



P2 Independent Certifier Deed

**Western Harbour Tunnel and Beaches Link
Package 2: WHT Tunnels and Mechanical and Electrical
Fitout
Independent Certifier Deed**

Contract No: 22.0000139213.2152

Transport for NSW

ABN 18 804 239 602

and

ACCIONA Construction Australia Pty Ltd

ABN 66 618 030 872

and

APP Corporation Pty Limited

ABN 29 003 764 770

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Annexure

A	Certification and Monitoring Plan
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THIS DEED is made on *30 November* 2022

BETWEEN:

- (1) **Transport for NSW** ABN 18 804 239 602 a New South Wales Government agency constituted by section 3C of the *Transport Administration Act 1988* (NSW) of 231 Elizabeth Street, Sydney, NSW 2061 (the **Principal**);
- (2) **ACCIONA Construction Australia Pty Ltd** ABN 66 618 030 872 whose registered office is at 174 Turner Street, Port Melbourne Victoria 3207 (the **Contractor**); and
- (3) **APP Corporation Pty Limited** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney NSW 2060 (the **Independent Certifier**).

RECITALS:

- (A) The Principal has procured the Independent Certifier to perform independent certification services in connection with the Project.
- (B) On or about the date of this deed, the Contractor entered into the P2 Contract with the Principal in respect of the Contractor's Activities.
- (C) The Independent Certifier represents that it is experienced generally in design and construction and, in particular, in the design and construction of works similar to the Works and offers its expertise in those fields.
- (D) The Project Agreements and Relevant Third Party Agreements contemplate that the Independent Certifier will discharge those functions set out in Schedule 1.
- (E) The Independent Certifier will perform its obligations on the terms and conditions of this deed.
- (F) The Principal, the Contractor and the Independent Certifier now wish to enter into this deed to record the terms on which the Independent Certifier will perform the Services.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this deed.

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

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

Additional Services means any additional services requested by the Principal from the Independent Certifier from time to time by the issue of an Additional Services Order, as those services are described in each Additional Services Order.

Additional Services Fee means the amount payable to the Independent Certifier for the performance of Additional Services specified in the relevant Additional Services Order, as calculated in accordance with clause 1(c) of the Payment Schedule.

Additional Services Order means a written request from the Principal to the Independent Certifier to carry out Additional Services issued under clause 7.1(d)(iii).

Additional Services Proposal means a proposal submitted by the Independent Certifier under clause 7.1(b).

Additional Services Request has the meaning given to that term in clause 7.1(a).

Additional Third Party Agreement has the meaning given to that term in clause 2.6(d)(i).

Amended Certification and Monitoring Plan has the meaning given to that term in clause 3.10(a)(iii).

AP Policy means the NSW Government Aboriginal Procurement Policy (January 2021) as amended or updated from time to time.

Approved Insurer means an insurer with a minimum credit rating of at least [REDACTED] with Standard & Poor's (Australia) Pty Limited or [REDACTED] by Moody's Investors Service, Inc (or such other credit rating as the Principal may approve in writing from time to time) or, if no rating is provided by Standard and Poor's (Australia) Pty Limited or by Moody's Investors Service, Inc, an equivalent rating with another reputable rating agency.

Certification and Monitoring Plan means:

- (a) from the date of this deed until paragraph (b) applies, the plan included in Annexure A; and
- (b) the latest Amended Certification and Monitoring Plan in respect of which the Principal has not issued a notice under clause 3.10(b)(ii),

as that plan is updated from time to time in accordance with clause 3.10.

Change in Control means, in respect of an entity, any event occurs such that a change occurs in the Control of that entity.

Commercially Sensitive Information means:

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

which, in respect of the information contained in this deed, is the information described in Schedule 4.

Completion Phase Services means all Core Services other than Design Phase Services, including any Core Services related to:

- (a) the construction of the Project Works;
- (b) Handover Completion of each Handover Portion;
- (c) the performance by the Contractor of its obligations in respect of Handover Completion of each Handover Portion;
- (d) Opening Completion and Completion;

- (e) the performance by the Contractor of its obligations in respect of Opening Completion and Completion;
- (f) completion of Local Area Works;
- (g) the performance by the Contractor of its obligations in respect of Local Area Works;
- (h) the rectification of Defects by the Contractor;
- (i) the performance by the Environmental Representative of its obligations under the P2 Contract and the Project Planning Approval as they relate to the Contractor's Activities;
- (j) the review of Project Plans under the P2 Contract when directed to by the Principal;
- (k) making determinations in relation to Unknown Contamination required under the P2 Contract;
- (l) the determinations of any Defect Issue required under the RI/P2 Interface Deed; and
- (m) Relevant Third Party Agreements except to the extent they are Design Phase Services.

Consequential Loss means any:

- (a) loss of income, loss of revenue (including loss of toll revenue), loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or
- (b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent, but Consequential Loss does not include Liquidated Damages Loss.

Control has the meaning given to that term in the *Corporations Act 2001* (Cth).

Core Services means the Design Phase Services and the Completion Phase Services, and includes the services set out in Schedule 1.

Core Services Fee means the amount payable to the Independent Certifier for the performance of the Core Services, as calculated in accordance with paragraph 1(b) of the Payment Schedule.

Defect Issue has the meaning given in the RI/P2 Interface Deed.

Design Phase Services means all Core Services related to:

- (a) the design of the Works; and
- (b) the performance by the Contractor of its design obligations in respect of the Works, including those specified in clause 9 of the P2 Contract, in the Contractor Documentation Schedule and under any Relevant Third Party Agreements,

and without limiting the foregoing includes the Core Services set out in paragraph 2.2 of Schedule 1.

Dispute Representatives has the meaning given to that term in clause 9.2(c).

Draft Inner West Council Interface Agreement means the draft deed titled 'Inner West Council Interface Agreement' to be entered into between Inner West Council and the Principal, a copy of which is set out in Schedule E6 of the P2 Contract.

Draft North Sydney Council Interface Agreement means the draft deed titled 'North Sydney Council Interface Agreement' to be entered into between North Sydney Council and the Principal, a copy of which is set out in Schedule E6 of the P2 Contract.

Draft Third Party Agreements has the meaning given to that term in clause 2.6(a)(ii).

Draft WestConnex Access Deed means the draft deed titled 'Western Harbour Tunnel - WestConnex Access Deed' to be entered into between WCX M4-M5 Link PT Pty Limited, WCX M4-M5 Link AT Pty Limited and the Principal, a copy of which is set out in Schedule E6 of the P2 Contract.

Environmental Representative means the person identified as the 'Environmental Representative' in paragraph 2 of Schedule 3 that has been appointed in accordance with the Project Planning Approval or any replacement appointed under clause 3.6(b)(ii).

Expert means the person appointed to determine a dispute pursuant to clause 9.3.

Fee means the amount payable to the Independent Certifier for the performance of the Services in accordance with the Payment Schedule and includes each [REDACTED] payable under this deed (if any).

Gross Negligence means a gross, high and reprehensible failure to take reasonable care in circumstances whereby the Independent Certifier knew that it was failing to take reasonable care and that such failure to take reasonable care had an obvious high risk of causing the loss claimed, and nevertheless proceeded with conscious and intentional indifference and disregard thereto but does not include errors of judgment, mistakes, errors or acts or omissions made in good faith.

GST, GST law and other terms used in clause 12 have the meanings used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time) or any replacement or other relevant legislation and regulations, except that **GST law** also includes any applicable rulings. Any reference to GST payable by the Supplier (as defined in clause 12) 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 Schedule 3 or any other person holding that position in accordance with clause 3.6.

Inner West Council Interface Agreement means the Draft Inner West Council Interface Agreement, as may be updated in accordance with clause 2.6.

Key Personnel means the key personnel referred to in paragraph 2 of Schedule 3.

Liquidated Damages Loss means any liability for liquidated damages under the P2 Contract caused by a breach of this deed by the Independent Certifier.

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

- (a) at least 1.5 per cent of the value of the Fee as at the date of the deed is subcontracted to Aboriginal businesses;
- (b) at least 1.5 per cent of the Independent Certifier's Australian based workforce (full time equivalent) directly contribute to the Services are Aboriginal employees; or

- (c) at least 1.5 per cent of the value of the Fee as at the date of the deed is applied to the cost of education, training or capability building for Aboriginal staff or businesses directly contributing to the contract.

North Sydney Council Interface Agreement means the Draft North Sydney Council Interface Agreement, as may be updated in accordance with clause 2.6.

Notice has the meaning given to that term in clause 13(a)(i).

Notice of Dissatisfaction has the meaning given to that term in clause 9.4(a).

Other Communication has the meaning given to that term in clause 13(a)(ii).

Other Parties means the Principal and the Contractor.

P2 Contract means the deed titled " Western Harbour Tunnel - Package 2: WHT Tunnels and Mechanical and Electrical Fitout - Incentivised Target Cost Contract" between the Principal and the Contractor dated on or about the date of this deed.

Payment Schedule means Schedule 2.

PDCS means the electronic or web based project data and collaboration system to be used as notified by the Principal's Representative under clause 13(b).

Principal's Representative means the person appointed as the Principal's Representative under the P2 Contract, as notified by the Principal to the Independent Certifier from time to time.

Principal's Surveillance Officer means any of the persons appointed as a Principal's Surveillance Representative under the P2 Contract, as notified by the Principal to the Independent Certifier from time to time.

Project means the Western Harbour Tunnel project, which is one of three key elements of the WHTBL Program.

Project Agreements means:

- (a) the P2 Contract;
- (b) the RI/P2 Interface Deed;
- (c) Project Planning Approval;
- (d) Relevant Third Party Agreements; and
- (e) any other agreement that the Principal informs the Independent Certifier constitutes a 'Project Agreement'.

Project Office has the meaning given to that term in clause 3.4(b)(i).

Project Planning Approval means the instrument of approval CSSI 8863 granted by the Minister for Planning and Infrastructure under section 5.19 of the EP&A Act dated 21 January 2021 in respect of the Works, a copy of which is located on the NSW Department of Planning and Environment website <http://www.planning.nsw.gov.au> and includes all conditions to such approval and documents incorporated by reference, as modified from time to time.

[REDACTED]

[REDACTED]

Recipient has the meaning given to that term in clause 12(e).

Related Body Corporate has the meaning given to that term in section 9 of the *Corporations Act 2001* (Cth).

Relevant Third Party Agreements means:

- (a) the SMW WHT Interface Deed;
- (b) the SMCSW WHT Interface Deed;
- (c) the North Sydney Council Interface Agreement;
- (d) the Inner West Council Interface Agreement;
- (e) the WestConnex Access Deed; and
- (f) any Additional Third Party Agreement, to the extent it includes a specific role to be performed by the Independent Certifier.

Resolution Institute means the Resolution Institute, Australia.

RI/P2 Interface Deed means the deed titled "Western Harbour Tunnel and Beaches Link Project - Western Harbour Tunnel – Rozelle Interchange Interface Deed" or similar to be entered into between the Principal, the Contractor and the RI Contractor after the date of this deed.

RI Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667) and John Holland Pty Ltd (ABN 11 004 282 268).

Services means:

- (a) the Core Services; and
- (b) any Additional Services.

SMCSW WHT Interface Deed means the deed titled "Sydney Metro City & Southwest – Western Harbour Tunnel Interface Deed (200-TPW-WC)" between Transport for NSW (ABN 18 804 239 602) and Sydney Metro (ABN 12 354 063 515) and dated 25 September 2020.

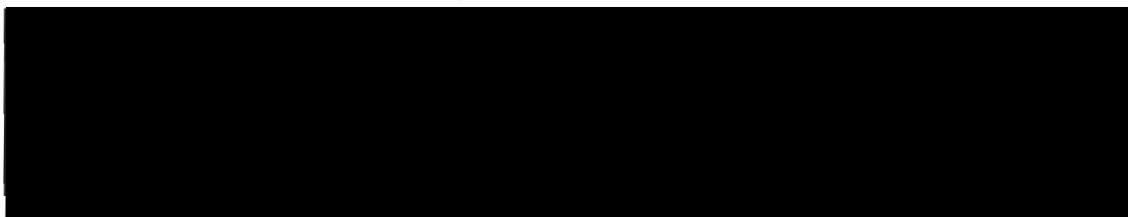
SMW WHT Interface Deed means the deed titled "Sydney Metro West – Western Harbour Tunnel Interface Agreement" between Transport for NSW (ABN 18 804 239 602) and Sydney Metro (ABN 12 354 063 515) and dated 16 June 2021.

Substitute Certifier has the same meaning as in clause 7.4.

Supplier has the meaning given to that term in clause 12(e).

Technical Specialists means the persons specified in Schedule 6.

Term means the term of this deed as set out in clause 3.15.





Fee means each [redacted] fee for the performance of Design Phase Services, Completion Phase Services (but excluding the determinations of any Defect Issue required under the RI/P2 Interface Deed, which will not count towards any [redacted] Fee) and Additional Services (as applicable, under each Additional Services Order), as specified in paragraphs 1(b) and 1(c) of the Payment Schedule, as adjusted in accordance with this deed.

Validity Period has the meaning given to that term in clause 7.1(c).

WestConnex Access Deed means the Draft WestConnex Access Deed, as may be updated in accordance with clause 2.6.

WHTBL Program means the Western Harbour Tunnel and Beaches Link Program.

Wilful Misconduct means any malicious conduct or any breach of this deed which results from a conscious and intentional indifference and disregard to the relevant provisions of this deed and the risk of causing the loss claimed by the relevant Other Party in respect of the breach but does not include errors of judgement, mistakes, errors or acts or omissions made in good faith.



Works means the Project Works and the Temporary Works.

1.2 Definitions in P2 Contract

Except as otherwise defined in clause 1.1, terms used in this deed that are defined in the P2 Contract will have the same meaning in this deed as in the P2 Contract.

1.3 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation of this deed and unless the context indicates a contrary intention;
- (b) person includes an individual, the estate of an individual, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) 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;
- (d) includes in any form is not a word of limitation;
- (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 object as that Authority, institute, association or body;
- (f) a reference to a document (including this deed and any other deed, agreement, instrument, guideline, code of practice or code and standard) is to that document as amended, varied, novated, ratified, supplemented 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 a 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;
- (h) 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;
- (i) 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 grammatical form of that word or phrase has a corresponding meaning;
- (l) a reference to a court or tribunal is to an Australian court or tribunal;
- (m) 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;
- (n) a reference to a month is a reference to a calendar month; and
- (o) a reference to \$ or dollar is to Australian currency.

1.4 **Contra proferentem**

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.

1.5 **Business Day**

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:

- (a) if it involves a payment other than a payment which is due on demand, on the preceding Business Day; and
- (b) in all other cases, no later than the next Business Day.

1.6 Approvals and Consents

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

1.7 Ambiguous terms

- (a) If the Principal considers, or the Independent Certifier or Contractor notifies the Principal's Representative in writing that it considers, that there is an omission, ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal's Representative must direct the interpretation of this deed, which the parties must follow.
- (b) The Principal's Representative, in giving a direction in accordance with clause 1.7(a), is not required to determine whether or not there is an omission, ambiguity, discrepancy, or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal's Representative gives in accordance with clause 1.7(a):
 - (i) will not relieve the Independent Certifier or the Contractor from or alter its liabilities or obligations under this deed, under the Project Documents (in the case of the Contractor), or otherwise according to Law;
 - (ii) will not entitle the Independent Certifier or the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iii) will not limit or otherwise affect the Principal's rights against the Independent Certifier or the Contractor, whether under this deed, under the Project Documents (in the case of the Contractor), or otherwise according to Law; and
 - (iv) must, in respect of a notice given under clause 1.7(a) by the Independent Certifier or the Contractor, be given within 25 Business Days of receipt of that notice.

1.8 Principal as an Authority

- (a) Subject to clause 1.8(b), the Contractor and the Independent Certifier acknowledge and agree that:
 - (i) nothing in this deed or in any of the Project Documents will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal to exercise any of its functions and powers pursuant to any legislation; and
 - (ii) without limiting clause 1.8(a)(i), anything which the Principal does, fails to do or purports to do pursuant to its functions and powers under any legislation will be deemed not to be an act or omission by the Principal under this deed and will not entitle the Contractor or the Independent Certifier to make any Claim against the Principal arising out of the subject matter of this deed and the other Project Documents to which the Principal is a party.
- (b) The parties agree that clause 1.8(a) is taken not to limit any liability which the Principal would have had to the Contractor or the Independent Certifier under this deed, or any other Project Document to which the Principal is a party, as a result of

a breach by the Principal of a term of this deed or any other Project Document to which the Principal is a party but for clause 1.8(a).

2. APPOINTMENT OF THE INDEPENDENT CERTIFIER

2.1 Appointment

- (a) Each of the Principal and the Contractor 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).
- (c) The Independent Certifier must perform the Services in accordance with this deed.

2.2 Payment

Subject to the Independent Certifier performing the Services in accordance with this deed, the Principal will pay the Independent Certifier:

- (a) the Fee subject to and in accordance with the Payment Schedule;

[REDACTED]

- (c) [REDACTED] subject to and in accordance with [REDACTED]
[REDACTED] the Payment Schedule.

2.3 Effect of the Certification and Monitoring Plan

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

2.4 Decisions of the Principal

- (a) Where this deed contemplates an action, agreement, decision, direction or the like by the Contractor and the Principal, and the Contractor and the Principal cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must, acting reasonably and after prior consultation with the Contractor, determine the appropriate action, agreement, decision, direction or the like.
- (b) In reaching decisions in relation to this deed which may affect the Principal and the Contractor, the Principal will take into account representations made by the Contractor.

2.5 Deed Polls

- (a) On or before the date of this deed, the Independent Certifier must have delivered to the Principal's Representative:
 - (i) a deed poll in favour of Sydney Metro duly executed by the Independent Certifier in the form set out in Part A of Schedule 9 in respect of the SMW WHT Interface Deed;
 - (ii) a deed poll in favour of Sydney Metro duly executed by the Independent Certifier in the form set out in Part B of Schedule 9 in respect of the SMCSW WHT Interface Deed; and

- (b) Within 5 Business Days of receipt of a request by the Principal, the Independent Certifier must deliver to the Principal's Representative a deed poll in favour of:
 - (i) the North Sydney Council duly executed by the Independent Certifier in the form set out in the North Sydney Council Interface Agreement;
 - (ii) the Inner West Council duly executed Independent Certifier in the form set out in the Inner West Council Interface Agreement; and
 - (iii) each of M4-M5 Link PT Pty Limited and M4-M5 Link AT Pty Limited duly executed by the Independent Certifier in a form agreed between the parties.
- (c) For the purposes of clause 2.5(b)(iii), the Independent Certifier acknowledges and agrees that it cannot object to any terms of the deed poll required by that clause to the extent the clauses are substantially the same as the terms of any of the deed polls referred to in clauses 2.5(a), 2.5(b)(i) or 2.5(b)(ii).

2.6 Relevant Third Party Agreements

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) the Principal will enter into the Relevant Third Party Agreements;
 - (ii) as at the date of this deed, the terms of:
 - (A) the North Sydney Council Interface Agreement;
 - (B) the Inner West Council Interface Agreement; and
 - (C) the WestConnex Access Deed,

(Draft Third Party Agreements) have not been finalised between the Principal and the North Sydney Council, the Inner West Council or the M4-M5 Link PT Pty Limited and the M4-M5 Link AT Pty Limited (as applicable) and the Draft Third Party Agreements have been made available to the Independent Certifier;
 - (iii) the Independent Certifier has reviewed each of the Draft Third Party Agreements; and
 - (iv) following the finalisation and execution of the Draft Third Party Agreements, after the date of this deed, the Principal must promptly give the Independent Certifier a copy of the executed:
 - (A) North Sydney Council Interface Agreement;
 - (B) Inner West Council Interface Agreement; and
 - (C) WestConnex Access Deed.
- (b) The Independent Certifier must carry out its obligations under this deed on the basis of:
 - (i) the North Sydney Council Interface Agreement;
 - (ii) the Inner West Council Interface Agreement; and
 - (iii) the WestConnex Access Deed.

- (c) If compliance with the terms of the executed:
 - (i) North Sydney Council Interface Agreement;
 - (ii) Inner West Council Interface Agreement; or
 - (iii) WestConnex Access Deed,

(as applicable) cause the Independent Certifier to incur costs which are additional to those that it would otherwise have incurred in complying with the terms of the relevant Draft Third Party Agreement, the Independent Certifier must notify the Principal's Representative of such additional costs and the Principal's Representative will then determine any adjustment to the applicable [REDACTED] Fee in accordance with paragraph 4(a)(v) of the Payment Schedule.

- (d) The parties acknowledge and agree that:
 - (i) after the date of this deed there may be additional Third Party Agreements which the Principal may, in its absolute discretion, enter into (each an **Additional Third Party Agreement**); and
 - (ii) if compliance with the terms of the Additional Third Party Agreement, including any obligation to provide an additional deed poll, causes the Independent Certifier to incur costs which are additional to that it would otherwise have incurred in complying with the terms of this deed, the Principal may issue to the Independent Certifier an Additional Services Request under clause 7.1 to comply with the terms of the Additional Third Party Agreement as if it were an Additional Service.

3. **INDEPENDENT CERTIFIER'S OBLIGATIONS**

3.1 **Acknowledgement**

The Independent Certifier acknowledges and agrees that:

- (a) it has received a copy of the execution version of the Project Agreements and the Relevant Third Party Agreements (other than the executed version of the Draft Third Party Agreements which it has received and reviewed in draft form as contemplated by clause 2.6);
- (b) it has read, and is familiar with, the terms of the Project Agreements and the Relevant Third Party Agreements to the extent they relate to the Services;
- (c) its obligations under this deed extend to, and include, the obligations, functions, duties and services of the Independent Certifier referred to in the Project Agreements and the Relevant Third Party Agreements (as applicable);
- (d) [REDACTED]; and
- (e) it will not be entitled to payment of any amount in addition to the relevant [REDACTED] Fee (as adjusted in accordance with paragraph 4 of the Payment Schedule) for the performance of the Services.

3.2 **General representations and warranties**

The Independent Certifier represents and warrants that:

- (a) it is a company duly incorporated and existing under Law and has the power to execute, deliver and perform its obligations under this deed and that all necessary corporate and other action has been taken to authorise that execution, delivery and performance;
- (b) the information provided by it in connection with this deed is true, accurate and complete in all material respects and not misleading in any material respect (including by omission);
- (c) its obligations under this deed are valid, legal and binding obligations enforceable against it in accordance with its terms, subject to equitable remedies and Laws in respect of the enforcement of creditor's rights;
- (d) the execution, delivery and performance of this deed by it will not contravene any Law to which it is subject or any deed or arrangement binding on it;
- (e) it does not (in any capacity) have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise); and
- (f) no litigation, arbitration, tax claim, dispute or administrative or other proceeding has been commenced or threatened against it which is likely to have a material adverse effect upon its ability to perform its obligations under this deed.

3.3 Further acknowledgements and warranties

The Independent Certifier:

- (a) acknowledges that each of the Principal and the Contractor:
 - (i) is relying upon the 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 Principal and the Contractor 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 diligence which would be reasonably expected of a skilled professional providing services similar to the Services within the design and construction industries generally and the design and construction of major engineering works in particular;
- (c) warrants to the Principal and the Contractor that, at all times, it will act within the time requirements for the performance of its obligations under this deed and within the times prescribed under the Project Agreements and Relevant Third Party Agreements (and where no time is prescribed, within a reasonable time) and will comply with the requirements of the Payment Schedule;
- (d) without limiting clauses 3.3(a) and 3.3(b), acknowledges and agrees that the Principal and the Contractor are entitled to and will rely on any certificate, notice or other document signed or given by the Independent Certifier under or pursuant to this deed, the Project Agreements or the Relevant Third Party Agreements;
- (e) without limiting its obligations under any provision of this deed, warrants to the Principal and the Contractor that:
 - (i) it will carry out and perform the Services;

- (ii) in performing the Services it will provide, as a minimum, the levels of surveillance and resources specified in Schedule 3; and
- (iii) without limiting clauses 3.3(e)(i) and 3.3(e)(ii), to the extent the Certification and Monitoring Plan is not inconsistent with:
 - (A) the Project Documents;
 - (B) the nature of the Services; or
 - (C) without limiting clauses 3.3(e)(iii)(A) and 3.3(e)(iii)(B), the requirements of clause 4,

it will carry out and perform the Services in accordance with the Certification and Monitoring Plan;
- (f) it will provide transport on the Construction Site, any Extra Land and Local Areas for the use of its site personnel;
- (g) warrants that, in performing the Services, it will keep itself informed of the progress of:
 - (i) the development of the Project Plans and the Design Documentation; and
 - (ii) the Works,

to the extent necessary to enable the Independent Certifier to provide timely reviews and timely and relevant comments in accordance with this deed;
- (h) will carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Principal and the Contractor) except where it is the unavoidable consequence of performing the Services;
- (i) will co-operate with the Principal and the Contractor and their subcontractors and coordinate the Services with the Works and the Contractor's Activities; and
- (j) in undertaking the Services, will comply with all the safe working requirements of the Contractor.

3.4 Access and Project Office

- (a) The Contractor must provide for the Independent Certifier accommodation on the Construction Site and access to such premises as may be reasonably necessary to enable the Independent Certifier to discharge its obligations under this deed.
- (b) The Independent Certifier must:
 - (i) establish a project office within the accommodation provided by the Contractor on the Construction Site (**Project Office**);
 - (ii) keep proper and complete written records of the performance of the Services at the Project Office; and
 - (iii) ensure that its Key Personnel and the Independent Certifier's Representative are located at the Project Office to the extent necessary to enable the Independent Certifier to perform the Services.

3.5 Site Surveillance

The Independent Certifier must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the Works and the Contractor's Activities when:

- (a) appropriate or necessary to do so, including for the purpose of determining whether Handover Completion of each Handover Portion, Opening Completion or Completion has been achieved by the Contractor; and
- (b) reasonably requested by the Principal or the Contractor,

in a manner which satisfies or exceeds the requirements ascertainable from Schedule 3 and the Certification and Monitoring Plan and the Independent Certifier must invite and permit the Principal, the Principal's Surveillance Officers and the Contractor to accompany it on all such inspections.

3.6 Key Personnel

- (a) The Independent Certifier must provide experienced and skilled personnel to perform its obligations under this deed.
- (b) The Independent Certifier must ensure that the Key Personnel:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal and the Contractor (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 the Principal and the Contractor within 10 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 skill, expertise and experience; and
 - (B) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements, the Relevant Third Party Agreements and the Services; and
 - (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) The Principal and the Contractor may jointly direct the Independent Certifier to remove from the performance of the Services any of the people referred to in Schedule 3 and the Independent Certifier must comply with any such direction and ensure that:
 - (i) any of the people that are removed must be replaced by people of at least equivalent skill, expertise and experience; and
 - (ii) there must be, prior to their removal and replacement, a proper handover to ensure that the new personnel have a reasonable understanding of the Project Agreements, the Relevant Third Party Agreements and the Services.
- (d) The Independent Certifier must notify the Principal and the Contractor in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Schedule 1 which the Independent Certifier is required to execute as part of the Services, and must ensure that these certificates and documents are signed by the person or persons so notified.

3.7 Subcontracting

- (a) Subject to clause 3.7(c) and with the exception of the Technical Specialists, the Independent Certifier must not subcontract or permit the subcontracting of the performance of any of the Services without the prior written consent of the Principal and the Contractor.
- (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 or omissions of the Independent Certifier.
- (c) Unless the Principal otherwise approves in writing, the Independent Certifier must contract with the subcontractors set out in Schedule 6 for the performance of the relevant parts of the Services.

3.8 Quality Assurance

- (a) The Independent Certifier must implement a quality system in accordance with AS/NZS ISO9000 and AS/NZS ISO9001, and otherwise in a form reasonably acceptable to the Principal and the Contractor 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 Principal (including the Principal's Surveillance Officers) or the Contractor with respect to the quality assurance requirements of this deed, including any audit under clause 3.13.

3.9 Documentation management and transmission

- (a) Without limiting clause 13, from the commencement date for use of the PDCS referred to in clause 13(b) and other than where clause 13(d) applies, the Independent Certifier must:
 - (i) implement and use the PDCS to manage and transmit all documentation connected with the Services in accordance with the processes and procedures required by the Principal;
 - (ii) align its document management and quality processes to complement and utilise the functions and features of the PDCS;
 - (iii) use the PDCS mail module for all correspondence relating to the Services between the Independent Certifier, the Principal and the Contractor;
 - (iv) upload all documentation required for the performance of the Services to the PDCS; and
 - (v) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (b) Documents supplied to the Independent Certifier by the Principal will remain the property of the Principal and must be returned by the Independent Certifier to the Principal on demand in writing. The documents must not, without the prior written approval of the Principal, be used, copied or reproduced for any purpose other than the execution of the Services.

- (c) The Independent Certifier must keep all the Independent Certifier's records relating to the Services in secure and fireproof storage.
- (d) The Independent Certifier will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with complying with its obligations under this clause 3.9.
- (e) The Independent Certifier must ensure that any documents and materials that it provides to the Principal or the Contractor in computer readable form contain no virus or computer software code which is intended or designed to:
 - (i) permit access to or use of a computer system by a third person not authorised by the Principal or the Contractor (as applicable); or
 - (ii) disable, damage or erase, or disrupt or impair the normal operation of any other software or data on a computer system.

3.10 Revisions to Certification and Monitoring Plan

- (a) The Independent Certifier must:
 - (i) progressively amend, update and develop the Certification and Monitoring Plan throughout the performance of the Services as necessary to reflect the commencement of new Portions, changes and stages of the Contractor's Activities, any Variations and any changes in the manner of performing the Services, including as directed under clause 7;
 - (ii) ensure that any amendments, updates or developments of the Certification and Monitoring Plan made pursuant to clause 3.10:
 - (A) are consistent with the format of the Certification and Monitoring Plan;
 - (B) meet or exceed the requirements of the then current Certification and Monitoring Plan;
 - (C) not reduce the effectiveness, methodology, scope, effect, resources or expertise contained in the then current Certification and Monitoring Plan; and
 - (D) otherwise comply with the requirements of this deed; and
 - (iii) submit each revision of the Certification and Monitoring Plan to the Principal (with a copy to the Principal's Surveillance Officers) and the Contractor for their review and comment (**Amended Certification and Monitoring Plan**).
- (b) The Principal and the Contractor may:
 - (i) review the Amended Certification and Monitoring Plan submitted under clause 3.10(a)(iii); and
 - (ii) if the Amended Certification and Monitoring Plan does not comply with the requirements of this deed, or the Principal or the Contractor believe that the Amended Certification and Monitoring Plan will lead to a reduction in the effectiveness, methodology, scope, effort, resources or expertise contained in the Certification and Monitoring Plan, notify the Independent Certifier of that non-compliance or reduction.
- (c) If the Independent Certifier receives a notice under clause 3.10(b)(ii), the Independent Certifier must promptly amend the Amended Certification and

Monitoring Plan to resolve the issues identified and submit such revised Amended Certification and Monitoring Plan to the Principal (with a copy to the Principal's Surveillance Officers) and the Contractor, after which clause 3.10(b) will reapply.

- (d) Without limiting clauses 3.1(c) and 3.3(e), the Independent Certifier must not, in the amending, updating and development of the Certification and Monitoring Plan required by clauses 3.10(a) and 3.10(c), decrease or otherwise reduce the effectiveness, methodology, performance and timing requirements, scope, effort, resources or expertise from that set out in the initial Certification and Monitoring Plan in Annexure A or the then existing Certification and Monitoring Plan without the written approval of the Principal (after prior consultation with the Contractor).
- (e) The Independent Certifier may not amend the Certification and Monitoring Plan other than in accordance with this clause 3.10.

3.11 Progress Reports by the Independent Certifier

Throughout the Term of this deed, the Independent Certifier must provide a monthly progress report to each of the Principal and the Contractor no later than 5 Business Days after the end of the month and in such format as is required by the Principal's Representative, containing, identifying or setting out the details set out in paragraph 1 of Schedule 1.

3.12 Meetings

The Independent Certifier:

- (a) must attend:
 - (i) a monthly progress meeting with the Principal's Representative within 5 Business Days of the submission of each monthly progress report to the Principal's Representative in accordance with clause 3.11 to discuss and review the content of such report; and
 - (ii) meetings of the Completion Steering Committee, the Project Design Group, the Project Leadership Group, and all other meetings which the Independent Certifier is required to attend pursuant to the terms of the Project Agreements or as required by the Principal's Representative under the Project Agreements; and
- (b) without limiting clause 3.12(a), must ensure that an appropriately qualified representative of the Independent Certifier attends any additional meetings at the request of Principal's Representative, with any of the following parties:
 - (i) the Principal;
 - (ii) the Contractor; or
 - (iii) any other third parties that the Principal may require.

3.13 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 Principal or the Contractor; 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.

3.14 Access to records

The Independent Certifier must, within a reasonable time of any request (and in any event within 5 Business Days), give the Principal or the Contractor access to any records or other documents received, prepared or generated by the Independent Certifier in the course of carrying out the Services.

3.15 Term

The Term of this deed commences on the date of this deed and continues until the earlier of:

- (a) completion of the Services; or
- (b) termination of this deed in accordance with clause 10.

3.16 Principal and Contractor not responsible

The Principal and the Contractor:

- (a) owe no duty to the Independent Certifier to review the Certification and Monitoring Plan for errors, omissions or compliance with this deed; and
- (b) are not responsible for the accuracy, completeness or the contents of, and make no representation and assume no duty of care in respect of, the Certification and Monitoring Plan.

3.17 NSW Government Aboriginal Procurement Policy

- (a) The Independent Certifier acknowledges that it must prepare and submit within 20 Business Days of the date of this deed an Aboriginal Participation Plan prepared in accordance with the AP Policy and in the format prescribed by the NSW Procurement Board which shows how the Independent Certifier intends to meet the Minimum Aboriginal Participation Requirements for the Principal's review and approval. Templates are available at:
<https://buy.nsw.gov.au/policy-library/policies/aboriginal-procurement-policy>
- (b) The Principal will review the Aboriginal Participation Plan submitted under clause 3.17(a) and either:
 - (i) approve the Aboriginal Participation Plan; or
 - (ii) if the Aboriginal Participation Plan does not comply with the requirements of clause 3.17(a) this deed, notify the Independent Certifier of that non-compliance.
- (c) If the Independent Certifier receives a notice under clause 3.17(b)(ii), the Independent Certifier must promptly amend the Aboriginal Participation Plan to resolve the issues identified by the Principal and submit such revised Aboriginal Participation Plan to the Principal, after which clause 3.17(b) will reapply.

- (d) The Independent Certifier must comply with the Aboriginal Participation Plan approved by the Principal under the process set out in clause 3.17(a) to clause 3.17(c) (inclusive).
- (e) The Independent Certifier must prepare and submit to the Principal:
 - (i) each quarter, an Aboriginal Participation Report which provides details of the implementation of the AP Policy and achievement of targets; and
 - (ii) prior to the completion of the Services, the final Aboriginal Participation Report describing and explaining:
 - (A) how the Aboriginal Participation Plan has been implemented within the specified period;
 - (B) what actual outcomes have been achieved; and
 - (C) whether the Minimum Aboriginal Participation Requirements have been met.
- (f) If the Minimum Aboriginal Participation Requirements have not been met by the Independent Certifier prior to the Independent Certifier's final payment claim, the Principal may direct the remaining balance of the required spend to the "Aboriginal Participation Fund" account held by Training Services NSW.

3.18 Pre-Agreed Variations

- (a) The Independent Certifier acknowledges that pursuant to clause 10.10(a) of the P2 Contract, the Principal's Representative may in its absolute discretion and without being under any obligation to do so, direct a Pre-Agreed Variation by giving written notice to the Contractor at any time prior to the relevant Election Date.
- (b) Within 10 Business Days of instructing a Pre-Agreed Variation under clause 10.10(a) of the P2 Contract, the Principal must notify the Independent Certifier in writing of that direction.
- (c) The parties acknowledge and agree that where the Principal issues a notice pursuant to clause 3.18(b) then:
 - (i) the Independent Certifier will not be entitled to any increase in any [REDACTED] Fee; and
 - (ii) the Services are deemed to be updated to include any additional services necessary for, or incidental to, the relevant Pre-Agreed Variation.
- (d) The Independent Certifier acknowledges and agrees that if and when the Principal exercises any Pre-Agreed Variations pursuant to clause 10.10(a) of the P2 Contract:
 - (i) notwithstanding the changes to the Services effected pursuant to clause 3.18(c)(ii), clause 7.2 will not apply to such changes; and
 - (ii) this will not result in an increase to any [REDACTED] Fee.

4. INDEPENDENCE, CONFIDENTIALITY AND EXCLUSIVITY

4.1 Independent Certifier to be independent

The Independent Certifier warrants to the Principal and the Contractor that in performing the Services, it will act professionally and independently of each of the Principal, the Contractor and the Subcontractors and in a timely manner.

4.2 Confidentiality

- (a) The Independent Certifier must:
- (i) keep confidential the details of this deed and all information and documents provided to, or by, the Independent Certifier relating to the Services, the Works, this deed, the Project Documents or the Project and not provide, disclose or use the information or documents except:
 - (A) to disclose them to the Principal or the Contractor;
 - (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 Principal and the Contractor; and
 - (ii) ensure that its subcontractors, if any, comply with the terms of clause 4.2(a)(i).
- (b) Where disclosure is permitted under clause 4.2(a), the Independent Certifier must ensure that the recipient of the information will be subject to the same obligation of confidentiality as that contained in this deed.
- (c) This clause 4.2 will survive completion of the Services or the termination of this deed.

4.3 Exclusivity

- (a) The Independent Certifier must not, and must procure that:
- (i) any related body corporate (as defined by sections 9 and 50 of the *Corporations Act 2001* (Cth)) of the Independent Certifier; and
 - (ii) any employees, agents, subcontractors and consultants who are involved in the provision of the Services,
- do not, from the date of execution of this deed until the date of expiry of the Term in accordance with clause 3.15:
- (iii) have any direct or indirect involvement (whether under contract or any other arrangement) in the Project; or
 - (iv) provide services to or advise any other person in relation to the Project, the Project Agreements or the Relevant Third Party Agreements,
- other than the provision of the Services under this deed and the provision of independent certifier services in connection with the RI Contract, except with the prior written consent of the Principal and the Contractor which may be withheld or granted in their absolute discretion.
- (b) The Independent Certifier agrees that:

- (i) having regard to the Project Agreements, the Relevant Third Party Agreements and the Services, this clause 4.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity requirements of the Project and to ensure the best value for money of the Project; and
 - (ii) damages may not be a sufficient remedy for a breach of this clause 4.3 and the Principal and the Contractor may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Certifier, in addition to any other remedies available at Law or in equity.
- (c) The Independent Certifier warrants that:
- (i) at the date of signing this deed, no conflict of interest (either actual or perceived) exists or is likely to arise in the performance of its obligations under this deed, the Project Agreements or the Relevant Third Party Agreements; and
 - (ii) if, during the Term, notwithstanding clause 4.3(a) or this clause 4.3(c), any conflict or risk of conflict of interest arises, the Independent Certifier will notify the Principal and the Contractor in writing immediately of that conflict or risk and take such action to avoid or mitigate the conflict or risk of conflict of interest as the Principal and the Contractor may reasonably require.

4.4 Relationship with the Principal and the Contractor

- (a) The Independent Certifier is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of the Principal or the Contractor.
- (b) Each party acknowledges and agrees that the Independent Certifier has no authority to:
 - (i) give directions to the Principal or the Contractor other than as expressly set out in this deed or any of the Project Documents;
 - (ii) waive or alter any terms of the Project Documents; or
 - (iii) discharge or release a party from any of its obligations pursuant to the Project Documents.

4.5 Publicity

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

5. NOTIFICATIONS

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

- (a) that any matter stated or certified by the Contractor or the Principal or certificate provided under the P2 Contract is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which, in its reasonable opinion:
 - (i) may materially or adversely affect the Contractor's ability to achieve:
 - (A) Handover Completion of each Handover Portion by the Date for Handover Completion of each Handover Portion;
 - (B) Opening Completion by the Date for Opening Completion; or
 - (C) Completion by the Date for Completion;
 - (ii) it considers to be, in the context of the Project, of material interest to the Principal or the Contractor;
 - (iii) may involve a material breach of the Project Agreements or a Relevant Third Party Agreement; or
 - (iv) may involve a material dispute between any of the parties to any Project Document and another party or the parties to any Project Document or any other person in relation to a Project Document or the Project.

6. OBLIGATIONS OF PRINCIPAL AND CONTRACTOR

6.1 No interference or influence

- (a) The Principal and the Contractor will not interfere with or attempt to improperly influence the Independent Certifier in the performance of any of the Services under this deed. The parties acknowledge that any communication allowed by this deed, the Project Agreements or the Relevant Third Party Agreements will not of itself constitute a breach of this clause.
- (b) Clause 6.1(a) will not prevent the Principal or the Contractor from providing written comments to the Independent Certifier in respect of the Design Documentation or any other aspect of the Contractor's Activities (including in connection with whether Handover Completion of each Handover Portion, Opening Completion or Completion has been achieved by the Contractor) and the Independent Certifier must consider any comments received from the Principal and the Contractor.

6.2 Co-operation

- (a) Without limiting or otherwise affecting any of the Contractor's obligations under this deed or the Project Agreements, the Contractor must:
 - (i) 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;
 - (ii) allow the Independent Certifier to attend all meetings and procure for the Independent Certifier access to such premises as may be reasonably necessary to enable the Independent Certifier to perform the Services or as requested by the Independent Certifier or directed by the Principal, including allowing access to the Construction Site and any Extra Land and all areas where the Works are being performed (including any relevant Local Areas);

- (iii) ensure that Hold Points and/or Witness Points are included in the Project Plans as reasonably required by the Independent Certifier or an Authority to enable the Independent Certifier to perform the Services; and
 - (iv) coordinate the Contractor's Activities with the Services.
- (b) A copy of any written communication to the Independent Certifier must simultaneously be provided by the sending party to each of the Principal and the Contractor.

6.3 Principal to have no liability

Each party acknowledges that, other than in respect of its obligation to pay the Fee (subject to paragraph 3(a)(ii) of the Payment Schedule), the Principal is not liable, nor will be taken to have a liability, or to have assumed a liability or become (on enforcement of any of their powers or otherwise) liable for the performance of any obligation of the Contractor or the Independent Certifier whether under or purportedly under this deed or under the Project Agreements or otherwise.

7. ADDITIONAL SERVICES, CHANGE TO SERVICES, SUSPENSION OF SERVICES AND APPOINTMENT OF SUBSTITUTE CERTIFIER

7.1 Additional Services

- (a) The Principal may at any time during the Term issue a notice to the Independent Certifier setting out details of a proposed Additional Services Order that the Principal is considering (**Additional Services Request**).
- (b) As soon as practicable, and in any event within 10 Business Days after the issue of the Additional Services Request, the Independent Certifier must provide the Principal with an Additional Services Proposal setting out:
 - (i) a description of the Additional Services to be performed by the Independent Certifier under the Additional Services Request, including:
 - (A) the program for carrying out the Additional Services;
 - (B) the personnel required to perform the Additional Services; and
 - (C) the estimated number of hours or days (as applicable) required to be performed by each personnel; and
 - (ii) the proposed [REDACTED] Fee for the performance of the Additional Services the subject of the Additional Services Request, which must be:
 - (A) calculated by reference to the schedule of rates set out in the Payment Schedule; or
 - (B) if the nature of the services are such that the schedule of rates set out in the Payment Schedule is not applicable, based on reasonable rates and prices.
- (c) The Additional Services Proposal must remain valid for acceptance by the Principal for the period stated in the proposal which must be not less than 30 Business Days after the date of the proposal (**Validity Period**).
- (d) Within the Validity Period, the Principal may by written notice to the Independent Certifier do one of the following:

- (i) advise the Independent Certifier that the Principal:
 - (A) requires further information or clarification with respect to the Additional Services Proposal; or
 - (B) has altered the scope of the Additional Services Request,
in which case the Independent Certifier must provide the Principal with an updated Additional Services Proposal within 5 Business Days of receiving the Principal's notice under this clause 7.1(d)(i) and this clause 7.1(d) will reapply to the updated Additional Services Proposal;
- (ii) withdraw the proposed Additional Services Request, in which case the Independent Certifier must not carry out the Additional Services; or
- (iii) issue an Additional Services Order setting out:
 - (A) a description of the Additional Services to be performed by the Independent Certifier; and
 - (B) the [REDACTED] Fee for the performance of the Additional Services.
- (e) The Independent Certifier must, within 5 Business Days of receipt of the Additional Services Order, provide the Principal with a notice either:
 - (i) accepting the Additional Services Order; or
 - (ii) subject to clauses 7.1(f) and 7.1(g), containing detailed written reasons why it cannot accept the Additional Services Order (acting reasonably).
- (f) For the purpose of clause 7.1(e), the Independent Certifier must accept and comply with any Additional Services Order issued by the Principal in accordance with clause 7.1(a), unless the Independent Certifier can demonstrate, to the Principal's reasonable satisfaction, that the Independent Certifier:
 - (i) would be in breach of this deed as a consequence of performing the Additional Services contemplated under the Additional Services Order; or
 - (ii) does not have the expertise or experience required to perform the Additional Services contemplated under the Additional Services Order in accordance with this deed.
- (g) Without limiting clause 7.1(f), the Independent Certifier acknowledges and agrees that it would be acting unreasonably by not accepting an Additional Services Order due to a disagreement in relation to the proposed [REDACTED] Fee for the performance of Additional Services subject to an Additional Services Order, and in these circumstances the Independent Certifier must:
 - (i) accept the Additional Services Order in accordance with clause 7.1(e)(i);
 - (ii) provide a written notice of disagreement to the Principal with respect to the proposed [REDACTED] Fee; and
 - (iii) perform the Additional Services in accordance with the Additional Services Order.
- (h) If the Principal and the Independent Certifier do not agree to the applicable [REDACTED] Fee within 5 Business Days after the issue of the Independent Certifier's written notice under clause 7.1(g)(ii), the Principal's Representative (acting

reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in accordance with clause 9 and/or any subsequent court proceedings.

- (i) An Additional Services Order is deemed accepted for all purposes under this deed if no notice is received by the Principal from the Independent Certifier in accordance with clause 7.1(e).
- (j) If an Additional Services Order is accepted or deemed to be accepted by the Independent Certifier under this clause 7.1:
 - (i) the Additional Services set out in that Additional Services Order become part of the Services and must be performed in accordance with this deed; and
 - (ii) the Additional Services Fee (if any) set out in that Additional Services Order becomes part of the Fee and must be paid in accordance with this deed.
- (k) The Principal is not obliged to:
 - (i) issue any Additional Services Request to the Independent Certifier under clause 7.1(a); or
 - (ii) proceed with any Additional Services Proposal issued under clause 7.1(b).
- (l) The Independent Certifier acknowledges that:
 - (i) the Principal has made no representations as to the amount of work (if any) which the Principal may request the Independent Certifier to perform under Additional Services Orders;
 - (ii) the Independent Certifier may not make any claim against the Principal on the basis that the Principal has not requested or engaged the Independent Certifier to perform any or sufficient work under Additional Services Orders; and
 - (iii) the Principal is entitled to engage other contractors to perform services similar to the Services.

7.2 **Changes to Services**

Without limiting clause 7.1, the Principal (after prior consultation with the Contractor) may, by written notice to the Independent Certifier, direct the Independent Certifier to carry out a change to the Services (including an addition or omission) and the Independent Certifier must comply with that direction.

7.3 **Suspension of Services**

The Principal and the Contractor may, by written notice to the Independent Certifier, jointly direct the Independent Certifier to suspend any or all of the Services for the period of time specified in the notice.

7.4 **Appointment of Substitute Certifier**

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) the Principal and the Contractor may appoint another certifier (**Substitute Certifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 7.2; and

- (ii) subject to the terms on which the Substitute Certifier is appointed, any decision of a Substitute Certifier appointed shall be treated (as between the Principal and the Contractor) as if it is a decision of the Independent Certifier, and the Substitute Certifier shall have all of the rights and powers of the Independent Certifier under the Project Agreements and Relevant Third Party Agreements in connection with those omitted Services.
- (b) Notwithstanding a change to the Services or the appointment of a Substitute Certifier, the Independent Certifier must continue to perform the Services, as varied in accordance with this clause 7, in accordance with this deed.
- (c) Without prejudice to any claim in respect of the performance of the Independent Certifier, the Independent Certifier is not responsible for the performance of the Substitute Certifier.

7.5 Meetings to address non-performance

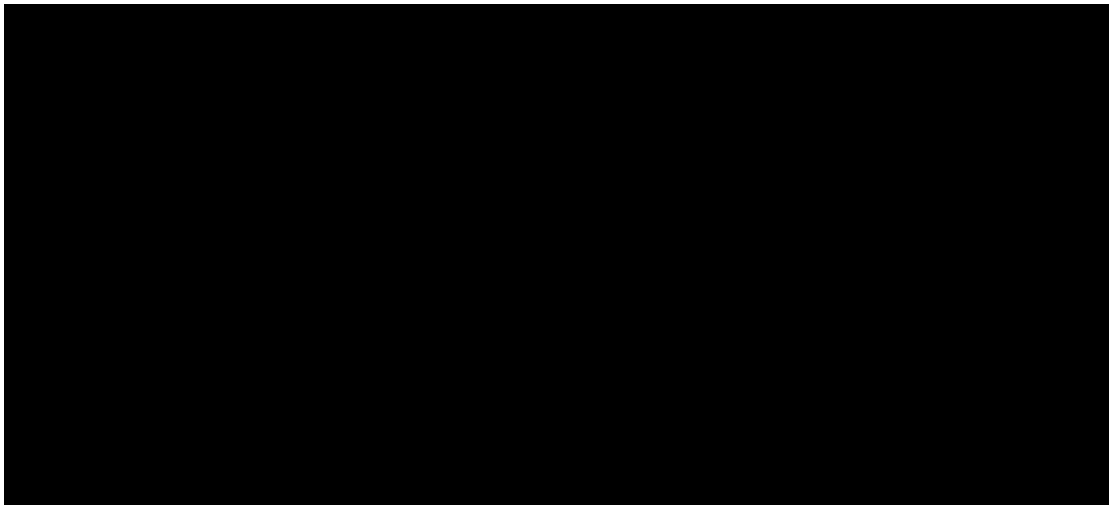
- (a) If the Principal or the Contractor is of the opinion that the Independent Certifier is not performing its duties in accordance with this deed, the Principal or the Contractor may call a meeting of the Principal's and the Contractor's duly authorised representatives who must attend within 2 Business Days (or such other period as is reasonably requested by the party calling the meeting) to decide an appropriate action to resolve the issue.
- (b) Without limiting the scope of the decision of the Principal and the Contractor, the Principal and the Contractor will consider at such a meeting whether to resolve the issue referred to in clause 7.5(a) by:
 - (i) requesting that the Independent Certifier comply with this deed;
 - (ii) changing the Services in accordance with clause 7.2;
 - (iii) suspending the Services in accordance with clause 7.3;
 - (iv) appointing a Substitute Certifier in accordance with clause 7.4; or
 - (v) terminating the appointment of the Independent Certifier in accordance with clause 10.

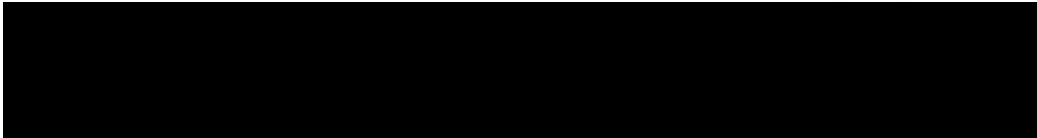
8. LIABILITY, INSURANCE AND INDEMNITY

8.1 Limitation of liability

- (a) Subject to clause 8.2, the Independent Certifier's total aggregate liability arising out of, under or in connection with this deed [REDACTED], from all claims howsoever arising (including under tort (including negligence), contract (including under an indemnity or warranty), in equity, in restitution and breach of statutory duty) will be limited to [REDACTED]:

- (i) [REDACTED]; and
- [REDACTED]





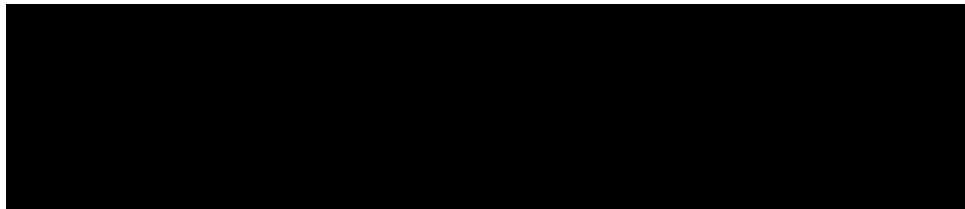
(b) 

8.2 Exclusions

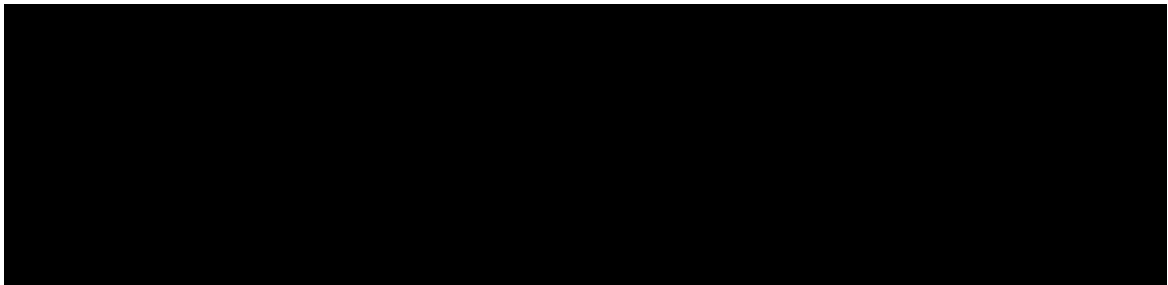
The limitation of liability in clause 8.1 and the exclusion of liability for Consequential Loss in clause 8.3 do not:

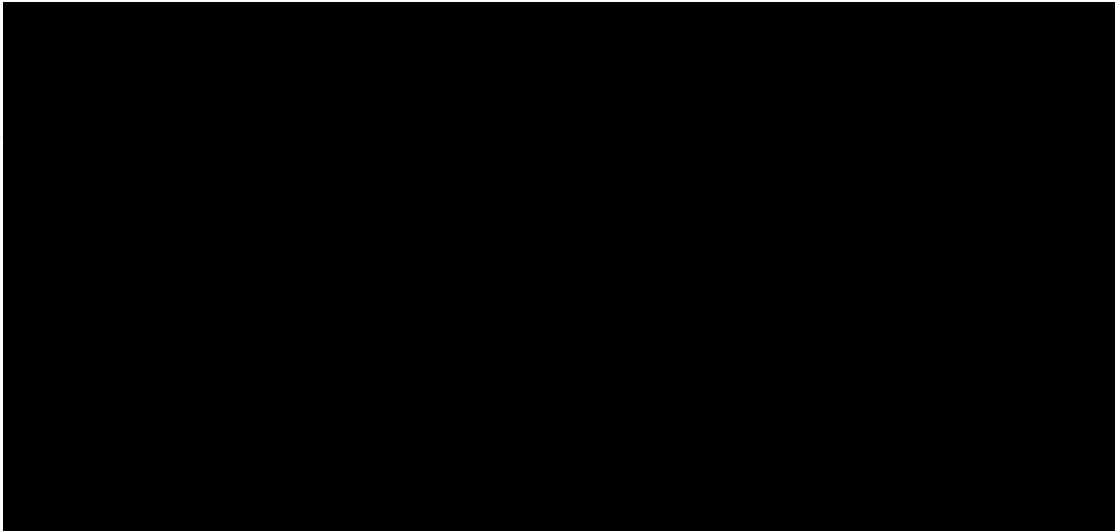
(a) apply to any claims arising out of or in connection with any of the following on the part of the Independent Certifier or anyone for whom the Independent Certifier is responsible:

- (i) fraud or criminal conduct;
- (ii) Wilful Misconduct;
- (iii) Gross Negligence;
- (iv) any damage to or loss of property, 




- (v) death of or injury to any person; or
- (vi) liability that cannot be limited or excluded by Law; or



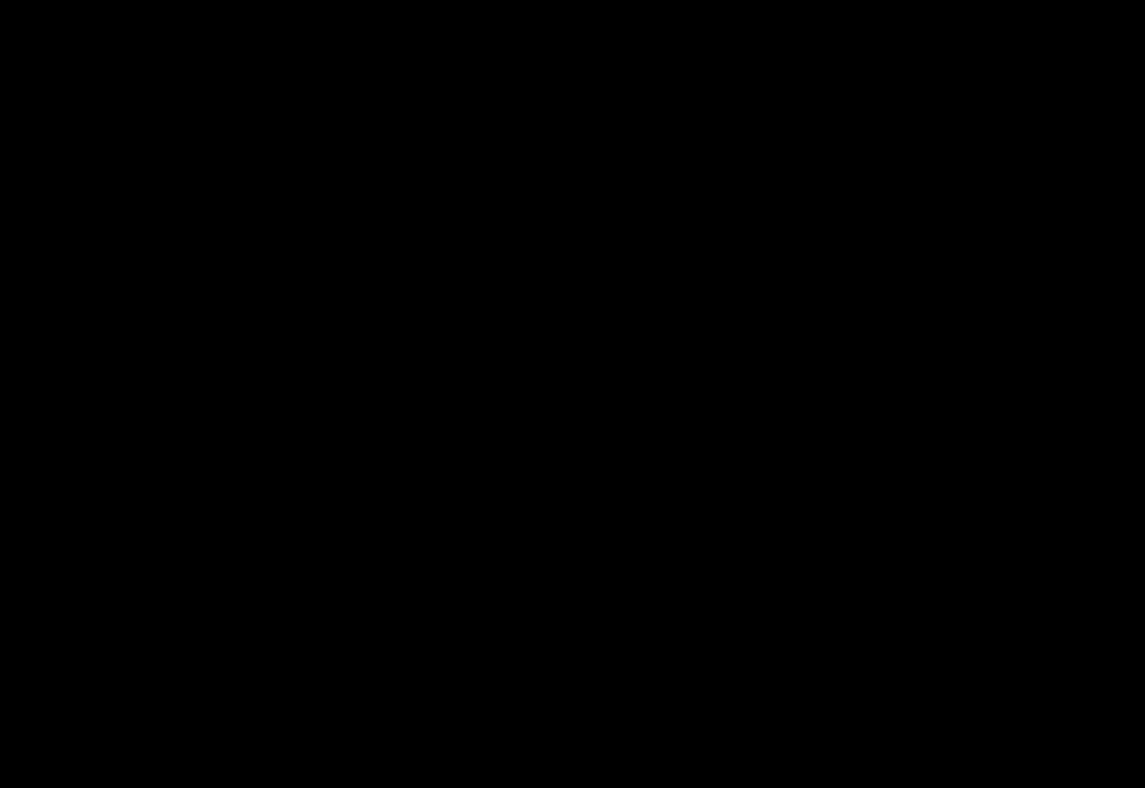


- (c) operate to limit or restrict the Independent Certifier's liability to pay any excess or deductible under an insurance policy referred to in clause 8.4,

and any liability arising out of or in connection with the matters referred to in clauses 8.2(a), 8.2(b) and 8.2(c) will not count towards or be included in any calculation of the limit of the Independent Certifier's total aggregate liability under clause 8.1.

8.3 Consequential Loss

- (a) Notwithstanding any other provision of this deed but subject to clauses 8.2 and 8.3(b), the Independent Certifier will have no liability to the Principal or the Contractor for any Claim for any Consequential Loss (in contract for breach of this deed, under an indemnity, for debt, in tort including negligence, by way of strict or vicarious liability, under statute or otherwise according to Law or in equity) arising out of or in any way in connection with the Services.



8.4 **Insurances**

The Independent Certifier must hold and maintain:

(a) [REDACTED] professional indemnity insurance that covers the period commencing on the date of this deed:

(i) with a limit of indemnity of [REDACTED] for any single claim and in the aggregate, in respect of legal liability (including, without limitation, in connection with property damage, personal injury or death) arising from a breach of professional duty, whether owed in contract or otherwise, by reason of any negligent act, error or omission by the Independent Certifier or its employees, agents or consultants;

(ii) with a deductible of [REDACTED] and [REDACTED]

[REDACTED]

(b) from the date of this deed, workers compensation insurance as required by Law under any statute relating to workers' or accident compensation; and

(c) from the date of this deed, public liability insurance:

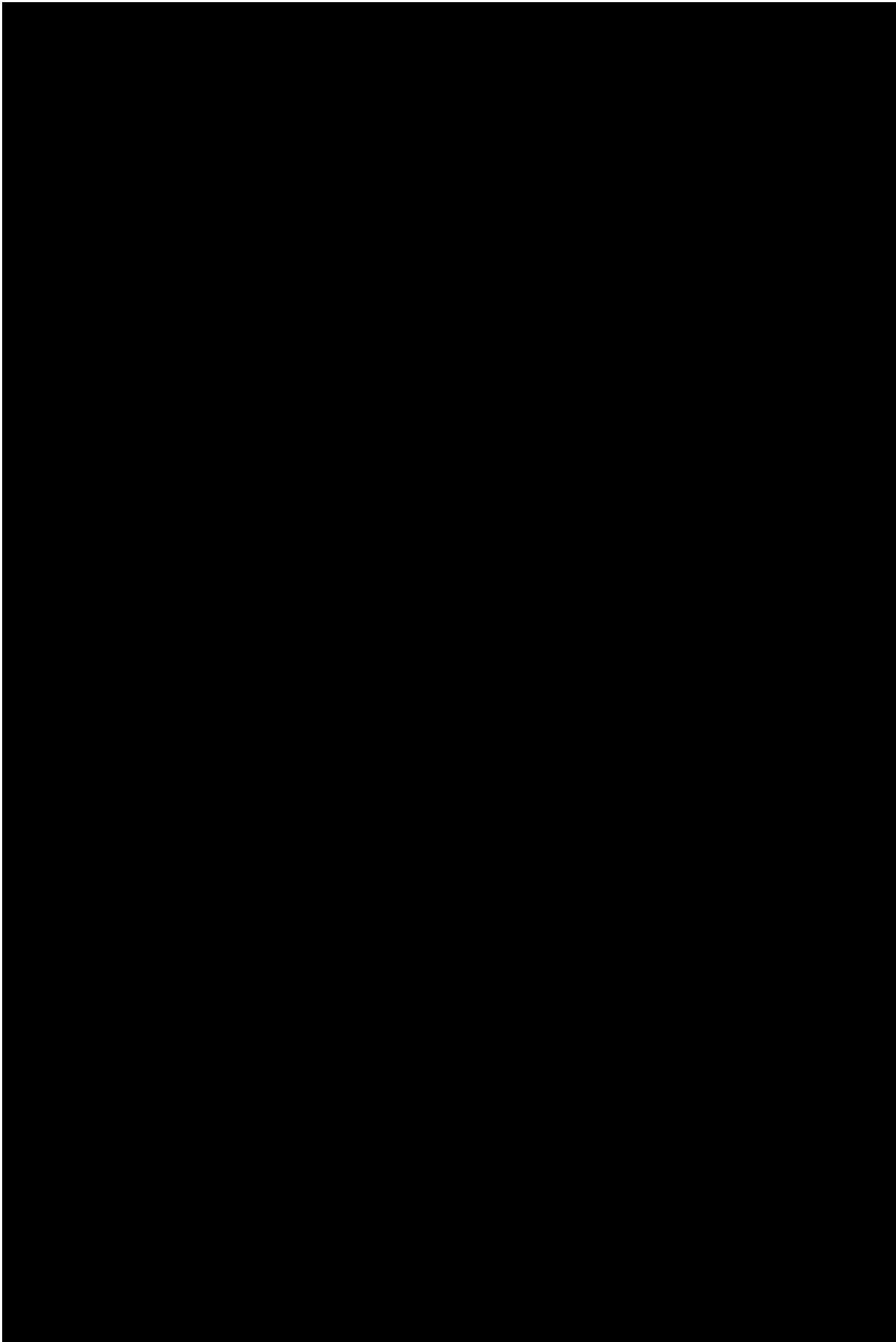
(i) endorsed to indemnify each of the Principal and Contractor as insured to the extent that such parties are vicariously liable for the activities of the Independent Certifier under this deed;

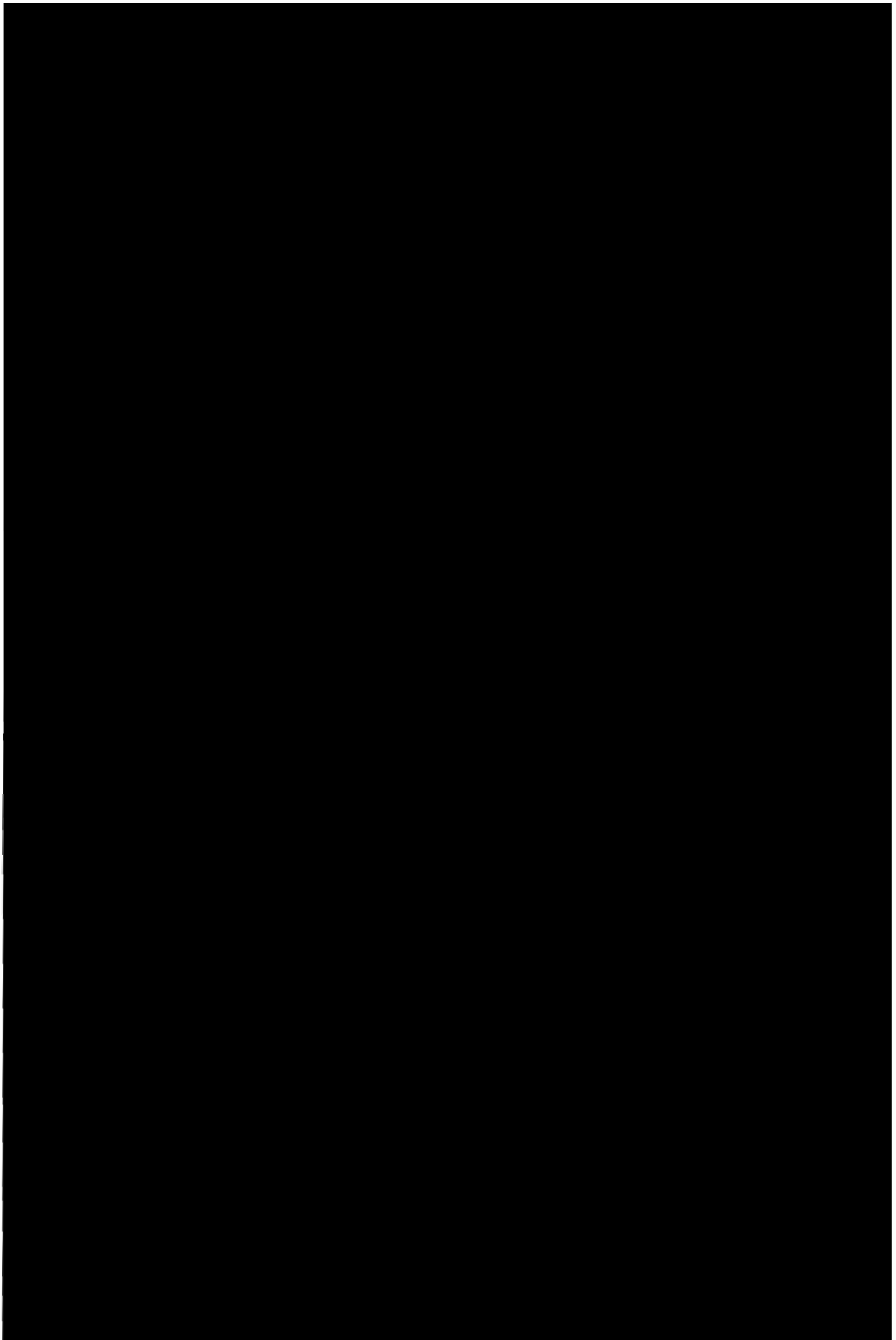
(ii) [REDACTED]

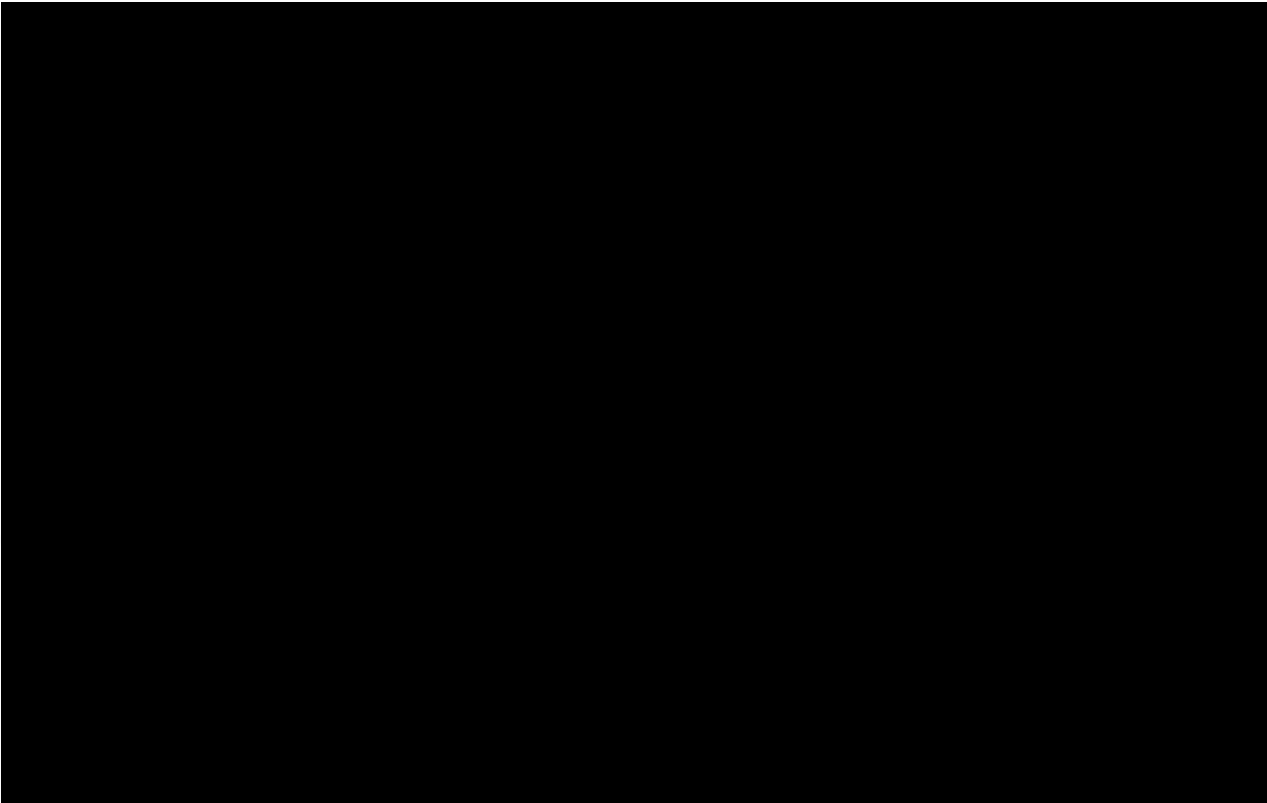
(iii) with a limit of indemnity of not less than [REDACTED] for any one claim in respect of legal liability for third party property damage, personal injury or death arising from the performance of the Services under this deed; and

(iv) with a deductible of not more than [REDACTED]

[REDACTED]







8.5 Notice of matter affecting insurance

- (a) The Independent Certifier must notify the Principal and the Contractor 30 days in advance of any event which could affect its insurance cover or if any policy is cancelled, avoided or allowed to lapse.
- (b) The Independent Certifier must not, without the prior written consent of the Principal and the Contractor, either materially alter the terms of, risks covered by or sum insured under the [REDACTED] professional indemnity insurance policy or public liability insurance policy.

8.6 Provision of information

The Independent Certifier must:

- (a) provide physical access to the Principal's and the Contractor's insurance advisors to the [REDACTED] professional indemnity insurance policy procured in accordance with this deed; and
- (b) provide to the Principal and the Contractor, certificates of currency, with respect to the insurances effected and maintained by the Independent Certifier for the purposes of this clause 8,

at any time and from time to time on request by any party and prior to the renewal of each policy.

8.7 Periods for insurance

The Independent Certifier must maintain:

- (a) [REDACTED] the [REDACTED] professional indemnity insurance for a period of seven years after the Date of Completion or the date of termination of this deed, whichever is earlier;

- (b) the workers compensation insurance until it ceases to perform the Services; and
- (c) the public liability insurance until it ceases to perform the Services.

8.8 Obligations unaffected by insurance

The requirement to effect and maintain insurance in this clause 8 does not limit the liability or other obligations of the Independent Certifier under this deed.

8.9 Indemnity in relation to property/persons

- (a) The Independent Certifier is liable for and indemnifies the Principal and the Contractor against any liability, loss, claim, expense or damage which they may pay, suffer or incur to the extent caused by:
 - (i) any damage to or loss of property; or
 - (ii) death of or injury to any person,insofar as the liability, loss, claim, expense or damage arises out of the act, error or omission of the Independent Certifier, its employees, agents or consultants.
- (b) The Independent Certifier's obligation to indemnify the Principal and the Contractor under this clause 8.9 and clause 8.10 shall be reduced proportionately to the extent that the Principal or the Contractor (as applicable) has failed to mitigate its loss.

8.10 Indemnity in relation to breach

The Independent Certifier is liable for and indemnifies the Principal and the Contractor against any liability, loss, claim, expense or damage which they may pay, suffer or incur to the extent caused by any breach of this deed by the Independent Certifier (including any claim or loss which the Principal or the Contractor may have to another party arising from such breach).

8.11 Approved Insurer

All insurance policies effected by the Independent Certifier under this deed must be taken out with Approved Insurers.

9. DISPUTE RESOLUTION

9.1 Procedure for resolving disputes

- (a) The parties agree that they will attempt to resolve all disputes in accordance with the procedures set out in this clause 9.
- (b) It is a condition precedent to the referral of a dispute to litigation that a party first exhausts the procedures referred to in clauses 9.2, 9.3 and 9.4.

9.2 Negotiation

- (a) If a dispute arises, then a party to the dispute may give notice to the other parties to the dispute, requesting that the dispute be referred for resolution to the respective senior officer with the authority to resolve the dispute of those parties to the dispute.
- (b) A notice under clause 9.2(a) must:
 - (i) be in writing;

- (ii) state that it is a notice under this clause 9.2; and
 - (iii) include, or be accompanied by, reasonable particulars of the matters in dispute.
- (c) If a dispute is referred to the persons referred to in clause 9.2(a) (**Dispute Representatives**), then the Dispute Representatives (or the persons for the time being acting in those positions) must meet and use reasonable endeavours acting in good faith to resolve the dispute (in whole or in part) within 10 Business Days of the date on which the notice under clause 9.2(a) is received.
 - (d) The joint decisions (if any) of the Dispute Representatives must be reduced to writing within the 10 Business Days referred to in clause 9.2(c) and will be contractually binding on the parties to the dispute.
 - (e) The 10 Business Days referred to in clause 9.2(c) may be extended by agreement of the parties to the dispute in writing.
 - (f) If the Dispute is not fully resolved by the Dispute Representatives within 10 Business Days (or such longer period as the parties agree) after the date the notice under clause 9.2(a) is received:
 - (i) a party to the dispute may by giving notice in writing to the other parties, refer the dispute to expert determination in accordance with clause 9.3; or
 - (ii) the parties may agree to have the dispute determined by litigation.

9.3 Expert Determination

- (a) Any dispute which is referred to expert determination under clause 9.2(f)(i) will be conducted in accordance with the Resolution Institute's Expert Determination Rules (2016 Edition), as modified by Schedule 7.
- (b) The parties must promptly make available to the Expert all such additional information, access to the Construction Site, any Extra Land and all areas where the Works are being performed (including any relevant Local Areas) and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the dispute.
- (c) The parties agree that, to the extent permitted by Law:
 - (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to expert determination.
- (d) Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by the parties to the dispute, the Expert must give its determination in writing to both parties, which must be reasoned and must state that it is given under this clause 9.3
- (e) Without limiting clause 9.1(b), the determination of the Expert will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed by written agreement between the parties or a court judgment made in court proceedings.

9.4 Notice of dissatisfaction

- (a) If:
 - (i) a party is dissatisfied with a determination made by an Expert under clause 9.3, then that party may, within 10 Business Days after receiving the determination, give notice to the other parties of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by the parties to the dispute), then any party to the dispute may, within 10 Business Days after the relevant period has expired, give a notice to the other parties of its dissatisfaction,

(each a **Notice of Dissatisfaction**).
- (b) A Notice of Dissatisfaction issued under clause 9.4(a) must:
 - (i) state that it is given under this clause 9.4; and
 - (ii) set out the matter in dispute and the reason(s) for dissatisfaction.
- (c) No party will be entitled to commence court proceedings in respect of any dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 9.4.

9.5 Final and binding decision

- (a) If:
 - (i) an Expert has made a determination as to a dispute; and
 - (ii) no Notice of Dissatisfaction has been given by any party under clause 9.4 within 10 Business Days after it received the Expert's determination,then the determination will become final and binding upon all parties, who must give effect to it.
- (b) Once a determination of an Expert has become final and binding under clause 9.5(a), no party will be entitled to challenge the determination on any basis.

9.6 Continue to perform

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

9.7 Urgent relief

Nothing in this clause 9 will prevent:

- (a) a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, or an equivalent provision under any Law.

9.8 Survive termination

This clause 9 will survive the termination of this deed.

10. TERMINATION OF APPOINTMENT

10.1 Notice of termination

Following consultation with the Contractor, the Principal may terminate the appointment of the Independent Certifier under this deed by notice in writing served on the Independent Certifier (copied to the Contractor) if:

- (a) the Independent Certifier is in breach of this deed and the breach is not remediable in the reasonable opinion of the Principal;
- (b) the Independent Certifier is in breach of this deed and the breach, being remediable in the reasonable opinion of the Principal, has not been remedied within seven days of the service by the Principal of a notice specifying the breach and requiring the breach to be remedied;
- (c) an Insolvency Event occurs in relation to the Independent Certifier;
- (d) a Change in Control of any entity that comprises the Independent Certifier occurs without the prior written consent of the Principal (other than a Change in Control permitted under 14.13(a)(iii)); or
- (e) the Principal in its absolute discretion for any reason whatsoever serves on the Independent Certifier a notice of termination of the appointment of the Independent Certifier in respect of the Services, on a date specified in the notice, being not less than 30 Business Days after the date of issue of the notice.

10.2 Termination of P2 Contract

If the P2 Contract is terminated for any reason, each of the Principal and the Contractor must give the Independent Certifier written notice and this deed will terminate on receipt of such notice from either Party.

10.3 Termination

Without limiting clause 10.2, where a notice is served on the Independent Certifier under clause 10.1, the appointment of the Independent Certifier will terminate upon the earlier of:

- (a) the date specified in the notice issued under clause 10.1; or
- (b) the appointment of a replacement for the Independent Certifier.

10.4 Delivery of documents

Upon the earlier of the date of termination of the appointment of the Independent Certifier and the date of completion of the Services, the Independent Certifier:

- (a) must deliver up to the Principal or to such other person as the Principal may direct, all books, records, drawings, specifications and other documents in the possession, custody or control of the Independent Certifier relating to the Services (whether complete or not and including all books, records, drawings, specifications and other documents stored electronically); and
- (b) acknowledges that the Principal and the Contractor have the right to use all such documents for any purposes in connection with the Project, the Works, the Principal's activities, the Contractor's Activities or any Project Document.

10.5 Reasonable assistance

Where the Principal gives a notice under clause 10.1 terminating the appointment of the Independent Certifier, the Independent Certifier must provide full assistance to the Principal and the Contractor and any appointed replacement for the Independent Certifier in order to enable such replacement to be in a position to perform the Services with effect from the appointment of such replacement.

10.6 Payment until date of termination

Where the appointment of the Independent Certifier is terminated under clause 10.1(e) or 10.2, the Independent Certifier is only entitled to be paid by the Principal the portion of the Fee for Services performed up to the date of the termination.

10.7 Termination without payment

Termination of the appointment of the Independent Certifier will be without prejudice to any claim which any of the Principal or the Contractor may have in respect of any breach of the terms of this deed which occurred prior to the date of termination.

10.8 Survive termination

This clause 10 will survive the termination of this deed under clause 10.1.

10.9 Rights upon termination

If the appointment of the Independent Certifier is terminated pursuant to clauses 10.1(a) to 10.1(d), the parties' remedies, rights and liabilities shall be the same as they would have been under the Law governing this deed had the Independent Certifier repudiated this deed and the Principal and the Contractor elected to treat this deed as at an end and recover damages.

10.10 Replacement deed

If this deed is terminated pursuant to clause 10.2, the Principal wishes to continue with the Project and the Principal gives the Independent Certifier a written request to do so, the Independent Certifier must promptly execute and deliver to the Principal a replacement deed on the terms of this deed incorporating such changes as are reasonably required by the Principal to either remove or replace (at the Principal's discretion) the Contractor as a party.

11. DISCLOSURE BY PRINCIPAL

- (a) Subject to clause 11(b), the Independent Certifier and the Contractor acknowledge that:
- (i) this deed will be made available to the Auditor-General in accordance with the *Public Finance and Audit Act 1983* (NSW);
 - (ii) information concerning this deed will be tabled in Parliament of the State of New South Wales by or on behalf of the Principal and will be published in accordance with applicable government policies and guidelines;
 - (iii) this deed and information concerning this deed will be published on the Principal's contracts register in accordance with the GIPA Act (subject to the prior redaction of Commercially Sensitive Information which is not required to be disclosed in the contracts register under the GIPA Act); and

- (iv) the Principal and the Principal's Representative may make this deed available to any person as required by any applicable Law.
- (b) The Independent Certifier and the Contractor acknowledge that:
 - (i) the Principal has consulted with the Contractor and the Independent Certifier in relation to the disclosure of those parts of this deed that are not Commercially Sensitive Information;
 - (ii) the Principal will notify the Contractor and the Independent Certifier of any proposed disclosure of any information that the Principal considers (acting reasonably) may be Commercially Sensitive Information by the Principal under the GIPA Act no later than 20 Business Days before the proposed date of disclosure;
 - (iii) following notification by the Principal in accordance with clause 11(b)(ii), the Principal will take reasonable steps to consult with the Contractor and the Independent Certifier before the Principal discloses the information referred to in clause 11(b)(ii), including under the GIPA Act; and
 - (iv) if, following:
 - (A) notification by the Principal in accordance with clause 11(b)(ii); or
 - (B) consultation between the parties in accordance with clause 11(b)(iii),
the Contractor or the Independent Certifier objects to the disclosure of some or all of the information referred to in clause 11(b)(ii) on the basis that it is Commercially Sensitive Information, the Contractor or the Independent Certifier (as applicable) must provide details of any such objection within 3 Business Days of the date the Contractor or the Independent Certifier (as applicable) received notification from the Principal or the date on which the consultation process concluded (as relevant).
- (c) The Principal may at its discretion take into account any objection received from the Contractor or the Independent Certifier pursuant to clause 11(b)(iv) in determining whether the information identified by the Contractor or the Independent Certifier as Commercially Sensitive Information should be disclosed.
- (d) Nothing in this clause 11 will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.

12. **GST**

- (a) Except where the context suggests otherwise, terms used in this clause 12 have the meaning given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (b) Any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 12.
- (c) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 12) is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 12.
- (d) Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be

limited to the total costs, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

- (e) If GST is payable in relation to a supply made under or in connection with this deed, then any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of that GST at the same time as any other consideration is to be first provided for that supply.
- (f) The Supplier must provide a tax invoice to the Recipient at the same time as any consideration is to be first provided for that supply.
- (g) If the GST payable in relation to a supply made under or in connection with this deed varies from the additional amount paid by the Recipient under clause 12(e), then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 12(g) is deemed to be a payment, credit or refund of the additional amount payable under clause 12(e). If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note event within seven days after the date of the adjustment event.

13. NOTICES

- (a) Wherever referred to in this clause:
 - (i) **Notice** means each notice, document, consent, approval, request and demand that is required, permitted, given or contemplated pursuant to the terms of this deed (including a notice of any Claim, notice of dispute, Notice of Completion and Notice of Dissatisfaction); and
 - (ii) **Other Communication** means all communications under or in connection with this deed other than a Notice.
- (b) When the PDCS is ready for use by the parties after the date of this deed, the Principal's Representative will notify the Contractor and the Independent Certifier that a PDCS is ready for use, which notice will set out:
 - (i) the commencement date for use of the PDCS for the giving of Notices and Other Communication under or in connection with this deed;
 - (ii) any password, login details or similar information required for the Contractor and the Independent Certifier to use the PDCS;
 - (iii) any requirements for specific notices (e.g. notices of Claims);
 - (iv) the name and contact details of any additional person which the Principal's Representative nominates for receipt of Notices under this deed; and
 - (v) any other information reasonably necessary for the use and service of Notices and Other Communication via the PDCS.
- (c) At any time and from time to time the Principal's Representative may notify the Independent Certifier and the Contractor that a different PDCS will be used for giving Notices and Other Communication 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 Independent Certifier and the Contractor 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 and Other Communication via the PDCS.
- (d) At any time and from time to time, the Principal's Representative may notify the Independent Certifier and the Contractor that a PDCS will not be used for giving certain Notices or Other Communication under or in connection with this deed and such notice will state that such Notices or Other Communication will be given in accordance with clause 13(e)(i) or clause 13(ee)(i).
- (e) Each Notice must:
- (i) before the date referred to in clause 13(b) or where clause 13(d) applies:
 - (A) be in writing;
 - (B) be addressed:
 - (aa) in the case of a Notice from the Contractor, to the Principal's Representative, the Independent Certifier's Representative and any additional person notified by the Principal in writing;
 - (bb) in the case of a Notice from the Independent Certifier, to the Principal's Representative, the Contractor's Representative and any additional person notified by the Principal in writing; or
 - (cc) in the case of a Notice from the Principal, to the Contractor's Representative and the Independent Certifier's Representative;
 - (C) comply with any requirements for specific notices (e.g. notices of Claims) specified by the Principal in writing;
 - (D) be signed by:
 - (aa) in the case of a Notice from the Contractor, the Contractor's Representative; or
 - (bb) in the case of a Notice from the Principal, the Principal's Representative; or
 - (cc) in the case of a Notice from the Independent Certifier, the Independent Certifier's Representative; or
 - (dd) the solicitor for, or any attorney, director, secretary or authorised agent of, that party (on that party's behalf); 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

Name: TfNSW, a New South Wales Government agency

Address:

Email:

For the attention of: the Principal's Representative and any additional person notified by the Principal in writing

Independent Certifier

Name: APP Corporation Pty Limited

Address:

Email:

For the attention of:

Contractor

Name: ACCIONA Construction Australia Pty Ltd

Address:

Email:

For the attention of:

- (ii) from the commencement date for use of the PDCS referred to in clause 13(b) and other than where clause 13(d) applies:
 - (A) be sent through the PDCS in accordance with the requirements set out in clause 13(g) and the processes, procedures and systems in the SWTC, including section 3.14 of the SWTC; and
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, issued in accordance with clause 13(e)(i).
- (ee) Each Other Communication must:
 - (iii) before the date referred to in clause 13(b) or where clause 13(d) applies:
 - (A) be in writing;
 - (B) comply with any requirements for specific communications specified by the Principal in writing; and
 - (C) be delivered or posted to the relevant address or sent to the email address for the party shown above (or to any new address or email address notified by the intended recipient); and

- (iv) from the commencement date for use of the PDCS referred to in clause 13(b) and other than where clause 13(d) applies:
 - (A) be sent through the PDCS in accordance with the processes, procedures and systems in the SWTC, including section 3.14 of the SWTC; or
 - (B) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 13(ee)(i).

- (f) A communication is taken to be received by the addressee:
 - (i) (in the case of a Notice and Other Communication sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice or Other Communication 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,

unless the result is that the communication would be taken to be received on a day which is not a Business Day or after 5.00 pm on a Business Day, in which case it is deemed to be received at 9.00 am on the next Business Day.

- (g) With respect to Notices sent through the PDCS:
 - (i) all Notices must be submitted by:
 - (A) in the case of a Notice from the Contractor, the Contractor's Representative; or
 - (B) in the case of a Notice from the Principal, the Principal's Representative; or
 - (C) in the case of a Notice from the Independent Certifier, the Independent Certifier's Representative; and
 - (ii) all Notices must be addressed to:
 - (A) in the case of a Notice from the Contractor, to the Principal's Representative, the Independent Certifier's Representative and any additional person notified in accordance with clause 13(b)(iv) or clause 13(c)(v);
 - (B) in the case of a Notice from the Independent Certifier, to the Principal's Representative, the Contractor's Representative and any additional person notified in accordance with clause 13(b)(iv) or clause 13(c)(v); or

- (C) in the case of a Notice from the Principal, to the Contractor and the Independent Certifier's Representative;
- (iii) all Notices from the Contractor or the Independent Certifier must comply with any requirements notified in accordance with clause 13(b)(iii) or clause 13(c)(iv);
- (iv) only the text in any Notice, or subject to 13(g)(v), any attachments to such Notice which are referred to in the Notice, will form part of the Notice and any text in the subject line will not form part of the Notice; and
- (v) 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.
- (h) Each of the Independent Certifier and the 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 or Other Communications) using the PDCS;
 - (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 13(e)(ii)(B) to the Principal's Representative through the PDCS;
 - (vii) align its document management and quality processes to complement and utilise the functions and features of the PDCS, which functions and features may be amended by the Principal from time to time; and
 - (viii) strictly adhere to the documentation numbering system, metadata structures and revision code sequences which are required by the Principal.
- (i) The Contractor and the Independent Certifier 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 the Independent Certifier's or the Contractor's access to or use of the PDCS or any failure of the PDCS.

14. GENERAL**14.1 Governing law**

This deed is governed by and must be construed according to the law applying in New South Wales.

14.2 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 14.2(a).

14.3 Cost

- (a) A party which has an obligation to do anything under this deed must perform that obligation at its cost, unless expressly provided for otherwise.
- (b) The Independent Certifier must pay all stamp duties and any related fines and penalties and any other fees payable in respect of this deed, the performance of this deed and each transaction effected by or made under this deed other than the Fee.
- (c) The Independent Certifier is authorised to apply for and retain the proceeds of any refund due in respect of stamp duty paid under this clause.

14.4 Waiver

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by Law or under this deed by a party does not 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 a 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 by a party of:
 - (i) a breach of any term of this deed; or
 - (ii) any other failure by a party to comply with a requirement of this deed,will operate as a waiver of:
 - (iii) another breach of that term or of a breach of any other term of this deed; or
 - (iv) another failure to comply with that requirement or of a failure to comply with any other requirement of this deed.

14.5 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in a form and content reasonably satisfactory to that party) required by Law or reasonably requested by the other party or parties to give effect to this deed.

14.6 Provisions limiting or excluding liability

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

14.7 Counterparts

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

14.8 Variation

No modification, variation or amendment of this deed will be of any force unless such modification, variation or amendment is in writing and executed by each party.

14.9 Severability of provisions

Any provision of this deed which is illegal, void or unenforceable will be ineffective to the extent only of such illegality, voidness or unenforceability without invalidating the remaining provisions hereof or thereof.

14.10 Joint and several liability

- (a) The obligations of a party, if more than one person, under this deed are joint and several and each person constituting that party 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 and the Contractor to this deed may proceed against any one or all of them.
- (b) The rights of a party, if more than one person, under this deed (including the right to payment) jointly benefit each person constituting that party (and not severally or jointly and severally).
- (c) Any payment by a party under this deed to any account nominated in writing by another party or, failing such nomination, to any one or more persons constituting that party, will be deemed to be payment to all persons constituting that party.
- (d) A party, if more than one person, may not exercise any right under this deed unless that right is exercised concurrently by all persons constituting that party.

14.11 Independent Certifier not to apply proportionate liability scheme

To the extent permitted by Law:

- (a) the Independent Certifier 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 and/or the Contractor against the Independent Certifier (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 and/or the Contractor against the Independent Certifier (whether in contract, tort or otherwise), the Independent Certifier will indemnify the

Principal against any Loss which the Principal is not able to recover from the Independent Certifier because of the operation of Part 4 of the *Civil Liability Act 2002* (NSW).

14.12 Assignment and novation

- (a) The Contractor and the Independent Certifier must not assign, novate or otherwise transfer any of their rights or obligations under this deed without the prior written consent of the Principal.
- (b) The Principal may, in its absolute discretion and without consent from the Contractor or the Independent Certifier, assign, novate or otherwise transfer any of its rights or obligations under this deed to any assignee, novatee or other beneficiary of the P2 Contract, where the assignment, novation or other transfer is in accordance with the terms of the P2 Contract.
- (c) The Independent Certifier and the Contractor must, if requested, execute a deed of novation in the form set out at Schedule 5.

14.13 Change in Control

- (a) The Independent Certifier acknowledges and agrees that:
 - (i) subject to the terms of this clause 14.13(a), the Independent Certifier must ensure that there is no Change in Control of any entity that comprises the Independent Certifier without the prior written consent of the Principal (which must not be unreasonably withheld);
 - (ii) the Independent Certifier must notify the Principal in writing of any Change in Control of any entity that comprises the Independent Certifier, and provide:
 - (A) full details of the Change in Control, including the acquisition of voting power, the change in equity interests or any other event which will cause or constitute the Change in Control; and
 - (B) all other information necessary for the Principal to determine whether to exercise its rights under clause 14.13(a)(iv), in relation to the Change in Control of the relevant entity that comprises the Independent Certifier;
 - (iii) the Principal's approval is not required for a Change in Control arising from:
 - (A) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (B) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Independent Certifier gives the Principal prior written notice of the transfer;
 - (iv) the Principal will be deemed to be acting reasonably if it withholds its approval to a Change in Control of an entity that comprises the Independent Certifier where the Principal is of the reasonable opinion that:
 - (A) the person or entity which will exercise Control of the Independent Certifier or the relevant entity that comprises the Independent Certifier:
 - (aa) is not solvent and reputable;

- (bb) has an interest or duty which conflicts in a material way with the interests of the Principal; or
 - (cc) is involved in a business or activity which is incompatible, or inappropriate, in relation to the WHTBL Program;
 - (B) as a result of the Change in Control, the Independent Certifier will no longer:
 - (aa) have sufficient expertise and ability; or
 - (bb) be of sufficiently high financial and commercial standing, to properly carry out the obligations of the Independent Certifier under this deed; or
 - (C) as a result of the Change in Control, the Independent Certifier will no longer comply with the requirements of clause 4.3.
- (b) The Principal's approval of a Change in Control of any entity that comprises the Independent Certifier will not relieve the Independent Certifier of any of its obligations under this deed.

14.14 Entire Agreement

To the extent permitted by Law, in relation to its subject matter, 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.

14.15 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.

14.16 No representation or reliance

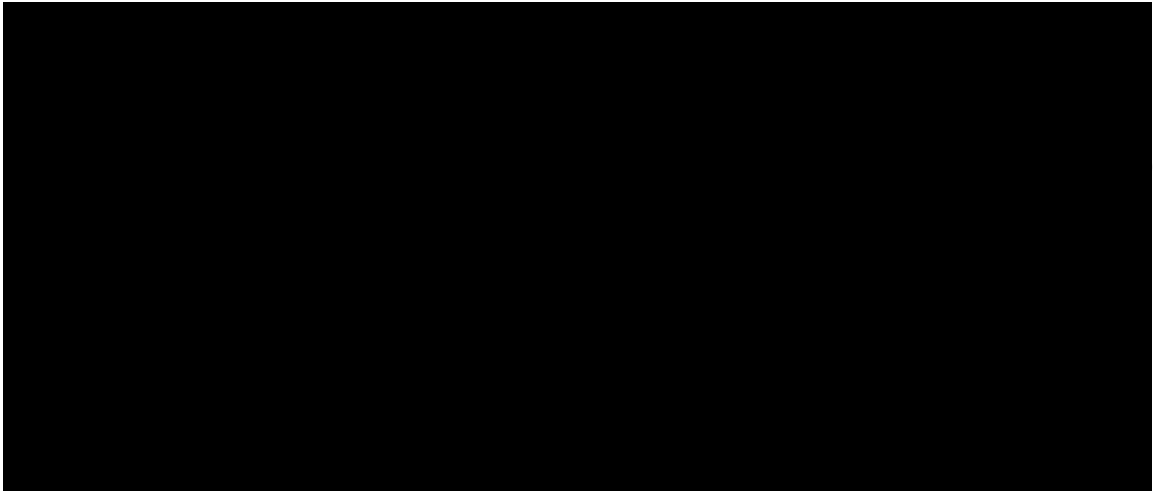
- (a) Each party acknowledges that no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.
- (b) Each party acknowledges and confirms that it does not enter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

14.17 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.

14.18 Contractor's Limitation on Liability

Despite any other provision of this deed, the Contractor's maximum aggregate liability to the counterparties to this deed and any person to whom this deed is novated or assigned in accordance with the terms of this deed, in respect of any claim or liability under, arising out of or in connection with the Works:

**15. AUSTRALIAN GOVERNMENT REQUIREMENTS**

- (a) The Independent Certifier, if it is a code covered entity within the meaning of the Building Code:
- (i) declares as at the date of this deed; and
 - (ii) must ensure during the term of this deed,
that, in relation to the Services, it, its subcontractors and consultants which could be required to comply with the Building Code:
 - (iii) complies with, and acts consistently with, the Building Code;
 - (iv) is not subject to an Exclusion Sanction; and
 - (v) to the extent required by the Building Code, only uses products that comply with the relevant Australian standards published by, or on behalf of, Standards Australia.
- (b) Without limiting clause 3.7, the Independent Certifier must only enter into a subcontract for the performance of any aspect of the Services that involves Commonwealth Funded Building Work where the subcontractor:
- (i) is not subject to an Exclusion Sanction or excluded from performing Building Work funded by a State or Territory Government, unless approval to do so is provided by the Minister responsible for administering the Building Code; and
 - (ii) has submitted any information required to be submitted by the Building Code.
- (c) The Independent Certifier must provide the Principal with confirmation of the matters the subject of clause 15(b) on request.
- (d) The Independent Certifier acknowledges and agrees that compliance with the Building Code does not relieve the Independent Certifier from any responsibility or obligation under this deed.

SCHEDULE 1**Core Services****1. GENERAL**

1.1 The Services include:

- (a) the Independent Certifier preparing a monthly progress report of a maximum of 20 A4 pages (plus attachments, if necessary) setting out:
 - (i) a description of the Services undertaken during the reporting period;
 - (ii) without limiting paragraph (i) above, a description of the Services undertaken by the Environmental Representative during the reporting period;
 - (iii) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Certifier during the reporting period, including the visits made by the Independent Certifier to the Construction Site and elsewhere in connection with the Works during the reporting period;
 - (iv) a list of the Hold Points and Witness Points attended by the Independent Certifier during the reporting period, including the outcome of the Independent Certifier's attendance and review where the Independent Certifier is the Nominated Authority for the relevant Hold Point or Witness Point (e.g. release of the Hold Point or witness the Witness Point);
 - (v) the documents reviewed by the Independent Certifier during that month and the current status of those documents;
 - (vi) the progress made by the Contractor in the development of the Design Documentation or the construction of the Works with reference to the Contractor's Program, to an extent sufficient to provide advice and to assist the Principal in the preparation of the Principal's monthly assessment of the forecast cost to complete;
 - (vii) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and each of the Principal and the Contractor (whether together or separately);
 - (viii) details of any Contractor's non-conformances raised by the Independent Certifier or the Principal and details on the verification of the rectification by the Contractor of non-conformances;
 - (ix) 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;
 - (x) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services and detailed particulars of how the Independent Certifier is addressing, or proposes to address, that act, matter or thing;
 - (xi) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period;
 - (xii) a summary of the Core Services Fee paid to date, which must include:

- (A) a breakdown of the amounts paid in connection with the Design Phase Services and Completion Phase Services; and
- (B) a breakdown of the amounts allocated to the Design Phase Services [REDACTED] Fee and to the Completion Phase Services [REDACTED] Fee (which shall exclude any amounts paid in connection with the determinations of any Defect Issue required under the RI/P2 Interface Deed);
- (xiii) a summary of the Additional Services Fee paid to date (which must include a breakdown of the amounts paid in connection with each Additional Services Order);
- (xiv) the forecast effort to complete the Design Phase Services and the Completion Phase Services (as applicable) and the estimated Core Services Fee that would be payable in respect of that effort [REDACTED];
- (xv) the forecast effort to complete the Additional Services under each Additional Services Order (as applicable) and the estimated Additional Services Fee that would be payable in respect of that effort [REDACTED];
- (xvi) a summary of any [REDACTED] paid to date; and
- (xvii) any other issues identified by the Independent Certifier relating to the Services;
- (b) all the functions, obligations, duties and services which the Project Agreements contemplate will be discharged by the Independent Certifier including providing various certificates required under the Project Agreements;
- (c) all the functions, obligations, duties and services which the Relevant Third Party Agreements contemplate will be discharged by the Independent Certifier or similarly named role including providing various certificates required under the Relevant Third Party Agreements;
- (d) without limiting paragraphs (a), (b) and (c) above, all other things and tasks not described in this deed, the Project Agreements or the Relevant Third Party Agreements, if those things and tasks should have been reasonably anticipated by an experienced and competent professional provider of the Services as being necessary for the performance of the Services or that are otherwise capable of inference from this deed, the Project Agreements or the Relevant Third Party Agreements;
- (e) the supply of all personnel, goods, and consumables and the mobilisation, demobilisation and personnel transportation to and from site required to allow the Independent Certifier to complete its obligations under this deed;
- (f) site surveillance activities and liaison with the Contractor, the Principal and all other stakeholders as required by the Independent Certifier to form its opinion regarding compliance of the Project Works with the P2 Contract, with the minimum site surveillance activities included in Schedule 3 and in the Certification and Monitoring Plan;
- (g) the Independent Certifier carrying out the Services referred to in clause 9 of the P2 Contract and the Contractor Documentation Schedule and satisfying itself that the Design Documentation satisfies the requirements of the P2 Contract and the SWTC, including by:

- (i) attending meetings of the Contractor's design team and any other meetings at which design issues are discussed;
 - (ii) meeting with the Principal and the Contractor;
 - (iii) reviewing the Design Documentation submitted by the Contractor and notifying the Principal and the Contractor of any non-compliances; and
 - (iv) conducting audits of the Contractor's compliance with its Design Management Plan;
- (h) certification of the rectification of any Defects and any non-conformance by the Contractor (including during the Defects Correction Period);
 - (i) the determination of any Defect Issue under the RI/P2 Interface Deed;
 - (j) the review of Project Plans provided by the Contractor under the P2 Contract when directed to by the Principal;
 - (k) the determinations in relation to Unknown Contamination required under the P2 Contract;
 - (l) for every Design Stage, collating and checking all notified comments on Design Documentation, providing a consolidated register to the Other Parties of:
 - (i) non-compliances with the P2 Contract with proposed actions for how and when each non-compliance will be resolved;
 - (ii) all other comments and observations with reasons why the comment is not considered to be a non-compliance with the P2 Contract; and
 - (iii) a record of the resolution of all comments provided on Design Documentation, including amended IFC Design Documentation;
 - (m) nominating Hold Points and Witness Points during the performance of the Contractor's Activities;
 - (n) attending all Hold Points and/or Witness Points (as applicable), in accordance with this deed and the P2 Contract;
 - (o) releasing Hold Points or witnessing Witness Points where the Independent Certifier is the Nominated Authority;
 - (p) attending any inspections and tests for a Witness Point or Hold Point;
 - (q) undertaking regular surveillance, process quality audits, Quality Management System audits and product quality audits of the Contractor's Activities, including the progressive review of construction work lots;
 - (r) issuing corrective action requests and non-conforming product notifications;
 - (s) advising the Contractor of apparent non-conformances with the P2 Contract, receiving reports of non-conformances from the Contractor, reviewing and providing comments on corrective action plans submitted by the Contractor and reviewing corrective actions (taking all durability objectives, safety objectives and performance requirements into account);
 - (t) if requested by the Principal, considering potential non-conformances with the P2 Contract raised by the Principal, the Principal's Representative, the Principal's

Surveillance Officers, the Acoustic Advisor or any other person who may review or approve any part of the Works or the Contractor's Activities; and

- (u) without limiting section 3.6.3(a) of the Contractor Documentation Schedule, the Independent Certifier must provide its Response (as that term is defined in the SWTC) to the Principal's Representative within 19 Business Days after the Contractor submits each Design Package (as that term is defined in the SWTC) for a Design Stage.
- 1.2 The Independent Certifier must ensure that the Environmental Representative:
- (a) fulfils the requirements of the Environmental Representative under the Project Planning Approval and the P2 Contract to the extent relevant to the Contractor's Activities; and
 - (b) in accordance with the Project Planning Approval and where requested to do so by the Principal, reviews and provides comments or its endorsement (as applicable) within the following review periods (or such longer period agreed by the Principal):
 - (i) in the case of any document other than the 'Out-of-Hours Work Protocol':
 - (A) within 5 Business Days of the Principal's request; or
 - (B) to the extent any document has already been reviewed by the Environmental Representative under paragraph (A) above, the re-review period will be 3 Business Days; or
 - (ii) in the case of the 'Out-of-Hours Works Protocol':
 - (A) within 3 Business Days of the Principal's request; or
 - (B) to the extent any 'Out-of-Hours Works Protocol' has already been reviewed by the Environmental Representative under paragraph (A) above, the re-review period will be 1 Business Day.

1.3 In performing the Design Phase Services, the Independent Certifier is not required to carry out "first principles" calculations or "proof engineering" in connection with the Design Documentation.

2. CORE SERVICES UNDER THE P2 CONTRACT

2.1 Defined terms

In this paragraph 2 of Schedule 1, the following terms have the meaning given to them in the SWTC: "Category 1 Temporary Works", "Category 2 Temporary Works", "Category 3 Temporary Works", "Comments", "Contractor Specifications", "Design Packages", "Final Design Documentation Stage", "Project Wide Reports", "Response" and "Reviewer".

2.2 Design Phase Services

- (a) **Clause 13.29 of the P2 Contract:** The Independent Certifier must meet with the other members of the Project Design Group at least weekly, or at such other times as the parties may agree, until the Date of Completion to carry out the role set out in clause 13.29(c) of the P2 Contract.
- (b) **Section 3.3 u) of the Contractor Documentation Schedule:** Other than in respect of Category 2 Temporary Works and Category 3 Temporary Works, the Independent Certifier must certify in the form set out in Part K of Schedule B7 (*Form of Certificates*) of the P2 Contract the Design Documentation with respect to the Final

- Design Documentation Stage, for each discrete design element of the Project Works, Temporary Works, Project Wide Reports and Contractor Specifications as complying with the P2 Contract including the SWTC and, in particular, the durability requirements in section 5.9 of the SWTC and the Design Life requirements in section 5.8 of the SWTC.
- (c) **Section 3.3 v) of the Contractor Documentation Schedule:** Where an observational approach has been used in accordance with section 7 of Appendix B.3, the Independent Certifier must within seven Business Days certify, in accordance with the requirements of section 3.3 u), the decision or solution to be implemented, including any remedial measures.
 - (d) **Section 3.6.1 a) of the Contractor Documentation Schedule:** Within 5 Business Days after the Contractor submits a Design Package for a Design Stage (or such longer period as the Contractor, the Principal's Representative and Independent Certifier agree), the Independent Certifier must review the Design Package to determine whether any Design Documentation is incomplete or missing with respect to the requirements of the SWTC, and in particular the requirements of section 3.5 b) and section 3.5 c) of the Contractor Documentation Schedule, and give the Contractor and Principal's Representative written details of any incomplete or missing Design Documentation.
 - (e) **Section 3.6.1 b) of the Contractor Documentation Schedule:** Where the Independent Certifier determines, at its absolute discretion, that incomplete or missing Design Documentation will have a material impact on the Reviewer's ability to commence their review of the Design Package, the Independent Certifier will reject the Design Package in its notice under section 3.6.3 b) of the Contractor Documentation Schedule.
 - (f) **Section 3.6.1 c) of the Contractor Documentation Schedule:** Where the Independent Certifier determines, at its absolute discretion, that incomplete or missing Design Documentation will not have a material impact on the Reviewer's ability to commence their review of the Design Package, the Independent Certifier must require the Contractor to submit the incomplete or missing Design Documentation in its notice under section 3.6.3 b) of the Contractor Documentation Schedule.
 - (g) **Section 3.6.1(f) of the Contractor Documentation Schedule:** The Independent Certifier must attend any meeting requested by the Principal's Representative or the Independent Certifier under section 3.6.1 f) of the Contractor Documentation Schedule.
 - (h) **Section 3.6.3 a) of the Contractor Documentation Schedule:** The Independent Certifier must provide its Response in relation to a Design Package to the Contractor and the Principal's Representative within 20 Business Days after the Contractor submits a Design Package for a Design Stage.
 - (i) **Section 3.6.3 b) of the Contractor Documentation Schedule:** The Independent Certifier's Response in relation to a Design Package must include a consolidated register with the details required under section 3.6.3 b) of the Contractor Documentation Schedule.
 - (j) **Section 3.6.4 a) of the Contractor Documentation Schedule:** If the Independent Certifier provides "no comments" in its Response in relation to a Final Design Documentation Design Package, the Independent Certifier must:

- (i) certify the Design Documentation (or relevant part of it) as required by the Contractor Documentation Schedule (including sections 3.3 and 3.5 of the Contractor Documentation Schedule); and
 - (ii) address any Comments of a Reviewer in its certificate.
- (k) **Section 3.6.4 c) and d) of the Contractor Documentation Schedule:** If the Contractor must re-verify its Design Documentation pursuant to section 3.6.4 c) of the Contractor Documentation Schedule, the Independent Certifier must comply with any further Design Review required in accordance with section 3.6.4 d) of the Contractor Documentation Schedule.
- (l) **Section 3.6.4 f) and g) of the Contractor Documentation Schedule:** If the Contractor must re-verify its Design Package or a part of it pursuant to section 3.6.4 f) of the Contractor Documentation Schedule, the Independent Certifier must comply with any further Design Review required in accordance with section 3.6.4 g) of the Contractor Documentation Schedule.
- (m) **Section 3.6.5 a) of the Contractor Documentation Schedule:** The Independent Certifier must, if the Principal or the Contractor gives a notice under section 3.6.5 a)(i) of the Contractor Documentation Schedule, meet with the Principal's Representative and the Contractor as soon as reasonably practicable after receiving such notice and attempt to resolve the disagreement in good faith.
- (n) **Section 3.6.6 a)(v) of the Contractor Documentation Schedule:** Where required by section 3.6.6 a)(v) of the Contractor Documentation Schedule, the Independent Certifier must provide a proposed action to resolve a comment as required to facilitate efficient and transparent Design Reviews.
- (o) **Section 3.6.6(b) of the Contractor Documentation Schedule:** The Independent Certifier must classify its Comments as an 'observation', a 'non-compliance with the Deed', or 'unable to assess compliance with the Deed'. Observations must be limited as much as practicable and any comment classified as either non-compliant or unable to assess compliance must identify the section of the P2 Contract that is non-compliant or unable to assess noncompliance against.
- (p) **Section 3.6.7 of the Contractor Documentation Schedule:** The Independent Certifier must comply with the process set out in section 3.6.7 of the Contractor Documentation Schedule in respect of any amended Design Documentation contemplated under section 3.6.7 a) of the Contractor Documentation Schedule.
- (q) **Section 3.7 g) of the Contractor Documentation Schedule:** The Independent Certifier must, in accordance with section 3.7 g) of the Contractor Documentation Schedule:
- (i) categorise the Temporary Works as Category 1 Temporary Works, Category 2 Temporary Works and Category 3 Temporary Works by agreement with the Principal and the Contractor; or
 - (ii) determine the category for any Temporary Works if the Principal, the Contractor and the Independent Certifier fail to agree the category for such Temporary Works.
- (r) **Section 3.7 h)(i) of the Contractor Documentation Schedule:** The Independent Certifier must, upon receipt of the Category 1 or Category 2 Temporary Works Design Documentation, review the Design Documentation to confirm that the Temporary Works have been appropriately designed and certified as required by section 3.7 h)(i) of the Contractor Documentation Schedule.

- (s) **Section 3.7 h)(iii) of the Contractor Documentation Schedule:** The Independent Certifier must, within 20 Business Days of receipt of the Category 1 or Category 2 Temporary Works Design Documentation, advise the Contractor of its Response taking into account the Response, if any, received from the Principal's Representative.

2.3 Completion Phase Services

- (a) **Clause 3.10(a) of the P2 Contract:** The Independent Certifier must, where requested by the Principal, review the Project Plans.
- (b) **Clause 5.5(a) of the P2 Contract:** The Independent Certifier must, where requested by the Principal, reasonably determine the aggregate estimated cost to rectify the Defects contemplated in clause 5.5(a) of the P2 Contract and provide notice of its determination to the Principal and the Contractor.
- (c) **Clause 7.14(g) of the P2 Contract:** Upon receipt of a notice from the Contractor under clause 7.14(f)(i) of the P2 Contract, the Independent Certifier must determine the classification of all Contamination and Waste for the purposes of determining the relevant rates that should apply for the purposes of valuing Reimbursable Cost Element Adjustments where such Contamination is Unknown Contamination.
- (d) **Clause 8.12(e) of the P2 Contract:** The Independent Certifier must provide comments in respect of Asset Management Information where such comments are sought from it by the Principal's Representative pursuant to clause 8.12(e) of the P2 Contract.
- (e) **Clause 12.3(c) of the P2 Contract:** The Independent Certifier must, within 5 Business Days after receipt of a notice given under clause 12.3(b) of the P2 Contract, inspect the Defect with the Principal's Representative and the Contractor's Representative at a mutually convenient time.
- (f) **Clause 12.3(d) of the P2 Contract:** The Independent Certifier must within 10 Business Days after receipt of a notice under clause 12.3(b) of the P2 Contract or clause 12.3(e) of the P2 Contract either:
- (i) provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form set out in Part P of Schedule B7 (*Form of Certificates*) of the P2 Contract certifying that the Defect has been corrected; or
 - (ii) issue a notice to the Contractor and the Principal in which it states the items which remain to be completed before the Defect is corrected.
- (g) **Clause 12.7(c) of the P2 Contract:** The Independent Certifier must, after receipt of a notice from the Contractor in writing stating that it considers that a discrete part of the Local Area Works is complete under clause 12.7(c) of the P2 Contract, jointly inspect the relevant Local Area Works with the Principal's Representative, the Contractor's Representative and the representative of any relevant Authority at a mutually convenient time.
- (h) **Clause 12.7(d) of the P2 Contract:** Within 5 Business Days after the date of the inspection pursuant to clause 12.7(c) of the P2 Contract (or such longer period permitted under any relevant Third Party Agreement), the Independent Certifier must:
- (i) determine whether the discrete part of the Local Area Works inspected pursuant to clause 12.7(c) of the P2 Contract have been completed in

accordance with the P2 Contract and the requirements of any relevant Third Party Agreement (if applicable); and

- (ii) notify the Contractor and the Principal in writing:
 - (A) if the discrete part of the Local Area Works is complete, of the date on which the Contractor has completed the discrete part of the Local Area Works in accordance with the P2 Contract; or
 - (B) if the discrete part of the Local Area Works is not complete, the items which remain to be completed (after which the procedure in clause 12.7(c) and clause 12.7(d) of the P2 Contract will reapply).
- (i) **Clause 12.7(e) of the P2 Contract:** The Independent Certifier must, if it considers that the discrete part of the Local Area Works inspected pursuant to clause 12.7(c) of the P2 Contract is complete, execute and provide to the Principal's Representative a certificate in the form of Schedule B6 (*Independent Certifier's Certificate – Completion of Local Area Works*) of the P2 Contract with respect to that discrete part of the Local Area Works.
- (j) **Clause 13.10(c) of the P2 Contract:** The Independent Certifier must act independently of the Principal, the Contractor and the Subcontractors.
- (k) **Clause 13.10(d) of the P2 Contract:** The Independent Certifier must:
 - (i) attend meetings;
 - (ii) access all premises where the Contractor's Activities are being carried out including for the purposes of site surveillance;
 - (iii) insert Hold Points and Witness Points in the Project Plans; and
 - (iv) release the Hold Points or witness the Witness Points where the Independent Certifier is the Nominated Authority for the relevant Hold Point or Witness Point,

as may be necessary or reasonably required by the Independent Certifier to allow the Independent Certifier to perform its obligations under this deed.
- (l) **Clause 13.10(f) of the P2 Contract:** The Independent Certifier must consider any comments provided to it by the Principal's Representative in respect of the Contractor's Activities pursuant to clause 13.10(f) of the P2 Contract.
- (m) **Clause 13.11(d) of the P2 Contract:** The Independent Certifier must, if it is satisfied with the matters being certified, provide to the Contractor the following:
 - (i) a certificate executed by the Independent Certifier in the form of Part E of Schedule B7 (*Form of Certificates*) of the P2 Contract within 59 Business Days after the Commencement Date of the P2 Contract;
 - (ii) a certificate executed by the Independent Certifier in the form of Part F of Schedule B7 (*Form of Certificates*) of the P2 Contract, every 59 Business Days from the Commencement Date of the P2 Contract until the Date of Opening Completion; and
 - (iii) a certificate executed by the Independent Certifier in the form of Part G of Schedule B7 (*Form of Certificates*) of the P2 Contract upon the expiry of the last Defects Correction Period; and

- (iv) a certificate executed in the form of Part K of Schedule B7 (*Form of Certificates*) of the P2 Contract, in accordance with section 3.3 of the Contractor Documentation Schedule.
- (n) **Clause 13.11(e)(iii) of the P2 Contract:** The Independent Certifier must attend, witness and authorise and release (where applicable) the relevant part of the work process in respect of a Hold Point pursuant to clause 13.11(e)(iii) of the P2 Contract.
- (o) **Clause 13.11(f)(iii) of the P2 Contract:** The Independent Certifier must attend and witness the relevant part of the work process in respect of a Witness Point pursuant to clause 13.11(f)(iii) of the P2 Contract.
- (p) **Clauses 13.13(h) of the P2 Contract:** The Independent Certifier must, if directed to by the Principal's Representative, after the submission of Project Plans which satisfy the requirements of clause 13.13(f) of the P2 Contract:
 - (i) review the Project Plans, or any resubmitted Project Plans, prepared and submitted by the Contractor; and
 - (ii) provide its review comments to the Principal's Representative within 10 Business Days.
- (q) **Clause 13.26 of the P2 Contract:** The Independent Certifier must meet with the other members of the Completion Steering Committee at least monthly, or at such other times as the parties may agree, until the Date of Completion to carry out the role set out in clause 13.26(c) of the P2 Contract.
- (r) **Clause 13.30 of the P2 Contract:** The Independent Certifier must meet with the other members of the Project Leadership Group at least monthly, or at such other times as the parties may agree, until the Date of Completion to carry out the role set out in clause 13.30(c) of the P2 Contract.
- (s) **Clause 16.1(e) of the P2 Contract:** If nominated by the Principal's Representative, the Independent Certifier must conduct the tests prescribed in the P2 Contract as and when provided for in the P2 Contract.
- (t) **Clause 16.2(b) of the P2 Contract:** The Independent Certifier must, within four Business Days after receipt of each notice given under clause 16.2(a) of the P2 Contract jointly inspect the Contractor's Activities with the Principal's Representative and the Contractor's Representative at a mutually convenient time.
- (u) **Clause 16.2(c) of the P2 Contract:** The Independent Certifier must, within three Business Days after the joint inspection referred to in clause 16.2(b) of the P2 Contract, give the Principal, the Contractor and the AM Contractor a notice either:
 - (i) containing a list of items which it believes must be completed before Handover Completion, Opening Completion or Completion (as the case may be) is achieved; or
 - (ii) stating that it believes the Contractor is so far from achieving Handover Completion, Opening Completion or Completion (as the case may be) that it is not practicable to issue a list as contemplated in clause 16.2(c)(i) of the P2 Contract.
- (v) **Clause 16.2(e) of the P2 Contract:** The Independent Certifier must, after receipt of a notice from the Contractor in writing stating that it considers it has achieved Handover Completion, Opening Completion or Completion (as the case may be) pursuant to clause 16.2(e)(i) of the P2 Contract and a certificate executed by the Contractor in the form of Schedule B4 (*Contractor's Certificate*) of the P2 Contract,

jointly inspect the Contractor's Activities with the Principal's Representative and the Contractor's Representative at a mutually convenient time.

- (w) **Clause 16.2(f) of the P2 Contract:** Within five Business Days after receipt of a notice from the Contractor under clause 16.2(e)(i) of the P2 Contract, or of receipt of a notice under clause 16.2(g) of the P2 Contract, the Independent Certifier must:
- (i) if Handover Completion, Opening Completion or Completion has been achieved, provide to the Principal's Representative and the Contractor a document signed by the Independent Certifier in the form of Schedule B5 (*Notice of Completion*) of the P2 Contract; or
 - (ii) if Handover Completion, Opening Completion or Completion (as the case may be) has not been achieved, issue a notice to the Contractor and the Principal in which it states:
 - (A) the items which remain to be completed before Handover Completion, Opening Completion or Completion (as the case may be); or
 - (B) that the Contractor is so far from achieving Handover Completion, Opening Completion or Completion (as the case may be) that it is not practicable to notify the Contractor of the items which remain to be completed as contemplated by clause 16.2(f)(ii)(A) of the P2 Contract.
- The Independent Certifier must give a copy of the certificate or notice to the AM Contractor at the same time.
- (x) **Clause 16.2(h)(ii) of the P2 Contract:** In making its determination under clause 16.2(f) of the P2 Contract, the Independent Certifier must consider comments from the Principal's Representative in relation to any non-compliance of the Contractor's Activities with the P2 Contract.
- (y) **Clause 16.3 of the P2 Contract:** If directed to do so by the Principal's Representative in accordance with clause 16.3 of the P2 Contract, the Independent Certifier must:
- (i) issue a Notice of Handover Completion, Notice of Opening Completion or Notice of Completion under clause 16.2(f) of the P2 Contract; or
 - (ii) carry out an inspection as if a notice had been received pursuant to clause 16.2(e)(i) of the P2 Contract, with clauses 16.2(f) and 16.2(g) of the P2 Contract applying.
- (z) **Clause 16A.1(c) of the P2 Contract:** The Independent Certifier must, as soon as reasonably practicable after the end of the Landscaping Maintenance Period, jointly inspect the Landscaping Maintenance with the Principal, the Contractor and any other person responsible for the maintenance of the relevant Project Works at a mutually convenient time.
- (aa) **Clause 16A.1(d) of the P2 Contract:** Within five Business Days of the joint inspection referred to in clause 16A.1(c) of the P2 Contract, the Independent Certifier must give the Contractor and the Principal a certificate signed by the Independent Certifier in the form set out in Part O of Schedule B7 (*Form of Certificates*) of the P2 Contract containing a list of all Defects in the Landscaping Maintenance.
- (bb) **Schedule A12 – Part D (RI/P2 Interface Deed), clause 6.3A(e):** Within 20 Business Days of its receipt of a Defect Issue Notice (as that term is defined in the RI/P2 Interface Deed) (or such longer period as agreed between the parties), the

Independent Certifier must review the Defect Issue and must give its determination in relation to:

- (i) the existence, nature and extent of an Interface Defect (as that term is defined in the P2 Contract); and
- (ii) the existence, nature and extent of a Defect (as that term is defined in the RI/P2 Interface Deed),

in writing, including comprehensive reasons for its determination.

- (cc) **Clause 2.1 of Schedule D1:** The Independent Certifier must participate in Chain of Responsibility risk workshops conducted by the Contractor.
- (dd) **Clause 4.2(a)(ii)(B) of Schedule E2:** In respect of the Handback Areas (as that term is defined in Schedule E2 of the P2 Contract), the Independent Certifier must certify that the relevant Project Works or Temporary Works have been completed in accordance with the P2 Contract or the relevant Interface Deed (as applicable) within the time required by clause 4.2(a) of Schedule E2 of the P2 Contract.
- (ee) **Clause 5.2(f) of Schedule E2:** The Independent Certifier must verify that each Tunnel Substratum Access Request complies with the requirements in clause 5.2(f) of Schedule E2.
- (ff) **Section 3.8.2 b) of the Contractor Documentation Schedule:** The Independent Certifier must certify each Verified As-Built drawing submitted under section 3.8.2 b) of the Contractor Documentation Schedule within one month of submission.

3. CORE SERVICES UNDER THE PROJECT PLANNING APPROVAL

3.1 Defined terms

Capitalised terms in this paragraph 3 that are defined in the Project Planning Approval will have the same meaning as defined in the Project Planning Approval.

3.2 Completion Phase Services

- (a) **Project Planning Approval:** The Environmental Representative must fulfil the requirements of the Environmental Representative under the Project Planning Approval to the extent relevant to the Contractor's Activities.
- (b) **Conditions A10 to A14 of the Project Planning Approval:** The Environmental Representative must endorse the Staging Report to the extent it relates to:
 - (i) the Works or the Contractor's Activities; or
 - (ii) Stage 1D or Stage 1E set out in the Staging Report,in accordance with Condition A10 of the Project Planning Approval and endorse any changes to the Staging Report to the extent the changes relate to clause 3.2(b)(i) or 3.2(b)(ii) of this Schedule 1 in accordance with Condition A14 of the Project Planning Approval.
- (c) **Condition A19 of the Project Planning Approval:** The Environmental Representative must assess which facilities are 'minor construction ancillary facilities' in accordance with the criteria set out in Condition A19 of the Project Planning Approval.

- (d) **Condition A22 of the Project Planning Approval:** The Environmental Representative must facilitate and assist the Planning Secretary with any audit of how the Environmental Representative has exercised its functions.
- (e) **Condition A27 of the Project Planning Approval:** For the duration of the Completion Phase Services until the commencement of operation, or as agreed with the Planning Secretary, the Environmental Representative must perform the activities set out in Condition A27 of the Project Planning Approval, including in relation to any activities set out in this condition that apply to Stage 1D and Stage 1E set out in the Staging Report.
- (f) **Condition C3 of the Project Planning Approval:** The CEMP must be endorsed by the Environmental Representative in accordance with Condition C3 of the Project Planning Approval.
- (g) **Condition C18 of the Project Planning Approval:** The Construction Monitoring Programs must be endorsed by the Environmental Representative in accordance with Condition C18 of the Project Planning Approval.
- (h) **Condition E69 of the Project Planning Approval:** The Environmental Representative must consult with the Principal, the AA and the EPA for the preparation of the Out-of-Hours Work Protocol in accordance with Condition E69 of the Project Planning Approval.
- (i) **Condition E131 of the Project Planning Approval:** The Environmental Representative must endorse any extenuating circumstances in relation to vehicles access at Yurulbin Point ancillary facility (WHT4) at Birchgrove as required by the Planning Approval.

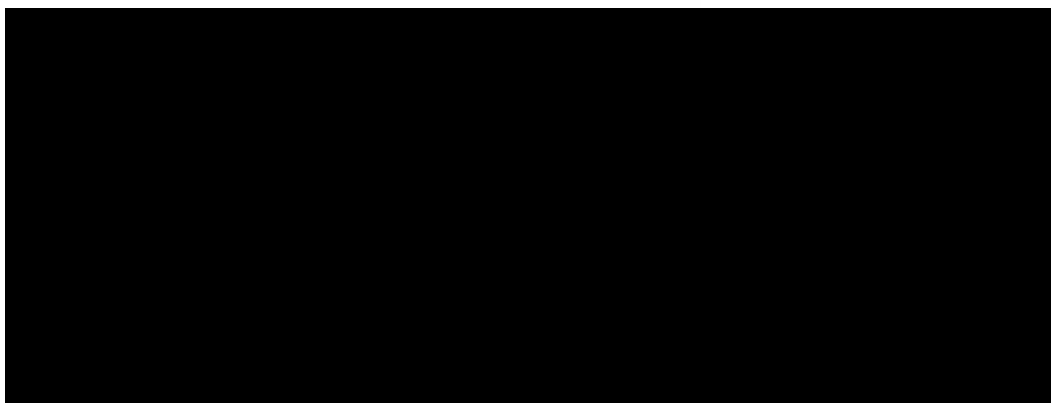
4. CORE SERVICES UNDER THE RELEVANT THIRD PARTY AGREEMENTS

4.1 Services under the SMW WHT Interface Deed

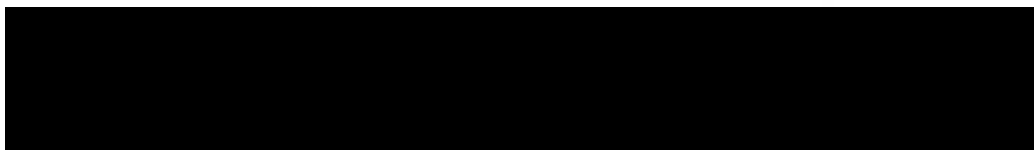
(a) **Defined terms**

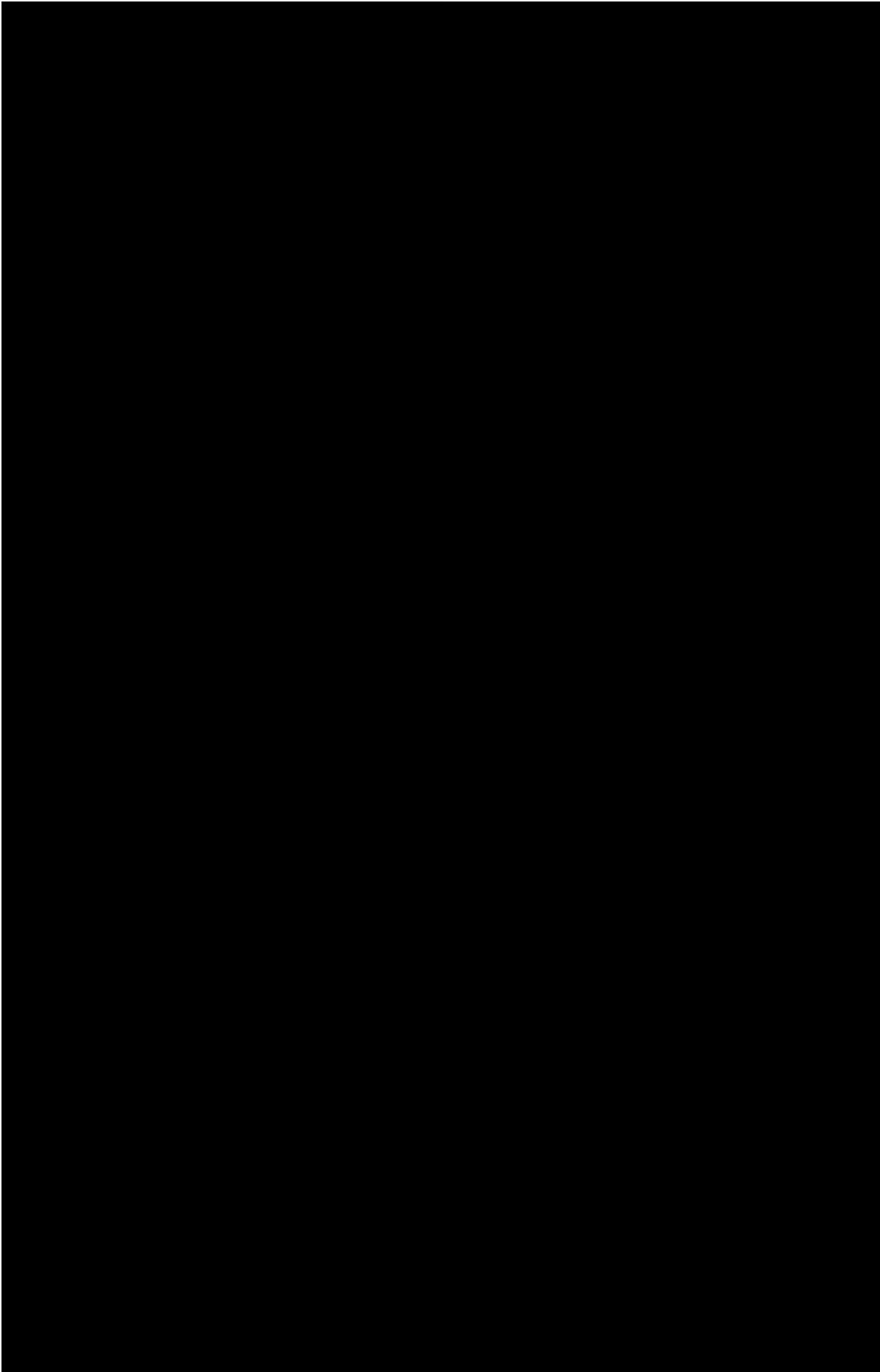
Capitalised terms in this paragraph 4.1 that are defined in the SMW WHT Interface Deed will have the same meaning as defined in the SMW WHT Interface Deed.

(b) **Design Phase Services**



(c) **Completion Phase Services**





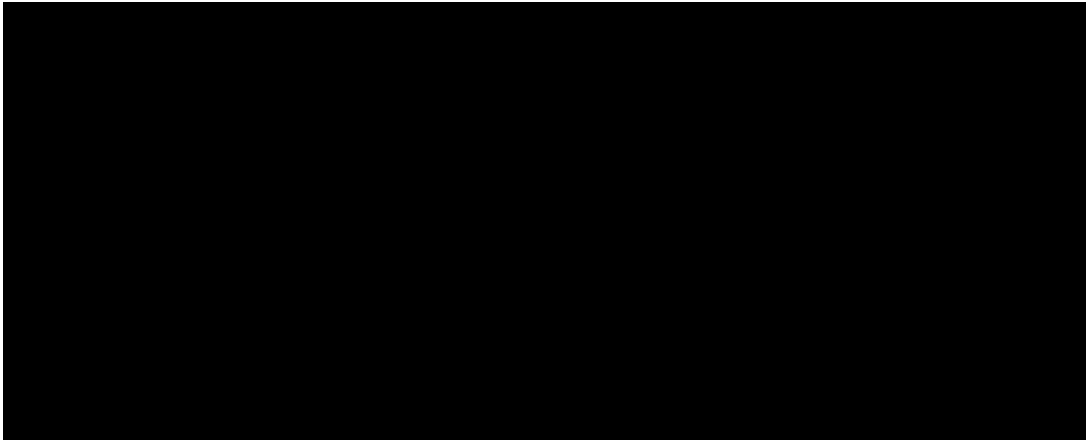


4.2 Services under the SMCSW WHT Interface Deed

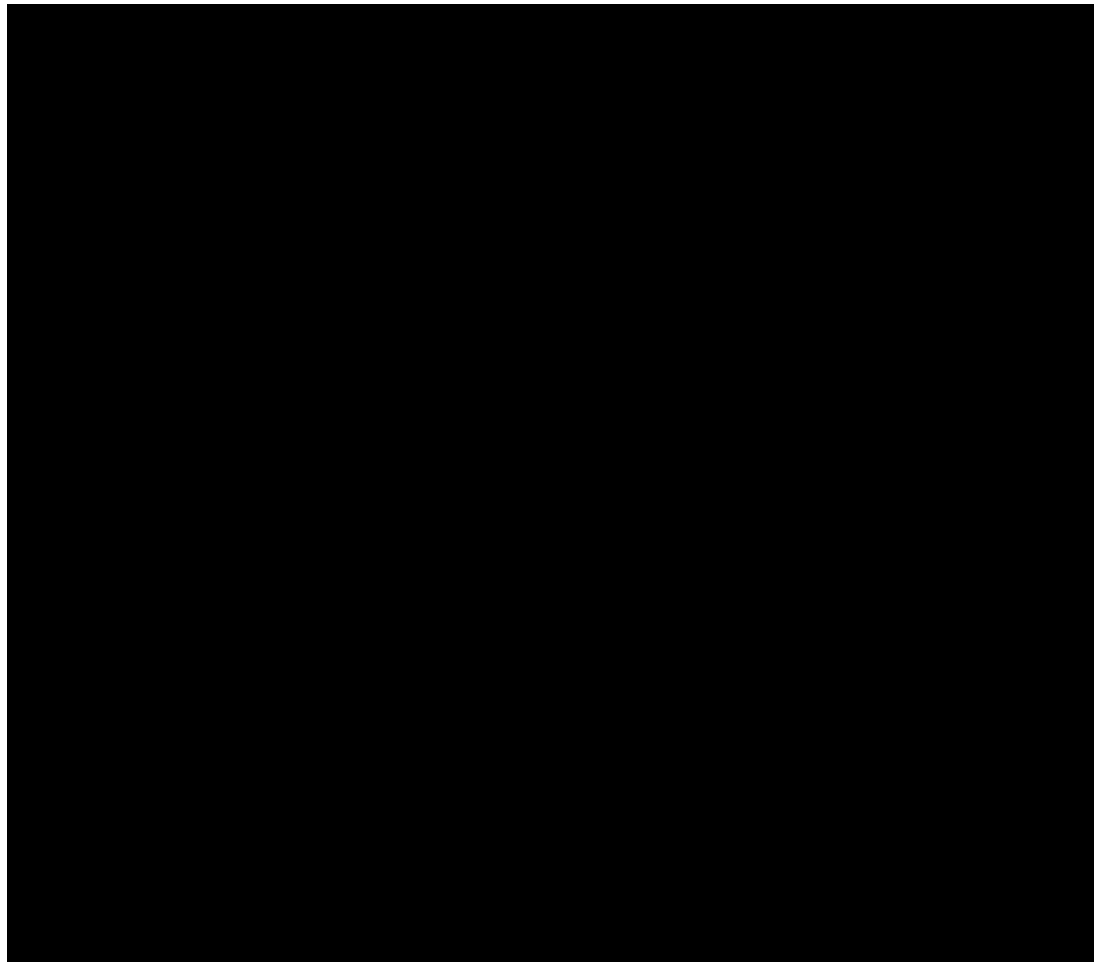
(a) **Defined terms**

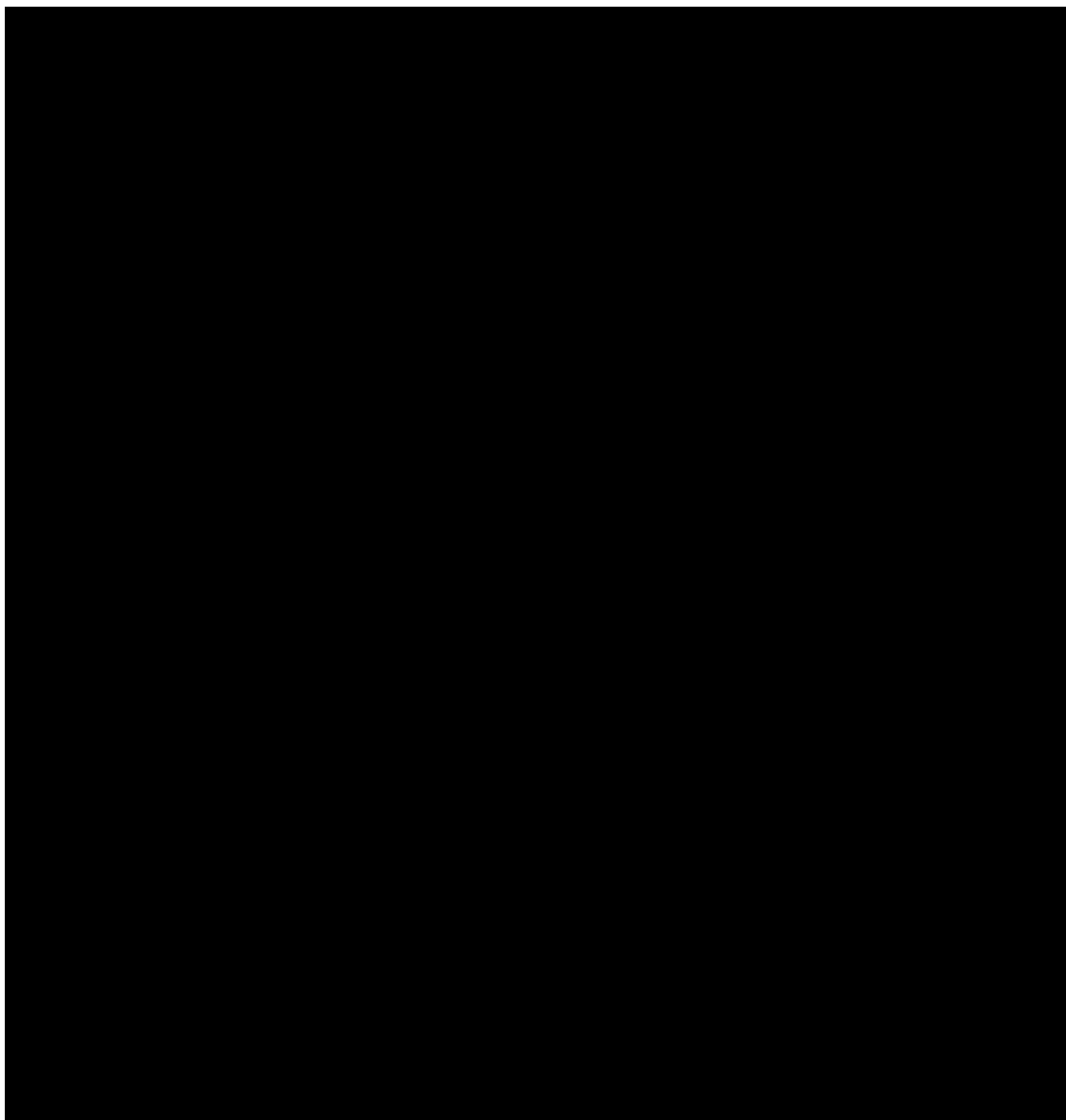
Capitalised terms in this paragraph 4.2 that are defined in the SMCSW WHT Interface Deed will have the same meaning as defined in the SMCSW WHT Interface Deed.

(b) **Design Phase Services**



(c) **Completion Phase Services**



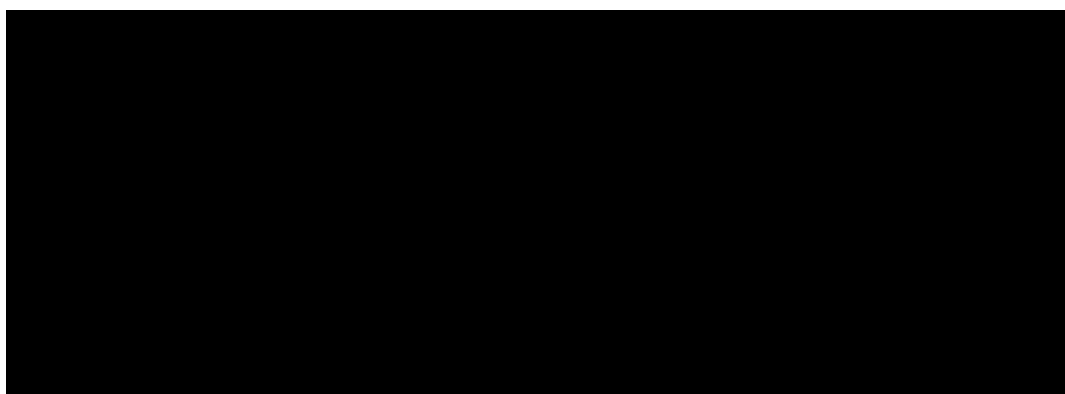


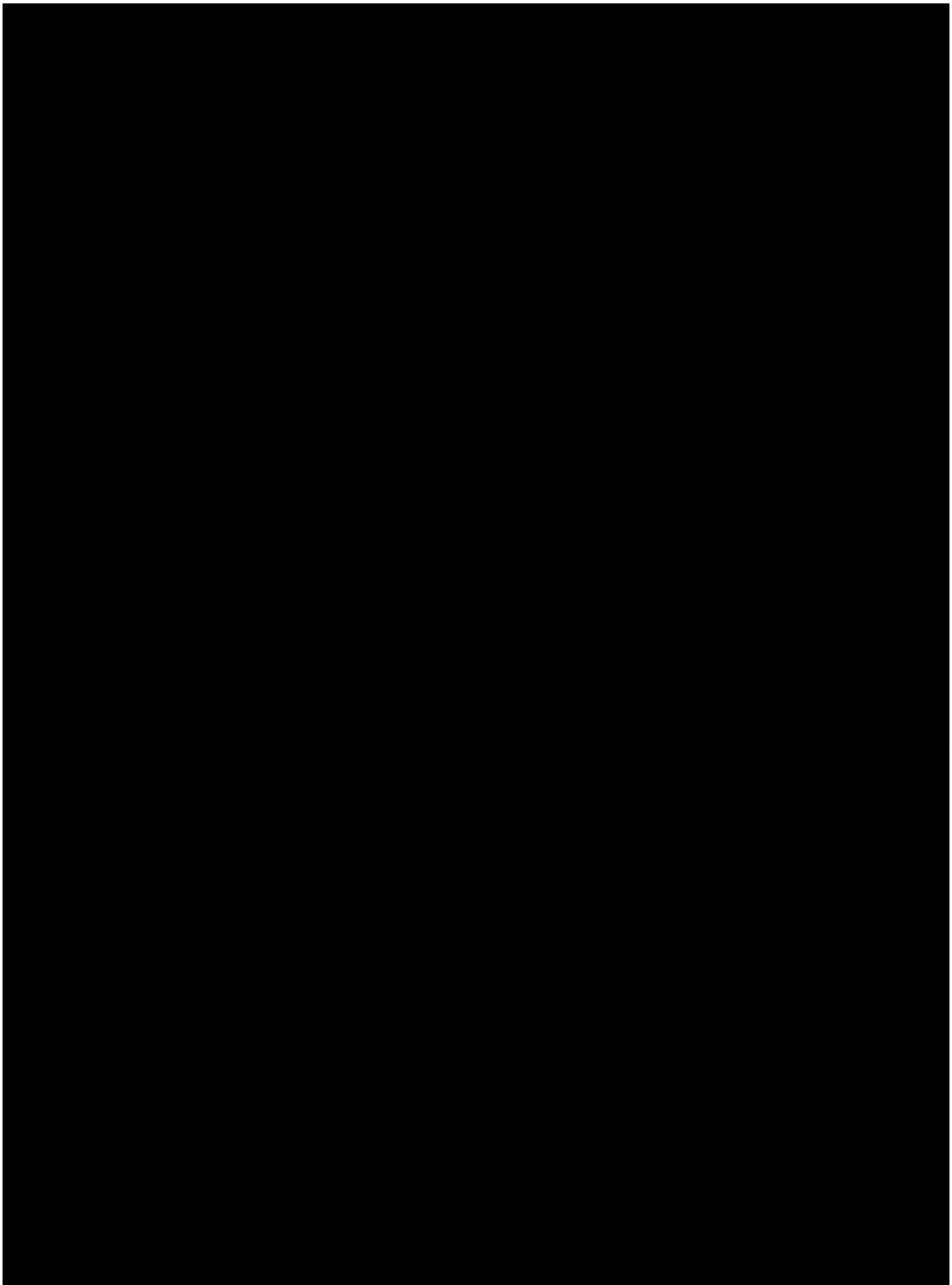
4.3 Services under the Draft North Sydney Council Interface Agreement

(a) **Defined terms**

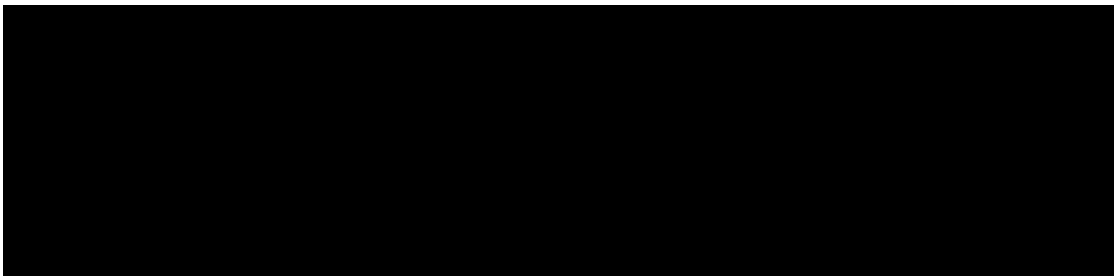
Capitalised terms in this paragraph 4.3 that are defined in the Draft North Sydney Council Interface Agreement will have the same meaning as defined in the Draft North Sydney Council Interface Agreement.

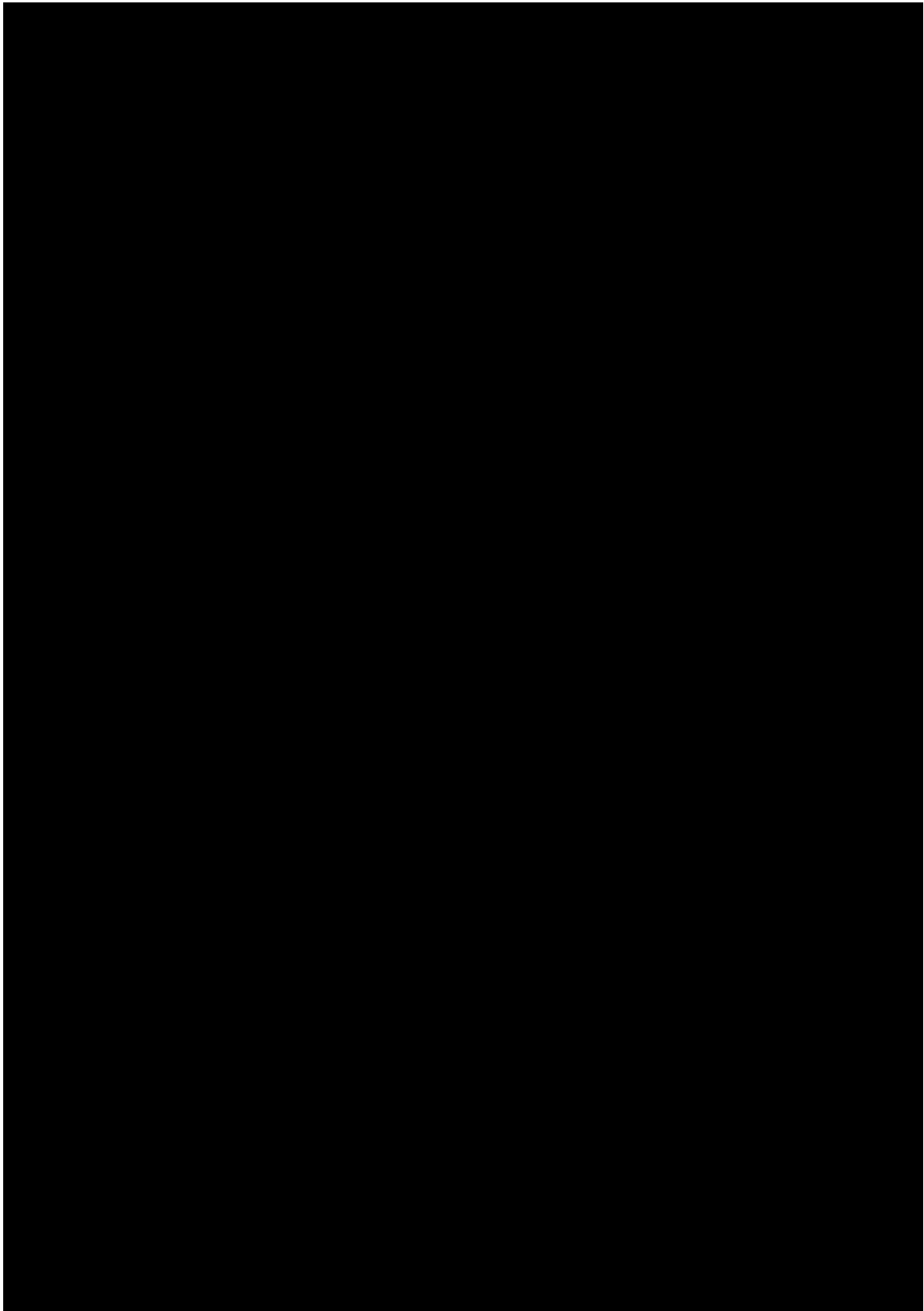
(b) **Design Phase Services**





(c) **Completion Phase Services**



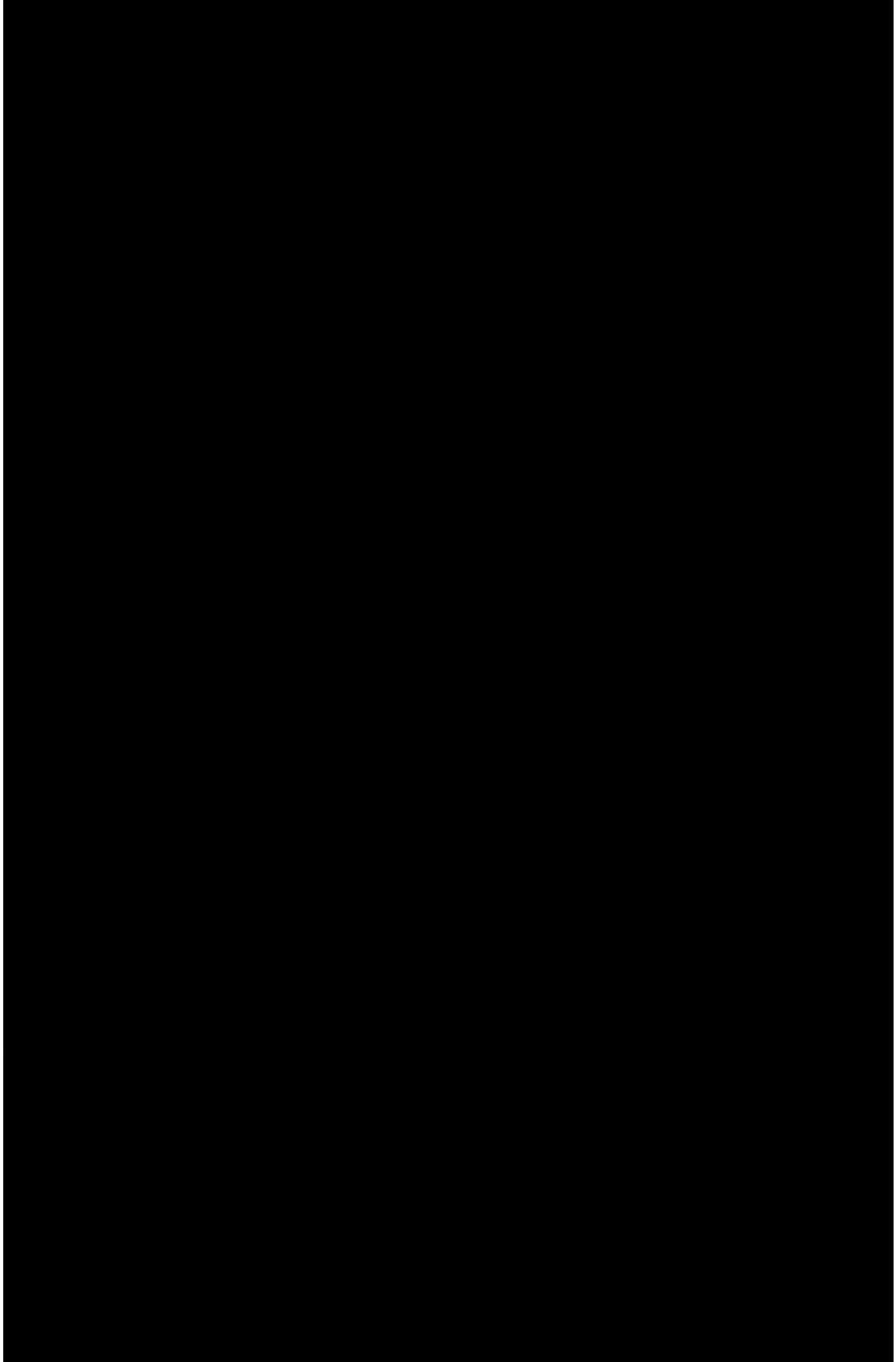


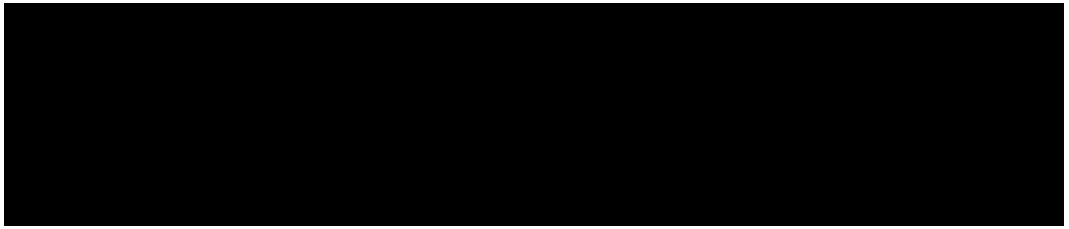
4.4 Services under the Draft Inner West Council Interface Agreement

(a) Defined terms

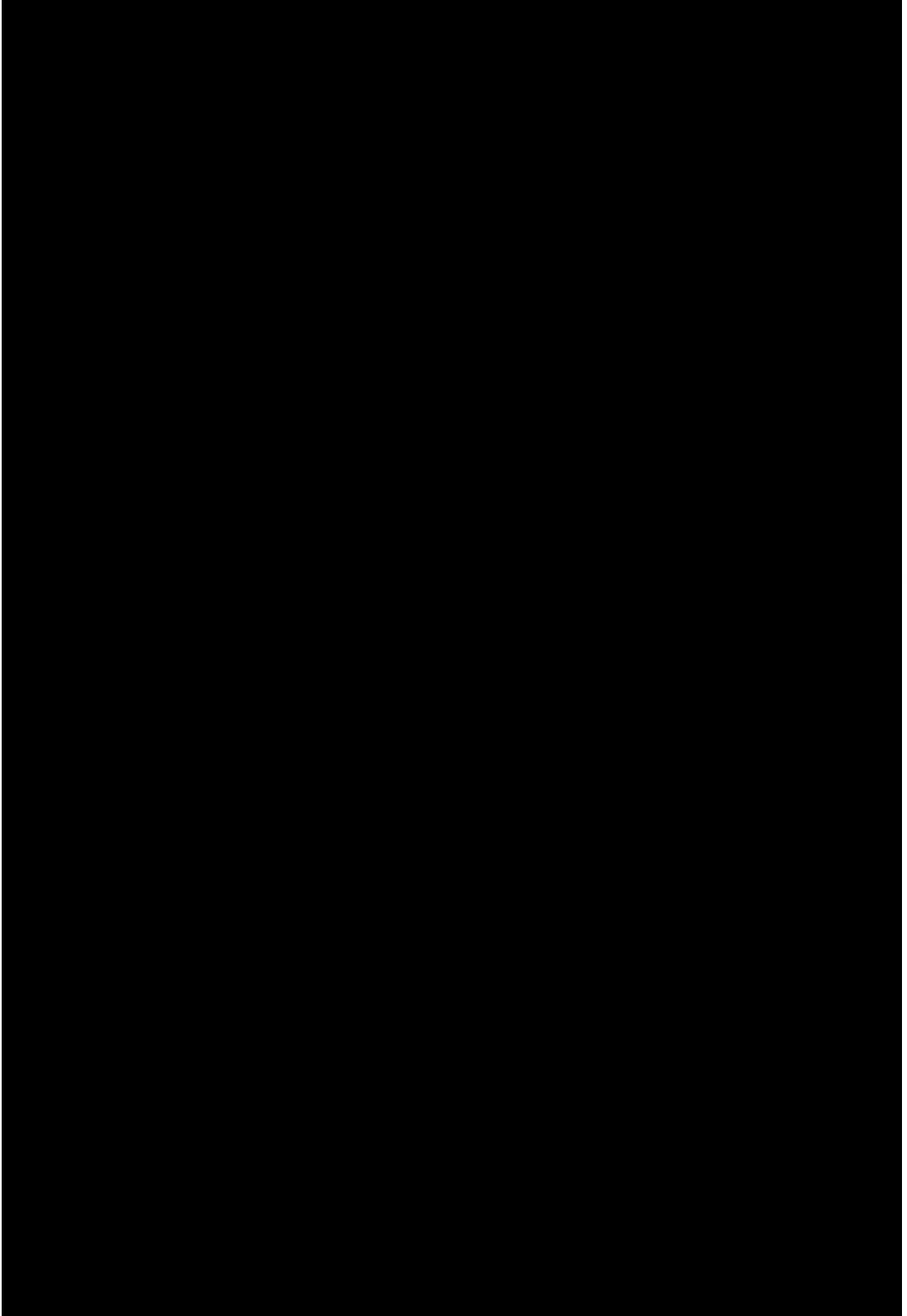
Capitalised terms in this paragraph 4.4 that are defined in the Draft Inner West Council Interface Agreement will have the same meaning as defined in the Draft Inner West Council Interface Agreement.

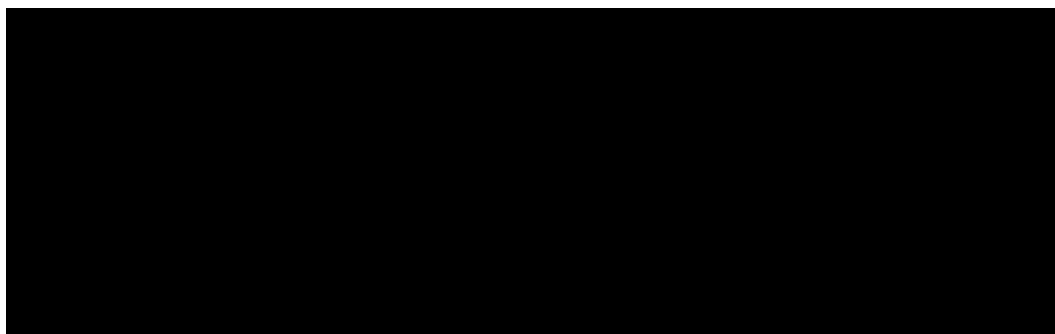
(b) **Design Phase Services**





(c) **Construction Phase Services**



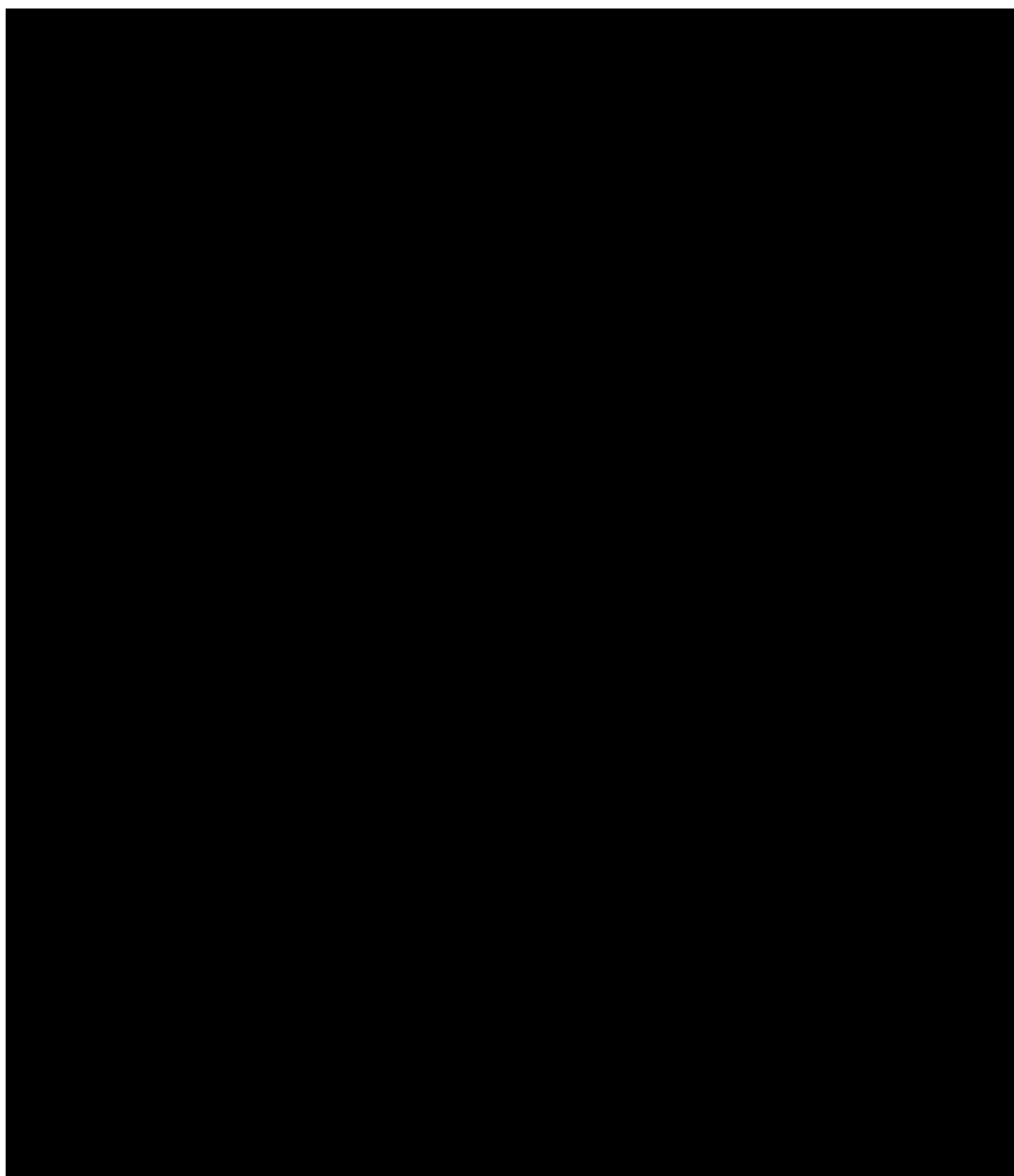


4.5 Services under the Draft WestConnex Access Deed

(a) **Defined terms**

Capitalised terms in this paragraph 4.5 that are defined in the Draft WestConnex Access Deed will have the same meaning as defined in the Draft WestConnex Access Deed.

(b) **Project Collaboration Group**



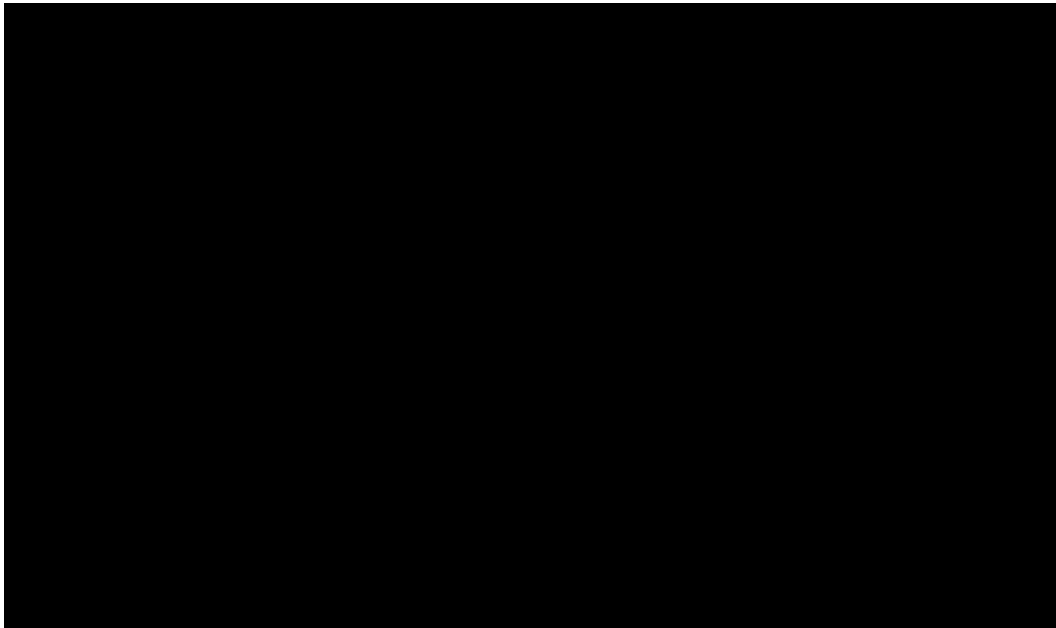


SCHEDULE 2

Payment Schedule

1. THE FEE

- (a) The Independent Certifier may claim payment for the performance of Services on a monthly basis.
- (b) The Core Services Fee will consist of:
 - (i) an amount for the performance of the Design Phase Services [REDACTED]
[REDACTED] of [REDACTED] (exclusive of GST and subject to adjustment in accordance with paragraph 4); and
 - (ii) an amount for the performance of the Completion Phase Services [REDACTED]
[REDACTED] of [REDACTED] (exclusive of GST and subject to paragraph 1(d)(ii) and adjustment in accordance with paragraph 4).
- (c) The amount of the Additional Services Fee in respect of the Additional Services being performed under an Additional Services Order:
 - (i) [REDACTED]
 - (ii) will be [REDACTED] for each Additional Services Order, being the amount specified in the relevant Additional Services Order or as otherwise agreed or determined in accordance with clause 7.1.
- (d) For the purposes of paragraph 1(b), the parties acknowledge that:
 - (i) the determination of any Defect Issue required under the RI/P2 Interface Deed by the Independent Certifier will form part of the Completion Phase Services; and
 - (ii) any amount paid to the Independent Certifier for the performance of the scope set out in paragraph (i) above will not [REDACTED]
- (e) Subject to paragraph 1(f), the Independent Certifier acknowledges that it has allowed in the schedule of rates in paragraph 5 of this Payment Schedule for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from Sydney and travelling within the Greater Sydney area (including Newcastle and Wollongong), but excluding Independent Certifier site facilities and the Project Office provided by the Contractor in accordance with this deed [REDACTED], disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the schedule of rates, whether or not expressly mentioned in this deed, the Project Agreements or a Relevant Third Party Agreement.
- (f) [REDACTED]



2. PAYMENT CLAIM

- (a) On the last Business Day of each calendar month after the later of the date of the P2 Contract and the date of this deed, the Independent Certifier must submit to the Principal and the Contractor an account for payment on account of the Fee:
 - (i) in respect of any Core Services performed during the relevant month:
 - (A) setting out:
 - (aa) the value of the Core Services performed in accordance with this deed during the relevant month calculated in accordance with paragraph 1(b) of this Payment Schedule; and
 - (bb) the aggregate of all amounts claimed for Core Services under this deed up to and including the relevant month in respect of:
 - (a) the Design Phase Services; and
 - (b) the Completion Phase Services; and
 - (B) in such form and with such details and supporting documentation as the Principal and the Contractor may reasonably require, including:
 - (aa) details of the time expended by the Independent Certifier in performing the Core Services during the relevant month (which must include a breakdown of the time expended by each personnel that carried out Services during the relevant month);
 - (bb) a list or schedule of the surveillance activities undertaken by the Independent Certifier during the reporting period, including:
 - (a) the visits made by the Independent Certifier to the Site and elsewhere in connection with the Services; and
 - (b) any attendance at tests;

- (cc) a comprehensive schedule of the status of all correspondence and documentation exchanged between the Independent Certifier and the Other Parties;
 - (dd) details of any Defects raised by the Independent Certifier; and
 - (ee) details of the current version of the Certification and Monitoring Plan and a summary of any amendments, updates and developments to the Certification and Monitoring Plan during the reporting period; and
- (ii) any Additional Services performed during the relevant month, setting out:
- (A) in respect of each Additional Service:
 - (aa) the date of the Additional Services Order to which the claimed Additional Services Fee relates;
 - (bb) a description of the Additional Services performed under that Additional Services Order to the date of the claim, including details of the time expended by the Independent Certifier in performing the Additional Services; and
 - (cc) the amount of the Additional Services Fee the Independent Certifier claims on account of that Additional Service, calculated in accordance with paragraph 1(c) of this Payment Schedule, but excluding:
 - (a) any amounts previously paid to the Independent Certifier in respect of the Additional Service; or
 - (b) any amounts in respect of Core Services included in the amount payable under paragraph 1(b) of this Payment Schedule;
 - (B) the aggregate of all amounts claimed for Additional Services for the relevant month; and
 - (C) in such form and with such details and supporting documentation and evidence as the Principal and the Contractor may reasonably require;
- (iii) [REDACTED]
- (b) The Independent Certifier is not entitled to payment or to make a claim for payment to the extent that any Services have not been carried out during the month in question.
 - (c) Each account for payment submitted by the Independent Certifier must be accompanied by an executed Subcontractor's Statement and Supporting Statement in the form set out at paragraph 7 of this Payment Schedule.

3. PAYMENT AND NOTIFICATION OF DISPUTED AMOUNTS

- (a) The parties agree that:

- (i) the Principal will pay [REDACTED] of the Fee, including any adjustments calculated in accordance with this deed, any [REDACTED] and [REDACTED]; and
- (ii) the Contractor will be liable to the Principal for any amounts payable to the Independent Certifier in respect of the matters set out in paragraph 4(a) of this Payment Schedule where the fact, matter or thing which gives rise to the liability to pay such amounts arises out of, or in connection with:

[REDACTED]

(b) [REDACTED]

- (c) If the Principal disagrees with an amount included in an account submitted by the Independent Certifier then, within 10 Business Days of receipt of the Independent Certifier's account, the Principal must notify the Independent Certifier (with a copy to the Contractor) in writing of the reasons for any amount which is disputed.
- (d) If the parties do not resolve the matter within 10 Business Days after the issue of the Principal's written notice, the Principal's Representative (acting reasonably and independently) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent court proceedings.

4. ADJUSTMENTS TO [REDACTED] FEES

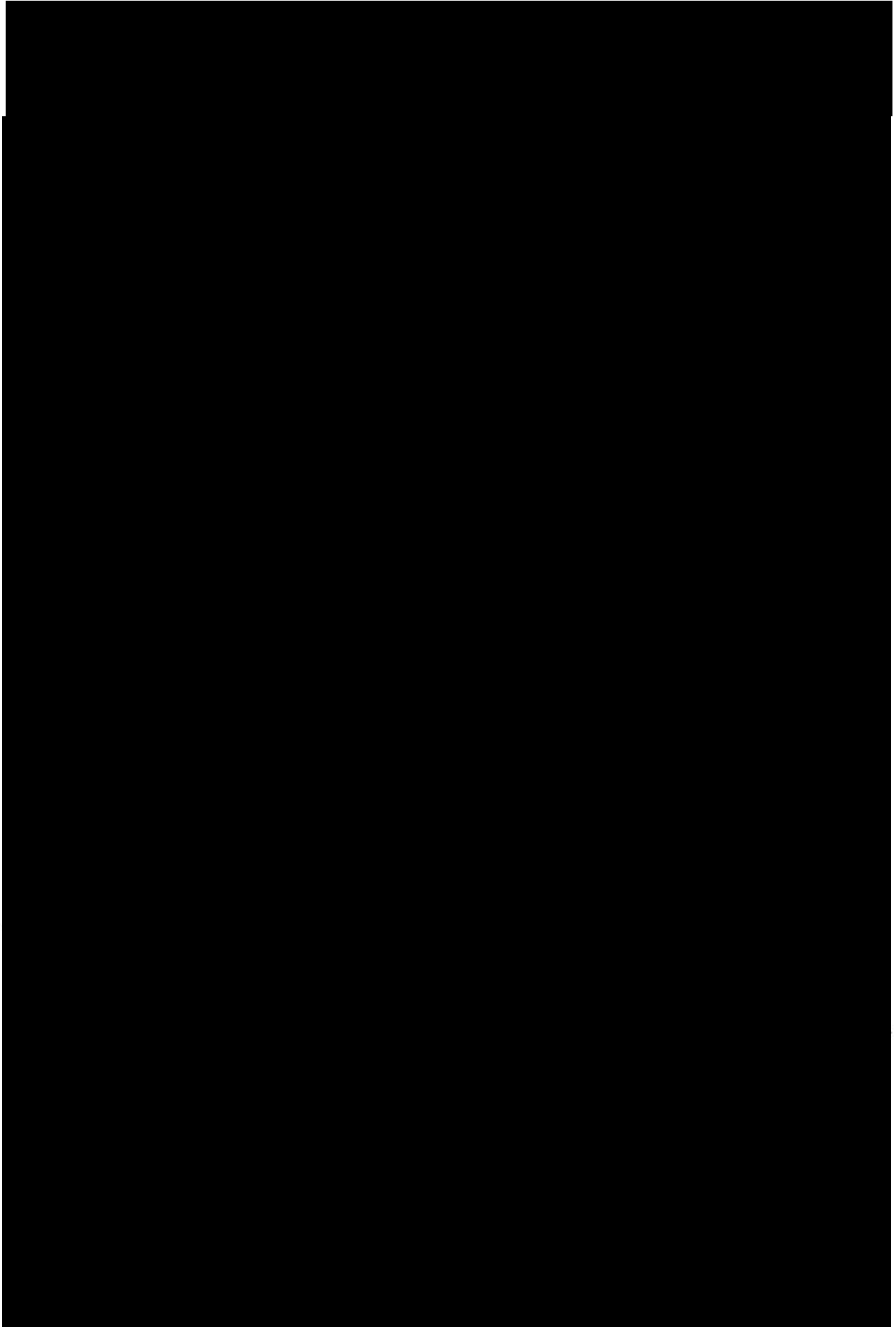
- (a) Adjustments will be made to the applicable [REDACTED] Fees referred to in paragraph 1(b) and 1(c) of this Payment Schedule by the Principal in accordance with paragraphs 4(b) and 4(c) for reasonable increases or decreases in the cost to the Independent Certifier of performing the Design Phase Services and/or Completion Phase Services and/or Additional Services as a result of:
 - (i) a change to the Services directed by the Principal in accordance with clause 7.1 or clause 7.2;
 - (ii) a Variation directed by the Principal's Representative under the P2 Contract that impacts the Services to be performed, except any Pre-Agreed Variation instructed by the Principal's Representative under clause 10.10 of the P2 Contract;
 - (iii) re-certification of Design Documentation packages due to changes in Design Documentation (including resubmission of Design Documentation under the Contractor Documentation Schedule including as required by the Principal's Representative); or

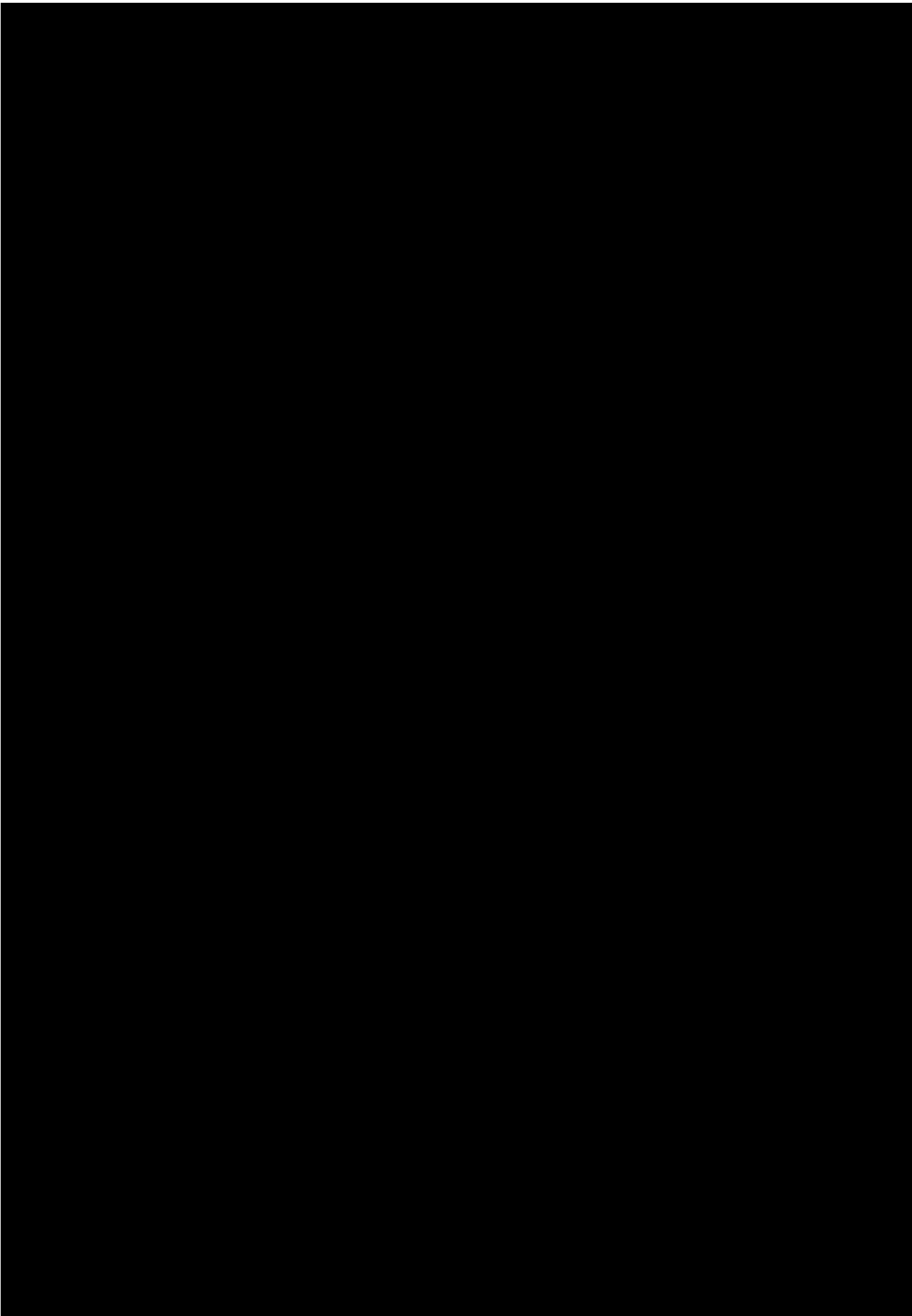
- (iv) delay to the performance of the Design Phase Services and/or Completion Phase Services having regard to the Contractor's Program, but only to the extent that:
 - (A) in the case of Design Phase Services, the Design Phase Services are required to be carried out past:
 - (aa) [REDACTED] or
 - (bb) any nominated date for completion of Design Phase Services determined by the Principal in accordance with paragraph 4(c); or
 - (B) in the case of Completion Phase Services, Completion has not occurred on or prior to:
 - (aa) [REDACTED] or
 - (bb) any nominated date for Completion determined by the Principal in accordance with paragraph 4(c); or
 - (v) compliance with the terms of the execution version of the Draft Relevant Third Party Agreements which causes the Independent Certifier to incur additional costs than it otherwise would have in complying with the terms of this deed in accordance with clause 2.6(c).
- (b) Each adjustment to the applicable [REDACTED] Fees referred to in paragraph 4(a) will be:
 - (i) determined by the Principal using the appropriate rates set out in the schedule of rates in paragraph 5 of this Payment Schedule; or
 - (ii) to the extent that any adjustment to the applicable [REDACTED] Fees cannot be determined by reference to the schedule of rates in paragraph 5 of this Payment Schedule, a reasonable amount as stated in writing by the Principal.
 - (c) Without limiting paragraph 4(b), the Principal's determination of any adjustment to the [REDACTED] Fee under paragraph 4(a)(iv) will be based on the assumption that Completion or completion of the Design Phase Services (as relevant) will occur prior to a nominated date, such nominated date to be determined by the Principal, acting reasonably.
 - (d) Notwithstanding paragraphs 4(a) to 4(c) (inclusive), the Independent Certifier acknowledges and agrees that it will not be entitled to any adjustment to increase the [REDACTED] Fee if the events referred to in clause 4(a) arise in connection with a breach by the Independent Certifier of this deed.
 - (e) The parties acknowledge and agree that the payment of [REDACTED] by the Principal [REDACTED]

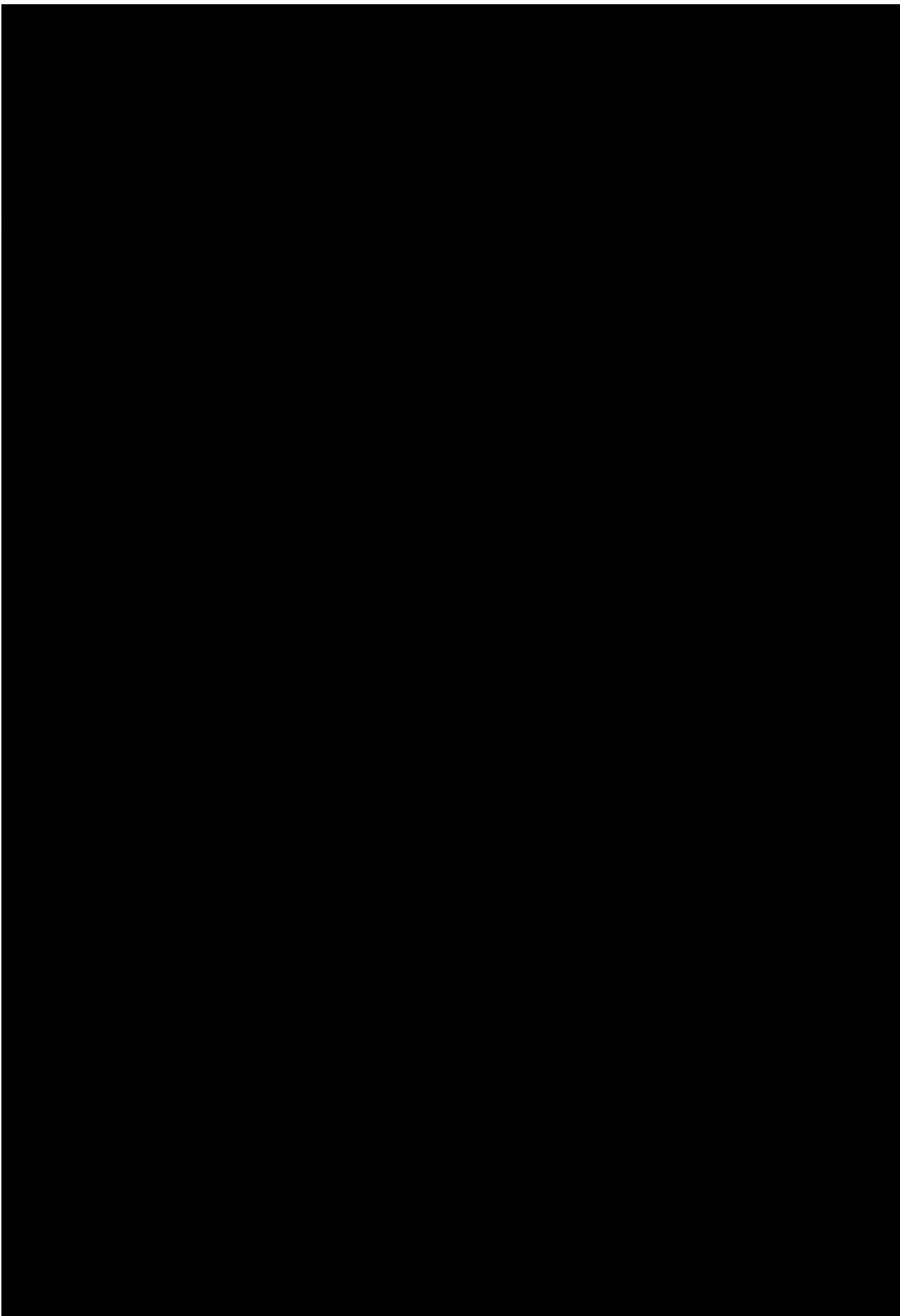
5. SCHEDULE OF RATES

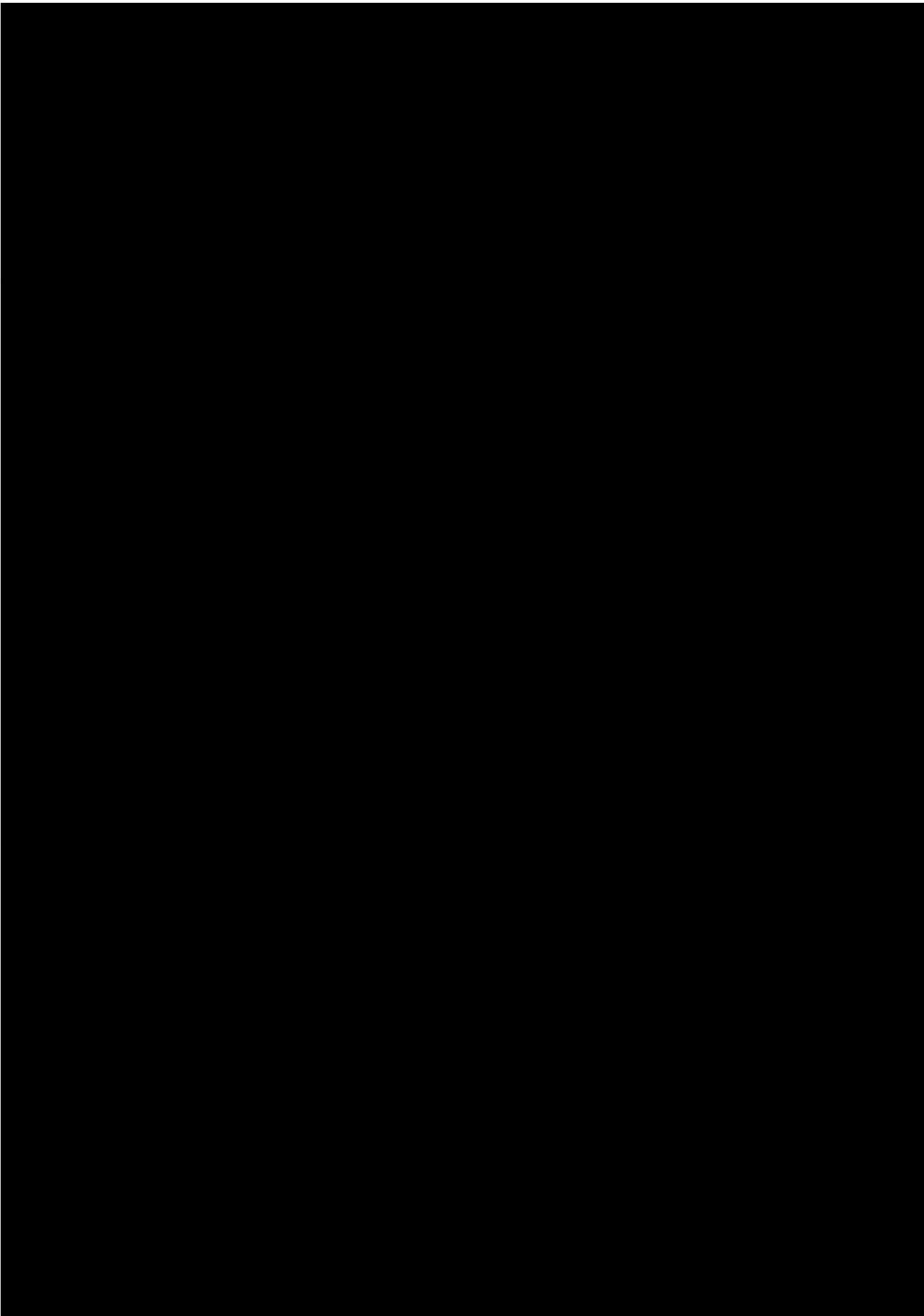
When claiming payment for any Services for which the Independent Certifier is to be paid on a schedule of rates basis, the Independent Certifier:

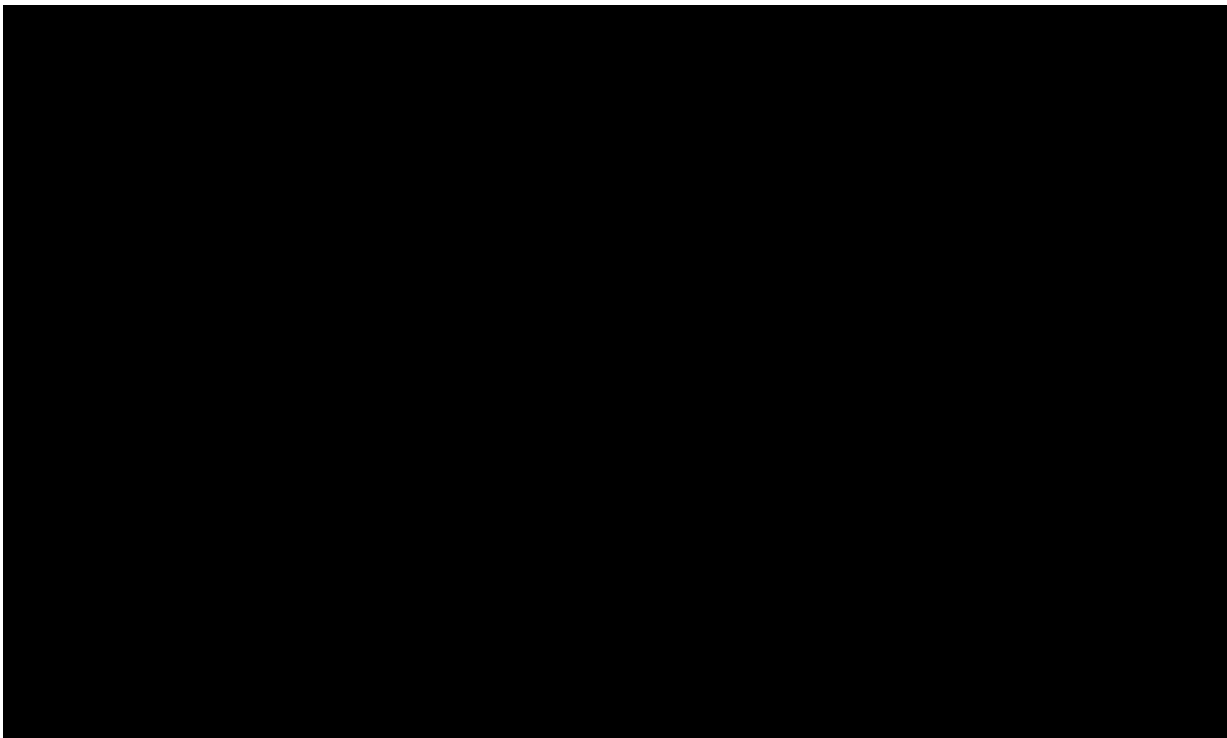
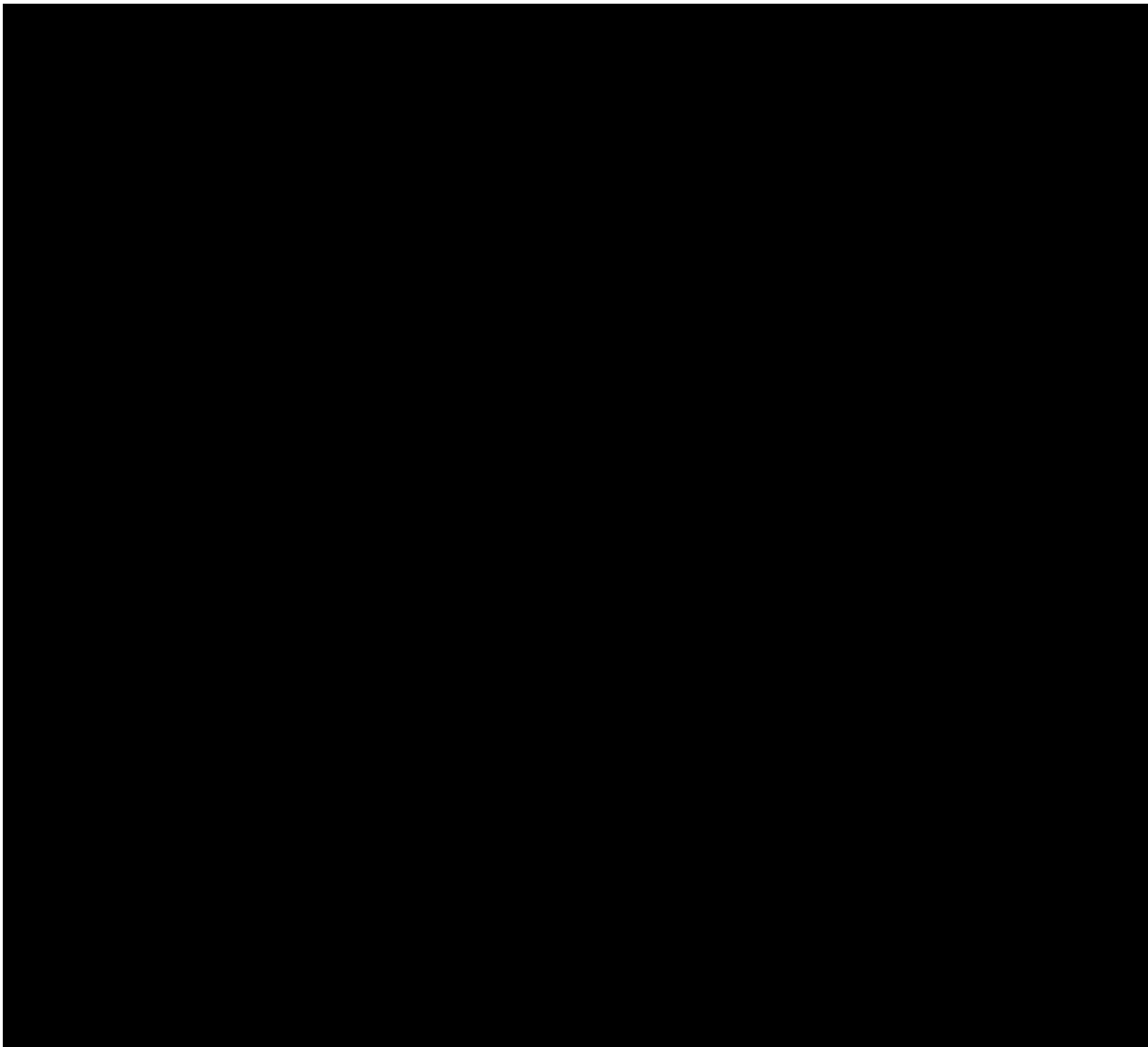
- (a) must provide details of the time expended by the Independent Certifier in performing the Services for which the Independent Certifier is entitled to be paid on a schedule of rates basis together with such further evidence as may be requested by the Principal; and

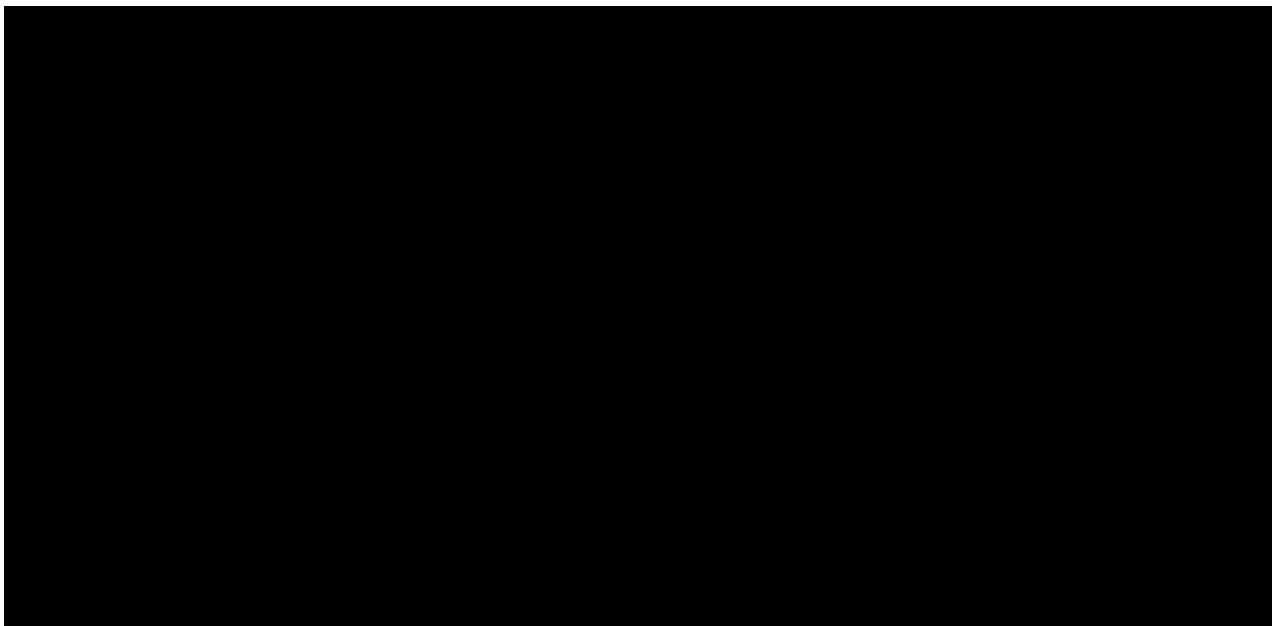












6. GST

Unless expressly stated otherwise, all [REDACTED] Fees, lump sums, rates and amounts in this Payment Schedule exclude GST.

7. SUBCONTRACTOR'S STATEMENT AND SUPPORTING STATEMENT

See next page.

**Subcontractor's Statement and Supporting Statement
(Paragraph 2(c) of Schedule 2 (Payment Schedule))**

SUBCONTRACTOR'S STATEMENT

**REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 – see back of form)**

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

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

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

Subcontractor: ABN:
(Business name)

of:
(Address of subcontractor)

has entered into a contract with: ABN:
(Business name of principal contractor) **(Note 2)**

Contract number/identifier: **(Note 3)**

This Statement applies for work between:/...../..... and/...../..... inclusive, **(Note 4)**

subject of the payment claim dated:/...../..... **(Note 5)**

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

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

(f) Signature: Full Name:

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

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

Notes

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

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

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

ABN [*insert ABN*]

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

ABN [*insert ABN*], contract number/identifier [*insert*]

OR

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

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

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

I, [*full name*], being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief all subcontractors, if any, have been paid all amounts that have become due and payable in relation to construction work that is the subject of this payment claim.

These subcontractors and the amounts paid to them are identified in the attachment to this statement.

It is an offence under section 13(7) of the Act for a head contractor to serve a payment claim on the principal, if it is not accompanied by a supporting statement that indicates that it relates to that payment claim. The maximum penalty is \$110,000 for corporations, and \$22,000 for an individual.

It is also an offence under the Act for a head contractor to serve a payment claim accompanied by a supporting statement knowing that the statement is false or misleading in a material particular in the particular circumstances. The maximum penalty is \$110,000 for corporations, and \$22,000 or 3 months imprisonment (or both) for individuals.

Signature:

Date:

Full name:

Position/Title:

Attachment to the Supporting Statement

List all subcontractors that have been paid all amounts that have become due and payable in relation to the construction work that is the subject of the payment claim which this supporting statement accompanies.

Subcontractor	ABN	Contract number/ identifier	Date of works (period or stage)	Date of subcontractor's payment claim

SCHEDULE 3

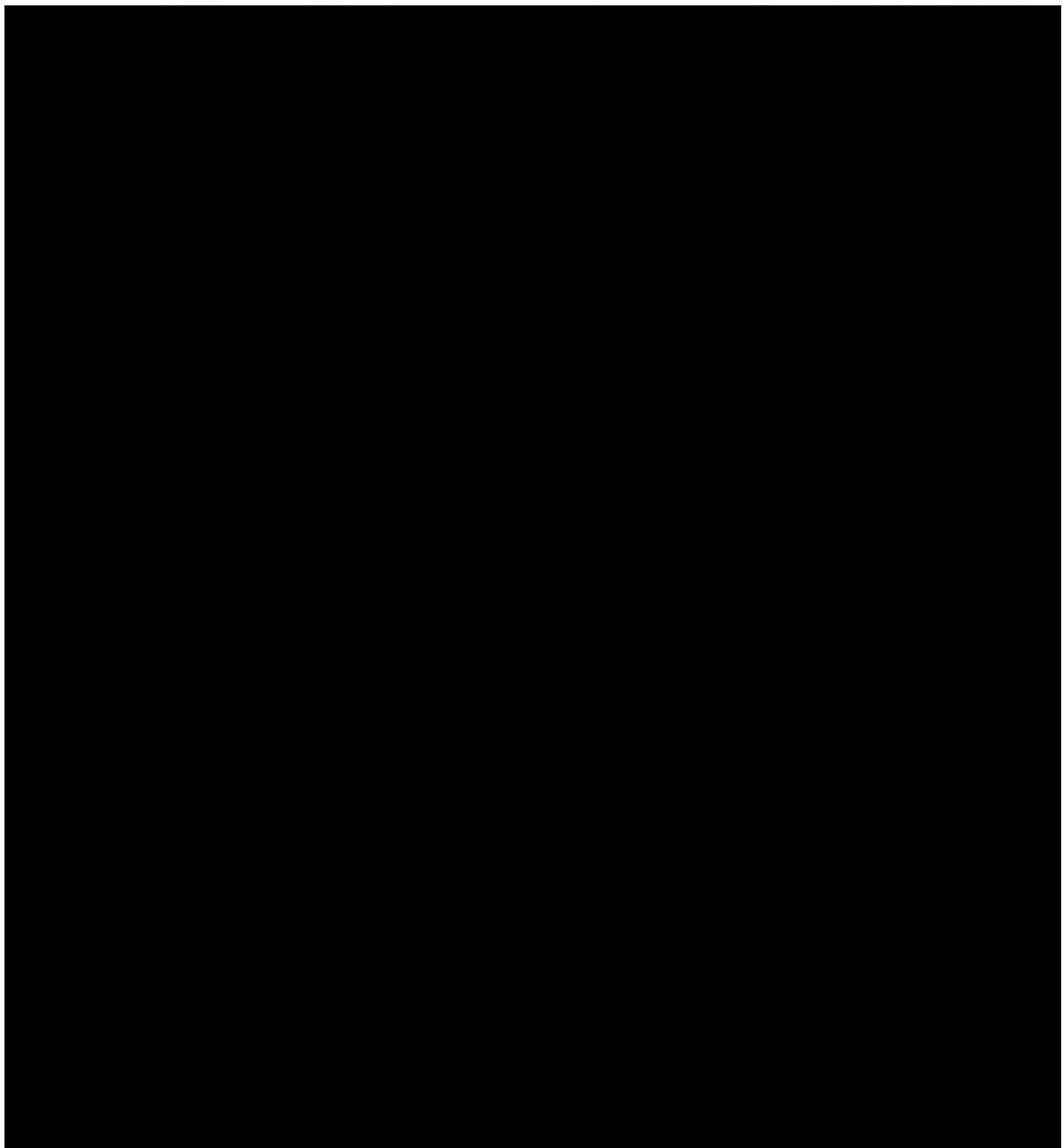
Minimum Resources and Surveillance Levels

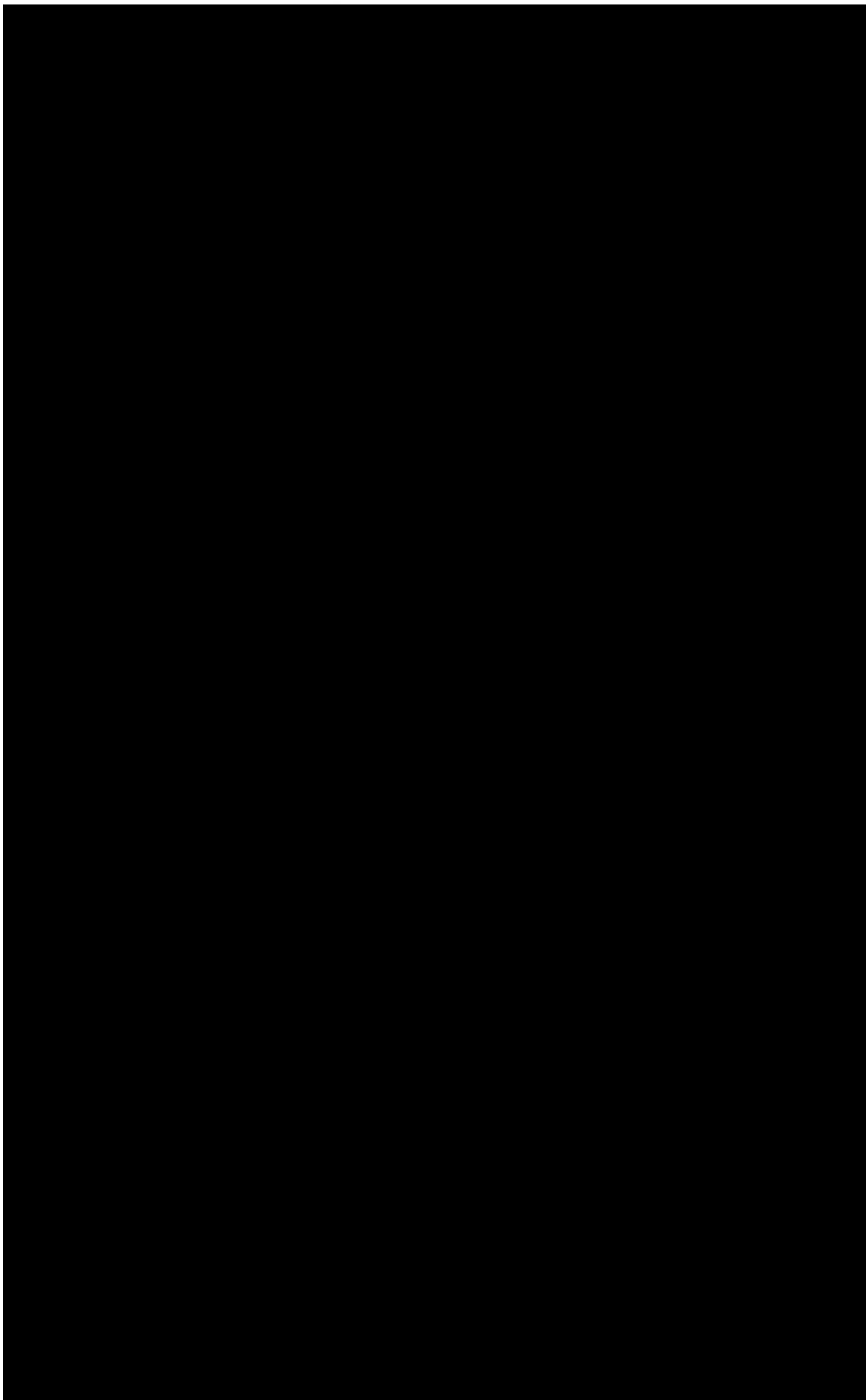
1. MINIMUM RESOURCES COMMITMENT

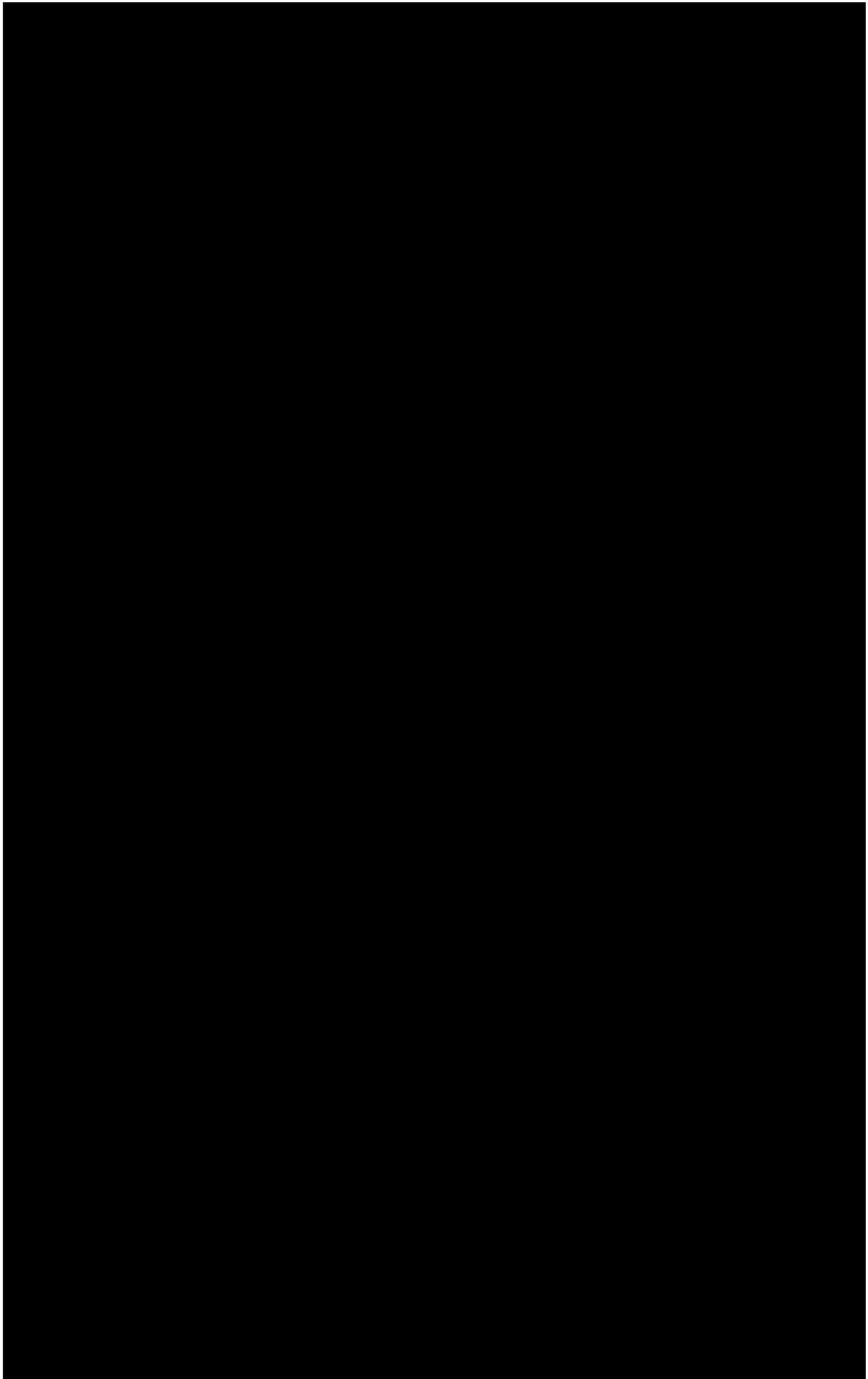
The Independent Certifier acknowledges and agrees that the levels of resources, including man-days, set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this deed.

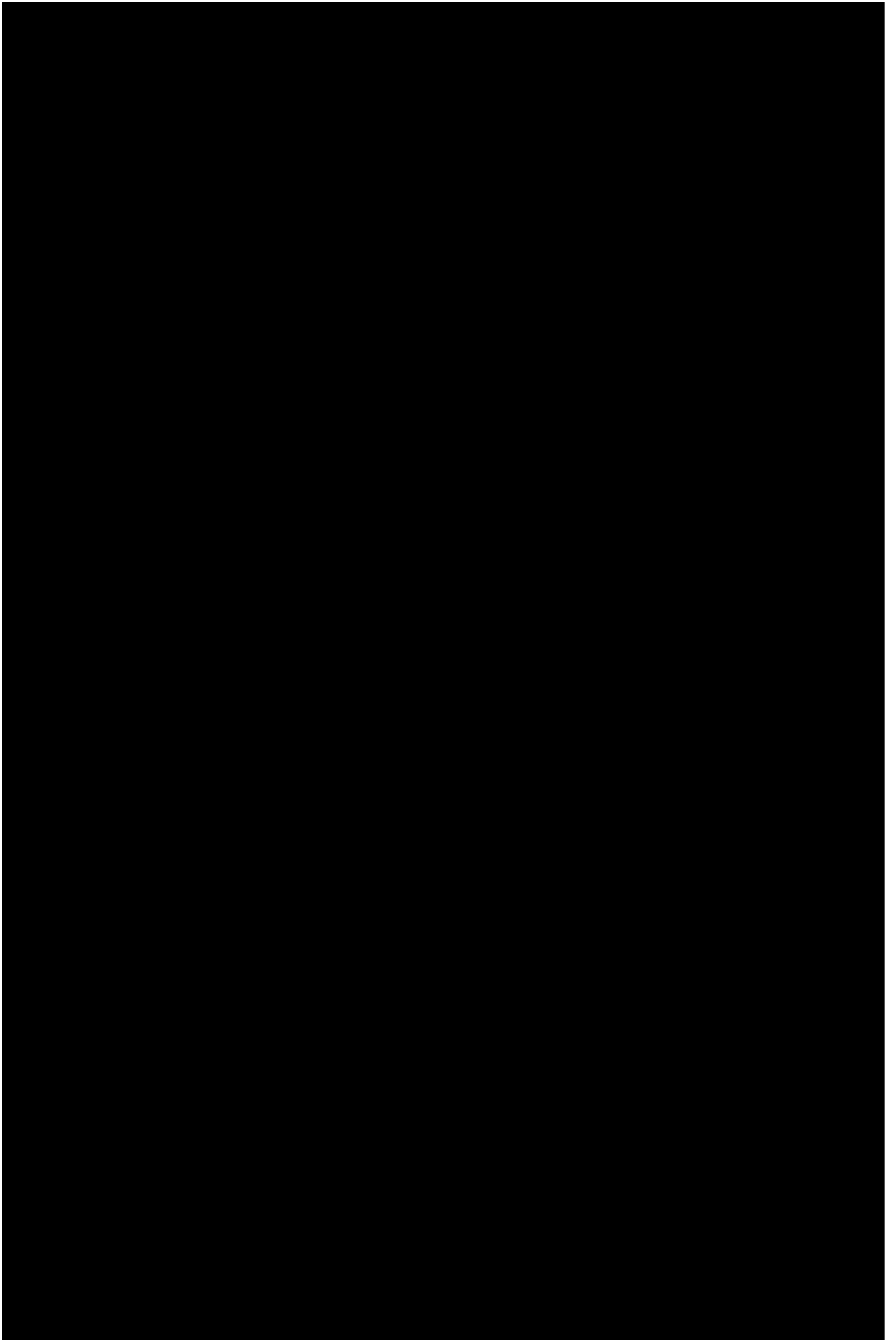
In this Schedule 3, a reference to "days" excludes public holidays and includes only those days which are stated in the Contractor's Program as working days.

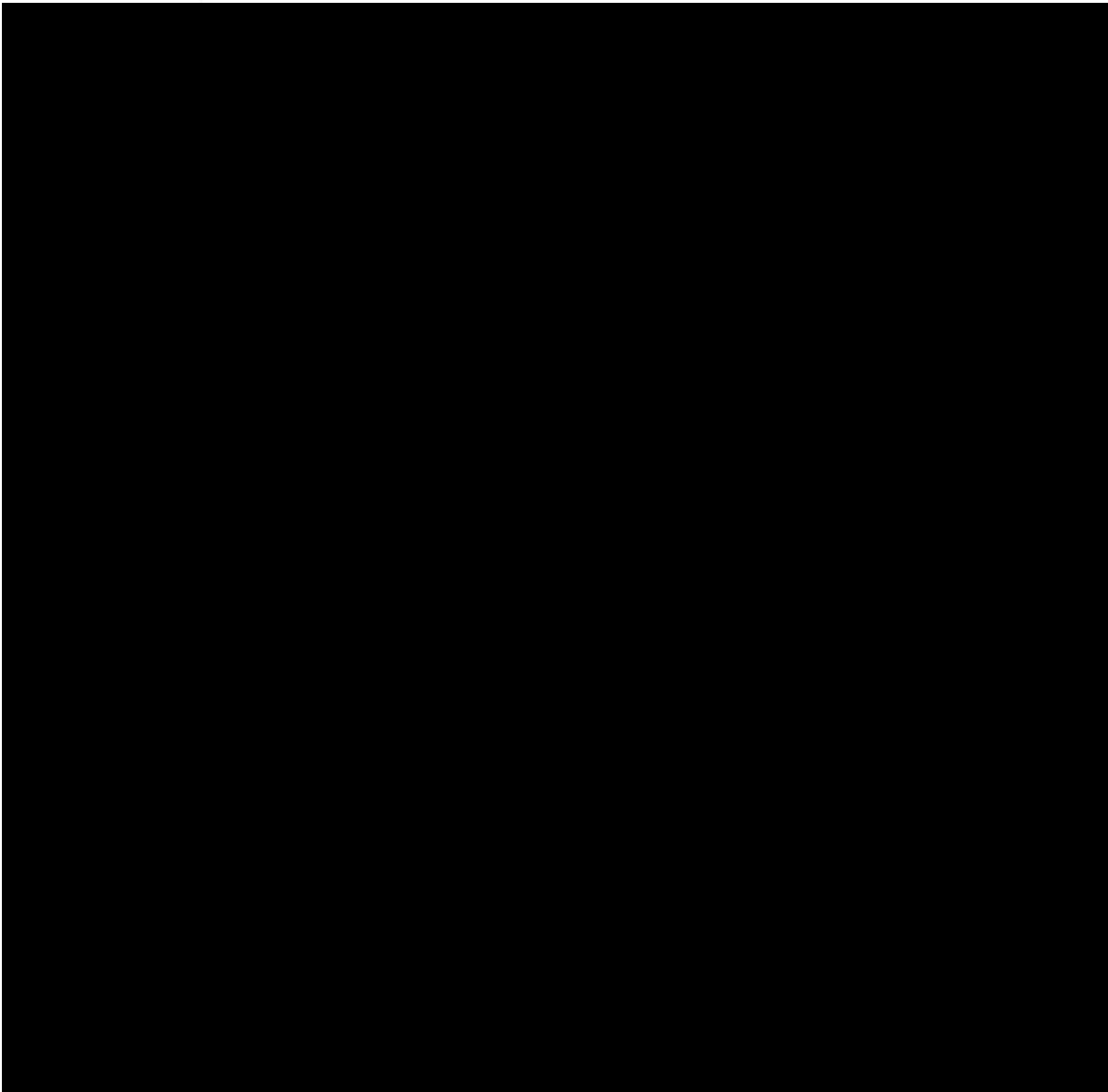
The Independent Certifier must provide at least the following Key Personnel to perform the Core Services with the minimum days to be committed to the Core Services as set out below:











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 certification of large projects similar to the Project and the 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 Services

The Independent Certifier's Representative for the Services must possess a recognised qualification relevant to the position and the Services, must be a 'Chartered Engineer' registered with Engineers Australia and must have at least five years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in roads or similar complex infrastructure.

Notwithstanding the levels of surveillance and resources specified in this Schedule 3 in respect of the Independent Certifier's Representative, the Independent Certifier's Representative must make itself available to the Principal and the Contractor as may be required for the performance of the Services under this deed.

2.3 Environmental Representative

The Environmental Representative must be a suitably qualified and experienced person with at least fifteen years' experience in construction environmental management. The Environmental Representative must:

- (a) be approved by the Planning Secretary of the NSW Department of Planning, Industry and Environment in accordance with Condition A24 of the Project Planning Approval;
- (b) not have been involved in the preparation of the documents listed in Condition A1 of the Project Planning Approval and be independent from the design and construction personnel for the Project and those involved in the delivery of it in accordance with Condition A25 of the Project Planning Approval;
- (c) hold current membership of a relevant professional body, unless otherwise agreed by the Planning Secretary of the NSW Department of Planning, Industry and Environment in accordance with Condition A21 of the Project Planning Approval; and
- (d) otherwise satisfy the requirements of the Environmental Representative under the Project Planning Approval and the P2 Contract.

2.4 Design Manager

The Design Manager must possess a recognised qualification relevant to the position and the Services and have at least ten years' experience in the design certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in road tunnels or similar complex infrastructure

2.5 Construction Manager

The Construction Manager must possess a recognised qualification relevant to the position and Services and have at least 15 years' experience in construction including strong experience in the delivery of road tunnels or similar complex infrastructure utilising TBMs.

2.6 Completion Lead

The Completion Lead must possess a recognised qualification relevant to the position and the Services and at least ten years of experience in testing and commissioning road tunnels or similar complex infrastructure.

2.7 Senior Engineer – Civil and Structure

The Senior Engineer – Civil and Structure must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in design and construction certification of large projects similar to the Project and the Contractor's Activities and at least ten years' experience in design and construction including strong experience in tunnelling civil and structural works design review.

2.8 Senior Engineer – Mechanical and Electrical

The Senior Engineer – Mechanical and Electrical must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in design and construction certification of large projects similar to the Project and the Contractor's

Activities and at least ten years' experience in design and construction including strong experience in tunnelling mechanical and electrical works.

2.9 Systems and Services Manager

The Systems and Services Manager must possess a recognised qualification relevant to the position and the Services and at least ten years' experience in the design and construction of road tunnel and tolling systems.

2.10 Senior Tunnelling Engineer

The Senior Tunnelling Engineer must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least ten years' experience in construction including strong experience in tunnelling construction.

2.11 Contamination Reviewer

The Contamination Reviewer must have at least ten years' experience in the infrastructure design and certification industry, including contamination treatment.

2.12 Utilities Manager

The Utilities Manager must have at least ten years' experience in the roads infrastructure industry and give years of experience with certification.

2.13 Geotechnical and Hydrology Reviewer

The Geotechnical & Hydrology Reviewer must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in geotechnical review.

2.14 Project Controls Lead

The Project Controls lead must possess a recognised qualification relevant to the position and the Services and have at least three years' experience in the construction certification of large projects similar to the Project and the Contractor's Activities and at least 15 years' experience in construction including strong experience in project controls.

2.15 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

3. MINIMUM SURVEILLANCE COMMITMENT

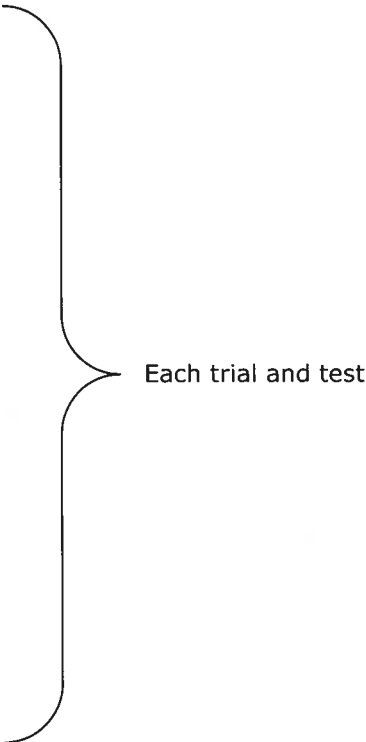
The Independent Certifier acknowledges and agrees that the minimum surveillance levels set out in this Schedule 3 are minimum requirements only and do not in any way limit or otherwise affect the obligations of the Independent Certifier to perform the Services in accordance with this Deed.

Without limiting the obligations of the Environmental Representative under the Project Planning Approval, the Independent Certifier must carry out, as a minimum, the following surveillance activities at the frequencies set out below:

SURVEILLANCE ACTIVITIES (GENERAL)


Surveillance Activity	Frequency during the Contractor's Activities
<p>Environmental Observation</p> <p>Observe the implementation of physical environmental controls, in accordance with the Construction Environmental Management Plan and sub-plans, including:</p> <ul style="list-style-type: none"> • noise and vibration; • air quality; • mud, dirt and debris on roadways; • water quality; • Contamination; • property accesses; • temporary pedestrian pathways and cycleways; • working within the approved hours; • spoil stockpiling and disposal; • waste management and disposal; • heritage management; • landscape maintenance; and • report to the Principal, the Contractor and the Environmental Representative. 	<p style="text-align: center;">Twice weekly</p>
<p>Traffic and Transport Surveillance</p> <p>Monitor the traffic and transport management and control provisions for compliance with the relevant Project Plans, including:</p> <ul style="list-style-type: none"> • layouts for compliance with approved Traffic and Transport Management Plans and control plans, including sign maintenance and delineation; • provisions for bicyclists, pedestrians, disabled persons, public transport passengers, public transport operators and road traffic; • timing and duration of road occupancies; • qualifications of traffic control personnel; and • truck haulage routes off the Construction Site. 	<p>Daily</p> <p>Daily</p> <p style="text-align: center;">Weekly</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p>Work Health and Safety Observation</p> <p>In conjunction with provision of the other Services, advise the other parties of issues that the Independent Certifier becomes aware of which may affect the safety of persons or property.</p>	<p>As required</p>
<p>Quality Management Surveillance</p> <p>Inspect the Contractor's Activities for compliance with the requirements of the P2 Contract.</p>	<p>Twice weekly</p>
<p>Inspect circumstances where significant non-conformances are or will be reported.</p>	<p>Each occurrence</p>
<p>Check compliance with the Quality Plans, process control plans and work processes.</p>	<p>Each method statement</p>
<p>Check implementation of inspection and test plans, including:</p> <ul style="list-style-type: none"> • testing frequencies; • test methods; • test result verifications; and • release of Hold and Witness Points. 	<p>} Weekly</p> <p>All Hold and Witness Points</p>
<p>Monitor the rectification of non-conforming product or work.</p>	<p>All rectifications</p>
<p>Construction Surveillance</p> <p>Monitor the Contractor's obligations to inform the local community of planned investigations and construction operations and changes that affect properties, residences and businesses.</p>	<p>Monthly</p>
<p>Check that the Contractor's Activities including in relation to the tunnel alignment, tunnel excavations, service facility shafts, cross passages, cross passages with sumps and construction work is within each relevant design tolerance.</p>	<p>Weekly</p>
<p>Check that the Works are being constructed using Design Documentation in compliance with the P2 Contract.</p>	<p>Weekly</p>
<p>Check that durability requirements of the Works are being addressed and applied.</p>	<p>Weekly</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p>Witness construction trials and commissioning tests, including:</p> <ul style="list-style-type: none"> • use of any materials, plant and equipment that differs from accepted industry standards; • concrete including in-situ concrete and precast elements; • batching plant(s); • precast segment manufacturing facility; • TBM factory acceptance tests; • ground freezing trials (if applicable); • sprayed concrete; • waterproofing systems; • water collection, treatment and discharge systems; • rock bolts/ground anchors; • blasting; • tunnel and cavern lighting and ventilation systems; and • Utility Service diversions. 	 <p>Each trial and test</p>
<p>Record photographically and catalogue general and detailed work in progress.</p>	<p>20 digital photographs/day</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p>Witness the construction of the Works including:</p> <ul style="list-style-type: none"> • tunnel excavation; • cross passages; • substations; • low point sumps; • bridges and structures; • ground support and treatment;; • waterproofing; • permanent structural concrete linings; • tunnel portal, headwalls and wing walls; • dive structures; • slope protection and retaining structures; • flood protection including sump and drainage systems; • structural connections; • groundwater collection, treatment and drainage systems; • pavements; • shaft excavation; • concrete blinding layer; • soil and rock bolts and anchors; • niches and enlargements excavation; • earthing and electrolysis protection, including earthing and bonding of reinforcement and monitoring points; • mechanical and electrical works; • haulage roads; • provisions to access, secure, support and hand over the relevant Third Party Works; • Utility Service diversion; and • adjustment to existing tunnels or tunnel structures or demolition of existing infrastructure and buildings. 	<p style="text-align: center;">Daily</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p>Quality Product Surveillance Monitoring</p> <ul style="list-style-type: none"> • monitor structure foundation and subgrade preparation and treatments; • monitor compaction of earthworks and spoil; • monitor placement, compaction of TBM tunnel backfill and pavement sub-grade layers; • monitor manufacture of off-site TBM tunnel precast concrete segments and other elements; • monitor manufacture of off-site pretensioned precast super t girders; and • monitor manufacture of off-site precast units (not super t girders). 	<p>Initial preparation and treatment Weekly</p> <p>Daily</p> <p>Daily</p> <p>Daily</p> <p>Weekly</p>
<p>Monitor:</p> <ul style="list-style-type: none"> • preparation and testing of grout test specimens; • bolt anchorage testing of rock bolts; • preparation of sprayed concrete test specimens; • concrete supply, including: <ul style="list-style-type: none"> • audits of each batch plant; • reviews of grout, mortar, concrete, precast concrete and sprayed concrete mix designs (including off-site work); and • monitoring of supplied mixes compared with mix designs. 	<p>} Initial test specimens and testing then weekly for four weeks and fortnightly thereafter</p> <p>Monthly</p> <p>Weekly</p> <p>Each mix</p> <p>Weekly</p>

Surveillance Activity	Frequency during the Contractor's Activities
<p>Monitor concreting and associated works including:</p> <ul style="list-style-type: none"> • preparation; • formwork; • bracing; • reinforcement; • placing; • stressing; • finishing; • curing; and • stripping formwork. <p>Sprayed concrete, including:</p> <ul style="list-style-type: none"> • batching and mixing; • application; • depth control; • curing; and • production tests. <p>Monitor steel fabrication, including:</p> <ul style="list-style-type: none"> • reviews of welding procedures; and • monitoring of the fabrication and welding processes for major members (off-site). <p>Monitor protective treatment systems (off-site).</p> <p>Monitor ground movement equipment monitors including:</p> <ul style="list-style-type: none"> • audits of equipment; and • review of results. 	<div style="text-align: center; margin-top: 20px;">  <p>Initial activity and twice weekly thereafter</p> </div> <p>Each procedure</p> <p>Twice weekly</p> <p>Twice weekly</p> <p>Monthly</p> <p>Daily</p> <p>Each procedure</p> <p>Twice weekly</p> <p>Twice weekly</p> <p>Monthly</p> <p>Daily</p>

SCHEDULE 4

Commercially Sensitive Information

Provision or specific information	Justification (including reference to the relevant clause in the GIPA Act)	Period of time in which justification will apply
All names, [REDACTED] Fees and rates (including escalation) included Schedule 2 – Payment Schedule	Commercial-in-confidence GIPA Act CI 32(1)(a)	In perpetuity
Annexure A - Certification and Monitoring Plan	Commercial-in-confidence GIPA Act CI 32(1)(a)	In perpetuity

SCHEDULE 5

Form of Deed of Novation

THIS DEED is made on [year]

BETWEEN:

- (1) **[Name of Novatee]** **[ABN/ACN of Novatee]** of **[insert address]** (the **Novatee**);
- (2) **Transport for NSW** (ABN 18 804 239 602) of **[insert address]** (the **Principal**);
- (3) **[Contractor]** (ABN **[insert]**) of **[insert address]** (the **Contractor**); and
- (4) **[Independent Certifier]** (ABN **[insert]**) of **[insert address]** (the **Independent Certifier**).

RECITALS:

- (A) The Contractor and the Principal are parties to the deed entitled "Western Harbour Tunnel – Package 2: WHT Tunnels and Mechanical and Electrical Fitout – Incentivised Target Cost Contract" dated **[Insert Date]** (the **P2 Contract**).
- (B) The Principal, the Contractor and the Independent Certifier are parties to an Independent Certifier Deed dated **[Insert Date]** (the **Independent Certifier Deed**).
- (C) The Principal wishes to exercise its right to novate its interests, rights and obligations under the Independent Certifier Deed, pursuant to clause 14.12(b) of the Independent Certifier Deed.
- (D) The parties to this Deed have agreed to novate the Independent Certifier Deed on the terms of this Deed.

1. DEFINITIONS AND INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules, and annexures to that agreement or document.
- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).

- (h) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Except as otherwise defined in this Deed, terms used in this Deed that are defined in the P2 Contract have the same meanings in this Deed.
- (j) The word "include" in any form is not a word of limitation.

2. NOVATION

2.1 Novation

The parties agree to novate the Independent Certifier Deed, such that on and from the date of execution of this Deed (the **Effective Date**):

- (a) the Novatee is substituted for the Principal under the Independent Certifier Deed as if the Novatee had originally been a party to the Independent Certifier Deed instead of the Principal; and
- (b) each reference in the Independent Certifier Deed to the Principal is to be read as if it were a reference to the Novatee.

2.2 Assumption of rights and obligations

On and from the Effective Date:

- (a) the Novatee:
 - (i) will be bound by, and must comply with, the Independent Certifier Deed as it relates to the Principal;
 - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the Independent Certifier Deed (whether arising before or after the Effective Date); and
 - (iii) will assume all the obligations and liabilities of the Principal under or in respect of the Independent Certifier Deed arising or accruing on or after the Effective Date (but will not assume any obligation or liability of the Principal under or in respect of the Independent Certifier Deed arising or accruing before the Effective Date); and
- (b) The Contractor and the Independent Certifier must comply with the Independent Certifier Deed on the basis that the Novatee has replaced the Principal under it in accordance with the terms of this Deed.

3. RELEASE

3.1 Release by Contractor and Independent Certifier

The Contractor and the Independent Certifier each release the Principal from:

- (a) its obligations and liabilities under or in respect of the Independent Certifier Deed; and

- (b) all claims, actions, demands, proceedings and liability that the Contractor or the Independent Certifier may have or claim to have, or but for this release might have had, against the Principal in connection with the Independent Certifier Deed,

arising on or after the Effective Date.

3.1A Release by the Principal

The Principal releases the Independent Certifier and the Contractor from:

- (a) its obligations and liabilities under or in respect of the Independent Certifier Deed; and
- (b) all claims, actions, demands, proceedings, and liability that the Principal may have or claim to have, or but for this release might have had, against the Independent Certifier and the Contractor in connection with the Independent Certifier Deed,

arising on or after the Effective Date.

3.2 No release by Contractor and Independent Certifier

- (a) Neither the Contractor nor the Independent Certifier releases the Principal from:
 - (i) any of its obligations or liabilities under or in respect of the Independent Certifier Deed; or
 - (ii) any claims, actions, demands, proceedings or liability that the Contractor or the Independent Certifier may have or claim to have, or but for this release might have had, against the Principal in connection with the Independent Certifier Deed,

accruing or arising before the Effective Date.

- (b) The Principal remains liable to the Contractor and the Independent Certifier for all its obligations and liabilities under the Independent Certifier Deed accruing or arising before the Effective Date.

4. INDEMNITY

4.1 Indemnity by the Principal

The Principal indemnifies the Novatee against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Novatee by the Contractor, the Independent Certifier or any other person in connection with any matter relating to, or any act or omission of the Principal with respect to, the Independent Certifier Deed before the Effective Date.

4.2 Indemnity by Novatee

The Novatee indemnifies the Principal against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Principal by the Contractor, the Independent Certifier or any other person in connection with any matter relating to, or any act or omission of the Novatee with respect to, the Independent Certifier Deed on or after the Effective Date.

5. INSURANCE

The Independent Certifier will:

- (a) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the policies of insurance that are required to be taken out pursuant to clause 8.4, [REDACTED] of the Independent Certifier Deed; and
- (b) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under those policies of insurance, take out replacement policies of insurance with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clause 8.4, [REDACTED] of the Independent Certifier Deed in all respects.

6. NOTICES UNDER THE INDEPENDENT CERTIFIER DEED

For the purposes of all provisions in the Independent Certifier Deed regarding service of notices, the address for the Novatee is the address set out at the start of this Deed.

7. REPRESENTATIONS AND WARRANTIES

- (a) Each party represents and warrants to each other party that:
 - (i) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
 - (iii) this Deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.
- (b) Each of the Contractor, the Independent Certifier and the Principal represents and warrants to the Novatee that, as at the Effective Date, neither the Contractor, the Independent Certifier nor the Principal is in default under any provision of the Independent Certifier Deed.

8. DELIVERY OF DOCUMENTS

The Principal will deliver to the Novatee on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the Independent Certifier Deed.

9. FURTHER ASSURANCES

At the reasonable request of another party, each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

10. ASSIGNMENT

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party, which may not be unreasonably withheld.

11. AMENDMENT

This Deed may be amended only by another deed executed by all the parties.

12. COSTS AND DUTY

The Principal must bear the costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Novatee.

13. GOVERNING LAW AND JURISDICTION

This Deed is governed by the laws of New South Wales. In relation to it and related non contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

14. COUNTERPARTS

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

EXECUTED as a deed.

Each person who executes this document 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.

Novatee

EXECUTED by **[NAME OF PARTY]** (ABN **[insert]**) in accordance with s127 of the Corporations Act:

Signature of director

Signature of director / company secretary

Name

Name

Principal

SIGNED for **TRANSPORT FOR NSW** (ABN 18 804 239 602) by its duly authorised delegate, in the presence of:

Signature of Delegate

Signature of witness

Name

Name

Contractor

EXECUTED by **[NAME OF PARTY]** (ABN **[insert]**) in accordance with s127 of the Corporations Act:

Signature of director

Signature of director / company secretary

Name

Name

Independent Certifier

EXECUTED by **[NAME OF PARTY]** (ABN **[insert]**) in accordance with s127 of the Corporations Act:

Signature of director

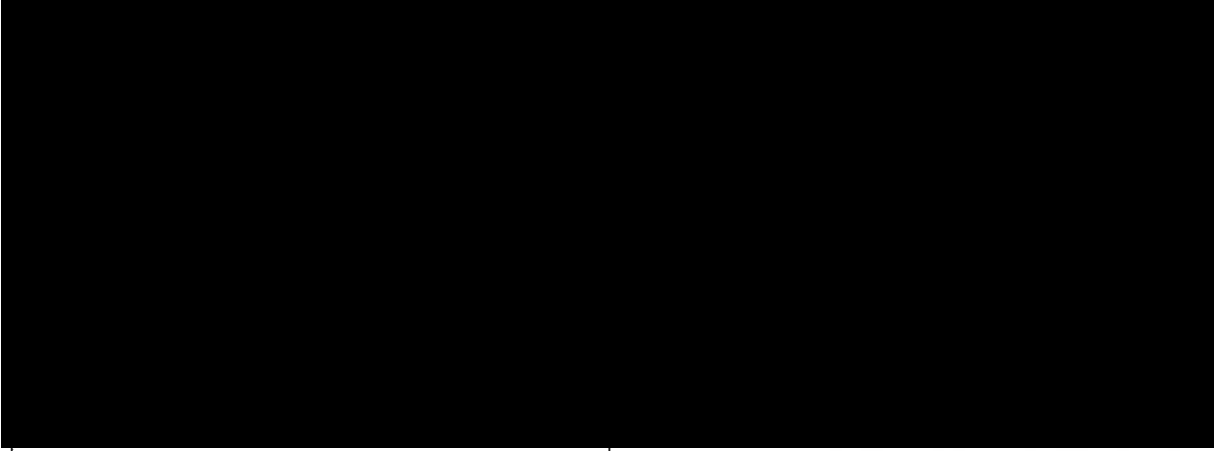
Signature of director / company secretary

Name

Name

SCHEDULE 6

Subcontractors and Technical Specialists

Name of Technical Specialists	Part of the Services/Technical Speciality
	

SCHEDULE 7

Modification to the Expert Determination Rules

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined.

RULE 1 Definitions

"Contract" means the deed entitled 'Package 2: WHT Tunnels and Mechanical and Electrical Fitout - Independent Certifier Deed' between the parties.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the Civil Liability Act 2002 (NSW);
- (b) Part IVA 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 (a)-(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 Industry Fairness (Security of Payment) Act 2017 (Qld);
- (d) the Building and Construction Industry (Security of Payment) Act 2021 (WA);
- (e) the Construction Contracts (Security of Payment) 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 (a)-(h) above.

RULE 2 Appointment of the Expert

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted by an expert agreed by the parties in accordance with clause 9.3 of the Contract.

2. Rule 2.2 is deleted in its entirety.
3. [no modification]
4. [no modification]
5. [no modification]

RULE 3 Agreement to be bound

1. [no modification]
2. Rule 3.2 is deleted in its entirety.

RULE 5 Role of the Expert

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 law.
2. [no modification]
3. [no modification]
4.
 - a. The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.
 - 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 inform the parties immediately.
 - d. The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.
 - e. The Expert shall have the power to determine questions of law.
5. [no modification]

RULE 9 Conduct of the Process

1. [no modification]
2. [no modification]
3. [no modification]
4. The rules of evidence do not apply to the Process.

RULE 10 The Expert's Determination

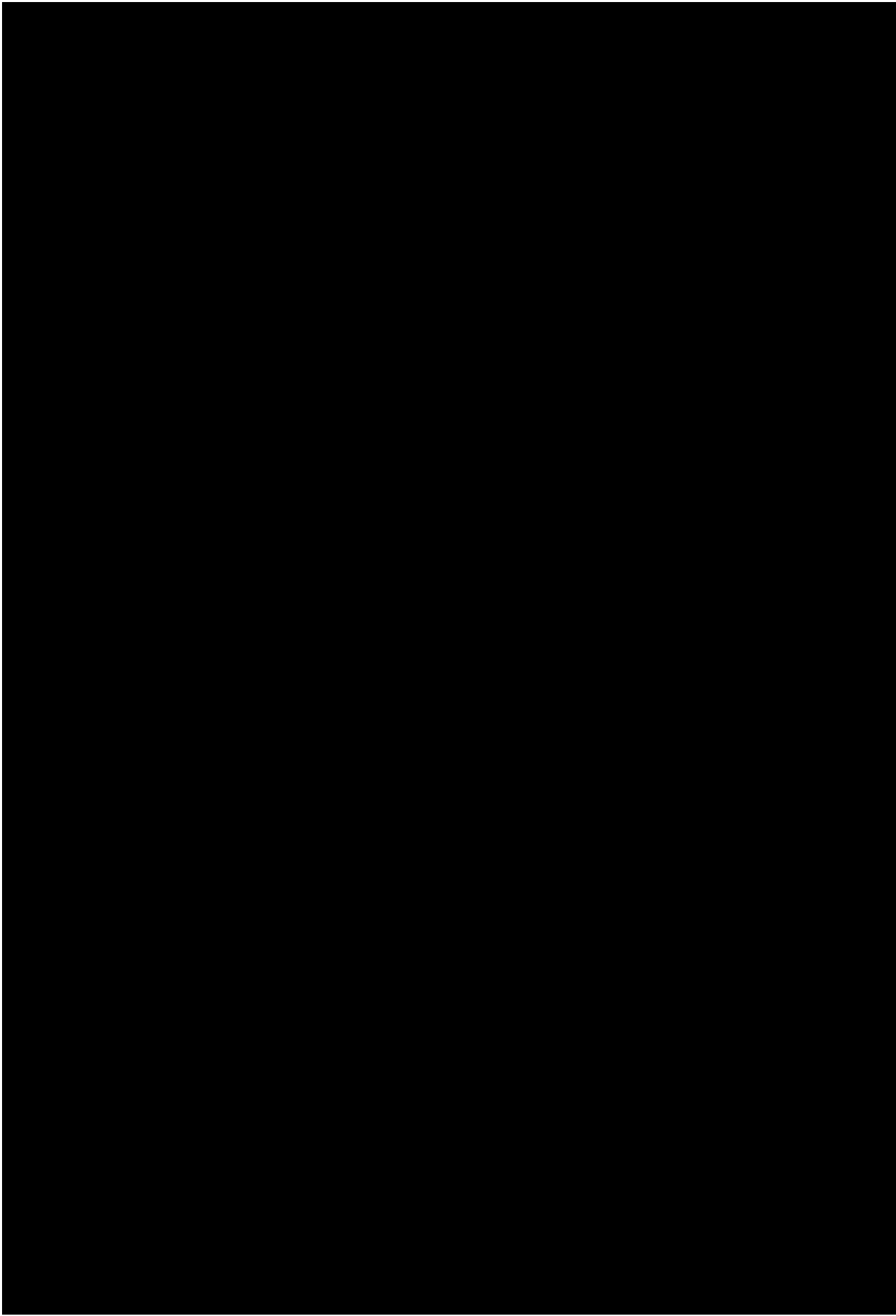
1. The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the Contract.
2. [no modification]
3. Unless otherwise agreed by the parties, the Expert's determination:
 - a. may include for the payment of interest 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.
4. [no modification]

RULE 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

RULE 14 Extension of Limitation Period

Rule 14 is deleted in its entirety.



the 1990s, the number of people in the world who are blind has increased by 100 million (World Health Organization 1998).

Blindness is a complex phenomenon. It is not only a physical condition, but also a social and cultural one. The social and cultural context of blindness varies from country to country, and even within a country. In some cultures, blindness is considered a curse or a punishment from God, while in others it is seen as a natural condition. The social status of blind people is also different in different cultures. In some cultures, blind people are considered as a lower caste, while in others they are treated as equals.

The purpose of this study was to explore the social and cultural context of blindness in the Netherlands. The study was conducted in a rural area of the Netherlands, where there is a high prevalence of blindness.

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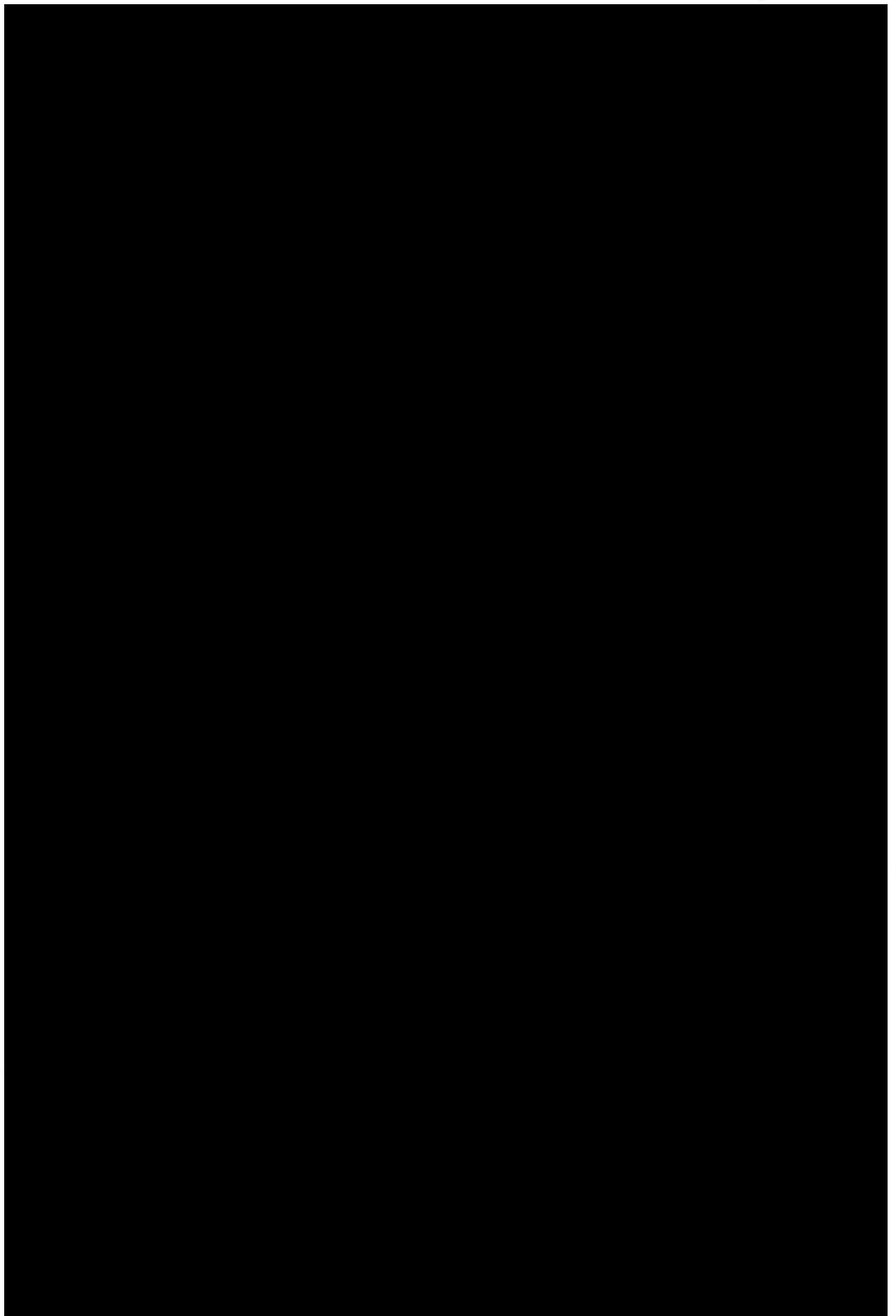
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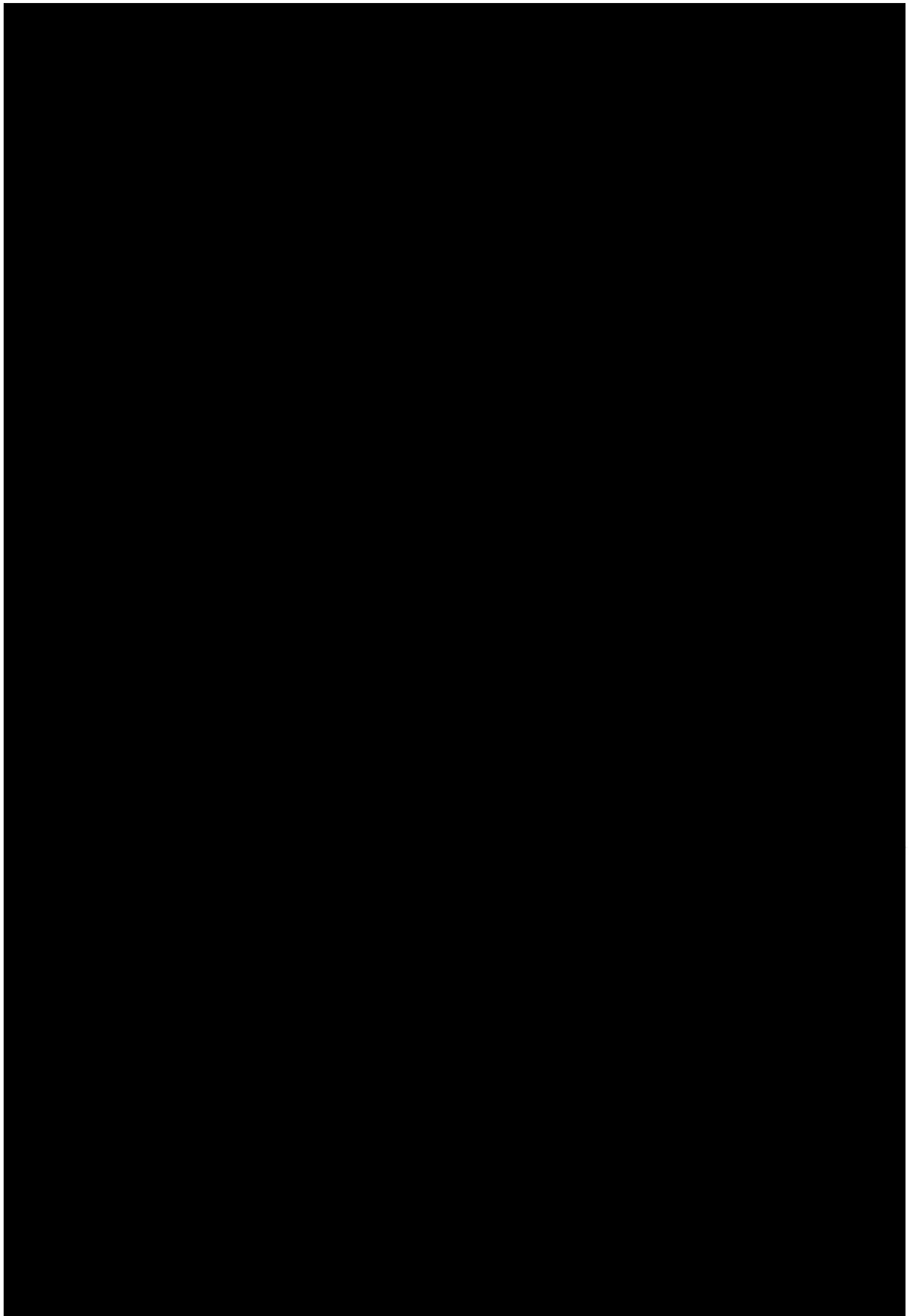
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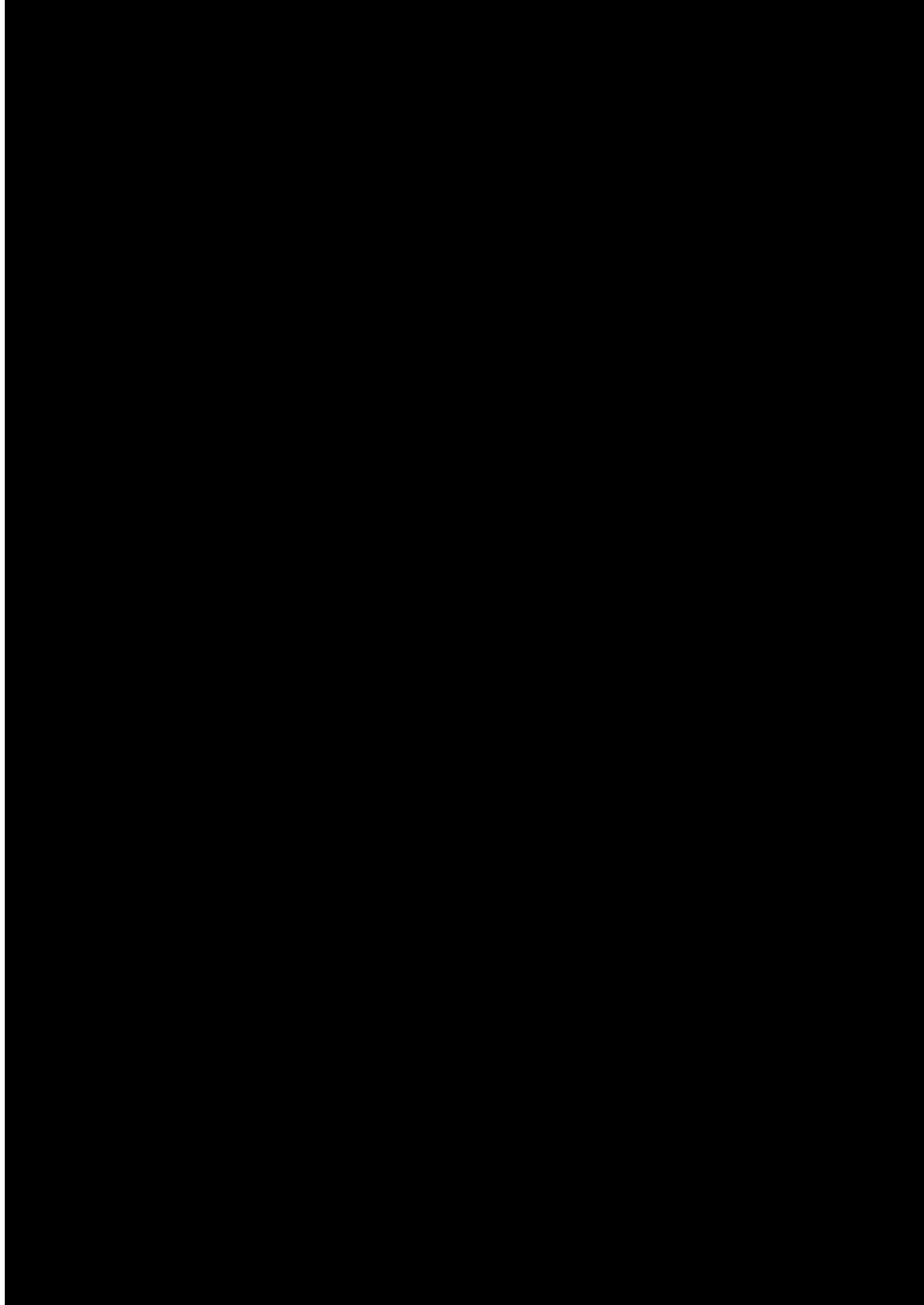


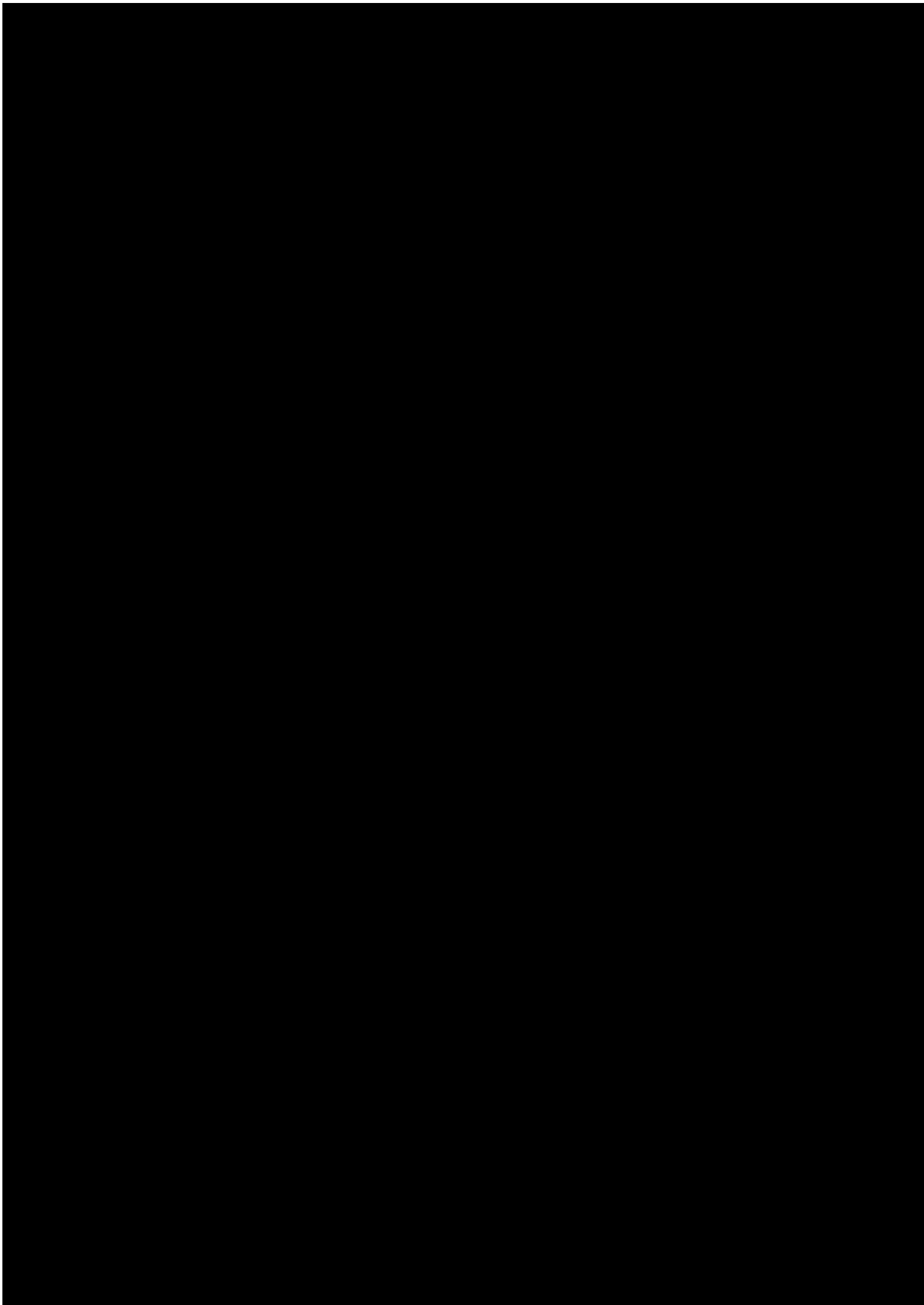
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and any other financial activity. The document also highlights the need for regular reconciliation of accounts to identify any discrepancies early on.

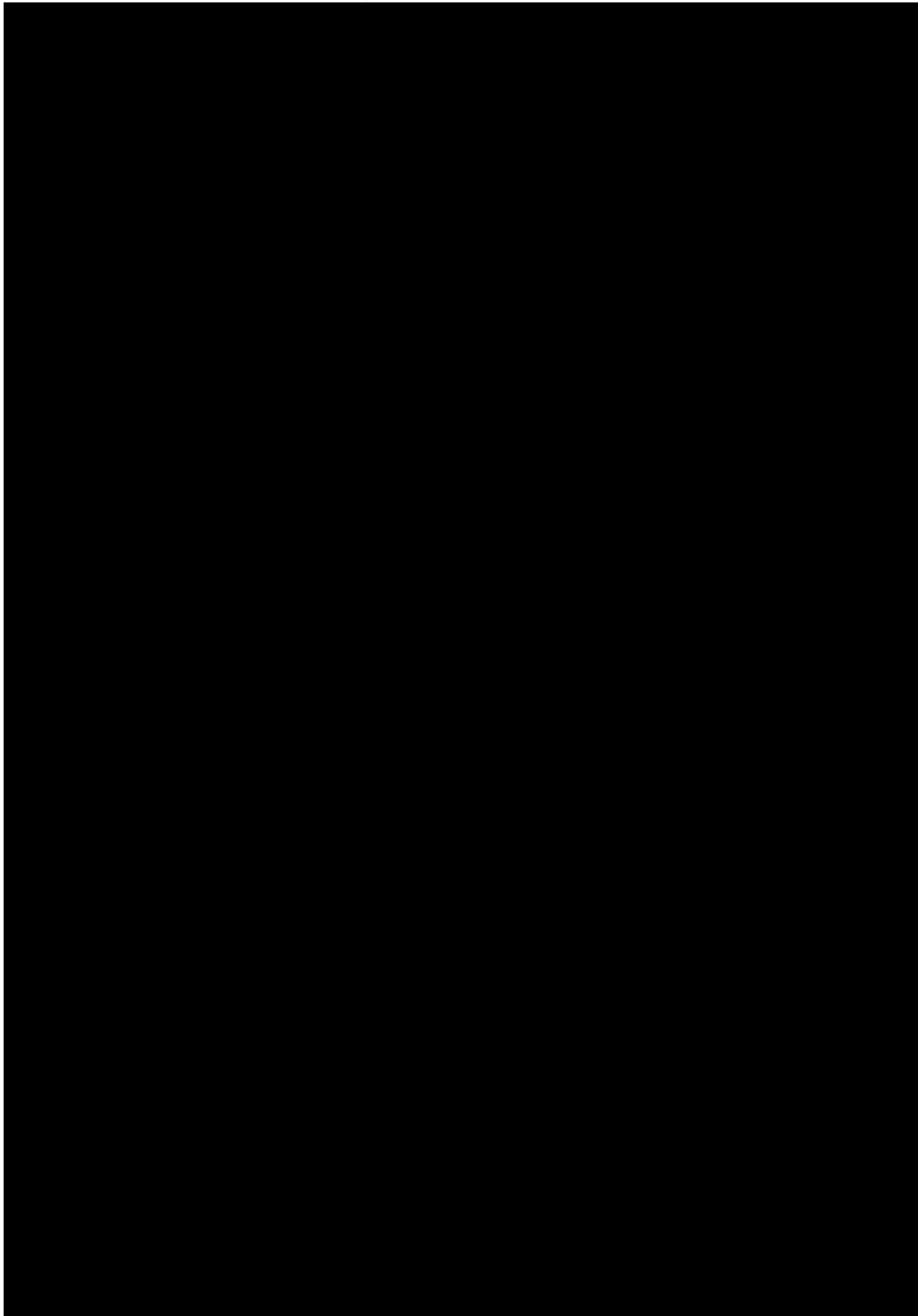
Next, the document covers the process of budgeting and forecasting. It explains how a well-defined budget can help in controlling costs and maximizing profits. The importance of reviewing the budget regularly is stressed, as it allows for adjustments to be made in response to changing market conditions or internal needs. Forecasting is also discussed as a key tool for planning future operations and identifying potential risks.

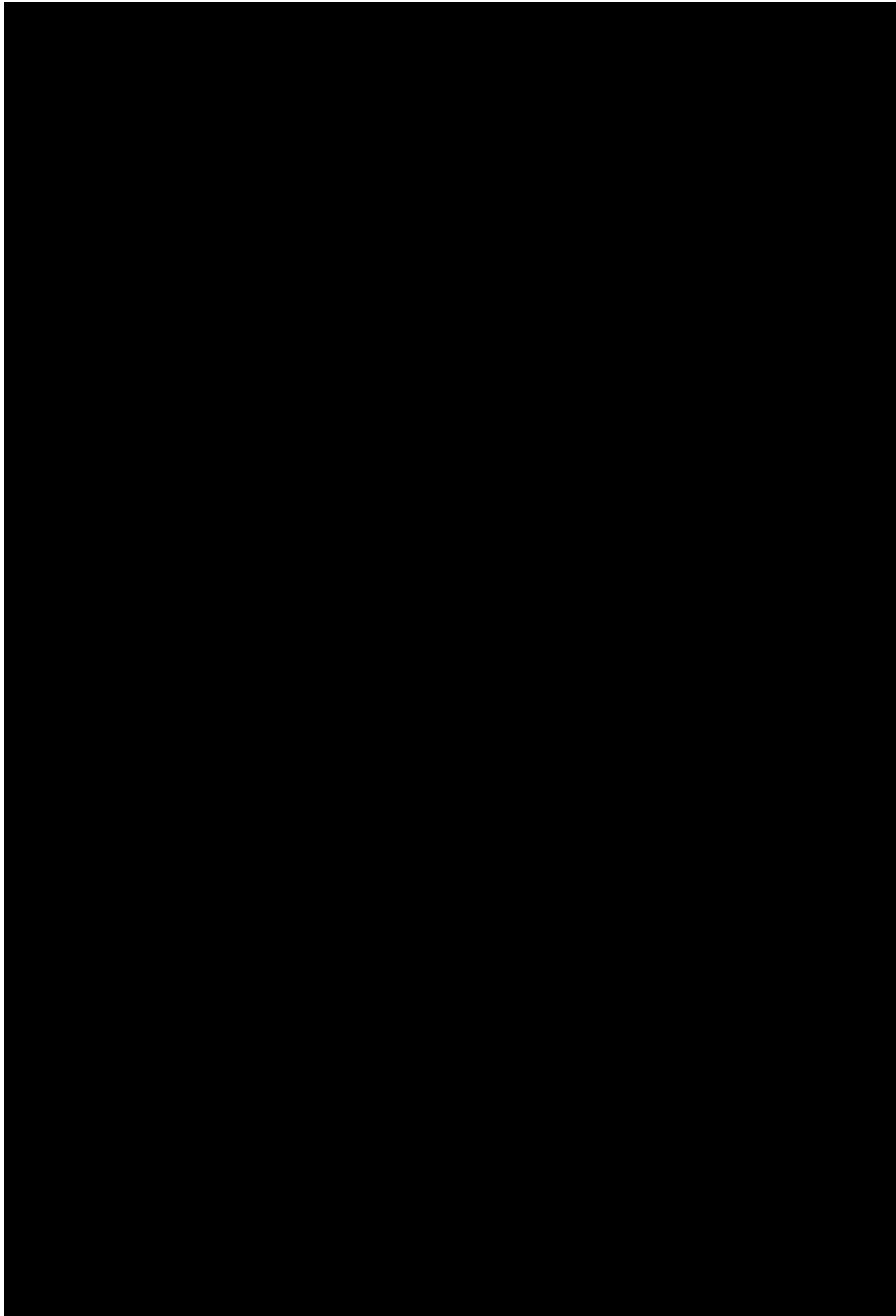
The document then delves into the topic of tax management. It provides an overview of the various tax obligations that a business may have and offers practical advice on how to minimize the tax burden. This includes keeping up-to-date with tax laws and regulations, as well as exploring various tax-saving strategies and incentives. The importance of seeking professional advice when dealing with complex tax issues is also mentioned.

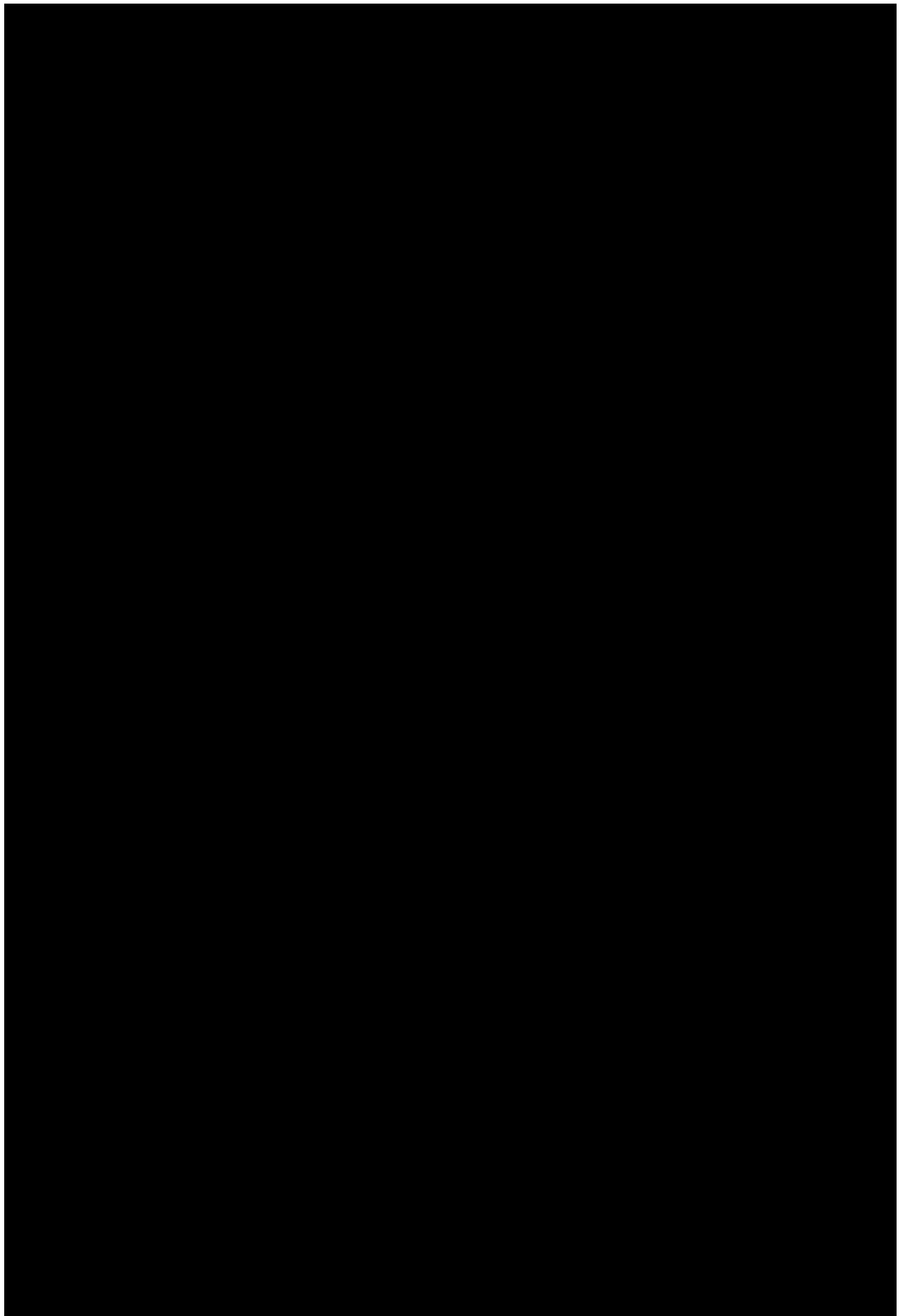
Finally, the document discusses the role of financial reporting in decision-making. It explains how financial statements, such as the balance sheet, income statement, and cash flow statement, provide valuable insights into the financial health of the business. The document stresses the importance of presenting accurate and transparent financial information to stakeholders, including investors, creditors, and management. It also highlights the need for clear communication and explanation of the results of the financial statements.

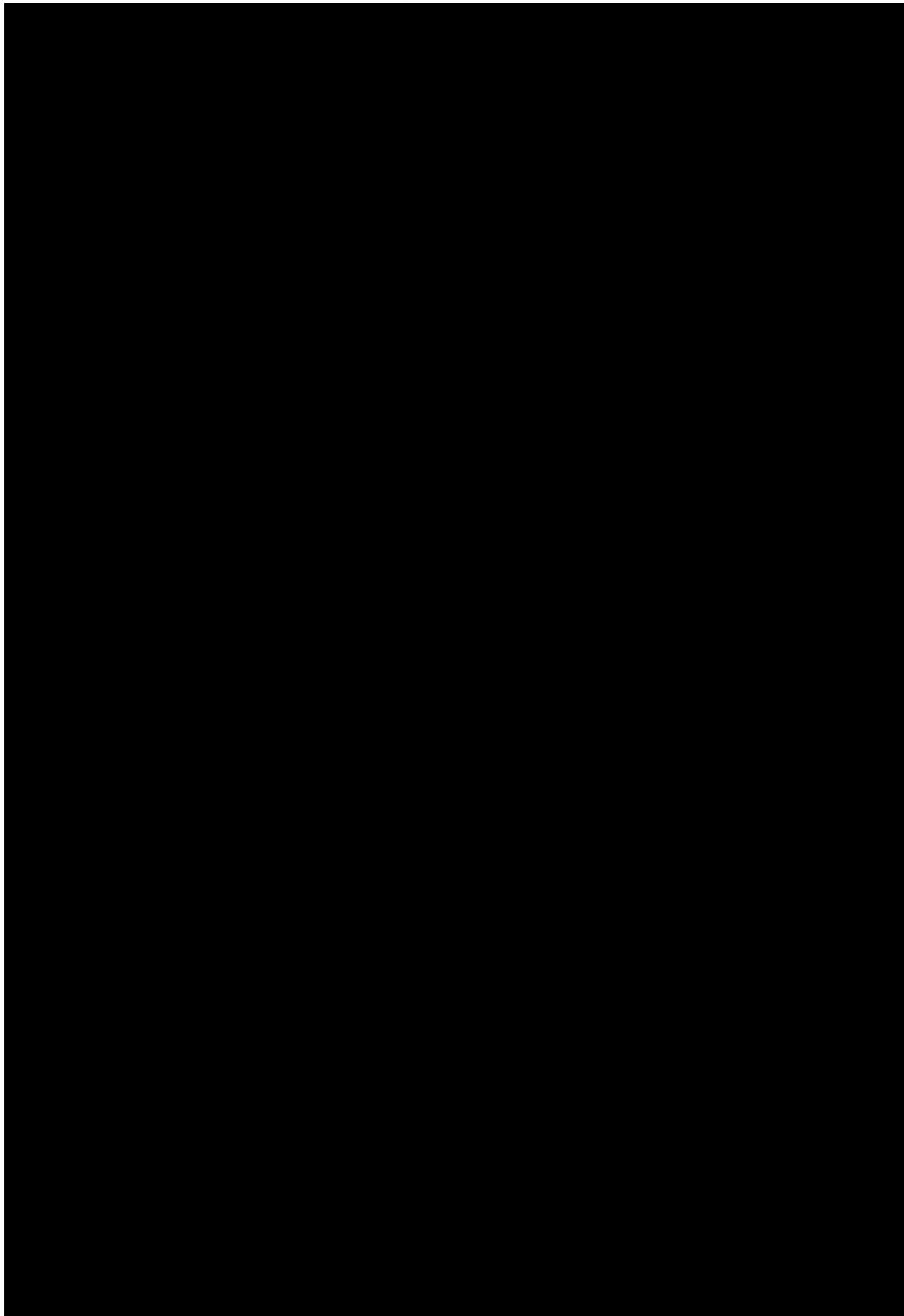


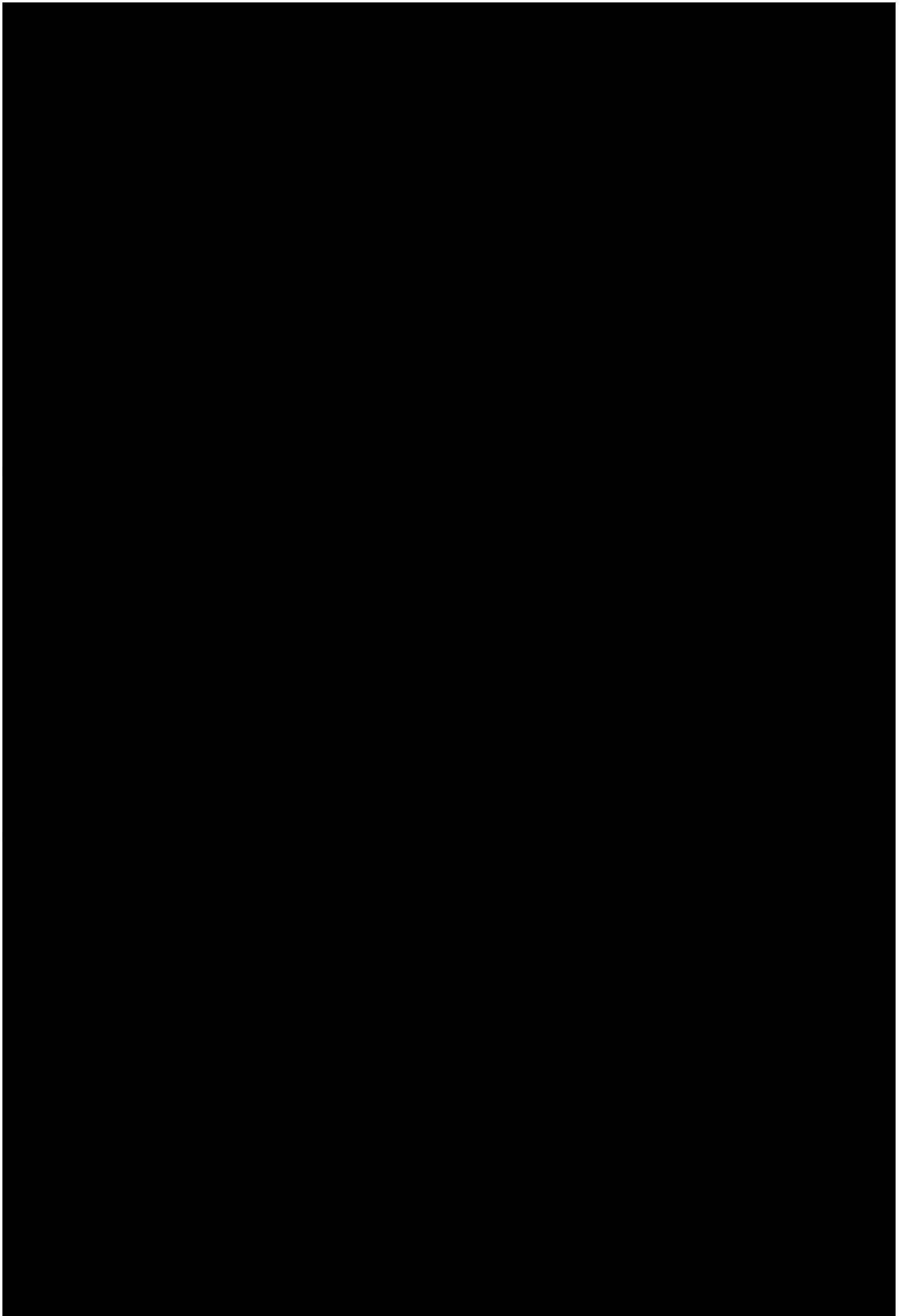


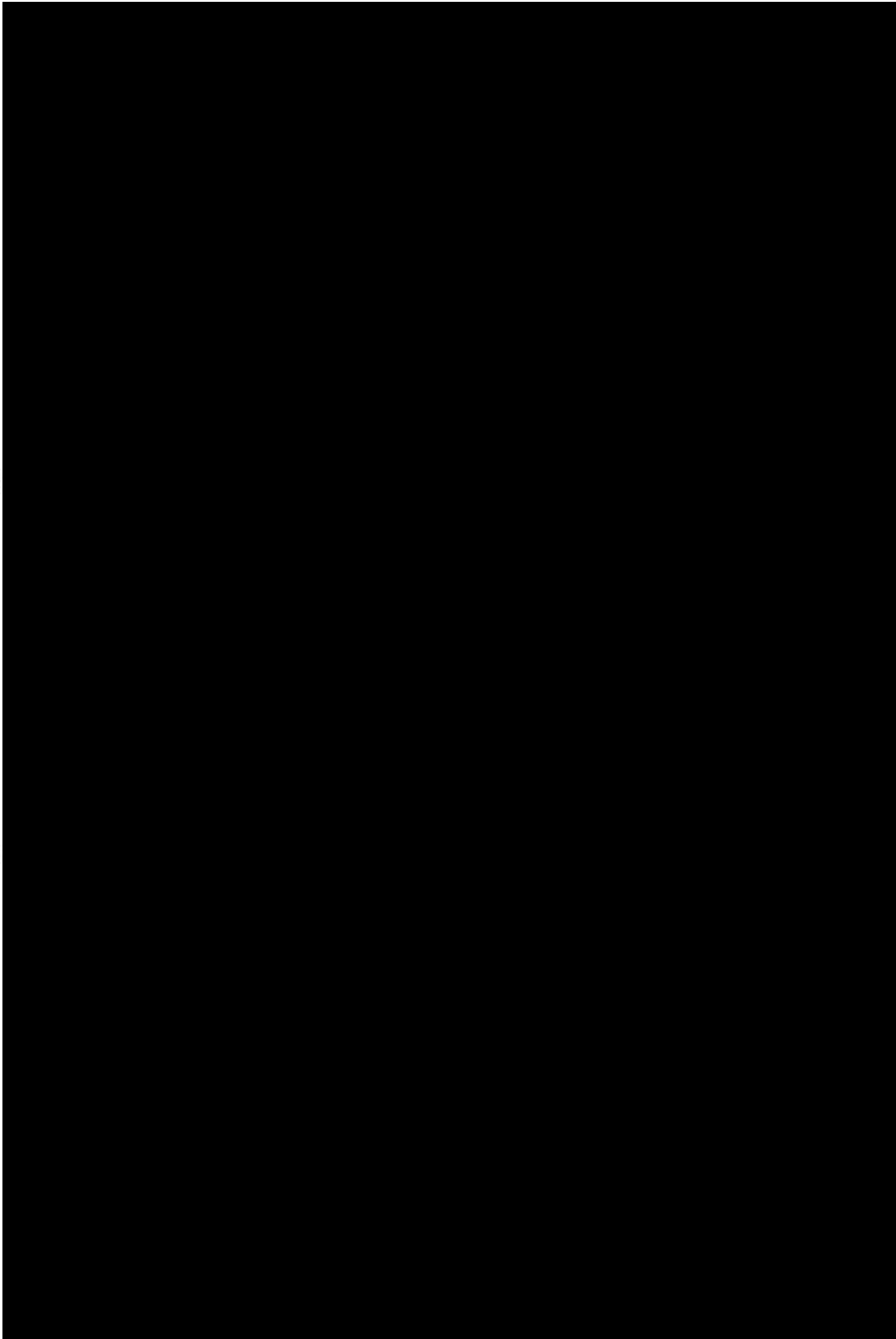


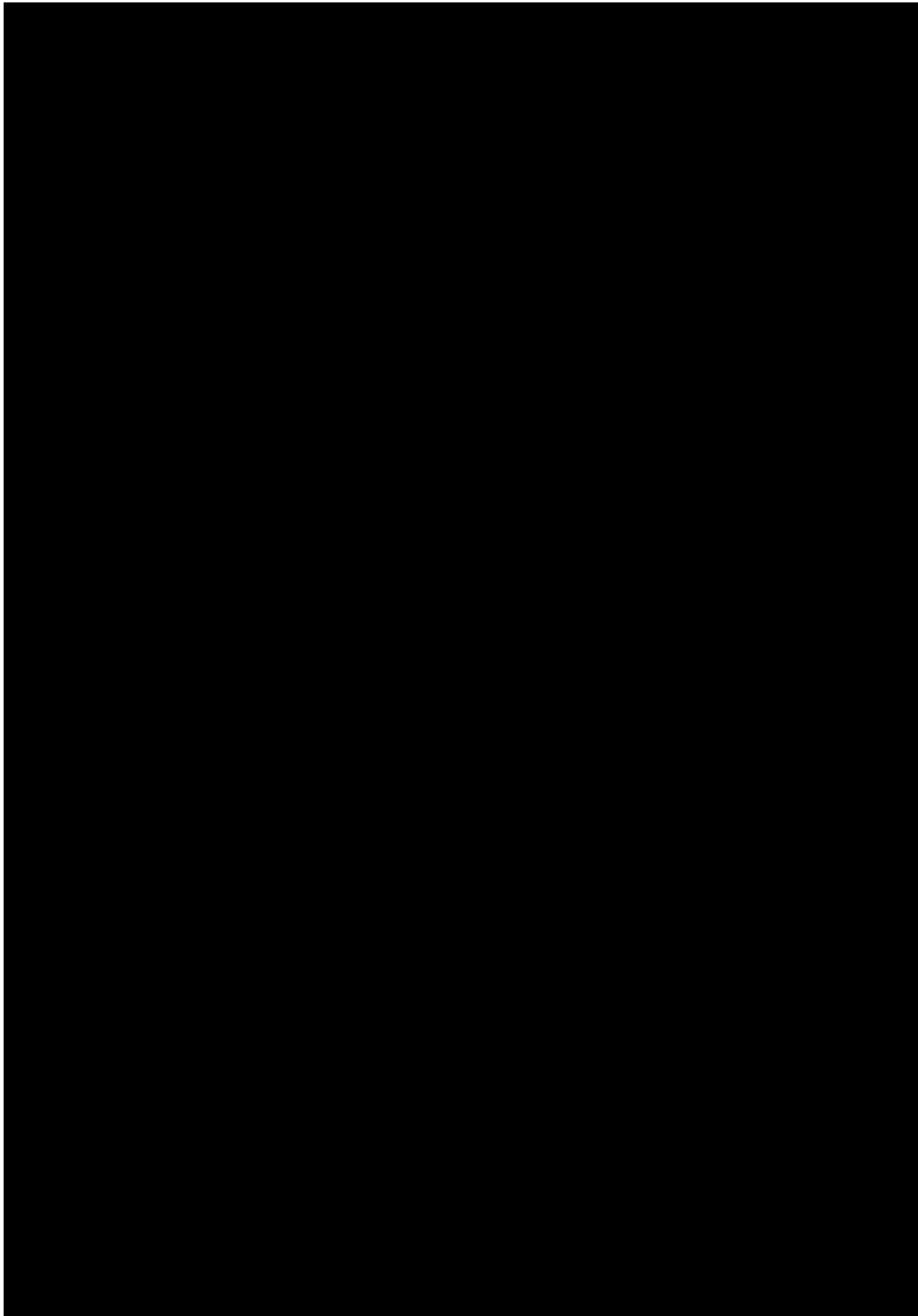


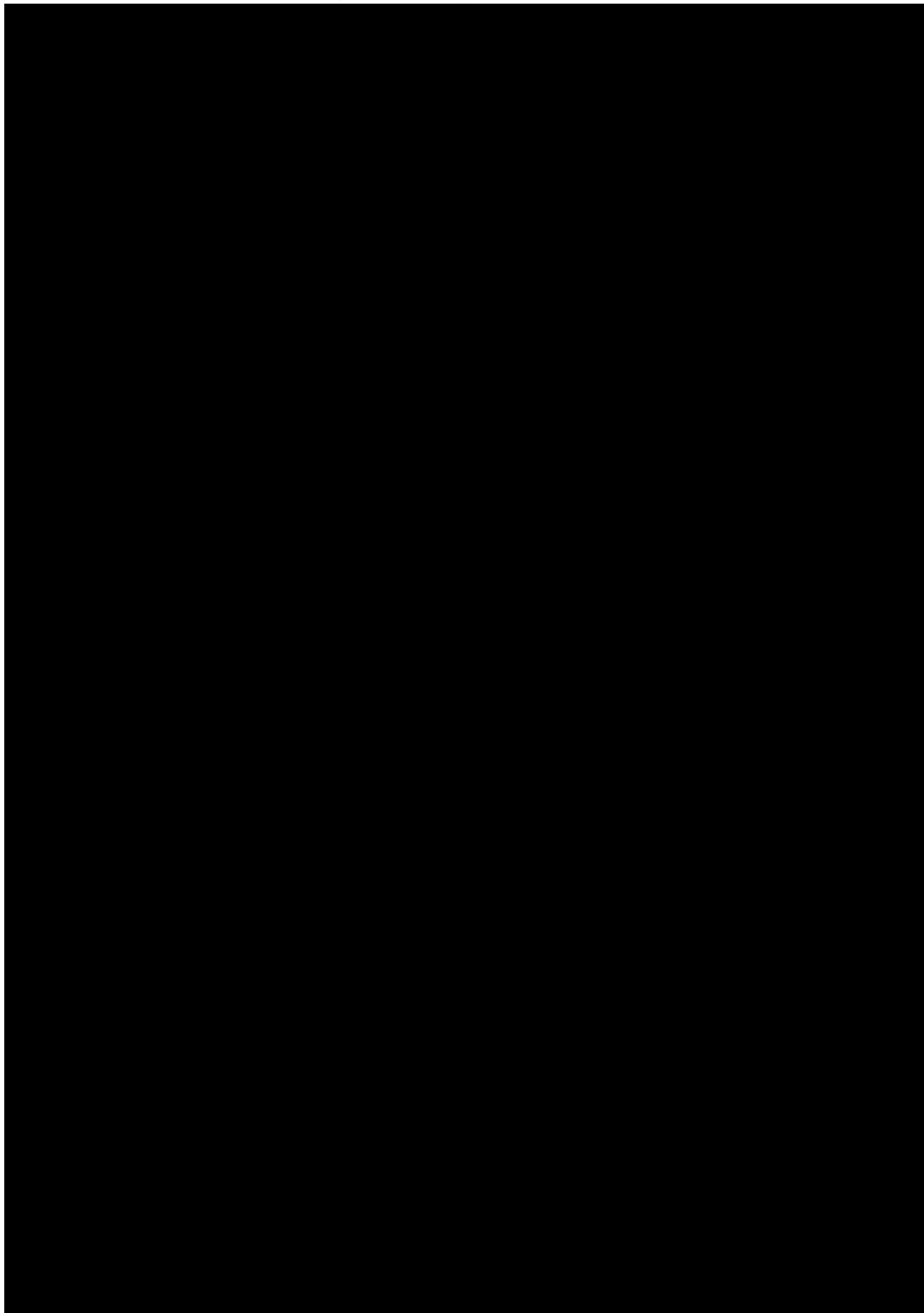


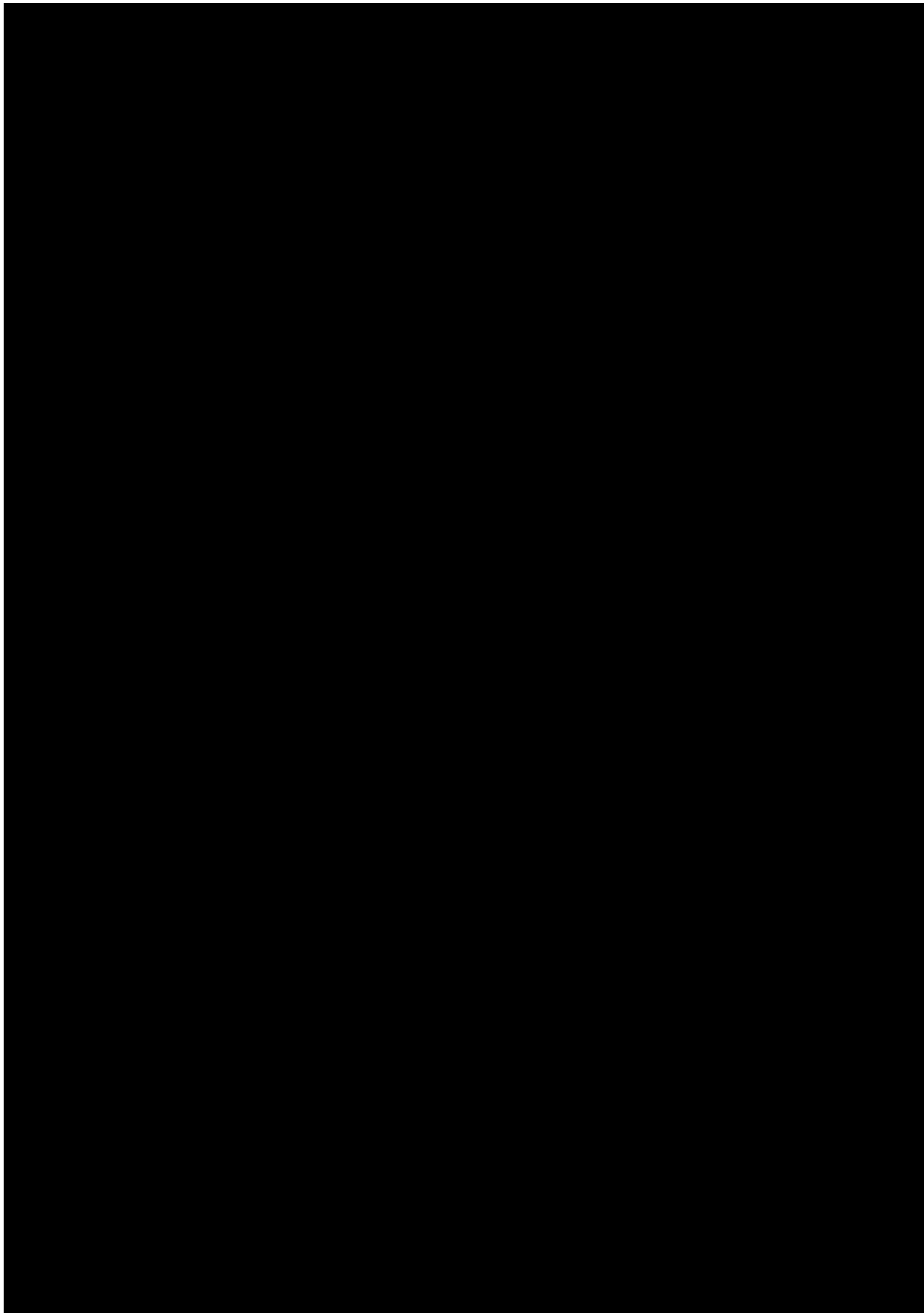


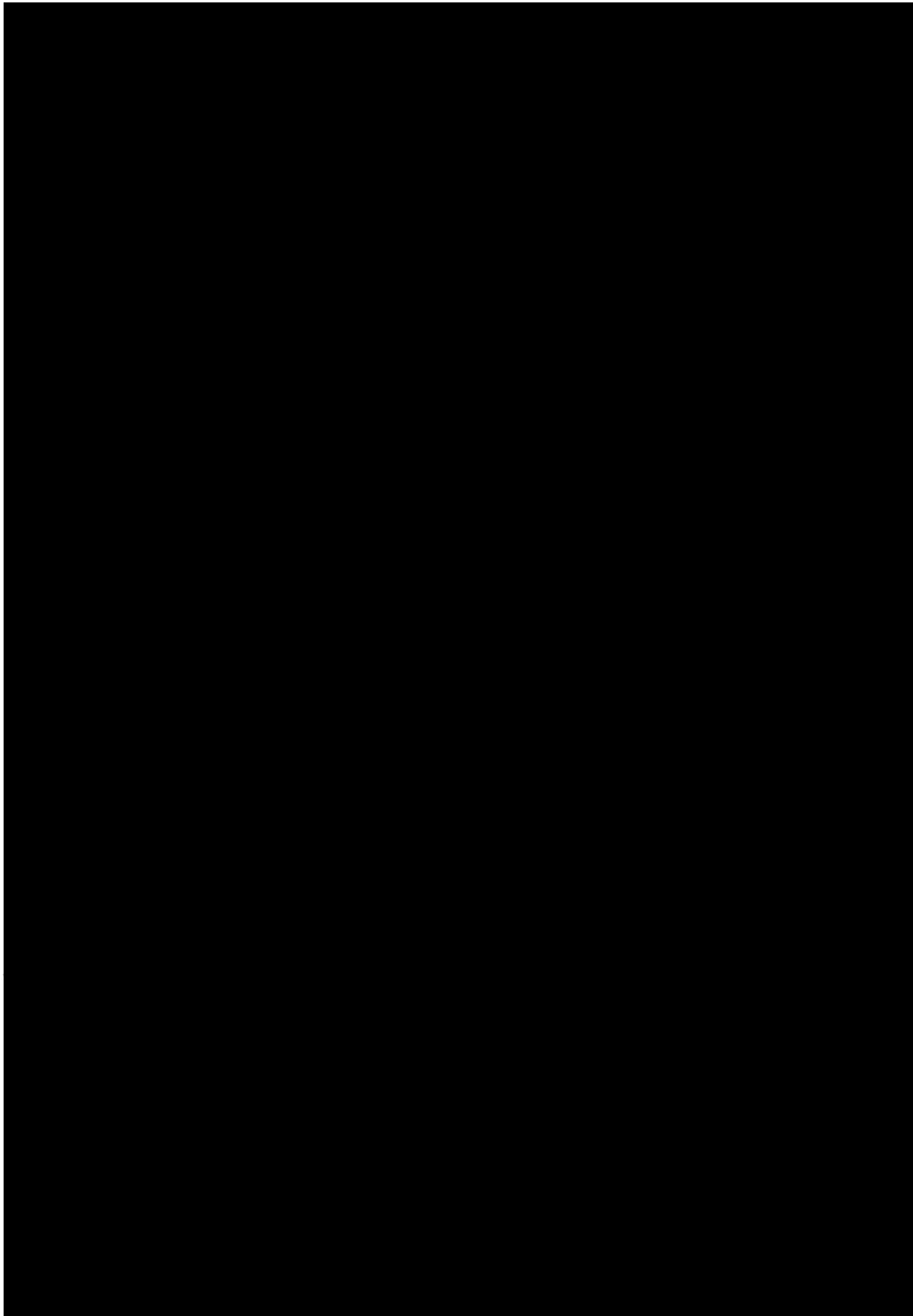


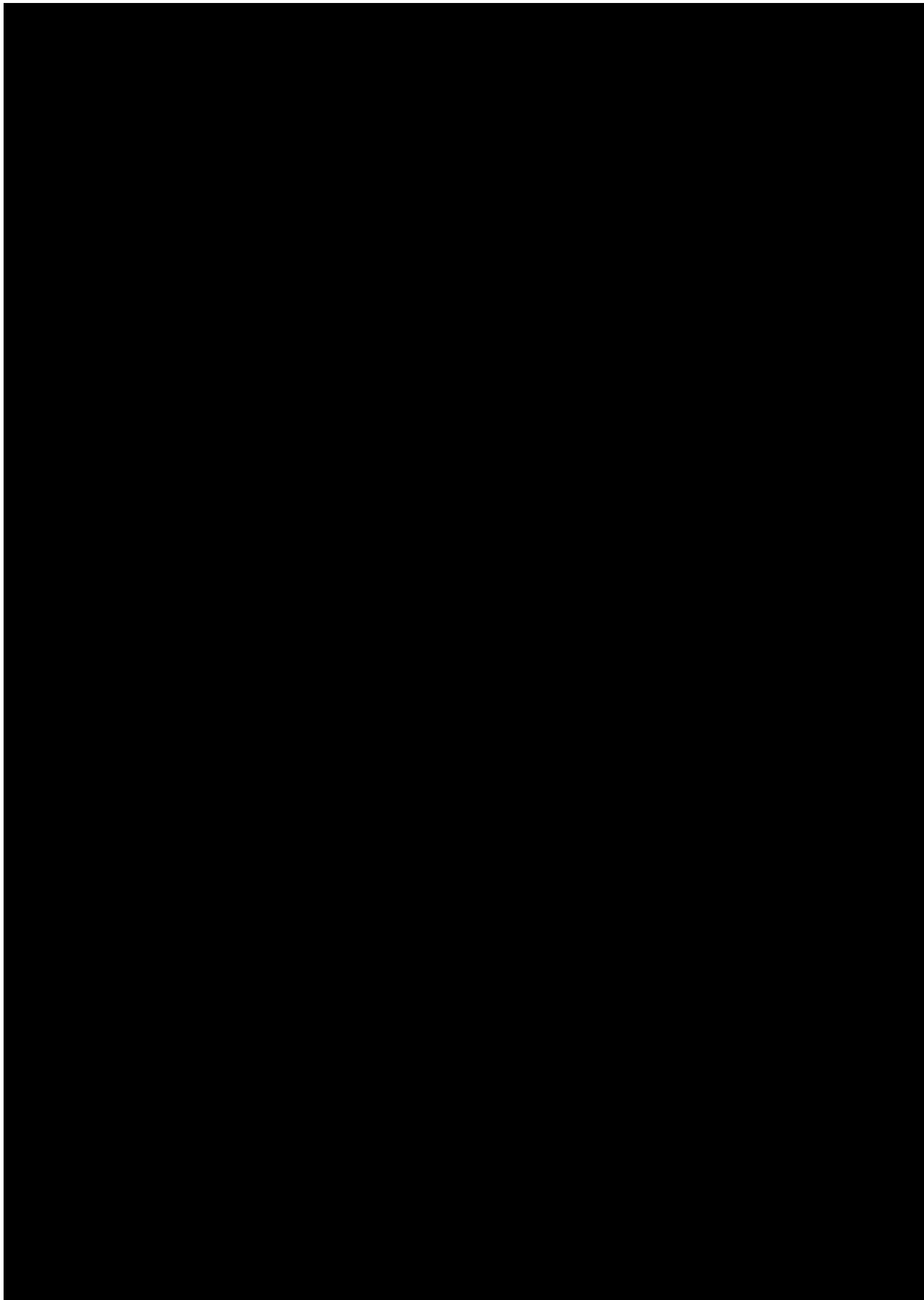




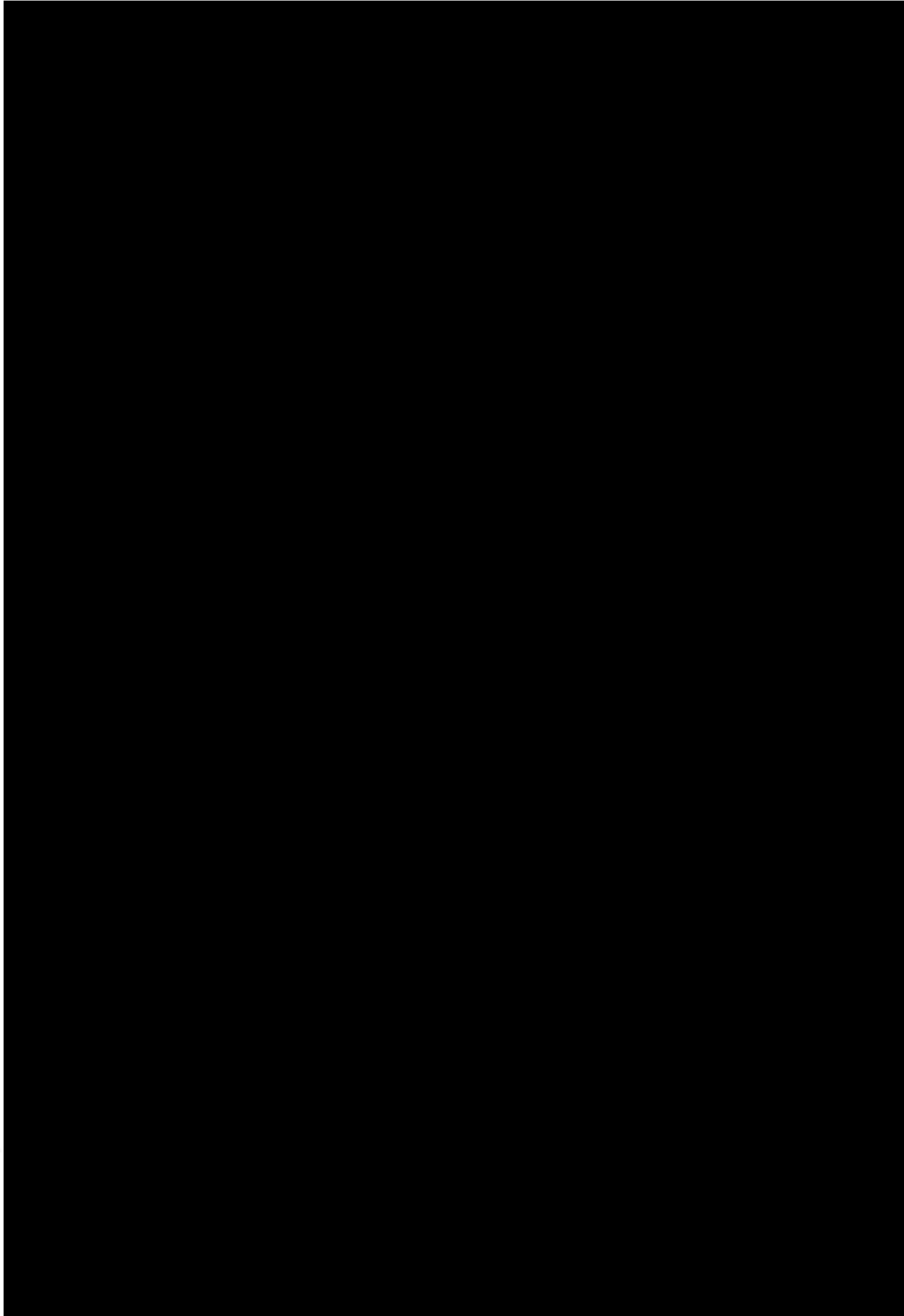


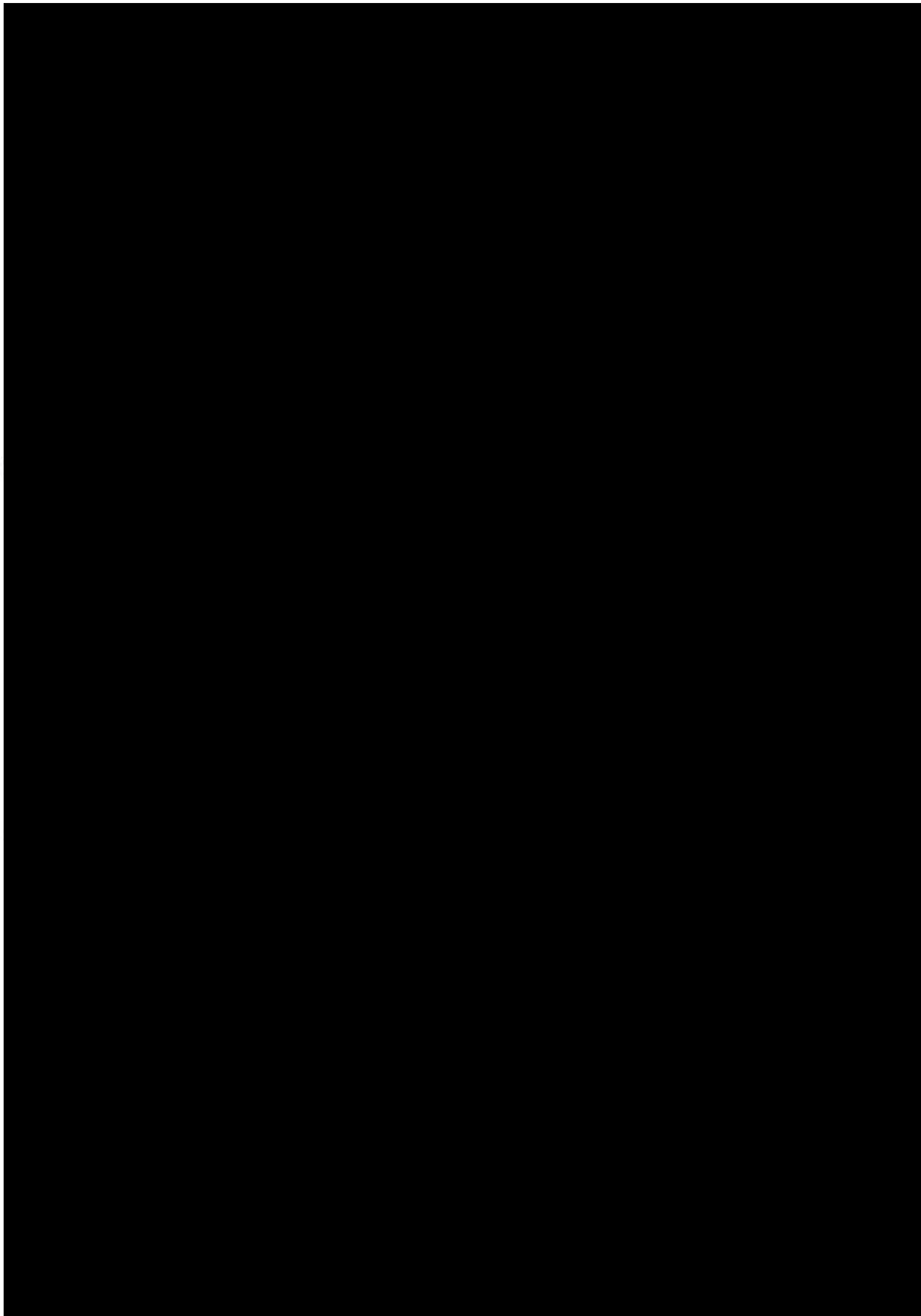


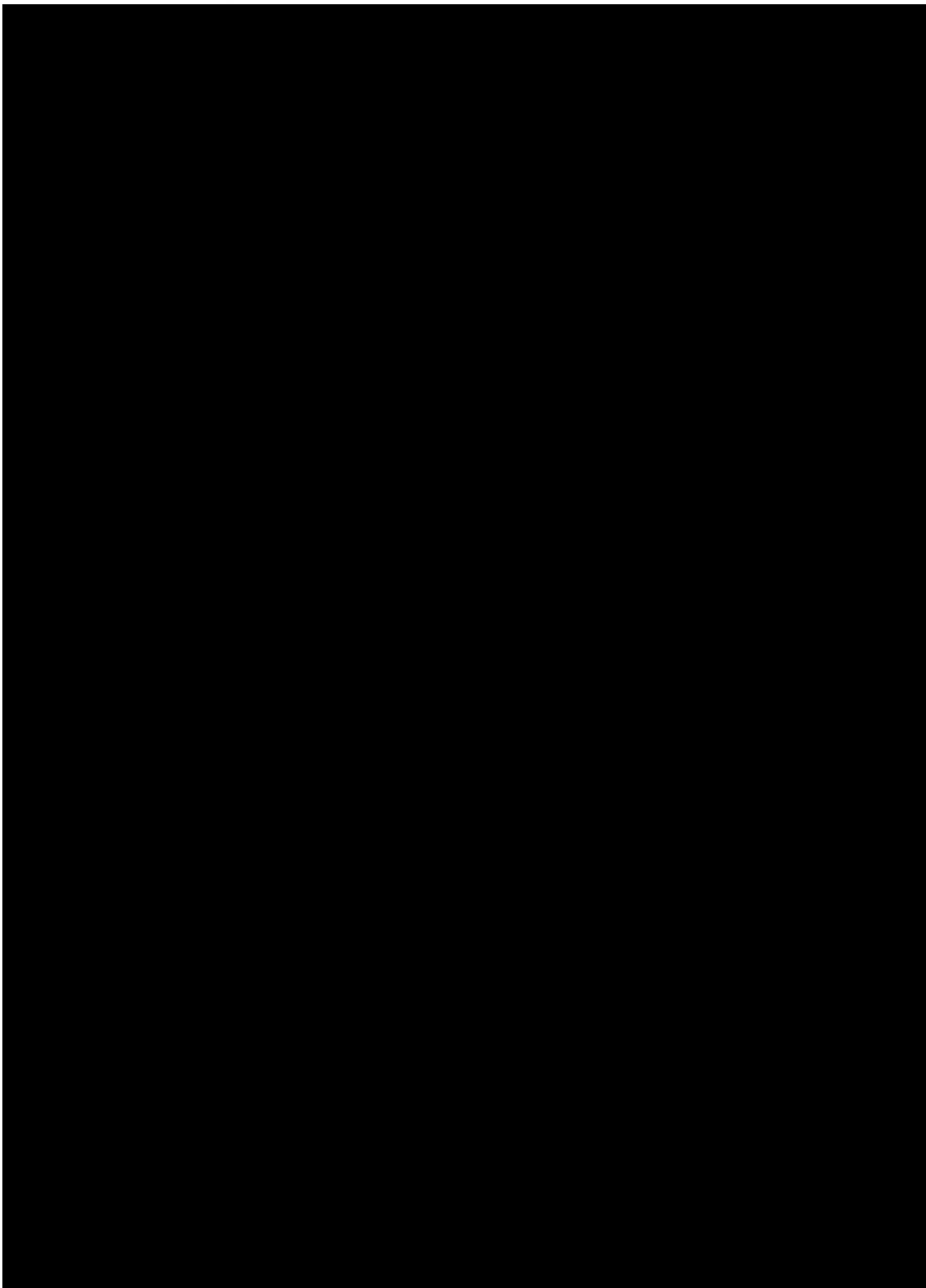


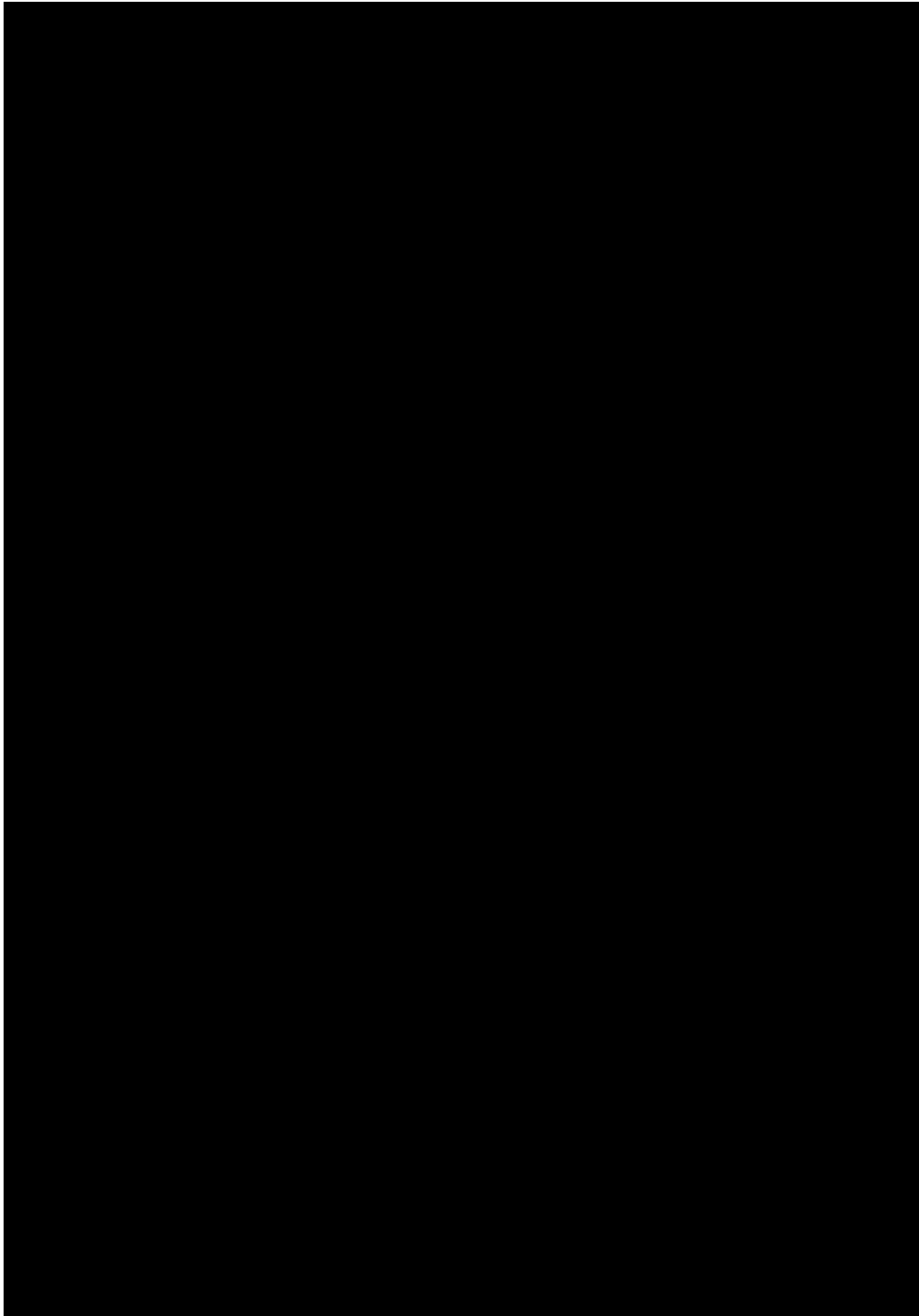


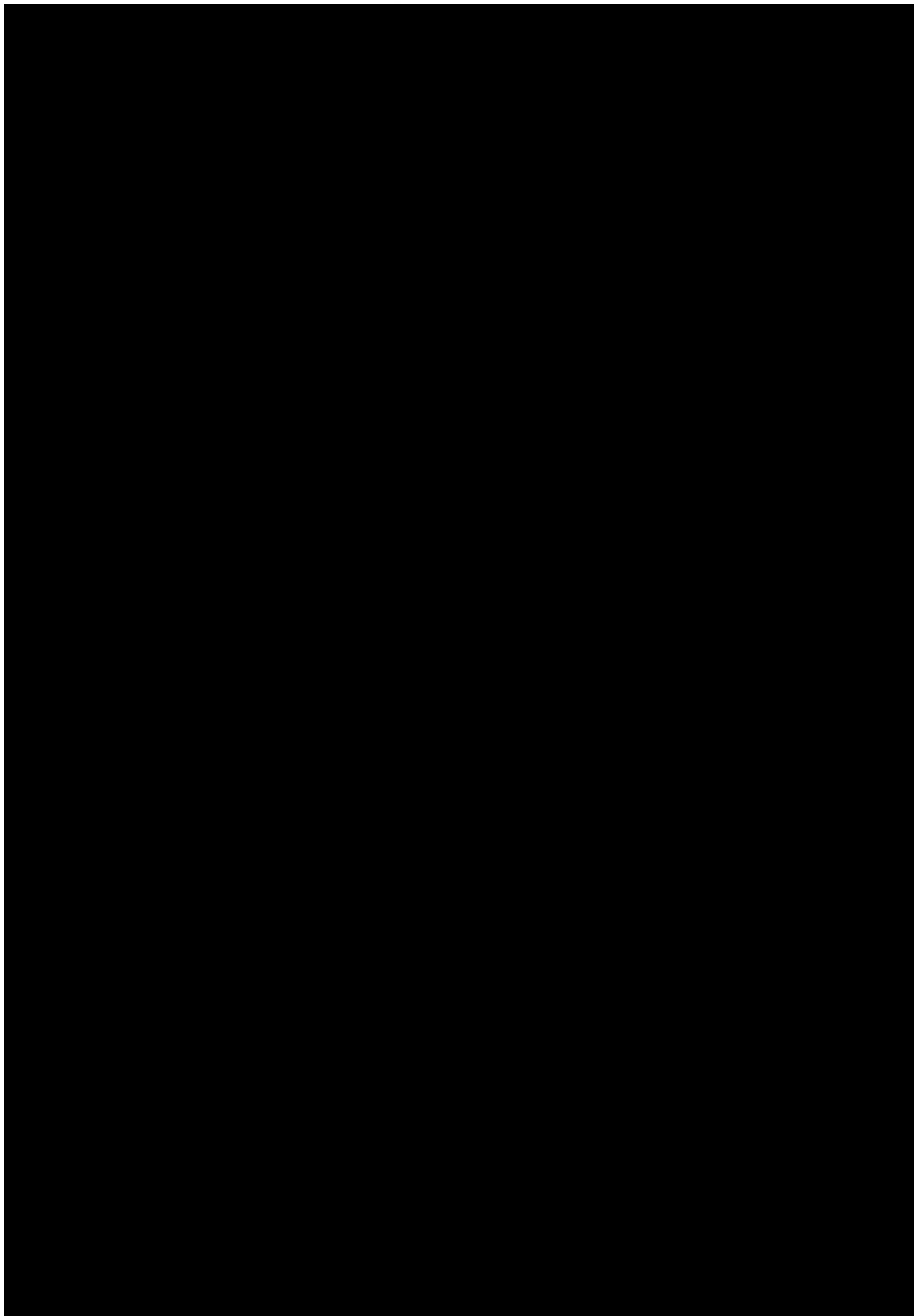
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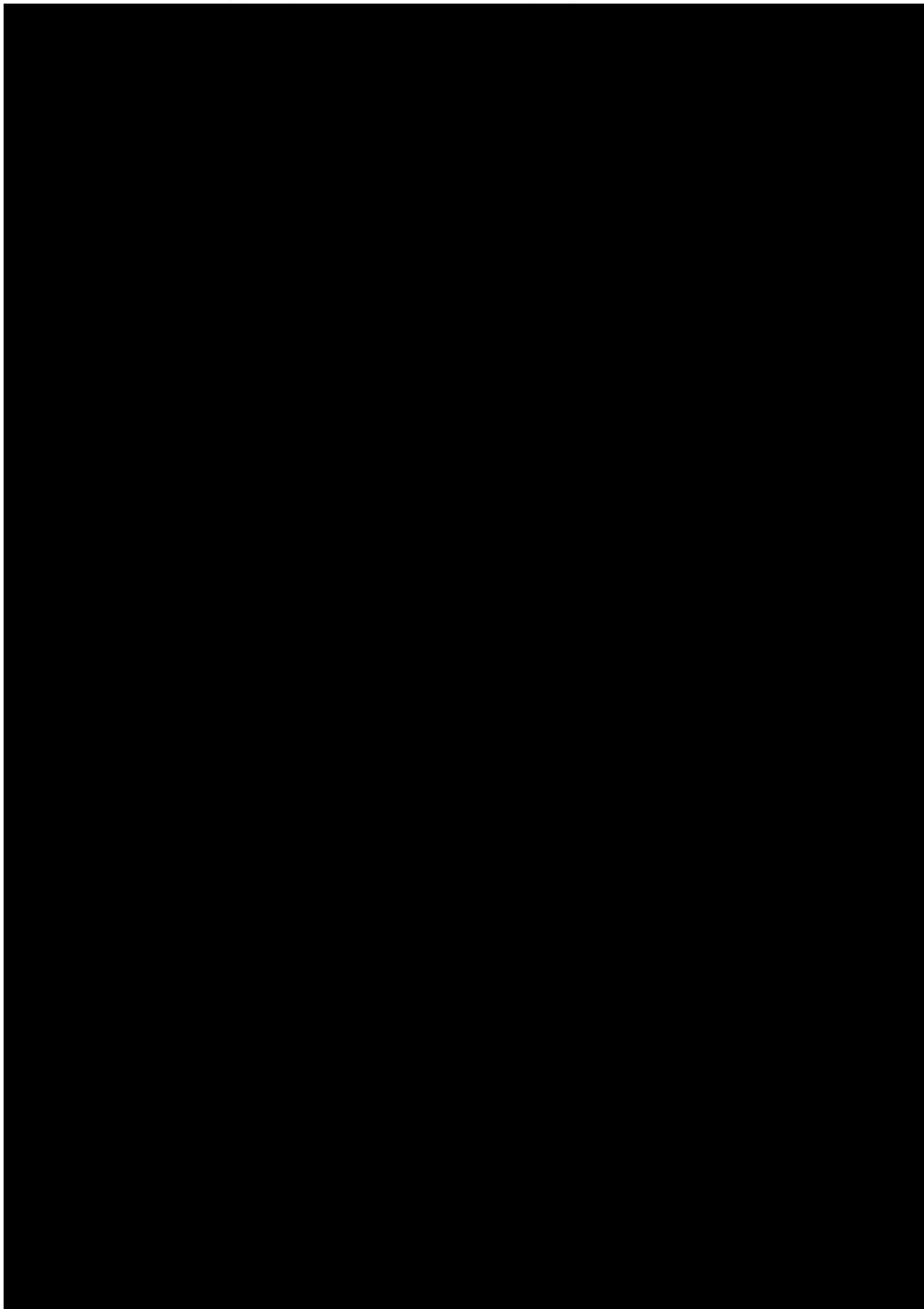


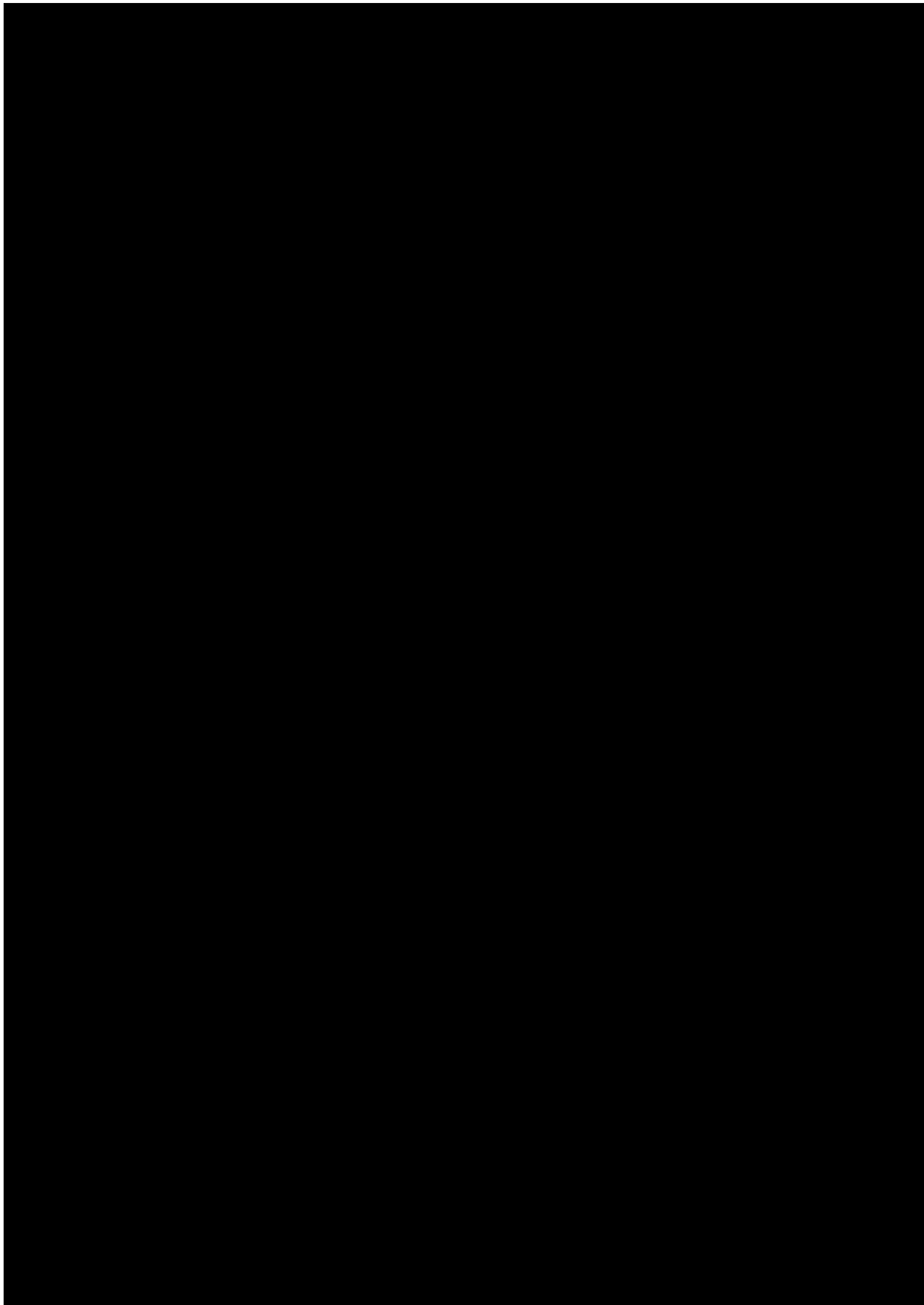


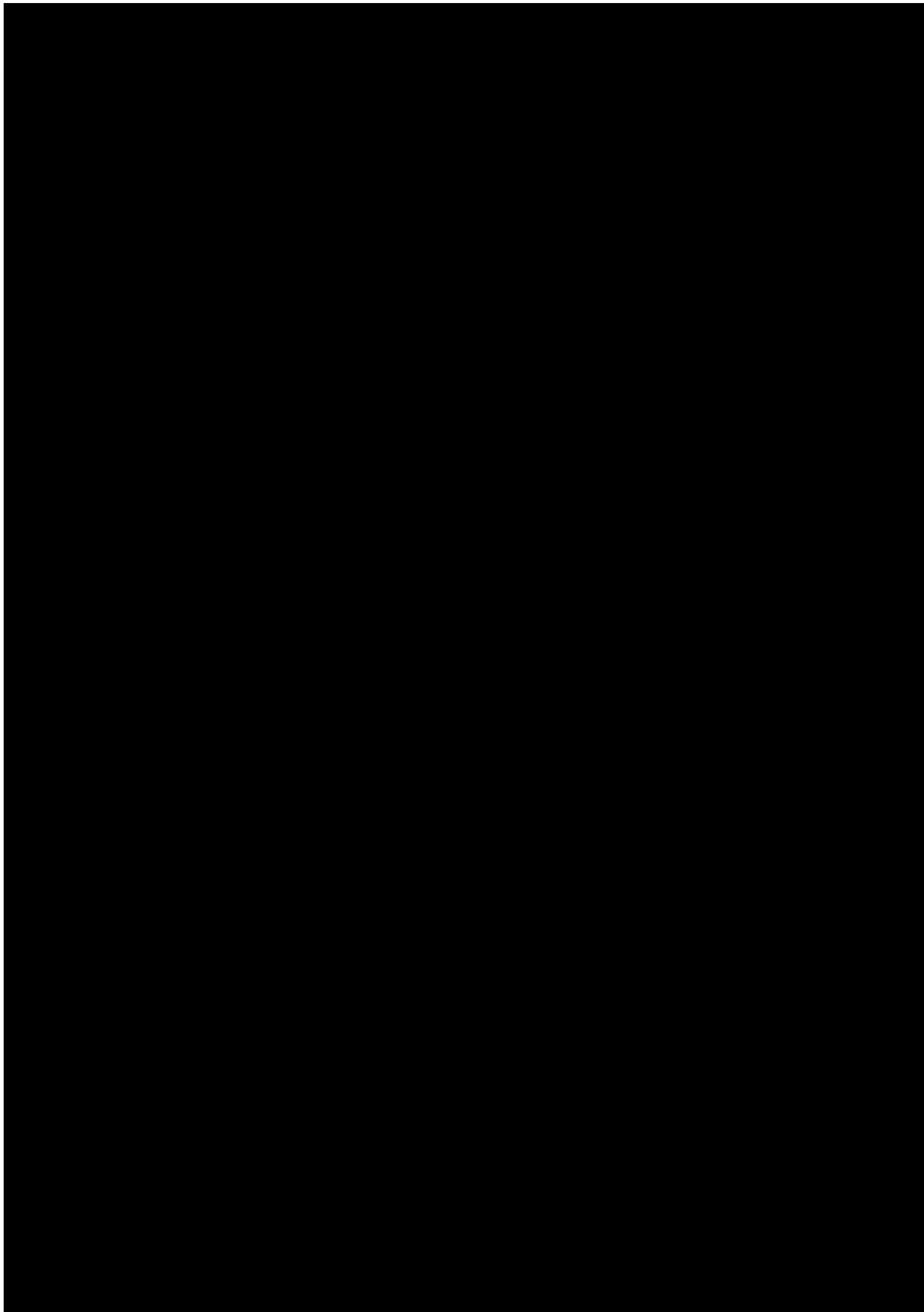












SCHEDULE 9

Independent Certifier Deeds Poll

Part A. SMW WHT Interface Deed Poll

Sydney Metro West - WHT Independent Certifier Deed Poll

Form of WHT Independent Certifier Deed Poll

This deed poll (**Deed Poll**) made the day of 2022

By: **APP Corporation Pty Limited** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney NSW 2060 (**WHT Independent Certifier**)

in favour of: **Sydney Metro** ABN 12 354 063 515 a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (the **Beneficiary**)

Recitals

- A Transport for New South Wales (**Principal**) and the Beneficiary are parties to the deed titled "Sydney Metro West – Western Harbour Tunnel Interface Deed" dated 16 June 2021 (**Interface Deed**).
- B The Principal and the WHT Contractor have engaged the WHT Independent Certifier under a deed entitled "Western Harbour Tunnel and Beaches Link Package 2: WHT Tunnels and Mechanical and Electrical Fitout - Independent Certifier Deed" (**WHT Independent Certifier Deed**) to, amongst other things perform services in relation to those parts of the WHT Works which interface with the Sydney Metro West Project (**WHT Independent Certifier's Services**).
- C The Beneficiary is relying on the WHT Independent Certifier to perform the WHT Independent Certifier's Services in accordance with the WHT Independent Certifier Deed.
- D The Beneficiary will suffer loss if the WHT Independent Certifier does not perform the WHT Independent Certifier's Services in accordance with the WHT Independent Certifier Deed.
- E It is a condition of the Interface Deed and the WHT Independent Certifier Deed that the WHT Independent Certifier executes this Deed Poll.

Unless otherwise defined herein, words defined in the Interface Deed have the same meaning in this Deed Poll.

A reference in this Deed Poll to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed Poll or that other agreement or document.

This Deed Poll witnesses that the WHT Independent Certifier hereby covenants, warrants and agrees with and for the benefit of the Beneficiary as follows:

- 1 It will comply with its obligations under the WHT Independent Certifier Deed, including the obligation to perform the role of the WHT Independent Certifier under the Interface Deed.
- 2 The Beneficiary may rely on the performance of the WHT Independent Certifier's obligations under the WHT Independent Certifier Deed and on any certificate or other document signed or given by the WHT Independent Certifier under or pursuant to the WHT Independent Certifier Deed.
- 3 Each representation and warranty made by the WHT Independent Certifier under the WHT Independent Certifier Deed is represented and warranted by the WHT Independent Certifier in favour of the Beneficiary at the same time as it is given under the WHT Independent Certifier Deed.

- 4 The aggregate of the WHT Independent Certifier's liability to the Beneficiary under this Deed Poll and the WHT Independent Certifier's liability to the Principal under the WHT Independent Certifier Deed:
- (a) will not exceed the liability which the WHT Independent Certifier would have had under the WHT Independent Certifier Deed if the WHT Independent Certifier Deed had named, as the Principal, the Beneficiary and the Principal jointly and severally;
 - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the WHT Independent Certifier Deed.
- 5 Any provision of this Deed Poll which seeks to limit or exclude a liability of the WHT Independent Certifier is to be construed as doing so only to the extent permitted by law.
- 6 The Principal may at any time give notice to the WHT Independent Certifier that another entity is to become an additional Beneficiary under this Deed Poll. The Principal may give multiple notices under this clause. The WHT Independent Certifier agrees that on and from the date of the Principal's notice, the entity identified by the Principal will be a Beneficiary under this Deed Poll.
- 7 If for any reason a Beneficiary is unable to enforce against the WHT Independent Certifier its promises under this Deed Poll, the WHT Independent Certifier agrees that the Principal may do so on behalf of any and all Beneficiaries.
- 8 The Beneficiary may assign or charge the benefits and rights accrued under this Deed Poll.
- 9 This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 10 The WHT Independent Certifier 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 Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 11 This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiary.

Executed as a Deed Poll.

EXECUTED by **APP CORPORATION PTY LIMITED (ABN 29 003 764 770)** in accordance with s127 of the Corporations Act 2001:

Signature of director

Signature of director/secretary

Name

Name

Part B. SMCSW WHT Interface Deed Poll

Sydney Metro Deed Poll

Sydney Metro City & Southwest - Independent Certifier Deed Poll

This deed poll (**Deed Poll**) made the day of 2022

By: **APP Corporation Pty Limited** (ABN 29 003 764 770) of Level 7, 116 Miller Street, North Sydney NSW 2060 (**Independent Certifier**),

in favour of: **Sydney Metro** (ABN 12 354 063 515) a NSW Government agency constituted under the *Transport Administration Act 1988* (NSW) (the **Beneficiary**).

Recitals

- A Transport for NSW (ABN 18 804 239 602) and the Contractor have engaged the Independent Certifier under the Western Harbour Tunnel Independent Certifier Deed (**Independent Certifier Deed**) to, amongst other things, perform Services in relation to those parts of the Works which interface with the Sydney Metro City & Southwest project (**Sydney Metro Interface Works**).
- B On 25 September 2020 Transport for NSW and the Beneficiary entered into an interface deed in respect of, amongst other things, the Sydney Metro Interface Works (**Sydney Metro Interface Agreement**).
- C It is a condition of the Independent Certifier Deed that the Independent Certifier executes this Deed Poll.

This Deed Poll witnesses that the Independent Certifier hereby covenants, warrants and agrees with and for the benefit of the Beneficiary as follows:

- 1 It has received a copy of the Sydney Metro Interface Agreement and it has read, and is familiar with, the terms of the Sydney Metro Interface Agreement.
- 2 It acknowledges and agrees that:
 - (a) the Beneficiary is relying on the Independent Certifier to perform the Services referable to the Sydney Metro Interface Agreement in accordance with the Independent Certifier Deed; and
 - (b) the Beneficiary will suffer loss if the Independent Certifier does not perform the Services referable to the Sydney Metro Interface Agreement in accordance with the Independent Certifier Deed.
3. It will comply with its obligations under the Independent Certifier Deed which relate to the Sydney Metro Interface Agreement and acknowledges that its obligations extend to and include the obligations, functions, duties and services of the Independent Certifier in the Sydney Metro Interface Agreement.
- 4 The Beneficiary may rely on the performance of the Independent Certifier's obligations under the Independent Certifier Deed and on any certificate or other document signed or given by the Independent Certifier under or pursuant to the Independent Certifier Deed which relates to the Sydney Metro Interface Agreement.
5. It will provide to the Beneficiary any certificate or other document signed or given by the Independent Certifier under or pursuant to the Independent Certifier Deed which relates to the Sydney Metro Interface Agreement within the timeframes required by the Sydney Metro Interface Agreement.
- 6 Each representation and warranty made by the Independent Certifier under the Independent Certifier Deed which may apply in respect of the Sydney Metro Interface Works is represented and warranted by the Independent Certifier in favour of the Beneficiary at the same time as it is given under the Independent Certifier Deed.

- 7 The aggregate of the Independent Certifier's liability to the Beneficiary under this Deed Poll and the Independent Certifier's liability to Transport for NSW under the Independent Certifier Deed:
 - (a) will not exceed the liability which the Independent Certifier would have had under the Independent Certifier Deed if the Independent Certifier Deed had named, as Transport for NSW, the Beneficiary and Transport for NSW jointly and severally; and
 - (b) is otherwise subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Independent Certifier Deed.
- 8 Any provision of this Deed Poll which seeks to limit or exclude a liability of the Independent Certifier is to be construed as doing so only to the extent permitted by law.
- 9 The Beneficiary may assign or charge the benefits and rights accrued under this Deed Poll.
- 10 This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 11 The Independent Certifier 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 Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 12 This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Beneficiary.
- 13 Where terms used in this Deed Poll are defined in the Independent Certifier Deed, those terms have the meaning given to them in the Independent Certifier Deed unless otherwise specified.
- 14 A reference in this Deed Poll to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time, except to the extent prohibited by this Deed Poll or that other agreement or document.

EXECUTED as a deed poll

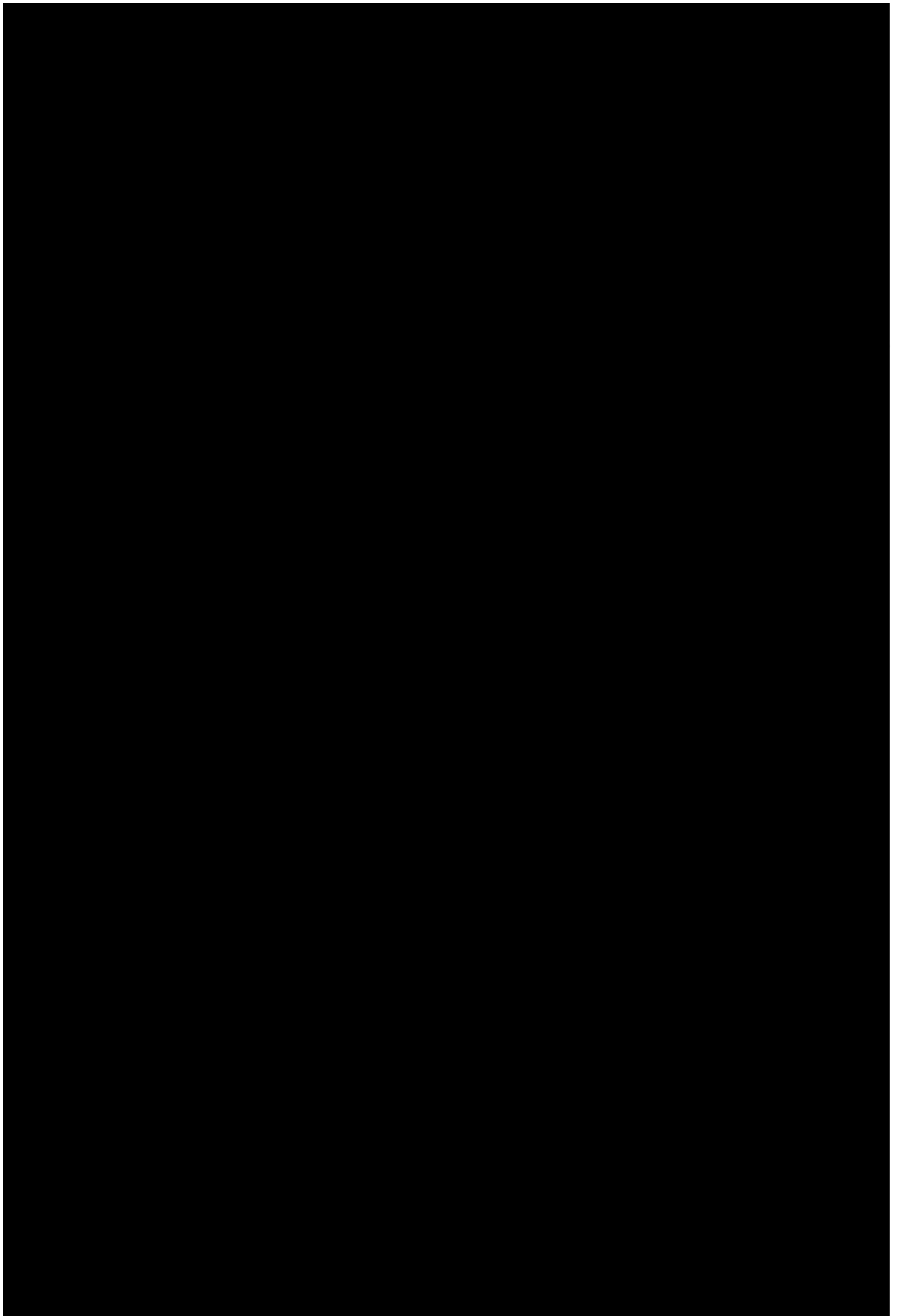
EXECUTED by **APP CORPORATION PTY LIMITED (ABN 29 003 764 770)** in accordance with s127 of the Corporations Act 2001:

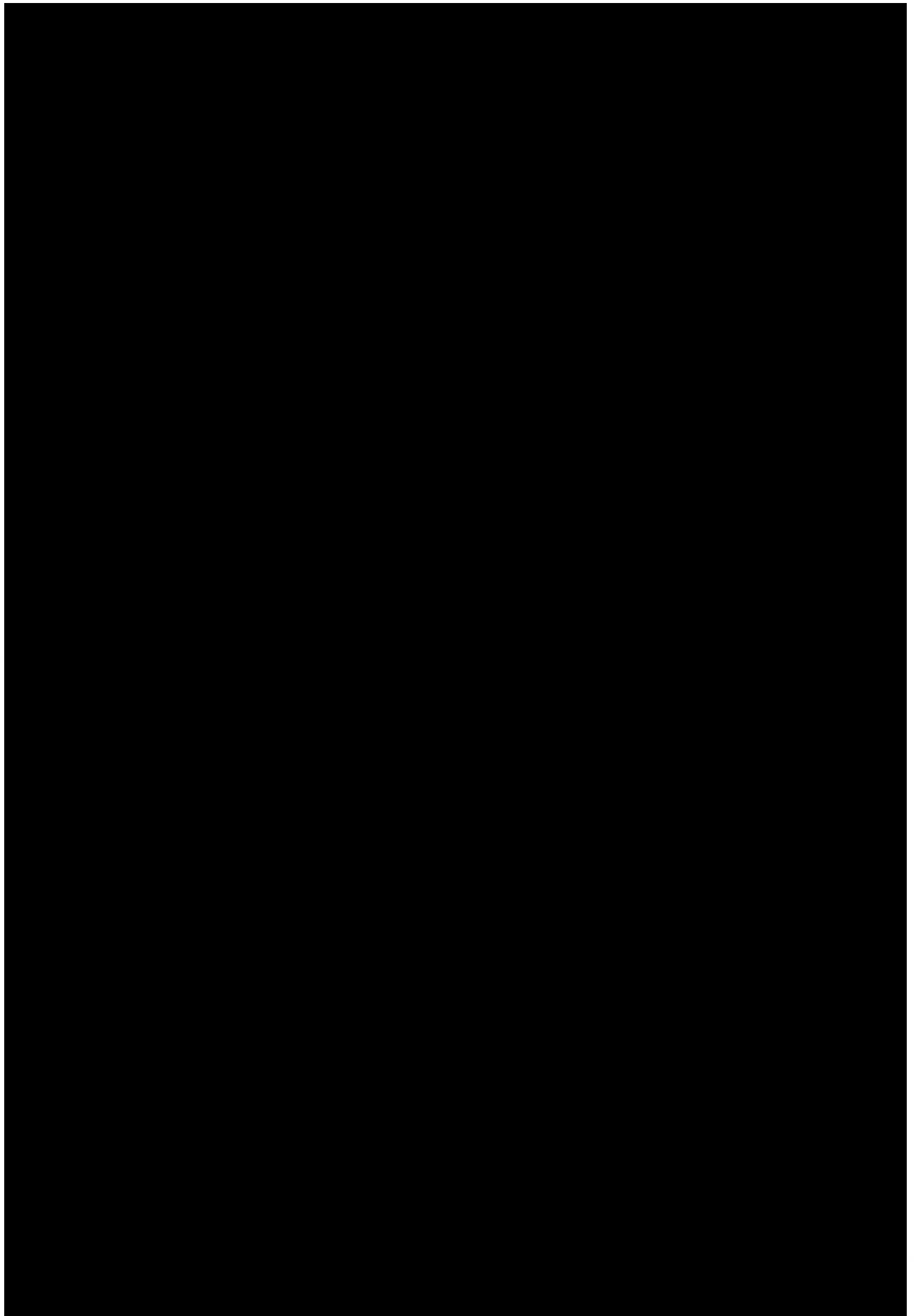
Signature of director

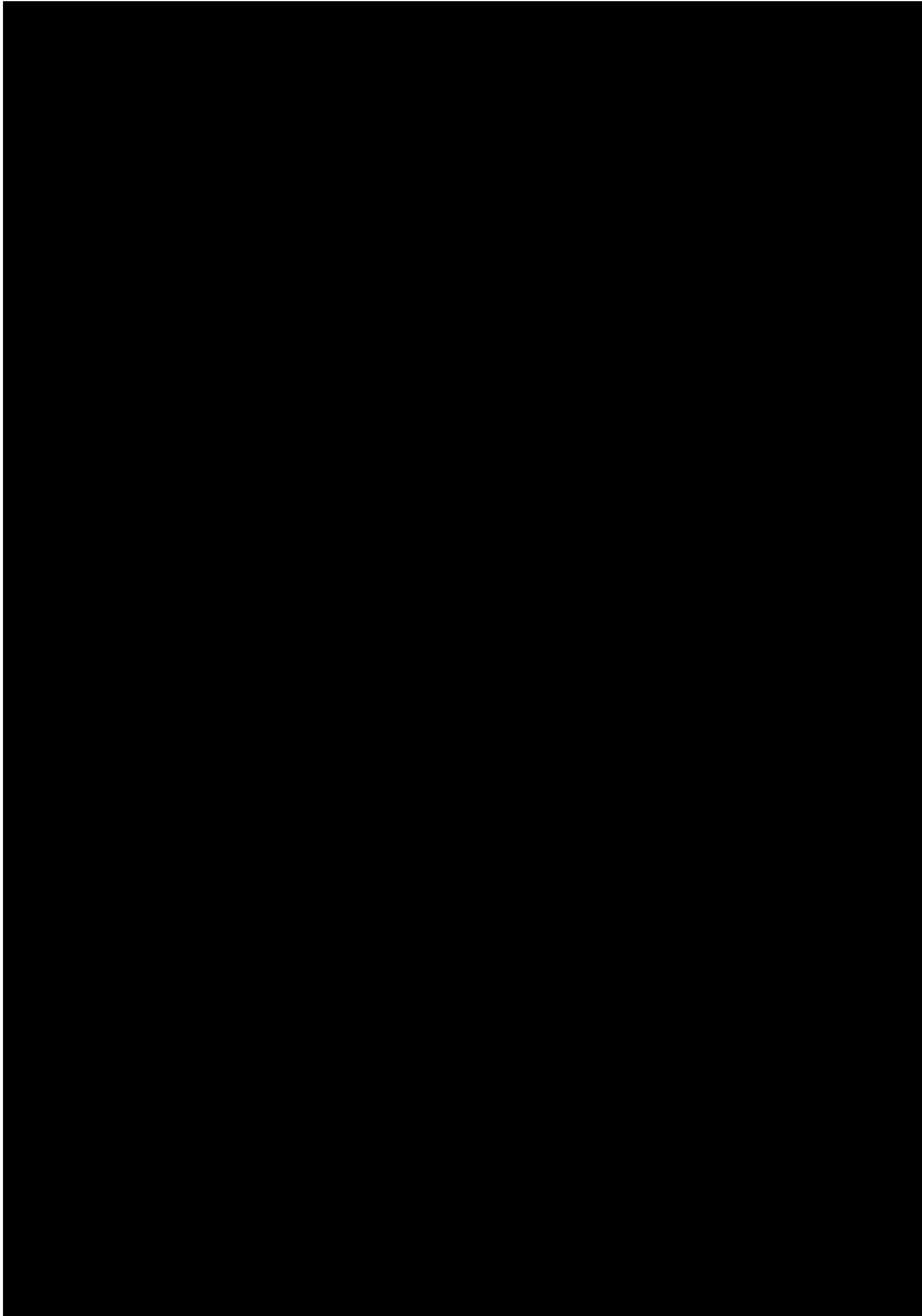
Signature of director/secretary

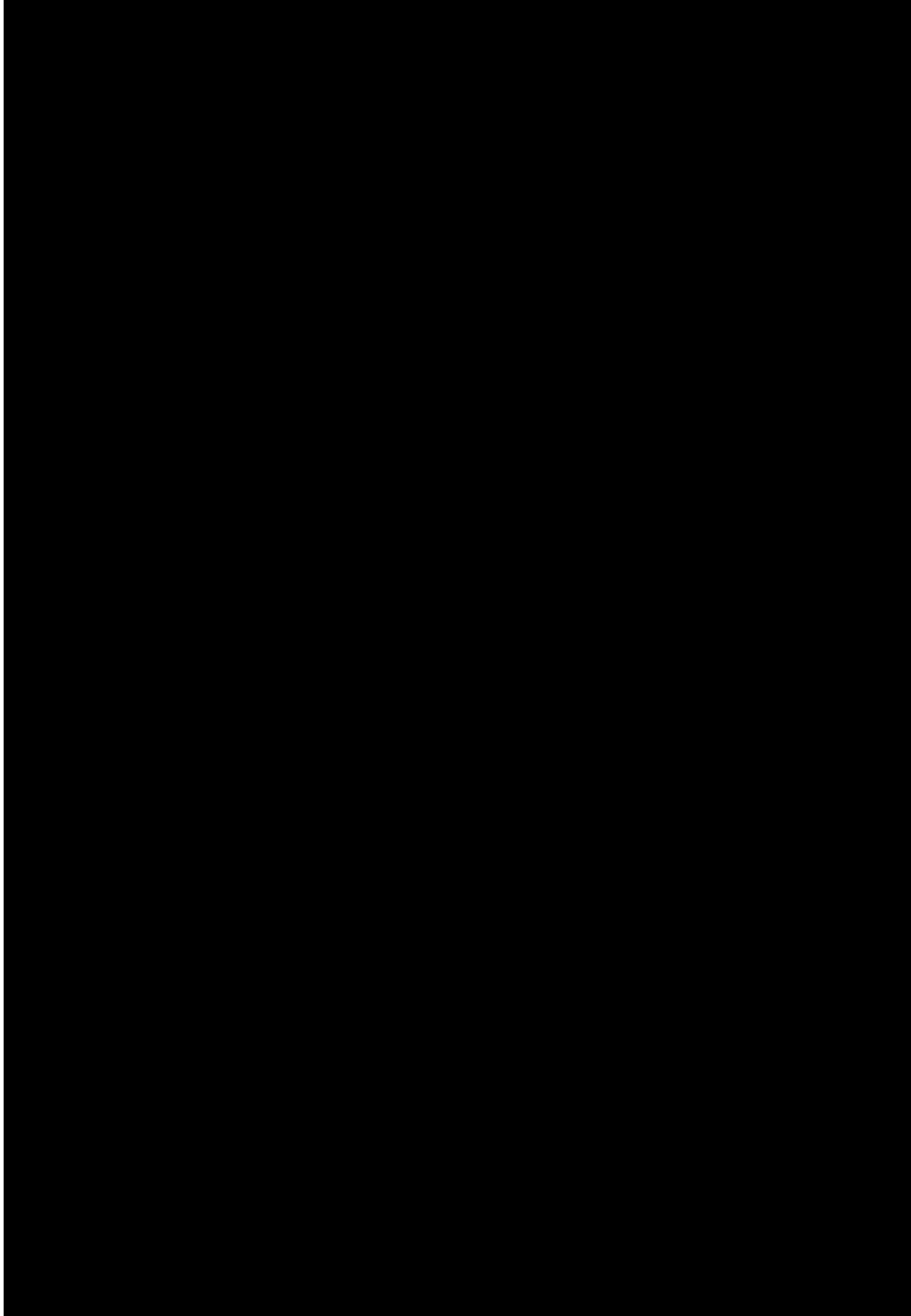
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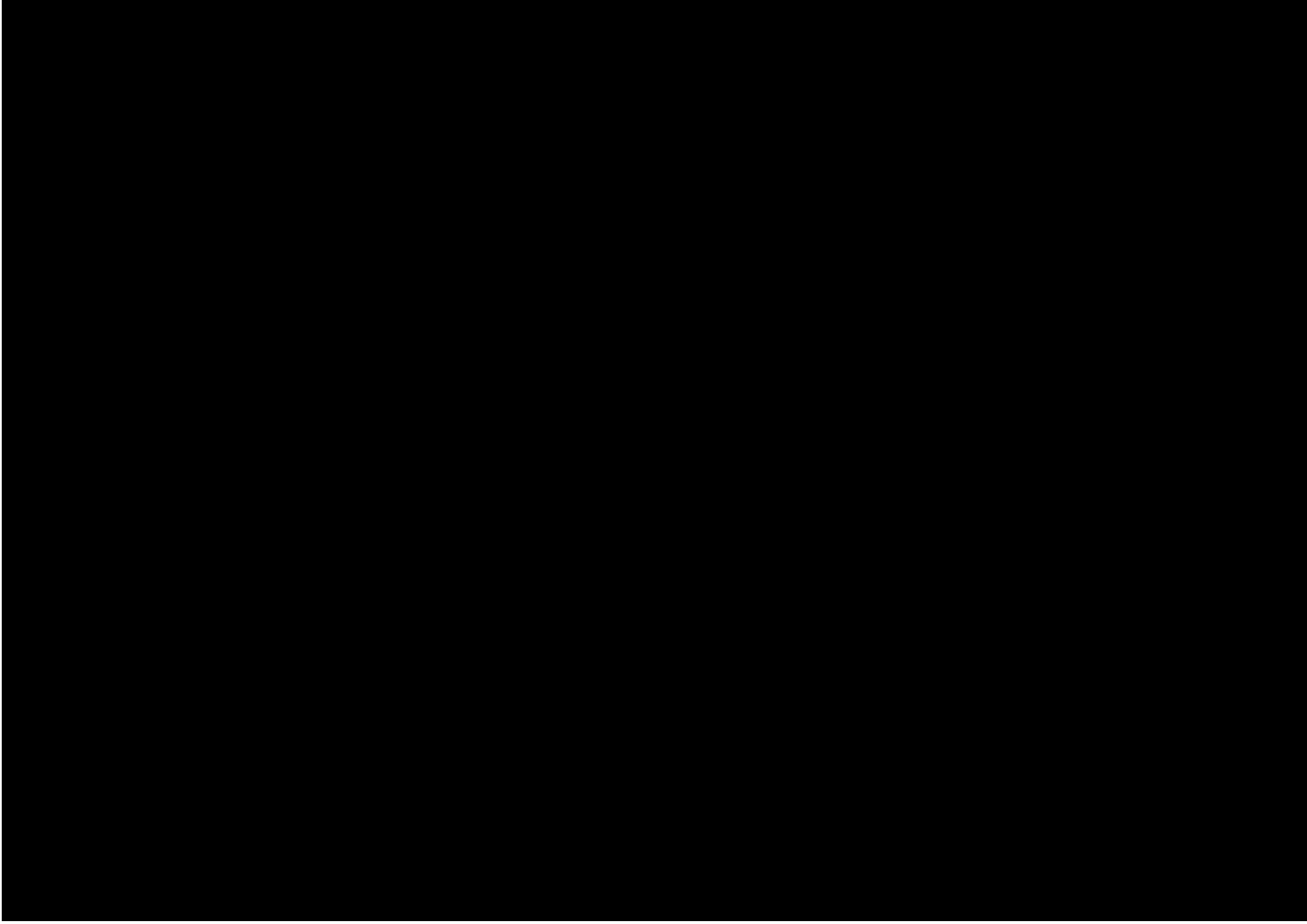
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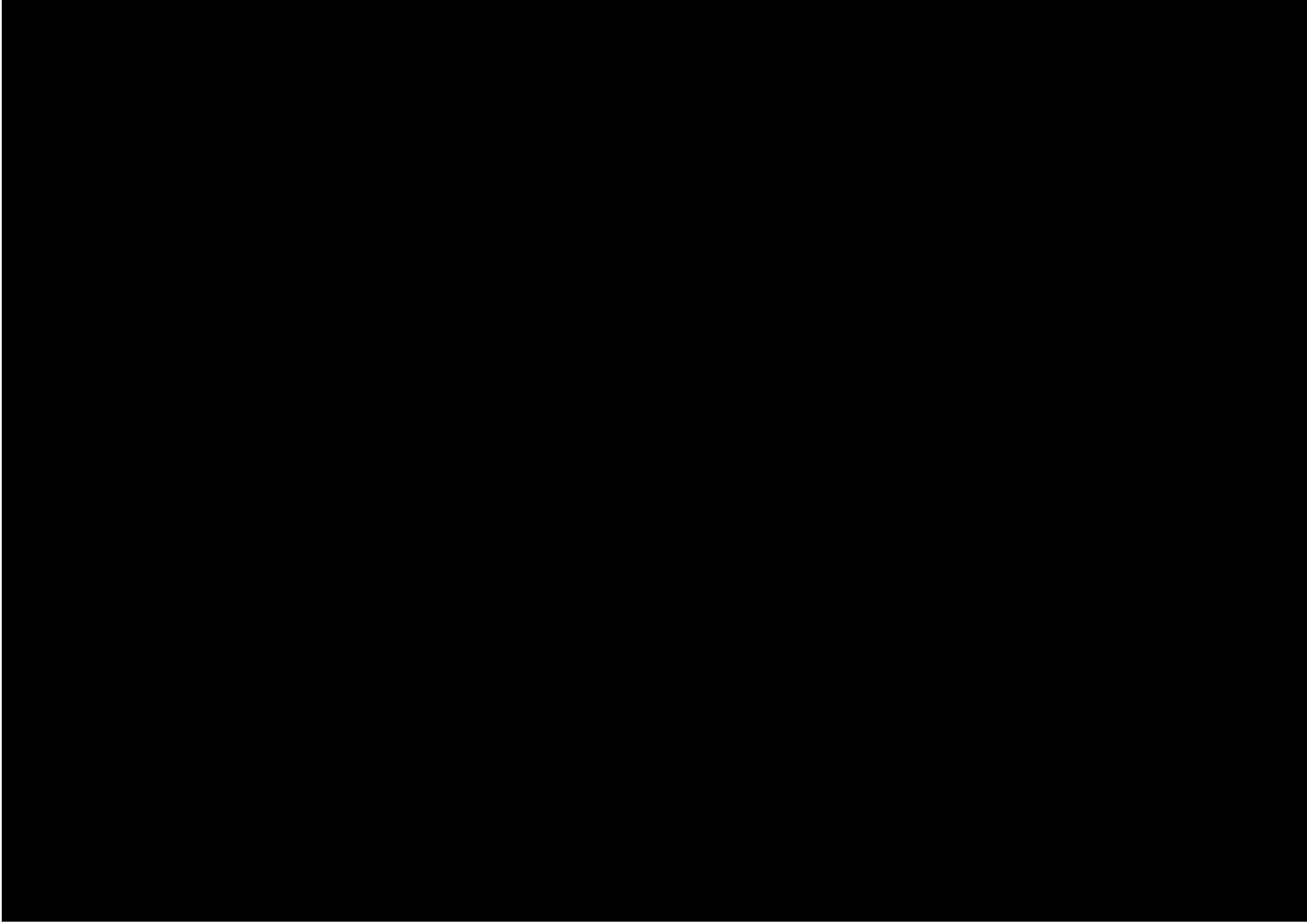




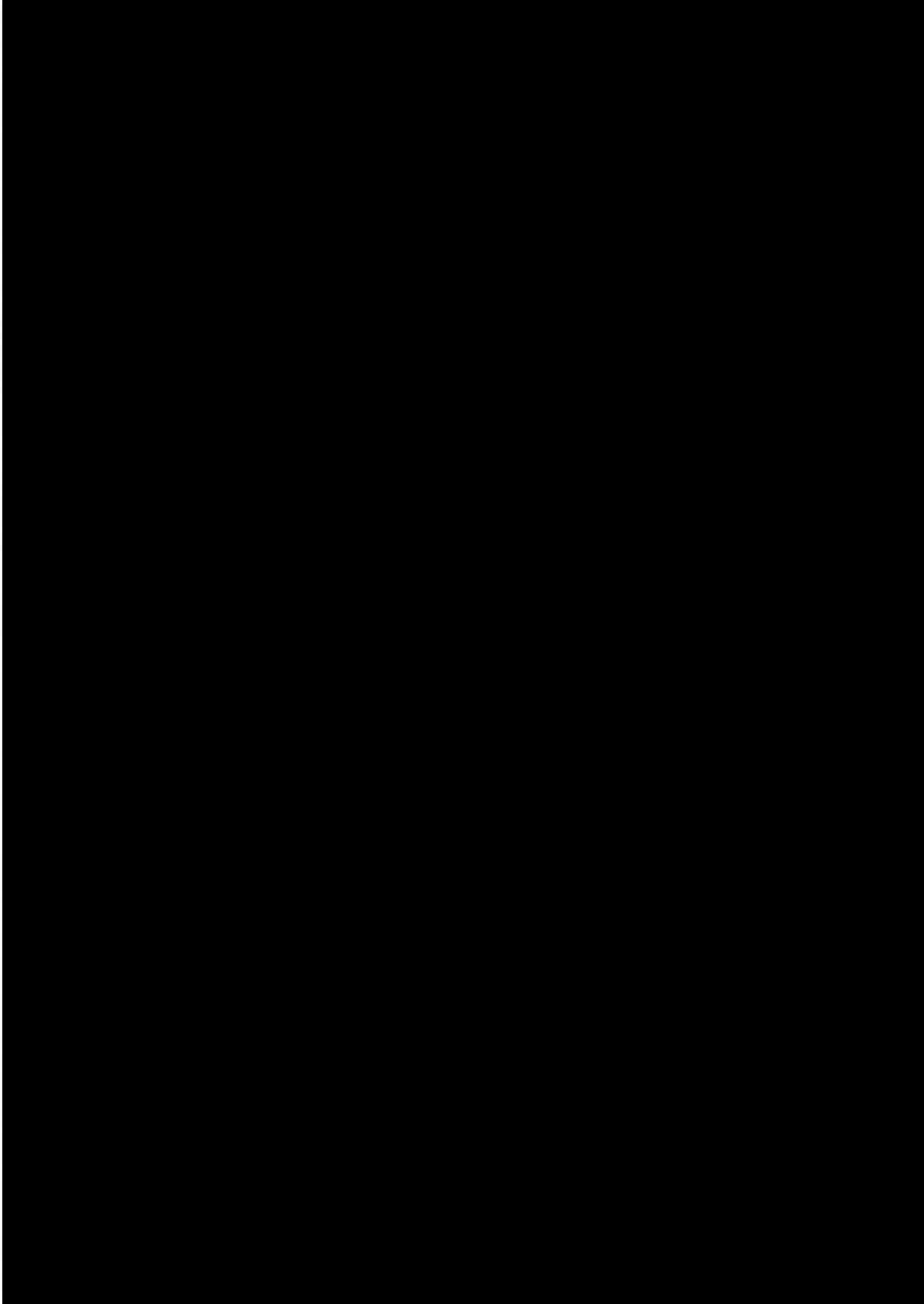


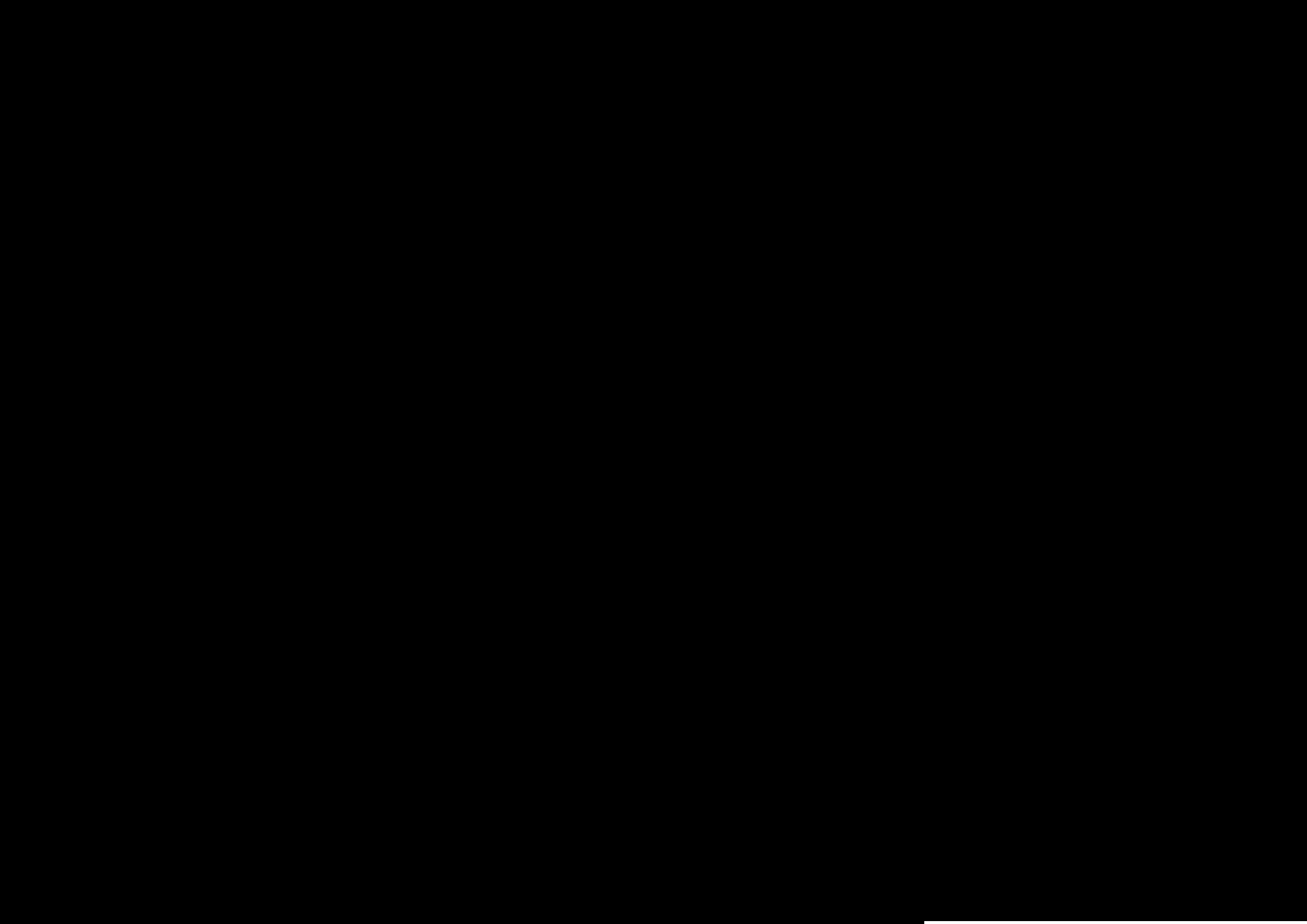


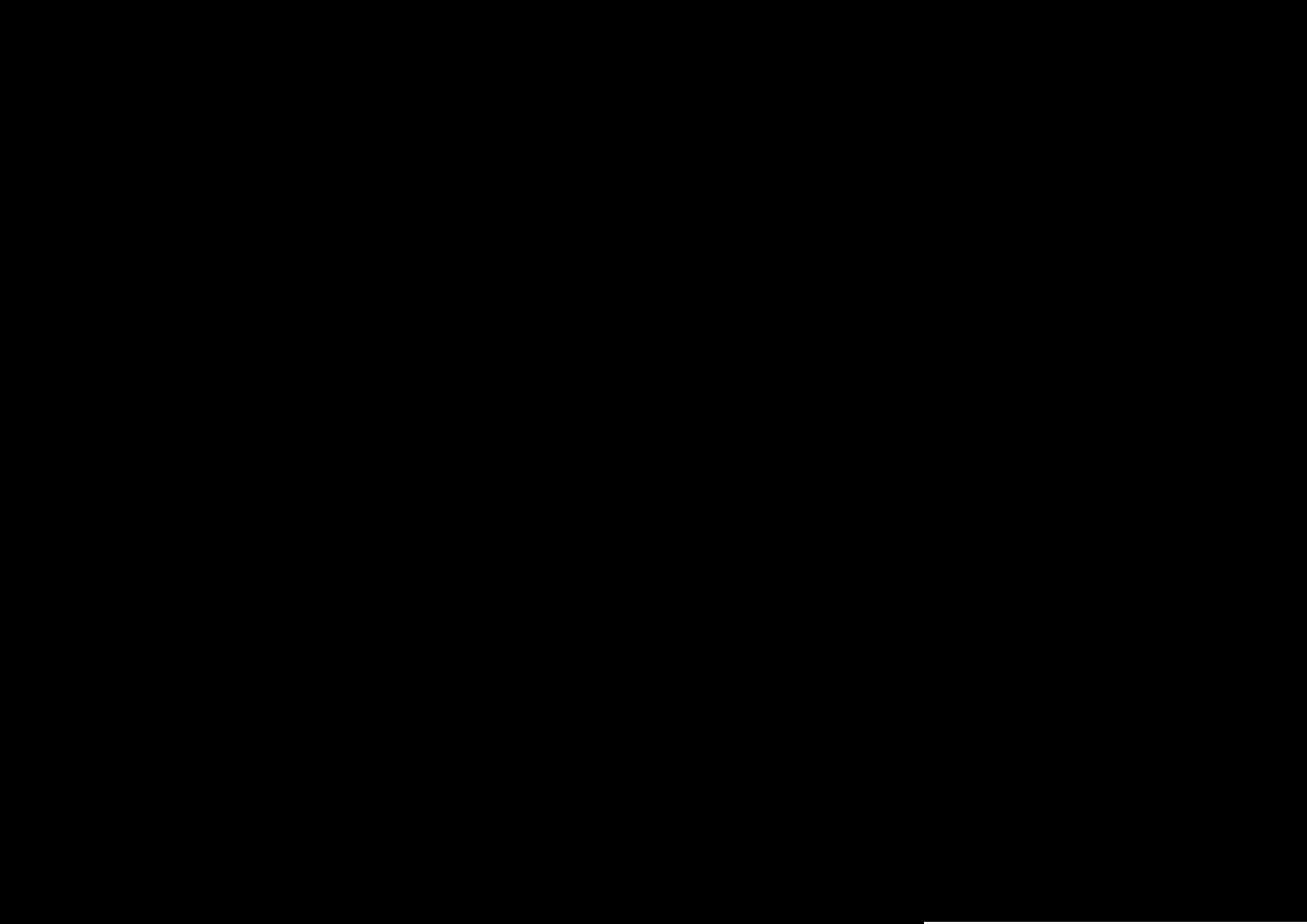


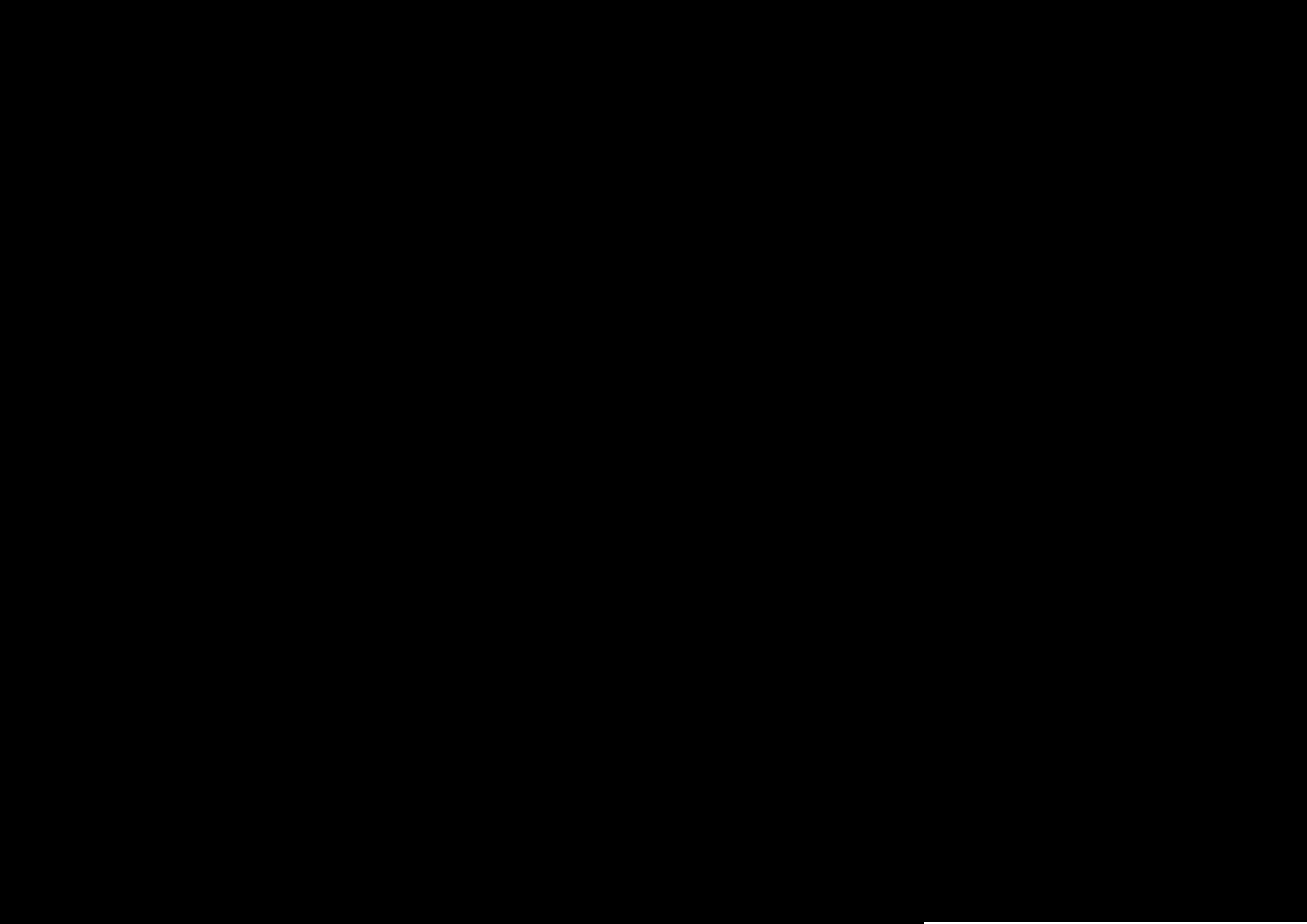


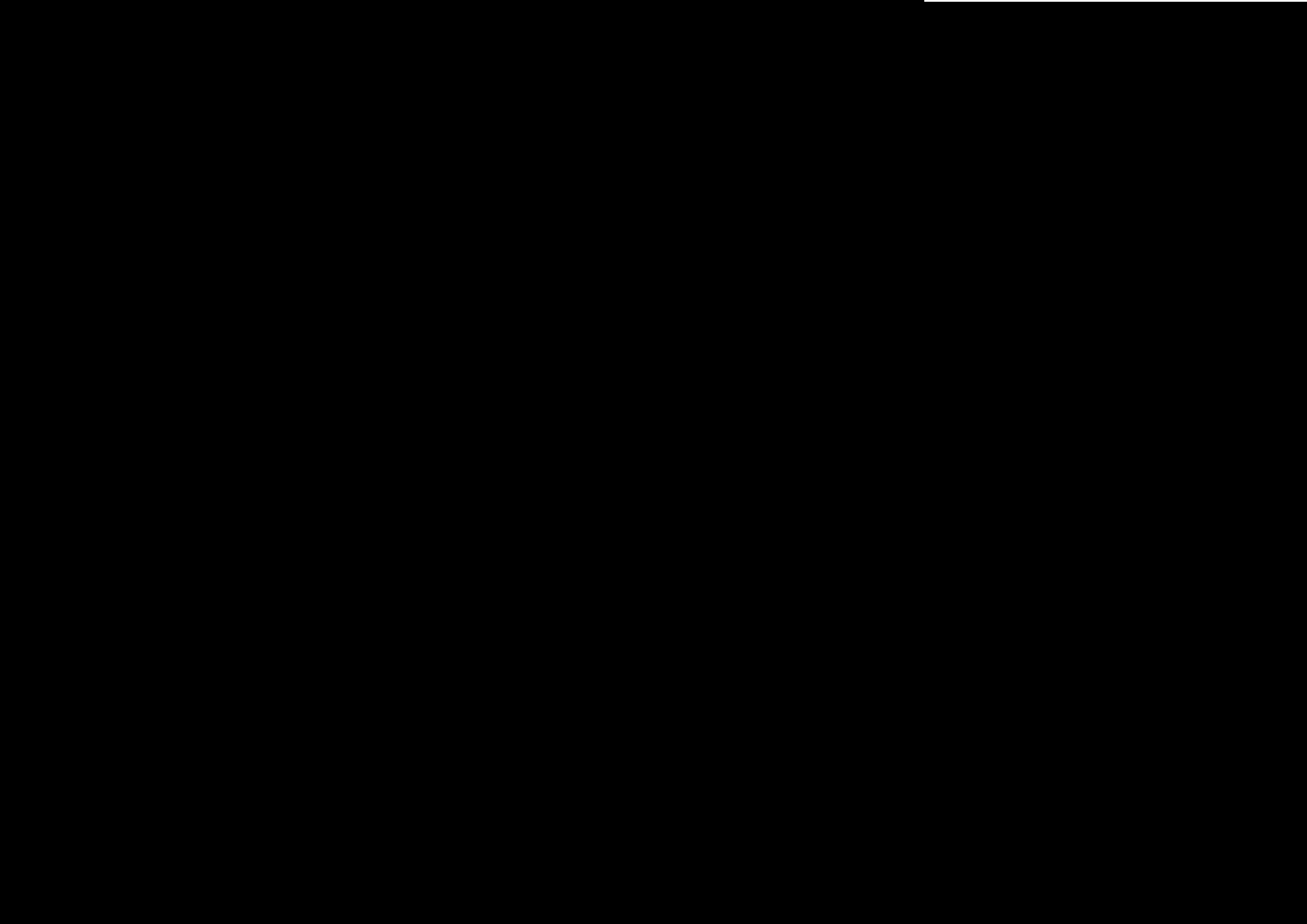
ANNEXURE A
Certification and Monitoring Plan

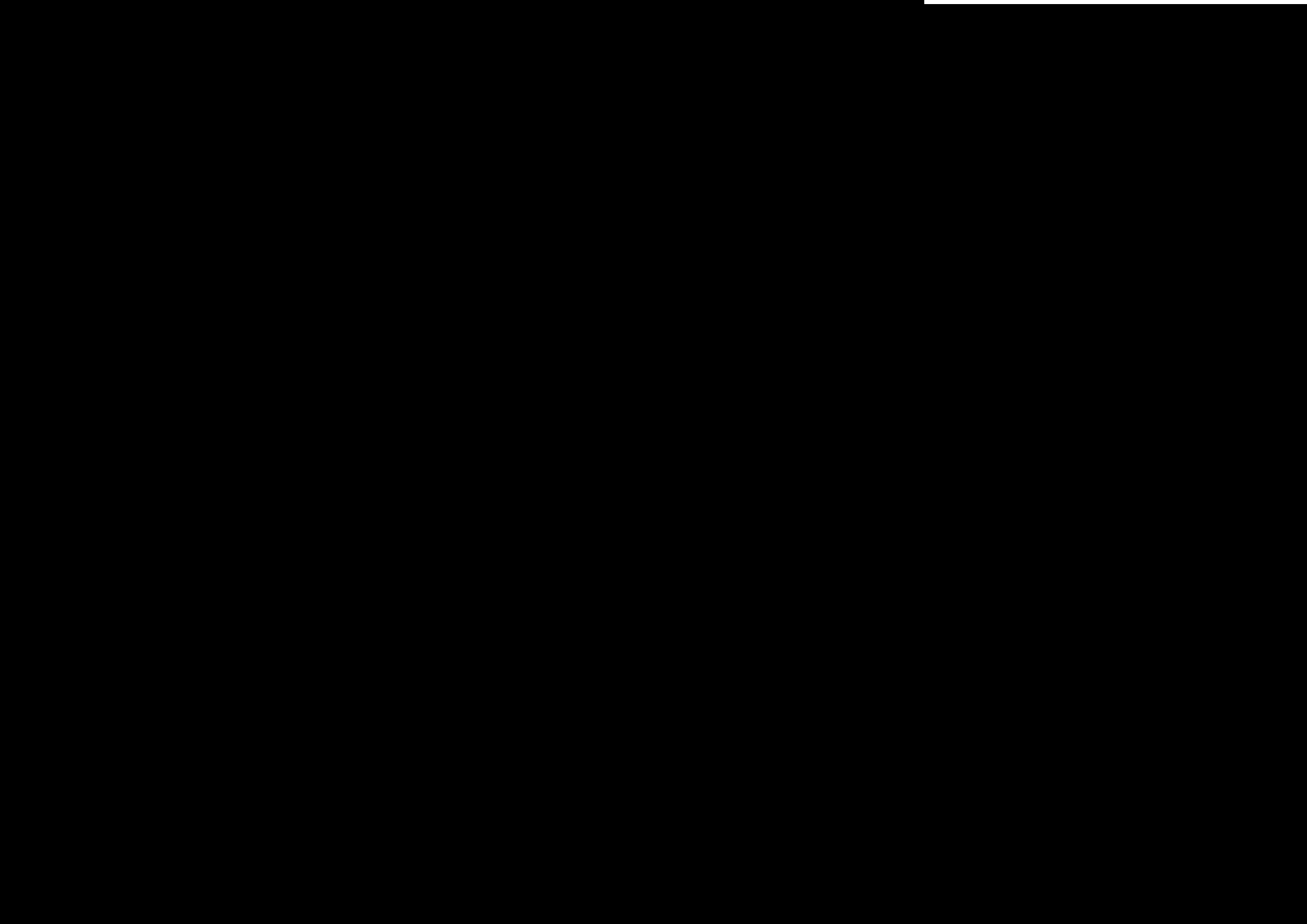










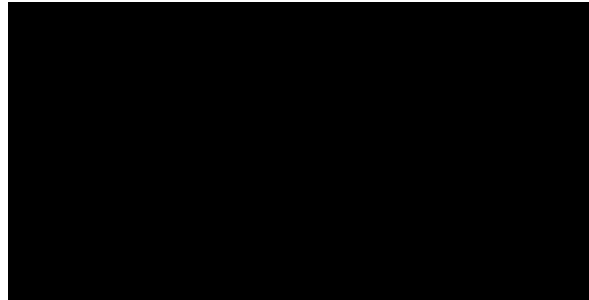


EXECUTED as a deed.

Each person who executes this document 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.

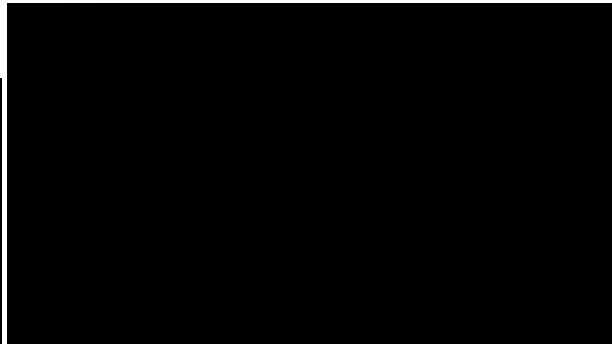
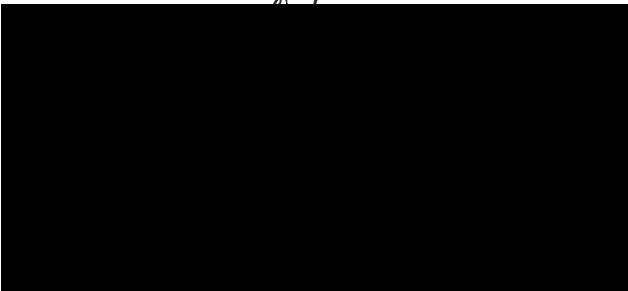
Principal

SIGNED for **TRANSPORT FOR NSW** (ABN 18 804 239 602) by its duly authorised delegate, in the presence of:



Contractor

EXECUTED by **ACCIONA CONSTRUCTION AUSTRALIA PTY LTD** (ABN 66 618 030 872) in accordance with s127 of the Corporations Act:



Independent Certifier

EXECUTED by **APP CORPORATION PTY LIMITED** (ABN 29 003 764 770) in accordance with s127 of the Corporations Act:

