comply with the SWTC.

.....

Signed for and on behalf of

**[Insert Independent Checking Engineer's  
name]**

## Proof Engineer's Certificate - Design Documentation

(Clause 12.2(e)(iv))

---

**[Insert project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Proof Engineer's name]**  
(ABN **[Insert Proof Engineer's ABN]**)  
("Proof Engineer")

---

In accordance with the terms of clause 12.2(e)(iv) of the deed between Transport for NSW and **[insert Contractor's name]** (ABN **[insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project (D&C Deed), we hereby:

- (a) confirm that we have undertaken the full and independent assessment as required under, and in accordance with, clause 2.5(d)(ii) of the D&C Deed; and
- (b) certify that in respect of those elements of the Project Works and any associated Temporary Works identified in Item 14 of Schedule 1 (Contract Information) to the D&C Deed, that those elements of the Project Works and any associated Temporary Works identified in the attached Design Documentation:
  - (i) are adequate and suitable for their intended purpose as stated in, implied from or contemplated by the D&C Deed; and
  - (ii) comply with the SWTC.

.....

Signed for and on behalf of  
**[Insert Proof Engineer's name]**

## Environmental Documents

(Clauses 3.6(c)(iii), 5.1(b), 5.1(e)(iii), 5.2(b), 6.5, 15.8(f)(i) and 23.2 (definition of "ONR"))

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### Part A: Approvals to be obtained by Principal

The Planning Approval.

The EPBC Act Approval, to the extent required by Law.

### Part B: Approval conditions to be undertaken by Principal or Contractor

2. The Contractor must fulfil all the conditions and requirements of:

- (a) the Planning Approval to the extent related to the Contractor's Activities, the Project Works or the Temporary Works, except to the extent to which this Part B of this Schedule 28 or Table 1 or Table 2 below expressly states otherwise or expressly allocates responsibility to the Principal; and
- (b) the Revised Environmental Management Measures (**REMMs**) set out in Chapter 6 of the Coffs Harbour Bypass Submissions report on the environmental impact statement (**Submissions Report**), to the extent:
  - (i) related to the Contractor's Activities, the Project Works or the Temporary Works;
  - (ii) related to a condition of the Planning Approval which the Contractor must fulfil under this Schedule 28; or
  - (iii) required so that the design and construction of the Project Works enables the operation and maintenance of the Project Works to satisfy the REMMs,

except to the extent to which this Part B of this Schedule 28 or Table 3 below expressly states otherwise or expressly allocates responsibility to the Principal.

2. The Principal is responsible for fulfilling all the conditions and requirements of the Planning Approval and the REMMs to the extent applicable to:

- (a) the operation, maintenance, repair and renewal of the parts of the Project Works in respect of Separable Portion 1 after the Date of Opening Completion; or
- (b) the operation, maintenance, repair and renewal of the parts of the Project Works in respect of Separable Portion 2 after the Date of Completion,

except to the extent Table 1, Table 2 or Table 3 (as applicable) below expressly states otherwise or expressly allocates responsibility to the Contractor.

3. Where the Planning Approval requires the Project Works to be operated or maintained in accordance with certain requirements, the Contractor must ensure that the Project Works are designed and constructed so as to satisfy those requirements if operated and maintained in accordance with the operation and maintenance requirements in the SWTC, original equipment manufacturer requirements and standard industry practice for operation and maintenance of similar works.

4. Except to the extent Table 1, Table 2 or Table 3 (as applicable) below expressly states otherwise, where the Contractor is required to submit any information, reports, plans, notifications and other documents required by or for the purposes of the Planning Approval or Submissions Report (**Approval Document**) to the Secretary of the Department of Planning, Industry and Environment (**Secretary**) or other Authority, the Principal will submit the Approval Document prepared by the Contractor to the Secretary or Authority, subject to the Contractor's compliance with the following:
- (a) The Contractor must provide to the Principal drafts of the Approval Documents in a form which meets the requirements of this deed in accordance with the following timetable:
    - (i) provide a first draft to the Principal, following completion of consultation with agencies and project stakeholders, including the endorsement of the AA and ER as required by the MCoA, not less than 30 Business Days in advance of the date upon which the Approval Document(s) are required to be submitted to the Secretary or Authority, and allow the Principal at least 10 Business Days to review and comment on the first draft;
    - (ii) if a second draft is required by the Principal, provide a second draft to the Principal not less than 10 Business Days in advance of the date upon which the Approval Document(s) are required to be submitted to the Secretary or Authority, and allow the Principal at least 5 Business Days to review and comment on the second draft; and
    - (iii) provide the form of Approval Document(s) to be submitted to the Principal 1 Business Day prior to the date upon which the Approval Document(s) are required to be submitted to the Secretary or Authority.
  - (b) The Contractor must revise the first and second drafts of the Approval Document to address any comments received from the Principal to the extent required to ensure the Approval Document complies with the requirements of this deed (including the Planning Approval) and must act reasonably in considering any other comments received from the Principal.
5. The Contractor must keep the Principal informed of all information, notifications, reports, plans and other documentation which it is required to submit to the Secretary or to any other third party in accordance with this Schedule 28 by providing the Principal with a copy of any such documents as soon as practicable after any such submission. This section 5 does not apply to information, notifications, reports, plans and other documentation which the Principal submitted in accordance with section 4 of this Part B of this Schedule 28.
6. Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule 28 will not limit any of the Contractor's obligations under this deed. The Contractor must provide information and assistance as reasonably required by the Principal to enable the Principal to comply with conditions for which the Principal is responsible (in full or in part) under this Schedule 28.
7. Any express allocation of responsibility to the Contractor (whether in full or in part) in Table 1, Table 2 or Table 3 (as applicable) does not exclude or limit the general allocation of responsibilities to the Contractor in accordance with this Part B of this Schedule 28.
8. For the purposes of determining the Contractor's obligations under this deed in relation to the Planning Approval, the following principles will apply unless otherwise specified in Table 1, Table 2 or Table 3 (as applicable):
- (a) The term "completion of construction" in the Planning Approval will include the satisfaction of all requirements for Opening Completion (in respect of Separable Portion 1) and Completion (in respect of all other Separable Portions).

- (b) The term “construction” in the Planning Approval will include the Project Works, the Temporary Works and the Contractor’s Activities, excluding certain low impact work in accordance with the definition of “construction” in the Planning Approval.
- (c) The term “construction activities” in the Planning Approval will include the Contractor’s Activities.
- (d) The term ‘works’ in the Planning Approval will include all Project Works, Temporary Works and the Contractor’s Activities which are physical work.

**Part C: Licences and certifications to be obtained by Contractor**

9. The Contractor must:

- (a) obtain an Environment Protection Licence in respect of the Contractor's Activities prior to undertaking any Scheduled Activity as contemplated by Schedule 1 to the *Protection of the Environment and Operations Act 1997* (NSW); and
- (b) hold an Environment Protection Licence in respect of the Contractor’s Activities until the Date of Final Completion.

**Table 1 – Allocation of responsibility for Planning Approval Conditions**

<b>Planning Approval Condition number</b>	<b>Exceptions to general allocations of responsibilities</b>
<b>A9</b>	The Contractor, except to the extent the Principal will submit the staging report, prepared by the Contractor, (if any) to DPIE in the specified timeframe
<b>A15</b>	The Contractor, except to the extent the Principal will submit the Ancillary Site Establishment Management Plan, prepared by the Contractor, (if any) to DPIE in the specified timeframe.
<b>A19</b>	The Contractor must comply with this Condition A19, except to the extent that the Principal will submit to the Planning Secretary for approval.
<b>A21</b>	The Principal is responsible for Condition A21.
<b>A22</b>	The Principal is responsible for Condition A22.
<b>A23</b>	The Principal is responsible for Condition A23.
<b>A24</b>	The Principal is responsible for Condition A24.
<b>A25</b>	The Principal and the Contractor must both comply with this Condition A25.
<b>A26</b>	The Principal and the Contractor must both comply with this Condition A26.
<b>A27</b>	The Principal and the Contractor must both comply with this Condition A27.
<b>A28</b>	The Principal is responsible for Condition A28, except that the Contractor and Principal must both comply with points (a), (b) and (c).
<b>A29</b>	The Principal is responsible for Condition A29
<b>A30</b>	The Principal and the Contractor must both comply with this Condition A30.
<b>A31</b>	The Principal is responsible for this Condition A31, except to the extent the Contractor must notify the Principal four (4) weeks prior to the commencement of construction and operation.

<b>A33</b>	The Contractor must comply with this Condition A33, except to the extent that the Principal will submit to the Planning Secretary for approval.
<b>A36</b>	The Contractor must comply with this Condition A36, except to the extent that the Principal will submit the response to the Planning Secretary and arrange for public display. The Contractor must submit the responses a minimum of 20 business days prior to display.
<b>A37</b>	The Contractor must comply with this Condition A37, except to the extent that the Principal will arrange for public display. The Contractor must submit the responses a minimum of 20 business days prior to display.
<b>A38</b>	The Contractor must comply with this Condition A38 for a period up to 12 months after Completion.
<b>A39</b>	The Principal, except to the extent the Contractor must immediately notify the incident to the Principal in accordance with the document entitled "Environmental Incident Classification and Reporting Procedure" referred to in TfNSW D&C Specification G36
<b>A40</b>	The Principal, except to the extent the Contractor must immediately notify the incident to the Principal in accordance with the document entitled "Environmental Incident Classification and Reporting Procedure" referred to in TfNSW D&C Specification G36
<b>B1</b>	The Principal has developed the Community Communication Strategy . The Contractor must comply with this Condition B1, including to the extent that it makes and changes or updates to the Strategy.
<b>B2</b>	The Principal has developed the Community Communication Strategy . The Contractor must comply with this Condition B2, including to the extent that it makes and changes or updates to the Strategy.
<b>B3</b>	The Principal has developed and submitted the strategy to the Planning Secretary for approval. The Contractor must comply with this Condition B3, including to the extent that it makes and changes or updates to the Strategy.
<b>B6</b>	The Principal has prepared the Complaints Management System . The Contractor must comply with this Condition B6, including to the extent that it makes and changes or updates to the Strategy.
<b>B11</b>	The Principal, except to the extent the Contractor must provide the relevant information for uploaded a minimum of 5 business days prior to display for review and approval.

<b>C3</b>	The Contractor, except to the extent the Principal will submit the CEMP, prepared by the Contractor and endorsed by the ER, (if any) to DPIE in the specified timeframe.
<b>C6</b>	The Contractor, except to the extent the Principal will submit the CEMP Sub-plans, prepared by the Contractor and endorsed by the ER, (if any) to DPIE in the specified timeframe.
<b>C13</b>	The Principal is responsible for Condition C13 only to the extent it relates to part (c) surface and ground water quality. The Contractor is responsible for all other aspects of Condition C13.
<b>C16</b>	The Contractor must comply with this Condition C16, except to the extent that the Principal will submit to the Planning Secretary for approval.
<b>C18</b>	The Contractor must comply with this Condition C18 for a period up to 12 months after Completion.
<b>C19</b>	The Contractor must comply with this Condition C19, except to the extent that the Principal will submit to the Planning Secretary and relevant agencies for information.
<b>D1</b>	The Contractor must comply with this Condition D1, in consultation with the operators (TfNSW).
<b>D2</b>	The parties agree that this condition D2 will not apply to the Project Works because the Contractor is required to prepare an OEMP for the Project Works under Condition D1.
<b>D3</b>	The Contractor must comply with this Condition D3, except to the extent that the Principal will submit to the Planning Secretary for information.
<b>D4</b>	The Contractor must comply with this Condition D4, except to the extent that the Principal will submit to the Planning Secretary for information.
<b>D5</b>	The Contractor must comply with this Condition D5, except to the extent that the Principal will submit to the Planning Secretary for information and be responsible for monitoring and reporting from 12 months after Completion.
<b>D6</b>	The Principal is responsible for Condition D6.
<b>D7</b>	The Principal is responsible for Condition D7.

<b>E3</b>	The Principal is responsible for Condition E3, except to the extent the Contractor must not exceed the areas, or individually impacted species, identified within Tables 7 and 8.
<b>E4</b>	The Principal is responsible for Condition E4, except to the extent the Contractor will be required to provide clearing areas in GIS format to the Principal within 20 Business Days of achieving IFC Design Documentation Stage for clearing areas.
<b>E5</b>	The Principal is responsible for Condition E5.
<b>E6</b>	The Principal is responsible for Condition E6.
<b>E7</b>	The Principal is responsible for Condition E7.
<b>E8</b>	The Principal is responsible for Condition E8.
<b>E10</b>	The Contractor, except to the extent the Principal will submit the final construction footprint, prepared by the Contractor and endorsed by the ER, (if any) to DPIE, EESG and DAWE in the specified timeframe.
<b>E11</b>	The Principal is responsible for Condition E11.
<b>E12</b>	The Principal is responsible for Condition E12.
<b>E13</b>	The Contractor is responsible for Condition E13 where it relates to undertaking restoration of Koala habitat. The Principal is responsible for Condition E13 where it relates to securing the in-perpetuity funding and protection of the restored koala habitat
<b>E14</b>	The Principal will prepare the Plan identified in this Condition E14 and submit the Plan to the Secretary for information. The Contractor must comply with this Condition E14, to the extent that the Contractor impacts areas outside of the Project Boundary.
<b>E15</b>	<p>The Principal has prepared the Plan identified in this Condition E15 . The Contractor must comply with this Condition E15, including to the extent that it makes and changes or updates to the Strategy. TfNSW will be responsible for implementing the following components of the TSMP:</p> <p>1) Nest Box Management Plan including installation and monitoring of nest boxes during construction and operation.</p> <p>2) Translocation and associated monitoring of Rusty Plum individuals (Section 5.3.4)</p>

	<p>3) Implementation of Threatened Species Translocation Plan</p> <p>4) All operational measures contained in Section 7 of the TSMP except for the first 12 months of monitoring of landscape revegetation work and associated reporting.</p> <p>5) All operational monitoring requirements outlined in Section 8 of the TSMP in relation to operational phase of the project.</p>
<b>E16</b>	The Contractor must comply with this Condition E16 to the extent that it makes changes or updates to the Plan identified in Condition E14. The Principal will submit the Plan, and any updates by the Contractor, to the Planning Secretary for information.
<b>E20</b>	The Contractor must comply with this Condition E20, except to the extent that the Principal will be responsible for submissions to Council, EESG and SES.
<b>E23</b>	The Principal is responsible for this Condition E23
<b>E24</b>	The Principal is responsible for this Condition E24
<b>E25</b>	The Principal is responsible for this Condition E25
<b>E26</b>	The Principal is responsible for this Condition E26
<b>E27</b>	The Principal is responsible for this Condition E27
<b>E28</b>	The Principal is responsible for this Condition E28
<b>E29</b>	The Principal is responsible for this Condition E29
<b>E30</b>	The Principal is responsible for this Condition E30
<b>E31</b>	The Principal is responsible for this Condition E31
<b>E45</b>	The Principal is responsible for this Condition E45
<b>E46</b>	The Principal will be responsible for this condition in relation to operational traffic noise monitoring for input into the Operational Noise Review under Condition E47 ( <b>ONR</b> ) and the Operational Noise Compliance Report under Condition E53. All other noise monitoring associated with construction noise requirements is the responsibility of the Contractor.

<b>E48</b>	The Contractor is responsible for this Condition E48 to the extent it relates to at-source treatments (such as noise walls, noise mounds) and the Principal is responsible for this condition E48 to the extent it relates to at-residence treatments.
<b>E49</b>	The Principal is responsible for this Condition E49
<b>E50</b>	<p>The Contractor is responsible for preparation of the report and associated mitigation measures to the extent that at-source noise treatments (noise walls and noise mounds) have not been built in accordance with Condition E48.</p> <p>The Principal will be responsible for preparation of the report and associated mitigation measures to the extent that at-resident treatments have not been completed in accordance with Condition E48. However, the Contractor maybe required to provide input into the report where additional at-resident treatments are required as a result of ONR.</p>
<b>E51</b>	The Principal is responsible for this Condition E51
<b>E52</b>	The Principal is responsible for this Condition E52
<b>E53</b>	The Principal is responsible for this Condition E53
<b>E62</b>	The Contractor must comply with this Condition E62, except to the extent that the Principal will submit to the Planning Secretary for information.
<b>E63</b>	The Contractor must comply with this Condition E63, except to the extent the Principal will submit the Place Design and Landscape Plan, prepared by the Contractor and endorsed by the ER, (if any) to DPIE in the specified timeframe.
<b>E68</b>	The Contractor must comply with this Condition E68 to a period of 12 months after Completion
<b>E69</b>	The Principal is responsible for this Condition E69 prior to contract award. The Contractor is responsible for this Condition E69 to the extent that their detailed design will result in the services being affected. In such a scenario, the Contractor will be required to consult with service providers in order to determine requirements for diversion, protection, and/or support of the affected services.
<b>E70</b>	The Principal is responsible for this Condition E70.
<b>E74</b>	The Principal is responsible for this Condition E74.
<b>E75</b>	The Contractor must comply with this Condition E75, except to the extent that the Principal will submit to the Planning Secretary for information.

<b>E78</b>	The Contractor must comply with this Condition E78, except to the extent that the Principal will submit to the Planning Secretary for information.
<b>E80</b>	The Contractor must comply with this Condition E80, except to the extent that the Principal will submit to the Planning Secretary for information.
<b>E83</b>	The Principal has prepared the Procedure identified in this Condition E83. The Contractor must comply with this Condition E15, including to the extent that it makes and changes or updates to the Procedure.
<b>E85</b>	The Principal has prepared the Strategy identified in this Condition E85. The Contractor must comply with this Condition E85, including to the extent that it makes changes or updates to the Strategy.
<b>E86</b>	The Contractor must comply with this Condition E86, except to the extent that the Principal will submit to the Planning Secretary for information and public display.
<b>E87</b>	The Contractor must comply with this Condition E87, except to the extent that the Principal will submit to the Planning Secretary for approval.
<b>E104</b>	The Contractor must comply with this Condition E104, except to the extent that the Principal will submit to the Planning Secretary for approval.

**Table 2 – Federal Approvals**

<b>Planning Approval Condition number</b>	<b>Exceptions to general allocations of responsibilities</b>
<b>2</b>	<p>The Contractor must comply with Federal Approval Condition 2 (a), 2 (b) and 2 (c). except to the extent that the responsibilities identified in Table 1 state otherwise.</p> <p>The Principal is responsible for Federal Approval Conditions 2 (d) and 2 (e).</p>
<b>3</b>	The Principal is responsible for this Condition 3.
<b>4</b>	The Principal is responsible for this Condition 4.
<b>7</b>	The Principal is responsible for this condition, except to the extent that the Contractor must prepare the compliance report and submit to the Principal for review a minimum of 40 business days prior to the proposed publication date. The Principal

	will advise the Contractor of the proposed publication dates within 60 business days of the date of the deed.
8	The Contractor must comply with this condition, except to the extent that the Principal will submit the information to the Department.
9	The Contractor must comply with this condition, except to the extent that the Principal will submit the information to the Department.
11	The Contractor must comply with this condition, except to the extent that the Principal will submit the information to the Department.

**Table 3 –Allocation of responsibility for REMMs**

<b>REMM number</b>	<b>Exceptions to general allocations of responsibilities</b>
<b>TT03</b>	The Principal is responsible for this requirement TT03.
<b>TT10</b>	The Principal is responsible for this requirement TT10.
<b>TT11</b>	The Principal is responsible for this requirement TT11.
<b>NV07</b>	The Principal is responsible for this requirement NV07.
<b>NV12</b>	The Principal is responsible for this requirement NV12.
<b>FF07</b>	The Principal is responsible for this requirement FF07.
<b>FF13</b>	The Principal is responsible for this requirement FF13.
<b>LUP01</b>	The Principal is responsible for this requirement LUP01.
<b>LUP02</b>	The Principal is responsible for this requirement LUP02.
<b>LUP04</b>	The Principal is responsible for this requirement LUP04 prior to construction commencement. The Contractor is responsible for this requirement LUP04 after construction commencement.
<b>AG01</b>	The Principal is responsible for this requirement AG01.

<b>AG03</b>	The Principal is responsible for this requirement AG03 prior to construction commencement. The Contractor is responsible for this requirement AG03 after construction commencement.
<b>AG06</b>	The Principal is responsible for this requirement AG06 prior to construction commencement. The Contractor is responsible for this requirement AG06 after construction commencement.
<b>AG07</b>	The Principal is responsible for this requirement AG07 prior to construction commencement. The Contractor is responsible for this requirement AG07 after construction commencement.
<b>SE04</b>	The Principal is responsible for this requirement SE04.
<b>SE06</b>	The Principal is responsible for this requirement SE06.
<b>AH02</b>	The Principal is responsible for this requirement AH02.
<b>AH03</b>	The Principal is responsible for this requirement AH03.
<b>AH04</b>	The Principal is responsible for this requirement AH04.
<b>AH05</b>	The Principal is responsible for this requirement AH05.
<b>AH09</b>	The Principal is responsible for this requirement AH09.
<b>AH10</b>	The Principal is responsible for this requirement AH10.
<b>NAH03</b>	The Principal is responsible for this requirement NAH03.
<b>FH08</b>	The Principal is responsible for this requirement FH08.
<b>SC01</b>	The Principal is responsible for this requirement SC01.
<b>SW01</b>	The Principal will be responsible for this requirement SW01, except to the extent that contingency and ameliorative measures are required in the event that adverse impacts on water quality occur, for which the Contractor is responsible.
<b>GW02</b>	The Principal is responsible for this requirement GW02.
<b>GW08</b>	The Principal is responsible for this requirement GW08, except to the extent that contingency and ameliorative measures are required in the event

	that adverse impacts on water quality occur, for which the Contractor is responsible.
<b>WM04</b>	The Principal is responsible for this requirement WM04 prior to construction commencement. The Contractor is responsible for this requirement WM04 during construction.
<b>WM05</b>	The Principal is responsible for this requirement WM05 prior to construction commencement. The Contractor is responsible for this requirement WM05 during construction.
<b>WM07</b>	The Principal is responsible for this requirement WM07.
<b>HZ07</b>	The Principal is responsible for this requirement HZ07.

## Environmental Manager's Certificate

(Clause 2.7(b))

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**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Environmental Manager's name]**  
(ABN **[Insert Environmental Manager's ABN]**)  
("Environmental Manager")

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In accordance with the terms of clause 2.7(b) of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, I hereby certify that between the following dates **[Insert dates of preceding 3 month period]**:

- (a) the Contractor's Environmental Management System under section 3.3.1 of the SWTC was in accordance with AS/NZS ISO 14001;
- (b) any Subcontractors' Environmental Management Systems which form a part of the Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification G36 in Appendix D.4 of the SWTC;
- (d) the release of Hold Points was undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

.....  
Signed by

**[Insert Environmental Manager's name]**

[REDACTED]

[REDACTED]

[REDACTED]

## Independent Certifier's Certificate – Tunnel System Works

(Clause 23.2 (definition of "Opening Completion"))

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**[Insert Project description] ("Project")**

**To:** Principal's Representative

**From:** **[Insert Independent Certifier's name]** (ABN **[Insert Independent Certifier's ABN]**)  
("Independent Certifier")

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In accordance with the terms of clause 23.2 (definition of "Opening Completion") of the deed between Transport for NSW and **[Insert Contractor's name]** (ABN **[Insert Contractor's ABN]**) ("Contractor") dated **[insert date]** with respect to the Project, we hereby certify that the Tunnel System Works comply with all requirements of the deed, including the SWTC.

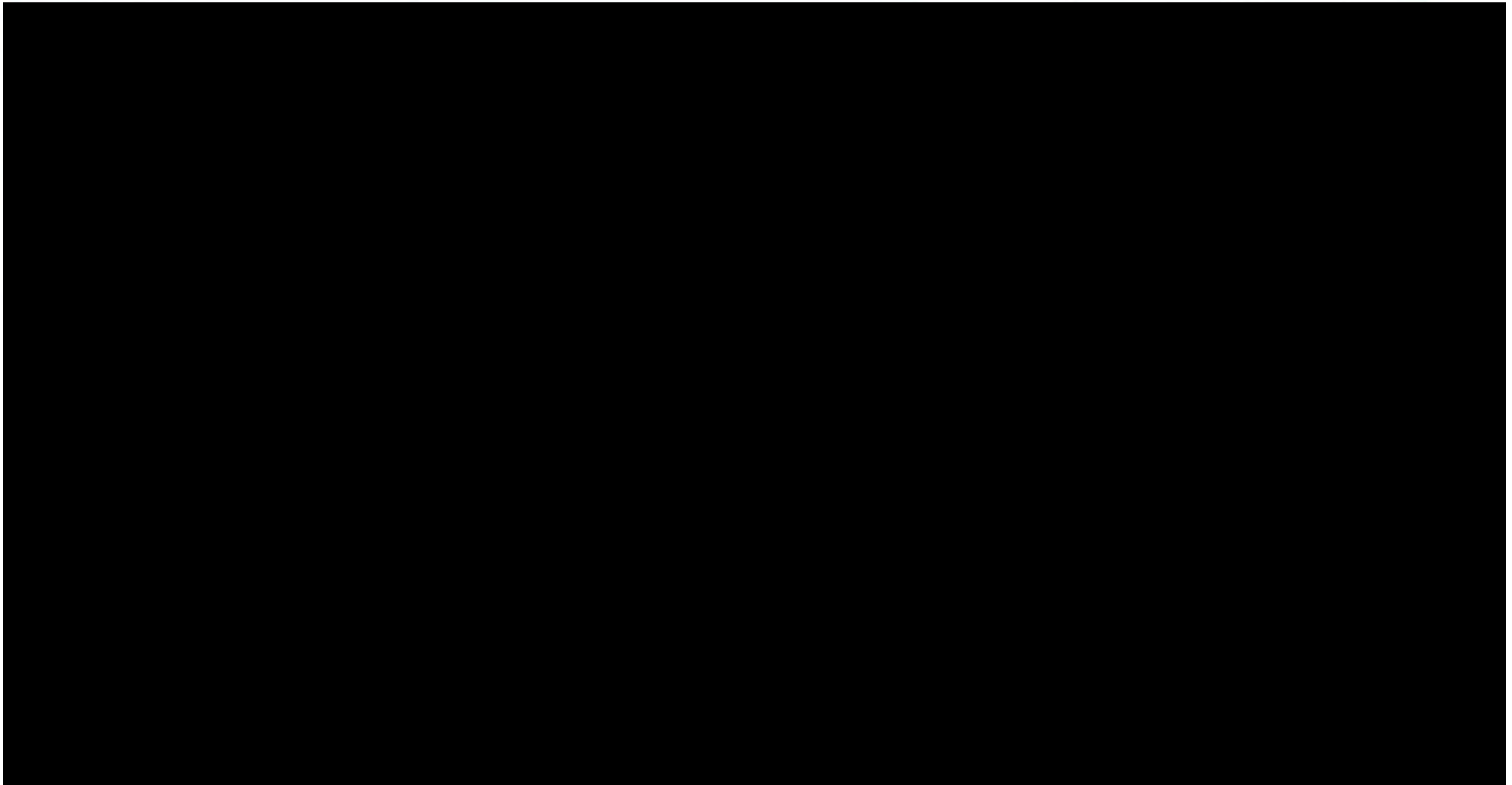
.....  
Signed for and on behalf of  
**[Insert Independent Certifier's name]**

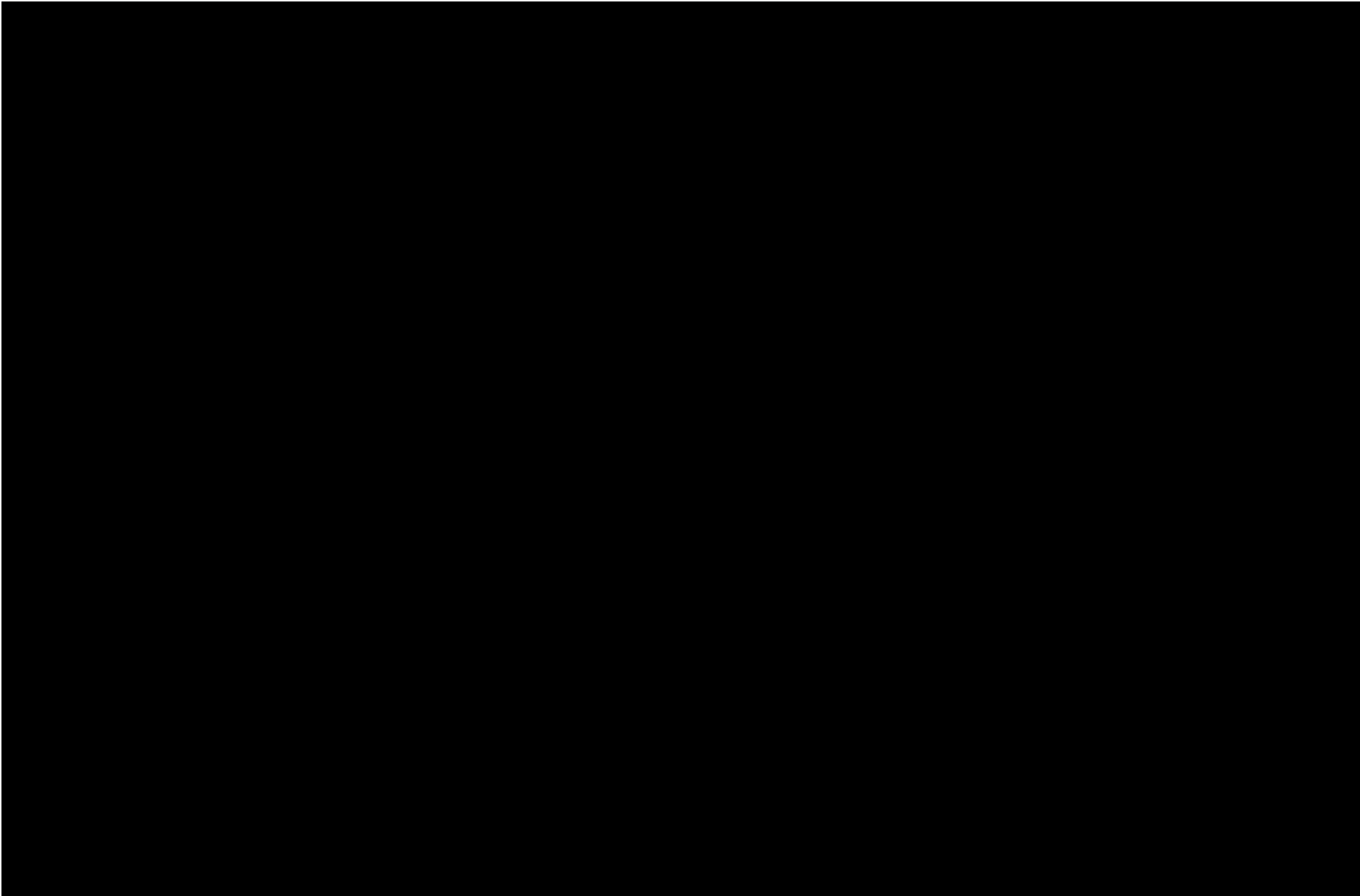
Schedule 32 – **Baseline ROL Schedule**

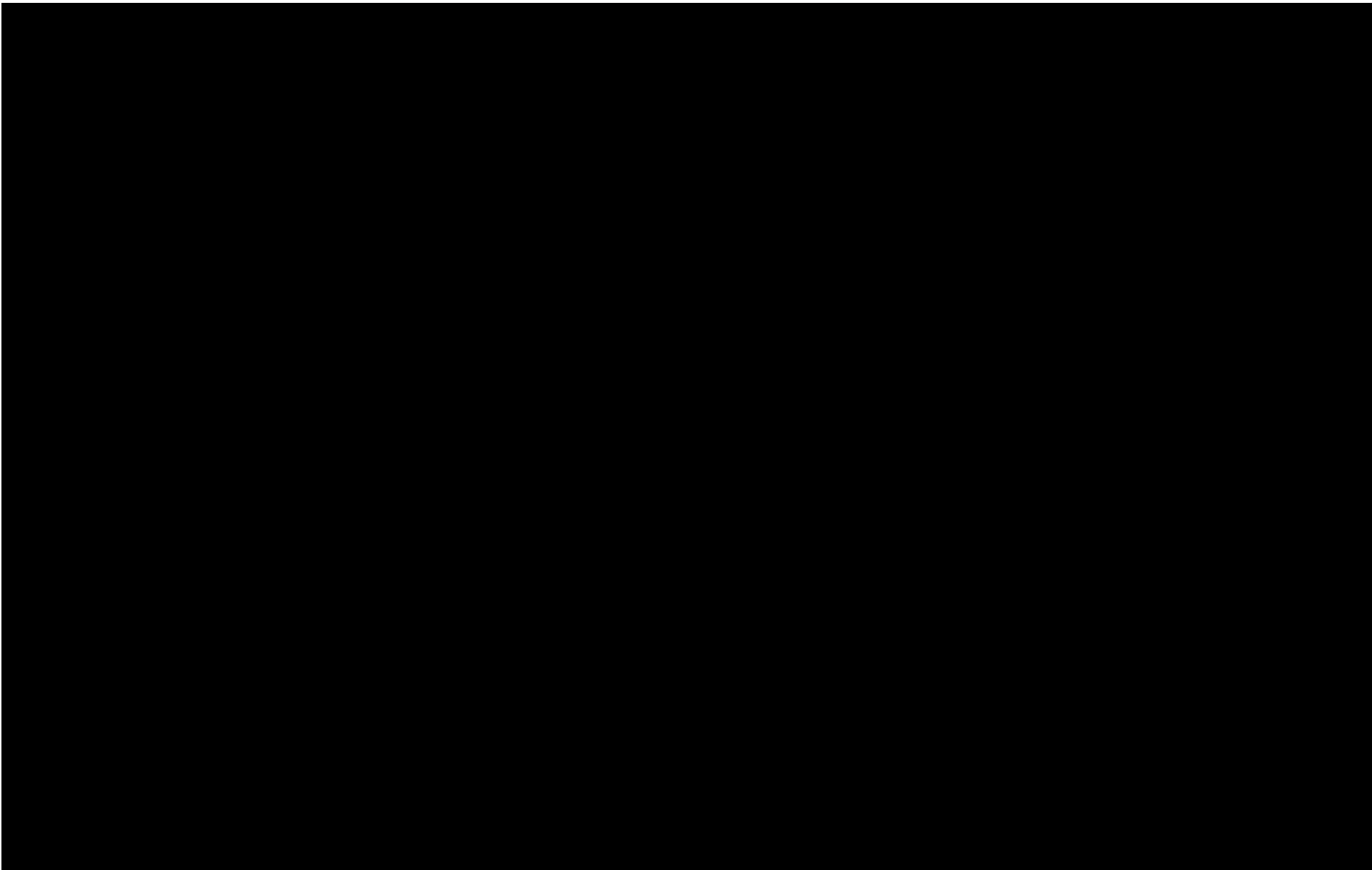
## **Baseline ROL Schedule**

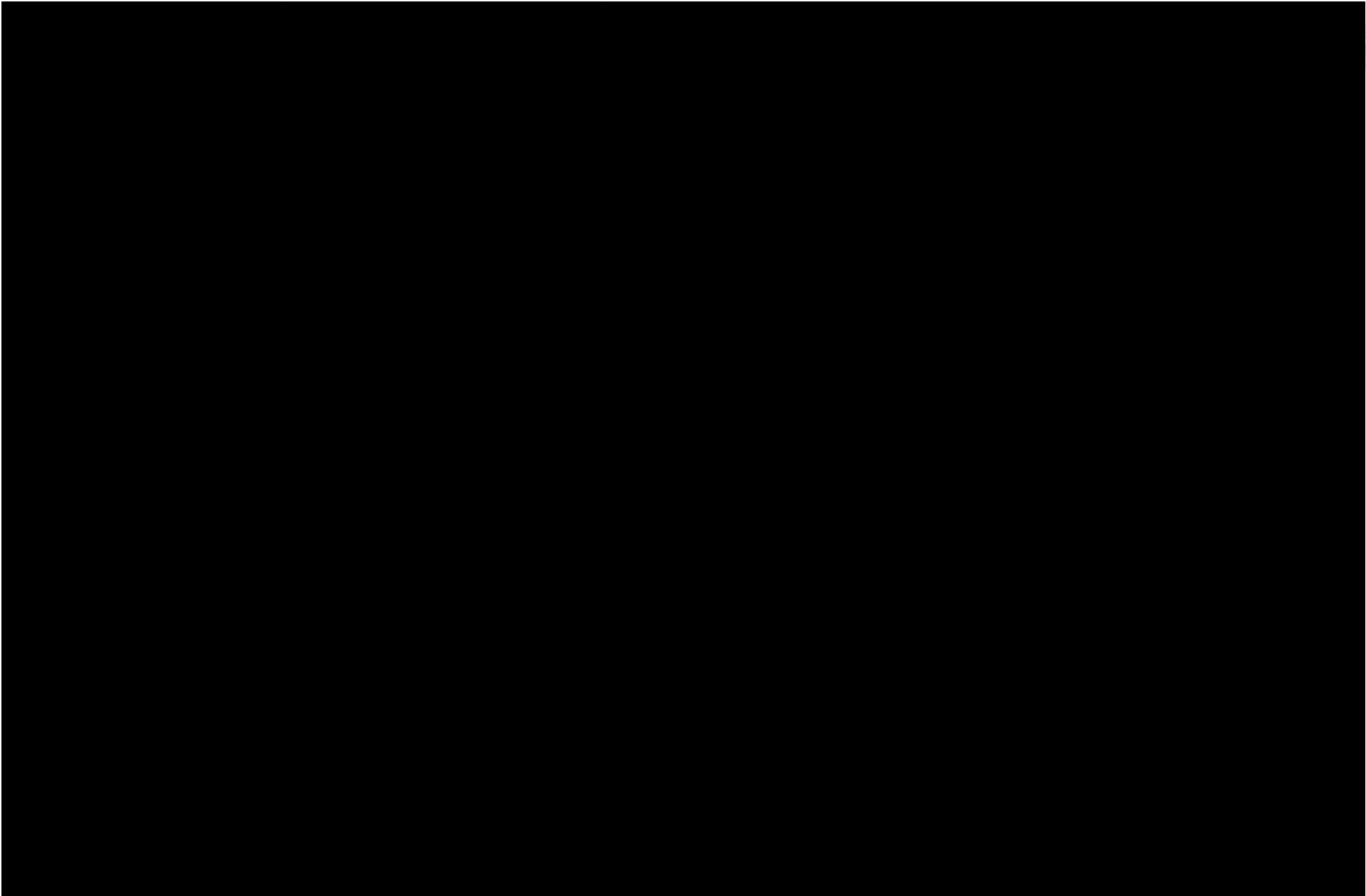
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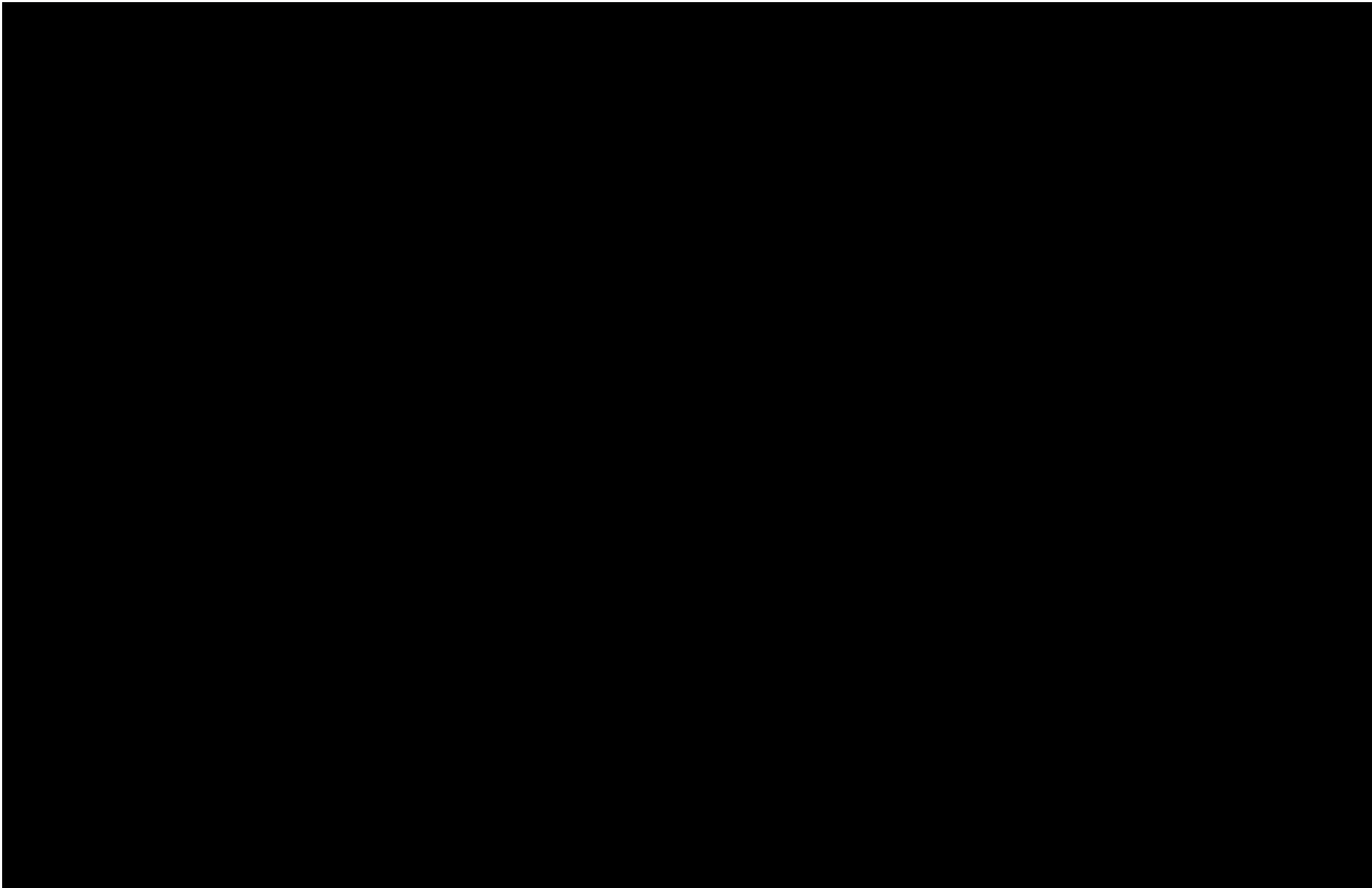
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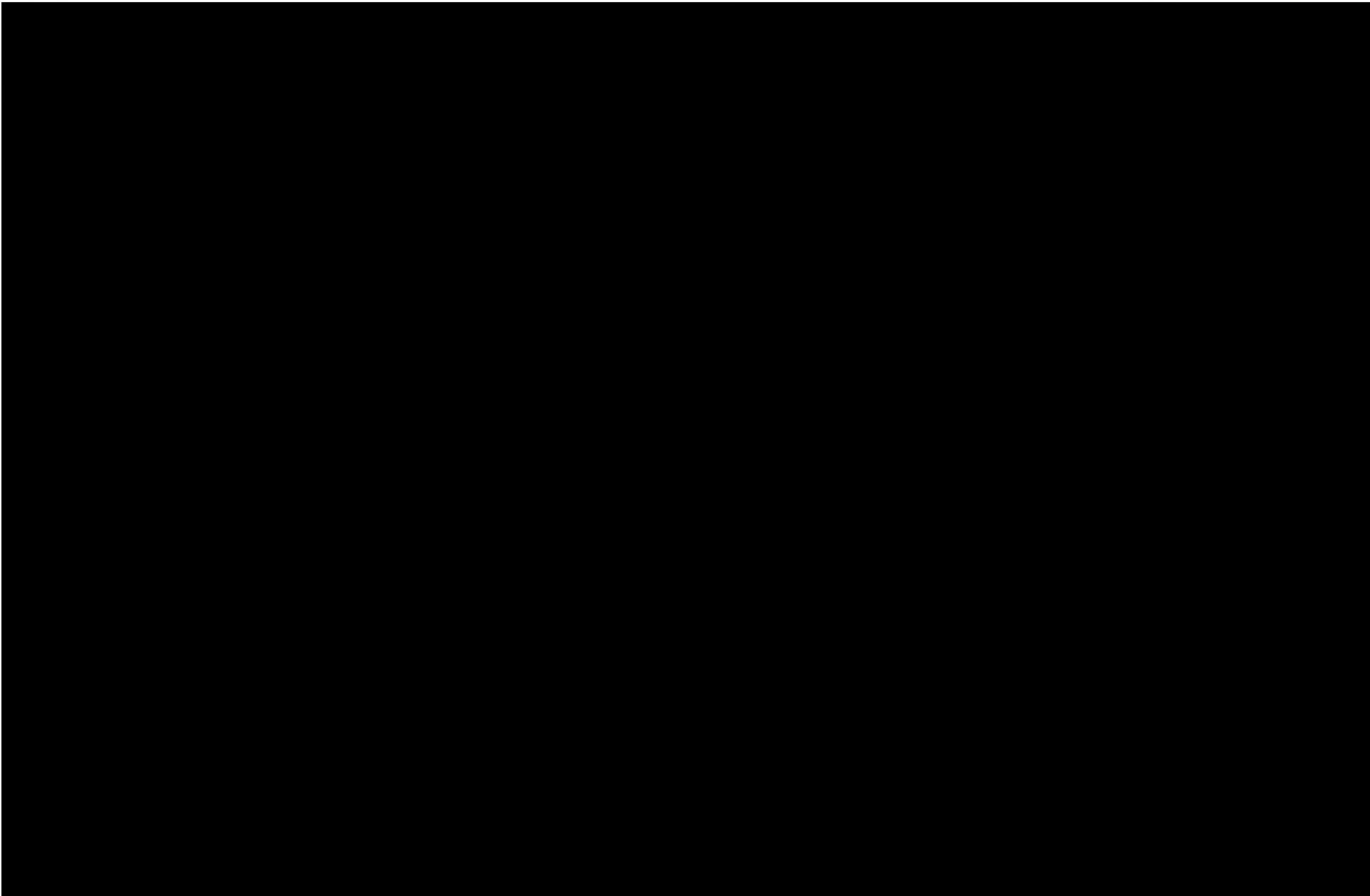


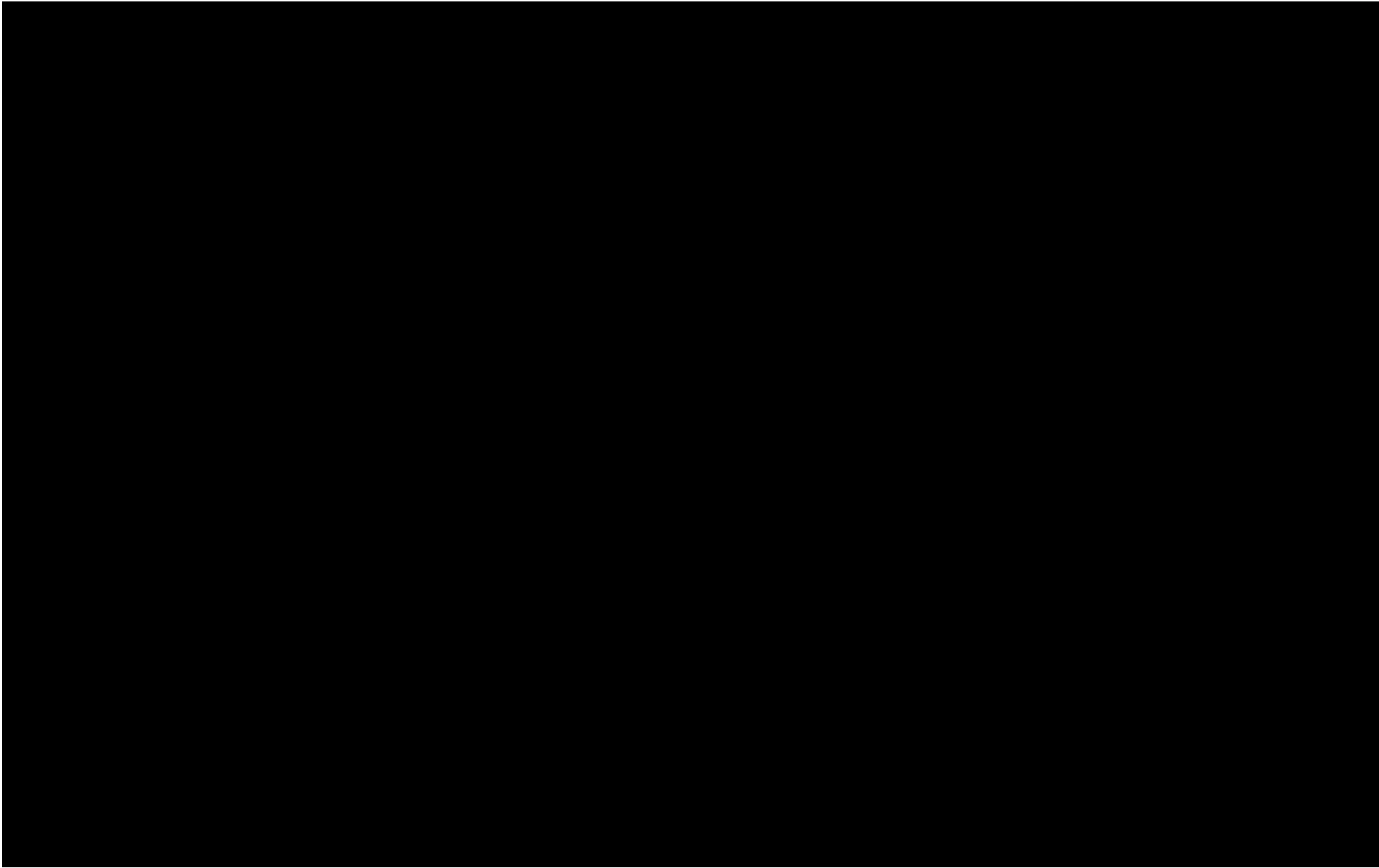


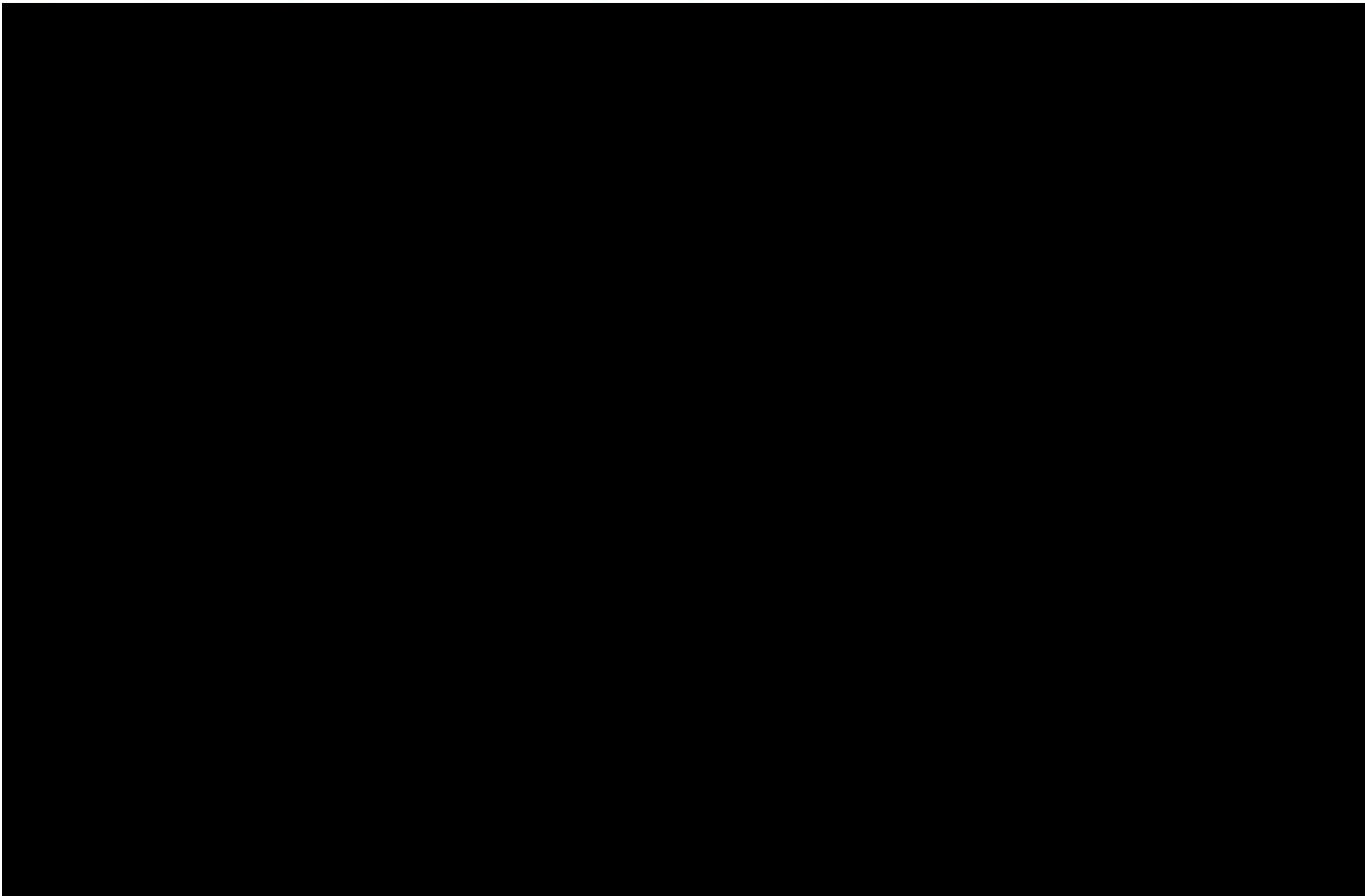


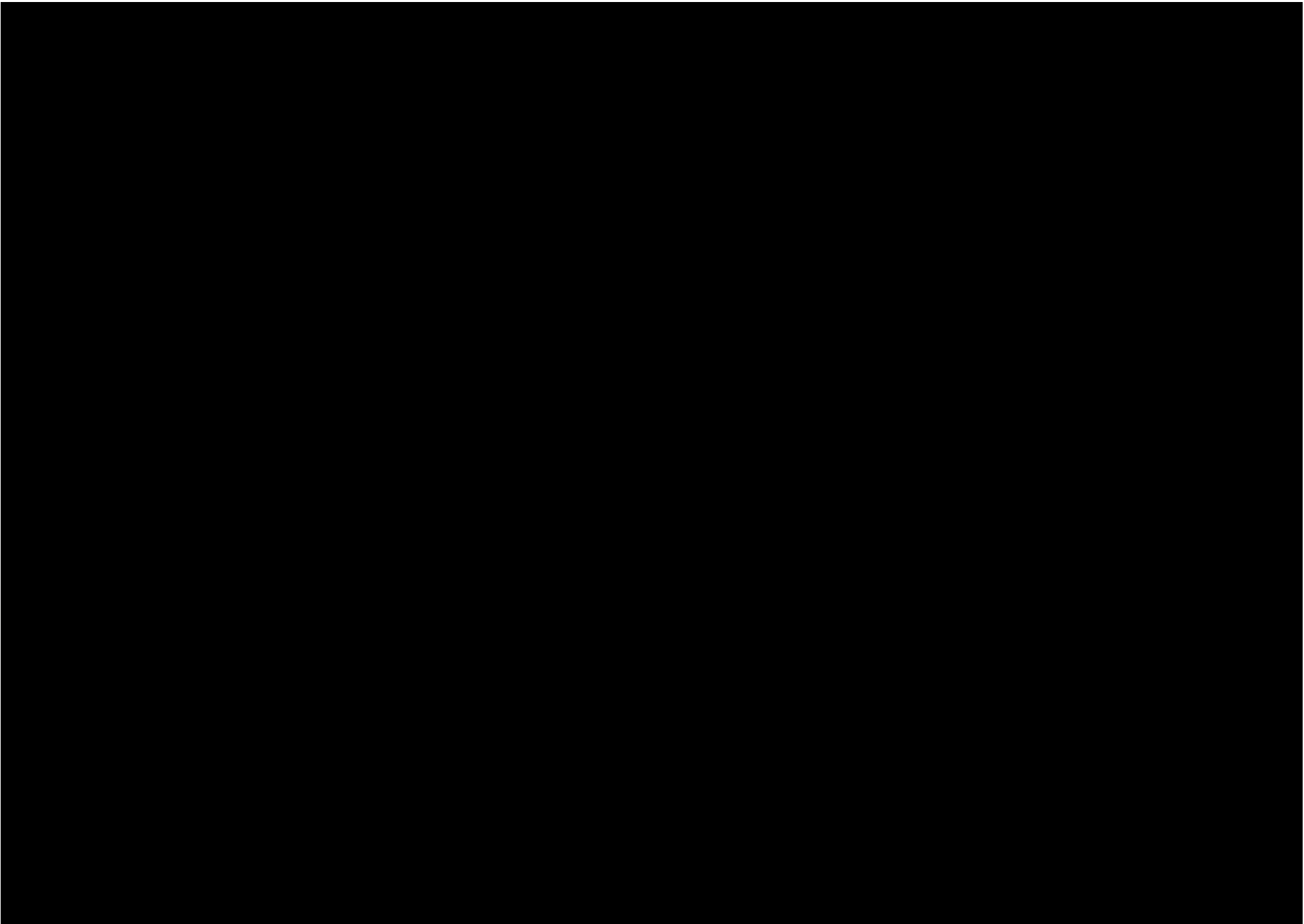


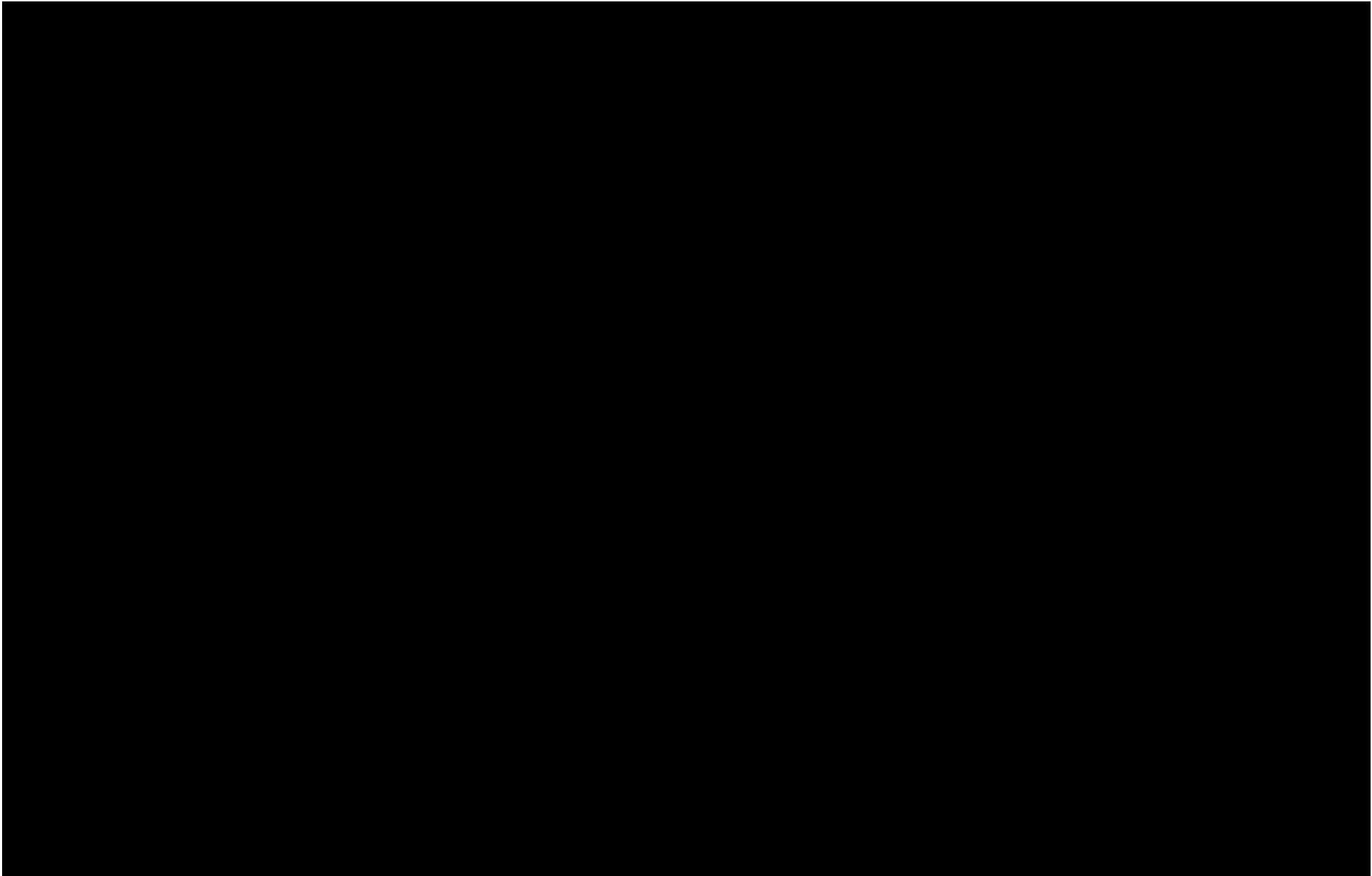


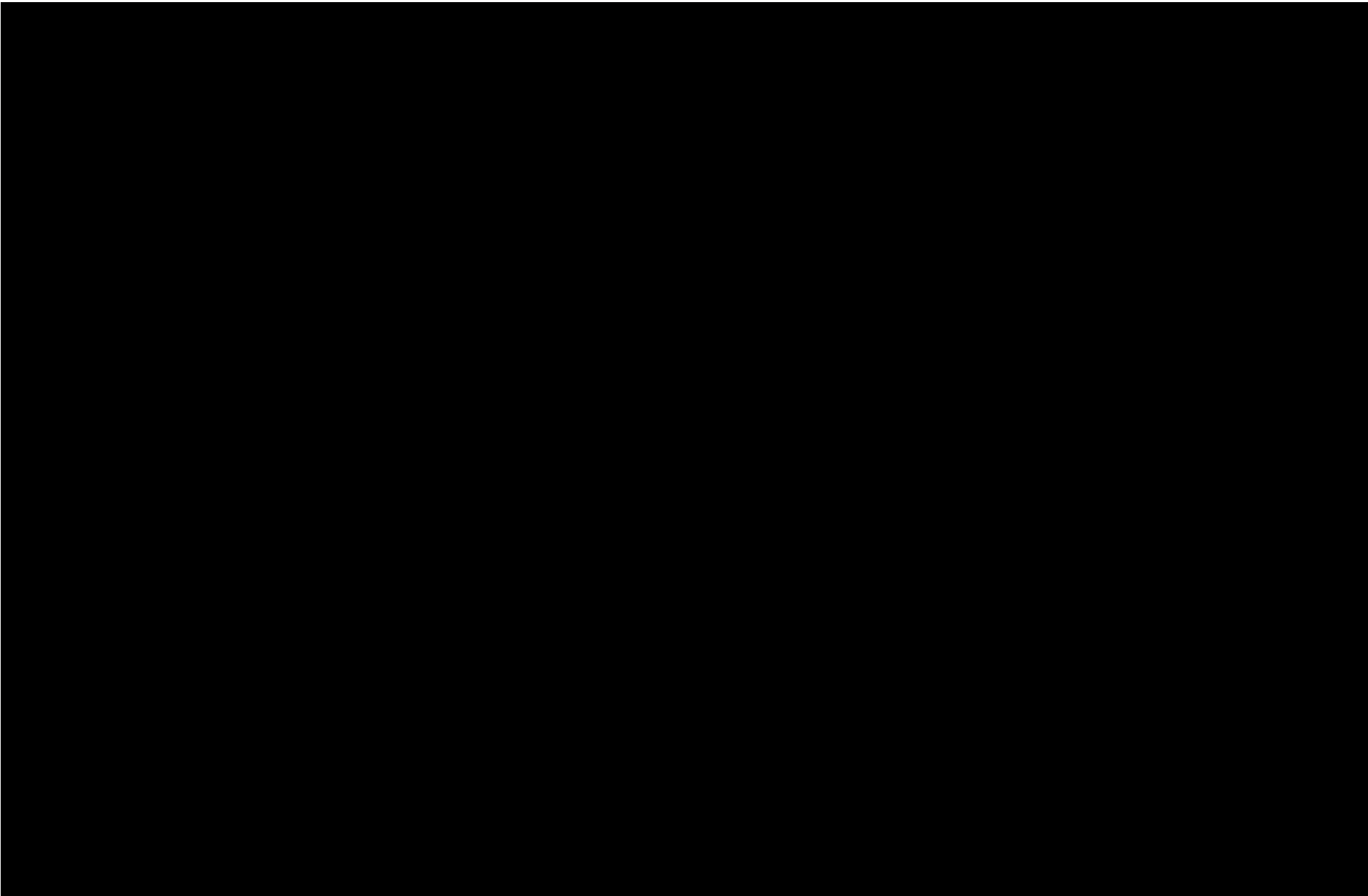


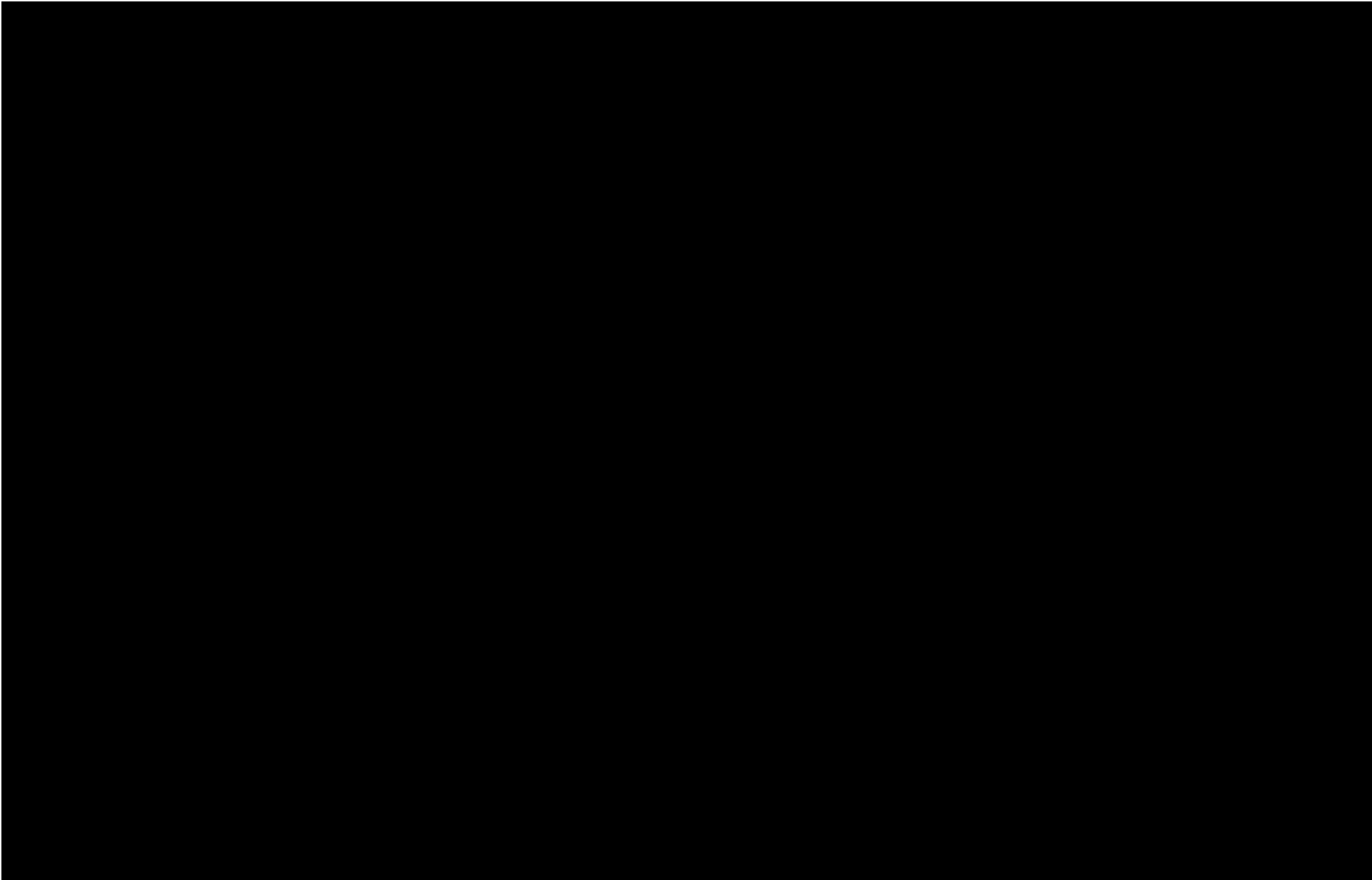


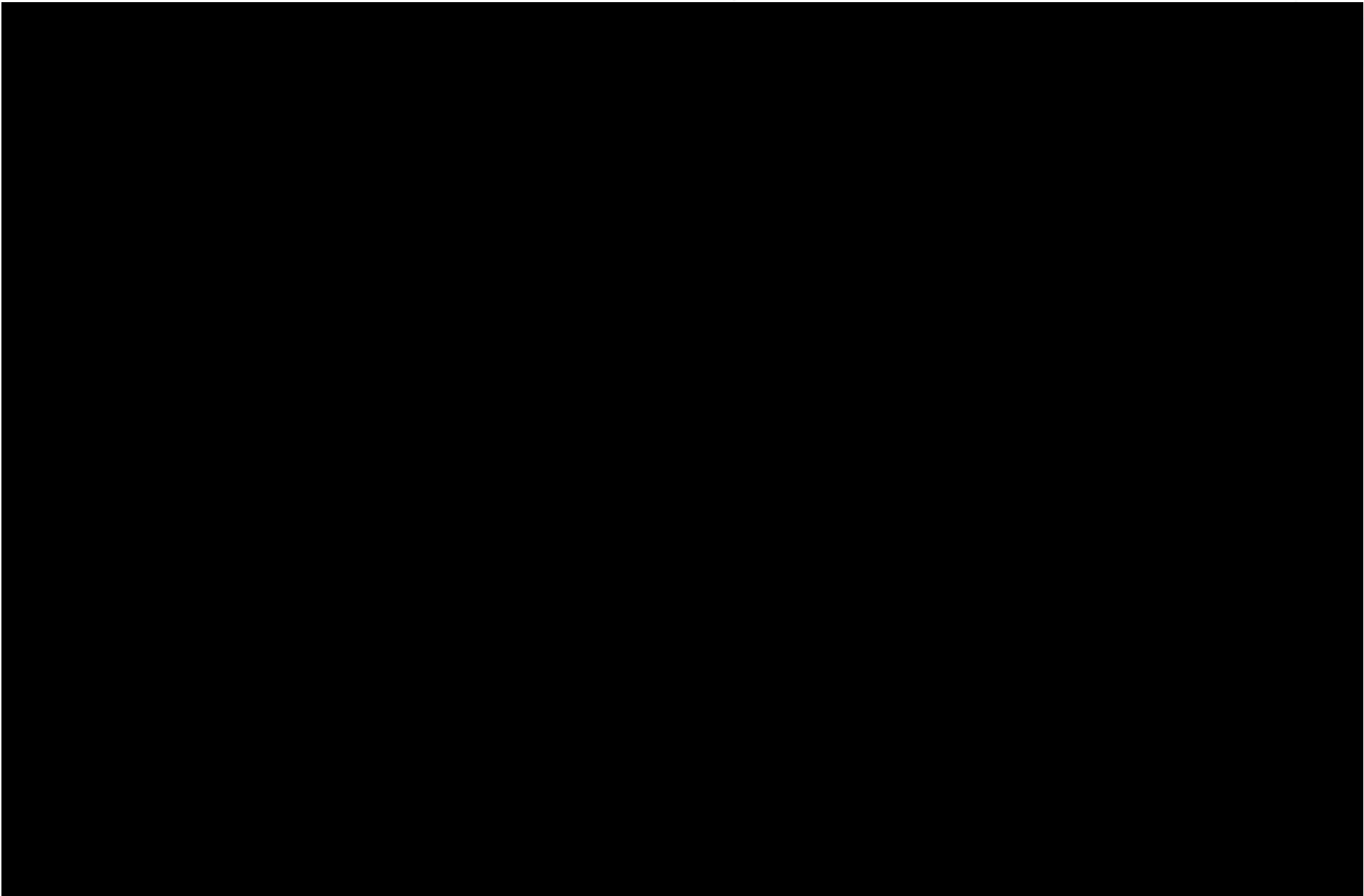


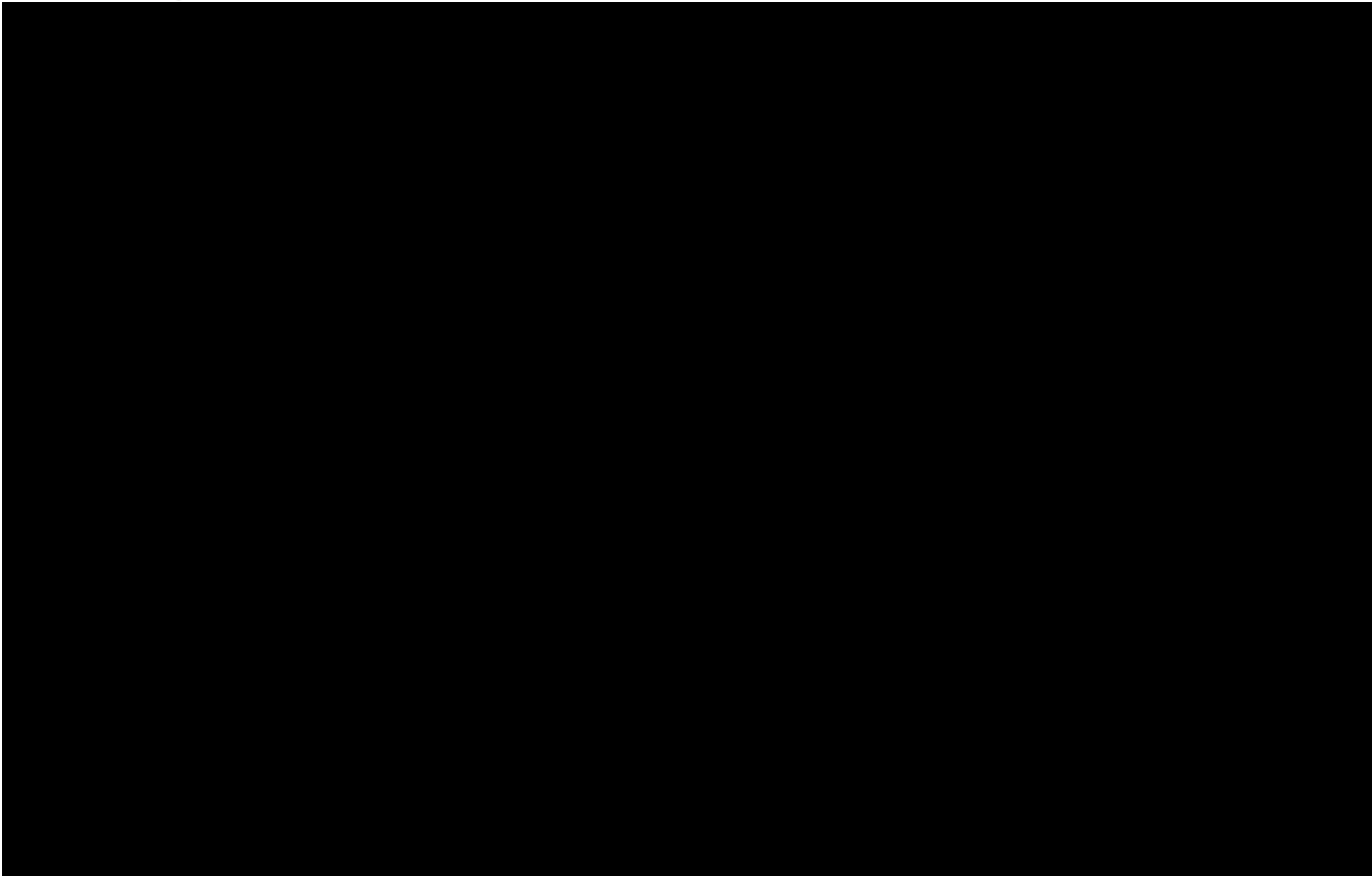


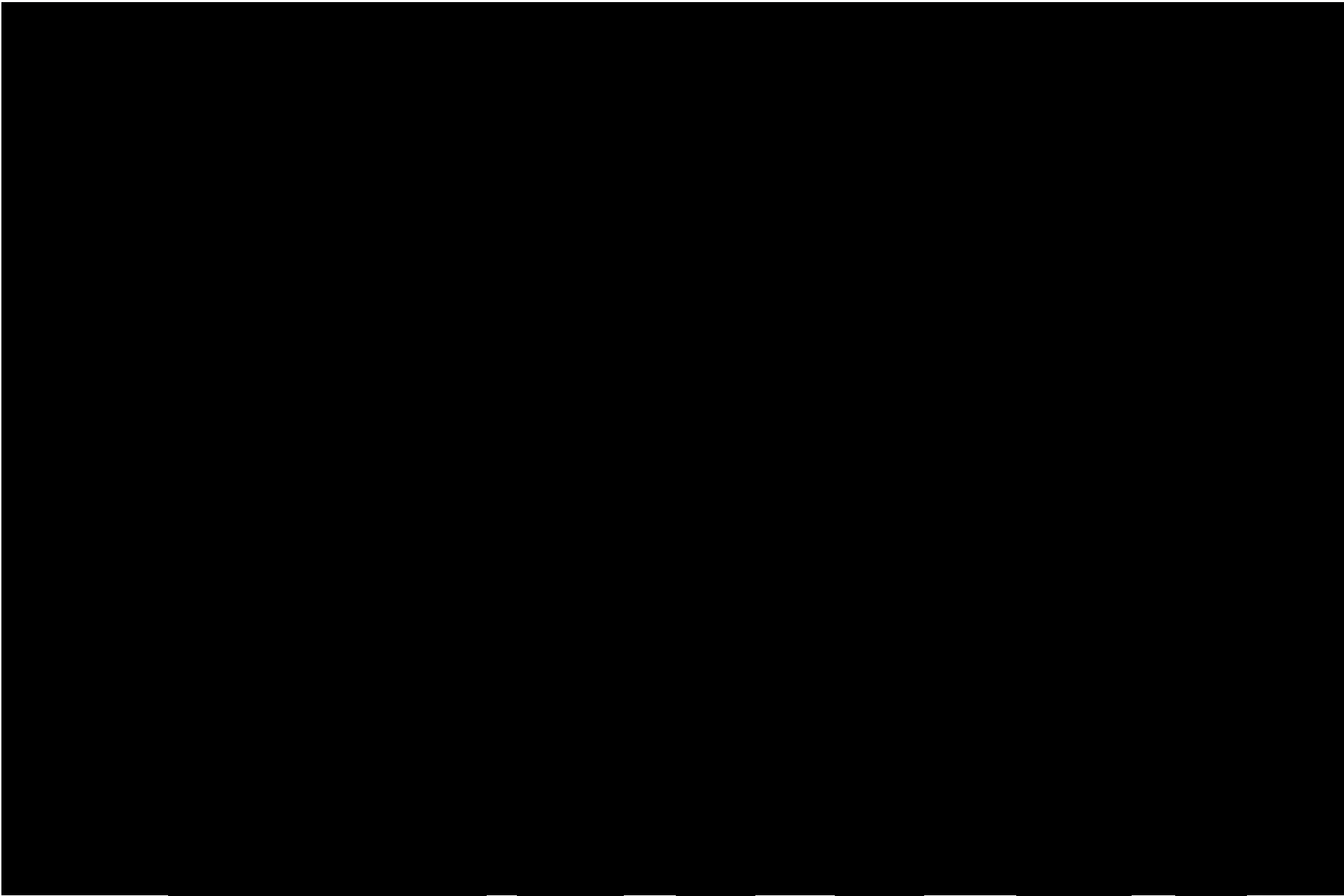


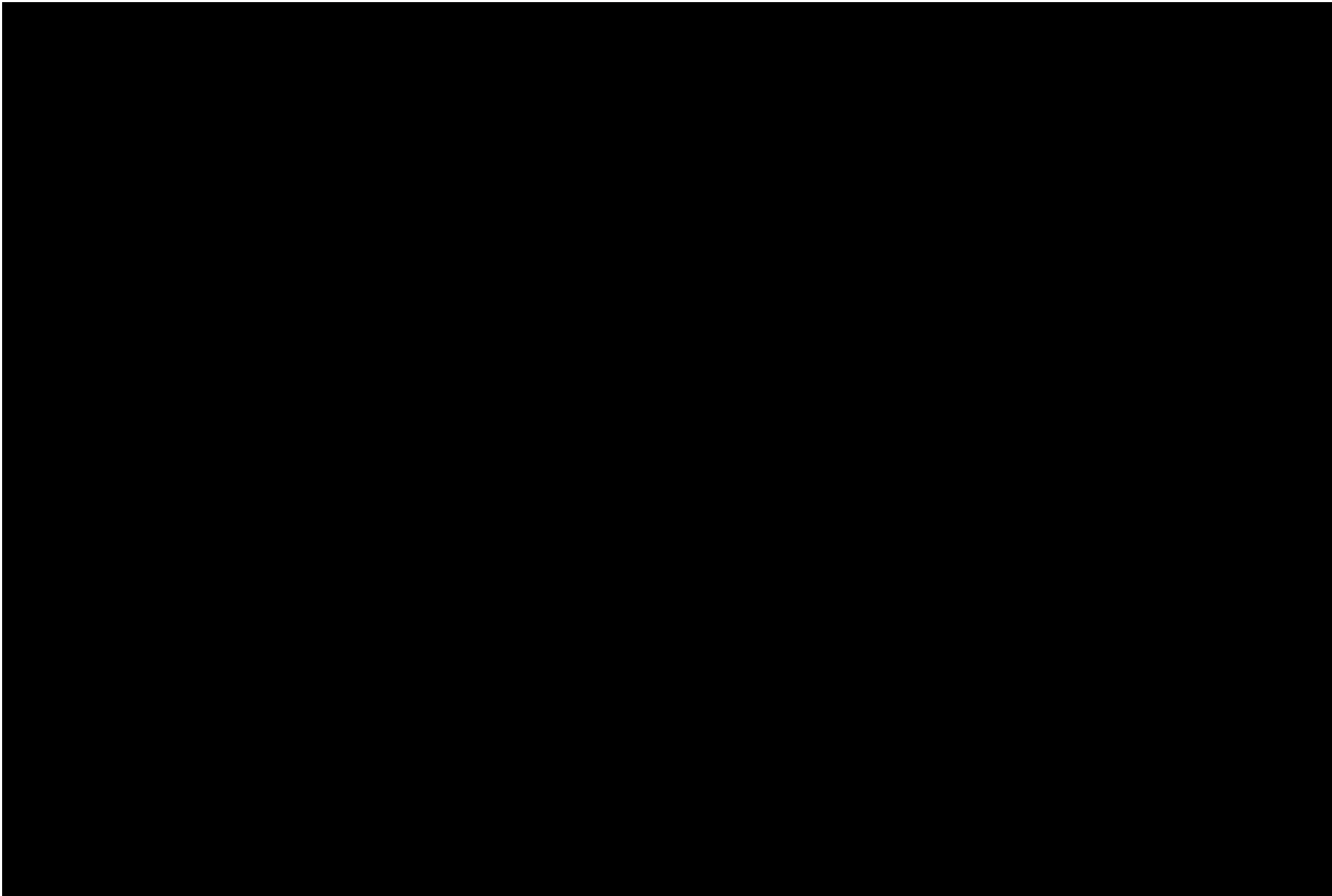


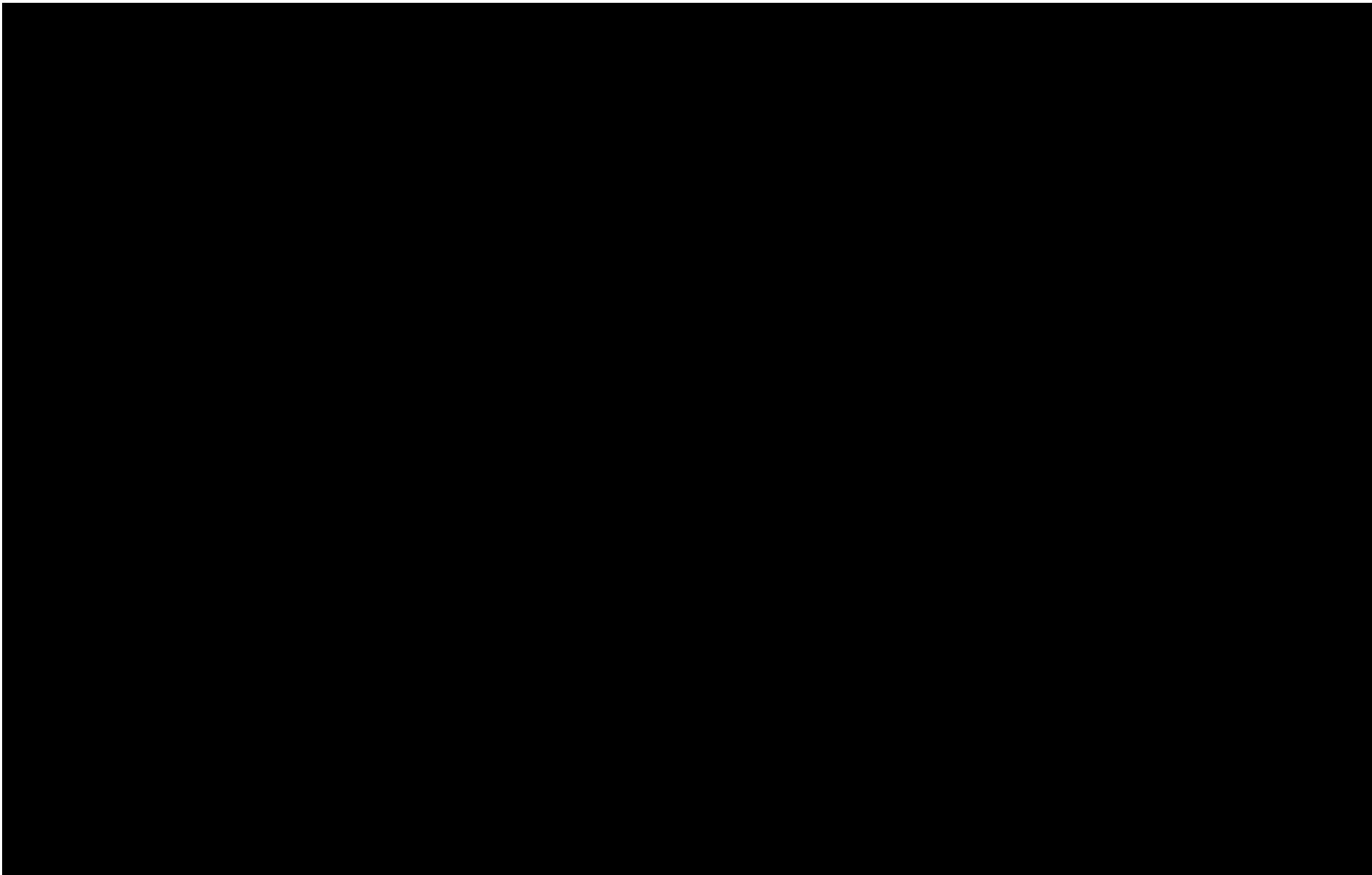


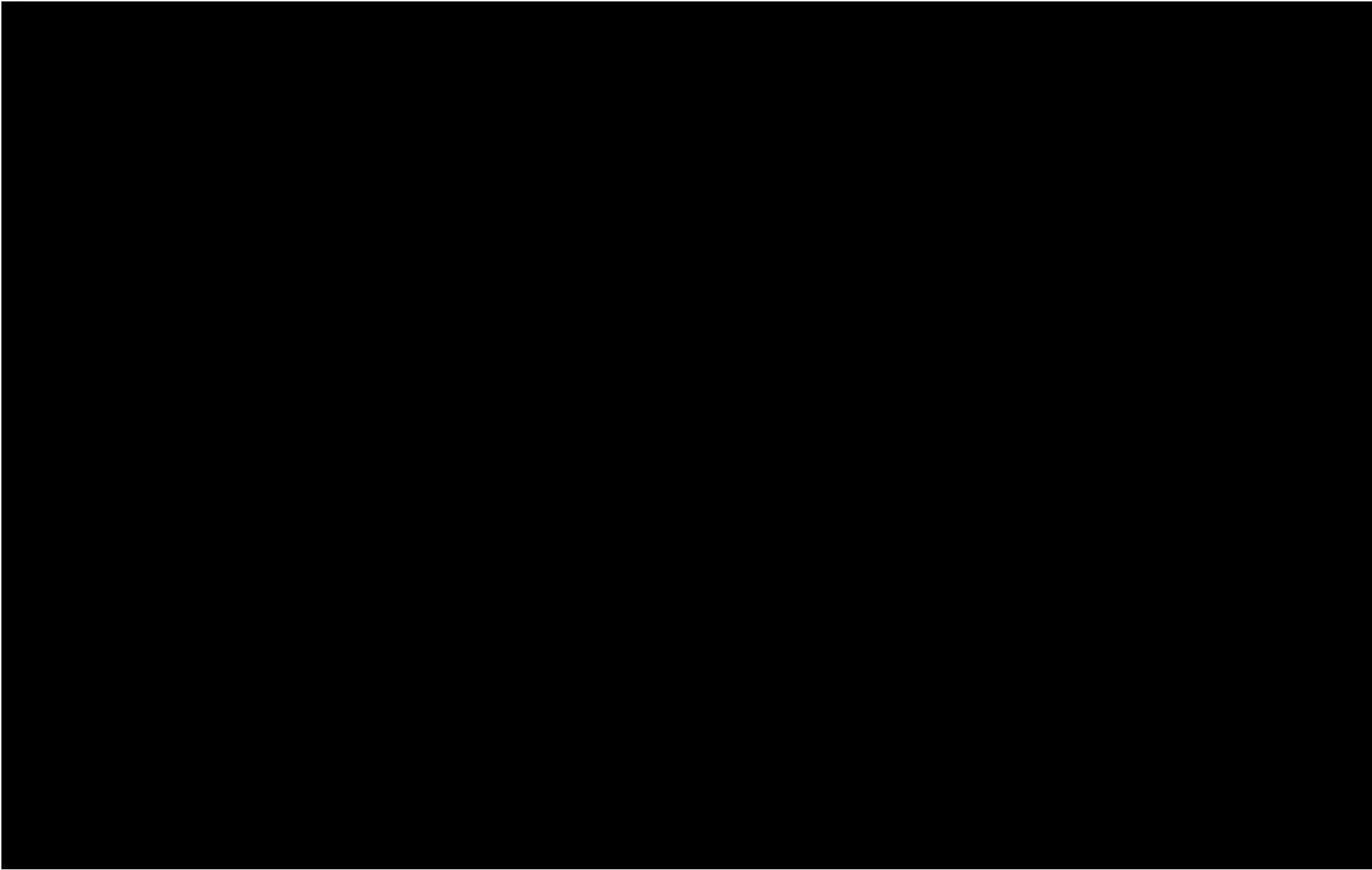




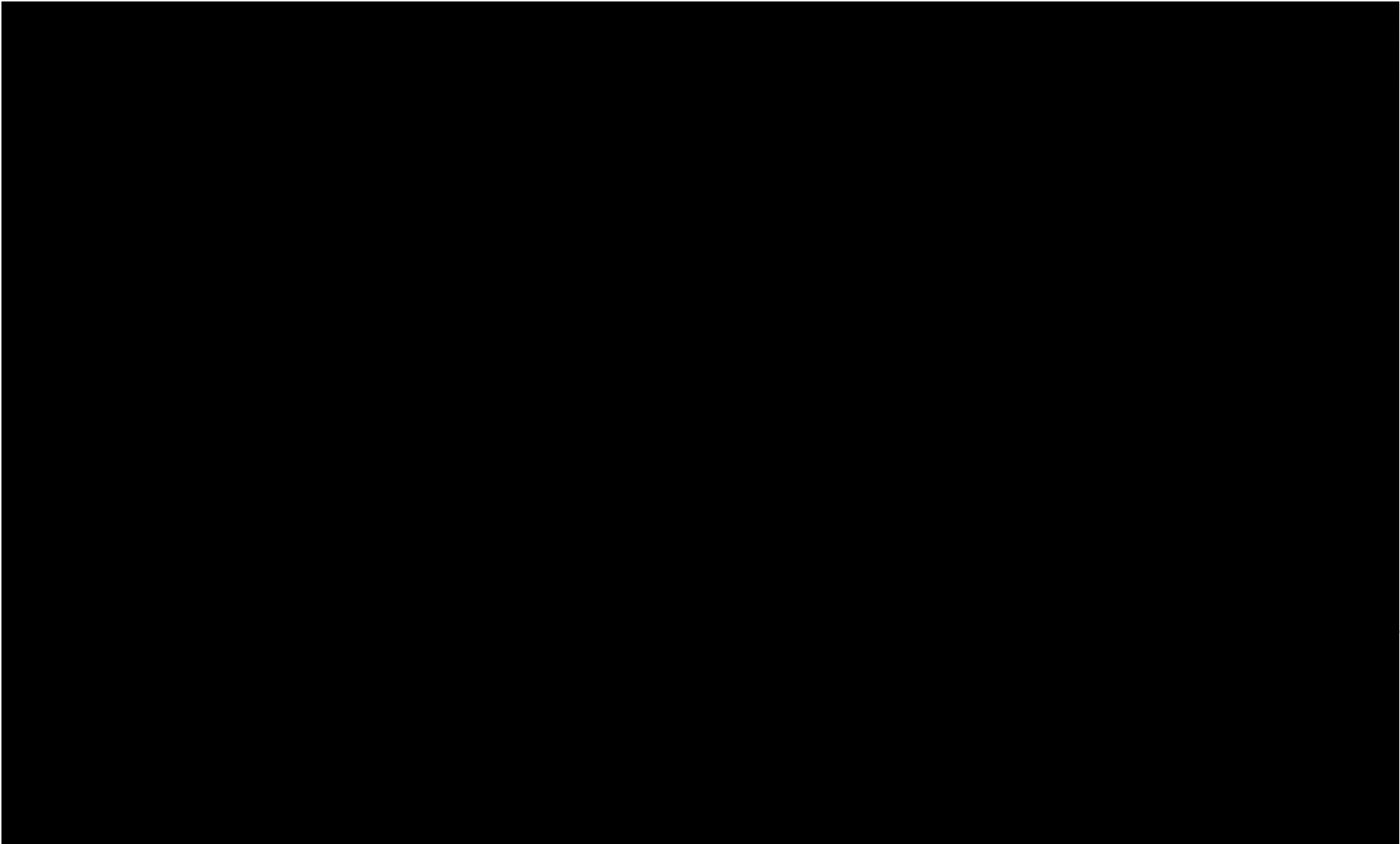


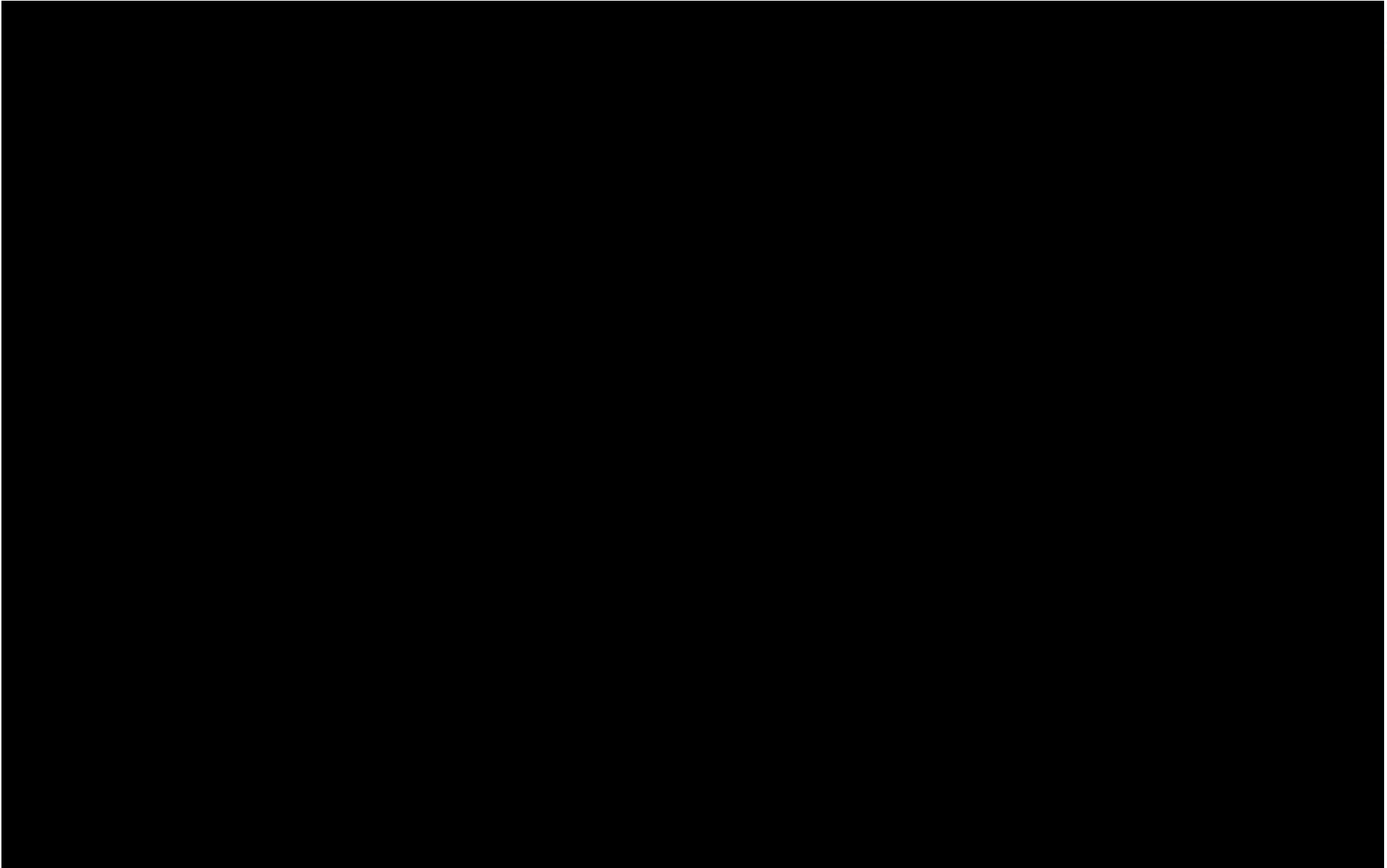




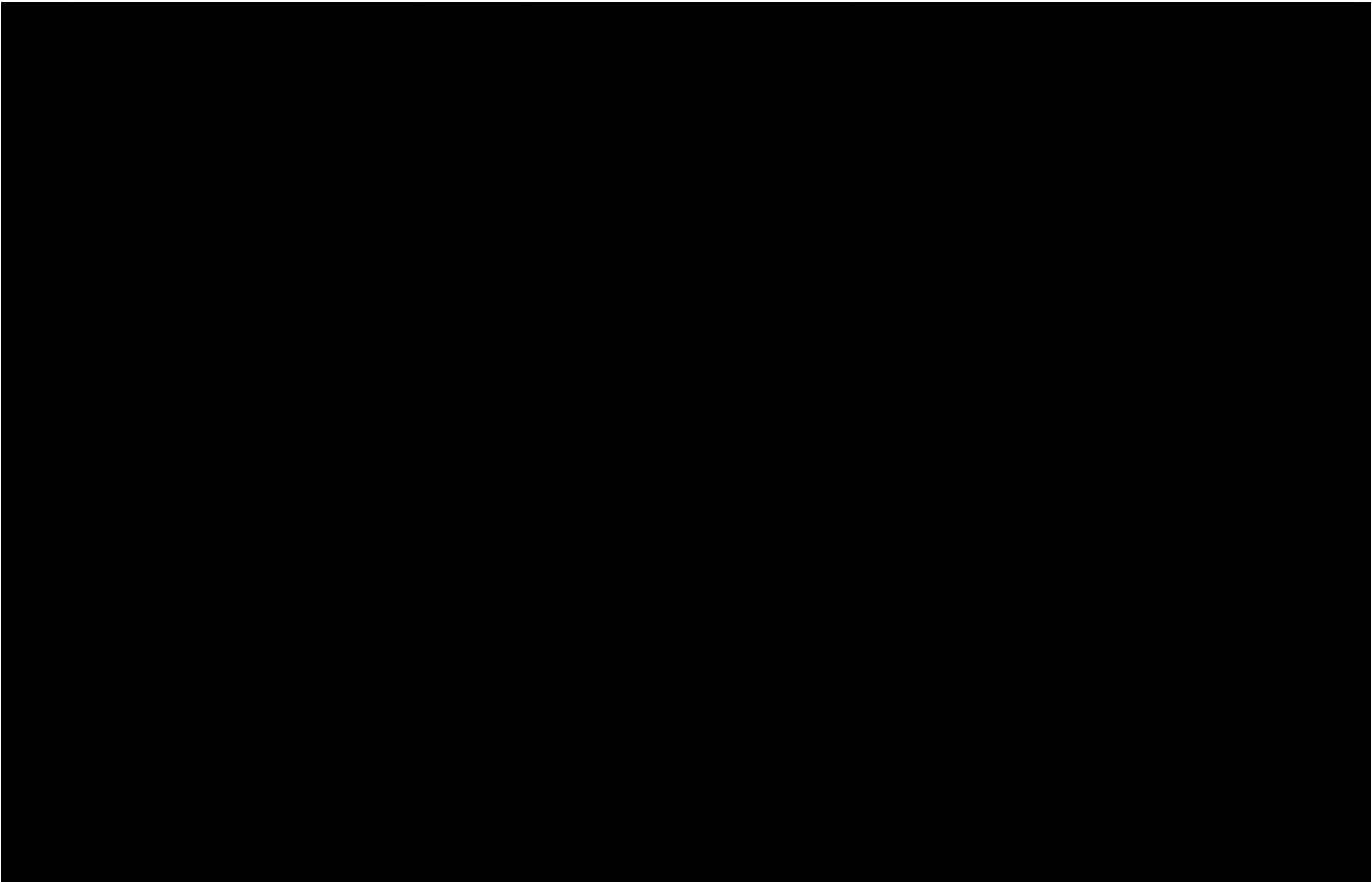


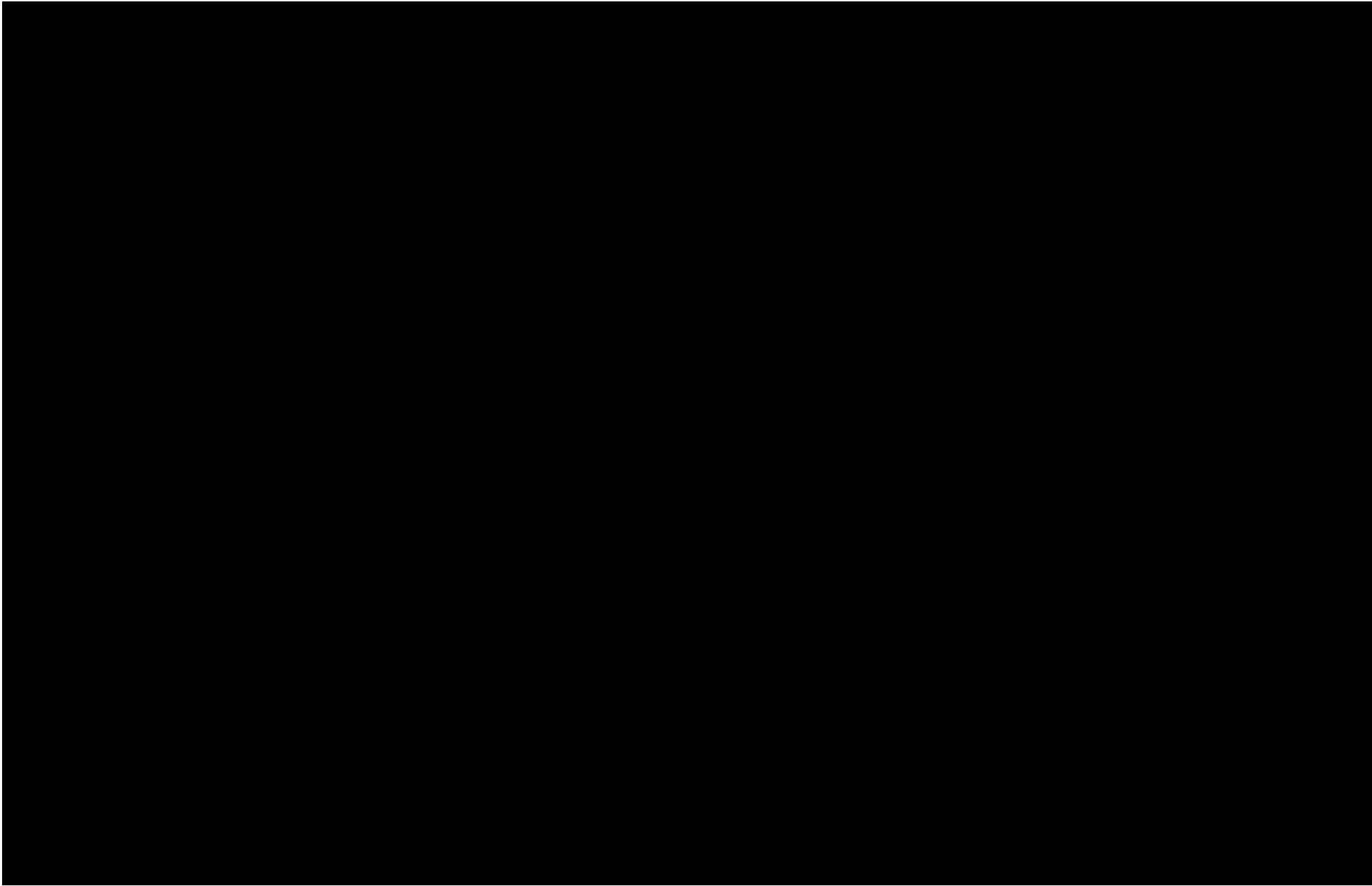


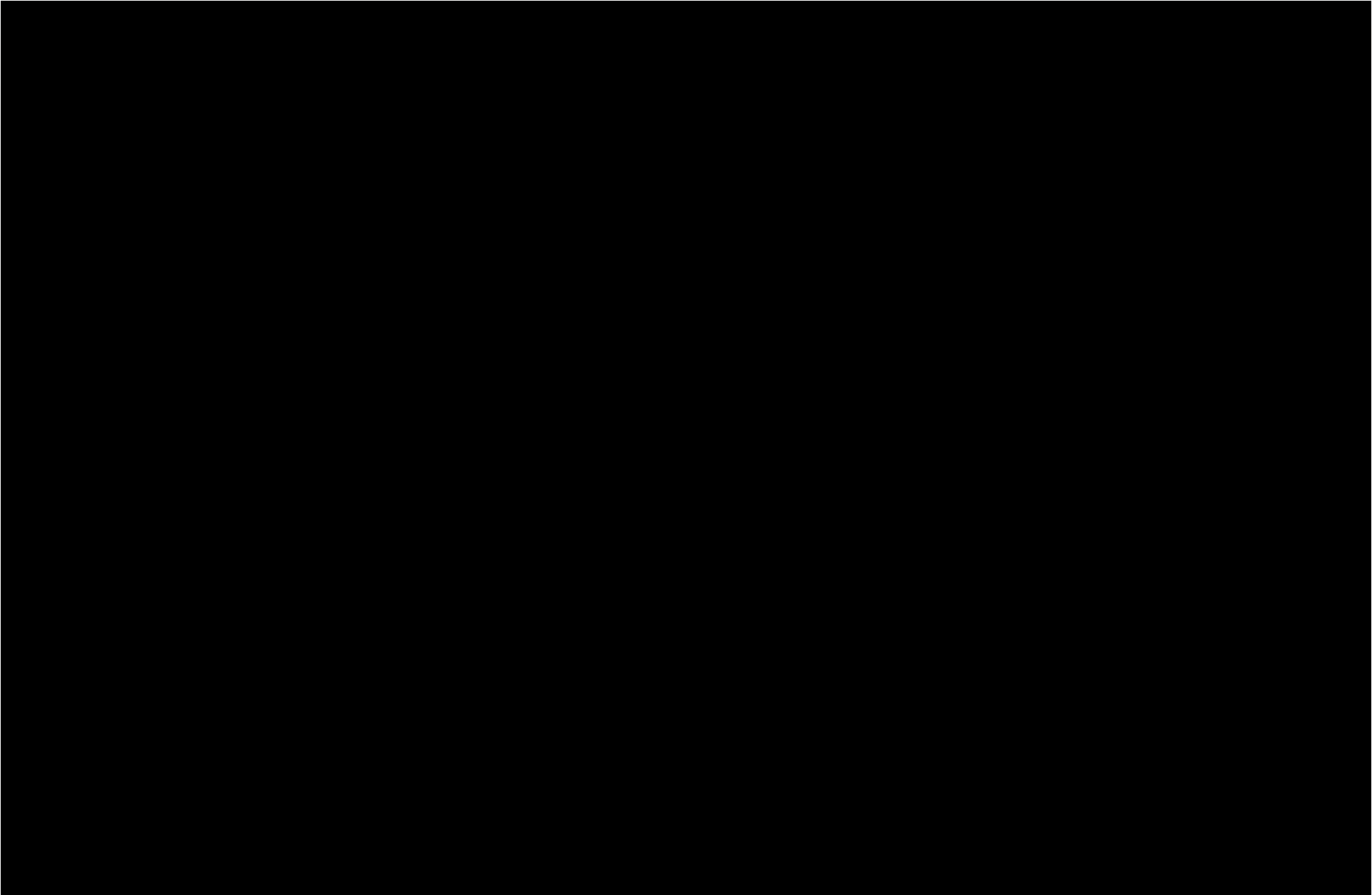


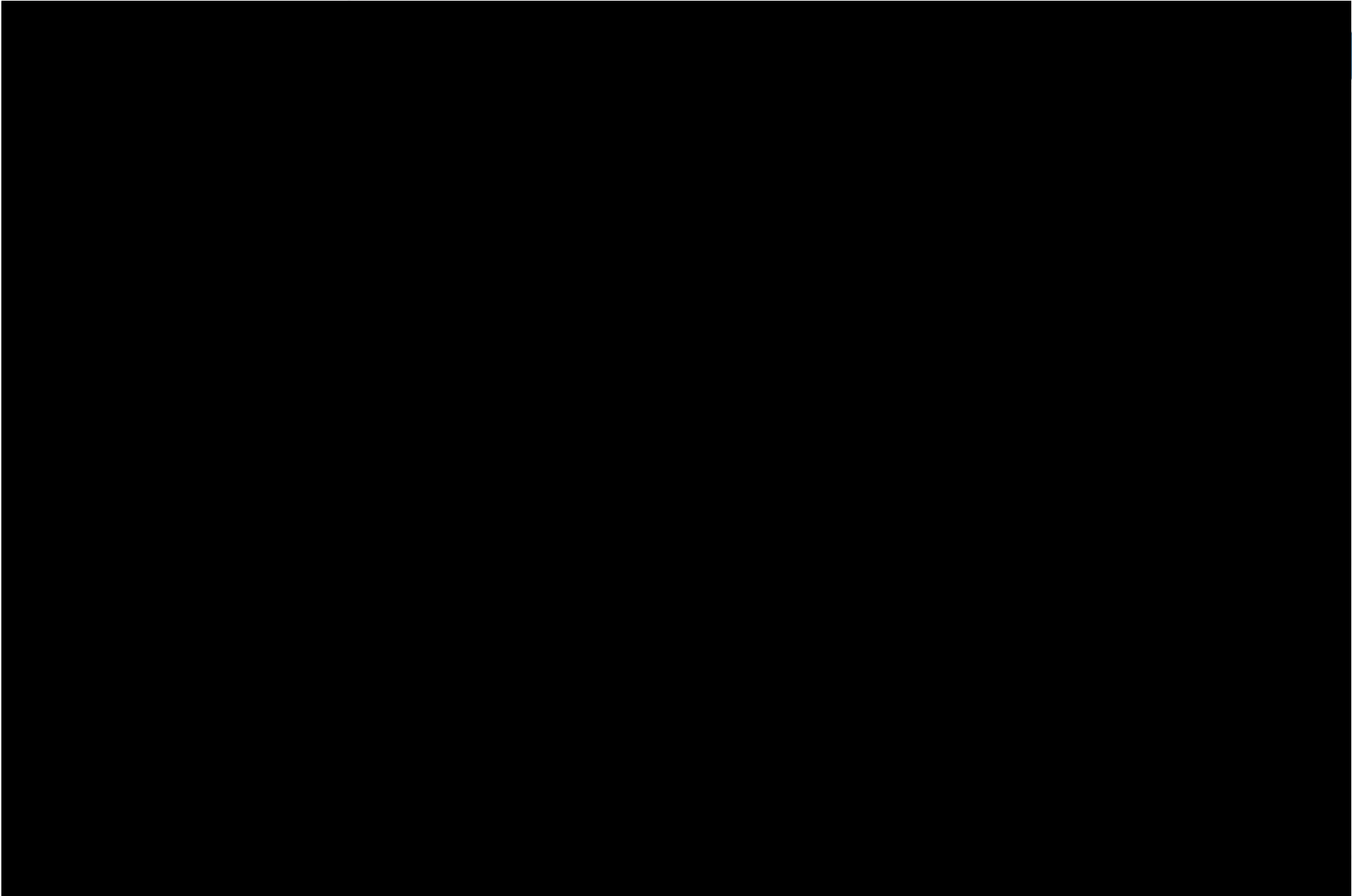


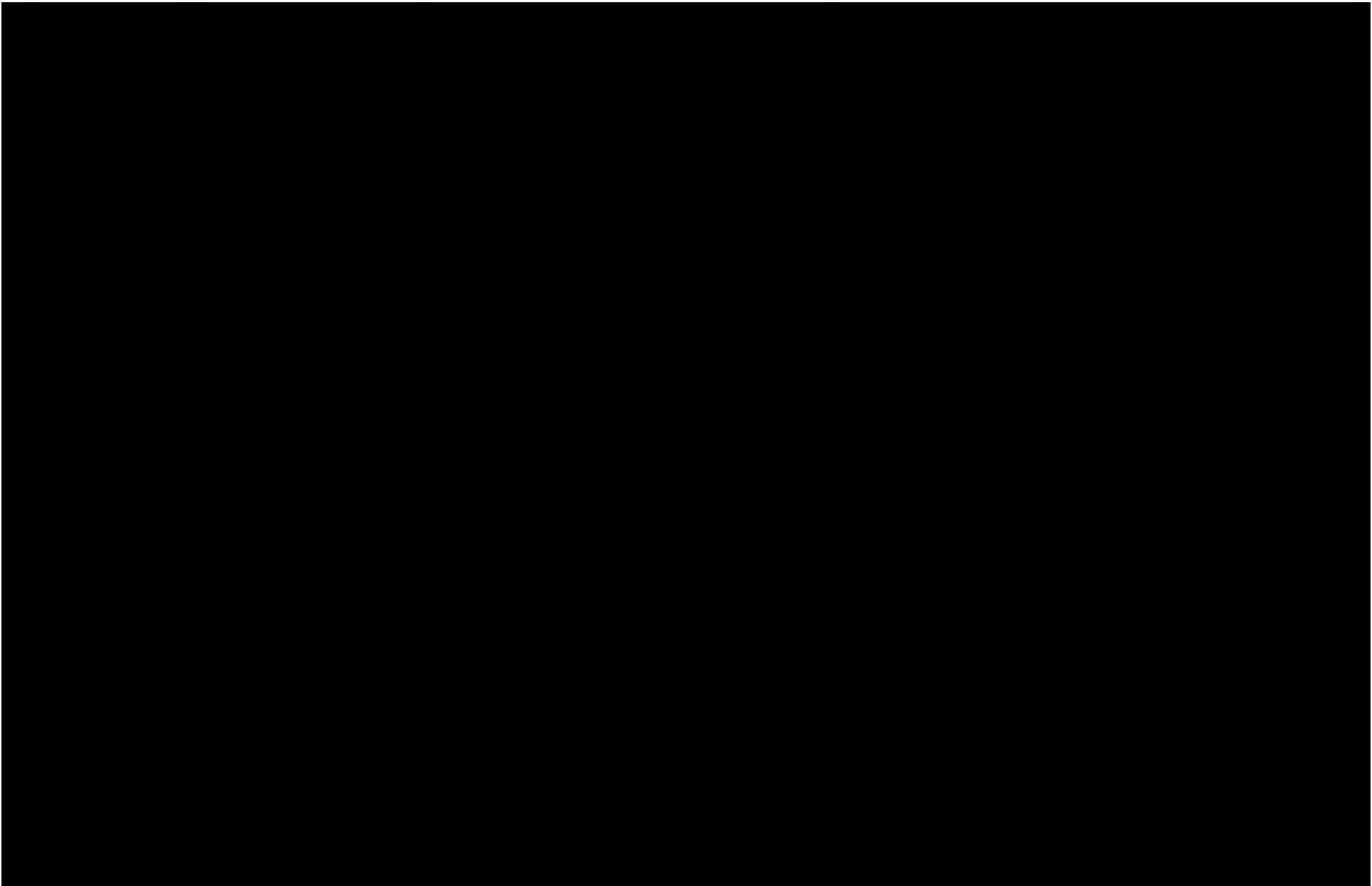


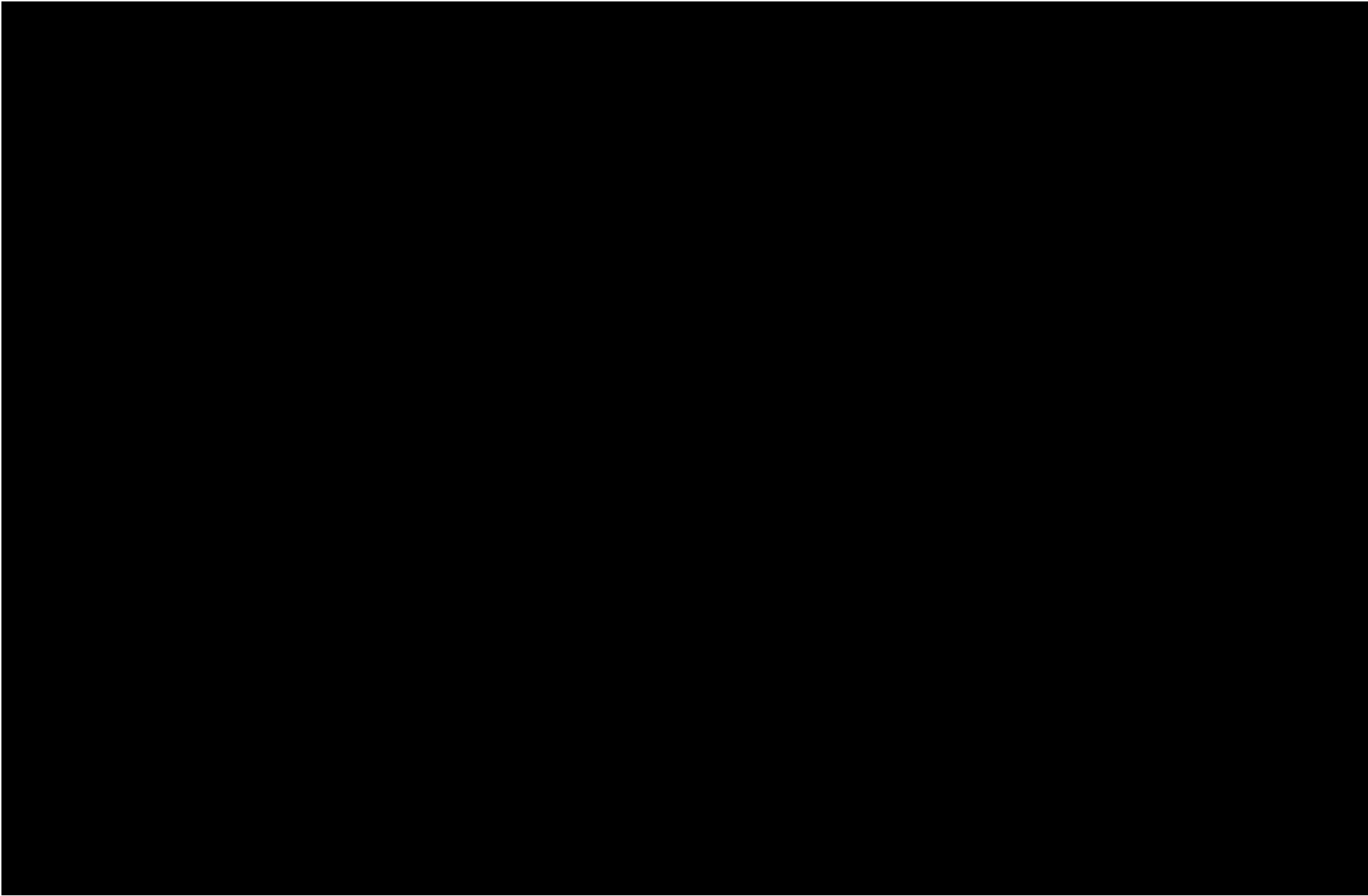


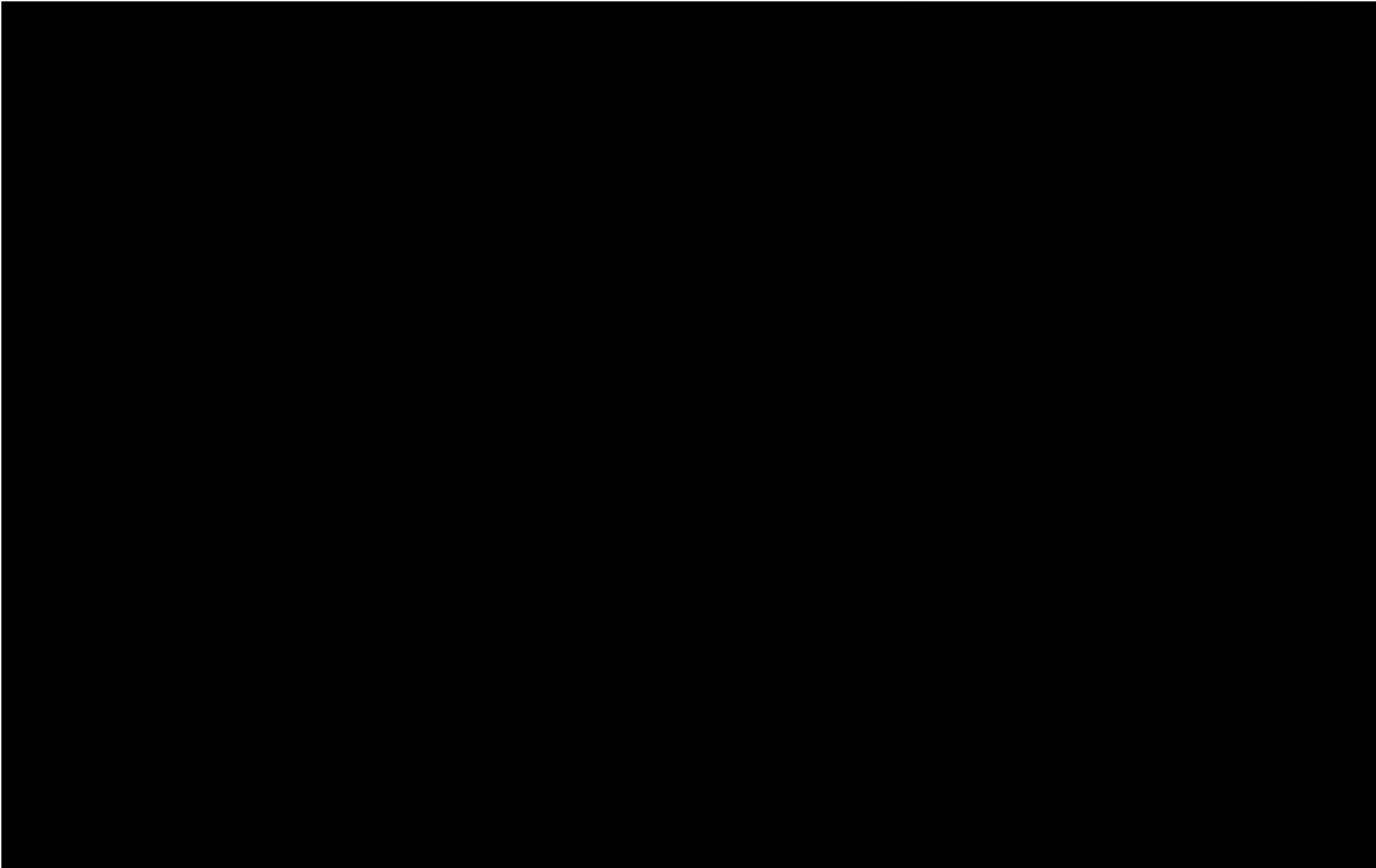


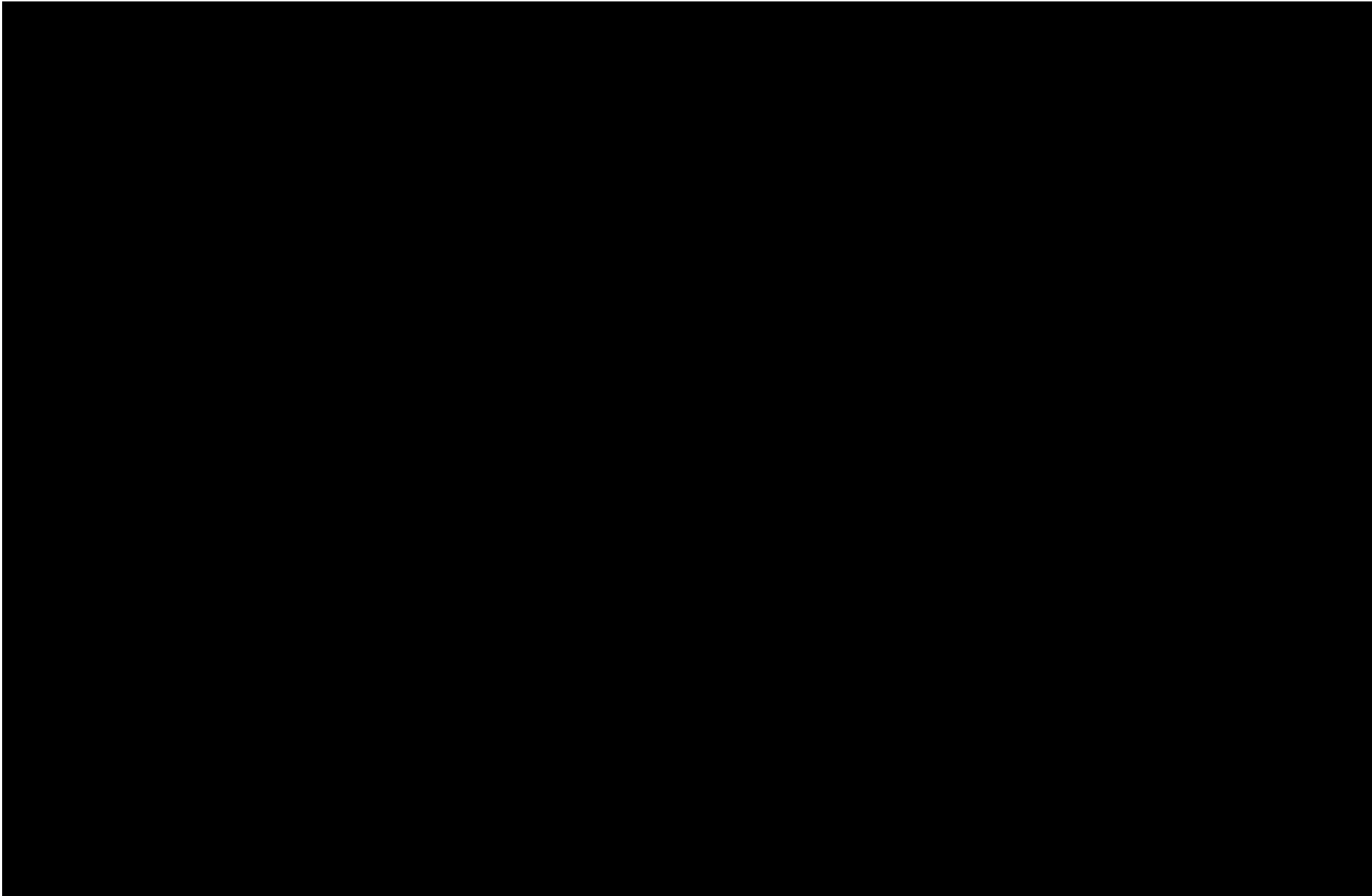


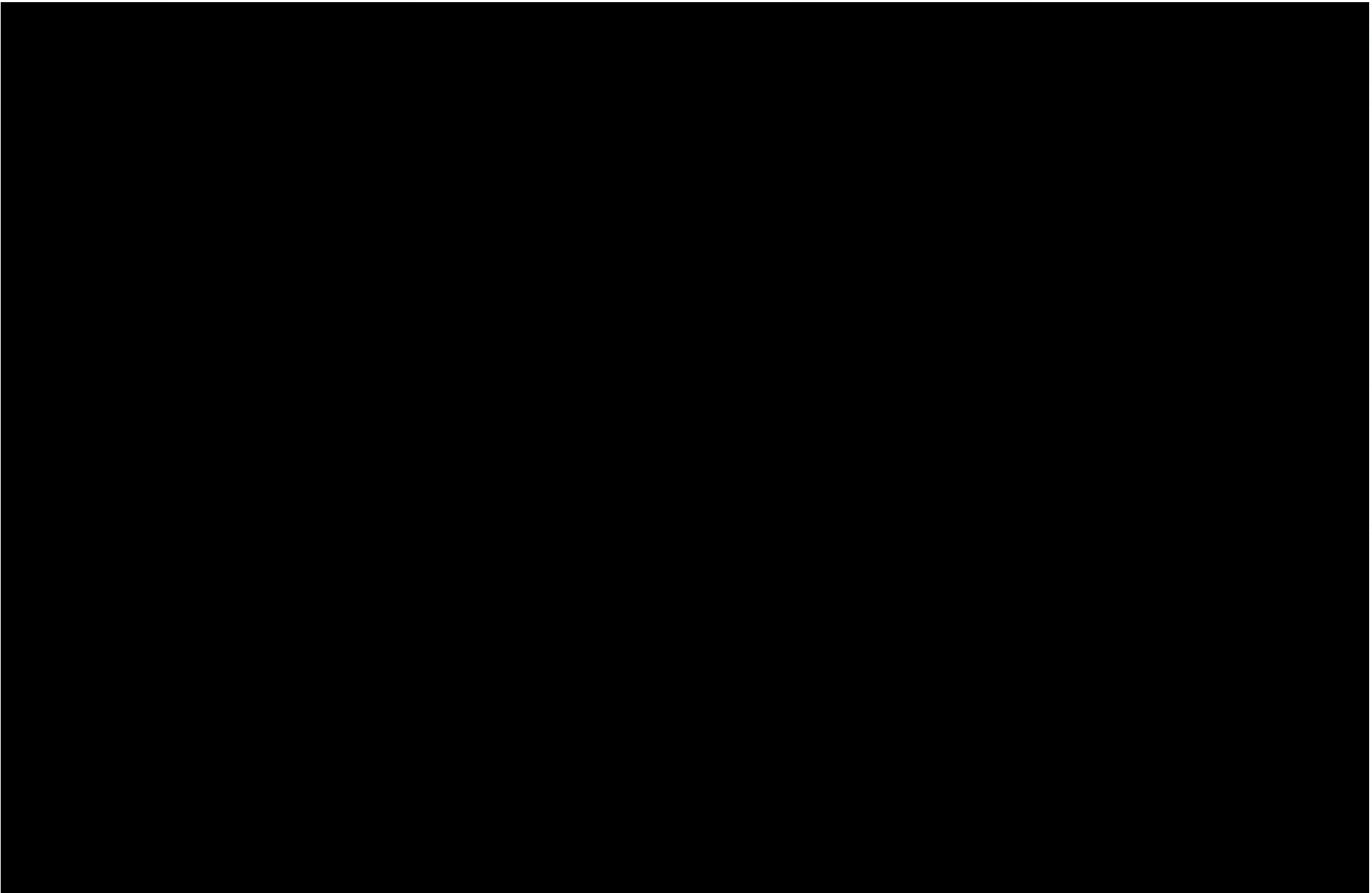


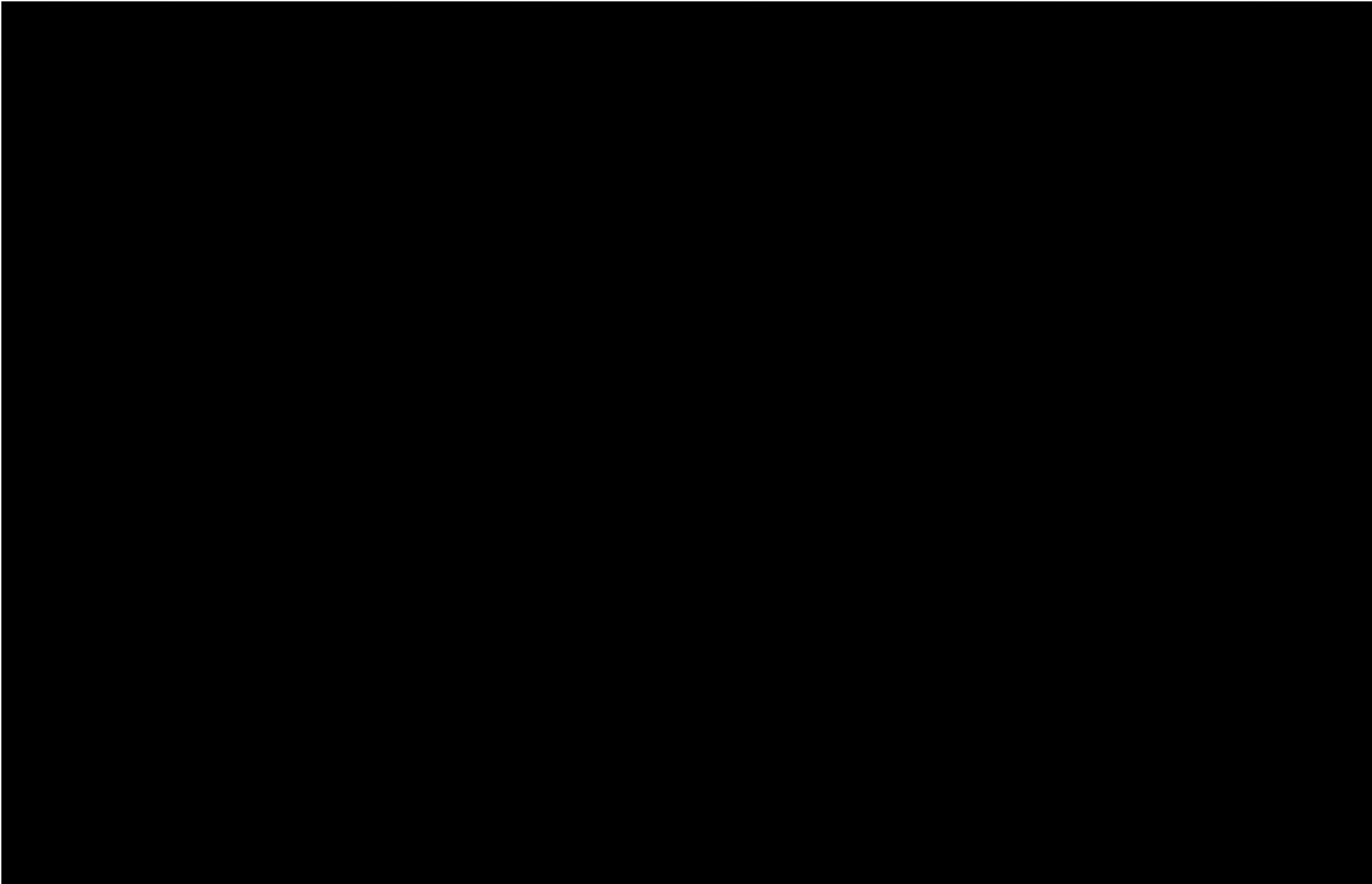


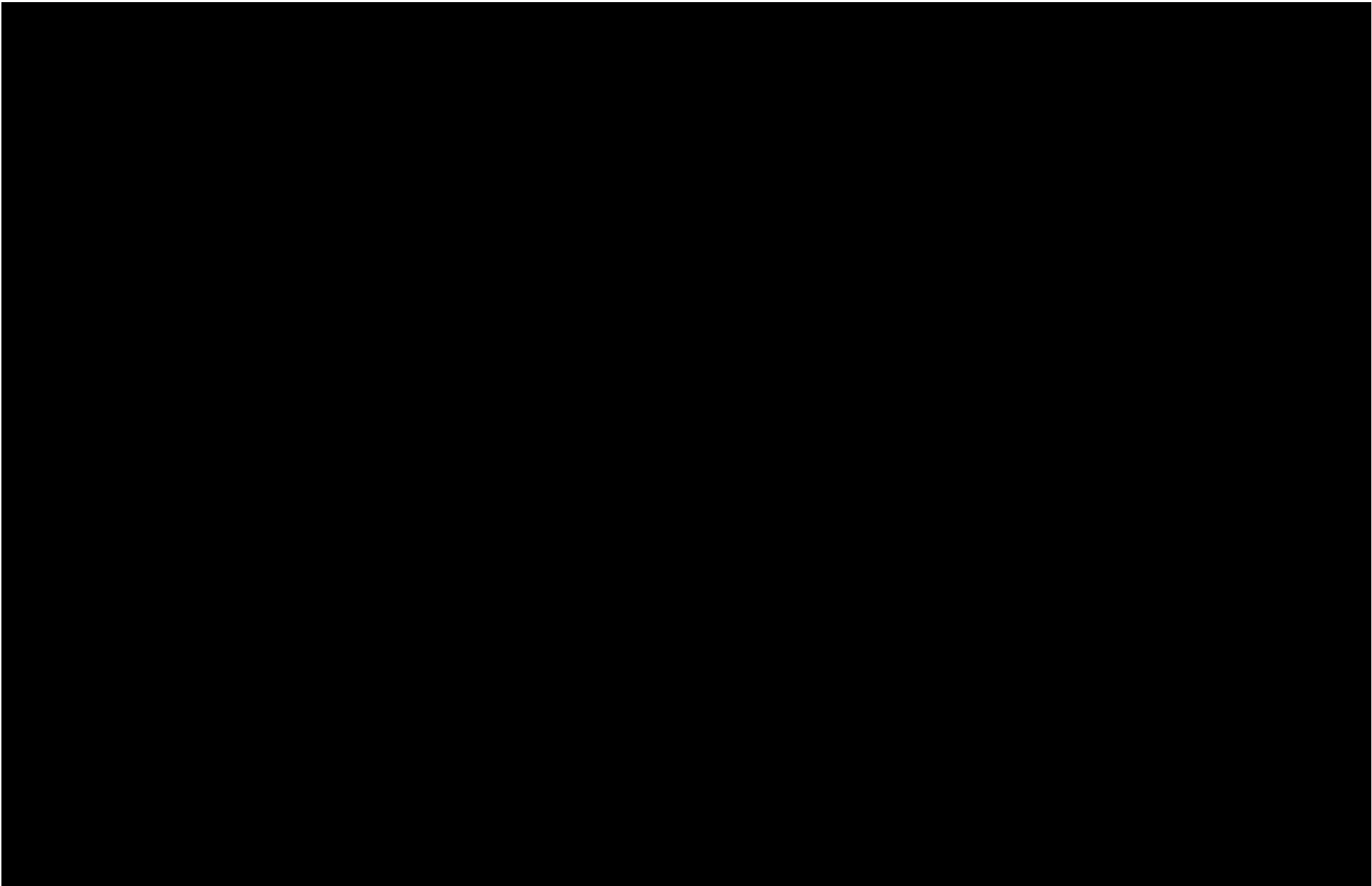


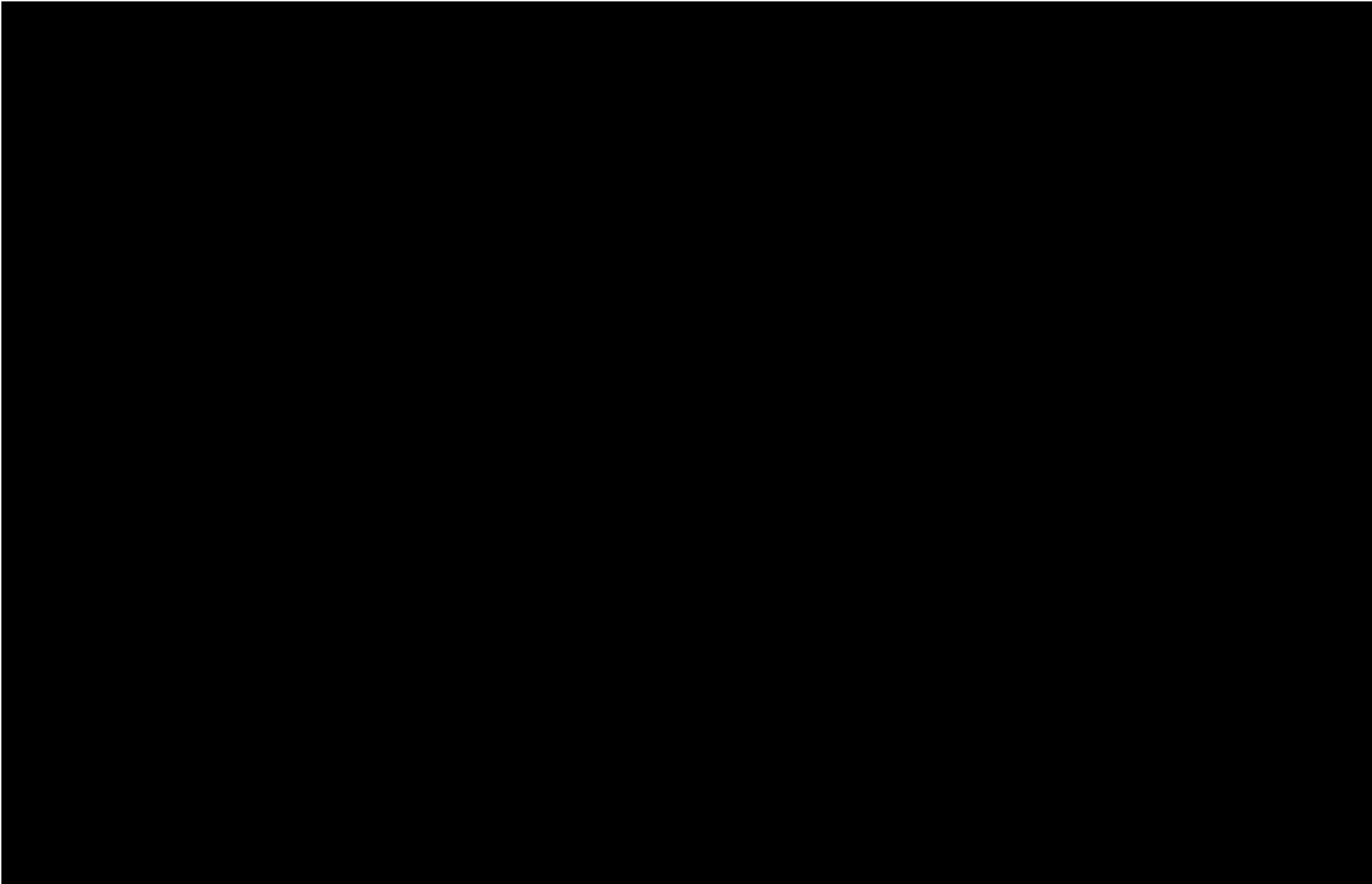


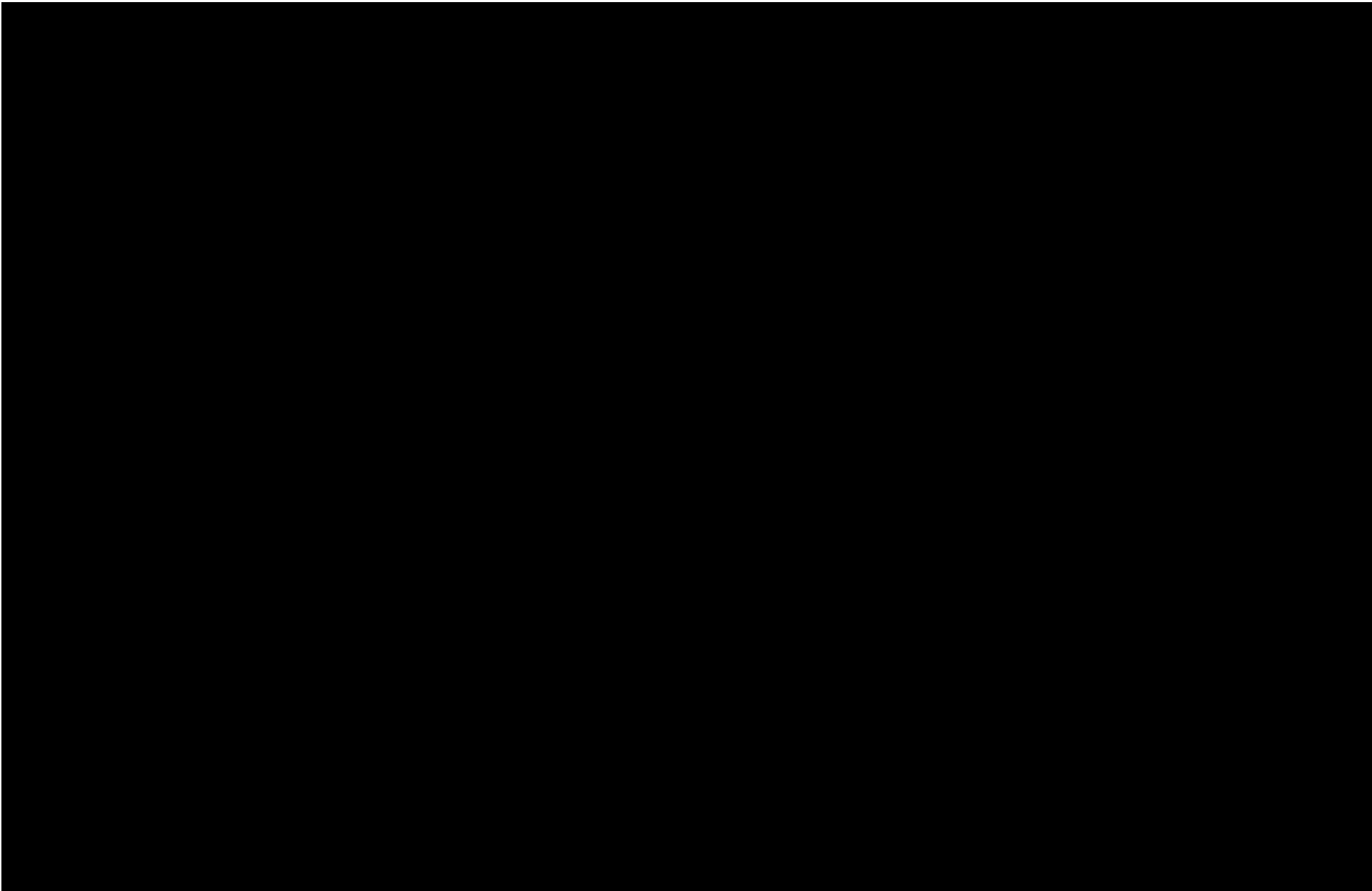






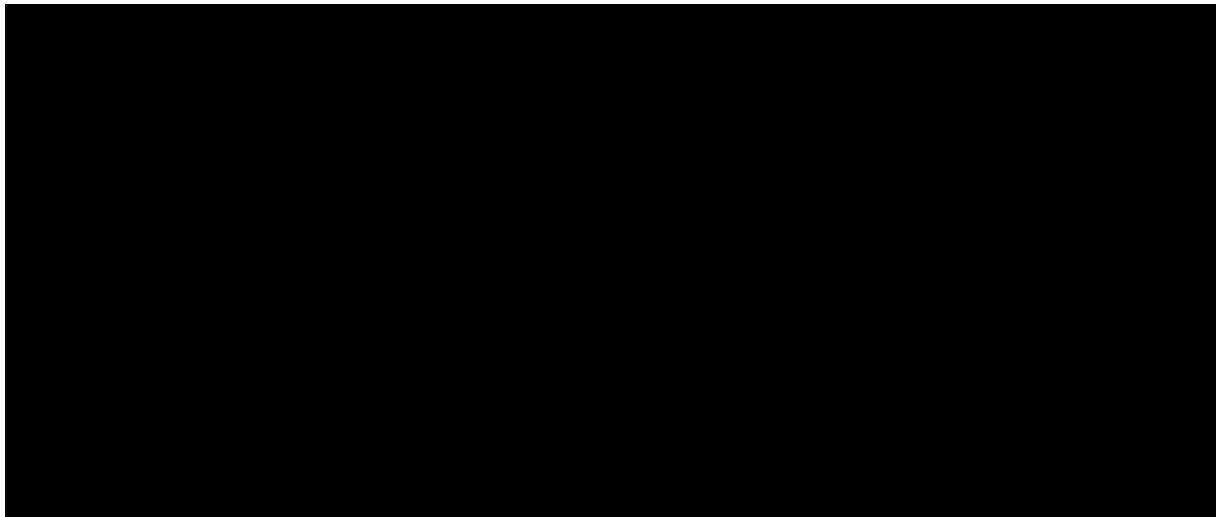






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## Operative



**4. Governing law and jurisdiction**

This deed poll will be construed in accordance with the law of the State of New South Wales and the Designer irrevocably submits to the jurisdiction of the Courts of that State.

## Schedule

*[Insert description of Design Work]*

**EXECUTED** as a deed poll.

**Executed by** [ ]  
in accordance with section 127(1) of the  
Corporations Act 2001 (Cth) by authority of its  
directors:

---

Signature of Director

Signature of Secretary/other Director

---

Name of Director in full

Name of Secretary/other Director in full

## Form of Warranty

(Clause 17.13(a))

This deed poll is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**To:** TRANSPORT FOR NSW, (ABN 18 804 239 602) of  
20-44 Ennis Road Milsons Point NSW 2061  
a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) ("**Principal**")

**By:** That person described in Item 1 of the Schedule  
("**Warrantor**" which expression will include its  
successors and assigns)

### Recitals

- A. The Warrantor has supplied the items described in Item 2 of the Schedule ("**Equipment**") to the person described in Item 3 of the Schedule ("**Contractor**") for the [*Insert project description*] ("**Project**") being carried out by the Contractor under the deed described in Item 4 of the Schedule ("**Deed**") with the Principal.
- B. It is a requirement imposed by the Principal that the Warrantor give the following warranties in favour of the Principal with respect to the Equipment.

## Operative

1. The Warrantor:
  - (a) warrants to the Principal that the Equipment will be to the quality and standard stipulated by the Deed and will be of merchantable quality and fit for the purpose for which it is required; and
  - (b) gives the warranty more particularly set out in Item 5 of the Schedule with respect to the Equipment.

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.
2. The Warrantor warrants to the Principal that it will replace so much of the Equipment as within the period described in Item 6 of the Schedule:
  - (a) is found to be of a lower quality or standard than that referred to in clause 1; or
  - (b) shows deterioration of such extent that in the opinion of the Principal the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.
3. The Warrantor covenants to the Principal that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.
4. The Warrantor acknowledges to the Principal that nothing contained in this Deed Poll is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.

## Schedule

*Item 1:*                    **Warrantor**  
                              [*Insert*  
                              *Warrantor's*  
                              *name*] [*Insert*  
                              *Warrantor's*  
                              *address*]

*Item 2:*                    **The Equipment**  
                              [*Insert details of the*  
                              *equipment*] (Recital  
                              A)

*Item 3:*                    **The Contractor**  
                              [*Insert Contractor's name*] (ABN [*Insert*  
                              *Contractor's ABN*]) [*Insert Contractor's address*]  
                              (Recital A)

*Item 4:*                    **Deed**  
                              The deed titled "[*Insert project*  
                              *deed title*] " (Recital A)

*Item 5:*                    **Detailed Warranty of Warrantor**  
                              [*Insert warranty with respect of the*  
                              *equipment*] (Clause 1)

*Item 6:*                    **Period of Years**  
                              [*Insert number of years*] years from the expiry of the  
                              last "Defects Correction Period" as defined in the Deed.  
                              (Clause 2)

**Executed** as a deed poll.

**Executed** by [ ]  
in accordance with section 127(1) of the  
Corporations Act 2001 (Cth)  
by authority of its directors:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

## Owner's Deed Poll

(Clauses 13.2(g) and 13.2(i))

---

**This deed poll is in favour of Transport for NSW.**

*Property Address:*                      *[Insert Property Address]*

- 
1.        I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:  
          *[Insert Description of Property Works]*
  2.        I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
  3.        I/We release Transport for NSW from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

**SIGNED** as a deed poll.

**Signed sealed and delivered by**

in the presence of:



\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Name of Witness in full

# Insurance Schedule

(Clauses 7.1(a), 7.5(a)(i), 7.5(a)(ii) and 23.2 (definition of "Approved Insurer"))

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
<b>Principal Arranged Insurance (TfNSW)</b>				
The drafts of the policies referred to below are provided in the icare policy documents. A copy of these is set out in Exhibit N (Insurance Policy Wording). Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
1A	Early Works – Material Damage	Early Works - Material Damage - as per policy in Exhibit N (Insurance Policy Wording)	Not later than 10 Business Days after the date of this deed until the Principal Arranged Insurance referred to in Item 1, 2 and 3 are effected  – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for material damage.
1B	Early Works – General liability	Early Works - General liability - as per policy in Exhibit N (Insurance Policy Wording)	Not later than 10 Business Days after the date of this deed until the Principal Arranged Insurance referred to in Item 1, 2 and 3 are effected  – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for general, products and environmental liability insurance.
1	Contract Works	Contract Works – as per policy in Exhibit N (Insurance Policy Wording)	Not later than 60 Business Days after the date of this deed and for the remaining duration of the Works  – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for contract works insurance. 
2	Public and Products Liability	Public and Products Liability \$  Each and every occurrence.	Not later than 60 Business Days after the date of this deed and until the Date of Completion – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of third party liability insurance.

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING

#### Contractor Arranged Insurances

4	Motor Vehicle Comprehensive or Third Party Property Damage effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 23	Refer to Schedule 1 (Contract Information) Item 23	<p>(a) Motor vehicles owned, leased or hired by the Contractor or Subcontractors directly or indirectly engaged, and used by anyone in connection with performance of the contract.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to the contract – all plant and equipment owned or used by the Contractor or Subcontractors directly or indirectly in the performance of the contract.</p> <p>(d) covering legal liability:</p> <ul style="list-style-type: none"> <li>For personal injury to, illness or death of, any person; and</li> <li>For damage to any real or personal property, arising out of the use by Principal or the Contractor of any registered motor vehicle in connection with the performance of the Project Works and Temporary Works, in accordance with all relevant Laws, and for not less than \$ [REDACTED] in respect of each and every occurrence.</li> </ul>
5	Workers Compensation effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 22	Refer to Schedule 1 (Contract Information) Item 22	As per State Workers Compensation legislation.

	<b>TYPES OF INSURANCES</b>	<b>MINIMUM SUM INSURED</b>	<b>PERIOD OF INSURANCE</b>	<b>INSURANCE COVER IS TO INCLUDE THE FOLLOWING</b>
6	Plant and equipment insurance	Refer to Schedule 1 (Contract Information) Item 27	Refer to Schedule 1 (Contract Information) Item 27	
7	Compulsory Third Party (CTP) insurance.	Refer to Schedule 1 (Contract Information) Item 30	Refer to Schedule 1 (Contract Information) Item 30	Compulsory Third Party (CTP) insurance.

## Definitions and Notes

1. Approved Insurer means:
  - (a) the NSW Self Insurance Corporation (ABN 97 369 689 650); or
  - (b) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia with a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, or an equivalent rating with another reputable rating agency.

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer listed in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit of the policy.
4. All insurances required to be effected by the Contractor which name more than one insured, must include a waiver and cross liability clause in which the insurer agrees:
  - (a) to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the insured;
  - (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result); and
  - (c) that any non-disclosure, breach of any duty or act or omission by one insured does not prejudice the right of any other insured to claim under any insurance.

## Key Plant and Equipment

\_\_\_\_\_

[illegible]

## Dispute Resolution Procedure

(Clauses 3.10, 20, 22.25 and 23.2 (definitions of "Dispute Resolution Procedure" and "Notice of Dispute"))

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### 1. NOTICE OF DISPUTE

Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (a) that it is a notice of Dispute under this clause 1 of this Schedule 38 (Dispute Resolution Procedure);
  - (b) the Dispute;
  - (c) particulars of the Dispute; and
  - (d) the position which the party believes is correct,
- (Notice of Dispute).

### 2. SENIOR NEGOTIATION

- (a) If a Notice of Dispute is served, the persons holding the position of senior representative of the Principal (on the one hand) and senior representative of the Contractor (on the other hand) or their nominees (the **Representatives**) must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the **Negotiation**).
- (b) Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.
- (c) Any agreement reached at the Negotiation must be in writing and signed by both parties.

## 2A. REFERRAL TO DISPUTE AVOIDANCE BOARD OR EXPERT DETERMINATION

- (a) If the Dispute has not been resolved within 10 Business Days of the delivery of a Notice of Dispute by a party (or such longer period of time as the Representatives or the parties may have agreed in writing), then the Principal must elect to refer the Dispute to either:
  - (i) the Dispute Avoidance Board in accordance with clause 3.1; or
  - (ii) expert determination in accordance with clause 3A.
- (b) If the Principal fails to elect to refer the Dispute to either the Dispute Avoidance Board or expert determination within 20 Business Days of a Notice of Dispute, the Dispute will be automatically referred to the Dispute Avoidance Board in accordance with clause 3.1.

### 3. DISPUTE AVOIDANCE BOARD

#### 3.1 Reference to Dispute Avoidance Board

- (a) If the Principal has elected to refer the Dispute to the Dispute Avoidance Board in accordance with clause 2A(a)(i) or the Dispute has been automatically referred to the Dispute Avoidance Board in accordance with clause 2A(b) then:
  - (i) the Principal (or if the Dispute is automatically referred to the Dispute Avoidance Board, the party who served the Notice of Dispute) (**Referring Party**) must, as a condition precedent to the right to refer the dispute (or have the Dispute automatically referred to the Dispute Avoidance Board), notify the other party to this deed (**Other Party**) that it intends to refer the dispute or that the dispute has been automatically referred to the Dispute Avoidance Board and provide the Other Party with a proposed 'Notice of Referral to DAB';
  - (ii) upon receipt of a notice under clause 3.1(a)(i), the Other Party may, within 2 Business Days, notify the Referring Party whether it wishes to submit a response to the Notice of Referral to DAB to the Dispute Avoidance Board at the same

- time as the Notice of Referral to DAB is delivered to the Dispute Avoidance Board;
- (iii) if the Other Party delivers a notice under clause 3.1(a)(ii) the Referring Party may not refer the dispute to the Dispute Avoidance Board until the earlier of:
    - (A) 5 Business Days of its receipt of the notice given under clause 3.1(a)(ii); and
    - (B) 1 Business Day after it receives a notice from the Other Party that it may proceed with the referral.
  - (b) If a Referring Party wishes to amend the proposed Notice of Referral to DAB given under clause 3.1(a)(i) prior to the actual referral, it must re-commence the process in this clause.
  - (c) Provided that the Referring Party has complied with clauses 3.1(a) and 3.1(b), the Referring Party may by notice in writing delivered to the Other Party, the Principal's Representative and the Dispute Avoidance Board refer the Dispute to the Dispute Avoidance Board (**Notice of Referral to DAB**).
  - (d) The Notice of Referral to DAB must include a copy of the Notice of Dispute.
  - (e) The Notice of Referral to DAB may include a joint submission by the claiming party and non claiming parties setting out:
    - (i) the relevant documents;
    - (ii) a joint summary of facts;
    - (iii) any matters that are agreed;
    - (iv) the main areas of disagreement; and
    - (v) a summary of the non claiming party's response to the claiming party's submission.
  - (f) The Notice of Referral to DAB may not contain, and the claiming party may not rely on or make, a Claim in the referral to the Dispute Avoidance Board in respect of any matter that is not contained in the Notice of Dispute.

### 3.2 Obtaining Dispute Avoidance Board's Decision

- (a) In performing its functions the Dispute Avoidance Board must comply with this Deed and the DAB Agreement.
- (b) If a Dispute is referred to the Dispute Avoidance Board under this clause 3, the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the Dispute Avoidance Board.
- (c) The determination of a dispute by the Dispute Avoidance Board must be made in accordance with the DAB Agreement, including the rules in Attachment 2 of Schedule 39 or such other rules that may otherwise be agreed between the parties.
- (d) Both parties must promptly make available to the Dispute Avoidance Board:
  - (i) relevant correspondence reports, minutes of meetings, programs and other materials produced as part of the Project; and
  - (ii) all such additional information, access to the Site, and appropriate facilities, as the Dispute Avoidance Board may require for the purposes of making a determination of the Dispute.
- (e) The Dispute Avoidance Board will be deemed to be not acting as an arbitrator.
- (f) Notwithstanding anything else, to the extent permitted by Law, the Dispute Avoidance Board will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (g) Within 60 Business Days after receiving a Notice of Referral to DAB under this clause 3.2 or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its determination, together with its reasons, in writing, and must state that it is given under this clause.

- (h) The determination will be binding on both parties, who must give effect to it unless and until it is revised in a settlement, an arbitral award made in an arbitration (following a referral to arbitration pursuant to this clause), or a judgment of a court (following a commencement of litigation pursuant to this clause).
- (i) If either party is dissatisfied with the Dispute Avoidance Board's determination then either party may within 10 Business Days after receiving the determination give notice to the other party of its dissatisfaction in accordance with clause 3B (**Notice of Dissatisfaction**).
- (j) If the Dispute Avoidance Board fails to give its determination within the period of 60 Business Days (or as otherwise approved) after receiving a Notice of Referral to DAB (**Determination Period**), then the Dispute will be automatically referred to litigation or arbitration in accordance with clause 4.

### **3A Expert Determination**

- (a) If the Principal has elected to refer the Dispute to expert determination in accordance with clause 2A(a)(ii), the Dispute will be determined in accordance with this section 3A and the Resolution Institute Expert Determination Rules (2016 Edition), as modified by clause 3A(b) and Appendix A to this Schedule 38.
- (b) Unless the Principal and the Contractor agree on the identity of the Expert within 15 Business Days of the Principal's election to refer the Dispute to expert determination (or such longer period agreed between the Principal and the Contractor), the Expert will be nominated by the President of the New South Wales Bar Association on the application of the Principal, which will be copied to the Contractor.
- (c) The Expert's determination will be binding on both parties, who must give effect to it unless and until it is revised in a settlement or changed by an arbitral award.
- (d) If either party is dissatisfied with the Expert's determination then either party may, within 15 Business Days after receiving the Expert's determination, serve a Notice of Dissatisfaction in accordance with clause 3B.

### **3B Notice of Dissatisfaction**

- (a) The Notice of Dissatisfaction served under clause 3.2(i) or clause 3A(c) must:
  - (i) state that it is given under this clause;
  - (ii) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and Law;
  - (iii) if the Dispute concerns a determination by the Independent Certifier, specify the alleged error of fact or Law and the reasons why the alleged error of fact or Law is manifest;
  - (iv) set out the position which the party believes is correct both in relation to liability and quantum; and
  - (v) provide detailed particulars of the quantum of the matters in dispute.
- (b) Except as stated in clause 7, neither party will be entitled to commence arbitration or litigation of a Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause and within the time required by clause 3.2(i) and clause 3A(d).
- (c) If the Dispute Avoidance Board or Expert has given its determination as to a dispute and a Notice of Dissatisfaction has not been given in accordance with clause 3.2(i) or clause 3A(d) within the time required by those clauses, then the determination will become final and binding upon both parties.
- (d) Once a determination of the Dispute Avoidance Board or Expert has become final and binding under clause 3B(c), neither party will be entitled to challenge the determination on any basis.

## **4. LITIGATION OR ARBITRATION**

If a Notice of Dissatisfaction has been given in accordance with clause 3.2(i) or 3A(c) or the Dispute Avoidance Board has failed to give its determination in accordance with clause 3.2(j), the

Principal may, in its absolute discretion, within 10 Business Days issue a notice to the Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within that 10 Business Day period, the Dispute will be referred to arbitration.

## 5. **ARBITRATION**

- (a) If any Dispute is referred to arbitration:
  - (i) the seat of the arbitration shall be Sydney, Australia;
  - (ii) the arbitration shall be conducted in accordance with the ACICA Arbitration Rules, as modified by Appendix B to this Schedule 38 (Dispute Resolution Procedure);
  - (iii) the number of arbitrators shall be agreed or determined in accordance with the ACICA Arbitration Rules;
  - (iv) the language of arbitration shall be English; and
  - (v) the arbitration shall be administered by ACICA.
- (b) The parties agree that an appeal may be made in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) on a question of law arising out of any award issued pursuant of this clause 5.
- (c) Subject to clause 7, this clause 5 is governed by the laws of New South Wales, Australia.

## 6. **EXCLUSION OF PROPORTIONATE LIABILITY FROM DETERMINATION OR AWARD**

In respect of any arbitrator appointed in relation to a Dispute, the parties agree that, to the extent permitted by Law:

- (a) the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by the *Civil Liability Act 2002* (NSW) are not conferred or imposed on him or her; and
- (b) the arbitrator (as the case may be) has no power to make any determination or award by applying or considering the provisions of the *Civil Liability Act 2002* (NSW).

## 7. **URGENT RELIEF**

Nothing in this Schedule 38 (Dispute Resolution Procedure) will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute.

## 8. **LIMITATION PERIODS**

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in clauses 1 to 6 of this Schedule 38 (Dispute Resolution Procedure) each party agrees that:

- (a) the limitation period will be deemed to be extended by a period equal to the number of days between the date the Notice of Dispute was served and the date the Negotiation process concludes; and
- (b) it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this clause 8.

## 9. **SEVERANCE**

If at any time any provision of this Schedule 38 (Dispute Resolution Procedure) 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 Schedule 38 (Dispute Resolution Procedure); or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Schedule 38 (Dispute Resolution Procedure).

## 10. CONTINUATION OF CONTRACTUAL OBLIGATIONS

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under this deed.

## 11. DISPUTES UNDER THIRD PARTY AGREEMENTS

- (a) A Dispute under this deed may be concerned with matters that also arise in respect of the respective rights and obligations of the Principal and a Third Party (a **Common Dispute**), including where:
  - (i) the Principal is in breach of a provision of this deed to the extent such a breach is caused by a Third Party under its respective Third Party Agreement;
  - (ii) the Principal is entitled to obtain remedies or benefits under a Third Party Agreement which are similar to remedies or benefits claimed by the Contractor in a Claim by the Contractor under this deed;
  - (iii) the Contractor has rights against the Principal under a warranty or indemnity or specific right of reimbursement or recovery in this deed, and there is a corresponding warranty or indemnity or specific right of reimbursement or recovery in a Third Party Agreement; or
  - (iv) the Contractor has a Claim against the Principal and the Principal has a Claim against a Third Party based on the same or similar events or circumstances.
- (b) In the event that there is a Common Dispute, the Principal may, in its absolute discretion determine that the Common Dispute will be resolved in accordance with the provisions of this clause 11 of Schedule 38 (Dispute Resolution Procedure) in which case clauses 11(c) to (j) of this Schedule 38 (Dispute Resolution Procedure) will then apply in respect of the Common Dispute.
- (c) In the event that there is a Common Dispute then:
  - (i) clauses 2 to 5 will not apply to the resolution of that Common Dispute; and
  - (ii) the Contractor acknowledges and agrees that the purpose of this clause 11 is:
    - A. to provide the Contractor with comparable remedies and entitlements in respect of Common Disputes, and to limit the Contractor's rights against the Principal in respect of Common Disputes by reference to the Principal's rights and entitlements under or in connection with Third Party Agreements; and
    - B. not to reduce or disentitle or otherwise affect the validity of any Claim by the Principal against a Third Party under, arising out of, or in any way in connection with the respective Third Party Agreement.
- (d) In respect of all Common Disputes:
  - (i) the Contractor's entitlement to receive compensation from the Principal, and the Principal's liability to pay compensation to the Contractor, will only arise at the time the relevant Common Dispute is resolved or determined;
  - (ii) if any compensation is payable by the Principal to the Contractor under this deed in respect of a Common Dispute, the Contractor will have the same entitlement to recover compensation under this deed as the Principal has to recover that compensation from a Third Party under the respective Third Party Agreement;
  - (iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and
  - (iv) the Principal will pass through to the Contractor the proportion of the damages or other form or relief to which the Principal is entitled:
    - A. to the extent that this is referable to the Contractor, including any liability, Claim or loss of the Contractor; and
    - B. determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.

- (e) The Principal agrees to:
  - (i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;
  - (ii) if it is unable to obtain the Third Party's consent as contemplated under clause 11(e)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and
  - (iii) provide:
    - A. regular updates to the Contractor; and
    - B. whatever information and documents the Contractor reasonably requests, as to the progress of the Common Dispute.
- (f) The Principal's liability to pay the Contractor:
  - (i) is satisfied by payment to the Contractor in accordance with this clause 11 or
  - (ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:
    - A. the Principal has complied with its obligations under this clause 11 with respect to recovery of the Principal and the Contractor's entitlements from the Third Party; and
    - B. all appeals from such determination have been exhausted.
- (g) The Contractor agrees:
  - (i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;
  - (ii) that where a Third Party Agreement contemplates:
    - A. alternative dispute resolution (including arbitration and expert determination):
      - 1) a like process will apply to the Common Dispute between the parties; and
      - 2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and
    - B. litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and
  - (iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this deed.
- (h) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other wrongful, negligent or unlawful act or omission (to the extent not caused by the Contractor).
- (i) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this deed, then the Contractor is not entitled to the same compensation under this clause 11.
- (j) Any payment to which the Contractor is entitled under this clause 11 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

## APPENDIX A

### Modification of the Resolution Institute Expert Determination Rules

Pursuant to sub-Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (2016 Edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

#### 1. RULE 1 Definitions

Insert the following new definitions after the definition of "the Process":

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building and Construction Industry Payments Act 2004* (Qld);
- (d) the *Construction Contracts Act 2004* (WA);
- (e) the *Construction Contracts (Security of Payments) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (TAS); and
- (i) any Regulations enacted pursuant to the Acts listed in paragraphs (a) to (h) above.

#### 2. RULE 5 Role of the Expert

Insert the wording "*the Contract, the requirements of procedural fairness,*" in sub-Rule 1. as follows:

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, *the Contract, the requirements of procedural fairness,* and according to the

law.

**Sub-Rule 4. shall be renumbered sub-Rule 4.(a) and insert after sub-Rule 4(a) additional sub-Rules 4.(b), 4.(c) and 4.(d) as follows:**

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must notify the parties immediately in writing.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c) above, unless the parties agree otherwise.

**3. RULE 9 Conduct of the Process**

**Insert additional sub-Rule 2A., after sub-Rule 2, as follows:**

2A. The rules of evidence do not apply to the Process.

**4. RULE 10 The Expert's Determination**

**Replace sub-Rule 3. With the following:**

3. Unless otherwise agreed by the parties, the Expert's determination:

(a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;

(b) must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;

(c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and

(d) to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.

**5. RULE 12 Waiver of Right to Object**

**Delete Rule 12 in its entirety.**

**6. RULE 14 Extension of Limitation Period**

**Delete Rule 14 in its entirety.**

## **APPENDIX B**

### **Modification of the ACICA Arbitration Rules**

Pursuant to sub-Rule 2.1 of the rules of arbitration of the Australian Centre for International Commercial Arbitration (2016 edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

#### **1. RULE 36 WAIVER OF RULES**

Delete Rule 36 in its entirety.

# Dispute Avoidance Board Agreement

(Clauses 20 and 23.2 (definition of "DAB Agreement"))

---

This Agreement made at Sydney on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_  
between the following parties:

**Parties**                    *[Insert Contractor's name]* (ABN *[Insert Contractor's ABN]*) ("Contractor")  
of: *[Insert Contractor's address and email address]*  
and  
Transport for NSW (ABN 18 804 239 602) "Principal"  
of: 20-44 Ennis Road Milsons Point NSW 2061 (for delivery of notices by hand)  
or: Locked Bag 928, North Sydney NSW 2059 (for delivery by post)  
a NSW Government agency constituted under the *Transport Administration Act 1988*  
(NSW)  
Attention: *[insert]* Email: *[Insert Principal's Representative's email address]*  
and  
Member of the Dispute Avoidance Board, namely:  
*[DAB Member Name]* of *[DAB Member Company's Name, ABN and address]*, *[DAB Member email address]*  
(the "Member" or "Dispute Avoidance Board")  
*[Note: Principal to insert details]*

## Recitals

- A. On or about the date of this Agreement, the Contractor entered into the D&C Deed with the Principal in respect of the *[insert Project Name]*.
- B. The D&C Deed provides for a dispute avoidance process through the establishment and the operation of a dispute avoidance board to assist the parties in preventing disputes from arising under the D&C Deed.
- C. The Member represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of, and the management of issues and avoidance of disputes in relation to, works similar to the Project Works and offer their expertise in those fields.
- D. The D&C Deed contemplates that the Member will discharge those functions set out in Appendix 1 to this Agreement.
- E. This Agreement sets out the rights, obligations and duties of the Member, the Principal and the Contractor in relation to the Dispute Avoidance Board.

**This Agreement provides:**

## 1. Definitions and interpretation

### 1.1 Definitions

In this Agreement:

**Adjudication Function** has the meaning given in clause 3.3(a)(ii), excluding the General Avoidance Function.

**General Avoidance Functions** has the meaning given in clause 3.3(a)(i), excluding the Adjudication Function.

**Member** means the individual or individuals appointed to the Dispute Avoidance Board in accordance with this Agreement, or any replacement Member in the circumstances contemplated under clause 13(b) of this Agreement, as the case may be.

**Other Parties** means the Principal and the Contractor.

## **1.2 Terms defined in the D&C Deed**

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the D&C Deed.

## **1.3 Interpretation**

In this Agreement 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 Agreement 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 Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement 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 Agreement;
- (i) a reference to:
  - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;

- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## **2. D&C Deed to prevail**

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the D&C Deed, the terms of the D&C Deed will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 20.3 of the D&C Deed.

## **3. Formation of the Dispute Avoidance Board**

### **3.1 Appointment of Member**

- (a) Each of the Other Parties appoints the Member to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the D&C Deed and this Agreement.
- (b) The Member confirms its acceptance of the appointment referred to in clause 3.1(a).

### **3.2 Formation**

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Member; and
- (c) must perform its obligations and functions under the D&C Deed and this Agreement.

### **3.3 Role and function**

- (a) The parties acknowledge and agree that the role of the Dispute Avoidance Board is to:
  - (i) provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed in a timely manner (**General Avoidance Function**);
  - (ii) if a Notice of Referral to DAB is received by the Dispute Avoidance Board, determine the Dispute between the parties in accordance with Attachment 2 to this Schedule (**Adjudication Function**); and
  - (iii) function as an objective, impartial and independent body at all times.

## **4. Establishment of procedures**

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters in accordance with the procedures included in Attachment 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the general operating procedures in Attachment 1 to this Agreement.

## **5. Dispute Avoidance Board Member's obligations**

### **5.1 Dispute Prevention**

The Member agrees to do all things and to take such action as may be practicable in accordance

with this Agreement to assist the Other Parties in preventing Disputes from arising under the D&C Deed.

## **5.2 Impartiality**

The Member agrees to consider fairly and impartially any matters referred to the Dispute Avoidance Board.

## **5.3 Independence**

The Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to any matter) and in accordance with clause 5 of this Agreement.

## **5.4 General duties**

The Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with the D&C Deed and this Agreement;
- (c) in compliance with all applicable Laws; and
- (d) in compliance with all timeframes set out in the Attachments, and any timetabling direction made by the Dispute Avoidance Board in respect of those Attachments.

## **6. Costs and fees**

- (a) The Other Parties are jointly and severally liable for the payment of the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3.
- (b) The Other Parties agree as between themselves that:
  - (i) where a party refers a Dispute to be determined by the Dispute Avoidance Board that party will, unless otherwise determined by the Dispute Avoidance Board, pay the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3;
  - (ii) in relation to other functions and processes of the Dispute Avoidance Board, they will each pay one half of the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3; and
  - (iii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any process of the Dispute Avoidance Board.
- (c) The Member agrees that it will submit separate tax invoices to each of the Principal and the Contractor at one monthly intervals (unless a different frequency is agreed by the Other Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3, then either of the Other Parties may request clarification from the Member.
- (d) The Member agrees that it will issue separate tax invoices to each of the Principal and the Contractor, for one half of the agreed Payment Amount.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 20 Business Days of receipt.
- (f) The Member is not entitled to engage any third party consultants or advisers in the

performance of its obligations under this Agreement unless the Other Parties agree in writing for it to do so, and on the terms on which it may do so.

## **7. Principal commitment and responsibilities**

The Principal acknowledges and agrees that it must:

- (a) act in good faith towards the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board on matters dealing with the prevention and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

## **8. Contractor's commitments and responsibilities**

The Contractor acknowledges and agrees that it must:

- (a) act in good faith towards the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

## **9. Confidentiality**

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time the Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than complying with its obligations under this Agreement; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

## **10. Conflict of interest**

- (a) If the Member, during the term of appointment as the Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and the Contractor.
- (b) The Other Parties will within five Business Days of notification under clause 10(a) confer and inform the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the Other Parties believe that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

## **11. Liability**

Except in the case of fraud:

- (a) the Member shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board; and
- (b) the Other Parties jointly and severally hereby release the Member against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "**claims**") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:

- (i) under or in any connection with this Agreement;
- (ii) in tort for negligence, negligent advice or otherwise; or
- (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Project or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

## 12. Indemnity

The Principal and the Contractor hereby jointly and severally indemnify and keep indemnified the Member against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise) against the Other Parties, or any of them arising out of anything done or omitted to be done by the Dispute Avoidance Board in the proper performance of its duties under this Agreement and the D&C Deed.

## 13. Termination of Agreement

- (a) This Agreement may be terminated by written agreement of the Principal and the Contractor or may terminate otherwise in accordance with clause 20.3 of the D&C Deed
- (b) Where:
  - (i) the Member resigns under clause 10(b) or 14.1; or
  - (ii) the appointment of the Member is terminated by the Principal and the Contractor under clause 14.2,

then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

## 14. Member's termination

### 14.1 Resignation

The Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to, the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

### 14.2 Termination

- (a) The Member may be terminated at any time by written agreement of the Principal and the Contractor.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### 14.3 Replacement

The parties acknowledge and agree that if:

- (a) the Member resigns under clause 10(b) or 14.1 or is unable to act as a result of death or disability; or

- (b) the appointment of the Member is terminated under clause 14.2,  
then:
- (c) the replacement Member may be appointed in accordance with clause 20.2 of the D&C Deed; and
- (d) the Principal, the Contractor and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Dispute Resolution Procedure.

## **15. Governing law**

- (a) This Agreement 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 Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

## **16. Relationship of the parties**

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Contractor and the Member as that of partners, joint venturers or any other fiduciary relationship.

## **17. Notices**

- (a) Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or email address (subject to clause 17 of this Agreement) as set out in the parties' details on page 1 of this Agreement (or to any new address or email address that a party notifies to the others).
- (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 given by email is 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.
- (d) Any notice contemplated by this Agreement to be given to the Principal must be delivered to the Principal address or sent by email in accordance with the Principal's details on page 1 of this Agreement.

## **18. Giving effect to this Agreement**

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

## **19. Survival of terms**

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

## **20. Waiver of rights**

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other

right.

## **21. Operation of this Agreement**

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

## **22. Goods and Services Tax**

### **22.1 Interpretation**

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

### **22.2 Consideration is GST exclusive**

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

### **22.3 Gross up of consideration**

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

### **22.4 Reimbursements (net down)**

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

### **22.5 Tax invoices**

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

### **22.6 Adjustment event**

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 22.6 will be made within ten Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

### **23. Amendment**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

### **24. Counterparts**

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

### **25. Attorneys**

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

**EXECUTED** as an agreement

**SIGNED** for and on behalf of **Transport for  
New South Wales (ABN 18 804 239 602)**  
by its duly authorised signatory in the presence of:

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

\_\_\_\_\_  
Signature of authorised signatory

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Name of authorised signatory in full

**EXECUTED BY** *[insert Contractor's name]*  
(ABN *[insert Contractor's ABN]*) in accordance  
with s127 of the *Corporations Act 2001* (Cth)

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

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

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

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

**SIGNED BY THE MEMBER** in the presence  
of:

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

\_\_\_\_\_  
Signature of Member

\_\_\_\_\_  
Name of Witness (Please Print)

\_\_\_\_\_  
Name of Member in full (Please Print)

## ATTACHMENT 1

### Dispute Avoidance Board General Operating Procedures

#### 1. General

- 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed in a timely manner.
- 1.2 The Contractor will furnish the following to the Dispute Avoidance Board Member:
  - (i) the Independent Certifier reports;
  - (ii) the Client Control Group reports;
  - (iii) the Project Site Meeting minutes; and
  - (iv) a joint presentation with the Principal at the frequency set out in section 2.3 (unless otherwise agreed under section 2.4).
- 1.3 No documents, other than those in clause 1.2 above, are required to be submitted to the Dispute Avoidance Board unless it is performing its dispute functions in accordance with Attachment 2 (Rules for Dispute Avoidance Board Decisions).
- 1.4 The Dispute Avoidance Board Member is not the representative of the party which appointed that representative. The Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.5 The Member shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to its attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.6 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 20 of the D&C Deed.

#### 2. Frequency of Regular Meetings and Construction Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.
- 2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Other Parties will schedule the meetings and visits as they see fit.
- 2.3 The frequency of meetings of the Dispute Avoidance Board should generally be:
  - (i) two monthly until all Design Documentation has reached the stage of Issue for Construction Design; and
  - (ii) thereafter, three monthly during construction,and coincide with the same day as meetings (which the Member will attend) of the Management Review Group under the D&C Deed, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of the Dispute Avoidance Board may be convened separately to meetings of the Management Review Group.
- 2.4 The Dispute Avoidance Board will not meet more frequently than set out in clause 2.3 unless:
  - (i) agreed between the Other Parties; or

- (ii) if not agreed between the Other Parties, the requesting party agrees to pay the costs incurred by the Dispute Avoidance Board as a result of the additional meetings.
- 2.5 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.

### **3. Agenda for Regular Meetings**

- 3.1 Unless otherwise agreed by the Other Parties in respect of a meeting, the agenda for each regular meeting will be:
  - (i) a joint presentation by representatives of the Principal and Contractor providing a Project update;
  - (ii) review of the register of potential and actual Disputes, including an explanation of new Disputes;
  - (iii) site visit and inspection of the Works (generally and also including any Works that are the subject of a Dispute); and
  - (iv) discussion of the process underway to avoid or resolve potential or actual Disputes, including the identification of any Disputes that may become or are the subject of a Notice of Referral.
- 3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Member on performance and progress of the work under the D&C Deed and issues or potential issues arising between the Other Parties shall be held on an in-confidence and "without prejudice" basis to encourage full and frank disclosure and discussions.
- 3.3 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will, subject to clause 3.1, generally inspect the Project Works, the Temporary Works and the Construction Site in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works or the Construction Site that are or may be the subject of any potential issue or potential Dispute will be pointed out by the Other Parties.

### **4. Minutes of Meetings**

- 4.1 The Management Review Group, under clause 5(d) of Schedule 40 of the D&C Deed, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Dispute Avoidance Board Member for information only.
- 4.2 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings shall be marked "in-confidence, without prejudice". The minutes of Dispute Avoidance Board meetings will be prepared by the Member and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.3 Minutes as may be amended will be adopted by the Dispute Avoidance Board Member at the next meeting.

### **5. Communications**

- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the D&C Deed and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board on matters dealing with the conduct of the work or resolution of problems.
- 5.2 There must be no communication between Dispute Avoidance Board Member and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Member informing the Other Parties.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the to the Member

and to the other party. All communications by the Member to the Other Parties should be addressed to the Principal's Representative and the Contractor's Representative.

- 5.4 Except as required under this Agreement or under the D&C Deed, communication by email is an acceptable alternative to physical delivery.

**6. Representation**

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

**7. Other Attendees**

- 7.1 Where requested by the Other Parties, and approved by the Member, or where requested by the Member, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or Independent Certifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.
- 7.2 At the Principal's request, third parties nominated by the Principal may also attend any meetings with the Dispute Avoidance Board.

## ATTACHMENT 2

### Rules for Dispute Avoidance Board decisions

#### 1. Written submissions

- (a) Unless another period is proposed by the Dispute Avoidance Board and approved by both parties:
  - (i) the Referring Party must deliver its submissions within 20 Business Days of the Notice of Referral; and
  - (ii) the Other Party must deliver its submissions within 40 Business Days of the Notice of Referral.
- (b) After the receipt of submissions from both parties, the Dispute Avoidance Board will facilitate discussions between the parties and may direct the parties to provide further submissions, information or documents as the Dispute Avoidance Board may require.
- (c) The Dispute Avoidance Board must disclose to both parties all submissions, further submissions, information and documents received.
- (d) Any failure by a party to make a written submission, will not terminate or discontinue the decision making process.

#### 2. Conference

- (a) Either party may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- (b) If neither party requests the Dispute Avoidance Board to call a conference, the Member may nevertheless call a conference if they think it appropriate.
- (c) Unless the parties agree otherwise, the conference will be held at the Site.
- (d) At least 2 Business Days before the conference, the Dispute Avoidance Board must inform the parties in writing of the date, venue and agenda for the conference.
- (e) 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 2(d), the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.
- (f) The parties:
  - (i) may be accompanied at a conference by legal or other advisers; and
  - (ii) will be bound by any procedural directions as may be given by the Dispute Avoidance Board in relation to the conference both before and during the course of the conference.
- (g) The conference must be held in private.
- (h) If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the parties.

#### 3. The decision

- (a) Within 60 Business Days after receiving a Notice of Referral to DAB or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must:
  - (i) determine the dispute between the parties; and
  - (ii) notify the parties of that decision together with its reasons.
- (b) The decision of the Dispute Avoidance Board must:

- (i) be in writing stating the Dispute Avoidance Board's decision and giving reasons;
  - (ii) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Avoidance Board's own expertise;
  - (iii) state that the decision is given under clause 3.2 of Schedule 38 of the D&C Deed; and
  - (iv) meet the requirements of the D&C Deed.
- (c) If the Dispute Avoidance Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the decision.

#### **4. Modification**

- (a) These rules may be modified only by agreement of the Principal and the Contractor.

### ATTACHMENT 3

#### Schedule of Fees and Disbursements

**[Drafting note: Details of fees to be notified to the Contractor following appointment of the DAAB Member.]**

*The Fees are to be:*

- (a) *the fixed component of the fees as a monthly retainer (which must include activities allowed for in the fixed component as set out for Item 1 in the following table); and*
- (b) *a fixed daily fee for attendance at Dispute Avoidance Board meetings (as set out for Item 2 in the following table),*

*which will be:*

- (c) *based on an hourly rate for all other services as set out for Item 3 in the following table, or*
- (d) *on such other basis for payment as may be agreed.*

*The Fees in (a) and (b) and the rates in (c) are to include all disbursements and expenses, excluding travel and accommodation outside of Sydney, which are to be paid at cost, as set out for Item 5 in the following table.]*

No.	Work Description/Scope	Fee Arrangement DAB Member [insert Name] (excl GST)
1.	<b>Monthly retainer</b> (including initial review of contract documentation, routine review of Project minutes and reports, preparation for DAB meetings)	
2.	<b>Daily fee for routine DAB meetings</b> (nominal frequency of 2/3 monthly intervals, including travel time). <b>This fee is in addition to the Monthly retainer</b>	
3.	<b>Hourly fee</b> (For activities not covered by the Monthly retainer and Daily fee)	
4.	<b>Escalation provision</b> (Annual adjustment from the anniversary of date of DAB Agreement)	[ ]%
5.	<b>Expenses</b> (Reimbursed at cost, supported by receipts. Mode or standard of travel may be agreed separately.)	At cost

## ATTACHMENT 4

### Criteria for Member of Dispute Avoidance Board

#### 1. Criteria

The Dispute Avoidance Board Member must meet the following criteria:

(a) Experience

The Dispute Avoidance Board Member must be experienced in:

- (i) the type of construction required for the Contractor's Activities, interpretation of project documents and avoidance of construction issues or disputes; and
- (ii) Dispute Avoidance Boards or Dispute Resolution Boards.

(b) Neutrality

- (i) The Member must be neutral, act impartially and be free of any conflict of interest.
- (ii) For the purposes of this clause 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the D&C Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.

(c) Prohibitions and disqualifying relationships for prospective Member

The Member must not have:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;
- (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the D&C Deed, except for fee-based consulting services on other projects;
- (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the reasonable opinion of either party, could suggest partiality; or
- (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities.

(d) Prohibitions and disqualifying relationships for Member

The following matters may be construed as a conflict of interest in respect of a Member:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;  
or
- (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

#### 2. Disclosure Statement

A disclosure statement for any prospective Member must be submitted to the Principal and the Contractor. Any such disclosure statement must include:

- (a) a resume of relevant experience;

- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the project; and
- (d) disclosure of any other matter relevant to the criteria identified in clause 1(c) above.

## Workshops and Meetings

(Clause 3.1)

### 1. Workshops and meetings

- (a) Within 20 Business Days after the date of this deed, the Principal may convene a preliminary start-up workshop.
- (b) Within 20 Business Days before the date indicated in the Contract Program as the date for commencement by the Contractor of the Project Works at the Construction Site), the Principal may convene a construction start-up workshop.
- (c) The workshops are intended to promote positive building of relationships and a culture of co-operation between the participants, through discussion and sharing of ideas but neither participation in the workshops nor anything concerning or arising out of or in connection with the workshops changes any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.
- (d) The workshops will be attended by:
  - (i) the Contractor's most senior manager or director with direct responsibility for civil works in New South Wales;
  - (ii) a senior manager or director of the Principal with direct responsibility for the Works;
  - (iii) the Project Director (or his or her delegate);
  - (iv) the Principal's Representative (or his or her delegate);
  - (v) the Design Manager (or his or her delegate); and
  - (vi) the Independent Certifier (or his or her delegate),and may be attended by any other person (including personnel of the Contractor, the Principal, a Subcontractor and representatives of Authorities, end users and the local community) invited by the Principal's Representative.
- (e) Appendix A to this Schedule 40 (Workshops and Meetings) contains a guide for participants in the workshops, which may be used as the basis for an agenda.
- (f) The Principal and the Contractor and any others who attend the workshops must meet their own costs of attendance at the workshops. Third party facilitation, venue and catering costs, if any, will be shared equally by the Principal and the Contractor.

### 2. Site meetings

- (a) From establishment on the Construction Site to the Date of Completion, the Contractor must convene meetings on the Construction Site at weekly intervals, or such longer period as may be required by the Principal's Representative.
- (b) The meetings referred to in clause 2(a) of this Schedule 40 (Workshops and Meetings) will be attended by:
  - (i) the Project Director (or his or her delegate);
  - (ii) the Principal's Representative (or his or her delegate); and
  - (iii) any other person (including any Subcontractor) required by the Principal's Representative.
- (c) Unless otherwise agreed by the Principal's Representative in writing, the Contractor must provide the Principal's Representative with an agenda (including any matter required by the Principal's Representative) prepared in consultation with the Principal's Representative for

each meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) no less than 2 Business Days prior to each meeting.

- (d) The role of chairperson for meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) will be held by the Principal's Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) must give all persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 2 Business Days after the meeting.
- (f) The purpose of the meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) includes the review of (at least) the matters set out in the reports referred to in clause 3.2.
- (g) The meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) are in addition to such other meetings and discussions as may be necessary for the proper administration of this deed.

### **3. Evaluation and monitoring**

- (a) The Principal's Representative and the Project Director must meet:
  - (i) monthly, immediately prior to each Project Group meeting; or
  - (ii) at such other times as agreed by the Principal's Representative and the Project Director,to evaluate and monitor performance of this deed (**Evaluation Meetings**), by jointly completing the Performance Evaluation Record Forms.
- (b) The Principal's Representative and the Project Director must decide jointly on participation in the Evaluation Meetings by others concerned with the Project Works and Temporary Works, including Subcontractors, representatives of Authorities, end users and the local community and the Independent Certifier.
- (c) The obligations in this clause 3 of this Schedule 40 (Workshops and Meetings) and anything arising from their performance do not change any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.

### **4. Project Control Group**

The parties acknowledge and agree that the Project Control Group will be comprised and function in accordance with section 3.19.1 of the SWTC.

### **5. Management Review Group**

- (a) The Management Review Group comprises:
  - (i) the Principal's Representative;
  - (ii) the Project Director;
  - (iii) a senior representative of the Principal as notified by the Principal to the Contractor from time to time; and
  - (iv) a senior representative of the Contractor as notified by the Contractor to the Principal from time to time.
- (b) The functions of the Management Review Group include:
  - (i) reviewing the progress of the Project Works;
  - (ii) reviewing conformity with the Quality Plan;
  - (iii) considering any issues arising out of the execution of the Contractor's Activities;

- (iv) considering the Monthly Key Result Area Reports and Separate Monthly Key Result Area Reports;
  - (v) considering any matters which the Project Control Group refers to the Management Review Group including considering any unresolved matters to assist resolution; and
  - (vi) considering, and using its influence and guidance to assist in resolving any issues identified by or referred to the Management Review Group.
- (c) The Management Review Group must meet:
- (i) on a three-monthly basis, immediately after a Project Control Group meeting, or such other regular period as the Principal and the Contractor agree in writing; and
  - (ii) at other times which any member of the Management Review Group requires, where that member provides at least 2 Business Days' prior written notice to the other members of the Management Review Group. Any notice under this clause 5(c)(ii) of this Schedule 40 (Workshops and Meetings) must state the reasons why the member of the Management Review Group wishes to convene the required meeting.
- (d) At the first meeting of the Management Review Group, the Management Review Group must agree and document the procedures relating to meetings of the Management Review Group, including:
- (i) the requirements for and timing of distribution of:
    - A. agendas; and
    - B. meeting minutes; and
  - (ii) chairing of the Management Review Group meetings.
- (e) Meetings of the Management Review Group will be attended by the Dispute Avoidance Board.

## **6. Project Design Group**

The parties acknowledge and agree that the Project Design Group will be comprised and function in accordance with section 3.19.2 of the SWTC.

## **7. Completion Working Group**

The parties acknowledge and agree that the Completion Working Group will be comprised and function in accordance with section 3.19.3 of the SWTC.

## **APPENDIX A**

### **Start-up workshops: Program**

#### **Opening**

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

#### **Discussions on co-operation**

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the contract dealing with co-operation, and how they apply to the Contractor's Activities.

#### **Communication framework and directory**

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

#### **Concerns and problems**

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

#### **Opportunities for innovation**

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

#### **Evaluation and monitoring process**

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and the contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

#### **Conclusion**

Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.

Schedule 41 – **Not used**

**Not used**

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## **Principal's Geotechnical Data, Principal's Contamination Data and Principal's Utilities Data**

(Clause 23.2 (definitions of "Principal's Geotechnical Data", "Principal's Contamination Data" and "Principal's Utilities Data"))

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1. The categories for the purposes of paragraph (a) of the definition of "Principal's Geotechnical Data" are:

(a) with respect to boreholes:

- (i) date of drilling (start and end);
- (ii) location (eastings/northings);
- (iii) total depth of borehole;
- (iv) surface relative level (RL);
- (v) borehole diameter;
- (vi) Standard Penetration Test (depth and reading);
- (vii) [REDACTED];
- (viii) [REDACTED];
- (ix) Sample depths; and
- (x) core photographs.<sup>1</sup>

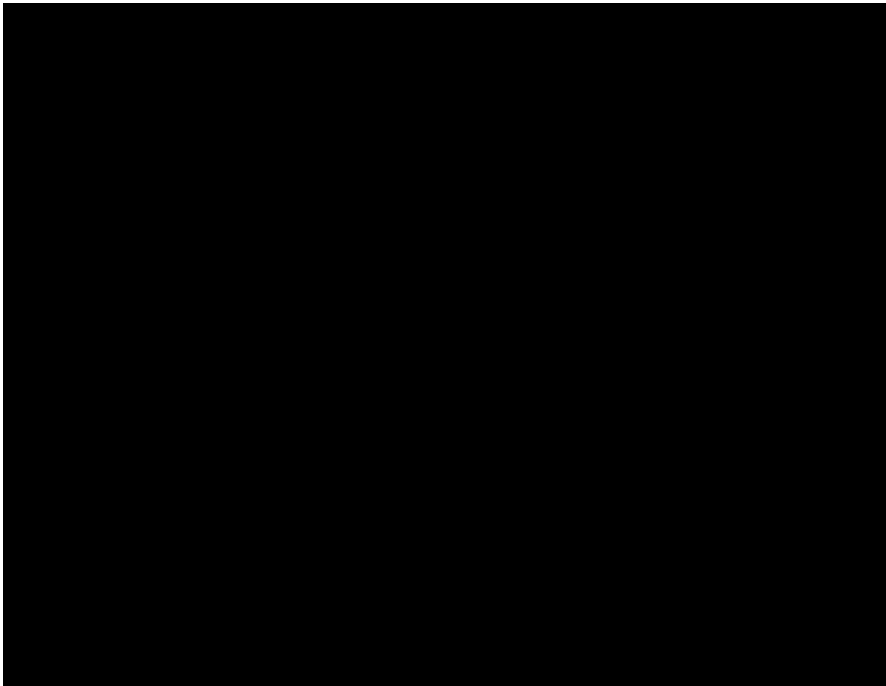
(b) Test Pits

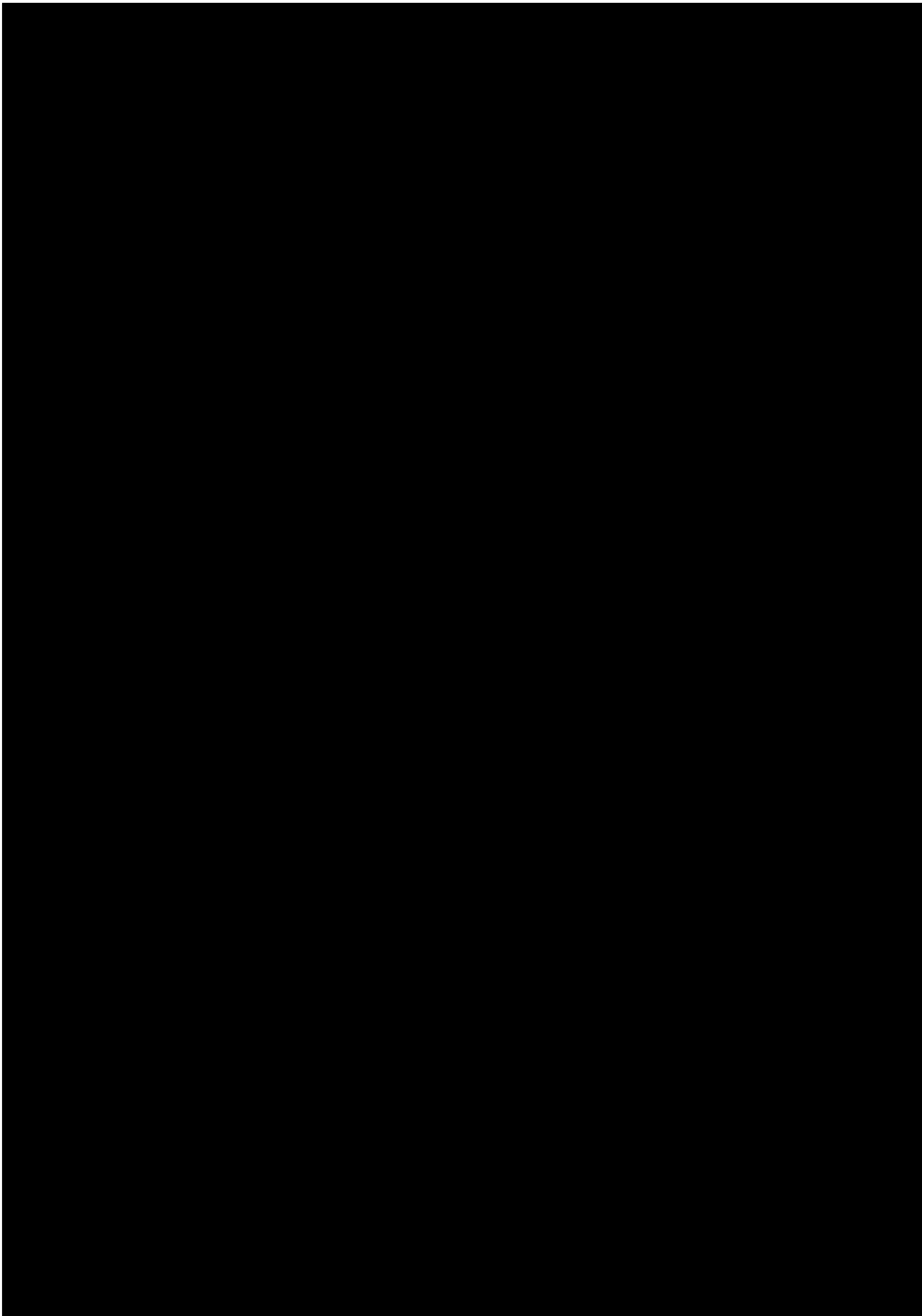
- (i) date of excavation (start and end);
- (ii) location (eastings/northings);
- (iii) total depth of excavation;
- (iv) surface relative level (RL);
- (v) DCP (blow count and depth);
- (vi) Sample depths; and
- (vii) Test pit photographs.<sup>2</sup>

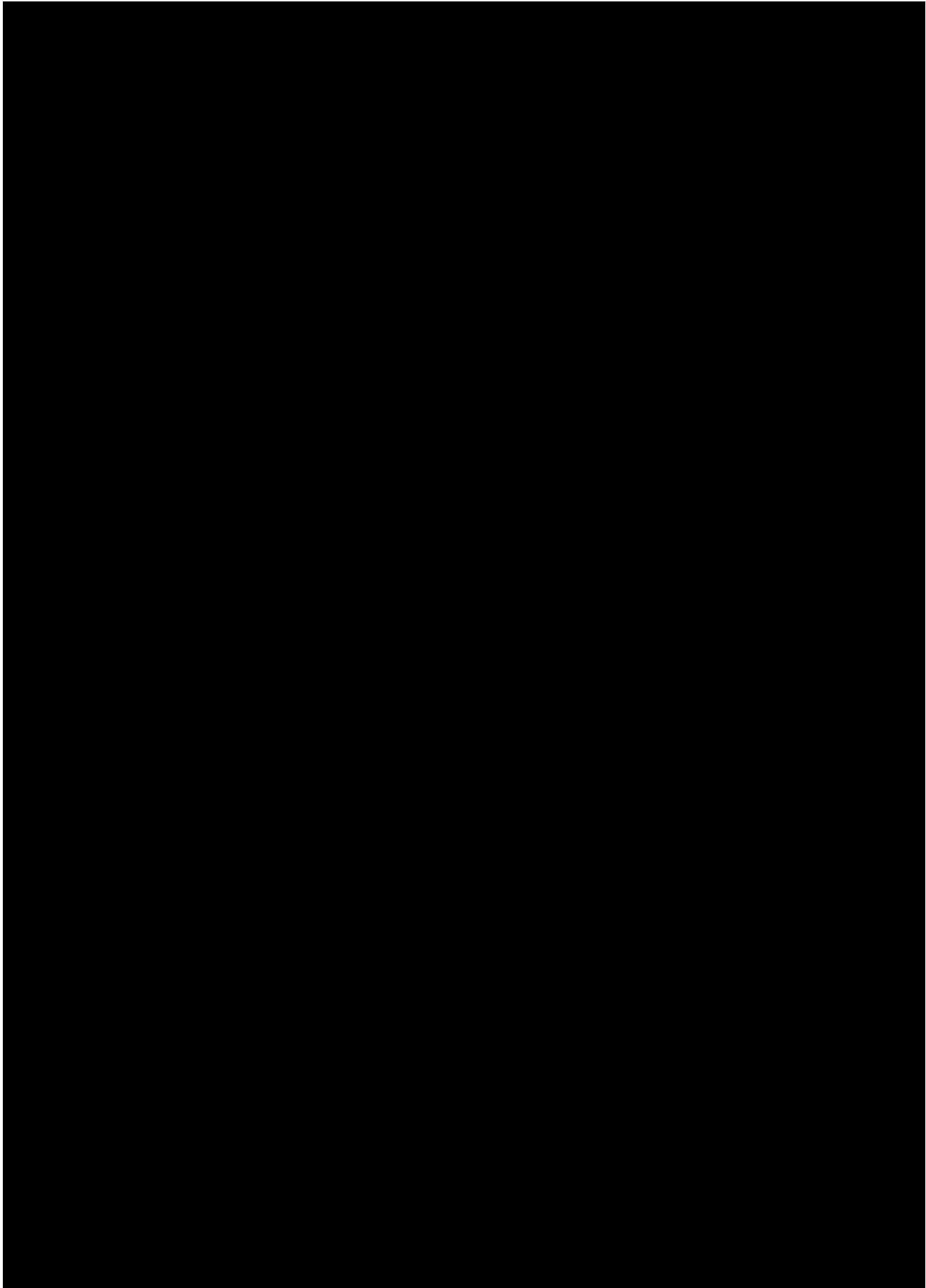
(c) Hand Augers

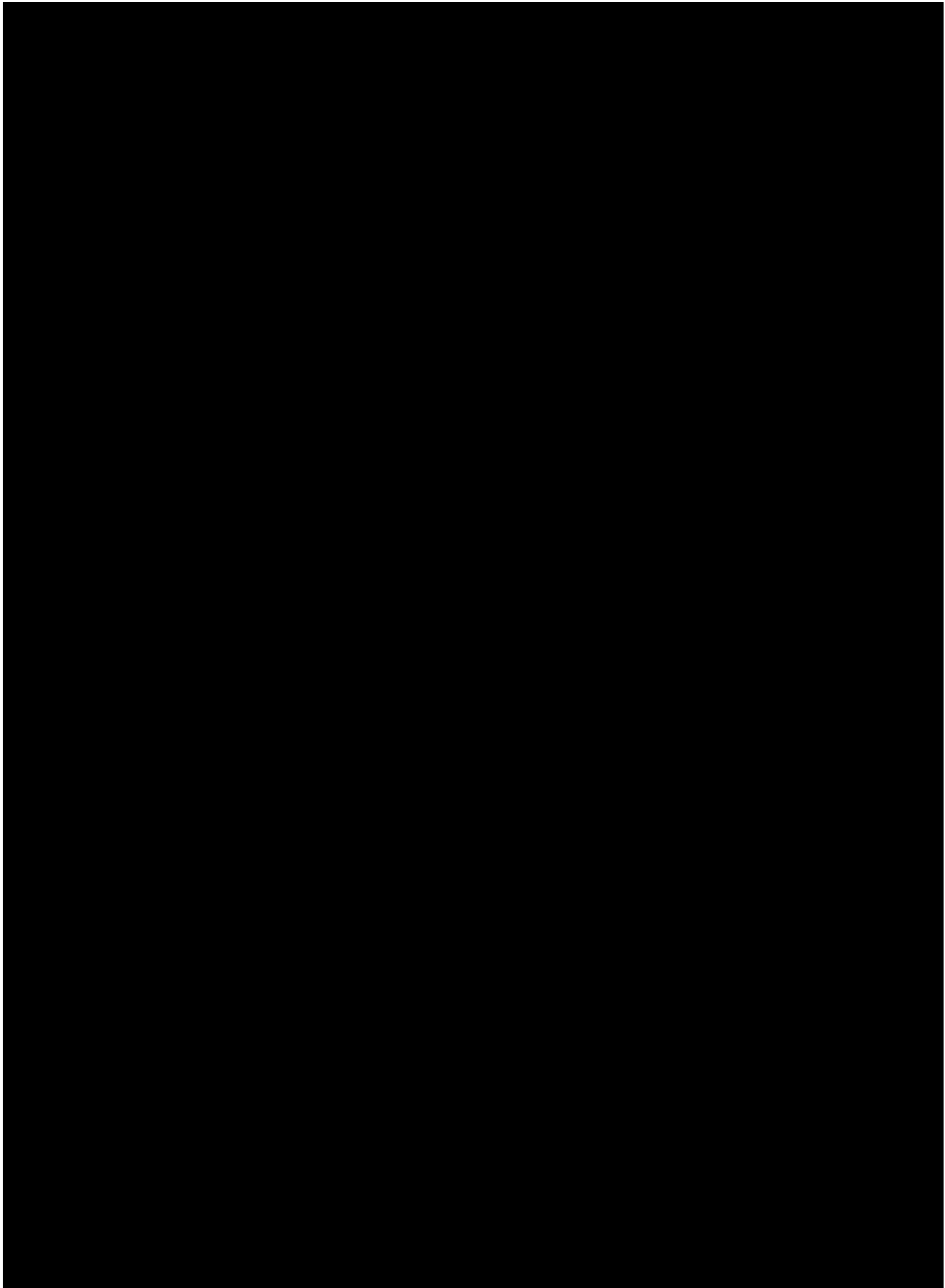
- (i) date of excavation (start and end);
- (ii) location (eastings/northings);

- (iii) total depth of excavation;
  - (iv) surface relative level (RL);
  - (v) DCP (blow count and depth);
  - (vi) Sample depths; and
  - (vii) Test pit photographs.<sup>2</sup>
- (d) Pavement Test Pits
- (i) date of excavation (start and end);
  - (ii) total depth of excavation;
  - (iii) DCP (blow count and depth);
  - (iv) Sample depths; and
  - (v) Test pit photos.<sup>2</sup>
- (e) Seismic
- (i) Date;
  - (ii) Location (eastings/northings);
  - (iii) surface relative level (RL);
  - (iv) Geophone Spacing;
  - (v) Shot Spacing;
  - (vi) Total Line Length; and
  - (vii) Raw Data.



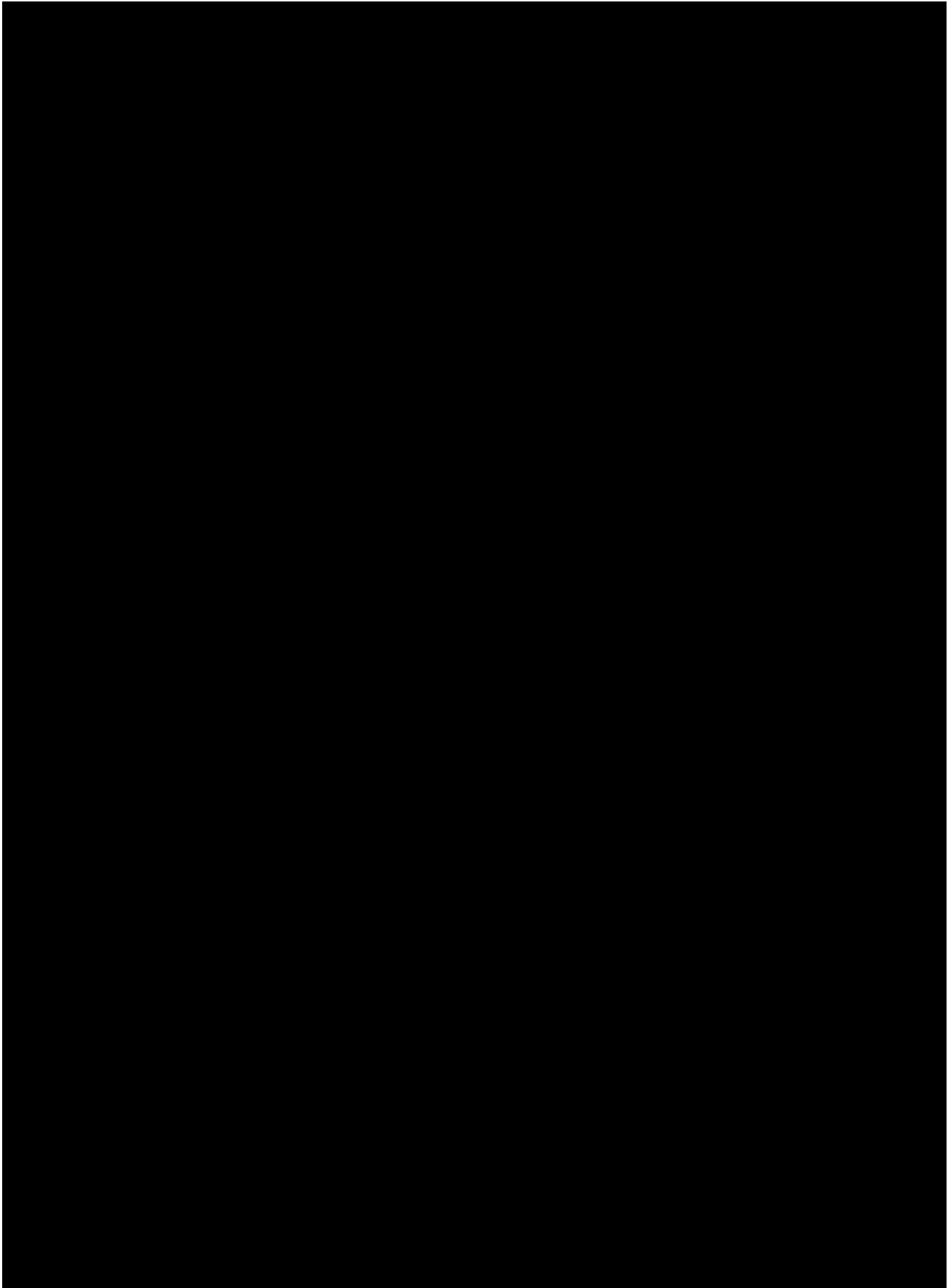












## D&C Deed Amendments due to Pre-Agreed Variations

(Clauses 15.5(c), 15.7(b), 15.7(d), 15.7(e) and 23.2 (definition of "Pre-Agreed Variation"))

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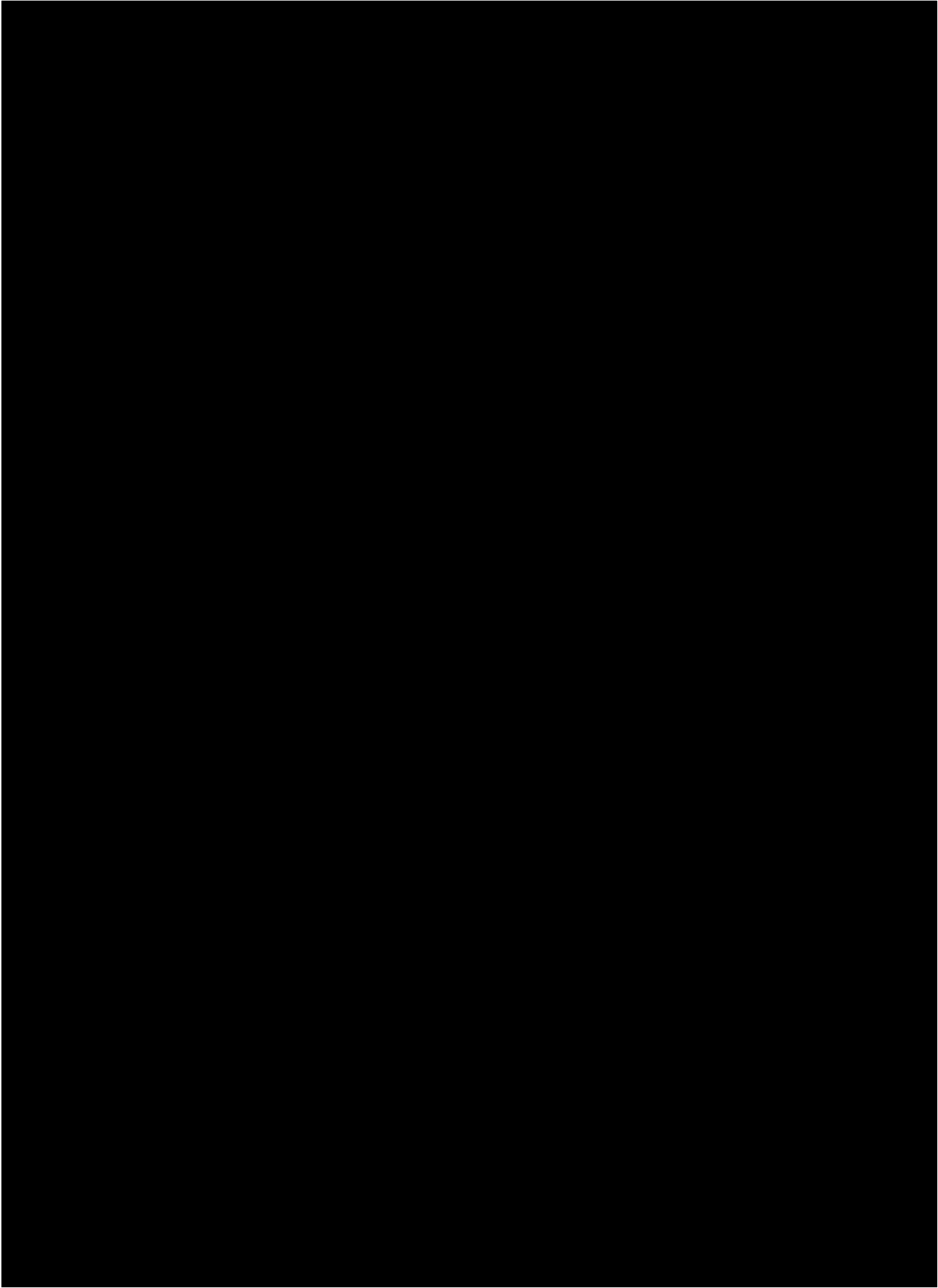
The following tables set out the Pre-Agreed Variations that may be directed by the Principal pursuant to clause 15.7 (*Pre-Agreed Variations*).

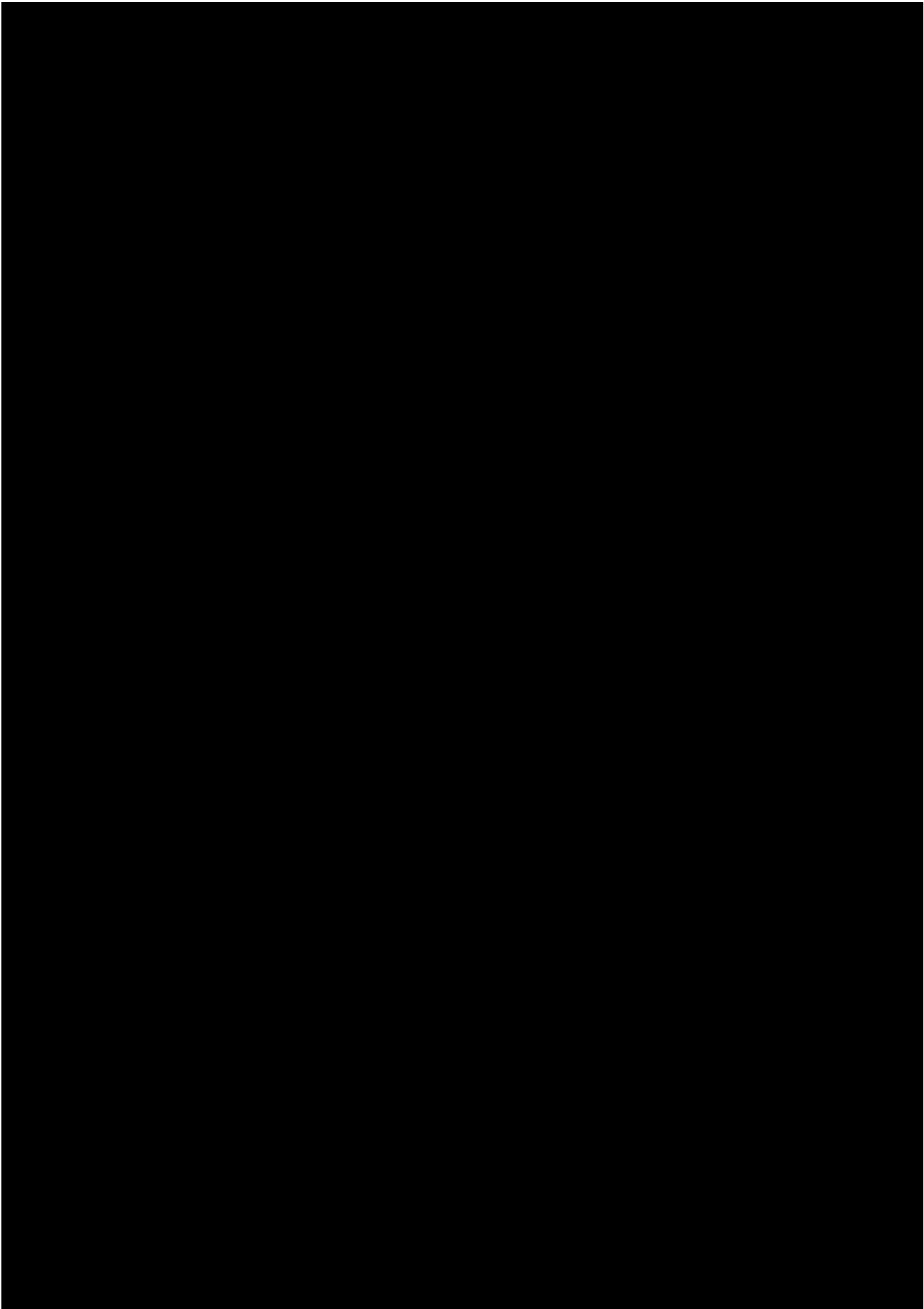
A Pre-Agreed Variation may only be directed as such if directed by the Principal by the "Exercise Date" identified in the table below. If no "Exercise Date" is identified in the table below or is identified as "not applicable", the Pre-Agreed Variation may be directed at any time before the end of the initial Defects Correction Period.

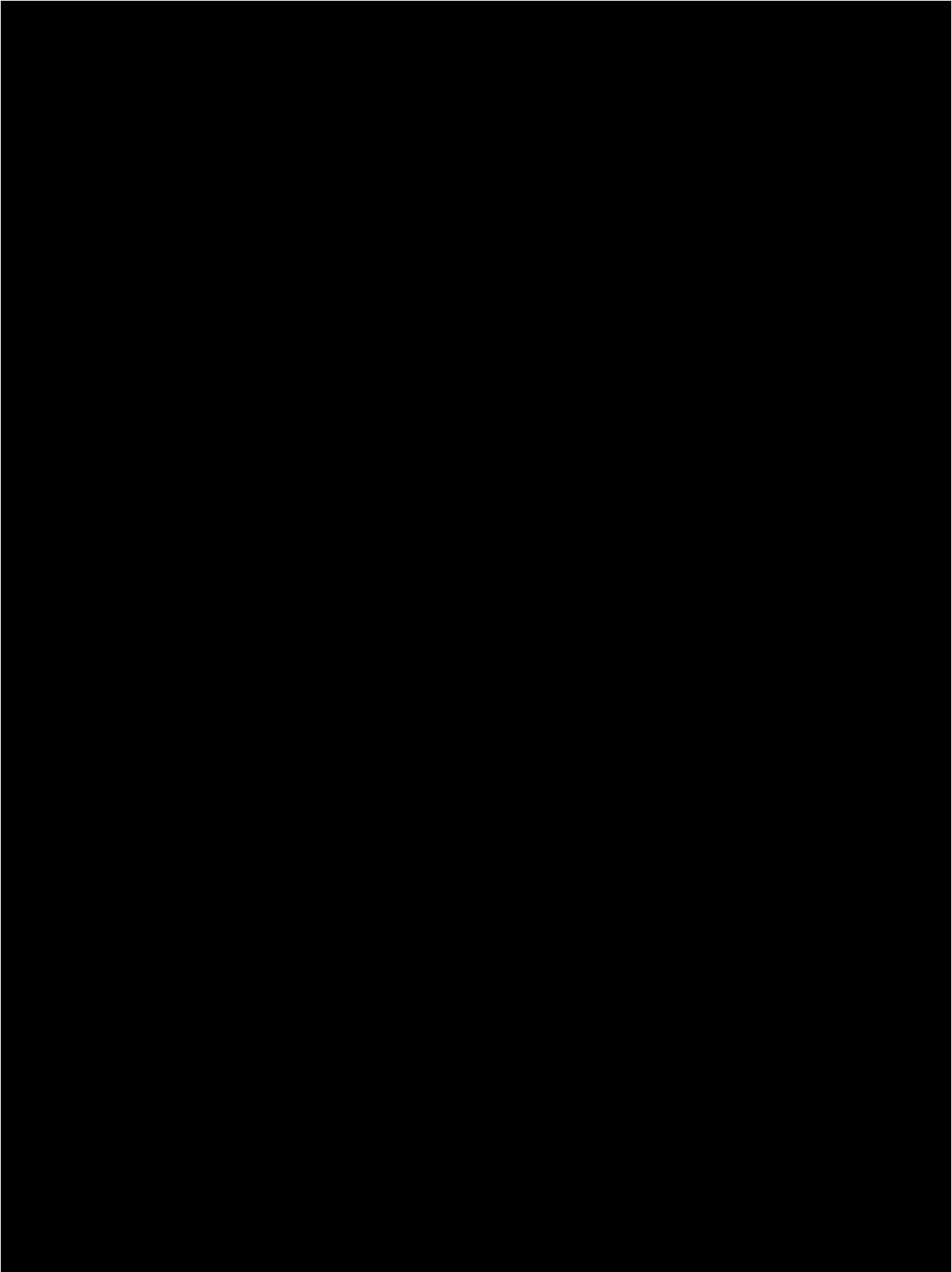




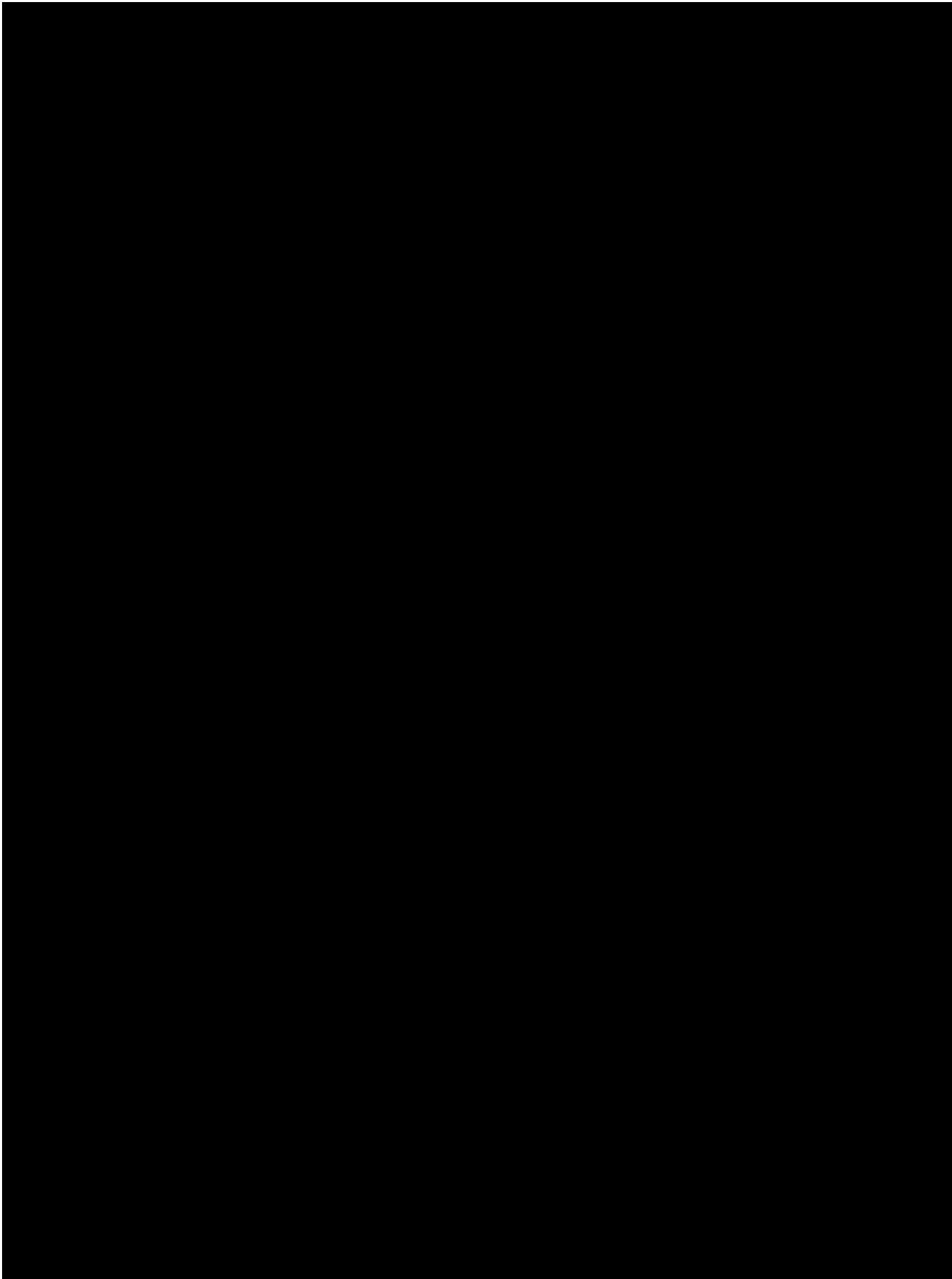










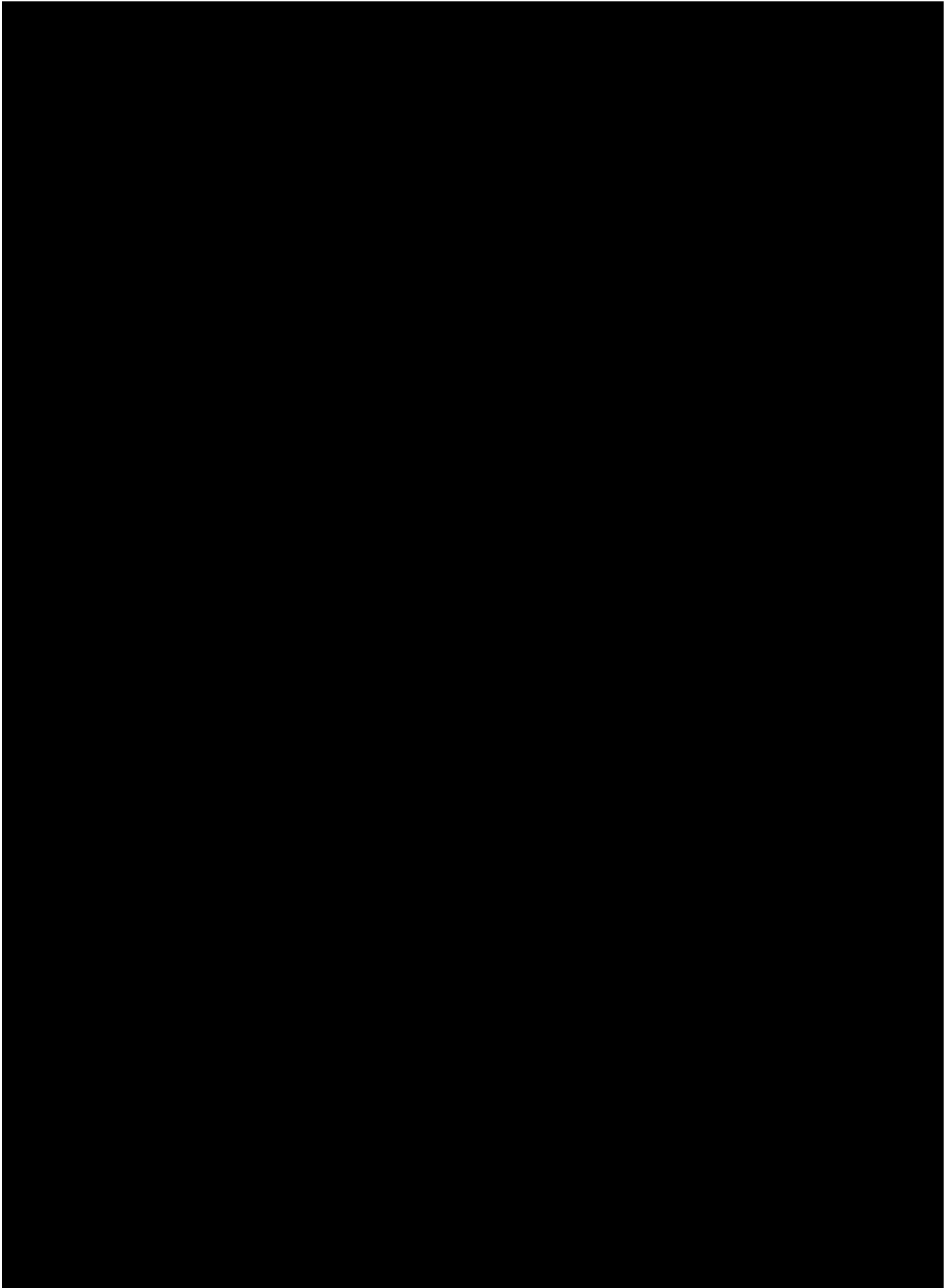




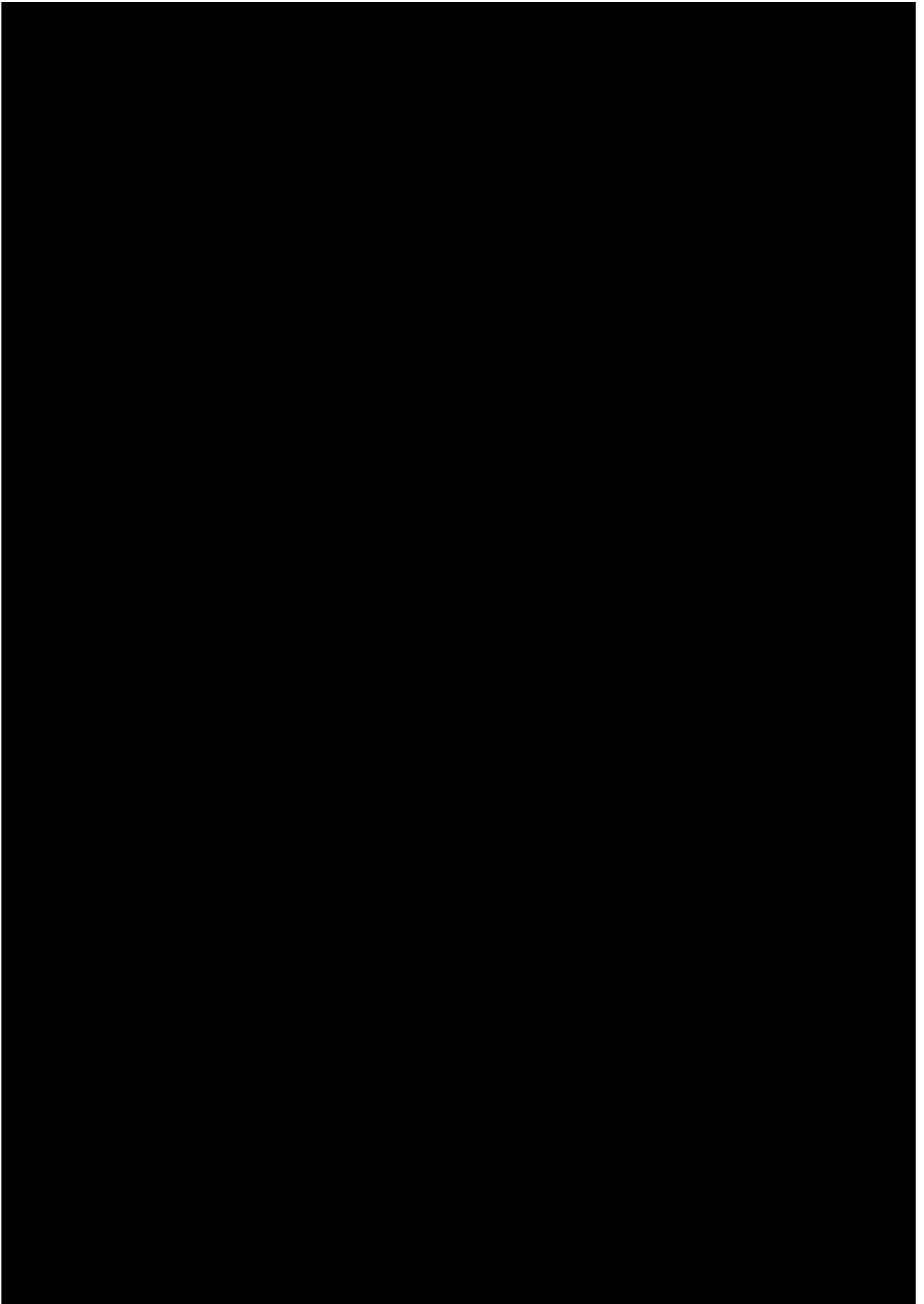


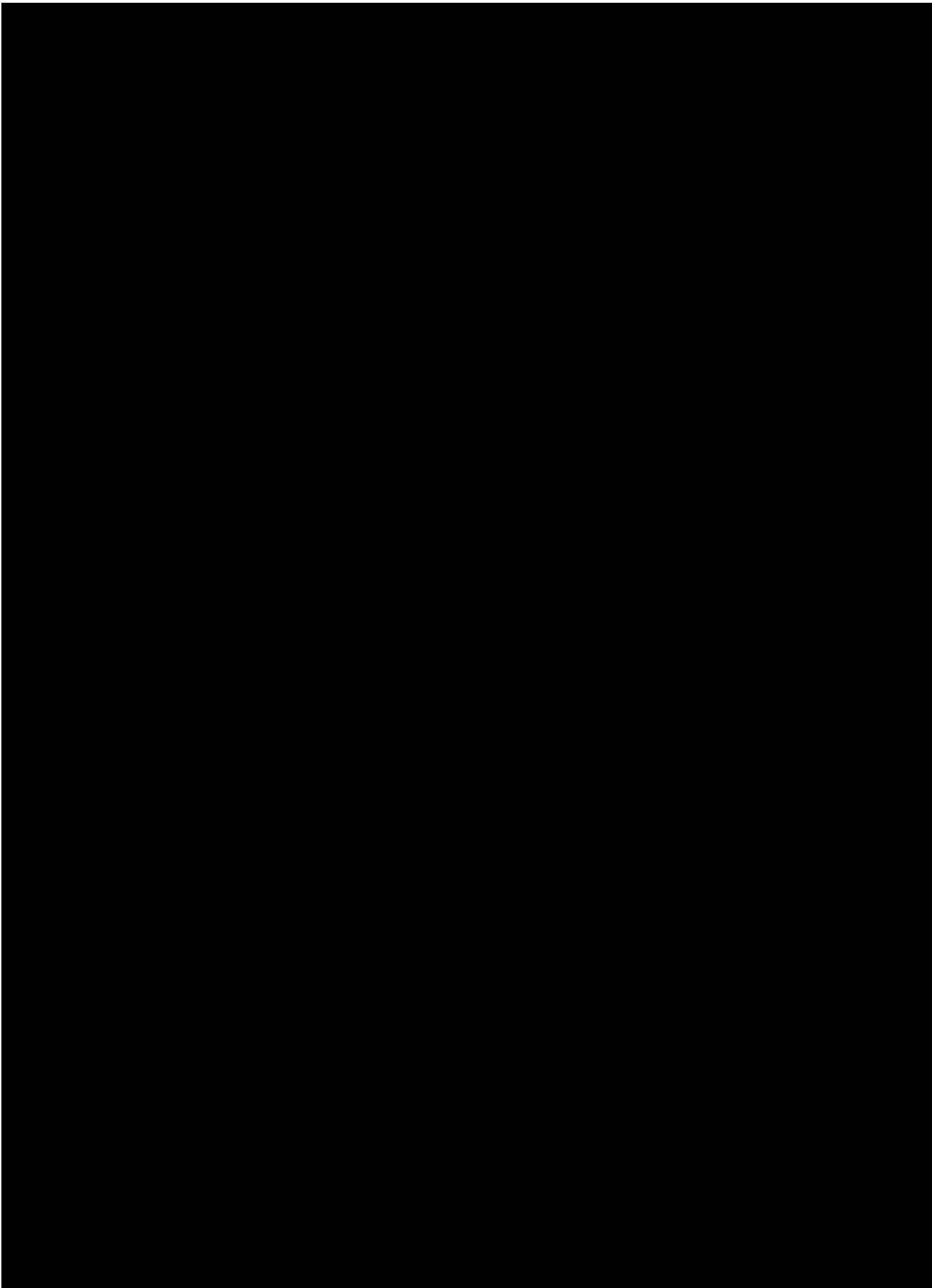


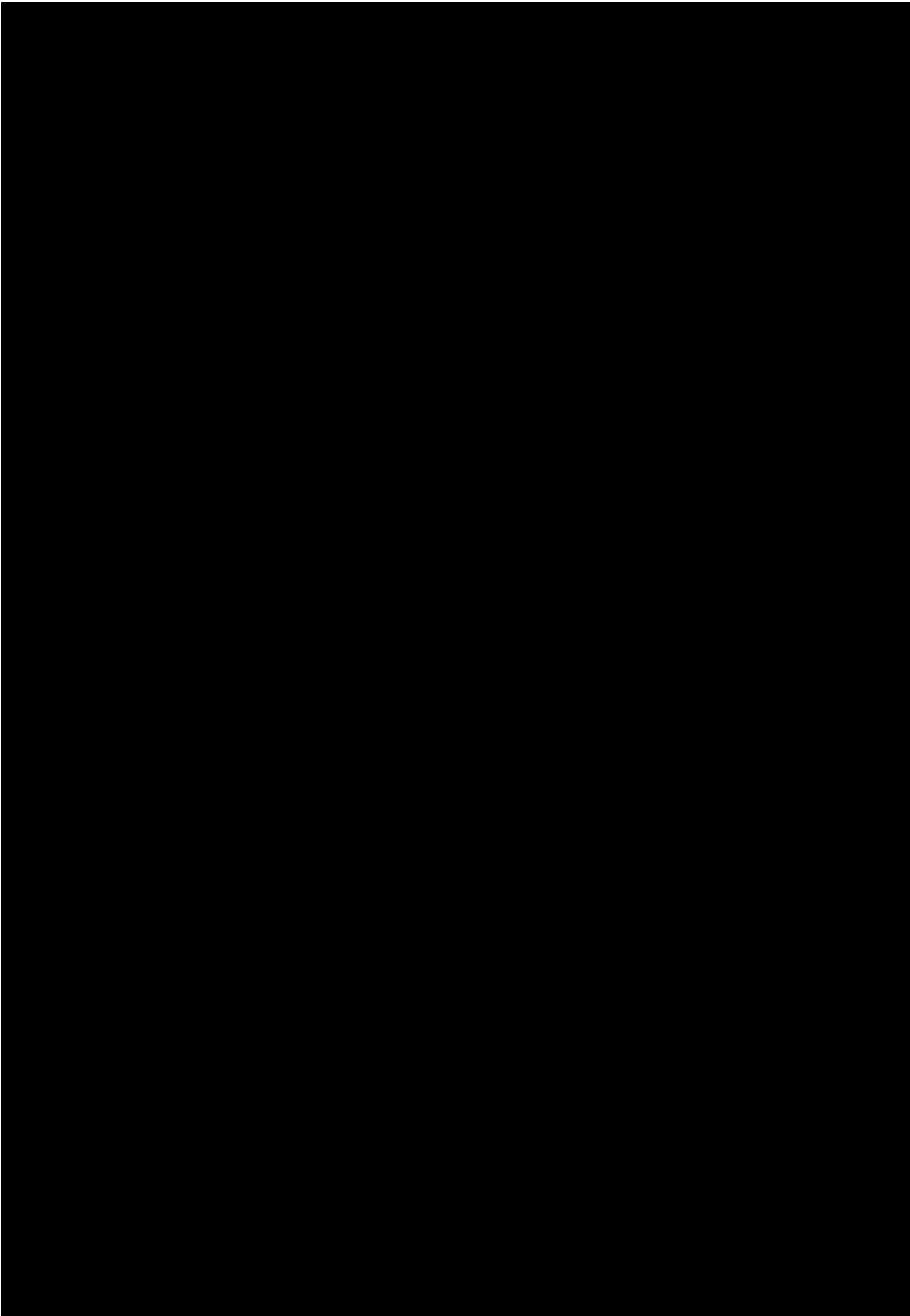










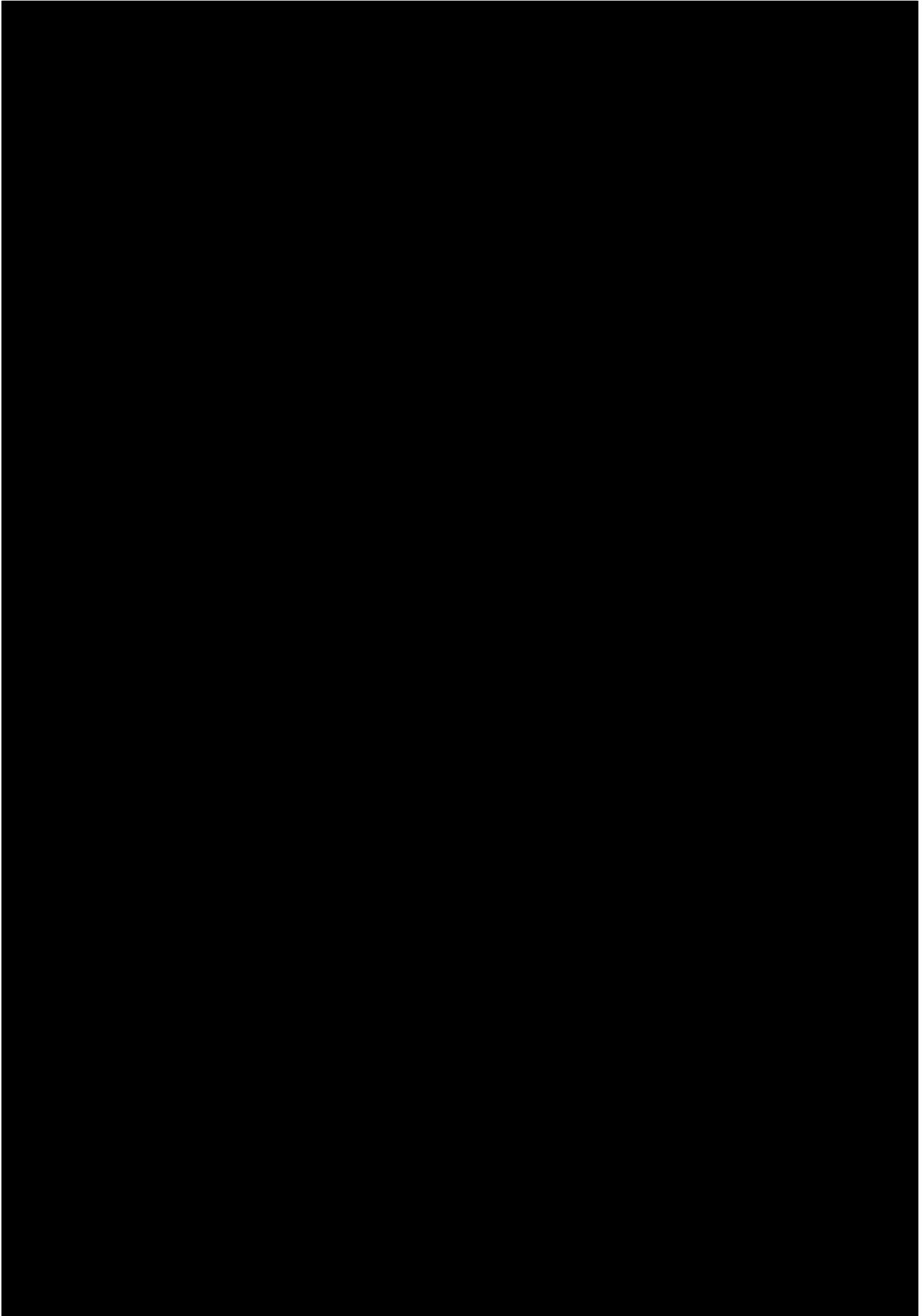




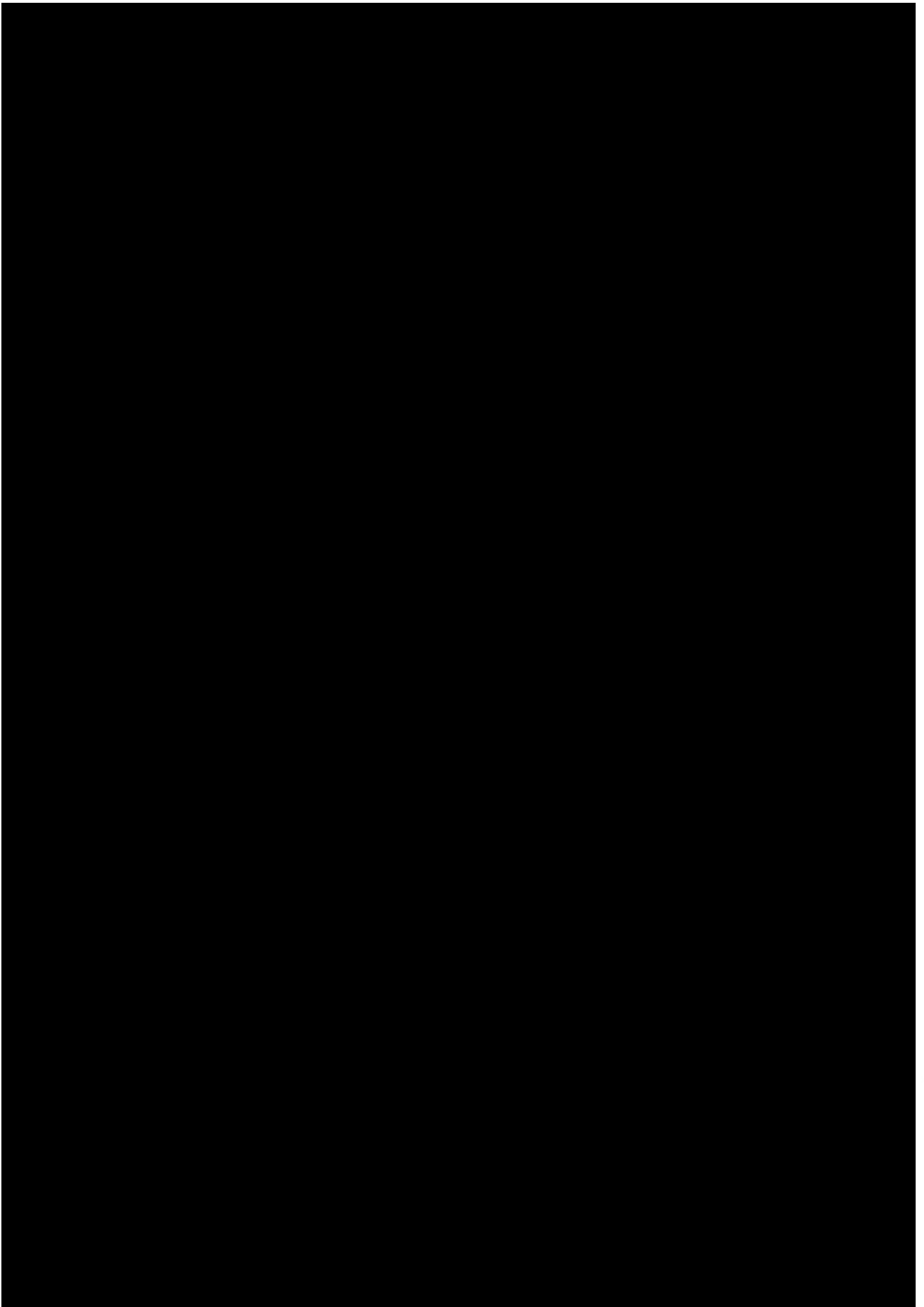




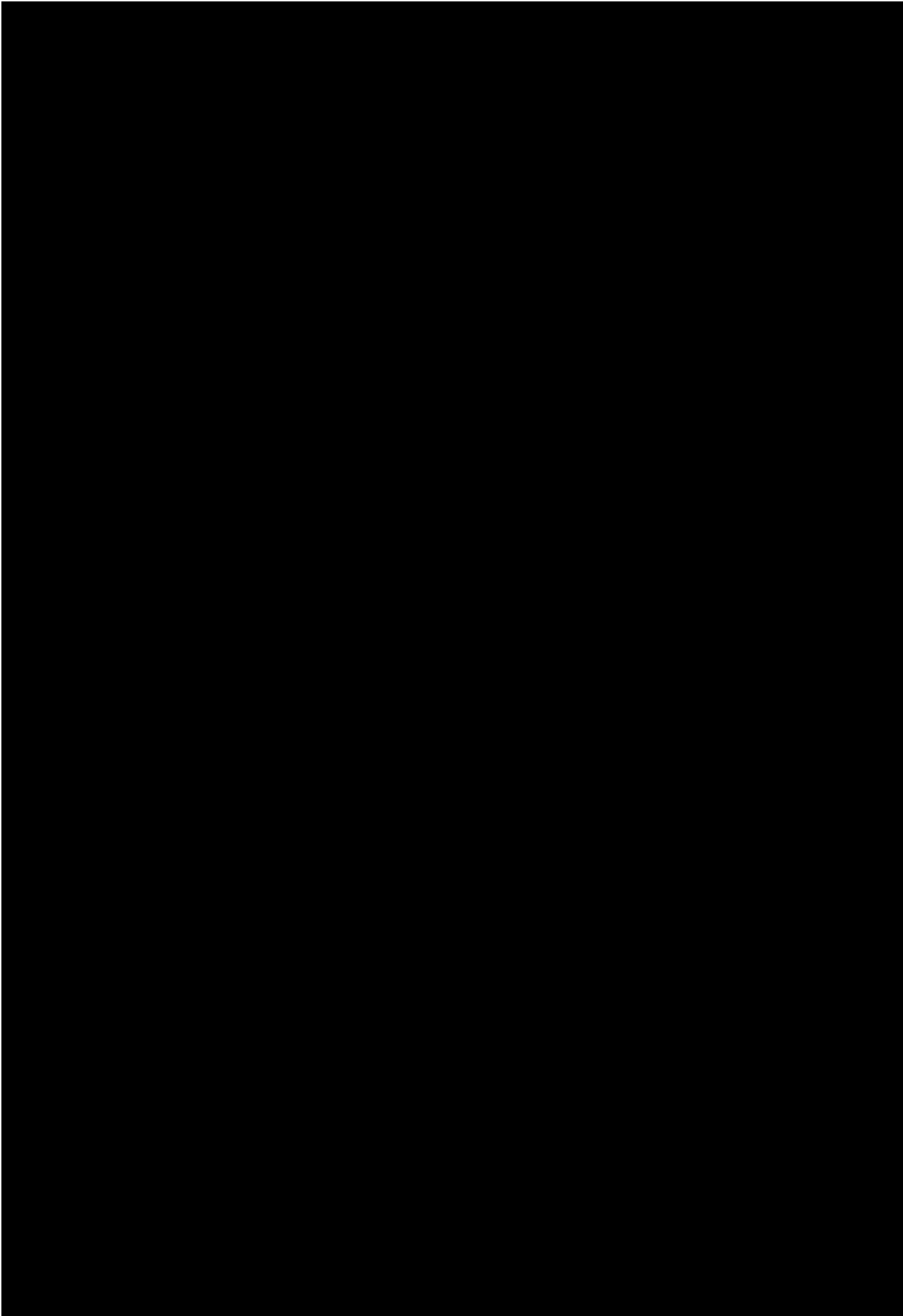


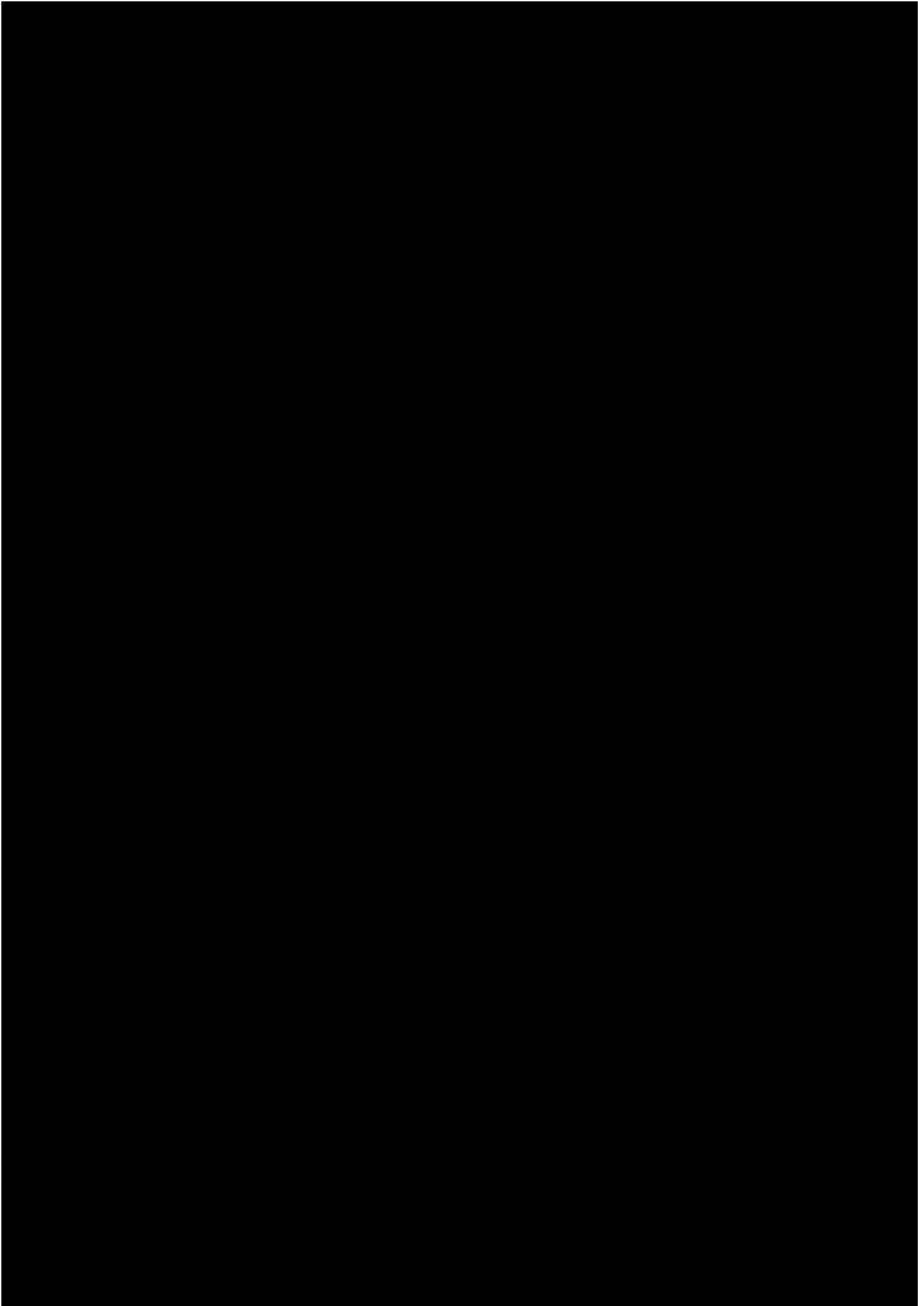


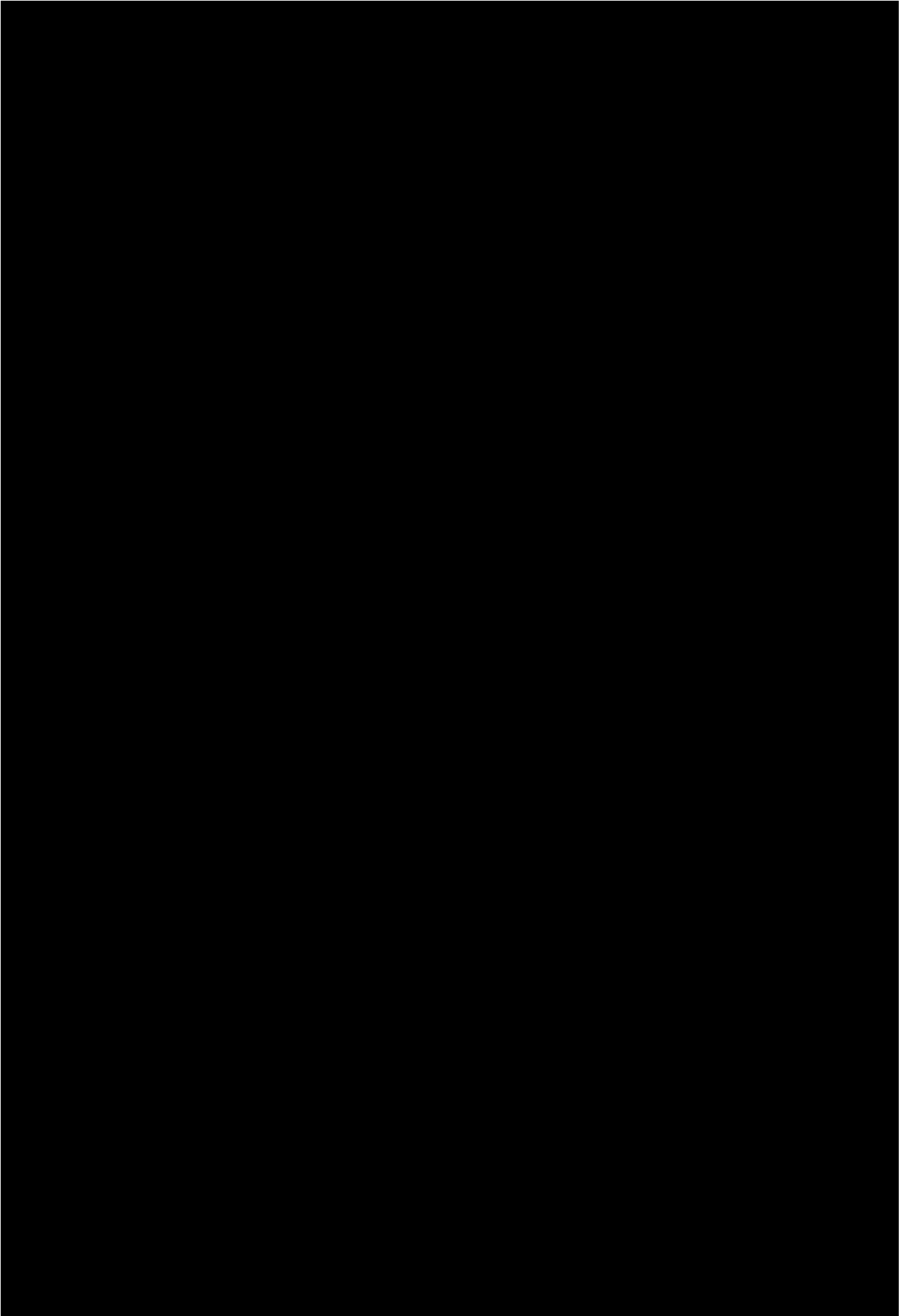




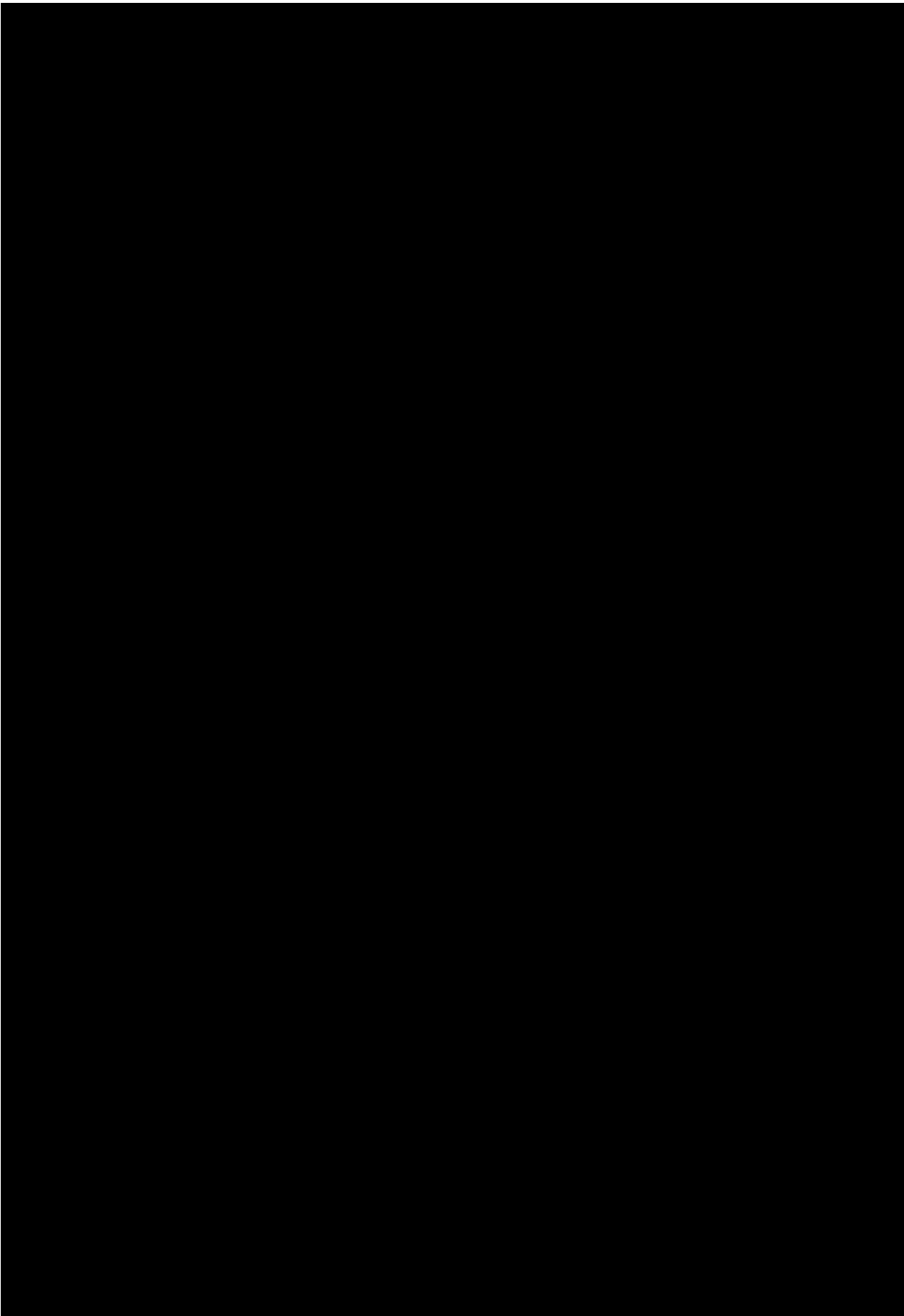




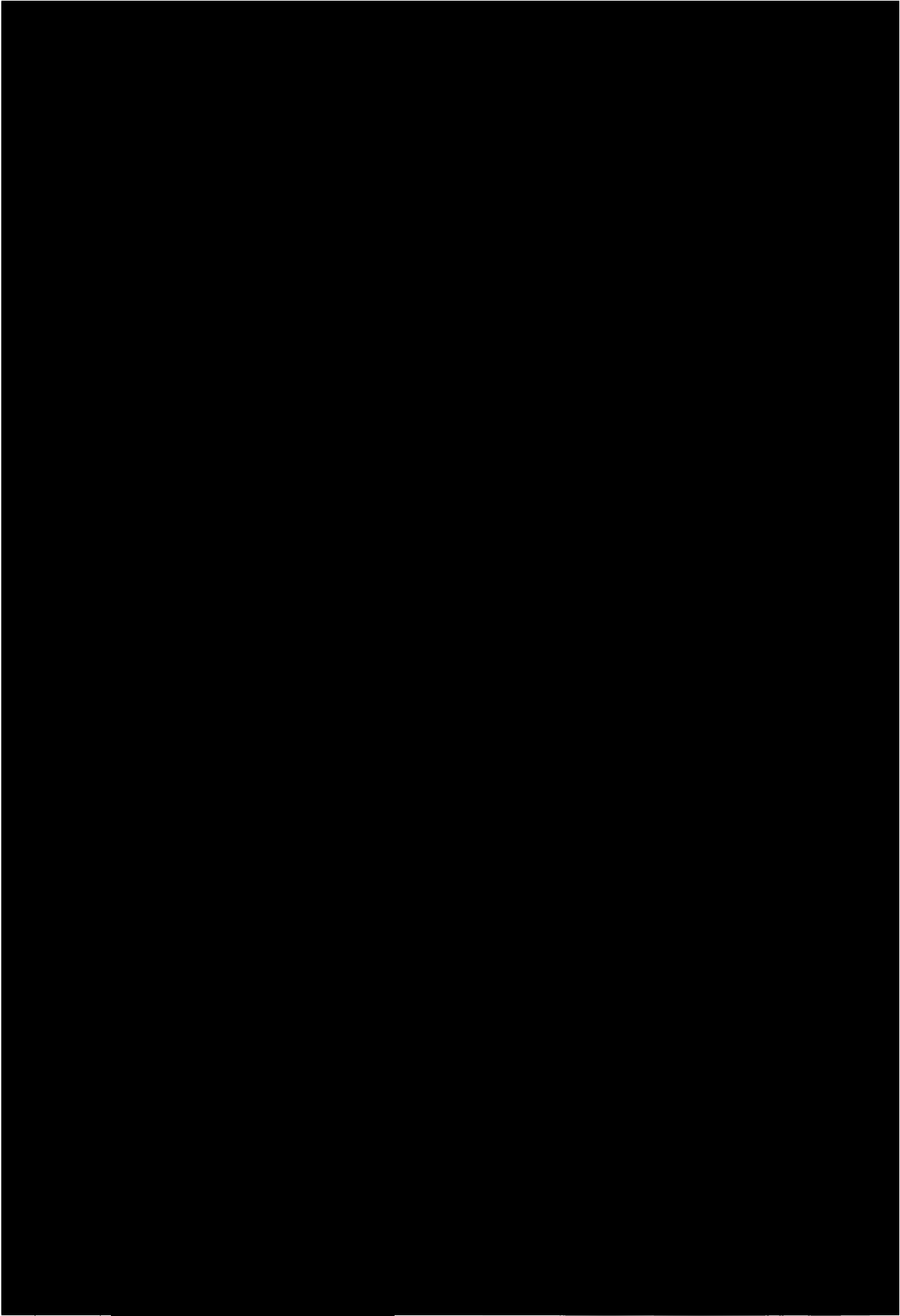




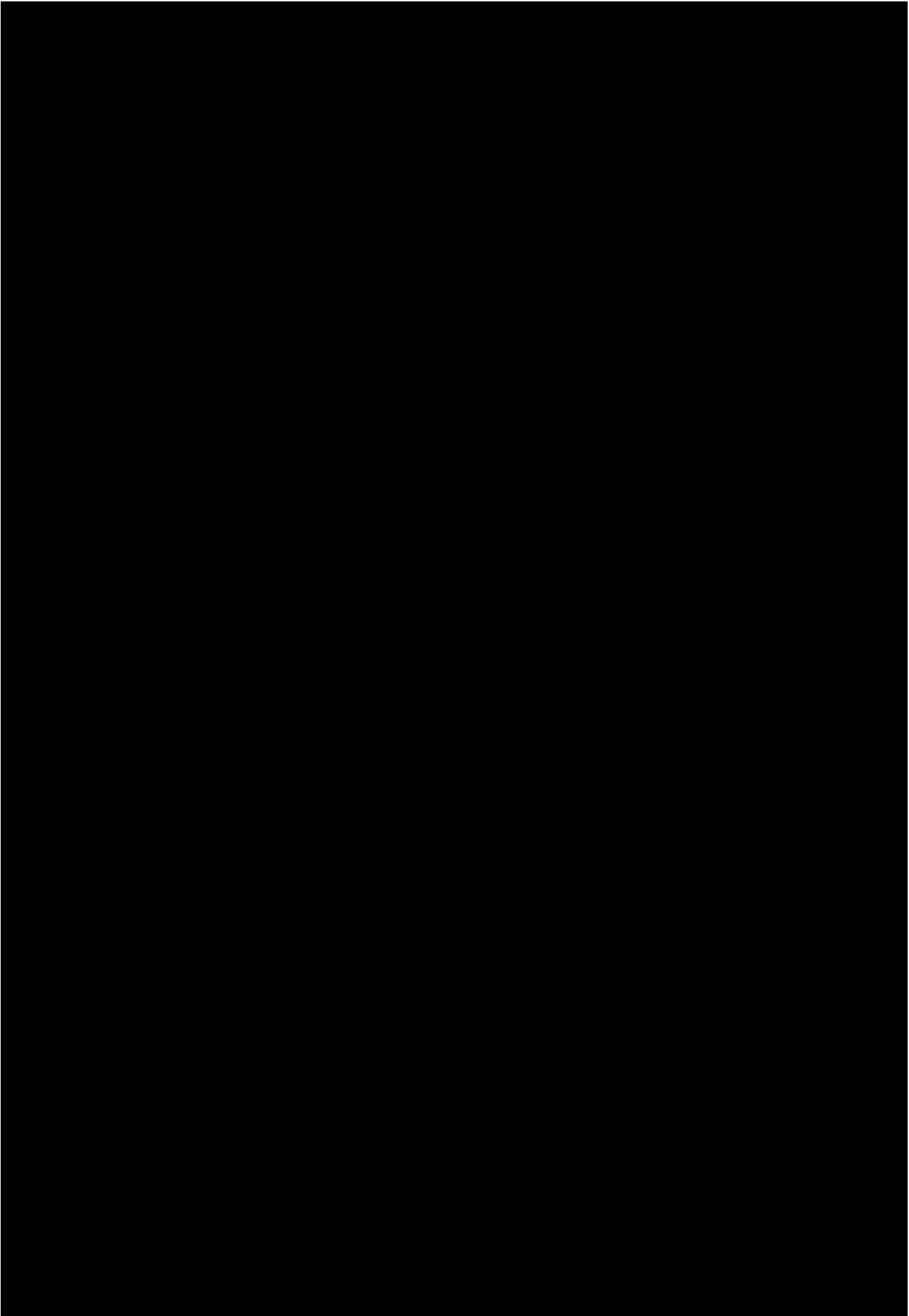




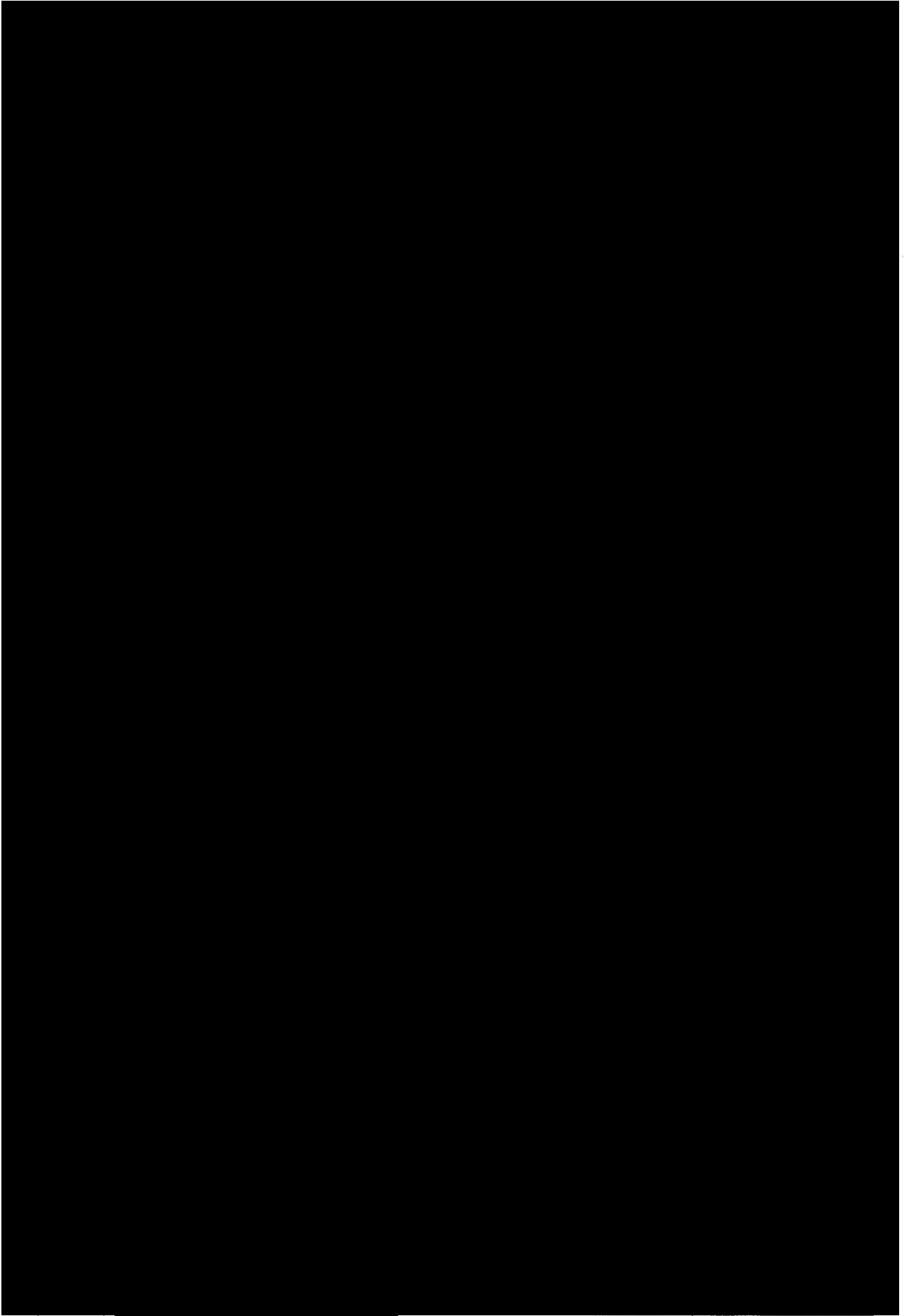


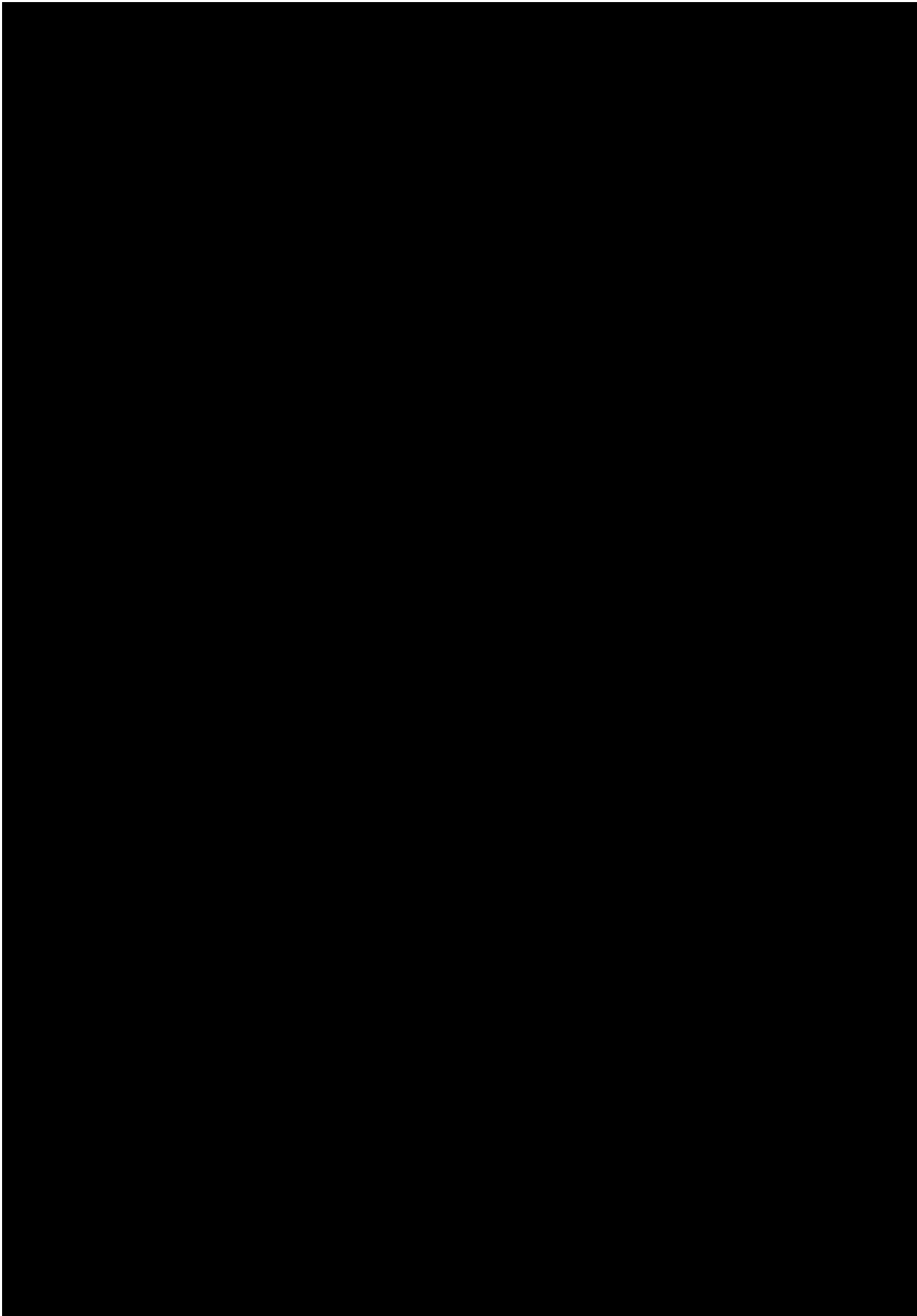


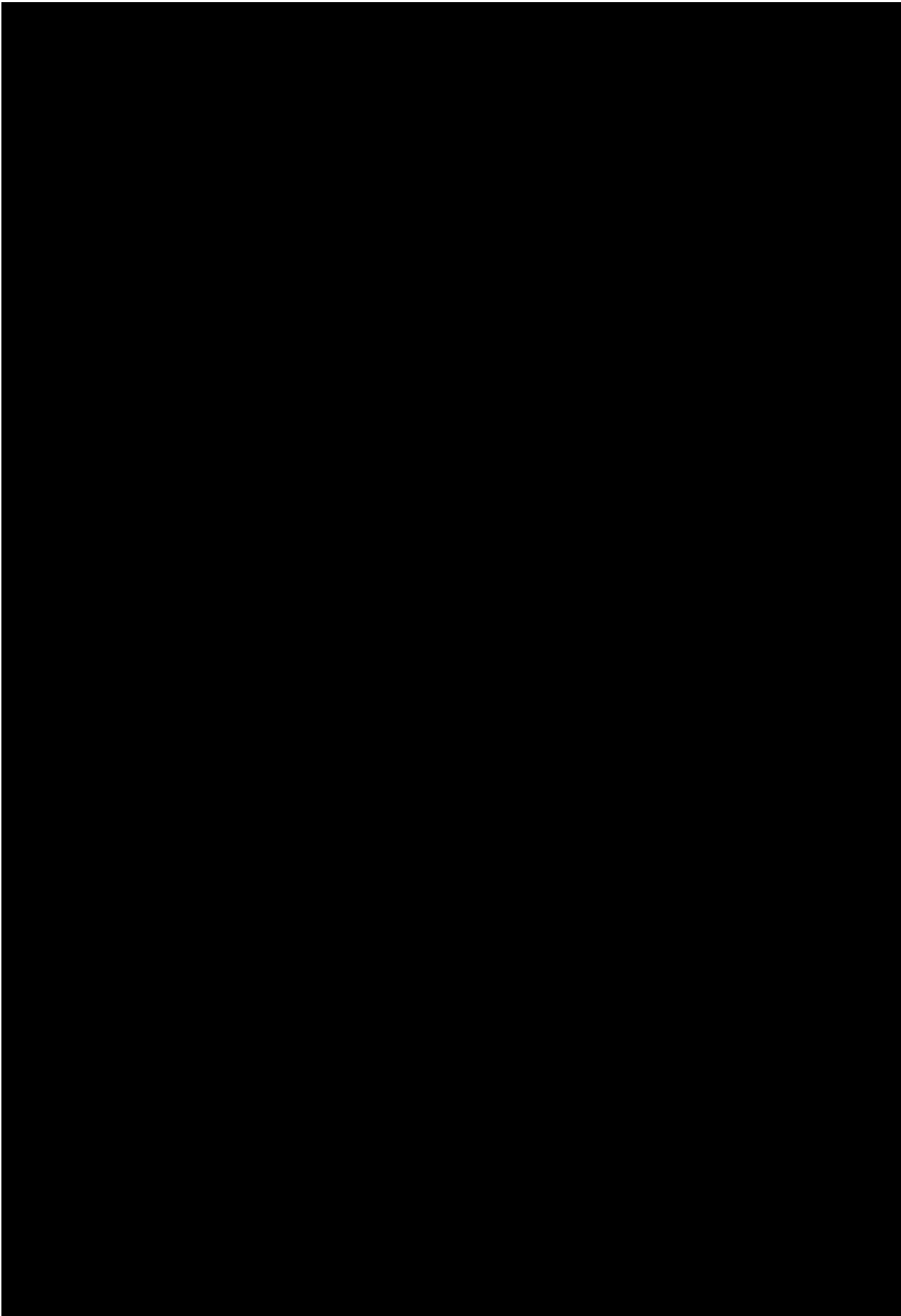












Information Documents

(Clauses 10.2 and 23.2 (definition of "Information Documents"))

Refer to table over the page.

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## **Proof Engineer and Independent Checking Engineer Requirements**

(Clauses 2.5, 2.8 and 23.2 (definition of "Proof Engineer" and "Independent Checking Engineer"))

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### **Part A - Minimum Requirements for Proof Engineer**

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) demonstrated experience in the design of complex bridges and structures, which shall mean for the purposes of this Schedule, bridges or structures with any of the following features:
  - (i) bridge spans exceeding 35m;
  - (ii) retaining walls with effective retained height greater than 6m;
  - (iii) cable stayed or suspension bridges;
  - (iv) steel orthotropic decks;
  - (v) bascule span bridges;
  - (vi) post tensioned concrete structures;
  - (vii) bridge decks with skew exceeding 35 degrees;
  - (viii) railway bridges over roads and road bridges over railways;
  - (ix) structures under railways;
  - (x) precast arch structures; and
  - (xi) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure.
- (b) proven ability in structural analysis and design of complex bridges and structures;
- (c) quality Management System 3rd party certified to AS/NZS ISO 9001;
- (d) range of suitable structural analysis, bridge design and CAD software;
- (e) qualifications admitting to MIEAust and National Professional Engineers Register;
- (f) at least 5 years' experience in complex structural analysis and design of complex bridges and structures;
- (g) knowledge of Australian Standard AS 5100, the Principal's Bridge Technical Directions, the Principal's Standard Drawings;
- (h) knowledge of the Principal's specifications for bridgeworks;
- (i) knowledge of scientific investigation and testing and specialist knowledge of materials and products used in bridge construction; and
- (j) at least 5 years' experience in undertaking the checking of structural design of complex bridges and structures as a proof engineer in the past 10 years.

### **Part B - Minimum Requirements for Independent Checking Engineer**

The following are the minimum required qualifications, experience and expertise that must be possessed by each Independent Checking Engineer:

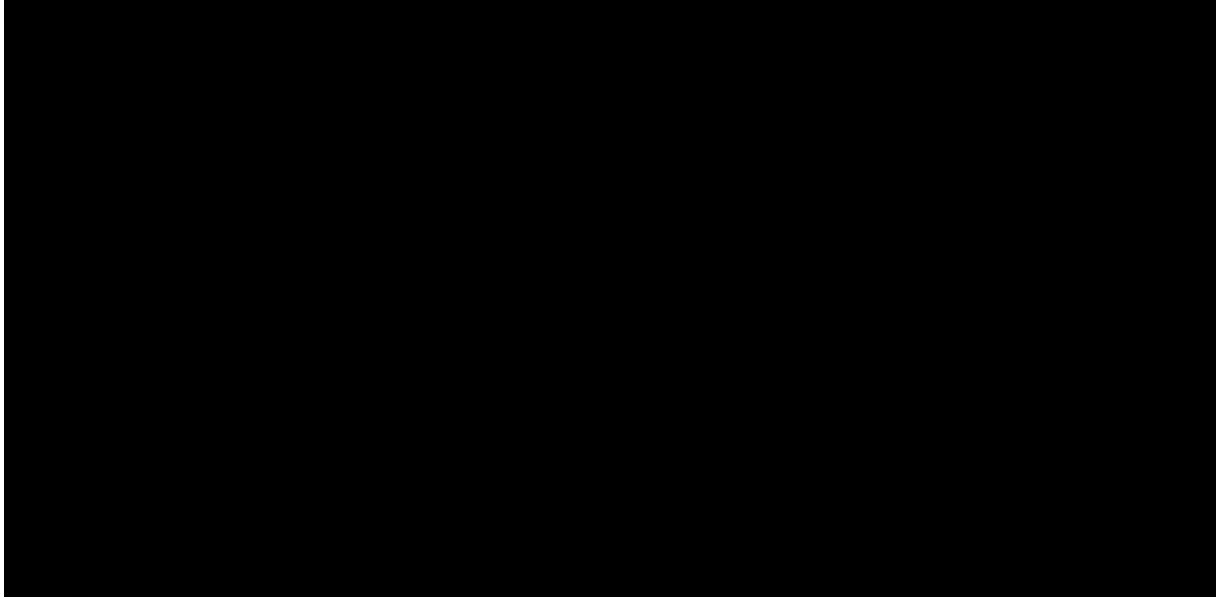
- (a) at least 5 years' experience in undertaking the design of Temporary Works (of the type described in this deed as 'Category 2 Temporary Works') as an engineer in the past 10 years.

## **Principal's Flood Data and Principal's Noise Data**

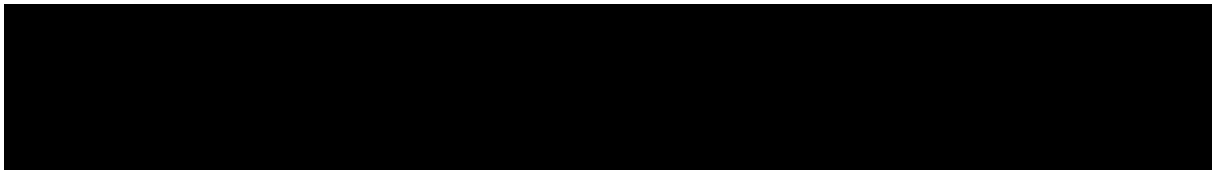
(Clauses 12.1(e) and 23.2 (definition of "Principal's Flood Data" and "Principal's Noise Data"))

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### **Principal's Flood Data**



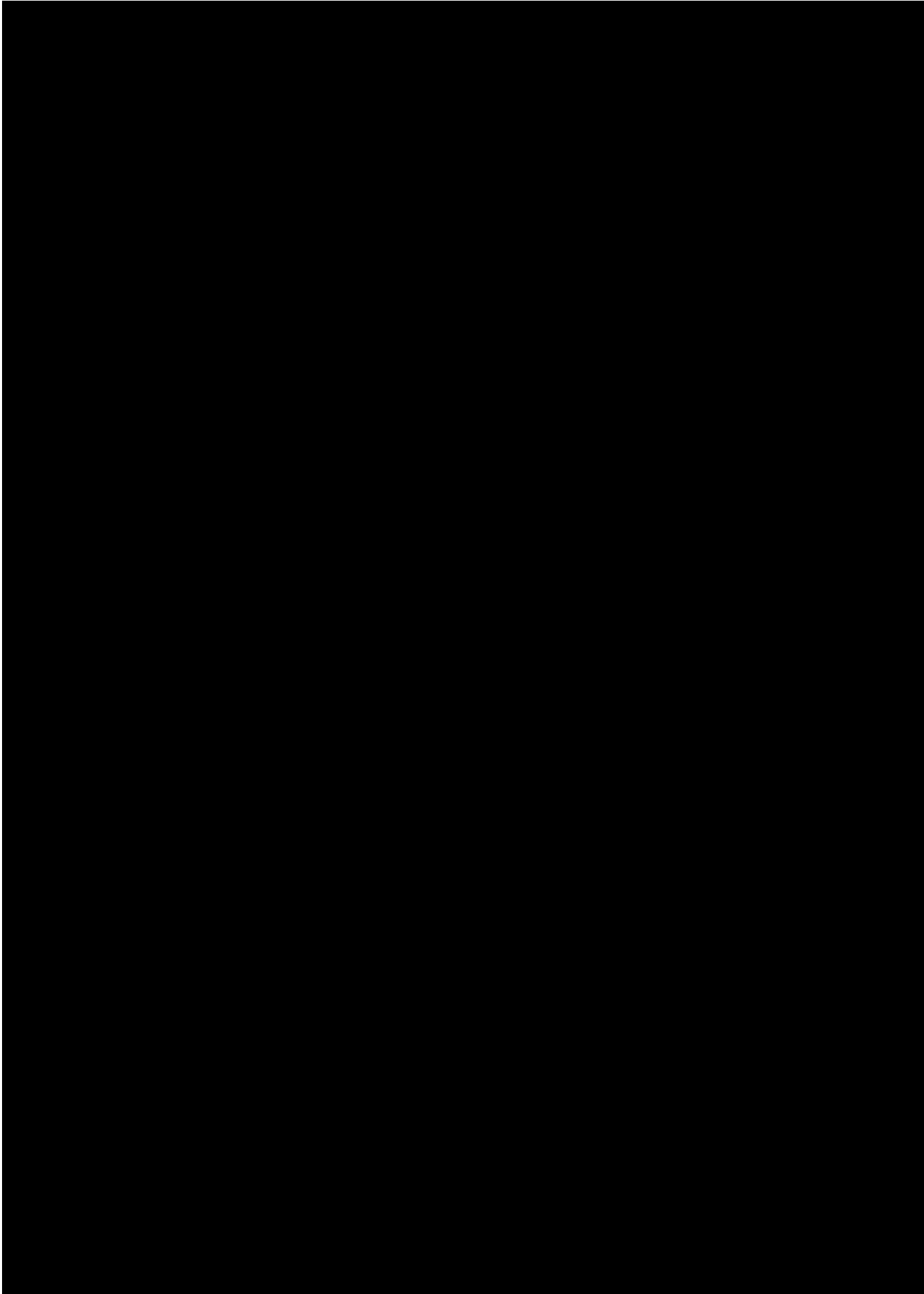
### **Principal's Noise Data**

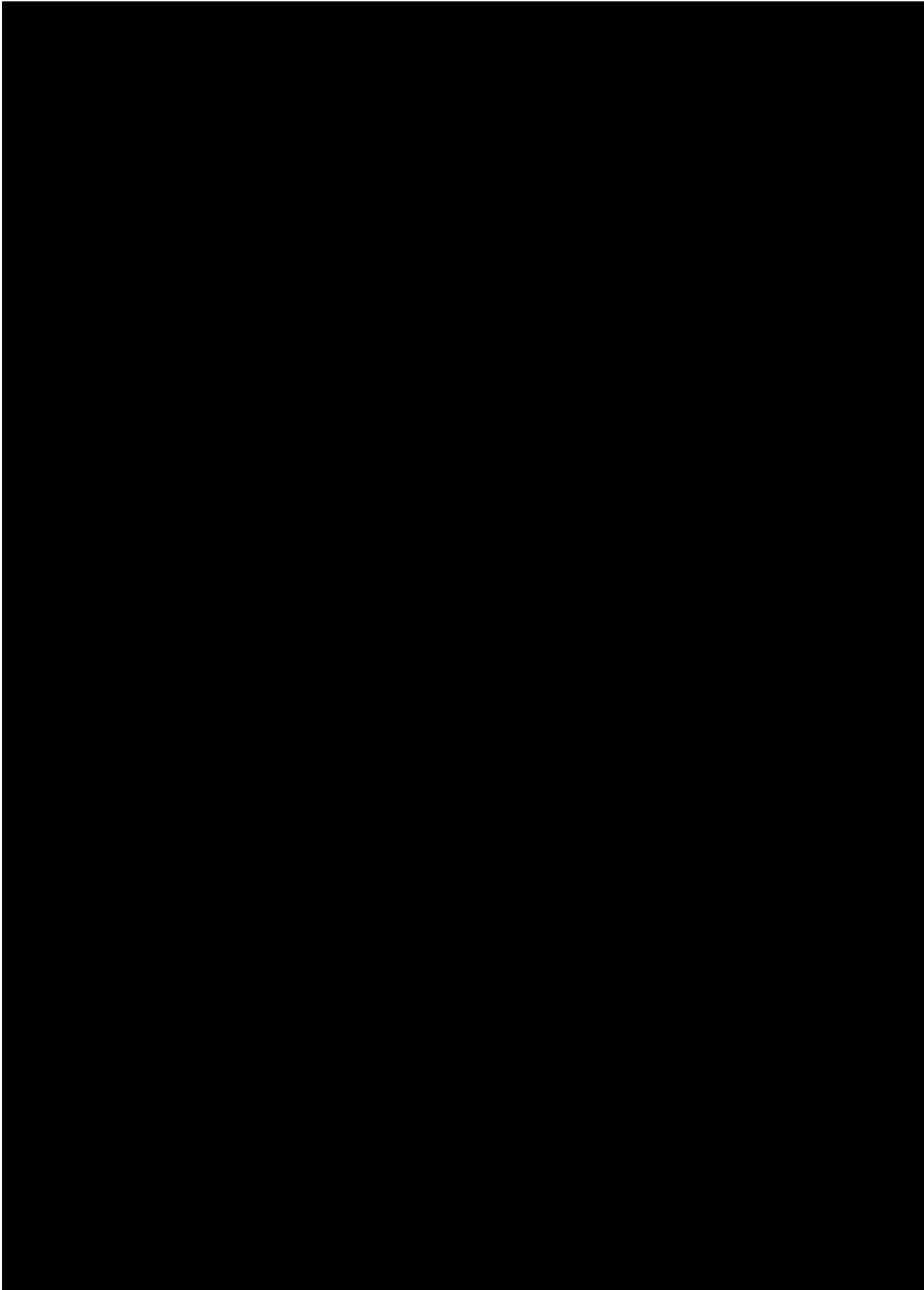


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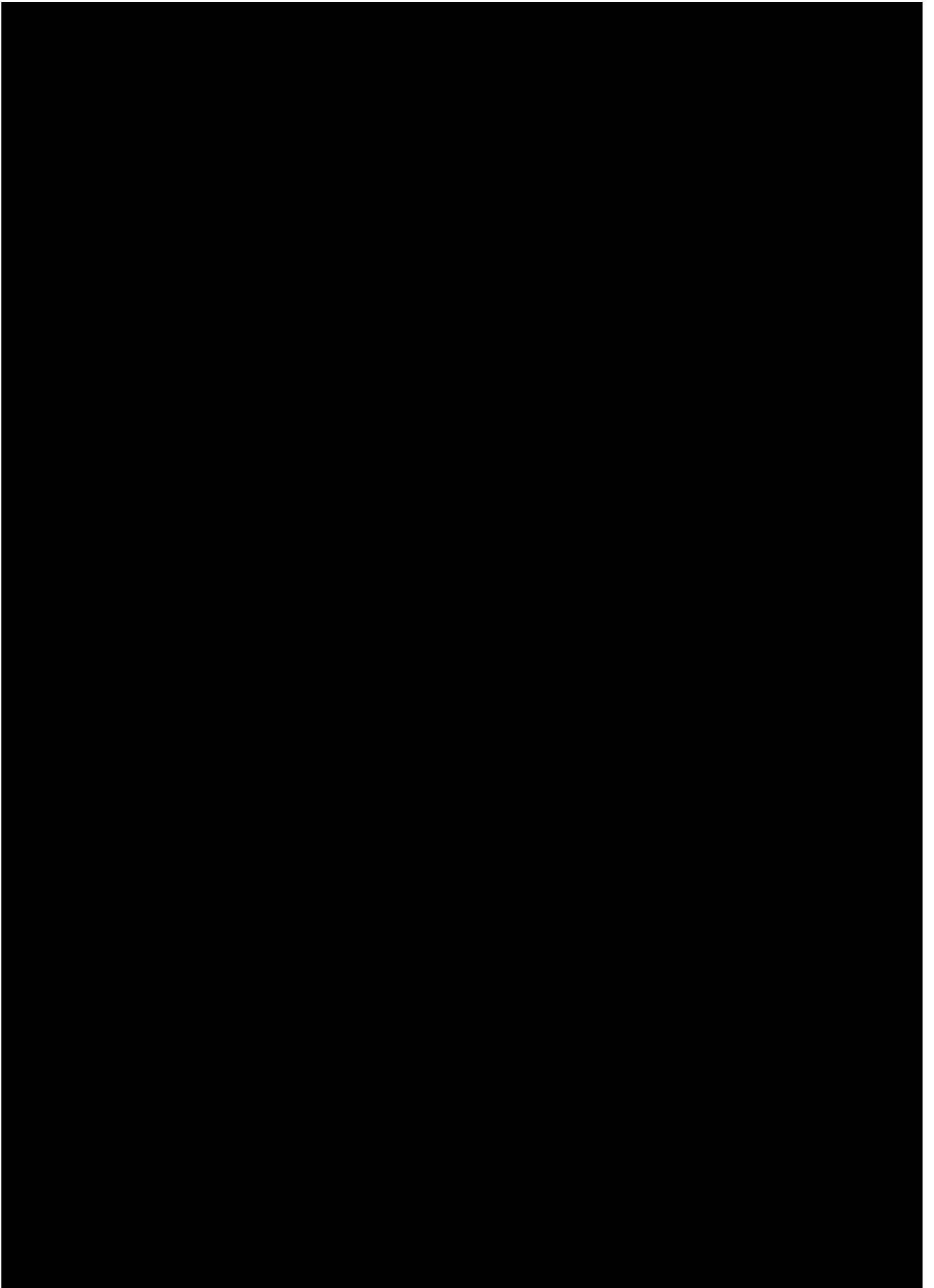






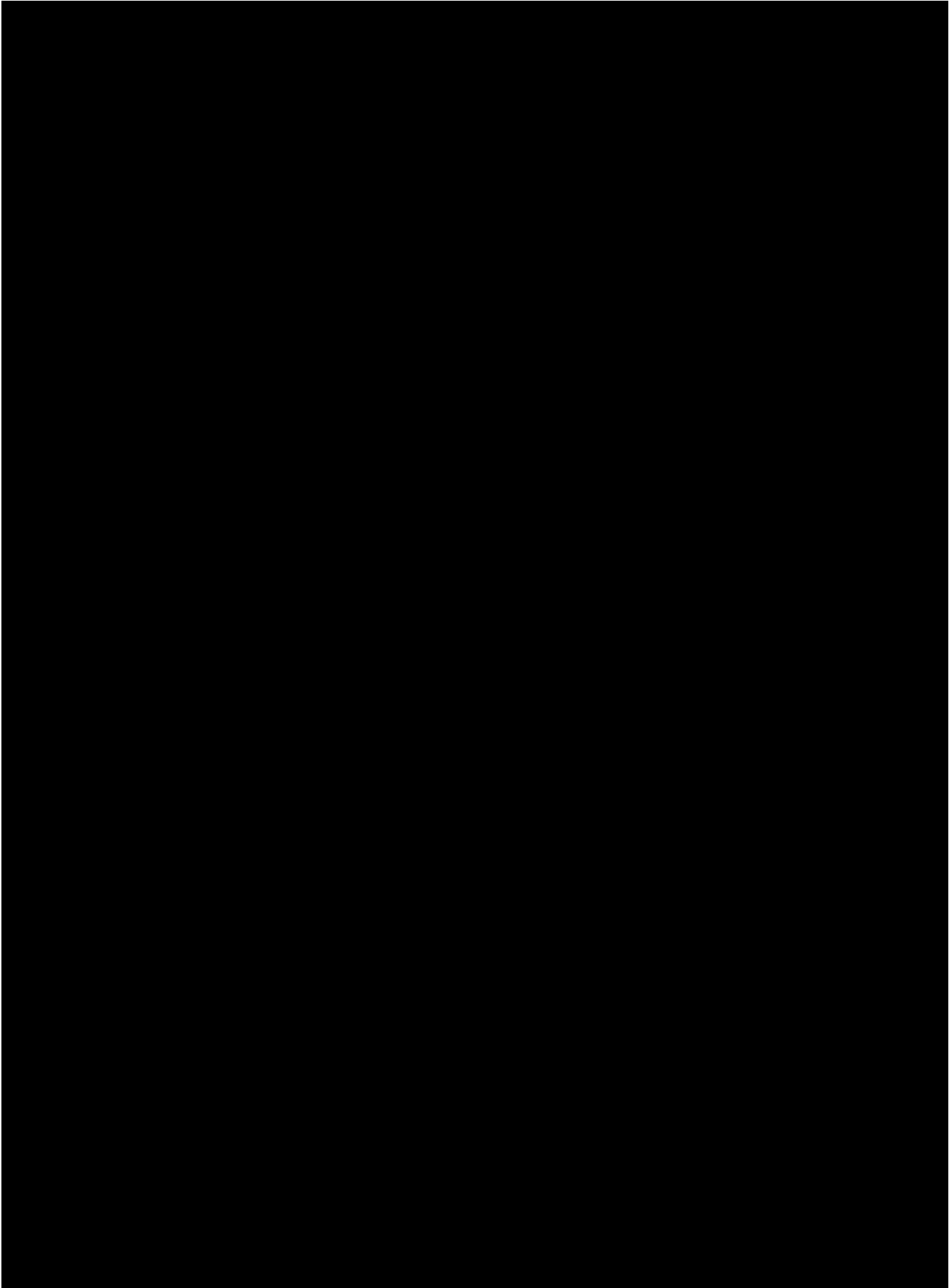


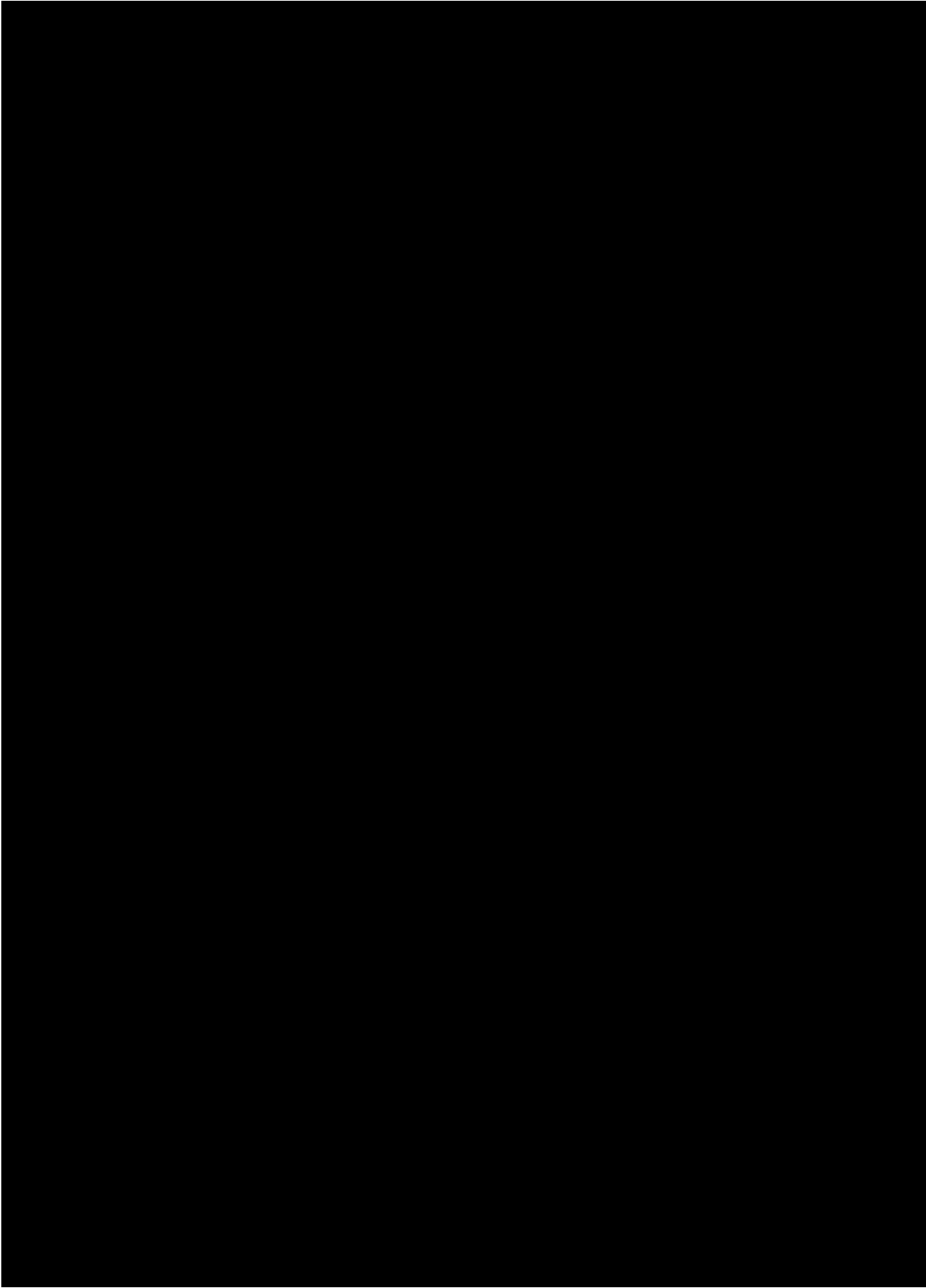












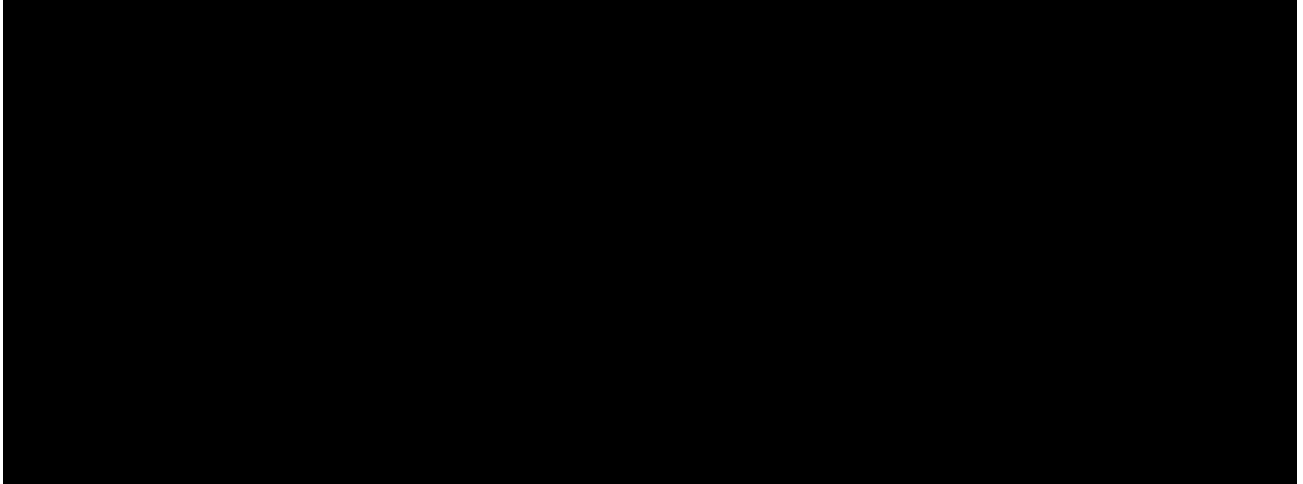




## **COVID-19 Mitigation Measures**

(Clauses 5.22 and 23.2 (definition of "COVID-19 Mitigation Measures"))

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## Requirements of Third Party Agreements

(Clause 5.20)

### 1. No limitation on deed

Nothing in this Schedule 50 (Requirements of Third Party Agreements) limits the Principal's rights or affects the Contractor's obligations under any clause of this deed.

### 2. ARTC Deed of Lease and ARTC Letter

- (a) The Contractor:
  - (i) acknowledges that:
    - (A) the Principal has entered into an agreement with ARTC entitled the "Deed of Lease" (**ARTC Deed**); and
    - (B) pursuant to the ARTC Deed, on 22 April 2021, ARTC issued a letter to the Principal granting its consent to undertake works the subject of the Principal's Notice of Lessor's Works dated 19 March 2021 (the **ARTC Letter**),  
(the **ARTC Agreements**); and
    - (C) copies of the ARTC Agreements are set out in Exhibit H (Third Party Agreements);
  - (ii) must, in performing the Contractor's Activities:
    - (A) comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of the ARTC Deed as if it were named as the Lessor in the ARTC Deed so as to ensure that the Principal is able to fully meet its obligations under the ARTC Deed or otherwise at Law except to the extent that the table below:
      - 1) provides that the Principal will comply with, satisfy, carry out and fulfil the obligation, condition or requirement; or
      - 2) limits the Contractor's obligation in respect of that obligation, condition or requirement;
    - (B) comply with, satisfy, carry out and fulfil all of the obligations, conditions and requirements of the ARTC Letter as if it were named as Transport for NSW in the ARTC Letter so as to ensure that the Principal is able to fully meet its obligations under the ARTC Letter or otherwise at Law except to the extent that the table below:
      - 1) provides that the Principal will comply with, satisfy, carry out and fulfil the obligation, condition or requirement; or
      - 2) limits the Contractor's obligation in respect of that obligation, condition or requirement; and
    - (C) comply with and fulfil any conditions, obligations or requirements allocated to the Contractor in this Schedule 50 (Requirements of Third Party Agreements) that are additional to or more stringent or onerous than the conditions and requirements described in clauses 2(a)(ii)A or 2(a)(ii)B;
  - (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 the table below; and
  - (iv) may not exercise any of the Principal's discretions or rights under the ARTC Agreements unless agreed by the Principal in writing.
- (b) Where the ARTC Agreements provide that:
  - (i) the Contractor must; or
  - (ii) the Principal must ensure that the Contractor will,  
do something or comply with an obligation, the Contractor must, in performing the Contractor's Activities, do that thing or comply with that obligation.
- (c) Where the ARTC Agreements provide for the Principal to provide a document, notice or information to ARTC:

- (i) the Contractor must not provide any such document, notice or information directly to ARTC;
- (ii) subject to paragraph (iii), the Contractor must provide such document, notice or information to the Principal within a reasonable time sufficient for the Principal to review and comment on the document, notice or information and provide it to the ARTC within the time period required by the relevant ARTC Agreement; and
- (iii) the Contractor is not required to provide to the Principal any document, notice or information:
  - (A) which the Principal may elect at its discretion to provide to the ARTC under the relevant ARTC Agreement; or
  - (B) responsibility for which the Principal has retained pursuant to the table in this Schedule 50 (Requirements of Third Party Agreements).
- (d) The Contractor must, in carrying out the Contractor's Activities:
  - (i) comply with any reasonable directions of the Principal's Representative in relation to compliance with the conditions and requirements of the ARTC Agreements or other requirements of ARTC;
  - (ii) ensure that no act or omission of the Contractor (other than as permitted in this clause 2 or the table below) constitutes, causes or contributes to any breach by the Principal of its obligations to the ARTC under the ARTC Agreements or otherwise at Law; and
  - (iii) otherwise act consistently with the terms of the ARTC Agreements.
- (e) Whenever, pursuant to the terms of the ARTC Agreements, the Principal makes an acknowledgment or gives a release or warranty, indemnity, or covenant to ARTC under any clause of the ARTC Agreements then, subject to what is provided in this Schedule 50 (Requirements of Third Party Agreements) and the other terms of this deed, 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 the relevant ARTC Agreements 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 deed.
- (f) The Contractor acknowledges that to the extent that the ARTC Agreements contain a provision pursuant to which ARTC 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 relevant ARTC Agreement were set out fully in this deed.
- (g) Nothing in the ARTC Agreements or this Schedule 50 (Requirements of Third Party Agreements) limits the Principal's rights or the Contractor's obligations in relation to Opening Completion or the rectification of Defects under this deed, including clauses 16.1 - 16.5 of this deed.
- (h) The Contractor must indemnify the Principal from and against any claim by ARTC against the Principal or any liability of the Principal to ARTC arising out of or in any way in connection with the ARTC Agreements to the extent that the claim or liability is caused by, or 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 a negligent act or omission of the Principal or an agent of the Principal contributed to the claim or liability.
- (i) The Contractor:
  - (i) bears the full risk of:
    - (A) complying with the obligations under this Schedule 50 (Requirements of Third Party Agreements); and
    - (B) any acts or omissions of ARTC or its employees, agents, contractors or officers; and
  - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:
    - (A) the risks referred to in clause 2(i)(i) of this Schedule 50 (Requirements of Third Party Agreements); or
    - (B) any acts or omissions of the ARTC or its employees, agents, contractors or officers.







[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]

# Heavy Vehicle National Law Requirements

(Clause 5.17)

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## Heavy Vehicle National Law Requirements

### 1. CHAIN OF RESPONSIBILITY – HEAVY VEHICLES

#### 1.1 Definitions

- (a) Capitalised terms in this Schedule 51 (Heavy Vehicle National Law Requirements) that are not defined in this deed have the meaning given to them in the Heavy Vehicle National Law.
- (b) The term "Chain of Responsibility" is as described in the Heavy Vehicle National Law.

#### 1.2 Chain of Responsibility obligations

- (a) The Contractor must comply with:
  - (i) the Heavy Vehicle National Law generally and the requirements of the Chain of Responsibility Provisions specifically;
  - (ii) the Principal's requirements (as the road authority) relevant to planning and use of heavy vehicles; and
  - (iii) the Chain of Responsibility Guideline contained in Attachment C.1-2 of Appendix C.1 to the SWTC.
- (b) The Contractor must prepare the Chain of Responsibility Management Plan for the Contractor's Activities in accordance with this deed, including the requirements of section 20 of Appendix C.1 to the SWTC.
- (c) The Contractor must ensure that:
  - (i) all Heavy Vehicles used as part of carrying out the Contractor's Activities; and
  - (ii) the Chain of Responsibility Management Plan,comply with the Chain of Responsibility Guideline.

### 2. CHAIN OF RESPONSIBILITY MANAGEMENT PLAN REQUIREMENTS

#### 2.1 Core obligations

- (a) The Contractor must not commence any work on or adjacent to the Construction Site or any place at which Contractor's Activities will be undertaken until the Contractor has submitted a revised Chain of Responsibility Management Plan to the Principal in accordance with this Schedule 51 (Heavy Vehicle National Law Requirements).
- (b) The Chain of Responsibility Management Plan prepared by the Contractor must comply with the requirements of section 20 of Appendix C.1 to the SWTC.

- (c) Without limiting clause 5.17 of this deed, the Contractor must submit the Chain of Responsibility Management Plan to the Principal within 40 Business Days after the date of this deed.
- (d) Not used.
- (e) Not used.
- (f) The Chain of Responsibility Management Plan must be submitted to the Principal's Representative for its review at least 25 Business Days prior to the commencement of any of the Contractor's Activities using any heavy vehicle governed by the Heavy Vehicle National Law.
- (g) No review of, comments on or any other act or omission of the Principal's Representative about a Chain of Responsibility Management Plan, will lessen or otherwise affect:
  - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
  - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) Not used.
- (i) Not used.
- (j) The Contractor:
  - (i) must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause; and
  - (ii) agrees that compliance with the Chain of Responsibility Management Plan will not in any way lessen or affect:
    - (A) its liabilities or responsibilities of the Contractor under this deed or otherwise according to Law; or
    - (B) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

### **3. CHAIN OF RESPONSIBILITY REQUIREMENTS**

#### **3.1 Incorporation of Chain of Responsibility requirements**

The Contractor must:

- (a) take account of, and incorporate all applicable, relevant or necessary requirements in relation to the Chain of Responsibility Provisions (particularly provisions that govern the supply chain for the Project Works and Temporary Works and for the bringing onto and removal from the Construction Site items requiring transport services) in all aspects of the Contractor's Activities, including:
  - (i) the Project Plans;
  - (ii) the design of the Project Works and Temporary Works; and
  - (iii) the Design Documentation; and
- (b) at key stages of the Contractor's Activities, conduct Chain of Responsibility risk workshops which will include the designer, Principal, the Contractor, Subcontractors and the Independent Certifier. The Chain of Responsibility risk workshops can be combined with the work health and safety risk workshops.

### **3.2 Chain of Responsibility risk assessment workshop**

- (a) Prior to the development of the Chain of Responsibility Management Plan, and any subsequent reviews or revisions of the Chain of Responsibility Management Plan, the Contractor must undertake and document the outcomes of a formal Chain of Responsibility risk assessment workshop.
- (b) The Contractor's Chain of Responsibility risk assessment workshop must identify and document a register of Chain of Responsibility risks and hazards and control measures associated with the Contractor's Activities.
- (c) The Contractor's Chain of Responsibility Management Plan must reflect the outcomes reached in the Chain of Responsibility risk assessment workshop.
- (d) The Contractor must hold further separate workshops at different stages of the Contractor's Activities to address different trades, phases, work areas or processes not covered during the earlier risk assessment workshops and must be held prior to the commencement of the relevant activity, phase or section of work.
- (e) The Contractor may combine the Chain of Responsibility risk assessment workshops with the work health and safety risk workshops conducted by the Contractor.

## **4. DRIVING AND VEHICLE SAFETY**

### **4.1 Reduction of risks to workers and public**

The Contractor must comply with the requirements of the:

- (a) WHS Laws;
- (b) Road Transport Legislation; and
- (c) Heavy Vehicle National Law,

and any subordinate legislation to ensure the risks to workers and the public are reduced so far as is reasonably practical when driving on the Construction Site and driving to and from the Construction Site on the public road network.

### **4.2 Minimum Vehicle Safety Equipment**

- (a) The Contractor must ensure that all light and heavy vehicles used to transport equipment, plant, materials and people to and from the Construction Site and working areas are equipped with the equipment as specified in the Chain of Responsibility Guideline, including the following:
  - (i) three-point seat belts (for the driver and all passengers);
  - (ii) rear view mirrors;
  - (iii) reversing cameras, quacker type alarms and collision/proximity sensors;
  - (iv) lights (head and tail, stop, turn signal and emergency warning);
  - (v) light and high visibility colours for vehicles;
  - (vi) daytime running lights;
  - (vii) no additional window tinting;
  - (viii) flashing lights (unless determined otherwise by risk assessment); and
  - (ix) fire safety equipment capable of suppressing or extinguishing potential vehicular fires.

- (b) Without limiting clause 4.2(a) of this Schedule 51 (Heavy Vehicle National Law Requirements), the Contractor must ensure all vehicles in carrying out the Contractor's Activities display signs approved by the Principal in a prominent position on the vehicle when driven on public roads which associate the vehicle with carrying out the Contractor's Activities.

#### **4.3 Vehicle Registration, Maintenance and Inspection**

The Contractor must:

- (a) ensure all work vehicles are registered, roadworthy and pre-start checked before being driven;
- (b) ensure that all vehicles are inspected, serviced and maintained in accordance with the manufacturer's recommendations;
- (c) maintain a register of company vehicles showing registration expiry dates and licence requirements; and
- (d) comply with the Chain of Responsibility Guideline requirements for ensuring the roadworthiness of all heavy vehicles used in connection with the Contractor's Activities.

#### **4.4 Vehicle Drivers**

- (a) The Contractor must ensure that all workers who drive a vehicle as part of their work in the Contractor's business or undertaking, including those persons employed by Subcontractors (including owner drivers), are licensed, fit and verified as competent to drive the vehicle they are driving.
- (b) The Contractor must develop a "Driver Code of Conduct" which outlines minimum driver behaviour requirements to ensure compliance with:
  - (i) WHS Laws;
  - (ii) Road Transport Legislation;
  - (iii) Heavy Vehicle National Law; and
  - (iv) the Chain of Responsibility Guideline.
- (c) The Contractor must ensure that all drivers, including those employed by Subcontractors (including owner drivers) are made aware of and sign the "Driver Code of Conduct" developed by the Contractor in accordance with clause 4.4(b) of this Schedule 51 (Heavy Vehicle National Law Requirements).

#### **4.5 Heavy Vehicle Requirements**

The Contractor must ensure that the on-road transport of dangerous goods is managed in accordance with Law, including the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) and the *Dangerous Goods (Road and Rail Transport) Regulation 2014* (NSW).

### **5. CONSTRUCTION TRAFFIC AND VULNERABLE ROAD USERS**

#### **5.1 Introduction**

The Contractor acknowledges that:

- (a) during the Contractor's Activities, the introduction of construction Heavy Vehicle traffic to areas in and around Coffs Harbour has the potential to generate road safety risks to the public, in particular vulnerable road users; and

- (b) where required under Heavy Vehicle National Law and the Chain of Responsibility Guideline, the Contractor must ensure that the specific measures in this clause 5 of Schedule 51 (Heavy Vehicle National Law Requirements) are implemented to minimise any impacts of construction Heavy Vehicles traffic on other road users.

## **5.2 Heavy Vehicle Operators**

- (a) The Contractor must ensure that all Heavy Vehicle operators engaged in the Contractor's Activities, including owner drivers, are assessed and selected to ensure that they meet the minimum requirements set out in this Schedule 51 (Heavy Vehicle National Law Requirements) and the Chain of Responsibility Guideline.
- (b) A Heavy Vehicle operator includes the Contractor and its Subcontractors engaged in the following activities:
  - (i) removing excavated material or waste; or
  - (ii) delivering concrete, equipment (including Temporary Works), plant or materials.

## **5.3 Haulage Route Compliance**

- (a) The Contractor must ensure that all Heavy Vehicles haulage routes comply with any planning approval requirements and are endorsed by the Traffic Control Group (as defined in the SWTC) and / or similar.
- (b) The Contractor must ensure that approved Heavy Vehicle haulage routes are adhered to at all times by the haulage contractor and that systems are in place to monitor the location of the vehicles at all times.

## **5.4 Heavy Vehicle Safety Equipment**

- (a) The Contractor must ensure that all Heavy Vehicles over 4.5 tonnes gross vehicle mass (GVM) are fitted with the safety equipment required in the Chain of Responsibility Guideline, as a minimum.
- (b) The Contractor must ensure that all Heavy Vehicle drivers are provided with sufficient training, instruction and supervision to ensure the competent use of the safety equipment specified in this Schedule 51 (Heavy Vehicle National Law Requirements) and the Chain of Responsibility Guideline.
- (c) The Contractor must conduct regular inspections to ensure that all Heavy Vehicles entering all Construction Site locations are compliant with the above requirements in accordance with the Chain of Responsibility Guideline. Where vehicles do not meet the minimum requirements set out in this clause 5 of Schedule 51 (Heavy Vehicle National Law Requirements) or the Chain of Responsibility Guideline, the Contractor must ensure the vehicle is not used as part of the Contractor's Activities.

## **5.5 Heavy Vehicle Driver Training**

- (a) The Contractor must ensure that all Heavy Vehicle drivers engaged by the Contractor in carrying out the Contractor's Activities, including those employed by its Subcontractors (including owner drivers), attend an approved "Vulnerable Road User Awareness Training" before they are engaged as part of the Contractor's Activities and otherwise comply with the Chain of Responsibility Guideline.
- (b) The Contractor must prepare a safety information pack in respect of the Contractor's Activities which outlines minimum expectations when driving on the Construction Site and to and from the Construction Site.
- (c) The Contractor must ensure that all other drivers (e.g. Light Vehicle Drivers) engaged as part of the Contractor's Activities, are provided with the safety information pack

prepared by the Contractor in accordance with clause 5.5(b) of this Schedule 51  
(Heavy Vehicle National Law Requirements).

Schedule 52 – **Not used**

**Not used**

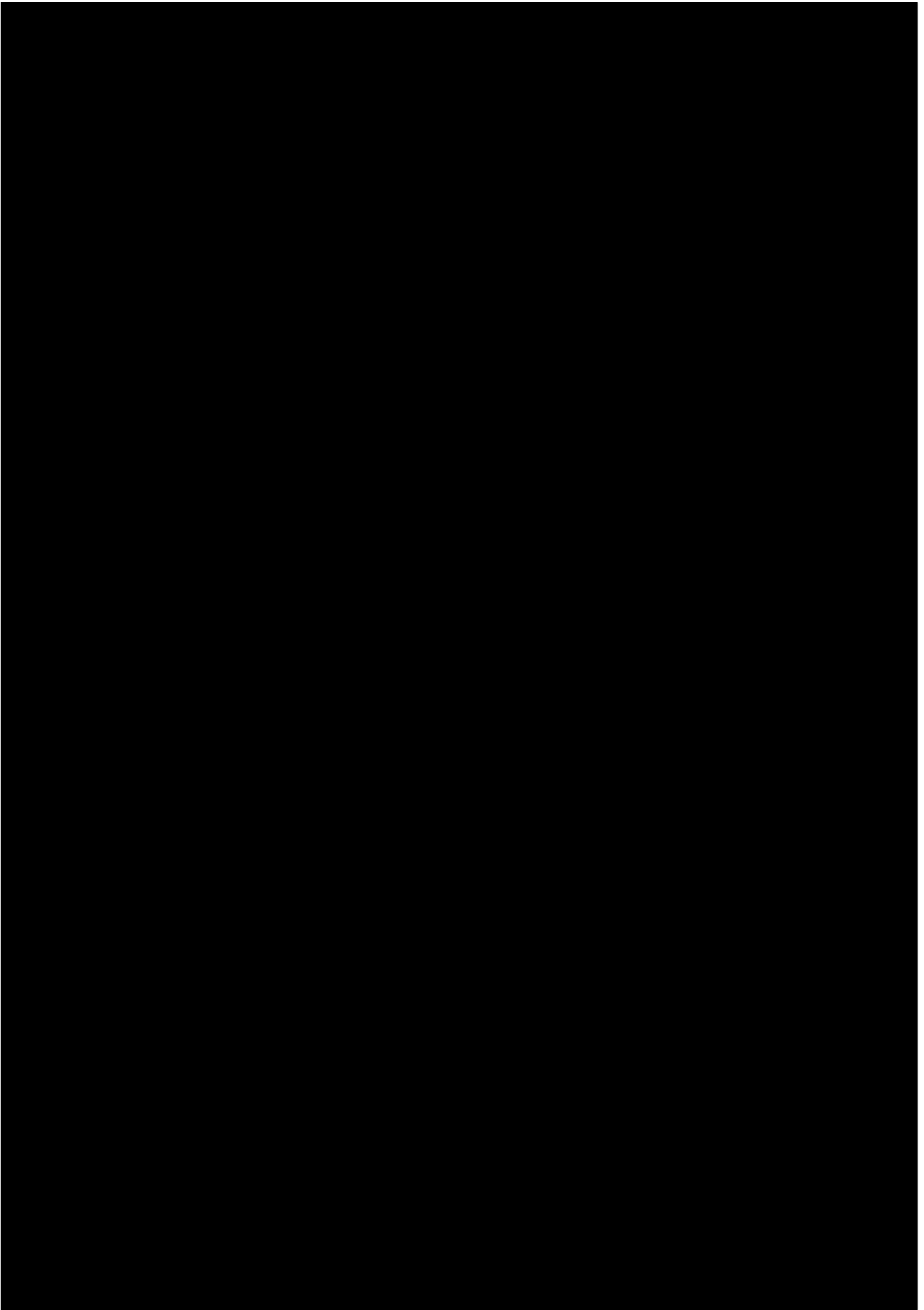
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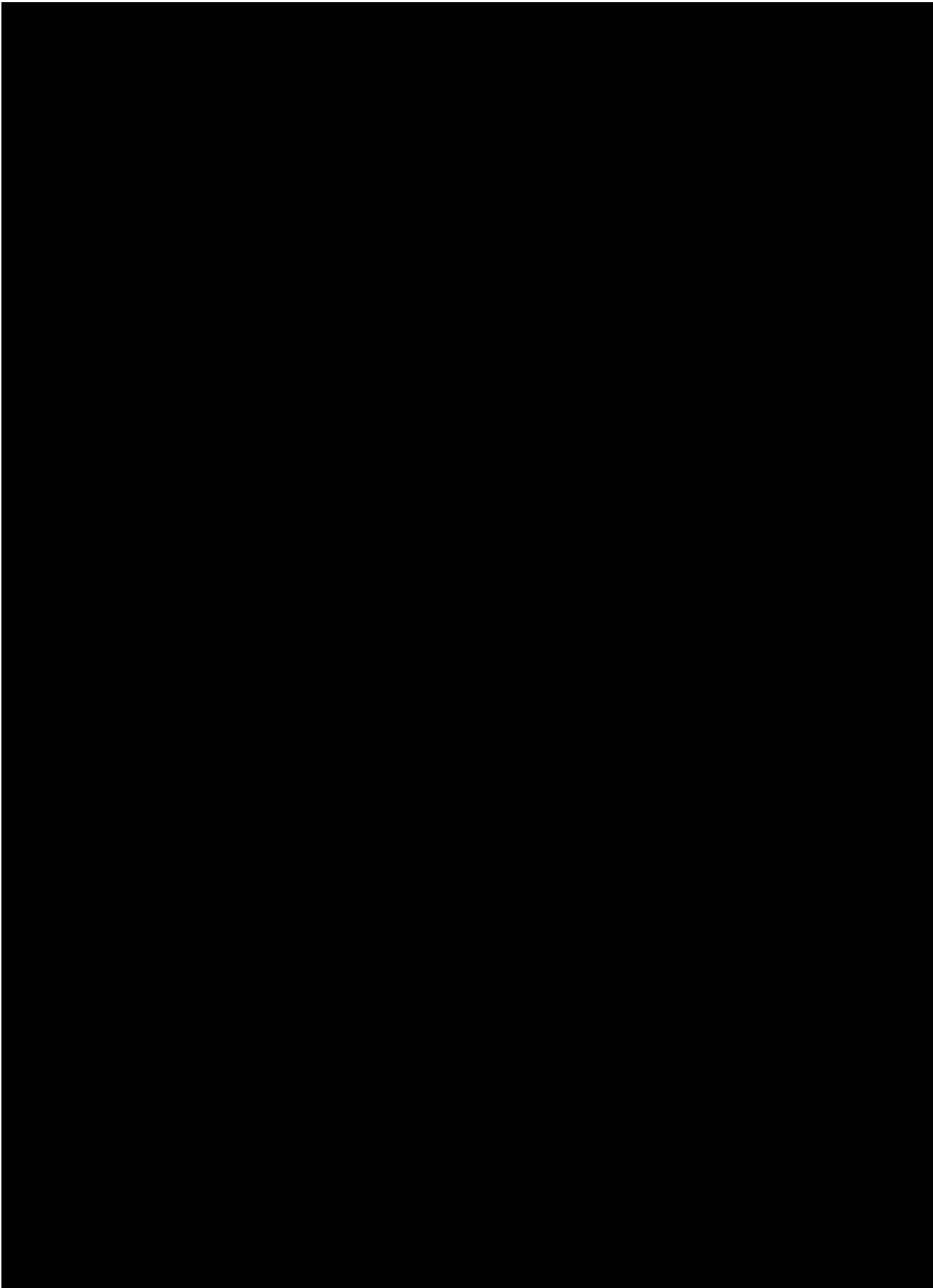
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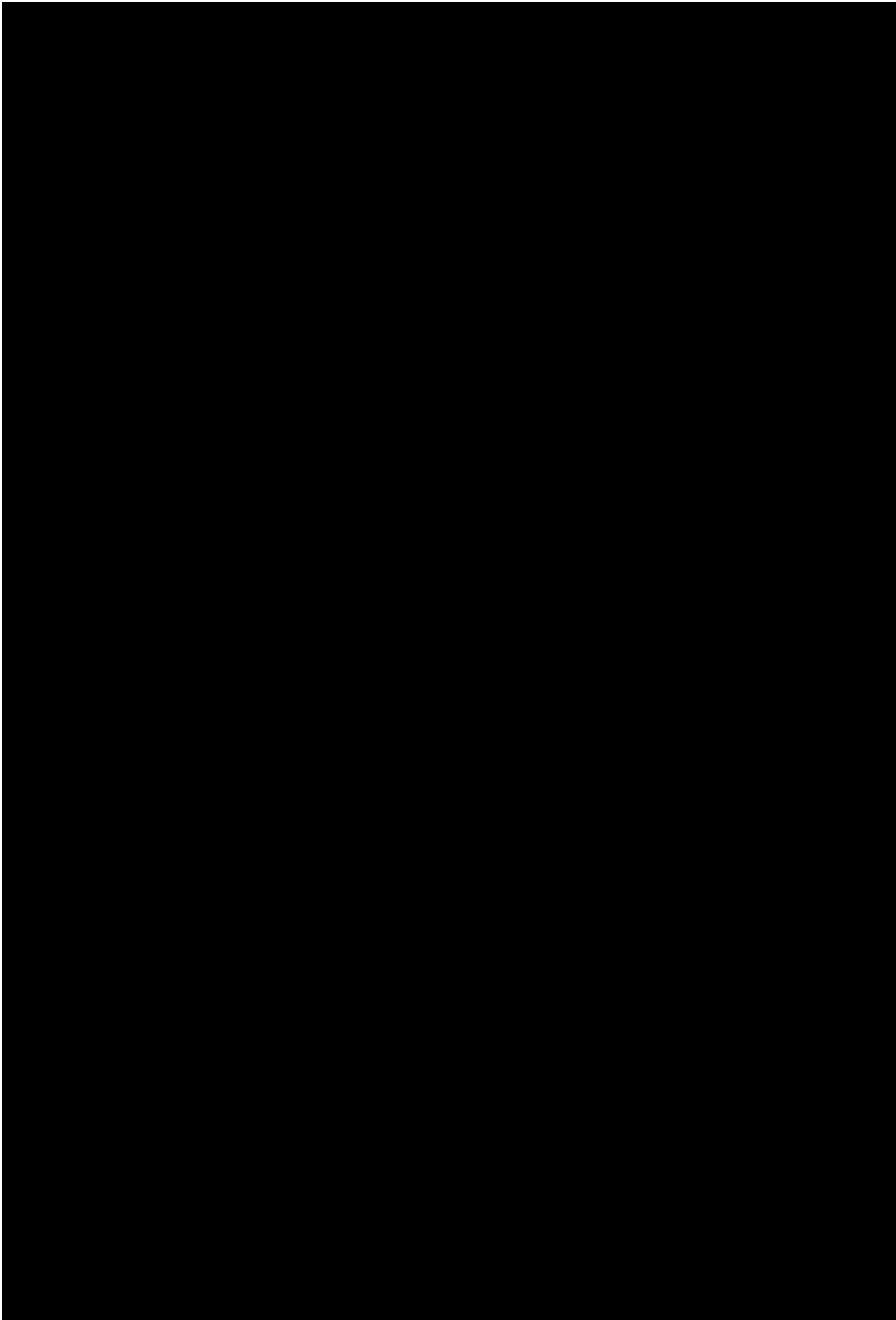
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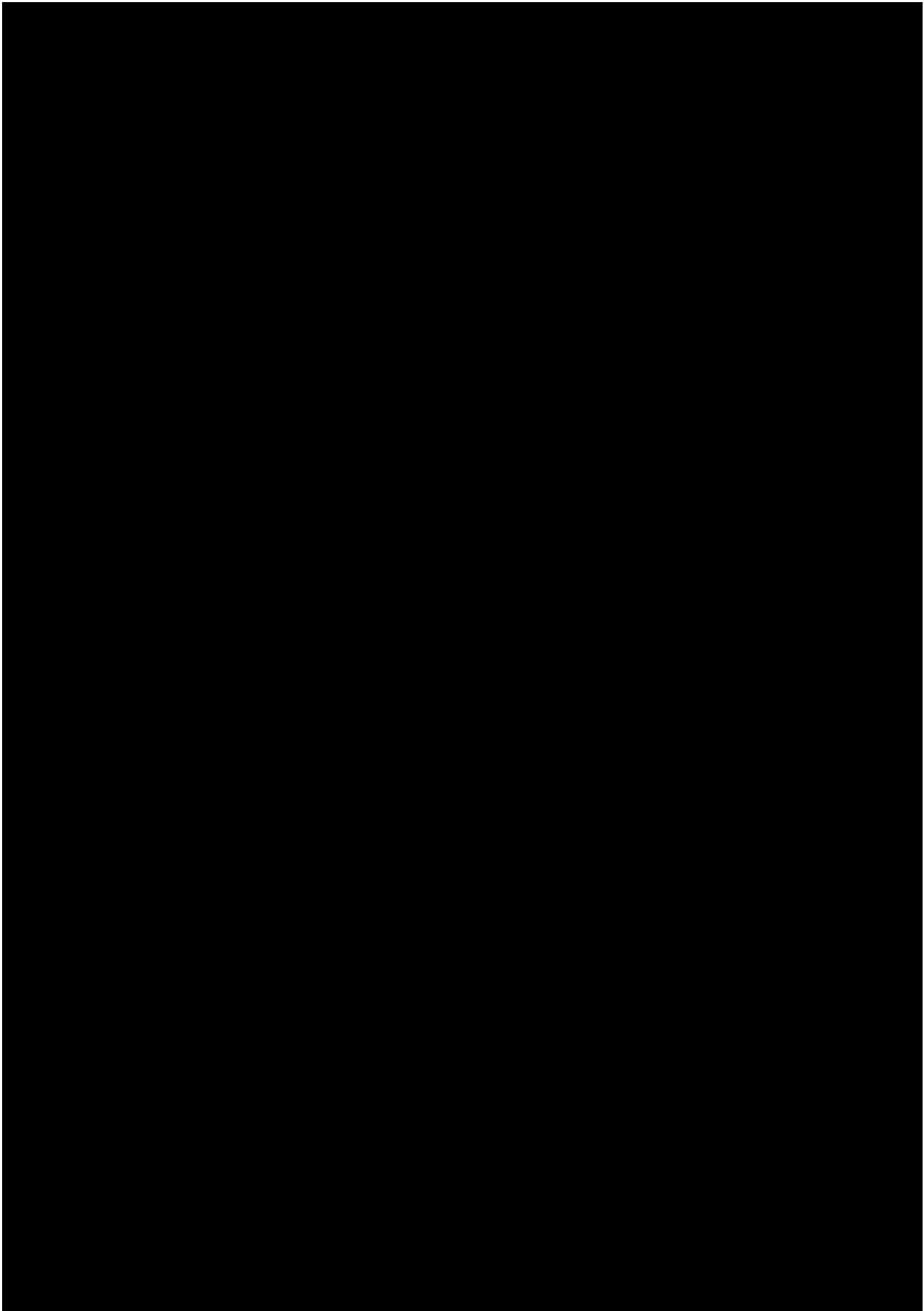
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## Noise Mitigation

(Clause 6.5)

Treatment Category (highest affected façade)	Exceedance (dBA)	New Property Requiring Treatment	Change in Treatment Category per property	Change in Treatment Category A to C per property	Change in Treatment Category A to D per property	Change in Treatment Category B to D per property
A	■	\$ ■				
B	■	\$ ■	\$ ■			
C	■	\$ ■	\$ ■	\$ ■		
D	> ■	\$ ■	\$ ■		\$ ■	\$ ■

1. The table above applies where:
  - a. noise mitigation works are required to be performed at properties other than the Eligible Properties (**Additional Properties**); or
  - b. there are changes to the ARNT treatment category of an Eligible Property where the highest affected facade has an increased treatment category when comparing the ONR results based on the Reference Design and the ONR results based on the Contractor's design (**Increased Treatment Properties**).
2. For each Additional Property, the rate to be applied is the rate for the highest treatment category of the affected facades. For example, if the new property has three facades that require treatment and the highest treatment category is C, then the rate applied would be \$ ■ per property.
3. For each Increased Treatment Property, the rate to be applied is the one of the change in treatment category rates. For example, if the treatment category for the property changed from treatment category B to C, then the rate applied would be \$ ■ per property.
4. For properties that have decreased treatment category for the highest affected facade or no longer require treatment, then no additional cost would be applied.

## Construction Licence Terms

(Clause 9.1(b)(vii) and 23.2 (definition of "Construction Licence Terms"))

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<b>Permitted Purpose</b>	To develop and construct the Project Works and Temporary Works
<b>Term Start Date</b>	The same date as the Contractor is first granted access to the Licensed Area in accordance with the Site Access Schedule under clause 9.1(a) of this deed
<b>Licensee</b>	The Contractor

### 1. Construction Licence Terms Costs and fees

Nothing in this Schedule limits any of the Principal's rights or the Contractor's obligations under this deed.

#### 1.1 General conditions of access

- (a) The Licensee, together with its authorised contractors, agents, consultants, invitees and employees (**Authorised Users**), is entitled to use the Licensed Area:
  - (i) solely for the Permitted Purpose; and
  - (ii) via the access points determined by the Principal (acting reasonably, having regard to the SWTC and the Site Access Schedule).
- (b) The Licensee must ensure that it and its Authorised Users comply with all requirements of this deed.
- (c) The Licensee and its Authorised Users must comply with all reasonable directions of the Principal or its employees or authorised representatives in relation to the Licensed Area from time to time.
- (d) The Licensee must keep the Licensed Area in a safe condition and must dispose of rubbish, waste and debris from the Licensed Area and must ensure that such rubbish, waste and debris do not migrate off the Licensed Area.
- (e) The Licensee acknowledges and agrees that:
  - (i) the Principal may appoint one of its employees to attend and inspect, at times agreed with the Licensee, the Licensee's access to and use of the Licensed Area;
  - (ii) if the Principal's Representative considers, acting reasonably, that the actions of the Licensee or its employees, contractors, consultants, agents or invitees may:
    - A. cause damage to an area which is adjacent to the Licensed Area (including but not limited to environmental damage);
    - B. cause damage to the Principal's property on the Licensed Area or in the vicinity of the Licensed Area;
    - C. detrimentally affect the safety or security of the Licensed Area;
    - D. cause harm or inconvenience to the Principal's employees or authorised users; or
    - E. cause any obstruction of, interference with or inconvenience to, the Principal's operations,then the Principal may direct the Licensee in writing to modify its activities on the Licensed Area so as to reduce, change or eliminate the relevant impact or cause.
- (f) Not used.
- (g) The grant of access to the Licensee to the Licensed Area does not create:

- (i) any estate or interest in land or any relationship of landlord and tenant between the Principal and the Licensee; or
  - (ii) a joint venture, a relationship of agency or any other relationship, except as set out in this deed.
- (h) The Licensee must inform each of its Authorised Users of the obligations contained in this Schedule 55 (Construction Licence Terms) prior to entry of the relevant Authorised User onto the Licensed Area.
- (i) If the Licensee is required to do anything or comply with any obligation under this document, it must also procure that its Authorised Users do that thing or comply with that obligation.

## **Interface Deed – WHS and Principal Contractor Interfaces**

(Clause 9.1(b)(viii)) (definition of "WHS Interface Deed"))

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## **Interface Deed – Work Health and Safety and Principal Contractor Interfaces**

### **Coffs Harbour Bypass**

#### **Transport for NSW**

ABN 18 804 239 602

#### **[Insert name of Contractor A]**

ABN/ACN/ARBN [number]

#### **[Insert name of Contractor B]**

ABN/ACN/ARBN [number]

# Interface Deed – Work Health and Safety and Principal Contractor Interfaces

This Deed is made at [INSERT] on [INSERT]

## PARTIES

**Transport for NSW** (ABN 18 804 239 602), a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (TfNSW);

[Insert full name of Contractor] [ABN/ACN/ARBN] [number]  
(Contractor A); and

[Insert full name of Contractor] [ABN/ACN/ARBN] [number]  
(Contractor B).

## RECITALS

- A. As part of the Pacific Highway upgrade, TfNSW is constructing the 14-kilometre bypass of the Coffs Harbour urban area from Englands Road in the south to Sapphire in the north (the **Coffs Harbour Bypass**).
- B. TfNSW will be letting several packages of construction work in respect of the Coffs Harbour Bypass, being separate construction projects for the purposes of the WHS Regulation.
- C. TfNSW has entered into the Contractor A Contract with Contractor A for the delivery of work for the Coffs Harbour Bypass, which includes the Contractor A Works.
- D. The Contractor A Works constitute a separate construction project for the purposes of the WHS Regulation (**Contractor A Construction Project**) and, pursuant to the Contractor A Contract, TfNSW has engaged Contractor A as principal contractor for the Contractor A Construction Project.
- E. TfNSW has entered into the Contractor B Contract with Contractor B for the delivery of work for the Coffs Harbour Bypass, which includes the Contractor B Works.
- A. The Contractor B Works constitute a separate construction project for the purposes of the WHS Regulation (**Contractor B Construction Project**) and, pursuant to the Contractor B Contract, TfNSW has engaged Contractor B as principal contractor for the Contractor B Construction Project.
- B. The parties acknowledge and agree that there will be times when the Contractor A Works and the Contractor B Works interface, as such works will be carried out in areas comprising the site under both the Contractor A Contract and the Contractor B Contract.
- C. Accordingly, the parties wish to set out the basis upon which they will cooperate, coordinate and interface with each other with respect to the management of work health and safety risks and responsibilities (including principal contractor duties) in respect of the interfaces between the Contractor A Construction Project and the Contractor B Construction Project.

## OPERATIVE PROVISIONS

### 1. INTERPRETATION

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#### 1.1 Definitions

In this deed the terms “**construction project**”, “**construction work**”, “**notifiable incident**”, “**principal contractor**” and “**workplace**” have the same meanings ascribed to those terms in the WHS Legislation and the following definitions also apply:

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

**Coffs Harbour Bypass** has the meaning given to it in Recital A.

**Contractor A Construction Project** has the meaning given to it in Recital D.

**Contractor A Contract** means the contract [insert description] between TfNSW and Contractor A dated [INSERT].

**Contractor A Site** has the meaning given in clause 2(b)(i).

**Contractor A Works** means the construction work Contractor A is required to carry out under the Contractor A Contract.

**Contractor B Construction Project** has the meaning given to it in Recital F.

**Contractor B Contract** means the contract [insert description] between TfNSW and Contractor B dated [INSERT].

**Contractor B Site** has the meaning given in clause 2(b)(ii).

**Contractor B Works** means the construction work Contractor B is required to carry out under the Contractor B Contract.

**COVID-19** means the COVID-19 virus the subject of the pandemic declared by the World Health Organisation on 12 March 2020, including any related virus strain.

**Public Health Legislation** means the *Public Health Act 2010* (NSW), any Orders made under that Act and any other state or Commonwealth legislation regulating public health.

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

**WHS Legislation** means the WHS Act and the WHS Regulation.

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

#### 1.2 Rules for interpreting this deed

In this deed:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the Recitals form part of this deed;
- (c) if an authority or body referred to:
  - (i) is reconstituted, renamed or replaced or if its powers or functions are transferred to another organisation; or

- (ii) ceases to exist,

this deed is deemed to refer to that organisation which serves substantially the same purpose or object as the former authority or body;

and unless the context indicates a contrary intention:

- (d) a reference to TfNSW includes any person appointed by TfNSW to act as its authorised representative from time to time;
- (e) a reference to an individual or person includes a corporation, firm, partnership, joint venture, association, authority, trust, state or government and vice versa;
- (f) 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;
- (g) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (h) a reference to a statute or statutory provision includes a statutory modification or re-enactment of it or a statutory provision substituted for it, and each ordinance, by-law, regulation, rule and statutory instrument (however described) issued under it;
- (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (j) 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 any and all schedules, exhibits, attachments and annexures to this deed;
- (k) 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;
- (l) "includes" in any form is not a word of limitation; and
- (m) a reference to \$ or dollar is to Australian currency.

## 2. WORK HEALTH AND SAFETY RESPONSIBILITIES

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- (a) The parties acknowledge and agree that:
  - (i) Contractor A is, and has been, engaged by TfNSW pursuant to reg 293 of the WHS Regulation as the principal contractor for the Contractor A Construction Project and TfNSW has authorised Contractor A to:
    - A. have management and control of the relevant workplace, including to ensure so far as is reasonably practicable, that the relevant workplace, the means of entering and exiting that workplace and anything arising from that workplace, are without risks to the health and safety of any person; and
    - B. discharge the duties imposed on a principal contractor by Chapter 6 of the WHS Regulation,

and if the engagement of Contractor A as principal contractor is not effective for any reason, Contractor A agrees that it will exercise and fulfil

the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged as principal contractor under the Contractor A Contract and this subclause; and

- (ii) Contractor B is, and has been, engaged by TfNSW pursuant to reg 293 of the WHS Regulation as the principal contractor for the Contractor B Construction Project and TfNSW has authorised Contractor B to:

- A. have management and control of the relevant workplace, including to ensure so far as is reasonably practicable, that the relevant workplace, the means of entering and exiting that workplace and anything arising from that workplace, are without risks to the health and safety of any person; and

- B. discharge the duties imposed on a principal contractor by Chapter 6 of the WHS Regulation,

and if the engagement of Contractor B as principal contractor is not effective for any reason, Contractor B agrees that it will exercise and fulfil the functions and obligations of the principal contractor under the WHS Legislation as if it had been validly engaged as principal contractor under the Contractor B Contract and this subclause,

and no other provision of this deed affects or otherwise releases Contractor A or Contractor B from those appointments or their obligations arising therefrom.

- (b) In respect of the site where the:

- (i) Contractor A Works are being carried out (**Contractor A Site**), Contractor A must ensure that such site is clearly defined as a separate and distinct workplace at all times, including by installing physical boundaries to the extent reasonably possible; and

- (ii) Contractor B Works are being carried out (**Contractor B Site**), Contractor B must ensure that such site is clearly defined as a separate and distinct workplace at all times, including by installing physical boundaries to the extent reasonably possible,

however, to the extent it is not possible or practicable to physically separate or visually demarcate a boundary between the Contractor A Site and the Contractor B Site, Contractor A and Contractor B agree to cooperate to ensure that:

- (iii) workers and others accessing and traversing their respective sites are identified and managed;

- (iv) their respective sites are secured from unauthorised access; and

- (v) they are compliant with the others' induction process and work health and safety requirements and ensure that, if required, their employees, consultants and any subcontractors have undergone an induction which is consistent with the relevant induction process and comply with those work health and safety requirements to the extent required when performing any Contractor Works A or Contractor B Works (as applicable) at the interfaces between the Contractor A workplace and the Contractor B workplace.

- (c) A party may request (and the other party in possession must promptly provide, and in any event no later than 5 Business Days following the request) copies of any safety plans of a party prepared in connection with the Contractor A Works or the Contractor B Works (as applicable).

- (d) Each of Contractor A and Contractor B must:
- (i) nominate a representative who will have overall responsibility for that party's work health and safety issues and provide TfNSW (and each other) with contact details for that representative; and
  - (ii) immediately notify TfNSW (and each other) as soon as reasonably practicable upon becoming aware of any actual, potential or suspected notifiable incident at or near the Contractor A Site or the Contractor B Site (as applicable) and if requested by TfNSW, within 7 days of such request provide:
    - A. a written report in respect of the notifiable incident containing such information as may be requested by TfNSW, including details of corrective actions to prevent the notifiable incident recurring; and
    - B. copies of relevant documents and access to personnel to enable TfNSW, or any person permitted by TfNSW, to investigate the notifiable incident.
- (e) The parties acknowledge and agree that:
- (i) Contractor A may direct any person to perform or not perform certain acts at the Contractor A workplace (or adjacent to or nearby to the Contractor A workplace to the extent that the safety of the activities performed at the Contractor A workplace may be adversely impacted) to cease or prevent a notifiable incident or breach of the WHS Legislation, and, if the direction affects a person working under the direction of Contractor B, Contractor B must enforce such a direction; and
  - (ii) Contractor B may direct any person to perform or not perform certain acts at the Contractor B workplace (or adjacent to or nearby to the Contractor B workplace to the extent that the safety of the activities performed at the Contractor B workplace may be adversely impacted) to cease or prevent a notifiable incident or breach of the WHS Legislation and, if the direction affects a person working under the direction of Contractor A, Contractor A must enforce such a direction.
- (f) The parties:
- (i) acknowledge that they can concurrently have the same duty under the WHS Legislation and that they will each comply with that duty, consulting and cooperating with each other as required; and
  - (ii) agree that they must consult, cooperate and coordinate with each other in relation to concurrent safety matters or duties and as required for each of them to comply with their respective obligations under WHS Legislation, and must ensure that any other person working under them does the same.

### **3. COOPERATION AND COORDINATION**

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#### **3.1 Acknowledgement of common interest**

The parties acknowledge and agree that they have a common interest in:

- (a) the timely completion of the Contractor A Works and the Contractor B Works; and

- (b) promoting the efficient and safe carrying out of the Contractor A Works and the Contractor B Works,

in each case in accordance with the terms of the Contractor A Contract and the Contractor B Contract respectively.

### **3.2 Cooperation and coordination**

- (a) Each of Contractor A and Contractor B agree to:
  - (i) achieve a high level of consultation, cooperation, coordination and collaboration to ensure compliance with its work health and safety duties and obligations to TfNSW under its respective contract with TfNSW;
  - (ii) not prevent, hinder, disrupt, delay or otherwise interfere with the other's construction work (or performance thereof) or cause the other to incur additional cost;
  - (iii) take all reasonable precautions to ensure no damage is caused to the construction work of the other; and
- (b) The parties must use best endeavours to resolve with each other any issues or problems arising out of the subject matter of this deed, and work closely and iteratively to resolve any such issues or problems, including by attending meetings called by any party for the purpose of resolving such issues or problems.

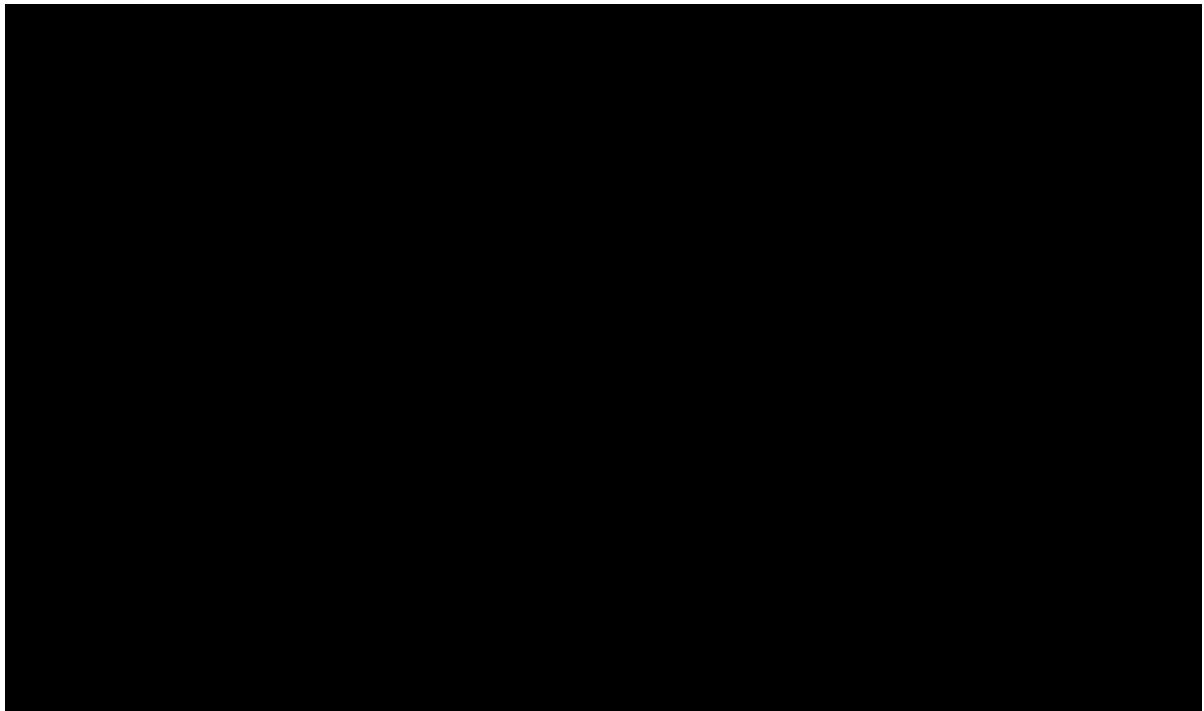
### **3.1 Responsibility to inform**

Each of Contractor A and Contractor B must promptly advise TfNSW of all matters arising out of the liaison between them that may involve a breach of WHS Legislation or a term of the Contractor A Contract or the Contractor B Contract.

### **3.2 Contracts**

- (a) Notwithstanding any other provision of this deed, Contractor A acknowledges and agrees that:
  - (i) nothing in this deed limits its obligations under the Contractor A Contract; and
  - (ii) TfNSW will administer each of the Contractor A Contract and the Contractor B Contract in accordance with its terms and, accordingly:
    - A. subject to clause 2(e), Contractor A must not direct or purport to direct Contractor B in relation to any matter under the Contractor B Contract or otherwise relating to the delivery of the Contractor B Works; and
    - B. Contractor A must not act or rely upon (or make any claim in respect of) any direction or purported direction of Contractor B in relation to any matter under the Contractor A Contract or otherwise relating to the delivery of the Contractor A Works.
- (b) Notwithstanding any other provision of this deed, Contractor B acknowledges and agrees that:
  - (i) nothing in this deed limits its obligations under the Contractor B Contract; and

- (ii) TfNSW will administer each of the Contractor A Contract and the Contractor B Contract in accordance with its terms and, accordingly:
  - A. subject to clause 2(e), Contractor B must not direct or purport to direct Contractor A in relation to any matter under the Contractor A Contract or otherwise relating to the delivery of the Contractor A Works; and
  - B. Contractor B must not act or rely upon (or make any claim in respect of) any direction or purported direction of Contractor A in relation to any matter under the Contractor B Contract or otherwise relating to the delivery of the Contractor B Works.



## **5. LIABILITY**

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To the extent permitted by law:

- (a) Contractor A acknowledges that this deed does not create any liability of TfNSW to Contractor A other than as set out in the Contractor A Contract; and
- (b) Contractor B acknowledges that this deed does not create any liability of TfNSW to Contractor B other than as set out in the Contractor B Contract.

## **6. GENERAL**

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### **6.1 Notices**

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

- (a) must be in writing;

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

**TfNSW**

Address: [address]  
Email Address: [email address]  
Attention: [name]

**Contractor A**

Address: [address]  
Email Address: [email address]  
Attention: [name]

**Contractor B**

Address: [address]  
Email Address: [email address]  
Attention: [name]

- (c) must be delivered by hand or posted by prepaid post to the address, or sent by email to the email address, of the addressee in accordance with clause 6.1(b); and
- (d) is taken to be received by the addressee:
- (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
  - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
  - (iii) (in the case of email) 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, unless the sender receives an 'undeliverable' or 'out of office' notice which indicates that the intended recipient is unavailable; and
  - (iv) (in the case of delivery by hand) on delivery,

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

**6.2 Governing law**

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

**6.3 Jurisdiction**

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or

proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.3(a).

#### **6.4 TfNSW as an authority**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of TfNSW to exercise any of its functions and powers pursuant to any law.
- (b) The parties acknowledge and agree that, without limiting clause 6.4(a), anything which TfNSW does, fails to do or purports to do pursuant to its functions and powers under any law will be deemed not to be an act or omission by TfNSW under this deed and will not entitle any party to make any claim against TfNSW.

#### **6.5 Amendments**

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

#### **6.6 Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

#### **6.7 Assignment**

- (a) Neither Contractor A nor Contractor B are permitted to assign, novate, encumber or otherwise transfer any of their rights or obligations under this deed without the prior written consent of TfNSW (which must not be unreasonably withheld or delayed).
- (b) TfNSW may, for its sole convenience and at its absolute discretion, assign, novate or otherwise transfer any of its rights and obligations under this deed to any Government department, agency, authority or state-owned corporation without requiring the consent of the other parties to this deed, and each other party must promptly execute any document reasonably required by TfNSW to give effect to the assignment, novation or other dealing.
- (c) This clause 6.7 does not in any way limit clause 6.17.

#### **6.8 Representations and reliance**

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

## **6.9 Entire agreement**

To the extent permitted by law and without limiting the operation of the Contractor A Contract or the Contractor B Contract, in relation to its subject matter only, this deed:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

## **6.10 No agency, partnership, joint venture or other fiduciary relationship**

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

## **6.11 Severance**

If at any time a provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

## **6.12 Further acts**

Each party must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by any other party (in form and content reasonably satisfactory to the requesting party) to give effect to this deed.

## **6.13 Costs**

Each party shall bear and is responsible for its own costs (including, without limitation, legal costs) in connection with the negotiation, preparation, execution and carrying into effect of this deed.

## **6.14 Counterparts**

- (a) This deed may be executed in any number of counterparts, each of which may be executed by one or more parties, may be executed electronically or in handwriting (including, a print-out of the electronic form) and will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document. Without limiting the foregoing, if the signatures on behalf of one party are on more than one copy of this deed, this shall be taken to be the same, and have the same effect, as if the signatures on the counterparts were on a single copy of this deed.
- (b) Executed counterparts of this deed may be exchanged by email.

## **6.15 Contra proferentem**

A provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of that provision in this deed.

#### **6.16 Commencement of this deed**

This deed will commence with effect at and from the time when both Contractor A and Contractor B have executed this deed.

#### **6.17 Termination or novation of this deed**

- (a) This deed will terminate automatically and with immediate effect upon the termination of the:

- (i) Contractor A Contract; or
- (ii) Contractor B Contract,

unless TfNSW otherwise requires the novation of the obligations of the terminated party, being Contractor A or Contractor B (as applicable), under this deed to a third party engaged by TfNSW to carry out works the same as or similar to the Contractor A Works or the Contractor B Works (as applicable).

- (b) In the event the obligations of:

- (i) Contractor A under the Contractor A Contract; or
- (ii) Contractor B under the Contractor B Contract,

are novated to a third party, the parties consent to the novation of the obligations of Contractor A or Contractor B (as applicable) under this deed to that third party.

EXECUTED by the parties as a deed.

**Executed** for and on behalf of **Transport for NSW** (ABN 18 804 239 602) by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

If the execution of this document by the authorised delegate was witnessed via audio-visual link, by affixing his/her signature to this document the witness confirms that this document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

\_\_\_\_\_  
Name (print)

**Date:**

\_\_\_\_\_  
Name and position of authorised delegate (print)

**EXECUTED** by **[INSERT DETAILS FOR CONTRACTOR A]** (ABN **[INSERT]**) in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name (print)

**Date:**

\_\_\_\_\_  
Name (print)

**EXECUTED** by **[INSERT DETAILS FOR CONTRACTOR B]** (ABN **[INSERT]**) in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name (print)

**Date:**

\_\_\_\_\_  
Name (print)

# Financial Reporting Requirements and Information

(Clauses 8A.1 and 23.2 (definition of "Financial Reporting Information"))

## Part 1

### Financial Reporting Information (clause 23.2)

1	Designated Significant Subcontractors	None, as at the date of this deed.
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## Part 2

### Financial Reporting Form (clause 8A.1)

Schedule 57 contains the form that is required to be completed and provided by the Contractor on the last Business Day of March and September in accordance with clause 8A.1(c) of this deed (Financial Reporting Form).

When completing the Financial Reporting Form, the Contractor is required to confirm if the information provided for each item in the previous half year is still current and accurate in the current half year. If such information is still current and accurate, the Contractor must indicate so in the table below (as applicable) and is not required to resubmit the same information in the current half year.

Item	Financial Reporting – Financial monitoring information requirements
	<i>All information to be provided in a template excel format (to be provided by the Principal for each entity comprising the Contractor and any Parent Company Guarantor on a six-monthly basis</i>
1. Liquidity	<ul style="list-style-type: none"> <li>a) Operating cash flow for the 6 months prior to the reporting date</li> <li>b) Net cash flow for the 6 months prior to the reporting date</li> <li>c) Current assets as at the reporting date</li> <li>d) Current liabilities as at the reporting date</li> <li>e) Total receivables as at the reporting date</li> <li>f) Receivables aged over 90 days as at the reporting date</li> <li>g) Work in progress as at the reporting date</li> <li>h) Total trade payables as at the reporting date</li> <li>i) Payables aged over 90 days as at the reporting date</li> </ul>
2. Profitability	<ul style="list-style-type: none"> <li>a) Revenue for the 6 months prior to the reporting date</li> <li>b) Total cost of sales for the 6 months prior to the reporting date</li> <li>c) EBITDA for the 6 months prior to the reporting date</li> <li>d) Net profit after tax for the 6 months prior to the reporting date</li> <li>e) Gross margin for the 6 months prior to the reporting date</li> </ul>

**Item****Financial Reporting – Financial monitoring information requirements**

*All information to be provided in a template excel format (to be provided by the Principal for each entity comprising the Contractor and any Parent Company Guarantor on a six-monthly basis*

	<ul style="list-style-type: none"><li>f) Total number of projects on hand as at the reporting date</li><li>g) Revenue for the prior corresponding period (i.e. the 6 month period in the previous financial year)</li><li>h) Revenue from the top 5 customers in the last 6 months prior to the reporting date</li><li>i) Revenue derived from state or federal government contracts in the 6 months prior to the reporting date</li><li>j) Spend on top 5 subcontractors in the last 6 months prior to the reporting date</li><li>k) Total subcontractor spend in the 6 months prior to the reporting date</li></ul>
3. Solvency	<ul style="list-style-type: none"><li>a) Total borrowings as at the reporting date, including related party borrowings</li><li>b) Total related party borrowings as at the reporting date</li><li>c) Total available headroom on existing facilities as at the reporting date</li><li>d) Total facility limit as at the reporting date</li><li>e) Total facilities expiring within 12 months of the reporting date</li><li>f) Total cash and cash equivalents as at the reporting date</li><li>g) Interest expense in the 6 months prior to the reporting date</li><li>h) Net assets as at the reporting date</li><li>i) Intangible assets as at the reporting date</li><li>j) Bonds called on projects in last six months (number and quantum)</li><li>k) Reportable covenant breaches in the last 5 years (number of breaches, and details on each breach (e.g. what covenant was breached))</li><li>l) Quantum of sales subject to debtor finance in the 6 months period prior to the reporting date</li><li>m) Information on the security given and any cross guarantees with group entities at the balance date</li></ul>
4. Qualitative	<ul style="list-style-type: none"><li>a) Number of board changes in the 2 years preceding the reporting date</li><li>b) Number of senior executive changes in the 2 years preceding the reporting date</li><li>c) License suspensions or investigations in the last 2 years (in any state) (y/n)</li><li>d) Details of any allegations of unethical conduct</li><li>e) Details of any late or qualified audits conducted in the 5 years preceding the reporting date</li><li>f) Confirmation that all corporate insurance and licenses required by Law are in place (y/n)</li><li>g) Number of late ATO lodgements in the 2 years preceding the reporting date</li></ul>

**Commercially Sensitive Information**

(Clauses 22.6 and 23.2 (definition of "Commercially Sensitive Information"))

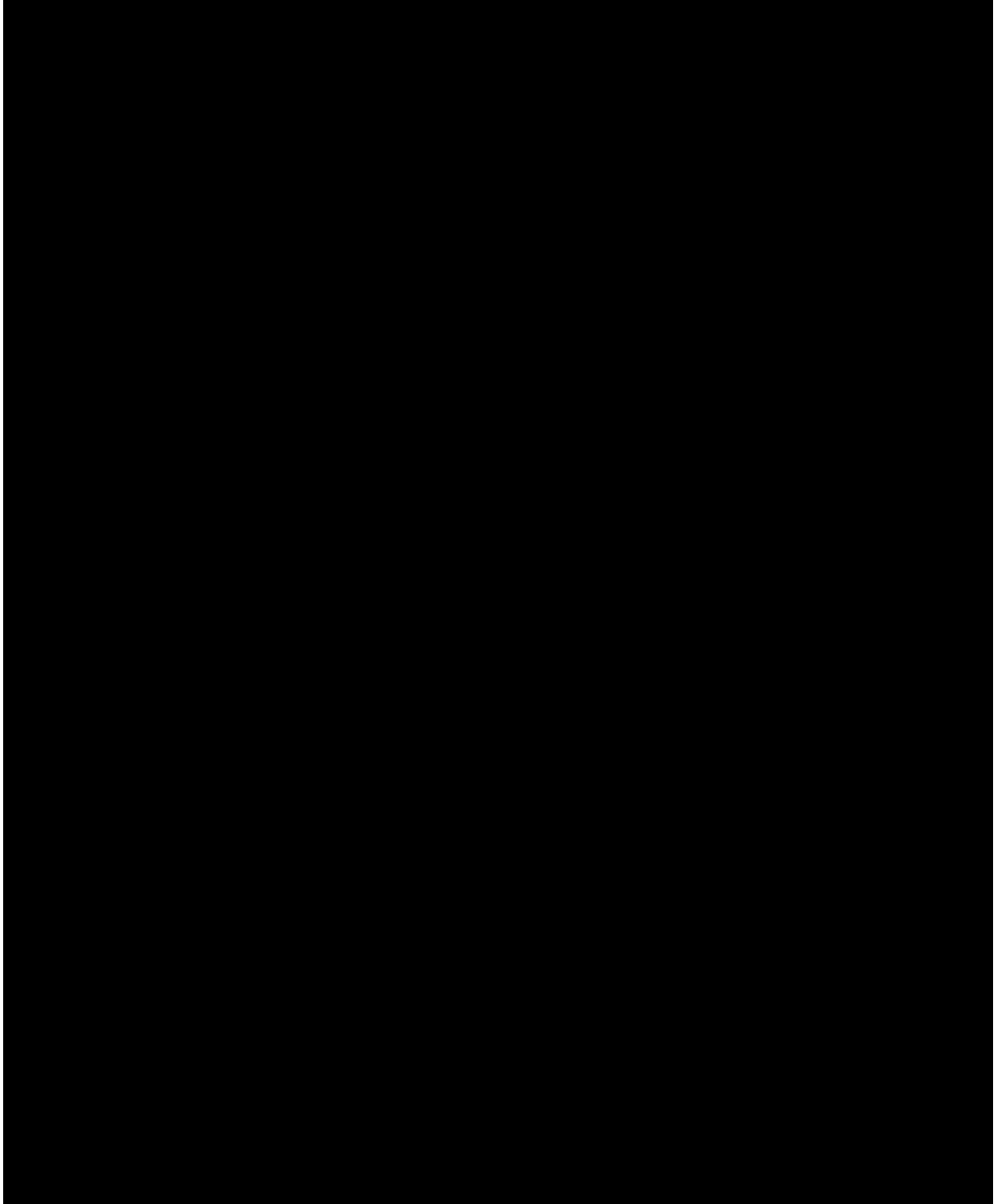
Commercially Sensitive Information	Detail
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## **Exhibit A - Scope of Works and Technical Criteria**

# **Scope of Works and Technical Criteria**

A copy of the documents comprising this Exhibit A is contained on the hard drive labelled 'CHB-HDD'.

The file paths and document titles in the hard drive for this Exhibit A are set out below.





## **Exhibit B – Site Access Schedule**

# **Site Access Schedule**

A copy of the documents comprising this Exhibit B is contained on the hard drive labelled 'CHB-HDD'.

The file paths and document titles in the hard drive for this Exhibit B are set out below.

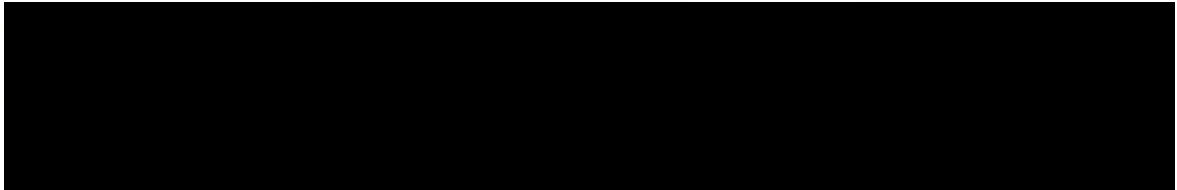


## **Exhibit C - Contract Program**

### **Contract Program**

A copy of the document comprising this Exhibit C is contained on the hard drive labelled 'CHB-HDD'.

The file path and document title in the hard drive for this Exhibit C is set out below.

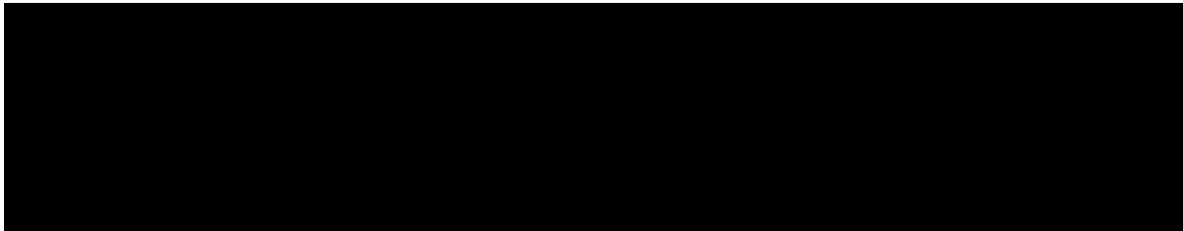


## **Exhibit D – Confidentiality Deed Polls**

# **Confidentiality Deed Polls**

A copy of the documents comprising this Exhibit D is contained on the hard drive labelled 'CHB-HDD'.

The file paths and document titles in the hard drive for this Exhibit D are set out below.

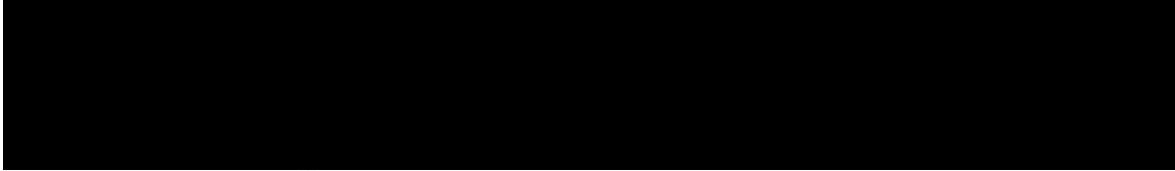


**Exhibit E - Deed of Appointment of ER**

**Deed of Appointment of ER**

A copy of the document comprising this Exhibit E is contained on the hard drive labelled 'CHB-HDD'.

The file path and document title in the hard drive for this Exhibit E is set out below.

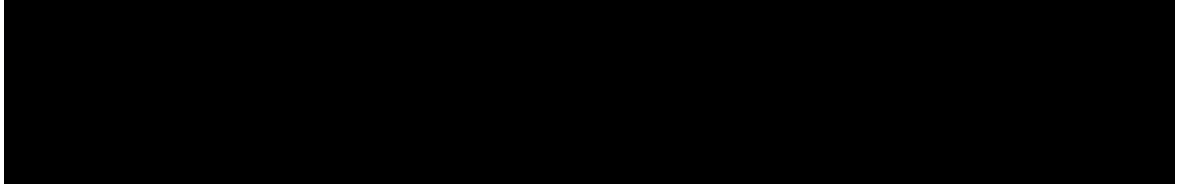


**Exhibit F - Deed of Appointment of AA**

**Deed of Appointment of AA**

A copy of the document comprising this Exhibit F is contained on the hard drive labelled 'CHB-HDD'.

The file path and document title in the hard drive for this Exhibit F is set out below.



**Exhibit G – Not used**

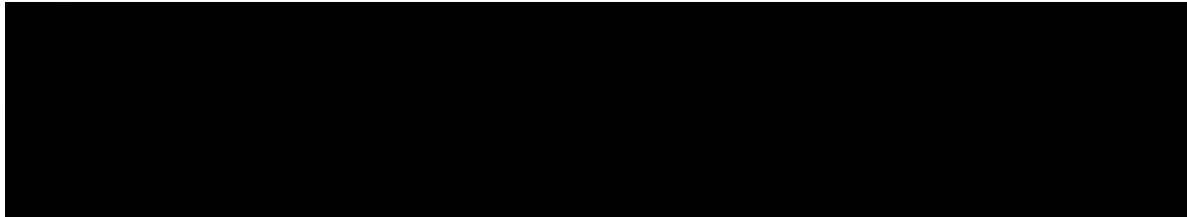
**Not used**

## **Exhibit H – Third Party Agreements**

# **Third Party Agreements**

A copy of the documents comprising this Exhibit H is contained on the hard drive labelled 'CHB-HDD'.

The file paths and document titles in the hard drive for this Exhibit H are set out below.



## **Exhibit I – Aboriginal Participation Plan**

# **Aboriginal Participation Plan**

A copy of the document comprising this Exhibit I is contained on the hard drive labelled 'CHB-HDD'.

The file path and document title in the hard drive for this Exhibit I is set out below.

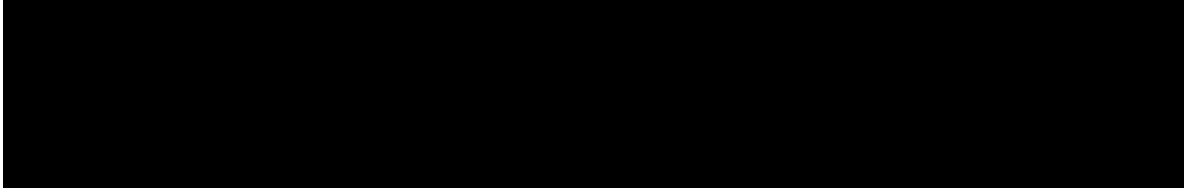


Exhibit J – Not used

**Not used**

**Exhibit K – Not used**

**Not used**

**Exhibit L – Not used**

**Not used**

Exhibit M – Not used

**Not used**

## **Exhibit N – Insurance Policy Wording**

# **Insurance Policy Wording**

A copy of the documents comprising this Exhibit N is contained on the hard drive labelled 'CHB-HDD'.

The file paths and document titles in the hard drive for this Exhibit N are set out below.

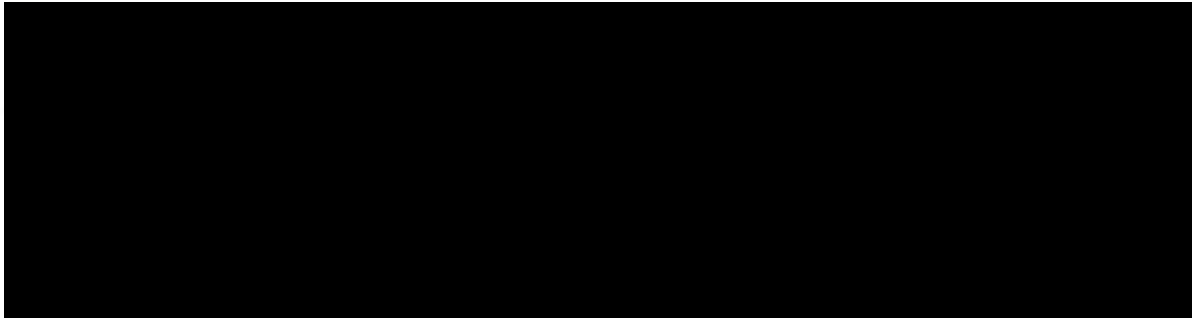


Exhibit O – Not used

**Not used**

## **Exhibit P – Information Documents**

# **Information Documents**

This Exhibit P comprises the documents listed in Schedule 44 (Information Documents), a copy of which is contained on the hard drive labelled 'CHB-HDD'.

A list of the document titles in the hard drive is set out in Schedule 44 (Information Documents).

Exhibit Q – Not used

**Not used**

**Exhibit R – Not used**

**Not used**

**Exhibit S – Not used**

**Not used**

**Exhibit T – Not used**

**Not used**

**Exhibit U – Not used**

**Not used**

**Exhibit V – Not used**

**Not used**