



# Central Place - Project Development Agreement

Dated 24 February 2023 | 10:15:38 AM AEDT

Transport for NSW (ABN 18 804 239 602) ("**State**")

Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust ("**Developer**")

Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Operations Trust (ABN 69 645 176 383) ("**Dexus Guarantor 1**")

Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Property Trust (ABN 24 595 854 202) ("**Dexus Guarantor 2**")

Frasers Property Australia Pty Limited (ABN 89 600 448 726) ("**Frasers Guarantor**")

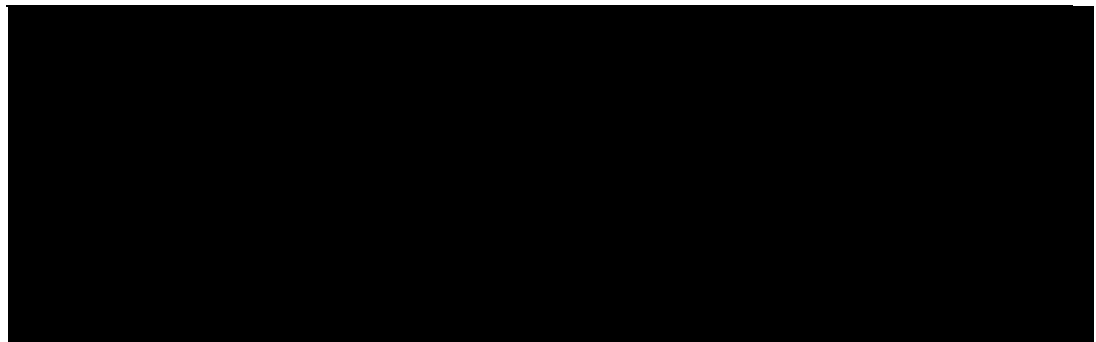
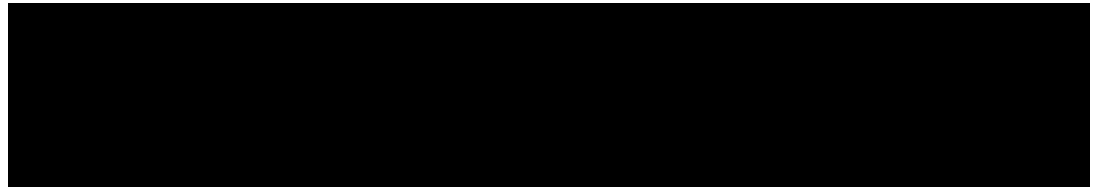
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# Project Development Agreement

## Contents

<b>Details</b>	<b>1</b>
<b>General terms</b>	<b>3</b>
<b>1</b>	<b>Definitions and interpretation</b>
<b>3</b>	
1.1	Definitions
3	
1.2	References to certain general terms
40	
1.3	Guarantor's obligations
41	
1.4	Number
41	
1.5	Headings
41	
1.6	Developer's Employees and Agents
41	
1.7	Ambiguity and inconsistency
42	
1.8	Authorities
42	
1.9	Transfer of functions
43	
1.10	TAHE Deed Poll
44	
<b>2</b>	<b>Objectives and risks</b>
<b>44</b>	
2.1	Project Objectives
44	
2.2	Project Risks
45	
2.3	Commitment by the Developer
46	
2.4	No reliance on Disclosure Materials (Non Reliance)
46	
2.5	State exercising statutory powers
46	
<b>3</b>	<b>Conditions Precedent</b>
<b>47</b>	
3.1	Conditions Precedent acknowledgement
47	
3.2	Conditions Precedent
48	
3.3	Satisfaction of Conditions Precedent
49	
3.4	Satisfaction or waiver of Conditions Precedent
51	
3.5	Extension of Conditions Precedent Sunset Date
52	
3.6	FIRB
53	
3.7	Stage 1 Development Works – option election
53	
3.8	Early Works
54	
3.9	Rail Entity Approval Matters
56	
<b>4</b>	<b>Development Consent</b>
<b>57</b>	



<b>6</b>	<b>Design</b>	<b>71</b>
6.1	Design Program	71
6.2	Design responsibility	72
6.3	Design Documentation	74
6.4	Review of Design Documentation (Public and Integration Works)	76
6.5	Design Liability	78
6.6	Consultation with Public Authorities	78
6.7	Pre-Application Requirements	79
6.8	Update to Public Works Brief	79
6.9	Certification of Design Documentation	79
<b>7</b>	<b>Preparation of Applications</b>	<b>80</b>
7.1	Developer to prepare Applications	80
7.2	State's review of Applications and Application Plans	80
7.3	Developer relies on own skill and judgment	80
7.4	Design Excellence	81
7.5	Post design competition governance	81
7.6	State's obligations	81
<b>8</b>	<b>Sustainability</b>	<b>81</b>
8.1	Commitments by the Developer	81
<b>9</b>	<b>Consent to Relevant Applications</b>	<b>81</b>
9.1	Relevant Applications must be lodged with the State	81
9.2	Requirements for proposed Relevant Applications	82
9.3	Developer to keep State informed of timing	83
9.4	Non-conforming Relevant Applications	83
9.5	Timing for State consent	83
9.6	Capacity of State and conditional consents	83
9.7	Withholding consent to Relevant Applications	84
9.8	Consequences of withholding consent to proposed Relevant Applications	84
9.9	State not liable in connection with consents	85
<b>10</b>	<b>Lodgement and Development Consent procedures</b>	<b>85</b>
10.1	Lodgement of Relevant Applications	85
10.2	Consent procedures	85
10.3	Obtaining other Approvals	85
10.4	Assistance by State	86
10.5	Delays in obtaining Approvals	86
10.6	State to be informed of progress	86
10.7	Copies of Relevant Applications, Approvals and associated documents	86
<b>11</b>	<b>Third Party Appeals</b>	<b>87</b>
<b>12</b>	<b>Copies of Final Design Documentation</b>	<b>87</b>

<b>14</b>	<b>Contractors, Independent Certifier and Project Team</b>	<b>89</b>
14.1	Appointment of Builder	89
14.2	Providing information about Building Contract	90
14.3	Provisions in third party contracts	93
14.4	Quality assurance systems	93
14.5	Developer liable for acts of contractors	93
14.6	Appointment of Independent Certifier	93
14.7	Project Director	95
<b>15</b>	<b>Commencement of Works and Access</b>	<b>95</b>
15.1	Vacant possession	95
15.2	Access to the State Land and Construction Licence	96
15.3	Terms of Developer access to the Development Land	96
15.4	Pre-conditions to commencement of Works Portion	98
15.5	Notice of Date for Commencement of Works	98
15.6	Restriction on entry after Works Portion Commencement Date	99
15.7	Substantial Commencement	99
<b>16</b>	<b>Progress of Works - reporting and meetings</b>	<b>100</b>
16.1	Development Control Group	100
16.2	Reports	100
16.3	Keeping the State informed	101
16.4	Design Working Group – Public Works and Integration Works	101
<b>17</b>	<b>Infrastructure</b>	<b>102</b>
<b>18</b>	<b>Public Works</b>	<b>103</b>
18.1	Commitment by the Developer	103
18.2	State Initiated Variations	104
18.3	Payment of Variation Amounts	105
18.4	Final payment claim	106
18.5	Completed Public Works	107
18.6	Developer must not suspend the Public Works	107
18.7	Allocation of Public Works delivery risk	108
18.8	Third party warranties	108
18.9	P1 Public Works – Pavilion Works – Design and Approvals	108
18.10	P1 Public Works – Pavilion Works Trigger Notice A	109
18.11	P1 Public Works – IDF Fitout Works – Design and Approvals	110
<b>19</b>	<b>Relocation of Third Party Services</b>	<b>111</b>
19.1	Relocation works	111
19.2	Easements in relation to Third Party Services	111
19.3	No compensation	111
<b>20</b>	<b>Achieving Practical Completion of each Works Portion</b>	<b>112</b>
20.1	Developer must progress each Works Portion	112
20.2	Notice of anticipated Practical Completion	112
20.3	Requesting Certificate of Practical Completion	113

20.4	Independent Certifier to certify	113
20.5	Carrying out required work	113
20.6	Effect of Certificate	113
20.7	Prerequisite for issue of Certificate of Practical Completion	113
20.8	Requirements following issue of Certificate of Practical Completion	113
20.9	Providing documents to the State	114
20.10	Dispute where no Certificate of Practical Completion	114
20.11	Developer's Variations to the Public Works	115

<b>21</b>	<b>Extensions of time</b>	<b>116</b>
21.1	Milestones	116
21.2	Claims for extension of time	116
21.3	Conditions precedent to extensions of time	117
21.4	Concurrent delays	117
21.5	Matters for consideration	117
21.6	Determination of extensions of time	118
21.7	Dispute over extensions of time	118
21.8	Changes to the Development Program - extensions of time	118
21.9	Occurrence of event for which Developer has Insurance	118

<b>24</b>	<b>General requirements for carrying out Works</b>	<b>140</b>
24.1	Works to comply	140
24.2	Developer must comply with all Approvals	141

24.3	Changes to Works Documents	141
24.4	State not liable	141
24.5	Developer's obligation for care of Works	141
24.6	Developer to rectify damage to Works	141
24.7	No noxious use	142
<hr/>		
<b>25</b>	<b>Condition of Development Land</b>	<b>143</b>
25.1	No warranty as to purpose	143
25.2	Development Land Condition	143
25.3	Site co-ordination	144
25.4	No claims by Developer	144
25.5	Services	144
25.6	Development within other projects	144
25.7	Stakeholder management	145
<hr/>		
<b>26</b>	<b>Environmental, native title and heritage obligations</b>	<b>145</b>
26.1	Environmental risk	145
26.2	Environmental Laws	146
26.3	Environmental matters	146
26.4	Environmental Liabilities	146
26.5	Finding of Relics	147
26.6	Native Title Claims and Threatened Species Claims	147
26.7	No claim by Developer	147
26.8	Release	147
<hr/>		
<b>27</b>	<b>Care of surrounding areas and safety</b>	<b>148</b>
27.1	Developer bears risk	148
27.2	Surrounding areas	148
27.3	Safety of persons	149
27.4	Noise	149
27.5	Crane usage	149
27.6	Monitoring regimes (including track displacement and vibration milestones)	149
27.7	Dilapidation reports and surveys	150
<hr/>		
<b>28</b>	<b>Compliance with Laws</b>	<b>152</b>
28.1	Obligations of the Developer	152
28.2	Not used	153
28.3	Copies of notices	153
28.4	Acceptance of risk	153
28.5	Change in Law	153
<hr/>		
<b>29</b>	<b>Insurances</b>	<b>154</b>
29.1	Contract works insurance	154
29.2	Amount of insurance	154
29.3	Public and products liability insurance	154
29.4	Amount for public and products liability insurance	155
29.5	Not used	155
29.6	Not used	155
29.7	Employees	155
29.8	Workers compensation indemnity	156
29.9	Professional indemnity insurance	156
29.10	Motor vehicle insurance	156
29.11	Insurance requirements generally	157

29.12	Cross liability	158
29.13	Periods of Insurance	158
29.14	Premiums	159
29.15	Providing information to the State	159
29.16	Failure to produce proof of insurance	160
29.17	Notices of potential claims	160
29.18	Additional obligations of Developer	160
29.19	Liabilities of Developer not affected	160
29.20	Change in Insured Risk	161
29.21	Insurances before commencement of the first Works Portion	161
<b>30</b>	<b>Workplace health and safety</b>	<b>161</b>
30.1	WHS Legislation	161
30.2	Principal contractor	161
30.3	Duration of engagement	162
30.4	Developer's obligations	162
30.5	Copies of documents	162
30.6	State may carry out WHS obligations	163
30.7	No release	163
30.8	AMB Compliance	163
<b>31</b>	<b>State's rights to enter, inspect and carry out work</b>	<b>165</b>
31.1	State's right to enter and inspect	165
31.2	State's notice to remedy	165
31.3	State may take action	165
31.4	Notice of exercise of rights	166
31.5	Emergencies	166
31.6	Costs and risk of taking action	167
31.7	State may carry out Works to Services	167
31.8	State not liable	168
<b>32</b>	<b>Defects Liability and Final Completion Certificate for a Works Portion for the Public Works</b>	<b>169</b>
32.1	Developer to rectify defects	169
32.2	Inspections by Independent Certifier and State	169
32.3	Defects Notice given by Independent Certifier or State	169
32.4	Obligations of Developer	170
32.5	State may rectify defects	170
32.6	Final Completion Certificate	171
32.7	Access to remedy defects	171
<b>33</b>	<b>Security</b>	<b>171</b>
33.1	Developer to give Security	171
33.2	Form of Security	171
33.3	Calling on a Security	172
33.4	Replacement of Security after call	172
33.5	Replacement Security	172
33.6	Returning the Security	173
<b>34</b>	<b>Naming and marketing the Development Works</b>	<b>175</b>
34.1	Naming the Developer's Works	175
34.2	Marketing the Development Works	175
34.3	Developer's obligations regarding marketing materials	176

34.4	Signage and advertising	176
34.5	Naming and marketing of the Central Precinct Renewal Program and the Public Works	176
<b>35</b>	<b>Intellectual property</b>	<b>176</b>
35.1	Ownership of intellectual property	176
35.2	Licences to use intellectual property	177
35.3	Moral Rights warranty	178
<b>36</b>	<b>Assignment</b>	<b>178</b>
<b>37</b>	<b>Asset restructure by the State</b>	<b>182</b>
<b>38</b>	<b>Dispute resolution</b>	<b>183</b>
38.1	Notice of dispute	183
38.2	Continuing to perform obligations	183
38.3	Dispute resolution process	183
38.4	Executive negotiation	183
38.5	Disputes for expert determination	183
38.6	Choice of expert	184
38.7	Expert	184
38.8	Agreement with expert	184
38.9	Directions to expert	185
38.10	Role of expert	185
38.11	Complying with directions of expert	185
38.12	Expert may commission reports	185
38.13	Expert may convene meetings	186
38.14	Meeting not a hearing	186
38.15	Confidentiality of information	186
38.16	Confidentiality in proceedings	186
38.17	Final determination of expert	187
38.18	Expert's Costs	187
38.19	Expert generally not liable	187
38.20	Litigation	187
38.21	Survive termination	188
38.22	Urgent interlocutory relief	188
<b>39</b>	<b>Default</b>	<b>188</b>
39.1	Trigger Notice	188
39.2	Corrective Action Plan	189
39.3	Trigger Event not remedied	190
39.4	Not used	190
39.5	State may terminate	190
39.6	Indemnity in connection with breach	191
39.7	Waiver	191
39.8	Consequences of breach by a party	192



39.9	Consequential or Indirect Loss	192
<hr/>		
<b>40</b>	<b>Developer's obligations on termination</b>	<b>195</b>
<hr/>		
<b>41</b>	<b>Releases and indemnities</b>	<b>195</b>
41.1	Release of State from liability	195
41.2	General indemnities	196
41.3	Continuation of liability	196
41.4	Conduct of proceedings	197
41.5	State's ability to enforce the indemnity	197
41.6	Obligation to mitigate	197
<hr/>		
<b>42</b>	<b>Dexus Guarantee and indemnity</b>	<b>197</b>
42.1	Consideration	197
42.2	Indemnity	198
42.3	Additional indemnities	198
42.5	Dexus Guarantor as principal debtor	199
42.6	Extent of guarantee and indemnity	199
42.7	Preservation of the State's rights	199
42.8	Liabilities not affected	200
42.9	Suspension of Dexus Guarantor's rights	200
42.10	Other securities and obligations of Dexus Guarantor	201
42.11	Reinstatement of State's rights	201
42.12	Application of money	201
42.13	State undertakings	201
42.14	Limitation on the Dexus Guarantor's liability	202
42.15	Release of Dexus Guarantors in certain circumstances	202
<hr/>		
<b>43</b>	<b>Frasers Guarantee and indemnity</b>	<b>202</b>
43.1	Consideration	202
43.2	Indemnity	203
43.3	Additional indemnities	203
43.5	Frasers Guarantor as principal debtor	204
43.6	Extent of guarantee and indemnity	204
43.7	Preservation of the State's rights	204
43.8	Liabilities not affected	205
43.9	Suspension of Frasers Guarantor's rights	205
43.10	Other securities and obligations of Frasers Guarantor	206
43.11	Reinstatement of State's rights	206
43.12	Application of money	207
43.13	State undertakings	207
43.14	Limitation on the Frasers Guarantor's liability	207
43.15	Release of Frasers Guarantors in certain circumstances	207
<hr/>		
<b>44</b>	<b>Representations and warranties</b>	<b>208</b>
44.1	Other interests	208
44.2	Warranties by Developer and Guarantor	208
44.3	Warranties by the State	209
44.4	Developer's privacy warranty	209
44.5	Obligations not affected	210

<b>45</b>	<b>NSW Code of Practice</b>	<b>210</b>
45.1	NSW Code and NSW Guidelines	210
45.2	Primary obligation	210
45.3	Access and information	210
45.4	Sanctions	211
45.5	Compliance	211
<b>46</b>	<b>Undertakings by Developer and Guarantor</b>	<b>212</b>
46.1	Undertakings by Developer	212
46.2	Undertakings by Guarantor	212
46.3	Developer's privacy obligations	212
46.4	Consent to use and disclose Personal Information	212
46.5	Anti-terrorism	213
<b>47</b>	<b>Representatives</b>	<b>213</b>
47.1	State's representative	213
47.2	Notification by State	213
47.3	Developer's representative	213
47.4	Notification by Developer	213
47.5	Knowledge of representative attributed to Developer	213
47.6	Objection by the State	213
<b>48</b>	<b>Costs</b>	<b>213</b>
<b>49</b>	<b>General requirements for payments</b>	<b>214</b>
49.1	Method of payment	214
49.2	No demand necessary	214
49.3	Incorrect amount paid	214
49.4	Ongoing obligation	214
49.5	When to make payments	214
49.6	If due date not a Business Day	214
49.7	Currency of payment	214
49.8	Interest on overdue money	215
49.9	Compounding	215
49.10	Interest on liability merged in judgment or order	215
49.11	Tender after termination	215
<b>50</b>	<b>GST</b>	<b>215</b>
50.1	Interpretation	215
50.2	Reimbursements	216
50.3	Additional amount of GST payable	216
50.4	Variation	216
50.5	Exchange of non-monetary consideration	216
50.6	Indemnities	217
50.7	Set off	217
50.10	No merger	218

<b>51</b>	<b>Notices</b>	<b>218</b>
51.1	Form	218
51.2	Delivery	218
51.3	When effective	219
51.4	Receipt - postal	219
51.5	Receipt - general	219
51.6	Receipt – email	219
51.7	Waiver of notice period	219
51.8	Notices by State	219
51.9	Changes to notice details	220
<b>52</b>	<b>General</b>	<b>220</b>
52.1	Certificate	220
52.2	Exercise of rights	220
52.3	Partial exercise of rights	220
52.4	Delay in exercising rights	220
52.5	State not liable	220
52.6	Waiver and variation	220
52.7	Supervening legislation	220
52.8	Approvals and consent	220
52.9	Remedies cumulative	221
52.10	Indemnities	221
52.11	Further assurances	221
52.12	Continuing breaches	221
52.13	Antecedent obligations	221
52.14	Confidentiality	221
52.15	Announcements	222
52.16	Severability	223
52.17	Entire agreement	223
52.18	Construction	223
52.19	Effect of moratorium	223
52.20	Proportionate liability	223
52.21	Governing Law, jurisdiction and service of process	224
52.22	Jurisdiction	224
52.23	Waiver	225
52.24	Counterparts	225
<b>53</b>	<b>Developer Limitation on Liability</b>	<b>225</b>
<b>54</b>	<b>Trustee limitation of liability</b>	<b>229</b>
54.1	Dexus CPA Pty Ltd – trustee limitation of liability	229
54.2	Frasers Trustee limitation of liability	230
54.3	Responsible Entity limitation of liability	231
	<b>Signing page</b>	<b>232</b>
<b>Schedule 1</b>	<b>Public Works Brief</b>	<b>236</b>
<b>Schedule 2</b>	<b>Project Scope</b>	<b>237</b>
<b>Schedule 3</b>	<b>Confirmation Letter</b>	<b>238</b>

<b>Schedule 4</b>	<b>Independent Certifier's Deed</b>	<b>239</b>
<b>Schedule 5</b>	<b>Development Program</b>	<b>240</b>
<b>Schedule 6</b>	<b>Site Access Schedule</b>	<b>241</b>
<b>Schedule 7</b>	<b>Form of Security</b>	<b>242</b>
<b>Schedule 8</b>	<b>Moral Rights Consent</b>	<b>247</b>
<b>_____</b>		
<b>Schedule 10</b>	<b>TfNSW Transport and Customer Requirements</b>	<b>249</b>
<b>Schedule 11</b>	<b>Construction Licence</b>	<b>250</b>
<b>Schedule 12</b>	<b>Unacceptable Conditions</b>	<b>252</b>
<b>Schedule 13</b>	<b>Not used</b>	<b>253</b>
<b>Schedule 13A</b>	<b>Certificate of Design Compliance</b>	<b>254</b>
<b>Schedule 13B</b>	<b>Certificate of Construction Compliance</b>	<b>255</b>
<b>Schedule 14</b>	<b>Financier's Side Deed</b>	<b>257</b>
<b>Schedule 15</b>	<b>Subdivision Strategy</b>	<b>258</b>
<b>Schedule 16</b>	<b>Not used</b>	<b>259</b>
<b>Schedule 17</b>	<b>Not used</b>	<b>260</b>
<b>Schedule 18</b>	<b>TAHE Deed Poll</b>	<b>261</b>
<b>Schedule 19</b>	<b>Sydney Innovation and Technology Precinct</b>	<b>265</b>
<b>Schedule 20</b>	<b>Deed of Release (Leasehold Land)</b>	<b>266</b>
<b>Schedule 21</b>	<b>Draft Toga AOA</b>	<b>272</b>
<b>_____</b>		
<b>Schedule 23</b>	<b>Not used</b>	<b>279</b>
<b>Schedule 24</b>	<b>Integration Works</b>	<b>280</b>
<b>Schedule 25</b>	<b>Sydney Innovation and Technology Precinct Provisions</b>	<b>281</b>
<b>Schedule 26</b>	<b>Western Gateway Design Guide</b>	<b>282</b>
<b>Schedule 27</b>	<b>Form of Deed of Novation</b>	<b>283</b>
<b>Schedule 28</b>	<b>Deed of Release (Adjoining Developments)</b>	<b>293</b>
<b>Schedule 29</b>	<b>Lot 201 Services</b>	<b>299</b>
<b>Schedule 30</b>	<b>Support</b>	<b>301</b>

# Project Development Agreement

## Details

<b>Parties</b>		
<b>State</b>	Name	Transport for NSW
	ABN	18 804 239 602
	Address	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]
<b>Developer</b>	Name	Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust
	Address	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]
<b>Frasers Guarantor</b>	Name	Frasers Property Australia Pty Limited
	ABN	ABN 89 600 448 726
	Address	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]
<b>Dexus Guarantor 1</b>	Name	Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Operations Trust
	ABN	69 645 176 383
	Address	[REDACTED]
	Email	[REDACTED]

<b>Dexus Guarantor 2</b>	Attention	[REDACTED]
	Name	Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Property Trust
	ABN	ABN 24 595 854 202
	Address	[REDACTED]
	Email	[REDACTED]
	Attention	[REDACTED]

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**Governing law** New South Wales

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**Business Day place (s)** Sydney, Australia

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- Recitals**
- A** The State or TAHE is the owner of the Development Land.
  - B** The parties are entering into this deed following the submission of an unsolicited proposal by the Developer and the assessment of that unsolicited proposal by the State.
  - C** Subject to the terms and conditions of this deed, under this deed:
    - (a) the Developer agrees to carry out the Works;
    - (b) the State will give to the Developer access to the State Land for the purposes of carrying out the Works;
    - (c) the Developer will access the Leasehold Land pursuant to the Leases for the purposes of carrying out the Works;
- [REDACTED]
- (e) the Guarantors agree to guarantee to the State the Guaranteed Obligations.

# Project Development Agreement

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

These meanings apply unless the contrary intention appears:

**Acceptable Development Consent** means a Development Consent referred to in clause 4.3(d)(iii).

**Accepted Security** means a bank guarantee or unconditional undertaking.

**Acquisition Land** has the meaning given to that term in clause 22.1(b).

**Adjoining Land** means any land adjoining the Development Land.

**Adjoining Owners** means:

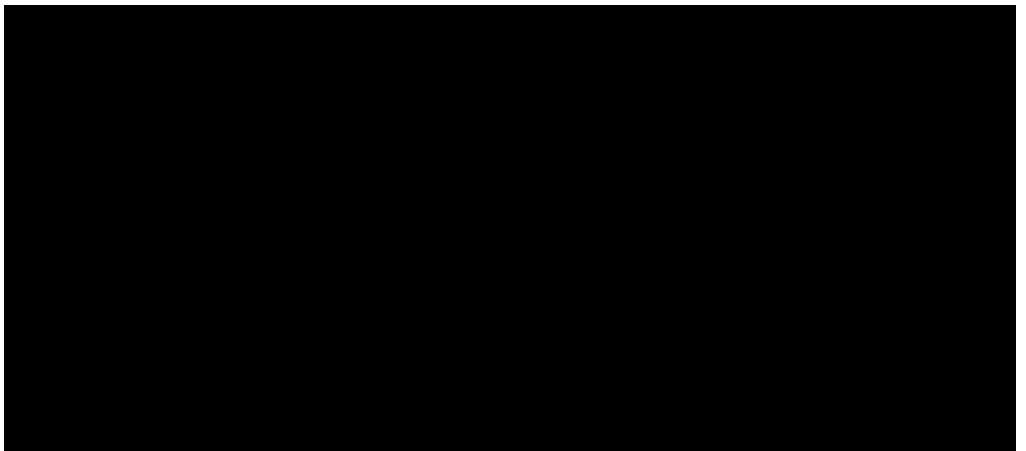
- (a) Toga;
- (b) Atlassian; and
- (c) in respect of the references to Adjoining Owners in clause 22.12, also includes YHA.

**Adjoining Owners Agreements** means:

- (a) the Toga Agreement; and
- (b) the Atlassian Agreement.

**Agreed Easement Changes** has the meaning given to that term in clause 22.4(b).

**Agreement for Lease** [REDACTED]



**Anticipated Date of Practical Completion** means in relation to a Works Portion, the date which the Independent Certifier certifies in writing to the State and the Developer pursuant to clause 20.2(a), as being the date that is likely to be the date on which Practical Completion of that Works Portion will be achieved.

**Appeal Period** means the period allowed under the EP&A Act by a person other than the State or the Developer to lodge an appeal in relation to the granting of the Development Consent.

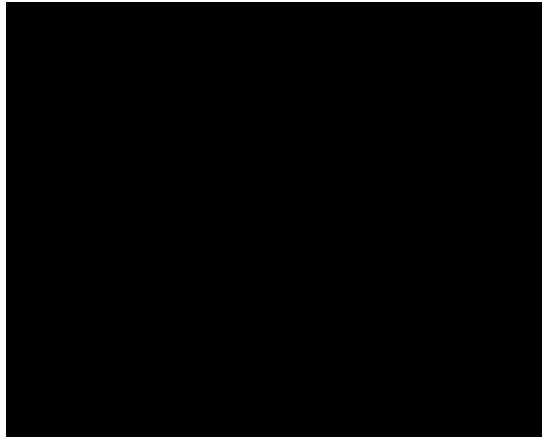
**Applicable Cure Period** has the meaning given to that term in clause 39.2(e)(i).

**Application** means an application for any Approval.

**Application Plans** means in respect of each proposed Application, the plans and specifications which are intended to form part of that proposed Application.

**Approvals** means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements which may be required by law for the commencement and carrying out of the Works or which may be lawfully imposed on the Improvements by any Public Authority and any variations or modifications to them, including approvals under the EP&A Act, the *National Parks and Wildlife Act 1974* (NSW), TAO Authorisation, Construction Certificates, Occupation Certificates and Complying Development Certificates.

**Approved Certifiers List:**



**Approved Corrective Action Plan** has the meaning given in clause 39.2(e).

**Approved Design Documentation** means the Design Documentation (Public and Integration Works) approved (or deemed to be approved) by the State under clause 6.4(a)(iv), as amended in accordance with this deed.

**Asset Lifecycle** includes whole of lifecycle activities and activities that are specific to a phase or several phases during a lifecycle, and includes:

- (a) concept, feasibility and total asset planning;
- (b) design and design review;
- (c) construction, installation, fabrication and manufacture;
- (d) systems engineering and systems integration;
- (e) inspecting, testing and commissioning;
- (f) maintenance;
- (g) modification; and
- (h) decommissioning, demolition and disposal,

and includes assurance of such activities including safety.



**Asset Lifecycle Works** means the aspects of the Works which relate to the Asset Lifecycle of Transport Assets.

**Asset Management Branch** or **AMB** means the unit within TfNSW which sets, controls, maintains, owns and publishes the network and asset standards for Transport Assets.

**Asset Management Frameworks** means the frameworks published externally or notified by the AMB in the exercise of its functions, including the Technical Supplier Assurance Framework.

**Assignment Tests** means that a person:

- (a) is solvent;
- (b) is of comparable or better financial standing to the relevant Developer assignor entity;
- (c) has equity and debt funding available to fund the construction of the Works;
- (d) has a delivery methodology in terms of design, construction, finance, management and maintenance suitable to effect the Project; and
- (e) is otherwise ready, willing and able to carry out the Works as required by this deed.

**Atlassian** means Vertical First Pty Ltd ACN 636 939 985 as trustee of the Vertical First Trust ABN 47 915 597 236.

**Atlassian Agreement** means the co-operation agreement between the Developer, Atlassian and Dexus CPA Pty Ltd ABN 90 160 685 156 as trustee for the Dexus CPA Commercial Property Trust ABN 38 186 826 938 dated 3 May 2022 (as amended from time to time).

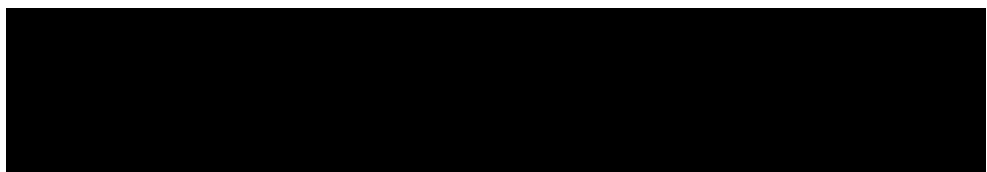
**Australian Standards** means national standards developed by Standards Australia.

**Authorised Officer** means:

- (a) in the case of the State, the Deputy Secretary of Infrastructure and Place or a person performing the functions of that position or any other person appointed by the State and notified in writing to the parties to act as an Authorised Officer for the purposes of this deed; and
- (b) in the case of each other party, a person appointed by that party to act as an Authorised Officer for the purposes of this deed.

**Bank Bill Swap Reference Rate** means the market rate of interest used to price commercial borrowings as published in the Australian Financial Review.

**Basement** means the structure of the basement forming part of the Project, including the basement structure for the Integrated Distribution Facility and associated ramps, as described in Schedule 1.



[REDACTED]

**Best Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the same or a similar type of undertaking as that of the Developer under the same or similar circumstances as the delivery of the Works (subject to any express provisions of this deed which impose higher standards).

**Builder** means a contractor engaged by the Developer under a Building Contract.

**Building** means each building to be completed as part of the Development Works.

**Building Contract** means, in respect of each Works Portion, any head contract between the Developer and a builder in connection with the design and construction (or construction only) of that Works Portion (or any part of it).

**Building Contract Notice** means a notice issued by the Developer to the State which is in compliance with clause 14.2(d).

**Business Day** means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday or public holiday).

**Bus Layover Overhead Platform** means that part of the State Land identified as such in item H of Schedule 6 for so long as it is Developer Controlled Land.

[REDACTED]

[REDACTED]

**Cash Deposit** has the meaning given in clause 33.5(b)(ii).

**Cash Deposit Account** has the meaning given in clause 33.5(b)(ii).

**CCU** means the construction compliance unit administered by NSW Industrial Relations.

**Central Over Station Development** means the potential development of the Central Station Significant Precinct as currently contemplated in the State Significant Precinct Study, which includes a Place strategy, Urban Design framework, master planning and proposed new planning framework, submitted by TfNSW to the NSW Department of Planning and Environment in August 2022.

**Central Precinct** means the 'Central Precinct' as defined in the State Significant Precinct Study, which includes a place strategy, Urban Design framework, Design Guide, master planning, Design Guide and proposed new planning framework, submitted by TfNSW to the NSW Department of Planning and Environment in August 2022.

**Central Precinct Renewal Program** means the redevelopment of the area around and including 24 hectares of government owned land at Central Station where investment and proposed initiatives are being targeted to improve the interchange function and deliver large scale transformation. It includes the

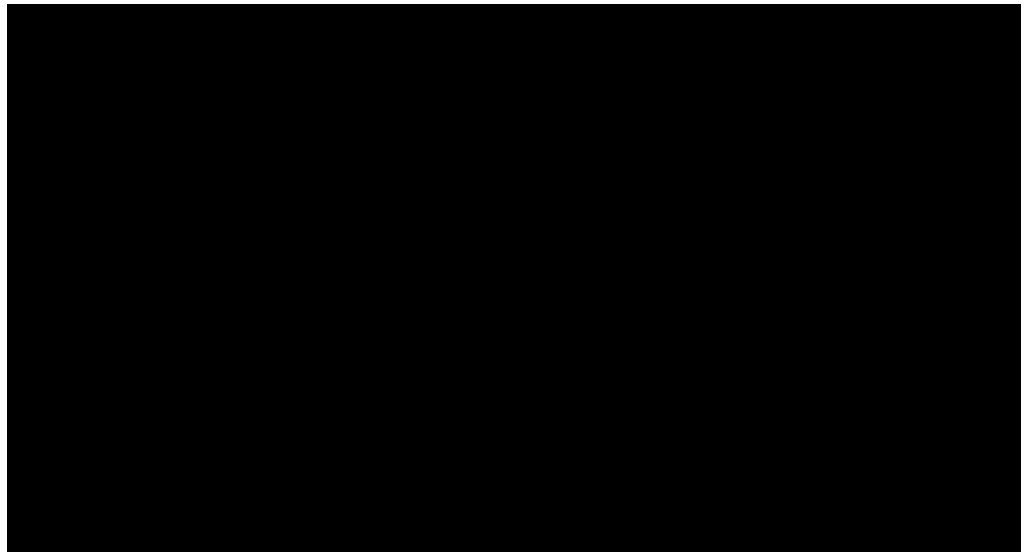
Central Station public transport interchange, surrounding public domain, streets, parks and buildings.

**Central Station** means the improvements, structures and rail infrastructure facilities (as that term is defined in the TAA) located from time to time on Lots 201, 203 and 204 in DP1280430.

**Certificate of Construction Compliance** means a certificate from the Developer in the form and at the times provided in Schedule 13B certifying that the Works comply with the requirements of this deed.

**Certificate of Design Compliance** means a certificate from the Developer in the form and at the times provided in Schedule 13A certifying that the Design Documentation complies with the requirements of this deed.

**Certificate of Practical Completion** means in respect of a Works Portion a certificate issued by the Independent Certifier under clause 20.4 in relation to that Works Portion.



**Change in Insured Risk** has the meaning ascribed to that expression in clause 29.20(c).

**Claim** means any claim, action, demand or proceeding for payment of money (including damages), for an extension of time or for any other form of relief:

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

**Clean-up** means the taking of all necessary action to Remediate any Contamination.

**Codes and Standards** means any codes, standards, policies, specifications, guidelines, requirements, by-laws, rules, procedures or other publications from time to time, with which the Developer is legally required to comply.

**Commencement Date** is the date of this deed.

**Compliance Certificate** means a certificate referred to in section 6.4(e) of the EP&A Act.

**Complying Development Certificate** means a complying development certificate referred to in section 4.27 of the EP&A Act.

**Conditions Precedent** has the meaning given to that term in clause 3.2.

**Conditions Precedent Sunset Date** [REDACTED]

**Configuration Management Framework** means the framework established by the TfNSW Configuration Management Plan (2017 version).

**Consent Authority** means, in relation to an Application, the Public Authority having the function to determine the Application.

**Consequential or Indirect Loss** means:

- (a) any Loss that does not flow directly and naturally from the relevant breach of this deed or a duty of care; and
- (b) any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of contract (other than this deed), loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

**Construction Certificate** means a construction certificate referred to in section 6.4(a) of the EP&A Act.

**Construction Licence** means the licence, on the terms and conditions set out in Schedule 11.

**Contamination** means the presence in, on or under the Development Land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment.

**Controller** has the meaning it has in the Corporations Act.

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

**Corrective Action Plan** means a plan to remedy a Trigger Event prepared by the Developer and approved by the State in accordance with clause 39.

**COS Act** has the meaning given to it in clause 4.5(a)(i)(A).

**Costs** include reasonable costs, charges and expenses, including those incurred in connection with external advisers and consultants.

**COVID-19** means the disease identified by the World Health Organisation on or about 11 February 2020 as COVID-19 and declared to be a pandemic by the

World Health Organisation on or about 11 March 2020, and any variants of that disease.

**COVID-19 Directive** means any Law, or a direction or order under a Law, for purposes related to avoiding, controlling, minimising or eliminating COVID-19.

[REDACTED]

**Crane Activities** means the passing and re-passing of the crane (with or without materials) for the purpose of carrying out the Works.

**Crane Area** means the airspace required for the passing and re-passing of the crane.

**Date for Commencement** means, in respect of the Works Portion, the date specified in the Developer's notice relating to the Works Portion under clause 15.5(a) as varied under clause 15.5(b).

**Date of Practical Completion** means, in respect of a Works Portion and subject to clause 20.7, the date being the date certified by the Independent Certifier as the date Practical Completion of that Works Portion was achieved as specified in the Certificate of Practical Completion under clause 20.4 for that Works Portion.

**DCG Report** has the meaning given to that term in clause 16.2(a).

**Decision Period** has the meaning given in clause 1.2 of Schedule 12.

**Deed of Release (Adjoining Developments)** means the deed of release contained in Schedule 28.

**Deed of Release (Leasehold Land)** means the deed of release contained in Schedule 20.

**Defects Liability Period** means for the Public Works (or part of the Public Works) referred to in clause 32.1:

- (a) a period of 12 months commencing on the Date of Practical Completion for the relevant Public Works (or relevant part of the Public Works); or
- (b) a period of not more than 12 months commencing on the date of completion of rectification works, for any make good works required by the State in a Defects Notice issued to the Developer as contemplated in clause 32.3(a)(iii) in relation to the relevant rectification works during the initial 12 month period referred to in paragraph (a).

**Defects Notice** has the meaning given in clause 32.3.

**Delay Event** has the meaning given in clause 16.2(b).

**Design Documentation** means:

- (a) all design documentation (including all design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models (including CAD and GIS models or any other digital engineering information), samples, prototypes, calculations, drawings, shop drawings, digital records, computer software and all other relevant data) in electronic, computer readable and written forms,

or stored by any other means, required by this deed, required for the performance of the Works, or necessary to be produced by the Developer or a designer to design and construct the Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this deed; and

- (b) computer software where the computer software has been specifically created or specifically modified for the purposes of the Works.

**Design Documentation (Public and Integration Works)** means the Design Documentation insofar as it relates to the Public Works and/or the Integration Works.

**Design Documentation (Development Works)** means the Design Documentation other than the Design Documentation (Public and Integration Works) and in respect of the Stage 1 Development Works or the Stage 2 Development Works, means only the Design Documentation relating to the Stage 1 Development Works or the Stage 2 Development Works below RL 34.

**Design Life** [REDACTED]

**Design Program** means the program prepared by the Developer in accordance with clause 6.1, as amended from time to time by the Developer in accordance with that clause.

**Design Stage** in respect of Design Documentation means:

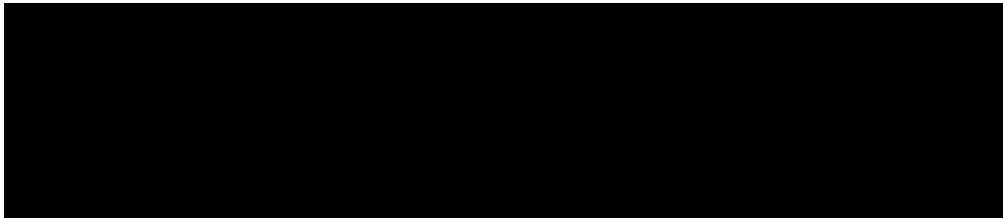
- (a) tender design; and
- (b) for construction design.

**Design Working Group** has the meaning given in clause 16.4.

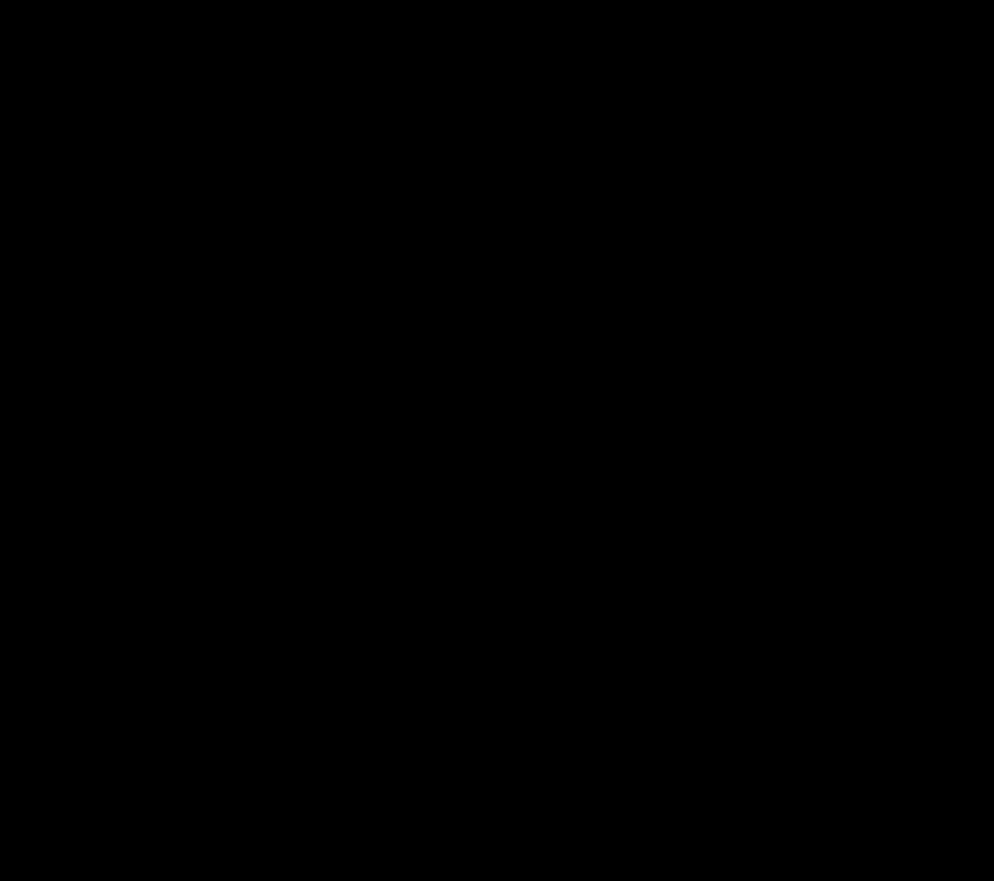
**Developer Controlled Land** has the meaning contained in clause 15.2(b).

**Developer Rejection Right (Variations)** [REDACTED]

[REDACTED]



**Developer Unacceptable Condition** 



**Developer's Employees and Agents** means each of the Developer's employees, officers, agents, contractors, service suppliers, licensees, invitees and those persons who are on the Development Land (other than the State and the State's Employees and Agents). Where it relates to persons on State Land in respect of which the Developer does not have exclusive use, it means only those persons on the Development Land who are employees, officers, agents, contractors, service suppliers or licensees of the Developer.

**Developer's Infrastructure** includes all Services, means of access and other infrastructure necessary for the Project but excluding Existing Infrastructure.

**Developer's Property** means all plant and equipment, fixtures, fittings, furniture, furnishings, decorations and other property not owned by the State which the Developer brings on to the Development Land or fixes to the Development Land.

**Development Application** means Applications made by the Developer for approval to carry out the Project and subdivide the Development Land pursuant to the EP&A Act, together with any ancillary documents otherwise forming part of that Application.

**Development Consent** means an Approval or authorisation necessary to enable the carrying out of the Project pursuant to the Development Application, and any modification of it.

**Development Control Group** is the group established in accordance with clause 16.1(a).

**Development Land** means the land comprised of the Leasehold Land and (for so long as it is licensed to the Developer or the Developer's Employees and Agents otherwise remain in occupation of the relevant part of the State Land) the State Land.

**Development Program** means the program set out in Schedule 5.

**Development Works** means the Stage 1 Development Works and the Stage 2 Development Works.

**Dexus Developer** means Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3.

**Dexus Group** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]

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

**Dexus Guarantee** means the guarantee and indemnity provided by the Dexus Guarantors in clause 42.

**Dexus Guaranteed Moneys** means all amounts payable by the Dexus Developer to the State under the Project Documents and any money payable by any nominee of the "Dexus Grantee" under the [REDACTED]  
[REDACTED]

**Dexus Guarantor** means:

- (a) in respect of the Dexus Guaranteed Moneys, the Dexus Guarantor 2; and
- (b) in respect of the Guaranteed Obligations (other than the Dexus Guaranteed Moneys), the Dexus Guarantor 1,

and a reference to a Dexus Guarantor is a reference to either the Dexus Guarantor 1 or the Dexus Guarantor 2 (as applicable).

**Dexus Managed Funds** means a trust, fund or corporate collective investment vehicle managed or operated by the Dexus Developer or another member of the Dexus Group.

**Disclosure Materials (Non Reliance)** means all information made available by the State to the Developer in connection with the Project.



**Draft Corrective Action Plan** has the meaning given in clause 39.2(a)

**Draft Subdivision Plan** means the draft subdivision plan set out in Schedule 4 of the Subdivision Strategy.

**Early Works** means:

- (a) enabling works (including services augmentation (but not in respect of high voltage cables), testing and investigation and minor works to the existing building) within the Leasehold Land; and

[REDACTED]

[REDACTED]

**Easement Changes** has the meaning given to that term in clause 22.4(a)(iv).

**Easement Dealing** means any of the items referred to in clause 22.5(a).

**Encumbrance** means an interest or power:

- (a) reserved in or over an interest in any asset including, but not limited to, any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to, any agreement to grant or create any of the above.

**Environment** includes all aspects of the surroundings of human beings.

**Environmental Law** means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere, waters and land;
- (c) pollution and contamination of the atmosphere, waters and land; and
- (d) production, use, handling, storage, transportation and disposal of:
  - (i) waste;
  - (ii) hazardous substances;
  - (iii) dangerous goods;
  - (iv) threatened, endangered and other flora and fauna species;
  - (v) conservation, heritage and natural resources; and
  - (vi) the health and safety of people,

whether made or in force before or after the Commencement Date.

**Environmental Liability** means any of the following liabilities:

- (a) all Costs associated with undertaking any Clean-up ordered or required by any Public Authority of any land, building or waters;
- (b) any compensation or other monies that a Public Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages, Costs and interest, payable under an Environmental Law.

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

**Estimated GFA** means the estimated GFA set out in the Project Scope.

**An Event of Default** [REDACTED]

**Existing Easements** mean the easements affecting the Development Land at the date of this deed.

**Existing Infrastructure** [REDACTED]

**Existing Tenant** means a lessee under a Lease.

**Final Certificate** has the meaning given to that term in clause 18.4(b)(v).

**Final Completion** means the point in time when the Public Works the subject of a Works Portion has been completed such that all defects and omissions in the Public Works the subject of the relevant Works Portion have been rectified.

**Final Completion Certificate** means in respect of the Public Works the subject of a Works Portion, a certificate issued by the Independent Certifier under clause 32.6 certifying that the Public Works the subject of that Works Portion has reached Final Completion.

**Final Design Documentation** means the respective Design Documentation for the Public Works consented to by the Consent Authority and (where consent is required by this deed) by the State and for which a Construction Certificate has been issued, as amended in accordance with this deed.

**Financier** means each financier notified to the State by the Developer from time to time.

**Financier's Side Deed** means a deed generally in the form of Schedule 14 and otherwise in a form acceptable to the State, the Developer and the Financier (each acting reasonably).

**FIRB Act** means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

**First Sunset Date** [REDACTED]

[REDACTED]

**Fit for Purpose** means, when used in the context of the Public Works, that they:

- (a) are fit for the Intended Purpose;
- (b) are capable of remaining fit for the Intended Purpose at all relevant times for the Design Life; and
- (c) otherwise meet the requirements set out in this deed.

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

- (a) a COVID-19 Directive or a change in COVID-19 Directive which in either case comes into force after the date of this deed;
- (b) a pandemic, epidemic or quarantine that impacts the supply chain for the Project;
- (c) war (undeclared or declared), civil war, invasion, act of foreign enemies, civil commotion, demonstrations, insurrections, riots, rebellions, insurrection or martial law;
- (d) a Terrorist Act;
- (e) explosions, earthquakes, fires (not caused by the Developer or the Developer's Employees and Agents), cyclones, acts of god or the public enemy or sabotage, natural disasters, weather conditions and any floods, or
- (f) ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (not caused by the Developer or the Developer's Employees and Agents),

but to the extent that such events or circumstances:

- (g) are beyond the reasonable control of the affected party;
- (h) not used;
- (i) where the affected party is the Developer, are such that a competent developer would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Developer's obligations under this deed if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced developer developing similar works; and
- (j) are not caused or contributed to by a breach of the affected party (or their associates) of this deed.

**Fourth Sunset Date** [REDACTED]  
[REDACTED]

**Frasers Developer** means Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust.

**Frasers Group** [REDACTED]

**Frasers Guarantee** means the guarantee and indemnity provided by the Frasers Guarantor in clause 43.

**Frasers Guaranteed Moneys** means all amounts payable by the Frasers Developer to the State under the Project Documents and any money payable by any nominee of the "Frasers Grantee" under the [REDACTED]

**Frasers Guarantor** means Frasers Property Australia Pty Limited (ABN 89 600 448 726).

**Frasers Listed Parent m** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

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

**Frasers Managed Fund** [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**GBCA** means the Green Building Council of Australia or any successor.

[REDACTED]

**GFA or Gross Floor Area** means the gross floor area of the Development Works calculated using the Property Council of Australia Limited's method of measurement applicable to the Development Works or last published at the time the calculation is made.

**GST** includes amounts defined as "GST" under the GST law and:

- (a) amounts payable on account of a notional liability under Division 177 of the GST Act; and
- (b) "GST equivalents" payments under the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) (or similar payments under corresponding legislation of any State or Territory).

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**GST Amount** has the meaning given to that term in clause 50.3.

**GST law** has the same meaning as in the GST Act.

**Guaranteed Obligations** means, subject to clause 36:

- (a) in the case of the Dexus Guarantor 1, all the Dexus Developer's obligations under each of the Project Documents referred to in the definition of 'Project Documents' in this clause 1.1 to which the State and the Dexus Developer are party and all of the obligations of any nominee of the "Dexus Grantee" under the [REDACTED] (other than the payment of any Dexus Guaranteed Moneys);
- (b) in the case of the Dexus Guarantor 2, the due and punctual payment of all Dexus Guaranteed Moneys; and
- (c) in the case of the Frasers Guarantor, all the Frasers Developer's obligations under each of the Project Documents referred to in the definition of 'Project Documents' in this clause 1.1 and all of the obligations of any nominee of the "Frasers Grantee" under the [REDACTED] to which the State and the Frasers Developer are party,

in each case, as they relate to the Public Works or the Public Works Lot.

This definition applies:

- (a) irrespective of the capacity in which the Developer or the State enter into this deed;
- (b) whether the Developer is liable alone, or jointly, or jointly and severally with another person;
- (c) whether the person entitled to the benefit of a Guaranteed Obligation is the State or an assignee of the Guaranteed Obligations (provided any such assignment is made in accordance with the terms of the Project Documents) and whether or not:
  - (i) the Developer or the Guarantor consented to or was aware of the assignment; or
  - (ii) the assigned obligation was secured.

**Guarantor** means the Dexus Guarantor 1, the Dexus Guarantor 2 or the Frasers Guarantor (as applicable).

**IDF Fitout Works** means that part of the P1 Public Works identified as 'IDF P1 Public Works' in the Public Works Brief.

**IDF Fitout Works Trigger Notice** has the meaning given in clause 3.7(a) of the P1 Works Deed.

**IDF Fitout Works Trigger Notice Period** has the meaning given in clause 3.7(b) of the P1 Works Deed.

**IDF Operational Plan** means the management plan in relation to the management, use and operation of the Integrated Distribution Facility approved in accordance with clause 22.9 of this deed or clause 3.13 of the P1 Works Deed (as applicable).

**Improvements** means the improvements and all associated landscaping and Public Works to be erected on the Development Land as part of the Works.

**Indemnified Persons** means each of the State, TAHE, Sydney Trains and their respective employees and agents.

**Independent Certifier** means the entity selected by the Developer from the Approved Certifiers List (or otherwise approved pursuant to clause 14.6(e)) and appointed by the State and the Developer to be the Independent Certifier for the purposes of this deed pursuant to clause 14.6.

**Independent Certifier's Deed** means a deed generally in the form of Schedule 4 and otherwise in a form acceptable to the State, the Developer and the Independent Certifier (each acting reasonably).

**Insolvency Event** means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the State);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
  - (i) is preparatory to or could result in any of (a), (b) or (c) above; or
  - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (f) a body corporate is, or it makes a statement from which the State reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which the State reasonably deduces it is so subject);
- (g) a body corporate is otherwise unable to pay its debts when they fall due;
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that person under the Law of any jurisdiction,

and **Insolvent** has a comparable meaning.

**Insurances** means the insurances required to be effected and maintained in connection with the Project under any Project Document.

**Integrated Distribution Facility** or **IDF** means the integrated distribution facility which provides centralised servicing and a loading dock, as detailed in Schedule 1.

**Integrating TAO** means a TAO that holds TAO Authorisation in engineering management services.

**Integration Works** means that part of the Stage 1 Development Works which interfaces with or adjoins the Public Works and is identified on the plans in Schedule 24.

**Intended Purpose** means, in the context of the Public Works, their intended purposes, functions and uses as specified in, or reasonably ascertainable from, the Public Works Brief, Asset Management Frameworks and TfNSW Transport and Customer Requirements.

**Interest Rate** [REDACTED]

**Investor** means the entity intending to acquire a long term interest in the Building as at Practical Completion of the Development Works.

**Law** means:

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

**Lease** means:

- (a) the lease of Lot 12 in DP1062447 being head lease AA651830;
- (b) the lease of Lot 14 in DP1062447 being head lease AA651832; and
- (c) the lease of Lot 15 in DP1062447 being head lease AA651833.

**Leasehold Land** means the land leased to the Developer comprised of the following titles as at the date of this deed:

- (a) Lot 12 in Deposited Plan 1062447;
- (b) Lot 14 in Deposited Plan 1062447; and
- (c) Lot 15 in Deposited Plan 1062447.

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

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent; or
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others.

**Liability End Date** [REDACTED]

**Loss** means:

- (a) any cost, expense, loss, damage, liability or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, subject to clause 39.9, Consequential or Indirect Loss.

**Lot 12** means Lot 12 in Deposited Plan 1062447.

**Lot 12 Surrender Area** means that part of Lot 12 being proposed lot 215 in the plan in Schedule 2 of the Subdivision Strategy.

**Lot 14** means Lot 14 in Deposited Plan 1062447.

**Lot 14 Surrender Area** [REDACTED]

**Lot 198** means Lot 198 in DP1266948.

**Lot 199** means Lot 199 in DP1266948.

**Lot 201** means Lot 201 in DP1280430.

**Lot 203** means Lot 203 in DP 1280430.

**Lot 204** means Lot 204 in DP1280430

**LRS** means NSW Land Registry Services.

**Main Development Application** means the Application for Approval to carry out the Project pursuant to the EP&A Act being development application number



D/2021/251 lodged by the Developer with City of Sydney prior to the date of this deed.

**Main Development Consent** means the Approval to carry out the Project pursuant to the EP&A Act being development application number D/2021/251 determined on 20 October 2022.

**Major Consultants** [REDACTED]

[REDACTED]

[REDACTED]

**Material Adverse Effect** means as the context permits a material adverse effect on:

- (a) the ability of the Developer or the Guarantor to comply with its material obligations under any Project Document;
- (b) the State's rights under any Project Document; or
- (c) the business or financial condition of the Developer.

**Milestone Date** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Milestones** [REDACTED]

[REDACTED]

**Moral Rights** means any moral rights including the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any applicable Law (including the *Copyright Act 1968* (Cth) or any Law outside Australia), that exists or may come to exist anywhere in the world.

**NABERS** means National Australian Built Environment Rating System.

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

**New CPS Easements** has the meaning given in clause 22.4(a)(i).

**New Easements** means the New CPS Easements and the New Third Party Easements.

**New Precinct Management Agreement** means any new precinct management agreement to be entered into by the Developer with any or all of the Adjoining Owners and, if relevant, the State.

**New Third Party Easements** has the meaning given to that term in clause 22.4(a)(ii).

**NLA** means the “net lettable area” determined in accordance with [REDACTED]

**NSW Code** means the New South Wales Government Code Supplier Code of Conduct, November 2019 a copy of which is available at [www.buy.nsw.gov.au](http://www.buy.nsw.gov.au), or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

**NSW Guidelines** means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury July 2013).

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

**Occupation Certificate** means a final occupation certificate to be issued under Part 6 of the EP&A Act to enable the occupation or use of a Works Portion in accordance with the EP&A Act, and which is to issue on Practical Completion of

a Works Portion (if relevant), but excludes any further or additional occupation certificate which may be issued in connection with any further development within a Works Portion after a final occupation certificate has been issued in relation to a Works Portion.

**OSD Interface Pedestrian** means that part of the Public Works identified as 'OSD Interface Pedestrian' in section 3.1 of the Public Works Brief.

**OSD Interface Vehicular** means that part of Public Works identified as 'OSD Interface Vehicular' in section 3.1 of the Public Works Brief.

An **Other Default Event** [REDACTED]

[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

**Outgoings** [REDACTED]  
[REDACTED]

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

[REDACTED]  
[REDACTED]

[REDACTED]

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

[REDACTED]  
[REDACTED]

**P1 Public Works** means that part of the Public Works identified as 'OSD Related (P1) Public Works' in section 5 of the Public Works Brief and comprises the Pavilion Works and the IDF Fitout Works.

**P1 Works Deed** means the deed entitled "Central Place P1 Public Works Deed" entered into between the State and the Developer on or about the date of this deed.

**Pavilion** means the pavilion as further identified in the Public Works Brief.

**Pavilion Wind Analysis** means the completion of a suitable wind tunnel test and analysis by a qualified wind engineer that if the Pavilion is removed from the Project and replaced with stairs, covered escalators and public space that includes Wind Mitigation Components and planting (within the Public Works Lot and within close proximity of the Public Works Lot) that provides connection to the Central Over Station Development, the wind environment conditions within the Western Gateway Sub-Precinct, including adjacent elevated terraces, will be in accordance with and meet the requirements of the Western Gateway Design Guide including the Figure 8: "Wind Criteria Map".

Wind tunnel testing of the Western Gateway Sub-Precinct to be undertaken for the following scenarios:

- (a) existing and proposed development of the Western Gateway Sub-Precinct; and
- (b) the existing and proposed development within the Central Precinct located to the east, south east and south of the Western Gateway Sub-Precinct.

**Pavilion Works** means that part of the P1 Public Works identified as 'P1 Public Works - Pavilion Works' in section 5.4 of the Public Works Brief.

**Pavilion Works Trigger Notice A** has the meaning given in clause 18.10(a).

**Pavilion Works Trigger Notice A Sunset Date** has the meaning given in clause 18.10(b).

**Person Conducting a Business or Undertaking** or **PCBU** has the meaning given to that term in the WHS Act.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) collected, held, used or disclosed in connection with this deed or the Project whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Practical Completion** means the point of time at which, in relation to a Works Portion:

- (a) (with respect to the Development Works) when practical completion of the relevant Works Portion has been achieved under the Building Contract;
- (b) (with respect to the Public Works):
  - (i) that every item shown or called for in the Final Design Documentation relevant to the Public Works comprised in the relevant Works Portion has been completed or installed in accordance with:
    - A. the Works Documents; and
    - B. the obligations of the Developer under this deed;

except for minor omissions and minor defects:

- C. which do not prevent the Public Works comprised in the relevant Works Portion from being reasonably capable of being used for the Intended Purpose;
  - D. which the Independent Certifier determines the Developer has reasonable grounds for not promptly rectifying; and
  - E. rectification of which will not prejudice the use of the Public Works comprised in the relevant Works Portion for the Intended Purpose;
- (ii) the Developer has carried out and passed all tests that are required to be carried out and passed under this deed before the Public Works comprised in the relevant Works Portion reach completion;
- (iii) the Developer has delivered to the State:
- A. the "Approved for Construction" Design Documentation for the Public Works comprised in the Works Portion;
  - B. the draft maintenance manuals for the Public Works comprised in the Works Portion;
  - C. all Approvals relating to the Public Works required to be provided under this deed before completion;
- (iv) all compliance reports required to be delivered to the relevant Consent Authority for the issue of certificates referred to in (vi), (vii) and (viii) in this definition relevant to the Public Works comprised in that Works Portion have been delivered to the relevant Consent Authority;
- (v) the Public Works the subject of the Works Portion are fit for use and occupation, and capable of being lawfully used and occupied, for the Intended Purpose with the consent of all relevant Public Authorities;
- (vi) (if relevant) a Compliance Certificate for that Works Portion has been issued;
- (vii) (if relevant) an Occupation Certificate for that Works Portion has been issued;
- (viii) (if relevant) a Complying Development Certificate for that Works Portion has been issued; and
- (ix) (if relevant) all TAO assurance reports have been prepared and certified by a TAO where the work, the subject of a Works Portion impacts a Transport Asset and the relevant TAO requirements in respect of the Works Portion have been satisfied;
- (c) not used; and
- (d) the Developer has carried out and completed any reinstatement and rectification of the Development Land, any public domain and any infrastructure required by this deed or as a requirement of Law in relation

to that Works Portion and (in respect of Practical Completion of the Stage 1 Development Works and Stage 1 Public Works) has removed any construction plant and equipment and any cranes from the Development Land unless the Stage 2 Development Works have commenced.

Despite any other provision of this deed, the Developer is not required to remove the Temporary Bridge Works or the Bus Layover Overhead Platform in order to achieve Practical Completion of the Stage 1 Public Works.

**Pre-Application Requirement** means the subject matter of any advice, recommendation or comment provided by any relevant Public Authority as contemplated by clause 6.7 which is not the subject of a determination pursuant to clause 38 to the effect that (or the State and the Developer otherwise agree that) the Developer is not required to accommodate such subject matter having regard to the provisions of clause 6.7.

**Precinct** means Lots 13, 14 and 15 in Deposited Plan 1062447, Lots 116 and 117 in Deposited Plan 1078271 and Lot 30 in Deposited Plan 877478 and Lots 201, 202, 203, 204 and 205 in Deposited Plan 1280430.

**Precinct Lease** means:

- (a) the Leases;
- (b) the registered lease AA651831 between RailCorp (now TfNSW as lessor) and Toga in relation to Lot 198 in DP 1266948;
- (c) the registered lease AD96764 between RailCorp (now TfNSW as lessor) and YHA dated 16 July 2004 in relation to Lot 116 in DP 1078271; and
- (d) the registered lease 7209347T between RailCorp (now TfNSW as lessor) and Toga in relation to Lot 30 in DP 1062447.

**Precinct Management Agreement** means the document titled "Central 2000 Western Gateway Precinct Management Agreement" between the State Rail Authority of New South Wales, Toga, Perpetual Nominees Limited, Henry Deane Building Nominees Pty Limited, Gateway Building Nominees Pty Limited and CFS Managed Property Limited dated 7 June 2004 as varied, suspended, terminated, waived or extinguished (in whole or in part) by the parties to the Precinct Management Agreement from time to time.

**Privacy Laws** means:

- (a) the Privacy Act 1988 (Cth); and
- (b) any other Law, industry code or policy relating to the handling of Personal Information.

**Privacy Statement** means a statement containing matters about the Developer's information-handling practices as required by the National Privacy Principle 1 in the Privacy Act 1988 (Cth).

**Prohibited Entity** means any person or entity which:

- (a) is a "terrorist organisation" as defined in Part 5.3 of the Criminal Code Act 1995 (Cth); or
- (b) is listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the Charter of the *United Nations Act 1945* (Cth)

which list as at the date of this deed is available from the website of the Australian Department of Foreign Affairs and Trade; or

- (c) is listed on any other list of terrorist or terrorist organisations maintained pursuant to the rules and regulations of the Australian Department of Foreign Affairs and Trade or pursuant to any other Australian legislation.

**Project** means the:

- (a) design, financing, development and delivery of the Development Works; and
- (b) design, financing, development and delivery of the Public Works.

**Project Director** means [REDACTED] or such other individual appointed by the Developer from time to time in accordance with clause 14.7 to take overall responsibility for delivery of the Project and compliance by Developer of its obligations under the Project Documents.

**Project Documents** means:

- (a) this deed;
- (b) the P1 Works Deed;
- (c) the Final Design Documentation;
- (d) the Approved Design Documentation;
- (e) the Public Works Brief;
- (f) the TfNSW Transport and Customer Requirements;
- (g) the Lease;
- (h) any Building Contract;
- (i) any Financier's Side Deed;
- (j) [REDACTED]
- (k) [REDACTED]
- (l) any Independent Certifier's Deed; and
- (m) any document which the State and the Developer acknowledge in writing to be a Project Document.

**Project Feasibility** [REDACTED].

**Project Scope** means the project scope at Schedule 2.

**Property** has the same meaning as that term in the [REDACTED].

[REDACTED]

**Public Authority** means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body including a joint regional planning panel, and, where applicable, a registered certifier accredited under section 9.33 of the EP&A Act.

**Public Authority Levies** means all Costs, levies, contributions and fees of whatever description in cash or kind lawfully imposed by any Public Authority in connection with the Development Land or the Project.

**Public Realm** means that part of the Public Works identified as 'Public Realm' in section 3.1 of the Public Works Brief.

**Public Transport Agency** means TfNSW, the State Transit Authority, Sydney Ferries, Sydney Metro, NSW Trains, Sydney Trains and their public subsidiary corporations.

**Public Works** means the Stage 1 Public Works and the P1 Public Works.

**Public Works Brief** means the project brief and plans contained in Schedule 1, as developed or varied in accordance with the terms of this deed, including to reflect Acceptable Development Consents.

[REDACTED]

**Public Works Lot** means that part of the Acquisition Land being the lot created pursuant to the registration of the Subdivision Documents generally as identified as Lot 3 on the Draft Subdivision Plan.

**Qualifying Cause of Delay** means each of the following:

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]



[REDACTED]

**Rail Infrastructure** means any rail infrastructure facilities as defined in the *Transport Administration Act 1988* (NSW).

**Rail Transport Agency** means TfNSW (and each of its divisions, including the Sydney Co-ordination Office (**SCO**), Traffic Control (**TCS**), AMB, Sydney Trains and NSW Trains) and TAHE.

**Receiver** includes a receiver or receiver and manager.

**Recipient** has the meaning given to that term in clause 50.3.

**Recipient Supply** has the meaning given to that term in clause 50.5.

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

**Related Entity** [REDACTED]

[REDACTED]

**Relevant Application** means any Application which requires the approval of the State as landowner prior to its submission to or lodgement with a Public Authority.

**Relevant Area** has the meaning given to it under clause 15.3(d).

**Relevant Lot 198 Area** means that part of Lot 198 which forms part of the Acquisition Land as described in the Schedule 2 of the Subdivision Strategy.

**Relic** means:

- (a) minerals of commercial value;
- (b) fossils;
- (c) relics, articles or objects of antiquity or of anthropological or archaeological interest;
- (d) coins and other articles of value;
- (e) historical archaeological sites; and
- (f) Aboriginal archaeological relics.

**Remediate and Remediation** includes the investigation, Clean-up, removal, abatement, disposal of, containment, encapsulation or other treatment of Contamination and includes the monitoring and risk management of Contamination.

**Required Rating** means:

[REDACTED]

**Resolution Institute** means the Resolution Institute ABN 69 008 651 232 (being formerly known as Lawyers Engaged in Alternative Dispute Resolution and the Institute of Arbitrators and Mediators Australia) or, if no such organisation exists, then the President of the Law Society of New South Wales.

[REDACTED]

**Second Sunset Date** [REDACTED]

[REDACTED]

[REDACTED]

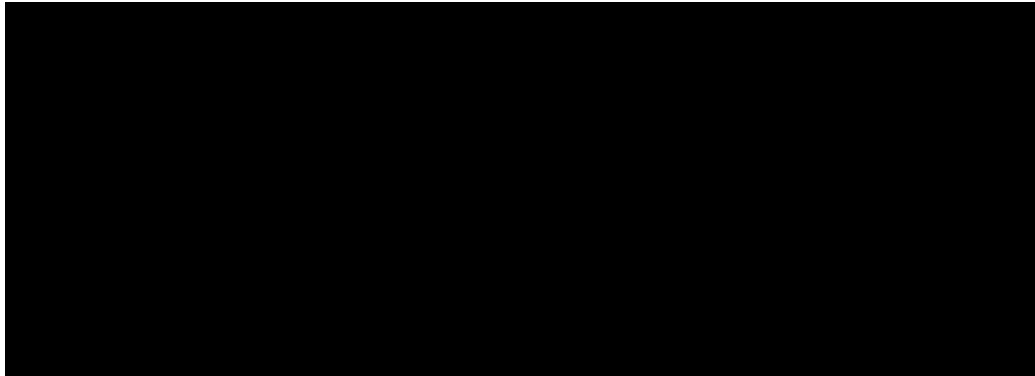
**Security** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**Security Interest** means any bill of sale (as defined in any statute), mortgage, charge, lien, pledge, hypothecation, title retention arrangement, trust or power as or in effect as security for the payment of a monetary obligation or the observance of any other obligation.

**Services** means the services servicing the Development Land including power, electricity, gas, water, sewerage and telecommunications, including all pipes, wires, cables, ducts and other conduits in connection with them (and includes Third Party Services).

**Site Access Schedule** means the access schedule set out in Schedule 6.

**Site Conditions** means any condition affecting or potentially affecting on, above, below or over the surface of the Development Land or their surroundings including, without limitation:

- (a) ground water, ground water hydrology and the effects of any de-watering;
- (b) physical conditions on above or below the surface of land;
- (c) demography of land surface and sub-surface conditions and geology including rock or other materials encountered on land;
- (d) climatic and weather conditions, rain surface water run-off and drainage, water seepage, wind, wind-blown dust and sand in seasons;
- (e) all existing systems and Services above or below the surface of the land and the location of all facilities with which such systems and Services are connected;
- (f) latent conditions; and
- (g) all other physical conditions and characteristics of land on, above or below the surface (including improvements) which may affect the performance by the Developer of its obligations under this deed,

relating to the Development Land and also the availability and condition of roads and all utility Services servicing, or required to the Development Land and the Project.

**Site Establishment** means site establishment on the Development Land including installation of site amenities, connection of temporary services and erection of hoardings.

**Stage 1 Development Works** means Stage 1 Development Works (Option A), Stage 1 Development Works (Option B) or Stage 1 Development Works (Option C) as elected by the Developer pursuant to clause 3.7.

**Stage 1 Development Works (Option A)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Stage 1 Development Works (Option B)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Stage 1 Development Works (Option C)** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Stage 1 Public Works** means the part of the Works carried out by the Developer which are required to complete the:

- (a) OSD Interface Vehicular;
- (b) OSD Interface Pedestrian (excluding the P1 Public Works); and
- (c) Public Realm,

as detailed in the Public Works Brief, but not including the P1 Public Works. For the avoidance of doubt, the Stage 1 Public Works also include the Temporary Bridge Works and the Bus Layover Overhead Platform as detailed in the Public Works Brief, although both are temporary and will be removed in accordance with clause 20.12 and clause 20.13 respectively.

**Stage 2 Development Works** means the part of the Works carried out by the Developer which are required to complete the second commercial tower, as further described in the Main Development Application (as the Main Development Application may be amended in accordance with this deed, including to reflect Acceptable Development Consents) and, in the event the Stage 1 Development Works comprises the Stage 1 Development Works (Option C), any make good works which may be required in the Public Realm between hoarding and the second commercial tower.

**State's Employees and Agents** means each of the State's employees, officers, agents, contractors, service suppliers, licensees and invitees (other than the Developer and the Developer's Employees and Agents).

**State Initiated Variation** means a Variation requested by the State pursuant to clause 18.2.

**State Land** means that part of the Development Land described as such in Schedule 6.

**State Owned Corporation** has the meaning contained in the State Owned Corporations Act 1989 (NSW).

**State Rejection Right (Approval)**

[REDACTED]

**State Rejection Right (Design)**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**State's Administration Costs** [REDACTED]

**State Unacceptable Condition** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Strata Scheme** means a strata scheme as defined in the *Strata Schemes (Leasehold Development) Act 1986* (NSW).

**Subdivide** and **Subdivision** means in respect of the Leasehold Land and that part of Lot 198 and Lot 14 affected by the Toga Boundary Realignment, registration of one or more:

- (a) plans of subdivision as defined in section 195 of the *Conveyancing Act 1919* (NSW); or
- (b) strata plans, strata plans of consolidation or strata plans of subdivision within the meaning of the *Strata Schemes (Leasehold Development) Act 1986* (NSW).

**Subdivision Documents** means:

- (a) any plans and documents which would have the effect of Subdividing any part of the Development Land, including any plans of subdivision (as defined in section 195 of the *Conveyancing Act 1919* (NSW)) and including the Toga Boundary Realignment;
- (b) any instrument creating or amending easements, covenants or restrictions under the *Conveyancing Act 1919* (NSW); and
- (c) any building management statement pursuant to section 196D of the *Conveyancing Act 1919* (NSW).

**Subdivision Strategy** means the subdivision strategy in Schedule 15.

**Subsidiary** has the meaning given in the Corporations Act and, in addition:

- (a) a trust may be a Subsidiary, for the purpose of which a unit or other beneficial interest will be regarded as a share and the ability to control the appointment or removal of the trustee is considered to satisfy the test set out above; and
- (b) a corporation or trust may be a Subsidiary of a trust if it would have been a Subsidiary if that trust were a corporation.

**Substantial Completion** means, in relation to the Basement, the point of time at which the Basement, as described in the Final Design Documentation, has been completed in accordance with:

- (a) the Works Documents; and
- (b) the obligations of the Developer under this deed,

except for minor omissions and minor defects which the Independent Certifier determines the Developer has reasonable grounds for not promptly rectifying.

**Substantially Commenced or Substantial Commencement** means demolition of the improvements on the Leasehold Land as at the Commencement Date which are relevant to that Works Portion has commenced.

**Sunset Date** means the First Sunset Date, Second Sunset Date, the Third Sunset Date and the Fourth Sunset Date.

**Supplier** has the meaning given to that term in clause 50.3.

**Supporting Structure** has the meaning given to that term in Schedule 30.

**Surrender Easements** has the meaning given in clause 22.4(a)(iii).

**Surveyor** means a surveyor who is a member of the Association of Consulting Surveyors NSW Inc. having at least 5 years' experience in surveying premises of the same type as the Development Land approved by the State (such approval not to be unreasonably withheld).

**Sustainability Obligations** means the sustainability obligations specified in the Western Gateway Design Guide.

**Sydney Innovation and Technology Precinct** means the Sydney Innovation and Technology Precinct as shown shaded in blue in the plan in Schedule 19.

**Sydney Trains** means Sydney Trains constituted under section 36 of the TAA.

**TAA** means the *Transport Administration Act 1988* (NSW).

**TAHE** means the Transport Asset Holding Entity of New South Wales constituted under section 4 of the TAA.

**TAHE Deed Poll** means a deed generally in the form of Schedule 18 and otherwise in a form acceptable to the State and the Developer (both acting reasonably).

**TAO Authorisation** means an authorisation issued by TfNSW in the context of the Technical Supplier Assurance Framework to a legal entity which verifies that it has the relevant systems and technical capability in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

**Taxes** means taxes, levies, imposts, deductions, charges and duties (excluding stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

**Technical Supplier Assurance Framework** means the document that outlines the arrangements for the development, implementation and management of technical outcomes for Transport Assets available at <https://www.transport.nsw.gov.au/industry/asset-management-branch>.

**Technically Assured Organisation** or **TAO** means a legal entity to whom the TfNSW has issued a TAO Authorisation.

**Temporary Bridge Works** means that part of the Stage 1 Public Works described as "Temporary Substation Access Works" in the Public Works Brief.

**Tenancy Documents** means any agreement for lease, agreement for licence, lease, licence or right of occupation or use (including any covenant or contractual right for use) of part of the completed Project.

**Tenant** means each tenant and licensee who has signed a Tenancy Document.

**Terrorist Act** has the meaning given to that term in section 3 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this deed.

**TfNSW** means Transport for NSW.

**TfNSW Transport and Customer Requirements** means the TfNSW requirements in Schedule 10.

**Third Party** has the meaning given to it in clause 19.1(b).

**Third Party Appeal** means legal proceedings which have been commenced in the Appeal Period by a person other than the State or the Developer in relation to the granting of an Approval.

**Third Party Services** means electricity, gas or water mains, telephone cabling, signalling cables, drainage, sewerage and other communications infrastructure or equipment installed, operated or owned by the State, other Public Authorities or Third Parties.

**Third Sunset Date** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Threatened Species Claim** means a claim made or legal proceedings commenced in connection with the existence of a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the Threatened Species Conservation Act 1995 (NSW), the National Parks and Wildlife Act 1974 (NSW) or the Environment Protection and Biodiversity Conservation Act 1999 (Cth).



**Tier 1 Builder** [REDACTED]

**Toga** means Toga Pty Ltd ACN 000 926 947.

**Toga Agreement** means an agreement entered into between the Developer and Toga resolved in accordance with clause 3.3(e).

**Toga Land** means Lot 198 and Lot 30 in Deposited Plan 877478.

**Toga Lease** means the lease of Lot 198 held by Toga pursuant to head lease AA651831.

**Transport Assets** means those assets which are vested in or owned, managed, controlled, commissioned or funded by the NSW Government, a NSW Government agency or a Public Transport Agency.

**Transport Standards** means the standards, plans, processes, procedures, instructions, requirements and guidance material (in whatever form) published externally or notified by the AMB in the exercise of its functions including any:

- (a) network and asset standards (including both technical and maintenance standards);
- (b) requirements for policies and processes in relation to TAO Authorisation;
- (c) asset management plans, systems and processes;



**Variation Order** means a Variation Proposal approved by the State in accordance with clause 18.2(e)(i).

**Variation Proposal** has the meaning in clause 18.2(d).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**Western Gateway Design Guide** means the document entitled the 'Western Gateway Design Guide' dated September 2021 contained in Schedule 26 and available (as at the date of this deed) at <https://www.planning.nsw.gov.au/-/media/Files/DPE/Manuals-and-guides/Western-Gateway-Design-Guide.pdf?la=en>.

**Western Gateway Publicly Accessible Design Strategy** means the document entitled "Western Gateway Sub-Precinct Publicly Accessible Space Strategy" Revision C dated 18 June 2021 and available (as at the date of this deed) at <https://www.planning.nsw.gov.au/-/media/Files/DPE/Strategy-documents/Plans-for-your-area/Western-Gateway-sub-precinct-Publicly-Accessible-Space-Strategy-June-2021-compressed-med.pdf#:~:text=This%20strategy%20provides%20a%20framework%20for%20the%20renewal,of%20broader%20changes%20occurring%20in%20the%20Central%20Precinct>.

**Western Gateway Sub-Precinct** means the land identified as the "Western Gateway Sub-precinct" on the Locality and Site Identification Map referred to in Sydney Local Environmental Plan 2012.

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

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

**Wind Mitigation Components** means the structures and other improvements (including screens and awning) to be installed or constructed which are necessary to mitigate the effects of wind on the Public Works Lot or on the OSD deck.

**Works** means:

- (a) the Stage 1 Public Works;
- (b) the Integration Works;
- (c) the Development Works;
- (d) the Pavilion Works, but only if the State gives the Developer a Pavilion Works Trigger Notice A before the Pavilion Works Trigger Notice A Sunset Date;
- (e) the IDF Fitout Works, but only if the State gives an IDF Fitout Works Trigger Notice to the Developer at least 24 months before the end of an IDF Fitout Works Trigger Notice Period (and the parties acknowledge and agree that, if carried out, the IDF Fitout Works will be carried out under the P1 Works Deed); and

all other work required to be performed or carried out to complete the Project.

**Works Documents** means:

- (a) the Approvals; and
- (b) the Final Design Documentation.

**Works Portion** means the following portions of the Works:

- (a) Stage 1 Public Works;
- (b) Stage 1 Development Works;
- (c) Stage 2 Development Works;
- (d) Pavilion Works, but only if the State gives the Developer a Pavilion Works Trigger Notice A before the Pavilion Works Trigger Notice A Sunset Date; and
- (e) IDF Fitout Works, but only if the State gives an IDF Fitout Works Trigger Notice to the Developer at least 24 months before the end of an IDF Fitout Works Trigger Notice Period (and the parties acknowledge and agree that, if carried out, the IDF Fitout Works will be carried out under the P1 Works Deed).

**Works Portion Commencement Date** means in respect of a Works Portion the date the Developer commences the carrying out that part of the Works the subject of that Works Portion.

**YHA** means YHA Limited (ACN 008 387 791) or its successors in title.

## 1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) other than in respect of the Dexus Guarantor or Frasers Guarantor, a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (c) other than in respect of the Dexus Guarantor or Frasers Guarantor, an agreement, representation or warranty by 2 or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (f) a document (including this deed) includes any variation or replacement of it;
- (g) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those

standards, in accounting principles and practices generally accepted in Australia;

- (h) dollars or \$ is a reference to Australian currency;
- (i) a time of day is a reference to Sydney time;
- (j) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (l) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (m) the obligations of the State under and in connection with this deed are limited to those expressly stipulated in this deed;
- (n) unless the context otherwise requires, defined terms will extend to all parts of speech which are derivative from that term; and
- (o) if a day by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur by the next Business Day.

### **1.3 Guarantor's obligations**

- (a) The obligations and rights of each Guarantor under this deed and each other Project Document are several.
- (b) Failure of a Guarantor to perform its obligations under this deed or a Project Document does not relieve any other Guarantor from any of its obligations under this deed or any other Project Document.
- (c) No Guarantor is responsible for the obligations of any other Guarantor under this deed or any other Project Document.

### **1.4 Number**

The singular includes the plural and vice versa.

### **1.5 Headings**

Headings are for convenience only and do not affect the interpretation of this deed.

### **1.6 Developer's Employees and Agents**

If this deed prohibits the Developer from doing a thing in the performance of the Works, then:

- (a) the Developer must use reasonable endeavours to ensure that the Developer's Employees and Agents do not do that thing; and
- (b) the Developer may not authorise or cause any person to do that thing.

## 1.7 Ambiguity and inconsistency

If there is any ambiguity or inconsistency between any of the documents comprising the Project Documents, that ambiguity or inconsistency will be resolved by interpreting the Project Documents, in the same order of priority that they are referred to in the definition of the 'Project Documents' in clause 1.1.

## 1.8 Authorities

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
- (i) the State or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
  - (ii) the AMB to exercise any of its functions and powers, including any functions or powers required to be exercised by the State or any Rail Transport Agency pursuant to the Configuration Management Framework.
- (b) Without limiting clause 1.8(a), anything the State, any other Rail Transport Agency or AMB does, or fails to do or purports to do, pursuant to their respective functions and powers either as a TAO or under any legislation, will be deemed not to be an act or omission by the State under this deed.
- (c) Subject to any express right of the Developer to make any Claim against the State or TAHE under this deed, the Developer:
- (i) waives any Claims that it may have against the State pursuant to this deed as a result of the exercise by the State, any Rail Transport Agency or the AMB of their respective functions and powers either as an TAO or under any legislation or the Configuration Management Framework (other than any Claim the Developer may have for an extension of time in accordance with this deed); and
  - (ii) acknowledges and agrees that:
    - (A) there are many Public Authorities with jurisdiction over aspects of the Works, parts of the Development Land and other areas affecting and affected by the Works;
    - (B) such Public Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Works (including, the exercise by persons (including individuals) acting on behalf of such Public Authorities of powers and functions including as necessary for such Public Authorities to comply with their statutory functions and powers); and
    - (C) subject to the Developer's express entitlements under this deed, it bears the full risk of all occurrences of the kind referred to in clause 1.8(c)(ii)(B) and will not be entitled to make, and the Developer will not be liable upon, any Claim arising out of or in any way in connection with such occurrences or any action it is required to take arising out of such occurrences (other

than any Claim the Developer may have for an extension of time in accordance with this deed).

- (d) Nothing in this deed will restrict, or require the exercise of, any right of the State, directly or through any Public Authority, 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.
- (e) Nothing in clause 1.8(a) or (b) affects:
  - (i) the State's liability to the Developer in respect of:
    - (A) a breach of this deed by the State; or
    - (B) any express right of the Developer to make any Claim against the State or TAHE under this deed; or
  - (ii) the liability of either the State or TAHE to the Developer (whether under this deed or otherwise) in relation to the matters contemplated in clause 26.

## 1.9 Transfer of functions

- (a) The Developer acknowledges that:
  - (i) the State may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, liabilities or responsibilities of the State may be transferred to or vested in another entity;
  - (ii) if the State is reconstituted, renamed, dissolved, replaced or restructured or if some or all of its powers, functions, assets, liabilities or responsibilities are transferred to or vested in another entity, references in the Project Documents to the State or TfNSW must, subject to any facilitative legislation, be deemed to refer, as applicable, to that reconstituted, renamed, restructured or new entity to the extent that the entity has assumed or has had transferred to it or vested in it those powers, functions, assets, liabilities or responsibilities; and
  - (iii) the State may, or may be required to (including as a result of changes to New South Wales Government policy or directions) acquire or dispose of, any property or assets forming part of the State's assets at its absolute discretion but agrees not to assign this deed to, or dispose of the Leasehold Land to, an entity which is not a Public Authority, a State Owned Corporation or any other entity owned or controlled by the New South Wales government.
- (b) The Developer acknowledges and agrees that it must, to the extent required by the State and without limiting any facilitative legislation, negotiate in good faith any variations required to the Project Documents, or any replacement agreement or agreements for the Project Documents to give effect to the State being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Developer shall be taken for all purposes to have consented to, and the Developer will have no Claim against the State as a result of, any action, matter or circumstance referred to in, or contemplated by, this clause.

- (d) For the purposes of this clause, 'another entity' and 'reconstituted, renamed, restructured or new entity' means a Public Authority and may include a State Owned Corporation or any other entity owned or controlled by the New South Wales government to whom powers, functions, assets, liabilities or responsibilities are transferred pursuant to any Law.

### 1.10 TAHE Deed Poll

The Developer must on the date of execution of this deed execute and deliver to TAHE, with a copy to the State, the TAHE Deed Poll.

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## 2 Objectives and risks

### 2.1 Project Objectives

- (a) The State's objective for the Project is to deliver a development that:
- (i) meets the TfNSW Transport and Customer Requirements and is aligned with the objectives of the Central Precinct Renewal Program (as set out in the TfNSW Transport and Customer Requirements);
  - (ii) promotes and facilitates a coordinated and integrated development of the Precinct and broader Central Precinct Renewal Program;
  - (iii) meets the State's safety standards in relation to the design, construction, asset delivery and commissioning of the Works;
  - (iv) delivers the Works in a cooperative manner with adjacent landholders (including TAHE), businesses, stakeholders and the community to minimise disruption and inconvenience;
  - (v) contributes to environmental, social and economic sustainability, while recognising the heritage significance of the surrounding area;
  - (vi) incorporates a combination of commercial and retail facilities, achieving the highest quality design outcomes having regard to the Development Land,

and to collaborate with the Developer in respect of the matters set out in Schedule 26.

Despite any other provision of this deed, the parties acknowledge and agree that the Developer is not required to incur any material costs in respect of the co-ordination and integration referred to in paragraph (ii) or the delivery of Works in a cooperative manner referred to in paragraph (iv) unless it is required to do so in order to comply with a specific obligation under this deed.

- (b) The Developer's objectives for the Project are:
- (i) to achieve the Development Works in accordance with the Milestones;
  - (ii) to implement the Subdivision Strategy;



- (iii) for the Developer or its nominee to be [REDACTED];
- (iv) to deliver creative commercial workspace for tech occupiers in the Sydney Innovation and Technology Precinct that underpin Sydney's enduring global competitiveness;
- (v) to integrate with the broader Central Precinct by delivering an activated public realm with lively retail and dining and improved transport customer experience; and
- (vi) to contribute to the wider renewal of the Central Precinct by delivering underground smart building services, waste and utility infrastructure necessary for an integrated and sustainable precinct,

and to collaborate with the State in respect of the matters set out in Schedule 26.

## 2.2 Project Risks

- (a) Unless otherwise provided in this deed including, without limiting clause 26.1(b), the Developer accepts all risks in connection with the Project, including as to:
  - (i) carrying out all elements of the Project;
  - (ii) the Site Conditions, except to the extent provided in clause 26.1(b);
  - (iii) whether or not the Development Land is suitable for the Project and the Works;
  - (iv) Environmental Liabilities except to the extent provided in clause 26.1(b);
  - (v) whether the actual Cost of the Project is greater than the Cost of the Project as estimated by the Developer;
  - (vi) whether the actual revenue and profit derived by the Developer from the Project is less than the revenue and profit from the Project estimated by the Developer; and
  - (vii) obtaining all necessary Approvals and additional consents from Public Authorities and third parties.
- (b) The Developer must, prior to the date of execution of the Building Contract, prepare and provide to the State a plan which describes the Developer's required responses to deal with COVID-19 in relation to the conduct of the Works, which plan must deal with:
  - (i) steps designed to promote worker safety and minimise infection and hygiene risk to employees involved in the Works;
  - (ii) use of social distancing, PPE and other appropriate measures where appropriate;
  - (iii) employee training in relation to COVID-19 matters;
  - (iv) management of supply chain risks arising from COVID-19; and

- (v) the Developer's management and governance strategies to deal with the strategies contained in the plan.

## 2.3 Commitment by the Developer

Unless otherwise provided in this deed, the Developer acknowledges and agrees that in undertaking the Project it must at its cost and risk, design, carry out and complete each item of Works in accordance with:

- (a) the Public Works Brief;
- (b) the Project Scope;
- (c) the Development Consent;
- (d) Approvals;
- (e) the Development Program, provided that (subject to the express provisions of this deed) the Developer is not liable to the State for delays in completion of the Works;
- (f) the Precinct Management Agreement (except to the extent that its provisions are suspended, released, waived or terminated);
- (g) Existing Easements (except to the extent that they are suspended, released, waived or terminated); and
- (h) this deed.

## 2.4 No reliance on Disclosure Materials (Non Reliance)

- (a) The Disclosure Materials (Non Reliance) are provided for the information of the Developer. The State does not warrant the accuracy or completeness of the Disclosure Materials (Non Reliance). The Developer acknowledges that it has reviewed the Disclosure Materials (Non Reliance) and warrants that it has:
  - (i) made its own assessment of the Disclosure Materials (Non Reliance) and their accuracy; and
  - (ii) not relied on the Disclosure Materials (Non Reliance) in entering into this deed,

but nothing in this subparagraph will limit or otherwise affect the Developer's obligations under this deed.

- (b) The Developer may not make any claim against the State in connection with the Disclosure Materials (Non Reliance) including in connection with their accuracy or completeness.

## 2.5 State exercising statutory powers

- (a) The State enters into this deed as the landowner and in no other capacity.
- (b) Nothing in any Project Document operates to restrict or otherwise affect the State's statutory discretion in exercising its powers as a Public Authority. If there is any conflict between the unfettered discretion of the State in the exercise of such powers, and the performance of the State's obligations in a Project Document, the former prevails.

- (c) The exercise of any rights by the State in its capacity as a Public Authority will not be a breach of this deed.

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### 3 Conditions Precedent

#### 3.1 Conditions Precedent acknowledgement

- (a) Subject to clause 3.1(b), the rights and obligations of the parties under this deed, other than the provisions of:

██

██

- (iii) Clause 15 (Commencement of Works and Access);
- (iv) Clause 18.1(a), 18.5 (to the extent that it requires the Developer to carry out the Public Works), 18.6, 18.7, 18.8 (to the extent that it requires the Developer to carry out the Public Works), 18.10;
- (v) Clause 19 (Relocation of Third Party Services);
- (vi) Clause 20 (Achieving Practical Completion of each Works Portion);
- (vii) Clauses 22.9 (IDF Operational Plan);
- (viii) Clause 22.13 (Leases);
- (ix) Not used;
- (x) Clauses 24.1 to 24.4 (inclusive) which require the Developer to carry out (or procure the carrying out of) the Works, provided that clauses 24.1 to 24.4 (inclusive) will apply to the Early Works to the extent applicable;
- (xi) Clauses 24.5, 24.6, 24.7 and 24.8(b), (c) and (d);
- (xii) Clause 27 (Care of surrounding areas and safety);
- (xiii) clauses 29.1 (Contract works insurance) and 29.2 (Amount of insurance);
- (xiv) clauses 29.3 (Public and products liability insurance) and 29.4 (Amount of public and products liability insurance);
- (xv) clause 29.10 (Motor vehicle insurance);
- (xvi) clause 31 (State's right to enter, inspect and carry out Works);
- (xvii) clause 32 (Defects Liability and Final Completion Certificate for a Works Portion for the Public Works); and
- (xviii) clause 33 (Security),

**(Suspended Provisions)**

will commence on the date of this deed.



[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**3.3 Satisfaction of Conditions Precedent**

[Redacted]

- (b) The Developer must keep the State informed of its progress in satisfying the Conditions Precedent under this clause 3.3 by:
  - (i) including an update of the activities being undertaken by the Developer to pursue satisfaction of the Conditions Precedent in the DCG Report provided under clause 16.2;
  - (ii) notifying the State in writing within 10 Business Days of the date on which each Condition Precedent is satisfied or has been waived; and
  - (iii) if requested, providing the State with updates of the Developer's progress in satisfying the Conditions Precedent.
- (c) The Developer must inform the State if it considers (acting reasonably) that any of the Conditions Precedent are incapable of being satisfied. The Developer must notify the State in its notice under this clause 3.3(c) whether the Developer proposes to waive the relevant Condition Precedent.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

**3.4 Satisfaction or waiver of Conditions Precedent**

- (a) The parties acknowledge and agree that:
  - (i) the Condition Precedent in clause 3.2(a)(i) is for the benefit of the Developer and the State and can only be waived by the Developer by notice in writing to the State before the Conditions Precedent Sunset Date if the Development Consent as granted either:
    - (A) does not contain a State Unacceptable Condition; or
    - (B) contains a State Unacceptable Condition and the State agrees to the waiver of the Condition Precedent in its absolute discretion;
  - (ii) the Condition Precedent in clause 3.2(a)(ix) is for the benefit of the State and the Developer and can only be waived as agreed between the parties in writing before the Conditions Precedent Sunset Date; and
  - (iii) the Conditions Precedent (other than those referred to in clauses 3.4(a)(i) and 3.4(a)(ii)) are for the benefit of the Developer and can be waived by the Developer by notice in writing to the State before the Conditions Precedent Sunset Date.

[REDACTED]



### **3.5 Extension of Conditions Precedent Sunset Date**

- (a) The Developer may claim an extension of time to the Conditions Precedent Sunset Date if the Developer is or is likely to be delayed as a result of an act or omission of the State or the State's Employees and Agents (other than an act or omission which is permitted or contemplated by this deed or any other Project Document).
- (b) The Developer may only claim an extension of time to the Conditions Precedent Sunset Date:
  - (i) if the Developer gives to the State and the Independent Certifier details of the number of days claimed, the date the cause of the delay first arose and the date the delay ceased, within 20 Business Days after the earlier of the day the Developer became aware, and the day the Developer ought reasonably to have become aware, of the cause of the delay ceasing;
  - (ii) to the extent the delay has not been caused or contributed to by the Developer or the Developer's Employees and Agents (including any subcontractor or proposed tenant); and
  - (iii) if the Developer has used its reasonable endeavours to remedy the cause of the delay and to minimise the delay, provided the Developer is not obliged to incur any Costs in doing so.
- (c) If it is not practicable or possible to include the information referred to in clause 3.5(b)(i) in the notice referred to in that clause, then the Developer must provide the remainder of the information as soon as practicable after issuing the notice.
- (d) In determining whether the Developer is or is likely to be delayed in achieving a Condition Precedent as a result of the act or omission of the State or any of the State's Employees and Agents, the Independent Certifier:
  - (i) may take into account whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay provided the Developer is not obliged to incur any Costs in doing so; and
  - (ii) may not take into account whether the Developer can achieve the relevant Condition Precedent by the Conditions Precedent Sunset Date without an extension of time.



- (e) The State and the Developer acknowledge and agree that the Developer will be entitled to an extension of time to the Conditions Precedent Sunset Date if the Independent Certifier determines that the Developer is entitled to an extension of time to the Conditions Precedent Sunset Date.
- (f) If, in the reasonable opinion of the Developer, the Independent Certifier fails to make its determination in accordance with this clause 3.5 or fails to give sufficient reason for refusing to grant an extension of time to the Conditions Precedent Sunset Date, then the Developer may regard the circumstances as constituting a dispute between the State and the Developer for the purposes of clause 38.

### **3.6 FIRB**

The Developer warrants that it either has an exemption or does not require approval under the FIRB Act in relation to the entry into of this deed and the Project Documents or it has, prior to the date of this deed, obtained such approval and provided a copy to the State.

### **3.7 Stage 1 Development Works – option election**

- (a) On or before the date on which the last of the Conditions Precedent is satisfied or waived, the Developer may notify the State that the Stage 1 Development Works will comprise either:
  - (i) the Stage 1 Development Works (Option B); or
  - (ii) the Stage 1 Development Works (Option C).
- (b) If the Developer gives notice to the State under:
  - (i) clause 3.7(a)(i), the Stage 1 Development Works are the Stage 1 Development Works (Option B); or
  - (ii) clause 3.7(a)(ii), subject to clause 3.7(d), the Stage 1 Development Works are the Stage 1 Development Works (Option C).
- (c) If the Developer does not give a notice to the State under either clause 3.7(a)(i) or clause 3.7(a)(ii), the Stage 1 Development Works are the Stage 1 Development Works (Option A).
- (d) The parties acknowledge and agree that:
  - (i) the Developer's election contained in clause 3.7(a) will not effect the obligations of the Developer under this deed to carry out the Stage 1 Public Works;
  - (ii) the Subdivision Strategy, as at the date of this deed, contemplates that the Stage 1 Development Works will comprise either the Stage 1 Development Works (Option A) or Stage 1 Development Works (Option B);
  - (iii) if the Developer intends to give a notice under clause 3.7(a)(ii), then the Developer must, by no later than the date that is 30 Business Days prior to the anticipated date on which the last Conditions Precedent will be satisfied or waived, provide to the State:
    - (A) a revised Subdivision Strategy;

- (B) revised Design Documentation (Public and Integration Works);
- (C) revised Design Documentation (Development Works); and
- (D) a revised Development Program,

which takes into account the fact that the Stage 1 Development Works will comprise the Stage 1 Development Works (Option C) for the State's approval, acting reasonably and it is acknowledged that the State may as part of the approval, impose reasonable conditions in respect of the items in (A) to (D) (inclusive) arising from the revised sequencing of the Development Works; and

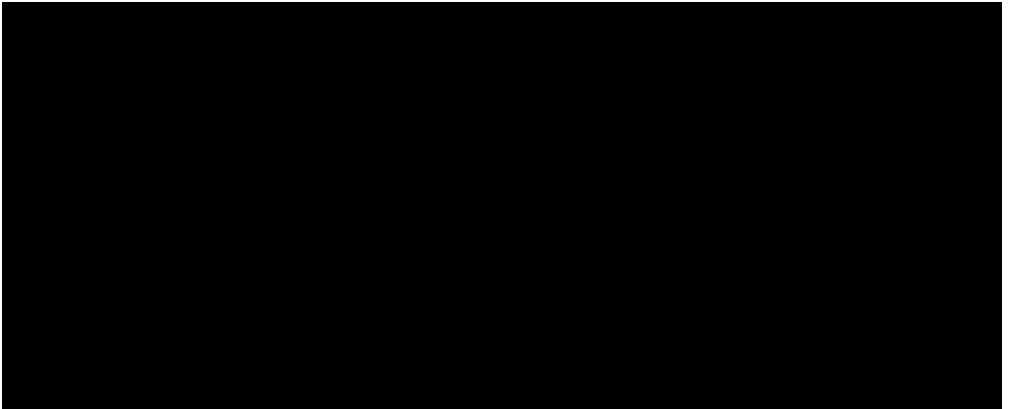
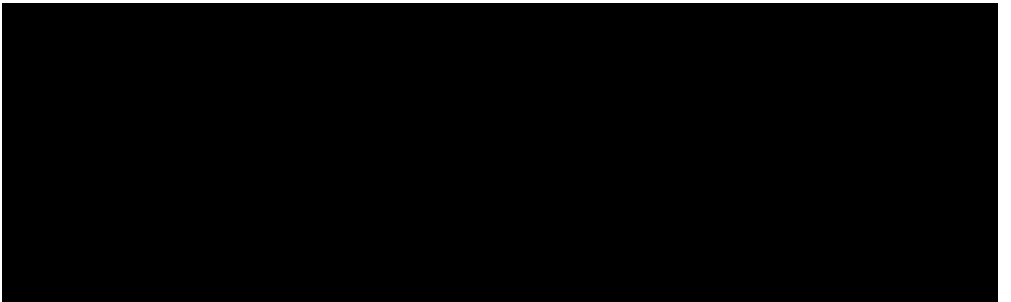
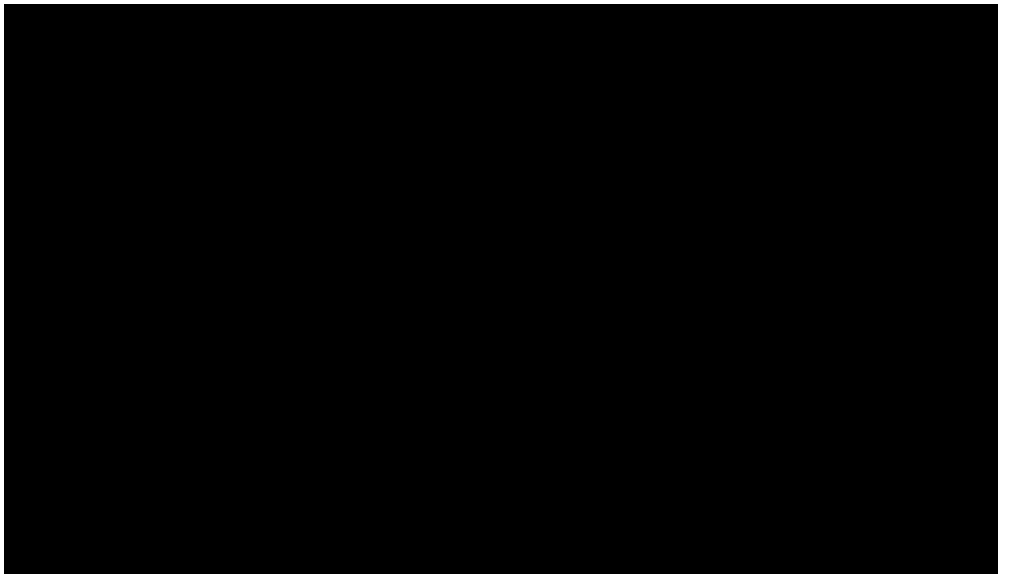
- (iv) once the revised Subdivision Strategy, revised Design Documentation (Public and Integration Works), Design Documentation (Development Works) and revised Development Program provided pursuant to clause 3.7(d)(iii) have been approved by the State, then those documents will be taken to be the Subdivision Strategy, Design Documentation (Public and Integration Works) and Development Program for the purposes of this deed.

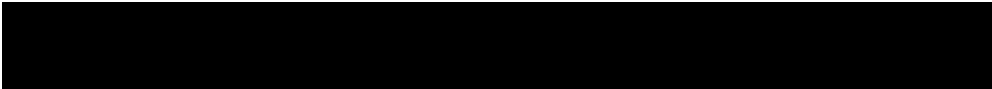
### 3.8 Early Works

- (a) The Developer must prepare and submit to the State the scope of works for the Early Works from time to time.
- (b) The State may within 10 Business Days of the scope of works for the Early Works being submitted in accordance with clause 3.8(a) review the scope of works and notify the Developer in writing whether the State approves or does not approve the scope of works. The State acknowledges and agrees that it must act reasonably in giving or withholding approval under this clause. If the State withholds approval to the scope of work for the Early Works, then either the State or the Developer may regard the circumstances as constituting a dispute which may be referred for determination in accordance with clause 38.
- (c) Where the State fails to provide a written notification to the Developer under clause 3.8(b) whether the State approves or does not approve the scope of works for the Early Works:
  - (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] and which must state that:
    - (A) the State has not given a notice under clause 3.8(b) as at the date of the email notice; and
    - (B) if the State does not provide a notice under clause 3.8(b) either giving or withholding approval to the scope of works for the Early Works within a further 2 Business Days, then the State will be deemed to have given a notice approving the scope of works; and
  - (ii) if the State does not provide a notice under clause 3.8(b) either giving or withholding approval to the scope of works for the Early Works within the 2 Business Day period referred to in clause

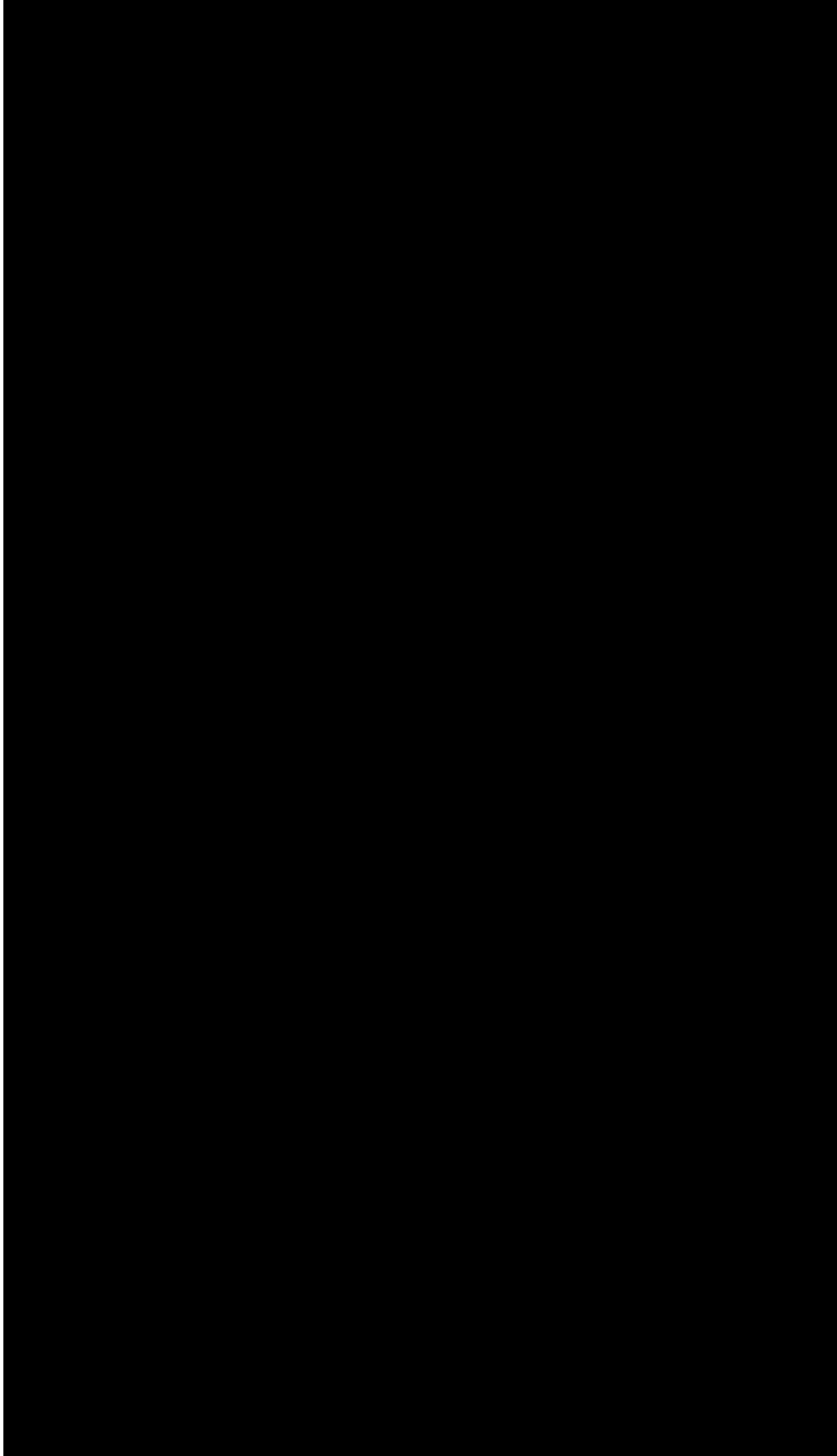
3.8(c)(i), the State will be deemed to have given a notice under clause 3.8(b) approving the scope of works.

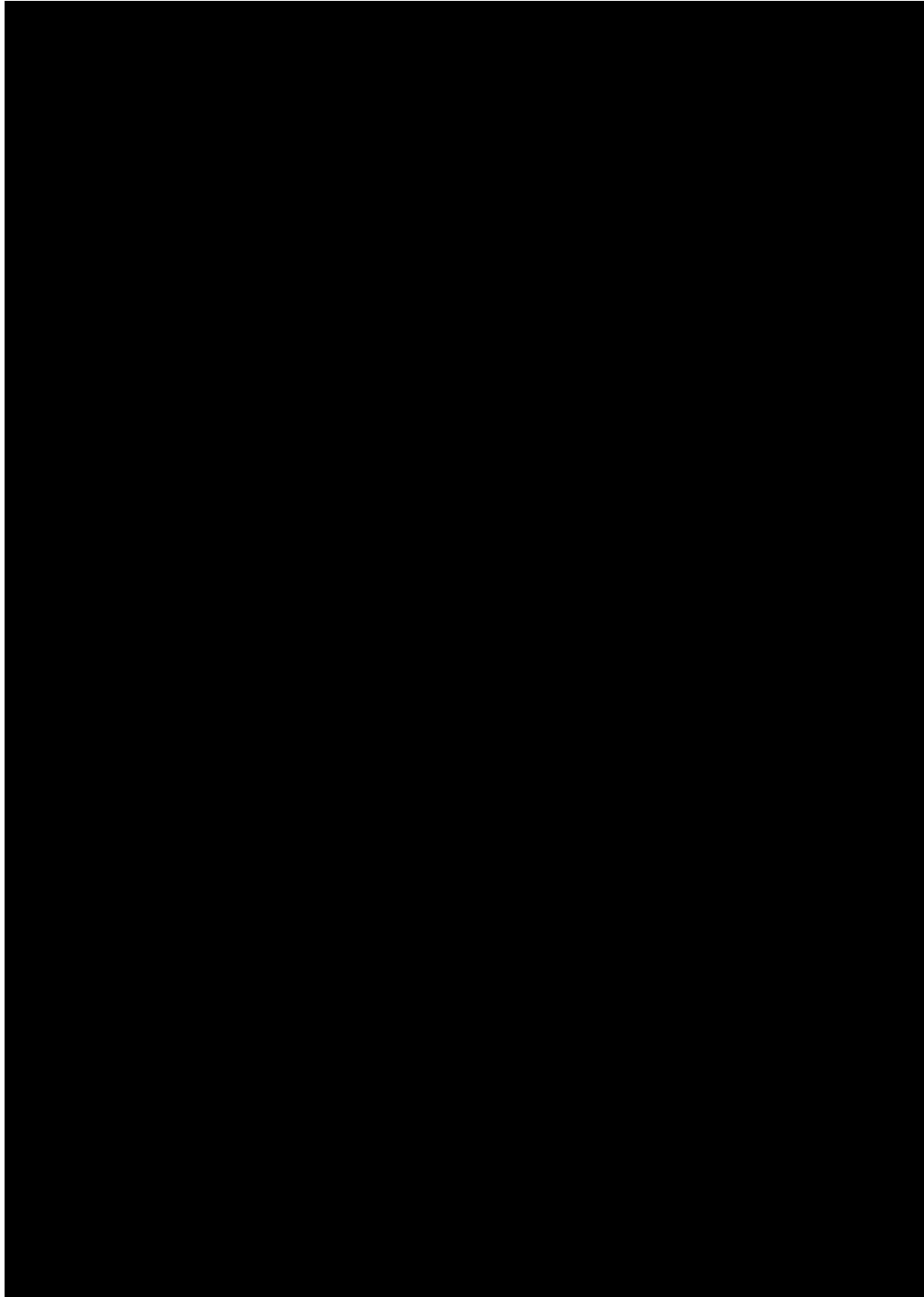
- (d) The Developer must give to the State not less than 30 days' notice prior to physical commencement of the Early Works.





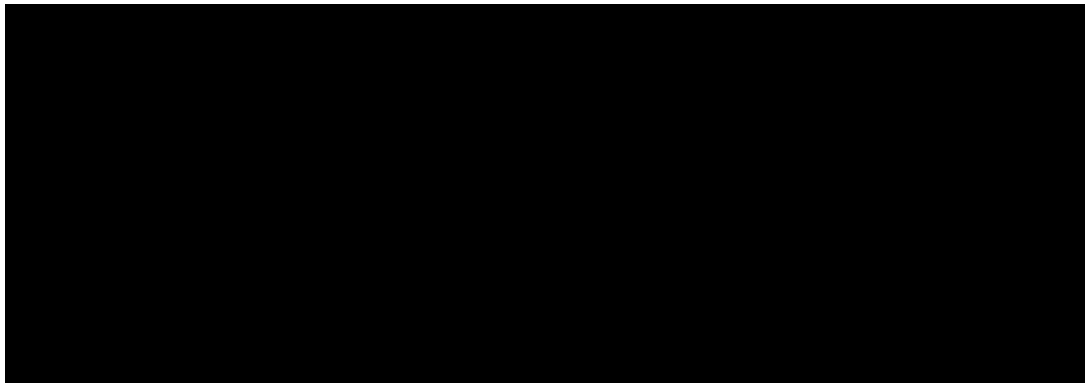
### **3.9 Rail Entity Approval Matters**

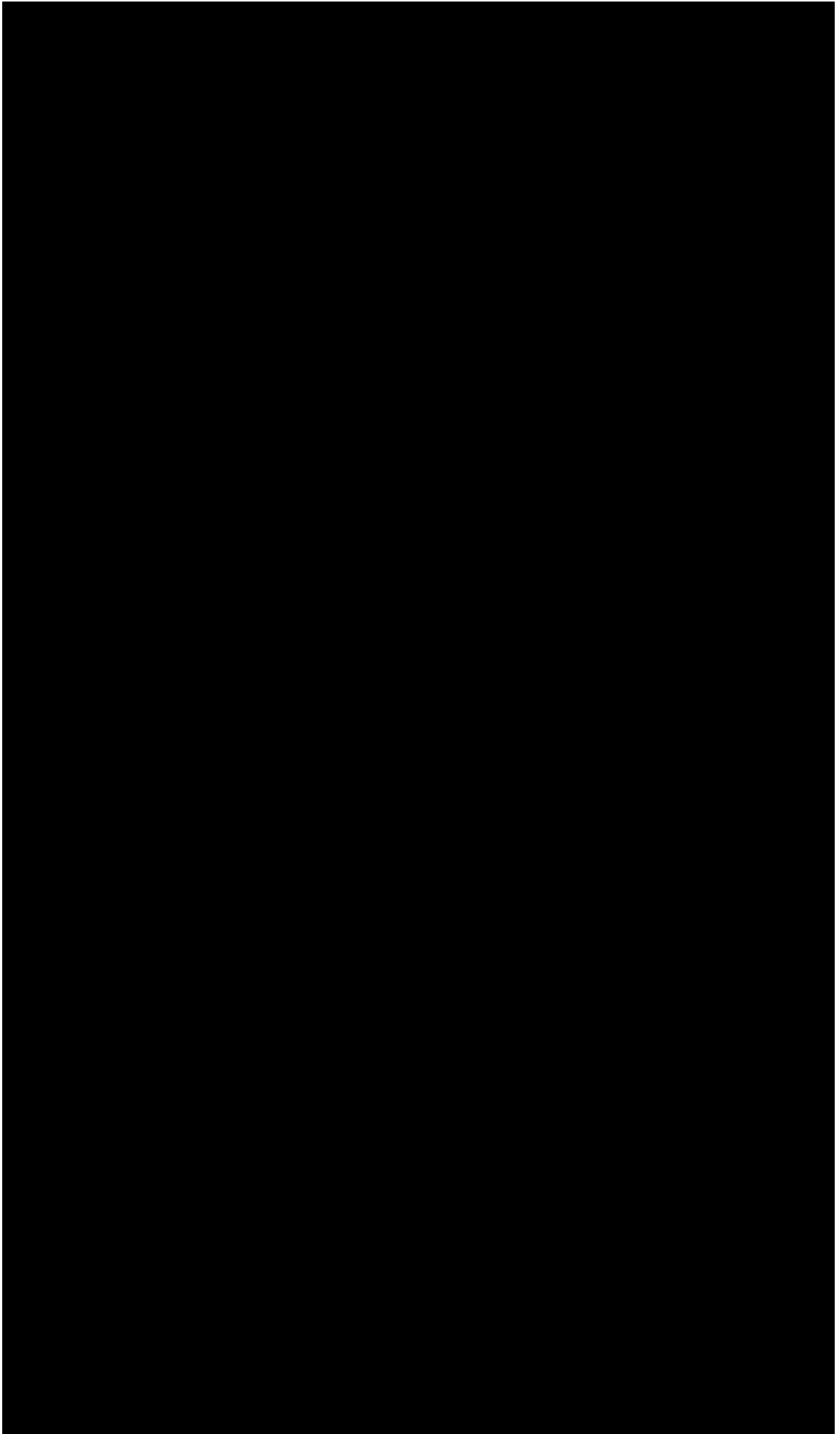


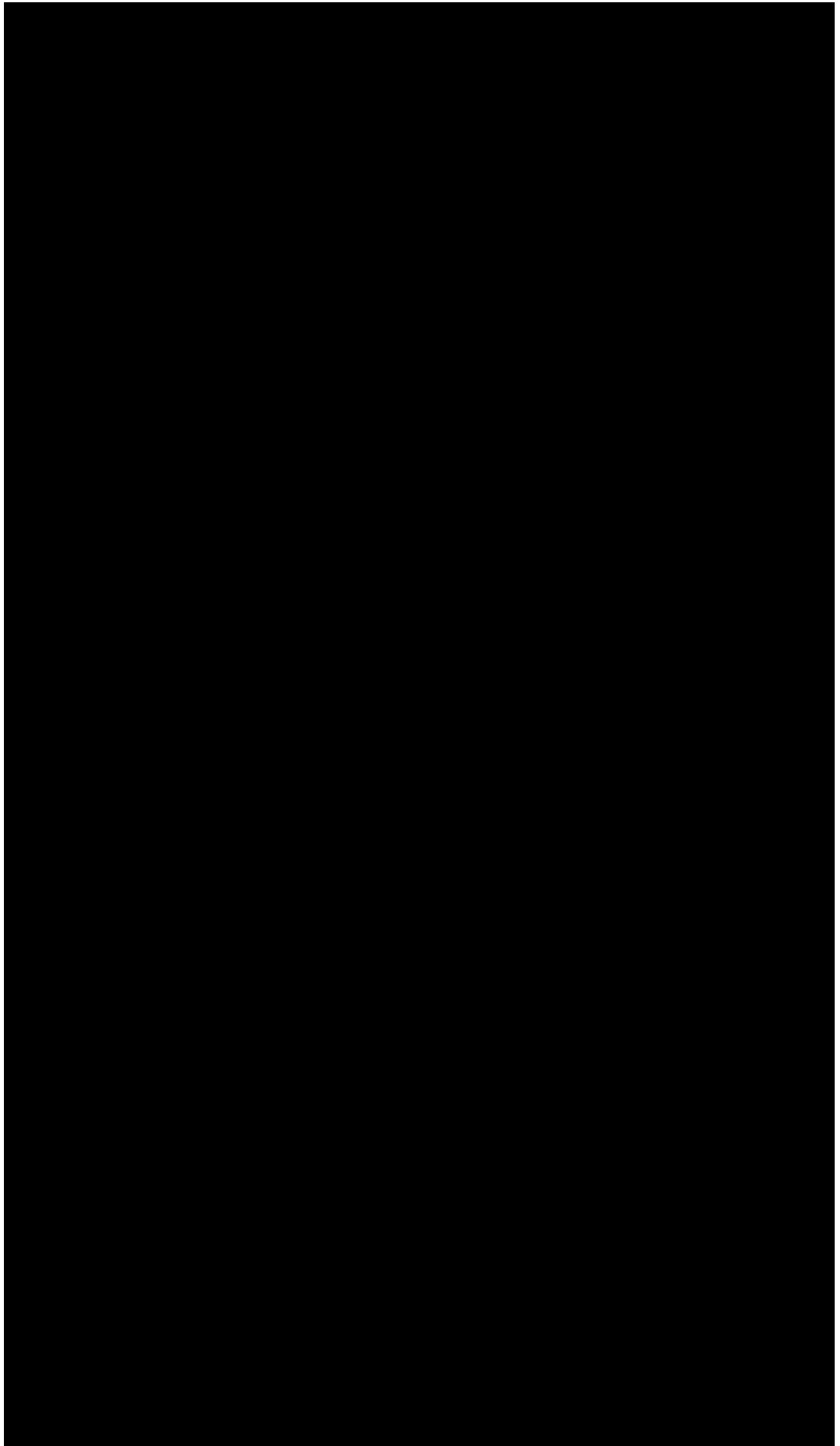


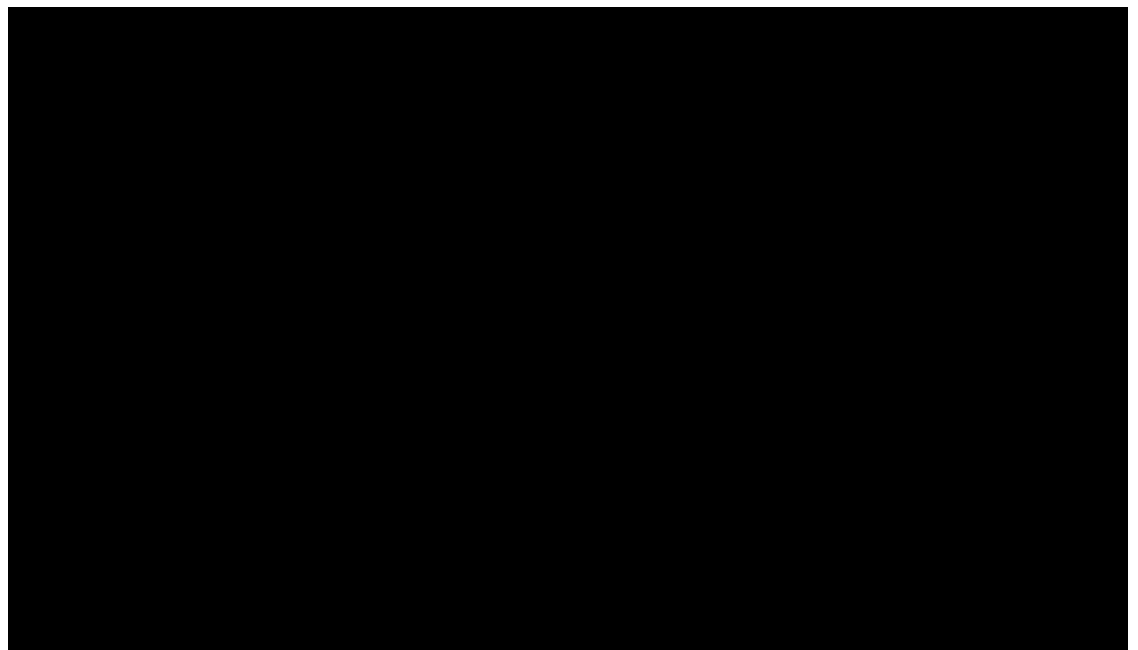
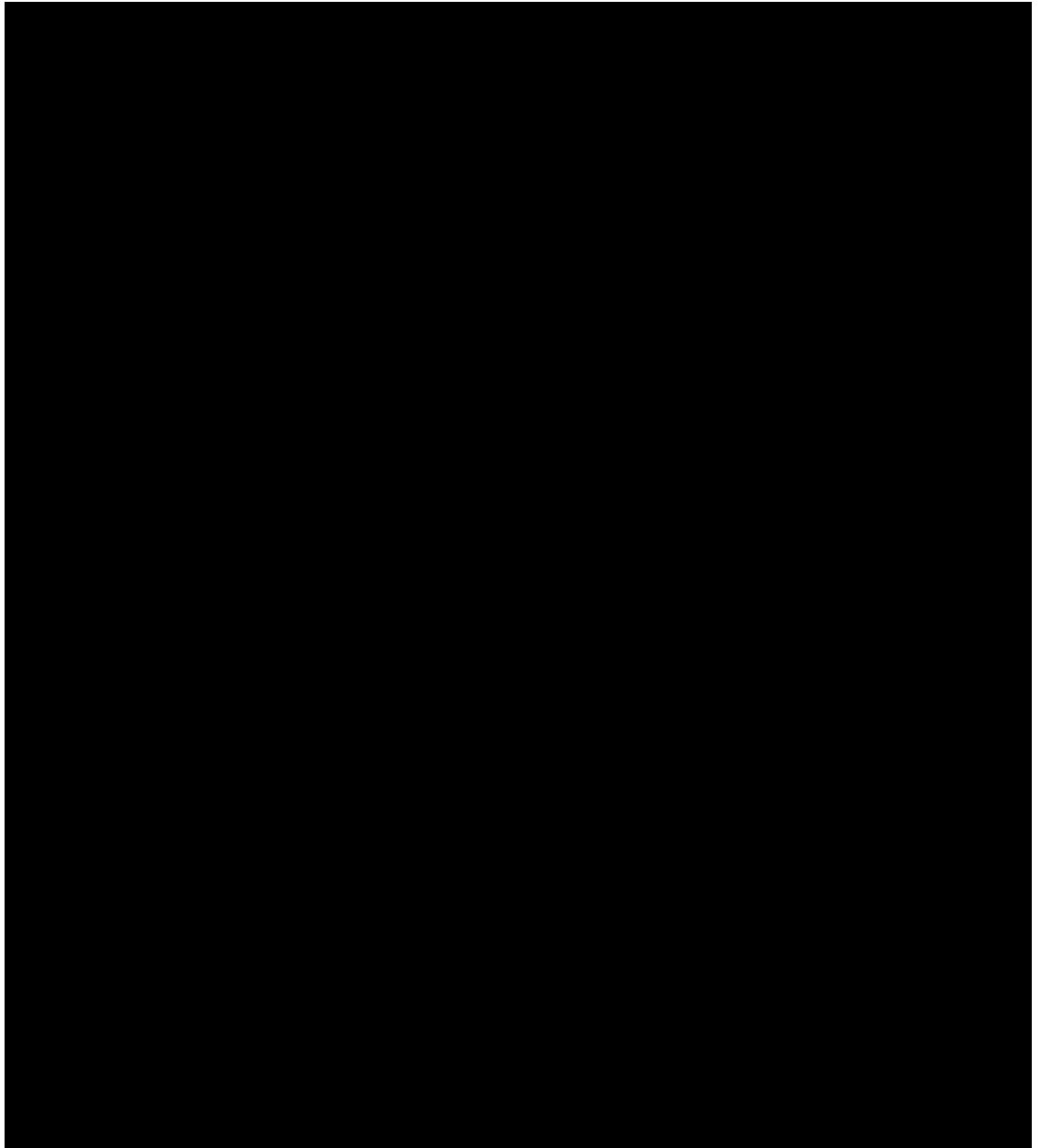
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**4 Development Consent**

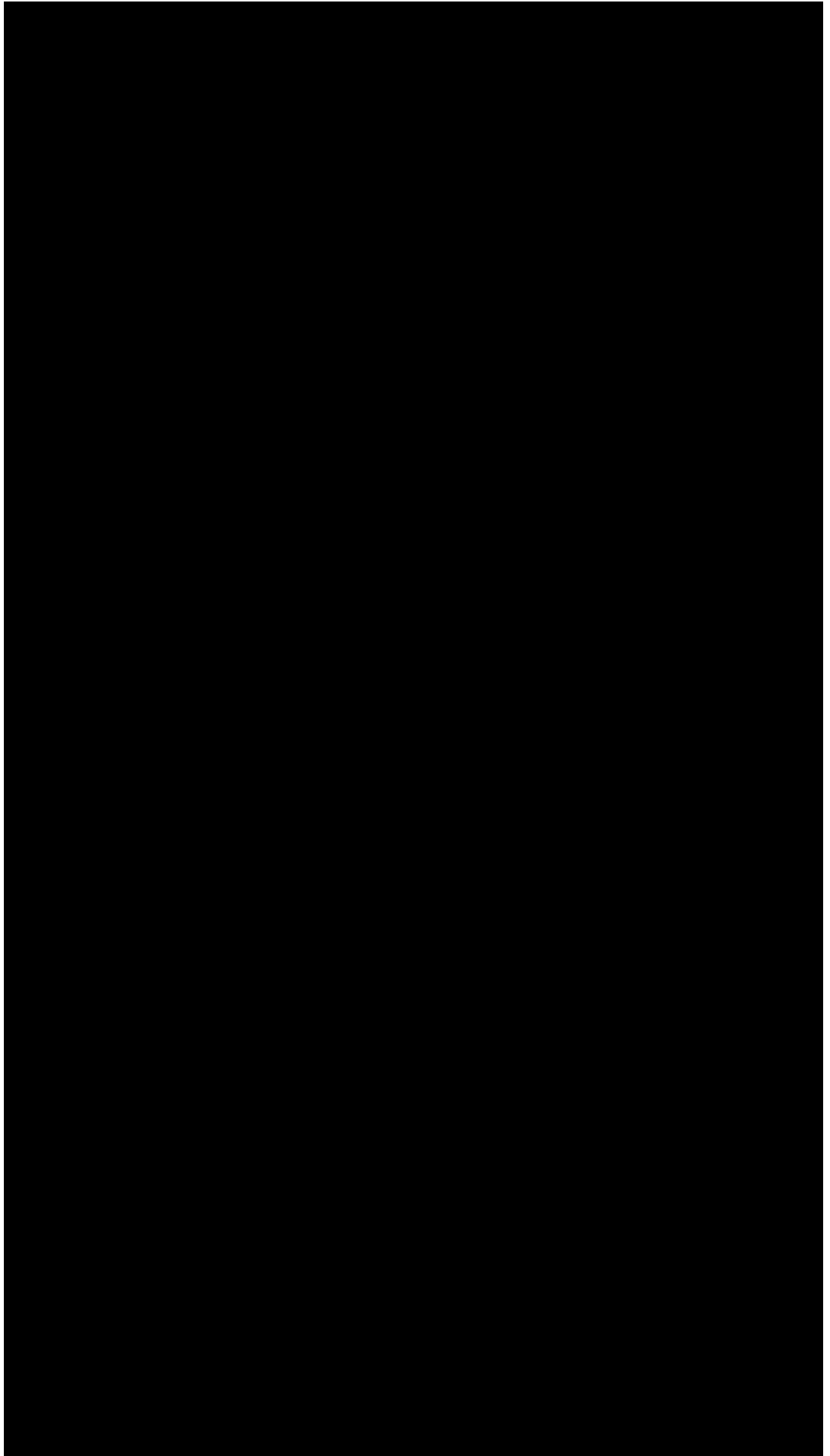


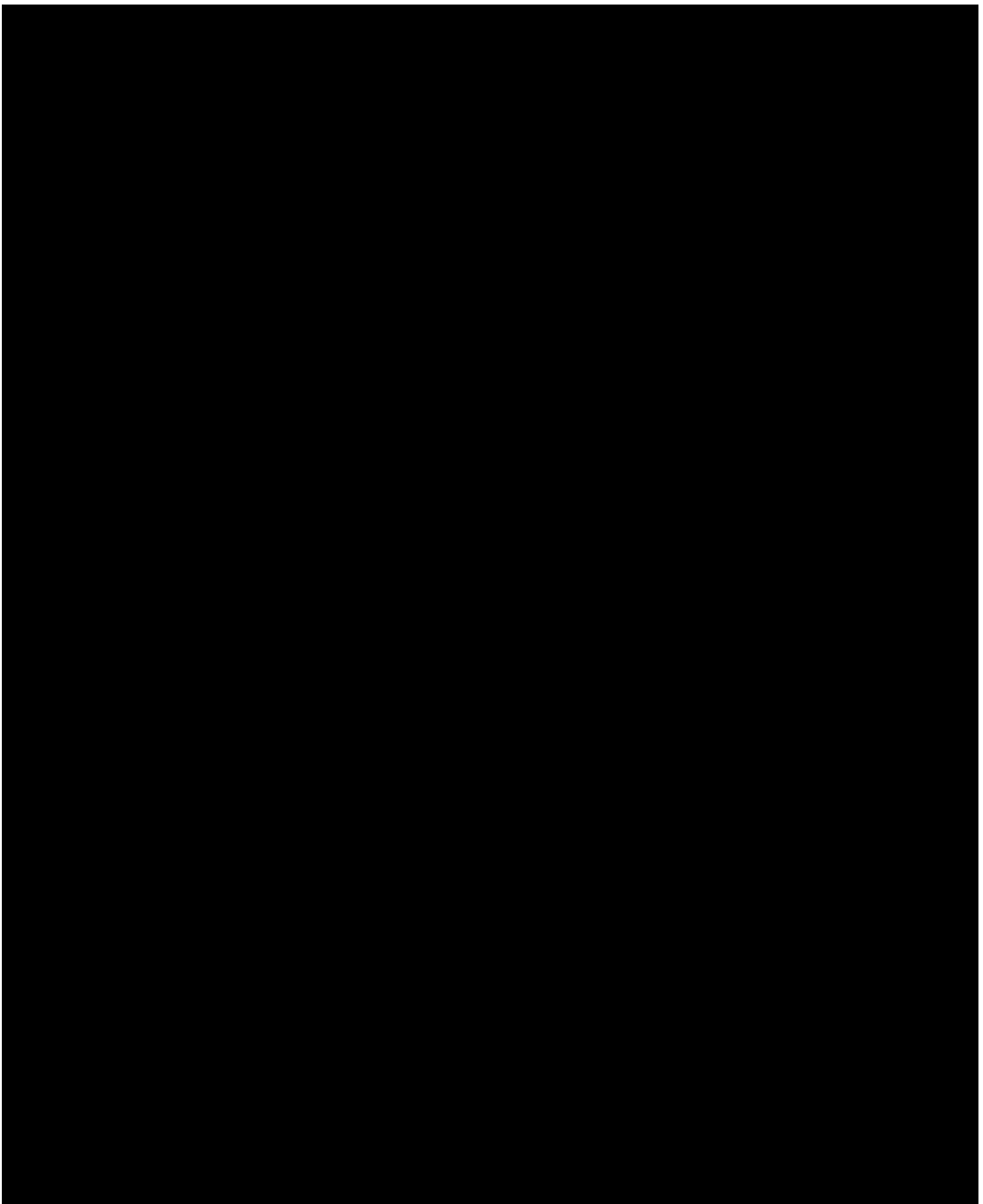


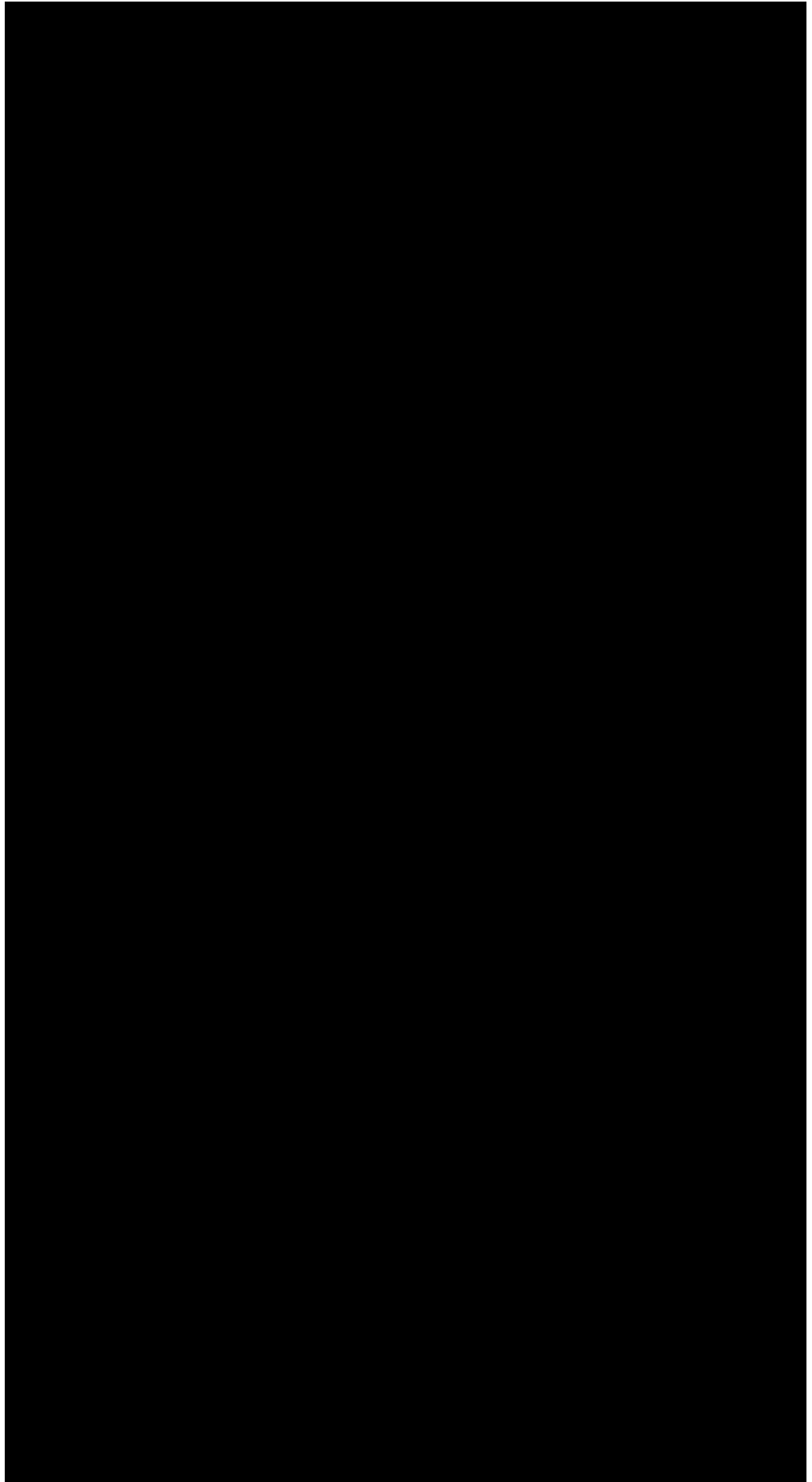


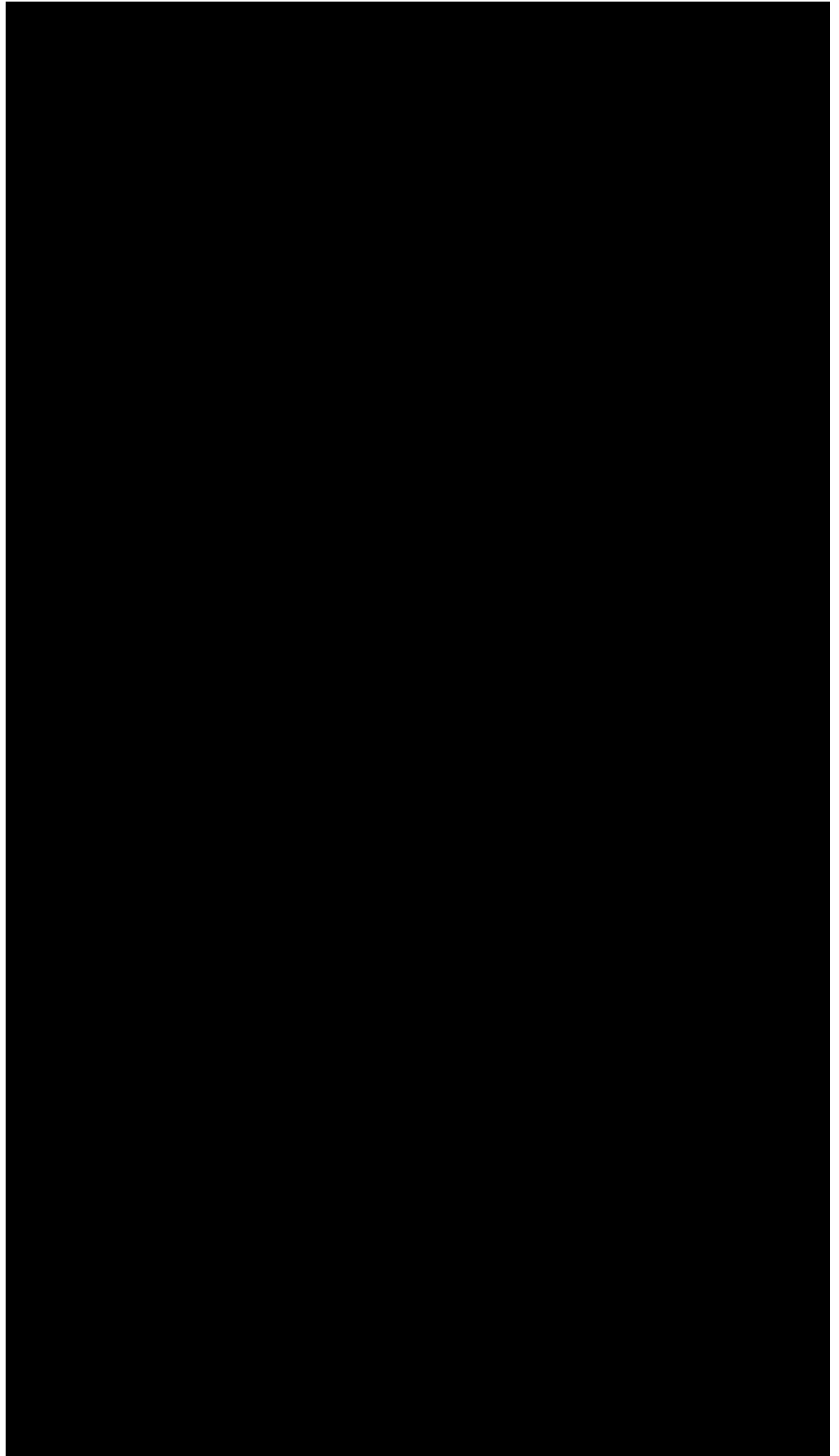


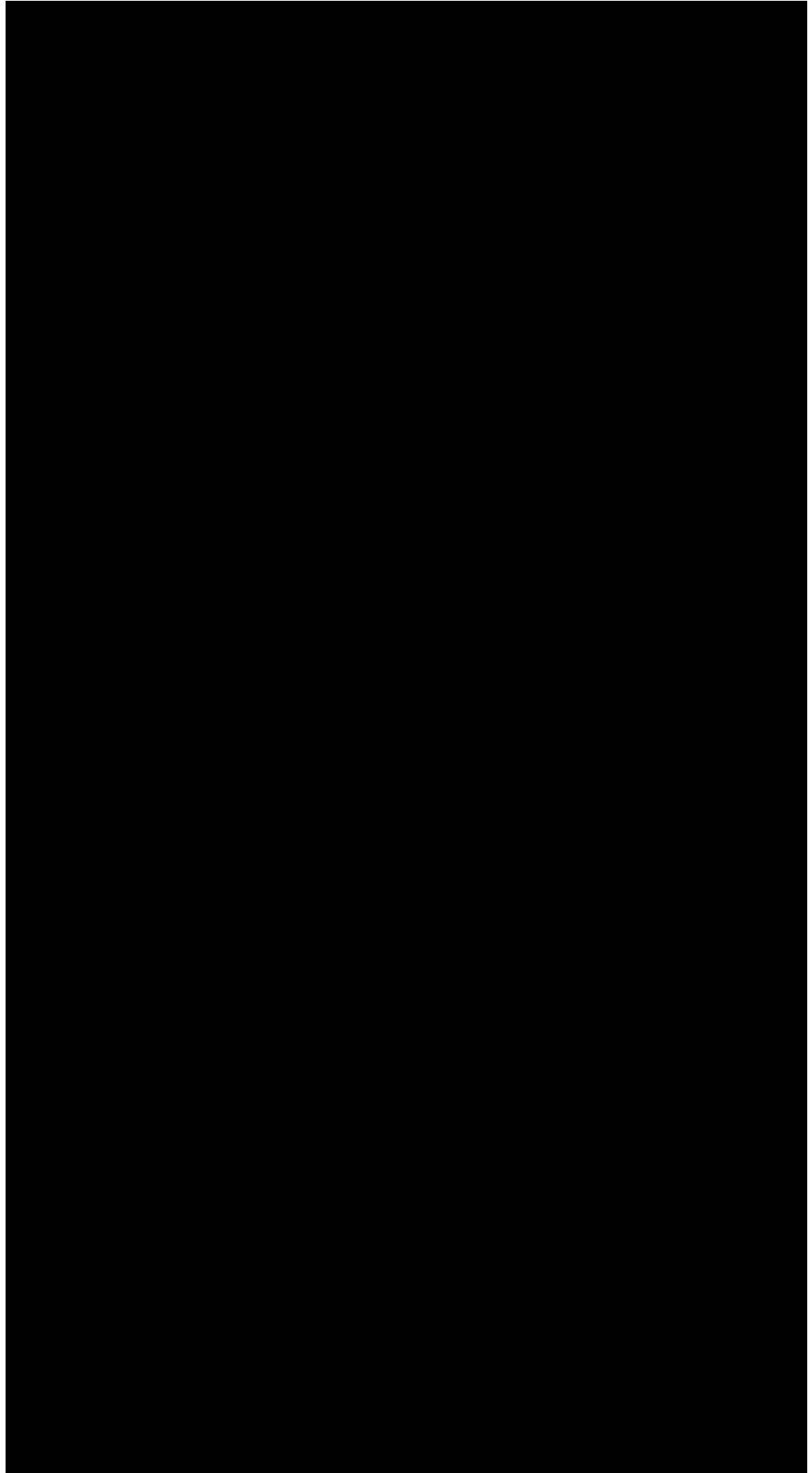


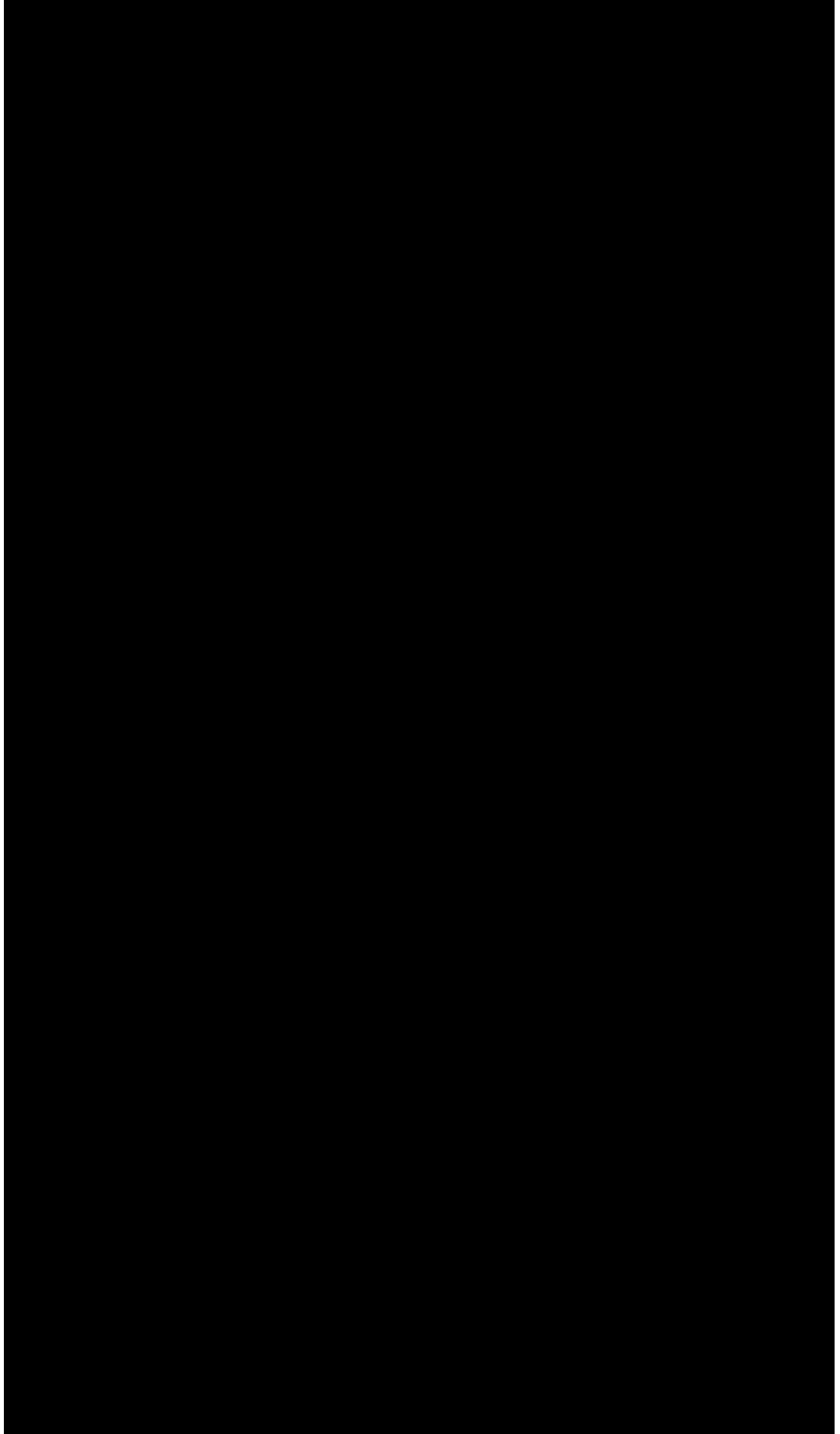


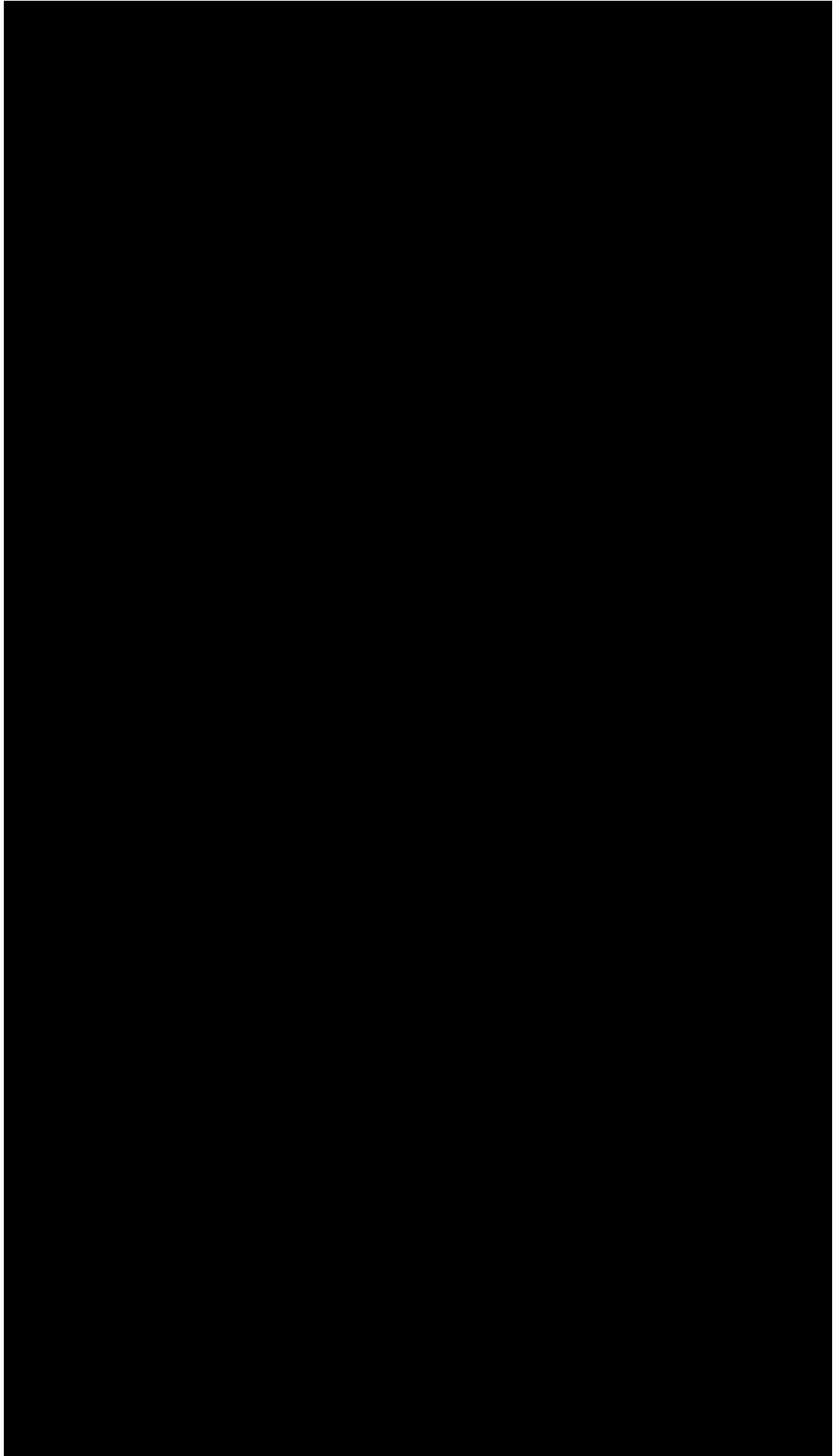


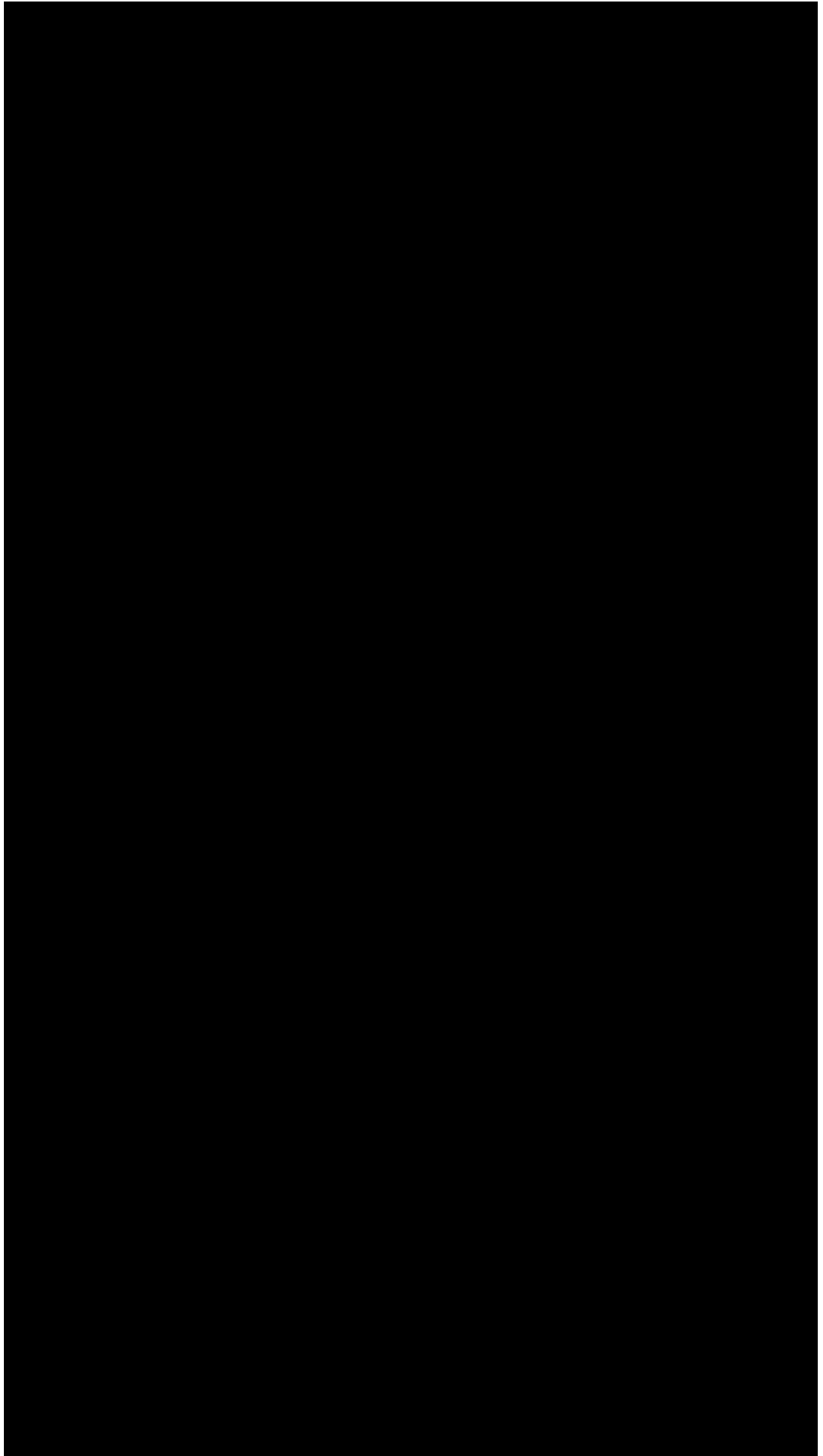




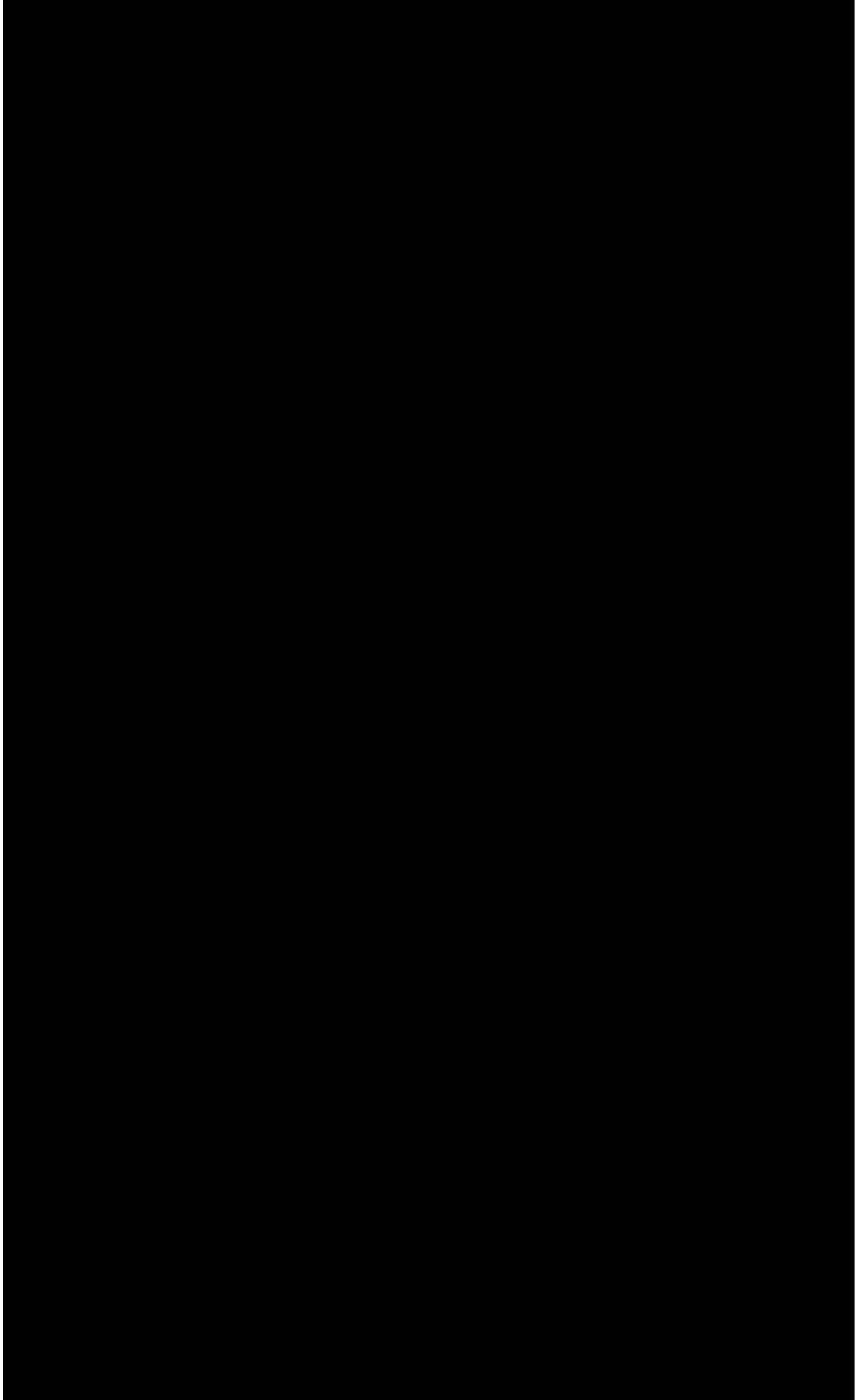


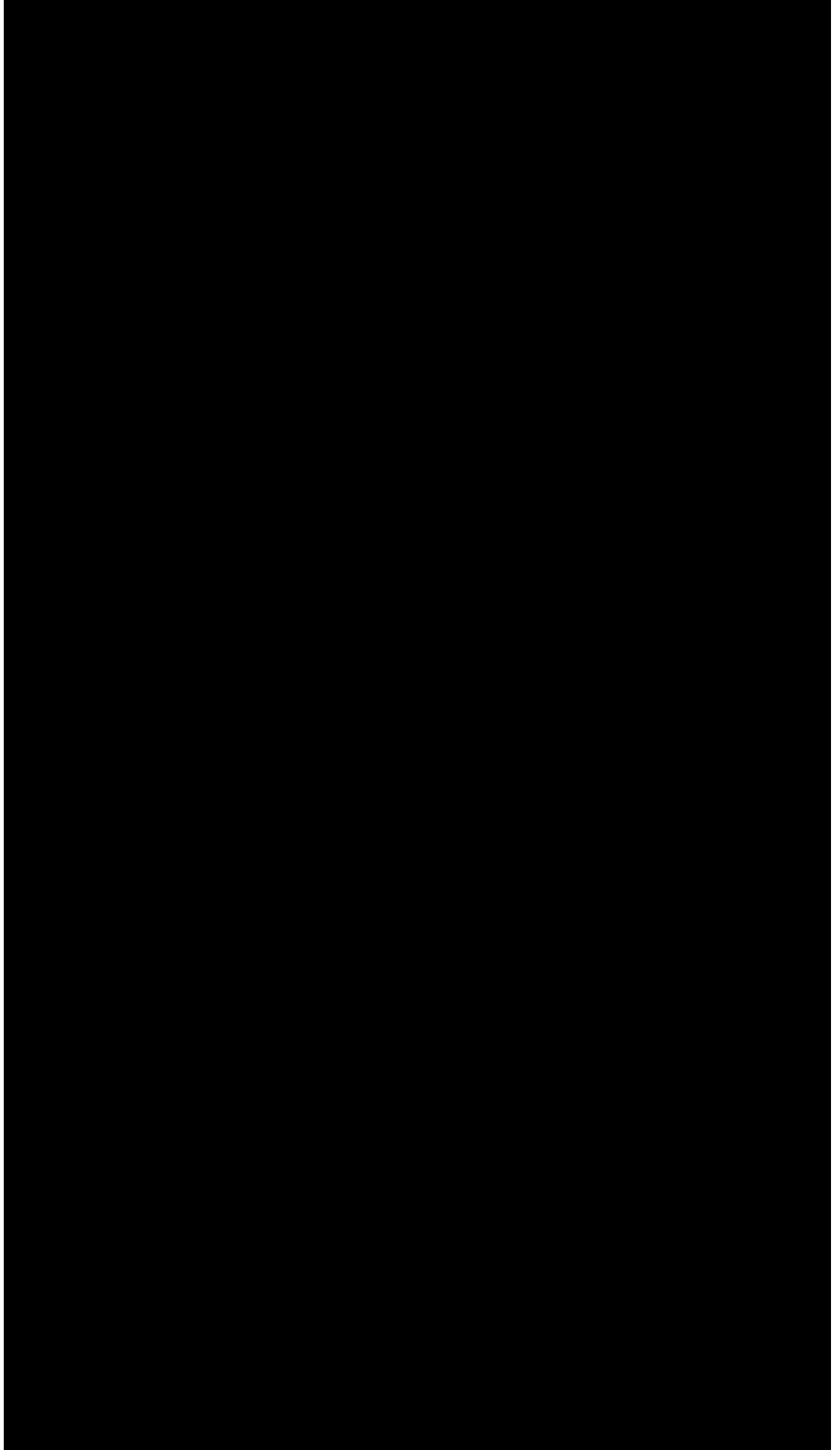


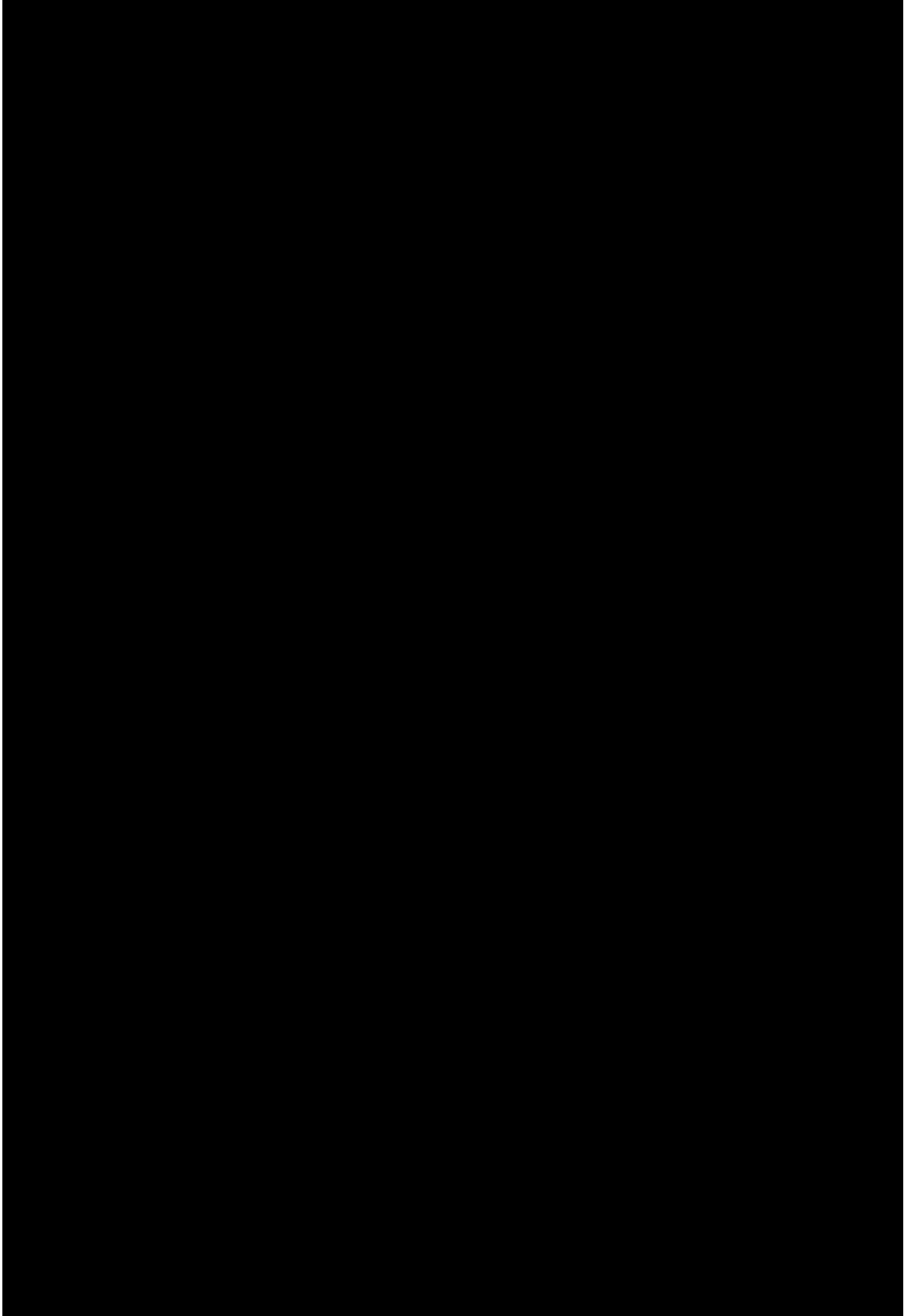












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## **6 Design**

### **6.1 Design Program**

- (a) The Developer must develop a draft design program which sets out the target dates for delivery of the Design Documentation (Public Works and

Integration Works) and provide that draft design program to the State for comment in accordance with clause 6.1(b).

- (b) The State must, within 20 Business Days of receiving the draft design program referred to in clause 6.1(a), either:
  - (i) notify the Developer that the State does not have any comments on the draft design program; or
  - (ii) notify the Developer of its comments on the draft design program and give the Developer its reasons (in sufficient detail) for those comments.
- (c) Upon receipt by the Developer of any notice under clause 6.1(b)(ii), the Developer must, as soon as practicable, consider the State's comments and, if the Developer considers it is reasonable to do so, amend the draft design program taking the State's comments into account, and subject to clause 6.1(d) re-submit the amended draft design program to the State for its comments.
- (d) The process set out in clause 6.1(b) will re-apply in respect of the draft design program which is amended in accordance with clause 6.1(c), but:
  - (i) the State's review of the draft design program will be limited to the items identified by the State in clause 6.1(b)(ii);
  - (ii) if the Developer has not amended the draft design program with respect to some or all of the State comments as it does not consider it to be reasonable to do so, the process set out in clause 6.1(c) and this clause 6.1(d) does not entitle the State to make the same comment or comments again; and
  - (iii) the State's applicable review period will reduce to 10 Business Days.
- (e) The draft design program (including any draft design program amended under clause 6.1(c)) finalised under this clause will be the Design Program.
- (f) The Developer may from time to time update the Design Program at its discretion. The Developer must provide the amended Design Program for comments and clauses 6.1(b) and 6.1(c) will apply.

## 6.2 Design responsibility

- (a) The Developer must:
  - (i) design, or procure the design of, the Works so that the design of the Works:
    - (A) utilises Best Industry Practice;
    - (B) satisfies the requirements of:
      - (aa) the Public Works Brief;
      - (ab) the Project Scope;
      - (ac) the TfNSW Transport and Customer Requirements;

- (ad) all Laws, Approvals, Codes and Standards; and
  - (ae) this deed;
  - (C) is (in respect of the Public Works) Fit for Purpose;
  - (ii) perform its design responsibilities with the skill, care and diligence expected of a professional designer experienced in projects of a similar nature to the Project; and
  - (iii) ensure that each member appointed to the Developer's design team performs its design responsibilities with the skill, care and diligence expected of a professional designer experienced in carrying out those responsibilities.
- (b) The Developer must complete the Design Documentation so that the completed design of the Works and any works carried out as part of the Works as represented in the Design Documentation:
- (i) are (in respect of the Public Works) Fit for Purpose; and
  - (ii) fulfil the requirements of and comply with:
    - (A) the Public Works Brief;
    - (B) Project Scope;
    - (C) Western Gateway Design Guide;
    - (D) TfNSW Transport and Customer Requirements;
    - (E) the Asset Management Frameworks;
    - (F) all applicable Laws, Approvals, Codes and Standards;
    - (G) safe So Far As Is Reasonably Practicable (**SFAIRP**) and evidenced in appropriate documentation;
    - (H) any Variation directed by the State in accordance with this deed or a Variation Order approved by the State in accordance with this deed; and
    - (I) this deed.
  - (iii) in respect of the Design Documentation (Development Works):
    - (A) where the Design Documentation (Development Works) impacts on the Public Works or Integration Works: ensure such Design Documentation (Development Works) is of a level of detail appropriate for that Design Stage which is sufficient to permit the State to comment on whether the Design Documentation (Development Works) that impacts on the Public Works or Integration Works complies with:
      - (aa) the Project Scope;
      - (ab) Western Gateway Design Guide;
      - (ac) TfNSW Transport and Customer Requirements;

- (ad) the Asset Management Frameworks;
- (ae) all applicable Laws, Approvals, Codes and Standards;
- (af) this deed; and
- (B) include all Design Documentation (Development Works) that are relevant to that Design Stage.
- (c) The Developer must include in the Design Documentation prepared pursuant to this clause 6.2 details of:
  - (i) the Developer's proposed plan for the provision of the Developer's Infrastructure; and
  - (ii) the integration, compatibility and co-ordination of the Developer's Infrastructure (as indicated in the Developer's plan) with the Existing Infrastructure and any other infrastructure or Services servicing all or part of the Development Land and the land immediately adjoining the Development Land.
- (d) Subject to the Developer's compliance with:
  - (i) the Asset Management Frameworks; and
  - (ii) the TfNSW Transport and Customer Requirements,

the parties acknowledge and agree that the Developer will not be in breach of any obligation or warranty under this deed to the extent that breach arises solely due to the Developer designing the Works in compliance with Central Station – Pedestrian Modelling Ultimate Capacity and Performance. Doc No: NWRLSRT-PBA-SCS-MO-REP-000001, Rev A, Dated 28 April 2016”.
- (e) In respect of the proposed easement EA9 to be granted under the Subdivision Documents, the Developer agrees to use reasonable endeavours to work with the State to resolve the detailed design of the area where easement EA9 joins with the part of Lot 201 being the goods line so that:
  - (i) easement EA9 is compliant with the requirements of the *Disability Discrimination Act 1992* (Cth); and
  - (ii) the State's vertical transport connection and associated circulation space is resolved as between proposed Lot 4 in the Draft Subdivision Plan and the part of Lot 201 being the goods line.

Despite the above provisions, nothing in this clause 6.2(e) requires the Developer to amend the proposed RL of proposed Lot 4 in the Draft Subdivision Plan to accommodate the vertical transport connection design or place plant or equipment on proposed Lot 4.

### 6.3 Design Documentation

The Developer must:

- (a) prepare and submit to the State:

- (i) all Design Documentation (Public and Integration Works) at each Design Stage in accordance with the Design Program; and
- (ii) all Design Documentation (Development Works) at each Design Stage,

(and the State acknowledges that the Design Documentation may be provided in packages);

- (b) in relation to Design Documentation prepared in accordance with clause 6.3(a):

- (i) in respect of the Design Documentation (Public and Integration Works):

- (A) ensure all Design Documentation (Public and Integration Works) is of a level of detail appropriate for that Design Stage which is sufficient to permit the State to comment on whether the Design Documentation (Public and Integration Works) complies with:

- (aa) the Public Works Brief;
- (ab) the Project Scope;
- (ac) TfNSW Transport and Customer Requirements;
- (ad) Asset Management Frameworks;
- (ae) all Laws, Approvals, Codes and Standards; and
- (af) this deed; and

- (B) include all Design Documentation (Public and Integration Works) that are relevant to that Design Stage.

- (ii) in respect of the Design Documentation (Development Works):

- (A) where the Design Documentation (Development Works) impacts on the Public Works or Integration Works: ensure such Design Documentation (Development Works) is of a level of detail appropriate for that Design Stage which is sufficient to permit the State to comment on whether the Design Documentation (Development Works) that impacts on the Public Works or Integration Works complies with:

- (aa) the Project Scope;
- (ab) TfNSW Transport and Customer Requirements;
- (ac) Asset Management Frameworks;
- (ad) all Laws, Approvals, Codes and Standards; and
- (ae) this deed; and

- (B) include all Design Documentation (Development Works) that are relevant to that Design Stage.

- (c) The State acknowledges and agrees that (despite any other provision of this deed) the Design Documentation (Development Works) provided pursuant to clause 6.2(a)(ii) is provided for the State's information purposes only and that:
  - (i) the State's approval is not required to the Design Documentation (Development Works); and
  - (ii) the State does not have the right to exercise a State Rejection Right (Design) in respect of such Design Documentation (Development Works).

#### **6.4 Review of Design Documentation (Public and Integration Works)**

- (a) In respect of the Design Documentation (Public and Integration Works), for each Design Stage, the State may within:
  - (i) 15 Business Days of the Design Documentation (Public and Integration Works) being submitted in accordance with clause 6.3; or
  - (ii) such other period as agreed by the parties,

**(Review Period),**

review the Design Documentation (Public and Integration Works) and notify the Developer in writing of:

  - (iii) a State Rejection Right (Design); or
  - (iv) the State's approval of the relevant Design Documentation (Public and Integration Works).
- (b) The State acknowledges and agrees that:
  - (i) it must act reasonably in exercising any State Rejection Right (Design); and
  - (ii) if the State has previously approved Design Documentation (Public and Integration Works) in respect of an aspect of the Public Works and/or Integration Works, the State can only exercise a State Rejection Right (Design) in respect of updated Design Documentation (Public and Integration Works) where both of the following are satisfied:
    - (A) the Design Documentation (Public and Integration Works) contains information which is materially different from the Design Documentation (Public and Integration Works) previously approved by the State; and
    - (B) the State has a State Rejection Right (Design).
- (c) Where the State fails to provide a written notification to the Developer under either clause 6.4(a)(iii) or clause 6.4(a)(iv):
  - (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] (with a copy to the Independent Certifier) and which must state that:



- (A) the State has not given a notice under either clause 6.4(a)(iii) or clause 6.4(a)(iv) as at the date of the email notice; and
- (B) if the State does not provide a notice under either clause 6.4(a)(iii) or clause 6.4(a)(iv) within a further 5 Business Days, then the State will be deemed to have given a notice under clause 6.4(a)(iv); and
- (ii) if the State does not give a notice under either clause 6.4(a)(iii) or clause 6.4(a)(iv) within the 5 Business Day period referred to in clause 6.4(c)(i)(B), the State will be deemed to have given a notice under clause 6.4(a)(iv).
- (d) If the Developer disagrees with any State Rejection Right (Design) raised by the State under clause 6.4(a)(iii), then the Developer must notify the State and:
  - (i) to the extent the non-compliance relates to clause 6.3(b)(i)(A)(ac) or 6.3(b)(i)(A)(ad):
    - (A) the Independent Certifier will not determine the matter; and
    - (B) the Developer may issue a notice to the State referring in the matter to executive negotiation in accordance with clause 38.4; or
  - (ii) to the extent the non-compliance relates to clause 6.3(b)(i)(A)(aa), 6.3(b)(i)(A)(ab), 6.3(b)(i)(A)(ae) or 6.3(b)(i)(A)(af), the Developer may refer the question of whether there is a non-compliance to the Independent Certifier for a written determination.
- (e) The Independent Certifier's determination will be final and binding subject to manifest error of fact or Law.
- (f) To the extent that the Developer does not deliver a notification pursuant to clause 6.4(d) within 20 Business Days, the Developer will be deemed to have rejected the comments of the State and the matter will be referred for further determination in accordance with clause 6.4(d).
- (g) If the State gives to the Developer a notice of a State Rejection Right (Design) under clause 6.4(a)(iii) and any disagreement under clauses 6.4(d) to 6.4(f) is not resolved in favour of the Developer:
  - (i) the Developer must promptly amend the relevant part of the Design Documentation (Public and Integration Works) which resulted in the State Rejection Right (Design) and re-submit it at the current or subsequent Design Stage in accordance with the proposed actions from the State; and
  - (ii) the process in this clause 6.4 will be reapplied to the amended Design Documentation (Public and Integration Works).
- (h) The parties acknowledge that despite any State Rejection Rights (Design) being exercised, the Developer can proceed with the procurement or construction of the Public Works and Integration Works and progress to the next Design Stage, provided that any notified State Rejection Rights (Design) are:

- (i) resolved in the Design Stage in which they are notified; or
- (ii) resolved in a subsequent Design Stage; or
- (iii) resolved by executive negotiation in accordance clause 38.4; or
- (iv) the subject of a determination of the Independent Certifier under clause 6.4(d),

(as applicable).

- (i) The parties acknowledge that the:
  - (i) the Independent Certifier cannot determine matters relating to:
    - (A) the Asset Management Frameworks or the asset assurance process contemplated by this deed; and
    - (B) compliance with the TfNSW Transport and Customer Requirements,

and that in respect of such matters these may be referred to dispute in accordance with clause 38; and
  - (ii) the Independent Certifier's determination under clause 6.4(d)(ii) will not affect the Developer's obligations under clause 30.8.

## 6.5 Design Liability

- (a) The Developer will not be entitled to make, and the State will not be liable upon, any Claim arising out of or in any way in connection with the State not detecting and notifying the Developer of any errors, omissions or non-compliance with the requirements of this deed in any Design Documentation submitted under clauses 6.3.
- (b) No review of, approval of or comment upon, or failure to review, approve, or comment upon, any Design Documentation prepared by the Developer will:
  - (i) constitute a direction to carry out a Variation pursuant to clause 18.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 18.2;
  - (ii) relieve the Developer from or alter its Liabilities or obligations, whether under this deed or otherwise according to any Law; or
  - (iii) limit or otherwise affect the State's rights against the Developer, whether under this deed or otherwise according to any Law.

## 6.6 Consultation with Public Authorities

- (a) The Developer must:
  - (i) report to the State in the DCG Reports in respect of the Developer's consultation with all relevant Public Authorities in respect of:
    - (A) the proposed terms and conditions of an Application;
    - (B) the development of the Design Documentation;

- (C) the development of the Design Documentation having regard to the Developer's Infrastructure, the Existing Infrastructure and all other Services in connection with the Project;
  - (D) the terms and conditions the relevant Public Authority indicates may be imposed on any consent; and
  - (E) the terms and conditions the relevant Public Authority indicates are required as a matter of policy or as a matter of Best Industry Practice; and
- (ii) unless otherwise agreed, give the State at least 3 Business Days' notice of any proposed meeting with a relevant Public Authority for the purpose of discussing an Application insofar as it relates to the Public Works and/or the Integration Works, giving details of the time, date and the matters to be discussed. The Developer may satisfy its obligation under this clause 6.6(a)(ii) by providing the State with details of any proposed meetings during each Development Control Group meeting and in each DCG Reports. The State may attend any proposed meeting.
- (b) If requested by Developer, the State must (except to the extent the State is prevented from making disclosures due to confidentiality obligations the State owes to third parties) provide the Developer with reasonable updates as to progress of the broader Central Precinct Renewal Program and authority approvals in respect of the development of the Precinct.

## 6.7 Pre-Application Requirements

If the Developer receives advice, comments, or recommendations from a relevant Public Authority (which are confirmed in writing, whether by the Public Authority or by correspondence or minutes) in relation to matters that ought to be taken into account when preparing the Application (or related Final Design Documentation), it must give due consideration to such advice, comments or recommendations.

## 6.8 Update to Public Works Brief

The Developer must update the Public Works Brief to reflect:

- (a) the Design Documentation (Public and Integration Works) approved by the State under this clause 6; and
- (b) Acceptable Development Consents.

## 6.9 Certification of Design Documentation

All Design Documentation (including Design Documentation (Development Works) to the extent required to demonstrate protection of Transport Assets and transport operations) submitted pursuant to clauses 6.2, 6.3 and 6.4 must be accompanied by the Certificate of Design Compliance.

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## **7 Preparation of Applications**

### **7.1 Developer to prepare Applications**

- (a) Subject to clause 7.1(c), the Developer agrees to prepare at its Cost all Applications.
- (b) Subject to the Developer obtaining the State's consent in accordance with clause 10, the State agrees, in its capacity as the owner of the freehold Development Land, to provide all necessary consents as land owner which the Developer requires in relation to:
  - (i) each Application; and
  - (ii) any consents and certificates relevant to the Application.
- (c) The State and the Developer will work co-operatively to ensure that only one Development Application fee is payable for any one Application. If the assessment of the Development Application is deferred or apportioned between two or more planning authorities, the Developer will only be required to pay one application fee in line with the applicable published schedule of fees.

### **7.2 State's review of Applications and Application Plans**

The Developer acknowledges and agrees that:

- (a) the State:
  - (i) is not obliged to critically analyse any Applications or Application Plans;
  - (ii) is not responsible for any errors, omissions or non-compliance with any Law or the requirements of any Public Authority by reason of not critically analysing the Applications or the Application Plans; and
  - (iii) is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Works; and
- (b) no comment, review or information supplied to the Developer by the State alters or alleviates the Developer's obligation to design, construct and complete the Works or otherwise undertake the Project in accordance with the requirements of this deed.

### **7.3 Developer relies on own skill and judgment**

Neither the requirement to obtain the State's consent under this deed, nor any consent given by the State, imposes any duty, obligation or liability upon the State in relation to the design or construction of the Project. The Developer acknowledges that:

- (a) it is relying on its own skill and judgment, and that of the Developer's Employees and Agents, in relation to the Works and the Project and is not relying upon the skill and judgement of the State or any of the State's Employees and Agents; and
- (b) any consent of the State is intended as a procedure to enable the State to protect its rights, and perform its obligations, as owner of the

Development Land (including compliance with the Works Documents) and does not relieve the Developer of its obligations under this deed.

#### **7.4 Design Excellence**

The Developer must support the design excellence objectives of the State in respect of the Public Works, including the requirement that all Public Works are to be completed in compliance with the design excellence requirements of the Western Gateway Design Guide.

#### **7.5 Post design competition governance**

The parties acknowledge and agree:

- (a) the State must be granted a standing invitation to attend any meeting of any panel or governance arrangement established by any Public Authority attended by the Developer in respect of the design of the Public Works and Integration Works after the design competition for the Project has been completed (other than in any internal design or governance groups within the Developer); and
- (b) the State's involvement in any meeting referred to in clause 7.5(a) will be for observational purposes only.

#### **7.6 State's obligations**

The State must support the Developer in the process for obtaining an Acceptable Development Consent as reasonably required by the Developer. The State acknowledges that this support may include contributions to design excellence and stakeholder negotiations.

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## **8 Sustainability**

### **8.1 Commitments by the Developer**

- (a) The Developer acknowledges and agrees that in undertaking the Project it must at its cost and risk, subject to 8.1(b) and the terms of this deed, comply with any Sustainability Obligations in connection with the Development Works.
- (b) The parties acknowledge that, as a result of the nature and proposed use of the Public Works, it may not be possible to obtain a rating from the GBCA or NABERS in relation to the Public Works.

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## **9 Consent to Relevant Applications**

### **9.1 Relevant Applications must be lodged with the State**

- (a) The Developer must, in the identical form it is proposed to be lodged with the Consent Authority, lodge with the State for its consent in accordance with this clause 9 each proposed Relevant Application in accordance with the time frame under clause 9.5.
- (b) The Developer must comply with the requirements of clause 9.2 when seeking the State's consent to each proposed Relevant Application.
- (c) The State acknowledges and agrees that notwithstanding any clause to the contrary in this deed, it has a limited right of consent or approval in

relation to any Relevant Application relating to the Development Works, and may only withhold consent or approval in relation to a Relevant Application for Development Works on the basis set out in clause 9.7.

## 9.2 Requirements for proposed Relevant Applications

- (a) The Developer must give a notice with any Relevant Application, to the State, as applicable. The notice must:
- (i) attach the Relevant Application in the identical form it is proposed to be lodged with the Consent Authority;
  - (ii) include a warranty by the Developer for the benefit of the State that the proposed Relevant Application:
    - (A) is developed to a level necessary to support an application for the Relevant Application;
    - (B) (subject to clause 6.7) has given due consideration to all Pre-Application Requirements;
    - (C) meets accepted industry standards;
    - (D) has been prepared by consultants with appropriate professional qualifications and membership of appropriate professional associations;
    - (E) except to the extent that the State expressly waives compliance with this clause 9.2 in relation to any element of a Relevant Application arising from any pre-lodgement consultation between the State and the Developer, is consistent with:
      - (aa) the Project Documents (excluding the Final Design Documentation); and
      - (ab) any other Approvals relevant to the Project,
 and to the extent that any aspect of a proposed Relevant Application submitted for approval is not consistent with the above requirements, disclose to the State any material inconsistency and provide clear and detailed reasons explaining the reason for not complying with the relevant requirements;
    - (F) complies with all Environmental Laws and all planning Laws that apply to those Works and the Development Land; and
    - (G) is consistent, compatible and integrated with the Existing Infrastructure and any other infrastructure or Services servicing the Development Land; and
  - (iii) request approval for the lodgement of that Relevant Application with the Consent Authority.
- (b) The Developer must promptly provide the State with any further information or documentation required by the State in order to consider the proposed Relevant Application.

### 9.3 Developer to keep State informed of timing

The Developer agrees to keep the State informed regarding the likely timing of lodgement with the State and the contents, of all Relevant Applications which this deed contemplates will be lodged with the State.

### 9.4 Non-conforming Relevant Applications

The Developer agrees to disclose to the State by written notice each aspect of a proposed Relevant Application submitted for consent pursuant to clause 9.1 that is not in conformity with relevant requirements of clause 9.2.

### 9.5 Timing for State consent

- (a) Where the consent of the State is required under clause 9.1 in relation to a Relevant Application, that consent must be either given or refused within 15 Business Days after the State receives:
- (i) a notice from the Developer requesting the State's consent;
  - (ii) a copy of the proposed Relevant Application;
  - (iii) all relevant supporting documents which the relevant Consent Authority reasonably requires in connection with the Relevant Application; and
  - (iv) any further information and documents which relate to the Relevant Application which the State, acting reasonably, requires to consider the Relevant Application and requests within 5 Business Days of receiving the documents referred to in clause 9.5(a)(ii) and 9.5(a)(iii).
- (b) Where the State fails to respond to any request for consent to a Relevant Application under clause 9.5(a):
- (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] and which must state that:
    - (A) the State has not given a response under clause 9.5(a) as at the date of the email notice; and
    - (B) if the State does not provide a notice under clause 9.5(a) within a further 5 Business Days, then the State will be deemed to have consented to the Relevant Application; and
  - (ii) if the State does not give a notice under clause 9.5(a) within the 5 Business Day period referred to in clause 9.5(b)(i) (B), the State will be deemed to have consented to the Relevant Application.

### 9.6 Capacity of State and conditional consents

The Developer acknowledges that:

- (a) in giving or withholding their consent to a Relevant Application, the State is not acting in the capacity of a Consent Authority; and

- (b) in giving their consent to a Relevant Application, the State may impose reasonable conditions which are consistent with the State's rights under this deed and the Developer's obligations under this deed.

## 9.7 Withholding consent to Relevant Applications

The State may only withhold its consent to any Relevant Application which:

- (a) would trigger a State Rejection Right (Approval), (provided that the State is not entitled to claim that a Relevant Application triggers a State Rejection Right (Approval)) to the extent that the Design Documentation forming part of the Relevant Application has already been approved or is deemed to have been approved by the State pursuant to clause 6;
- (b) is not accompanied by such documents (including Design Documentation) and other information in respect of the relevant Works Portion the subject of the proposed Relevant Application as the State reasonably requires in order to review the proposed Relevant Application provided the State has requested the Developer in writing to provide such documents and information within the timeframe referred to in clause 9.5(a)(iv);
- (c) together with any accompanying documents and information is not accompanied by a written statement from the Developer stating that the relevant Works Portion the subject of the proposed Relevant Application conforms with:
  - (i) the Approved Design Documentation; and
  - (ii) all planning Laws that apply to those works and the Development Land;
- (d) is not materially consistent with requirements set out in clause 9.2; and
- (e) is inconsistent with the Developer's obligations under this deed.

## 9.8 Consequences of withholding consent to proposed Relevant Applications

- (a) If the State withholds its consent to any Relevant Application in accordance with its rights under this clause, it must notify the Developer of its reasons within the 15 Business Day timeframe referred to in clause 9.5.
- (b) Upon receipt by the Developer of any notice referred to in clause 9.8(a), the Developer must either:
  - (i) as soon as practicable, amend the proposed Relevant Application taking the State's reasons into account, and re-submit the amended proposed Relevant Application to the State for its approval; or
  - (ii) promptly advise the State that it disagrees with the State's reasons (as applicable), in which case the matter must be resolved in accordance with clause 38.
- (c) If, following referral of the matter to dispute resolution, an expert determines that:
  - (i) the State was entitled to withhold its consent to that proposed Relevant Application, then clause 9.8(b)(i) will apply; or



- (ii) the State was not entitled to withhold its consent to that proposed Relevant Application, then the approval status of that Relevant Application will be deemed to be in accordance with the expert's determination.

## 9.9 State not liable in connection with consents

Except to the extent that the State is in breach of any provision of this clause 9, the Developer releases the State from, and agrees that the State is not liable for, liability or loss arising from, and any Costs incurred in connection with the State rejecting or consenting to a Relevant Application (as applicable) or any delay in giving or refusing that consent.

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## 10 Lodgement and Development Consent procedures

### 10.1 Lodgement of Relevant Applications

After receiving the State's consent to any proposed Relevant Application, the Developer agrees to finalise the Relevant Application having regard to any reasonable comments the State may make in respect of the proposed terms and conditions of the Relevant Application.

### 10.2 Consent procedures

Without limiting any of the Developer's other obligations under this deed, the Developer agrees that it must regularly consult with the State and keep the State fully informed in relation to all its material dealings with the Consent Authority with respect to the Main Development Application and Relevant Applications and must seek the State's prior written approval before making any submissions, variations or submitting anything pursuant to the EP&A Act in respect of the Public Works or the Integration Works, including:

- (a) to any panel of experts or panel of officers;
- (b) any environmental assessment, preferred project report, statement of commitments or any revisions of those documents;
- (c) in relation to the environmental assessment made publicly available and any response to issues raised;
- (d) any response to issues raised in submissions or any other document; and
- (e) all details of any significant changes, modifications or conditions of which the Developer becomes aware, which the Consent Authority may consider in relation to the Relevant Application.

In giving or withholding its approval to any such documents or matters, the provisions of clauses 9.1, 9.2, 9.5, 9.7, 9.8 and 9.9 will apply *mutatis mutandis*.

### 10.3 Obtaining other Approvals

The Developer agrees to:

- (a) obtain other required Approvals; and
- (b) ensure that those Approvals are consistent with the Development Consent for the Main Development Application and any Relevant Applications,

but in any event upon the basis that all conditions of the relevant Approval are fully satisfied.

#### **10.4 Assistance by State**

- (a) Subject to the Developer complying with the provisions of this clause 10 and the Relevant Application being approved under clause 9.5, the State, in its capacity as landowner, agrees to (within 10 Business Days after request from the Developer, which request may be given when the Relevant Application is given to the State pursuant to clause 9.1):
- (i) sign all documents; and
  - (ii) provide all authorisations, consents and approvals,
- as may be reasonably required to enable the Developer to lodge any Relevant Application with a Consent Authority.
- (b) Subject to the Developer complying with the provisions of this clause 10 and without limiting clause 10.5, the State, in its capacity as landowner, agrees to provide reasonable assistance to the Developer in connection with the Developer obtaining all Approvals from Rail Transport Agencies which are needed in respect of the Project (where the Developer forms the view (acting reasonably) that the State's assistance would assist to resolve the relevant issue).

#### **10.5 Delays in obtaining Approvals**

The Developer agrees that it accepts all risk of obtaining all Approvals required to carry out the Works as contemplated by this deed.

#### **10.6 State to be informed of progress**

The Developer must:

- (a) inform the State of the progress of, and give the State other information in connection with, the Relevant Applications; and
- (b) use its reasonable endeavours to identify, and keep the State informed of, the anticipated timing of Relevant Applications required to be made to the relevant Public Authorities.

#### **10.7 Copies of Relevant Applications, Approvals and associated documents**

The Developer must promptly give the State a copy of each of the following in relation to the Project:

- (a) each Relevant Application;
- (b) all significant correspondence between the Developer (or any person on behalf of the Developer) and any Consent Authority in connection with any Relevant Application, proposed Relevant Application, Approval of any Relevant Application or proposed or draft determination of any Relevant Application;
- (c) all requirements issued by the Consent Authority insofar as they relate to the Public Works or the Integration Works;

- (d) all environmental assessment requirements or other requirements issued by the Consent Authority;
- (e) all submissions that may be made by or on behalf of the Developer to any panel of experts or panel of officers in connection with any Relevant Application;
- (f) all submissions received, and any report provided to the Developer by the Consent Authority with respect to any Relevant Application;
- (g) any response to issues raised in submissions, preferred project report and revised statement of commitments or other document provided by the Developer to the Consent Authority with respect to a Relevant Application;
- (h) all written submissions in relation to any Relevant Application which are received by the Developer or of which it has a copy; and
- (i) all Approvals received and notices gazetted in relation to any Relevant Application.

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## 11 Third Party Appeals

If a Third Party Appeal occurs, the State and the Developer agree that promptly after either the State or the Developer becomes aware of the Third Party Appeal, the Developer and the State must meet and discuss in good faith (both acting reasonably) the most appropriate action to be taken in respect of that Third Party Appeal insofar as it related to the Public Works and the Integration Works, which may include:

- (a) lodging a new (and amended) Development Application with the Consent Authority;
- (b) lodging an Application for a modification to the Development Consent; or
- (c) taking whatever action necessary to object to the Third Party Appeal,

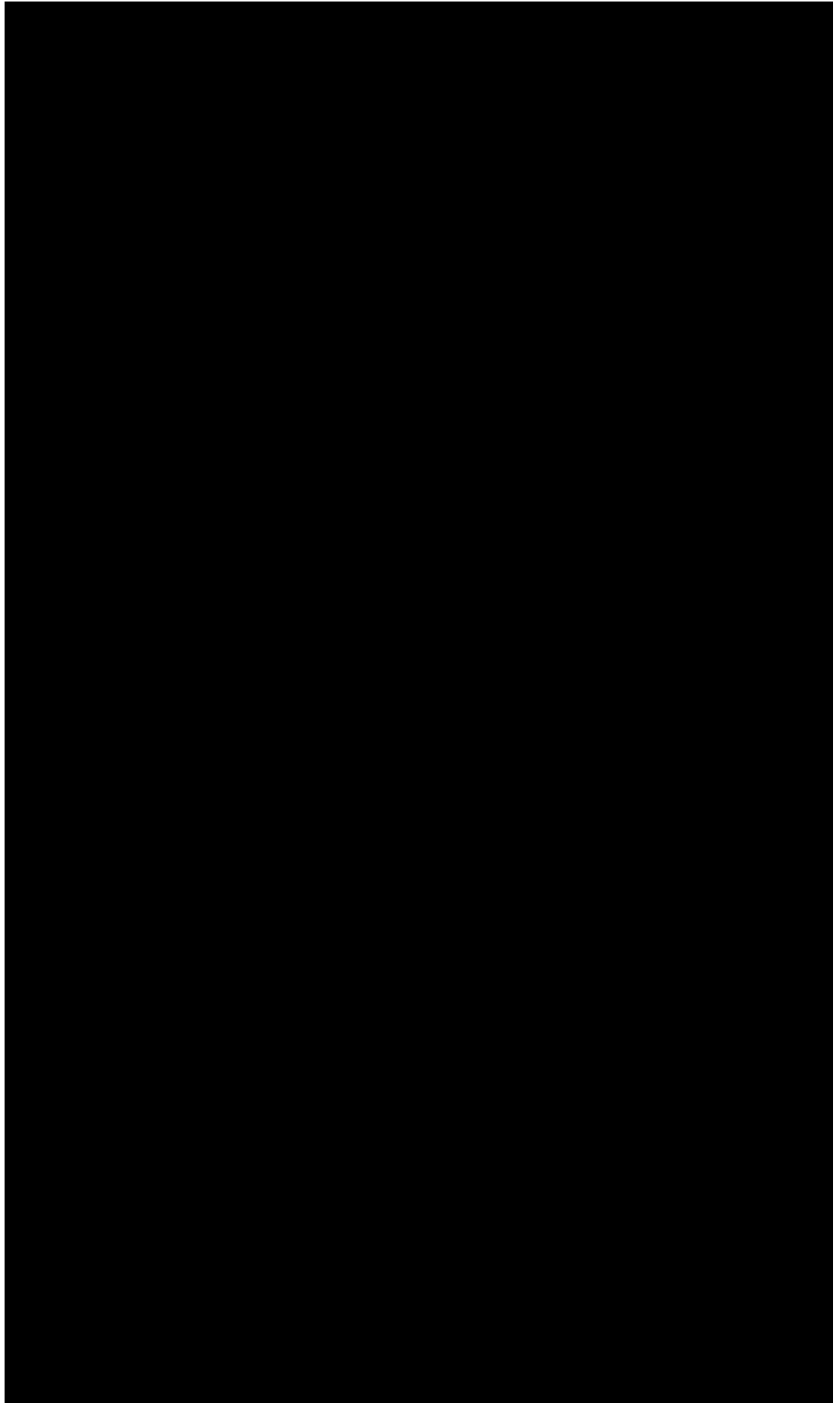
and notwithstanding anything to the contrary contained in this deed, if the effective outcome of any such Third Party Appeal is that the Development Consent as previously granted, is invalid, the parties agree that there is no Development Consent for the Works then the Developer must prepare a new (and amended) Development Application and comply with the provisions of clauses 10 and 11 as regards the new (and amended) Development Application.

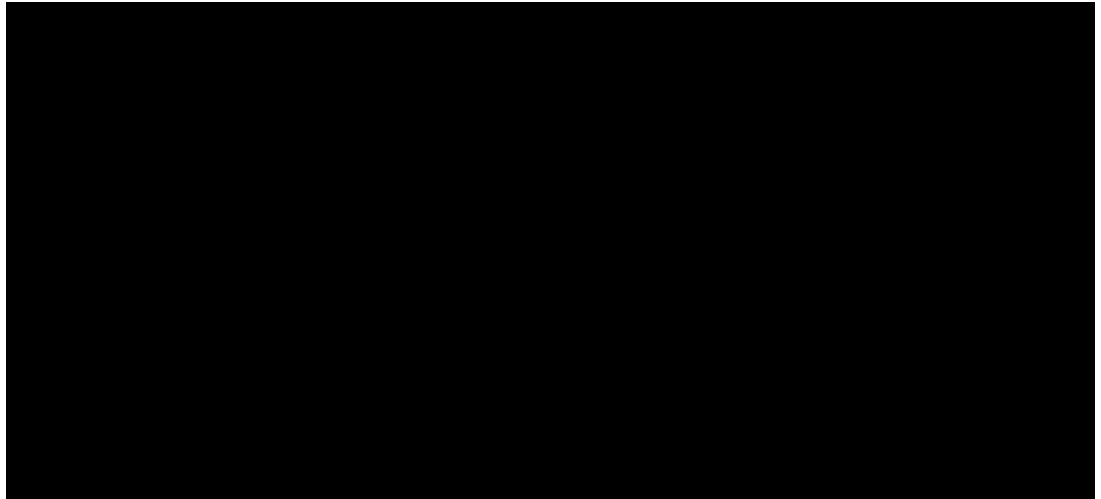
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## 12 Copies of Final Design Documentation

The Developer must give the State and the Independent Certifier:

- (a) a consolidated set of the Final Design Documentation for each Works Portion promptly after the Developer receives any Construction Certificate for that Works Portion or, if no Construction Certificate is required by Law, prior to commencement of any works for that Works Portion on the Development Land; and
- (b) written details of any changes to the Final Design Documentation (including copies of the changed plans and specifications), promptly after the Developer receives any other Approval.





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## 14 Contractors, Independent Certifier and Project Team

### 14.1 Appointment of Builder

- (a) The Developer must not appoint a Builder without the prior approval of the State (which approval, subject to clause 14.1(b), must not be unreasonably withheld).
- (b) The parties acknowledge and agree that:
  - (i) at the date of this deed, the State has approved each Tier 1 Builder in relation to the requirements set out in clauses 14.1(c)(i) and 14.1(c)(ii); and
  - (ii) prior to appointing a Tier 1 Builder as the Builder, the Developer must obtain the State's approval in relation to the requirements set out in clauses 14.1(c)(iii) and 14.1(c)(iv).
- (c) The State will not unreasonably withhold its approval of a Builder pursuant to clause 14.1(a) if, in the opinion of both parties (acting reasonably):
  - (i) the Builder is not Insolvent and has sufficient financial capacity to design and construct the part of the Works which is subject to the relevant Building Contract;
  - (ii) the Builder has sufficient technical capability and has demonstrated relevant experience in designing and constructing the part of the Works which is subject to the relevant Building Contract;
  - (iii) the entry into the relevant Building Contract will not give rise to material reputational or probity issues for the State; and
  - (iv) the Builder is a TAO that holds and maintains a TAO Authorisation and has the systems and technical capability in place to carry out the class of Asset Lifecycle Works specified in the TAO Authorisation sufficient to deliver the Works under the Building Contract with no outstanding non-conformances or conditions.
- (d) Subject to the Developer having responded to the State's request for more information under clause 14.1(f)(iv) (such request having been

made within 5 Business Days after the Developer requests the State to approve a Builder), the State must respond to any request for approval of a Builder:

- (i) in the case of a Tier 1 Builder, within 15 Business Days after the Developer's request; and
  - (ii) in the case of any other proposed Builder, within 20 Business Days after the Developer's request.
- (e) Where the State fails respond to any request for approval of a Builder under clause 14.1(d):
- (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] and which must state that:
    - (A) the State has not given a response under clause 14.1(d) as at the date of the email notice; and
    - (B) if the State does not provide a notice under clause 14.1(d) within a further 5 Business Days, then the State will be deemed to have approved the Builder; and
  - (ii) if the State does not give a notice under clause 14.1(d) within the 5 Business Day period referred to in clause 14.1(e)(i)(B), the State will be deemed to have approved the Builder.
- (f) The Developer must:
- (i) prior to commencing any tender or other market process (excluding a market sounding) to select the Builder, provide written notice to the State, which notice must contain the names of the entities being invited to tender or participate in that market process;
  - (ii) provide written notice to the State of the names of the entities short listed to tender;
  - (iii) provide written notice to the State when the Developer decides to proceed to negotiations with one Builder; and
  - (iv) within 5 Business Days after request by the State (the State's request having been made within 5 Business Days after the Developer requests the State to approve a Builder) provide the State with all information reasonably required to allow the State to respond to a request for approval of a Builder pursuant to clause 14.1(a) including information for approval under clauses 14.1(c)(i) and 14.1(c)(ii) regardless of the fact that the State has approved each Tier 1 Builder in relation to the requirements set out in clauses 14.1(c)(i) and 14.1(c)(ii).

## 14.2 Providing information about Building Contract

- (a) The Developer must enter into a Building Contract for the Works. For the avoidance of doubt, subject to clause 14.2(b), the Developer must ensure that the Stage 1 Development Works, the Stage 2 Development Works and the Stage 1 Public Works are all delivered pursuant to a single Building Contract.

- (b) The parties acknowledge that, if:
- (i) the Building Contract is terminated at any time, the Developer may appoint a new Builder subject to the provisions of clause 14.1; and
  - (ii) the Developer, after entering into a Building Contract, wishes to enter into a new Building Contract for the Works or part of the Works, the Developer may appoint a new Builder subject to the provisions of clause 14.1 and this clause 14.2.
- (c) The Developer is not required to obtain the State's consent to enter into any Building Contract to the extent that it relates to the Development Works, provided that such Building Contract is on terms consistent with the obligations of the Developer under this deed and that before entering into a Building Contract in respect of the Development Works, the Developer gives to the State:
- (i) a copy of the proposed Building Contract; and
  - (ii) a Building Contract Notice.
- (d) A Building Contract Notice must contain a warranty by the Developer to the State that:
- (i) the Building Contract includes provisions requiring the Builder to comply with the Codes and Standards and Asset Management Frameworks in relation to the carrying out of the Works the subject of that Works Portion;
  - (ii) the Building Contract includes provisions stating that:
    - (A) the Builder may not assign the Building Contract or any payment, right, benefit or interest under it without the consent of the Developer (other than a general security arrangement entered into by the Builder with a financier in the ordinary course of the Builder's business which will not require the Developer's consent); and
    - (B) the Builder acknowledges that the Developer will not be able to consent to any such assignment without the consent of the State (acting reasonably);
  - (iii) the Building Contract includes a provision requiring the Builder to provide a schedule of rates and an agreed margin for State Initiated Variations (insofar as the Building Contract relates to the Public Works);
  - (iv) the Building Contract includes the details referred to in 5.3(a);
  - (v) the Building Contract includes a disputes regime that reflects clause 38 and linked disputes provision;
  - (vi) the relevant Insurances are in force prior to the relevant Works Portion Commencement Date and that the State and TAHE are each noted as an insured on all policies, provided that the State will not be named as an insured on any professional indemnity insurance or other statutory insurance policy;
  - (vii) the definition of "practical completion" of the Development Works under the Building Contract is comparable to the requirements

set out in the definition of "Practical Completion" in this deed to the extent relevant to each Works Portion for the Development Works; and

- (viii) the Building Contract complies with clause 14.3.
- (e) The State's consent is required to a Building Contract only to the extent that it relates to:
  - (i) the Public Works; and
  - (ii) the requirements of, and consistency with, clause 5.3(a),
 and:
  - (iii) provided that the Building Contract contains the provisions set out in clause 14.2(d) and is not otherwise inconsistent with the provisions of this deed, the State must not withhold that consent; or
  - (iv) if the Building Contract does not contain the provisions set out in clause 14.2(d), the State may but is not obliged to consent, acting reasonably.

The State must respond to any request for consent within 15 Business Days after request from the Developer.

- (f) Where the State fails to respond to any request for consent to a Building Contract under clause 14.2(e):
  - (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] and which must state that:
    - (A) the State has not given a response under clause 14.2(e) as at the date of the email notice; and
    - (B) if the State does not provide a notice under clause 14.2(e) within a further 5 Business Days, then the State will be deemed to have consented to the Building Contract; and
  - (ii) if the State does not give a notice under clause 14.2(e) within the 5 Business Day period referred to in clause 14.2(f)(i)(B), the State will be deemed to have consented to the Building Contract.
- (g) In respect of the Public Works, without limiting its obligations under this deed, the Developer must:
  - (i) not vary the terms and conditions of the Building Contract or otherwise waive any of its rights or the Builder's obligations under the Building Contract in a manner that would materially adversely impact the Developer's ability to deliver the Public Works or the Integration Works without the prior written consent of the State (acting reasonably);
  - (ii) not exercise any rights under the Building Contract in relation to termination for convenience or otherwise terminate or accept a repudiation of the Building Contract if to do so would materially



adversely impact the Developer's ability to deliver the Public Works or the Integration Works without the consent of the State (acting reasonably); and

- (iii) not instruct or accept any variations under the Building Contract if they would cause the Developer to be in breach of this deed without the prior written approval of the State.

#### **14.3 Provisions in third party contracts**

All contracts entered into by the Developer in connection with the carrying out of the Works (including each Building Contract) must contain provisions which:

- (a) in the case only of each contract for the design and/or construction of the Public Works, requires the relevant contractor to provide a warranty (by deed poll or certificate in favour of the State in such form as the State reasonably approves) that the design of the Public Works prepared by the relevant contractor will satisfy the requirements detailed in the Public Works Brief, Asset Management Frameworks and TfNSW Transport and Customer Requirements; and
- (b) are sufficient to enable the Developer to grant the licence required under clause 35.2.

#### **14.4 Quality assurance systems**

- (a) The Developer must procure that the Works are carried out in accordance with quality assurance systems conforming to the ISO 9000 or AS3900 series of standards.
- (b) The Developer must ensure that all major contractors engaged in respect of a Works Portion have certified quality assurance systems and have achieved substantial implementation of a quality assurance system conforming to the ISO 9000 series.

#### **14.5 Developer liable for acts of contractors**

The entry into of a contract or subcontract in respect of the Works (or any Works Portion) does not relieve the Developer from any liability or obligation under this deed. The Developer is liable to the State for the acts and omissions of any contractor or any person engaged by the Developer in connection with the Works as if they were acts or omissions of the Developer.

#### **14.6 Appointment of Independent Certifier**

- (a) The Developer must, by the date 6 months after the Commencement Date, notify the State which Independent Certifier it wishes to select from the Approved Certifiers List. If the Developer wishes to engage an Independent Certifier that is not on the Approved Certifiers List, the identity of the Independent Certifier must be approved by the State (acting reasonably). The State must within 10 Business Days after receiving a request to engage an Independent Certifier that is not on the Approved Certifiers List notify the Developer whether the State approves the proposed Independent Certifier.
- (b) Subject to clause 14.6(c) and 14.6(d), at the date of this deed, the form of the Independent Certifier Deed in Schedule 4 has been agreed by the parties, including:

- (i) the level of public liability insurance and professional indemnity insurance that are to be effected and maintained by the Independent Certifier; and
  - (ii) the limitation of liability amount applicable to the Independent Certifier.
- (c) The State agrees that it must work together with the Developer (acting reasonably) to agree any variations to the form of the Independent Certifier Deed that are required to address any feedback or responses received by the Developer from prospective independent certifiers in respect of the form of the Independent Certifier Deed. Such variations may include, without limit, where feedback or responses are received that the insurance provisions or amounts are not acceptable to prospective independent certifiers having regard to usual market practice.
- (d) Without limiting clause 14.6(c), to the extent that the form of the Independent Certifier Deed differs from the deed in Schedule 4, the parties must approve the revised form of the Independent Certifier Deed (both acting reasonably).
- (e) Subject to clause 14.6(b) to 14.6(d), promptly following the Developer's notice pursuant to clause 14.6(a) the parties must enter into (and procure that the selected Independent Certifier enter into) the Independent Certifier Deed.
- (f) The parties must comply with the Independent Certifier Deed.
- (g) To the extent that there is any inconsistency, ambiguity or discrepancy between this deed and the Independent Certifier Deed then this deed will prevail.
- (h) If, at any time, the Independent Certifier Deed is terminated or the appointment of the Independent Certifier is terminated, the Developer must, within 10 Business Days of such termination, nominate a replacement Independent Certifier and the parties must use their respective reasonable endeavours to appoint the replacement Independent Certifier on substantially the same terms as the Independent Certifier Deed. The selection of such replacement Independent Certifier will be subject to approval by the State (acting reasonably) in accordance with clause 14.6(a), provided that the State's approval will not be required in relation to the identity of the replacement Independent Certifier if the replacement Independent Certifier is on the Approved Certifiers List.
- (i) The parties acknowledge and agree that there may be matters which arise for determination by the Independent Certifier pursuant to this deed prior to the date on which the Independent Certifier is appointed pursuant to this clause 14.6.
- (j) If clause 14.6(i) applies:
  - (i) the parties must notify each other of the matters which require determination by the Independent Certifier in accordance with the timeframes set out in this deed; and
  - (ii) the parties must notify the Independent Certifier (as soon as possible after his or her appointment) of the matters notified in accordance with clause 14.6(j)(i) and the Independent Certifier must determine those matters in accordance with the

timeframes set out in this deed commencing on the date the Independent Certifier receives notice under this clause.

(k) The parties agree that the Developer will not be entitled to claim:

- (i) an extension of time in respect of delay; or
- (ii) compensation against the State,

arising out of or in connection with the Developer's failure to enter into (or procure that the selected Independent Certifier enter into) the Independent Certifier Deed in accordance with this clause 14.6.

## 14.7 Project Director

(a) The Developer agrees to:

- (i) procure that the Developer's obligations in relation to the Project and its obligations under the Project Documents are managed by the Project Director; and
- (ii) if the Developer wishes to change the Project Director, the Developer must (subject to clause 14.7(b)) submit for the approval of the State (such approval not to be unreasonably withheld), the name of the person the Developer nominates from time to time to undertake the obligations of the Project Director.

(b) The State acknowledges that:

- (i) the following individuals have been pre-approved by the State as Project Director: [REDACTED]; and
- (ii) the temporary or permanent appointment of any of the individuals named in clause 14.7(b)(i) as Project Director will not require the approval of the State.

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## 15 Commencement of Works and Access

### 15.1 Vacant possession

- (a) Subject to clauses 15.2(d) and 15.2(e), the State must by the relevant dates set out in Schedule 6, provide (or procure that TAHE provides) the Developer with each relevant part of the State Land set out in Schedule 6 free of all tenancies before the relevant date set out in Schedule 6 for that part of the State Land.
- (b) The Developer is responsible for and, subject to any express provision of this deed, accepts all risks in connection with:
  - (i) obtaining access to and obtaining possession of the Leasehold Land for the conduct of the Works; and
  - (ii) subject to the State's obligations under clause 22.2(b), obtaining access to and obtaining possession of any part of Lot 198 for the conduct of the Works,

except to the extent that the Developer's access is impeded by the act or omission of the State or the State's Employees and Agents.

## 15.2 Access to the State Land and Construction Licence

- (a) The State grants (or will procure the grant) to the Developer, and the Developer accepts the grant of a right to access the State Land referred to in Schedule 6 on the terms set out in clause 15.3 and on the terms and conditions set out in Schedule 11.
- (b) Each part of the State Land which the Developer is granted access to pursuant to clause 15.2(a) becomes Developer Controlled Land on and from the date such access is granted in respect of the relevant part of the State Land until such access ceases and the Construction Licence in respect of the relevant part of the State Land ends.
- (c) Subject to the State's rights of entry pursuant to this deed, from the date the Developer is granted access to the relevant part of the Developer Controlled Land under clause 15.3 until such access ceases and the Construction Licence in respect of the relevant part of the State Land ends, subject to clause 15.2(d) and 15.2(e), the State must not grant access to the Developer Controlled Land to any other person.
- (d) The Developer acknowledges that the State has agreed to grant Atlassian a construction licence with respect to the Construction Licence Overlap Area (as defined in the Atlassian Agreement). The Developer and Atlassian's use of Construction Licence Overlap Area (as defined in the Atlassian Agreement) is to be as agreed pursuant to the Atlassian Agreement. The State must not grant access to any other Developer Controlled Land to Atlassian.
- (e) The Developer acknowledges that the State has granted to a third party bus operator a licence to use that part of the State Land beneath the land referred to in Schedule 6 as the "Bus Layover Overhead Platform". The State and the Developer must minimise any impact the carrying out of the Works may have on the use of the land beneath the Bus Layover Overhead Platform by the third party bus operator.

## 15.3 Terms of Developer access to the Development Land

- (a) The access granted to the Developer pursuant to clause 15.2(a) is for the purpose of delivering the Project, including to:
  - (i) obtain Approvals;
  - (ii) carry out the Works; and
  - (iii) comply with the Developer's obligations under this deed.
- (b) The parties acknowledge and agree that:
  - (i) the State is entitled to continue to use the State Land which is to become Developer Controlled Land for its own purposes until such time as clause 15.2(a) applies;
  - (ii) the State must not, between the date of this deed and the date on which access is provided to the Developer under this clause 15, permit any structural alterations or other improvements to be conducted on the State Land which is to become Developer Controlled Land;
  - (iii) access to the Developer Controlled Land under clause 15.3(a) confers on the Developer a right only to such use and control as is permitted under clause 15.3(a);

- (iv) in accessing the Developer Controlled Land, the Developer must not interfere with the operation of Central Station unless approved by the State or otherwise permitted under this deed;
- (v) in accessing the Developer Controlled Land, the Developer must comply with:
  - (A) any easements or other affectations burdening the Developer Controlled Land; and
  - (B) the Precinct Management Agreement; and
- (vi) the Developer must maintain safe and convenient public access through Devonshire Street Tunnel at all times.
- (c) Access granted under this clause 15.3 expires or terminates in accordance with Site Access Schedule.
- (d) The Developer must, upon termination of the licences in relation to the State Land which is Developer Controlled Land (**Relevant Area**):
  - (i) remove any rubbish and equipment from the Relevant Area and make good the Relevant Area in accordance with Site Access Schedule; and
  - (ii) vacate the Relevant Area and deliver vacant possession of the Relevant Area to the State.
- (e) If the Developer fails to comply with clause 15.3(d), then the State may, in its sole and absolute discretion, exercisable at any time:
  - (i) enter and remain on the Relevant Area;
  - (ii) require the Developer to vacate the Relevant Area immediately, leaving in place any material, improvements, fixtures or structures as directed by the State; and
  - (iii) remove any rubbish and equipment of the Developer and make good any damage to any of the Relevant Area caused by the Developer.
- (f) The State's rights under clause 15.3(e) are in addition to any other remedies of the State for the Developer's non-compliance with clause 15.3(d). The Developer must pay to the State on demand an amount equal to all Costs and liabilities reasonably incurred or suffered by the State in taking the action except to the extent caused by or contributed to by the breach of a Project Document by the State or the State's Employees and Agents or a negligent, wrongful or reckless act or omission of the State or the State's Employees and Agents.
- (g) Unless otherwise provided in this deed including, without limiting clause 26.1(b), from the date the Developer is granted access to the Developer Controlled Land under clause 15.3, the Developer accepts all risks in connection with the Developer Controlled Land (including the Developer's insurance obligations under clause 29) except to the extent caused or contributed to by:
  - (i) the State's Employees and Agents; or

- (ii) Atlassian or its agents, contractors, employees or sub-contractors with respect to the Construction Licence Overlap Area (as defined in the Atlassian Agreement).
- (h) If the Developer does not commence the Works (other than Early Works) [REDACTED], the State must use best endeavours to either:
- (i) extend the Access End Date (as specified in Schedule 6) for the area described as 'D - Substation Access Bridge' in Schedule 6; or
  - (ii) procure or facilitate alternative access arrangements with respect to the substation located on the State Land,

so as to ensure the Developer can continue to carry out the Works in accordance with this deed.

#### 15.4 Pre-conditions to commencement of Works Portion

The Developer must not commence any Works Portion:

- (a) subject to clause 15.5(a), before the Date for Commencement of that Works Portion;
- (b) until:
  - (i) it has notified the State that all Approvals necessary for commencement of that Works Portion have been obtained and has provided the State with copies of those Approvals;
  - (ii) it has warranted to the State that it has complied with such requirements of the Codes and Standards and Asset Management Frameworks as are required to be complied with prior to the commencement of that Works Portion;
  - (iii) it has warranted to the State that the Developer has entered into the Building Contract for that Works Portion;
  - (iv) the design of the Works for that Works Portion is sufficiently developed to permit the Developer to commence physical conduct of the Works (including demolition);
  - (v) it has affected the Insurances referred to in clause 29 for that Works Portion and provided the State with evidence, as reasonably required by the State, of such compliance; and
  - (vi) it has provided the Security in relation to the Public Works for that Works Portion to the State.

#### 15.5 Notice of Date for Commencement of Works

- (a) Subject to any arrangement to the contrary agreed between the parties, at least 3 months before the Developer wishes to commence a Works Portion, the Developer must give the State a notice specifying the date it expects to commence those works (including any Site Establishment and erection of hoardings and works on Services). The Developer must not give the State a notice under this clause 15.5(a) unless it believes, acting reasonably, that all of the pre-conditions in clause 15.4 will be satisfied on or before the specified date.

- (b) The Developer may change the date in its notice to the State under clause 15.5(a) one or more times by giving a further notice to the State.
- (c) At least 5 Business Days before the Developer wishes to commence a Works Portion, the Developer must give to the State a notice specifying the date it expects to commence the Works Portion (including any Site Establishment, erection of hoardings and works on Services). The Developer must not give the State a notice under this clause 15.5(c) until it believes, acting reasonably, that all of the pre-conditions in clause 15.4 have been satisfied.

**15.6 Restriction on entry after Works Portion Commencement Date**

Subject to the State's rights of entry and obligations under clause 31 and clause 15.2(d), no person may enter that part of the Developer Controlled Land or the Leasehold Land which is affected by the relevant Works Portion at any time after the Works Portion Commencement Date relevant to that Works Portion unless they fully comply with all site safety requirements implemented by the Developer or the Builder, including:

- (a) any safe work method statement;
- (b) any clothing requirements;
- (c) any supervision requirements; and
- (d) any safety directions issued by the Developer or the Builder.

**15.7 Substantial Commencement**

- (a) The Developer must achieve Substantial Commencement by the Conditions Precedent Sunset Date.
- (b) The State acknowledges and agrees that, despite any other provision of this deed, if the Developer fails to achieve Substantial Commencement by the Conditions Precedent Sunset Date:
  - (i) the State's only rights in respect of that failure are to give the Developer a Trigger Notice and, if applicable under clause 39, exercise a right to terminate this deed under clause 39;

[Redacted text block]

[Redacted text block]

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## 16 Progress of Works - reporting and meetings

### 16.1 Development Control Group

- (a) The State and the Developer must establish a Development Control Group to be comprised of 2 representatives appointed by the Developer and 2 representatives appointed by the State.
- (b) The Development Control Group must meet every month, or such other frequency as agreed between the parties from time to time until the Date of Practical Completion of the last Works Portion.
- (c) The Development Control Group will be responsible for:
  - (i) reviewing the progress of the Works the subject of that Works Portion and the timing of Practical Completion with a focus on the Public Works;
  - (ii) reviewing the Developer's compliance with its obligations under this deed; and
  - (iii) updating the State in respect of the Works with a focus on the Public Works.
- (d) The Developer is responsible for preparing minutes of meetings of the Development Control Group and for preparation of action lists of matters that need to be undertaken or pursued following each such meeting.
- (e) No member of the Development Control Group has any power to bind the parties to any act, matter or thing otherwise than pursuant to an express written authority to do so given from time to time by any party.

### 16.2 Reports

- (a) Until the Date of Practical Completion of the last Works Portion, the Developer must prepare and provide to the Development Control Group, every 2 months, a report (**DCG Report**), which contains:
  - (i) details of the Works carried out in the previous 2 months;
  - (ii) details of the progress towards achieving the Milestones including details as to how the progress towards achieving the Milestones is tracking against the Development Program (as updated from time to time in accordance with 21.8); and
  - (iii) details of all Applications which are proposed to be lodged in the next 2 months.
- (b) Where an event occurs which impacts on the timing of the Works as set out in the Development Program (**Delay Event**):
  - (i) the Developer must provide reasonable details of the Delay Event to the Development Control Group; and
  - (ii) the Development Control Group must consider the details and make recommendations to the Developer about any remedial action which is reasonably necessary to address the consequences of the Delay Event.
- (c) After consulting with the Development Control Group, the Developer will take such action as is reasonably necessary to address the



consequences of the Delay Event, having regard to the recommendations of the Development Control Group provided it is not required to incur any Costs in doing so and in respect of any Milestone is not required to do anything unless it is obliged to pursuant to any other clause (other than this clause 16) in this deed.

- (d) The Developer must include details of any action taken by it in respect of a Delay Event in the DCG Report immediately following the occurrence of a Delay Event.

### 16.3 Keeping the State informed

- (a) The Developer must provide to the State any information reasonably requested by the State at any time in connection with the performance of the Works in accordance with the requirements of this deed.
- (b) The State may, on reasonable notice, require the Developer to attend (and may also require the Developer to use its reasonable endeavours to procure that any or all of the Builder, the Guarantor, the Financier and the Independent Certifier attend) a meeting with the State to discuss any aspect of the performance of the Works in accordance with this deed.
- (c) The State may request a copy of any upcoming Application detailed in a DCG Report, in which event the Developer must provide the State with a copy of the requested Application on the later of:
  - (i) as soon as practicable after the State's request; and
  - (ii) 5 Business Days of the Application having been prepared by the Developer.

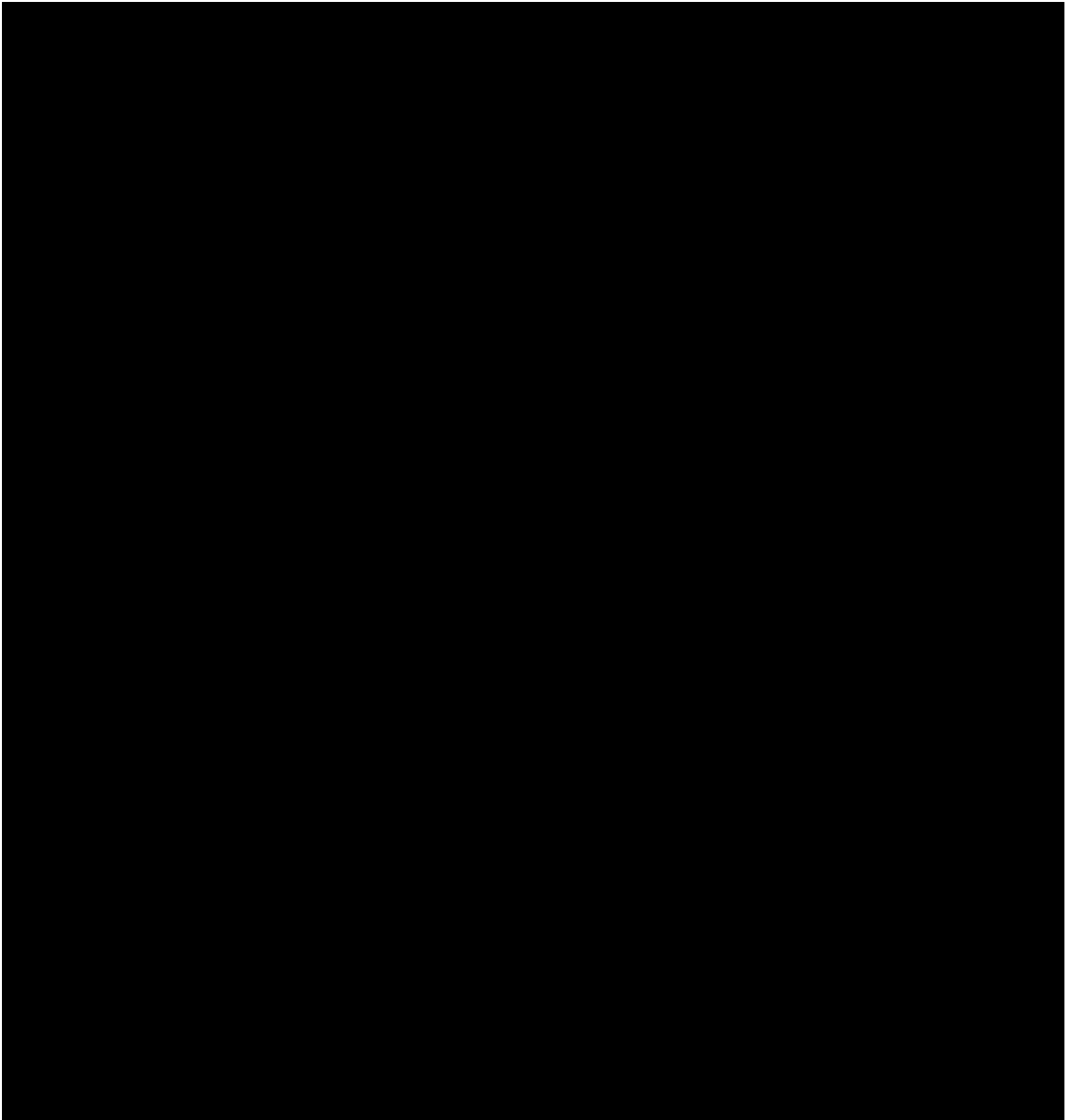
### 16.4 Design Working Group – Public Works and Integration Works

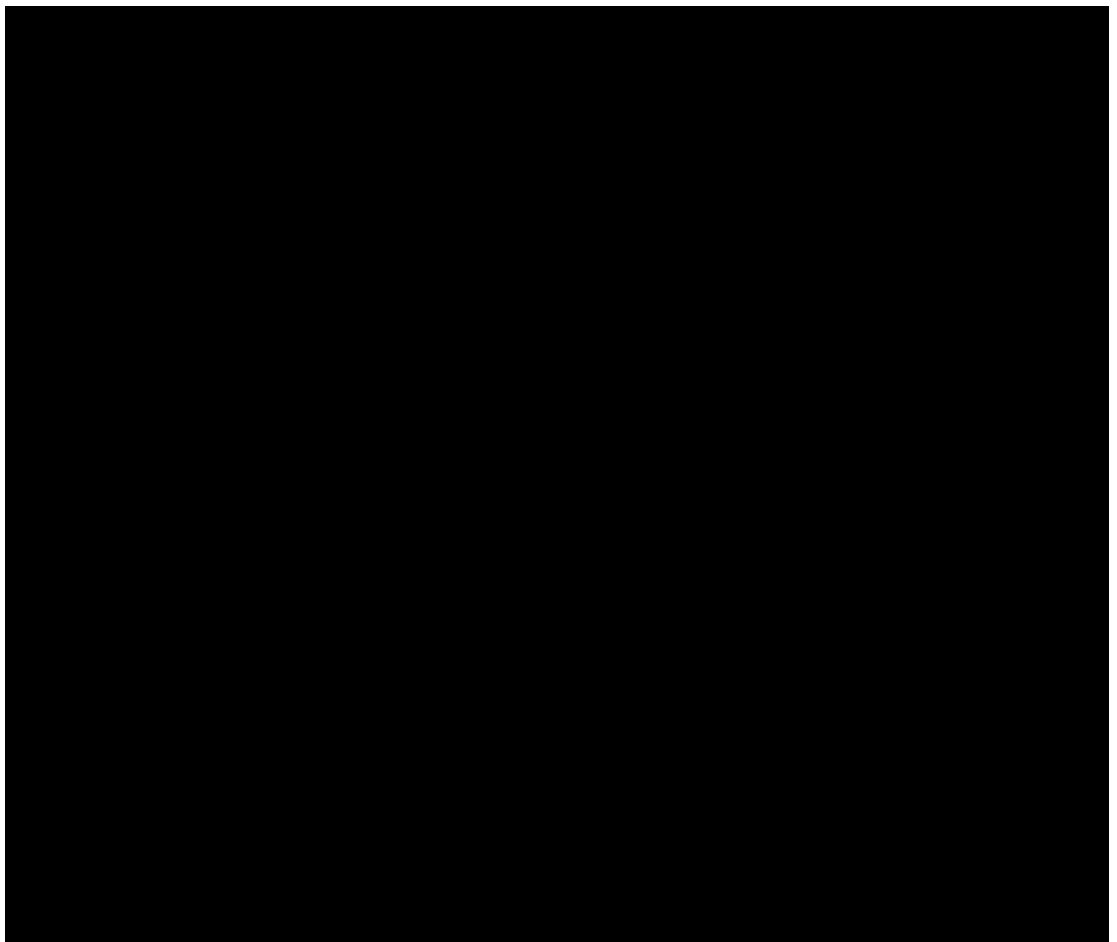
- (a) In addition to the requirements of clause 6, the State and the Developer must establish a design working group to be comprised of 2 representatives appointed by the Developer and 2 representatives appointed by the State (**Design Working Group**).
- (b) The Design Working Group must meet every month, or such other times as agreed between the parties until the Design Documentation (Public and Integration Works) prepared in the "Approved for Construction" Design Stage has been approved by the State in accordance with this deed.
- (c) The Design Working Group will be responsible for:
  - (i) reviewing the progress of the design of the Public Works and the Integration Works;
  - (ii) reviewing the Developer's compliance with its design related obligations under this deed in respect of the Public Works and the Integration Works; and
  - (iii) updating the State in respect of the design of the Works with a focus on the Public Works and the Integration Works.
- (d) The Developer is responsible for preparing minutes of meetings of the Design Working Group and for preparation of action lists of matters that need to be undertaken or pursued following each such meeting.

- (e) No member of the Design Working Group has any power to bind the parties to any act, matter or thing otherwise than pursuant to an express written authority to do so given from time to time by any party.

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## 17 Infrastructure





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## **18 Public Works**

### **18.1 Commitment by the Developer**

- (a) Subject to the balance of the provisions of this deed, the Developer acknowledges and agrees that in undertaking the Project it must at its cost and risk, design, carry out and complete each item of Public Works in accordance with the requirements of clause 24.1. Despite the previous sentence, the parties acknowledge and agree that the Developer is only required to carry out the P1 Public Works in the circumstances referred to in clause 18.10 and/or the P1 Works Deed.
- (b) Subject to clause 18.1(c), the Developer must:
  - (i) design the Public Works in accordance with the Western Gateway Publicly Accessible Design Strategy;
  - (ii) cooperate and coordinate with the State to ensure that the finishes, fittings and appearance of the Public Works are consistent with the design of the Western Gateway Sub-Precinct; and
  - (iii) coordinate the design of the Public Works with the State's design of the Central Over Station Development to the extent that the State's design is known during the period when the Developer is designing the Public Works.
- (c) The Developer's obligation under clause 18.1(b):

- (i) ceases on and from the end of the “construction design” Design Stage for the relevant Public Works;
- (ii) does not apply to Design Documentation for the Public Works to the extent that it has already been approved by the State (and the State cannot require the Developer pursuant to this clause to change any Design Documentation for the Public Works that has previously been approved); and
- (iii) does not limit the Developer’s rights with respect to any Developer Rejection Right (Variations) or Developer Unacceptable Conditions.

## 18.2 State Initiated Variations

- (a) The State may request Variations to the Public Works by giving written notice to the Developer and providing all relevant information sufficient for the Developer to fully consider the request and seek necessary Approvals to the Variations in a timely manner. The parties acknowledge and agree that the State may request a Variation which comprises only the design component of a change to the Public Works and not the construction or delivery component of that change, on the basis that, if the State authorises the Developer to proceed with the requested Variation which is design only, the State may (after the design of the requested Variation has been completed) subsequently request (under this clause 18.2) a further Variation being the construction and delivery of the relevant change to the Public Works.
- (b) Within 20 Business Days of receipt of a request from the State under clause 18.2(a), the Developer must consider the State’s request and provide written notification to the State of:
  - (i) its consent to the State Initiated Variation and its estimated costs associated with preparing the Variation Proposal for the State Initiated Variation (“**Cost Estimate**”); or
  - (ii) its refusal of consent to the State Initiated Variation on the basis that the State Initiated Variation would cause the trigger of a Developer Rejection Right (Variations).
- (c) If the State wishes the Developer to proceed to prepare a Variation Proposal for a State Initiated Variation consented to by the Developer under clause 18.2(b)(i), the State must notify the Developer that it approves the Developer’s Cost Estimate notified by the Developer to the State under clause 18.2(b)(i) in respect of the relevant State Initiated Variation within 15 Business Days of the Developer’s notice of the Cost Estimate being given to the State under clause 18.2(b)(i).
- (d) If:
  - (i) the Developer notifies the State of its consent under clause 18.2(b)(i) in respect of a State Initiated Variation; and
  - (ii) the State notifies the Developer under clause 18.2(c) that it approves the Developer’s Cost Estimate for that State Initiated Variation within the timeframe referred to in clause 18.2(c),

the Developer must, within 20 Business Days of the State’s notice of consent given under clause 18.2(c) to the Developer’s Cost Estimate for the relevant State Initiated Variation, provide a proposal to the State (“**Variation Proposal**”) which includes:

- (iii) the price of the proposed Variation (including reasonable details of external and internal costs);
  - (iv) the Developer's payment or funding terms for the Variation;
  - (v) any delay which the Variation, if conducted, will cause to any Milestones (including the Date of Practical Completion of the Works);
  - (vi) any delay costs which arise from the Variation or other costs arising from the impact of the Variation on the Development Works; and
  - (vii) any adverse effect which the proposed Variation may cause to the Works or the fitness for purpose of the Works.
- (e) The State must consider the information provided by the Developer under clause 18.2(d) and, within 10 Business Days of receipt of the Variation Proposal, provide written notification to the Developer:
- (i) authorising the Developer to proceed with the Variation Proposal; or
  - (ii) rejecting the Variation Proposal.
- (f) If the State fails to give the notice required under clause 18.2(e), the State will be deemed to have rejected the Variation Proposal.
- (g) If the State rejects (or is deemed to have rejected) a Variation Proposal, the State must pay to the Developer within 10 Business Days after notice the Cost Estimate referred to in clause 18.2(b)(i).

### 18.3 Payment of Variation Amounts

- (a) On or before the 5th day of every month, the Developer must submit to the State and the Independent Certifier a progress claim setting out details of any Variation Amounts arising since the end of the period in respect of which the previous progress claim was submitted.
- (b) The Developer must (at reasonable times and on reasonable notice) permit the State and the Independent Certifier to inspect copies of invoices and such other supporting material as the State or the Independent Certifier reasonably requires to inspect in respect of each claim referred to in this clause 18.3. The State may provide comments to the Independent Certifier before the Independent Certifier issues a progress certificate pursuant to clause 18.3(c).
- (c) Within 10 Business Days of receiving a progress claim from the Developer, the Developer and the State must procure the Independent Certifier to issue to the Developer and the State, a progress certificate that identifies each of the following:
  - (i) the amount of Variation Amounts which, in the reasonable opinion of the Independent Certifier having regard to the information provided or made available to it under clause 18.3(a), has arisen since the previous progress claim; and
  - (ii) the cumulative amount of the Variation Amounts which, in the reasonable opinion of the Independent Certifier having regard to the amount identified in clause 18.3(c)(i) and all amounts

identified in previous Payment Schedules in respect of clause 18.3(c), has arisen up to the date of the relevant progress claim;

- (iii) the amount calculated as follows (the “**Progress Payment**”):

$$A = B - C$$

where:

- A = the Progress Payment;
- B = the amount in clause 18.3(c)(ii); and
- C = the aggregate of all previous Progress Payments pursuant to this clause,

to be known as a “**Payment Schedule**”.

- (d) A Payment Schedule issued by the Independent Certifier under this clause 18.3 is agreed to be a payment schedule for the purposes of section 14 of the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- (e) The State must pay to the Developer the Progress Payment within 10 Business Days after the issue of the Payment Schedule.

#### 18.4 Final payment claim

- (a) On the date which is no later than the date 20 days after a Works Portion achieves Practical Completion, the Developer must submit to the State and the Independent Certifier a final payment claim for that Works Portion endorsed “final payment claim” and setting out the Variation Amounts for that Works Portion arising since the end of the period in respect of which the previous progress claim was submitted. The Developer must (at reasonable times and on reasonable notice) permit the State and the Independent Certifier to inspect copies of invoices and such other supporting material as the State or the Independent Certifier reasonably requires to inspect in respect of the claim referred to in this clause 18.4. The State may provide comments to the Independent Certifier before the Independent Certifier issues a progress certificate pursuant to clause 18.4(b).
- (b) Within 10 Business Days of receiving the final payment claim from the Developer for a Works Portion, the Developer and the State must procure the Independent Certifier to issue to the Developer and the State, a final certificate that identifies each of the following in respect of that Works Portion:
- (i) the amount of Variation Amounts which, in the reasonable opinion of the Independent Certifier having regard to the information provided or made available to it under clause 18.4(a), has arisen since the previous progress claim;
- (ii) the cumulative amount of the Variation Amounts which, in the reasonable opinion of the Independent Certifier having regard to the amount identified in clause 18.4(b)(i) and all amounts identified in previous Payment Schedules in respect of clause 18.3(c), has arisen up to the date of the final payment claim;

- (iii) any other amount which, in the reasonable opinion of the Independent Certifier, is payable by the State to the Developer under this deed;
- (iv) all amounts identified in previous Payment Schedules in respect of clause 18.3(c)(iii); and
- (v) the amount calculated as follows (the “**Final Payment**”):

$$A = B - C$$

where:

- A = the Final Payment;
- B = the amount in clause 18.4(b)(ii); and
- C = the aggregate of all previous Progress Payments pursuant to clause 18.3,

to be known as a “**Final Certificate**”.

- (c) A Final Certificate issued by the Independent Certifier under this clause 18.4 is agreed to be a payment schedule for the purposes of section 14 of the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- (d) The State must pay to the Developer the Final Payment within 5 Business Days of the issue of the Final Certificate.
- (e) None of the issue of a Payment Schedule, a Final Certificate, nor the payment of moneys shall be evidence of the value of work or an admission of liability or evidence that work has been executed satisfactorily but shall be a payment on account only.

## 18.5 Completed Public Works

The Developer must construct the Public Works using Best Industry Practice and in accordance with clause 24.1, so that the Public Works at Practical Completion are Fit for Purpose and otherwise fulfil the requirements of this deed. Despite the previous sentence, the parties acknowledge and agree that the Developer is only required to carry out the P1 Public Works in the circumstances referred to in clause 18.10 and/or the P1 Works Deed.

## 18.6 Developer must not suspend the Public Works

The Developer must ensure that the progress of the Public Works is not suspended without the prior written consent of the State except in the case of:

- (a) a Force Majeure Event (but only to the extent the Force Majeure Event reasonably necessitates a suspension of the Public Works);
- (b) a suspension required by Law or an order of a court;
- (c) a suspension required in order to comply with the WHS Act;
- (d) a suspension which the Builder is entitled to undertake pursuant to the Building Contract; or

- (e) a suspension arising due to the replacement of the Builder where the Builder is being replaced as a result of the Builder's non-performance or insolvency.

### **18.7 Allocation of Public Works delivery risk**

Except as otherwise provided in this deed, the delivery of the Public Works is at the Developer's sole cost and risk. The parties acknowledge and agree that, to the extent that this clause applies to the P1 Public Works, this clause 18.7 only applies in respect of an aspect of the P1 Public Works where the Developer is carrying out that aspect of the P1 Public Works in the circumstances referred to in clause 18.10 and/or the P1 Works Deed.

### **18.8 Third party warranties**

- (a) The Developer must procure that all warranties given by third party contractors or suppliers in respect of any part or parts of the Public Works are:
  - (i) on terms reasonably acceptable to the State acting reasonably having regard to the nature of the Public Works and usual market practice in respect of warranties provided by contractors in respect of comparable works; and
  - (ii) given for the benefit of (and in a form enforceable by) the State and the Developer.
- (b) The Developer must provide all such warranties to the State, and must (at the State's cost) do all things reasonably required by the State to enforce any such warranties should the State be unable to do so.
- (c) The parties acknowledge and agree that, to the extent that this clause applies to the P1 Public Works, this clause 18.8 only applies in respect of an aspect of the P1 Public Works where the Developer is carrying out that aspect of the P1 Public Works in the circumstances referred to in clause 18.10 and/or the P1 Works Deed.

### **18.9 P1 Public Works – Pavilion Works – Design and Approvals**

- (a) The State must:
  - (i) keep the Developer informed about design development and procurement of the Central Over Station Development;
  - (ii) prior to constructing the Wind Mitigation Components, complete the Pavilion Wind Analysis and provide a copy of the Pavilion Wind Analysis to the Developer;
  - (iii) prepare the design of the Wind Mitigation Components; and
  - (iv) consult with the Developer regarding the Pavilion Wind Analysis and the design of the Wind Mitigation Components and acting reasonably address all comments made by the Developer in that regard.
- (b) The Developer must in consultation with the State prepare the design for the Pavilion Works in accordance with the Public Works Brief by the Conditions Precedent Sunset Date and the provisions of clause 6 will apply in respect of the design of the Pavilion Works (as part of the Stage 1 Public Works).



- (c) If the State wishes to amend the design of the Pavilion Works after the Design Documentation for the Pavilion Works has become Approved Design Documentation under this deed, the State may request amendments which will be treated as a State Initiated Variation to which clauses 18.2 to 18.4 (inclusive) will apply.
- (d) Despite any other provision of this deed, the State (and not the Developer) is responsible for:
  - (i) preparing, lodging and managing all applications for all necessary Approvals for the Pavilion Works; and
  - (ii) obtaining all Approvals or authorisations necessary to enable the carrying out of the Pavilion Works.

**18.10 P1 Public Works – Pavilion Works Trigger Notice A**

- (a) If the State requires the Developer to carry out the Pavilion Works, the State must give a trigger notice to the Developer (**Pavilion Works Trigger Notice A**) before the Pavilion Works Trigger Notice A Sunset Date.

[REDACTED]

- (c) If the State gives the Developer a Pavilion Works Trigger Notice A before the Pavilion Works Trigger Notice A Sunset Date, then:

[REDACTED]

- (ii) the State will provide to the Developer a construction licence of the State Land referred to in the Site Access Schedule as required to facilitate the performance by the Developer of the Pavilion Works; and
- (iii) the Developer must use best endeavours to achieve Practical Completion of the Pavilion Works by the Third Sunset Date; and

[REDACTED]

- (d) If the Developer fails to comply with clause 18.10(c)(iii) then the State may, in its sole and absolute discretion exercisable at any time prior to the achievement of Practical Completion of the Pavilion Works, give notice to the Developer that:

- (i) the Developer has failed to achieve Practical Completion of the Pavilion Works by the Third Sunset Date; and
- (ii) the State intends to exercise its right under clause 18.10(e).

- (e) Following the issue of a notice pursuant to clause 18.10(d), the State may, in its sole and absolute discretion:

- (i) direct the Developer to cease carrying out the Pavilion Works;
- (ii) despite any other provision of a Project Document, terminate any Construction Licence and any other agreement entered into between the State and the Developer in respect of the Pavilion Works;
- (iii) require the Developer to handover the Pavilion Works and vacate any areas occupied by the Developer in relation to the Pavilion Works, within a reasonable period of time, leaving in place any material, improvements, fixtures or structures as directed by the State and removing any rubbish, equipment of the Developer and making good any damage to any of the Pavilion Works caused by the Developer (not being changes to those areas necessarily occasioned as a result of carrying out the Pavilion Works) up until the date of the State's direction under clause 18.10(e)(i), to the reasonable satisfaction of the State;
- (iv) appoint any other third party to carry out the Pavilion Works;

- (vi) exercise any other rights that the State has under any Project Document.

**18.11 P1 Public Works – IDF Fitout Works – Design and Approvals**

- (a) The Developer must prepare the design for the IDF Fitout Works in accordance with the Public Works Brief by the Conditions Precedent Sunset Date and the provisions of clause 6 will apply in respect of the design of the IDF Fitout Works.
- (b) If the State wishes to amend the design of the IDF Fitout Works after the Design Documentation for the IDF Fitout Works has become Approved Design Documentation under this deed, the State may request amendments which will be treated as a State Initiated Variation to which clauses 18.2 to 18.4 (inclusive) will apply.
- (c) The Developer is responsible for:

- (i) preparing, lodging and managing all applications for all necessary Approvals for the IDF Fitout Works; and
  - (ii) obtaining all Approvals or authorisations necessary to enable the carrying out of the IDF Fitout Works.
- (d) The parties acknowledge and agree that clauses 18.11(b) and 18.11(c) will only apply until Practical Completion of the Stage 2 Development Works, after which the provisions of clauses 3.6 and 3.12 of the P1 Works Deed will apply.

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## 19 Relocation of Third Party Services

### 19.1 Relocation works

The Developer must at its cost:

- (a) make enquiries as to the location of any Third Party Services located above or below the surface of the Development Land;
- (b) determine the relevant owner, user and/or person responsible for a Third Party Service (**Third Party**);
- (c) liaise with the Third Party regarding potential relocation or protection of those Third Party Services; and
- (d) if relocation of Third Party Services located above or below the surface of the Development Land is required in order to conduct the Works, resolve the terms and conditions of any such relocation as between the Developer and the relevant Third Party.

### 19.2 Easements in relation to Third Party Services

- (a) If:
  - (i) any Third Party Service is required to be relocated in accordance with clause 19.1; and
  - (ii) as a result of such relocation, an easement burdening the Development Land is required to be amended or relocated,
 then, as between the Developer and the State, the Developer will be responsible, at its cost, for obtaining the consent of any person entitled to the benefit of that easement.
- (b) Nothing in clause 19.2(a)(i) operates to affect any of the Developer's rights, obligations or arrangements with third parties under any third party arrangements or agreements (including co-operation agreements with any owners of adjoining land).

### 19.3 No compensation

The Developer acknowledges that no compensation or other payment will be payable by the State in relation to any matter arising out of clause 19.2.

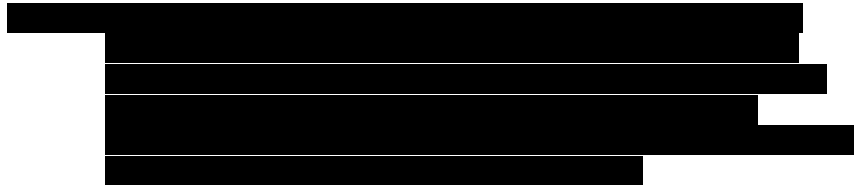
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## **20 Achieving Practical Completion of each Works Portion**

### **20.1 Developer must progress each Works Portion**

The Developer must:

- (a) carry out that Works Portion in an expeditious, proper and workmanlike manner under adequate and competent supervision, and in accordance with the good industry practices of the various trades involved, using good quality materials;
- (b) carry out the Works in respect of that Works Portion with due skill care and diligence; and
- (c) use best endeavours to ensure that the:
  - (i) Stage 1 Public Works and the Stage 1 Development Works reach Practical Completion by the First Sunset Date;
  - (ii) Stage 2 Development Works reach Practical Completion by the Second Sunset Date;
  - (iii) Pavilion Works reach Practical Completion by the Third Sunset Date if the State gives the Developer a Pavilion Works Trigger Notice A before the Pavilion Works Trigger Notice A Sunset Date; and



The parties acknowledge and agree that this clause 20 only applies in respect of an aspect of the P1 Public Works where the Developer is carrying out that aspect of the P1 Public Works in the circumstances referred to in clause 18.10 and/or the P1 Works Deed.

### **20.2 Notice of anticipated Practical Completion**

In respect of each Works Portion:

- (a) the:
  - (i) Developer must at least 2 months prior to the date on which it reasonably anticipates Practical Completion of that Works Portion to be achieved; and
  - (ii) State may at any other time (at the State's Cost),

request the Independent Certifier to assess the likely date for Practical Completion of that Works Portion and following such assessment, the Independent Certifier must by notice to both the State and the Developer, certify the Anticipated Date of Practical Completion of that Works Portion; and

- (b) the Developer must give the State and the Independent Certifier at least 15 Business Days' notice of the date on which the Developer anticipates that Practical Completion of that Works Portion will be reached.

### **20.3 Requesting Certificate of Practical Completion**

When the Developer is of the opinion that Practical Completion of a Works Portion has been reached, the Developer must:

- (a) request the Independent Certifier to issue a Certificate of Practical Completion in relation to that Works Portion; and
- (b) at the same time give the State a copy of that request.

### **20.4 Independent Certifier to certify**

In respect of a Works Portion within 5 Business Days after the receipt of the Developer's request, the Independent Certifier must give the Developer (with a copy to the State at the same time) either:

- (a) a Certificate of Practical Completion certifying the Date of Practical Completion of that Works Portion; or
- (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for that certificate to be issued.

### **20.5 Carrying out required work**

On receipt of the detailed list referred to in clause 20.4(b), the Developer must carry out the work referred to in that list and, on completion of that work, request the Independent Certifier to issue a Certificate of Practical Completion for the relevant Works Portion and clauses 20.4, and this clause 20.5 will re-apply.

### **20.6 Effect of Certificate**

The issue of a Certificate of Practical Completion of a Works Portion is evidence that Practical Completion of that Works Portion has been achieved, but not an acknowledgment that the Developer has otherwise complied with its obligations under this deed.

### **20.7 Prerequisite for issue of Certificate of Practical Completion**

A Certificate of Practical Completion for each Works Portion may not be issued unless and until:

- (a) the Developer has procured from the Independent Certifier the issue of a certificate addressed to the State stating that the Works the subject of that Works Portion have achieved the requirements for Practical Completion; and
- (b) the Developer has delivered to the State a Certificate of Construction Compliance.

### **20.8 Requirements following issue of Certificate of Practical Completion**

- (a) Within 20 Business Days after the Certificate of Practical Completion for each Works Portion for the Public Works issued (or within any shorter period required by the relevant Consent Authority), the Developer must:
  - (i) deliver to the relevant Consent Authority all certificates, third party warranties, surveys, a building certificate (if required by the State), any third party warranties and other relevant documents to the extent that the Developer is required by Law to provide those document to the relevant Consent Authority;

- (ii) deliver to the relevant Consent Authority compliance reports required to be delivered to that Consent Authority in relation to that Works Portion; and
  - (iii) deliver to the State copies of all documents and Approvals issued by the relevant Public Authority acknowledging completion of the works the subject of that Works Portion, and permitting use and occupation of the development the subject of that Works Portion (including, if relevant, a Compliance Certificate and an Occupation Certificate).
- (b) Within 40 Business Days after the Certificate of Practical Completion for each Works Portion for the Public Works issued, the Developer must deliver to the relevant Consent Authority all as built drawings to the extent that the Developer is required by Law to provide as built drawings to the relevant Consent Authority in respect of that Works Portion.

## 20.9 Providing documents to the State

Promptly, and in any event within:

- (a) 40 Business Days after Practical Completion of a Works Portion for the Public Works with respect to clause 20.9(c); and
- (b) 20 Business Days after Practical Completion of a Works Portion for the Public Works with respect to clause 20.9(d) to 20.9(g) (inclusive),

the Developer must do all things required to procure the issue and delivery to the State of copies of the following items in relation to that Works Portion:

- (c) as-built drawings of the Public Works the subject of that Works Portion;
- (d) all surveys of the Development Land the subject of that Works Portion in the possession or control of the Developer which have not previously been delivered to the State, including a copy of any survey of the completed Project by a Surveyor in form and substance satisfactory to the State;
- (e) all certificates issued by any Public Authority in relation to any part of the Public Works the subject of that Works Portion which have not previously been delivered to the State;
- (f) a building certificate under Part 9 of the EP&A Act in respect of that Works Portion; and
- (g) any third party warranties which are the subject of clause 14.3.

## 20.10 Dispute where no Certificate of Practical Completion

In respect of a Works Portion, if within 10 Business Days after receipt of the Developer's request pursuant to clause 20.3 the Independent Certifier does not:

- (a) issue the Certificate of Practical Completion of that Works Portion; or
- (b) give the Developer reasons for not issuing the certificate,

then either the State or the Developer may regard the circumstances as constituting a dispute between the State and the Developer for the purposes of clause 38.

## 20.11 Developer's Variations to the Public Works

- (a) Subject to clause 20.11(b) to 20.11(e), the Developer may carry out a variation to the Works without the approval of the State.
- (b) If, prior to Practical Completion of a Works Portion in respect of the Public Works, the Developer wishes to carry out a Variation to that Works Portion, the Developer must seek the approval of the State to that Variation in accordance with this clause. The State (acting reasonably) may withhold its approval to a Variation to the Public Works proposed by the Developer where:
  - (i) the Variation will result in any delays to Practical Completion of the Works Portion for the Public Works (once physically commenced) by more than four months; or
  - (ii) the Variation will have a material adverse impact on the:
    - (A) Public Works or prevent the use of the Public Works for their proposed use (including any material adverse impact on the quality, durability, maintainability or functionality of the Public Works) from what appears in the Public Works Brief;
    - (B) operation of any Services (excluding Services which do not service the Public Works) being detrimentally affected or altered (other than in a minor respect) from what appears in the Public Works Brief;
    - (C) Works so that the Works would not be in accordance with any relevant Law, relevant Australian Standards which have the force of Law, TfNSW Transport and Customer Requirements, Asset Management Frameworks and relevant industry codes which have the force of Law; or
  - (iii) the Variation would result in the State being in breach of a Project Document.
- (c) If the Developer wishes to propose a Variation under this clause 20.11 to the Public Works the Developer must submit a notice to the State attaching:
  - (i) the proposed drawings and specifications for the Variation;
  - (ii) reasons for the Variation; and
  - (iii) confirmation (together with appropriate substantiating information) as to whether the Developer believes that the Variation will have one of the impacts set out in clause 20.11(b).
- (d) The State must notify the Developer whether it approves the Variation to the Public Works requested by the Developer within 10 Business Days after the State receives the Developer's notice pursuant to clause 20.11(c). The State must act reasonably in giving or withholding its approval and may only withhold its approval where the Variation has one of the effects listed in clause 20.11(b)(i) to 20.11(b)(iii)(inclusive).
- (e) If the State does not give a notice under clause 20.11(d) within the timeframe referred to in that clause:

- (i) the Developer must give to the State a reminder notice which must be sent by email to Director, Project Finance and USPS Infrastructure and Place, [REDACTED] (with a copy to the Independent Certifier) and which must state that:
  - (A) the State has not given a notice under clause 20.11(d) as at the date of the email notice; and
  - (B) if the State does not provide a notice under clause 20.11(d) within a further 5 Business Days, then the Developer may regard the circumstances as constituting a dispute between the State and the Developer for the purposes of clause 38.

- (f) If the State approves the Variation the Developer may implement the Variation in the execution of the Works.

[REDACTED]

[REDACTED]

[REDACTED]

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## 21 Extensions of time

### 21.1 Milestones

The Developer must, subject to clause 21.2, use its best endeavours to achieve each Milestone by the relevant Milestone Date.

### 21.2 Claims for extension of time

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

**21.3 Conditions precedent to extensions of time**

- (a) The Developer may only claim an extension of time:
  - (i) if the Developer gives to the State and the Independent Certifier details of the number of days claimed, the date the cause of the delay first arose and the date the delay ceased, within 20 Business Days after the earlier of the day the Developer became aware, and the day the Developer ought reasonably to have become aware, of the delay ceasing;
  - (ii) [REDACTED] to the extent the delay has not been caused or contributed to by the Developer or the Developer's Employees and Agents (including any subcontractor or proposed tenant);
  - (iii) if the Developer has used its reasonable endeavours to remedy the cause of the delay and to minimise the delay, provided the Developer is not obliged to incur any Costs in doing so; and
  - (iv) if the Developer has actually been delayed in carrying out the relevant Works Portion.
- (b) If it is not practicable or possible to include the information referred to in clause 21.3(a)(i) in the notice referred to in this clause, then the Developer must provide the remainder of the information as soon as practicable after issuing the notice.

**21.4 Concurrent delays**

If, in respect of a Works Portion, more than one event set out in clause 21.2 causes concurrent delays, then to the extent that the delays are concurrent the Developer is not entitled to an additional extension of time due to the fact that more than one delay referred to in clause 21.2 occurred during the period of concurrency.

**21.5 Matters for consideration**

In determining whether the Developer is or is likely to be delayed in achieving a Milestone by the relevant Milestone Date, the Independent Certifier:

- (a) may take into account whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay provided the Developer is not obliged to incur any Costs in doing so; and
- (b) may not take into account whether the Developer can achieve the relevant Milestone by the relevant Milestone Date without an extension of time.

**21.6 Determination of extensions of time**

The State and the Developer acknowledge and agree that the Developer will be entitled to an extension of time if the Independent Certifier determines that the Developer is entitled to an extension of time.

**21.7 Dispute over extensions of time**

If, in the reasonable opinion of the Developer, the Independent Certifier fails to make its determination in accordance with clause 21.6 or fails to give sufficient reason for refusing to grant an extension of time, then the Developer may regard the circumstances as constituting a dispute between the State and the Developer for the purposes of clause 38.

**21.8 Changes to the Development Program - extensions of time**

- (a) If the Developer obtains an extension of time under to this clause 21, then within 15 Business Days of being granted that extension of time, the Developer must update the Development Program to reflect the impact of the extension of time on the anticipated timing for achieving each Milestone and provide a copy of the revised Development Program to the State.
- (b) Any updated Development Program submitted to the State must be:
  - (i) a Level 3 Schedule (Project Co-ordination Schedule) appropriate for management reporting, including:
    - (A) all key Project deliverables;
    - (B) Milestone activities;
    - (C) major components by Works Portion;
  - (ii) in PDF and native file format; and
  - (iii) accompanied by an explanation of the material changes to the Development Program and the reason for those changes.

**21.9 Occurrence of event for which Developer has Insurance**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

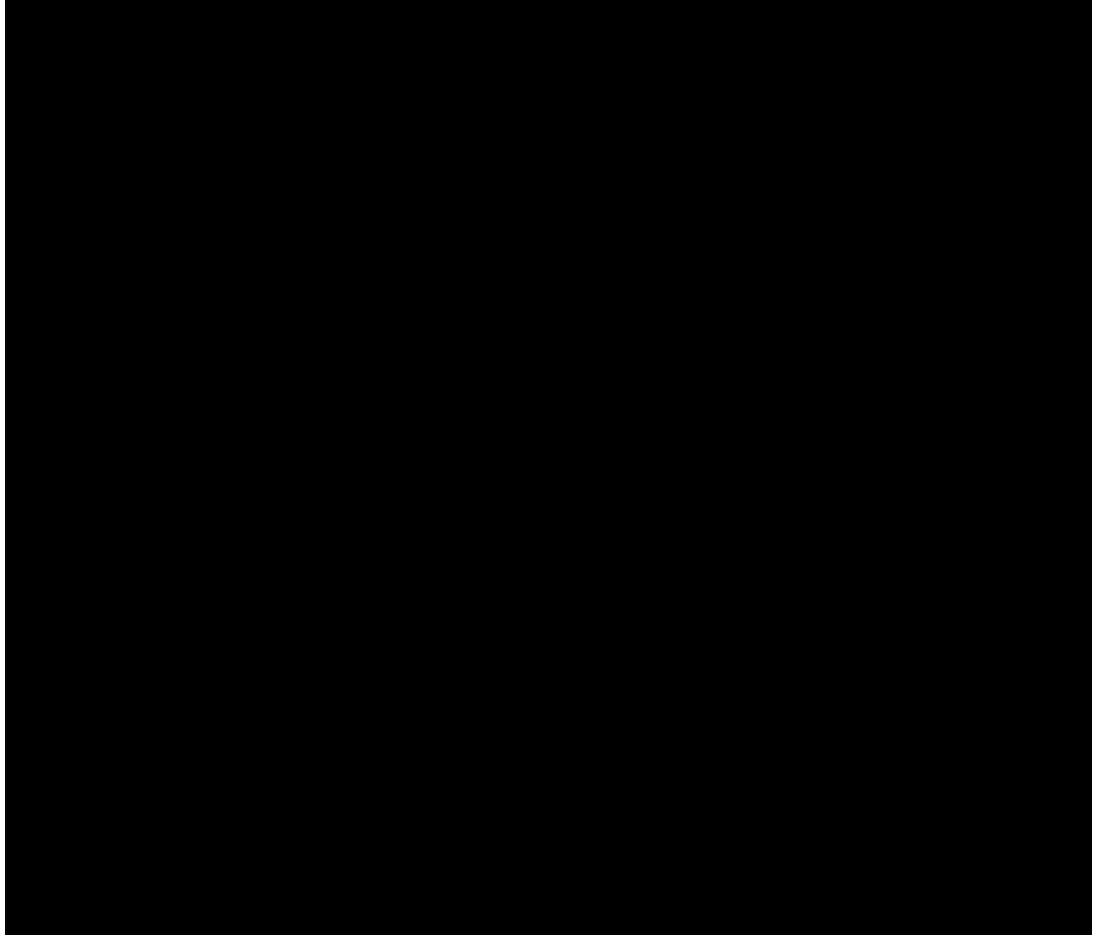
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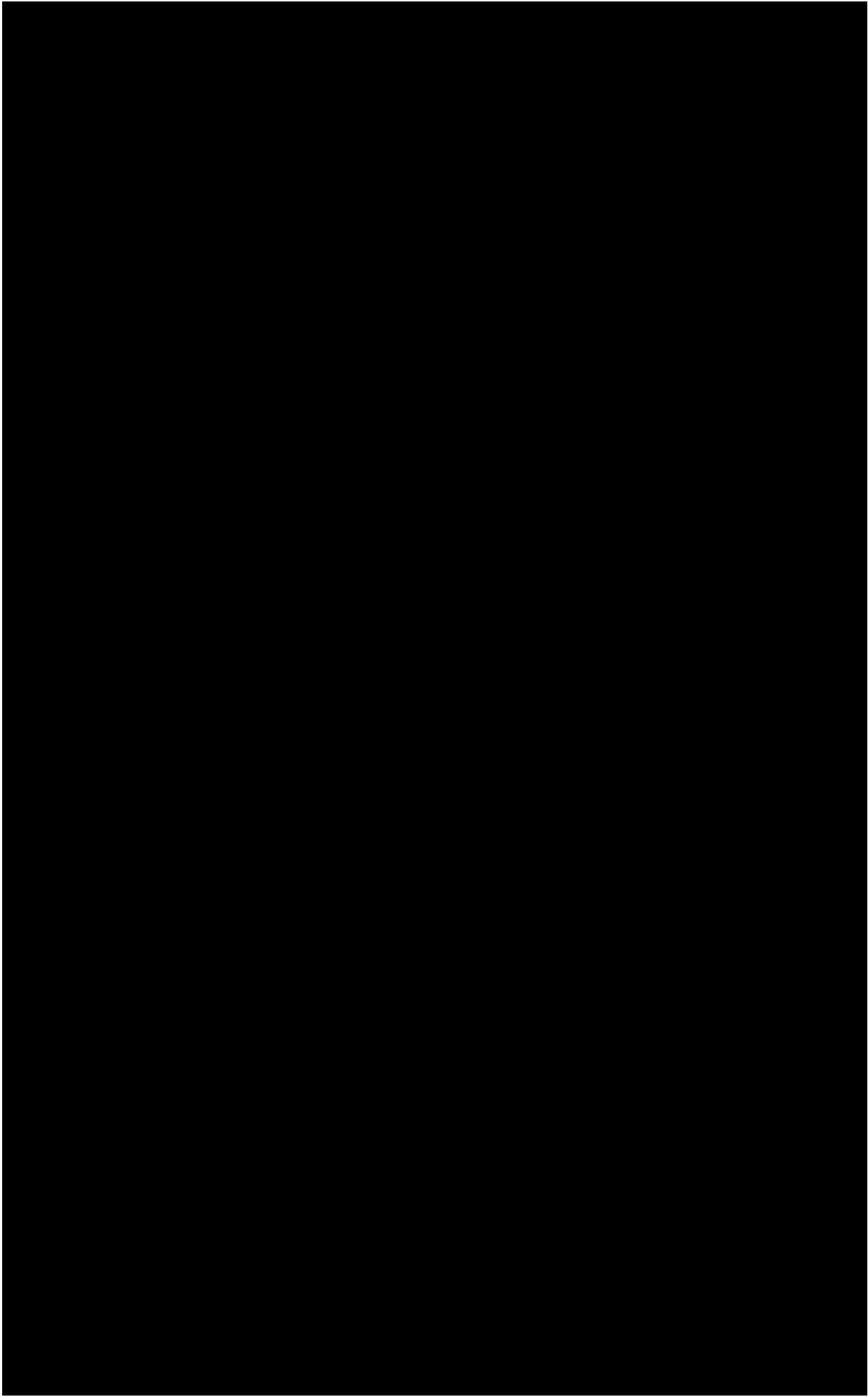
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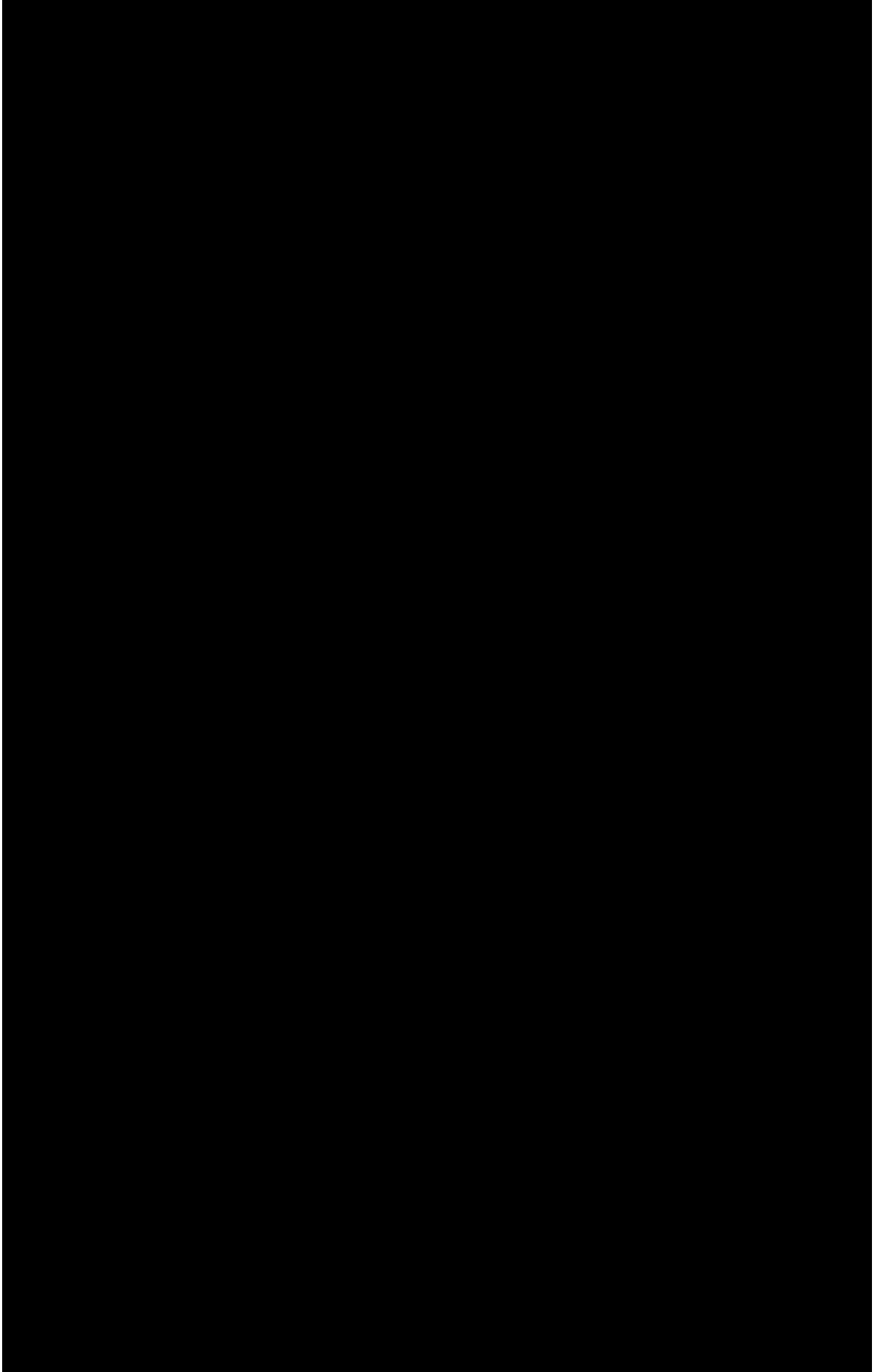
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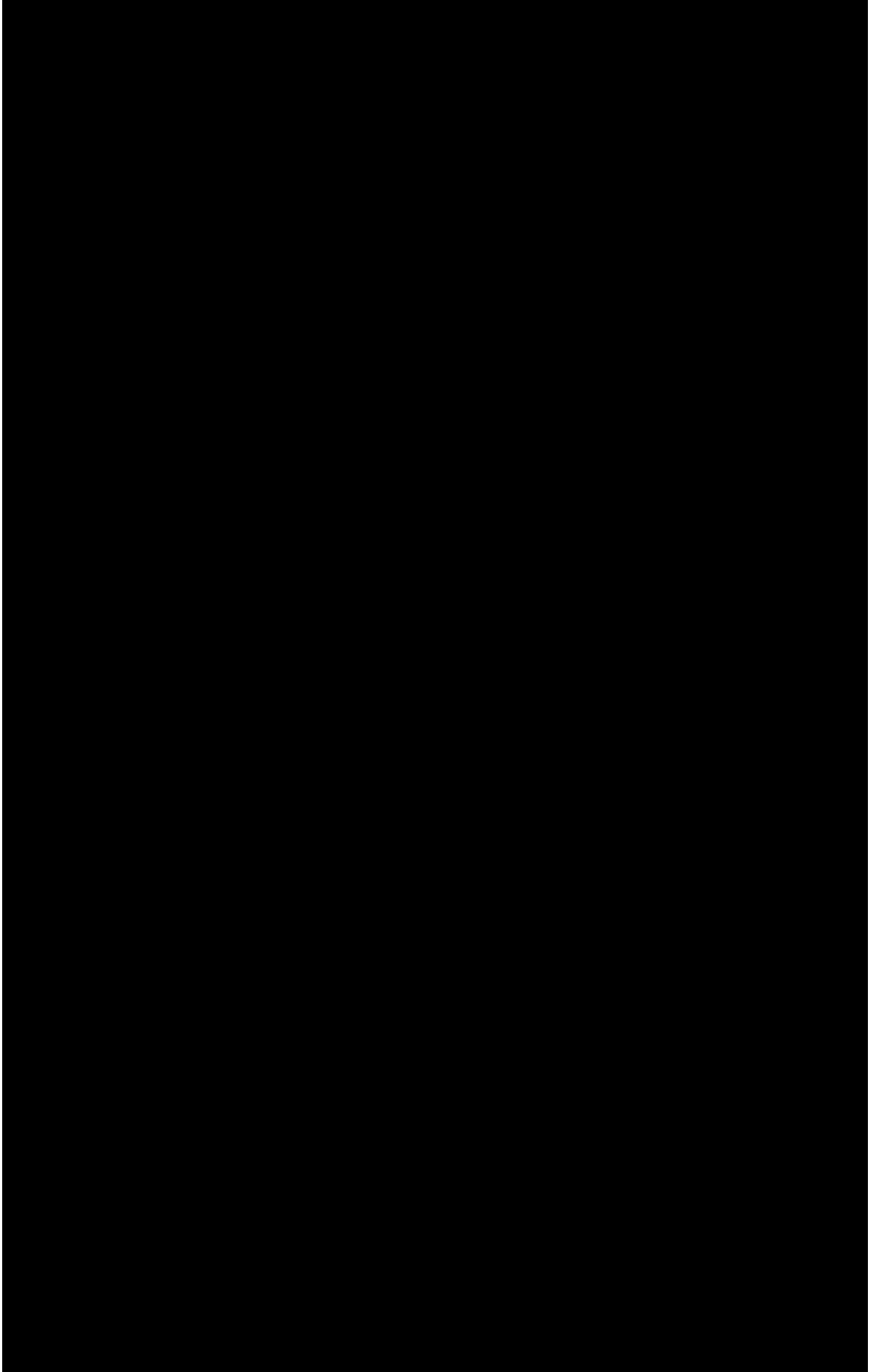
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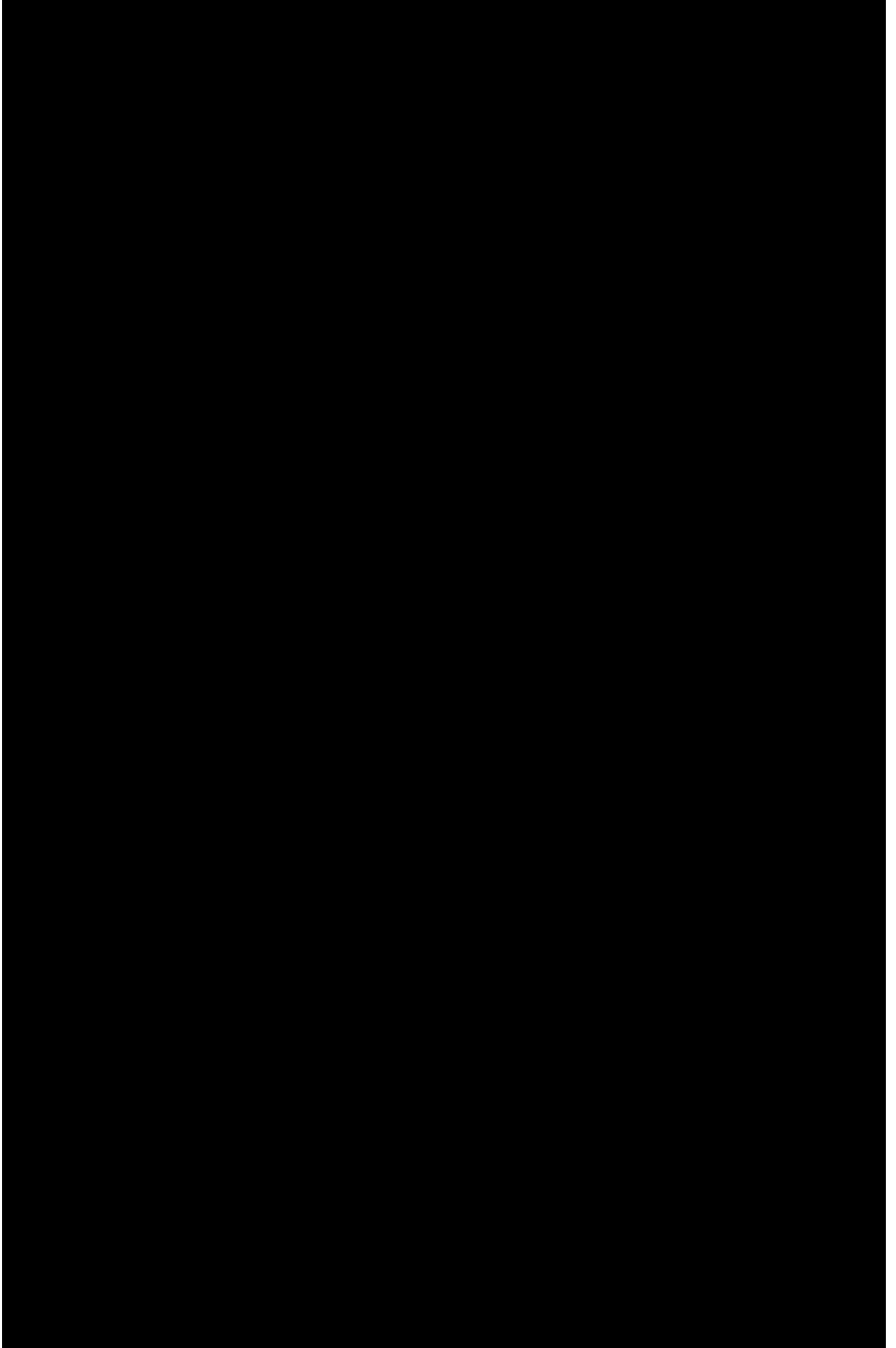


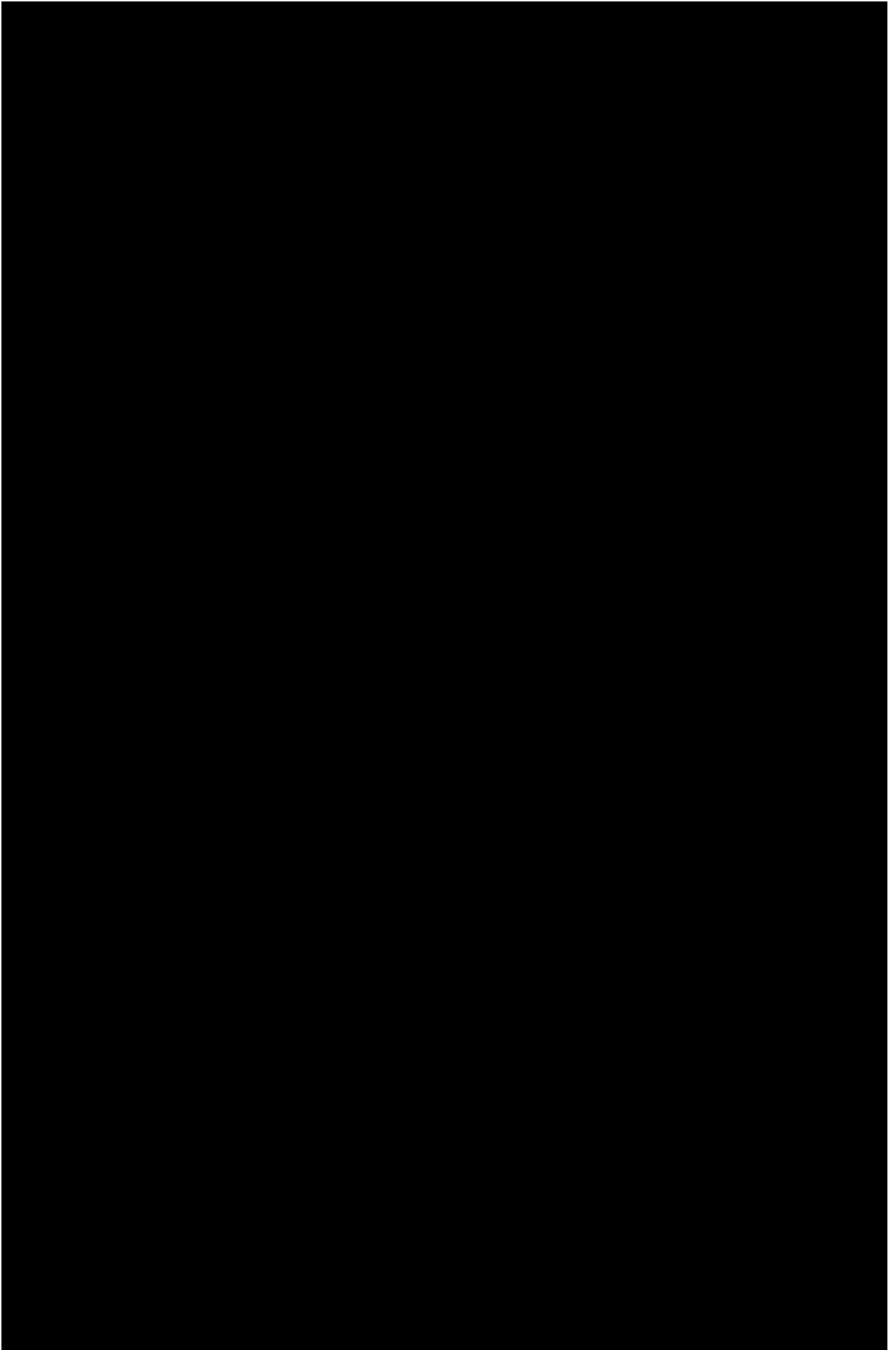
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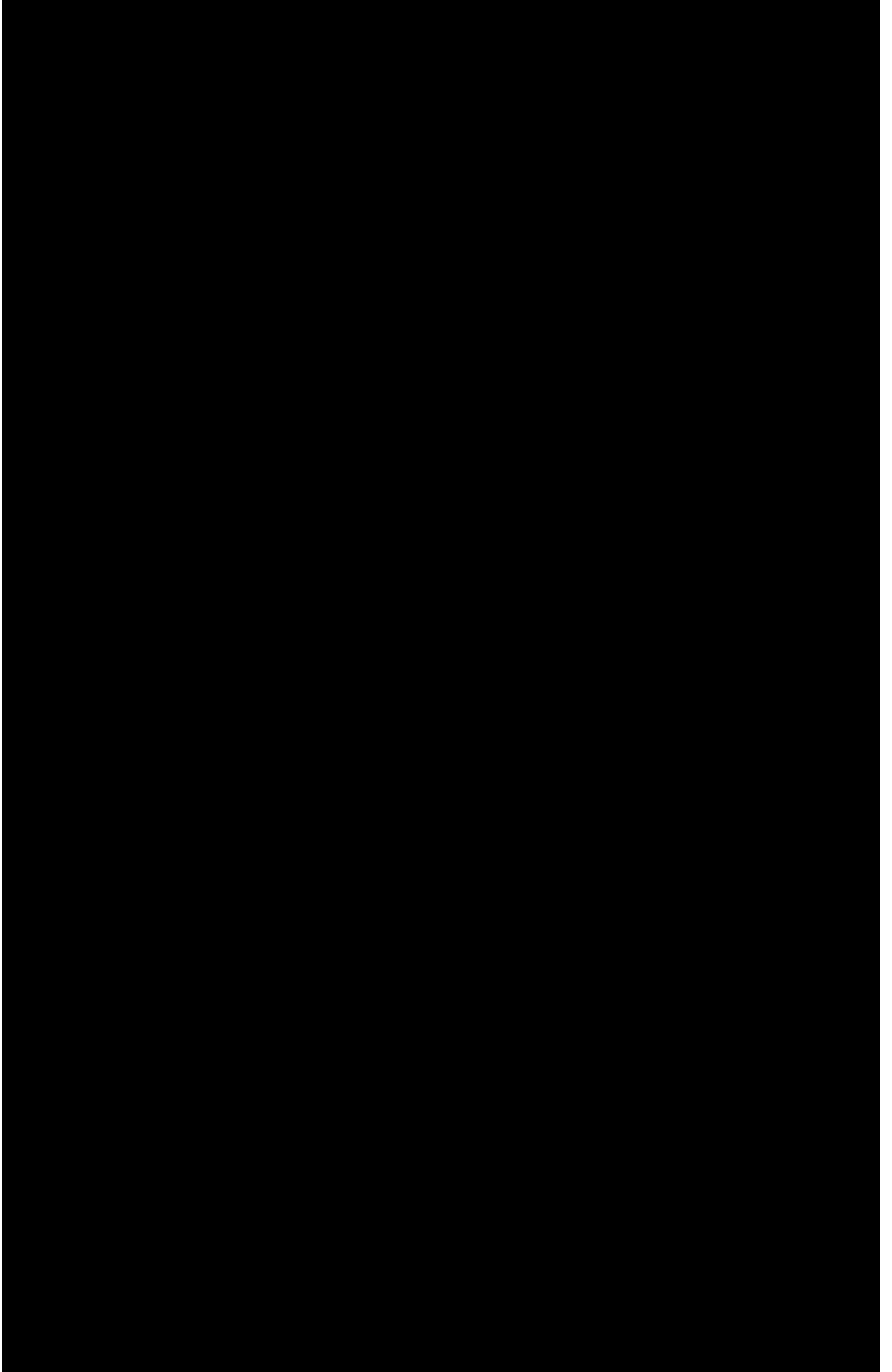


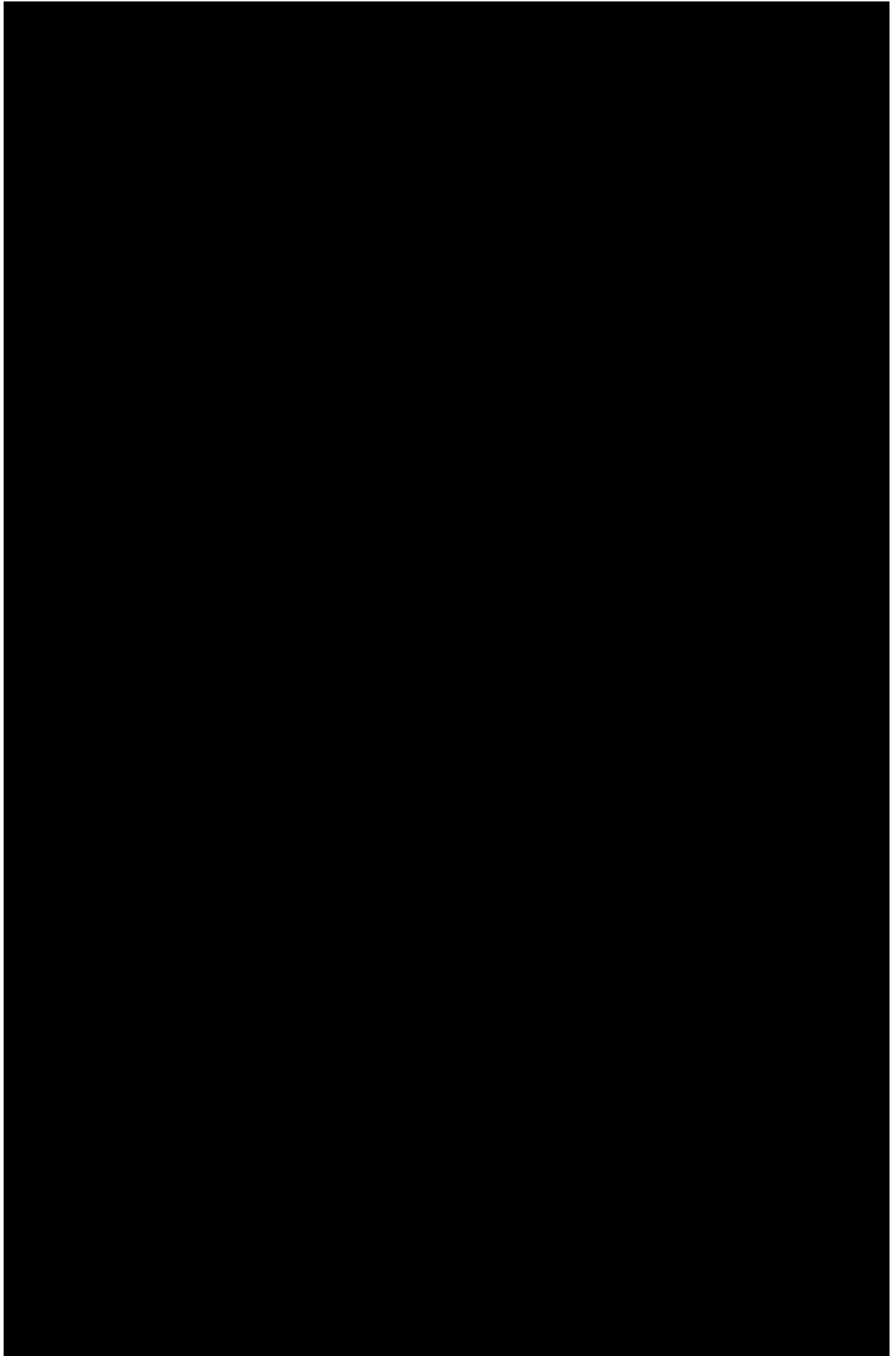


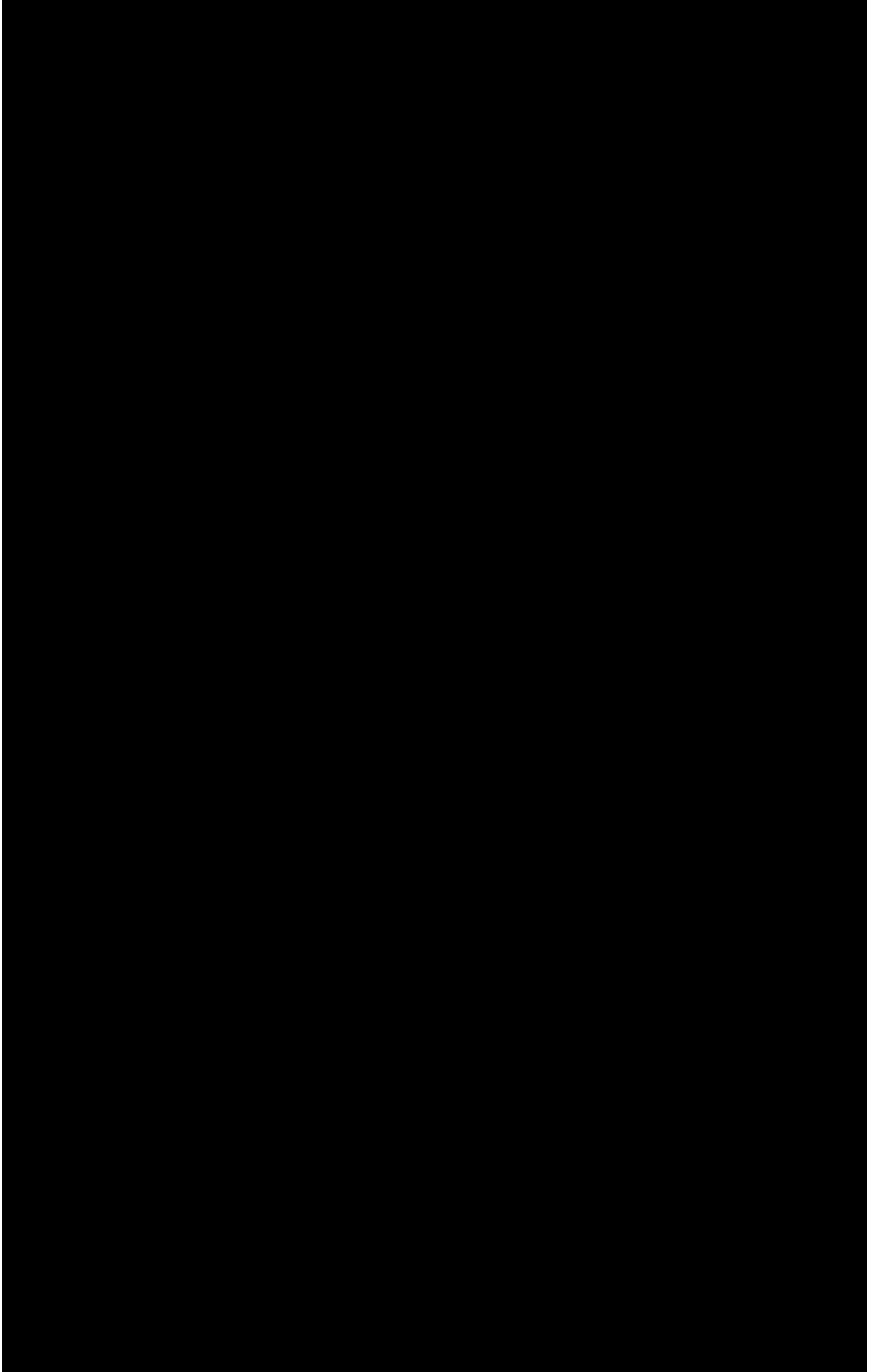


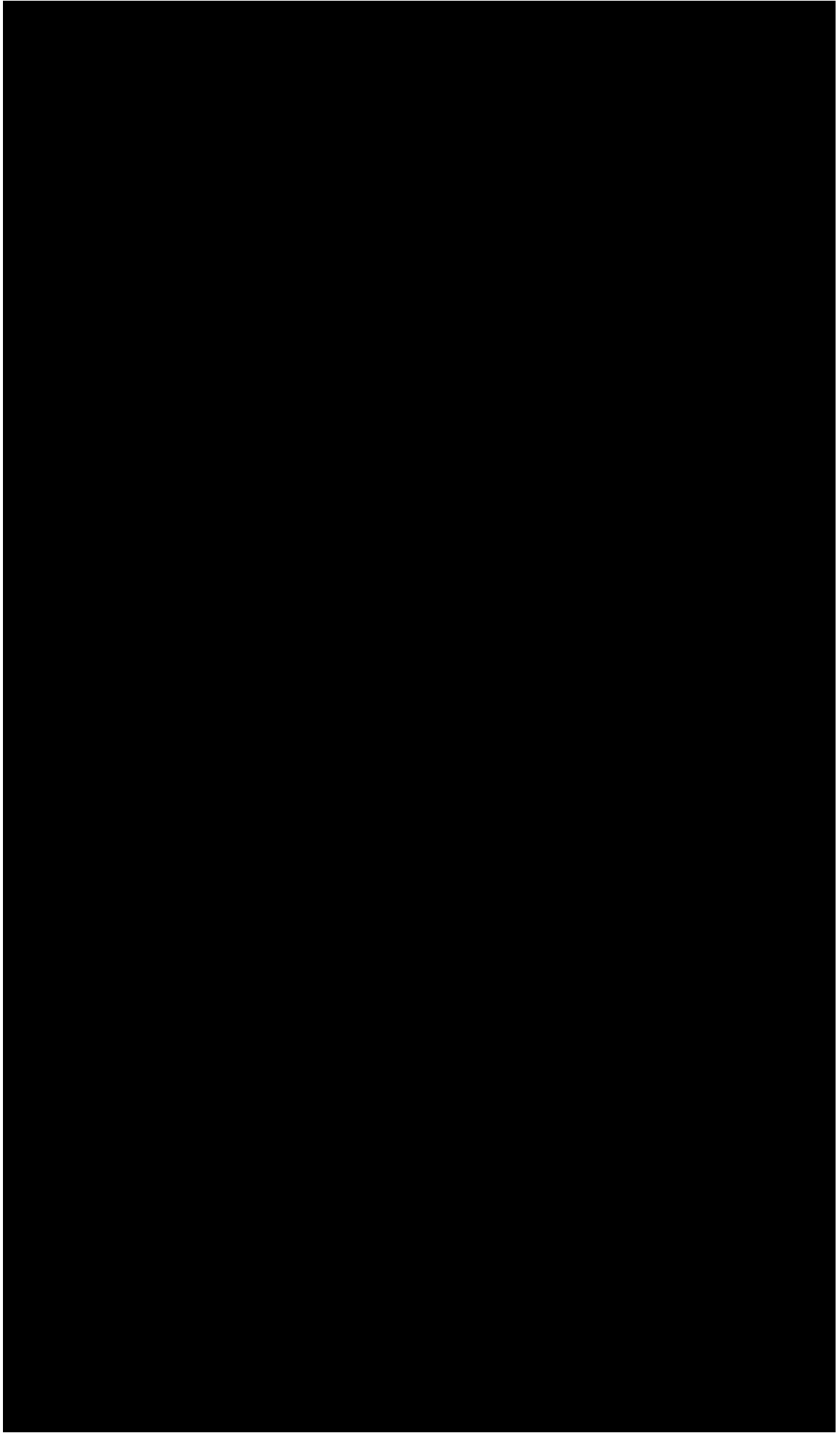


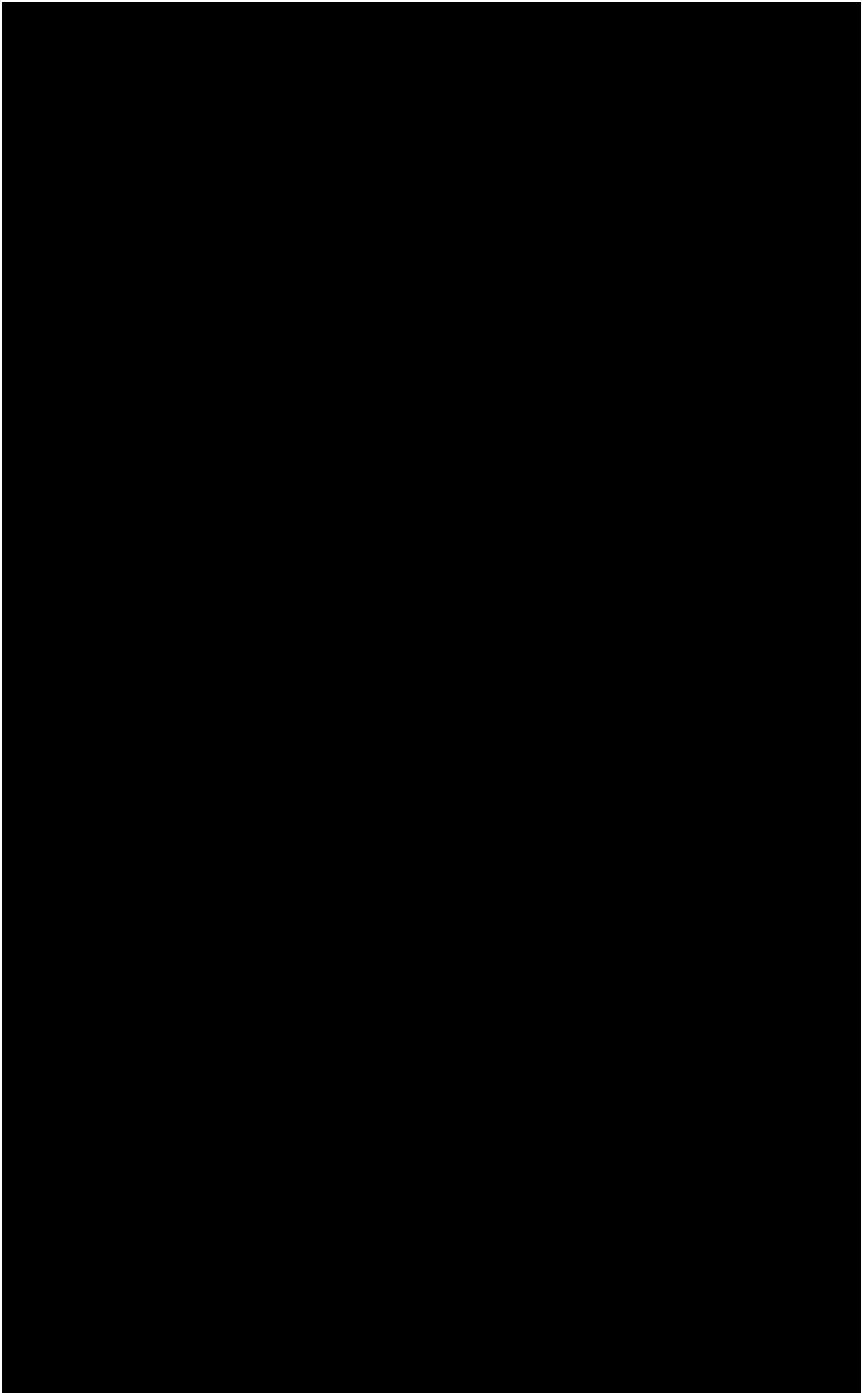


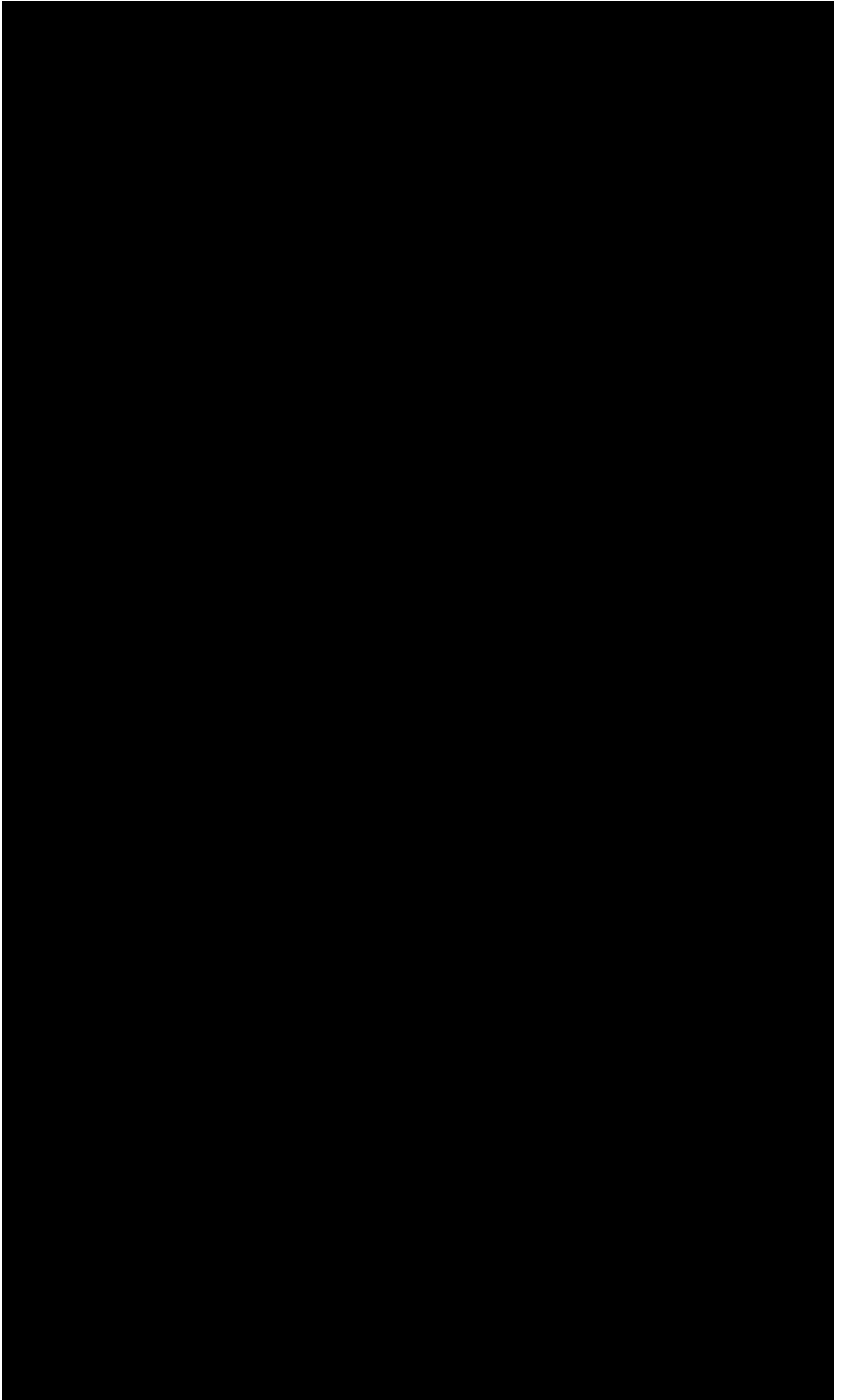


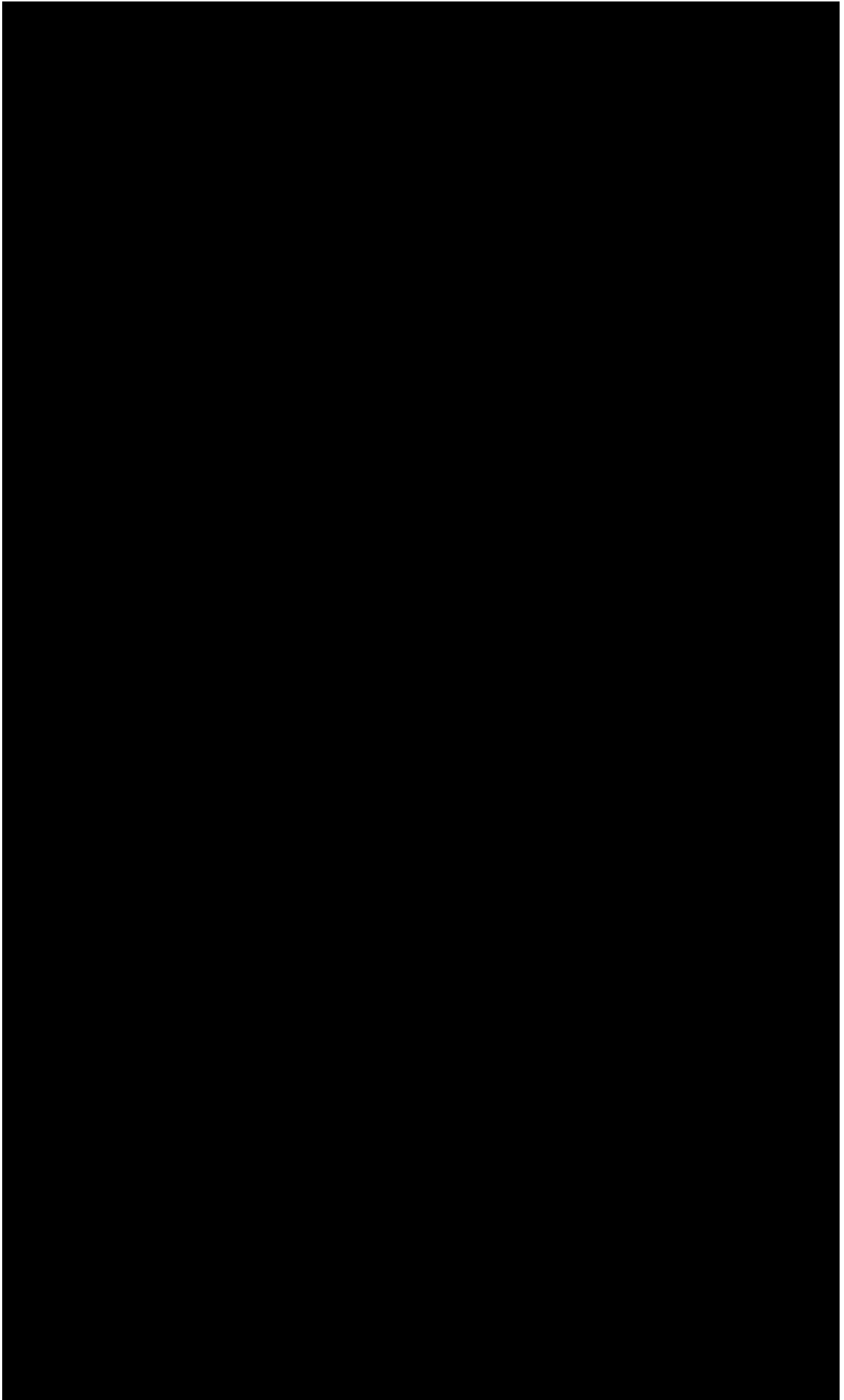


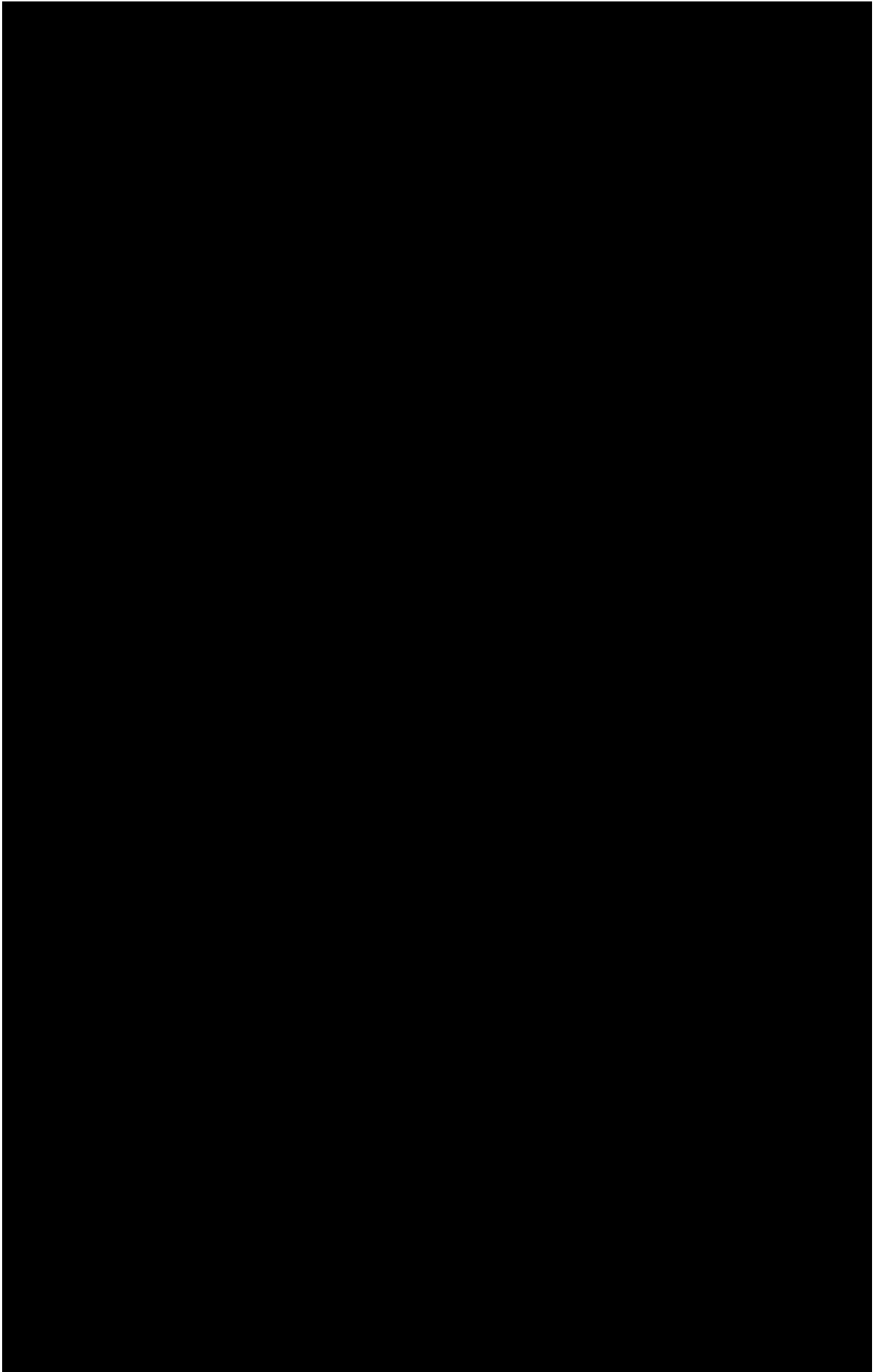




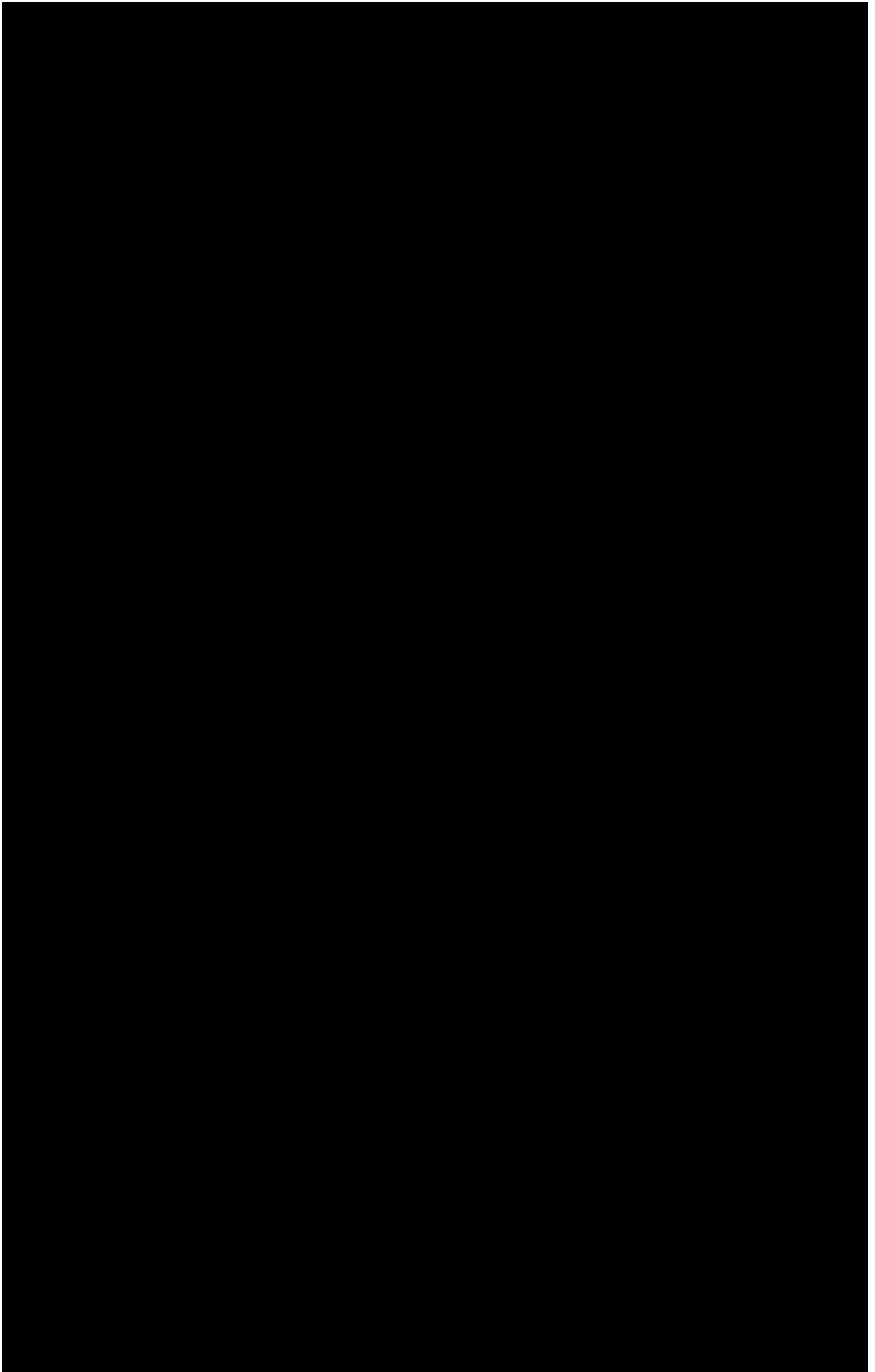


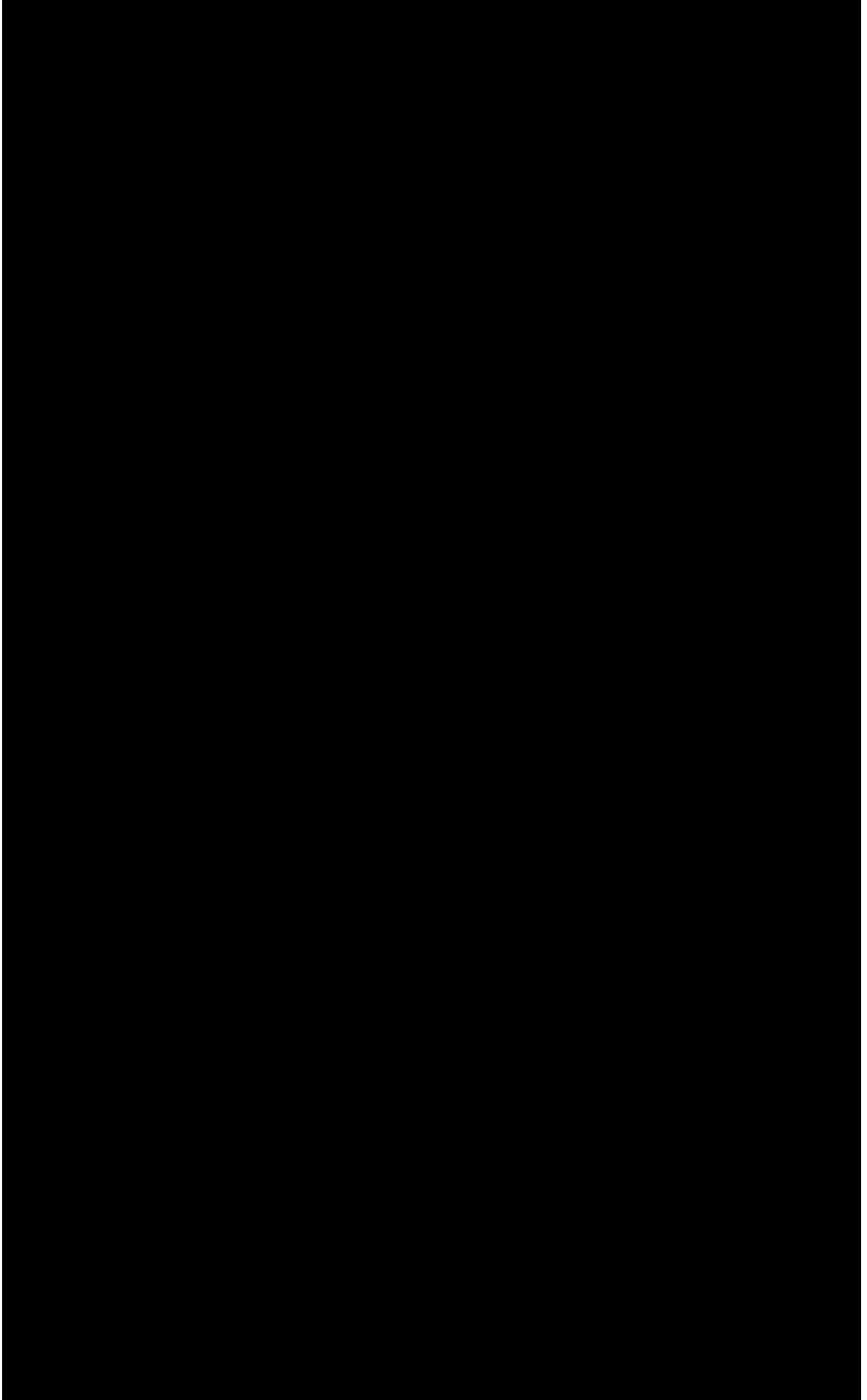


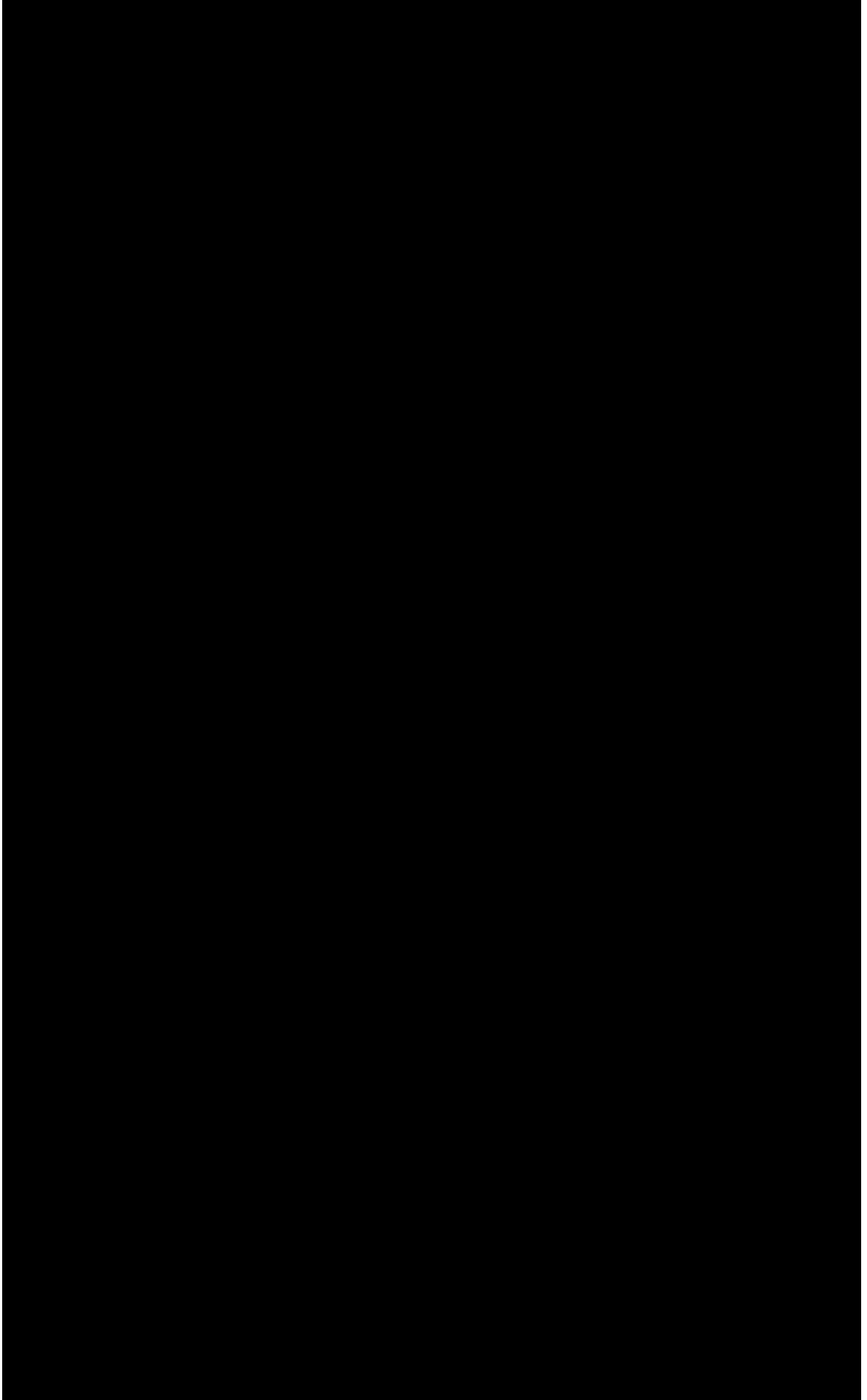


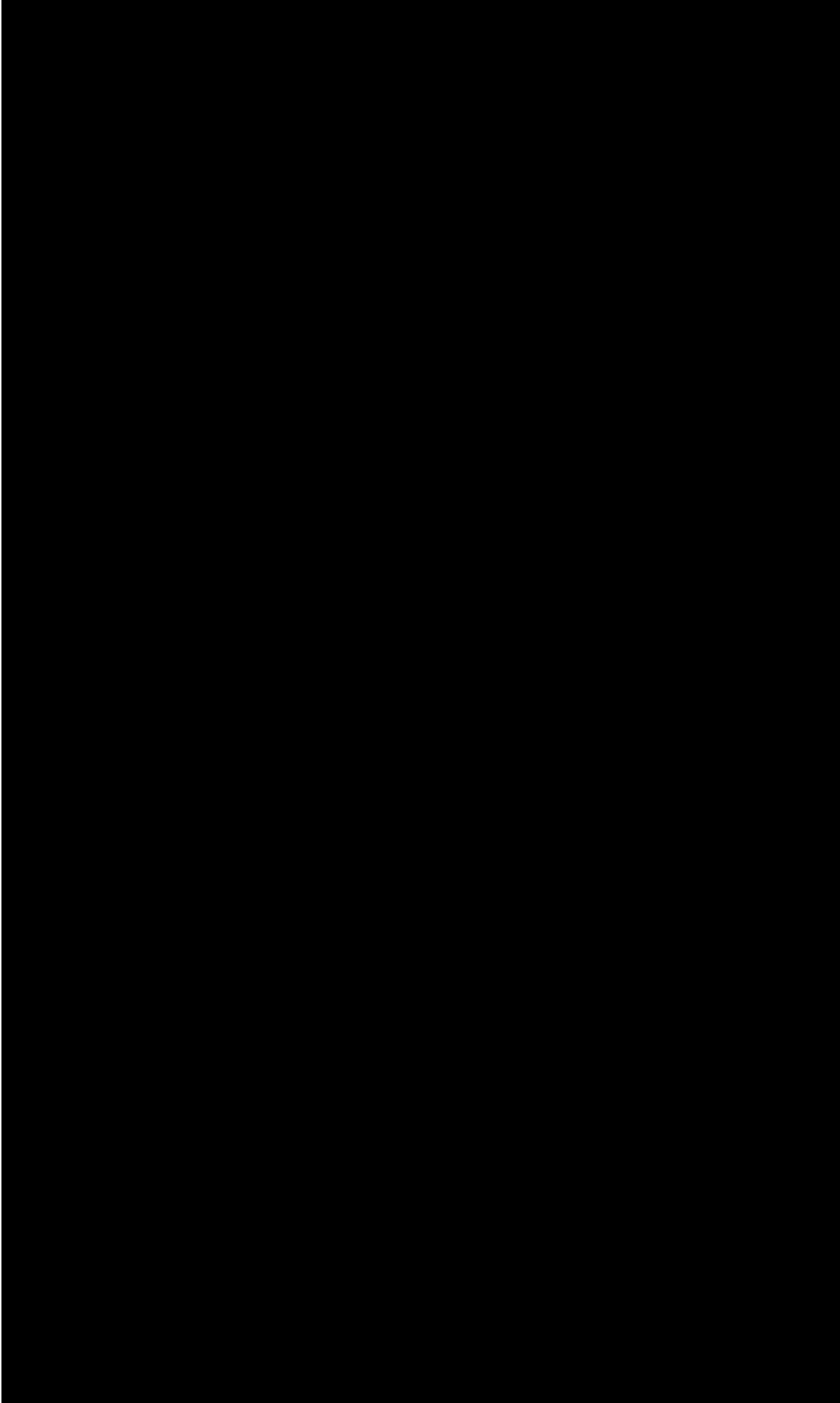


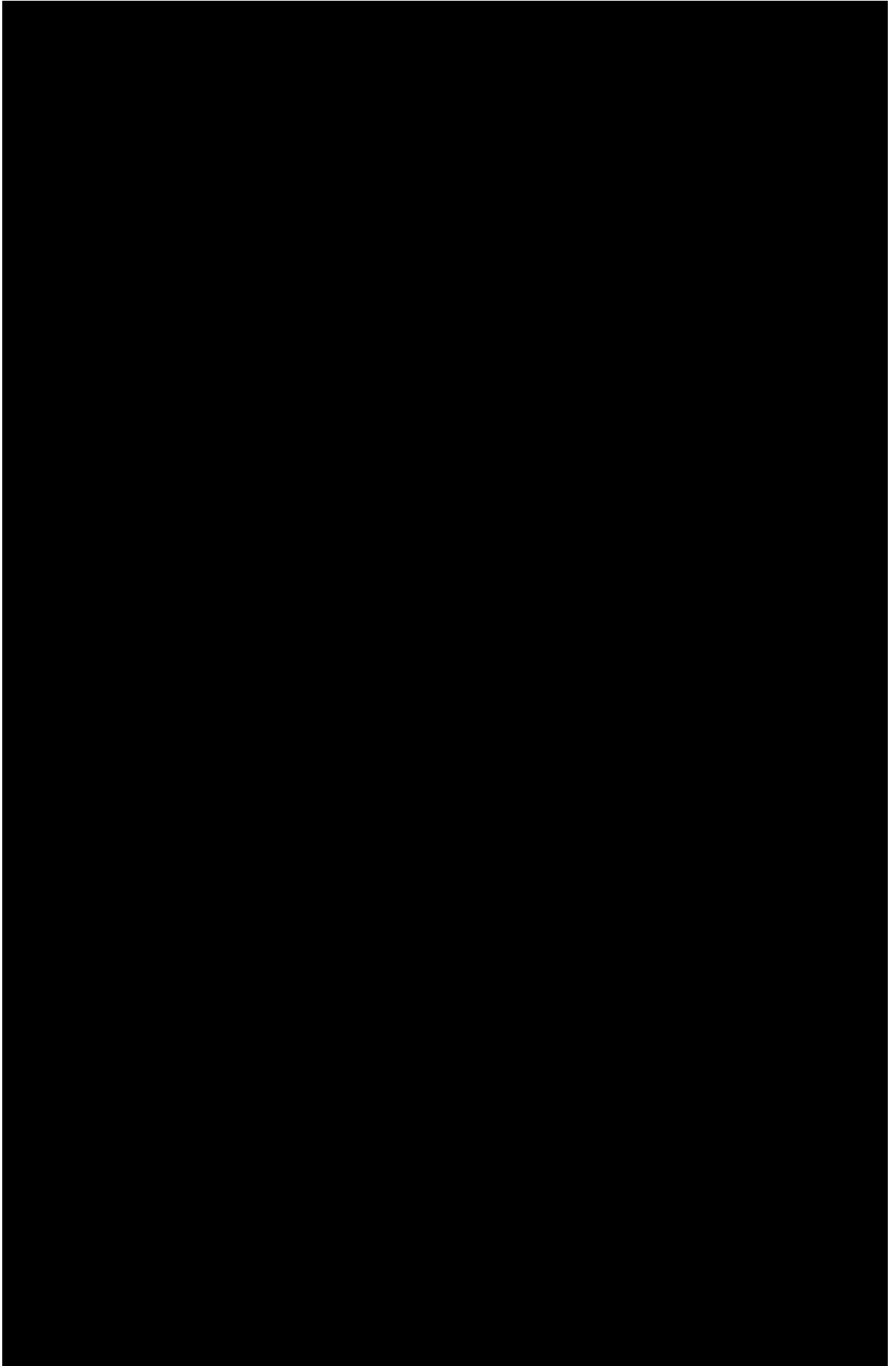


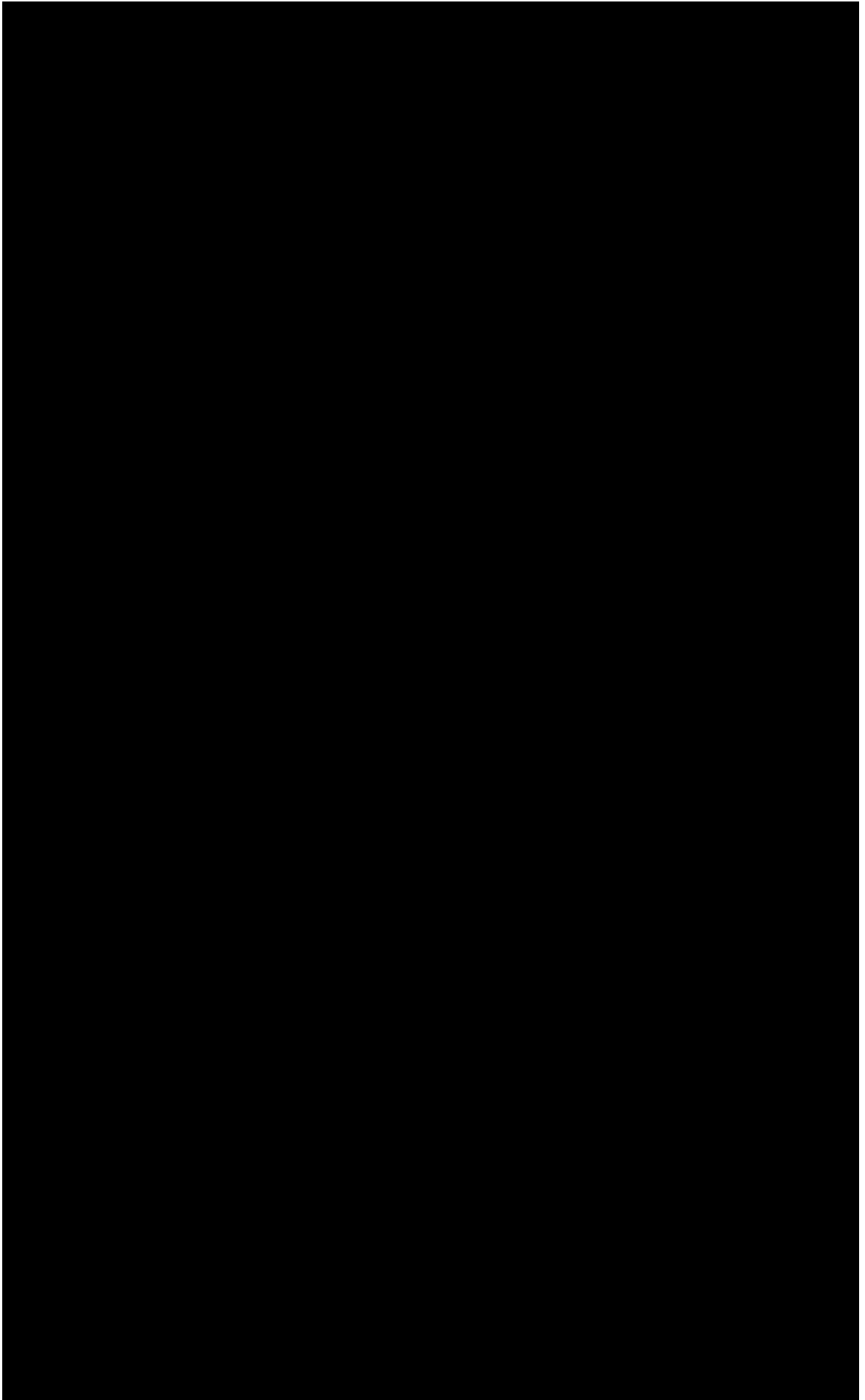


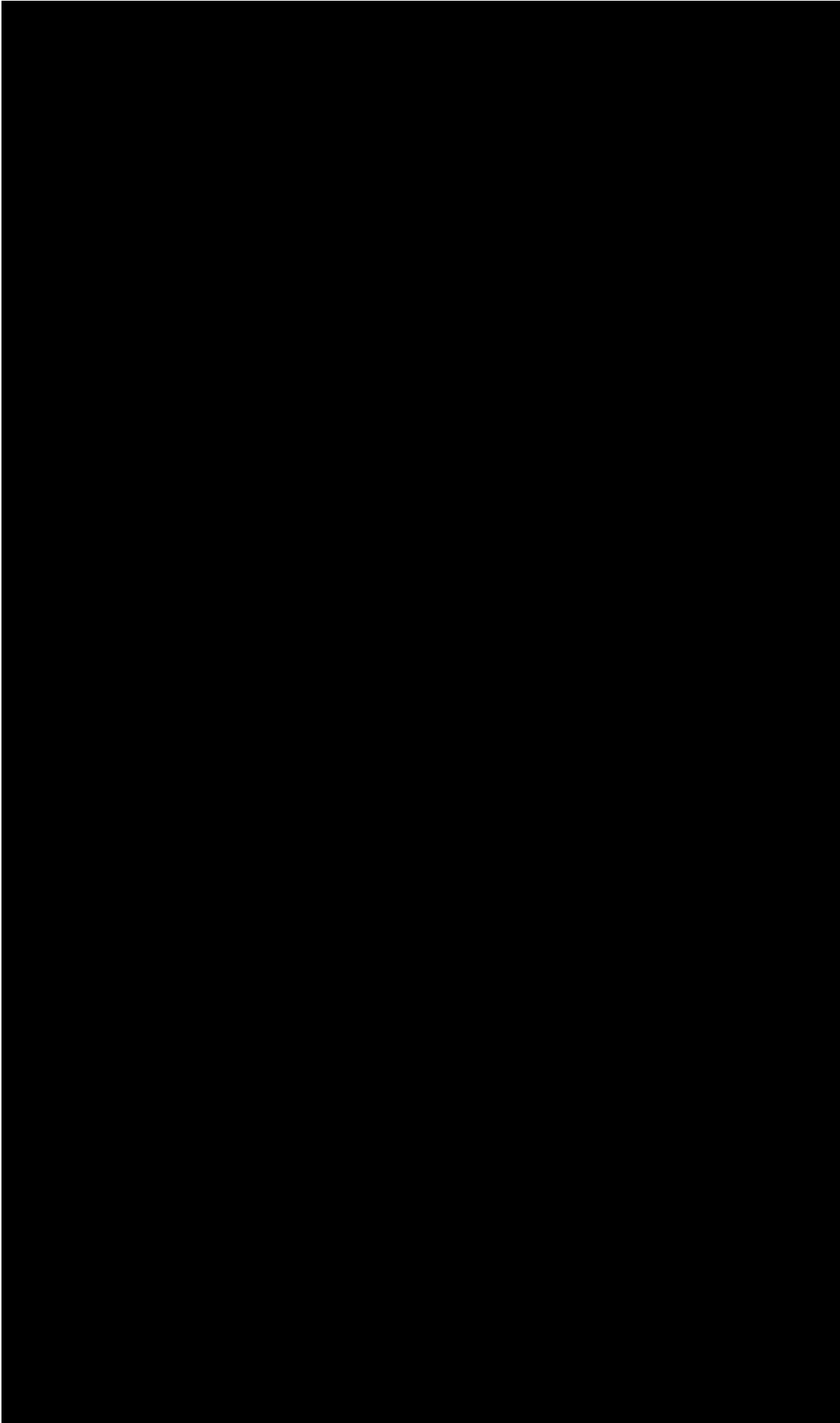








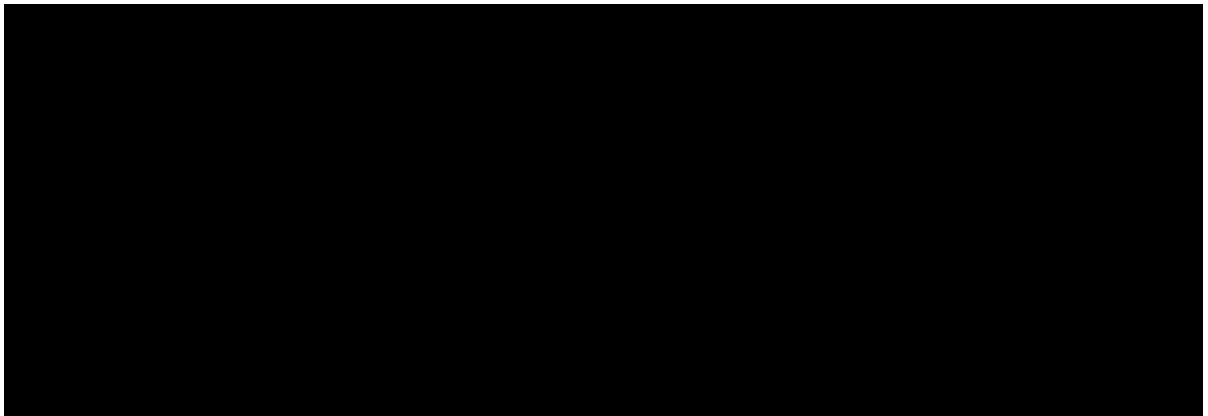
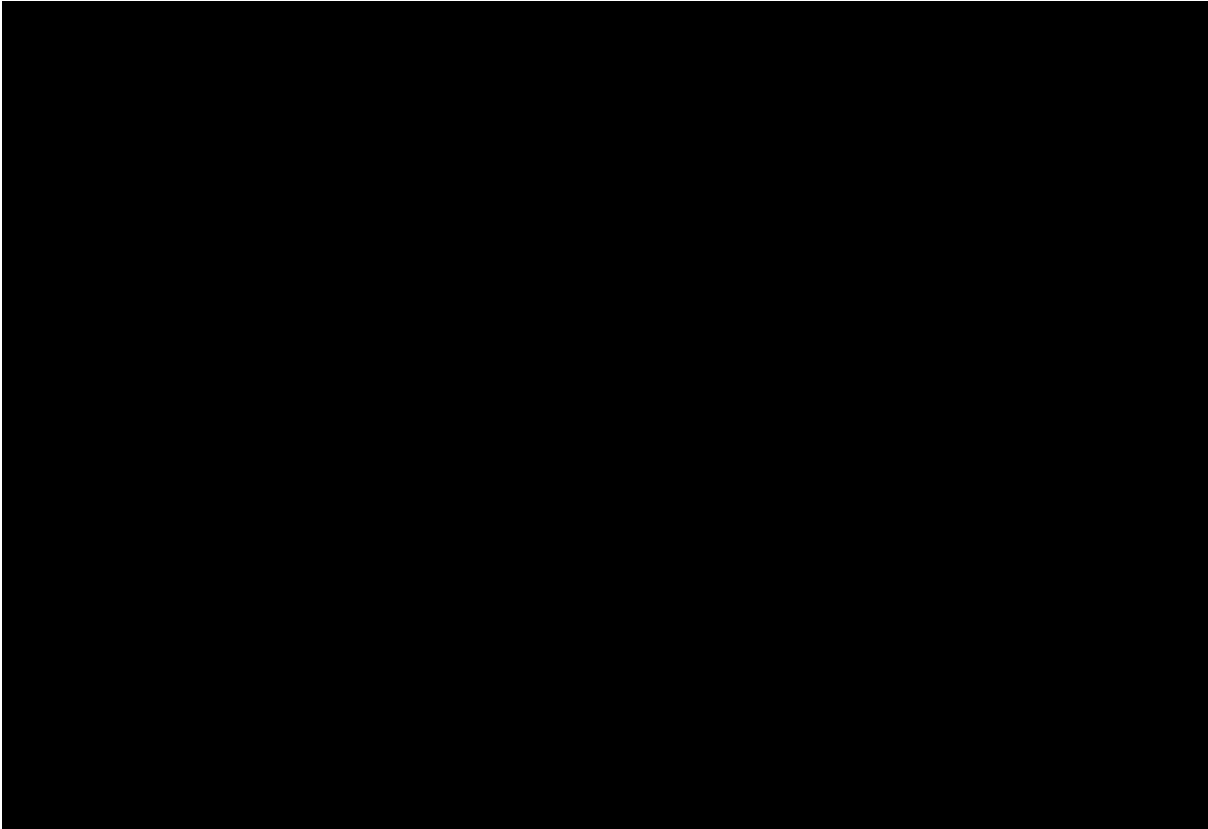




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## **24 General requirements for carrying out Works**

### **24.1 Works to comply**

- (a) The Developer must carry out (or procure the carrying out of) each Works Portion and ensure that each Works Portion is carried out in accordance with:
  - (i) in respect of the Public Works only, the Public Works Brief;
  - (ii) the TfNSW Transport and Customer Requirements;
  - (iii) the Asset Management Frameworks;
  - (iv) all applicable Approvals;
  - (v) all applicable Laws;
  - (vi) the Codes and Standards; and



(vii) the Project Documents,

except as otherwise provided in this deed.

- (b) Subject to clause 21, the Developer and the State agree that should any requirement of the Project Documents be inconsistent with any requirement under clause 24.1(a) inclusive, then clause 24.1(a) will prevail to the extent of the inconsistency.

#### **24.2 Developer must comply with all Approvals**

The Developer must, subject to the terms of this deed, comply on time with all relevant Approvals and all Laws in connection with the carrying out of the Works and the construction and use of the Development Land for the Works at the Developer's sole cost.

#### **24.3 Changes to Works Documents**

If changes to the Works Documents are required under a Law, then subject to clause 9.1, the Developer must at its own cost:

- (a) cause the Works to be redesigned to accommodate the changes;
- (b) obtain all necessary Approvals for the changes; and
- (c) incorporate those changes into the Works.

#### **24.4 State not liable**

Subject to any other express provision of this deed, the Developer releases the State from, and agrees that the State is not liable for, liability or loss arising from, and any Costs incurred in connection with:

- (a) any conditions attaching to an Approval; or
- (b) anything contained in the Works Documents.

#### **24.5 Developer's obligation for care of Works**

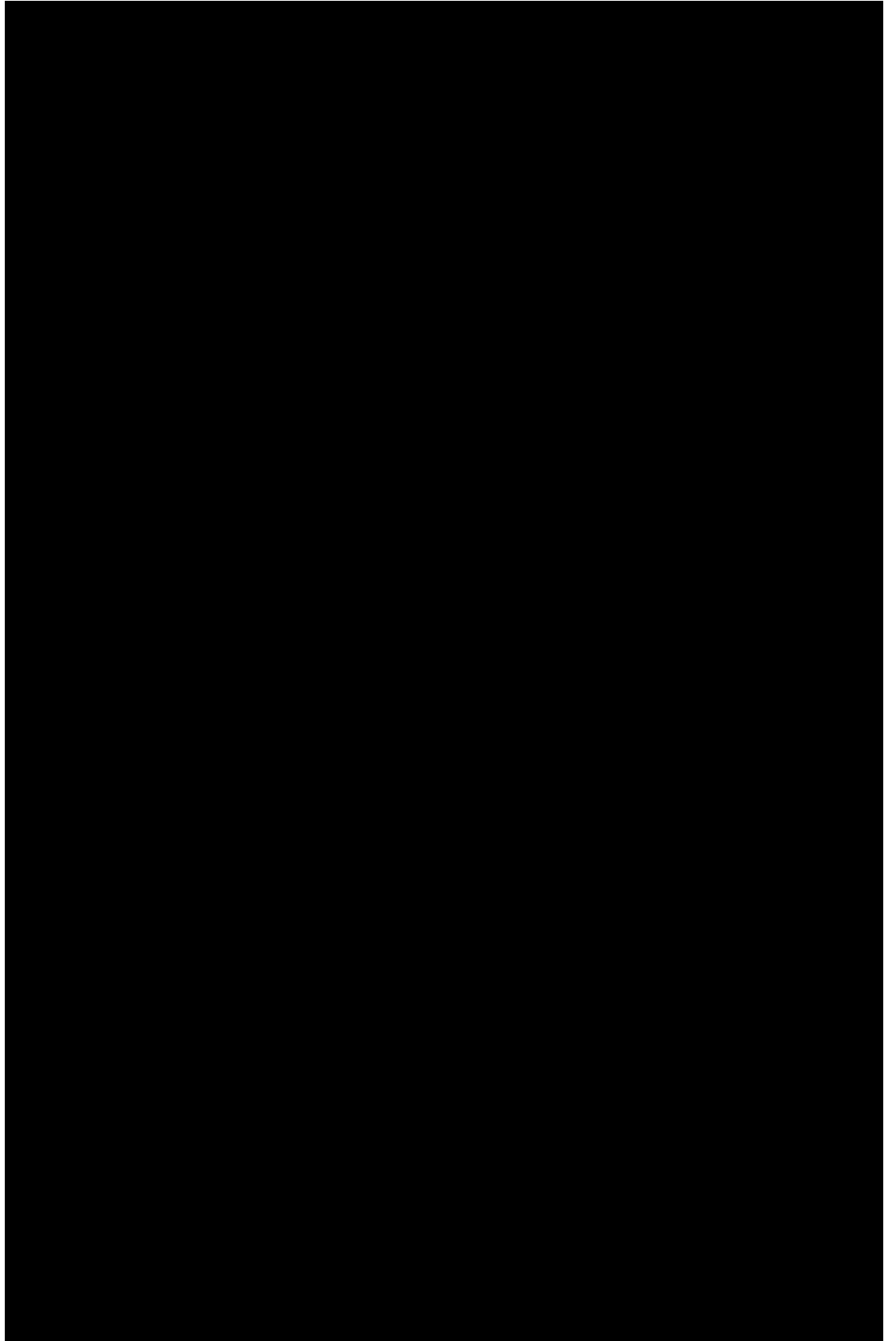
Except as otherwise provided in this deed, the Developer is responsible for the care of each Works Portion at all times, until Practical Completion of that Works Portion (subject to the Developer's obligations under clause 32 during the Defects Liability Period).

#### **24.6 Developer to rectify damage to Works**

- (a) The Developer must promptly notify the State of any material loss or material damage to or material defects of which it is aware, or ought reasonably to be aware, in the Works and without limiting its rights to make any claim or take any action in respect of such loss or damage or defects at its Cost, promptly rectify any loss or damage to or defects in the Public Works so that the Public Works conform in every respect with the requirements of this deed.
- (b) Without limiting the Developer's obligations in respect of defects during the Defects Liability Period pursuant to clause 32, the Developer's obligations pursuant to this clause 24.6 in respect of a Works Portion cease on the Date of Practical Completion of that Works Portion.

**24.7 No noxious use**

The Developer must not permit any illegal act, trade, business, occupation or calling at any time to be exercised carried on, permitted or suffered in or on the Developer Controlled Land.



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## 25 Condition of Development Land

### 25.1 No warranty as to purpose

The State does not warrant that the Development Land or the Precinct is suitable, or may be used, for any purpose. Subject to any provision of this deed, the Developer represents and warrants that:

- (a) it has made its own appraisal of, and has satisfied itself in all respects in connection with, the suitability of the Leasehold Land for the Project and Developer's proposed use of the Leasehold Land;
- (b) it will not make any claim against the State regarding the suitability of the State Land for the Project or for the Developer's proposed use of the State Land;
- (c) it has had the opportunity to investigate, and has entered into this deed with full knowledge of (other than in relation to any Approval) and subject to, all prohibitions and restrictions applying to the Leasehold Land (including their use) under any Law, pursuant to any affectation on title or the Precinct Management Agreement as disclosed by the State prior to the Developer entering into the deed;
- (d) it has satisfied itself in all respects in connection with the timetable for the completion of the Project; and
- (e) it will complete the Works with due skill, care and diligence.

### 25.2 Development Land Condition

- (a) The Developer accepts all Costs and risks associated with the condition of the Development Land, except as otherwise provided in this deed.
- (b) The Developer:
  - (i) represents and warrants to the State that, because of the Developer's own inspection and enquiries, except as otherwise provided in this deed the Developer:
    - (A) is satisfied as to the nature, quality, condition and state of repair of the Leasehold Land; and
    - (B) accepts the Leasehold Land as it is and subject to all defects (latent or patent) and all dilapidation and infestation; and
  - (ii) subject to clause 21 and subject to any other provision in this deed to the contrary, may not make any objection or claim for compensation against the State, delay the carrying out of any Works Portion (such that the Developer may not achieve a Milestone in accordance with the Development Program) or terminate this deed because of anything in connection with:
    - (A) any of the matters referred to in this clause 25.2;
    - (B) loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Development Land except to the extent caused or contributed to by the State or the State's Employees and Agents after the Commencement Date;

- (C) the presence in or on the Development Land or in the Precinct of Contamination except to the extent any Contamination was caused or contributed to by the State or the State's Employees and Agents after the Commencement Date;
- (D) subject to the State exercising its rights under clause 31.7, the condition or existence or nonexistence of Services; or
- (E) any action or non-action by any person.

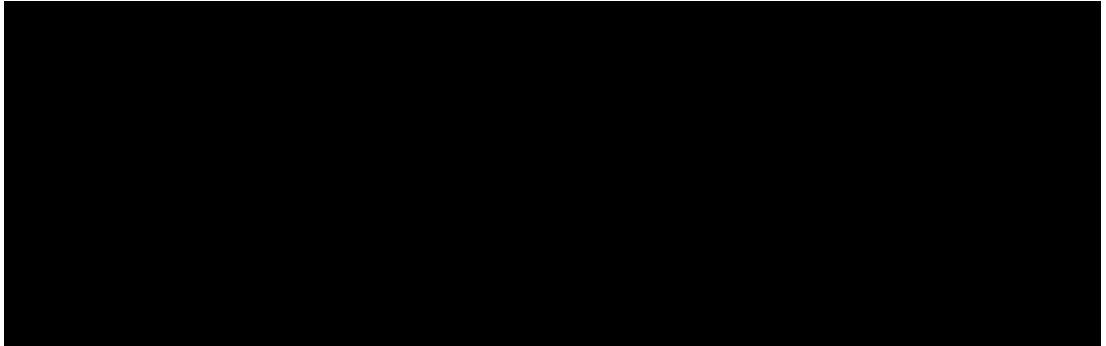
### **25.3 Site co-ordination**

The Developer (and the Builder or anyone acting on their behalf) must liaise and co-operate with the State.

### **25.4 No claims by Developer**

The Developer acknowledges and agrees that:

- (a) the matters referred to in clause 25.2 may have an effect on the conduct of the Works and the Project; and
- (b) except as otherwise provided in this deed it is not entitled to object to, or make a claim against the State (including a claim for an extension of time to achieve any Milestone pursuant to clause 21.2) because of, the occurrence of any of the matters referred to in clause 25.2.



### **25.6 Development within other projects**

- (a) Subject to the rights to an extension of time under clause 21, the Developer assumes the risk that any planned structure or project for other development projects may not proceed, or may proceed in a different manner than planned or anticipated.
- (b) The State does not accept any responsibility for the Project being developed in a different manner than the Developer anticipated.
- (c) Subject to the rights to an extension of time under clause 21, the Developer will not be relieved of its obligations under this deed and may not make any claim against the State for any actual or perceived Loss or damage arising out of the development carried out by other developers in other development projects in the area.
- (d) Clause 25.6(a) to 25.6(c) do not limit the ability of the Developer to make any claims against other developers or third parties in respect of any development projects in the area.

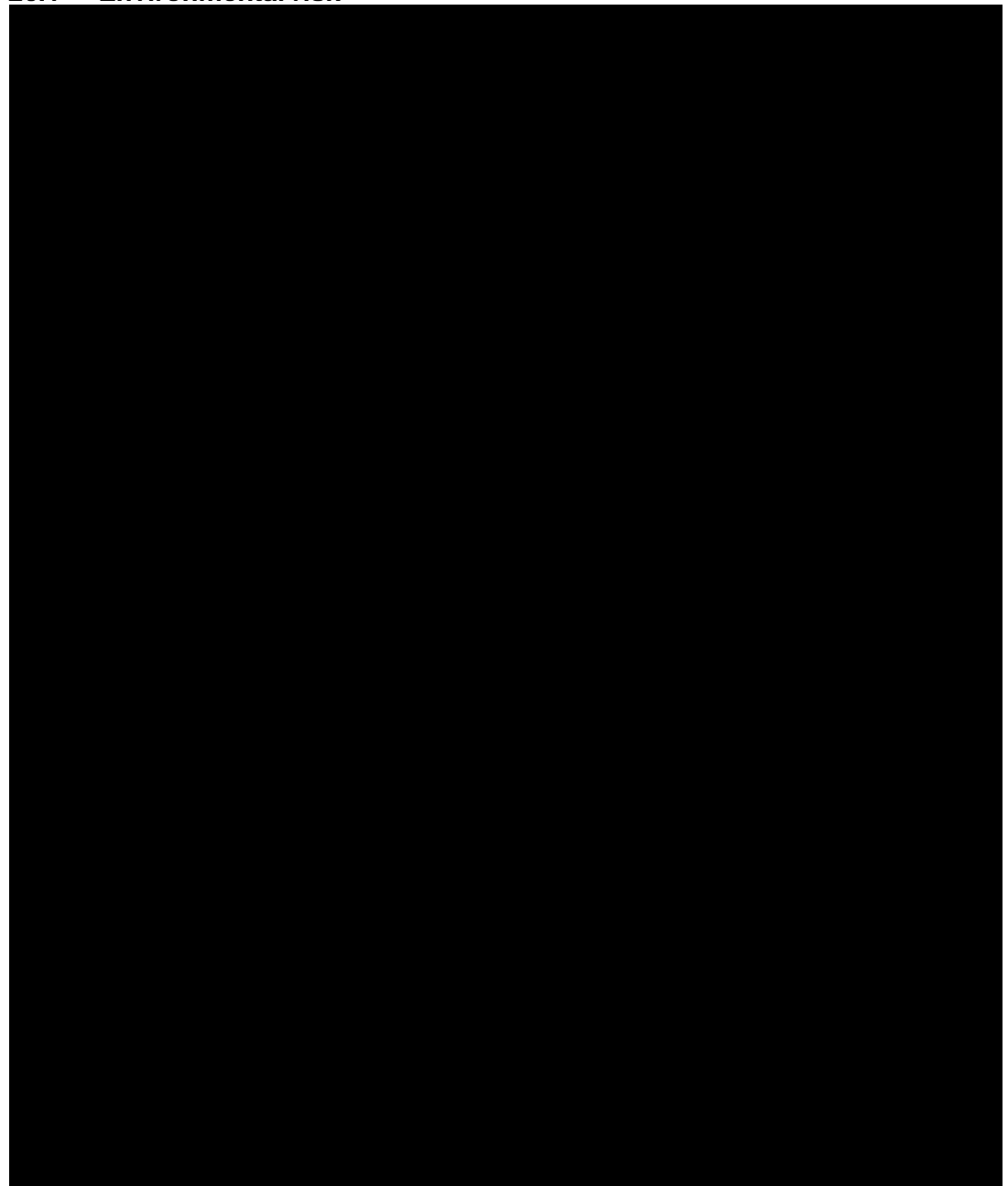
## **25.7 Stakeholder management**

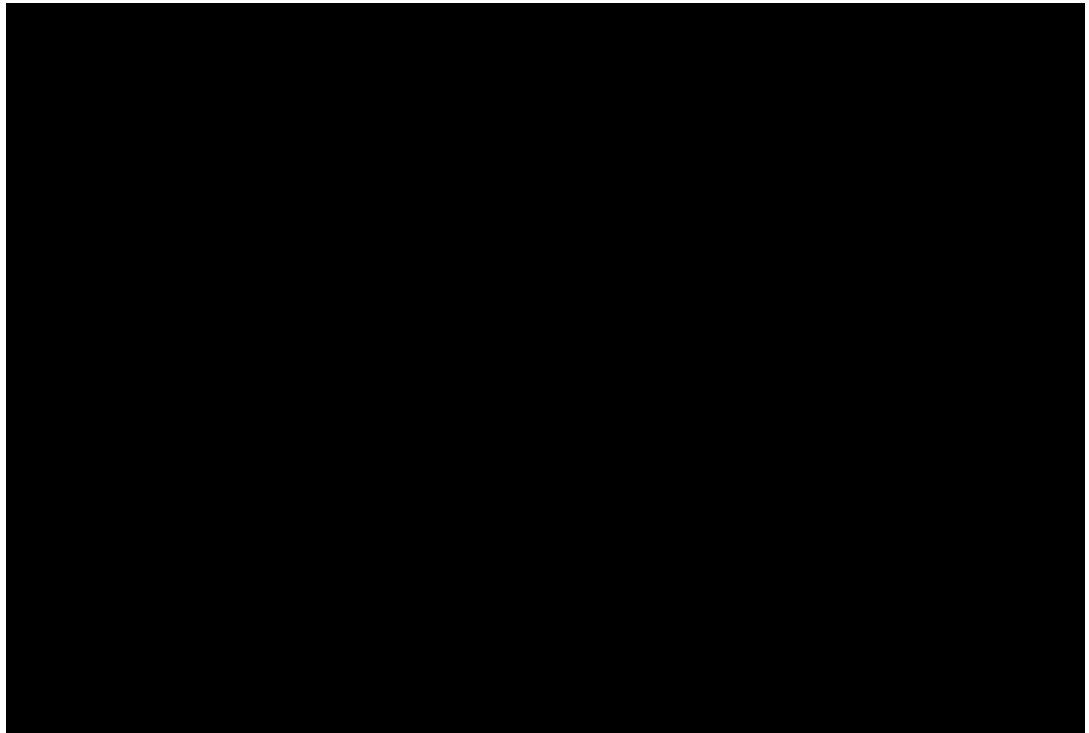
- (a) The parties will work together to develop and implement a stakeholder and community engagement and management plan.
- (b) Unless otherwise provided in this deed including, without limiting 26.1(b), the Developer accepts all risks and costs of dealing with stakeholder, community and third party objections in relation to the Works. The Developer may not claim compensation from the State as a result of any stakeholder, community or third party objections to the Development Works and (subject to the rights to an extension of time under clause 21) will not be entitled to an extension of time for any Milestone Dates as a result of community or third party objections to the Works.

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## **26 Environmental, native title and heritage obligations**

### **26.1 Environmental risk**





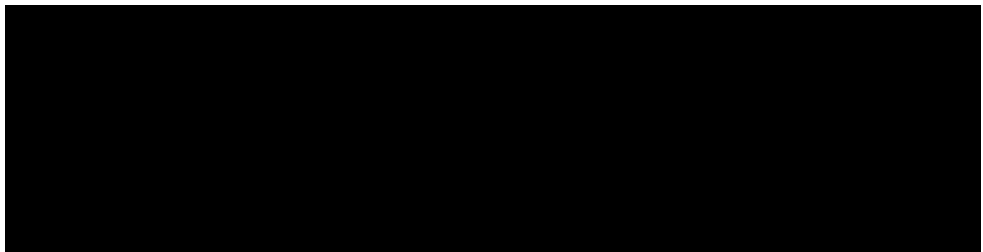
**26.2 Environmental Laws**

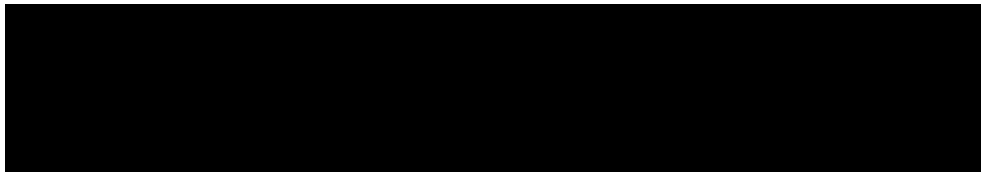
- (a) Without limiting clause 26.1, the Developer must comply with and observe all Environmental Laws in carrying out the Project, undertaking the Works and complying with its obligations under this deed.
- (b) In carrying out the Project, undertaking the Works, and complying with its obligations under this deed, subject to clause 26.1(b) and 26.2(c), the Developer is responsible for all Contamination:
  - (i) on, in or under the Development Land;
  - (ii) to the extent that such Contamination is disturbed by, or exacerbated by, the conduct of the Works; or
  - (iii) which migrates from the Development Land as a result of the conduct of the Works.
- (c) Nothing in 26.2(b) affects or limits the rights the Developer may have against third parties in respect of the Contamination referred to in clause 26.2(b).

**26.3 Environmental matters**

In addition to the other requirements under this deed, the Developer agrees to keep the State informed in connection with all material environmental aspects of the Works.

**26.4 Environmental Liabilities**





**26.5 Finding of Relics**

The Developer:

- (a) acknowledges and agrees that:
  - (i) Relics may be found on, in or under the surface of the Development Land; and
  - (ii) as between the State and the Developer, any such Relics are and will remain the property of the State; and
- (b) must, upon the discovery of a Relic:
  - (i) promptly notify the State; and
  - (ii) comply with all Laws relating to the discovery of the Relic.

**26.6 Native Title Claims and Threatened Species Claims**

The Developer agrees that if:

- (a) there is a Native Title Claim; or
- (b) a Threatened Species Claim is commenced,

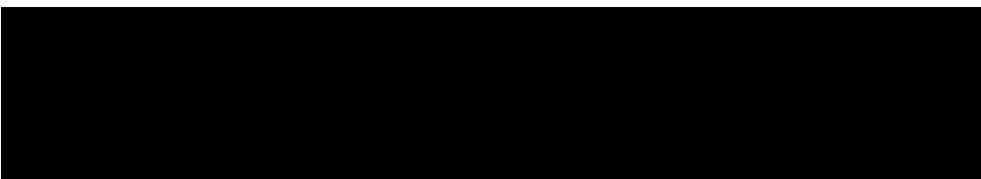
affecting any part of the Development Land or the carrying out of the Works, the Developer must:

- (c) continue to perform its obligations under this deed and the other Project Documents unless otherwise:
  - (i) ordered by any court or tribunal; or
  - (ii) required by Law; and
- (d) take all reasonable steps to mitigate any loss or Cost to the State in complying with its obligations under clause 26.6(c).

**26.7 No claim by Developer**

Except as otherwise provided in this deed, the Developer may not make a claim against the State for any Costs, losses or damages incurred by the Developer arising from or in connection with any of the matters referred to in clauses 26.5 and 26.6 (other than any Claim the Developer may have for an extension of time in accordance with this deed).

**26.8 Release**



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## **27 Care of surrounding areas and safety**

### **27.1 Developer bears risk**

- (a) Unless otherwise provided in this deed including, without limiting clause 26.1(b), the Developer agrees that except to the extent that such risk or Costs are caused by the State's or the State's Employees and Agents' breach of a Project Document or any negligent, wrongful or reckless act or omission by the State or any of the State's Employees and Agents:
  - (i) from the Works Portion Commencement Date, it is solely responsible for, and bears all risk and Cost in relation to, the protection of people and property on the Development Land;
  - (ii) it must, to the extent consistent with the execution of the Works in accordance with this deed, take reasonable steps to avoid unnecessary interference with the movement of people and vehicles on public areas in the vicinity of the Development Land; and
  - (iii) it is solely responsible for, and releases the State in respect of all risk and Cost in relation to any nuisance or unreasonable noise and disturbance caused as a result of carrying out the Works.
- (b) The Developer is entitled to take, at its risk and Cost, such action as it considers reasonably necessary to ensure the continuation of access on a continuous basis for the benefit of all owners, occupiers and invitees of land adjoining the Development Land and the safety of persons and property within the Development Land, including removing or modifying any improvements which exist on the Development Land as at the Commencement Date (other than services which are the responsibility of any Public Authority (not being the State) to maintain).

### **27.2 Surrounding areas**

The Developer must:

- (a) use all reasonable endeavours not to cause:
  - (i) the streets adjoining the Development Land to be in an unclean or untidy condition throughout construction of the Works; or
  - (ii) any damage to the existing streets, kerbs, services and public utilities and any property located in the vicinity of the Development Land, except as reasonably necessary for the purposes of the Works;
- (b) not wash or permit the washing of concrete trucks or other vehicles or machinery employed in relation to the Works in the streets or areas surrounding the Development Land;
- (c) promptly make good any damage, caused or contributed to by the Developer (or the Builder) carrying out the Works, to any part of the Development Land, including public utilities and services owned or controlled by the State, as soon as practicable after the damage occurs or such longer time as the State permits in its absolute discretion; and
- (d) on Practical Completion of each Works Portion, ensure that the access roads to the Development Land and any adjoining structures or infrastructure, fencing, footpaths or other roadways which have been



damaged by the Developer or the Builder are repaired in a timely manner having regard to the future development of the Project, or if repair is not possible the relevant damaged part replaced to the satisfaction of any relevant Public Authority, in compliance with all Laws and otherwise to the reasonable satisfaction of the State.

### **27.3 Safety of persons**

The Developer must:

- (a) before commencing the Works ensure, that appropriate safety measures including safety fencing, barriers, barricades, hoardings and protective coverings are in place to prevent public access to the Development Land; and
- (b) if required as a result of the carrying out of the Works shore up, maintain, underpin and support adjoining structures (including the relevant access roads, buildings, fencing, footpaths and roadways) so as to ensure:
  - (i) stability and continued use of these structures; and
  - (ii) the safety of persons; and
- (c) cause the Works to be carried out in a safe manner.

### **27.4 Noise**

The Developer must use its reasonable endeavours, having regard to the nature of the Works, to ensure that any person involved in the carrying out of the Works complies with any applicable Laws with respect to noise suppression methods for building or construction machinery used in carrying out the Works.

### **27.5 Crane usage**

- (a) Subject to clause 27.5(b), the Developer must ensure that any land cranes used for construction of the Works remain fully on the Development Land. Subject to clause 27.5(c), nothing in this clause restricts the boom swing of any crane being above land outside the boundaries of the Development Land, subject to all necessary approvals having been obtained from the relevant Public Authorities and necessary access arrangements being resolved between the Developer and long term lessees of such land.
- (b) If, in accordance with ordinary construction practices, the Developer needs to locate any crane outside of the Development Land, the Developer must obtain all relevant Approvals and access to air rights before it may do so.
- (c) Without limiting the Developer's obligations under this deed, the Developer must ensure that where the owners, occupiers, developers or builders of the Adjoining Land are carrying out works at the same time as the Developer is carrying out the Works it has co-ordinated the Crane Area, Crane Activities, crane strategy and location of cranes with the owners, occupiers, developers or builders of the Adjoining Land throughout the duration of the Works.

### **27.6 Monitoring regimes (including track displacement and vibration milestones)**

The Developer must:

- (a) before commencing the Works, ensure that appropriate monitoring regimes for track displacement and vibration approved by the State and, if applicable, Sydney Trains are in place;
- (b) cause the Works to be carried out in a manner that minimises vibration; and
- (c) take all steps necessary to minimise the impact of the Works on the Adjoining Land and the occupiers of the Adjoining Land.

## **27.7 Dilapidation reports and surveys**

- (a) Within 20 Business Days of being given access to the State Land and at least 10 Business Days prior to commencing any Works, the Developer must:
  - (i) identify all retained existing and adjoining buildings, infrastructure (including rail infrastructure), roads and other property in respect of which pre-construction dilapidation reports are required by the Approvals using a suitably qualified structural engineer;
  - (ii) provide to the State the proposed list of all buildings, infrastructure and roads identified under clause 27.7(a)(i) and a draft letter to be sent to all property owners or other interest holders seeking agreement for the Developer to undertake the dilapidation reports; and
  - (iii) in accordance with the Approvals, prepare the pre-construction dilapidation reports for all of the buildings, infrastructure, roads and other property identified by the Developer under clause 27.7(a)(ii), attend a joint inspection with the State (and if required, TAHE) of the rail infrastructure and property in the vicinity of the Works, and submit the dilapidation reports to the State for review and approval.
- (b) The Developer must, at least 15 Business Days before the start of any Works that potentially put any adjoining buildings, infrastructure (including rail infrastructure), roads and other property at risk, submit to the State for review and approval (such approval not to be unreasonably withheld) the Developer's analysis of the risks and potential for damage and proposed mitigation measures. The Developer must not commence any of those Works until it receives the State's approval.
- (c) The Developer acknowledges and agrees that:
  - (i) the State and TAHE are relying on the judgment, experience, skill and knowledge of the Developer in assessing and identifying:
    - (A) all buildings, infrastructure (including rail infrastructure), roads and other property which are likely to be affected by the Works; and
    - (B) the extent of the risk of damage involved; and

the preparation of dilapidation reports by the Developer will not affect the Developer's liability for damage to property which is caused by the Developer or its associates under this deed.
- (d) The dilapidation reports required by clause 27.7(a) must:

- (i) include all property identified, using geotechnical and other appropriate analysis, as being at risk, including from:
    - (A) the impact of the excavation, ground support and foundation construction methods proposed;
    - (B) the excavation and construction sequences and support methods proposed;
    - (C) geological changes across the State Land;
    - (D) the impact of ground water levels and the predicted changes in those levels; and
    - (E) predicted changes with time;
  - (ii) include vibration sensitive equipment requiring vibration limits, including limits to the frequency, acceleration, displacement and peak particle velocity with vibration; and
  - (iii) be selected taking into account the vulnerability and condition of the property involved.
- (e) The Developer must keep a database of all the dilapidation reports' results and information prepared under clause 27.7 and make this database available to the State (and if required, TAHE) for inspection and copying at all reasonable times.
  - (f) The dilapidation reports must include the investigation, identification and recording of the condition of all buildings, infrastructure (including rail infrastructure), roads and other property in accordance with clause 27.7(a) including photographs and videos with a sequential dated log and plan showing the locations of each view.
  - (g) The photographs and video records of all such buildings, infrastructure (including rail infrastructure), roads and other property must be taken by a competent and qualified photographer or cinematographer. The photographic and video images must include a scale reference.
  - (h) All areas that show evidence of existing damage or failure must be photographed and carefully recorded, including the location and extent of the damage and the date when the photograph was taken.
  - (i) The results of each dilapidation report must be embodied in a written report, which must describe and identify the building, infrastructure (including rail infrastructure), road or other property, its owner (with contact details) and its location, detail the existing condition of all such property prior to the commencement of the Works, and the activities most likely to cause damage and the monitoring frequency proposed.
  - (j) The relevant part of the applicable dilapidation report record must be submitted by the Developer for inspection to the relevant owner of each property. The Developer must use its reasonable endeavours to obtain the agreement of each owner that the dilapidation report information and record represents the state of their property, and provide a copy of the agreement and the dilapidation report record to the owner and relevant Authority in accordance with the Approvals.
  - (k) The condition of the property covered by the dilapidation reports must be regularly monitored during the Works and the dilapidation reports augmented to address any change in the conditions observed.

- (l) One month after the practical completion of each Works Portion the subject of the Approvals, the Developer must:
  - (i) in accordance with the Approvals, prepare post-construction dilapidation reports of any building, infrastructure, road or other property included in the original dilapidation reports, including a joint inspection with the State (and if required, TAHE) of the rail infrastructure and property in the vicinity of the Development Works, and confirm:
    - (A) the condition of the building, infrastructure, road or other property relative to that recorded previously; and
    - (B) that any damage and deterioration caused by the Works has been or is in the process of being, repaired;
  - (ii) provide a copy of the new dilapidation report to each owner and the relevant Authority in accordance with the Approvals; and
  - (iii) obtain the State's written agreement confirming their satisfaction with the post-construction dilapidation reports and/or rectification of any damage relating to any rail infrastructure and property in the vicinity of the Works in accordance with the Approvals.
- (m) Unless a property owner otherwise directs, the Developer is responsible for the rectification of any damage to any property contemplated by clause 27.7(a) as evidenced by a discrepancy between the conditions described in the dilapidation reports carried out before the commencement of the Works and the actual condition of the identified property after completion of the Works.
- (n) The Developer acknowledges and agrees:
  - (i) the Developer will not be entitled to make any Claim for complying with this clause 27.7;
  - (ii) the Developer will not be entitled to an extension of time in respect of delay arising out of or in connection with the discharge of its obligations under this clause 27.7; and
  - (iii) for the avoidance of doubt, this clause 27.7 does not diminish or reduce in any way the Developer's other obligations under this deed.
- (o) If there is any duplication or inconsistency between the requirements of this clause 27.7 and the requirements of any Approvals, the parties must work together to review the requirements and act reasonably to resolve the duplication or inconsistency.

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## 28 Compliance with Laws

### 28.1 Obligations of the Developer

Subject to the terms of this deed, the Developer must on time comply with, and observe at the Developer's expense, all Laws (excluding any judgments issued by any Court or tribunal requiring any payment or action by the State) in connection with:

- (a) the Leasehold Land;

- (b) the Developer Controlled Land, to the extent that the Law relates to the Developer's use or occupation of the Developer Controlled Land in connection with the Works;
- (c) the Works;
- (d) the Developer's Property; and
- (e) the use or occupation of the Development Land by the Developer or the Developer's Employees and Agents,

whether or not those Laws are imposed on the State or the Developer but except to the extent that requirement for compliance with those Laws is caused or contributed to by a breach of this deed or any Project Document by the State or by any negligent, wrongful or reckless act or omission by the State or any of the State's Employees and Agents.

## **28.2 Not used**

## **28.3 Copies of notices**

- (a) The Developer must give the State a copy of:
  - (i) any notice relating to the Environment or public safety of the Development Land notified to, or served on, the Developer; or
  - (ii) any other notice relating to the Development Land which is materially relevant to the State.
- (b) The State must give the Developer a copy of any notice relating to the Environment or public safety of the Development Land notified to, or served on, the State or any other notice relating to the Development Land which is materially relevant to the Developer.

## **28.4 Acceptance of risk**

Except in respect of:

- (a) any other provision of this deed imposing liabilities, responsibility or obligations on the State or excluding the Developer from liability;
- (b) any breach by the State or the State's Employees and Agents of its obligations under a Project Document;
- (c) any negligent, wrongful or reckless act or omission by the State or any of the State's Employees and Agents; or
- (d) the State exercising its rights under clause 31.7,

the effect of any Law (excluding any judgments or orders issued by any Court or tribunal requiring any payment, action or inaction by the State) on the Developer's use of the Development Land is at the sole risk of the Developer.

## **28.5 Change in Law**

If there is any change in the Law, the Developer must comply with the change and will not be entitled to make any Claim against the State arising out of or in any way in connection with the change (but this does not affect the Developer's rights to a claim for an extension of time pursuant to clause 21).

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## 29 Insurances

### 29.1 Contract works insurance

- (a) Without limiting or affecting the Developer's other obligations under this deed, before commencement of any Works Portion the Developer must (at its own Cost) effect and maintain or cause to be effected and maintained a contract works insurance policy in respect of that Works Portion.
- (b) The risks covered under the contract works insurance policy shall include physical loss, damage or destruction (including, without limitation, by earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage) and resulting in loss or damage of:
  - (i) the relevant Works Portion (including any associated temporary works);
  - (ii) all materials and things brought onto or in storage on the Development Land by the Developer, the Developer's Employees and Agents, for the purpose of the Project other than plant and equipment;
  - (iii) the Improvements (associated with the relevant Works Portion); and
  - (iv) all materials and things associated with the relevant Works Portion in storage off the Development Land or in transit to the Development Land within Australia, occurring during the period when the Developer is responsible for their care including under the terms of any maintenance or defects liability conditions.

### 29.2 Amount of insurance

The insurance cover referred to in clause 29.1 must be for an amount [REDACTED]

### 29.3 Public and products liability insurance

Without limiting or affecting the Developer's other obligations under this deed, before commencement of the relevant Works Portion, the Developer must effect and maintain or cause to be effected and maintained, a policy of public and products liability insurance which covers with respect to such Works Portion:

- (a) liabilities to third parties for destruction of, loss of or damage to property (other than property insured under clause 29.1) and the death of, disease or illness to (including mental anguish or mental injury) or injury to any person (other than liability which is required by Law to be insured under a workers compensation policy of insurance);
- (b) the Developer's liability to the State, for destruction of, loss of or damage to property (other than property insured under clause 29.1, but including any property of the State in the care, custody or control of the Developer) and the death of, disease or illness to (including mental illness) or injury to any person;

(c) [REDACTED]

(d) subject to standard exclusions generally contained in policies of insurance, the Developer's liabilities under clauses 27.2(c) and 41.2(a).

**29.4 Amount for public and products liability insurance**

The policy of public liability and products insurance must be written on an occurrence basis for:

[REDACTED]

[REDACTED]

**29.5 Not used**

**29.6 Not used**

**29.7 Employees**

(a) Before commencing the relevant Works Portion:

(i) each Developer must effect and maintain or cause to be effected and maintained workers compensation insurance which covers all persons employed or deemed to be employed by the relevant Developer including for all liabilities required to be insured by the *Workers Compensation Act 1987 (NSW)*, any other legislation relating to workers' or accident compensation in New South Wales (as well as each other state or territory where the relevant Developer's employees normally reside or where their contract of employment was made) or imposed at common Law; and

(ii) the Developer must effect and maintain or cause to be effected and maintained workers compensation insurance which covers all persons employed or deemed to be employed by the Builder including for all liabilities required to be insured by the *Workers Compensation Act 1987 (NSW)*, any other legislation relating to workers' or accident compensation in New South Wales (as well as each other state or territory where the Builder's employees normally reside or where their contract of employment was made) or imposed at common Law.

(b) The insurance cover must be effected and maintained for a period ending when the relevant Works Portion (including rectification work) is completed.

(c) The Developer must also procure the Builder to require that subcontractors or contractors engaged by it in connection with, or arising out of, the relevant Works Portion insure themselves against all liabilities which the *Workers Compensation Act 1987 (NSW)* (or any other relevant workers' or accident compensation legislation or imposed at common Law) requires it to insure against.

- (d) The State acknowledges that each Developer is entitled to effect and maintain the insurance cover contemplated by this clause 29.7(a)(i) individually and severally in respect of its own employees and that such policy will not insure the other Developer's employees for the liabilities covered by such insurance.

**29.8 Workers compensation indemnity**

Each Developer indemnifies the State against any liability or loss arising from, and any costs incurred by the State in connection with, the Developer failing to comply with the Developer's obligations under the Workers Compensation Act 1987 (NSW) (and all other relevant workers' or accident compensation legislation), including as a result of:

- (a) any claim made against the State under section 20(1) of the Workers Compensation Act 1987 (NSW); or
- (b) any increase in the premium payable by the State under the State's own workers compensation insurance.

**29.9 Professional indemnity insurance**

- (a) Before commencing any Works Portion, the Developer must effect and maintain, or cause to be effected and maintained, professional indemnity insurance policies which:

- (i) are:

[Redacted text]

[Redacted text]

- (ii) covers liability of the person providing advice or being retained by the Developer arising from breach of duty owed in a professional capacity; and
    - (iii) must have a definition of professional services wide enough to include all services of a professional nature to be provided by the Developer in the performance of its obligations under this deed and by such other person contemplated by this clause as requiring insurance.

- (b) The Developer must supply the State with evidence that each person required to effect and maintain professional indemnity insurance pursuant to paragraph (a) has effected and maintained that insurance.

**29.10 Motor vehicle insurance**

Before commencing any Works Portion the Developer must supply the State with evidence of motor vehicle insurance covering all motor vehicles used in



connection with the Works, which are registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:

- (a) insurance against personal injury or death, as required under all applicable Laws; and
- (b) in addition to the coverage provided under clause 29.3, insurance for third party property damage and personal injury or death.

### 29.11 Insurance requirements generally

- (a) All Insurances which the Developer effects and maintains or procures to be effected and maintained under this deed:
  - (i) must be with reputable insurers (reasonably accepted to the State) with a rating of [REDACTED] or the equivalent rating with another ratings agency (reasonably acceptable to the State) (or in the case of workers compensation insurance, WorkCover NSW) and who are reasonably approved by the State. The State acknowledges that:
    - (A) in respect of the insurance specified in clause 29.9: [REDACTED];
    - (B) in respect of the insurance specified in clause 29.3: [REDACTED];

are insurers that have been approved by the State for the purposes of this clause 29 and that the State's further approval of such insurers is not required;
  - (ii) (other than statutory insurances) must be on terms and conditions (including deductible amounts) approved in writing by the State (acting reasonably); and
  - (iii) the Insurance specified in clauses 29.1 and 29.3 must provide that:
    - (A) in respect of the contract works and public and product liability only, name as insureds, the State, Sydney Trains, TAHE, the Financier and the Developer (and the Developer's Employees and Agents) for their respective rights and interests;
    - (B) failure by any one insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure or misrepresentation by any one insured does not prejudice the insurance of any other insured; and
    - (C) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against insureds.
- (b) Once any Insurance policy is approved by the State, the terms of that insurance policy must not be changed without the State's prior written approval (acting reasonably). The Developer must indemnify the State for its legal and other Costs (if any) associated with determining whether or not to approve any such change.

## 29.12 Cross liability

Any Insurance required to be effected in accordance with this deed by the Developer in joint names shall include a cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action against any of the persons comprising the insured;
- (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
- (c) that any non-disclosure or misrepresentation by one insured does not prejudice the right of the other insured to claim under any Insurance.

## 29.13 Periods of Insurance

Each Developer must maintain or otherwise must procure to be maintained (in relation to any Works Portion):

- (a) insurance policies that comply with clauses 29.7, 29.8 and 29.10 until:
  - (i) (in the case of the Development Works), the Date of Practical Completion of the relevant Works Portion; and
  - (ii) (in the case of the Public Works), the issue of the Final Completion Certificate of the relevant Works Portion;
- (b) an insurance policy that complies with clauses 29.1 until the Date of Practical Completion of the relevant Works Portion; and
- (c) an insurance policy:
  - (i) that complies with clause 29.3 for the Stage 1 Development Works and the Stage 1 Public Works for the amount specified in 29.4(a) for the period from commencement of the Stage 1 Development Works and the Stage 1 Public Works until the later of:
    - (A) the Date of Practical Completion of the Stage 1 Development Works and the Stage 1 Public Works; and
    - (B) the date on which the Developer removes from the Stage 1 Development Works and the Stage 1 Public Works all cranes and scaffolding and when the construction licences of State Land granted in connection with the Stage 1 Development Works and the Stage 1 Public Works are clear of construction material;
  - (ii) that complies with clause 29.3 for the Stage 2 Development Works for the amount specified in 29.4(a) for the period from commencement of the Stage 2 Development Works until the later of:
    - (A) the Date of Practical Completion of the Stage 2 Development Works; and

- (B) the date on which the Developer removes from the Stage 2 Development Works all cranes and scaffolding and when the construction licences of State Land granted in connection with the Stage 2 Development Works are clear of construction material;
- (iii) that complies with clause 29.3 for the period commencing on the day after the later of the dates in clause 29.13(c)(i) until the commencement of the Stage 2 Development Works for the amount specified in 29.4(b); and
- (d) an insurance policy that complies with clause 29.9 in the first instance until:
  - (i) (in the case of the Development Works), the Date of Practical Completion of the relevant Works Portion; and
  - (ii) (in the case of the Public Works), the issue of the Final Completion Certificate for the relevant Works Portion,
 and then for a further period of 6 years after the events referred to in paragraphs (c)(i) and (c)(ii) respectively.

#### **29.14 Premiums**

Each Developer must punctually pay or cause or procure to be punctually paid, all premiums in respect of all Insurances that it is obliged to arrange under this clause 29 (including any increased premiums payable after claims) and all excesses it may be obliged to pay under the terms of those Insurances (except to the extent that the claim in respect of which the excess is payable, arises out of a breach of a Project Document by the State, the State's Employees and Agents' negligence or the wrongful or reckless act or omission by the State or any of the State's Employees and Agents, which must be paid for by the State).

#### **29.15 Providing information to the State**

Before the Developer commences any Works Portion and whenever requested in writing by the State (but no more frequently than twice each year), the Developer must, in respect of each Insurance required to be effected and maintained or procured to be effected and maintained under this clause 29:

- (a) give the State copies of all:
  - (i) cover notes and, other than policies that are effected under a global insurance program covering the primary insureds other business activities or insurances required under clauses 29.7 or 29.9, policies (including schedules);
  - (ii) renewal certificates; and
  - (iii) endorsement slips,
 as soon as the Developer receives them from the insurer or the party effecting the required Insurances and in any event within 20 Business Days of the State making a request; and
- (b) produce evidence satisfactory to the State (acting reasonably) that the Insurances have been effected and maintained prior to the cover being required.

**29.16 Failure to produce proof of insurance**

If, after being requested in writing by the State to do so, the Developer fails to comply with its obligations to effect or cause to be effected any of the Insurances required to be effected and maintained pursuant to this clause 29 the State may (acting in good faith and reasonably) (after giving the Developer 20 Business Days' prior notice of its intention to do so) effect and maintain the Insurances and pay the premiums. The Developer must pay to the State on demand a sum equal to the amount paid by the State.

**29.17 Notices of potential claims**

In addition to the obligations to notify the insurer under any policy, the Developer must, as soon as practicable after it becomes aware of the relevant claim, inform the State in writing of any claim made under the Insurances referred to in clause 29.1 which is in excess of [REDACTED] and must keep the State informed of subsequent developments concerning the claim.

**29.18 Additional obligations of Developer**

In relation to the insurance policies referred to in this clause 29, the Developer must comply (or procure compliance) with the following in respect of the insurances it is required to effect and maintain (or procure to be effected and maintained):

- (a) ensure that insurance premiums are paid on time, deductibles are paid promptly and the conditions of insurance are otherwise complied with;
- (b) comply with the terms of each insurance policy and not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice in any way the cover under any Insurance or which might prejudice any claim under any insurance policy;
- (c) if necessary, rectify anything which might prejudice any insurance policy;
- (d) subject to clause 29.14, reinstate an insurance policy if it lapses;
- (e) not cancel, vary or allow an insurance policy to lapse without the prior consent of the State;
- (f) promptly notify the State in writing if an insurer gives notice of cancellation, notice of avoidance or other notice in respect of any insurance policy;
- (g) promptly notify the State of any event of which it is aware which results in:
  - (i) an insurance policy lapsing or being cancelled or avoided; or
  - (ii) the insurer's liability for a claim being able to be reduced (including to nil) or denied; and
- (h) give full, true and particular information to the insurer of all matters and things the non-disclosure or misrepresentation of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance policy.

**29.19 Liabilities of Developer not affected**

The effecting of Insurances does not limit the liabilities or obligations of the Developer under this deed.

## 29.20 Change in Insured Risk

- (a) If, after the date by which Insurance is to be effected in accordance with this deed, a Change in Insured Risk occurs, the Developer and the State will promptly meet to discuss, in good faith, the measures which should be undertaken to address the Change in Insured Risk, to place the parties, to the extent reasonably practicable, in the same positions that they would have been in had the relevant Change in Insured Risk not occurred.
- (b) If, within 20 Business Days, the parties are not able to agree on the relevant measures to be adopted, then the matter must be determined in accordance with clause 38.
- (c) For the purposes this clause 29.20, **Change in Insured Risk** means any Insurance required to be effected and maintained under this clause 29 which:
  - (i) ceases to be available from insurers which satisfy clause 29.11(a) (other than where due to any act or omission of the Developer, the Developer's Employees and Agents or any person on their behalf); or
  - (ii) is available, but the terms and conditions (including as to premiums and deductibles) on which the insurance is generally available from insurers which satisfy clause 29.11(a), change such that the risk is not generally being insured against with such insurers by competent and experienced developers of developments such as the Project.

## 29.21 Insurances before commencement of the first Works Portion

For the avoidance of doubt, the parties acknowledge and agrees that before the Developer is required to procure the insurances referred to in this clause 29, the Developer must procure that insurances required under each of the Leases are maintained.

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## 30 Workplace health and safety

### 30.1 WHS Legislation

In this clause 30, the terms "construction project" and "principal contractor" have meanings given to those terms by the WHS Regulation.

### 30.2 Principal contractor

The parties agree that the Developer:

- (a) is the PCBU commissioning the Works; and
- (b) for the purposes of Chapter 6 of the WHS Regulation:
  - (i) must engage the Builder or other contractor as the principal contractor under clause 293 of the WHS Regulation for the construction project(s) forming the whole or part of the Works; and
  - (ii) must authorise the Builder or other contractor to have management or control of those workplaces necessary to

discharge its duties as principal contractor under Chapter 6 of the WHS Regulation;

- (c) to the extent that the State is a PCBU that commissions a construction project for the purposes of clause 293 of the WHS Regulation, the Developer engages the Builder or other contractor under clause 30.2(b) as agent for the State and all parties acknowledge and accept that engagement as if it was made by the State; and
- (d) any such agency between the State and the Developer only extends to the matters contained in clause 30.2(c).

### **30.3 Duration of engagement**

The engagement and authorisation of the Builder or other contractor as principal contractor in respect of each Works Portion must continue:

- (a) subject to clause 30.3(b), until the Practical Completion of each Works Portion or the date that this deed is terminated, whichever first occurs unless sooner revoked including by the State or according to Law; and
- (b) in respect of any rectification work under clause 32 that is or forms part of a construction project (as that term is used in the WHS Regulation), during the period any such work is carried out during the Defects Liability Period.

### **30.4 Developer's obligations**

The Developer must ensure, to the extent that it is reasonably able to do so, that:

- (a) in carrying out the Works it complies with the WHS Regulation;
- (b) the duties imposed on a principal contractor under the WHS Regulation are discharged;
- (c) the Builder, all subcontractors and consultants and all persons for whom it is responsible or over whom it is capable of exercising control, comply with the requirements referred to in this clause 30 and their respective obligations under the WHS Act and WHS Regulation;
- (d) it complies with its obligation under the WHS Act and WHS Regulation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (e) it complies with any reasonable direction of the State representatives given following a perceived breach of the WHS Act and WHS Regulation; and
- (f) it does not do anything or fail to do anything that would cause the State to be in breach of the WHS Act and WHS Regulation.

### **30.5 Copies of documents**

The Developer must provide or procure the Builder to provide to the State, on request from the State:

- (a) quarterly or more frequently, a copy of all plans, registers, records and documents that the Builder is required to prepare or maintain as a principal contractor under in or reasonably ascertainable from the WHS Act and WHS Regulation; and

- (b) copies of all approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) of the Builder and any other person who will undertake the Public Works.

### **30.6 State may carry out WHS obligations**

- (a) If the Developer fails to comply with an obligation under this clause 30, the State may perform, or have performed, the obligation on the Developer's behalf and the Developer must pay to the State on demand an amount equal to the Costs incurred, provided that the State has given the Developer prior written notice of its intention and the Developer has not, within a reasonable time, remedied the non-compliance.
- (b) If and to the extent that the State (acting reasonably) considers it necessary to undertake any activity, give any direction or otherwise perform any of the works or services pursuant to clause 30.6(a), the parties acknowledge and agree that in doing so, the State is not acting as a principal contractor, nor is the State to be taken, for any purpose, to be the principal contractor.
- (c) If and to the extent that the State undertakes any activity or otherwise performs any of the works or services pursuant to clause 30.6(a), the State must ensure that any person undertaking any such activity or otherwise performing any of the works or services has first undertaken the Developer and/or Builder's usual site induction and complies with the Developer and Builder's reasonable requirements.

### **30.7 No release**

For the avoidance of doubt, nothing in this clause 30 in any way releases the Developer from its obligations to the State under this deed.

### **30.8 AMB Compliance**

- (a) The:
  - (i) Developer must appoint an Integrating TAO for the Developer to provide technical engineering management and systems assurance services for the Asset Lifecycle Works, including the management and assurance of design, construction, delivery resources and directing people and organisations in the delivering of the Works to the engineering processes and Transport Standards for the Developer for so long as the Works are carried out; and
  - (ii) Developer or Builder (or a relevant subcontractor) must hold and maintain TAO Authorisation or appoint a TAO or TAO's that hold a TAO Authorisation in respect of the Asset Lifecycle Works which are required to be delivered or carried out by a TAO working within the scope of their TAO Authorisation (excluding technical engineering management and assurance services required for the Asset Lifecycle Works carried out by the Integrating TAO in accordance with clause 30.8(a)(i)) for so long as the Works are carried out.
- (b) The Developer must ensure that the TAO engaged by the Developer to carry out Asset Lifecycle Services which are required to be provided or delivered by a TAO, only work within the TAO's authorised scope of services as per the TAO Authorisation.

- (c) An Integrating TAO appointed in accordance with clause 30.8(a)(i) or a TAO appointed in accordance with clause 30.8(a)(ii) must carry out the relevant Asset Lifecycle Works in accordance with the relevant TAO Authorisation.
- (d) For the avoidance of doubt, the appointment of the Integrating TAO for the Developer is not a self-assurance role and appointment to the role of self-assurer is subject to AMB approval in writing.
- (e) The Developer must (and must ensure that its associates and all personnel for which the Developer is responsible):
  - (i) comply with the applicable TAO Authorisation;
  - (ii) implement and comply with the Asset Management Frameworks applicable to the Asset Lifecycle Works;
  - (iii) implement and comply with any Transport Standards and other assurance processes in relation to the Asset Lifecycle Works for the whole of asset lifecycle activities that are specific to a phase or several phases during the Asset Lifecycle;
  - (iv) cooperate fully with the AMB in the performance of the AMB's functions;
  - (v) 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;
  - (vi) comply with the directions, instructions and requirements issued by the AMB;
  - (vii) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;
  - (viii) 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;
  - (ix) provide the State with such reasonable assistance as may be reasonably required by the State to enable the State to cooperate fully with the AMB and to implement and comply with Asset Management Frameworks and Transport Standards; and
  - (x) provide the State with evidence of competency management of all contracted entities.
- (d) If a design consultant engaged by the Developer is required under the AMB to maintain a TAO Authorisation the Developer must ensure that any such design consultant has and maintains a TAO Authorisation for so long as the design consultant is engaged with respect to the Works.
- (e) The Developer releases the State from, and agrees that the State is not liable for, liability or loss arising from, and any Costs incurred in connection with, the requirement to obtain TAO Authorisation or the obligation to comply with the requirements of AMB and this clause 30.8.



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## **31 State's rights to enter, inspect and carry out work**

### **31.1 State's right to enter and inspect**

- (a) Subject to clause 31.1(b), provided the State complies with the site safety requirements referred to in clause 15.6, the State may, at its Cost, inspect the Works the subject of a Works Portion, acting reasonably, by entering onto the relevant parts of the Development Land which is being occupied by the Developer to carry out the Works the subject of such Works Portion.
- (b) Subject to clause 31.5, where no notice requirements or restrictions apply, the State may only exercise its right to enter onto the relevant part of the Development Land pursuant to clause 31.1(a) after giving not less than 5 Business Days' prior notice and then only in the presence of a representative of the Developer and on the date and at the time nominated by the Developer (acting reasonably).

### **31.2 State's notice to remedy**

- (a) If at any time prior to Practical Completion of a Works Portion in respect of the Public Works, the State reasonably believes that any part of that Works Portion, or any materials for incorporation into the relevant Works Portion, are materially inconsistent with:
  - (i) the Final Design Documentation relevant to that Public Works in the relevant Works Portion (as amended pursuant to this deed); or
  - (ii) the requirements of this deed,then the State may provide the Developer with a notice containing full details of any such inconsistency to the extent of the information available to the State.
- (b) Subject to clause 31.2(c) and (d), the Developer must, upon receiving a notice from the State under clause 31.2(a), provide the State with a plan for remedying any materials or workmanship identified by the State in its notice and implement that plan subject to the State's reasonable requirements and conditions.
- (c) If the Developer reasonably requires any additional details to those contained in the State's notice under clause 31.2(a), it may request that those details be provided, and the State must provide those details within a further 5 Business Days of such request.
- (d) If the Developer disputes the contents of any notice issued by the State pursuant to clause 31.2(a), then it must give the State a notice to that effect within 20 Business Days after the later of the date it receives that notice and the date the State provides further details following a request under clause 31.2(c), and the provisions of clause 38 will apply to that dispute.

### **31.3 State may take action**

Subject to clause 31.4, where the Developer is in material breach of this deed or a Project Document and that material breach gives rise to:

- (a) an imminent risk to public health or safety;

- (b) a need for emergency action for construction safety or site safety reasons; or
- (c) damage to land adjoining the Leasehold Land or improvements on the land adjoining the Leasehold Land,

the State:

- (d) may remedy the Developer's breach;
- (e) may (and the State's Employees and Agents may) enter and remain on the Development Land for so long as it is reasonably necessary for that purpose; and
- (f) must use its best endeavours not to interfere with the parts of the Development Land not required by the State under this clause 31.3.

#### **31.4 Notice of exercise of rights**

The State may not exercise its rights under clause 31.3 unless:

- (a) the Developer has not remedied the relevant non-compliance in accordance with any plan provided to the State by the Developer pursuant to clause 31.2(b) or otherwise within a reasonable time after it occurs after receiving written notice from the State to remedy the non-compliance (or, in the case of an emergency, as soon as possible after having been provided written notice of the breach by the State); and
- (b) the State has first given the Developer reasonable notice of its intention to do so.

#### **31.5 Emergencies**

If there is, or the State or the Developer has grounds for believing there is, an emergency of any nature in connection with any Works Portion or the Development Land:

- (a) on becoming aware of the emergency or possible emergency, the State or the Developer (as applicable) must as soon as practicable advise and cooperate with the other party, and keep the other party fully informed about the nature of the emergency and the Developer must keep the State informed of any actions being taken by, or on behalf of, the Developer to address the emergency and ameliorate any risks;
- (b) if both of the following are satisfied:
  - (i) the Developer does not take all reasonable steps to address the emergency and ameliorate any risks as soon as reasonably practicable having regard to the emergency and the steps required to address it or ameliorate any risks; and
  - (ii) the emergency has one or more of the following effects:
    - (A) an imminent risk to public health or safety;
    - (B) a need for emergency action for construction safety or site safety reasons; or

- (C) damage to land adjoining the Leasehold Land or improvements on the land adjoining the Leasehold Land,

the State is permitted to have reasonable access to the Development Land, having regard to the nature of the emergency or possible emergency, and to take whatever action it considers is reasonably necessary to eliminate the emergency or assist the Developer to eliminate the emergency. In having access under this clause, the State must use its best endeavours not to interfere with the parts of the Development Land not required by the State under this clause and must comply with the directions of the Builder in respect of such access.

### 31.6 Costs and risk of taking action

- (a) The State's rights under clause 31.3 and 31.5 are in addition to any other remedies of the State for the Developer's non-compliance. The Developer must pay to the State on demand a sum equal to all Costs and liabilities reasonably incurred or suffered by the State in taking the action, if the action is taken on the Development Land and arose as a result of a material breach of this deed by the Developer and unless the action was required due to the breach of this deed or of a Project Document by the State or the State's Employees and Agents or due to any negligent, wrongful or reckless act or omission of the State or the State's Employees and Agents.
- (b) The State acknowledges that any action undertaken by the State under clause 31.3 and 31.5 is at the State's sole risk, except to the extent that such action is required due to the breach of this deed or of a Project Document by the Developer or the Developer's Employees and Agents or due to any negligent, wrongful or reckless act or omission of the Developer or the Developer's Employees and Agents.

### 31.7 State may carry out Works to Services

- (a) The State (and/or the State's Employees and Agents) may at any time, at each respective party's sole Cost and risk, carry out works to vary, maintain, use, repair, alter, replace any Services or Existing Infrastructure within the State Land, provided that, in carrying out those works, the State:
- (i) gives the Developer reasonable notice of its intention to perform those works and of the access times required;
- (ii) in circumstances where the State Land is Developer Controlled Land:
- (A) seeks the Developer's approval to such works and access times (in respect of which the State acknowledges the Developer may also require the Builder's approval); and
- (B) complies with the reasonable requirements of the Developer and the Builder in respect of any such access;
- (iii) ensures that those works comply with all Laws and the requirements of all relevant Public Authorities;

- (iv) obtains all required consents and approvals in respect of those works;
  - (v) causes as little inconvenience to the Developer and the Builder as is reasonably practicable; and
  - (vi) complies with the site safety requirements of clause 15.6.
- (b) Without affecting the generality of clause 31.7(a), the Developer must, where reasonably possible:
- (i) permit the execution of work on State Land in accordance with clause 31.7(a) and ensure any person undertaking work under clause 31.7(a) has sufficient access to the State Land in accordance with the reasonable requirements of the State;
  - (ii) co-operate with any person undertaking work under clause 31.7(a) and co-ordinate the Developer's activities with their work;
  - (iii) not in any way obstruct or impede the works referred to in clause 31.7(a); and
  - (iv) minimise the effect the carrying out of the Works has on the works referred to in clause 31.7(a).
- (c) The State must, when carrying out works on the State Land pursuant to this clause:
- (i) permit the execution of the Works on State Land in accordance with this deed and ensure any person undertaking the Works under this deed has sufficient access to the State Land in accordance with this deed;
  - (ii) co-operate with any person undertaking the Works and co-ordinate the State's activities with the Works;
  - (iii) not in any way obstruct or impede the Works; and
  - (iv) minimise the effect the carrying out of the works on the State Land pursuant to this clause has on the Works.
- (d) The State acknowledges that any action undertaken by the State under this clause 31.7 is at the State's sole risk, except to the extent that such action is required due to the breach of this deed or of a Project Document by the Developer or the Developer's Employees and Agents or due to any negligent, wrongful or reckless act or omission of the Developer or the Developer's Employees and Agents.

### **31.8 State not liable**

Excluding clauses 31.5, 31.7 and 31.2(d), the Developer:

- (a) acknowledges that it is not entitled to make a claim against the State (but without prejudice to the Developer's rights under clause 21, including a claim for an extension of time pursuant to clause 21) in respect of anything arising out of clause 31; and
- (b) agrees that the State is not liable for, and releases the State from liability and loss arising from, and Costs incurred, in connection with the State's right to:

- (i) enter and inspect the Works the subject of a Works Portion in accordance with clause 31.1;
- (ii) issue a notice to the Developer under clause 31.2 to remedy any materials or workmanship for the Public Works that the State identifies as materially inconsistent with the Final Design Documentation relevant to the Public Works and the requirements of this deed;
- (iii) remedy a material breach by the Developer of this deed or a Project Document in the circumstances referred to in clause 31.3; and
- (iv) anything the State is permitted to do under this clause 31,

(except to the extent that any such claim, liability, loss or Costs arises from the State or the State's Employees and Agents failing to comply with any of its obligations under this clause 31 or by reason of any negligent, wrongful or reckless act or omission by the State or any of the State's Employees and Agents).

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## **32 Defects Liability and Final Completion Certificate for a Works Portion for the Public Works**

### **32.1 Developer to rectify defects**

The Developer must rectify any defects notified to it in a Defects Notice given within the Defects Liability Period in respect of a Works Portion relating to the Public Works as soon as practicable after the service of the Defects Notice.

### **32.2 Inspections by Independent Certifier and State**

- (a) At any time during the Defects Liability Period, the State may request the Independent Certifier to inspect the Public Works the subject of that Works Portion for the purpose of ascertaining what defects and omissions (if any) in those Public Works referred to in clause 32.1 are required to be made good by the Developer.
- (b) At reasonable times after reasonable notice during the Defects Liability Period, the State may in the presence of a representative of the Developer and on the date and at the time nominated by the Developer (acting reasonably) inspect the Public Works the subject of that Works Portion for the purpose of ascertaining what defects and omissions (if any) in those Public Works referred to in clause 32.1 are required to be made good by the Developer.

### **32.3 Defects Notice given by Independent Certifier or State**

- (a) After each inspection by the Independent Certifier or the State, the Independent Certifier or the State (as the case may be) may give a notice (**Defects Notice**) to the Developer of all defects and omissions (if any) in the Public Works which in the reasonable opinion of the Independent Certifier or the State (as the case may be) are required to be made good. Any Defects Notice:
  - (i) must identify the defect or omission;

- (ii) state a date by which the Developer must complete the rectification work (being a reasonable date having regard to the relevant defect);
  - (iii) may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration not exceeding 12 months, commencing on the date the rectification work is completed; and
  - (iv) must be given during the Defects Liability Period.
- (b) If the Independent Certifier provides the Defects Notice, the Developer must provide a copy of that Defects Notice to the State or procure that the Independent Certifier provides a copy to the State.
  - (c) Following receipt of a notice from the State or Independent Certifier, the Developer may issue a notice disputing the date by which the Developer must complete the rectification work if it considers that such date does not allow a reasonable time to complete such rectification works.

### **32.4 Obligations of Developer**

The Developer must:

- (a) make good any defect or omission specified in the Defects Notice which in the reasonable opinion of the Independent Certifier are required to be made good, within the relevant time specified by the Independent Certifier or within the time otherwise agreed between the parties if the Developer issues a notice under clause 32.3(c); and
- (b) give notice to the State when, in the Developer's opinion, those defects or omissions have been made good.

### **32.5 State may rectify defects**

- (a) If the Developer does not complete the rectification work within the time specified in the Defects Notice, the State may (subject to clause 32.3(c), 32.5(b) and 32.5(c)):
  - (i) have the rectification work carried out at the Developer's cost; and
  - (ii) the State may call on any relevant Security (Defects) (without prejudice to any other rights that the State may have against the Developer in connection with the defect) to recover the Costs incurred by the State in carrying out the rectification work pursuant to clause 32.5(a)(i) if the Developer does not pay to the State on demand a sum equal to the reasonable cost of the rectification work reasonably incurred by the State.
- (b) Prior to exercising its rights pursuant to clause 32.5(a), the State must give notice to the Developer that the Developer has not completed the rectification work within the time specified in the Defects Notice and allow the Developer a further 20 Business Days to complete the rectification work unless some other timeframe is agreed pursuant to clause 32.3(c).
- (c) If the Developer does not complete the rectification work within the time specified in clause 32.5(b) the State may exercise its rights pursuant to clause 32.5(a).

### 32.6 Final Completion Certificate

The provisions of clauses 20.2 to 20.6 apply *mutatis mutandis* to the issue of the Final Completion Certificate in relation to Public Works the subject of a Works Portion as if the reference in those clauses to:

- (a) the Certificate of Practical Completion were a reference to the Final Completion Certificate; and
- (b) the reference to Practical Completion were a reference to Final Completion.

### 32.7 Access to remedy defects

- (a) The Developer must ensure the State has reasonable access to the Acquisition Land for the purposes of remedying defects in accordance with the State's rights under this clause 32 and in accessing the Acquisition Land under this clause the State must use its best endeavours not to disrupt or interfere with any tenant's or occupier's use of any part of the Acquisition Land.
- (b) The State must ensure that the Developer has reasonable access to the State Land for the purposes of remedying defects in accordance with this clause 32 and in accessing the State Land under this clause the Developer must use its best endeavours not to disrupt or interfere with any tenant's or occupier's use of any part of the State Land.

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## 33 Security

### 33.1 Developer to give Security

The Developer must give the State the Security on the date of satisfaction (or waiver by the Developer) of the last of the Conditions Precedent.

### 33.2 Form of Security

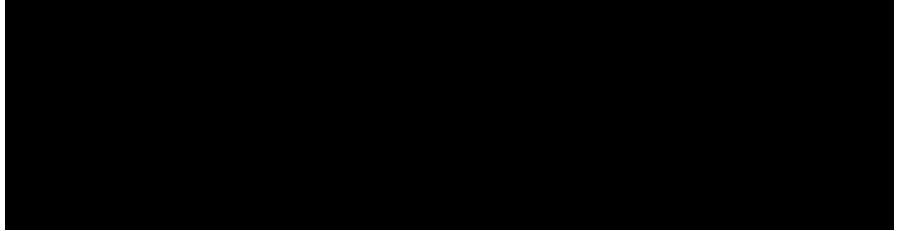
- (a) Each Security must be in the form of an irrevocable and unconditional undertaking to pay on demand the specified amount and must be:

[REDACTED]

- (b) payable at the office of the issuer in Sydney or such other place as the State may approve; and
- (c) in the applicable form set out in Schedule 7 (or substantially consistent with the form set out in Schedule 7) or such other form acceptable to the State (acting reasonably).

**33.3 Calling on a Security**

- (a) The Developer and the State each acknowledge and agree that the State may make demand on and utilise the Security to compensate the State for any costs, expenses or damages which the State suffers or incurs as a result of any breach of this deed by the Developer or other act or omission of the Developer in the event that:

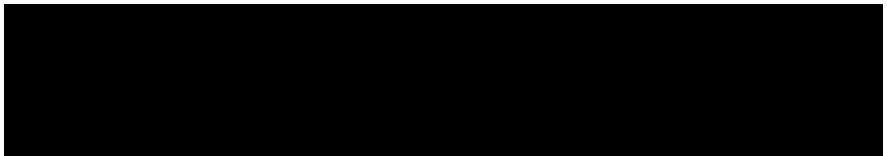


- (iii) termination of this deed by the State pursuant to clause 39.5.
- (b) It is not necessary for the State to establish to the Developer the validity of the claim before making demand on and utilising any Security. The State may in its absolute discretion determine which Security is the subject of a demand at any time.
- (c) The Developer must not take any steps whatsoever to injunct the insurer of the unconditional undertakings or the State in respect of dealing with any Security or to restrain the State from utilising the Security.
- (d) If the State makes a demand on any Security, the State:
- (i) does not hold the amount received under the demand on trust for the Developer; and
- (ii) is not obliged to pay the Developer interest on that amount.
- (e) If the State makes a demand on or utilises any Security and it is later established that the State was not entitled to make such a demand or effect the utilisation, the State must return to the Developer the amount received by the State pursuant to its demand or utilisation (within 15 Business Days of receiving notice from the Developer), which will be the sole remedy of the Developer arising out of the Developer's demand on the Security.

**33.4 Replacement of Security after call**

- (a) Subject to clause 33.4(b), if the State calls on the Security, the Developer must, no later than 10 Business Days after the State gives notice to the Developer requesting that any called Security must be replaced, provide a replacement or additional Security so that the amount held by the State is the full amount of the relevant Security.

(b)

**33.5 Replacement Security**

- (a) If:
- (i) the State holds a Security provided under clause 33.1 which contains an expiry date which is earlier than the date upon which



this deed requires the State to return the Security to the Developer; or

- (ii) the credit rating of the issuer falls below the Required Rating under clause 33.2(a)(i),

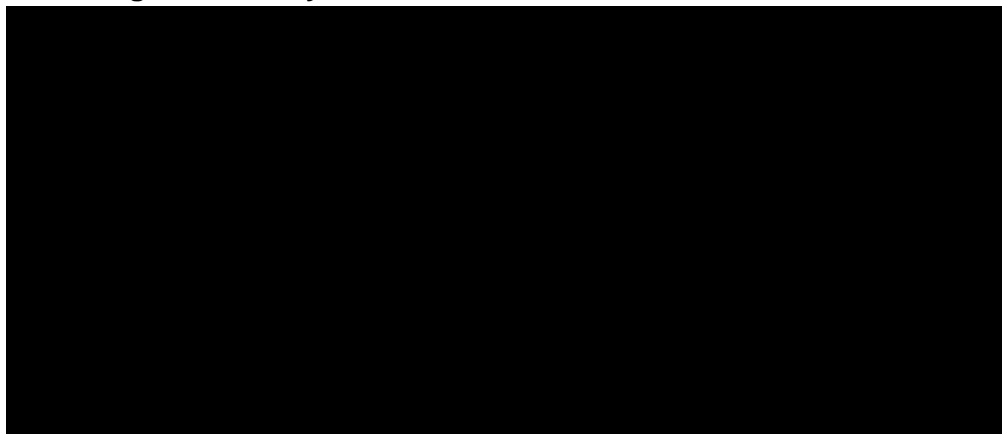
the Developer must:

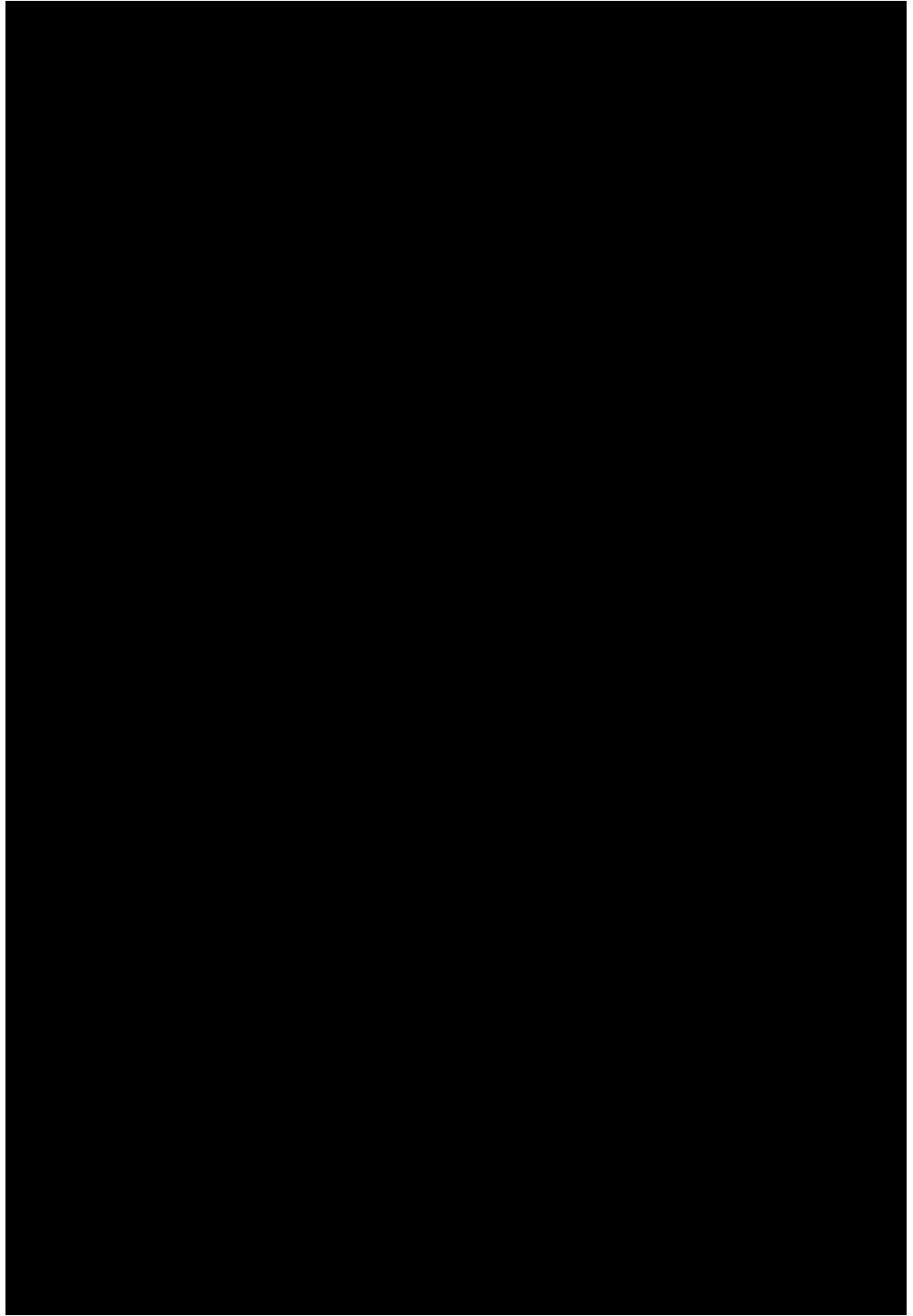
- (iii) where clause 33.5(a)(i) applies, on or before the date which is 10 Business Days prior to the expiry date for that Security; or
- (iv) where clause 33.5(a)(ii) applies, within 10 Business Days of the date on which the credit rating falls below the Required Rating,

provide the State with replacement Security in accordance with clause 33.2 in exchange for the Security which is being replaced.

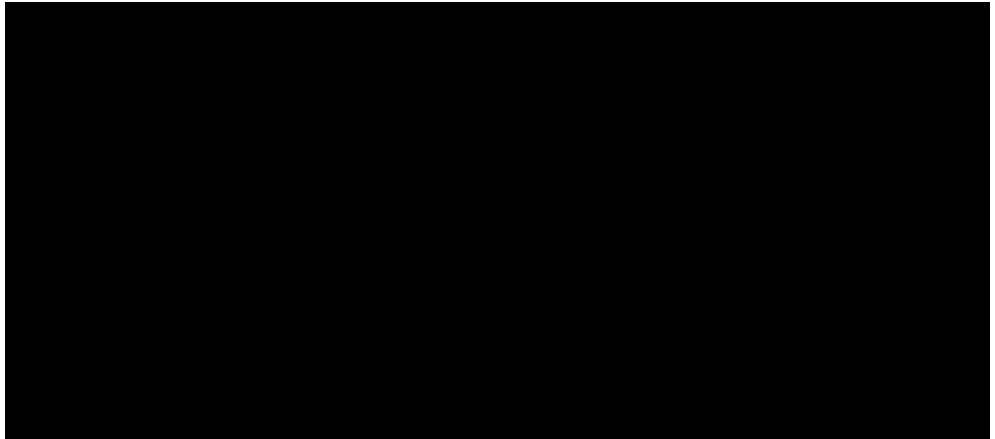
- (b) If the Developer fails to provide the State with the replacement Security as required under clause 33.5(a), the State:
  - (i) may call on the full amount of the relevant Security on 5 Business Days' notice to the Developer unless the Security has 5 Business Days or less before it expires in which event no prior notice is required;
  - (ii) must hold the amount of that Security as a cash deposit (**Cash Deposit**) in a separate bank account in the name of the State (**Cash Deposit Account**);
  - (iii) may withdraw money (including accrued interest) from the Cash Deposit Account and use that money:
    - (A) in accordance with clause 33.2 as if the Cash Deposit were the amount secured by the Security; and
    - (B) to pay all Costs and Taxes payable in connection with that Cash Deposit Account; and
  - (iv) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by the State under clause 33.5(b)(iii)) to the Developer in accordance with clause 33.6 as if the amount in that Cash Deposit Account were the Security.

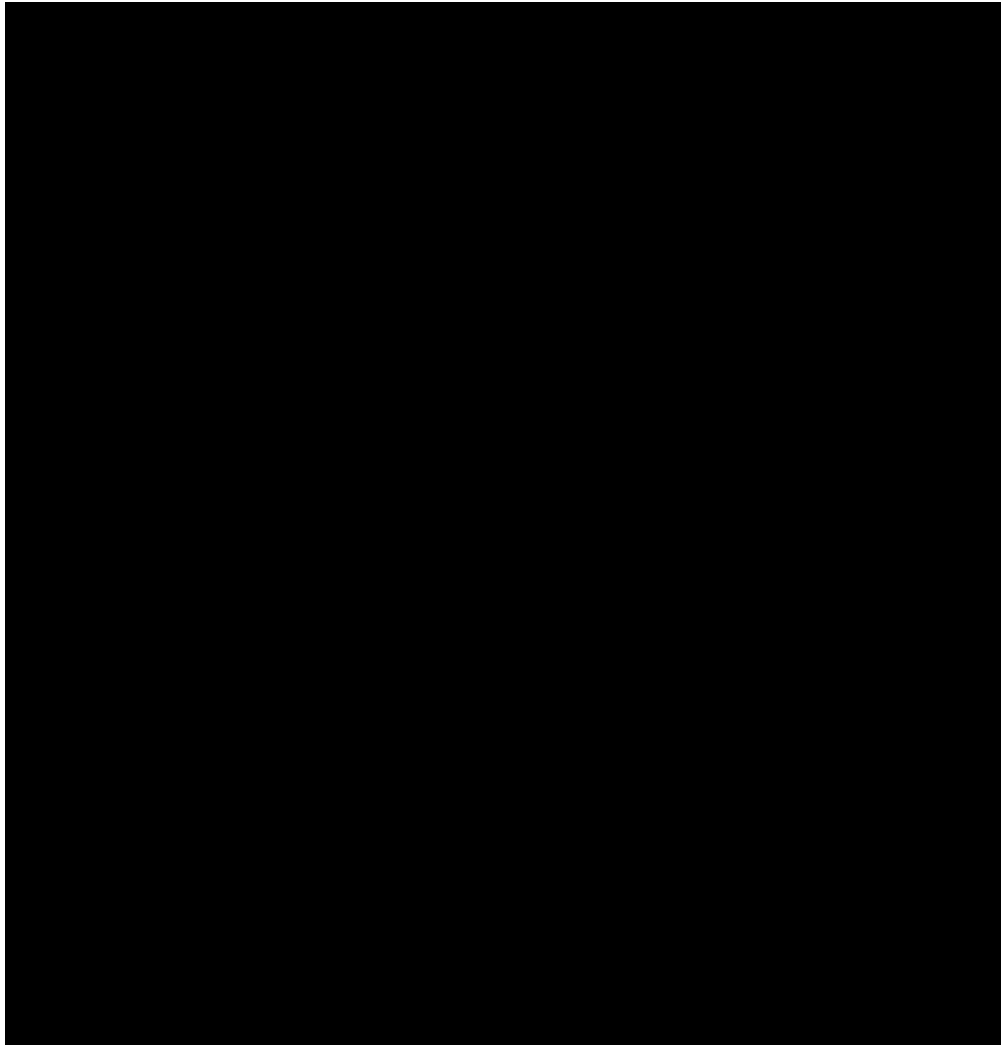
### 33.6 Returning the Security





**33.7**





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## **34 Naming and marketing the Development Works**

### **34.1 Naming the Developer's Works**

- (a) Subject to clause 34.1(b), the State acknowledges and agrees that the Developer has the naming rights in respect of the Development Works.
- (b) The Developer will take reasonable steps to consult with the State with respect to the proposed name or logo being used for the Development Works prior to using the name.
- (c) The Developer must not use the name or logo of the State in connection with the naming or branding of the Development Works without the prior approval of the State (given or withheld in its absolute discretion).

### **34.2 Marketing the Development Works**

- (a) The State and the Developer acknowledge that they wish to jointly promote the Development Works for the mutual benefit of the parties, recognising that the Project is an integral component of the Central Precinct Renewal Program.
- (b) At each Development Control Group meeting, the Developer must keep the State reasonably informed of its marketing strategies for the Development Works, which must be in accordance with reasonable standards of industry practice.

### **34.3 Developer's obligations regarding marketing materials**

- (a) The Developer is responsible for all aspects of the marketing and promotion of the Development Works and is entitled to market and promote the Development Works as it sees fit (subject to the provisions of this clause 34).
- (b) The Developer must ensure that all promotional and marketing materials (including printed or digital materials) issued in connection with the Project that bear the State's logo or branding comply with the State's marketing guidelines.

### **34.4 Signage and advertising**

- (a) The Developer must not place any signs or advertisements on any part of the State Land unless the State's prior consent is obtained to the size, nature, content, colour and location of those signs or advertisements.
- (b) If required by the State, the State's logo must be incorporated into any advertising located in the Public Works areas.
- (c) The Developer's obligations under clause 34.3 and this clause 34.4 cease after all of the Works to be delivered under this deed have reached Practical Completion.

### **34.5 Naming and marketing of the Central Precinct Renewal Program and the Public Works**

- (a) The Developer acknowledges and agrees that the State has the naming rights in respect of:
  - (i) the Public Works; and
  - (ii) the Central Precinct Renewal Program.
- (b) The State and the Developer acknowledge that they may wish to jointly promote the Central Precinct Renewal Program and the Public Works for the mutual benefit of the parties, recognising that the Project is an integral component of the Central Precinct Renewal Program.
- (c) The State is responsible for all aspects of the marketing and promotion of the Central Precinct Renewal Program and Public Works.

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## **35 Intellectual property**

### **35.1 Ownership of intellectual property**

The Developer:

- (a) warrants that the Developer has or will have a right to use all design, materials, documents and methods of working produced by or on behalf of the Developer for the purpose of the Works, including the right to use such items for the purpose of operating, maintaining, repairing, rectifying and altering the Works; and
- (b) indemnifies the State against any liability or loss arising from and any Costs incurred in connection with any design, materials, documents and methods of working provided by, or on behalf of, the Developer infringing

any patent, copyright, registered design, trademark, name or other protected right.

### 35.2 Licences to use intellectual property

- (a) If this deed is terminated, the Developer:
- (i) grants the State a royalty-free, irrevocable, transferable licence (including the right to sublicense) to use and modify the items referred to in clause 35.1(a) in accordance with the State's rights under this deed in respect of the Public Works, including any alterations and repairs to, and rectification and maintenance of, the Public Works, provided the State may only transfer such licence to a person who takes an assignment of the State's interest in this deed or, in respect of the P1 Public Works, becomes the owner of the P1 Public Works; and
  - (ii) agrees that such licence will include sufficient rights:
    - (A) in any Approval, and all plans and specifications referred to in any such Approval; and
    - (B) in any design work relating to the Project produced by or on behalf of the Developer which is not incorporated in any Approval,

for the State to:

    - (C) commence or complete any part of those Public Works which are not complete at the date of termination, and use (and modify) such Approvals, plans and design work to construct, operate, maintain, repair, rectify and alter those Public Works, in the manner contemplated by this deed; and
    - (D) sublicense its rights to third parties engaged by the State to provide goods or services in connection with those Public Works, including any alterations and repairs to, and rectification and maintenance of, those Public Works; and
  - (iii) must deliver to the State all documentation the subject of the licence under this clause 35.2(a)(i) as is reasonably required by the State, including such documentation as may be required to lodge appeals, or making Applications in respect of any Approval.
- (b) The Developer grants to the State a royalty-free, irrevocable, transferable licence to use the items referred to in clause 35.1(a) for the operation, maintenance, repair, rectification and alteration of Public Works without the need for consent from the Developer or a third party, provided the State may only transfer such licence to a person who takes an assignment of the State's interest in this deed. The licence arises in respect of each component of the Public Works on the later of the date of this deed and the date of creation of the relevant item in clause 35.1(a).
- (c) The Developer must deliver to the State all documentation the subject of the licence under clause 35.2(b) as is reasonably required by the State.

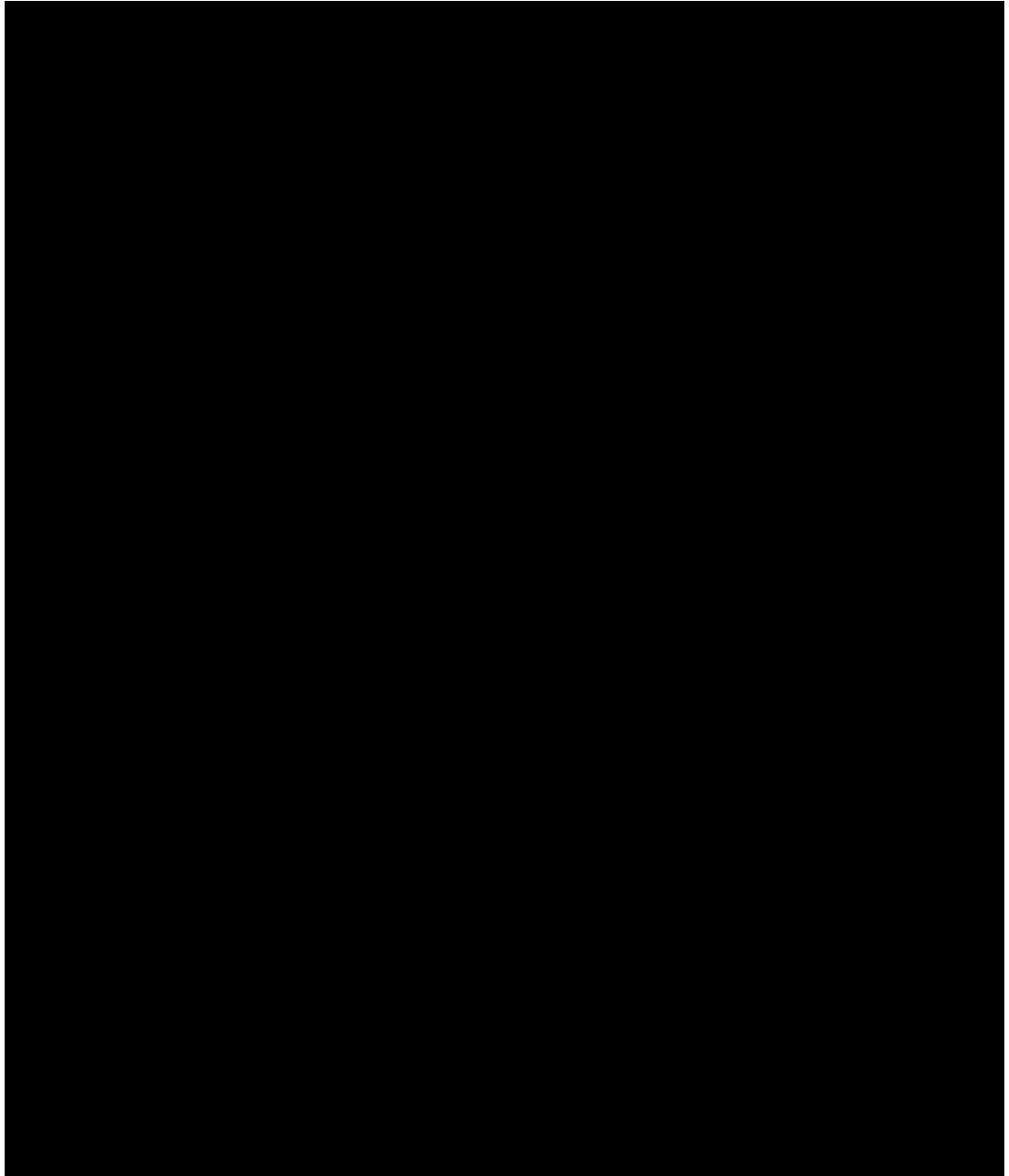
### 35.3 Moral Rights warranty

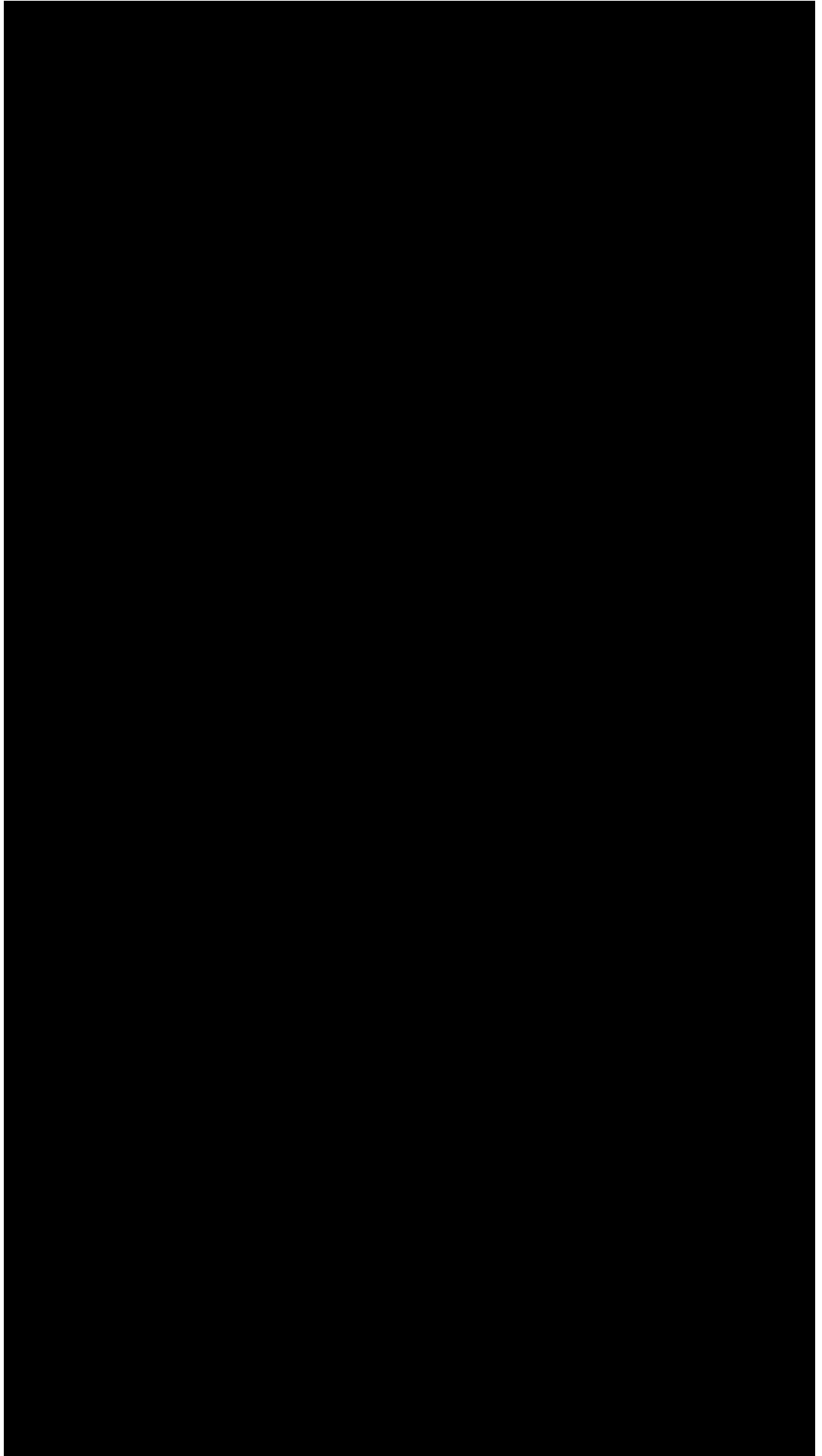
The Developer:

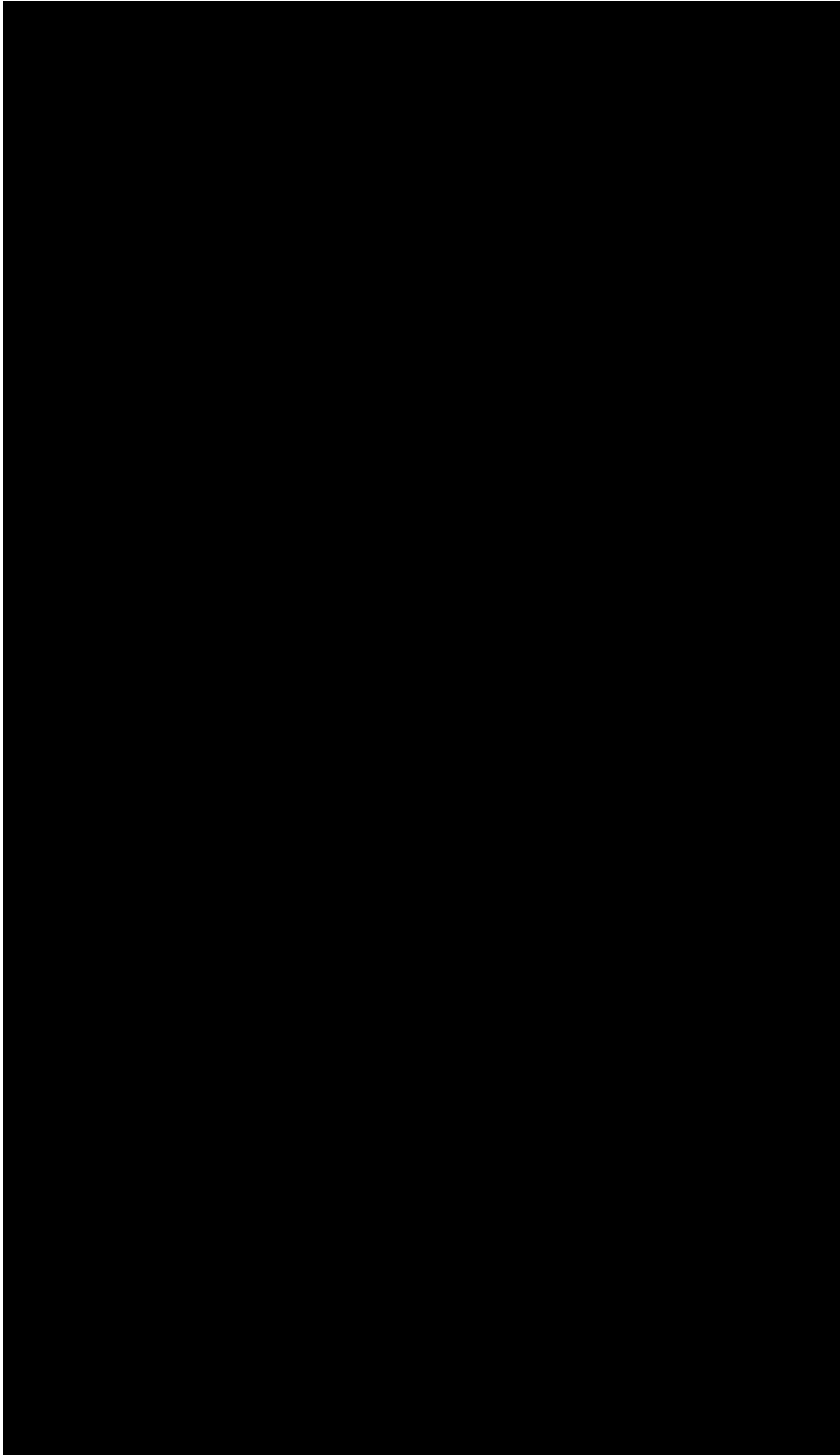
- (a) will use all reasonable endeavours to obtain an undertaking in the form of Schedule 8, from each individual author employed by each party performing any design work in relation to the Public Works, not to enforce any Moral Rights that author may have, now or in the future, in any such design work in which copyright subsists, so that the State may freely exercise its rights pursuant to the licence granted under clause 35.2; and
- (b) indemnifies the State against any liability or loss arising from, and any Costs incurred in connection with the Developer's failure to use all reasonable endeavours to obtain the undertaking required under clause 35.3(a).

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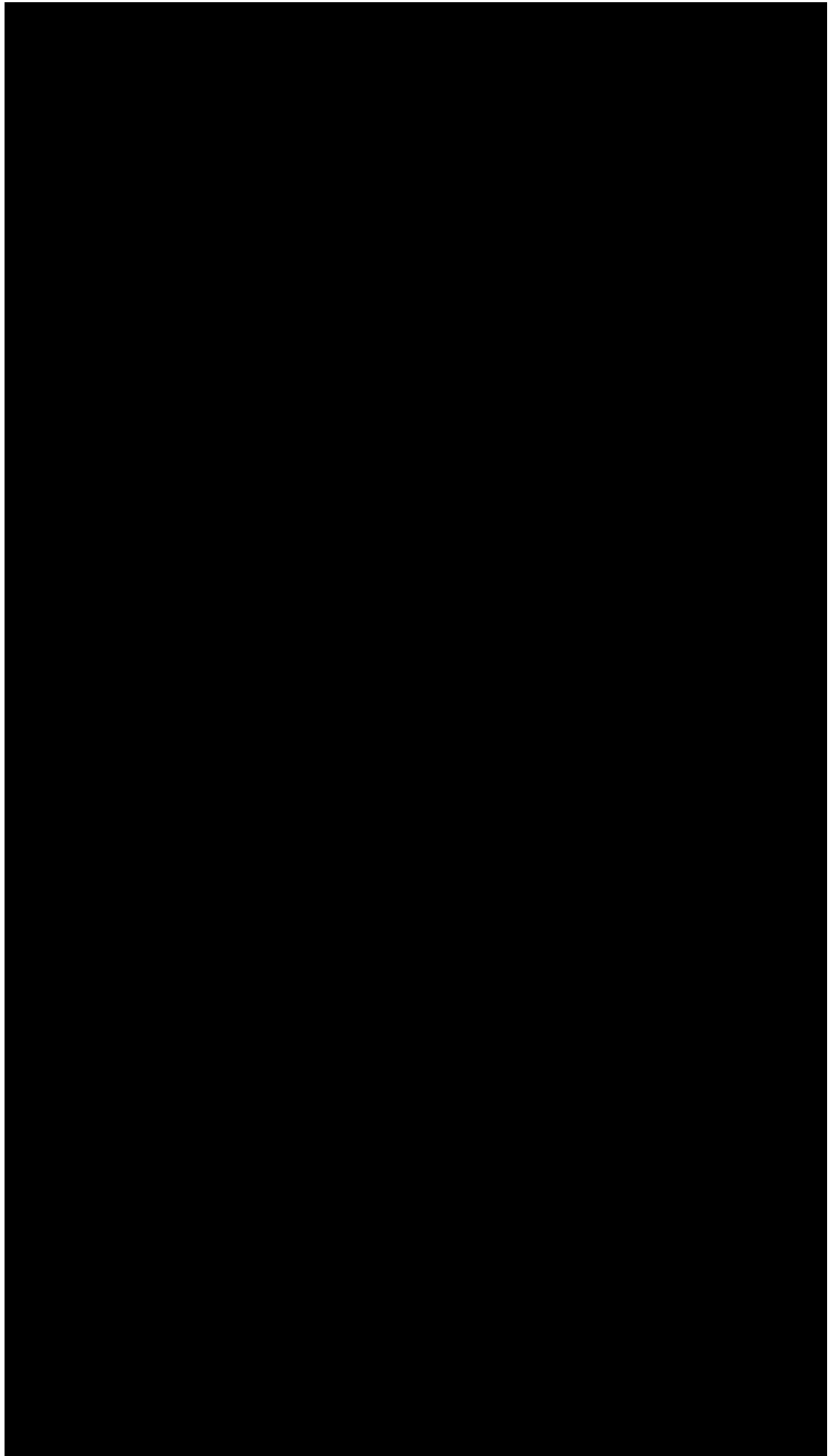
## 36 Assignment

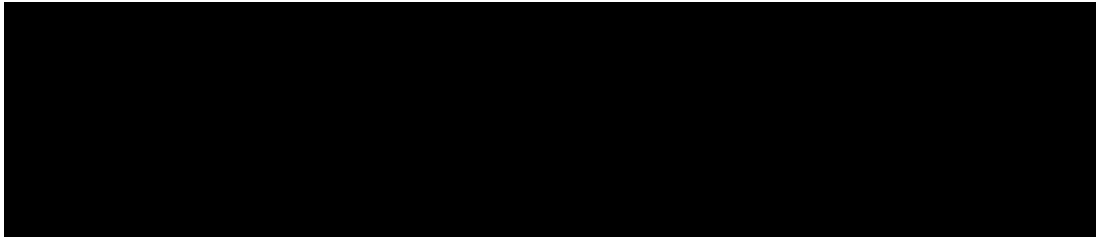






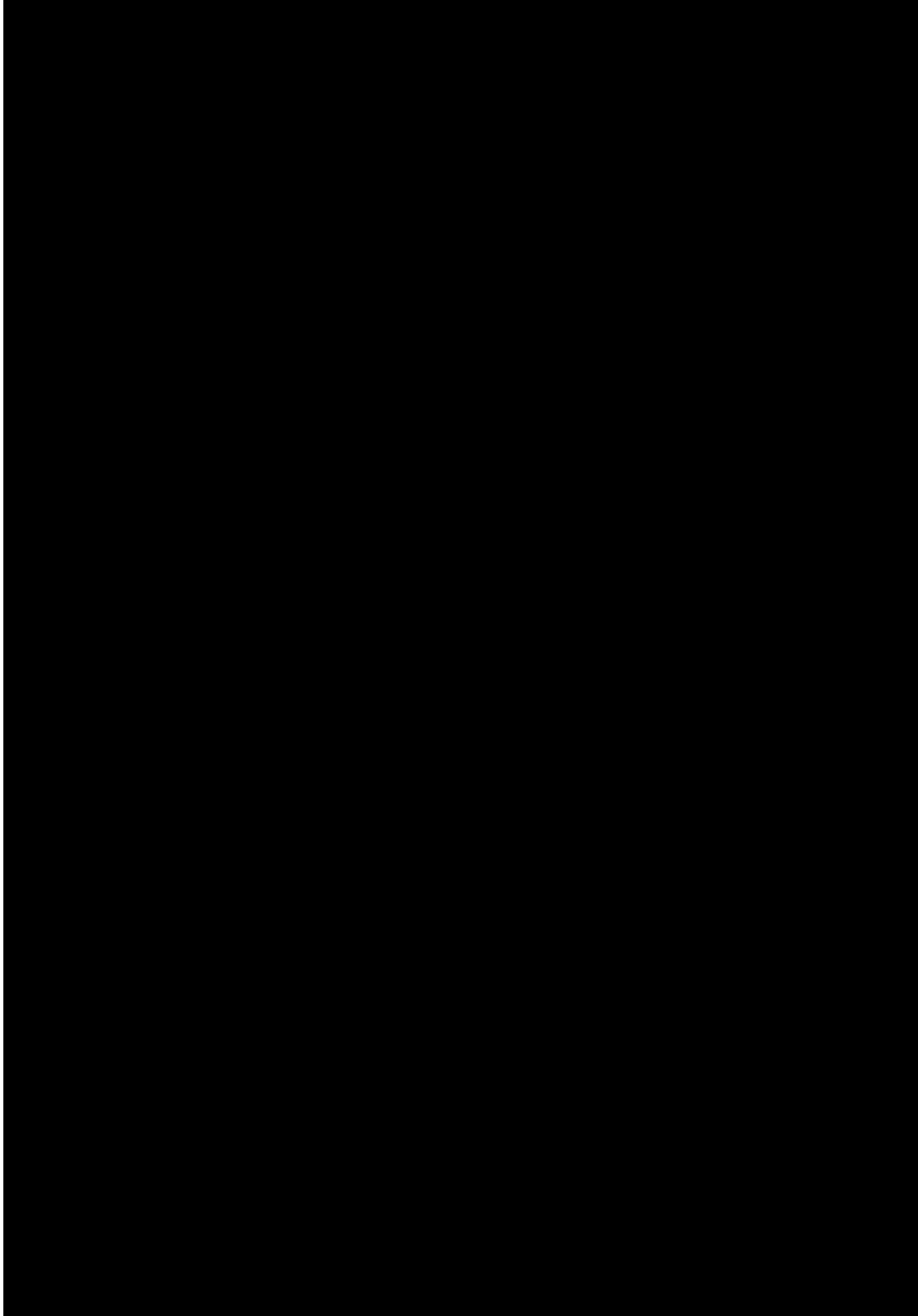






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**37 Asset restructure by the State**



## **38 Dispute resolution**

### **38.1 Notice of dispute**

If a dispute between any or all of the parties arises in connection with this deed or its subject matter, then the disputing party must give to the other a notice identifying and providing details of the subject of the dispute (**Dispute Notice**).

### **38.2 Continuing to perform obligations**

All parties to this deed must continue to perform their respective obligations under this deed if there is a dispute. This clause does not limit the right of any party to recover damages (including damages for any delay or other loss and associated costs) if the matter the subject of the dispute is resolved in favour of that party or the other party withdraws its requirement that the dispute be resolved.

### **38.3 Dispute resolution process**

After a party issues a Dispute Notice, the parties will seek to negotiate a resolution under clause 38.4.

### **38.4 Executive negotiation**

Any:

- (a) dispute the subject of a Dispute Notice; or
- (b) referral under clauses 6.4(d)(i)(B), 6.4(h)(iii) or 21.10(c),

must first be referred to the following representatives of the parties:

- (c) in the case of the State, the Chief Development Officer of Infrastructure and Place or equivalent; and
- (d) in the case of the Developer, the Chief Executive Officer of the Developer or equivalent,

for executive negotiations, and those representatives must meet within 10 Business Days after the date of the Dispute Notice or referral under the clauses referred to in paragraph (b) above and undertake genuine and good faith negotiations with a view to resolving the dispute. If these persons cannot agree on how to resolve the dispute within 10 Business Days of the date of the Dispute Notice then the remaining provisions of this clause 38 apply.

### **38.5 Disputes for expert determination**

- (a) If pursuant to clause 38.4, the Chief Development Officer of Infrastructure and Place (or equivalent) and the Chief Executive Officer of the Developer (or equivalent) cannot agree on a resolution of the dispute or how to resolve the dispute, then:

- (i) if a dispute is expressed in this deed to be a dispute which will be referred to expert determination under this clause 38, either party may refer the dispute to expert determination in accordance with this clause 38;
  - (ii) the State and the Developer may agree that the dispute will be referred to expert determination in accordance with this clause 38; and
  - (iii) subject to clause 38.5(a)(i), if the State and the Developer do not agree within 5 Business Days of the expiration of the period for executive negotiation that the dispute will be referred to expert determination, either of them may commence litigation in accordance with clause 38.20.
- (b) Where clause 38.5(a)(i) or 38.5(a)(ii) applies, the dispute will be taken to have been referred to expert determination on the date notice is given by a party to the other referring the dispute to expert determination.

### **38.6 Choice of expert**

A dispute to be referred to an expert in accordance with clause 38.4 must be determined by an independent expert of at least 10 years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 5 Business Days after the dispute is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field and, if the parties cannot agree as to the relevant field within a further 5 Business Days, by an expert appointed by Resolution Institute.

### **38.7 Expert**

- (a) The expert appointed to determine a dispute:
  - (i) must have a technical understanding of the issues in contest; and
  - (ii) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
  - (iii) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.
- (b) Once an expert is agreed and jointly appointed by the parties, a party cannot rely on this clause 38.7 to challenge the appointment.

### **38.8 Agreement with expert**

- (a) The parties must within 10 Business Days after the expert is agreed or appointed pursuant to clause 38.6 enter into an agreement with the expert appointed under clause 38.7 setting out the terms of the expert's engagement (including the time within which the expert must make the determination) and the expert's fees.

- (b) The terms of the expert's engagement must require the expert to make a determination in respect of the dispute in accordance with clauses 38.9 to 38.19 (inclusive) to the extent they are not inconsistent with the terms of the agreement with the expert.

### **38.9 Directions to expert**

In reaching a determination in respect of a dispute under clause 38.7, the expert must give effect to the purposes of this deed and with respect to legal interpretations matters only, the intent of the parties entering into this deed.

### **38.10 Role of expert**

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft determination stating the expert's intended determination giving each party 5 Business Days to make further submissions;
- (h) issue a final determination stating the expert's determination having had regard to any further submissions received under clause 38.10(g); and
- (i) act with expedition with a view to issuing the final determination as soon as practicable.

### **38.11 Complying with directions of expert**

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

### **38.12 Expert may commission reports**

Subject to obtaining the prior consent of both parties, the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. Provided that both parties have consented to the Costs, the State and the Developer must indemnify

the expert for the Cost of those advisers or consultants in accordance with clause 38.18.

### **38.13 Expert may convene meetings**

The expert will hold a meeting with all the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

### **38.14 Meeting not a hearing**

The parties agree that a meeting under clause 38.13 is not a hearing and is not an arbitration.

### **38.15 Confidentiality of information**

The parties agree, and must procure that the expert agrees as a condition of its appointment:

- (a) subject to clause 38.15(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination; and
- (b) not to disclose any confidential documents, information and other material except:
  - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 38.15(a); or
  - (ii) if required by Law to do so; or
  - (iii) for the purpose of a party enforcing the expert's determination; and
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination.

### **38.16 Confidentiality in proceedings**

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:



- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination relating to a possible settlement of the dispute; and
- (b) admissions or concessions made by a party during the expert determination in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings,

except:

- (d) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 38.15(a); or

- (e) if required by Law to do so; or
- (f) for the purpose of enforcing the expert's determination.

### **38.17 Final determination of expert**

- (a) The determination of the expert:
  - (i) must be given to the parties in writing;
  - (ii) must be given within a timeframe to be agreed by the parties but no later than 30 Business Days from appointment of the expert;
  - (iii) will be final and binding except where both of the following are satisfied:
    - 
    - 
    - (B) a party gives a notice of disagreement to the other party within 5 Business Days of receipt of the determination; and
  - (iv) is to be given effect to by the parties until it is reversed, overturned or otherwise changes by way of litigation.
- (b) Where a party gives a notice of disagreement under clause 38.17(a)(iii)(B), either party may commence litigation in respect of the dispute.

### **38.18 Expert's Costs**

If any expert does not award Costs, the disputing parties must:

- (a) each pay an equal share of the expert's Costs incurred from the date of appointment to the date of the final determination; and
- (b) each pay its own Costs of and incidental to any expert determination process pursuant to this deed.

### **38.19 Expert generally not liable**

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this deed.

### **38.20 Litigation**

- (a) If:
  - (i) the negotiation process referred to in clause 38.4 has not resulted in settlement or resolution of the dispute and has been terminated and the dispute has not or cannot be referred to expert determination under clause 38.4; or
  - (ii) in the case of a dispute which has been referred to expert determination under clause 38.4:

- (A) an expert is not appointed within 20 Business Days after the date on which the matter was referred for expert determination; or
- (B) a determination is not made by the expert within 30 days of the expert's acceptance of the appointment,

then either party to the dispute may commence legal proceedings to resolve the dispute.

- (b) If a dispute is referred to the courts due to the operation of clause 38.20(a)(ii), the relevant expert determination will be terminated with immediate effect.

### **38.21 Survive termination**

The provisions of this clause 38 survive termination of this deed.

### **38.22 Urgent interlocutory relief**

Nothing in this clause 38 prejudices, affects or limits or is intended to prejudice, affect or limit any party's right to institute proceedings to seek or obtain urgent interlocutory relief in respect of a dispute under this deed.

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## **39 Default**

### **39.1 Trigger Notice**

- (a) If a Trigger Event or an Other Default Event occurs, the State may give the Developer and the Guarantor a notice specifying the Trigger Event or Other Default Event (**Trigger Notice**):
  - (i) stating that it is a notice under this clause 39; and
  - (ii) specifying the nature of the Trigger Event or Other Default Event.
- (b) The State may stipulate in the Trigger Notice the period of time within which the Trigger Event or Other Default Event must be remedied, which period must be reasonable having regard to the Trigger Event or Other Default Event and the likely time needed to remedy it. If the State stipulates that period of time in which the Trigger Event or Other Default Event must be remedied and the Developer does not dispute whether the period is reasonable having regard to the Trigger Event or Other Default Event and the likely time needed to remedy it, then clause 39.2 will not apply and:
  - (i) the Developer (or the Guarantor, Financier or Investor) (as applicable) must remedy that Trigger Event or Other Default Event within the period of time stipulated by the State; and
  - (ii) failure by the Developer (or the Guarantor, Financier or Investor) (as applicable) to remedy the Trigger Event within the period of time stipulated by the State will be an Event of Default (but failure to remedy an Other Default Event within the period of time stipulated by the State will not be an Event of Default).



## 39.2 Corrective Action Plan

- (a) If:
- (i) a Trigger Notice is given;
  - (ii) the Trigger Event or Other Default Event is capable of being remedied; and
  - (iii) the State either does not specify in the Trigger Notice the period of time within which the Trigger Event or Other Default Event must be remedied or the Developer disputes whether the period of time stipulated by the State is reasonable having regard to the Trigger Event or Other Default Event and the likely time needed to remedy it,

the Developer (or the Guarantor, Financier or Investor) (as applicable) must, within 10 Business Days after receipt of the Trigger Notice prepare and submit to the State a draft plan describing the actions and measures which the Developer will diligently pursue to remedy the Trigger Event or Other Default Event, including the time that will be taken to remedy the Trigger Event (**Draft Corrective Action Plan**).

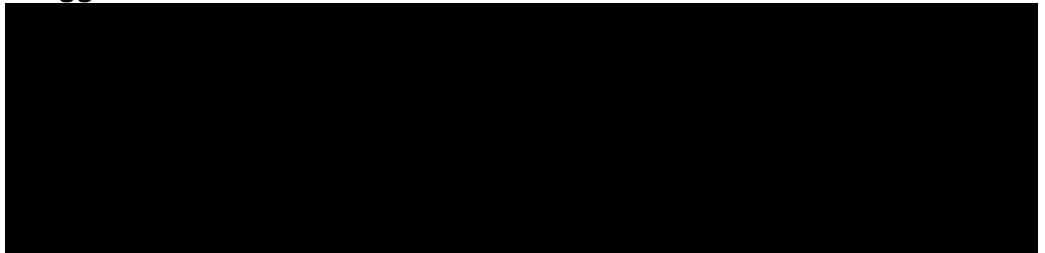
- (b) If:
- (i) a Trigger Notice is given;
  - (ii) the Trigger Event or Other Default Event is capable of being remedied; and
  - (iii) the State specifies the period of time within which the Trigger Event or Other Default Event must be remedied in the Trigger Notice and the Developer does not dispute whether the period of time stipulated by the State is reasonable having regard to the Trigger Event or Other Default Event,

then the Developer (or the Guarantor, Financier or Investor) (as applicable) must comply with the Trigger Notice.

- (c) The Draft Corrective Action Plan referred to in clause 39.2(a) must demonstrate that the Developer (or the Guarantor, Financier or Investor) (as applicable) is acting in good faith and is applying measures that are not less than Best Industry Practice in remedying the Trigger Event or Other Default Event.
- (d) Within 10 Business Days after receipt of a Draft Corrective Action Plan, the State (acting reasonably) must either:
- (i) approve the Draft Corrective Action Plan by notifying the Developer, the Guarantor or Financier; or
  - (ii) reject the Draft Corrective Action Plan by notifying the Developer and providing reasons to the Developer, the Guarantor or Financier, as applicable, for its decision.
- (e) If the State approves a Draft Corrective Action Plan pursuant to clause 39.2(d)(i) (**Approved Corrective Action Plan**):
- (i) the period of time in the Approved Corrective Action Plan to remedy the Trigger Event or Other Default Event is the cure period (**Applicable Cure Period**); and

- (ii) the Developer (or the Guarantor, Financier or Investor (as applicable)) must comply with and implement the Approved Corrective Action Plan and remedy the Trigger Event or Other Default Event within the Applicable Cure Period.
- (f) If the State (having acted reasonably) rejects a Draft Corrective Action Plan pursuant to clause 39.2(d)(ii), the Developer (or the Guarantor, Financier or Investor) (as applicable) must give consideration to the reasons provided by the State in accordance with clause 39.2(d)(ii) and re-submit a further Draft Corrective Action Plan for consideration by the State in accordance with this clause 39.2.
- (g) The Developer will not be relieved of any obligation, liability or responsibility under this deed or otherwise arising under Law by virtue of any notice given under this clause 39.2 or the implementation of any Corrective Action Plan.

### **39.3 Trigger Event not remedied**

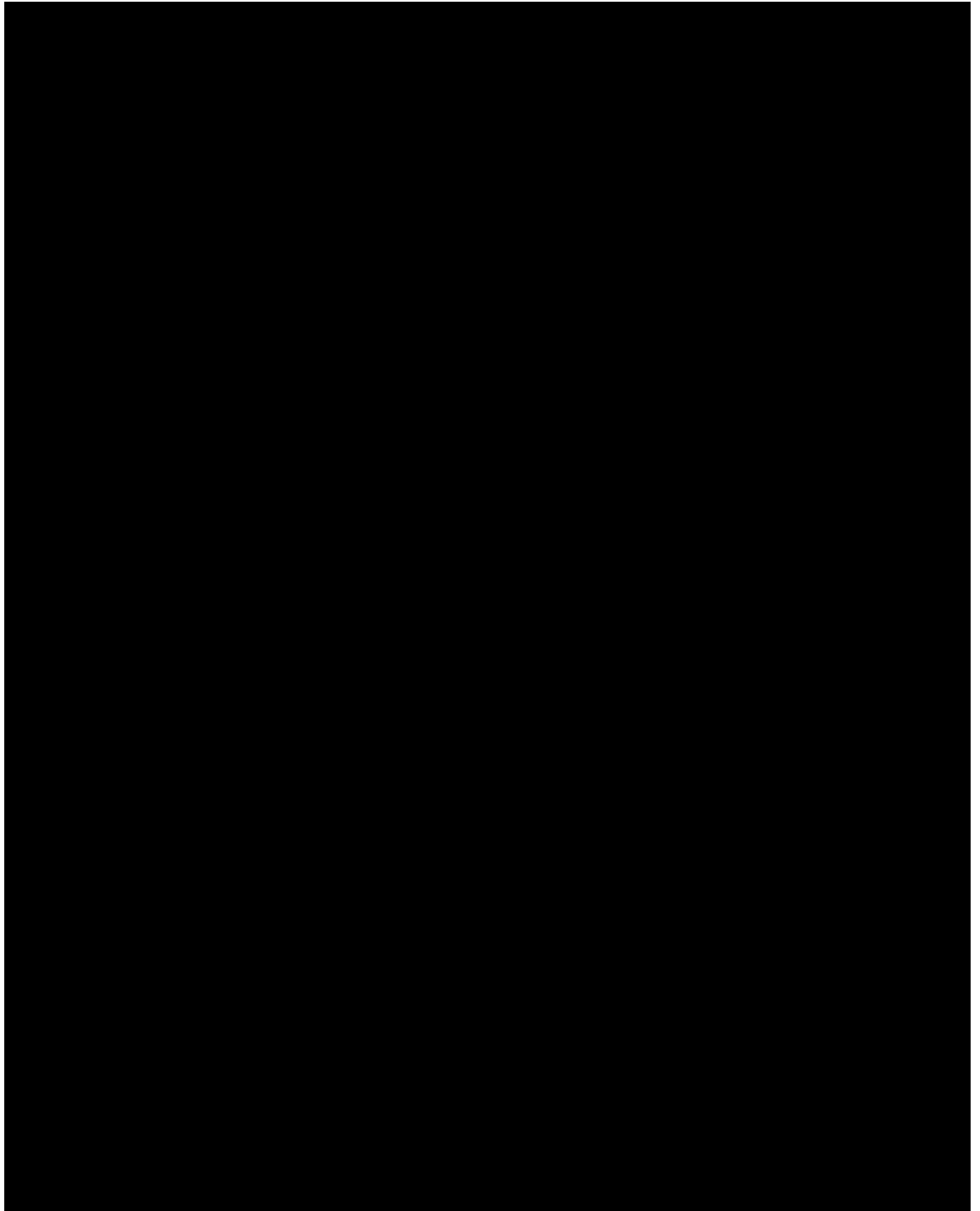


### **39.4 Not used**

### **39.5 State may terminate**

- (a) If an Event of Default occurs the State may terminate this deed by notice.
- (b) The State acknowledges and agrees that its right to terminate this deed under clause 39.5(a) is without prejudice to the rights (if any) of the Developer under any statute or under general Law including seeking relief against forfeiture, subject always to any defences, counterclaims and other rights available to the State from time to time.
- (c) The State cannot exercise its rights under clause 39.5(a) if:
  - (i) the Developer or the Guarantor complies with the notice given under clause 39.1;
  - (ii) either party has availed itself of the procedures set out in clause 38 until those procedures have been completed in accordance with clause 38; or
  - (iii) the parties have availed themselves of the procedures in clause 38 and it is determined in accordance with those procedures that there is no Event of Default.
- (d) Termination of this deed does not affect the Leases. The Leases continue despite any termination of this deed.

### 39.6 Indemnity in connection with breach



### 39.7 Waiver

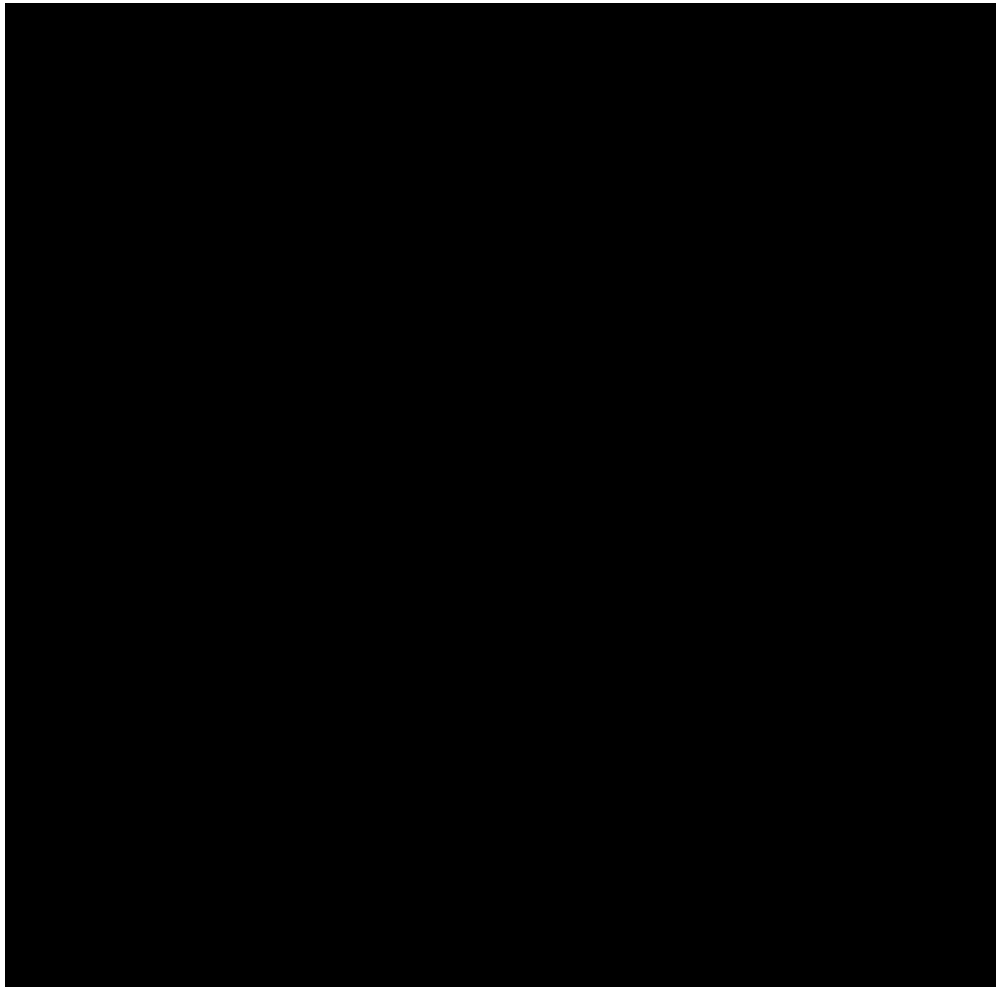
- (a) Subject to clause 52.6, the State and the Developer agree that:
  - (i) the State's failure to enforce any breach of covenant on the part of the Developer is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of the State to insist upon the performance by the Developer of any term, covenant or condition of this deed, or to exercise any rights given to the State on account of any such default; and

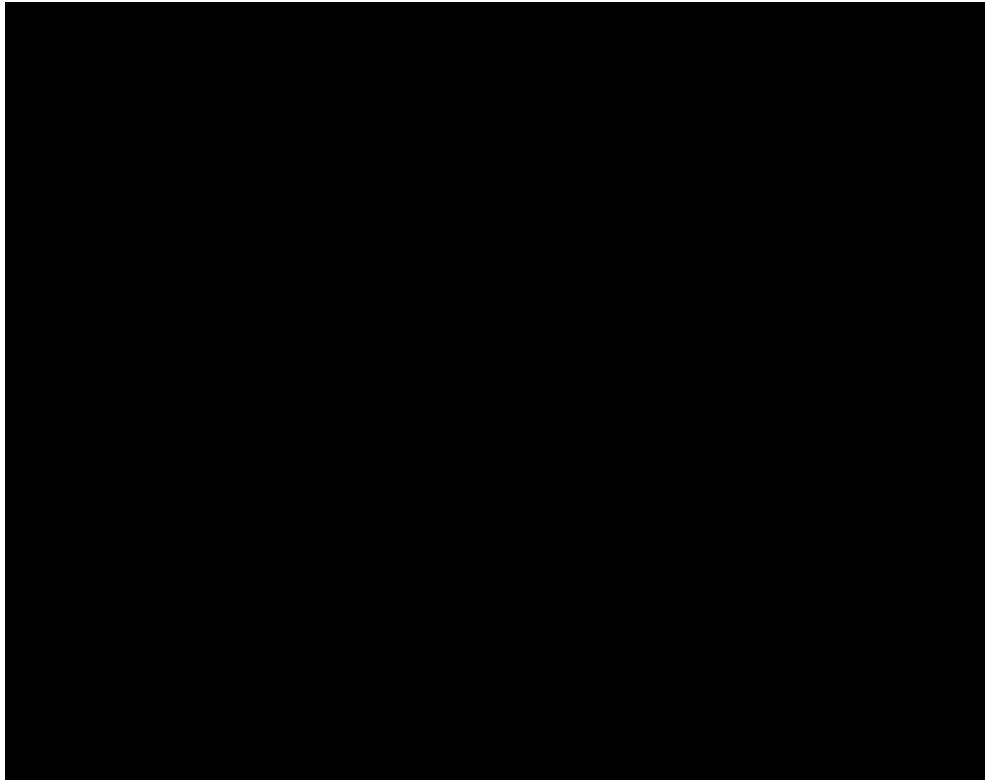
- (ii) a waiver by the State of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default.
- (b) Subject to clause 52.6, the State and the Developer agree that:
  - (i) the Developer's failure to enforce any breach of covenant on the part of the State is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of the Developer to insist upon the performance by the State of any term, covenant or condition of this deed, or to exercise any rights given to the Developer on account of any such default; and
  - (ii) a waiver by the Developer of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default.

### **39.8 Consequences of breach by a party**

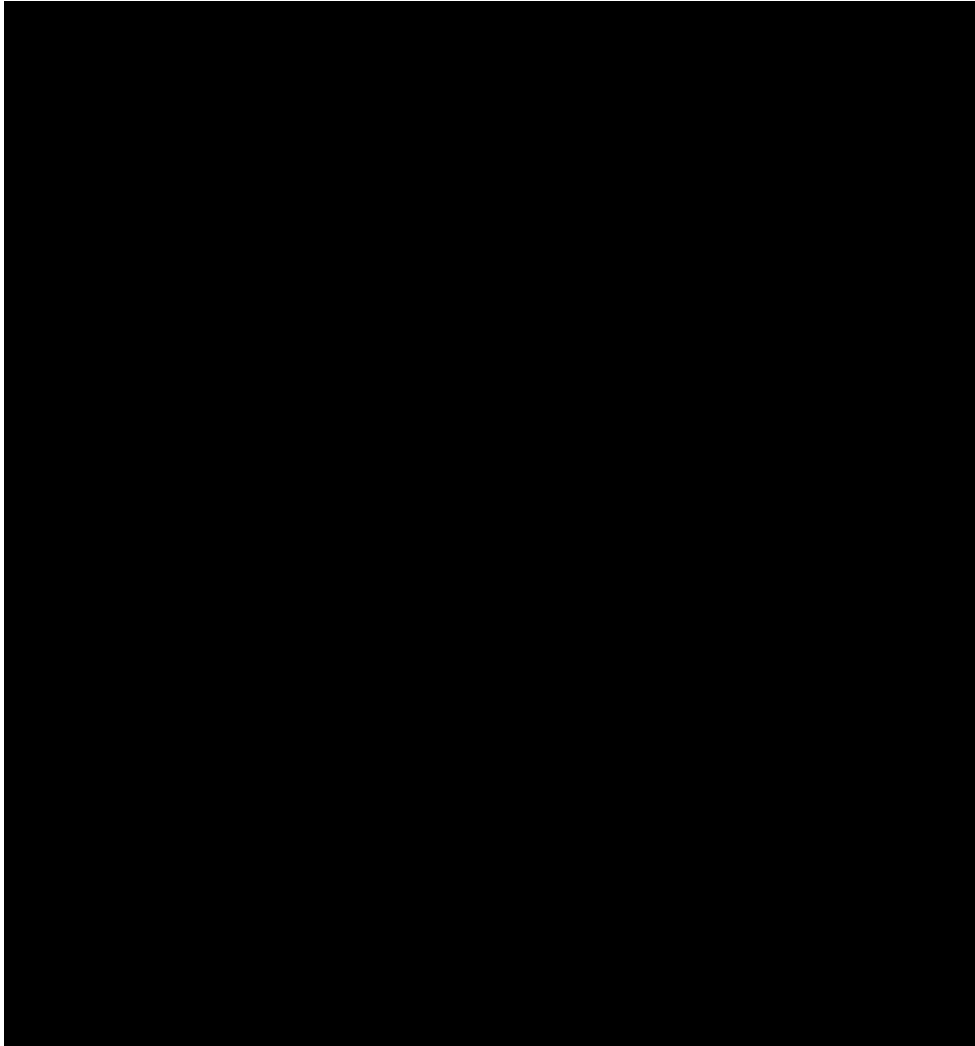
If a party breaches an obligation imposed on it by this deed, the other party must, if it is, or reasonably ought to have been, aware of such breach, provide written notice to the other party describing the nature of the breach, when the breach occurred and what action, consistent with the rights and obligations of the parties under this deed, the party requires the other party to take to remedy such breach.

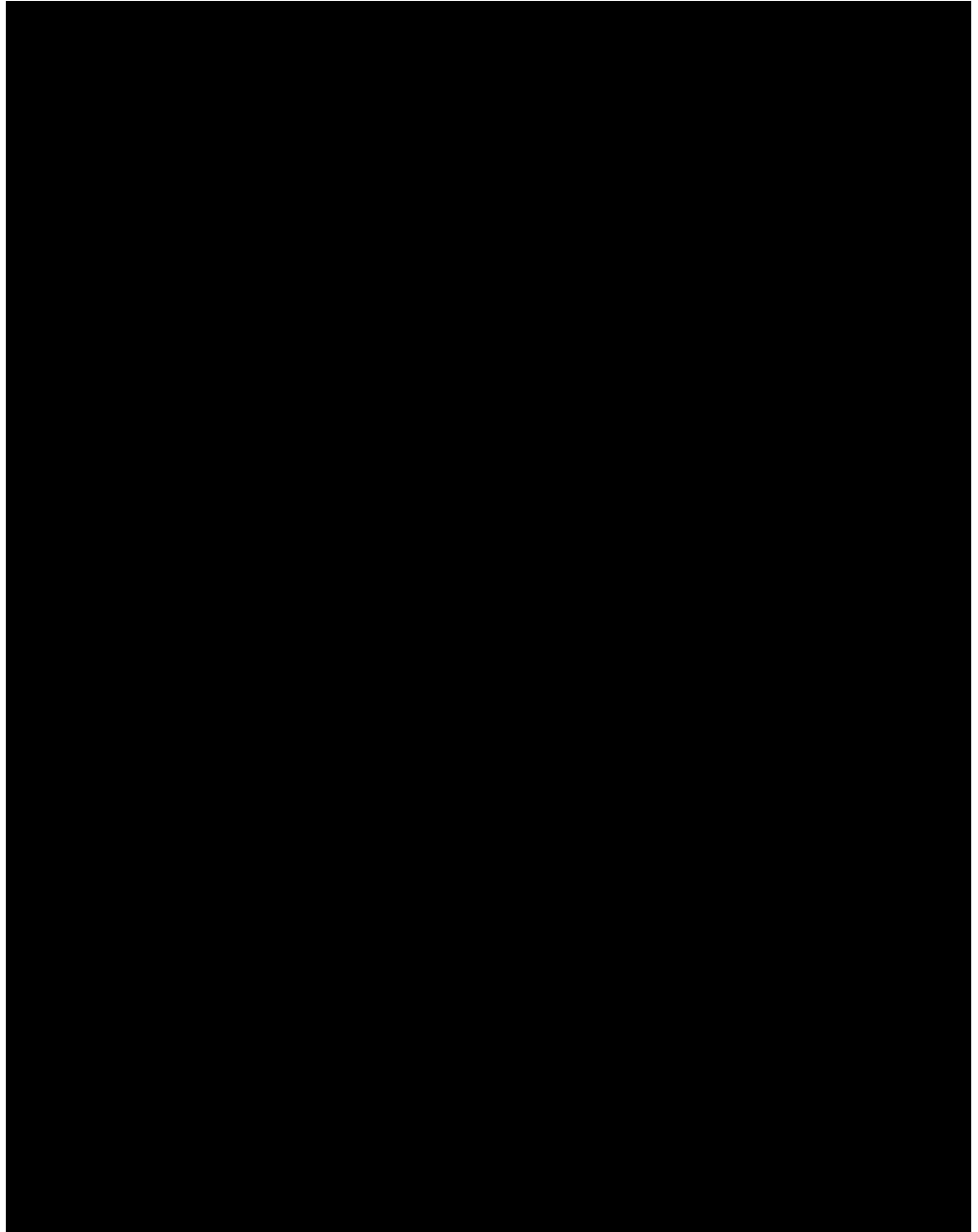
### **39.9 Consequential or Indirect Loss**



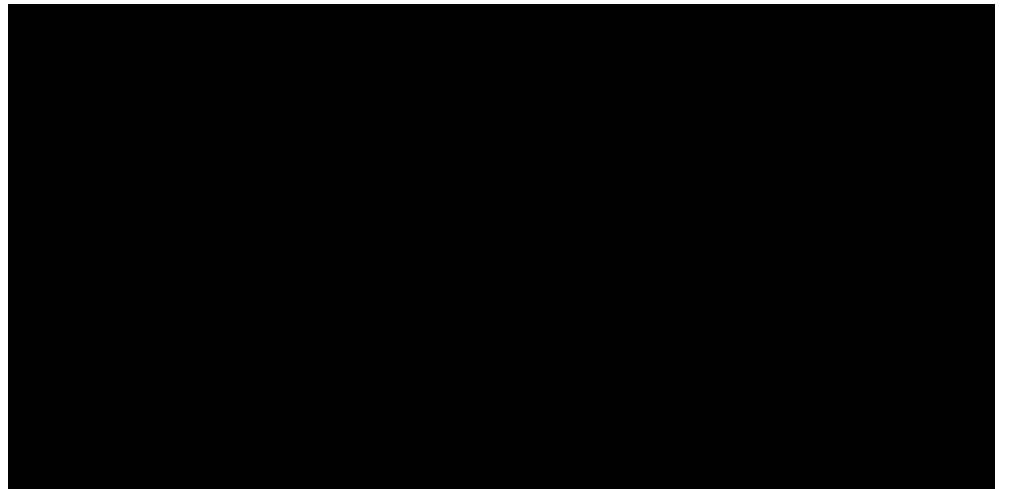


**39.10**





**39.11**



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## 40 Developer's obligations on termination

If this deed is terminated under clause 39.5(a), the Developer must, unless otherwise agreed, at its cost:

- (a) continue to comply with the Leases (which the parties acknowledge will continue, subject to their terms, following termination);
- (b) remove all hoardings and other temporary works from the State Land;
- (c) leave the State Land in a safe and secure condition;
- (d) remove all rubbish from the State Land and leave it clean and tidy;
- (e) remove from the State Land furniture, loose equipment, materials, goods and other items owned by the Developer but which do not form part of the relevant part of the State Land or which are not affixed (or intended to be affixed) to the relevant part of the State Land; and
- (f) make good any damage to the State Land caused as a result of the Developer complying with its obligations under this clause 40.

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## 41 Releases and indemnities

### 41.1 Release of State from liability

- (a) The Developer agrees that, except as otherwise specified in this deed, the Works and all property on the Development Land, are at the sole risk of the Developer except to the extent of any breach of a Project Document by the State or the State's Employees and Agents, or the negligent, wrongful or reckless act or omission of the State or the State's Employees and Agents.
- (b) Except as otherwise specified in this deed, the Developer releases and forever discharges the State from all actions, suits, claims, demands, causes of actions and Costs, equitable or under statute and otherwise and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which the Developer has against the State in any way relating to or arising out of or in connection with:
  - (i) any injury, damage or loss that the Developer or the Developer's Employees and Agents suffer by reason of:
    - (A) the carrying out of the Works;
    - (B) any construction within the Development Land;
    - (C) the condition of or from any defect in the gas, electricity or water supply, connections or fittings within the Development Land; or
    - (D) the flooding of any part of the Development Land;
  - (ii) loss of or damage to any property or effects of the Developer or any other person on or in the vicinity of the Development Land howsoever occurring;
  - (iii) injury to or the death of any person on the Development Land however occurring;

- (iv) security of or within the Development Land;
- (v) any unauthorised entry to the Development Land; and
- (vi) any loss, injury or damage sustained by the Developer or any other person because of the interruption or failure of any of the Services,

except to the extent that such injury, loss or damage is caused or contributed to by the breach of this deed by the State or the State's Employees and Agents or the negligent, wrongful or reckless act or omission of the State or the State's Employees and Agents.

## 41.2 General indemnities

The Developer indemnifies the State and the State's Employees and Agents from and against any claim, action, damage, loss, liability or Cost incurred or suffered by any of the Indemnified Persons or arising from any claim, suit, demand, action or proceeding by any person against any of the Indemnified Persons to the extent such loss was caused or contributed to by:

- (a) loss of or damage to the Development Land or to any property on or in the vicinity of the Development Land, or injury to or the death of any person on or in the vicinity of the Development Land, caused by the Developer or the Developer's Employees and Agents in connection with this deed or the Project;
- (b) security of or within the Developer Controlled Land for such period as the relevant State Land is Developer Controlled Land for the purposes of this deed or the Works are otherwise being conducted on the Developer Controlled Land;
- (c) any unauthorised entry to the Developer Controlled Land for such period as the relevant State Land is Developer Controlled Land for the purposes of this deed or the Works are otherwise being conducted on the Developer Controlled Land;
- (d) the negligent or careless use, misuse, waste or abuse of any Services by the Developer or the Developer's Employees and Agents or any other person claiming through or under the Developer;
- (e) loss of or damage to the Development Land or to any property on or in the vicinity of the Development Land arising from overflow or leakage of water emanating from the Development Land, or from any sprinkler system or device in the Development Land or arising from any defect in the Services (or any connections or equipment for the Services); or
- (f) any breach by the State or the State's Employees and Agents of a Precinct Lease to which the State is a party caused by a breach of a Project Document by the Developer or the Developer's Employees and Agents,

subject always to clause 26.1 and except to the extent that such injury, loss or damage is caused or contributed to by the breach of a Project Document by the State or the State's Employees and Agents or the negligent, wrongful or reckless act or omission of the State or the State's Employees and Agents.

## 41.3 Continuation of liability

The obligations of the Developer under clause 41.2 will continue:



- (a) in the case of each part of the State Land, until the date set out in clause 15.3(c) in respect of that part of the State Land; and
- (b) in the case of the Development Land, in relation to each Works Portion on the Development Land, until the Date of Practical Completion of that Works Portion.

#### **41.4 Conduct of proceedings**

- (a) In connection with any indemnity provided by the Developer under clause 41.2, the State agrees to act reasonably in considering any request by the Developer with respect to the manner in which any claim that may be made against the State or any legal proceedings that may be commenced against the State are to be conducted, including considering in good faith any request by the Developer that the Developer should have the carriage and conduct of the manner in which any such claims or proceedings are defended, upon the basis that all Costs and risks (including the risks of adverse judgments) that may arise in connection any such claim or proceeding are accepted by the Developer.
- (b) Without limiting the State's obligations under this clause 41.4, the State agrees that it will not compromise or settle any such claim without the Developer's prior approval. The Developer must act reasonably and promptly in relation to any request received from the State as to the manner in which any such claim ought to be settled or compromised.

#### **41.5 State's ability to enforce the indemnity**

The Developer agrees that the State may enforce any indemnity or other covenant in this clause 41 in favour of the person specified in this clause 41 for the benefit of each such person in the name of the State or such person.

#### **41.6 Obligation to mitigate**

The State must use reasonable endeavours to mitigate its liabilities, losses and Costs referred to in this clause and the amount payable by the Developer to the State under this clause must be assessed on the assumption that the State has complied with this obligation to use reasonable endeavours to mitigate.

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## **42 Dexus Guarantee and indemnity**

### **42.1 Consideration**

- (a) Each Dexus Guarantor acknowledges that the State is acting in reliance on the Dexus Guarantors incurring obligations and giving rights under this clause 42.
- (b) Subject to clause 42.14:
  - (i) the Dexus Guarantor 2 unconditionally and irrevocably guarantees to the State the due and punctual payment of all the Dexus Guaranteed Moneys; and
  - (ii) the Dexus Guarantor 1 unconditionally and irrevocably guarantees to the State the performance and observance by the Dexus Developer of the Guaranteed Obligations (other than any such obligations that form part of the Dexus Guaranteed Moneys).

- (c) A demand may be made at any time and from time to time and must be made in accordance with clause 42.4.
- (d) If the Dexus Guaranteed Moneys are not paid by the Dexus Developer when due, the Dexus Guarantor 2 must, within 10 Business Days of receiving a demand from the State in accordance with clause 42.4, pay to the State the Dexus Guaranteed Moneys in the same manner and currency as the Dexus Guaranteed Moneys are or were required to be paid by the Dexus Developer.
- (e) If the Dexus Developer does not perform or observe the Guaranteed Obligations on time and in accordance with the provisions of the Project Documents, then Dexus Guarantor 1 agrees to perform and observe the Guaranteed Obligations (other than any such obligations that form part of the Dexus Guaranteed Moneys) for the benefit of the State on demand from the State.

## **42.2 Indemnity**

Subject to clause 42.14, the Dexus Guarantor 2 unconditionally and irrevocably indemnifies the State for all losses, Costs, damages and liabilities which it incurs or suffers because the Dexus Developer fails to duly and punctually perform and observe the Guaranteed Obligations.

## **42.3 Additional indemnities**

Subject to clause 42.14, whether or not the State exercises any rights it may have under clause 39.5, and without being affected by the exercise of any such rights, the relevant Dexus Guarantor unconditionally and irrevocably indemnifies the State against any loss the State suffers because:

- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority (other than by or in relation to the State);
- (b) the Dexus Developer does not observe, perform or comply with (whether full or in part) the Guaranteed Obligations;
- (c) an Insolvency Event occurs with respect to the Dexus Developer; or
- (d) the Guaranteed Obligations are not or have never been enforceable against the relevant Dexus Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the State knew or should have known anything about that transaction.

## **42.4 Demand**

Any demand under this clause 42 must:

- (a) be in writing and state that it is made under this clause 42;
- (b) state and provide details of the Guaranteed Obligations and/or Dexus Guaranteed Moneys being demanded and confirm that:
  - (i) at least 10 Business Days has passed since the demand on the Dexus Developer was made; and
  - (ii) the demand on the Dexus Developer remains unsatisfied;

- (c) state and confirm that the State has made a demand on the Frasers Guarantor under the Frasers Guarantee for the same Guaranteed Obligations, and where the demand relates to payment, confirm that the demand is for an amount equal to the amount being demanded under this clause 42 (and attach a copy of the relevant demand); and
- (d) be signed by an Authorised Officer of the State.

#### **42.5 Dexus Guarantor as principal debtor**

Each Dexus Guarantor as principal debtor agrees to pay to the State within 10 Business Days of a demand, a sum equal to the amount of any loss described in clauses 42.2 and 42.3 (as applicable).

#### **42.6 Extent of guarantee and indemnity**

The guarantee provided in clause 42.1(b) and the indemnities provided in clauses 42.2 and 42.3 are continuing security and extend to all of the Guaranteed Obligations and other money payable under this deed. Each of the Dexus Guarantors waives any rights it has of first requiring the State to commence proceedings or enforce any other right against the Dexus Developer or any other person (other than the requirement for a demand under clause 42.4) before claiming from the relevant Dexus Guarantor under this deed.

#### **42.7 Preservation of the State's rights**

The liabilities under this deed of each Dexus Guarantor as a guarantor or an indemnifier and the rights of the State against each Dexus Guarantor under clause 36 or this clause 42 are not affected by anything which might otherwise affect them at Law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the State or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, the Dexus Developer, any other indemnifier or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the State or another person or both the State and another person;
- (c) any variation or novation of a right of the State or another person, or material alteration of a Project Document, in respect of the Dexus Developer, a Dexus Guarantor or another person;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Dexus Developer, a Dexus Guarantor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not a Dexus Guarantor or another person was a member;
- (f) a Security Interest being void, voidable or unenforceable;
- (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (h) the death of any person or an Insolvency Event occurring in respect of any person;

- (i) a change in the legal capacity, rights or obligations of a person;
- (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Dexus Developer or another person;
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Dexus Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) any part of the Guaranteed Obligations being irrecoverable;
- (n) an assignment of rights in connection with the Guaranteed Obligations;
- (o) the acceptance of repudiation or other termination in connection with the Guaranteed Obligations;
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the relevant Dexus Guarantor;
- (q) invalidity or irregularity in the execution of this deed by any Dexus Guarantor or any deficiency in or irregularity in the exercise of the powers of any Dexus Guarantor to enter into or observe its obligations under this deed;
- (r) any obligation of the Dexus Developer or any other Dexus Guarantor being discharged by operation of Law or otherwise; or
- (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined.

#### **42.8 Liabilities not affected**

The liability of the Dexus Guarantors under a Project Document is not affected:

- (a) because any other person who was intended to enter into this deed, or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed has not done so or has not done so effectively; or
- (b) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed is discharged under an agreement or under statute or a principle of law or equity.

#### **42.9 Suspension of Dexus Guarantor's rights**

As long as the Guaranteed Obligations or other money payable by a Dexus Guarantor under this deed remains unpaid, that Dexus Guarantor cannot without the consent of the State:

- (a) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, the Dexus Developer or a co-surety or co-indemnifier against the State or claim a set-off or make a counterclaim against the State;
- (b) make a claim or enforce a right (including, without limitation, an Encumbrance) against the Dexus Developer or any other Dexus Guarantor or against their estate or property;

- (c) prove in competition with the State if an Insolvency Event occurs in respect of the Dexus Developer or any other Dexus Guarantor whether in respect of an amount paid by the Dexus Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by the State in reduction of the Dexus Guarantor's liability under this deed, or otherwise unless the Dexus Guarantor provides the State with a written undertaking that any amount received will be paid by the Dexus Guarantor to the State in satisfaction of all outstanding amounts due from the Dexus Guarantor to the State under this deed in respect of any relevant Guaranteed Obligations; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations or other money payable by the Dexus Guarantor under this deed.

#### **42.10 Other securities and obligations of Dexus Guarantor**

The State's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by the State from the Dexus Developer, any Dexus Guarantor or any other person; or
- (b) any other obligation of any Dexus Guarantor to the State,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

#### **42.11 Reinstatement of State's rights**

If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable by a Dexus Guarantor under this clause is void or voidable under Law relating to Insolvency Events or the protection of creditors or for any other reason and the claim is upheld, conceded or compromised, then:

- (a) the State is entitled immediately as against that Dexus Guarantor to the rights in respect of the relevant Guaranteed Obligations or other money payable under this deed to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the State, that Dexus Guarantor agrees to do any act and sign any document to restore to the State any Security Interest or guarantee held by it from that Dexus Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

#### **42.12 Application of money**

The State may apply money paid by the Dexus Developer or the Dexus Developer's estate, or a Dexus Guarantor or otherwise towards satisfaction of the Guaranteed Obligations and other money payable by a Dexus Guarantor to the State under this deed in the manner it sees fit.

#### **42.13 State undertakings**

The State acknowledges and agrees that:

- (a) it must not amend, vary or waive any of its rights under, or terminate, the Frasers Guarantee without the prior written consent of each Dexu Guarantor; and
- (b) it must not make a demand under this deed on a Dexu Guarantor without also making a demand which contains the same Claims (and if applicable quantum of those Claims) under the Frasers Guarantee at the same time, provided that nothing in this clause 42.13(b) reduces the liability of either Dexu Guarantor if, having complied with this clause 42.13(b), the State recovers different amounts from the Dexu Guarantors and the Frasers Guarantor.

#### **42.14 Limitation on the Dexu Guarantor's liability**

- (a) Despite any other provision of this deed or any other Project Document, the maximum aggregate liability of the Dexu Guarantors to the State under or in connection with this deed or any Project Document (whether that liability arises under a specific provision of the Project Documents, for breach of contract, negligence or otherwise) is limited to 50% of the [REDACTED] and is no greater than the liability of the Dexu Developer to the State under or in connection with this deed or any Project Document.
- (b) Despite any other provision of this deed or any other Project Document:
  - (i) the State is not entitled to make a claim on any Dexu Guarantor under or in connection with this deed or any Project Document after the Liability End Date; and
  - (ii) each Dexu Guarantor's liability under or in connection with this deed or any Project Document ceases on the Liability End Date except in relation to a claim made on a Dexu Guarantor under and in accordance with this deed on or prior to the Liability End Date.

#### **42.15 Release of Dexu Guarantors in certain circumstances**

Subject to the Dexu Developer and the Dexu Guarantors complying with their respective obligations under clause 36 and subject to any express requirements under clause 36 pursuant to which a Dexu Guarantor is to remain a Guarantor, each Dexu Guarantor is automatically released from all of its obligations and liabilities under this deed and each other Project Document upon completion of any assignment or transfer permitted in accordance with clause 36.

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### **43 Frasers Guarantee and indemnity**

#### **43.1 Consideration**

- (a) The Frasers Guarantor acknowledges that the State is acting in reliance on the Frasers Guarantor incurring obligations and giving rights under this clause 43.
- (b) Subject to clause 43.14, the Frasers Guarantor unconditionally and irrevocably guarantees to the State:
  - (i) the due and punctual payment of all the Frasers Guaranteed Moneys; and

- (ii) the performance and observance by the Frasers Developer of the Guaranteed Obligations (other than any such obligations that form part of the Frasers Guaranteed Moneys).
- (c) A demand may be made at any time and from time to time and must be made in accordance with clause 43.4.
- (d) If the Frasers Guaranteed Moneys are not paid by the Frasers Developer when due, the Frasers Guarantor must, within 10 Business Days of receiving a demand from the State in accordance with clause 43.4, pay to the State the Frasers Guaranteed Moneys in the same manner and currency as the Frasers Guaranteed Moneys are or were required to be paid by the Frasers Developer.
- (e) If the Frasers Developer does not perform or observe the Guaranteed Obligations on time and in accordance with the provisions of the Project Documents, then the Frasers Guarantor agrees to perform and observe the Guaranteed Obligations (other than any such obligations that form part of the Frasers Guaranteed Moneys) for the benefit of the State on demand from the State.

### **43.2 Indemnity**

Subject to clause 43.14, the Frasers Guarantor unconditionally and irrevocably indemnifies the State for all losses, Costs, damages and liabilities which it incurs or suffers because the Frasers Developer fails to duly and punctually perform and observe the Guaranteed Obligations.

### **43.3 Additional indemnities**

Subject to clause 43.14, whether or not the State exercises any rights it may have under clause 39.5, and without being affected by the exercise of any such rights, the Frasers Guarantor unconditionally and irrevocably indemnifies the State against any loss the State suffers because:

- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of lack of capacity, power or authority or improper exercise of power or authority (other than by or in relation to the State);
- (b) the Frasers Developer does not observe, perform or comply with (whether full or in part) the Guaranteed Obligations;
- (c) an Insolvency Event occurs with respect to the Frasers Developer; or
- (d) the Guaranteed Obligations are not or have never been enforceable against the Frasers Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the State knew or should have known anything about that transaction.

### **43.4 Demand**

Any demand under this clause 43 must:

- (a) be in writing and state that it is made under this clause 43;
- (b) state and provide details of the Guaranteed Obligations and/or Frasers Guaranteed Moneys being demanded and confirm that:

- (i) at least 10 Business Days has passed since the demand on the Frasers Developer was made; and
- (ii) the demand on the Frasers Developer remains unsatisfied;
- (c) state and confirm that the State has made a demand on the Dexu Guarantor under the Dexu Guarantee for the same Guaranteed Obligations, and where the demand relates to payment, confirm that the demand is for an amount equal to the amount being demanded under this clause 43 (and attach a copy of the relevant demand); and
- (d) be signed by an Authorised Officer of the State.

#### **43.5 Frasers Guarantor as principal debtor**

The Frasers Guarantor as principal debtor agrees to pay to the State within 10 Business Days of a demand, a sum equal to the amount of any loss described in clauses 43.2 and 43.3 (as applicable).

#### **43.6 Extent of guarantee and indemnity**

The guarantee provided in clause 43.1(b) and the indemnities provided in clauses 43.2 and 43.3 are continuing security and extend to all of the Guaranteed Obligations and other money payable under this deed. The Frasers Guarantor waives any rights it has of first requiring the State to commence proceedings or enforce any other right against the Frasers Developer or any other person (other than the requirement for a demand under clause 43.4) before claiming from the Frasers Guarantor under this deed.

#### **43.7 Preservation of the State's rights**

The liabilities under this deed of the Frasers Guarantor as a guarantor or an indemnifier and the rights of the State against the Frasers Guarantor under clause 36 and this clause 43 are not affected by anything which might otherwise affect them at Law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):

- (a) the State or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with, or wholly or partially releasing, the Frasers Developer, any other indemnifier or another person in any way;
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the State or another person or both the State and another person;
- (c) any variation or novation of a right of the State or another person, or material alteration of a Project Document, in respect of the Frasers Developer, the Frasers Guarantor or another person;
- (d) the transaction of business, expressly or impliedly, with, for or at the request of the Frasers Developer, the Frasers Guarantor or another person;
- (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise, whether or not the Frasers Guarantor or another person was a member;
- (f) a Security Interest being void, voidable or unenforceable;



- (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it);
- (h) the death of any person or an Insolvency Event occurring in respect of any person;
- (i) a change in the legal capacity, rights or obligations of a person;
- (j) the fact that a person is a trustee, nominee, joint owner, joint venturer or a member of a partnership, firm or association;
- (k) a judgment against the Frasers Developer or another person;
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Frasers Developer or another person at any time (whether received or paid jointly, jointly and severally or otherwise);
- (m) any part of the Guaranteed Obligations being irrecoverable;
- (n) an assignment of rights in connection with the Guaranteed Obligations;
- (o) the acceptance of repudiation or other termination in connection with the Guaranteed Obligations;
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the Frasers Guarantor;
- (q) invalidity or irregularity in the execution of this deed by any Frasers Guarantor or any deficiency in or irregularity in the exercise of the powers of any Frasers Guarantor to enter into or observe its obligations under this deed;
- (r) any obligation of the Frasers Developer or any other Frasers Guarantor being discharged by operation of Law or otherwise; or
- (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined.

#### **43.8 Liabilities not affected**

The liability of the Frasers Guarantor under a Project Document is not affected:

- (a) because any other person who was intended to enter into this deed, or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed has not done so or has not done so effectively; or
- (b) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed is discharged under an agreement or under statute or a principle of law or equity.

#### **43.9 Suspension of Frasers Guarantor's rights**

As long as the Guaranteed Obligations or other money payable by the Frasers Guarantor under this deed remains unpaid, the Frasers Guarantor cannot without the consent of the State:

- (a) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, the Frasers Developer or a co-surety or co-indemnifier against the State or claim a set-off or make a counterclaim against the State;
- (b) make a claim or enforce a right (including, without limitation, an Encumbrance) against the Frasers Developer or any other Frasers Guarantor or against their estate or property;
- (c) prove in competition with the State if an Insolvency Event occurs in respect of the Frasers Developer or any other Frasers Guarantor whether in respect of an amount paid by the Frasers Guarantor under this deed, in respect of another amount (including the proceeds of a Security Interest) applied by the State in reduction of the Frasers Guarantor's liability under this deed, or otherwise unless the Frasers Guarantor provides the State with a written undertaking that any amount received will be paid by the Frasers Guarantor to the State in satisfaction of all outstanding amounts due from the Frasers Guarantor to the State under this deed in respect of any relevant Guaranteed Obligations; or
- (d) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations or other money payable by the Frasers Guarantor under this deed.

#### **43.10 Other securities and obligations of Frasers Guarantor**

The State's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by the State from the Frasers Developer, the Frasers Guarantor or any other person; or
- (b) any other obligation of the Frasers Guarantor to the State,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

#### **43.11 Reinstatement of State's rights**

If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable by the Frasers Guarantor under this clause is void or voidable under Law relating to Insolvency Events or the protection of creditors or for any other reason and the claim is upheld, conceded or compromised, then:

- (a) the State is entitled immediately as against the Frasers Guarantor to the rights in respect of the Guaranteed Obligations or other money payable under this deed to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the State, the Frasers Guarantor agrees to do any act and sign any document to restore to the State any Security Interest or guarantee held by it from the Frasers Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

### **43.12 Application of money**

The State may apply money paid by the Frasers Developer or the Frasers Developer's estate, or the Frasers Guarantor or otherwise towards satisfaction of the Guaranteed Obligations and other money payable by the Frasers Guarantor to the State under this deed in the manner it sees fit.

### **43.13 State undertakings**

The State acknowledges and agrees that:

- (a) it must not amend, vary or waive any of its rights under, or terminate, the Dexus Guarantee without the prior written consent of the Frasers Guarantor;
- (b) it must not make a demand under this deed on the Frasers Guarantor without also making a demand which contains the same Claims (and if applicable quantum of those Claims) under the Dexus Guarantee at the same time, provided that nothing in this clause 43.13(b) reduces the liability of the Frasers Guarantor if, having complied with this clause 43.13(b), the State recovers different amounts from the Frasers Guarantor and the Dexus Guarantors.

### **43.14 Limitation on the Frasers Guarantor's liability**

- (a) Despite any other provision of this deed or any other Project Document, the maximum aggregate liability of the Frasers Guarantor to the State under or in connection with this deed or any Project Document (whether that liability arises under a specific provision of the Project Documents, for breach of contract, negligence or otherwise) is limited to 50% of the [REDACTED] and is no greater than the liability of the Frasers Developer to the State under or in connection with this deed or any Project Document.
- (b) Despite any other provision of this deed or any other Project Document:
  - (i) the State is not entitled to make a claim on the Frasers Guarantor under or in connection with this deed or any Project Document after the Liability End Date; and
  - (ii) the Frasers Guarantor's liability under or in connection with this deed or any Project Document ceases on the Liability End Date except in relation to a claim made on the Frasers Guarantor under and in accordance with this deed on or prior to the Liability End Date.

### **43.15 Release of Frasers Guarantors in certain circumstances**

Subject to the Frasers Developer and the Frasers Guarantor complying with their respective obligations under clause 36 and subject to any express requirements under clause 36 pursuant to which the Frasers Guarantor is to remain a Guarantor, the Frasers Guarantor is automatically released from all of its obligations and liabilities under this deed and each other Project Document upon completion of any assignment or transfer permitted in accordance with clause 36.

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## 44 Representations and warranties

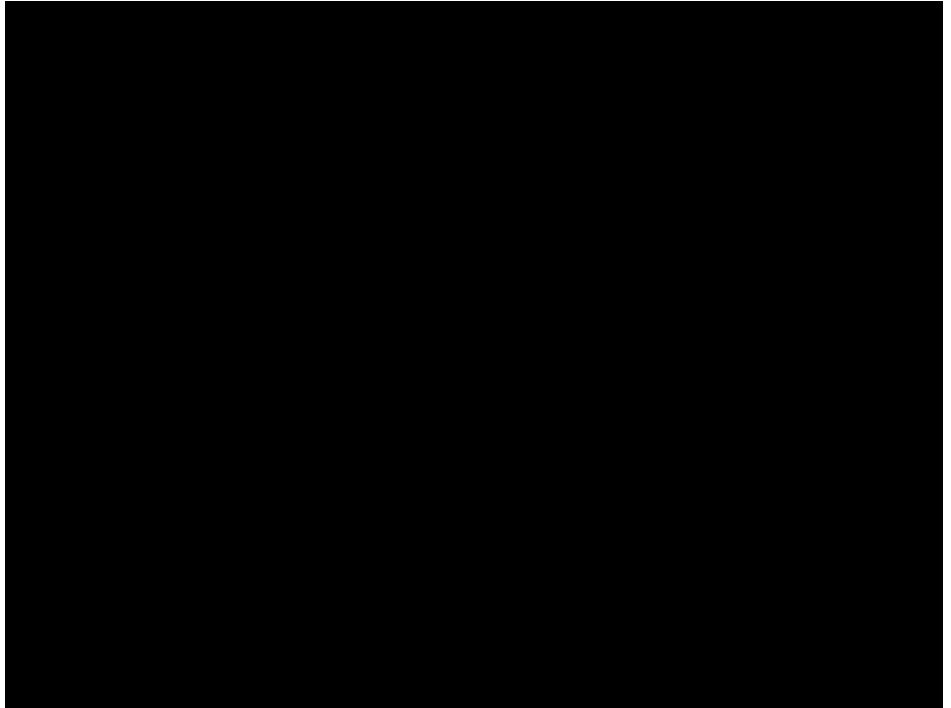
### 44.1 Other interests

The Developer must permit persons having an estate or interest in the Development Land concurrent with the State's to exercise the State's or that other person's rights, and otherwise perform their obligations, in connection with the Development Land.

### 44.2 Warranties by Developer and Guarantor

- (a) The Dexus Developer, the Frasers Developer and each Guarantor represents and warrants in relation to itself that:
- (i) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
  - (ii) it has, power to enter into the Project Documents to which it is a party and comply with its obligations under them;
  - (iii) it has, in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
  - (iv) at all times during the Project, its obligations under the Project Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
  - (v) at all times during the Project, the Project Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (vi) it benefits by entering into the Project Documents to which it is a party;
  - (vii) at all times during the Project, there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
  - (viii) at all times during the Project, it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a Material Adverse Effect;
  - (ix) it does not have immunity from the jurisdiction of a court or from legal process;
  - (x) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into any Project Document or participating in any transaction in connection with a Project Document; and
  - (xi) the Treasurer cannot prohibit and has not prohibited the grant of this deed under the FIRB Act.

(b)



#### **44.3 Warranties by the State**

The State represents and warrants that at all times during the Project in relation to itself that:

- (a) it has power to enter into the Project Documents to which it is a party and comply with its obligations under them;
- (b) it has in full force and effect the authorisations necessary for it to enter into the Project Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (c) its obligations under the Project Documents are valid and binding and are enforceable against it in accordance with their terms;
- (d) the Project Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (e) it benefits by entering into the Project Documents to which it is a party; and
- (f) it is legally entitled and has all statutory power to enter into and perform its obligations under each Project Document to which it is a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of its power.

#### **44.4 Developer's privacy warranty**

The Dexus Developer, the Frasers Developer and each Guarantor represents and warrants that disclosures of Personal Information which it makes to the State (and which it has consented to the State using and disclosing) are consistent with any Privacy Statement or policy which it has issued and all Privacy Laws by which it is bound.

## 44.5 Obligations not affected

The Dexus Developer, the Frasers Developer and the Guarantors each acknowledge that the warranties in this clause 44 and the obligations of the Developer and Guarantors under the Project Documents to which they are a party remain unaffected notwithstanding:

- (a) the design carried out by or on behalf of the State in connection with the Project; and
- (b) any receipt or review of, or comment or direction on, documentation prepared by the Developer.

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## 45 NSW Code of Practice

### 45.1 NSW Code and NSW Guidelines

In addition to terms defined in this deed, terms used in this clause 45 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at [www.industrialrelations.nsw.gov.au](http://www.industrialrelations.nsw.gov.au).

### 45.2 Primary obligation

- (a) The Developer must at all times comply with, and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (b) The Developer must notify the CCU and the State of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Developer engages a Builder, the Developer must ensure that the contract imposes on the Builder equivalent obligations to those in this clause 45, including that the Builder must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Developer must not appoint or engage another party in relation to the Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

### 45.3 Access and information

- (a) The Developer must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Builder and Related Entities.
- (b) The Developer 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 Developer, including but not limited to the Development Land;
  - (ii) inspect any work, material, machinery, appliance, article or facility;
  - (iii) access information and documents;
  - (iv) inspect and copy any record relevant to the Works;

- (v) have access to personnel; and
- (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Developer, its subcontractors and Related Entities.

- (c) The Developer, 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 within a reasonable period as required to monitor and investigate compliance with the NSW Code and NSW Guidelines, whether in person, by post or electronic means.

#### 45.4 Sanctions

- (a) The Developer 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 Code or NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and NSW Guidelines apply.
- (b) If the Developer does not comply with, or fails to meet any obligation imposed by, the NSW Code or NSW Guidelines, a sanction may be imposed against it in connection with the NSW Code or 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 Code or 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 Developer, or its Related Entities, in respect of work to which the NSW Code and NSW Guidelines apply.

#### 45.5 Compliance

- (a) The Developer bears the cost of ensuring its compliance with the NSW Code and NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Developer is not entitled to make a claim for reimbursement or an extension of time (except, in respect of an extension of time, where a change to the NSW Code and NSW Guidelines after the date of this deed gives rise to a Qualifying Cause of Delay) from the State or the State of NSW for such costs.
- (b) Compliance with the NSW Code and NSW Guidelines does not relieve the Developer from responsibility to perform the Works 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 Code and NSW Guidelines.

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## **46 Undertakings by Developer and Guarantor**

### **46.1 Undertakings by Developer**

The Developer undertakes to notify the State promptly if any representation or warranty made or taken to be made by or on behalf of the Developer or the Guarantor in connection with a Project Document is found, having regard to the State's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

### **46.2 Undertakings by Guarantor**

The Guarantor undertakes to the State that it will not take action to reduce its capital or buy back any of its ordinary shares or pass a resolution referred to in Chapter 2J of the Corporations Act if that action or resolution would, or would be likely to have, a Material Adverse Effect.

### **46.3 Developer's privacy obligations**

The Developer and the Guarantor agree to:

- (a) comply with all Privacy Laws in connection with the use or disclosure of Personal Information disclosed by it to the State in connection with the Project;
- (b) if requested by the State, give the State after the Commencement Date, copies of any updates of Personal Information which the Developer or the Guarantor has disclosed to the State except where to do so would put the Developer in breach of any Privacy Laws; and
- (c) notify the State if the Developer or the Guarantor does something of which it is, or ought reasonably to be, aware and which may cause the State to be in breach of any Privacy Law.

### **46.4 Consent to use and disclose Personal Information**

The Developer and the Guarantor consent to the Personal Information of third persons it gives to the State being:

- (a) used by the State in connection with the State's functions or business, including in connection with:
  - (i) internal reporting;
  - (ii) reporting to any adviser of the State or to any Public Authority;
  - (iii) the management of the Project;
  - (iv) any use specified in any Privacy Statement; and
- (b) disclosed by the State:
  - (i) if required or authorised by law;
  - (ii) to any adviser of the State or any Public Authority; or
  - (iii) if the third person consents.



## **46.5 Anti-terrorism**

The Developer and the Guarantor:

- (a) represent and warrant that it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (b) undertake to ensure that it complies with all anti-terrorism legislation in Australia including, without limitation, Part 4 of the Charter of the United Nations Act 1945 and Part 5.3 of the Criminal Code Act 1995.

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## **47 Representatives**

### **47.1 State's representative**

The State may from time to time appoint an individual or individuals to exercise any functions of the State under this deed. The appointment of a representative does not prevent the State from exercising any function.

### **47.2 Notification by State**

The State must notify the Developer of:

- (a) the appointment and the name of the State's representative and the functions delegated to that representative; and
- (b) the termination of the appointment of a representative.

### **47.3 Developer's representative**

The Developer must appoint a competent representative in respect of the Project.

### **47.4 Notification by Developer**

The Developer must immediately notify the State of the name of its representative and of any subsequent changes. A direction of the State given to a representative of the Developer prior to the State's receipt of a notification that that person is no longer the Developer's representative shall be taken to have been given to the Developer.

### **47.5 Knowledge of representative attributed to Developer**

Matters within the knowledge of a representative of the Developer are taken to be within the knowledge of the Developer.

### **47.6 Objection by the State**

If the State makes a reasonable objection to the appointment of a representative, the Developer must terminate the appointment and appoint another representative.

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## **48 Costs**





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## **49 General requirements for payments**

### **49.1 Method of payment**

The Developer must make payments under this deed to the State (or a person nominated by the State in a notice to the Developer) by the method the State reasonably requires without set off or counterclaim and without deduction, unless prohibited by law or allowed under this deed.

### **49.2 No demand necessary**

The State need not make demand for any amount required to be paid by the Developer under this deed unless this deed expressly specifies that demand must be made.

### **49.3 Incorrect amount paid**

If the Developer pays an amount and it is found later that the amount payable should have been:

- (a) higher, then the State may demand payment of the difference; or
- (b) lower, then the State must repay the difference,

even though the State has given the Developer a receipt for payment of the incorrect amount.

### **49.4 Ongoing obligation**

Subject to any provision in this deed to the contrary, expiry or termination of this deed does not affect the Developer's obligations to make payments under this deed for periods before then.

### **49.5 When to make payments**

The Developer must make payments to the State under this deed on the due date in immediately available funds.

### **49.6 If due date not a Business Day**

If a payment becomes due for payment on a day which is not a Business Day, then the date for payment is the next Business Day.

### **49.7 Currency of payment**

The Developer waives any right which it has in any jurisdiction to pay an amount in a currency other than the currency payable under this deed.

**49.8 Interest on overdue money**

The parties agrees to pay interest at the Interest Rate on any amount under this deed which is not paid on the due date for payment. That interest:

- (a) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days; and
- (b) is payable on demand from either party or, if no such demand is made, on the last day of each calendar month.

**49.9 Compounding**

Interest payable under clause 49.8 which is not paid when due for payment may (at any time before payment) be added to the overdue amount by either party monthly or the last day of each calendar month. Interest is payable on the increased overdue amount at the Interest Rate in the manner set out in clause 49.8 compounding daily.

**49.10 Interest on liability merged in judgment or order**

If a liability under this deed becomes merged in a judgment or order, then the Developer agrees to pay interest to the State on the amount of that liability as an independent obligation. The interest accrues both before and after that judgment or order from the date the liability was due for payment until it is paid, at a rate that is the higher of the Interest Rate and the rate payable under the judgment or order.

**49.11 Tender after termination**

Money tendered by the Developer after the termination of this deed and accepted by the State may be applied in the manner the State decides.

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**50 GST****50.1 Interpretation**

- (a) Except where the context suggests otherwise, terms used in this clause 50 have the meanings given to those terms by the GST Act (as amended from time to time).
- (b) Any periodic or progressive component of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 50.
- (c) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.
- (d) Unless otherwise expressly stated, all consideration to be provided under any other provision of this deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 50.
- (e) A reference to GST payable by a party includes any GST payable by the representative member of any GST group of which that party (or the entity on whose behalf that party is acting) is a member.

- (f) A reference to input tax credits includes input tax credits to which an entity is notionally entitled in accordance with Division 177 of the GST Act and a reference to input tax credits to which an entity is entitled includes any input tax credits to which the representative member of any GST group to which that entity may belong is entitled.

## 50.2 Reimbursements

Any payment, reimbursement, indemnity or similar payment required to be made under this deed that is calculated by reference an amount paid or incurred by another party will be limited to the total amount less the amount of any input tax credit to which the other party is entitled. If the reduced amount is consideration for a taxable supply, clause 50.3 shall apply to the reduced amount.

## 50.3 Additional amount of GST payable

Subject to clause 50.5, if GST becomes payable on any supply made by a party (**Supplier**) to another party to this deed, under, or in connection with this deed:

- (a) any amount payable or consideration to be provided under any provision of this deed (other than this clause 50), for that supply is exclusive of GST;
- (b) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (c) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 50.3(b).

## 50.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 50.3 and clause 50.5), varies from the additional amount paid by the Recipient under clause 50.3, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 50.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 50.3.
- (b) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed as soon as reasonably practicable after the Supplier becomes aware of the adjustment event.

## 50.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 50.3 applies is a taxable supply made by the Recipient attributed to the same tax period (**Recipient Supply**), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 50.3 shall be reduced by the amount of GST payable by the Recipient on the Recipient Supply.
- (b) The Recipient must issue to the Supplier an invoice for any Recipient Supply on or before the time at which the Recipient must pay the GST Amount in accordance with clause 50.3 (or the time at which such GST

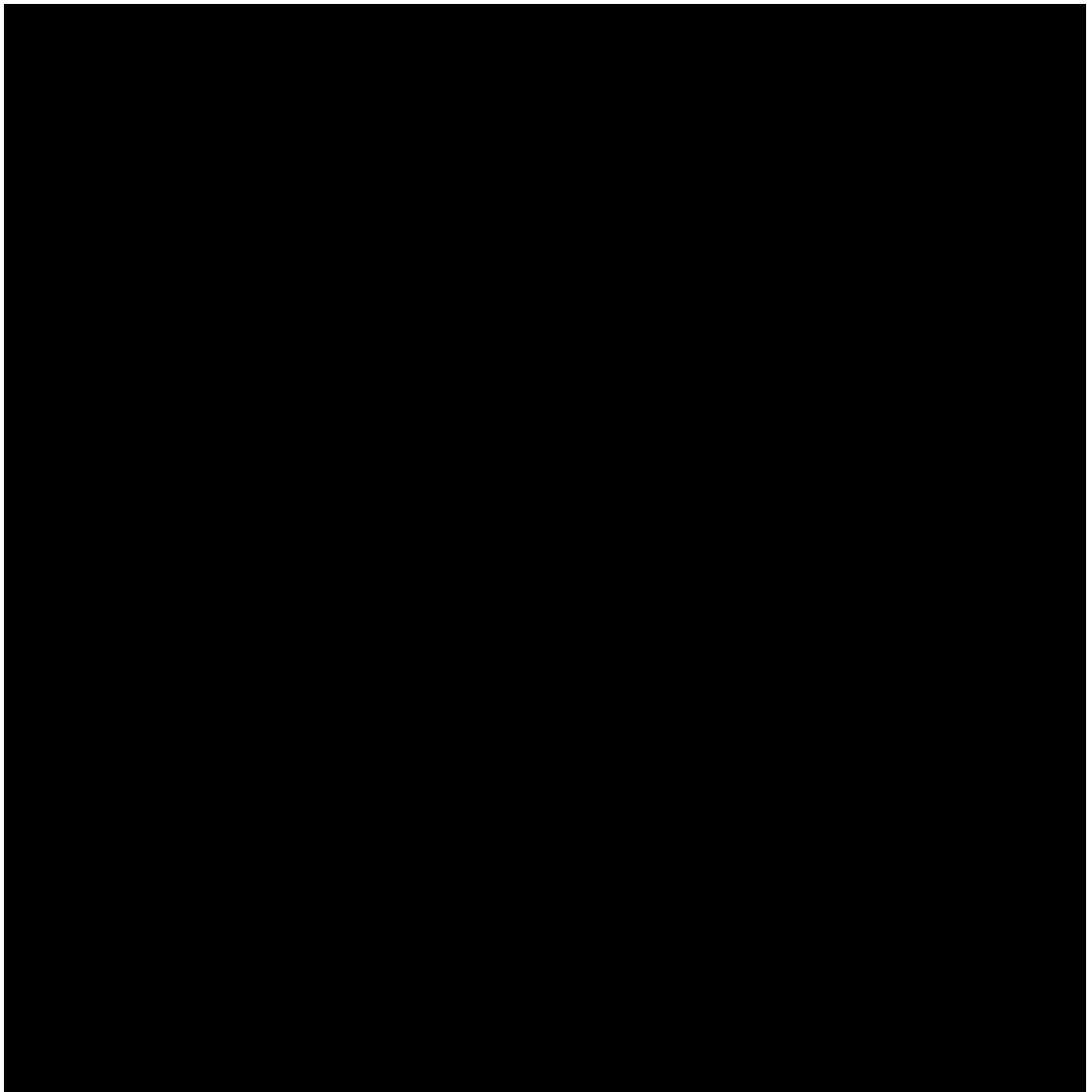
Amount would have been payable in accordance with clause 50.3 but for the operation of clause 50.5(a)).

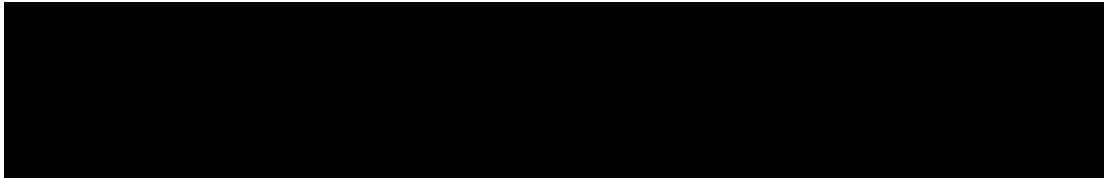
**50.6 Indemnities**

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).

**50.7 Set off**

- (a) If and to the extent that, in the same tax period the State is required to pay the Developer and the Developer is required to pay the State an additional amount under clause 50.3, the parties agree that such amounts will be offset and only the balance, if any, will be payable.
- (b) For the avoidance of doubt, the offset of any amount under clause 50.3(a) shall not affect the obligations under the remainder of this clause 50.





**50.10 No merger**

This clause will not merge on completion or termination of the deed.

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**51 Notices**

**51.1 Form**

Unless expressly stated otherwise in this deed, all notices, certificates, consents, approvals, waivers and other communications in connection with this deed must be in writing, signed by the relevant representative of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified.

**State**

Name:  
Address:  
Email address:

**Developer**

Name:  
Address:  
Email address:

For the attention of:

**Frasers Guarantor**

Name:  
Address:  
Email address:  
For the attention of:

**Dexus Guarantor 1**

Name:  
Address:  
Email address:  
For the attention of:

**Dexus Guarantor 2**

Name:  
Address:  
Email address:  
For the attention of:



**51.2 Delivery**

(a) Subject to clause 51.2(b), they must be:

- (i) left at the address referred to in clause 51.1;
  - (ii) sent by prepaid post (airmail, if appropriate) to the address referred to in clause 51.1; or
  - (iii) sent by email to the nominated email address.
- (b) Any notice of breach or termination which the Developer purports to issue on the State must be sent by:
- (i) prepaid post (airmail, if appropriate) to the address referred to in clause 51.1; and
  - (ii) email to the nominated email address.
- (c) However, if the intended recipient has notified a changed postal address or email address, then the communication must be to that address.

### **51.3 When effective**

- (a) Subject to clause 51.4, they take effect from the time they are received unless a later time is specified in them.
- (b) In respect of notices issued under clause 51.2(b), they take effect from the earlier of when the notice is received under clause 51.2(b)(i) or 51.2(b)(ii).

### **51.4 Receipt - postal**

If sent by prepaid post, they are taken to be received:

- (a) in the case of all parties other the Guarantor, 3 Business Days after posting (or 10 Business Days after posting if sent to or from a place outside Australia); and
- (b) in the case of the Guarantor, on receipt by the Guarantor.

### **51.5 Receipt - general**

If notices are left at an address or received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

### **51.6 Receipt – email**

If sent by email, notices are taken to be received immediately once sent unless a notification of delivery failure is received within 120 minutes of the email being sent.

### **51.7 Waiver of notice period**

The State may waive a period of notice required to be given by the Developer under this deed.

### **51.8 Notices by State**

Where there is an obligation on the State in this deed to notify the parties, the State will be taken to have complied with that obligation in respect of the Developer where it notifies the Developer in writing.

## **51.9 Changes to notice details**

A party may, from time to time, change its name, attention details, address or email address referred to in clause 51.1 by written notice to the other parties. The State may also, from time to time, change the email addresses contained in clauses 3.3(e)(iii), 3.8(c)(i), 4.3(f)(i), 6.4(c)(i), 9.5(b)(i), 14.1(e)(i), 14.2(f)(i), 20.11(e)(i), 22.4(k)(i), 22.6(e)(i), 22.9(f)(i) and 22.12(g)(i) by written notice to the other parties.

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## **52 General**

### **52.1 Certificate**

A certificate signed by the State or the State's solicitor about a matter or about a sum payable to the State in connection with this deed is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

### **52.2 Exercise of rights**

Any party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

### **52.3 Partial exercise of rights**

A single or partial exercise of a right, power or remedy by the State does not prevent a further exercise of that or an exercise of any other right, power or remedy.

### **52.4 Delay in exercising rights**

Failure by any party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

### **52.5 State not liable**

Except to the extent expressly provided for in this deed, the State is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

### **52.6 Waiver and variation**

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

### **52.7 Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Developer or the Guarantor in connection with this deed with the result that the State's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

### **52.8 Approvals and consent**

The State may (acting reasonably) give conditionally or unconditionally or withhold its approval or consent unless this deed expressly provides otherwise.



## 52.9 Remedies cumulative

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this deed.

## 52.10 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the State, the Developer or the Guarantors and survives expiry or termination of this deed. Except as otherwise provided for in this deed, it is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this deed.
- (b) In respect of each right of indemnity conferred upon the State by this deed, the State must use reasonable endeavours to mitigate its liability, Costs and Losses.

## 52.11 Further assurances

If asked by the other party (acting reasonably), then a party must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind it and its successors under this deed; and
- (b) use its reasonable endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

## 52.12 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

## 52.13 Antecedent obligations

The expiry or termination of this deed does not affect the Developer's or the Guarantor's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to the State to enable it to calculate those payments.

## 52.14 Confidentiality

- (a) All information provided under or in relation to the Project Documents:

- (i) by the Developer or the Guarantor to the State; or
- (ii) by the State to the Developer or the Guarantor,

and which is identified as confidential at the time it is provided, or which by its nature is confidential, must not be disclosed to any person, except:

- (iii) with the consent of the disclosing party;

- (iv) if allowed or required by Law or required by any stock exchange;
- (v) in connection with legal proceedings relating to the Project Documents;
- (vi) if the information is generally and publicly available;
- (vii) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed; or
- (viii) if disclosure is reasonably and properly required for the purposes of the Project, including to:
  - (A) any actual and potential Financiers;
  - (B) any actual and potential purchaser of part of the Project; and
  - (C) any actual or potential equity investor in the Project.
- (b) The recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person.
- (c) The parties acknowledge that:
  - (i) the State may be required to disclose this deed (and information concerning the terms of this deed) under or in accordance with any one or more of the following:
    - (A) the *Government Information (Public Access) Act 2009* (NSW) (**GIPA Act**); and
    - (B) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability;
  - (ii) within 5 Business Days of the date of this deed the Developer must notify the State in writing identifying any provisions of this deed it considers to be commercial-in-confidence (as defined in the GIPA Act);
  - (iii) the State will take reasonable steps to consult with the Developer before disclosing any part of this deed that the Developer has notified that it considers to be commercial-in-confidence (as defined in the GIPA Act); and
  - (iv) nothing in clauses 52.14(a) or 52.14(b) will limit or otherwise affect the discharge of the State's obligations under the GIPA Act.
- (d) The Developer must provide to the State any other information which the State reasonably requires to comply with its obligations under clause 52.14(c).

## 52.15 Announcements

- (a) Without limiting any right for a party to disclose information, the Developer must not make or issue any joint public statements (including statements or disclosures to media outlets, press conferences or any

other public or media event) about the Project without the State's consent.

- (b) The parties will seek to co-operate in relation to the timing and content of any joint public statements made by the parties in relation to the Project.

#### **52.16 Severability**

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:

- (a) it is severed for that jurisdiction; and
- (b) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

This clause 52.16 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

#### **52.17 Entire agreement**

The Project Documents represent the entire agreement between the parties.

#### **52.18 Construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

#### **52.19 Effect of moratorium**

To the extent permitted by Law the application to this deed of any moratorium or other Act whether State or Federal having the effect of extending the term, reducing or postponing [REDACTED] or otherwise affecting the operation of the terms of this deed is expressly excluded and negated.

#### **52.20 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 to this deed under or in any way in connection with this deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 52.20(a), the rights, obligations and Liabilities of the State and the Developer 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.
- (c) To the extent permitted by Law:
  - (i) the Developer must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the State against the Developer (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 the State against the Developer (whether in contract, tort or otherwise), the Developer will indemnify the State against any Loss, damage, cost or expense that forms part of a claim by the State against the Developer which the State is not able to recover from the Developer because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).
- (d) The Developer must:
- (i) in the Building Contract it enters into for the carrying out of the work under this deed or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with the Building Contract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
  - (ii) require the Builder to include, in any further contract that it enters into with a third party for the carrying out of the work under this deed, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with each further contract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.
- (e) The Developer must ensure that all policies of insurance covering third party liability it is required by this deed to effect or maintain (including the professional indemnity policy referred to in clause 29.9):
- (i) cover the Developer for potential Liability to the State assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
  - (ii) do not exclude any potential Liability the Developer may have to the State under or by reason of this deed.
- (f) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on any arbitrator appointed in accordance with the provisions of this deed.

The arbitrator has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitration.

## 52.21 Governing Law, jurisdiction and service of process

This deed is governed by the Law in force in New South Wales.

## 52.22 Jurisdiction

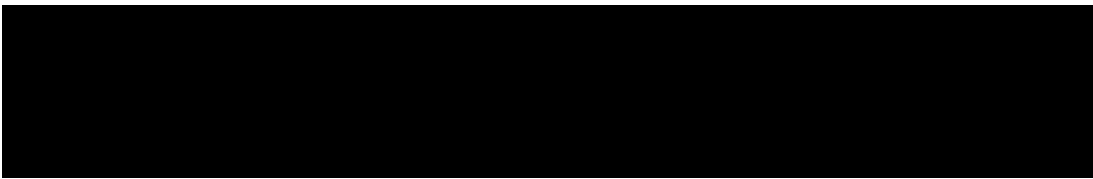
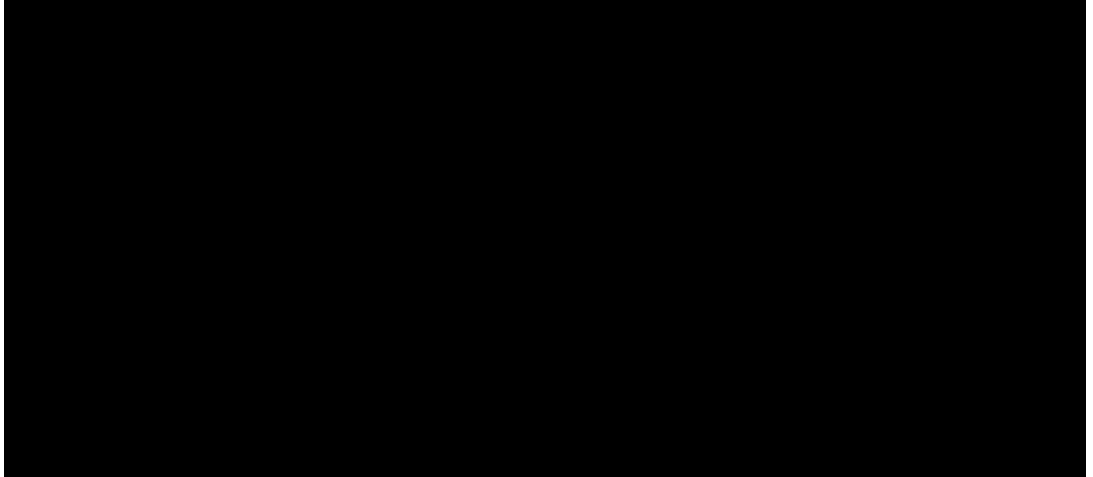
Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

### **52.23 Waiver**

Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

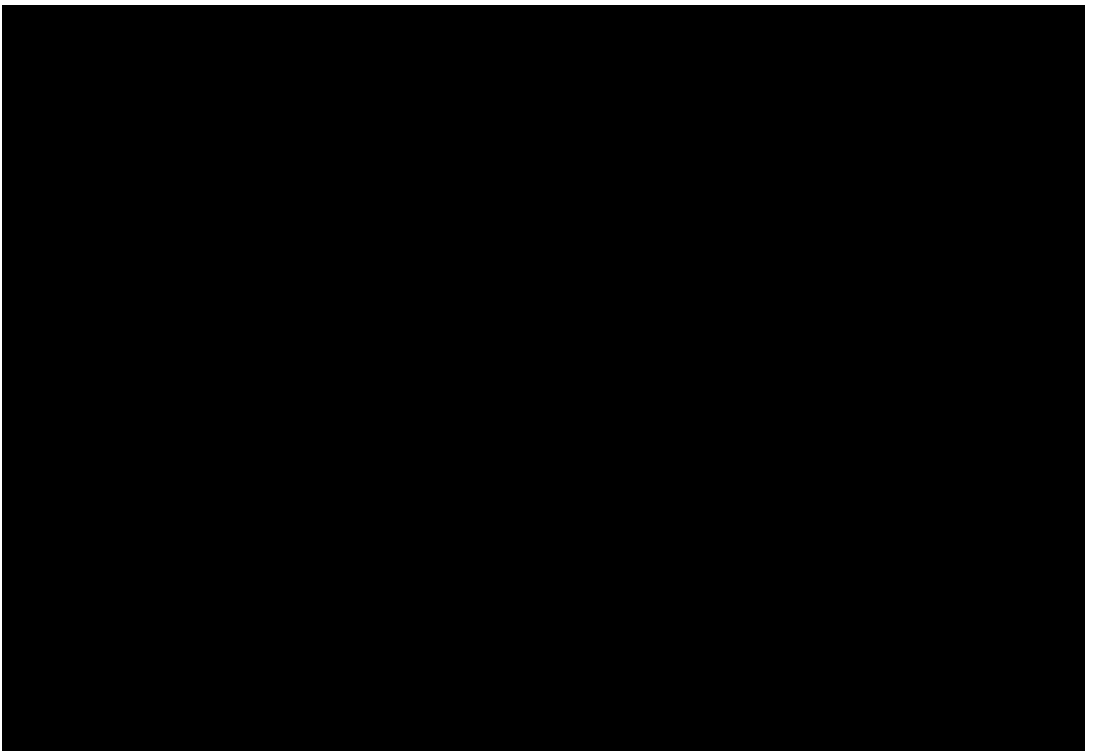
### **52.24 Counterparts**

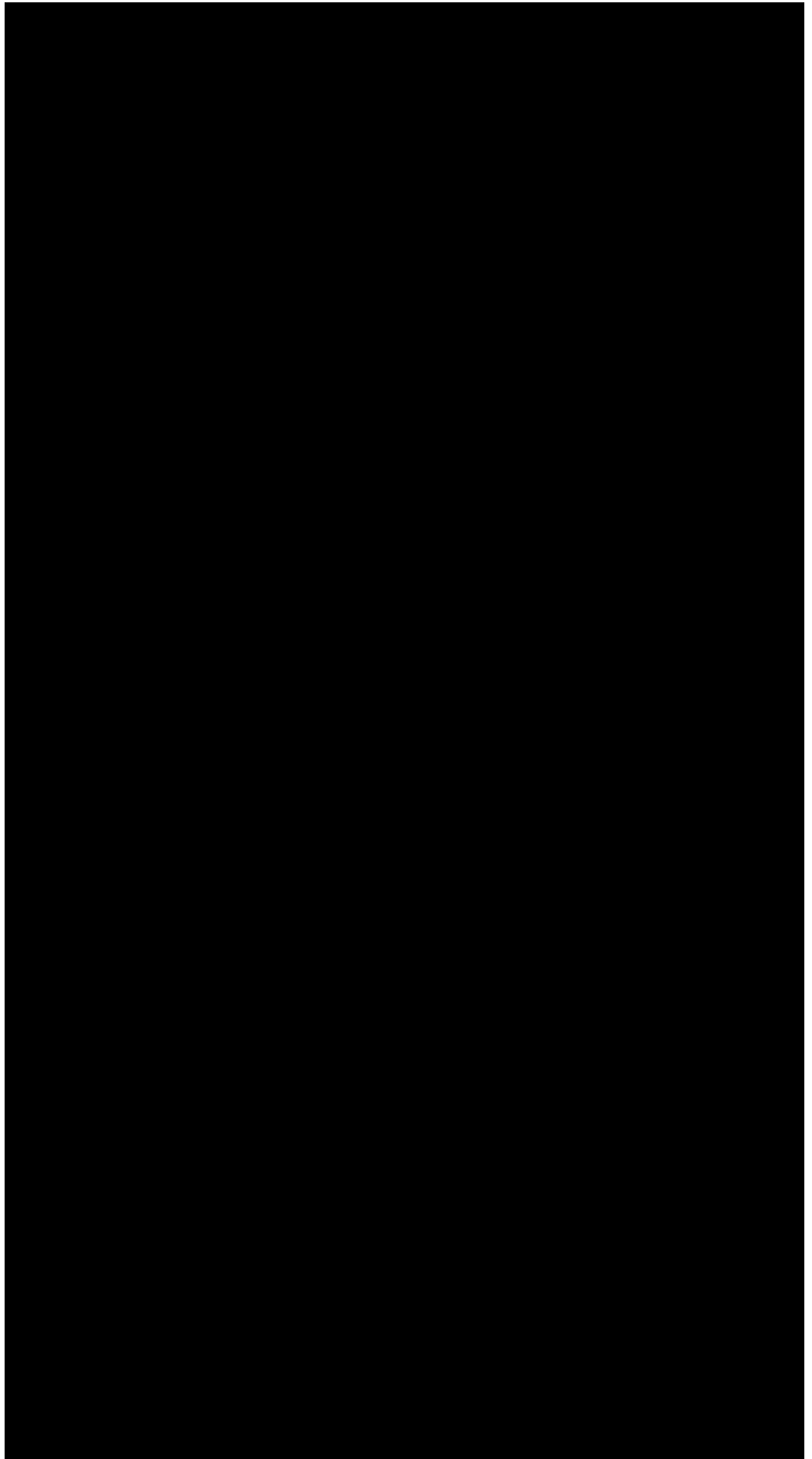
This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

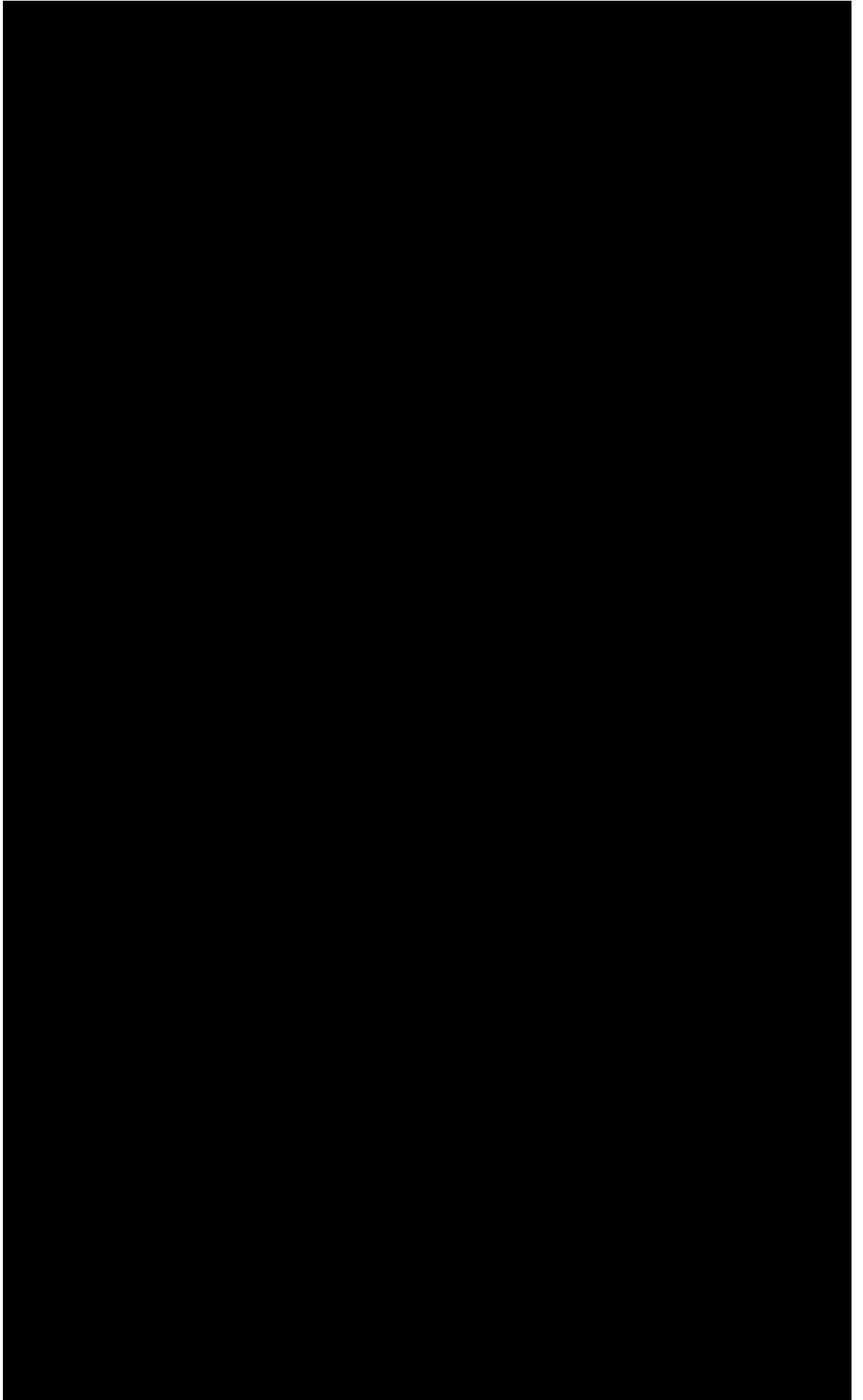


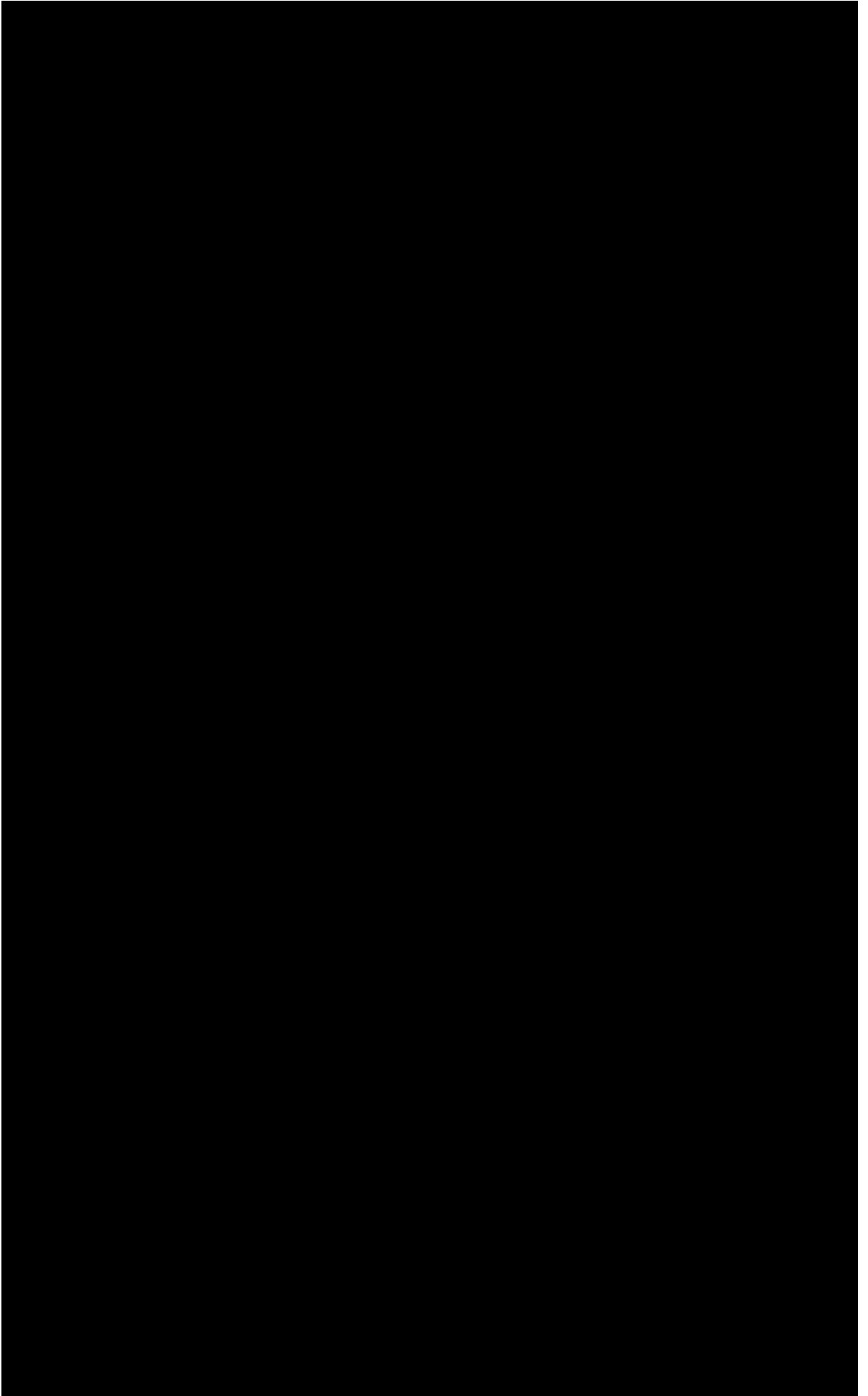
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## **53 Developer Limitation on Liability**

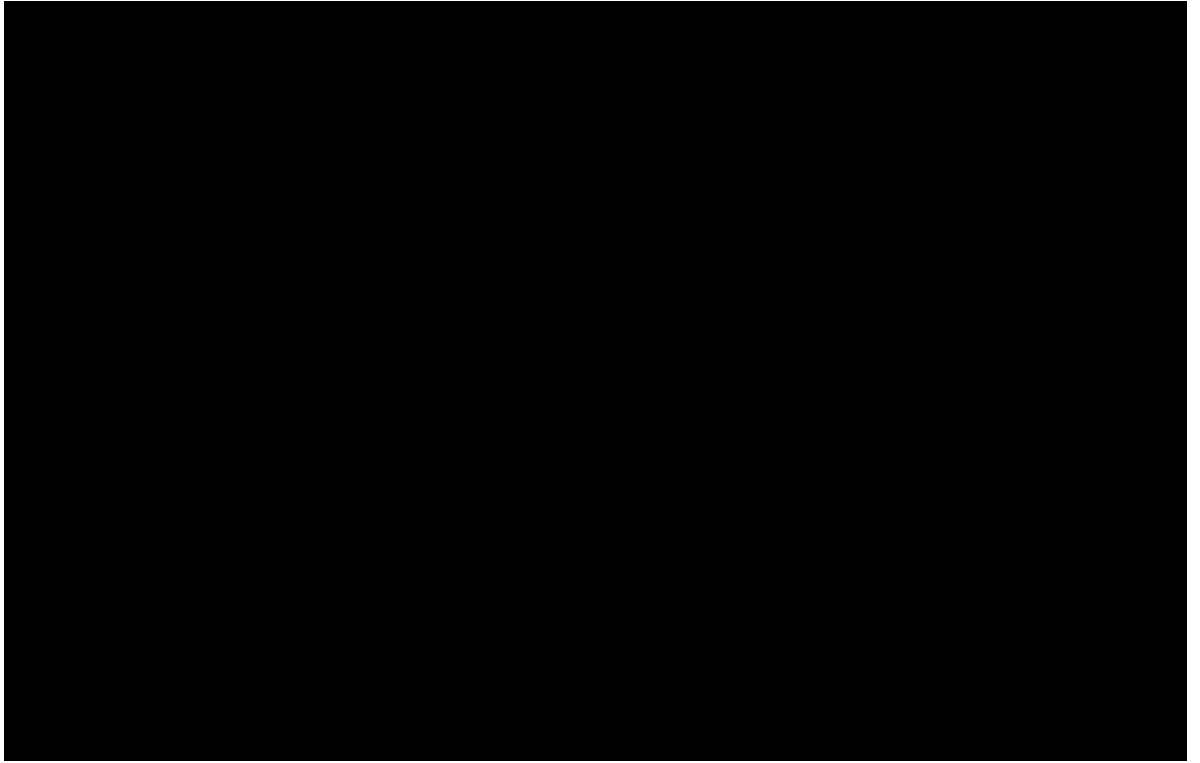












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## 54 Trustee limitation of liability

### 54.1 Dexus CPA Pty Ltd – trustee limitation of liability

- (a) Dexus CPA Pty Ltd enters into this deed in its capacity as trustee (**Dexus Trustee**) of the Dexus CPA Commercial Property Trust No. 3 (**Dexus Trust**) and in no other capacity unless specifically provided for in this deed.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against Dexus Trustee only to the extent to which it can be and is in fact satisfied out of the property (including contractual rights) of the Dexus Trust from which the Dexus Trustee is actually indemnified for the liability (or would be indemnified if the Dexus Trustee exercised its entitlement to be indemnified out of the property, including contractual rights, of the Dexus Trust). This limitation of the Dexus Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Dexus Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party to this deed may sue the Dexus Trustee in any capacity other than as the trustee of the Dexus Trust, including seeking the appointment of a receiver (except in relation to property, including contractual rights, of the Dexus Trust), a liquidator, an administrator or any similar person to the Dexus Trustee or proving in any liquidation, administration or arrangement of or affecting the Dexus Trustee (except in relation to property, including contractual rights, of the Dexus Trust).
- (d) The provisions of this clause 54.1 will not apply to any obligation or liability of the Dexus Trustee to the extent that it is not satisfied because, under the Dexus Trust's deed or by operation of law, there is a reduction in the extent of the Dexus Trustee's indemnification out of the property, including contractual rights, of the Dexus Trust as a result of the Dexus

Trustee's failure to properly perform its duties as trustee of the Dexu Trust or otherwise.

- (e) The Dexu Trustee is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in clauses 54.1(b) to 54.1(d).

## 54.2 Frasers Trustee limitation of liability

- (a) All provisions of this deed will have effect and be applied subject to this clause 54.2. For the purposes of this clause 54.2:
- (i) **Assets** includes all assets, property and rights real or personal of any nature whatsoever;
  - (ii) **Frasers Trust** means Gateway Building Trust;
  - (iii) **Frasers Trustee** means the trustee of the Frasers Trust as at the date of this deed and its successors and assigns;
  - (iv) **Frasers Trust Deed** means the trust deed under which the Frasers Trust is established; and
  - (v) **Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Frasers Trustee, under or in respect of this deed or any deed, agreement or other instrument collateral to this deed or given or entered into pursuant to this deed whether express or implied by statute or other legal requirements or arising otherwise howsoever.
- (b) The Frasers Trustee enters into this deed in its capacity as trustee of the Frasers Trust and covenants it has the power as trustee of the Frasers Trust to enter into this deed and to assume the Obligations.
- (c) The Frasers Trustee must perform and carry out the Obligations.
- (d) Any liability of the Frasers Trustee arising in connection with this deed is limited to the extent that the Frasers Trustee is entitled to be indemnified for that liability out of the Assets of the Frasers Trust under the Frasers Trust Deed.
- (e) A party may enforce its rights powers and remedies under this deed against the Frasers Trustee, and the Frasers Trustee is only liable to pay or satisfy any Obligation, to the extent to which the Frasers Trustee is entitled to be indemnified out of the Assets of the Frasers Trust and the Frasers Trustee must exercise all such rights to indemnity to satisfy such rights, powers and remedies.
- (f) Where a party does not recover all money owing to it by enforcing the rights powers and remedies referred to paragraph (e) of this clause 54.2, that party may not seek to recover the shortfall by bringing proceedings against the Frasers Trustee in its personal capacity.
- (g) Paragraphs (c) to (f) of this clause 54.2 do not apply in the case of fraud, negligence, default, breach of trust or breach of duty on the part of the Frasers Trustee or its agents (even if the agents were acting fraudulently or outside the scope of their authority or engagement).

- (h) No receiver or receiver and manager, liquidator, an administrator or any similar person appointed by any party to this agreement other than the Frasers Trustee has authority to act on behalf of the Frasers Trustee in a way which exposes the Frasers Trustee to any personal liability or to liability in any capacity other than as trustee of the Frasers Trust and no act or omission of any such person will be considered fraud, negligence or breach of trust or breach of warranty of the Frasers Trustee for the purposes of this clause 54.2.
- (i) The Frasers Trustee is not obliged to enter into or refrain from entry into any collateral document in connection with this deed unless the Frasers Trustee's liability in relation to that collateral document is limited to the reasonable satisfaction of the Frasers Trustee in the same manner as set out in this clause 54.2.

### 54.3 Responsible Entity limitation of liability

- (a) Any party that enters into this deed in its capacity as a responsible entity (**Responsible Entity**) enters into this deed in its capacity as responsible entity of its trust (**Trust**) and in no other capacity unless specifically provided for in this deed.
- (b) A liability arising under or in connection with this deed is limited to and can be enforced against a Responsible Entity only to the extent to which it can be and is in fact satisfied out of the property (including contractual rights) of the Trust from which the Responsible Entity is actually indemnified for the liability (or would be indemnified if the Responsible Entity exercised its entitlement to be indemnified out of the property, including contractual rights, of the Trust). This limitation of the Responsible Entity's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Responsible Entity in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (c) No party to this deed may sue the Responsible Entity in any capacity other than as the responsible entity of the Trust, including seeking the appointment of a receiver (except in relation to property, including contractual rights, of the Trust), a liquidator, an administrator or any similar person to the Responsible Entity or proving in any liquidation, administration or arrangement of or affecting the Responsible Entity (except in relation to property, including contractual rights, of the Trust).
- (d) The provisions of this clause 54.3 will not apply to any obligation or liability of the Responsible Entity to the extent that it is not satisfied because, under the Trust's deed or by operation of law, there is a reduction in the extent of the Responsible Entity's indemnification out of the property, including contractual rights, of the Trust as a result of the Responsible Entity's failure to properly perform its duties as responsible entity of the Trust or otherwise.
- (e) A Responsible Entity is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in clauses 54.3(b) to 54.3(d).


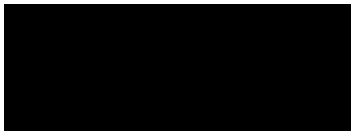


**EXECUTED** as a deed

# Project Development Agreement

## Signing page

**DATED:** 24 February 2023 | 10:15:38 AM AEDT  
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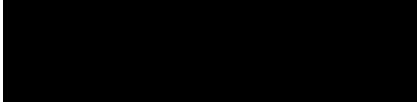


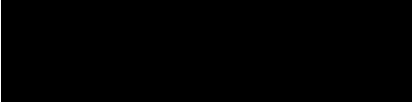



Signed sealed and delivered for  
**Transport for NSW (ABN 18 804 239 602)**  
by its duly authorised delegate in the presence of

<i>sign here</i> ►		<i>sign here</i> ►	
	Delegate		Witness
<i>print name</i>		<i>print name</i>	
	_____		_____

*Position held* Secretary Transport for NSW    *Position held* Executive Coordinator to the Secretary

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

**SIGNED, SEALED and DELIVERED**  
for and on behalf of **Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3** by its duly authorised attorneys under power of attorney dated 17 December 2021 in the presence of:

	
..... Signature of Witness	..... Signature of Attorney
	
..... Name of Witness (print)	..... Name of Attorney (print)
	
..... Signature of Witness	..... Signature of Attorney
	
..... Name of Witness (print)	..... Name of Attorney (print)



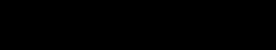
Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.


**SIGNED, SEALED and DELIVERED**

for and on behalf of **Dexus Funds Management Limited (ABN 24 060 920 783)** as responsible entity for **Dexus Property Trust (ABN 24 595 854 202)** by its duly authorised attorneys under power of attorney dated 17 December 2021 in the presence of:

 .....  
Signature of Witness


 .....  
Signature of Attorney

 .....  
Name of Witness (print)

 .....  
Name of Attorney (print)

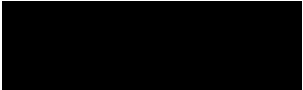
 .....  
Signature of Witness

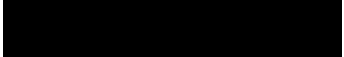
 .....  
Signature of Attorney

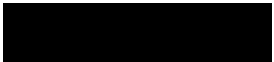
 .....  
Name of Witness (print)


 .....  
Name of Attorney (print)

**SIGNED, SEALED and DELIVERED**  
by **Frasers Property Australia Pty Limited (ABN 89 600 448 726)** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

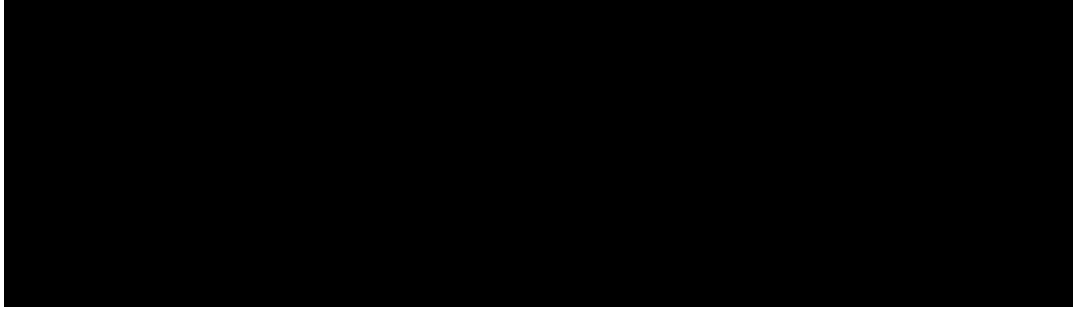
 .....  
Signature of director

 .....  
Signature of director/company secretary\*  
\*delete whichever is not applicable

 .....  
Name of director (block letters)

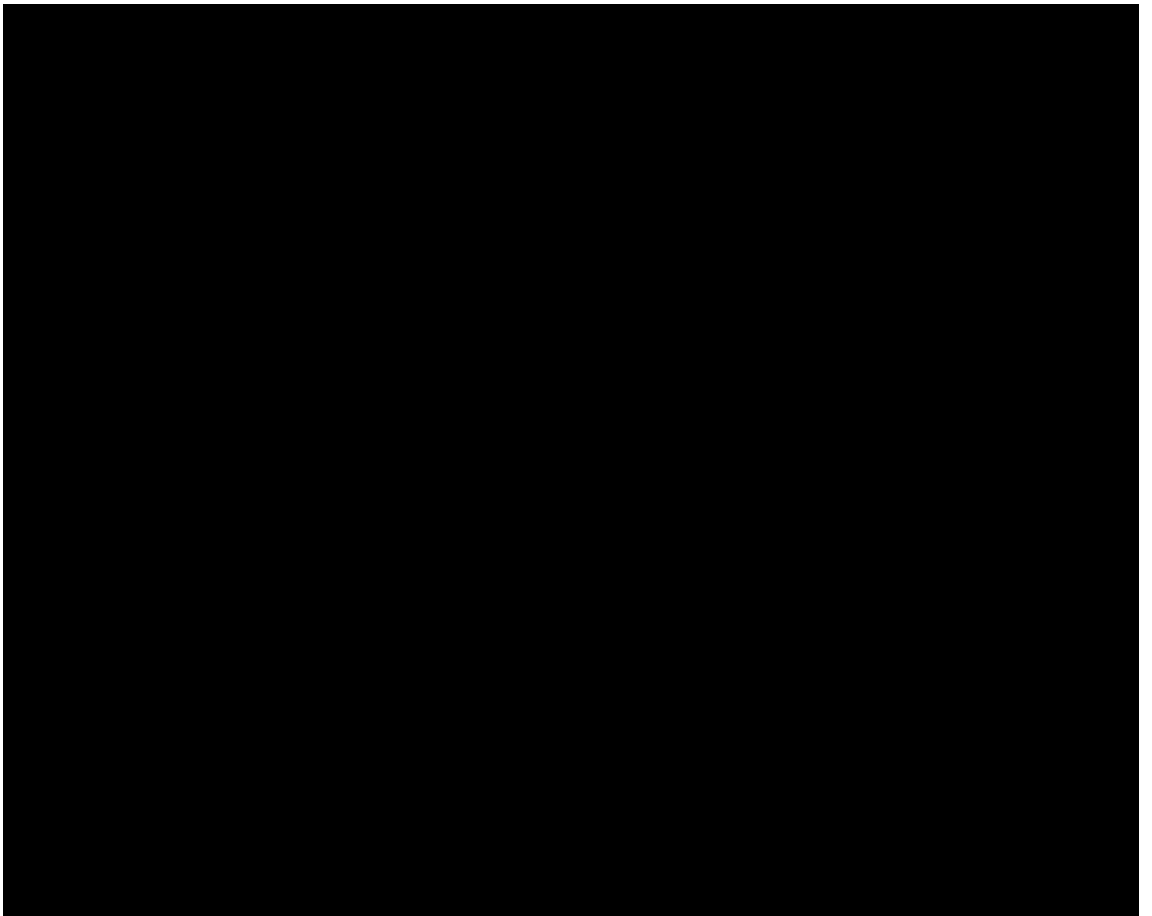
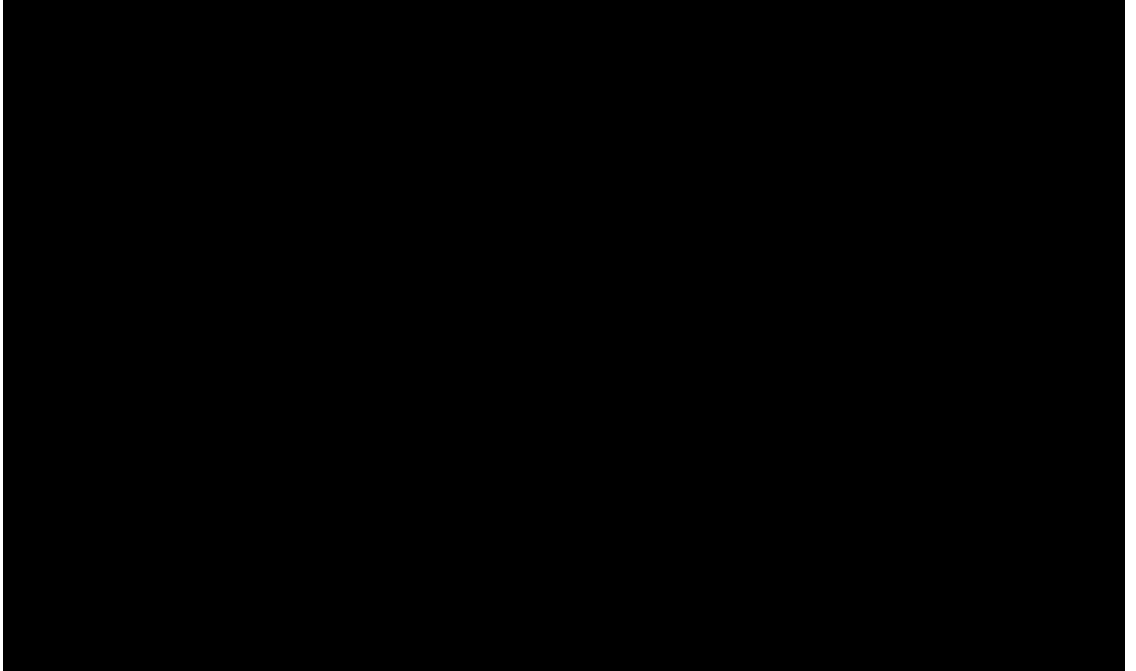
 .....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

## Schedule 1 Public Works Brief





## Schedule 2 Project Scope



## Schedule 3 Confirmation Letter

To: **[Insert contact]**  
Transport for NSW  
231 Elizabeth Street  
Sydney NSW 2000

**Subject: Consent to Easement Dealing**

I am the

**[#Choice #1]** head lessee of the **[#lot burdened/lot benefitted]** by **[Insert dealing description]** (“Easement Dealing”)]

**[#Choice #2]** prescribed authority in respect of **[Insert dealing description]** (“Easement Dealing”)]

**[#Choice #3]** registered proprietor of the lot benefitted by **[Insert dealing description]** (“Easement Dealing”)]

Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust have requested that I consent to the **[Insert dealing description]** (“Easement Dealing”).

I confirm that I consent to the Easement Dealing being carried out and if necessary, registered on title.

Kind regards

**[Insert signature]**

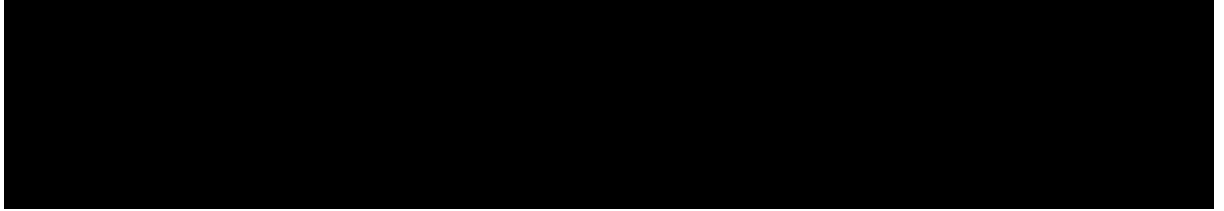
## Schedule 4 Independent Certifier's Deed

The parties acknowledge and agree that the document entitled "Schedule 4 – Independent Certifier's Deed" is included in this deed as an electronic file and is saved to USB labelled "PDA – Central Precinct Sydney – February 2023" provided by King and Wood Mallesons to Herbert Smith Freehills on or prior to the date of this deed.

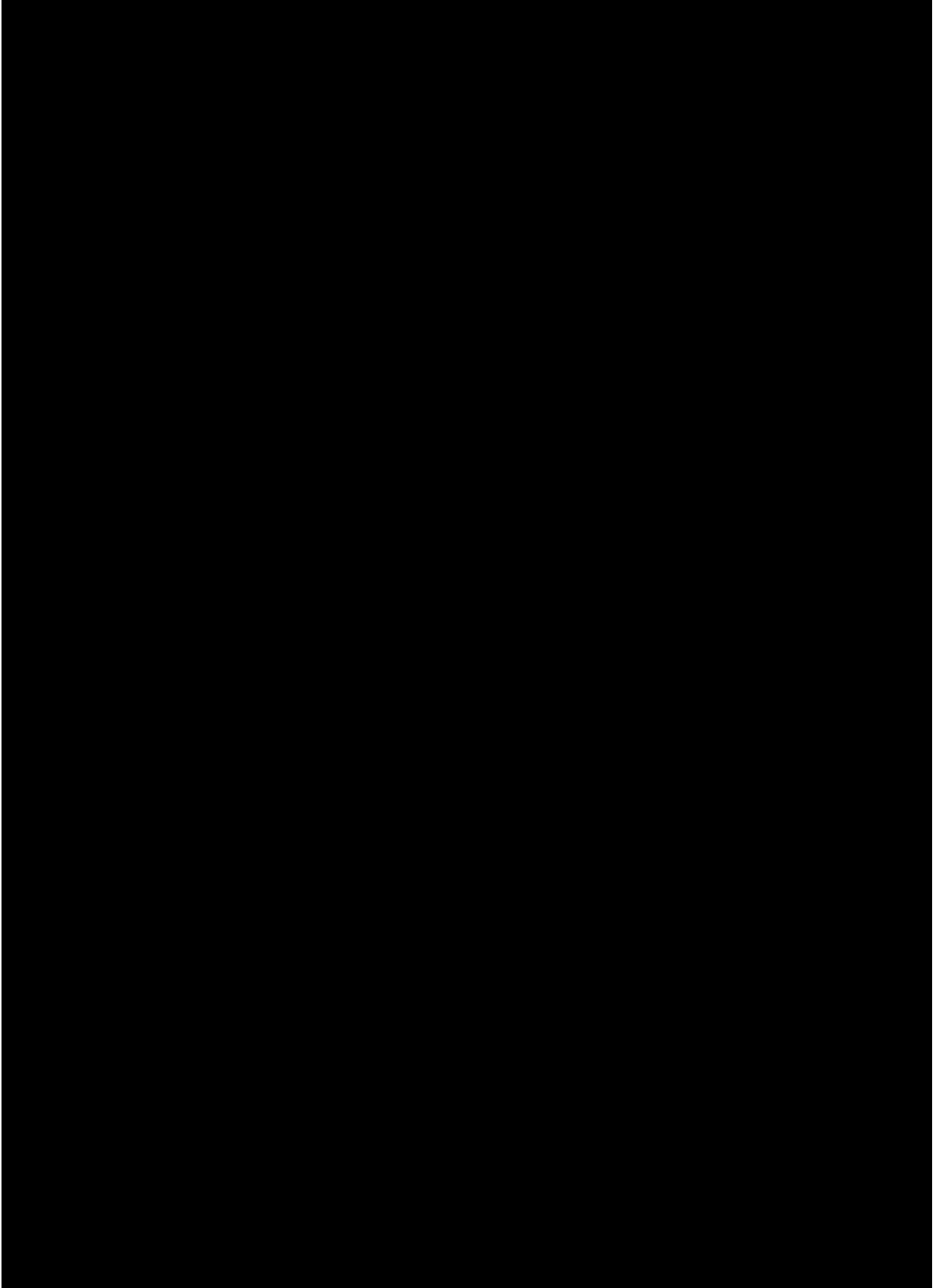
## Schedule 5 Development Program

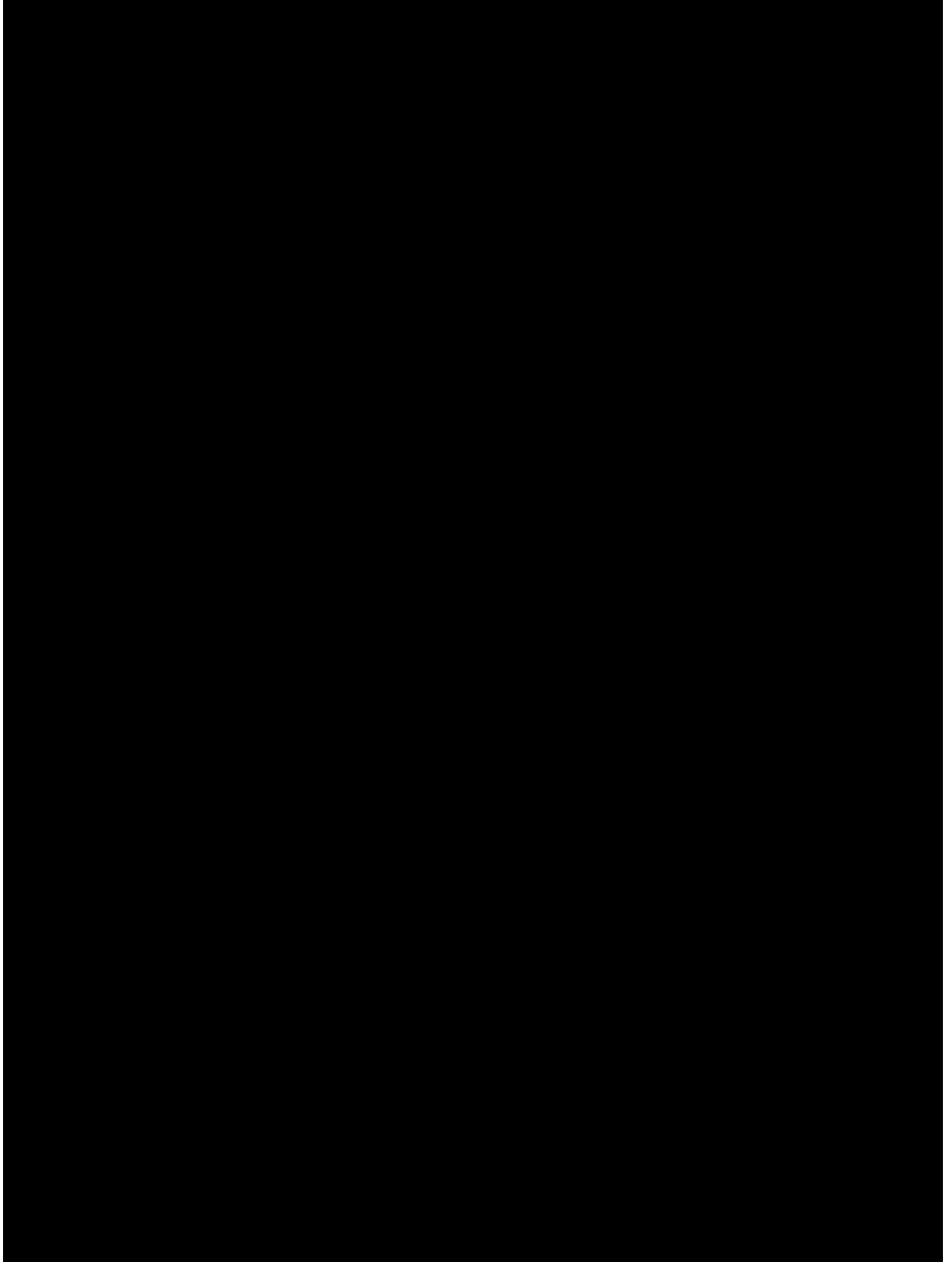


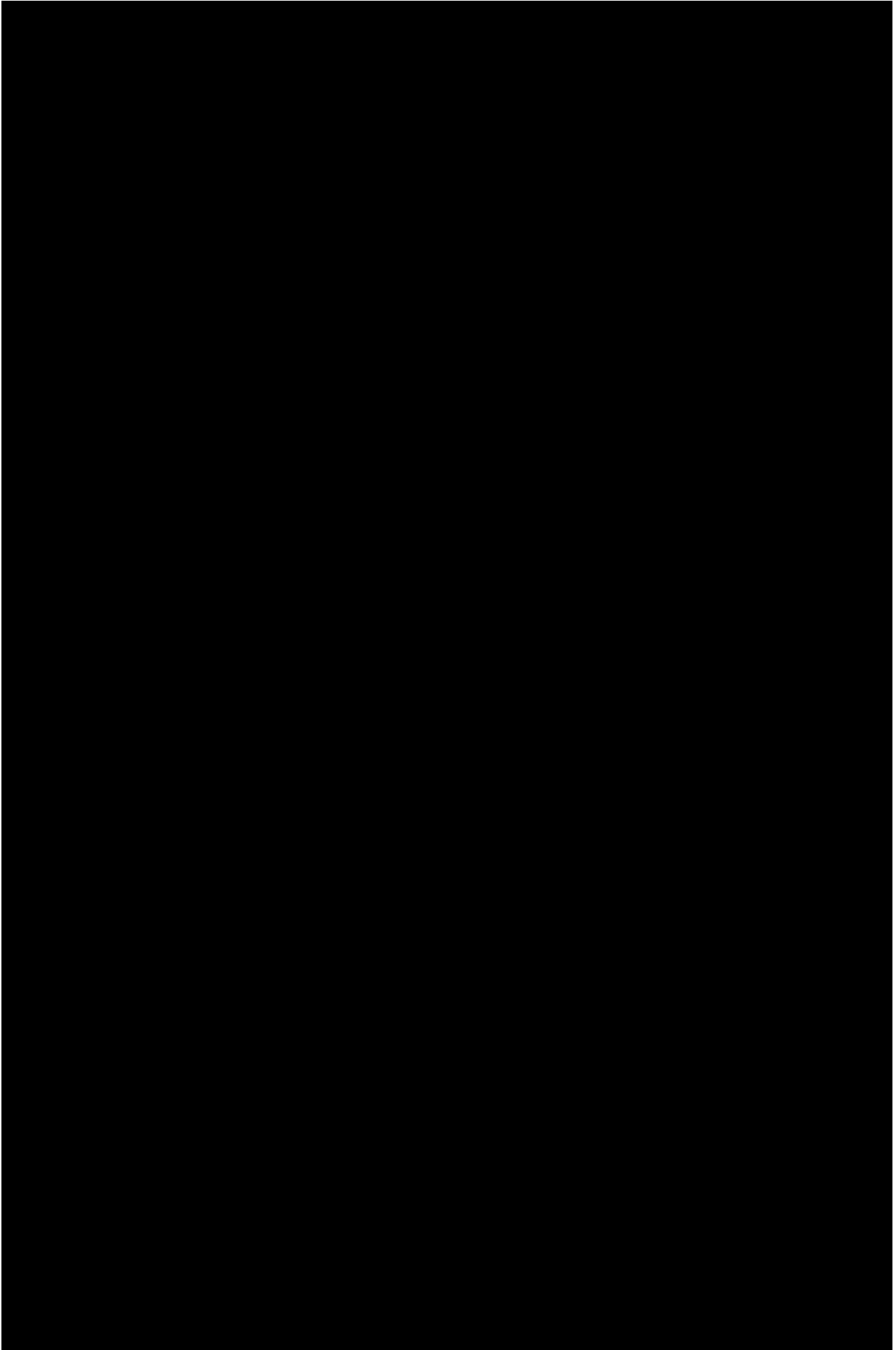
## Schedule 6 Site Access Schedule



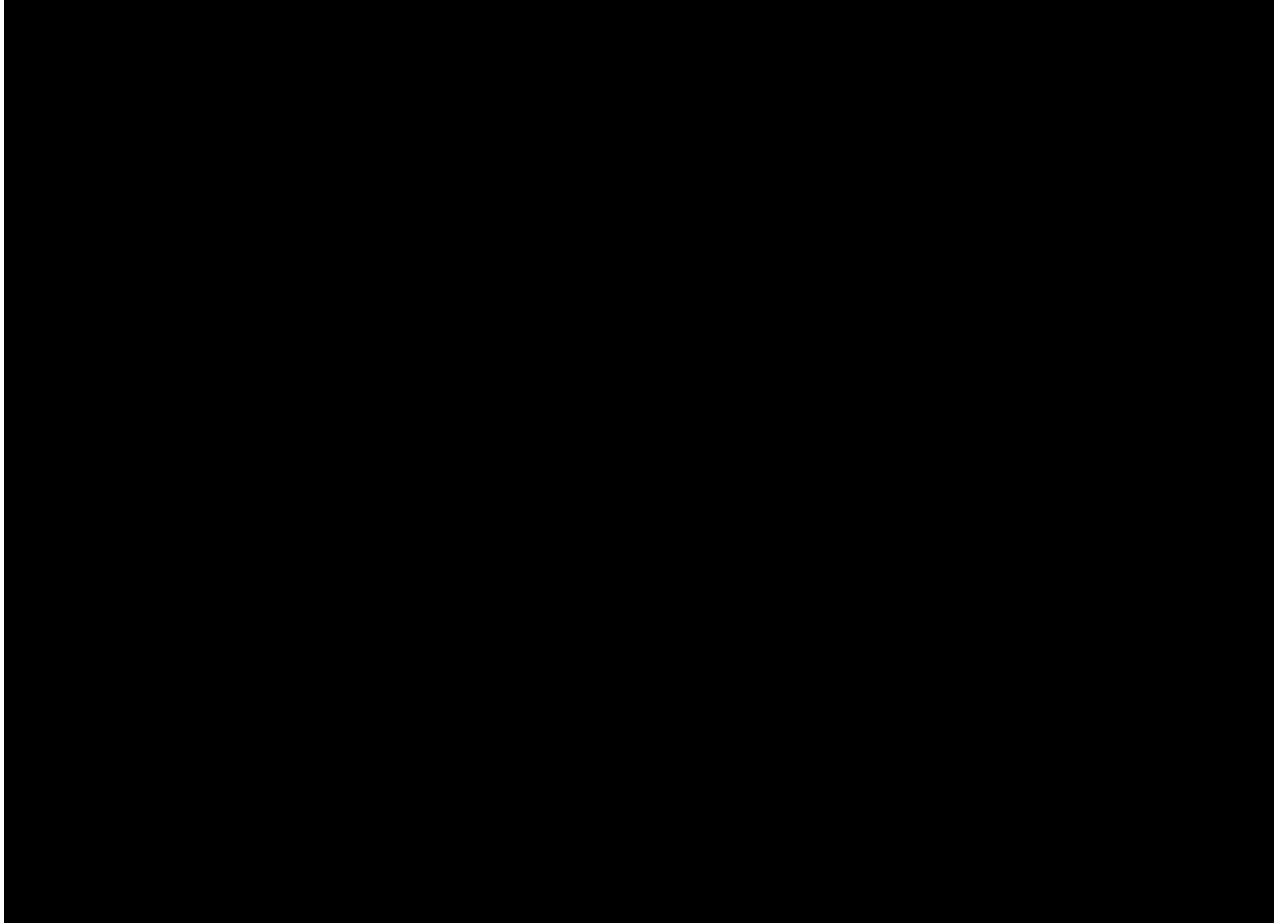
## Schedule 7 Form of Security

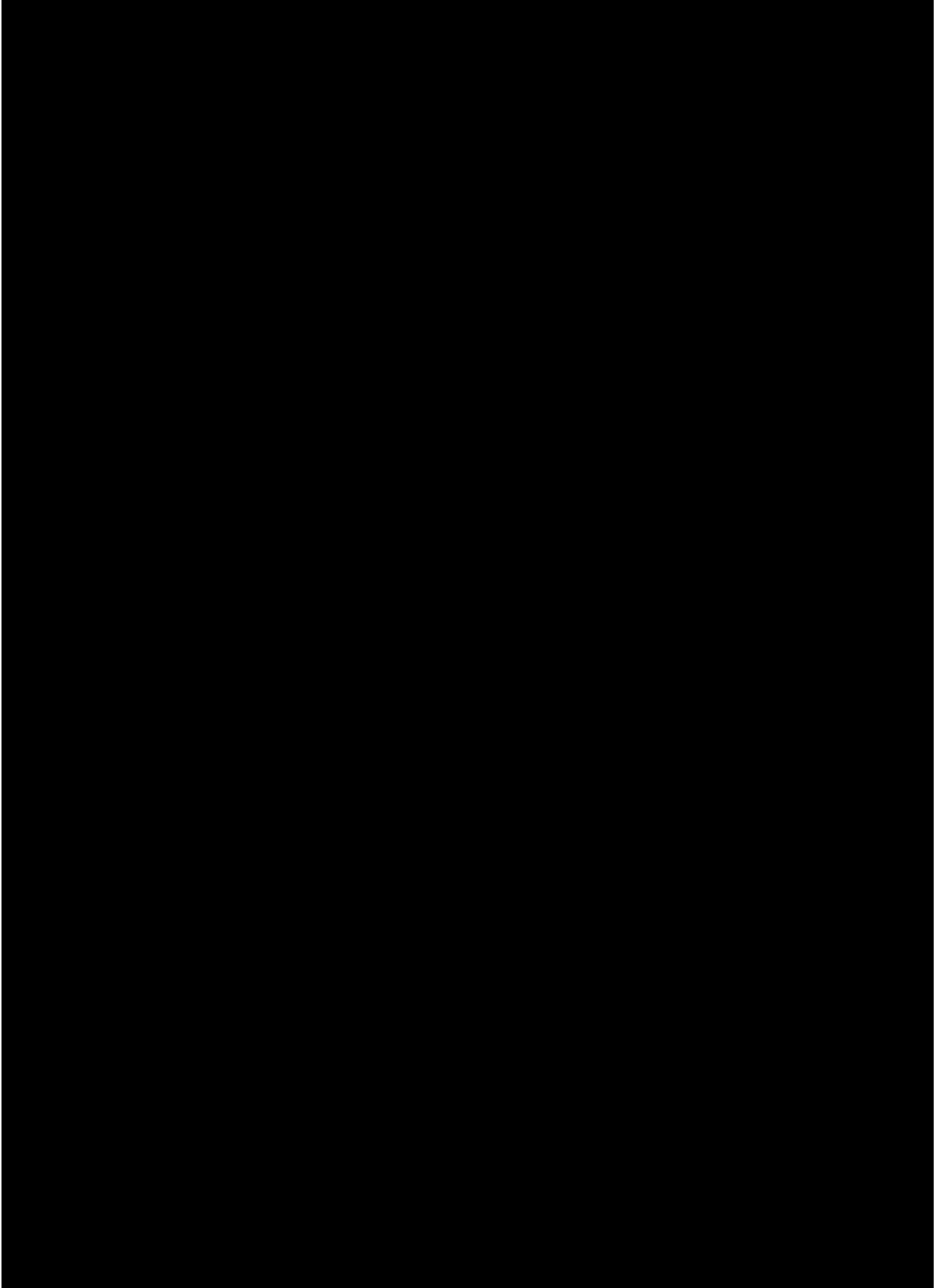












# Schedule 8 Moral Rights Consent

## Moral Rights Consent

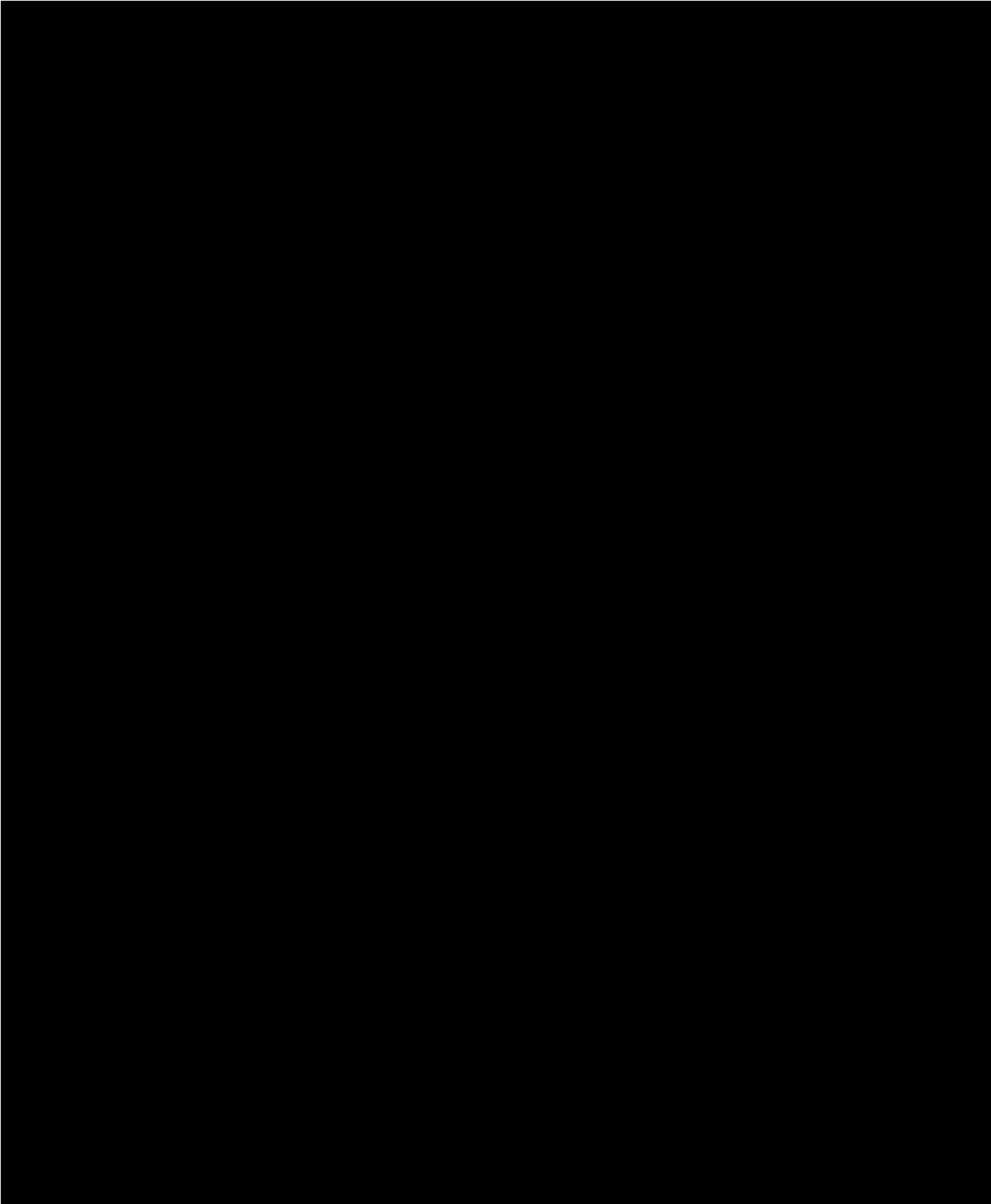
- (a) In relation to any Moral Rights the **[##insert name of Author] (Author)** has in respect of **[specify the relevant copyright work(s) - e.g. the relevant architectural plans] (Copyright Works)**, the Author hereby consents to **[##insert name of Developer entities] (Developer)** and **[##insert name of State entity] (State)**, doing or authorising the doing of the following acts or making or authorising the making of the following omissions (whether occurring before or after this consent is given) anywhere in the world:
  - (b) exercise any rights in relation to the Copyright Works, without identifying any person as the individual responsible for creating any particular material comprising the Copyright Works;
  - (c) have the Copyright Works bear the name of the Project (or any part of it) or the address of the Development Land or bear the name of the Developer, the State or any other person associated with the Project; and
  - (d) modify, alter, adapt, distort or otherwise change any of the Copyright Works as it sees fit in its absolute discretion, including:
    - (i) by adapting or translating those Copyright Works into other dimensions, format or media; and
    - (ii) by changing, relocating, demolishing or destroying any 2 or 3 dimensional reproduction of those Copyright Works without notice to, or consultation with, the Author.

The Author acknowledges that the Developer and the State will be relying on the consents in this document and that those consents are intended to be legally binding.

Dated

**SIGNED** by **[##insert name of AUTHOR]** in the presence of: )  
 )  
 )  
 )  
 ..... )  
 Signature of witness )  
 )  
 )  
 ..... )  
 Name of witness (block letters) )

.....  
 Signature of **[## insert name of AUTHOR]**



## Schedule 10 TfNSW Transport and Customer Requirements

The parties acknowledge and agree that the document entitled "Schedule 10 – TfNSW Transport and Customer Requirements" is included in this deed as an electronic file and is saved to USB labelled "PDA – Central Precinct Sydney – February 2023" provided by King and Wood Mallesons to Herbert Smith Freehills on or prior to the date of this deed.

# Schedule 11 Construction Licence

The terms and conditions of the Construction Licence granted pursuant to clause 15.2 are set out in this Schedule 11.

---

## 1 Grant of non-exclusive licence

The State grants to the Developer a right to access and use each area of State Land set out in Schedule 6 to:

- (a) do all things reasonably necessary to deliver the Project, including to:
  - (i) obtain Approvals (including all works necessary to prepare an Application, including surveying, erecting signs and conducting engineering, environmental and geotechnical investigations on the State Land);
  - (ii) carry out the Works;
  - (iii) install and retain hoardings and protection structures;
  - (iv) where expressly noted in the Site Access Schedule, undertake excavation and demolition;
  - (v) where expressly noted in the Site Access Schedule, undertake the construction of a temporary substation access bridge and services bridge;
  - (vi) use the State Land for materials handling, site sheds and site accommodation;
  - (vii) where expressly noted in the Site Access Schedule, install and use temporary ground anchors;
  - (viii) install, use and retain scaffolding;
  - (ix) where expressly noted in the Site Access Schedule, excavate existing batter and install car park and substation fresh air intake;
  - (x) use air spaces for crane swing;
  - (xi) where expressly noted in the Site Access Schedule, permit potholing and investigative works; and
  - (xii) comply with the Developer's obligations under this deed; and
- (b) for any other use which State approves in its absolute discretion, subject to the conditions contained in this Schedule 11.

---

## **2 Licence term**

The Construction Licence in respect of area portion of State Land referred to in Schedule 6:

- (a) commences on the relevant "Access Commencement Date" specified in Schedule 6; and
- (b) expires at midnight on the relevant "Access End Date" specified in Schedule 6.

---

## **3 Use of the State Land**

The Developer must not use any part of the State Land for any purpose other than as provided in paragraph 1 above and will not do anything in or about the State Land which may constitute a breach of the Developer's obligation under the Code and Standards.

---

## **4 Developer Obligation**

### **4.1 No propriety interest**

The Developer:

- (a) does not have exclusive possession or occupation of any part of the State Land; and
- (b) is not a tenant of State.

### **4.2 Care of Site**

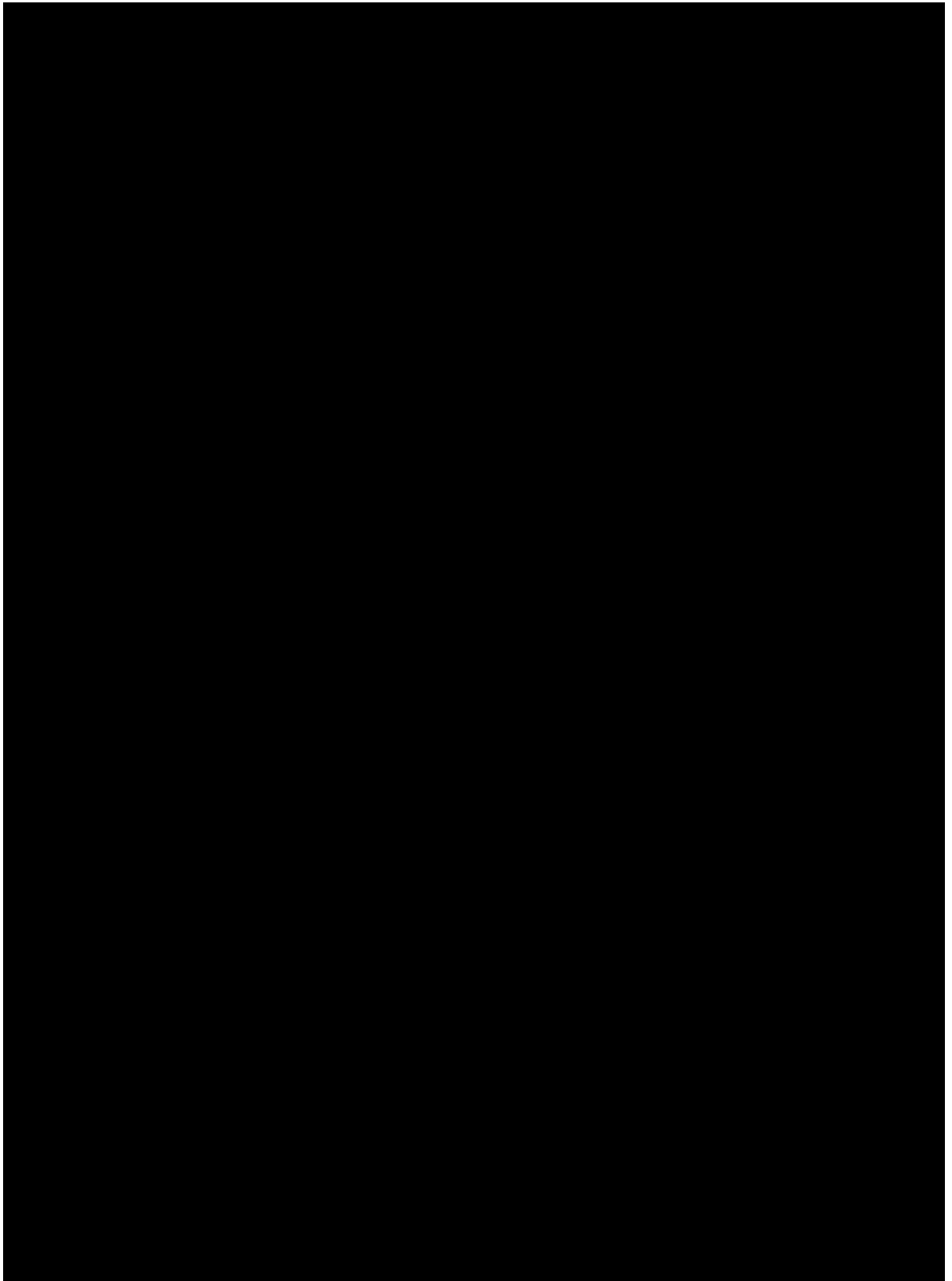
From the commencement date of the Construction Licence, the Developer:

- (a) must not make any structural additions to the State Land other than in accordance with this deed; and
- (b) must make good in a timely manner any damage to the State Land caused by the Developer or the Developer's Employees and Agents and return the State Land to State in accordance with the "Terms of Handback" set out in Schedule 6.

### **4.3 Transfer and other dealings**

The Developer must not transfer, assign, sub-licence or grant an encumbrance over or otherwise deal with any part of the State Land or with its licence to use the State Land other than in accordance with this deed or with the State's prior written consent.

## Schedule 12 Unacceptable Conditions





## Schedule 13 Not used

# Schedule 13A Certificate of Design Compliance

The Developer must submit to the State the following certificates at the times set out in the table below:

Required certificates	Timing
Certificate of Design Compliance	With submission of Design Documentation

## Certificate of Design Compliance

DEVELOPER'S CERTIFICATE OF DESIGN COMPLIANCE	
<b>DEVELOPER:</b>	
WORK PACKAGE	DESCRIPTION
<i>Attach schedule of work packages if insufficient space</i>	
<p>This certificate is given in accordance with the Project Development Agreement between TfNSW, [Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust, Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Operations Trust (ABN 69 645 176 383 ), Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Property Trust (ABN 24 595 854 202 ) and Frasers Property Australia Pty Limited (ABN 89 600 448 726)] dated [#insert#]. (<b>Contract</b>). Words defined in the Contract have the same meaning in this certificate.</p> <p>The Developer certifies that the Design Documentation for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Contract and the Approvals, except for the non-conformances and unresolved issues identified in the attached list, and addresses the safety requirements of the Contract and at Law.</p> <p>The Developer further certifies that the attached compliance records as required by the Contract reflect the true status of the design packages.</p>	
NAME: ..... (Developer's Representative)	SIGNATURE:..... DATE / / .

### Design Documentation the subject of this certificate:

[Attach list]

### Attachment – List of non compliances

No.	Minor error or omission	Action to be taken by Developer to address minor error or omission
1.	[to be inserted]	[to be inserted]

# Schedule 13B Certificate of Construction Compliance

The Developer must submit to the State the following certificates at the times set out in the table below:

Required certificates	Timing
Certificate of Construction Compliance	[#]

## Certificate of Construction Compliance

CERTIFICATE OF CONSTRUCTION COMPLIANCE – NO OBJECTION TO CONSTRUCT			
<b>Project Name:</b>	Atlassian Central	<b>Contract Number:</b>	
<b>Work Package:</b>	[to be inserted]	<b>Document Number:</b>	[to be inserted]
		<b>Revision:</b>	
<b>Reviewer:</b>	Builder / Project Manager	<b>Issue Date:</b>	[to be inserted]

This certificate is given in accordance with the Project Development Agreement between TfNSW, [Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust, Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Operations Trust (ABN 69 645 176 383 ), Dexus Funds Management Limited (ABN 24 060 920 783) as responsible entity for Dexus Property Trust (ABN 24 595 854 202 ) and Frasers Property Australia Pty Limited (ABN 89 600 448 726)] dated [#insert#]. (**Contract**). Words defined in the Contract have the same meaning in this certificate.

### Review documents the subject of this certificate:

[Insert list]

The Builder confirms that it has reviewed the above mentioned documentation provided by [insert contractor / consultant] in relation to the [insert TAO submission details] for the [insert works package or part of package], and:

- Each design element has been verified by an TAO certified company related to that field
- All comments from the State and stakeholders have been addressed

- All relevant stakeholders have been consulted in accordance with the Contract.

As the verifier for [insert], I hereby certify that the Design Documentation that has been provided has been completed to the extent above in accordance with the requirements of the Contract and relevant Approvals, except as identified in the design deliverables and as communicated with stakeholders.

This certificate is to the effect that I have no objection to the Design Documentation listed in Appendix A progressing to the construction phase,

NAME	POSITION	SIGNATURE	DATE

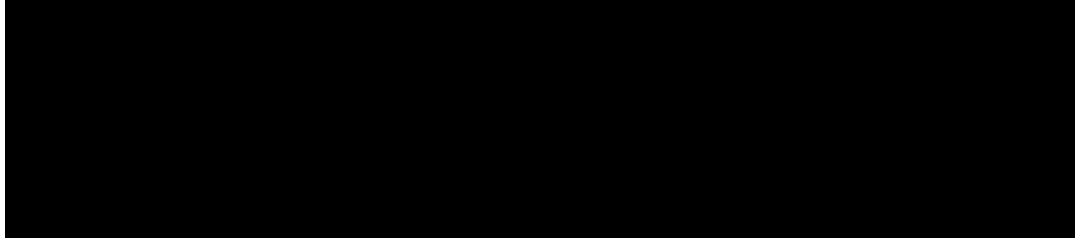
**Appendix A: Document List**

#	DOCUMENT NUMBER	TITLE	Rev

## Schedule 14 Financier's Side Deed



## Schedule 15 Subdivision Strategy



## Schedule 16 Not used

## Schedule 17 Not used



## Schedule 18 TAHE Deed Poll

This Deed Poll is made the                      day of                      20

**By: Dexus CPA Pty Ltd (ABN 90 160 685 156) as trustee for the Dexus CPA Commercial Property Trust No. 3 and Gateway Building Nominees Pty Limited (ACN 081 951 822) as trustee for the Gateway Building Trust, of Level 2, Building C, 1 Homebush Bay Drive, Rhodes NSW 2138 (Developer)**

**To: Transport Asset Holding Entity of New South Wales (ABN 59 325 778 353)**  
constituted by the *Transport Administration Act 1988* (NSW), of address 20-44 Ennis Road Milsons Point NSW (**TAHE**)

### Recitals

- A. Transport for NSW (ABN 18 804 239 602) of Level 6, 18 Lee Street, Chippendale NSW 2008 (**State**) and the Developer have entered into a contract (**Project Development Agreement**) for the execution of Works and for the Developer to make certain payments to the State.
- B. TAHE is the freehold landowner of the State Land where the Works will be undertaken.
- C. It is a condition of the Project Development Agreement that the Developer executes this Deed Poll.

### This Deed Poll provides

1. In this Deed Poll terms used have the same meaning as in the Project Development Agreement.
2. The Developer covenants in favour of TAHE that:
  - (a) it will comply with its obligations under the Project Development Agreement relating to access to the State Land with respect to the Works;
  - (b) it will comply with the terms of the Construction Licences;
  - (c) it will ensure that, in respect of the contract works and public liability insurance required under clause 29 the Project Development Agreement, TAHE is named as an insured in respect of those parts of the Works to be carried out on the State Land; and
  - (d) upon their completion the Works will satisfy the requirements of the Project Development Agreement.
3. The Developer acknowledges that:
  - (a) in undertaking the Works it will owe a duty of care to the State and TAHE; and

- (b) it is aware that the State and TAHE will be relying on the skill and judgement of the Developer in undertaking the Works and the warranties given by the Developer in this Deed Poll.
4. The aggregate of the Developer's liability to TAHE under this Deed Poll and the Developer's liability to the State under the Project Development Agreement:
- (a) will not exceed the liability which the Developer would have had under the Project Development Agreement if the Project Development Agreement had named, in place of the State, TAHE and the State jointly and severally; and
  - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Project Development Agreement.
5. This Deed Poll is governed by the laws of the state of New South Wales.
6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of TAHE.
7. Dexus CPA Pty Ltd – trustee limitation of liability
- 7.1 Dexus CPA Pty Ltd enters into this Deed Poll in its capacity as trustee (Dexus Trustee) of the Dexus CPA Commercial Property Trust No. 3 (Dexus Trust) and in no other capacity unless specifically provided for in this Deed Poll.
  - 7.2 A liability arising under or in connection with this Deed Poll is limited to and can be enforced against Dexus Trustee only to the extent to which it can be and is in fact satisfied out of the property (including contractual rights) of the Dexus Trust from which the Dexus Trustee is actually indemnified for the liability (or would be indemnified if the Dexus Trustee exercised its entitlement to be indemnified out of the property, including contractual rights, of the Dexus Trust). This limitation of the Dexus Trustee's liability applies despite any other provision of this Deed Poll and extends to all liabilities and obligations of the Dexus Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed Poll.
  - 7.2 No beneficiary to this Deed Poll may sue the Dexus Trustee in any capacity other than as the trustee of the Dexus Trust, including seeking the appointment of a receiver (except in relation to property, including contractual rights, of the Dexus Trust), a liquidator, an administrator or any similar person to the Dexus Trustee or proving in any liquidation, administration or arrangement of or affecting the Dexus Trustee (except in relation to property, including contractual rights, of the Dexus Trust).
  - 7.3 The provisions of this clause 7 will not apply to any obligation or liability of the Dexus Trustee to the extent that it is not satisfied because, under the Dexus Trust's deed or by operation of law, there is a reduction in the extent of the Dexus Trustee's indemnification out of the property, including contractual rights, of the Dexus Trust as a result of the Dexus Trustee's failure to properly perform its duties as trustee of the Dexus Trust or otherwise.

7.4 The Dexus Trustee is not obliged to do or refrain from doing anything under this Deed Poll (including incur any liability) unless its liability is limited in the same manner as set out in clauses 7.2 to 7.4

8. Frasers Trustee limitation of liability

8.1 All provisions of this Deed Poll will have effect and be applied subject to this clause 8. For the purposes of this clause 8:

- (a) **Assets** includes all assets, property and rights real or personal of any nature whatsoever;
- (b) **Frasers Trust** means Gateway Building Trust;
- (c) **Frasers Trustee** means the trustee of the Frasers Trust as at the date of this Deed Poll and its successors and assigns;
- (d) **Frasers Trust Deed** means the trust deed under which the Frasers Trust is established; and
- (e) **Obligations** means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving upon the Frasers Trustee, under or in respect of this Deed Poll or any deed, agreement or other instrument collateral to this Deed Poll or given or entered into pursuant to this Deed Poll whether express or implied by statute or other legal requirements or arising otherwise howsoever.

8.2 The Frasers Trustee enters into this Deed Poll in its capacity as trustee of the Frasers Trust and covenants it has the power as trustee of the Frasers Trust to enter into this Deed Poll and to assume the Obligations.

8.3 The Frasers Trustee must perform and carry out the Obligations.

8.4 Any liability of the Frasers Trustee arising in connection with this Deed Poll is limited to the extent that the Frasers Trustee is entitled to be indemnified for that liability out of the Assets of the Frasers Trust under the Frasers Trust Deed.

8.5 A beneficiary may enforce its rights powers and remedies under this Deed Poll against the Frasers Trustee, and the Frasers Trustee is only liable to pay or satisfy any Obligation, to the extent to which the Frasers Trustee is entitled to be indemnified out of the Assets of the Frasers Trust and the Frasers Trustee must exercise all such rights to indemnity to satisfy such rights, powers and remedies.

8.6 Where a beneficiary does not recover all money owing to it by enforcing the rights powers and remedies referred to paragraph 8.5 of this clause 8, that beneficiary may not seek to recover the shortfall by bringing proceedings against the Frasers Trustee in its personal capacity.

8.7 Paragraphs 8.3 to 8.6 of this clause 8 do not apply in the case of fraud, negligence, default, breach of trust or breach of duty on

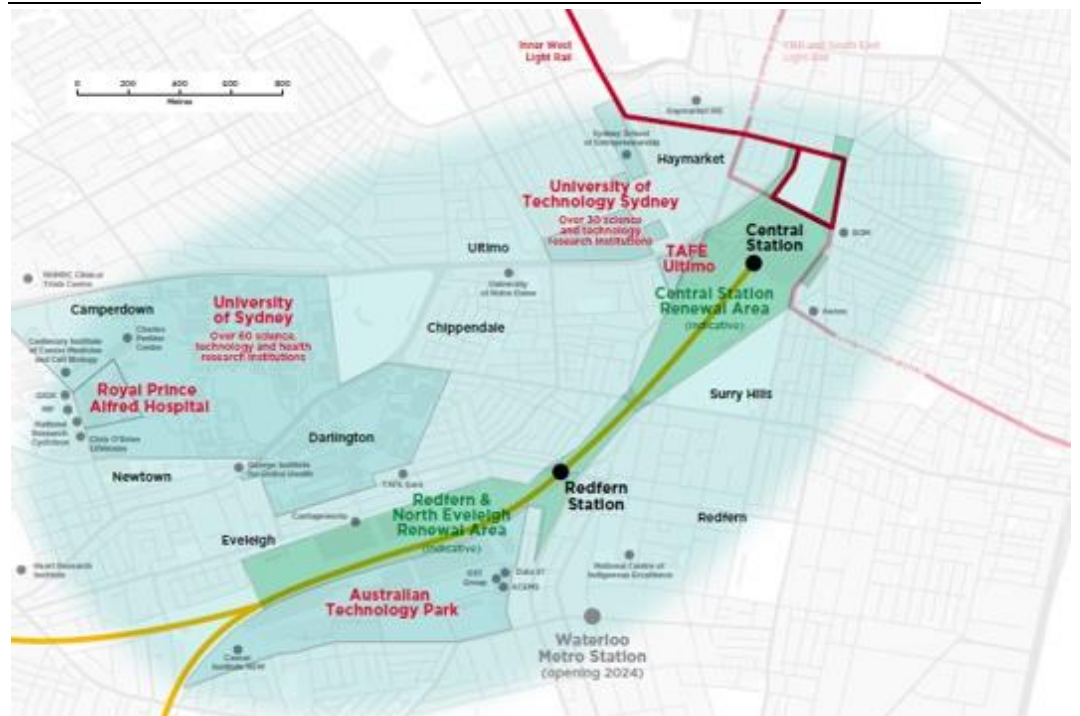
the part of the Frasers Trustee or its agents (even if the agents were acting fraudulently or outside the scope of their authority or engagement).

- 8.8 No receiver or receiver and manager, liquidator, an administrator or any similar person appointed by any party or beneficiary to this agreement other than the Frasers Trustee has authority to act on behalf of the Frasers Trustee in a way which exposes the Frasers Trustee to any personal liability or to liability in any capacity other than as trustee of the Frasers Trust and no act or omission of any such person will be considered fraud, negligence or breach of trust or breach of warranty of the Frasers Trustee for the purposes of this clause 8.
- 8.9 The Frasers Trustee is not obliged to enter into or refrain from entry into any collateral document in connection with this Deed Poll unless the Frasers Trustee's liability in relation to that collateral document is limited to the reasonable satisfaction of the Frasers Trustee in the same manner as set out in this clause 8.

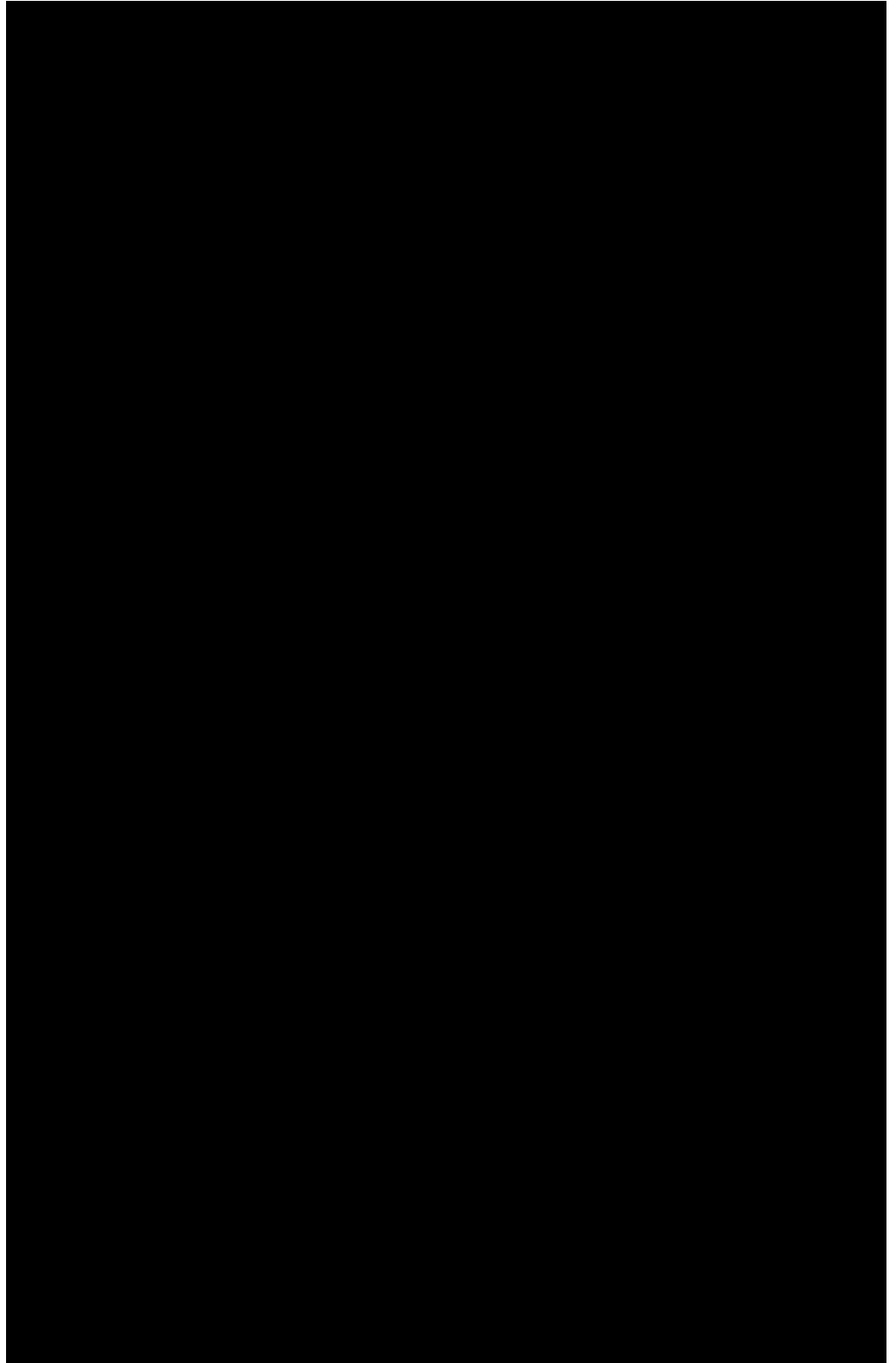
**Executed** as a Deed Poll

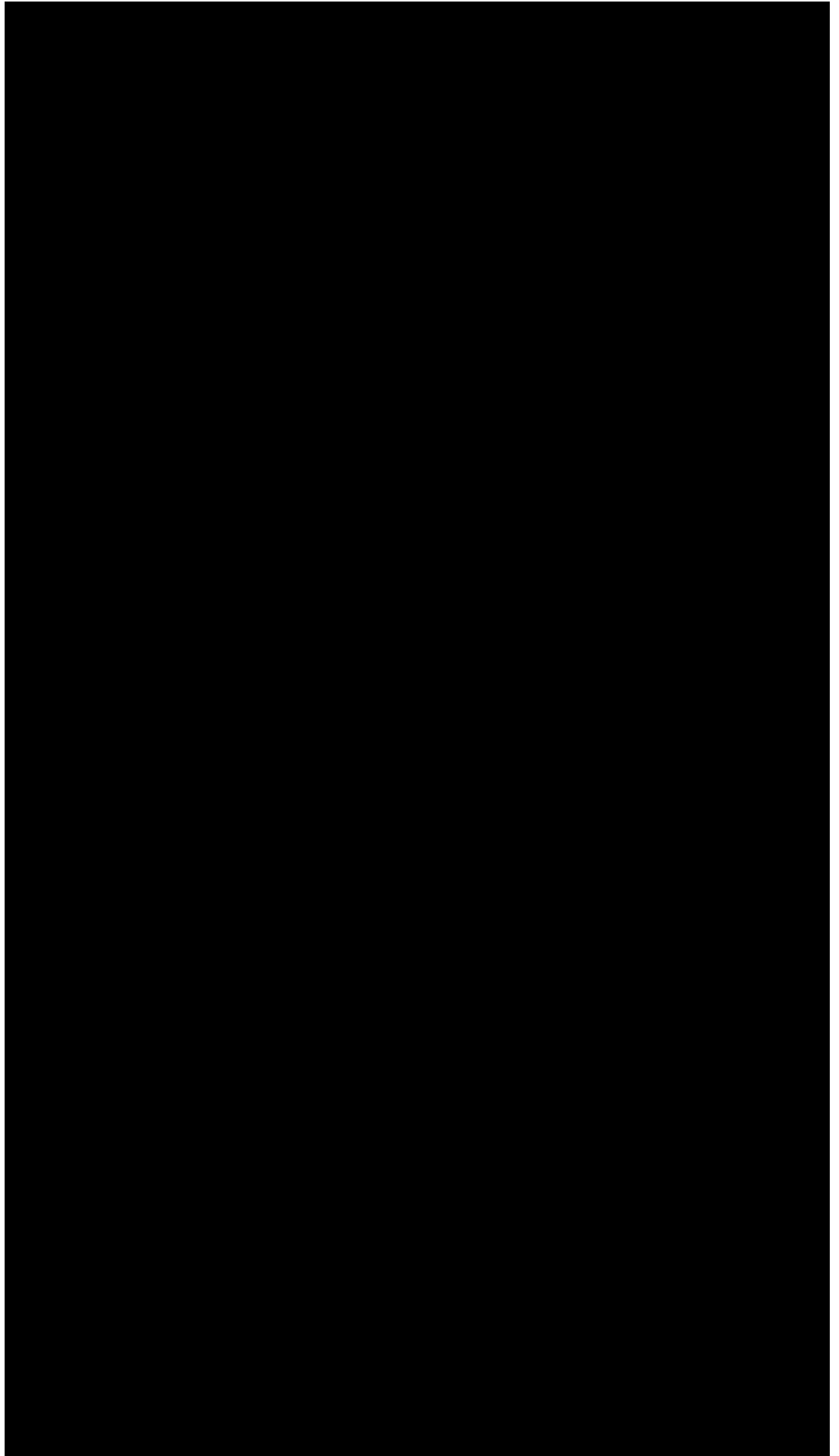
***[Insert Developer execution block]***

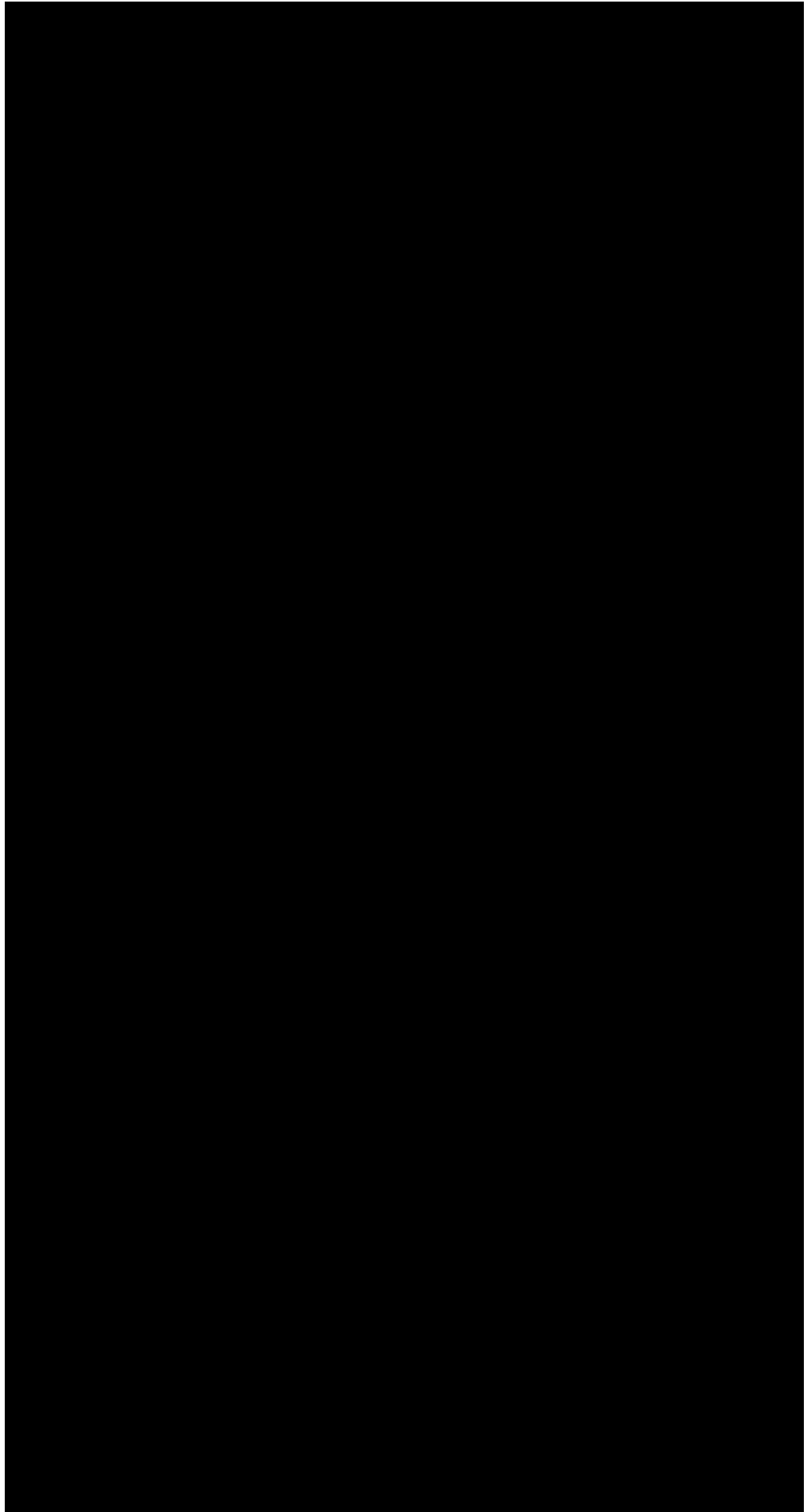
# Schedule 19 Sydney Innovation and Technology Precinct



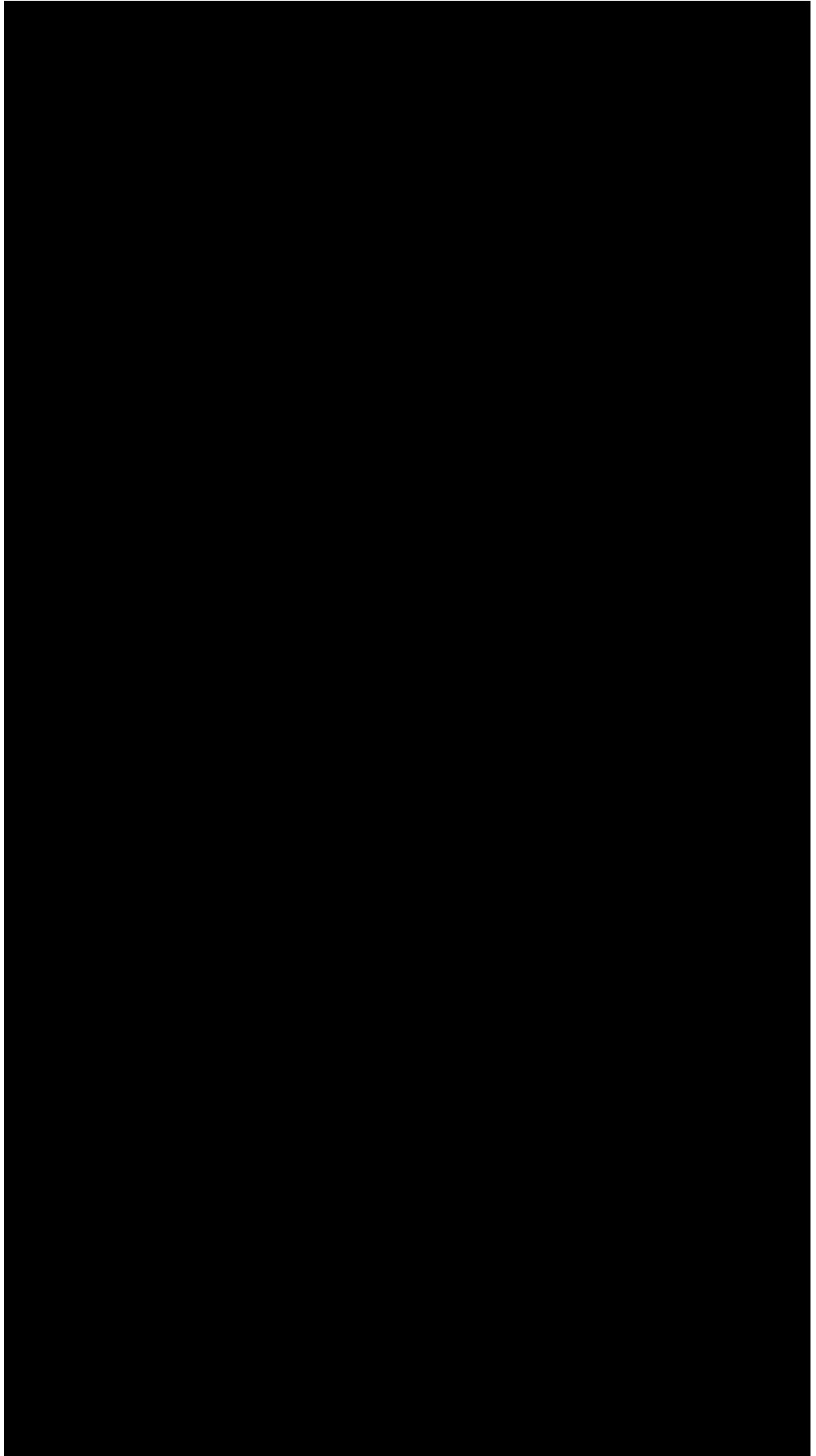
## Schedule 20 Deed of Release (Leasehold Land)

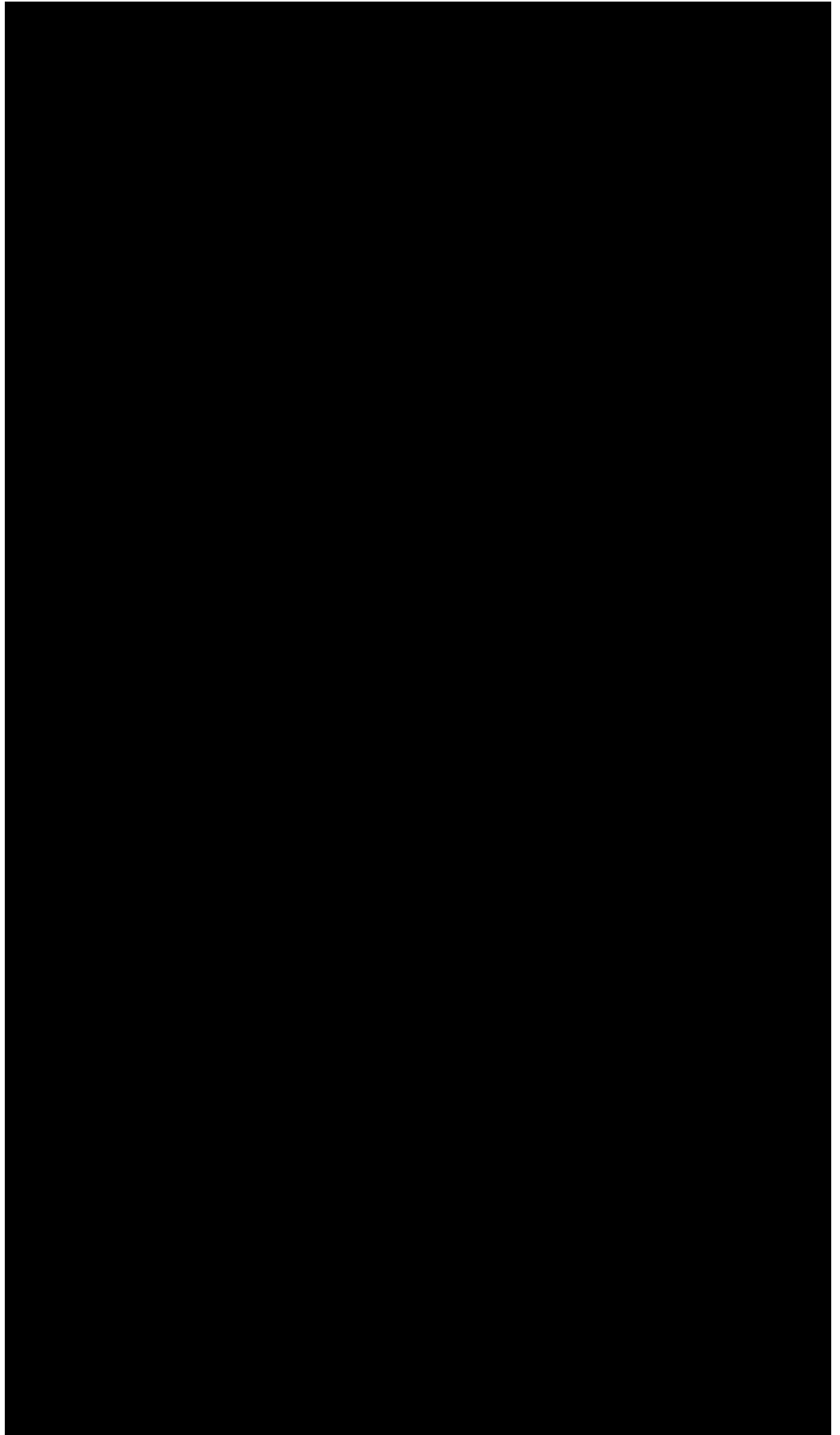


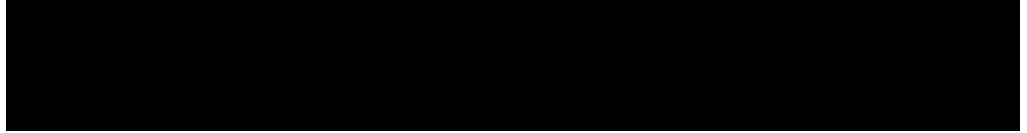




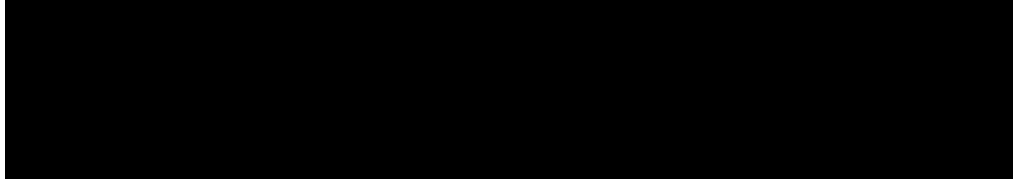


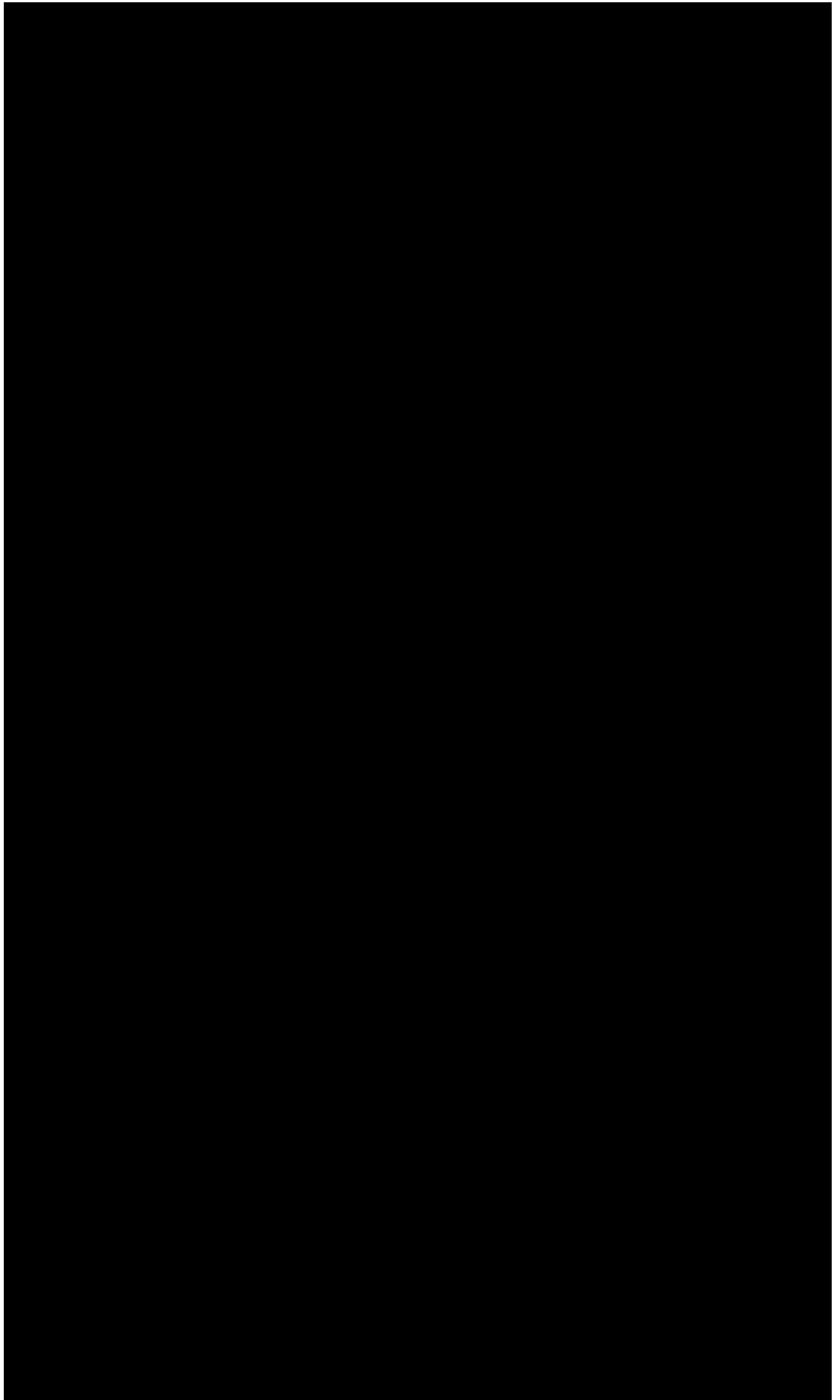


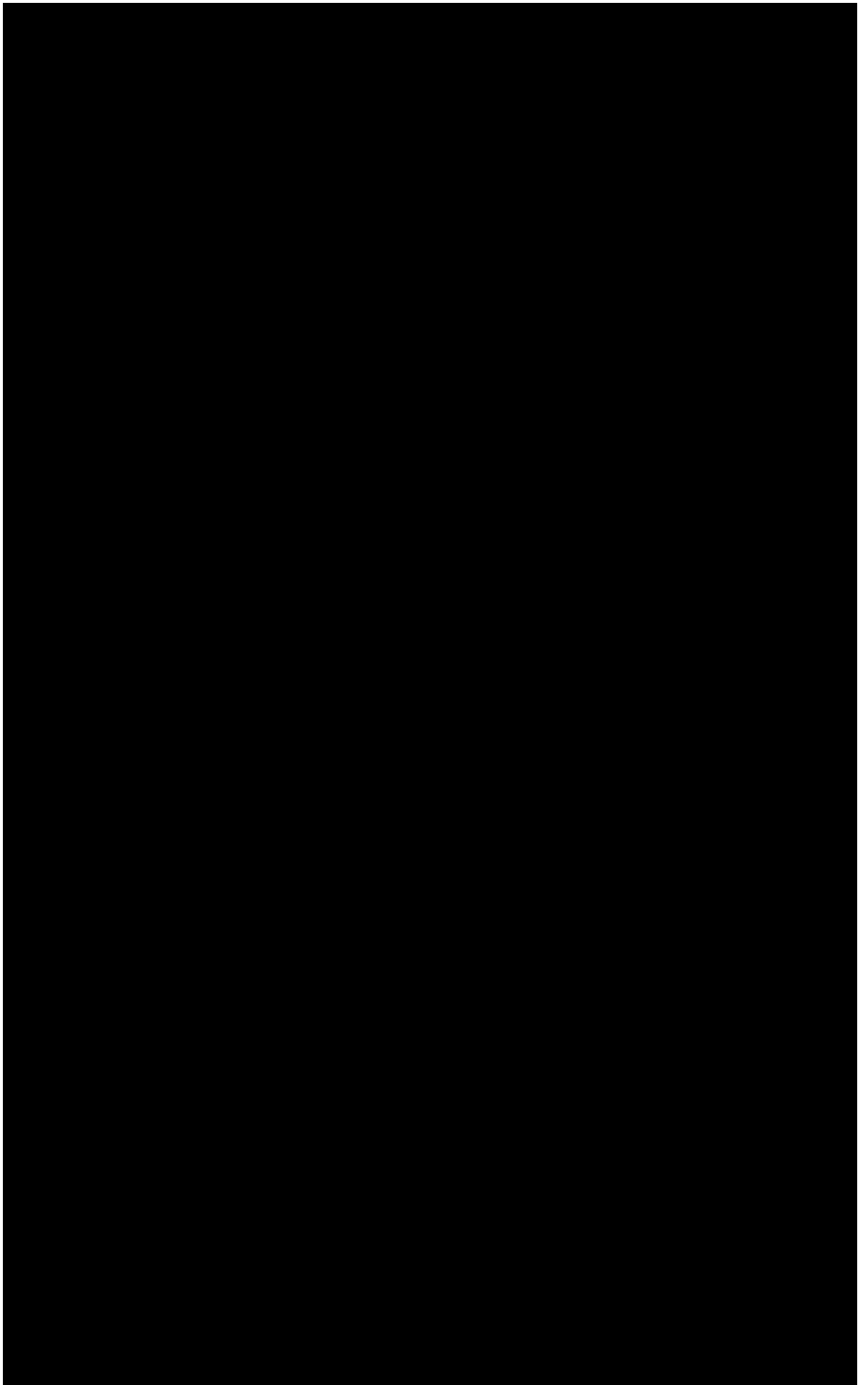


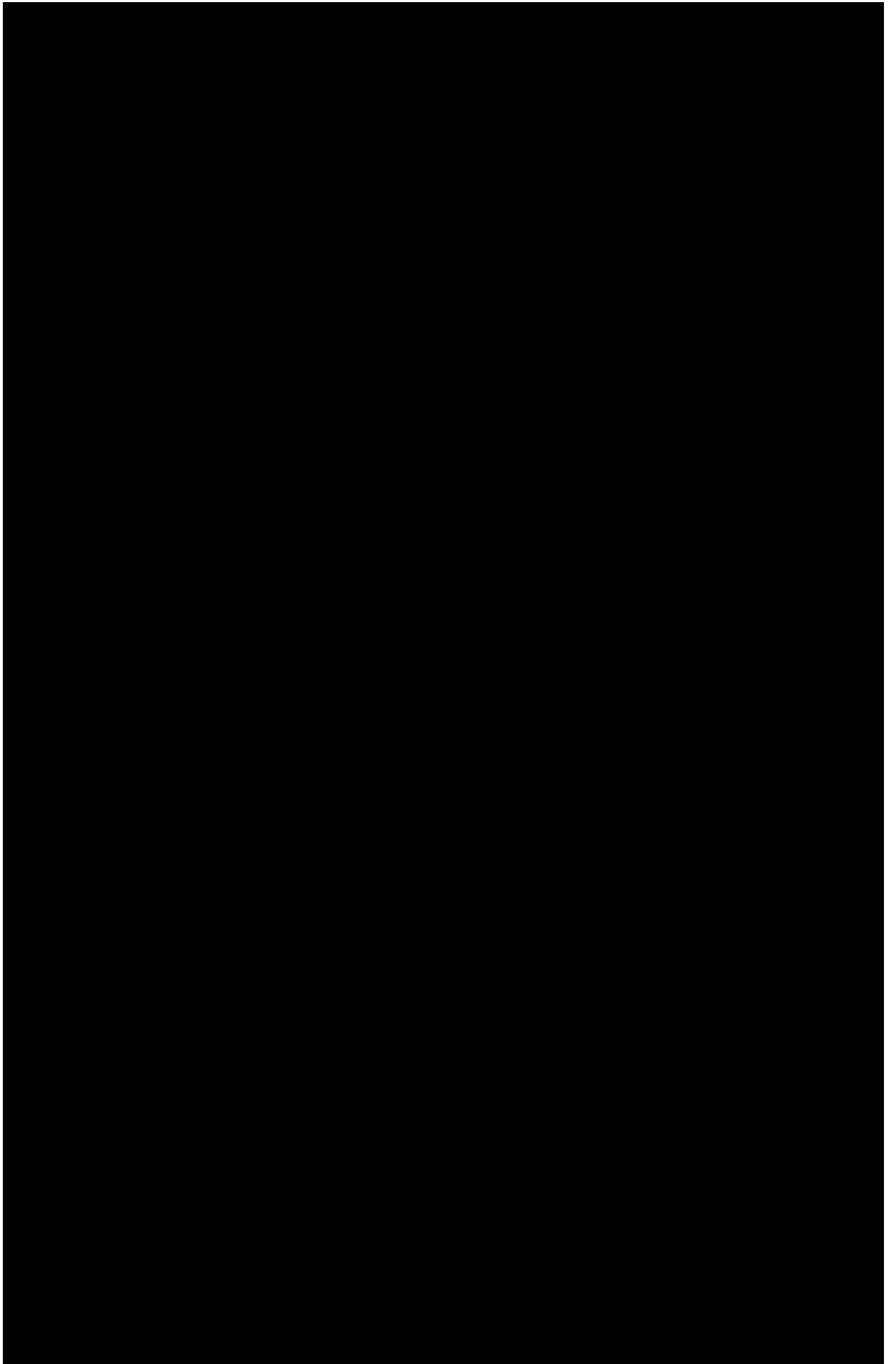


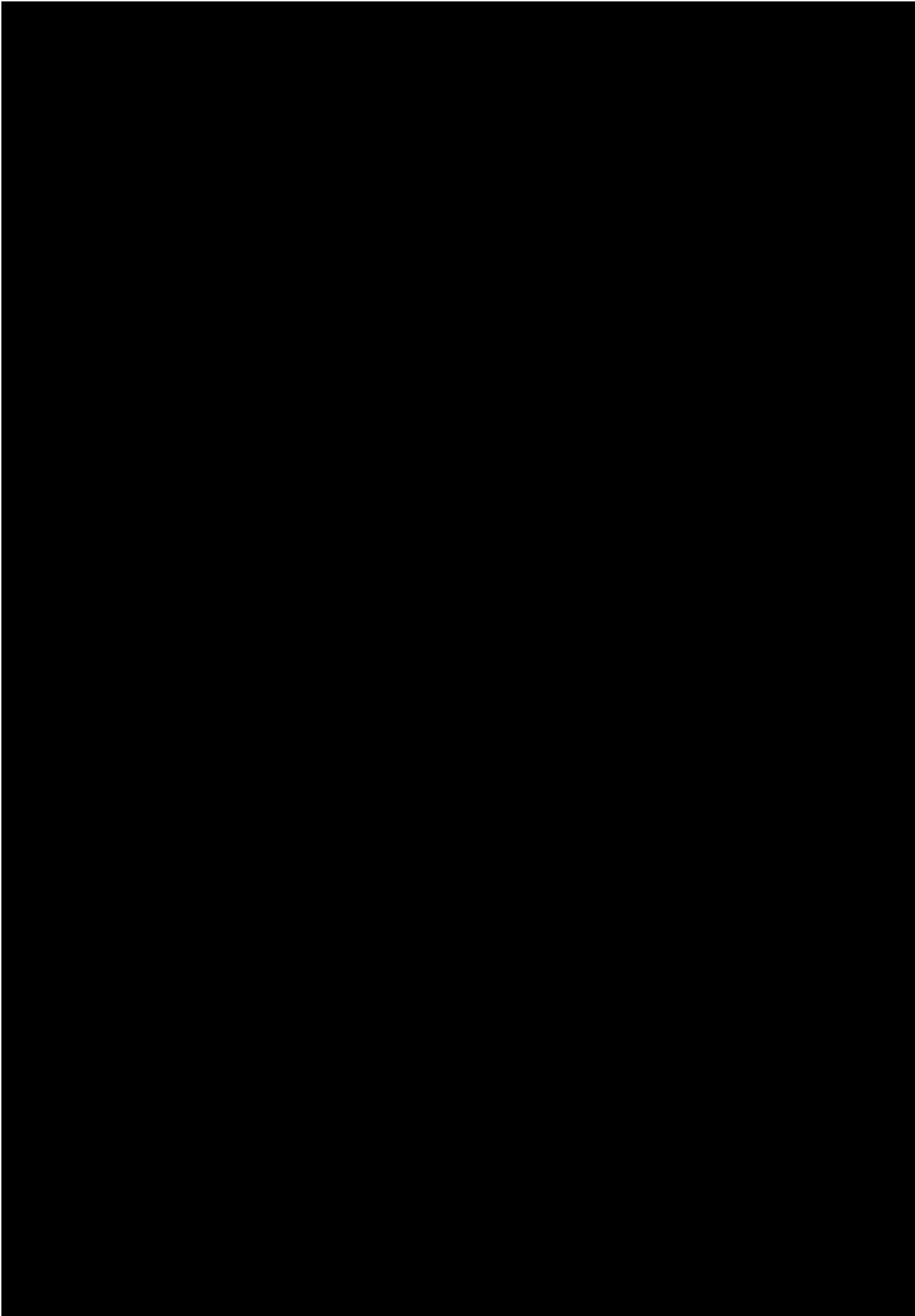
## Schedule 21 Draft Toga AOA



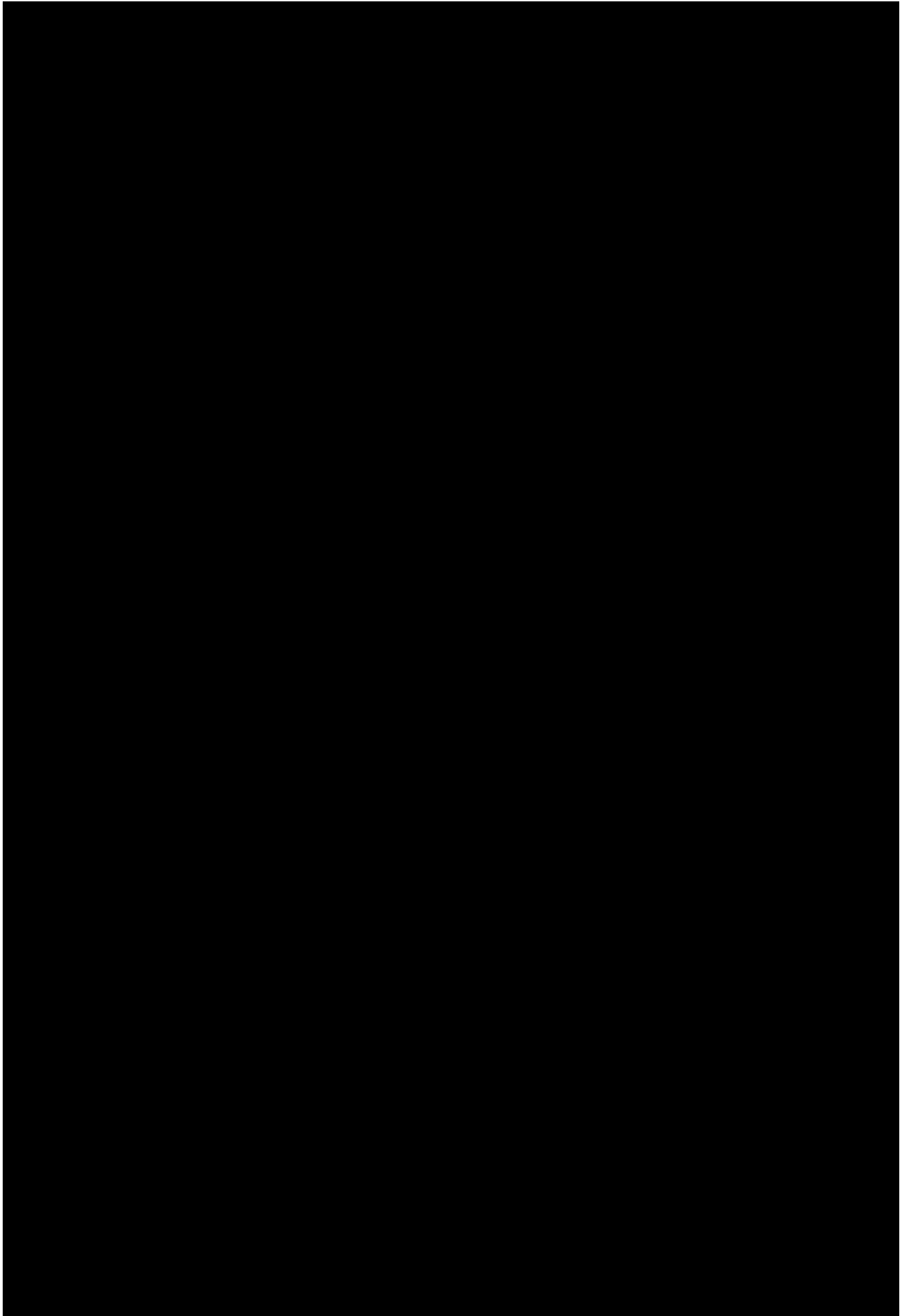


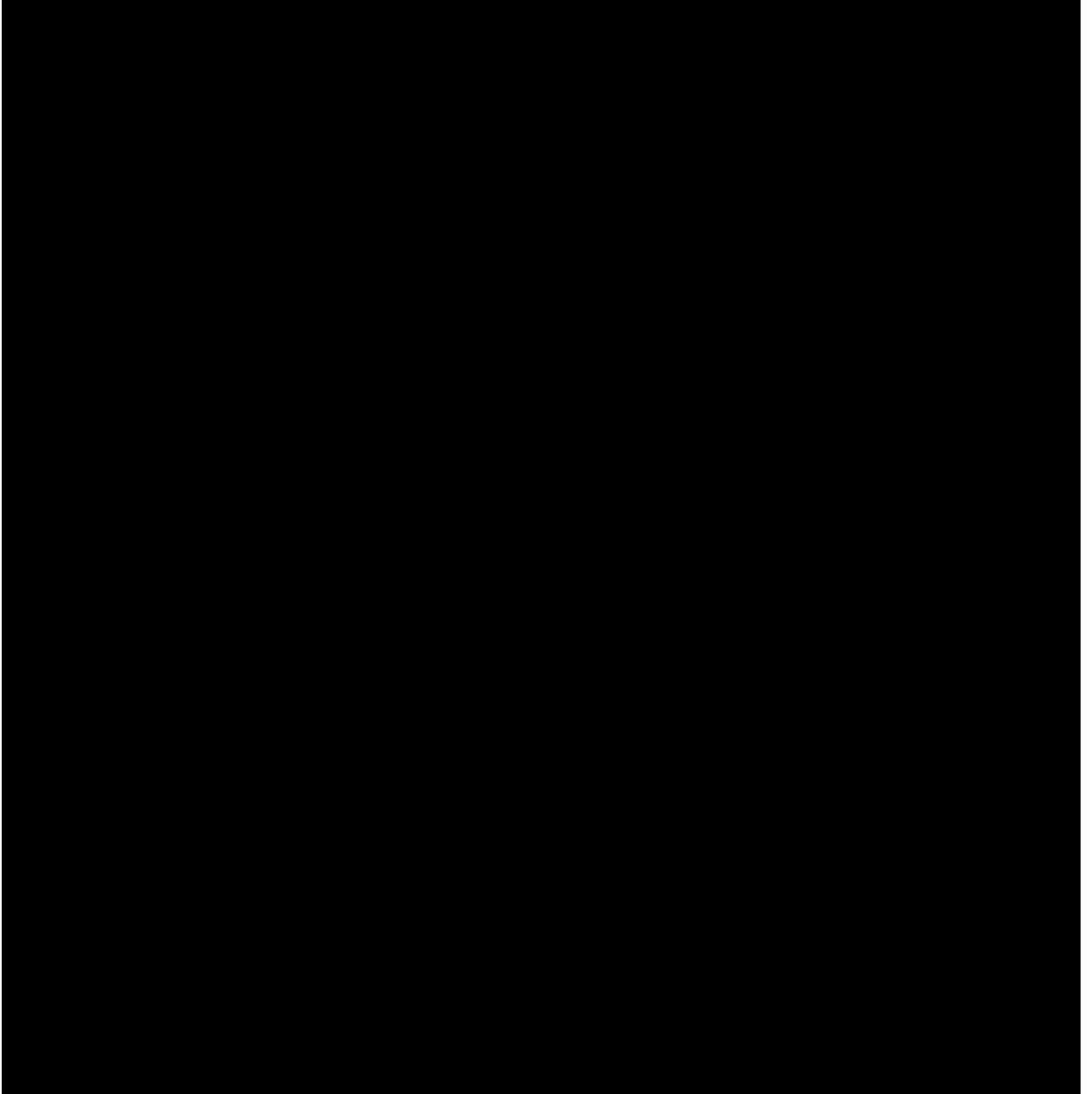






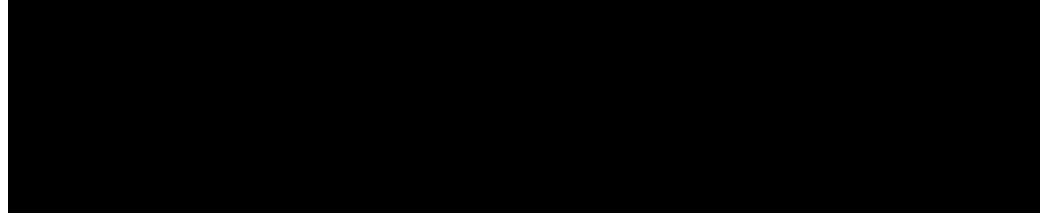






## Schedule 23 Not used

## Schedule 24 Integration Works



## Schedule 25 Sydney Innovation and Technology Precinct Provisions

- (a) Collaborate on inputs required to develop:
  - (i) the Precinct's strategic vision and economic development plan
  - (ii) the Precinct activation strategy and its implementation
- (b) Coordinate promotion and marketing of the Precinct, including Central Place Sydney via website, print, video and workshops/roadshows.
- (c) Work collaboratively to help secure tech tenants at Central Place Sydney, including:
  - (i) NSW Government exploring training/innovation/R&D grants or funding for prospective tenants;
  - (ii) Define the process for enquiries and interest from Tenants and Investors looking to establish a presence in the Precinct area;
  - (iii) Involvement from the NSW Treasury and Investment Attraction to support discussions with key anchors in Central Place Sydney;
  - (iv) Share information about potential startups, suppliers and research partners to assist with delivery of Central Place Sydney;
  - (v) Explore opportunities to flexibly structure leases for startups and scaleups within Central Place Sydney; and
  - (vi) Explore options to structure affordable space for start-ups within Central Place Sydney.

## Schedule 26 Western Gateway Design Guide

The parties acknowledge and agree that the document entitled "Schedule 26 – Western Gateway Design Guide" is included in this deed as an electronic file and is saved to USB labelled "PDA – Central Precinct Sydney – February 2023" provided by King and Wood Mallesons to Herbert Smith Freehills on or prior to the date of this deed.

## Schedule 27 Form of Deed of Novation

# Deed of Novation

Dated

#insert party name# (“Incoming Party”)

#insert party name# (“Outgoing Party”)

Transport for NSW, #insert parties names# (“Continuing Parties”)

**King & Wood Mallesons**

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

[www.kwm.com](http://www.kwm.com)

# Deed of Novation

## Contents

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<b>1</b>	<b>Interpretation</b>	<b>287</b>
1.1	Definitions	287
1.2	Interpretation	287
1.3	Variation of the Project Development Agreement	287
1.4	Capitalised terms in the Project Development Agreement	287

---

<b>2</b>	<b>Novation</b>	<b>287</b>
2.1	Consent to novation	287

---

<b>4</b>	<b>Accrued Rights</b>	<b>289</b>
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<b>6</b>	<b>Representations and warranties</b>	<b>290</b>
6.1	Representations and warranties from each party	290
6.2	Representations and warranties from Incoming Party	290

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<b>8</b>	<b>Notices and General</b>	<b>291</b>
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## Details

<b>Parties</b>	<b>Continuing Parties, Incoming Party and Outgoing Party</b>	
<b>State</b>	Name	Transport for NSW
	ABN	18 804 239 602
	Address	231 Elizabeth Street Sydney NSW 2000
	Email	<b>[#insert details]</b>
	Attention	<b>[#insert details]</b>
<b>[#Continuing Party]</b>	Name	<b>[#insert details]</b>
	Address	<b>[#insert details]</b>
	Email	<b>[#insert details]</b>
	Attention	<b>[#insert details]</b>
<b>[#Continuing Party]</b>	Name	<b>[#insert details]</b>
	ABN	<b>[#insert details]</b>
	Address	<b>[#insert details]</b>
	Email	<b>[#insert details]</b>
	Attention	<b>[#insert details]</b>
<b>Outgoing Party</b>	Name	<b>[#insert details]</b>
	ACN	<b>[#insert details]</b>
	Address	<b>[#insert details]</b>
		<b>[#insert details]</b>
	Email	<b>[#insert details]</b>
	Attention	<b>[#insert details]</b>
<b>Incoming Party</b>	Name	<b>[#insert details]</b>
	ACN	<b>[#insert details]</b>

Address **[#insert details]**  
Telephone **[#insert details]**  
Email **[#insert details]**  
Attention **[#insert details]**

---

**Business Day place (s)** New South Wales

---

**Recitals**

**A** The Continuing Parties and the Outgoing Party are parties to the Project Development Agreement.

**B** The Outgoing Party proposes to novate its interest in the Project Development Agreement to the Incoming Party pursuant to clause 36.1 (**[#insert#]**) of the Project Development Agreement.

**C** The parties agree to the novation of the Project Development Agreement from the Outgoing Party to the Incoming Party on the terms of this deed.

---

# Deed of Novation

---

## 1 Interpretation

### 1.1 Definitions

**Continuing Parties** means the State, [#insert].

**Details** means the section of this deed headed Details.

**Effective Date** means [#the date of this deed]/[#insert].

**Project Development Agreement** means the “Central Place - Project Development Agreement” between the Continuing Parties and the Outgoing Party dated [#insert].

**Project Documents** means:

- (a) the Project Development Agreement;
- (b) [#insert].

***[Drafting note: amend list of Project Document as appropriate based on the documents in existence at the time of entering into this deed which include the Outgoing Party as a party.]***

### 1.2 Interpretation

Clause 1.2 (“References to certain general terms”), clause 1.3 (“Guarantor’s obligations”), clause 1.4 (“Number”), clause 1.5 (“Headings”), clause 1.7 (“Ambiguity and inconsistency”), clause 1.8 (“Authorities”), clause 1.9 (“Transfer of functions”) and clause 2.5 (“State exercising statutory powers”) of the Project Development Agreement apply to this deed as if those clauses were set out in full in this deed.

### 1.3 Variation of the Project Development Agreement

This deed prevails over the Project Development Agreement to the extent of any inconsistency.

### 1.4 Capitalised terms in the Project Development Agreement

Capitalised terms not defined, but used in this deed, have the same meaning as in the Project Development Agreement, except where the context requires otherwise.

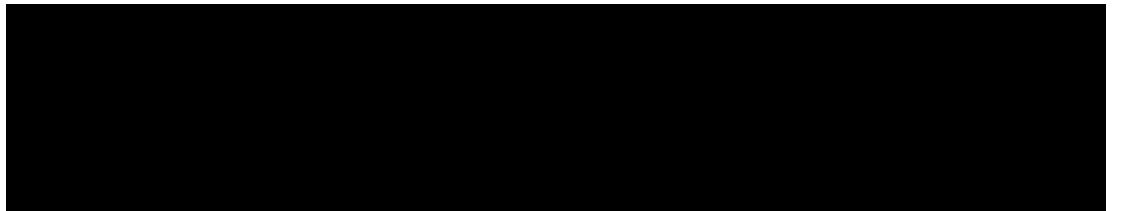
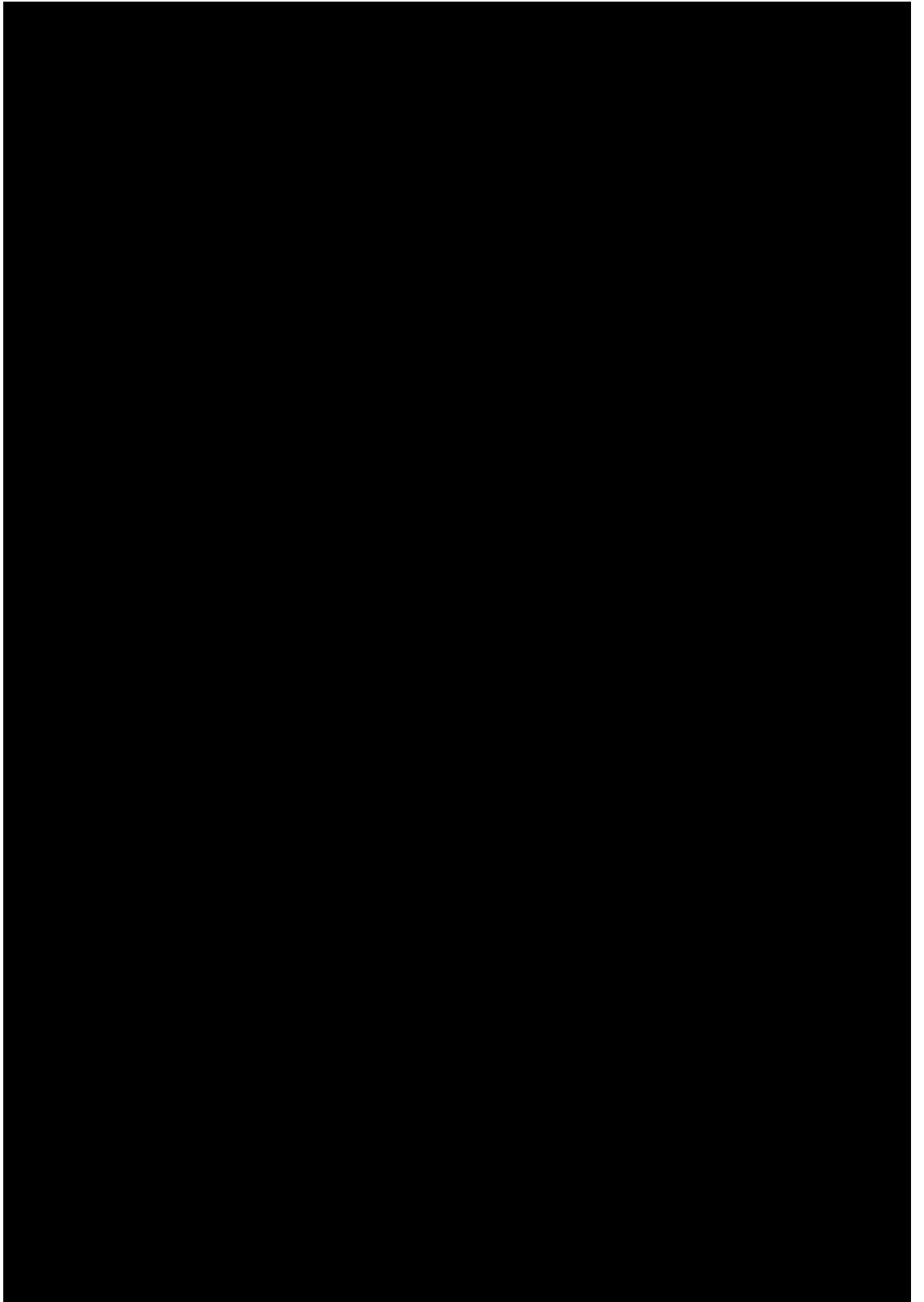
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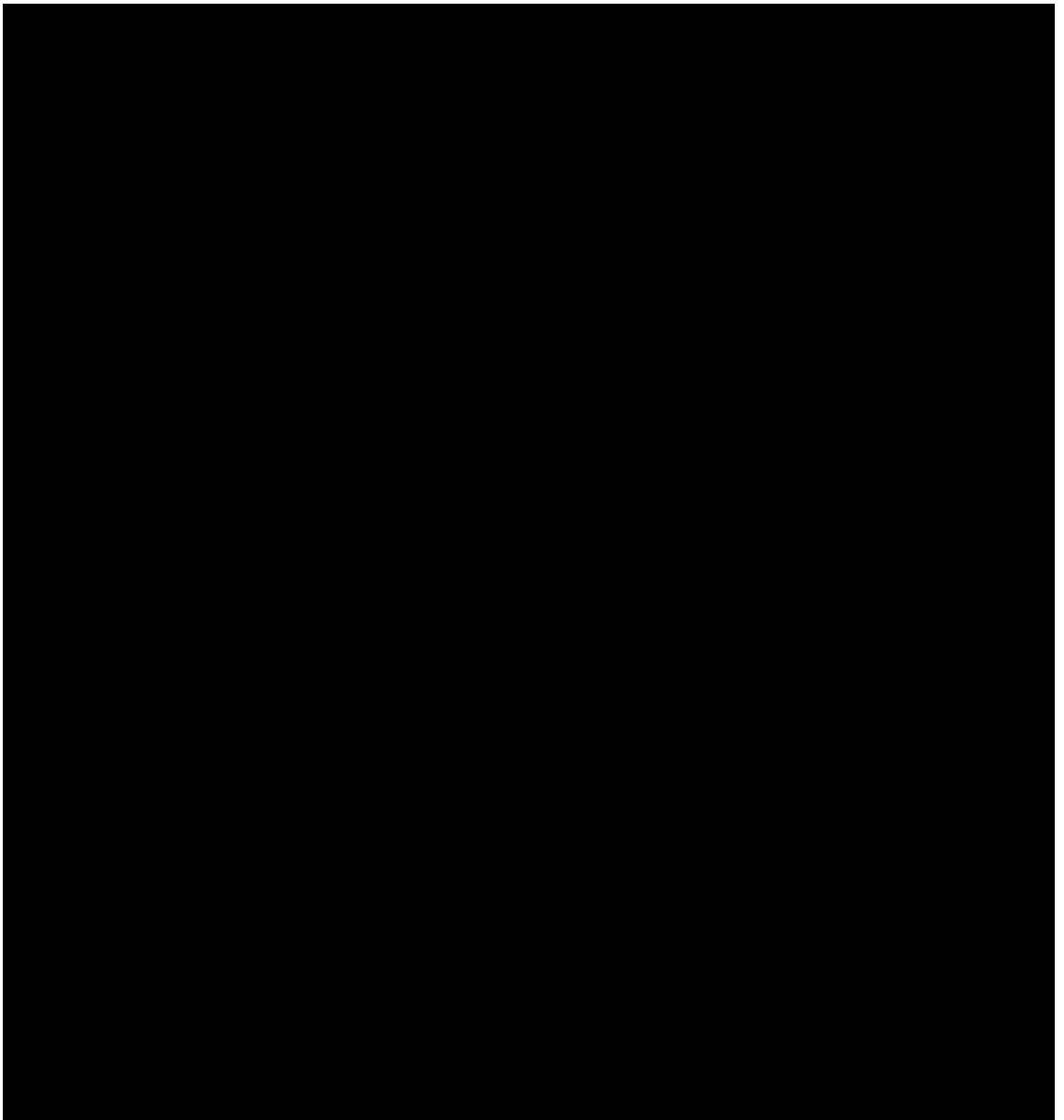
## 2 Novation

### 2.1 Consent to novation

Each party consents to the novation of the Project Development Agreement to the effect that the Incoming Party replaces Outgoing Party as the “[#insert party description]” under the Project Development Agreement on and from the Effective Date.

***[Completion Note: in circumstances where there is a change to a Developer as well as a change to a Guarantor, necessary changes to be made to reflect both changes, as there will be two Incoming Parties and two Outgoings Parties.]***





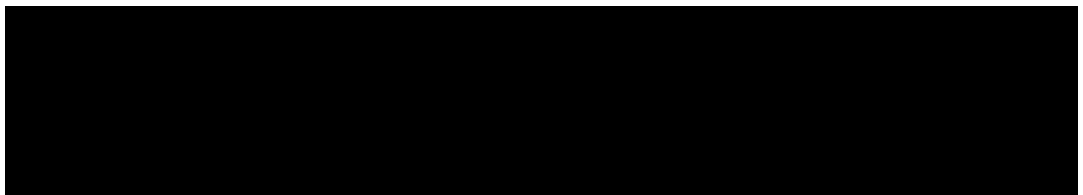
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#### **4 Accrued Rights**

The novation and release under clause 2 (“Novation”) do not prejudice any accrued rights, obligations, claims or liabilities arising under the Project Documents in connection with the performance of the Project Documents before the Effective Date which the Outgoing Party and any Continuing Party may have against each other.

---

#### **5 Indemnities**



## 6 Representations and warranties

### 6.1 Representations and warranties from each party

Each party represents and warrants to each other party that:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this deed, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this deed do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any Encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this deed, to comply with its obligations and exercise its rights under it and to allow them to be enforced; and
- (e) **(validity of obligations)** its obligations under this deed are, valid and binding and are enforceable against it in accordance with their terms; and
- (f) **(insolvency)** it is not Insolvent.

### 6.2 Representations and warranties from Incoming Party

The Incoming Party represents and warrants to each other party that:

- (a) **(power)** it has power to enter into the Project Documents, to comply with its obligations under them, and exercise its rights under them;
- (b) **(authority)** it has, in full force and effect, each authorisation necessary for it to enter into the Project Documents, to comply with its obligations and exercise its rights under them and to allow them to be enforced; and
- (c) **(validity of obligations)** its obligations under the Project Documents are valid and binding and are enforceable against it in accordance with their terms.



## **8 Notices and General**

Clause 51 ("Notices") and clause 52 ("General") (other than clauses 52.20 and 52.26) of the Project Development Agreement apply to this deed as if:

- (a) those clauses were set out in full in this deed; and
- (b) for the purpose of clause 51.1 ("Form"), the relevant addresses and emails are as set out in the Details.

**EXECUTED** as a deed

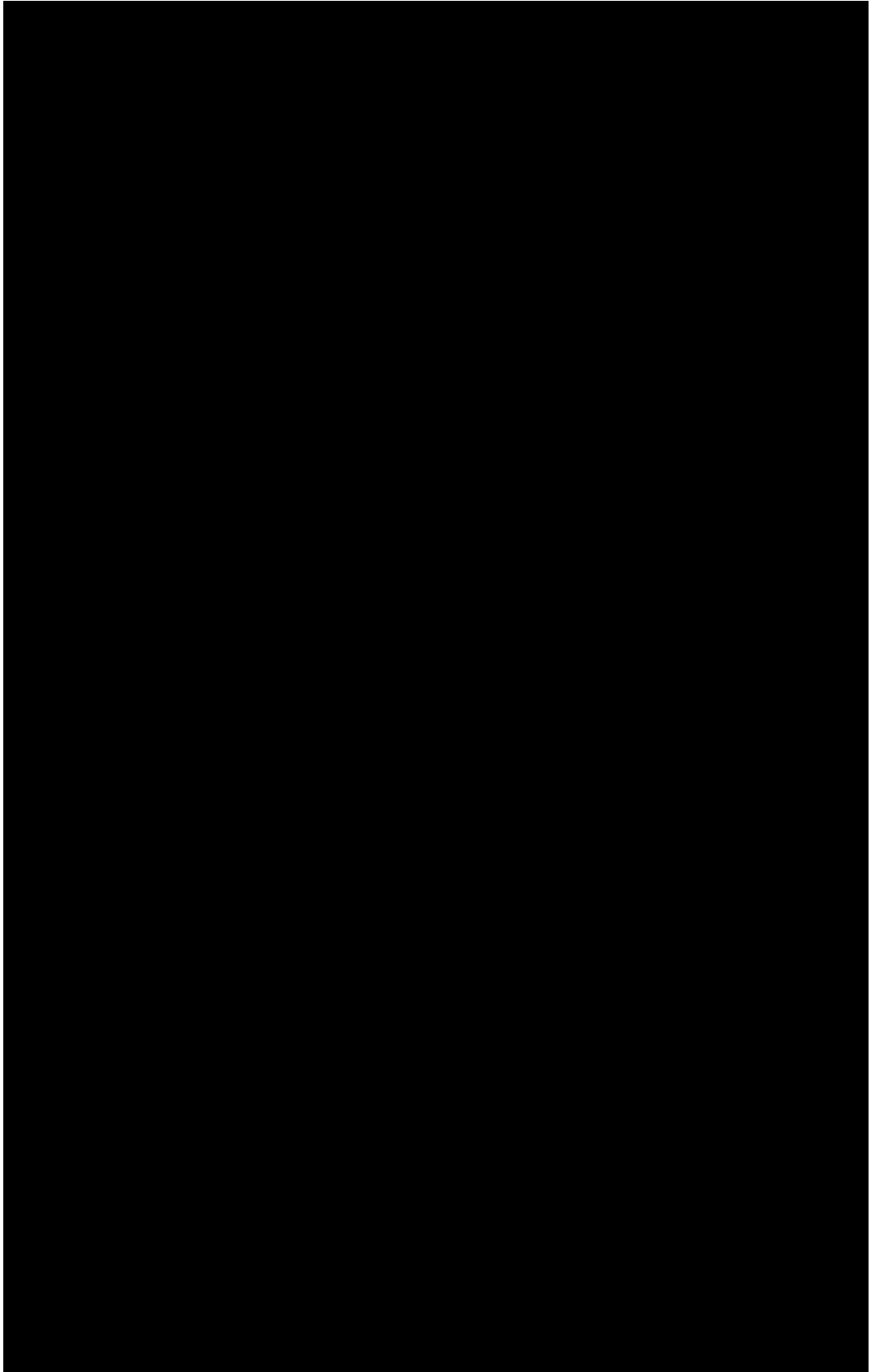
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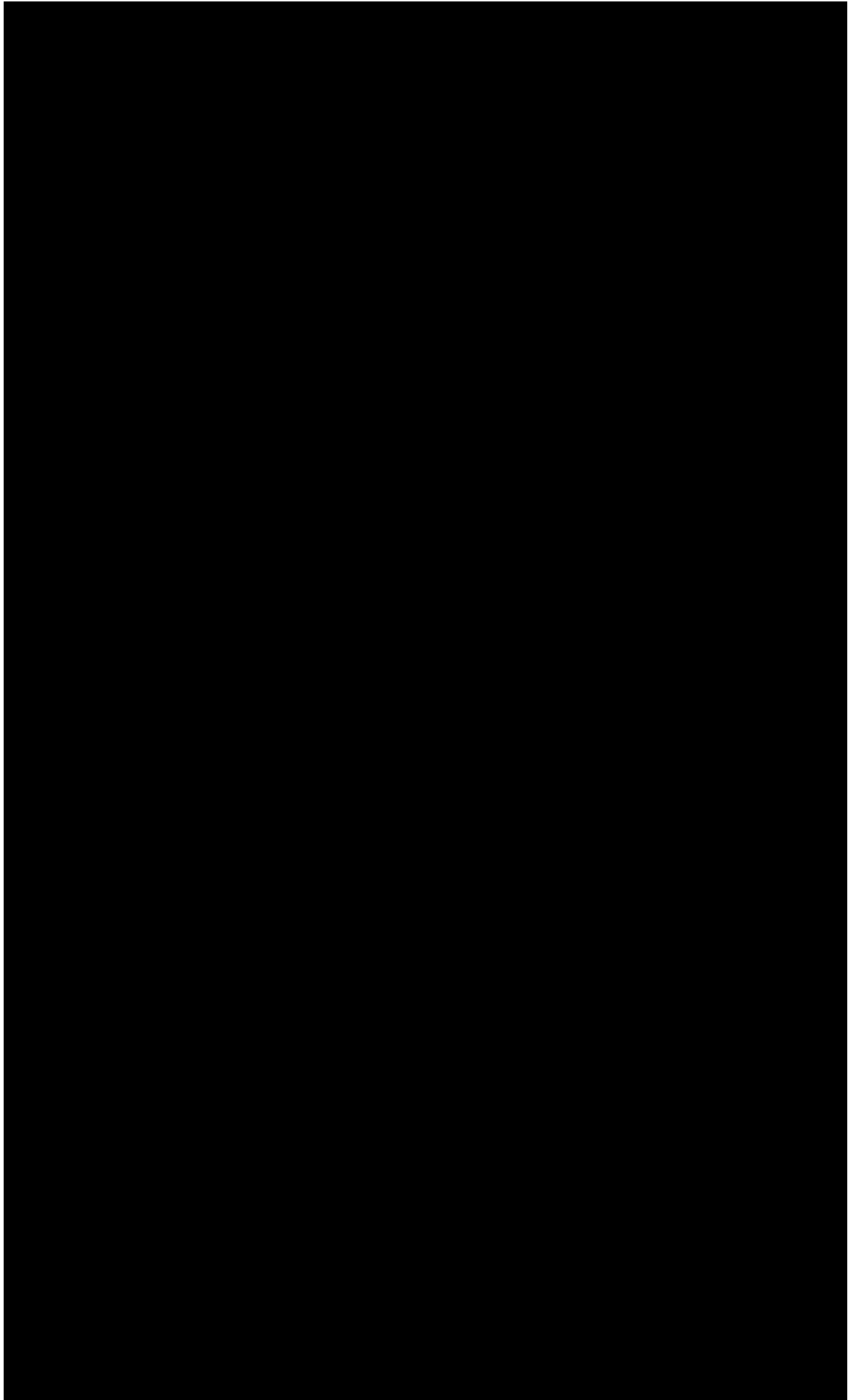
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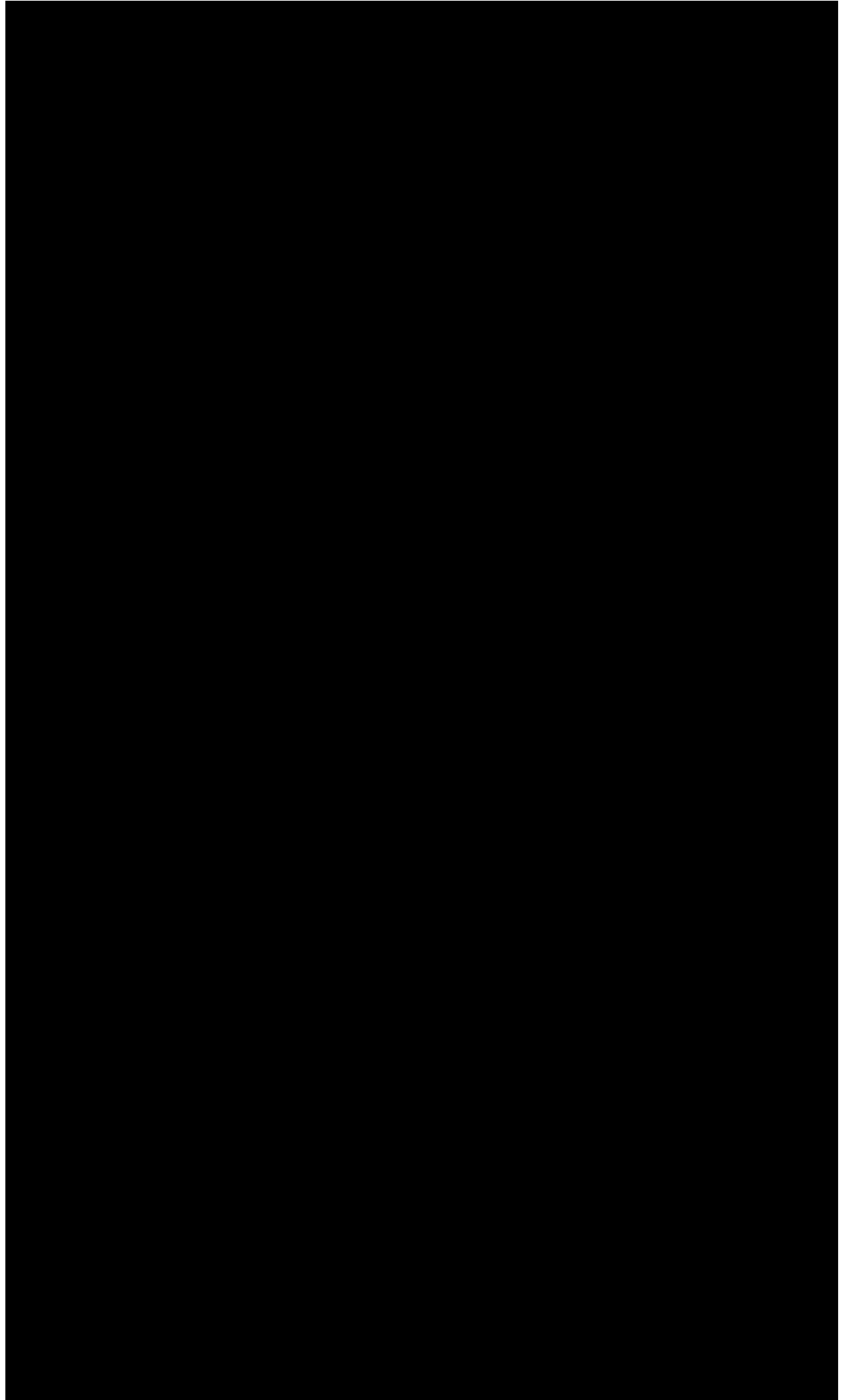
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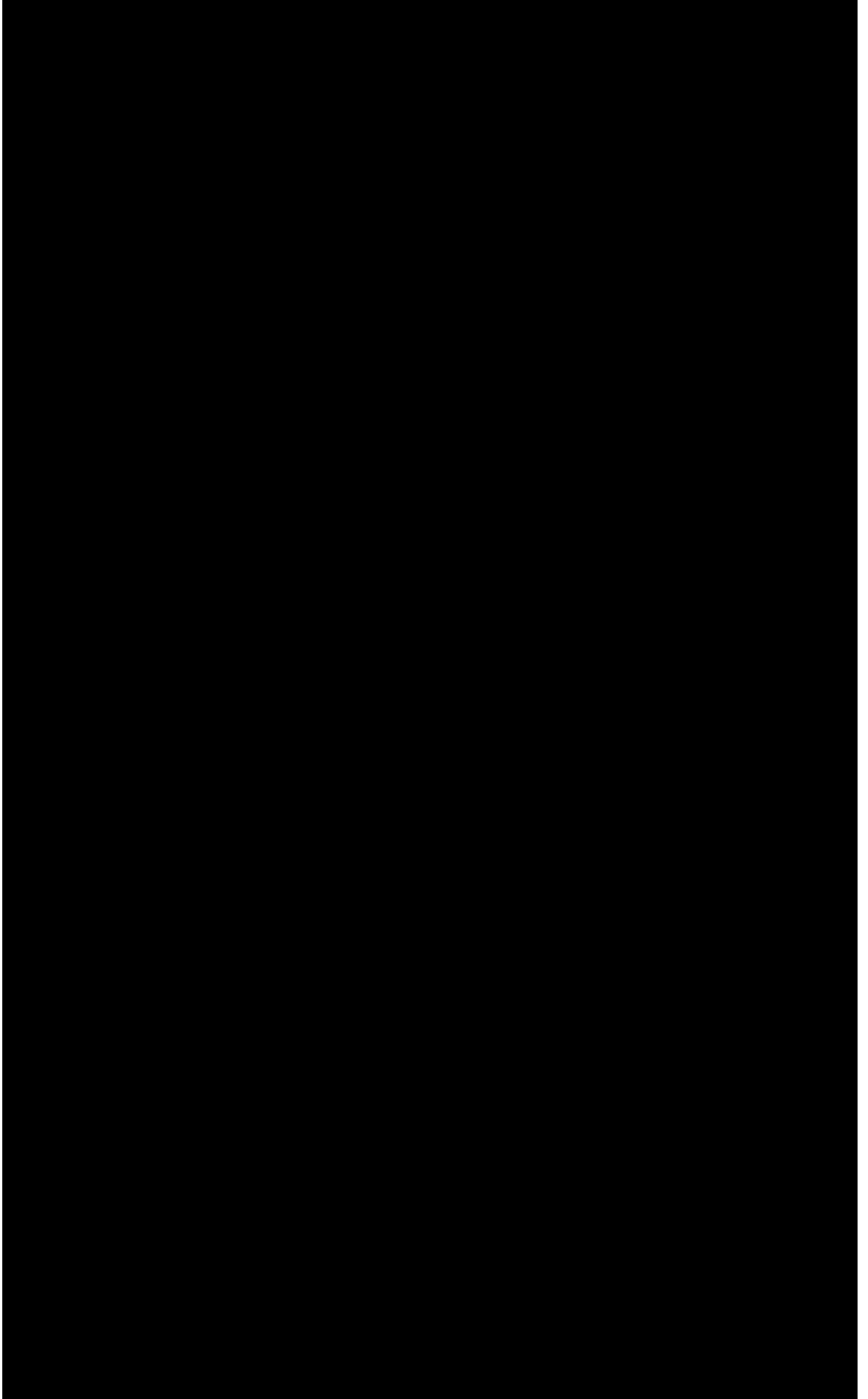


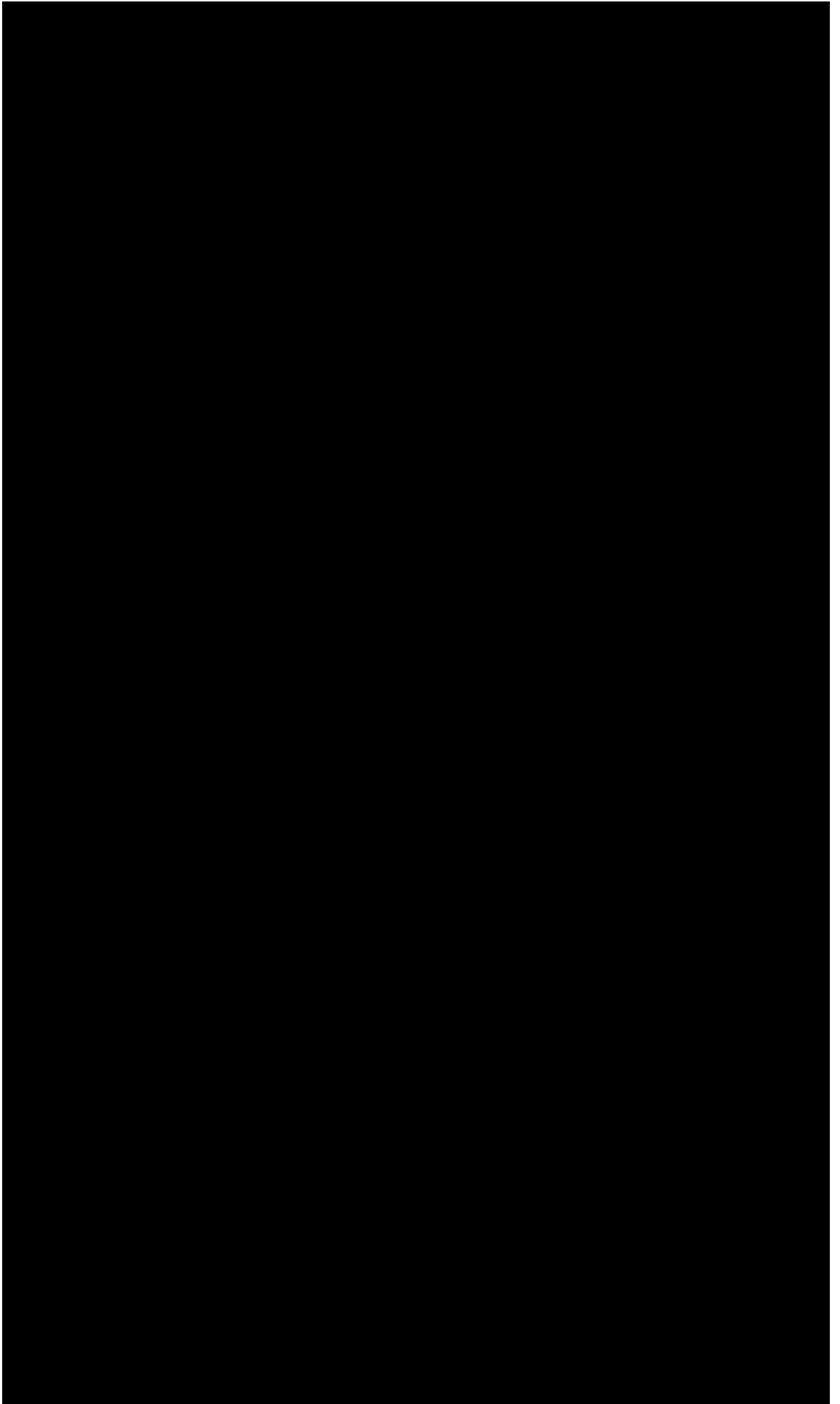
## Schedule 28 Deed of Release (Adjoining Developments)

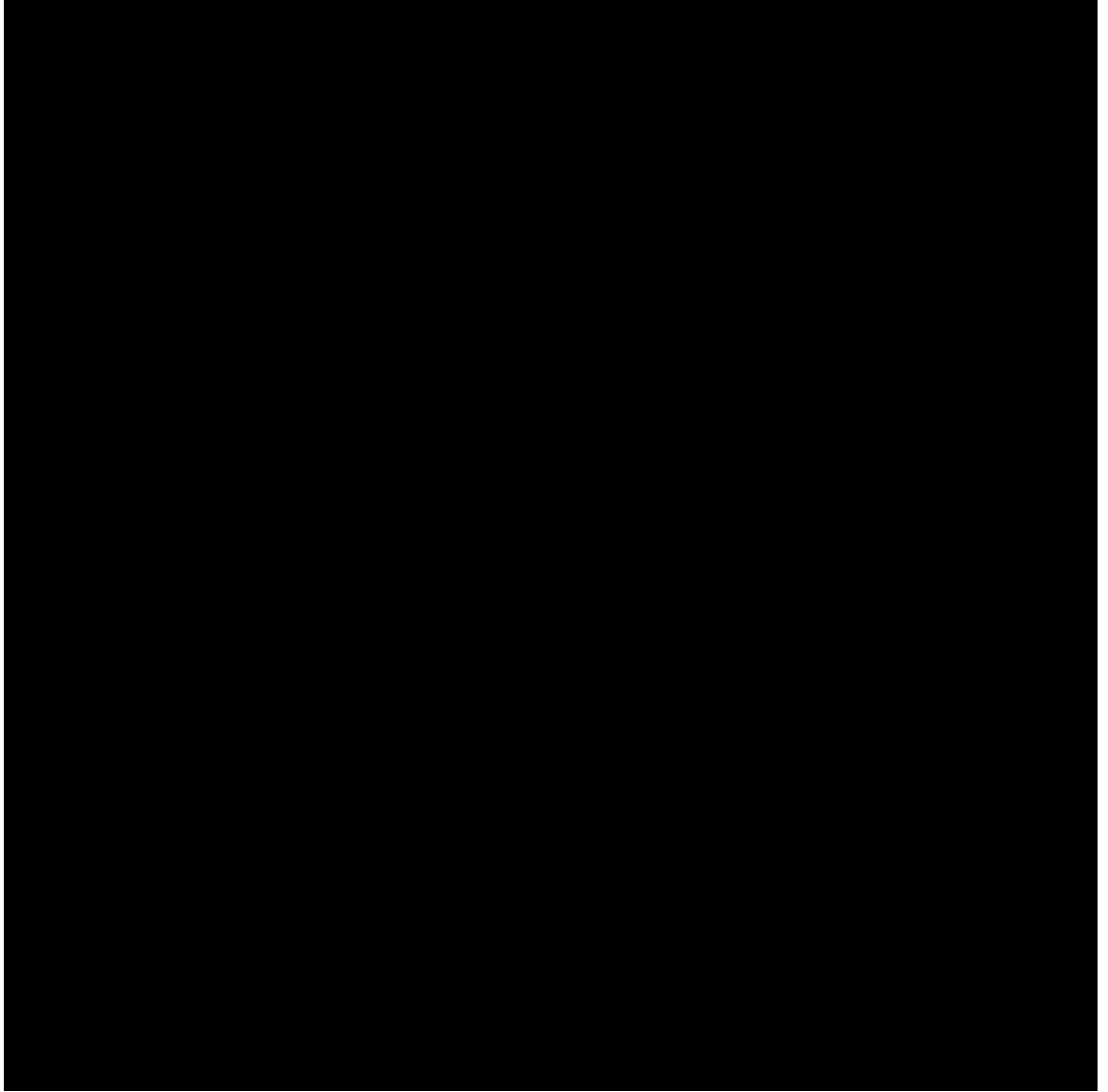




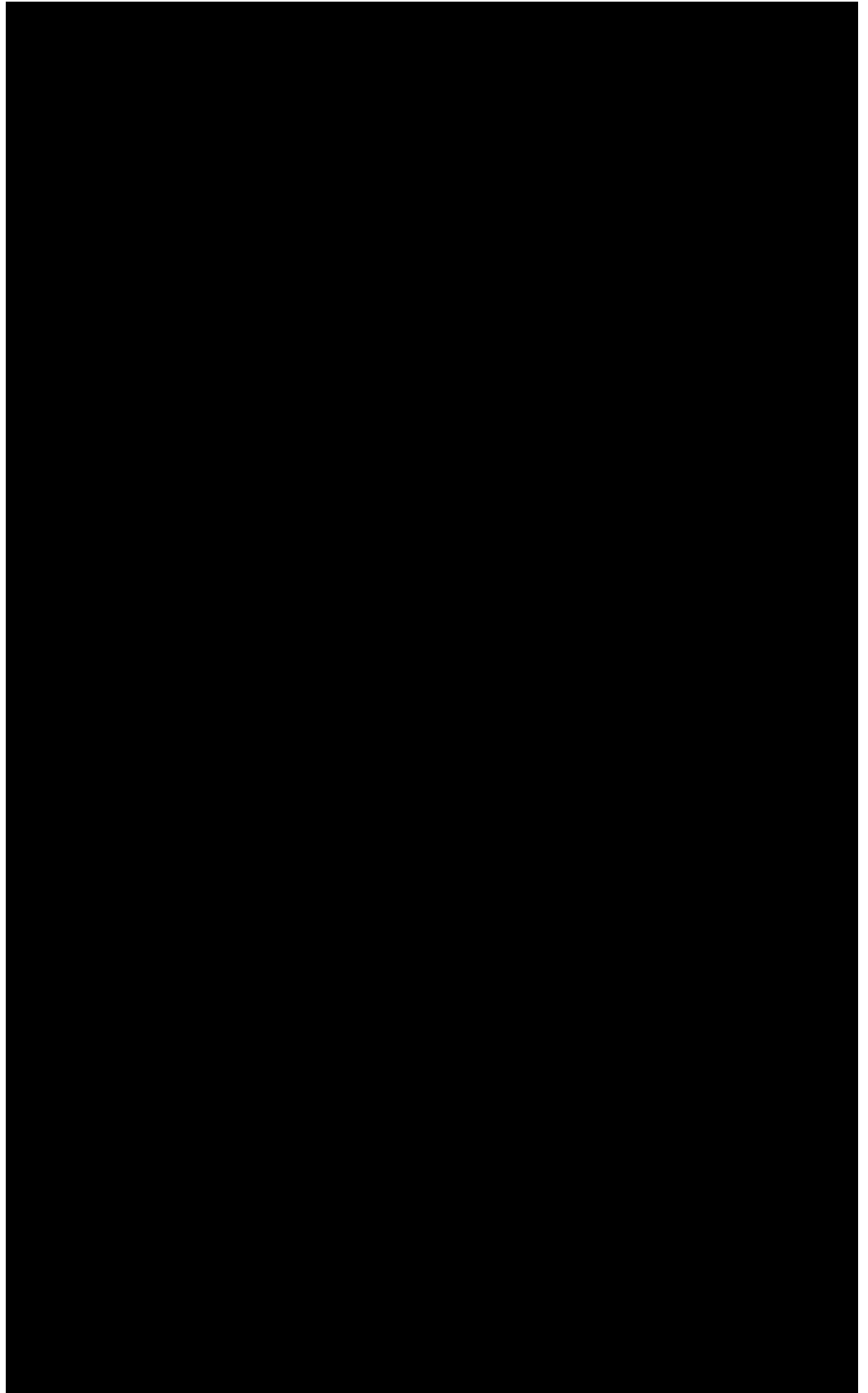


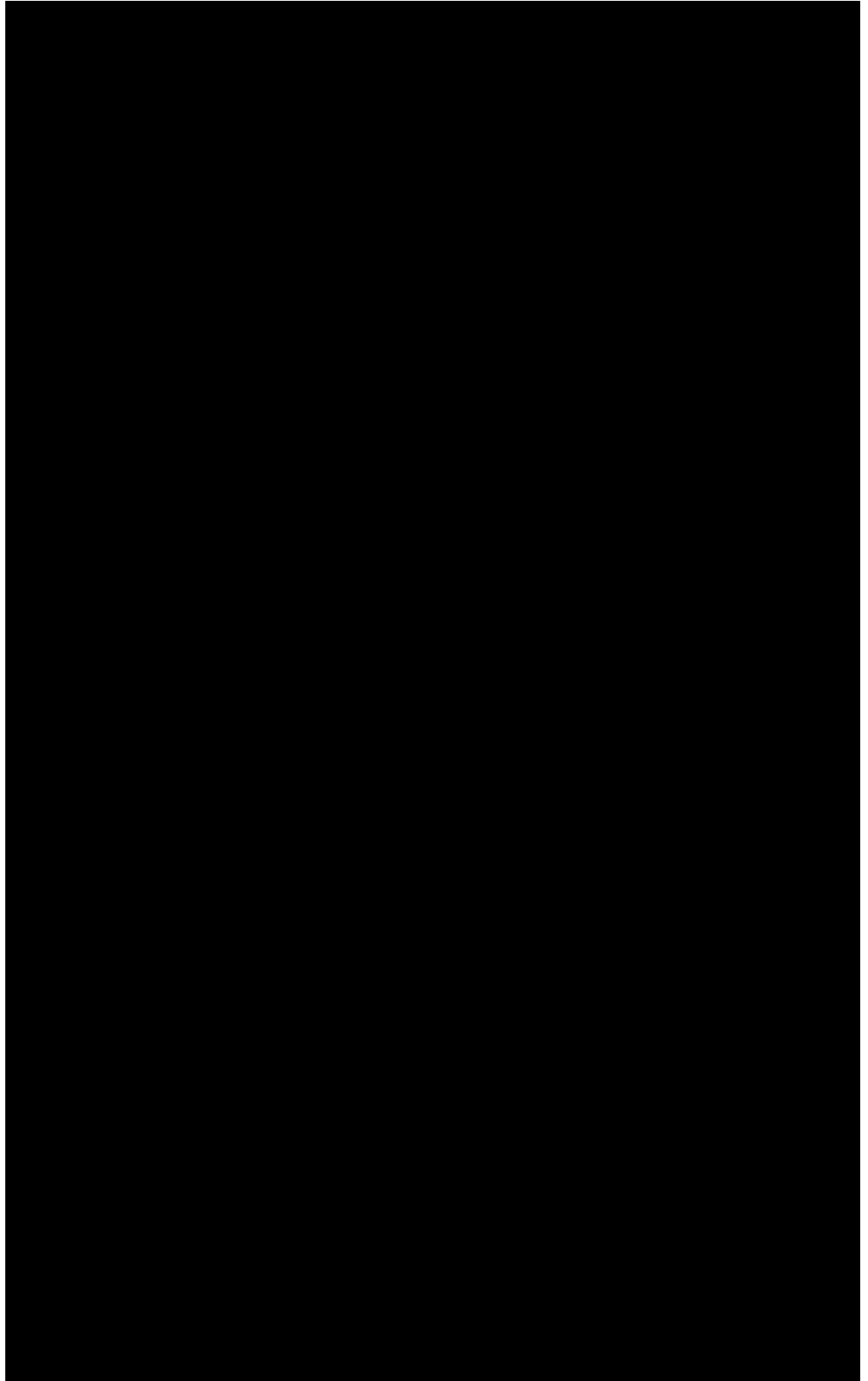






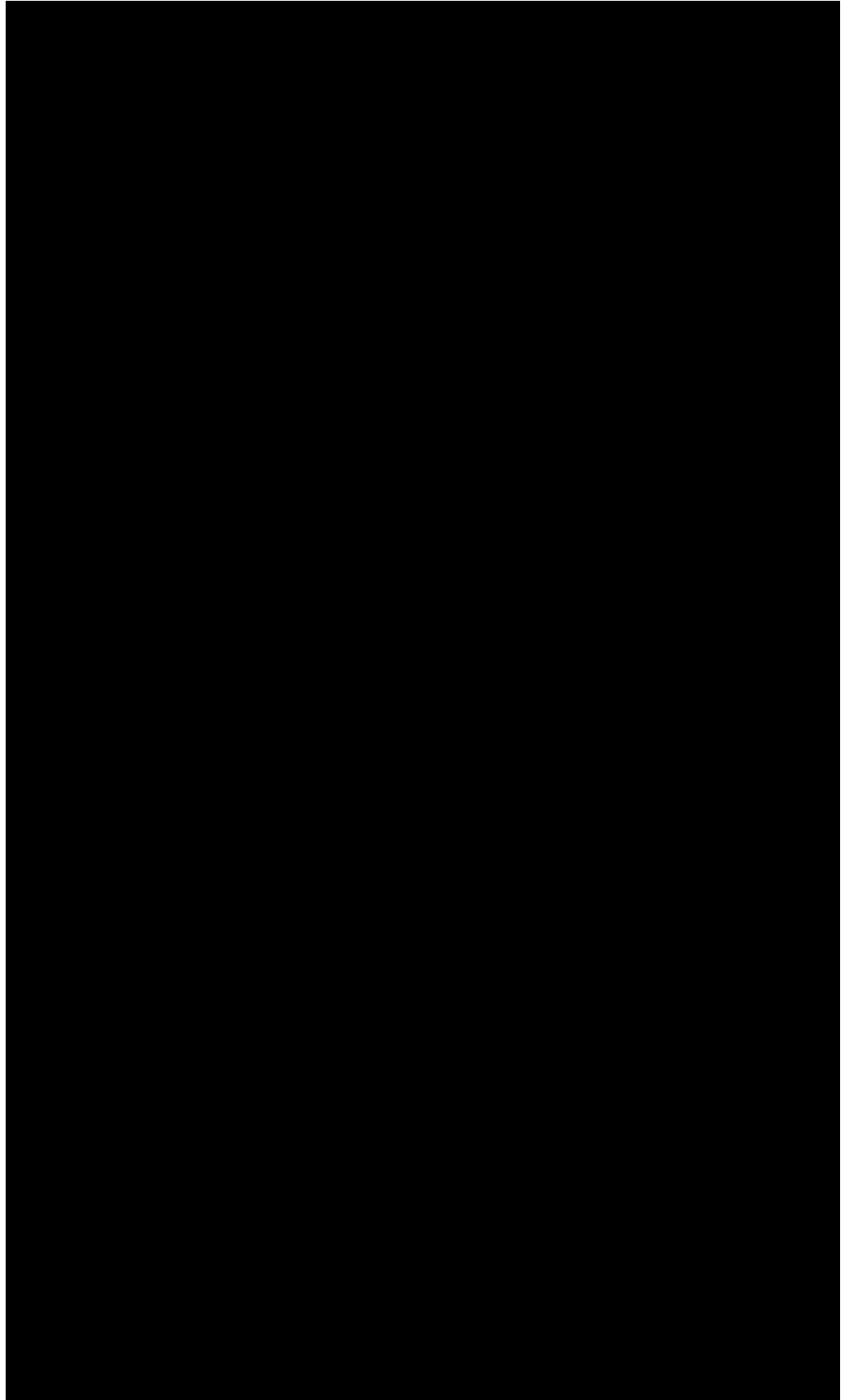
## Schedule 29 Lot 201 Services

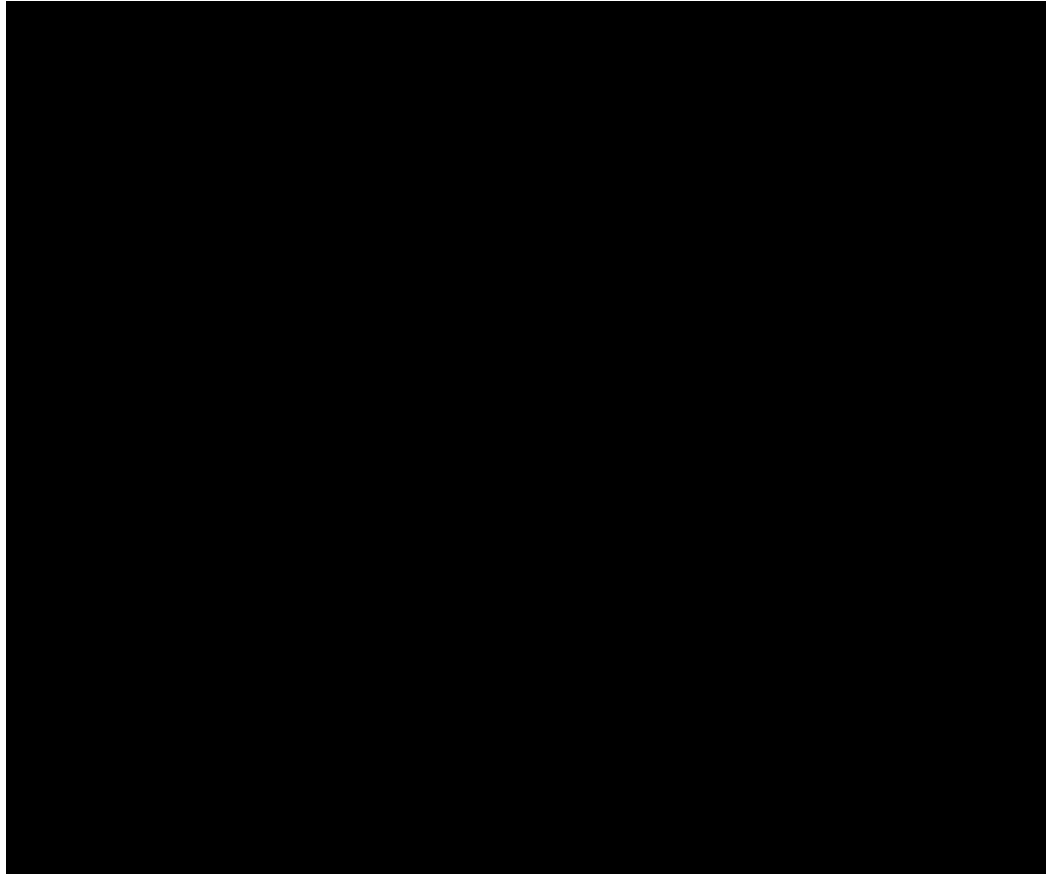






## Schedule 30 Support





## Schedule 31 Easements for the Purpose of clause 3.9

