



Transport
for NSW

Collaborative Design and Construct Deed Schedules M1 Pacific Motorway Extension to Raymond Terrace – Black Hill to Tomago

EXECUTION VERSION

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Schedule 1 - Contract Information

Contract Information

Item	Clause	Insert information
1.	Contractor (Clause 23.2: Definition)	The unincorporated joint venture comprising: Name: John Holland Pty Ltd ABN: 11 004 282 268 Address: Level 9, 180 Flinders St, Melbourne VIC 3000 Registered and head office address: Level 9, 180 Flinders Street, Melbourne VIC 3000 and Name: Gamuda Berhad a company incorporated in Malaysia on 6 October 1976 under the Companies Act 1965, and bearing Company Registration number 197601003632 (29579-T) trading as Gamuda (Australia) Branch (ABN 27 632 738 768) ARBN: 632 738 768 Address: Suite 26.01, 100 Miller St, North Sydney NSW 2060 Registered and head office address: Menara Gamuda, PJ Trade Centre, No. 8, Jalan PJU 8/8A, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor, Malaysia
1A.	Contractor PC (Clause 23.2: Definition)	John Holland Pty Ltd
2.	Construction Contract Sum (Clause 23.2: Definition)	\$ [REDACTED] (excluding GST)
2A.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
2B.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
2BB.	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
2C.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]

2D.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
2DD	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
2E.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] margin of the kind described in paragraph (g) of the definition of Direct Costs)
3A.	Date for Opening Completion (Clause 23.2: Definition)	[REDACTED]
3B.	Date for Completion (Clause 23.2: Definition)	[REDACTED]
3C.	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
4.	Design Contract Sum (Clause 23.2: Definition)	\$ [REDACTED] (excluding GST)
4A.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
4B.	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]
5.	Environmental Representative (Clause 23.2: Definition)	Name: Healthy Building International Pty Ltd ABN: 39 003 270 693 Address: Suite 2.06, Level 2, 29-31 Solent Circuit, Norwest, NSW 2153 (Subject to approval in accordance with the Planning Approval)
6.	Not used	Not used.
7.	Parent Company Guarantor (Clause 23.2: Definition)	[REDACTED] [REDACTED] [REDACTED]

8.	Planning Approval (Clause 23.2: Definition)	The approval under s5.19 of the Environmental Planning and Assessment Act 1979 (NSW) issued by the Minister for Planning and Public Spaces dated 8 November 2022 in respect of the Project (Instrument of Approval application no SSI 7319). The approval under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> (Cth) (<i>EPBC Act</i>) in respect of the Project to be issued after the date of this deed.																								
9.	Proof Engineer (Clause 2.9(c) and clause 23.2: Definition)	[REDACTED] [REDACTED] [REDACTED]																								
10.	Not used	Not used.																								
11.	Principal Insurer (Clause 23.2: Definition)	Self Insurance Corporation of NSW through Insurance and Care NSW (iCare) ABN 16 759 382 489 Level 15, 321 Kent Street Sydney NSW 2000 Telephone: 61 2 9216 3852 Email: cpai@icare.nsw.gov.au																								
12.	Separable Portions (Clause 2.10 and Clause 23.2: Definition)	Not used.																								
13.	Sunset Date (Clause 23.2: Definition)	[REDACTED]																								
14.	Elements of the Project Works and the Temporary Works to be assessed and verified by Proof Engineer (Clause 2.5(d)(ii) and clause 12.2(e)(iv))	A Proof Engineer must assess and verify: <ul style="list-style-type: none"> all Class C - Complex Structures. For the purposes of this item, Class C - Complex Structures are: <ul style="list-style-type: none"> the structures marked as 'C' in the following table and as identified in the Contractor's Concept Design; and <table border="1" data-bbox="534 1361 1299 2022"> <tbody> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </tbody> </table>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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		<table border="1" data-bbox="534 156 1300 324"> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> <tr> <td>[REDACTED]</td> <td>[REDACTED]</td> </tr> </table> <ul style="list-style-type: none"> • to the extent not covered in the table above, structures which have any of the following features: <ul style="list-style-type: none"> • any span exceeding 37 m; • retaining walls with an effective retained height greater than 6 m; • cable stayed or suspension bridges; • steel orthotropic decks; • bascule span bridges; • post-tensioned concrete structures; • skew exceeding 35 degrees; • bridges with a superstructure consisting of precast prestressed concrete girders and cast -insitu deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure; and • other structures deemed by TfNSW to be complex, but excludes Class S structures. 		[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]										
[REDACTED]	[REDACTED]										
[REDACTED]	[REDACTED]										
[REDACTED]	[REDACTED]										
15.	Subcontractors (Clauses 2.9(c) and 2.9(e))	Part of the Contractor's Activities [REDACTED] [REDACTED]	Subcontractor [REDACTED] [REDACTED]								
		[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]								
		[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]								
		[REDACTED] [REDACTED]	[REDACTED] [REDACTED]								
		[REDACTED]	[REDACTED] [REDACTED]								
		[REDACTED]	[REDACTED] [REDACTED]								
		[REDACTED]	[REDACTED]								

16.	Aboriginal participation (Clause 3.7 and Clause 23.2 Definition of Minimum Aboriginal Participation Spend)	<p>1) The Aboriginal Participation Project Category is: Category 2.</p> <p>2) The Minimum Aboriginal Participation Spend amount at the date of this deed is to be █% of the Initial Project Contract Sum.</p> <p>3) Is the Contractor required to submit an Aboriginal Participation Plan and Aboriginal Participation Reports? Yes</p> <p>4) The frequency of submission of the Aboriginal Participation Report is: Quarterly</p>
17.	Notice details for the Principal (Clause 3.10 (a)(ii))	<p>Address for notices: Level 7, 6 Stewart Avenue Newcastle West NSW 2300 (for delivery by hand) Locked Bag 2030 Newcastle 2300 (for delivery by post)</p> <p>Attention: Head of Regional Project Delivery</p>
18.	Notice details for the Principal's Representative (Clauses 3.10(a)(ii))	<p>Address for notices: Level 7, 6 Stewart Avenue Newcastle West NSW 2300 (for delivery by hand) Locked Bag 2030 Newcastle 2300 (for delivery by post)</p> <p>Attention: ██</p>
19.	Notice details for Contractor (Clauses 3.10(a)(ii))	<p>Address for notices: John Holland Gamuda Joint Venture Level 3, 65 Pirrama Rd, Pyrmont NSW 2009 Attention: ██</p>
19A	Notice details for Contractor for Defect Rectification Notices (Clause 3.10(a)(iii))	<p>Address for notices: John Holland Gamuda Joint Venture Level 3, 65 Pirrama Rd, Pyrmont NSW 2009 Attention: ██</p>
20.	Notice - electronic platform (Clause 3.10 and Clause 23.2 Definition of PDCS)	InEight or any other electronic platform notified by the Principal's Representative from time to time.
21.	Australian Industry Participation Plan (Clause 5.18)	Is the Contractor required to implement and comply with the Certified AIP Plan? Yes

21A.	Critical Domestic Materials (Clause 5.22 and Clause 23.2 Definition of Critical Domestic Materials)	None.																							
21B.	Project specific professional indemnity insurance (Clause 7.1(a)(i)(C))	Minimum cover: \$ [REDACTED] Period of cover: [REDACTED]																							
22.	Workers compensation insurance (Clause 7.5(a)(i))	Minimum cover: As required by Law Insurer: As per certificate of currency Policy number: As per certificate of currency Period of cover: Until the end of all Defects Correction Periods																							
23.	Motor vehicle / third party property insurance (Clause 7.5(a)(ii))	Minimum cover: \$ [REDACTED] for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences Insurer: As per certificate of currency Policy number: As per certificate of currency Period of cover: Until the end of all Defects Correction Periods																							
24.	Not used	Not used.																							
25.	Categories of Subcontractors, levels of cover of Subcontractors' professional indemnity insurance (Clause 7.5(b)(ii))	<table border="1"> <thead> <tr> <th data-bbox="525 1128 746 1207">Subcontractor</th> <th data-bbox="751 1128 887 1207">Discipline</th> <th data-bbox="892 1128 1019 1207">Level of cover</th> <th data-bbox="1024 1128 1450 1207">Period of cover</th> </tr> </thead> <tbody> <tr> <td data-bbox="525 1214 746 1352">[REDACTED]</td> <td data-bbox="751 1214 887 1352">[REDACTED]</td> <td data-bbox="892 1214 1019 1352">\$ [REDACTED]</td> <td data-bbox="1024 1214 1450 1352">[REDACTED]</td> </tr> <tr> <td data-bbox="525 1359 746 1415">[REDACTED]</td> <td data-bbox="751 1359 887 1415"></td> <td data-bbox="892 1359 1019 1415"></td> <td data-bbox="1024 1359 1450 1415"></td> </tr> <tr> <td data-bbox="525 1422 746 1478">[REDACTED]</td> <td data-bbox="751 1422 887 1478"></td> <td data-bbox="892 1422 1019 1478"></td> <td data-bbox="1024 1422 1450 1478"></td> </tr> <tr> <td data-bbox="525 1485 746 1532">[REDACTED]</td> <td data-bbox="751 1485 887 1532"></td> <td data-bbox="892 1485 1019 1532"></td> <td data-bbox="1024 1485 1450 1532"></td> </tr> </tbody> </table>	Subcontractor	Discipline	Level of cover	Period of cover	[REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]	[REDACTED]				[REDACTED]				[REDACTED]						
Subcontractor	Discipline	Level of cover	Period of cover																						
[REDACTED]	[REDACTED]	\$ [REDACTED]	[REDACTED]																						
[REDACTED]																									
[REDACTED]																									
[REDACTED]																									
26.	Not used	Not used.																							
27.	Plant and equipment insurance (Clause 7.5(a)(iii))	Minimum cover: The full replacement or reinstatement market value of the plant and equipment Insurer: As per certificate of currency Policy number: As per certificate of currency Period of cover: Until the end of all Defects Correction Periods																							
28.	Not used	Not used.																							
29.	Marine liability (Clause 7.5(c))	<i>Marine liability</i> Minimum cover: For any work to which clause 7.5(c) applies, \$ [REDACTED] for any one occurrence, and unlimited in the aggregate with regard to the number of occurrences.																							

		<p>Insurer: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(c).</p> <p>Policy number: To be advised to Principal by the Contractor prior to undertaking any work that requires marine liability insurance under clause 7.5(c).</p> <p>Period of cover: The whole of the period of use of waterborne craft of 12 or more metres in length on work for or in connection with this deed.</p>		
30.	Compulsory Third Party (CPT) Insurance (Clause 7.5(a)(iv))	<p>Minimum cover: As required by Law</p> <p>Insurer: As per certificate of currency</p> <p>Policy number: As per certificate of currency</p> <p>Period of cover: Until the end of all Defects Correction Periods</p>		
31.	Site Conditions (Clause 10.6)	<p>██</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p> <p>██</p>		
32.	Not used	Not used.		
33.	Not used	Not used.		
34.	Cap on delay costs (Clause 17.6)	<p>Period during the Contractor's Activities when the relevant delay occurs</p>	<p>Daily delay cost cap (excl GST)</p>	
		1	<p>Delay occurring in connection with the Contractor's Activities prior to commencement of construction activities on the Construction Site.</p>	<p>\$████████ per day</p>
		2	<p>Delay occurring in connection with the Contractor's activities, subject to (3), after commencement of construction activities on the Construction Site:</p>	
			a. prior to the Date of Opening Completion	<p>\$████████ per day</p>
			b. after the Date of Opening Completion and prior to the Date of Completion	<p>\$████████ per day</p>
		3	<p>Delay caused by a breach or failure to give access by the Principal, occurring in connection with the Contractor's Activities after commencement of construction activities on the Construction Site:</p>	
a. during the first quarter of the construction activities associated with the Contractor's Activities	<p>\$████████ per day</p>			

		b. during the second quarter of the construction activities associated with the Contractor's Activities	\$ [REDACTED] per day
		c. during the third quarter of the construction activities associated with the Contractor's Activities	\$ [REDACTED] per day
		d. during the fourth quarter of the construction activities associated with the Contractor's Activities	\$ [REDACTED] per day
		4 [REDACTED] [REDACTED]	\$ [REDACTED]
35.	Not used	Not used.	
36.	Liquidated Damages – Completion (Clause 7A.3(d))	\$ [REDACTED] per day (excluding GST)	
37.	References to Scope of Works and Technical Criteria	(Clause 3.3 (a))	Appendix 21
		(Clause 3.3(b)(i))	Appendix 21
		(Clause 3.3(b)(ii))	Appendices 33, 35 to 43, 46, 47, 50
		(Clause 3.3(c))	Section 2.10 of the SWTC and Appendix 21
		(Clause 3.3(h)(ii)D)	Appendix 21
		(Clause 3.3(h)(ii)G)	Appendix 21
		(Clause 3.3(l))	Appendix 21
		(Clause 3.4(b))	Appendix 21
		(Clause 5.5(a)(i))	Appendix 27
		(Clause 5.15(a)(ii))	Section 7.15 of the SWTC and Appendix 21
		(Clause 5.15(d))	Appendix 27
		(Clause 10.6(e))	Appendix 21
		(Clause 11.1(a))	Section 3 of the SWTC
		(Clause 11.1(b))	Appendix 21
		(Clause 13.2(j))	Section 2.3.1 (b) of the SWTC and Appendix 3
		(Clause 16.7(e))	Section 2.3.1 (c) of the SWTC and Appendix 2
		(Clause 17.1(c)(i))	Section 24.2 of Appendix 24
(Definition of 'Communication Management Plan')	Appendix 21		
(Definition of 'Construction Environmental Management Plans')	Appendix 21		

	(Definition of 'Construction Management Plan')	Appendix 21
	(Definition of 'Contractor's Concept Design')	Appendix 30 and Appendix 31
	(Definition of 'Contractor Documentation Schedule')	Appendix 24
	(Definition of 'COVID-19 Management and Safety Plan')	Appendix 50
	(Definition of 'Design Plan')	Appendix 21
	██████████ ██████████	██████████
	(Definition of 'Environmental Documents')	Appendix 4
	(Definition of 'Landscaping Maintenance')	Section 2.2.2 of the SWTC
	(Definition of 'Landscaping Maintenance Plan')	Appendix 21
	(Definition of 'Local Area Works')	Section 2.3.1 (c) of the SWTC and Appendix 2
	(Definition of 'Maintenance Plan')	Appendix 21
	(Definition of 'Nominated Authority')	Section 3.1.4 of the SWTC
	(Definition of 'Project WHS Management Plan')	Appendix 21
	(Definition of 'Property Works')	Section 2.3.1 (b) of the SWTC and Appendix 3
	(Definition of 'Provisional Sum Work')	Not used
	(Definition of 'Quality Plan')	Appendix 21
	(Definition of 'Road Occupancy')	Appendix 27

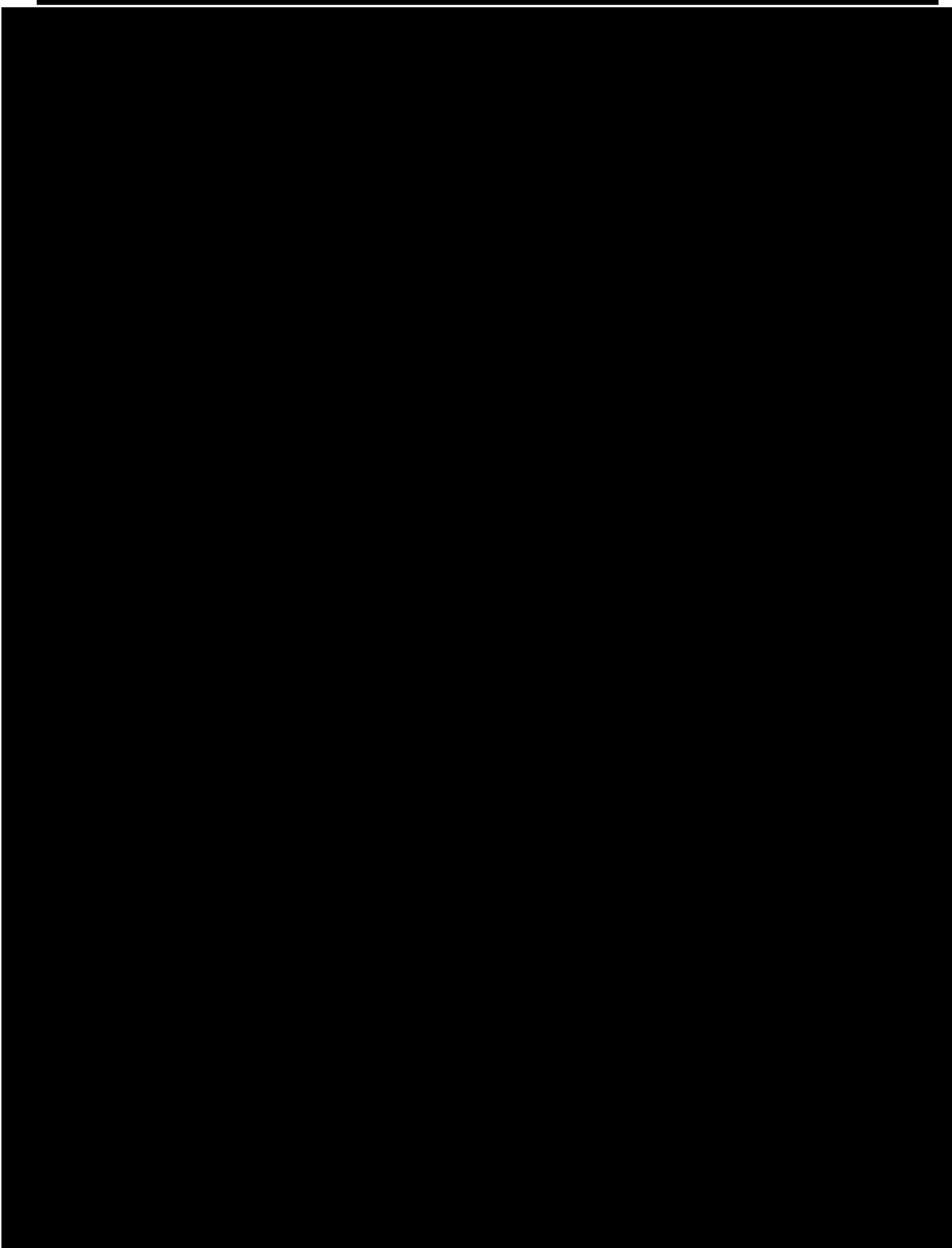
		(Definition of 'Traffic Management and Safety Plan')	Appendix 21
		██████████ ██████████████████ ██████	██████████
		(Definition of 'Workplace Relations Management Plan')	Appendix 21
38.	References to Exhibits	(Clause 23.1(a)(x)A)	Exhibits A to N
		(Definition of 'Confidentiality Deed Poll')	Exhibit D
		(Definition of 'Contract Program')	Exhibit C
		(Definition of 'Electronic Files')	Exhibit F
		(Definition of 'Scope of Works and Technical Criteria')	Exhibit A
		(Definition of 'Site Access Schedule')	Exhibit B
		(Definition of 'Third Party Agreements')	Exhibit H
		(Definition of 'Third Party Interests')	Exhibit G
		(Definition of 'Certified AIP Plan')	Exhibit M
		Threshold for referral of a Dispute Avoidance Board decision to arbitration or litigation (Schedule 38, clauses 3.2(i) and 3.2(ii))	\$ ██████████
		39.	Threshold for referral of a Dispute Avoidance Board decision to arbitration or litigation (Schedule 38,

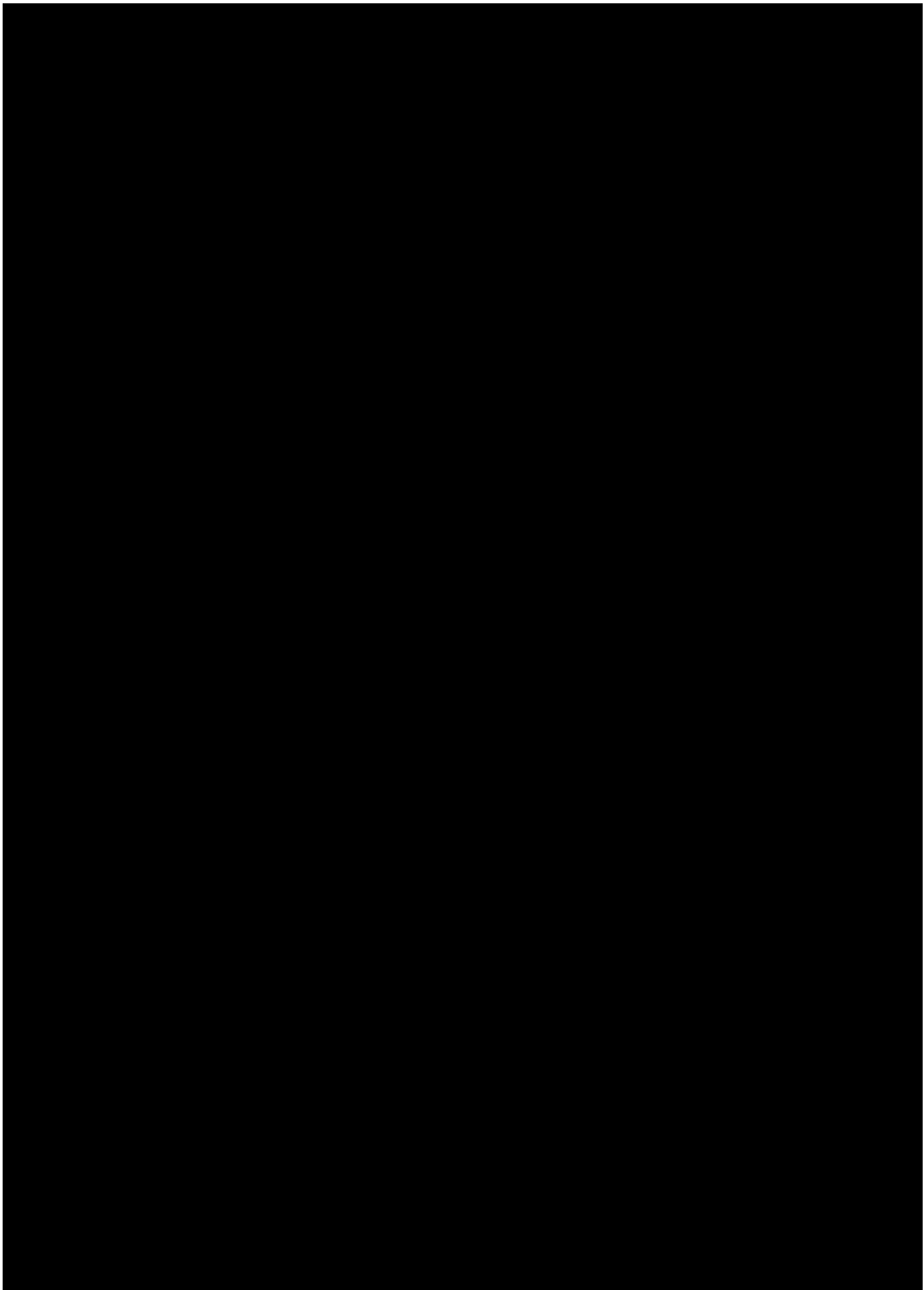
	clauses 3.2(i) and 3.2(ii))																																																																																											
40.	DAB Member Nominee List (Clause 20.1(c) and Clause 20.2(a))	[REDACTED]																																																																																										
41.	Critical Non-Contestable Works (definition of Critical Non-Contestable Works)	Critical Non-Contestable Works																																																																																										
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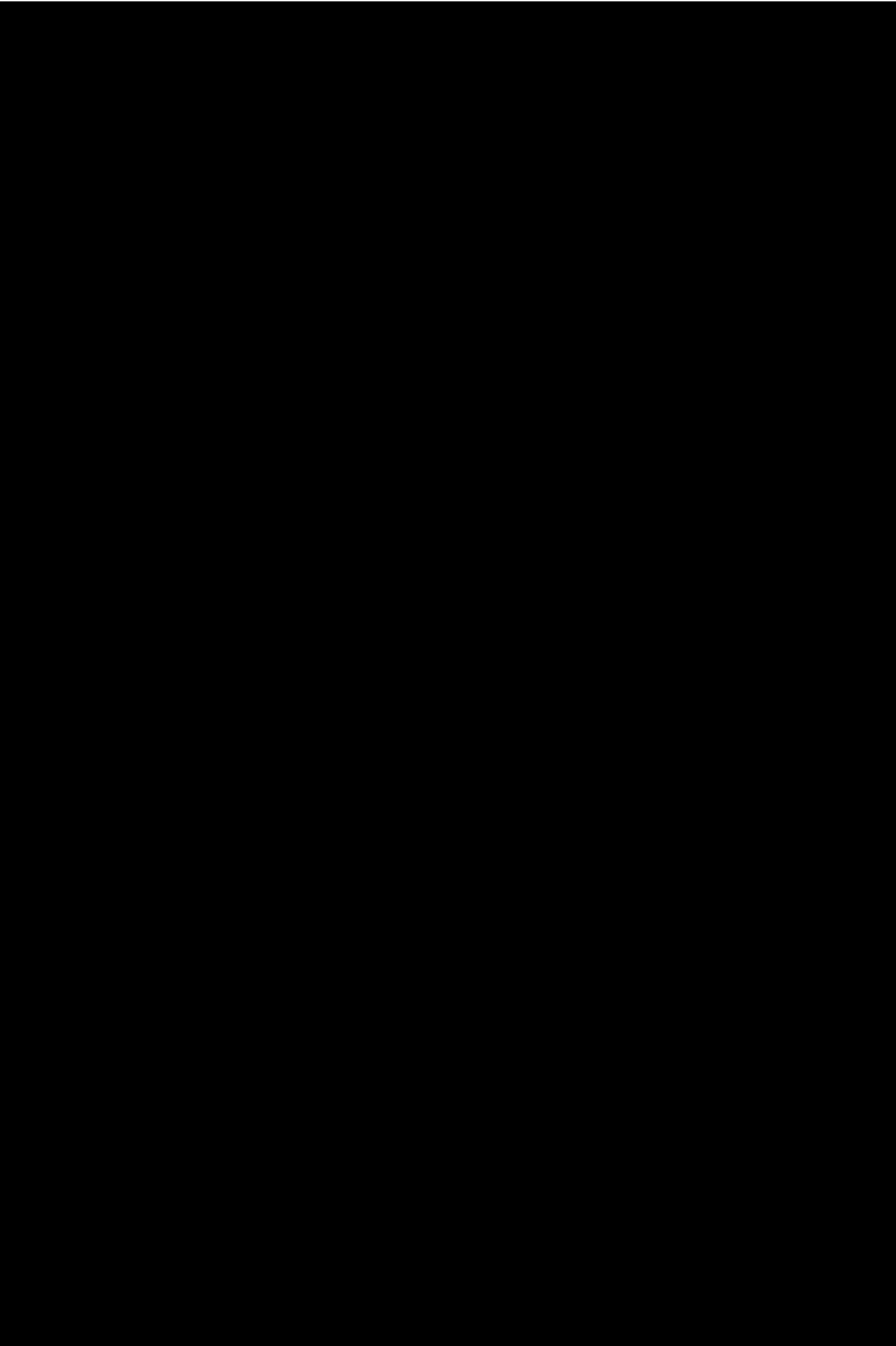
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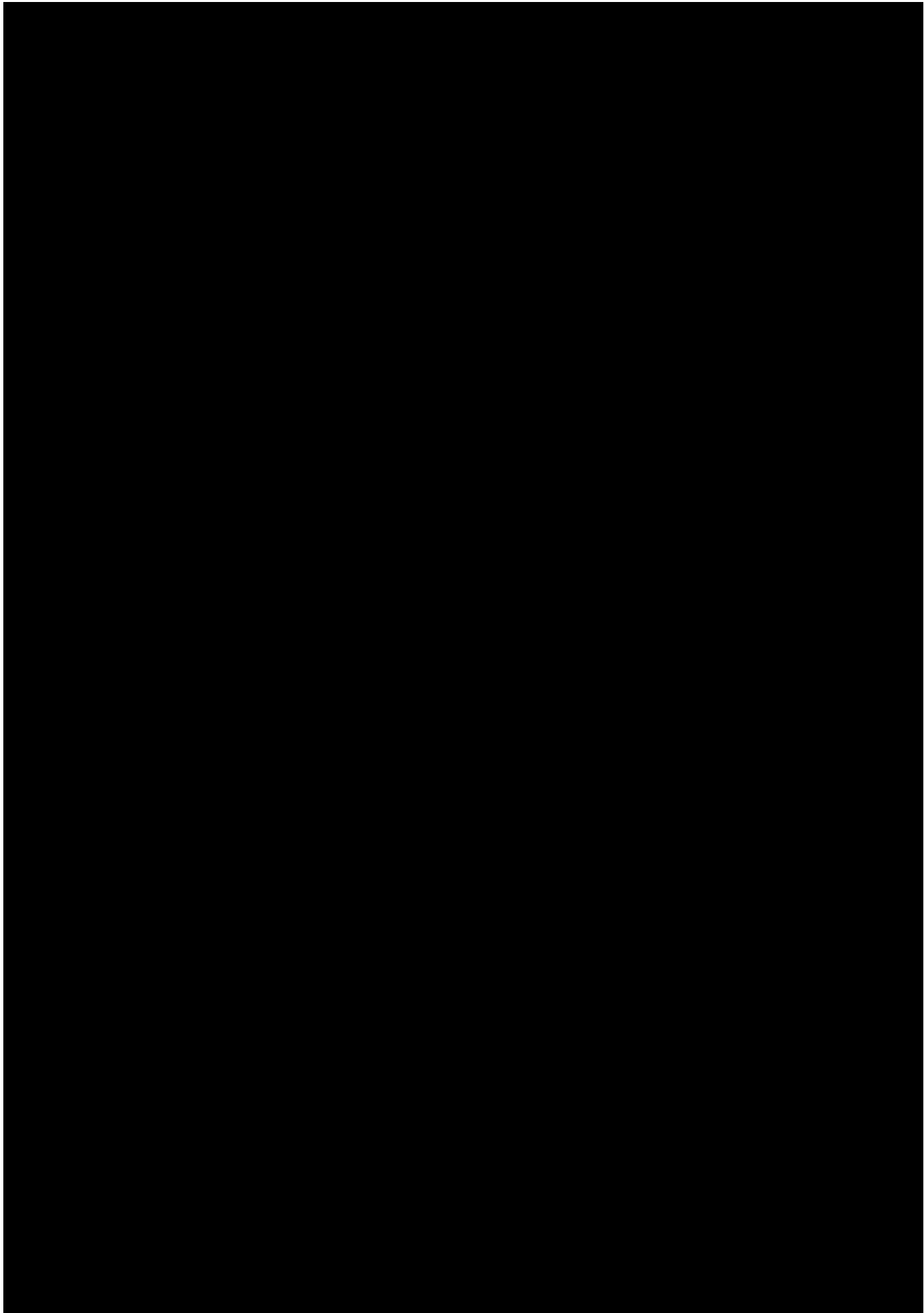
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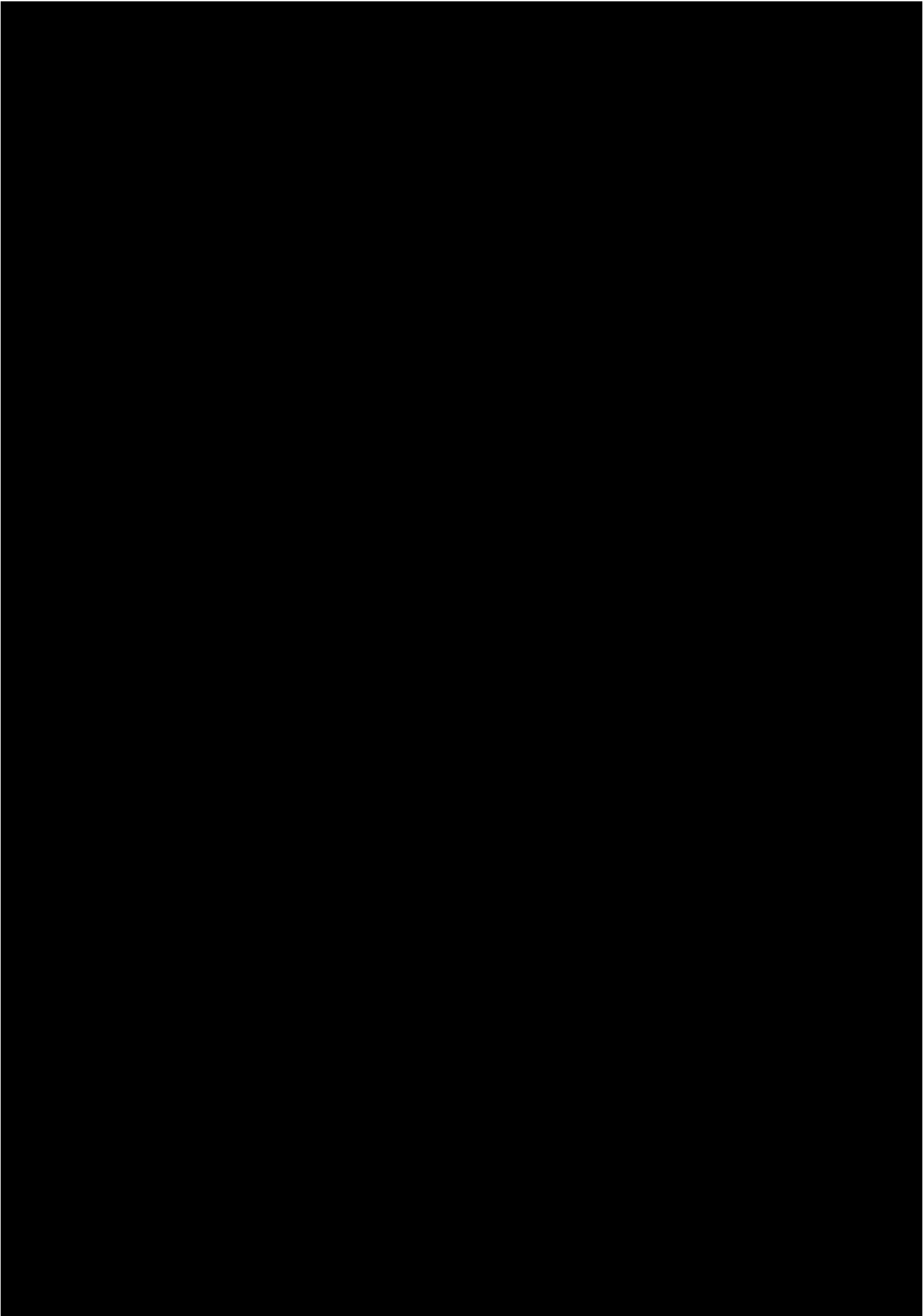
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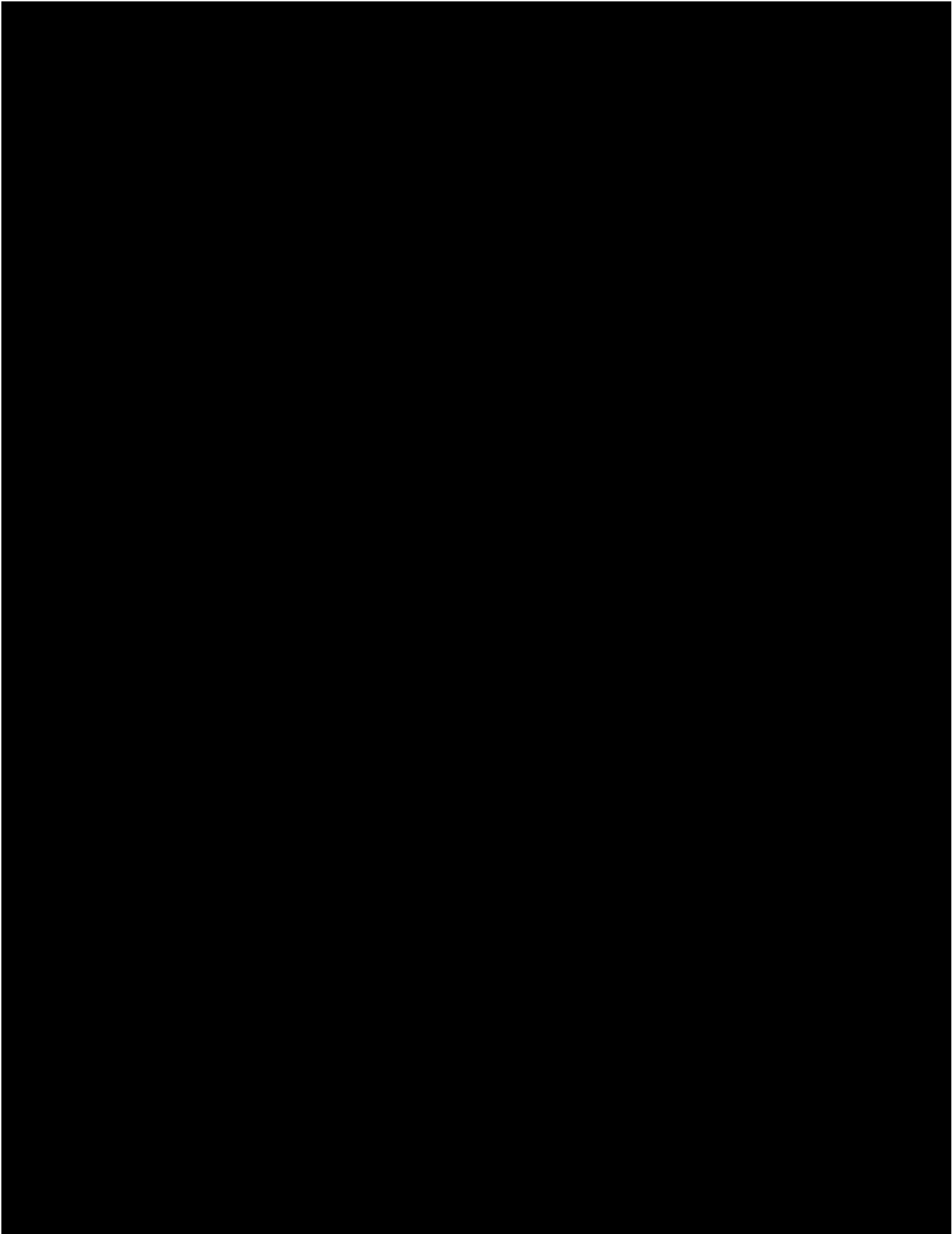












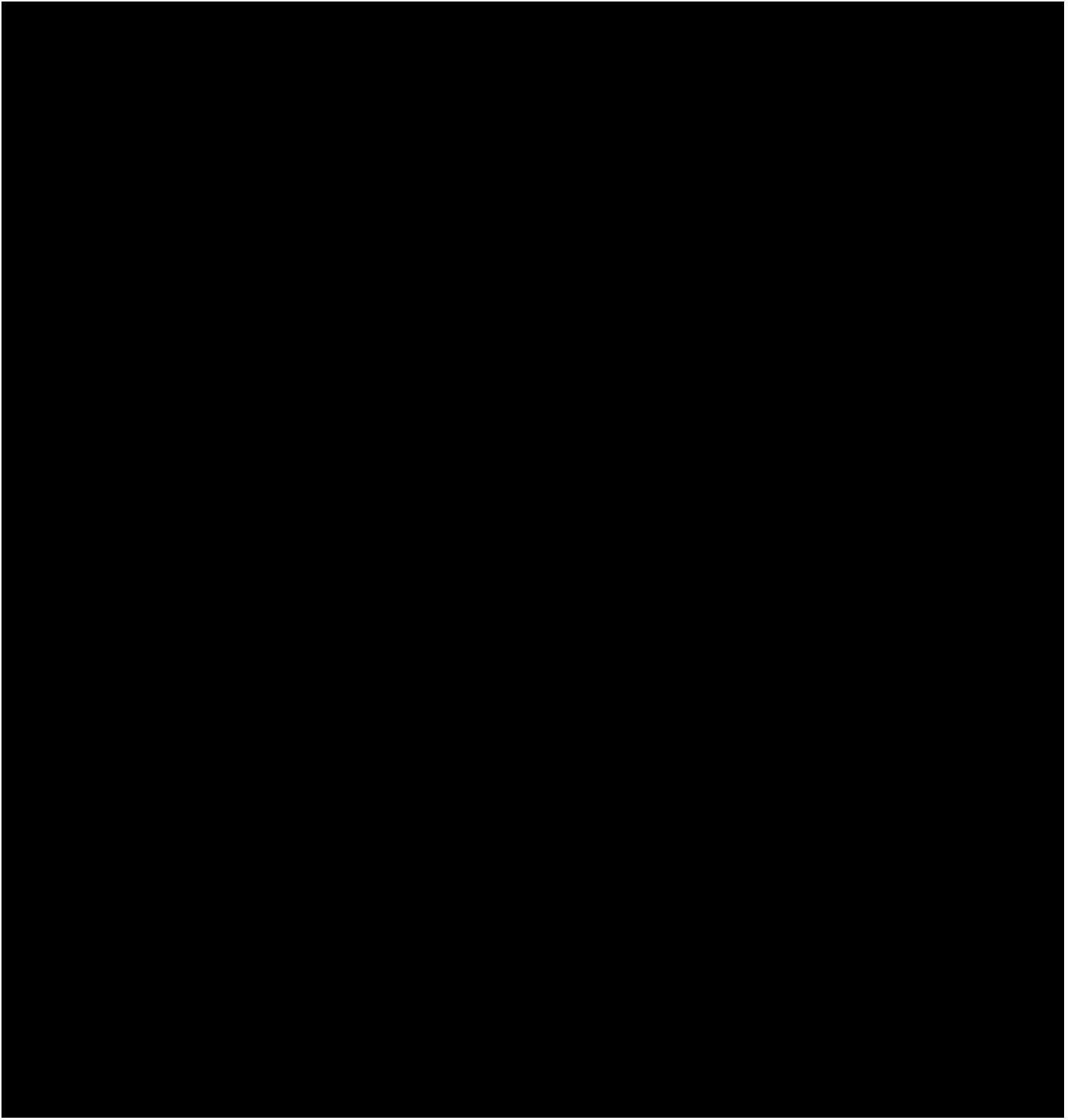
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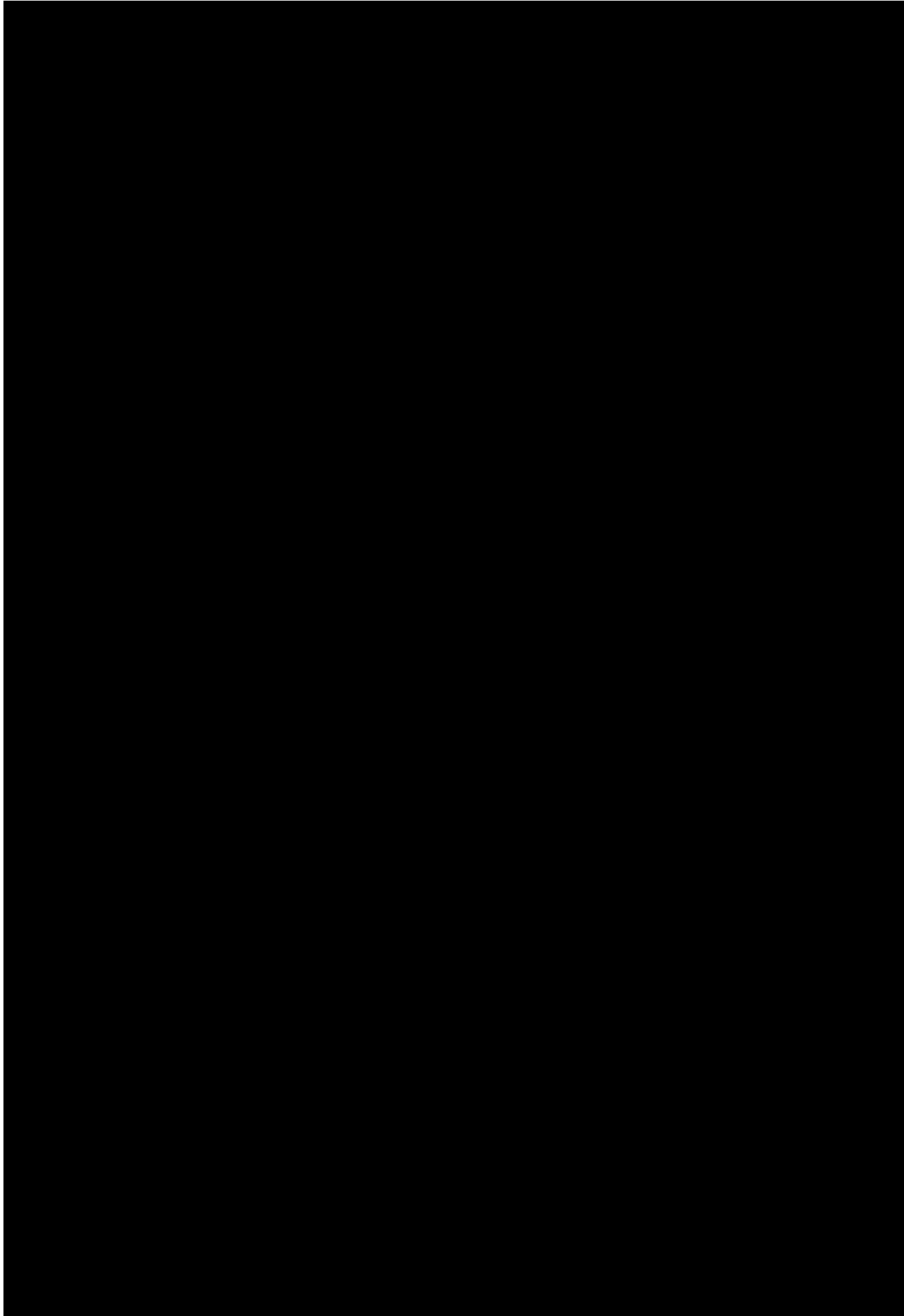
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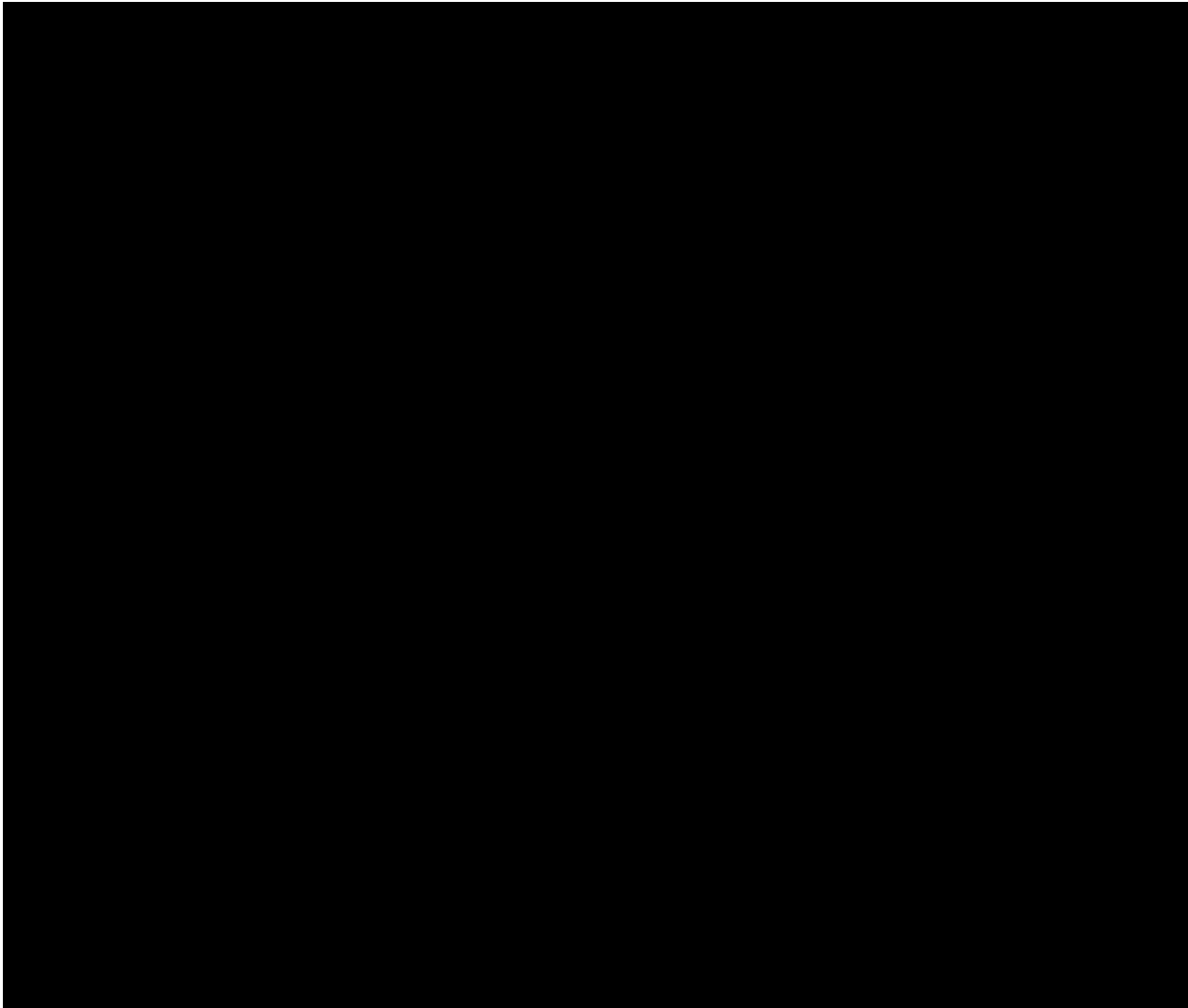
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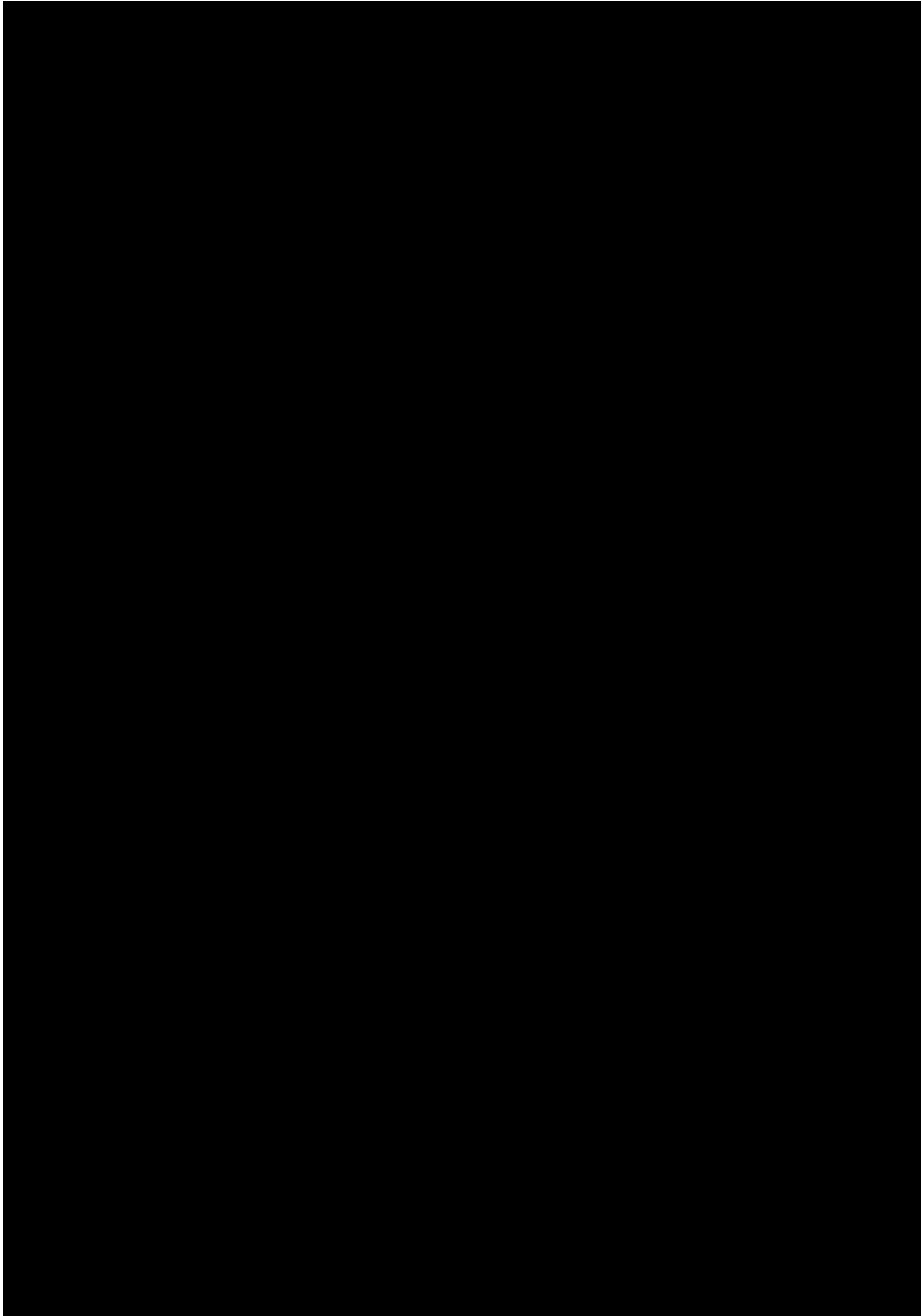
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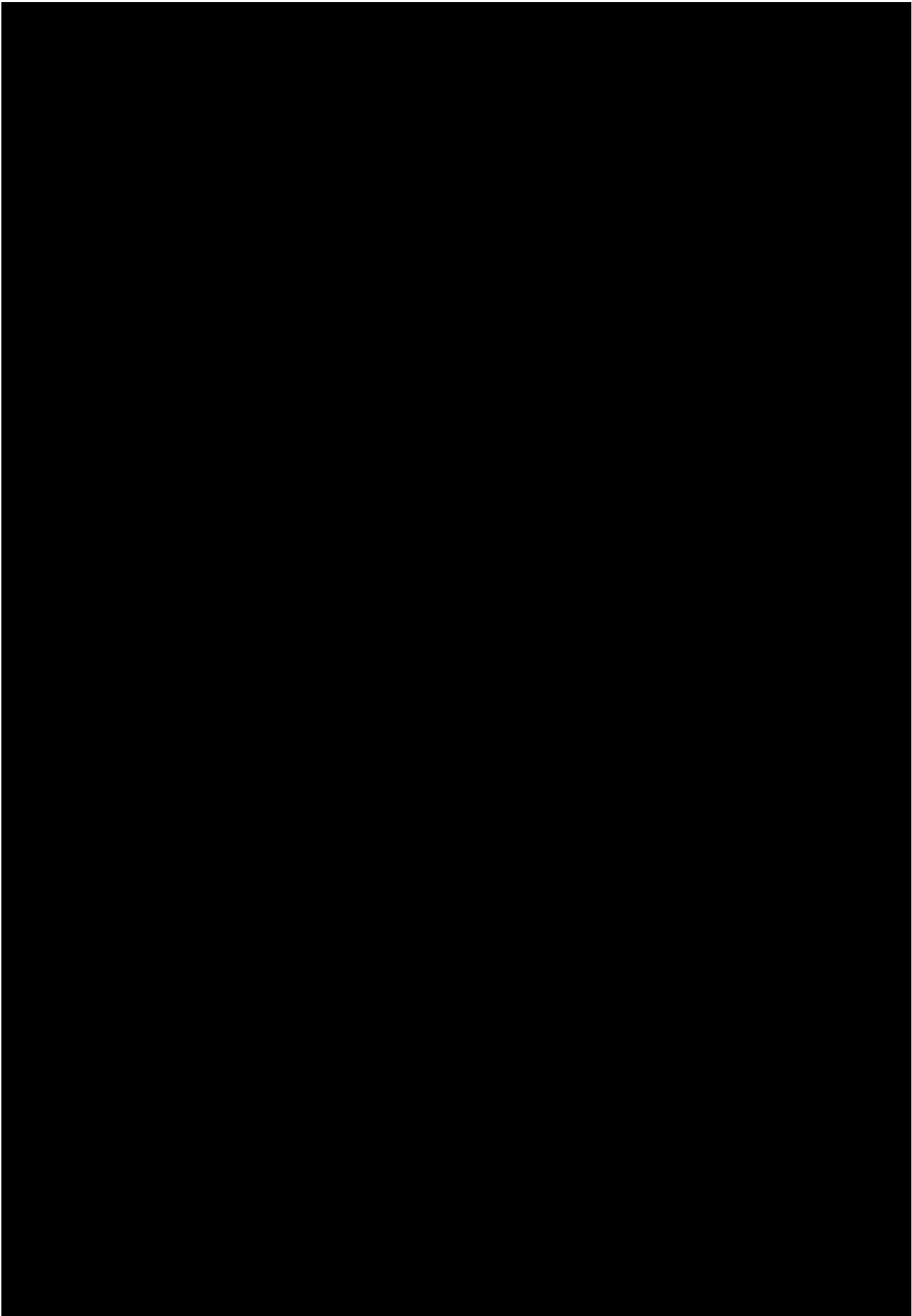


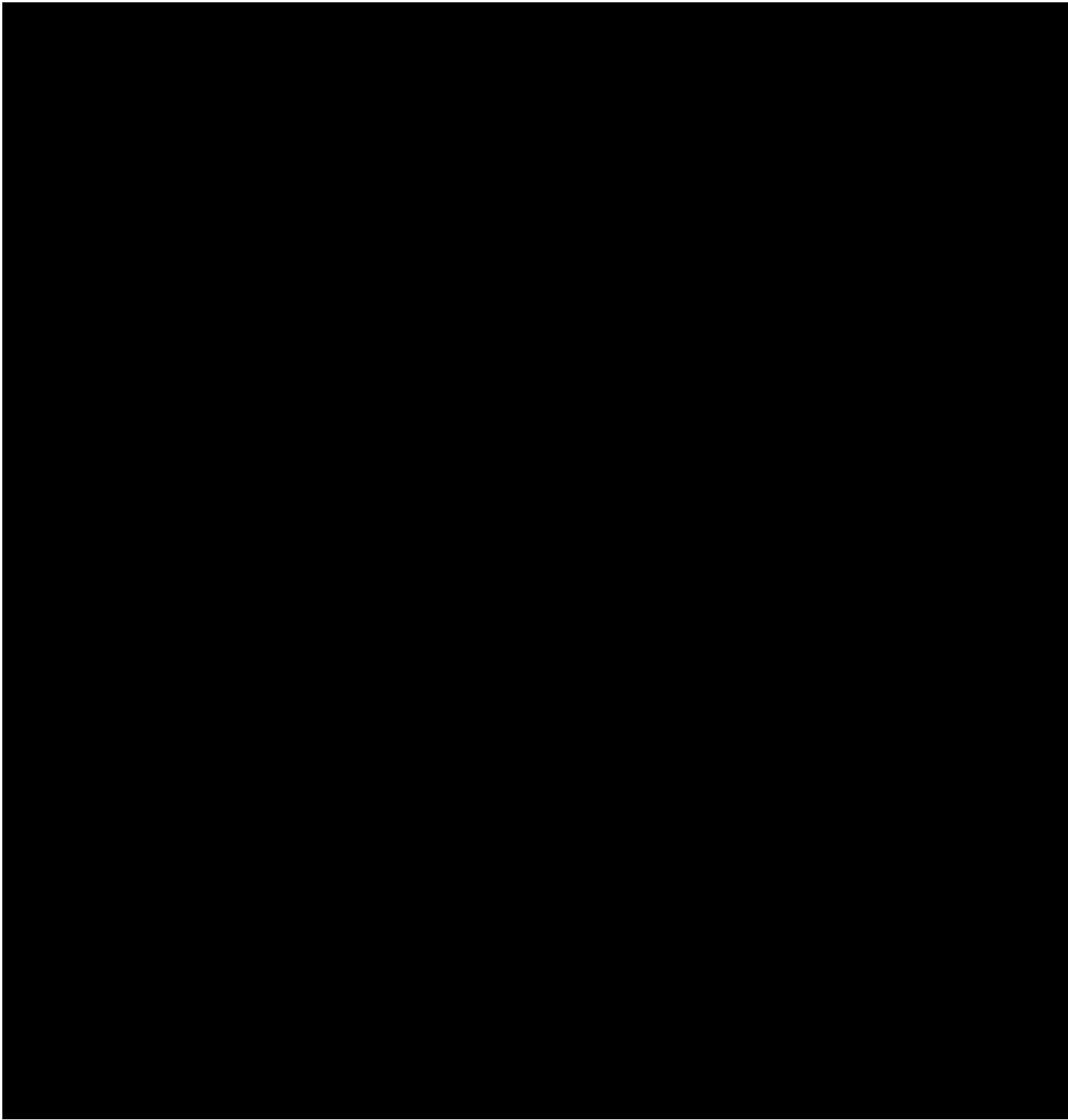


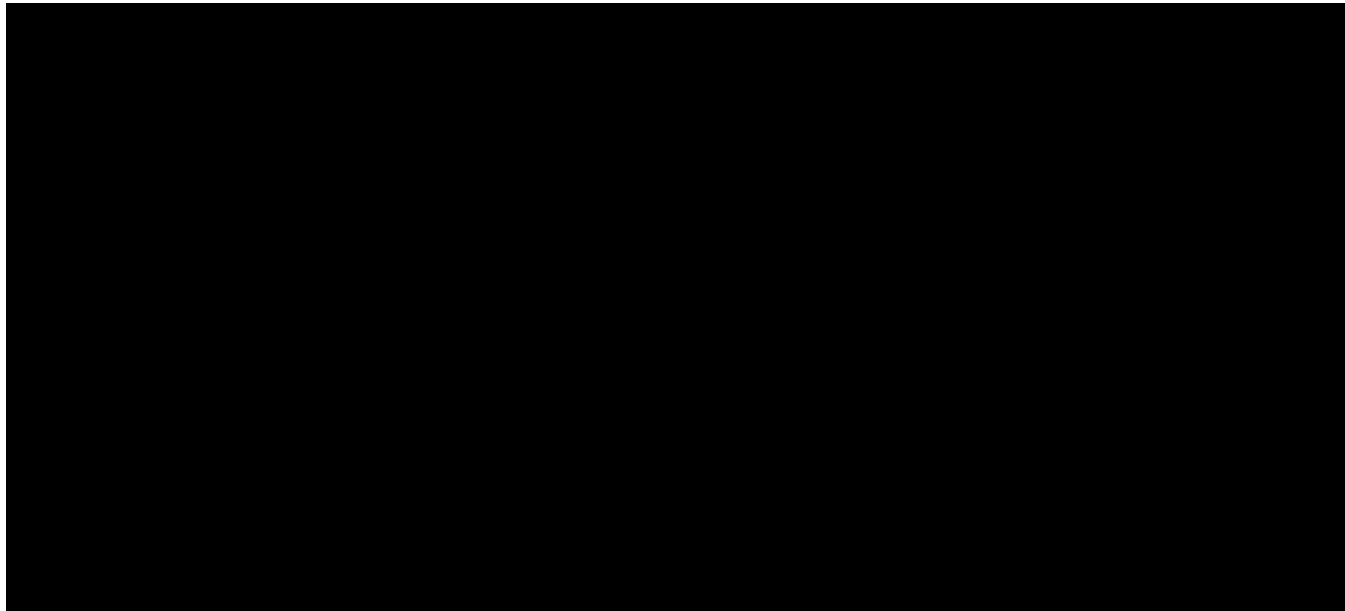


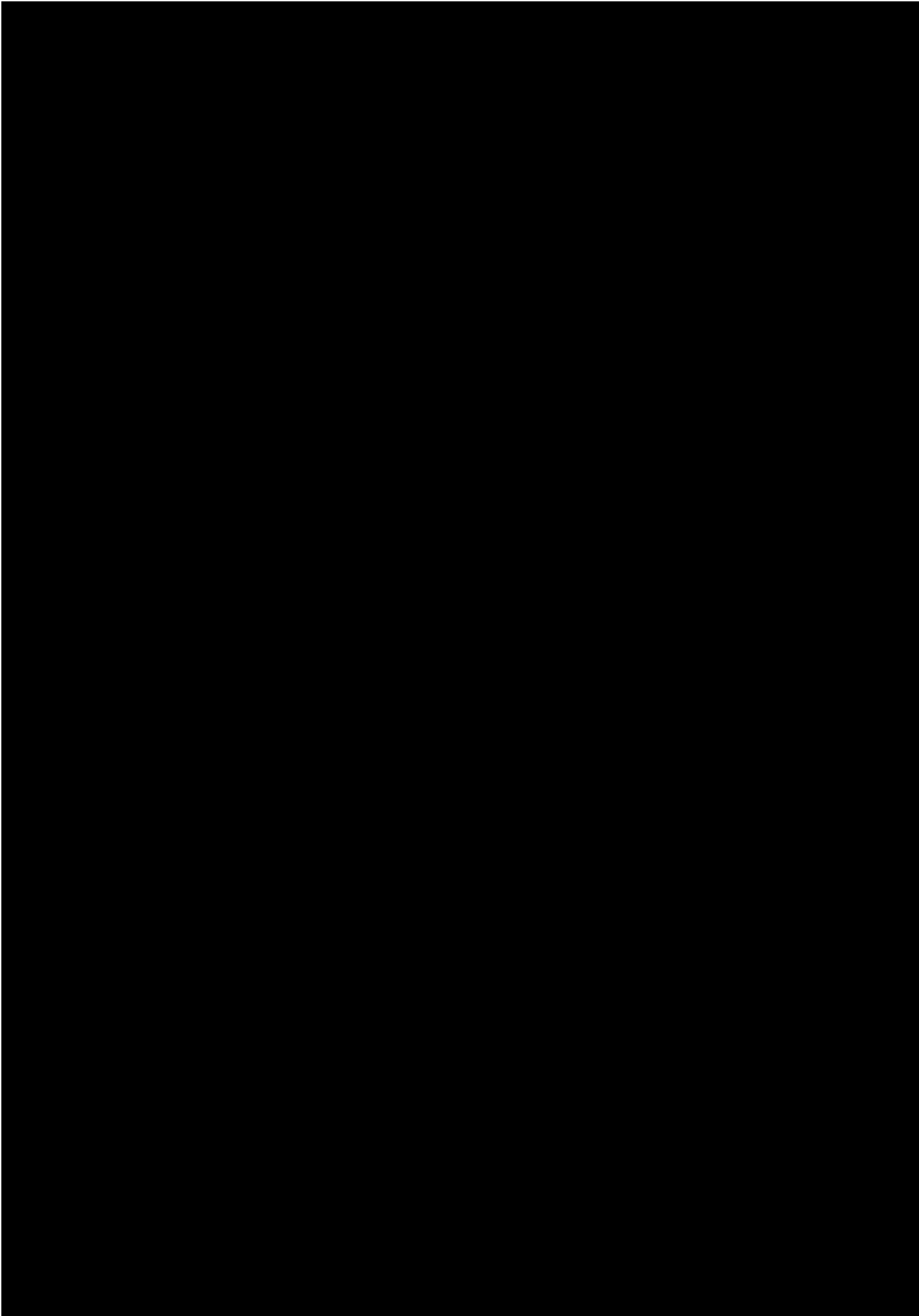


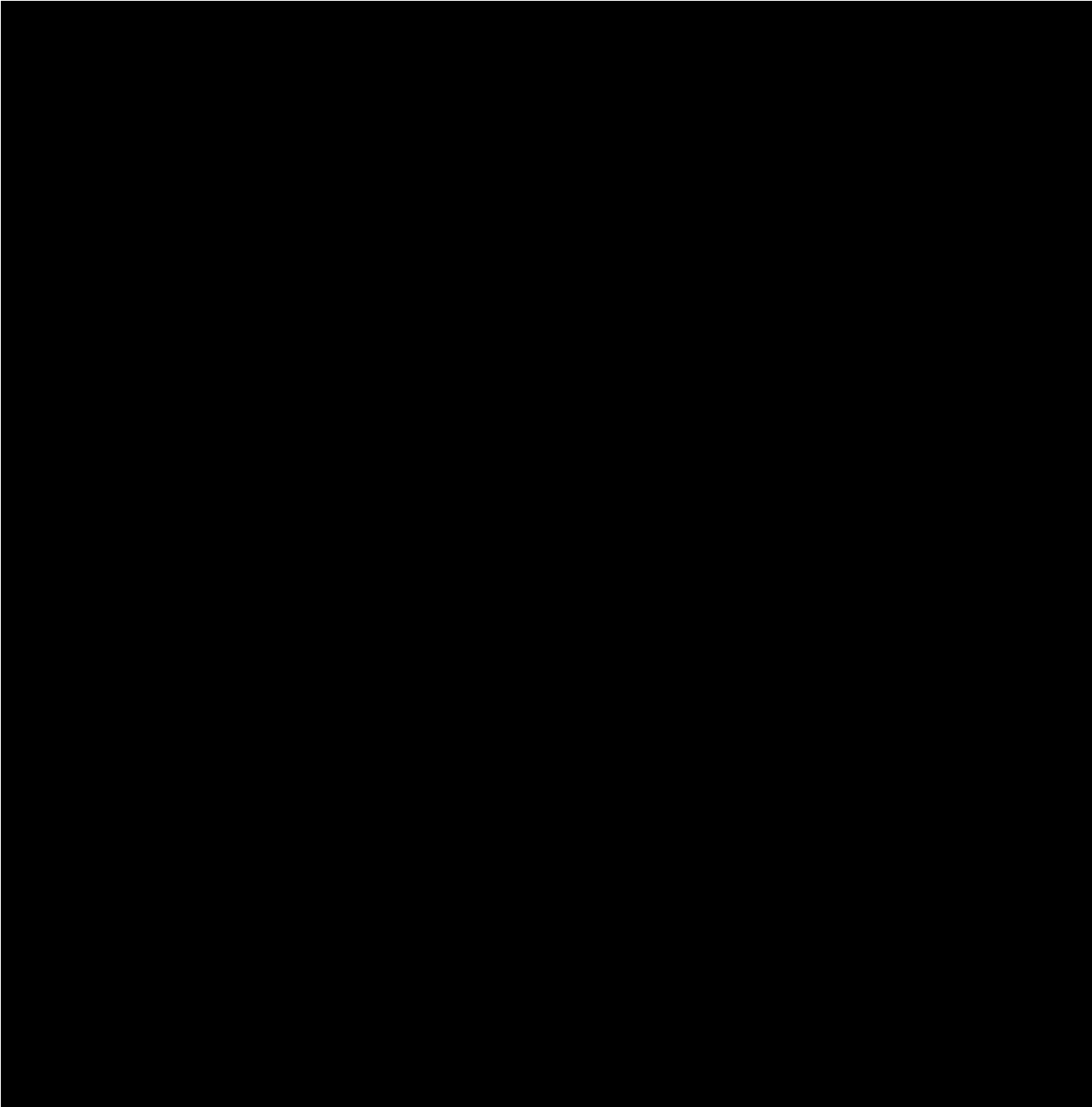


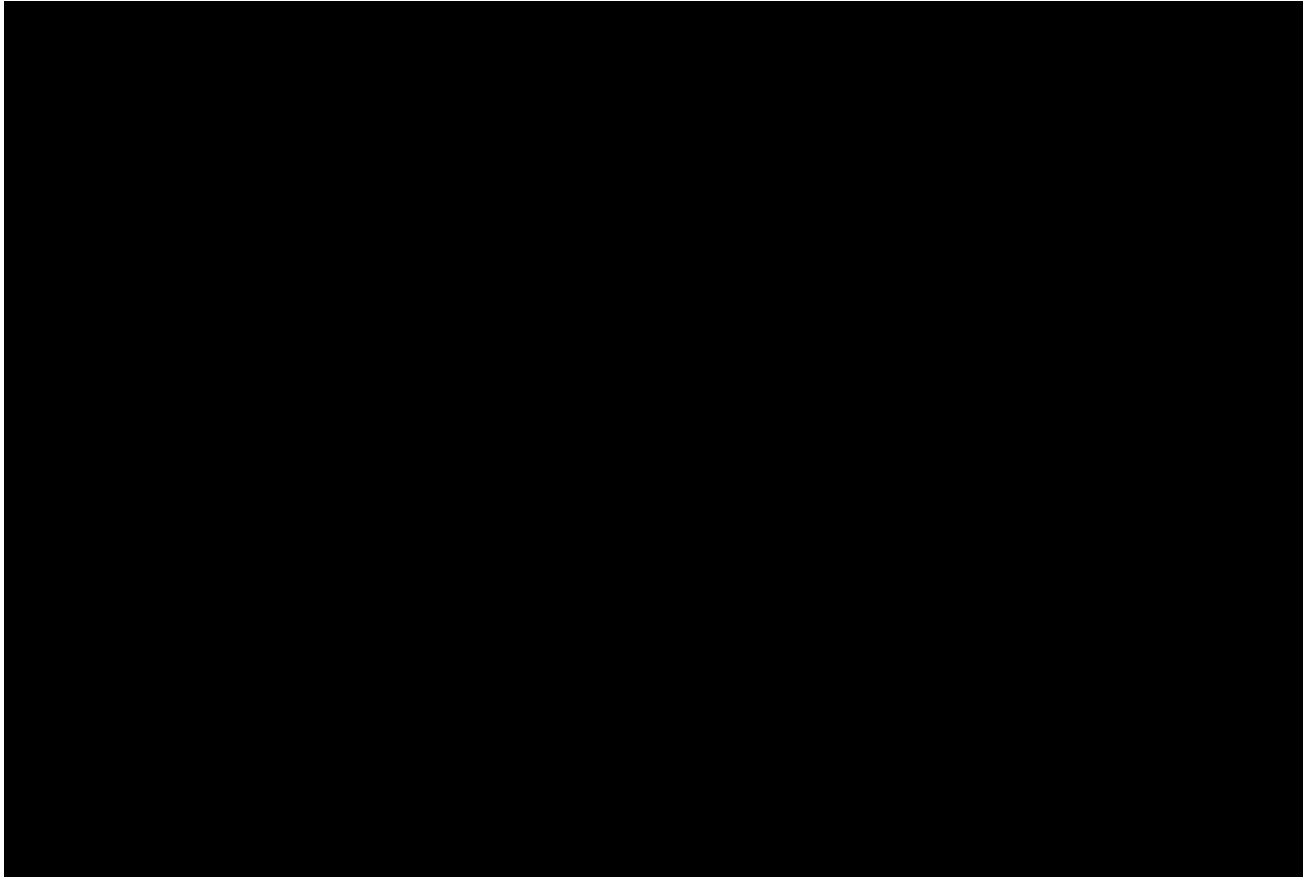


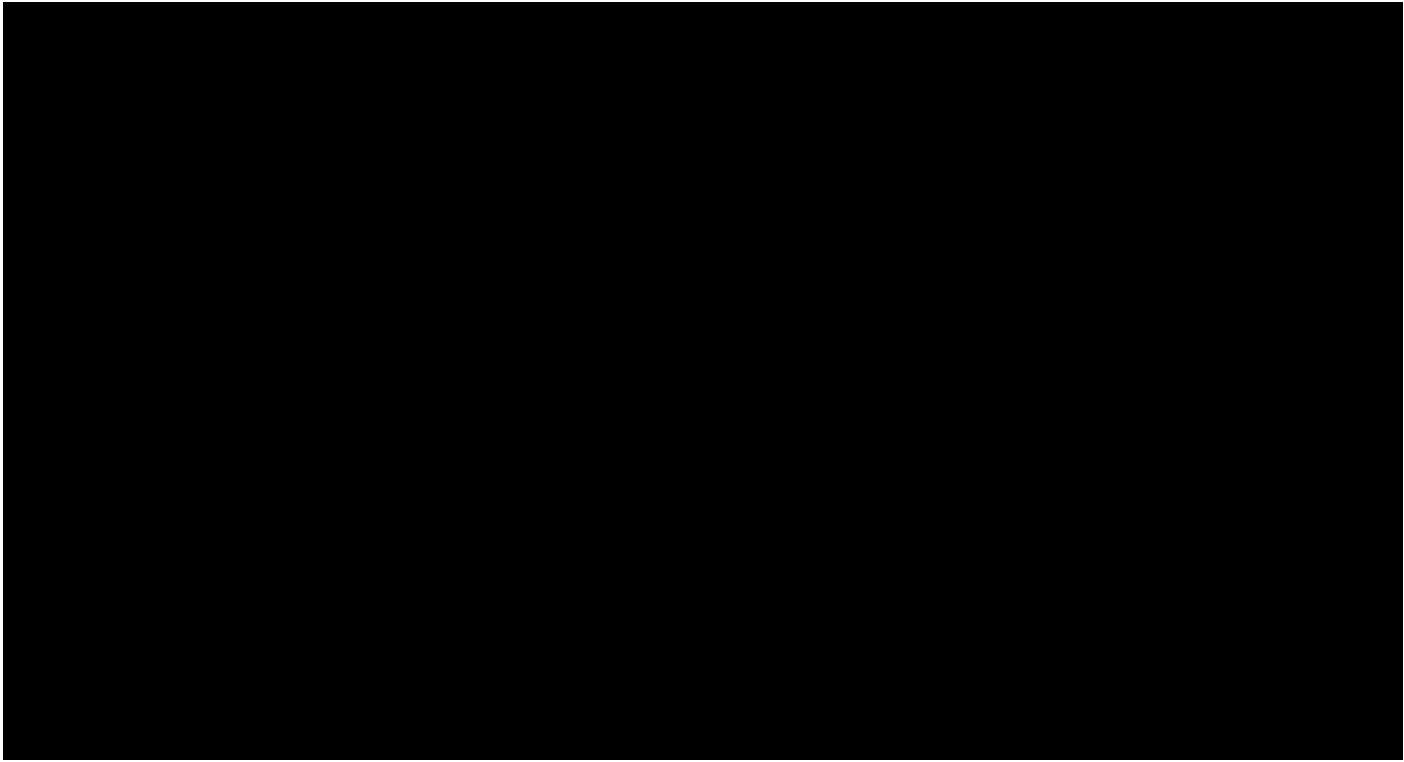


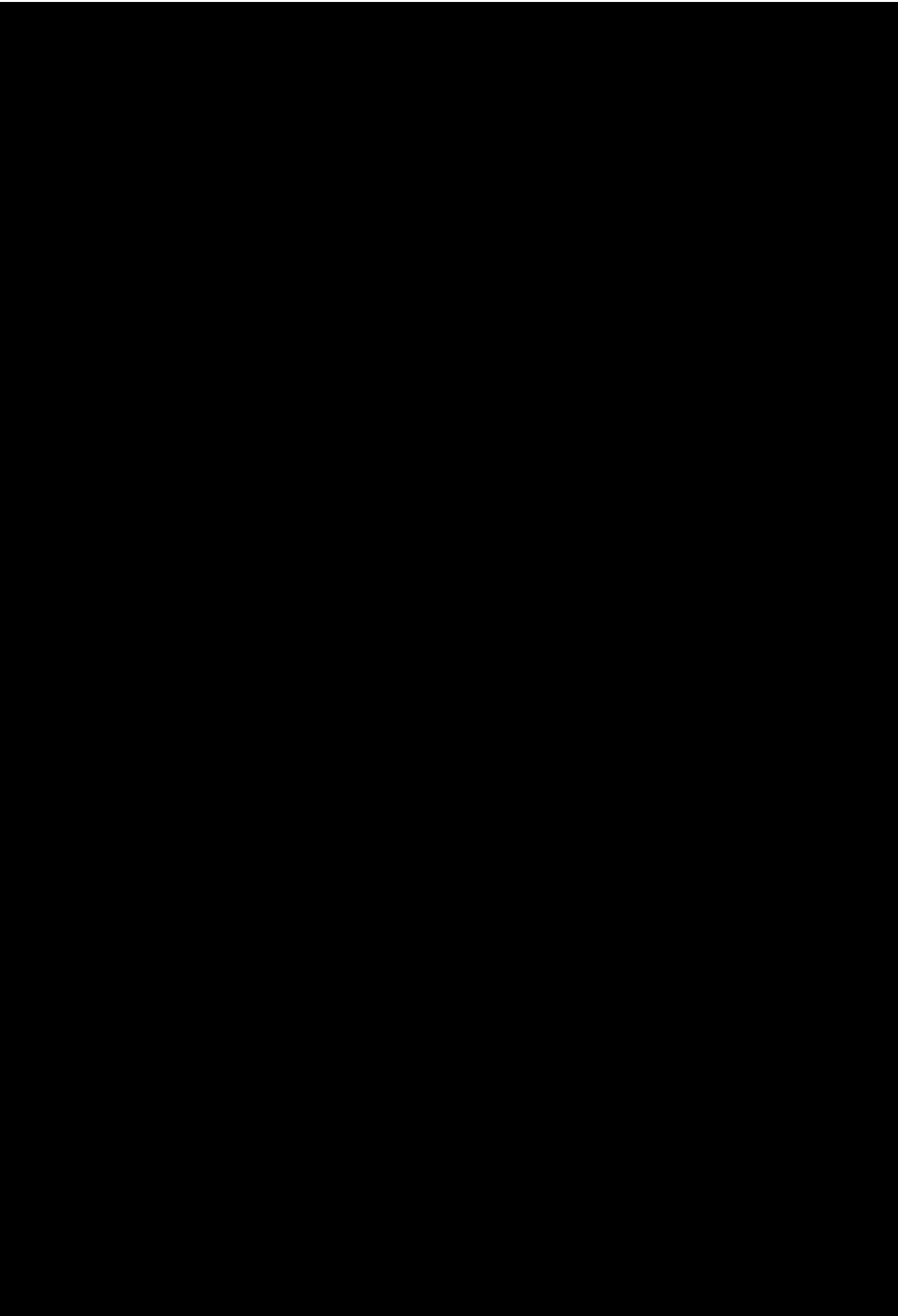


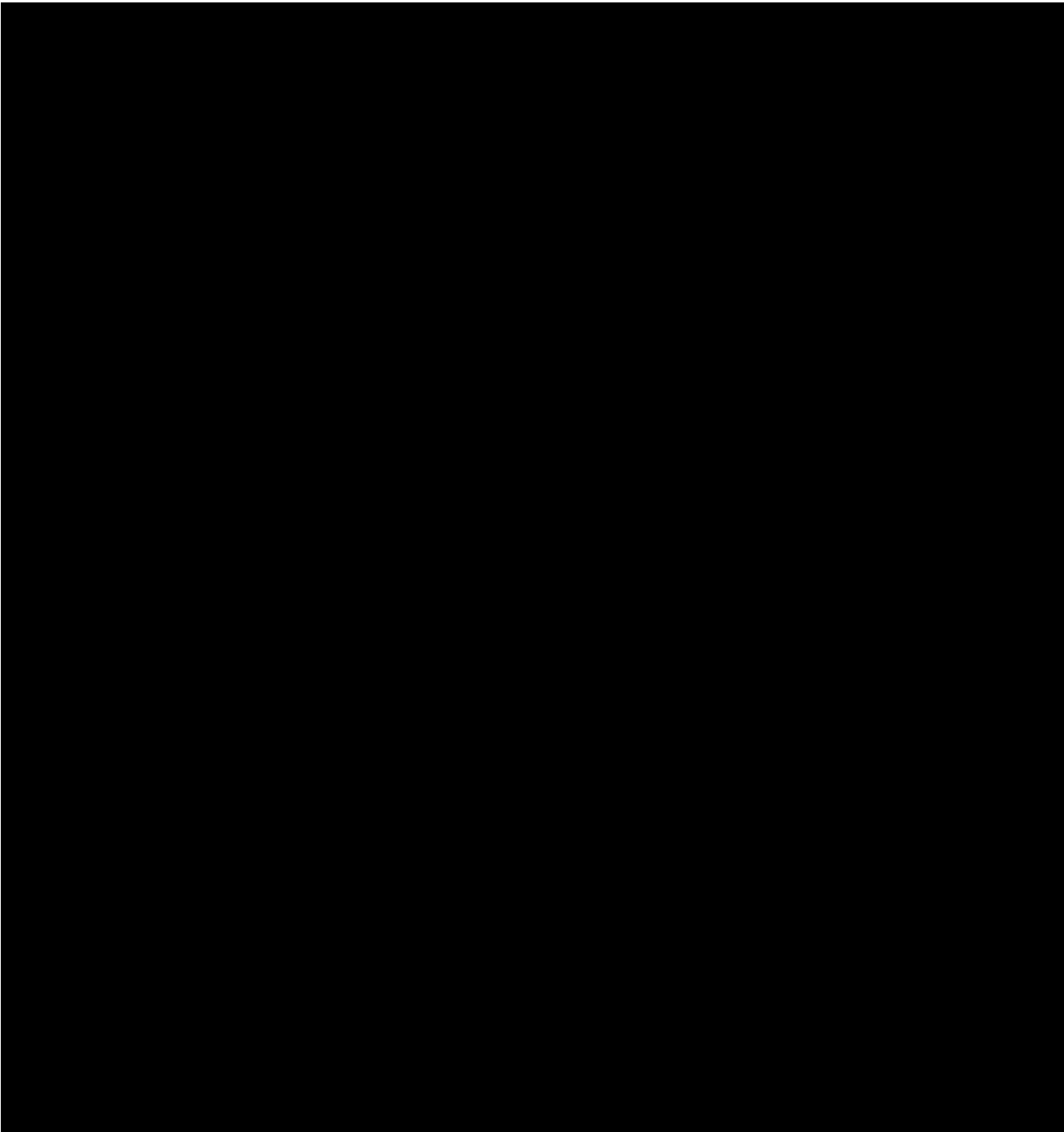


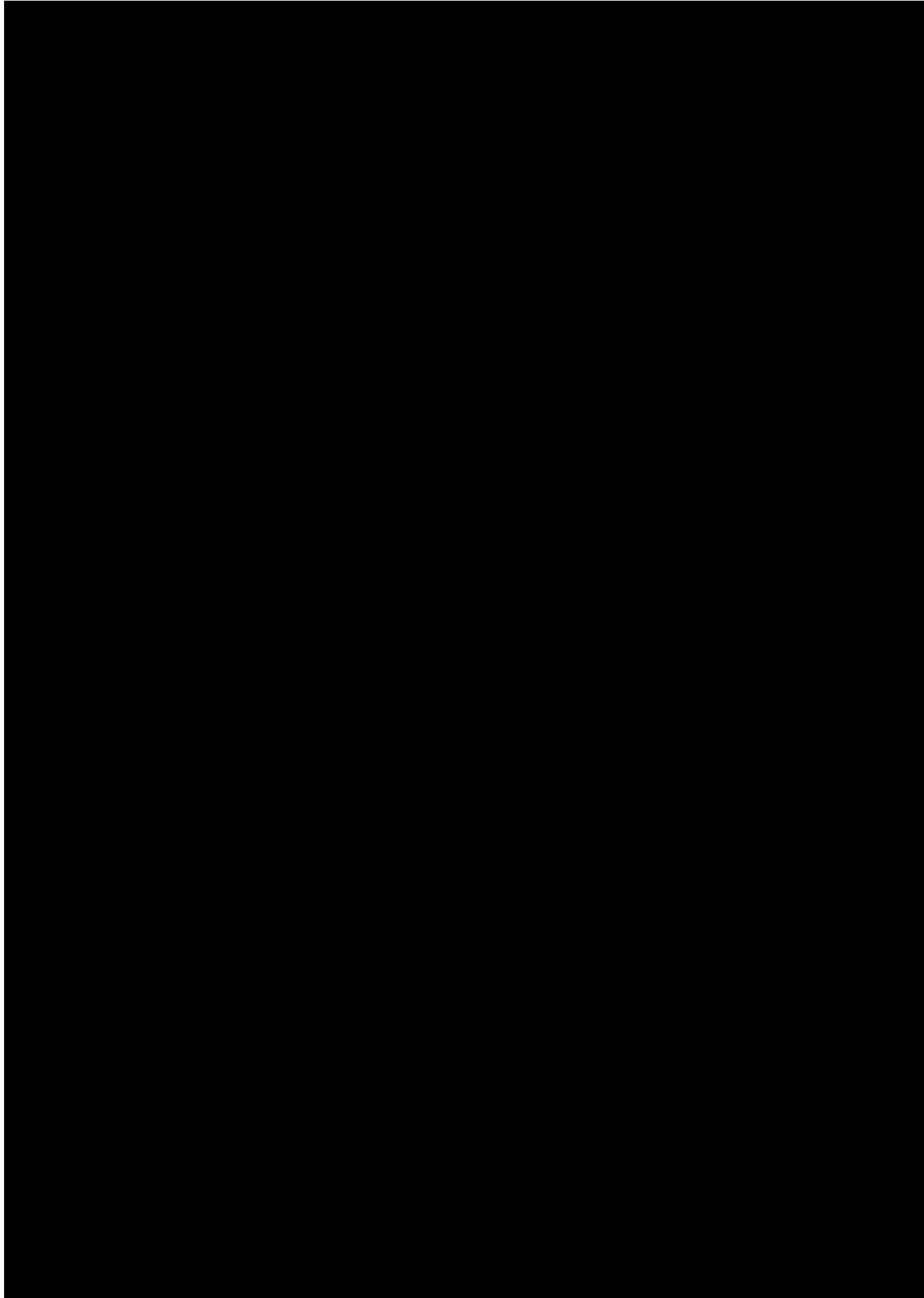


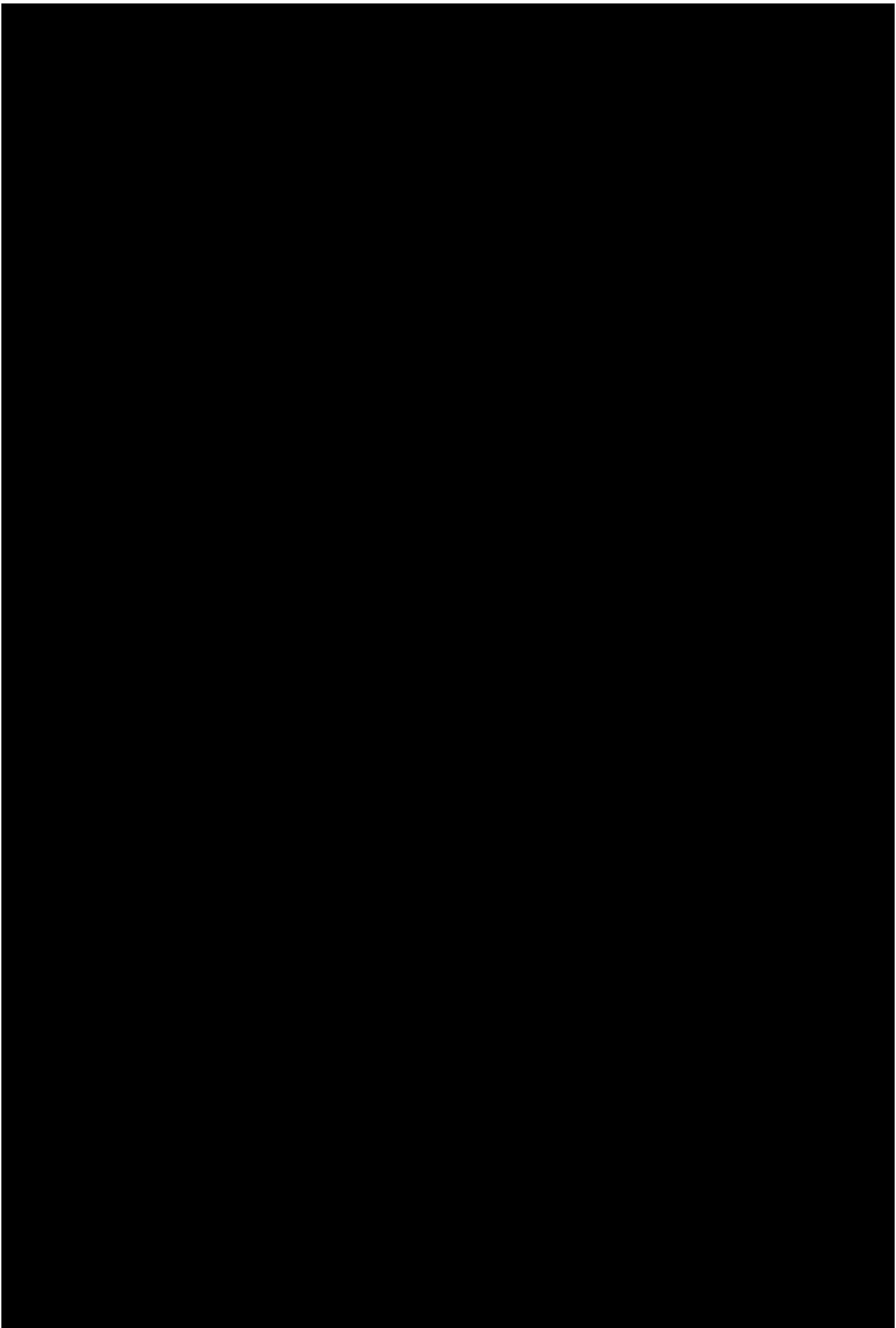


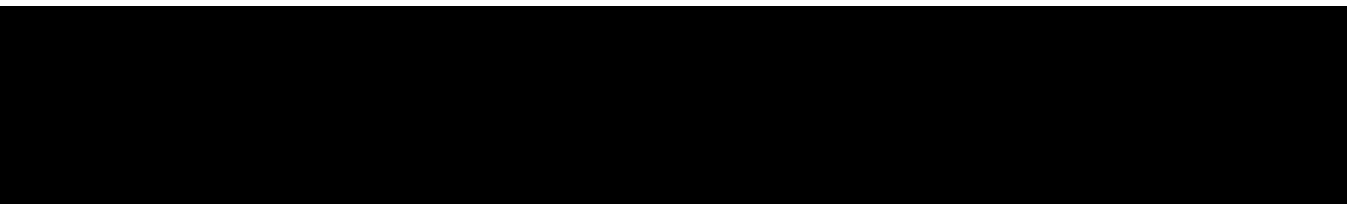


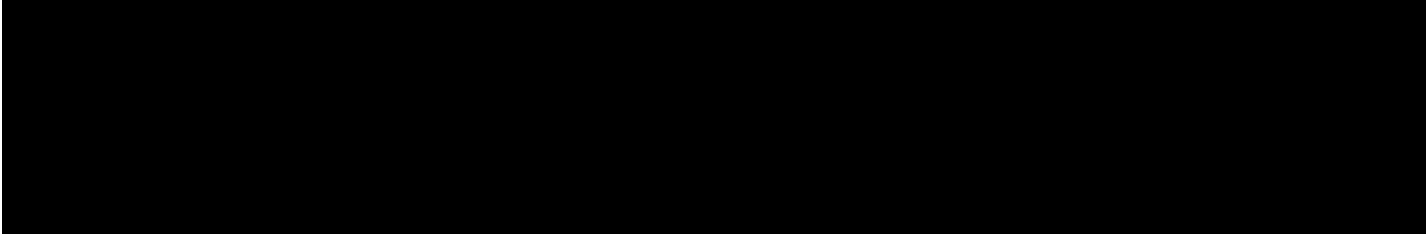


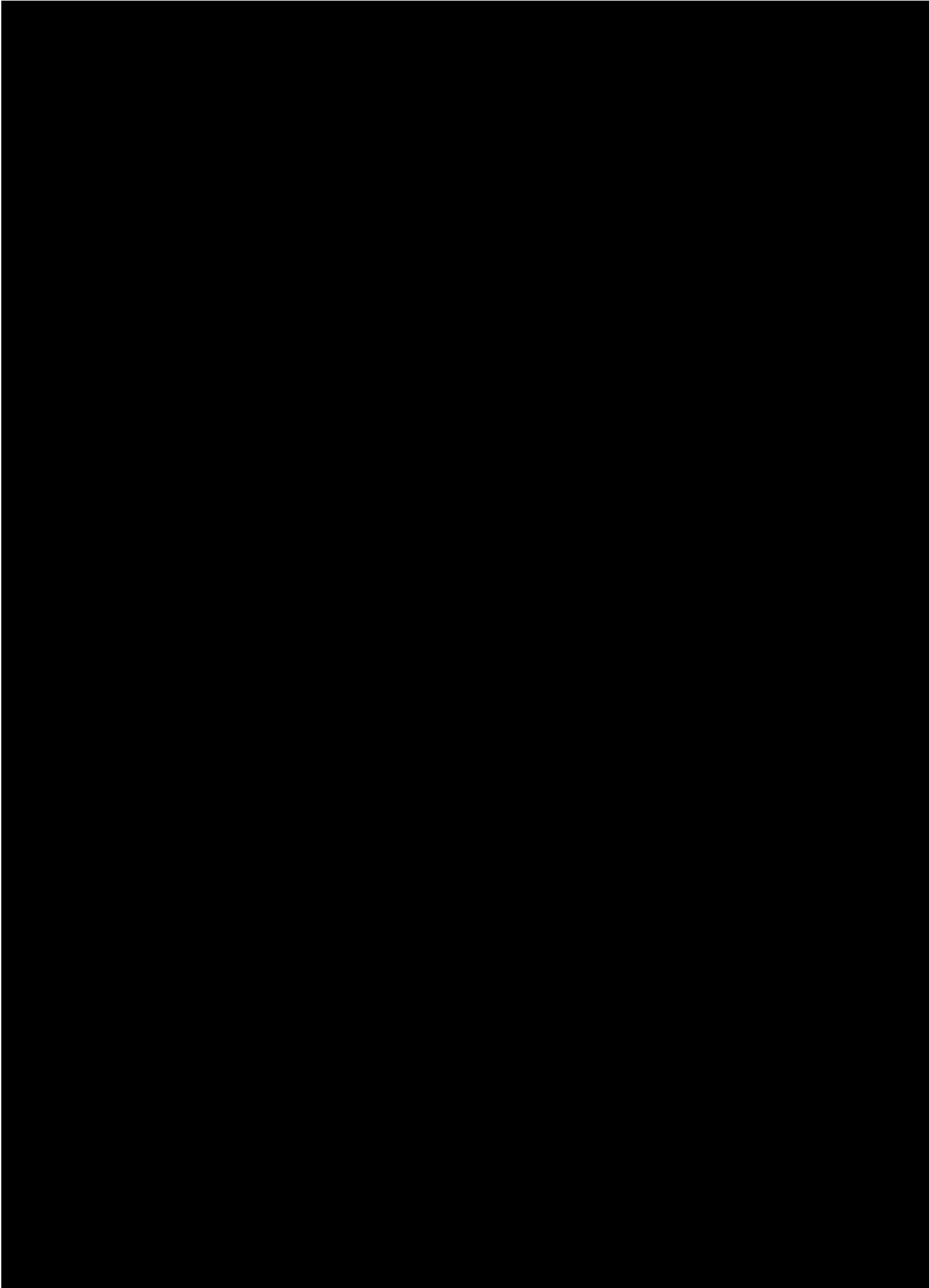


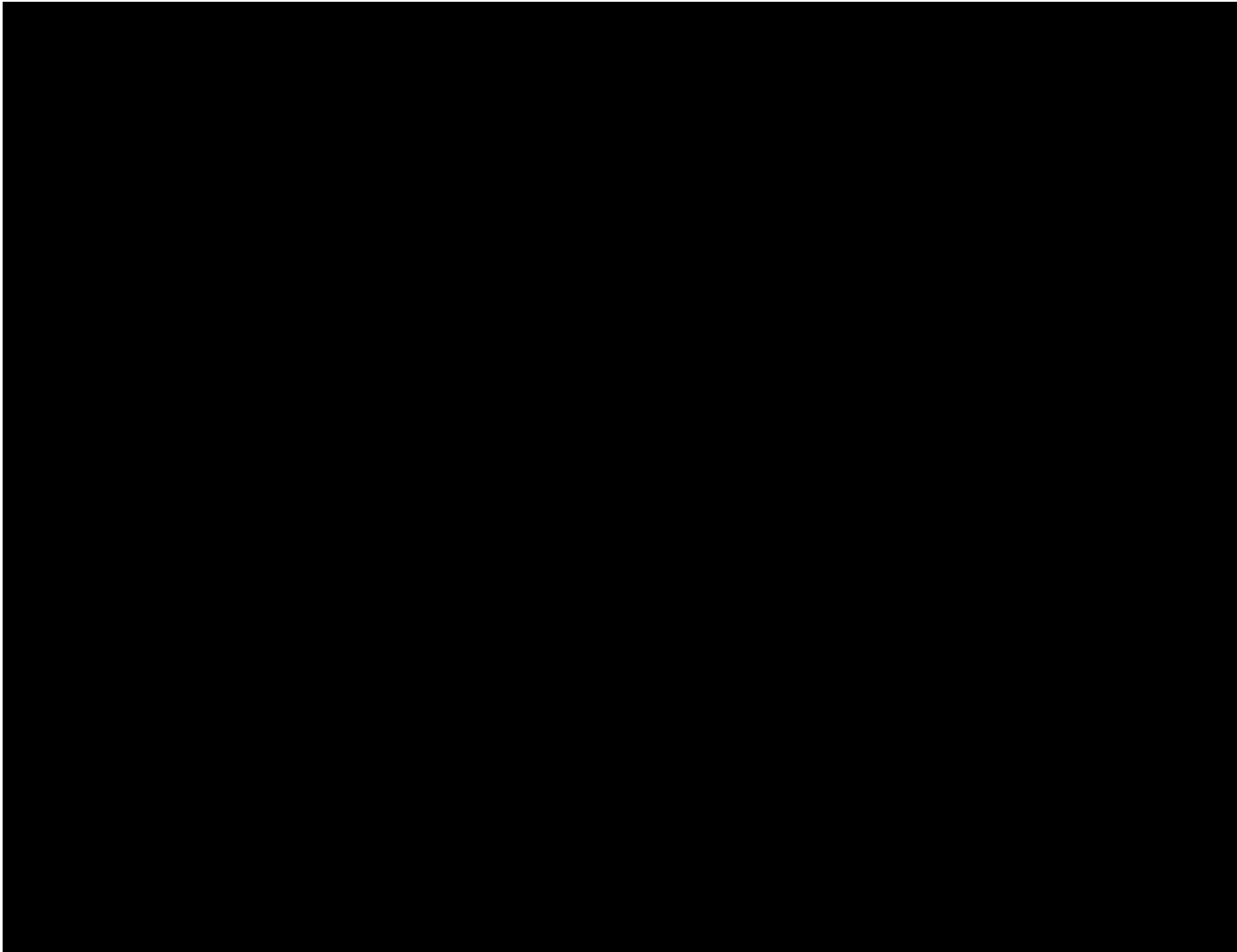


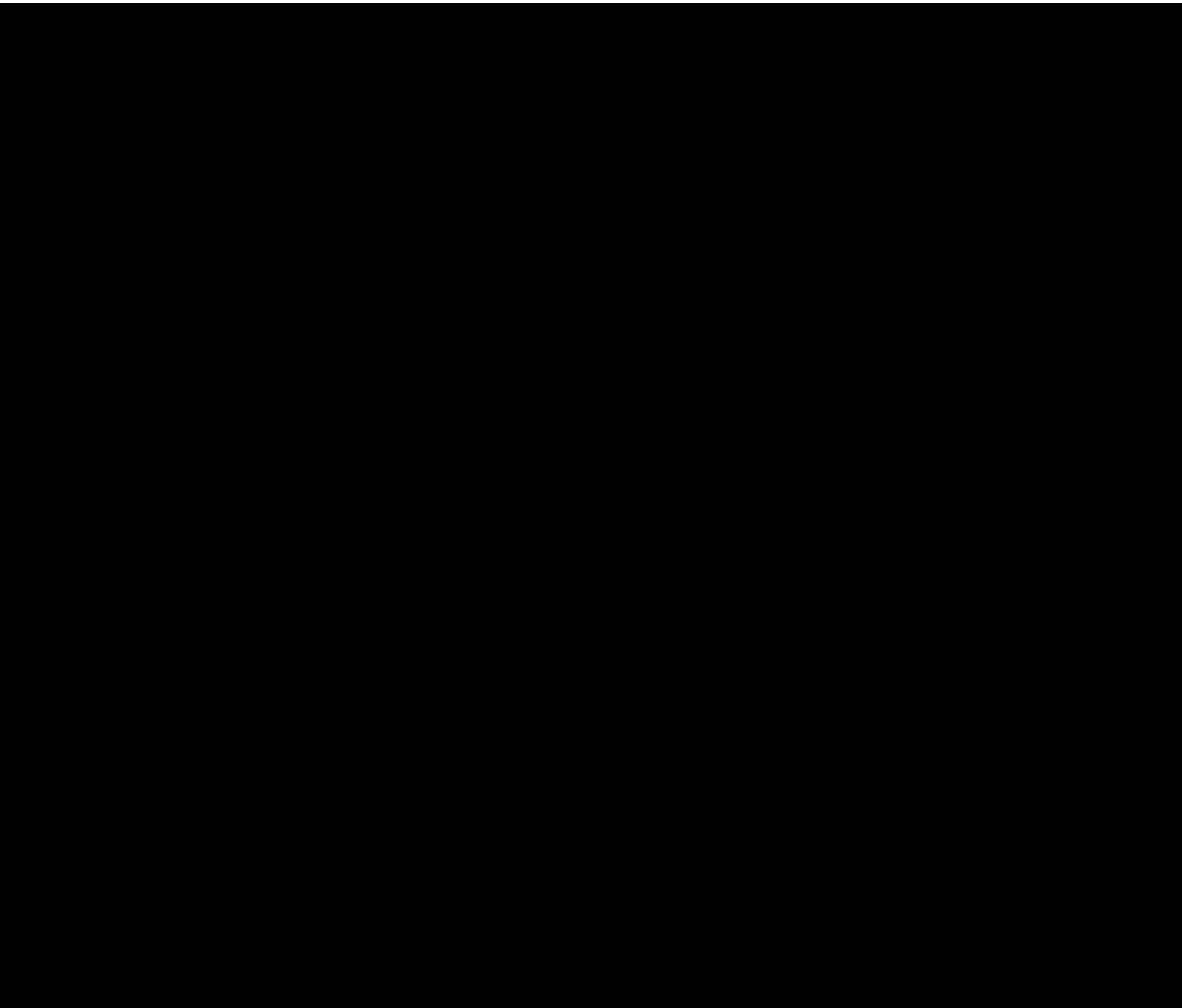


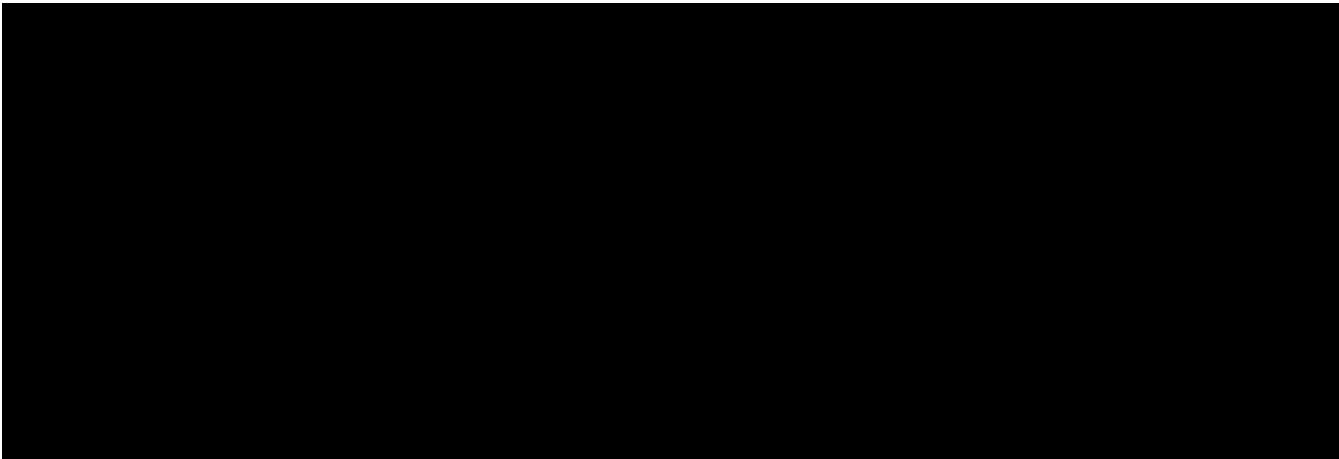


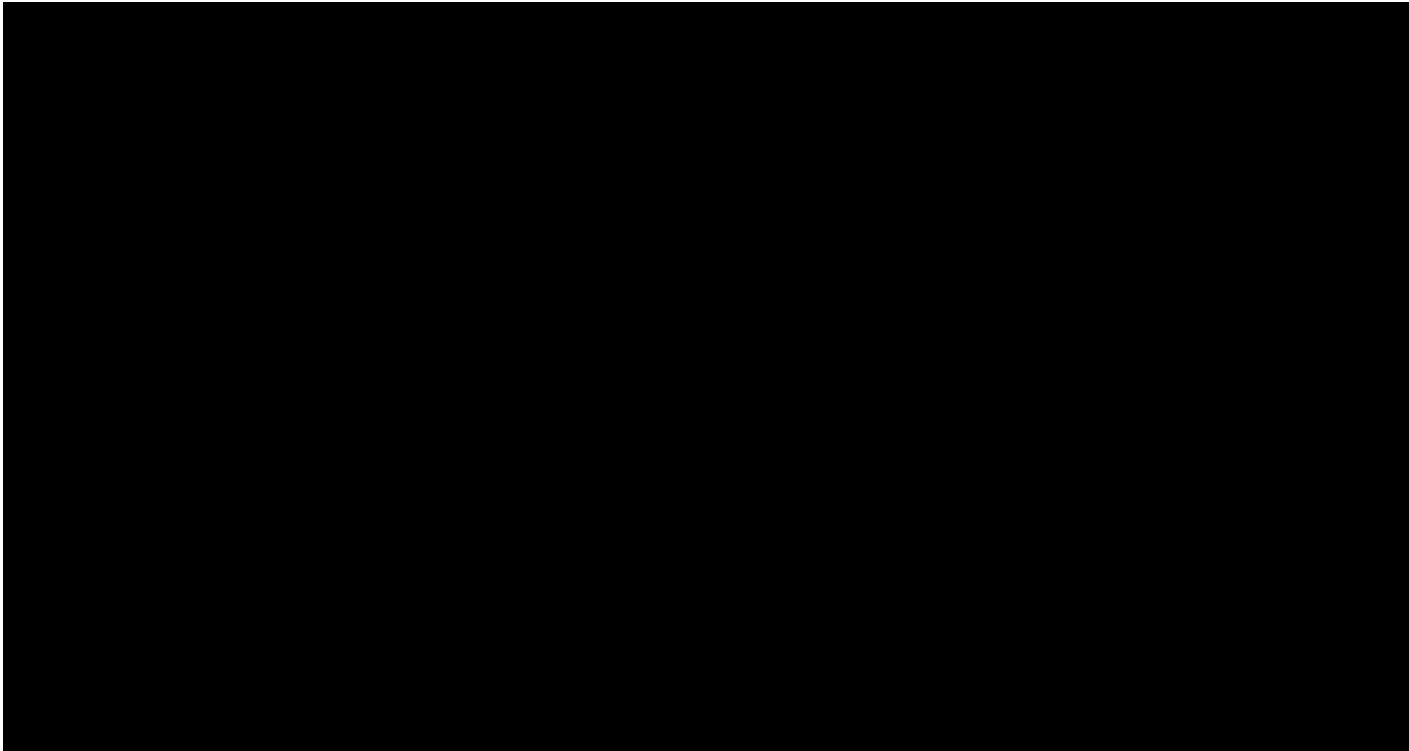


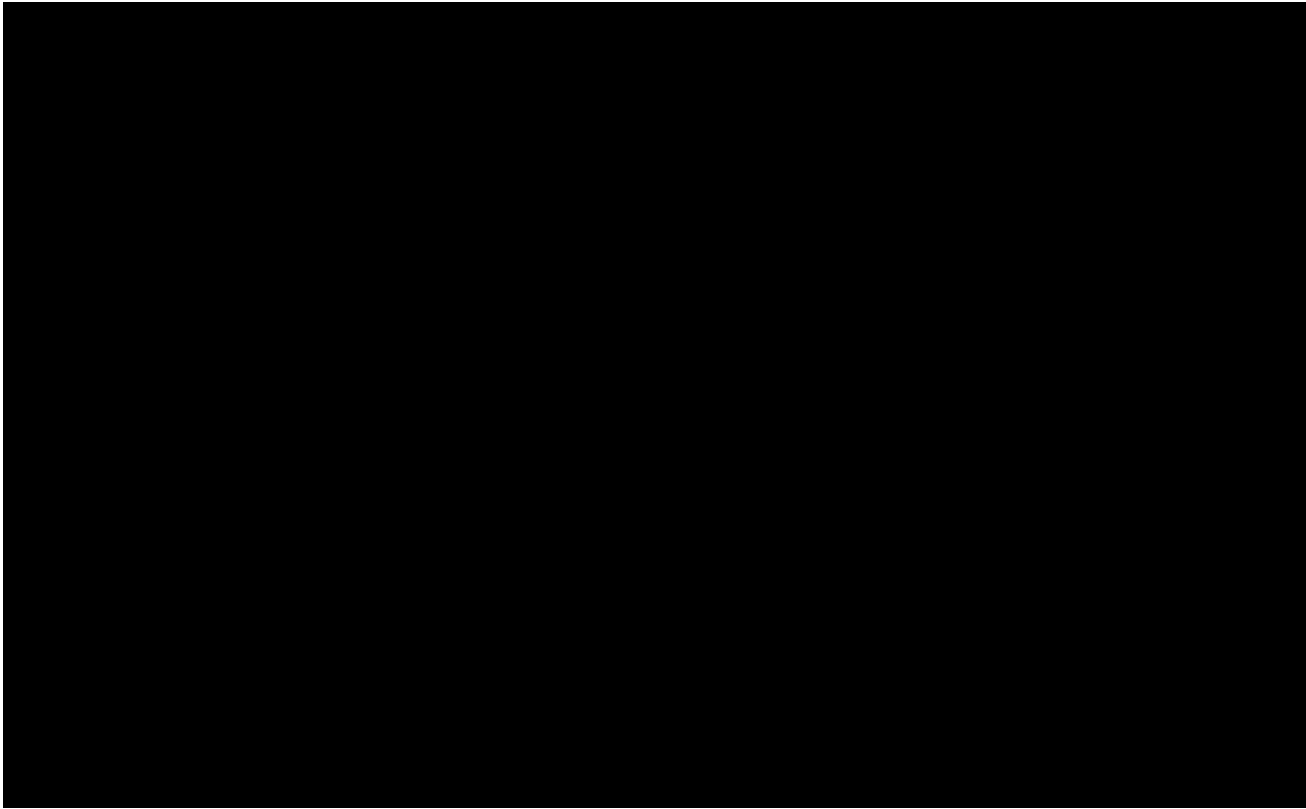


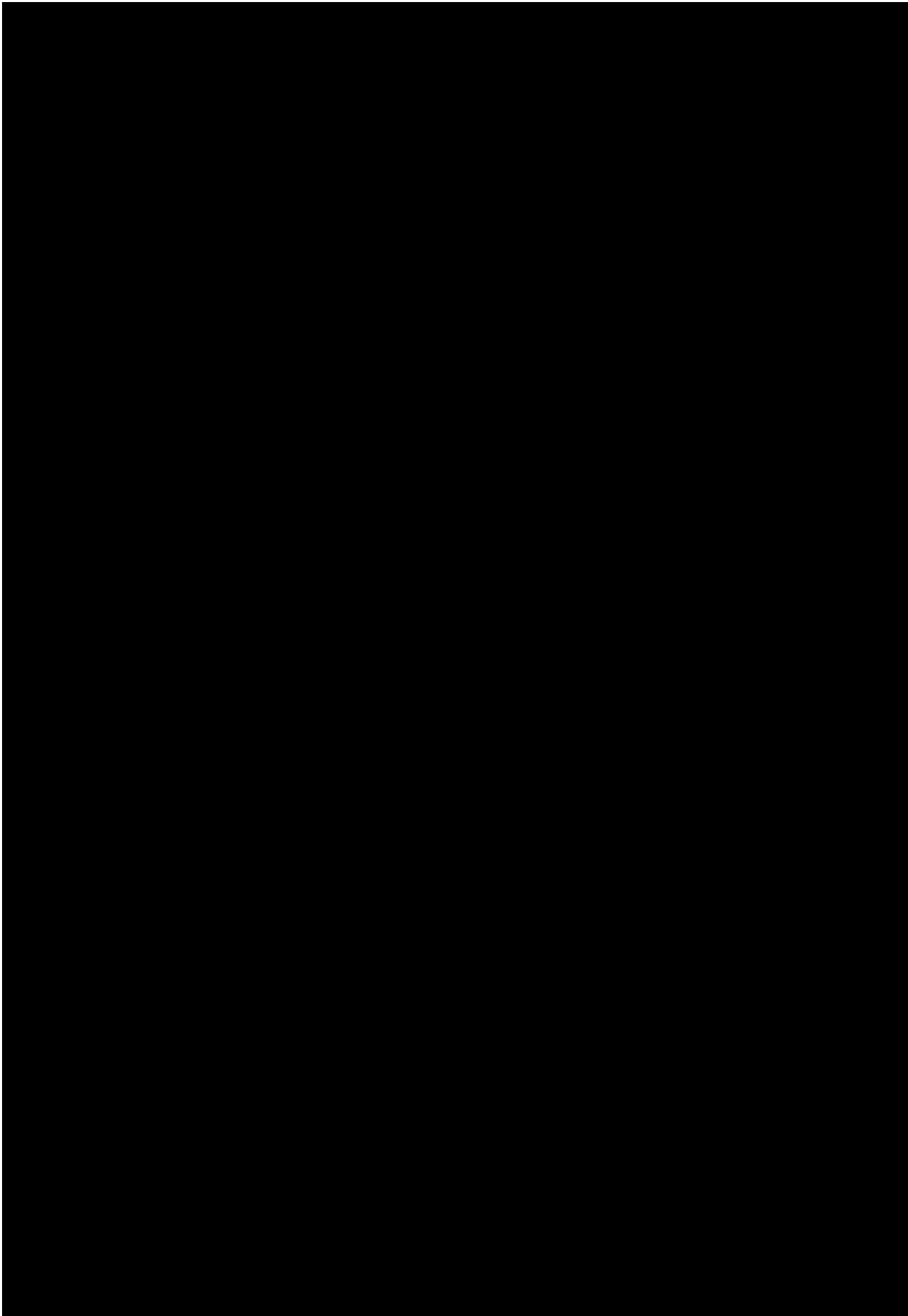


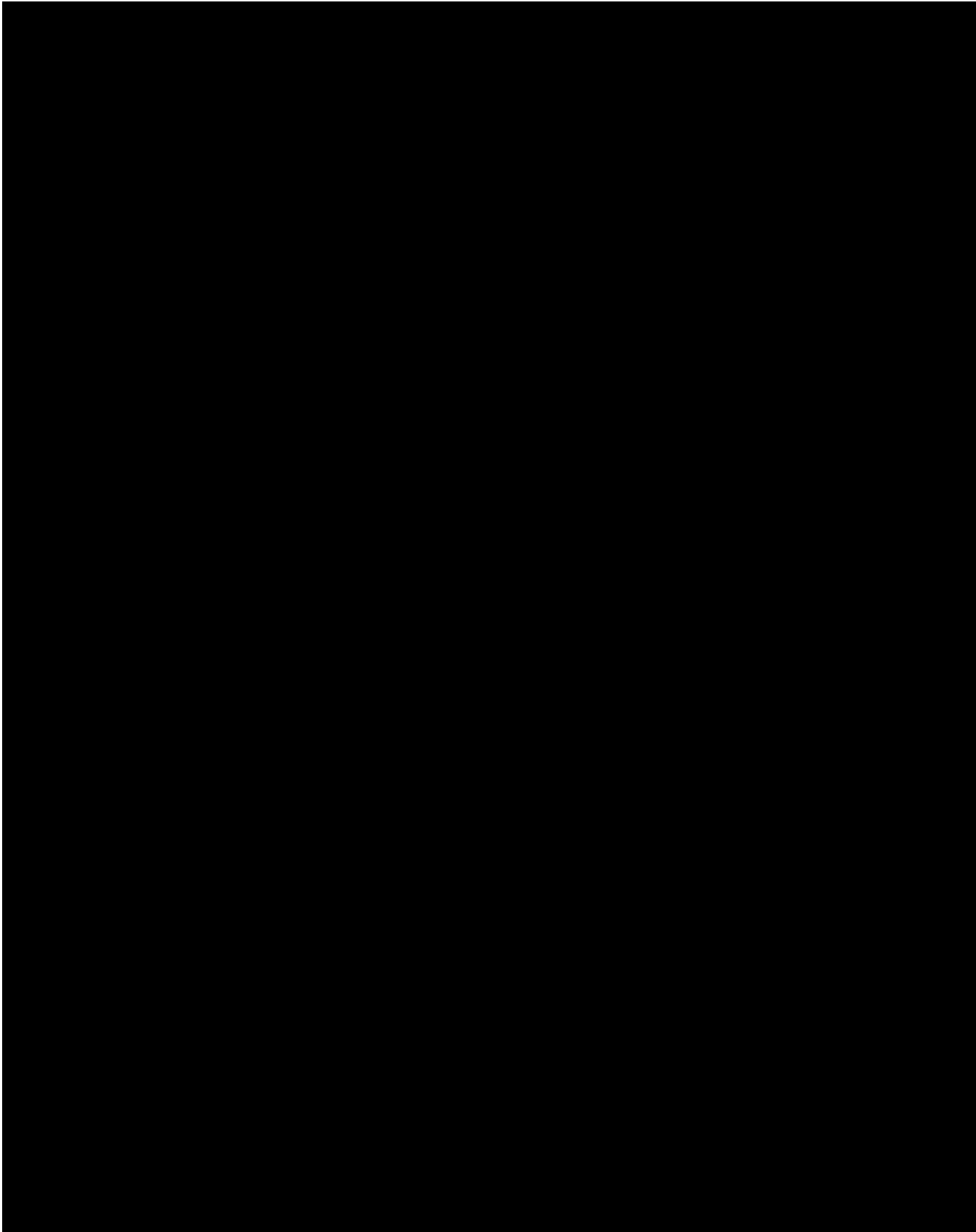


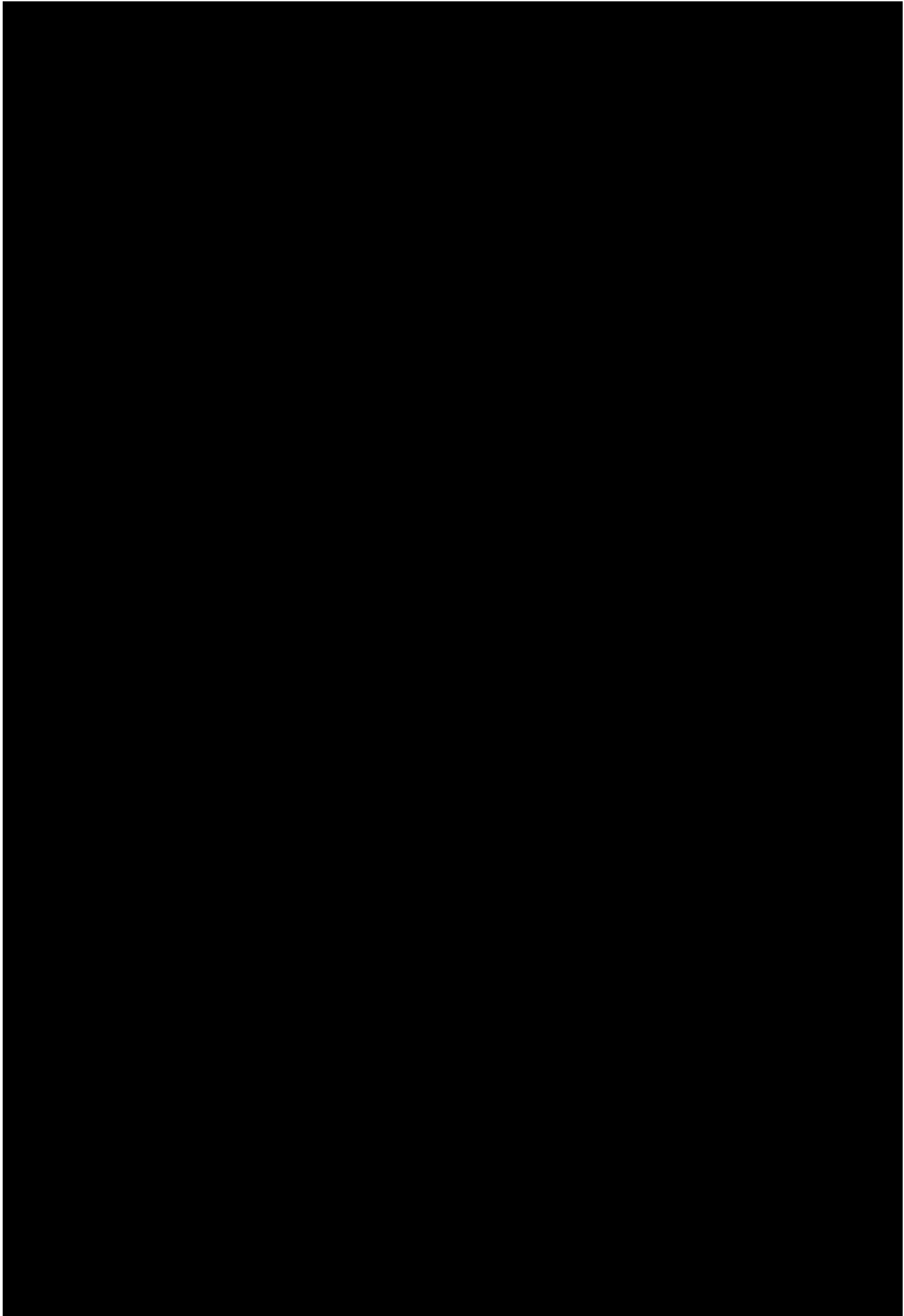


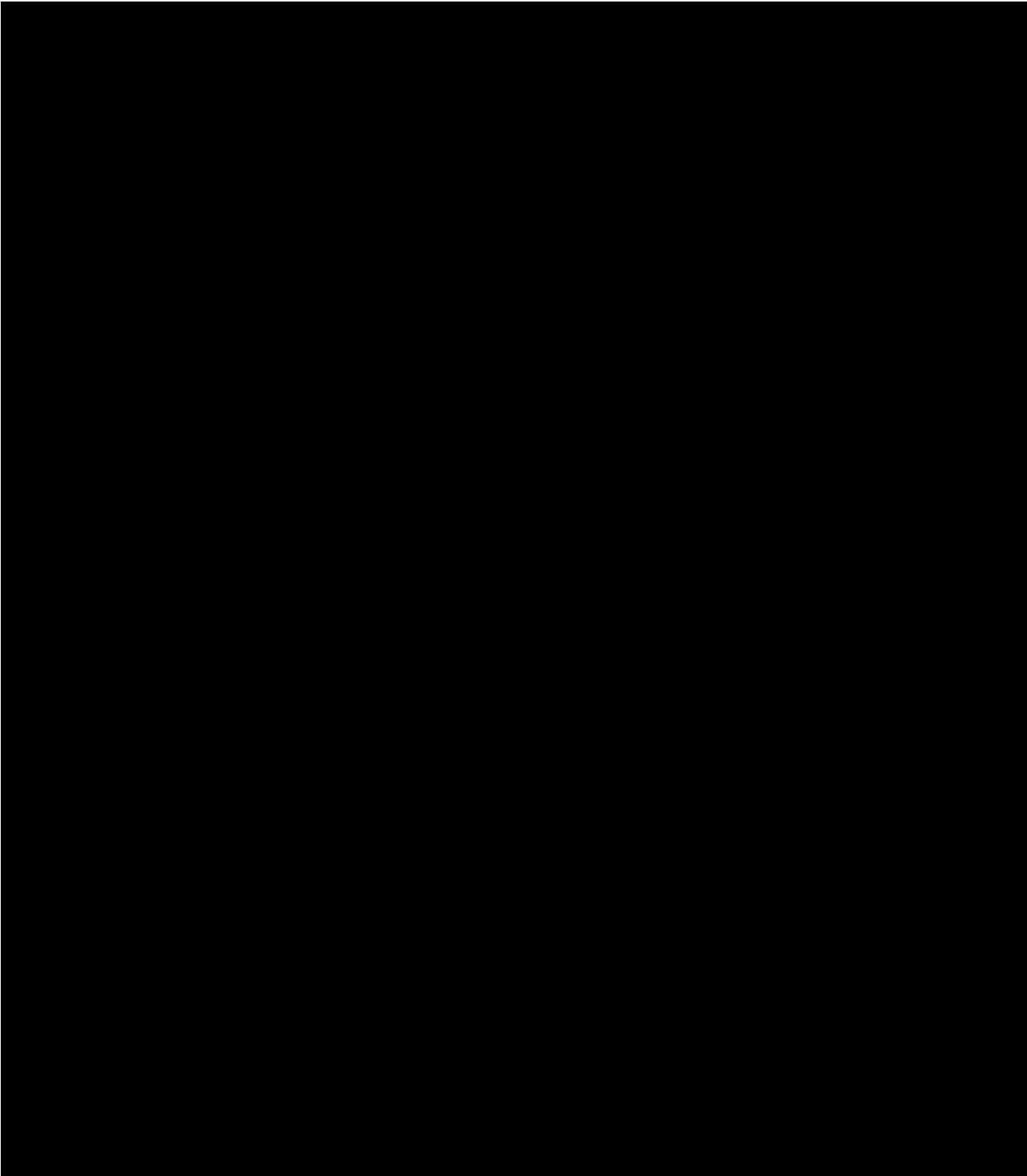




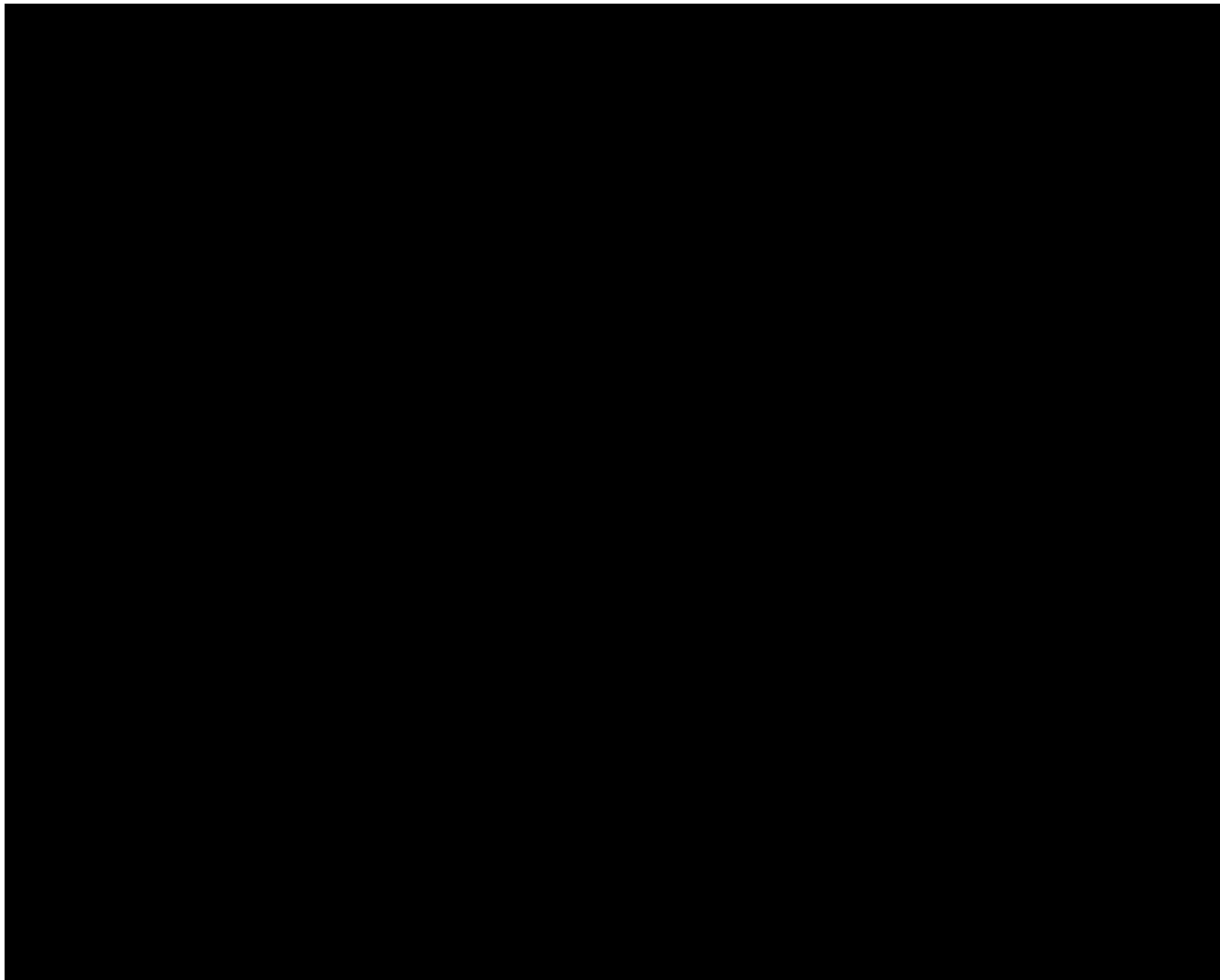








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Schedule 3 - Confidentiality Obligations

Confidentiality Obligations

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

1. Dictionary and interpretation

1.1 Definitions

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

Approved Purpose means the design and construction of the Project Works under the Design and Construct Deed M1 Pacific Motorway Extension to Raymond Terrace Black Hill to Tomago.

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

- (a) information which, either orally or in writing, is designated or indicated as being the proprietary or confidential information of the Principal, or a third party to whom the Principal owes an obligation of confidentiality;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling; and
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the information:

- (d) was disclosed orally, in writing or in electronic or machine readable form;
- (e) was disclosed or created before, on or after the date of this deed;
- (f) was disclosed as a result of discussions between the parties concerning or arising out of the Approved Purpose; or
- (g) was disclosed by the Principal, any of its Representatives or by a person acting on the Principal's behalf.

Excluded Information means Confidential Information:

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

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

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

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

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

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

1.2 Confidential Information not in public domain

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

2. Disclosure

2.1 No obligation to disclose information

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

2.2 No representations or warranties given

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

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

2.3 Contractor to make its own assessment

The Contractor agrees and acknowledges that:

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

3. Obligation of confidence

3.1 Confidential discussions

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

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

3.2 Contractor to maintain confidence

The Contractor must:

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

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

3.3 Contractor to inform the Principal before disclosure

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

- (a) inform the Principal of the name and title of the Representatives to whom it is to be disclosed; and
- (b) ensure that each Representative is made fully aware of the confidential nature of all Confidential Information prior to obtaining access to it.

3.4 Contractor's Representatives leaving its employ

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

3.5 Contractor's control of Confidential Information

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

4. Contractor's Representatives

4.1 Contractor's responsibility for Representatives' conduct

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

4.2 Contractor to assist in the Principal's action

The Contractor must give the Principal all assistance it requires to take any action or bring any proceedings for breach of the Confidential Obligations by its Representatives (whether or not still employed or engaged by the Contractor).

5. Acknowledgements

5.1 Confidential Information belongs to the Principal

The Contractor acknowledges that:

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

5.2 Injunctive relief

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

6. Indemnity

6.1 Contractor indemnifies the Principal

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

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

6.2 No set-off

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

7. Exclusions

7.1 Excluded Information

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

7.2 Disclosure required by law

Subject to compliance with clause 7.4, the obligations in clause 3 do not apply to the disclosure of any Confidential Information to the extent that it is required to be disclosed by the Contractor under any law.

7.3 Disclosure in the course of a dispute

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

7.4 Limitation of disclosure

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

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

8. Return of Confidential Information

8.1 Return of Confidential Information

The Contractor must (at its own expense):

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

on the earlier of:

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

8.2 No release from obligations

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

9. Privacy

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

- (a) take all necessary measures to ensure that Personal Information in its possession or control in connection with this deed is protected against loss and unauthorised access, use, modification or disclosure; and
- (b) comply with the *Privacy and Personal Information Protection Act 1998* (NSW) as though the Contractor were a public sector agency as defined in that Act.

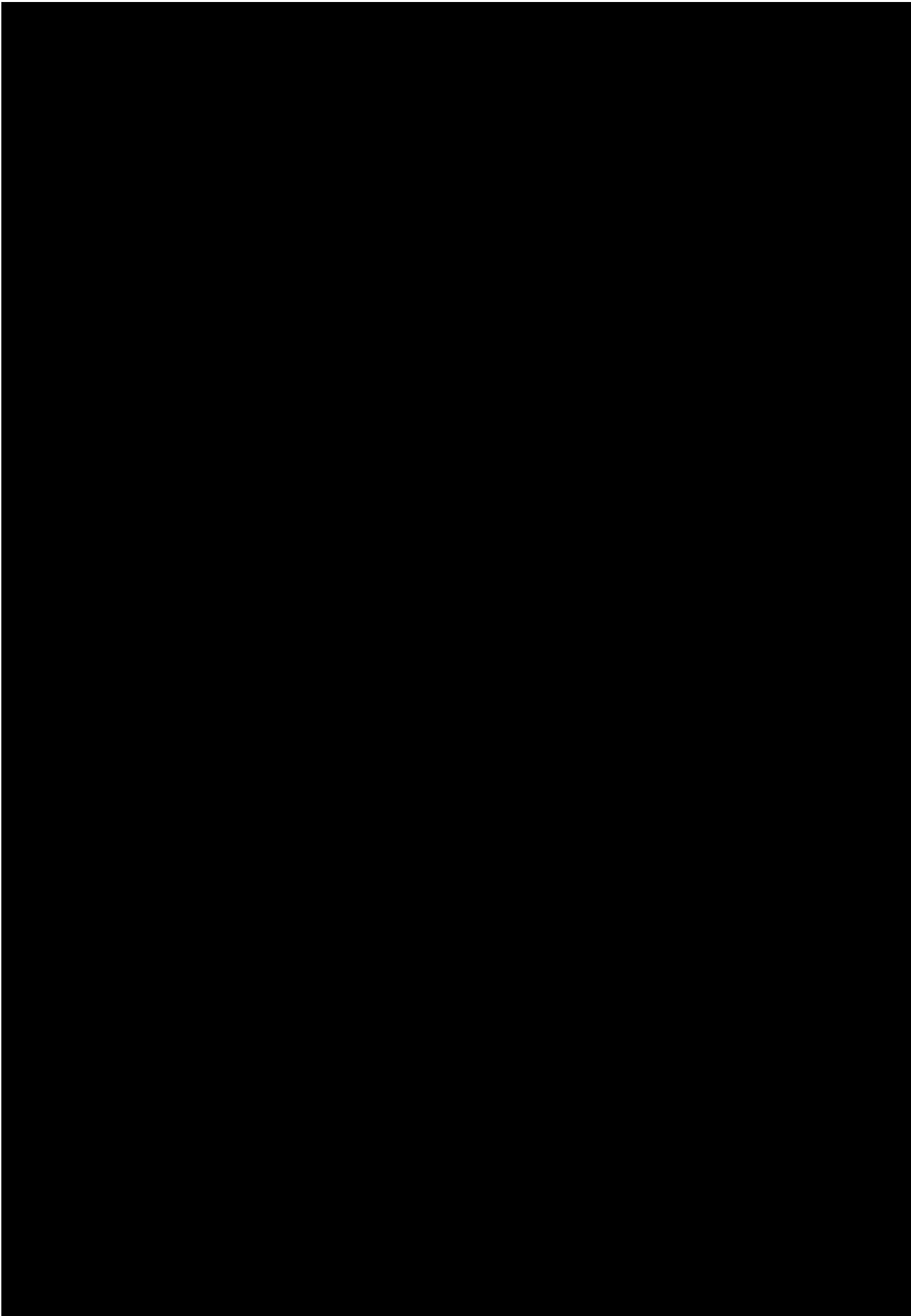
Schedule 4 - Progress Claim

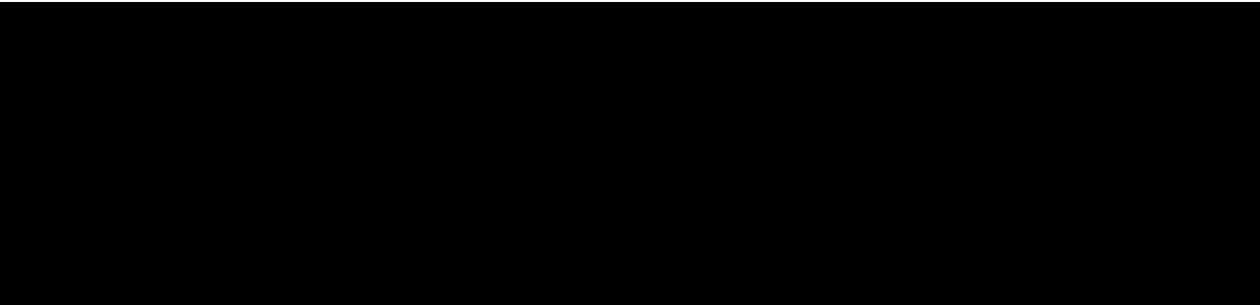
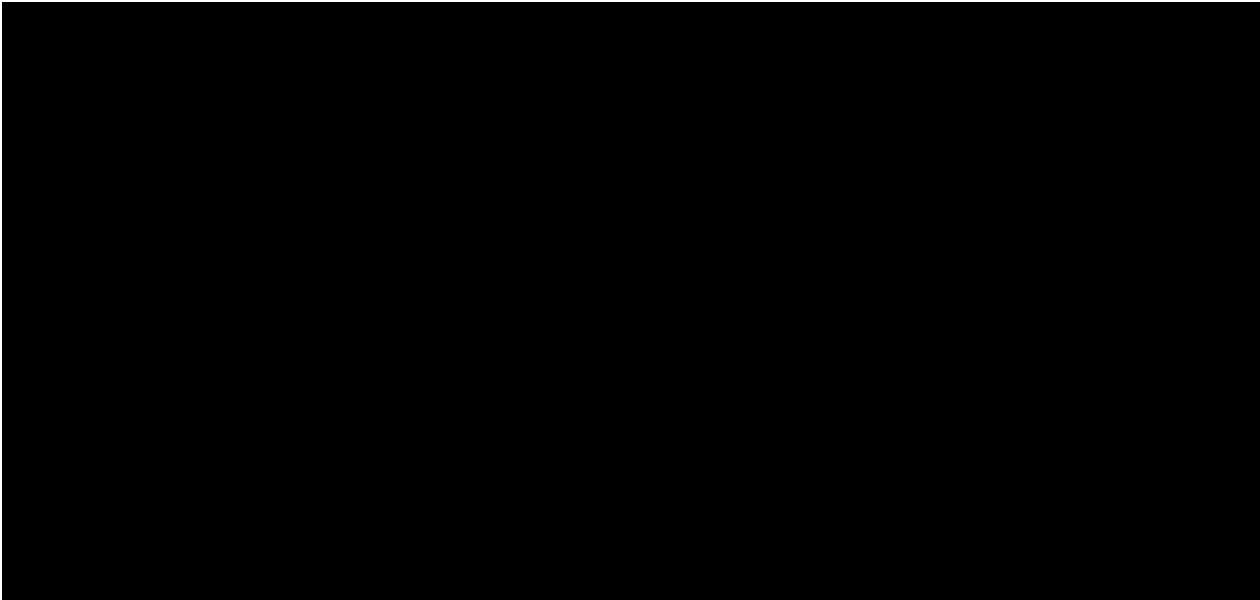
Progress Claim

(clause 18.2(c) progress claim pro forma)

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

Black Hill to Tomago – Progress Claim Summary					
Payment claim number:					
Date:					
Period to:					
Schedule reference	Description	Project Amount (excluding GST)	Previous claimed to date	Current claim	Total claimed to date
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				
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[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]				







Schedule 5 - Contractor's Statement and Supporting Statement

Contractor's Statement and Supporting Statement

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

Contractor's Statement

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

	Transport for NSW	<h3 style="margin: 0;">Contractor Statement</h3> <p style="margin: 0;">Payment of Workers, Payroll Tax & Worker's Compensation Premiums</p>
<p>All suppliers/contractors must provide this Statement with every invoice/Payment Claim for all works/services carried out for Transport for NSW (TfNSW). TfNSW is entitled by law to withhold payment until this Statement is provided (see Note 2 overleaf).</p>		<p style="font-size: small;">Workers Compensation Insurance Certificate of Currency for the work period in question. Unless the contractor is exempt</p> <div style="border: 1px solid black; padding: 2px; display: inline-block;">  </div>
Details		
Contractor's Legal Name:	<input style="width: 95%;" type="text"/>	
Contractor's Trading / Business Name:	<input style="width: 95%;" type="text"/>	
Contractor's ABN:	<input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/>	Contractor's ACN: <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/> <input style="width: 20px;" type="text"/>
Contractor's Address:	<input style="width: 95%;" type="text"/>	
TfNSW Contract No:	<input style="width: 200px;" type="text"/>	Project/Contract Title: <input style="width: 200px;" type="text"/>
Description of Works:	<input style="width: 95%; height: 20px;" type="text"/> <input style="width: 95%; height: 20px;" type="text"/>	
Period of Work this Statement applies to (see Note 3):	From: <input style="width: 100px;" type="text"/>	To: <input style="width: 100px;" type="text"/>
Invoice or Payment Claim Numbers this applies to:	<input style="width: 95%;" type="text"/>	
Invoice or Payment Claim Dates this Statement applies to:	<input style="width: 95%;" type="text"/>	

Notes for

Declaration	Tick one in each row
I declare that the following is true to the best of my knowledge and belief in respect of the Period of Work above:	
<ul style="list-style-type: none"> • All workers engaged by the Contractor in respect of the works have been paid all remuneration entitlements. 	<input type="checkbox"/>
<ul style="list-style-type: none"> • All workers compensation insurance premiums have been paid and attached is a true copy of a Certificate of Currency for workers compensation insurance valid for the period covered by this Statement; or • the Contractor is an exempt employer for workers compensation purposes (see Note 6); 	<input type="checkbox"/> or <input type="checkbox"/>
<ul style="list-style-type: none"> • The Contractor is registered as an employer under the <i>Payroll Tax Act 2007</i> and has paid all payroll tax due in respect of employees in relation to the works the subject of this Statement; or • the Contractor is not required to be registered; 	<input type="checkbox"/> or <input type="checkbox"/>
<ul style="list-style-type: none"> • The Contractor has not engaged any subcontractors for the works the subject of this Statement; or • The Contractor has engaged subcontractors and has obtained a similar statement to this Statement from each of those subcontractors and believes it to be true 	<input type="checkbox"/> or <input type="checkbox"/>
<ul style="list-style-type: none"> • I am authorised to make this declaration and I am in a position to know the truth of its contents 	<input type="checkbox"/>
Signature of Authorised Person:	Name of Signatory (<i>print</i>):
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>
Date:	Position / Job Title of Signatory (<i>print - see Note 4</i>):
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

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

Contractor's Statement

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

Generic Version of Statement

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

Record Retention

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

Offences for False Statement

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

Further Information

These notes are not intended as legal advice and Contractors should obtain their own professional advice if they have any questions about this Statement or these Notes. For more information, refer to OSR Revenue Ruling PT 59 at <http://www.osr.nsw.gov.au/lib/doc/rulings/rrpt59.pdf>, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website <https://www.revenue.nsw.gov.au/>, or the Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au. Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

Supporting Statement

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

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

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

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

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

Main Contract

Head contractor: _____

(Business name of the head contractor)

ABN _____ **ACN** _____

Of _____

(Address of Contractor)

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

Contract description _____

Contract number/identifier _____

Subcontracts

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

Period

This Statement applies for work between: _____ and _____ inclusive,

subject of the payment claim dated: _____

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

Signature: _____ Date: _____

Full Name: _____ Position/Title: _____

Attachment to the Supporting Statement

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

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

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

Notes for Supporting Statement

Offences for False Statement

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

Further Information

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

Schedule 5A - Subcontractors Proof of Payment Process

Subcontractors Proof of Payment Process

(clause 2.9)

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

***Note:**

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

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

Attachment 1
Subcontractors Payments List

Project: »

Contractor: 1. » Contractor's »
 ABN » Bank:
 A/C Name: »

Date: »

Payment Claim: » Period: »

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

Subcontract Retentions (Refer Accounts Payable Retention Summary)

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

Payments by Contractor to Subcontractors

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

Signed by:

	<i>Contractor</i>
Name:	»
Signature:	»
Date:	»

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

Contractor Name:

ABN:

Payment Claim:

Date:

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

**Attachment 3
Accounts Payable Statement**

<u>AP Ref</u>	Subcontractor Name	Total Amount Owning
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»
»	»	»

Grand Total:

**Attachment 4
Payment Details**

Month: »

Project: »

Contract: »

Payment Method* Payment Method* Payment Method* Payment Method*

Date: » » » »

Subcontractors listed on the Supporting Statement and Contractor's Statement

Payment Claim No Payment Claim No Payment Claim No Payment Claim No

» » » »

» » » »

» » » »

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» » » »

» » » »

Payment Batch Totals » » » »

***Note:**

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

Schedule 6 - Unconditional Undertaking

Unconditional Undertaking

(clauses 8.1(a) and 18.6(b)(i)A)

This deed poll ("Undertaking")

made the _____ **day of** _____ **20**

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

given by: *[Insert name of Financial Institution]*("Financial Institution")

The Contractor: » *[Insert Contractor's name]*

ABN: » *[Insert Contractor's ABN]*

Security Amount: » \$.....

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

Contract Number(s): » *[Insert contract number]*

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

Undertaking

1. At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this Undertaking from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
2. The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor or each Contract and despite any notice from the Contractor not to pay.
3. The Principal must not assign this Undertaking without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
4. This Undertaking continues until one of the following occurs:
 - a. the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - b. this Undertaking is returned to the Financial Institution; or
 - c. the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
5. At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this Undertaking (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

SIGNED as a deed poll.

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

Signature of Witness

Signature of Attorney

Name of Witness in full

Name of Attorney in full

Schedule 7 - Parent Company Guarantee

Parent Company Guarantee

(clause 8.2(a))

Deed of Guarantee and Indemnity made at _____ **on** _____ **20** _____

between **TRANSPORT FOR NSW** (ABN 18 804 239 602), a NSW Government agency and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 20-44 Ennis Road Milsons Point NSW 2061 (**Principal**)

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

Recitals

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

This Deed provides

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the M1 Pacific Motorway Extension to Raymond Terrace Black Hill to Tomago D&C Deed between the Principal and the Contractor dated on or about the date of this Deed.

Contractor means the unincorporated joint venture comprising John Holland Pty Ltd (ABN 11 004 282 268) and Gamuda Berhad (ABRN 27 632 738 768).

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

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

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

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

Legal Opinion means a legal opinion:

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

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

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

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

and irrespective of:

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

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

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

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

PPS Law means:

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

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

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

Specified Rate means the rate [REDACTED] % [REDACTED]

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

[REDACTED]
[REDACTED]

Subsidiary means [REDACTED]

Transaction Document means each of:

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

1.2 Defined terms

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

1.3 Interpretation

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

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

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

2. Guarantee

2.1 Guarantee

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

2.2 Payment by Guarantor

If the Subsidiary does not pay the Guaranteed Money when due, the Guarantor must, [REDACTED], pay to the Principal the Guaranteed Money which is then due and unpaid.

2.3 Perform Obligations

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

3. Indemnity

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

- (a) any failure by the Subsidiary to perform the Obligations;
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Subsidiary for any reason, and whether or not the Principal knew or ought to have known of that reason; or

- (c) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Subsidiary pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or any other applicable laws.

4. Liability

4.1 Liability of Guarantor

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

4.2 Limit of liability

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the liability of the Guarantor under this Deed will:
 - A. not exceed the aggregate liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract if the Guarantor had been named as the Subsidiary under the Contract; and
 - (ii) payment by one of the Subsidiary or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 4.2 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed, liability to pay any GST in accordance with clause 8.3 of this Deed, or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Subsidiary would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;

- (ii) the execution of this Deed by any person is invalid, forged or irregular in any way;
or
- (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

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

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

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

5.3 No merger

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

5.4 No obligation to gain consent

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

5.5 Appropriation

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

5.6 Void or voidable transactions

If:

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

then:

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

5.7 No set-off, counterclaim

The liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

- (a) [REDACTED] the Principal is not required to make any claim or demand on the Subsidiary, or to enforce the Contract, or any other right, power or remedy against the Subsidiary, before making any demand or claim on the Guarantor.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.9 No representation by Principal etc.

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

5.10 No contribution

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

[REDACTED]

6. Representations and Warranties

6.1 General representations and warranties

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

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

6.2 Corporate representations and warranties

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

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the Constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Securities Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed;

- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law and all of those filings and registrations are current, complete and accurate;
- (e) the execution of this Deed is in the best commercial interests of the Guarantor;
- (f) this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (g) it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) ('ASC Law'), or the subject of an investigation under, or taken to be under, the ASC Law;
- (h) this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (i) its financial statements current as at the date of this Deed have been prepared in accordance with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a material effect on it, or on it and its subsidiaries on a consolidated basis;
- (j) the written information and reports (if any) which it has given to the Principal in connection with the negotiation and preparation of this Deed:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and
 - (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (k) it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any government agency or that any Taxes be paid.

6.3 Representations and warranties repeated

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

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

6.4 No representations to Guarantor

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

7. Payments

7.1 On demand

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

7.2 Payment in gross

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

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must, [REDACTED] pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate and, if not paid when due, will itself bear interest in accordance with this clause 7.3. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

7.4 Merger

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

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed will be without any set-off or counterclaim and the Guarantor irrevocably waives any right of set-off or counterclaim which it may have against the Principal.

7.6 No deduction for Taxes

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

7.7 Certificate of the Principal

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

7.8 Currency indemnity

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

8. Expenses and stamp duties

8.1 Expenses

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

8.2 Stamp duties

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

8.3 Goods and Services Tax

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

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

9. PPSA

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

- (a) to perfect any such Security Interest the Principal may register a financing statement(s) on the Personal Property Securities Register;
- (b) the Guarantor will have no rights under sections 95, 118, 121(4), 125, 130, 132, 135, 142 and 143 of the PPS Law;
- (c) the application of Part 4.3 (other than sections 123, 124, 126, 128, 129(1), 133, 134(1) and 136) of the PPS Law is contracted out of if that Part would apply by virtue of section 116(2) of the PPS Law;
- (d) the Guarantor waives its right to receive notice of a verification statement under section 157 of the PPS Law;
- (e) for the purposes of section 275(6) of the PPS Law, the parties agree not to disclose information of the kind mentioned in section 275(1) of the PPS Law in respect of the Security Interest;
- (f) the Guarantor agrees that the Principal may seize any collateral subject to the Security Interest and/or dispose of any such collateral in such manner and generally on such terms and conditions as the Principal thinks desirable, and otherwise do anything that the Guarantor could do in relation to that collateral; and
- (g) the Guarantor must, promptly on request by the Principal, provide any such information and execute and deliver any such documents as the Guarantor may reasonably require to protect the Securities granted to the Principal by the Guarantor under or in relation to this Deed.

10. Assignment

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

11. Governing law, jurisdiction and arbitration

11.1 Governing law

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

11.2 Jurisdiction

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

11.3 Dispute resolution

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

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

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

11.4 Arbitration

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

- (a) notwithstanding any provision of the ACICA Expedited Arbitration Rules to the contrary, if:
 - (i) a party considers that a dispute about a matter may be resolved in accordance with the ACICA Expedited Arbitration Rules and that party wishes to progress the dispute in accordance with the ACICA Expedited Arbitration Rules, that party must give the other party notice that it considers that the dispute may be resolved in accordance with the ACICA Expedited Arbitration Rules (Arbitration Expedition Notice); and
 - (ii) the other party agrees (in writing) that the matter in dispute is suitable to be resolved in accordance with the ACICA Expedited Arbitration Rules, the other party must advise the party that provided the Arbitration Expedition Notice that the proposed use of the ACICA Expedited Arbitration Rules is accepted in writing within 2 Business Days of receipt of the Arbitration Expedition Notice,

then the dispute will be referred to and finally resolved by arbitration in accordance with the ACICA Expedited Arbitration Rules;
- (b) the seat of the arbitration will be Sydney;
- (c) the number of arbitrators will be one;
- (d) the language of the arbitration will be English;
- (e) the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages;
- (f) the parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations;
- (g) the arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration; and
- (h) any arbitral award will be final and binding upon the parties.

11.5 Guarantor incorporated outside Australia

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

11.6 Joinder and consolidation with Contractor disputes

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

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

then:

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

11.7 Guarantor's involvement in subsequent disputes

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

12. Miscellaneous

12.1 Notices

- (a) Any notices contemplated by this Deed must be in legible writing and delivered to the relevant address or sent to the email address as set out below (or to any new address or email address that a party notifies to the others):
 - (i) to the Principal: [Insert details]
Email: [Insert]
 - (ii) to the Guarantor: [Insert details]
Email: [Insert]
- (b) A notice sent by email will be taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.
- (c) Where the Guarantor is domiciled in a country other than Australia, without preventing any other mode of service, any document in an action or process may be served on any party by being delivered to or left for that party at its address for service of notices under this Deed. The Guarantor appoints the Contractor (whose address for service is as at set out in the Contract) as its agent to accept service of process under or in connection with this Deed, and the Guarantor warrants that the Contractor has accepted the appointment. The appointment may not be revoked without the Principal's consent. The Guarantor agrees that service of documents on its process agent is sufficient service on the Guarantor, and that failure by a process agent to notify the Guarantor of any document in an action in connection with the project contemplated by this Deed and the Contract and will not invalidate the action concerned.

12.2 Continuing obligation

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

12.3 Further assurance

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

12.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines. It need not specify the amount of the Guaranteed Money, nor the method or basis of calculation of all or any part of the Guaranteed Money, including amounts of, or in the nature of, interest.

12.5 Entire agreement

This Deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this Deed; or
- (b) any correspondence or other documents relating to the subject matter of this Deed that may have passed between the parties prior to the date of this Deed and that are not expressly included in this Deed.

12.6 Joint and several liability

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

12.7 Severance

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

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

- A. the enforceability of the provision and the provisions of this Deed; and
- B. the original effect and intent of this Deed.

12.8 Transfer of functions or Public Transport Agency assets

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

12.9 Remedies cumulative

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

12.10 Waiver

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

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

12.11 Consents

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

12.12 Moratorium legislation

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

12.13 Set-off

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

12.14 Variations

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

12.15 Provisions limiting or excluding liability

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

12.16 Counterparts

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

12.17 Vienna Convention

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

12.18 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:

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

12.19 Civil Liability Act

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

Executed as a deed.

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

Signature of Director

Name of Director in full

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

Signature of witness

Full name of witness

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of authorised delegate

Name of authorised delegate

Schedule 7A – Joint Venture provisions

Joint Venture provisions

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

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

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

- (b) Clause 2.2 is amended to read:

2.2 Payment of Guaranteed Money

- (a) Subject to clause 2.2(b), if the Subsidiary does not pay the Guaranteed Money when due, the Guarantor must, in accordance with clause 7.1, pay to the Principal the Guaranteed Money which is then due and payable.
- (b) The Guarantor shall not be liable to pay to the Principal any part or parts of the Guaranteed Money which have been paid to the Principal by another Guarantor.

- (c) clause 2.3 is amended to read:

2.3 Perform obligations

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

- (d) the first paragraph of clause 5.2 is amended to read:

5.2 Unconditional liability

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

- (e) clause 11.7 is amended to read:

11.7 Award final and binding

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

Quality Manager's Certificate – Payment Claim

(clause 18.2(c)(ii))

[Insert project description] ("Project")

To: Principal's Representative

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

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

[If applicable, insert details of any exceptions]

.....

Signed by

[Insert Quality Manager's name]

Quality Manager's Certificate - Quality

(clause 11.2(c)(i))

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with TfNSW Specification D&C Q6 and AS/NZS ISO 9001:2016 Quality Systems – Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2016;
- (d) not used;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Principal's Representative and the Independent Certifier in accordance with the deed.

.....
Signed by

[Insert Quality Manager's name]

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

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

(clauses 11.2(c)(ii), 13A.5(d)(i) (when applicable) and 23.2 (definition of "Final Completion"))

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with TfNSW Specification D&C Q6 and AS/NZS ISO 9001:2008 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system were in accordance with AS/NZS ISO 9001:2008;
- (d) not used;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Principal's Representative and the Independent Certifier in accordance with the deed.

.....

Signed by

[Insert Quality Manager's name]

Quality Manager's Certificate – Opening Completion / Completion

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

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.6 of the deed;
- (c) not used; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

.....
Signed by
[Insert Quality Manager's name]

Quality Manager's Certificate – Final Completion

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

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) the Contractor has complied with and satisfied the requirements of TfNSW D&C Specification Q6;
- (b) the Contractor has completed construction in accordance with the Design Documentation it was entitled to use for construction purposes under clauses 12.2 to 12.6 of the deed;
- (c) not used; and
- (d) all documentation has been recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

.....
Signed by

[Insert Quality Manager's name]

Deed of Appointment of Independent Certifier

(clause 23.2 (definition of "Deed of Appointment of Independent Certifier"))

This Deed made at Sydney on

Parties

[Insert Contractor's name]
(ABN [Insert Contractor's ABN]) of [Insert Contractor's address] ("Contractor")
Transport for NSW
(ABN 18 804 239 602) of 20-44 Ennis Road Milsons Point NSW 2061 ("Principal")
[Insert Independent Certifier's name]
(ABN [Insert Independent Certifier's ABN]) of [Insert Independent Certifier's address]
("Independent Certifier")

Recitals

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

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

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

Additional Services has the meaning given in clause 6A.

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

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

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

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

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

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

Initial Verification and Monitoring Plan means the initial verification and monitoring plan contained in Part 1 of Attachment 4 to this Deed.

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

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

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

NCR means a non-conformity report.

Other Parties means the Principal and the Contractor.

Payment Schedule means Attachment 3 to this Deed.

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

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

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

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, two or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

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

2. Appointment of the Independent Certifier

2.1 Appointment

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

2.2 Payment

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

2.3 Nature of Services

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

3. Independent Certifier's obligations

3.1 Acknowledgement

The Independent Certifier acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "Independent Certifier" under the Project Documents.

3.2 Further acknowledgements and warranties

The Independent Certifier:

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

3.3 Independent Certifier’s Organisation and Personnel

- (a) The Independent Certifier must provide a dedicated management team and personnel who are engaged under an effective organisation structure and have appropriate and a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed. The organisation structure must clearly identify positions, roles, skills, expertise, experience levels, tasks, resourcing levels, delegated authorities and responsibilities and internal and external lines of authority, communication and reporting, including those with the Principal's Representative and the Contractor.
- (b) The Independent Certifier must ensure that the people referred to in clause 3.3(c):
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 7 days of the request for removal), and if any of the people are removed:
 - (A) they must be replaced by people of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Attachment 9 to this Deed); and
 - (B) prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
 - (iii) are available for consultation as any party may reasonably require from time to time.
- (c) The people required to perform the Services are:
 - (i) **[Insert name]** as Independent Certifier's Representative for the Design Verification Services;
 - (ii) **[Insert name]** as Independent Certifier's Representative for the Construction Verification Services;
 - (iii) **[Insert name]** as Independent Certifier's project director; and
 - (iv) the other persons listed in clause 2 of Attachment 9 to this Deed.

[Principal to insert details above when awarding the contract, in accordance with the successful IC Tenderer’s tender.]
- (d) The Other Parties may direct the Independent Certifier to remove from the performance of the Services any of the people referred to in clause 3.3(c) and the Independent Certifier must comply with any such direction.
- (e) The Independent Certifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Attachment 2 which the Independent Certifier is required to execute as part of the Services (being Schedules 13 (Independent Certifier's Certificate - Payment Claim), 14 (Independent Certifier's Certificate - Quality), 15 (Independent Certifier's Certificate - Design Documentation), 14A (Independent Certifier's Certificate – Progressive and at end of Landscaping Maintenance Period), 16 (Independent Certifier's Certificate - Opening Completion and Completion), 17 (Independent Certifier's Certificate - Nominated Defects), 17A (Independent Certifier's Certificate - As-Built documentation) and 18 (Independent Certifier's Certificate – Final Completion) of the D&C Deed). The Independent Certifier must ensure that these certificates and documents are signed by the person or persons so notified.

3.4 Subcontracting

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

Name of subcontractor	Relevant Services
[Principal to insert]	[Principal to insert]
<i>[Principal to insert details above when awarding the contract, in accordance with the successful IC Tenderer’s tender.]</i>	

3.5 Quality Assurance

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

3.6 Verification and Monitoring Plan

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

3.7 Revisions to the Verification and Monitoring Plan

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

development of the Verification and Monitoring Plan required by clause 3.7(a)(i), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise contained in the Initial Verification and Monitoring Plan without the prior written approval of the Principal's Representative.

- (f) The Independent Certifier must not amend the Verification and Monitoring Plan other than in accordance with this clause 3.7.

3.8 Progress Reports by the Independent Certifier

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

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

3.9 Audit and surveillance

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

3.10 Access to records

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

3.11 [Deed polls

- (a) The Independent Certifier must, within 5 Business Days of the date of this Deed, provide the Principal with duly executed deed polls in the form of Attachment 11.]

4. Independence and Confidentiality

4.1 Independent Certifier to be independent

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

- (a) subject to clause 6A, independently of the Other Parties;

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

4.2 Confidentiality

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

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

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

5. Obligations of the Other Parties

5.1 No Interference or Influence

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

5.2 Co-operation by Contractor

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

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

5.3 Principal to have no liability

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

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the Independent Certifier's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to **£** [REDACTED]

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the Independent Certifier knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

- (a) The Principal has effected the insurance policy referred to in Item 1 of Attachment 7 and clause 7.1(a) of the D&C Deed.
- (b) The Independent Certifier must from the date of the D&C Deed effect and maintain the policies of insurance listed in Attachment 7 to this Deed, other than those referred to in clause 6.3(a) of this Deed:
 - (i) on the terms;
 - (ii) for the types;
 - (iii) for the periods; and
 - (iv) for the sums,specified in Attachment 7 to this Deed.
- (c) The Independent Certifier acknowledges and agrees that:
 - (i) it has reviewed and examined the proposed wording of the insurance policies which appear in Attachment 8 (Insurance Policy Wording) and the actual insurance policies effected by the Principal pursuant to clause 7.1(a) of the D&C Deed and has satisfied itself as to the extent of cover provided by those insurance policies for the purposes of insuring against certain of the risks referred to in this Deed and is aware that those insurance policies will not provide cover to the Independent Certifier against all the risks assumed by the Independent Certifier under this Deed;
 - (ii) the obtaining of insurance by the Principal in accordance with clause 7.1(a) of the D&C Deed does not limit or otherwise affect the Independent Certifier's obligations under this Deed; and
 - (iii) the policies of insurance referred to in clause 7.1(a) of the D&C Deed have been obtained at the Principal's cost; and
- (d) The Independent Certifier is responsible for the amount of any excess payable under the policies of insurance referred to in clause 7.1(a) of the D&C Deed and may effect insurance to cover the amount of that excess at its own cost.

6.4 Notice of matter affecting insurance

The Independent Certifier must notify the Other Parties of any:

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

6.5 Provision of information

- (a) Before the Independent Certifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Independent Certifier must supply proof that all insurance policies which the Independent Certifier is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

- (b) If a notification is made pursuant to clause 6.4 of this Deed, the Independent Certifier must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The Independent Certifier must ensure that any subcontractor engaged by the Independent Certifier who is not covered by the professional indemnity policy of insurance effected and maintained by the Independent Certifier, effects and maintains a professional indemnity policy of insurance on terms, for the period and for the sum specified in Attachment 7 to this Deed.

6.7 Obligations unaffected by insurance

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

6.8 Indemnity

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

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

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

6A Additional Services

- (a) The parties acknowledge that:
 - (i) the Principal may direct the Independent Certifier in writing to carry out any additional services in relation to the Project from time to time (**Additional Services**); and
 - (ii) Additional Services directed under clause 6A(a)(i) may include:
 - (A) advising the Principal on claims for extension of time, by engaging a specialist subcontractor approved by the Principal with experience in assessing extensions of time; and
 - (B) any other services required by the Principal in respect of the Project.
- (b) The Other Parties:
 - (i) consent to the Independent Certifier performing the Additional Services for the benefit of Principal (as applicable); and
 - (ii) acknowledge that the Contractor will not receive copies of any documents or notices to or from the Independent Certifier in connection with the Additional Services (unless the Principal's Representative so determines, in its absolute discretion.)

7. Termination of appointment

7.1 Notice of termination

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

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

7.2 Prior agreement on replacement

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

7.3 Termination

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

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

7.4 Delivery of documents

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

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

7.5 Reasonable assistance

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

7.6 Payment until date of termination

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

7.7 Termination without payment

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

7.8 Survive termination

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

7.9 Rights upon Termination

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

8. Expenses, Stamp Duty and GST

8.1 Expenses

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

8.2 Stamp Duties

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

8.3 GST

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

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

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 Notices

Any notices contemplated by this Deed:

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

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

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

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

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

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

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

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid express post to the relevant address of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid express post) on the second Business Day after the date of posting to an address within Australia, and on the fourth Business Day after the date of posting to an address outside Australia; and
 - (ii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.
- (f) Any notice contemplated by this deed to be given to the Principal must be delivered to the Principal address in accordance with clause 9.2(b).
- (g) Subject to clause 9.2(f), the party making the communication may give any notice contemplated by this deed to be given to other parties by email, to the relevant email address in accordance with clause 9.2(b) or to a new email address which one party notifies to the other parties in writing from time to time.
- (h) A notice given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply.

9.3 Jurisdiction

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

9.4 Amendments

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

9.5 Assignment

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

9.6 Waiver

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

9.7 Consents

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

9.8 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

9.9 Indemnities

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

9.10 Entire agreement

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

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

9.11 No representation or reliance

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

9.12 Relationship of the parties

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

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

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

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

9.14 Severance

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

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

9.15 Moratorium Legislation

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

9.16 Civil Liability Act

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

Attachment 1 - Project Documents

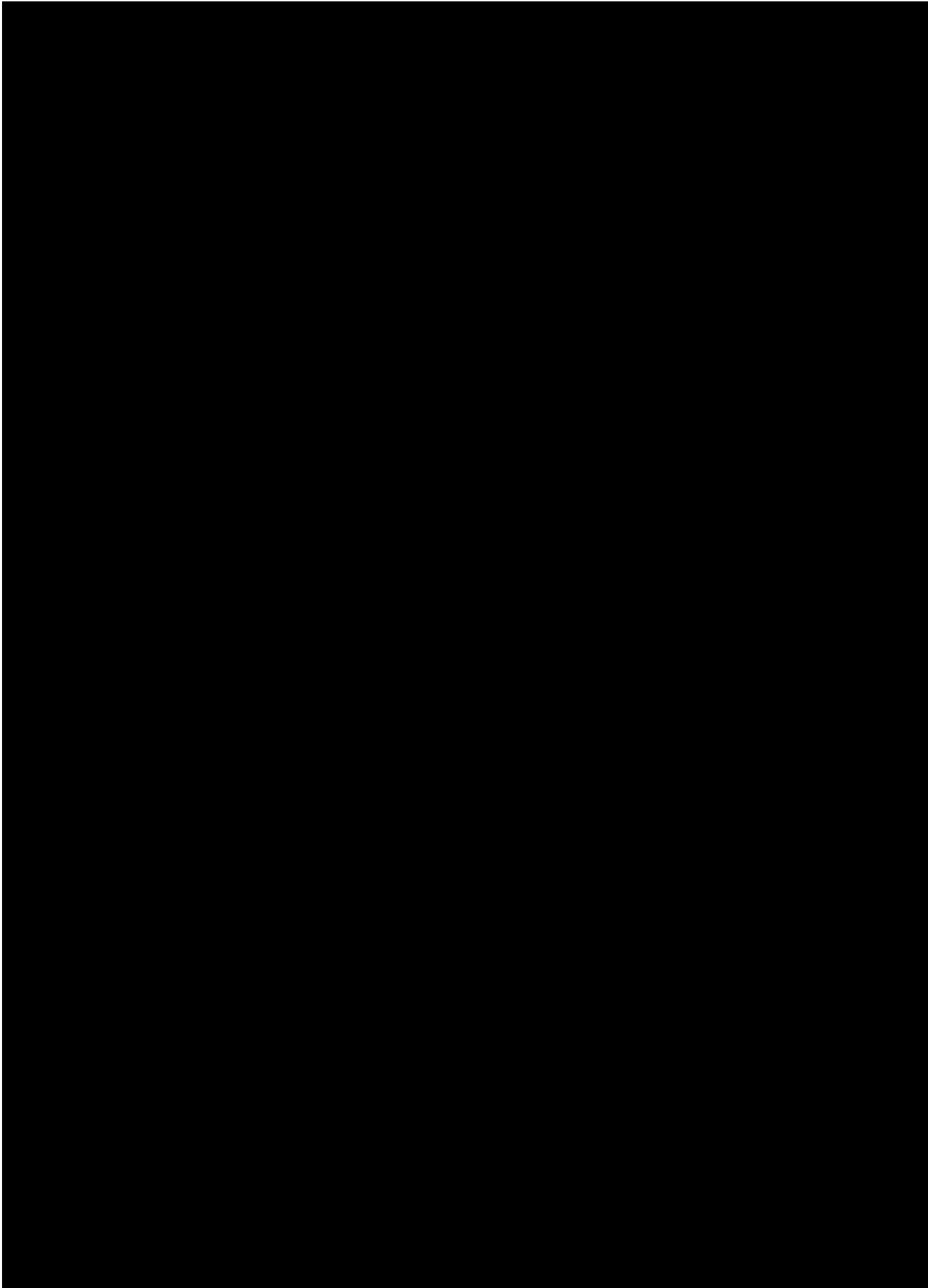
	Contract Name and Parties	Contract Date
1	D&C Deed and Schedules	
2	Exhibits to the D&C Deed	

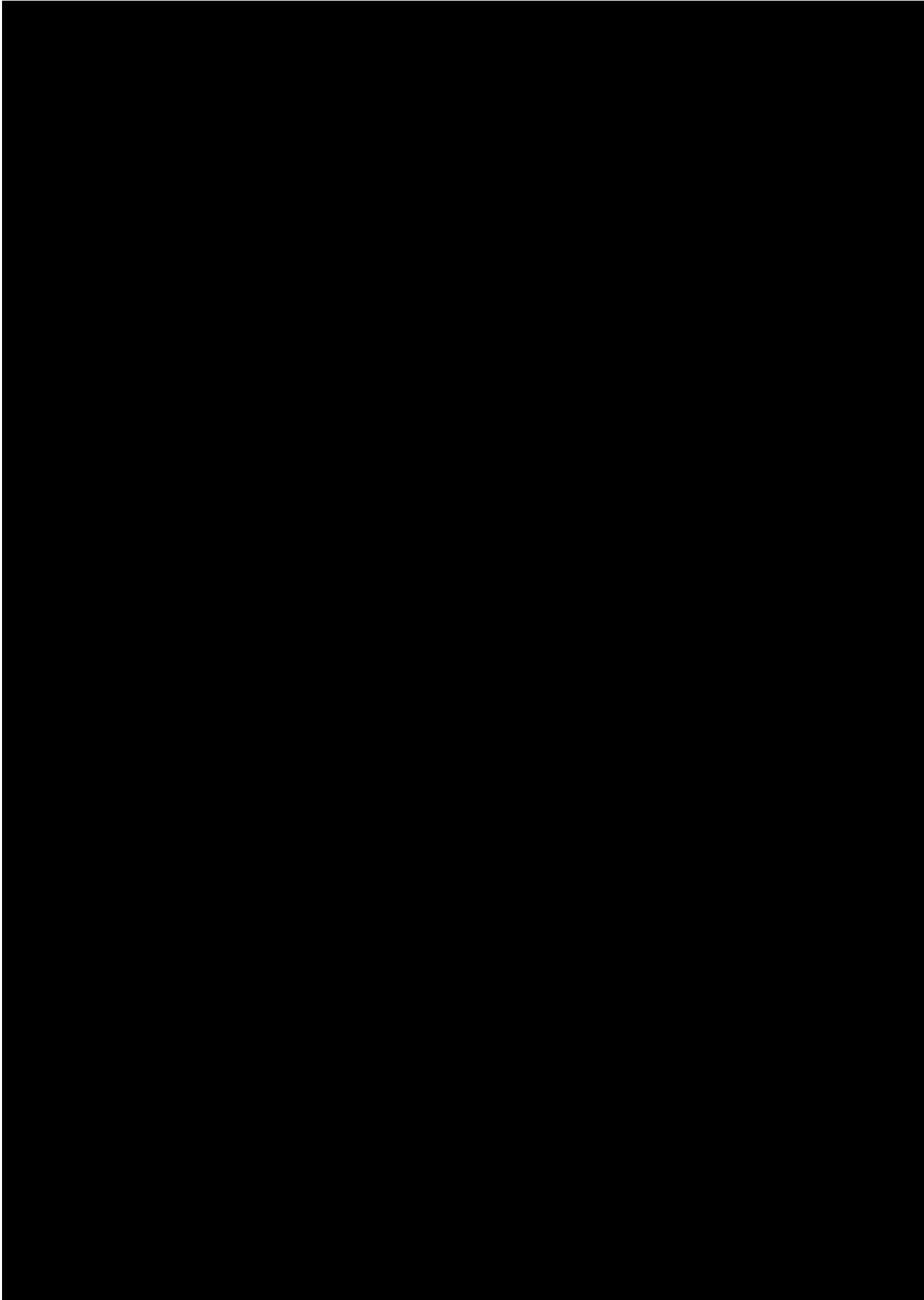
Attachment 2 - Independent Certifier Services

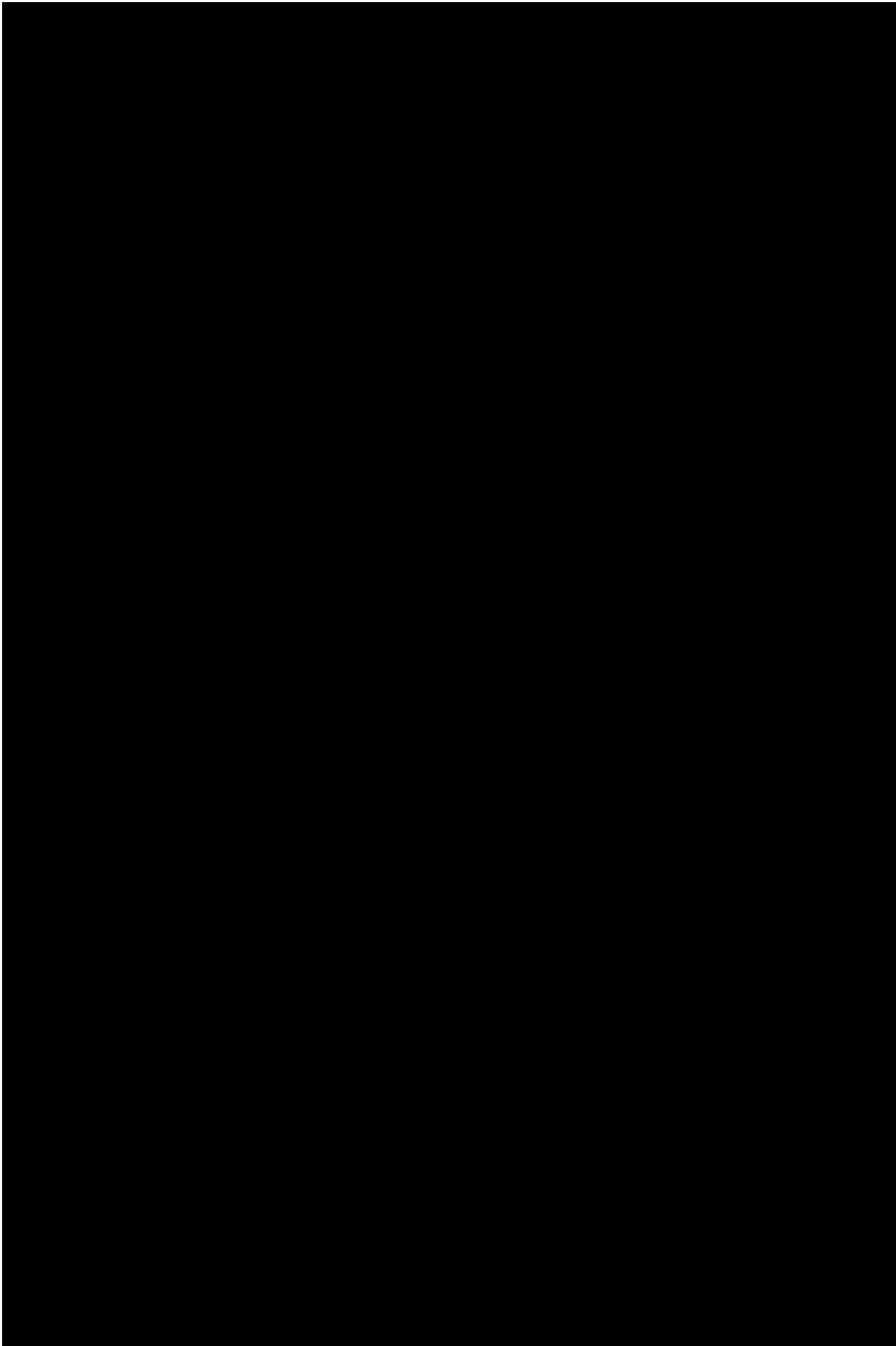
D&C Deed functions

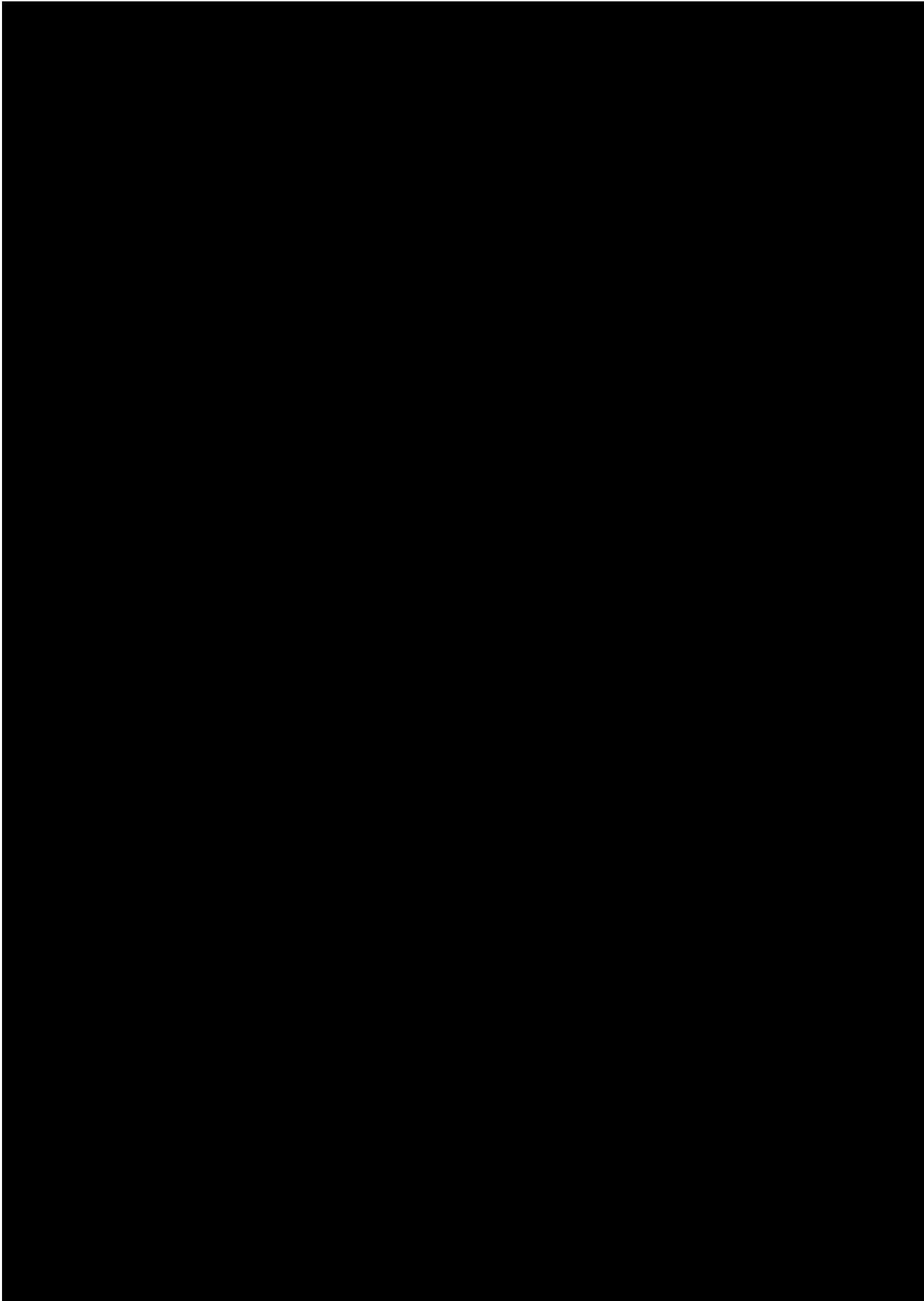
The Independent Certifier must discharge the functions, obligations, duties and services which the Project Documents contemplate will be discharged by the Independent Certifier, which include the following:

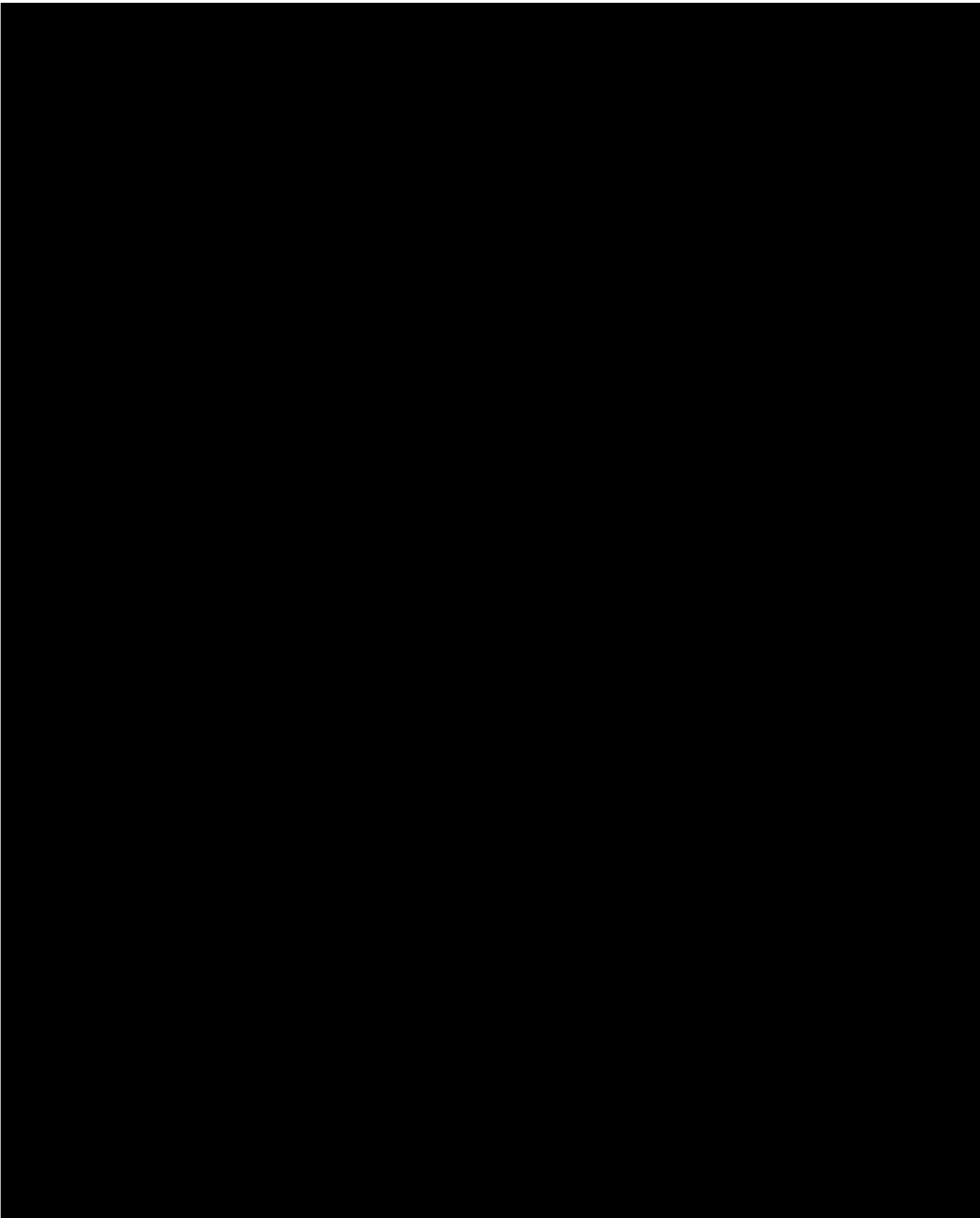
[REDACTED]











Attachment 3 - Payment Schedule

1. Payment claim

At the end of each month after the date of the D&C Deed, the Independent Certifier must submit to the Principal a claim for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Principal may reasonably require,

(Payment Claim).

2. Payment

The Principal must, within 20 Business Days after receipt of the Payment Claim for the month, pay the Independent Certifier that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

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

4. The Fee

[Redacted content]

[REDACTED]

[REDACTED]

5. Schedule of Rates

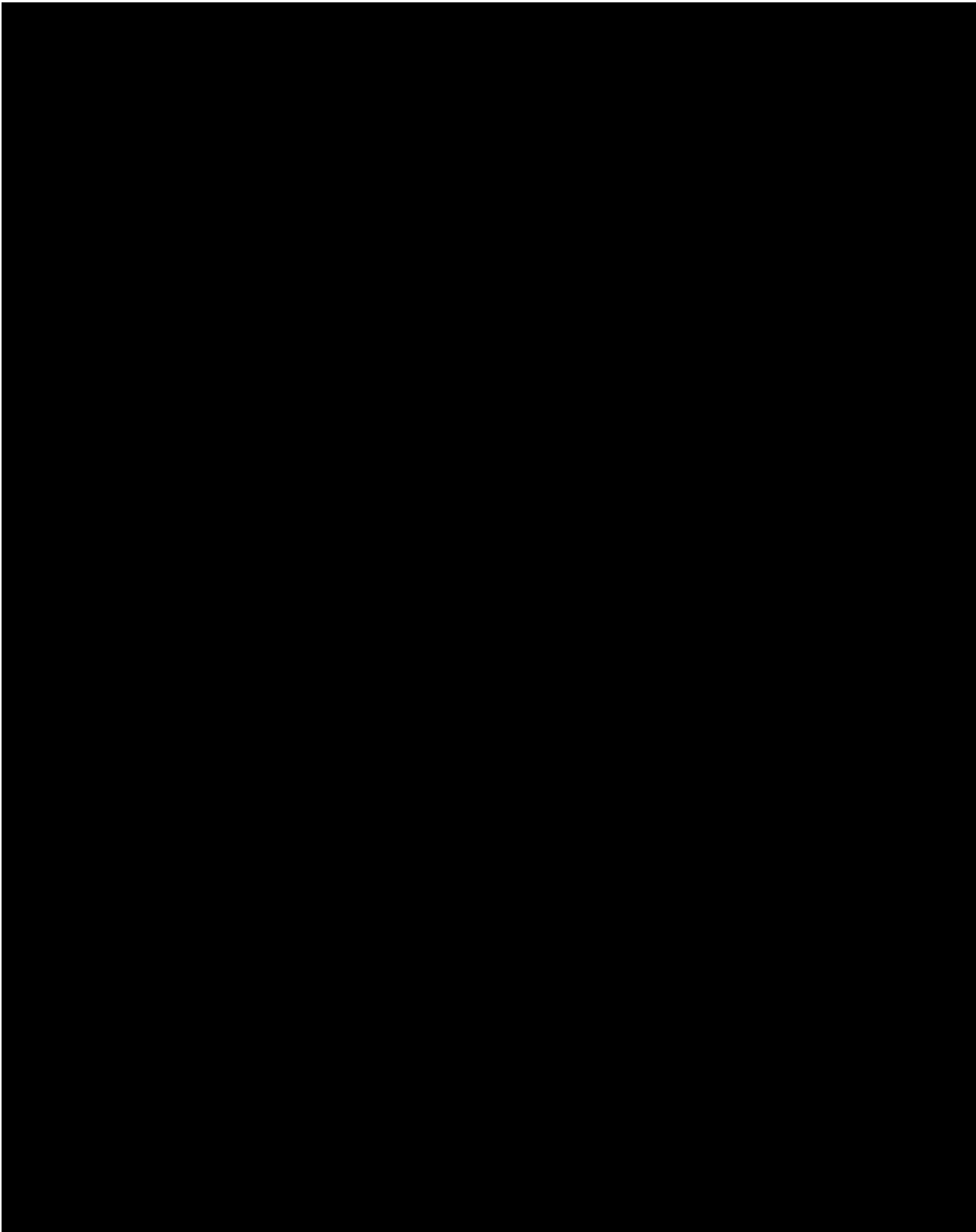
[REDACTED]

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

[REDACTED]



6. Disbursements

[Redacted text block containing multiple lines of obscured content under the 'Disbursements' heading.]

[Redacted text block]

7. Monthly payment schedule for lump sums

[Redacted text block]

[Redacted]	[Redacted]
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8. GST

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

Attachment 4 - Initial Verification and Monitoring Plan

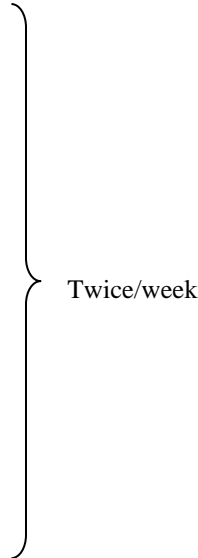



Part 1

[Initial Verification and Monitoring Plan is the IC Tenderer's Returnable]

Part 2

[Principal to insert matters to be addressed]

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

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

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
<p>Work Health and Safety Surveillance Inspect and monitor the Contractor's Activities on the Construction Site for compliance with the work, health and safety provisions of the D&C Deed.</p> <p>Monitor:</p> <ul style="list-style-type: none"> the Contractor's safety inspections; interfaces between different work groups on the Construction Site; the preparation and induction of job safety analyses; Construction Site vehicle and plant movements; and the security of the public from the Contractor's Activities. 	<p>Daily</p> <p>Twice/Week</p>	<p>Daily</p> <p>Twice/Week</p>
<p>Construction Surveillance</p> <p>Monitor the Contractor's obligation to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.</p>	<p>Monthly</p>	<p>Monthly</p>
<p>Monitor on-site design changes.</p>	<p>All changes</p>	<p>All changes</p>
<p>Check that the Project Works and Temporary Works are being constructed using Design Documentation in compliance with clauses 12.2 to 12.6 of the D&C Deed.</p>	<p>50% of design lots</p>	<p>50% of design lots</p>
<p>Check that durability requirements of the Project Works are being addressed and satisfied.</p>	<p>20% of design lots</p>	<p>20% of design lots</p>
<p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> all operations management and control systems and infrastructure; use of materials, plant and equipment that differs from accepted industry practices; concrete and AC pavements; and blasting. 	<p>Each trial and test</p>	<p>Each trial and test</p>
<p>Record general and detailed work in progress and non-conformances using photographs and video recording of significant activities (time and GPS referenced).</p>	<p>200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.</p>	<p>200 digital photographs/ month, including cataloguing of the digital photographs, and digital video recordings of each significant activity, including time and location identification.</p>
<p>Quality Management Surveillance</p> <p>Inspect work in progress for compliance with the requirements of the D&C Deed.</p>	<p>Daily</p>	<p>Daily</p>

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Inspect Construction Site circumstances where significant non-conformities are or are likely to be reported.	Each occurrence	Each occurrence
Check compliance with method statements	Daily	Daily
Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> testing frequencies; test methods; test result verifications; and release of hold points. 	} Daily	} Daily
Monitor the implementation of significant approved NCR dispositions.	All dispositions	All dispositions
Quality Product Surveillance Monitor and inspect foundation and subgrade preparation and treatments, including: <ul style="list-style-type: none"> structure foundations; pavement subgrades; cast-in-place pile foundations; and inaccessible drainage foundations. 	} Initial preparation and treatment and twice/week thereafter	} Initial preparation and treatment and twice/week thereafter
Monitor and inspect compaction of earthworks and reinforced soil.	Daily	Daily
Monitor and inspect: <ul style="list-style-type: none"> water testing and grouting. 	} Initial testing, grouting and stressing and twice/week thereafter	} Initial testing, grouting and stressing and twice/week thereafter
Monitor and inspect: <ul style="list-style-type: none"> preparation and testing of grout test specimens. 	[Drafting note: Frequency to be confirmed by TfNSW.]	} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.
Monitor and inspect preparation of shotcrete test specimens	Monthly	Monthly
Monitor and inspect concrete supply, including: <ul style="list-style-type: none"> audits of each batch plant; reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and monitoring of supplied mixes compared with mix designs. 	Monthly Each mix Monthly	Monthly Each mix Monthly

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

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Monitor the interfaces of civil and electrical works, including: <ul style="list-style-type: none"> • backfilling of cabling conduit trenches. 	Initial backfilling and daily thereafter	Initial backfilling and daily thereafter
Monitor landscaping preparation and implementation	Daily	Daily
Monitor Landscaping Maintenance	Initially weekly, then twice a month thereafter	Initially weekly, then twice a month thereafter

For the purposes of this Attachment 5 to this Deed:

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

Attachment 6 - Minimum Requirements

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

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

- F. verification of the Contractor's processes to address safety in design issues;
- G. verification of the Contractor's processes to ensure that durability is incorporated into all aspects of the design and construction of the Project Works;
- H. verification of the Contractor's processes to address constructability issues; and
- I. verification of the rectification by the Contractor of non-conformities.

Attachment 7 - Insurance Schedule

[Drafting note: Insurance requirements (including IC insurance requirements) to be confirmed.]

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
Principal Arranged Insurance (TfNSW)				
The details of the policy below is provided in the icare policy documents. A copy of these may be provided upon request. Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Independent Certifier Arranged Insurance				
[REDACTED]	[REDACTED]			

Definitions and Notes:

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

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

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

Attachment 8 - Insurance Policy Wording

[Drafting note: Policy wording to be inserted once confirmed.]

Attachment 9 - Independent Certifier's Personnel

1. Minimum Resources Commitment

The Independent Certifier acknowledges and agrees that the minimum levels of resources, including man- days, set out in this Attachment 9 to this Deed are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this Deed.

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

1.1 Design Verification

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

Position	Name	Minimum commitment	
		During performance of design activities associated with the Contractor's Activities, until all discrete design elements have passed IFC Design Documentation Stage	During performance of construction activities associated with the Contractor's Activities, including until the expiry of the last "Defects Correction Period"
Independent Certifier's Representative, Design	[insert name]	Full Time	Part Time
Senior Project Engineer – Structural Works Design	[insert name]	Full Time	Part Time
Senior Project Engineer – Civil Works Design	[insert name]	Full Time	Part Time
Project Engineer – Structural Works Design	[insert name]	Full Time	Part Time
Project Engineer – Civil Works	[insert name]	Full Time	Part Time
Design Project Engineer – Civil Works Design	[insert name]	Full Time	Part Time
Document Controller/Site Administrative assistant (1 No.)	[insert name]	Full Time	Part Time

1.2 Construction Verification

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

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

Position	Name	Minimum Commitment
----------	------	--------------------

Independent Certifier's Representative, Construction	<i>[insert name]</i>	Full time during the performance of the Contractor's Activities, and to be based on the Construction Site full time Monday to Saturday inclusive during the construction of the Project Works and Temporary Works
Senior Project Engineer – Civil and Structural Works construction (1 No.)	<i>[insert name]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil and structural works components of the Project Works and Temporary Works.
Project Engineer – Civil Works Construction (1 No.)	<i>[insert name]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works
Project Engineer – Structural Works Construction (1 No.)	<i>[insert name]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
Surveillance Officer – Civil Works Construction (3 No.)	<i>[insert names]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works
Surveillance Officer – Structural Works Construction (2 No.)	<i>[insert names]</i>	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
Document Controller/Site Administrative assistant (1 No.)	<i>[insert name]</i>	Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works

1.3 Landscaping Maintenance Verification

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

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

Position	Name	Minimum Commitment
Project Engineer	<i>[insert name]</i>	Part Time, 36 days (Full Time Equivalent)
Surveillance Officer	<i>[insert name]</i>	Part Time, 36 days (Full Time Equivalent)

1.4 Construction Verification Services during the period from the expiration of the Landscaping Maintenance Period until the expiration of the last Defects Correction Period

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

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

Position	Name	Minimum Commitment
----------	------	--------------------

Project Engineer	<i>[insert name]</i>	Part Time, 6 days (Full Time Equivalent)
Surveillance Officer	<i>[insert name]</i>	Part Time, 6 days (Full Time Equivalent)

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

2.1 Independent Certifier's project director

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

2.2 Independent Certifier's Representative for the Design Verification Services

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

2.3 Independent Certifier's Representative for the Construction Verification Services

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

2.4 Senior Project Engineer – Civil and Structural Works Construction

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

2.5 Project Engineer – Civil Works Construction

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

2.6 Project Engineer – Structural Works Construction

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

2.7 Surveillance Officer – Civil Works Construction

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

2.8 Surveillance Officer – Structural Works Construction

The surveillance officer - structural works construction must have at least 15 years of experience in the civil

engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, precasting, prestressing, steel fabrication and erection.

2.9 Document Controller/Site Administrative Assistant

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

Attachment 10 - Deed Poll in favour of Third Parties

[Drafting note: The IC is likely to provide deed polls in favour of Third Parties under the Third Party Agreements.]

Executed as a deed.

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

Signature of Witness

Signature of authorised signatory

Name of Witness in full

Name of authorised signatory in full

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

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

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

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Independent Certifier's Certificate – Payment Claim

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

[Insert project description] ("Project")

To: Principal's Representative

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

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

[If applicable, insert details of any exceptions].

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

Independent Certifier's Certificate – Quality

(clause 2.4(j)(ii))

[Insert project description] ("Project")

To: Principal's Representative
From: [Insert Independent Certifier's name]
(ABN [Insert Independent Certifier's ABN])
("Independent Certifier")

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

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

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

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

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

(clauses 2.4(j)(iii), 13A.5(d)(ii) (when applicable) and 23.3 (definition of "Final Completion"))

[Insert project description] ("Project")

To: Principal's Representative
From: [Insert Independent Certifier's name]
(ABN [Insert Independent Certifier's ABN])
("Independent Certifier")

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

- (a) the Contractor's quality system under clause 11.1 of the deed was in accordance with the TfNSW D&C Specification Q6 and AS/NZS ISO 9001:2008 Quality Systems - Model for Quality Assurance in Design, Development, Production, Installation and Servicing;
- (b) the Contractor has complied with and satisfied the requirements of the TfNSW D&C Specification Q6;
- (c) Subcontractors' quality systems which form a part of the Contractor's quality system have been in accordance with AS/NZS ISO 9001:2008;
- (d) the release of Hold Points has been undertaken in accordance with the deed;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (f) *(strike out if not applicable)* the Landscaping Maintenance undertaken by the Contractor has been undertaken in accordance with the deed, including the SWTC;
- (g) *(strike out if not applicable)* the Landscaping Maintenance has been completed in accordance with the deed, including the SWTC, and the areas where the Landscaping Maintenance has been performed are ready to be handed over to the Principal; and
- (h) that documentation has been recorded and submitted to the Principal's Representative in accordance with the deed.

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

Independent Certifier's Certificate – Design Documentation

(clauses 2.4 (j)(iv), 12.2(d), 12.2(e)(i) and 12.2(g))

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements in section 5.5 of the SWTC and the Contractor Documentation Schedule; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects).
- (c) *[subject to the satisfaction of following comments or conditions:*
 - *insert comments or conditions]*

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

.....

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

Schedule 16 - Independent Certifier's Certificate – Opening Completion and Completion

Independent Certifier's Certificate – Opening Completion and Completion

(clauses 2.4(j)(v) and 23.2 (definition of "Opening Completion" and "Completion"))

[Insert Project description] ("Project")

To: Principal's Representative

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

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

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

This certificate of [Opening Completion | Completion] does not relieve the Contractor of its obligation to rectify defects under clause 16 of the deed and to complete other outstanding obligations under the deed.

.....

Signed for and on behalf of

[Insert Independent Certifier's name]

Independent Certifier's Certificate – Nominated Defects

(clause 2.4(j)(vi))

[Insert Project description] ("Project")

To: Principal's Representative

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

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

.....

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

Independent Certifier's Certificate – As-Built documentation

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

[Insert Project description] ("Project")

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

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

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

Schedule 18 - Independent Certifier's Certificate – Final Completion

Independent Certifier's Certificate – Final Completion

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

[Insert Project description] ("Project")

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

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

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

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

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

Schedule 19 - Contractor's Personnel

Contractor's Personnel

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

General

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

Project Director

- (a) The Project Director must:
 - (i) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works;
 - (ii) at all times have authority to act on behalf of the Contractor in respect of the Contractor's Activities;
 - (iii) have a minimum 20 years' experience delivering major civil infrastructure projects;
 - (iv) be available full-time during the design phase; and
 - (v) be available full-time in attendance on or around the Construction Site during the construction phase.
- (b) At the date of this deed, the Project Director is [REDACTED].

Commercial Manager

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

Design Manager

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

Construction Managers

- (a) The Construction Managers must:

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

Quality Manager

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

Community and Stakeholder Engagement Manager

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

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

Environmental Manager

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

Health & Safety Manager

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

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

Traffic Manager

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

Landscape Representative

- (a) The Landscape Representative must:
- (i) possess a recognised tertiary qualification in horticulture, forestry or landscape design;
 - (ii) have a minimum 5 years' experience in the design and implementation of landscaping; and
 - (iii) be engaged full-time on or around the Construction Site during the performance of landscaping activities, including ground preparation, seeding, planting and mulching operations. The Landscape Representative must have responsibility for the landscaping activities, including the Landscaping Maintenance, and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Activities.
- (b) At the date of this deed, the Landscaping Representative is [REDACTED].

Collaboration Manager

- (a) The Collaboration Manager must:
- (i) possess a recognised qualification relevant to the position and to the Contractor's Work;
 - (ii) have a knowledge and understanding of the Contractor's overall leadership plan and Transport for New South Wales' values and objectives in relation to the Contractor's Work;
 - (iii) have a minimum of 10 years performance coaching experience, with extensive experience in coaching a major contractor's organisation, teams and personnel, or similar, on large projects similar to the Project Works and Temporary Works; and
 - (iv) be available part-time during all phases of the Project Works and Temporary Works to assist, implement and manage the Contractor's implementation and operation of its overall leadership plan and processes for the alignment of the Contractor's team's culture with Transport for New South Wales' values and objectives in relation to Project Works and Temporary Works, including:
 - A. taking a proactive role in performance coaching of the Contractor's personnel;

- B. reporting on the Contractor's performance against its leadership strategy and alignment with Transport for New South Wales' values and objectives; and
- C. assisting with the development of improvement plans to improve the performance of the Contractor and its key personnel.

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

Completions Manager

(a) The Completions Manager must:

- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in completion activities on large projects similar to the Project Works and Temporary Works;
- (ii) have a minimum 10 years construction experience, with experience in the preparation and implementation of completion planning and activities for major road projects.
- (iii) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to plan and implement a successful completion of the project and handover to TfNSW.
- (iv) be engaged full-time on or around the Construction Site as needed during the construction phase of the Contractor's Activities with responsibility for the completions planning and must at all times have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Activities and be available at all times for matters regarding Road Occupancy Licences.

(b) At the date of this Deed, the Completions Manager is [REDACTED].

General Superintendent

(a) The General Superintendent must:

- (i) have a minimum of 15 years of supervision experience on large-scale road and bridge construction projects, in similar role;
- (ii) have experience on projects similar to the Project Works and Temporary Works;
- (iii) have extensive knowledge of road and bridge construction;
- (iv) have skills in planning and implementing project delivery (including resourcing of plant, equipment and labour) and managing the subcontractors and suppliers;
- (v) have experience in consultation with stakeholders and local communities;
- (vi) have the ability to work as part of a multi-disciplinary team;
- (vii) have knowledge and understanding of safety, quality and environmental management systems and an understanding of the community attitudes and needs in relation to the Project Works and Temporary Works;
- (viii) manage and co-ordinate the site operations so as to comply with all safety, environmental, community, quality and industrial relations objectives; and
- (viii) be engaged full-time on or around the Construction Site during the construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities on the construction site.

(b) At the date of this deed, the General Superintendent is [REDACTED].

Lead Design Consultants

(a) The Lead Design Consultant(s) must include the following personnel:

- (i) Road & Civil Design Lead;
- (ii) Geotechnical Design Lead; and
- (iii) Structures Design Lead

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

Viaduct Construction Manager

- (a) The Viaduct Construction Manager must:
- (i) possess recognised qualifications relevant to the position and the Contractor's Activities and have at least 10 years' experience in the overall management of construction of large complex structures within a marine environment on major road (and rail) infrastructure projects similar to the Project Works and Temporary Works; and
 - (ii) be available full-time on or around the Construction Site during the construction phase of the Contractor's Activities and must at all times have appropriate delegated authorities to act on behalf of the Contractor in respect of the Contractor's Activities.
- (b) At the date of this deed, the Viaduct Construction Manager is [REDACTED].

Viaduct Design Manager

- (a) The Viaduct Design Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the management and co-ordination of the design of large complex structures within a marine environment similar to the Project Works and Temporary Works;
 - (ii) manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Contract Program and the Subsidiary Contract Programs); and
 - (iii) have a minimum 10 years' experience managing the design of large complex structures within a marine environment on complex road (and rail) infrastructure projects.
- (b) At the date of this deed, the Viaduct Design Manager is [REDACTED].

Rail Works Design Manager

- (a) The Rail Works Design Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the management and co-ordination of the Project Works and Temporary Works within and adjacent to the rail corridor;
 - (ii) manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Contract Program and the Subsidiary Contract Programs); and
 - (iii) have a minimum 10 years' experience managing the design of large complex structures within and adjacent to a rail corridor on complex road (and rail) infrastructure projects.
- (b) At the date of this deed, the Rail Works Design Manager is [REDACTED].

Rail Safety Manager

- (a) The Rail Safety Manager must:
- (i) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in work health and safety management on large projects within or adjacent to the rail corridor similar to the Project Works and Temporary Works;
 - (ii) have a minimum 10 years' experience as a site safety manager on major civil projects of similar size and complexity within a rail corridor;
 - (iii) facilitate a work health and safety induction and training programme for all persons involved in construction activities within or adjacent to the rail corridor;
 - (iv) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works and Temporary Works when any non-conformity with the work health and safety requirements of this deed is identified; and
 - (v) be available full-time on or around the Construction Site during the execution of the Contractor's Activities until the Date of Opening Completion with responsibility to develop and implement the Work Health and Safety Management Plan.
- (b) At the date of this deed, the Rail Safety Manager is [REDACTED].

Coordination Manager

- (a) The Coordination Manager must:
- (i) possess a recognised qualification relevant to the position and to the Contractor's Work;
 - (ii) have a knowledge and understanding of the Contractor's overall leadership plan and Transport for New South Wales' values and objectives in relation to the Contractor's Work;
 - (iii) have a minimum of 10 years' experience liaising and co-ordinating interface works with other Contractor's adjacent to the Contractor's activities and/or adjacent stakeholders on large projects similar to the Project Works and Temporary Works; and
 - (iv) be available full-time during all phases of the Project Works and Temporary Works to assist, implement and manage the interface with the Northern Package Contractor in accordance with the requirements of the Interface Deed as set out in Schedule 53.
- (b) At the date of this deed, the Coordination Manager is [REDACTED].

Contractor's Certificate - Design Documentation

(clause 12.2(e)(iii))

[Insert project description] ("Project")

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

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

- (a) the attached Design Documentation:
 - (i) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements of section 5.5 of the SWTC;
 - (ii) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects); and
 - (iii) does not involve or constitute a Variation which has not been the subject of a Variation Order under clause 15.2, or a notice under clauses 15.6(d) or 15.7(c) approving the Variation; and
- (b) all issues of review, comment and consultation with the Principal in respect of the Design Documentation have been addressed as required by the deed.

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

Contractor's Certificate - Opening Completion and Completion

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

[Insert project description] ("Project")

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

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

.....

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

Schedule 21A - Contractor's Certificate – End of Landscaping Maintenance Period
Contractor's Certificate – End of Landscaping Maintenance Period

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

[Insert project description] ("Project")

To: Principal's Representative

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

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

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

Contractor's Certificate – Final Completion

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

[Insert project description] ("Project")

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

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

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

Schedule 23 - Principal Subcontractor Pre-Qualification

Principal Subcontractor Pre-Qualification

(clause 2.9(b))

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

1. **Pre-qualified categories of work:**
 - (a) Roadworks;
 - (b) Bridgeworks;
 - (c) Concrete Paving (Machine Placed);
 - (d) Asphalt Paving (Machine Placed);
 - (e) Pretensioned Concrete;
 - (f) Steel Fabrication;
 - (g) Protective Treatment (Field); and
 - (h) Traffic Signals.

 2. **Registered categories of work (Registered Scheme for Construction Industry Contractors):**
 - (a) D – Drainage;
 - (b) E – Earthworks;
 - (c) F – Formwork;
 - (d) G – Provision of Traffic Control;
 - (e) L3 – Construction laboratories >\$██████;
 - (f) S2 – Erosion, Sedimentation and Soil Conservation Consultancy Services (unrestricted);
 - (g) CC2 – Steel Items to Construction Category 2;
 - (h) U – Urban Design Services;
 - (i) X – Demolition of Buildings;
 - (j) Z1 – Stabilisation (insitu method); and
 - (k) Z2 – Stabilisation (stationary plant).

 3. **Registered categories of design work (Technical Services Registration Scheme):**
 - (a) Complex Bridge Design;
 - (b) Complex Road Design;
 - (c) Drainage Investigation and Design; and
 - (d) Geotechnical Assessment and Interpretation.
-

Schedule 24 - Terms to be included in Subcontracts

Terms to be included in Subcontracts

(clauses 2.9(f) and 2.9(g)(ii))

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

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

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

Subcontractor's Certificate - Design Documentation

(clause 12.2(e)(ii))

[Insert project description] ("Project")

To: Principal's Representative

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

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

- (a) complies with all the requirements of the deed, including the SWTC, and in particular, the durability requirements of section 5.9 of the SWTC and the design life requirements of section 5.5 of the SWTC; and
- (b) is documented to enable construction in compliance with the deed (including, to the extent applicable, in respect of correction of Defects).

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

Schedule 26 – **Not Used**

Not used

Proof Engineer's Certificate - Design Documentation

(clause 12.2(e)(iv))

[Insert project description] ("Project")

To: Principal's Representative

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

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

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

.....

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

Schedule 28 - Environmental Documents

Environmental Documents

(clauses 5.1(b), 5.1(e)(iii), 5.2(b), 6.5, 15.8(f)(i) and 23.2 (definition of "Environmental Documents"))

1. Approvals not to be obtained by Contractor

The Planning Approval.

2. Order of Precedence

The order of precedence of the Environmental Documents is set out below:

- a) the specific requirements of Appendix 4 of the SWTC;
- b) the Planning Approval.

3. Principal Obligations in respect of Environmental Documents

The only obligations identified in the Environmental Documents and the Approvals that remain the responsibility of the Principal are that the Principal is:

- a) to be responsible for fulfilling any obligations to the extent that they do not relate specifically to the Project Works, Temporary Works or Contractor's Activities;
- b) to be responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Completion, except for any that relate specifically to the Contractor's Activities after the Date of Completion;
- c) in relation to the approval granted by the Minister for Planning under section 5.19 of the *Environmental Planning and Assessment Act 1979* (NSW):
 1. to be responsible for condition A9;
 2. to be responsible for condition A10;
 3. to be responsible for condition A13, to the extent only that the Principal is to submit the revised Staging Report prepared by the Contractor and endorsed by the ER to the Planning Secretary;
 4. to be responsible for condition A17, to the extent only that the Principal is to submit the Ancillary Facility Site Establishment Management Plan prepared by the Contractor to the Planning Secretary;
 5. to be responsible for condition A22, to the extent only where the Principal is responsible for an Independent Appointment in accordance with this Schedule 28;
 6. to be responsible for condition A26, to the extent only that the Principal is to nominate the Environmental Representative for approval by the Planning Secretary;
 7. to be responsible for condition A27;
 8. to be responsible for condition A28, to the extent only that the Principal is to nominate the Environmental Representative for approval by the Secretary and the Principal will appoint the Environmental Representative jointly with the Contractor by way of the Deed of Appointment of the Environmental Representative;
 9. to be responsible for condition A31;
 10. to be responsible for condition A32;
 11. to be responsible for condition A33;
 12. to be responsible for condition A34;

13. to be responsible for condition A35;
14. to be responsible for condition A36, except that the Contractor must provide the Principal with all current and up-to-date electronic information, documents, details and data from the Contractor's Activities in the format required by the Principal within the timeframe requested by the Principal in order to comply with condition A36;
15. to be responsible for condition A37;
16. to be responsible for condition A38;
17. to be responsible for condition A39, except that the Contractor must provide the Principal with all necessary information, documents, details and data in the format required by the Principal within the timeframe requested by the Principal in order to comply with condition A39;
18. to be responsible for condition A40, except that the Contractor must provide the Principal with all necessary information, documents, details and data in the format required by the Principal within the timeframe requested by the Principal in order to comply with condition A40;
19. to be responsible for condition A41, except that the Contractor must provide the Principal with all necessary information, documents, details and data in the format required by the Principal within the timeframe requested by the Principal in order to comply with condition A41;
20. to be responsible for condition A43, to the extent only that the Principal will make this information publicly available in accordance with condition B12;
21. to be responsible for condition B1;
22. to be responsible for condition B2;
23. to be responsible for condition B3;
24. to be responsible for condition B5, to the extent that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
25. to be responsible for condition B7, to the extent that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
26. to be responsible for condition B8, to the extent that the Principal is to:
 - i. be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion; and
 - ii. provide this information on the website required under condition B12;
27. to be responsible for condition B9, to the extent only that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
28. to be responsible for condition B11, to the extent only that the Principal is to submit the Complaints Register, provided to the Principal by the Contractor, to the Planning Secretary;
29. to be responsible for condition B12, except that the Contractor must provide the Principal with all current and up-to-date electronic information, documents, details and

- data from the Contractor's Activities in the web accessible format required by the Principal, that are required by condition B12;
30. to be responsible for condition B13, to the extent only that the Principal is to submit the request prepared by the Contractor to the Planning Secretary;
 31. to be responsible for condition C3, to the extent only that the Principal is to submit the CEMP (s) (and relevant CEMP Sub-plans) to the Planning Secretary for approval;
 32. to be responsible for condition C4, to the extent only that the Principal is to submit the CEMP(s) (and relevant CEMP Sub-plans) to the Planning Secretary for approval;
 33. to be responsible for condition C7, to the extent only that the Principal is to submit the Dredging and Disposal CEMP Sub-plan to the Planning Secretary for approval;
 34. to be responsible for condition C9, to the extent only that the Principal is to submit the Soil and Water CEMP Sub-plan to the Planning Secretary for approval;
 35. to be responsible for condition C15, to the extent only that the Principal is to submit the Construction Monitoring Programs to the Planning Secretary for approval;
 36. to be responsible for condition C17, to the extent that the Principal is to be responsible after the Date of Final Completion;
 37. to be responsible for condition C18, to the extent only that the Principal is to submit the Construction Monitoring Reports to the Planning Secretary;
 38. to be responsible for condition D1, except that the Contractor must provide the Principal with all current and up-to-date electronic information, documents, details and data from the Contractor's Activities that the Principal requires to prepare the Operational Environmental Management Plan;
 39. to be responsible for condition D2, except that the Contractor must provide the Principal with all current and up-to-date electronic information, documents, details and data from the Contractor's Activities that the Principal requires to incorporate the CSSI into the Principal's environmental management system;
 40. to be responsible for condition D3;
 41. to be responsible for condition D4;
 42. to be responsible for condition E1, to the extent that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
 43. to be responsible for condition E2, to the extent only that the Principal will prepare an Unexpected Finds Protocol and submit to the Planning Secretary;
 44. to be responsible for condition E3, to the extent only that the Principal will notify the Planning Secretary and BCD;
 45. to be responsible for condition E6, to the extent only that the Principal will submit the report to the Planning Secretary, BCD and DCCEEW;
 46. to be responsible for condition E7;
 47. to be responsible for condition E8;
 48. to be responsible for condition E9, to the extent only that the Principal will review and update the credit requirements based on verification survey provided by the Contractor;

49. to be responsible for condition E10, to the extent only that the Principal will undertake any changes or updates of the Biodiversity Assessment Report or credit calculator required based on verification survey provided by the Contractor;
50. to be responsible for condition E11;
51. to be responsible for condition E12, to the extent only that the Principal will be responsible for implementing habitat offset requirements for residual impacts to Key Fish Habitat in consultation with DPI Fisheries;
52. to be responsible for condition E13;
53. to be responsible for condition E14;
54. to be responsible for condition E15;
55. to be responsible for condition E18, except that the Contractor must provide the Principal with a record of the number of trees removed in sufficient detail to report to the Planning Secretary on this condition;
56. to be responsible for condition E19, to the extent only for managing lighting during operation;
57. to be responsible for condition E24, to the extent only that the Principal will submit the Design and Landscape Plan to the Planning Secretary;
58. to be responsible for condition E28, to the extent that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
59. to be responsible for condition E29;
60. to be responsible for condition E30, to the extent that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
61. to be responsible for condition E32, to the extent only that the Principal is to consult with landowners and the specified government agencies;
62. to be responsible for condition E34;
63. to be responsible for condition E35;
64. to be responsible for condition E36;
65. to be responsible for condition E37;
66. to be responsible for condition E38;
67. to be responsible for condition E39;
68. to be responsible for condition E40;
69. to be responsible for condition E41;
70. to be responsible for condition E42;
71. to be responsible for condition E43;
72. to be responsible for condition E44;
73. to be responsible for condition E45;

74. to be responsible for condition E46;
75. to be responsible for condition E47;
76. to be responsible for condition E48;
77. to be responsible for condition E49;
78. to be responsible for condition E53;
79. to be responsible for condition E54;
80. to be responsible for condition E57;
81. to be responsible for condition E58;
82. to be responsible for condition E59;
83. to be responsible for condition E60;
84. to be responsible for condition E61, to the extent only that the Principal will prepare an Unexpected Heritage Finds and Human Remains Procedure in consultation with Heritage NSW;
85. to be responsible for condition E66, to the extent only that the Principal will notify the Planning Secretary and the EPA;
86. to be responsible for condition E67, to the extent only that the Principal will submit the Out-of-Hours Work Protocol to the Planning Secretary;
87. to be responsible for condition E77, to the extent only that the Principal will notify the Planning Secretary and the EPA;
88. to be responsible for condition E85, to the extent only that the Principal will submit to the Planning Secretary the Blast Management Strategy prepared by the Contractor;
89. to be responsible for condition E86, to the extent only that the Principal will:
 - i. submit the details of the independent and experienced noise specialist nominated by Contractor to the Planning Secretary for approval;
 - ii. engage an independent and experienced noise specialist as approved by Planning Secretary for verification of the Traffic Noise Monitoring Program required under condition E87, the Operational Noise Monitoring Program required under condition E95 and the Operational Noise Compliance Report required under condition E97; and
 - iii. submit each verification to the Planning Secretary in the specified timeframe.
90. to be responsible for condition E87;
91. to be responsible for condition E88;
92. to be responsible for condition E89, to the extent only that the Principal will:
 - i. consult with the relevant council(s) and EPA in conjunction with the Contractor;
 - ii. provide the data collected in condition E87 or E88;
 - iii. undertake at-property operational noise treatment on the affected properties identified in Table 17.6 in Appendix 17 to the SWTC;

- iv. prepare and implement a consultation strategy with directly affected landowners;
 - v. submit the Operational Noise Review to the Planning Secretary; and
 - vi. make the Operational Noise Review publicly available;
93. to be responsible for condition E91, to the extent only that the Principal will:
- i. undertake at-property operational noise treatment on the affected properties identified in Table 17.6 in Appendix 17 to the SWTC;
 - ii. submit all requests to the Planning Secretary; and
 - iii. prepare the report and associated mitigation measures to the extent that at-property operational noise treatment have not been completed in accordance with condition E91;
94. to be responsible for condition E93;
95. to be responsible for condition E94, to the extent only that the Principal will undertake at-property operational noise treatment on the affected properties identified in Table 17.6 in Appendix 17 to the SWTC;
96. to be responsible for condition E95;
97. to be responsible for condition E96;
98. to be responsible for condition E97;
99. to be responsible for condition E98;
100. to be responsible for condition E99;
101. to be responsible for condition E100;
102. to be responsible for condition E102;
103. to be responsible for condition E112;
104. to be responsible for condition E113;
105. to be responsible for condition E118, to the extent only that the Principal will submit the evidence as provided by the Contractor to the Planning Secretary;
106. to be responsible for condition E120, to the extent only that the Principal will make the information provided by the Contractor publicly available in accordance with condition B12;
107. to be responsible for condition E123, to the extent only that the Principal will submit the Detailed Site Investigation Report to the Planning Secretary;
108. to be responsible for condition E129, to the extent only that the Principal will submit to the Planning Secretary the Site Audit Statement and Site Audit Report prepared by the Contractor;
109. to be responsible for condition E132, to the extent only that the Principal will submit to the Planning Secretary the Unexpected Finds Procedure for Contamination prepared by the Contractor;
110. to be responsible for condition E133, to the extent only that the Principal will submit the evidence provided by the Contractor to the Planning Secretary;

111. to be responsible for condition E134, to the extent only that the Principal is to be responsible from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
 112. to be responsible for condition E135, to the extent only that the Principal will:
 - i. be responsible for implementation of the strategy from the Date of Completion onwards except for any elements that relate specifically to the Contractor's Activities after the Date of Completion;
 - ii. make any submissions to the Planning Secretary; and
 - iii. make the strategy publicly available;
 113. to be responsible for condition E136, to the extent only for submissions to the Planning Secretary;
 114. to be responsible for condition E138, to the extent only for submissions to the Planning Secretary;
 115. to be responsible for condition E145, to the extent only for waste management by the Principal during operation;
 116. to be responsible for condition E149, to the extent only for water quality management by the Principal during operation;
 117. to be responsible for condition E153, to the extent only for ongoing operational dewatering by the Principal during operation;
- d) in relation to the approval granted by the Australian Government Minister for the Environment under section 130(1) and 133(1) of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (the conditions to which are referred to in this clause as 'EPBC conditions' and which correspond to the clause in the Exhibit referred to in Item 8 of Schedule 1 of this deed) to be responsible for EPBC conditions to the extent only that the Principal is to be responsible for the conditions already identified in section 2(c) of this Schedule 28 of the deed.
- e) in relation to the environmental management measures contained in the M1 Pacific Motorway extension to Raymond Terrace Environmental Impact Statement (Transport for NSW, 2021) (the EIS):
1. to be responsible for NV02, to the extent only that the Principal will undertake at-property operational noise treatment on the affected properties identified in section 17.2.1 of Appendix 17 to the SWTC;
 2. to be responsible for NV07, to the extent only that the Principal will undertake at-property operational noise treatment on the affected properties identified in section 17.2.1 of Appendix 17 to the SWTC;
 3. to be responsible for NV08;
 4. to be responsible for B13, to the extent only that the Principal will manage artificial lighting during operation;
- 4a. to be responsible for FH02, to the extent only that the Principal will:
- i. extend the flood hydraulic model in the upstream direction along the Hunter River, Paterson River and Williams River to define the full extent of afflux and other impacts resulting from the project beyond the limits of the Unadjusted Hydraulic Model; and
 - ii. undertake additional building floor survey to improve the accuracy of the flood

impact assessment;

5. to be responsible for FH03, to the extent only that the Principal will consult with impacted landowners;
6. to be responsible for FH06, to the extent only that the Principal will consult with the relevant operators of the Hunter Valley Flood Mitigation Scheme in conjunction with Contractor;
- 6a. to be responsible for FH08, to the extent only that the Principal will undertake monitoring during operation;
7. to be responsible for FH09, to the extent only that the Principal will carry out monitoring prior to construction commencement;
8. to be responsible for WQ04, to the extent only that the Principal will ensure the lining of basins and swales within the Tomago Sandbeds drawdown area during operation;
9. to be responsible for WQ06, to the extent only that the Principal will carry out monitoring during operation;
10. to be responsible for AH01, except for where the Contractor is responsible for implementing the induction program and ongoing Aboriginal community engagement during construction;
11. to be responsible for AH02, except for where the Contractor is responsible for protecting any known or potential Aboriginal objects and places identified by the Principal and implementing the Unexpected Heritage Finds and Human Remains Procedure;
- 11a. to be responsible for AH03;
12. to be responsible for SE01;
13. to be responsible for LU01;
14. to be responsible for UD05, to the extent only that the Principal will manage lighting during operation;
15. to be responsible for UD06, to the extent that the Principal will prepare the Aboriginal Cultural Heritage Report and provide to the Contractor to comply and implement during detailed design and construction;
16. to be responsible for SC04;
- 16a. to be responsible for SC05 to the extent only that the Principal will engage a NSW EPA accredited site auditor for the former mineral sands processing facility;
17. to be responsible for NA01, to the extent only that the Principal will prepare the Unexpected Heritage Items Procedure and provide a list, plan and maps with GIS layers showing the location of identified heritage items;
18. to be responsible for NA03; except for the dilapidation survey to be carried out by the Contractor;
19. to be responsible for NA04, to the extent only that the Principal will implement at-property architectural noise treatment;
20. to be responsible for NA07;
21. to be responsible for SU1, to the extent only that the Principal will prepare the Sustainability Management Plan (or similar framework) and provide to the Contractor to comply and

implement during detailed design and construction.

Schedule 29 - Environmental Manager's Certificate

Environmental Manager's Certificate

(clause 2.7(b))

[Insert Project description] ("Project")

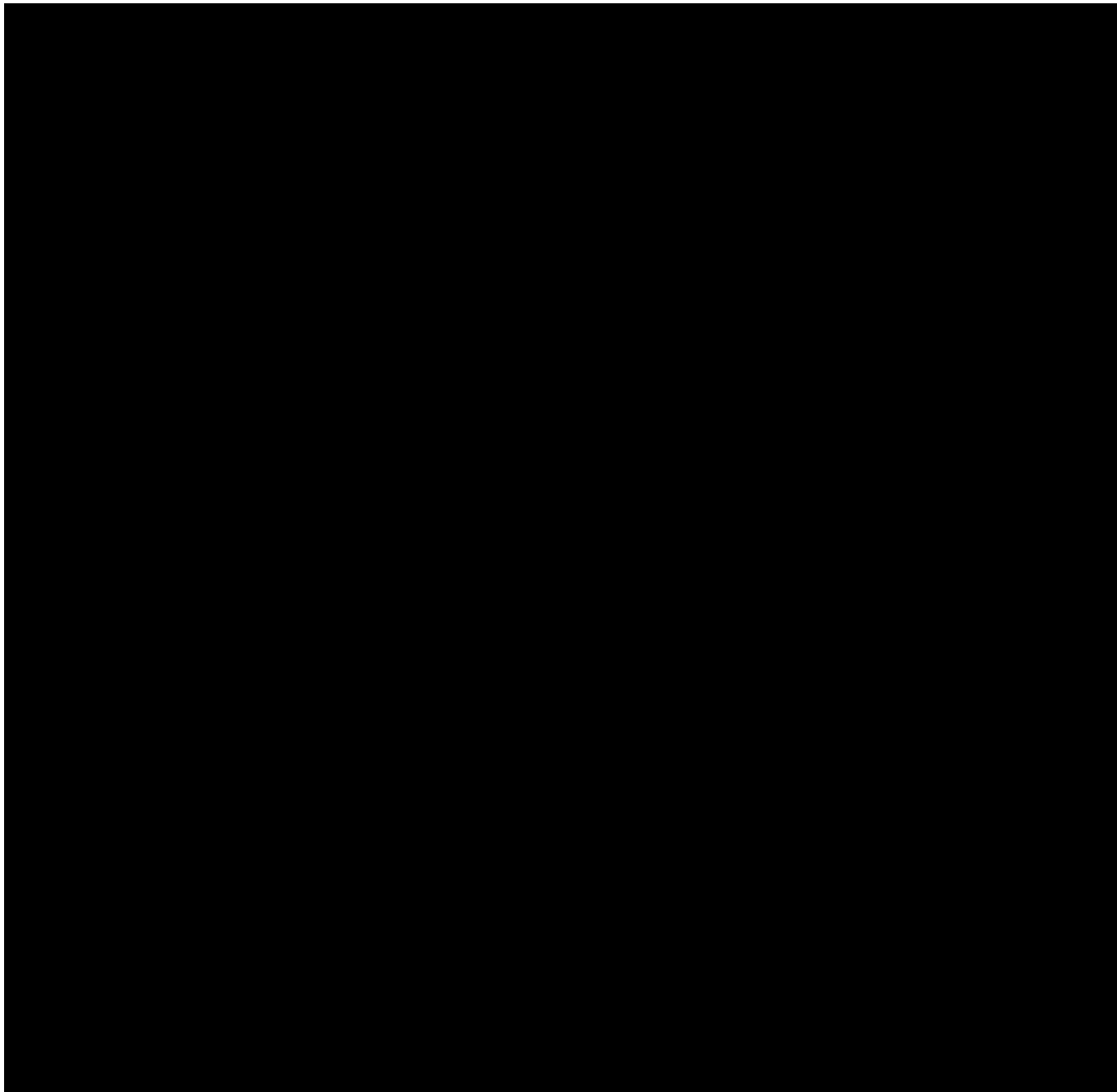
To: Principal's Representative

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

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

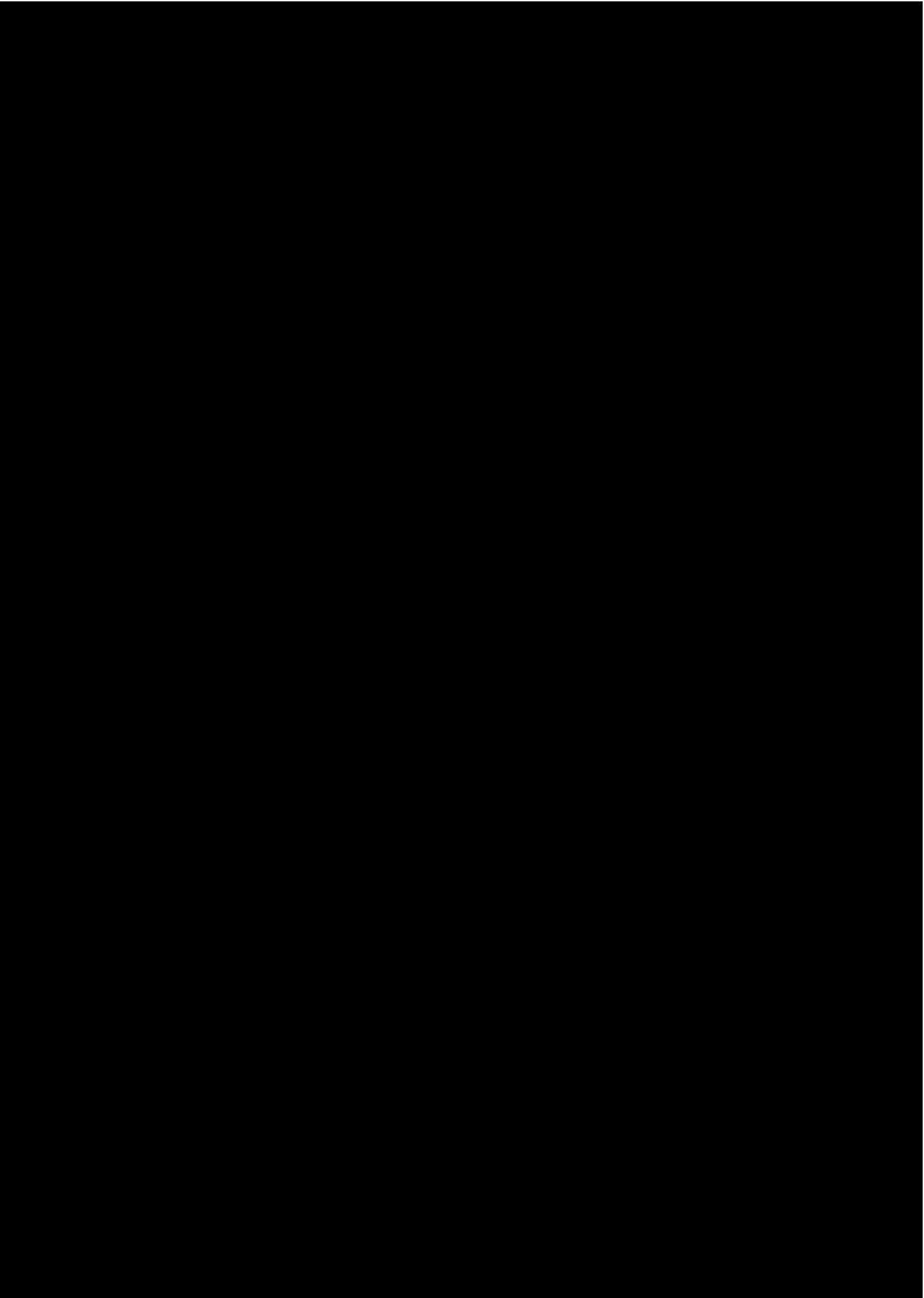
- (a) the Contractor's Environmental Management System under section 2.5.1 of the SWTC was in accordance with AS/NZS ISO 14001;
- (b) any Subcontractors' Environmental Management Systems which form a part of the Contractor's Environmental Management System were in accordance with AS/NZS ISO 14001;
- (c) the Contractor complied with and satisfied the requirements of TfNSW D&C Specification G36 in Appendix 6 of the SWTC;
- (d) not used;
- (e) the design, construction, inspection, repairs and monitoring by the Contractor was undertaken in accordance with the deed; and
- (f) that documentation was recorded and submitted to the Independent Certifier and the Principal's Representative in accordance with the deed.

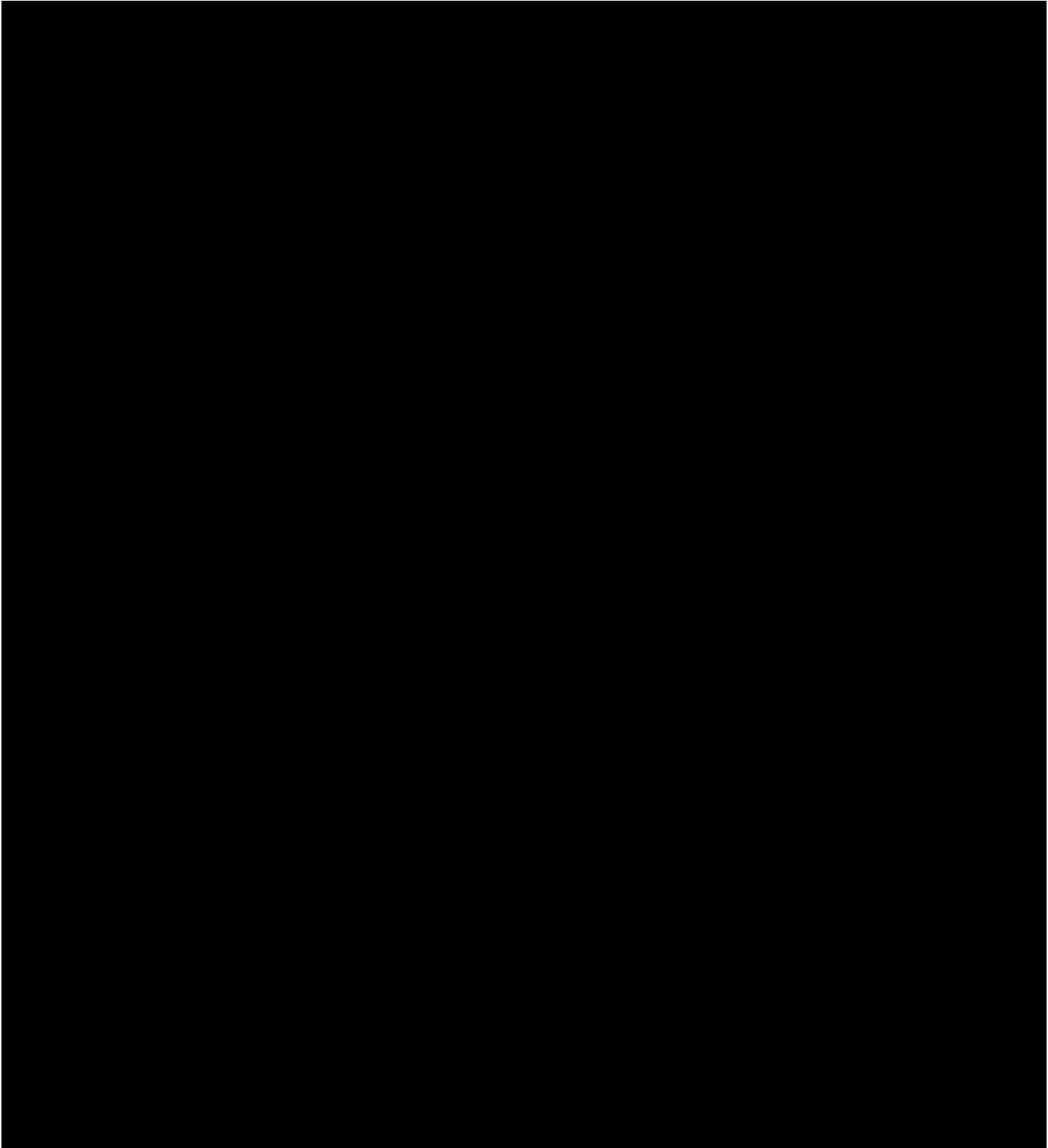
.....
Signed by
[Insert Environmental Manager's name]



Schedule 31 - Not used

Not used





Designer's Deed of Covenant

(clause 2.9(g)(i))

This deed poll is made the _____ **day of** _____ **20** _____

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

By: [insert Designer's name and details] (ABN [Insert Designer's ABN]) of [Insert Designer's address]

Recitals

- A. The Principal has engaged [Insert Contractor's name] (ABN [Insert Contractor's ABN]) of [Insert Contractor's address] ("Contractor") to carry out certain works for the Principal by deed dated [insert date] ("Deed").
 - B. The Contractor has engaged [Insert Designer's name] ("Designer") to carry out the design work specified in the Schedule for the purposes of its obligations under the Deed ("Design Work").
 - C. Under the Deed the Contractor is required to procure the Designer to execute this deed poll in favour of the Principal.
-

Operative

1. Duty of care

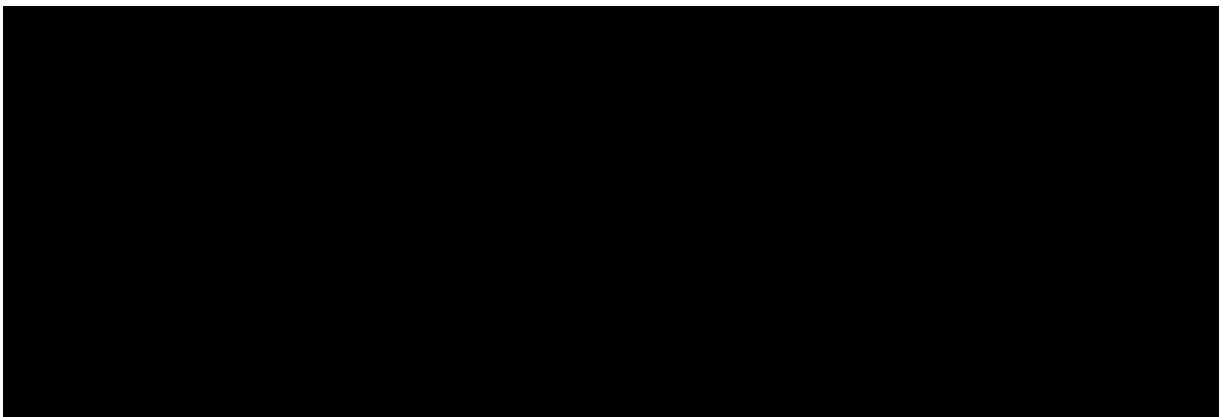
The Designer warrants to the Principal that in performing the Design Work and in providing any certificate under clause 2.9(g)(i) of the Deed:

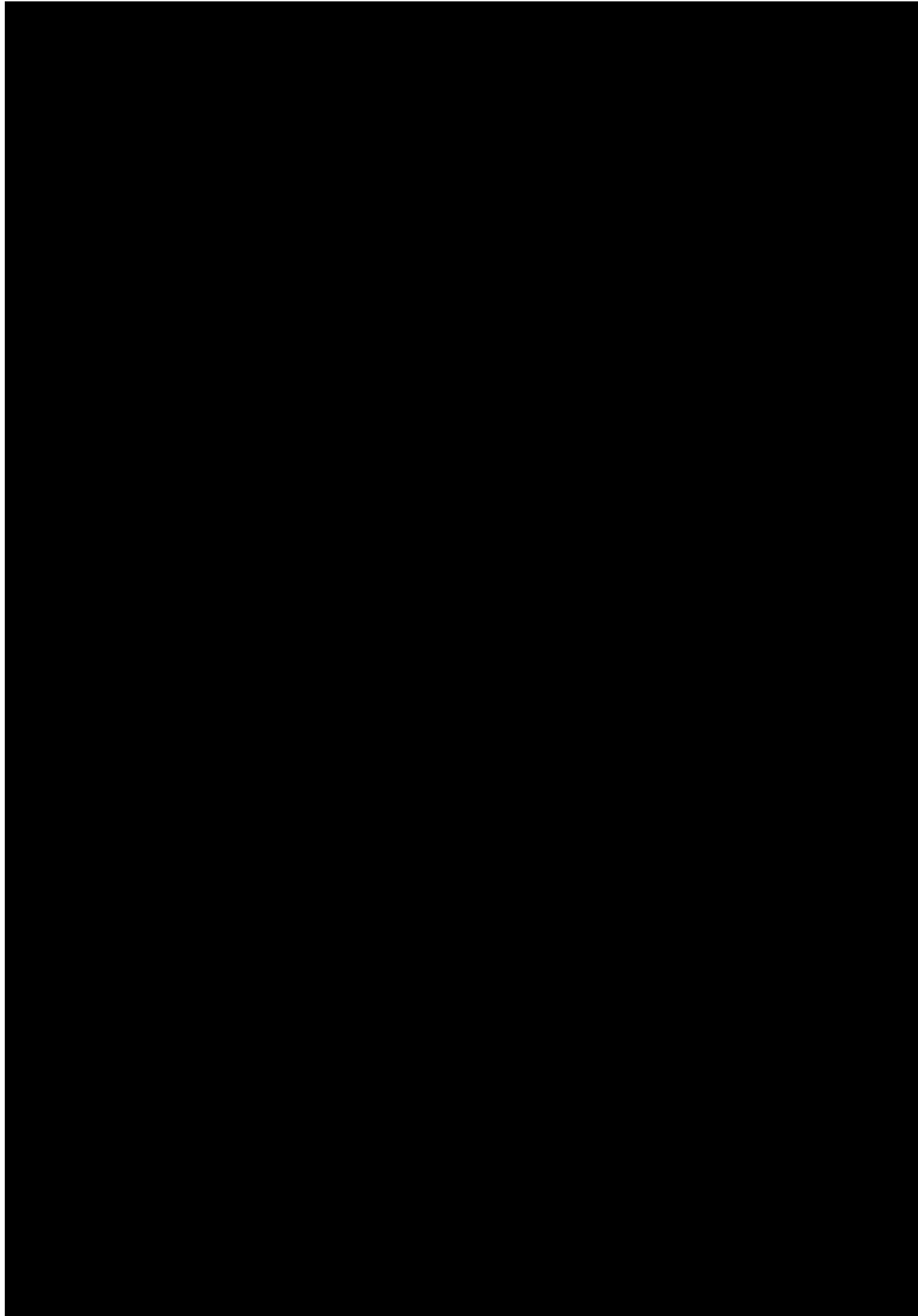
- (a) it will owe a duty of care to the Principal;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Principal will be relying upon the skill and judgement of the Designer in performing the Design Work.

2. Not used

3. Governing law and jurisdiction

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







Schedule

[Insert description of Design Work]

EXECUTED as a deed poll.

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

|

Signature of Director	Signature of Secretary/other Director
-----------------------	---------------------------------------

Name of Director in full	Name of Secretary/other Director in full
--------------------------	--

Form of Warranty

(clause 17.13(a))

This deed poll is made the _____ day of _____ 20____

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

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

Recitals

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

Operative

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

The above warranties are in addition to and do not derogate from any warranty implied by law in respect of the Equipment.

- 2. The Warrantor warrants to the Principal that it will replace so much of the Equipment as within the period described in Item 6 of the Schedule:
 - (a) is found to be of a lower quality or standard than that referred to in clause 1; or
 - (b) shows deterioration of such extent that in the opinion of the Principal the Equipment ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise.
- 3. The Warrantor covenants to the Principal that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.

The Warrantor acknowledges to the Principal that nothing contained in this Deed Poll is intended to nor will render the Principal in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.



[Redacted text block]

Owner's Deed Poll

(clauses 13.2(g) and 13.2(i)(i))

This deed poll is in favour of Transport for NSW.

Property Address: [Insert Property Address]

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

SIGNED as a deed poll.

Signed sealed and delivered by

in the presence of:

<p>_____</p>	<p>_____</p>
	<p>Signature</p>

Signature of Witness

Name of Witness in full

Schedule 36 - Insurance Schedule

Insurance Schedule

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

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
Principal Arranged Insurance (TfNSW)				
The details of the policies below are provided in the iCare policy documents. A copy of these is set out in Exhibit N (Insurance Policy Wording). Capitalised terms which are not defined in the deed are defined in the sample policy documents.				
1A	Early Works – Material Damage	Early Works – Material Damage - as per policy in Exhibit N (Insurance Policy Wording)	Not later than 10 Business Days after the date of this deed until the Principal Arranged Insurance referred to in Item 1, 2 and 4 are effected - covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for material damage
1B	Early Works – General Liability	Early Works – General Liability - as per policy in Exhibit N (Insurance Policy Wording)	Not later than 10 Business Days after the date of this deed until the Principal Arranged Insurance referred to in Item 1, 2 and 4 are effected - covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for general, products and environmental liability insurance
1	Contract Works	Contract Works – as per policy in Exhibit N (Insurance Policy Wording)	Not later than 60 Business Days after the date of this deed and until the Date of Final Completion – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	The Principal will arrange standard policies of insurance for contract works insurance. ██████████ ██████████████████ ██████████████████ ██████████ ██████████████████ ██████████
2	Public and Products Liability	Public and Products Liability \$██████████ Each and every occurrence.	Not later than 60 Business Days after the date of this deed and until the Date of Final Completion – covering the Principal, Contractor and subcontractors and other parties as specified in the	The Principal will arrange standard policies of third party liability insurance

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
			contract	
3	Project Specific Professional Indemnity insurance	Refer to Schedule 1 (Contract Information) Item 21B	Refer to Schedule 1 (Contract Information) Item 21B	Cover for claims for breach of professional duty (whether owed in contract or otherwise) or any act or omission in performance of the Contractor's Activities by the Contractor or its Subcontractors.
4	Environmental Impairment Liability	Environmental Impairment Liability \$ ████████ Each and every occurrence	Not later than 60 Business Days after the date of this deed and until the Date of Completion – covering the Principal, Contractor and subcontractors and other parties as specified in the contract	
Contractor Arranged Insurances				
5	Motor Vehicle Comprehensive or Third Party Property Damage effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 23	Refer to Schedule 1 (Contract Information) Item 23	<p>(a) Motor vehicles owned, leased or hired by the Contractor or Subcontractors directly or indirectly engaged, and used by anyone in connection with performance of the contract.</p> <p>(b) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in Definitions and Notes clause 2 below.</p> <p>(c) If applicable to the contract – all plant and equipment</p>

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
				<p>owned or used by the Contractor or Subcontractors directly or indirectly in the performance of the contract.</p> <p>(d) covering legal liability:</p> <ul style="list-style-type: none"> • For personal injury to, illness or death of, any person; and • For damage to any real or personal property, arising out of the use by Principal or the Contractor of any registered motor vehicle in connection with the performance of the Project Works and Temporary Works, in accordance with all relevant Laws, and for not less than \$ [REDACTED] in respect of each and every occurrence.
6	Workers Compensation effected with an Approved Insurer.	Refer to Schedule 1 (Contract Information) Item 22	Refer to Schedule 1 (Contract Information) Item 22	As per State Workers Compensation legislation or in the case of self-insurance by John Holland under clause 7.5(e), as otherwise permitted by Law.
7	Plant and equipment insurance.	Refer to Schedule 1 (Contract Information) Item 27	Refer to Schedule 1 (Contract Information) Item 27	

	TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING
8	Compulsory Third Party (CTP) insurance.	Refer to Schedule 1 (Contract Information) Item 30	Refer to Schedule 1 (Contract Information) Item 30	Compulsory Third Party (CTP) insurance.
9	Marine liability	Refer to Schedule 1 (Contract Information) Item 29	Refer to Schedule 1 (Contract Information) Item 29	Use of waterborne craft of 12 or more metres in length on work for or in connection with this deed.

Definitions and Notes

1. Approved Insurer means:
 - (a) the NSW Self Insurance Corporation; or
 - (b) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia with a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, or an equivalent rating with another reputable rating agency; or
 - (c) for the purposes of the Workers Compensation Insurance under clause 7.5(e), a self-insurer, licenced under the *Safety, Rehabilitation & Compensation Act 1988* (Cth).

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

Deed of Appointment of ER

(clauses 2.6 and 23.2 (definition of "Deed of Appointment of ER"))

This Deed made at Sydney on

Parties [Insert Contractor's name] (ABN [Insert Contractor's ABN]) of [Insert

Contractor's address] ("Contractor")

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

[Insert Environmental Representative's name] (ABN [Insert Environmental Representative's ABN]) of [Insert Environmental Representative's address]

("Environmental Representative")

Recitals

- A. On or about the date of this Deed, the Contractor entered into the D&C Deed with the Principal in respect of the Project.
- B. The ER represents that it is experienced generally in environment management and, in particular, in the environment management of works similar to the Project Works and offers its expertise in those fields.
- C. The D&C Deed contemplates that the ER will discharge those functions set out in Attachment 2 to this Deed.
- D. The ER will perform its obligations on the terms and conditions of this Deed.

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

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

[Redacted]

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

DP & E means the Department of Planning and Environment.

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

[Redacted]

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

[Redacted]

Other Parties means the Principal and the Contractor.

Payment Schedule means Attachment 3 to this Deed.

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

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

1.2 Interpretation

In this Deed:

- (a) headings are for convenience only and do not affect interpretation; and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more parties binds or benefits all of them jointly and each of them severally;
- (c) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to any party includes that party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (e) a reference to any document (including this Deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (g) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (h) references to parties, clauses, schedules, exhibits or annexures are references to parties, clauses, schedules, exhibits and annexures to or of this Deed, and a reference to this Deed includes any schedule, exhibit or annexure to this Deed;
- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation; and
- (k) a reference to "\$" or "dollar" is to Australian currency.

1.3 Governing Law

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

2. Appointment of the ER

2.1 Appointment

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

2.2 Payment

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

3. ER's obligations

3.1 Acknowledgement

The ER acknowledges that:

- (a) it has received a copy of the Project Documents and that it has read, and is familiar with, the terms of each of these documents to the extent they relate to the Services; and
- (b) its obligations extend to and include the obligations, functions, duties and services of the "ER", "Environment Representative" or the "Environmental Representative" under the Planning Approval.

3.2 Further acknowledgements and warranties

The ER:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the skill and expertise of the ER in the performance of its obligations under this Deed; and
 - (ii) may suffer loss if the ER does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care,

knowledge, experience, skill and care which would be reasonably expected of an expert professional providing services similar to the Services within the construction industry generally and the construction of major engineering works in particular;

- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate, approval, report, direction or instruction signed or given by the ER under or pursuant to the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that it will carry out and perform the Services;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's Activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport to and from (but not within) the Construction Site to perform the Services;
- (h) acknowledges it must only travel in transport provided by the Principal within the Construction Site; and
- (i) warrants that it has qualifications in compliance with AS/NZS ISO 19011:2003 Guidelines for Quality and/or Environmental Management Systems Auditing.

3.3 Key Personnel

- (a) The ER must provide experienced and skilled personnel to perform its obligations under this Deed.
- (b) The ER must ensure that the person referred to in clause 3.3(c):
 - (i) performs all of the Services;
 - (ii) is not removed without the prior written consent of the Other Parties (which consent must not be unreasonably withheld or delayed, and will be deemed to have been given in relation to a party if no response has been received from that party within 5 Business Days of the request for removal), and if the person is removed, that person must be replaced by a person of at least equivalent skill and experience and whose appointment is approved by the Secretary of the DP & E; and
 - (iii) is available for consultation as any party may reasonably require from time to time.
- (c) The person required to perform all of the Services is [*Note: Principal to insert name when awarding the contract, in accordance with the successful ER Tenderer's tender*].

3.4 Subcontracting

- (a) Subject to clause 3.3, the ER may not subcontract the performance of any of its Services.
- (b) The ER remains responsible for the performance of the Services in accordance with this Deed, notwithstanding the performance of the Services by any person in accordance with clause 3.3.

3.5 Quality Assurance

- (a) The ER must implement a quality system in accordance with ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The ER must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Services Implementation Plan" which gives a detailed description of how the ER intends to carry out and perform the Services. The ER must:
 - (i) progressively amend, update and develop the Services Implementation Plan throughout the performance of the Services as necessary to reflect the commencement of new stages of the Contractor's Activities and any changes in the manner of performing the Services;
 - (ii) submit each revision of the Services Implementation Plan to the Other Parties for their review and comment; and
 - (iii) include in the Services Implementation Plan details of the proposed timing for the performance of discrete elements of the Services.
- (c) The Principal may:

- (i) review the Services Implementation Plan submitted under clause 3.5(b); and
 - (ii) if the Services Implementation Plan does not comply with this Deed, notify the ER of the non-compliance.
- (d) If the ER receives a notice under clause 3.5(c), the ER must promptly submit an amended Services Implementation Plan to the Other Parties.
- (e) The Other Parties owe no duty to the ER to review the Services Implementation Plan for errors, omissions or compliance with this Deed.
- (f) The ER will not be relieved of any requirement to perform any obligation under this Deed as a result of:
- (i) compliance with the quality assurance requirements of this Deed; or
 - (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Services Implementation Plan or any audit under clause 3.6.

3.6 Audit

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

4. Independence and Confidentiality

4.1 ER to be independent

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

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

4.2 Confidentiality

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

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

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

5. Obligations of the Other Parties

5.1 No Interference or Influence

The Other Parties will not interfere with or attempt to improperly influence the ER in the performance of any of the Services.

5.2 Co-operation by Contractor

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

- (a) co-operate with and provide the ER with all information and documents necessary or reasonably required by the ER, or otherwise requested by the ER or directed by the Principal;
- (b) allow the ER to attend all meetings and procure for the ER access to such premises as may be reasonably necessary to enable the ER to perform the Services or as requested by the ER or directed by the Principal, including allowing access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the ER must comply with the reasonable directions of the Principal Contractor; and
- (c) ensure that appropriate Hold Points and Witness Points are included in the Project Plans as required by the ER to enable the ER to perform the Services.

5.3 Co-operation by the Principal

The Principal must co-operate with and provide the ER with all information and documents necessary and not obtainable by the ER from the Contractor.

5.4 Principal to have no liability

Each party acknowledges that the Principal is not, nor will be taken to have a liability, or to have assumed or become (on enforcement of any of their powers or otherwise), liable:

- (a) to any party to this Deed by reason of the Principal being a party to this Deed;
- (b) for the performance of or failure to perform, any obligation of the Contractor or the ER under this Deed or the Project Documents; or
- (c) for any stop work direction being issued by the ER to either or both the Contractor and the Principal.

5.5 Audit

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

- (a) allow DP & E at any time to conduct an audit of actions undertaken by the ER and any approvals issued by the ER; and
- (b) facilitate and assist DP & E in the conduct of any such audit.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the ER's liability under this Deed, from all claims howsoever arising (including negligence and breach of statutory duty) will be limited in aggregate to \$[REDACTED].

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to any claims arising out of or in connection with any of the following on the part of the ER or anyone for whom it is responsible:

- (a) fraud or criminal conduct;
- (b) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
- (c) gross negligence being any negligent act or omission which the ER knew, or ought reasonably to have been aware, would result in substantial losses being incurred by, or substantial harmful consequences being suffered by, another party to the Deed.

6.3 Insurances

The ER must from the date of the D&C Deed effect and maintain the policies of insurance listed in Attachment 4 to this Deed:

- (a) on the terms;
- (b) for the types;
- (c) for the periods; and
- (d) for the sums

specified in Attachment 4 to this Deed.

6.4 Notice of matter affecting insurance

The ER must notify the Other Parties of any:

- (a) occurrence of an event that may give rise to a claim against any of the insurance policies obtained and maintained under, or as required by, this Deed; and
- (b) notice of any claim or subsequent proceeding or action and developments concerning the claim,

as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such event or circumstance.

6.5 Provision of information

Before the ER starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the ER must supply proof that all insurance policies which the ER is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.

If a notification is made pursuant to clause 6.4 of this Deed, the ER must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

The ER must ensure that any subcontractor engaged by the ER, who is not covered by the professional indemnity policy of insurance effected and maintained by the ER, effects and maintains a professional indemnity policy of insurance on the terms, for the period and for the sum specified in Attachment 4 to this Deed.

6.7 Obligations unaffected by insurance

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

6.8 Indemnity

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

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

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

7. Termination of appointment

7.1 Notice of termination

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

- (a) the ER is in breach of this Deed and the breach is not remediable in the reasonable opinion of the Other Parties;
- (b) the ER is in breach of this Deed and the breach, being remediable in the reasonable opinion of the Other Parties, has not been remedied within 7 days of the service by the Other Parties of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the ER; or
- (d) the Other Parties in their absolute discretion for any reason whatsoever serve on the ER a notice of termination of this Deed, on a date specified in the notice, being not less than 21 days after the date of issue of the notice.

7.2 Prior agreement on replacement

Prior to serving a notice under clause 7.1:

- (a) the Principal and the Contractor must have agreed upon another person to act as a replacement for the ER; and
- (b) the person so agreed upon must have been approved as a replacement of the ER

by the Secretary of DP & E.

7.3 Termination

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

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

7.4 Delivery of documents

Upon the date of termination of the appointment of the ER, the ER:

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

7.5 Reasonable assistance

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

7.6 Payment until date of termination

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

7.7 Termination without payment

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

7.8 Survive termination

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

7.9 Rights upon Termination

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

8. Expenses, Stamp Duty and GST

8.1 Expenses

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

8.2 Stamp Duties

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

8.3 GST

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

9. Miscellaneous

9.1 Further acts

Each party will promptly do and perform all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by any other party to give effect to this Deed.

9.2 Notices

Any notices contemplated by this Deed:

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

Name: **Transport for NSW**
Address: **[Insert]**
For the attention of: **[Insert Head of Relevant Branch]**

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

Name: **[Insert Contractor's name]**
Address: **[Insert Contractor's address]**

Email: [Insert Contractor's Email address]

For the attention of: [Insert contact name]

Name: [Insert ER's name]

Address: [Insert ER's address]

Email: [Insert ER's Email address]

For the attention of: [Insert contact name]

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

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted to the relevant address of the addressee, in accordance with clause 9.2(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of post) on the third Business Day after the date of posting to an address within Australia, and on the fifth Business Day after the date of posting to an address outside Australia; and
 - (ii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 9.2(b), unless that delivery is made on a non Business Day, or after 5.00pm on a Business Day, when that communication will be deemed to be received at 9.00am on the next Business Day.
- (f) Any notice contemplated by this deed to be given to the Principal must be delivered to the Principal address in accordance with clause 9.2(b).
- (g) Subject to clause 9.2(f), the party making the communication may give any notice contemplated by this deed to be given to other parties by email, to the relevant email address in accordance with clause 9.2(b) or to a new email address which one party notifies to the other parties in writing from time to time.
- (h) A notice given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.

9.3 Jurisdiction

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

9.4 Amendments

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

9.5 Assignment

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

9.6 Waiver

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

9.7 Consents

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

9.8 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

9.9 Indemnities

Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.

It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Deed.

9.10 Entire agreement

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

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

9.11 No representation or reliance

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

9.12 Relationship of the parties

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

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

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

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

9.14 Severance

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

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

9.15 Moratorium Legislation

To the fullest extent permitted by Law, the provisions of all Laws which at any time operate directly or indirectly to lessen or affect in favour of a party any obligation under this Deed,

or to delay or otherwise prevent or prejudicially affect the exercise by a party of any right, power or remedy under this Deed or otherwise, are expressly waived.

9.16 Civil Liability Act

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

Attachment 1 - Project Documents

	Contract Name and Parties	Contract Date
1	D&C Deed and Schedules	<i>[Insert]</i>
2	Exhibits to the D&C Deed and Appendices	<i>[Insert]</i>

Attachment 2 - ER Services

The ER must:

- (a) discharge the role, functions, obligations, duties and services which the D&C Deed (including the SWTC) requires to, or contemplates will, be discharged by the ER, including those identified in the Planning Approval;
- (b) become familiar with the role, functions, obligations, duties and services (express or implied) under the D&C Deed of the "ER", "Environment Representative" and the "Environmental Representative" and review information made available to the ER by the Other Parties in order to become fully acquainted with the Project;
- (c) attend meetings and report as required from time to time by the Other Parties;
- (d) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties;
- (e) submit in sufficient time to the Other Parties for review and comment, a copy of any proposed submission, certificate, approval or report to be issued by the ER (and each proposed direction or instruction, to the extent there is sufficient time for this to be done) before such document is issued by the ER;
- (f) provide any written submissions, approvals and certification required by the Planning Approval from the ER and ensure that copies of any such approvals and certification are provided at the same time to the Other Parties;
- (g) undertake the obligations detailed under Condition A29 of the Planning Approval;
- (h) audit and monitor the Contractor's environmental activities at a minimum of quarterly intervals, to evaluate the implementation, effectiveness and level of compliance of on-site construction activities with the CEMP, including carrying out site inspections of the Project Works, Temporary Works and the Contractor's Activities. The ER must provide quarterly reports to the Other Parties on the outcomes of the audits and monitoring;
- (i) review corrective and preventive actions to ensure the effective implementation of mitigation measures to avoid or minimise the adverse impacts on the environment and/or to identify changes to the CEMP resulting from the audits and monitoring;
- (j) record and provide a written report, at least monthly, to the Other Parties identifying non-conformities with the CEMP that require the Contractor to undertake mitigation measures to avoid or minimise any adverse impacts on the environment and/or report on changes required to the CEMP;
- (k) provide monthly reports to the Other Parties on matters relevant to carrying out the ER's role, including details on any approvals or rejections by the ER of minor amendments to the CEMP made by the Contractor, any steps that the ER has required to be taken by the Contractor to avoid or minimise unintended or adverse environmental impacts and any directions given by the ER to the Contractor to cease actions in the event that an adverse impact to the environment was likely to occur;
- (l) immediately, and at the same time, provide advice to the Other Parties of any major issues resulting from the construction of the Project Works or the Temporary Works that were not dealt with expediently or adequately by the Contractor;
- (m) pursuant to section 1.4(j) of the SWTC, receive and, where relevant, review, consider, comment upon, and take any action otherwise required in relation to, submissions required by TfNSW D&C specifications;
- (n) pursuant to sections 2.5.3 and 2.19.5 of the SWTC, perform the role of chairperson of the Environmental Review Group (ERG) established by the Contractor in accordance with that section, including by ensuring that:
 - (i) meetings of the ERG are held at appropriate intervals that will enable the ERG to satisfy the purposes contemplated for it in the SWTC; and
 - (ii) administrative matters in relation to the ERG are attended to appropriately, including timely preparation and circulation of agendas, minutes, invitations to attend, reports to be considered by the ERG and reports from the ERG to the Contractor and the Principal;
- (o) pursuant to section 2.10 of the SWTC, receive, review, consider, comment upon, and where appropriate, make recommendations in relation to, or require amendment of, Project Plans (including updated Project Plans) prepared by the Contractor;
- (p) pursuant to sections 2.11 and 7.21 of the SWTC, receive, review, consider, and where appropriate, comment upon, make recommendations or take any action otherwise appropriate

in relation to, the reports, submissions, Approvals, Contract Program, Subsidiary Contract Programs, durability assessment reports, Design Documentation, as constructed documentation, construction completion report, pavement report and other information required to be issued or submitted to the ER under those sections;

- (q) pursuant to section 2.16 of the SWTC, use the cloud-based sharing and storage data system for exchanging, searching and sharing the Contractor's information and data;
- (r) pursuant to section 3.1.1 of the SWTC, where relevant, access, review and consider the Contractor's quality system records required to perform the Services;
- (s) witness any inspections and tests preceding the release of any Hold Points, and where required accept nomination as the Nominated Authority to release specified Hold Points;
- (t) pursuant to section 3.1.5 and 3.1.6 of the SWTC, advise the Contractor of apparent non-conformities that come to the attention of the ER and receive reports, NCRs and CARs in relation to non-conformities;
- (u) where required, attend Issues Group meetings; and
- (v) where required, attend information sessions and respond to questions.

Attachment 3 - Payment Schedule

1. Payment claim

At the end of each month after the date of the D&C Deed, the ER must submit to the Principal a claim for payment on account of the Fee:

- (a) setting out the value of the Services performed in accordance with this Deed during the relevant month;
- (b) calculated in accordance with this Payment Schedule; and
- (c) in such form and with such details and supporting documentation as the Principal may reasonably require.

(Payment Claim).

The ER must, at the time of submission of its Payment Claim to the Principal's Representative, provide a copy of the Payment Claim to the Principal.

2. Payment

Subject to clause 8 of this Payment Schedule, the Principal must within 20 Business Days after receipt of the Payment Claim for the month, pay the ER that portion of the Fee attributable to the Services performed during the month.

3. Notification of disputed amounts

The Principal must pay the ER any amount included in the Payment Claim which it does not dispute.

4. The Fee

[REDACTED]

5. Not used

6. Schedule of Rates

[REDACTED]

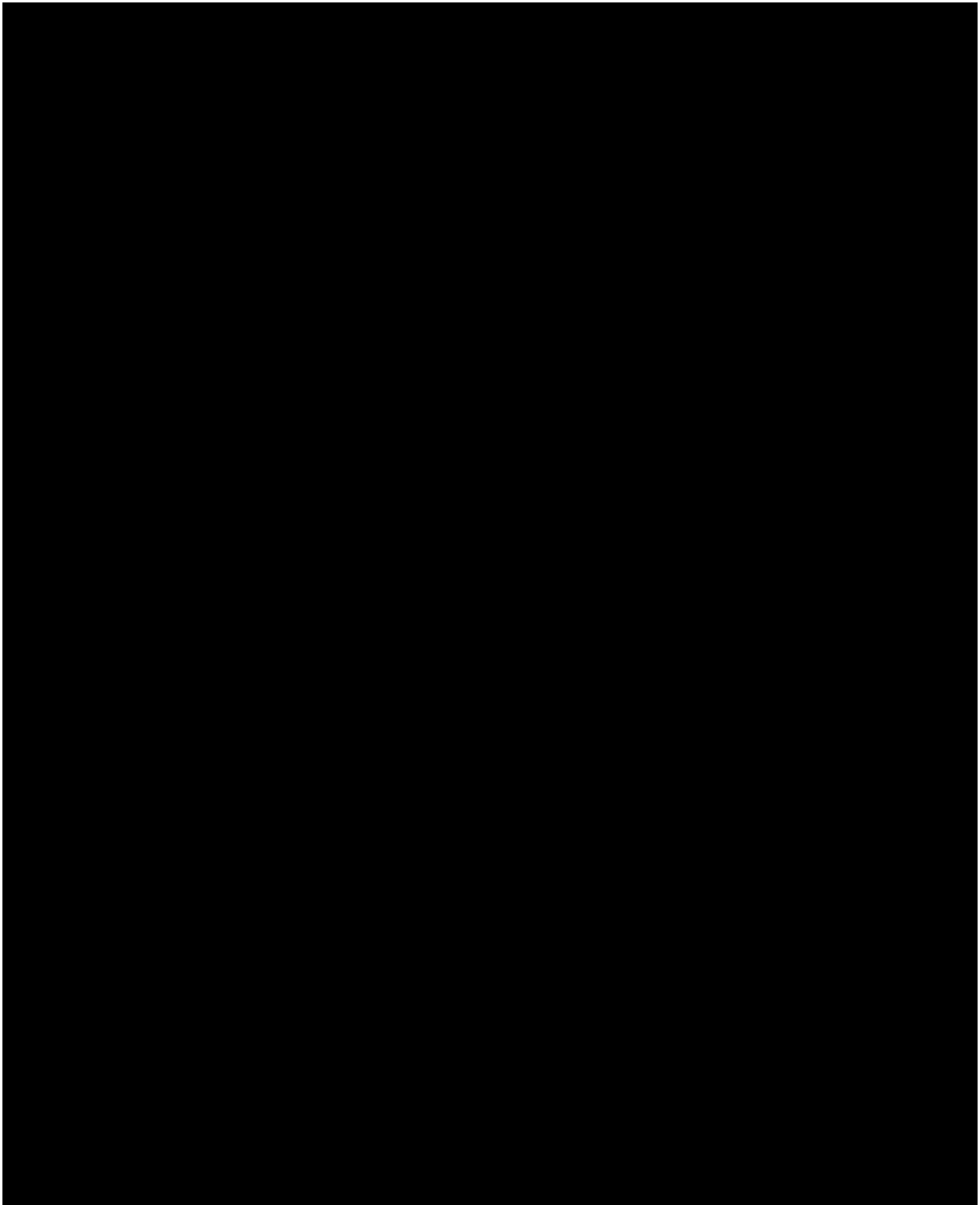
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

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

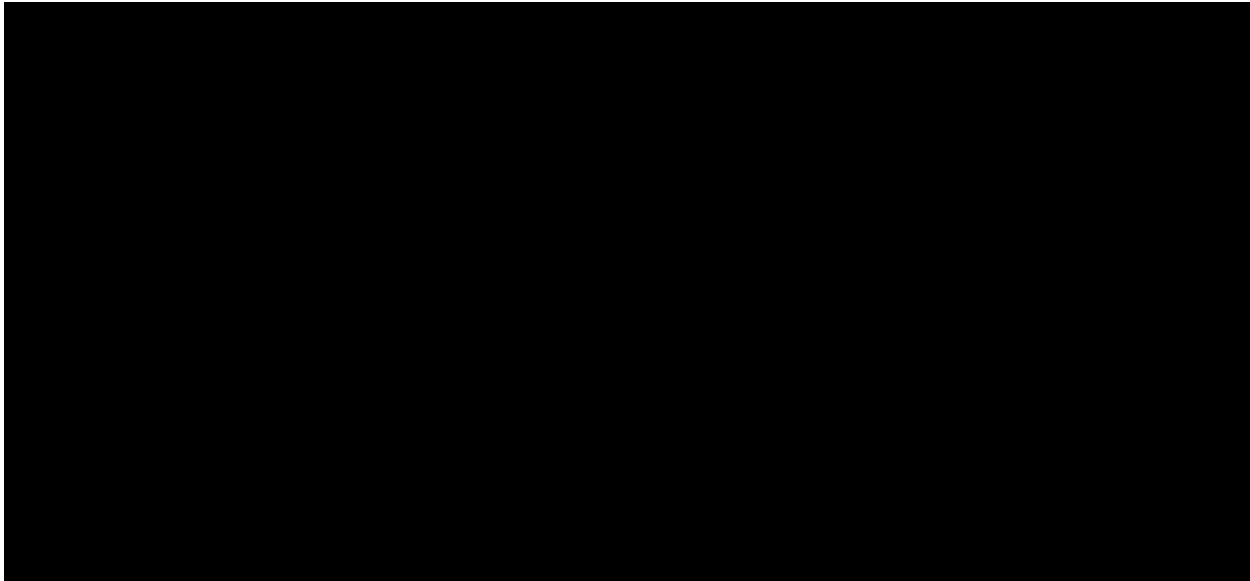
[REDACTED]

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





7. Disbursements



8. Not used

9. GST

All rates and amounts in this Payment Schedule exclude GST.

Attachment 4 – Insurance Schedule

(clause 6.3)

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
Broad form Public Liability and Product Liability	Public Liability: \$ [REDACTED] Each and every occurrence Product Liability: \$ [REDACTED] Each and every occurrence & in the aggregate for all occurrences	Annually, from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).	(a) Is with an Approved Insurer; (b) Is governed by the law of New South Wales and subject to Australian jurisdictions as defined in clause 2 of the Definitions and Notes below.	If no products are being supplied then only Public Liability cover is required.
Motor Vehicle Comprehensive or Third Party Property Damage	\$ [REDACTED] For any single occurrence	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).	(a) Is with an Approved Insurer; (b) Covers motor vehicles owned or used by the ER or its subcontractors directly or indirectly engaged in performance of the Services; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;	Only required if the ER will use a motor vehicle in the course of providing the Services or if the ER will use or park their motor vehicles on premises owned or occupied by the Principal.
Professional Indemnity	\$ [REDACTED] Each and every occurrence and in the aggregate for all occurrences	From the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier) plus 6 years following the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier). The Insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the D&C Deed.	(a) Is with an Approved Insurer; (b) One automatic restatement per period of insurance; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	
Workers Compensation	As per the relevant Workers Compensation legislation.	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of ER, whichever is earlier).	(a) Is with an Approved Insurer; and (b) Is as per relevant Workers Compensation legislation.	

Definitions and Notes:

1. In this Attachment 4 (Insurance Schedule), "Approved Insurer" means:
 - (a) an Australian registered insurance company which is approved by the Australian Prudential Regulatory Authority (APRA) to conduct general insurance business in Australia; or
 - (b) Lloyds Underwriters; or
 - (c) a Treasury Managed Fund insurance scheme with the NSW State Government; or
 - (d) Self Insurance Corporation of NSW through Insurance and Care NSW (icare); or
 - (e) the Comcover insurance scheme for the Australian Federal Government.

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

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

Executed as a deed.

Executed by [*Insert Contractor's name*]
(ABN [*Insert Contractor's ABN*]) by or in the
presence of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed Sealed and Delivered by
as an authorised delegate of **Transport
for NSW**
(ABN 18 804 239 602) in the presence of:

Signature

Name

Signature of Witness

Name of Witness in full

Executed by [*Insert ER's name*]
(ABN [*Insert ER's ABN*]) by or in the presence
of:

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Dispute Resolution Procedure

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

1. NOTICE OF DISPUTE

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

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

2. MANAGEMENT REVIEW GROUP

- (a) If a Notice of Dispute is served, the Management Review Group must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the **Negotiation**).
- (b) Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.
- (c) Any agreement reached at the Negotiation must be in writing and signed by both parties.

2A. REFERRAL TO DISPUTE AVOIDANCE BOARD OR EXPERT DETERMINATION

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

3. DISPUTE AVOIDANCE BOARD

3.1 Reference to Dispute Avoidance Board

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

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

3.2 Obtaining Dispute Avoidance Board's Decision

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

- (h) The determination of the Dispute Avoidance Board pursuant to clause 3.2(g) will be binding on both parties, who must give effect to it unless and until it is revised in a settlement, an arbitral award made in an arbitration following a referral to arbitration or determined by litigation pursuant to court proceedings.
- (i) If:
 - (i) a party refers a Dispute to the Dispute Avoidance Board under this clause 3 involving a claim for an amount in excess of the amount stated in Item 39 of Schedule 1 (Contract Information); or
 - (ii) the Dispute Avoidance Board's determination in respect of the Dispute requires one party to pay to the other party an amount in excess of the amount stated in Item 39 of Schedule 1 (Contract Information) and either party is dissatisfied with the Dispute Avoidance Board's determination;

then either party may within 10 Business Days after receiving the determination give notice to the other party of its dissatisfaction (**Notice of Dissatisfaction**) in accordance with clause 3B.
- (j) If the Dispute Avoidance Board fails to give its determination within the period of 60 Business Days (or as otherwise approved) after receiving a Notice of Referral to DAB (**Determination Period**), then the Dispute will be automatically referred to litigation or arbitration in accordance with clause 4.

3A. Expert determination

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

3B. Notice of Dissatisfaction

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

3A(d) and within the time required by those clauses, then the determination will become final and binding upon both parties.

- (d) Once a determination of the Dispute Avoidance Board or Expert has become final and binding under clause 3B(c), neither party will be entitled to challenge the determination on any basis.

4. LITIGATION OR ARBITRATION

If a Notice of Dissatisfaction has been given in accordance with clause 3.2(i) or 3A(d) or the Dispute Avoidance Board has failed to give its determination in accordance with clause 3.2(j), the Principal may, in its absolute discretion, within 10 Business Days issue a notice to the Contractor stating that the Dispute is to be determined by litigation pursuant to court proceedings. If the Principal does not issue such a notice within that 10 Business Day period, the Dispute will be referred to arbitration.

5. ARBITRATION

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

6. EXCLUSION OF PROPORTIONATE LIABILITY FROM DETERMINATION OR AWARD

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

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

7. URGENT RELIEF

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

8. LIMITATION PERIODS

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

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

9. SEVERANCE

If at any time any provision of this Schedule 38 (Dispute Resolution Procedure) is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

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

10. CONTINUATION OF CONTRACTUAL OBLIGATIONS

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

11. DISPUTES UNDER THIRD PARTY AGREEMENTS

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

- (iii) any rights the Contractor has against the Principal will not exceed the equivalent relief, benefit or payment to which the Principal is entitled under the relevant Third Party Agreement; and
- (iv) the Principal will pass through to the Contractor the proportion of the damages or other form or relief to which the Principal is entitled:
 - A. to the extent that this is referable to the Contractor, including any liability, Claim or loss of the Contractor; and
 - B. determined by reference to what is actually compensated or allowed by a Third Party under the respective Third Party Agreement.
- (e) The Principal agrees to:
 - (i) request of the relevant Third Party that the Contractor be permitted to directly make representations in respect of the Common Dispute;
 - (ii) if it is unable to obtain the Third Party's consent as contemplated under clause 11(e)(i), make on behalf of the Contractor whatever representations in respect of the Common Dispute that the Contractor reasonably requests; and
 - (iii) provide:
 - A. regular updates to the Contractor; and
 - B. whatever information and documents the Contractor reasonably requests, as to the progress of the Common Dispute.
- (f) The Principal's liability to pay the Contractor:
 - (i) is satisfied by payment to the Contractor in accordance with this clause 11 or
 - (ii) if the Third Party is not liable to the Principal, is deemed to be satisfied on the determination of that matter (whether by dispute resolution under the respective Third Party Agreement or otherwise), provided that:
 - A. the Principal has complied with its obligations under this clause 11 with respect to recovery of the Principal and the Contractor's entitlements from the Third Party; and
 - B. all appeals from such determination have been exhausted.
- (g) The Contractor agrees:
 - (i) to provide all documents, assistance, and cooperation reasonably requested by the Principal (and in the time requested by the Principal) in connection with the Common Dispute;
 - (ii) that where a Third Party Agreement contemplates:
 - A. alternative dispute resolution (including arbitration and expert determination):
 - 1) a like process will apply to the Common Dispute between the parties; and
 - 2) the Contractor consents to the Common Dispute being heard together with (or consolidated with) that alternative dispute resolution process; and
 - B. litigation, the Contractor consents to the Common Dispute being consolidated with (or heard together with) that litigation; and
 - (iii) to be bound by the outcome of the Common Dispute resolution process to the extent it affects the Contractor's rights and obligations under this deed.
- (h) The Contractor's entitlement to a remedy will not be reduced to the extent to which the Principal's entitlements under a Third Party Agreement are reduced or extinguished due to the Principal's breach or failure to comply with the Third Party Agreement or other wrongful, negligent or unlawful act or omission (to the extent not caused by the Contractor).

- (i) To the extent the Contractor has recovered compensation in respect of a Common Dispute under another provision of this deed, then the Contractor is not entitled to the same compensation under this clause 11.
- (j) Any payment to which the Contractor is entitled under this clause 11 shall be paid by the Principal to the Contractor within 20 Business Days from the date of the settlement or determination of such entitlement under or in connection with the Third Party Agreement.

APPENDIX A

Modification of the Resolution Institute Expert Determination Rules

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

1. RULE 1 Definitions

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

"Relevant Proportionate Liability Legislation" means:

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

"Relevant Security of Payment Legislation" means:

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

2. RULE 5 Role of the Expert

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

1. The Expert shall determine the Dispute as an expert in accordance with these

Rules, *the Contract, the requirements of procedural fairness*, and according to the law.

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

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

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

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

3. RULE 9 Conduct of the Process

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

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

4. RULE 10 The Expert's Determination

Replace sub-Rule 3. With the following:

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

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

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

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

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

5. RULE 12 Waiver of Right to Object

Delete Rule 12 in its entirety.

6. RULE 14 Extension of Limitation Period

Delete Rule 14 in its entirety.

APPENDIX B

Modification of the ACICA Arbitration Rules

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

1. RULE 36 WAIVER OF RULES

Delete Rule 36 in its entirety.

Schedule 39 - Dispute Avoidance Board Agreement

Dispute Avoidance Board Agreement

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

This Agreement made at Sydney on the _____ day of _____ 20____
between the following parties:

Parties [Insert Contractor's name] (ABN [Insert Contractor's ABN]) ("Contractor")

of: [Insert Contractor's address and email address]

and

Transport for NSW (ABN 18 804 239 602) ("Principal")

of: 20-44 Ennis Road Milsons Point NSW 2061 (for delivery of notices by hand)

or: Locked Bag 928, North Sydney NSW 2059 (for delivery by post)

a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW)

Attention: [insert] Email: [Insert Principal's Representative's email address]

and

Member of the Dispute Avoidance Board, namely:

[DAB Member Name] of [DAB Member Company's Name, ABN and address], [DAB Member email address]

(the "Member" or "Dispute Avoidance Board")

Recitals

- A. On or about the date of this Agreement, the Contractor entered into the D&C Deed with the Principal in respect of the M1 Pacific Motorway Extension to Raymond Terrace – Heatherbrae Bypass.
- B. The D&C Deed provides for a dispute avoidance process through the establishment and the operation of a dispute avoidance board to assist the parties in preventing disputes from arising under the D&C Deed.
- C. The Member represents that it is experienced generally in construction and project management and, in particular, in the construction and project management of, and the management of issues and avoidance of disputes in relation to, works similar to the Project Works and offer their expertise in those fields.
- D. The D&C Deed contemplates that the Member will discharge those functions contemplated by this Agreement and the Attachments to this Agreement.
- E. This Agreement sets out the rights, obligations and duties of the Member, the Principal and the Contractor in relation to the Dispute Avoidance Board.

This Agreement provides:

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

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

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

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

Other Parties means the Principal and the Contractor.

1.2 Terms defined in the D&C Deed

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

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;

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

2. D&C Deed to prevail

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

3. Formation of the Dispute Avoidance Board

3.1 Appointment of Member

- (a) Each of the Other Parties appoints the Member to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the D&C Deed and this Agreement.
- (b) The Member confirms its acceptance of the appointment referred to in clause 3.1(a).

3.2 Formation

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Member; and
- (c) must perform its obligations and functions under the D&C Deed and this Agreement.

3.3 Role and function

The parties acknowledge and agree that the role of the Dispute Avoidance Board is to:

- (a) provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed in a timely manner (**General Avoidance Function**);
- (b) if a Notice of Referral to DAB is received by the Dispute Avoidance Board, determine the Dispute between the parties in accordance with Attachment 2 to this Agreement (**Adjudication Function**); and
- (c) function as an objective, impartial and independent body at all times.

4. Establishment of procedures

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters in accordance with the procedures included in Attachment 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with the general operating procedures in Attachment 1 to this Agreement.

5. Dispute Avoidance Board Member's obligations

5.1 Dispute Prevention

The Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in preventing Disputes from arising under the D&C

Deed.

5.2 Impartiality

The Member agrees to consider fairly and impartially any matters referred to the Dispute Avoidance Board.

5.3 Independence

The Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to any matter) and in accordance with clause 5 of this Agreement.

5.4 General duties

The Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with the D&C Deed and this Agreement;
- (c) in compliance with all applicable Laws; and
- (d) in compliance with all timeframes set out in the Attachments, and any timetabling direction made by the Dispute Avoidance Board in respect of those Attachments.

6. Costs and fees

- (a) The Other Parties are jointly and severally liable for the payment of the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3.
- (b) The Other Parties agree as between themselves that:
 - (i) where a party refers a Dispute to be determined by the Dispute Avoidance Board that party will, unless otherwise determined by the Dispute Avoidance Board, pay the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3;
 - (ii) in relation to other functions and processes of the Dispute Avoidance Board, they will each pay one half of the Member's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3; and
 - (iii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any process of the Dispute Avoidance Board.
- (c) The Member agrees that it will submit separate tax invoices to each of the Principal and the Contractor at one monthly intervals (unless a different frequency is agreed by the Other Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Attachment 3, then either of the Other Parties may request clarification from the Member.
- (d) The Member agrees that it will issue separate tax invoices to each of the Principal and the Contractor for the amounts determined in accordance with clause 6(b) above.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 20 Business Days of receipt.
- (f) The Member is not entitled to engage any third party consultants or advisers in the performance of its obligations under this Agreement unless the Other Parties agree in

writing for it to do so, and on the terms on which it may do so.

7. Principal commitment and responsibilities

The Principal acknowledges and agrees that it must:

- (a) act in good faith towards the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board on matters dealing with the prevention and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

8. Contractor's commitments and responsibilities

The Contractor acknowledges and agrees that it must:

- (a) act in good faith towards the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

9. Confidentiality

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time the Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than complying with its obligations under this Agreement; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. Conflict of interest

- (a) If the Member, during the term of appointment as the Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and the Contractor.
- (b) The Other Parties will within five Business Days of notification under clause 10(a) confer and inform the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the Other Parties believe that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

11. Liability

Except in the case of fraud:

- (a) the Member shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board; and
- (b) the Other Parties jointly and severally hereby release the Member against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "**claims**") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:

- (i) under or in any connection with this Agreement;
- (ii) in tort for negligence, negligent advice or otherwise; or
- (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Project or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

12. Indemnity

The Principal and the Contractor hereby jointly and severally indemnify and keep indemnified the Member against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise) against the Other Parties, or any of them arising out of anything done or omitted to be done by the Dispute Avoidance Board in the proper performance of its duties under this Agreement and the D&C Deed.

13. Termination of Agreement

- (a) This Agreement may be terminated by written agreement of the Principal and the Contractor or may terminate otherwise in accordance with clause 20.3 of the D&C Deed
- (b) Where:
 - (i) the Member resigns under clause 10(b) or 14.1; or
 - (ii) the appointment of the Member is terminated by the Principal and the Contractor under clause 14.2,

then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

14. Member's termination

14.1 Resignation

The Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to, the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

14.2 Termination

- (a) The Member may be terminated at any time by written agreement of the Principal and the Contractor.
- (b) Either one of the Other Parties may terminate the Member by written notice to the Member and the other Other Party if the Member is in material breach of this Agreement.
- (c) For the purposes of clause 14.2(b), a material breach includes:
 - (i) an egregious failure by the Member to comply with any obligation (including in accordance with the timeframe required under the D&C Deed or this Agreement);
 - (ii) a repeated failure by the Member to perform its obligations in accordance with the D&C Deed and this Agreement (including a failure to adhere to required timeframes for performance of any obligation more than three times in any continuous period of up to three months or three consecutive breaches of the same obligation in any period); and
 - (iii) if the Member abandons its obligations under this Agreement.

14.3 Replacement

The parties acknowledge and agree that if:

- (a) the Member resigns under clause 10(b) or 14.1 or is unable to act as a result of death or

disability; or

- (b) the appointment of the Member is terminated under clause 14.2,

then:

- (c) the replacement Member may be appointed in accordance with clause 20.2 of the D&C Deed; and
- (d) the Principal, the Contractor and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of the Dispute Resolution Procedure.

15. Governing law

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Agreement, and waives any right it might have to claim that those courts are an inconvenient forum.

16. Relationship of the parties

Nothing in this Agreement will be construed or interpreted as constituting the relationship between the Principal, the Contractor and the Member as that of partners, joint venturers or any other fiduciary relationship.

17. Notices

- (a) Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or email address as set out in the parties' details on page 1 of this Agreement (or to any new address or email address that a party notifies to the others).
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice given by email is taken to have been received at the local time (in the place of receipt of that email) that would be determined if section 13A of the *Electronic Transactions Act 2000* (NSW) were to apply.
- (d) Any notice contemplated by this Agreement to be given to the Principal must be delivered to the Principal's address or sent by email in accordance with the Principal's details on page 1 of this Agreement.

18. Giving effect to this Agreement

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that another party may reasonably require to give full effect to this Agreement.

19. Survival of terms

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

20. Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

21. Operation of this Agreement

- (a) Except as otherwise expressly specified in this Agreement, this Agreement contains the entire agreement between the parties about its subject matter, and any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.
- (b) Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

22. Goods and Services Tax

22.1 Interpretation

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

22.2 Consideration is GST exclusive

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

22.3 Gross up of consideration

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and
- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

22.4 Reimbursements (net down)

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

22.5 Tax invoices

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

22.6 Adjustment event

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in

relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 22.6 will be made within ten Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

23. Amendment

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

24. Counterparts

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

25. Attorneys

Each person who executes this Agreement on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

EXECUTED as an agreement

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

Signature of Witness

Signature of authorised signatory

Name of Witness in full

Name of authorised signatory in full

EXECUTED BY [*insert Contractor's name*]
(ABN [*insert Contractor's ABN*]) in
accordance with s.127 of the *Corporations Act 2001* (Cth)

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

SIGNED BY THE MEMBER in the presence
of:

Signature of Witness

Signature of Member

Name of Witness (Please Print)

Name of Member in full (Please Print)

ATTACHMENT 1

Dispute Avoidance Board General Operating Procedures

1. General

- 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in attempting to avoid or prevent Disputes under the D&C Deed in a timely manner.
- 1.2 The Principal will furnish the following to the Dispute Avoidance Board Member:
 - (i) the Independent Certifier reports;
 - (ii) the Client Control Group reports;
 - (iii) the Project Site Meeting minutes; and
 - (iv) for the first two meetings of the Management Review Group and Dispute Avoidance Board (which may be convened together) and every 3 months thereafter, materials in connection with a joint presentation with the Contractor.
- 1.3 No documents, other than those in clause 1.2 above, are required to be submitted to the Dispute Avoidance Board unless it is performing its dispute functions in accordance with Attachment 2 (Rules for Dispute Avoidance Board decisions).
- 1.4 The Dispute Avoidance Board Member is not the representative of the party which appointed that representative. The Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.5 The Member shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to its attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.6 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under clause 20 of the D&C Deed.

2. Frequency of Regular Meetings and Construction Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.
- 2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Other Parties will schedule the meetings and visits as they see fit.
- 2.3 The frequency of meetings of the Dispute Avoidance Board should generally be:
 - (i) two monthly until all Design Documentation has reached the stage of Issue for Construction Design; and
 - (ii) thereafter, three monthly during construction,

and, subject to this clause 2.3, coincide with the same day as meetings of the Management Review Group under the D&C Deed, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. With the exception of:
 - (iii) the first two meetings of the Management Review Group, which may be convened together with the first two meetings of the Dispute Avoidance Board; and
 - (iv) instances where a party has invited the Dispute Avoidance Board to attend a meeting of the Management Review Group, in which case the relevant meeting

of the Management Review Group may be convened together with the meeting of the Dispute Avoidance Board,

meetings of the Dispute Avoidance Board must be convened separately to meetings of the Management Review Group.

- 2.4 The Dispute Avoidance Board will not meet more frequently than set out in clause 2.3 unless:
- (i) agreed between the Other Parties; or
 - (ii) if not agreed between the Other Parties, the requesting party agrees to pay the costs incurred by the Dispute Avoidance Board as a result of the additional meetings.
- 2.5 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.

3. Agenda for Regular Meetings

- 3.1 Unless otherwise agreed by the Other Parties in respect of a meeting, the agenda for each regular meeting will be:
- (i) a joint presentation by representatives of the Principal and Contractor providing a Project update;
 - (ii) review of the register of potential and actual Disputes, including an explanation of new Disputes;
 - (iii) site visit and inspection of the Works (generally and also including any Works that are the subject of a Dispute); and
 - (iv) discussion of the process underway to avoid or resolve potential or actual Disputes, including the identification of any Disputes that may become or are the subject of a Notice of Referral.
- 3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Member on performance and progress of the work under the D&C Deed and issues or potential issues arising between the Other Parties shall be held on an in-confidence and "without prejudice" basis to encourage full and frank disclosure and discussions.
- 3.3 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will, subject to clause 3.1, generally inspect the Project Works, the Temporary Works and the Construction Site in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works or the Construction Site that are or may be the subject of any potential issue or potential Dispute will be pointed out by the Other Parties.

4. Minutes of Meetings

- 4.1 The Management Review Group, under clause 5(d) of Schedule 40 of the D&C Deed, will agree and document procedures relating to meetings of the Management Review Group, and any minutes of Management Review Group meetings will be circulated to the Dispute Avoidance Board Member for information only.
- 4.2 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings shall be marked "in-confidence, without prejudice". The minutes of Dispute Avoidance Board meetings will be prepared by the Member and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.3 Minutes as may be amended will be adopted by the Dispute Avoidance Board Member at the next meeting.

5. Communications

- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by the D&C Deed and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board on matters dealing with the conduct of the work or resolution of problems.
- 5.2 There must be no communication between Dispute Avoidance Board Member and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Member informing the Other Parties.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the Member and to the other party. All communications by the Member to the Other Parties should be addressed to the Principal's Representative and the Contractor's Representative.
- 5.4 Except as required under this Agreement or under the D&C Deed, communication by email is an acceptable alternative to physical delivery.

6. Representation

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

7. Other Attendees

- 7.1 Where requested by the Other Parties, and approved by the Member, or where requested by the Member, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or Independent Certifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.
- 7.2 At the Principal's request, third parties nominated by the Principal may also attend any meetings with the Dispute Avoidance Board.

ATTACHMENT 2

Rules for Dispute Avoidance Board decisions

1. Written submissions

- (a) Unless another period is proposed by the Dispute Avoidance Board and approved by both parties:
 - (i) the referring party must deliver its submissions within 20 Business Days of the Notice of Referral; and
 - (ii) the other party must deliver its submissions within 40 Business Days of the Notice of Referral.
- (b) After the receipt of submissions from both parties, the Dispute Avoidance Board will facilitate discussions between the parties and may direct the parties to provide further submissions, information or documents as the Dispute Avoidance Board may require.
- (c) The Dispute Avoidance Board must disclose to both parties all submissions, further submissions, information and documents received.
- (d) Any failure by a party to make a written submission, will not terminate or discontinue the decision making process.

2. Conference

- (a) Either party may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- (b) If neither party requests the Dispute Avoidance Board to call a conference, the Member may nevertheless call a conference if they think it appropriate.
- (c) Unless the parties agree otherwise, the conference will be held at the Site.
- (d) At least 2 Business Days before the conference, the Dispute Avoidance Board must inform the parties in writing of the date, venue and agenda for the conference.
- (e) The parties must appear at the conference and may make submissions on the subject matter of the conference. If a party fails to appear at a conference of which that party had been notified under clause 2(d), the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.
- (f) The parties:
 - (i) may be accompanied at a conference by legal or other advisers; and
 - (ii) will be bound by any procedural directions as may be given by the Dispute Avoidance Board in relation to the conference both before and during the course of the conference.
- (g) The conference must be held in private.
- (h) If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the parties.

3. The decision

- (a) Within 60 Business Days after receiving a Notice of Referral to DAB or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must:
 - (i) determine the dispute between the parties; and
 - (ii) notify the parties of that decision together with its reasons.

- (b) The decision of the Dispute Avoidance Board must:
 - (i) be in writing stating the Dispute Avoidance Board's decision and giving reasons;
 - (ii) be made on the basis of the submissions (if any) of the parties, the conference (if any), and the Dispute Avoidance Board's own expertise;
 - (iii) state that the decision is given under clause 3.2 of Schedule 38 of the D&C Deed;
and
 - (iv) meet the requirements of the D&C Deed.
- (c) If the Dispute Avoidance Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the decision.

4. Modification

- (a) These rules may be modified only by agreement of the Principal and the Contractor.

ATTACHMENT 3

Schedule of Fees and Disbursements

[Drafting note: The Schedule of Fees and Disbursements to be updated prior to signing.]

The Fees are to be:

- (a) *the fixed component of the fees as a monthly retainer (which must include activities allowed for in the fixed component as set out for Item 1 in the following table); and*
- (b) *a fixed daily fee for attendance at Dispute Avoidance Board meetings (as set out for Item 2 in the following table),*

which will be:

- (c) *based on an hourly rate for all other services as set out for Item 3 in the following table, or*
- (d) *on such other basis for payment as may be agreed.*

The Fees in (a) and (b) and the rates in (c) are to include all disbursements and expenses, excluding travel and accommodation outside of Sydney, which are to be paid at cost, as set out for Item 5 in the following table.]

[Drafting note: TfNSW will insert details in the table below prior to signing.]

No.	Work Description/Scope	Fee Arrangement DAB Member [insert Name] (excl GST)
1.	Monthly retainer (including initial review of contract documentation, routine review of Project minutes and reports, preparation for DAB meetings)	
2.	Daily fee for routine DAB meetings (nominal frequency of 2/3 monthly intervals, including travel time). This fee is in addition to the Monthly retainer	
3.	Hourly fee (For activities not covered by the Monthly retainer and Daily fee)	
4.	Escalation provision (Annual adjustment from the anniversary of date of DAB Agreement)	[]%
5.	Expenses (Reimbursed at cost, supported by receipts. Mode or standard of travel may be agreed separately.)	At cost

ATTACHMENT 4

Criteria for Member of Dispute Avoidance Board

1. Criteria

The Dispute Avoidance Board Member must meet the following criteria:

(a) Experience

The Dispute Avoidance Board Member must be experienced in:

- (i) the type of construction required for the Contractor's Activities, interpretation of project documents and avoidance of construction issues or disputes; and
- (ii) Dispute Avoidance Boards or Dispute Resolution Boards.

(b) Neutrality

- (i) The Member must be neutral, act impartially and be free of any conflict of interest.
- (ii) For the purposes of this clause 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the D&C Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.

(c) Prohibitions and disqualifying relationships for prospective Member

The Member must not have:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;
- (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the D&C Deed, except for fee-based consulting services on other projects;
- (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the reasonable opinion of either party, could suggest partiality; or
- (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities.

(d) Prohibitions and disqualifying relationships for Member

The following matters may be construed as a conflict of interest in respect of a Member:

- (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board; or
- (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

2. Disclosure Statement

A disclosure statement for any prospective Member must be submitted to the Principal and the Contractor. Any such disclosure statement must include:

- (a) a resume of relevant experience;

- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the project; and
- (d) disclosure of any other matter relevant to the criteria identified in clause 1(c) above.

Schedule 40 - Workshops and Meetings

Workshops and Meetings

(clauses 3.1 (a) and 23.2 (definitions of "Environmental Review Group", "Evaluation Meetings", "Management Review Group", "Project Control Group" and "Project Design Group"))

1. Workshops and meetings

- (a) Within 20 Business Days after the date of this deed, Principal may convene a preliminary start-up workshop.
- (b) Within 20 Business Days before the date indicated in the Contract Program as the date for commencement by the Contractor of the Project Works at the Construction Site), the Principal may convene a construction start-up workshop.
- (c) The workshops are intended to promote positive building of relationships and a culture of co-operation between the participants, through discussion and sharing of ideas but neither participation in the workshops nor anything concerning or arising out of or in connection with the workshops changes any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.
- (d) The workshops will be attended by:
 - (i) the Contractor's most senior manager or director with direct responsibility for civil works in New South Wales;
 - (ii) a senior manager or director of the Principal with direct responsibility for the Works;
 - (iii) the Project Director (or his or her delegate);
 - (iv) the Principal's Representative (or his or her delegate);
 - (v) the Design Manager (or his or her delegate); and
 - (vi) the Independent Certifier (or his or her delegate),and may be attended by any other person (including personnel of the Contractor, the Principal, a Subcontractor and representatives of Authorities, end users and the local community) invited by the Principal's Representative.
- (e) Appendix A to this Schedule 40 (Workshops and Meetings) contains a guide for participants in the workshops, which may be used as the basis for an agenda.
- (f) The Principal and the Contractor and any others who attend the workshops must meet their own costs of attendance at the workshops. Third party facilitation, venue and catering costs, if any, will be shared equally by the Principal and the Contractor.

2. Site meetings

- (a) From establishment on the Construction Site to the Date of Completion, the Contractor must convene meetings on the Construction Site at weekly intervals, or such longer period as may be required by the Principal's Representative.
- (b) The meetings referred to in clause 2(a) of this Schedule 40 (Workshops and Meetings) will be attended by:
 - (i) the Project Director (or his or her delegate);
 - (ii) the Principal's Representative (or his or her delegate); and
 - (iii) any other person (including any Subcontractor) required by the Principal's Representative.
- (c) Unless otherwise agreed by the Principal's Representative in writing, the Contractor must provide the Principal's Representative with an agenda (including any matter required by the

Principal's Representative) prepared in consultation with the Principal's Representative for each meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) no less than 2 Business Days prior to each meeting.

- (d) The role of chairperson for meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) will be held by the Principal's Representative (or his or her delegate).
- (e) The chairperson of a meeting under clause 2(a) of this Schedule 40 (Workshops and Meetings) must give all persons who attended the meeting (and any other person nominated by the Principal's Representative) minutes of the meeting within 2 Business Days after the meeting.
- (f) The purpose of the meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) includes the review of (at least) the matters set out in the reports referred to in clause 3.2.
- (g) The meetings under clause 2(a) of this Schedule 40 (Workshops and Meetings) are in addition to such other meetings and discussions as may be necessary for the proper administration of this deed.

3. Evaluation and monitoring

- (a) The Principal's Representative and the Project Director must meet:
 - (i) monthly, immediately prior to each Project Control Group meeting; or
 - (ii) at such other times as agreed by the Principal's Representative and the Project Director,to evaluate and monitor performance of this deed (**Evaluation Meetings**), by jointly completing the Performance Evaluation Record Forms.
- (b) The Principal's Representative and the Project Director must decide jointly on participation in the Evaluation Meetings by others concerned with the Project Works and Temporary Works, including Subcontractors, representatives of Authorities, end users and the local community and the Independent Certifier.
- (c) The obligations in this clause 3 of this Schedule 40 (Workshops and Meetings) and anything arising from their performance do not change any rights, obligations or responsibilities of the parties under this deed, and cannot be relied upon or used by one party against the other in any dispute, difference or proceeding or to found any Claim.

4. Project Control Group

The parties acknowledge and agree that the Project Control Group will be comprised and function in accordance with section 2.19.1 of the SWTC.

5. Management Review Group

- (a) The Management Review Group comprises:
 - (i) the Principal's Representative;
 - (ii) the Project Director;
 - (iii) a senior representative of the Principal as notified by the Principal to the Contractor from time to time; and
 - (iv) a senior representative of the Contractor as notified by the Contractor to the Principal from time to time.
- (b) The functions of the Management Review Group include:
 - (i) reviewing the progress of the Project Works;
 - (ii) reviewing conformity with the Quality Plan;

- (iii) considering any issues arising out of the execution of the Contractor's Activities;
 - (iv) considering the Monthly Key Result Area Reports and Separate Monthly Key Result Area Reports;
 - (v) considering any matters which the Project Control Group refers to the Management Review Group including considering any unresolved matters to assist resolution;
 - (vi) considering, and using its influence and guidance to assist in resolving, any issues identified by or referred to the Management Review Group;
 - (vii) conducting a Negotiation in accordance with clause 2 of Schedule 38 (Dispute Resolution Procedure) upon a Notice of Dispute being issued; and
 - (viii) carrying out required functions in accordance with section 2.19.4 and the Contractor Documentation Schedule.
- (c) The Management Review Group must meet:
- (i) on a three-monthly basis, immediately after a Project Control Group meeting, or such other regular period as the Principal and the Contractor agree in writing;
 - (ii) as soon as is practicable and within 5 Business Days after the delivery of a Notice of Dispute by a party; and
 - (iii) at other times which any member of the Management Review Group requires, where that member provides at least 2 Business Days' prior written notice to the other members of the Management Review Group. Any notice under this clause 5(c)(ii) of this Schedule 40 (Workshops and Meetings) must state the reasons why the member of the Management Review Group wishes to convene the required meeting.
- (d) At the first meeting of the Management Review Group, the Management Review Group must agree and document the procedures relating to meetings of the Management Review Group, including:
- (i) the requirements for and timing of distribution of:
 - A. agendas; and
 - B. meeting minutes; and
 - (ii) chairing of the Management Review Group meetings.
- (e) The first two meetings of the Management Review Group will be attended by the Dispute Avoidance Board (except if those meetings or parts of those meetings are a meeting at which a Negotiation is undertaken in accordance with clause 2 of Schedule 38 (Dispute Resolution Procedure), in which case the Dispute Avoidance Board will not attend), and thereafter, the meetings of the Management Review Group may only be attended by the Dispute Avoidance Board at the request of the Management Review Group.

6. Project Design Group

The parties acknowledge and agree that the Project Design Group will be comprised and function in accordance with section 2.19.2 of the SWTC.

7. Completion Working Group

The parties acknowledge and agree that the Completion Working Group will be comprised and function in accordance with section 2.19.3 of the SWTC.

8. Cooperation and Integration Control Group

The parties acknowledge and agree that the Cooperation and Integration Control Group will be comprised and function in accordance with the Interface Deed in Schedule 53.

9. Environmental Review Group

The parties acknowledge and agree that the Environmental Review Group will be comprised and function in accordance with section 2.19.5 of the SWTC.

APPENDIX A

Start-up workshops: Program

Opening

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

Discussions on co-operation

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the contract dealing with co-operation, and how they apply to the Contractor's Activities.

Communication framework and directory

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

Concerns and problems

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

Opportunities for innovation

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

Evaluation and monitoring process

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and the contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

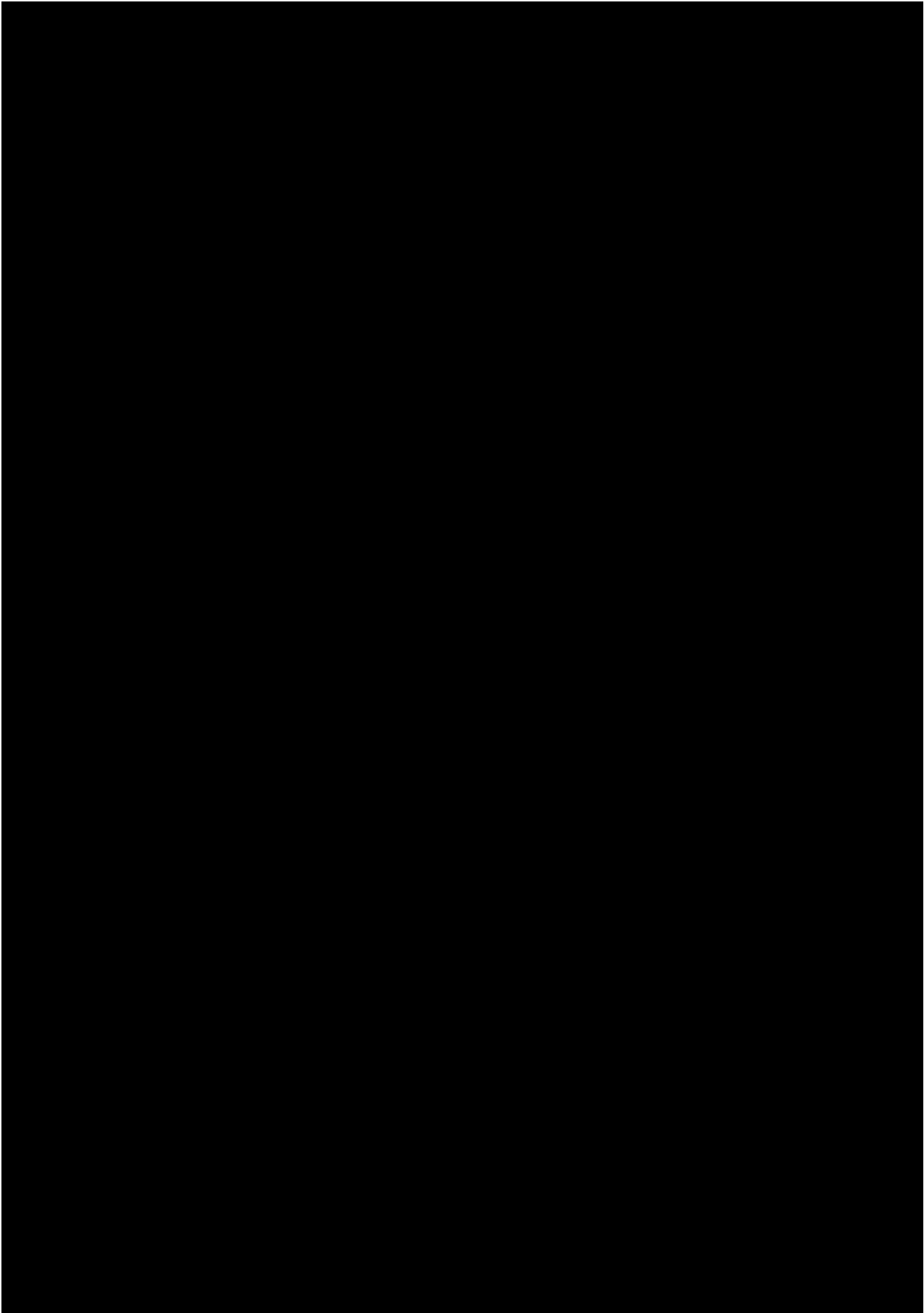
Conclusion

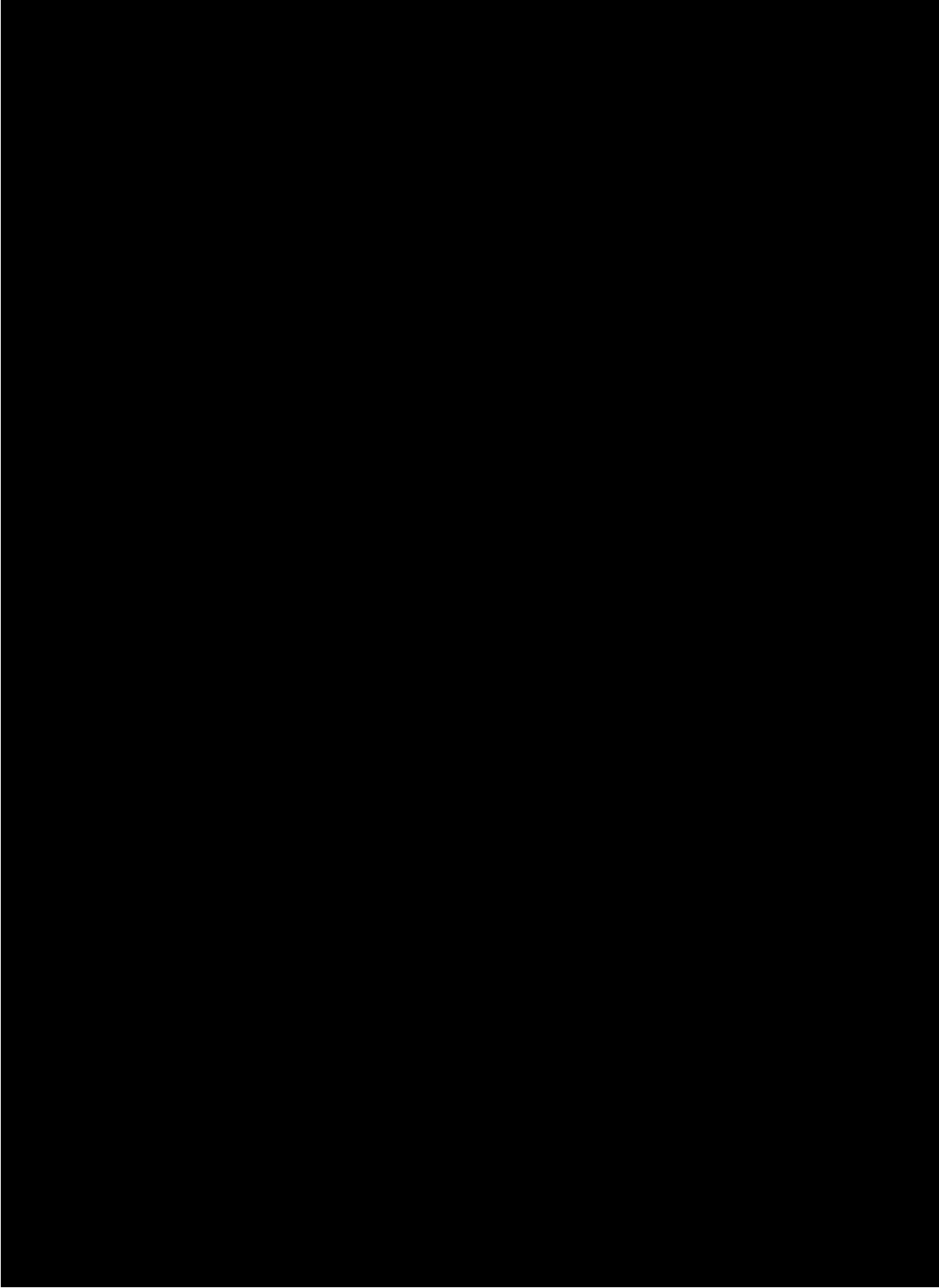
Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.

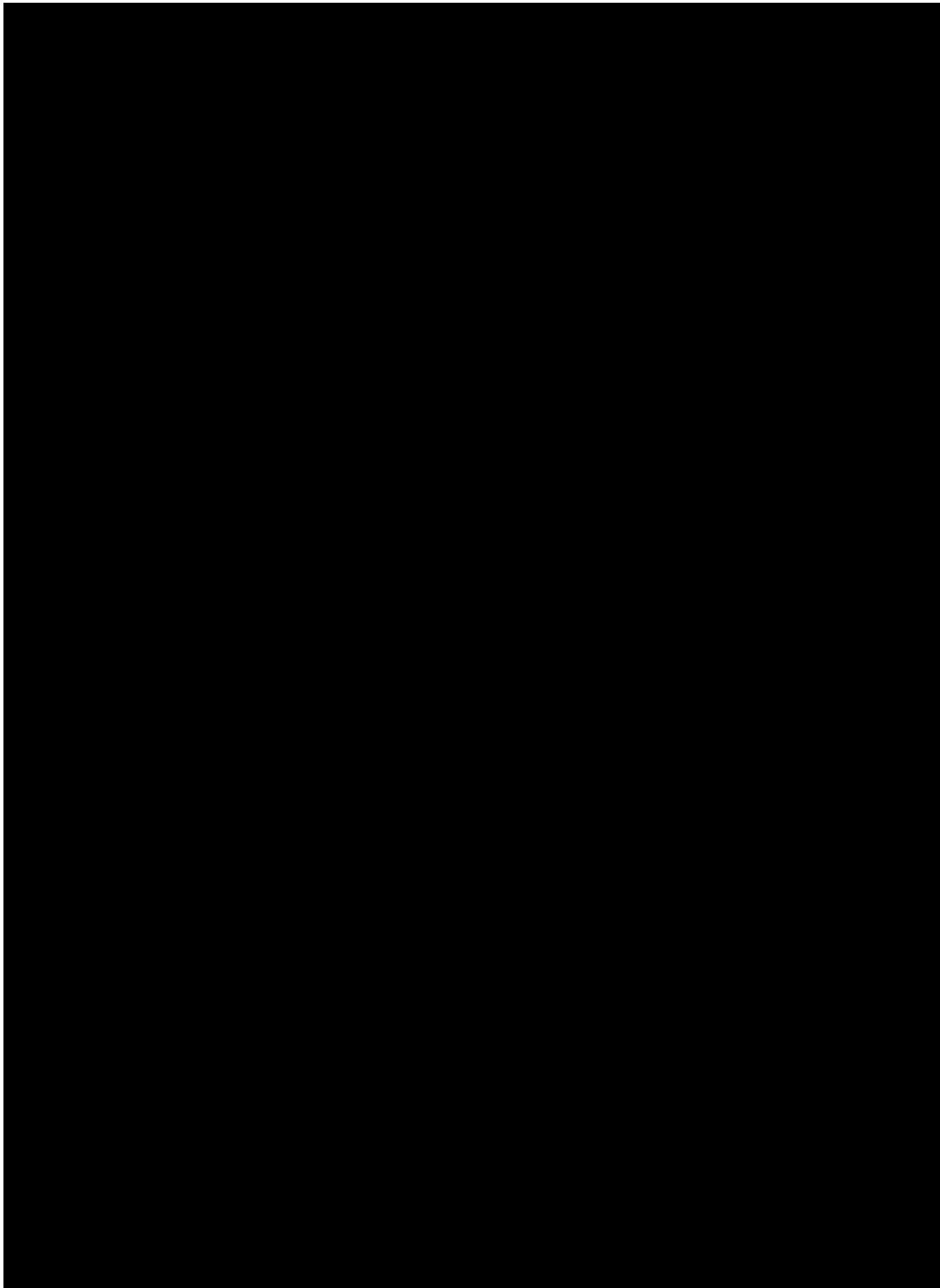
Unfixed Goods and Materials

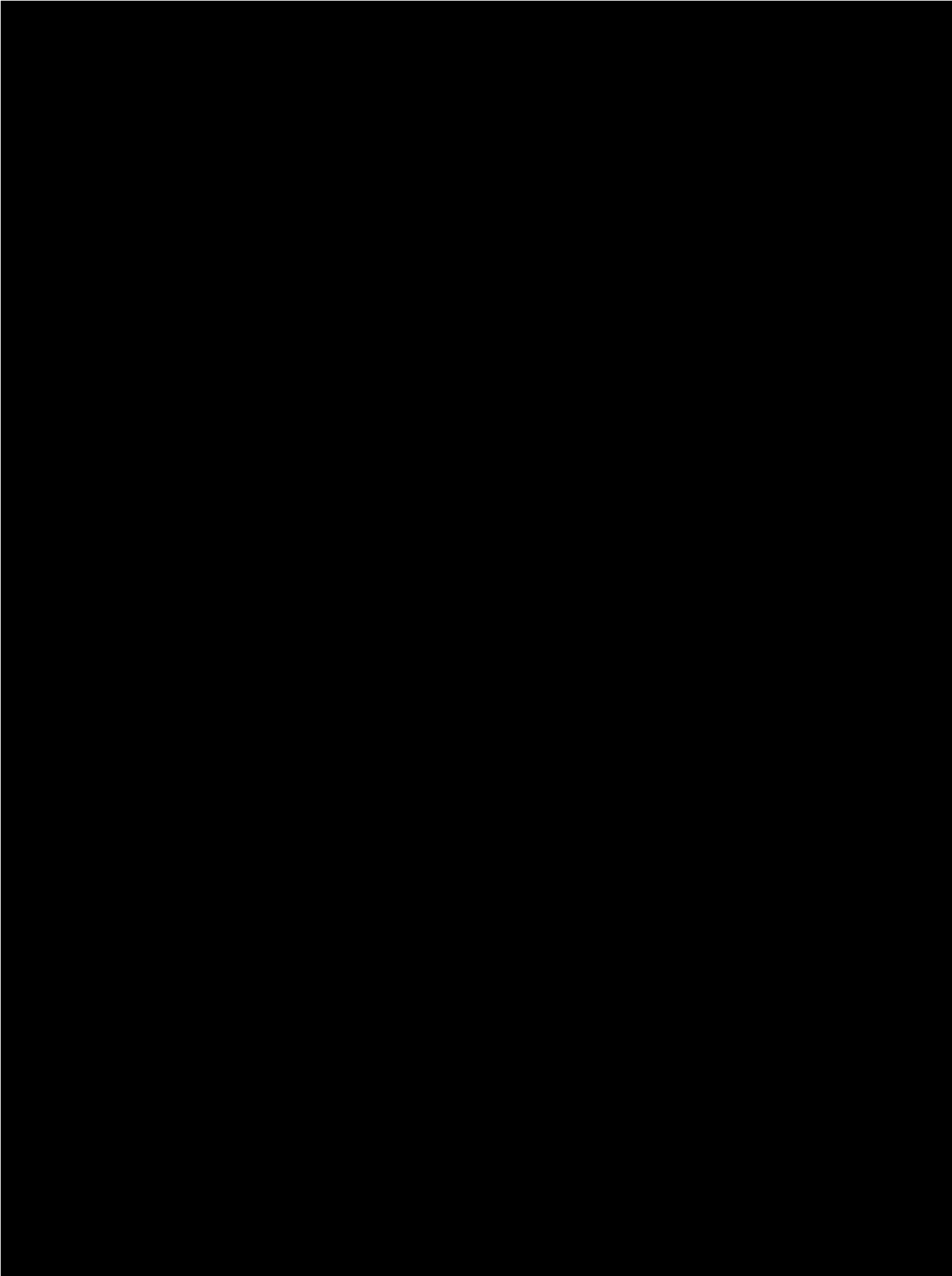
(clause 18.6(b))

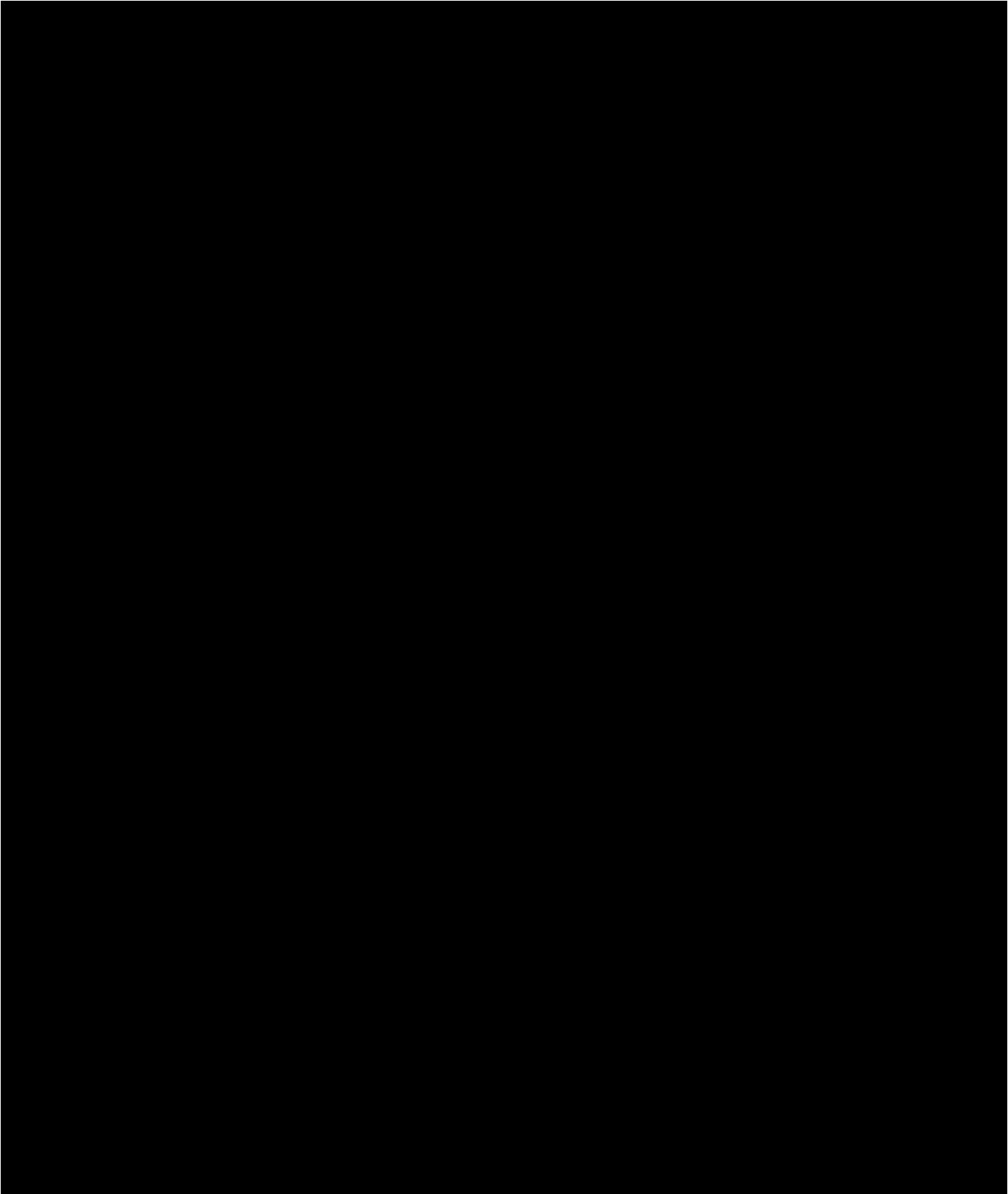












Schedule 43 - D&C Deed Amendments due to Pre-Agreed Variations

D&C Deed Amendments due to Pre-Agreed Variations

(clauses 15.5(c), 15.7(b), 15.7(d), 15.7(e) and 23.2 (definition of "Pre-Agreed Variation"))

The following tables set out the Pre-Agreed Variations that may be directed by the Principal pursuant to clause 15.7 (*Pre-Agreed Variations*).

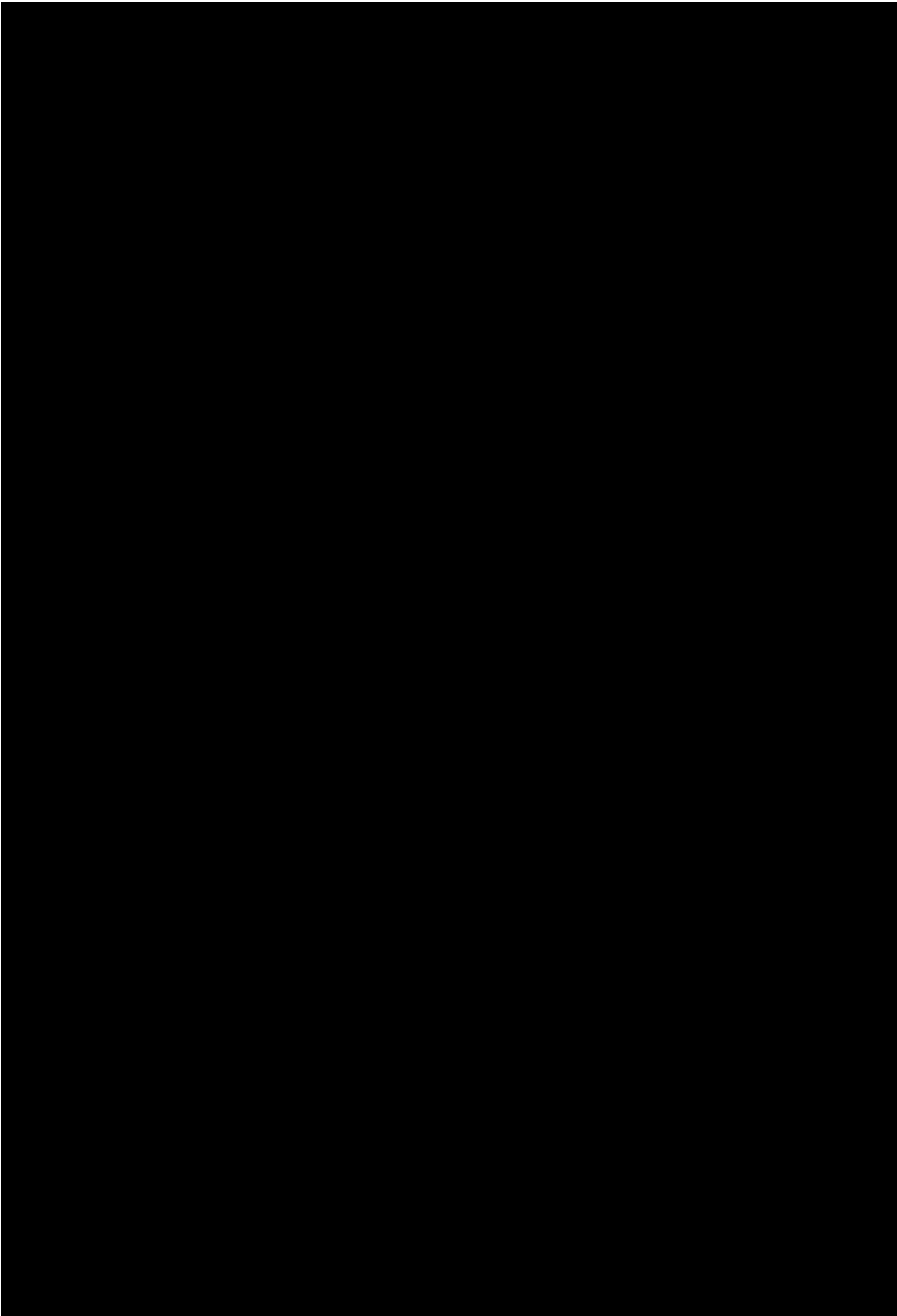
A Pre-Agreed Variation may only be directed as such if directed by the Principal by the "Exercise Date" identified in the table below. If no "Exercise Date" is identified in the table below or is identified as "not applicable", the Pre-Agreed Variation may be directed at any time before the end of the initial Defects Correction Period.

[Redacted]

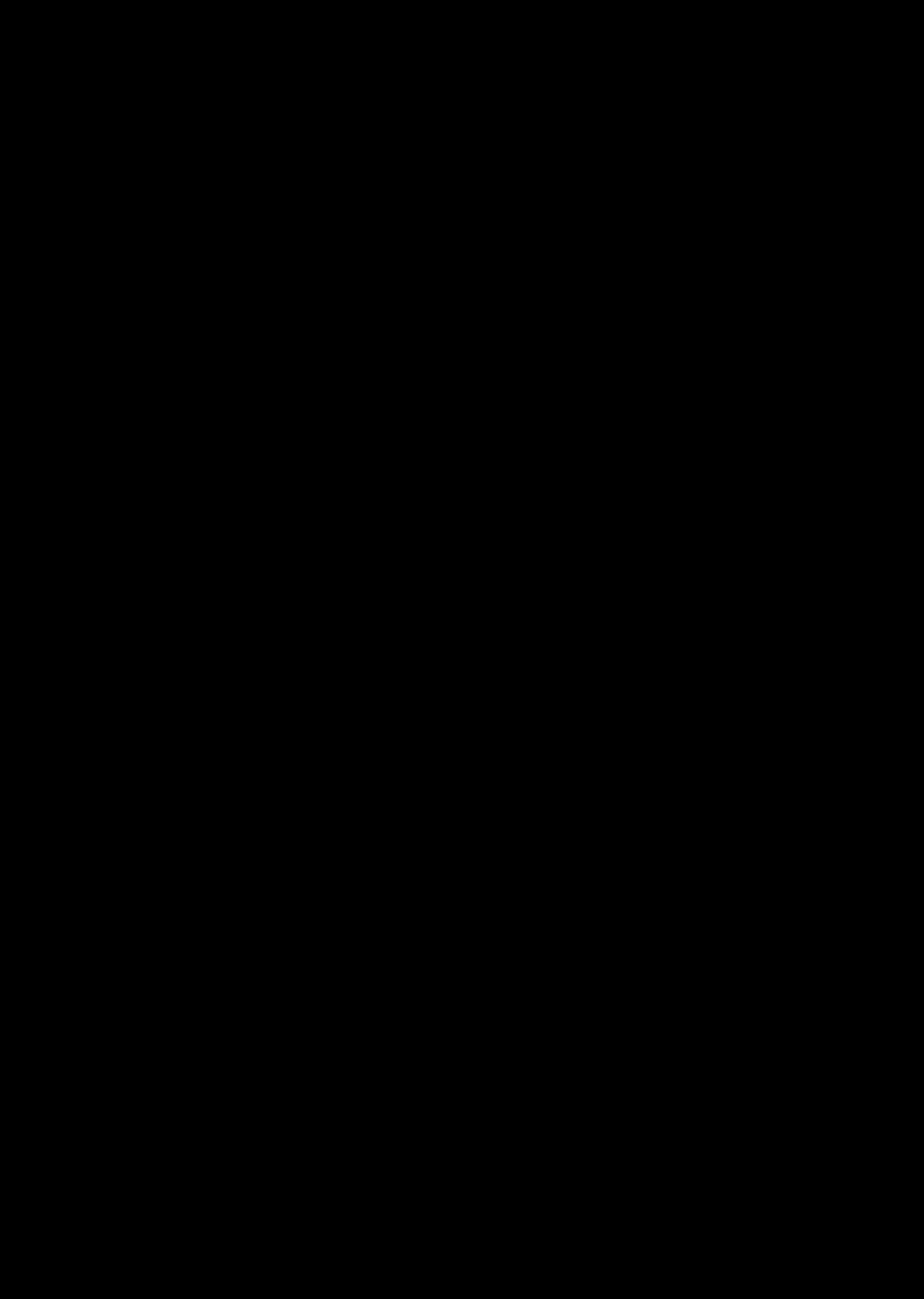
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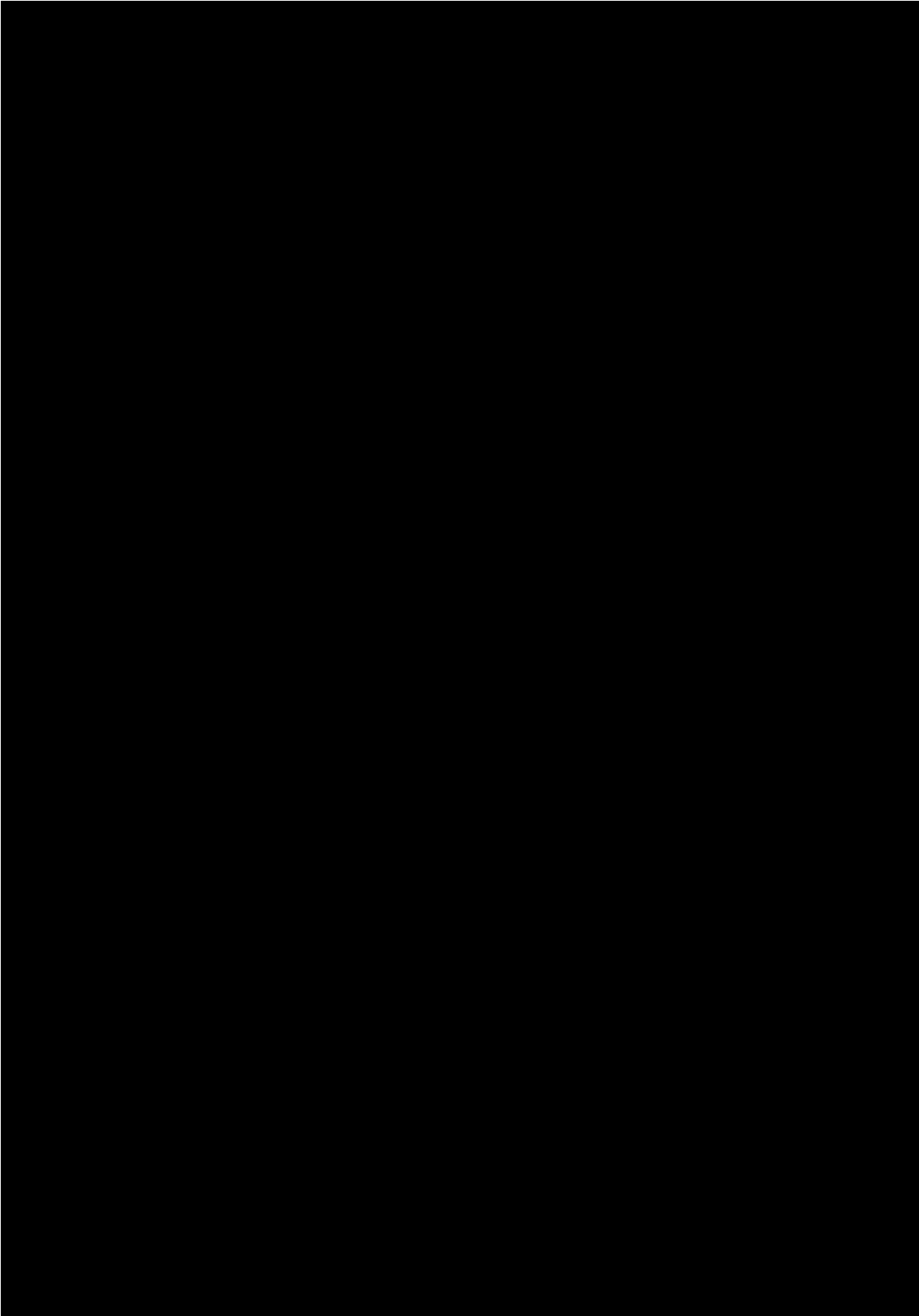
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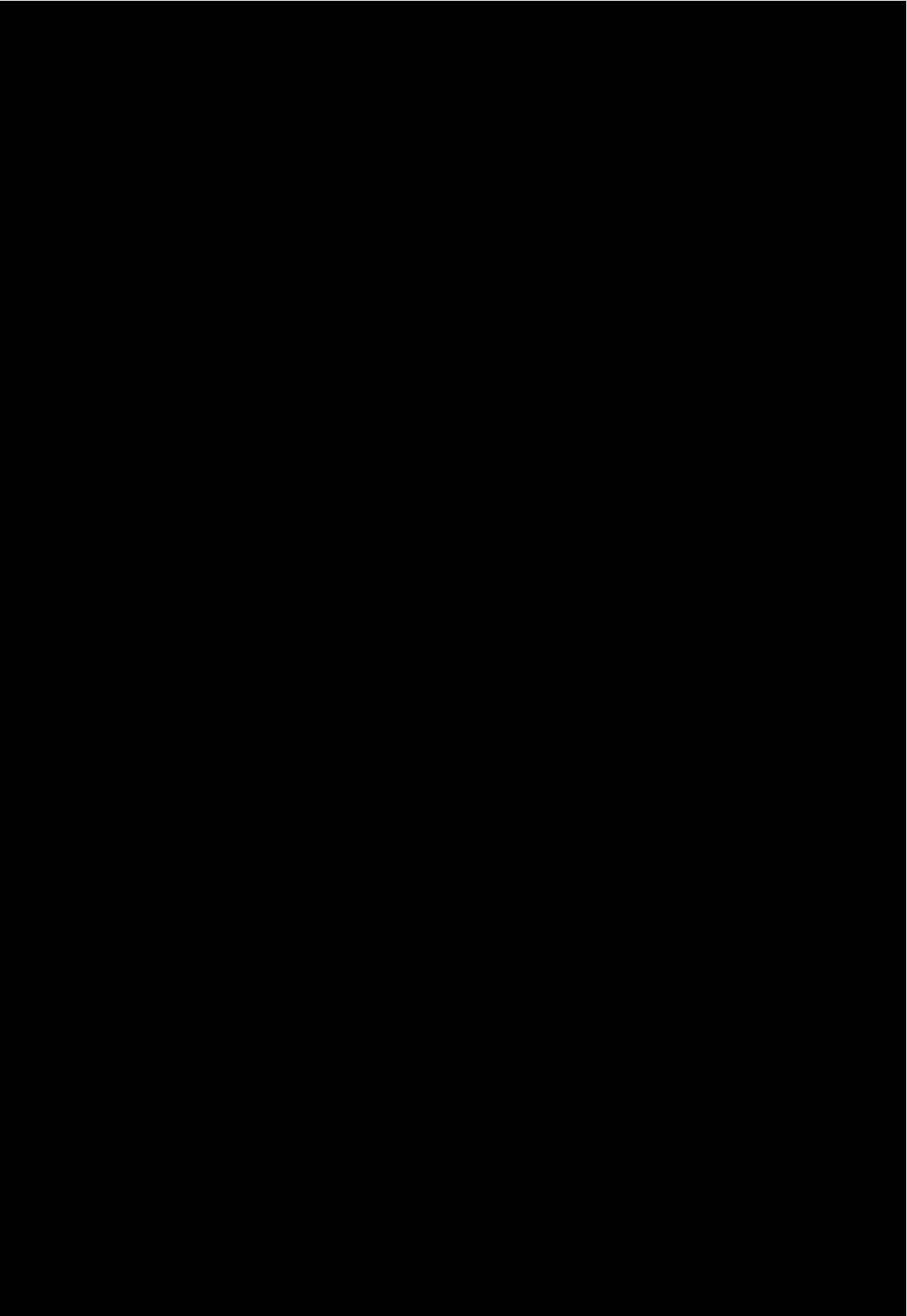
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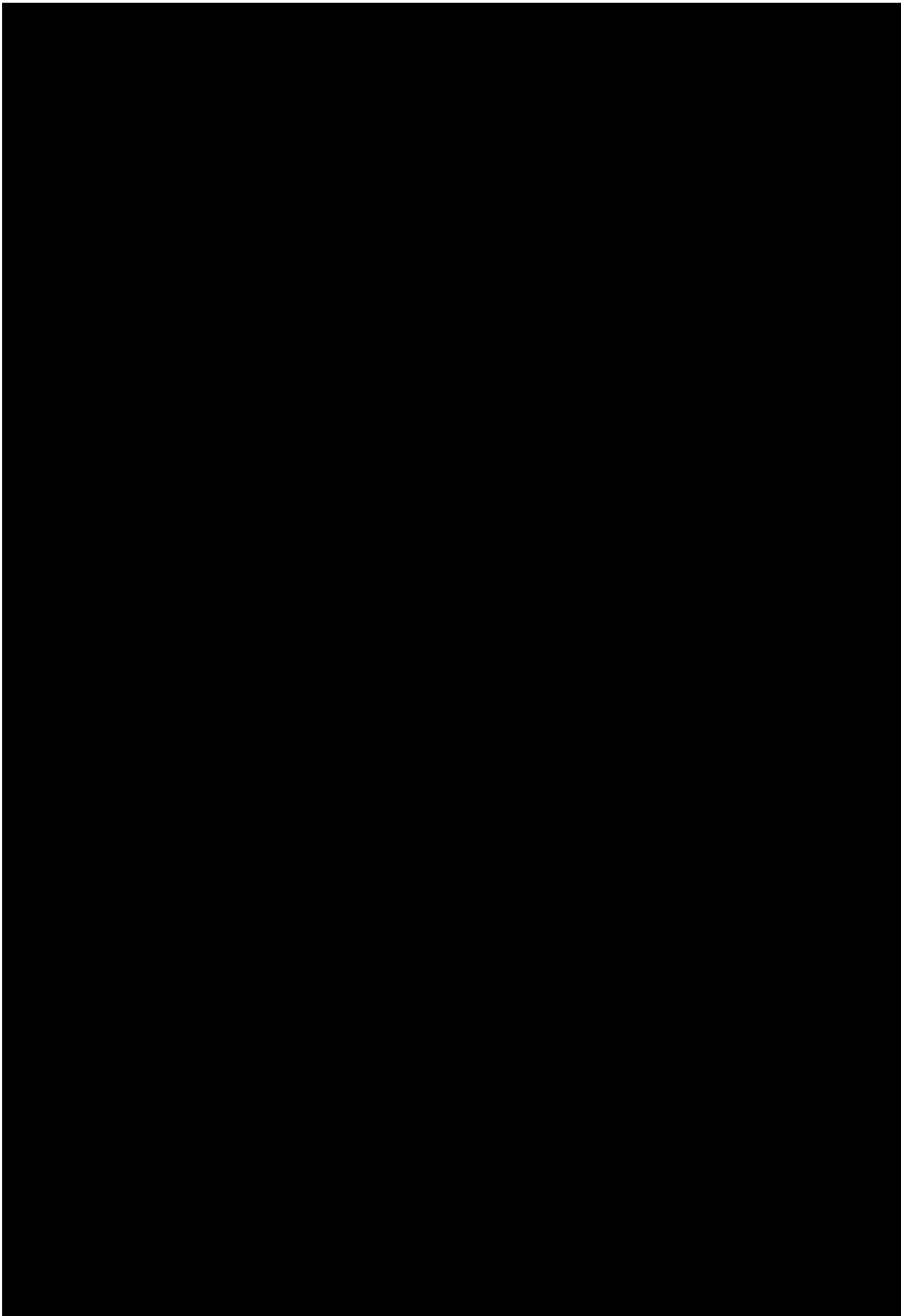


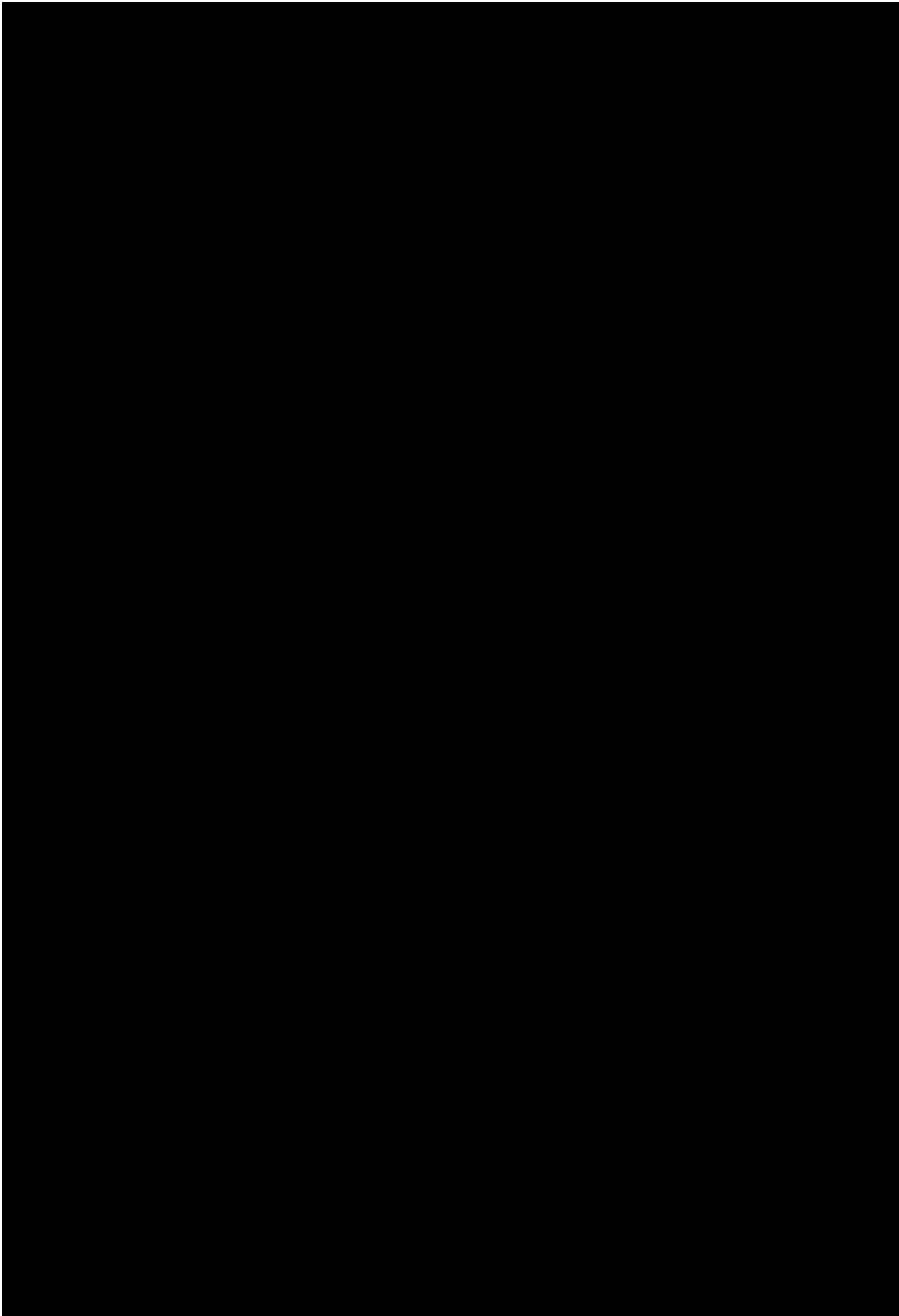


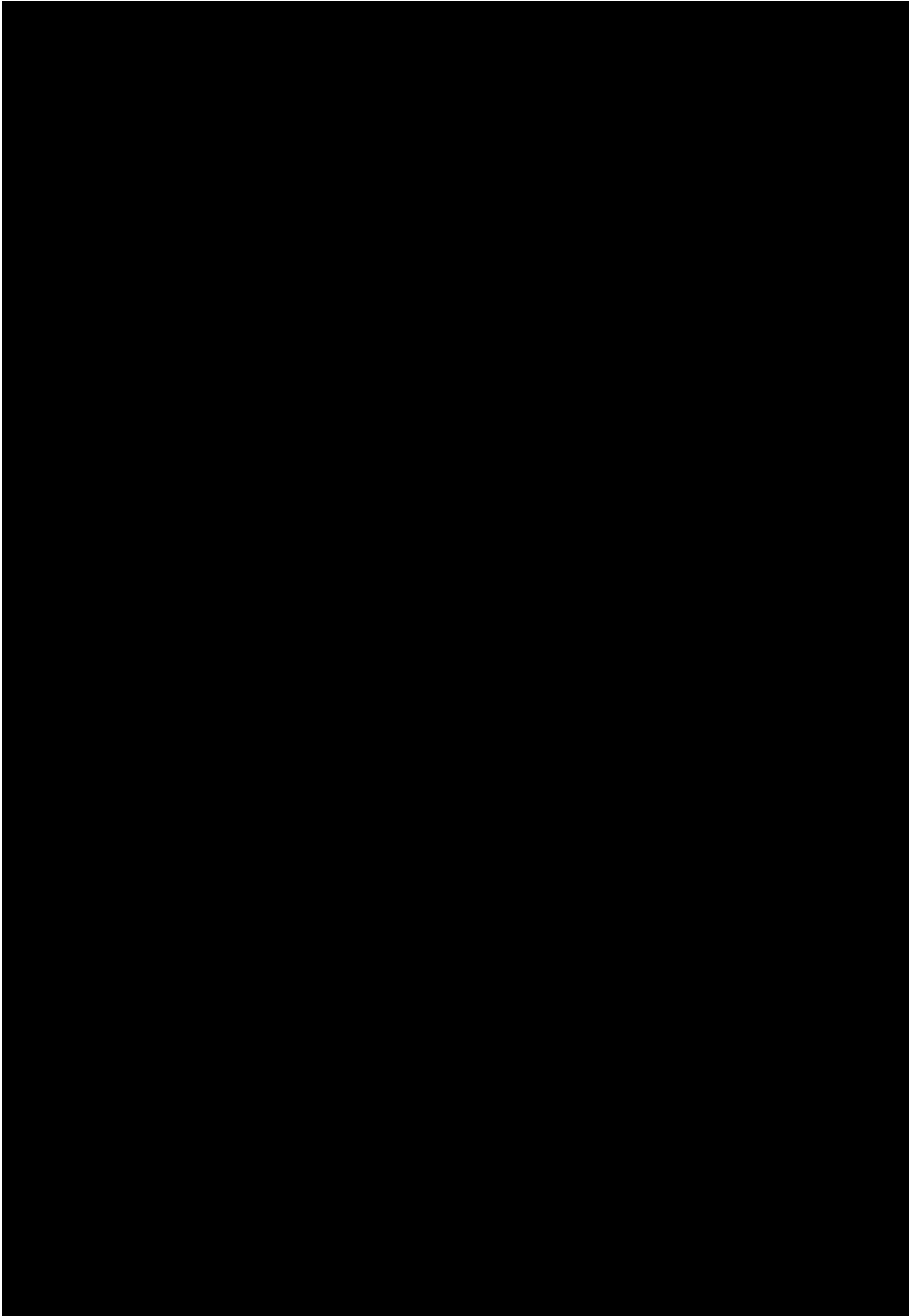


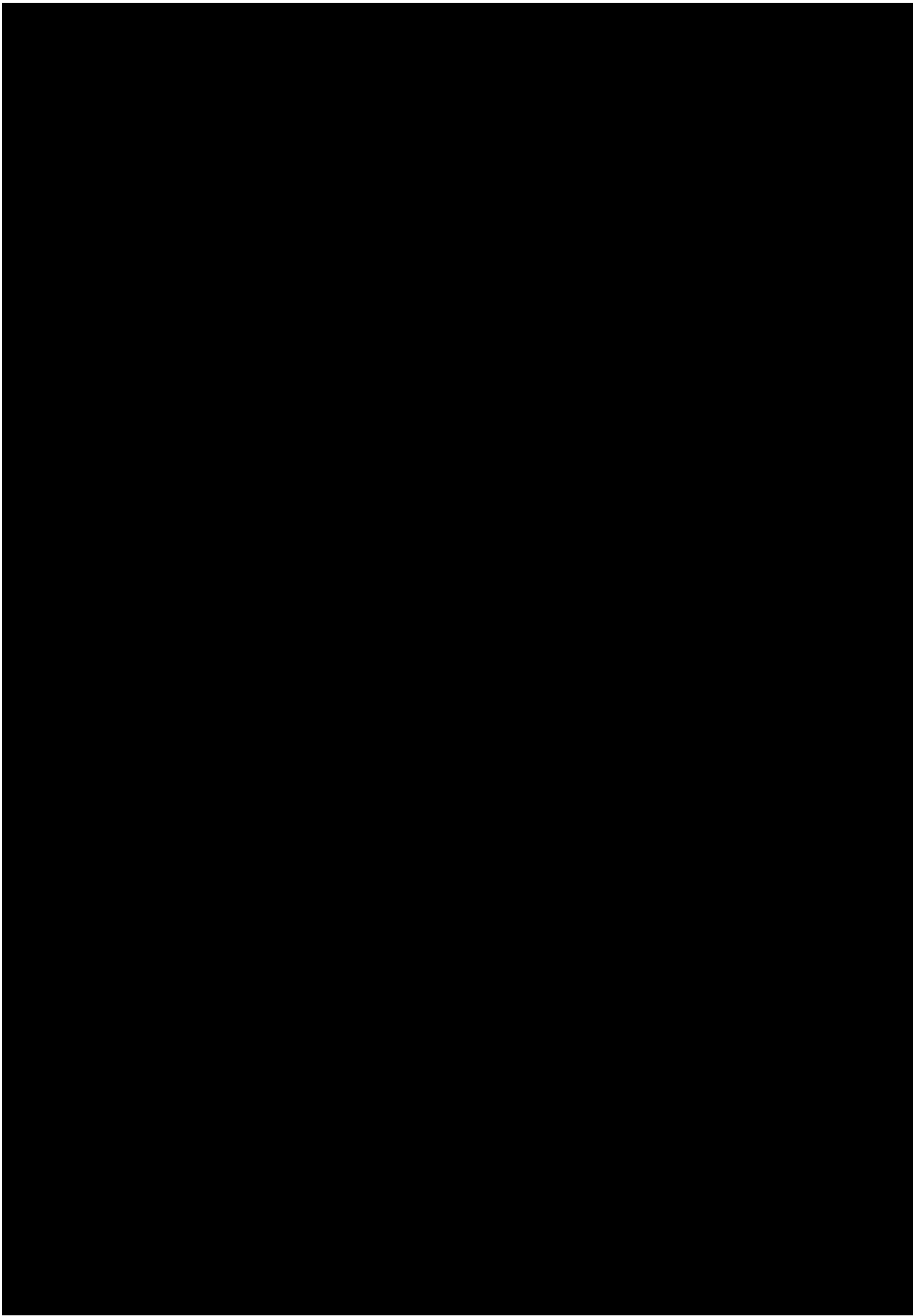


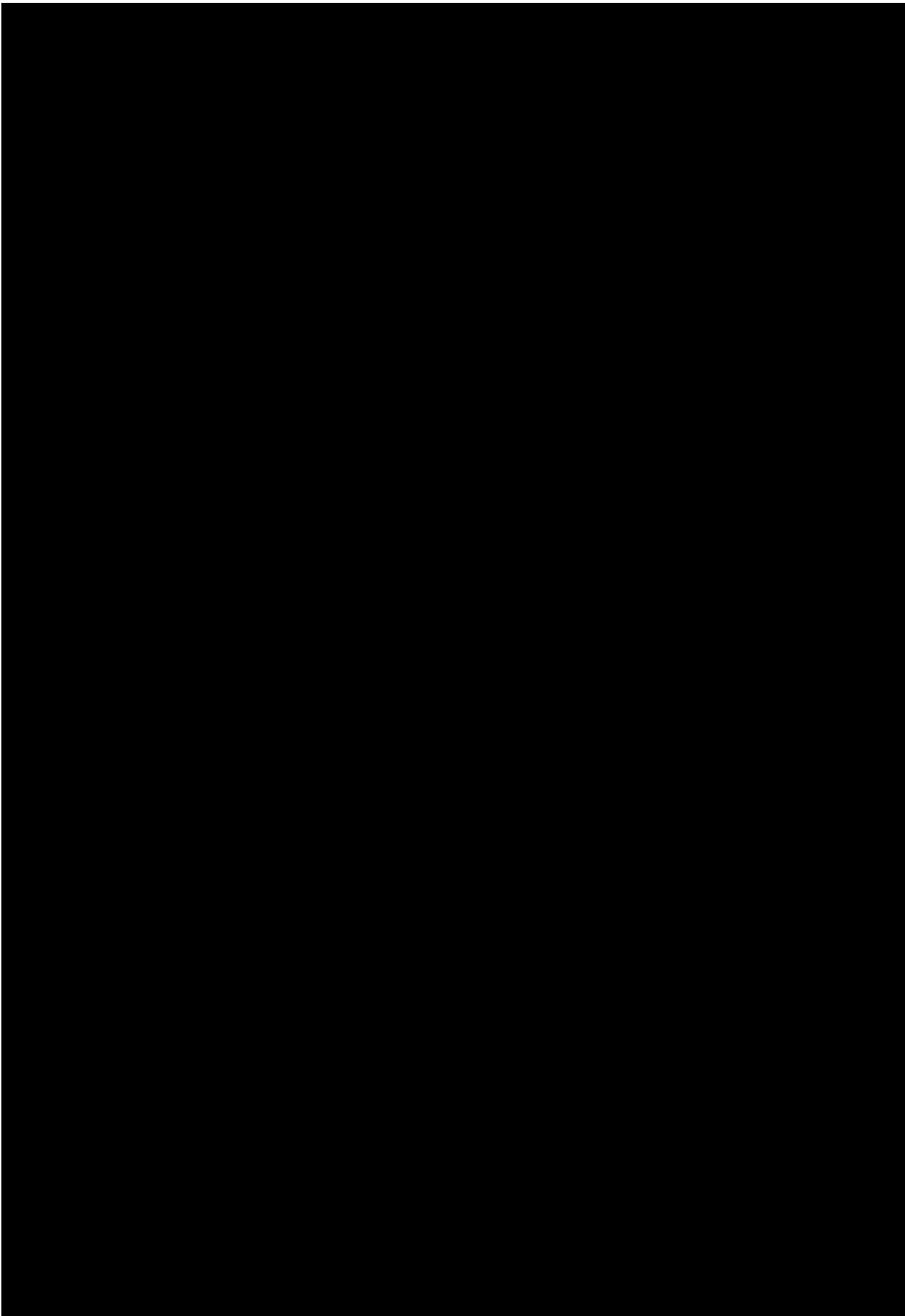


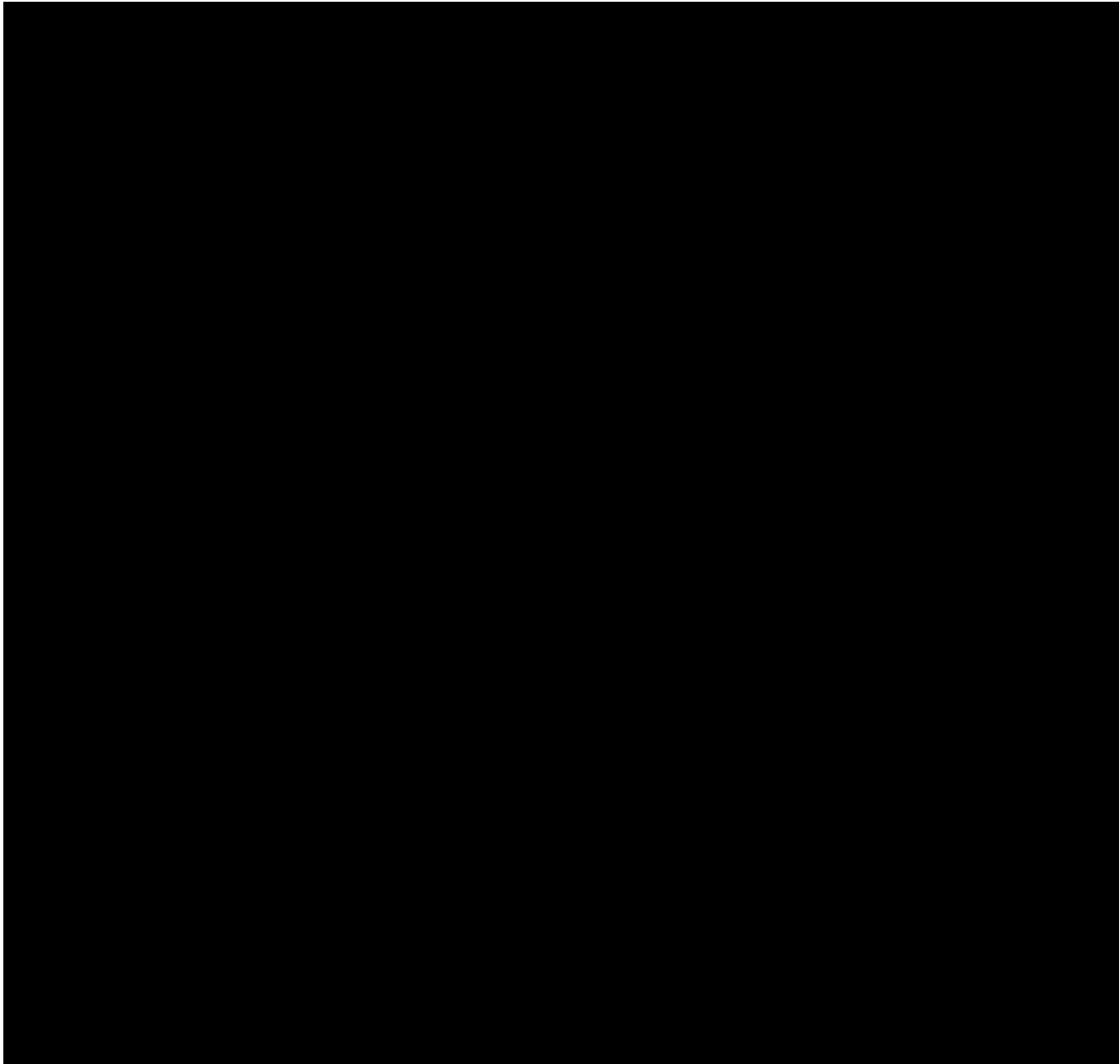












Schedule 45 - Proof Engineer Requirements

Proof Engineer Requirements

(clauses 2.5(b)(ii)A and 23.2 (definition of "Proof Engineer"))

Minimum Requirements for Proof Engineer

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) demonstrated experience in the design of complex bridges and structures, which shall mean for the purposes of this Schedule, bridges or structures with any of the following features:
 - (i) bridge spans exceeding 37m;
 - (ii) retaining walls with effective retained height greater than 6m;
 - (iii) cable stayed or suspension bridges;
 - (iv) steel orthotropic decks;
 - (v) bascule span bridges;
 - (vi) post tensioned concrete structures;
 - (vii) bridge decks with skew exceeding 35 degrees
 - (viii) railway bridges over roads and road bridges over railways
 - (ix) structures under railways
 - (x) precast arch structures; and
 - (xi) bridges with a superstructure consisting of precast prestressed concrete girders and cast in-situ deck slab, where the girders are made continuous for live load or the superstructure is made fully integral with the substructure.
- (b) registered for design work under the Complex Bridge Design category on the Technical Services Registration Scheme;
- (c) proven ability in structural analysis and design of complex bridges and structures;
- (d) quality Management System 3rd party certified to AS/NZS ISO 9001;
- (e) range of suitable structural analysis, bridge design and CAD software;
- (f) qualifications admitting to MIEAust and National Professional Engineers Register;
- (g) at least 5 years' experience in complex structural analysis and design of complex bridges and structures;
- (h) knowledge of Australian Standard AS 5100, the Principal's Bridge Technical Directions, the Principal's Standard Drawings;
- (i) knowledge of the Principal's specifications for bridgeworks;
- (j) knowledge of scientific investigation and testing and specialist knowledge of materials and products used in bridge construction; and
- (k) at least 5 years' experience in undertaking the checking of structural design of complex bridges and structures as a proof engineer in the past 10 years.

TfNSW Specification	Clause	Description
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

TfNSW Specification	Clause	Description

- (a) TfNSW may change the Nominated Authority for any Hold Point during the progress of the Contractor's Activities.
- (b) The Quality Manager must be satisfied that all activities in the Hold Point process (including methods of work, sequences of activities, inspections and tests preceding any Hold Point specified in the Quality Plan) comply fully with the requirements of the deed and, once satisfied, may:
 - (i) release that Hold Point, where authorised according to the schedule of Hold Points in the Quality Plan, in order that work may proceed on that part of the Contractor's Activities; or
 - (ii) obtain release of the Hold Point from the Nominated Authority so that work may proceed on that part of the Contractor's Activities.
- (c) The Contractor must not proceed beyond any Hold Point without release by the Nominated Authority.
- (d) The release of a Hold Point by the Nominated Authority, allowing the work to proceed beyond that Hold Point, will not relieve the Contractor of any responsibility for carrying out all or any part of the Contractor's Activities in accordance with the requirements of the deed.
- (e) The Independent Certifier, the ER and the Principal's Representative, where the Nominated Authority, or as otherwise required by the Independent Certifier or the Principal's Representative from time to time, must be given reasonable notice of the proposed release of any Hold Point and must be given reasonable opportunity to witness any inspections and tests preceding the release of any Hold Points and the release of the Hold Point.

Schedule 47 – **Not Used**

Not Used

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Schedule 49 – Principal Supplied Items


Principal Supplied Items

(clauses 13.11 and 23.2 (definition of "Principal Supplied Items"))

[REDACTED]

Safety Barrier System Acceptance Conditions

PIN and LOOP Barrier - Temporary

	Issue Date: 16 December 2021	Supplier: Pin and Loop Pty Ltd
	<p>These conditions take precedence over any instructions in the Product Manual.</p> <p>These acceptance conditions should be read in conjunction with the Product Manual and Transport for NSW Specification R132 – Safety Barrier Systems and Austroads Guide to Road Design Part 6: Roadside Design, Safety and Barriers.</p> <p>Transport for NSW may withdraw or modify this acceptance at any time without notice. Users should refer to the Transport for NSW website to ensure they have the latest version of the conditions related to this product.</p> <p>Acceptance of this product does not place any obligation on Transport for NSW, or its contractors, to purchase or use the product.</p>	

Status	Accepted - may be used on the classified road network
Product accepted	<p style="text-align: center;">Accepted for temporary installations only</p> <p>Pin and Loop Barrier</p> <p><u>Variants</u> Nil</p> <p>Variants that are NOT listed above are NOT recommended for acceptance.</p>
Accepted speed	100 km/h

Tested Outcomes

Containment Level	Point of Redirection		Tested Article Length (m)	Anchor/Post Spacing (m)	Dynamic Deflection (m)	Working Width (m)	Notes
	Leading (m)	Trailing (m)					
MASH TL3	21.77	39.47	61.4	Freestanding	1.61	2.22	

Approved Connections

<i>Crash Cushions or Terminals must be fitted to both ends of a barrier</i>	
Public Domain Products	
W-Beam Guardrail	Not Permitted
Thrie-Beam Guardrail	Not Permitted
Concrete	Not Permitted
Proprietary Products	
Legacy Product UNIVERSAL TAU-II Crash Cushion	<ul style="list-style-type: none"> • Legacy - Not permitted on Transport for NSW contracts signed from 1 January 2022. • Refer Universal Tau-II Crash Cushion Conditions for Use. • The Pin and Loop barrier adjacent to the Universal Tau-II Crash Cushion must be anchored to the pavement as required by the Product Manual. • The Pin and Loop to Universal TAU-II Crash Cushion transition must be used to connect the crash cushion to the barrier. • Leading and trailing points of redirection are considered to be 0. • Reverse impacts into the transition section can produce a greater occupant severity value than preferred. Where reverse impacts are possible (e.g. bi-directional traffic), a risk assessment must be completed and steps to mitigate the likelihood of reverse impact should be implemented.

Legacy Product ABSORB 350 Plastic Terminal	<ul style="list-style-type: none"> • Legacy - Not permitted on Transport for NSW contracts signed from 1 January 2022. • The installation is restricted to an impact speed of 70 km/h or less. • Refer to ABSORB 350 Terminal Conditions for Use. • The Pin and Loop to AB350 Terminal transition must be used to connect the terminal to the barrier. • This is a gating device.
ABSORB-M Crash Cushion	<ul style="list-style-type: none"> • The installation is restricted to an impact speed of 80 km/h or less. • Refer to Absorb-M Crash Cushion Conditions for Use. • The Pin and Loop to Absorb-M Crash Cushion transition must be used to connect the crash cushion to the barrier. • This is a gating device.

Design Guidance

This product must be installed and maintained in accordance with the Product Manual and Transport for NSW specifications	
Minimum installation length (m)	61.4 metres between crash cushions/terminals (tested article)
System width (m)	0.61
Minimum distance to excavation	1.61 - measured from the face of the barrier on the works side
Slope limit	7%
Systems conditions	Installation on top of a kerb is not recommended.
Gore area use	Permitted
Pedestrian area use	Permitted
Cycleway use	Permitted
Frequent impact likely	Permitted
Remote location	Permitted
Median use	Permitted

Foundation Pavement Conditions					
Pavement Type	Use	Max Accepted Speed (km/h)	Post/Pin Spacing (m)	Post/Pin Type	Pavement Construction
Concrete	Permitted	100 km/h			<u>Freestanding</u> Foundation pavement conditions must be smooth and free of snag points, kerbs or obstructions that may interfere with the operation of the product
Deep lift asphaltic concrete					
Asphaltic concrete over granular pavement					
Flush seal over granular pavement					
Unsealed compacted formation					

Note: Installation in pavement conditions not listed above have not been justified to the Transport for NSW's satisfaction.

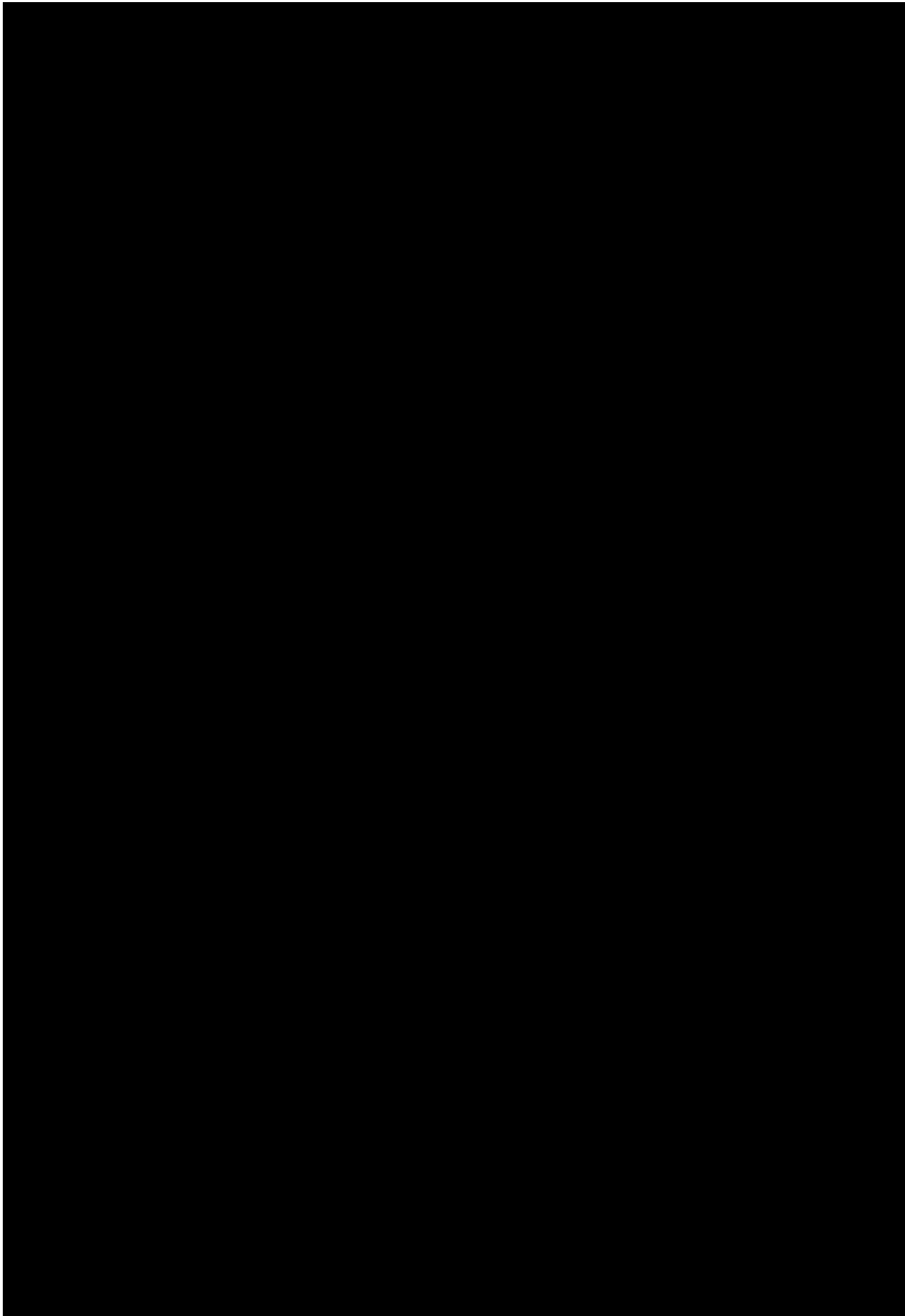
Requirements of Third Party Agreements

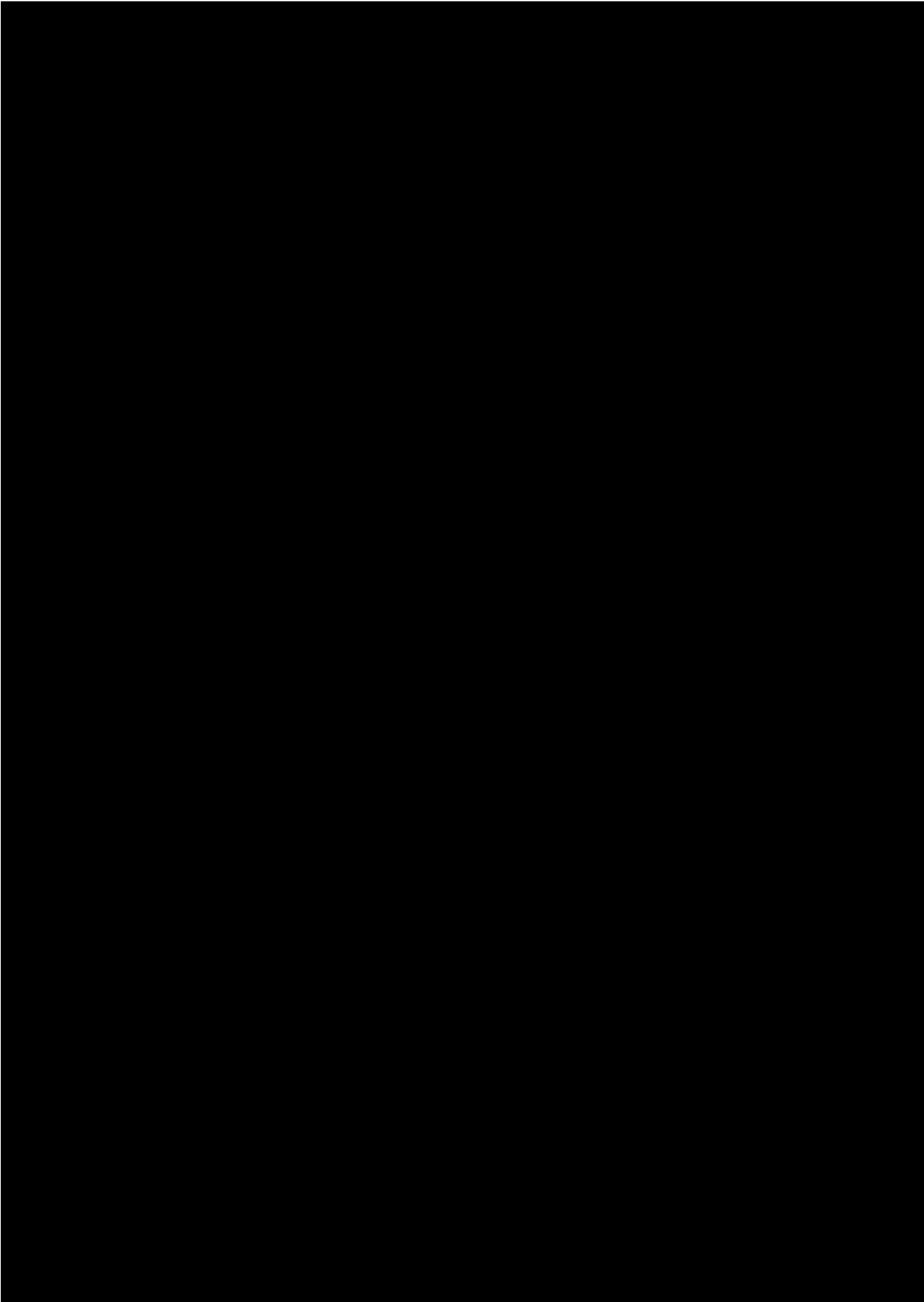
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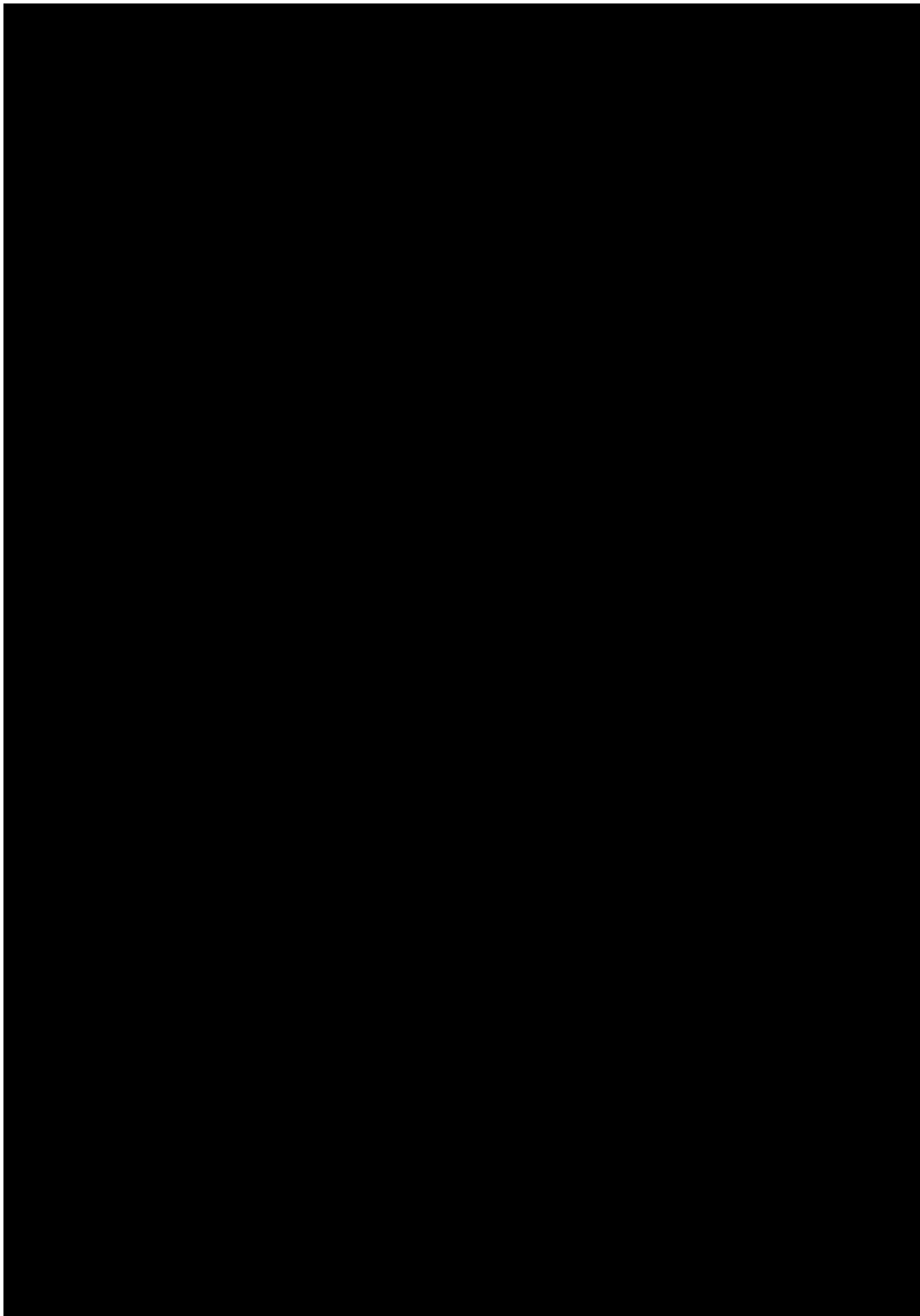
1. No limitation on deed

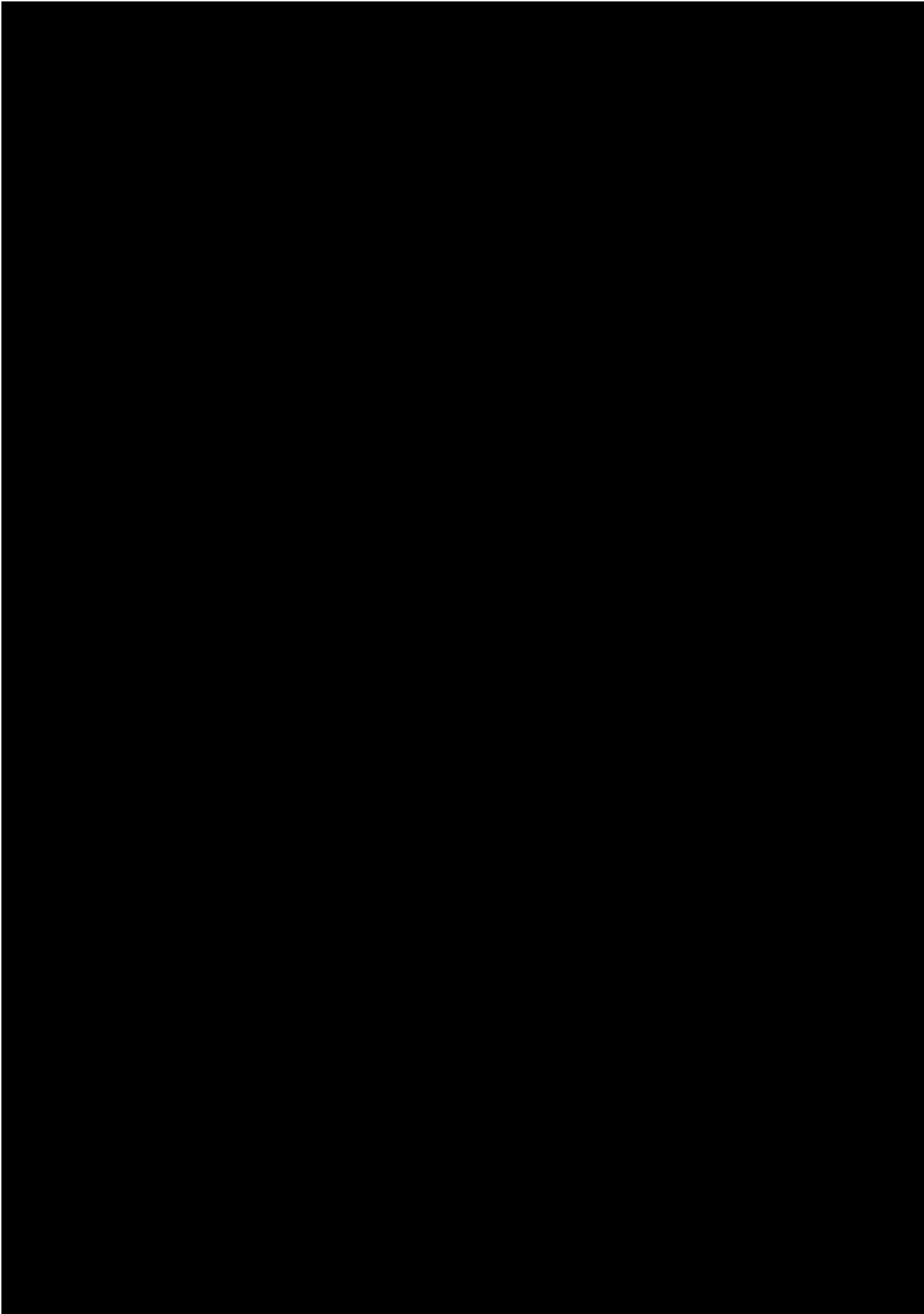
- (a) Nothing in this Schedule 50 (Requirements of Third Party Agreements) limits the Principal's rights or affects the Contractor's obligations under any clause of this deed.
- (b) Clause 7A of this deed applies to this Schedule 50.
- (c) Capitalised terms in the tables below in this Schedule 50 (Requirements of Third Party Agreements) that are not defined in this deed have the meaning given to them in the relevant Third Party Agreement.

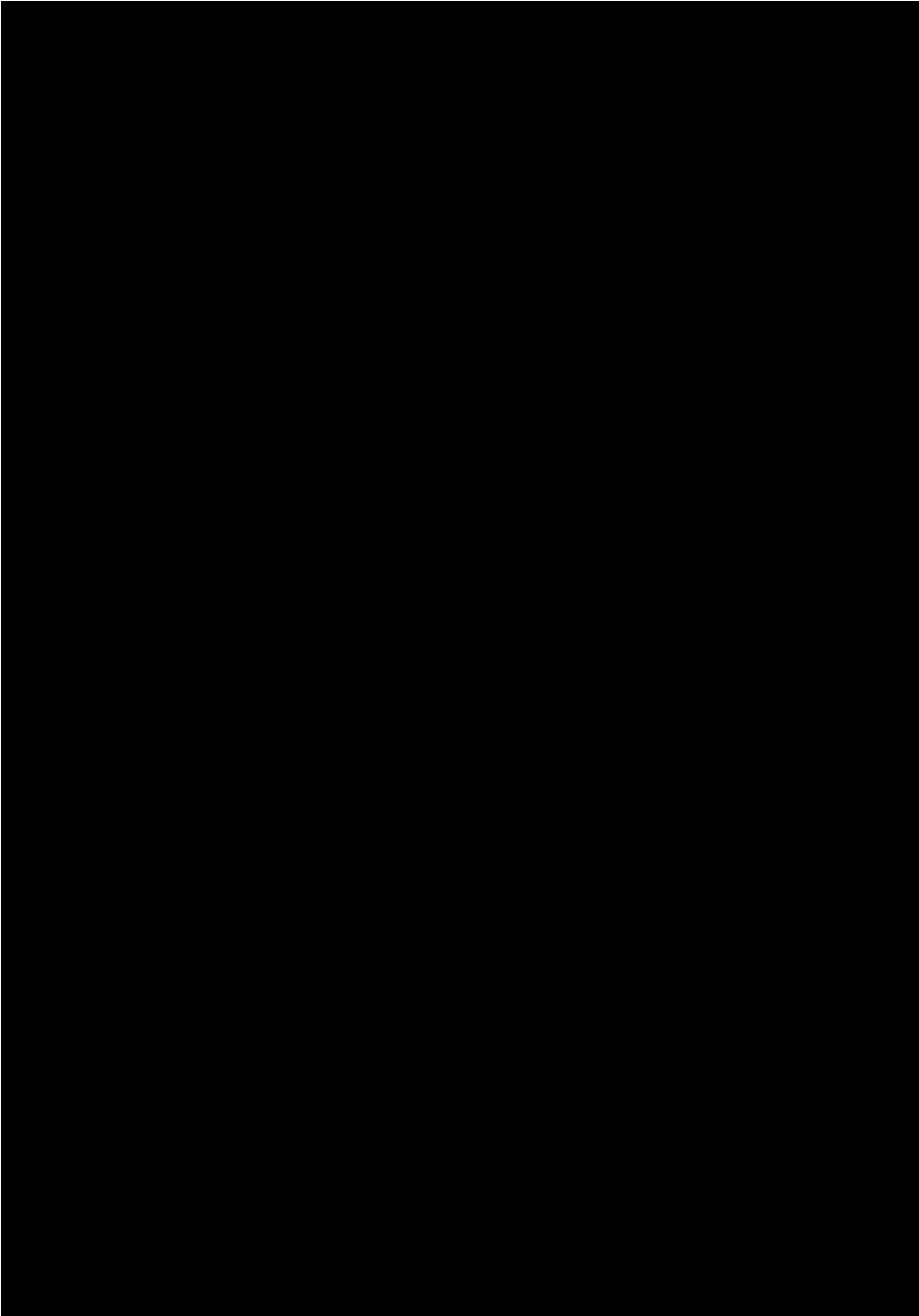
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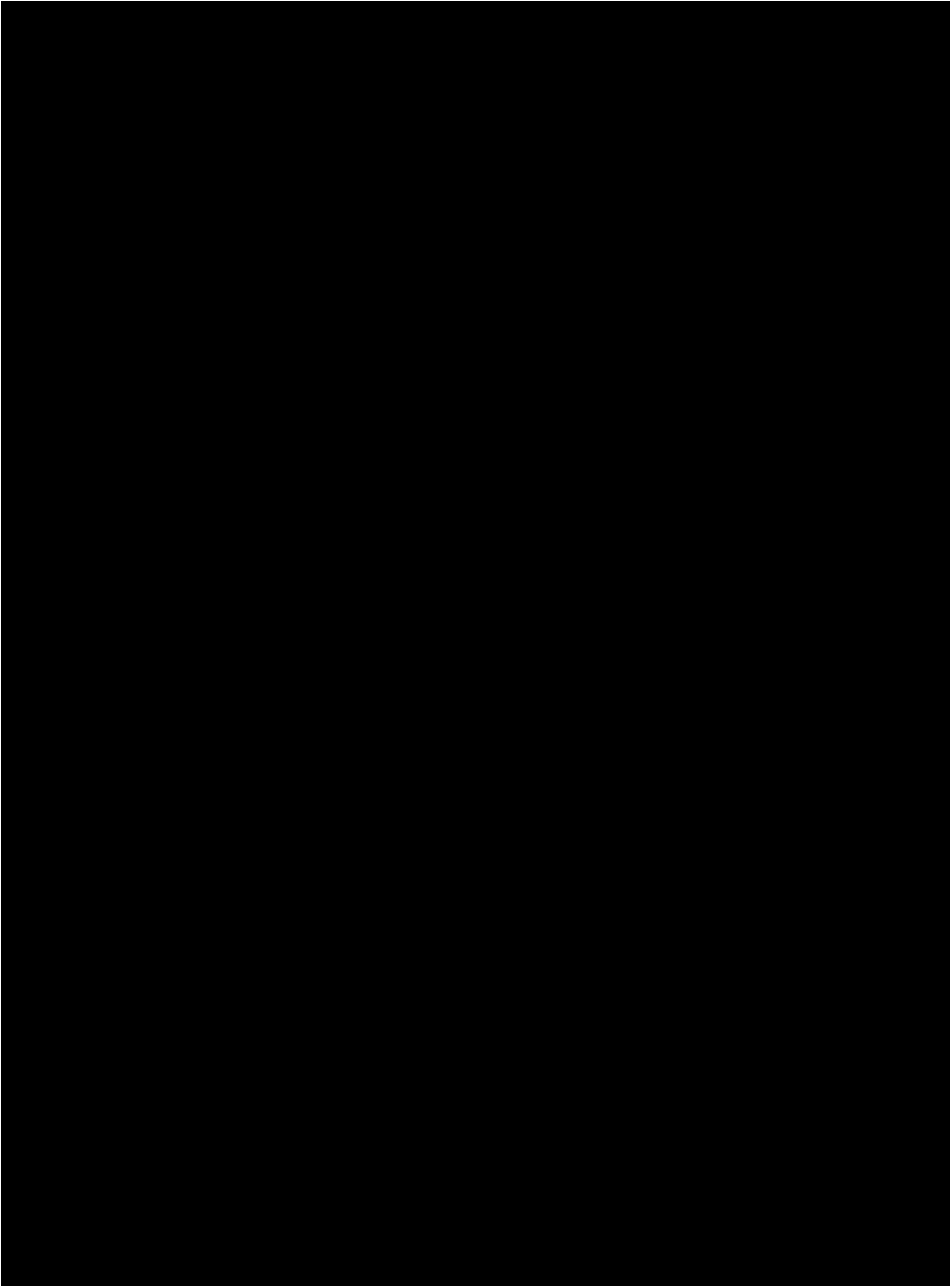


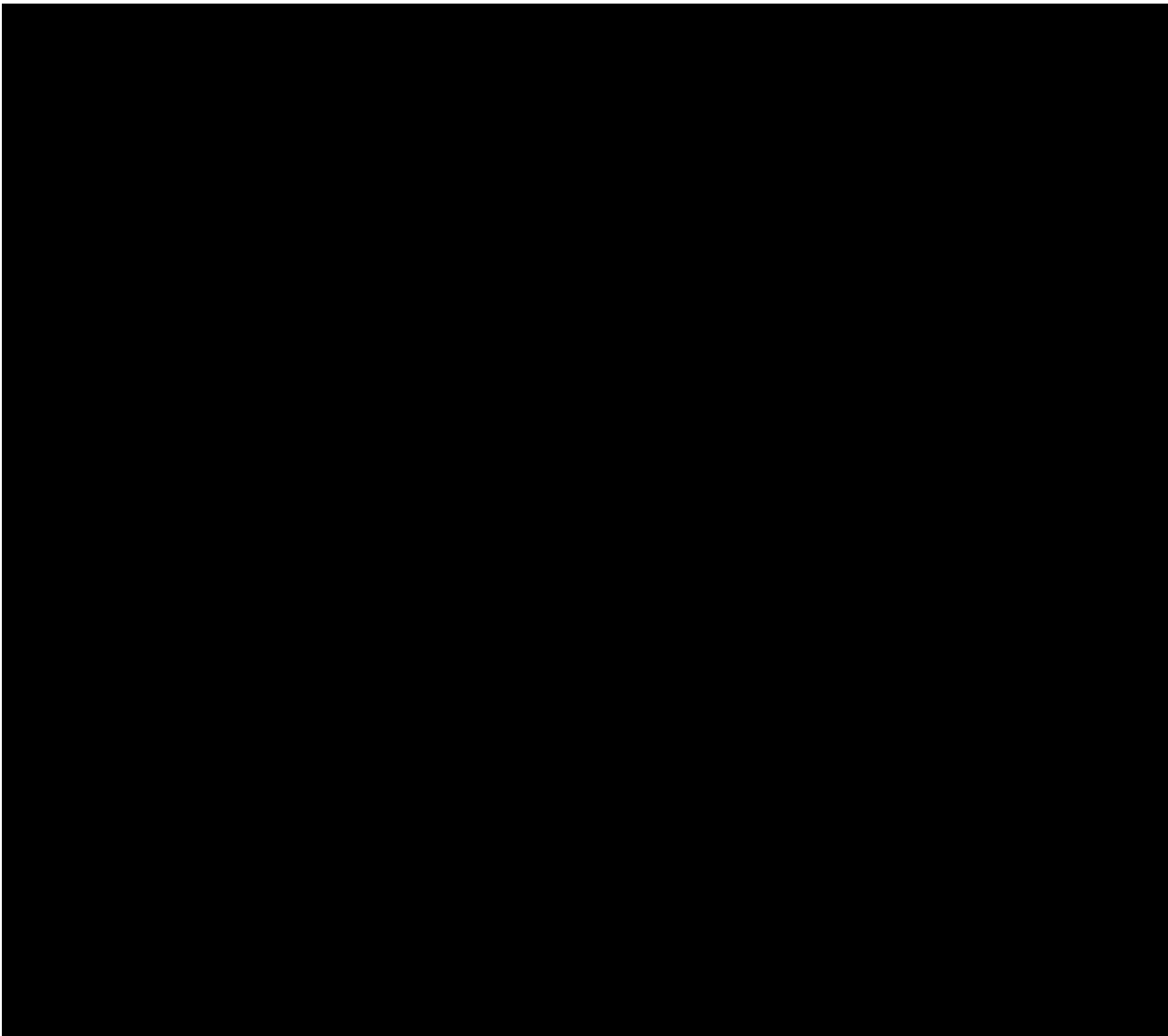


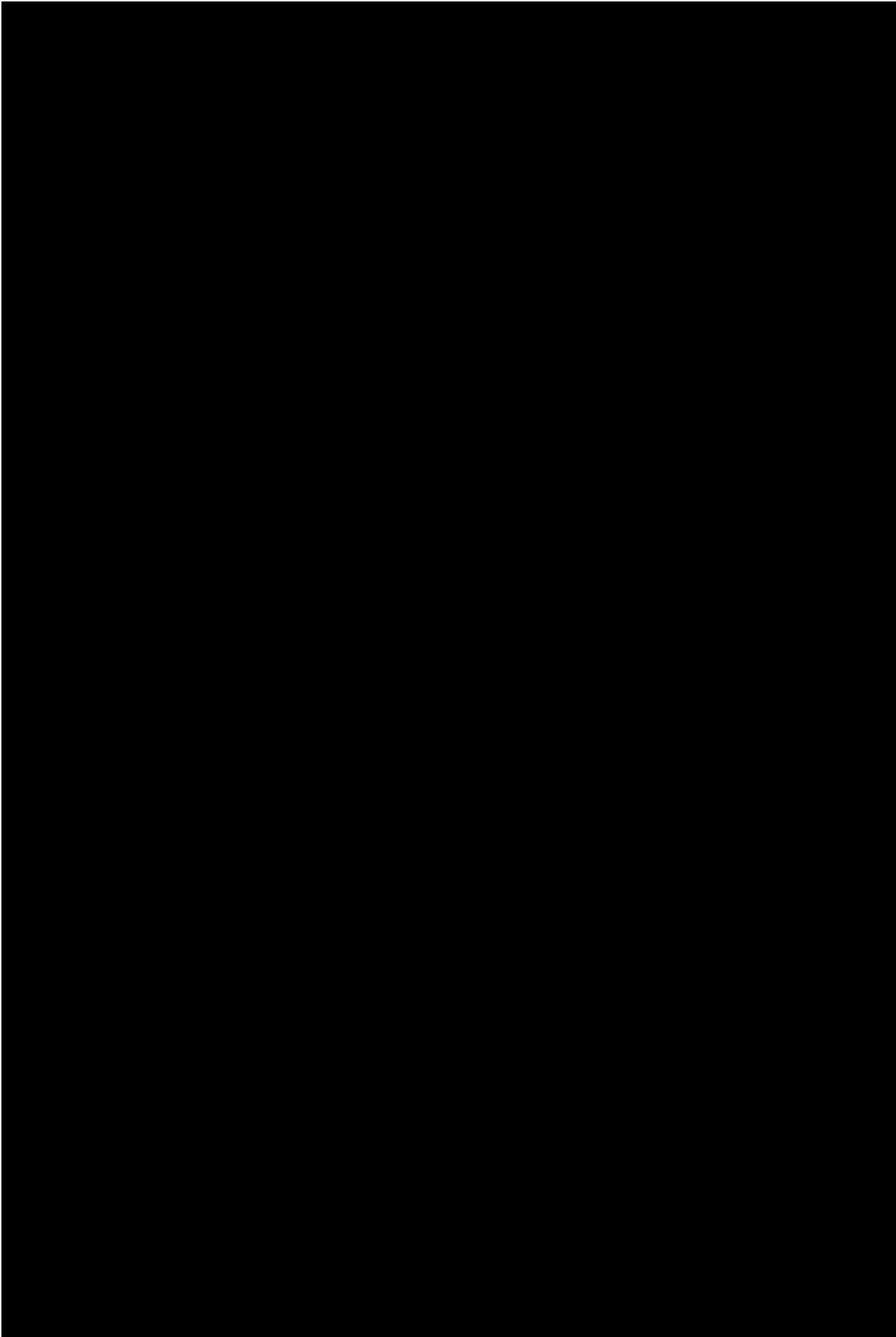


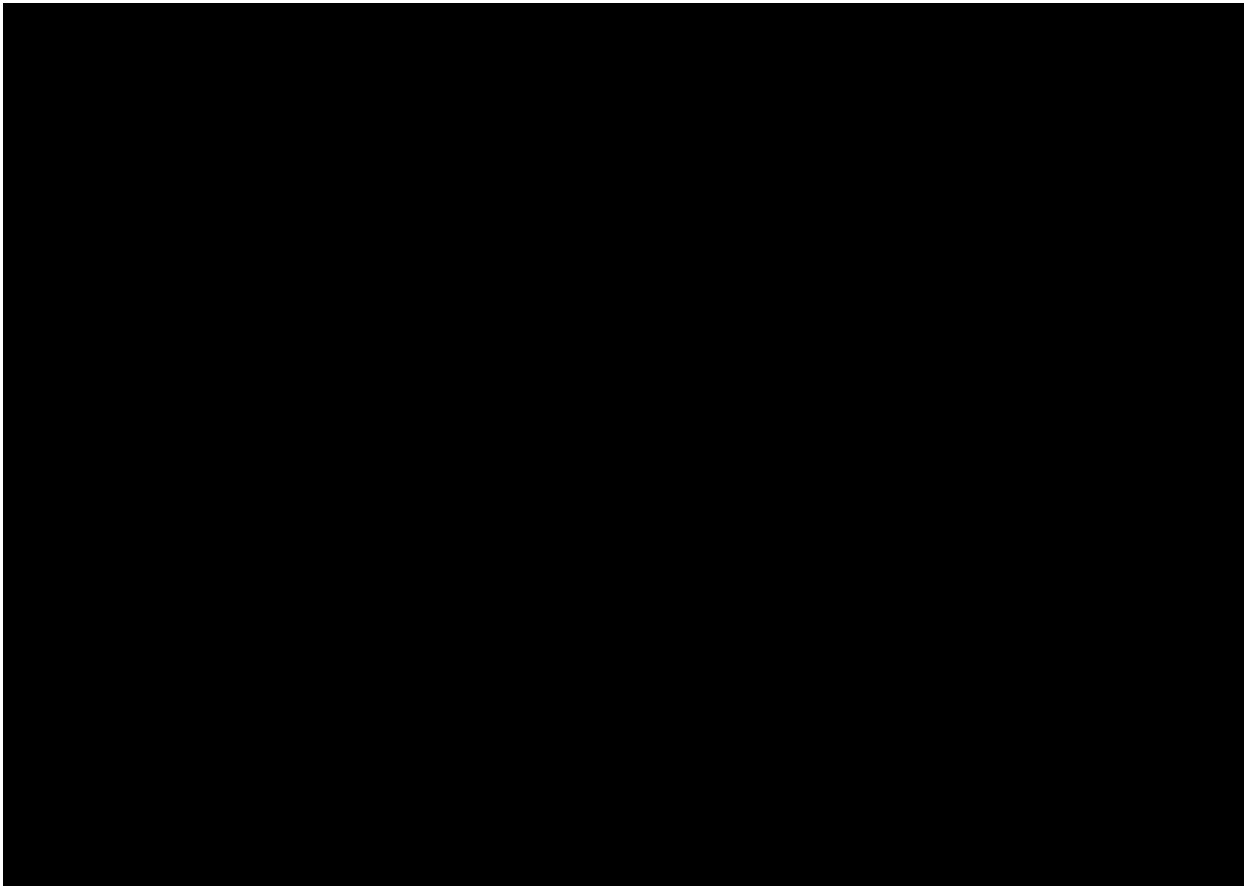












Heavy Vehicle National Law Requirements

(clauses 5.17 and 23.2 (definition of "Chain of Responsibility Management Plan"))

Heavy Vehicle National Law Requirements

1. CHAIN OF RESPONSIBILITY – HEAVY VEHICLES

1.1 Definitions

- (a) Capitalised terms in this Schedule 51 (Heavy Vehicle National Law Requirements) that are not defined in this deed have the meaning given to them in the Heavy Vehicle National Law.
- (b) The term "Chain of Responsibility" is as described in the Heavy Vehicle National Law.

1.2 Chain of Responsibility obligations

- (a) The Contractor must comply with:
 - (i) the Heavy Vehicle National Law generally and the requirements of the Chain of Responsibility Provisions specifically;
 - (ii) the Principal's requirements (as the road authority) relevant to planning and use of heavy vehicles; and
 - (iii) the Chain of Responsibility Management Plan prepared in accordance with section 21.15 of Appendix 21 to the SWTC.
- (b) The Contractor must prepare the Chain of Responsibility Management Plan for the Contractor's Activities in accordance with this deed, including the requirements of section 21.15 of Appendix 21 to the SWTC.
- (c) The Contractor must ensure that:
 - (i) all Heavy Vehicles used as part of carrying out the Contractor's Activities; and
 - (ii) the Chain of Responsibility Management Plan, comply with the Chain of Responsibility Guideline.

2. CHAIN OF RESPONSIBILITY MANAGEMENT PLAN REQUIREMENTS

2.1 Core obligations

- (a) The Contractor must not commence any work on or adjacent to the Construction Site or any place at which Contractor's Activities will be undertaken until the Contractor has submitted a revised Chain of Responsibility Management Plan to the Principal in accordance with this Schedule 51 (Heavy Vehicle National Law Requirements).
- (b) The Chain of Responsibility Management Plan prepared by the Contractor must comply with the requirements of section 21.15 of Appendix 21 to the SWTC.

- (c) Without limiting clause 5.17 of this deed, the Contractor must submit the Chain of Responsibility Management Plan to the Principal within 40 Business Days after the date of this deed.
- (d) Not used.
- (e) Not used.
- (f) The Chain of Responsibility Management Plan must be submitted to the Principal's Representative for its review at least 25 Business Days prior to the commencement of any of the Contractor's Activities using any heavy vehicle governed by the Heavy Vehicle National Law.
- (g) No review of, comments on or any other act or omission of the Principal's Representative about a Chain of Responsibility Management Plan, will lessen or otherwise affect:
 - (i) the Contractor's liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.
- (h) Not used.
- (i) Not used.
- (j) The Contractor:
 - (i) must comply with and ensure that any Subcontractors comply with the Chain of Responsibility Management Plan which has been submitted to the Principal's Representative under this clause; and
 - (ii) agrees that compliance with the Chain of Responsibility Management Plan will not in any way lessen or affect:
 - (A) its liabilities or responsibilities of the Contractor under this deed or otherwise according to Law; or
 - (B) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

3. CHAIN OF RESPONSIBILITY REQUIREMENTS

3.1 Incorporation of Chain of Responsibility requirements

The Contractor must:

- (a) take account of, and incorporate all applicable, relevant or necessary requirements in relation to the Chain of Responsibility Provisions (particularly provisions that govern the supply chain for the Project Works and Temporary Works and for the bringing onto and removal from the Construction Site items requiring transport services) in all aspects of the Contractor's Activities, including:
 - (i) the Project Plans;
 - (ii) the design of the Project Works and Temporary Works; and
 - (iii) the Design Documentation; and
- (b) at key stages of the Contractor's Activities, conduct Chain of Responsibility risk workshops which will include the designer, Principal, the Contractor, Subcontractors

and the Independent Certifier. The Chain of Responsibility risk workshops can be combined with the work health and safety risk workshops.

3.2 Chain of Responsibility risk assessment workshop

- (a) Prior to the development of the Chain of Responsibility Management Plan, and any subsequent reviews or revisions of the Chain of Responsibility Management Plan, the Contractor must undertake and document the outcomes of a formal Chain of Responsibility risk assessment workshop.
- (b) The Contractor's Chain of Responsibility risk assessment workshop must identify and document a register of Chain of Responsibility risks and hazards and control measures associated with the Contractor's Activities.
- (c) The Contractor's Chain of Responsibility Management Plan must reflect the outcomes reached in the Chain of Responsibility risk assessment workshop.
- (d) The Contractor must hold further separate workshops at different stages of the Contractor's Activities to address different trades, phases, work areas or processes not covered during the earlier risk assessment workshops and must be held prior to the commencement of the relevant activity, phase or section of work.
- (e) The Contractor may combine the Chain of Responsibility risk assessment workshops with the work health and safety risk workshops conducted by the Contractor.

4. DRIVING AND VEHICLE SAFETY

4.1 Reduction of risks to workers and public

The Contractor must comply with the requirements of the:

- (a) WHS Laws;
- (b) Road Transport Legislation; and
- (c) Heavy Vehicle National Law,

and any subordinate legislation to ensure the risks to workers and the public are reduced so far as is reasonably practical when driving on the Construction Site and driving to and from the Construction Site on the public road network.

4.2 Minimum Vehicle Safety Equipment

- (a) The Contractor must ensure that all light and heavy vehicles used to transport equipment, plant, materials and people to and from the Construction Site and working areas are equipped with the equipment as specified in the Chain of Responsibility Guideline, including the following:
 - (i) three-point seat belts (for the driver and all passengers);
 - (ii) rear view mirrors;
 - (iii) reversing cameras, quacker type alarms and collision/proximity sensors;
 - (iv) lights (head and tail, stop, turn signal and emergency warning);
 - (v) light and high visibility colours for vehicles;
 - (vi) daytime running lights;
 - (vii) no additional window tinting;
 - (viii) flashing lights (unless determined otherwise by risk assessment); and

- (ix) fire safety equipment capable of suppressing or extinguishing potential vehicular fires.
- (b) Without limiting clause 4.2(a) of this Schedule 51 (Heavy Vehicle National Law Requirements), the Contractor must ensure all vehicles in carrying out the Contractor's Activities display signs approved by the Principal in a prominent position on the vehicle when driven on public roads which associate the vehicle with carrying out the Contractor's Activities.

4.3 Vehicle Registration, Maintenance and Inspection

The Contractor must:

- (a) ensure all work vehicles are registered, roadworthy and pre-start checked before being driven;
- (b) ensure that all vehicles are inspected, serviced and maintained in accordance with the manufacturer's recommendations;
- (c) maintain a register of company vehicles showing registration expiry dates and licence requirements; and
- (d) comply with the Chain of Responsibility Guideline requirements for ensuring the roadworthiness of all heavy vehicles used in connection with the Contractor's Activities.

4.4 Vehicle Drivers

- (a) The Contractor must ensure that all workers who drive a vehicle as part of their work in the Contractor's business or undertaking, including those persons employed by Subcontractors (including owner drivers), are licensed, fit and verified as competent to drive the vehicle they are driving.
- (b) The Contractor must develop a "Driver Code of Conduct" which outlines minimum driver behaviour requirements to ensure compliance with:
 - (i) WHS Laws;
 - (ii) Road Transport Legislation;
 - (iii) Heavy Vehicle National Law; and
 - (iv) the Chain of Responsibility Guideline.
- (c) The Contractor must ensure that all drivers, including those employed by Subcontractors (including owner drivers) are made aware of and sign the "Driver Code of Conduct" developed by the Contractor in accordance with clause 4.4(b) of this Schedule 51 (Heavy Vehicle National Law Requirements).

4.5 Heavy Vehicle Requirements

The Contractor must ensure that the on-road transport of dangerous goods is managed in accordance with Law, including the *Dangerous Goods (Road and Rail Transport) Act 2008* (NSW) and the *Dangerous Goods (Road and Rail Transport) Regulation 2014* (NSW).

5. CONSTRUCTION TRAFFIC AND VULNERABLE ROAD USERS

5.1 Introduction

The Contractor acknowledges that:

- (a) during the Contractor's Activities, the introduction of construction Heavy Vehicle traffic to areas in and around the M1 Pacific Motorway Extension to Raymond Terrace Black Hill to Tomago has the potential to generate road safety risks to the public, in particular vulnerable road users; and
- (b) where required under Heavy Vehicle National Law and the Chain of Responsibility Guideline, the Contractor must ensure that the specific measures in this clause 5 of Schedule 51 (Heavy Vehicle National Law Requirements) are implemented to minimise any impacts of construction Heavy Vehicles traffic on other road users.

5.2 Heavy Vehicle Operators

- (a) The Contractor must ensure that all Heavy Vehicle operators engaged in the Contractor's Activities, including owner drivers, are assessed and selected to ensure that they meet the minimum requirements set out in this Schedule 51 (Heavy Vehicle National Law Requirements) and the Chain of Responsibility Guideline.
- (b) A Heavy Vehicle operator includes the Contractor and its Subcontractors engaged in the following activities:
 - (i) removing excavated material or waste; or
 - (ii) delivering concrete, equipment (including Temporary Works), plant or materials.

5.3 Haulage Route Compliance

- (a) The Contractor must ensure that all Heavy Vehicles haulage routes comply with any planning approval requirements.
- (b) The Contractor must ensure that approved Heavy Vehicle haulage routes are adhered to at all times by the haulage contractor and that systems are in place to monitor the location of the vehicles at all times.

5.4 Heavy Vehicle Safety Equipment

- (a) The Contractor must ensure that all Heavy Vehicles over 4.5 tonnes gross vehicle mass (GVM) are fitted with the safety equipment required in the Chain of Responsibility Guideline, as a minimum.
- (b) The Contractor must ensure that all Heavy Vehicle drivers are provided with sufficient training, instruction and supervision to ensure the competent use of the safety equipment specified in this Schedule 51 (Heavy Vehicle National Law Requirements) and the Chain of Responsibility Guideline.
- (c) The Contractor must conduct regular inspections to ensure that all Heavy Vehicles entering all Construction Site locations are compliant with the above requirements in accordance with the Chain of Responsibility Guideline. Where vehicles do not meet the minimum requirements set out in this clause 5 of Schedule 51 (Heavy Vehicle National Law Requirements) or the Chain of Responsibility Guideline, the Contractor must ensure the vehicle is not used as part of the Contractor's Activities.

5.5 Heavy Vehicle Driver Training

- (a) The Contractor must ensure that all Heavy Vehicle drivers engaged by the Contractor in carrying out the Contractor's Activities, including those employed by its Subcontractors (including owner drivers), attend an approved "Vulnerable Road User Awareness Training" before they are engaged as part of the Contractor's Activities and otherwise comply with the Chain of Responsibility Guideline.

- (b) The Contractor must prepare a safety information pack in respect of the Contractor's Activities which outlines minimum expectations when driving on the Construction Site and to and from the Construction Site.
- (c) The Contractor must ensure that all other drivers (e.g. Light Vehicle Drivers) engaged as part of the Contractor's Activities, are provided with the safety information pack prepared by the Contractor in accordance with clause 5.5(b) of this Schedule 51 (Heavy Vehicle National Law Requirements).

Schedule 52 – Principal's Enabling Works / Services Locations

Principal's Enabling Works / Services Locations

(clauses 10.1 and 23.2 (definition for "Principal's Enabling Works"))

[REDACTED]

Schedule 53 – Interface Deed

Interface Deed

(clauses 13.9, 13.10 and 23.2 (definition for "Interface Deed"))

M1 Pacific Motorway Extension to Raymond Terrace – M12RT Program

Interface Deed

Transport for NSW
(ABN 18 804 239 602)

and

[Insert details of Northern Package Contractor]
ABN [insert]

and

[Insert details of Southern Package Contractor]
(ABN [insert])

DATE: [insert date]

BETWEEN:

- (1) **Transport for NSW** ABN (18 804 239 602) a NSW Government agency and a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 20 – 44 Ennis Road, Milsons Point NSW 2061 (**Principal**);
- (2) [Insert] ABN [Insert ABN] whose registered office is at [Insert address] (**Northern Package Contractor**); and
- (3) [Insert] ABN [Insert ABN] whose registered office is at [Insert address] (**Southern Package Contractor**).

RECITALS:

- (A) The Principal is a statutory body representing the Crown in the right of the State of New South Wales.
- (B) In order to deliver the M12RT Program, the Northern Package Contractor and the Southern Package Contractor will need to cooperate with each other and integrate the work under their respective contracts.
- (C) The parties enter into this deed to record the terms on which they will cooperate with each other and integrate their respective work as part of the overall development of the M12RT Program.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

In this deed:

Appointed Principal Contractor means the entity engaged as principal contractor pursuant to WHS Legislation in respect of the Northern Package Construction Site or the Southern Package Construction Site (as applicable).

Approvals has the meaning given to that term in the Northern Package Deed and the Southern Package Deed (as applicable to each of the Northern Package Contractor and Southern Package Contractor).

Authority means:

- (a) any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the M12RT Program; and
- (c) any person having jurisdiction over, or ownership of, utilities and local areas.

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

Claim includes any claim, demand, action, proceeding or suit of any kind whatsoever for payment of money or for an extension of time or for any other form or 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, any task, fact, matter, thing or relationship connected with the M12RT Program, the Northern Package Contractor's Activities, the Southern Package Contractor's Activities, or any party's conduct prior to the date of this deed; or
- (c) otherwise at Law or in equity 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, on a quantum meruit or in quasi-contract.

Consequential Loss means any:

- (a) loss of business opportunity;
- (b) loss of goodwill;
- (c) loss of contracts;
- (d) loss arising from business interruption;
- (e) loss of anticipated savings;
- (f) loss of profit; or
- (g) the cost of capital or other financing costs,

whether incurred by the Principal, the Northern Package Contractor, the Southern Package Contractor or a third party.

Contractor means each of the Northern Package Contractor and the Southern Package Contractor and **Contractors** will mean both of them.

Cooperation and Integration Control Group means the group referred to in clause 3.1.

Final Design Documentation Stage is the design stage described in section 3 of the Contractor Documentation Schedule to the Northern Package Deed or Southern Package Deed (as applicable).

Law means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation (including ordinances, instruments, codes of practice, policy and statutory guidance);
- (b) common law; and
- (c) Approvals (including any condition or requirement under them).

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.

Loss means:

- (a) any cost (including reasonable legal costs), expense, fee, 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 includes Consequential Loss.

M12RT Program means the M12RT project, comprising the Northern Package and the Southern Package.

Northern Package Construction Site has the meaning given to the term "Construction Site" in the Northern Package Deed.

Northern Package Contractor's Activities means all things and tasks that the Northern Package Contractor is or may be required to do under the Northern Package Deed.

Northern Package Contractor's Representative means any person that the Northern Package Contractor may from time to time appoint as its representative in respect of this deed, as notified to the Southern Package Contractor and the Principal.

Northern Package Deed means the deed titled "Collaborative Design and Construct Deed M1 Pacific Motorway Extension to Raymond Terrace – Heatherbrae Bypass" entered into between the Northern Package Contractor and the Principal dated **[Insert]**.

Northern Package Design Documentation means all design documentation (including design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, shop drawings, drawings, digital records, business rules, system processes, computer software and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means required by the Northern Package Deed or necessary to be produced by or on behalf of the Northern Package Contractor to design and construct the Northern Package Project Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of the Northern Package Deed.

Northern Package Project Works has the meaning given to "Project Works" in the Northern Package Deed.

PDCS means the project document control system, being the electronic platform specified by the Principal's Representative under clause 6.1.

Planning Approval has the meaning given to that term in the Northern Package Deed and the Southern Package Deed (as applicable to each of the Northern Package Contractor and Southern Package Contractor).

Principal's Representative means any person that the Principal may from time to time appoint as its representative in respect of this deed, as notified to the Northern Package Contractor and the Southern Package Contractor, and if no such representative is appointed it means the Principal itself.

Southern Package Construction Site has the meaning given to the term "Construction Site" in the Southern Package Deed.

Southern Package Contractor's Activities means all things and tasks that the Southern Package Contractor is or may be required to do under the Southern Package Deed.

Southern Package Contractor's Representative means any person that the Southern Package Contractor may from time to time appoint as its representative in respect of this deed, as notified to the Northern Package Contractor and the Principal.

Southern Package Deed means the deed titled "Collaborative Design and Construct Deed M1 Pacific Motorway Extension to Raymond Terrace – Black Hill to Tomago" entered into between the Southern Package Contractor and the Principal dated on or about **[Insert]**.

Southern Package Design Documentation means all design documentation (including design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models, samples, prototypes, calculations, shop drawings, drawings, digital records, business rules, system processes, computer software and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means required by the Southern Package Deed or necessary to be produced by or on behalf of the Southern Package Contractor to design and construct the Southern Package Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of the Southern Package Deed.

Southern Package Project Works has the meaning given to "Project Works" in the Southern Package Deed.

Subcontractor means any person (including a supplier of a Contractor) engaged by a Contractor to perform any part of the Northern Package Project Works or the Southern Package Project Works (as applicable).

Tie-In Works means the work to be performed by the Southern Package Contractor, as part of the Southern Package Contractor's Activities to achieve the integration of the Southern Package Project Works with the Northern Package Project Works.

Tie-In Works Area means the area of Northern Package Construction Site and Southern Package Construction Site on which the Tie-In Works will be carried out by the Southern Package Contractor, identified in Schedule 2.

WHS Legislation means:

- (a) *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW); and
- (b) *Work Health and Safety Act 2011* (Cth) and *Work Health and Safety Regulations 2011* (Cth).

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation,

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

- (b) where the Northern Package Contractor or the Southern Package Contractor comprises more than one entity, an obligation or a liability assumed by, or a right conferred on, the Northern Package Contractor or the Southern Package Contractor (as applicable), binds or benefits the entities which comprise that party jointly and severally;
- (c) **person** includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors, and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) **includes** in any form is not a word of limitation;
- (f) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (g) a reference to a document (including this deed and any other deed, agreement, instrument, guideline or code of practice) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;

- (h) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (i) a reference to a part, clause, schedule, exhibit, attachment or annexure is a reference to a part, 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;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes every other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) where under this deed:
 - (i) a notice, certificate or direction is required to be given; or
 - (ii) a default must be remedied,

within a stated number of days, only Business Days will be counted in computing the number of days;
- (m) for all purposes other than as set out in clause 1.2(l), day means calendar day;
- (n) a reference to a court or tribunal is to an Australian court or tribunal;
- (o) a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (p) a reference to a **month** is a reference to a calendar month;
- (q) a reference to **\$** or **dollar** is to Australian currency;
- (r) 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;
- (s) if the day on or by which any thing is to be done under this deed is not a Business Day, that thing must be done:
 - (i) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
 - (ii) in all other cases, no later than the next Business Day;
- (t) the word subcontractor will include subcontractors, suppliers and Subcontractors, and the word subcontract will include a contract with a subcontractor;
- (u) when the Principal may exercise a right or remedy, the Principal has an absolute discretion whether or not to do so, and is not required to exercise the discretion in good faith or having regard to, or for the benefit of, the Contractors.

1.3 No bias against drafter

In the interpretation of this deed, no rule of construction applies to the disadvantage of one party on the basis that the party or its representative put forward or drafted this deed or any provision in it.

1.4 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 Law.

2. PRIMARY OBLIGATIONS

2.1 General

- (a) The parties acknowledge that:
 - (i) the Principal and the Northern Package Contractor have entered into the Northern Package Deed; and
 - (ii) the Principal and the Southern Package Contractor have entered into the Southern Package Deed.
- (b) Each Contractor acknowledges that it:
 - (i) must comply with the obligations under its respective deed with the Principal and this deed; and
 - (ii) as at the date of this deed, intends to achieve the dates set out in Schedule 3.
- (c) Other than as expressly required under this deed, the Northern Package Contractor and the Southern Package Contractor must not enter into any contract, arrangement or other understanding with each other in respect of the M12RT Program without the prior written approval of the Principal's Representative.

3. COOPERATION

3.1 Cooperation and Integration Control Group

The Cooperation and Integration Control Group will be established within 28 days of the date of this deed. The Cooperation and Integration Control Group will comprise:

- (a) the Principal's Representative for each of the Northern Package Deed and Southern Package Deed;
- (b) the Northern Package Contractor's Representative;
- (c) the Southern Package Contractor's Representative;
- (d) representatives of any subcontractors of each Contractor as reasonably required by the Principal's Representative; and
- (e) any other person the Principal's Representative reasonably requires from time to time.

3.2 Cooperation and Integration Control Group functions

The functions and objectives of the Cooperation and Integration Control Group include:

- (a) identifying all key interfaces between the Northern Package Contractor's Activities and the Southern Package Contractor's Activities;
- (b) developing a program for the key interface activities to be incorporated into each Contractor's delivery program;
- (c) reviewing the progress of the Northern Package Contractor's Activities and the Southern Package Contractor's Activities and anticipated future progress of the Northern Package Contractor's Activities and the Southern Package Contractor's Activities;
- (d) considering interface issues between the Northern Package Contractor's Activities, the Southern Package Contractor's Activities and any other interfaces with other contractors, including their status, problems, solutions and newly identified interfaces;
- (e) identifying strategies to efficiently manage key interface issues between the Contractors;
- (f) considering and coordinating community and stakeholder relations issues;
- (g) establishing administrative procedures to be adopted by the various parties in relation to the matters referred to in this deed;
- (h) reviewing the working relationship between the parties and addressing issues as they arise in a constructive and efficient manner; and
- (i) any other matters relating to the interface between the Southern Package Project Works and the Northern Package Project Works.

3.3 Cooperation and Integration Control Group meetings

- (a) The Cooperation and Integration Control Group must meet:
 - (i) at the dates and times specified by the Principal's Representative, which will be on a regular monthly basis between the date of this deed and the date that is one month after Completion (as defined in the Southern Package Deed) (or such other regular period as the Principal and each of the Contractors agree in writing);
 - (ii) in accordance with this clause 3.3; and
 - (iii) at other times as required by the Principal and/or the Contractors.
- (b) The Contractors must together provide the Principal's Representative with an agenda for each meeting of the Cooperation and Integration Control Group, which agenda must:
 - (i) have been prepared in consultation with the Principal's Representative;
 - (ii) be provided no less than 48 hours prior to each meeting; and
 - (iii) be distributed to any other person as required by the Principal's Representative.
- (c) The Principal's Representative will have the role of chairperson for meetings of the Cooperation and Integration Control Group.

- (d) For each meeting of the Cooperation and Integration Control Group, the Principal's Representative (or such other member of the Cooperation and Integration Control Group as is nominated by the Principal's Representative) must record minutes of the meeting and distribute the minutes to all members of the Cooperation and Integration Control Group within five (5) Business Days after the meeting. The Principal's Representative may also require that the minutes be distributed to any other person.
- (e) Notwithstanding the recording of the minutes of any Cooperation and Integration Control Group meeting, no resolution or communication at any Cooperation and Integration Control Group meeting (nor minutes recording any resolution or communication) or anything else which occurs during a Cooperation and Integration Control Group meeting or as part of the process for such meetings will:
 - (i) limit or otherwise affect:
 - (A) the Northern Package Contractor's obligations under this deed or the Northern Package Deed or otherwise according to Law;
 - (B) the Southern Package Contractor's obligations under this deed or the Southern Package Deed or otherwise according to Law; or
 - (C) the Principal's rights under this deed, the Northern Package Deed or the Southern Package Deed or otherwise according to Law;
 - (ii) be construed as or amount to a direction under the Northern Package Deed unless and until a separate direction is given to the Northern Package Contractor in writing by the Principal's Representative under the Northern Package Deed; or
 - (iii) be construed as or amount to a direction under the Southern Package Deed unless and until a separate direction is given to the Southern Package Contractor in writing by the Principal's Representative under the Southern Package Deed,

and the parties agree that all materials referred to and all discussions, debates, disagreements and resolutions on any matters raised at these meetings are only for the purpose of reviewing the matters referred to in this clause 3 and other matters raised at the meetings.

3.4 Cooperation and Integration – Northern Package Contractor

The Northern Package Contractor:

- (a) acknowledges that:
 - (i) the Northern Package Project Works and the Southern Package Project Works form part of the M12RT Program;
 - (ii) the Northern Package Contractor's Activities interface with the Southern Package Contractor's Activities;
 - (iii) the Southern Package Contractor may be executing Southern Package Project Works on or adjacent to parts of the Northern Package Construction Site or the Tie-In Works Area at the same time as the Northern Package Contractor is performing the Northern Package Contractor's Activities; and
 - (iv) any delay in the performance of the Northern Package Contractor's Activities, or in the Northern Package Contractor providing information to, or cooperating and

coordinating with, the Southern Package Contractor may adversely impact upon, delay or disrupt the Southern Package Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;

(b) must:

(i) permit the Southern Package Contractor to execute the Southern Package Project Works on the applicable parts of the Northern Package Construction Site, the Tie-In Works Area, or on any adjacent property to the Northern Package Construction Site or the Tie-In Works Area:

(A) at the same time as the Northern Package Contractor is performing the Northern Package Contractor's Activities; and

(B) at the times agreed between the Contractors, or failing agreement at the times reasonably determined by the Principal's Representative,

and for this purpose ensure that the Southern Package Contractor has safe, clean and clear access to those parts of the Northern Package Construction Site or the Tie-In Works Area reasonably required by the Southern Package Contractor for the purpose of carrying out its work, subject to clause 3.7;

(ii) protect the Northern Package Project Works and other improvements on the Northern Package Construction Site from accidental damage by the Southern Package Contractor;

(iii) not damage the Southern Package Project Works or the Southern Package Contractor's plant or equipment;

(iv) co-operate with the Southern Package Contractor, and do everything reasonably necessary to facilitate the execution of the Southern Package Project Works (including the Tie-In Works), including providing the Southern Package Contractor with such assistance as may be reasonably directed by the Principal's Representative;

(v) carefully coordinate and interface the Northern Package Project Works and Northern Package Contractor's Activities with the Southern Package Project Works and Southern Package Contractor's Activities, and for this purpose:

(A) make proper allowance in all programs for the Southern Package Project Works;

(B) review all programs provided by the Southern Package Contractor and confirm that they adequately allow for the Northern Package Contractor's Activities and the interfaces between the Northern Package Contractor's Activities and the Southern Package Contractor's Activities;

(C) monitor the progress or conduct of the Southern Package Project Works;

(D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or completion of the Northern Package Project Works; and

(E) provide the Southern Package Contractor with sufficient information about the current and expected Northern Package Contractor's Activities to assist

the Southern Package Contractor to coordinate the Southern Package Contractor's Activities with the Northern Package Contractor's Activities;

- (vi) cooperate, meet with, liaise and share information so that the Northern Package Contractor and the Southern Package Contractor each comply with the provisions of the Planning Approval;
- (vii) perform the Northern Package Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Southern Package Project Works;
- (viii) coordinate the Northern Package Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Southern Package Contractor's personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Northern Package Project Works which are adjacent to or interface with the Southern Package Project Works, at least fifteen (15) Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with the Southern Package Contractor where required and provide all reasonably necessary information to the Southern Package Contractor in respect of the Northern Package Project Works;
- (x) attend interface coordination meetings in accordance with clause 3.3;
- (xi) when information is reasonably required from the Southern Package Contractor, provide reasonable written notice to the Southern Package Contractor (with a copy to the Principal's Representative) requesting that information and specifying the date by which such information is required, which must be:
 - (A) at least 10 days after the date of the notice (except in special circumstances); or
 - (B) if a longer period for the provision of information is required by the Northern Package Deed, the date that period expires;
- (xii) ensure that any written notice given under clause 3.4(b)(xi) provides the Southern Package Contractor with the longest practicable time for the provision of the information;
- (xiii) when any information is reasonably requested by the Principal or Southern Package Contractor:
 - (A) provide the information to the Southern Package Contractor, with a copy to the Principal's Representative, within the time requested by the Southern Package Contractor, provided that this time is:
 1. at least 10 days after the date of the notice (except in special circumstances); or
 2. if a longer period for the provision of information is required by the Northern Package Deed, the date that period expires; and
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;

- (xiv) achieve a high level of cooperation, coordination and collaboration with the Southern Package Contractor to ensure that:
 - (A) the Northern Package Project Works are fully integrated with the Southern Package Project Works; and
 - (B) any delay, or potential delay, to the Northern Package Contractor's Activities or the Southern Package Contractor's Activities is mitigated;
- (xv) closely cooperate with the Southern Package Contractor with respect to community and stakeholder liaison issues; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with the Southern Package Contractor, including in relation to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, the Southern Package Contractor;
 - (D) the compatibility of the Northern Package Project Works with the Southern Package Project Works;
 - (E) coordination in accordance with this clause 3.4; and
 - (F) technical issues with the information provided to, or received from, the Southern Package Contractor;
- (c) must, in the event that despite having complied with all of its obligations under clause 3.4, the Contractors fail to resolve any interface issue or dispute between them:
 - (i) as soon as practicable give written notice to the Principal's Representative with a copy to the Southern Package Contractor describing the problem; and
 - (ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem; and
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to the Northern Package Project Works or otherwise have an adverse effect upon, or cause a delay to, the Northern Package Contractor's Activities.

3.5 Cooperation and Integration – Southern Package Contractor

The Southern Package Contractor:

- (a) acknowledges that:
 - (i) the Southern Package Project Works and the Northern Package Project Works form part of the M12RT Program;
 - (ii) the Southern Package Contractor's Activities interface with the Northern Package Contractor's Activities;

- (iii) the Northern Package Contractor may be executing Northern Package Project Works on or adjacent to parts of the Southern Package Construction Site or the Tie-In Works Area at the same time as the Southern Package Contractor is performing the Southern Package Contractor's Activities; and
 - (iv) any delay in the performance of the Southern Package Contractor's Activities, or in the Southern Package Contractor providing information to, or cooperating and coordinating with, the Northern Package Contractor may adversely impact upon, delay or disrupt the Northern Package Contractor's Activities in a way which may lead to the Principal suffering or incurring additional costs, Losses and damages;
- (b) must:
- (i) permit the Northern Package Contractor to execute the Northern Package Project Works on the applicable parts of the Southern Package Construction Site, the Tie-In Works Area, or on any property adjacent to the Tie-In Works Area:
 - (A) at the same time as the Southern Package Contractor is performing the Southern Package Contractor's Activities; and
 - (B) at the times agreed between the Contractors, or failing agreement, at the times reasonably determined by the Principal's Representative,

and for this purpose ensure that the Northern Package Contractor has safe, clean and clear access to those parts of the Southern Package Construction Site or the Tie-In Works Area reasonably required by the Northern Package Contractor for the purpose of carrying out their work subject to clause 3.6;
 - (ii) protect the Southern Package Project Works and other improvements on the Southern Package Construction Site from accidental damage by the Northern Package Contractor;
 - (iii) not damage the Northern Package Project Works or the Northern Package Contractor's plant or equipment;
 - (iv) co-operate with the Northern Package Contractor, and do everything reasonably necessary to facilitate the execution of the Northern Package Project Works, including providing the Northern Package Contractor with such assistance as may be reasonably directed by the Principal's Representative;
 - (v) carefully coordinate and interface the Southern Package Project Works and Southern Package Contractor's Activities with the Northern Package Project Works and Northern Package Contractor's Activities, and for this purpose:
 - (A) make proper allowance in all programs for the Northern Package Project Works;
 - (B) review all programs provided by the Northern Package Contractor and confirm that they adequately allow for the Southern Package Contractor's Activities and the interfaces between the Southern Package Contractor's Activities and the Northern Package Contractor's Activities;
 - (C) monitor the progress or conduct of the Northern Package Project Works;

- (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or completion of the Southern Package Project Works; and
- (E) provide the Northern Package Contractor with sufficient information about the current and expected Southern Package Contractor's Activities to assist the Northern Package Contractor to coordinate the Northern Package Contractor's Activities with the Southern Package Contractor's Activities;
- (vi) cooperate, meet with, liaise and share information so that the Southern Package Contractor and the Northern Package Contractor each comply with the provisions of the Planning Approval;
- (vii) perform the Southern Package Contractor's Activities so as to minimise any interference with or disruption or delay to, or otherwise adversely affect, the Northern Package Project Works;
- (viii) coordinate the Southern Package Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Northern Package Contractor's personnel and work, including providing to the Principal's Representative copies of work method statements for those parts of the Southern Package Project Works which are adjacent to or interface with the Northern Package Project Works, at least fifteen (15) Business Days prior to commencing the work described in the work method statement;
- (ix) work directly with the Northern Package Contractor where required and provide all reasonably necessary information to the Northern Package Contractor in respect of the Southern Package Project Works;
- (x) attend interface coordination meetings in accordance with clause 3.3;
- (xi) when information is reasonably required from the Northern Package Contractor, provide reasonable written notice to the Northern Package Contractor (with a copy to the Principal's Representative) requesting that information and specifying the date by which such information is required, which must be:
 - (A) at least 10 days after the date of the notice (except in special circumstances); or
 - (B) if a longer period for the provision of information is required by the Southern Package Deed, the date that period expires;
- (xii) ensure that any written notice given under clause 3.5(b)(xi) provides the Northern Package Contractor with the longest practicable time for the provision of the information;
- (xiii) when any information is reasonably requested by the Principal or Northern Package Contractor:
 - (A) provide the information to the Northern Package Contractor, with a copy to the Principal's Representative, within the time requested by the Northern Package Contractor, provided that this time is:
 - 1. at least 10 days after the date of the notice (except in special circumstances); or

2. if a longer period for the provision of information is required by the Northern Package Deed, the date that period expires; and
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate;
- (xiv) achieve a high level of cooperation, coordination and collaboration with the Northern Package Contractor to ensure that:
 - (A) the Northern Package Project Works are fully integrated with the Southern Package Project Works; and
 - (B) any delay, or potential delay, to the Northern Package Contractor's Activities or the Southern Package Contractor's Activities is mitigated;
- (xv) closely cooperate with the Northern Package Contractor with respect to community and stakeholder liaison issues; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with the Northern Package Contractor, including in relation to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, the Northern Package Contractor;
 - (D) the compatibility of the Northern Package Project Works with the Southern Package Project Works;
 - (E) coordination in accordance with this clause 3.5; and
 - (F) technical issues with the information provided to, or received from, the Northern Package Contractor;
- (c) must, in the event that despite having complied with all of its obligations under clause 3.5, the Contractors fail to resolve any interface issue or dispute between them:
 - (i) as soon as practicable give written notice to the Principal's Representative with a copy to the Northern Package Contractor describing the problem; and
 - (ii) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem; and
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison between the Contractors that may involve a change to the Southern Package Project Works or otherwise have an adverse effect upon, or cause a delay to, the Southern Package Contractor's Activities.

3.6 Access to the Southern Package Construction Site and Tie-In Works Area

Without limiting clause 3.4 and unless otherwise directed by the Principal's Representative, if the Northern Package Contractor is required to access a part of the Southern Package Construction Site or the Tie-In Works Area to carry out Northern Package Project Works while the Southern Package

Contractor (or its nominee) is Appointed Principal Contractor for the relevant part of the Southern Package Construction Site or the Tie-In Works Area:

- (a) as soon as practicable, and in any event, no later than 5 Business Days prior to the intended date of access, the Northern Package Contractor must provide the Principal and the Southern Contractor notice of:
 - (i) the date, time and duration for which it intends to access the Southern Package Construction Site or the Tie-In Works Area; and
 - (ii) the relevant part of the Southern Package Construction Site or the Tie-In Works Area which it intends to access,(the **Southern Access Notice**); and
- (b) subject to clause 3.7A, and unless otherwise directed by the Principal's Representative, the Northern Package Contractor, its personnel, its Subcontractors and their personnel (as relevant) may access (and the Southern Package Contractor must allow and/or facilitate such access) the relevant part of the Southern Package Construction Site or the Tie-In Works Area in accordance with the Southern Access Notice, and while they are on the relevant part of the Southern Package Construction Site or the Tie-In Works Areas, the Northern Package Contractor (or its nominee) will be the Appointed Principal Contractor for the duration and to the extent of that access.

3.7 Access to the Northern Package Construction Site

Without limiting clause 3.5 and unless otherwise directed by the Principal's Representative, if the Southern Package Contractor is required to access a part of the Northern Package Construction Site in order to carry out the Southern Package Project Works while the Northern Package Contractor (or its nominee) is Appointed Principal Contractor for the relevant part of the Northern Package Construction Site:

- (a) as soon as practicable and in any event, no later than 5 Business Days prior to the intended date of access, the Southern Package Contractor must provide the Principal and the Northern Package Contractor notice of:
 - (i) the date, time and duration for which it intends to access the Northern Package Construction Site; and
 - (ii) the relevant part of the Northern Package Construction Site which it intends to access,(**Northern Access Notice**); and
- (b) subject to clause 3.7A, and unless otherwise directed by the Principal's Representative, the Southern Package Contractor, its personnel, its Subcontractors and their respective personnel (as relevant), may access (and the Northern Package Contractor must allow and/or facilitate such access) the relevant part of the Northern Package Construction Site in accordance with the Northern Access Notice, and while they are on the relevant part of the Northern Package Construction Site, the Southern Package Contractor (or its nominee) will be the Appointed Principal Contractor for the duration and to the extent of that access.

3.7A Indemnities when accessing the other Contractor's Construction Site

- (a) When accessing the Southern Package Construction Site or Tie-in Works Area in accordance with clause 3.6, the Northern Package Contractor indemnifies the Southern Package Contractor against:
 - (i) any injury to people or damage to property arising from the Northern Package Contractor's access; or
 - (ii) any return of the relevant part of the Southern Package Construction Site or Tie-in Works Area that is delayed or otherwise not in accordance with the timing in the Southern Access Notice,

but the responsibility of the Northern Package Contractor to indemnify the Southern Package Contractor under this clause 3.7A(a) will be reduced proportionally to the extent that an act or omission by the Southern Package Contractor, any of the Southern Package Contractor's Subcontractors or their respective personnel contributed to the cost or expense.

- (b) When accessing the Northern Package Construction Site in accordance with clause 3.7, the Southern Package Contractor indemnifies the Northern Package Contractor against:
 - (i) any injury to people or damage to property arising from the Southern Package Contractor's access; or
 - (ii) any return of the relevant part of the Northern Package Construction Site that is delayed or otherwise not in accordance with the timing in the Northern Access Notice,

but the responsibility of the Southern Package Contractor to indemnify the Northern Package Contractor under this clause 3.7A(b) will be reduced proportionally to the extent that an act or omission by the Northern Package Contractor, any of the Northern Package Contractor's Subcontractors or their respective personnel contributed to the cost or expense.

3.8 Design

The Contractors and the Principal acknowledge that:

- (a) the Northern Package Contractor will be provided with the Southern Package Design Documentation for the Southern Package Project Works to the extent relevant to the Northern Package Project Works; and
- (b) the Southern Package Contractor will be provided with the Northern Package Design Documentation for the Northern Package Works to the extent relevant to the Southern Package Project Works.

3.9 Northern Package Deed and Southern Package Deed not affected

Notwithstanding the provisions of this deed, the parties acknowledge and agree that nothing contained in this deed will limit or otherwise affect the duties, rights and obligations of:

- (a) the Northern Package Contractor pursuant to the Northern Package Deed; or
- (b) the Southern Package Contractor pursuant to the Southern Package Deed.

3.10 Limitation of liability

- (a) Subject to clause 3.10(c), the Northern Package Contractor releases absolutely the Southern Package Contractor from and against:
 - (i) any Claim against the Southern Package Contractor (including any claim, action, demand or proceeding for payment of money (including damages)); and
 - (ii) any Loss suffered or incurred by the Northern Package Contractor,arising out of or in any way in connection with a breach of this deed by, or other act or omission of, the Southern Package Contractor.
- (b) Subject to clause 3.10(c), the Southern Package Contractor releases the Northern Package Contractor from and against:
 - (i) any Claim against the Northern Package Contractor (including any claim, action, demand or proceeding for payment of money (including damages)); and
 - (ii) any Loss suffered or incurred by the Southern Package Contractor,arising out of or in any way in connection with a breach of this deed by, or other act or omission of, the Northern Package Contractor.
- (c) Clause 3.10(a) and clause 3.10(b) do not limit:
 - (i) a Contractor's liability which cannot be limited at Law;
 - (ii) a Contractor's liability arising from a breach of clause 3.4(b)(iii) in respect of the Northern Package Contractor or clause 3.5(b)(iii) in respect of the Southern Package Contractor;
 - (iii) a Contractor's liability which is due to that Contractor's fraud or criminal conduct; or
 - (iv) a Contractor's liability to the Principal under the Northern Package Deed or the Southern Package Deed (as the case may be), arising out of or in any way in connection with any:
 - (A) breach of this deed by the relevant Contractor; or
 - (B) other act, default or omission by the relevant Contractor under, or purportedly under, this deed.
- (d) This clause 3.10 applies:
 - (i) notwithstanding and survives any termination of this deed;
 - (ii) notwithstanding any other provision of this deed; and
 - (iii) to the maximum extent permitted by Law (present or future).
- (e) Despite any other provision of this deed:
 - (i) the Northern Package Contractor's and the Southern Package Contractor's liability to the relevant Principal under or in connection with this deed is limited to the extent

described in the Northern Package Deed or the Southern Package Deed (as applicable);

- (ii) nothing in this deed is intended to make or makes either of the Contractors liable for the same loss twice for the same breach of an obligation; and
- (iii) a Contractor's total aggregate liability to the other Contractor under or in connection with this deed howsoever caused or arising, whether in contract, tort (including negligence), equity, statute, by way of indemnity, contribution, unjust enrichment, warranty or guarantee or otherwise at Law will not exceed the liability that:
 - (A) the Northern Package Contractor would have had under the Northern Package Deed if the Northern Package Deed had named, in place of the Principal, the Principal and the Southern Package Contractor, jointly and severally; or
 - (B) the Southern Package Contractor would have had under the Southern Package Deed if the Southern Package Deed had named, in place of the Principal, the Principal and the Northern Package Contractor, jointly and severally.

4. LIABILITY

4.1 Exclusion of proportionate liability scheme

- (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 any party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 4.1(a), the rights, obligations and liabilities of the Principal and the Contractors 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, tort or otherwise.

4.2 Contractors not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) each of the Contractors must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against a Contractor (whether in contract, tort or otherwise); and
- (b) if any of the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) are applied to any claim by the Principal against a Contractor (whether in contract, tort or otherwise), the relevant Contractor will indemnify the Principal against any Loss which the Principal is not able to recover from the relevant Contractor because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

5. TERMINATION AND SUBSTITUTION

5.1 Termination

- (a) Subject to clause 5.1(b), none of the parties will have any right to terminate this deed.

- (b) This deed will terminate automatically upon the termination of the Northern Package Deed or the Southern Package Deed.
- (c) If required by:
 - (i) the Principal upon any termination of the Southern Package Deed, the Northern Package Contractor must; or
 - (ii) the Principal upon any termination of the Northern Package Deed, the Southern Package Contractor must,

enter into a new interface deed on substantially the same terms as this deed with the Principal and any new contractor or contractors appointed by the Principal for the completion of the balance of the works under the Southern Package Deed or the Northern Package Deed (as applicable) which remain unfinished as at the date of termination.

5.2 Preservation of rights

Nothing in this clause 5 or the Principal does or fails to do pursuant to this clause 5 will prejudice the right of the Principal to exercise any right or remedy which it may have where a Contractor breaches (including repudiates) this deed.

6. GENERAL

6.1 Notices

- (a) Wherever referred to in this clause, Notice means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time, the Principal's Representative may notify the parties that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's Representative's notice will set out:
 - (i) the name of the relevant PDCS;
 - (ii) the commencement date for use of the PDCS;
 - (iii) any password, login details or similar information required for the parties to use the PDCS;
 - (iv) any requirements for specific notices (e.g. notices of claims);
 - (v) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.
- (c) At any time and from time to time, the Principal's Representative may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's Representative's notice will state that such Notices will be given in accordance with clause 6.1(d).
- (d) Each Notice must:
 - (i) before the date referred to in clause 6.1(b)(ii) or where clause 6.1(c) applies:

- (A) be in writing;
- (B) be addressed:
 - (aa) in the case of a Notice from the Northern Package Contractor, to the Principal's Representative and the Southern Package Contractor;
 - (bb) in the case of a Notice from the Southern Package Contractor, to the Principal's Representative and the Northern Package Contractor; or
 - (cc) in the case of a Notice from the Principal, to each Contractor;
- (C) comply with any requirements for specific notices (e.g. notices of Claims) specified by the Principal in writing;
- (D) be signed 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; and
- (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

Principal

Address: *[to be inserted]*

Email: *[to be inserted]*

Attention: *[to be inserted]*

Northern Package Contractor

Address: *[to be inserted]*

Email: *[to be inserted]*

Attention: *[to be inserted]*

Southern Package Contractor

Address: *[to be inserted]*

Email: *[to be inserted]*

Attention: *[to be inserted]*

- (ii) from the commencement date for use of the PDCS referred to in clause 6.1(b)(ii) (other than where clause 6.1(c) applies):
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 6.1(f):
 - (aa) in the case of a Notice from the Northern Package Contractor, be addressed to the Principal's Representative and the Southern Package Contractor and comply with any requirements notified in accordance with clause 6.1(b)(iv);

- (bb) in the case of a Notice from the Southern Package Contractor, be addressed to the Principal's Representative and the Northern Package Contractor and comply with any requirements notified in accordance with clause 6.1(b)(iv); or
 - (cc) in the case of a Notice from the Principal, be addressed to the Northern Package Contractor and the Southern Package Contractor; or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 6.1(d)(i).
- (e) A communication is taken to be received by the addressee:
- (i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;
 - (ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;
 - (iii) (in the case of international post) 7 Business Days after the date of posting;
 - (iv) (in the case of delivery by hand) on delivery; and
 - (v) (in the case of email):
 - (A) if it is transmitted by 5.00 pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5.00 pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) 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 6.1(f)(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.
- (g) Each Contractor 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 the PDCS and check whether Notices have been received on each Business Day;
 - (iii) ensure all relevant personnel attend all necessary training required by the Principal's Representative;
 - (iv) advise the Principal's Representative of which personnel require access to the PDCS;
 - (v) 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; and
 - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 6.1(d)(ii)(B) to the Principal's Representative through the PDCS.
- (h) The Principal has no liability for any Losses the Contractors may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractors will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with such access to or use of the PDCS or any failure of the PDCS.

6.2 Governing law

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

6.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any action or proceedings, and any Claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 6.3(a).

6.4 The Principal as a public authority

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any Law.
- (b) Each of the Contractors acknowledges and agrees that, without limiting clause 6.4(a), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any Law will be deemed not to be an act or omission by the Principal under this deed and will not entitle either of the Contractors to make any Claim against the Principal.

6.5 Amendments

This deed may only be varied by a deed executed by or on behalf of each of the parties.

6.6 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, any right, power or remedy provided by Law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by the Northern Package Contractor or the Southern Package Contractor to comply with a requirements of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

operates as a waiver of another breach of that term or of a breach of any other term of this deed.

6.7 Cost of performing obligations

Subject to the terms of the Northern Package Deed and the Southern Package Deed (as applicable), each party must, unless this deed expressly provides otherwise, pay its own costs and expenses in connection with performing its obligations under this deed.

6.8 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by Law or reasonably requested by another party to give effect to this deed.

6.9 Consents

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

6.10 Assignment

- (a) Subject to clause 6.10(b) a party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party unless this deed expressly provides otherwise.
- (b) If:
 - (i) the Southern Package Contractor assigns, novates or otherwise transfers its rights or interests under the Southern Package Deed; or
 - (ii) the Northern Package Contractor assigns, novates or otherwise transfers its rights or interests under the Northern Package Deed,

(in each case in accordance with the terms of such contract) and if required by the Principal, the Southern Package Contractor or the Northern Package Contractor (as applicable) must ensure that the relevant assignee, novatee or transferee takes assignment, novation or transfer (as applicable) of the relevant Contractor's rights and/or obligations (as applicable) under this deed.

- (c) The parties acknowledge and agree that the consent of each other party is not required in relation to an assignment, novation or transfer made pursuant to clause 6.10(b).

6.11 Replacement body

Where a reference is made to any Authority, institute, association, body, person or organisation (**Former Body**) which is reconstituted, renamed, replaced, ceases to exist or has its powers or functions transferred to another Authority, institute, association, body, person or organisation, that reference will be deemed to refer to the Authority, institute, association, body, person or organisation (**Replacement Body**) which then serves substantially the same powers, functions or objects as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

6.12 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. All counterparts together will be taken to constitute one instrument.

6.13 No representation or reliance

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

6.14 Expenses

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

6.15 Entire agreement

This deed constitutes the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

- (a) any prior agreement (whether in writing or not), negotiations and discussions between the parties in relation to the subject matter of this deed; and
- (b) any correspondence or other documents relating to the subject matter of this deed that may have passed between the parties prior to the date of this deed and that are not expressly included in this deed.

6.16 Indemnities

- (a) Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this deed.
- (b) Nothing in this clause 6.16 prevents any other provision of this deed, as a matter of interpretation also surviving the termination of this deed.
- (c) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by this deed.
- (d) Each indemnity in this deed is an obligation on the indemnifying party to pay on demand the amount of the relevant Claim or Loss suffered or incurred by the indemnified party.

6.17 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any party to enter into any commitment on behalf of another party or otherwise to act as agent of another party; or
- (b) constituting the relationship between any two of the parties (or all of the parties) as that of partners, joint venturers or any other fiduciary relationship.

6.18 Severance

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

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

6.19 Moratorium legislation

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

SCHEDULE 1 TO INTERFACE DEED

NOT USED

SCHEDULE 2 TO INTERFACE DEED

- The area shown in Figure 2.1 for the Southern Contract and defined in the Site Access Schedule as Property Id No.s 116 and 117.
- The area shown in Figure 2.1 for the Northern Contract and defined in the Site Access Schedule as Property Id No.s 1 and 2.

SCHEDULE 3 TO INTERFACE DEED

<i>Northern Contract – Heatherbrae Bypass</i>	
<i>Milestone</i>	<i>Date</i>
<i>Award Contract</i>	<i>TBC</i>
<i>Commence Construction</i>	<i>TBC</i>
<i>Opening Completion</i>	<i>TBC</i>
<i>Completion</i>	<i>TBC</i>

<i>Southern Contract – Black Hill to Tomago</i>	
<i>Milestone</i>	<i>Date</i>
<i>Award Contract</i>	<i>TBC</i>
<i>Commence Construction</i>	<i>TBC</i>
<i>Opening Completion</i>	<i>TBC</i>
<i>Completion</i>	<i>TBC</i>

Executed and delivered as a deed.

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

.....
Signature of witness

.....
Signature of authorised delegate

.....
Print name
(BLOCK LETTERS)

.....
Print name
(BLOCK LETTERS)

EXECUTED by **[INSERT NAME OF SOUTHERN PACKAGE CONTRACTOR]**
(ABN []):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by **[INSERT NAME OF THE NORTHERN PACKAGE CONTRACTOR]**
(ABN []):

Signature of director

Signature of director/secretary

Name

Name

Schedule 54– Financial Reporting Requirements and Information

Financial Reporting Requirements and Information

(clauses 8A.1 and 23.2 (Definition for 'Designated Significant Subcontractors'))

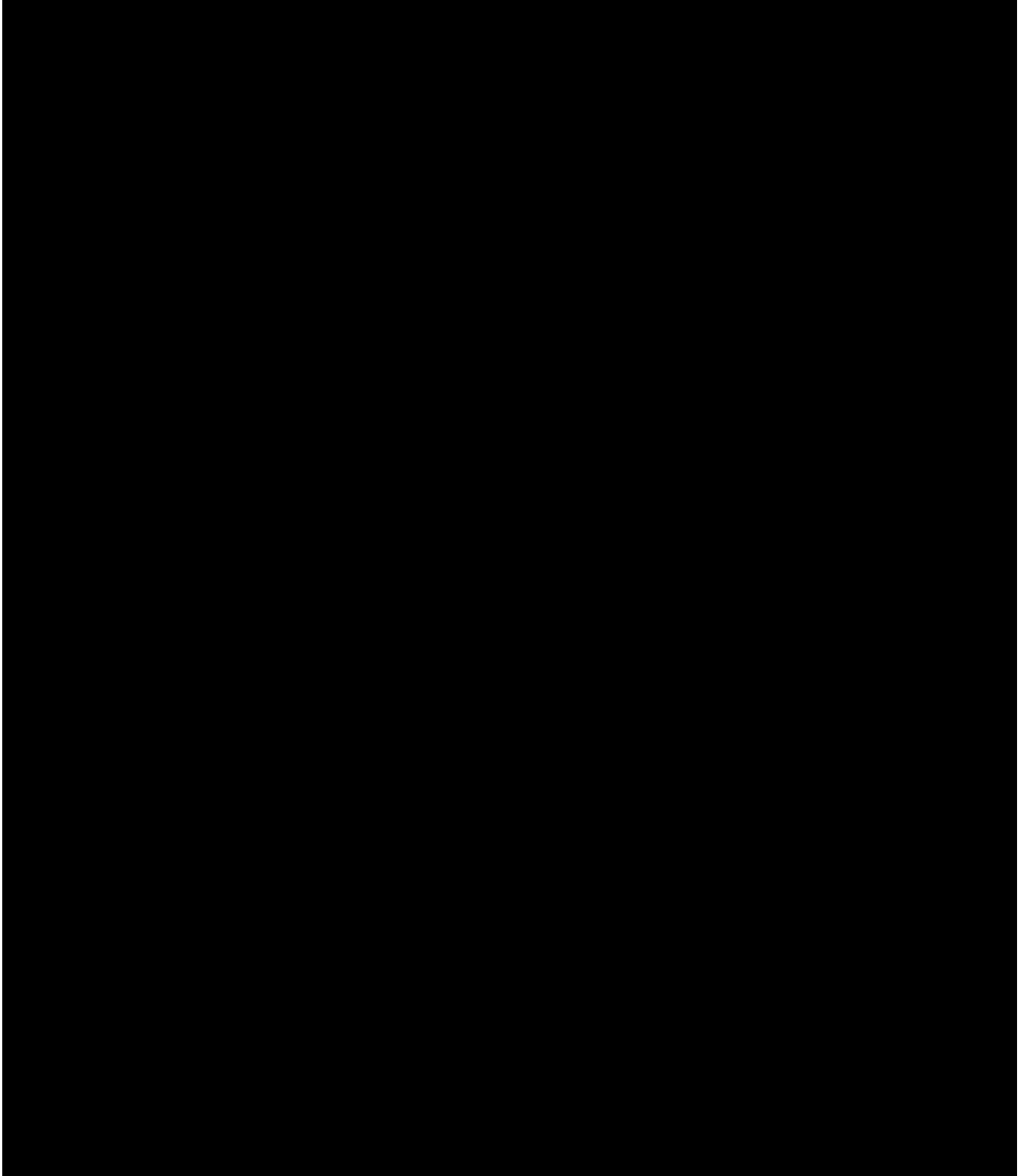
Part 1 – Financial Reporting Information

	Designated Significant Subcontractors	The Subcontractor engaged by the Contractor to perform the following Contractor's Activities:
	[REDACTED]	[REDACTED]

Part 2 – Financial Reporting Form

Schedule 54 contains the form that is required to be completed and provided by the Contractor on the last Business Day of the third month after the end of the relevant reporting period in accordance with clause 8A.1(c) of this deed (**Financial Reporting Form**).

When completing the Financial Reporting Form, the Contractor is required to confirm if the information provided for each item in the previous half year is still current and accurate in the current half year. If such information is still current and accurate, the Contractor must indicate so in the table below (as applicable) and is not required to resubmit the same information in the current half year.



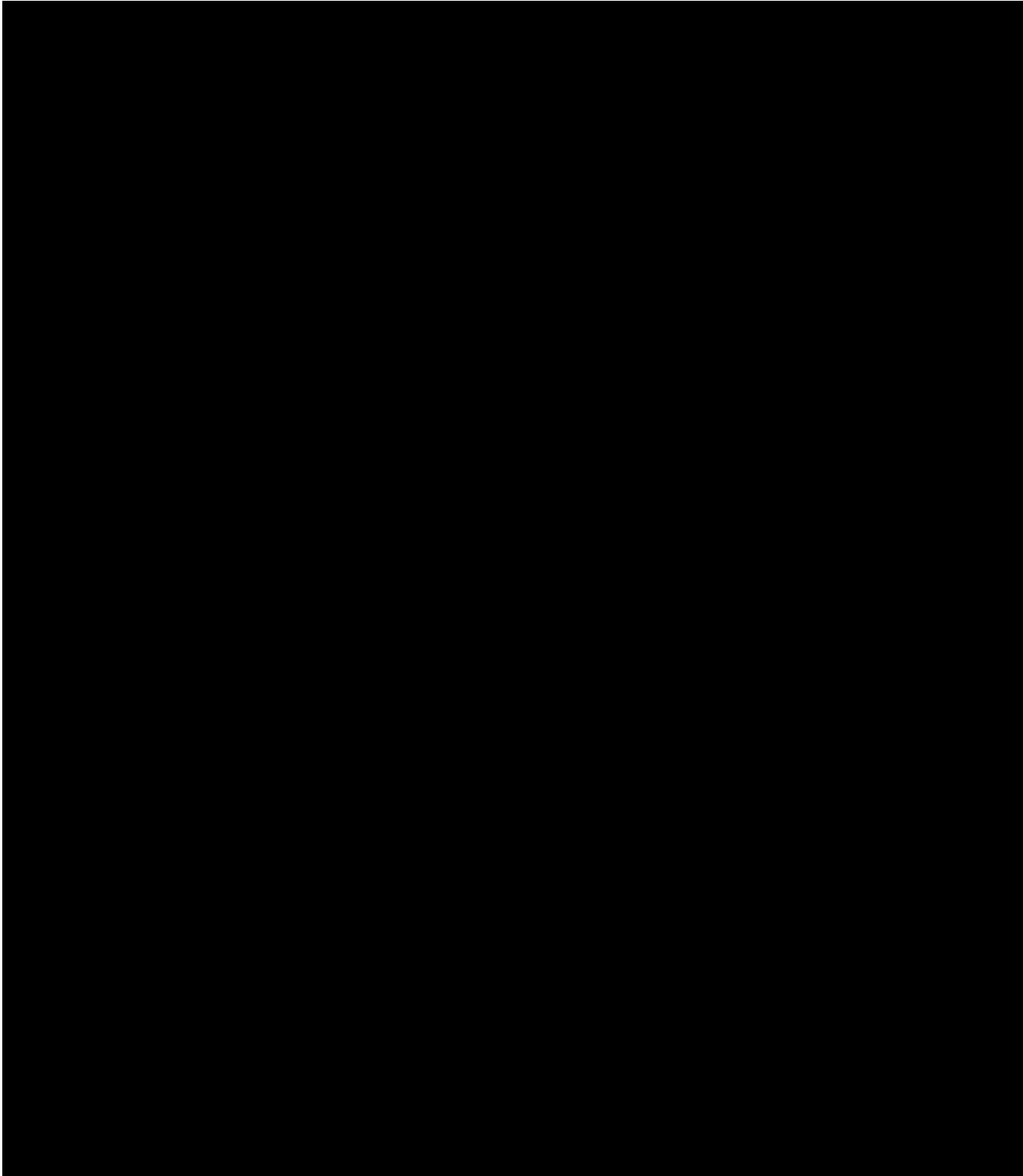


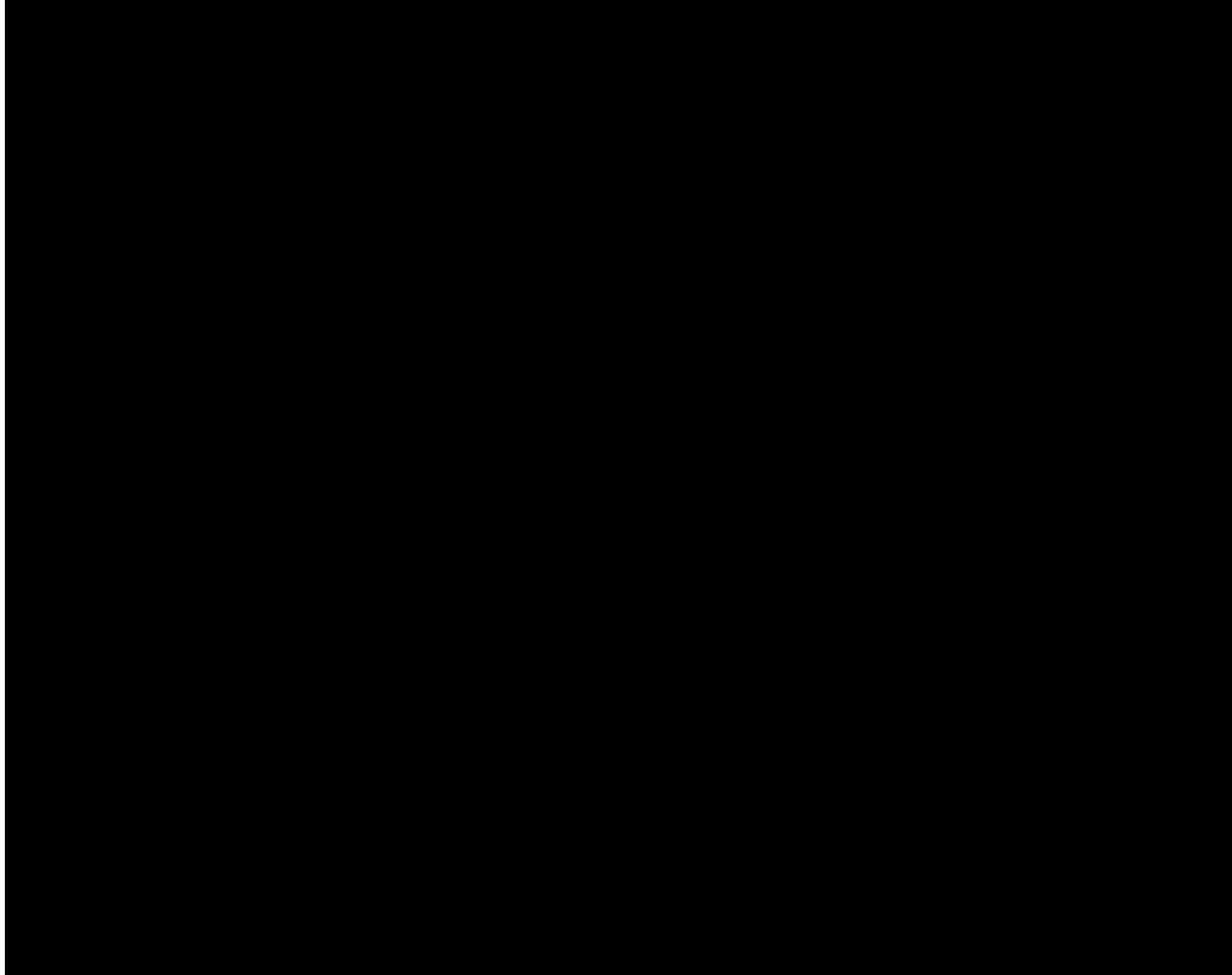
Exhibit A Scope of Works and Technical Criteria

Scope of Works and Technical Criteria

A copy of the documents comprising this Exhibit A is contained on each of the hard drives labelled



The file paths and document titles in the hard drives for this Exhibit A are set out below.



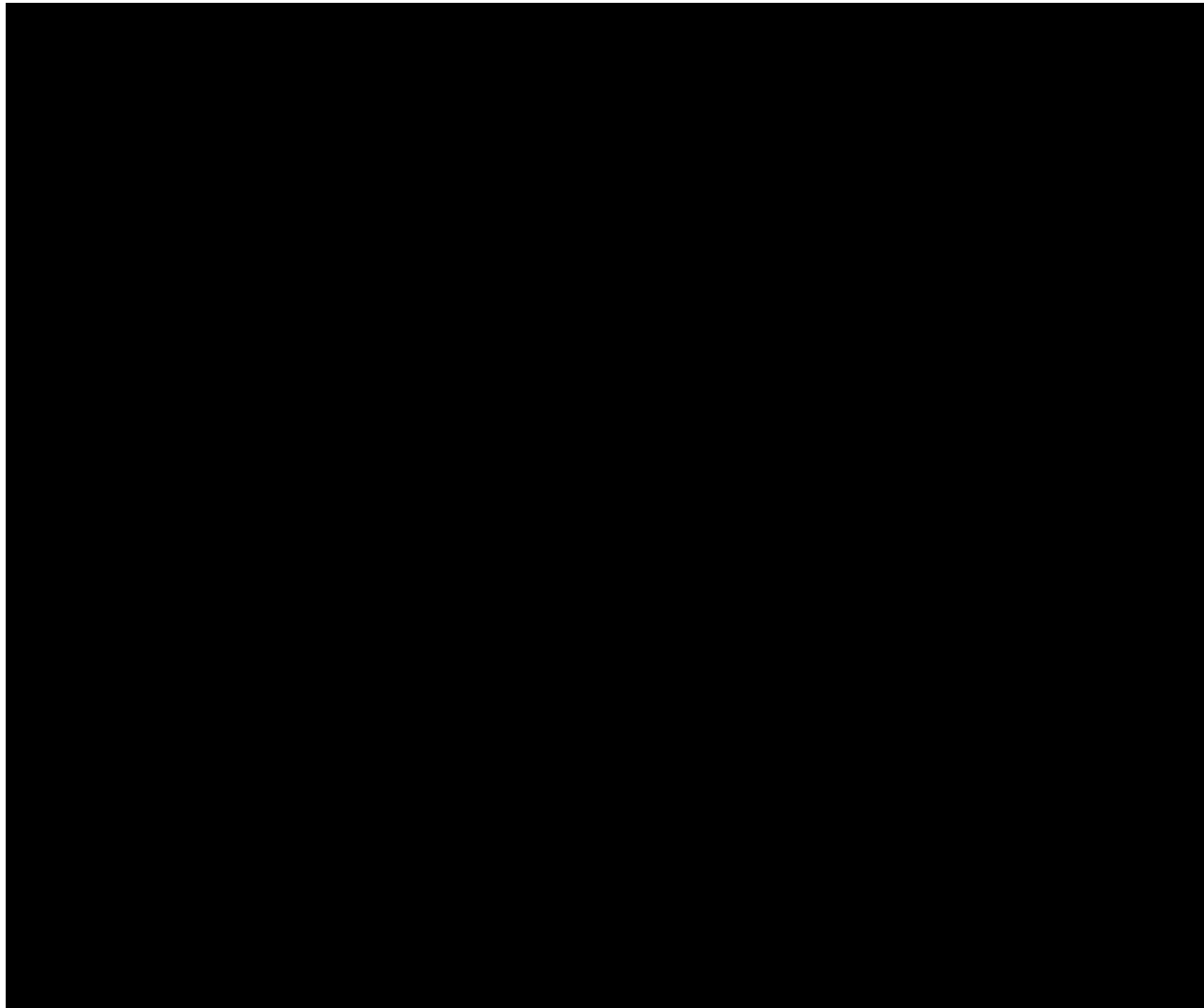


Exhibit B Site Access Schedule

Site Access Schedule

A copy of the documents comprising this Exhibit B is contained on each of the hard drives labelled



The file paths and document titles in the hard drives for this Exhibit B are set out below.

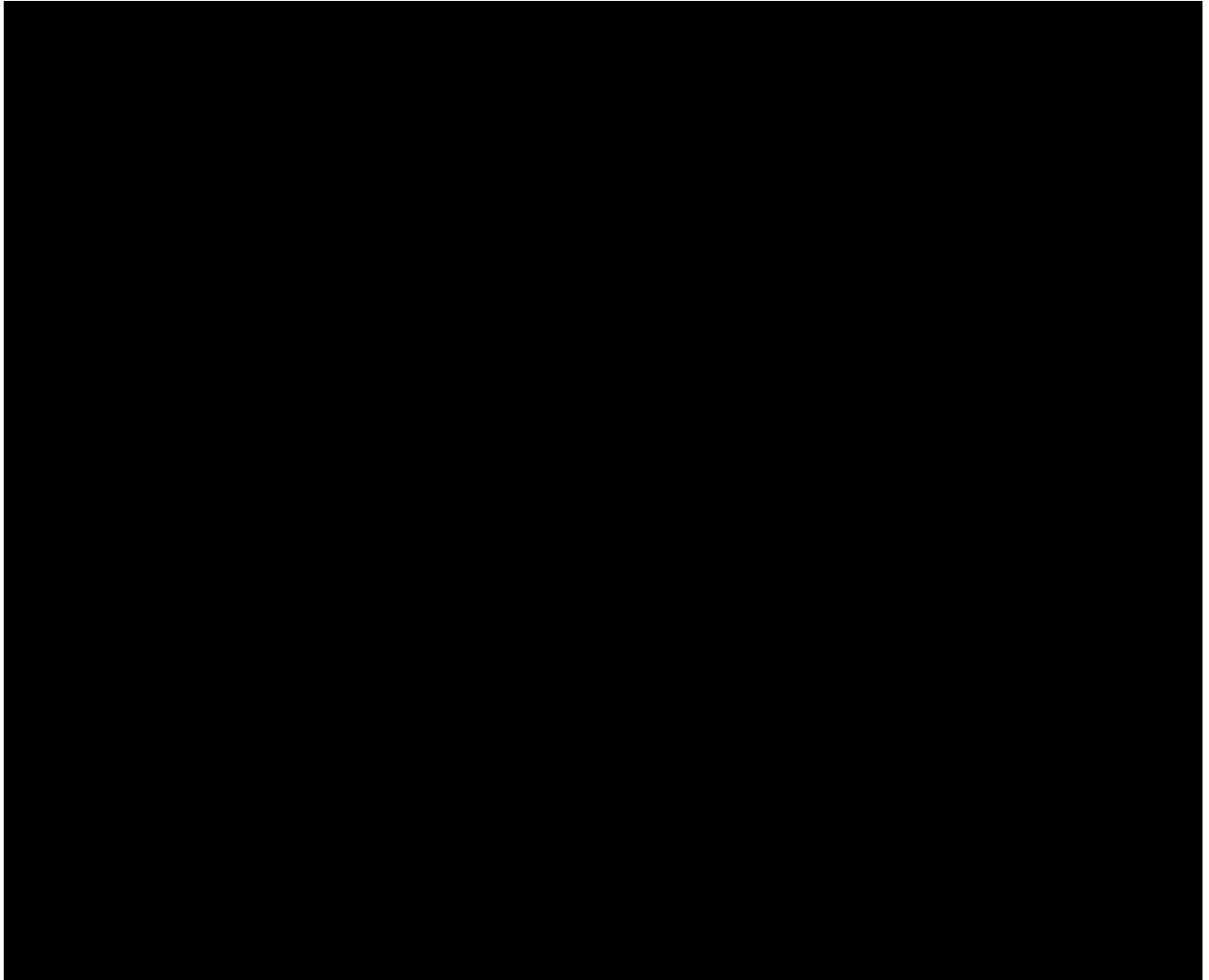


Exhibit D Confidentiality Deed Poll

Confidentiality Deed Poll

A copy of the documents comprising this Exhibit D is contained on each of the hard drives labelled
[REDACTED]

The file paths and document titles in the hard drives for this Exhibit D are set out below.

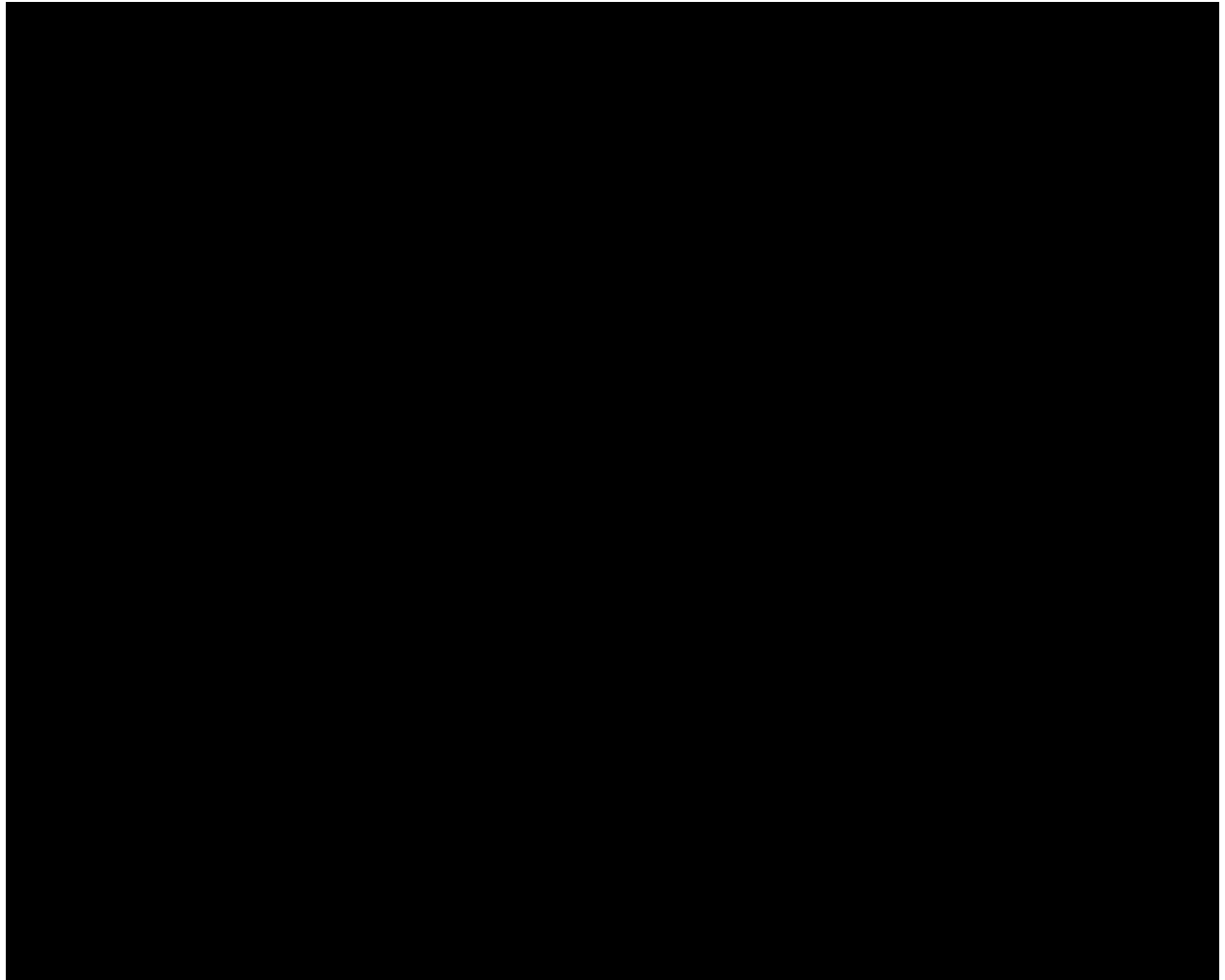


Exhibit E Not used

Not used

Exhibit F Electronic Files

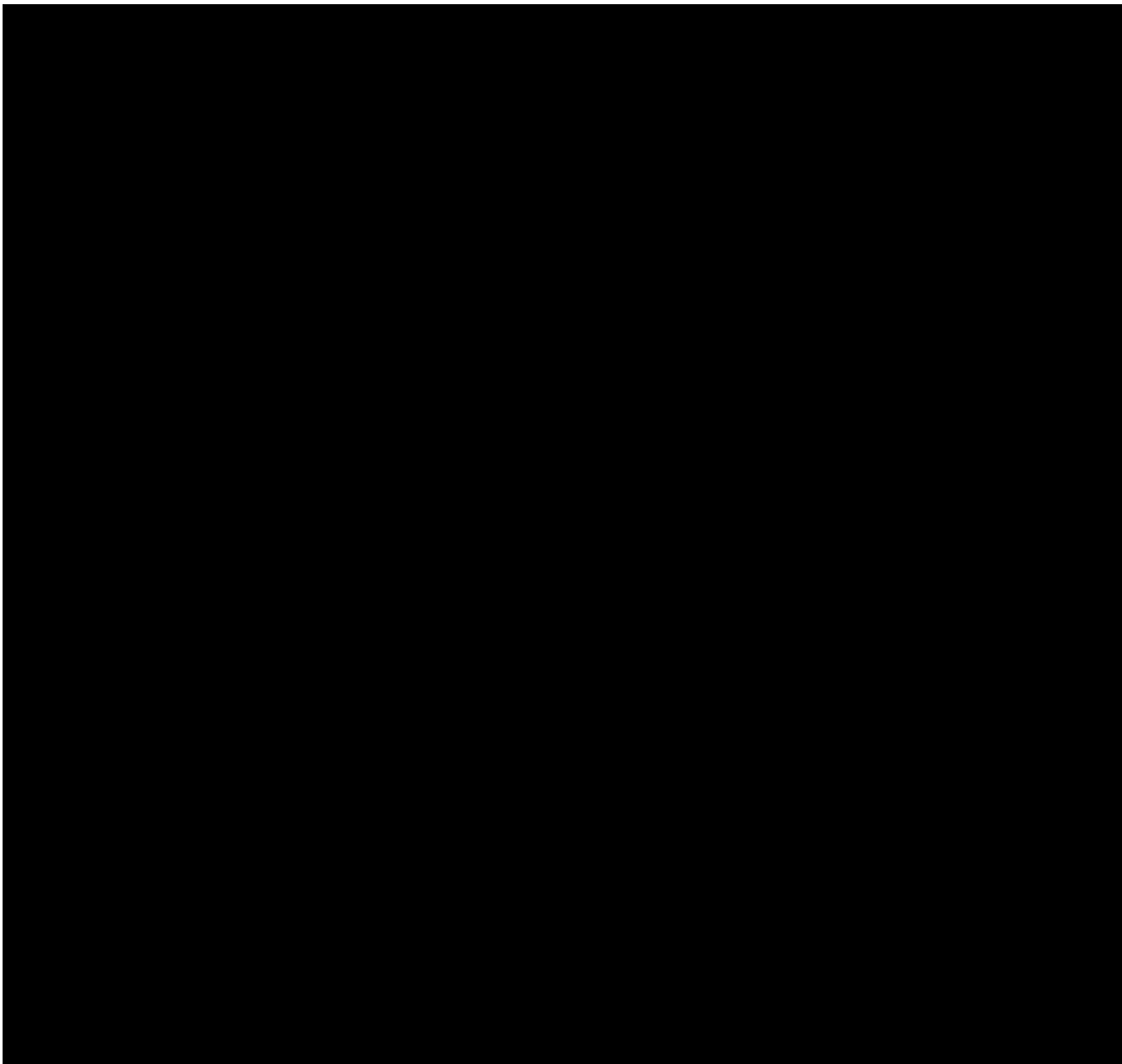
Electronic Files

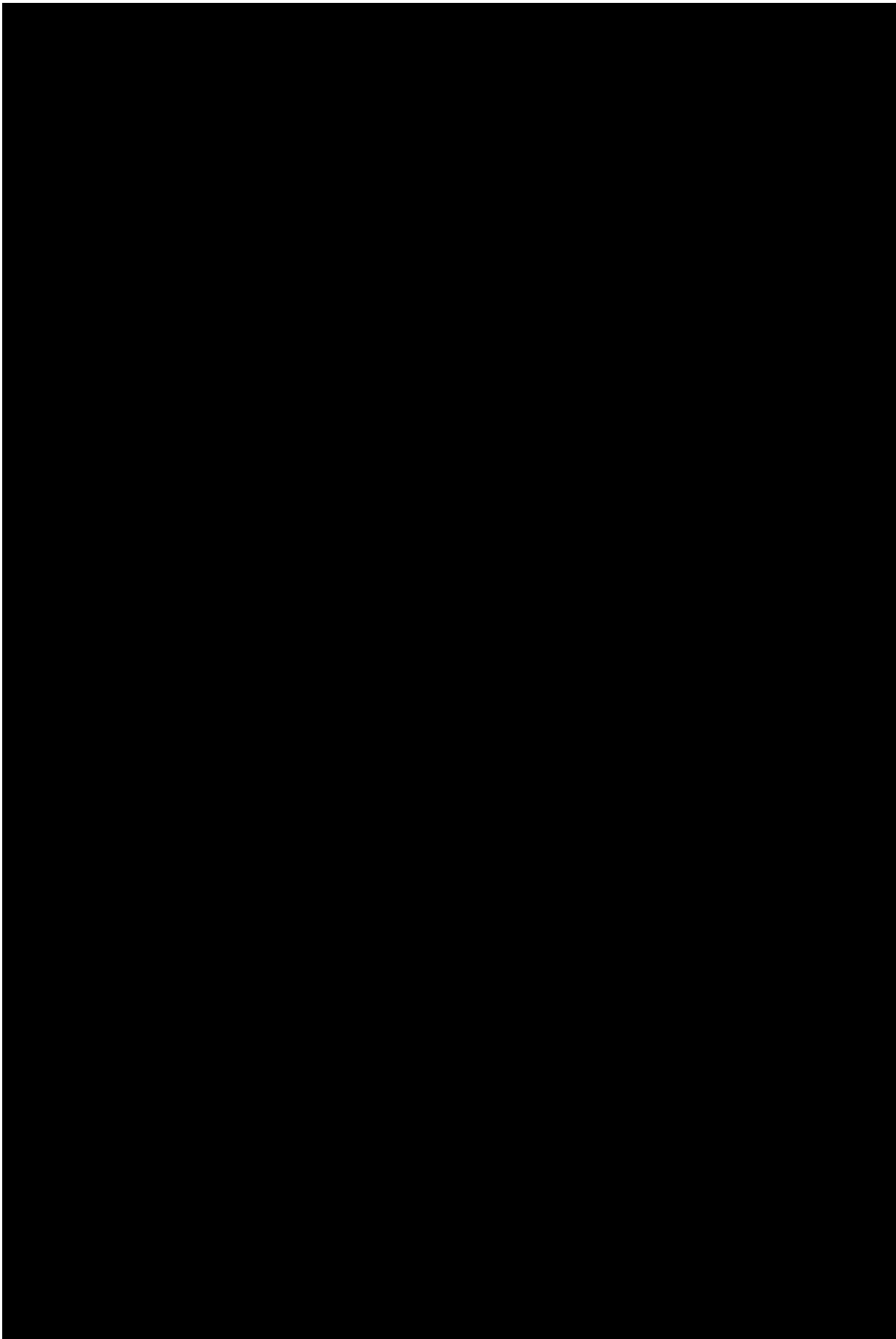
A copy of the documents comprising this Exhibit F are contained on the hard drives labelled:

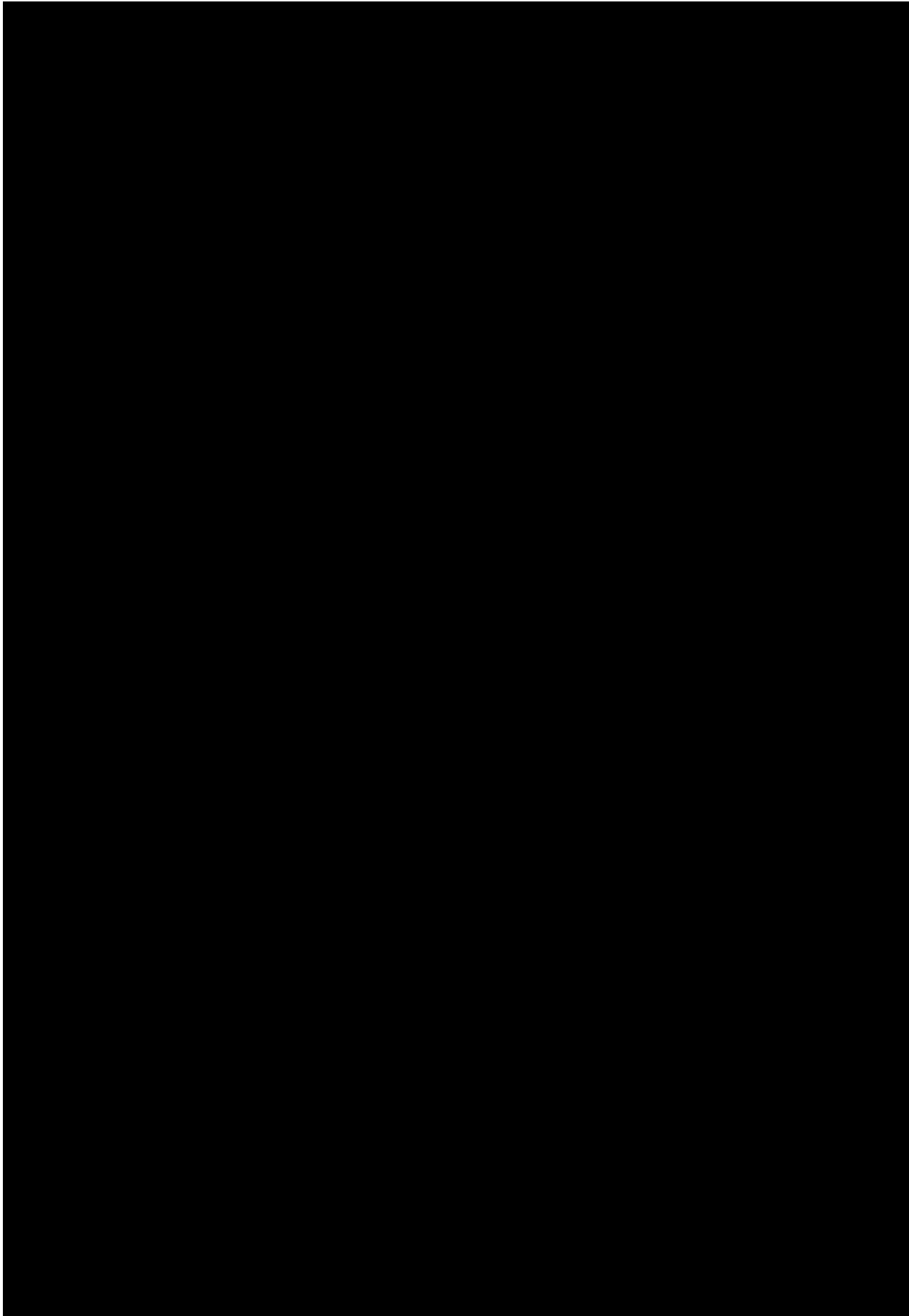
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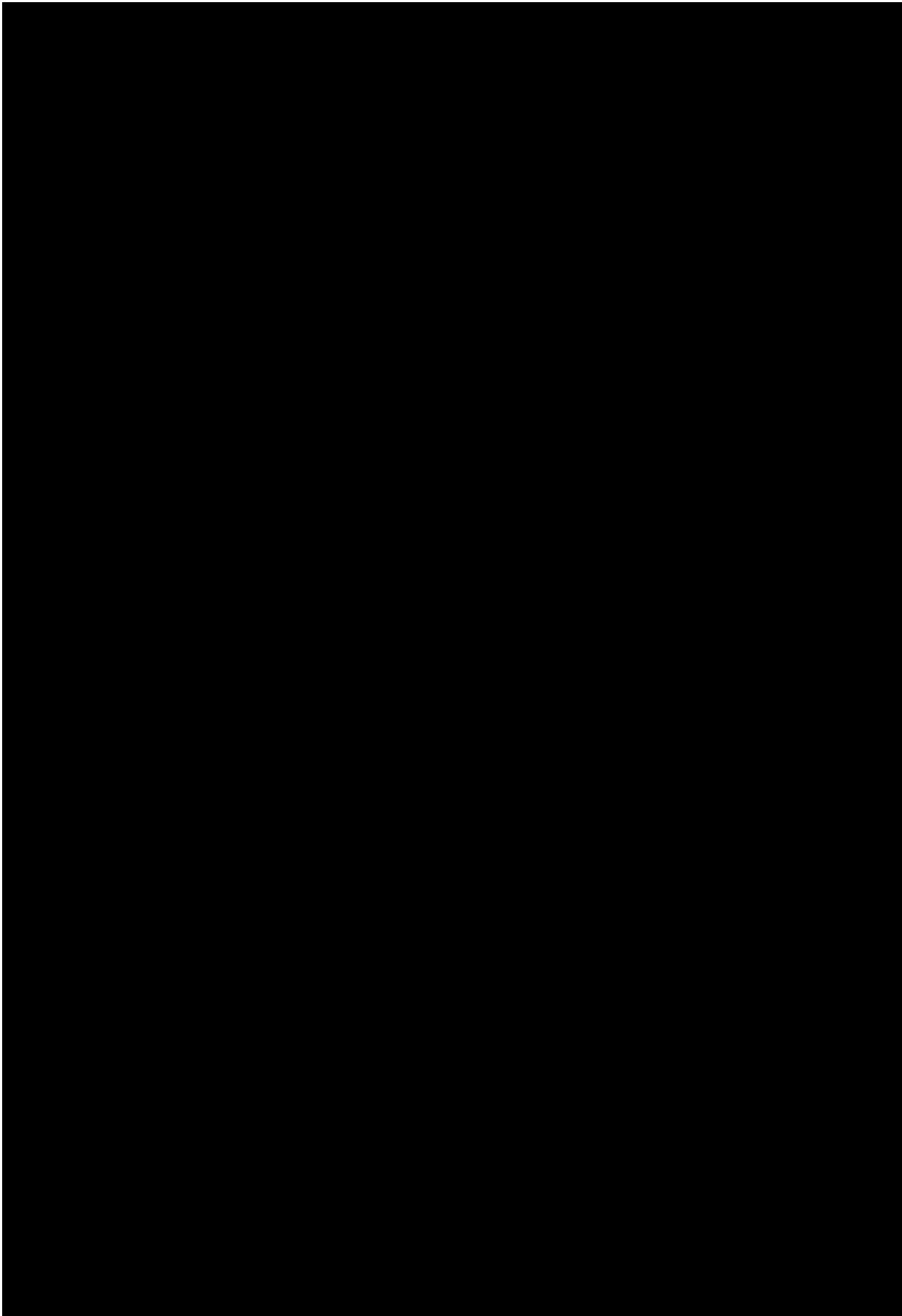
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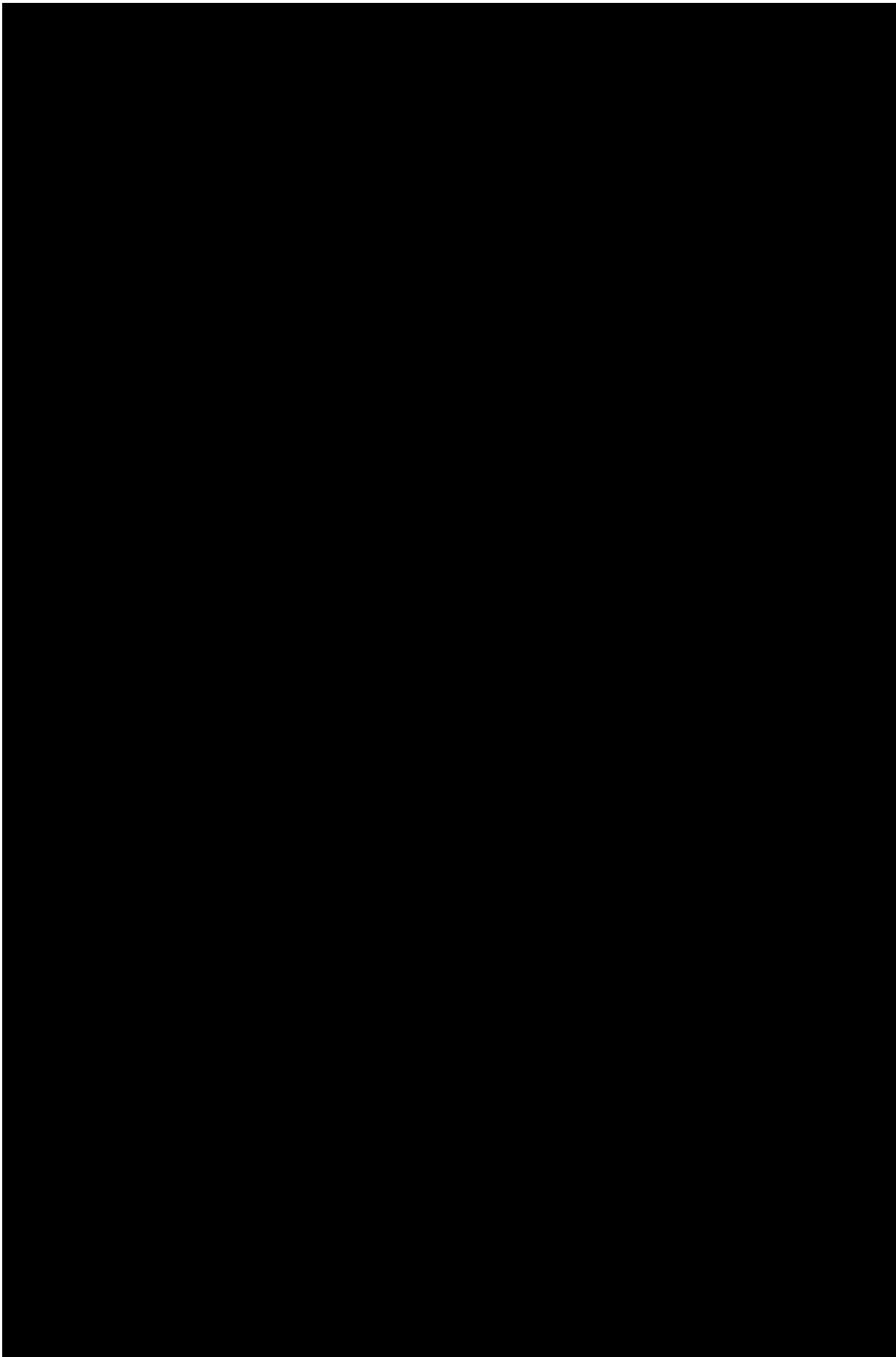
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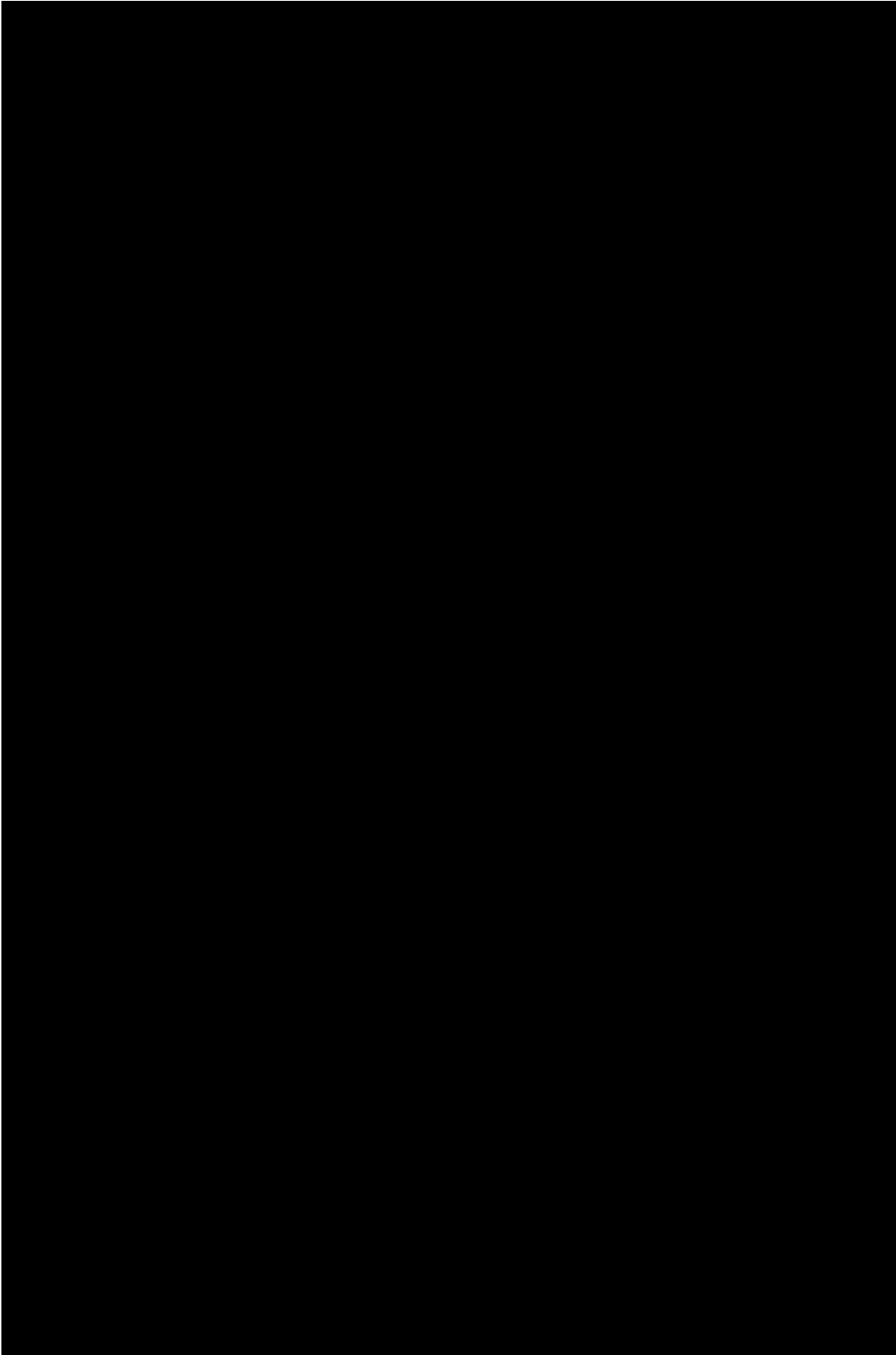


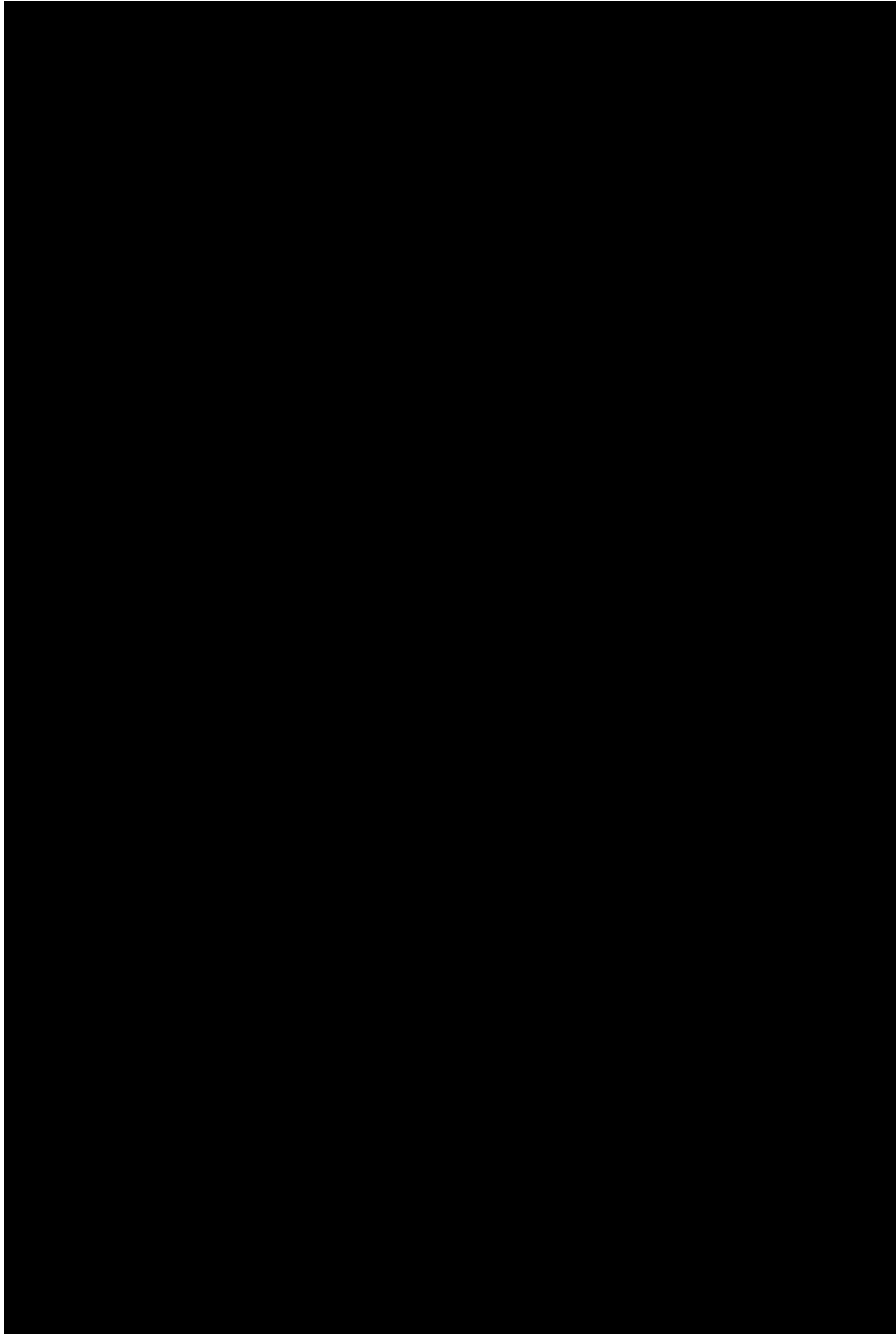


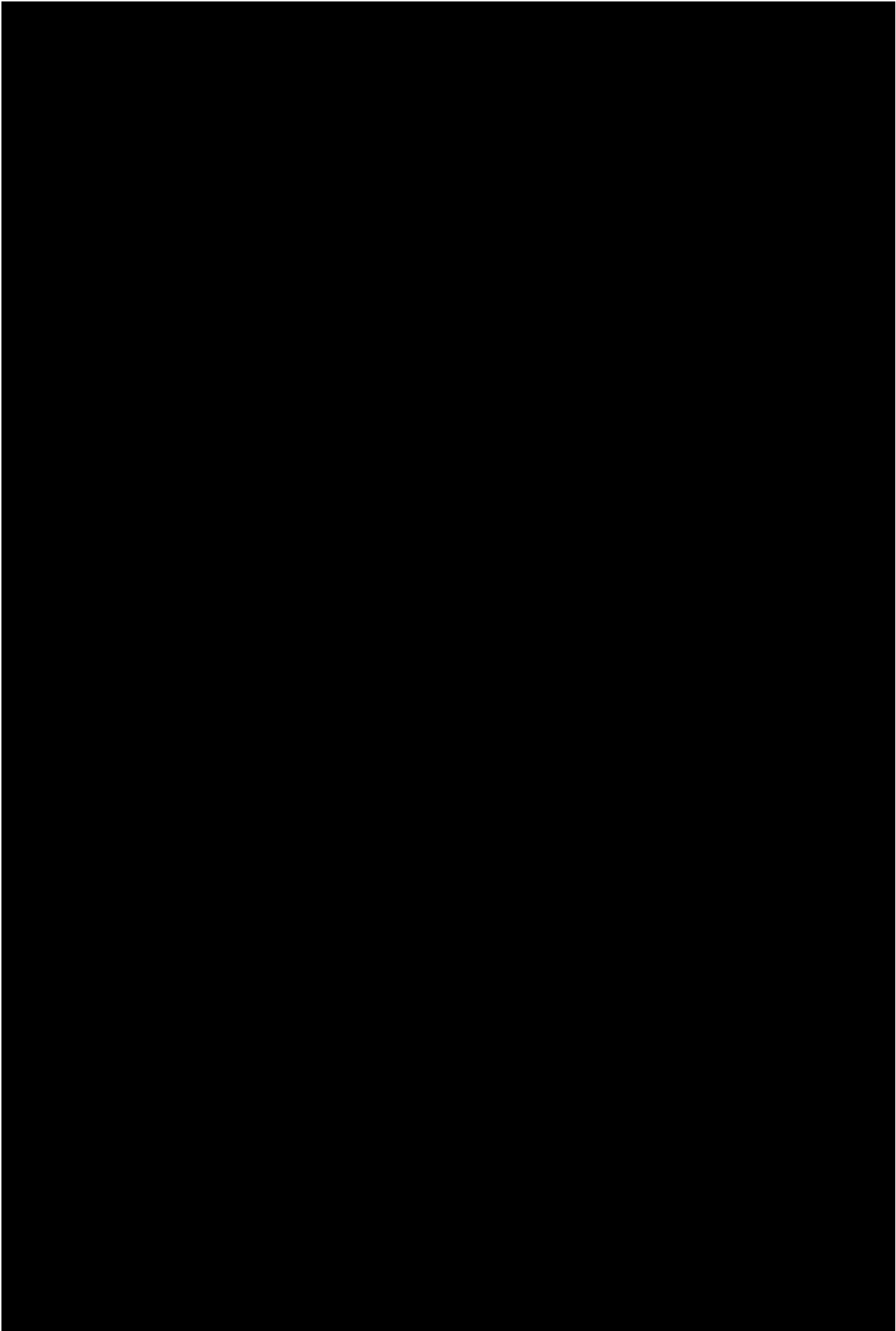


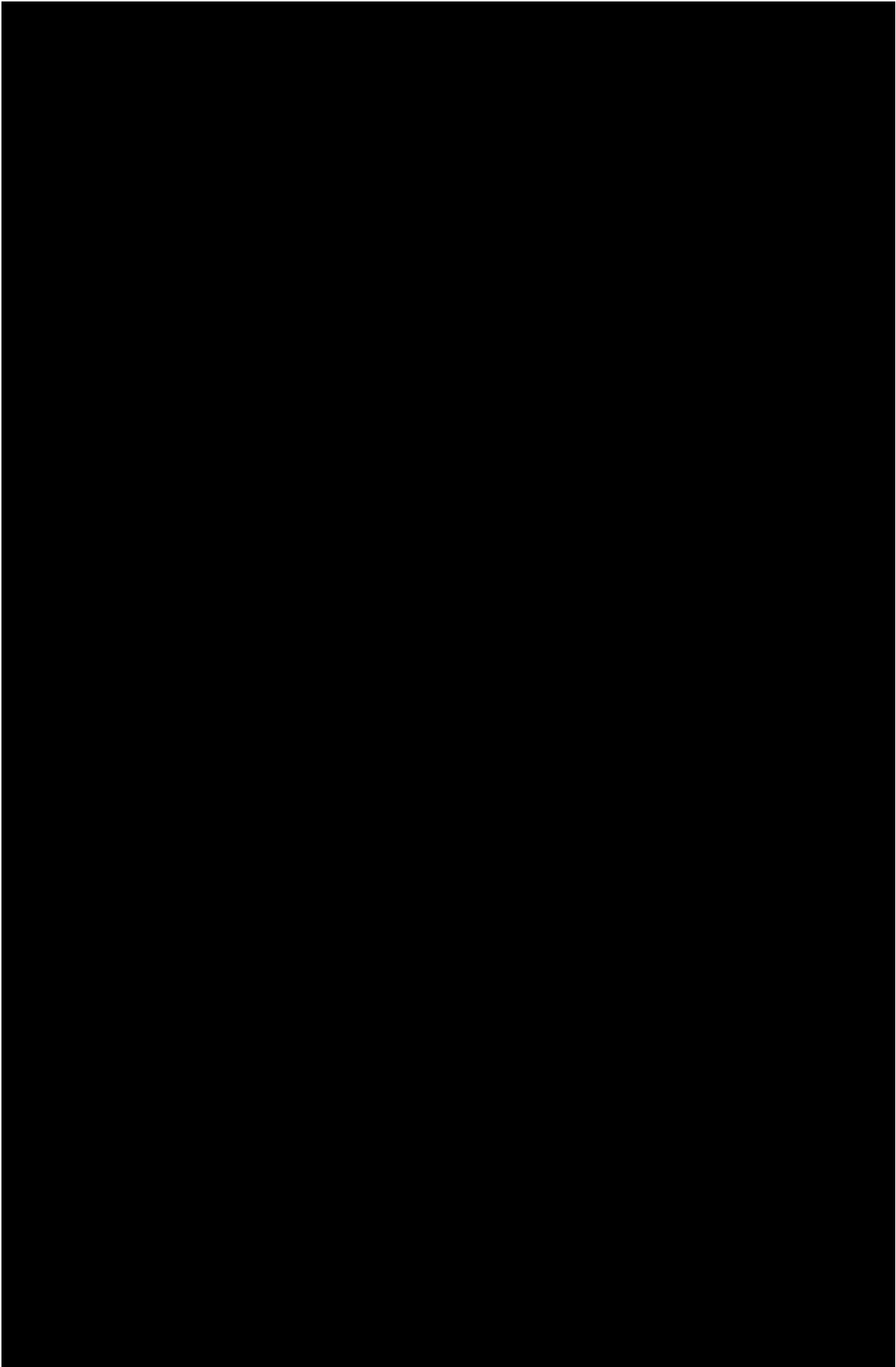


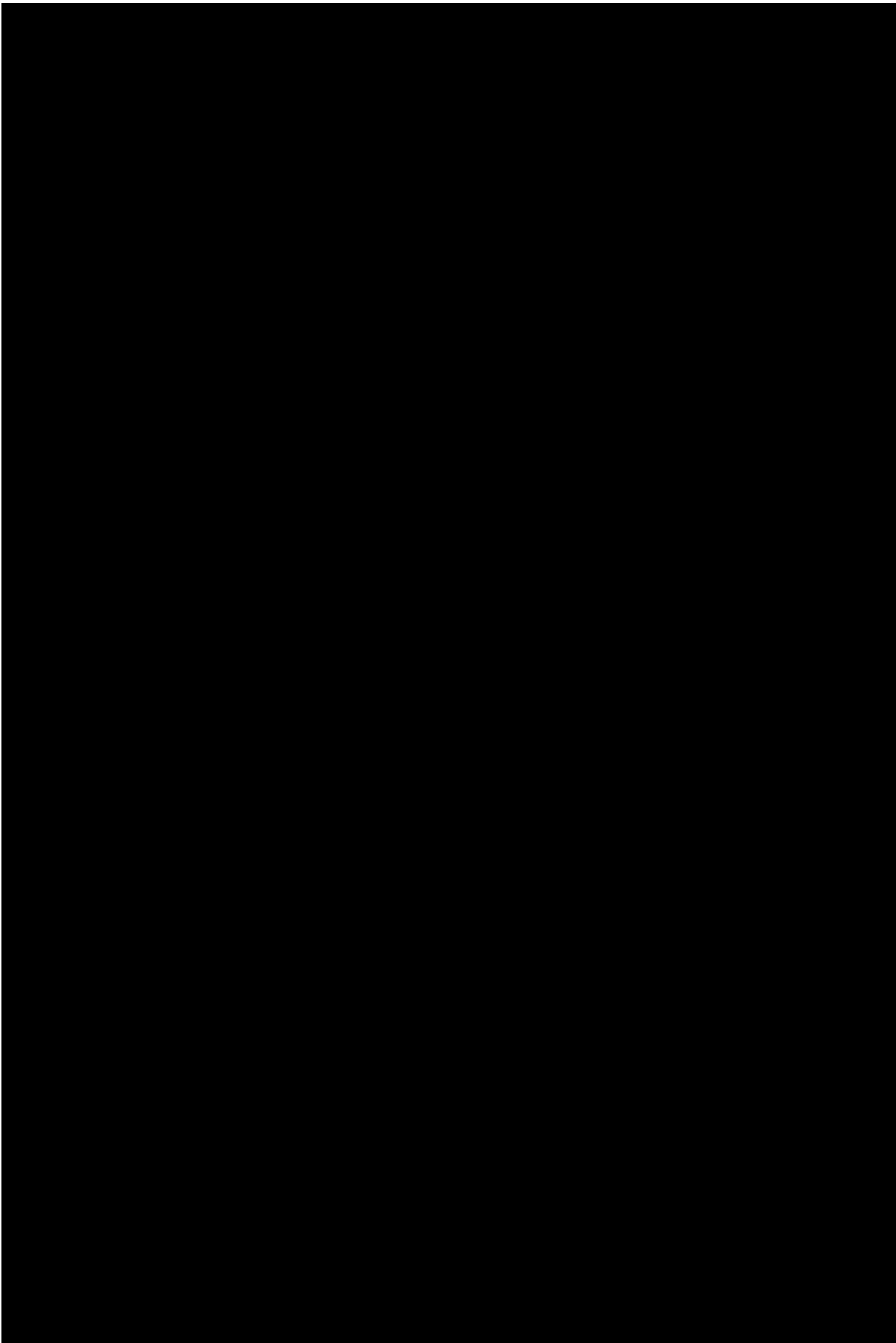


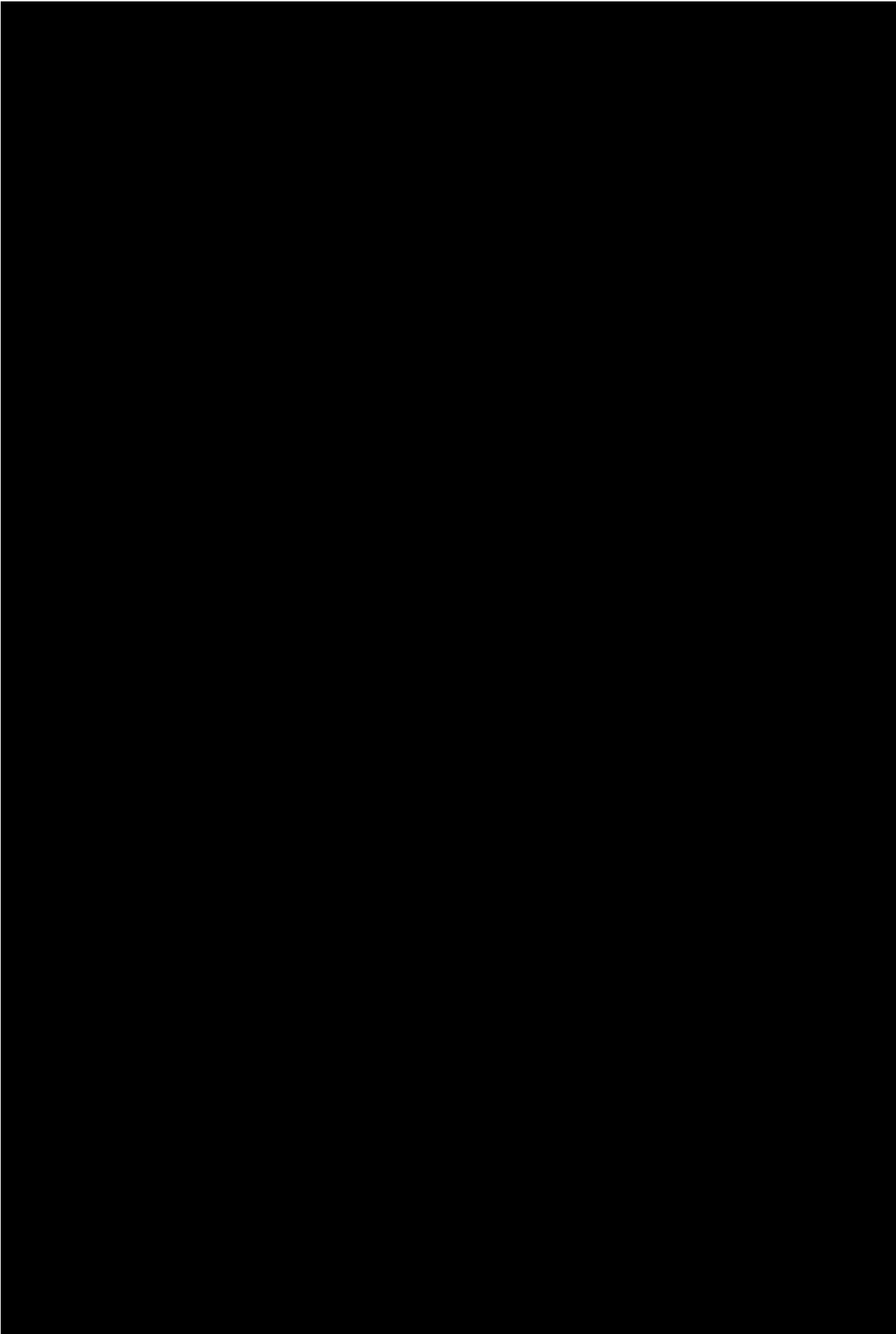


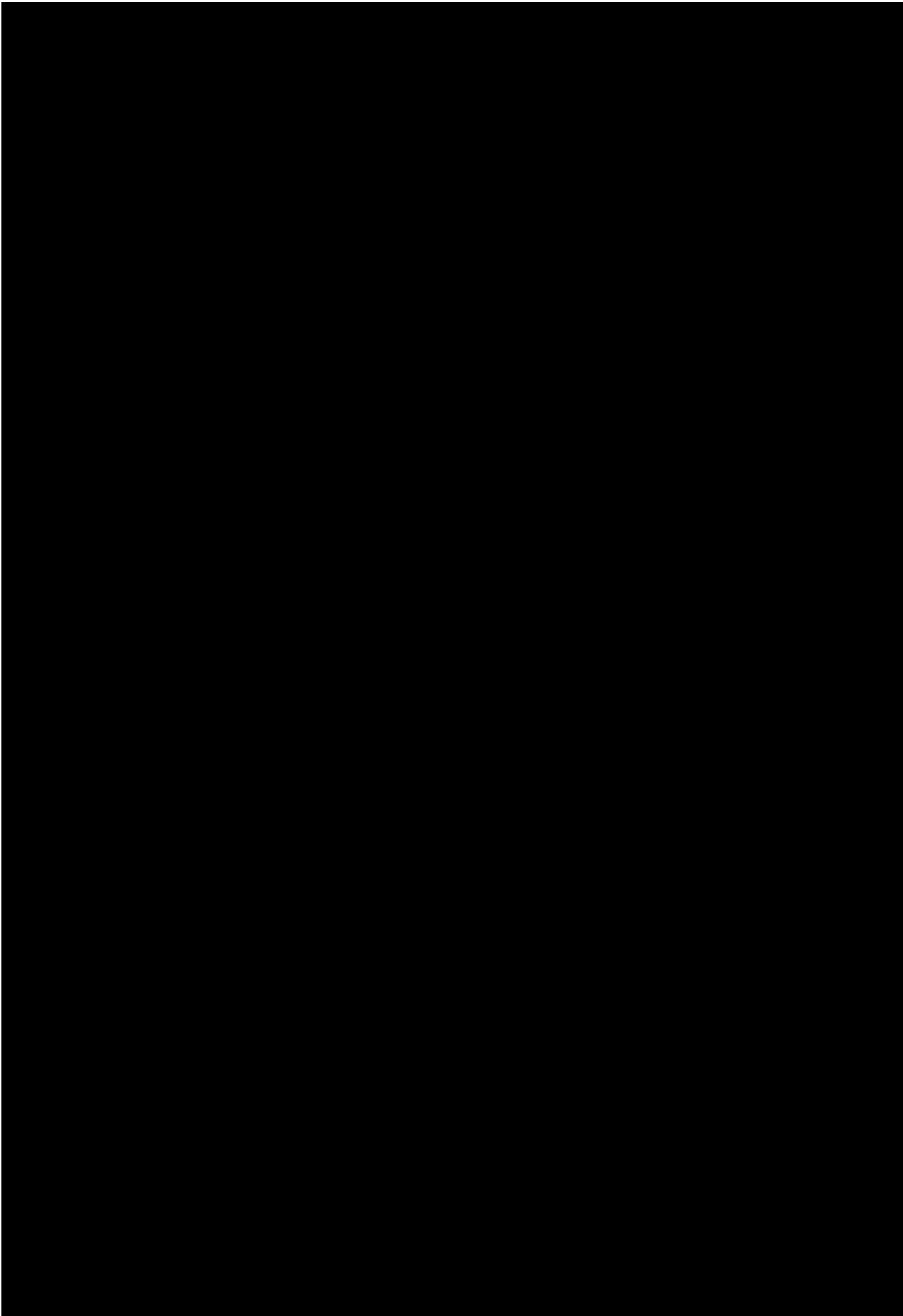


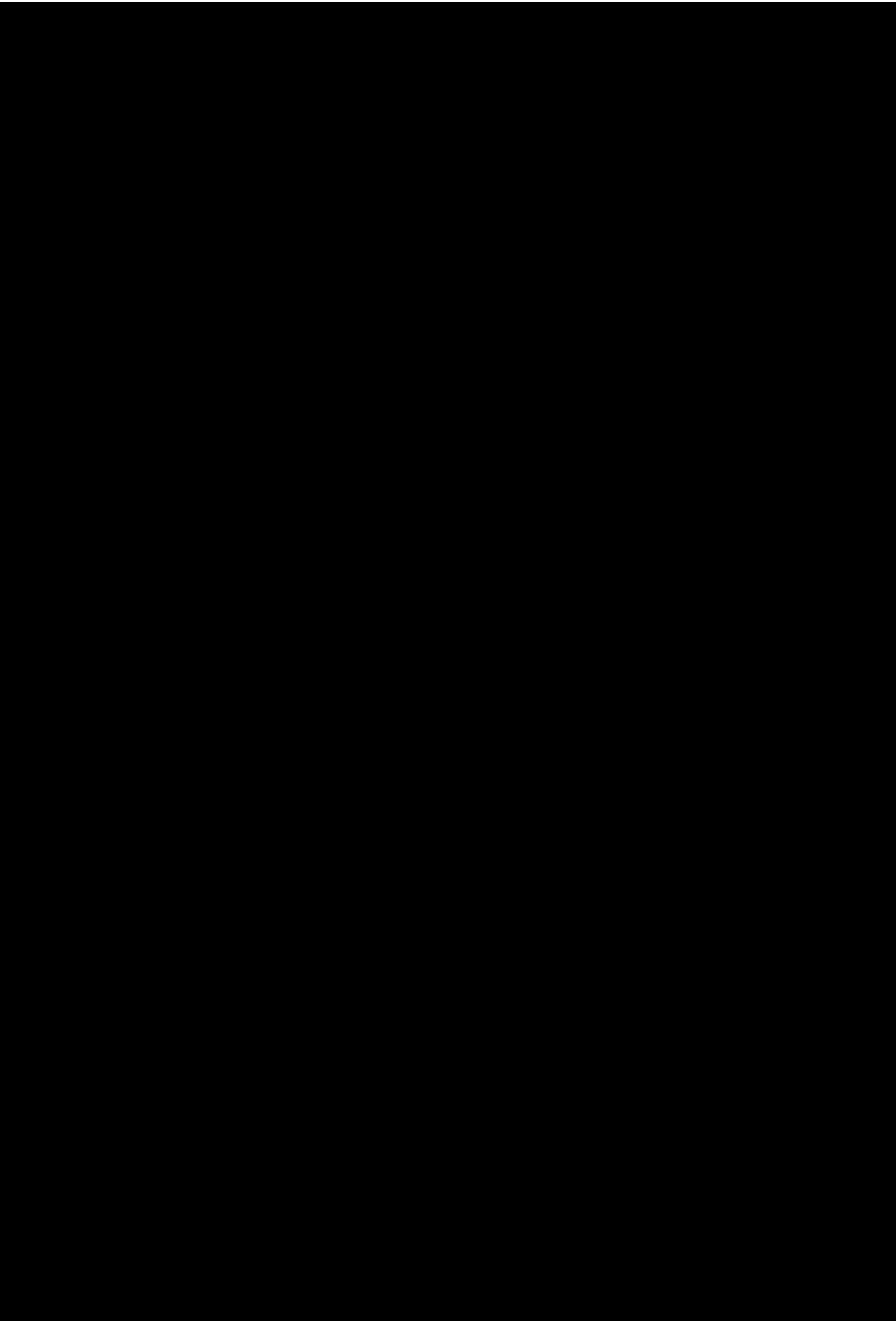


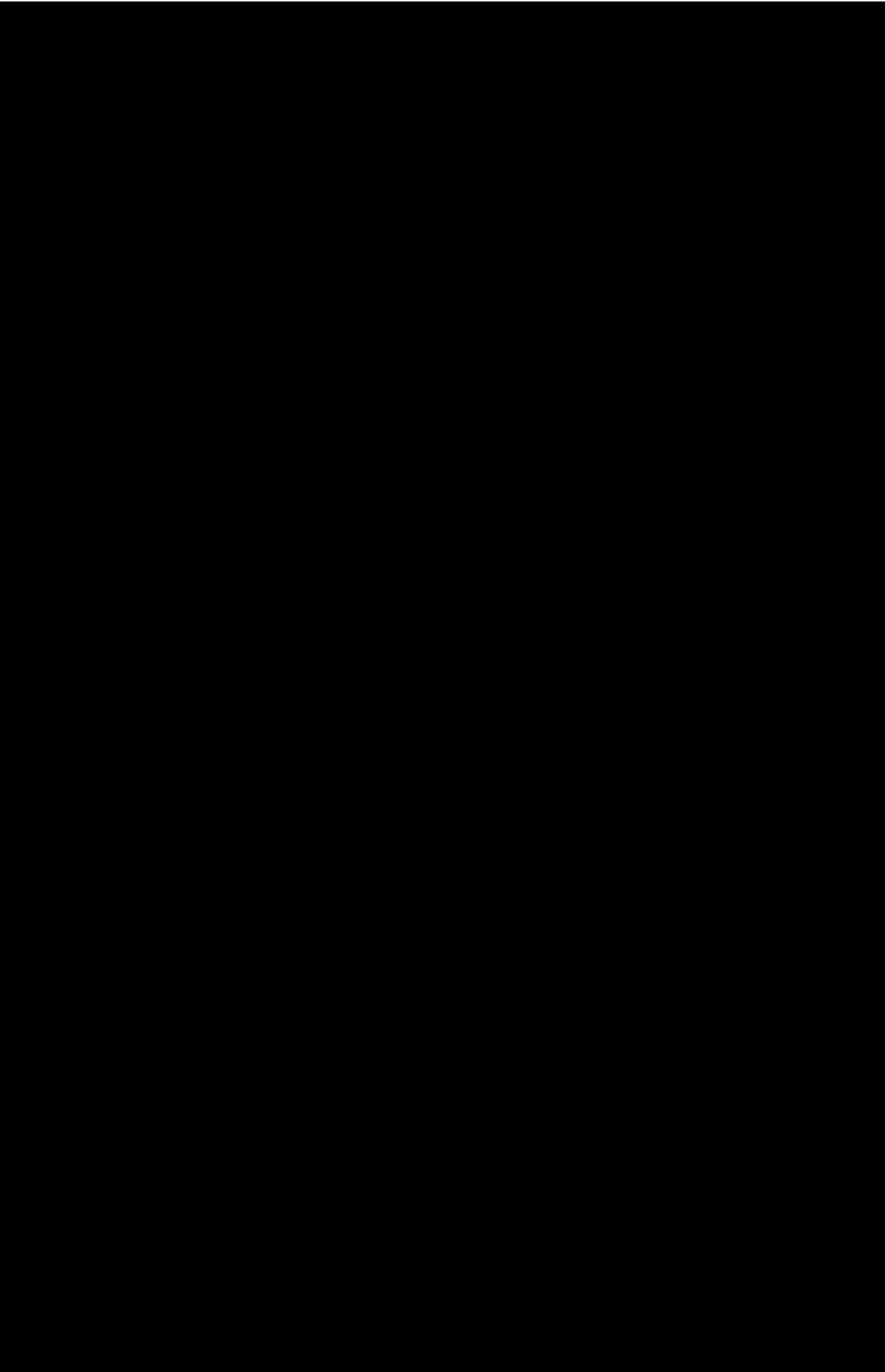


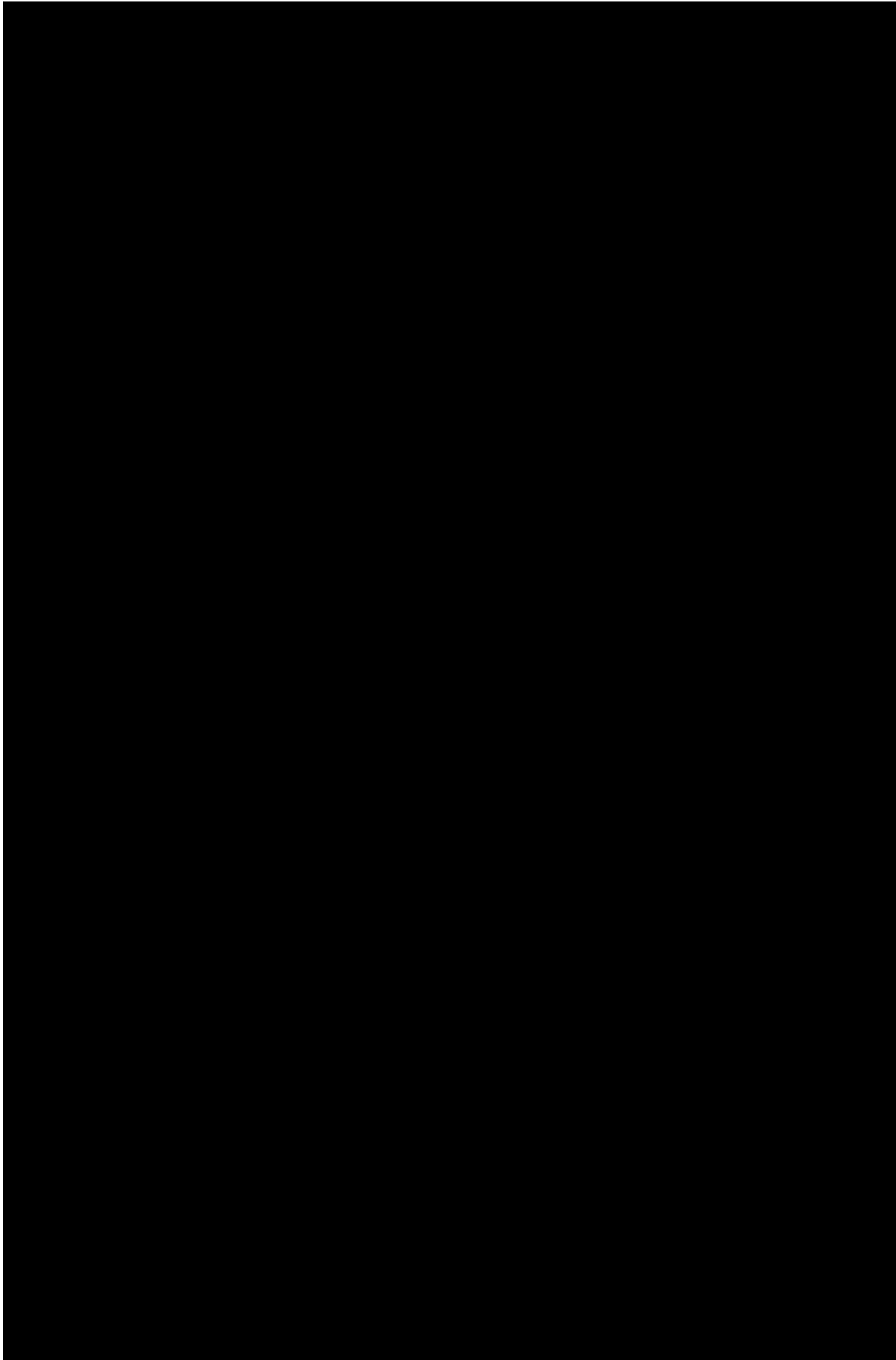


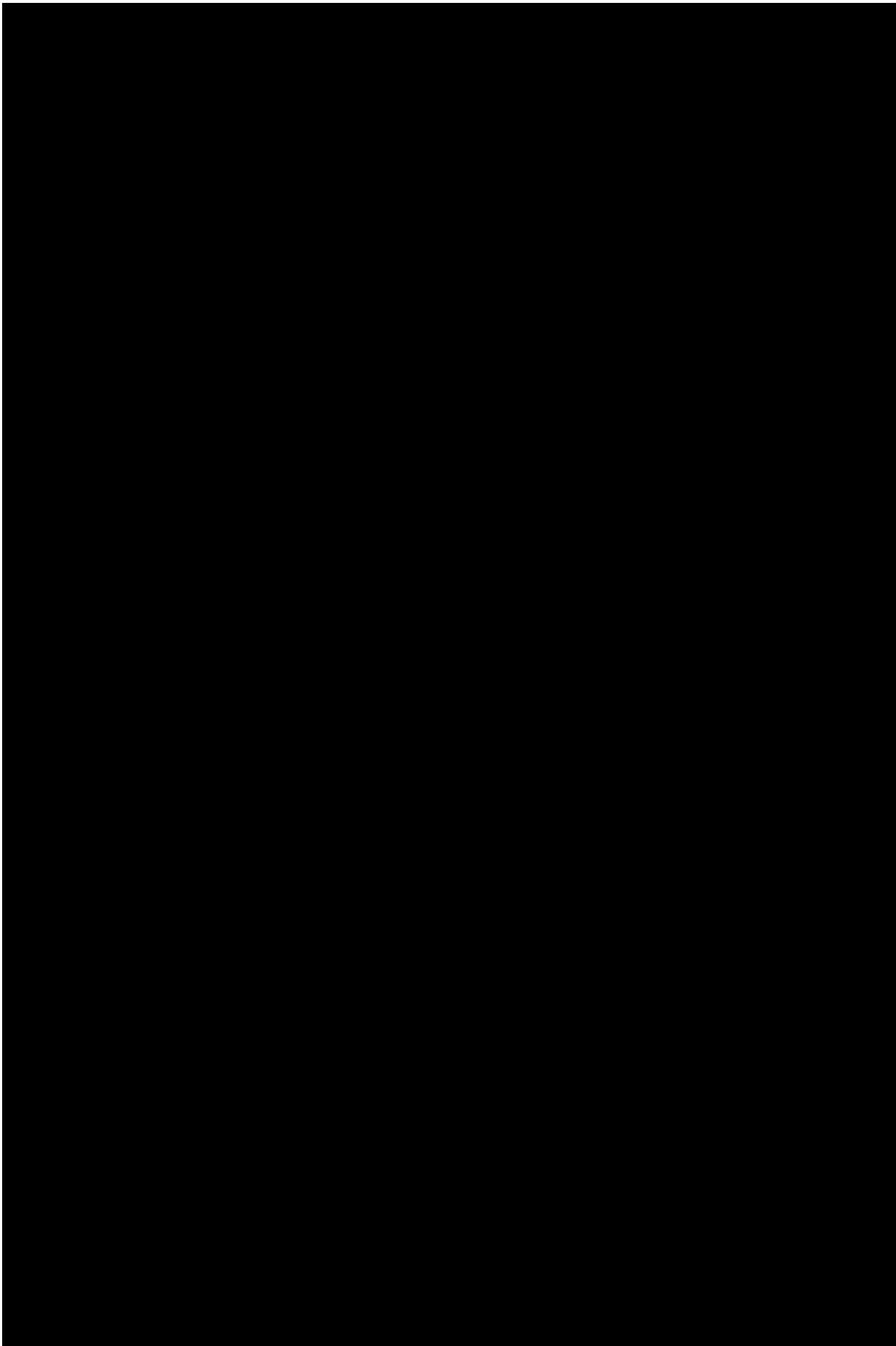


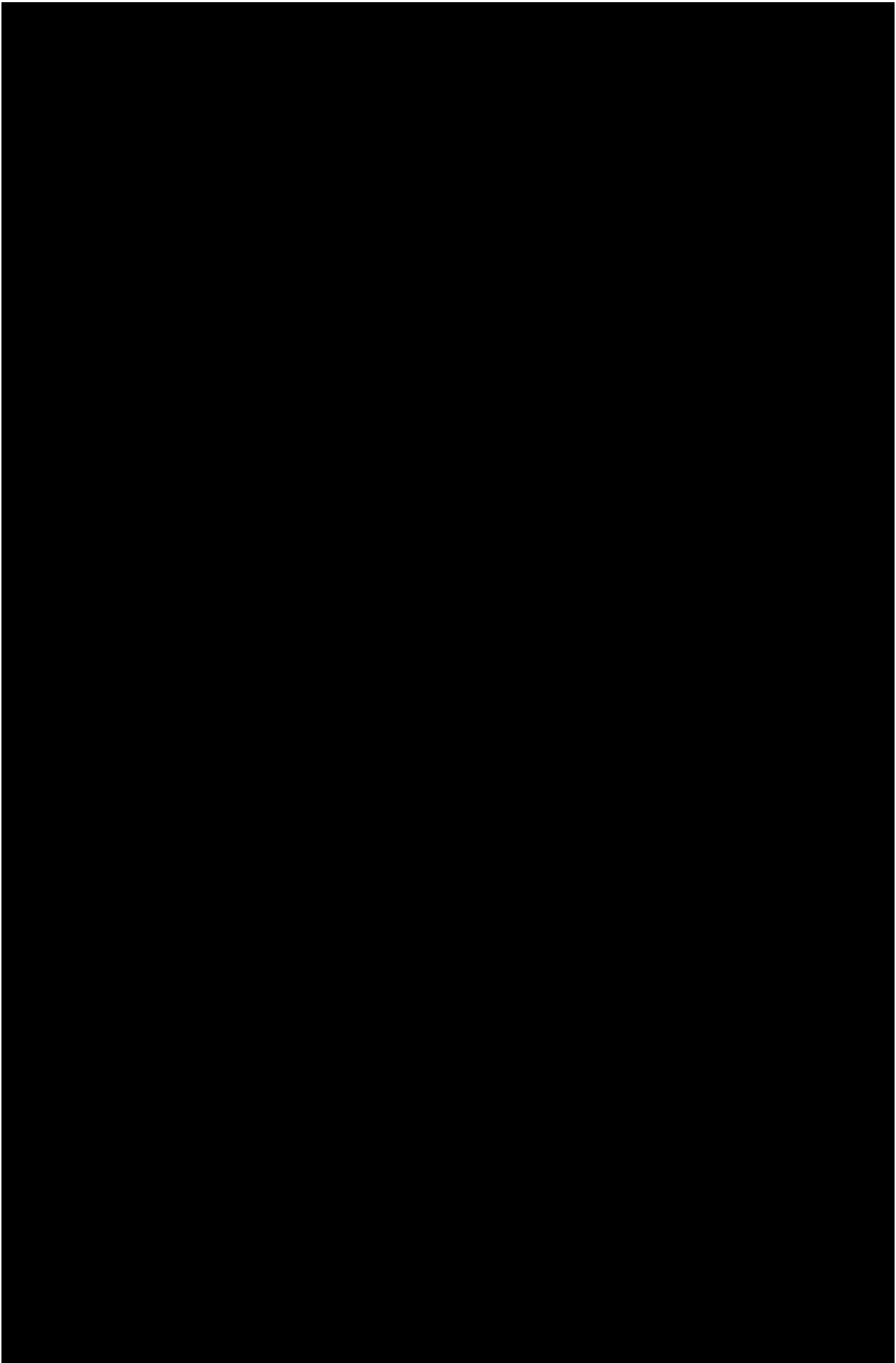


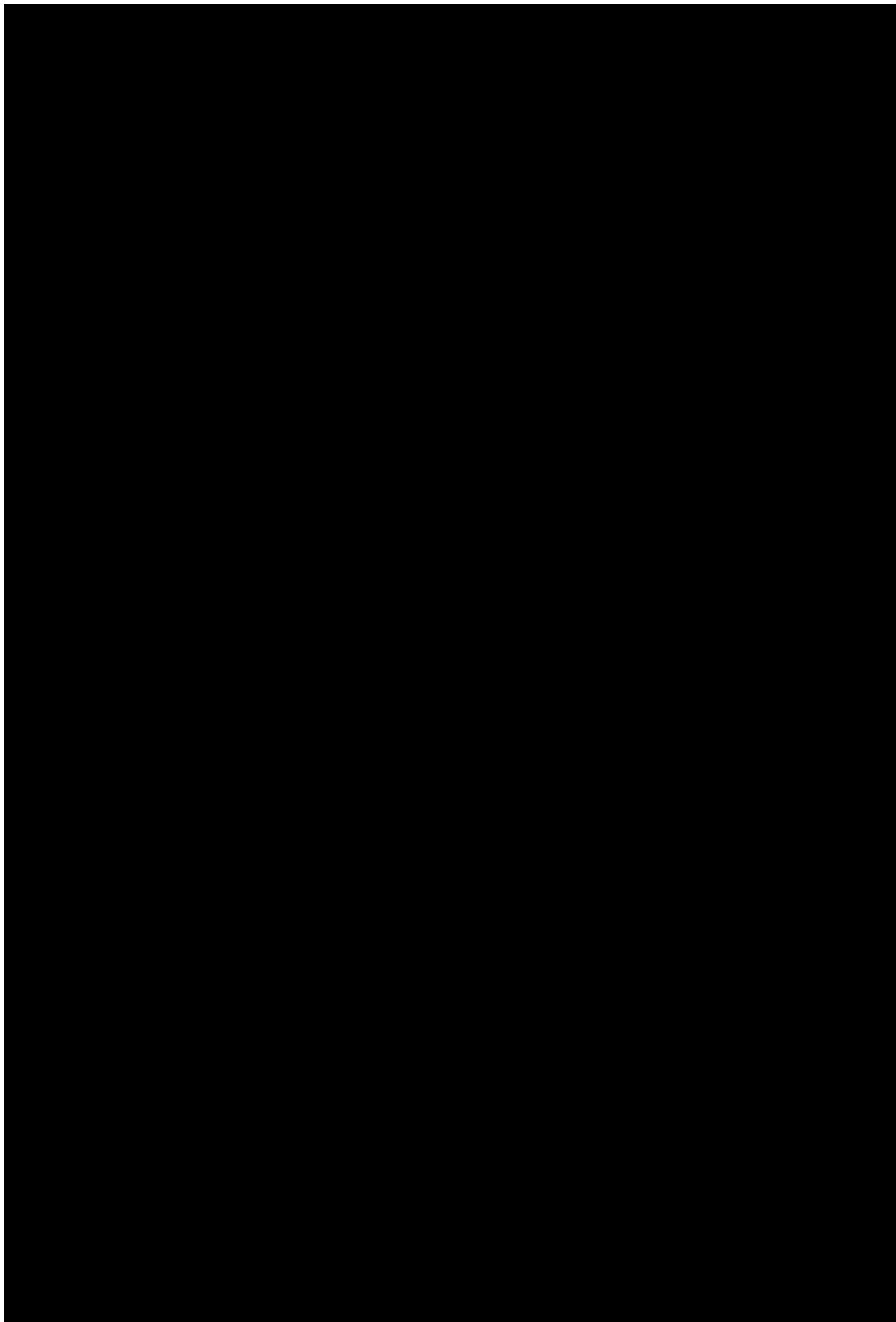












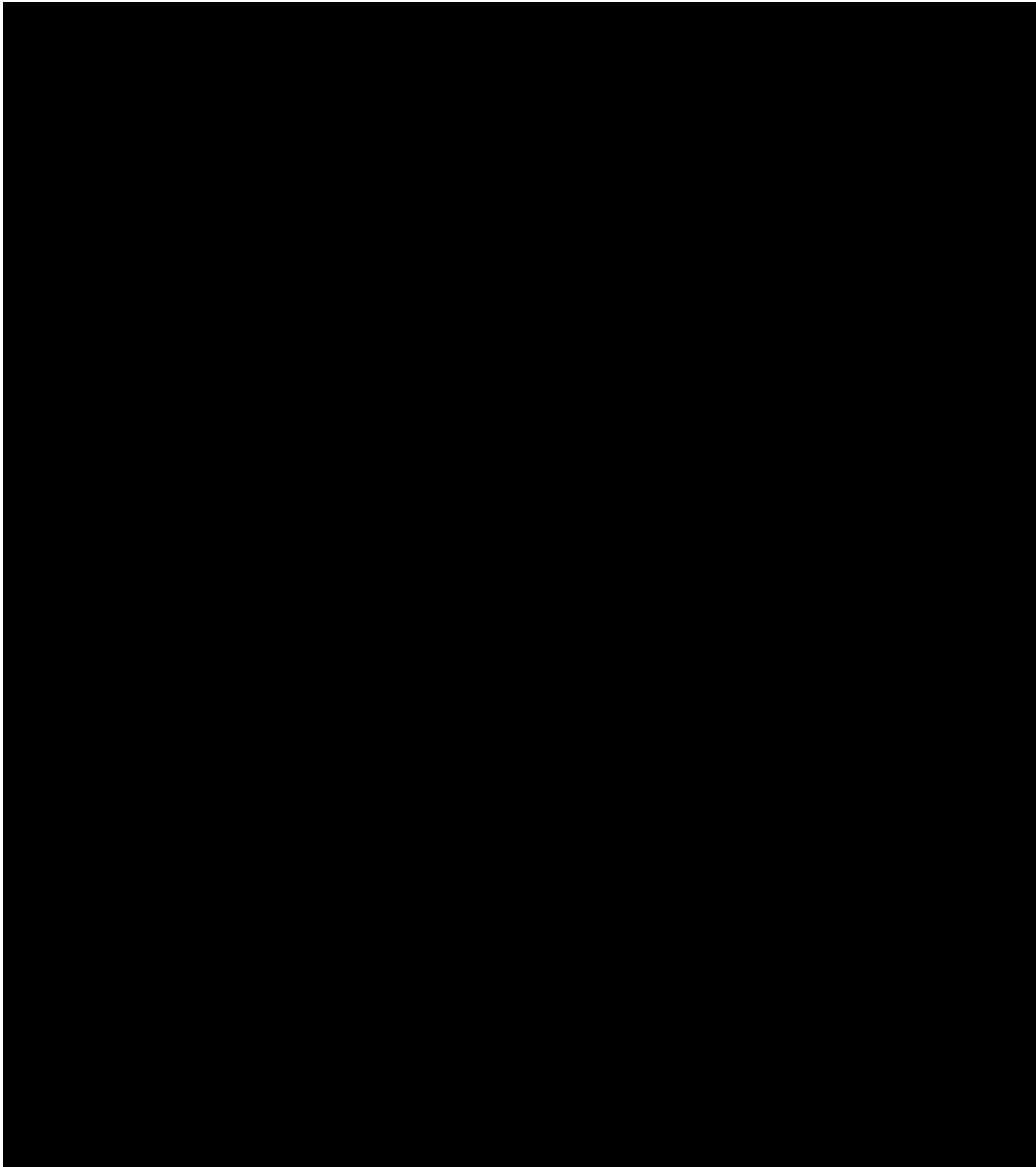


Exhibit G Not used

Not used

Third Party Agreements

[REDACTED]	[REDACTED]	[REDACTED]

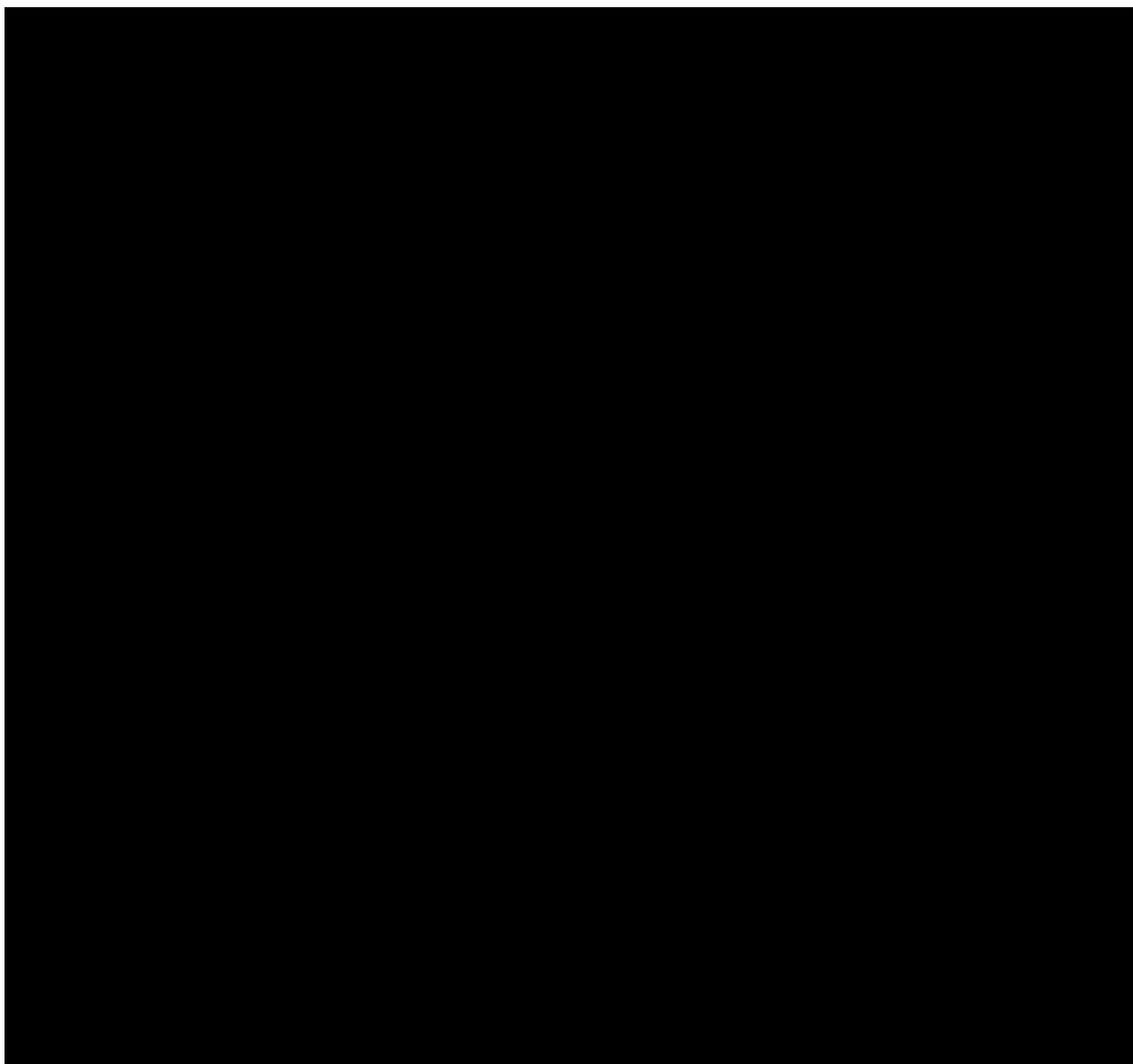


Exhibit I Not used

Not used

Exhibit J Not used

Not used

Exhibit K Not used

Not used

Exhibit L Not used

Not used

Exhibit M Certified AIP Plan

Certified AIP Plan

A copy of the documents comprising this Exhibit M is contained on each of the hard drives labelled



The file paths and document titles in the hard drives for this Exhibit M are set out below.

