



PLR Stage 2 Enabling Works - Independent Certifier Deed

Dated 16 September 2024

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

APP Corporation Pty Limited (ABN 29 003 764 770)
("**Independent Certifier**")

John Holland Pty Ltd (ABN 11 004 282 268) ("**Other Party**")

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PLR Stage 2 Enabling Works - Independent Certifier Deed Details

Parties	TfNSW, Independent Certifier and Other Party	
TfNSW	Name	Transport for NSW
	ABN	18 804 239 602
	Address	7 Harvest St, Macquarie Park NSW 2113
	Telephone	02 9422 7330
	Attention	Anthony Di Giacomo
Independent Certifier	<div></div>	
Other Party	<div></div>	
Governing law	New South Wales	
Representatives	TfNSW	Anthony Di Giacomo
	<div></div>	
Aggregate Liability Cap	<div></div>	
Business Day place(s)	Sydney	

Preamble	A	On or about the date of this Deed, TfNSW and the Other Party entered into the Contract.
	B	The Contract provides for certain functions to be carried out by the Independent Certifier.
	C	By this Deed, TfNSW, the Independent Certifier and the Other Party set out their rights and obligations in relation to the performance by the Independent Certifier of the Services in connection with the Contract.

PLR Stage 2 Enabling Works - Independent Certifier Deed

General terms

1 Interpretation

Acoustic Advisor Fee means the fee to be paid in respect of the Acoustic Advisor Services as specified in Schedule 2.

Acoustic Advisor Services means the services so described in Schedule 1, as amended by this Deed.

Best Industry Practice means (subject to any express provisions of this Deed which impose higher standards) the practices which are adopted by consultants with respect to services similar to the Services and which, with respect to any purpose to which the performance of the Services is directed, may be expected, in the exercise of that expertise, to accomplish that purpose in a manner consistent with recognised professional standards.

Category 1 Design Document has the meaning given to that term in the SOPA DA.

Certification and Monitoring Plan means the plan to be developed and implemented in accordance with Schedule 4.

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

- (a) under or arising out of, or in any way in connection with, this Deed or a Project Contract;
- (b) arising out of, or in any way in connection with, the Services or any 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.

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 business or loss of business 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).

Contract means the PLR Stage 2 Enabling Works Deed entered into by TfNSW and the Other Party dated on or about the date of this Deed in relation to the Enabling Works.

Contract Fee means the fee specified in Schedule 2.

Contract Fee (Option) means the fee specified in Schedule 2 for any Option.

COPC means City of Parramatta Council (ABN 49 907 174 773).

COPC MOU means the memorandum of understanding between TfNSW and COPC in respect of Archer Park.

Deed means this document and its schedules.

Design Documentation means the designs, drawings, specifications (including any environment, planning and sustainability design reports) and other design materials produced pursuant to the Contract and any other Project Contract (as applicable).

Details means the details set out on page one of this Deed.

Environmental Representative Fee means the fee to be paid in respect of the Environmental Representative Services as specified in Schedule 2.

Environmental Representative Services means the services so described in Schedule 1, as amended by this Deed.

Independent Arborist Fee means the fee to be paid in respect of the Independent Arborist Services as specified in Schedule 2.

Independent Arborist Services means the services so described in Schedule 1, as amended by this Deed.

Independent Certifier Default means an event so described in clause 15.1.

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its Services under this Deed for financial reasons;
- (b) in relation to an individual, the individual (being a party) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;

- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
- (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
- (vi) a sequestration order or winding up order is made in respect of the corporation;
- (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
- (viii) a mortgagee of any property of the corporation takes possession of that property; or
- (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Insurances means the insurances specified in Schedule 3 required to be effected and maintained under clause 12.

Key Individual means the person employed by the Independent Certifier that is to make and issue the decisions, certifications and determinations required as part of the exercise of its Services, as specified in Schedule 6.

Key Personnel means the persons specified in Schedule 6, including the Key Individual(s).

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.

Option Services means the services so described in Schedule 1.

Payment Schedule means Schedule 2.

Planning Approval means approval under the *Environmental Planning and Assessment Act 1979* published as CSSI 10035.

PLR Stage 2 means the light rail system from Parramatta CBD to Sydney Olympic Park via Camellia, Rydalmere, Ermington, Melrose Park, Wentworth Point, Sydney Olympic Park and Carter Street, including all track, catenary

systems, stops, LRVs and the Assets as more particularly described in the SPR including any modification.

PMC means Planning Ministerial Corporation trading as Office of Strategic Lands (ABN 36 691 806 169).

PMC Deed means the Deed of Agreement between TfNSW and PMC in respect of Archer Park.

Principal Parties means TfNSW and the Other Party.

Project Contracts means the various contracts that will be entered into by TfNSW for the delivery of the Project and includes the Contract.

Project Data Collaboration System (PDCS) means the web based project data and collaboration system to be used by the Principal Parties in connection with the Project, as notified by the Principal, from time to time.

Replacement Certifier means the successor of the Independent Certifier.

Representatives means the persons specified in the Details as replaced from time to time pursuant to this Deed.

Services means the services set out in Schedule 1.

SOPA means Sydney Olympic Park Authority (ABN 68 010 941 405).

SOPA DA means the "Development Agreement Parramatta Light Rail Stage 2 Enabling Works" to be entered between TfNSW and SOPA.

Variable Services means services described in Schedule 2 as may be directed by TfNSW.

1.2 Interpretation

In this Deed unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Deed includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially

the same purposes or objects as that Authority, institute, association or body;

- (e) a reference to this Deed or to any other deed, agreement, document or instrument is deemed to include a reference to this Deed or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) the obligations of TfNSW under and in connection with this Deed and any Project Contract are limited to those expressly stipulated in this Deed and the Project Contract;
- (j) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (k) a reference to this Deed includes all Schedules and Exhibits;
- (l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) where under this Deed:
 - (i) a direction is required to be given or must be complied with;
 - (ii) payment of money must be made;
 - (iii) an unconditional undertaking must be released; or
 - (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (n) for all purposes (otherwise designated as a Business Day), "day" means calendar day;
- (o) a reference to \$ is to Australian currency;
- (p) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions,

deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and

- (q) any reference to “work” will be read as referring to work or services, as the context permits.

1.3 No bias against drafting party

No term or provision of this Deed will be construed against a party on the basis that the Deed or the term in question was put forward or drafted by or on behalf of that party.

1.4 Capitalised terms in the Contract

Capitalised terms not defined, but used in this Deed, have the same meaning as in the Contract.

1.5 Inconsistency with Contract

If there is inconsistency between the provisions of this Deed and the Contract, the provisions of the Contract prevail.

1.6 Provisions limiting or excluding liability

Any provision of this Deed which seeks to limit or exclude a liability of a party, is to be construed as doing so only to the extent permitted by applicable Law.

1.7 Discretion

- (a) Subject to any express provision in the Deed to the contrary:
 - (i) a provision of the Deed which says that TfNSW or the TfNSW Representative "may" do or not do something is not to be construed as imposing an obligation on TfNSW or the TfNSW Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which TfNSW or the TfNSW Representative may exercise any discretion, power or entitlement conferred by the Deed.
- (b) Without limiting clause 1.7(a), neither TfNSW nor the TfNSW Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Independent Certifier or as required by any other legal doctrine which in any way limits the express words used in the provision of the Deed conferring the discretion, power or entitlement.

1.8 Relationship of the parties

- (a) The relationship between the Principal Parties to this Deed will not be that of partners or joint venturers and nothing in this Deed will be deemed to constitute a partnership or joint venture among them and no party will have authority or power to act unilaterally as agent for the other.
- (b) Unless otherwise expressly provided, this Deed does not:

- (i) create a partnership, joint venture or fiduciary relationship between the parties to this Deed; or
- (ii) impose any duty of good faith on TfNSW.

2 Appointment of Independent Certifier

2.1 Terms of appointment

- (a) TfNSW and the Other Party appoints the Independent Certifier to perform the Services.
- (b) The Independent Certifier's appointment commences on the date of this Deed and concludes on the earlier of:
 - (i) the date to be determined under clause 3; or
 - (ii) the date this Deed is terminated pursuant to clause 15.2.
- (c) Each Principal Party confirms and approves the appointment of the Independent Certifier as the independent certifier to do those things provided in this Deed.
- (d) The Independent Certifier will not have any duties and obligations under the Project Documents except for the Services set out in this Deed unless otherwise agreed by all parties.

2.2 Consent

The Independent Certifier accepts its appointment under clause 2.1 and agrees that it will perform the Services in accordance with this Deed and otherwise do all things contemplated to be done by the Independent Certifier under the Project Contracts.

2.3 Receipt of the Project Contracts

The Independent Certifier:

- (a) acknowledges receipt of copies of the Project Contracts; and
- (b) confirms that it has read and will be deemed to have informed itself fully of:
 - (i) the requirements of the documents referred to in clause 2.3(a);
 - (ii) the nature of the work necessary for the performance of the Services;
 - (iii) the accuracy and completeness of the description of the Services;
 - (iv) the fees payable to it which are to cover completely the costs of complying with the Services; and
 - (v) all matters and things necessary or ancillary to the due and proper performance of the Services.

2.4 Warranty

The Independent Certifier warrants to the Other Party and TfNSW that it has received the Contract and has read and is familiar with the terms (as well as the requirements) of the Contract so as to be in a position to duly perform the relevant Services.

3 Term of appointment

The Principal Parties' rights under this Deed to require the Independent Certifier to perform the Services remain in effect until the Independent Certifier has completed and discharged the last of the Services and all of its other obligations, functions and duties under this Deed.

4 Services performed by Independent Certifier

4.1 Standard of performance

- (a) The Independent Certifier warrants that it has the resources and expertise to perform the Services.
- (b) In performing the Services, the Independent Certifier must:
 - (i) comply with this Deed;
 - (ii) comply with all Laws;
 - (iii) apply Best Industry Practice;
 - (iv) act in good faith, impartially, honestly, diligently, reasonably and with a degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of consultants experienced in the performance of the same or similar services as are required to be performed by the Independent Certifier under this Deed; and
 - (v) perform all of its Services:
 - (A) independently;
 - (B) within the times specified in this Deed, and if no time is specified, promptly and with all due expedition;
 - (C) in a manner which will not will not prevent, hinder, delay, disrupt or otherwise interfere with any work or services performed by any person (including the Principal Parties);
 - (D) in a manner that does not cause or contribute to any Principal Party being in breach of its obligations under the Project Contracts or Planning Approval; and
 - (E) in accordance with the requirements of the Contract and Planning Approval.

4.2 Services

- (a) The Independent Certifier must perform each of the Services specified in Schedule 1.
- (b) The Independent Certifier must provide a copy of such certificates or determinations made in the course of performing the Services to all of the Principal Parties on the same day as issue of such certificate or determination, together with written reasons if required by the Contract.

4.3 Variations

- (a) TfNSW may from time to time give the Independent Certifier a notice that:
 - (i) changes the Services;
 - (ii) deletes any Services; and/or
 - (iii) adds new Services.
- (b) If directed by TfNSW, the Independent Certifier must provide a detailed proposal in relation to the pricing, timing and resources impacts of a notice that TfNSW is contemplating giving under clause 4.3(a), together with any other information reasonably required by TfNSW within the time reasonably directed by TfNSW.
- (c) The Independent Certifier must comply with any notice given under clause 4.3(a).
- (d) If TfNSW issues a notice under clause 4.3(a), then:
 - (i) TfNSW and the Independent Certifier will seek to agree any required amendments to the Contract Fee and timing requirements; and
 - (ii) failing agreement, the adjustment to the Contract Fee and timing requirements will be determined by the TfNSW Representative:
 - (A) in relation to pricing:
 - (aa) by applying the rates and prices in this Deed; and
 - (ab) in the absence of any applicable rates and prices, on the basis of reasonable rates and prices; and
 - (B) in relation to timing requirements, acting reasonably.
- (e) If the Independent Certifier considers that the TfNSW Representative has not acted reasonably as required by this clause:
 - (i) the Independent Certifier must continue to perform the Services;
 - (ii) the Independent Certifier may refer TfNSW's Representative's determination to dispute under clause 23; and

- (iii) if it is determined that the TfNSW Representative has not acted reasonably then the TfNSW Representative must re-consider its determination acting reasonably.
- (f) If TfNSW gives the Independent Certifier a notice under clause 4.3(a)(ii) then TfNSW may have the deleted Services and have them undertaken by others.
- (g) If the Independent Certifier considers that any direction or other circumstance changes the Services or adds new Services in relation to some or all of the Contracts, and TfNSW has not given a notice under this clause, the Independent Certifier must, if it wishes to make a Claim against TfNSW for an adjustment to the Contract Fee or timing requirements:
 - (i) give a notice to TfNSW within 10 Business Days of becoming aware of the changed or new Services (but in any event before commencing work on the subject matter of any direction), expressly specifying the direction, event, circumstance, act, omission, facts or matters giving rise to the alleged entitlement to Claim; and
 - (ii) continue to carry out the Services in accordance with this Deed and all directions of TfNSW, including any direction in respect of which notice has been given under this clause 4.3(g).
- (h) Claims submitted by the Independent Certifier under clause 4.3(g) will be considered in the first instance by TfNSW's Representative, who may accept or reject the Claim in part or full, and may consult with any Other Party to verify the alleged event, circumstance, act, omission, fact or matter giving rise to the Independent Certifier's Claim. If the Independent Certifier wishes to dispute the rejection of the Claim it may do so under clause 23.
- (i) If within 20 Business Days after first receipt of a Claim under clause 4.3(g) TfNSW's Representative has not made a decision on the Claim, the Claim will be deemed to have been rejected by TfNSW.

4.4 Independent Certifier must continue to perform

Despite any action by the TfNSW under clause 4.3 the Independent Certifier must continue to perform the Services, as varied under clause 4.3.

4.5 Option Services

- (a) The Independent Certifier acknowledges that:
 - (i) under the Contract, TfNSW may by written notice exercise an Option, and that commencing upon the issue of such a notice, TfNSW and the Other Party must perform their obligations under the Contract on the basis that the Contract Sum, the SPR and the provisions of the Contract are adjusted for the relevant Option; and
 - (ii) the exercise of an Option by the Principal's Representative under the Contract may result in a change to the Enabling Works or the requirements of the SPR.
- (b) If TfNSW exercises an Option, then the Independent Certifier must perform the Option Services in accordance with this Deed and on the

basis that the Contract Sum, the SPR and the provisions of the Contract are adjusted for the relevant Option.

- (c) The Independent Certifier has no Claim in respect of the Contract Fee (Options) for the Option Services unless TfNSW has exercised an Option in accordance with and subject to the Contract.

5 Administrative obligations

5.1 Plans

- (a) The Independent Certifier must develop and implement such plans as reasonably required by the TfNSW Representative in connection with the Services.
- (b) Without limiting clause 5.1(a), the Independent Certifier must develop and implement the Certification and Monitoring Plan.
- (c) In developing the Certification and Monitoring Plan, the Independent Certifier must implement the requirements in Schedule 4.

5.2 Reporting

The Independent Certifier must prepare a consolidated monthly report of a maximum of 20 A4 pages (plus attachments, if necessary) setting out:

- (a) the tasks undertaken by the Independent Certifier during that month in respect of Services performed under this Deed;
- (b) the visits made by the Independent Certifier to the Site and elsewhere in connection with the Project during that month;
- (c) the documents reviewed by the Independent Certifier during that month and the current status of those documents as they relate to the Contract;
- (d) a register of all notices given and received by the Independent Certifier to date under the Contract;
- (e) the progress made in the development of Design Documentation, or the construction of works performed under the Contract with reference to the Enabling Works Program;
- (f) early warning of any Design Documentation proposed for certification in the coming month that in the Independent Certifier's opinion is not likely to achieve certification;
- (g) tests attended by the Independent Certifier during that month and the results of those tests;
- (h) details of any Defects identified by the Independent Certifier or alleged Defects notified to the Independent Certifier by the Principal Parties in respect of the Contractor's activities under the Contract; and
- (i) any non-conformances or other issues identified by the Independent Certifier,

and submit that report to TfNSW no later than 5 Business Days after the end of the month to which the report relates.

5.3 Review of documentation

- (a) The Independent Certifier must use the PDCS to manage and record all correspondence, including certificates, comments, determinations and all other records.
- (b) All information submitted or exchanged between the Independent Certifier and the Principal Parties and any relevant Authorities must occur within the PDCS.
- (c) The PDCS will be provided to the Independent Certifier at no cost, with training available from TfNSW as required.

5.4 Attendance

- (a) The Independent Certifier must attend all meetings, including all contract administration meetings and discipline-specific meetings as contemplated the Contract or as reasonably requested by TfNSW. The Independent Certifier must ensure that any personnel who will actually undertake the relevant review(s) be made available for any discipline specific meetings or other meetings that relate to their specific discipline. This obligation will not be satisfied by the Independent Certifier's representative merely attending the relevant meeting and attendance at meetings is not limited to only one Independent Certifier representative.
- (b) The Independent Certifier must attend all safety, sustainability and environmental inductions as required by a Principal Party or any Authority in order for the Independent Certifier to discharge its obligations under this Deed or the Contract.

6 Contract Fees

6.1 Contract Fee

In consideration of the Independent Certifier undertaking the Services in accordance with this Deed, TfNSW must pay the Independent Certifier the Contract Fee.

6.2 Payment

- (a) At the end of each month after the date of this Deed, the Independent Certifier must submit to TfNSW's Representative a claim for payment of the Contract Fee in accordance with the Payment Schedule that:
 - (i) sets out the amount due in respect of the Services and any expert advice obtained by the Independent Certifier in accordance with this Deed; and
 - (ii) is in such form and with such details and supporting documentation as TfNSW's Representative reasonably requires including details of the time expended by the Independent Certifier and its staff and contractors in performing the Services.
- (b) Each claim for payment submitted by the Independent Certifier must be accompanied by:

- (i) documentary evidence of the payment of moneys due and payable to:
 - (A) employees of the Independent Certifier and of subcontractors; and
 - (B) subcontractors and suppliers,
 in respect of services the subject of that payment claim;
 - (ii) a supporting statement which complies with section 13 of the *Building and Construction Industry Security of Payment Act 1999* (NSW); and
 - (iii) a duly signed written statement in a form which complies with the Contractor's Services under section 127 of the *Industrial Relations Act 1996* (NSW), Schedule 2 Part 5 of the *Payroll Tax Act 2007* (NSW) and section 175B of the *Worker's Compensation Act 1987* (NSW) to provide a statement to the "principal contractor" as contemplated by that legislation,
- in the form in paragraph 7 of the Payment Schedule.
- (c) Within 10 Business Days after receipt of the claim under clause 6.2(a), TfNSW's Representative must assess the amount and issue a payment statement to the Independent Certifier setting out the portion of the payment claim which is agreed and any portion which is disputed.
 - (d) The Independent Certifier must give the TfNSW Representative a valid tax invoice for the amount assessed and within 3 Business Days of receipt of a payment statement under clause 6.2(c).
 - (e) TfNSW must, within the later of:
 - (i) 5 Business Days of the payment statement; and
 - (ii) receipt of a valid tax invoice under clause 6.2(d),
 but in any event within 15 Business Days of receipt of a claim for payment received under clause 6.2(a), pay the Independent Certifier the portion of each claim for payment which is not disputed.
 - (f) If the TfNSW Representative disputes an amount included in the claim submitted by the Independent Certifier, then within 10 Business Days of receipt of the Independent Certifier's claim, the TfNSW Representative must notify the Independent Certifier in writing of the reasons for any amount which is disputed.

6.3 Payment on account only

Payments made by TfNSW are on account only and are not:

- (a) evidence of the value of the Services performed by the Independent Certifier; or
- (b) an admission of Liability on the part of the Principal Parties.

7 Relationship

7.1 No conflict of interest

- (a) The Independent Certifier acknowledges and warrants for the benefit of the Principal Parties that:
 - (i) it owes a duty of care and professional responsibility to each Principal Party in connection with the performance of the Services;
 - (ii) each Principal Party is relying on its independence; and
 - (iii) it has no conflict of interest with respect to the carrying out of the Services and that it will not accept any role in relation to the Project other than expressly set out in this Deed.
- (b) If, during the term of this Deed, the Independent Certifier becomes aware of the existence of or potential for a conflict of interest, it will:
 - (i) immediately notify the Principal Parties of the conflict of interest or potential conflict of interest; and
 - (ii) take such steps to avoid or mitigate the conflict of interest or potential conflict of interest as the Principal Parties reasonably require.

7.2 Nature of relationship

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of any of the Principal Parties.
- (b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of the Principal Parties.
- (c) The Independent Certifier assumes full responsibility for the benefit of the Principal Parties for the acts and omissions of its employees, contractors, consultants and agents.
- (d) No Principal Party is liable for, nor will they be taken to have a Liability for, or to have assumed or become (on enforcement of any of its powers or otherwise) liable for, the performance of any obligation of the Independent Certifier under this Deed.

7.3 Authority to act

The Independent Certifier has no authority to represent the Principal Parties and, in particular:

- (a) other than expressly provided in this Deed, to give directions to any Principal Party or its officers, employees, contractors, consultants or agents;
- (b) to waive or alter any terms of any Project Contract; or
- (c) to discharge or release a party from any of its obligations under any Project Contracts.

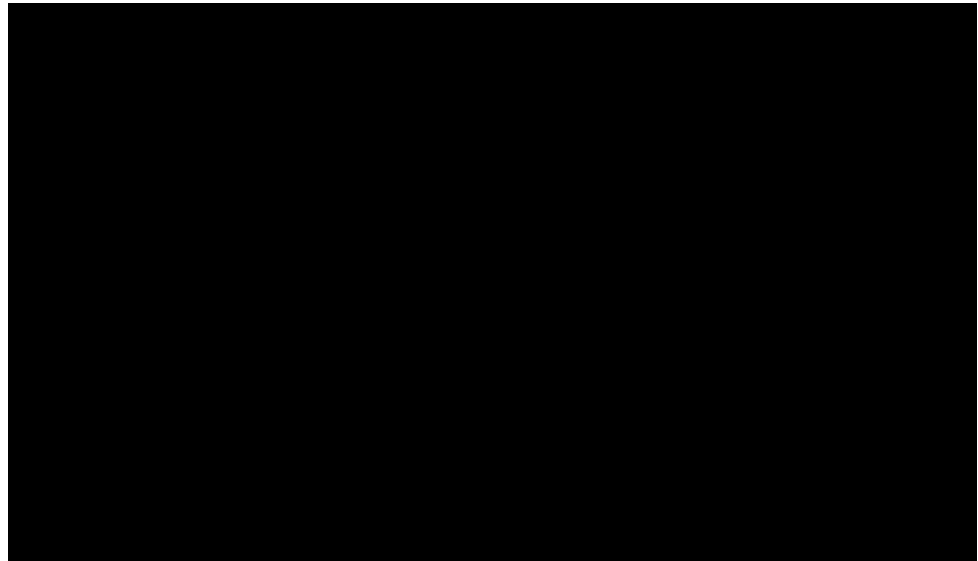
7.4 No voiding

If the Independent Certifier fails to comply with any timeframes for the performance of the respective Services, any decision, assessment, valuation, certificate or determination which is made or given outside the required timeframe, will not be invalidated or voided.

7.5 Reliance

The Independent Certifier acknowledges and agrees that:

- (a) it will perform the Services in accordance with this Deed for the benefit of each of the Principal Parties and that each Principal Party will be relying on the performance of the Services as if the Independent Certifier were separately performing them for each Principal Party directly;
- (b) the Principal Parties may suffer loss if the Independent Certifier does not perform the Services in accordance with the requirements of this Deed; and
- (c) the Principal Parties are entitled to and will rely on its certification in accordance with the provisions of this Deed for the purposes of the Project Contracts.

7.6 Certification final and binding**7.7 Representatives**

- (a) The parties have appointed the Representatives.
- (b) The Representatives have authority to give and receive directions and instructions and are the agents of the parties for the purposes of this Deed.
- (c) The parties may change their Representatives by notice in writing to the other parties.

8 Independent Certifier's powers

In performing the Services, the Independent Certifier:

- (a) will act as an expert and not as an arbitrator;

- (b) will not be bound to observe the rules of evidence;
- (c) must take into consideration all documents, information and other written material that the Principal Parties place before the Independent Certifier; and
- (d) will not be expected or required to obtain or refer to any other documents or information or material but may do so if the Independent Certifier requires them.

9 Determinations

- (a) All determinations made by the Independent Certifier in connection with the Contract must be:
 - (i) in writing;
 - (ii) delivered within the time required under the Contract; and
 - (iii) supported by detailed reasons.
- (b) In making a determination in connection with the Contract the Independent Certifier must not obtain any expert advice without the prior written consent of the Principal Parties (including in relation to the cost), not to be unreasonably withheld.
- (c) If it obtains expert advice the Independent Certifier must:
 - (i) ensure that such advice is in writing and sets out:
 - (A) the advice;
 - (B) the basis of the advice in detail; and
 - (C) all materials reviewed and other investigations undertaken in relation to the advice; and
 - (ii) deliver the advice to the Principal Parties together with the determination and explain in detail the manner in which the expert advice has been utilised in making the determination.
- (d) If the Independent Certifier obtains expert advice then such advice will be deemed to form part of the Independent Certifier's determination.

10 Assistance access and information

10.1 Co-operation and assistance

- (a) The Principal Parties must:
 - (i) co-operate with the Independent Certifier;
 - (ii) reasonably assist the Independent Certifier; and
 - (iii) act honestly and fairly,
 to enable the Independent Certifier to perform the Services.

- (b) Subject to any Law or duty of confidentiality and without limiting any other clause in this Deed, each Principal Party must:
 - (i) provide to the Independent Certifier and to the other Principal Party any information reasonably necessary to enable the Independent Certifier to perform the Services; and
 - (ii) provide the Independent Certifier with any such information within the time required by this Deed or any relevant Contracts.

10.2 Information provided to Independent Certifier

- (a) The Independent Certifier may rely on information provided to it by any of the Principal Parties as being true and correct in all material respects unless:
 - (i) such information is:
 - (A) manifestly incorrect;
 - (B) expressly provided on the basis that it cannot be relied on; or
 - (C) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or
 - (ii) the relevant Principal Party subsequently informs the Independent Certifier of any change to the information provided to it.
- (b) The Principal Parties must use their best endeavours to ensure that all information provided to the Independent Certifier is accurate and true.
- (c) Where a Principal Party is entitled to comment on Design Documentation that party agrees:
 - (i) to provide all comments in a format reasonably required by the Independent Certifier, which as a minimum must contain:
 - (A) a unique reference number;
 - (B) a description of the Design Documentation; and
 - (C) the reasons for the non-compliance; and
 - (ii) make available the author of the comment or appropriate personnel to meet with the Independent Certifier to clarify any comments.

10.3 Access

- (a) A Principal Party must give access to the Independent Certifier to such places that it controls as may be reasonably necessary to enable the Independent Certifier to perform the Services.
- (b) A Principal Party must, within a reasonable time of request by the Independent Certifier, allow the Independent Certifier access to any records held or systems maintained by it or its subcontractors or sub-consultants in relation to the works to which the Services relate, which are reasonably necessary to enable the Independent Certifier to perform the Services.

- (c) The Independent Certifier must within a reasonable time of any request, give the Principal Parties, access to and copies of any records, reports, advice or other documents received, prepared, or generated by or for the Independent Certifier in the course of performing the Services.
- (d) The Independent Certifier must comply with the reasonable requirements of the Principal Parties when accessing any place under the control of a Principal Party, including in relation to safety.

10.4 Copies of notices and documents

All notices and documents:

- (a) provided by the Independent Certifier to one Principal Party must be copied to the Other Party; and
- (b) provided by a Principal Party to the Independent Certifier must be provided by the Independent Certifier to the Other Party.

11 Independent Certifier's personnel

11.1 Independent Certifier's personnel

The Independent Certifier must ensure that its personnel:

- (a) undertake the minimum attendance;
- (b) have the minimum level of skill and expertise; and
- (c) apply the minimum level of surveillance,

as set out in Schedule 6.

11.2 List of personnel

Upon the request at any time by any Principal Party, the Independent Certifier must promptly provide a list of the personnel which it will use or will be using to perform the Services and detailing the qualifications and experience of each person.

11.3 Removal of personnel

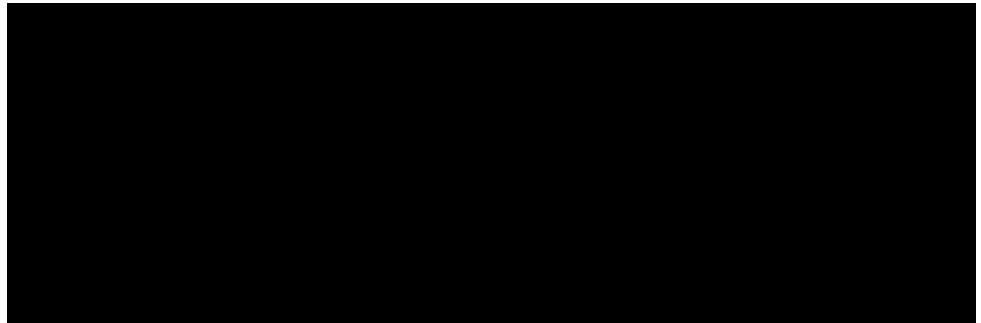
If TfNSW considers that the:

- (a) conduct of the Independent Certifier's personnel (including the Key Individual) is prejudicial to the provision of the Services; or
- (b) Independent Certifier has not engaged personnel (including the Key Individual) who are sufficiently competent, experienced and qualified to perform the Services,

TfNSW may, after consultation with the Independent Certifier and the Other Party, by written notice to the Independent Certifier require the removal of any person from any involvement in the provision of the Services. The Independent Certifier must within 10 Business Days replace the person named in that notice with the person approved by TfNSW.

11.4 Key Personnel

- (a) The Independent Certifier must ensure that the Key Personnel (including the Key Individual) are engaged in the performance of the Services in the manner specified in Schedule 6.
- (b) Subject to clause 11.4(c), the Independent Certifier must not terminate the appointment of any Key Personnel, or substitute another person for any Key Personnel to carry out the Services under this Deed without the prior written approval of TfNSW.
- (c) If any Key Personnel resigns or is unable to work due to illness or other circumstances, the Independent Certifier must procure that they are replaced as soon as reasonably practicable and in any event with 10 Business Days. TfNSW and the Independent Certifier must agree the identity of the replacement Key Personnel in writing. In endeavouring to reach agreement under this clause 11.4(c), the parties must act reasonably.

11.5 Subcontracting**11.6 Adequacy of resourcing**

- (a) The Independent Certifier acknowledges and agrees that the Principal Parties are relying on the performance by the Independent Certifier of the Services in a timely manner.
- (b) If the Independent Certifier fails to perform the Services in a timely manner TfNSW may direct the Independent Certifier to:
 - (i) commit additional resources to the performance of the Services; and/or
 - (ii) provide a plan for the improvement of the performance of the Services.
- (c) Any additional resources committed to the performance of the Services by the Independent Certifier pursuant to a direction from TfNSW or pursuant to a plan developed by the Independent Certifier will be at its own cost, except to the extent that the inadequacy of resourcing is attributable to:
 - (i) an increase in the scope of the Services;
 - (ii) the need to perform the Services for a longer period due to causes beyond the control of the Independent Certifier; or
 - (iii) the failure of any Principal Party to comply with a Contract.

12 Notification

The Independent Certifier agrees to promptly notify the Principal Parties if it becomes aware in the course of performing the Services:

- (a) that any matter stated or certified by a Principal Party or certificate provided under a Project Contract is not correct as at the date stated or certified; or
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) may materially or adversely affect the Other Party’s ability to achieve Enabling Works Practical Completion by the relevant Date for Enabling Works Practical Completion;
 - (ii) it considers to be, in the context of the Project, of material interest to a Principal Party;
 - (iii) may involve a material breach of any of the Project Contracts; or
 - (iv) may involve a material dispute between any party to the Project Contracts or any other person in relation to the Project Contracts or the Project.

13 Insurance

13.1 Own Risk

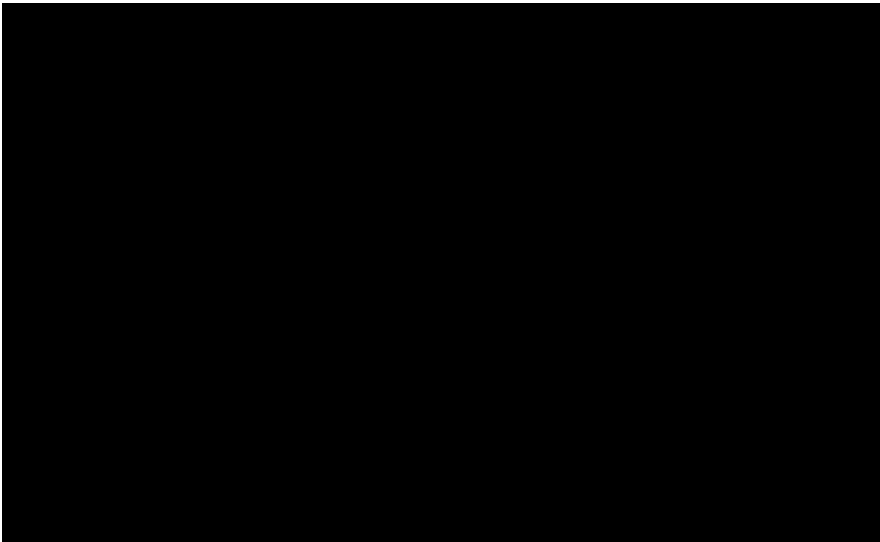
Subject to the express provisions of this Deed, the Independent Certifier undertakes to carry out the Services entirely at its own risk.

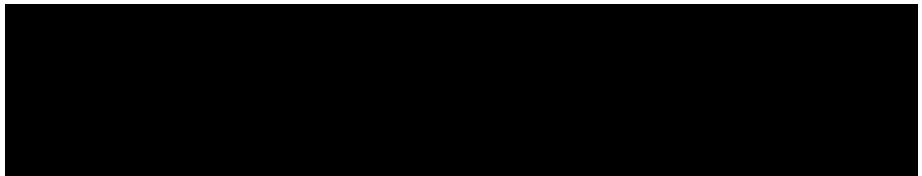
13.2 General

The Independent Certifier must:

- (a) obtain and maintain the Insurances as further defined in Schedule 3;
- (b) obtain and maintain such additional insurances and make such variations to existing Insurances, as may reasonably be requested by TfNSW promptly after that request, provided that the Contract Fee must be adjusted to reflect the additional costs incurred as a result;

(c)





- (d) ensure the following requirements are complied with in relation to each insurance policy, except in respect of workers compensation:
 - (i) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
 - (ii) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;
 - (iii) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);
 - (iv) the Independent Certifier must promptly notify the Principal Parties of:
 - (A) cancellation or avoidance of any Insurances;
 - (B) any change whatsoever of a restrictive nature which affects any Insurances;
 - (C) any act or omission or any event which might invalidate an Insurance policy or render it unenforceable;
 - (D) any failure to pay an amount on account of premiums when due; or
 - (E) any failure to provide renewal instructions to the insurer by 5 Business Days prior to the due date for expiry of any Insurance,

no later than 5 Business Days after the first to occur of the Independent Certifier:

 - (F) receiving notice from the insurer; or
 - (G) otherwise becoming aware,

of the relevant matter;
 - (v) despite the occurrence of an event referred to in clause 13.2(d)(iv), the Insurances must continue unaltered for the benefit of the Principal Parties (where named as insured) for a period of at least 20 Business Days after notice is given to the Principal Parties under clause 13.2(d)(iv);
 - (vi) there must be no reduction of limits or coverage without the prior consent of the Principal Parties; and
 - (vii) the insurer's indemnity must be a primary indemnity, without right of contribution in respect of any other indemnity or insurance cap;
- (e) provide:

- (i) the Principal Parties with copies of certificates of currency for each Insurance policy required by this Deed; and
- (ii) the Principal Parties with:
 - (A) not used;
 - (B) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
 - (C) a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and
 - (D) such other details in respect of Insurances as the Principal Parties may from time to time reasonably request, promptly after the request;
- (f) pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances and give evidence of that payment to the Principal Parties. The Principal Parties will have no liability to the Independent Certifier for any premiums, commissions or other costs in connection with the Independent Certifier's obligation to obtain and maintain the Insurances;
- (g) do all things necessary or desirable to maintain the Insurances in full force;
- (h) not, without the Principal Parties' consent, vary, cancel or allow to lapse any Insurances;
- (i) do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
- (j) not, without the consent of the Principal Parties do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any indemnity of the insurer in respect of any Insurances;
- (k) immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;
- (l) not, without the consent of the Principal Parties, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;
- (m) not, without the consent of the Principal Parties:
 - (i) consent to any reduction in limits or coverage; or
 - (ii) enforce, conduct, settle or compromise any claims,
 in respect of any Insurances, whether or not any of them cover other property; and
- (n) notify the Principal Parties immediately when:

- (i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
- (ii) any of the Insurances are cancelled.

13.3 Failure to produce proof of insurance

If the Independent Certifier fails to comply with its obligations under this clause to effect any of the Insurances, TfNSW may effect and maintain the Insurances and pay the premiums. The Independent Certifier must pay to TfNSW on demand a sum equal to the amount paid by the Principal Parties and the amount of any such premiums and other costs incurred by TfNSW will be deducted from the Contract Fee.

13.4 Independent Certifier responsible for its own insurance assessment

In specifying the types and amounts of the insurances that the Independent Certifier must maintain under this Deed, the Principal Parties do not accept liability for:

- (a) the completeness of their listing;
- (b) the adequacy of the sums insured;
- (c) the adequacy of the limits of liability in those insurance policies;
- (d) the scope of coverage being appropriate for the Independent Certifier; or
- (e) the conditions of exclusions of those insurances in respect of how they may, or may not, respond to any loss, damage or liability.

14 Suspension of Services

- (a) TfNSW may by notice to the Independent Certifier, instruct the Independent Certifier to suspend and, after a suspension has been instructed, to recommence, the performance of any or all of the Services.
- (b) During the period which the Independent Certifier's performance of the Services are suspended in accordance with clause 14(a), TfNSW must pay the Independent Certifier:
 - (i) subject to the provisions of this Deed, for the Services that are not suspended (if any); and
 - (ii) subject to:
 - (A) the Independent Certifier using all reasonable endeavours to mitigate, minimise or avoid the effects and consequences of the costs associated with the suspension of any or all of the Services; and
 - (B) provided that the suspension is not as a result of the Independent Certifier failing to comply with this Deed,

such unavoidable costs or expenses incurred arising in connection with the suspension of the Services and costs and expenses incurred by the Independent Certifier in anticipation of their Services not being suspended.


15 Default

15.1 Independent Certifier Default

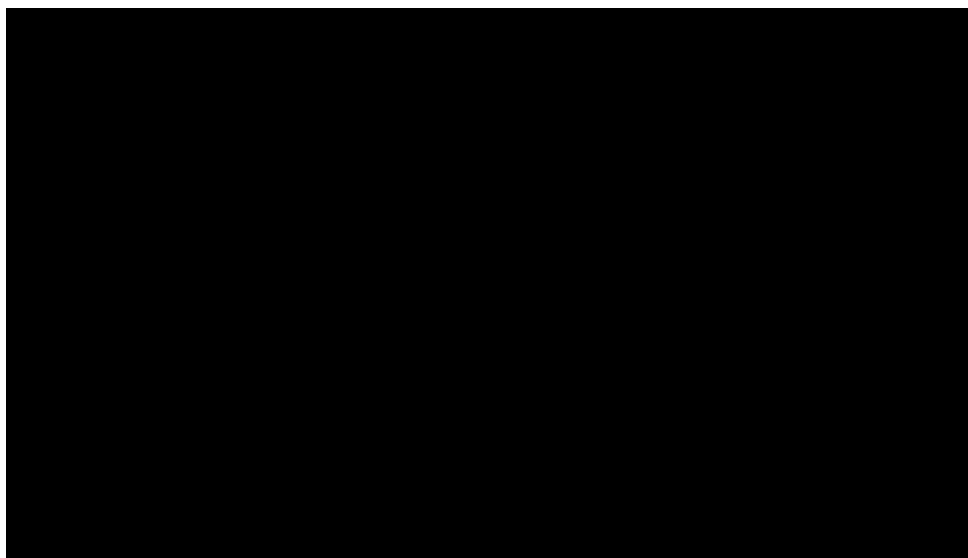
Each of the following is an Independent Certifier Default:

- (a) the Independent Certifier does not perform any of the Services to the standard of care required by this Deed;
- (b) the Independent Certifier fails to comply with any obligation relating to Insurance;
- (c) the Independent Certifier fails to act independently;
- (d) the Independent Certifier breaches a term of this Deed in a material way;
- (e) the Independent Certifier persistently breaches this Deed;
- (f) the Independent Certifier becomes the subject of an Insolvency Event;
- (g) a representation or warranty made by or for the Independent Certifier in connection with this Deed is found to have been incorrect or misleading when made;
- (h) the Independent Certifier fails to commit adequate resources to the performance of the Services; and
- (i) the Independent Certifier ceases to carry on its business or a material part of it.

15.2 Termination by TfNSW

- (a) If:
 - (i) an Independent Certifier Default occurs, and either:
 - (A) 
 - (B) if the Independent Certifier Default cannot be remedied, the Independent Certifier does not establish to the satisfaction of TfNSW that:
 - (aa) there was a reasonable explanation for the Independent Certifier Default; and
 - (ab) the Independent Certifier Default will not be repeated; or
 - (ii) TfNSW terminates the Contract then TfNSW may terminate this Deed by notice in writing to the Independent Certifier.
- (b) TfNSW may, without giving advance notice, terminate this Deed by giving notice in writing to the Independent Certifier and the Other Party if an event described in clause 15.1(b), 15.1(c), 15.1(f), 15.1(g) or 15.1(i) occurs.
- (c) TfNSW may terminate this Deed at any time for convenience.

(d) For the avoidance of doubt:



15.3 Rights on termination

If this Deed is terminated under:

- (a) clause 15.2(a)(i), 15.2(a)(ii), 15.2(b) or at Law:
 - (i) the Independent Certifier will only be entitled to payment of amounts due to it under clause 6 up to and including the date of termination;
 - (ii) TfNSW may suspend the payment of the Contract Fee until all of the Services that would have been performed by the Independent Certifier have been performed by others;
 - (iii) without limiting its rights TfNSW may set off from any payment any amount which TfNSW would otherwise be obliged to make to the Independent Certifier any Loss incurred by TfNSW as a result of the termination of this Deed; and
 - (iv) the rights of the parties will otherwise be on basis that the Independent Certifier has repudiated the Deed and the repudiation has been accepted by the Principal Parties; or
- (b) clause 15.2(a)(ii) or 15.2(c), then the Independent Certifier will only be entitled to payment of all amounts due to it under clause 6 up to and including the date of termination plus the reasonable costs incurred by it directly arising from early termination. For the avoidance of doubt the Independent Certifier will have no Claim in respect of any foregone profit.

15.4 Return of records

- (a) Within 2 Business Days of the termination of this Deed, the Independent Certifier must deliver all documentation, records, and materials in the possession or control of the Independent Certifier relating to the Services including all contracts, correspondence, records, plans, specifications and other documents:
 - (i) where directed by TfNSW, to the Replacement Certifier; or
 - (ii) otherwise, to TfNSW, which will be received by TfNSW subject to clause 15.4(e).

- (b) The documentation, records, and materials must be:
 - (i) delivered in such form as directed by the TfNSW Representative; and
 - (ii) indexed and organised as directed by the TfNSW Representative.
- (c) The Independent Certifier may not exercise any lien against any of the documentation, records, and materials referred to in this clause 15.4.
- (d) If this Deed is terminated, the Independent Certifier must co-operate with and assist TfNSW and the Replacement Certifier to ensure an effective and smooth transition of its duties and Services under this Deed to the Replacement Certifier.
- (e) If TfNSW receives pursuant to clause 15.4(a)(ii) documentation, records, and materials that were provided to the Independent Certifier by the Other Party, TfNSW will deliver that documentation, records, and materials to the Other Party, as directed by the Other Party.

15.5 Novation

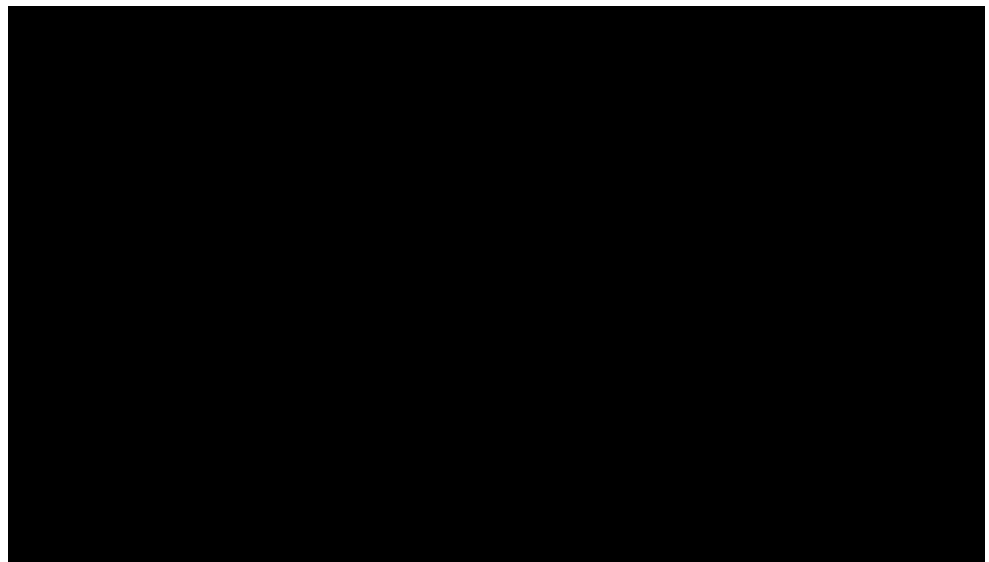
If this Deed is terminated, the Independent Certifier:

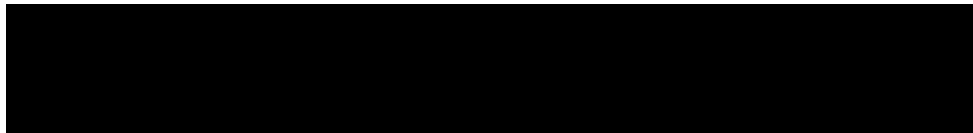
- (a) must novate to TfNSW or the Replacement Certifier (as directed by TfNSW) those subcontracts that have been entered into by the Independent Certifier that TfNSW directs; and
- (b) irrevocably appoints (for valuable consideration) TfNSW to be the Independent Certifier's attorney to:
 - (i) execute, sign, seal and deliver all notices, deeds and documents; and
 - (ii) undertake actions in the name of the Independent Certifier.

15.6 Survival

This clause will survive the termination of this Deed.

16 Indemnity





17 Costs

17.1 What the Independent Certifier agrees to pay

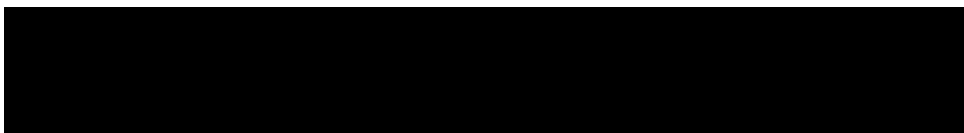
The Independent Certifier agrees to pay or reimburse the Principal Parties on demand for the Principal Parties' reasonable Costs in enforcing this Deed against the Independent Certifier, including reasonable legal costs.

17.2 Payment of other costs

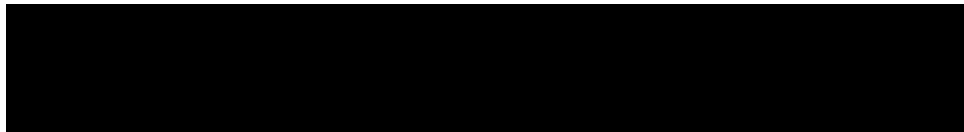
Subject to the Project Contracts and any express provision of this Deed, each Principal Party agrees to pay its own costs in connection with anything it does under this Deed.

18 Assignment

18.1 Assignment by the Independent Certifier or any Other Party



18.2 Assignment by TfNSW



19 Notices

19.1 Delivery of Notices

- (a) Notices must be (subject to clause 19.4) uploaded onto PDCS.
- (b) A notice takes effect on the day that:
 - (i) if delivered by hand, upon actual receipt by the addressee; or
 - (ii) in the case of a notice sent through PDCS, at the time the direction has been uploaded onto PDCS by the sender.
- (c) If a notice takes effect after 5.00 pm on a day, the notice will be deemed to have been received at 9.00 am on the next Business Day.

19.2 Delivery of Design Documentation

In the case of Design Documentation, Design Documentation is deemed to be delivered through the PDCS at the time the Design Documentation has been uploaded onto the PDCS by the sender.

19.3 PDCS

- (a) Subject to clause 19.4, at any time, and from time to time, the TfNSW Representative may notify the Independent Certifier that the PDCS will

be used for giving notices under or in connection with this Deed. The TfNSW Representative's notice will set out:

- (i) the commencement date for use of the PDCS; and
 - (ii) any other information reasonably necessary for the effective use and service of notices via the PDCS.
- (b) If a party is unable to use the PDCS as a result of the failure of the PDCS, that party must use one of the alternative means of communication set out in this clause.
- (c) With respect to notices sent through the PDCS:
- (i) all notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
 - (ii) only the text in any notice, or subject to clause 19.3(c)(iii), any attachments to such notice which are referred to in the notice, will form part of the notice. Any text in the subject line will not form part of the notice; and
 - (iii) an attachment to a notice will only form part of a notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or
 - (C) such other format as may be agreed between the parties in writing from time to time.
- (d) The Independent Certifier must:
- (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use PDCS and check whether notices have been received on each Business Day; and
 - (iii) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including notices) using the PDCS.
- (e) The Principal Parties have no Liability for any losses the Independent Certifier may suffer or incur arising out of or in connection with its access to or use of PDCS or any failure of PDCS, and the Independent Certifier will not be entitled to make, and the Principal Parties will not be liable upon, any Claim against the Principal Parties arising out of or in connection with the Independent Certifier's access to or use of PDCS or any failure of PDCS.

19.4 Notices for delivery by hand and PDCS

The parties acknowledge and agree that notices issued pursuant to clauses 14 and 23 must be delivered by hand to the other party and by the PDCS, pursuant to this Deed.

20 GST

20.1 Interpretation

- (a) Except where the context suggests otherwise, terms used in this clause 20 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part 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 20.
- (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.

20.2 Reimbursements

Any payment or reimbursement required to be made under this Deed that is calculated by reference to a cost or other amount paid or incurred will be limited to the total cost or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost or amount relates.

20.3 Additional amount of GST payable

Subject to clause 20.5, if GST becomes payable on any supply made by a party (Supplier) under or in connection with this Deed or a Project Contract:

- (a) any amount payable or consideration to be provided under any provision of this Deed (other than this clause 20), 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 20.3(b).

20.4 Variation

- (a) If the GST Amount properly payable in relation to a supply (as determined in accordance with clause 20.3 and clause 20.5, varies from the additional amount paid by the Recipient under clause 20.3, 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 20.4(a) is deemed to be a payment, credit or refund of the GST Amount payable under clause 20.3.
- (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.

20.5 Exchange of non-monetary consideration

- (a) To the extent that the consideration provided for the Supplier's taxable supply to which clause 20.3 applies is a taxable supply made by the Recipient in the same tax period ("**Recipient Supply**"), the GST Amount that would otherwise be payable by the Recipient to the Supplier in accordance with clause 20.3 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 20.3 (or the time at which such GST Amount would have been payable in accordance with clause 20.3 but for the operation of clause 20.5(a)).

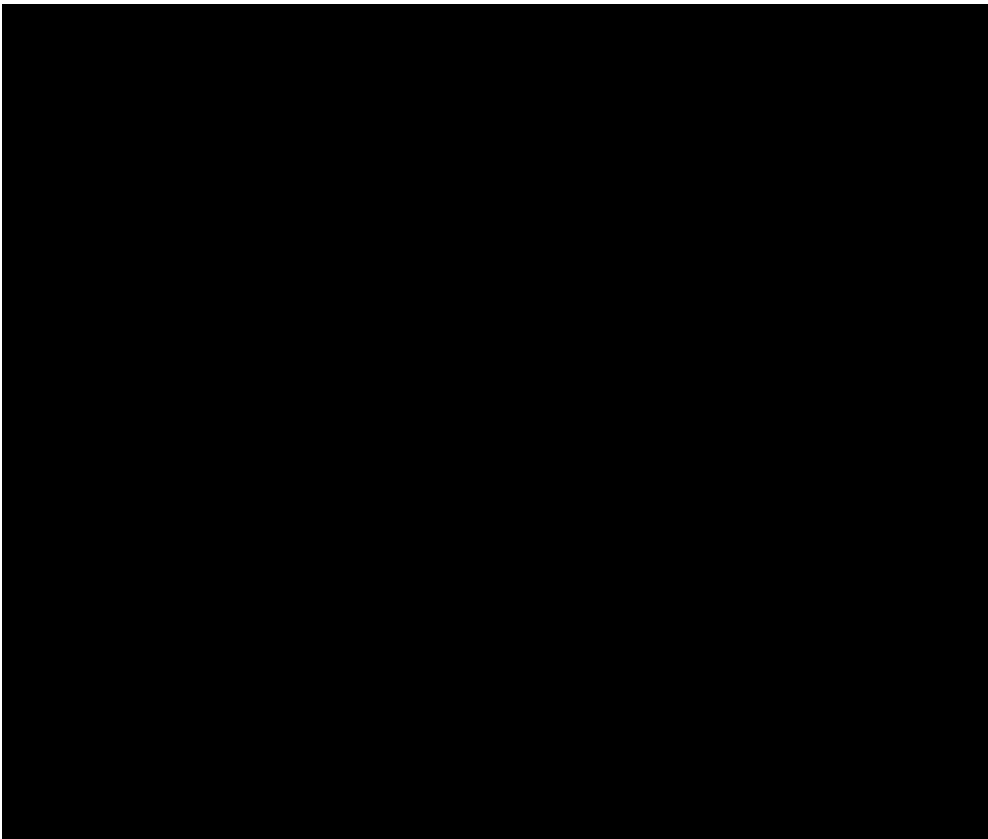
20.6 Indemnities

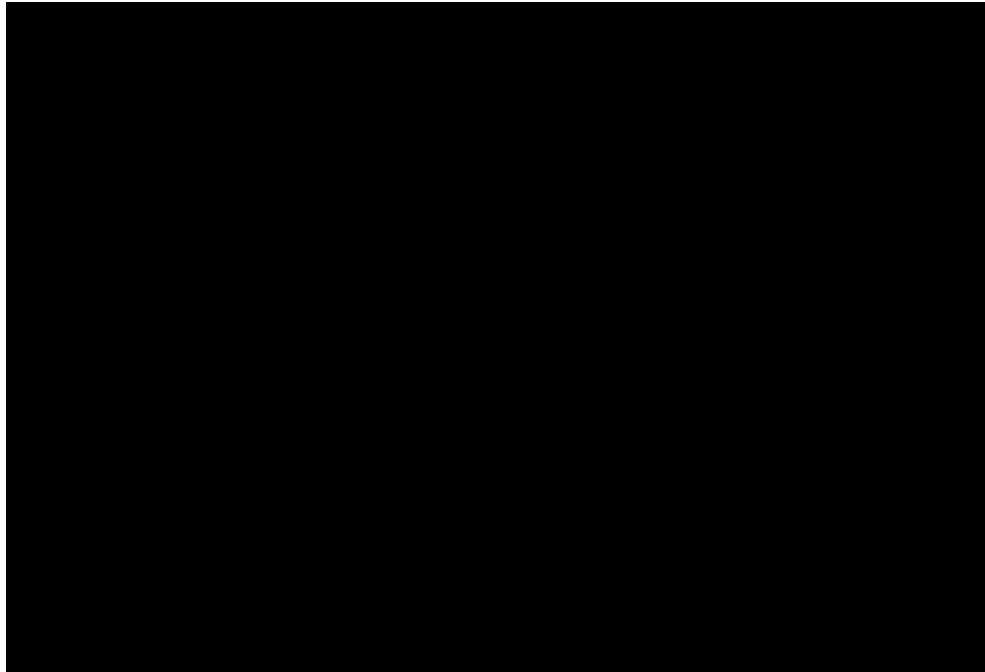
- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against, the amount of that GST.
- (b) If a party has an indemnity for a cost on which that party must pay GST, the indemnity is for the cost plus all GST (except any GST for which that party can obtain an input tax credit).
- (c) A party may recover payment under an indemnity before it makes the payment in respect of which the indemnity is given.

20.7 No merger

This clause 20 will not merge on completion or termination of this Deed.

21 Representations and warranties





22 General

22.1 Set-off

Without limiting its rights TfNSW may set off any amount due for payment by TfNSW to the Independent Certifier against any amount due for payment by the Independent Certifier to TfNSW under this Deed.

22.2 Discretion in exercising rights

A Principal Party may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this Deed expressly states otherwise.

22.3 Partial exercising of rights

If a Principal Party does not exercise a right or remedy fully or at a given time that Principal Party may still exercise it later.

22.4 No liability for Loss

The Principal Parties are not liable for Loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any fraud by any Principal Party.

22.5 Conflict of interest

The Principal Parties' rights and remedies under this Deed may be exercised even if this involves a conflict of duty or the Principal Parties have a personal interest in their exercise.

22.6 Remedies cumulative

The Principal Parties' rights and remedies under this Deed are in addition to other rights and remedies given by law independently of this Deed.

22.7 Other encumbrances or judgments

- (a) This Deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any encumbrance or other right or remedy to which the Principal Parties are entitled; or
 - (ii) a judgment which the Principal Parties obtain against the Independent Certifier in connection with this Deed.
- (b) Notwithstanding clause 22.7(a), the Principal Parties may still exercise their rights under this Deed as well as under the judgment, the encumbrance or the right or remedy.

22.8 Inconsistent law

To the extent permitted by any Law, this Deed prevails to the extent it is inconsistent with any Law.

22.9 Supervening legislation

Any present or future legislation which operates to vary the Services of the Independent Certifier in connection with this Deed with the result that the Principal Parties' rights, powers or remedies are adversely affected (including by way of delay or postponement) are excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

22.10 Variation and waiver

Unless this Deed expressly states otherwise, a provision of this Deed, or right created under it, may not be waived or varied except in writing signed by the Other Party, Independent Certifier and TfNSW.

22.11 Confidentiality

- (a) All information provided by one party to another party under this Deed or a Project Contract 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:
 - (i) with the consent of the party providing the information;
 - (ii) if required by law or required by any stock exchange;
 - (iii) in connection with any legal proceedings relating to this Deed or any Project Contract;
 - (iv) if the information is generally and publicly available;
 - (v) to employees, legal advisers, auditors and other consultants to whom it needs to be disclosed; or
 - (vi) as required for any legitimate NSW Government purpose or process, including publication in accordance with the *Government Information (Public Access) Act 2009* (NSW) (subject to the prior redaction of commercially sensitive information which is not required to be disclosed in the contracts register under the *Government Information (Public Access) Act 2009* (NSW)).

- (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 do not disclose it to any person.

22.12 Further steps

The Independent Certifier agrees to do anything TfNSW asks (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) to:

- (a) bind the Independent Certifier and any other person intended to be bound under this Deed; or
- (b) show whether the Independent Certifier is complying with this Deed.

22.13 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to this Deed. If so, the signed copies are treated as making up the one document.

22.14 Applicable Law

This Deed is governed by the Law in force in New South Wales. The Independent Certifier and the Principal Parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

22.15 Exclusion of Civil Liability Act 2002 (NSW)

To the extent permitted by Law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to any and all rights, Services and liabilities arising under or in relation to this Deed howsoever such rights, obligations or liabilities are sought to be enforced.

23 Dispute resolution

23.1 Application

- (a) Any dispute or difference between the parties arising out of, relating to or in connection with this Deed, including any dispute or difference as to the formation, validity, existence or termination of this Deed ("**Dispute**") must be determined in accordance with this clause 23.
- (b) Disputes arising out of, relating to or in connection with a Project Contract, including any dispute or difference as to the formation, validity, existence or termination of that Project Contract will be subject to the dispute resolution process in that Project Contract.

23.2 Executive negotiation

- (a) If any Dispute arises, a party to the Dispute ("**Referring Party**") may, by giving notice to the other parties ("**Dispute Notice**"), refer the Dispute to the Representatives for resolution.
- (b) The Dispute Notice must:
 - (i) be in writing;

- (ii) state that it is given in accordance with this clause 23.2;
- (iii) include or be accompanied by reasonable particulars of the Dispute, including:
 - (A) a brief description of the circumstances in which the Dispute arose; and
 - (B) references to any:
 - (aa) provisions of this Deed or the Contract; and
 - (ab) acts or omissions of any person,

relevant to the Dispute.
- (c) Within 5 Business Days of the Referring Party giving the Dispute Notice, the Representatives must meet at least once to attempt to resolve the Dispute. The parties must not delegate the function of the Representative to any other person.
- (d) The Representatives may meet more than once to try and resolve a Dispute during the period of 10 Business Days after the service of the Dispute Notice and may meet in person, via telephone, videoconference, or any other agreed means of instantaneous communication to effect the meeting.
- (e) Discussions conducted in accordance with this clause 23.2 must be undertaken in good faith and will be held on a 'without prejudice' basis.

23.3 Litigation

A party may commence legal proceedings in respect of any Dispute not resolved through executive negotiation.

23.4 Continuance of performance

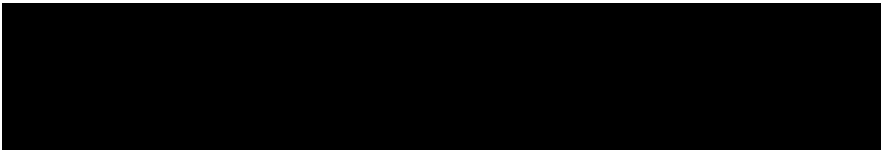
Despite the existence of a Dispute, the parties must continue to perform their respective Services under this Deed.

23.5 Summary relief

Nothing in this clause 23 will prevent a party from commencing proceedings to enforce payment due under this Deed or to seek urgent injunctive interlocutory or declaratory relief in respect of a Dispute.

23.6 Consolidation of disputes

- (a) The parties acknowledge and agree that Disputes arising between TfNSW, the Other Party and the Independent Certifier in respect of this Deed may be concerned with matters which also arise in respect of the respective rights and obligations of TfNSW and the Other Party under the Contract.
- (b) The parties agree that a Dispute referred to in clause 23.6(a) must be resolved at the same time and to the extent it relates to the, Contract, under clause 18 of the Contract (which is incorporated into this Deed by reference).

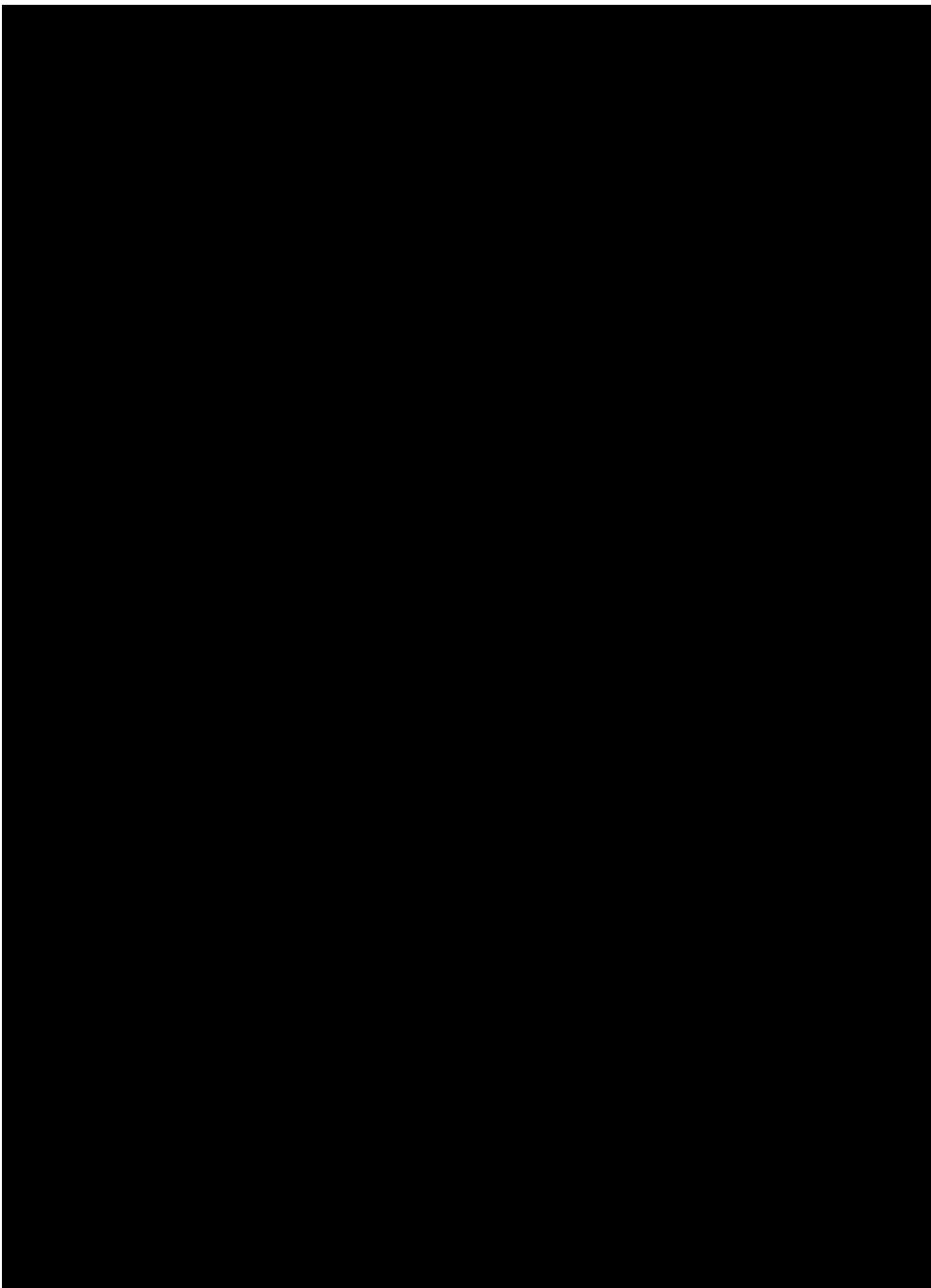
- (c) The parties consent to the Independent Certifier participating (including making submissions) in the dispute resolution procedures contemplated by the Contract, to the extent that a Dispute referred to in clause 23.6(a) relates to a dispute or potential dispute under the Contract.
- (d) 

23.7 Survives termination

This clause will survive the termination of this Deed and the applicable Contract.

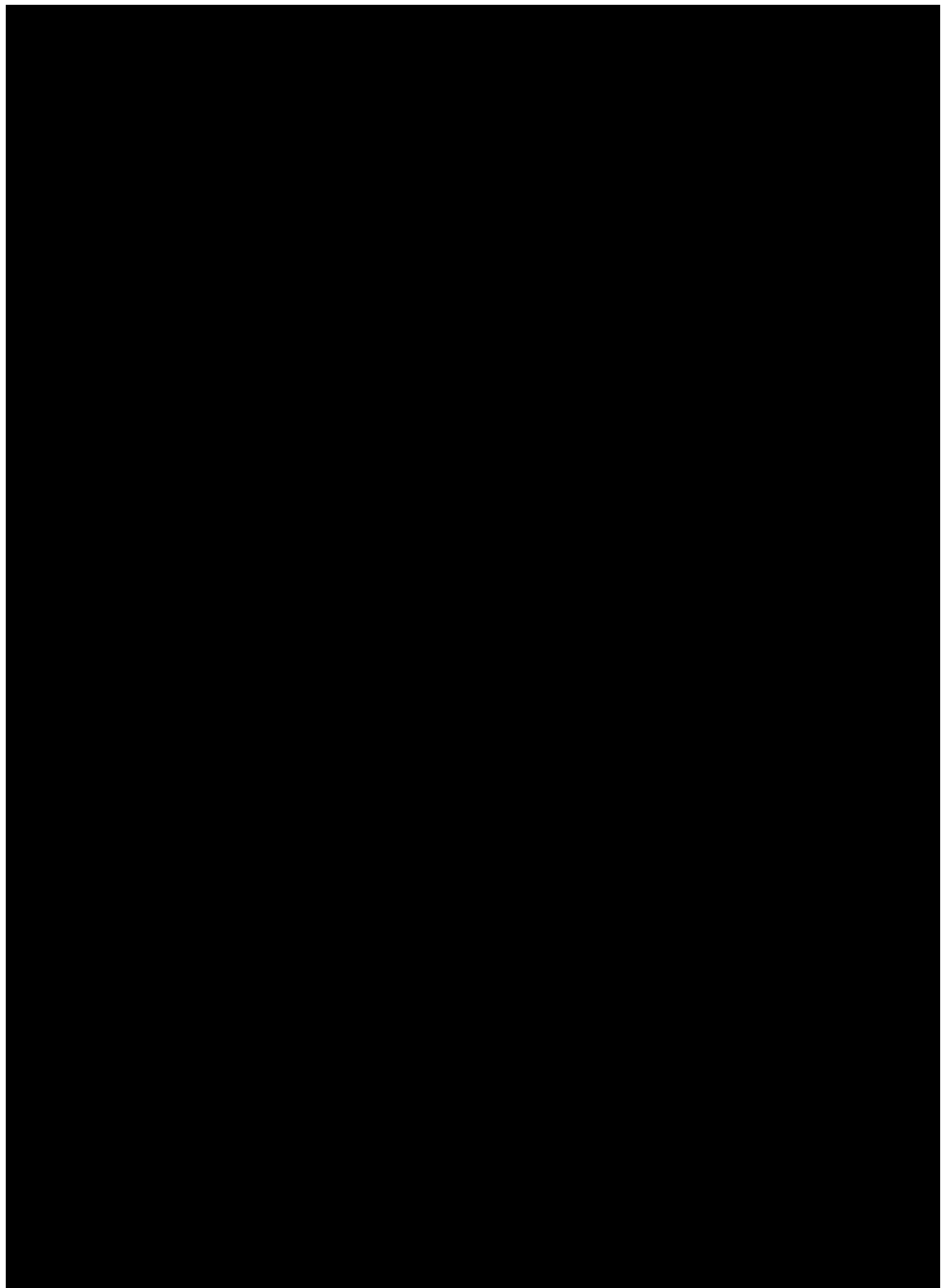
24 Liability and exclusions

24.1 Limitation of Liability

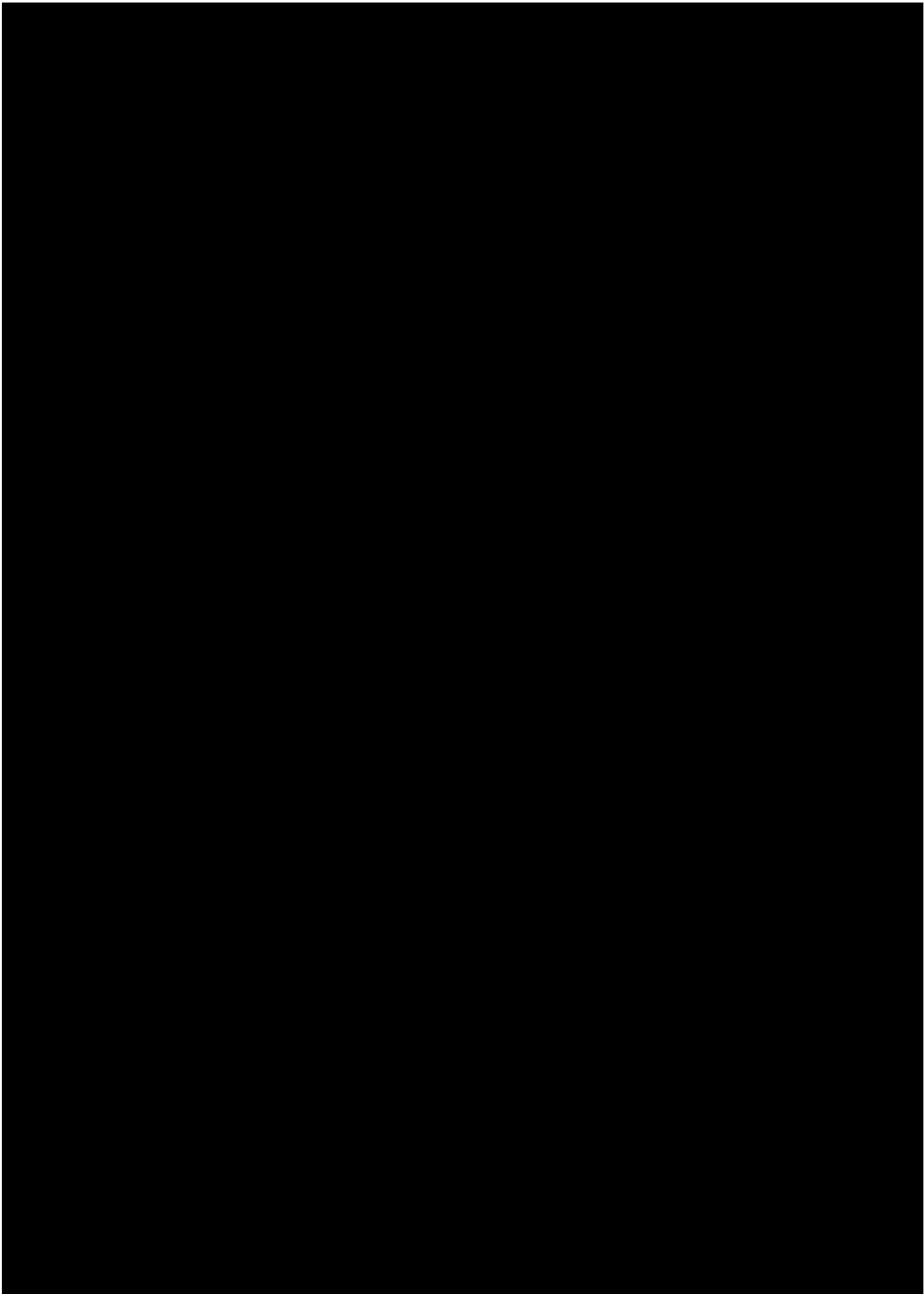


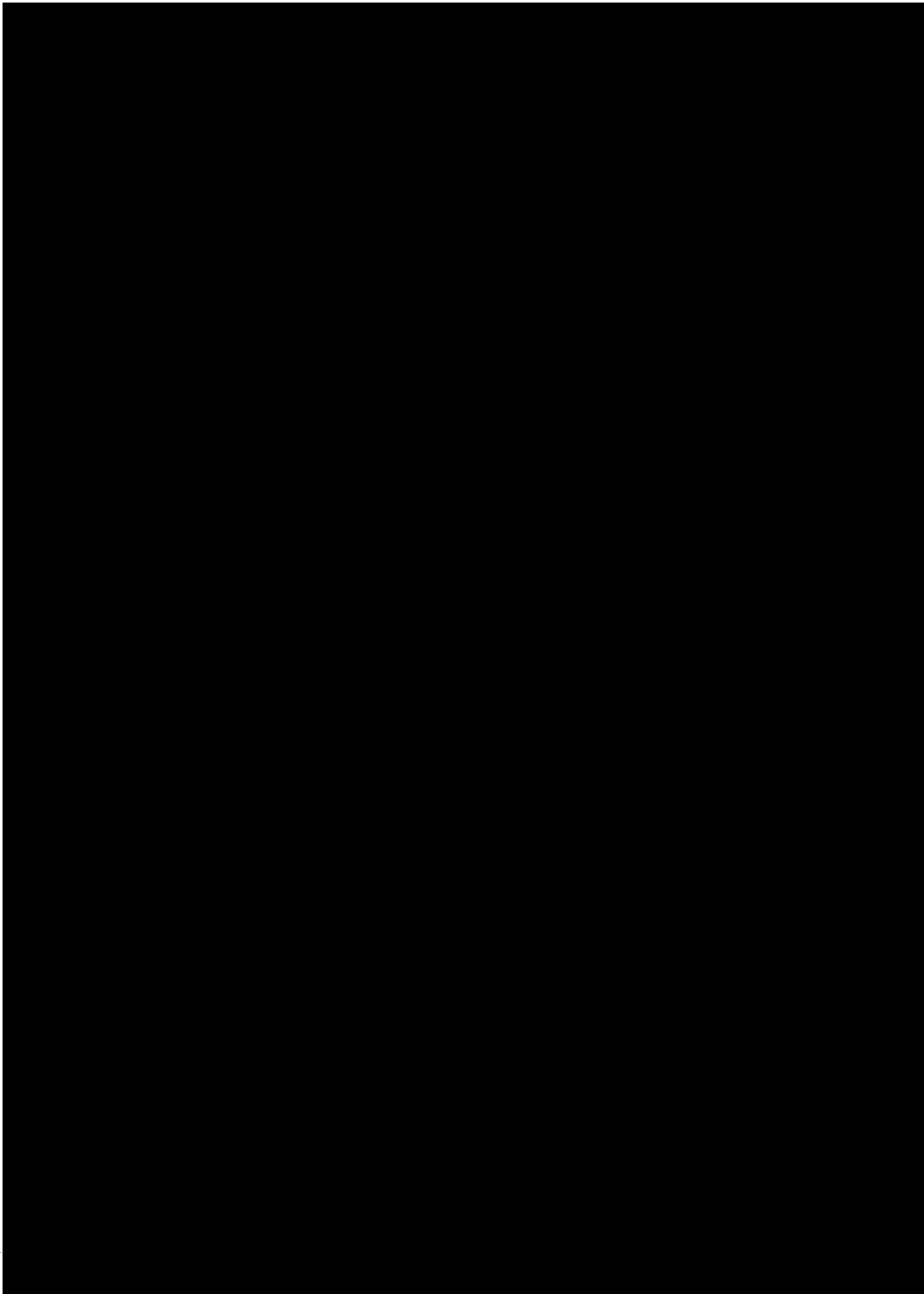


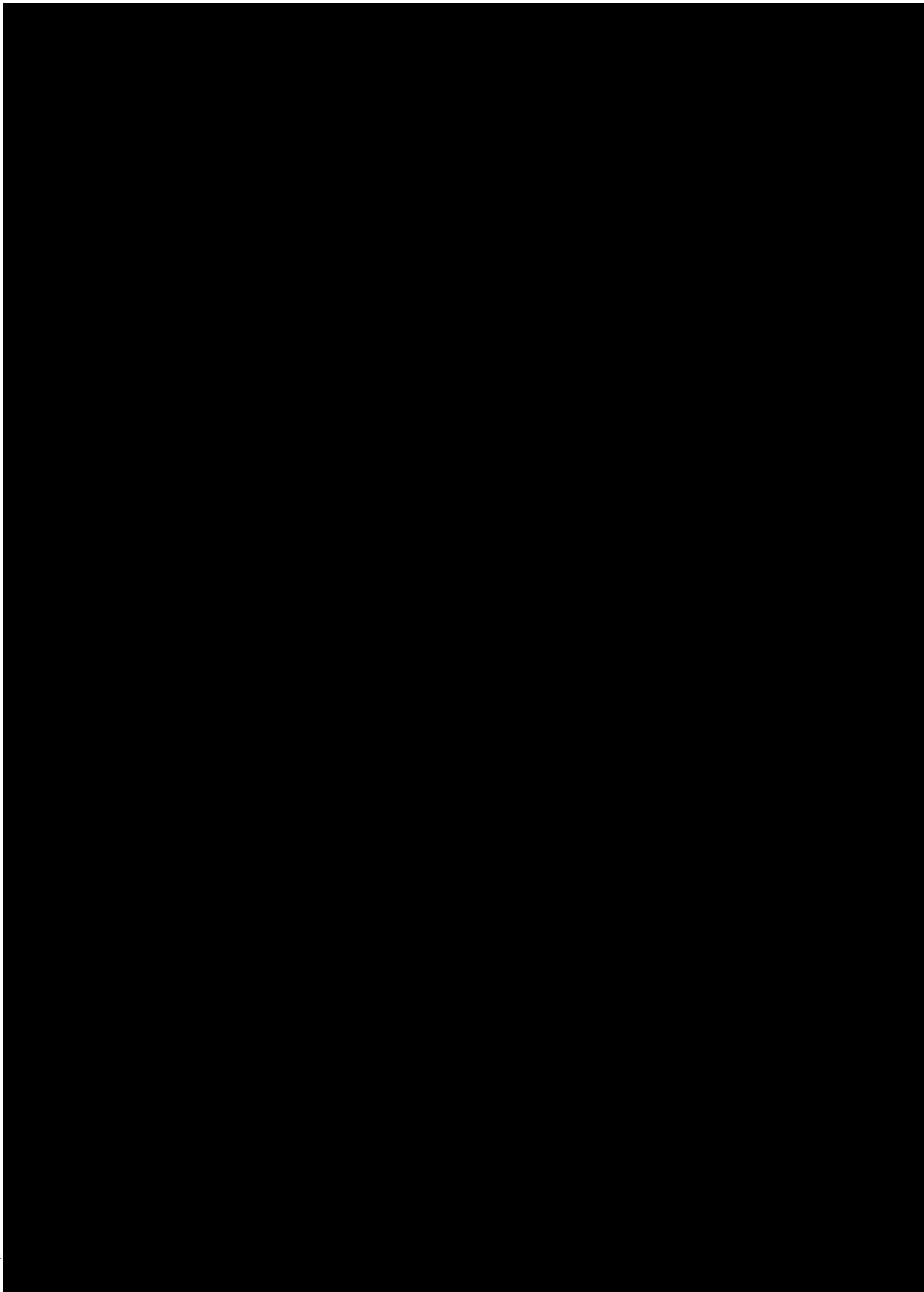
24.2 Exclusion of Consequential and Indirect Loss

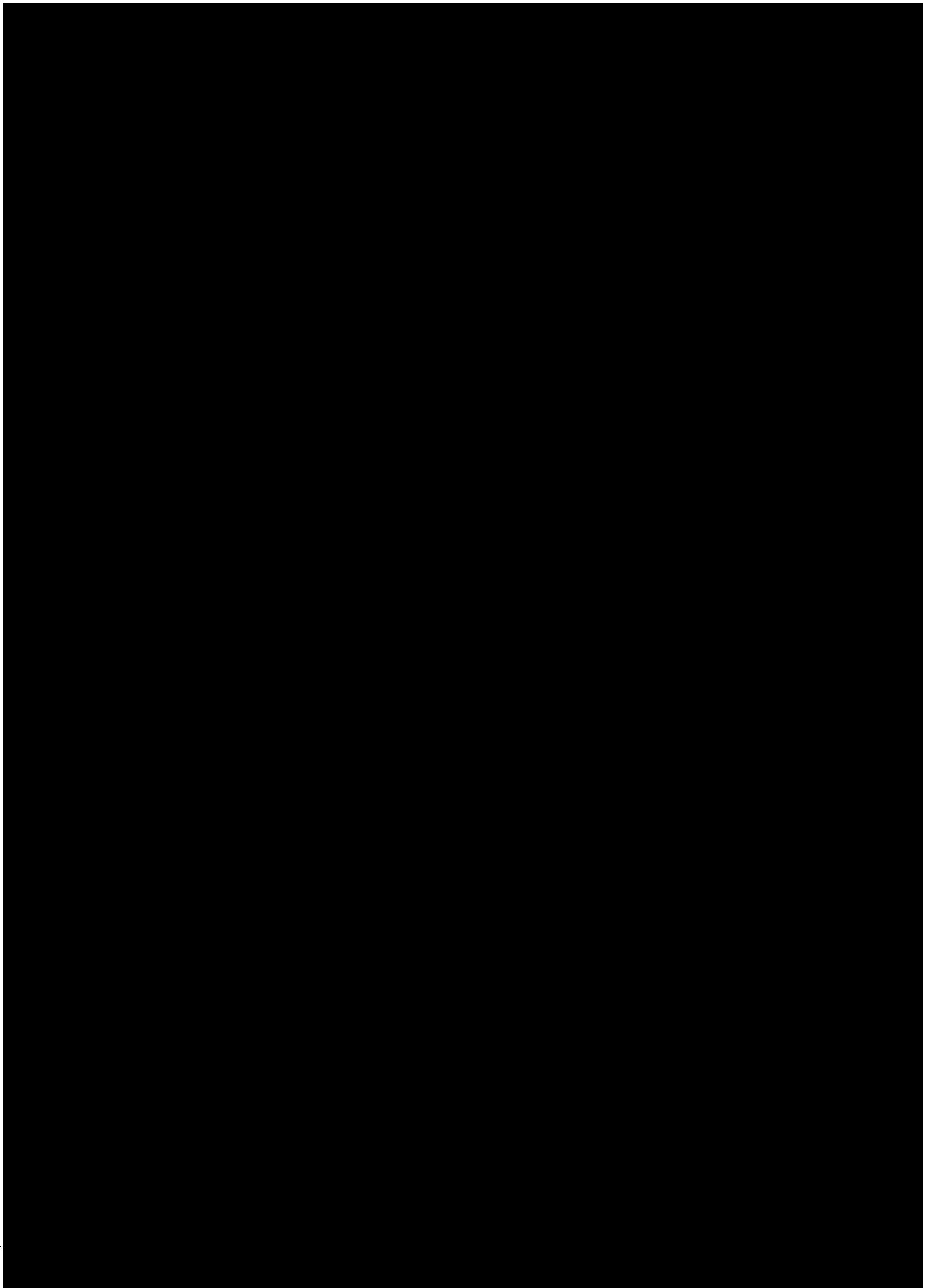


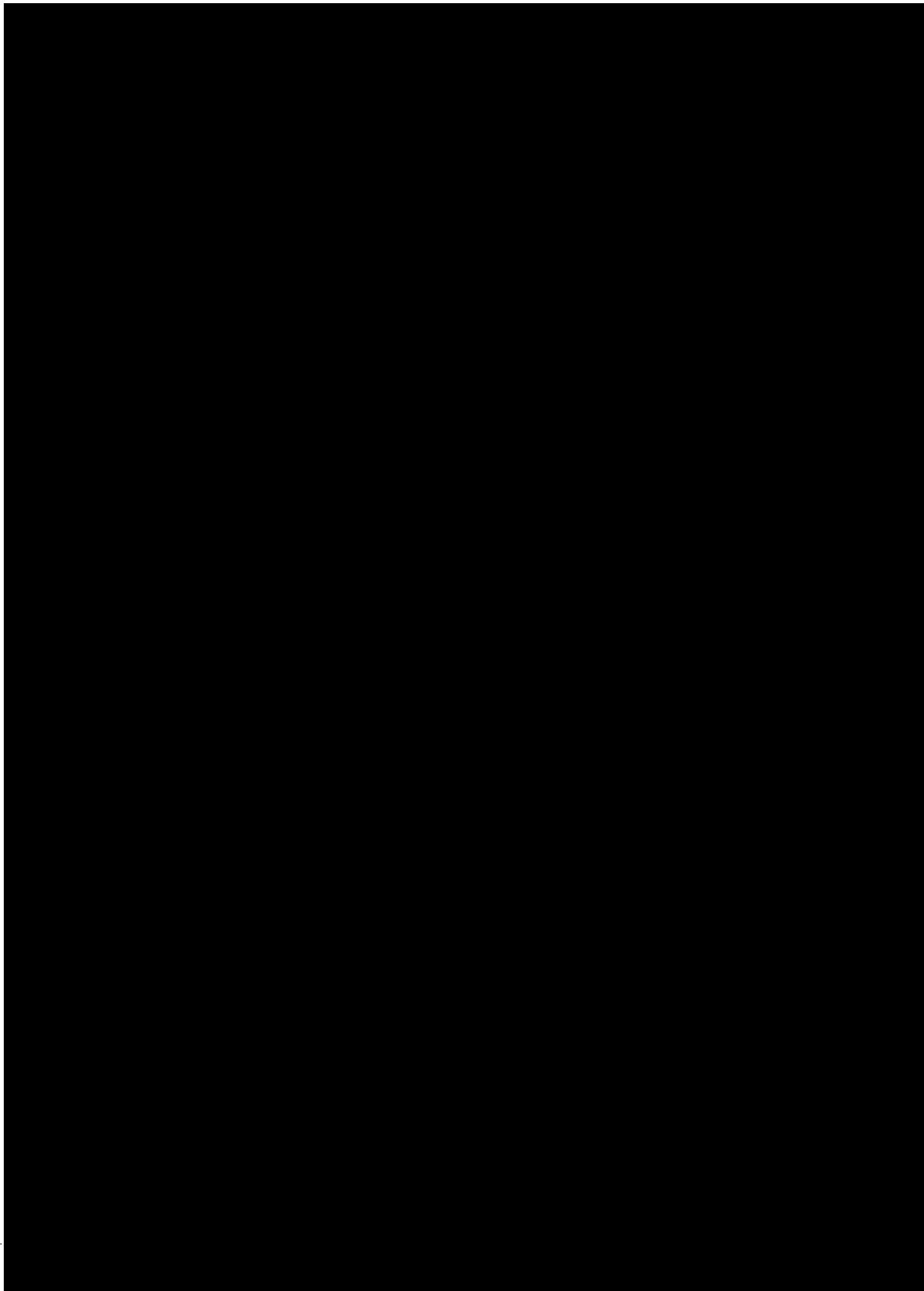
Schedule 1 Services

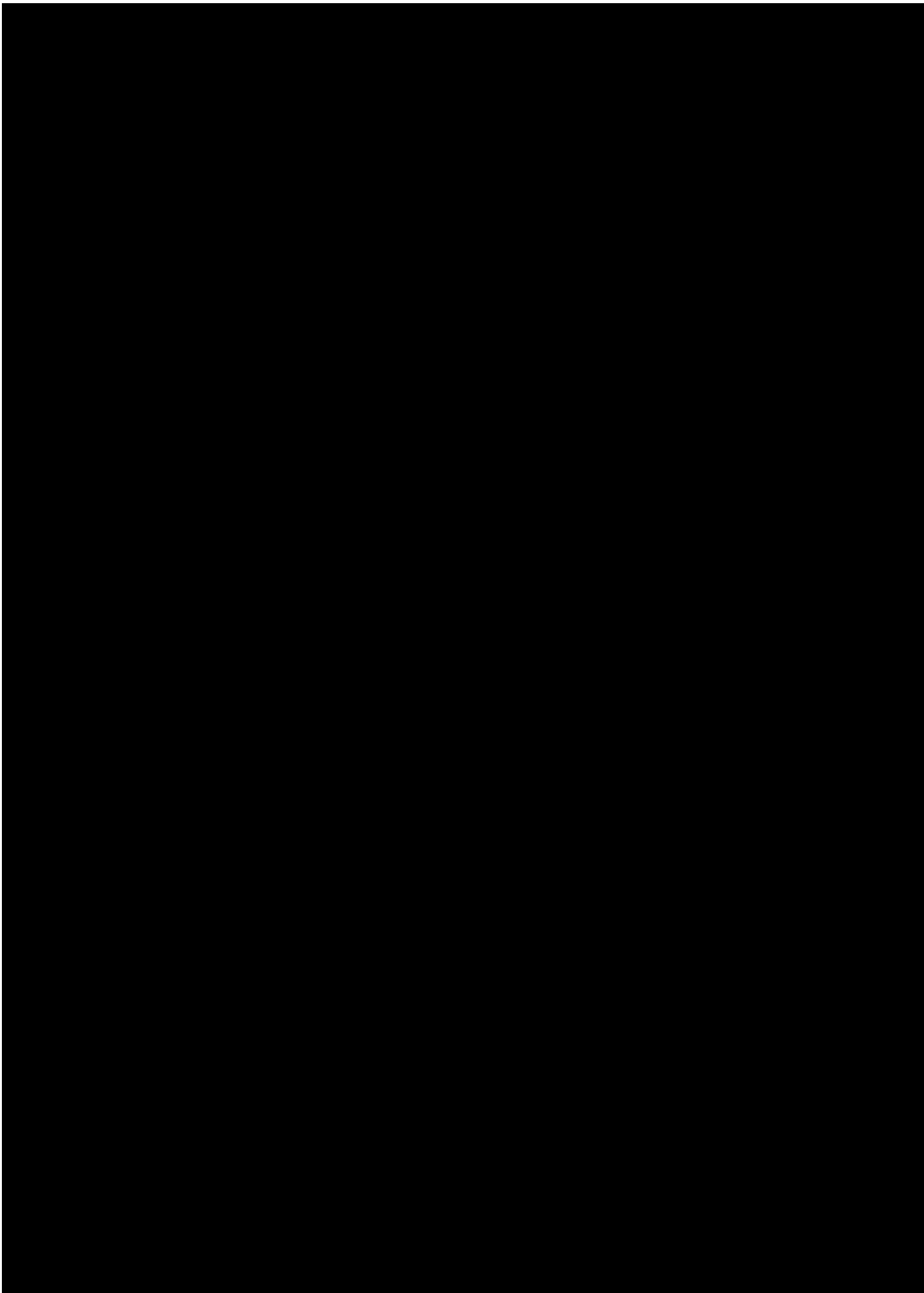


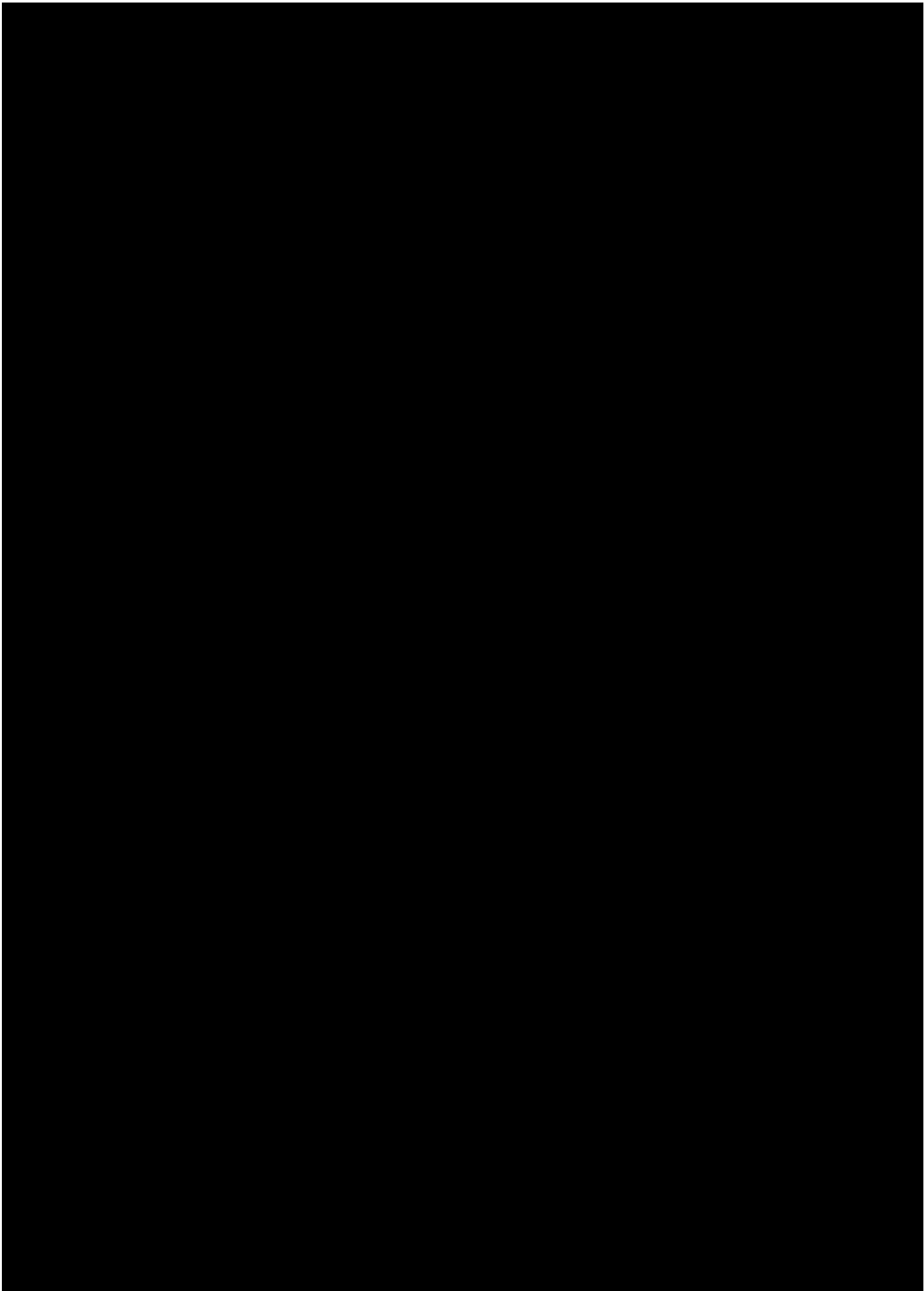


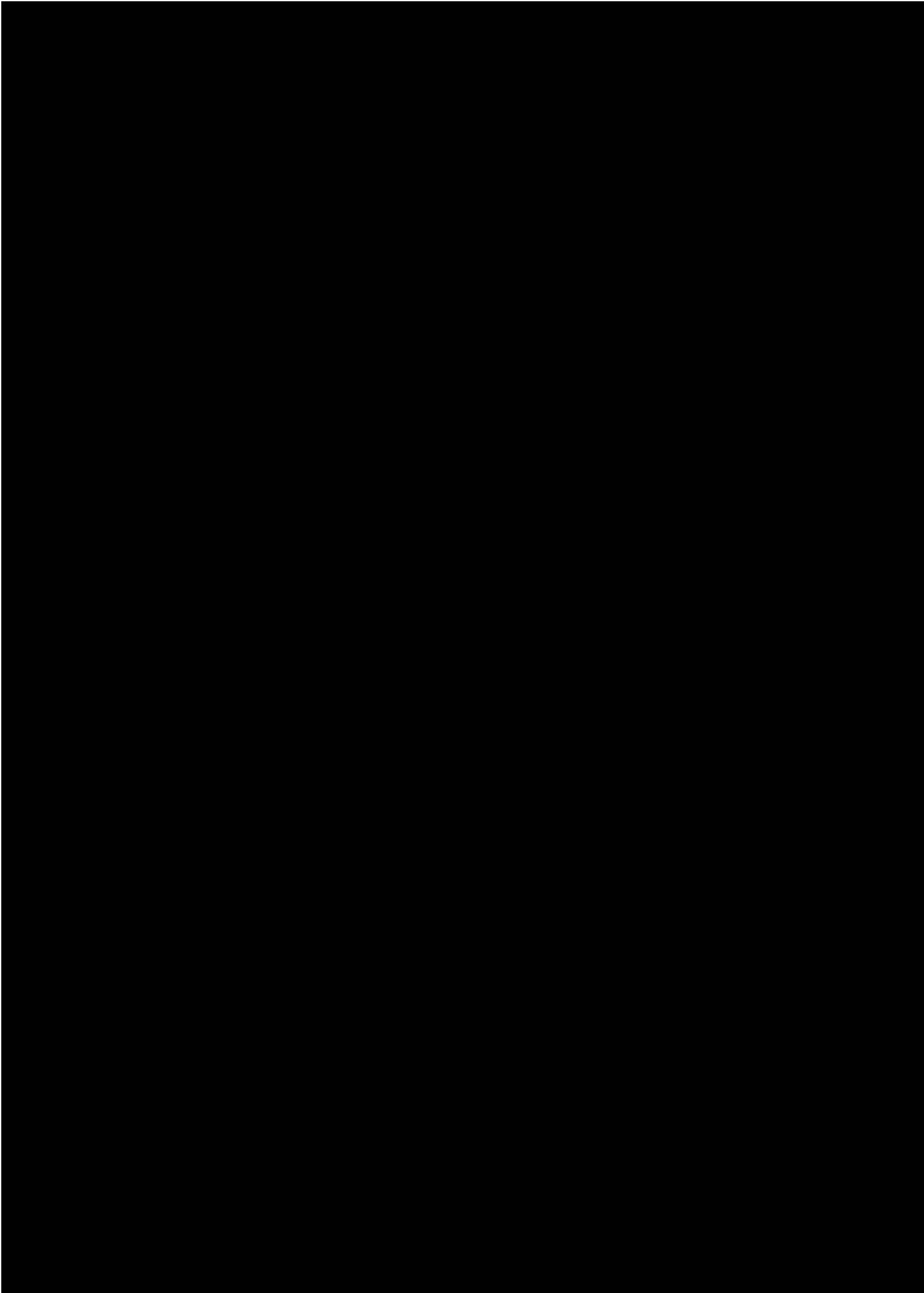


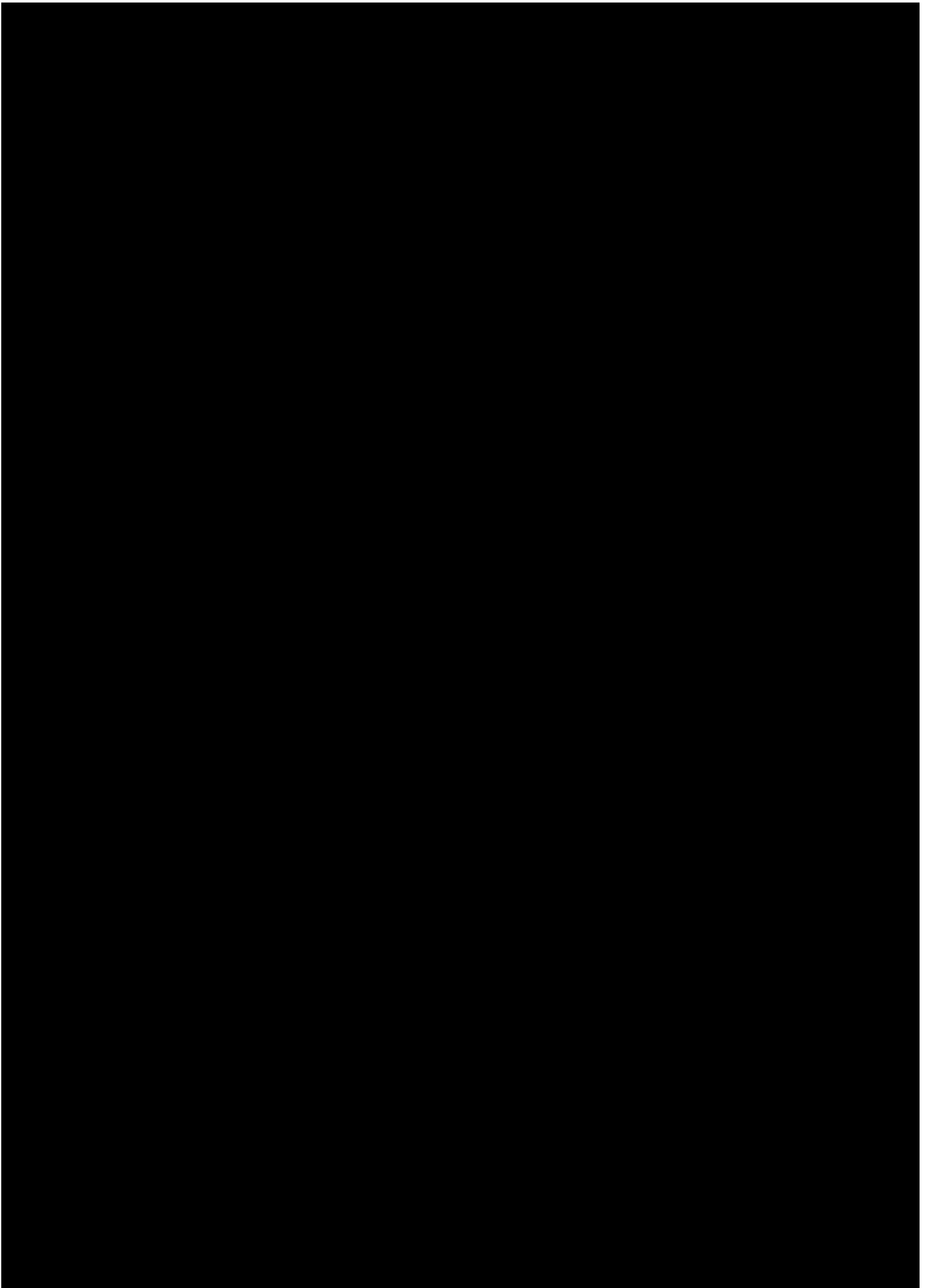


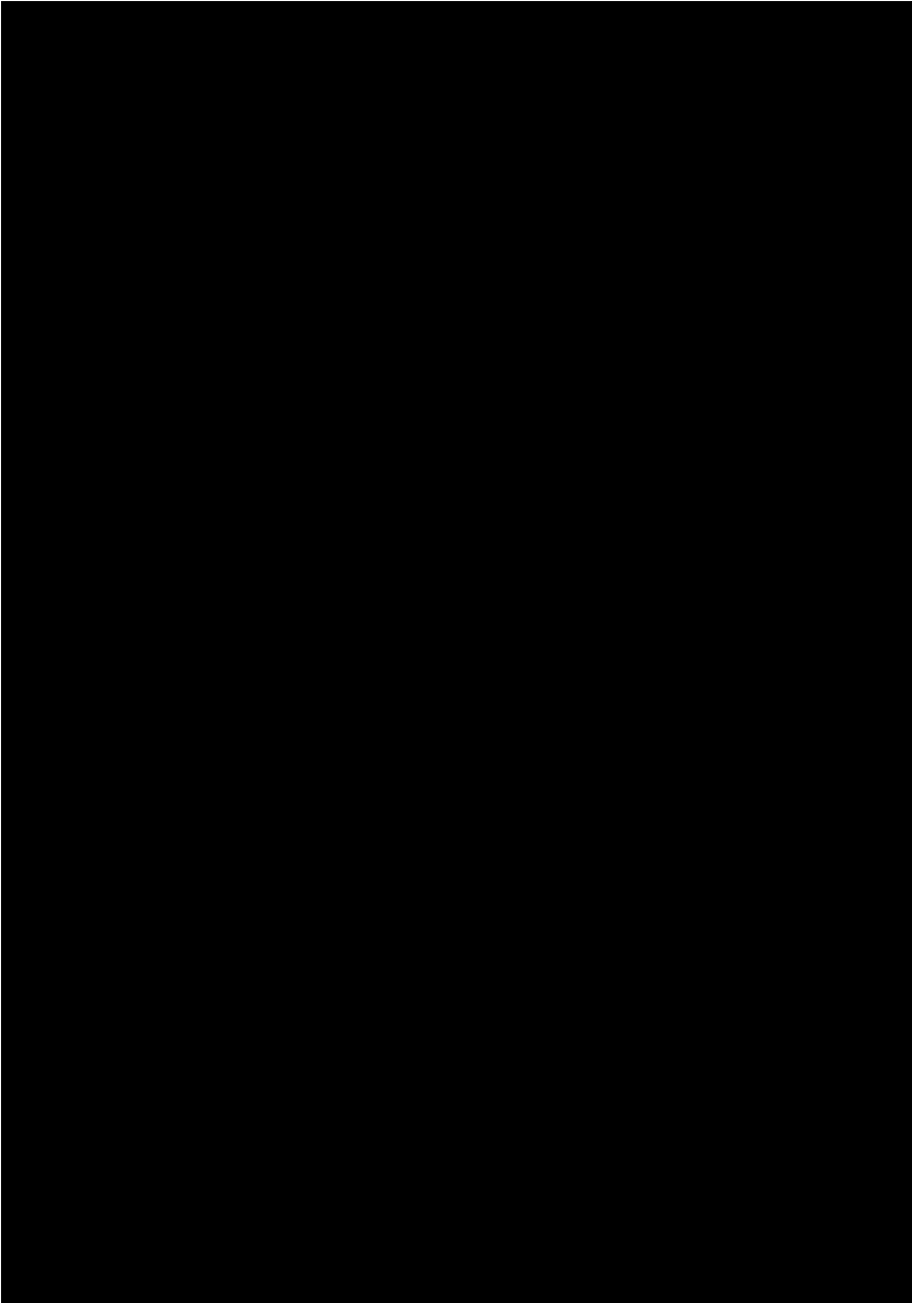


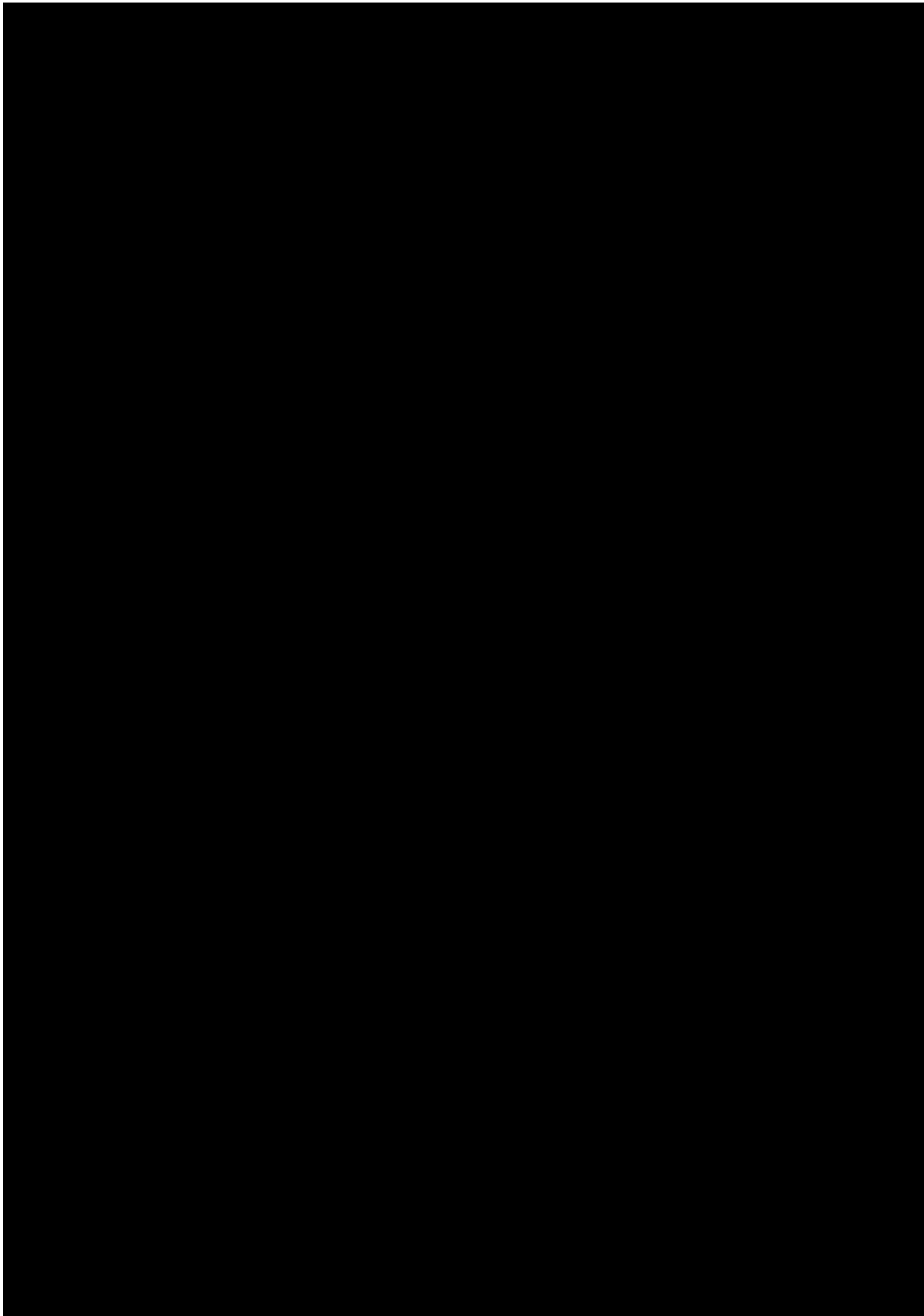




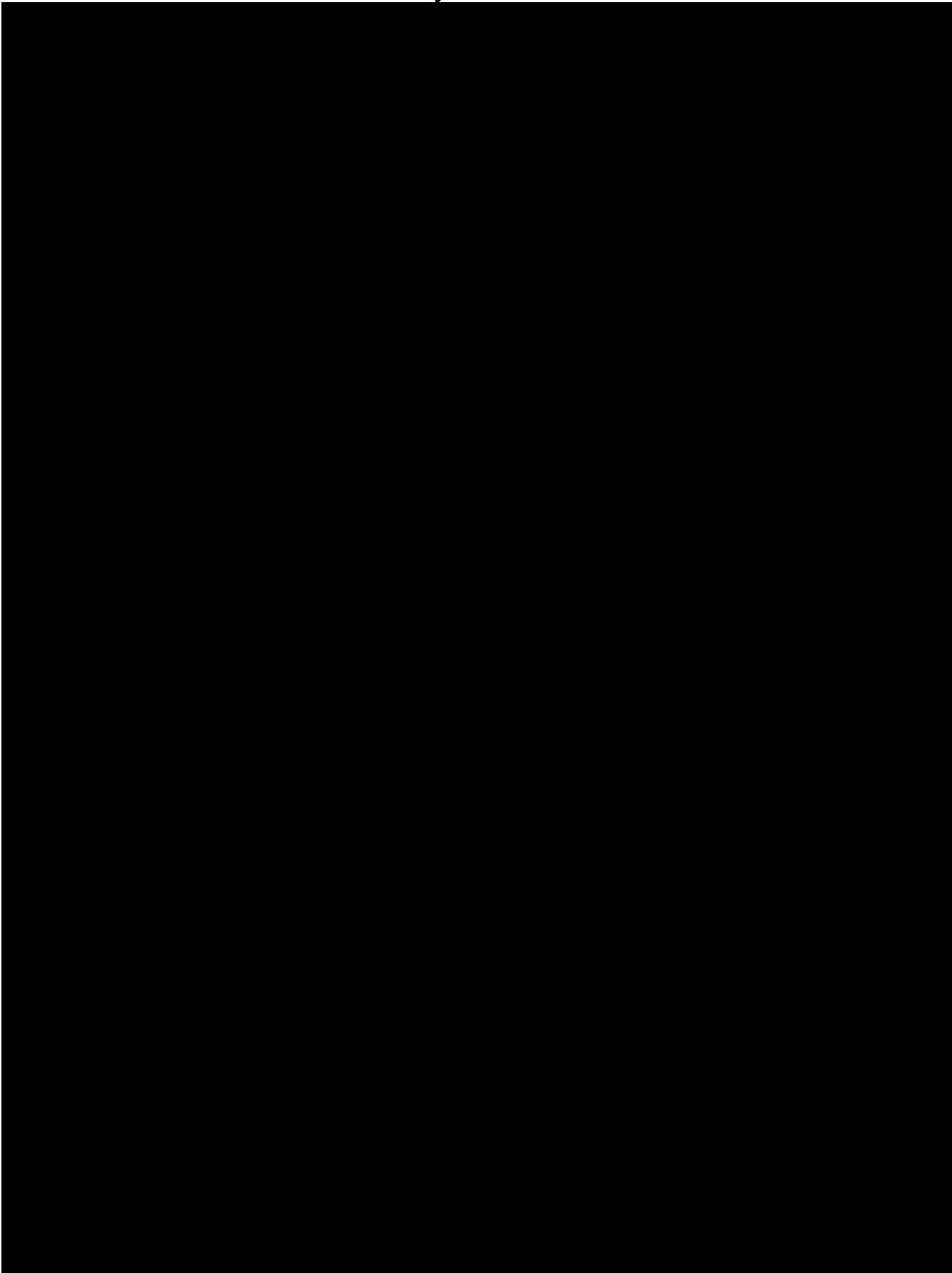




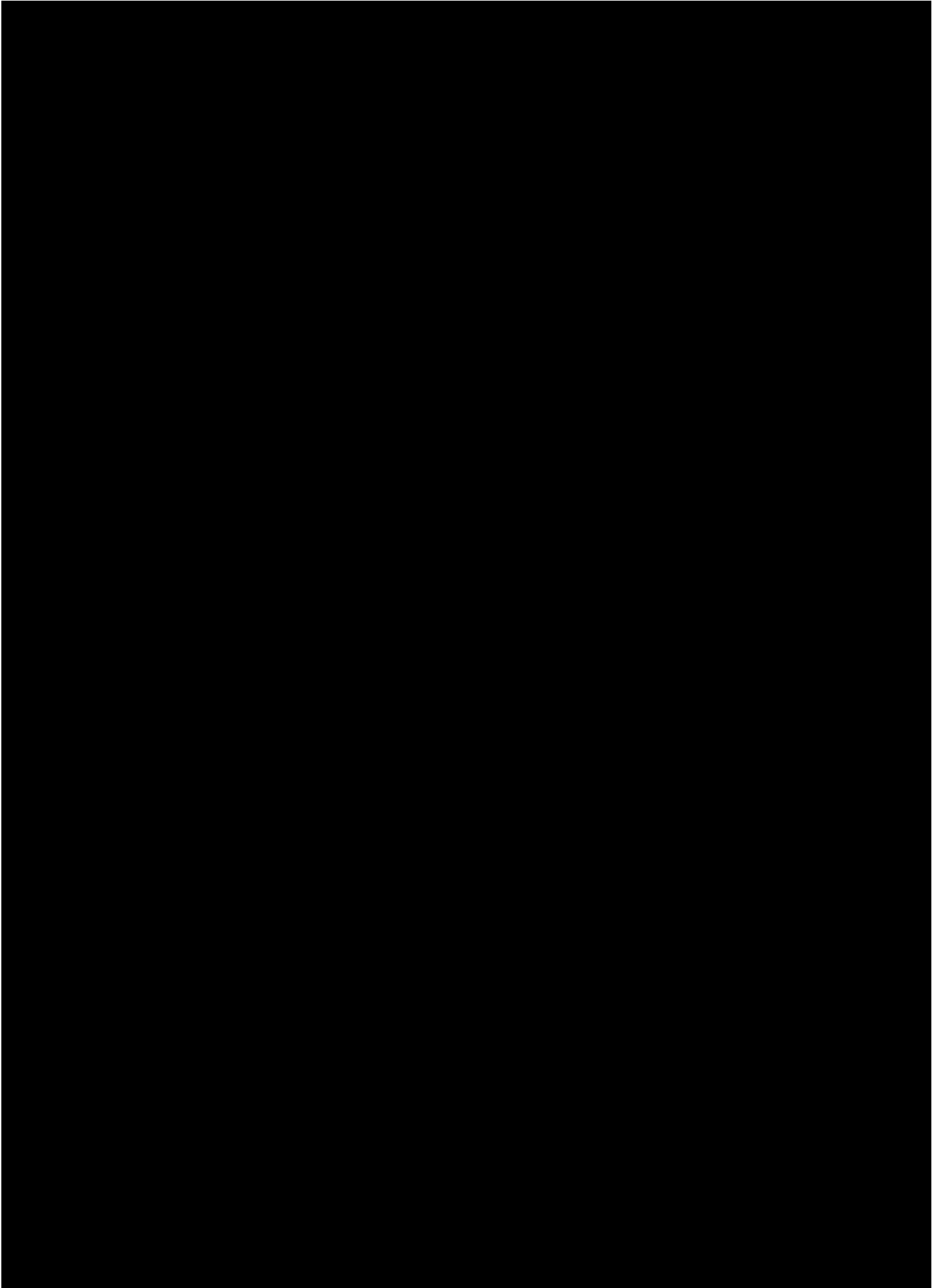




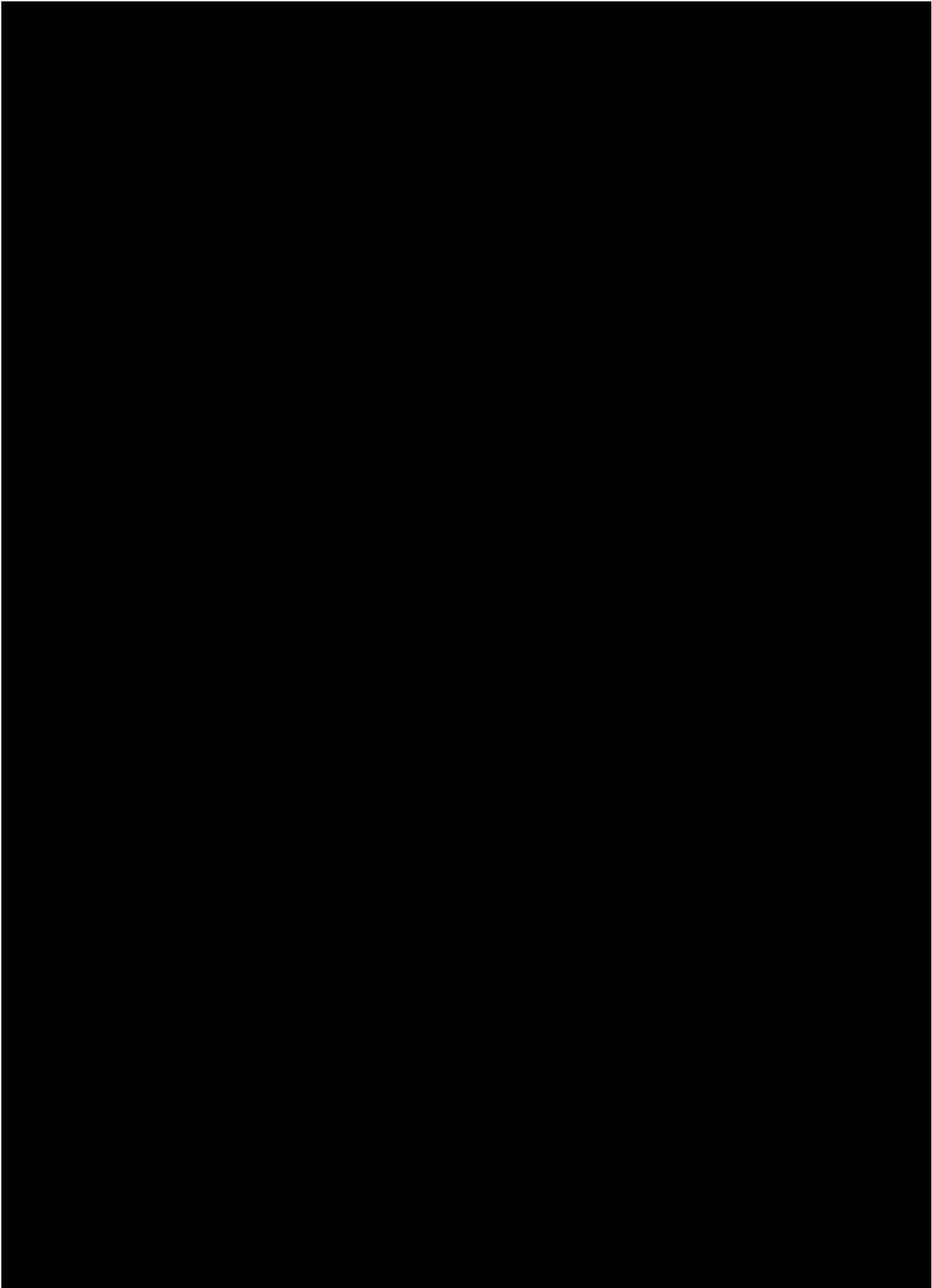
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**
Schedule 2 Payment Schedule



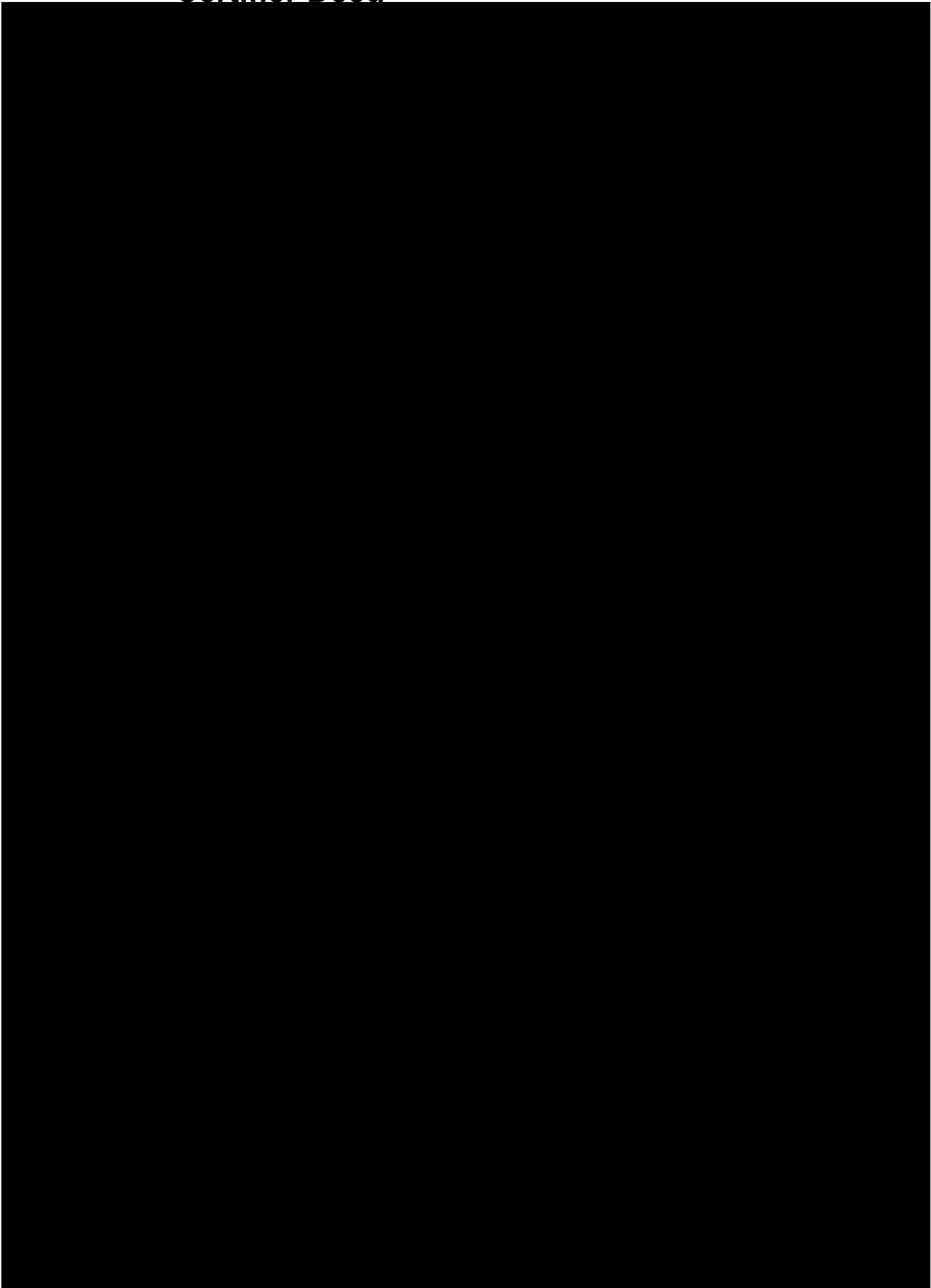
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



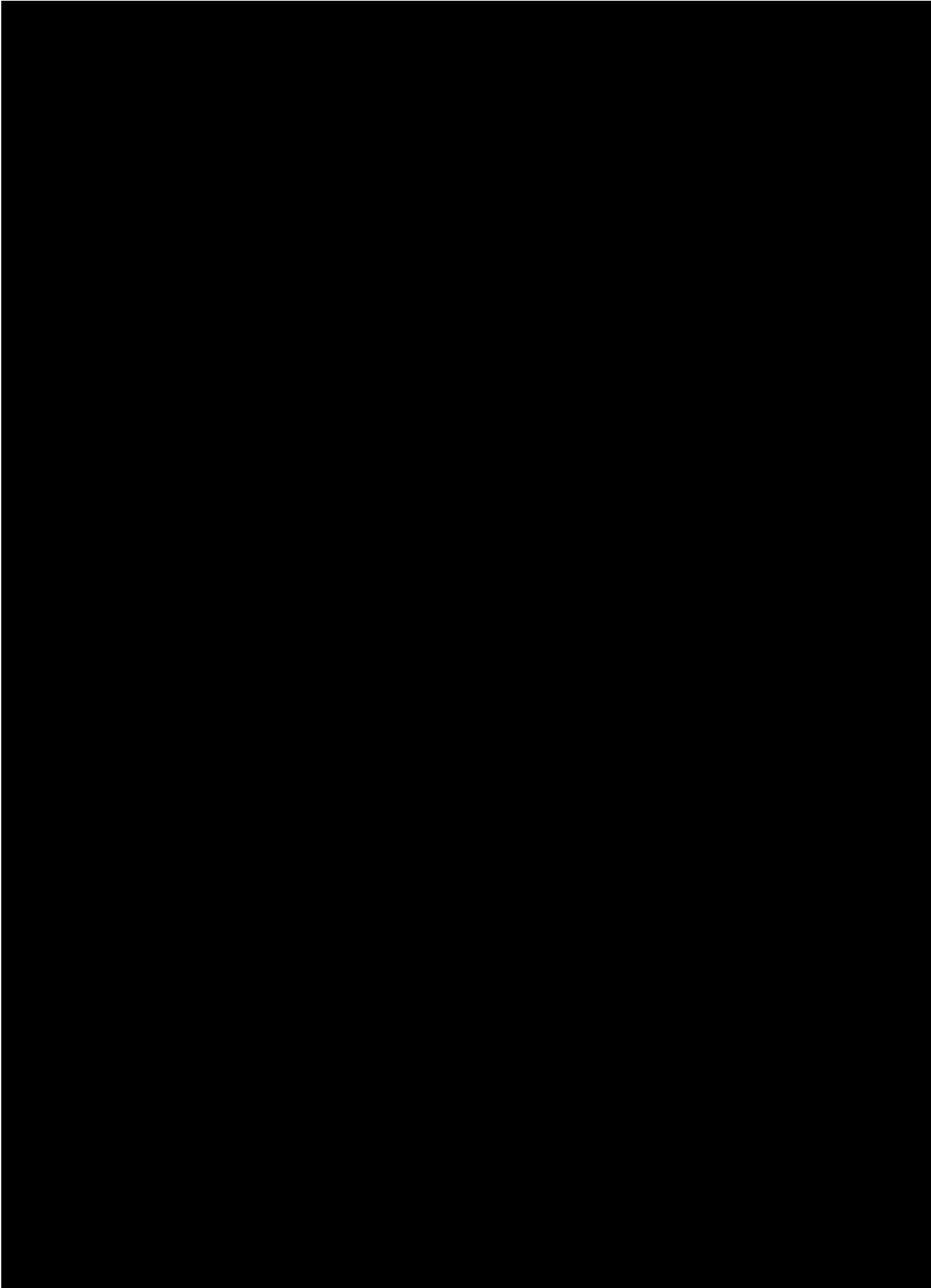
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



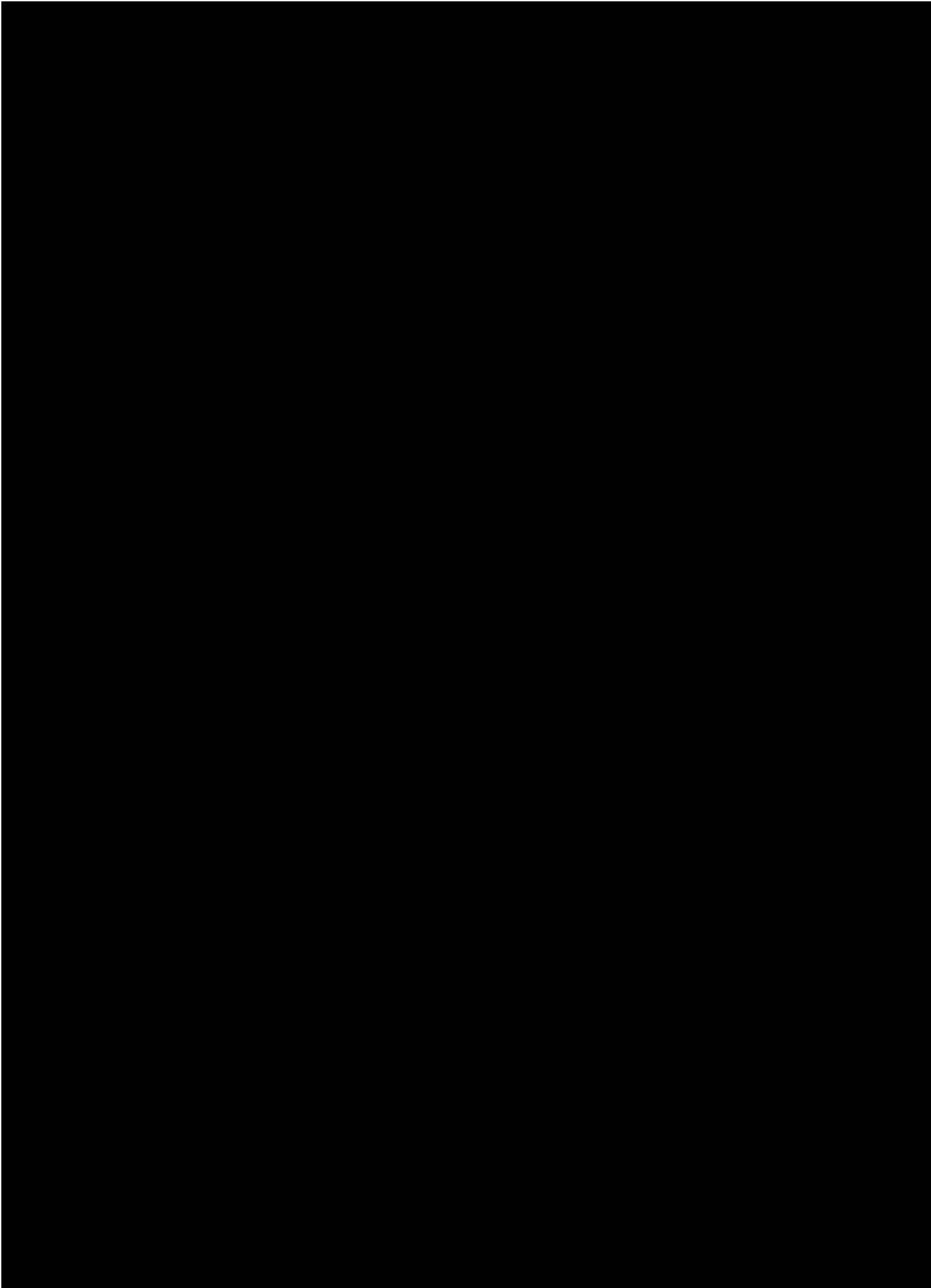
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



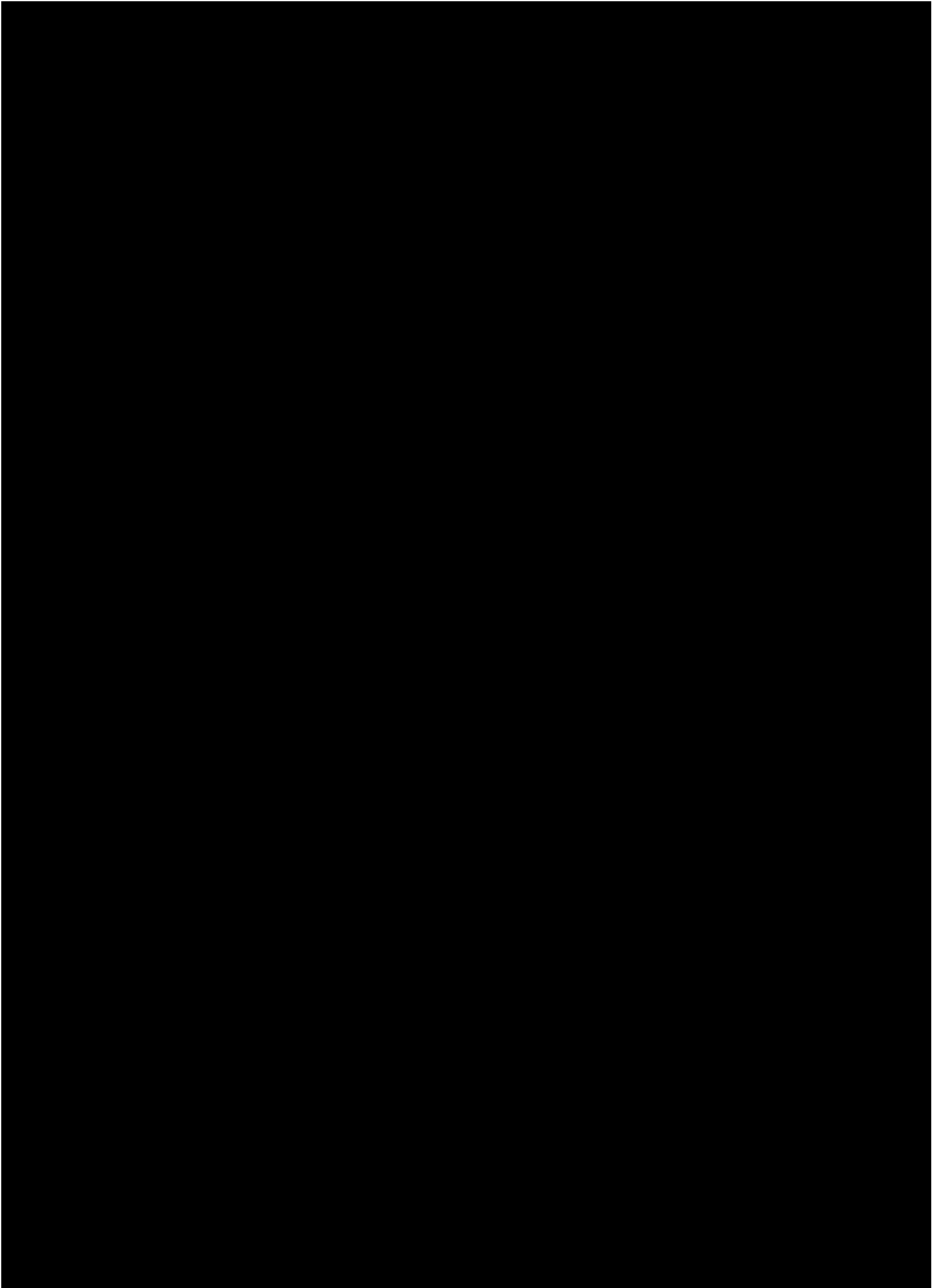
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



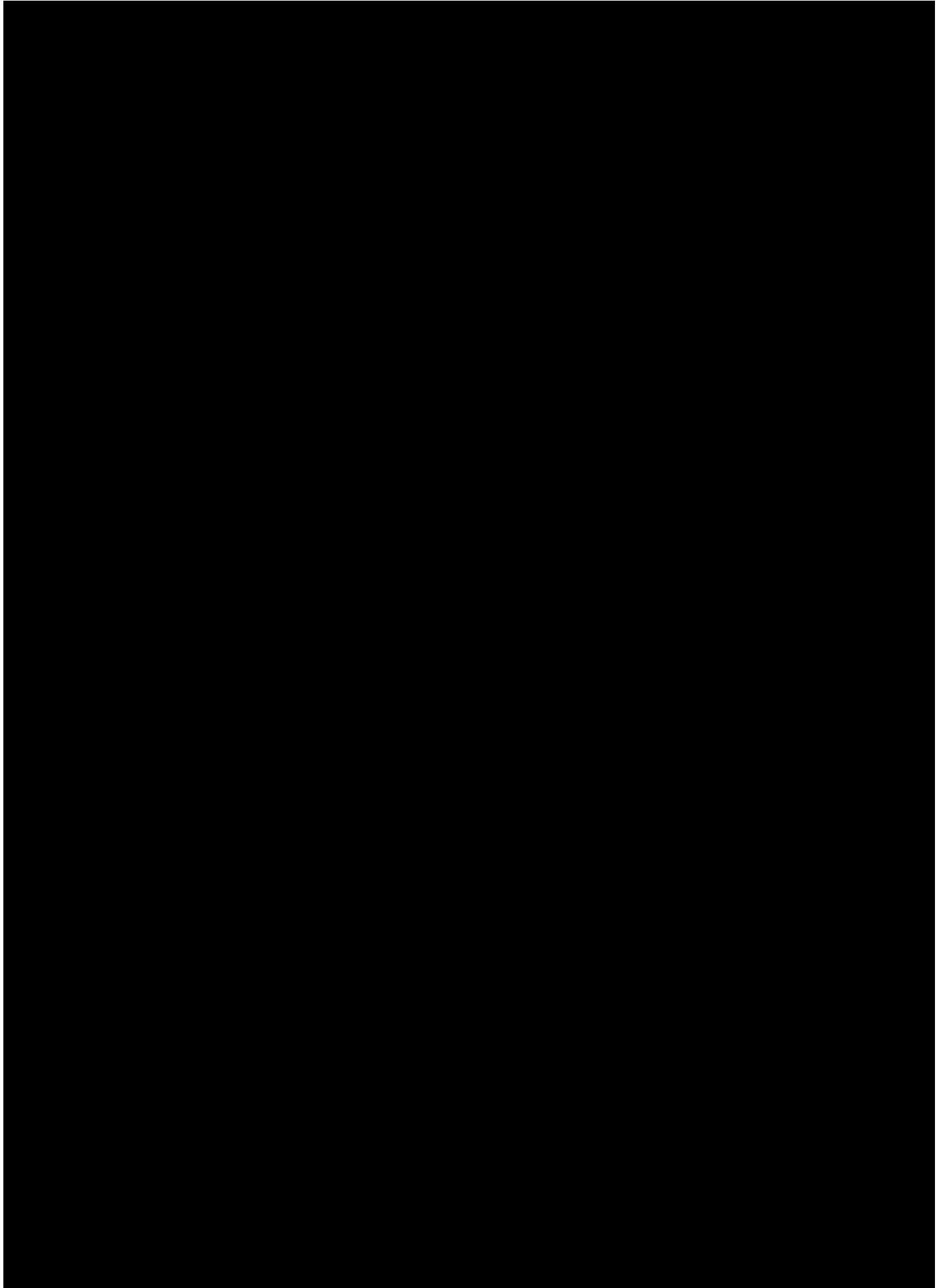
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



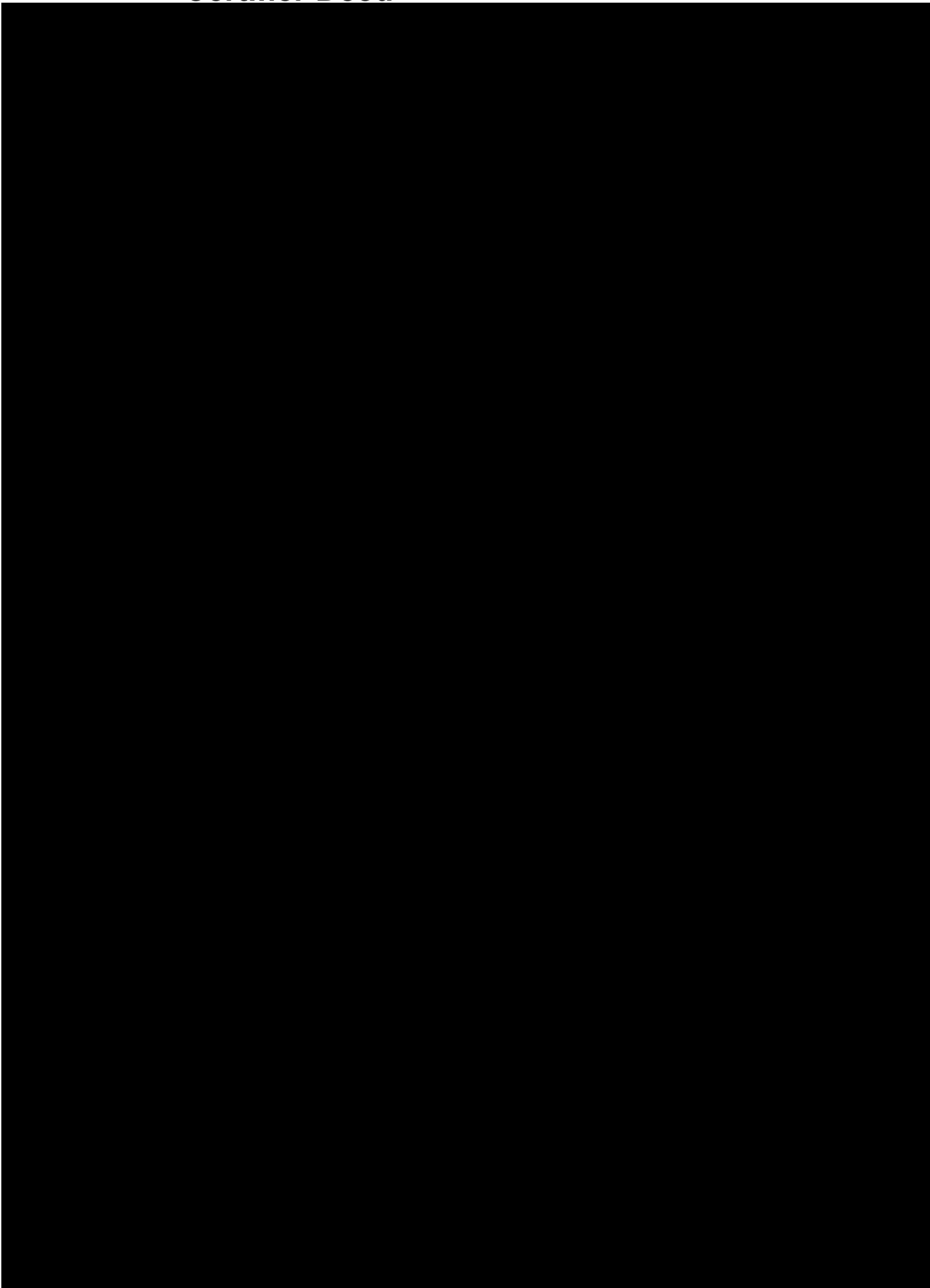
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



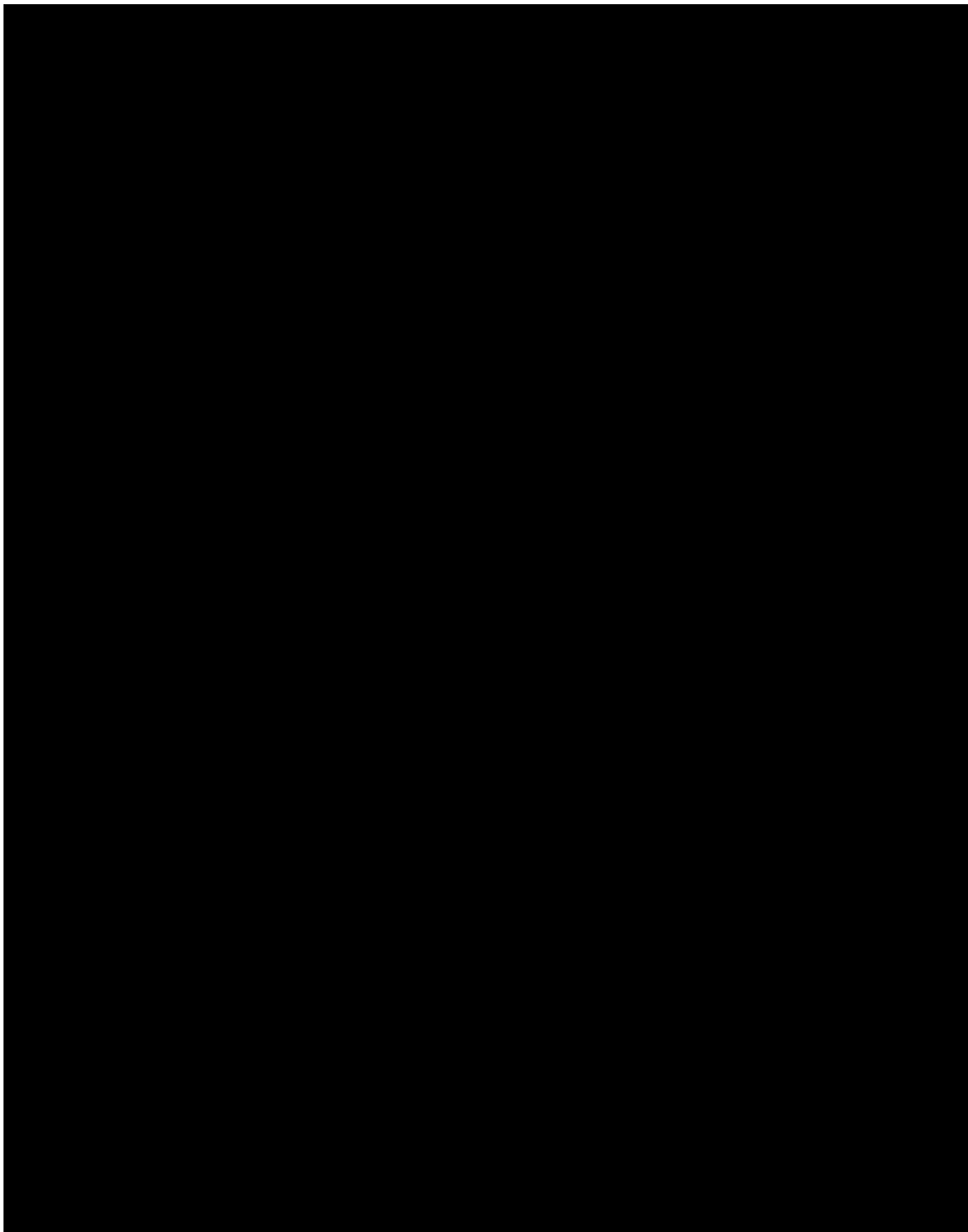
PLR Stage 2 Enabling Works - Independent Certifier Deed



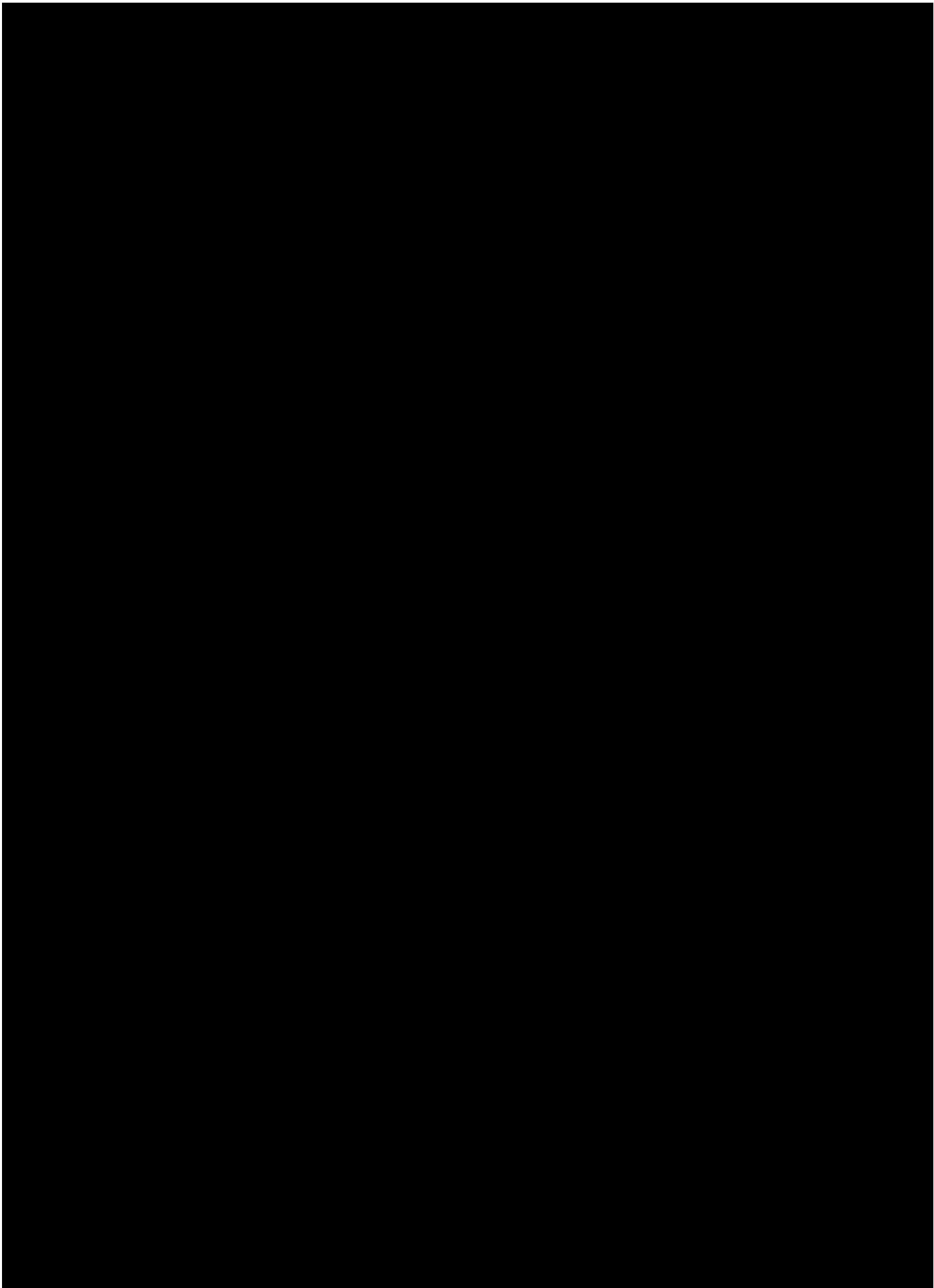
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



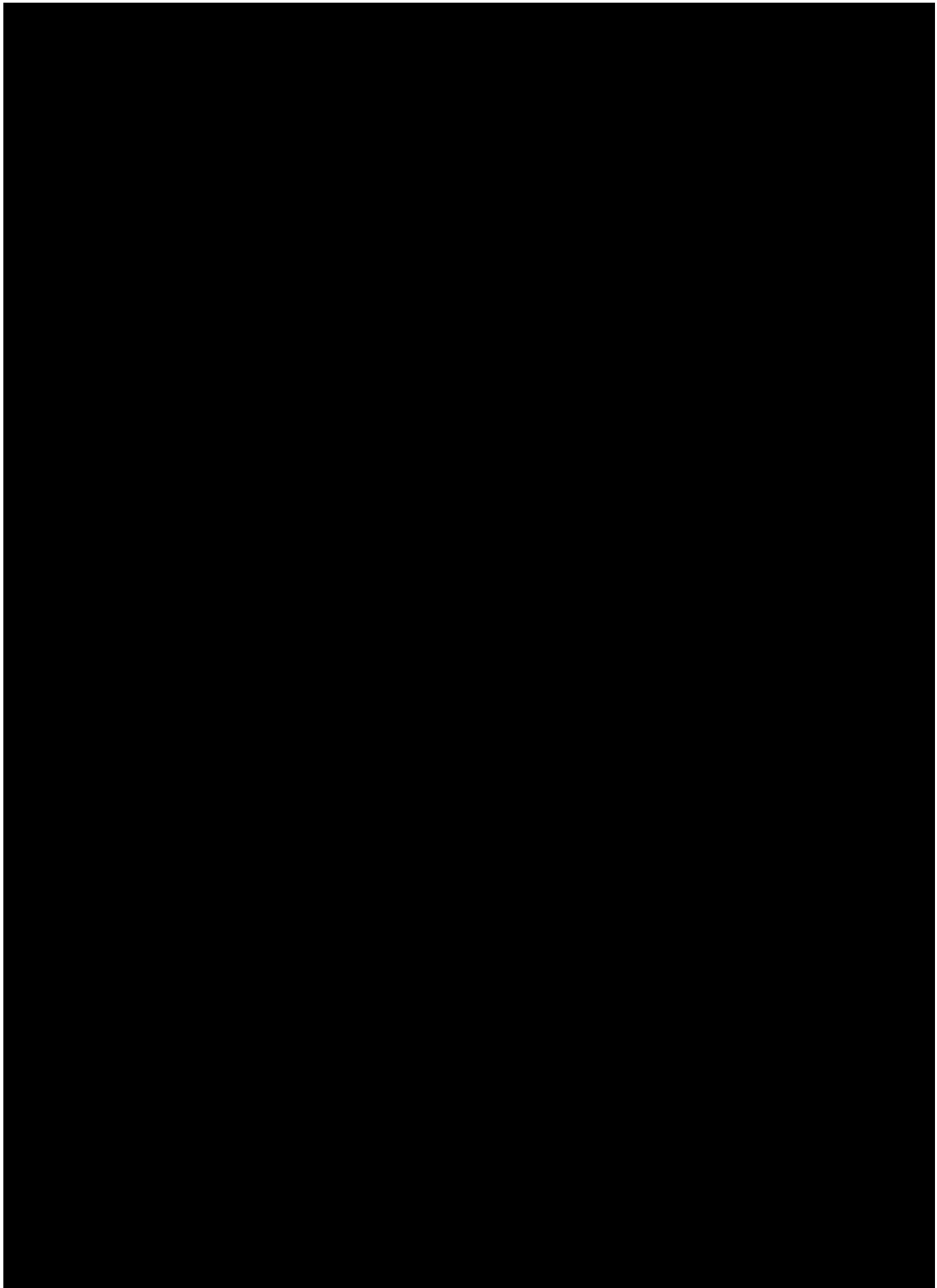
PLR Stage 2 Enabling Works - Independent Certifier Deed



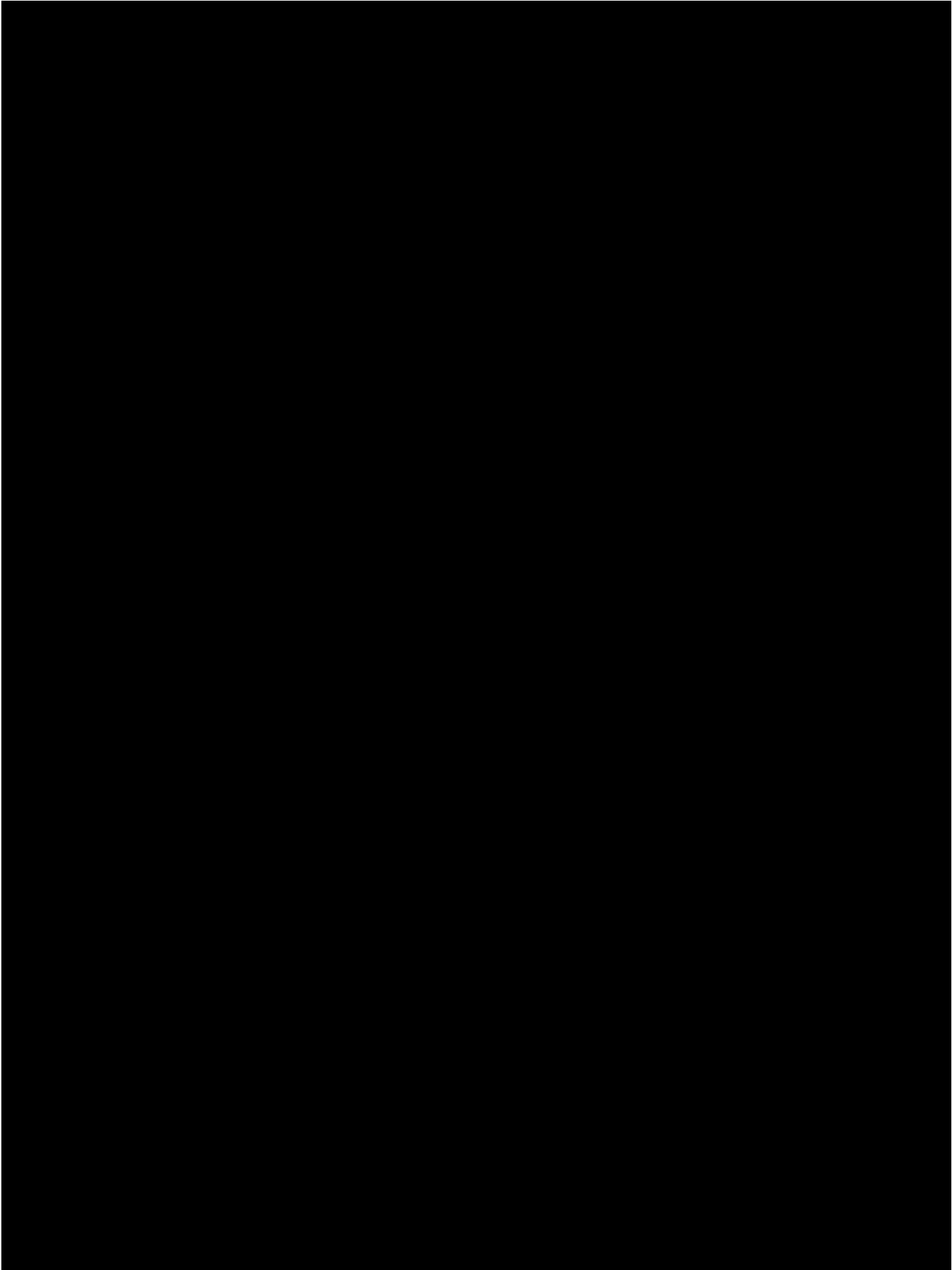
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



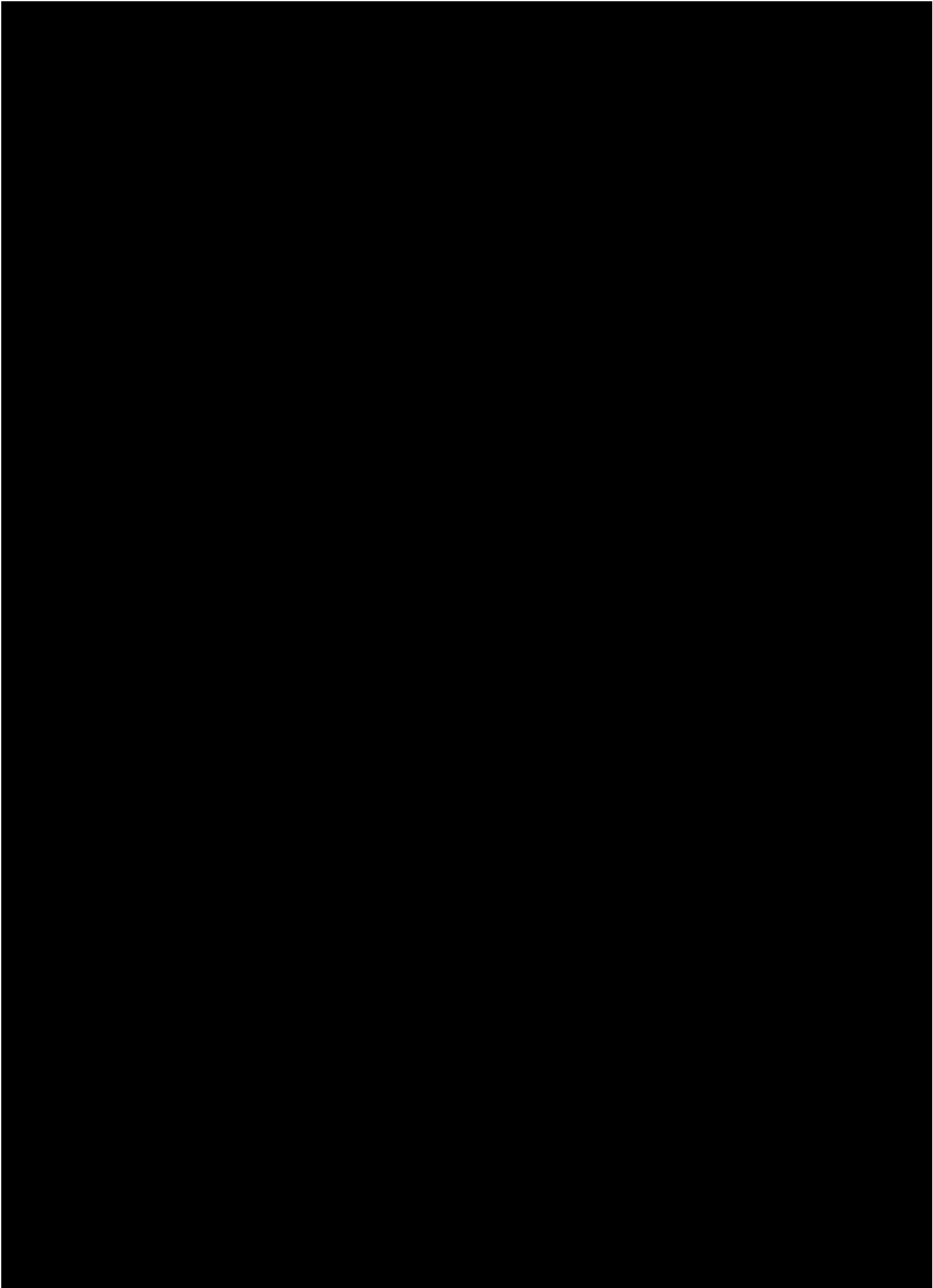
PLR Stage 2 Enabling Works - Independent Certifier Deed



**PLR Stage 2 Enabling Works - Independent
Certifier Deed**
Schedule 3 Insurance



**PLR Stage 2 Enabling Works - Independent
Certifier Deed**



PLR Stage 2 Enabling Works - Independent Certifier Deed

Schedule 4 Certification and Monitoring Plan

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

- (a) the detailed schedule of functions, obligations, duties and services which the Project Contracts contemplate will be discharged by the Independent Certifier;
- (b) the management team structures, positions, nominated personnel and subcontractors to be engaged on and off the site for the Project and the roles and tasks of the nominated personnel and subcontractors;
- (c) the minimum skill, expertise and experience levels of each position and details of personnel resource levels;
- (d) the Independent Certifier's internal and external lines of authority, communication and reporting, including those with the parties to the Contract;
- (e) the identification of delegated authorities of the Independent Certifier's personnel, including identification of personnel with delegated authority to execute certificates on behalf of the Independent Certifier;
- (f) all compliance records to be maintained;
- (g) the proposed timing of progressive performance of discrete elements of the Services, including the timing for conducting reviews, audits of Design Documentation and other aspects of the Project;
- (h) the Independent Certifier's comprehensive plans for:
 - (i) continual observation, monitoring, auditing, reviewing, assessment and testing of the Project;
 - (ii) without limiting sub-paragraph (i), observation, monitoring, auditing, reviewing, assessment and testing of the quality and durability of the physical works to determine, verify and ensure compliance with the Contract;
 - (iii) audit and surveillance, including identification of resources, methodology, scope, levels of surveillance, inspection, testing and survey; and
 - (iv) off-site surveillance of critical activities;
- (i) the Independent Certifier's strategies, processes, methodologies and procedures for:
 - (i) reviewing the plans and progress of the Project;
 - (ii) addressing environmental monitoring and protection;
 - (iii) audit, surveillance and monitoring of design and construction activities for the Enabling Works, including the processes used for determining the levels and scope of surveillance of activities;

PLR Stage 2 Enabling Works - Independent Certifier Deed

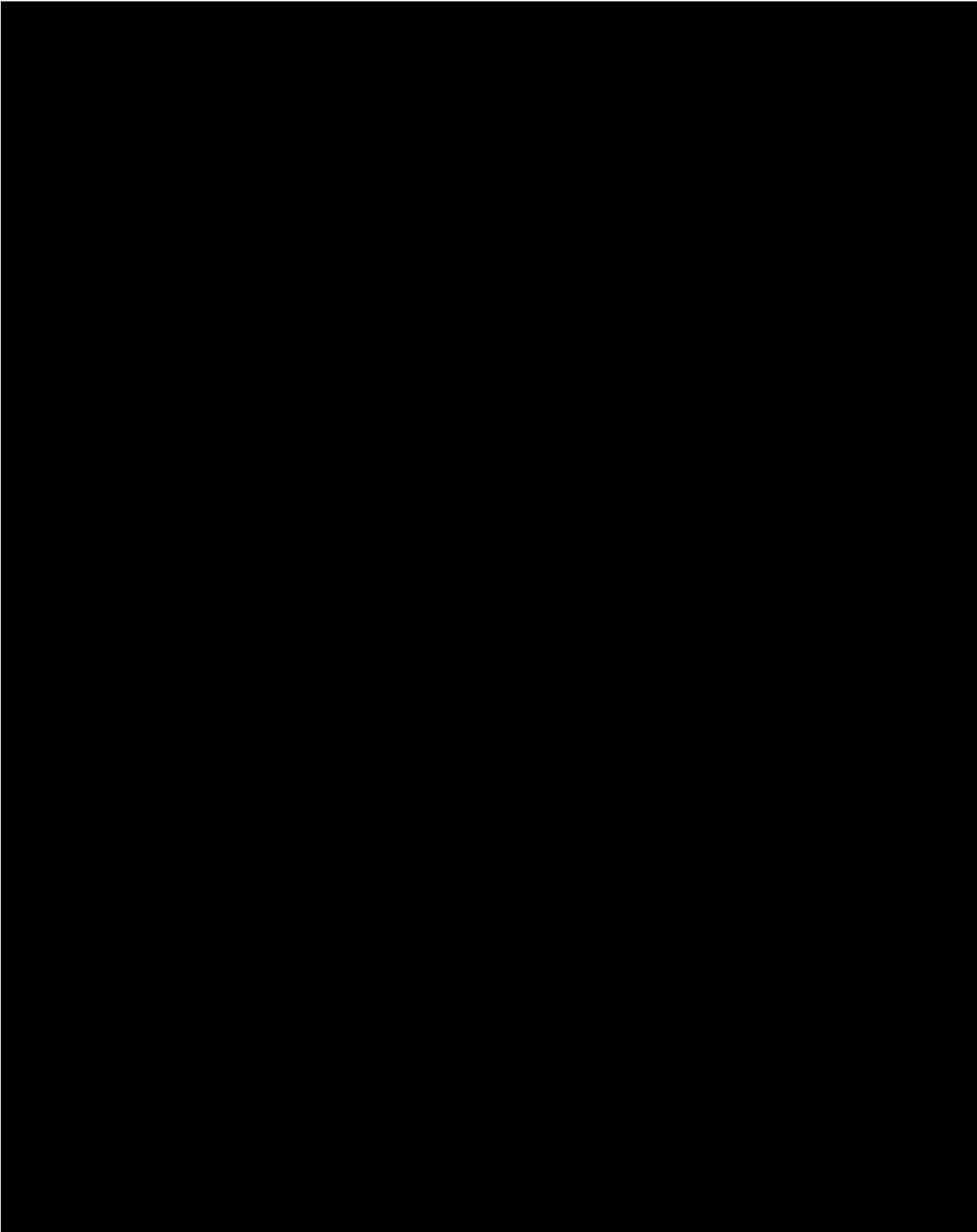
- (iv) identifying and managing the Services to be subcontracted, including quality, reporting and communication aspects of the Services;
- (v) ensuring that the contractors for the Enabling Works have addressed all issues of review, comment and consultation with TfNSW in respect of the Design Documentation and the Enabling Works; and
- (vi) risk management of the work covered by sub-paragraphs (ii), (iii) and (iv) above;
- (j) the Independent Certifier's strategies, systems, procedures, processes, methodologies and reporting protocols to be applied whereby all certificates and determinations required as part of the Enabling Works will be achieved and satisfied; and
- (k) the Independent Certifier's proposed standards including:
 - (i) committed surveillance activities; and
 - (ii) committed surveillance resources.

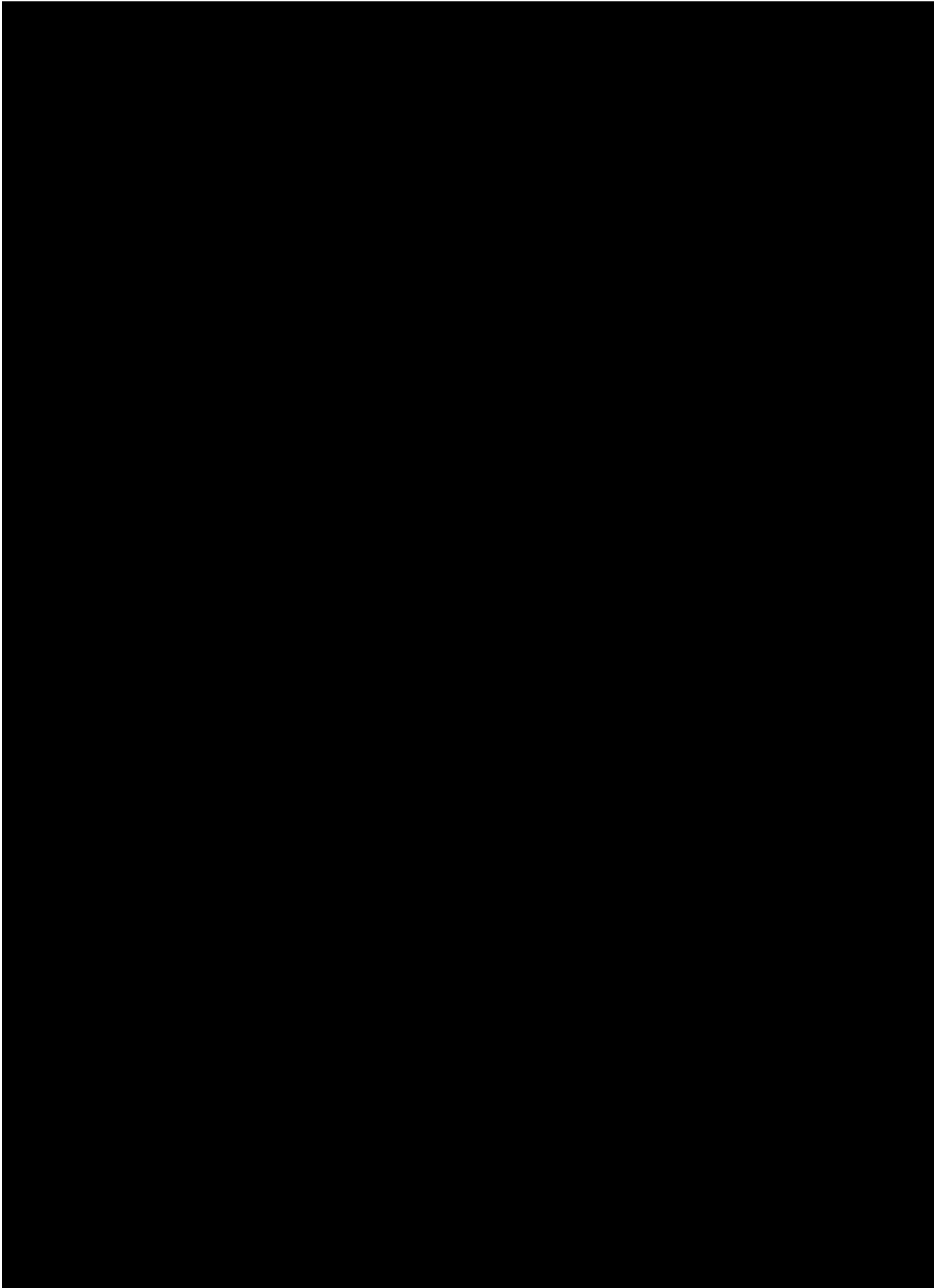
PLR Stage 2 Enabling Works - Independent
Certifier Deed
Schedule 5 Subcontracts

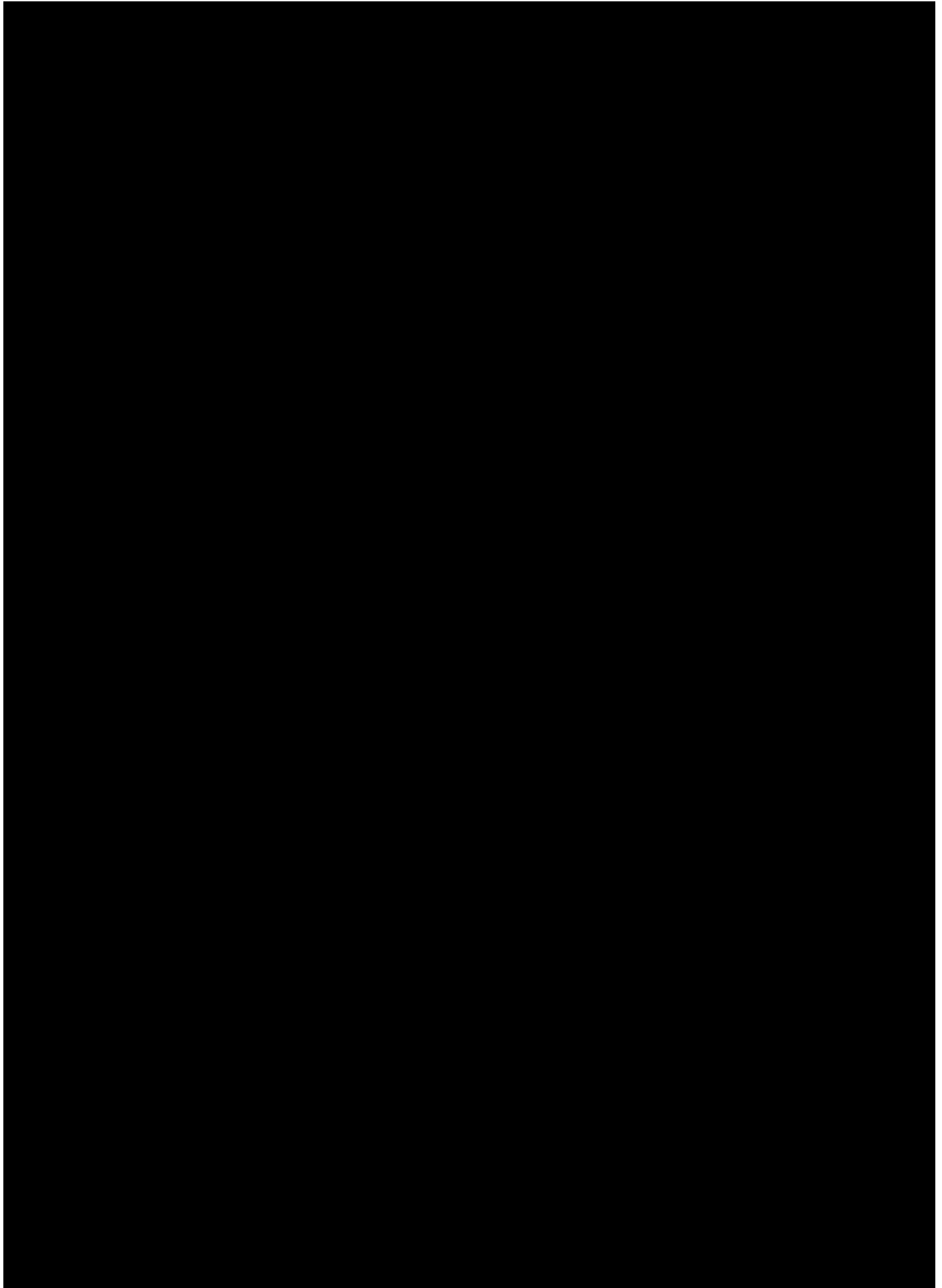
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ABN and ACN	47 065 475 149
Subcontractor Name	Urban Tree Management
ABN and ACN	56 098 599 805
Subcontractor Name	Trinity Consultants
ABN and ACN	62 630 202 201
Subcontractor Name	Green Bean Design
ABN and ACN	86 603 575 702
Subcontractor Name	Tactix Group
ABN and ACN	63 161 140 174
Subcontractor Name	Architectus Australia Pty Ltd
ABN and ACN	90 131 245 684

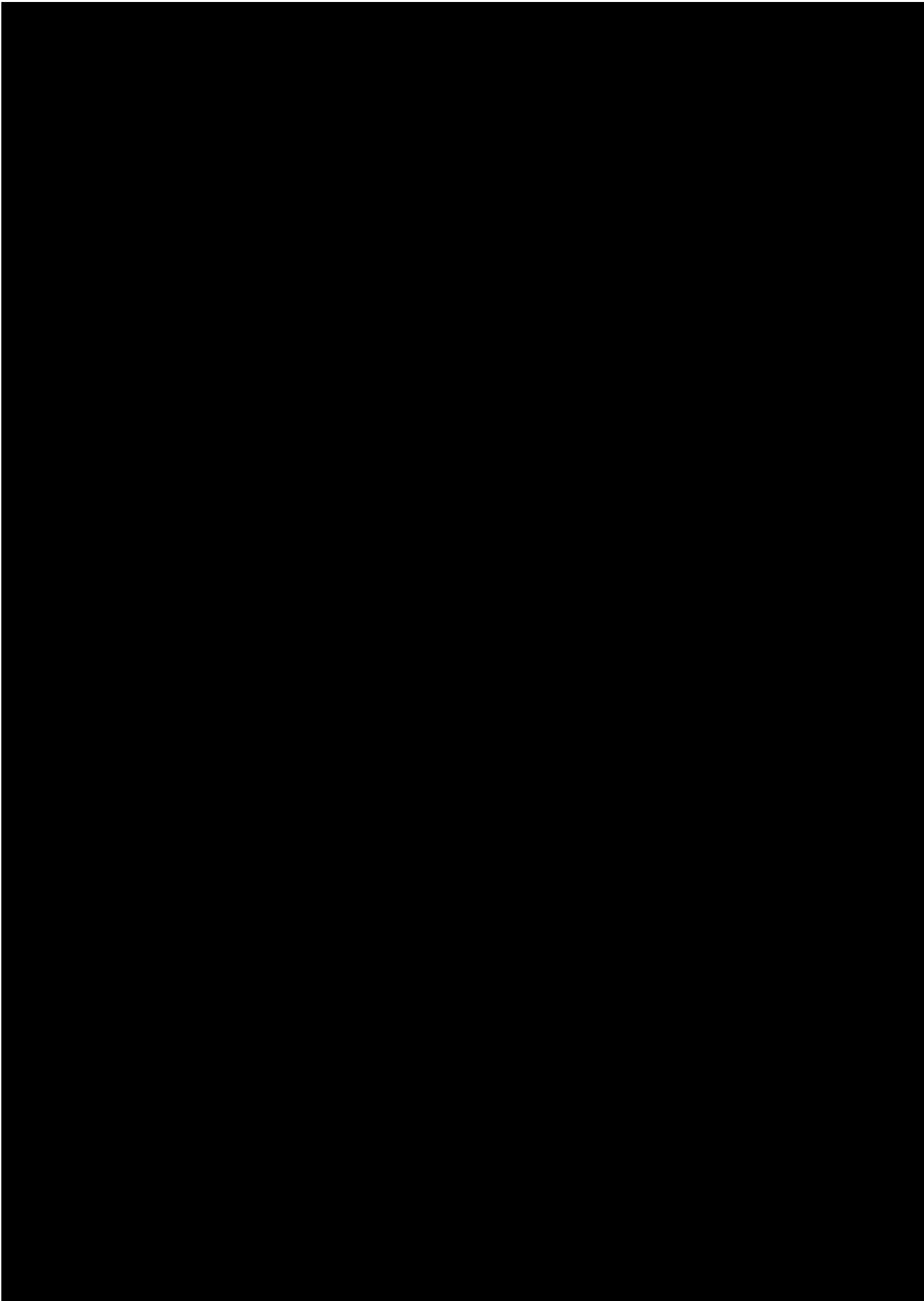
**PLR Stage 2 Enabling Works - Independent
Certifier Deed**

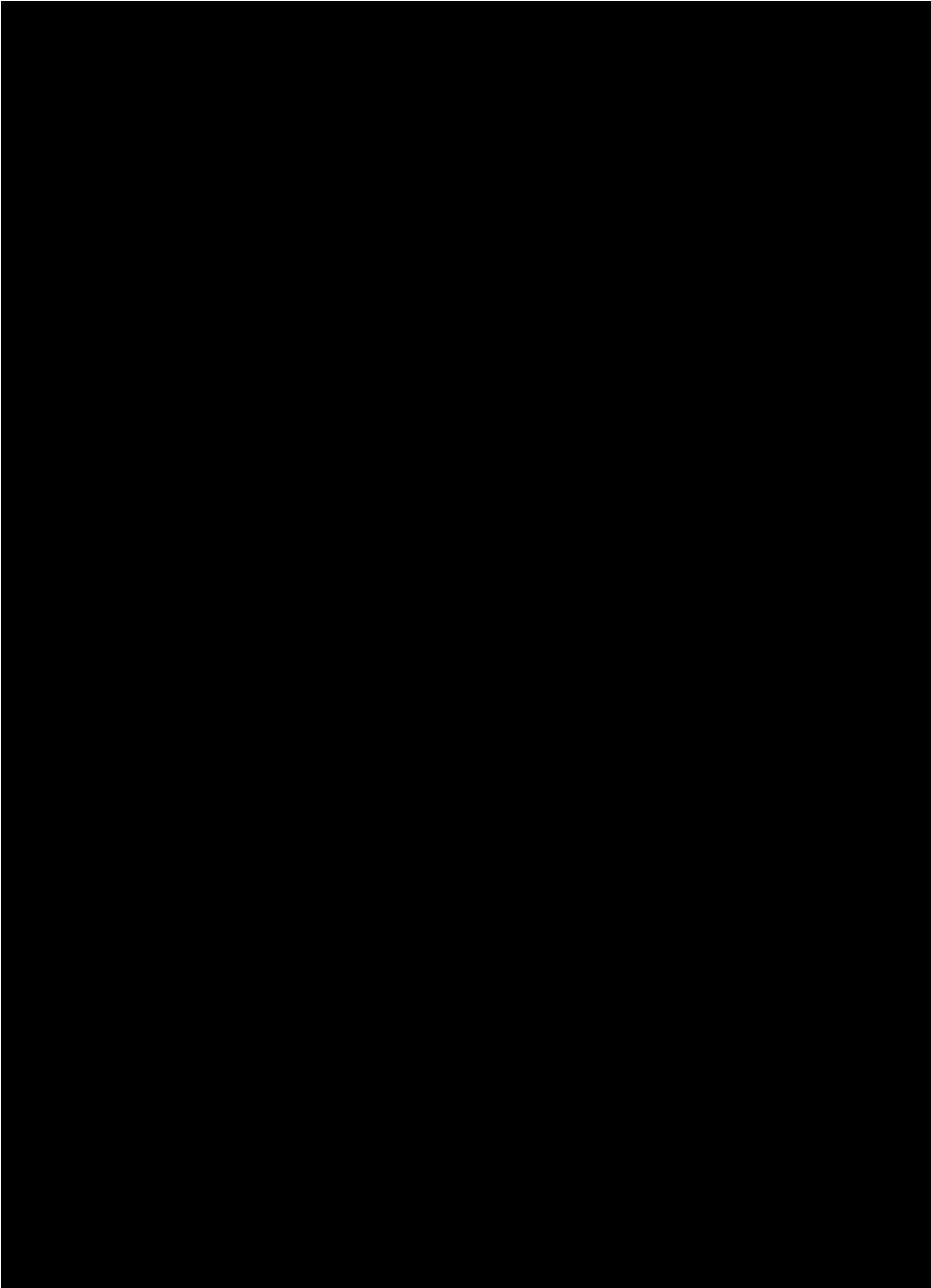
Schedule 6 Minimum Resources, Key
 Personnel and Surveillance Levels

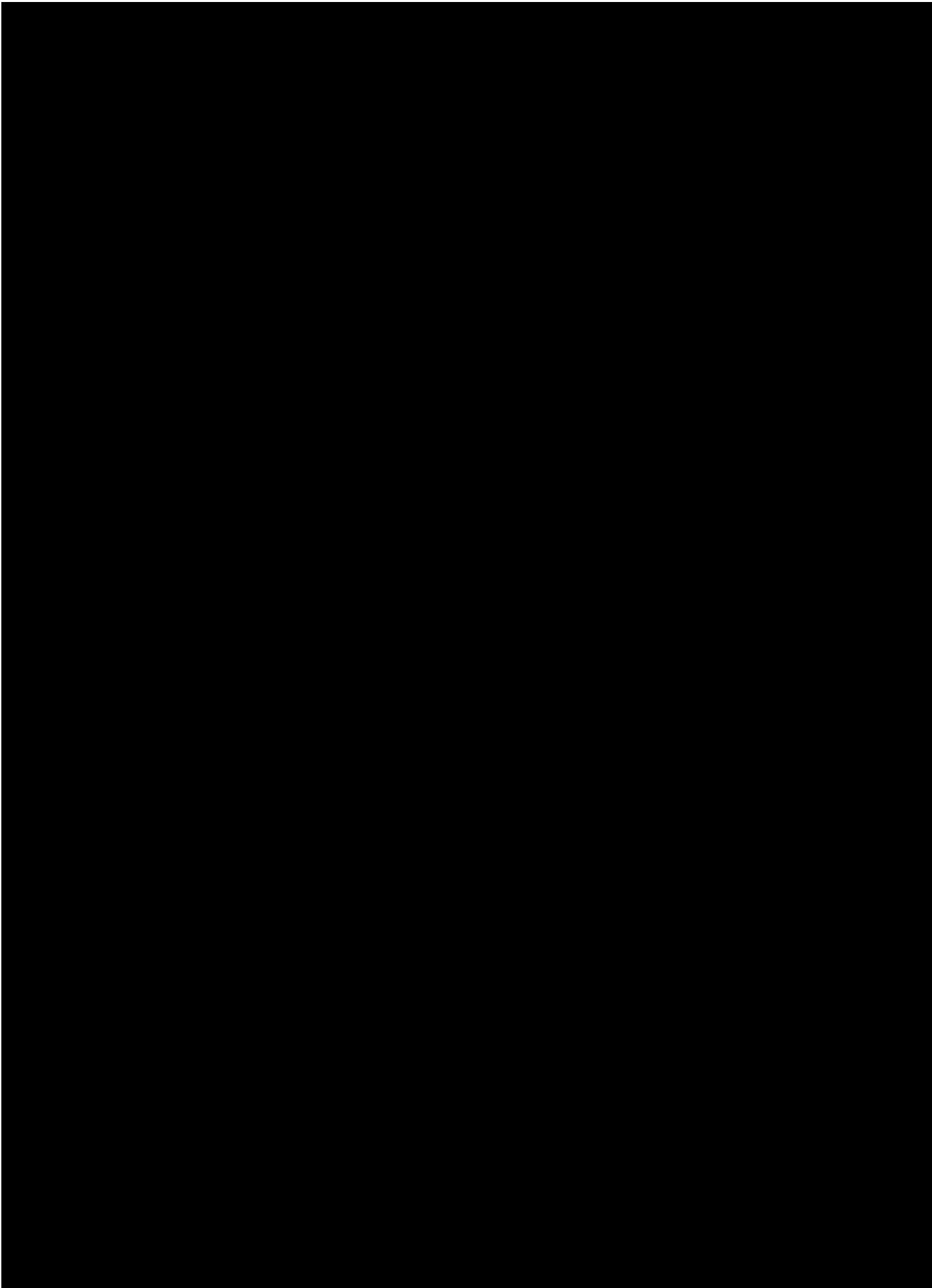


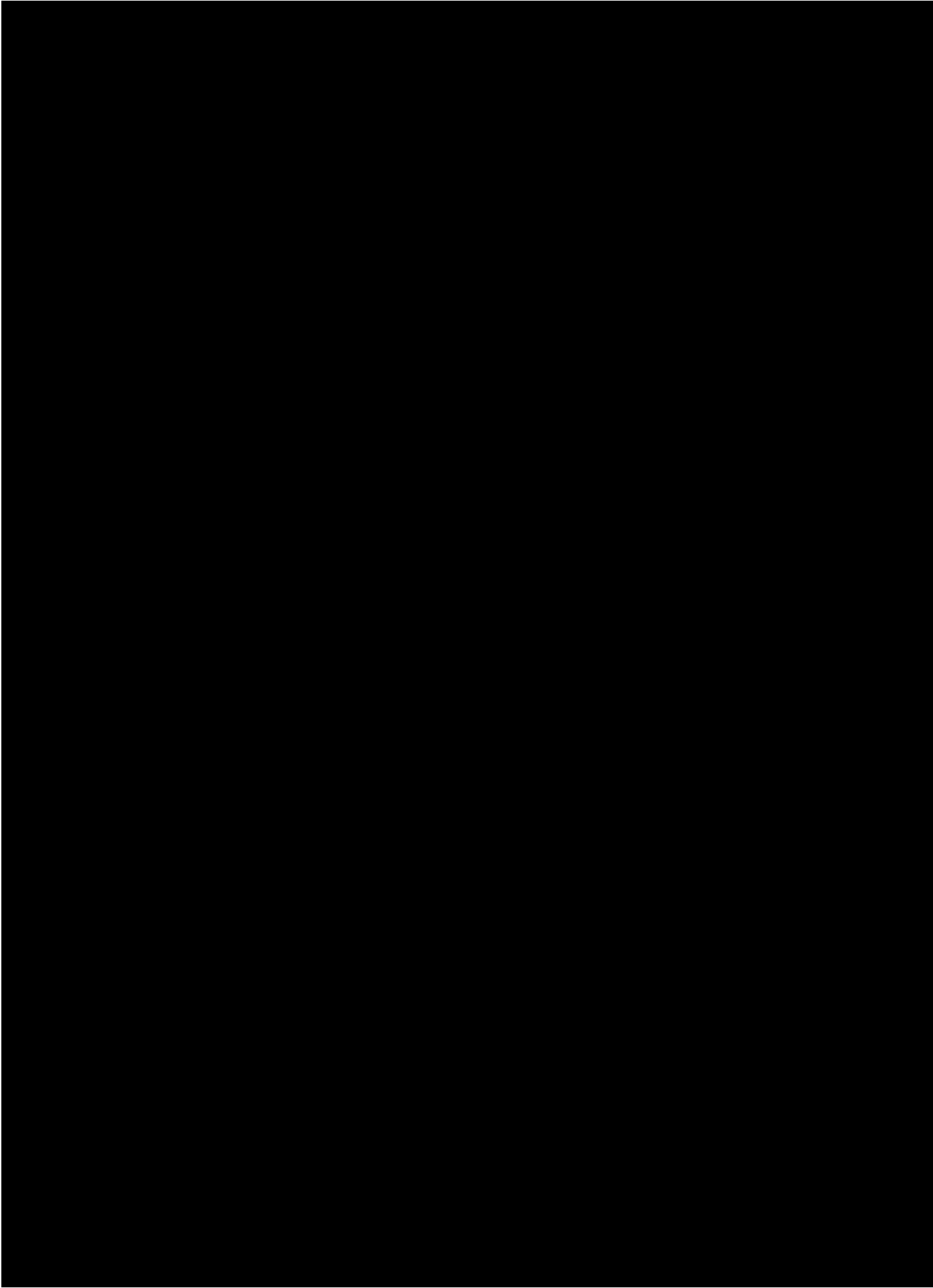


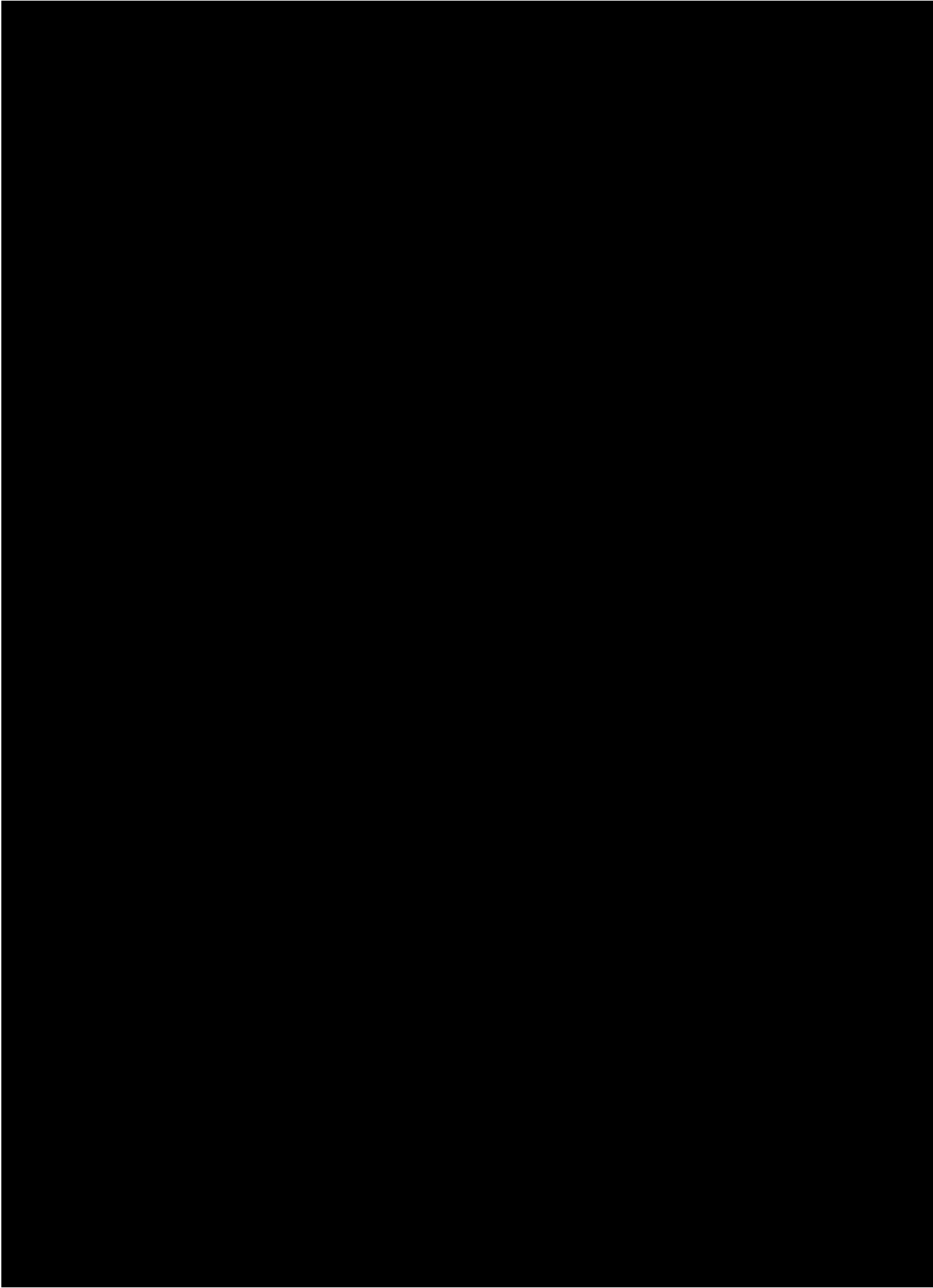


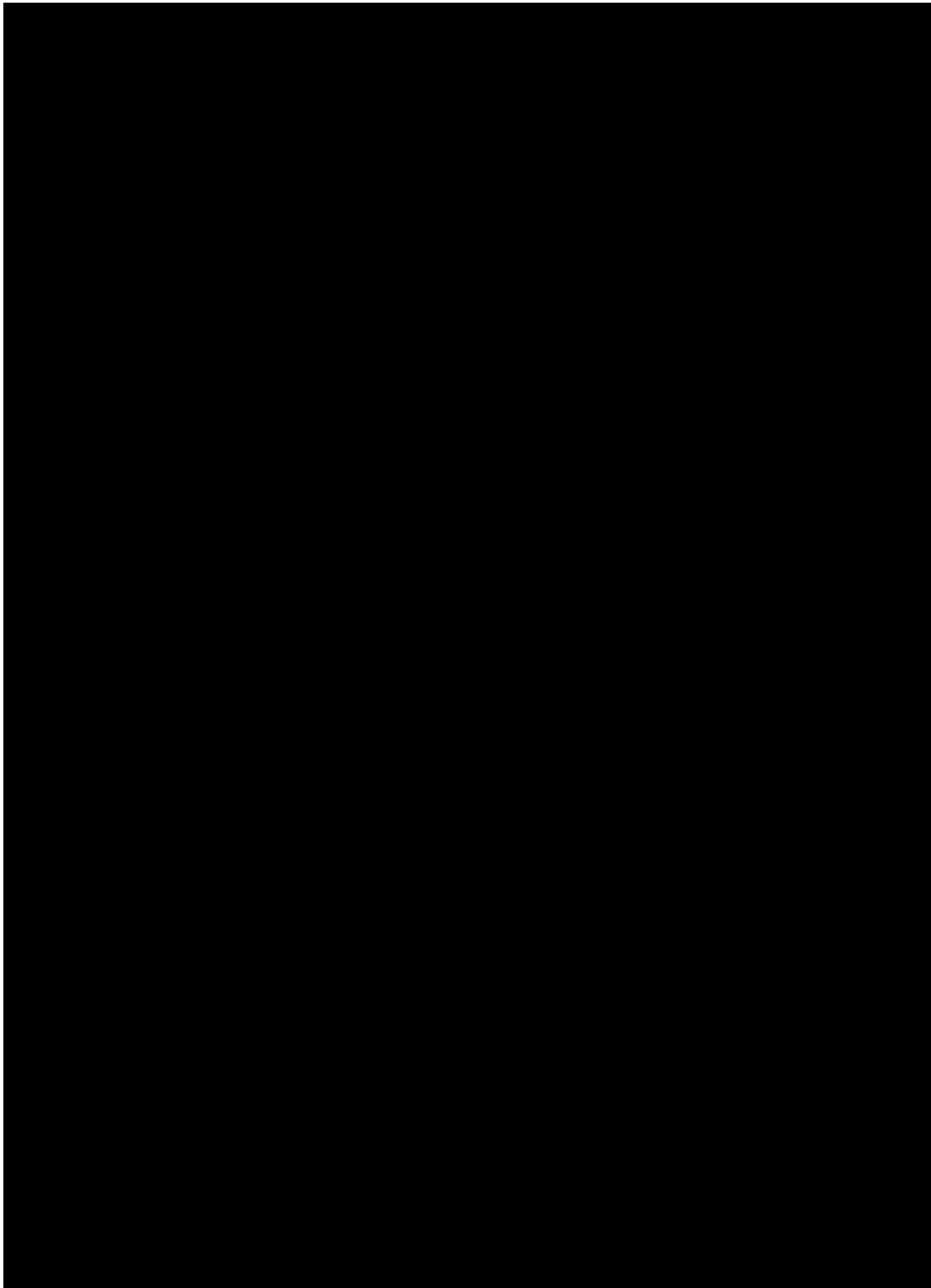


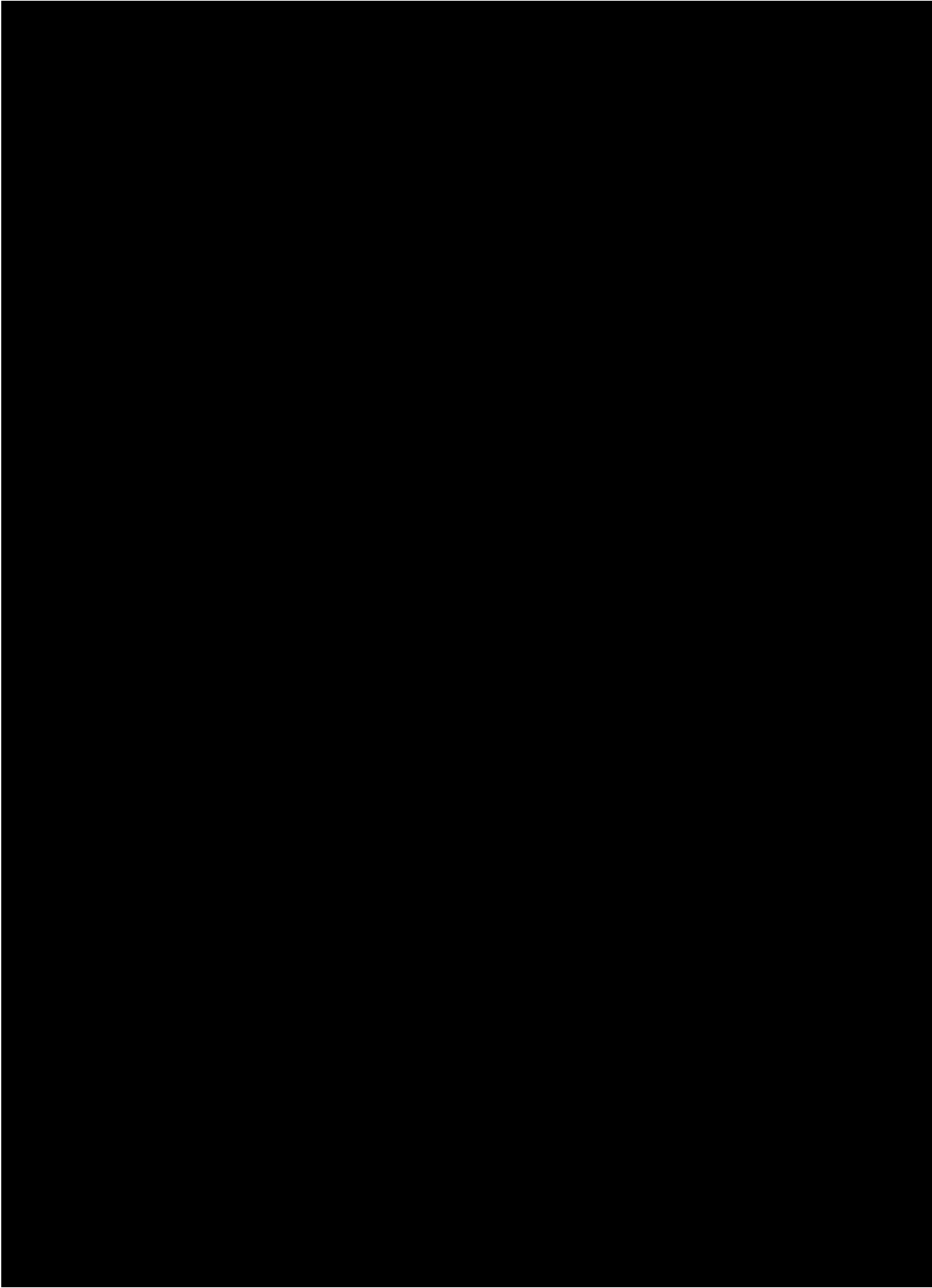


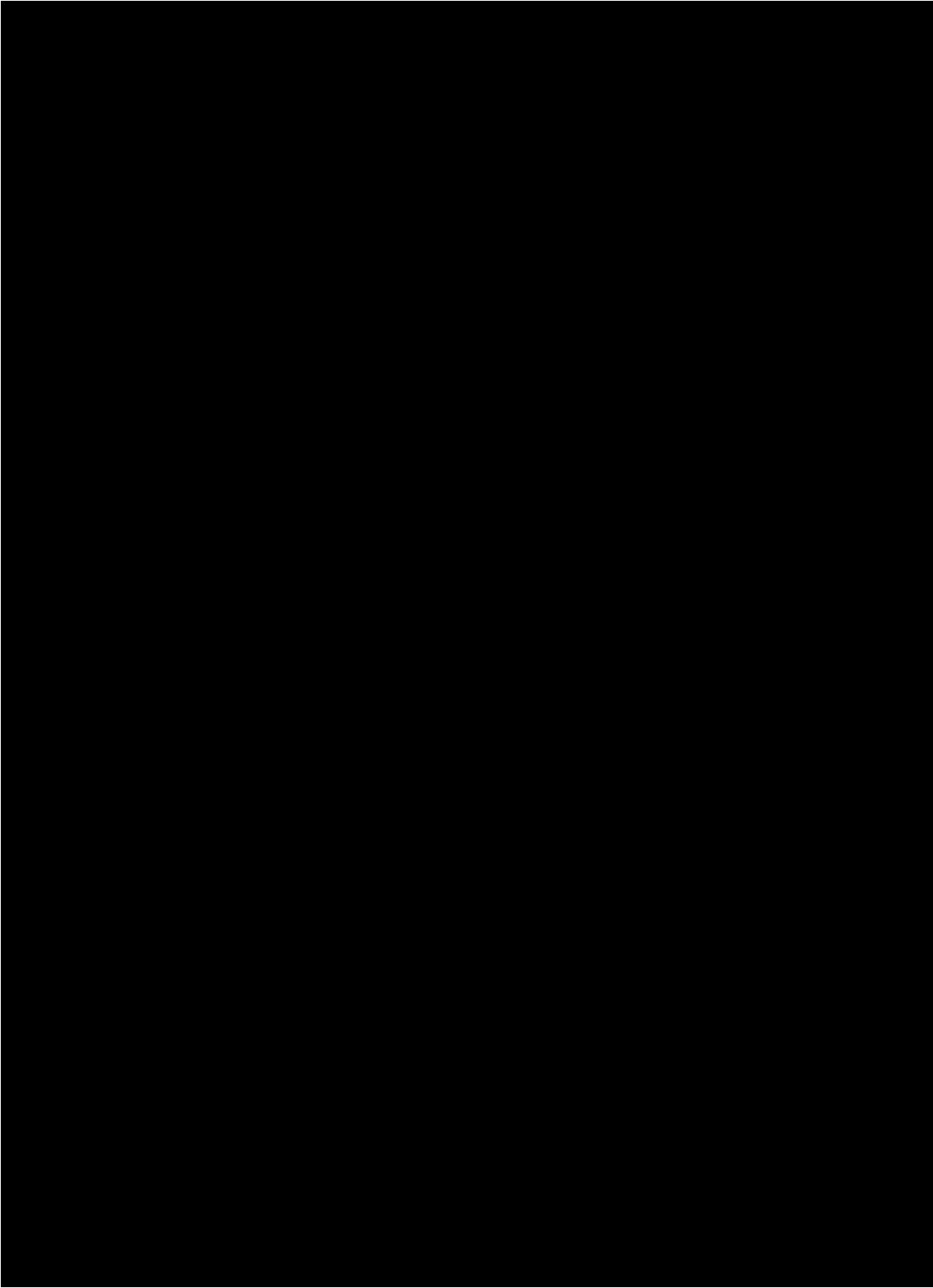












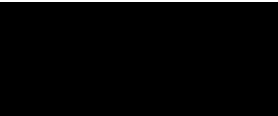
Signing page

Executed as a Deed.

DATED: 16 September 2024

TfNSW

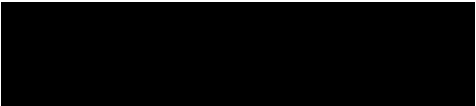
SIGNED, SEALED AND DELIVERED for
and on behalf of **TRANSPORT FOR NSW**
(ABN 18 804 239 602):



Signature of Witness
David Britton

Print Name

(block letters)



Signature of Authorised Delegate

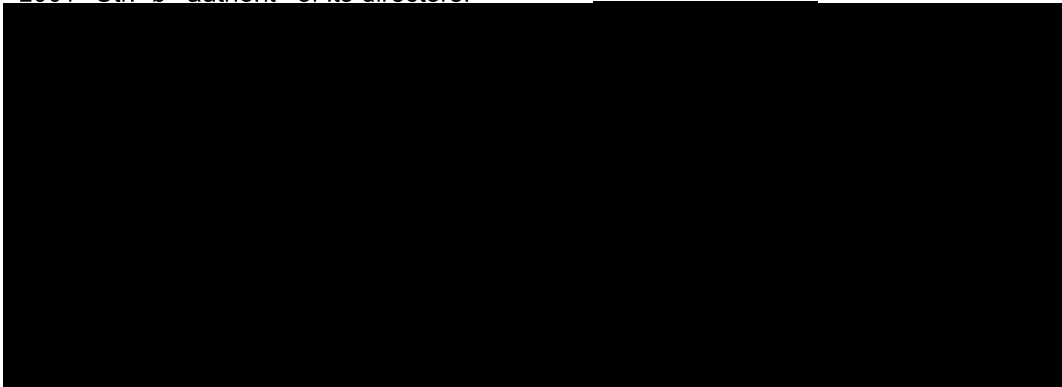
Camilla Drover

Print Name

(block letters)

INDEPENDENT CERTIFIER

EXECUTED by **APP CORPORATION**)
LTD LIMITED in accordance with)
section 127(1) of the *Corporations Act*)
2001 (Cth) by authority of its directors:)



CONTRACTOR

SIGNED SEALED AND DELIVERED)
by)
)
)
)
as attorney for **JOHN HOLLAND PTY**)
LTD (ABN 11 004 282 268) under)

