



Transport for NSW

Planning and Design Services Agreement

Contract No. IPD-22-12013

Circular Quay Renewal

Between

Transport for NSW

(ABN 18 804 239 602)

[TfNSW]

and

**Capella Capital Pty Limited (ACN 127 727 771) as
agent for the Capella Capital Partnership**

(ABN 68 720 326 224)

and

Lendlease Construction Pty Limited

(ABN 97 000 098 162)

[PDSA P&D Partner]

Level 44, 680 George Street
Sydney NSW 2000

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PLANNING AND DESIGN SERVICES AGREEMENT

DEED FORM

DATED 16 day of November 2022

Parties: Transport for NSW (ABN 18 804 239 602) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) of Level 44, 680 George Street, Sydney NSW 2000 (TfNSW)

Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000

and

Lendlease Construction Pty Limited (ABN 97 000 098 162) of Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo NSW 2000

(together, the **PDSA P&D Partner**)

Deed: The parties agree to enter into and comply with the terms of this Deed.

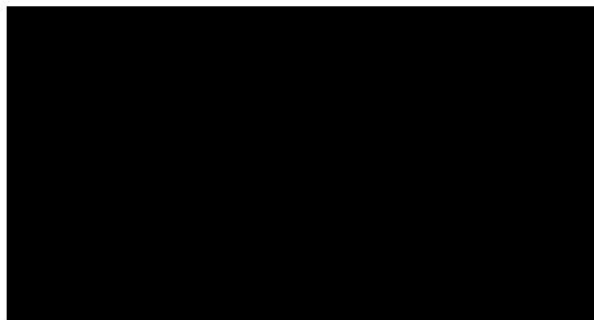
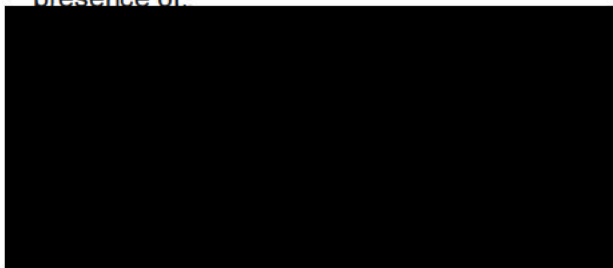
This Deed comprises the following documents:

Document description	Where found
This Deed Form	This document
General Conditions Schedule 1 – Contract Particulars Schedule 2 – [REDACTED] Schedule 3 – Form of Statutory Declaration and Subcontractor's Statement Schedule 4 – Form of Statement of Interests and Associations Schedule 5 – Pricing Principles Schedule 6 – Rates for Valuation of Variations Schedule 7 – Not used Schedule 8 – Not used Schedule 9 – Pre approved subcontractors Schedule 10 – Expert Determination Agreement Attachment A – Services Brief (including any annexures, schedules or attachments)	Attached to this document

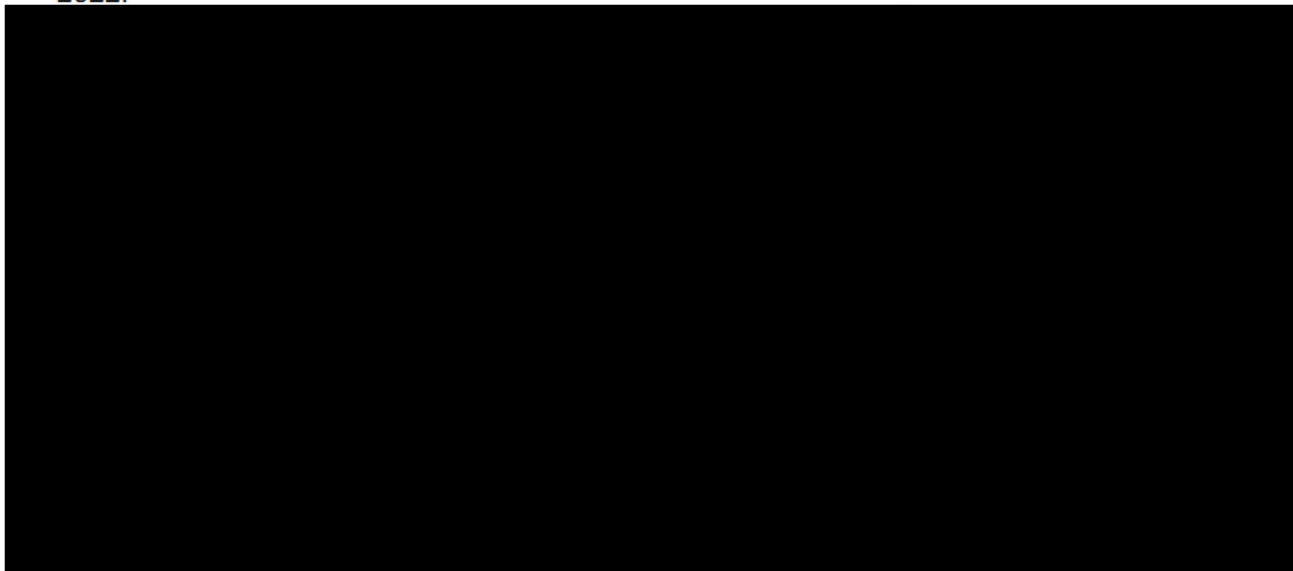


EXECUTED by the parties as a deed.

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

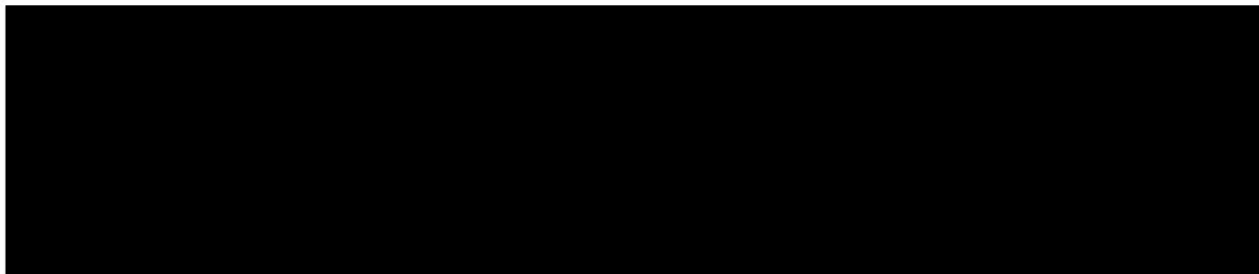


Signed sealed and delivered by Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) by its joint Attorneys under Power of Attorney dated 9 November 2022:





Signed sealed and delivered by
Lendlease Construction Pty Limited (ABN
97 000 098 162) by its Attorney under Power
of Attorney dated 1 September 2022:



PLANNING AND DESIGN SERVICES AGREEMENT – GENERAL CONDITIONS

This Deed is between TfNSW and the PDSA P&D Partner set out in the Contract Particulars.

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

"Asset Management Branch" or **"AMB"** (formerly **Asset Standards Authority** or **ASA**) means the independent unit of that name established within TfNSW, the functions of which include setting, controlling, maintaining, owning and publishing the network and asset standards for Transport Assets for the Asset Lifecycle (both as defined in the AMB Charter).

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

"AMB Charter" means the document which identifies the AMB's objectives, functions, powers and governance and the duties of Rail Transport Agencies and AEOs in relation to the AMB (as amended from time to time), a copy of which could be found on <https://www.transport.nsw.gov.au/industry/asset-management-branch#About>.

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

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

"Asset Lifecycle Services" means the aspects of the Services which relate to the Asset Lifecycle of Transport Assets.

"Author" means any person, including a relevant employee of the PDSA P&D Partner or any of its contractors or any other contributing person, who is the author of any Copyright Works.

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

"Authority" includes any governmental or semi-governmental or local government authority administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (and includes AMB) and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to CQR, the Services or the performance by the PDSA P&D Partner of its obligations under this Deed and includes any Government Agency (as defined in the Commitment Deed).

"Background IP Rights" means Intellectual Property Rights owned by the PDSA P&D Partner, or any relevant contractor or other person contributing through the PDSA P&D Partner, in any existing methodologies or proprietary information which was not created as a result of the performance of the Services.

"Binding Offer" has the meaning given in the Commitment Deed.

"Business Day" has the meaning given in the Commitment Deed.

"Capella Capital Partnership" means the partnership between Capella Capital Lendlease Pty Limited (ACN 127 727 566) and Capella Partners Pty Limited (ACN 138 800 923).

"Claim" means a claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Codes of Conduct" means the following documents:

- (a) the 'Transport for NSW Statement of Business Ethics', a copy of which is available on the TfNSW website;

- (b) TfNSW's 'Our Code of Conduct', a copy of which is available on the TfNSW website; and
- (c) the New South Wales Government 'Supplier Code of Conduct', November 2019, a copy of which is available at www.procurepoint.nsw.gov.au,

as updated from time to time.

"Commencement Date" means the date stated in the Contract Particulars.

"Competence Records" means, with respect to any Rail Safety Worker engaged in connection with the Services (including those engaged by subcontractors), the following information:

- (a) the rail safety training undertaken by the Rail Safety Worker, including when, and for how long, the training was undertaken;
- (b) the qualifications of the Rail Safety Worker, including (if applicable):
 - (i) the units of competence undertaken to achieve the qualification;
 - (ii) the level of qualification attained;
 - (iii) if, and when, a re-assessment of competence is to be conducted;
 - (iv) if, and when, any re-training is due and was undertaken; and
 - (v) the name of any organisation conducting training or re-training;
- (c) the name and qualifications of any person who assessed the competence of the worker; and
- (d) any further information requested by TfNSW with respect to the competence of the Rail Safety Worker.

"Commitment Deed" means the "CQR Commitment Deed" between TfNSW and the P&D Partner dated on or about the date of this deed.

"Confidential Information" has the meaning given in the Confidentiality Deed Poll.

"Confidentiality Deed Poll" means the confidentiality deeds poll in relation to CQR signed by:

- (a) Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) on 10 June 2020; and
- (b) Lendlease Construction Pty Limited (then trading as Lendlease Building Pty Limited) (ABN 97 000 098 162) on 3 June 2020.

"Construction Strategy" means the construction strategy that was developed by the PDSA P&D Partner during the ECI Phase in response to the CQR Framework and included as an attachment to the PDSA Services Brief which is to be further developed by the PDSA P&D Partner during the Transaction Phase.

"Contract Close" has the meaning given in the Commitment Deed.

"Contract Close Plan" has the meaning given in the Commitment Deed.

"Contract Material" means those documents (including, but not limited to, information stored by electronic and other means) and materials created or required to be created under this Deed by the PDSA P&D Partner or in the performance of the Services.

"Contract Particulars" means the particulars in Schedule 1.

"Copyright Works" means any documents, drawings, buildings, models, plans and other materials or things in which rights under the *Copyright Act 1968* (Cth) (or equivalent legislation) vest, created in respect of or amended, relocated, or demolished or for which any other act or omission occurs pursuant to the Services.

"**COVID-19**" means the disease known as Coronavirus (COVID-19) which was characterised to be a pandemic by the World Health Organisation on 11 March 2020, or any future forms or strains of the disease known as Coronavirus (COVID-19).

"**COVID-19 Directive**" means any Statutory Requirement or direction by an Authority in Australia under a Statutory Requirement arising out of or directly related to COVID-19.

"**COVID-19 Management Plan**" means the plan referred to as the COVID-19 Management Plan to be developed by the PDSA P&D Partner and approved by TfNSW within 6 months of the date of this Deed.

"**CQR**" has the meaning given in the Commitment Deed.

"**CQR Data Room**" the Ansarada data room made available to the P&D Partner for the purpose of the Transaction Phase.

"**CQR Framework**" means the suite of framework documents, developed by the NSW Government to guide detailed planning, design and development of CQR which are set out in Schedule 8 of the PDSA.

"**CQR Information**" has the meaning given in clause 22.7.

"**CQR Team**" has the meaning given in the Commitment Deed.

"**Date for FBO Submission**" [REDACTED]

"**Date of FBO Submission**" means the date on which the Final Binding Offer is submitted.

"**Deed**" means this deed between TfNSW and the PDSA P&D Partner comprising the documents specified in the Deed Form.

"**Deed Form**" means the document of that name to which these General Conditions are attached.

"**Deed of Disclaimer**" means the disclaimer deeds poll executed by:

- (a) Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) on or around the date of this Deed; and
- (b) Lendlease Construction Pty Limited (ABN 97 000 098 162) on or around the date of this Deed.

"**Defect**" means any:

- (a) defect, deficiency, fault, error or omission in the Services; or
- (b) other aspect of the Services that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities.

"**Developed Binding Offer**" has the meaning given in the Commitment Deed.

"**Delivery Phase Activities**" has the meaning given in the Commitment Deed.

"**Dispute**" means any dispute, difference or issue between the parties concerning or arising out of or in connection with or relating to this Deed or the subject matter of this Deed or the breach, termination, validity, repudiation, rectification, frustration, operation or interpretation of this Deed and a reference to a Dispute, where the Dispute is partly resolved, refers to the unresolved part of the Dispute.

"**EIS**" has the meaning given in the Commitment Deed.

"**Electronic Portal**" means the electronic portal or document management system (if any) referred to in a notice by TfNSW's Representative under clause 37.

"**Fee**" means the fee set out in the Contract Particulars.

"**Final Binding Offer**" has the meaning given in the Commitment Deed.

"Financial Close" has the meaning given in the Commitment Deed.

"General Conditions" means these General Conditions and all Schedules including the Contract Particulars attached to these General Conditions and any Exhibits which are attached to the Deed Form.

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

"Government Agency" has the meaning given in the Commitment Deed.

"ICIP Rights" means indigenous cultural and intellectual property.

"Insolvency Event" means when:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge;
- (c) in relation to an individual person or a partnership including an individual person, and if that person (being a party):
 - (i) commits an act of bankruptcy;
 - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
 - (iii) is made bankrupt;
 - (iv) makes a proposal for a scheme of arrangement or a composition; or
 - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the party enters a deed of company arrangement or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the party;
 - (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the party;
 - (v) an application is made to a court for the winding-up of the party and not stayed, dismissed or discontinued within 21 days;
 - (vi) a sequestration order or winding-up order is made in respect of the party;
 - (vii) that party resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up) or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the party be wound up;
 - (viii) the party enters into any other form of insolvency administration;
 - (ix) a mortgagee of any property of the party takes possession of that property; or

- (x) the party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

"Intellectual Property Rights" means present and future rights throughout the world conferred by law in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and other results in the industrial, commercial, scientific, literary or artistic fields, including confidential information, whether or not registrable, registered or patentable, including:

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

but excluding Moral Rights.

"Key People" means the person(s) nominated in the Contract Particulars who are engaged by the PDSA P&D Partner under clause 11.5.

"Legislative Requirement" means:

- (a) legislation, including delegated legislation and any policy enforceable under legislation; and
- (b) licences, permits, approvals, determinations, certificates, exemptions and other lawful requirements from or of a Government Agency,

and includes any Statutory Requirement.

"Long Stop Date" has the meaning given in the Commitment Deed.

"Marine Subcontractor" has the meaning given in the Commitment Deed.

"Maritime AMB Authorisation" means the AMB Authorisations relevant to maritime Asset Lifecycle work required in respect of the Services.

"Member" means each entity which comprises the PDSA P&D Partner.

"Moral Right" has the meaning given in the *Copyright Act 1968* (Cth) and any corresponding rights granted under any other laws anywhere in the world.

"NCS Value" has the meaning given in clause 3.3(d)(i).

"New COVID-19 Directive" means a new COVID-19 Directive, or a change in an existing COVID-19 Directive, coming into effect after the date which is 10 Business Days prior to the date of this Deed which:

- (a) has a direct effect on the PDSA P&D Partner carrying out the Services; and
- (b) directly results in an increase in the PDSA P&D Partner's costs of carrying out the Services or a delay to the PDSA P&D Partner achieving completion of the Services;

but excludes a change in an existing COVID-19 Directive or a new COVID-19 Directive that is introduced as the result of a perceived lower risk (rather than a greater risk) to public health as a result of COVID-19, including any easing of restrictions.

"Non-complying Services" has the meaning given in clause 3.3.

"NSW Government" has the meaning given in the Commitment Deed.

"NSW Government Adviser" has the meaning given in the Commitment Deed.

"NSW Trains" means the corporation by that name constituted by section 37(1) of the *Transport Administration Act 1988* (NSW).

"**Other Contractor**" means any consultant, contractor, supplier or other person engaged by TfNSW in relation to CQR other than the PDSA P&D Partner and its subcontractors, the Key People and the PDSA P&D Partner's Representative.

"**P&D Partner**" means:

- (a) Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224);
- (b) Lendlease Construction Pty Limited (ABN 97 000 098 162); and
- (c) BESIX Watpac (NSW) Pty Ltd (ABN 46 651 621 493).

"**Payment Claim Date**" means the last Business Day of each month.

"**PDSA P&D Partner's Representative**" means the person nominated in the Contract Particulars under clause 11.1.

"**Phase 3 Activities**" has the meaning given in the Commitment Deed.

"**Phase 3 Agreement**" has the meaning given in the Commitment Deed.

"**Potential Probity Issue**" means any fact, matter, circumstance or thing concerning, arising out of or in any way in connection with the PDSA P&D Partner, its Providers, its Team Members or the Services which might adversely affect, or create the perception of adversely affecting, the probity or competitiveness of the SME. It includes actual, potential or perceived conflicts of interest.

"**Probity Adviser**" has the meaning given in the Commitment Deed.

"**Project Document**" has the meaning given in the Commitment Deed.

"**Project Partner**" has the meaning given in the Commitment Deed.

"**Project Phase**" has the meaning given in the Commitment Deed.

"**Process Document**" means each of the Confidentiality Deed Poll and Deed of Disclaimer.

"**Provider**" means an entity (other than a Member of the PDSA P&D Partner) who is involved with the performance of the Services. It includes proposed advisers, consultants, subcontractors and suppliers to the PDSA P&D Partner, and proposed subcontractors and suppliers further down the contracting chain.

"**Public Transport Agency**" means each of:

- (a) TfNSW (and each of its divisions);
- (b) Rail Corporation New South Wales, a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW);
- (c) Sydney Metro, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW);
- (d) Sydney Trains, the body corporate constituted by Part 2A of the *Transport Administration (General) Regulations 2005* (NSW); and
- (e) the body corporate constituted by Part 2B of the *Transport Administration (General) Regulations 2005* (NSW).

"**RailCorp**" means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the *Transport Administration Act 1988* (NSW).

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

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

"**Rail Safety Work**" has the meaning given in section 8 of Rail Safety National Law.

"**Rail Safety Worker**" has the meaning given in section 4 of the Rail Safety National Law.

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

"**Related Entity**" means in respect of an entity, another entity which is a related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) or an associate (as defined by sections 10 to 17 of the *Corporations Act 2001* (Cth)) of that first mentioned entity.

"**Safety Report**" means the report required to be prepared by a designer of a structure by clause 295 of the *Work Health and Safety Regulation 2017* (NSW).

"**Services**" means the whole of the services to be carried out and completed in accordance with this Deed, including any changes required due to variations provided for by this Deed, as generally described in the Contract Particulars (and the Services Brief in Attachment A).

"**SME**" has the meaning given in the Commitment Deed.

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

"**Statutory Requirements**" include:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (b) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services;
- (c) relevant Australian Standards applicable to the Services;
- (d) for the purpose of the definition of "COVID-19 Directive", any other government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance) of a State or Territory of Australia; and
- (e) any Legislative Requirement.

"**Submission Design**" has the meaning given in clause 3.1(d).

"**Submission Documents**" means any Contract Materials which the Services Brief specifies are required to be submitted to TfNSW or TfNSW's Representative for review.

"**Sydney Metro**" means the corporation by that name constituted by section 38(1) of the *Transport Administration Act 1988* (NSW).

"**Sydney Trains**" means the corporation by that name constituted by section 36(1) of the *Transport Administration Act 1988* (NSW).

"**Team Member**" an individual who is an employee, officer, agent or adviser of the PDSA P&D Partner, a Member or Provider who is involved in the performance of the Services or the SME on behalf of that PDSA P&D Partner or Provider (as applicable).

"**TfNSW**" means 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).

"**TfNSW's Representative**" means the person nominated in the Contract Particulars or any other person appointed from time to time by TfNSW under clause 11.1.

"**Transaction Phase**" has the meaning given in the Commitment Deed.

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

"**Upper Limit**" means the capped amounts in respect of the relevant Services as set out in Schedule 5 as amended in accordance with the terms of this Deed or otherwise by agreement of the parties.

"**WHS Legislation**" means the following as it may apply from time to time:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) all other acts, regulations and codes of practice relating to work health and safety which apply in the State in which the Services are being executed.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an Authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (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 Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (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 Deed;
- (i) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;

- (j) 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 otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
- (l) a reference to \$ is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Deed or any part;
- (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; and
- (o) any reference in this Deed to "the Contract" or "this Contract" will be taken to be a reference to this Deed.

1.3 Reasonable endeavours and obligations to act in good faith

Any statement that TfNSW (or the officer or agent of TfNSW) will use or exercise 'reasonable endeavours', 'act reasonably' or 'good faith' in relation to an outcome, means that TfNSW (or the officer or agent of TfNSW) will take steps so far as it is reasonably able to do so, having regard to its resources and other responsibilities but:

- (a) does not guarantee the relevant outcome will be brought about; and
- (b) is not required to:
 - (i) exercise a right of any government party, or to influence, over-ride, interfere with or direct any other government party in the proper exercise and performance of its legal, statutory or executive duties and functions;
 - (ii) exercise a power or discretion or otherwise act in a manner that TfNSW (or the officer or agent of TfNSW) regards as not in the public interest;
 - (iii) develop or implement any new standard or a change in standard;
 - (iv) develop or implement new policy or a change in policy;
 - (v) procure any new Legislative Requirements or a change in Legislative Requirements; or
 - (vi) act in any way that TfNSW regards as not in the public interest.

1.4 Government Agencies

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) TfNSW or any other Public Transport Agency to exercise any of their respective functions and powers pursuant to any law; or
 - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) Without limiting clause 1.4(a), anything TfNSW, any other Public Transport Agency or the AMB does, or fails to do or purports to do, pursuant to their respective functions and powers either as an AEO or an Authority or under any law or pursuant to the AMB Charter, will be deemed not to be an act or omission by TfNSW, the Public Transport Agency or the AMB for the purposes of this Deed (including a breach of contract) and will not entitle the PDSA P&D Partner to make any Claim against TfNSW.

- (c) Clauses 1.4(a) and 1.4(b) do not limit any liability which TfNSW would have had to the PDSA P&D Partner under this Deed as a result of a breach by TfNSW of a term of this Deed but for clauses 1.4(a) and 1.4(b).
- (d) The PDSA P&D Partner acknowledges that:
 - (i) there are many Government Agencies (other than TfNSW) with jurisdiction over aspects of the Services, parts of the CQR site and other areas affected by the CQR Activities;
 - (ii) such Government Agencies may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services or CQR generally; and
 - (iii) except to the extent expressly stated otherwise in this Deed [REDACTED] the PDSA P&D Partner bears the risk of all occurrences of the kind referred to in this clause 1.4(b) and will not be entitled to make, and TfNSW will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.
- (e) Nothing in this Deed will restrict or fetter, or require the exercise of, any right of TfNSW, directly or through any Government Agency, to develop, manage or change New South Wales' transport network or assets or make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit.

1.5 Ambiguous Terms

- (a) If TfNSW's Representative considers, or if the PDSA P&D Partner notifies TfNSW's Representative in writing that it considers, that there is an ambiguity, inconsistency or discrepancy in the Deed, TfNSW's Representative must, subject to clause 1.6, direct the interpretation of this Deed which the PDSA P&D Partner must follow.
- (b) TfNSW's Representative, in giving a direction in accordance with clause 1.5(a), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.

1.6 Order of Precedence in this Deed

In the event of any other inconsistency, ambiguity or discrepancy between the various documents comprising this Deed then:

- (a) where the inconsistency, ambiguity or discrepancy is between two or more documents that together comprise the Services Brief, then to the extent of any inconsistency, ambiguity or discrepancy, the higher, or more onerous, or more rigorous, requirement will apply; and
- (b) otherwise, to the extent of any inconsistency, ambiguity or discrepancy, the order of precedence in this Deed is:
 - (i) the Deed Form;
 - (ii) the General Conditions;
 - (iii) the Schedules; then
 - (iv) Attachment A (Services Brief).

1.7 Inconsistency

To the extent that there are any inconsistencies, ambiguities or discrepancies between:

- (a) this Deed;

- (b) the Contract Close Plan;
- (c) the Process Documents;
- (d) the Phase 3 Agreements; and
- (e) the Developed Binding Offer or the Final Binding Offer,

the higher standard (being the standard that delivers greater benefit to TfNSW) shall prevail (unless TfNSW's Representative directs otherwise).

2. TERMS OF ENGAGEMENT

2.1 Engagement

TfNSW engages the PDSA P&D Partner to perform the Services in accordance with this Deed.

2.2 Acknowledgement

- (a) Notwithstanding any other provision of this Deed, the PDSA P&D Partner acknowledges and agrees the following:
 - (i) the decision whether or not to proceed with the P&D Partner or PDSA P&D Partner to the Project Phase will be made by the NSW Government in its absolute discretion;
 - (ii) there is no guarantee that the P&D Partner or the PDSA P&D Partner will proceed to the Project Phase. If TfNSW elects not to proceed with the P&D Partner or the PDSA P&D Partner to the Project Phase, then TfNSW will not be liable for any cost, loss, expense and damage suffered by the PDSA P&D Partner in respect of this Deed arising from that fact including following termination of this Deed by TfNSW in accordance with clause 21 other than any costs payable by TfNSW under clause 18.7 or 21.4; and
 - (iii) if TfNSW elects not to proceed with the P&D Partner or the PDSA P&D Partner to the Project Phase or otherwise terminates this Deed (for whatever reason), it is entitled, in its absolute discretion, to appoint or engage any other party or parties to perform all or part of the Services on such terms as it determines.
- (b) Where the P&D Partner or the PDSA P&D Partner is engaged to proceed to the Project Phase as Project Partner:
 - (i) the Services performed under this Deed will be treated as Delivery Phase Activities under the Project Documents; and
 - (ii) the terms and conditions of the Project Documents will apply to any Services performed (and any Contract Materials produced) under this Deed.

3. PDSA P&D PARTNER'S OBLIGATIONS

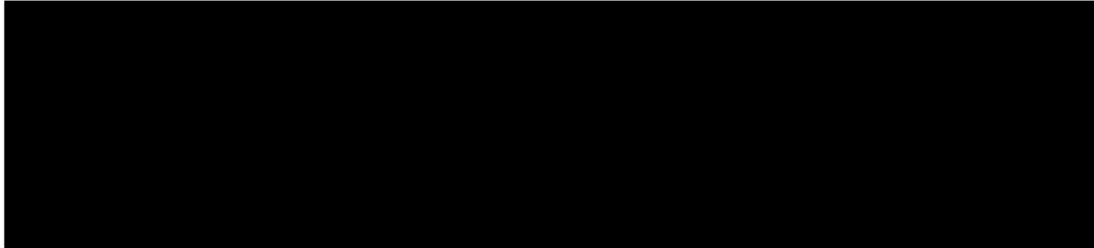
3.1 General

- (a) The PDSA P&D Partner must:
 - (i) perform the Services in accordance with this Deed in consideration of the payments to be made by TfNSW under clause 17;
 - (ii) perform the Services in compliance with the Codes of Conduct;
 - (iii) perform the Services to that standard of skill, care and diligence to be expected of a professional services contractor who regularly acts in the capacity in which the PDSA P&D Partner is engaged and who possesses the knowledge, skill

- and experience of a professional services contractor qualified to act in that capacity;
- (iv) use all reasonable efforts to inform itself of the requirements of TfNSW and regularly consult with TfNSW during the performance of the Services;
 - (v) liaise, co-operate and confer with others as directed by TfNSW [REDACTED];
 - (vi) promptly give written notice to TfNSW if and to the extent the PDSA P&D Partner becomes aware that any document or other information provided by TfNSW is ambiguous or inaccurate or is otherwise insufficient to enable the PDSA P&D Partner to carry out the Services;
 - (vii) make reasonable enquiries to ascertain the requirements of TfNSW regarding the Services, including in respect of any hazards and risks at the site upon which CQR is to be located of which TfNSW is aware [REDACTED];
 - (viii) regularly consult TfNSW regarding the carrying out of the Services;
 - (ix) as soon as practicable after becoming aware of any matter or circumstances, [REDACTED] adversely affect or has adversely affected the scope, timing or carrying out of the Services, give written notice to TfNSW detailing the matter or circumstances and its anticipated effect on the Services;
 - (x) ensure that any person employed or engaged by the PDSA P&D Partner and its subcontractors who undertakes any work in connection with the Services complies with all Statutory Requirements, including the WHS Legislation; and
 - (xi) without limiting any other provision of this Deed, consult with TfNSW as required to enable TfNSW to discharge its obligations under clause 294 of the *Work Health and Safety Regulation 2017* (NSW).
- (b) The PDSA P&D Partner must ensure that the Submission Documents, when provided to TfNSW:
- (i) are complete and suitable for their intended purposes as [REDACTED] this Deed and the Services Brief;
 - (ii) comply with all Statutory Requirements and applicable standards or codes;
 - (iii) are prepared in accordance with the standard of care set out in clause 3.1(a)(iii) of this Deed;
 - (iv) comply with the requirements of this Deed; and
 - (v) in relation to the EIS and Submissions Report, ensure that it is consistent with the requirements of the *Environmental Planning and Assessment Act 1979* (NSW), *Environmental Planning and Assessment Regulation 2000* (NSW) and NSW Department of Planning, Industry and Environment (DPIE) guidelines, and ensure each EIS satisfies the DPIE adequacy assessment.
- (c) The PDSA P&D Partner warrants that it has done everything that would be expected of a skilled, prudent, experienced and professional consultant in assessing the risks which it is assuming under this Deed and ensuring that the Fee contains allowances to protect it against any of these risks eventuating.
- (d) The PDSA P&D Partner acknowledges that prior to the date of this Deed it has prepared a portion of the design for the CQR that represents a 5-10% development of the Final Detailed Design (as defined in the Commitment Deed) (**Submission Design**) and:
- (i) accepts all responsibility for the Submission Design; and

- (ii) [REDACTED] bears all risks however as they might arise as a result of the use by the PDSA P&D Partner upon the Submission Design in performing the Services and complying with its obligations under this Deed.
- (e) Where the PDSA P&D Partner has given written notice to TfNSW under clause 3.1(a)(ix) TfNSW must direct the PDSA P&D Partner within 10 Business Days of how TfNSW would like the PDSA P&D Partner to deal with that matter or circumstances and any change required to the Services as a consequence thereof.

3.1A



3.2 Complying with Statutory Requirements

- (a) The PDSA P&D Partner must, unless otherwise directed by TfNSW's Representative, comply with:
 - (i) all Statutory Requirements including the WHS Legislation and any New COVID-19 Directive;
 - (ii) the requirements of the National Construction Code; and
 - (iii) the requirements of any other standards or codes,which apply to the Services.
- (b) Without limiting the above, the PDSA P&D Partner must prepare the Safety Report in accordance with the requirements of, and otherwise discharge its obligations under, the provisions of the WHS Legislation. The PDSA P&D Partner must give a copy of the Safety Report to TfNSW within the time specified in the Contract Particulars.

3.3 Non-Complying Services

If TfNSW discovers or (acting reasonably) believes that the Services, or any part thereof, have not been performed in accordance with this Deed (including any Contract Material not complying with the requirements of this Deed), ("**Non-complying Services**") TfNSW may give the PDSA P&D Partner a direction specifying the non-complying Services and require the PDSA P&D Partner to:

- (a) re-perform the Non-complying Services (including by amending the Contract Material) within a specified time period; and
- (b) take all such steps as are reasonably necessary to:
 - (i) mitigate the effect on TfNSW of the failure to perform the Services in accordance with this Deed; and
 - (ii) put TfNSW (as closely as possible) in the position in which it would have been if the PDSA P&D Partner had performed the Services in accordance with this Deed; and



- (c) advise the PDSA P&D Partner that TfNSW will accept the Non-complying Services despite the non-compliance, in which event TfNSW will be entitled to recover from the PDSA P&D Partner any additional costs which will be incurred by TfNSW as a result of

the non-compliance, including any costs incurred by TfNSW in having the Non-complying Services re-performed by an Other Contractor; or

- (d) advise the PDSA P&D Partner that TfNSW will accept the Non-complying Services despite the non-compliance, in which event for any portion of Non-complying Services:
 - (i) TfNSW's Representative will determine the value of the Non-complying Services or in accordance with clauses 16.3(b) or 16.3(c) (each an "**NCS Value**");
 - (ii) the PDSA P&D Partner will have no entitlement to make any payment claim against TfNSW arising out of or in connection with the Non-complying Services; and
 - (iii) if TfNSW has already paid the PDSA P&D Partner some or all of the NCS Value for those Services, such amount will be a debt due and payable by the PDSA P&D Partner to TfNSW.

3.4 Re-performance of the Non-complying Services

If a direction is given under clause 3.3(a) or clause 3.3(b), the PDSA P&D Partner must, at its own cost, re-perform the Non-complying Services:

- (a) within the time specified in TfNSW's instruction; and
- (b) so as to minimise the delay and disruption to the performance of the Services.

If the PDSA P&D Partner fails to comply with a direction under clause 3.4, TfNSW may give the PDSA P&D Partner a direction under clauses 3.3(c) or 3.3(d).

3.5 Safety and Environment

- (a) The PDSA P&D Partner must:
 - (i) prior to appointing any subcontractor, assess the work health and safety management capability of such subcontractor and institute systems to obtain regular written assurances from all subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (ii) prior to commencing to perform the Services on the CQR site ensure that all Key People have undertaken any induction required by TfNSW;
 - (iii) in the provision of the Services comply with and procure that any subcontractor and its employees comply with all the requirements of the WHS Legislation and any other requirements of this Deed for work health, safety and rehabilitation management;
 - (iv) comply with, and procure that any subcontractor complies with, any reasonable directions issued by TfNSW's Representative in relation to work health, safety or the environment including where the direction is given because Key People are not complying with their obligations under this clause 3.5;
 - (v) immediately inform TfNSW's Representative in writing of all work health, safety and environment matters arising out of, or in any way connected with the Services or CQR;
 - (vi) provide written assurances obtained pursuant to clause 3.5(a)(i), together with written assurances from the subcontractor and its employees about the subcontractor's and its employees' ongoing compliance with the WHS Legislation, to TfNSW;
 - (vii) comply with its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety

duty in relation to the same matter including co-operate with TfNSW's Representative and any contractor engaged by TfNSW with respect to CQR and co-ordinate the Services with the work of TfNSW's Representative and any contractor engaged by TfNSW with respect to CQR;

- (viii) exercise a duty of utmost good faith to TfNSW in carrying out the Services to enable TfNSW to discharge TfNSW's duties under the WHS Legislation; and
 - (ix) ensure its subcontracts include provisions equivalent to the obligations of the PDSA P&D Partner in this clause 3.5 and any other provisions of this Deed concerning work health and safety matters.
- (b) The PDSA P&D Partner's design (if any) must:
- (i) take into account best work health and safety practice applicable to the construction, utilisation, operation, safety and/or maintenance of CQR; and
 - (ii) be subject to a health, safety and environment review by a suitably qualified person at appropriate stages of the design development process (if any) to verify the design's compliance with the WHS Legislation.

3.6 Licensing and Authorisation

The PDSA P&D Partner must:

- (a) ensure that if any Statutory Requirement (including the WHS Legislation) requires that:
 - (i) a person:
 - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any part of the Services at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
 - B. has prescribed qualifications or experience to carry out any part of the Services or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (b) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements under clause 3.6(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by TfNSW, TfNSW's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of TfNSW before the PDSA P&D Partner commences such work.

3.7 Duties under WHS Legislation

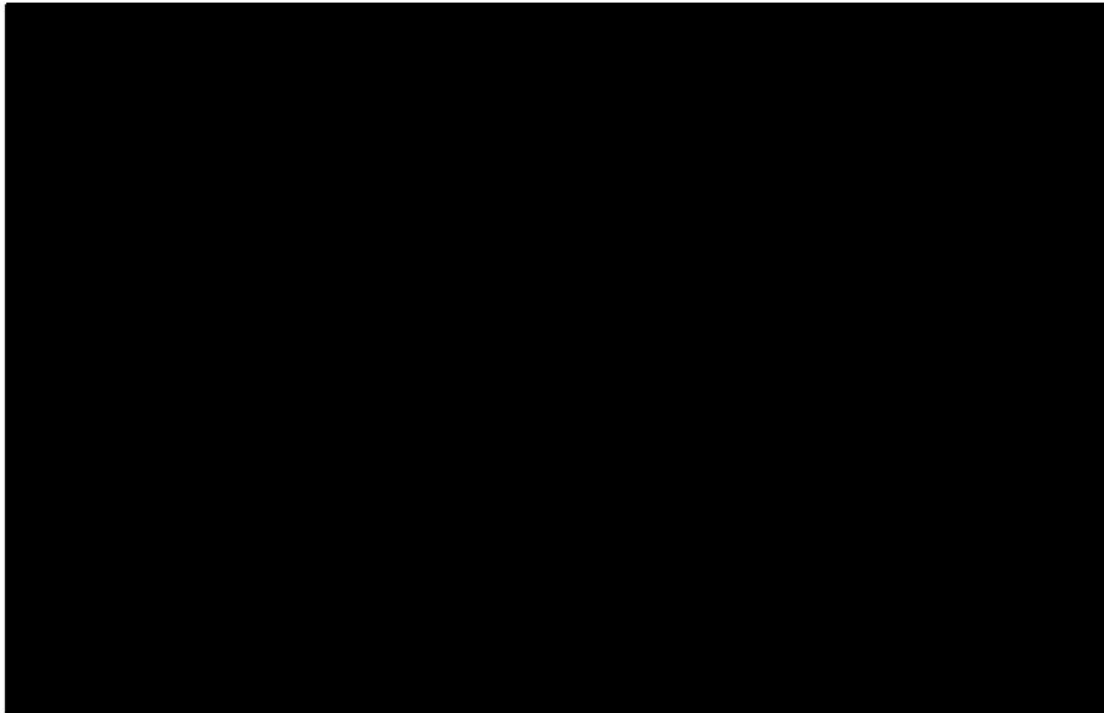
Without limiting the PDSA P&D Partner's obligations under any other clause of this Deed, insofar as the PDSA P&D Partner, in carrying out the Services, is a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies, then to the extent that the obligations under that section apply to the Services the PDSA P&D Partner must comply with the applicable obligations under the WHS Legislation.

3.8 AMB Compliance

This clause 3.8 applies unless otherwise stated in the Contract Particulars.

- (a) [REDACTED] the PDSA P&D Partner (or a relevant Provider or Marine Subcontractor) must:

- (i) hold and maintain AMB Authorisation in respect of the Asset Lifecycle Services for so long as the Services are carried out; and
- (ii) must carry out the Asset Lifecycle Services in accordance with that AMB Authorisation.



- (b) The PDSA P&D Partner must (and must ensure that all personnel for which it is responsible including any Provider):

- (i) comply with the conditions of the applicable AMB Authorisation;
- (ii) implement and comply with the requirements of any AMB Requirements applicable to the Asset Lifecycle Services;
- (iii) cooperate fully with the AMB in the performance of the AMB's functions;
- (iv) provide access to premises and resources as reasonably required by the AMB, including so that it can effectively carry out its review, surveillance and audit functions;
- (v) comply with the directions, instructions and requirements issued by the AMB;
- (vi) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
- (vii) provide the AMB with any information relating to its activities or any documents or other things reasonably required by the AMB in the exercise of its functions;
- (viii) comply with AMB standards and processes, including in relation to the issuance of design packages at the standard design development stages and submissions for Transport Network Assurance Gate Reviews; and

- (ix) provide TfNSW with such reasonable assistance as may be reasonably required by TfNSW to enable TfNSW to cooperate fully with the AMB and to implement and comply with AMB Requirements.
- (c) Subject to clause 18, the PDSA P&D Partner releases and discharges TfNSW from all claims, costs, expenses and losses which it may have against TfNSW or otherwise suffer or incur arising out of, or in any way in connection with, the requirement to obtain AMB Authorisation or the obligation to comply with the requirements of the AMB and the AMB Authorisation.

3.9 Rail Safety Work

Subject to clause 10.2 and without limiting or otherwise restricting clauses 3.1 and 3.2, this clause 3.9 only applies to the extent the PDSA P&D Partner is carrying out Rail Safety Work in performing the Services.

The PDSA P&D Partner must:

- (a) whilst performing the Services, require all persons to:
 - (i) report for work and whilst working be free from the influence of alcohol and otherwise comply with section 128 of the Rail Safety National Law and be free from the influence of any other drugs (below the cut off level stipulated by the Australian Standard AS/NZS 4308:2008); and
 - (ii) undergo random and targeted alcohol and drug testing in accordance with the Rail Safety National Law, the TfNSW 60-ST-010 - Alcohol and Other Drugs and TfNSW 60-PR-085 Testing for Alcohol and Other Drugs; and
- (b) ensure that any person employed or engaged by the PDSA P&D Partner and its subcontractors who undertakes any Rail Safety Work in connection with the Services complies with any Statutory Requirements, including:
 - (i) the provisions of the Rail Safety National Law;
 - (ii) holding and maintaining Rail Safety Worker ("RSW") certification; and
 - (iii) the WHS Legislation;
- (c) prior to any Rail Safety Worker carrying out any Rail Safety Work in connection with the Services, provide TfNSW with the Competence Records in the form directed by TfNSW (which may be electronic);
- (d) ensure that any Rail Safety Worker who carries out Rail Safety Work in connection with TfNSW's railway operations has the competence to carry out that work; and
- (e) ensure that each Rail Safety Worker used in connection with the Services has a form of identification that is sufficient to enable the type of competence and training undertaken by that Rail Safety Worker to be checked by a rail safety officer.

3.10 Access to the Rail Corridor

- (a) The PDSA P&D Partner acknowledges and agrees that if clause 3.9 does not apply to this Deed:
 - (i) the PDSA P&D Partner:
 - A. is not permitted to access; and
 - B. must not access,
- the Rail Corridor to perform any of the Services under this Deed, without the prior express written approval of TfNSW;

- (ii) as a condition of giving approval to access the Rail Corridor, TfNSW and other Public Transport Agencies may impose on the PDSA P&D Partner, additional terms and conditions for accessing the Rail Corridor; and
- (iii) TfNSW or other rail agencies such as Sydney Trains may require the PDSA P&D Partner to enter into a separate agreement to facilitate access to the Rail Corridor.

4. CONTRACTOR PERFORMANCE REPORTING

The PDSA P&D Partner acknowledges that TfNSW has in place processes for assessing the performance of its professional services contractors and that these processes will apply to this Deed. The PDSA P&D Partner agrees to participate in TfNSW's 'Contractor Performance Reporting' process.

4.1 Exchange of Information between Government Departments and Agencies

The PDSA P&D Partner authorises TfNSW, its employees and agents to make information concerning the PDSA P&D Partner available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the PDSA P&D Partner to TfNSW and any information relating to the PDSA P&D Partner's performance under this Deed.

The PDSA P&D Partner acknowledges that:

- (a) any information about the PDSA P&D Partner from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by TfNSW and NSW government departments and agencies in considering whether to offer the PDSA P&D Partner future opportunities for NSW government work; and
- (b) TfNSW may be required to publish information concerning this Deed in accordance with sections 27 to 35 of the GIPA Act. If the PDSA P&D Partner reasonably believes that any part of this Deed contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the PDSA P&D Partner must immediately advise TfNSW in writing, identifying the provisions and providing reasons so that TfNSW may consider exempting those provisions from publication.

5. SUBCONTRACTING

- (a) The PDSA P&D Partner must not subcontract any part of the Services without the prior written approval of TfNSW. TfNSW hereby approves the subcontracting of the relevant parts of the Services to the subcontractors set out in Schedule 9.
- (b) An approval given by TfNSW permitting the PDSA P&D Partner to subcontract any portion of the Services does not relieve the PDSA P&D Partner from its obligations and liabilities pursuant to this Deed and the PDSA P&D Partner will be vicariously liable for the acts and omissions of its subcontractors and consultants.

6. SUBMISSION DOCUMENTS

6.1 Submission

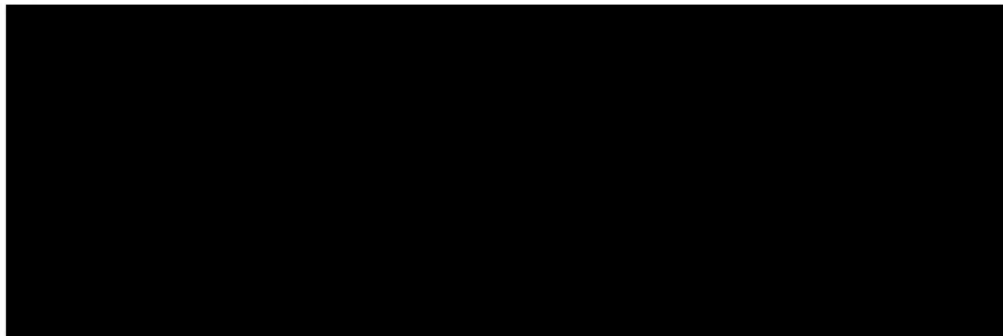
- (a) The PDSA P&D Partner will submit the Submission Documents to TfNSW for review in accordance with this clause 6 and at the times for submission set out in the Services Brief.
- (b) TfNSW may request any further documents, information or Contract Materials it reasonably considers it requires in order to review the Submission Documents (and the

PDSA P&D Partner will promptly provide such further documents, information or Contract Materials).

- (c) The PDSA P&D Partner must submit the number of copies of the Contract Material stated in this Deed, or if no number is stated then:
 - (i) an electronic version electronically and on USB (in both pdf and native formats), which must be virus free; or
 - (ii) as otherwise advised by TfNSW.

6.2 Review process

(a)

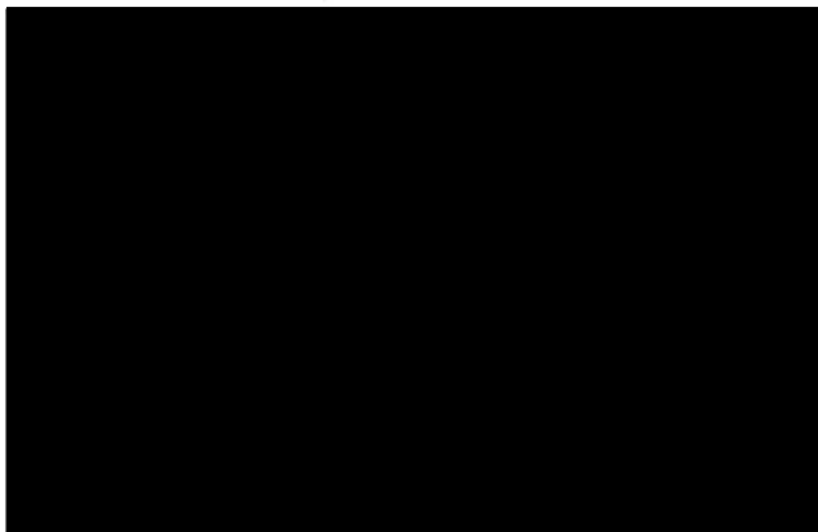


(b) Where TfNSW provides comments under clause 6.2(a)(ii), the PDSA P&D Partner must:

- (i) promptly amend the Submission Documents to take into account those comments, provided that:

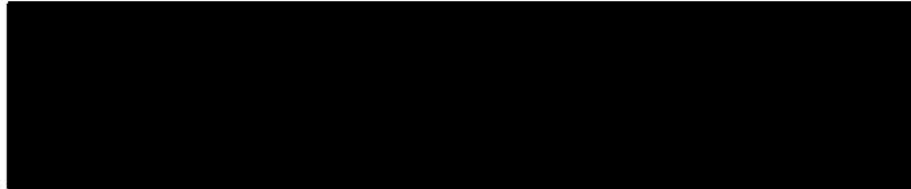
A. the PDSA P&D Partner shall not be obliged to take into account any comments from TfNSW under this clause where to do so would place it in breach of this Deed; and

B.




(ii)





- (c) This clause 6.2 does not affect or limit the operation of clause 3.3.

6.3 PDSA P&D Partner's acknowledgements

The PDSA P&D Partner acknowledges and agrees that 

- (a) TfNSW is not bound to and has no duty to:
- (i) review the Submission Documents (or other Contract Materials) for any error, discrepancy or non-compliance with the requirements of the Deed;
 - (ii) advise the PDSA P&D Partner in relation to its performance of the Services or otherwise supervise or direct the performance of the Services;
- (b) no receipt, review, comment, endorsement, consultation, approval, acceptance or silence in relation to the Submission Documents by TfNSW will relieve the PDSA P&D Partner from, or alter or affect, the PDSA P&D Partner's liabilities or responsibilities whether arising out of this Deed, any other Phase 3 Agreement, the Project Documents, or otherwise at law;
- (c) the PDSA P&D Partner shall not be entitled to make any Claim in connection with any receipt, review, comment, endorsement, consultation, approval, acceptance or silence by on or behalf of TfNSW in relation to the Submission Documents whether under this Deed, any other Phase 3 Agreement, the Project Documents, or otherwise at Law.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 Background IP Rights

- (a) This Deed does not assign any Background IP Rights.

If the PDSA P&D Partner, or any contractor or person contributing to the Services through the PDSA P&D Partner, has any Background IP Rights that are applied or used in the performance of the Services or embodied in any Contract Materials or other Copyright Works created or developed for the purposes set out in clause 7.2(a), the PDSA P&D Partner grants, and must procure that each such contractor or contributing person grants, to TfNSW a perpetual, royalty-free, non-exclusive, worldwide licence of those Background IP Rights for any purpose related to TfNSW's interest in CQR (including any project that replaces all or part of CQR), whether or not the Services or Transaction Phase has been completed, the Project Documents are executed, or TfNSW proceeds with CQR with the PDSA P&D Partner, including a right to grant sub-licences to third parties for any of those purposes.

7.2 Intellectual Property Rights

- (a) The PDSA P&D Partner hereby assigns to TfNSW, and must procure that each contractor or person contributing to Services through the PDSA P&D Partner assigns, all Intellectual Property Rights (other than Background IP Rights or ICIP Rights) with effect from the date of relevant creation or development:
- (i) in all documentation and information or other Copyright Works comprising the Contract Materials; and

- (ii) created or developed by the PDSA P&D Partner, or any contractor or person contributing to the Services:
 - A. during or in connection with the Contract Materials submitted by the PDSA P&D Partner either alone or in conjunction with TfNSW or any third party; or
 - B. otherwise in connection with the performance of obligations under this Deed,

or in any other Copyright Works created or developed for any of those purposes. The PDSA P&D Partner must do all things necessary to give effect to the assignment of Intellectual Property Rights contemplated by this clause 7.2(a) and to ensure that each contractor or person contributing to the Services through the PDSA P&D Partner assigns all Intellectual Property Rights required by this clause to be assigned to TfNSW, including doing all such things, and signing such documents as TfNSW requires and procuring that each such contractor or person does such things and signs such documents.

- (b) TfNSW grants the PDSA P&D Partner a non-exclusive, royalty-free licence to use any Intellectual Property Rights referred to in clause 7.2(a) for the purposes of performing the Services.

7.3 PDSA P&D Partner must not infringe rights

- (a) The PDSA P&D Partner warrants and represents that the Background IP Rights, the Contract Materials and other Copyright Works created or developed for the purposes set out in clause 7.2(a), and their use by TfNSW and its licensees for purposes in connection with this Deed, do not infringe the Intellectual Property Rights or Moral Rights of any person.
- (b) The PDSA P&D Partner must ensure that, in providing the Services, complying with its obligations under this Deed and in submitting any Contract Materials it does not infringe, and no contractor of the PDSA P&D Partner or person contributing to the Services through the PDSA P&D Partner infringes, the Intellectual Property Rights or Moral Rights of any person.

7.4 Moral rights

- (a) The PDSA P&D Partner acknowledges that TfNSW and any of TfNSW's licensees, successors in title and persons authorised by TfNSW may use, adapt, change, relocate, demolish or destroy the whole or any part of any documentation or other Copyright Works, building, structure or any other work produced as part of the Services, or during the performance of the Services, or as a result of, the participation in the SME, in any way (including any way which could otherwise be a breach of the Moral Rights of the creators of the documentation, Copyright Works, building, structure or other work).
- (b) The PDSA P&D Partner acknowledges that TfNSW and any of TfNSW's licensees, successors in title and authorised persons do not have to include any attribution of the PDSA P&D Partner, its contractors or other persons contributing to the Services through the PDSA P&D Partner or the individual creator of the documentation, Copyright Works, building, structure or other work.
- (c) The PDSA P&D Partner warrants that it has obtained, or has procured its contractors or other persons contributing to the Services through the PDSA P&D Partner have obtained the necessary consents including, but not limited to, consents from its employees and any subcontractors, or other persons contributing to the Services through the PDSA P&D Partner, who are Authors engaged or employed by it, or its subcontractors or other entities contributing to the Services in relation to CQR, to give effect to the acknowledgements and agreements in this clause 7.4, including an express agreement that he or she will not enforce any and all Moral Rights that he or she may

have, presently or in the future, in any documentation, Copyright Works, building, structure or other work.

- (d) The PDSA P&D Partner must ensure that any agreement or consent given under clause 7.4(c) is genuinely given and not obtained by duress or by the making of any false or misleading statement.
- (e) Without limiting the PDSA P&D Partner's obligations under this clause 7.4, the PDSA P&D Partner must, if requested by TfNSW, execute, and ensure that any Author engaged or procured by it, or by its contractors or other persons contributing to the Services through the PDSA P&D Partner, a Moral Rights consent form setting out the matters referred to in this clause 7.4. The consent form must be in a form approved by TfNSW. The PDSA P&D Partner must promptly deliver to TfNSW copies of any executed consent forms.

7.5 Indigenous Cultural and Intellectual Property

- (a) The parties acknowledge that the Contract Materials, may include ICIP, and that ICIP rights remain with the relevant traditional owners or custodians of such ICIP.
- (b) Despite any other provision of this Deed, each party agrees to deal with any ICIP identified in relation to the Contract Materials or Services in accordance with this clause 7.5.
- (c) The PDSA P&D Partner will consult with persons and communities with relevant ICIP rights in relation to the production of Contract Materials to ensure that relevant ICIP is identified and treated respectfully in the Contract Materials, including identifying to TfNSW relevant traditional indigenous owners or custodians of relevant ICIP rights, obtaining consents from relevant traditional indigenous owners or custodians to including ICIP materials in the Contract Materials and providing information about any relevant cultural restrictions in relation to ICIP rights that should be communicated to TfNSW, including how to appropriately acknowledge indigenous individuals, communities or families who have ICIP rights relevant to the Services and the Contract Materials.
- (d) The PDSA P&D Partner warrants that to the extent ICIP materials are included in the Contract Materials, use of the ICIP materials in those Contract Materials, and use of those Contract Materials will not be culturally inappropriate when used in accordance with any requirements identified under clause 7.5(c) and if any consents are required under clause 7.5(c), the PDSA P&D Partner has obtained or will obtain such consents.
- (e) The PDSA P&D Partner will assist TfNSW to develop and maintain relationships with any relevant indigenous contributors or communities for potential ongoing consultation or collaboration in relation to ICIP identified in carrying out the Services and the Contract Materials.
- (f) The PDSA P&D Partner agrees that if any third party claims that TfNSW does not have rights to use the ICIP in the Contract Materials, that it will assist TfNSW to address that claim.
- (g) Each party:
 - (i) will respectfully use any Contract Materials in a way that respects the cultural significance of the ICIP contained in such Contract Materials;
 - (ii) will ensure that the relevant traditional indigenous knowledge holders, owners or custodians are attributed as the cultural source of the ICIP, including individual, community and/or family acknowledgements as required and as notified under clause 7.5(c);
 - (iii) will not make material alterations or modifications of ICIP without re-consulting traditional indigenous owners or custodians identified under clause 7.5(c); and

- (iv) will not use the ICIP contained in the Contract Materials for any purpose other than undertaking CQR without first consulting with the relevant traditional indigenous owners or custodians.
- (h) TfNSW will engage with the PDSA P&D Partner and traditional indigenous owners or custodians to allow for ongoing feedback about the authenticity and cultural integrity of ICIP. Each party will respond to feedback or complaints in a timely, transparent and respectful manner.

7.6 PDSA P&D Partner's indemnity

- (a) Subject to clause 7.6(b), the PDSA P&D Partner must indemnify TfNSW against all costs, expenses and liabilities of any kind arising out of or in connection with any claim that:
 - (i) the PDSA P&D Partner's participation and the participation of its contractors and other persons contributing through the PDSA P&D Partner) in the Services;
 - (ii) any Contract Material; or
 - (iii) the use, adaptation, change, relocation, demolition, destruction or non-attribution by TfNSW of any part of the Contract Materials or any other work produced in connection with the Services,infringes the Intellectual Property Rights or Moral Rights of any person.
- (b) The PDSA P&D Partner's liability to indemnify TfNSW under clause 7.6(a) will be proportionally reduced to the extent that the relevant costs, expenses and liabilities referred to in that clause were suffered or incurred as a result of any breach, wrongful act, omission or conduct of TfNSW, its officers, agents or employees.

8. CONFLICT OF INTEREST

- (a) The PDSA P&D Partner warrants that no conflict of interest exists in relation to the Services at the date of this Deed.
- (b) The PDSA P&D Partner must immediately provide TfNSW written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.
- (c) On receipt of a notice under clause 8(b), TfNSW may:
 - (i) approve the PDSA P&D Partner continuing to perform the Services, which approval may be subject to conditions specified by TfNSW (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
 - (ii) where in TfNSW's view the conflict of interest cannot be appropriately managed, and without limiting clause 21, terminate this Deed by notice in writing to the PDSA P&D Partner effective from the date specified in the notice.
- (d) TfNSW may, at its sole discretion and at any time, require the PDSA P&D Partner to sign and procure that each of its officers, employees, subcontractors or agents involved in the performance of the Services signs and delivers to TfNSW a Statement of Interests and Associations in the form attached in Schedule 4.

9. INDEMNITY BY PDSA P&D PARTNER

The PDSA P&D Partner must indemnify TfNSW against:

- (a) loss of or damage to property of TfNSW including, but not limited to, the Contract Material; and

- (b) claims by any person against TfNSW in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the Services but the PDSA P&D Partner's liability to indemnify TfNSW will be reduced proportionally to the extent that the act or omission of TfNSW or the employees, agents or other contractors of TfNSW contributed to the loss, damage, injury or death.

10. INSURANCE

10.1 Professional Indemnity Insurance

Before the PDSA P&D Partner commences carrying out the Services, the PDSA P&D Partner must effect a professional indemnity insurance policy for the Services with a total aggregate cover of not less than the sum stated in the Contract Particulars.

The policy must include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover must be maintained until the PDSA P&D Partner completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.

The PDSA P&D Partner must ensure that its subcontractors and consultants have professional indemnity insurance with an annual total aggregate cover of not less than the sum stated in the Contract Particulars (or such level as agreed by the parties from time to time). Such policies and such level of cover must be maintained until the relevant subcontractor or consultant completes carrying out its respective services and thereafter for a period as stated in the Contract Particulars.

10.2 Public Liability Insurance

The PDSA P&D Partner must maintain a public liability policy for an amount in respect of any one claim or series of claims arising from one original cause of not less than the sum stated in the Contract Particulars. The policy must be maintained until the PDSA P&D Partner completes carrying out the Services.

The policy must cover the PDSA P&D Partner in respect of liability to TfNSW and third parties in respect of any claim arising from the acts or omissions of the PDSA P&D Partner, its employees, subcontractors and consultants in the course of carrying out the Services and must extend to indemnify TfNSW and/or any Government Agency as one of the class of persons constituting the insured, [REDACTED]

The PDSA P&D Partner must ensure that if the Services are to be carried out on or near rail, the public liability Insurance does not contain any exclusions or limitations in cover in respect of works conducted on or near rail.

Notwithstanding any other provision in this Deed, if the Services include Rail Safety Work, the public liability insurance must be structured such that:

- (a) the PDSA P&D Partner provides the primary layer of public liability insurance, which must be for an amount not less than as specified in the Contract Particulars; and
- (b) TfNSW provides the secondary layer of public liability insurance, comprising a further amount topping up the aggregate public liability insurance to an amount not less than [REDACTED] for any one occurrence.

10.3 Insurance of Employees

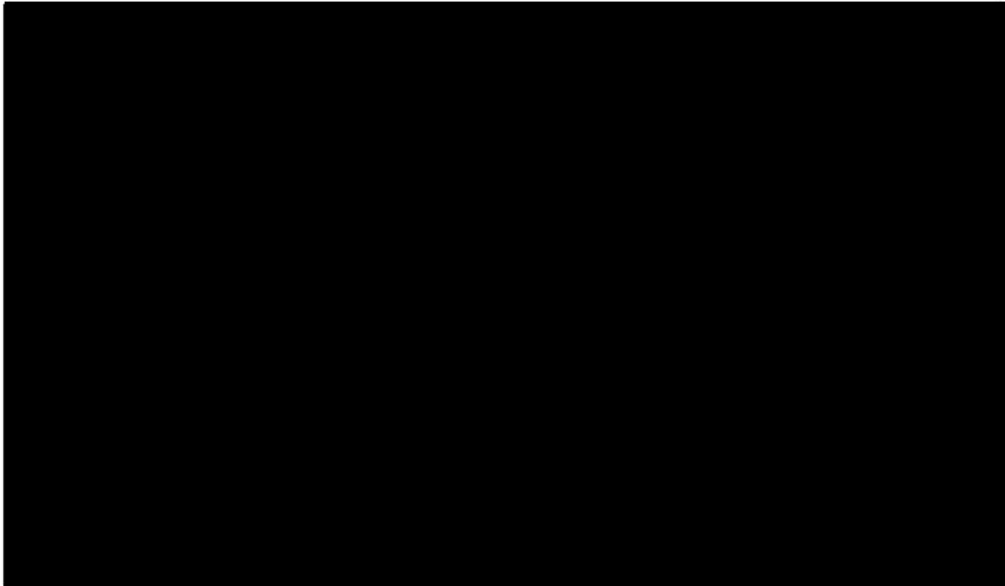
Before the PDSA P&D Partner commences carrying out the Services, the PDSA P&D Partner must insure against liability for death or injury to persons employed by the PDSA P&D Partner

including, but not limited to, liabilities, under statute including relevant workers compensation legislation and at common law. The insurance cover must be maintained until the PDSA P&D Partner completes carrying out the Services.

Where permitted by law, the insurance cover must be extended to indemnify TfNSW for TfNSW's statutory liability for persons employed by the PDSA P&D Partner. The PDSA P&D Partner must ensure that employees of the PDSA P&D Partner's subcontractors and consultants are similarly insured.

10.4 PDSA P&D Partner's Insurance Obligations

The PDSA P&D Partner must:

- (a) provide TfNSW's Representative with a copy of, or certificate of currency for, any insurance policies required by this clause 10 prior to commencement of the Services and evidence satisfactory to TfNSW's Representative that the policy is current as required by TfNSW's Representative from time to time;
- (b) ensure that, in relation to insurance policies required to be taken out by the PDSA P&D Partner in accordance with this Deed, it:
 - (i) does not do anything which prejudices the insurance;
 - (ii) if necessary, rectifies anything which might prejudice any insurance;
 - (iii) reinstates any insurance policy if it lapses;
 - (iv) does not cancel, vary (with an effect which is material and adverse to TfNSW) or allow an insurance policy to lapse without providing prior written notification to TfNSW's Representative. Such notification, or any cancellation, variation or lapse that has not been notified to TfNSW's Representative, will not constitute a waiver of TfNSW's rights under this Deed;
 - (v) immediately notifies TfNSW's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (c) 

11. REPRESENTATIVES

11.1 Appointment of representatives

The parties appoint as TfNSW's Representative and the PDSA P&D Partner's Representative the persons named in the Contract Particulars or another person the relevant party may nominate and notify to the other party in writing from time to time.

11.2 Powers of representatives

Each of TfNSW's Representative and the PDSA P&D Partner's Representative has authority to:

- (a) exercise all of the powers and functions of the party it represents arising out of or in connection with this Deed; and
- (b) bind the party it represents in relation to any matter arising out of or in connection with this Deed.

11.3 TfNSW's Representative

The PDSA P&D Partner must communicate directly with TfNSW's Representative in relation to any matters within the authority of TfNSW's Representative and must act in accordance with directions or instructions given by TfNSW's Representative in respect of this Deed.

11.4 PDSA P&D Partner's Representative

- (a) An instruction given to the PDSA P&D Partner's Representative is deemed to be given to the PDSA P&D Partner.
- (b) The PDSA P&D Partner must ensure that the PDSA P&D Partner's Representative is available to attend on and provide advice to TfNSW and TfNSW's Representative at all reasonable times from the date of this Deed until this Deed terminates.

11.5 PDSA P&D Partner's personnel

- (a) The PDSA P&D Partner must ensure:
 - (i) appropriate and adequate resources are applied to its performance of the Services; and
 - (ii) in addition to the requirements of clause 11.5(b), adequate commitment and participation by senior personnel.
- (b) The PDSA P&D Partner must ensure that, subject to events beyond its control, the Key People:
 - (i) are the personnel performing the roles described in the Contract Particulars; and
 - (ii) allocate as much of their time as necessary to properly perform their roles and the PDSA P&D Partner's other obligations under this Deed.
- (c) Subject to clause 11.5(d), the PDSA P&D Partner may not, without TfNSW's prior written consent:
 - (i) remove any of the Key People; or
 - (ii) substitute another person for one or more of the Key People.
- (d) TfNSW's consent under clause 11.5(c) is not required if the Key Person becomes seriously ill, dies, retires, resigns or is dismissed by the PDSA P&D Partner. In that case, the PDSA P&D Partner must provide a replacement as soon as reasonably

practicable that is acceptable to TfNSW and of at least equivalent qualification, experience, ability and expertise.

12. DIRECTIONS

12.1 Directions

Subject to clause 16:

- (a) the PDSA P&D Partner must comply with the directions of TfNSW or TfNSW's Representative. Except where this Deed otherwise provides, a direction may be given orally; and
- (b) if the PDSA P&D Partner in writing requests TfNSW to confirm an oral direction in writing, TfNSW must do so as soon as practicable.

12.2 Programming

The PDSA P&D Partner must give TfNSW reasonable advance notice of when the PDSA P&D Partner needs information, materials, documents or instructions from TfNSW.

TfNSW shall not be obliged to give any information, materials, documents or instructions earlier than TfNSW should reasonably have anticipated at the date of this Deed and in any event no earlier than 10 Business Days after the request for the information, materials, document or instruction was made by the PDSA P&D Partner.

TfNSW may direct in what order and at what time the various stages or separable portions of the Services must be carried out and the PDSA P&D Partner must comply with any such direction.

13. RECORD KEEPING AND PROGRAM REPORTING

The PDSA P&D Partner must:

- (a) keep, and ensure its subcontractors keep, accurate records of the performance of the Services;
- (b) ensure that all persons engaged in the performance of the Services produce and maintain:
 - (i) a daily diary record of tasks performed; and
 - (ii) where the Fee is time based, a daily timesheet accurately recording the time spent in the performance of the Services;
- (c) at TfNSW's request, provide, and ensure that its subcontractors provide, the records referred to in this clause 13 for their inspection and copying by TfNSW;
- (d) provide TfNSW's Representative with periodic program reports on the engagement as required by this Deed;
- (e) ensure that all records required to be kept by this Deed, including the Competence Records, are current and accurate; and
- (f) whenever requested by TfNSW's Representative provide TfNSW's Representative with a written report containing details on all work health and safety matters arising out of the Services, including in respect of any matters concerning or arising out of clause 3.2 and clauses 3.5 to 3.7.

The records referred to in this clause 13 must be retained for seven (7) years after completion of the Services.

14. COLLABORATIVE AUDITING PROCESS

The PDSA P&D Partner and TfNSW will, on a collaborative basis, develop, agree and implement, a scope and program for TfNSW's Representative to undertake audits of the PDSA P&D Partner's compliance with the requirements of the PDSA P&D Partner's quality management system (if applicable) as these may apply to the Services and obligations under this Deed and:


- (a) the PDSA P&D Partner agrees to participate and assist in the development and completion of these audits; and
- (b) the PDSA P&D Partner and TfNSW's Representative shall when requested share the results of any self verification by the PDSA P&D Partner and/or the outcome of any audits completed.

15. PREMISES

15.1 Project Office

- (a) The PDSA P&D Partner, as part of the Services, will maintain a project office for the purpose of carrying out the substantial part of the Services and Phase 3 Activities (**Project Office**) as set out in the Services Brief, and will carry out the substantial part of the Services from the Project Office.
- (b) The PDSA P&D Partner will ensure that the Project Office has sufficient capacity to allow for co-location of at least 10 TfNSW personnel, and the PDSA P&D Partner will do everything reasonably necessary to allow and facilitate the co-location of such staff.

15.2 Access to premises

 the PDSA P&D Partner must, at all reasonable times and upon reasonable notice, permit TfNSW access to the Project Office and any other PDSA P&D Partner premises where Services are being performed in order for TfNSW to inspect, discuss and assess the Contract Material and any other material obtained by the PDSA P&D Partner from any person in connection with this Deed.

16. VARIATIONS

16.1 Proposal

- (a) TfNSW may direct in writing that the PDSA P&D Partner vary the Services, including, but not limited to, addition to, omission from or deletion of any part of the Services, or the timing or both ("**variation**").
- (b) If a variation the subject of a direction by TfNSW omits or deletes any part of the Services, TfNSW may thereafter carry out the omitted or deleted Services either itself or engage an Other Contractor to carry out the omitted or deleted Services or part of the Services and the PDSA P&D Partner will, without limiting its right to claim under clause 17 for Services already carried out, have no entitlement to make any payment claim against TfNSW arising out of or in connection with the omitted or deleted Services or any part thereof.
- (c) If TfNSW gives such a direction where the need for the variation is in order to overcome any Defect in or from the Services, any costs or losses suffered or incurred by TfNSW in having the Services which have been deleted or omitted carried out by an Other Contractor will be a debt due and payable by the PDSA P&D Partner to TfNSW which may be deducted from the Fee.

- (d) Nothing in clause 16.1 limits TfNSW's rights under clauses 3.3(c) and 3.3(d).
- (e) If TfNSW proposes a variation, TfNSW will specify in the direction a reasonable time by which the PDSA P&D Partner must provide a written estimate of the time, cost and programming effects of the proposed variation. If no time is specified, the PDSA P&D Partner must provide the estimate within 14 days.

16.2 Variation Direction

Whether or not the PDSA P&D Partner provides a written estimate under clause 16.1(e), TfNSW may direct in writing the PDSA P&D Partner to carry out a variation, and the PDSA P&D Partner must comply with such direction.

16.3 Valuation

The value of a variation directed under clause 16.1 or 16.2 will be determined by TfNSW's Representative as follows:

- (a) by agreement between TfNSW's Representative and the PDSA P&D Partner including, but not limited to, where the PDSA P&D Partner has provided a written estimate pursuant to clause 16.1(e), which TfNSW has accepted, the amount in that written estimate;
- (b) by using the hourly rates and other prices set out (as applicable) in the Pricing Principles in Schedule 5 and/or the Rates for Valuation of Variations in schedule 6 where included and where these are reasonable to use; or
- (c) on the basis of reasonable prices and rates determined by TfNSW's Representative.

The Fee and any relevant Upper Limit will be adjusted by the value of the applicable Variation as determined in accordance with this clause 16.3.

16.4 Variation due to a Change in a Statutory Requirement

If a new Statutory Requirement or a change in a Statutory Requirement after the date of this Deed:

- (a) necessitates a change to the Services;
- (b) has effect after the date of this Deed; and
- (c) could not reasonably have been anticipated at that date,

then the extent to which the Services are changed by the Statutory Requirement shall be deemed to be a variation and will be valued pursuant to clause 16.3.

16.5 COVID-19

- (a) The parties acknowledge that, as at the date of this Deed:
 - (i) COVID-19 exists; and
 - (ii) the precise nature, extent, impact and duration of COVID-19 is unknown.
- (b) The PDSA P&D Partner acknowledges and warrants that it has made adequate allowance for the impact of all COVID-19 Directives in effect on the date that is 10 Business Days prior to the date of this Deed.
- (c) Except as stated in clause 16.6 [REDACTED] the PDSA P&D Partner will have no entitlement to and TfNSW will not be liable for any Claim arising out of or in connection with the impact of COVID-19 or any COVID-19 Directives.
- (d) The PDSA P&D Partner must:

- (i) ensure its plans and methodologies for performing the Services take COVID-19 and all COVID-19 Directives into account for the period during which the COVID-19 Directives remain in force and relevant to the Services;
- (ii) proactively monitor the potential impacts of COVID-19 and all relevant COVID-19 Directives on the performance of the Services;
- (iii) implement mitigation measures to minimise any potential impact of COVID-19 and any relevant COVID-19 Directives on the Services, including:
 - A. as set out in the updated plans and methodologies for performing the Services and otherwise consistent with good industry practice; and
 - B. sequencing the Services and employing practices that minimise the impacts of COVID-19 and any relevant COVID-19 Directives on the performance of the Services; and
- (iv) comply with any New COVID-19 Directive.

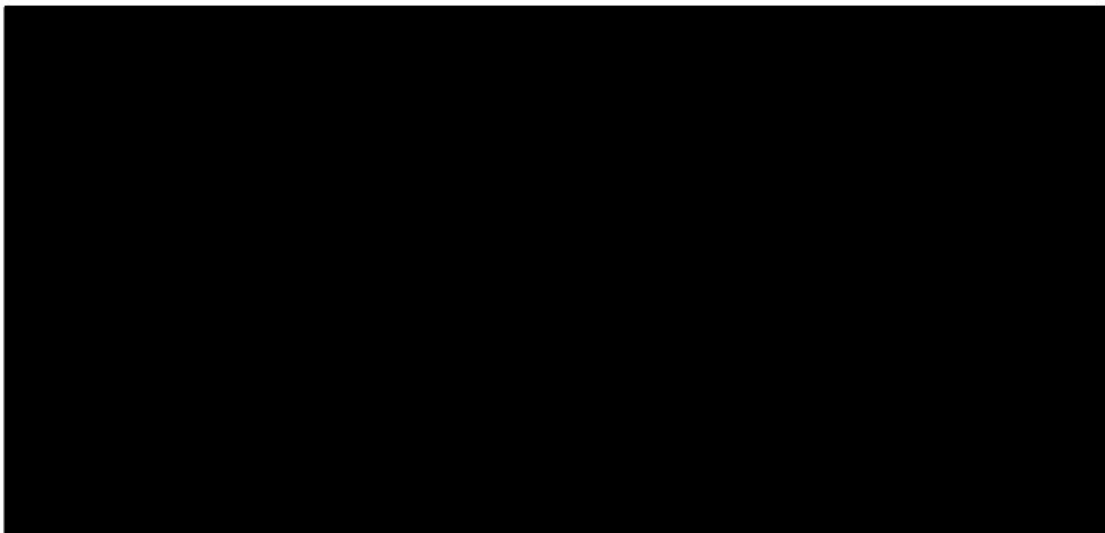
16.6 New COVID-19 Directives

- (a) Where there is a New COVID-19 Directive and the PDSA P&D Partner wishes to claim any increase to the Fee or any applicable Upper Limit on account of the New COVID-19 Directive:
 - (i) the PDSA P&D Partner must, within 10 Business Days after the commencement of the New COVID-19 Directive, give a written notice to TfNSW stating that this clause 16.6(a) applies and containing:
 - A. details of the New COVID-19 Directive;
 - B. the PDSA P&D Partner's estimate of the reasonable net extra direct cost (including costs arising due to any delay in performing the Services) to be incurred by the PDSA P&D Partner in performing the Services in compliance with the New COVID-19 Directive including sufficient information to support the estimate; and
 - C. the PDSA P&D Partner's plan to deal with the consequences of the New COVID-19 Directive, including:
 - 1) details of the steps the PDSA P&D Partner will take to avoid, mitigate, resolve or otherwise manage the effects of the New COVID-19 Directive and mitigate any extra direct costs incurred by the PDSA P&D Partner in performing the Services in compliance with the New COVID-19 Directive; and
 - 2) an updated COVID-19 Management Plan addressing the impacts of the New COVID-19 Directive;
 - (ii) TfNSW and the PDSA P&D Partner must meet within 20 Business Days of a notice being given under clause 16.6(a)(i) to negotiate and endeavour to agree the net extra direct costs to be incurred by the PDSA P&D Partner in performing the Services in compliance with the New COVID-19 Directive and where agreement is reached as to the amount of the extra direct costs the relevant component or components of the Fee and the relevant Upper Limit will be increased; and
 - (iii) if no agreement is reached within 20 Business Days (or such other period that TfNSW and the PDSA P&D Partner agree on) of a notice being given under clause 16.6(a)(i) the reasonable net extra direct costs actually incurred will, subject to the PDSA P&D Partner having taken all reasonable steps to mitigate those increased direct costs, increase the relevant component or components of the Fee and the relevant Upper Limit, in each case such amount to be as

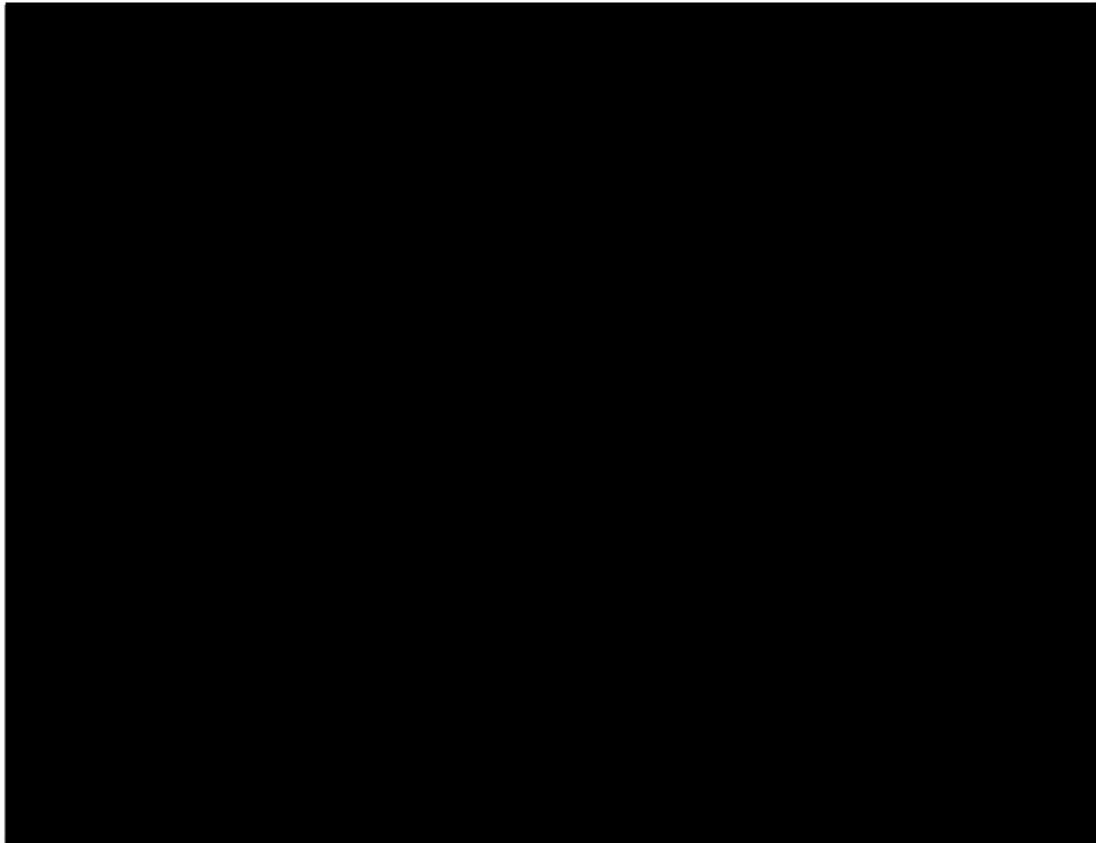
stated by TfNSW's Representative, provided that should the PDSA P&D Partner disagree with the amount stated by TfNSW's Representative, it may refer the matter as a Dispute under clause 19.

- (b) If either party reasonably believes that the direct costs to which the PDSA P&D Partner is entitled under clause 16.6(a) has increased or decreased since the agreement of the parties under clause 16.6(a)(ii) or statement by TfNSW clause 16.6(a)(iii), then (as applicable):
 - (i) the PDSA P&D Partner may give an updated notice under clause 16.6(a)(i); or
 - (ii) TfNSW's Representative may direct the PDSA P&D Partner to give an updated notice under clause 16.6(a)(i),
 and the process under clause 16.6(a) will reapply.
- (c) The PDSA P&D Partner's entitlement to any direct costs under clause 16.6(a) [REDACTED] will be reduced to the extent that:
 - (i) the PDSA P&D Partner could have avoided or lessened the direct costs or extension of time (as applicable) by implementing the measures set out in the initial COVID-19 Management Plan; or
 - (ii) the PDSA P&D Partner has saved any direct costs or achieved any productivity gains in respect of the Services as a result of the New COVID-19 Directive.
- (d) Without limiting any other provision of this Deed, the PDSA P&D Partner must, every three months or otherwise promptly upon request, provide to TfNSW's Representative a detailed breakdown, on a transparent and open book basis, of:
 - (i) any direct costs claimed under this clause 16.6; and
 - (ii) any program impacts of any New COVID-19 Directive.
- (e) Upon request by TfNSW's Representative from time to time, the PDSA P&D Partner must submit to a cost assessment by an assessor nominated by TfNSW's Representative of any direct costs claimed under this clause 16.6 and must provide any information or records requested by the independent costs assessor in relation to such costs.

16.7



16.8

**17. PAYMENT OF FEE****17.1 Payment Claim issued by PDSA P&D Partner**

Subject to the PDSA P&D Partner performing the Services, TfNSW must pay the Fee in accordance with this clause 17.

Subject to clause 17.1A, the PDSA P&D Partner may prepare and submit to TfNSW's Representative a payment claim for the amount representing the value of the Services completed in accordance with this Deed upon the latter of:

- (a) satisfaction of each of the following which is a condition precedent to the PDSA P&D Partner's right to submit a payment claim under this clause 17.1:
 - (i) providing TfNSW with a duly completed and signed statutory declaration and subcontractor's statement in the form contained in Schedule 3 (or in any other form requested and/or approved by TfNSW's Representative);
 - (ii) where clause 17.5(l) applies, providing TfNSW with the statement and the evidence (if any) required to be provided by the PDSA P&D Partner pursuant to that clause; and
 - (iii) providing TfNSW with certificates of currency in respect of its workers compensation, public liability, professional indemnity and any other insurances which must be effected by the PDSA P&D Partner under this Deed; and
- (b) the times set out in the Contract Particulars.

Each payment claim must contain the details required by TfNSW (including any requirements under clause 17.1A(b)). All payment claims must be addressed to TfNSW and must refer to the Contract No. on the cover page of this Deed.

Payment claims on a time basis must be for the period up to the last Business Day of the month of the payment claim and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

17.1A Upper Limit

- (a) The PDSA P&D Partner and each Member acknowledges and agrees that it will not be entitled to claim any amount (whether per claim or in the aggregate with other claims made by the PDSA Partner and each Member) in respect of any part of the Services to which an Upper Limit applies as set out in Schedule 5 which exceeds the applicable Upper Limit (whether amounts have been claimed or are claimable).
- (b) The PDSA P&D Partner will provide monthly updates to TfNSW (which may be included in a payment claim under clause 17.1):
 - (i) of the amounts of the relevant Fees claimed up to and including that month including amounts claimed by each Member (and the aggregate of those claims for each part of the Services to which an Upper Limit applies, against the Upper Limit applicable to that part of the Services; and
 - (ii) an estimate of the Fees it anticipates claiming, including it anticipates each Member claiming (and the aggregate of those claims) for that part of the Services in the subsequent month.

17.2 Payment Schedule of Fee issued by TfNSW

If TfNSW intends making a payment that is less than the amount claimed by the PDSA P&D Partner, TfNSW must, within 10 Business Days following receipt of a payment claim give the PDSA P&D Partner a payment schedule which sets out:

- (a) the value of the Services completed in accordance with this Deed;
- (b) the amount already paid to the PDSA P&D Partner (and provided the PDSA P&D Partner (and Members) have complied with clause 17.3A(b), each Member);
- (c) the amount that TfNSW is entitled to retain, deduct, withhold or set-off under this Deed;
- (d) the amount (if any) which TfNSW proposes to pay to the PDSA P&D Partner (or where clause 17.3A applies, each Member);
- (e) the reason why the amount under clause 17.2(d) is less than the amount claimed in the payment claim; and
- (f) if the reason for the difference is that TfNSW is retaining, deducting, withholding or setting-off payment for any reason, the reason for TfNSW retaining, deducting, withholding or setting-off payment.

The failure of TfNSW to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Deed will not prejudice its right to subsequently exercise such right.

17.3 Payments

TfNSW must within 15 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule or the amount claimed by the PDSA P&D Partner in its payment claim (as the case may be) provided always that the amount claimed in respect of the Services does not exceed the Upper Limit applicable to those Services.

Where TfNSW has notified the PDSA P&D Partner in accordance with clause 25(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Members for TfNSW, the Members must, within 2 Business Days after receipt of the payment schedule issued by TfNSW's Representative under clause 17.2 give TfNSW's Representative a tax invoice (which complies with the GST Law) for the amount of the payment schedule (or where clause 17.3A does not apply, the PDSA P&D Partner must do so).

The making of a payment by TfNSW under this clause 17.3 is not evidence of the value of the Services performed, does not constitute an admission by TfNSW that any Services provided by the PDSA P&D Partner conform with the requirements of this Deed and is a payment on account only.

17.3A Invoicing and payment entitlement

- (a) A payment claim submitted by the PDSA P&D Partner to TfNSW's Representative in accordance with clause 17.1 may include one or more claims provided by Capella Capital Pty Limited and/or Lendlease Construction Pty Ltd in an amount representing the value of the Services completed by Capella Capital Pty Limited and/or Lendlease Construction Pty Ltd (as applicable) in accordance with this Deed.
- (b) Any payment claim submitted by the PDSA P&D Partner in accordance with clause 17.1 which includes one or more claims must in addition contain a cost statement which:
 - (i) sets out the total amount of both claims;
 - (ii) sets out a breakdown of that total amount against the amounts claimed by each of Capella Capital Pty Limited and Lendlease Construction Pty Ltd.
- (c) To the extent TfNSW makes a payment under clause 17.3 in respect of a payment claim, the parties acknowledge and agreed that:
 - (i) Capella Capital Pty Limited (and not Lendlease Construction Pty Ltd) shall be entitled to receive and retain the proportion of the payment that relates to the amount set out in any claim provided by Capella Capital Pty Limited to TfNSW as contemplated in clause 17.1B(a); and
 - (ii) Lendlease Construction Pty Ltd (and not Capella Capital Pty Limited) shall be entitled to receive and retain the proportion of the payment that relates to the amount set out in any claim provided by Lendlease Construction Pty Ltd to TfNSW as contemplated in clause 17.1B(a).
- (d) The parties agree that nothing in this clause 17.3A is intended to modify or increase TfNSW's liability to the PDSA P&D Partner which will be determined in accordance with clauses 17.1 to 17.3

17.4 Set Off

TfNSW may, at any time withhold, set-off or deduct from amounts otherwise payable to the PDSA P&D Partner (or its Members):

- (a) any debt or other moneys due from the PDSA P&D Partner to TfNSW including any due debt from the PDSA P&D Partner to TfNSW pursuant to section 26C of the SOP Act; or
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on TfNSW pursuant to division 2A of Part 3 of the SOP Act,

under this Deed or in respect of the Services.

17.5 SOP Act

- (a) This clause applies if the SOP Act applies to the Services.

- (b) The PDSA P&D Partner agrees that each Payment Claim Date is the date on which the PDSA P&D Partner is entitled to make a payment claim for the purposes of section 13(1B) of the SOP Act.
- (c) The PDSA P&D Partner must ensure that a copy of any written communication it delivers to TfNSW of whatever nature in relation to the SOP Act, including a payment claim under the SOP Act, is provided to TfNSW's Representative at the same time.
- (d) In responding to the PDSA P&D Partner under the SOP Act, TfNSW's Representative acts as the agent of TfNSW and TfNSW authorises TfNSW's Representative to issue payment schedules on its behalf (without affecting TfNSW's right to issue a payment schedule itself).
- (e) If, within the time allowed by the SOP Act for the service of a payment schedule by TfNSW, TfNSW does not:
 - (i) serve the payment schedule itself; or
 - (ii) notify the PDSA P&D Partner that TfNSW's Representative does not have authority from TfNSW to issue the payment schedule on its behalf,
 then a payment schedule issued by TfNSW's Representative under this Deed which relates to the period relevant to the payment schedule will be taken to be the payment schedule for the purpose of the SOP Act (whether or not it is expressly stated to be a payment schedule).
- (f) For the purposes of section 17(3)(b) of the SOP Act the PDSA P&D Partner irrevocably chooses the Resolution Institute as the authorised nominating authority (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Deed.
- (g) If an adjudication occurs under the SOP Act, and TfNSW has paid an adjudicated amount to the PDSA P&D Partner:
 - (i) the amount will be taken into account by TfNSW in issuing a payment schedule under clause 17.2;
 - (ii) if it is subsequently determined pursuant to this Deed that the PDSA P&D Partner was not entitled under this Deed to payment of some or all of the adjudicated amount that was paid by TfNSW ("**Overpayment**"), the Overpayment will be a debt due and payable by the PDSA P&D Partner to TfNSW which the PDSA P&D Partner must pay to TfNSW upon demand and in respect of which the PDSA P&D Partner is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence; and
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the PDSA P&D Partner to TfNSW upon demand and in respect of which the PDSA P&D Partner is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence.
- (h) Without limiting clause 17.4, TfNSW may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on TfNSW pursuant to division 2A of Part 3 of the SOP Act.
- (i) If TfNSW withholds from money otherwise due to the PDSA P&D Partner any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on TfNSW pursuant to division 2A of Part 3 of the SOP Act, then:
 - (i) TfNSW may plead and rely upon division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the PDSA P&D Partner from TfNSW; and

- (ii) the period during which TfNSW retains money due to the PDSA P&D Partner pursuant to an obligation under division 2A of Part 3 of the SOP Act will not be taken into account for the purpose of determining:
 - A. any period for which money owed by TfNSW to the PDSA P&D Partner has been unpaid; and
 - B. the date by which payment of money owed by TfNSW to the PDSA P&D Partner must be made.
- (j) The PDSA P&D Partner agrees not to commence proceedings to recover any amount withheld by TfNSW pursuant to a payment withholding request served on TfNSW in accordance with division 2A of Part 3 of the SOP Act.
- (k) Any amount paid by TfNSW pursuant to section 26C of the SOP Act will be a debt due from the PDSA P&D Partner to TfNSW.
- (l) If TfNSW withholds money pursuant to a payment withholding request served on TfNSW pursuant to division 2A of Part 3 of the SOP Act and the PDSA P&D Partner:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,then the PDSA P&D Partner must so notify TfNSW within 5 days of the occurrence of the event under the clauses 17.5(l)(i) and 17.5(l)(ii) (as applicable) by providing to TfNSW a statement in writing in the form of a statutory declaration together with such other evidence as TfNSW may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

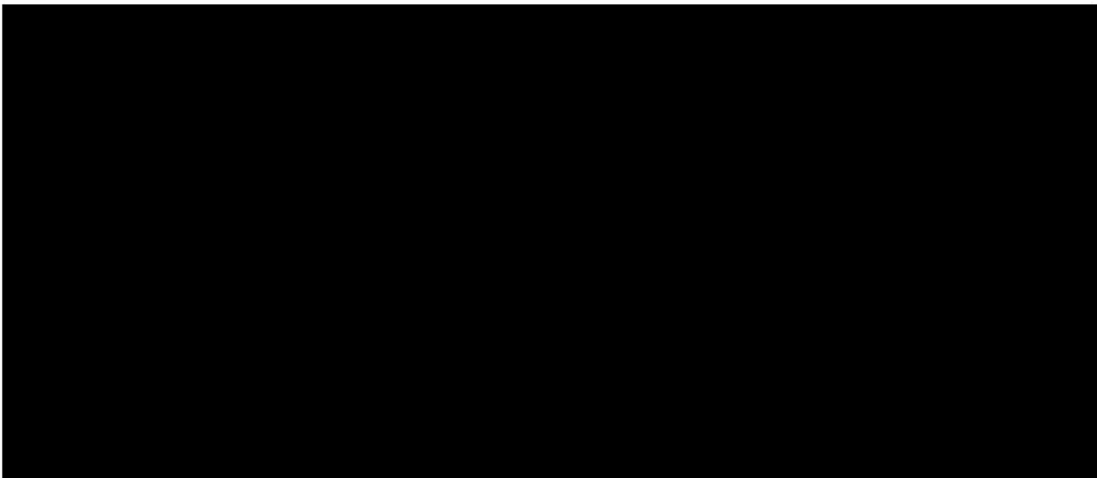
18. TIME

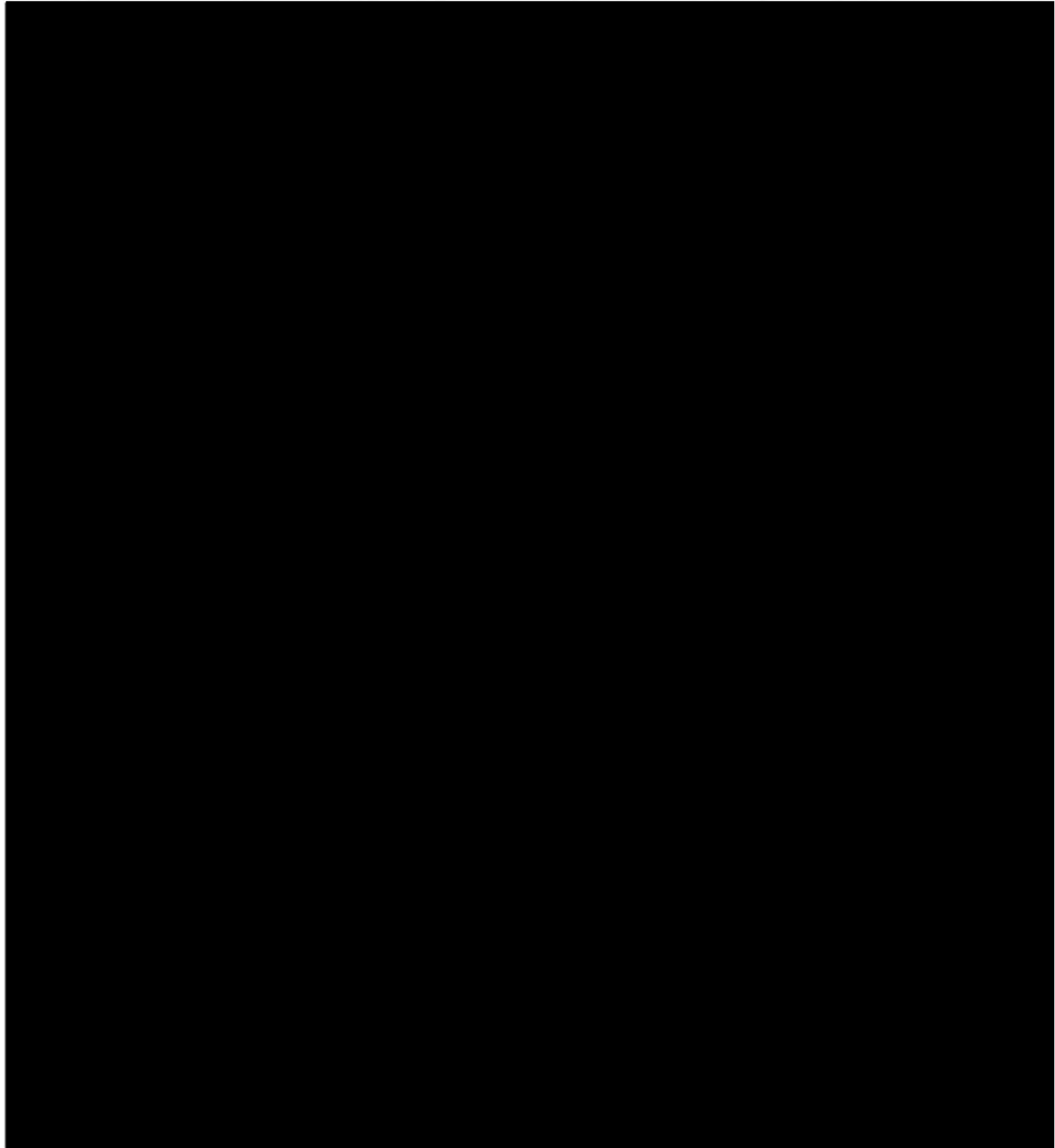
18.1 Time for Commencement and programming

The PDSA P&D Partner must immediately commence the performance of the Services.

Within 5 Business Days of the Commencement Date, the PDSA P&D Partner must, without limiting or otherwise restricting clauses 12.2, 13 and 14, provide TfNSW's Representative with a program acceptable to TfNSW's Representative which contains such details as may be required by this Deed, including the Date for FBO Submission. Thereafter the PDSA P&D Partner must regularly revise the program at intervals acceptable to TfNSW's Representative.

18.2





18.3 Claim for extension of time

To claim an extension of time, the PDSA P&D Partner must submit a written claim to TfNSW's Representative within 10 Business Days of the becoming aware (or within 10 Business Days of when the PDSA P&D Partner ought to have been aware, acting reasonably) of the first occurrence of the event or circumstance causing the delay ("**Initial Claim**"). This claim should include:

- (a) details of the delay and the event or circumstance causing the delay;
- (b) details of the activities that are critical to the maintenance of progress in the execution of the Services;
- (c) a statement of the number of days extension of time claimed together with the basis of calculating that period; and
- (d) any other information reasonably requested by TfNSW's Representative.

If the effects of the delay continue beyond the period of 10 Business Days after first becoming aware (or within 10 Business Days of when the PDSA P&D Partner ought to have been aware, acting reasonably) of the occurrence of the event or circumstance causing the delay, the PDSA P&D Partner must:

- (a) include an update of the delay in the next Monthly Progress Report (as defined in the Commitment Deed); and
- (b) within 10 Business Days of the conclusion of the delay or circumstance causing the delay the PDSA P&D Partner must submit a claim updating the information detailed in clauses 18.3(a)-(d) above ("**Updated Claim**").

TfNSW's Representative may, within 10 Business Days of receiving the PDSA P&D Partner's Initial Claim or an Updated Claim, by written notice to the PDSA P&D Partner, request additional information in relation to the claim. The PDSA P&D Partner must, within 10 Business Days of receiving such request, provide TfNSW's Representative with the information requested.

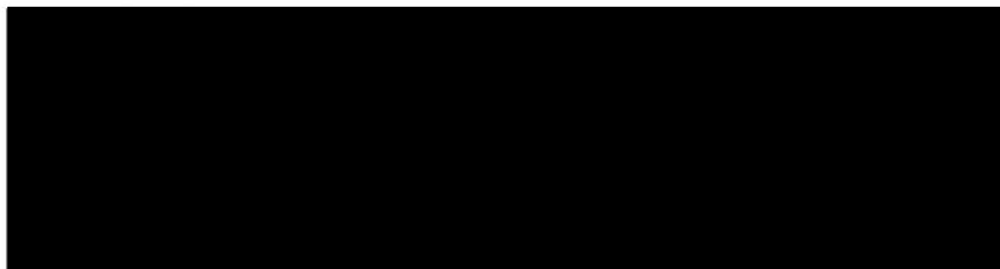
Notwithstanding that the PDSA P&D Partner is not entitled to an extension of time or has not made a claim for an extension of time, TfNSW's Representative may at any time by notice in writing to the PDSA P&D Partner extend the Date for FBO Submission for any reason.

TfNSW's Representative is not required to exercise its discretion under the previous paragraph for the benefit of the PDSA P&D Partner.

18.4 Conditions precedent to extension of time

It is a condition precedent to the PDSA P&D Partner's entitlement to an extension of time to the Date for FBO Submission that:

- (a)
- (b)
- (c)
- (d)



If the PDSA P&D Partner fails to comply with the conditions precedent in this clause 18.4:

- (e) TfNSW will not be liable upon any claim by the PDSA P&D Partner; and
- (f) the PDSA P&D Partner will be absolutely barred from making any claim against TfNSW arising out of or in any way in connection with the event giving rise to the delay and the delay involved.

The Contractor's entitlement to an extension of time will be reduced by the extent to which the Contractor has failed to take reasonable steps to prevent or mitigate the delay.

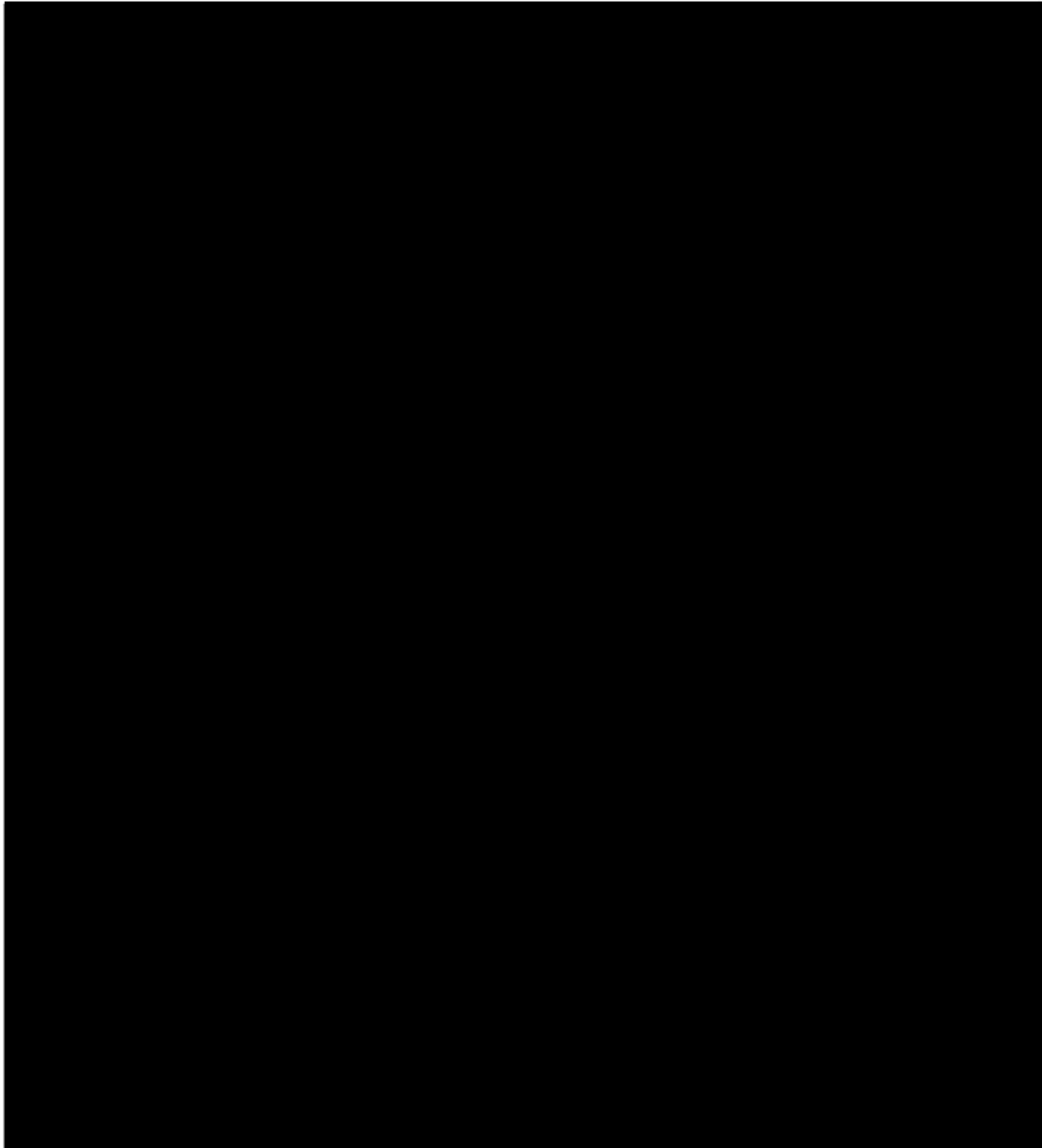
Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is not one of the events in clause 18.2 then to the extent that the delays are concurrent, TfNSW's Representative shall apportion the resulting delay according to the respective causes' contribution.

18.5 Assessment of extension of time

Within 15 Business Days of receiving an Initial Claim or, where applicable, an Updated Claim, or within 15 Business Days of the provision of additional information in response to a request under clause 18.3, TfNSW's Representative will assess the number of days the PDSA P&D Partner will be delayed and the Date for FBO Submission will be extended by that time period.

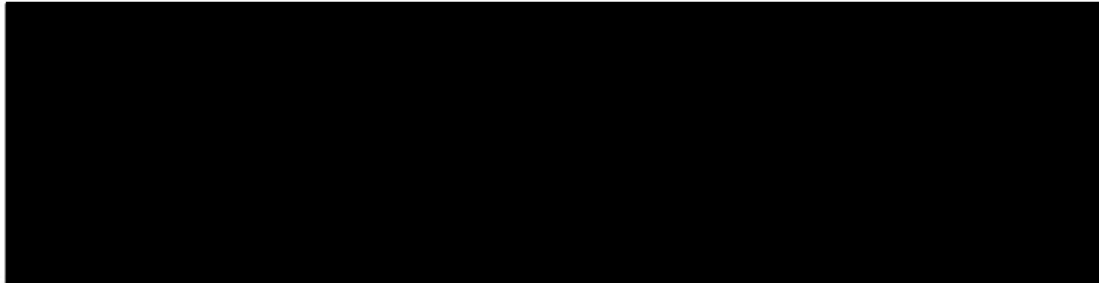
TfNSW's Representative must provide details of their assessment where TfNSW's Representative's assessment of the number of days the PDSA P&D Partner will be delayed is less than the amount of days claimed in the Initial Claim or Updated Claim (as applicable).

18.6



18.7 Suspension

- (a) TfNSW may immediately by written notice suspend the Services or any of the PDSA P&D Partner's obligations in connection with the Services or this Deed.
- (b) If TfNSW suspends the Services or any of the PDSA P&D Partner's obligations under clause 18.7(a), TfNSW may at any time give the PDSA P&D Partner a written notice to resume performing the Services or the suspended obligations.
- (c) The PDSA P&D Partner must resume performing any suspended obligations as soon as practicable after the date of the notice referred to in clause 18.7(b), and in any event no later than 5 Business Days (or such longer period as may be agreed by the parties) after the date of that notice.



19. DISPUTE RESOLUTION

19.1 Negotiation

- (a) The parties commit to working cooperatively and collaboratively to identify and resolve issues in relation to the Services and this Deed to their mutual satisfaction.
- (b) If a Dispute arises, either party (**Claimant**) may, by written notice to the other party (**Respondent**), refer the Dispute to the parties' senior representatives for resolution (**Notice of Dispute**). The Notice of Dispute must set out reasonable particulars of the Dispute and specify the senior representative nominated by the Claimant to resolve the Dispute.
- (c) Within 5 Business Days after a Dispute is referred to senior representatives under clause 19.1(b), the Respondent must give the Claimant written notice specifying the senior representatives nominated by the Respondent to resolve the Dispute.
- (d) The parties must meet within 5 Business Days of a notice under clause 19.1(c) and use their best endeavours to resolve the Dispute.

19.2 Expert Determination

- (a) If a Dispute is not resolved by negotiation between the senior representatives within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of a notice under clause 19.1(c) (**Negotiation Period**) then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must submit the dispute to expert determination by an independent expert.
- (b) If the parties do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period then either party may request the President of the Resolution Institute to nominate an expert.
- (c) The parties must enter into an agreement with the agreed or nominated expert on the terms of the agreement in Schedule 10 or such other terms as the parties and the expert may agree.
- (d) Except where the parties otherwise agree in writing:
 - (i) each party must bear its own costs and pay one half of the expert's fees and expenses;
 - (ii) the expert must not act as an arbitrator;
 - (iii) the determination of the expert will be final and binding on the parties except where:
 - A. the expert's determination relating to the Dispute is that one party shall pay to the other an amount, or carry out works to an amount, greater than [REDACTED] and

- B. a party gives notice of appeal to the other party within 15 Business Days of the determination being given.

19.3 Continued performance of this Deed

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under this Deed.

19.4 Conditions precedent to litigation

No party may commence proceedings in court in relation to a Dispute unless:

- (a) a Notice of Dispute has been delivered in relation to that Dispute;
- (b) the party commencing proceedings has complied with its obligations under clause 19.1;
- (c) the parties have not submitted to expert determination in accordance with clause 19.2; and
- (d) the expert has given a determination which is not final and binding.

19.5 Urgent relief

Nothing in this clause 19 prejudices either party's right to seek injunctive or urgent declaratory relief in relation to a Dispute.

20. NOTICE OF BREACH

If the PDSA P&D Partner is in breach of this Deed, then TfNSW may give a written notice to the PDSA P&D Partner stating:

- (a) that it is a notice under this clause 20;
- (b) the breach relied upon; and
- (c) that this Deed will be terminated unless the breach is remedied within the period set out in the notice, which must be no less than 10 Business Days.

21. TERMINATION

21.1 Expiry

Unless terminated in accordance with clause 21.2 or clause 21.3, this Deed will terminate on the earlier of:

- (a) Contract Close; and
- (b) the Long Stop Date.

21.2 Termination for default and insolvency

TfNSW may terminate this Deed:

- (a) by giving the PDSA P&D Partner 5 Business Days prior written notice if:
 - (i) the PDSA P&D Partner breaches any of its obligations under this Deed and to the extent that breach is capable of remedy, that breach is not remedied within 10 Business Days after written request by TfNSW under clause 20; or
 - (ii) the Commitment Deed is terminated in accordance with clause 31.2 of that deed;
- (b) immediately by giving written notice to the PDSA P&D Partner if:

- (i) the PDSA P&D Partner is a company to which the definition of Insolvency Event applies; or
- (ii) TfNSW is reasonably of the opinion that there is no material prospect that the PDSA P&D Partner will be able to continue to perform and complete the Services.

21.3 Termination for convenience

TfNSW may terminate this Deed for its convenience by giving the PDSA P&D Partner 10 Business Days prior written notice.

21.4 Termination payments

If this Deed is terminated pursuant to this clause 21, TfNSW must reimburse the PDSA P&D Partner for the cost of Services performed to the date of termination. Such payment will be a limitation upon TfNSW's liability to the PDSA P&D Partner in connection with the termination of this Deed.

21.5 Consequences of termination

- (a) On termination of this Deed (other than pursuant to clause 21.1), the PDSA P&D Partner must:
 - (i) cease performing any of its obligations under this Deed (except for those obligations that survive termination); and
 - (ii) immediately deliver to TfNSW copies of all Contract Materials and any other designs, drawings, specifications, warranties and documents prepared or procured in performing the Services or otherwise held by the PDSA P&D Partner or its subcontractors in respect of the Services.
- (b) The parties acknowledge and agree that on termination of this Deed:
 - (i) except as expressly set out in clause 21.4:
 - A. the PDSA P&D Partner is not entitled to make a Claim against TfNSW as a result of the termination; and
 - B. the PDSA P&D Partner will have no right to be paid any amount by TfNSW;
 - (ii) subject to clause 3.6(e) of the Commitment Deed, the other Phase 3 Agreements will continue to apply unless separately terminated in accordance with their terms; and
 - (iii) TfNSW may, in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party.

22. COMMUNICATIONS AND INFORMATION

22.1 Confidentiality

- (a) The PDSA P&D Partner acknowledges and agrees that:
 - (i) prior to the date of this Deed, the NSW Government provided a range of information to the PDSA P&D Partner in connection with CQR; and
 - (ii) TfNSW may from time to time during the Transaction Phase or during the performance of the Services provide further information to the PDSA P&D Partner in connection with CQR or this Deed,
- that is Confidential Information.

- (b) The parties acknowledge and agree that:
- (i) the provision of Confidential Information to the PDSA P&D Partner (whether prior to, or after, the date of this Deed) is subject to the terms of the Confidentiality Deed Poll;
 - (ii) use of the Confidential Information by the PDSA P&D Partner to participate in the Transaction Phase (including carrying out the Services) is a Permitted Purpose as defined in and under the terms of the Confidentiality Deed Poll;
 - (iii) without limiting the above or the Confidentiality Deed Poll, the terms, schedules and attachments of this Deed and the Contract Materials are all Confidential Information to which the terms of the Confidentiality Deed Poll apply; and
 - (iv) [REDACTED]

22.2 Contact with NSW Government

- (a) Except where required under clause 22.5 or any of the other Phase 3 Agreements:
- (i) the PDSA P&D Partner must not contact, canvass, solicit or approach:
 - A. any Authorities, agencies, agents, members, employees, officers or representatives of Authorities (including the State of New South Wales and local councils);
 - B. the NSW Government's advisers, including the NSW Government Advisers, or their subsidiaries or related companies; or
 - C. elected representatives of Commonwealth, NSW Government or local governments, and their offices,in each case excluding TfNSW, to discuss the Services, CQR or any other element of its participation in the SME in any way.
 - (ii) if the PDSA P&D Partner wants to meet with an officer or representative of the NSW Government, it must submit a written request to the CQR Team, following which:
 - A. TfNSW (at its absolute discretion) may organise a meeting following a request; and
 - B. a member of the CQR Team will be present at any meeting held pursuant to clause 22.2(a)(ii).
- (b) The PDSA P&D Partner acknowledges that an unauthorised communication in breach of this clause may, at TfNSW's absolute discretion, lead to termination of this Deed pursuant to clause 21.2.

22.3 Contact with infrastructure owners, third parties and other stakeholders

Subject to clause 22.3A:

- (a) the PDSA P&D Partner acknowledges and agrees that during the Transaction Phase TfNSW will have primary responsibility for engagement, communication or interface with infrastructure owners, other third parties (including landowners, peak bodies and private operators but not including utility service providers) and other stakeholders;
- (b) subject to clause 22.3A, if the PDSA P&D Partner requires communication or interface with any infrastructure owner, other third party (including landowners, peak bodies, and private operators) or other stakeholder that is not a Government Agency, on the basis that it considers it is necessary for the performance of the Services, it must obtain the written approval of TfNSW prior to the commencement of any communication,

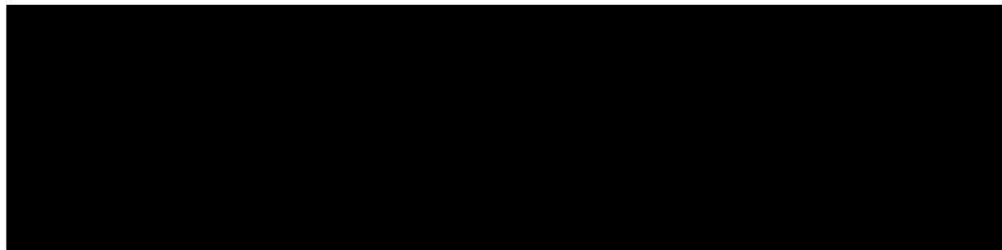
interaction or interface. The approval of TfNSW is at its absolute discretion, and may be conditional;

- (c) the PDSA P&D Partner acknowledges that any approved communication, interaction or interface with any infrastructure owner, third party or stakeholder will be facilitated by TfNSW unless otherwise specified;
- (d) the PDSA P&D Partner acknowledges and agrees that it will be the responsibility of the PDSA P&D Partner to satisfy itself that all relevant information required to perform the Services is obtained from each infrastructure owner or third party;
- (e) the PDSA P&D Partner must not contact, canvass, solicit or approach any infrastructure owner, third party or stakeholder (that is not a Government Agency) to discuss the Services, CQR or any other element of its participation in the SME in any way, other than as expressly permitted by clause 22.3(b); and
- (f) the PDSA P&D Partner acknowledges that any breach of this clause 22.3 may, at TfNSW's absolute discretion, lead to termination of this Deed pursuant to clause 21.2.

22.3A Utility Service Providers

- (a) The PDSA P&D Partner acknowledges and agrees that during the Transaction Phase the PDSA P&D Partner will have primary responsibility for:
 - (i) engagement, communication or interface with utility service providers;
 - (ii) identifying any utility service providers that may be required to enter into binding agreements with TfNSW or the PDSA P&D Partner in order to progress the SME or undertake the Delivery Phase Activities; and
 - (iii) ongoing monitoring of utility service providers within the site boundaries through the 'Dial Before You Dig' Service.

(b)



22.4 Assistance with stakeholder engagement

- (a) The PDSA P&D Partner will, at the request of TfNSW, attend any meeting, briefing or engagement with any infrastructure owner, other third party (including landowners, peak bodies, private operators and utility service providers) or other stakeholder as relevant to the Services or SME.
- (b) Without limiting clause 22.4(a), the PDSA P&D Partner will attend the following stakeholder engagement meetings:
 - (i) Design, Planning, Environment, Sustainability, Culture and Heritage (**DPESCH**);
 - (ii) Engineering, Construction, Operations and Maintenance (**ECOM**);
 - (iii) Financial, Legal, Commercial (**FLC**); and
 - (iv) Precinct Management, Services, Property and Retail (**PMSPR**).
- (c) The PDSA P&D Partner will provide any reasonable assistance required by TfNSW in relation to TfNSW's participation in any meeting contemplated under clauses 22.4(a) and 22.4(b), including preparation of any briefing papers or other documentation.

22.5 Attendance at meetings

- (a) The PDSA P&D Partner will at the request of the P&D Partner or TfNSW attend any Senior Management Coordination Meetings (as defined in the Commitment Deed) and the Monthly Control Group (as defined in the Commitment Deed) under the Commitment Deed.
- (b) The PDSA P&D Partner will, and shall procure that each of its Providers as requested by TfNSW will, attend Technical Workstream Meetings (as defined in the Commitment Deed) to the extent the subject matter of a Technical Workstream Meetings is relevant to such Provider.
- (c) The PDSA P&D Partner acknowledges that TfNSW requires direct access to the PDSA P&D Partner's Providers as set out in clause 22.5(b) for the purposes of working in a collaborative manner to ensure optimal design and planning outcomes.
- (d) Without limiting this clause 22.5, the PDSA P&D Partner must attend all other meetings as described in the Services Brief.

22.6 Media and other communications

- (a) The PDSA P&D Partner must not use any media or other public communication channels to comment about:
 - (i) CQR or the NSW Government in relation to CQR; or
 - (ii) matters associated with the SME or the Transaction Phase; or
 - (iii) matters concerning its performance of the Services.
- (b) If the PDSA P&D Partner considers that it should make a market, public or media statement in relation to or in connection with CQR or the Services, the PDSA P&D Partner must, to the extent reasonably possible, discuss the content of such statement with TfNSW before making the statement and comply with any requirements which TfNSW may express in relation to the statement.
- (c) The PDSA P&D Partner acknowledges that any breach of this clause 22.6 may, at TfNSW's absolute discretion, lead to termination of this Deed pursuant to clause 21.2.

22.7 CQR Information

- (a) The PDSA P&D Partner acknowledges and agrees that:
 - (i) prior to the date of this Deed, the NSW Government made available a range of background, technical and commercial information to the PDSA P&D Partner in connection with CQR or the Approved Purpose (as defined in the Deed of Disclaimer); and
 - (ii) TfNSW may from time to time during the Transaction Phase or in relation to this Deed or the Services provide further background, technical and commercial information (including in the CQR Data Room) to assist the PDSA P&D Partner in its participation in the Transaction Phase and performance of the Services, (together, **CQR Information**).
- (b) The parties acknowledge and agree that, subject to clause 22.7(e), the provision of CQR Information to the PDSA P&D Partner is subject to the terms of the Deed of Disclaimer.
- (c) Without limiting the Deed of Disclaimer, and subject to clause 22.7(e):
 - (i) TfNSW makes no warranty or representation, and does not assume any duty of care to the PDSA P&D Partner, that the information, data and documents in the CQR Information is accurate, adequate, suitable or complete and TfNSW

- accepts no responsibility for interpretations placed on the information, data and documents by the PDSA P&D Partner; and
- (ii) the PDSA P&D Partner must perform its obligations under this Deed and prepare the Contract Materials based on its own investigations and determinations and should not rely on the information, data and documents contained in the CQR Information.
 - (d) Without limiting the above or the Deed of Disclaimer, to the maximum extent permitted by law, TfNSW is not bound by, and has no responsibility or liability for, any oral advice, representation or, subject to clause 22.7(e), information given or furnished by or on behalf of the NSW Government with respect to CQR or the performance of the Services.
 - (e) [REDACTED]

22.8 Privacy Act compliance

- (a) If the PDSA P&D Partner provides any Personal Information or Sensitive Information (each as defined in the *Privacy Act 1988 (Cth)* (in this clause 22.8, "the Act")) to TfNSW in connection with the Services or any Contract Material, the PDSA P&D Partner warrants to the NSW Government that the PDSA P&D Partner has:
 - (i) obtained the consent of each individual about whom any Personal Information or Sensitive Information is provided; and
 - (ii) ensured or will ensure, within the time required by the Act, that each individual about whom any Personal Information or Sensitive Information is provided has received a written statement setting out all of the matters required by National Privacy Principle 1.3:
 - A. in relation to disclosure of the Personal Information or Sensitive Information to the NSW Government or any of its advisers requiring the information for the purposes set out in clause 22.8(a)(ii)B); and
 - B. disclosing that the entities referred to in clause 22.8(a)(ii)A) shall use the Personal Information or Sensitive Information for the purposes of reviewing and utilising the Contract Materials.
- (b) The PDSA P&D Partner must comply with the provisions of the Act in relation to any Personal Information or Sensitive Information provided to it by TfNSW or any of its advisers.

23. DISCLOSURE OF CONTRACT INFORMATION

- (a) The PDSA P&D Partner acknowledges that TfNSW may disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:
 - (i) the GIPA Act;
 - (ii) the *Ombudsman Act 1974 (NSW)*; and
 - (iii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of parliamentary accountability.
- (b) The PDSA P&D Partner must provide to TfNSW any other information which TfNSW reasonably requires to comply with its obligations under the items referred to in clause 23(a).
- (c) If the PDSA P&D Partner reasonably believes that any part of this Deed (including as varied in accordance with the terms of this Deed) contains information which:

- (i) falls within the definition of 'commercial-in-confidence provisions' (as that term is defined in the GIPA Act);
 - (ii) could reasonably be expected to affect public safety or security or;
 - (iii) is subject to an overriding public interest consideration against disclosure,
- the PDSA P&D Partner must advise TfNSW in writing, identifying the relevant information and commercial-in-confidence provisions and providing reasons so that TfNSW may consider excluding the relevant information and commercial-in-confidence provisions from publication in accordance with the GIPA Act.
- (d) The PDSA P&D Partner must comply with clause 23(c) within the following periods:
 - (i) 5 working days (as that term 'working day' is defined in the GIPA Act) of the date on which the Deed becomes effective (as that term "becomes effective" is defined in section 27(3) of the GIPA Act); and
 - (ii) 5 working days (as that term 'working day' is defined in the GIPA Act) of each date that the Deed is varied in accordance with the terms of this Deed.
 - (e) If the PDSA P&D Partner fails to:
 - (i) comply with clauses 23(c) and 23(d); or
 - (ii) respond to requests for further information related to disclosure of any part of this Deed within the timeframes requested by TfNSW,

then TfNSW will determine, in accordance with the GIPA Act, the relevant information to be disclosed to satisfy TfNSW's disclosure obligations under the GIPA Act.
 - (f) The PDSA P&D Partner acknowledges that compliance with clauses 23(c) and 23(d) will enable TfNSW to take account of matters that may weigh against disclosure of limited parts of this Deed under section 32 of the GIPA Act, and that these considerations are not conclusive and that the relevant information may nevertheless be disclosed.

24. PROBITY

24.1 Probity Adviser

- (a) The parties acknowledge and agree that CQR, and discussions and negotiations during the Transaction Phase in connection with CQR, will be governed by the probity requirements of the NSW Government.
- (b) The parties acknowledge and agree that the Probity Adviser's role during the Transaction Phase includes:
 - (i) ensuring that the procedures adopted for the receipt and evaluation of the Developed Binding Offer and Final Binding Offer are fair and equitable, monitoring the Transaction Phase (including evaluation and any interaction) and providing independent validation of this to the NSW Government;
 - (ii) providing guidance to the NSW Government as to how probity issues can be resolved; and
 - (iii) monitoring communications and interactions that occur between the PDSA P&D Partner and any representatives of the NSW Government in respect of CQR.
- (c) The parties acknowledge and agree that the Probity Adviser is an independent observer of the evaluation process and will not be involved in the evaluation of the Developed Binding Offer or Final Binding Offer.

24.2 Potential Probity Issues

- (a) In performing the Services, the PDSA P&D Partner must:
 - (i) use its best endeavours to identify all Potential Probity Issues throughout the Transaction Phase; and
 - (ii) immediately notify TfNSW throughout the duration of the Transaction Phase of any Potential Probity Issue of which the PDSA P&D Partner becomes aware.
- (b) For each Potential Probity Issue identified by the PDSA P&D Partner or notified by TfNSW, the PDSA P&D Partner must promptly submit to TfNSW and the Probity Adviser written details of the procedures and arrangements the PDSA P&D Partner has implemented or intends to implement to ensure that the identified Potential Probity Issue does not adversely affect the competitiveness or probity of the SME.
- (c) TfNSW may, in its discretion, make comments on the procedures and arrangements, and may request the PDSA P&D Partner to implement additional measures, which may include the execution of an appropriate deed. The PDSA P&D Partner must ensure that all of TfNSW's comments are promptly incorporated into the procedures and arrangements that the PDSA P&D Partner implements.
- (d) The PDSA P&D Partner must immediately notify TfNSW of any breaches of the procedures and arrangements implemented in accordance with clauses 24.2(a) to 24.2(c).
- (e) TfNSW may, in its absolute discretion, exercise any of its rights under this Deed if a Potential Probity Issue is not addressed to the satisfaction of TfNSW.
- (f) Without limiting clause 24.4, TfNSW may undertake its own investigations and inquiries regarding Potential Probity Issues or suspected or actual breaches of the procedures and arrangements implemented in accordance with clauses 24.2(b) and 24.2(c).

24.3 Relationship between PDSA P&D Partner and NSW Government Advisers

- (a) The PDSA P&D Partner acknowledges that Potential Probity Issues may arise where the PDSA P&D Partner (or its Member(s) or Provider(s) or Team Member(s)) has a relationship with an entity or person that is a NSW Government Adviser.
- (b) The PDSA P&D Partner must, prior to the engagement of an entity, confirm whether that entity (or any of its Related Parties) has been previously or is currently engaged by the NSW Government on any basis in relation to CQR. If so, the PDSA P&D Partner and that entity must obtain TfNSW's written approval before being engaged by the PDSA P&D Partner (which approval may be withheld in TfNSW's absolute discretion).
- (c) In addition to its other rights in relation to Potential Probity Issues, and without limiting TfNSW's rights under clause 24.3(b), where the PDSA P&D Partner (or its Member(s) or Provider(s) or Team Member(s)) has a relationship with an entity or person that is a NSW Government Adviser, TfNSW reserves the right to require the PDSA P&D Partner to put in place such procedures and arrangements as TfNSW considers necessary in order to address any such Potential Probity Issue, which may include separation barrier arrangements, the appointment of an independent probity auditor and the execution of an appropriate probity deed.

24.4 Probity checks

- (a) TfNSW may undertake probity checks in connection with the involvement of the PDSA P&D Partner, or any Member, Provider or Team Member, in the Services or the SME. Such probity checks may include, in respect of the PDSA P&D Partner and each Member, Provider or Team Member:
 - (i) investigations into commercial structure, business and credit history;

- (ii) prior contract compliance;
 - (iii) prior dealings with the NSW Government;
 - (iv) any criminal records or pending charges;
 - (v) any Independent Commission Against Corruption investigations;
 - (vi) research into any relevant activity that is or might reasonably be expected to be the subject of regulatory investigation.
- (b) In its evaluation of the P&D Partner's Developed Binding Offer and Final Binding Offer, TfNSW may have regard to any information which it has obtained in accordance with this clause 24.4.

25. GST

TfNSW and the PDSA P&D Partner agree:

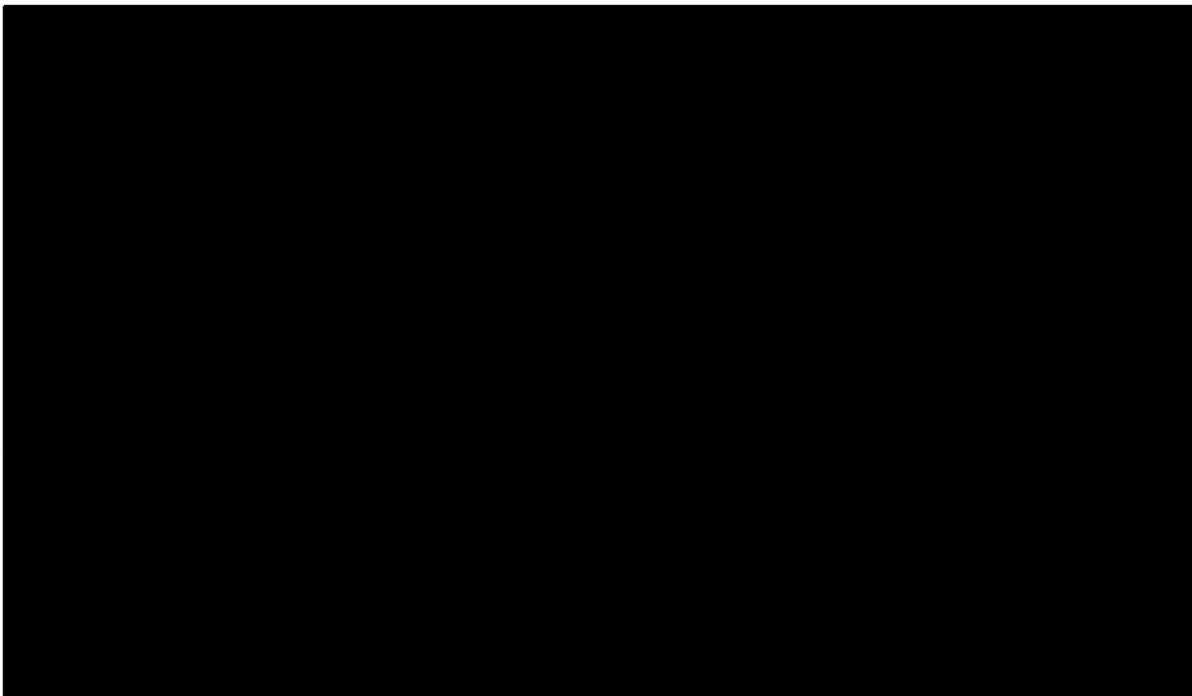
- (a) unless otherwise stated all dollar amounts referred to in this Deed are GST exclusive;
- (b) if GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Deed, including the Services, the party providing the consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply;
- (c) any amount payable under clause 25(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) if any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Fee) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) notwithstanding any other provision of this Deed, where the Recipient is the PDSA P&D Partner, it will not be obliged to pay any amount in respect of GST to TfNSW (whether under this clause 25 or otherwise) in respect of a taxable supply made by TfNSW unless TfNSW issues to the PDSA P&D Partner a tax invoice that complies with the GST Law in respect of that taxable supply;
- (f) the parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by each Member to TfNSW under or in connection with this Deed:
 - (i) TfNSW will issue to each Member a recipient created tax invoice ('**RCTI**') for each taxable supply made to TfNSW under this Deed;
 - (ii) TfNSW will issue to each Member an adjustment note for any adjustment event;
 - (iii) each Member will not issue a tax invoice in respect of any taxable supply it makes to TfNSW; and
 - (iv) TfNSW may notify the PDSA P&D Partner that it will no longer issue a RCTI for each taxable supply made by each Member under this Deed, in which case, from that point in time, TfNSW will not be required to issue RCTIs in respect of such supplies and each Member will be required to issue tax invoices to TfNSW (including under clause 17.3) as a condition precedent to TfNSW being obliged to pay any amount in respect of GST to each Member in respect of any such taxable supply,

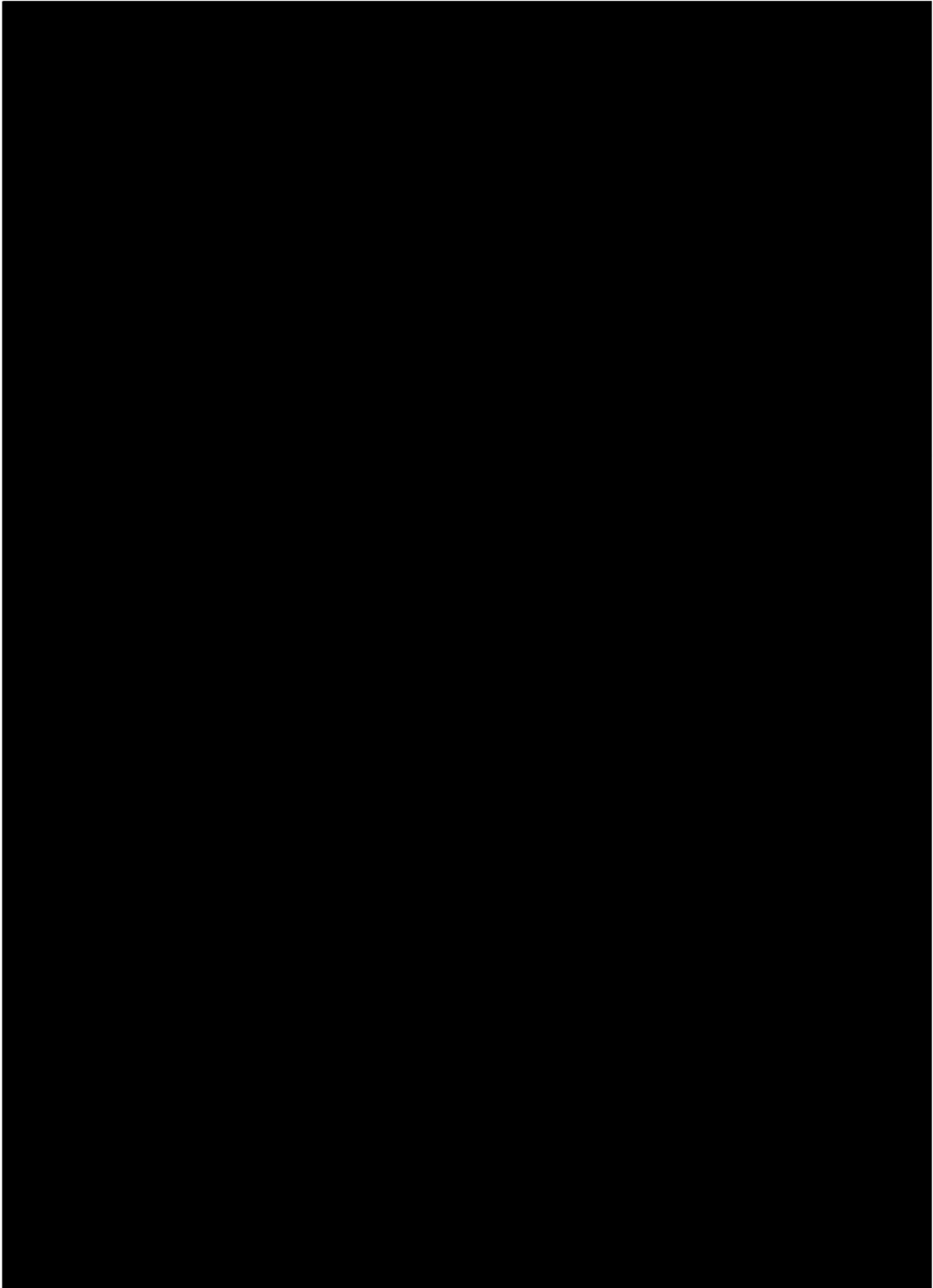
provided that where clause 17.3A does not apply, references in this clause 25(f) to 'each Member' will refer instead to the PDSA P&D Partner.

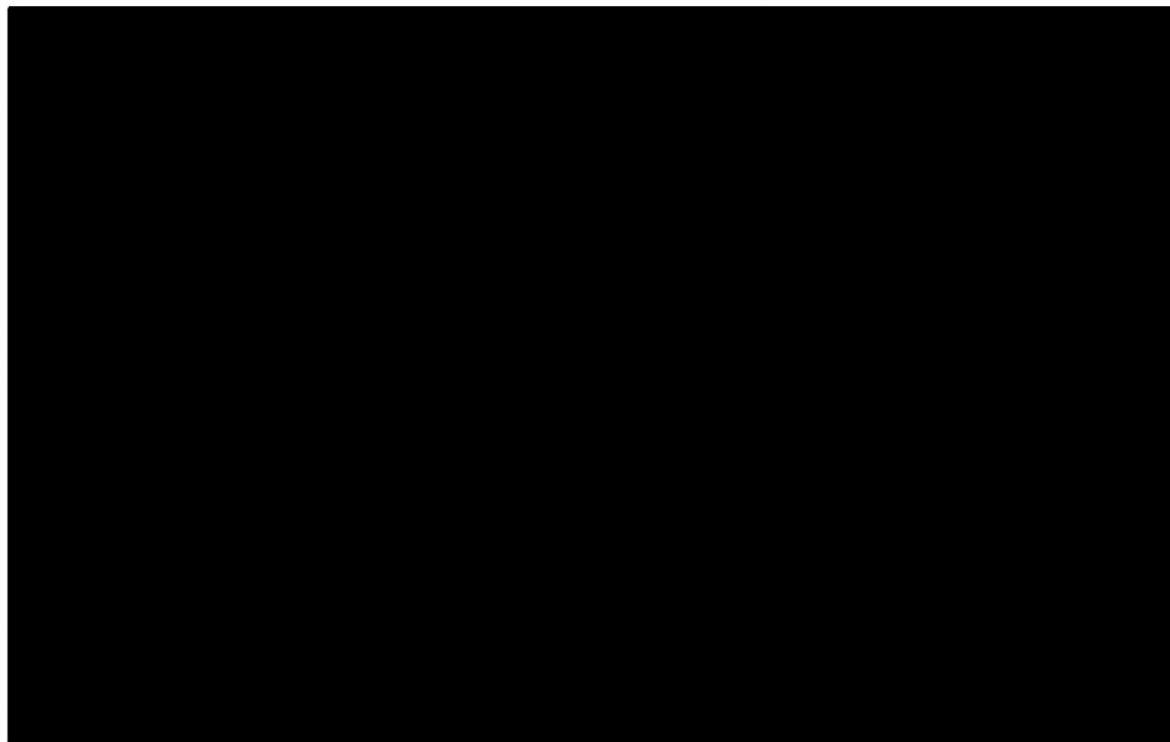
- (g) each party acknowledges and warrants that at the time of entering into this Deed it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation Authority relating to the creation of RCTIs;
- (h) if the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 25 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate);
- (i) the PDSA P&D Partner must ensure that each insurance policy referred to in clause 10 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and
- (j) in clauses 17.3 and 25:
 - (i) "GST" means the tax payable on taxable supplies under GST Law;
 - (ii) "GST Law" means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
 - (iii) terms which are defined in GST Law have the meaning provided by GST Law.

Subject to clauses 25(a) to 25(i) (inclusive), the PDSA P&D Partner must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

26. LIABILITY







27. NO WAIVER

Failure by TfNSW to enforce or compel performance of any term or condition of this Deed does not constitute a waiver of that term or condition and does not impair the right of TfNSW to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

28. RETURN OF DOCUMENTS

On completion of the Services or upon the termination of this Deed, the PDSA P&D Partner must deliver to TfNSW:

- (a) all Contract Material produced by the PDSA P&D Partner regardless of its stage of completion; and
- (b) TfNSW's documents, samples, patterns, moulds and other information provided to the PDSA P&D Partner in carrying out those Services.

29. NOT USED

30. PROPORTIONATE LIABILITY

- (a) To the extent permitted by law, part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.

Without limiting the above, the rights, obligations and liabilities of the PDSA P&D Partner and TfNSW under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.

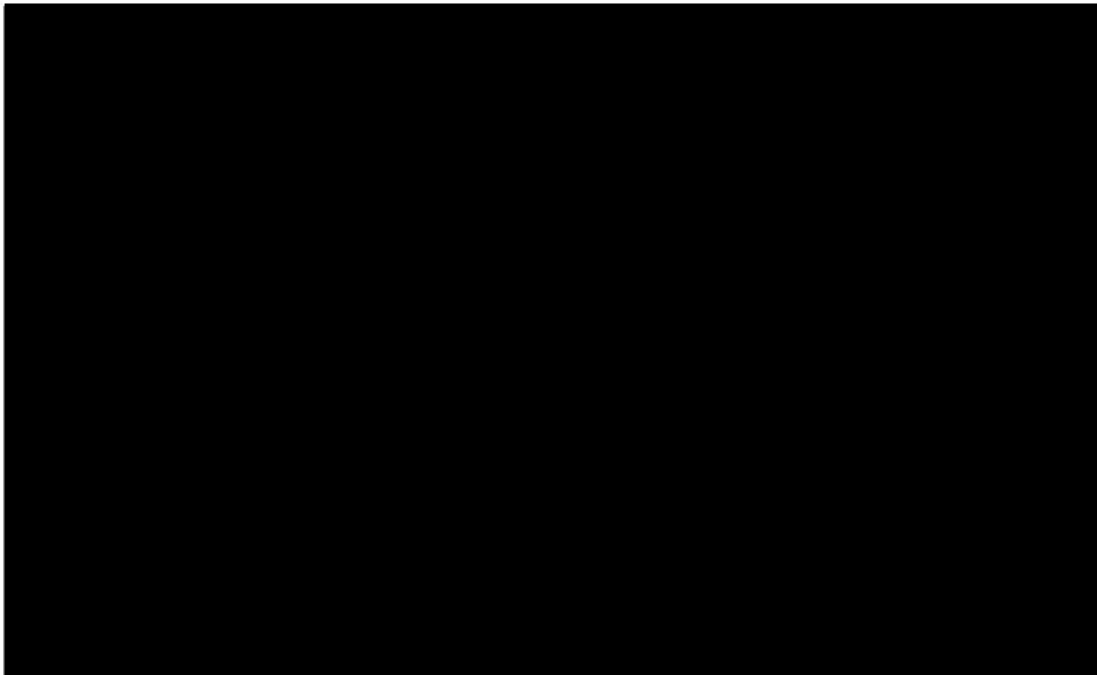
- (b) To the extent permitted by law:
 - (i) the PDSA P&D Partner must not seek to apply the provisions of part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by TfNSW against the PDSA P&D Partner (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by TfNSW against the PDSA P&D Partner (whether in contract, tort or otherwise), the PDSA P&D Partner will indemnify TfNSW against any loss, damage, cost or expense which TfNSW is not able to recover from the PDSA P&D Partner because of the operation of part 4 of the *Civil Liability Act 2002* (NSW).

31. SEVERABILITY

If at any time a provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this Deed; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Deed.

32. ASSIGNMENT AND NOVATION



33. BUILDING CODE

This clause 33 only applies if stated in the Contract Particulars.

- (a) The PDSA P&D Partner must comply with the Building Code. A copy of the Building Code is available at:
<https://www.legislation.gov.au/Details/F2017C00125>
- (b) The PDSA P&D Partner:

- (i) declares as at the Commencement Date; and
- (ii) must ensure during the term of this Deed,
that, in relation to the Services, the PDSA P&D Partner and each of their subcontractors and consultants:
 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) meets the requirements of section 11 of the Building Code;
 - (v) is not subject to an Exclusion Sanction or a formal warning that any further failure to comply with the Building Code may result in the imposition of an Exclusion Sanction;
 - (vi) has not been the subject of an adverse decision, direction or order, or failed to comply with a decision, direction or order, made by a court or tribunal for a breach of the BCI(IP) Act, a designated building law, work health and safety law, competition and consumer law or the *Migration Act 1958* (Cth) (other than a decision, direction or order that is stayed or has been revoked);
 - (vii) has not been required to pay any amount under an adjudication certificate or owed any unsatisfied judgement debts to a Building Industry Participant;
 - (viii) only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia;
 - (ix) unless approved by the ABC Commissioner, is not excluded from performing Building Work funded by a state or territory government; and
 - (x) if the Deed states that a Workplace Relations Management Plan is required, will comply with the Workplace Relations Management Plan approved by the ABCC in accordance with Part 6 of the Building Code.
- (c) The PDSA P&D Partner acknowledges and agrees that compliance with the Building Code does not relieve the PDSA P&D Partner from any responsibility or obligation under this Deed, or from liability for any Defect arising from compliance with the Building Code.
- (d) The PDSA P&D Partner 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 PDSA P&D Partner to rectify the breach; and
 - B. the steps taken to rectify any breach of the Building Code with 14 days of providing a notification under clause 33(d)(i)(A); and
 - (ii) give TfNSW a copy of any notification given by the PDSA P&D Partner to the ABCC under clause 33(d)(i) and respond to any requests for information by TfNSW concerning matters related to the Building Code so as to enable TfNSW to comply with its obligations under section 28 of the Building Code.
- (e) The PDSA P&D Partner acknowledges the powers and functions of the ABC Commissioner and the ABCC under the BCI(IP) Act and the Building Code and must ensure that it (and must procure that its subcontractors and consultants) 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 BCI(IP) Act;

- (ii) to interview any person under section 74 of the BCI(IP) Act;
 - (iii) to produce records or documents under sections 74 and 77 of the BCI(IP) Act; and
 - (iv) for information concerning matters relating to the Building Code under subsection 7(c) of the Building Code.
- (f) The PDSA P&D Partner must only enter into a subcontract for any aspect of the Services where:
 - (i) the subcontractor is not covered by, and does not have Related Entities covered by, an Enterprise Agreement that does not meet the requirements of section 11 of the Building Code;
 - (ii) the subcontractor or consultant has submitted a Declaration of Compliance, including the further information outlined in Attachment A to the Declaration of Compliance, which the PDSA P&D Partner agrees is substantially in the same form as the model declaration of compliance applicable to the PDSA P&D Partner in relation to the Building Code; and
 - (iii) the subcontract with the subcontractor or consultant includes an equivalent clause to this clause 33.
- (g) The PDSA P&D Partner must provide the Commonwealth with any subcontractor's or consultant's Declaration of Compliance referred to in clause 33(f) promptly upon request.
- (h) The PDSA P&D Partner must maintain adequate records of the compliance with the Building Code by:
 - (i) the PDSA P&D Partner; and
 - (ii) any subcontractors or consultants.
- (i) In this clause 33:
 - (i) **"ABC Commissioner"** means the Australian Building and Construction Commissioner referred to in subsection 15(1) of the BCI(IP) Act;
 - (ii) **"ABCC"** means the body referred to in subsection 29(2) of the BCI(IP) Act;
 - (iii) **"BCI(IP) Act"** means the *Building and Construction Industry (Improving Productivity) Act 2016* (Cth);
 - (iv) **"Building Code"** means the *Code for the Tendering and Performance of Building Work 2016* in force pursuant to section 34 of the BCIIP Act available at: <https://www.legislation.gov.au/Details/F2017C00668>.
 - (v) **"Building Industry Participant"** has the same meaning as in the BCI(IP) Act;
 - (vi) **"Building Work"** has the same meaning as in subsection 3(4) of the Building Code;
 - (vii) **"Declaration of Compliance"** means a declaration in substantively the same form as the model declaration of compliance applicable to contractors and subcontractors in relation to the Building Code, including the further information outlined in 'Attachment A' to that model declaration of compliance;
 - (viii) **"Enterprise Agreement"** has the same meaning as in the *Fair Work Act 2009* (Cth);
 - (ix) **"Exclusion Sanction"** has the same meaning as in subsection 3(3) of the Building Code; and

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

34. NSW GUIDELINES

This clause 34 only applies if stated in the Contract Particulars.

34.1 NSW Guidelines

In addition to terms defined in this document, terms used in this clause 34 have the same meaning as is attributed to them in the New South Wales Industrial Relations Guidelines: Building and Construction Procurement ("NSW Guidelines") (as published by the NSW Treasury July 2013, updated in September 2017 and updated from time to time). The NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

34.2 Primary Obligation

- (a) The PDSA P&D Partner must at all times comply with, and meet any obligations imposed by the NSW Guidelines.
- (b) The PDSA P&D Partner must notify the CCU and TfNSW of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the PDSA P&D Partner engages a subcontractor or consultant, the PDSA P&D Partner must ensure that the contract imposes on the subcontractor or consultant equivalent obligations to those in this clause 34 (under the heading NSW Guidelines), including that the subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.
- (d) The PDSA P&D Partner must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

34.3 Access and information

- (a) The PDSA P&D Partner must maintain adequate records of compliance with the NSW Guidelines by it, its subcontractors, consultants and related entities.
- (b) The PDSA P&D Partner must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the PDSA P&D Partner, including but not limited to the project site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the project;
 - (v) have access to personnel; and
 - (vi) interview any person,as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the PDSA P&D Partner, its subcontractors, consultants and related entities.
- (c) The PDSA P&D Partner, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

34.4 Sanctions

- (a) The PDSA P&D Partner warrants that at the time of entering into this Deed, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.
- (b) If the PDSA P&D Partner does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.
- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - A. record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
 - B. take them into account in the evaluation of future procurement processes and responses that may be submitted by the PDSA P&D Partner, or its related entities, in respect of work to which the NSW Guidelines apply.

34.5 Compliance

- (a) The PDSA P&D Partner bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The PDSA P&D Partner is not entitled to make a claim for reimbursement or an extension of time from TfNSW or the State of NSW for such costs.
- (b) Compliance with the NSW Guidelines does not relieve the PDSA P&D Partner from responsibility to perform the Services and any other obligation under this Deed, or from liability for any Defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.
- (c) Where a change in this Deed or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the PDSA P&D Partner must immediately notify TfNSW (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
 - (iii) what steps the PDSA P&D Partner proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Project Work Health and Safety Management Plan);

and TfNSW will direct the PDSA P&D Partner as to the course it must adopt within 10 Business Days of receiving notice.

- (d) In this clause 34:

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

35. EMPLOYMENT OF ABORIGINAL PEOPLE

This clause 35 only applies if stated in the Contract Particulars.

The PDSA P&D Partner must:

- (a) comply with the requirements of the NSW Government Aboriginal Procurement Policy (January 2021) (**APP**), a copy of which can be found at <https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>;
- (b) submit its Aboriginal Participation Plan to TfNSW's Representative for review within 20 Business Days of the date of this Deed;
- (c) base its Aboriginal Participation Plan on the draft Aboriginal Participation Plan;
- (d) submit the requirements of the approved plan under clause 35(b) to TfNSW's Representative;
- (e) report quarterly to TfNSW on its progress towards the requirements in its Aboriginal Participation Plan, in accordance with the APP; and
- (f) provide a final Aboriginal Participation Report to TfNSW's Representative at the completion of the Services, identifying if Aboriginal participation requirements were met and following approval by TfNSW.

36. NOT USED**37. NOTICES**

- (a) At any time and from time to time TfNSW's Representative may notify the PDSA P&D Partner of an electronic portal or document management system to be used for the purposes of this Deed. TfNSW's Representative's notice will set out:
 - (i) the relevant electronic portal or document management system;
 - (ii) the commencement date for the use of the electronic portal or document management system;
 - (iii) any password, login details or similar information required for the PDSA P&D Partner to use the electronic portal or document management system;
 - (iv) address details for TfNSW, TfNSW's Representative and the PDSA P&D Partner; and
 - (v) any other information reasonably necessary for the use and service of notices via the electronic portal or document management system.
- (b) Any notices contemplated by this Deed must be in writing and must before the date referred to in clause 37(a)(ii), be delivered or posted to the relevant address or sent to the email address shown in Contract Particulars (or to any new address or email address notified by the intended recipient); and
- (c) A notice is taken to be given in the case of:
 - (i) delivery by hand, on the day of delivery;
 - (ii) post, at the time when, in due course of the post, it would have been delivered at the address to which it is sent;
 - (iii) 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.
- (d) In relation to any notice under clauses 19, 20 or 21:

- (i) the sender will only be permitted to give a notice by email under clause 37(b) if the notice is concurrently delivered by hand or post in accordance with clause 37(b); and
 - (ii) the notice will only be taken to be given at the same time as the concurrent notice is taken to be given under clause 37(c)(i) or 37(c)(ii) (as applicable).
- (e) On and from the commencement date for use of the electronic platform referred to in clause 37(a), all notices must:
 - (i) be sent through the electronic platform in accordance with the requirements set out in clause 37(a); and
 - (ii) in the case of notices listed in clause 37(d) a copy of the notice sent through the electronic platform must be printed and delivered or posted to the relevant address as set out in clause 37(b) (in which case the deemed time of receipt for the notice will be the deemed time of receipt of delivered or posted notice and not the time of receipt through the electronic platform).
- (f) With respect to notices sent by email or through the electronic platform, an attachment to a notice will only form part of a notice if it is uploaded to the electronic platform in:
 - (i) pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

38. GENERAL

38.1 No implied terms

The PDSA P&D Partner acknowledges and agrees that no term or condition will be implied into this Deed.

38.2 Governing law and jurisdiction

- (a) This Deed is governed by the law in force in New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Deed. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

38.3 Invalidity and enforceability

- (a) If any provision of this Deed is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (b) Clause 38.3(a) does not apply where enforcing the provision of this Deed in accordance with clause 38.3(a) would materially affect the nature or effect of the parties' obligations under this Deed.

38.4 Joint and several liability

Where the PDSA P&D Partner consists of more than one person:

- (a) the obligations of the PDSA P&D Partner under this Deed are joint and several and each person constituting the PDSA P&D Partner acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this Deed) of

each other person comprising the PDSA P&D Partner as if those acts or omissions were its own; and

- (b) a reference to the PDSA P&D Partner in this Deed is a reference to each person separately and any two or more of them together, for example:
 - (i) a representation, warranty or undertaking given by the PDSA P&D Partner relates to each person comprising the PDSA P&D Partner separately and any two or more of them together; and
 - (ii) an act or omission of the PDSA P&D Partner includes an act or omission taken or made by each person comprising the PDSA P&D Partner separately and any two or more of them together.

38.5 Waiver

- (a) No party to this Deed may rely on the words or Conduct of any other party as a Waiver of any Right unless the Waiver is in writing and signed by the party granting the Waiver.
- (b) The meanings of the terms used in clause 38.5(a) are set out below.

Term	Meaning
Conduct	includes delay in the exercise of a right.
Right	any right arising under or in connection with this Deed and includes the right to rely on clause 38.5(a).
Waiver	includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

38.6 Variation

A variation of any term of this Deed must be in writing and signed by the parties.

38.7 Further action

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

38.8 Entire agreement

This Deed states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

38.9 Counterparts

This Deed may be executed in any number of counterparts.

38.10 Relationship of the parties

- (a) Nothing in this Deed gives a party authority to bind any other party in any way.
- (b) Nothing in this Deed imposes any fiduciary duties on a party in relation to any other party.

38.11 Exercise of discretions

- (a) Unless expressly required by the terms of this Deed, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Deed. Any conditions must be complied with by the party relying on the consent, approval or waiver.

38.12 No representation or 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.

38.13 Expenses

Except as otherwise provided in this Deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this Deed.

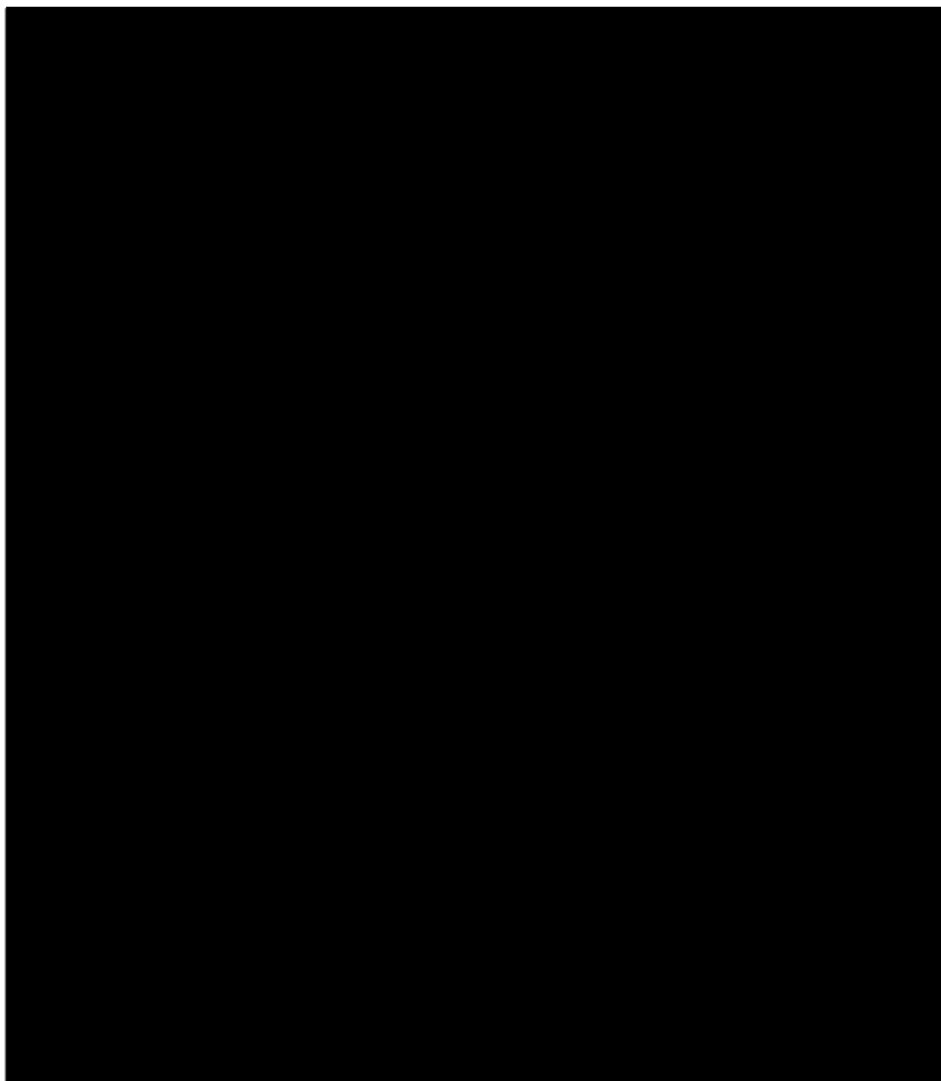
38.14 Survival of certain provisions

- (a) Clauses 1, 4.1, 6.3, 7, 8, 9, 10.1, 13, 19, 21.4, 21.5, 22, 23, 24, 25, 26, 27, 28, 30, 31, 37, 38 and any other provisions of this Deed which are expressed to survive termination or by implication of their nature (together the **Surviving Clauses**) will survive rescission, termination or expiration of this Deed.
- (b) If this Deed is rescinded or terminated, no party will be liable to any other party under this Deed except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Deed occurring before such rescission or termination.
- (c) No right or obligation of any party will merge on completion of any transaction under this Deed, and all rights and obligations under this Deed survive the execution and delivery of any transfer or other document which implements any transaction under this Deed.
- (d) No provision of this Deed which is expressed to survive the termination of this Deed will prevent any other provision of this Deed, as a matter of interpretation, also surviving the termination of this Deed.

SCHEDULE 1 – CONTRACT PARTICULARS

TfNSW:	<p>Transport for NSW ABN 18 804 239 602 Address: Level 44, 680 George Street Sydney NSW 2000 Tel: 02 9200 Email: CQ-Procurement@transport.nsw.gov.au 0200 with a copy to: [REDACTED]</p>
PDSA P&D Partner:	<p>Capella Capital Pty Limited (ACN 127 727 771) as agent for the Capella Capital Partnership (ABN 68 720 326 224) Address: Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo, NSW, 2000 Tel: Not applicable Email: companysecretary@capellacapital.com.au and Lendlease Construction Pty Limited (ABN 97 000 098 162) Address: Level 14, Tower Three, International Towers Sydney, Exchange Place, 300 Barangaroo Avenue, Barangaroo, NSW, 2000 Tel: Not applicable Email: [REDACTED]</p>
Commencement Date: (clause 1.1)	5 December 2022
Fee: (clause 1.1)	The Fee for performing the Services as determined by TfNSW's Representative in accordance with the Pricing Principles in Schedule 5.
Services: (clause 1.1)	the Services described in Attachment A (Services Brief)
Time period for provision of the Safety Report: (clause 3.2)	At 30% design submission as required by clause 295 of the <i>Work Health and Safety Regulation 2017</i> (NSW).
AMB Compliance: (clause 3.8)	Clause 3.8 does apply.

**Minimum Level
of Professional
Indemnity
Insurance:**
(clause 10.1)



**Time for
maintaining
Professional
Indemnity
Insurance:**
(clause 10.1)

7 years (PDSA P&D Partner).

7 years (subcontractors and consultants) from the date on which the relevant subcontractor or consultant completes carrying out its respective services.

**Minimum Level
of Public
Liability
Insurance:**
(clause 10.2)



**PDSA P&D
Partner's
Representative:**
(clause 11.1)



Key People:
(clause 11.5)

Senior Development Manager – Place: [REDACTED]

D&C Project Director: [REDACTED]

Senior Project Manager: [REDACTED]

Senior Design Manager: [REDACTED]

Services Manager: [REDACTED]

**TfNSW's
Representative:**
(clause 11.1)

**Times for
Payment
Claims:** (clause
17.1)

On or from the Payment Claim Date

**Limit of PDSA
P&D Partner's
Liability:**
(clause 26.3)

Building Code:
(clause 33)

Clause 33 does not apply.

**NSW
Guidelines:**
(clause 34)

Clause 34 does apply.

**Employment of
Aboriginal
People:**
(clause 35)

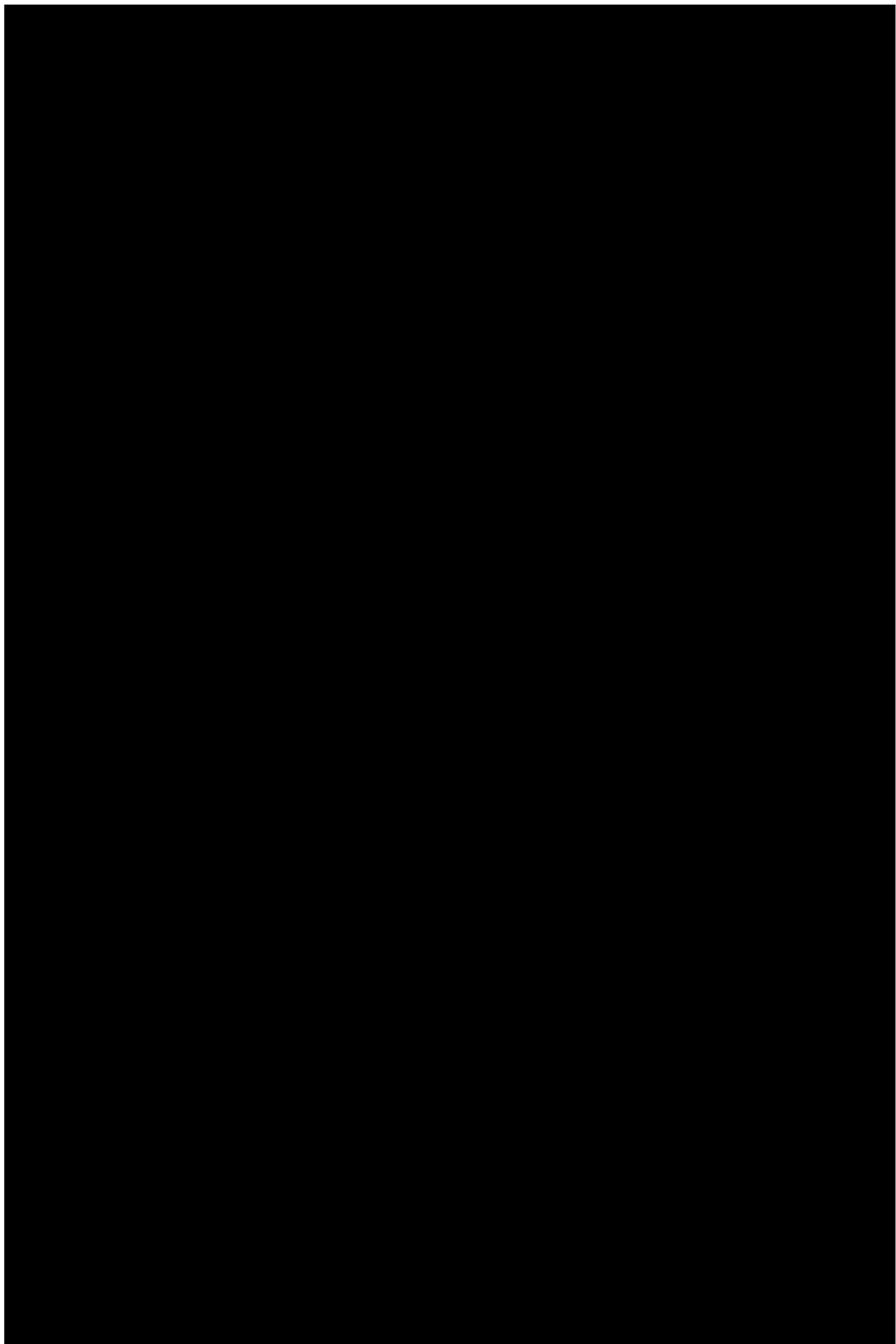
Clause 35 does not apply.

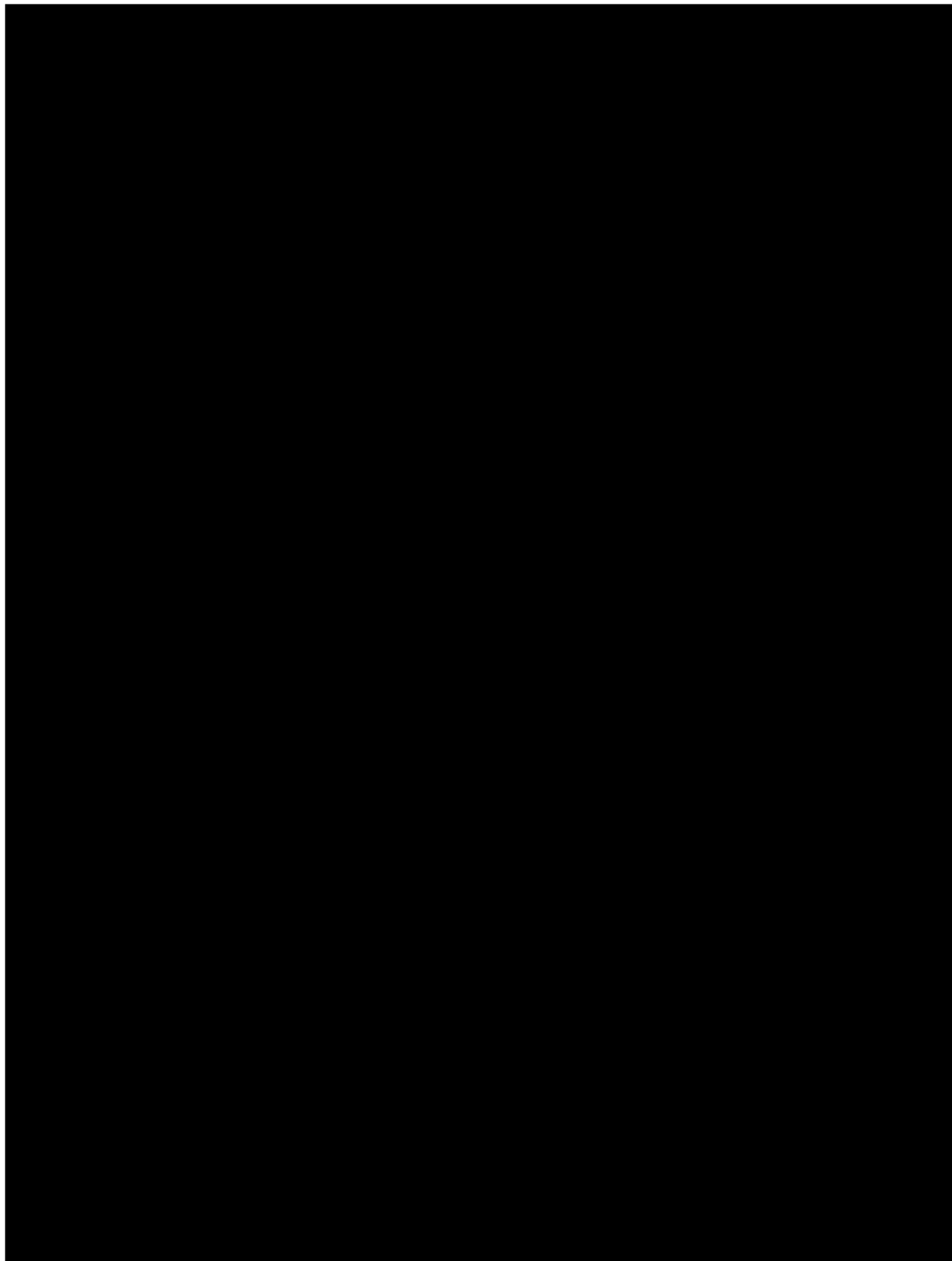




SCHEDULE 2 –







SCHEDULE 3 – FORM OF STATUTORY DECLARATION AND SUBCONTRACTOR'S STATEMENT

FORM OF STATUTORY DECLARATION

Statutory Declaration	Oaths Act (NSW) Ninth Schedule
I,	Insert full name of Declarant
Of	Insert address
do solemnly and sincerely declare that:	
1. I am the representative of:	
.....(ABN.....)	Insert name of Contractor, and ABN if applicable
("the Contractor")	
in the Office Bearer capacity of:	Insert position title of Declarant
.....	
2. The Contractor has a contract with: (ABN.....)	Insert name of Principal and ABN
to carry out [Contract No.]	Insert name of Contract and Contract No.
("the Contract")	
3. I personally know the facts which I have set out in this declaration.	
4. All employees who have at any time been engaged by the Contractor for work done under the Contract:	
a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and	
b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,	
with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:	
Employee:	Insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.
Amount unpaid or not accrued:	
.....	
.....	
5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).	
6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.	
7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.	
8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):	
a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and	

- b) that all their employees and subcontractors, as at the date of the making of such a declaration:
- i) have been paid all remuneration and benefits due and payable to them by; or
 - ii) had accrued to their account all benefits to which they are entitled from;
- the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and
- c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(b) above which have not been paid, received or accrued,

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

Subcontractor:

Due amount unpaid:

.....

.....

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

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

Employee, subcontractor or supplier:

Amount unpaid or not accrued:

.....

.....

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

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

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

Declared at: on
(place) (day) (month) (year)

.....
(signature of Declarant)

in the presence of an authorised witness, who states:

I,
(Name of authorised witness)

(* Please cross out any text that does not apply)

1. * I saw the face of the person.

OR

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

2. * I have known the person for at least 12 months.

OR

* I have not known the person for at least 12 months,
but I have confirmed the person's identity using an
identification document and the document I relied on was:
(describe identification document relied on)

.....
(signature of authorised witness)

.....
(date)

.....
(name of authorised witness)

.....
(Justice of the Peace / Solicitor of the Supreme Court of New South Wales)

[for other person legally authorised to administer an oath under the Oaths Act 1900 (NSW) or where the declaration is sworn outside the State of New South Wales, any person having authority to administer an oath in that place.]

Authorised witness must print or stamp his or her full name, qualification and address before whom the declaration is made. JPs must include their registration number.]

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

ABN: *[ABN]*

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

ABN: *[ABN]*

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

OR

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

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

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

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

Signature: Date:

Full name: Position/Title:

Attachment

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

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

Annexure B

SUBCONTRACTOR'S STATEMENT

Note to the parties

For the purpose of this Subcontractor's Statement:

- "the subcontractor" is the PDSA P&D Partner; and
- "the principal contractor" is Transport for NSW

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

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

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

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

Subcontractor: ABN:

(Business name)

of:

.....

(Address of subcontractor)

has entered into a contract with:

ABN:

.....

(Business name of principal contractor)

(Note 2)

Contract number/identifier:

.....

(Note 3)

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

(Note 4)

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

(Note 5)

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

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. *You must tick one box.* (Note 6)
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... (Note 7)
- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. (Note 8)
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. (Note 9)
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. (Note 10)

(f) Signature: Full Name:

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

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

Notes

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

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called **the subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'

5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

SCHEDULE 4 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS

This form is completed by the PDSA P&D Partner when directed by TfNSW as per clause 8.

Date:

Name:

Organisation:

To: Transport for NSW

[Principal]

In relation to: [name of project in full]

Declaration

I [insert full name] of
..... [insert business address]

agree and acknowledge that, except for the matters disclosed below:

1. To the best of my knowledge and belief, I do not have:
 - (a) any financial or other interest, either directly or indirectly in;
 - (b) any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in;
 - (c) any other interest or association, either directly or indirectly with,
the entities listed below.

Disclosure

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g)

(if further space is required please attach a signed separate letter)



I undertake to:

1. notify TfNSW as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

Executed as a Deed Poll

by the Recipient:

in the presence of:

Recipient

Witness

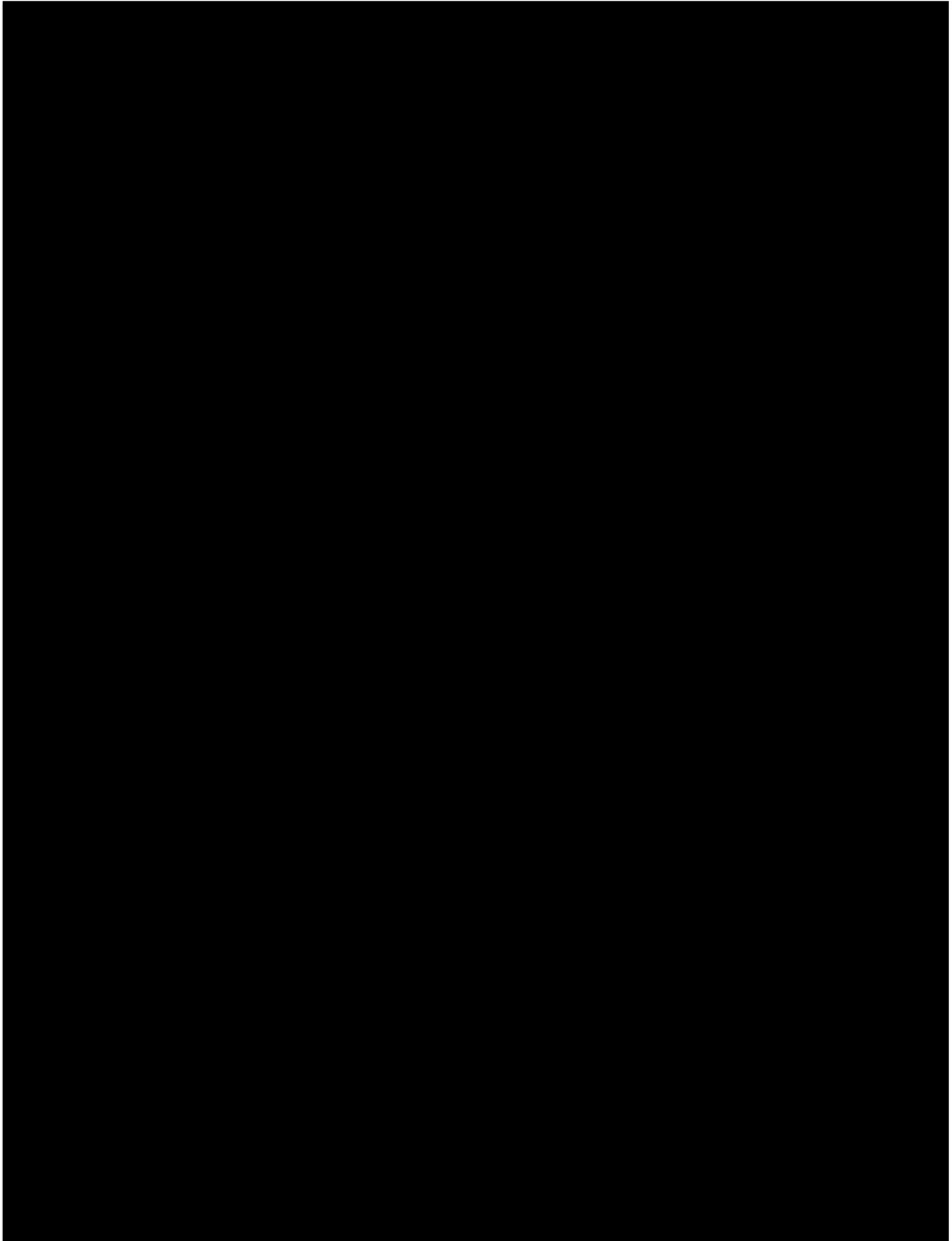
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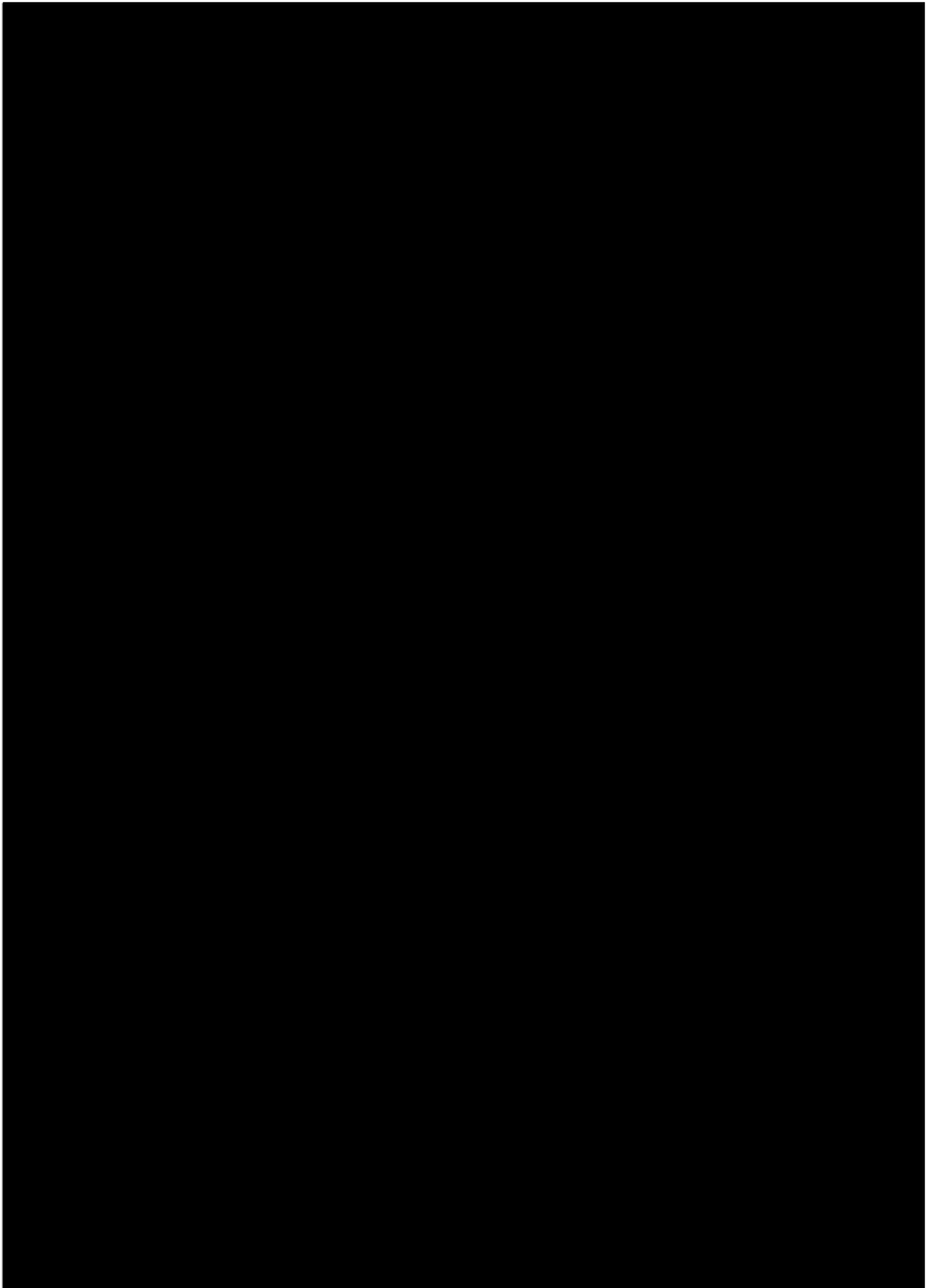
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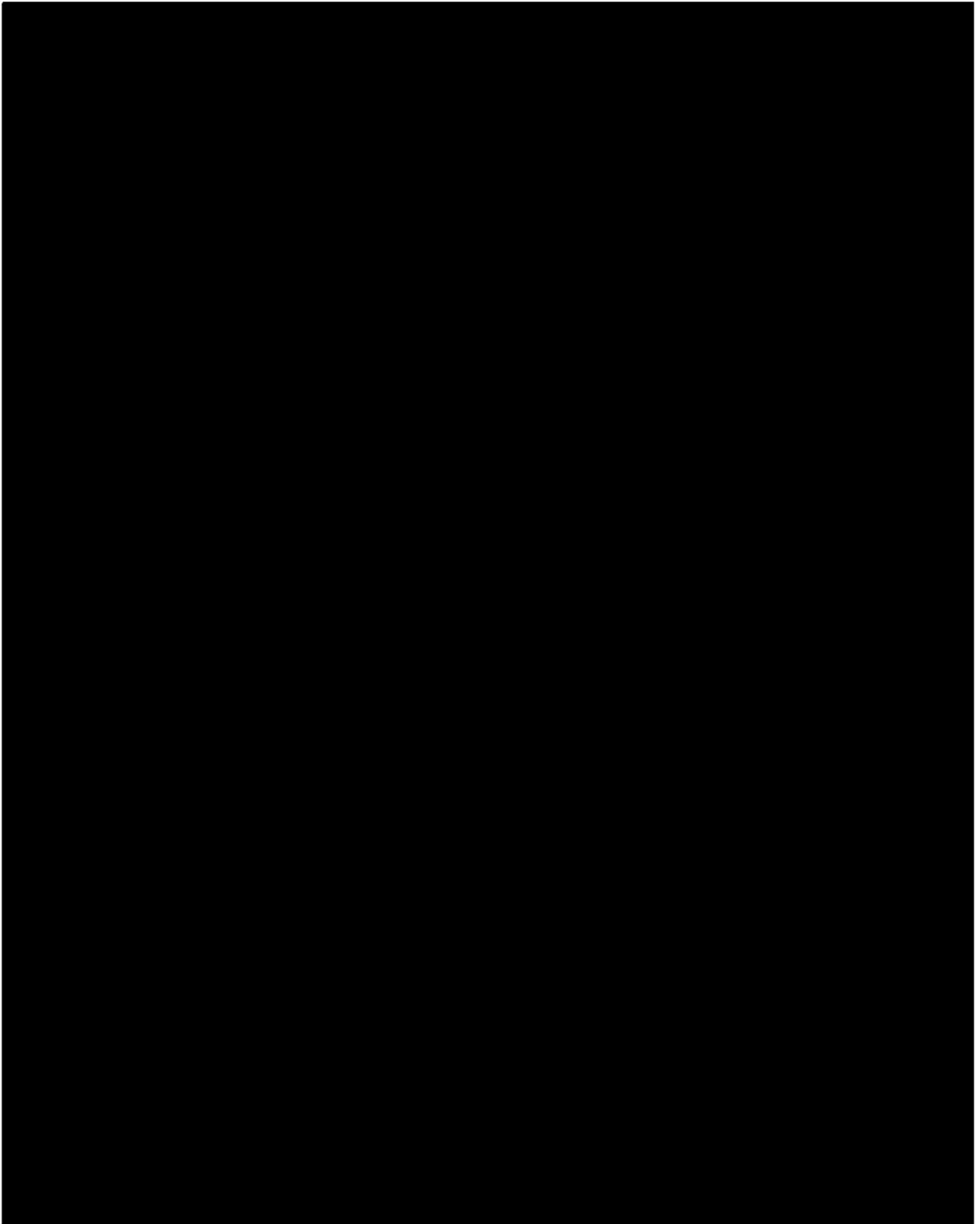
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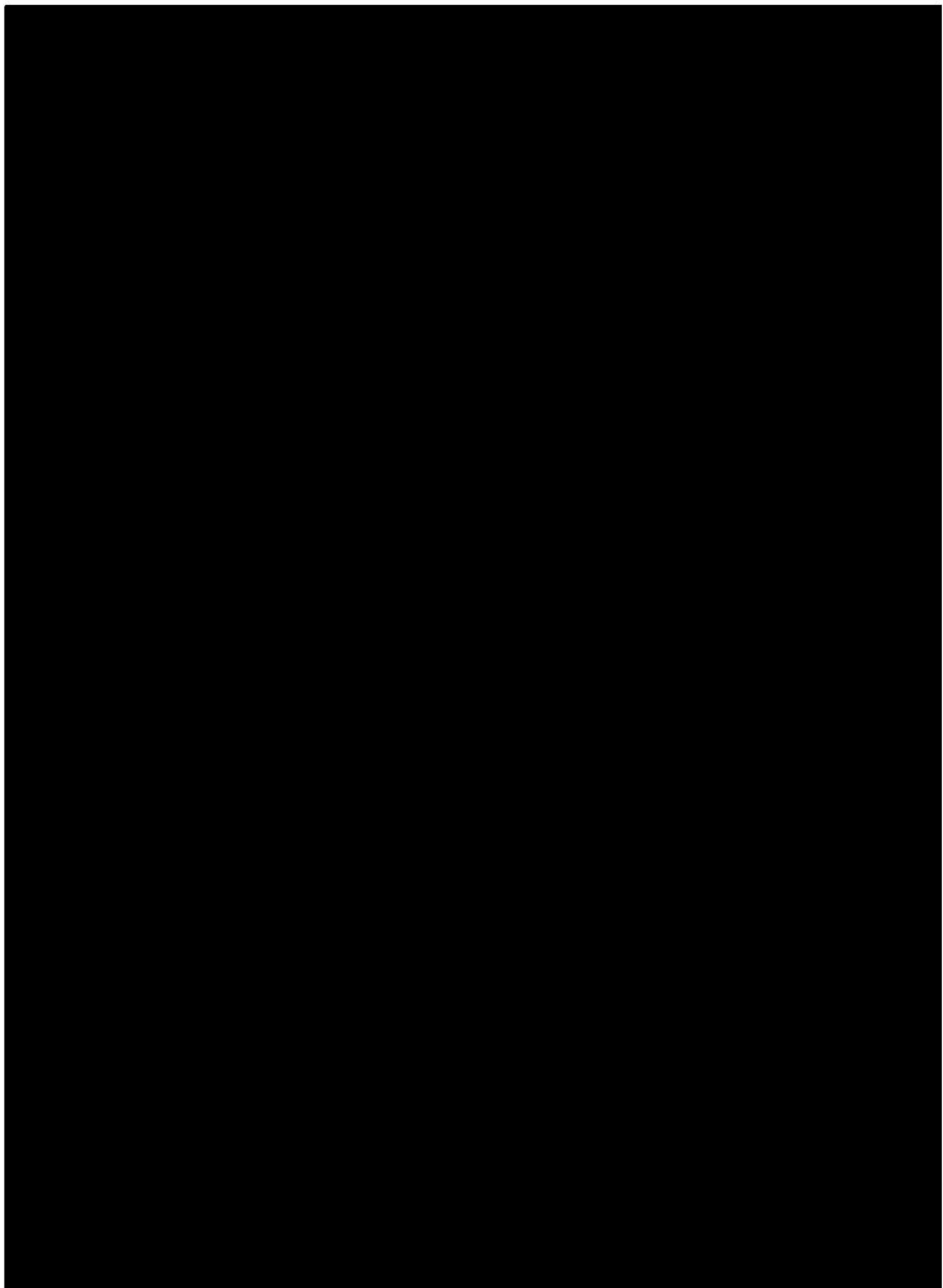
Date

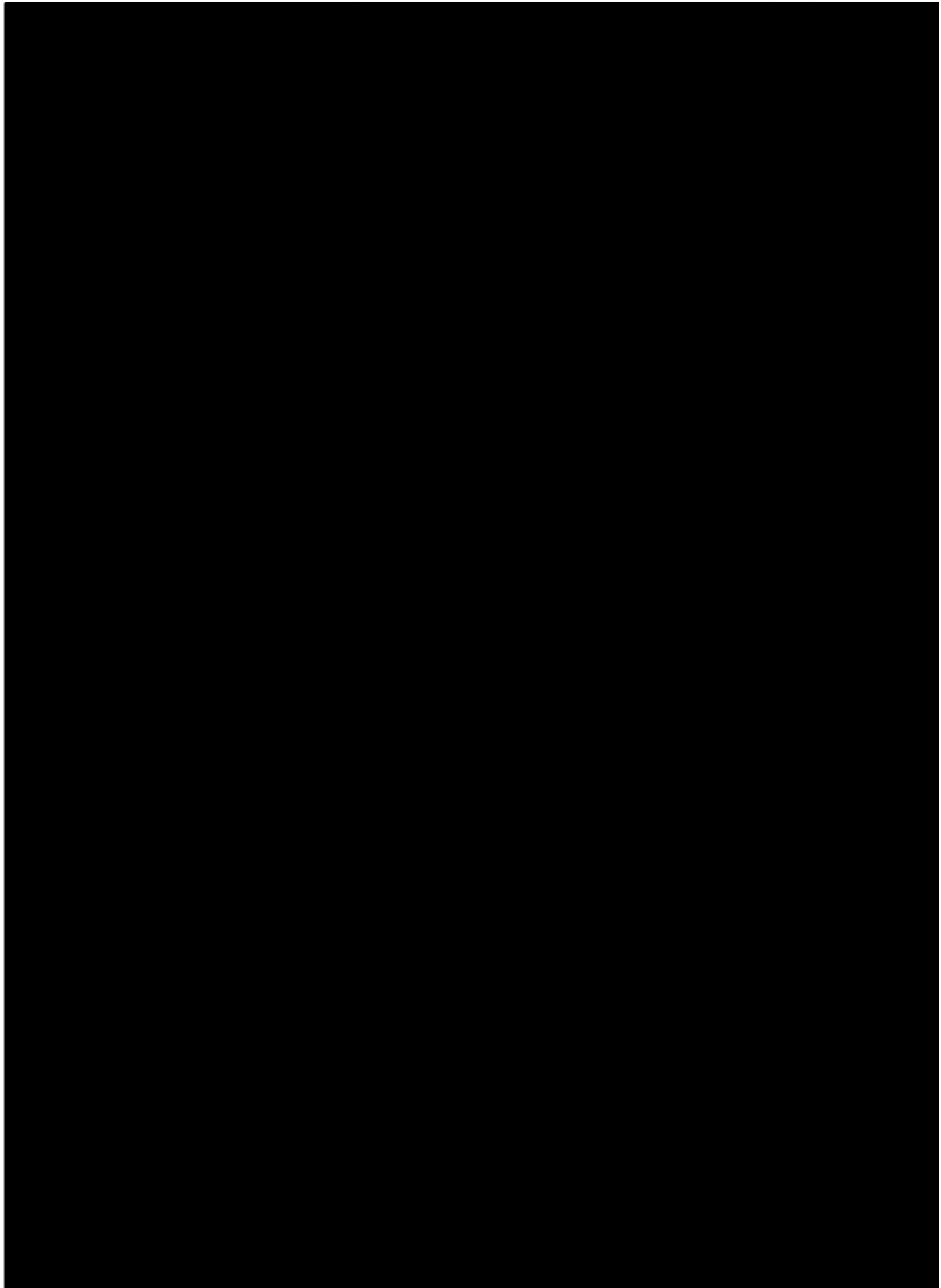
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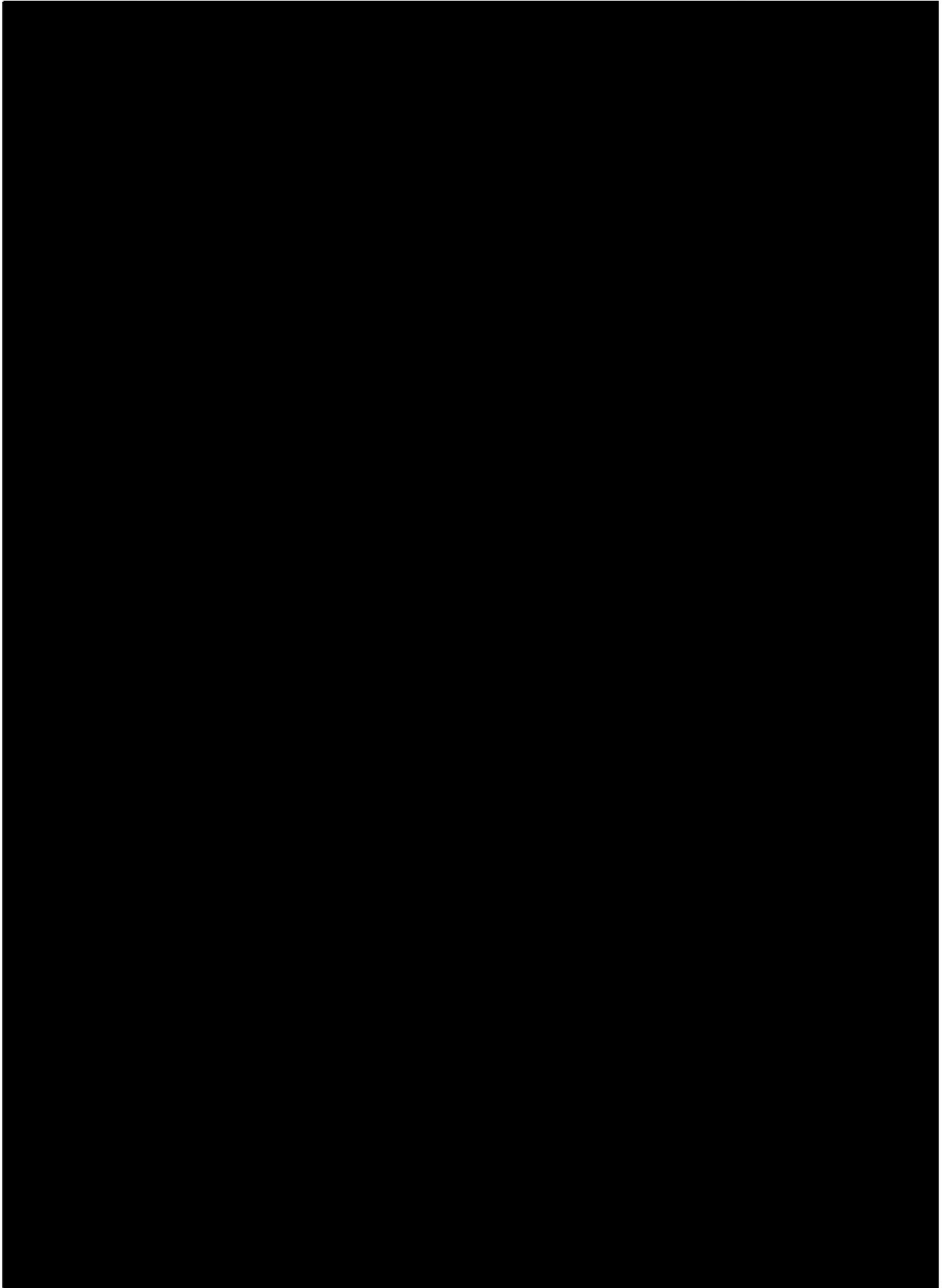


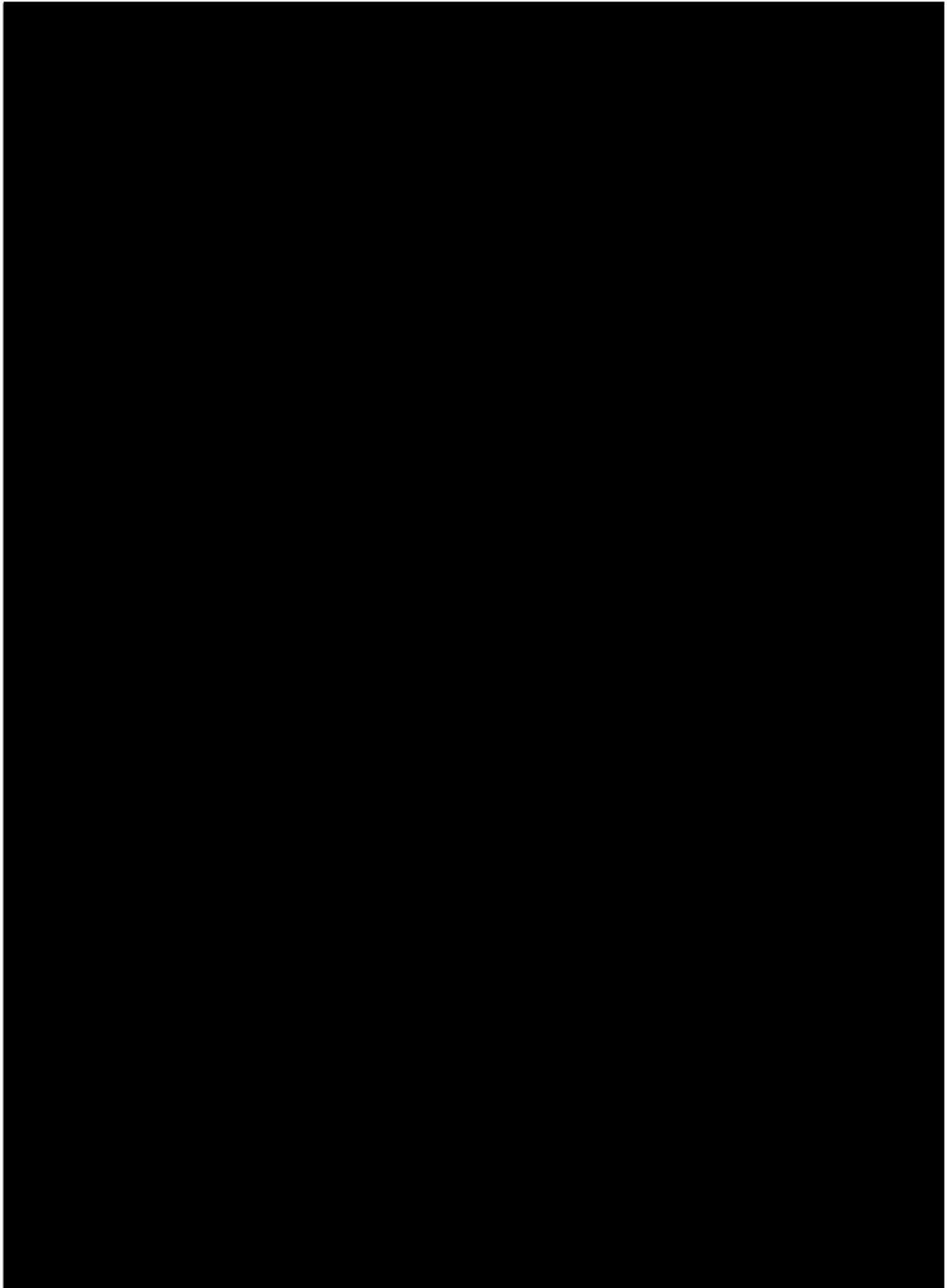






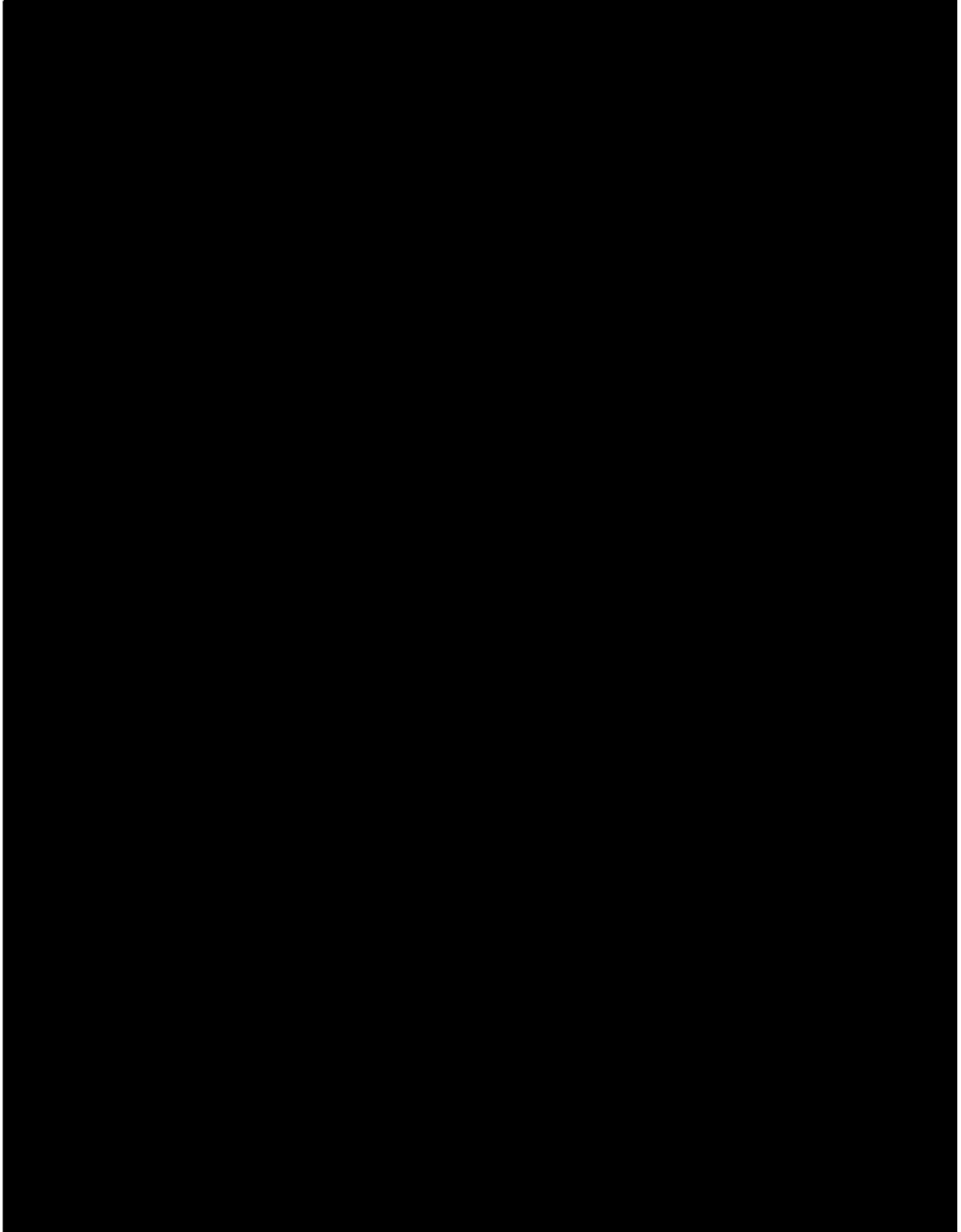


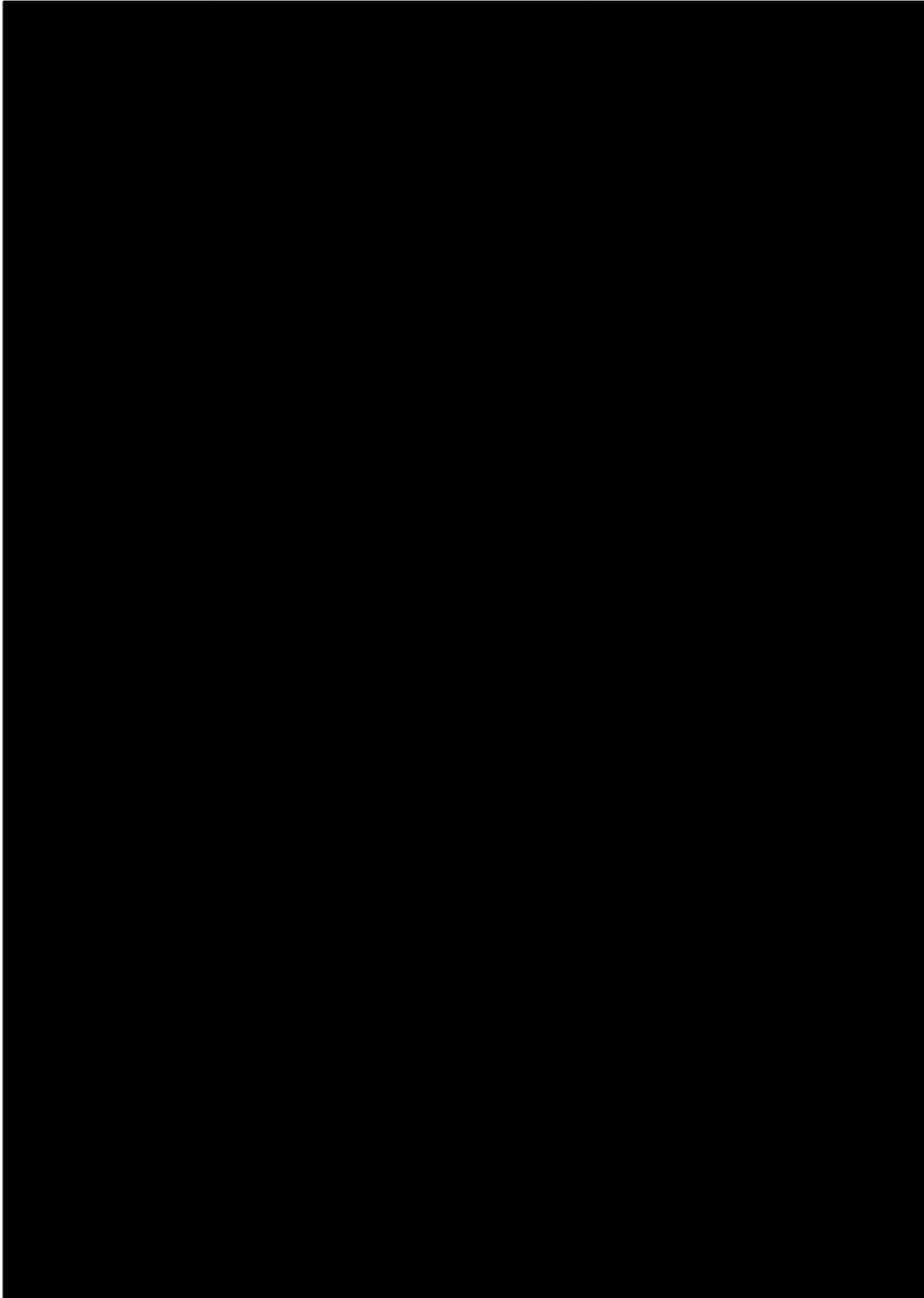


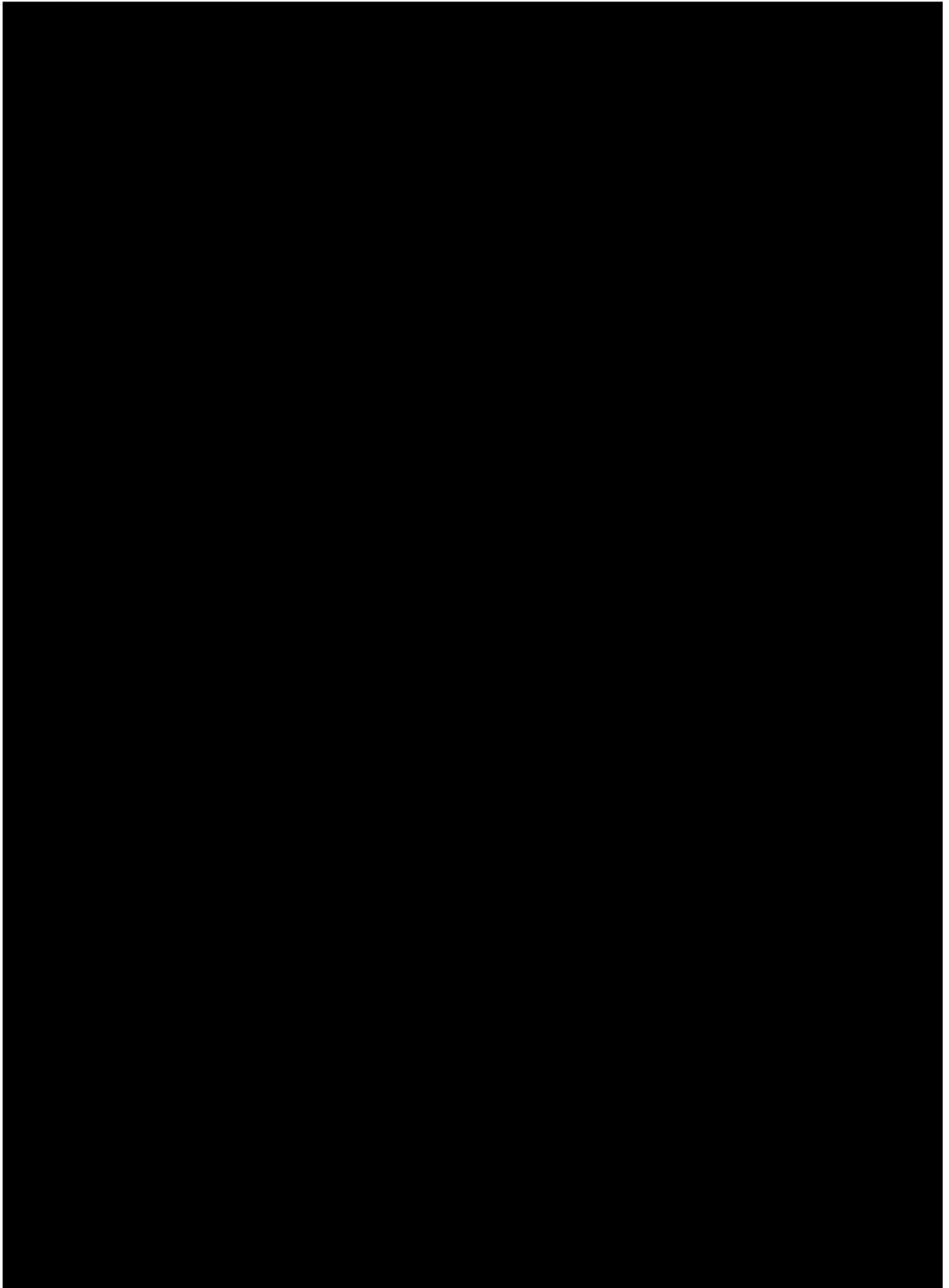


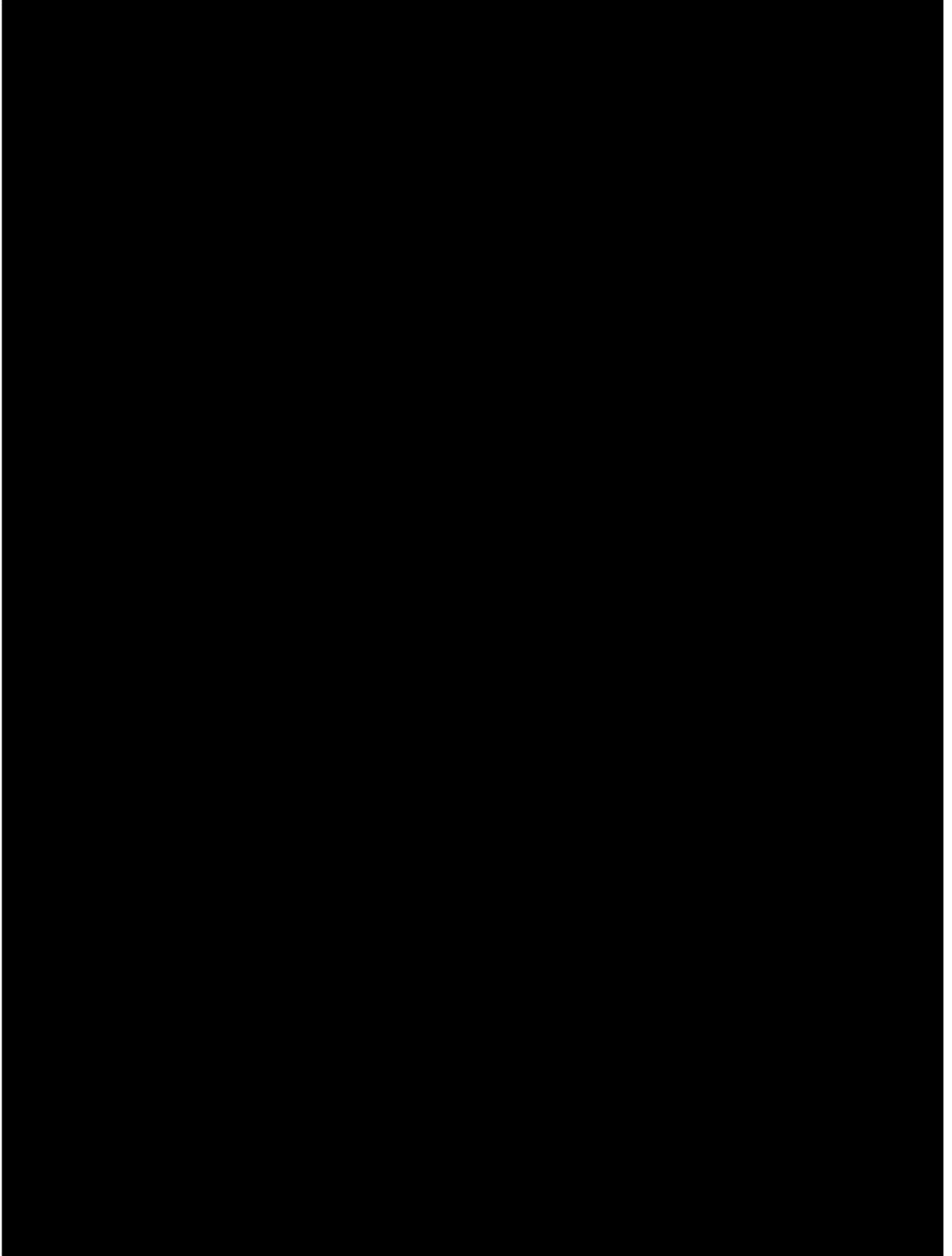


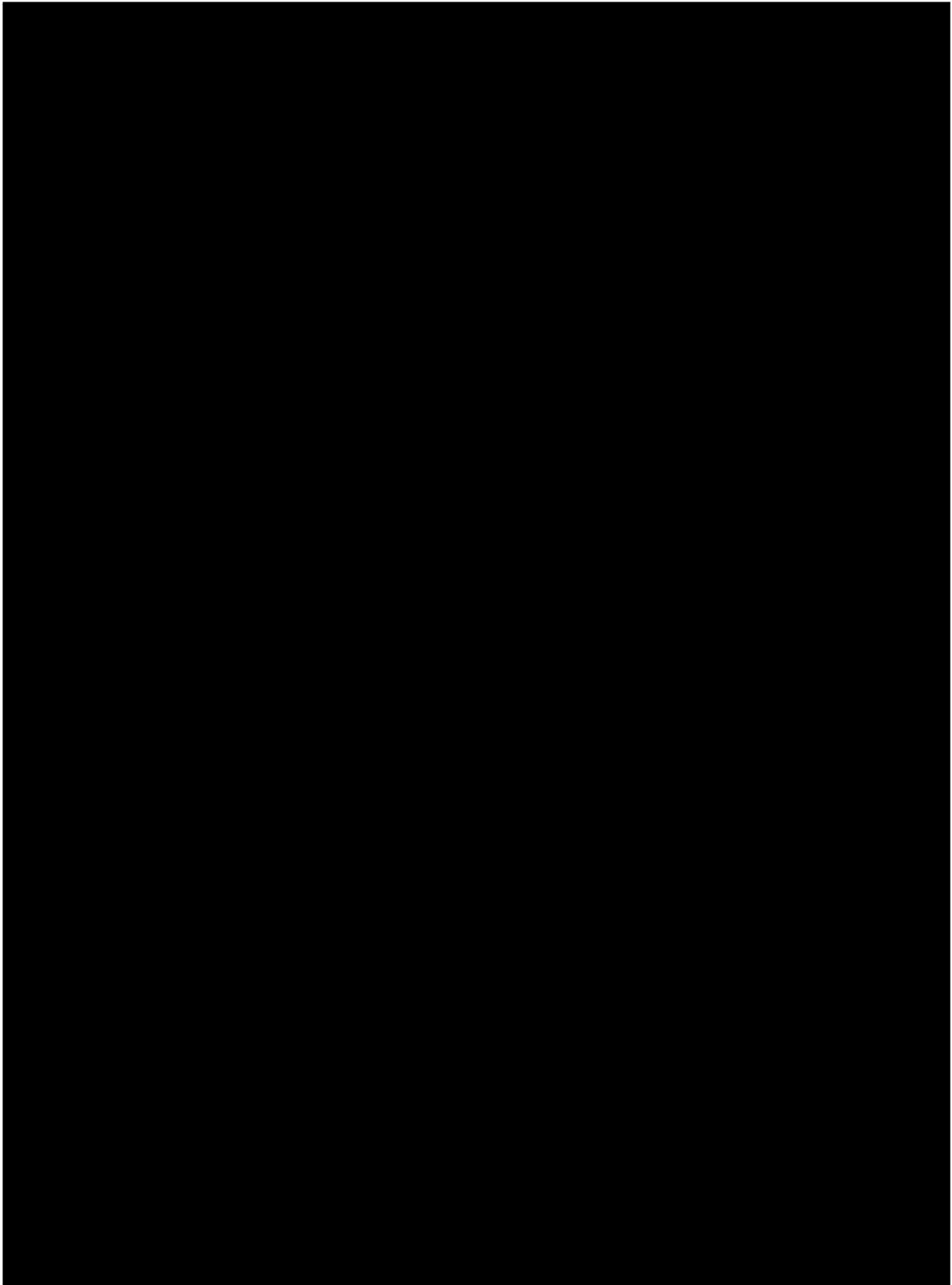
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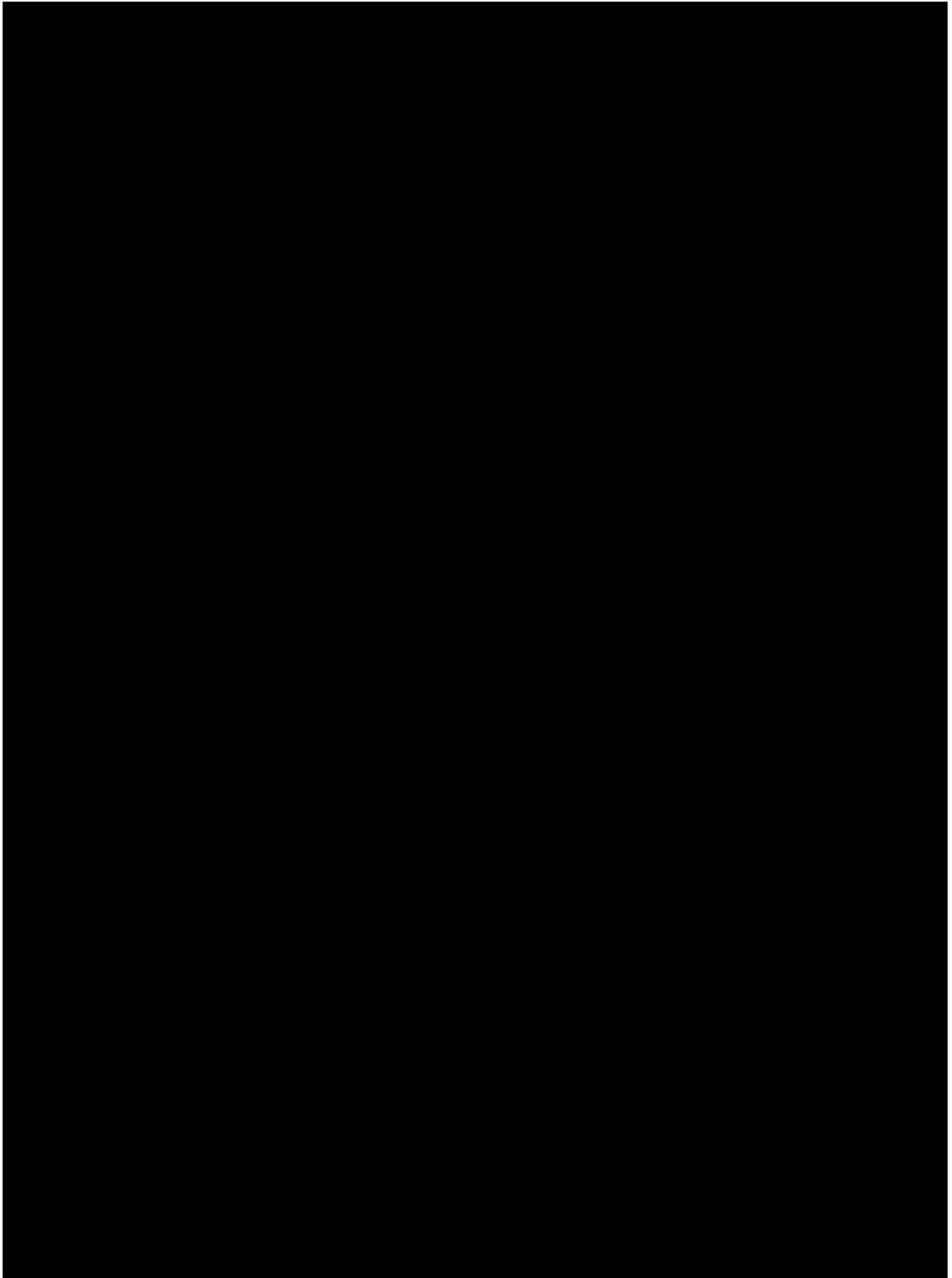


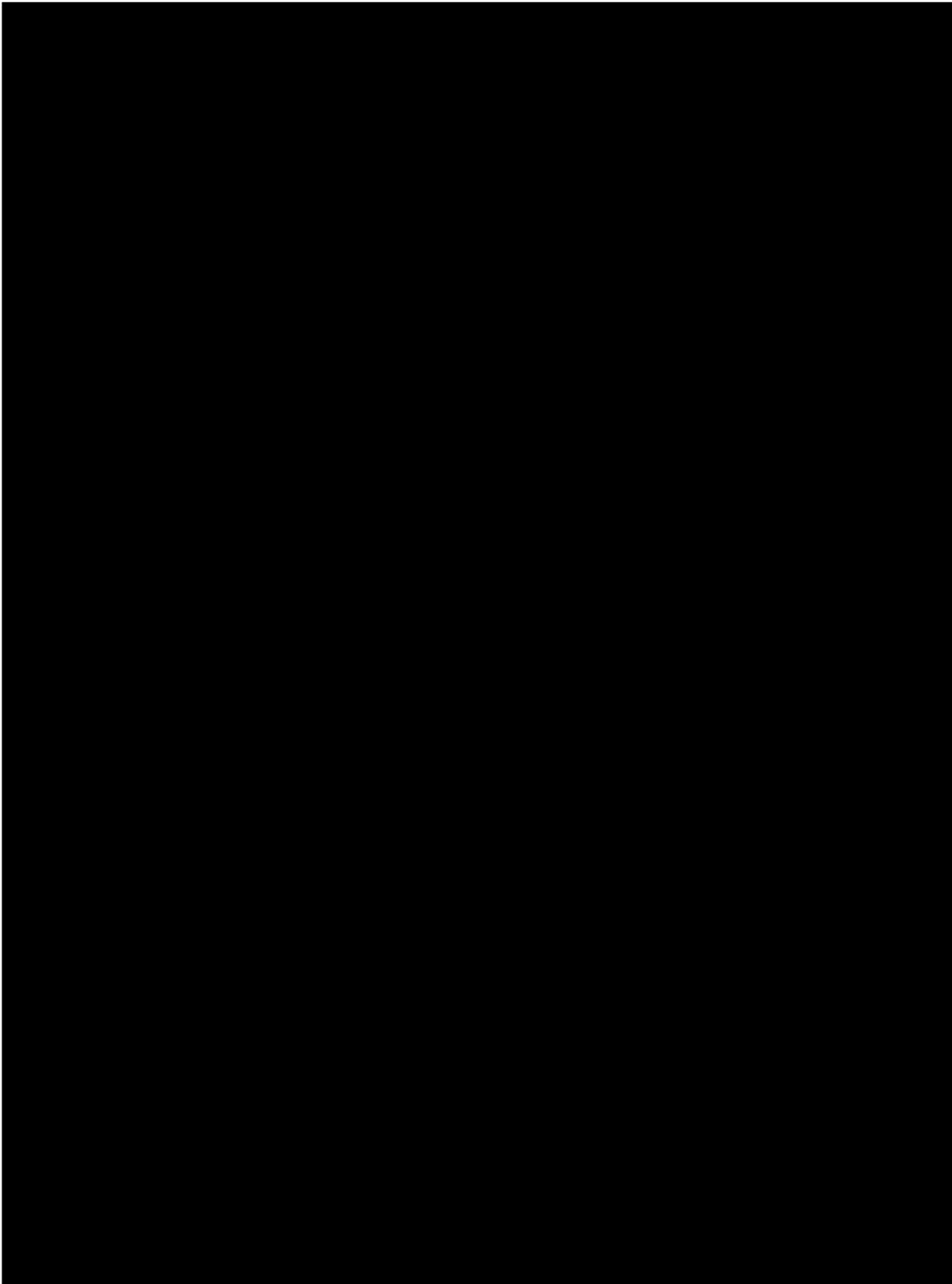


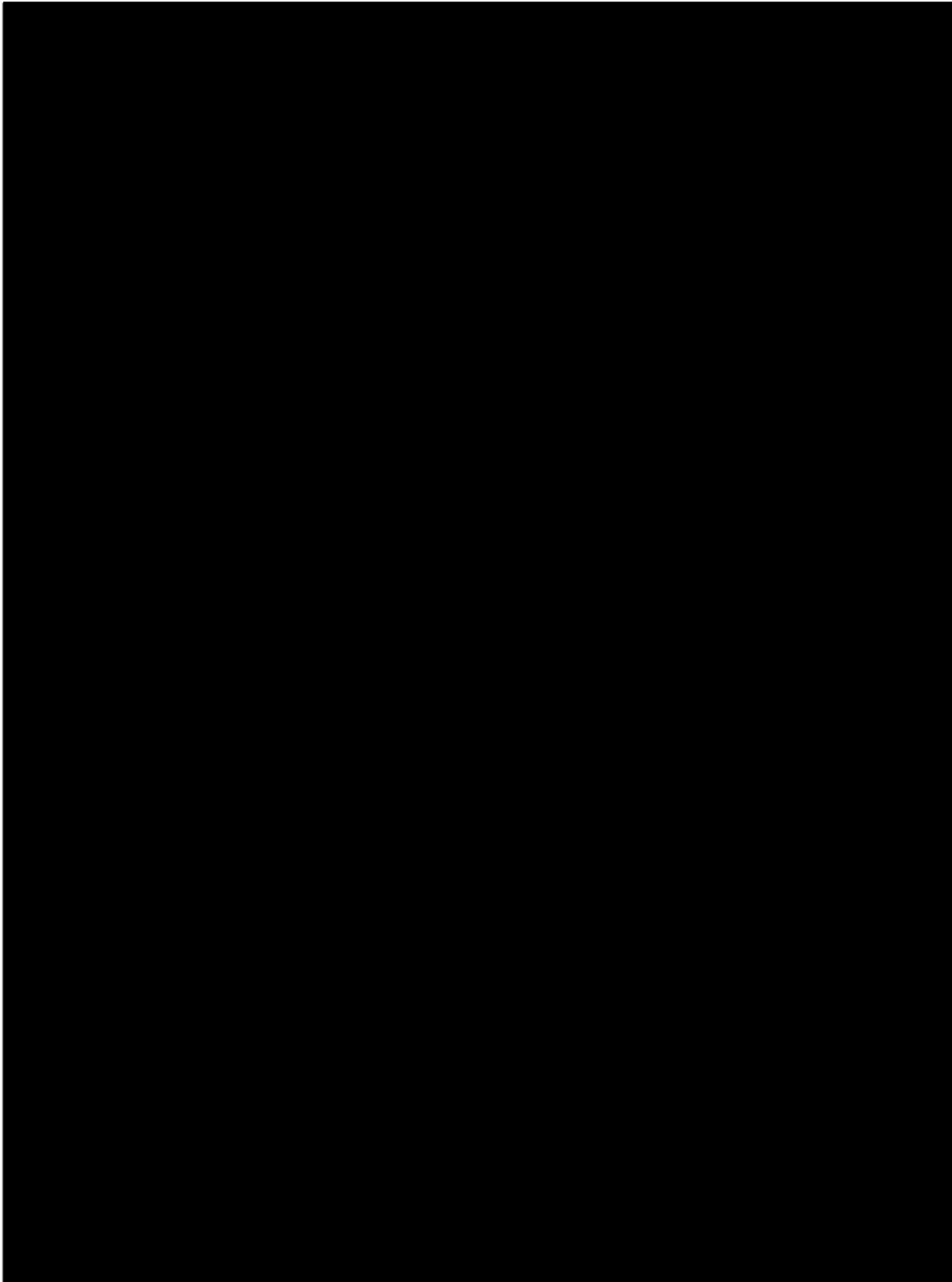


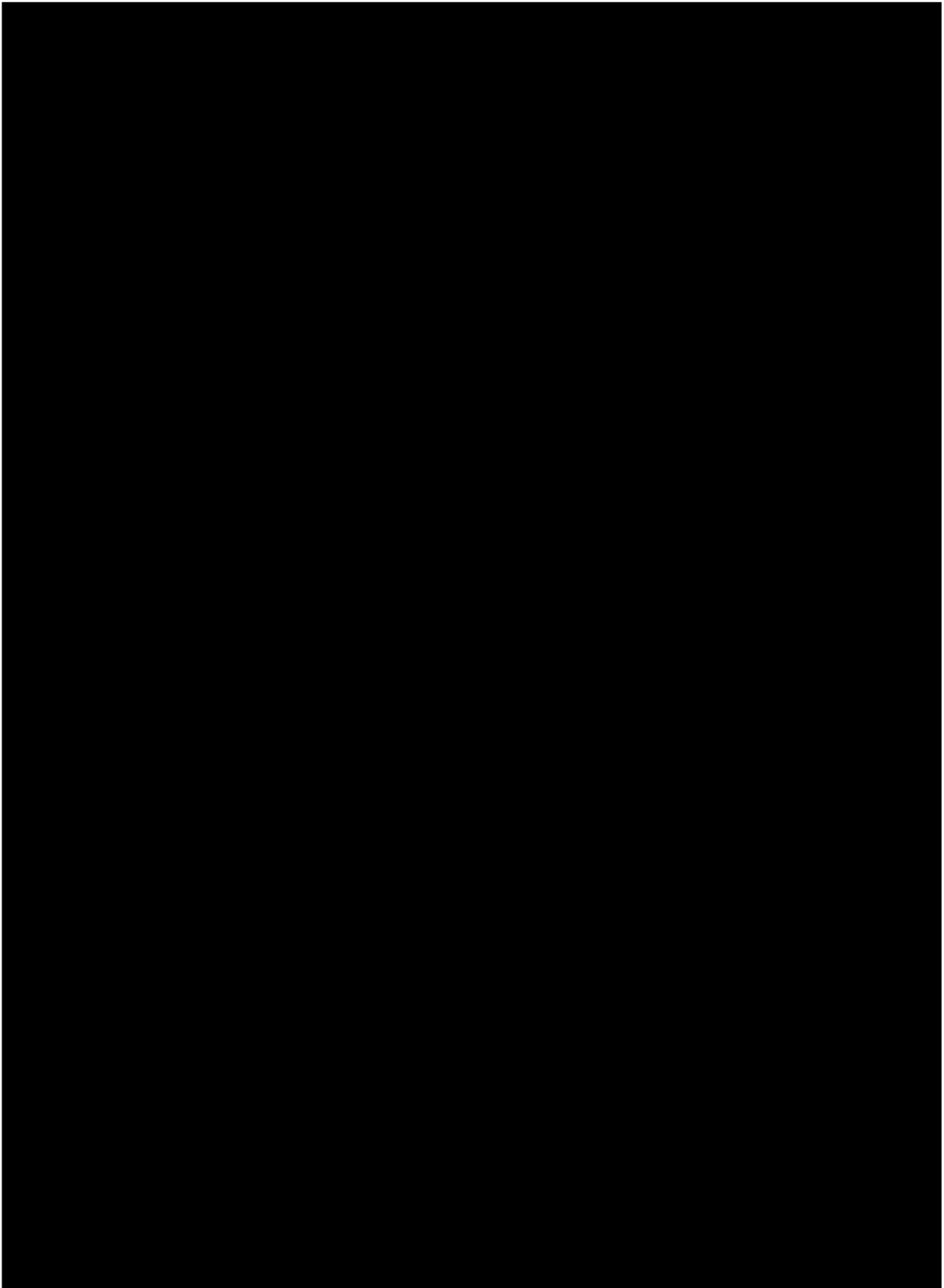


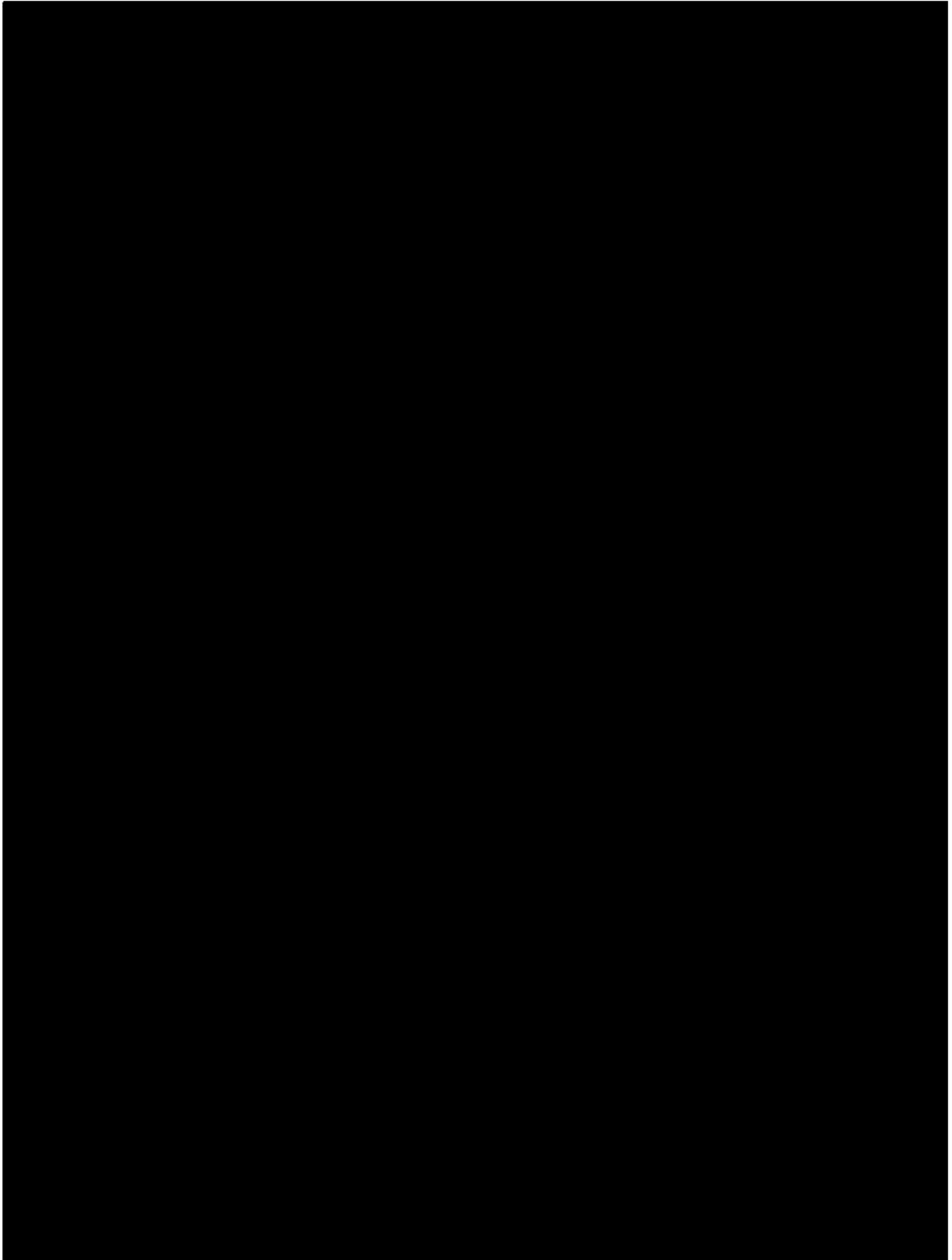


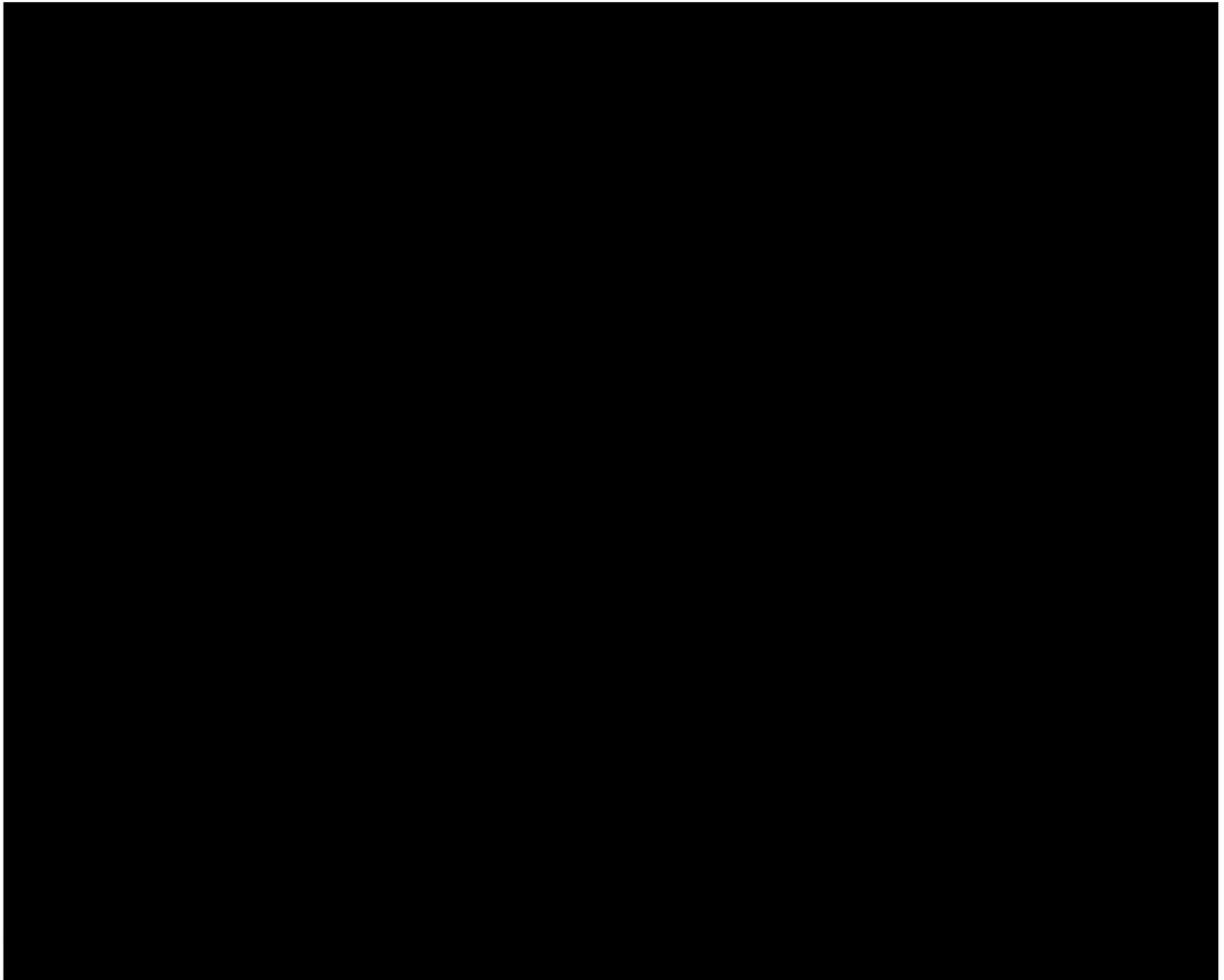


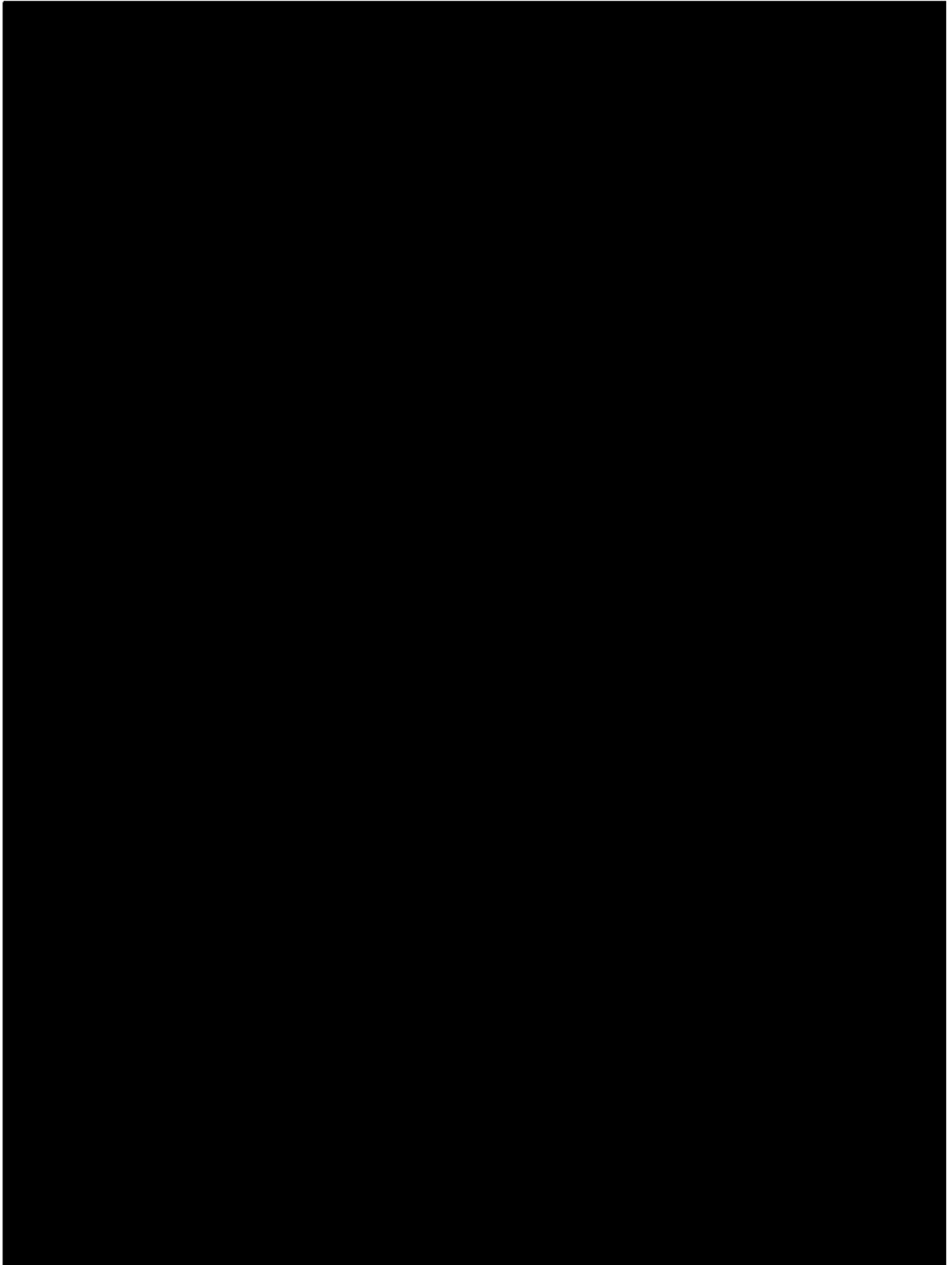


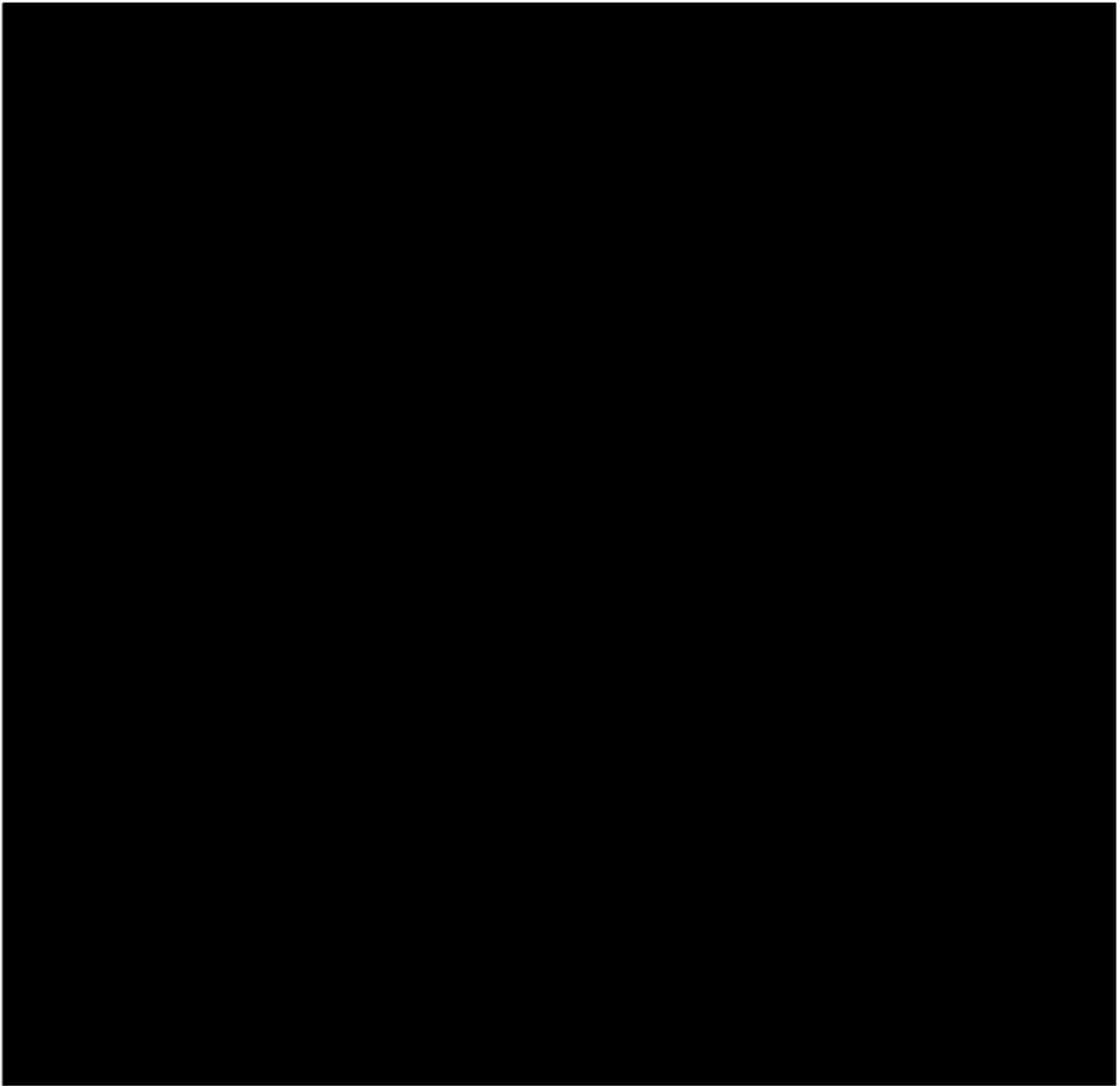














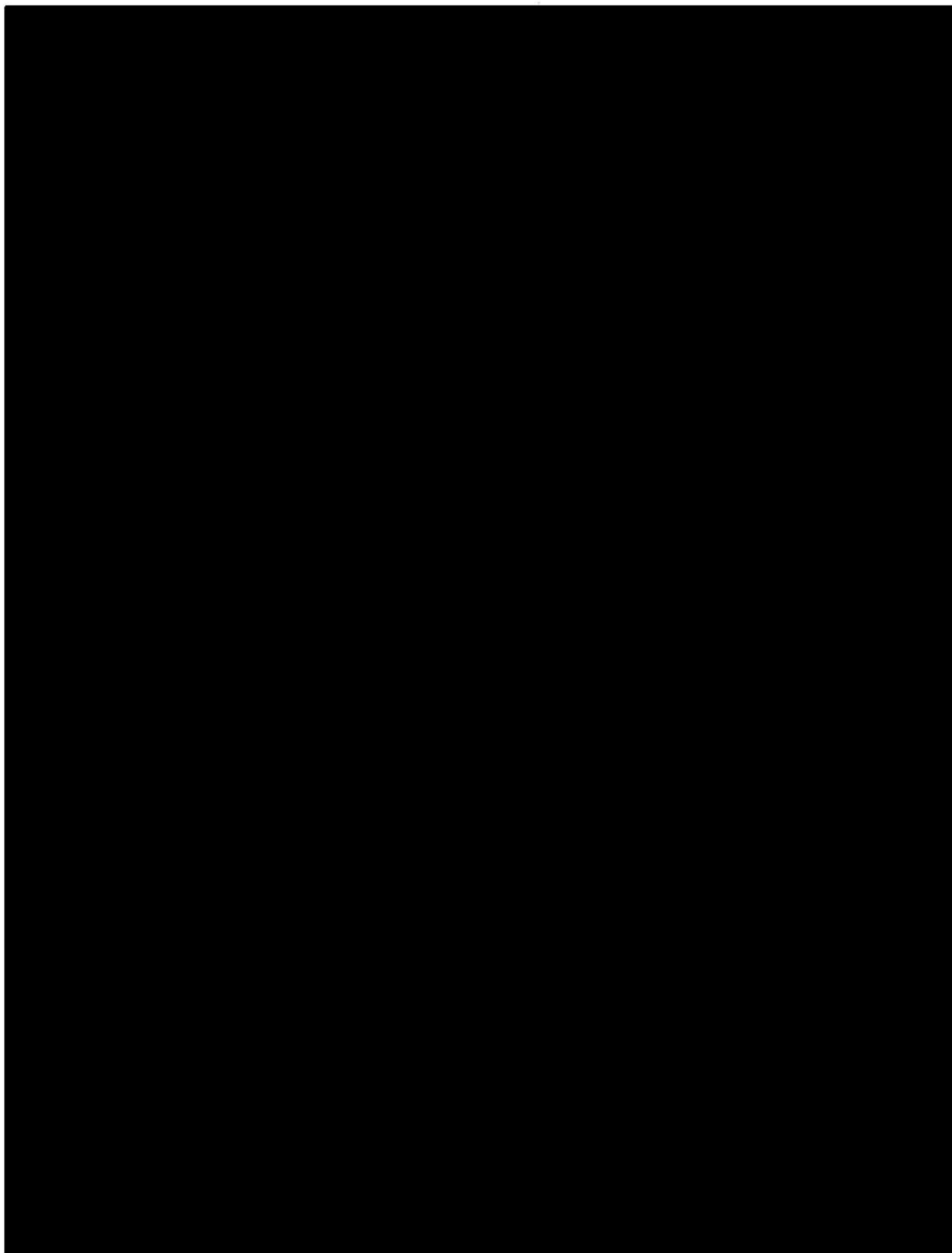
SCHEDULE 7 – NOT USED

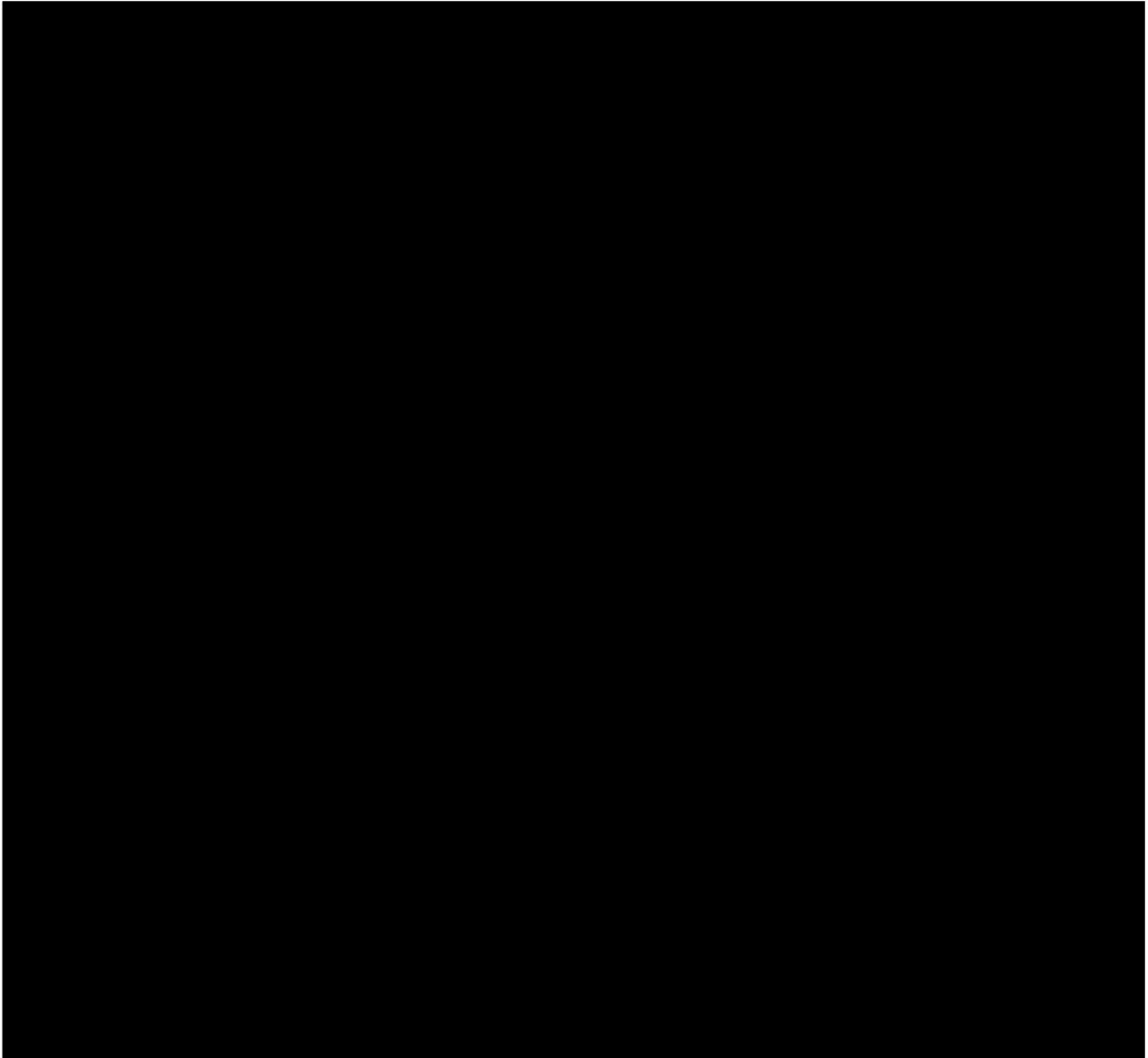


SCHEDULE 8 – NOT USED



SCHEDULE 9 – PRE APPROVED SUBCONTRACTORS





SCHEDULE 10 – EXPERT DETERMINATION AGREEMENT

Expert Determination Agreement

[Insert name of Principal]
Principal

[Insert name of PDSA P&D Partner]
Contractor

[Insert name of Expert]
Expert

Expert Determination Agreement made at _____ on _____

Parties [Insert name and address of Principal] ("Principal")

 [Insert name and address of PDSA P&D Partner] ("PDSA P&D Partner")

 [Insert name and address of Expert agreed between the Parties or appointed pursuant to clause 19.2 of the Planning and Design Services Agreement (PDSA)] ("Expert")

Recitals

- A. TfNSW and the PDSA P&D Partner (together "**the Parties**" and each "**a Party**") are parties to a contract (the "**PDSA**") for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert Principal or PDSA P&D Partner as applicable]* has required that the matter described in Schedule 1, being a matter that the PDSA requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 19.2 of the PDSA (the "**Matter**").
- C. Pursuant to clause 19.2 of the PDSA, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. APPOINTMENT OF EXPERT

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

2. CONFIDENTIALITY

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the

Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. COSTS AND FEES

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

4. EXCLUSION OF LIABILITY AND INDEMNITY

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

5. CO-OPERATION OF THE PARTIES

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

6. GOVERNING LAW

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

7. JURISDICTION

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



Schedule 1 - The Matter

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

Schedule 2 - Rules for Expert Determination Process**1. Commencement**

Except as provided in clause 4.3 of these Rules, the expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written Submissions

- 2.1 Within 7 days after the date this process begins, Party A (i.e. the Party who gave notice of dispute under clause 19.1 of the PDSA) must, in addition to any particulars provided by Party A under clause 19.1 of the PDSA, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.
- 2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.
- 2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.
- 2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

- 3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in Sydney.
- 3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.
- 3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.
- 3.4 The Parties:
 - (a) may be accompanied at a conference by legal or other advisers; and
 - (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.
- 3.5 The conference must be held in private.
- 3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

- 4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with the PDSA.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

- (a) with the prior consent of the Parties;
- (b) as may be required by law; or
- (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise terminate the proceedings.

5. The Determination

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (b) notify the Parties of that determination.

5.2 The determination of the Expert must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
- (c) meet the requirements of the PDSA.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties in the circumstances set out in clause 19.2 of the PDSA.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

6. Costs

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

7. Modification



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

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS

Code of Conduct for an Expert

1. The function of the Expert is to make a determination of the Matter in accordance with the PDSA and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.



Schedule 3 - The Expert's Fees and Disbursements

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



Signed as an agreement.

Signed for and on behalf of TfNSW by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]

Signed for and on behalf of the PDSA
P&D Partner by
[insert name] in the presence of:

[Signature]

[Name of witness]

[Signature of witness]



Signed by the Expert *[insert name]* in the
presence of:

[Signature]

[Name of witness]

[Signature of witness]



ATTACHMENT A – SERVICES BRIEF

