

Services Contract

Contract No. MU-SEC-21-24

Macquarie University
Principal

Wilson Security Pty Ltd
Contractor

Formal Instrument of Agreement

Formal Instrument of Agreement made at Sydney on the Award Date

Parties**Principal:**

Name: **Macquarie University** ABN 90 952 801 237

Address: 2 Link Road, Macquarie University, NSW 2109

Contractor:

Name **Wilson Security Pty Ltd** ABN 90 127 406 295

Address: Level 3, Unit 309, 14-16 Lexington Drive, Bella Vista, NSW 2153

Background

- A. The Principal is committed to operating and maintaining a safe, reliable, effective and efficient University campus and to obtaining value for money outcomes when procuring goods, services, activities and other things from contractors (the **Objectives**).
- B. Having regard to the Objectives, the Contractor has represented to the Principal that it has the necessary skill, experience, available resources and professional competence to carry out the Services.
- C. The Contractor has agreed to carry out the Services on the terms and conditions of the Contract.

The parties agree

The Principal and the Contractor promise to carry out and complete their respective obligations in accordance with the Contract.

Unless the context indicates otherwise, capitalised terms in this Formal Instrument of Agreement have the meaning given in the attached General Conditions of Contract.

General Conditions of Contract

Campus, Hospital and Clinic Security Services

Signed as an agreement

Signed, sealed and delivered for Macquarie University by its duly authorised attorney under power of attorney in registered book 4778 No 358 in the presence of.

Signature of witness

Full name of witness

Date

BD
Bruce Dowton (Sep 6, 2021 14:02 GMT+10)

Signature of ~~Attorney~~ *Authorised delegate*

Bruce Dowton

Name of ~~Attorney~~ *Authorised delegate*

06/09/21

Position of ~~Attorney~~ *Date:*

Executed by Wilson Security Pty Ltd ABN 90 127 406 295 in accordance with section 127 of the Corporations Act 2001 (Cth).



[Handwritten signature]

Signature of director

JOSE DA SILVA

Full name of director

[Handwritten signature]

Signature of company secretary/director

MICHAEL JAMES QUINLIVAN

Full name of company secretary/director

1 September 2021

Date

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General Conditions of Contract

1. Definitions and interpretation

1.1 Definitions

In the Contract, unless the context indicates otherwise:

Approval means any licence, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of any Authority having any jurisdiction in connection with the Services or under any applicable Law, which must be obtained or satisfied to carry out the Services.

Advantage means any financial or other advantage, payment, gift, promise or transfer of anything of value.

Applicable Corruption Law means all of the laws, rules, regulations and other legally binding measures relating to bribery, corruption, money laundering, fraud or similar activities of Australia.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

Award Date means the date specified in the Key Details.

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

Change in Law means a change in an existing Law or a new Law, but does not include:

- (a) a change in an Approval or a new Approval; or
- (b) a change in an existing Law, or a new Law, relating to taxes.

Claim includes any claim for an increase in the Contract Price or for payment of money (including damages):

- (a) under, arising out of, or in any way in connection with, the Contract, including any Direction of the Principal's Representative;
- (b) arising out of, or in any way in connection with, the Services or either party's conduct before the Contract; or
- (c) otherwise at Law or in equity, including by statute, in tort (for negligence or otherwise, including negligent misrepresentation) or for restitution.

Confidentiality Undertaking means a deed in the form of Schedule 5.

Contract means the contractual relationship between the parties constituted by:

- (a) the Formal Instrument of Agreement;
- (b) these General Conditions of Contract;
- (c) the Key Details;
- (d) the Schedules and Exhibits;

- (e) the Statement of Work; and
- (f) the other documents (if any) referred to in the Key Details.

Contract Price means the amount specified in the Key Details as adjusted, subject to clause 16.5, under the Contract.

Contractor's Representative means the person so named in the Key Details or any other person from time to time appointed as the Contractor's Representative in accordance with clause 3.5.

Corrupt Conduct has the meaning given in the Independent Commission Against Corruption Act 1988 (NSW).

Deliverables means all items, materials, documentation and products produced, created or developed for the Principal by or on behalf of the Contractor as part of providing the Services or Services for the purposes of, or in anticipation of, this Contract, irrespective of whether they are produced, created or developed prior to the Award Date.

Direction means any decision, demand, determination, direction, instruction, notice, order, rejection or requirement.

Environmental Requirements means the environmental requirements contained in Schedule 6.

Formal Instrument of Agreement means the formal instrument of agreement to which these General Conditions of Contract are attached.

Force Majeure Event means:

- (a) riot, war, invasion or act of foreign enemies, acts of terrorism, or hostilities;
- (b) ionising radiation or contamination, radio activity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive, toxic, explosive or other hazardous properties of any explosive assembly or nuclear component;
- (c) pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;
- (d) industrial action in the form of a strike that is not specific to, or caused by, the Contractor; and
- (e) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions, regardless of severity,

but only where such events or circumstances:

- (a) are beyond the reasonable control of the affected party;
- (b) where the affected party is the Contractor, are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under the Contract if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor supplying similar services; and
- (c) are not caused or contributed to in whole or in part by a breach by the affected party of the Contract.

General Conditions of Contract means these General Conditions of Contract.

GST or Goods and Services Tax means the tax payable on taxable supplies under the GST Legislation.

GST Legislation means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Guarantor has the meaning given in clause 4.5(b).

ICAC means the Independent Commission Against Corruption.

Insolvency Event means in relation to a party to the Contract, any of the following:

- (a) the party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with the Contract for financial reasons;
- (b) a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power is appointed to the party;
- (c) the party:
 - (i) becomes bankrupt or insolvent;
 - (ii) makes any assignment in bankruptcy or makes any other assignment for the benefit of creditors;
 - (iii) seeks relief from its obligations to creditors under any bankruptcy, insolvency or analogous Law;
 - (iv) files a petition or proposal to take advantage of any act of bankruptcy or insolvency;
 - (v) consents to or acquiesces in the appointment of a trustee, receiver, receiver and manager, interim receiver, controller, administrator, custodian, sequestrator, provisional liquidator, liquidator or other person with similar power of itself or of all or a portion of its assets; or
 - (vi) files a petition or otherwise commences any proceeding seeking any reorganisation, arrangement, composition or readjustment under any applicable bankruptcy, insolvency or analogous Law affecting creditors' rights or consents to, or acquiesces in, the filing of such a petition; or
- (d) any act is done or event occurs which, under applicable Law, has a similar effect to anything mentioned in paragraphs (b) or (c).

Intellectual Property Rights means any patent, registered design, trademark or name, copyright or other protected intellectual property right.

Key Details means the particulars which appear in Schedule 1.

Key Performance Indicators or KPIs means the key performance indicators in Schedule 10.

Law means:

- (a) any legally binding law, legislation, statute, act, regulation, subordinate legislation, rule, by-law, order, proclamation, decree, ordinance, directive or code which is enacted, issued or promulgated by the Commonwealth, or any State or Territory government;
- (b) common law and equity;

- (c) Approvals; and
- (d) any other relevant Authority requirements.

Moral Rights means any of the rights described in Article 6bis of the Berne Convention for the Protection of Literary and Artistic Works 1886, being "droit moral" or other analogous rights arising under any applicable Law that exists or may come to exist anywhere in the world.

Motor Vehicle Insurance means a policy of insurance covering vehicle third party bodily injury and property damage in respect of all vehicles to be used by the Contractor (whether owned, rented or leased) in connection with the Services.

Notice of Dispute has the meaning given in clause 15.1.

Occupier means the owner, and any tenants and occupiers, of premises situated on, within, about or in the vicinity of the Site (and the invitees of each of them).

Option Period 1 means the period stated in the Key Details.

Option Period 2 means the period stated in the Key Details.

Option Period 3 means the period stated in the Key Details.

Other Contractor means any supplier, contractor, consultant, artist, tradesperson or other person engaged to do work other than the Contractor or its Subcontractors.

Personnel means:

- (a) in respect of the Contractor, any directors, officers, employees, consultants, agents and Subcontractors of the Contractor; and
- (b) in respect of the Principal, any directors, officers, employees, consultants, agents and contractors of the Principal (other than the Contractor).

Policies, Codes and Standards means the most recent version of the policies, codes and standards described in the Key Details, as updated from time to time.

PPSA means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.

Pre-existing IPR of any party means any Intellectual Property Rights belonging to the party which are:

- (a) pre-existing as at the Award Date, but does not include any Intellectual Property Rights developed by the Contractor or any of its Personnel for the purposes of, or in anticipation of, carrying out the Services; or
- (b) brought into existence other than as a result of the performance of its obligations under this Contract,

and used by a party in performing its obligations under this Contract.

Principal's Representative means the person so nominated in the Key Details or any other person nominated by the Principal from time to time under clause 3.2 to replace that person.

Public Official includes any person representing or employed by a government department or enterprise.

Public Liability Insurance means a policy of public liability insurance covering:

- (a) the respective rights and interests and liabilities to third parties of the Principal, the Contractor, the Principal's Representatives and all Subcontractors from time to time; and
- (b) the parties' respective liability to each other for loss or damage to property (including the Principal's property) and the death of or injury to any person (other than liability which the Law requires to be covered under a workers compensation insurance policy),

arising out of, or in any way in connection with, the Services.

Schedule of Prices means the document (if any) so described in Schedule 2.

Services means all things, tasks or services which the Contractor is, or may be, required to do to comply with its Contract obligations and includes the services as more particularly described in the Statement of Work.

Site means any land made available by the Principal to the Contractor to carry out the Services, if any, including any such land described in the Statement of Work.

Statement of Work means the document in Exhibit A (if any).

Subcontractor means any person engaged by the Contractor for the performance of any of the Services.

Term means the period described as such in the Key Details (as extended pursuant to clause 2.3).

Unconditional Undertaking means an unconditional undertaking (duly stamped) on terms, and given by a financial institution, approved by the Principal (and the terms of the unconditional undertaking set out in Schedule 3 are approved by the Principal).

Variation means, unless otherwise stated in the Contract, any change to the Services including any addition, increase, decrease, omission, deletion or removal to or from the Services.

WHS Legislation means legislation relating to health and safety at work including:

- (a) the Work Health and Safety Act 2011 (NSW); and
- (b) the Work Health and Safety Regulation 2017 (NSW).

WHS Management Plan means the work health and safety plan to be prepared by the Contractor under clause 7.5, which must:

- (a) set out in adequate detail the procedures the Contractor will implement to manage the Services from a work health and safety perspective;
- (b) describe how the Contractor proposes to ensure the Services are performed consistently with WHS Legislation; and
- (c) comply with the specific requirements of Part 6.4 of the Work Health and Safety Regulation 2017 (NSW) in relation to the matters that a WHS management plan must include.

WHS Requirements means the work, health and safety requirements contained in Schedule 7.

Workers Compensation Insurance means a policy of insurance to insure against liability for death of or injury to employees, including liability by statute and at common law.

1.2 Interpretation

In the Contract:

- (a) headings are for convenience only and do not affect interpretation;
- and unless the context indicates a contrary intention:
- (b) an obligation or liability assumed by, or a right conferred on, 2 or more 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 a 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 additional trustee;
 - (e) a reference to a document (including the Contract) 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 the Contract, and a reference to the Contract includes all schedules, exhibits, attachments and annexures to it;
 - (i) if the time for giving any notice, issuing any certificate, making any payment or doing any other act required or permitted by the Contract, falls on a day which is not a Business Day, then the time for giving the notice, issuing the certificate, making the payment or doing the other act will be taken to be on the next Business Day;
 - (j) 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;
 - (k) "includes" in any form is not a word of limitation;
 - (l) a reference to "\$" or "dollar" is to Australian currency;
 - (m) the word "Subcontractor" will include suppliers and consultants;
 - (n) any reference to the Services or any other document or thing being fit for their intended purpose (or any similar reference) will be read as referring to the purpose having regard to any purpose contemplated in or reasonably ascertainable from that:
 - (i) the Contract; and
 - (ii) to the extent relevant for determining the purpose in connection with a Variation, any document provided by the Principal to the Contractor specifically in connection with the Variation; and
 - (o) to the extent that:

- (i) any amounts are payable to the Contractor under this Contract by reference to hourly or daily rates; and
- (ii) the Contractor's Personnel is engaged in the relevant Services for an increment of time less than a full hour or day (or for one or more full hours or days plus an increment of time less than a full hour or day) (as applicable).

1.3 No bias against drafting party

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

1.4 Provisions limiting or excluding liability

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

1.5 Discretion

Subject to any express provision in the Contract to the contrary:

- (a) a provision of the Contract which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
- (b) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by the Contract.

Without limiting the previous paragraph, neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of the Contract conferring the discretion, power or entitlement.

1.6 Authorities

The Contractor acknowledges and agrees that:

- (a) there are many Authorities with jurisdiction over aspects of the Services, and other matters affecting and affected by the Services;
- (b) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
- (c) it bears the full risk of all occurrences of the kind referred to in clause 1.6(b) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences.

2. Parties' obligations

2.1 Contractor's obligations

- (a) The Contractor must perform the Services during the Term.
- (b) The Contractor must ensure that the Services will be fit for their intended purposes.

2.2 Principal's obligations

The Principal must, in accordance with the requirements of the Contract:

- (a) allow the Contractor to perform the Services;
- (b) give the Contractor sufficient access to the Site to allow it to carry out the Services; and
- (c) pay the Contract Price.

2.3 Extension of Term

- (a) The Principal may (in its absolute discretion):
 - (i) extend the Term once by Option Period 1;
 - (ii) if the Principal exercised its right to extend the Term by Option Period 1 in accordance with clause 2.3(a)(i), extend the Term once by Option Period 2; and
 - (iii) if the Principal exercised its right to extend the Term by Option Period 2 in accordance with clause 2.3(a)(ii), extend the Term once by Option Period 3,

by giving written notice at least 30 days before the end of the Term (or such other notice period as the parties may agree).

- (b) Any extension exercised in accordance with paragraph (a) will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term but the Contract Price payable for the further period will be equal to the Contract Price payable for the prior equivalent period of the original Term, escalated by the amount set out in the Key Details.

2.4 KPIs

- (a) The Contractor in performing the Services must comply with the KPIs as amended in accordance with this Contract.
- (b) The Contractor must report to the Principal at the frequency specified in the Key Details in the form of a report (**KPI Performance Report**) in a form satisfactory to the Principal which:
 - (i) provides an analysis of the performance of the Contractor in meeting the KPIs;
 - (ii) identifies any non-compliances;
 - (iii) proposes an action plan to remedy non-compliances and implement continuous improvements; and
 - (iv) reports on whether the Contractor has implemented any previous action plan and, if not, the extent of non-compliance.
- (c) The Contractor acknowledges and agrees that:
 - (i) the Principal will review each KPI Performance Report to assess the level of compliance by the Contractor with the KPIs;
 - (ii) it must provide any action plan required by the Principal and must implement and comply with any action plan required by the Principal; and

- (iii) the Principal, acting reasonably, may amend the KPIs provided that the Contractor has been consulted by the Principal in respect of the amended KPIs, including being advised of the reasons for the amendment.
- (d) The Principal and the Contractor must meet at the times specified in the Key Details, to monitor and review the Contractor's performance under this Contract and the KPIs and, if required by the Principal, the Contractor's compliance with any action plan.

3. Personnel

3.1 Principal's Representative

The Principal's Representative will give Directions and carry out all its other functions under the Contract as the agent of the Principal (and not as an independent certifier, assessor or valuer).

The Contractor must comply with any Direction by the Principal's Representative given or purported to be given under a provision of the Contract.

Except where the Contract otherwise provides, the Principal's Representative may give a Direction orally but will as soon as practicable confirm it in writing.

3.2 Replacement of Principal's Representative

The Principal may at any time replace the Principal's Representative, in which event the Principal will appoint another person as the Principal's Representative and notify the Contractor of that appointment.

Any substitute Principal's Representative appointed under this clause 3.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

3.3 Principal's Representative's representative

The Principal's Representative may:

- (a) by written notice to the Contractor appoint persons to exercise any of the Principal's Representative's functions under the Contract;
- (b) not appoint more than one person to exercise a specific function under the Contract; and
- (c) revoke any appointment under paragraph (a) by notice in writing to the Contractor.

All references in the Contract to the Principal's Representative include a reference to a representative appointed under this clause 3.3.

3.4 Contractor's Representative

The Contractor must ensure that the Contractor's Representative is present at any location where the Services are being carried out at all times reasonably necessary to ensure that the Contractor is complying with its obligations under the Contract.

A Direction is deemed to be given to the Contractor if it is given to the Contractor's Representative.

Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.

If the Principal's Representative makes a reasonable objection to the appointment of a representative by the Contractor, the Contractor must terminate the appointment and appoint

another representative, subject again to the reasonable objection of the Principal's Representative.

3.5 Key people

The Contractor must:

- (a) employ those people specified in the Statement of Work, including the Contractor's Representative, in the jobs specified in the Statement of Work;
- (b) subject to paragraph (c), not replace the people referred to in paragraph (a) without the Principal's Representative's prior written approval; and
- (c) if any of the people referred to in paragraph (a) die, become seriously ill or resign from the employment of the Contractor, replace them with persons approved by the Principal's Representative of at least equivalent experience, ability and expertise.

3.6 Removal of persons

The Principal's Representative may by notice in writing instruct the Contractor to remove any person from the Services who in the reasonable opinion of the Principal's Representative is guilty of misconduct or is incompetent or negligent.

The Contractor must ensure that this person is not again employed in the Services.

4. Security

4.1 Form of security

This clause 4.1 applies where so stated in the Key Details.

The Contractor must provide security in the form of an Unconditional Undertaking for the amount specified in the Key Details.

Security must be provided within 10 Business Days of the Award Date.

4.2 Release of security

Subject to its rights to have recourse to the security, the Principal must release the security then held when:

- (a) the Term has expired;
- (b) the Contractor has provided the Principal with the final payment claim required by clause 12.7; and
- (c) the Contractor has complied with all of its obligations under the Contract.

If the Principal terminates the Contract pursuant to clause 14.7 then to the extent that the Principal has not had recourse to it, the Principal must release all security then held by it when the Contractor has complied with its obligations under clause 14.8(b).

4.3 Replacement security

- (a) If the Principal holds security provided under clause 4.1 which contains an expiry date which is earlier than the date upon which the Principal is required to return the security to the Contractor, the Contractor must, on or before the date which is 20 Business Days prior to the expiry date for that security, provide the Principal with replacement security in the form of an Unconditional Undertaking in exchange for the security which is being replaced.

- (b) If paragraph (a) applies in respect of any security and the Principal has not received from the Contractor replacement security in the form of an Unconditional Undertaking at least 20 Business Days prior to the expiry date for that undertaking then, irrespective of anything contained in, and without limiting the Principal's rights under, the Contract or the security, the Principal may make a demand under the security for the entire amount payable under that security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under the Contract to use these proceeds, the proceeds from any demand made by the Principal pursuant to paragraph (b) will be paid to the Contractor at the same time as the Principal would have been required to return the security from which the proceeds were obtained.

4.4 Interest

The Principal:

- (a) is not obliged to pay the Contractor interest on any Unconditional Undertaking provided under clause 4.1 including the proceeds of any bank guarantee if it is converted into cash; and
- (b) does not hold the proceeds or money referred to in paragraph (a) on trust for the Contractor.

4.5 Parent company guarantee

If the Contractor is required by the Key Details to provide a parent company guarantee, the Contractor must, on the Award Date, provide the Principal's Representative with a parent company guarantee:

- (a) in the form set out in Schedule 4 with all particulars completed; and
- (b) duly executed by the person named in the Key Details (**Guarantor**).

4.6 PPSA

- (a) To the extent the PPSA applies to any goods, materials or other items supplied by the Contractor to Principal the Contractor warrants that:
 - (i) the supply of goods, materials or other items to Principal does not breach any security agreement the Contractor has with a third party; and
 - (ii) the supply of goods, materials or other items to Principal is within the ordinary course of the Contractor's business.
- (b) The Contractor indemnifies the Principal against any Claims against, or costs, losses or damages suffered or incurred by the Principal directly or indirectly in connection with any infringement of, or Claim in regard to, any third party security agreement or security interest under the PPSA arising as a result of:
 - (i) the Contractor carrying out the Services; or
 - (ii) goods, materials or other items supplied to Principal by the Contractor infringing that third party's rights under the PPSA.

5. Risks and insurance

5.1 Contractor's indemnity

The Contractor will indemnify the Principal against:

- (a) any loss of or damage to property of the Principal; and
- (b) any liability to or claims by a third party in respect of loss of or damage to property or injury to or death of persons,

caused by, or arising out of, or in any way in connection with, the Services provided that the Contractor's responsibility to indemnify the Principal will be reduced to the extent that an act or omission of the Principal, Principal's Representative or an Other Contractor engaged by the Principal may have contributed to the loss, damage, injury or death.

5.2 Insurance by Principal

The Principal must, from the Award Date, effect the insurance (if any) specified in the Key Details.

The insurance is subject to the exclusions, conditions and excesses noted in the policies and the Contractor:

- (a) must satisfy itself of the nature and extent of the Principal's insurance;
- (b) acknowledges that the insurances effected by the Principal do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits, and the Contractor may at its cost, take out insurance to:
 - (i) insure any risks not insured by the Principal's insurance; or
 - (ii) cover any such exclusions, conditions or excesses in that insurance,which the Contractor wants to insure against or cover;
- (c) will be responsible for paying or bearing all excesses in relation to insured matters under the insurances effected by the Principal in accordance with the policy terms; and
- (d) may effect its own insurance to cover the amount of any excess.

5.3 Contractor insurance obligations

The Contractor must:

- (a) from the Award Date effect and have in place the following insurance with insurers and on terms satisfactory to the Principal's Representative:
 - (i) Public Liability Insurance;
 - (ii) Workers Compensation Insurance; and
 - (iii) Motor Vehicle Insurance,for at least the amounts referred to and with the maximum deductibles specified in the Key Details;
- (b) in relation to the Workers Compensation Insurance ensure that each of its Subcontractors has similar insurance to the Workers Compensation Insurance covering the Subcontractors' employees;

- (c) ensure that the Public Liability Insurance complies with the requirements set out in the Key Details;
- (d) provide the Principal's Representative with copies of certificates of currency for the insurances referred to in paragraphs (a) and (b), as required by the Principal's Representative from time to time; and
- (e) upon request by the Principal's Representative, promptly provide the Principal's Representative with a copy of any insurance policy that is in the joint names of the Contractor and the Principal.

5.4 Period of insurance

The insurance which the parties are required to have in place under this clause 5 must be maintained:

- (a) in the case of Public Liability Insurance, at all times at which the Contractor performs the Services (and at least until the expiry of the Term);
- (b) in the case of Workers Compensation Insurance, at all times at which the Contractor performs the Services; and
- (c) in the case of Motor Vehicle Insurance, at all times that vehicles are to be used by the Contractor in connection with the Services.

5.5 Insurers

Unless otherwise approved in writing by the Principal, the insurance which the Contractor is required to have in place under clause 5.3 must be maintained with insurers that:

- (a) are authorised under the Insurance Act 1973 (Cth) to carry on an insurance business in Australia and are supervised by the Australian Prudential Regulation Authority; and
- (b) have a credit rating of not less than A from Standard & Poor's, A2 from Moody's Investor Services or A- from A.M. Best Company.

5.6 Insurance obligations

The Contractor must ensure that it:

- (a) does not do anything which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal's Representative;
- (e) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
- (f) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

5.7 Failure to insure

If the Contractor fails to:

- (a) provide copies of any insurance policy together with evidence satisfactory to the Principal's Representative that the policy is current; or
- (b) effect insurance which is with insurers and on terms satisfactory to the Principal's Representative,

as required by clause 5.3, the Principal may, without prejudice to any other rights it may have, effect the insurance and the cost will be a debt due from the Contractor to the Principal.

5.8 Notice of potential claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim under an insurance policy required by the Contract, if that claim would:
 - (i) have a material impact on insurance proceeds available under that policy; or
 - (ii) affect the Contractor's ability to comply with its obligations under the Contract, including this clause 5;
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences which may give rise to a claim by them.

5.9 Cross liability

Where the Contract requires insurance to be effected in joint names, the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured and that failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (c) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (d) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

5.10 Liabilities unaffected

The effecting of insurance by the Contractor or the Principal and the approval of any insurance policy, terms of insurance or insurer by the Principal's Representative does not limit any obligations or liabilities of the Contractor (including the obligation to effect the insurances required by the Contract).

6. Documentation

6.1 Principal's documents

The Principal must provide to the Contractor the documents and number of copies of those documents specified in the Statement of Work.

6.2 Fitness for purpose

The Contractor warrants that:

- (a) the Services will be carried out so as to be fit for their intended purpose; and
- (b) documents provided by the Principal under clause 6.1 are accurate and suitable for their purposes under the Contract unless within 10 Business Days of receipt the Contractor gives written notice to the Principal's Representative of any deficiencies in such documents.

6.3 IP warranties and representations

The Contractor warrants and represents that:

- (a) it owns, or is licensed by the owner to use and sub-licence all Pre-existing IPR;
- (b) in carrying out the Services, the Contractor will not infringe the Intellectual Property Rights of any person; and
- (c) the Principal's use of any Deliverables, or Services for any purpose will not infringe the Intellectual Property Rights of the Contractor or any third party.

6.4 Ownership

- (a) The Contractor agrees that, immediately upon the creation of any Deliverables, the Principal owns the Deliverables.
- (b) The Contractor assigns to the Principal all existing and future Intellectual Property Rights subsisting in and to any Deliverables (including any Deliverables which have been jointly created, developed or brought into existence by the Principal and Contractor) excluding all Pre-existing IPR.
- (c) The Contractor must do all things reasonably required, including executing any documents, to further effect the assignment of the Intellectual Property Rights in the Deliverables from the Contractor to the Principal in this clause 6.4.
- (d) The Contractor must procure that its Personnel ensure that the ownership of the Intellectual Property Rights in the Deliverables which would, but for the application of this clause 6.4, vest in such Personnel, vest in or are transferred or assigned immediately to the Principal on and from the date of creation.

6.5 Pre-existing IPR

- (a) Each party will retain its Pre-existing IPR and nothing in this Contract assigns or transfers the Pre-existing IPR of one party to another. Neither party may assert or bring any Claim for ownership of any or all of the other party's Pre-existing IPR.
- (b) The Contractor grants to the Principal a non-exclusive, perpetual, transferable, royalty-free licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-licence any other third party to do so) all existing and future Intellectual Property Rights subsisting in the Contractor's Pre-existing IPR to:

- (i) allow the Principal the full benefit and enjoyment of the Services and the Deliverables;
- (ii) use the Contractor's Pre-existing IPR:
 - A. to procure, undertake or perform any works, activities, goods or services for any further upgrade or refurbishment of the Services, or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal;
 - B. to install, operate, maintain and monitor the Services or any plant, equipment or infrastructure systems owned, operated or maintained by the Principal;
 - C. to integrate Services with any other plant, equipment or infrastructure systems owned, operated or maintained by the Principal; and
- (iii) disclose the Contractor's Pre-existing IPR on a confidential basis to third parties for the purposes of a tender process for any procurement in connection with the matters set out in clause 6.5(b)(ii).

6.6 Indemnity and infringement

The Contractor must indemnify the Principal against any Claims against, or costs, losses or damages suffered or incurred by, the Principal, arising out of, or in any way in connection with, any actual or alleged infringement of any Intellectual Property Rights in or associated with the Services or any Deliverables provided by the Contractor or any breach by the Contractor of clause 6.7.

6.7 Moral Rights

The Contractor must, at its own expense, obtain or procure all consents or waivers from any person who has Moral Rights in the Deliverables and the Services to the extent necessary to ensure that the Principal may do or authorise any acts or omissions consistent with the ownership and licences granted by clauses 6.4 and 6.5 without infringing any Moral Rights.

6.8 Contractor to notify errors

The Contractor shall review any documentation which makes up the Contract, and any revisions of and additions to such documentation issued by the Principal's Representative for the purposes of the Services, for any ambiguity, discrepancy, inconsistency, errors, contradictions or omissions and promptly notify the Principal's Representative of any ambiguity, discrepancy, inconsistency, such errors, contradictions or omissions of which the Contractor becomes aware for the attention and action of the Principal's Representative.

6.9 Resolution of ambiguities

- (a) The following order of precedence will apply to any ambiguity, discrepancy or inconsistency in the documents which make up the Contract, with those higher in the list having precedence over those lower in the list:
 - (i) the Formal Instrument of Agreement ;
 - (ii) the General Conditions of Contract (including the Schedules);
 - (iii) any Exhibits to the General Conditions of Contract other than the Statement of Work; and
 - (iv) the Statement of Work.

- (b) If either party discovers any ambiguity, discrepancy or inconsistency in the documents which make up the Contract or between the Contract and any documents provided to the Contractor by or on behalf of the Principal which the Contractor is required by the Contract to use for manufacture and production purposes:
- (i) the party must promptly give notice to the other; and
 - (ii) the Principal's Representative must instruct the Contractor as to the course it must adopt within 5 Business Days of the notice under subparagraph (b)(i).
- (c) If compliance with the Principal's Representative's instruction under subparagraph (b)(ii) causes the Contractor to incur more or less cost than a competent and experienced contractor (having the experience of a contractor that is an expert in carrying out work of a nature similar to the Services) could reasonably have anticipated if it had carefully examined the Contract documents on or before the Award Date, then the difference in cost, as determined by the Principal's Representative, will be added to or deducted from the Contract Price (as applicable).

6.10 Confidentiality

- (a) The Contractor must, within 5 Business Days of being requested by the Principal to do so, deliver to the Principal a duly executed Confidentiality Undertaking. The execution of the Confidentiality Undertaking will not limit the Contractor's obligations under this clause 6.10.
- (b) The Contractor must, and must ensure its Personnel, keep confidential and not make, or cause to be made, any public announcement, public comment, press release or other disclosure directly or indirectly in connection with the Services or the Contract to any person other than:
- (i) as necessary to perform the Services;
 - (ii) with respect to any matter already within the public domain; or
 - (iii) to comply with any applicable Law or any requirement of any regulatory body (including any relevant stock exchange).
- (c) Without limiting clause 17.16, the Contractor acknowledges that the Principal may disclose the Contract (and information concerning the terms of the Contract) under or in accordance with any one or more of the following:
- (i) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and
 - (ii) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability,
- and the Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under this paragraph (c).
- (d) If the Principal is required to include a copy of the Contract in the government contracts register pursuant to the GIPA Act:
- (i) the Principal will not disclose Schedule 2 (except for the Contract Price) but may disclose the remainder of the Contract;
 - (ii) if the Contractor considers that the Principal should not disclose any other provisions of the Contract on the basis that their disclosure would fall within section 32(1) of the GIPA Act, the Contractor must within 10 Business Days of the Award Date give the Principal written notice of:

- A. any provisions of the Contract it believes should not be disclosed for the reasons set out in section 32(1) of the GIPA Act; and
 - B. details of:
 - 1) the reasons why the provisions should not been disclosed;
 - 2) whether the provisions can be disclosed at a later date and, if so, when it is likely that they can be disclosed; and
 - 3) a general description of the types of provisions that the Contractor proposes should not be disclosed; and
- (iii) in complying with its disclosure obligations under the GIPA Act, the Principal will consider, but will not be bound by, any proposal made by the Contractor under paragraph (d)(ii).

6.11 Media

The Contractor must not disclose any information concerning the Contract for distribution through any communications media without the Principal's prior written approval. The Contractor must refer to the Principal any enquiries from any media concerning the Contract.

6.12 Contractor to retain records

The Contractor must, for a period of seven years after completion of the Services, keep true and accurate accounts and records of:

- (a) all Services performed under the Contract; and
- (b) all associated accounts and records including all supporting materials used to generate and substantiate invoices submitted in respect of the Services.

6.13 Auditing and probity

The Contractor acknowledges and agrees that:

- (a) the Principal's Representative (or any other person nominated by the Principal's Representative) may carry out regular audits on the Contractor's compliance with its obligations under the Contract; and
- (b) the Contractor must provide reasonable access to any premise where the Services are being undertaken to enable the Principal or its nominees to carry out any such audit and must co-operate with and provide all assistance requested by the Principal or its nominees when carrying out any such audit, including providing access to all relevant facilities, documentation, records and Personnel (including those of Subcontractors).

6.14 Survive termination

Clauses 6.3 to 6.7, and 6.10 to 6.13, and the licences granted to the Principal under them, will survive any termination of the Contract.

7. Site and information

7.1 Contractor to inform itself

The Contractor warrants that it has, and it will be deemed to have, done everything that would be expected of a prudent, competent and experienced contractor in:

- (a) assessing the risks which it is assuming under the Contract; and
- (b) ensuring that the Contract Price contains allowances to protect it against any of these risks eventuating,

including:

- (c) visiting and inspecting the Site and its surroundings; and
- (d) making its own assessment of the risks associated with conditions at the Site and its surroundings,

and any failure by the Contractor to have done any of those things will not relieve the Contractor of its obligation to carry out and complete the Services in accordance with the Contract.

7.2 Site information

The Principal does not warrant, guarantee or make any representation about the accuracy, adequacy, suitability or completeness of any information or data made available to the Contractor as to the existing conditions at the Site and the Contractor acknowledges that such information or data does not form part of the Contract.

7.3 Site access

The Principal:

- (a) is not obliged to:
 - (i) provide the Contractor with sole access to the Site; or
 - (ii) carry out any work or provide any facilities to the Contractor (other than as stated in the Contract) which may be necessary to enable the Contractor to obtain adequate access to carry out the Services; and
- (b) may engage Other Contractors to work upon or in the vicinity of the Site at the same time as the Contractor.

7.4 Contractor's obligation to provide access

In carrying out the Services, the Contractor must:

- (a) minimise disruption or inconvenience to:
 - (i) the Principal, occupiers, tenants and potential tenants of the Site in their occupation or use of, or attendance upon, any part of the Site; and
 - (ii) others having a right of access to the Site; and
- (b) at all reasonable times give the Principal's Representative, the Principal and any person authorised by either the Principal's Representative or the Principal access to the Services, the Site or any areas off-Site where the Services are being carried out.

7.5 Work health and safety

- (a) As a condition precedent to the Principal's obligation under the Contract to provide the Contractor with access to, or possession of the Site, the Contractor must prepare and submit a WHS Management Plan to the Principal's Representative for approval (such approval not to be unreasonably withheld).
- (b) No comment upon nor any review, acceptance or approval of the WHS Management Plan by the Principal's Representative will affect any warranty or guarantee given by the Contractor or relieve the Contractor of any of its liabilities or obligations under the Contract.
- (c) Without limiting its obligations, the Contractor must:
 - (i) comply, and must ensure that its Subcontractors and any other person engaged by the Contractor for the purposes of the Contract comply, with the WHS Legislation (including its obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter);
 - (ii) if requested by the Principal's Representative or required by WHS Legislation, demonstrate compliance with the WHS Legislation, including providing evidence of any Approvals, prescribed qualifications or experience, or any other information relevant to work health and safety matters;
 - (iii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Services;
 - (iv) insofar as the Contractor, in carrying out the Services is under any duty imposed by the WHS Legislation, do everything necessary to comply with any such duty; and
 - (v) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation.
- (d) Without limiting any other part of this clause 7.5 or the Contract, the Contractor must comply with the WHS Requirements.
- (e) To the extent not prohibited by Law, the Contractor indemnifies the Principal against any Claims against, or loss suffered or incurred by, the Principal arising out of or in connection with the failure of the Contractor to discharge the duties imposed under the WHS Legislation or otherwise comply with this clause 7.5.

7.6 Occupiers

The Contractor must:

- (c) perform the Services in such a manner as to interfere to the least extent possible with the access to, and occupation of, the Site by the Occupiers;
- (d) take all steps to ensure the quiet enjoyment of the Occupiers in the course of executing the Services;
- (e) comply with the procedures, policies and rules required from time to time by the Principal in connection with the Site;
- (f) keep the Site and its surrounds clean and tidy at all times;

- (g) keep the Principal's Representative informed as frequently as possible and at least on a daily basis of the operations of the Contractor which may interfere with access to, or occupation or use of, any part of the Site by Occupiers;
- (h) consult and co-operate with the Principal and the Occupiers and attend meetings as required by the Principal in relation to the interface between the Occupiers' access to, and occupation and use of, any part of the Site and the performance of the Services; and
- (i) ensure that existing utility services at the Site are not disrupted without the prior written consent of the Principal, which consent may be:
 - (i) withheld; or
 - (ii) conditional upon the Principal approving a written submission by the Contractor detailing any information reasonably required by the Principal concerning the proposed interruption to the existing utility services,
 and provide all temporary utility services and accommodation required by the Principal at locations approved by the Principal.

7.7 Non-reliance

The Contractor:

- (a) warrants that it did not in any way rely upon:
 - (i) any information, data, representation, statement or document made by or provided to the Contractor by the Principal, the Principal's Representative or anyone else on behalf of the Principal; or
 - (ii) the accuracy, adequacy, suitability or completeness of any such information, data, representation, statement or document,
 for the purposes of entering into the Contract, except to the extent that any such information, data, representation, statement or document forms part of the Contract;
- (b) warrants that it enters into the Contract based on its own investigations, interpretations, deductions, information and determinations; and
- (c) acknowledges that it is aware that the Principal has entered into the Contract relying upon the warranties in paragraphs (a) and (b).

8. Provision of Services

8.1 All work included

The Contractor warrants that it has, and it will be deemed to have, allowed for the provision of all equipment, materials and other work necessary for the Services, whether or not expressly mentioned in the Statement of Work.

Any such equipment, materials and other work:

- (a) must be undertaken and provided by the Contractor; and
- (b) forms part of the Services and will not entitle the Contractor to make a Claim except as otherwise provided for in the Contract.

8.2 Compliance with Law

The Contractor must in carrying out the Services:

- (a) comply with all applicable Law;
- (b) without limiting paragraph (a) or clause 8.7, comply with the Environmental Requirements;
- (c) obtain all Approvals except for those specified in the Key Details which were either obtained prior to the Award Date or will be obtained after the Award Date by the Principal; and
- (d) comply with, carry out and fulfil the conditions and requirements of all Approvals (whether obtained by the Contractor or specified in the Key Details) including those conditions and requirements which the Principal is required under the terms of the Approvals specified in the Key Details to comply with, carry out and fulfil.

8.3 Change in Law

If there is a Change in Law after the Award Date and:

- (a) the Change in Law could not reasonably have been anticipated at the Award Date; and
- (b) compliance with the Change in Law by the Contractor:
 - (i) has a direct adverse effect on the Contractor in providing the Services; and
 - (ii) directly results in an increase in the Contractor's costs of providing the Services,

then the additional costs necessarily and reasonably incurred by the Contractor in complying with the Change in Law, as determined by the Principal's Representative, will be added to the Contract Price.

8.4 Subcontracting

The Contractor:

- (a) must not subcontract the whole of the Services;
- (b) must not subcontract any work without the prior written approval of the Principal's Representative, other than to the Subcontractors specified in the Key Details;
- (c) will be fully responsible for the Services despite subcontracting the carrying out of any part of the Services; and
- (d) will be vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees and agents of its Subcontractors) relating to, or in any way connected with, the Services.

8.5 Cooperation with Other Contractors

The Contractor must:

- (a) permit Other Contractors to carry out their work;
- (b) fully co-operate with Other Contractors;

- (c) carefully co-ordinate and interface the Services with the work carried out or to be carried out by Other Contractors; and
- (d) carry out the Services so as to avoid interfering with, disrupting or delaying the work of Other Contractors.

8.6 Cleaning up

In carrying out the Services, the Contractor must keep the Site clean and tidy and free of refuse.

8.7 The environment

- (a) The Contractor must at all times when providing Services comply with this clause 8.7 and the Environmental Requirements.
- (b) This clause 8.7 and the Environmental Requirements:
 - (i) are in addition to, but are not in substitution for, any other requirements of Law or other terms of this Contract; and
 - (ii) are not to be taken to limit the powers of the Principal, nor the Contractor's obligations and responsibilities under this Contract.
- (c) The Contractor must, at all times, exercise any necessary and reasonable precautions appropriate to the nature of the Services to be provided to protect the environment at the Site, or in the vicinity of the Site.
- (d) The Contractor must comply, where directed by the Principal, with any reasonable requests made by the Principal's Representative to stop work or to take urgent remedial measures where actual or potential risk of harm to the environment has been identified as a result of the Contractor's actions.
- (e) The Contractor must provide equipment, materials, training, personnel and other resources (including supervision) necessary to meet the environmental management requirements of this Contract and to ensure environmental compliance.
- (f) The Contractor must comply with all applicable environmental Laws and codes of practice in performing the Services.
- (g) The Contractor must procure all applicable certificates, licences, consents, permits, approvals and any other requirements of organisations having jurisdiction in connection with the supply of the Services, prior to the performance of the Services.
- (h) If at any time the Contractor has not carried out any part of its obligations under this clause 8.7 or the Environmental Requirements then notwithstanding any other provision of the Contract, the Principal will not be obligated to make payments to the Contractor until such obligations are met.

8.8 Principal may act

The Principal may, either itself or by a third party, carry out an obligation under the Contract which the Contractor was obliged to carry out but which it failed to carry out within the time required in accordance with the Contract.

The costs, expenses and damages suffered or incurred by the Principal in so carrying out such an obligation will be a debt due from the Contractor to the Principal.

8.9 Policies, Codes and Standards

- (a) The Contractor must ensure that the Contractor and its Personnel are aware of, and comply with the Policies, Codes and Standards.
- (b) For the purposes of clause 8.9(a), any reference to "NSW government sector employees" or "Macquarie University employees" in the Policies, Codes and Standards is to be read as a reference to the Contractor's employees.

8.10 Modern Slavery Act 2018

- (a) **(Acknowledgement):** The Contractor acknowledges that modern slavery practices are violations of human rights and are serious breaches of the Law.
- (b) **(Reasonable steps):** The Contractor commits to supporting ethical supplier practices throughout its supply chain, including by taking reasonable steps to ensure that there are no human rights abuses, trafficking, slavery or slavery-like practices in its supply chain or in any part of the Contractor's business.
- (c) **(Warranties):** The Contractor warrants that neither:
 - (i) the Contractor; nor
 - (ii) to the best of the Contractor's knowledge and belief (other than as disclosed in writing to the Principal) any of the Contractor's officers, employees or other associates or Subcontractors (of any tier),

have been charged or convicted of any offence, or have been or are the subject of any investigation or trial, involving human rights abuses, trafficking, slavery or slavery like practices and that this warranty is continuing and will be accurate in all respects until completion of the Maintenance Services.
- (d) **(notification):** The Contractor must:
 - (i) without limiting clause 8.2, provide all documents reasonably required for the Principal to comply with its reporting obligations, if any, under:
 - A. the Modern Slavery Act 2018 (NSW); and
 - B. the Modern Slavery Act 2018 (Cth); and
 - (ii) notify the Principal as soon as it becomes aware of any actual or suspected human rights abuses, trafficking, slavery or slavery-like practices in its supply chain which has a connection with the Maintenance Services or the Contractor's Activities.

9. Quality

9.1 Quality

The Contractor must, in carrying out the Services:

- (a) use workmanship:
 - (i) of the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Services; and
 - (ii) which is fit for its purpose;
- (b) use materials:

- (i) which are new and comply with the requirements of the Contract, and to the extent not fully described in the Contract, which are consistent with the best industry standards for work of a nature similar to the Services; and
- (ii) of merchantable quality, which are fit for their purpose and consistent with the nature and character of the Services;
- (c) use care, skill, judgment and diligence to the standard prescribed in the Contract, and to the extent it is not so prescribed, of a standard consistent with the best industry standards for work of a nature similar to the Services;
- (d) carry out the Services in a manner that is safe to both people and the environment, in accordance with Law and best industry standards for work of a nature similar to the Services;
- (e) minimise any disruption, interference or inconvenience to the Principal or its Personnel, including the Principal's operations, or any Other Contractors;
- (f) ensure that the Contractor's Personnel engaged in carrying out the Services are suitably qualified and competent; and
- (g) comply with the requirements of the Contract.

9.2 Quality assurance

The Contractor:

- (a) must implement a quality assurance system representing best industry standards;
- (b) must allow the Principal's Representative access to the quality system of the Contractor and its Subcontractors so as to enable monitoring and quality auditing; and
- (c) will not be relieved from compliance with any of its Contract obligations or from any of its liabilities whether under the Contract or otherwise by Law as a result of:
 - (i) the implementation of, and compliance with, the quality assurance requirements of the Contract;
 - (ii) any Direction by the Principal's Representative concerning the Contractor's quality assurance system or its compliance or non-compliance with that system; or
 - (iii) any audit or other monitoring by the Principal's Representative, or anyone else acting on behalf of the Principal, of the Contractor's compliance with the quality assurance system.

9.3 Right to inspect

The Principal's Representative may at any time inspect the Services.

The Contractor acknowledges that:

- (a) the Principal's Representative owes no duty to the Contractor to:
 - (i) inspect the Services; or
 - (ii) review manufacture and production for errors, omissions or compliance with the requirements of the Contract if it does so inspect; and

- (b) no inspection of the Services or review of manufacture and production by the Principal's Representative will in any way lessen or otherwise affect:
- (i) the Contractor's obligations whether under the Contract or otherwise by Law; or
 - (ii) the Principal's rights against the Contractor whether under the Contract or otherwise by Law.

10. Time

10.1 Progress and Time

The Contractor must regularly and diligently progress the Services with due expedition and without delay.

10.2 Programming

The Contractor must:

- (a) within 10 Business Days of the Award Date, submit to the Principal's Representative, a program of the Services which must contain the details required by the Contract or which the Principal's Representative otherwise reasonably directs;
- (b) update the program periodically at least at intervals of no less once per month (unless otherwise required by the Principal's Representative) to take account of changes to the program; and
- (c) give the Principal's Representative copies of all programs for its approval.

10.3 Contractor not relieved

Any review of, comments upon or approval of, or any failure to review or comment upon, a program by the Principal's Representative will not:

- (a) relieve the Contractor from or alter its liabilities or obligations under the Contract, especially (without limitation) the obligation to perform the Services within any time required by the Contract; or
- (b) affect the time for the carrying out of the Principal's or Principal's Representative's Contract obligations.

10.4 Force Majeure

- (a) If a party is or will be prevented from performing any of its obligations under the Contract by a Force Majeure Event, then it must give notice to the other party of the event or circumstances constituting the Force Majeure Event and of the obligations the performance of which are or will be prevented. The notice must be given within 10 Business Days after the party became aware of the relevant event or circumstance constituting the Force Majeure Event.
- (b) Subject to this clause, the party having given notice, will be excused from performance of such obligations to the extent that and for so long as such Force Majeure Event prevents it from performing them.
- (c) A party must give notice to the other party when it ceases to be affected by a Force Majeure Event. From the point at which it ceases to be affected, that party must continue to perform this Contract on the terms existing immediately prior to the commencement of the Force Majeure Event.

10.5 Suspension

The Principal's Representative may instruct the Contractor to suspend and, after a suspension has been instructed, to re-commence, the carrying out of all or a part of the Services.

If a suspension under this clause 10.5 arises as a result of:

- (a) the Contractor's failure to carry out its obligations in accordance with the Contract, the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension; or
- (b) a cause other than the Contractor's failure to carry out its obligations in accordance with the Contract:
 - (i) an instruction to suspend under this clause 10.5 will entitle the Contractor to be paid by the Principal the reasonable extra costs (not including any profit, loss of profit or offsite overheads) necessarily incurred by the Contractor as a result of the suspension as determined by the Principal's Representative;
 - (ii) the Contractor must take all steps possible to mitigate the extra costs incurred by it as a result of the suspension; and
 - (iii) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, the suspension other than under this paragraph (b).

11. Variations

11.1 Variation price request

At any time prior to the later of the expiry of the Term, the Principal's Representative may issue a document titled "Variation Price Request" to the Contractor which will set out details of a proposed Variation which the Principal is considering.

Within 10 Business Days of the receipt of a "Variation Price Request" the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:

- (a) the adjustment (if any) to the Contract Price to carry out the proposed Variation; and
- (b) the effect (if any) which the proposed Variation will have on the then approved program.

11.2 Variation order

Whether or not the Principal's Representative has issued a "Variation Price Request" under clause 11.1, the Principal's Representative may at any time prior to the expiration of the Term, instruct the Contractor to carry out a Variation by issuing a written document to the Contractor titled "Variation Order" in which the Principal's Representative will state one of the following:

- (a) the proposed adjustment to the Contract Price as set out in the Contractor's notice under clause 11.1 (if any) is agreed and the Contract Price will be adjusted accordingly; or
- (b) any adjustment to the Contract Price will be determined under clauses 11.3(b) and 11.3(c).

No Variation will invalidate the Contract irrespective of the nature, extent or value of the services the subject of the Variation.

11.3 Adjustment for Variation

Subject to clause 16.1, the Contract Price will be adjusted for all Variations which have been the subject of a Direction by the Principal's Representative by:

- (a) where clause 11.2(a) applies, the agreed amount; or
- (b) an amount determined by the Principal's Representative using any rates or prices which appear in the Key Details to the extent they are applicable to, or it is reasonable to use them for valuing the Variation, to which will be added the following percentage or percentages of the amount determined:
 - (i) where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for overheads and profit; or
 - (ii) where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit; or
- (c) to the extent paragraph (b) does not apply, a reasonable amount:
 - (i) to be agreed between the parties; or
 - (ii) failing agreement, determined by the Principal's Representative, to which will be added the following percentage or percentages of the amount determined:
 - (iii) where the adjustment to the Contract Price is to be an increase, those percentages specified in the Key Details for overheads and profit; or
 - (iv) where the adjustment to the Contract Price is to be a decrease, the percentage specified in the Key Details for overheads and profit.

11.4 Omissions and deletions

If a Variation the subject of a Direction by the Principal's Representative omits or deletes any part of the Services, the Principal may thereafter either perform this work itself or employ or engage Other Contractors to perform the omitted or deleted work.

11.5 Variations requested by Contractor

The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details:

- (a) a description of the Variation;
- (b) the additional or reduced costs or time involved in the Variation and any proposal for sharing any savings in costs with the Principal including the amount; and
- (c) any benefits which will flow to the Principal from the Variation.

11.6 Principal's Representative's determination

After a request is made by the Contractor in accordance with clause 11.5, the Principal's Representative will, in its absolute discretion, give a written notice to the Contractor:

- (a) rejecting the request; or
- (b) approving the request either conditionally or unconditionally.

The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

11.7 Variation approved by Principal's Representative

If the Principal's Representative issues a written notice under clause 11.6 approving the Contractor's request under clause 11.5:

- (a) unless otherwise agreed, the Contractor will not be entitled to make a Claim against the Principal arising out of, or in any way in connection with, the Variation;
- (b) if the Contractor's request offered to share savings in cost with the Principal, the Contract Price will be reduced by the amount offered by the Contractor in its request; and
- (c) the Contractor will be responsible for all parts of the Services which are in any way affected by the Variation.

12. Payment

12.1 Payment obligation

Subject to clause 12.8 and to any other right to set-off which the Principal may have, the Principal must pay the Contractor:

- (a) the Contract Price; and
- (b) any other amounts which are payable by the Principal to the Contractor under the Contract.

12.2 Payment Claims

The Contractor must give the Principal's Representative claims for payment on account of the Contract Price and any other amounts payable by the Principal to the Contractor under the Contract:

- (a) subject to clause 12.4:
 - (i) on the 25th day of each month after the Award Date or where that day is not a Business Day, the next Business Day; and
 - (ii) at the time required by clause 12.7;
- (b) in such form which the Principal's Representative reasonably requires;
- (c) which must be accompanied by a signed subcontractor's statement in the form set out in Schedule 8 which must not be dated before the date of the relevant payment claim; and
- (d) which are based on the Schedule of Prices to the extent such prices are relevant.

The Contractor cannot include in any payment claim under this clause 12.2, a Claim which is barred by clause 16.5.

The Contractor agrees with the Principal that a payment claim submitted to the Principal's Representative under this clause 12.2 is received by the Principal's Representative as agent for the Principal.

12.3 Payment statements

The Principal's Representative must within 10 Business Days of receiving a payment claim under clauses 12.2 or 12.7 give the Contractor, on behalf of the Principal, a payment statement which states:

- (a) the value of the work completed in accordance with the Contract;
- (b) the amount already paid to the Contractor;
- (c) the amount the Principal is entitled to retain, deduct, withhold or set-off under the Contract;
- (d) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Price and otherwise under the Contract and which the Principal proposes to pay to the Contractor; and
- (e) if the amount in paragraph (d) is less than the amount claimed in the payment claim:
 - (i) the reason why the amount in paragraph (d) is less than the amount claimed in the payment claim; and
 - (ii) if the reason for the difference is that the Principal has retained, deducted, withheld or set off payment for any reason, the reason for the retention, deduction, withholding or setting off payment.

The issue of a payment statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Services covered by the payment statement has been satisfactorily carried out in accordance with the Contract.

Failure by the Principal's Representative to set out in a payment statement an amount which the Principal is entitled to retain, deduct, withhold or set off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set off any amount under the Contract.

If the Principal has notified the Contractor in accordance with clause 12.11(f)(iv) that it no longer proposes to issue a recipient created tax invoice for a taxable supply made by the Contractor for the Principal, the Contractor must within 2 Business Days after receipt of the payment statement issued by the Principal's Representative, provide to the Principal a valid tax invoice from the Contractor for the amount set out as payable in the payment statement.

12.4 Conditions precedent to payment

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.7, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) any Unconditional Undertakings and parent company guarantee required under clause 4;
- (b) evidence of any insurance taken out by the Contractor which is required under clause 5.3;
- (c) a duly executed Confidentiality Undertaking as required by clause 6.10(a); and
- (d) documents showing compliance by the Contractor with clause 12.9.

12.5 Payment

- (a) Subject to clause 12.8, the Principal must pay the Contractor the amount set out as payable in the payment statement within 30 days of the last to occur of:
- (i) the issue by the Principal's Representative of the payment statement under clause 12.3; and
 - (ii) the receipt by the Principal's Representative of the documents referred to in clause 12.4.
- (b) If a payment statement issued under clause 12.3 shows an amount owing by the Contractor to the Principal, the Contractor must pay the Principal that amount within 5 Business Days of receipt by the Contractor of the payment statement.
- (c) Upon the Principal paying to the Contractor the amount payable pursuant to a payment statement, all plant, equipment, materials or other goods for which an amount is included in the payment statement will become the property of the Principal free of any security interest regardless of whether or not the plant, equipment, materials or other goods have been delivered to the Principal.
- (d) The Contractor acknowledges that pursuant to the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW):
- (i) the subcontractor's statement required by clause 12.9 is required to be provided to the Principal; and
 - (ii) the Principal may withhold any payment due to the Contractor under this Contract until the Contractor gives a subcontractor's statement in the form of Schedule 8.

Any penalty for late payment under the Contract does not apply to any payment withheld under clause 12.5(d)(ii).

12.6 Payment on account

Any payment statement or payment of moneys is not:

- (a) evidence of the value of work or that work has been satisfactorily carried out in accordance with the Contract;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with the Contract.

Payment is only to be taken as payment on account.

12.7 Final payment claim and notice

Within 20 Business Days after the expiry of the Term, the Contractor must give the Principal's Representative:

- (a) a payment claim which must include all amounts which the Contractor claims from the Principal on account of the Contract Price or otherwise under the Contract; and
- (b) notice of any other amounts which the Contractor claims from the Principal,

in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services or the Contract which occurred prior to the expiry of the Term.

The payment claim and notice required under this clause 12.7 are in addition to the other notices which the Contractor must give to the Principal's Representative under the Contract in order to preserve its entitlements to make any such Claims.

Without limiting the previous paragraph, the Contractor cannot include in this payment claim or notice any Claims which are barred by clause 16.5.

After the date for submitting the payment claim and notice under this clause 12.7 has passed, the Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Services or the Contract which occurred prior to the expiry of the Term except for any Claim included in a payment claim or notice under this clause 12.7 which is given to the Principal's Representative within the time required by, and in accordance with the terms of, clause 12.7.

12.8 Right of set off

The Principal may deduct from any moneys otherwise due to the Contractor and from any security held by the Principal:

- (a) any debt or other moneys due from the Contractor to the Principal; or
- (b) any Claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under or in connection with the Contract or relating to the Services.

The rights given to the Principal under this clause 12.8 are in addition to and do not limit or affect any other rights of the Principal under the Contract or at Law and nothing in the clause affects the right of the Principal to recover from the Contractor the whole of the debt or Claim in question or any balance that remains owing.

Failure by the Principal to deduct from an amount otherwise due to the Contractor any amount which the Principal is entitled to deduct under this clause 12.8, will not prejudice the Principal's right to subsequently exercise its right of deduction under this clause.

Clause 12.8 will survive any termination of the Contract.

12.9 Payment of workers, payroll tax and workers compensation

The Contractor is not entitled to give the Principal a payment claim under clause 12.2 or 12.7, and the Principal is not obliged to make any payment under clause 12.5, unless the Contractor has provided the Principal's Representative with:

- (a) a subcontractor statement in the form of Schedule 8, together with any supporting evidence which may be reasonably required by the Principal's Representative, duly signed by the Contractor or, where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts declared; and
- (b) copies of all relevant certificates of currency in respect of Workers Compensation Insurance which the Contractor has in place in connection with the Services.

12.10 Interest

The Principal will pay simple interest at the 90 day bank bill rate on any amount which has been set out as payable by the Principal's Representative in a payment statement under clause 12.3, but which is not paid by the Principal within the time required by the Contract.

This will be the Contractor's sole entitlement to interest including damages for loss of use of, or the cost of borrowing money.

12.11 GST

- (a) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in the Contract are exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with the Contract, including the Services, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 12.11(b) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (d) If any party is required under the Contract to reimburse or pay to the other party an amount (other than any payment on account of the Contract Price) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of the Contract, where the Recipient is the Supplier, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 12.11 or otherwise) in respect of a taxable supply made by the Principal unless and until the Principal issues to the Contractor, a tax invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) The parties agree that, unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Contractor to the Principal under or in connection with the Contract:
 - (i) the Principal will issue to the Contractor a recipient created tax invoice (**RCTI**) for each taxable supply made by the Contractor to the Principal under the Contract;
 - (ii) the Principal will issue to the Contractor an adjustment note for any adjustment event;
 - (iii) the Contractor will not issue a tax invoice in respect of any taxable supply it makes to the Principal; and
 - (iv) the Principal may notify the Contractor that it will no longer issue a RCTI for each taxable supply made by the Contractor under the Contract, in which case, from that point in time, the Principal will not be required to issue RCTIs in respect of such supplies and the Contractor will be required to issue tax invoices to the Principal (including under clause 12.3) as a condition precedent to the Principal being obliged to pay any amount in respect of GST to the Contractor in respect any such taxable supply.

Each party acknowledges and warrants that at the time of entering into the Contract it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

- (g) If the GST payable in relation to a supply made by the Supplier under the Contract varies from the additional amount paid by the other party under this clause 12.11 in respect of 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 other party (as appropriate).

- (h) In this clause 12.11:
- (i) terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

13. Anti-Corruption obligations

13.1 Contractor's obligations

The Contractor must always comply with all Applicable Corruption Law and not offer, promise or give (either directly or indirectly) any financial or other Advantage:

- (a) to any person with the intention of inducing that person to breach a position of trust or duty of good faith or impartiality; or
- (b) to any Public Official intending to influence that official; with the aim that either party should benefit as a result.

13.2 Contractor's warranties

- (a) The Contractor warrants to the Principal that:
 - (i) it has not been found by the ICAC to have engaged in Corrupt Conduct;
 - (ii) it has read and will comply with the Principal's "Gifts and Benefits Policy and Procedure" and
 - (iii) in performing its obligations under this Contract it will not employ or continue to employ an employee or Subcontractor found by the ICAC to have engaged in Corrupt Conduct, or who has breached the Principal's "Gifts and Benefits Policy and Procedure".
- (b) The Contractor must ensure that:
 - (i) it does not employ, or continue to employ, any employee or Subcontractor; and
 - (ii) no Subcontractor employs, or continues to employ, any person, in relation to the performance of this Contract, who has been found to have engaged in, or in the case of a company any officer of which has been found to have engaged in, Corrupt Conduct by the ICAC or who has breached the Principal's "Gifts and Benefits Policy and Procedure".
- (c) The Principal may direct the Contractor to terminate any subcontract if any officer of the Subcontractor has been found to have engaged in Corrupt Conduct by the ICAC.

13.3 Records

The Contractor must keep accurate and complete records of all transactions related to this Contract and will promptly report any breach or potential breach of clause 13 to the Principal. The Contractor must cooperate fully with the Principal in relation to any investigation that the Principal wishes to conduct into any breach or potential breach of clause 13, whether or not it has been reported.

14. Termination

14.1 Preservation of rights

Subject to clause 14.6, nothing in this clause 14 or that a party does or fails to do pursuant to this clause 14 will prejudice the right of that party to exercise any right or remedy (including recovering damages) which it may have where the other party breaches (including repudiates) the Contract.

14.2 Contractor default

The Principal may give a written notice under clause 14.3 to the Contractor, if the Contractor:

- (a) does not commence the Services in accordance with the requirements of the Contract;
- (b) suspends the Services in breach of clause 10.5 or otherwise does not regularly and diligently progress the Services with due expedition and without delay;
- (c) fails to provide security as required by clauses 4.1 or 4.3 or a parent company guarantee as required by clause 4.5;
- (d) fails to effect, have in place or otherwise maintain or provide evidence of, insurance as required by clause 5.3;
- (e) fails to use the materials or standards of workmanship required by the Contract;
- (f) does not comply with any Direction of the Principal's Representative made in accordance with the Contract;
- (g) abandons the Services or otherwise plainly demonstrates the intention not to continue performance of its obligations under the Contract;
- (h) is in substantial breach of any applicable Law;
- (i) fails to comply with a KPI action plan required by the Principal under this Contract;
- (j) fails to comply with clause 13; or
- (k) is otherwise in substantial breach of the Contract.

14.3 Contents of notice of default

A notice under this clause 14.3 must state:

- (a) that it is a notice under clause 14.3;
- (b) the breach relied upon; and
- (c) that the Principal requires the Contractor to remedy the breach within 15 Business Days of receiving the notice.

14.4 Termination for insolvency or breach

If:

- (a) an Insolvency Event occurs to the Contractor, or where the Contractor comprises 2 or more persons, to any one of those persons; or

- (b) the Contractor does not remedy a breach of Contract the subject of a notice under clause 14.3 within 15 Business Days of receiving the notice under clause 14.3,

then the Principal may by written notice to the Contractor terminate the Contract.

14.5 Principal's entitlements after termination

Subject to clause 14.1, if:

- (a) the Principal terminates the Contract under clause 14.4; or
- (b) the Contractor repudiates the Contract and the Principal otherwise terminates the Contract,

then:

- (c) the Principal will:
- (i) not be obliged to make any further payments to the Contractor, including any money the subject of a payment claim under clause 12.2 or 12.7 or a payment statement under clause 12.3; and
- (ii) be entitled to recover from the Contractor any costs, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, such termination or rejection; and
- (d) the Contractor must immediately:
- (i) except where clause 14.5(b) applies, deliver all items in which ownership has passed to the Principal under the Contract; and
- (ii) hand over to the Principal all copies of:
- A. documents provided by the Principal under clause 6.1; and
- B. any Deliverables prepared by the Contractor to the date of termination (whether complete or not).

14.6 Contractor's entitlements after termination

If the Principal repudiates the Contract and the Contractor otherwise terminates the Contract, the Contractor will:

- (a) be entitled to claim damages; and
- (b) not be entitled to a quantum meruit.

This clause 14.6 will survive any termination of the Contract.

14.7 Termination for convenience

Without prejudice to any of the Principal's other rights, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate the Contract effective from the time stated in the Principal's notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at its absolute discretion, complete the uncompleted part of the Services either itself or by engaging Other Contractors.

14.8 Costs

If the Principal terminates the Contract under clause 14.7, the Contractor:

- (a) will be entitled to payment of the following amounts as determined by the Principal's Representative:
- (i) for work carried out prior to the date of termination the amount which would have been payable if the Contract had not been terminated and the Contractor submitted a payment claim for the Contract value of work carried out prior to the date of termination, provided that ownership of all goods and materials included in the value of work will vest in the Principal, free of any security interest, upon payment;
 - (ii) the cost of goods or materials reasonably ordered by the Contractor for the Services for which the Contractor is legally bound to pay provided that:
 - A. the value of the goods or materials is not included in any previous payment by the Principal or the amount payable under sub-paragraph (i); and
 - B. ownership in the goods and materials will vest in the Principal, free of any security interest, upon payment; and
 - (iii) the reasonable direct costs incurred by the Contractor (excluding profit but including an amount for overheads) as a direct result of the termination,

but in no case will the total amount payable to the Contractor under the Contract (including under this clause 14.8) be more than the Contract Price; and

(b) must:

- (i) take all steps possible to mitigate the costs referred to in clause 14.8(a); and
- (i) immediately:
 - A. deliver all items in which ownership has passed to the Principal under the Contract; and
 - B. hand over to the Principal all copies of:
 - 1) documents provided by the Principal under clause 6.1; and
 - 2) Deliverables prepared by the Contractor to the date of termination (whether complete or not).

The amount to which the Contractor is entitled under this clause 14.8 will be a limitation upon the Principal's liability to the Contractor arising out of, or in any way in connection with, the termination of the Contract and the Contractor may not make any Claim against the Principal arising out of, or in any way in connection with, the termination of the Contract other than for the amount payable under this clause 14.8.

This clause 14.8 will survive the termination of the Contract by the Principal under clause 14.7.

15. Disputes

15.1 Notice of dispute

If a dispute or difference arises between the Contractor and the Principal or between the Contractor and the Principal's Representative in respect of any fact, matter or thing arising out of, or in any way in connection with, the the Services or the Contract, or either party's conduct before the Contract, the dispute or difference must be determined in accordance with the procedure in this clause 15.

Where such a dispute or difference arises, either party may give a notice in writing (**Notice of Dispute**) to the Principal's Representative and the other party specifying:

- (a) the dispute or difference;
- (b) particulars of the party's reasons for being dissatisfied; and
- (c) the position which the party believes is correct.

15.2 Negotiation

The Principal's Representative and the Contractor's Representative (or their nominees) must, within 5 Business Days of a notice being given under clause 15.1, meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference.

15.3 Executive negotiation

Whether or not negotiations have taken place under clause 15.2, if dispute or difference is not resolved within 10 Business Days after a notice is given under clause 15.1, it must be referred to senior executives of each party (as nominated by each party) who must:

- (a) meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference; and
- (b) if they cannot resolve the dispute or difference, endeavour to agree upon a procedure to resolve the dispute or difference.

15.4 Expert determination

Whether or not negotiations have taken place under clause 15.3, if the senior executives of each party have not resolved, or agreed upon a procedure to resolve the dispute or difference within 25 Business Days after a notice is given under clause 15.1, either party may submit the dispute or difference to an expert determination.

15.5 The expert

The expert determination under clause 15.4 is to be conducted by an independent industry expert appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).

15.6 Not arbitration

An expert determination conducted under this clause 15 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

15.7 Procedure for determination

The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

15.8 Disclosure of interest

The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one party to the determination without the knowledge of the other.

15.9 Costs

Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay one-half of the expert's costs.

15.10 Conclusion of expert determination

Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision upon an expert determination conducted under this clause 15 within 20 Business Days from the acceptance by the expert of his or her appointment.

15.11 Agreement with expert

The expert will not be liable to the parties arising out of, or in any way in connection with, the expert determination process, except in the case of fraud.

The parties must enter into an agreement with the appointed expert on the terms set out in Schedule 9 or such other terms as the parties and the expert may agree.

15.12 Determination of expert

The determination of the expert:

- (a) must be in writing;
- (b) will be:
 - (i) substituted for the relevant Direction of the Principal's Representative (if applicable); and
 - (ii) final and binding,

unless a party gives notice of appeal to the other party within 15 Business Days of the determination; and

- (c) is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

15.13 Arbitration

- (a) If:
- (i) the expert fails to notify the parties of his or her decision within the time required by clause 15.10; or
 - (ii) a notice of appeal is given under clause 15.12,
- the dispute or difference will be referred to arbitration.
- (b) The arbitration will be conducted before a person to be:
- (i) agreed between the parties; or
 - (ii) failing agreement within 20 Business Days of the referral to arbitration, appointed by the Chair for the time being of the Resolution Institute (unless the parties agree otherwise).
- (c) To the extent that they are not inconsistent with the Contract, the Resolution Institute Arbitration Rules will apply to the arbitration.
- (d) The seat of the arbitration will be Sydney, Australia.
- (e) The arbitrator will have power to grant all legal, equitable and statutory remedies and to open up, review and substitute any determination of an expert under clause 15.12.
- (f) Notwithstanding anything else, to the extent permissible by Law, the arbitrator will have no power to apply or to have regard to the provisions of Part 4 of the Civil Liability Act 2002 (NSW).

15.14 Survive termination

This clause 15 will survive any termination of the Contract.

15.15 Continuation of Services

Despite the existence of a dispute or difference between the parties, the Contractor must:

- (a) continue to carry out the Services; and
- (b) otherwise comply with its obligations under the Contract.

16. Notices

16.1 Notice of Variation

If the Contractor considers that a Direction by the Principal's Representative, which is not expressed to be a "Variation Order" under clause 11.2, constitutes or involves a Variation, the Contractor must, as a condition precedent to any Claim it may have against the Principal arising out of, or in any way in connection with, the Direction:

- (a) within 5 Business Days of receiving the Direction and before commencing work on the subject matter of the Direction, give notice to the Principal's Representative that it considers the Direction constitutes or involves a Variation;

- (b) within 15 Business Days of giving the notice under paragraph (a), submit a written claim to the Principal's Representative which includes the details required by clause 16.3(b); and
- (c) continue to carry out the Services in accordance with the Contract and all Directions of the Principal's Representative, including any Direction in respect of which notice has been given under this clause 16.1.

16.2 Notice of other Claims

Except for Claims for:

- (a) a Variation instructed in a "Variation Order" under clause 11.2 or to which clause 16.1 applies; or
- (b) payment under clause 12.2 or 12.7 of the original Contract Price specified in the Key Details,

the Contractor must give the Principal's Representative the notices required by clause 16.3 as a condition precedent to any Claim it may have against the Principal arising out, of or in any way in connection with, any Direction by the Principal's Representative or any other fact, matter or thing (including a breach of the Contract by the Principal) under, arising out of, or in any way in connection with, the Contract or the Services, the Services, including anything in respect of which:

- (c) it is otherwise given an express entitlement under the Contract; or
- (d) the Contract expressly provides that:
 - (i) specified costs are to be added to the Contract Price; or
 - (ii) the Contract Price will be otherwise increased or adjusted,
 as determined by the Principal's Representative.

16.3 Prescribed notices

The notices referred to in clause 16.2 are:

- (a) a written notice within 5 Business Days of the first occurrence of the Direction or other fact, matter or thing upon which the Claim is based, expressly specifying:
 - (i) that the Contractor proposes to make a Claim; and
 - (ii) the Direction or other fact, matter or thing upon which the Claim will be based; and
- (b) a written claim within 15 Business Days of giving the written notice under paragraph (a), which must include:
 - (i) detailed particulars concerning the Direction or other fact, matter or thing upon which the Claim is based;
 - (ii) the legal basis for the Claim, whether based on a term of the Contract or otherwise, and if based on a term of the Contract, clearly identifying the specific term;
 - (iii) the facts relied upon in support of the Claim in sufficient detail to permit verification; and
 - (iv) details of the amount claimed and how it has been calculated.

16.4 Continuing events

If the Direction or fact, matter or thing upon which the Claim under clause 16.1(b) or clause 16.2 is based or the consequences of the Direction or fact, matter or thing are continuing, the Contractor must continue to give the information required by clause 16.3(b) every 20 Business Days after the written claim under clause 16.1(b) or 16.3(b) (as the case may be) was submitted or given to the Principal's Representative, until after the Direction or fact, matter or thing upon which the Claim is based has, or the consequences thereof have, ceased.

16.5 Time bar

If the Contractor fails to comply with clauses 16.1, 16.2, 16.3 or 16.4:

- (a) the Principal will not be liable (insofar as it is possible to exclude such liability) upon any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal, arising out of, or in any way in connection with, the relevant Direction or fact, matter or thing (as the case may be) to which clause 16.1 or 16.2 applies.

16.6 Other provisions unaffected

Nothing in clauses 16.1, 16.2, 16.3, 16.4 or 16.5 will limit the operation or effect of any other provision of the Contract which requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

17. Miscellaneous

17.1 Address for service

- (a) All communications (including notices, consents, approvals, requests and demands) under or in connection with the Contract:
 - (i) must be in writing;
 - (ii) must be signed by the party making the communication or (on its behalf) by any director, secretary, attorney or authorised agent of, that party;
 - (iii) subject to clause 17.1(b), must be delivered or posted by prepaid express post to the address, sent by fax to the number, or sent by email to the email address, of the Principal's Representative or the Contractor's Representative (as applicable) set out in this Contract or such other address, fax number or email address as may be notified in writing by a party to the other party; and
 - (iv) are taken to be received by the addressee:
 - A. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting;
 - B. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting;
 - C. (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time that fax is sent as shown on the transmission report produced by the machine from which that fax is sent confirming transmission of that fax in its entirety;

- D. (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 17.1(a)(iii); and
- E. (in the case of email), at the local time (in the place of receipt of that email) that would be determined if section 13A of the Electronic Transactions Act 2000 (NSW) were to apply in respect of the email,

provided that if the communication would be taken to be received on a day which is not a Business Day or after 5.00pm on a Business Day, it is taken to be received at 9.00am on the next Business Day.

- (b) If:
 - (i) the Contractor sends a notice under clause 10, 11, 12, 13, 14, 15 or 16 or concerning a claim for payment; or
 - (ii) the Principal sends a notice under clause 11.2, 14.2, 14.3, 14.4, 14.7 or 15.1,
 by email, the Contractor or the Principal (as applicable) must also deliver or post such notice to the relevant address or send it to the fax number provided in clause 17.1(a)(iii).
- (c) For the avoidance of doubt:
 - (i) no notice referred to in clause 17.1(b) will be effective until it has been delivered, posted or sent by fax in accordance with clause 17.1(b); and
 - (ii) if a notice referred to in clause 17.1(b) is issued by both email and is also either delivered by hand, posted or sent by fax, both notices must be identical, and in the event that they are not identical, neither notice will constitute a valid notice.
- (d) Where clause 17.1(b) applies, the relevant notice will be taken to have been received on the date determined in accordance with clause 17.1(a)(iv)A, 17.1(a)(iv)B, 17.1(a)(iv)C or 17.1(a)(iv)D (as the case may be).
- (e) The Contractor must ensure that any documents it provides, including by electronic means, are in the file structure and format for such documents as may be specified by the Principal from time to time. As at the Award Date, the Principal requires such documents which are submitted by email to be submitted as an attachment to an email, where the attachment is in .pdf, or where appropriate Excel, Primavera (.xer or .xml) or Microsoft Project (.mpp) format.
- (f) The Principal will not be liable to the Contractor or to any other person for any loss or damage suffered in relation to any document transmitted electronically, including any loss or damage related to or arising out of:
 - (i) the transmission of any harmful code (such as viruses) to the Contractor by electronic mail (including any document attached to electronic mail); or
 - (ii) any failure by the Principal to notify the Contractor that the Principal may have received any harmful code (such as viruses) from the Contractor in any electronic mail (including in any document attached to electronic mail).

17.2 Governing Law

The Contract is governed by and must be construed according to the Laws of the State of New South Wales.

17.3 Jurisdiction

Subject to clause 15.13, each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of the State 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 the Contract; 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 17.3(a).

17.4 Counterparts

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

17.5 Entire agreement

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

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

17.6 Amendments

This Contract may only be amended by a document signed by or on behalf of both the Principal and the Contractor.

17.7 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 the Contract 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 the Contract.
- (b) A waiver or consent given by a party under the Contract 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 the Contract operates as a waiver of any other breach of that term or of a breach of any other term of the Contract.

17.8 Assignment

The Principal may at any time, and without having to obtain the Contractor's approval, assign any right or interest of the Principal under the Contract to any Authority, any successor in title to

the Principal or any other person that assumes the functions or obligations of the Principal, or create or allow to exist, a security interest over or in respect of the Contract or any right or interest of the Principal under the Contract.

The Contractor cannot assign, novate or otherwise transfer any of its rights or obligations under the Contract without the prior written consent of the Principal.

17.9 Consents

A consent required under the Contract 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 the Contract expressly provides otherwise.

17.10 Expense

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

17.11 Severance

If at any time a provision of the Contract 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 the Contract; or
- (b) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of the Contract.

17.12 Indemnities

- (a) Each indemnity in the Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiry of the Contract.
- (b) It is not necessary for a party to incur expense or to make any payment before enforcing a right of indemnity conferred by the Contract.
- (c) A party must pay on demand any amount it must pay under an indemnity in the Contract.

17.13 English language

All communications between the parties and all documentation provided in connection with the Services (including the Deliverables) must be in the English language.

17.14 Taxes

- (a) Without limiting clause 8.2, the Contractor must pay all taxes which may be payable in respect of the Services, including any customs duty and primage applicable to imported plant, equipment and materials required for the Services.
- (b) If the Principal is required in its opinion to withhold any amount in respect of tax from a payment to be made to the Contractor under the Contract, it is entitled to do so and such withholding and payment to the relevant taxing authority will be a good discharge of its obligation to pay the relevant amount to the Contractor.
- (c) If the Principal pays an amount to the Contractor without withholding an amount in respect of tax, the Contractor must indemnify the Principal for any loss suffered by the Principal as a result of the Principal failing to withhold the amount in respect of tax.

17.15 No partnership, joint venture or other fiduciary relationship

Nothing in the Contract will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

17.16 Exchange of information between government agencies

- (a) The Contractor authorises the Principal and its Personnel to make information concerning the Contractor and the Contract available to NSW government departments or agencies, including:
- (i) any information provided by the Contractor to the Principal;
 - (ii) any information relating to the Contractor's performance under the Contract; and
 - (iii) the terms of the Contract.
- (b) The Contractor acknowledges and agrees that:
- (i) any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work;
 - (ii) the communication of such information to any NSW government department or agency is a communication falling within section 30 of the Defamation Act 2005 (NSW); and
 - (iii) the Principal has in place processes for assessing the performance of its suppliers, that these processes will apply to the Contractor's performance under the Contract and that it will participate in the Principal's "Contractor Performance Reporting" process.

17.17 Proportionate liability

- (a) To the extent permitted by Law, Part 4 of the Civil Liability Act 2002 (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under or in any way in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting paragraph (a), the rights, obligations and liabilities of the Principal and the Contractor under the Contract with respect to proportionate liability are as specified in the Contract and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a Claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
- (i) the Contractor must not seek to apply the provisions of Part 4 of the Civil Liability Act 2002 (NSW) in relation to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) if any of the provisions of Part 4 of the Civil Liability Act 2002 (NSW) are applied to any Claim by the Principal against the Contractor (whether in contract, tort or otherwise), the Contractor will indemnify the Principal against any loss, damage, cost or expense that forms part of a Claim by the Principal against the Contractor which the Principal is not able to

recover from the Contractor because of the operation of Part 4 of the Civil Liability Act 2002 (NSW).

17.18 Prior work

The terms of the Contract apply to all of the work performed by the Contractor in connection with the Services even if it was performed prior to the Award Date.

Any payment made to the Contractor by the Principal in connection with the Contract or the Services prior to the Award Date will be treated as a payment under the Contract and will be in part discharge of the Principal's obligation to pay the Contract Price.

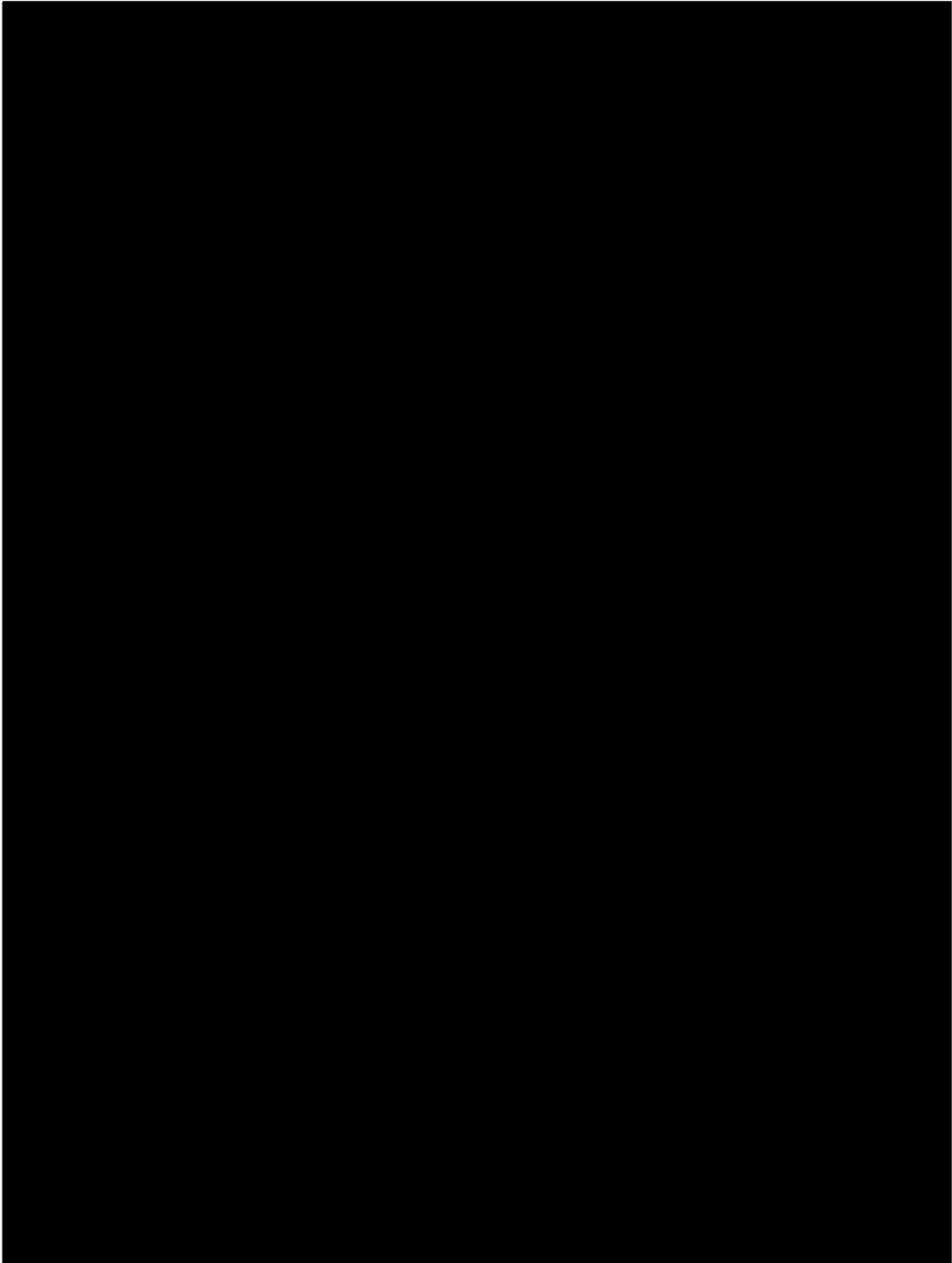
Schedule 1 - Key Details

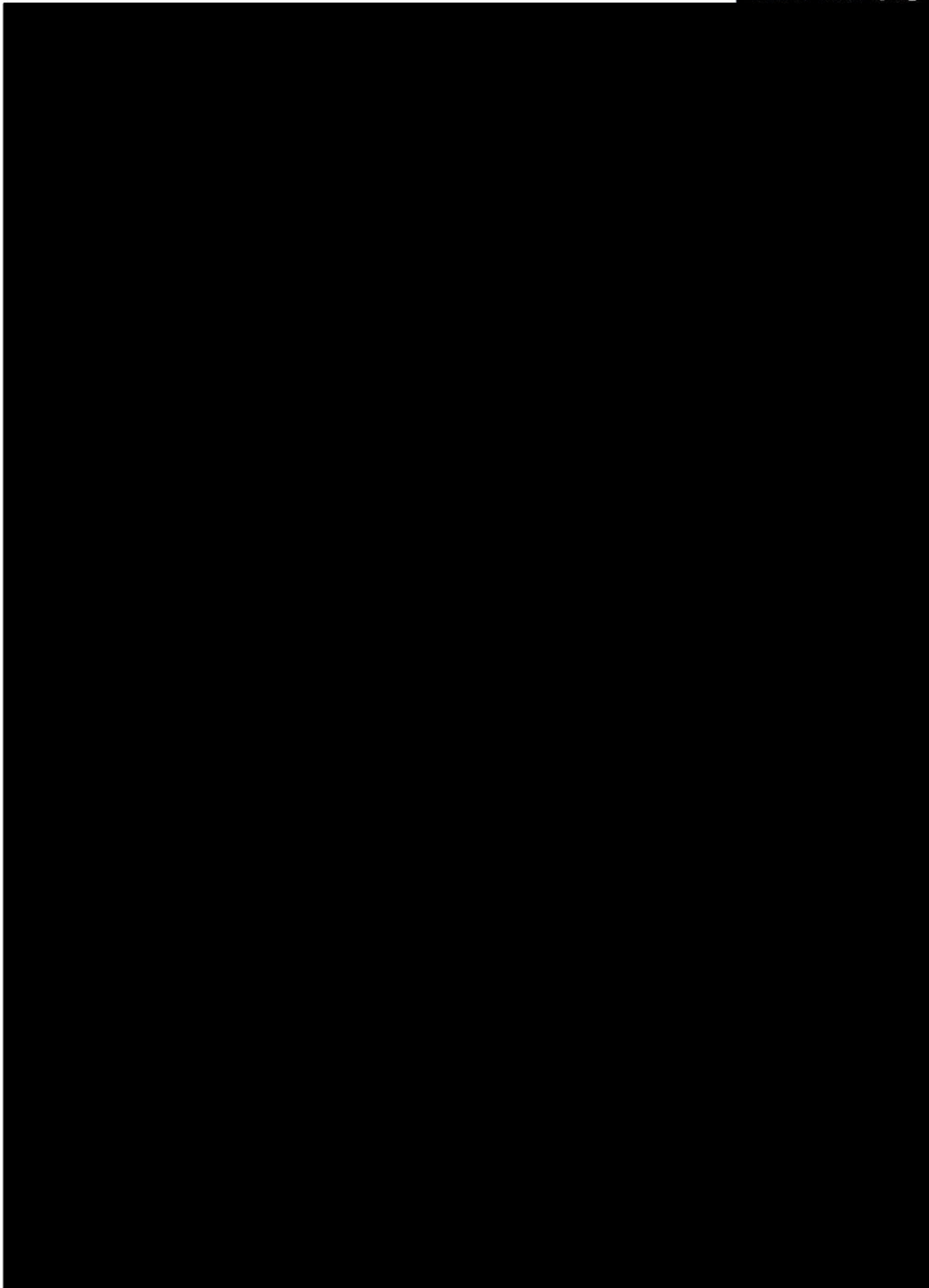
Clause 1 - Definitions and Interpretation		
1.	Award Date: (Clause 1.1)	1 October 2021
2.	Contract - Other documents forming part of the Contract (Clause 1.1)	Nil
3.	Contract Price: (Clause 1.1)	<p>The Contract Price for the Term is the total of the following amounts:</p> <ul style="list-style-type: none"> • The lump sum amount of \$26,675.00 (Twenty six thousand, six hundred and seventy five dollars and zero cents) excluding GST; • <u>Vehicles</u>: the lump sum amount of \$419,066.97 (Four hundred and nineteen thousand, sixty six dollars and ninety seven cents) excluding GST; and • <u>Services</u>: the product of the hourly rate and actual number of hours of provision of Services calculated in accordance with Schedule 2.
4.	Contractor's Representative: (Clause 1.1)	<p>Name: [REDACTED] [REDACTED] Phone: [REDACTED] Email: [REDACTED]</p>
5.	Option Period 1: (Clause 1.1):	One year
6.	Option Period 2: (Clause 1.1)	One Year
7.	Option Period 3: (Clause 1.1)	N/A
8.	Principal's Representative: (Clause 1.1)	<p>Name: Mr John Durbridge, Campus Security Manager Address: 2 Link Road, Macquarie University, NSW 2109 Phone: 02 9850 7174 Fax: 02 9850 7163 Email: john.durbridge@mq.edu.au</p>

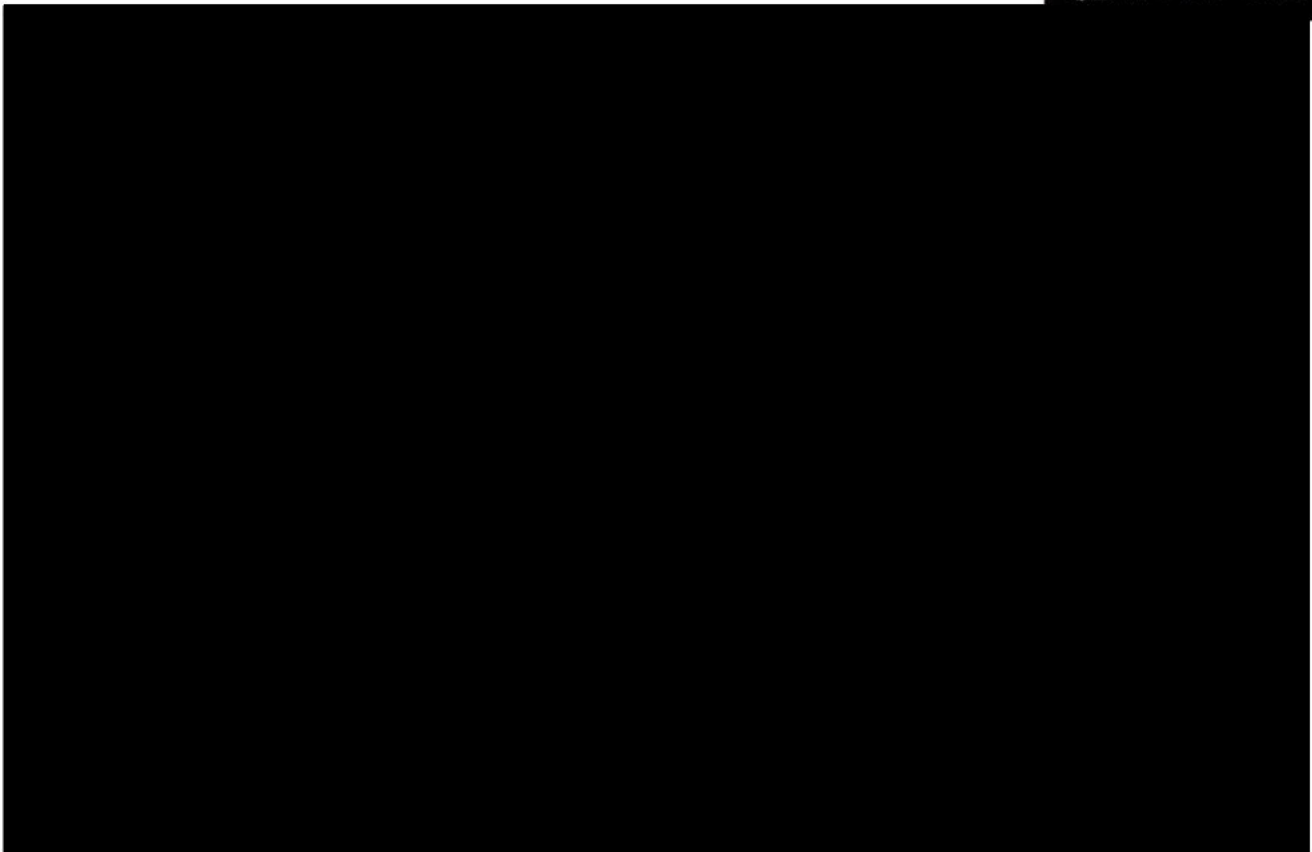
Clause 4 - Security					
15. Security to be provided by the Contractor: (Clause 4.1)	Clause 4.1 applies: Yes Security is required, \$893,293.00.				
16. Is a parent company guarantee required?: (Clause 4.5)	No				
Clause 5 - Risks and insurance					
17. Insurance policies required to be effected by the Principal: (Clause 5.2)	None				
18. Insurance policies required to be effected by the Contractor: (Clause 5.3(a))	Public Liability Insurance Amount of Cover is \$20 million in respect of any one occurrence. Workers Compensation Insurance Amount of Cover: The maximum amount required by Law Motor Vehicle Insurance Amount of Cover: Combined limit of not less than \$20 million				
19. Additional requirements for Public Liability Insurance (Clause 5.3(c))	The Public Liability Insurance must extend the benefit of cover to the Principal as insureds in respect of their vicarious liability for the acts or omissions of the Contractor and its Subcontractors				
Clause 6 - Design and Documentation					
20. Documents and number of copies to be provided by the Principal to the Contractor: (Clause 6.1)	<table border="0"> <thead> <tr> <th>Document</th> <th>No of copies</th> </tr> </thead> <tbody> <tr> <td>Nil</td> <td></td> </tr> </tbody> </table>	Document	No of copies	Nil	
Document	No of copies				
Nil					
Clause 8 - Services					
21. Existing Approvals and other Approvals which the Principal is to obtain: (Clause 8.2(c))	N/A				

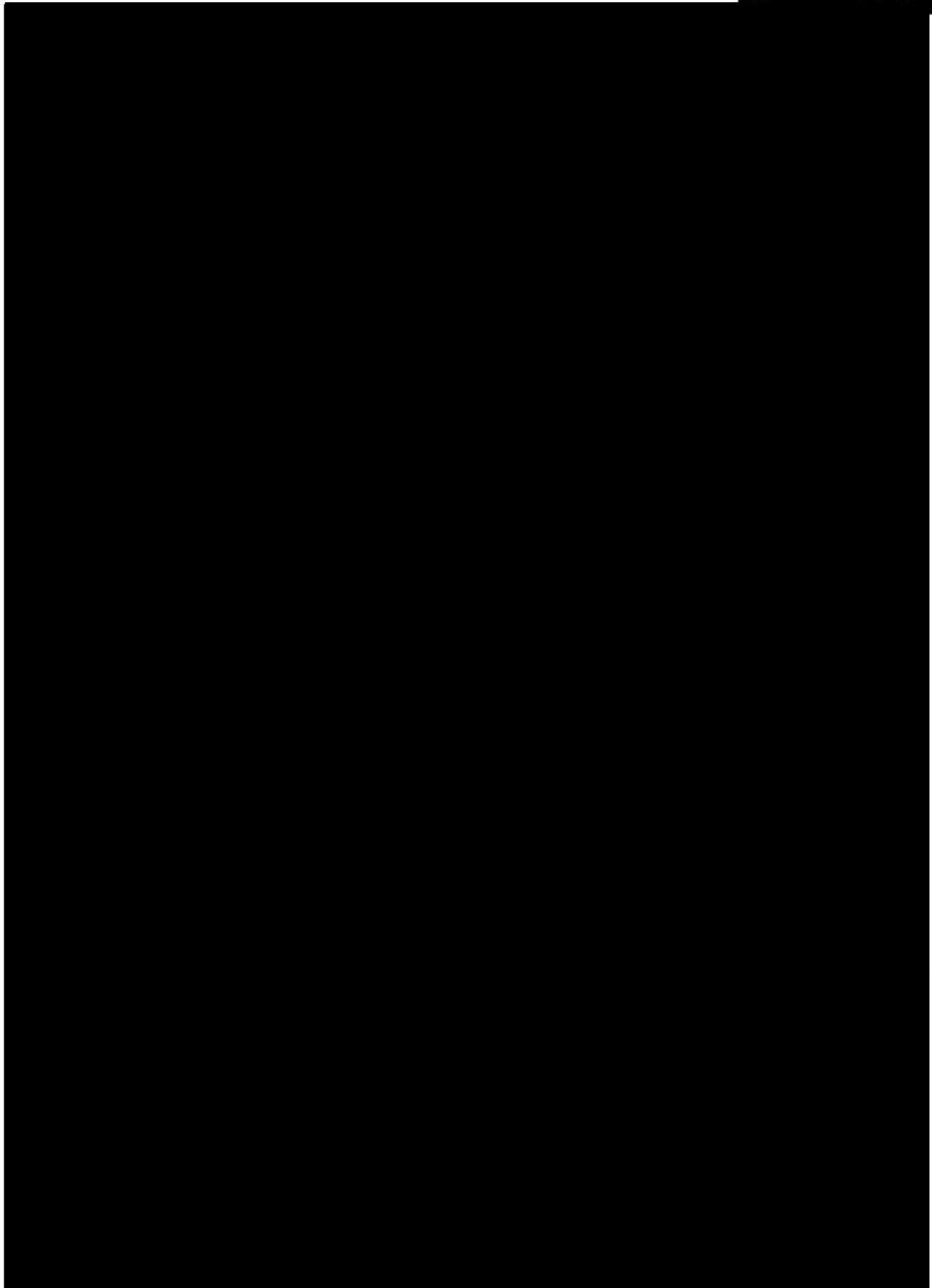
22.	Pre-Approved Subcontractors (Clause 8.4(b))	Subcontractor	Part of the Services
		N/A	N/A
		N/A	N/A
		N/A	N/A
Clause 11 – Variations			
	Percentage adjustments for valuing a Variation: (Clause 11.3(b) and 11.3(c))	<p>(a) For non-time related overheads and profit where the adjustment is to be an increase: 0% of the amount determined.</p> <p>(b) For overheads and profit where the adjustment is to be a decrease: 0% of the amount determined.</p> <p>(c) Hourly guarding rates, as applicable, are set out in Schedule 2.</p>	

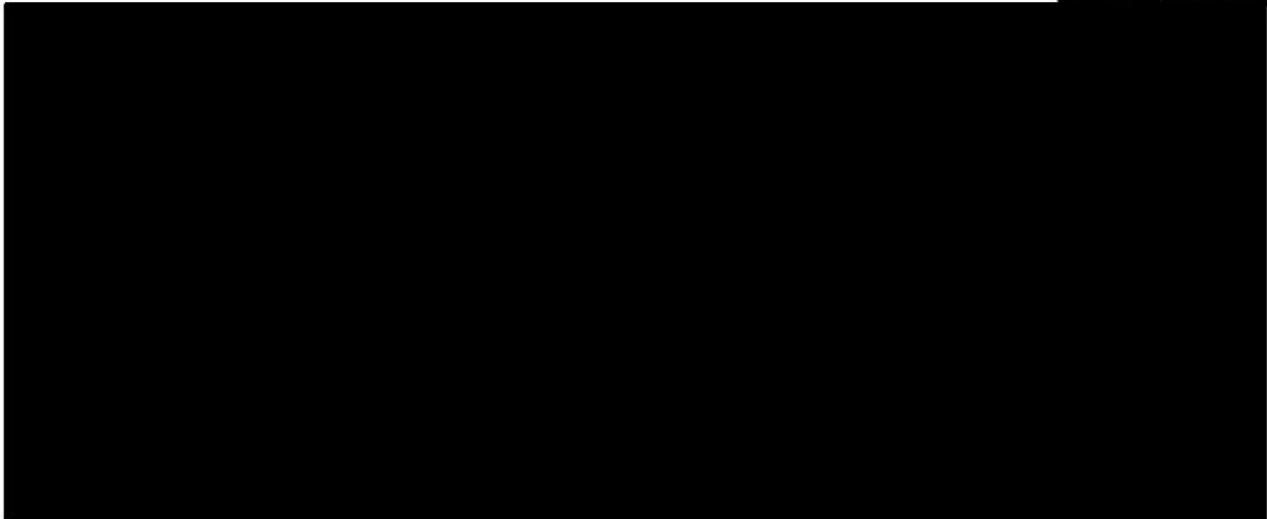
Schedule 2 - Payment Schedule











Schedule 3 - Unconditional Undertaking

This deed poll (Undertaking) made on the date of execution of this deed poll

In favour of: ABN of (Principal)

Given by: [] (Institution)

Recitals

- A. By a deed dated [*] (Deed) between [] ABN [] (Contractor) and the Principal the Contractor agreed to carry out the Services (as defined in the Deed).
- B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

Operative

- 1. The Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contract and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$).

The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.

The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Services or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.

The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.

This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.

Executed as a deed poll.

Signed Sealed and Delivered)
 by [])
 being signed sealed and)
 delivered by its duly constituted) (Signature)
 Attorney []) Date:.....
 under Power of Attorney)

No. Click here to enter text. in the presence of:

.....

(Signature of Witness)

.....

(Name of Witness in Full)

Schedule 4 - Deed of Guarantee and Indemnity

Deed of Guarantee and Indemnity made on the date on which the last party to execute this deed has executed this deed

(ABN []) of (Principal)
 [] ABN [] of [] (Guarantor)

RECITALS

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

THIS DEED PROVIDES

1. Definitions

1.1 Definitions and Interpretation

In this Deed:

Contract means the Contract (Contract Number: []) dated on or about the date of this Deed between the Principal and the Contractor.

Contractor means [] ABN [].

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

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

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

Legal Opinion means a legal opinion:

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

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

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

and irrespective of:

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

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

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

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

Specified Rate means the rate which is 2% above the rate expressed as a percentage per annum:

- (a) which is the average of the bid rates shown at or about 10.15 am on reference rate page "BBSY" on the Reuters Monitor System on the day the relevant amount was due and payable for bank accepted bills having a tenor of 30 days; or
- (b) if for any reason the rate referred to in paragraph (a) is no longer available or if there is no rate displayed for that period at that time, then the average of the buying rates quoted by 3 banks selected by the Principal at or about 10.15 am on the relevant date referred to in paragraph (a) for bills accepted by such banks having a tenor of 30 days.

1.2 Defined terms

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

1.3 Interpretation

In this Deed unless the context otherwise requires:

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

1.4 Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor;
 - (iv) the Guarantor is entitled to rely on all defences, limitations and exclusions (including set off and counterclaim) available to the Contractor under the Contract;
 - (v) where the Guarantor is performing any Obligation, the Guarantor will not be required to perform any such Obligation in a manner any different than that required by the Contract; and
 - (vi) payment by one of the Contractor or the Guarantor to or in favour of the Principal shall be deemed to be good discharge against the Principal in respect of that payment.
- (b) The limitation of liability under this clause 1.4 does not apply to liability to pay any interest in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Obligations which arise from or would have arisen from any voided, voidable, unenforceable or irrecoverable Obligations referred to in clause 3(b) of this Deed (if those Obligations had not been voided, avoided, unenforceable or irrecoverable), subject to such liability not exceeding the liability that the Contractor would have had if the Obligations had not been voided, voidable, unenforceable or irrecoverable.

2. Guarantee

2.1 Guarantee

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

2.2 Payment by Guarantor

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 Perform Obligations

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

3. Indemnity

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

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

4. Liability as guarantor and indemnifier

A reference in this Deed to the obligations or liabilities of the Guarantor is a reference to the Guarantor's obligations or liabilities as either guarantor or indemnifier (or both) under this Deed. The use of the expression "Guarantor" in this Deed in relation to a party must not be construed as diminishing that party's obligations as an indemnifier under this Deed.

5. Nature and preservation of liability

5.1 Absolute liability

- (a) The liability of the Guarantor under this Deed is absolute and is not subject to the performance of any condition precedent or subsequent by the Contractor or the Guarantor.
- (b) This Deed binds each person who has executed it, notwithstanding that:
 - (i) any person, whether named as a party or not, does not execute this Deed;
 - (ii) the execution of this Deed by any person is invalid, forged or irregular in any way; or
 - (iii) this Deed is or becomes unenforceable, void or voidable against any other person.

5.2 Unconditional liability

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

- (a) the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to the Contractor or the Guarantor;
- (b) the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;

- (c) the occurrence of any Event of Default;
- (d) the Contract or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) the Principal accepting or declining to accept any Security from any person at any time;
- (f) the Principal granting time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any remedy or right it has for the enforcement of the Contract or any Obligation;
- (h) any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) any variation to the Contract or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability on or disadvantages the Contractor or the Guarantor;
- (k) the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from the Contract or any Obligation;
- (l) any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under the Contract or under any other Obligation;
- (n) any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;
- (o) the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor; or
- (p) the provisions of section 440J of the Corporations Act 2001 (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against any Guarantor; or
 - (ii) any claim for contribution against any Guarantor.

5.3 No merger

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

5.4 No obligation to gain consent

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

5.5 Appropriation

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

5.6 Void or voidable transactions

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,
 in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or
- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security;

and:

- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;

- (f) the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 No set-off, counterclaim

Subject to clause 1.4(a)(iv), the liability of the Guarantor under this Deed will not be reduced or avoided by any defence, set-off or counterclaim available to the Contractor against the Principal.

5.8 Claim on the Guarantor

- (a) Subject to clause 5.8(b), the Principal is not required to make any claim or demand on the Contractor, or to enforce the Contract, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.
- (b) The Principal agrees not to make a claim or demand for payment of Guaranteed Money against the Guarantor under this Deed unless:
 - (i) the Principal has made a written claim or demand against the Contractor for such Guaranteed Money, a copy of which the Principal gives to the Guarantor at the same time as the Principal makes the claim or demand against the Contractor, and such Guaranteed Money remains unpaid, in whole or in part, for 10 Business Days after the claim or demand is made; or
 - (ii) an Insolvency Event has occurred in relation to the Contractor or the Guarantor.

5.9 No representation by Principal etc.

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

6. Representations and Warranties

6.1 General representations and warranties

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

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

- (e) the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

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

- (a) it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) the Guarantor has filed all corporate notices and effected all registrations with the Australian Securities and Investments Commission and all of those filings and registrations are current, complete and accurate to the extent they are material to the performance of the obligations of the Guarantor under this Deed.

7. Payments

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor on demand by the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

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

7.3 Interest

As a liability separate and distinct from the Guarantor's liability under clauses 2 and 3, the Guarantor must on demand by the Principal pay interest on all amounts due and payable by it and unpaid under or in respect of this Deed. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment, before and (as a separate and independent obligation) after judgment, at the Specified Rate for successive 90 day interest periods commencing on the date of default and, if not paid when due, will itself bear interest in accordance with this clause 7.3, provided that interest will not be payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 Merger

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

7.5 No set-off or deduction

All payments by the Guarantor to the Principal under this Deed must be:

- (a) subject to clause 1.4(a)(iv), free of any set-off or counterclaim; and
- (b) without deduction or withholding for or on account of any present or future taxes, unless the Guarantor is compelled by law to make any deduction or withholding.

If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future taxes (not being taxes on the overall net income of the Principal), then the Guarantor must:

- (c) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
- (d) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those taxes; and
- (e) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those taxes.

7.6 Currency indemnity

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

8. Expenses and stamp duties

8.1 Expenses

The Guarantor must on demand reimburse the Principal for and keep the Principal indemnified against all expenses, including legal fees, costs and disbursements on a solicitor/own client basis (or on a full indemnity basis, whichever is the higher) assessed without the necessity of taxation, incurred by the Principal in connection with:

- (a) any consent, agreement, approval, waiver, amendment to or discharge of this Deed; and
- (b) any exercise, enforcement or preservation, or attempted exercise, enforcement or preservation, of any rights under this Deed.

8.2 Stamp duties

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

8.3 Goods and Services Tax

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

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

9. Assignment

The Principal may assign, novate or otherwise transfer all or any part of its rights under this Deed and may disclose to a proposed assignee or transferee any information in the possession of the Principal relating to the Guarantor.

10. Governing law, jurisdiction and arbitration

10.1 Governing law

This Deed, and where applicable the arbitration reference contained in clause 10.3, is governed by and will be construed according to the laws of New South Wales.

10.2 Jurisdiction

- (a) This clause 10.2 only applies where clauses 10.3 to 10.7 do not apply.
- (b) The Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts and appellate courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought relating in any way to this Deed.
- (c) The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within paragraph (b) of this clause.

10.3 Reference to arbitration

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the Corporations Act 2001 (Cth)).
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the

Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).

- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.

10.4 Powers of the arbitrator

The arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.5 Consolidation

The parties agree that section 24 of the International Arbitration Act 1974 (Cth) will apply in respect of consolidations.

10.6 Joinder

The arbitral tribunal has the power, on the application of any party to the arbitration, to allow a third party who the arbitrator considers has a sufficient interest in the outcome of the arbitration to be joined in the arbitration as a party. Each party to this Deed hereby consents to such joinder. In the event of such joinder of parties in the arbitration, the arbitrator has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

10.7 Award final and binding

Any award will be final and binding upon the parties.

10.8 Guarantor incorporated outside Australia

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

11. Miscellaneous

11.1 Notices

- (a) Any notices contemplated by this Deed must be in writing and delivered or posted by prepaid express post to the relevant address or sent to the facsimile number as set out below (or to any new address or facsimile number that a party notifies to the others):

(i) to the Principal: []

(ii) to the Guarantor: []

- (b) A notice sent by prepaid express post will be taken to have been received by the addressee:

1. (in the case of prepaid express post sent to an address in the same country) on the second Business Day after the date of posting; and
2. (in the case of prepaid express post sent to an address in another country) on the fourth Business Day after the date of posting.

- (c) A notice sent by facsimile will be taken to have been received on the next day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with paragraph (a), which is a Business Day.

11.2 Continuing obligation

This Deed is a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, express or implied revocation or any other matter or thing, and the Principal will continue to be entitled to the benefit of this Deed as regards the due and punctual performance of all the Obligations until a final discharge has been given to the Guarantor.

11.3 Further assurance

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

11.4 Form of demand

A demand on the Guarantor for payment under this Deed may be in the form and contain any information as the Principal determines, provided it includes particulars of the relevant default in the due and punctual performance of the Obligations.

11.5 Entire agreement

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

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

11.6 Joint and several liability

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

11.7 Severance

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

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

11.8 Remedies cumulative

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

11.9 Waiver

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

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

11.10 Consents

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

11.11 Vienna Convention

The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Deed.

11.12 Moratorium legislation

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

11.13 Variations

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

11.14 Provisions limiting or excluding liability

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

11.15 Counterparts

- (a) This Deed need not be executed by the Principal.
- (b) If the Guarantor is more than one person, a Guarantor may execute this Deed in one or more separate counterparts, each of which constitutes the deed of that Guarantor.

Schedule 5 - Confidentiality Undertaking

Given by [] [ABN]
of []
(Consultant)

In favour of [] [ABN]
of []
(Principal)

Recitals

- A. The Principal wishes to provide to the Consultant, the Confidential Information for the Permitted Purpose.
- B. As a condition of the Principal providing to the Consultant the Confidential Information for the Permitted Purpose, the Consultant is required to execute this deed poll.

Operative provisions

1. Definitions

1.1 In this deed poll:

Commencement Date means the commencement date identified in Schedule 1;

Confidential Information means all Information disclosed to the Consultant by the Principal, any Representative of the Principal, or any person acting on behalf of the Principal, for or in connection with the Permitted Purpose, including:

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

whether the Information was:

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

Corporations Act means the Corporations Act 2001 (Cth);

Excluded Information means Confidential Information:

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

Government Authority means any government or any governmental or semi-governmental entity, authority, agency, commission, corporation or body (including those constituted or formed under any Statute), local government authority, stock exchange, administrative or judicial body or tribunal;

Information means information, correspondence, data, reports, interpretations, forecasts, processes, formulae, procedures, techniques, computer programs, records, analysis, compilation, business plans, studies or other documents or material of whatever nature and embodied, contained, exhibited, displayed or conveyed in any form or manner (including in writing, or in machine readable form (whether visible or not) recorded or stored by or in any computer or information retrieval system, or recorded or stored by any electronic magnetic, electromagnetic or other means);

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

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

Loss means:

- (a) any cost, expense, fee, loss, damage, Liability, or other amount; and
- (n) without being limited by paragraph (a) and only to the extent not prohibited by law, any fine or penalty,
- (o) whether direct, indirect, consequential (including pure economic loss), present, future, fixed, unascertained, actual or contingent;

Notes means all and any notes, summaries or extracts of or derived from the Confidential Information;

Permitted Purpose means the permitted purpose described in Schedule 1;

Related Entity has the meaning it has in the Corporations Act;

Representative of a party includes an employee, agent, officer, director, auditor, adviser, partner, consultant, joint venturer, contractor or sub-contractor of that party or of a Related Entity of that party; and

Statute means any legislation of the Parliament of Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia in force at any time, any rule, regulation, ordinance, by-law, statutory instrument, order or notice at any time made under that legislation.

1.2 Interpretation

In this deed poll:

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

and unless the context indicates a contrary intention:

- (b) **person** includes an individual, the estate of an individual, a corporation, a Government Authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and in the case of a trustee, includes a substituted or an additional trustee;
- (d) a reference to a document (including this deed poll) is to that document as varied, novated, ratified or replaced from time to time;
- (e) 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;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) **includes** in any form is not a word of limitation;
- (h) a reference to **\$** or **dollar** is to Australian currency;
- (i) 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 poll, and a reference to this deed poll includes all schedules, exhibits, attachments and annexures to it;
- (j) 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; and
- (k) all accounting terms used in this deed poll have the meaning given to them under Australian accounting standards.

2. Term

This deed poll will commence on the Commencement Date.

The obligations of the Consultant survive termination or expiry of this deed poll.

3. Consideration

The Consultant gives the undertakings in this deed poll in consideration of the Principal disclosing the Confidential Information or parts of the Confidential Information in accordance with this deed poll.

4. General Consultant obligations

4.1 Consultant to maintain confidentiality

The Consultant must:

- (a) keep the Confidential Information confidential and do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information;
- (b) not use, or allow the use of, any part of the Confidential Information other than for the Permitted Purpose;
- (c) keep the Confidential Information out of any computer, database, or other electronic means of data or information storage except for a computer, database, or other electronic means of data or electronic storage exclusively controlled by the Consultant;
- (d) ensure that the Confidential Information is not disclosed to any person other than a Representative;
- (e) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access, use, copying or disclosure;
- (f) immediately notify the Principal of any potential, suspected or actual unauthorised use, copying or disclosure of the Confidential Information; and
- (g) not disclose to any person without the prior written consent of the Principal (other than a Representative in accordance with the terms of this deed poll or except as it may be required to disclose by law under clause 6.2):
 - (i) the existence of and contents of this deed poll and any other instruments entered into or to be entered into in connection with this deed poll;
 - (ii) the contents of any discussions between the parties relating to the Permitted Purpose; or
 - (iii) the fact that any discussions between the parties relating to the Permitted Purpose have taken place or will or may take place.

4.2 Consultant to obtain undertaking from Representatives

Before disclosing any portion of the Confidential Information to any of its Representatives for the Permitted Purpose, the Consultant must:

- (a) inform the Principal of the name and title of the Representatives to whom the Confidential Information is to be disclosed;
- (b) obtain a signed undertaking from each of the Representatives that are to be given access to the Confidential Information in the form of the undertaking included in Schedule 2; and
- (c) deliver each of the signed undertakings to the Principal.

4.3 Consultant to return Confidential Information

- (a) If requested in writing by the Principal or if the Confidential Information is no longer required for the Permitted Purpose, the Consultant will immediately return to the Principal, or to any third person nominated by the Principal, the Confidential Information, copies of the Confidential Information, Notes and copies of the Notes.

- (b) If any part of the Confidential Information is in a form that cannot be detached from equipment (whether computer equipment or otherwise), the Consultant must immediately erase it from such equipment.
- (c) The Consultant must provide written certification to the Principal within 5 days from the date of a written request issued by the Principal in accordance with this clause 4.3 (or within 5 days from the date upon which the Confidential Information is no longer required for the Permitted Purpose) that it has:
 - (i) returned to the Principal the Confidential Information, copies of the Confidential Information, Notes and copies of the Notes; and
 - (ii) erased from any equipment (whether computer equipment or otherwise) the Confidential Information, copies of the Confidential Information, Notes and copies of the Notes.
- (d) The Consultant acknowledges that compliance with this clause 4.3 does not release the Consultant or its Representatives from their obligations under this deed poll.

4.4 Consultant to inform Principal before disclosure

Before the Consultant discloses any Confidential Information under any Statute, law or order of any Government Authority, the Consultant must provide to the Principal:

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

4.5 Consultant acknowledgement

The Consultant acknowledges that:

- (a) damages will not be a sufficient remedy for the Principal for any breach of the covenants in this deed poll by the Consultant; and
- (b) the Principal will be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach of the covenants in the deed poll by the Consultant, in addition to any other remedies available to the Principal at law or in equity.

5. Disclosure by the Principal

5.1 No obligation to disclose Information

Nothing in this deed poll obliges the Principal, its Representatives or any person acting on behalf of the Principal, to disclose any Information to the Consultant or its Representatives.

The Principal has an absolute discretion as to the Information which it determines to disclose.

5.2 No representations or warranties given

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

- (a) has made nor makes any representation or warranty, express or implied, as to the accuracy, adequacy, content, legality or completeness of the Confidential Information;

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

5.3 Disclaimer by the Principal

Neither the Principal, its Representatives nor any person acting on its behalf, warrants, guarantees or makes any representation, or assumes any duty of care, or (to the extent permitted by law) accepts any liability, with respect to the accuracy, adequacy, content, legality or completeness of any Confidential Information.

6. Exclusions

6.1 Excluded Information

- (a) Clause 4 does not apply to Excluded Information.
- (b) The parties acknowledge that the Confidential Information will not be regarded as being Excluded Information by reason only of:
 - (i) some portion of the Confidential Information being in the public domain; or
 - (ii) information being in the public domain which, if presented or interpreted in a particular manner (or together with other information) may amount to information that is the same as the Confidential Information.

6.2 Disclosure required by law

Subject to clause 4.4, this deed poll does not apply to the disclosure of any Confidential Information to the extent that disclosure by the Consultant is required under any Statute, law or order of any Government Authority.

7. Indemnity

7.1 Consultant indemnifies Principal

The Consultant agrees to indemnify the Principal from and against all Losses incurred or suffered by the Principal by reason (whether directly or indirectly) of:

- (a) any breach by the Consultant of this deed poll; or
- (b) any act or omission by any of the Consultant's Representatives which, if done or omitted to be done by the Consultant, would be a breach of the Consultant obligations under this deed poll.

7.2 No set-off

The Consultant agrees to pay to the Principal any sum due under clause 7.1 without any deduction or set off.

8. General

8.1 Governing law and jurisdiction

- (a) This deed poll is governed by and must be construed according to the laws of the State or Territory identified in Schedule 1.
- (b) Each party irrevocably:
 - (i) submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State or Territory identified in Schedule 1 with respect to any legal action or proceedings that may be brought at any time relating in any way to this deed poll; and
 - (ii) waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

8.2 Notices

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed poll must be:
 - (i) in writing;
 - (ii) delivered to the address or sent to the facsimile number shown in Schedule 1 (or to any new address or facsimile number that a party notifies the other);
 - (iii) 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
- (b) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it is sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

8.3 Severance

If at any time a provision of this deed poll 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 poll; or

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

8.4 Amendments

This deed poll may only be varied by deed signed by or on behalf of each of the parties.

8.5 Assignment

The Consultant cannot assign any of its rights under this deed poll without the Principal's prior written consent.

Schedule 1

Item Number	Item Description	Contract Particular
1.	Principal's Contact Details	<i>[Insert Details]</i>
2.	Consultant's Contact Details	<i>[Insert Details]</i>
3.	Commencement Date	<i>[Insert Details]</i> If nothing stated, the Commencement Date is the date the Consultant executes this deed poll.
4.	Permitted Purpose	<i>[Insert Details of Permitted Purpose]</i>
5.	Jurisdiction	<i>New South Wales</i>

Undertaking

Person's name and address:

Confidentiality Deed Poll in favour of

(Principal)

I **[Insert name and address]** acknowledge that:

I have read the deed poll attached to this Undertaking and marked with the letter "A" and agree:

- (a) that the Confidential Information made available to me is confidential to the Principal;
- (b) to keep the Confidential Information confidential; and
- (c) not to disclose any of the Confidential Information to any person other than to those who have signed an undertaking in this form unless I have the prior written consent of the Principal; and

damages are not a sufficient remedy for the Principal for any breach of this Undertaking and the Principal is entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or possible breach by me of this Undertaking, in addition to any other remedies available to the Principal at law or in equity.

Signed by [Insert Individual's name] in the presence of:

Signature

Signature of Witness

Name of Witness in full

Executed as a deed poll

Executed by [Insert Company name and ACN/ARBN/ABN] in accordance with section 127 of the Corporations Act by or in the presence of:

Signature of Secretary/other Director

Signature of Director or Sole Director and Secretary

Name of Secretary/other Director in full

Name of Director or Sole Director and Secretary in full

Schedule 6 - Environmental Requirements

Schedule 7 - WHS Requirements

Schedule 8 - Subcontractor's Statement

**SUBCONTRACTOR'S STATEMENT
REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 - see back of form)**

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

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

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

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

has entered into a contract with ABN:.....

(Business name of principal contractor) **(Note 2)**

Contract number/identifier

.....

(Note 3)

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

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

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

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

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above.

(Note 10)

(f) Signature Full name.....

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

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

Notes

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

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

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the Industrial Relations Act 1996 (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

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

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

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 9 - Terms of Expert Appointment

THIS AGREEMENT is made on the date the last party to execute this agreement executes this agreement

BETWEEN [insert name, company number and address] ("Principal")
AND [insert name, company number and address] ("Contractor")
AND [insert name and address] ("Expert")

Recitals

- A. The Principal and the Contractor (together the **Parties** and each a **Party**) are parties to a contract (the **Contract**) for the provision of [.....] services by the Contractor to the Principal.
- B. By written notice dated [to be inserted], the [insert Principal or Contractor as applicable] has required that the matter described in Schedule 1, being a matter that the Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 15 of the Contract (the **Matter**).
- C. Pursuant to clause 15 of the Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

Operative part

1. Appointment of Expert

- (a) The Parties appoint the Expert to determine the Matter in the manner and within the times set out in this Agreement and the Expert accepts the appointment on the basis set out in this Agreement.
- (b) The Parties agree that:
- (i) the Expert will act as an expert and not as an arbitrator;
 - (ii) neither the determination of the Matter, nor the process required by this Agreement is an arbitration and any conference conducted during the determination is not a hearing conducted under any legislation or rules relating to any form of arbitration;
 - (iii) the rules of evidence do not apply to the determination;
 - (iv) the Expert must conduct the determination of the Matter in accordance with the Rules for Expert Determination Process set out in Schedule 2;
 - (v) in making the determination, the Expert may determine that a Party pay the other Party's costs of the expert determination.
- (c) If, at any time during the determination, the Expert becomes aware of circumstances that might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially, the Expert must inform the Parties immediately and, unless the Parties agree otherwise, terminate this Agreement.

2. Confidentiality

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of the determination (including the Expert's determination), must be kept confidential between the

Parties and the Expert. No such proceedings, submissions or documents, nor any other information relating to or arising out of the determination, may be divulged to any other person, except with the prior written consent of both Parties or as may be required by law or to the extent necessary to give effect to or enforce the Expert's determination.

3. Costs and fees

- (a) As between the Parties and the Expert, the Parties are jointly and severally liable for the payment of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3. The Parties agree to comply with any direction from the Expert as to the provision of security deposits in respect of his or her fees and disbursements.
- (b) Subject to any direction as to costs given by the Expert in the Expert's determination, the Parties agree as between themselves that:
 - (i) they will each pay one half of the Expert's fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Schedule 3; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement and their participation in the determination.

4. Exclusion of liability and indemnity

Except in the case of fraud, the Expert will not be liable to either Party for any act or omission by the Expert in the performance or purported performance of this Agreement. The Parties jointly and severally indemnify the Expert against all claims arising out of or in any way referable to any act or omission by the Expert (except fraud) in the performance or purported performance by the Expert of the terms of this Agreement.

5. Co-operation of the Parties

Each Party agrees to take part in the determination in good faith and to comply with the reasonable requests and directions of the Expert in relation to the conduct of the determination.

6. Governing law

This Agreement is governed by and is to be construed in accordance with the laws in force in the place stated in Schedule 1.

7. Jurisdiction

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the in the place stated in Schedule 1.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

SCHEDULE 1

1. **The Matter**
[to be inserted when it comes time for Expert determination]
2. **Governing law - the place**
New South Wales
3. **Jurisdiction - the place**
New South Wales
4. **Place for conferences with Expert (clause 3.1 of Schedule 2)**
Sydney

SCHEDULE 2

Rules for Expert Determination Process

1. Commencement

Except as provided in clause 4.3 of these Rules, the Expert determination process begins when the Expert accepts an appointment to determine the Matter in accordance with these Rules and the Code of Conduct appended to these Rules.

2. Written submissions

2.1 No later than 7 days after the date this process begins, Party A (ie the Party who gave notice under clause 15.1 of the Contract) must, in addition to any particulars provided by Party A under clause 15.1 of the Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

2.2 Within 7 days after the statement in clause 2.1 is served, the other Party must give Party A and the Expert a written response to Party A's submissions.

2.3 If the Expert considers it appropriate, Party A may reply in writing to the other Party's response in clause 2.2 within the time allowed by the Expert.

2.4 If the Expert decides further information or documentation is required for the determination of the Matter, the Expert may direct one or more Parties to provide such further submissions, information or documents as the Expert may require.

3. Conference

3.1 The Expert may, if he or she thinks appropriate, call a conference of the Parties. Unless the Parties agree otherwise, the conference will be held in the place nominated in Schedule 1.

3.2 At least 14 days before the conference, the Expert must inform the Parties of the date, venue and agenda for the conference.

3.3 The Parties must appear at the conference and may make submissions on the subject matter of the conference. If a Party fails to appear at a conference of which that Party had been notified under clause 3.2, the Expert and the other Party may nevertheless proceed with the conference and the absence of that Party will not terminate or discontinue the Expert determination process.

3.4 The Parties:

(i) may be accompanied at a conference by legal or other advisers; and

(ii) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

3.6 If required by any Party, transcripts of the conference proceedings must be taken and made available to the Expert and the Parties.

4. General

4.1 In making a determination or calling or holding a conference, the Expert must proceed in accordance with this Contract.

4.2 All proceedings and submissions relating to the Expert determination process must be kept confidential except:

- (a) with the prior consent of the Parties;
- (b) as may be required by law; or
- (c) as may be required in order to enforce the determination of the Expert.

4.3 The Expert must:

- (a) inform the Parties of:
 - (i) any relationship or interest with the Parties or their respective officers, employees, contractors, consultants or agents;
 - (ii) any interest the Expert has in the matters in dispute; and
 - (iii) any circumstance which might reasonably be considered to adversely affect the Expert's capacity to act independently or impartially,immediately upon becoming aware of any such circumstances; and
- (b) upon making any disclosure under this clause 4.3, unless and until the Parties agree otherwise or it is otherwise determined under clause 15 of the Contract, terminate the proceedings.

5. **The determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 20 Business Days after the Expert's acceptance of appointment, the Expert must:

- (a) determine the Matter between the Parties; and
- (d) notify the Parties of that determination.

5.2 The determination of the Expert must meet the requirements of this Contract.

5.3 To the extent permitted by law, the Expert's determination will be final and binding on the Parties unless a party gives a notice of appeal to the other party in accordance with clause 15.12(b) of the Contract.

6. **Costs**

Security for costs must be deposited by both Parties at the commencement of the Expert determination process in accordance with any direction of the Expert.

7. **Modification**

These rules may be modified only by agreement of the Parties and, if the Expert has been appointed, the Expert.

APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS**Code of Conduct for an Expert**

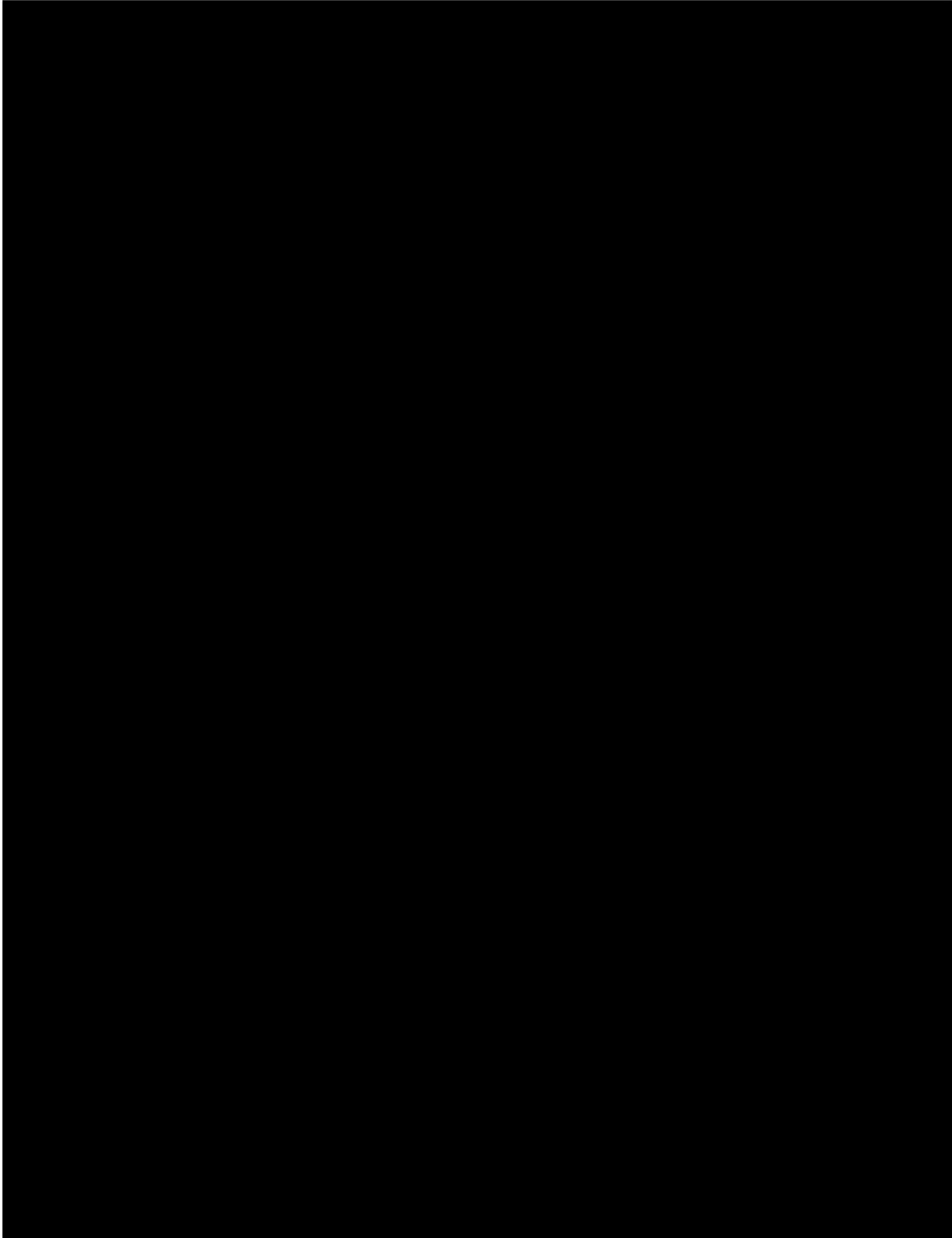
1. The function of the Expert is to make a determination of the Matter in accordance with the Contract and the Expert Determination Agreement, including the Rules and this Code of Conduct.
2. The Expert must receive the written submissions and responses of the Parties in accordance with the procedures specified in the Rules and may require further information or documentation from the Parties which is reasonably necessary to determine the Matter.
3. The Expert must decide whether a conference is necessary to receive further information. The Expert must inform the Parties of the subject matter of any conference and may hear representations only on those matters during any such conference.
4. The Expert must disclose to both Parties all information and documents received.
5. If a Party fails to make a written submission, the Expert may continue with the process.
6. Subject to clause 3.3 of the Rules in relation to conferences, meetings and discussions with the Expert must only take place in the presence of both Parties.

SCHEDULE 3

The Expert's Fees and Disbursements

[to be inserted when it comes time for expert determination]

Schedule 10 - KPIs



Where:

Lost Time Injury means any injury sustained that results in time away from work in excess of 1 working days

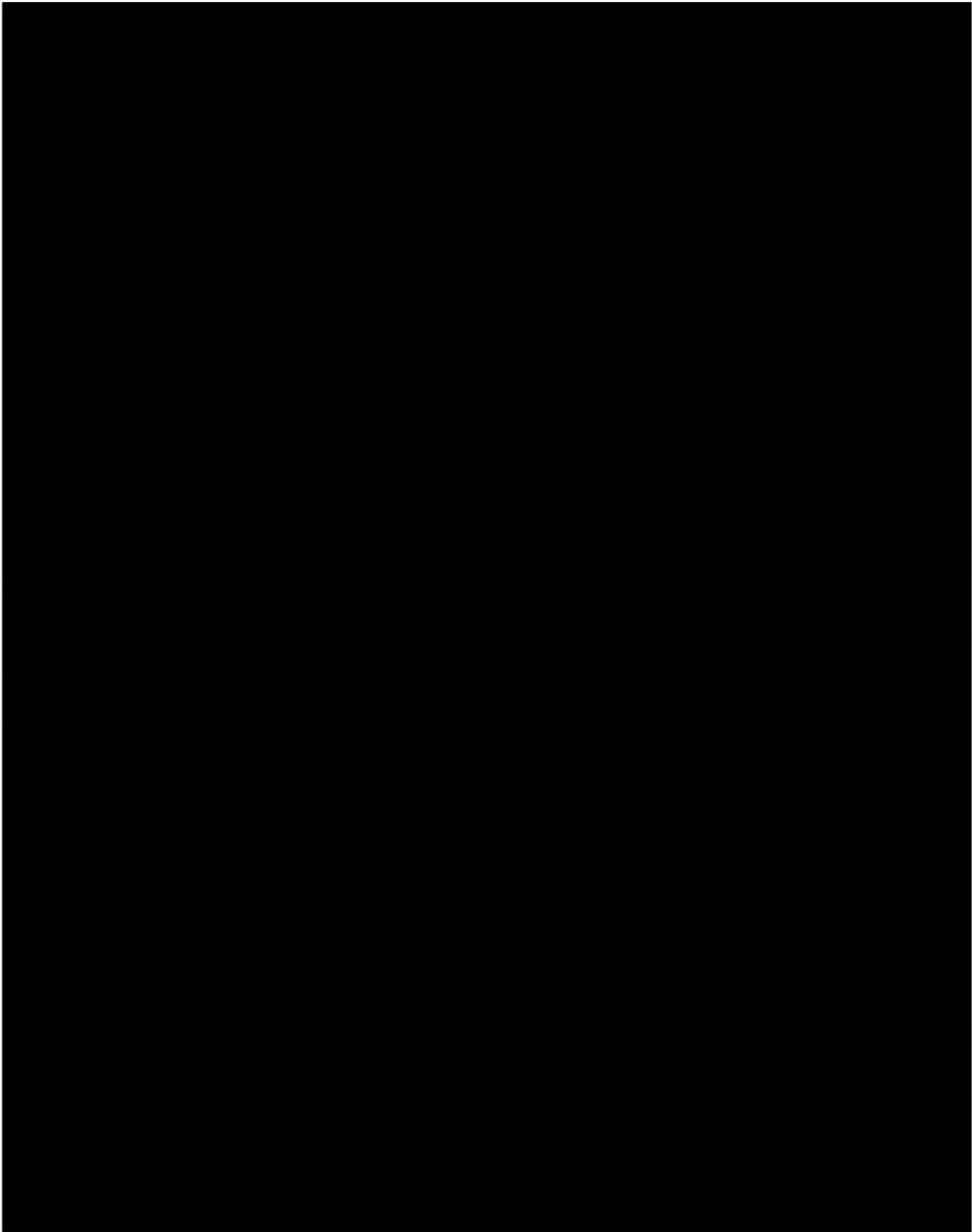
Notes:

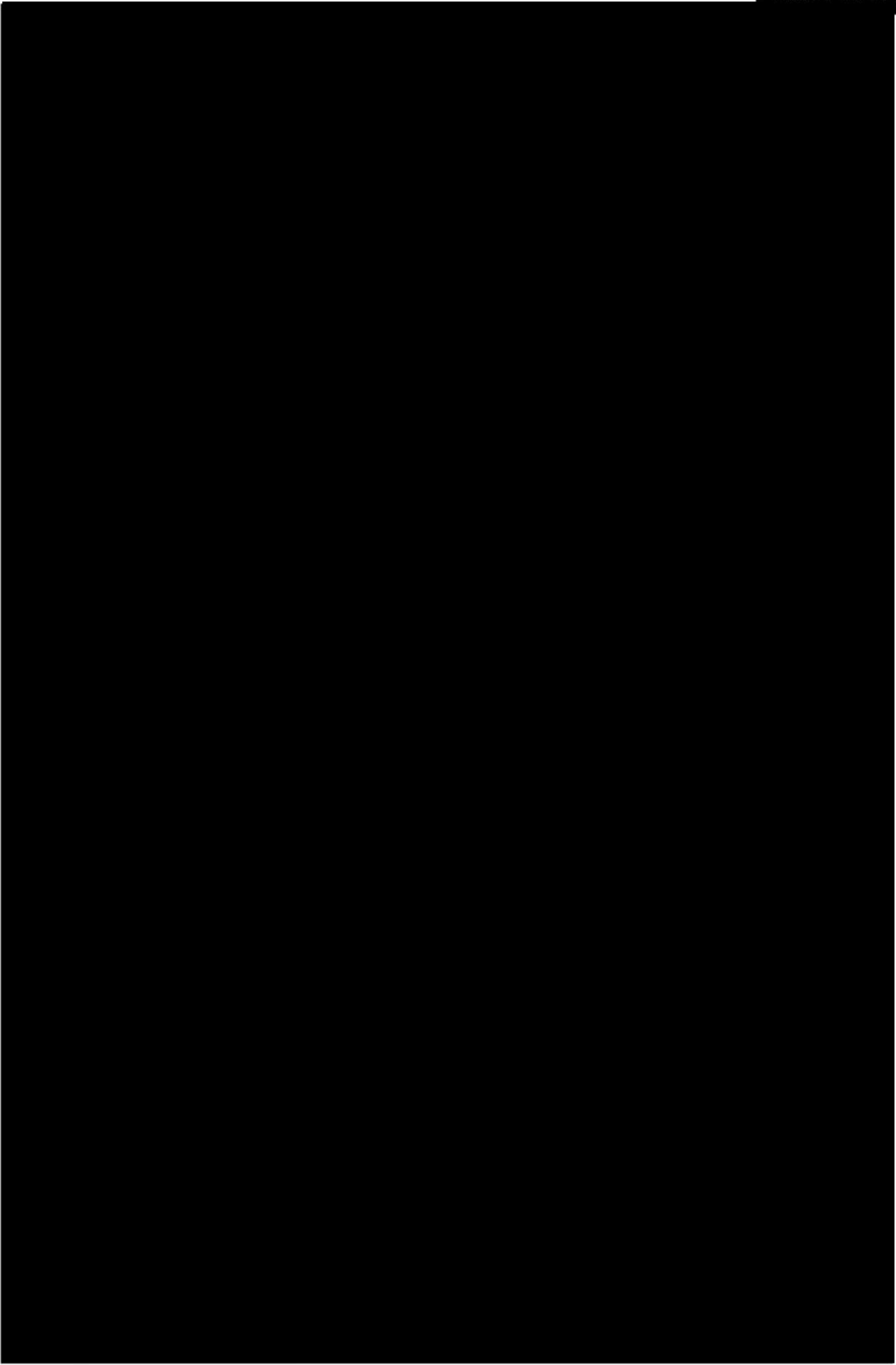
The Principal will not take into account, for the purposes of assessing performance against a KPI the following:

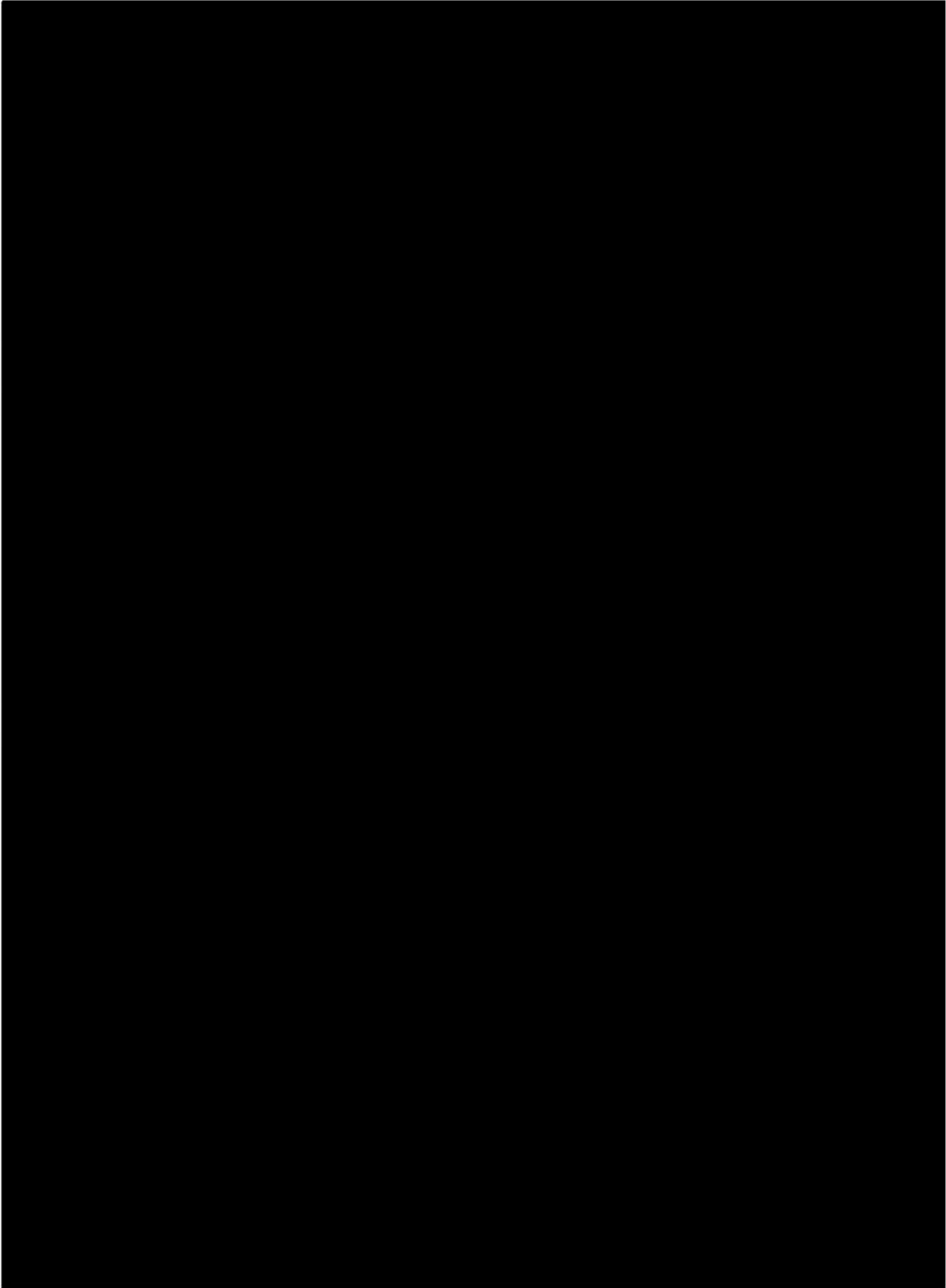
- a) poor quality work performed by third parties;
- b) changes in law;
- c) excessive or prolonged wet weather
- d) any Macquarie University Campus operations

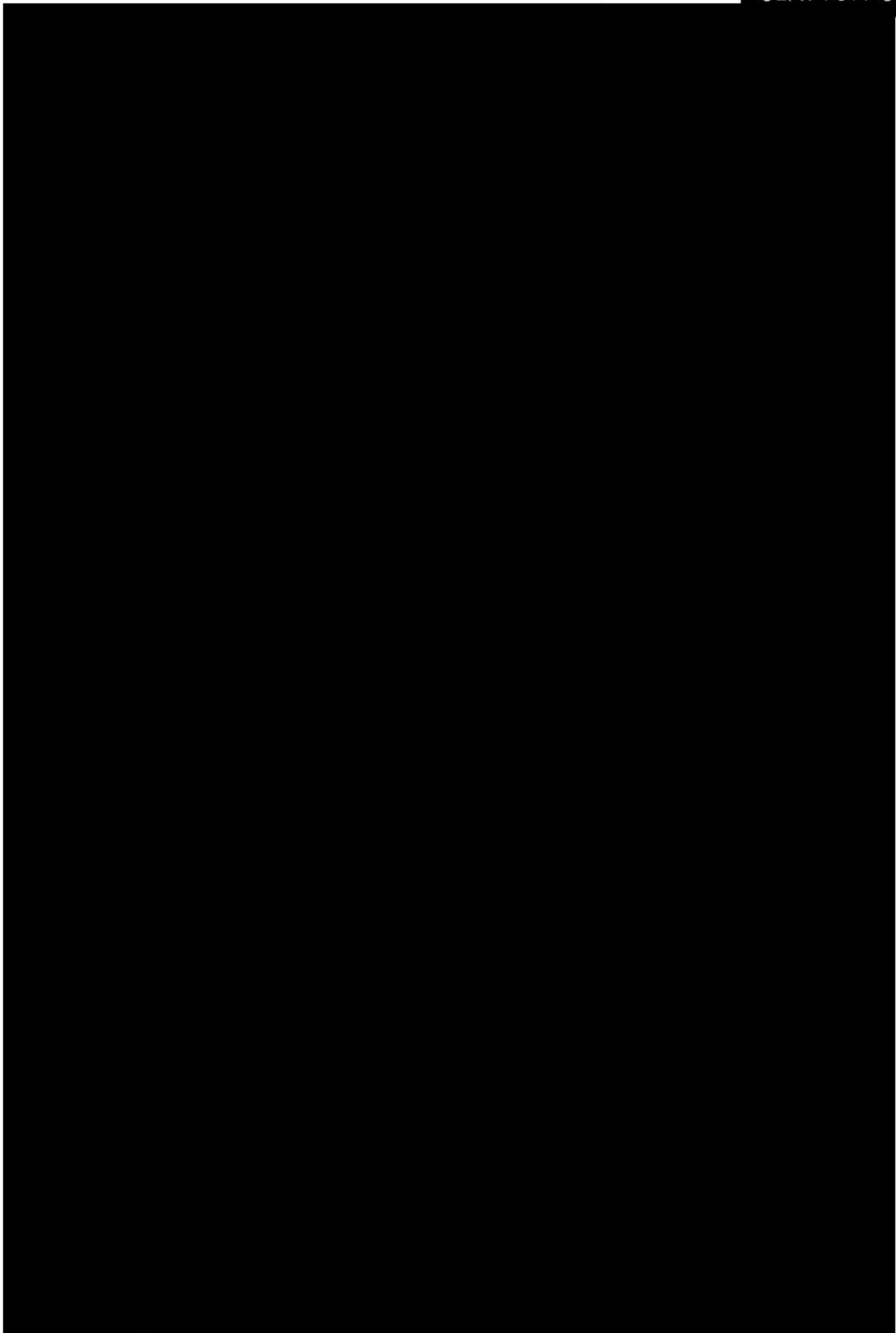
Exhibit A - Statement of Work

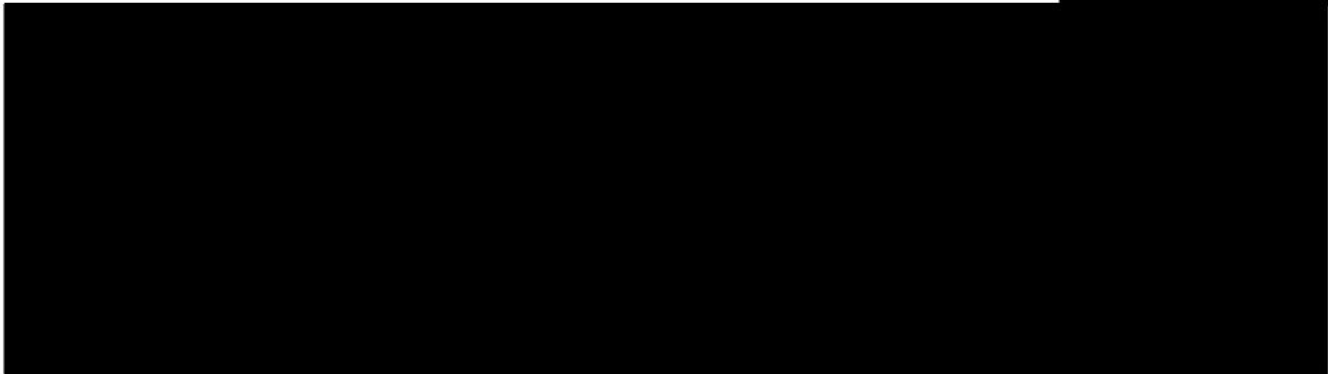
The Site includes the following:











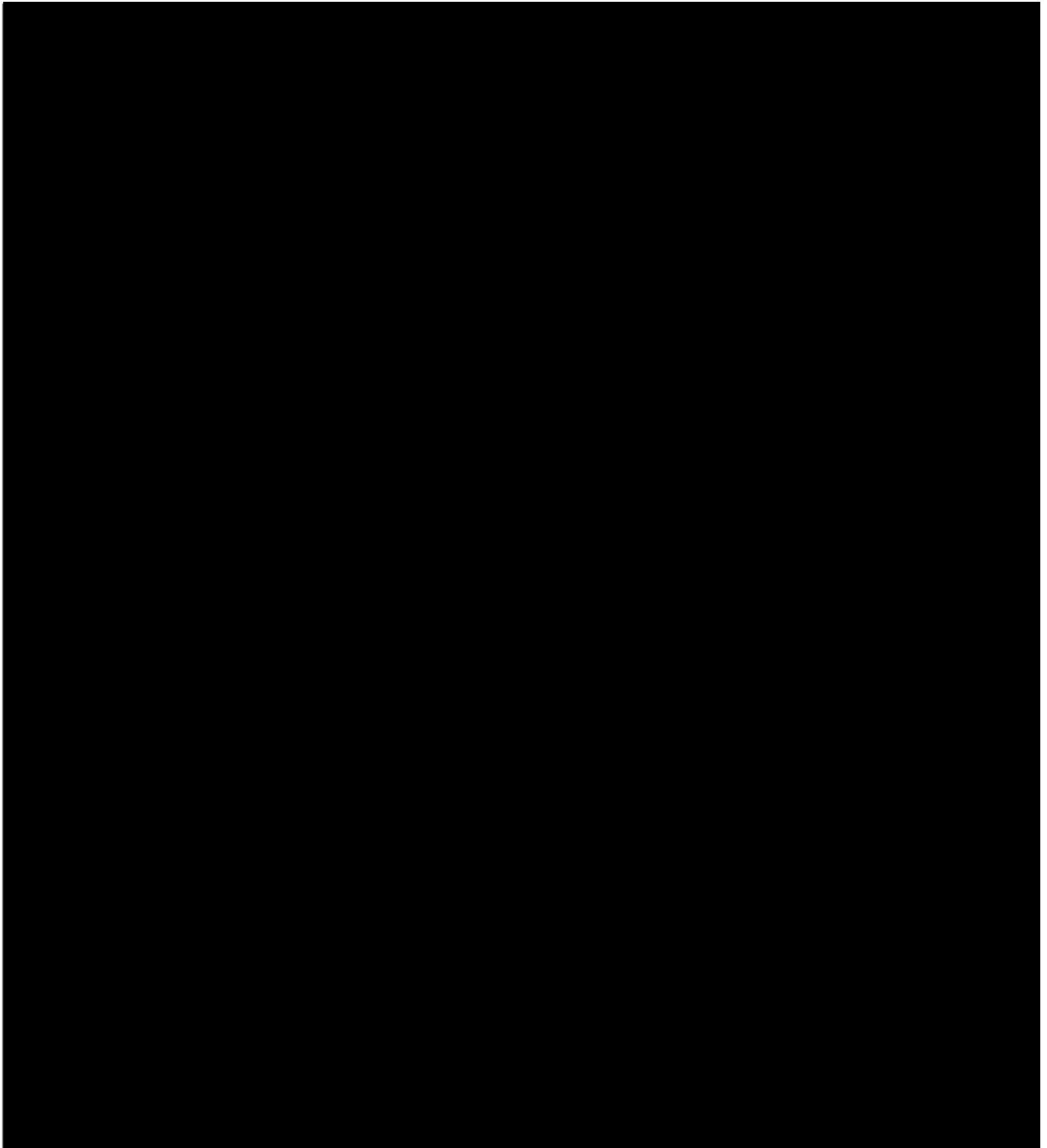
PROPERTY

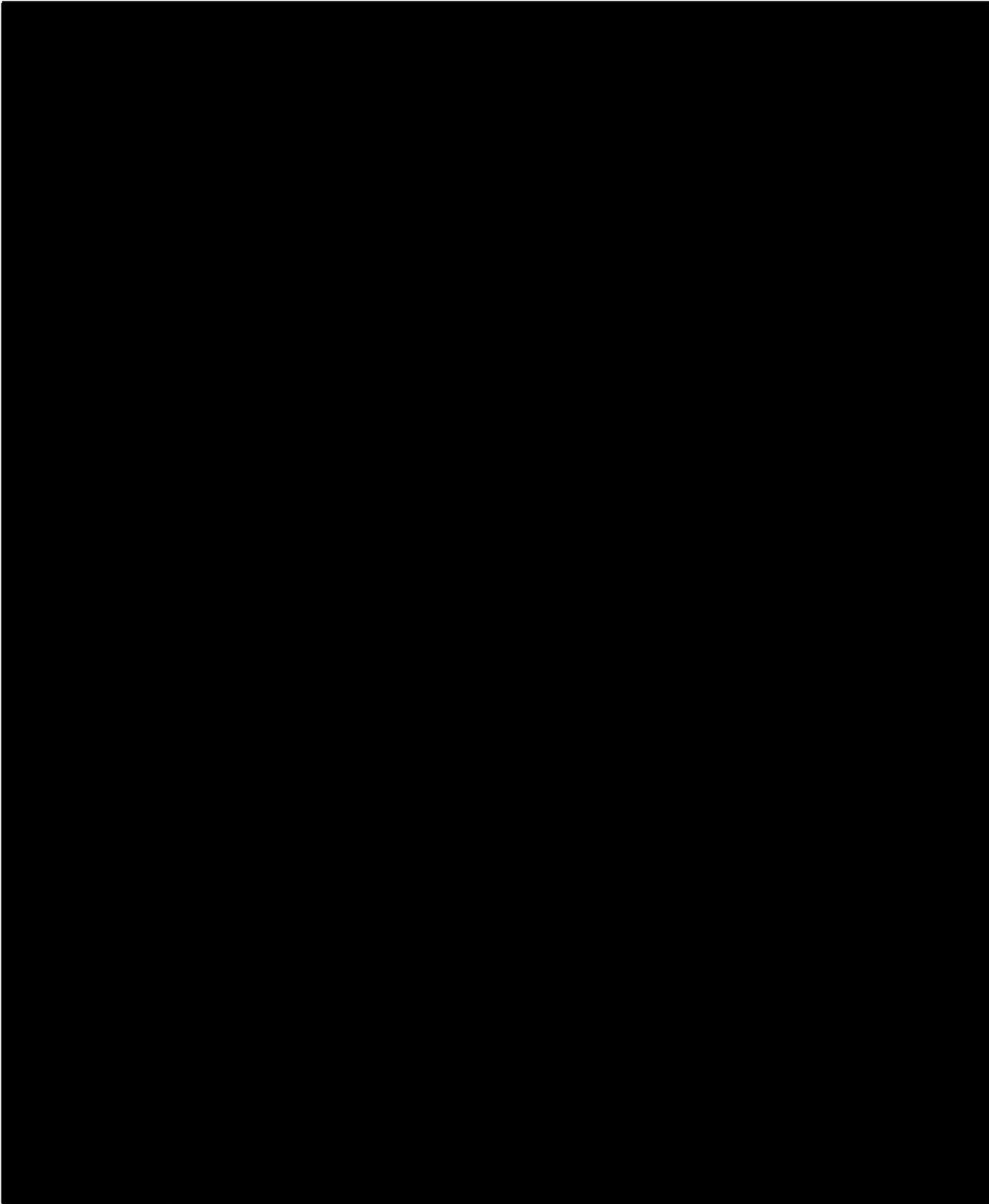


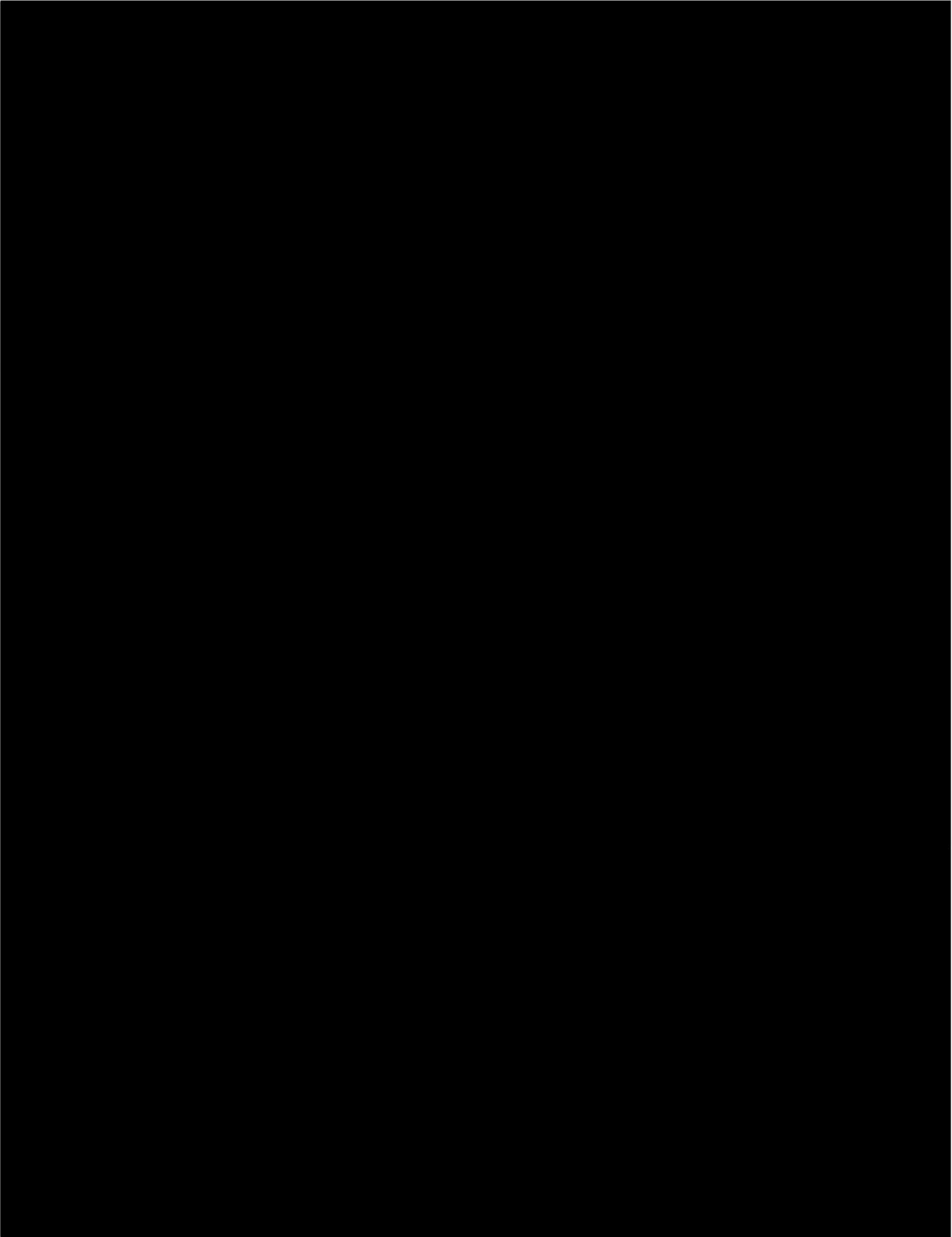
ANNEXURE 1

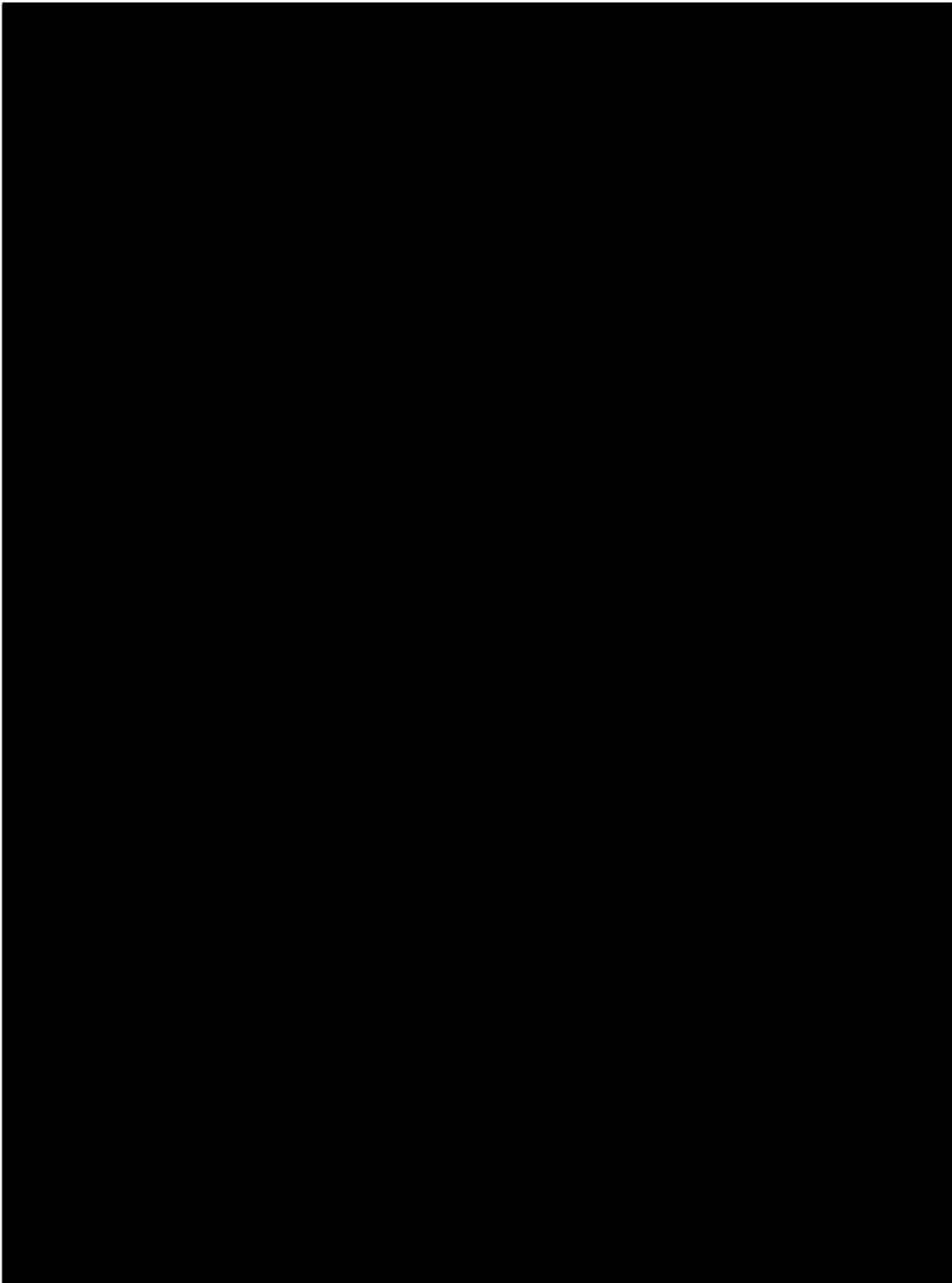
Security Services

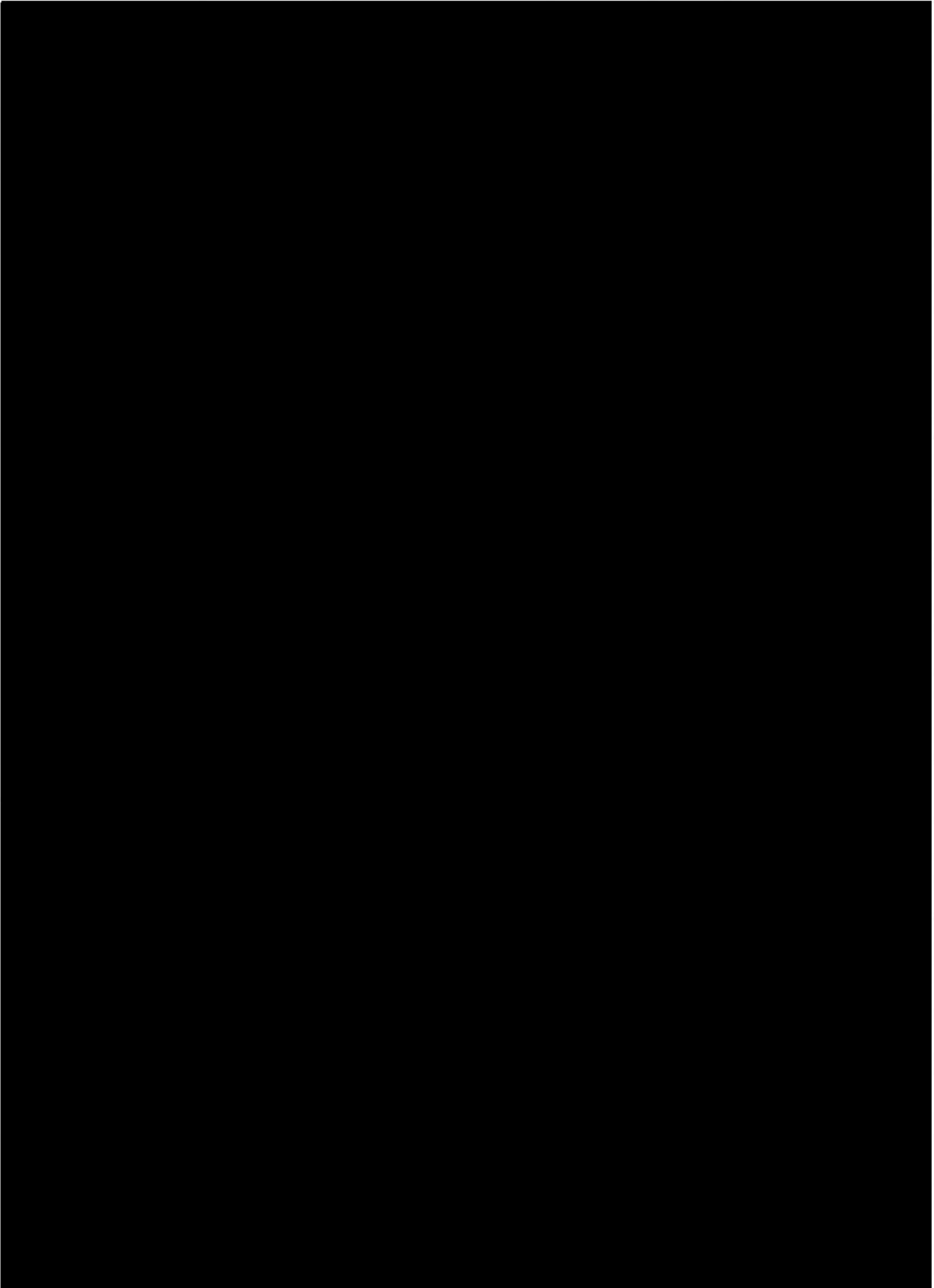
MACQUARIE UNIVERSITY CAMPUS

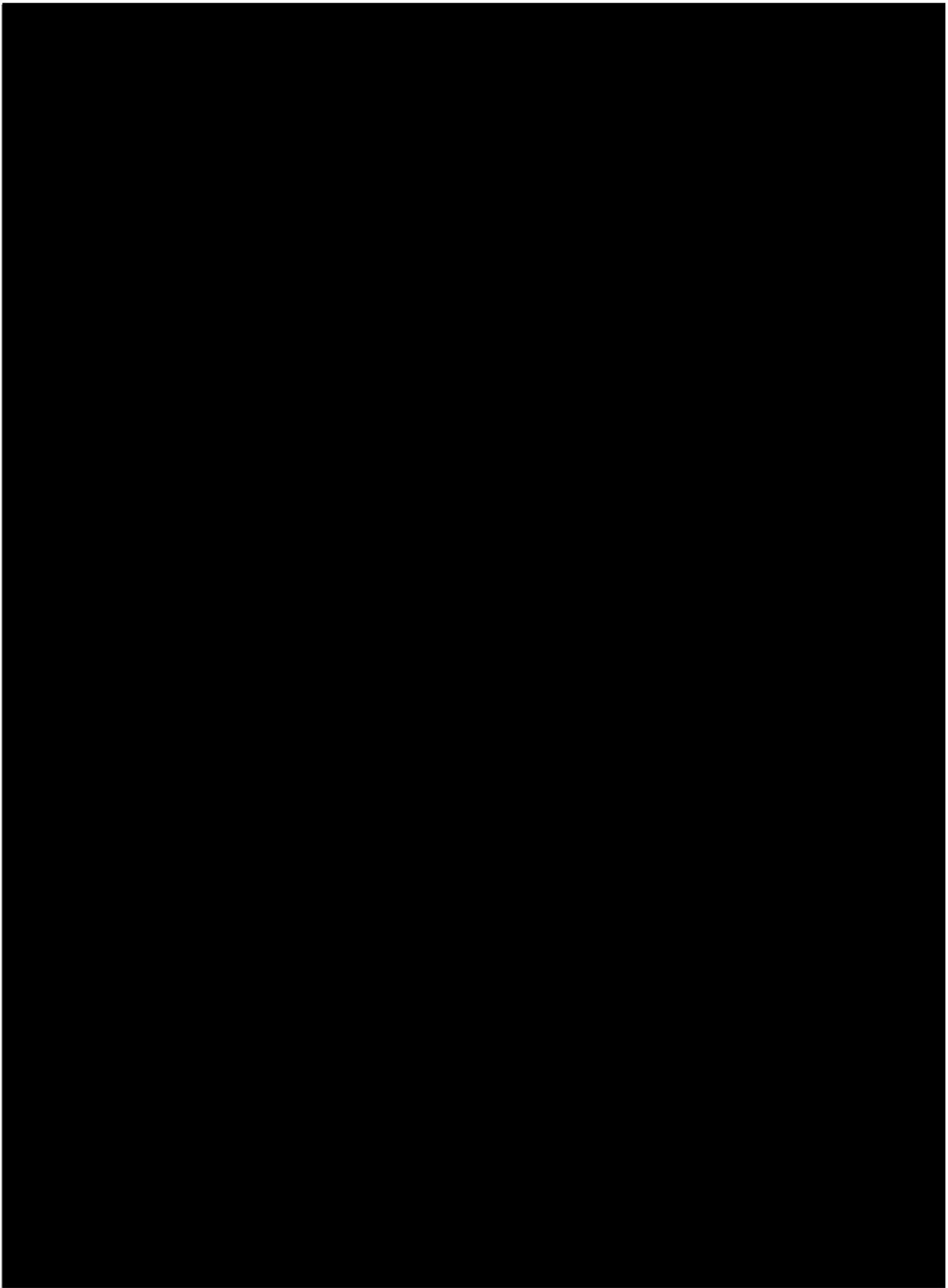


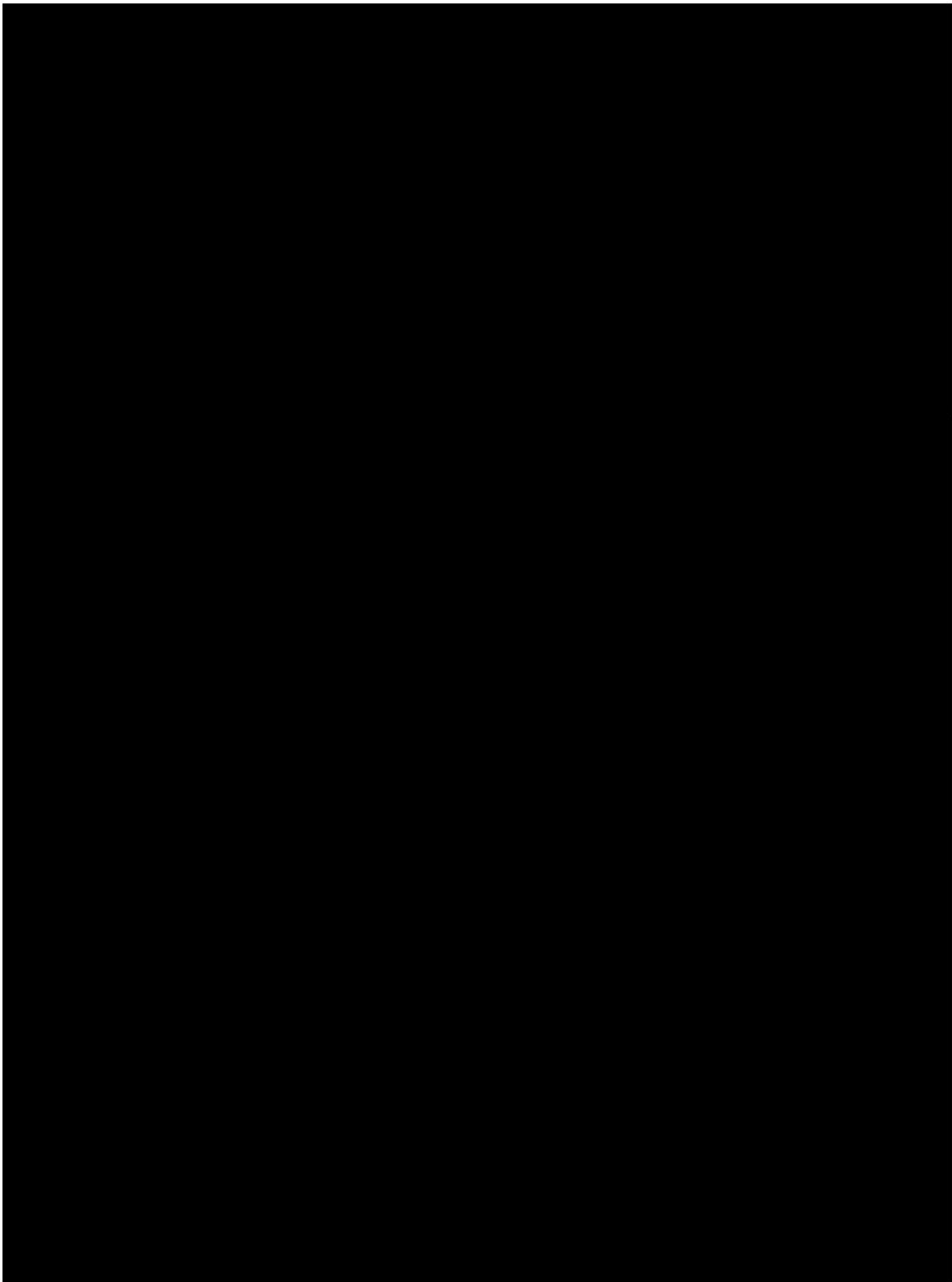


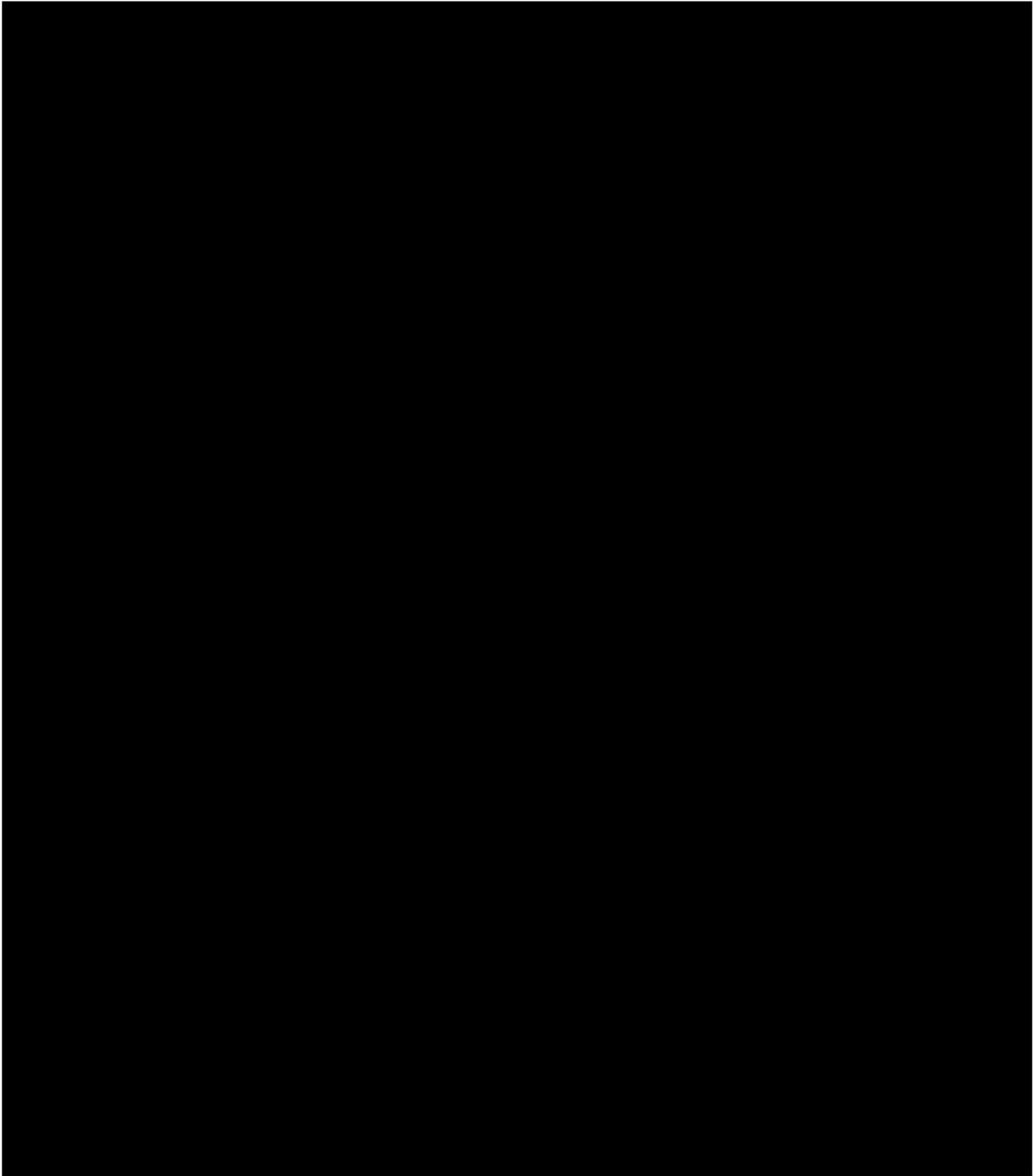


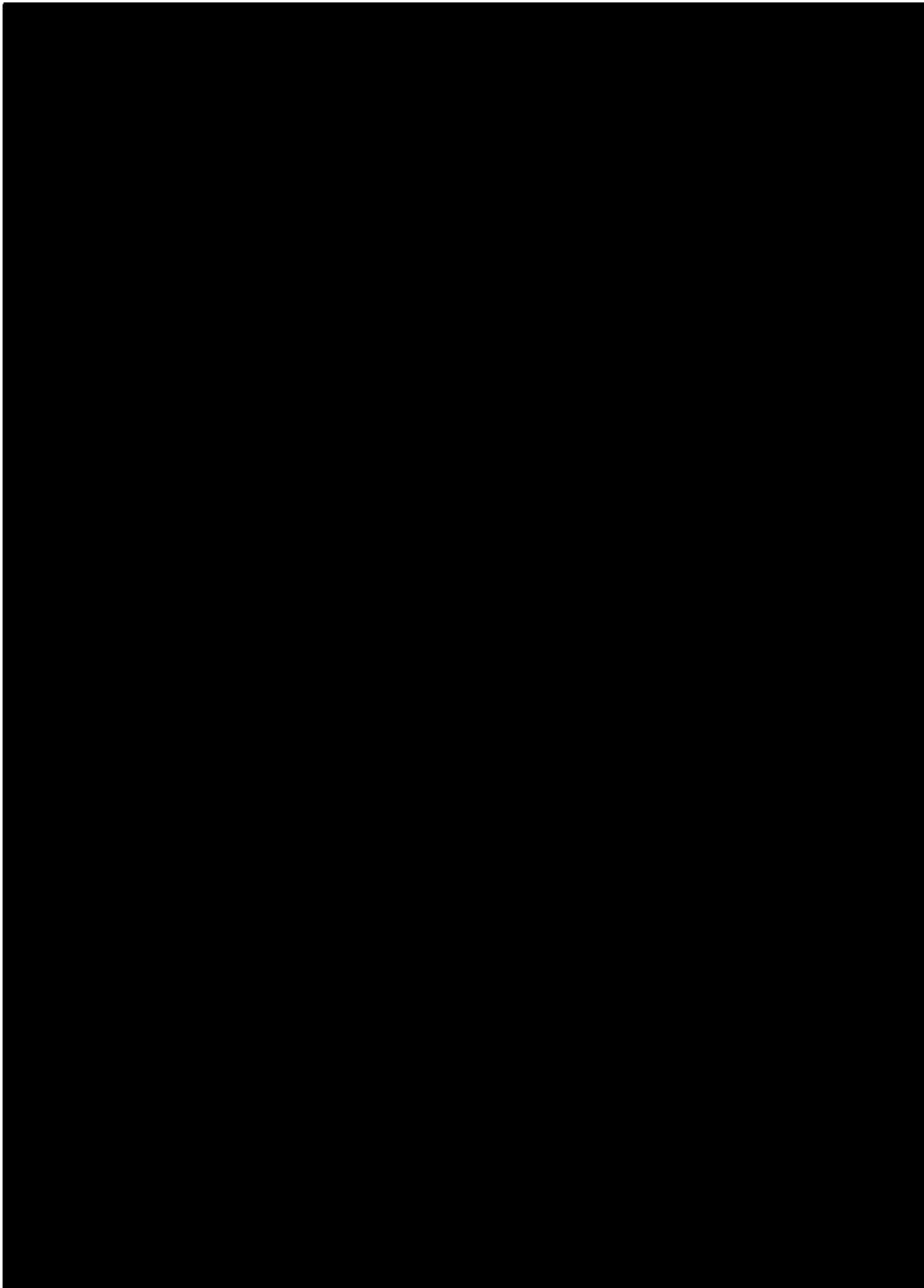


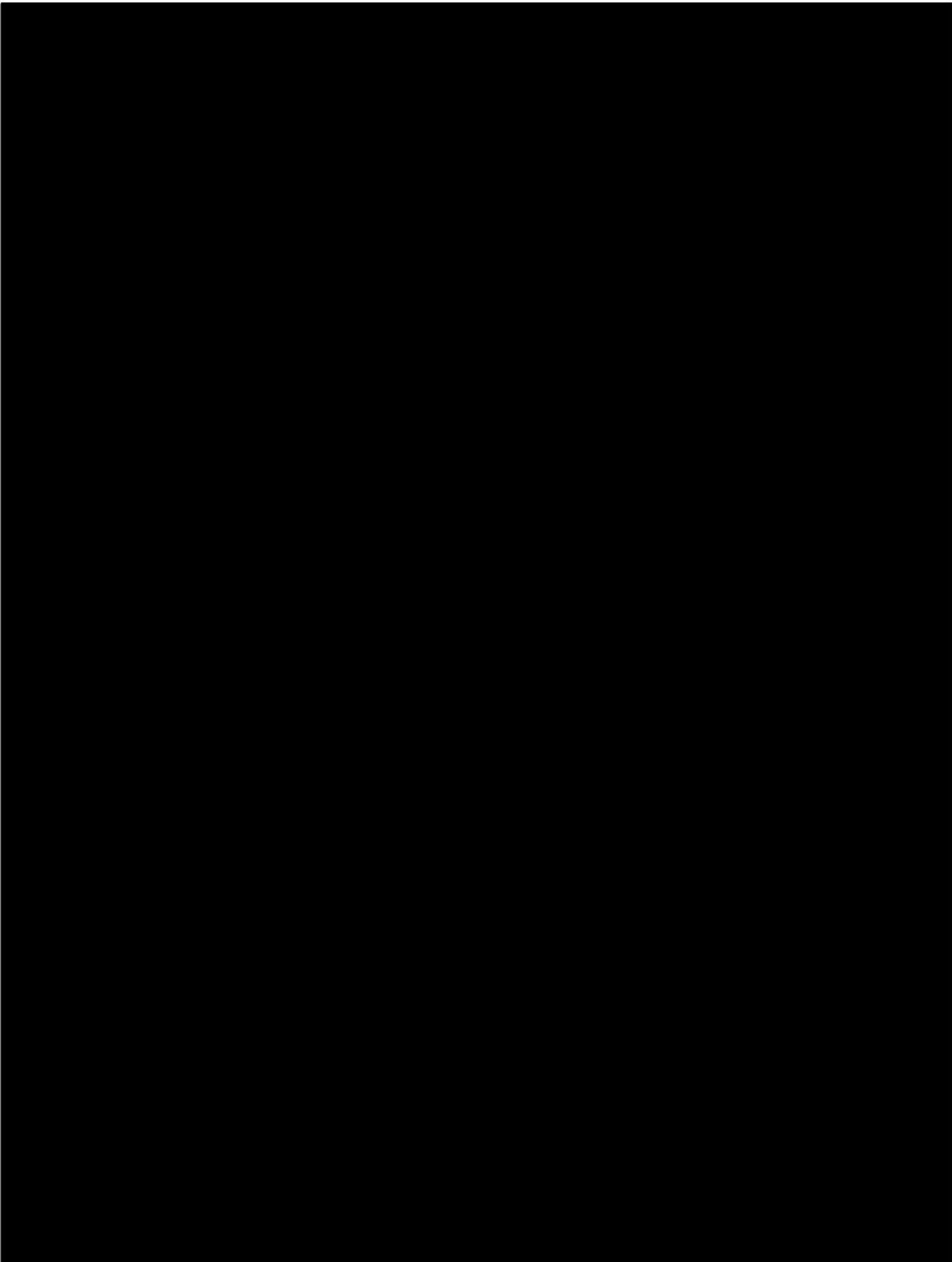


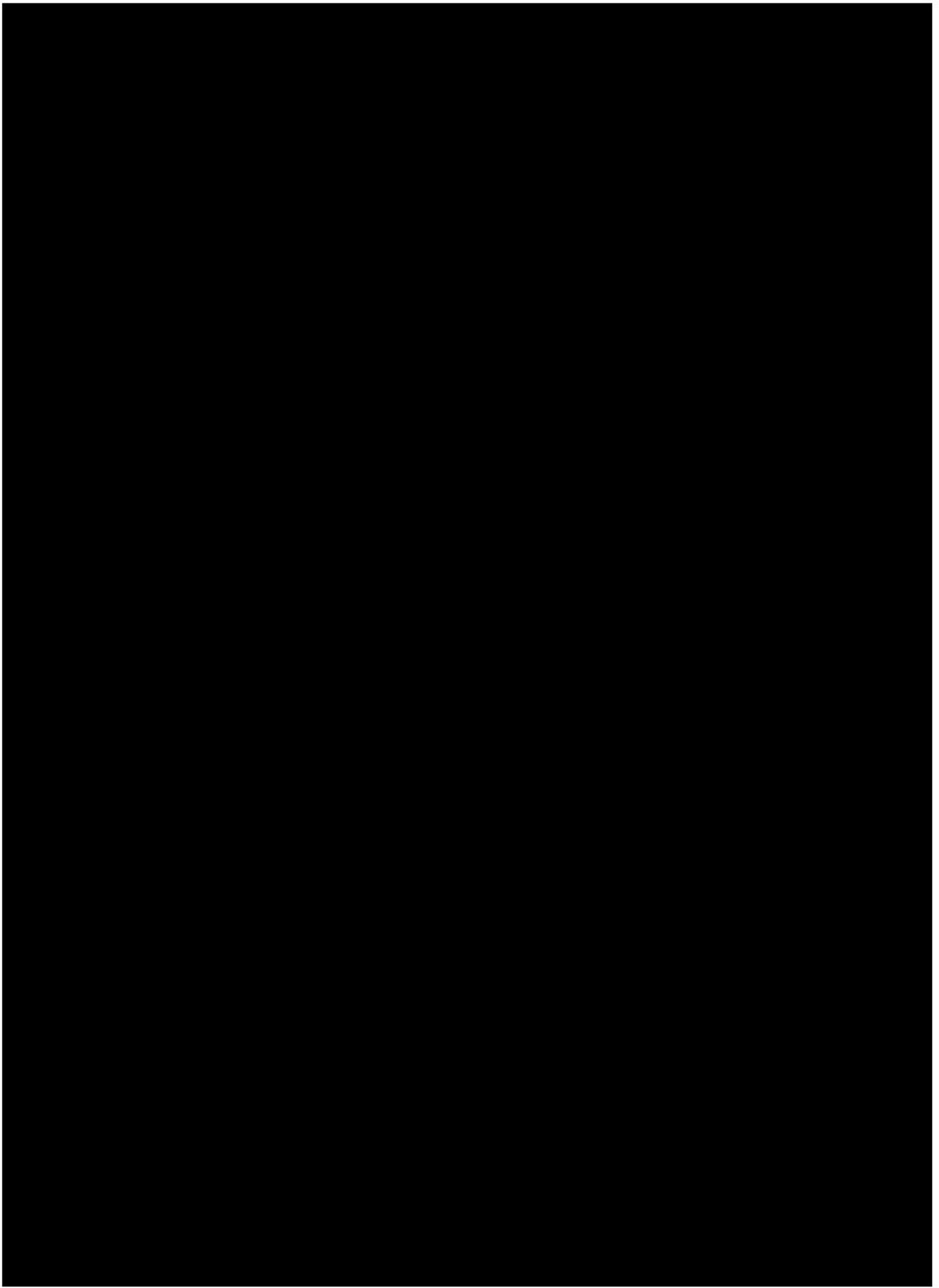


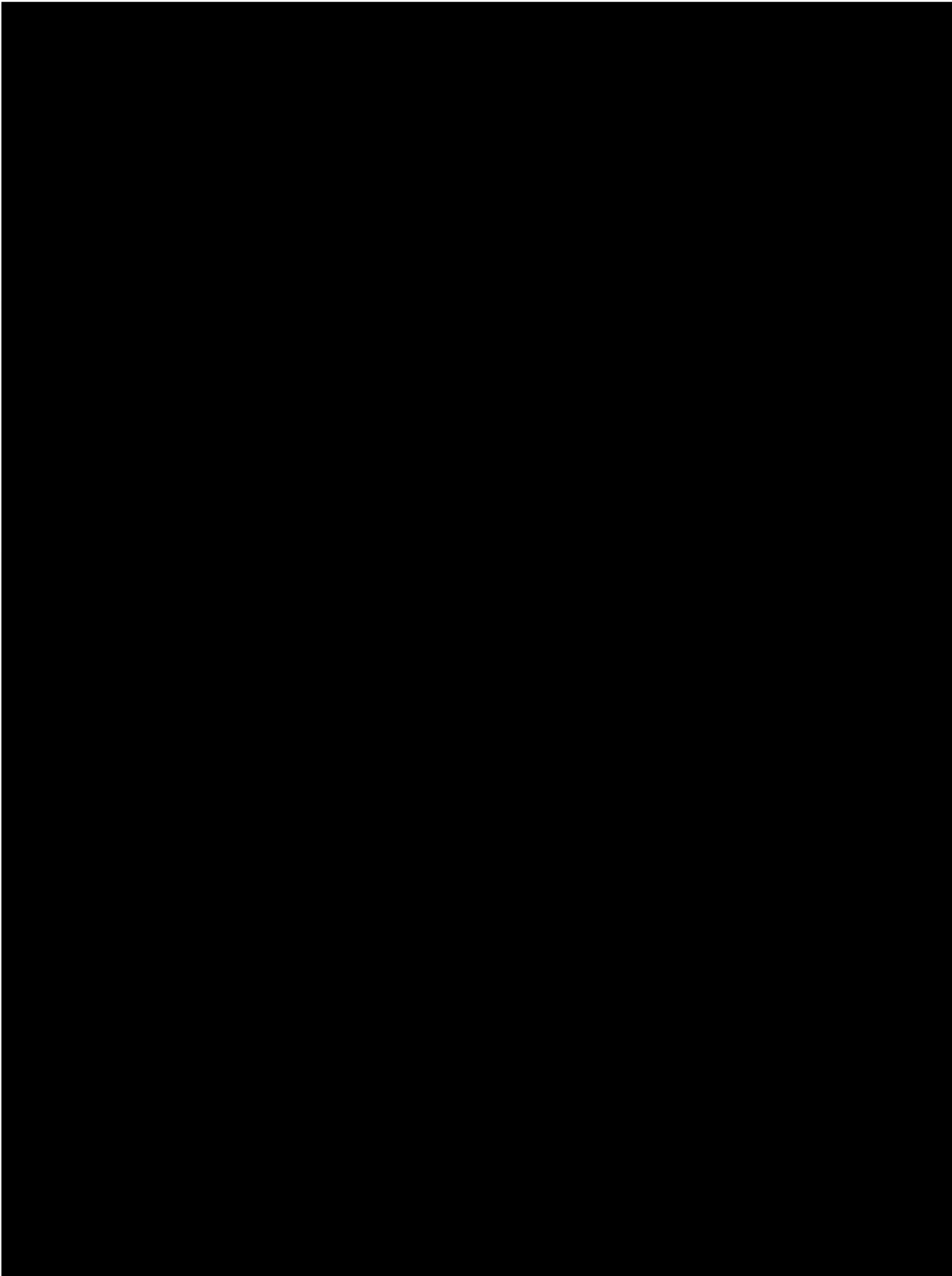


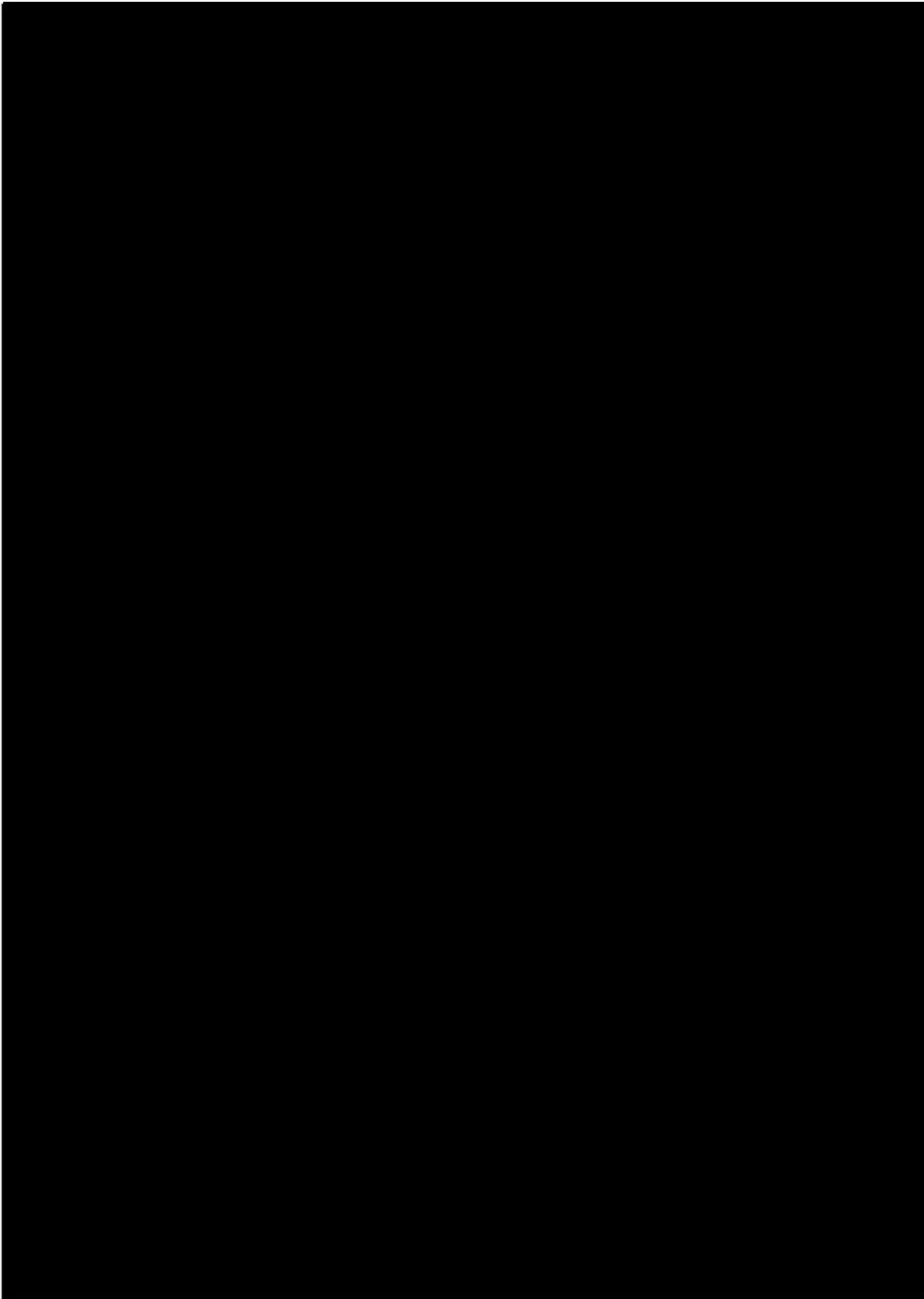


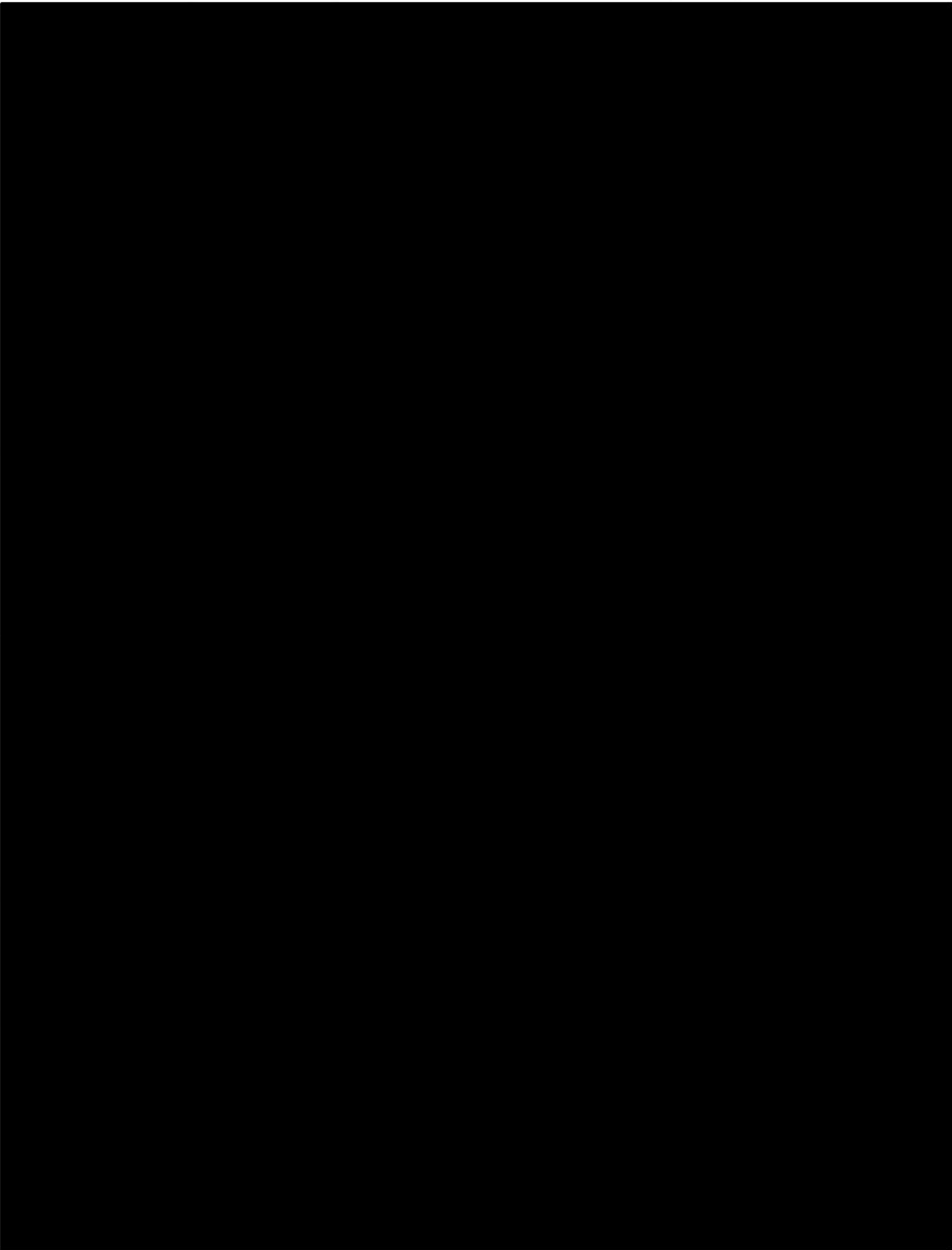


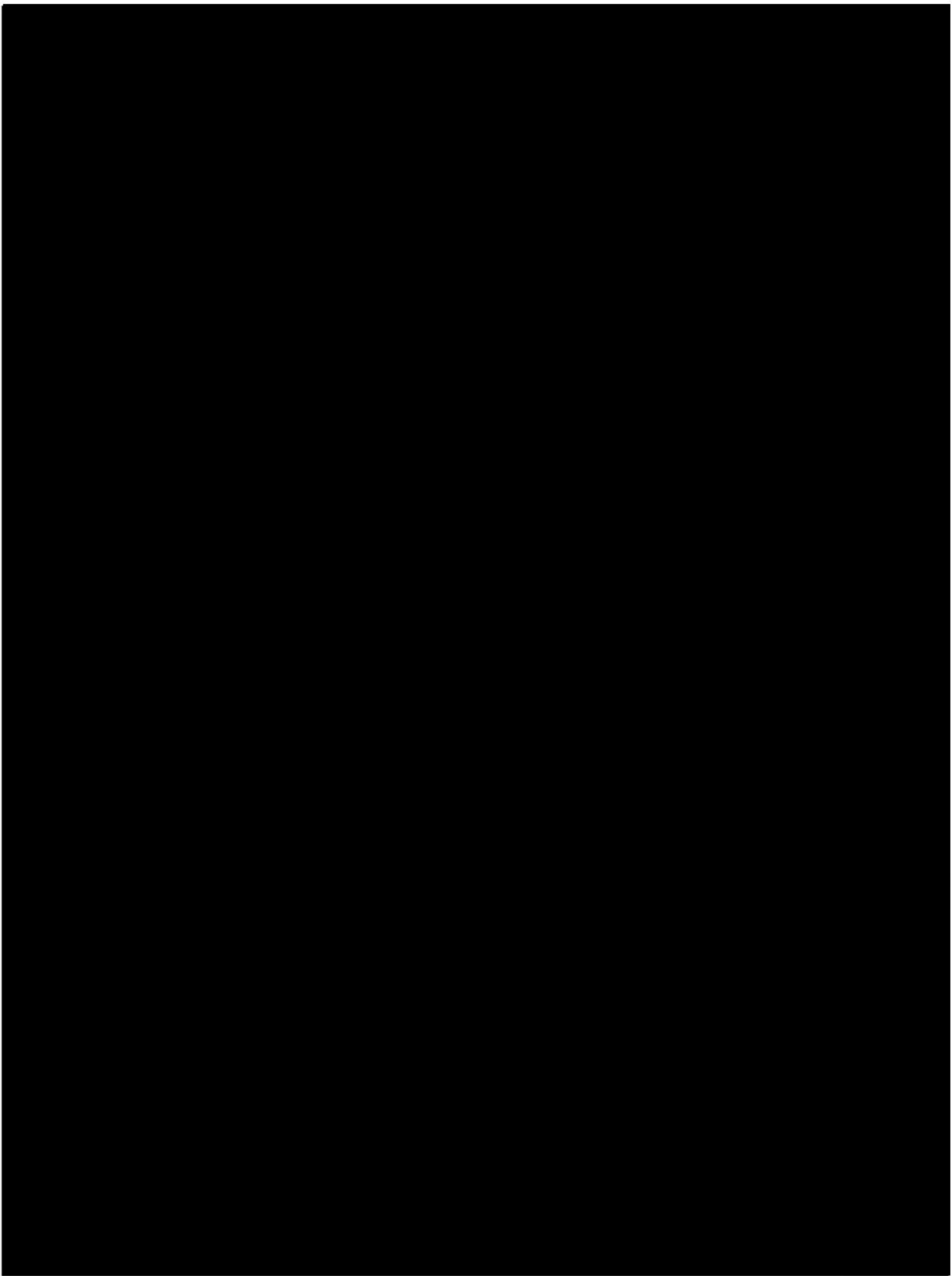


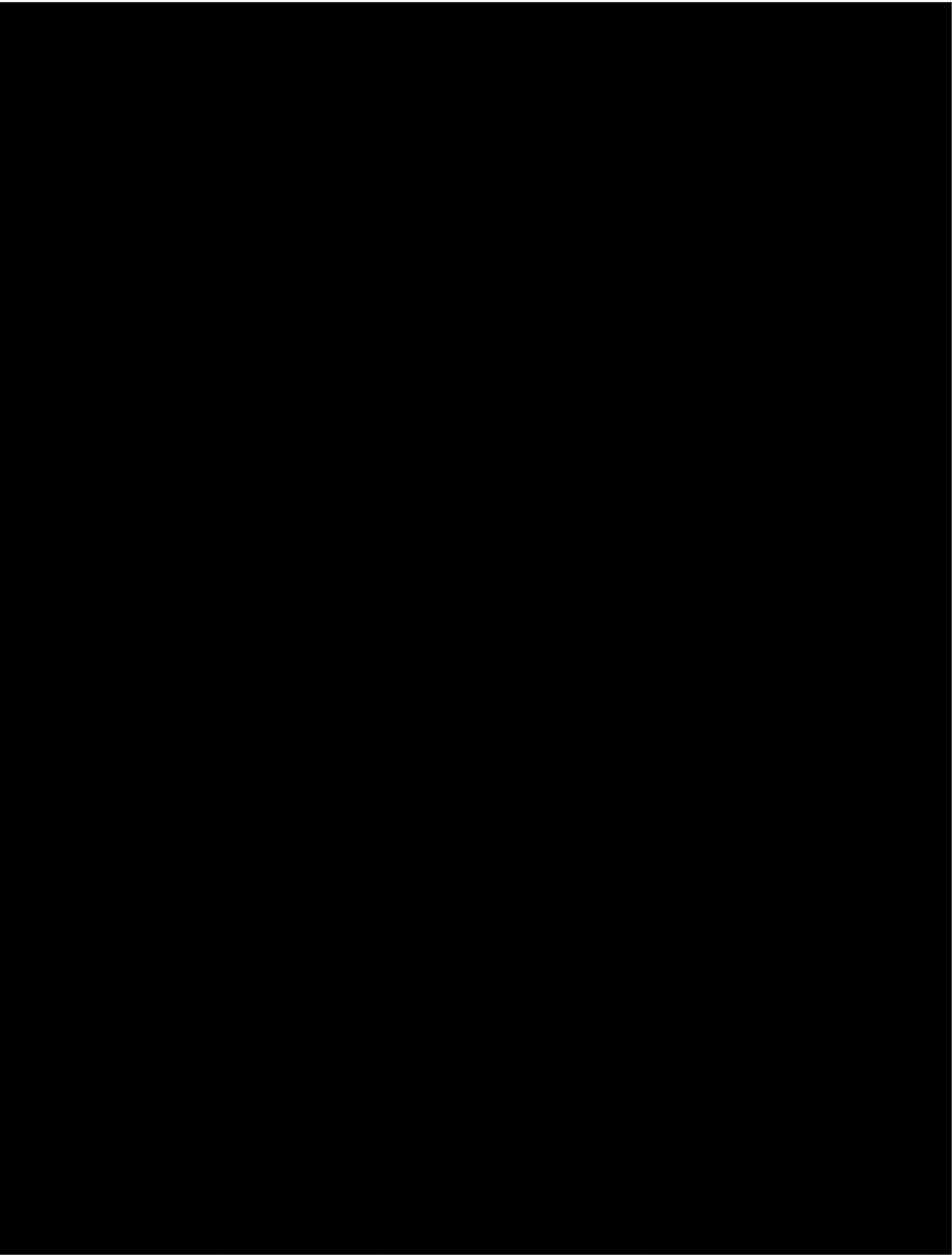


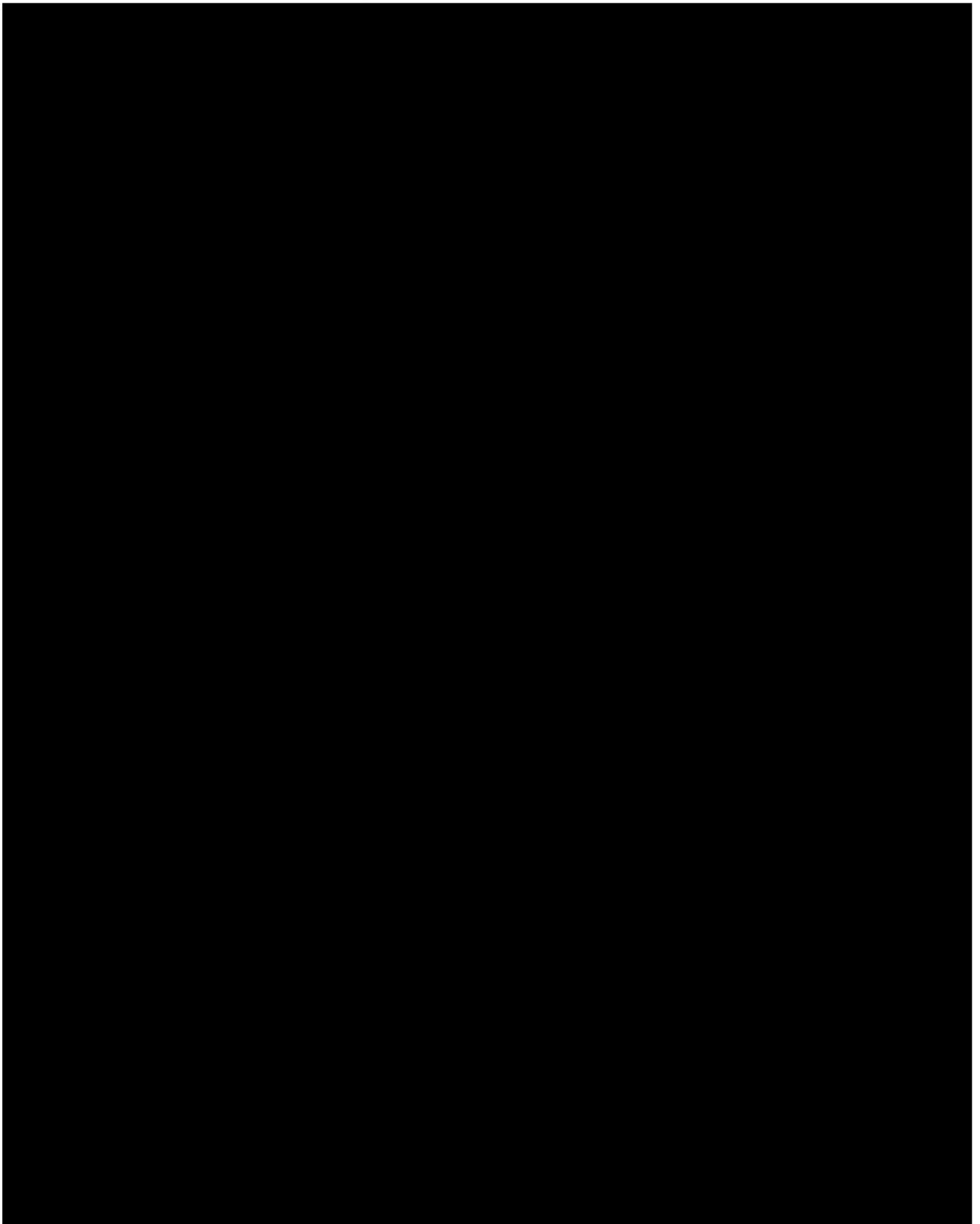


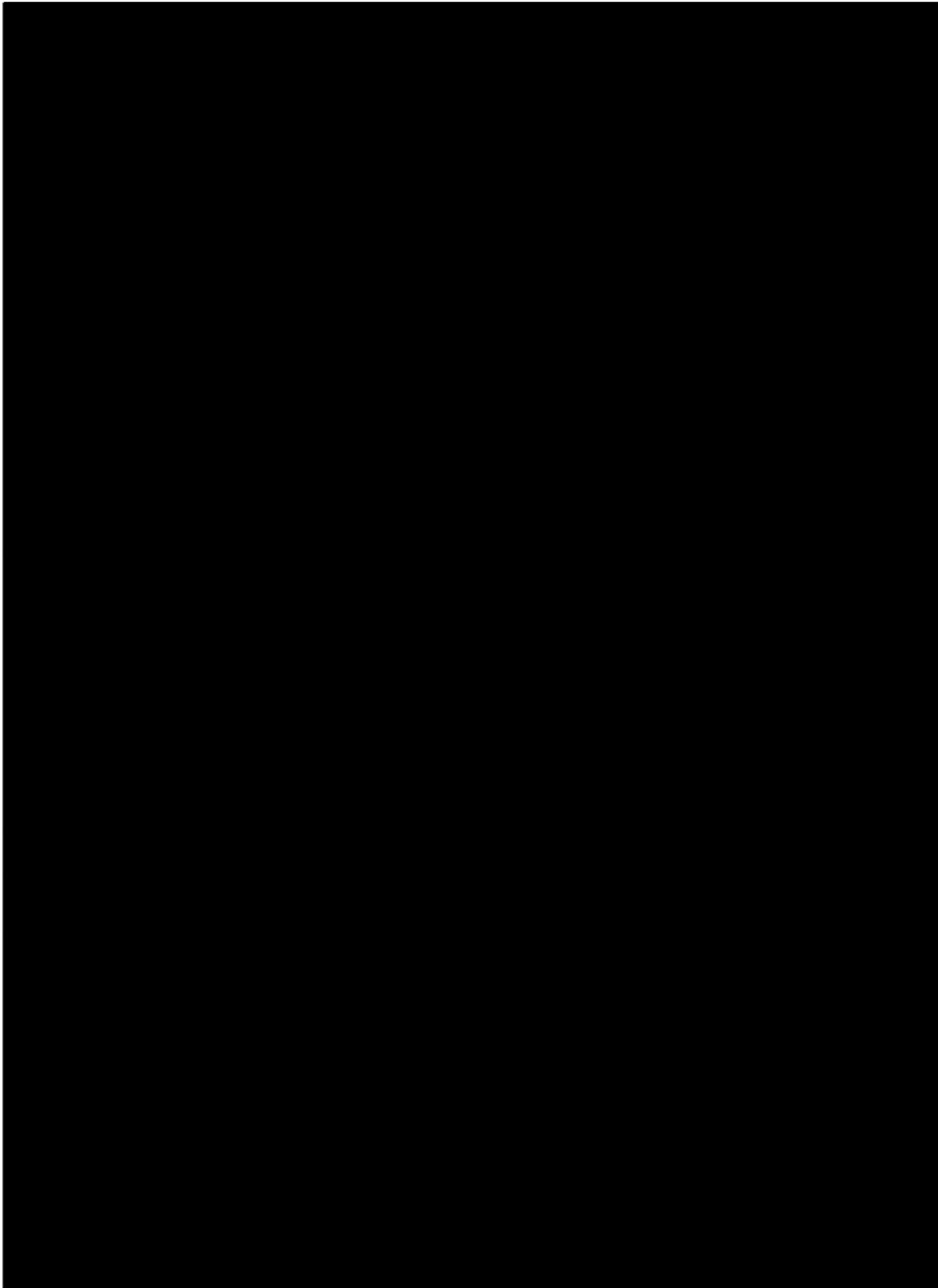


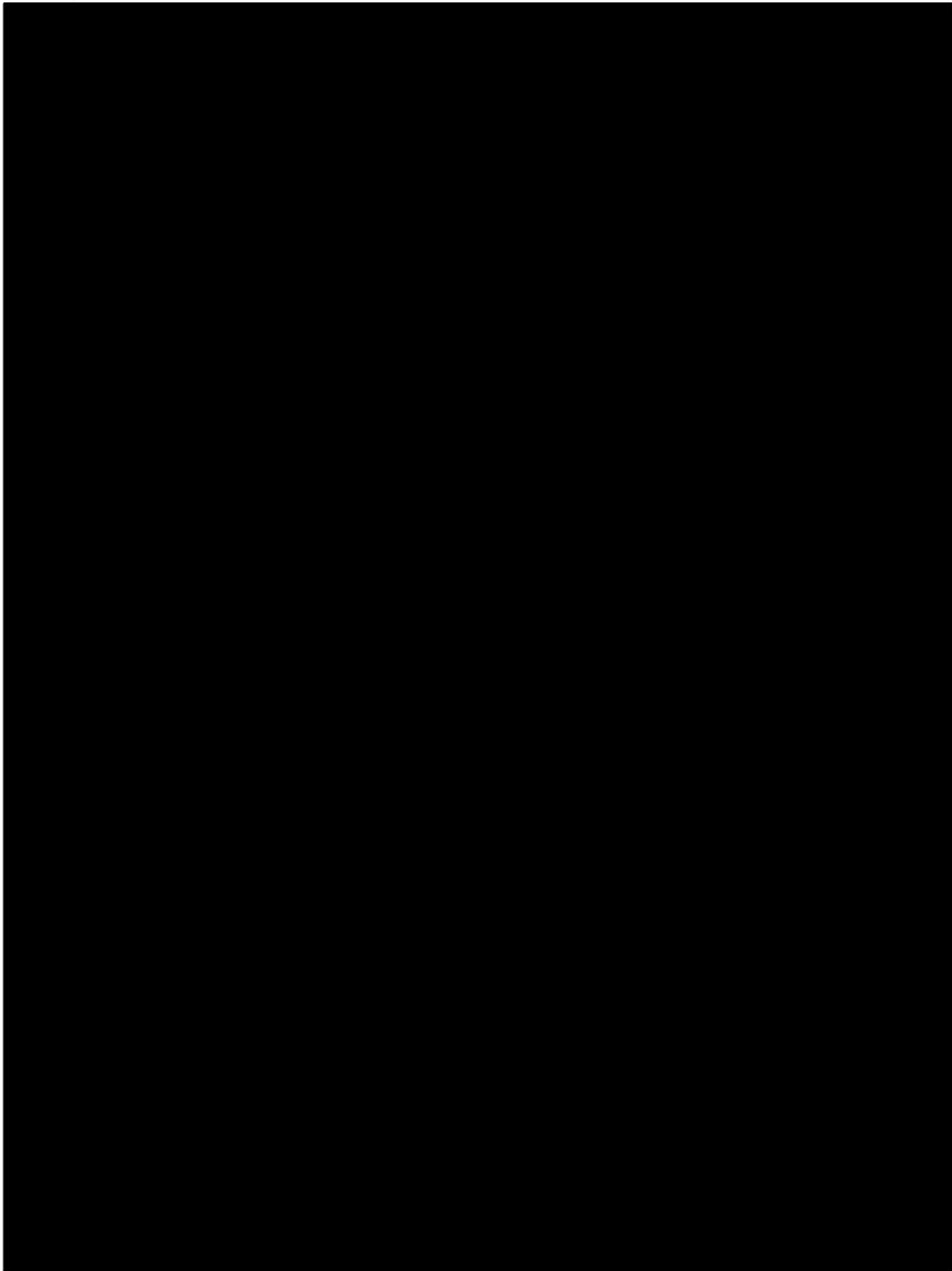


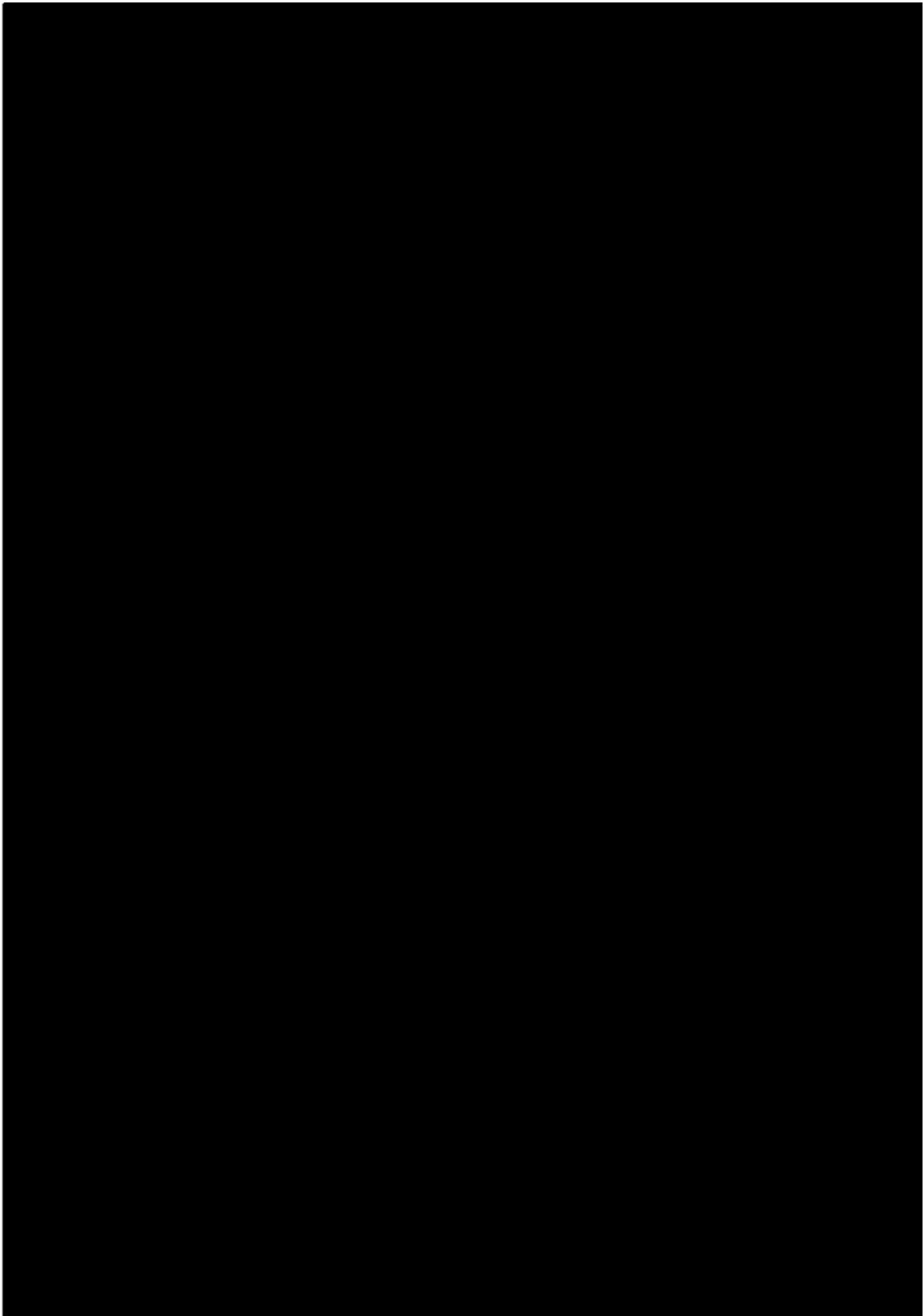


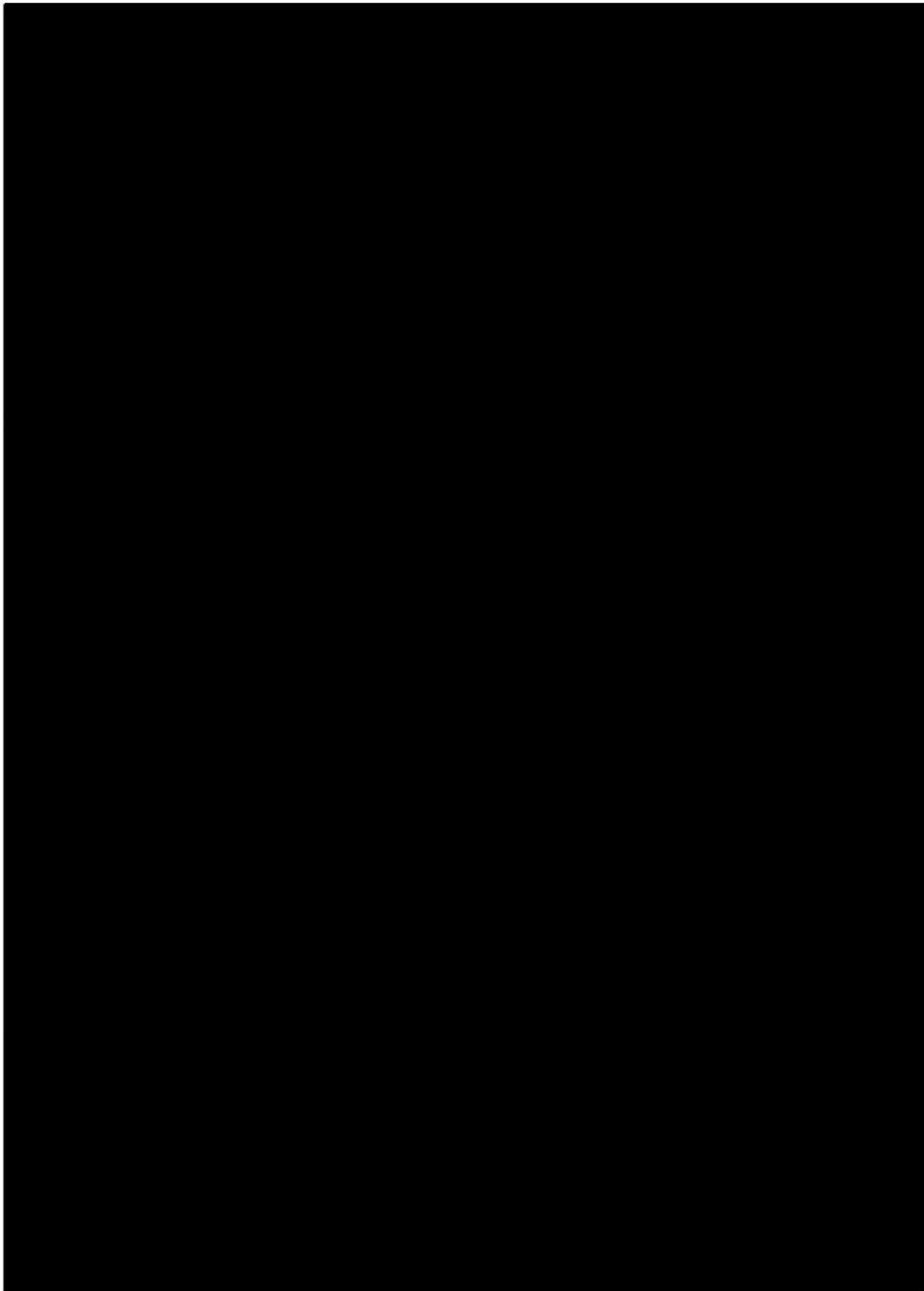












PROPERTY



ANNEXURE 2

Security Services

MACQUARIE UNIVERSITY HOSPITAL AND CLINIC

