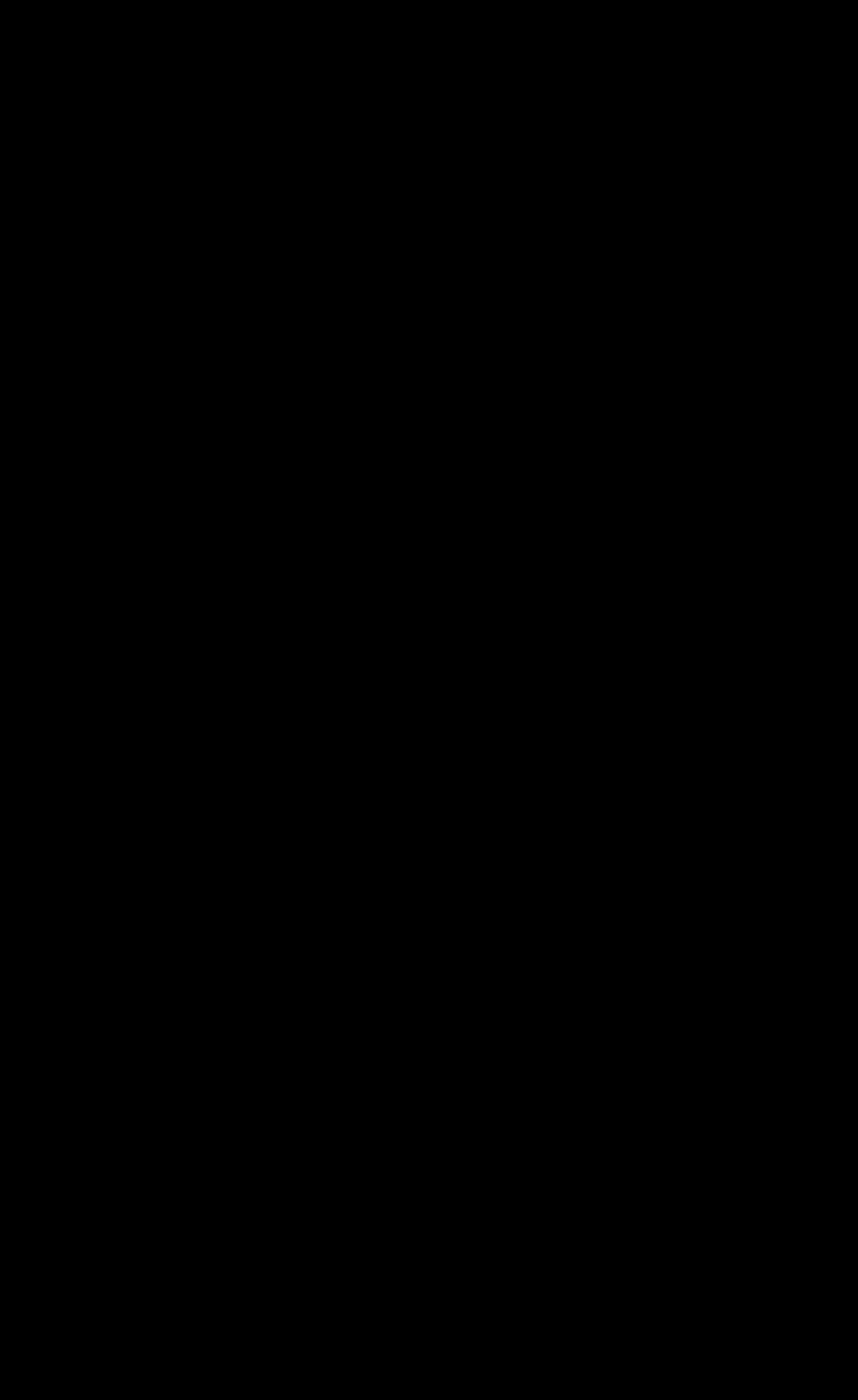
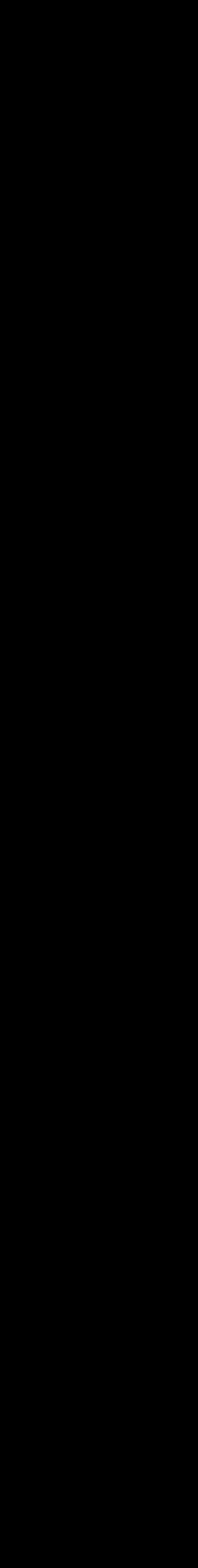


**PART A – GENERAL**

**SCHEDULE A1**  
**Conditions Precedent**  
**(Clauses 1.1 and 2)**

No.	Condition Precedent	Benefiting Party
1.	<p>The following documents have been executed by all parties to them in a form satisfactory to the Principal:</p> <p>(a) this deed;</p> <p>(b) the Independent Certifier Deed (and all conditions precedent to its effectiveness have been satisfied or waived by the relevant parties);</p> <p>(c) the Independent Estimator Deed (in the number of counterparts required by the Principal);</p> <p>(d) the Parent Company Guarantees; and</p> <p>(e) the Master Interface Deed Accession Deed Poll.</p>	The Principal and the Tunnelling Contractor
2.	The Tunnelling Contractor has provided the unconditional undertakings required by clause 7.1 of the deed.	The Principal
3.	The Principal has effected the policies of insurance required by clause 25.4 of the deed (other than the project specific professional indemnity insurance referred to in clause 25.4(a)(ii)).	The Principal and the Tunnelling Contractor
4.	The Tunnelling Contractor has effected the policies of insurance required by clause 25.5 of the deed (other than the insurances referred to in clauses 25.7, 25.12 and 25.13 of the deed).	The Principal and the Tunnelling Contractor
5.	The Tunnelling Contractor has provided the Principal with a certified copy of the Tunnelling Contractor Consortium Deed executed by all entities that comprise the Tunnelling Contractor.	The Principal
6.	Not used	
7.		

No.	Condition Precedent	Benefiting Party

No.	Condition Precedent	Benefiting Party
8.		

No.	Condition Precedent	Benefiting Party
9.	Not used.	Not used.
10.		

No.	Condition Precedent	Benefiting Party

## SCHEDULE A2

### Portions and Milestones

(Clauses 1.1, 14.2 and 21.10(d))

#### 1. GENERAL

- (a) Unless the context requires otherwise, terms which are defined in the Particular Specification or the General Specification have the same meaning where used in this Schedule A2.
- (b) Areas that are referred to in this Schedule A2 by an individual area number are references to the areas so numbered and described in the drawings described in Table 1 of Schedule D1.
- (c) The parts of the Construction Site that are related to:
  - (i) a Portion for the purposes of clause 14.2(g) of the deed are, for each Portion identified in the column headed "Portion", the parts of the Construction Site described in the corresponding column headed "Part of Construction Site"; and
  - (ii) a Milestone for the purposes of clause 14.2(h) of the deed are, for each Milestone identified in the column headed "Milestone", the parts of the Construction Site described in the corresponding column headed "Milestone Area".

2. PORTIONS

Portion	Description of Infrastructure	Date of Substantial Completion	for Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional conditions precedent to Substantial Completion	Part of Construction Site



Portion	Description of Infrastructure	Date of Substantial Completion	for Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional conditions precedent to Substantial Completion	Part of Construction Site

Portion	Description of Infrastructure	Date of Substantial Completion	for Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted Content]					

Portion	Description of Infrastructure	Date of Substantial Completion	for	Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional precedent to Substantial Completion	conditions to	Part of Construction Site
[Redacted Content]							

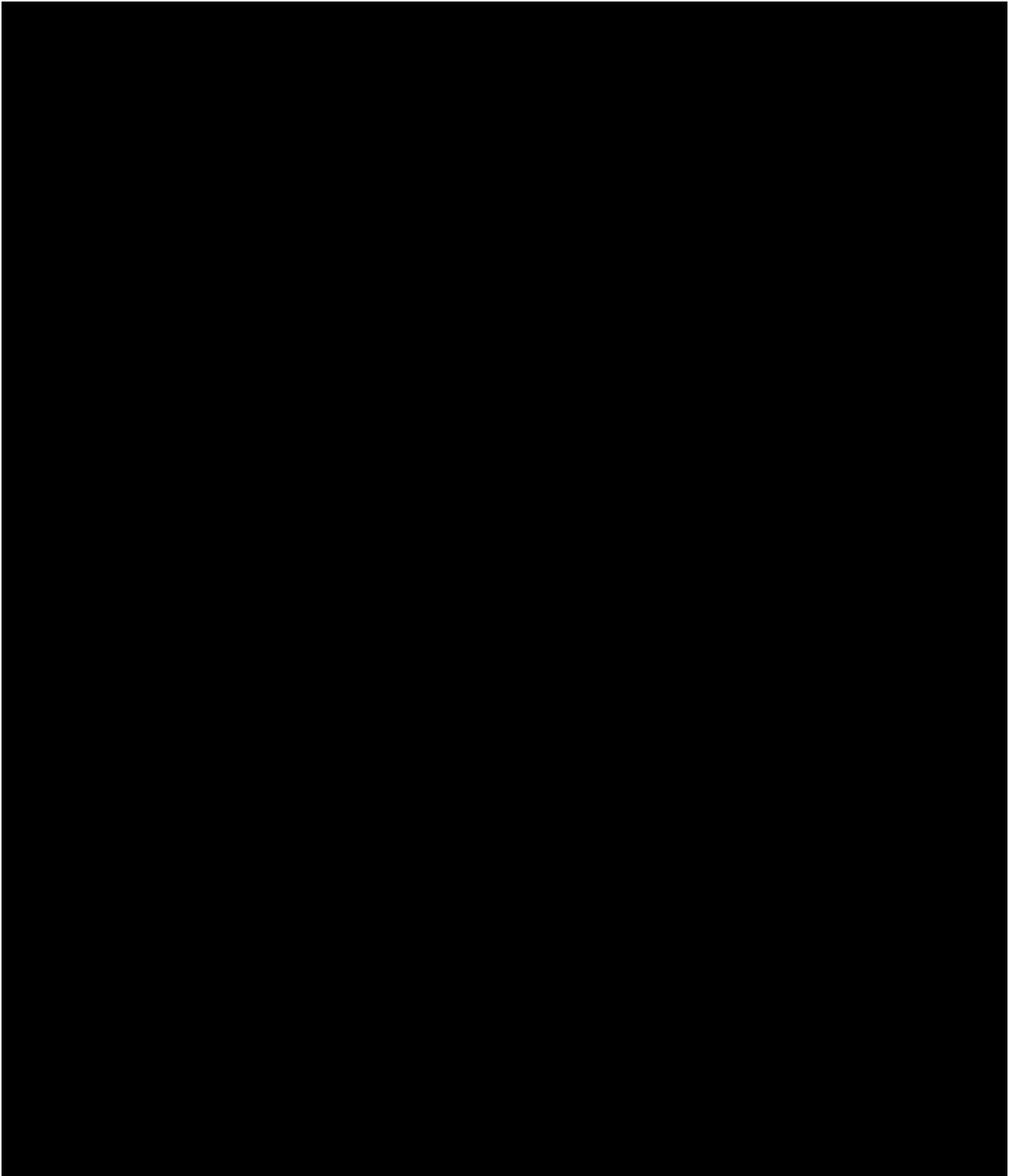
Portion	Description of Infrastructure	Date of Substantial Completion	for	Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional conditions precedent to Substantial Completion	Part of Construction Site
[Redacted Content]						

Portion	Description of Infrastructure	Date of Substantial Completion	for	Liquidated damages (clause 21.10(d)(ii)) \$/day	Additional precedent to Substantial Completion	conditions to	Part of Construction Site

3. **MILESTONES**

Not applicable.

**SCHEDULE A3**  
**Pre-Agreed Changes**  
**(Clauses 1.1 and 17.11)**































## SCHEDULE A4

### Transitional Handover Services

#### (Clauses 1.1 and 21.16)

Where the Principal's Representative gives a notice under clause 21.16(a) for a Portion or Milestone Area or, in the case of Portion 10 where clause 21.16(b) applies, the Transitional Handover Services to be performed by the Tunnelling Contractor in respect of that Portion or Milestone Area (as applicable) comprise the general Transitional Handover Services described in clause 1 of this Schedule A4 .

#### 1. General Transitional Handover Services

- (a) Continuing to comply with the obligations under clause 10.2 of this deed.
- (b) The Appointed Principal Contractor continuing to fulfil the role of "principal contractor" (as that term is defined in clause 10.3(a) of this deed).
- (c) Any activities required to ensure that:
  - (i) the Portion or Milestone Area (as applicable) itself, and the Portion together with any previously completed Portions will, upon the completion of the Transitional Handover Services:
    - (A) be fit for their intended purposes; and
    - (B) be capable of remaining at all relevant times fit for their intended purpose; and
  - (ii) the Portion or the Milestone Area (as applicable) remains ready for an Interface Contractor to take over the Portion.
- (d) Continuing to comply with all obligations of the Tunnelling Contractor that relate to access to the relevant parts of the Construction Site, including the obligations under clause 14.5 of this deed and any relevant obligations under the Site Access Schedule.
- (e) Without limiting clause 14.5 of this deed or any obligations under the Site Access Schedule:
  - (i) securing and protecting all relevant areas of the Portion or the Milestone Area (as applicable); and
  - (ii) keeping all relevant areas of the Portion or the Milestone Area (as applicable) clean, including removing rubbish, litter, graffiti and surplus material.
- (f) Maintaining and (to the extent applicable) operating any Handover Works related to the Portion.
- (g) Regular inspection, lubrication, adjustment, cleaning, replacement of parts (including drains, screens and filters).
- (h) Any activities provided for in the relevant Asset Management Information that must be carried out at a time that occurs before the relevant Portion Handover Date or the relevant Milestone Area Handover Date (as applicable).

- (i) Continuing to comply with, carry out and fulfil the conditions and requirements of all relevant Approvals (including, where relevant, ongoing monitoring).
- (j) All activities required to obtain and maintain any Approval required for the performance of the Transitional Handover Services and complying with, carrying out and fulfilling the conditions and requirements of any such Approval.
- (k) Payment of any costs in connection with Utility Services associated with the performance of the Transitional Handover Services.
- (l) Replacement of parts and consumables, including water treatment chemicals and supplies, used during the performance of the Transitional Handover Services.
- (m) Providing safe and convenient access to the relevant parts of the Construction Site to the Principal's Representative and any person authorised by the Principal.
- (n) Providing a monthly report, in which the Tunnelling Contractor must provide an overview of to the general Transitional Handover Services described in this clause 1 of Schedule A4 and confirm compliance with its obligations under paragraph (m) above specifically.

**SCHEDULE A5****Subcontract Requirements****(Clause 6.8(c))**

Item	Requirement
<b>1.</b>	<b>Subcontracts and Significant Subcontracts</b>
(a)	Each Subcontract must contain a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each Subcontract whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(b)	Each Subcontract must contain a requirement that in any further contract that a Subcontractor enters into with a third party for the performance of the Tunnelling Contractor's Activities, a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
(c)	To the extent applicable to the relevant Subcontract, each Subcontract must include provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and each further Subcontract that a Subcontractor enters into must also contain a clause to the same effect which is binding on the Subcontractor.
(d)	To the extent applicable to the relevant Subcontract, each Subcontract must contain provisions equivalent to clauses 4.20 ( <i>Australian Jobs Act</i> ) and 4.21 ( <i>Workforce development and industry participation</i> ), and each further Subcontract that a Subcontractor enters into must also contain clauses to the same effect which are binding on the Subcontractor.
(e)	Each Subcontract must contain provisions equivalent to clause 6.8(a)(iv), expressly requiring a Subcontractor that carries out Key Professional Services to execute a deed in form of Schedule A14 and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor.
(f)	To the extent applicable to the relevant Subcontract, each Subcontract must contain provisions equivalent to clause 10.1 ( <i>Care of people, property and Environment</i> ), clause 10.2 ( <i>Work health and safety</i> ) and clause 10.3(d) ( <i>Principal contractor</i> ).
(g)	To the extent applicable to the relevant Subcontract, each Subcontract must contain provisions equivalent to clause 11 ( <i>Engineering Authorisation and AMB Compliance</i> ).
(h)	Each Subcontract must contain provision equivalent to clause 15.7 ( <i>Monitoring and audits by the Principal's Representative</i> ).

Item	Requirement
(i)	Each Subcontract which involves the performance of design work must contain provisions equivalent to clauses 16.4(c)(i) and 16.4(c)(ii).
(j)	Each Subcontract must contain provision requiring the Subcontractor attend, upon request, the meetings contemplated in clauses 20.4(b), 20.5(d) and 20.18(c)(ii) of the deed.
(k)	Each Subcontract with a Subcontractor that prepared Design Documentation must contain provisions equivalent to clauses 2(a)(ii) and 2(b)(i)(B) of Schedule A26 with respect to certification requirements that are relevant to the Subcontractor's scope of work.
(l)	Each Subcontract with a Subcontractor that prepared Work as Executed Design Documentation must contain provisions equivalent to clause 18.14(b)(ii) with respect to the preparation of a certificate in the form of Schedule B19 ( <i>Tunnelling Contractor and Subcontractor design certificate – Work as Executed Design Documentation</i> ).
(m)	Each Subcontract must contain provisions equivalent to clause 30 ( <i>Transport for NSW Statement of Business Ethics</i> ), clause 31 ( <i>NSW Industrial Guidelines: Building and Construction Procurement</i> ) and clause 32 ( <i>Australian Government Requirements</i> ).
(n)	If the Subcontract is a reimbursable contract, each such Subcontract must contain provisions requiring that all documentation and information provided by the Subcontractor under its subcontract be provided on an Open Book Basis.
(o)	Each Subcontract must not contain any provisions that may in any way hinder (or potentially hinder) the exercising of the Principal's rights under clauses 34.15 or 34.22.
(p)	Except where a Subcontract includes an obligation to execute a deed in the form of Schedule A30 pursuant to clause 6.8(a)(v), the Tunnelling Contractor must ensure that each Subcontract contains provisions which bind the Subcontractor to participate in any novation required by the Principal under clause 26.6(a)(i)(B) at no cost to the Principal.
<b>2. Significant Subcontracts</b>	
(a)	Each Significant Subcontract must contain provisions recognising the Principal's rights under clause 18.5 ( <i>Principal's right to inspect and seek comments</i> ).
(b)	Each Significant Subcontract must contain provisions that require the Tunnelling Contractor's consent to any assignment or subcontract proposed by the Subcontractor.
(c)	Each Significant Subcontract must include a clause providing that if this deed is terminated for any reason or the Principal takes over the Tunnelling Contractor's work, the Tunnelling Contractor and the Subcontractor must, after the Principal

Item	Requirement
	has given a Direction to do so, promptly (and within 5 Business Days) execute a deed of novation in the form of Schedule A18.
(d)	<p>Each Significant Subcontract which involves the performance of design work or other professional services must include provisions requiring the Significant Subcontractor to effect and maintain professional indemnity insurance which:</p> <ul style="list-style-type: none"> <li>• covers liability arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Significant Subcontractor or its Associates (or, if the Significant Subcontractor's professional indemnity insurance does not cover its Associates, ensure that its Associates effect such insurance) in relation to the carrying out of its obligations under the relevant Significant Subcontract; and</li> <li>• are equivalent to the terms of clauses 25.15, 25.16(c), 25.16(d) and 25.18,</li> </ul> <p>unless such insurance has been arranged for the relevant Significant Subcontractor under the project specific professional indemnity insurance policy procured by the Principal in accordance with clause 25.4 and Schedule E6.</p>
(e)	The Tunnelling Contractor must [REDACTED] ensure that each Designated Significant Subcontract that it enters into in connection with the Tunnelling Contractor's Activities includes provisions that will enable the Tunnelling Contractor to comply with clause 29 of the deed.
(f)	Each Significant Subcontract must contain provisions requiring that all documentation and information provided by the Significant Subcontractor under its Significant Subcontract be provided on an Open Book Basis.
(g)	If a Significant Subcontract is an incentivised target cost contract, each Significant Subcontract must contain valuation principles on the same basis as the following valuation principles set out in clauses 1, 2, 3(a)-3(f) and 3(h) of Schedule E9.



**SCHEDULE A6**

**Significant Subcontractors and Pre-Approved Subcontractors**

**(Clauses 1.1, 6.7 and Schedule A35)**

**PART A – SIGNIFICANT SUBCONTRACTORS**

Significant Subcontract Work	Significant Subcontractor
Crane Hire - Tower	
Formwork - Cavern Lining	
Form, Reinforcement and Pour - Cavern - Pyrmont	
Form, Reinforcement and Pour - Cavern/Pillar Replacement - Hunter Street	
Form, Reinforcement and Pour - Plenum Slab & Deflection Wall - Turnbacks	
Form, Reinforcement and Pour - Turnbacks - Hunter Street	

Significant Subcontract Work	Significant Subcontractor
Shotcrete Application	

**PART B – PRE-APPROVED PACKAGES**

Item	Pre-Approved Subcontractor	Corresponding works
1.		Design Consultants - Blast Resilience and Security
2.		Design Consultants - Blast Design Assessment
3.		Design Consultants - Construction Noise and Vibration
4.		Design Consultants - Tunnel Design
5.		Design Consultants - Water and Soil Contamination
6.		Design Consultants - Geotechnical, Tunnel Design
7.		Design Consultants - TBM Tunnel Design, Tunnel Design
8.		Environmental Engineering Services
9.		Heritage Consultant Services
10.		Water Services Coordinator
11.		Hyperbaric Tunnelling Consultant
12.		Geotechnical Drilling

Item	Pre-Approved Subcontractor	Corresponding works
13.		Geotechnical Drilling
14.		Geotechnical Drilling
15.		Geotechnical Drilling
16.		Instrumentation & Monitoring Software & Services
17.		Demolition
18.		Instrumentation & Monitoring Software & Services
19.		Precast Batch Plant and Concrete Supply
20.		Precast Batch Plant and Concrete Supply
21.		Precast Batch Plant and Concrete Supply
22.		Laboratory Sampling and Testing
23.		Laboratory Sampling and Testing
24.		RMS Peer Reviewer
25.		RMS Peer Reviewer
26.		Skid Steers
27.		Skid Steers
28.		Skid Steers
29.		Precast Carousels & Commissioning
30.		Precast Carousels & Commissioning
31.		Telehandlers & Forklifts
32.		Telehandlers & Forklifts
33.		Telehandlers & Forklifts
34.		Dump Trucks

Item	Pre-Approved Subcontractor	Corresponding works
35.		Dump Trucks
36.		Dedusters
37.		Dedusters
38.		Dedusters
39.		LV & HV Electrical Reticulation
40.		LV & HV Electrical Reticulation
41.		LV & HV Electrical Reticulation
42.		LV & HV Electrical Reticulation
43.		Station Ventilation
44.		Station Ventilation
45.		Electric Excavators
46.		Electric Excavators
47.		Tunnel Air Monitoring
48.		Tunnel Air Monitoring
49.		Tunnel Air Monitoring
50.		Shotcrete Equipment Supply
51.		Shotcrete Equipment Supply
52.		Compressor Station
53.		Compressor Station
54.		Compressor Station
55.		Dewatering Equipment
56.		Dewatering Equipment

Item	Pre-Approved Subcontractor	Corresponding works
57.		Dewatering Equipment
58.		Excavator Attachments (Hammers, Rippers, Pulverisers)
59.		Excavator Attachments (Hammers, Rippers, Pulverisers)
60.		Excavator Attachments (Hammers, Rippers, Pulverisers)
61.		Excavators
62.		Excavators
63.		Excavators
64.		Excavators
65.		Security Access Provisions
66.		Tunnel Service Pipework
67.		HV Earthing
68.		HV Earthing
69.		Front End Loaders
70.		Front End Loaders
71.		Front End Loaders
72.		Front End Loaders
73.		Service Bracket
74.		Service Bracket
75.		Service Bracket
76.		Service Bracket
77.		Communications Network (Tunnel)

Item	Pre-Approved Subcontractor	Corresponding works
78.		Communications Network (Tunnel)
79.		Communications Network (Tunnel)
80.		Generators & Light Towers
81.		Generators & Light Towers
82.		Generators & Light Towers
83.		Security Services
84.		Supply Truck (9t)
85.		Supply Truck (9t)

**PART C – SPECIFIED SUPPLY ITEMS REQUIRING A SUBCONTRACT PROPOSAL (excluding items in Part A and B)**

- Tunnel ground support, lining and waterproofing (excludes excavation, fitments etc.)
- Temporary tunnel HV electrical (includes substations, etc.)
- Temporary tunnel ventilation (includes axial fans, jet fans, etc.)
- TBM segment supply items (segment fitments, etc.)

**PART D – SUBCONTRACT PACKAGES WITH PRE-APPROVED TENDER LISTS**

Item	Subcontract package	Pre-approved tender list
1.		
2.		
3.		
4.		
5.		
6.		

Item	Subcontract package	Pre-approved tender list
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		
26.		
27.		
28.		
29.		

Item	Subcontract package	Pre-approved tender list
30.		
31.		
32.		
33.		
34.		
35.		
36.		
37.		
38.		
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50.		
51.		
52.		



Item	Subcontract package	Pre-approved tender list
53.		
54.		
55.		
56.		
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Item	Subcontract package	Pre-approved tender list
76.		
77.		
78.		
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81.		
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Item	Subcontract package	Pre-approved tender list
97.		
98.		
99.		
100.		
101.		
102.		
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104.		
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115.		
116.		
117.		
118.		
119.		

Item	Subcontract package	Pre-approved tender list
120.		
121.		
122.		
123.		
124.		
125.		
126.		
127.		
128.		
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131.		
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137.		
138.		
139.		
140.		
141.		

Item	Subcontract package	Pre-approved tender list
142.		
143.		
144.		
145.		
146.		
147.		
148.		
149.		
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159.		
160.		
161.		
162.		
163.		

Item	Subcontract package	Pre-approved tender list
164.		
165.		
166.		
167.		
168.		
169.		
170.		
171.		
172.		
173.		
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181.		
182.		
183.		
184.		

Item	Subcontract package	Pre-approved tender list
185.		
186.		
187.		

**SCHEDULE A7**

**Subcontractors to provide warranties**

**(Clause 6.10 and 19.12)**

Subcontract Work	Warranty Period



**SCHEDULE A8**  
**Form of Warranty**  
**(Clause 6.10 and 19.12)**

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

**TO:** **Sydney Metro** ABN 12 354 063 515 a New South Wales agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

[**Insert name of relevant beneficiary**] ABN [**Insert ABN**] of [**Insert address**],

(together the **Beneficiaries**)

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

**BACKGROUND**

- A. The Warrantor has supplied the items described in Item 2 of the Schedule (**Warranty Items**) to the person described in Item 3 of the Schedule (**Tunnelling Contractor**) for the tunnel and station excavation works component of the Sydney Metro West (**Project**) being carried out by the Tunnelling Contractor under the deed described in Item 4 of the Schedule (**Deed**) with the Principal.
- B. It is a requirement imposed by the Principal under the Deed that the Tunnelling Contractor procures the Warrantor to give the following warranties in favour of the Beneficiaries with respect to the Warranty Items.

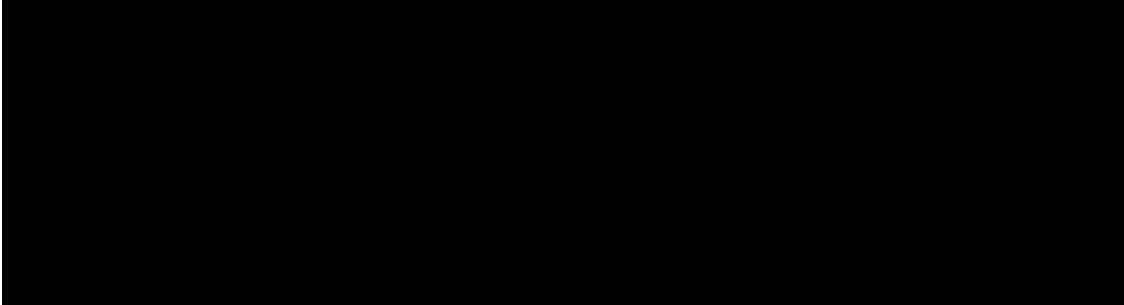
**OPERATIVE**

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

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

2. The Warrantor warrants to the Beneficiaries that it will:
- (a) replace so much of the Warranty Items as is found to be of a lower quality or standard than that referred to in clause 1; or
  - (b) make good or replace so much of the Warranty Items that shows deterioration of such extent that in the opinion of the Beneficiaries the Warranty Items ought to be made good or replaced in order to achieve fitness for the purpose for which it is required, whether on account of utility, performance, appearance or otherwise,

within the period described in Item 6 of the Schedule.

3. The Warrantor covenants to the Beneficiaries that it will bear the cost of any work necessary to any part of the Project to enable the requirements of clause 2 to be carried out or to make good the Project afterwards.
4. The Warrantor acknowledges to the Beneficiaries that nothing contained in this Deed Poll is intended to nor will render the Beneficiaries in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.
5. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
6. The Warrantor 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.
7. 

**SCHEDULE**

**Item 1:** *Name and address of Warrantor*

**Item 2:** *Details of the Warranty Items*

(Background clause A)

**Item 3:** *The Tunnelling Contractor*

(Background clause A)

**Item 4:** *The deed titled "[Sydney Metro West, Eastern Tunnelling Works Incentivised Target Cost Contract]"*

(Background clause A)

**Item 5:** *Detailed warranty of Warrantor*

(Clause 1)

**Item 6:** *Period of years*

[ ] years from the date of the Final Certificate issued pursuant to clause 21.17(b) of the Deed.

(Clause 2)

**Item 7:** [REDACTED]  
[REDACTED]

**Executed** as a deed poll.

**Executed** by  
[ ] in the  
presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**SCHEDULE A9****Tunnelling Contractor's Personnel****(Clauses 1.1, 4.18, 15.4 and 20.2)****Project Director**

- (a) The Project Director must possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Project Works and Temporary Works.
- (b) The Project Director must at all times have authority to act on behalf of and bind the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.
- (c) The Project Director must be engaged full-time during the design phase of the Project Works and the Temporary Works and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works.
- (d) At the date of this deed, the Project Director is [REDACTED]

**Design Manager**

- (a) The Design Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management and co-ordination of multi-disciplinary design teams on large projects similar to the Project Works and Temporary Works.
- (b) The Design Manager must manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this deed (including the Overall ETP Program and any other Programs).
- (c) The Design Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works up until six months after the completion of the design review process for Design Stage 3, as set out in Schedule A26.
- (d) The Design Manager must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.
- (e) At the date of this deed, the Design Manager is [REDACTED]

**Construction Manager**

- (a) The Construction Manager must possess a recognised engineering qualification relevant to the position and the Tunnelling Contractor's Activities and have at least fifteen years' experience in the overall management of construction on large projects similar to the Project Works and Temporary Works.
- (b) The Construction Manager must be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works and must at all times

have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities.

- (c) At the date of this deed, the Construction Manager is [REDACTED]

### **Quality and Systems Manager**

- (a) The Quality and Systems Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in quality management on projects similar to the Project Works and the Temporary Works;
- (ii) have at least fifteen years' quality management experience, with extensive experience in the development and implementation of quality management systems and plans;
- (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on quality matters;
- (iv) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels;
- (v) be responsible for an induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
- (vi) be responsible for and have the authority to develop the quality management requirements addressed within the Assurance and Governance Plan as detailed in section 5.1.5.2 of the General Specification;
- (vii) be responsible for the Tunnelling Contractor's requirements management tool in accordance with section 3.3 of the General Specification;
- (viii) be given authority by the Tunnelling Contractor to act freely and independently and to stop the progress of the relevant part of the Tunnelling Contractor's Activities when any non-conformance with the quality requirements of this deed is identified and at specified Hold Points; and
- (ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to quality management of the Tunnelling Contractor's Activities.

- (b) At the date of this deed, the Quality and Systems Manager is [REDACTED]

### **Changes Manager**

- (a) The Contractor's Changes Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the management of commercial issues on major civil construction projects;
- (ii) have at least ten years commercial management experience on major civil construction projects;

- (iii) have recent relevant experience in effectively negotiating and communicating at a senior level with clients on major civil construction projects;
- (iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on contractual Change matters; and
- (v) must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of contractual Change matters.

(b) At the date of this deed, the Contractor's Changes Manager is [REDACTED]

#### **Commercial Manager**

(a) The Commercial Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and be experienced in the management of commercial issues on major civil construction projects;
- (ii) have at least ten years commercial management experience on major civil construction projects;
- (iii) have recent relevant experience in effectively negotiating and communicating at a senior level with clients on major civil construction projects;
- (iv) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on contractual and commercial matters; and
- (v) must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of contractual and commercial matters.

(b) At the date of this deed, the Commercial Manager is [REDACTED]

#### **Stakeholder and Community Engagement Manager**

(a) The Stakeholder and Community Engagement Manager must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in community involvement on projects similar to the Project Works and Temporary Works and have an understanding of stakeholder and community attitudes and needs in relation to the Project Works and Temporary Works;
- (ii) have at least ten years' communications and community relations experience, with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;
- (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on stakeholder and community relations matters;
- (iv) be experienced in the development and implementation of community involvement strategies and plans;
- (v) be experienced in and have an understanding of NSW government public affairs processes;
- (vi) be responsible for a stakeholder and community relations induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;

- (vii) be responsible for and have the authority to develop and implement the Community Communications Strategy as described in section 5.1.10 of the General Specification; and
- (viii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to stakeholder and community relations management of the Tunnelling Contractor's Activities and be available at all times:
  - A. to take a proactive role in the stakeholder and community relations processes relating to the Tunnelling Contractor's Activities as set out in this deed; and
  - B. for contact by stakeholders and the community to answer questions and deal with complaints relating to the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Stakeholder and Community Engagement Manager is [REDACTED]

#### **Public Affairs and Events Manager**

- (a) The Public Affairs and Events Manager must:
  - (i) have a recognised and appropriate public affairs qualification, ten years of active industry experience and demonstrated competence in public affairs management (with a background in journalism or public relations);
  - (ii) commence within 14 Business Days of the date of this deed and continue until the Date of Completion of the last Portion to achieve Completion;
  - (iii) be engaged full-time by the Tunnelling Contractor during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works; and
  - (iv) have comprehensive knowledge of the Tunnelling Contractor's Activities, have access to key personnel and on-site information, and be authorised to prepare and issue media and other urgent copy to the Principal's Representative on a 24 hour a day, seven day a week basis.

(b) At the date of this deed, the Public Affairs and Events Manager is [REDACTED].

#### **Environmental Manager**

- (a) The Environmental Manager must:
  - (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in environmental management on projects similar to the Project Works and Temporary Works;
  - (ii) have at least ten years' environmental management experience, with extensive experience in the preparation and implementation of environmental management systems and plans;
  - (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on environmental matters;



- (iv) be experienced in regulatory liaison and consultation;
- (v) be responsible for all environmental compliance matters associated with the Tunnelling Contractor Activities;
- (vi) be responsible for an environmental management induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
- (vii) be responsible for and have the authority to develop and implement the Construction Environmental Management Plan;
- (viii) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps to be taken to achieve environmental compliance, to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Project Works, Temporary Works and the Tunnelling Contractor's Activities when any non-conformance with the environmental requirements of this deed is identified; and
- (ix) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to environmental management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Environmental Manager is [REDACTED]

**Sustainability Manager**

- (a) The Sustainability Manager must:
  - (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in sustainability management on projects similar to the Project Works and Temporary Works;
  - (ii) have at least ten years' sustainability management experience, with previous experience in the provision of sustainability advice on the design and construction of engineering;
  - (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on sustainability matters;
  - (iv) be responsible for a sustainability induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
  - (v) be responsible for ensuring the Tunnelling Contractor's Activities meet the requirements of section 2.8 of the General Specification and section 3.4 of the Particular Specification; and
  - (vi) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to sustainability management of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Sustainability Manager is [REDACTED].

### Work Health and Safety Manager

- (a) The Work Health and Safety Manager must:
- (i) possess a bachelor's degree in health and safety or equivalent and have recent relevant work health and safety management experience on major infrastructure projects similar to the Project Works and Temporary Works;
  - (ii) have at least ten years' experience in work health and safety management on major infrastructure projects, with extensive experience in the preparation and implementation of work health and safety management systems and plans;
  - (iii) be available as the Principal's Representative's primary contact with the Tunnelling Contractor on work health and safety matters;
  - (iv) be responsible for a work health and safety induction and training program for all personnel involved in the performance of the Tunnelling Contractor's Activities;
  - (v) be responsible for and have the authority to develop and implement the Project Health & Safety Management Plan;
  - (vi) be given authority by the Tunnelling Contractor to act freely and independently, to direct that all reasonable steps be taken where safety compliance is at risk and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformance with the work health and safety requirements of this deed is identified; and
  - (vii) be engaged full-time during the execution of the Tunnelling Contractor's Activities and be full-time on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to work health and safety management of the Tunnelling Contractor's Activities.
- (b) At the date of this deed, the Work Health and Safety Manager is [REDACTED].

### Traffic Manager

- (a) The Traffic Manager must:
- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant work experience in a traffic management position on large projects similar to the Project Works and Temporary Works in a confined CBD environment;
  - (ii) have a minimum of 10 years traffic management experience, with extensive experience in the preparation and implementation of construction traffic management plans and traffic control plans;
  - (iii) have experience in regulatory liaison and consultation;
  - (iv) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps be taken to avoid or minimise adverse traffic impacts and to stop the progress of the relevant part of the Project Works, the Temporary Works or the Tunnelling Contractor's Activities when any non-conformity with the traffic management requirements of this deed is identified; and

- (v) be full-time on or around the Construction Site during the construction phase of the Tunnelling Contractor's Activities with responsibility for the management of traffic and must at all times have appropriate delegated authority to act on behalf of the Tunnelling Contractor in respect of the Tunnelling Contractor's Activities and be available at all times for matters regarding road occupancy licences.

(b) At the date of this deed, the Traffic Manager is [REDACTED]

**Workforce Development and Industry Participation Manager**

- (a) The Workforce Development and Industry Participation Manager must:
  - (i) be responsible for the overall delivery and reporting of all requirements of workforce development and industry participation;
  - (ii) possess a degree, diploma or advanced diploma in adult education, vocational education, organisational development, education or human resources and a "Certificate IV" or equivalent in "Training and Assessment";
  - (iii) possess the following skills, competencies and experience:
    - (A) demonstrated and appropriate learning and development work experience in a similar role within the rail or civil construction industry;
    - (B) demonstrable and significant experience dealing at a strategic level with stakeholders, including but not limited to education providers, registered training organisations, skill services organisations and procurement;
    - (C) excellent communication and leadership skills;
    - (D) experience in managing or delivering nationally accredited programs within recognised industry training packages;
    - (E) experience in delivering workforce development and industry participation within infrastructure or construction projects; and
    - (F) experience working with the implementation and delivery of Aboriginal participation programs; and
  - (iv) be full-time on or around the Construction Site during the delivery of the Tunnelling Contractor's Activities.

(b) At the date of this deed, the Workforce Development and Industry Participation Manager is [REDACTED].

**Interface and Integration Manager**

- (a) The Interface and Integration Manager must:
  - (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in interface management on projects similar to the Project Works and Temporary Works;
  - (ii) have at least 15 years' professional experience in a similar role within the rail industry or on other large, high profile, multi-package projects; and

- (iii) have demonstrable and significant experience dealing at a senior level with third parties and/or interface contractors and the management of stakeholders and key interface risk on major infrastructure projects.

(b) At the date of this deed, the Interface and Integration Manager is [REDACTED]

**Heritage Structural Engineer**

(a) The Heritage Structural Engineer must:

- (i) possess a recognised qualification relevant to the position and the Tunnelling Contractor's Activities and have recent relevant experience in providing engineering advice to heritage projects similar to the Project Works and Temporary Works;
- (ii) have at least ten years' demonstrated experience, with extensive experience in providing advice and assessment of potential impacts to heritage structures from construction activities including (but not limited to) tunnelling, excavation and demolition;
- (iii) be given authority by the Tunnelling Contractor to act freely and independently, to require all reasonable steps to be taken to avoid or minimise heritage impacts and to stop the progress of the relevant part of the Project Works, Temporary Works and the Tunnelling Contractor's Activities when any non-conformance with the heritage requirements of this deed is identified; and
- (ix) be engaged as required during the execution of the Tunnelling Contractor's Activities and be available to advise on or around the Construction Site during the construction phase of the Project Works and Temporary Works with responsibilities limited to provision of engineering advice relevant to the management of heritage buildings and structures.

(b) At the date of this deed, the Heritage Structural Engineer is [REDACTED]

**Stakeholder and Community Engagement Manager Support**

(a) The Stakeholder and Community Engagement Manager Support must:

- (i) be engaged by the Tunnelling Contractor for a period of up to 12 months from the date of this deed; and
- (ii) provide support to the Stakeholder and Community Engagement Manager, including the following:
  - (A) attendance at monthly workshops to discuss the status of critical milestones and key risks;
  - (B) ad hoc support to assist in the resolution of complex issues; and
  - (C) support with the development of the ETP Community Communications Strategy.

(b) At the date of this deed, the Stakeholder and Community Engagement Manager Support is [REDACTED].

**SCHEDULE A10**  
**Form of Independent Certifier Deed**  
**(Clause 1.1 and 15.2)**

















































































































































































































































































































**SCHEDULE A11**  
**Form of Master Interface Deed**  
**(Clauses 1.1, 4.10 and 4.18)**



# Sydney Metro West Master Interface Deed

Sydney Metro

ABN 12 354 063 515

[insert]

[ACN/ABN] [insert]

## Sydney Metro West – Master Interface Deed

**THIS DEED** is made at \_\_\_\_\_ on \_\_\_\_\_ [year]

### BETWEEN THE FOLLOWING PARTIES:

- (1) **Sydney Metro** (ABN 12 354 063 515) a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) [name(s) of initial Project Contractor(s)] ([ABN/ACN] [insert]) whose registered office is at [insert address] (**Initial Contractor**); and
- (3) from each Accession Date, each person who accedes to this deed under clause 3, being the person identified as the "Acceding Party" in an Accession Deed Poll.

### RECITALS:

- (A) The Principal is responsible for delivering the Sydney Metro West project (**Project**).
- (B) The Project involves the design, construction, operation and maintenance of a metro railway line from Westmead to [Sydney CBD], comprising multiple works packages to be undertaken by different contractors (some of which will be undertaken contemporaneously), and including stations, precinct developments, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock, stabling facilities and ancillary infrastructure.
- (C) The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the relevant Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this deed.
- (D) Each Project Contractor:
  - (1) is responsible for the delivery of a Contract Package for the Project;
  - (2) recognises the need to cooperate, collaborate, coordinate and integrate its activities in relation to the Project with the Parties to enable the Project's successful implementation; and
  - (3) acknowledges that the interface between certain activities of the Project Contractor and the other Parties will be governed by the Framework Principles.
- (E) By entering into or acceding to this deed (as applicable), each Project Contractor agrees to comply with this deed and the Framework Principles for the benefit of each other Party.

### THE PARTIES AGREE AS FOLLOWS:

#### 1. INTERPRETATION

##### 1.1 Definitions

The following definitions apply in this document.

**Acceding Party means** a person engaged by the Principal to carry out any part(s) of the Contract Packages (including any Incoming Project Contractor) and who accedes to this deed in accordance with clause 3.

**Accession Date** has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Acceding Party accedes to this deed.

**Accession Deed Poll** means the deed poll substantially in the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Acceding Party in accordance with clause 3.

**Accreditation** means accreditation (including provisional accreditation, conditions or restrictions in respect of accreditation or any variation to the accreditation) under Part 3 of the Rail Safety National Law (or an exemption from the same).

**Approval** means any licence, permit, consent, approval, determination, certificate or permission from any authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be):

- (a) to perform the relevant Project Contractor's activities under its Project Contract;
- (b) for the use and occupation of the relevant Project Contractor's Works under its Project Contract; or
- (c) otherwise to comply with Law,

and for the avoidance of doubt includes:

- (d) planning approvals; and
- (e) any environment protection licence issued in relation to the relevant Project Contractor's activities,

but does not include:

- (f) any direction given by the Principal or its representative pursuant to this deed or the relevant Project Contract; or
- (g) the exercise by the Principal of its rights under this deed or the relevant Project Contract.

**AMB or Asset Management Branch** means the independent unit of that name established within Transport for NSW whose functions include setting, controlling, maintaining, owning and publishing the network and asset standards for transport assets for the asset lifecycle.

**AMB Charter** means the document which identifies the AMB's objectives, functions, powers and governance and the duties of public transport agencies and technically assured organisations in relation to the AMB (as amended from time to time), a copy of which can be found on [www.AMB.transport.nsw.gov.au](http://www.AMB.transport.nsw.gov.au).

**Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

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

- (a) under, arising out of, or in any way in connection with, this deed or any Project Contract;
- (b) arising out of, or in any way in connection with, any task, fact, matter, thing or relationship connected with the Project or a Party's conduct prior to the date of this deed; or



- (c) otherwise at Law including:
  - (i) under or for breach of any statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; or
  - (iii) for restitution including restitution based on unjust enrichment.

**Confidential Information** means information that:

- (a) relates to a Party's business, computer systems or affairs and includes information relating to this deed, the Framework Principles or the relevant Project Contract;
- (b) is made available by or on behalf of a Party to a Project Contractor, or is otherwise obtained by or on behalf of the Project Contractor; and
- (c) is by its nature confidential or a Project Contractor knows, or ought to know, is confidential.

**Continuing Parties** has the same meaning as given to the term "Continuing Parties" in the Accession Deed Poll, being those parties to this deed at the Accession Date, excluding the Principal.

**Contract Packages** means the following major contract packages to be procured by the Principal in relation to the Project:

- (a) central tunnelling package;
- (b) western tunnelling package;
- (c) eastern tunnelling package;
- (d) station packages;
- (e) line-wide contract package;
- (f) trains, signalling, maintenance, integration and operations package; and
- (g) any other packages as may be notified by the Principal to the other Parties from time to time, which may include development packages,

any elements of which may be grouped, amended or disaggregated by the Principal in its absolute discretion.

**Delivery Site Integration Group** means a group established by the Principal under clause 9 of the Framework Principles.

**Dispute** means any dispute, difference, controversy or Claim.

**Environment** means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and

- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c) (inclusive) of this definition.

**EPA** means the Environment Protection Authority constituted by the *Protection of the Environment Administration Act 1991* (NSW).

**Exiting Contractor** means a Project Contractor, as nominated in an Exiting Contractor Notice, that is party to a Project Contract that has completed, been novated or terminated (as applicable).

**Exiting Contractor Notice** means a notice in the form of Schedule 2 served by the **SMW Project Director** on the Project Contractors, which advises the Project Contractors that a Project Contractor is no longer a Party to this deed.

**Framework Principles** means the Framework Coordination and Interface Principles in Schedule 3, as amended in accordance with clause 10.5(b).

**Good Faith** means acting fairly, reasonably, honestly and with integrity at all times.

**Good Industry Practice** means that degree of skill, care, prudence, foresight and practice which would reasonably be expected from time to time of a skilled and experienced person, engaged in the same or similar type of undertaking as that of the relevant Project Contractor or its Subcontractors in Australia, as the case may be, under the same or similar circumstances as the performance of the relevant activities and which includes compliance with all Laws relating to the Environment and all guidelines made or approved by the EPA.

**Governance Forum** means each of the Project Integration Group, each Delivery Site Integration Group, the System Integration Working Group and each Sub-Group established under clause 8.2(b), 9.2(b) or 10.2(b) of Schedule 3, as applicable.

**IDAR Panel** means the Independent Dispute Avoidance and Resolution Panel constituted under the IDAR Panel Agreement.

**IDAR Panel Agreement** means the agreement for the establishment of an independent dispute avoidance and resolution panel in respect of the Project dated [on or about the date of this deed].

**Incoming Project Contractor** means a person replacing a Project Contractor (or an entity comprising part of the Project Contractor) under a Project Contract and to whom the Project Contract will be or has been novated in accordance with the terms of the Project Contract.

**Integrated Program** means the integrated program prepared by the Principal in accordance with clause 11.2(a)(i) of the Framework Principles, as updated from time to time in accordance with clause 11.2(a)(ii) and clause 11.2(a)(iii) of the Framework Principles.

**Integration** means the activities and tools to ensure that ultimately all systems, including sub-system components, contractors and other third parties are aligned and work together to design, construct, commission, operate, maintain and hand over an operational, fit for purpose railway, that meets the requirements of the Principal.

**Interfaces** means points where two or more systems, Project Contractor's Works (or any part of them), Contract Packages or Project Contractors meet or interact.

**Joint Project Committee** means the committee referred to in clause 7.1(b) of the Framework Principles.

**Law** means:

- (a) Commonwealth, New South Wales or local government legislation including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

**Liability** includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and including any claim for an increase in contract payments, for payment of money, for an extension of time, or for a reduction of a Project Contractor's obligations or the Principal's rights and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent;
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;
- (f) under, arising out of, or in any way in connection with, a Project Contract or this deed, including any direction under them;
- (g) arising out of, or in any way in connection with the Works or a Party's conduct before or after the date of this deed; and
- (h) otherwise at Law including:
  - (i) by statute;
  - (ii) in tort for negligence or otherwise, including negligent misrepresentation; and
  - (iii) for restitution (as a result of unjust enrichment or otherwise).

**Loss** means any cost, expense, loss, damage, Liability, fine, penalty or other amount, whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes consequential loss.

**Material Impact** means, in respect of any amendment to or replacement of the Framework Principles, a material adverse or beneficial impact on:

- (a) the ability of a Project Contractor to comply with its obligations under the relevant Project Contract; or
- (b) the quantity of work or resources required by a Project Contractor to comply with its obligations under the relevant Project Contract.

**NSW Trains** means NSW Trains (ABN 50 325 560 455) a NSW Government agency constituted by the *Transport Administration Act 1988* (NSW).

**ONRSR** means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

**Party** or **Parties** (as applicable) means the Principal and each Project Contractor.

**Program** means the Project Contractor's program for the Project Contractor's Works, as amended from time to time, under the relevant Project Contract.

**Project** has the meaning given in Recital A.

**Project Completion Date** means the date as advised by the Principal to each Project Contractor as being the date upon which a certificate or equivalent documentation certifying that final completion of the Works (including, where applicable, expiry of all defects correction periods) under all Project Contracts has been achieved.

**Project Contract** means any contract in respect of a Contract Package pursuant to which a Project Contractor is engaged.

**Project Contractor** means:

- (a) an Initial Contractor; and
- (b) an Acceding Party, from the relevant Accession Date.

**Project Contractor's Representative** means a single representative appointed by each Project Contractor from time to time as its representative in respect of this deed, as notified in writing to each Party.

**Project Integration Group** means the group established under clause 8 of the Framework Principles.

**Public Transport Agency** means the Principal, TfNSW (and each of its divisions), Transport Asset Holding Entity, Sydney Trains and NSW Trains.

**Rail Safety National Law** means the *Rail Safety National Law 2012 No. 82a* (NSW).

**Site** means, in respect of a Project Contractor, the lands and other places that are made available to the Project Contractor by the Principal in accordance with the relevant Project Contract for the purpose of carrying out the Project Contractor's Works.

**Site Access Deed Poll** means a deed poll substantially in the form of Schedule 4 to this deed given by a Project Contractor in favour of another Project Contractor.

**SMW Deputy Project Director** means the person notified as such by the Principal to the other Parties from time to time.

**SMW Deputy Project Director Rail Systems** means the person notified as such by the Principal to the other Parties from time to time.

**SMW Director Engineering & Design** means the person notified as such by the Principal to the other Parties from time to time.

**SMW Project Director** means the person notified as such by the Principal to the other Parties from time to time.

**SMW Senior Project Manager** means, in respect of each Delivery Site Integration Group, the person notified as such by the Principal to the other Parties from time to time.

**State** means the State of New South Wales.

**Subcontractor** means any person, including a consultant, engaged by the Project Contractor to execute any Works, (but does not include an employee of the Project Contractor).

**Sydney Trains** means Sydney Trains (ABN 38 284 779 682), a NSW Government agency constituted under the *Transport Administration Act 1988 (NSW)*.

**System Integration Working Group** means the group established under clause 10 of the Framework Principles.

**TfNSW** means Transport for NSW (ABN 18 804 239 602), a NSW Government agency constituted by section 3C of the *Transport Administration Act 1988 (NSW)*.

**Transport Asset Holding Entity** means Transport Asset Holding Entity of New South Wales as constituted by Part 2 of the *Transport Administration Act 1988 (NSW)*.

**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 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 whole of the works, the provision of any materials, plant, equipment, machinery, systems or other infrastructure and the provision of any operation or maintenance activities required to be undertaken by the Project Contractors for the Project as set out in the Project Contracts and includes any Contract Package or any part of such work.

## 1.2 Rules for interpreting this document

In this deed:

- (a) headings are for convenience only and do not affect the interpretation of this deed, and unless the context indicates a contrary intention:
- (b) "person" includes an individual, the estate of an individual, a body politic, a corporation, a statutory or other authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a person includes that person'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 or 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 any section or provision of either of these includes:
  - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (h) a reference to a party, clause or schedule is a reference to a party, clause or schedule to or of this deed;
- (i) a reference to this deed includes all schedules;
- (j) a word importing the singular includes the plural (and vice versa) and a word indicating a gender includes any other gender;
- (k) if a word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (l) 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;
- (m) a reference to a "month" is a reference to a calendar month;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated; and
- (o) a reference to a court or tribunal is to an Australian court or tribunal.

### 1.3 **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.

### 1.4 **Resolution of ambiguities**

- (a) If the Principal considers, or if a Project Contractor notifies the Principal in writing that it considers, that there is an ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed (including in any schedules), the Principal will, subject to clause 1.5, direct the interpretation of this deed which the Parties must follow.
- (b) The Principal, in giving a direction in accordance with clause 1.4(a), is not required to determine whether or not there is an ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed.
- (c) Any direction which the Principal gives in accordance with clause 1.4(a):
  - (i) will not relieve the Project Contractors from or alter their liabilities or obligations under this deed, their Project Contract or otherwise according to Law;

- (ii) will not entitle the Project Contractors 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 Project Contractors, whether under this deed, the Project Contracts or otherwise according to Law; and
- (iv) will, in respect of a notice given by a Project Contractor under clause 1.4(a), be given within 20 Business Days of receipt of that notice.

#### 1.5 **Order of precedence**

The following order of precedence applies in the event of any ambiguity, discrepancy or inconsistency in, or between, the documents comprising this deed:

- (a) if the ambiguity, discrepancy or inconsistency is in or between the documents comprising this deed, the documents will be given precedence in accordance with the following:
  - (i) this deed excluding the schedules; and
  - (ii) the schedules;
- (b) to the extent paragraph (a) does not apply or resolve the ambiguity, discrepancy or inconsistency and the ambiguity, discrepancy or inconsistency relates to a Project Contractor's obligations, the Project Contractor must comply with the highest quality or standard specified or perform the more onerous obligation.

#### 1.6 **Severability**

If at any time any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, then:

- (a) that will not affect or impair:
  - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
  - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
  - (i) avoids the provision being void, illegal, invalid or unenforceable; and
  - (ii) subject to clause 1.6(b)(i), preserves to the maximum possible extent:
    - (A) the enforceability of the provision and the provisions of this deed; and
    - (B) the original effect and intent of this deed.

#### 1.7 **Authorities**

- (a) This deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
  - (i) the Principal to exercise any of its functions and powers pursuant to any Law; or

- (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) Each Project Contractor acknowledges and agrees that, without limiting clause 1.7(a), anything which the Principal or the AMB does, fails to do or purports to do pursuant to their respective functions and powers either as an technically assured organisation or under any Law or under the AMB Charter will be deemed not to be an act or omission by the Principal (including a breach of contract) under or in connection with this deed or its Project Contract and will not entitle the Project Contractor to make any Claim against the Principal.
- (c) The Parties agree that clauses 1.7(a) and 1.7(b) are taken not to limit any liability which the Principal would have had to the Project Contractor under this deed as a result of a breach by the Principal of a term of this deed but for clauses 1.7(a) and 1.7(b) of this deed.

## 2. PRIMARY COVENANTS

### 2.1 Framework Principles

Each Project Contractor undertakes to the other Parties to comply with and procure that its representatives on the Governance Forums comply with the Framework Principles:

- (a) from:
  - (i) in respect of an Initial Contractor, the date of this deed; or
  - (ii) in respect of an Acceding Party, the relevant Accession Date; and
- (b) until the earliest of:
  - (i) the Project Completion Date;
  - (ii) the date of expiry of the final defects correction period under the relevant Project Contractor's Project Contract; and
  - (iii) the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed.

### 2.2 Damage

- (a) Each Project Contractor (**Acknowledging Contractor**) acknowledges and agrees that:
  - (i) without limiting its obligations under its Project Contract and its other obligations under this deed, it must not (and must procure that its Subcontractors and personnel do not) damage any other Project Contractor's works or plant or equipment; and
  - (ii) if another Project Contractor suffers or incurs any cost or expense in rectifying any damage occurring which amounts to a breach of clause 2.2(a)(i) by an Acknowledging Contractor, that Acknowledging Contractor must, subject to clause 2.2(b), reimburse those costs and expenses to that other Project Contractor within 20 Business Days of a demand for them.
- (b) The Acknowledging Contractor's responsibility to reimburse another Project Contractor in accordance with clause 2.2(a)(ii) will be reduced proportionally to the extent that an act or omission by that other Project Contractor contributed to the damage.



### 2.3 **Restriction on contracting**

Other than as expressly required under this deed, the Project Contractors must not enter into any contract, arrangement or other understanding with each other in connection with the Project without the prior written approval of the Principal.

### 3. **ACCESSION BY PROJECT CONTRACTORS**

- (a) The Principal will procure that each contractor who enters into a Project Contract after the date of this deed (including any Incoming Project Contractor) accedes to this deed.
- (b) The Acceding Parties may accede to this deed by execution of an Accession Deed Poll without the Continuing Parties' prior approval.
- (c) Upon accession of any Project Contractor to this deed, as referred to in clause 3(a), the rights and liabilities of the Parties will be as set out in this deed and each Party acknowledges and agrees that the Acceding Party:
  - (i) is entitled to exercise all the rights and benefits conferred on a Project Contractor under this deed; and
  - (ii) is bound by the obligations of a Project Contractor under this deed.
- (d) The Principal will provide the Continuing Parties with a copy of the Accession Deed Poll duly executed by the Project Contractor.

### 4. **PROJECT CONTRACTS NOT AFFECTED**

Despite anything to the contrary in this deed, the Parties acknowledge and agree that:

- (a) nothing contained in this deed will limit or otherwise affect the duties, rights, liabilities and obligations of any Party pursuant to the relevant Project Contract to which it is a party; and
- (b) where there is any conflict, ambiguity, discrepancy or inconsistency between this deed and a Project Contract, the terms of the relevant Project Contract take precedence over this deed to the extent of any such conflict, ambiguity, discrepancy or inconsistency.

### 5. **LIABILITY**

#### 5.1 **Release**

- (a) Despite anything else in this deed and to the maximum extent permitted by Law:
  - (i) each Project Contractor (**Releasing Party**) releases each other Project Contractor (**Released Party**) from all Liability arising in connection with this deed:
    - (A) as a result of any breach of this deed by, or any other act or omission of, the Released Party; or
    - (B) otherwise at Law or in equity,
 except for any Liability:
    - (C) which cannot be limited at Law;

- (D) is due to Wilful Misconduct, fraud or criminal conduct by the Released Party or any of its personnel or Subcontractors;
  - (E) arising under the indemnity in clause 2 of any Site Access Deed Poll given by the Released Party in favour of the Releasing Party; or
  - (F) arising under clause 2.2(a)(ii) in respect of damage to the Releasing Party's works or the Releasing Party's plant and equipment; and
- (ii) subject to clause 4(a), each Project Contractor releases the Principal from all Liability to that Project Contractor arising out of or in any way in connection with this deed, including as a result of the Principal entering into this deed or as a result of any breach by the Principal of any of the Principal's obligations under this deed except for any Liability:
- (A) which cannot be limited at Law; or
  - (B) is due to Wilful Misconduct, fraud or criminal conduct by the Principal.
- (b) This clause 5.1 applies:
- (i) notwithstanding and survives any termination of this deed;
  - (ii) despite any other provision of this deed; and
  - (iii) to the maximum extent permitted by Law.

## 5.2 Proportionate Liability

To the extent permitted by Law:

- (a) Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of any Party under this deed whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise; and
- (b) each Project Contractor must not to seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against that Project Contractor (whether in contract, tort or otherwise).

## 6. ASSIGNMENT AND NOVATION

### 6.1 Assignment of rights and remedies

- (a) Without limiting clause 6.2, the Principal may:
  - (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the other Parties' prior approval, provided that the assignee, novate or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is whole owned or controlled by the State;
  - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the relevant Project Contractor's prior written consent (which must not be unreasonably withheld or delayed); and
  - (iii) may disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the other Parties.

- (b) In the case of a novation by the Principal under this clause:
  - (i) the Principal will be released from its obligations under this deed and the respective rights of the Principal against the Project Contractors and rights of the Project Contractors against the Principal under this deed will cease;
  - (ii) the novated deed will be on the same terms as this deed, such that the incoming party and the Project Contractors will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 6.1(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and
  - (iii) the Project Contractors consent to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.
- (d) Each Project Contractor must not assign, novate or otherwise transfer any of its rights, interests, liabilities or obligations under this deed without the prior written consent of the Principal.

## 6.2 **Transfer of functions or Public Transport Agency assets**

- (a) The Parties acknowledge that:
  - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;
  - (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
  - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Project Contractors each acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in Good Faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
- (c) The Project Contractors will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 6.2.

- (d) For the purposes of this clause 6.2, "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

## 7. TERMINATION

- (a) Each Project Contractor's rights and obligations under this deed will terminate automatically upon termination (including on novation) of that Project Contractor's Project Contract, and subject to clauses 7(d) to 7(f), the terms of this deed will be of no further force and effect in respect of the Exiting Contractor from the date of termination.
- (b) If a Project Contractor's rights and obligations under this deed are terminated or novated, the Principal will give to the other Parties an Exiting Contractor Notice in respect of that Project Contractor.
- (c) A Project Contractor has no right to terminate, rescind or accept the repudiation of this deed.
- (d) The termination or expiry of this deed is without prejudice to the accrued rights, liabilities and obligations of each Party as at the date of termination or expiry.
- (e) Any provision of this deed which expressly or by implication from its nature is intended to survive the termination or expiry of this deed and any rights arising on termination or expiry shall survive, including any warranties, guarantees, licences or indemnities given under this deed.
- (f) No provision of this deed which is expressed to survive the termination or expiry of this deed will prevent any other provision of this deed, as a matter of interpretation, also surviving the termination or expiry of this deed.

## 8. CONFIDENTIALITY

- (a) Subject to clause 8(b), each Project Contractor must:
- (i) keep confidential this deed and the Confidential Information; and
  - (ii) ensure that each person to whom it discloses information complies with the terms of clause 8(a)(i).
- (b) A Project Contractor is not obliged to keep confidential any information:
- (i) which is in the public domain through no default of that Project Contractor; or
  - (ii) the disclosure of which is:
    - (A) required by Law;
    - (B) given with the written consent of the Principal; or
    - (C) given to a court in the course of proceedings to which that Project Contractor is a party.
- (c) On written request from another Party to a Project Contractor being made to that Project Contractor following termination of this deed in respect of that Project Contractor, such Project Contractor must immediately:

- (i) deliver to the requesting Party all documents and other materials containing, recording or referring to Confidential Information of the requesting Party; and
- (ii) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information of the requesting Party,

which are in the possession, power or control of the Project Contractor or of any person to whom the Project Contractor has given access.

9. **NOTICES**

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that Party to each other Party from time to time):

- (i) if to the Principal:

Address: Level 43, 680 George Street, Sydney NSW 2000

Email: [REDACTED]

For the attention of: [REDACTED]

Any notice in relation to a Dispute must also be addressed to the General Counsel Sydney Metro and sent to [REDACTED]

- (ii) if to [insert]: **[Note: insert notice details for Project Contractors entering into this deed directly]**

Address: [insert]

Email: [insert]

For the attention of: [insert]

- (iii) if to a Project Contractor other than [the Project Contractor(s)] referred to in clause 9(b)(ii), as set out in the relevant Accession Deed Poll;

- (c) must be signed by the Party making it or (on that Party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of the Principal or Project Contractor, as the case may be;
- (d) must be delivered by hand, posted by prepaid post to the address or sent to the email address, in accordance with clause 9(b); and
- (e) is taken to be received by the addressee:
  - (i) (in the case of prepaid post sent to an address in the same country) two Business Days after the date of posting;

- (ii) (in the case of prepaid post sent to an address in another country) seven Business Days after the date of posting;
- (iii) (in the case of email):
  - (A) if it is transmitted by 5.00pm (Sydney time) on a Business Day – on that Business Days; or
  - (B) if it is transmitted after 5.00pm (Sydney time) on a Business Day, or a day that is not a Business Day, on the next Business Day; and
- (iv) (in the case of delivery by hand) on delivery.

10. **GENERAL**

10.1 **Governing law and jurisdiction**

- (a) This deed is governed by and must be construed according to the law applying in New South Wales.
- (b) Each Party irrevocably:
  - (i) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any action or proceedings which may be brought at any time relating in any way to this deed; and
  - (ii) waives any objection it may now or in the future have to the venue of any action or proceedings, and any claim it may now or in the future have that any action or proceedings have been brought in an inconvenient forum, if that venue falls within clause 10.1(b)(i).

10.2 **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 preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by Law or under this deed.
- (b) A waiver or consent given by a Party under this deed is only effective and binding on that Party if it is given or confirmed in writing by that Party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

10.3 **Costs and expenses**

- (a) Each Project Contractor must, unless this deed expressly provides otherwise:
  - (i) pay its own costs and expenses in connection with negotiating and preparing this deed; and
  - (ii) pay its own costs and expenses in connection with performing its obligations under this deed.
- (b) Each Project Contractor acknowledges and agrees that the sum payable under its Project Contract for performance of its obligations under the Project Contract

includes allowance for all costs and expenses in connection with performing its obligations under this deed.

#### 10.4 Further acts and documents

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

#### 10.5 Amendments

- (a) This deed (other than the Framework Principles) may only be amended, varied or replaced by written agreement executed by or on behalf of each Party.
- (b) The Framework Principles may be amended or replaced by the Principal, in its absolute discretion, by giving each Project Contractor written notice setting out the amended or replacement Framework Principles and the date on which they are take effect.
- (c) The Parties acknowledge and agree that:
  - (i) any amendments to or replacement of the Framework Principles will be made by the Principal and will be made in consultation with the Project Contractors;
  - (ii) if:
    - (A) the Framework Principles are amended or replaced in accordance with clause 10.5(b); and
    - (B) compliance with the amended or replacement Framework Principles will have a Material Impact on a Project Contractor,
 then such amendment will be treated as a Change or Modification (as applicable and as defined in that Project Contractor's Project Contract) directed by the Principal under that Project Contractor's Project Contract; and
  - (iii) the Framework Principles, as amended or replaced in accordance with clause 10.5(b), take effect on and from the date notified by the Principal under clause 10.5(b) and each of the Project Contractors must comply with such amended or replaced Framework Principles notwithstanding the existence of any Dispute in relation to them.

#### 10.6 No agency, partnership, joint venture or other fiduciary relationship

Nothing in this deed will be construed or interpreted as:

- (a) conferring a right in favour of any Party to enter into any commitment on behalf of another Party; or
- (b) constituting the relationship between any two or more of the Parties as that of partners, joint venturers or any other fiduciary relationship.

#### 10.7 Joint and several liability

- (a) Unless expressly stated otherwise in its Accession Deed Poll, the obligations of a Project Contractor, if more than one person, under this deed, are joint and several and each person constituting that Project Contractor 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 other Parties may proceed against any one or all of them.

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

#### 10.8 **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.

#### 10.9 **Disputes**

The Parties acknowledge and agree that, without limiting clause 13 of the Framework Principles:

- (a) any Dispute between the Principal and a Project Contractor is to be resolved under the provisions of the relevant Project Contract; and
- (b) the Principal and each Project Contractor will be bound by the outcome of any Dispute between those Parties which is resolved pursuant to the relevant Project Contract.



**EXECUTED** as a deed.

**EXECUTED** by **SYDNEY METRO** (ABN 12 354 063 515) by its authorised delegate, in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Signature of authorised delegate

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**[Note: Execution page to be updated to reflect execution blocks required for the Project Contractor(s) directly signing this deed.]**

**EXECUTED** by **[INSERT NAME OF PROJECT CONTRACTOR]** ([ACN/ABN] [insert]) in accordance with s127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / company secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director / company secretary

## SCHEDULE 1

### Form of Accession Deed Poll

#### Accession Deed Poll

**THIS DEED POLL** is made on

[year]

**BY:** [insert name of acceding party] ([ABN/ACN] [insert]) whose registered office is at [insert address] (**Acceding Party**)

#### IN FAVOUR OF:

- (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) each Party under the Master Interface Deed as at the Effective Date and each party who accedes to the Master Interface Deed after the Effective Date (together, the **Continuing Parties**).

#### RECITALS:

- (A) This deed poll is supplemental to the agreement titled "Sydney Metro West – Master Interface Deed" between the Principal and the Continuing Parties dated [insert] as amended or acceded to from time to time (**Master Interface Deed**).
- (B) The Principal has entered into the [insert name of Project Contract] with the Acceding Party.
- (C) By this deed poll, the Acceding Party accedes to the Master Interface Deed.

#### THE ACCEDING PARTY COVENANTS AS FOLLOWS:

##### 1. INTERPRETATION

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the Master Interface Deed. The following definitions apply in this deed poll:

**Effective Date** means the date of execution of this deed poll.

**[Insert short-hand name of Project Contract]** means the contract entered into between the Principal and the Acceding Party titled "[insert long-form name of Project Contract]" and dated [insert].

##### 2. PRIMARY COVENANTS

- (a) The Acceding Party:
  - (i) confirms that it has been supplied with and has reviewed a copy of the Master Interface Deed;
  - (ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the Master Interface Deed; and
  - (iii) acknowledges that, with effect from the Effective Date, it is entitled in accordance with clause 3(c) of the Master Interface Deed to exercise all the rights and benefits conferred on a Project Contractor under the Master Interface Deed.

- (b) For the purposes of the Master Interface Deed, the Acceding Party's representative is as set out below:

[insert]

- (c) For the purposes of clause 9 of the Master Interface Deed, the Acceding Party's notice address details are as set out below:

Address: [insert]

Email: [insert]

For the attention of: [insert name] ([insert role])

- (d) For the purposes of the Master Interface Deed, the Acceding Party's Project Contractor's Representative and each of its Governance Forum representatives, as at the Effective Date, are as set out below:

- (i) Project Contractor's Representative

Name: [insert]

Email: [insert]

- (ii) Governance Forum representatives:

Governance Forum		Representative name	Contact details
Project Group	Integration	[insert]	[insert]
[Insert names of Delivery Site Integration Groups]		[insert]	[insert]
System Working Group	Integration	[insert]	[insert]

- (e) Clause 10.1 of the Master Interface Deed applies to this deed poll.

- (f) This deed poll is irrevocable.

### 3. CAPACITY OF TRUSTEES

***[Note: This is an optional clause to be used where the Project Contractor is a trustee entity.]***

- (a) Subject to clause 3(e), any obligations imposed on a trustee of a trust under this deed poll and, on and from the Effective Date, under the Master Interface Deed are undertaken only in its capacity as trustee of the relevant trust and not in any other capacity.
- (b) A liability arising under or in connection with this deed poll or the Master Interface Deed is limited to, and can be enforced against a trustee of a trust only to, the extent to which it can be satisfied out of the funds of the trust.

- (c) The limitation of liability in this clause 3 (Capacity of trustees) applies despite any other provision of this deed poll and the Master Interface Deed and extends to all liabilities and obligations of the trustee that are in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (d) A party may not sue a trustee of a trust in any capacity except as trustee of the trust, including seeking the appointment of a receiver (except in relation to property of the trust), a liquidator, an administrator, or similar person to the trustee in any liquidation.
- (e) The provisions of this clause 3 (Capacity of trustees) do not apply to any obligation or liability of a trustee of a trust to the extent that the right of indemnification out of the funds of the trust is reduced under the relevant trust deed or by law, as a result of the fraud, negligence or breach of trust by the trustee.

**EXECUTED** as a deed poll.

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.

**[Note: Execution block to be updated as required for the Acceding Party.]**

**EXECUTED** by **[INSERT NAME OF ACCEDING PARTY]** ([ACN/ABN] [insert]) in accordance with s127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director / company secretary

\_\_\_\_\_  
Name of director

\_\_\_\_\_  
Name of director / company secretary

## SCHEDULE 2

### Exiting Contractor Notice

[Date]

[Project Contractor]  
[Project Contractor's Address]

#### Exiting Contractor Notice

The SMW Project Director refers to the deed entitled "Sydney Metro West– Master Interface Deed" dated *[insert date]*, executed by *[insert the Project Contractor's full name and address details]* in favour of each Party (**Deed**).

Capitalised terms used in this Exiting Contractor Notice and not otherwise defined have the same meanings as those given in the Deed.

The SMW Project Director confirms that *[insert Project Contractor]*'s Project Contract has **Alt***[completed / been terminated / been novated]* in accordance with its terms and consequently that, from *[insert date of completion or termination of Project Contract or the date the deed of novation takes effect]* and subject to the terms of the Deed, *[insert Project Contractor]* is no longer a Party for the purposes of the Deed.

Nothing in this notice limits clauses 7(d) to 7(f) of the Deed.

---

SMW Project Director

### **SCHEDULE 3**

## **Framework Coordination and Interface Principles**

### **CONTENTS**

1. BEST FOR PROJECT APPROACH
2. COOPERATION AND COORDINATION
3. PROJECT INTERFACES
4. INDUSTRIAL RELATIONS
5. SITE ACCESS
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## 1. BEST FOR PROJECT APPROACH

- (a) In performing all undertakings under these Framework Principles, and obligations under the relevant Project Contract, each Project Contractor undertakes to adopt a culture based on a 'Best for Project' approach and to act at all times in a manner consistent with a Best for Project approach (in accordance with clause 1(b) of these Framework Principles).
- (b) For the purposes of clause 1(a) of these Framework Principles, adopting a Best for Project approach means to:
  - (i) cooperate and work with the other Project Contractors in Good Faith to assist in achieving the successful implementation and completion of the Project and resolving any conflict with regard to design, scheduling, access, testing, commissioning, completion and other such Interface issues as may arise;
  - (ii) perform its obligations in an efficient and prompt manner and in accordance with Good Industry Practice;
  - (iii) work with the other Project Contractors to mitigate so far as it is reasonably practicable those risks to the Project that are within the Project Contractor's control;
  - (iv) work with the other Project Contractors to eliminate and reduce, so far as is reasonably practicable, any risks to health, safety and the Environment arising from the Works to the extent that those matters are within that Project Contractor's control; and
  - (v) cooperate and work with the other Project Contractors to develop a culture for the delivery of the Project of collaboration, transparency in dealings, innovation and outstanding performance.

## 2. COOPERATION AND COORDINATION

- (a) Each Project Contractor (the **Acknowledging Contractor**) must:
  - (i) notify other Project Contractors (with a copy to the Principal) of any proposed Works that may impact them, prior to the commencement of such Works;
  - (ii) during any period that the Acknowledging Contractor is responsible for the care of the Acknowledging Contractor's Works (or any part of them) under the relevant Project Contract, protect the Works performed under its Project Contract from accidental damage by other Project Contractors and allow goods and equipment supplied by other Project Contractors to be received and stored by the other Project Contractors on the Site;
  - (iii) fully cooperate with the other Project Contractors, and do everything reasonably necessary to:
    - (A) during the period prior to completion of the last portion of the Acknowledging Contractor's Works and during any period while the Acknowledging Contractor is rectifying Defects, facilitate the execution of Works by other Project Contractors, including providing the other Project Contractors with such assistance as may be directed by the Principal;
    - (B) ensure the effective coordination of the design and construction of the Works to be performed under its Project Contract with the design and

construction of the Works to be performed under the other Project Contracts;

- (iv) carefully coordinate and interface its activities with the other Project Contractors' activities and for this purpose:
  - (A) make proper allowance in all programs for the Works to be performed under the other Project Contracts;
  - (B) during the period prior to completion of the last portion of the Acknowledging Contractor's Works:
    - (aa) review all programs provided by other Project Contractors and confirm that they adequately allow for the Acknowledging Contractor's activities and the Interfaces of Works to be performed under the other Project Contracts with the Acknowledging Contractor's activities;
    - (bb) monitor the progress or conduct of the other Project Contractor's Works;
    - (cc) notify the Principal and the other relevant Project Contractors of any Interface or sequence of activities that may affect the commencement, progress or completion of any portion of Works; and
    - (dd) provide the other Project Contractors with sufficient information about the current and expected Acknowledging Contractor's activities to assist them to coordinate their Works with the Acknowledging Contractor's activities;
- (v) perform the Acknowledging Contractor's activities so as to minimise any interference with or disruption or delay to the other Project Contractors' Works;
- (vi) be responsible for coordinating the Acknowledging Contractor's activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, the other Project Contractors' personnel and work;
- (vii) without limiting clauses 7 to 10 of these Framework Principles, attend coordination meetings chaired by the Principal's representative with other Project Contractors and others at such times as may be reasonably required by the Principal, to review current and future issues; and
- (viii) when any information is requested by the Principal or the other Project Contractors, including commenting on the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the other Project Contractors' Works with the Acknowledging Contractor's Works or activities:
  - (A) provide the information to the Principal or the other Project Contractors, with a copy to the Principal (as the case may be), within the time requested by the Principal or the other Project Contractor, provided that this time is reasonable; and
  - (B) ensure and warrant to the Principal that the information provided is accurate as at the date it is provided.



- (b) Each Project Contractor (the **Acknowledging Contractor**) acknowledges and agrees that:
- (i) the other Project Contractors may require design and work methodology information from the Acknowledging Contractor to coordinate the design of the Works, and such information must be provided in a timely manner by the Acknowledging Contractor following a written request by a Project Contractor;
  - (ii) any delay in the performance of the Acknowledging Contractor's Works, or in the Acknowledging Contractor providing information to, or cooperating and coordinating with, other Project Contractors may adversely impact upon, delay or disrupt any one or more of the other Project Contractors or Works; and
  - (iii) if, during the period prior to completion of the last portion of the Acknowledging Contractor's Works, there is a delay in the performance of another Project Contractor's Works, the Acknowledging Contractor must use reasonable endeavours to overcome any resulting delay, taking a whole of Project perspective.

### 3. **PROJECT INTERFACES**

Each Project Contractor acknowledges and agrees that:

- (a) there are several Contract Packages for the Project being undertaken at or about the same time and that the Works involve Interfaces;
- (b) its Project Contract identifies certain Interfaces and dates for completion of its activities which Interface with other Project Contractors' activities;
- (c) it is aware of all of the Interfaces relevant to its Works and will plan, program and carry out its Works in a manner which recognises and allows for those Interfaces to be efficiently managed;
- (d) the Interfaces will be further developed and defined throughout the design development process under each Project Contract;
- (e) it must attend and participate in all relevant Governance Forums established in accordance with these Framework Principles to discuss, develop and coordinate Interface issues; and
- (f) the Interface and Integration obligations, responsibilities and requirements set out in its Project Contract are not necessarily exhaustive.

### 4. **INDUSTRIAL RELATIONS**

- (a) The Project Contractors must liaise and cooperate with each other in order to maintain a stable industrial relations environment at the Sites and in connection with the Works.
- (b) Each Project Contractor must as soon as reasonably practicable notify the chairperson of the Project Integration Group of any actual or potential industrial action that may impede the Works or the Project or compliance with this deed.

### 5. **SITE ACCESS**

- (a) Each Project Contractor (the **Acknowledging Contractor**) acknowledges and agrees that:

- (i) other Project Contractors may require access to the Acknowledging Contractor's Site in order to execute the other Project Contractor's Works in accordance with the other Project Contractor's Project Contract;
  - (ii) subject to clause 5(b) of these Framework Principles, it must at all times (on a 24 hour per day, 7 day per week basis) permit other Project Contractors to execute those other Project Contractors' Works on the applicable parts of the Acknowledging Contractor's Site or on any adjacent property to the Acknowledging Contractor's Site; and
  - (iii) for the purpose of clause 5(a)(ii) of these Framework Principles, it must ensure that other Project Contractors have safe, clean and clear access to those parts of the Acknowledging Contractor's Site, or property adjacent to the Acknowledging Contractor's Site, required by the other Project Contractor for the purpose of carrying out the other Project Contractor's Works.
- (b) If any other Project Contractor is carrying out construction work on the Acknowledging Contractor's Site during any period in which the Acknowledging Contractor or its nominee has been engaged as principal contractor in respect of that part of the Acknowledging Contractor's Site, that other Project Contractor must execute and provide to the Acknowledging Contractor a deed poll in favour of the Acknowledging Contractor and the relevant appointed principal contractor in the form set out in Schedule 4 of this deed.
- (c) In this clause 5, the terms "construction work" and "principal contractor" have the meaning given to those terms in the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW).

## 6. RAIL SAFETY

Each Project Contractor agrees that in performing its undertakings under these Framework Principles, and without limiting its obligations under its Project Contract and its other obligations under this deed, it must:

- (a) liaise and cooperate with each Party (and with ONRSR); and
- (b) provide any reasonable assistance and documentation required by any Party from time to time in relation to safety matters, including in relation to the Principal's Accreditation or any other Project Contractors' Accreditation, including any application for or renewal or extension of such Accreditation.

## 7. INTEGRATION GOVERNANCE STRUCTURE

### 7.1 Overview of Governance Forums

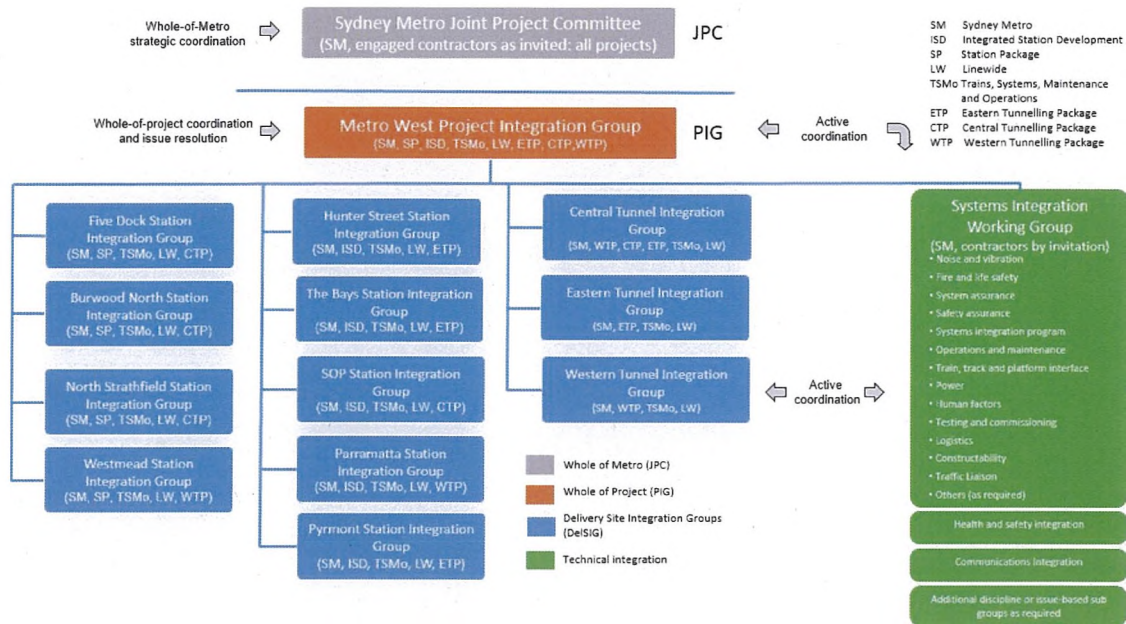
- (a) These Framework Principles establish the following Governance Forums:
  - (i) *Project Integration Group (PIG)*: The lead Integration coordination group for the facilitation, implementation and management of Integration and Interface activities across the Project in accordance with the relevant Project Contracts;
  - (ii) *Delivery Site Integration Groups (DelSIGs)*: Site-specific Integration groups for the facilitation, implementation and day-to-day management of site-specific Integration and Interface activities in accordance with the relevant Project Contracts; and
  - (iii) *System Integration Working Group*: A whole-of-project group (supported by discipline or issue based ad-hoc sub-groups) for the facilitation and

implementation of technical Integration support and Interface activities across relevant Contract Packages in accordance with the relevant Project Contracts.

- (b) The Principal has separately established a Joint Project Committee (JPC) to consider whole-of-Metro coordination across all Sydney Metro projects (including the Project) at the senior executive level. The Joint Project Committee will meet on a quarterly basis and at such other times as the Principal requires.

**7.2 Structure of Governance Forums**

The structure of these Governance Forums, as at the date of this deed, is illustrated in the diagram below:



**7.3 Principal may invite persons and require certain representatives to attend**

- (a) The Principal may invite any person to attend any Governance Forum as a non-member participant or observer from time to time.
- (b) At the request of the Principal, each Project Contractor must procure:
  - (i) the attendance of its Project Contractor's Representative at a meeting of any Governance Forum; and
  - (ii) that a member of the Project Contractor's executive attend any meeting of the Joint Project Committee as a non-member participant or observer and assist in the functions of the Joint Project Committee.
- (c) Each Project Contractor must:
  - (i) comply with a request under clause 7.3(b) of these Framework Principles if it is made at least 3 Business Days before the meeting of the relevant Governance Forum or Joint Project Committee (as applicable) the subject of the request; and
  - (ii) promptly following receipt of a request under clause 7.3(b)(ii) of these Framework Principles, provide the Principal with the name and contact details

of the member of the Project Contractor's executive that will attend the relevant meeting of the Joint Project Committee.

#### 7.4 Decisions

- (a) Subject to clause 7.4(b) of these Framework Principles, no decision or determination by a Governance Forum or the Joint Project Committee will:
- (i) be legally binding on any of the Parties;
  - (ii) affect the rights or obligations of the Parties under any Project Contract;
  - (iii) entitle a Project Contractor to make any Claim against the Principal or any other Project Contractors;
  - (iv) relieve any Project Contractor from, or alter or affect, that Project Contractor's Liabilities or responsibilities whether under this deed or otherwise according to Law;
  - (v) prejudice any Project Contractor's rights against the Principal or any other Project Contractor whether under this deed or otherwise according to Law; or
  - (vi) be construed as a direction by any Project Contractor or the Principal to do or not do anything under any Project Contract.
- (b) The Principal may, in its absolute discretion, take necessary steps under the relevant Project Contract to implement a decision of the relevant Governance Forum or the Joint Project Committee, which may include, where relevant and if the Principal considers appropriate, issuing a Principal directed Change or Modification (as applicable and as defined in the relevant Project Contract).

#### 7.5 Notice of meetings and minutes

- (a) The Principal will provide each Party:
- (i) at least 10 Business Days' notice to convene the inaugural meeting of each Governance Forum, excluding any Sub-Group; and
  - (ii) an agenda for each meeting of each Governance Forum no less than 5 Business Days prior to each meeting.
- (b) The Principal will issue to all members of each Governance Forum minutes of the meeting of that Governance Forum within 5 Business Days after the meeting. If a Project Contractor considers that the minutes of any meeting of a Governance Forum are not accurate or correct, it must advise the Principal as soon as possible, and in any case no later than the next meeting of that Governance Forum.

### 8. PROJECT INTEGRATION GROUP

#### 8.1 Establishment

- (a) Each Project Contractor acknowledges and agrees that:
- (i) the following persons will form the Project Integration Group:
    - (A) the SMW Project Director;
    - (B) SMW Deputy Project Director;

- (C) SMW Director Engineering & Design; and
  - (D) each Project Contractor's Representative; and
- (ii) a representative of the IDAR Panel nominated by the Principal may be invited by the Principal to attend any meeting of the Project Integration Group as a non-member observer in the Principal's absolute discretion, having first consulted with each Project Contractor's Representative.
- (b) The persons referred to in clause 8.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority or experience) to attend Project Integration Group meetings in their absence.
- (c) The Principal may replace the representatives specified in clause 8.1(a) (excluding clause 8.1(a)(i)(D)) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.
- (d) A Project Contractor may, subject to the Principal's prior written approval, replace its Project Contractor's Representative at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

## 8.2 Project Integration Group functions

- (a) The role of the Project Integration Group is to:
- (i) be the senior body for the facilitation, implementation and management of Integration and Interface issues in accordance with the relevant Project Contracts;
  - (ii) review Project performance, achievements and upcoming milestone events;
  - (iii) contribute to the Integrated Program including key Interface activities to be incorporated into each Project Contractor's Program;
  - (iv) identify new key issues;
  - (v) review work health and safety performance;
  - (vi) have regard to the Project delivery objectives;
  - (vii) provide a collaborative forum through which Parties can review and discuss the progress of the Project;
  - (viii) determine and implement actions to respond to negative Project performance and/or trends;
  - (ix) develop and agree strategies to coordinate the management and implementation of Integration across the Project;
  - (x) ensure the effectiveness of the federated model and other collaboration tools in managing Integration;
  - (xi) identify any opportunities between Contract Packages to encourage cost savings and innovation and innovative thinking relevant to the delivery of the Project;

- (xii) resolve key Integration issues (including considering any recommendations made by, and issues escalated by, a Delivery Site Integration Group or the System Integration Working Group);
  - (xiii) ensure strategies are used in Delivery Site Integration Group meetings and the System Integration Working Group to ensure good relationships are maintained between the Parties and Integration issues are resolved or elevated to the Project Integration Group;
  - (xiv) refer matters requiring technical advice to the System Integration Working Group, and take advice from that group;
  - (xv) share 'lessons learnt' in relation to the delivery of the Project; and
  - (xvi) make recommendations to the Principal to improve Project delivery.
- (b) The chairperson of the Project Integration Group may establish relevant sub-groups from time to time.

### 8.3 Decisions

Any decision, determination or recommendation of the Project Integration Group:

- (a) must be made unanimously (excluding abstentions) at a meeting of the Project Integration Group where each member of the Project Integration Group that is required to attend that meeting is in attendance;
- (b) must be documented in the minutes for the relevant meeting of the Project Integration Group; and
- (c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

### 8.4 Project Integration Group meetings

- (a) The Project Integration Group will meet:
  - (i) on a monthly basis for the duration of the Project;
  - (ii) in accordance with this clause 8.4 of these Framework Principles; and
  - (iii) at such other times as the chairperson of the Project Integration Group requires.
- (b) Each Project Contractor must ensure that its Project Contractor's Representative attends each Project Integration Group meeting:
  - (i) during the period from:
    - (A) in respect of an Initial Contractor, the date of this deed; or
    - (B) in respect of an Acceding Party, the relevant Accession Date,
 until the earlier of:
    - (C) completion of the last portion of the Project Contractor's Works to achieve completion; and

- (D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and
- (ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.
- (c) The chairperson for meetings of the Project Integration Group will be the SMW Project Director (or their appointed delegate pursuant to clause 8.1(b) of these Framework Principles).

## 9. DELIVERY SITE INTEGRATION GROUPS

### 9.1 Establishment

- (a) The Principal will form Delivery Site Integration Groups, as shown in the diagram in clause 7.2 of these Framework Principles, each of which will comprise:
  - (i) the relevant SMW Senior Project Manager; and
  - (ii) a senior site representative of each of the relevant Project Contractors (as nominated by each of them and approved by the Principal).
- (b) The persons referred to in clause 9.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority, knowledge and experience) to attend Delivery Site Integration Group meetings in their absence.
- (c) The Principal may replace the representative specified in clause 9.1(a)(i) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.
- (d) A Project Contractor may, subject to the Principal's prior written approval, replace the representative specified in clause 9.1(a)(ii) of these Framework Principles at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

### 9.2 Functions

- (a) The role of each Delivery Site Integration Group is to:
  - (i) provide a collaborative forum through which Parties can identify, discuss the progress of and resolve Site specific Integration issues;
  - (ii) consider work health and safety in all activities;
  - (iii) consider Environmental management in activities where appropriate;
  - (iv) provide a forum for the facilitation, implementation and day to day management of Integration at each Site in accordance with the relevant Project Contracts;
  - (v) review the Project Contractors' weekly Integration progress reports and achievements;
  - (vi) review actual progress against baseline, identify slippage or negative trends and determine corrective actions;

- (vii) review the achievement of Site milestones throughout the delivery of the Project;
  - (viii) review and confirm status of upcoming milestone events;
  - (ix) identify and resolve key Site Integration issues, including gaps and overlap in scope;
  - (x) escalate unresolved Interface issues and make recommendations in respect of them to the Project Integration Group;
  - (xi) share 'lessons learnt' from the relevant Sites;
  - (xii) address construction and Interface issues escalated by the Project Contractors or the Principal;
  - (xiii) resolve technical matters in consultation with the System Integration Working Group where required; and
  - (xiv) make recommendations to the Project Integration Group to improve Project delivery.
- (b) The chairperson of each Delivery Site Integration Group may establish relevant sub-groups from time to time.

### 9.3 Decisions and recommendations

Any decision, determination or recommendation of a Delivery Site Integration Group:

- (a) must be made unanimously (excluding abstentions) at a meeting where each member of the Delivery Site Integration Group that is required to attend that meeting is in attendance;
- (b) must be documented in the minutes for the relevant meeting of the Delivery Site Integration Group; and
- (c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

### 9.4 Meetings

- (a) Each Delivery Site Integration Group will meet:
  - (i) from the date of formation, on a weekly basis for the duration of the Project;
  - (ii) in accordance with this clause 9.4 of these Framework Principles; and
  - (iii) at such other times as the chairperson of that Delivery Site Integration Group requires.
- (b) Each Project Contractor must, in respect of each applicable Delivery Site Integration Group (as shown in the diagram in clause 7.2 of these Framework Principles), ensure that its representative referred to in clause 9.1(a)(ii) of these Framework Principles attends each Delivery Site Integration Group meeting:
  - (i) during the period from:



- (A) in respect of an Initial Contractor, the date of formation of the relevant Delivery Site Integration Group; or
- (B) in respect of an Acceding Party, the relevant Accession Date,  
until the earlier of:
  - (C) completion of the last portion of the Project Contractor's Works to achieve completion; and
  - (D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and
- (ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.
- (c) The relevant SMW Senior Project Manager (or their appointed delegate pursuant to clause 9.1(b) of these Framework Principles) will have the role of chairperson for meetings of each Delivery Site Integration Group.

## 10. SYSTEM INTEGRATION WORKING GROUP

### 10.1 Establishment

- (a) The Principal will form the System Integration Working Group, which will comprise:
  - (i) the SMW Director Engineering & Design;
  - (ii) such engineering design solutions technical subject matter experts as the Principal may nominate from time to time; and
  - (iii) a technical subject matter expert from each Project Contractor (as nominated by the relevant Project Contractor and approved by the Principal).
- (b) The persons referred to in clause 9.1(a) of these Framework Principles may appoint delegates (of an equivalent level of seniority or experience) to attend System Integration Working Group meetings in their absence.
- (c) The Principal may replace the representatives specified in clauses 10.1(a)(i) and 10.1(a)(ii) of these Framework Principles at any time by giving written notice to each other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.
- (d) A Project Contractor may, subject to the Principal's prior written approval, replace the representative specified in clause 10.1(a)(iii) of these Framework Principles at any time by giving written notice to each of the other Parties specifying the name and contact details of the replacement and the date the replacement will become effective.

### 10.2 Functions

- (a) The System Integration Working Group will provide technical support to the Project Integration Group and the Delivery Site Integration Groups and its role is to:
  - (i) ensure informed forward-planning and resolution of Integration issues as they arise;

- (ii) review and oversee the design and engineering assurance program to ensure technical Interfaces are successfully managed;
  - (iii) work closely with the Principal's engineering design solutions team;
  - (iv) ensure an integrated design and scope allocation, including the resolution of key scope and engineering issues where engaged by the Project Integration Group and the Delivery Site Integration Groups;
  - (v) contribute to the systems integration, testing, commissioning and operational readiness plans;
  - (vi) consider the design, delivery and Integration of the Project in all phases including whole-of-life considerations;
  - (vii) resolve Interface technical issues;
  - (viii) obtain advice on Interface issues from discipline-based sub-groups to help resolve Interface issues;
  - (ix) obtain advice on Interface issues from issue-based sub-groups to help resolve Interface issues;
  - (x) escalate unresolved issues to the Project Integration Group for resolution and make recommendations in respect of them; and
  - (xi) make recommendations to the Project Integration Group to improve Integration across the Project.
- (b) The chairperson of the System Integration Working Group may establish relevant sub-groups to deal with discipline-specific or issue-specific matters.

### 10.3 Decisions and recommendations

Any decision, determination or recommendation of the System Integration Working Group:

- (a) must be made unanimously (excluding abstentions) at a meeting where each member of the System Integration Working Group that is required to attend that meeting is in attendance;
- (b) must be documented in the minutes for the relevant meeting of the System Integration Working Group; and
- (c) will only be binding upon the Principal or a Project Contractor if, in accordance with clause 7.4(b) of these Framework Principles, the Principal takes the necessary steps under the relevant Project Contract to implement the decision.

### 10.4 Meetings

- (a) The System Integration Working Group will meet:
  - (i) from the date of formation, on a weekly basis for the duration of the Project;
  - (ii) in accordance with this clause 10.4 of these Framework Principles; and
  - (iii) at such other times as the chairperson of the System Integration Working Group requires.

- (b) Each Project Contractor must ensure that its technical subject matter expert referred to in clause 10.1(a)(iii) of these Framework Principles attends each System Integration Working Group meeting:
- (i) during the period from:
    - (A) in respect of an Initial Contractor, the date of formation of the System Integration Working Group; or
    - (B) in respect of an Acceding Party, the relevant Accession Date,
 until the earlier of:
    - (C) completion of the last portion of the Project Contractor's Works to achieve completion; and
    - (D) if applicable, the date on which the Project Contractor's rights and obligations under this deed are terminated in accordance with clause 7(a) of this deed; and
  - (ii) after completion of the last portion of the Project Contractor's Works to achieve completion, at the request of the Principal.
- (c) The chairperson for meetings of the System Integration Working Group will be the SMW Director Engineering & Design (or their appointed delegate pursuant to clause 10.1(b) of these Framework Principles).

## 11. INTEGRATED PROGRAM

### 11.1 Provision of information

- (a) Each Project Contractor must prepare and submit to the Principal:
- (i) the Project Contractor's Program for the purpose of the Principal preparing the Integrated Program;
  - (ii) without limiting the Project Contractor's programming obligations under the relevant Project Contract to which it is a party, no later than 5 Business Days prior to each meeting of the Project Integration Group that the Project Contractor is required to attend in accordance with clause 8.4(b) of these Framework Principles, the Project Contractor's then current Program identifying:
    - (A) Works currently being carried out by the Project Contractor and demonstrating alignment to the Program;
    - (B) the Works the Project Contractor will be undertaking in the following three month period; and
    - (C) any likely or potential delay to the Project Contractor's Works in the following three month period and recommendations from the Project Contractor to mitigate the delay,
 and in the format required by the relevant Project Contract.
- (b) Each Project Contractor must, if requested by the Principal, provide the Principal with any such other information as the Principal considers reasonably necessary to assist in the preparation of the Integrated Program.

## 11.2 **Integrated Program**

- (a) The Principal will:
- (i) prepare the Integrated Program with reference to the Programs provided by the Project Contractors in accordance with clause 11.1 of these Framework Principles;
  - (ii) regularly update the Integrated Program to reflect any revisions or alterations in the Programs relevant to the Integrated Program; and
  - (iii) in its absolute discretion, but not less than quarterly until the Project Completion Date, issue an update of the Integrated Program to the Project Integration Group.
- (b) Each Project Contractor's Program will be used to prepare the Integrated Program and will be used by the Parties in considering Interface issues.
- (c) Each Project Contractor acknowledges and agrees that:
- (i) it will inform the Principal of any proposed solutions to ensure timely delivery of the Project;
  - (ii) nothing contained in the Integrated Program will affect the obligations of any Project Contractor under the relevant Project Contract to which it is a party; and
  - (iii) any update of the Integrated Program issued by the Principal will not be construed as a direction by the Principal to do or not do anything under any Project Contract.

## 12. **SUBCONTRACTORS**

Each Project Contractor must ensure that its Subcontractors work with the Project Contractor to ensure that the Project Contractor is able to comply with its obligations under these Framework Principles.

## 13. **CONTINUITY**

Despite the existence of a Dispute between the Parties or the referral of the Dispute for resolution, all of the Parties must continue to perform their obligations under their respective Project Contracts and under these Framework Principles.

**SCHEDULE 4****Form of Site Access Deed Poll**

**THIS DEED POLL** is made on [year]

**IN FAVOUR OF:**

- (1) **[Insert details]** (ABN **[Insert details]**) of **[Insert details]** (**[Site] Contractor**);
- (2) **[Insert details]** (ABN **[Insert details]**) of **[Insert details]** (**Appointed Principal Contractor**); and
- (3) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**),

(together, the **Beneficiaries**)

**GIVEN BY:**

- (4) **[Insert details]** (ABN **[Insert details]**) of **[Insert details]** (**Accessing Contractor**)

**RECITALS:**

- (A) Pursuant to the deed titled "**[Insert]**" (Contract No: **[Insert]**) dated **[Insert date]** (**Contract**), the [Site] Contractor agreed to, among other things, design and construct certain works and carry out certain activities (**Project Works**), on the land more particularly described in the Contract (the **Construction Site**).
- (B) The Accessing Contractor has been appointed under a contract to undertake certain works and activities on the Construction Site (**Construction Site Interface Work**).
- (C) For the purposes of the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) (together, the **WHS Legislation**), the Project Works and the Construction Site Interface Work are a 'construction project' within the meaning of the WHS Legislation.
- (D) The Appointed Principal Contractor is authorised to have management and control of the workplace for the purpose of discharging the duties imposed on a principal contractor for the construction project.
- (E) Under the provisions of the Contract, the Principal is required to procure the provision of this deed poll from certain contractors that undertake Construction Site Interface Work.

**This deed poll witnesses that the Accessing Contractor hereby covenants, warrants and agrees with and for the benefit of the Beneficiaries as follows:**

1. In consideration of the [Site] Contractor and the Appointed Principal Contractor accepting this deed poll, the Accessing Contractor agrees that:
  - (a) the Accessing Contractor, its subcontractors and their respective personnel while they are on the Construction Site, will comply with Construction Site safety regulations, any Construction Site rules or regulations and with all directions of the [Site] Contractor and the Appointed Principal Contractor with respect to work health and safety;
  - (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the [Site] Contractor and the Appointed

Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;

- (c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the [Site] Contractor, the Appointed Principal Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;
  - (d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the [Site] Contractor and the Appointed Principal Contractor while on the Construction Site;
  - (e) the [Site] Contractor and the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;
  - (f) the [Site] Contractor and the Appointed Principal Contractor may direct the Accessing Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
  - (g) where high risk construction work, as reasonably determined by the [Site] Contractor or the Appointed Principal Contractor, is to be carried out in the performance of the Construction Site Interface Work, the Accessing Contractor must:
    - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
    - (ii) provide a copy of the safe work method statement to the Principal, the [Site] Contractor and the Appointed Principal Contractor prior to the commencement of high risk construction work;
    - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
    - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
    - (v) where so directed by the [Site] Contractor and the Appointed Principal Contractor, suspend the performance of any high risk construction work;
  - (h) the Accessing Contractor will in carrying out the Construction Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
  - (i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.
2. The Accessing Contractor indemnifies the [Site] Contractor and the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the [Site] Contractor and the Appointed Principal Contractor as a result of:
- (a) any failure by the Accessing Contractor to comply with any direction given by the [Site] Contractor or the Appointed Principal Contractor in accordance with this deed poll; or
  - (b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:

- (i) their respective contractual or legislative work health and safety obligations;  
or
  - (ii) the provisions of this deed poll.
3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

**EXECUTED** as a deed poll.

Executed by **[Accessing Contractor]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Full name of director

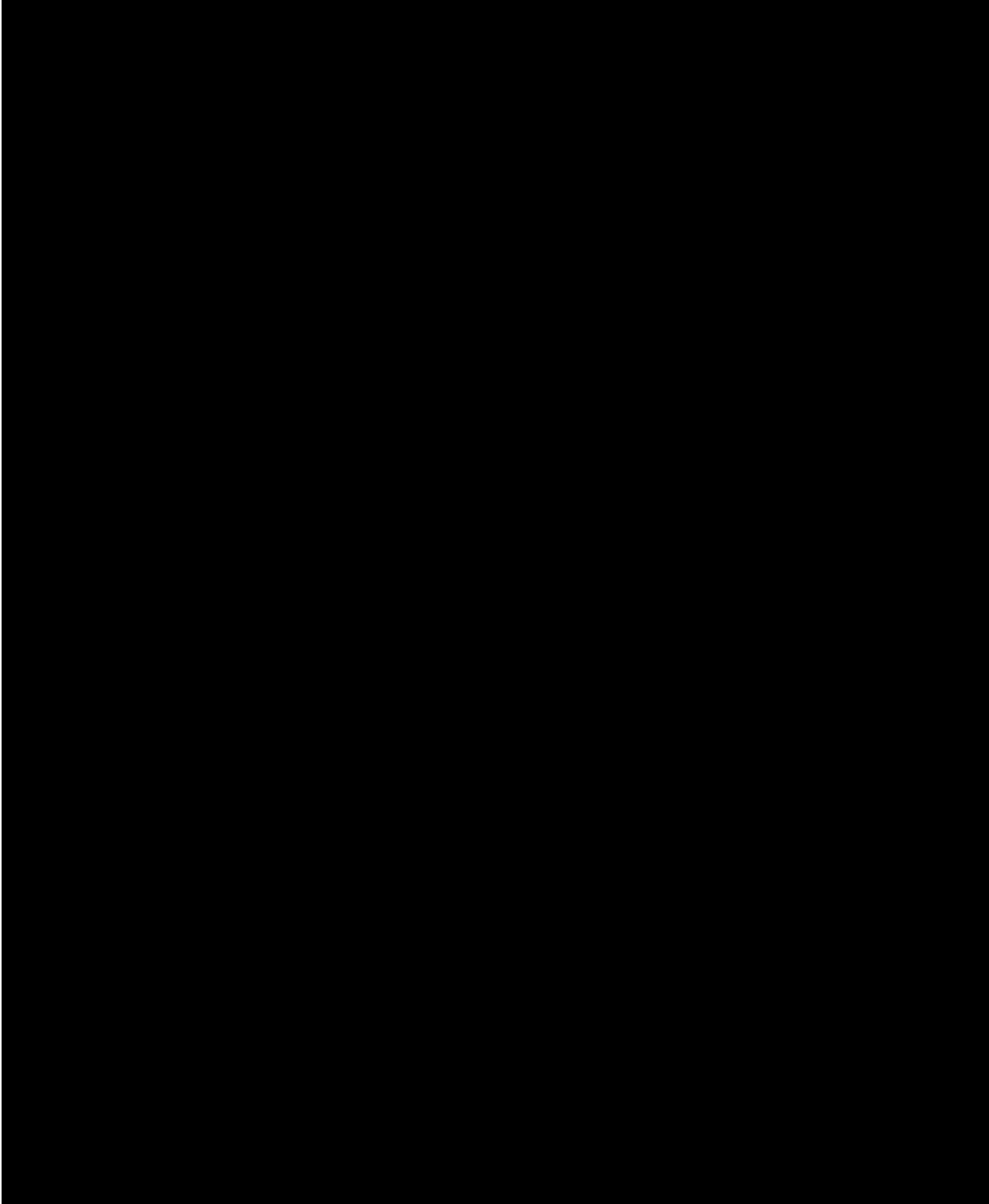
\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of company secretary/other director

**SCHEDULE A12**

**Form of Collateral Warranty Deed Poll**

**(Clause 1.1 and 4.19)**









**SCHEDULE A13****Form of Confidentiality Undertaking****(Clause 6.8(a)(iii))**

To: [Insert]

We [Insert name and ABN] of [Insert] the engaged [Designer/Supplier/Contractor/Subcontractor] body, undertake to treat as confidential all information received/generated from Sydney Metro (ABN 12 354 063 515) (**Principal**) in respect of work performed by the Principal.

The Designer/Supplier/Contractor/Subcontractor hereby undertakes:

- (1) to disclose information to its employees only on a need-to-know basis;
- (2) not to disclose information to any other person without first obtaining the written consent of the Principal; and
- (3) to ensure that its employees to whom information is disclosed will comply with (1) and (2) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the [Designer/Supplier/Contractor/Subcontractor], its employees or agents) or which was already known to the [Designer/Supplier/Contractor/Subcontractor].

Any breach of this undertaking by the [Designer/Supplier/Contractor/Subcontractor]'s employee or agent will constitute a breach of this undertaking by the [Designer/Supplier/Contractor/Subcontractor] and at the direction of the Principal the [Designer/Supplier/Contractor/Subcontractor] must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The [Designer/Supplier/Contractor/Subcontractor] undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

However the [Designer/Supplier/Contractor/Subcontractor]:

- (4) is not required to return or destroy electronic copies of confidential information which form part of its usual data back-up where such erasure is impracticable;
- (5) will be entitled to maintain one copy of its work papers which may contain copies of, references to, or extracts from the confidential information (to the extent that those work papers contain the level of detail consistent with the normal practices of the [Designer/Supplier/Contractor/Subcontractor]), for the purposes of an audit trail to support the records of any decision made by its board of directors in relation to the [Designer/Supplier/Contractor/Subcontractor]'s work performed in relation to the Principal; and
- (6) may retain copies of confidential information which are necessary to comply with any applicable laws, professional standards, prudential policies or ethical requirements to which the [Designer/Supplier/Contractor/Subcontractor] is subject,

provided that:

- (7) all such information, however it is embodied, remains subject to the confidential information obligations under this undertaking; and

- (8) the relevant confidential information is not subsequently accessed, used or retained for any purpose other than for, and then only to the extent of, the purpose for which it has been retained.

The [*Designer/Supplier/Contractor/Subcontractor*] also undertakes to declare to the Principal any conflict of interests that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interests issue arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Dated: [Insert]

***[Note: Appropriate execution block to be inserted by the party giving this undertaking prior to execution.]***

**SCHEDULE A14****Deed of Covenant****(Clause 6.8(a)(iv))**

**THIS DEED POLL** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_

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

**BY:** [ ] (ABN [ ]) of [ ] (**Service Provider**)

**BACKGROUND**

- A. The Beneficiary has engaged [ ] (ABN [ ]) of [ ] (**Tunnelling Contractor**) to carry out certain works on its behalf under the "Sydney Metro West, Eastern Tunnelling Works Incentivised Target Cost Contract" (Contract No: [Insert]) dated [ ] (**Tunnelling Contract**).
- B. The Tunnelling Contractor has engaged the Service Provider under a deed dated [ ] (**Deed**) to carry out the [design work / technical professional services] specified in the Schedule for the purposes of its obligations under the Tunnelling Contract (**Works**).
- C. Under the Tunnelling Contract the Tunnelling Contractor is required to procure the Service Provider to execute this deed poll in favour of the Beneficiary.

**OPERATIVE****1. DUTY OF CARE**

The Service Provider warrants to the Beneficiary that in performing the Works and in providing any certificate under clause 2(b)(i)(B) of Schedule A26:

- (a) it will owe a duty of care to the Beneficiary;
- (b) it will exercise reasonable skill and care; and
- (c) it is aware that the Beneficiary will be relying upon the skill and judgement of the Service Provider in performing the Works.

**2. GOVERNING LAW AND JURISDICTION**

This deed poll will be governed by and construed in accordance with the laws of the State of New South Wales and the Service Provider hereby submits to the non-exclusive jurisdiction of the courts of that State 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.

**3. LIMITATION OF LIABILITY**

- (a) Subject to clause 3(b), the aggregate of the Service Provider's liability to the Beneficiary under this deed poll and the Service Provider's liability to the Tunnelling Contractor under the Deed will not exceed the liability that the Service Provider would have had under the Deed if the Deed had of named, in place of the Tunnelling Contractor, the Beneficiary and the Tunnelling Contractor jointly and severally.

- (b) Clause 3(a) does not limit the Service Provider's liability:
  - (i) in respect of any liability that:
    - (A) cannot be limited at Law; or
    - (B) is due to the Service Provider's fraud, wilful misconduct or criminal conduct; or
  - (ii) to the extent that (ignoring the application of clause 3(a)), the Service Provider is entitled to be indemnified for that liability under a policy of insurance required under the Deed or would have been entitled to be indemnified for that liability under a policy of insurance required under the Deed but for any act or omission of the Service Provider and, in each case, up to the maximum of the amount of the relevant insurance required under the Deed.

**SCHEDULE**

[INSERT DESCRIPTION OF DESIGN WORK / TECHNICAL PROFESSIONAL SERVICES]

**EXECUTED** as a deed poll.

**Executed** by **[Service Provider]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of company secretary/other director

\_\_\_\_\_  
Full name of director

\_\_\_\_\_  
Full name of company secretary/other director

**SCHEDULE A15**  
**Significant Subcontractor Side Deed**  
**(Clause 6.7(d))**





# Sydney Metro West

## Significant Subcontractor Side Deed

Sydney Metro

ABN 12 354 063 515

and

[Name of Tunnelling Contractor]

Ait[ABN/ACN] [number]

and

[Name of Significant Subcontractor]

Ait[ABN/ACN] [number]

and

[Name of Significant Subcontractor Guarantor]

Ait[ABN/ACN] [number]

**THIS DEED** is made on

20

**BETWEEN:**

- (1) **Sydney Metro** ABN 12 354 063 515, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**);
- (2) **[Name of Tunnelling Contractor]** [ABN] [number] of [address] (**Tunnelling Contractor**);
- (3) **[Name of Significant Subcontractor]** [ABN] [number] of [address] (the **Significant Subcontractor**); and
- (4) **[Name of Significant Subcontractor Guarantor]** [ABN] [number] of [address] (the **Significant Subcontractor Guarantor**).

**RECITALS:**

- (A) The Principal and the Tunnelling Contractor have entered into the Eastern Tunnelling Works ITC Contract for the design, construction, testing and commissioning of the Project Works.
- (B) The Tunnelling Contractor has subcontracted the Significant Subcontract Work to the Significant Subcontractor pursuant to the Significant Subcontract.
- (C) The Significant Subcontractor Guarantor has, pursuant to the Significant Subcontract Guarantee, guaranteed to the Tunnelling Contractor the performance of the Significant Subcontractor's obligations under the Significant Subcontract.
- (D) The parties have entered into this deed to set out the terms on which the Significant Subcontractor and Significant Subcontractor Guarantor will grant the Principal certain rights in relation to the Significant Subcontract and the Significant Subcontract Guarantee.

**THE PARTIES AGREE AS FOLLOWS:**

1. **INTERPRETATION**

1.1 **Definitions**

Capitalised terms used in this deed and not otherwise defined have the same meanings as those given in the Eastern Tunnelling Works ITC Contract.

The following definitions also apply in this deed:

**Approved Nominee** means a person nominated by the Principal as:

- (a) having legal capacity, power and authority to become a party to, and perform the obligations of the Tunnelling Contractor under, the Significant Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub-contracts) which are sufficient to enable it to perform the obligations of the Tunnelling Contractor under the Significant Subcontract,

and approved by the Significant Subcontractor in accordance with clause 4.9.

**Assumption Notice** means the notice referred to in clause 4.1.

**Default** means:

- (a) any breach by the Tunnelling Contractor of any of its obligations under the Significant Subcontract; or
- (b) any other event or circumstance,

which would entitle the Significant Subcontractor to terminate, rescind, accept the repudiation of, suspend the performance of any or all of the Significant Subcontractor's obligations under the Significant Subcontract.

**Default Notice** has the meaning given in clause 3.2(a).

**Eastern Tunnelling Works ITC Contract** means the deed titled "Sydney Metro West, Eastern Tunnelling Works Incentivised Target Cost Contract" (Contract No: [insert]) between the Principal and the Tunnelling Contractor dated [insert].

**Effective Date** means the date of the Assumption Notice.

**Project Works** has the meaning given in the Eastern Tunnelling Works ITC Contract.

**Significant Subcontractor's Activities** means all things or tasks which the Significant Subcontractor is, or may be, required to provide, carry out or do to comply with its obligations under the Significant Subcontract (whether or not the performance of such things or tasks is subcontracted by the Significant Subcontractor to another person).

**Significant Subcontract** means the deed or agreement titled "[insert]" dated on or about the date of this deed between the Tunnelling Contractor and the Significant Subcontractor.

**Significant Subcontract Guarantee** means the deed of guarantee dated on or about the date of the Significant Subcontract from the Significant Subcontractor Guarantor in favour of the Tunnelling Contractor in respect of the obligations of the Significant Subcontractor under the Significant Subcontract and, if the Principal gives an Assumption Notice, the new guarantee entered into pursuant to clause 4.6.

**Significant Subcontract Work** means the physical works to be designed and constructed by the Significant Subcontractor under the Significant Subcontract.

**State** means the Crown in right of the State of New South Wales.

**Step-in Rights** has the meaning given in clause 3.1(a).

## 1.2 Rules for interpreting this deed

In this deed headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this deed and unless the context indicates a contrary intention:

- (a) "person" includes an individual, the estate of an individual, a corporation, an Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (c) a reference to a "document", "contract" or "agreement" is to that document, contract or agreement as updated, varied, novated, ratified or replaced from time to time;
- (d) a reference to any "Authority", "institute", "association" or "body" is:

- (i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured 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 is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (e) a reference to a "statute" includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
- (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
  - (ii) any consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to:
- (i) a "part" or "schedule" is a reference to a part or schedule to or of this deed; and
  - (ii) this deed includes all schedules to it;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency; and
- (k) a time of day is a reference to Sydney time.

### 1.3 **Business Day**

If the day on or by which anything is to be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

### 1.4 **Inconsistency between this deed and the Significant Subcontract**

This deed prevails to the extent of any inconsistency between this deed and the Significant Subcontract.

### 1.5 **No bias against drafter**

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

### 1.6 **Aggregate liability**

Despite any other provision of the Significant Subcontract, this deed or the Significant Subcontract Guarantee:

- (a) the Significant Subcontractor's liability to the Tunnelling Contractor under or in connection with this deed is limited to the extent described in the Significant Subcontract;

- (b) nothing in this deed is intended to make or makes the Significant Subcontractor or the Significant Subcontractor Guarantor liable for the same loss twice for the same breach of an obligation;
- (c) neither the Significant Subcontractor nor the Significant Subcontractor Guarantor will have any greater obligations or liabilities to the Principal arising under or in connection with this deed in respect of the performance of their obligations and liabilities under the Significant Subcontract and the Significant Subcontract Guarantee than they would have had if the Principal had been named as principal under the Significant Subcontract; and
- (d) the liability of the Significant Subcontractor and the Significant Subcontractor Guarantor arising under or in connection with this deed will not exceed the difference between the maximum liability of the Significant Subcontractor under the Significant Subcontract and the liability incurred (from time to time) by the Significant Subcontractor and the Significant Subcontractor Guarantor to the Tunnelling Contractor under the Significant Subcontract.

## 2. **SIGNIFICANT SUBCONTRACTOR'S WARRANTY**

- (a) The Significant Subcontractor warrants to the Principal that:
  - (i) it will carry out its duties and obligations under the Significant Subcontract in accordance with the Significant Subcontract;
  - (ii) it will in performing its duties and obligations under the Significant Subcontract exercise the level of skill, care and diligence that would be reasonably expected of a qualified and experienced contractor performing the same or similar works and services to the Significant Subcontractor's Activities;
  - (iii) it will use materials, equipment and goods that are of the quality and standard specified in the Significant Subcontract or, if no quality or standard is specified in the Significant Subcontract, new and of merchantable quality and which are and will be capable of remaining at all relevant times fit for their intended purpose; and
  - (iv) without limiting the generality of the foregoing, it will carry out and complete the Significant Subcontract Work in accordance with the Significant Subcontract and duly observe and perform all its duties and obligations thereunder.
- (b) Without prejudice to any of the Principal's other rights under this deed (including, without limitation, under clause 3 and clause 4), the Principal may only exercise its rights pursuant to this clause 2 upon:
  - (i) the Principal exercising its step-in rights under the Eastern Tunnelling Works ITC Contract;
  - (ii) the termination of the Eastern Tunnelling Works ITC Contract; or
  - (iii) the Tunnelling Contractor no longer being responsible for performing the Project Works substantially on the basis set out in the Eastern Tunnelling Works ITC Contract.

### 3. PRINCIPAL'S RIGHT TO CURE DEFAULT EVENT

#### 3.1 Principal's Step-in Rights

- (a) On becoming aware of any Default, the Principal may (but is not obliged to) cure or remedy, or procure the cure or remedy of, that Default (**Step-in Rights**).
- (b) Clause 3.1(a) only applies where the Significant Subcontractor has given a Default Notice in accordance with clause 3.2(a).
- (c) Upon the Principal exercising any of its rights under this clause 3.1, the Tunnelling Contractor's obligations under the Significant Subcontract are suspended to the extent and for such period as the Tunnelling Contractor is prevented from performing such obligations by the Principal's exercise of its Step-in Rights.
- (d) If the Principal exercises its Step-in Rights, the Principal may, after giving reasonable notice to the Tunnelling Contractor, cease to exercise that right, and in any event, will cease to exercise the Step-in Rights once the relevant Default has been remedied.

#### 3.2 Restriction on right to terminate or suspend

The Significant Subcontractor must not terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract unless each of the following conditions have been satisfied:

- (a) the Significant Subcontractor has given to the Principal prior notice setting out details of the Default giving rise to the right to terminate, rescind, accept the repudiation of, or suspend the performance of any or all of its obligations under, the Significant Subcontract (**Default Notice**), together with the statements referred to in clause 3.3; and
- (b) either:
  - (i) if the Default is capable of cure or remedy within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor), that Default has not been cured or remedied within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;
  - (ii) if the Default is not one described in clause 3.2(b)(i) but is nevertheless capable of cure or remedy, the Principal has not within 20 Business Days after the date on which the Default Notice is given to the Principal notified the Significant Subcontractor that the Principal has elected to make arrangements to cure or remedy the Default. If notified, the Significant Subcontractor agrees:
    - (A) to use its best endeavours to reach an agreement with the Principal in respect of the arrangements to cure or remedy the Default; and
    - (B) not to exercise any of its rights in relation to the Default, including any right to terminate the Significant Subcontract, for as long as the Principal is diligently pursuing a cure or remediation for the Default;
  - (iii) if the Default is not reasonably capable of cure or remedy and the Default Notice contains a claim for reasonable compensation for the Default, the Principal (or another person on behalf of the Principal) has not paid or otherwise provided that compensation within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to

by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal;

- (iv) if the Default is not capable of cure or remedy and the Default Notice does not contain a claim for reasonable compensation for the Default, the Principal does not commence and continue to perform the Tunnelling Contractor's obligations under the Significant Subcontract within 20 Business Days (or such longer period as is permitted under the Significant Subcontract or agreed to by the Significant Subcontractor) after the date on which the Default Notice is given to the Principal; or
- (v) the Principal notifies the Significant Subcontractor in writing after receipt of the Default Notice that it elects not to cure or remedy, or procure the cure or remedy of, the Default.

The parties acknowledge and agree that a failure to pay money is a Default that is capable of cure or remedy.

### 3.3 **Statements concerning Default**

As part of any Default Notice, the Significant Subcontractor must submit to the Principal statements of:

- (a) where the Default is a monetary default, the amount which must be paid to the Significant Subcontractor to remedy the Default; and
- (b) where the Default is of a non-monetary nature:
  - (i) the provisions of the Significant Subcontract alleged to have been breached or not fulfilled;
  - (ii) sufficient information to enable the Principal to identify the material facts, to the extent these are known to the Significant Subcontractor;
  - (iii) the steps required to cure or remedy the specified breaches or conditions not fulfilled if capable of cure or remedy; and
  - (iv) the time within which the specified steps can reasonably be expected to be taken.

### 3.4 **Warranty of accuracy**

- (a) The Significant Subcontractor warrants to the Principal that statements submitted by it under clause 3.3 will be, so far as reasonably practicable, true, complete and accurate statements of the amounts to which the Significant Subcontractor considers itself entitled.
- (b) The Significant Subcontractor agrees that it will notify the Principal immediately upon becoming aware that any statements submitted by it under clause 3.3 are not true, complete and/or accurate and that it will, in any such notice, include details of the revised amounts to which the Significant Subcontractor considers itself entitled.

### 3.5 **Disputes as to statements**

If the Principal disputes the amount of any claim or the existence of any Default referred to in a Default Notice:

- (a) the Principal must pay the amount not in dispute;

- (b) upon resolution of the dispute in accordance with this deed, the parties must make payments as determined; and
- (c) during the period of dispute resolution, all parties must continue to perform their obligations under this deed, the Significant Subcontract and the Tunnelling Contract Documents.

### 3.6 Verification

The Principal may appoint a firm of independent chartered accountants or a firm of technical advisers to verify (at the cost of the Tunnelling Contractor) statements submitted by the Significant Subcontractor to the Principal pursuant to clause 3.3, and the Significant Subcontractor must (subject to such firm(s) executing an appropriate confidentiality agreement as the Significant Subcontractor may reasonably request) permit that firm to have access to and make copies of all records, documents, data and accounting and other information not subject to legal (including, without limitation, solicitor and own client) and other professional privilege which is reasonably required with a view to confirming the accuracy and completeness of such statements.

### 3.7 No liability

- (a) The Tunnelling Contractor and the Significant Subcontractor acknowledge that, without limiting the liability of the Tunnelling Contractor (which continues to be responsible for the performance of its obligations under the Significant Subcontract), and without limiting the Principal's obligations under clause 4, the Principal will not be liable for any obligation or liability of the Tunnelling Contractor under the Significant Subcontract by reason only of the Principal performing the Tunnelling Contractor's obligations in accordance with the Significant Subcontract.
- (b) The Tunnelling Contractor and the Significant Subcontractor each release the Principal from any such liability.

### 3.8 Tunnelling Contractor to compensate the Principal

Any reasonable Loss suffered or incurred by the Principal arising out of or in any way in connection with the exercise of its rights under this clause 3 will be a debt due and payable from the Tunnelling Contractor to the Principal.

### 3.9 No limitation on other rights

The exercise (or failure to exercise) by the Principal of its rights under this clause 3 will not limit the Principal's rights against the Tunnelling Contractor under the Eastern Tunnelling Works ITC Contract or otherwise according to law.

## 4. NOVATION OF SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE

### 4.1 Option

- (a) If the Eastern Tunnelling Works ITC Contract is terminated, the Principal may exercise its rights under this clause 4 by giving a notice (**Assumption Notice**) to the Significant Subcontractor and Significant Subcontractor Guarantor.
- (b) The Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor:
  - (i) confirm that each of the Significant Subcontract and the Significant Subcontract Guarantee contains provisions which preserve the terms of the Significant Subcontract and the Significant Subcontract Guarantee (respectively) and the Principal's ability to exercise its rights under clause



4.1(a) upon termination of the Eastern Tunnelling Works ITC Contract for any reason; and

- (ii) acknowledge and agree that, in accordance with clause 1.4, any provision of the Significant Subcontract or the Significant Subcontract Guarantee that allows for the termination of the Significant Subcontract or the Significant Subcontract Guarantee upon termination of the Eastern Tunnelling Works ITC Contract will be deemed to have no effect unless and until the Principal gives written notice to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor confirming that it will not issue an Assumption Notice.

#### 4.2 **Novation of Significant Subcontract**

With effect from the Effective Date:

- (a) the Principal and the Tunnelling Contractor novate the Significant Subcontract so that the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor are parties to a new contract on the same terms as the Significant Subcontract, as amended by this deed; and
- (b) any reference in the Significant Subcontract to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee).

#### 4.3 **Rights and obligations of the Principal and the Significant Subcontractor under the Significant Subcontract**

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) the Principal (or, if applicable, the Approved Nominee):
  - (i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, the Tunnelling Contractor could have been entitled, at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, the Tunnelling Contractor would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, the Tunnelling Contractor would have been bound, at and after the Effective Date; and
- (b) the Significant Subcontractor:
  - (i) is entitled to all rights and benefits under the Significant Subcontract to which, but for this deed, it would have been entitled at and after the Effective Date;
  - (ii) must perform all obligations and discharge all liabilities under the Significant Subcontract which, but for this deed, it would have been required to perform or discharge at and after the Effective Date; and
  - (iii) is bound by and must comply with all other provisions of the Significant Subcontract by which, but for this deed, it would have been bound at and after the Effective Date,

as if the Principal (or, if applicable, the Approved Nominee) had originally been a party to the Significant Subcontract in place of the Tunnelling Contractor.

#### 4.4 Release by Significant Subcontractor

Subject to clause 4.7, with effect from the Effective Date, the Significant Subcontractor releases the Tunnelling Contractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

#### 4.5 Release by Tunnelling Contractor

Subject to clause 4.7, with effect from the Effective Date, the Tunnelling Contractor releases the Significant Subcontractor from all obligations and liability under or in respect of the Significant Subcontract to be performed or discharged at or after the Effective Date.

#### 4.6 Novation of Significant Subcontract Guarantee

If the Principal gives an Assumption Notice then, subject to clause 4.7, with effect from the Effective Date:

- (a) the Principal and the Significant Subcontractor Guarantor novate the Significant Subcontract Guarantee so that the Principal (or, if applicable, the Approved Nominee) will be named as beneficiary to the new deed of guarantee on the same terms as the Significant Subcontract Guarantee;
- (b) any reference in the Significant Subcontract Guarantee to the Tunnelling Contractor will be read as a reference to the Principal (or, if applicable, the Approved Nominee); and
- (c) the Significant Subcontractor Guarantor will guarantee for the benefit of the Principal (or, if applicable, the Approved Nominee) all of the obligations of the Significant Subcontractor in accordance with the Significant Subcontract Guarantee.

#### 4.7 Obligations and liability prior to the Effective Date

Nothing in this deed releases:

- (a) the Tunnelling Contractor or the Significant Subcontractor from any obligation or liability under the Significant Subcontract; or
- (b) the Tunnelling Contractor, the Significant Subcontractor or the Significant Subcontractor Guarantor from any obligation or liability under the Significant Subcontract Guarantee,

arising or accruing before the Effective Date and the Principal (or, if applicable, the Approved Nominee) does not assume any such obligation or liabilities under this deed.

#### 4.8 Amendments to the Significant Subcontract

- (a) With effect from the Effective Date, the terms of the Significant Subcontract will be deemed to be amended as required to reflect the fact that the Eastern Tunnelling Works ITC Contract is at an end, and that the Significant Subcontract must operate independently of the Eastern Tunnelling Works ITC Contract, on the basis that:
  - (i) the rights and obligations that the Principal (or, if applicable, the Approved Nominee) will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Tunnelling Contractor would have had under the Significant Subcontract had the Eastern Tunnelling Works ITC Contract not been terminated;
  - (ii) the rights and obligations that the Significant Subcontractor will assume under the Significant Subcontract from the Effective Date will be equivalent to those that the Significant Subcontractor would have had under the Significant

Subcontract had the Eastern Tunnelling Works ITC Contract not been terminated;

- (iii) any provisions of the Eastern Tunnelling Works ITC Contract that are incorporated by reference into the Significant Subcontract prior to the Effective Date are incorporated in the Significant Subcontract from the Effective Date; and
  - (iv) without affecting the generality of this clause 4.8, clauses **[to be inserted]** of the Significant Subcontract will be deleted. **[Note: This clause will be completed as required to capture any applicable clauses of the Significant Subcontract.]**
- (b) If at or after the Effective Date, there is a dispute between the Principal (or, if applicable, the Approved Nominee) and the Significant Subcontractor as to how the terms of the Significant Subcontract are deemed to have been amended pursuant to clause 4.8, then upon either party serving a written notice to this effect on the other, the dispute will be determined as if clause 27 of the Eastern Tunnelling Works ITC Contract and the Dispute Procedure were incorporated in this deed but as if:
- (i) references in those clauses to "the Tunnelling Contractor" were references to "the Significant Subcontractor";
  - (ii) references to "the parties" were references to "the Principal and the Significant Subcontractor";
  - (iii) references to a "party" were references to "the Principal" or "the Significant Subcontractor" (as appropriate); and
  - (iv) references in those clauses to "Dispute" were references to this dispute.

#### 4.9 Approved Nominee

- (a) The Principal's nominee may be named as a party to the Significant Subcontract in substitution for the Tunnelling Contractor if the Principal's nominee is an Approved Nominee.
- (b) The Significant Subcontractor must:
  - (i) notify the Principal as to whether the Principal's nominee is an Approved Nominee, on or before the date falling 20 Business Days after the date of receipt of all information reasonably required by the Significant Subcontractor (including information as to the nominee's financial standing) to decide whether the nominated person is an Approved Nominee;
  - (ii) not unreasonably withhold or delay its decision as to whether the Principal's nominee is an Approved Nominee; and
  - (iii) enter into a side deed with the Principal and the Approved Nominee on substantially the same terms as this deed.

#### 4.10 Unconditional undertakings

**[Note: This clause will be amended as required to reflect the security arrangements under the relevant Significant Subcontract.]**

If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must (with the support of the Significant Subcontractor to effect this provision) either:

- (a) procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of any unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract prior to the Effective Date; or
- (b) procure the issue to the Principal (or, if applicable, the Approved Nominee) of replacement unconditional undertakings for the same undrawn value and on the same terms as the unconditional undertakings held by the Tunnelling Contractor under the Significant Subcontract immediately prior to the Effective Date.

#### 4.11 Other documents under the Significant Subcontract

**[Note: This clause will be included as required in order to deal with the assignment or novation of relevant ancillary documents.]**

If the Principal gives an Assumption Notice then, as from the Effective Date, the Tunnelling Contractor must procure the novation or assignment to the Principal (or, if applicable, the Approved Nominee) of:

- (a) **[Insert as required]**.

#### 5. AMENDMENTS TO SIGNIFICANT SUBCONTRACT AND SIGNIFICANT SUBCONTRACT GUARANTEE

- (a) The Tunnelling Contractor and the Significant Subcontractor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).
- (b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not agree to or permit any modification, variation, waiver or amendment to the terms of the Significant Subcontract Guarantee to the extent it may impact the rights or increase the liabilities or obligations of the Principal (including if the Principal were to subsequently exercise its rights under clause 4) without the prior consent of the Principal (which must not be unreasonably withheld or delayed).

#### 6. RESTRICTION ON DEALINGS

- (a) The Tunnelling Contractor and the Significant Subcontractor must not transfer, assign, mortgage, charge, encumber or otherwise deal with its interest in the Significant Subcontract without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.
- (b) The Tunnelling Contractor and the Significant Subcontractor Guarantor must not transfer, assign, mortgage, charge, encumber or otherwise deal with their interest in the Significant Subcontract Guarantee without the prior consent of the Principal (such consent not to be unreasonably withheld or delayed), and without procuring that such transferee, assignee, mortgagee, chargee or other encumbrance holder enters into a deed in which it agrees to be bound by the terms of this deed.

#### 7. ACKNOWLEDGEMENT BY TUNNELLING CONTRACTOR AND SIGNIFICANT SUBCONTRACTOR

- (a) The Tunnelling Contractor and the Significant Subcontractor consent to the terms of this deed and will cooperate in the implementation of this deed.

- (b) The rights and benefits conferred upon the Principal by this deed are in addition to any other rights and remedies it may have against the Significant Subcontractor, including without prejudice to the generality of the foregoing, any remedies in negligence.

## 8. GENERAL REPRESENTATIONS AND WARRANTIES

The Significant Subcontractor makes the following representations and warranties to the Principal each of which is true and correct on the date of this deed:

- (a) it has power to enter into this deed and the Significant Subcontract and comply with its obligations under this deed and the Significant Subcontract;
- (b) this deed, the Significant Subcontract and the transactions under them do not contravene its constituent documents or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation of powers or the powers or its directors to be exceeded;
- (c) it has in full force and effect the authorisations necessary for it to enter into this deed, the Significant Subcontract and the transactions under them;
- (d) its obligations under this deed and the Significant Subcontract are valid and binding and are enforceable against it in accordance with the terms of this deed and the Significant Subcontract;
- (e) it is not in breach of any law or obligation affecting it or its assets in a way which may result in a material adverse effect on the business or financial condition;
- (f) there is no pending or threatened proceeding affecting either it or any of its assets that would affect the validity or enforceability of this deed, the Significant Subcontract, the ability to fulfil its commitments under this deed or the Significant Subcontract in any material respect, or that could result in any material adverse change in the business or financial condition;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable; and
- (h) it will give all notices it is required to give under this deed as and when it is required to do so.

## 9. AMENDMENT AND ASSIGNMENT

### 9.1 Amendment

This deed may only be varied by a formal deed or agreement executed by or on behalf of each party.

### 9.2 No assignment by the Significant Subcontractor

The Significant Subcontractor and the Significant Subcontractor Guarantor must not assign, novate, mortgage, charge, transfer or otherwise deal with its rights, interest or benefits under this deed without the prior written consent of the Principal (which may be given or be withheld in the Principal's absolute discretion).

### 9.3 Transfer of functions or Public Transport Agency assets

- (a) The parties acknowledge that:
- (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights,

liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;

- (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
  - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor acknowledge and agree that they must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith any variations required to this deed, or any replacement agreement or agreements for this deed to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
  - (c) The Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 9.3.
  - (d) For the purposes of this clause 9.3 "another entity" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

## 10. NOTICES

- (a) Wherever referred to in this clause, "**Notice**" means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) At any time and from time to time, the Principal may notify the parties that a PDCS will be used for giving Notices under or in connection with this deed. The Principal's notice will set out:
  - (i) the name of the relevant PDCS;
  - (ii) the commencement date for use of the PDCS;
  - (iii) any password, login details or similar information required for the parties to use the PDCS;
  - (iv) any requirements for specific notices (e.g. notices of claims);
  - (v) the name and contact details of any additional person which the Principal nominates for receipt of Notices under this deed; and
  - (vi) any other information reasonably necessary for the use and service of Notices via the PDCS.

- (c) At any time and from time to time, the Principal may notify the parties that a PDCS will not be used for giving certain Notices under or in connection with this deed. The Principal's notice will state that such Notices will be given in accordance with clause 10(d).
- (d) Each Notice must:
  - (i) before the date referred to in clause 10(b)(ii) or where clause 10(c) applies:
    - (A) be in writing;
    - (B) be addressed:
      - (aa) in the case of a Notice from the Tunnelling Contractor, to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;
      - (bb) in the case of a Notice from the Significant Subcontractor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified by the Principal in writing;
      - (cc) in the case of a Notice from the Significant Subcontractor Guarantor, to the Principal, the Tunnelling Contractor and the Significant Subcontractor and any additional person notified by the Principal in writing; or
      - (dd) in the case of a Notice from the Principal, to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor;
    - (C) comply with any requirements for specific notices (e.g. notices of claims) specified by the Principal in writing;
    - (D) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
    - (E) be delivered or posted to the relevant address or sent to the email address shown below (or to any new address or email address notified by the intended recipient):

**Principal**

Address: [insert]

Email: [insert]

Attention: [insert]

(any Notice in relation to a claim or a dispute must also be addressed to the Deputy General Counsel Sydney Metro and sent to [insert])

**Tunnelling Contractor**

Address: [insert]

Email: **[insert]**

Attention: **[insert]**

**Significant Subcontractor**

Address: **[insert]**

Email: **[insert]**

Attention: **[insert]**

**Significant Subcontractor Guarantor**

Address: **[insert]**

Email: **[insert]**

Attention: **[insert]**

(ii) on and from the commencement date for use of the PDCS referred to in clause 10(b)(ii) (other than where clause 10(c) or clause 10(d)(i) applies):

(A) be sent through the PDCS in accordance with the requirements set out in clause 10(f):

(aa) in the case of a Notice from the Tunnelling Contractor, be addressed to the Principal, the Significant Subcontractor and the Significant Subcontractor Guarantor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);

(bb) in the case of a Notice from the Significant Subcontractor, be addressed to the Principal, the Tunnelling Contractor and the Significant Subcontractor Guarantor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv);

(cc) in the case of a Notice from the Significant Subcontractor Guarantor, be addressed to the Principal, the Significant Subcontractor and the Tunnelling Contractor and any additional person notified in accordance with clause 10(b)(v) and comply with any requirements notified in accordance with clause 10(b)(iv); and

(dd) in the case of a Notice from the Principal, be addressed to the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor; or

(iii) in circumstances where the PDCS is temporarily disabled or not operating, be issued in accordance with clause 10(d)(i).

(e) A communication is taken to be received by the addressee:

(i) (in the case of a Notice sent through the PDCS) at the time recorded on the PDCS as being the time at which the Notice was sent;

(ii) (in the case of prepaid post sent to an address in the same country) 2 Business Days after the date of posting;



- (iii) (in the case of international post) 7 Business Days after the date of posting;
- (iv) (in the case of delivery by hand) on delivery; and
- (v) (in the case of email sent to the Principal):
  - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
  - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day.
- (f) With respect to Notices sent through the PDCS:
  - (i) all Notices must be submitted by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
  - (ii) only the text in any Notice, or subject to clause 10(f)(iii), any attachments to such Notice which are referred to in the Notice, will form part of the Notice. Any text in the subject line will not form part of the Notice; and
  - (iii) an attachment to a Notice will only form part of a Notice if it is uploaded to the PDCS in:
    - (A) .pdf format;
    - (B) a format compatible with Microsoft Office; or
    - (C) such other format as may be agreed between the parties in writing from time to time.
- (g) Each of the Tunnelling Contractor, Significant Subcontractor and Significant Subcontractor Guarantor 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;
  - (iv) advise the Principal of which personnel require access to the PDCS;
  - (v) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including Notices) using the PDCS; and
  - (vi) as soon as practicable, at the first available opportunity following any period of time during which the PDCS is temporarily disabled or not operating, send all communications which have been issued pursuant to clause 10(d)(iii) to the Principal through the PDCS.
- (h) The Principal has no liability for any Losses the Tunnelling Contractor, Significant Subcontractor or Significant Subcontractor Guarantor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and neither the Tunnelling Contractor, the Significant Subcontractor nor the

Significant Subcontractor Guarantor will be entitled to make, and the Principal will not be liable upon, any claim against the Principal arising out of or in connection with such access to or use of the PDCS or any failure of the PDCS.

## 11. GST

### (a) (Interpretation)

- (i) Except where the context suggests otherwise, terms used in this clause 11 have the same meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time).
- (ii) 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 11.
- (iii) Unless otherwise expressly stated, all consideration to be provided under this deed (other than under this clause 11) 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 11.
- (iv) A reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

(b) **(Reimbursements)** 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 cost, 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.

(c) **(Additional amount of GST payable)** If GST becomes payable on any supply made by a party (**Supplier**) under or in connection with this deed:

- (i) any party (**Recipient**) that is required to provide consideration to the Supplier for that supply must pay an additional amount to the Supplier equal to the amount of the GST payable on that supply (**GST Amount**), at the same time as any other consideration is to be first provided for that supply; and
- (ii) the Supplier must provide a tax invoice to the Recipient for that supply, no later than the time at which the GST Amount for that supply is to be paid in accordance with clause 11(c)(i).

(d) **(Variation of GST)**

- (i) If the GST Amount recovered by the Supplier from the Recipient under clause 11(c) for a supply varies from the amount of GST paid or payable by the Supplier on that supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- (ii) The Supplier must issue an adjustment note to the Recipient in respect of any adjustment event occurring in relation to a supply made under or in connection with this deed within 20 Business Days after the Supplier becomes aware of the adjustment event.

(e) **(No merger)** This clause 11 will not merge on completion or termination of this deed.

## 12. GENERAL

### 12.1 Governing Law and jurisdiction

- (a) This deed is governed by and must be constructed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally 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 that may be brought at any time relating to this deed.

### 12.2 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 preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of another breach of that term or of a breach of any other term of this deed.

### 12.3 Further acts and documents

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

### 12.4 Consents

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

### 12.5 No representations or reliance

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

### 12.6 Severance

If at any time any provision of this deed is or becomes illegal, invalid or unenforceable in any respect under applicable law, that provision is to be severed to the extent necessary to make this deed enforceable, and it will not affect or impair the legality, validity or enforceability of any other provision of this deed.

### 12.7 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 by the parties; and

- (b) supersedes any prior written or other agreement of the parties.

#### 12.8 Counterparts

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

#### 12.9 Independent subcontractor

The Significant Subcontractor is an independent contractor performing this deed. This deed does not create any agency, partnership, joint venture or other joint relationship between the parties.

#### 12.10 Joint and several liability

If a party to this deed is made up of more than one person, or a term is used in this deed to refer to more than one party, then unless otherwise specified in this deed:

- (a) an obligation of those persons is joint and several;
- (b) a right of those persons is held by each of them severally; and
- (c) any other reference to that party or term is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking relates to each of them separately.

#### 12.11 Conflicts of interests

- (a) The Significant Subcontractor warrants that, to the best of its knowledge having made diligent enquiries, no conflict of interest exists in the performance of its obligations and the Principal's best interests.
- (b) The Significant Subcontractor must use reasonable endeavours to prevent any actions or conditions which may conflict with the Principal's best interests. In the event that such a conflict arises, the Significant Subcontractor shall immediately notify the Principal and take such steps as the Principal reasonably requires to resolve or otherwise deal with the conflict.

#### 12.12 Third party rights

No one other than a party to this deed shall have any right to enforce any of its terms.

#### 12.13 Survival

- (a) Clause 1 (*Interpretation*), clause 4.8 (*Amendments to the Significant Subcontract*), clause 10 (*Notices*), clause 11 (*GST*) and clause 12 (*General*) and the representations and warranties given by the Tunnelling Contractor, the Significant Subcontractor and the Significant Subcontractor Guarantor under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination and any rights arising on termination, survive the expiry or termination of this deed.
- (b) This deed survives the expiry or termination of any or all of the following documents:
  - (i) the Eastern Tunnelling Works ITC Contract; and
  - (ii) the Significant Subcontract.

12.14 **Costs of negotiating this deed**

Except as otherwise provided in this deed, each party agrees to pay its own costs of and incidental to the negotiation and execution of this deed.

**EXECUTED** as a deed.

**[Note: Execution blocks to be confirmed prior to execution.]**

**EXECUTED** by **[NAME OF TUNNELLING CONTRACTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **[NAME OF SIGNIFICANT SUBCONTRACTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**EXECUTED** by **[NAME OF SIGNIFICANT SUBCONTRACTOR GUARANTOR]** ABN **[INSERT]** in accordance with section 127 of the *Corporations Act 2001* (Cth):

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SIGNED** for **SYDNEY METRO** ABN 12  
354 063 515 by its duly authorised  
delegate, in the presence of:

\_\_\_\_\_  
Signature of Delegate

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

**SCHEDULE A16**

**Nominated Subcontractors**

**(Clauses 1.1 and 6.19)**

The documents referred to in the "Form of Nominated Subcontract" column for items 1 to 4 in the table below are included in Schedule F1 as electronic files.

Item	Nominated Subcontract Work	Nominated Subcontractor	Form of contract
1. Videography, filming and editing services	Videography, filming and editing services as described in section 6.17.2 of the General Specification.		The Professional Services Contract reference PSC No. 00013/11009.
2. Time lapse photos	Time lapse photos as described in section 6.17.2 of the General Specification.		The Professional Services Contract reference PSC No. SMC-21-0293B.
3. 3D animation and stills	3D animation and stills as described in section 6.11 of the General Specification.		The Professional Services Contract reference PSC No. SMC-21-0253.
4. Photography services	Photography services as described in section 6.17.2 of the General Specification.		The Professional Services Contract reference PSC No. 00013/10882.



**SCHEDULE A17**

**IDAR Panel Agreement**

**(Clauses 1.1 and 27)**

**This Agreement** is made at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ between the following parties:

1. **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)  
and
2. **Members of the IDAR Panel** (collectively **Members**), namely:
  - (a) [*insert name of Chair*] of [*insert address of Chair*] (**Chair**);
  - (b) [*insert name of Member*] of [*insert address of Member*];
  - (c) [*insert name of Member*] of [*insert address of Member*];
  - (d) [*insert name of Member*] of [*insert address of Member*];
  - (e) [*insert name of Member*] of [*insert address of Member*]; and
  - (f) [*insert name of Member*] of [*insert address of Member*],  
and
3. (From each Accession Date) each person who accedes to this agreement under clause 4, being the person identified as the "Acceding Party" in an Accession Deed Poll (**Project Contractor**).

**RECITALS:**

- A. The Principal is procuring Sydney Metro West on behalf of the NSW government and the people of New South Wales. Sydney Metro West will involve multiple packages of works to be undertaken by contractors engaged by the Principal and by developers above or adjacent to the new stations under separate contracts (**Project Contracts**).
- B. The Principal will progressively engage or enter into contracts with Project Contractors. As each Project Contract is entered into, the Project Contractor will execute an Accession Deed Poll substantially in the form set out in Schedule 1 and will thereby accede to the terms of this agreement.
- C. The Project Contracts provide for a dispute resolution process through the establishment and the operation of an IDAR Panel to assist in avoiding and resolving Disputes under the Project Contracts.
- D. The role of the IDAR Panel is to, among other things, assist the Principal and the relevant Project Contractor as and when required to avoid Disputes or, where Disputes cannot be avoided, to resolve Disputes.

- E. The parties acknowledge the benefits of a project-wide IDAR Panel include an improvement in the quality of assessments and determinations as a result of the IDAR Panel's familiarity with complex interfaces across multiple integrated works packages.
- F. This agreement sets out the rights, obligations and duties of the Members, the Principal and (from each Accession Date) the Project Contractors in relation to the IDAR Panel and the Disputes (the **Agreement**).

**THIS AGREEMENT PROVIDES:**

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Agreement:

**Accession Date** has the same meaning as given to the term "Effective Date" in the Accession Deed Poll, being the date from which each Project Contractor accedes to this Agreement.

**Accession Deed Poll** means the deed poll in substantially the same form as Schedule 1 (with relevant details duly completed) which is to be executed by each Project Contractor in accordance with clause 4.

**Authority** means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality; or
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any obligations of any party under this Agreement.

**Business Day** means any day other than a Saturday, Sunday or public holiday in Sydney, or 27, 28, 29, 30 and 31 December.

**Chair** means that Member designated in this Agreement as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time pursuant to clause 3(c).

**Construction Site** has the meaning given to it in the relevant Project Contract.

**Continuing Parties** has the same meaning as given to the term "Continuing Parties" in the Accession Deed Poll, being those parties to the Agreement at the Accession Date, excluding the Principal.

**Dispute** has the meaning given to it in the relevant Project Contract and, for the avoidance of doubt, includes an IE Level Dispute (where such term is defined in the relevant Project Contract).

**Dispute Avoidance Process** means the process set out in clause 7A.

**Dispute Resolution Process** means the process set out in clause 7B.

**Fees and Disbursements Letter** means each of the following:

- (a) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement;
- (b) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement;
- (c) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement;
- (d) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement;
- (e) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement; and
- (f) the letter titled "Fees and Disbursements for Independent Dispute Avoidance and Resolution Panel" between the Principal, each Project Contractor and [**insert name of Member**] dated on or about the date of this agreement.

**IDAR Panel** means the panel of Members formed pursuant to this Agreement.

**Instigating Party** has the meaning given in clause 7A(a)(i).

**Law** means:

- (a) Legislation; and
- (b) principles of law or equity established by decisions of courts.

**Legislation** means, in relation to New South Wales or the Commonwealth of Australia:

- (a) any act of parliament;
- (b) any subordinate legislation, rules, regulations or by-laws; and
- (c) binding rules, guidelines, regulations, policies, standards, procedures, directives, circulars, codes of practice or requirements relating to or affecting this Agreement or the performance by a party of any of its obligations under this Agreement, in each case as may be published by the Commonwealth or New South Wales governments or local councils or Authorities and with which the relevant party is legally required to comply.

**Management Review Group** has the meaning given to it (if any) in the relevant Project Contract.

**Master Interface Deed** has the meaning given to it in the relevant Project Contract.

**Members** means the 6 individuals appointed to the IDAR Panel in accordance with this Agreement.

**Nominated Member** means the Member nominated unanimously by the Principal and relevant Project Contractor(s) to participate in the Dispute Avoidance Process or the Dispute Resolution Process (as applicable) or otherwise nominated by the Chair pursuant to clause 9.

**Notice of Dispute** has the meaning given to it in the relevant Project Contract.

**Notice of IE Level Dispute** has the meaning (if any) given to it in the relevant Project Contract.

**Potential Matter** means any matter which a party to a Project Contract considers may, or has the potential to, give rise to a Dispute.

**Project Briefing** has the meaning given in clause 6(a).

**Project Contract** has the meaning given in Recital A.

**Project Integration Group** has the meaning given to it in the Master Interface Deed.

**Project Meeting** means each of the meetings that a Member of the IDAR Panel or a representative of the IDAR Panel (as applicable) is required to attend in accordance with clause 7.

**Project Works** has the meaning given to it in the relevant Project Contract or, where that term is not defined in the relevant Project Contract, means the works to be undertaken under that Project Contract.

**Resolution Institute** means the Resolution Institute, Australia.

**Services Brief** means the document set out at Schedule 3 of this Agreement.

**Sydney Metro West** has the meaning given to it in the relevant Project Contract.

## 1.2 Terms defined in the Project Contracts

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the Project Contracts.

## 1.3 Interpretation

In this Agreement unless the context otherwise requires:

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

- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
  - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
  - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), day means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated.

## 2. AGREEMENT TO PREVAIL

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and a Project Contract the terms of this Agreement will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date the Principal and the Members sign this document and will continue, unless terminated earlier, until it terminates in accordance with clause 16.

## 3. FORMATION OF THE IDAR PANEL

The parties acknowledge that the IDAR Panel:

- (a) has been formed;

- (b) is constituted by the Members;
- (c) will be chaired by that Member designated as Chair or such other Member as the Principal nominates, by written notice to the Members and Project Contractors, from time to time; and
- (d) must perform its obligations and functions under the Project Contracts and this Agreement.

4. **ACCESSION BY PROJECT CONTRACTORS**

- (a) The Principal will ensure that each Project Contractor who enters into a Project Contract that contemplates the involvement of the IDAR Panel in the relevant dispute resolution process accedes to this Agreement.
- (b) The Project Contractors may accede to this Agreement by execution of an Accession Deed Poll without the Continuing Parties' prior approval.
- (c) Upon accession of any Project Contractor to this Agreement as referred to in clause 4(a), the rights and liabilities of the parties to this Agreement will be as set out in this Agreement as amended in accordance with the requirements of the Accession Deed Poll.
- (d) The Principal will provide the Members with a copy of the Accession Deed Poll duly executed by the Project Contractor.

5. **ROLE OF THE IDAR PANEL**

The parties acknowledge and agree that the role of the IDAR Panel is to:

- (a) when requested by the parties, provide specialised expertise in order to assist the relevant parties in firstly, attempting to prevent, and if unable to prevent, encouraging the parties to reach a resolution in determining Disputes under each Project Contract in a timely manner;
- (b) function as an objective, impartial and independent body at all times; and
- (c) utilise knowledge gained from Disputes across each Project Contract in its recommendations and determinations.

6. **PROJECT BRIEFINGS**

- (a) The Principal may (in its discretion) from time to time hold monthly meetings with some or all of the Members for the purpose of the Principal providing a Sydney Metro West project briefing and update (**Project Briefing**).
- (b) To the extent required to do so by the Principal, the Members must attend the Project Briefings, subject to the Principal giving the relevant Members reasonable notice of such Project Briefings.
- (c) During the first Project Briefing, the IDAR Panel will establish procedures for the conduct of its routine site visits and other matters (excluding the rules governing the dispute resolution process as it relates to the IDAR Panel in each Project Contract) in accordance with the procedures included in Schedule 2 to this Agreement (unless otherwise agreed by the parties).

## 7. PROJECT MEETINGS

- (a) To the extent required to do so by the Principal or a Project Contractor, the Members must attend meetings of the Management Review Group, but will not be members of the Management Review Group.
- (b) To the extent required to do so by the Principal or a Project Contractor, a representative of the IDAR Panel nominated by the Principal must attend meetings of the Project Integration Group as a non-member observer.
- (c) Members must attend and participate in such other meetings as may be required by the Principal from time to time, subject to the Principal giving the relevant Members reasonable notice of such meeting.
- (d) At Project Briefings or any other meeting referred to in this clause 7, the relevant Members in attendance must:
  - (i) listen to the parties' concerns and observe discussions between attendees;
  - (ii) assist with identifying and clarifying issues and concerns which could give rise to a Dispute; and
  - (iii) where an issue or concern is identified or requires clarification, assist the parties to resolve such matters so as to avoid or resolve a Dispute.

## 7A. DISPUTE AVOIDANCE PROCESS

- (a) This clause 7A applies where:
  - (i) a party (**Instigating Party**) has notified the other parties to the Project Contract of a Potential Matter under the relevant provisions of the Project Contract;
  - (ii) all of the other parties to the Project Contract have issued a notice to the Instigating Party in accordance with the Project Contract confirming that they wish to participate in this Dispute Avoidance Process in respect of the Potential Matter;
  - (iii) all parties to the Project Contract have confirmed to the Chair in writing in accordance with the Project Contract that they wish to participate in this Dispute Avoidance Process in respect of the Potential Matter; and
  - (iv) a Notice of Dispute or Notice of IE Level Dispute has not been issued under the Project Contract in relation to the Potential Matter.
- (b) Where this clause 7A applies, the Nominated Member and the parties to the Project Contract must meet as soon as reasonably practicable and as many times as the parties agree is necessary, in person or via any other agreed method, to discuss the Potential Matter with the aim of attempting to avoid a Dispute arising from or in connection with the Potential Matter.
- (c) During the meetings referred to in clause 7A(b):
  - (i) the parties must provide their understanding and position with respect to the Potential Matter;
  - (ii) the Nominated Member must provide their understanding of the Potential Matter based upon the Nominated Member's attendance at Project Briefings

and Project Meetings and the Nominated Member's experience and expertise;  
and

- (iii) the parties and the Nominated Member may agree upon any additional steps to be taken in the Dispute Avoidance Process for that Potential Matter.
- (d) Unless the relevant Project Contract provides that the Dispute Avoidance Process will continue in respect of a Potential Matter beyond the issue of a Notice of Dispute or Notice of IE Level Dispute under the relevant Project Contract, then the Dispute Avoidance Process will cease with effect from that time (irrespective of whether or not the Potential Matter has been resolved), unless the Principal and relevant Project Contractor(s) otherwise agree in writing. Where the relevant Project Contract provides that the Dispute Avoidance Process will cease in respect of a Potential Matter at a particular time or upon the occurrence of a particular event, then the Dispute Avoidance Process will cease with effect from that time or the occurrence of that event (irrespective of whether or not the Potential Matter has been resolved), unless the Principal and relevant Project Contractor(s) otherwise agree in writing.
- (e) The Dispute Avoidance Process is purely consultative and advisory, and no advice, view, direction, statement or comment by the Nominated Member as part of the Dispute Avoidance Process shall be binding on the parties unless and until it is incorporated into a written agreement between the parties for the purpose of avoiding the occurrence of a Dispute.
- (f) Unless otherwise agreed between the parties to the relevant Project Contract, the Member who participates in the Dispute Avoidance Process with respect to a Potential Matter shall be precluded from acting as a Nominated Member of the IDAR Panel or otherwise in the resolution of any Dispute arising out of or in connection with the Potential Matter.

#### 7B. **DISPUTE RESOLUTION PROCESS**

- (a) Where a Dispute has been notified to the IDAR Panel in accordance with the relevant provisions of a Project Contract:
  - (i) the Nominated Member must assist the relevant parties to discuss and resolve the Dispute as soon as reasonably practicable or otherwise within such time period as may reasonably be specified by the relevant parties;
  - (ii) the particular role to be played by the Nominated Member will be determined by the relevant parties on a case-by-case basis, depending on the nature of the Dispute and the views of the relevant parties as to how the Nominated Member may best assist them in relation to that Dispute; and
  - (iii) without limiting sub-clause (ii) above, any party to the Dispute may require the Nominated Member to (and the Nominated Member must, to the extent required by such party):
    - (A) attend and participate in such meetings and discussions as may be required by the relevant party;
    - (B) act in a consultative role in relation to the Dispute;
    - (C) provide their view on a particular issue relating to the Dispute (including providing a written view where required to do so);
    - (D) make non-binding recommendations in relation to any matter in connection with the Dispute;



- (E) assist with identifying and clarifying issues in relation to the Dispute;
  - (F) facilitate discussions, help trouble shoot positions and brainstorm solutions in relation to the Dispute; and / or
  - (G) to the extent that a Dispute cannot be resolved through this process, assist the relevant parties to clarify and narrow any issues the subject matter of the Dispute.
- (b) The Nominated Member will undertake its obligations contemplated by clause 7B(a) with the objectives of:
- (i) facilitating genuine and good faith negotiations between the relevant parties in respect of the Dispute;
  - (ii) facilitating the efficient resolution of the Dispute; and
  - (iii) helping to avoid protracted Disputes that may adversely impact project delivery.
- (c) Where the relevant Project Contract provides that the Dispute Resolution Process will cease in respect of a Dispute at a particular time or upon the occurrence of a particular event, then the Dispute Resolution Process will cease with effect from that time or the occurrence of that event (irrespective of whether or not the Dispute has been resolved), unless the Principal and relevant Project Contractor(s) otherwise agree in writing.
- (d) The Nominated Member's role under this clause 7B in relation to a Dispute is purely consultative and advisory, and no advice, view, direction, statement or comment by the Nominated Member as part of this process shall be binding on the parties unless and until it is incorporated into a written agreement between the relevant parties.

## 8. MEMBER'S OBLIGATIONS

### 8.1 Impartiality

Each Member agrees to consider fairly, objectively and impartially the Disputes, Potential Matters and other matters referred to the IDAR Panel.

### 8.2 Independence

Each Member agrees to act honestly and independently in the performance of its obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute or Potential Matter) and in accordance with clause 8 of this Agreement.

### 8.3 General Duties

Each Member agrees to carry out his or her obligations as a Member of the IDAR Panel:

- (a) with due care and diligence;
- (b) in compliance with the Project Contracts and this Agreement; and
- (c) in compliance with all applicable Laws.

## 9. SELECTION OF NOMINATED MEMBER

- (a) Where:

- (i) the parties to a Project Contract have agreed in accordance with that Project Contract to participate in the Dispute Avoidance Process in respect of a Potential Matter; or
  - (ii) a party to a Project Contract has issued a notice in accordance with the relevant provisions of that Project Contract notifying the other parties that it wishes to engage the IDAR Panel to assist with the resolution of a Dispute,
- and in either case:
- (iii) the relevant parties to the Project Contract are unable to agree on a Nominated Member within the timeframe specified in the Project Contract; or
  - (iv) the Member nominated by the parties to the Project Contract declines to act or is unable to act as a result of death, disability, resignation or termination of appointment,

the Chair must, subject to clause 7A(f), nominate a Nominated Member within a further 2 Business Days.

- (b) If a Member nominated under clause 9(a) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the Chair must, subject to clause 7A(f), nominate a further Nominated Member within a further 2 Business Days.
- (c) The Chair may not nominate itself as the Nominated Member for the Dispute Resolution Process in respect of a Dispute, but may nominate itself as the Nominated Member for the Dispute Avoidance Process in respect of a Potential Matter.
- (d) If a replacement member appointed under clause 9(b) declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the process in clause 9(b) will be reapplied until there are no Members to accept the appointment, in which case the Chair must request the Resolution Institute to appoint a replacement member. This appointment will be final and conclusive.

## 10. COMPLIANCE WITH SERVICES BRIEF AND INCONSISTENCY

- (a) Each Member must comply with the Services Brief, provided that nothing in this clause 10(a) will entitle or oblige any Member to provide any services in connection with Sydney Metro Western Sydney Airport (as such term is defined in the Services Brief).
- (b) To the extent of any inconsistency between the Services Brief (on the one hand) and any other provision of this Agreement (on the other hand), the other provision of this Agreement will prevail over the Services Brief unless the Principal directs otherwise in writing.

## 11. COSTS AND FEES

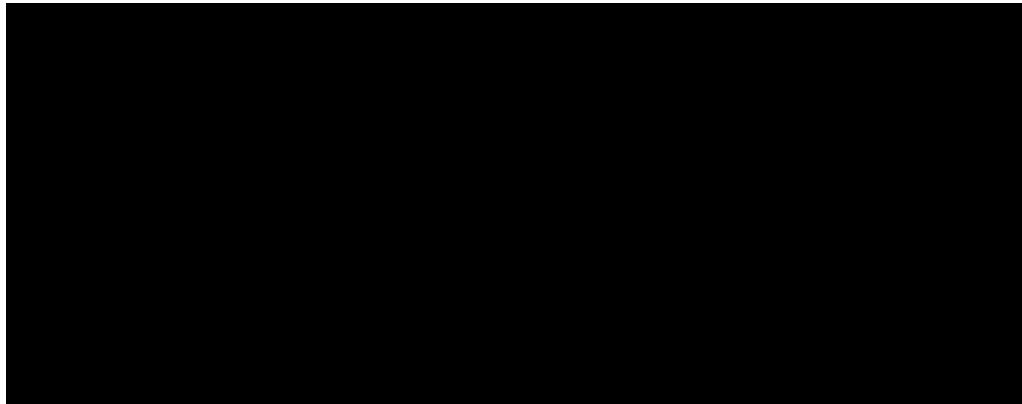
### 11.1 Monthly retainer

- (a) The Principal is liable for the payment of the Members' monthly retainer set out in the Fees and Disbursements Letter for each Member.
- (b) The Principal is liable for the payment of the Members' attendance at each Project Meeting as set out in the Fees and Disbursements Letter for each Member.

### 11.2 Agreed rates for work and services

With respect to each Dispute or Potential Matter between the Principal and a Project Contractor:

- (a) the Principal and the relevant Project Contractor are jointly and severally liable for the payment of the Members' fees and disbursements (other than those in clause 11.1), calculated in accordance with the Fees and Disbursements Letter for each Member; and
- (b) the Principal and the relevant Project Contractor agree as between themselves that:



**11.3 Payment claims**

All claims for payment by the Members must be submitted and processed in accordance with the payment procedure set out in Schedule 4.

**12. THE PARTIES' COMMITMENTS AND RESPONSIBILITIES**

The Principal and each Project Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the IDAR Panel;
- (b) comply with the requests and directions of the IDAR Panel; and
- (c) except for its participation in the IDAR Panel's activities as provided in the Project Contracts and this Agreement, not solicit advice or consultation from the IDAR Panel or the Members on matters dealing with the resolution of Disputes or Potential Matters which may compromise the IDAR Panel's integrity or compliance with this Agreement.

**13. CONFIDENTIALITY**

In relation to all confidential information disclosed to the IDAR Panel at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;
- (c) not to use that information for a purpose other than the resolution of the Dispute or the Potential Matter in relation to which the confidential information was disclosed; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

14. **CONFLICT OF INTEREST**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and each Project Contractor and the other Members.
- (b) The other Members will within 5 Business Days of notification under clause 14(a) confer and inform the parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or more of the other Members believe that the Member should be replaced, the Member will immediately resign from the IDAR Panel and a reappointment will occur pursuant to clause 17.3.

15. **LIABILITY AND INDEMNITY**

15.1 **Liability**

Each Member is not liable to either the Principal or a Project Contractor for any act or omission done in good faith and with due care and diligence.

15.2 **Indemnity**

The Principal and each Project Contractor each indemnify each Member against all claims from a person not a party to this Agreement for any act or omission done in connection with this Agreement in good faith and with due care and diligence.

15.3 **Due Care and Diligence**

For the purpose of clauses 15.1 and 15.2, the parties agree that the Member's act will have been done in good faith and with due care and diligence unless no reasonable person in the position of the Member would have so acted or made such an omission.

16. **TERMINATION OF AGREEMENT**

- (a) The Principal may terminate this Agreement by written notice to the Members and each Project Contractor.
- (b) Each Project Contractor's rights and obligations under this Agreement will terminate automatically upon termination or expiry of the Project Contractor's Project Contract, and the terms of this Agreement will be of no further force and effect.

17. **MEMBERS' TERMINATION**

17.1 **Resignation**

A Member may resign from the IDAR Panel by providing 30 Business Days' written notice to the other Members, the Principal and each Project Contractor.

17.2 **Termination**

A Member's appointment may be terminated at any time by the Principal.

17.3 **Re-Appointment**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 14(b) or 17.1; or

- (b) the appointment of a Member is terminated by the Principal under clause 17.2;

then:

- (c) a replacement Member will be appointed by the Principal; and
- (d) the parties, the Members and any new Member must enter into a replacement agreement substantially similar to this Agreement.

**18. GOVERNING LAW**

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

**19. RELATIONSHIP OF THE PARTIES**

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

**20. NOTICES**

- (a) Any notices contemplated by this Agreement must be in writing and delivered to the relevant postal address or sent by email in the form of a .pdf file to the relevant email address as set out below (or to any new address or email address that a party notifies to the others).
  - (i) to the Principal: *[insert postal address and email address of Principal]*
  - (ii) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (iii) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (iv) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (v) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (vi) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (vii) to *[insert name of Member]*: *[insert postal address and email address of Member]*
  - (viii) to a Project Contractor: To the address or email address set out in the relevant Accession Deed Poll.
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by email will be taken to have been received:

- (i) if it is transmitted by 5.00 pm (Sydney time) on a Business Day - on that Business Day; or
- (ii) 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.

**21. GIVING EFFECT TO THIS AGREEMENT**

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

**22. SURVIVAL OF TERMS**

The parties agree that clauses 11 and 15 and this clause 22 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

**23. WAIVER OF RIGHTS**

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

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

**24. OPERATION OF THIS AGREEMENT**

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

**25. AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties, provided that the Principal may unilaterally vary the scope of services to be provided under this Agreement as contemplated by paragraph 2.3 of the Services Brief.

**26. COUNTERPARTS**

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.

(b) A party may execute this Agreement by executing any counterpart.

27. **ATTORNEYS**

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

**EXECUTED** as an agreement.

**Executed** by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name and position

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature



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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

**SCHEDULE 1****Form of Accession Deed Poll**

**THIS DEED POLL** is made on [year]

**BY:** [Insert name] ABN [number] whose registered office is at [address] (**Acceding Party**)

- IN FAVOUR OF:**
- (1) **Sydney Metro** ABN 12 354 063 515 a New South Wales Government agency of Level 43, 680 George Street, Sydney NSW 2000 (**Principal**)  
and
  - (2) **Members of the IDAR Panel** (collectively **Members**), namely:
    - (a) [insert name of Member] of [insert address of Member];
    - (b) [insert name of Member] of [insert address of Member];
    - (c) [insert name of Member] of [insert address of Member];
    - (d) [insert name of Member] of [insert address of Member];
    - (e) [insert name of Member] of [insert address of Member]; and
    - (f) [insert name of Member] of [insert address of Member]
 and
  - (3) each person who has acceded to the IDAR Panel Agreement,  
(together (2) and (3) being the **Continuing Parties**).

**RECITALS:**

- (A) This deed poll is supplemental to the agreement titled "IDAR Panel Agreement" between the Principal and the Continuing Parties dated [insert] as amended or acceded to from time to time (**IDAR Panel Agreement**).
- (B) The Principal and the Continuing Parties are each party to the IDAR Panel Agreement.
- (C) The Principal has entered into the [insert name of relevant Project Contract] with the Acceding Party.
- (D) Each of the Continuing Parties has acknowledged and agreed that the Acceding Party will accede to the IDAR Panel Agreement.
- (E) By this deed poll, the Acceding Party accedes to the IDAR Panel Agreement and the IDAR Panel Agreement is amended on the terms set out in this deed poll.

**THE ACCEDING PARTY COVENANTS AS FOLLOWS:**

**1. INTERPRETATION**

Capitalised terms used in this deed poll and not otherwise defined have the same meanings as those given in the IDAR Panel Agreement. The following definitions apply in this deed poll:

**Effective Date** means the date of execution of this deed poll.

**[Insert name of relevant Project Contract]** means the contract entered into between the Principal and the Acceding Party titled **[insert title]** and dated **[insert date]**.

**2. PRIMARY COVENANTS**

(a) The Acceding Party:

- (i) confirms that it has been supplied with a copy of the IDAR Panel Agreement; and
- (ii) covenants with each of the Principal and the Continuing Parties, with effect from the Effective Date, to be bound by the provisions of, and to perform all of its obligations under the IDAR Panel Agreement.

(b) For the purposes of the IDAR Panel Agreement, the Acceding Party's representative is as set out below:

*[Insert details of Acceding Party's representative]*

(c) For the purposes of clause 20 of the IDAR Panel Agreement, the Acceding Party's notice address details are as set out below:

Address:  
Email:  
For the attention of:

(d) Clause 18 of the IDAR Panel Agreement applies to this deed poll.

**EXECUTED** as a deed poll.

**[Note: Appropriate execution block to be inserted by the Acceding Party prior to execution.]**

## SCHEDULE 2

### IDAR Panel General Operating Procedures

#### 1. **General**

- 1.1 Each Project Contractor will furnish to each of the Members all documents necessary for the IDAR Panel to perform its functions, including copies of all Project Contract documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Members of Disputes and other matters.
- 1.2 The Members must make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.3 Communications between the parties and the IDAR Panel for the purpose of attempting to prevent or resolve Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under the relevant Project Contract.

#### 2. **Frequency of regular meetings and site visits**

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the IDAR Panel properly informed of the project circumstances will generally be agreed between the IDAR Panel and the parties to each Project Contract.
- 2.2 In the case of a failure to agree between the IDAR Panel and the parties to a Project Contract, the Principal will schedule the meetings and visits as it sees fit.

#### 3. **Agenda for regular meetings**

- 3.1 IDAR Panel meetings held for the purposes of briefing and updating the Members on performance and progress of the work under each Project Contract and issues or potential issues between the relevant parties will be held on an in-confidence and without prejudice basis to encourage full and frank disclosure and discussions.
- 3.2 At the conclusion of the meeting, the IDAR Panel will generally inspect the Project Works and the Construction Site in the company of representatives of both parties to the relevant Project Contract. Any areas of the Project Works or Construction Site that are or may be the subject of any potential Dispute will be pointed out by the parties to the relevant Project Contract.

#### 4. **Minutes of meetings**

- 4.1 The Chair will prepare minutes of the regular meetings of the IDAR Panel and these draft minutes will be circulated to the parties of the relevant Project Contract and the Members for comments, additions and corrections.
- 4.2 In accordance with clause 3.1 above, the minutes of IDAR Panel meetings held will be marked "in-confidence, without prejudice".
- 4.3 Minutes as amended will be adopted by the relevant parties and the Members at the next meeting.

#### 5. **Communications**

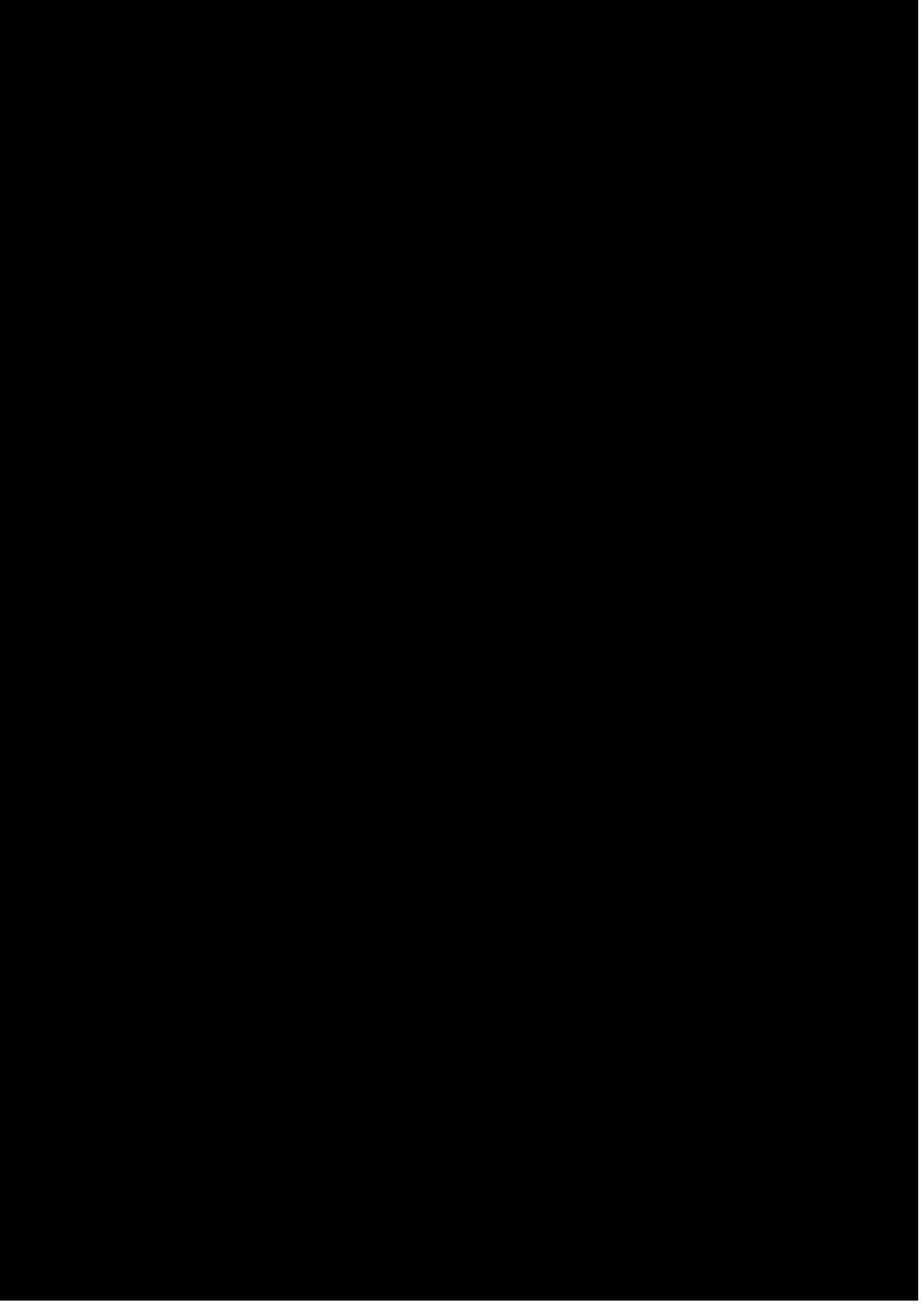
- 5.1 All communications by the parties to the IDAR Panel outside the IDAR Panel meetings should be directed in writing to the Chair and copied to the other Members and to the other party of the relevant Project Contract. All communications by the Members to the parties should

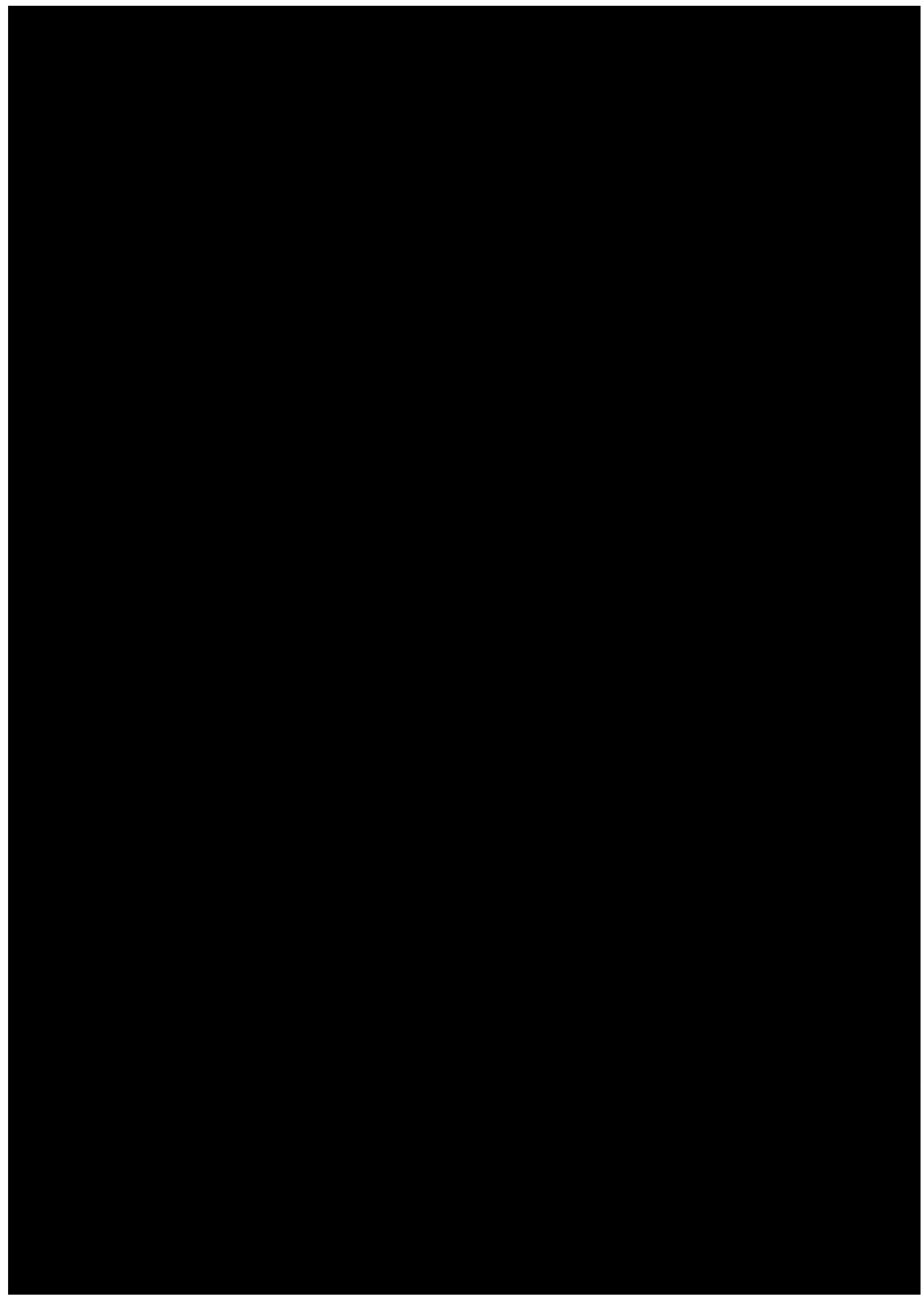
be addressed to the Principal's Representative and the relevant Project Contractor's representative.

**6. Representation**

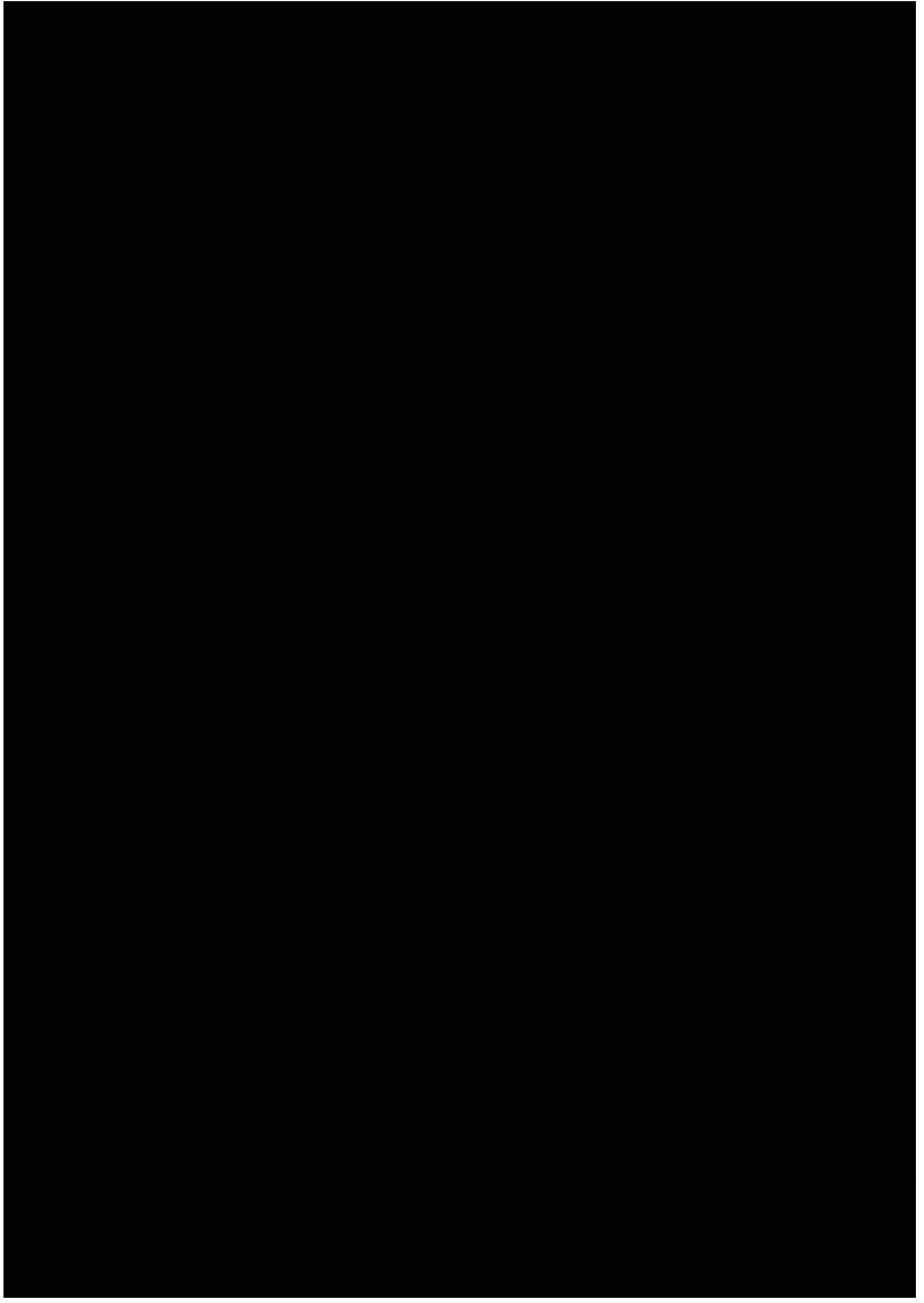
- 6.1 The parties must each ensure they are represented at IDAR Panel meetings by at least one senior project personnel and at least one senior off-site person to whom the on-site personnel reports. The parties must inform the Chair of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternatives.

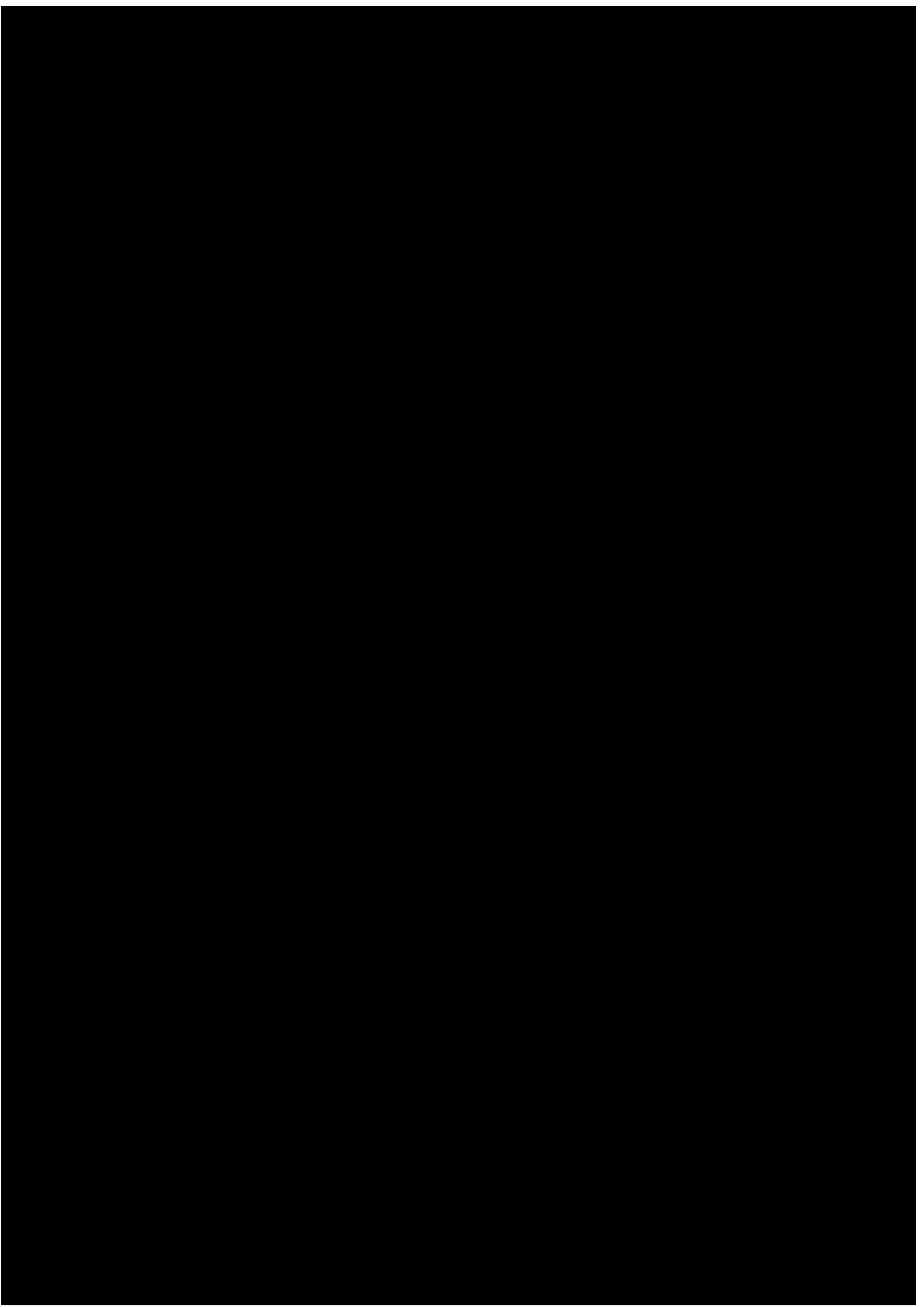
**SCHEDULE 3**  
**Services Brief**

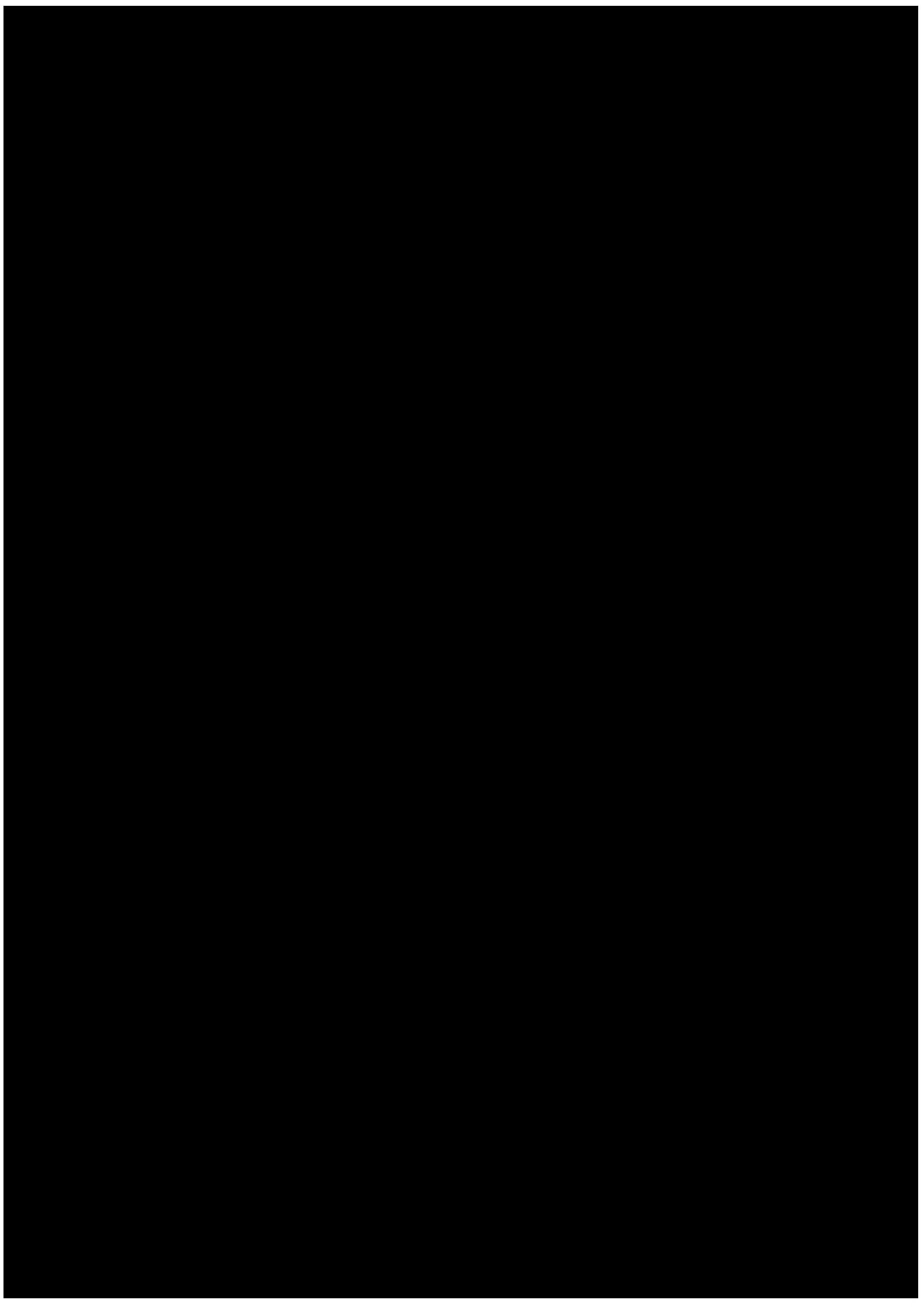


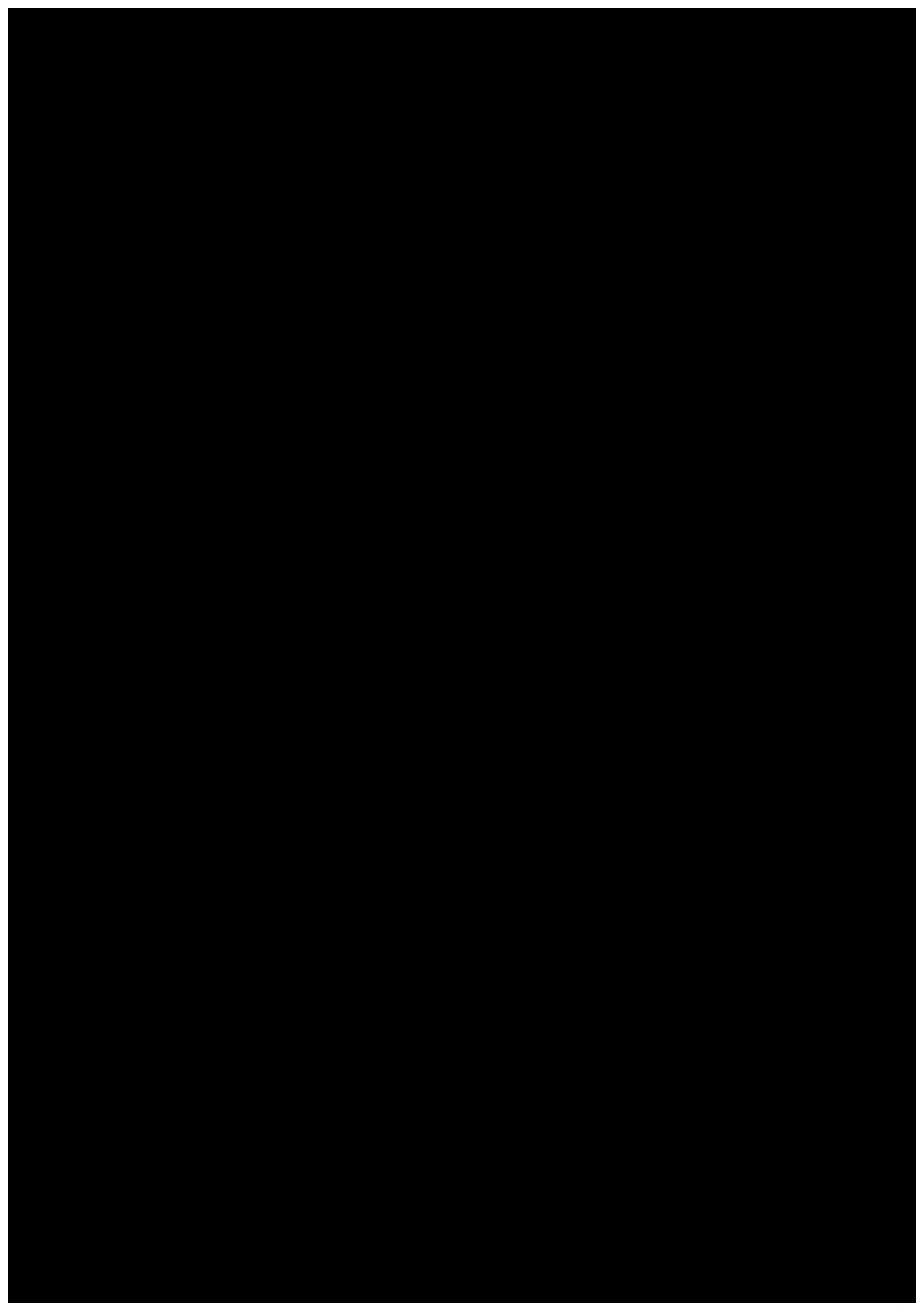


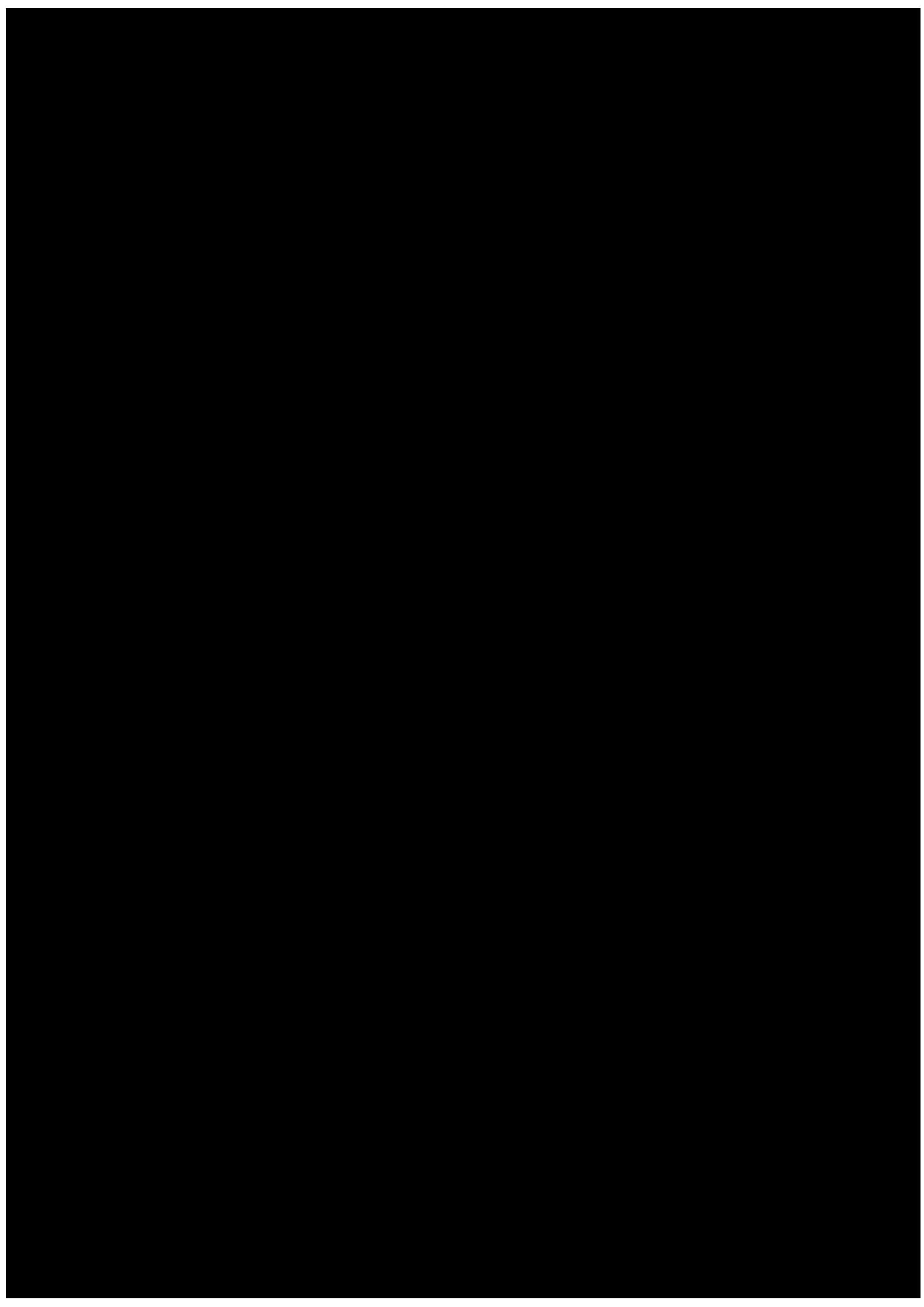










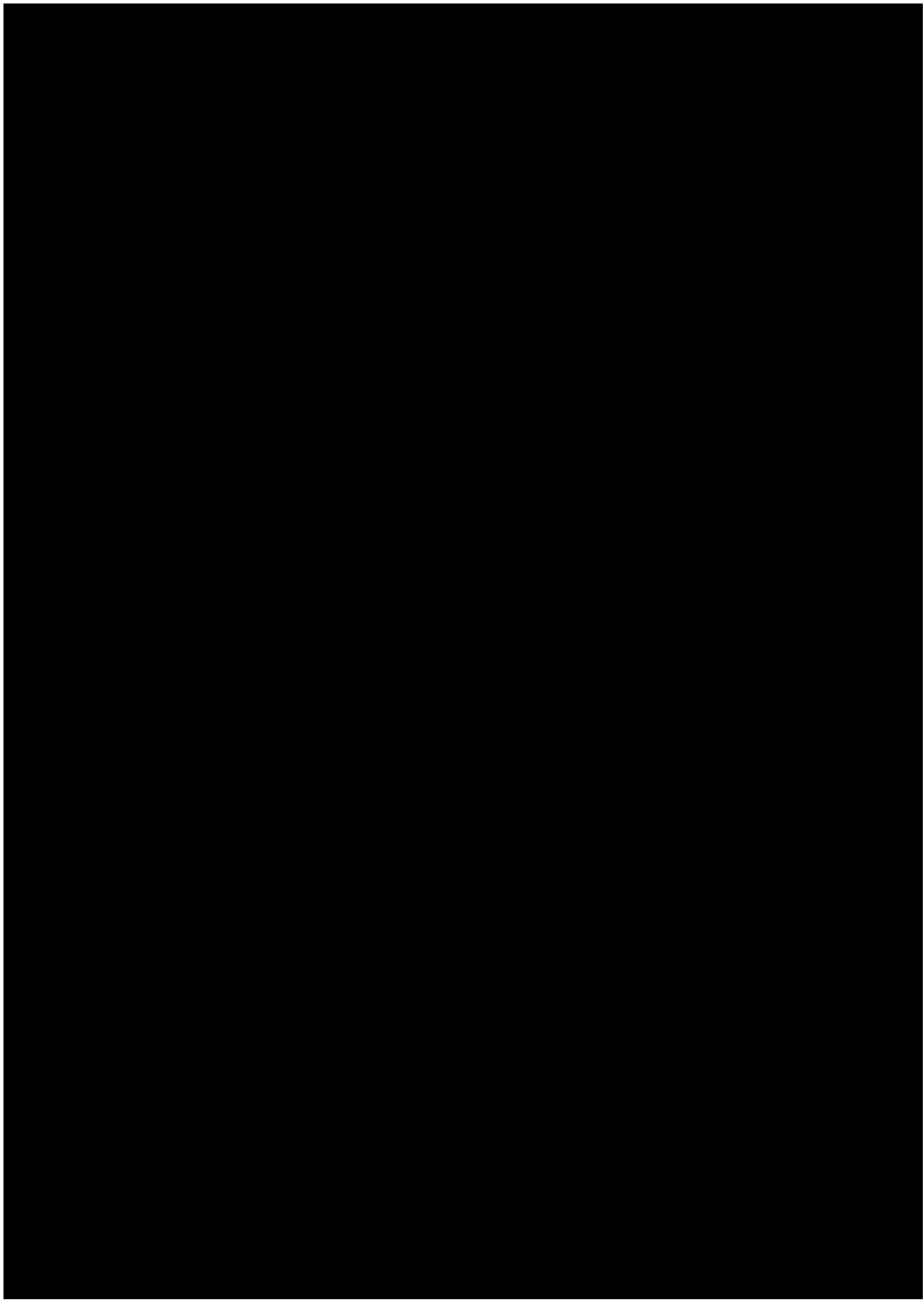


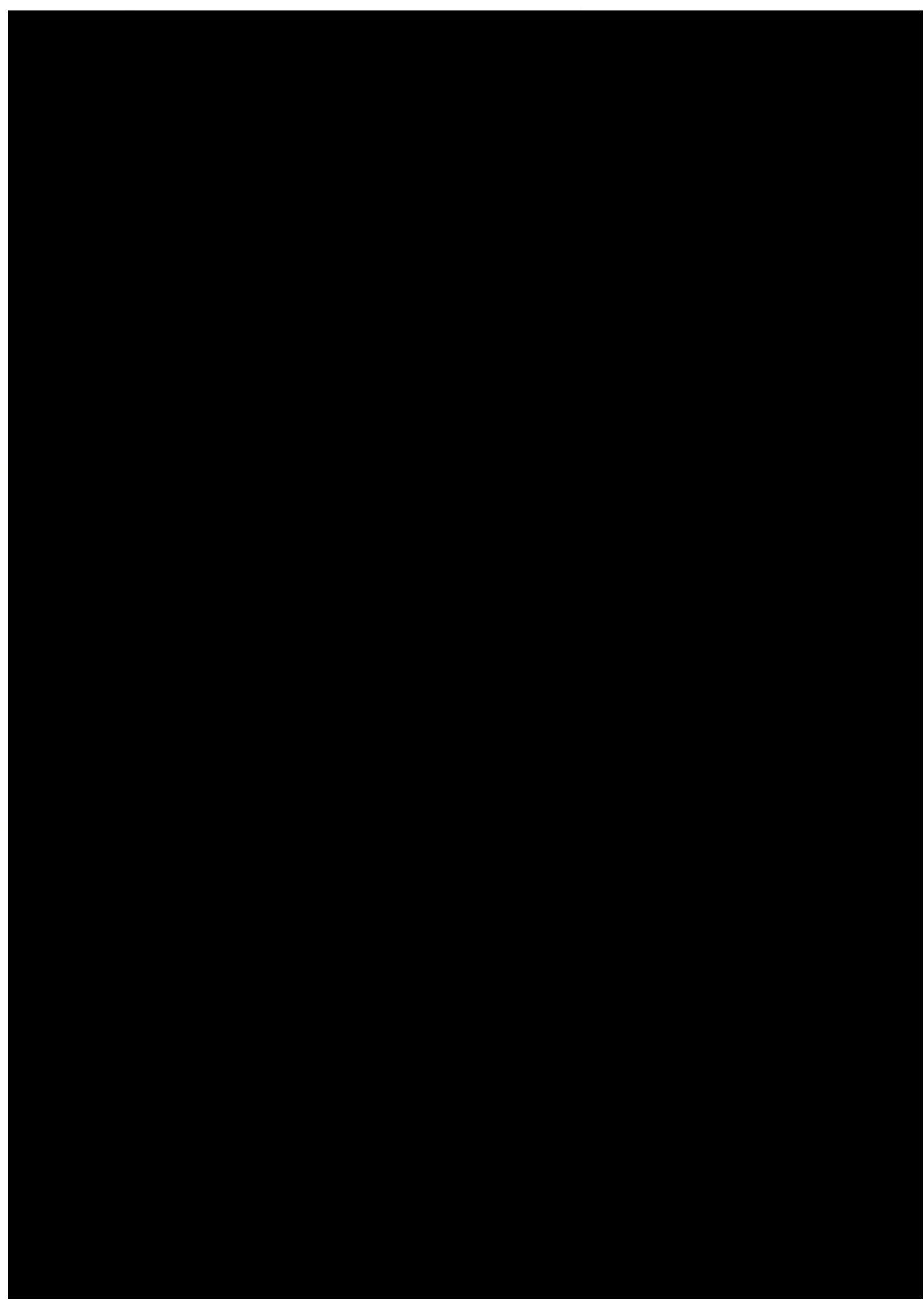
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry, no matter how small, should be recorded to ensure the integrity of the financial statements. This includes not only sales and purchases but also expenses, income, and transfers between accounts.

Next, the document outlines the process of reconciling bank statements. It explains that this process involves comparing the bank's records with the company's internal records to identify any discrepancies. Common reasons for these discrepancies include timing differences, such as deposits in transit or outstanding checks, as well as potential errors in recording or bank-side mistakes.

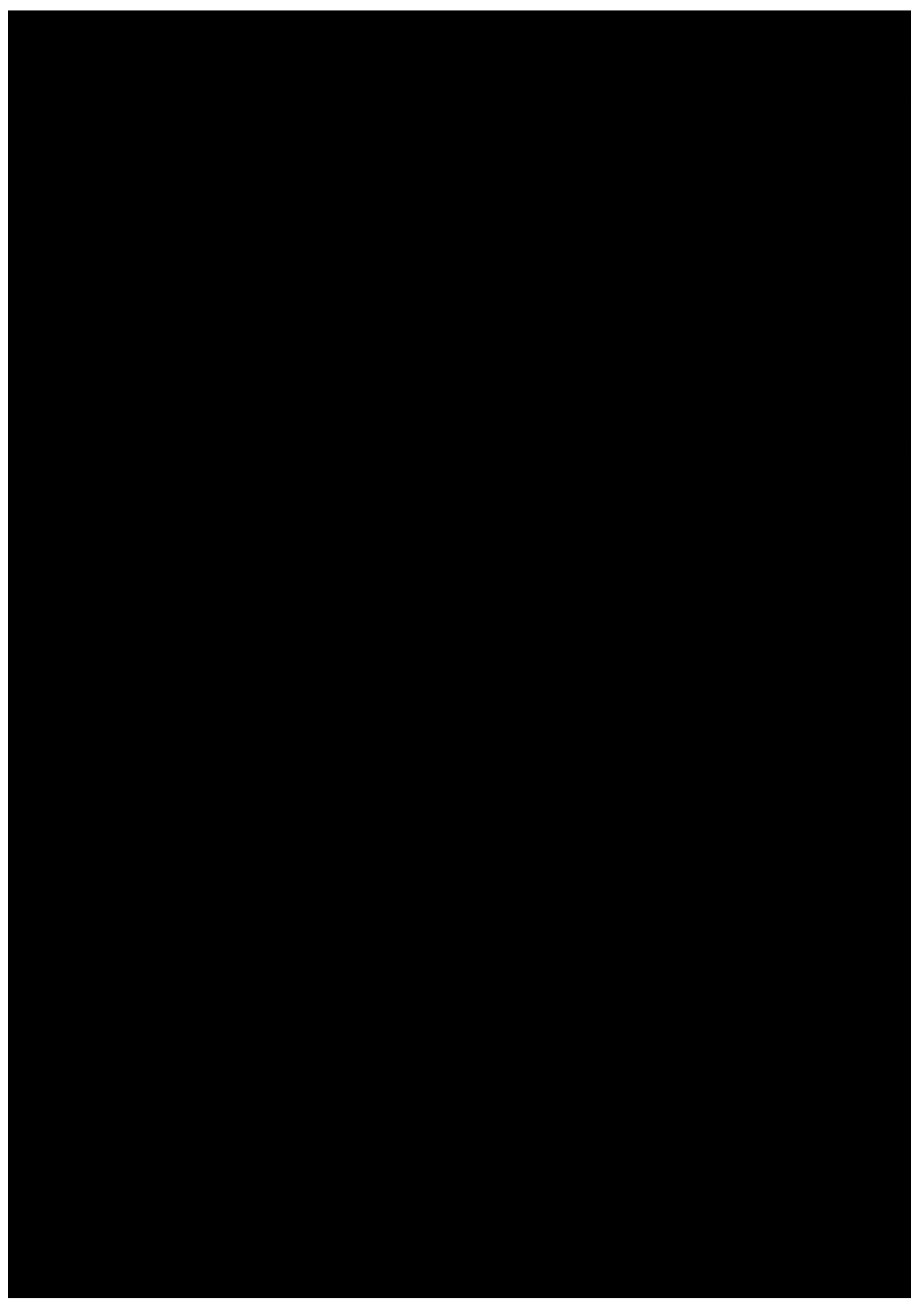
The document then moves on to discuss the preparation of financial statements. It details the steps involved in calculating net income, determining the cost of goods sold, and preparing the income statement, balance sheet, and statement of cash flows. It stresses the importance of using the correct accounting methods and consistently applying them from period to period.

Finally, the document provides guidance on how to analyze the financial statements. It suggests looking for trends over time, comparing performance against industry benchmarks, and identifying areas where the company may be over-investing or under-performing. The goal is to use the financial data to make informed decisions that will help the company grow and succeed in the long run.

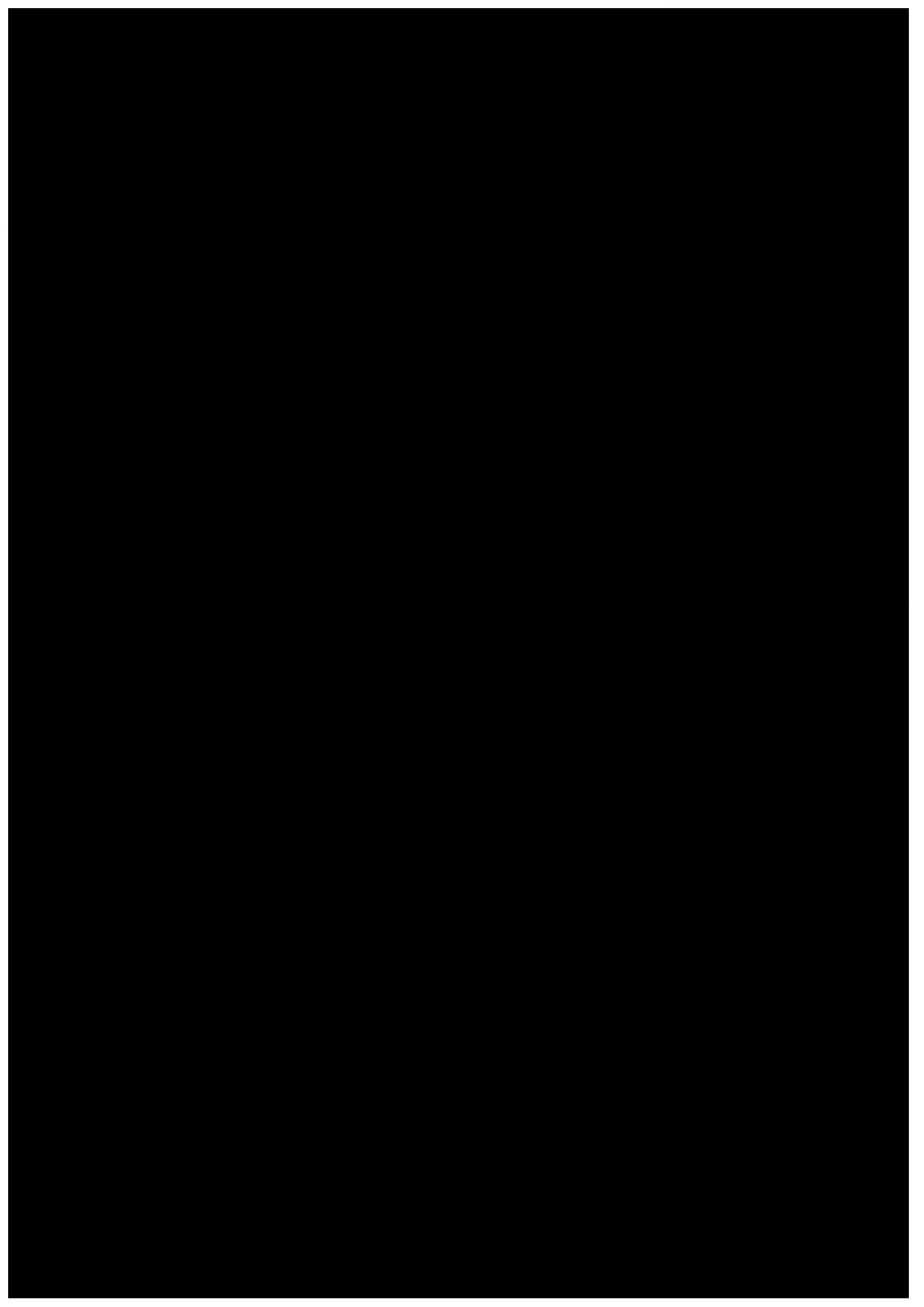


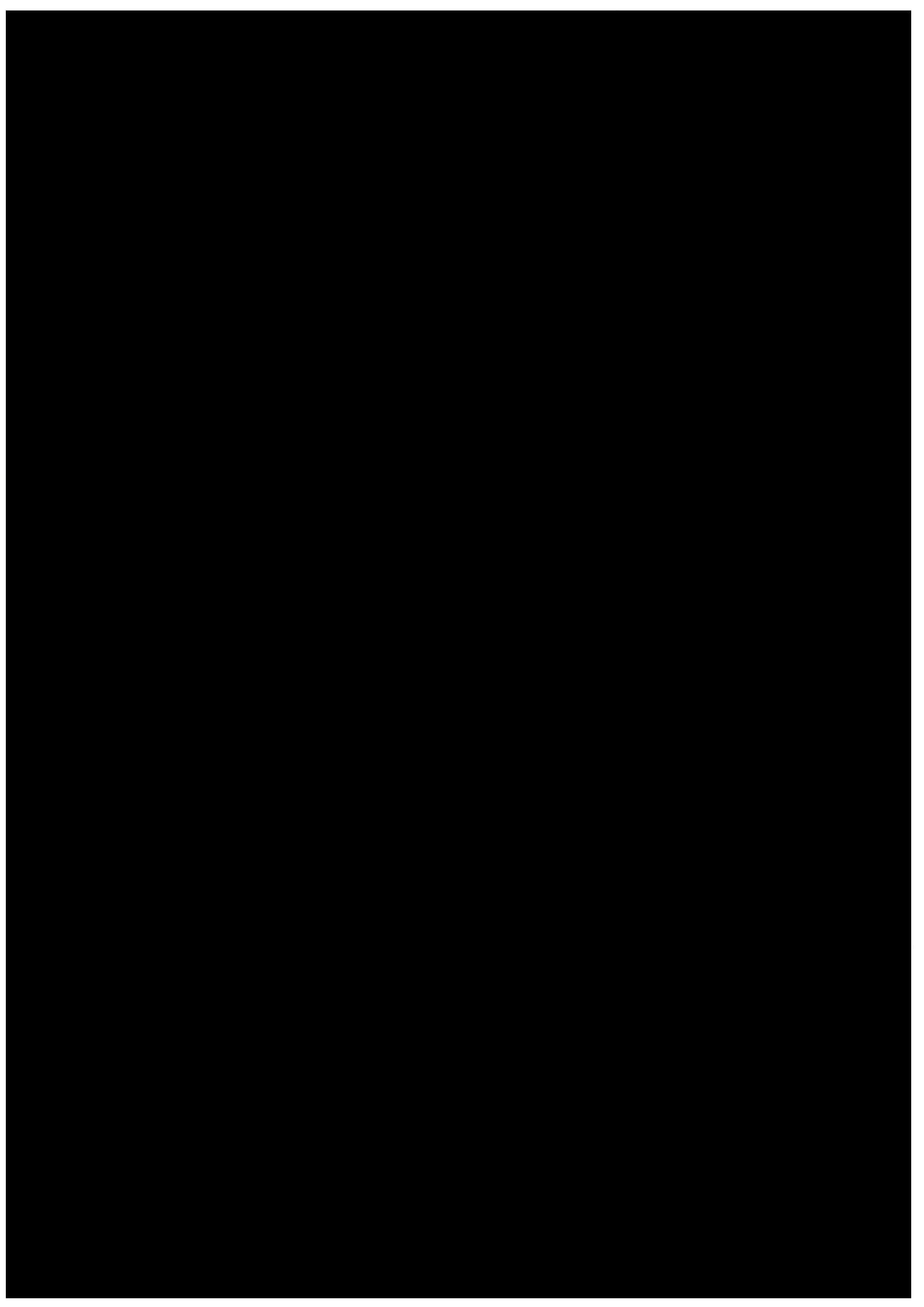


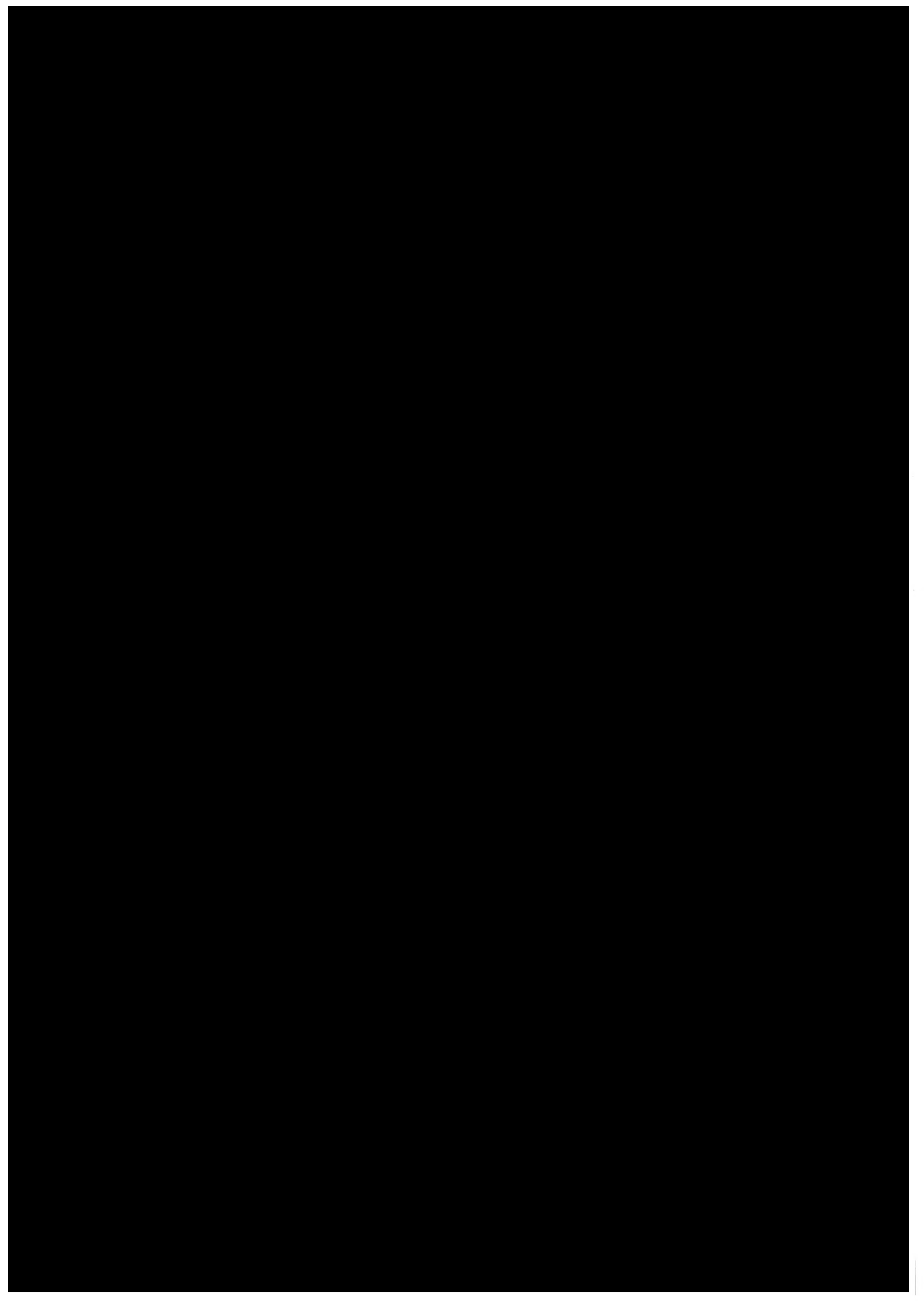


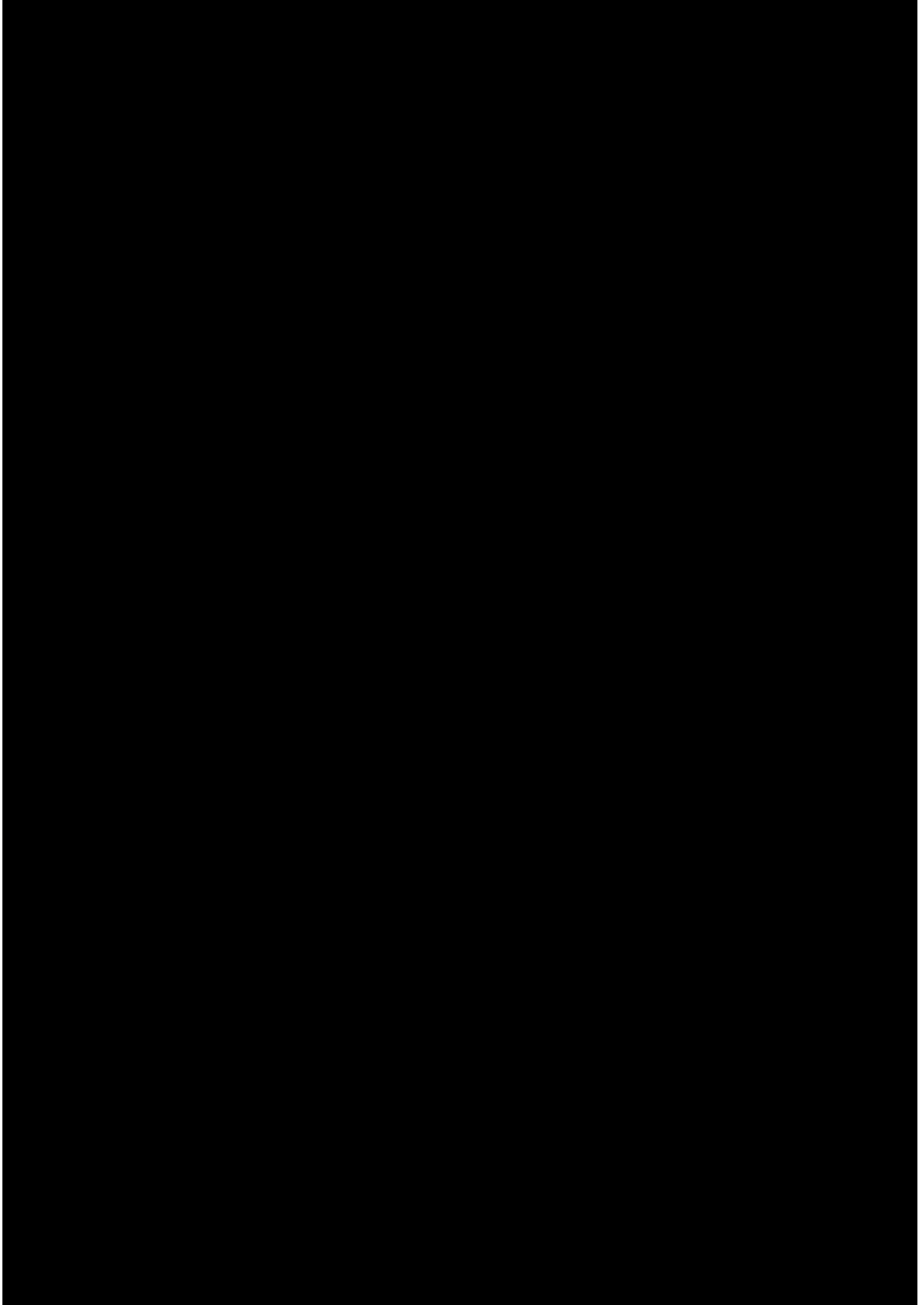


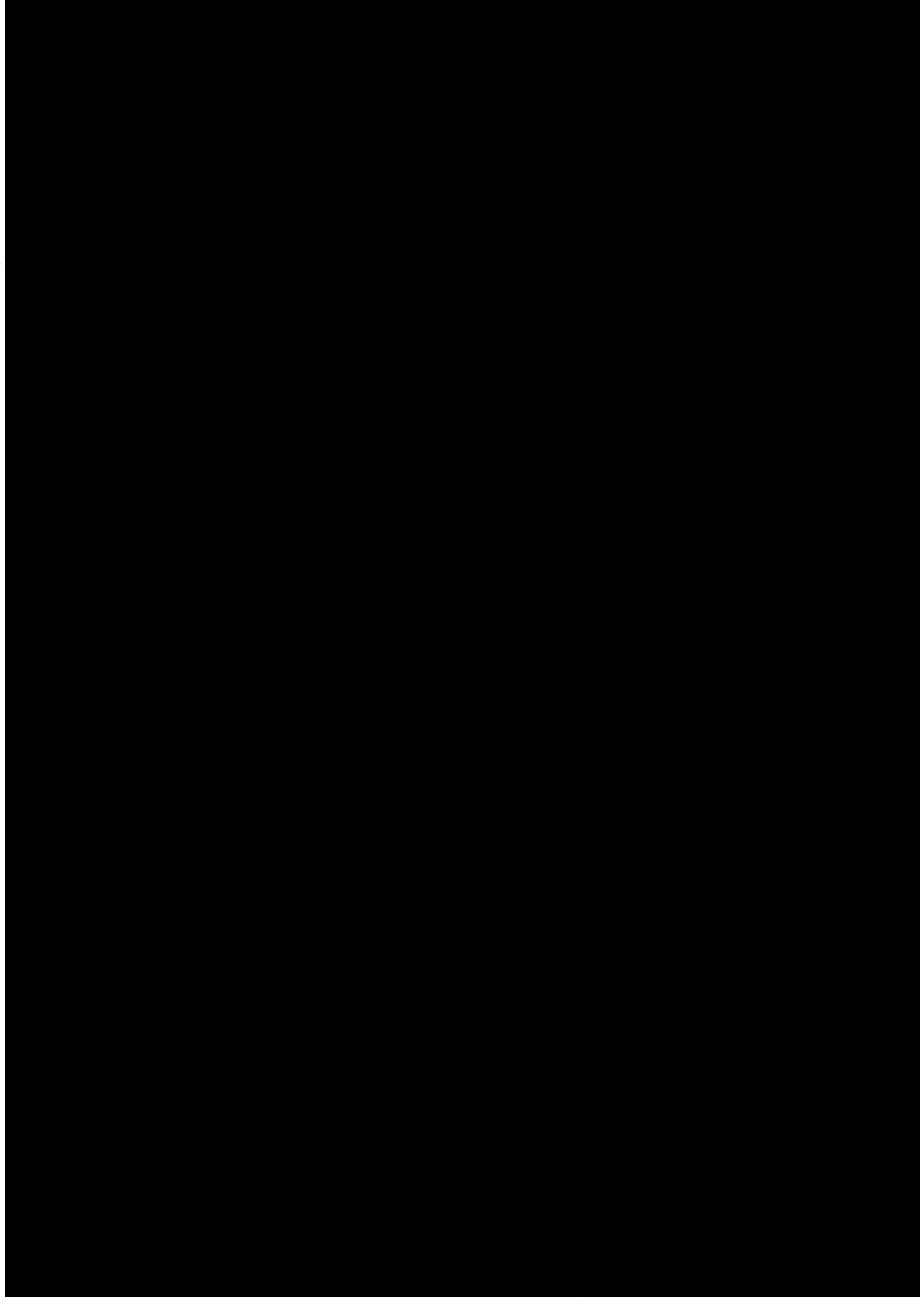


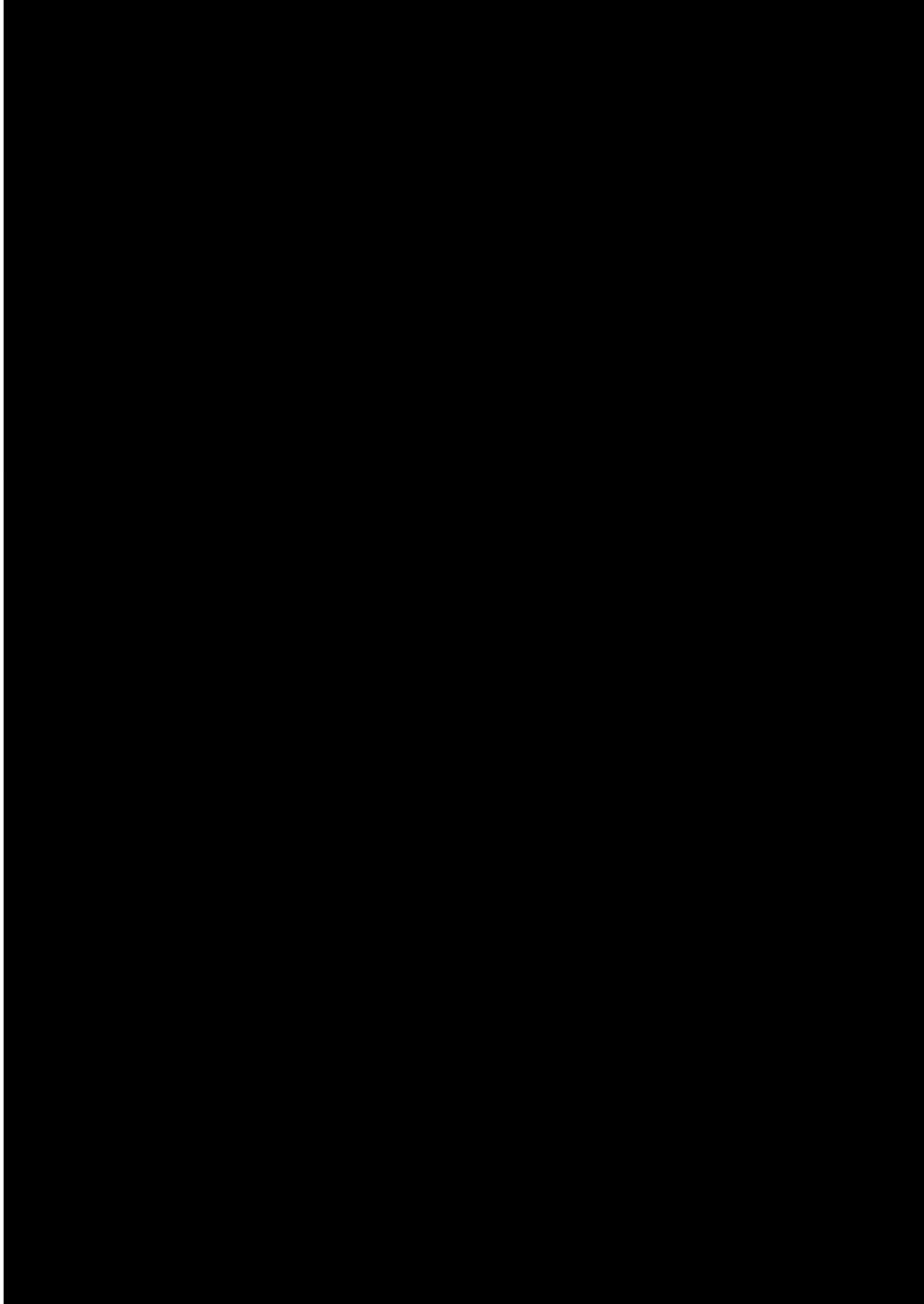




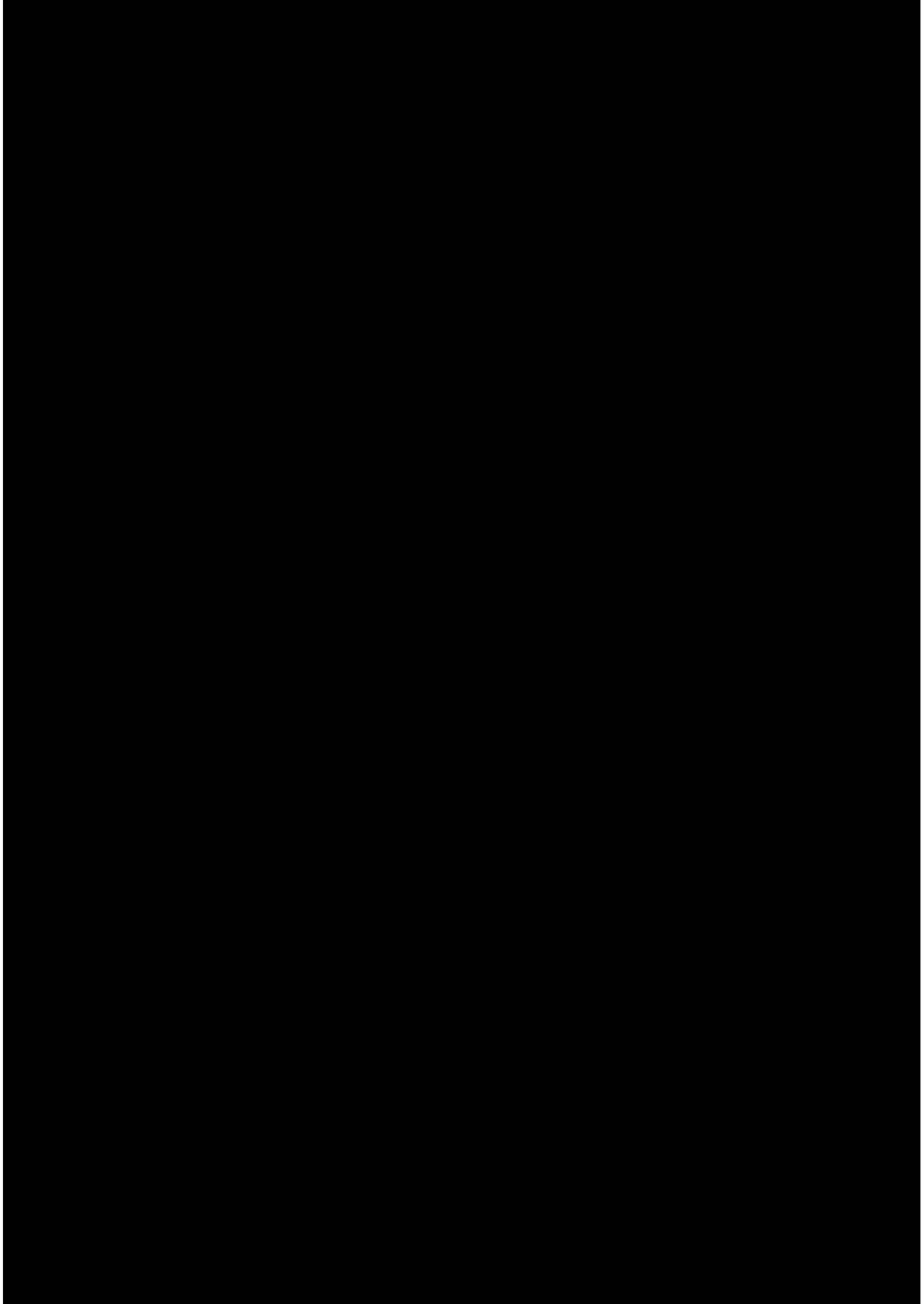


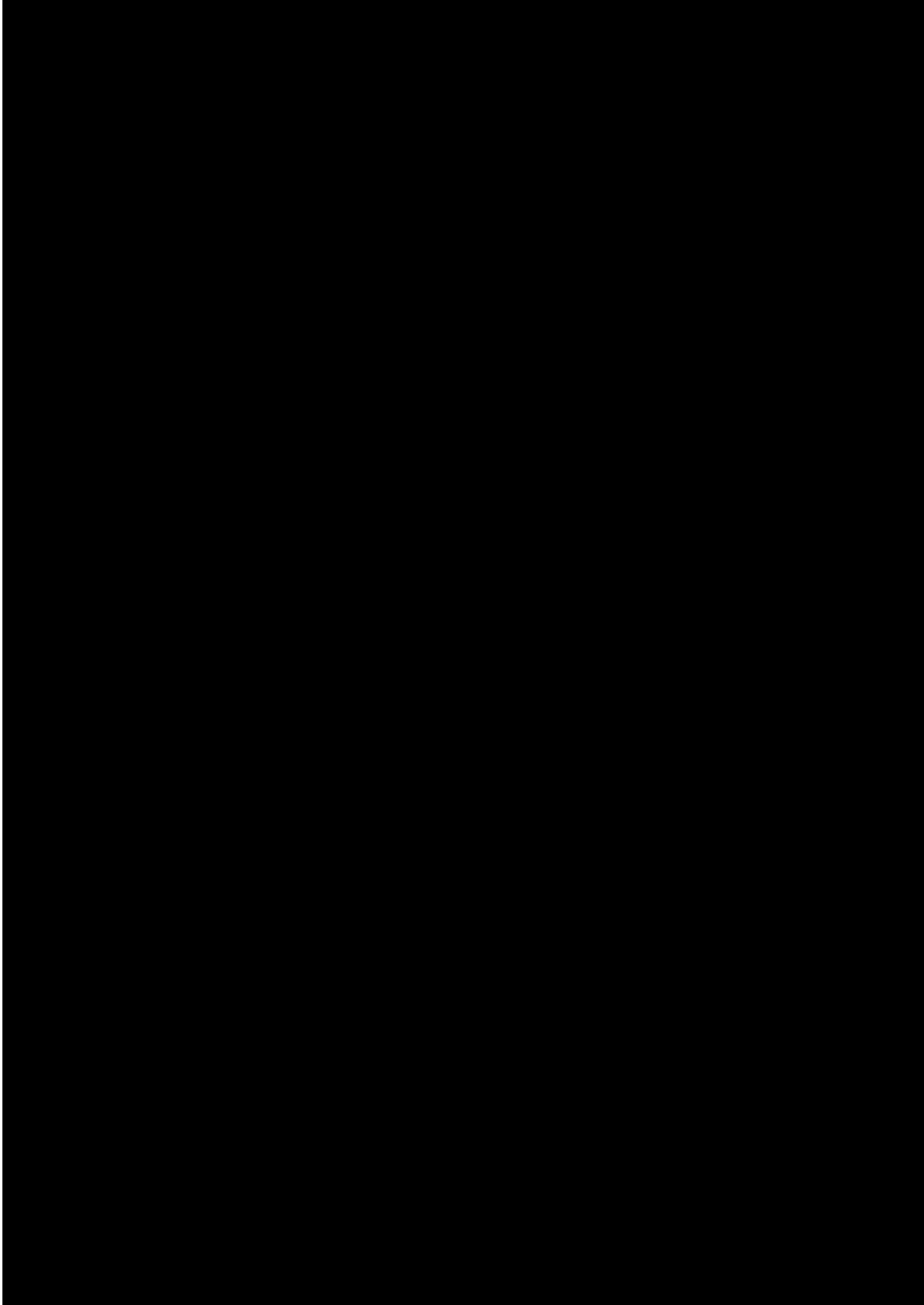


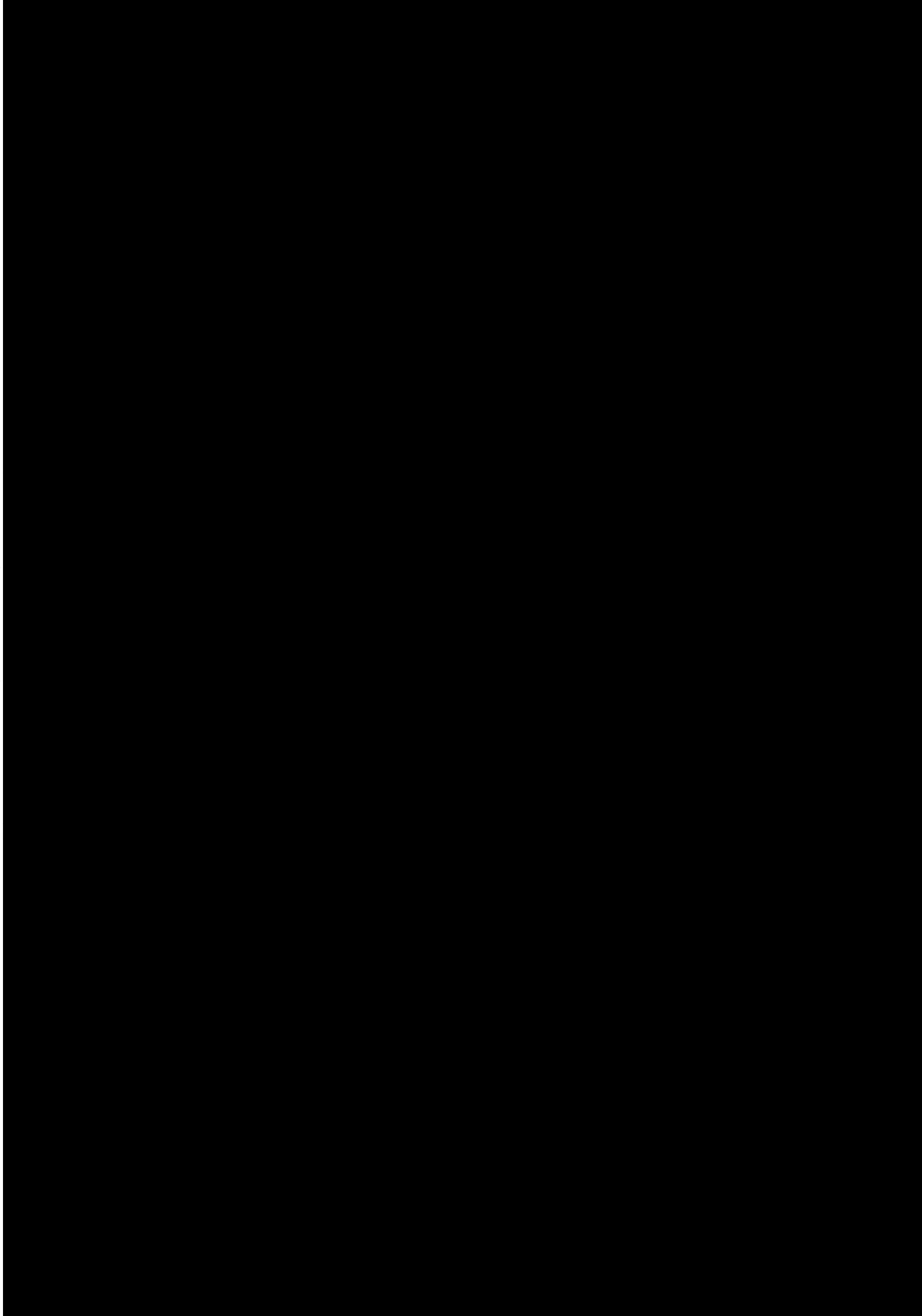


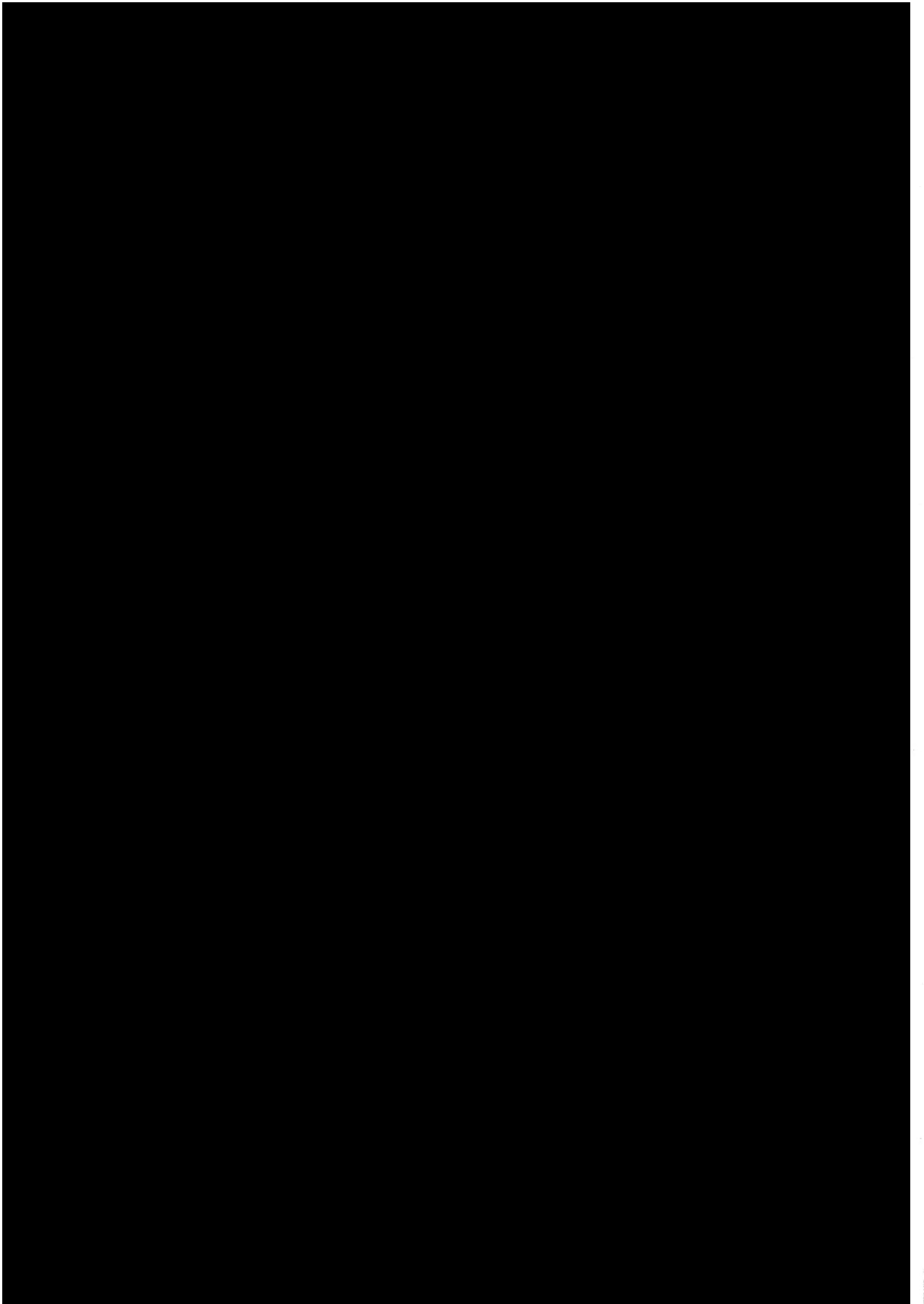


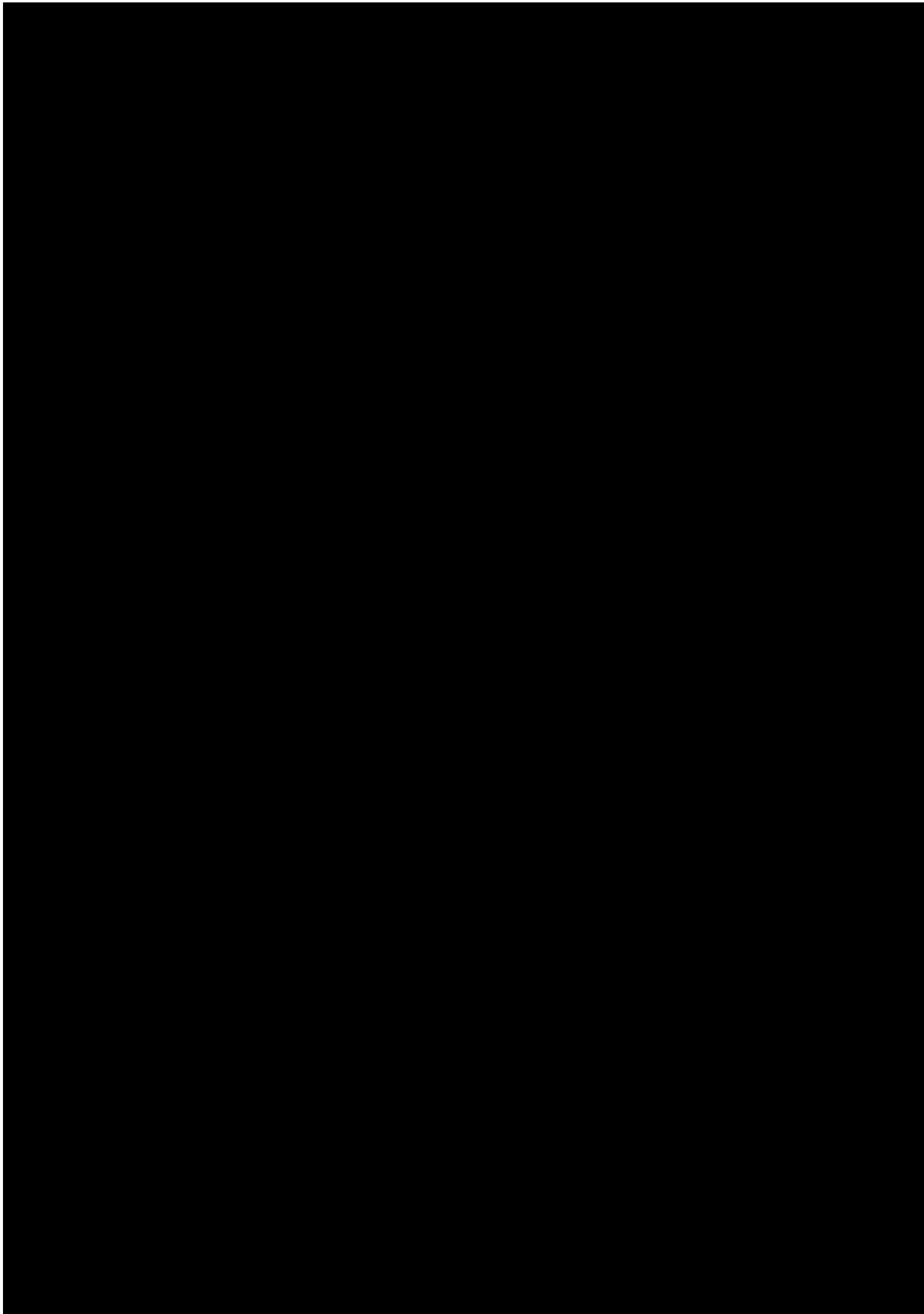


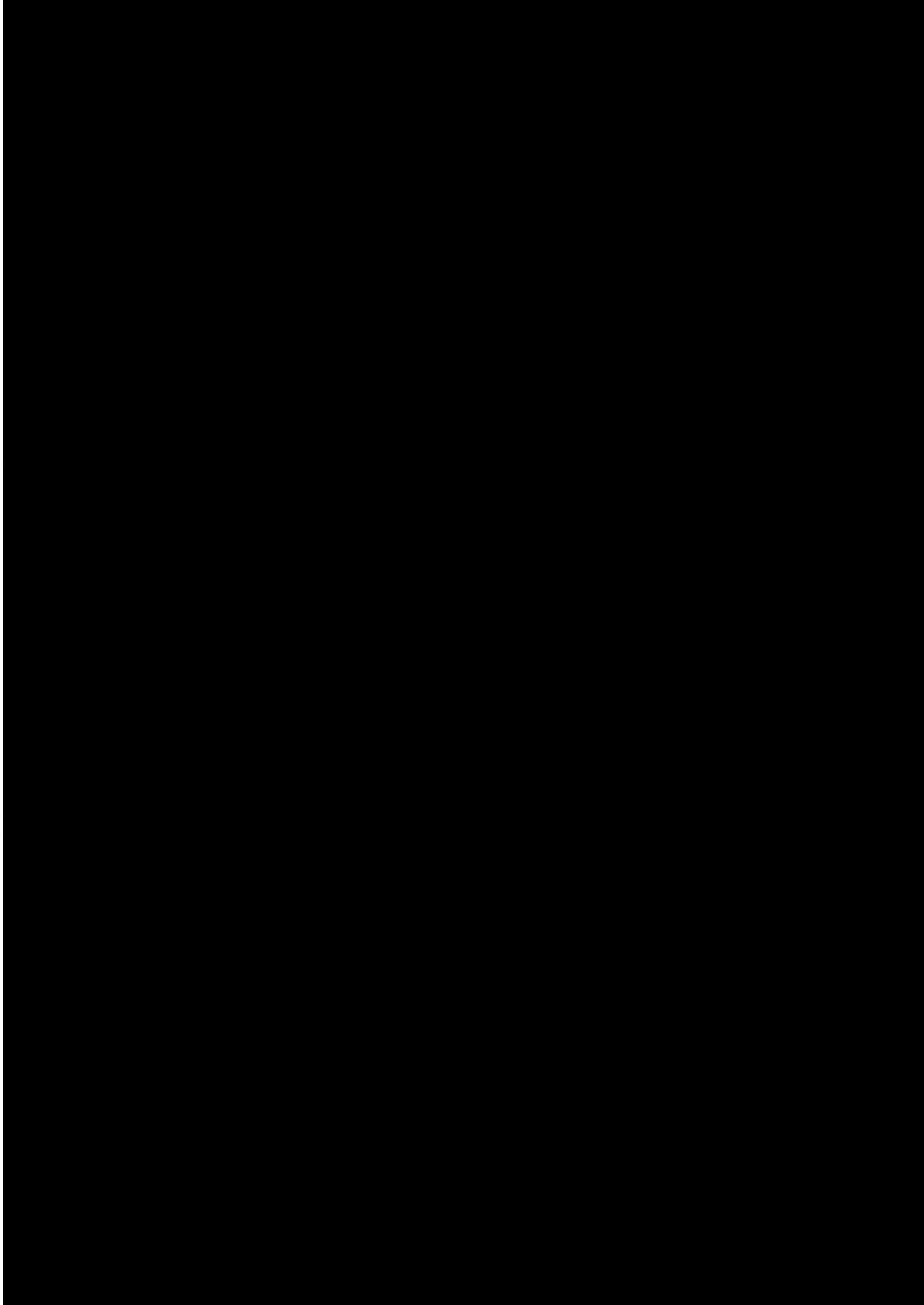


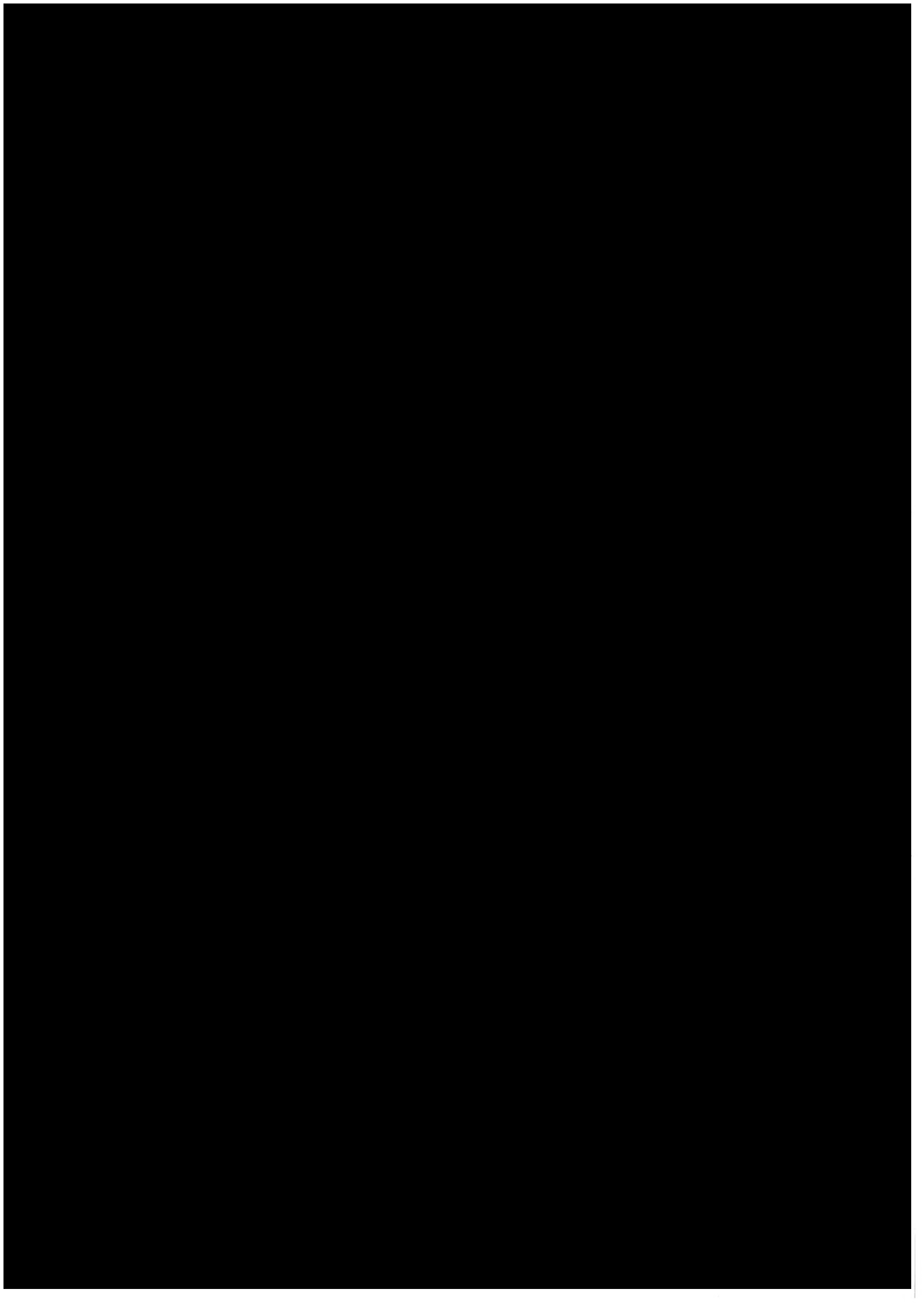


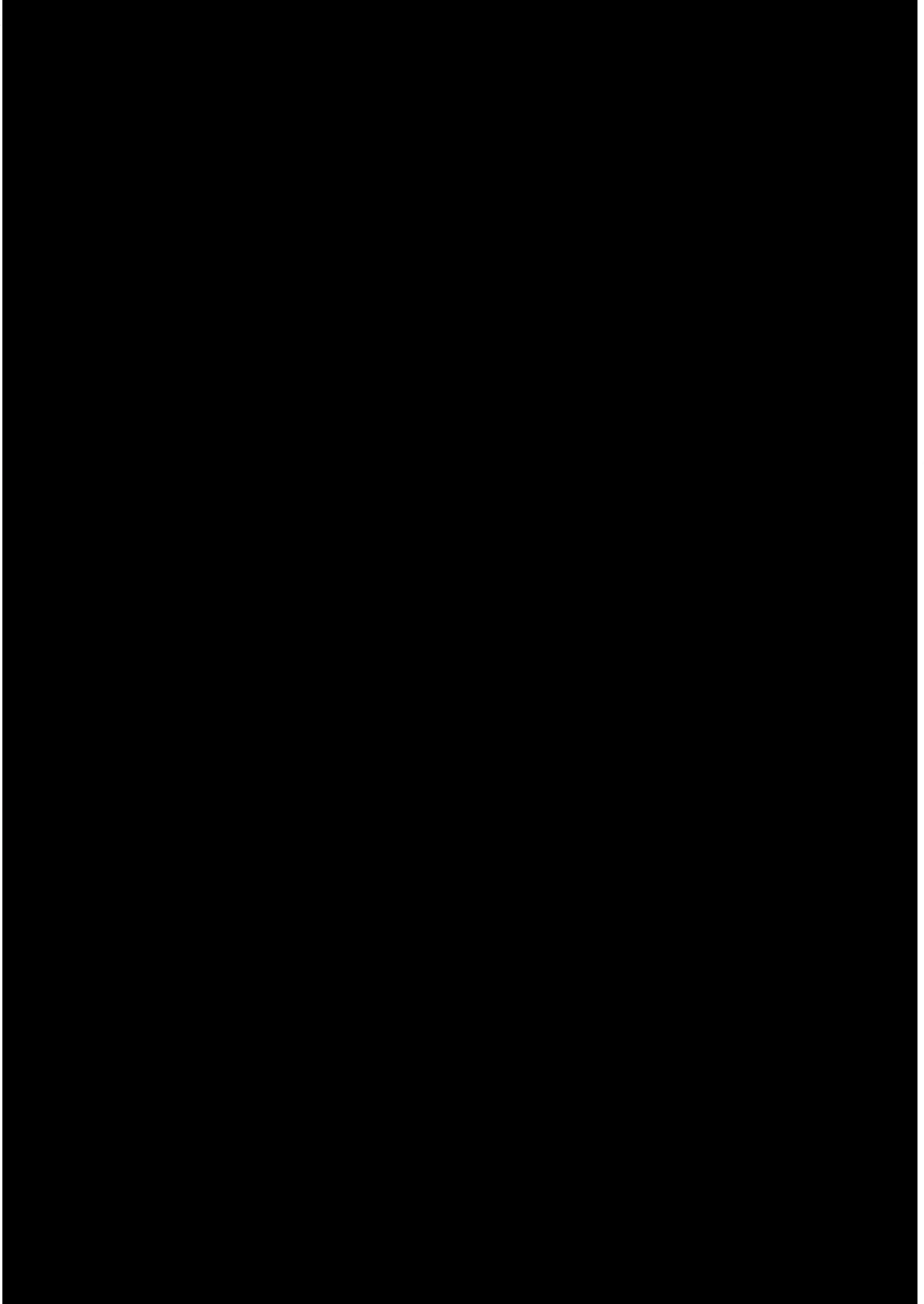












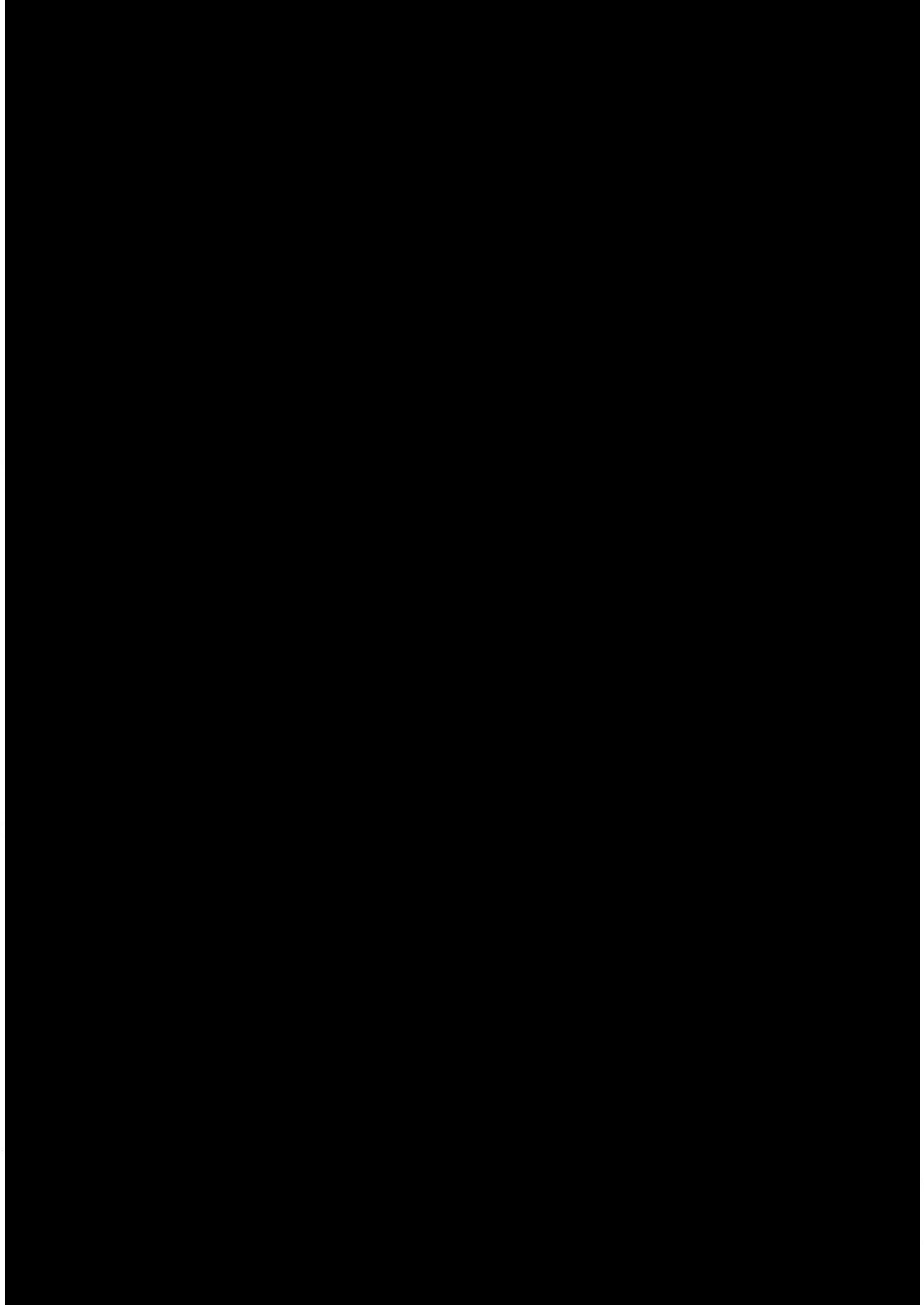


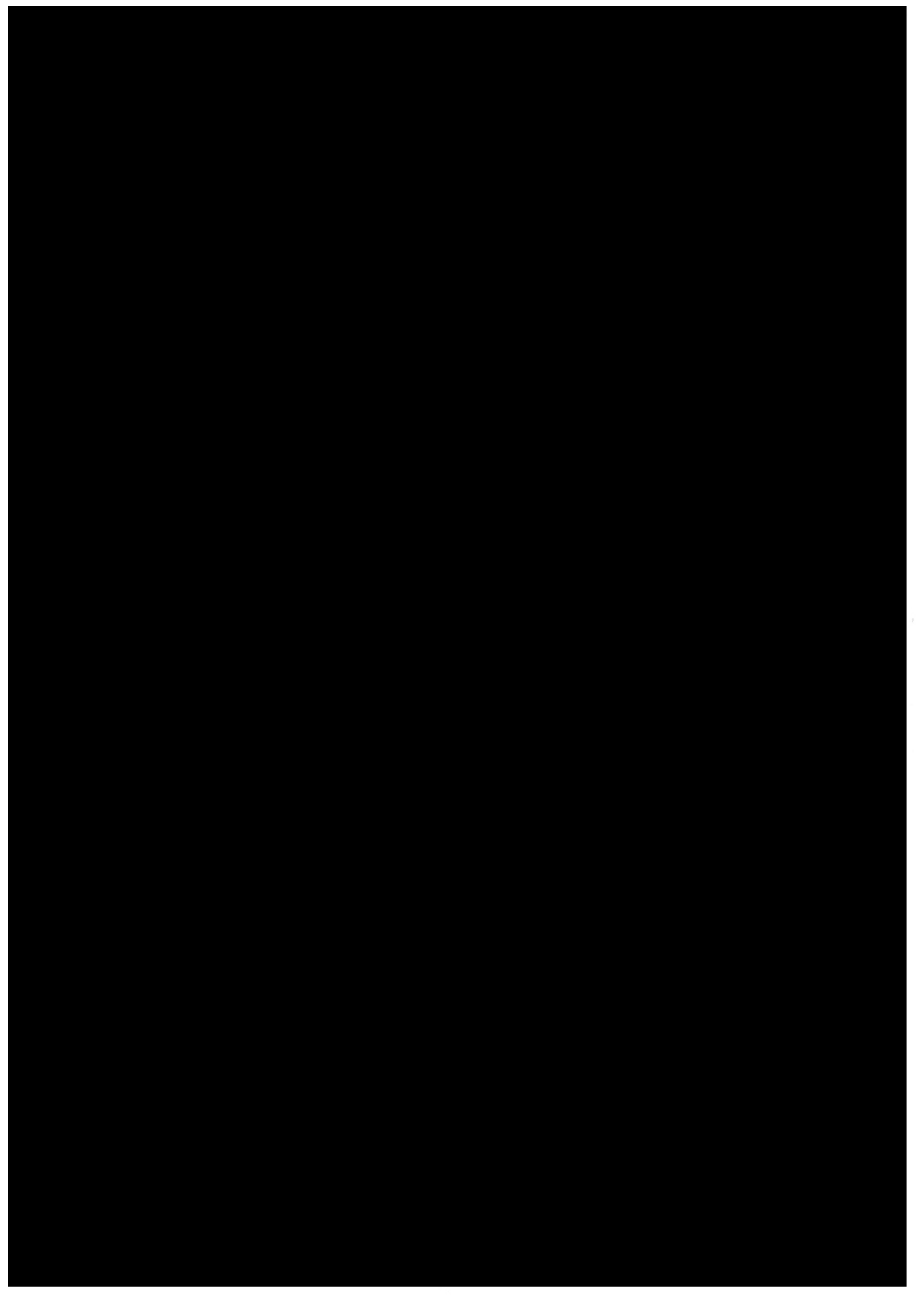
The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every receipt, invoice, and bill should be properly filed and dated. This not only helps in tracking expenses but also provides a clear audit trail for tax purposes. The text suggests using a systematic approach, such as the envelope system, to ensure that no financial activity goes unrecorded.

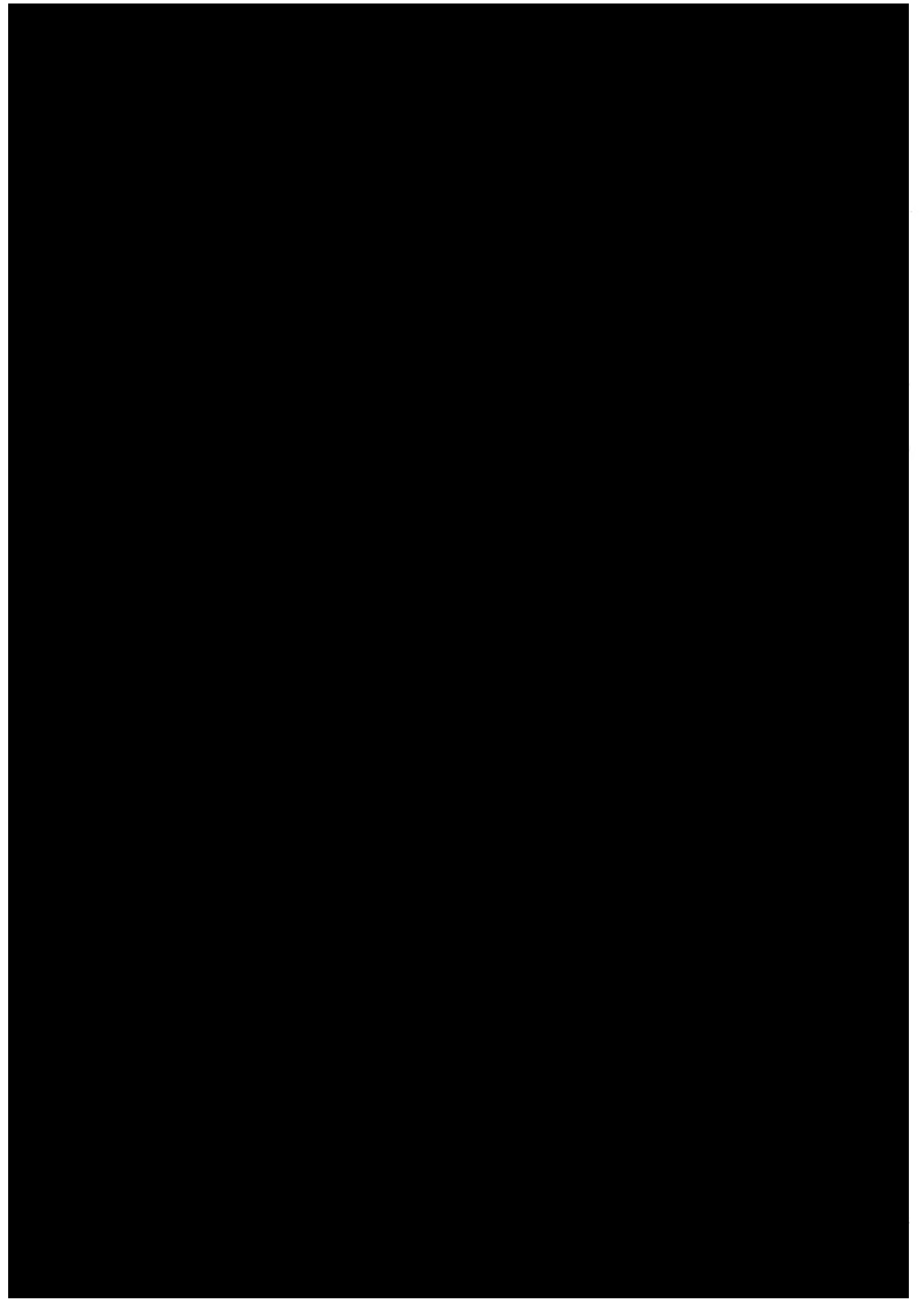
Next, the document addresses the issue of budgeting. It states that a well-defined budget is essential for controlling spending and achieving financial goals. The author recommends reviewing the budget regularly to adjust for changes in income or expenses. This proactive approach can prevent overspending and ensure that funds are allocated to the most important areas of the household.

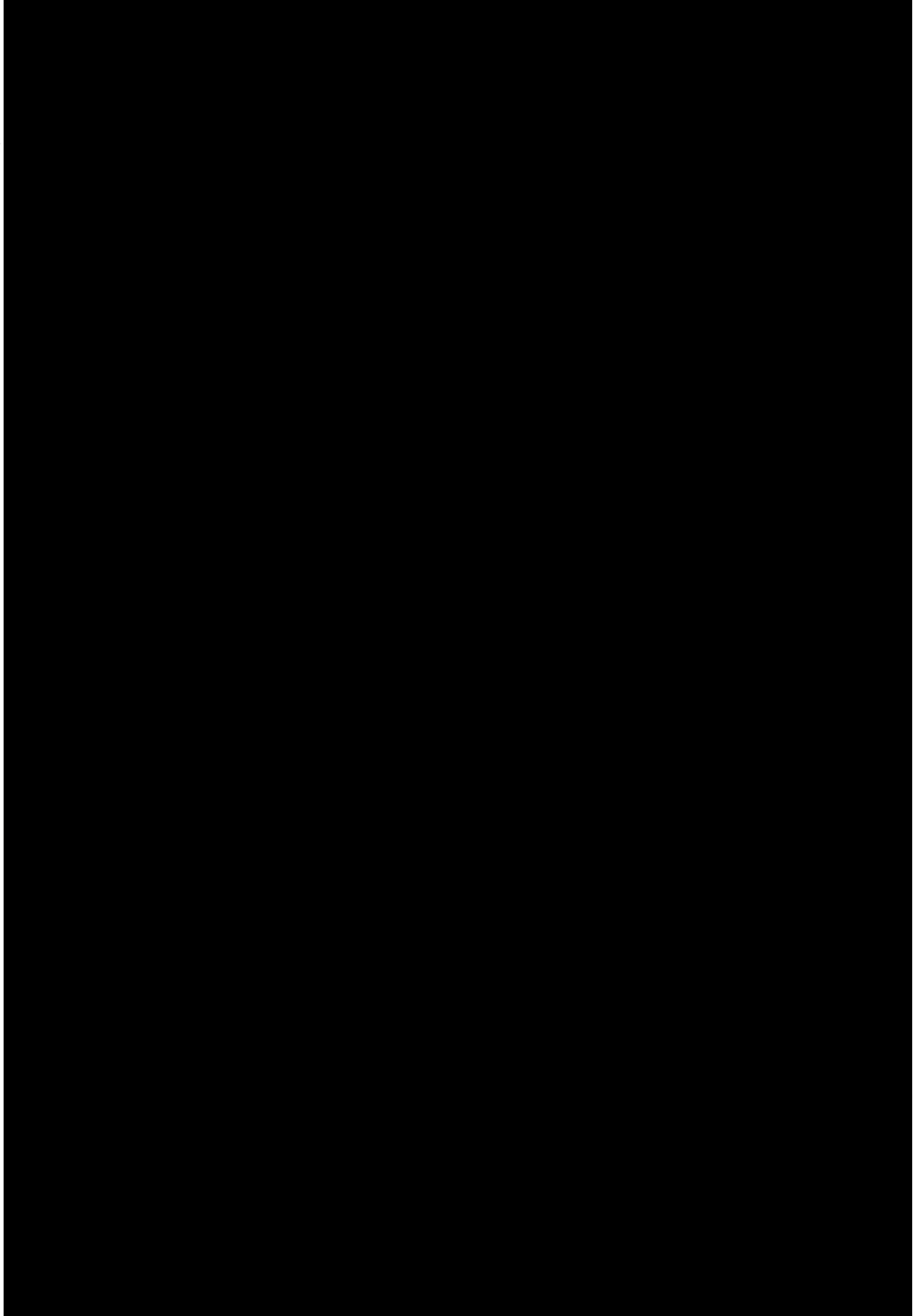
The third section focuses on debt management. It advises that high-interest debt should be prioritized for repayment to minimize the total amount paid over time. The document also discusses the benefits of consolidating debts into a single, lower-interest loan, which can simplify payments and reduce the overall cost of borrowing. However, it cautions against taking on new debt unless it is necessary and can be managed responsibly.

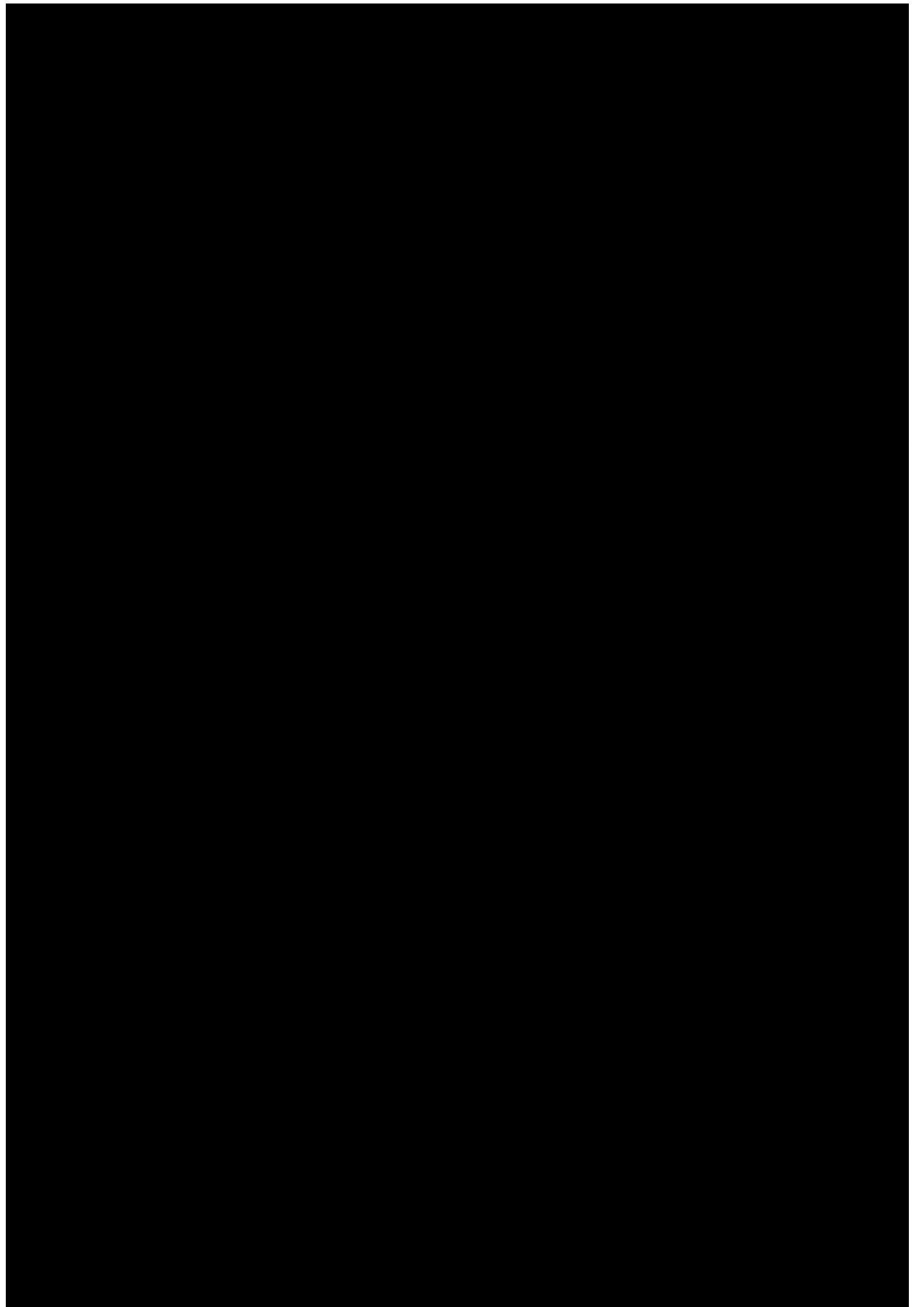
Finally, the document touches upon the importance of emergency savings. It suggests setting aside a portion of each month's income into a dedicated fund to cover unexpected expenses or income loss. This financial cushion provides peace of mind and ensures that the household can weather any unforeseen circumstances without resorting to high-cost borrowing.

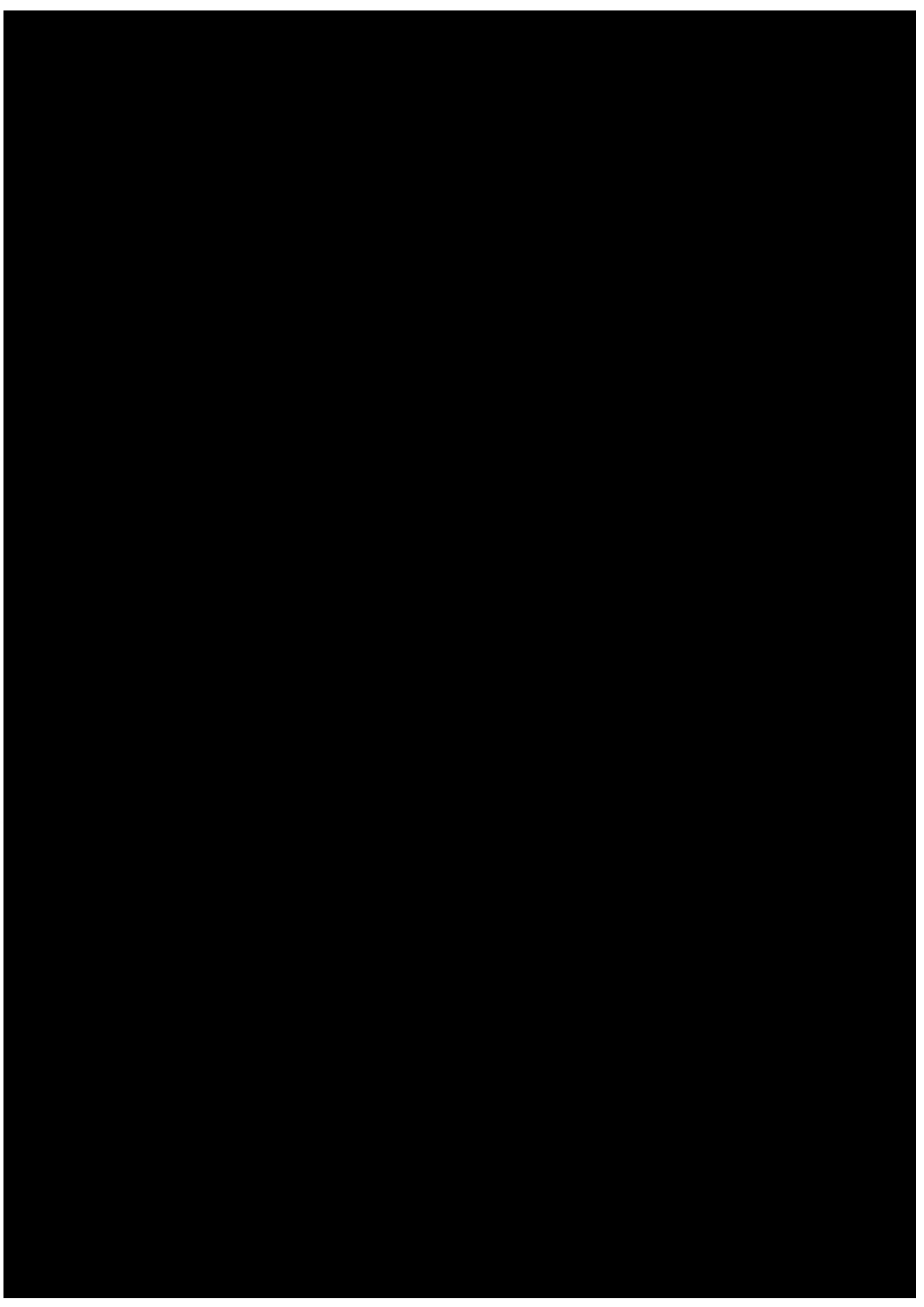


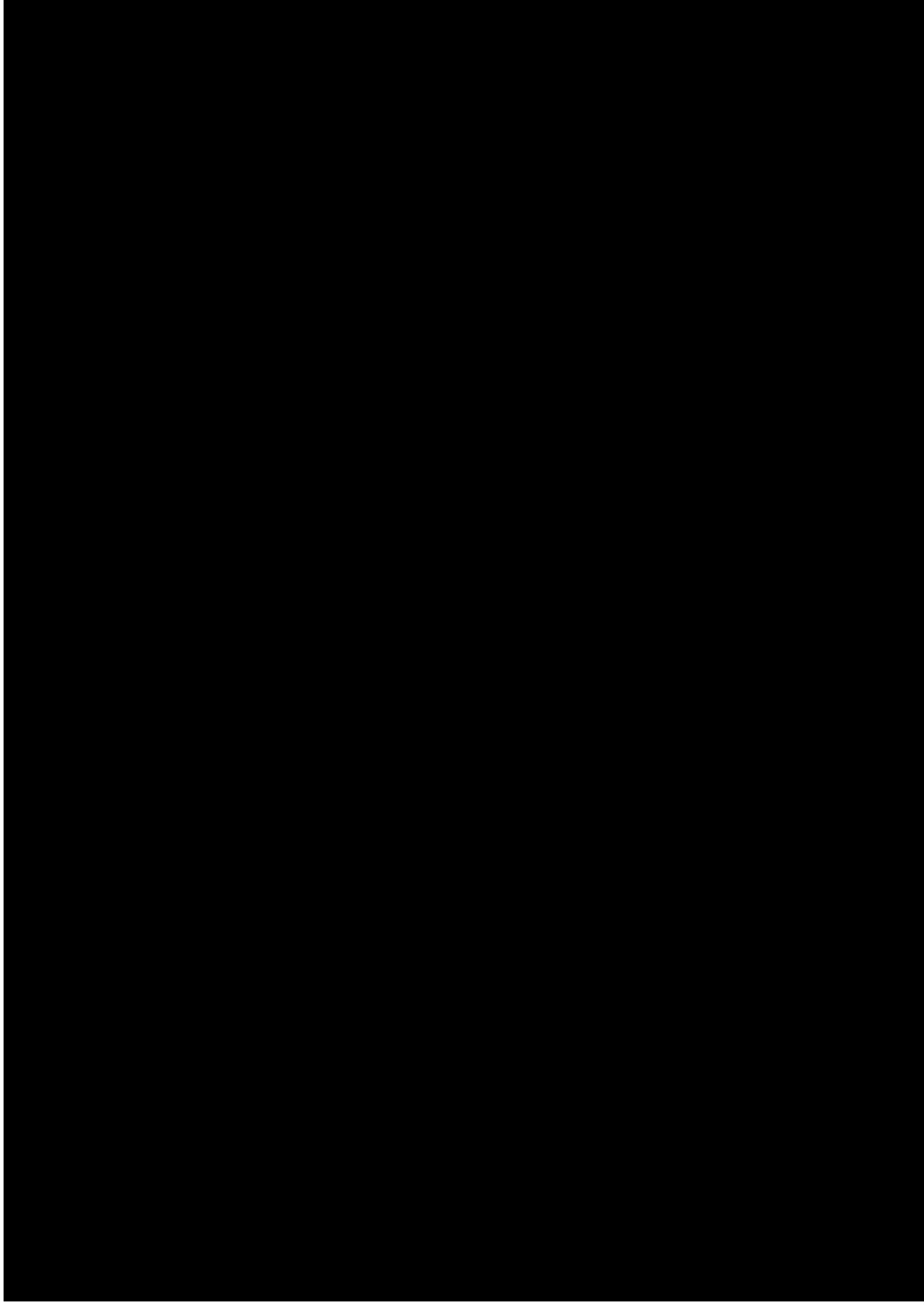














## SCHEDULE 4

### Payment procedure

#### 1. Payment claims

At the end of each month in which the Members perform services under this Agreement with respect to each Dispute or Potential Matter between the Principal and a Project Contractor, each Member must submit to both the Principal and the relevant Project Contractor an account for payment on account of the Member's fees and disbursements:

- (a) setting out the value of the services performed in accordance with this Agreement during the relevant month;
- (b) calculated in accordance with the Fees and Disbursements Letter for that Member; and
- (c) in such form and with such details and supporting documentation as the Principal and the relevant Project Contractor may reasonably require (including details of the time expended by the Member in performing the services).

#### 2. Payment and notification of disputed amounts

- (a) Within 20 Business Days after receipt of the account for the month (submitted in accordance with section 1 of this Schedule 4):
  - (i) the Principal must pay:
    - (A) the Member's monthly retainer set out in the Fees and Disbursements Letter for that Member; and
    - (B) the Member's attendance at each Project Meeting as set out in the Fees and Disbursements Letter for the Member; and
  - (ii) the Principal and the relevant Project Contractor must each pay each Member █████ of the amount claimed by each Member for services performed (other than those in (i) above) during the month which is not disputed.
- (b) If the Principal or the relevant Project Contractor disagrees with the amount included in an account submitted by a Member then, within 10 Business Days of receipt of the relevant Member's account, the Principal or the relevant Project Contractor (as applicable) must notify the relevant Member in writing of the reasons for any amount which is disputed (with a copy to the Principal and the relevant Project Contractor).
- (c) If the Principal, the relevant Project Contractor and the relevant Member do not resolve the matter within 10 Business Days after the issue of the Principal's or the relevant Project Contractor's written notice, the Principal and the relevant Project Contractor (acting reasonably) must jointly determine the dispute. Any determination by the Principal and the relevant Project Contractor in respect of the amount payable must be given effect to by the Principal, the relevant Project Contractor and the relevant Member unless and until it is reversed or overturned in any subsequent court proceedings.

#### 3. Goods and services tax

- (a) A party must pay GST on a taxable supply made to it under this Agreement, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.

- (b) Terms used in this section 3 have the meaning given to them in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**FORM OF FEES AND DISBURSEMENTS LETTER**

[Date]

[Member details]

Dear [Member]

**Fees and Disbursements for IDAR Panel**

This letter (**Fees and Disbursements Letter**) forms part of the IDAR Panel Agreement between Sydney Metro, each Project Contractor and Members of the IDAR Panel dated on or about the date of this Fees and Disbursements Letter.

All defined terms used in this Fees and Disbursements Letter have the meaning given to them in the IDAR Panel Agreement.

The fees and disbursements due to [Member] in respect of his/her responsibilities as a Member of the IDAR Panel are agreed as follows:

Item	Work scope/description	Fee arrangement	Fee (excl. GST)
1.	Preparation for, and attendance at, one Project Briefing per month		
2.	Preparation for, and attendance at Project Meetings		
3.	All other work carried out in connection with this Agreement, other than work set out in items (1) and (2)		
4.	Disbursements		
5.	Rates escalation		

**Payment terms**

Payment terms will be in accordance with Schedule 4 of the IDAR Panel Agreement.

**Counterparts**

This Fees and Disbursements Letter may be executed in counterparts, which taken together constitute one instrument. A party may execute this Fees and Disbursements Letter by executing any counterpart.

**Acceptance**

Please acknowledge your acceptance of the fees and disbursements of this letter by signing, dating and returning the enclosed copies to Sydney Metro.

**Executed** by **SYDNEY METRO ABN 12 354 063 515** by its authorised delegate in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of witness

\_\_\_\_\_  
Signature of [insert position]

\_\_\_\_\_  
Name of [insert position]

**Signed** by [**Member**] in the presence of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness in full

\_\_\_\_\_  
Signature

**SCHEDULE A18**

**Deed of Novation**

**(Clause 26.6(a)(v) and Schedule A5)**

**Date:**

**Parties:** [ ] ABN [ ] of [ ]  
(Retiring Party)

[ ] ABN [ ] of [ ]  
(Continuing Party)

[ ] ABN [ ] of [ ]  
(Substitute Party)

**Recitals**

- (A) The Retiring Party and the Continuing Party are parties to the Contract.
- (B) The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms and conditions of this deed.
- (C) The Continuing Party has agreed to the novation of the Contract on the terms and conditions of this deed.

**THIS DEED PROVIDES**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

**Claim** means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

**Continuing Party Retained Liabilities** means the undischarged obligations and Liability of the Continuing Party arising prior to the Effective Date.

**Contract** means the agreement between the Retiring Party and the Continuing Party [described in Schedule 1 *or insert description here*].

**Contract Guarantees** means the guarantees or bonds issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and/or, where required by the Contract, by a Related Entity of that party.

**Effective Date** means [the date of this deed or the date agreed by the parties from which the novation will be effective].

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

**Liability** means all liabilities, losses, Claims, damages, outgoings, costs and expenses of whatever description.

**Related Entity** has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

**Retiring Party Retained Liabilities** means the undischarged obligations and Liability of the Retiring Party arising prior to the Effective Date.

## 2. INTERPRETATION

In this deed:

(a) headings are for convenience only and do not affect interpretation;

and unless the context indicates a contrary intention:

(b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;

(c) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;

(d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;

(e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;

(f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;

(g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;

(h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;

(i) 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;

(j) "includes" in any form is not a word of limitation; and

(k) a reference to "\$" or "dollar" is to Australian currency.

## 3. NOVATION

### 3.1 Novation

From the Effective Date:

(a) the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract; and

- (b) any reference in the Contract to the Retiring Party shall be read as a reference to the Substitute Party.

**3.2 Assumptions of rights and obligations**

- (a) From the Effective Date the Substitute Party will be bound by and shall comply with the terms of the Contract as amended by this deed, and shall enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
- (b) From the Effective Date the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.

**3.3 Release by Continuing Party**

From the Effective Date:

- (a) the Continuing Party releases the Retiring Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has, or but for this clause would have had against the Retiring Party under or in respect of the Contract,

except for the Retiring Party Retained Liabilities;
- (b) subject to clause 3.3(c), this release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and Liability of the Retiring Party under the terms of the Contract; and
- (c) the Continuing Party releases the Substitute Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, claim and demand it has against the Retiring Party under or in respect of the Contract,

in respect of the Retiring Party Retained Liabilities.

**3.4 Release by Retiring Party**

- (a) From the Effective Date the Retiring Party releases the Continuing Party from:
  - (i) any obligation or Liability under or in respect of the Contract; and
  - (ii) any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,

except for the Continuing Party Retained Liabilities.
- (b) Nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract from the Effective Date.

**3.5 Insurance**

From the Effective Date:

- (a) the Substitute Party must have in place insurances which replace the insurances required to be effected and maintained by the Retiring Party under the terms of the Contract; and
- (b) the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

**3.6 Replacement of Guarantees**

From the Effective Date the Substitute Party must have in place guarantees which replace the Contract Guarantees on similar terms in favour of the Continuing Party.

**4. OVERRIDING EFFECT**

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

**5. REPRESENTATIONS AND WARRANTIES**

**5.1 Authority**

Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.

**5.2 Authorisations**

Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

**5.3 Binding obligations**

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

**6. DUTIES, COSTS AND EXPENSES**

**6.1 Stamp Duty**

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

**6.2 Costs**

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

**6.3 GST**

- (a) 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 cost, 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.



- (b) If GST is payable on a supply made under this deed by an entity (**Supplier**), the party providing the consideration for that supply must, in addition to any other amounts payable under any provision of this deed, pay an additional amount equal to the GST payable by the Supplier on that supply. The additional amount must be paid, and the Supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause 6.3 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999*.

## 7. GENERAL

### 7.1 Governing Law

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

### 7.2 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and
- (b) 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, if that venue falls within clause 7.2(a).

### 7.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

### 7.4 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 preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.
- (b) A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- (c) No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

### 7.5 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.

### 7.6 Severance

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

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or

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

**7.7 Further acts and documents**

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

**7.8 Assignment**

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.

**Schedule 1 [if needed]**

**Contract**  
(clause 1.1)

.....  
.....

**Executed** as a deed.

**Executed** by **[Retiring Party and ABN]** by or  
in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**Executed** by **[Continuing Party and ABN]**  
by or in the presence of:

---

Signature of Director

---

Signature of Secretary/other Director

---

Name of Director in full

---

Name of Secretary/other Director in full

**Executed** by **[Substitute Party and ABN]** by  
or in the presence of:

---

Signature of Director

---

Name of Director in full

---

Signature of Secretary/other Director

---

Name of Secretary/other Director in full

**SCHEDULE A19****Modification to the Expert Determination Rules****(Clause 27.6)**

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 or ~~struck-out~~.

**RULE 1 Definitions**

"Business Days" means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

"IDAR Panel Agreement" means the agreement titled "Independent Dispute Avoidance and Resolution Panel Agreement" between the Principal, the Members, the Tunnelling Contractor and any other party that accedes to the agreement from time to time.

"Member" has the meaning given in the IDAR Panel Agreement.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the Civil Liability Act 2002 (NSW);
- (b) Part IVAA of the Wrongs Act 1958 (Vic);
- (c) Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
- (d) Part 1F of the Civil Liability Act 2002 (WA);
- (e) the Proportionate Liability Act 2005 (NT);
- (f) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT);
- (g) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);
- (h) Part 9A of the Civil Liability Act 2002 (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (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 Payments) Act 2004 (NT);
- (f) the Building and Construction Industry (Security of Payment) Act 2009 (ACT);
- (g) the Building and Construction Industry Security of Payment Act 2009 (SA);
- (h) the Building and Construction Industry Security of Payment Act 2009 (Tas); and

- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Tunnelling Contract" mean the deed titled "Sydney Metro West, Eastern Tunnelling Works Incentivised Target Cost Contract" (Contract No: 00013/13102) between the Principal and the Tunnelling Contractor dated [insert].

## **RULE 2 Appointment of the Expert**

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:
  - a. by a person agreed between the parties; or
  - b. if the parties are unable to agree on the identity of the person to be appointed within 10 Business Days of receipt of the Notice of Referral of Dispute to Expert Determination (as defined in the Tunnelling Contract), by a person nominated by the Australian Centre for International Commercial Arbitration (ACICA) Resolution Institute,

who is not a Member and accepts appointment as Expert.

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 Tunnelling 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.

5. [no modification]

**RULE 9 Conduct of the Process**

1. [no modification]

2. [no modification]

3. ~~If The parties agree in writing (in the Agreement or otherwise), that the procedure in Schedule B shall will apply.~~

4. The rules of evidence do not apply to the Process.

**RULE 10 The Expert's Determination**

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9, t~~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 Tunnelling Contract.

2. [no modification]

3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary, 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.

**SCHEDULE B**

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".

2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".

3. The reference to "twenty one (21) days" is replaced by "five Business Days".

4. [no modification]

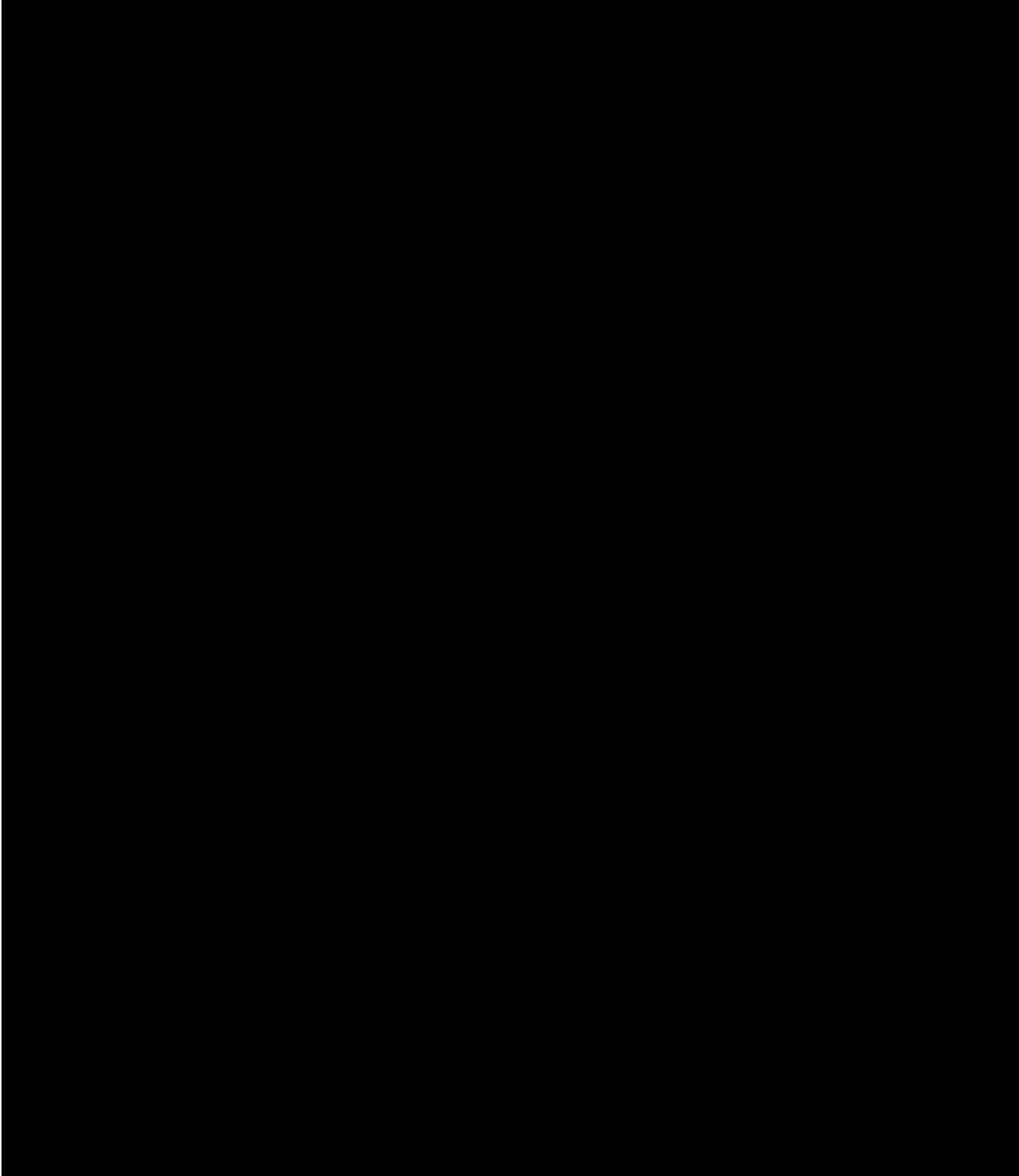


- 5. [no modification]
- 6. [no modification]
- 7. [no modification]
- 8. [no modification]

**SCHEDULE A20**

**Deed of Disclaimer**

**(Clauses 1.1, 14.8 and 14.10)**

























































































































































































































**SCHEDULE A21**

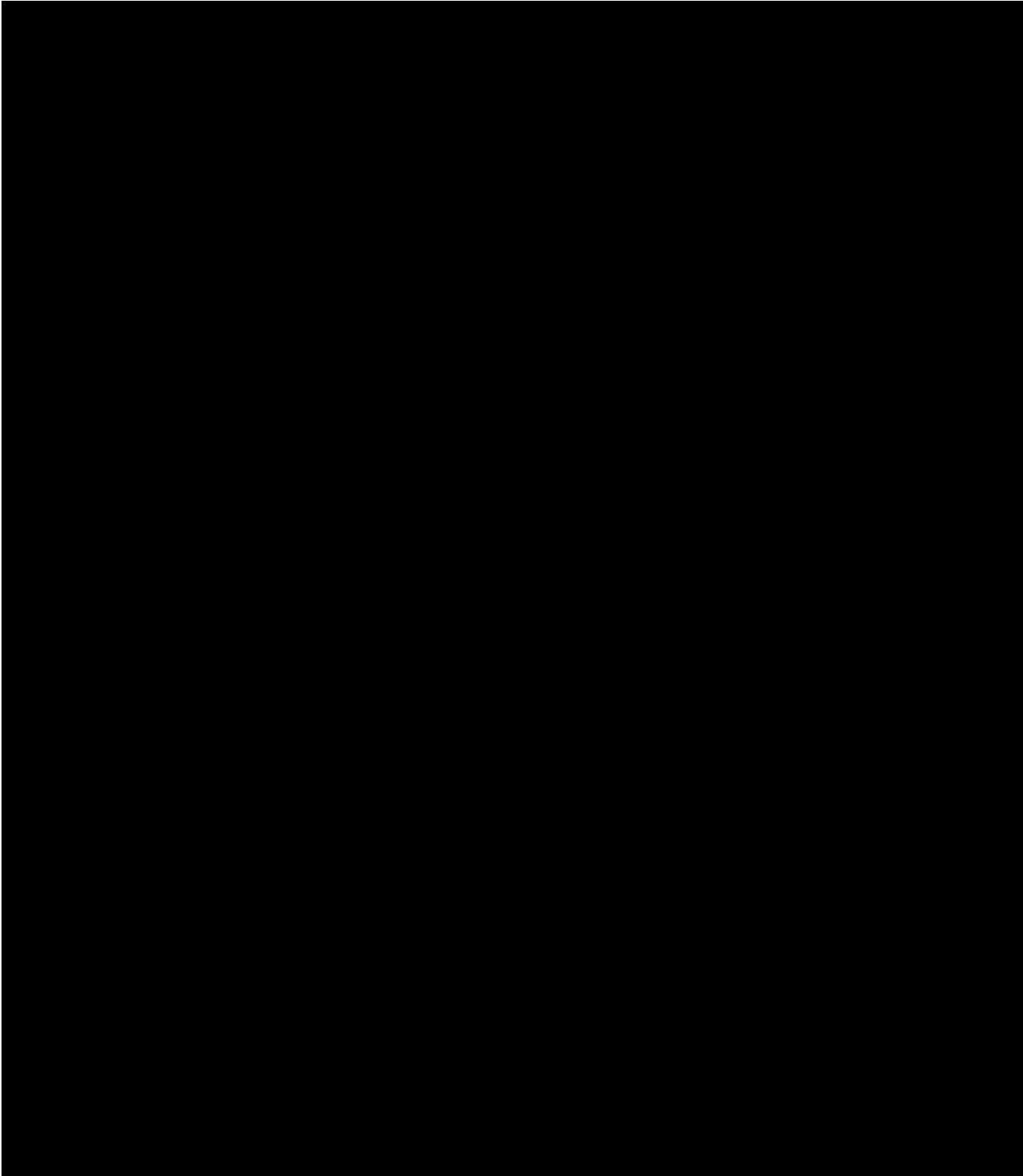
**Information Documents**

**(Clauses 1.1, 1.2 and 14.10)**

This Schedule A21 consists of the documents and information set out in the document entitled "Schedule A21 (Information Documents) Register", which is included in Schedule F1 as an electronic file.

The documents and information set out in the document entitled "Schedule A21 (Information Documents) Register" are Information Documents for the purposes of paragraph (a) of the definition of "Information Document", and are included in Schedule F1 as electronic files for reference only.

**SCHEDULE A22**  
**Geotechnical Reports**  
**(Clauses 1.1 and 14.12)**



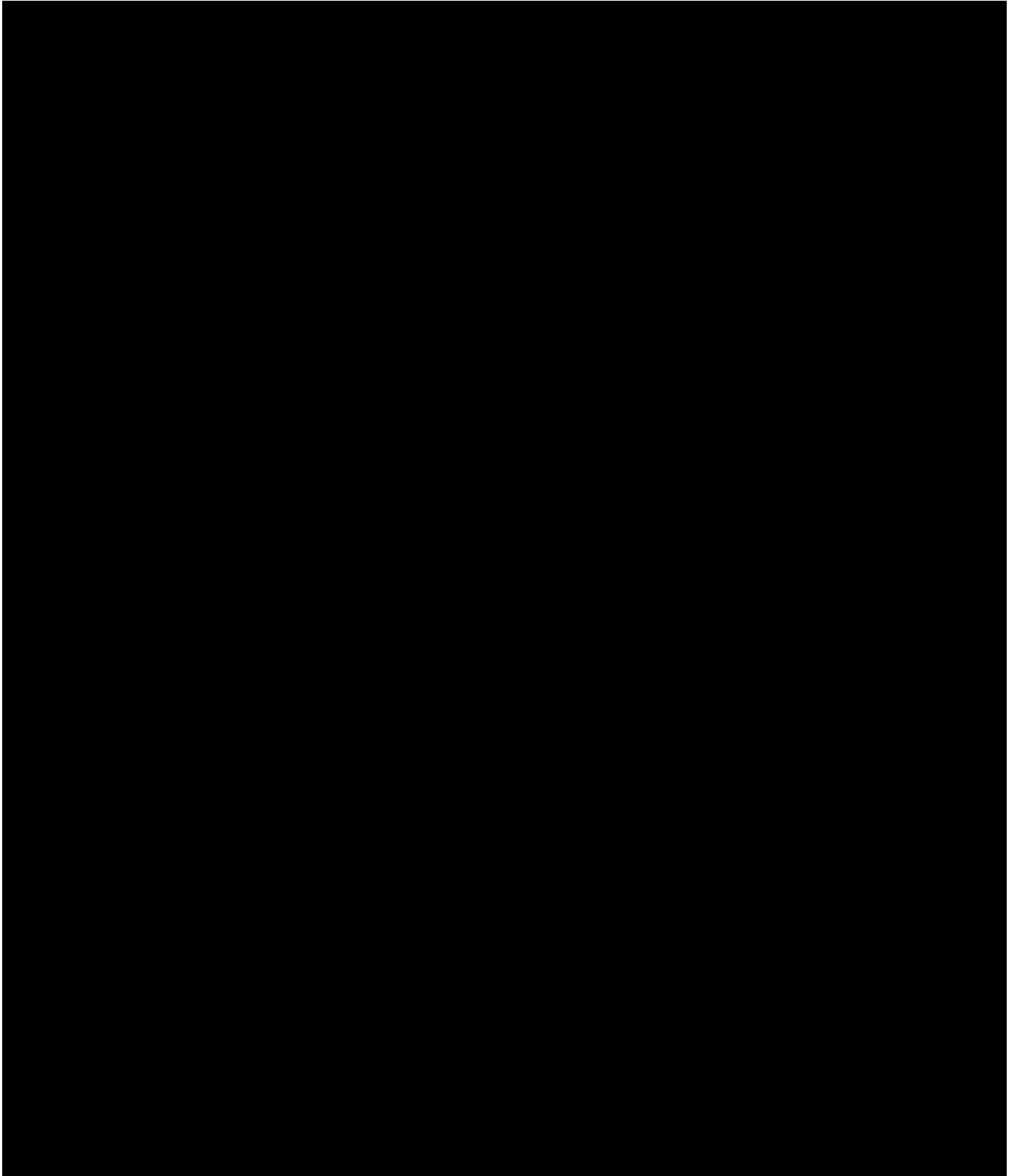




**SCHEDULE A23**

**Overall ETP Program**

**(Clauses 1.1 and 21.2)**



























































































































































**SCHEDULE A24**

**Proof Engineer Requirements**

**(Clauses 1.1 and 15.3)**

The following are the minimum required qualifications, experience and expertise that must be possessed by the Proof Engineer:

- (a) demonstrated experience in the design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification);
- (b) 12 years' experience (including 5 years' experience in the last 10 years) and proven ability in structural analysis and design of temporary works similar to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification) [REDACTED];
- (c) Quality Management System 3rd party certified to AS/NZS ISO 9001;
- (d) range of suitable structural analysis and CAD software [REDACTED];
- (e) be a Chartered Engineer registered with the Institution of Engineers Australia, and with qualifications admitting to MIEAust and the National Engineering Register;
- (f) knowledge of Australian Standards applicable to the Temporary Works that are required to be designed under the terms of this deed (including the Tunnelling Specification); and
- (g) at least 5 years' experience in undertaking the checking of temporary works design as a proof engineer in the past 10 years.

**SCHEDULE A25****Special Events****(Clauses 1.1 and 4.9)**

<b>Expected Month / Event</b>	<b>Location</b>
<b>JANUARY</b>	
Australia Day	Sydney CBD and Pyrmont
ELEVATE Sydney	Cahill Expressway
Sydney Festival	Sydney CBD
The Domain Event Season – Various festivals and events. Stage and fencing established in area for duration	The Domain – Phillip Precinct
<b>FEBRUARY</b>	
Chinese New Year Festival	Sydney CBD
Korean town Lunar New Year Festival	Sydney CBD
Mardi Gras Fair Day	Sydney Park, Alexandria
The Domain Event Season – Various festivals and events. Stage and fencing established in area for duration	The Domain – Phillip Precinct
<b>MARCH</b>	
Sydney Gay and Lesbian Mardi Gras	Oxford St
St. Patrick's Day Parade	Sydney CBD
Greek Independence Day	Sydney CBD
Sparkling Sydney	Pirrama Park
<b>APRIL</b>	
Premier Senior Week	Sydney Entertainment Centre
Sydney Easter Parade	Hyde Park
ANZAC Day	Sydney CBD and Pyrmont
Sydney Comedy Festival	Sydney CBD
<b>MAY</b>	
May Day March	Sydney CBD
Mothers Day Classic	Sydney CBD
SMH Half Marathon	Sydney CBD
Vivid Festival	Sydney CBD
<b>JUNE</b>	
Vivid Festival	Sydney CBD
Procession of the Blessed Sacrament	Sydney CBD
Sydney Film Festival	Sydney CBD
<b>JULY</b>	
Aroma Coffee Festival	The Rocks
Sydney Harbour 10km Run	Sydney CBD
Reserve Forces Day	Sydney CBD
Bastille Day	The Rocks
<b>AUGUST</b>	
City 2 Surf	Sydney to Bondi
Bay Run	Iron Cove
<b>SEPTEMBER</b>	
Sydney Running Festival (Marathon)	Nth Syd-Barangaroo-Randwick-Haberfield-SOH
Pyrmont Festival	Pirrama Park
Sydney Fringe Festival	Sydney CBD

Expected Month / Event	Location
<b>OCTOBER</b>	
The Domain Event Season – Various festivals and events. Stage and fencing established in area for duration	The Domain – Phillip Precinct
Spring Cycle	North Sydney-Sydney Olympic Park
Seven Bridges Walk	Sydney Harbour
Sydney Night Noodle Markets	Sydney CBD
Pyrmont Festival	Pirrama Park
Australian Beer Festival	The Rocks
<b>NOVEMBER</b>	
The Domain Event Season – Various festivals and events. Stage and fencing established in area for duration	The Domain – Phillip Precinct
Sydney International Art Series	Art Gallery of New South Wales and Museum of Contemporary Art Australia
<b>DECEMBER</b>	
Christmas in Pyrmont	Bowman St (Refinery Square)
Santa Fun Run	The Rocks
Carols in the Domain	The Domain
City of Sydney Village Christmas Concert	Sydney CBD
Sydney to Hobart Yacht Race	Sydney Harbour
NYE celebrations	Sydney & North Sydney
The Domain Event Season – Various festivals and events. Stage and fencing established in area for duration	The Domain – Phillip Precinct
<b>WEEKLY</b>	
Rozelle Collectors Market (every Saturday)	Rozelle
Rozelle Farmers Markets (every Sunday)	Rozelle
The Rocks Markets	The Rocks

**SCHEDULE A26****Procedure for submission and review of Design Documentation and Network Assurance Submissions****(Clauses 1.1, 15.3, 16, 18.1, 18.6 and 27.6)****1. PREPARATION AND SUBMISSION OF DESIGN DOCUMENTATION**

- (a) The Tunnelling Contractor must:
- (i) prepare the Design Documentation in the following three Design Stages:
    - (A) Design Stage 1;
    - (B) Design Stage 2; and
    - (C) Design Stage 3,

or as otherwise required by a Third Party Agreement or contemplated by the Systems Engineering Management Plan;
  - (ii) ensure that the Design Documentation submitted at each Design Stage:
    - (A) enables the Principal's Representative and, at Design Stage 3 and at each earlier Design Stage for the Nominated Early IC Packages, the Independent Certifier, to confirm the matters contemplated by section 8 of the General Specification at each applicable Design Stage;
    - (B) includes a design report which contains the details, information and deliverables required by section 5 of the Particular Specification for each applicable Design Stage;
    - (C) references relevant clauses within this deed; and
    - (D) otherwise complies with the requirements of the Tunnelling Specification;
  - (iii) submit Design Documentation in design packages in accordance with the Tunnelling Specification and the Systems Engineering Management Plan;
  - (iv) as a precondition to submitting each design package deliver a design presentation workshop to the Principal's Representative, the Independent Certifier and the Principal's nominees, at least 5 Business Days prior to its submission;
  - (v) submit all Design Documentation (other than Third Party Agreement Design Documentation and Design Documentation for Temporary Works) to the Principal's Representative and the Independent Certifier and otherwise:
    - (A) in accordance with the Tunnelling Specification, the Systems Engineering Management Plan and the Overall ETP Program; and
    - (B) in a manner and at a rate which, having regard to the quantum of Design Documentation submitted, will give the Principal's Representative and, at Design Stage 3 and at each earlier Design Stage for the Nominated Early IC Packages, the Independent Certifier, a reasonable opportunity to review the submitted Design Documentation;

- (vi) submit all Third Party Agreement Design Documentation to the required recipients under any relevant Third Party Agreement (with a copy to the Principal's Representative) at the times required by the relevant Third Party Agreement;
  - (vii) submit all Design Documentation for Category 1, 2 and 3 Temporary Works (as referred to in section 3.2.2 of the Particular Specification) to the Principal's Representative in accordance with the requirements of section 3.2 of the Particular Specification at Design Stage 3 or when it has otherwise reached the final stage of design development;
  - (viii) otherwise submit Design Documentation for Temporary Works (regardless of category) whenever requested by the Principal's Representative and within 5 Business Days of the Principal's Representative's request;
  - (ix) ensure the Design Stage 3 Design Documentation submitted is accurate, complete, co-ordinated with the other Design Documentation and at a level of detail which is sufficient to permit the Principal's Representative and the Independent Certifier and any relevant third party to determine whether:
    - (A) the Design Documentation complies with this deed; and
    - (B) the Project Works and Temporary Works which will be constructed in accordance with the Design Documentation will comply with this deed;
  - (x) provide any further information required by the Principal's Representative and the Independent Certifier in relation to the Design Documentation; and
  - (xi) submit any amendment to the Design Documentation to the Principal's Representative and the Independent Certifier (in which case the requirements of this Schedule A26 will re-apply).
- (b) The Principal's Representative may, at any time (including after the Principal's Representative has "not rejected" or the Independent Certifier has certified the Design Documentation pursuant to this Schedule A26), direct the Tunnelling Contractor to make amendments to any Design Documentation to ensure the Design Documentation complies with this deed and, if it does so, clause 5.3(c) of this Schedule A26 will apply.
  - (c) All Design Documentation submitted by the Tunnelling Contractor must be in English and in metric units.

## 2. CERTIFICATES TO BE PROVIDED BY THE TUNNELLING CONTRACTOR

- (a) With all Design Documentation submitted for Design Stage 1 and Design Stage 2, the Tunnelling Contractor must deliver a certificate in the form of Schedule B3 from each of:
  - (i) the Tunnelling Contractor; and
  - (ii) the Subcontractors that prepared the Design Documentation.
- (b) With all Design Documentation submitted for Design Stage 3, the Tunnelling Contractor must:
  - (i) deliver a certificate in the form of Schedule B4 from each of:
    - (A) the Tunnelling Contractor; and

- (B) the Subcontractors that prepared the Design Documentation;
- (ii) where the Design Documentation relates to any Proof Engineered Temporary Works, deliver a certificate in the form of Part A of Schedule B17 from the Proof Engineer; and
- (iii) where the Design Documentation relates to any element of the Demolition Temporary Works, deliver certificates:
  - (A) in the form of Schedule B25 from a Demolition Temporary Works Independent Checker; and
  - (B) in the form of Schedule B24 from a Demolition Structural Engineer.
- (c) The Tunnelling Contractor must procure and provide all certificates and approvals that are required by Schedule D5, Schedule D6 and Schedule D7.

### 3. **DISTRIBUTION OF DESIGN DOCUMENTATION**

- (a) The Principal may distribute, or require the Tunnelling Contractor to distribute, the whole or a part of the Design Documentation to third parties including Authorities, the Independent Certifier and Interface Contractors.
- (b) The Principal and, if applicable, the Independent Certifier may, but are not obliged to:
  - (i) consult with third parties in relation to the Design Documentation;
  - (ii) take into account the comments of third parties in relation to the Design Documentation when responding to the Tunnelling Contractor; and
  - (iii) in relation to the Principal only, take into account the comments of the Independent Certifier in relation to the Design Stage 1 and Design Stage 2 Design Documentation for the Nominated Early IC Packages and the Design Stage 3 Design Documentation when responding to the Tunnelling Contractor.
- (c) No comment or instruction from a third party in relation to the design is binding on the Principal, or will have any effect on the obligations of the Tunnelling Contractor under this deed (unless it is also a direction from the Principal's Representative).

### 4. **DESIGN STAGE 1 AND DESIGN STAGE 2 REVIEW**

#### 4.1 **Review of Design Stage 1 and Design Stage 2 Design Documentation**

- (a) The Principal's Representative must, within the Principal's Design Review Period, review any Design Stage 1 and Design Stage 2 Design Documentation submitted to it by the Tunnelling Contractor and notify the Tunnelling Contractor in writing of any non-compliance or potential non-compliance of the Design Documentation with the requirements of this deed with detailed reasons.
- (b) The Tunnelling Contractor acknowledges that the Independent Certifier will, in relation to the Nominated Early IC Packages and within the Principal's Design Review Period, notify the Principal and the Tunnelling Contractor in writing of any non-compliance or potential non-compliance of the Design Documentation for the Nominated Early IC Packages with the requirements of this deed with detailed reasons.

#### 4.2 **Non-compliance of Design Stage 1 or Design Stage 2 Design Documentation**

If the Principal's Representative, or in the case of the Nominated Early IC Packages, the Independent Certifier, notifies the Tunnelling Contractor under clause 4.1 of this Schedule A26 that any Design Stage 1 or Design Stage 2 Design Documentation contains a non-compliance with the requirements of the deed:

- (a) the Tunnelling Contractor:
  - (i) must within 20 Business Days after receiving such notice, give the Principal's Representative and, where the notice relates to a Nominated Early IC Package, the Independent Certifier, a written response:
    - (A) which explains how the Tunnelling Contractor will address the non-compliance in sufficient detail to satisfy the Principal's Representative and, where the non-compliance was identified by the Independent Certifier in relation to a Nominated Early IC Package, the Independent Certifier, that compliance will be achieved prior to submitting the next stage of Design Documentation (as applicable); or
    - (B) setting out any matters in relation to which it disagrees with the Principal's Representative or, in the case of a Nominated Early IC Package, the Independent Certifier, together with its reasons for doing so;
  - (ii) must, prior to or when it submits the next stage of the Design Documentation that relates to a non-compliance identified in any Design Documentation, give the Principal's Representative and, in the case of a non-compliance identified in a Nominated Early IC Package, the Independent Certifier, a written statement which explains how the non-compliance has been addressed; and
  - (iii) is not obliged to respond to any comments received from the Principal's Representative or the Independent Certifier which do not concern a non-compliance; and
- (b) following receipt of a notice under clause 4.2(a)(i)(B) of this Schedule A26, the parties and, where applicable, the Independent Certifier, must meet and in good faith seek to resolve the disagreement.

## 5. DESIGN STAGE 3 REVIEW

### 5.1 Review of Design Stage 3 Design Documentation

- (a) The Principal's Representative must, within the Principal's Design Review Period, review the Design Stage 3 Design Documentation submitted to it by the Tunnelling Contractor and either:
  - (i) reject a part or all of the Design Stage 3 Design Documentation (in writing, with detailed reasons, to the Tunnelling Contractor) if the Principal's Representative or, if applicable, the Independent Certifier considers that the Design Stage 3 Design Documentation:
    - (A) does not comply with the requirements of this deed; or
    - (B) is not sufficiently complete to enable the Principal's Representative or, if applicable, the Independent Certifier to form a view on whether it is compliant; or
  - (ii) notify the Tunnelling Contractor in writing that the Design Stage 3 Design Documentation is not rejected, together with:



- (A) a list of:
    - (aa) any non-compliances which the Principal's Representative or, if applicable, the Independent Certifier considers to be Minor Non-Compliances; and
    - (bb) suggested actions that the Tunnelling Contractor may take to address those Minor Non-Compliances; and
  - (B) subject to clause 5.1(b) of this Schedule A26, a copy of the certificate issued by the Independent Certifier in the form of Schedule B2 in accordance with the Independent Certifier Deed.
- (b) If, in respect of any Design Stage 3 Design Documentation, the Independent Certifier has not issued to the Principal's Representative, prior to the Principal's Representative giving notice to the Tunnelling Contractor under clause 5.1(a) of this Schedule A26, either:
- (i) a notice rejecting a part or all of the Design Stage 3 Design Documentation; or
  - (ii) a certificate in the form of Schedule B2 in respect of the Design Stage 3 Design Documentation,
- in accordance with the Independent Certifier Deed, then the Principal's Representative must provide the Tunnelling Contractor with a copy of the Independent Certifier's notice or certificate (as applicable) promptly after receiving such notice or certificate (as applicable) from the Independent Certifier.
- (c) For the avoidance of doubt, it is acknowledged and agreed by the parties that:
- (i) the Independent Certifier is not required to review or certify any Design Stage 3 Design Documentation for Temporary Works; and
  - (ii) nothing in this Schedule A26 limits the Principal's or the Tunnelling Contractor's rights against the Independent Certifier under the Independent Certifier Deed.

## 5.2 Options following rejection of Design Stage 3 Design Documentation

Without limiting the Tunnelling Contractor's ability to proceed with construction where it is permitted to do so under clause 6 of this Schedule A26, if any Design Stage 3 Design Documentation is rejected by the Principal's Representative under clause 5.1(a)(i) of this Schedule A26, the Tunnelling Contractor must either:

- (a) promptly amend the relevant non-compliant element of the Design Stage 3 Design Documentation and re-submit it to the Principal's Representative and the Independent Certifier in accordance with clause 1(a) of this Schedule A26 and the process in clause 5.1 of this Schedule A26 will be reapplied to the amended element of the Design Stage 3 Design Documentation, except that the reference to the Principal's Design Review Period will be deemed to be a reference to the Principal's Design Re-Review Period; or
- (b) provide the Principal's Representative and the Independent Certifier with a notice in writing setting out any matters in relation to which it disagrees with the Principal's Representative's opinion or, if applicable, the Independent Certifier's opinion that the Design Stage 3 Design Documentation does not comply with the requirements of this deed together with its reasons for doing so.

### 5.3 Process following notice of disagreement

- (a) If the Tunnelling Contractor gives a notice under clause 5.2(b) of this Schedule A26, the Principal's Representative may, promptly after receipt of the notice:
- (i) consult with the Independent Certifier, where appropriate; and
  - (ii) determine and notify the parties as to whether or not the Tunnelling Contractor's notice satisfactorily addresses the Principal's Representative's or, if applicable, the Independent Certifier's concerns, together with its reasons for forming that opinion and:
    - (A) if the Principal's Representative, or, if applicable, the Independent Certifier considers that the Tunnelling Contractor's notice satisfactorily addresses its concerns, provide as part of its notice:
      - (aa) the notice under clause 5.1(a)(ii) of this Schedule A26; and
      - (bb) if applicable, a copy of the certificate issued by the Independent Certifier in the form of Schedule B2 in accordance with the Independent Certifier Deed; or
    - (B) if the Principal's Representative does not consider that the Tunnelling Contractor's notice satisfactorily addresses its concerns, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 5.2(b) of this Schedule A26. If the disagreement is in relation to a non-compliance identified by the Independent Certifier, the Independent Certifier will also attend the relevant meeting.
- (b) If the parties are unable to resolve a disagreement contemplated by clause 5.3(a)(ii)(B) of this Schedule A26 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with:
- (i) the Dispute Procedure; or
  - (ii) if the dispute is in relation to any non-compliance identified by the Independent Certifier, the Independent Certifier Deed.
- (c) If:
- (i) the relevant parties reach resolution under clause 5.3(b) of this Schedule A26 and the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation;
  - (ii) it is determined in accordance with the Dispute Procedure, or, if applicable, the Independent Certifier Deed that the Tunnelling Contractor is required to resubmit any Design Stage 3 Design Documentation; or
  - (iii) any Design Stage 3 Design Documentation is the subject of a direction by the Principal's Representative under clause 1(b) of this Schedule A26,
- then:
- (iv) the Tunnelling Contractor must promptly amend and re-submit the relevant non-compliant element of the Design Stage 3 Design Documentation to the

Principal's Representative and the Independent Certifier in accordance with clause 1(a) of this Schedule A26; and

- (v) the process in clause 5.1 of this Schedule A26 will reapply to the amended element of the Design Stage 3 Design Documentation except that the reference to the Principal's Design Review Period under clause 5.1 of this Schedule A26 will be deemed to be a reference to the Principal's Design Re-Review Period.
- (d) If clause 5.3(c) of this Schedule A26 applies, the Tunnelling Contractor must:
  - (i) immediately cease construction of any work that is being carried out in accordance with the relevant non-compliant element(s) of the Design Stage 3 Design Documentation or element(s) of the Design Stage 3 Design Documentation the subject of a direction by the Principal's Representative under clause 1(b) of this Schedule A26; and
  - (iii) promptly rectify any such work at its cost so that it complies with the requirements of this deed.

#### 5.4 Resolution of Minor Non-Compliances

If a notice provided by the Principal's Representative under clause 5.1(a)(ii) of this Schedule A26 lists any Minor Non-Compliances:

- (a) the notice may suggest the action that could be taken by the Tunnelling Contractor to address the Minor Non-Compliance; and
- (b) the Tunnelling Contractor must complete the suggested action, or take any other action the Tunnelling Contractor deems reasonable in the circumstances, to correct the Minor Non-Compliance to the extent required for the Design Stage 3 Design Documentation to comply with this deed and provide a copy of the rectified Design Stage 3 Design Documentation to the Principal and the Independent Certifier, within the timeframe (if any) specified in the Principal's Representative's notice and, in any event, as a pre-condition to Substantial Completion of a Portion.

#### 6. USE OF DESIGN DOCUMENTATION FOR CONSTRUCTION

- (a) The Tunnelling Contractor may use for construction purposes Design Stage 3 Design Documentation submitted to the Principal's Representative and the Independent Certifier under clause 1(a) of this Schedule A26 if the following conditions are met:
  - (i) the Principal's Representative has issued the Tunnelling Contractor with:
    - (A) a notice under clause 5.1(a)(ii) of this Schedule A26; and
    - (B) subject to clause 5.1(b) of this Schedule A26, a copy of the certificate issued by the Independent Certifier in the form of Schedule B2,
      - or the Principal's Design Review Period or Principal's Design Re-Review Period (as applicable) has elapsed in respect of the relevant Design Stage 3 Design Documentation;
  - (ii) the Design Documentation complies with the requirements of any relevant Approval (if applicable);
  - (iii) for Design Documentation that relates to Proof Engineered Temporary Works, the Tunnelling Contractor has provided a certificate from the Proof Engineer in the form of Part A of Schedule B17; and

- (iv) for Design Documentation that relates to construction work that requires NAC Gate 3 approval (including Design Documentation for Category 1 Temporary Works (as defined in section 3.2.2 of the Particular Specification)):
  - (A) the Principal's Representative has given a notice under clause 8.2(a) of this Schedule A26; or
  - (B) the Principal's Representative has given a notice under clause 8.2(b) of this Schedule A26 and:
    - (aa) the Tunnelling Contractor has completed all NAC Required Actions set out in the notice; or
    - (bb) the notice permits the Tunnelling Contractor to proceed with construction provided that the NAC Required Actions are completed in due course.
- (b) The Tunnelling Contractor may use Third Party Agreement Design Documentation for construction purposes if the relevant requirements set out in the relevant Third Party Agreement have been satisfied and all necessary Approvals have been obtained.
- (c) This clause 6 of this Schedule A26 does not restrict the use for construction purposes of Design Documentation for Temporary Works which are Category 4 Temporary Works (as specified in section 3.2.2 of the Particular Specification).

#### 7. **AMENDMENTS TO AFC DESIGN DOCUMENTATION**

- (a) Subject to clause 7(b) of this Schedule A26 and clause 17 of the deed, if the Tunnelling Contractor wishes to amend any AFC Design Documentation prior to the Date of Substantial Completion of a Portion, then:
  - (i) the Tunnelling Contractor must submit the amended Design Documentation to the Principal's Representative together with an explanation as to why it is seeking to amend the AFC Design Documentation; and
  - (ii) clauses 1 to 6 and clause 8 of this Schedule A26 will apply as if the amended AFC Design Documentation is Design Stage 3 Design Documentation.
- (b) The Tunnelling Contractor may, at its own risk, use the amended AFC Design Documentation submitted in accordance with clause 1(a) of this Schedule A26 for construction purposes prior to the expiry of the 20 Business Day period in clause 6(a)(i) of this Schedule A26 if the amendment to the AFC Design Documentation:
  - (i) is minor;
  - (ii) does not adversely impact the Project Works or the Temporary Works; and
  - (iii) is necessary to overcome an issue which:
    - (A) prevents or adversely affects the Tunnelling Contractor proceeding with construction; and
    - (B) has arisen or become evident since the AFC Design Documentation was submitted to the Principal's Representative; and
    - (C) the AFC Design Documentation does not relate to a NAS that has been the subject of a notice under clause 8.2(a) or clause 8.2(b) of this Schedule A26.

## 8. NETWORK ASSURANCE SUBMISSIONS

### 8.1 Submission of NAS to the NAC

- (a) The Tunnelling Contractor must:
- (i) prepare each NAS required for the following NAC control gates:
    - (A) Gate 3 "For Construction";
    - (B) Gate 4 "Ready for Testing"; and
    - (C) Gate 5 "Asset Handover"; and
  - (ii) submit each NAS to the Principal's Representative in accordance with the Tunnelling Specification and the Systems Engineering Management Plan.
- (b) Within 2 Business Days commencing on the date on which the Principal's Representative is provided with a NAS by the Tunnelling Contractor under clause 8.1(a) of this Schedule A26, the Principal's Representative must review the NAS and either:
- (i) reject the NAS (in writing, with reasons, to the Tunnelling Contractor) if the Principal's Representative reasonably considers that the NAS is not sufficiently complete to enable the NAC to form a view on whether the NAS satisfies the NAC Requirements; or
  - (ii) submit that NAS to the NAC in accordance with section 3.2 of the General Specification.
- (c) If the Principal's Representative rejects a NAS under clause 8.1(b)(i) of this Schedule A26, the Tunnelling Contractor must promptly amend the NAS and re-submit it to the Principal's Representative in accordance with clause 8.1(a)(ii) of this Schedule A26 and clause 8.1(b) of this Schedule A26 will reapply.

### 8.2 NAC Assurance Review

In respect of each NAS submitted by the Principal's Representative to the NAC under clause 8.1(b)(ii) of this Schedule A26, within 10 Business Days of submitting the NAS to the NAC, the Principal's Representative must give written notice to the Tunnelling Contractor:

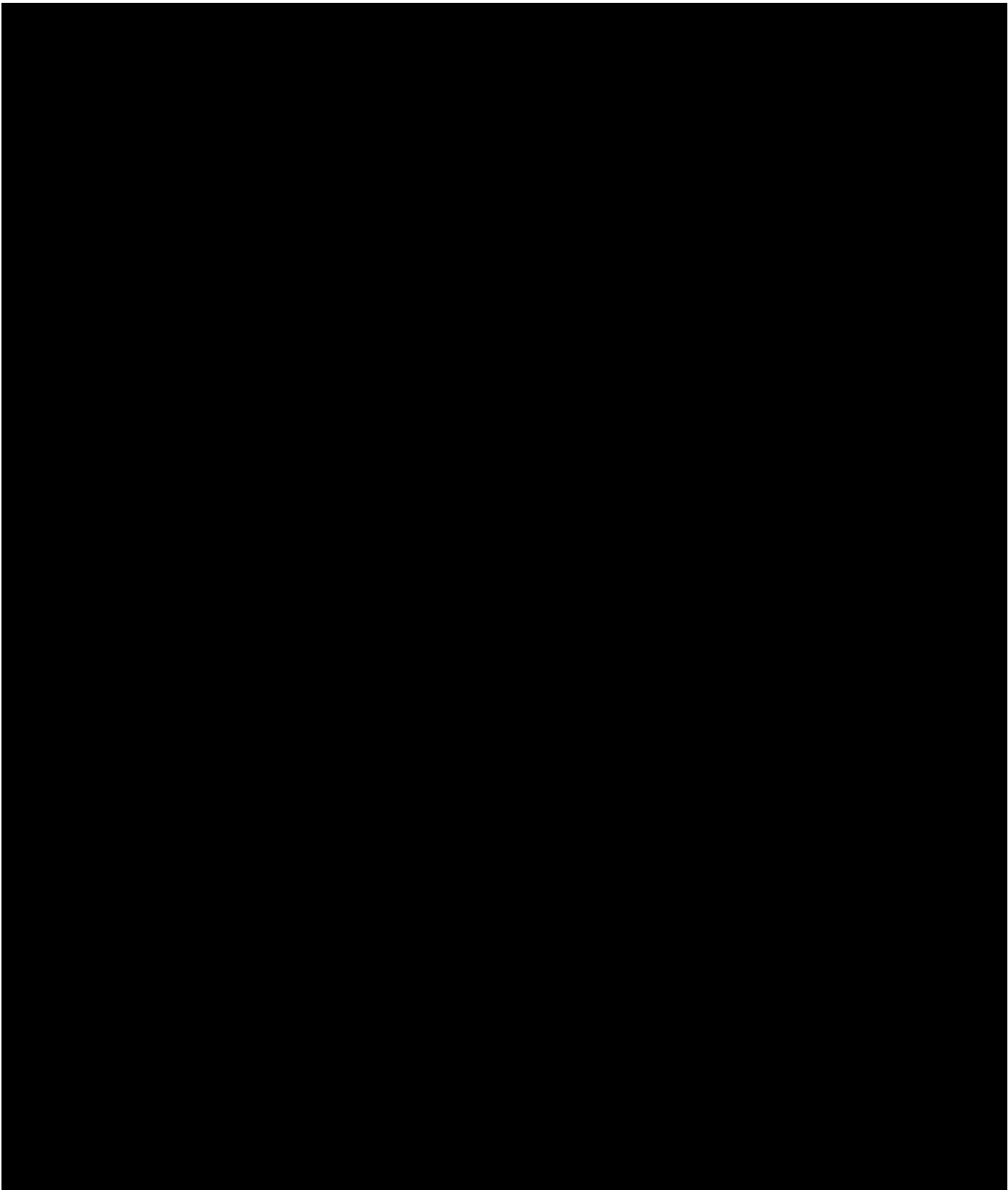
- (a) that the NAS has been accepted; or
- (b) that the NAS has been accepted subject to the satisfaction of a list of actions which the Tunnelling Contractor must take in order for the NAS to satisfy the NAC Requirements (**NAC Required Actions**); or
- (c) that the NAS has been deferred or rejected.

### 8.3 NAC Required Actions and Deferral or Rejection

- (a) If the Principal's Representative provides a notice under clause 8.2(b) or clause 8.2(c) of this Schedule A26, the Tunnelling Contractor:
- (i) must complete the NAC Required Actions (if applicable);
  - (ii) if the notice is under clause 8.2(c) of this Schedule A26, must promptly amend and re-submit the NAS to the Principal's Representative and the process in clause 8.1 and clause 8.2 of this Schedule A26 will reapply; and

- (iii) may provide the Principal's Representative with a notice which states that the NAS satisfies the NAC Requirements and disputes the need to carry out any of the NAC Required Actions (if applicable), together with its reasons.
- (b) If the Tunnelling Contractor gives a notice under clause 8.3(a)(iii) of this Schedule A26, the parties will promptly meet and in good faith seek to resolve the disagreement (whether by a Change or otherwise) within 10 Business Days of the notice under clause 8.3(a)(iii) of this Schedule A26.
- (c) If the parties are unable to resolve a disagreement contemplated by clause 8.3(a)(iii) of this Schedule A26 within 10 Business Days of first meeting in relation to the disagreement, either the Principal or the Tunnelling Contractor may refer the disagreement for resolution in accordance with the Dispute Procedure.

**SCHEDULE A27**







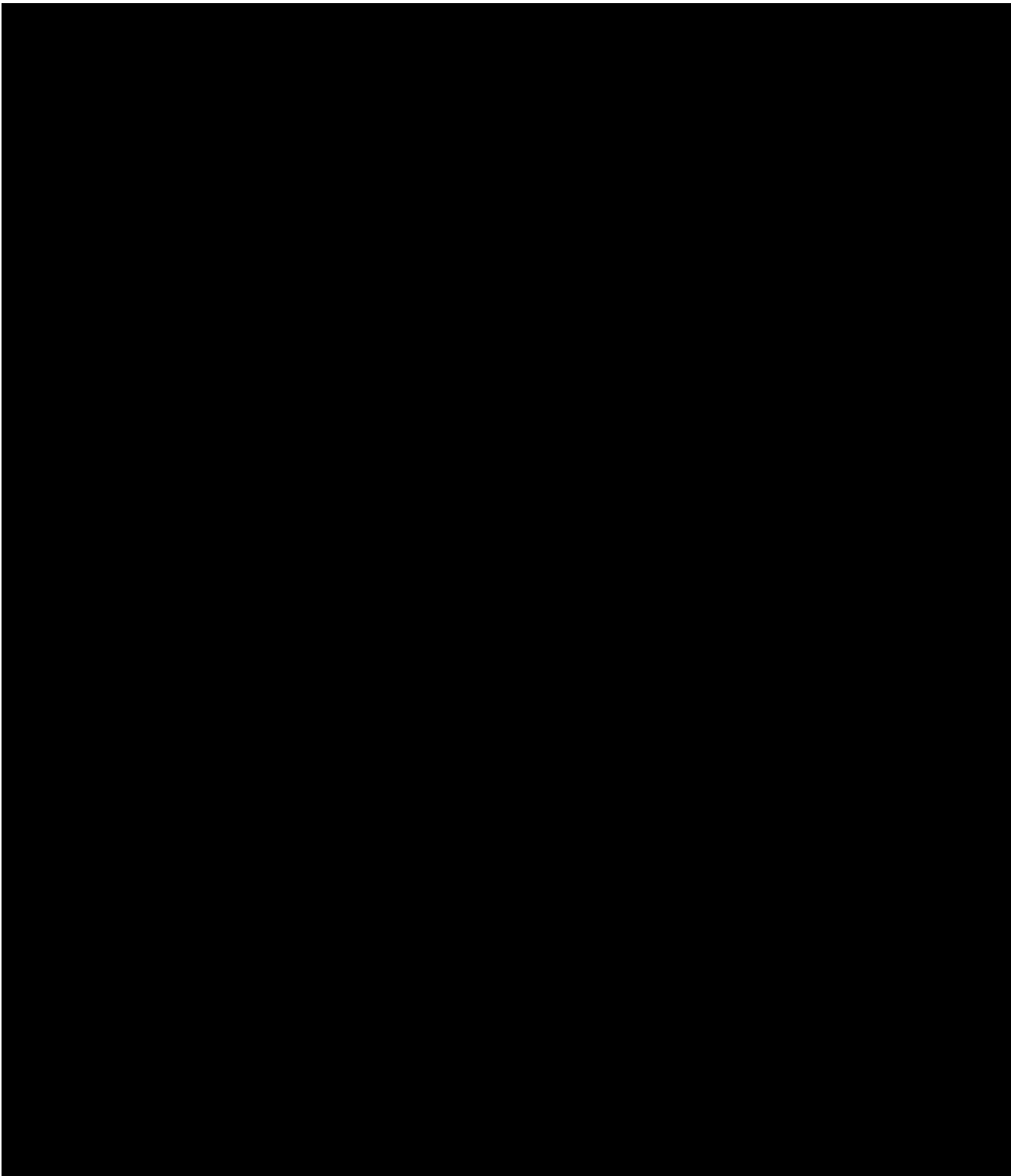




**SCHEDULE A28**

**Initial Tender Design**

**(Clauses 1.1 and 16.8)**













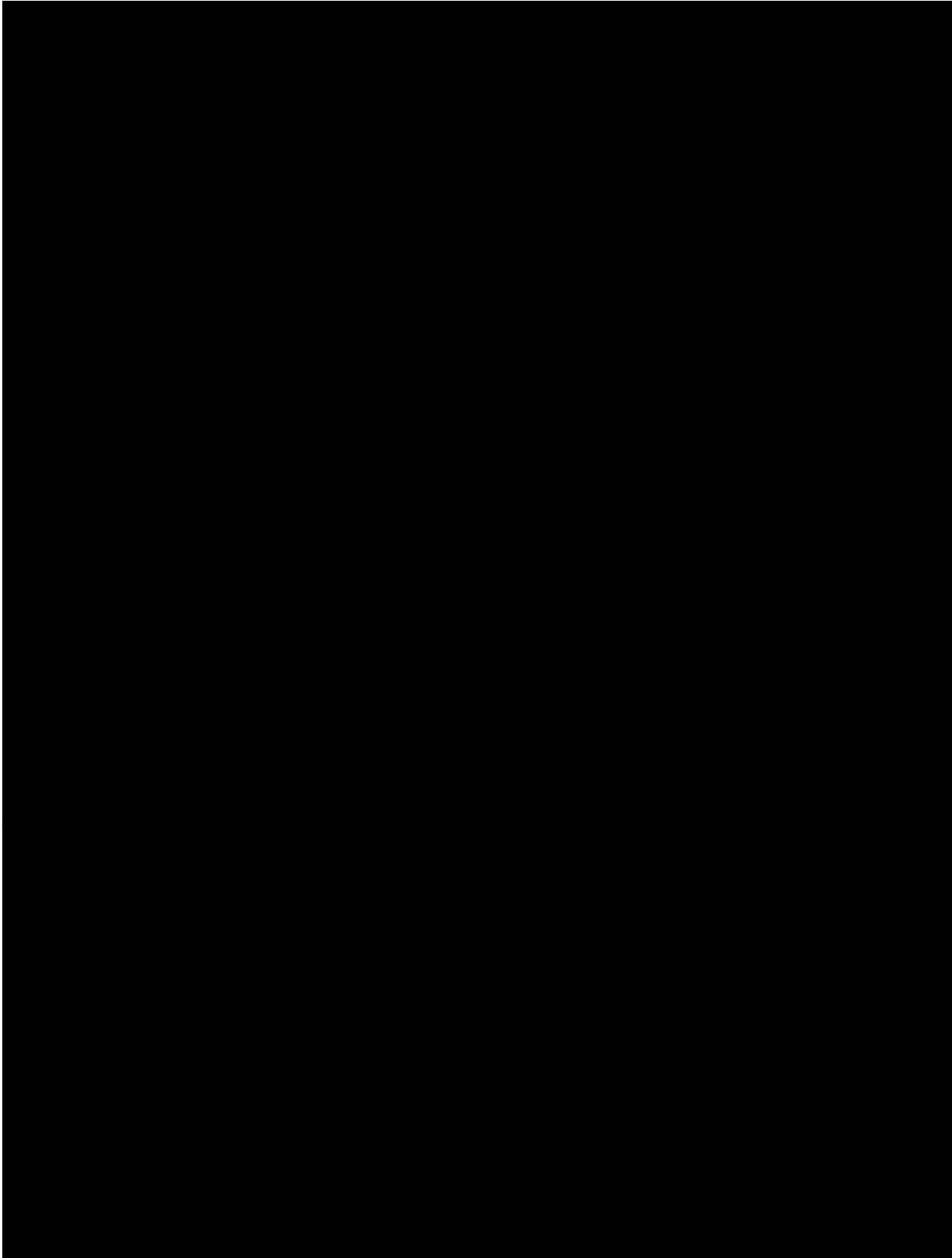








**SCHEDULE A29**









## ATTACHMENT 1 TO FORM OF SUBCONTRACTOR DEED

### Deed of Novation

**DATE:** [insert date]

**BETWEEN:**

1. [Insert name and ABN] of [Insert] (**Substitute Contractor**);
2. [Insert name and ABN] of [Insert] (**Original Contractor**); and
3. [Insert name and ABN] of [Insert] (**Subcontractor**).

**RECITALS:**

(A) By a contract dated [Insert] between:

(1) Sydney Metro (ABN 12 354 063 515) a New South Wales Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and

(2) Original Contractor,

(**Contract**) the Principal engaged the Original Contractor to undertake the Project Works (as defined in the Contract).

(B) The Original Contractor has entered into an agreement (**Subcontract**) with the Subcontractor for the execution and completion of the [Insert] (**Subcontract Works**) as part of the Project Works.

(C) The Principal has terminated the Contract and has engaged the Substitute Contractor to complete the Project Works.

(D) The Principal and the Substitute Contractor wish to effect a novation of the Subcontract.

**THIS DEED WITNESSES** that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Substitute Contractor must perform all of the obligations of the Original Contractor under the Subcontract which are not performed at the date of this deed. The Substitute Contractor is bound by the Subcontract as if it had originally been named in the Subcontract in place of the Original Contractor.
2. The Subcontractor must perform its obligations under, and be bound by, the Subcontract as if the Substitute Contractor was originally named in the Subcontract in place of the Original Contractor, provided that the Subcontractor must not be released from any action, claim or demand the Original Contractor has or may have against the Subcontractor in connection with an obligation or liability under or in respect of the Subcontract that arose prior to the novation of the Subcontract to the Substitute Contractor.
3. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

**EXECUTED** by the parties as a deed:



**Executed** by [Insert] **ABN** [Insert] by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed** by [Insert] **ABN** [Insert] by or in the presence of:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

**Executed** by [Insert] **ABN** [Insert] by or in the presence of:

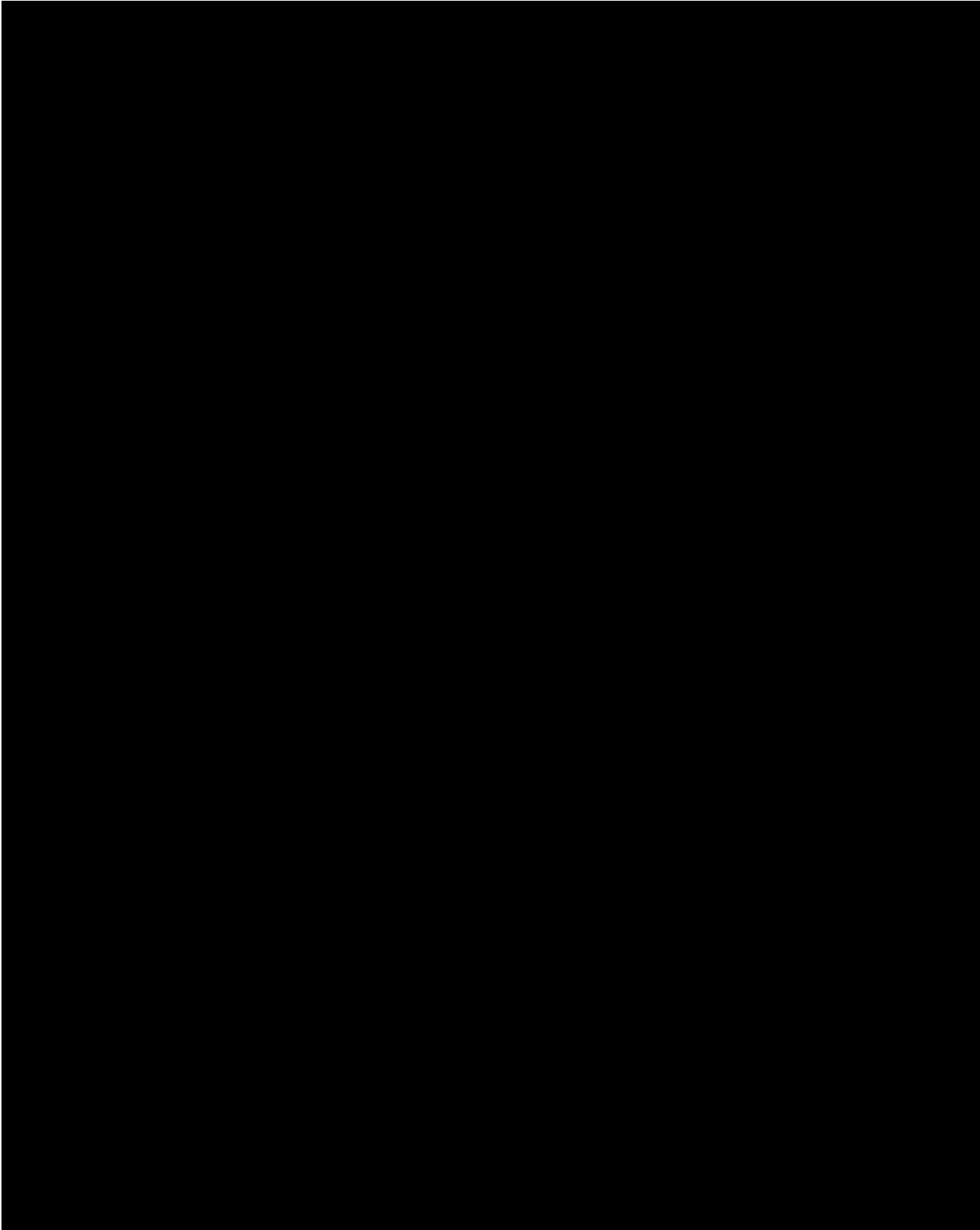
\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Name of Director in full

\_\_\_\_\_  
Signature of Secretary/other Director

\_\_\_\_\_  
Name of Secretary/other Director in full

**SCHEDULE A31**



























































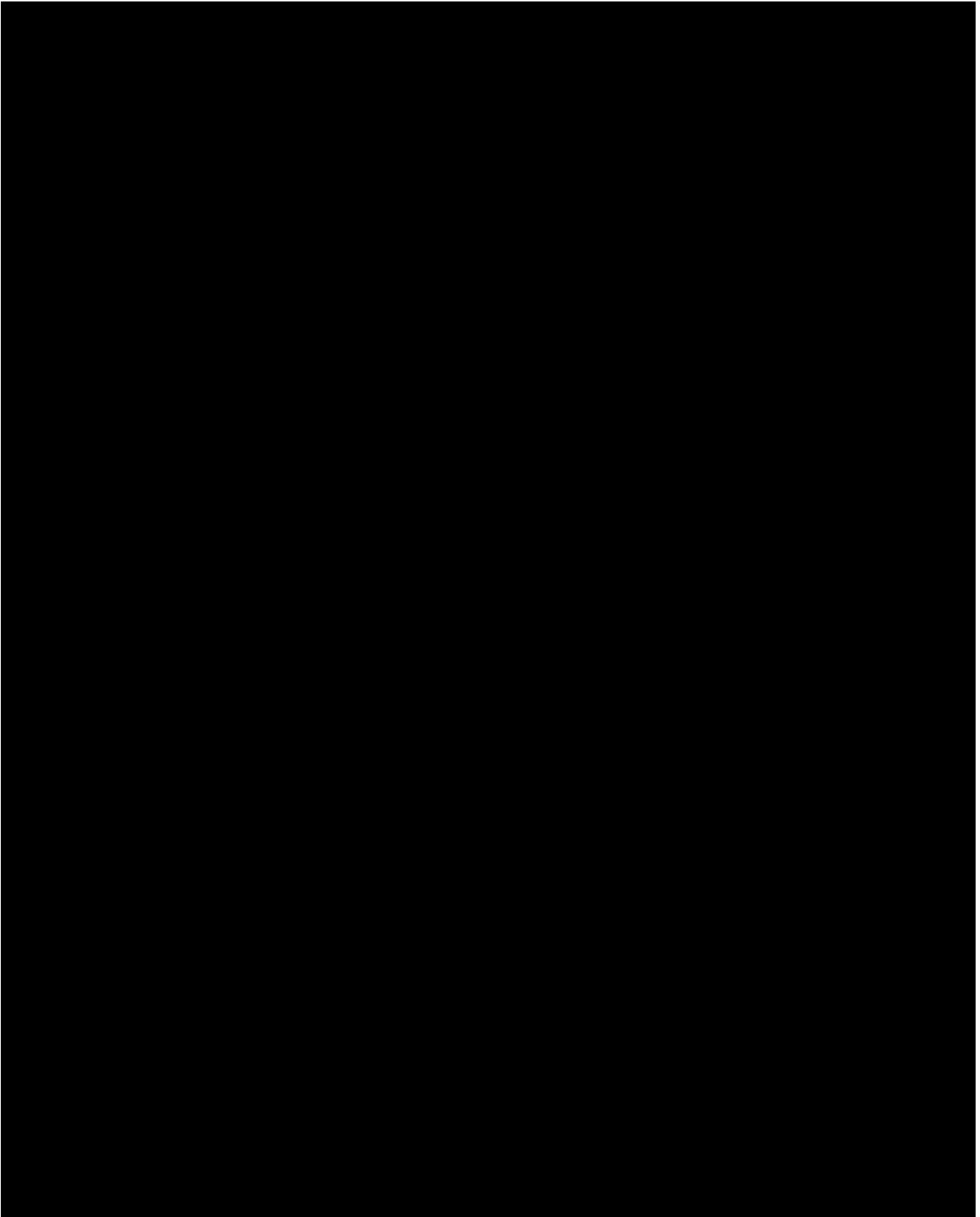








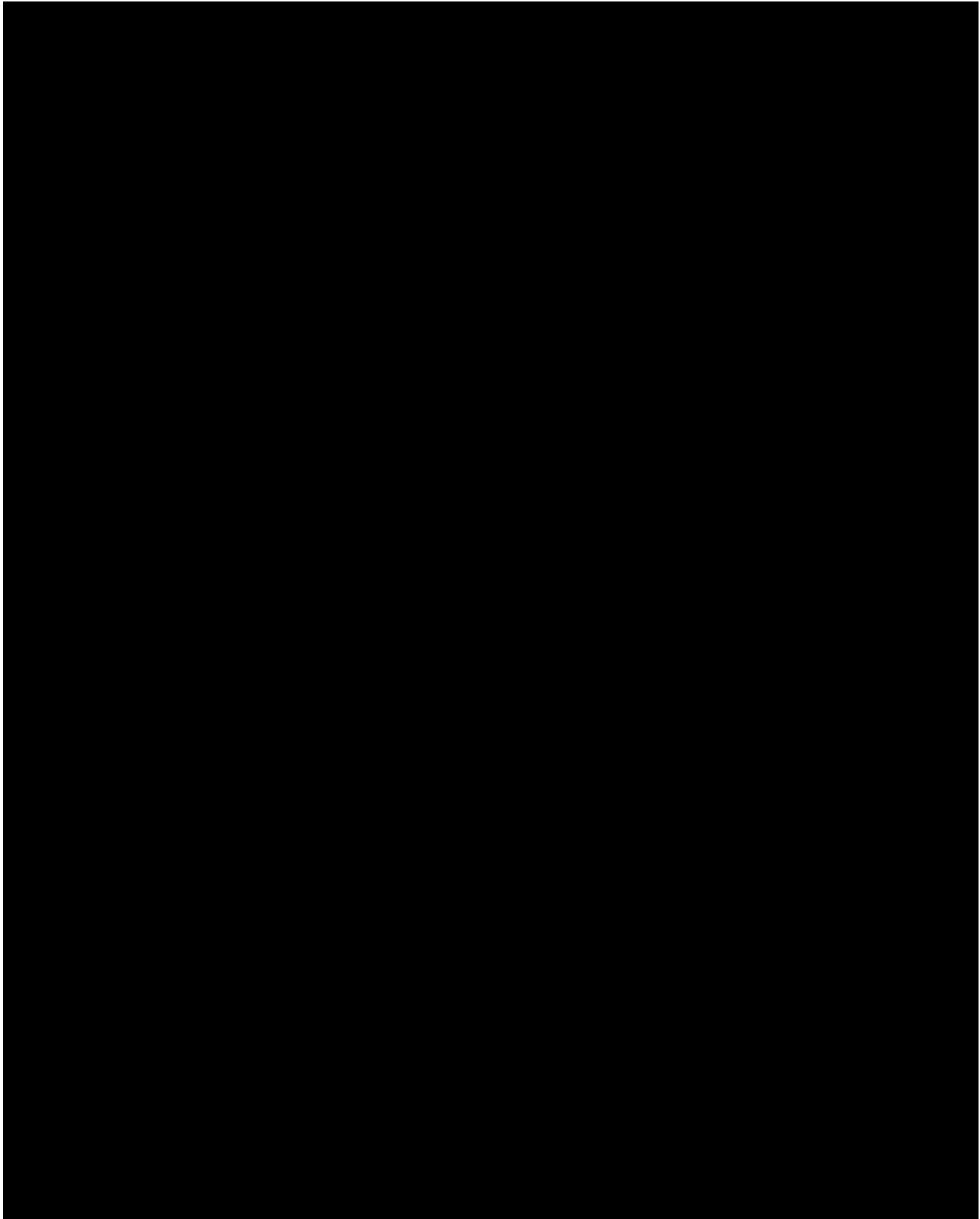
**SCHEDULE A32**







**SCHEDULE A33**









**SCHEDULE A34****C&SW Monitoring Regime****(Clause 15.10)****1. Definitions**

In this Schedule A34 the following terms are defined as follows:

**Acoustic and Vibration Consultant** means a person who holds membership of the Association of Australian Acoustic Consultants.

**Alert Event** has the meaning given in clause 12 of this Schedule A34.

**Alert Event Communications Protocol** means the protocol developed and updated in accordance with clause 11 of this Schedule A34.

**City and Southwest Metro Tunnels** means the Sydney Metro rail tunnels between Chatswood and Sydenham which form part of Sydney Metro City and Southwest.

**Condition Consultant** means the consultant jointly appointed by the Tunnelling Contractor and Sydney Metro to prepare the C&SW Monitoring Regime in accordance with this Schedule A34.

**C&SW Assets** means the tunnel and other physical works, facilities, railway track, railway stations, rolling stock, rolling stock control systems, electrical power supply, electric traction systems, civil works, associated track structures, over track structures, signalling systems, train control systems, data management systems, communication systems, service roads, nodes, conduits, ducting, cable, cable support structures and other plant, machinery, equipment, buildings, workshops, depots, yards, notices and signs which comprise or support the City and Southwest Metro Tunnels.

**C&SW Monitoring Regime** means the regime required for the monitoring of the effects of the Tunnelling Contractor's Activities, the Project Works and the Temporary Works on the C&SW Assets that are located within the Interface Zone and that comply with the Minimum Requirements.

**Geo-Structural Consultant** means a person who holds:

- (a) appropriate tertiary qualifications in Civil, Mining or Geotechnical Engineering or Engineering Rock Mechanics; and
- (b) corporate membership of the Institution of Engineers Australia or equivalent,

and has at least 10 years relevant experience in relation to tunnel excavations and related geological and rock mechanics issues.

**Hand Back** occurs in respect of a Track Possession when the Tunnelling Contractor has:

- (a) vacated the relevant part(s) of the rail corridor within the City and Southwest Metro Tunnels; and
- (b) provided OpCo2 (C&SW) or the relevant Rail Infrastructure Manager (or OpCo2 (C&SW) or the relevant Rail Infrastructure Manager has provided to the Tunnelling Contractor) the relevant documentation required for hand back of a Track Possession

as required by OpCo2 (C&SW)'s or the relevant Rail Infrastructure Manager's possession management processes.

**Initial Condition Report** means a condition report prepared no more than 5 Business Days prior to installing the Monitoring Equipment to establish the existing 'base line' conditions (spatial positions) against which the trigger levels should be measured.

**Interface Zone** means those areas shown shaded in green (including RT01, RT02 and C&SW Adit) in Attachment 2.

**Longstop Date** has the meaning given in clause 7 of this Schedule A34.

**Minimum Requirements** means the minimum requirements set out in Attachment 1 of this Schedule A34 for the Monitoring Regimes.

**Monitoring Activities** means the activities that the Tunnelling Contractor must carry out, in accordance with this Schedule A34, as part of any Monitoring Regime.

**Monitoring Equipment** means any devices, equipment, wires, conduits or hardware used as part of the C&SW Monitoring Regime.

**Railway Engineering Consultant** means a person who holds:

- (c) appropriate tertiary qualifications in Civil or Mechanical Engineering; and
- (d) corporate membership of the Institution of Engineers Australia or equivalent,

and has at least 10 years relevant experience in relation to railway design, construction and operations issues.

**Safety Officer** means the Principal's Representative, or such other person that the Principal notifies to the Tunnelling Contractor in writing.

**Track Possession** means a period during which the Tunnelling Contractor has access to the rail corridor within the City and Southwest Metro Tunnels for the purpose of carrying out the Tunnelling Contractor's Activities including for the purpose of the C&SW Monitoring Regime.

**Tunnel Engineering Consultant** means a person who holds:

- (a) appropriate tertiary qualifications in Civil, Mining or Structural Engineering; and
- (b) corporate membership of the Institution of Engineers Australia or equivalent,

and has at least 10 years relevant experience in tunnel, excavation, support and drainage engineering.

## 2. Implementation

- (a) The Tunnelling Contractor must develop the C&SW Monitoring Regime in accordance with this deed (including this Schedule A34) and having regard to the relevant Initial Condition Reports.
- (b) The Tunnelling Contractor must carry out the Monitoring Activities:
  - (i) in accordance with the C&SW Monitoring Regime:
    - (A) submitted to, and approved by, the Principal in accordance with clause 4 of this Schedule A34; and

- (B) subject to any modifications to the C&SW Monitoring Regime agreed pursuant to clause 6 of this Schedule A34,
  - (ii) in accordance with this Schedule A34; and
  - (iii) during any time periods specified for the performance of Monitoring Activities in the C&SW Monitoring Regime.
- (c) The parties acknowledge and agree that the C&SW Monitoring Regime only applies to the Interface Zones and any other additional areas where C&SW Assets may be located as agreed in writing by the parties.

**3. Process for review and comment on C&SW Monitoring Regime**

- (a) The Tunnelling Contractor must submit the C&SW Monitoring Regime to the Principal for review in accordance with the requirements of this clause 3 of this Schedule A34.
- (b) If the Principal (or its contractors including OpCo2 (C&SW), the Line-wide Contractor (C&SW) or the Martin Place Station Contractor)) reasonably considers that the C&SW Monitoring Regime submitted in accordance with clause 3(a) of this Schedule A34:
  - (i) does not comply with the Minimum Requirements; or
  - (ii) would, if carried out by the Tunnelling Contractor, prejudice the safe operation or maintenance of:
    - (A) the Principal's operations (including third party operators using C&SW Assets); or
    - (B) the C&SW Assets,

the Principal may give written comments to that effect to the Tunnelling Contractor within 15 Business Days of receipt of the C&SW Monitoring Regime.
- (c) Subject to clause 3(d) of this Schedule A34, the Tunnelling Contractor must amend the C&SW Monitoring Regime in accordance with the comments provided by the Principal in accordance with clause 3(b) of this Schedule A34.
- (d) If the Tunnelling Contractor does not accept any comment provided by the Principal under clause 3(b) of this Schedule A34, the Tunnelling Contractor must respond to the Principal in writing within 5 Business Days of receipt of the Principal's comment(s), identifying the comment(s) that the Tunnelling Contractor does not accept and providing reasons.
- (e) If requested by the Principal's Representative or the Tunnelling Contractor, the Tunnelling Contractor and the Principal (and any other person nominated by the Principal, including OpCo2 (C&SW), the Line-wide Contractor (C&SW) or the Martin Place Station Contractor) must meet within 5 Business Days of the date of such request to discuss the resolution of any comments:
  - (i) raised under clause 3(b) of this Schedule A34; or
  - (ii) a response provided by the Tunnelling Contractor to the Principal in accordance with clause 3(d) of this Schedule A34.
- (f) If:
  - (i) the Principal has received a response from the Tunnelling Contractor under clause 3(d) of this Schedule A34; or



- (ii) the parties have been unable to agree the changes required to the C&SW Monitoring Regime within 5 Business Days of holding a meeting in accordance with clause 3(e) of this Schedule A34,

the Principal may issue a written notice to the Tunnelling Contractor that a dispute exists and either party may then refer the matter for resolution pursuant to clause 27 of this deed.

- (g) The Tunnelling Contractor acknowledges and agrees that it must not commence construction of any part of the Project Works or Temporary Works that is within the Interface Zones until the C&SW Monitoring Regime has been accepted by the Principal or, if a dispute exists under this clause 3 relating to the Monitoring Regime, that dispute has been resolved.

#### 4. **Monitoring Activities prior to commencement of works**

- (a) Prior to commencing any part of the Project Works or Temporary Works that are the subject of the C&SW Monitoring Regime, the Tunnelling Contractor must ensure that Monitoring Equipment is installed and Monitoring Activities are effected to determine the ambient baseline readings for the development of the C&SW Monitoring Regime.
- (b) The Tunnelling Contractor and the Principal acknowledge and agree that the readings obtained from the Monitoring Activities effected in accordance with clause 4(a) of this Schedule A34 establish the ambient baseline readings for the purpose of the C&SW Monitoring Regime.

#### 5. **Modification of C&SW Monitoring Regime**

- (a) Subject to clauses 5(b) and 6 of this Schedule A34, the Principal and the Tunnelling Contractor will agree an effective and practical process for agreeing any changes to the C&SW Monitoring Regime required after the C&SW Monitoring Regime has been submitted and reviewed in accordance with clause 3 of this Schedule A34.
- (b) The process agreed in accordance with clause 5(a) of this Schedule A34 must be communicated to the Principal's officers, employees, contractors and agents by the Principal and the Tunnelling Contractor's officers, employees, contractors and agents by the Tunnelling Contractor, together with any update of the process agreed by the Tunnelling Contractor and the Principal from time to time.

#### 6. **Principal's right to require modifications to a C&SW Monitoring Regime for an Alert Event**

- (a) If an Alert Event occurs, the Principal may provide a notice in writing to the Tunnelling Contractor requesting that the Tunnelling Contractor modify the C&SW Monitoring Regime, and the Principal may also specify the modifications to the C&SW Monitoring Regime which the Tunnelling Contractor must implement and the reasons those modifications are required.
- (b) If the Tunnelling Contractor does not accept any or all of the modifications requested by the Principal under clause 6(a) of this Schedule A34 are made:
  - (i) the Tunnelling Contractor must, within 1 Business Day of receiving the Principal's notice, respond to the Principal in writing, identifying the modifications that the Tunnelling Contractor has not accepted and giving reasons; and
  - (ii) if the Principal determines that the Tunnelling Contractor's failure to modify the C&SW Monitoring Regime results in:

- (A) risk or danger to persons or property (including the C&SW Assets); or
- (B) a disruption to railway services,

the Principal may direct the Tunnelling Contractor to modify the C&SW Monitoring Regime in accordance with the Principal's direction and the Tunnelling Contractor must promptly implement the modifications.

#### 7. **Procurement and installation of Monitoring Equipment**

The Tunnelling Contractor must procure and install the Monitoring Equipment by dates to be reasonably agreed between the Principal and the Tunnelling Contractor (but in any event by no later than 1 August 2023 (**Longstop Date**)) to ensure that the requirements of the proposed C&SW Monitoring Regime:

- (a) enable the Tunnelling Contractor to carry out the Monitoring Activities in accordance with this Schedule A34; and
- (b) comply with the Minimum Requirements and this deed.

#### 8. **Access and Track Possessions**

- (a) The Principal will procure sufficient access to the City and Southwest Metro Tunnels to enable the Tunnelling Contractor to install and maintain (and, if applicable, remove) the Monitoring Equipment and otherwise perform the Monitoring Activities within the City and Southwest Metro Tunnels.
- (b) The Tunnelling Contractor acknowledges that any access that is provided to the City and Southwest Metro Tunnels:
  - (i) will be non-exclusive;
  - (ii) will be at times nominated by the Principal in its absolute discretion;
  - (iii) will be subject to any conditions that are imposed by the Principal, the Line-wide Contractor (C&SW), OpCo2 (C&SW) or the relevant Rail Infrastructure Manager;
  - (iv) may be outside of normal working hours;
  - (v) may require a Track Possession; and
  - (vi) may be cancelled and rescheduled at short notice due to operational or other reasons.
- (c) If access to any parts of the City and Southwest Metro Tunnels is provided during a Track Possession, the Tunnelling Contractor must:
  - (i) hand back the relevant parts of the City and Southwest Metro Tunnels by the scheduled end time of each Track Possession;
  - (ii) not cause any delay to rail services or trial running;
  - (iii) in the event of an emergency, cease to occupy the relevant part of the City and Southwest Metro Tunnels within a reasonable period of the emergency occurring; and

- (iv) immediately notify the Principal's Representative if the Tunnelling Contractor anticipates it may be late in vacating the relevant parts of the City and Southwest Metro Tunnels.
- (d) Subject to clause 8(e) of this Schedule A34, the Tunnelling Contractor must indemnify the Principal against all costs, expenses, losses or damages suffered or incurred by the Principal (including arising out of or in any way in connection with any claim by OpCo2 (C&SW) or the relevant Rail Infrastructure Manager against the Principal or any liability of the Principal to OpCo2 (C&SW) or the relevant Rail Infrastructure Manager) if:
  - (i) the Tunnelling Contractor is late in achieving Hand Back of the relevant part of the City and Southwest Metro Tunnels that is the subject of a Track Possession; or
  - (ii) there is a delay to rail services or trail running arising out of or in connection with the Tunnelling Contractor's Activities.
- (e) The Tunnelling Contractor's liability to indemnify the Principal under clause 8(d) of this Schedule A34 will be reduced proportionally to the extent that any act or omission of the Principal, its Associates, OpCo2 (C&SW) or the relevant Rail Infrastructure Manager contributed to the costs, expenses, losses or damages.
- (f) A delay to the commencement of a Track Possession will not:
  - (i) affect the Tunnelling Contractor's liability to indemnify the Principal under clause 8(d) of this Schedule A34; or
  - (ii) constitute an act or omission of the Principal, its Associates, OpCo2 (C&SW) or the relevant Rail Infrastructure Manager for the purposes of clause 8(d) of this Schedule A34.

#### 9. **Risk in relation to operation of Monitoring Equipment**

- (a) The Tunnelling Contractor accepts all risk in relation to the continued operation of the Monitoring Equipment and releases the Principal from all liability and claims in this respect.
- (b) If the Principal or any representative, contractor, agent, employee, licensee or invitee of the Principal interferes with, damages or destroys the Monitoring Equipment or any part of the Monitoring Equipment:
  - (i) the Principal must, immediately notify the Tunnelling Contractor as soon as it becomes aware of such interference, damage or destruction; and
  - (ii) the Tunnelling Contractor must as soon as practicable, and in consultation with the Principal, access the relevant parts of the City & Southwest Metro Tunnels for the purpose of rectifying such damage or destruction and to minimise the impact of such interference.

#### 10. **Power for Monitoring Equipment**

- (a) Tunnelling Contractor must provide power for the operation of the Monitoring Equipment.
- (b) Notwithstanding clause 10(a) of this Schedule A34, if a power source is not readily available at a location, the Principal is not responsible for provision of any cabling, connection or outlet points required in order to ensure compliance with clause 10(a) of this Schedule A34.

## 11. Monitoring communications

- (a) Subject to clause 11(b) of this Schedule A34, the Principal must cooperate with the Tunnelling Contractor and do all things reasonably necessary, and the Tunnelling Contractor must cooperate with the Principal and do all things necessary, in order to:
- (i) develop a common view on how the C&SW Monitoring Regimes should be managed and applied at the Interface Zone, which will be outlined in the Alert Event Communications Protocol; and
  - (ii) develop the Alert Event Communications Protocol to set out:
    - (A) the agreed notification and reporting protocols; and
    - (B) in the event that any exceedance of a level in a C&SW Monitoring Regime occurs, the corrective steps that need to be effected to avert danger or reduce risks to safety arising from the exceedance.
- (b) The Alert Event Communications Protocol must require that at all times during which the Project Works and Temporary Works are occurring, results of the C&SW Monitoring Regimes are submitted by the Tunnelling Contractor:
- (i) in the case of a detection of any exceedance of the levels specified in the C&SW Monitoring Regime, by providing a notice to the Principal immediately which includes:
    - (A) a description of the exceedance;
    - (B) the monitor location;
    - (C) the cause of the exceedance (where practicable); and
    - (D) the Tunnelling Contractor's proposed corrective action (where practicable); and
  - (ii) in the case of routine reporting under the C&SW Monitoring Regimes, to the Principal's Representative within the timeframes specified in the C&SW Monitoring Regimes from time to time.
- (c) The Principal and the Tunnelling Contractor must comply with the Alert Event Communications Protocol at all relevant times during which the Tunnelling Contractor's Activities, the Project Works and the Temporary Works are occurring.
- (d) The Principal may provide a notice in writing to the Tunnelling Contractor specifying that changes to the Alert Event Communications Protocol are required and the reasons those changes are required.
- (e) The Tunnelling Contractor must, within 1 Business Day of receiving the Principal's notice issued in accordance with clause 11(d) of this Schedule A34, respond to the Principal in writing either:
- (i) identifying the changes that are not agreed, giving reasons; or
  - (ii) confirming the revised Alert Events Communications Protocol.
- (f) Upon receipt of a notice from the Tunnelling Contractor in accordance with clause 11(e)(i) of this Schedule A34 the Principal must, within 10 Business Days and acting reasonably, either:

- (i) amend the Alert Events Communications Protocol, taking into account the Tunnelling Contractor's comments; or
- (ii) if the Principal determines that failure to make one or more of the proposed changes results in:
  - (A) a risk or danger to persons or property (including the C&SW Assets); or
  - (B) a disruption to railway services,

the Principal may direct the Tunnelling Contractor that the Alert Events Communications Protocol must be amended by making those changes, and notify the Tunnelling Contractor by written notice including the revised Alert Event Communications Protocol.

## 12. **Alert Events**

For the purposes of this Schedule A34, an Alert Event is any:

- (a) exceedance of the alert level identified in the C&SW Monitoring Regime;
- (b) other actual or likely event or circumstance which arises out of or in connection with the Tunnelling Contractor's Activities, and which interferes with or is very likely to interfere with or threaten:
  - (i) the Principal's operations (including third party operators using C&SW Assets) or activities;
  - (ii) the use or safe operation of C&SW Assets;
  - (iii) the operational capacity or efficiency of C&SW Assets; or
  - (iv) the future safe operation of C&SW Assets or the future operational capacity or efficiency of C&SW Assets;
- (c) event or circumstance which has or is likely to have a material detrimental effect on the safety of the Principal's customers, authorised users of the C&SW Assets or representatives of the Principal including its contractors,

each as determined by the Principal acting reasonably.

## 13. **Tunnelling Contractor to notify the Principal of Alert Events**

If the Tunnelling Contractor or the Principal (or any of its contractors including OpCo2 (C&SW), the Line-wide Contractor (C&SW) or the Martin Place Station Contractor) becomes aware of the occurrence of an Alert Event, the Tunnelling Contractor must, in accordance with the Alert Event Communications Protocol:

- (a) immediately inform the Principal's Representative and OpCo2 (C&SW), the Line-wide Contractor (C&SW) and the Martin Place Station Contractor of the Alert Event;
- (b) keep the Principal, OpCo2 (C&SW), the Line-wide Contractor (C&SW) and the Martin Place Station Contractor informed about the Alert Event; and
- (c) provide the Principal with sufficient information (and with a copy to OpCo2 (C&SW), the Line-wide Contractor (C&SW) and the Martin Place Station Contractor) to enable the Principal to assess the nature of the Alert Event and the likely effect of the Alert Event on the issues contemplated by clause 12 of this Schedule A34.

14. **Risk mitigation**

If an Alert Event occurs, the Tunnelling Contractor must immediately cooperate with the Principal and adhere to any direction provided by the Principal's Representative which is necessary to avert any danger and ameliorate the risk including by:

- (a) suspending that part of the Tunnelling Contractor's Activities that gave rise to the Alert Event; and
- (b) vacating C&SW Assets (where applicable);
- (c) continuing monitoring at an increased frequency;
- (d) implementing contingency or emergency response plans;
- (e) ensuring that the Project Works and Temporary Works are made safe by the Tunnelling Contractor;
- (f) assisting the Principal to take such action as the Principal directs is necessary to avert any danger and ameliorate the risk; and
- (g) allowing representatives of the Principal and its contractors, including OpCo2 (C&SW), the Line-wide Contractor (C&SW) and the Martin Place Station Contractor (as relevant) to enter upon the land under the control of the Tunnelling Contractor for the purpose of taking any action directed by the Principal as is necessary to avert any danger and ameliorate the risk.

15. **Representative on-call**

- (a) The Tunnelling Contractor's Project Director (or his or her nominee) must be available on a 24 hour call basis to respond to any suspension of the Tunnelling Contractor's Activities under clause 14 of this Schedule A34.
- (b) The Principal's Safety Officer (or his or her nominee) must be available on a 24 hour call basis to respond to any issues arising under clauses 13 and 14 of this Schedule A34.

16. **No entitlement to Claim**

Subject to clause 21.8 of the deed, the Tunnelling Contractor is not entitled to bring any Claim against the Principal arising out of any direction of the Principal (or any of its contractors including OpCo2 (C&SW), the Line-wide Contractor (C&SW) or the Martin Place Station Contractor) under clauses 13 or 14 of this Schedule A34.

17. **Recommencing work following an Alert Event**

Without limiting any other term of this deed, any period of suspension of the Tunnelling Contractor's Activities under clause 14(a) of this Schedule A34 will continue until the:

- (a) risk or danger to persons or property; or
- (b) interference or threat or likelihood of interference or threat,

caused by the Alert Event is addressed to the Principal's reasonable satisfaction.

18. **No impact on Tunnelling Contractor's other responsibilities**

Nothing in this Schedule A34 lessens or otherwise affects the:

- (a) Tunnelling Contractor's liabilities or responsibilities elsewhere under this deed or otherwise according to Law; or
- (b) Principal's rights against the Tunnelling Contractor, whether under this deed or otherwise according to Law.

## Attachment 1

### Minimum requirements

The minimum requirements for the C&SW Monitoring Regime developed in accordance with clause 3 of this Schedule A34 are set out below:

- (a) The Tunnelling Contractor must develop the C&SW Monitoring Regime in respect of the effect of the Tunnelling Contractor's Activities, the Project Works and the Temporary Works on the C&SW Assets.
- (b) In developing the C&SW Monitoring Regime, the Tunnelling Contractor must determine the critical failure point of each relevant part of the C&SW Assets.
- (c) The Tunnelling Contractor must provide monitoring equipment with visible and audible alarms at an agreed location that is accessible by the Principal and its nominees.
- (d) The Tunnelling Contractor must provide an effective and practical communications system between the monitoring stations, the machinery operators and the nominated representative(s) of the parties.
- (e) The frequency of additional monitoring, visual inspections and submission of monitoring results must be agreed with the Principal.
- (f) Incorporate a protocol for identification of rogue results, to prevent triggering of emergency responses from unreliable exceedances.
- (g) Unless otherwise agreed between the parties, include 24 hours per day real time monitoring for the duration of the relevant Project Works and Temporary Works and continue monitoring until the Principal is satisfied that all likely impacts of the relevant part of the Project Works and Temporary Works have ceased.
- (h) Where vibration monitoring is required, the C&SW Monitoring Regime must:
  - (i) be developed by an Acoustic and Vibration Consultant.
  - (ii) consider the ambient range of vibration at each location as advised by the Acoustic and Vibration Consultant based on appropriate background vibration monitoring results.
- (i) Where tunnel profile monitoring is required, the C&SW Monitoring Regime must:
  - (i) be developed by a Tunnel Engineering Consultant and include a determination of the ambient range of rail tunnel profile changes at each location identified in the regime based on monitoring of the rail tunnel profile dimensions prior to commencement of construction.
  - (ii) include an appropriate analysis (including where necessary, a three dimensional finite element analysis) by a Geo-Structural Consultant undertaken to verify that stresses and strains in the rock, and rail tunnel structures, are within the nominated limits. The analysis must include an assessment of initial stress conditions and the subsequent impact and predicted movements at different stages of tunnel construction.
  - (iii) Monitor convergence/divergence to an accuracy of +/- 0.5mm at two levels of the tunnel wall to give horizontal and diagonal measurements and also carry out precise survey measurements of the tunnel floor and crown.
  - (iv) Include monitoring and inspections (including visual inspections) at a frequency agreed with the Principal.



- (j) Where track monitoring is required, the C&SW Monitoring Regime must:
- (i) Be developed by a Railway Engineering Consultant and include a determination of the ambient range of track displacements and geometry based on a survey of the appropriate extent of the existing track alignment and prior monitoring of track displacement and geometry before and after trains traverse the tracks over an appropriate period of time; and
  - (ii) Include an appropriate analysis (including where necessary, a three dimensional finite element analysis) by a Geo-Structural Consultant undertaken to assess the initial stress conditions and subsequent impact and predicted movements in the track geometry at different stages of construction.
- (k) Where asset condition monitoring is required, the C&SW Monitoring Regime must:
- (i) be developed by a Condition Consultant and include surveyed identification and location of drainage pits, structures, existing cracks and spalling, and electrolytic corrosion (arising from 1500V DC traction power), which must be carried out to the satisfaction of the Principal and submitted to the Principal at least 1 week prior to the commencement of construction;
  - (ii) include an appropriate management and mitigation strategy to address the extension of existing cracks or creation of new cracks that may allow dislodgment of a section of the rail tunnel lining;
  - (iii) consider the ambient range of seepage (determined by the Condition Consultant prior to construction) for all relevant locations;
  - (iv) require the installation of active monitoring where an existing or new crack exceeds the requirements determined by the Condition Consultant, including but not limited to, strain gauges and transducers;
  - (v) include regular inspections at a frequency agreed with the Principal to identify any change in the condition of the rail tunnel lining, drainage, structures and fittings; and
  - (vi) include an appropriate management and mitigation strategy that has been agreed with the Principal to deal with the possibility of spalling.
- (l) Where platform height and gap monitoring is required, the C&SW Monitoring Regime must comply with the following requirements:
- (i) be developed by a Railway Engineering Consultant and include a determination of the ambient range of platform height and gap changes based on survey of the current location of the track relative to the platform coping at all relevant platforms.
- (m) Where station acoustic monitoring is required, the C&SW Monitoring Regime must:
- (i) be developed by an Acoustic and Vibration Consultant and be based on the occupational health and safety and comfort of those working within the station and the safety and comfort of those using the station; and
  - (ii) be prepared by the Acoustic and Vibration Consultant based on background monitoring of all identified platform and concourse areas that may be subject to excessive noise as a result of construction. The background monitoring must establish LA90 (background noise level exceeded 90% of the time) and be used to set an appropriate limit on LA10 (noise level exceeded 10% of the time due to construction noise).

- (n) Where disturbing the formation beneath an existing track, the C&SW Monitoring Regime must comply with the requirements of SPC-207 Track Monitoring Requirements for Undertrack Excavation.

**Attachment 2**  
**Interface Zone Diagram**





**SCHEDULE A35**  
**Subcontract Procurement Process**  
**(Clauses 6.4, 6.13 and 6.15)**

## 1. GENERAL

- (a) **(Definitions):** The following definitions apply in this Schedule A35:

**Pre-Tender Checklist** means a checklist for a package of works or services that is proposed to be subcontracted which is in the form required by Attachment B.

**Subcontract Proposal** means a detailed proposal for a package of works or services that is proposed to be subcontracted that contains the information required by Attachment A.

**Subcontracting Strategy** has the meaning given in clause 2(a)(i).

**Template Subcontracts** has the meaning given in clause 2(a)(ii).

**Template Subcontract Tender Documents** has the meaning given in clause 2(a)(iii).

**Tender Checklist** means each:

- (a) Pre-Tender Checklist; and
- (b) Tender Evaluation Checklist.

**Tender Evaluation Checklist** means a checklist for a package of works or services that is proposed to be subcontracted which is in the form required by Attachment C.

- (b) **(Clause References):** In this Schedule A35 all clause references are references to clauses of this Schedule A35 unless otherwise stated.
- (c) **(Progressive submission of documents):** All documents that are required to be submitted by the Tunnelling Contractor under this Schedule A35 must be submitted to the Principal's Representative in a progressive manner and at a rate which, having regard to the quantity of the documents submitted, will give the Principal a reasonable opportunity to review the submitted documents in accordance with this Schedule A35.
- (d) **(Parties may vary timeframes for review):** Where this Schedule A35 specifies a timeframe for review of any particular document or documents by the Principal's Representative, the parties (acting reasonably) may agree in writing to an alternative timeframe having regard to the nature, size and complexity of the relevant documents to be reviewed.

## 2. UPFRONT APPROVALS STAGE

- (a) **(Required submissions):** Prior to inviting any tenders for Subcontracts for Reimbursable Work, the Tunnelling Contractor must prepare and submit to the Principal's Representative:
  - (i) a written plan outlining how the Reimbursable Work that is to be subcontracted will be divided into packages for the purpose of calling for tenders for Subcontracts (**Subcontracting Strategy**);
  - (ii) the suite of subcontract documents that it proposes to use to engage Subcontractors (including works contractors, suppliers, consultants and others) to perform any part of the Tunnelling Contractors Activities including subcontract terms, management requirements and any generic scope documentation (**Template Subcontracts**); and

- (iii) the suite of tender documents that it proposes to use to request tenders from prospective Subcontractors (including works contractors, suppliers, consultants and others) to perform any part of the Tunnelling Contractors Activities (**Template Subcontract Tender Documents**).
- (b) (**Review by Principal's Representative**): Within 15 Business Days of receiving any Subcontracting Strategy, Template Subcontract or Template Subcontract Tender Documentation submission under clause 2(a), the Principal's Representative (acting reasonably) must notify the Tunnelling Contractor in writing whether the relevant documents are:
  - (i) approved; or
  - (ii) not approved, in which case the Principal's Representative must provide reasons for withholding its approval.
- (c) (**Amendment and resubmission**): If the Principal's Representative gives the Tunnelling Contractor a notice under clause 2(b)(ii) in respect of any relevant document, the Tunnelling Contractor must amend the relevant document to address the reasons for disapproval and resubmit such amended document to the Principal's Representative after which the process in clause 2(b) will reapply, except that the time period for review of the resubmitted document by the Principal's Representative will be reduced to 10 Business Days.
- (d) (**Implementation and use of approved documents**): The Tunnelling Contractor must:
  - (i) implement and comply with the approved Subcontracting Strategy; and
  - (ii) not use any subcontract terms or tender documentation for the procurement of Subcontractors other than terms and tender documentation which are substantially in the form of the approved Template Subcontracts and Template Subcontract Tender Documents unless it first obtains the prior written approval of the Principal's Representative.
- (e) (**Changes to approved documents**): If at any time the Tunnelling Contractor elects or needs to make any changes to the approved Subcontracting Strategy, Template Subcontracts or Template Subcontract Tender Documents, the Tunnelling Contractor must submit the amended documentation (or relevant parts thereof) to the Principal's Representative for review together with a written explanation of why the changes are required and clauses 2(b), 2(c) and 2(d) will reapply to the amended documentation (or relevant parts thereof).

### 3. PRE-TENDER APPROVALS STAGE

#### 3.1 Tender list requirements

- (a) (**Requirement for at least 3 tenderers**): Subject to clause 3.1(b), for each subcontract package to which this Schedule A35 applies, the Tunnelling Contractor must seek tenders from at least three persons which in the Tunnelling Contractor's opinion (acting reasonably) are suitable for inclusion in the tender list for the works or services to be subcontracted unless otherwise agreed in writing by the Principal's Representative where the Tunnelling Contractor has demonstrated to the satisfaction of the Principal's Representative (acting reasonably) that there are no other specialist contractors capable of performing those works or services.
- (b) (**Requirement for Significant Subcontracts**): For any Significant Subcontract Work listed in Schedule A6, the list of contractors from which the Tunnelling Contractor may call tenders will be limited to those persons that are identified in

Schedule A6 for the relevant Significant Subcontract Work unless otherwise agreed in writing by the Principal's Representative.

- (c) **(Pre-approved tender lists)**: For each subcontract package that is listed in Part D of Schedule A6, the list of tenderers that is contained in Part D of Schedule A6 for that package is pre-approved by the Principal and, provided that no changes are made by the Tunnelling Contractor, no further approval is required from the Principal in relation to such lists under clauses 2, 3 and 4 of this Schedule A35.

### 3.2 Pre-Tender approval process for high value and other key Subcontracts

- (a) **(Application of this clause 3.2)**: The pre-tender approval process set out in this clause 3.2 applies to each of the following types of Subcontract:
- (i) all Subcontracts for the supply of Materials or Construction Plant for which the forecast final value will, in the reasonable opinion of the Tunnelling Contractor, be equal to or above [REDACTED]
  - (ii) all Subcontracts for Reimbursable Work for which the forecast final value will, in the reasonable opinion of the Tunnelling Contractor be equal to or above [REDACTED]
  - (iii) all Subcontracts that are Significant Subcontracts; and
  - (iv) all Subcontracts for the supply of items listed in Part C of Schedule A6.
- (b) **(Splitting of packages across multiple subcontracts)**: If the Tunnelling Contractor splits the same type of Reimbursable Work across multiple Subcontracts with the same Subcontractor, then the aggregate value of all such Subcontracts will be used for the purpose of applying the monetary thresholds in clauses 3.2(a)(i) and 3.2(a)(ii) and in the definition of "Significant Subcontract" and, where the aggregate value of such Subcontracts meets or exceeds such thresholds, the pre-tender approval process set out in this clause 3.2 will apply to each of those Subcontracts even though the value of any one of them may be below the relevant threshold.
- (c) **(Required submissions)**: Prior to inviting any tenders for any of the types of Subcontract referred to in clause 3.2(a) or 3.2(b), the Tunnelling Contractor must prepare and submit to the Principal's Representative all of the following documents for the relevant subcontract package:
- (i) a completed Pre-Tender Checklist signed for and on behalf of the Tunnelling Contractor;
  - (ii) a Subcontract Proposal;
  - (iii) a list of the contractors from which the Tunnelling Contractor proposes to seek tenders;
  - (iv) the subcontract terms under which the Tunnelling Contractor proposes to engage the successful tenderer together with all relevant specifications, scope documents and management requirements;
  - (v) the tender documents which the Tunnelling Contractor proposes to use for the calling of tenders including all relevant returnable schedules; and
  - (vi) any other information relating to the proposed subcontract package that is reasonably requested by the Principal's Representative.



- (d) **(If Pre-Tender Checklist answers do not trigger approval requirement):** If the answers to all of the questions in the completed Pre-Tender Checklist for a relevant subcontract package do not trigger a requirement for approval (as stated in the form of Pre-Tender Checklist contained in Attachment B), then, subject to clause 6(b), the remaining paragraphs of this clause 3.2 will not apply and the review process in clauses 3.3(c) to 3.3(e) will apply instead.
- (e) **(If Pre-Tender Checklist answers do trigger approval requirement):** If the answers to any one or more of the questions in the completed Pre-Tender Checklist for a relevant subcontract package trigger a requirement for approval (as stated in the form of Pre-Tender Checklist contained in Attachment B), then the Tunnelling Contractor may proceed to tender the relevant subcontract package only after:
- (i) the list of contractors from which the Tunnelling Contractor proposes to seek tenders; and
  - (ii) the relevant matters identified in the Pre-Tender Checklist for the subcontract package,
- have been approved by the Principal's Representative under the remaining paragraphs of this clause 3.2.
- (f) **(Review by Principal's Representative):** Within 10 Business Days of receiving the last of the documents referred to in clauses 3.2(c)(i) to 3.2(c)(vi) for the relevant subcontract package, the Principal's Representative (acting reasonably) must notify the Tunnelling Contractor in writing:
- (i) whether it accepts or does not accept the reasons given by the Tunnelling Contractor for the relevant matters that are identified by the Tunnelling Contractor in its completed Pre-Tender Checklist; and
  - (ii) whether or not each of the:
    - (A) list of contractors from which the Tunnelling Contractor proposes to seek tenders;
    - (B) Subcontract Proposal;
    - (C) subcontract terms under which the Tunnelling Contractor proposes to engage the successful tenderer and the relevant specifications, scope documents and management requirements;
    - (D) tender documents which the Tunnelling Contractor proposes to use for the calling of tenders including all relevant returnable schedules; and
    - (E) other information (if any) requested by the Principal's Representative,
 are:
    - (F) approved; or
    - (G) not approved, in which case the Principal's Representative must provide reasons for withholding its approval.
- (g) **(Amendment and resubmission):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 3.2(f)(ii)(G) in respect of:
- (i) any of the relevant documents referred to in paragraphs (f)(ii)(B) to (f)(ii)(E), the Tunnelling Contractor must amend the relevant documents to address the

reasons for disapproval and promptly resubmit such amended documents to the Principal's Representative; or

- (ii) the list referred to in paragraph (f)(ii)(A), the Tunnelling Contractor must remove any proposed contractor from its tender list that is not acceptable to the Principal's Representative and promptly propose an alternative contractor to take its place,

after which the process in clause 3.2(f) will reapply, except that the time period for review of any amended documents or alternative contractor proposal (as applicable) by the Principal's Representative under clause 3.2(f) will be reduced to 5 Business Days.

- (h) **(Nomination of tenderers by Principal's Representative):** If any alternative contractor that is proposed by the Tunnelling Contractor under clause 3.2(g)(ii) is not approved by the Principal's Representative, the Principal's Representative may in its sole and absolute discretion nominate a contractor from which the Tunnelling Contractor must seek a tender for the relevant subcontract package by giving written notice to the Tunnelling Contractor.

### 3.3 Pre-tender approval process for other types of Subcontracts

- (a) **(Application of this clause 3.3):** The pre-tender approval process set out in this clause 3.3 applies to:
  - (i) each Subcontract type that is not referred to in clause 3.2(a) or 3.2(b); and
  - (ii) any subcontract package in respect of which clause 3.2(d) applies.
- (b) **(Required submissions):** Prior to inviting any tenders for any subcontract package referred to in clause 3.3(a), the Tunnelling Contractor must submit the list of contractors from which the Tunnelling Contractor proposes to seek tenders to the Principal's Representative for approval.
- (c) **(Review by Principal's Representative):** Within 5 Business Days of receiving the list of contractors from which the Tunnelling Contractor proposes to seek tenders, the Principal's Representative (acting reasonably) must notify the Tunnelling Contractor in writing whether the list of contractors is:
  - (i) approved; or
  - (ii) not approved, in which case the Principal's Representative must provide reasons for withholding its approval.
- (d) **(Amendment and resubmission):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 3.3(c)(ii), the Tunnelling Contractor must remove any proposed contractor from its tender list that is not acceptable to the Principal's Representative and promptly propose an alternative contractor to take its place after which the process in clause 3.3(c) will reapply in relation to any alternative contractor that is proposed by the Tunnelling Contractor.
- (e) **(Nomination of tenderers by Principal's Representative):** If any alternative contractor that is proposed by the Tunnelling Contractor under clause 3.3(d) is not approved by the Principal's Representative, the Principal's Representative may in its sole and absolute discretion nominate a contractor from which the Tunnelling Contractor must seek a tender for the relevant subcontract package by giving written notice to the Tunnelling Contractor.

#### 4. **TENDER STAGE**

For each subcontract package to which this Schedule A35 applies, the Tunnelling Contractor must:

- (a) call for tenders:
  - (i) only from the contractors that have been approved or nominated by the Principal's Representative under clauses 3.2(f)(ii)(F), 3.2(h), 3.3(c)(i) or 3.3(e); and
  - (ii) in sufficient time to avoid delays or disruption to the progress of the Tunnelling Contractor's Activities;
- (b) for subcontract packages referred to in clause 3.2(a), conduct the tender process using only the subcontract terms and tender documents that have been approved by the Principal's Representative under clause 3.2(f)(ii)(F) unless such approval is not required due to the operation of clause 3.2(d);
- (c) conduct each tender process:
  - (i) with the highest standards of probity, fairness and equal opportunity; and
  - (ii) in accordance with the Procurement Management Sub Plan; and
- (d) if requested by the Principal's Representative, promptly (and in any event within 2 Business Days of request) provide the Principal's Representative with a copy of:
  - (i) all or any part of the tender documentation that has been issued to the tenderers; and
  - (ii) each tender that is received,

in relation to any subcontract package.

#### 5. **TENDER EVALUATION AND SUBCONTRACT AWARD STAGE**

##### 5.1 **Tunnelling Contractor's obligations following receipt of tenders**

Following receipt of tenders for each subcontract package to which this Schedule A35 applies, the Tunnelling Contractor must:

- (a) examine and analyse all tenders received;
- (b) provide the Principal's Representative with a completed Tender Evaluation Checklist signed for and on behalf of the Tunnelling Contractor;
- (c) recommend in writing to the Principal's Representative which tenderer, if any, should be accepted by the Tunnelling Contractor (which recommendation will be deemed to include a warranty by the Tunnelling Contractor that the recommended tenderer has the necessary suitability, reliability, expertise and financial standing to execute the work being subcontracted, that the Tunnelling Contractor knows of no reason why that tenderer's tender should not be accepted and that the tenderer's tender will provide Value for Money for the Principal); and
- (d) submit together with any such recommendation:
  - (i) an evaluation report detailing the Tunnelling Contractor's assessment of tenders against the evaluation criteria;

- (ii) a description of the works or services to be undertaken under the proposed Subcontract;
- (iii) the time for commencement and completion of the works or services and confirmation that these times are in accordance with the Overall ETP Program;
- (iv) the proposed subcontract price and pricing structure details (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) compared to the amount included in the Cost Plan for the relevant Reimbursable Work (including any amounts the Tunnelling Contractor has allowed for contingency) and the amounts tendered by other tenderers;
- (v) any proposed amendments to the subcontract terms that were contained in the tender documentation, including pricing notes and qualifications, special conditions and any proposed amendments to the payment terms, entitlements to delay related costs and/or extensions of time and any risk related provisions;
- (vi) the recommended tenderer's contact details;
- (vii) if any Law in the State or Territory in which the Project Works are situated requires that a person be registered or licensed to carry out that part of the work, evidence to the satisfaction of the Principal's Representative that the recommended tenderer is so registered or licensed; and
- (viii) any other details which may be required by the Principal's Representative, including the draft subcontract.

## 5.2 Approval process where Tender Evaluation Checklist does not contain exceptions

- (a) **(Application of this clause 5.2):** The approval process in this clause 5.2 applies where the answers to all of the questions in the completed Tender Evaluation Checklist for a relevant subcontract package do not trigger a requirement for approval (as stated in the form of Tender Evaluation Checklist contained in Attachment C).
- (b) **(Review by Principal's Representative):** Within 5 Business Days of the date on which the Principal's Representative has received the completed Tender Evaluation Checklist and all of the documents referred to in clauses 5.1(c) and 5.1(d) for the relevant subcontract package, the Principal's Representative (acting reasonably) must notify the Tunnelling Contractor in writing whether Tunnelling Contractor's recommended tenderer for the subcontract package is:
  - (i) approved; or
  - (ii) not approved, in which case the Principal's Representative must provide reasons for withholding its approval and the name of the other tenderer that it considers the Subcontract should be awarded to.
- (c) **(Subcontracting when approval is given):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 5.2(b)(i), the Tunnelling Contractor must promptly enter into a Subcontract with the approved tenderer on the basis set out in the documents referred to in clauses 5.1(c) and 5.1(d) that were submitted to the Principal's Representative or with only such amendments as the Principal's Representative may approve in writing.
- (d) **(Subcontracting when approval is not given):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 5.2(b)(ii), the Tunnelling

Contractor must, unless otherwise directed by the Principal's Representative in writing, promptly enter into a Subcontract with the other tenderer nominated by the Principal's Representative on terms that are approved by the Principal's Representative in writing.

### 5.3 Approval process where Tender Evaluation Checklist contains exceptions

- (a) **(Application of this clause 5.3):** The approval process in this clause 5.3 applies where any one or more of the questions in the completed Tender Evaluation Checklist for a relevant subcontract package trigger a requirement for approval (as stated in the form of Tender Evaluation Checklist contained in Attachment C).
- (b) **(Review by Principal's Representative):** Within 10 Business Days of the date on which the Principal's Representative has received the completed Tender Evaluation Checklist and all of the documents referred to in clauses 5.1(c) and 5.1(d) for the relevant subcontract package, the Principal's Representative (acting reasonably) must notify the Tunnelling Contractor in writing whether Tunnelling Contractor's recommended tenderer for the subcontract package is:
  - (i) approved; or
  - (ii) not approved, in which case the Principal's Representative must provide reasons.
- (c) **(Subcontracting when approval is given):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 5.3(b)(i), the Tunnelling Contractor must promptly enter into a Subcontract with the approved tenderer on the basis set out in the documents referred to in clauses 5.1(c) and 5.1(d) that were submitted to the Principal's Representative or with only such amendments as the Principal's Representative may approve in writing.
- (d) **(Amendment and resubmission):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 5.3(b)(ii), the Tunnelling Contractor must promptly address the reasons for disapproval and resubmit an amended Tender Evaluation Checklist and, if applicable, any new or amended documents referred to in clauses 5.1(c) and 5.1(d) that may be required, after which the process in clause 5.3(b) will reapply.
- (e) **(Nomination by Principal's Representative):** If the Principal's Representative does not approve the tenderer that is recommended in any new or amended documents submitted by the Tunnelling Contractor under clause 5.3(d), the Principal's Representative must provide reasons and the name of the other tenderer that it considers the Subcontract should be awarded to.
- (f) **(Subcontracting with nominated Subcontractor):** If the Principal's Representative gives the Tunnelling Contractor a notice under clause 5.3(e), the Tunnelling Contractor must, unless otherwise directed by the Principal's Representative in writing, promptly enter into a Subcontract with the other tenderer nominated by the Principal's Representative on terms that are approved by the Principal's Representative in writing.

### 5.4 Post tender negotiations

If required by the Principal's Representative, the Tunnelling Contractor must conduct post-tender negotiations with the tenderers, which must, if the Principal's Representative so requires, be held in the presence of the Principal's Representative.

## 6. TENDER CHECKLISTS

- (a) **(Acknowledgements and warranties):** The Tunnelling Contractor:
- (i) acknowledges that the purpose of the Tender Checklists is to provide summary information which will assist to streamline the process for review of subcontract tender documentation by the Principal;
  - (ii) represents and warrants to the Principal that it will complete all Tender Checklists accurately, honestly and in good faith; and
  - (iii) acknowledges that the Principal is relying on the Tunnelling Contractor to complete all Tender Checklists in such manner and that if the Tunnelling Contractor does not do so the Principal will suffer Loss.
- (b) **(Direction by Principal's Representative):** If at any time the Principal's Representative (acting reasonably) considers that the answers or other information that the Tunnelling Contractor has included in a Tender Checklist are not accurate or have not been completed honestly or in good faith, the Principal's Representative may (without limiting any of its other rights and remedies) by notice in writing direct the Tunnelling Contractor to resubmit an updated Tender Checklist which rectifies the relevant inaccuracies or other matters and if the Principal's Representative gives such a direction:
- (i) the timeframe within which the Principal's Representative must review the updated Tender Checklist and all other documents that have been submitted for the relevant subcontract package will recommence in full on the date on which the updated Pre-Tender Checklist is received by the Principal's Representative; and
  - (ii) the Tunnelling Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal for any delay, disruption, loss, damage, cost or expense that arises out of or in any way in connection with any such direction by the Principal's Representative.

## 7. FLOW CHART

- (a) In order to assist the parties administer the process that is set out in this Schedule A35, a flow chart containing a graphical overview of this process is contained in Attachment D.
- (b) This flow chart is included for illustrative purposes only and is not binding on the parties.

**ATTACHMENT A**  
**SUBCONTRACT PROPOSAL REQUIREMENTS**

Each Subcontract Proposal that is prepared by the Tunnelling Contractor must include:

1. a description of the parts of the Reimbursable Work that are to be the subject of the tender;
2. the amount included for this work in the Cost Plan;
3. how the Tunnelling Contractor will select the preferred tenderer including details of the evaluation criteria (with weightings) for the assessment of tenders;
4. the method of delivery for the work;
5. the subcontract terms on which the Tunnelling Contractor proposes to use to enter into the Subcontract, including details about the pricing structure (which may include details regarding payment terms, a detailed breakdown of the price, and any schedule of rates items) and pricing notes (such as working hours and shift durations, waiting times allowances, price escalation and traffic control arrangements);
6. the proposed date for calling of tenders and for tender responses; and
7. a statement as to whether or not the Subcontract would fall within the requirement under clause 6.8(a)(v) of the deed to procure that the Subcontractor executes a deed in the form of Schedule A30, and if so whether the Tunnelling Contractor is seeking the Principal's approval to not comply with this requirement (including reasons).

**ATTACHMENT B**  
**PRE-TENDER CHECKLIST**

No.	Question	Answer
1.	<p>Has a Subcontract Proposal been prepared and provided to the Principal (as an attachment to the checklist)?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
2.	<p>Has the tender list been determined and provided to the Principal (as an attachment to the checklist)?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
3.	<p>Does the tender list comprise at least three tenderers?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
4.	<p>Is the Tenderer proposing to deviate from the Subcontract packaging strategy that has been approved by the Principal?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
5.	<p>Is the Tenderer proposing to materially deviate from the Template Subcontracts and Template Subcontract Tender Documents as approved by the Principal?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
6.	<p>Will the Subcontractor be required to execute a deed in the form of Schedule A30 (Form of Subcontractor Deed)?</p>	[Yes / No]
7.	<p>If yes to 6 above, is the Tunnelling Contractor seeking the Principal's approval not to comply with this requirement in relation to Schedule A30 (Form of Subcontractor Deed)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
8.	<p>Is the Subcontract a Significant Subcontract or for supply of an item listed in Part C of Schedule A6?</p> <p>[If "Yes" then the Principal's approval is required.]</p>	[Yes / No]



.....

Signed for and on behalf of

[insert name of the Tunnelling Contractor]

**Attachment to Pre-Tender Checklist**

***[Note: Where the response to any of the questions contained in the checklist triggers a requirement for the Principal's approval, the Tunnelling Contractor must provide reasons as to why this is the case.]***

**ATTACHMENT C**  
**TENDER EVALUATION CHECKLIST**

No.	Question	Answer
1.	<p>Is the recommendation in accordance with the findings of the evaluation report (i.e. 1st ranked Tenderer)?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
2.	<p>Is the subcontract price less than or equal to the estimate (per Cost Plan)?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
3.	<p>Is the recommendation for the Tenderer with the lowest price?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
4.	<p>Has the Tunnelling Contractor provided all requirements set out in clause 5.1(d) of Schedule A35 (as an attachment to the checklist)? e.g. evaluation report, description of the work, program, price etc.</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
5.	<p>Has the Subcontractor proposed amendments to the subcontract terms contained in the Subcontract Tender Documentation, which in effect mean that the Subcontract does not include all provisions required by Schedule A5 (as applicable)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
6.	<p>Has the Subcontractor proposed amendments to the Subcontract contained in the Subcontract Tender Documentation which materially alter the risk allocation under the Subcontract?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
7.	<p>Is the time for commencement and completion of the work in accordance with the Overall ETP Program?</p> <p>[If "No" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]

8.	<p>If applicable, has the Subcontractor proposed departures to Schedule A8 (Form of Warranty)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
9.	<p>If applicable, has the Subcontractor proposed departures to Schedule A14 (Deed of Covenant)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
10.	<p>If applicable, has the Subcontractor proposed departures to Schedule A15 (Significant Subcontractor Side Deed)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]
11.	<p>If applicable, has the Subcontractor proposed departures to Schedule A30 (Form of Subcontractor Deed)?</p> <p>[If "Yes" then the Principal's approval is required and the Tunnelling Contractor must provide reasons in the attachment to this checklist.]</p>	[Yes / No]

.....

Signed for and on behalf of

[insert name of the Tunnelling Contractor]

**Attachment to Tender Evaluation Checklist**

***[Note: Where the response to any of the questions contained in the checklist triggers a requirement for the Principal's approval, the Tunnelling Contractor must provide reasons as to why this is the case.]***

**ATTACHMENT D**  
**PROCUREMENT PROCESS FLOW CHART**

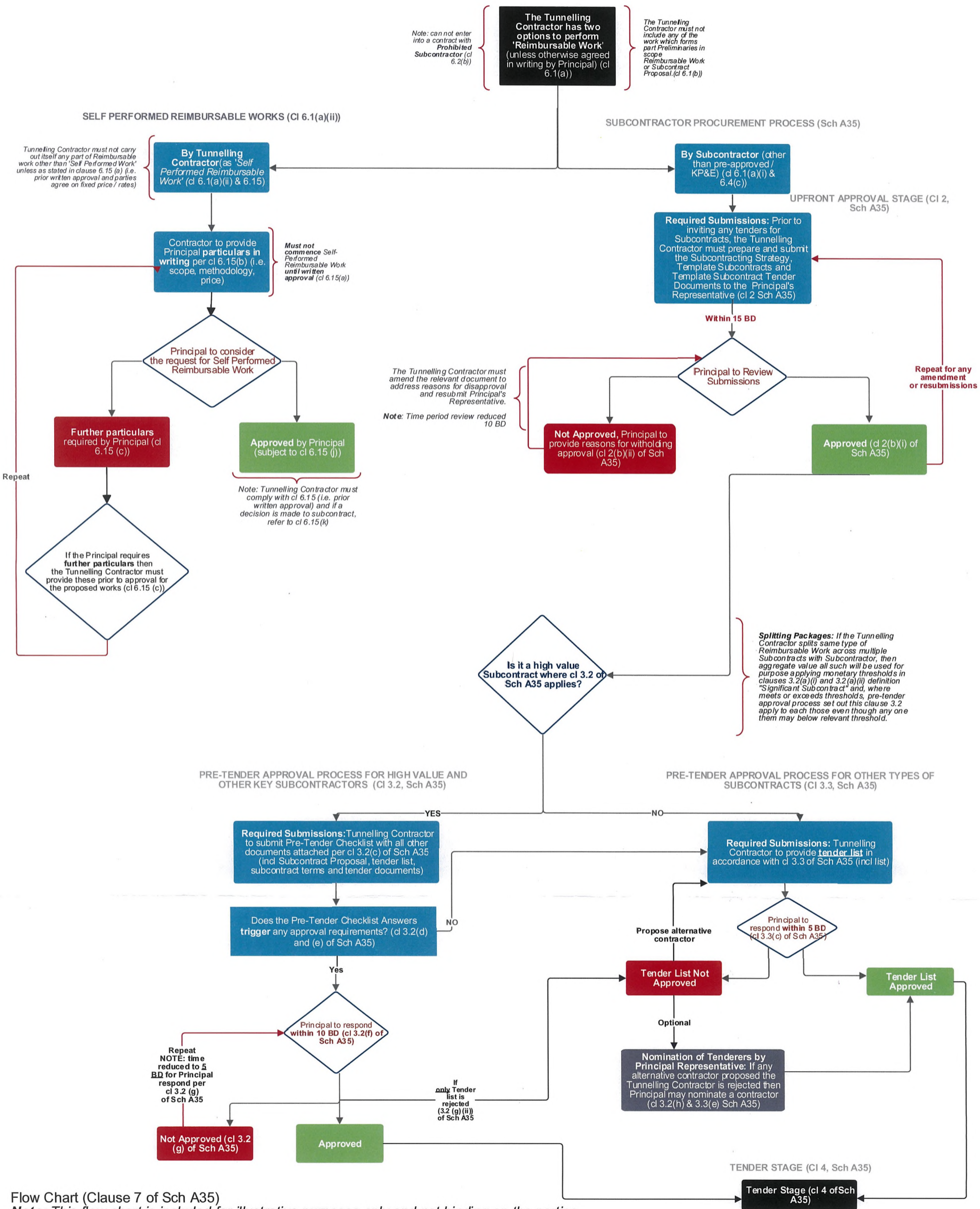
# Flow Chart | Clause 6- Subcontracting

SMW | ETP



## Reimbursable Works (Part 1/2) (excluding 'Pre-Approved Subcontractors' & 'Subcontractors for Key Plant and Equipment')

\*BD = Business Days



Flow Chart (Clause 7 of Sch A35)

Note: This flow chart is included for illustrative purposes only and not binding on the parties.

**Flow Chart | Clause 6- Subcontracting**

SMW | ETP

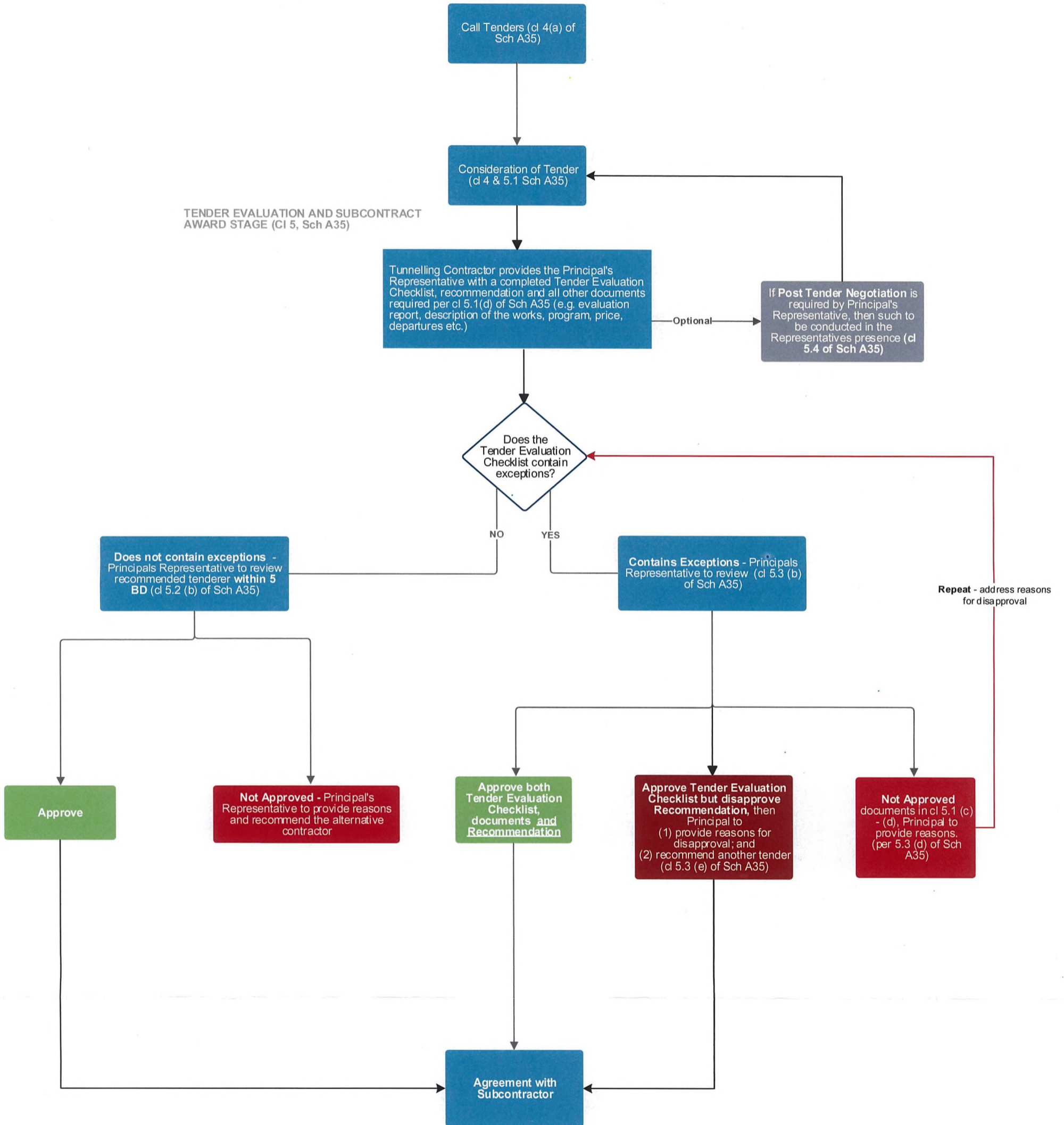
**Reimbursable Works - Part 2/2**

*(excluding 'Pre-Approved Subcontractors' & 'Subcontractors for Key Plant and Equipment')*



TENDER STAGE (Cl 4, Sch A35)

TENDER EVALUATION AND SUBCONTRACT AWARD STAGE (Cl 5, Sch A35)



Flow Chart (Clause 7 of Sch A35)

**Note:** This flow chart is included for illustrative purposes only and not binding on the parties.



**SCHEDULE A36**  
**Form of Independent Estimator Deed**  
**(Clause 10.7(b))**





































































































































































































































