



Transport for NSW

Design and Construction of Sydney Gateway Stage 3

Independent Verifier Deed

Contract Number: 20.0000301737.2120



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Deed of Appointment of Independent Verifier

This Deed made at Sydney on 9 November 2020

Parties

John Holland Pty Ltd (ABN 11 004 282 268) of Level 5, 380 St Kilda Road, Melbourne VIC 3004
Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) of 12 Electronics Street, Eight Mile Plains QLD 4113

(together, "**Contractor**")

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

Sydney Airport Corporation Limited (ABN 62 082 578 809) of Nigel Love Building, 10 Arrivals Court, Sydney International Airport, NSW 2020

("Sydney Airport")

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

Recitals

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

This Deed provides:

1. Definitions and interpretation

1.1 Definitions

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

Abatement Amount means, for any Quarter, the amount determined in accordance with Attachment 14.

Adjustment Amount means, for any Quarter, the amount determined in accordance with Attachment 14.

Aboriginal Participation Plan means the plan contained in Exhibit A prepared by the Independent Verifier for the purposes of the APIC Policy.

Additional Services has the meaning given in clause 6A.

APIC Policy means the NSW Government Aboriginal Participation in Construction (APIC) Policy (June 2018) as amended or updated from time to time.

ARTC Works Deed means the draft deed entitled "Gateway Project – Project Works Deed for the design and construction of the Sydney Gateway Road Project between 12.380km and 14.740km on the Botany Line" between Australian Rail Track Corporation Limited (ABN 75 081 455 754) and the Principal and set out in Exhibit H (Third Party Agreements) to the D&C Deed.

Collective KPI Score has the meaning given in Attachment 14.

Construction Verification Services means all Services relating to the verification of the construction of the Project Works, the Temporary Works and the performance by the Contractor of its

construction obligations under the D&C Deed, including those specified in clause 13 of the D&C Deed and in the Third Party Agreements.

Contamination Specialist means the person so entitled as the contamination specialist in Attachment 9 engaged by the Independent Verifier with the minimum qualifications set out in Attachment 9.

D&C Deed means the deed entitled "Design and Construct Deed Sydney Gateway - Stage 3" between the Principal and the Contractor dated 28 October 2020.

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

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

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

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

Individual KPI Score has the meaning given in Attachment 14.

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

Gateway Project Deed means the deed entitled "Gateway Project Deed" between the Principal, Roads and Maritime Services (ABN 76 236 371 088) and Sydney Airport dated [REDACTED] a copy of which was provided to the Independent Verifier prior to the date of this Deed.

Key Performance Indicator or **KPI** has the meaning given in Attachment 14.

Minimum Aboriginal Participation Spend means the amount identified in clause 3.13(d). It represents [REDACTED] of the Fee (excluding GST) at the date of this Deed less allowable exclusions, in line with the APIC Policy goals.

Allowable exclusions are costs incurred by the Independent Verifier over which it has little or no control. For example:

- (a) specialised capital equipment (for example tunnel exhaust fans, tunnel boring machines, batch plants); and
 - (b) imported materials;
- where no suitable Australian supplier exists in the market, and
- (a) value of existing and new non- contract/project specific assets apportioned to the contract/project, where they are used in delivery of the Project Works;
 - (b) property i.e. acquisitions, indirect leasing costs, extra land, adjustments; and
 - (c) non-construction related services,

as agreed in writing by the Principal and the Independent Verifier or if not agreed as directed by the Principal.

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

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

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

Monthly Progress Report means the report referred to in clause 3.8 of this Deed.

NCR means a non-conformity report.

Nominated Personnel means the people referred to in clause 3.3(d) including any replacement personnel engaged in accordance with clause 3.3(b) or clause 3.3(c).

Other Parties means the Principal, Sydney Airport and the Contractor.

Payment Schedule means Attachment 3.

PDCS means the project document control system, being the electronic platform InEight or any other electronic platform notified by the Principal's Representative from time to time.

Project means the design and construction of an arterial road connection and flyover to Sydney Airport's Domestic Terminals, including improvements to existing roads to relieve congestion and improve connectivity to Sydney Airport Domestic Terminals and towards Port Botany as described in the D&C Deed.

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

Quarter means:

- (a) in the case of the first Quarter, the period commencing on the date of this Deed and ending on the day immediately prior to the first Quarterly Date occurring thereafter;
- (b) each 3 month period commencing on a Quarterly Date thereafter; and
- (c) in the case of the last Quarter, the period commencing on the last Quarterly Date occurring prior to the expiry of the last Defects Correction Period and ending on the date of expiry of the last Defects Correction Period.

Quarterly Date means 1 January, 1 April, 1 July and 1 October in any year in the period commencing on the date of this Deed and expiring on the date of expiry of the last Defects Correction Period.

Quarterly KPI Report means the report referred to in clause 3.9 of this Deed.

Services means those services listed in Attachment 2.

TfNSW Specifications means the specifications listed in section 2 and 3 of Appendix D.4 to the SWTC.

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

Working Day means an aggregate period of 7 hours.

1.2

Interpretation

In this Deed:

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

- (i) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) the word "includes" in any form is not a word of limitation;
- (k) a reference to "\$" or "dollar" is to Australian currency; and
- (l) a reference to "surveillance" includes the ongoing observation, examination, assessment, inspection, monitoring, testing and analysis of the Contractor's Activities and reporting to independently verify compliance with the requirements under the D&C Deed and the Project Documents.

1.3 **Governing Law**

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

2. **Appointment of the Independent Verifier**

2.1 **Appointment**

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

2.2 **Payment**

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

2.3 **Nature of Services**

- (a) The Independent Verifier and the Other Parties acknowledge and agree that the Verification and Monitoring Plan is incidental to, and does not limit or otherwise affect the Services or the Independent Verifier's obligations under this Deed.
- (b) Where this Deed contemplates an action, agreement, decision, direction or the like by the Other Parties, and the Other Parties cannot reach agreement in respect of such action, decision, direction or the like, then the Principal must determine the appropriate action, agreement, decision, direction or the like.
- (c) In reaching decisions in relation to this Deed which may affect the Other Parties, the Principal may take into account representations made by the Contractor.

3. **Independent Verifier's obligations**

3.1 **Acknowledgement**

The Independent Verifier acknowledges that:

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

3.2 **Further acknowledgements and warranties**

The Independent Verifier:

- (a) acknowledges that each of the Other Parties:
 - (i) is relying upon the knowledge, skill, expertise and experience of the Independent Verifier in the performance of its obligations under this Deed; and
 - (ii) may suffer loss if the Independent Verifier does not perform its obligations in accordance with the requirements of this Deed;
- (b) warrants to the Other Parties that, in performing the Services, it will comply with all Law, act honestly, diligently, reasonably and with the degree of professional care, knowledge, skill, expertise, experience and care which would be reasonably expected of a professional providing services similar to the Services within the design and construction industry generally and the design and construction of major engineering works in particular;
- (c) warrants to the Other Parties that, at all times, it will act within the time requirements for the performance of its obligations under this Deed and the Project Documents, and where no time is prescribed, within a reasonable time, and will comply with the requirements of the Payment Schedule;

- (d) without limiting clauses 3.2(a) and 3.2(b), acknowledges that the Other Parties are entitled to and will rely on any certificate or other document signed or given by the Independent Verifier under or pursuant to this Deed or the Project Documents;
- (e) without limiting its obligations under any provision of this Deed, warrants to the Other Parties that:
 - (i) it will carry out and perform the Services in accordance with this Deed; and
 - (ii) without limiting subparagraph (i), to the extent the Verification and Monitoring Plan is not inconsistent with:
 - A. the Project Documents; or
 - B. the nature of the Services,
 it will carry out and perform the Services in accordance with the Verification and Monitoring Plan;
- (f) acknowledges that it must, when accessing the Construction Site and all places at which the Contractor's Activities are being undertaken, comply with the reasonable directions of the Principal Contractor;
- (g) will provide transport on site for the use of its site personnel;
- (h) acknowledges its separate functions under the Gateway Project Deed;
- (i) must, in carrying out the Services, carry out physical inspections of the Construction Site, any Extra Land, the Project Works, the Temporary Works and the Contractor's Activities:
 - (i) when appropriate or necessary to do so (including for the purpose of determining whether Construction Completion has been achieved by the Contractor); or
 - (ii) when reasonably requested by the Principal, Sydney Airport or the Contractor, in a manner which satisfies or exceeds the requirements ascertainable from Attachment 5 by Independent Verifier during the Contractor's Activities and the Verification and Monitoring Plan (including surveillance levels and resources) and will invite and permit the Principal, Sydney Airport and the Contractor to accompany it on all such inspections;
- (j) must carry out the Services in a manner which does not prevent, hinder, disrupt, delay or otherwise interfere with any work or services performed by any person (including the Contractor) except where it is the unavoidable consequence of performing the Services;
- (k) in undertaking the Services will comply with all the safe working requirements of the Contractor;
- (l) acknowledges that a reference in the TfNSW Specifications to the "Project Verifier" is to be read as a reference to the Independent Verifier; and
- (m) must nominate itself as the Nominated Authority for the release of all Hold Points and Witness Points documented within the TfNSW Specifications and any Hold Points or Witness Points inserted by the Independent Verifier as contemplated by clause 2.4(e) of the D&C Deed.

3.3 Independent Verifier's Organisation and Personnel

- (a) The Independent Verifier must provide a dedicated management team and personnel who are engaged under an effective organisation structure and have appropriate and a sufficient degree of knowledge, skill, expertise and experience to perform its obligations under this Deed. The organisation structure must clearly identify positions, roles, skills, expertise, experience levels, tasks, resourcing levels, delegated authorities and responsibilities and internal and external lines of authority, communication and reporting, including those with the Principal's Representative and the Contractor.
- (b) The Independent Verifier must ensure that the Nominated Personnel:
 - (i) perform the services required of their respective positions;
 - (ii) are not removed without the prior written consent of the Principal (which consent must not be unreasonably withheld or delayed), and if any of the Nominated Personnel are removed:
 - A. they must be replaced by people of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Attachment 9); and

- B. prior to removal and replacement, there must be a proper and adequate handover to ensure that the new personnel have a reasonable understanding of the Project and the Services; and
- (iii) are located in Sydney for the performance of the Services and are available for consultation as any party may reasonably require from time to time.
- (c) If any of the Nominated Personnel:
 - (i) die or are seriously ill;
 - (ii) resign from their role with the Independent Verifier; or
 - (iii) are otherwise unable to perform their duties in respect of the Services for a period in excess of 5 Business Days (including as a result of annual, long service, sick, bereavement or other leave),
 the Independent Verifier must promptly provide an alternative person to replace that person who is of at least equivalent ability, knowledge, skill, expertise and experience (including the ability, knowledge, skill, expertise and experience required by clause 2 of Attachment 9).
- (d) The people required to perform the Services are:
 - (i) [REDACTED] as Independent Verifier's Representative for the Design Verification Services;
 - (ii) [REDACTED] as Independent Verifier's Representative for the Construction Verification Services;
 - (iii) [REDACTED] as Independent Verifier's project director;
 - (iv) the other persons listed in clause 1 of Attachment 9; and
 - (v) the persons listed in clause 5 of the Payment Schedule.
- (e) The Other Parties may direct the Independent Verifier to remove from the performance of the Services any of the Nominated Personnel and the Independent Verifier must comply with any such direction.
- (f) The Independent Verifier must notify the Other Parties in writing of the names of the person or persons that are authorised to sign the certificates and documents referred to in Attachment 2 which the Independent Verifier is required to execute as part of the Services (being Schedules 13 (Independent Verifier's Certificate - Payment Claim), 14 (Independent Verifier's Certificate - Quality), [REDACTED] 15 (Independent Verifier's Certificate - Design Documentation), 16 (Independent Verifier's Certificate - Construction Completion), 17 (Independent Verifier's Certificate - Nominated Defects), 17A (Independent Verifier's Certificate - As-Built documentation) and 18 (Independent Verifier's Certificate - Final Completion). The Independent Verifier must ensure that these certificates and documents are signed by the person or persons so notified.

3.4 Subcontracting

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

Name of subcontractor	Relevant Services
[REDACTED]	[REDACTED]

3.5 Quality Assurance

- (a) The Independent Verifier must implement a quality system in accordance with ISO 9000 and ISO 9001, and otherwise in a form reasonably acceptable to the Other Parties to ensure compliance of the Services with the requirements of this Deed.
- (b) The Independent Verifier will not be relieved of any requirement to perform any obligation under this Deed as a result of:
 - (i) compliance with the quality assurance requirements of this Deed; or

- (ii) any acts or omissions of the Other Parties with respect to the quality assurance requirements of this Deed, including any review of, comments upon, or notice in respect of, the Verification and Monitoring Plan or any audit under clause 3.10.

3.6 Verification and Monitoring Plan

- (a) The Independent Verifier must prepare and submit to the Other Parties within 10 Business Days of the date of this Deed a "Verification and Monitoring Plan" which must:
 - (i) be based on the Initial Verification and Monitoring Plan;
 - (ii) address the matters identified in Part 2 of Attachment 4; and
 - (iii) comply with Attachment 6, Attachment 5 and Attachment 9.
- (b) The Principal and Sydney Airport may:
 - (i) review the Verification and Monitoring Plan submitted under clause 3.6(a); and
 - (ii) if the Verification and Monitoring Plan does not comply with this Deed, or if the Principal or Sydney Airport believes that the Verification and Monitoring Plan does not comply with Attachment 6, Attachment 5 and Attachment 9, notify the Independent Verifier with details of the non-compliance.
- (c) If the Independent Verifier receives a notice under clause 3.6(b)(ii), the Independent Verifier must promptly submit an amended Verification and Monitoring Plan to the Other Parties after which clause 3.6(b) will reapply.
- (d) If the Independent Verifier does not receive a notice under clause 3.6(b)(ii) within 15 Business Days after the submission of the relevant Verification and Monitoring Plan, the relevant Verification and Monitoring Plan submitted will be the Verification and Monitoring Plan with which the Independent Verifier must comply (as it is updated from time to time under and in accordance with clause 3.7).

3.7 Revisions to the Verification and Monitoring Plan

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

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

3.8 Progress Reports by the Independent Verifier

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

- (a) a description of the verification activities undertaken during the reporting period;
- (b) a list or schedule of design and construction surveillance, monitoring and audits undertaken by the Independent Verifier during the reporting period including Independent Verifier certificates issued;
- (c) a comprehensive schedule of the status of all correspondence and other documentation exchanged between the Independent Verifier and the Other Parties, including the dates on which the Other Parties and any Third Party submitted comments on a design package to the Independent Verifier during the period;
- (d) a summary of key risks and issues relating to the Services;
- (e) the Independent Verifier's current and planned resources and staffing levels;
- (f) details of any Contractor non-conformities raised by the Independent Verifier or the Principal and details on the verification of the rectification by the Contractor of non-conformities;
- (g) details of the surveillance, monitoring and auditing proposed to be undertaken by the Independent Verifier in the forthcoming reporting period, including the outcomes of the risk management processes used to determine the levels and scope of the surveillance activities;
- (h) details of the current version of the Verification and Monitoring Plan and a summary of any amendments, updates and developments to the Verification and Monitoring Plan during the reporting period;
- (i) any act, matter or thing which has or is likely to have a material adverse effect on the progress and provision of the Services, together with detailed particulars on how the Independent Verifier is dealing or proposes to deal with any such act, matter or thing; and
- (j) all data necessary for the Principal to calculate or substantiate the calculation of the Individual KPI Scores for the relevant month, including:
 - (i) a summary table setting out:
 - A. the number of Working Days worked by each Nominated Personnel;
 - B. the total of Working Days worked by all Nominated Personnel; and
 - C. the total number of Working Days worked by all staff (including Nominated Personnel),
who were engaged by the Independent Verifier in the performance of the Services during the relevant month;
 - (ii) a summary table setting out details of:
 - A. each design package submitted to the Independent Verifier by the Contractor during the relevant month; and
 - B. the date on which each such design package was submitted by the Contractor,
and, if consolidated comments on the design package were issued by the Independent Verifier during the relevant month, details of:
 - C. the date on which such comments were issued by the Independent Verifier; and
 - D. the number of Business Days between the date on which the design package was submitted by the Contractor and the date on which the consolidated comments were issued by the Independent Verifier; and
 - E. the total number of design packages in respect of which consolidated comments issued by the Independent Verifier were not issued in compliance with the timeframes specified in the Project Documents; and

- (iii) the date on which each Monthly Progress Report and Quarterly KPI Report was issued and, if applicable, the number of Business Days that a Monthly Progress Report or Quarterly KPI Report was late.

3.9 Quarterly KPI Report

During the period from the date of this Deed until the end of the last Defects Correction Period, the Independent Verifier must provide a quarterly report of its performance against the Key Performance Indicators (one hard copy plus simultaneous provision of an electronic copy) to the Principal's Representative by the fifth Business Day of the month after the end of each Quarter and in such format as is required by the Principal's Representative, containing, identifying or setting out:

- (a) the Independent Verifier's assessment of its performance against the Key Performance Indicators and its calculation of each Individual KPI Score it believes it has achieved and the Collective KPI Score for the relevant Quarter;
- (b) all data necessary for the Principal to calculate or substantiate the calculation of the Individual KPI Scores, including the data referred to in clause 3.8(j) consolidated for the relevant Quarter; and
- (c) the Independent Verifier's calculation of the Abatement Amount (if any) and the Adjustment Amount (if any).

3.10 Audit and surveillance

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

3.11 Access to records

- (a) Without limiting clause 3.11(c), the Independent Verifier acknowledges and agrees that the Principal may on 5 Business Days' notice at any time carry out an audit of and copy the Independent Verifier's documents, accounts and other records to the extent reasonably necessary to verify the Independent Verifier's performance against any Key Performance Indicator, except to the extent that the documents, accounts or records:
 - (i) are subject to legal professional privilege; or
 - (ii) must not be disclosed in accordance with any Law.
- (b) The Independent Verifier must:
 - (i) provide the Principal with such assistance as it may reasonably require in connection with the inspection or audit, including making all relevant documents available; and
 - (ii) supply to the Principal photocopies or electronic copies of information requested.
- (c) Without limiting the foregoing, from the date of this Deed and for a period of seven years following completion of the Services, the Independent Verifier must, within a reasonable time of any request, give the Other Parties access to any records or other documents prepared or generated by or on behalf of the Independent Verifier arising out of or in connection with the carrying out the Services.
- (d) Digital media records are to be provided in both native format and formats with the greatest potential for long term survival such as Portable Document Format specialised for the preservation of electronic documents (PDF/A-1) or equivalent.

3.12 Deeds poll

The Independent Verifier must, within 5 Business Days of the date of this Deed, provide the Principal with duly executed deeds poll in the form of Attachments 11 and 13.

3.13 **Aboriginal participation in construction**

- (a) The Independent Verifier must systematically manage its Aboriginal participation processes and implement its Aboriginal Participation Plan in accordance with the APIC Policy.
- (b) The Independent Verifier must submit an Aboriginal Participation Plan and Aboriginal participation reports.
- (c) The parties acknowledge and agree that the Aboriginal participation project category is Category 2.
- (d) The Minimum Aboriginal Participation Spend amount is at the date of this Deed:
 - (i) [REDACTED] (excl GST).
- (e) The Independent Verifier must prepare and submit to the Principal (copying the Other Parties) in accordance with the APIC Policy reporting requirements and value of contract:
 - (i) its Aboriginal participation reporting data in the format required by the NSW Procurement Board (as defined in the APIC Policy), providing details of the implementation of the APIC Policy and achievement of targets, on a monthly basis; and
 - (ii) the final Aboriginal participation report, prior to completion of the Services, describing and explaining:
 - A. how the Aboriginal Participation Plan has been implemented within the specified period;
 - B. what actual outcomes have been achieved;
 - C. whether the Minimum Aboriginal Participation Spend amount in the Aboriginal Participation Plan has been achieved; and
 - D. the allocation of any unspent amounts from the Minimum Aboriginal Participation Spend to the APIC Policy's list of approved organisations.
- (f) Templates are, at the date of this Deed, available at:
<https://www.procurepoint.nsw.gov.au/policy-and-reform/construction-procurement-policy/aboriginal-participation-construction-policy-apic>.

3.14 **Performance Regime**

The Principal and the Independent Verifier must comply with Attachment 14.

4. **Independence and Confidentiality**

4.1 **Independent Verifier to be independent**

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

- (a) subject to clause 6A, independently of the Other Parties;
- (b) honestly, diligently and reasonably;
- (c) with the degree of professional, knowledge, skill, expertise, experience and care which would be reasonably expected of [REDACTED] professional providing services similar to the Services within the construction industry generally and the design and construction of major engineering works in particular; and
- (d) within the time prescribed under this Deed or the Project Documents or as anticipated by the Contract Program.

4.2 **Confidentiality**

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

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

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

4.3 **Exclusivity**

- (a) The Independent Verifier must not, and must procure that:

- (i) any related body corporate (as defined in sections 9 and 50 of the Corporations Act 2001 (Cth)) of the Independent Verifier; and
- (ii) any employees, agents, subcontractors and consultants that are involved in the provision of the Services,

do not, from the date of execution of this Deed until the earlier of completion of the Services or termination in accordance with clause 7:

- (iii) have any direct or indirect involvement (whether under contract or any other arrangement):
 - A. with the Contractor or any of its contractors, consultants or providers; or
 - B. in any work being carried out under the Project Documents; or
- (iv) provide services to or advise any other person in relation to the Project Documents or the work being carried out under the Project Documents,

other than the provision of the Services under this Deed, except with the prior written consent of the Principal which may be withheld or granted in its absolute discretion.

(b) The Independent Verifier agrees that:

- (i) having regard to the Project Documents and the Services, clause 4.3 is reasonable as regards the nature of the involvement restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project Documents and to ensure the best value for money of the Project Documents; and
- (ii) damages may not be a sufficient remedy for a breach of clause 4.3 and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Independent Verifier, in addition to any other remedies available at Law or in equity.

5. Obligations of the Other Parties

5.1 No Interference or Influence

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

5.2 Co-operation by Contractor

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

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

least two months prior to the commencement of construction activities on the Construction Site and until four months after the Date of Construction Completion.

5.3 Principal to have no liability

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

5.4 Sydney Airport to have no liability

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

- (a) to any party to this Deed by reason of Sydney Airport being a party to this Deed; or
- (b) for the performance of or failure to perform, any obligation of the Contractor or the Independent Verifier under this Deed or the Project Documents.

5.5 Change to Services, suspension of Services and appointment of Substitute Verifier

- (a) The Principal may, by written notice to the Independent Verifier, direct the Independent Verifier to carry out a change to the Services (including an addition or omission or change described in clause 5.5(b)) and the Independent Verifier must comply with that direction.
- (b) The Contractor acknowledges that:
 - (i) as at the date of this Deed, the terms and conditions of the Third Party Agreements identified in Schedule 50 (Requirements of Third Party Agreements) and Exhibit H (Third Party Agreements) of the D&C Deed as "Draft" have not been finalised between the Principal and the relevant Third Party (each a **Draft Third Party Agreement**); and
 - (ii) following finalisation of any Draft Third Party Agreement after the date of this Deed, if there are any additional or different Services to be provided by the Independent Verifier under the finalised Third Party Agreement, the Principal may direct a change under clause 5.5(a).
- (c) The Fee to be paid to the Independent Verifier in relation to a change to the Services referred to in clause 5.5(a) will be determined in accordance with the schedule of rates set out in the Payment Schedule. If an amount for the change to the Services cannot be determined by reference to the schedule of rates, the amount will be a reasonable amount as stated in writing by the Principal.
- (d) The Principal may, by written notice to the Independent Verifier (copied to Sydney Airport and the Contractor), direct the Independent Verifier to suspend any or all of the Services for the period of time specified in the notice.
- (e) The Independent Verifier acknowledges and agrees that the Principal may, with or without the Other Parties, appoint another verifier (**Substitute Verifier**) to carry out those Services which are omitted as a result of a change to the Services as directed under clause 5.5(a), and any decision of a Substitute Verifier appointed shall be treated (between the Principal, the Contractor and Sydney Airport) as if it is a decision of the Independent Verifier, and the Substitute Verifier shall have all of the rights and powers of the Independent Verifier under the Project Documents (excluding this Deed) in connection with those Services.
- (f) Notwithstanding a change to the Services or the appointment of a Substitute Verifier, the Independent Verifier must continue to perform the Services, as varied in accordance with this clause 5.5, in accordance with this Deed. Without prejudice to any claim in respect of the performance of the Independent Verifier, the Independent Verifier is not responsible for the performance of the Substitute Verifier.

6. Liability, insurance and indemnity

6.1 Limitation of liability

Subject to clause 6.2, the Independent Verifier's total aggregate liability arising out of, under or in connection with this Deed [REDACTED], from all claims howsoever arising (including in tort (including negligence), in contract (including under an indemnity or warranty), in equity, in restitution and breach of statutory duty) will be limited in aggregate to [REDACTED]

6.2 Exclusions

The limitation of liability in clause 6.1 does not apply to:

- (a) any claims arising out of or in connection with any of the following on the part of the Independent Verifier or anyone for whom it is responsible:
 - (i) fraud or criminal conduct;
 - (ii) wilful misconduct being any conduct, act or omission done or to be done which results from conscious, reckless or intentional indifference to any provision of this Deed or the rights or welfare of, or the foreseeable harmful consequences to, those who are or may be affected by that conduct, act or omission; or
 - (iii) gross negligence being any intentional act or failure to act by the Independent Verifier which seriously and substantially deviates from a diligent course of action which is done in reckless disregard of or indifference to the serious and avoidable harm it is likely to cause; or
- (b) limit or exclude the Independent Verifier's liability in respect of:
 - (i) liability to the extent to which the Independent Verifier is (or will be or ought to be) entitled to be paid or indemnified pursuant to a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance policy required under this Deed in respect of that liability; or
 - (ii) liability for which, but for a failure by the Independent Verifier to comply with its obligations under this Deed or under a public liability or product liability insurance policy or a motor vehicle comprehensive or third party property damage insurance policy required under this Deed, the Independent Verifier would have (or ought to have) been entitled to receive payment or been indemnified under the insurance policy.

6.3 Insurances

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

(iii) the policies of insurance referred to in clause 7.1(a) of the D&C Deed have been obtained at the Principal's cost.

(d) [REDACTED] the Independent Verifier is responsible for the amount of any excess payable under that policy and may effect insurance to cover the amount of that excess at its own cost.

6.4 Notice of matter affecting insurance

The Independent Verifier must notify the Other Parties:

- (a) [REDACTED]
- (b) of any notice of any claim or subsequent proceeding or action and developments concerning the claim [REDACTED] or if any policy is cancelled, avoided or allowed to lapse or any limit of a policy eroded, as soon as possible, and in any case no later than 2 Business Days after becoming aware of any such event or circumstance.

6.5 Provision of information

- (a) Before the Independent Verifier starts any work for or in connection with this Deed and whenever requested in writing by any of the Other Parties, the Independent Verifier must supply proof [REDACTED] that all insurance policies which the Independent Verifier is required to effect and maintain under this Deed (including insurance policies required to be taken out by subcontractors) are current.
- (b) If a notification is made pursuant to clause 6.4 of this Deed, the Independent Verifier must provide all information reasonably requested by any of the Other Parties, and comply with all reasonable requests made by any of the Other Parties, in relation to the occurrence, claim, demand or circumstance the subject of the notice.

6.6 Subcontractors insurance

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

6.7 Obligations unaffected by insurance

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

6.8 Indemnity

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

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

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

6A. Additional Services

- (a) The parties acknowledge that:
- (i) the Principal may direct the Independent Verifier in writing to carry out any additional services in relation to the Project from time to time (**Additional Services**); and
- (ii) Additional Services directed under clause 6A(a)(i) may include:
- A. where Sydney Airport advises the Principal under the Gateway Project Deed that any Design Documentation does not comply with the requirements of the Gateway Project Deed, in which case the Independent Verifier must:
- 1) notify the Principal and Sydney Airport of its determination within 5 Business Days; and

- 2) where the Independent Verifier's determination is that the Design Documentation does not comply with the requirements of the Gateway Project Deed and the requirements of the D&C Deed, the Independent Verifier must address such non-compliance in its response to the Contractor as part of the design review process under the D&C Deed;
 - B. advising the Principal and Sydney Airport on claims for extension of time, either in-house or if necessary or requested by the Principal by engaging a specialist subcontractor approved by the Principal and Sydney Airport with experience in assessing extensions of time;
 - C. any services to be carried out to assist the Airport Building Controller in carrying out its functions as directed by the Principal from time to time; and
 - D. any other services required by the Principal in respect of the Project, including in respect of the Gateway Project Deed.
- (b) The Other Parties:
- (i) consent to the Independent Verifier performing the Additional Services for the benefit of Principal and / or Sydney Airport (as applicable); and
 - (ii) acknowledge that the Contractor will not receive copies of any documents or notices to or from the Independent Verifier in connection with the Additional Services (unless the Principal's Representative so determines, in its absolute discretion.)

7. Termination of appointment

7.1 Notice of termination

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

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

7.2 Prior agreement on replacement

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

7.3 Termination

Subject to clause 7.1(d), where a notice is served on the Independent Verifier under clause 7.1, the appointment of the Independent Verifier will terminate upon the earlier of:

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

7.4 Delivery of documents

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

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

7.5 **Reasonable assistance**

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

7.6 **Payment until date of termination**

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

7.7 **Termination without payment**

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

7.8 **Survive termination**

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

7.9 **Rights upon Termination**

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

8. **Expenses, Stamp Duty and GST**

8.1 **Expenses**

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

8.2 **Stamp Duties**

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

8.3 **GST**

- (a) Notwithstanding any other provision of this Deed, any amount payable for a supply made under this Deed which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any input tax credits to which that party is entitled to in respect of that cost, expense or other amount.
- (b) If GST becomes payable on any supply made by a party (the "**Supplier**") under or in connection with this Deed:
 - (i) any amount payable or consideration to be provided under this Deed for that supply ("**Agreed Amount**") is exclusive of GST;
 - (ii) an additional amount will be payable by the party to whom that supply is made (the "**Recipient**"), equal to the amount of GST payable on that supply as calculated by the Supplier in accordance with the GST law and payable at the same time and in the same manner as for the Agreed Amount; and
 - (iii) the Supplier will provide a tax invoice (or equivalent documentation which complies with the GST law) to the Recipient in respect of that supply, no later than the time at which the Agreed Amount for that supply is to be provided under this Deed.
- (c) If, for any reason, the GST payable by the Supplier in respect of a supply it makes under this Deed (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under sub-clause

(b) in respect of that supply, the Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate). The payment of the variation amount by the Supplier or the Recipient under this clause (as the case may be) must be paid within 10 Business Days of that party becoming aware of the variation in the amount of GST payable. Where an adjustment event occurs in relation to a supply, the Supplier will issue an adjustment note to the Recipient in respect of that supply within 10 Business Days after becoming aware of that adjustment event occurring.

(d) If the Recipient is dissatisfied with any calculation to be made by the Supplier under this clause, the Recipient may, at its own expense and after notifying the Supplier accordingly, refer the matter to an independent expert nominated by the President of the Institute of Chartered Accountants for expert determination, which will be final and binding on all parties. The expert will act as an expert and not as an arbitrator and will take into account the terms of this Deed, the matters required to be taken into account by the Supplier under this clause and any other matter considered by the expert to be relevant to the determination.

9. Miscellaneous

9.1 Further acts

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

9.2 Notices

(a) Any notices contemplated by this Deed:

- (i) must be in writing and be sent through the PDCS; and
- (ii) must be addressed as shown below:

Name: Transport for NSW
Address: 20-44 Ennis Road
Milsons Point
NSW 2061

For the attention of: Executive Director, Commercial Services

Name: Principal's Representative
Address: Level 21, 101 Miller Street
North Sydney NSW 2060

Email: [REDACTED]
For the attention of: [REDACTED]

Name: Sydney Airport Corporation Limited
Address: Nigel Love Building
10 Arrivals Court
Sydney International Airport, NSW 2020

Email: [REDACTED]
For the attention of: [REDACTED]

Name: John Holland Pty Ltd and Seymour Whyte
Constructions Pty Ltd
Address: Level 3, 65 Pirrama Rd
Pyrmont NSW 2009

Email: [REDACTED]
For the attention of: [REDACTED]

Name: APP Corporation Pty Limited
Address: Level 7, 116 Miller Street
North Sydney NSW 2060

Email: [REDACTED]

For the attention of: [REDACTED]

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

- (b) A notice is taken to have been received in the case of delivery by the PDCS, when the sender receives the sent confirmation report generated by the PDCS, provided that if the notice would be taken to have been received on a day which is not a Business Day or after 5pm on a Business Day, it is taken to be received at 9am on the next Business Day.
- (c) With respect to notices sent through the PDCS, an attachment to a notice will only form part of a notice if it is uploaded to the PDCS in:
 - (i) pdf format;
 - (ii) a format compatible with Microsoft Office; or
 - (iii) such other format as may be agreed between the parties in writing from time to time.

9.3 Jurisdiction

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

9.4 Amendments

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

9.5 Assignment

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

9.6 Waiver

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

9.7 Consents

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

9.8 Counterparts

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

9.9 Indemnities

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

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

9.10 Entire agreement

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

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

9.11 No representation or reliance

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

9.12 Relationship of the parties

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

9.13 Replacement Body Interpretation

If an authority or body referred to in this Deed:

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

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

9.14 Severance

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

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

9.15 Moratorium Legislation

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

9.16 Civil Liability Act

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



Attachment 1 - Project Documents

No.	Contract Name	Parties	Contract Date
1.	D&C Deed and Schedules	Principal Contractor	28 October 2020
2.	Exhibits to the D&C Deed	Principal Contractor	28 October 2020
3.	ARTC Works Deed	Principal Australian Rail Track Corporation Limited (ACN 081 455 754)	As set out in Exhibit H (Third Party Agreements) to the D&C Deed.
4.	Gateway Project Deed	Principal Roads and Maritime Services (ABN 76 236 371 088) Sydney Airport Corporation Limited (ABN 62 082 578 809)	[REDACTED]

Attachment 2 - Independent Verifier Services

1. D&C Deed functions

The Independent Verifier must discharge the functions, obligations, duties and services which the D&C Deed contemplates will be discharged by the Independent Verifier or 'Project Verifier' (as applicable), which include the following:

- (a) functions, obligations, duties and services identified in the D&C Deed (where the clause references below are to clauses in the D&C Deed):
 - Clause 2.4(b)(i) Independently verify in accordance with this Deed that:
 - (a) the Project Works; and
 - (b) the Temporary Works, comply with the requirements of the D&C Deed;
 - Clause 2.4(b)(ii) Make determinations on matters that the D&C Deed expressly requires be determined by the Independent Verifier;
 - Clause 2.4(b)(iii) Perform the functions and activities identified in the D&C Deed and this Deed;
 - Clause 2.4(e) Receive all information and documents, attend all design meetings (including the Project Design Group), obtain access to such premises as may be necessary or reasonably required for the performance of the obligations of the Independent Verifier under this Deed and insert Hold Points or Witness Points and designate the nominated authority to release these and any other the Hold Points in accordance with the SWTC;
 - Clause 2.4(f) Execute and provide certificates in the form of:
 - (a) Schedule 14 (Independent Verifier's Certificate - Quality) every 3 months from the date of the D&C Deed until the end of the last Defects Correction Period;
 - (b) 
 - (c) Schedule 17 (Independent Verifier's Certificate - Nominated Defects) on request in connection with the rectification of particular Defects nominated by the Principal's Representative;
 - (d) Schedule 17A (Independent Verifier's Certificate - As-Built documentation) 
 - (e) Schedule 18 (Independent Verifier's Certificate - Final Completion) upon the expiry of the last Defects Correction Period;
 - Clause 2.5(d)(ii)B Receive from the Proof Engineer a copy of a comprehensive report on the independent assessment of all factors influencing the final integrity of elements of the Project Works and associated Temporary Works;
 - Clause 2.8(d)(ii)B Receive from the Independent Checking Engineer a copy of a comprehensive report on the check required under clause 2.8(d)(ii)A;
 - Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 1(d) Attend preliminary start-up and construction start-up workshop;
 - Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 2(b) When required by the Principal's Representative, attend weekly Construction Site meetings;
 - Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 3(b) When required by the Principal's Representative or the Project Director, attend Evaluation Meetings;

- Clause 3.1 & Schedule 40 (Workshops and Meetings) clause 4 When required by the Principal's Representative, attend meetings of the Project Control Group;
- Clause 3.1 Schedule 40 (Workshops and Meetings) clause 6(c) Attend meetings of the Project Design Group;
- Clause 3.3(c) Receive each Project Plan;
- Clause 3.3(e) Receive each amended Project Plan;
- Clause 3.3(h)(ii) Receive each further developed, amended or updated Project Plan;
- Clause 3.3(j)(iv) Receive each resubmitted Project Plan;
- Clause 3.3(n) Audit and review each revision of the Project Plans (excluding the Quality Plan in which case clause 11.2(d) applies) within 10 Business Days of submission of the plan to the Independent Verifier;
- Clause 3.4(b) Receive the draft Operations and Maintenance Plan;
- Clause 3.4(c) Receive the final draft Operations and Maintenance Plan;
- Clause 3.4(d) Receive the amended final Operations and Maintenance Plan;
- Clause 3.4(f) Receive the developed, amended or updated Operations and Maintenance Plan;
- Clause 3.4(h) Audit and review each revision of the Operations and Maintenance Plan within 10 Business Days of submission of the plan to the Principal's Representative;
- Clause 5.1(c)(i) [REDACTED]
- Clause 5.1(c)(ii) [REDACTED]
- Clause 5.1(c)(iii)B [REDACTED]
- Clause 5.17 and Schedule 51, clause 3.1 Attend Chain of Responsibility Workshops;
- Clause 8.1(c)(i) [REDACTED]
- Clause 10.9 [REDACTED]
- Clause 11.2(a)(ii) Observe, monitor, audit and test all aspects of quality in the Contractor's Activities and the durability of the Project Works to verify compliance with the requirements of the D&C Deed;
- Clause 11.2(a)(iii) Review and assess the quality of the Contractor's Activities, and the durability of the Project Works to verify the Contractor's compliance with the requirements of the D&C Deed;
- Clause 11.2(b)(ii) Receive reports on quality issues from the Quality Manager;
- Clause 11.2(d) Audit and review each revision of the Quality Plan within 10 Business Days of submission of the plan to the Principal's Representative;
- Clause 12.2(b) Receive, review, comment on and monitor the design performance of the Contractor in accordance with clauses 12.2 to 12.3 of the D&C Deed and the Contractor Documentation Schedule;
- Clause 12.2(d) Verify that the Design Documentation for the Substantial Detailed Design Stage for the Project Works:
- (a) comply with the D&C Deed including the SWTC (and in particular the durability and design life requirements); and
 - (b) are documented to enable construction in compliance with the D&C Deed (including to the extent applicable in respect of the correction of Defects),
- by providing design verification in the form of Schedule 15 (Independent Verifier's Certificate - Design Documentation) to the D&C Deed attaching a register of drawings the subject of the verification;
- Clause 12.2(e) Verify that the Design Documentation for the Final Design Documentation Stage (and any amended versions of Design

Documentation for the Final Design Documentation Stage) for the Project Works and Temporary Works (other than Category 3 Temporary Works):

- (a) comply with the D&C Deed including the SWTC (and in particular the durability and design life requirements); and
- (b) are documented to enable construction in compliance with the D&C Deed (including to the extent applicable in respect of the correction of Defects),

by providing design verification in the form of Schedule 15 (Independent Verifier's Certificate - Design Documentation) to the D&C Deed attaching a register of drawings the subject of the verification;

Clause 12.2(f) Consult (if necessary or desirable) with and take into account any views and requirements of any Reviewer and any relevant Authority on the Design Documentation;

Clause 16.7(h)

Clause 16.8(c)

Clause 17.1(a) Receive Subsidiary Contract Programs for all activities to be undertaken in carrying out the Contractor's Activities (including procurement of goods and materials);

Clause 17.1(f) Receive reviewed and updated Contract Programs and Subsidiary Contract Programs along with the reports required by section 2 of the Contractor Documentation Schedule;

Clause 17.10(a) Receive notice from the Contractor of the estimated Date of Construction Completion;

Clause 17.10(b) Inspect the Contractor's Activities with the Principal's Representative and the Project Director within 10 Business Days of receipt of a notice under clause 17.10(a)(ii);

Clause 17.10(d) Receive notice from the Contractor of any amendments to the estimated Date of Construction Completion;

Clause 17.10(e) Receive notice from the Contractor that it considers it has achieved Construction Completion;

Clause 17.10(f) Inspect the Contractor's Activities with the Principal's Representative and the Project Director within 5 Business Days of receipt of a notice under clause 17.10(e);

Clause 17.15(a) Receive notice from the Contractor of the estimated Date of Final Completion;

Clause 17.15(b) Inspect the Works with the Principal's Representative and the Project Director within 15 Business Days of receipt of a notice under clause 17.15(a);

Clause 17.15(d) Receive notice from the Contractor that it considers it has achieved Final Completion and inspect the Works;

Clause 18.2(d) Verify in the form of Schedule 13 (Independent Verifier's Certificate - Payment Claim) of the D&C Deed that the parts of the Contractor's Activities claimed for payment comply with the requirements of the D&C Deed, for each progress claim made by the Contractor under clause 18.2(a) of the D&C Deed within 5 Business Days after submission of the payment claim by the Contractor;

Schedule 48, clause 7(c)

Schedule 48, clause 7(e)

Schedule 48, clause 7(g)

Schedule 48, clause 7(j)(iv) [REDACTED]

Schedule 48, clause 7(k) [REDACTED]

Schedule 48, clause 7(l) [REDACTED]

Schedule 48, clause 12 [REDACTED]

- (b) otherwise discharge the role, and all functions, obligations, duties and services which the D&C Deed contemplates will be discharged by the Independent Verifier or 'Project Verifier' (as applicable), including those identified in the SWTC and providing various certificates.

2. **Project Document functions**

The Independent Verifier must:

- (a) discharge the role, and all functions, obligations, duties and services which the Project Documents contemplate will be discharged by the Independent Verifier or "Project Verifier" (as applicable), including providing various certificates required by the Project Documents; and
- (b) become familiar with the role, functions, obligations, duties and services (express or implied) under the Project Documents of the "Independent Verifier" and "Project Verifier" (as applicable) and review information made available to the Independent Verifier by the Other Parties in order to become fully acquainted with the Project.

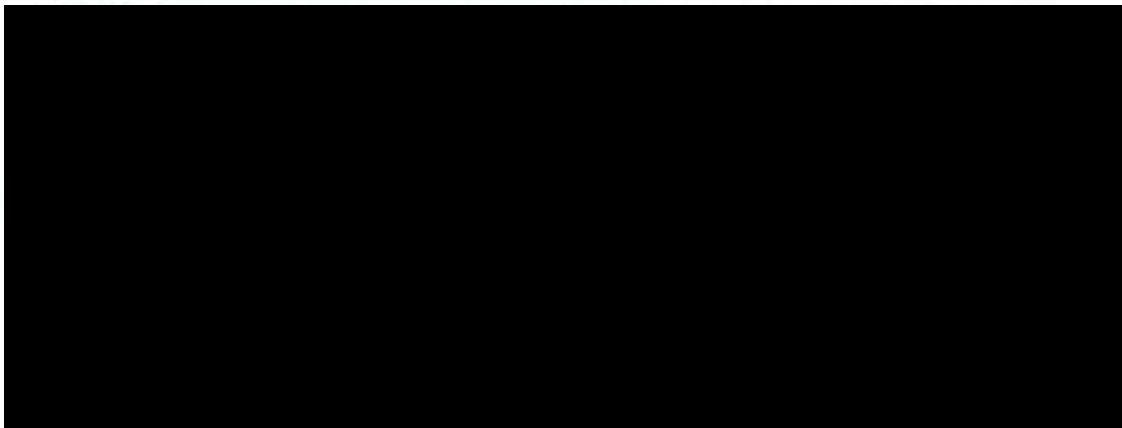
3. **General**

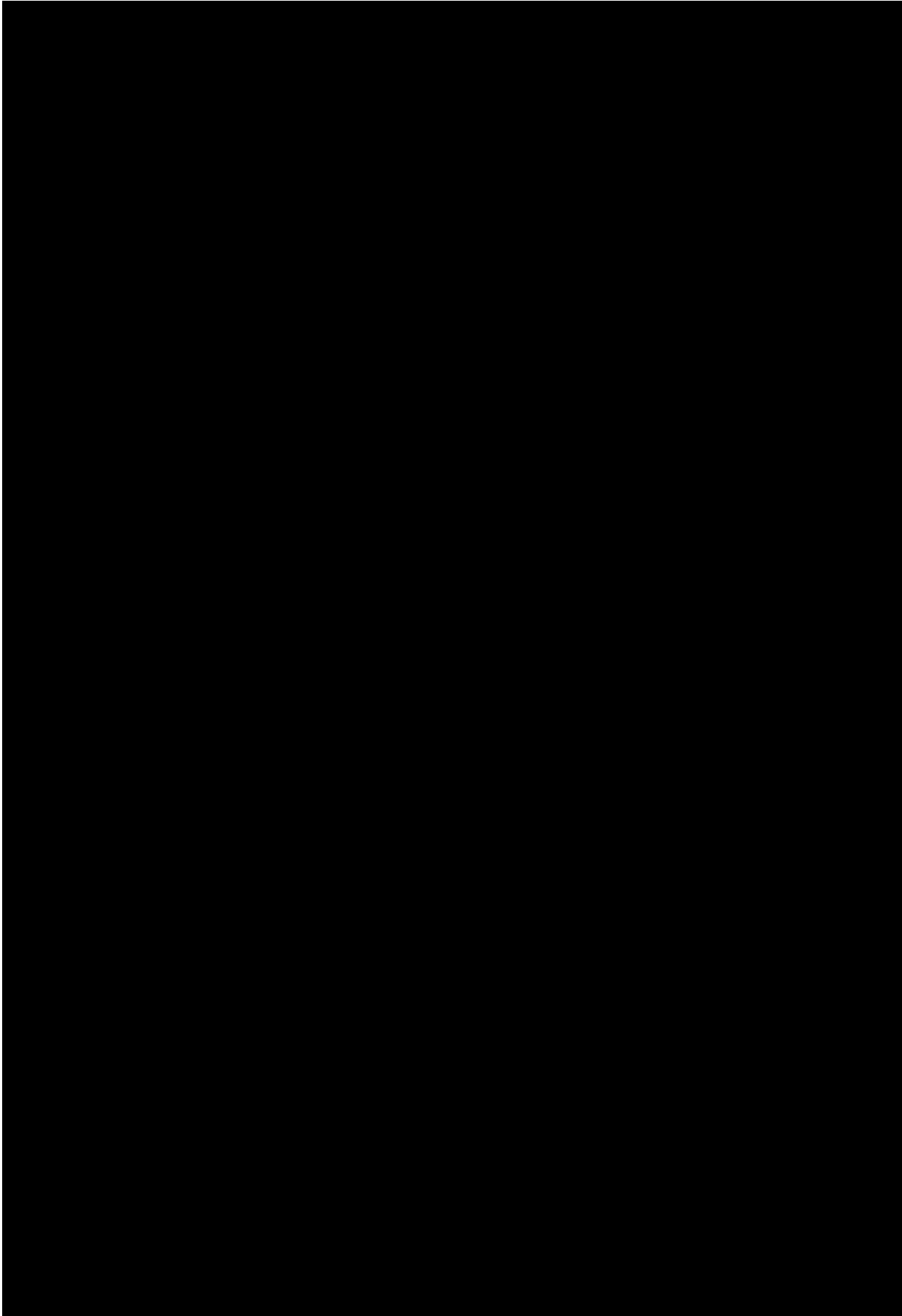
The Independent Verifier must also discharge the following functions, obligations, duties and services:

- (a) attend meetings and report as required from time to time by the Other Parties, the Project Documents or a Third Party pursuant to a Third Party Agreement, including pre lodgement meetings with the Contractor, Sydney Airport, the Airport Building Controller and the Airport Environment Officer for the Approvals (including under the Airport Building Regulations, *Airports (Environment Protection) Regulations 1997 (Cth)* and the *Airports (Protection of Airspace) Regulations 1996 (Cth)*);
- (b) carry out any additional services in relation to the Project as jointly directed in writing by the Other Parties or as directed under clause 6A;
- (c) undertake, as a minimum, the surveillance listed in Attachment 5;
- (d) develop a master register to record all submitted design packages by the Contractor and monitor the progress of each package to ensure the review is completed within the allocated timeframe; and
- (e) develop and carry out innovative solutions to support the design process such that the time for each step of the design and design review is carried out with industry leading efficiency.

The Independent Verifier must undertake its functions, obligations, duties and services in a co-operative manner which fosters open communication and early involvement with the Other Parties (i.e. receiving advanced copies of design packages and providing informal advice) with the objective of facilitating and shortening the verification and Approval process.

4. **Solid Waste**





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Gateway Independent Verifier Deed

Attachment 3 - Payment Schedule

1. Payment claim

- (a) After the end of each month after the date of the D&C Deed, the Independent Verifier must submit to the Principal (copying the Contractor and Sydney Airport) a claim for payment on account of the Fee:
- (i) setting out the value of the Services performed in accordance with this Deed during the relevant month;
 - (ii) calculated in accordance with this Payment Schedule; and
 - (iii) in such form and with such details and supporting documentation as the Principal and the Contractor may reasonably require,
- (Payment Claim).**
- (b) In respect of the Payment Claim submitted under paragraph 1(a) after the end of the month following the last month of a Quarter, the Independent Verifier must include:
- (i) the Abatement Amount (if any) for that Quarter; and
 - (ii) the Adjustment Amount (if any) for that Quarter.

2. Payment

- (a) The parties agree that:
- (i) the Principal will pay 100% of the Fee; and
 - (ii) pursuant to the D&C Deed, the Contractor will be liable to the Principal for any amounts payable to the Independent Verifier under paragraphs 4(b) of this Payment Schedule where the fact, matter or thing which gives rise to the liability to pay such amounts arises out of, or in connection with, an act or omission of the Contractor.
- (b) Subject to clause 6 of this Payment Schedule the Principal must, within 20 Business Days after receipt of the Payment Claim for the month, pay the Independent Verifier:
- (i) that portion of the Fee attributable to the Services performed during the month which is not disputed, less, in the case of the month following the last month of a Quarter, the Abatement Amount in respect of that Quarter (if any); and
 - (ii) in respect of the month following the last month of a Quarter, the Adjustment Amount in respect of that Quarter (if any).
- (c) If, in the case of the month following the last month of a Quarter, the Abatement Amount for that Quarter exceeds the aggregate of:
- (i) the portion of the Fee attributable to the Services performed during the relevant month which is not disputed; and
 - (ii) the Adjustment Amount (if any) for the Quarter,
- the Principal will be entitled to deduct that excess amount from the Fee payable in respect of the subsequent month(s).

3. Notification of disputed amounts

The Principal must pay the Independent Verifier any amount included in a Payment Claim which it does not dispute. If the Principal or the Contractor (as applicable) disagrees with an amount included in the Payment Claim, the Principal or the Contractor (as applicable) must within 10 Business Days after receipt of the relevant Payment Claim notify the Independent Verifier in writing of the reasons for any amount which is disputed (which in the case of notification by the Contractor must be copied to the Principal).

If the parties do not resolve the matter within 10 Business Days after issue of the Principal's or the Contractor's written notice, the Principal's Representative (acting reasonably) must determine the dispute. Any determination by the Principal's Representative in respect of the amount payable must be given effect to by the parties unless and until it is reversed or overturned in any subsequent proceedings.

4. The Fee

- (a) The Fee consists of the following components:
- (i) a lump sum of [REDACTED] exclusive of GST for the Design Verification Services; and
 - (ii) a lump sum of [REDACTED] exclusive of GST for the Construction Verification Services,
- subject to adjustment in accordance with clauses 4(b) or 4(c) below (as the case may be).
- (b) Adjustments will be made to the lump sums referred to in clause 4(a) in accordance with:

- (i) the appropriate rates set out in the schedule of rates in clause 5 of this Payment Schedule; and
 - (ii) the disbursements set out in clause 6 of this Payment Schedule,
- for reasonable increases or decreases in the cost to the Independent Verifier of performing the Design Verification Services and/or the Construction Verification Services which arise as a result of (without double counting):
- (iii) a Variation directed by the Principal's Representative under the D&C Deed;
 - (iv) any re-verification of previously certified design packages due to changes in Design Documentation. In relation to the re-verification of any design packages during the provision of the Construction Verification Services, adjustments will be made to the lump sum for the Design Verification Services referred to in clause 4(a)(i) only to the extent that the time involved in undertaking the re- verification work, and addressing non-conformities, by the Independent Verifier exceeds [REDACTED] in total;
 - (v) [REDACTED]
 - (vi) any additional services jointly directed in writing by the Other Parties or as directed under clause 6A of this Deed, as required by paragraph (b) under the heading "General" in Attachment 2.

In this clause, a "design package" means each submission of the Design Documentation to the Independent Verifier and other information required by clause 12.2 of the D&C Deed or the Contractor Documentation Schedule relating to each discrete design element of the Contractor's Activities and includes the Design Documentation that is produced for each of the Developed Concept Design Stage, Substantial Detailed Design Stage, Final Design Documentation Stage and Issued for Construction Design Documentation.

- (c) The Independent Verifier acknowledges that (except as described in and payable under clause 6 of this Payment Schedule) it has allowed in the lump sums referred to in clause 4(a) for the provision of all labour, materials, work, vehicles, telecommunications, travel, accommodation (including travel and/or accommodation for personnel relocating to and from the Construction Site and excluding provision of the Independent Verifier site facilities referred to in clause 5.2(d) of this Deed), disbursements and other costs necessary for and arising out of or in connection with the Services referred to above as covered by the lump sums, whether or not expressly mentioned in this Deed or the Project Documents.

5. **Schedule of Rates**
Design Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

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Construction Verification Services – adjustments

Role	Nominated Personnel	Daily Rate (\$) (excluding GST)
		█
		█
		█
		█
		█
		█
		█
		█
		█
		█
		█
		█
		█

These rates contain allowances for the provision of all labour, materials, plant, equipment and work, including telecommunications, vehicles, accommodation, disbursements and any other costs necessary for and arising out of or in connection with the Services for which the Independent Verifier is to be paid on a schedule of rates basis under this Deed, excluding disbursements described in and payable under clause 6

of this Payment Schedule and reasonable costs for transport outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site. When claiming payment for any Services for which the Independent Verifier is to be paid on a schedule of rates basis the Independent Verifier must provide details of the time expended by the Independent Verifier in performing the Services for which the Independent Verifier is entitled to be paid on a schedule of rates basis.

6. Disbursements

- (a) The Independent Verifier will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the Independent Verifier is to be paid on a schedule of rates basis under this Deed if those disbursements:
 - (i) have been reasonably and properly incurred for the sole purpose of performing Services for which the Independent Verifier is to be paid on a schedule of rates basis in accordance with this Deed and do not fall into the category of one of the disbursements described in clause 6(b);
 - (ii) were approved in writing by the Principal's Representative and Sydney Airport prior to being incurred where they exceed [REDACTED] and
 - (iii) are supported by documentation provided to the Principal which is satisfactory to the Principal's Representative and Sydney Airport.
- (b) The Independent Verifier is not entitled to reimbursement of costs relating to vehicles, local transport (within the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site), car parking, computers, insurance, general office consumables and telecommunications.
- (c) The Independent Verifier will only be entitled to reimbursement of disbursements incurred in the course of carrying out the Services for which the Independent Verifier is to be paid on a lump sum basis under this Deed if those disbursements:
 - (i) were not possible to be identified at the tender stage;
 - (ii) have been reasonably and properly incurred for the sole purpose of performing surveillance, inspection, monitoring and audits on the Contractor's Activities at locations outside the Greater Sydney area, which incorporates Newcastle and Wollongong and the areas within and in the vicinity of the Construction Site;
 - (iii) were approved in writing by the Principal's Representative and Sydney Airport prior to being incurred where they exceed [REDACTED] and
 - (iv) are supported by documentation provided to the Principal which is satisfactory to the Principal's Representative and Sydney Airport.
- (d) The Independent Verifier will not be entitled to make any claim against the Principal arising out of or in connection with disbursements incurred in connection with the performance of the Services other than in accordance with clauses 6(a) and 6(c) above.

7. Monthly payment schedule for lump sums

The Independent Verifier is not entitled to payment or to make a claim for payment to the extent that the Services have not been carried out for the month in question. Subject to clauses 1 and 2 of this Payment Schedule, the indicative monthly payment to be made under the lump sums (excluding disbursements) is set out in the following table:

Month after date of the D&C Deed	Payment (\$ excluding GST)
1	[REDACTED]
2	[REDACTED]
3	[REDACTED]
4	[REDACTED]
5	[REDACTED]
6	[REDACTED]
7	[REDACTED]
8	[REDACTED]
9	[REDACTED]
10	[REDACTED]

Month after date of the D&C Deed	Payment (\$ excluding GST)
11	██████████
12	██████████
13	██████████
14	██████████
15	██████████
16	██████████
17	██████████
18	██████████
19	██████████
20	██████████
21	██████████
22	██████████
23	██████████
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36	██████████
37	██████████
38	██████████
39	██████████
40	██████████
41	██████████
42	██████████
43	██████████
44	██████████
45	██████████
46	██████████
47	██████████
48	██████████
49	██████████
50	██████████
TOTAL	██████████

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

Attachment 4 - Initial Verification and Monitoring Plan

Part 1

Refer to Exhibit C - Initial Verification and Monitoring Plan

Part 2

Refer to Attachment 6 - Minimum Requirements



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

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

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

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Check implementation of inspection and test plans, including: <ul style="list-style-type: none"> • testing frequencies; • test methods; • test result verifications; and • release of hold points. The Nominated Authority for the release of all Hold Points and Witness Points documented within the TfNSW Specifications is the Independent Verifier.	} Daily	} Daily
Monitor the implementation of significant approved NCR dispositions.	All dispositions	All dispositions
Quality Product Surveillance Monitor and inspect foundation and subgrade preparation and treatments, including: <ul style="list-style-type: none"> • structure foundations; • pavement subgrades; • cast-in-place pile foundations; and • inaccessible drainage foundations. 	} Initial preparation and treatment and twice/week thereafter	} Initial preparation and treatment and twice/week thereafter
Monitor and inspect compaction of earthworks and reinforced soil.	Daily	Daily
Monitor and inspect: <ul style="list-style-type: none"> • water testing and grouting. 	} Initial testing, grouting and stressing and twice/week thereafter	} Initial testing, grouting and stressing and twice/week thereafter
Monitor and inspect: <ul style="list-style-type: none"> • preparation and testing of grout test specimens. 		} Initial test specimens and testing, then weekly for four weeks and fortnightly thereafter.
Monitor and inspect preparation of shotcrete test specimens		Monthly
Monitor and inspect concrete supply, including: <ul style="list-style-type: none"> • audits of each batch plant; • reviews of grout, mortar, concrete and shotcrete mix designs (including offsite work); and • monitoring of supplied mixes compared with mix designs. 	Monthly Each mix Monthly	Monthly Each mix Monthly

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

Surveillance Activity	Minimum Frequency for Type A Category of the Contractor's Activities	Minimum Frequency for Type B Category of the Contractor's Activities
Monitor the interfaces of civil and electrical works, including: <ul style="list-style-type: none"> backfilling of cabling conduit trenches. Monitor landscaping preparation and implementation	Initial backfilling and daily thereafter Daily	Initial backfilling and daily thereafter Daily
Aboriginal Participation in Construction Verifying and monitoring the Contractor's compliance with its obligations under the APIC Policy and its Aboriginal Participation Plan as submitted under the D&C Deed	Monthly	Monthly
Schedule 48 (Solid Waste)		

For the purposes of this Attachment 5:

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

Attachment 6 - Minimum Requirements

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

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

- H. verification of the Contractor's processes to address constructability issues; and
- I. verification of the rectification by the Contractor of non-conformities.

APPROVED
BY
DATE

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Gateway Independent Verifier Deed

Attachment 7 - Insurance Schedule

(Clause 6.3)

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
Principal Arranged Insurance (TfNSW)				
The details of the policy below is provided in the icare policy documents. A copy of these may be provided upon request. Capitalised terms which are not defined in this Deed are defined in the sample policy documents.				
1. Broad form Public Liability and Product Liability	Public and Products Liability: [REDACTED] Each and every occurrence	Maintained from the date of the D&C Deed until the Date of Completion - covering the Principal, Contractor and subcontractors and other parties as specified in the contract.		The Principal has arranged standard policies of third party liability insurance. The Insurance must be in the joint names of the Principal and Sydney Airport.
Independent Verifier Arranged Insurances				
2. Motor Vehicle Comprehensive or Third Party Property Damage	[REDACTED] For any single occurrence	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Independent Verifier, whichever is earlier).	(a) Is with an Approved Insurer; (b) Covers motor vehicles owned or used by the Independent Verifier or its subcontractors directly or indirectly engaged in performance of the Services; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below;	Only required if the Independent Verifier will use a motor vehicle in the course of providing the Services or if the Independent Verifier will use or park their motor vehicles on premises owned or occupied by the Principal or Sydney Airport.
3. Professional Indemnity	[REDACTED] Each and every claim and in the aggregate for all occurrences	From the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Independent Verifier, whichever is earlier) plus 7 years following the Date of Final Completion (or the date of termination of the Deed of Appointment of Independent Verifier, whichever	(a) Is with an Approved Insurer; (b) One automatic reinstatement per period of insurance; and (c) Is governed by the law of New South Wales and subject to Australian jurisdiction as defined in clause 2 of the Definitions and Notes below.	

TYPES OF INSURANCES	MINIMUM SUM INSURED	PERIOD OF INSURANCE	INSURANCE COVER IS TO INCLUDE THE FOLLOWING	QUALIFICATIONS
		is earlier). The insurance can be taken out as annual covers where the cover is to include a retroactive date being the date of the D&C Deed.		
4. Workers Compensation	As per the relevant Workers Compensation legislation.	Annually from the date of the D&C Deed until the Date of Final Completion (or the date of termination of the Deed of Appointment of Independent Verifier, whichever is earlier).	(a) Is with an Approved Insurer; and (b) Is as per relevant Workers Compensation legislation.	

Definitions and Notes:

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

Note that where the insurance risk is insured by an insurer not listed in Note 1(a) or 1(b) then a 'fronting' placement is acceptable from an insurer list in Note 1(a) or 1(b).
2. Insurances policies must be subject to the laws of Australia (or an Australian State or Territory) and their courts.
3. A cross liability clause operates as if there was a separate policy of insurance covering each of the insured. This means that the insurer provides each party named on the insurance policy access to the limit of liability, subject to the overall limit under the policy.
4. A waiver of subrogation clause is where the Insurer agrees to waive all rights of subrogation that they may have or acquire against the Principal where required to do so under the contract.

Attachment 8 - Not used

Attachment 9 - Independent Verifier's Personnel

1. Minimum Resources Commitment

The Independent Verifier acknowledges and agrees that the minimum levels of resources, including man- days, set out in this Attachment 9 are minimum requirements only, [REDACTED] and do not in any way limit or otherwise affect the obligations of the Independent Verifier to perform the Services in accordance with this Deed. References to "days" exclude public holidays and include only those days which are stated in the Contract Program as working days.

1.1 Design Verification

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

Position	Name	Minimum commitment	
		During performance of design activities associated with the Contractor's Activities, until all discrete design elements have passed IFC Design Documentation Stage	During performance of construction activities associated with the Contractor's Activities, including until the expiry of the last "Defects Correction Period"
Independent Verifier's Representative for the Design ¹	[REDACTED]	■	[REDACTED]
Road Lead Engineer	[REDACTED]	■	[REDACTED]
Traffic and Transportation Lead Engineer	[REDACTED]	■	[REDACTED]
Bridges and Structures Lead Engineer	[REDACTED]	■	[REDACTED]
Drainage Lead Engineer	[REDACTED]	■	[REDACTED]
Rail Lead Engineer	[REDACTED]	■	[REDACTED]
Electrical Lead Engineer	[REDACTED]	■	[REDACTED]
Services Lead Engineer	[REDACTED]	■	[REDACTED]
ITS Lead Engineer	[REDACTED]	■	[REDACTED]
Geotechnical Lead Engineer	[REDACTED]	■	[REDACTED]
Aviation Expert	[REDACTED]	■	[REDACTED]
Durability Expert	[REDACTED]	■	[REDACTED]

Position	Name	Minimum commitment	
		During performance of design activities associated with the Contractor's Activities, until all discrete design elements have passed IFC Design Documentation Stage	During performance of construction activities associated with the Contractor's Activities, including until the expiry of the last "Defects Correction Period"
Air Quality Specialist	[REDACTED]	■	[REDACTED]
Quality Manager	[REDACTED]	■	[REDACTED]
Environmental Observation/Approvals/Community	[REDACTED]	■	[REDACTED]
Noise and Vibration Specialist	[REDACTED]	■	[REDACTED]
Pavement Specialist	[REDACTED]	■	[REDACTED]
Temporary Works Lead	[REDACTED]	■	[REDACTED]
Urban Design Lead	[REDACTED]	■	[REDACTED]
Water Treatment Lead	[REDACTED]	■	[REDACTED]
[REDACTED]	[REDACTED]	■	[REDACTED]
Project Director	[REDACTED]	■	[REDACTED]

1.2 Construction Verification

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

Position	Name	Minimum Commitment
Independent Verifier's Representative, Construction ¹	[REDACTED]	Full time during the performance of the Contractor's Activities, and to be based on the Construction Site full time Monday to Saturday inclusive during the construction of the Project Works and Temporary Works
Senior Project Engineer – Civil and Structural Works construction (1 No.)	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil and structural works components of the Project Works and Temporary Works.
Project Engineer – Civil Works Construction (1 No.)	[REDACTED]	Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works

Position	Name	Minimum Commitment
Project Engineer – Structural Works Construction (1 No.) ²		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
Surveillance Officer – Civil Works Construction (2 No.)		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the civil works components of the Project Works and Temporary Works
Surveillance Officer – Structural Works Construction (1 No.)		Based on the Construction Site full time Monday to Saturday inclusive during the construction of the structural works components of the Project Works and Temporary Works
Contamination Specialist (1 No.)		Based on the Construction Site for a minimum of 2 days per week while earthworks are being carried out to ensure full compliance with the requirements of this Deed with regards to Construction Site contamination / waste management. This includes the undertaking of all functions, obligations, duties and services in respect of Schedule 48 (Solid Waste) of the D&C Deed.
Document Controller/Site Administrative assistant (1 No.)		Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works
Project Control ³		Based on the Construction Site full time Monday to Friday inclusive during the construction of the Project Works and Temporary Works

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

2.1 Independent Verifier's project director

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

2.2 Independent Verifier's Representative for the Design Verification Services

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

2.3 Independent Verifier's Representative for the Construction Verification Services

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

2.4 Senior Project Engineer – Civil and Structural Works Construction

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

Contractor's Activities and at least 15 years of experience in construction including strong experience in road and bridge construction.

2.5 Project Engineer – Civil Works Construction

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

2.6 Project Engineer – Structural Works Construction

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

2.7 Surveillance Officer – Civil Works Construction

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

2.8 Surveillance Officer – Structural Works Construction

The surveillance officer - structural works construction must have at least 15 years of experience in the civil engineering construction industry and at least 10 years in surveillance of the construction of structures, including piling, concrete work, precasting, prestressing, steel fabrication and erection.

2.9 Document Controller/Site Administrative Assistant.

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

2.10 Contamination Specialist

The Contamination Specialist must possess a recognised qualification relevant to the position and have at least 15 years of experience in the civil engineering construction industry and at least 10 years in contamination management, including site investigations related to soil contamination and waste classification of solid waste, spoil disposal and earthworks.

2.11 Design Lead Engineer – All Design Disciplines listed in Clause 1.1 Table

The Design Lead Engineer must possess a recognised qualification relevant to the position and the Services and have at least 15 years of experience in the design of major road projects and at least five years' experience in the design project verification of large projects similar to the Project Works, Temporary Works and Contractor's Activities.

2.12 Technical Experts/Specialist – All Disciplines

The Technical Expert must possess a recognised qualification relevant to the position and the Services and have at least 15 years of experience in relevant field and at least five years' experience similar to the Project Works, Temporary Works and Contractor's Activities.

Attachment 10 - Not used

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Gateway Independent Verifier Deed

Attachment 11 - Deed Poll in favour of Third Parties

1. The form set out in Schedule 7 to the ARTC Works Deed.

Attachment 12 - Not used

JOHN HOLLAND
Beymouja Whyte
Partners & Vineyard

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Attachment 13 - Deed Poll in favour of Airport Building Controller

Independent Verifier's Deed Poll

This deed poll made the day of 2020
in favour of: **Airport Building Contractor**, the person appointed for the Airport under regulation 4.01 of the Airports (Building Control) Regulation 1996 (**Beneficiary**)
given by: **APP Corporation Pty Limited (ABN 29 003 764 770)** of Level 7, 116 Miller Street, North Sydney NSW 2060 (**Independent Verifier**)

Background

- A. Transport for NSW (ABN 18 804 239 602) of 20-44 Ennis Road, Milsons Point, NSW 2061, a NSW Government agency constituted under the Transport Administration Act 1988 (NSW) (**Principal**) and the Sydney Airport Corporation Limited ABN 62 082 578 809 of Nigel Love Building, 10 Arrivals Court, Sydney International Airport, Mascot NSW 2020 (**Sydney Airport**) have entered into a contract dated [REDACTED] (**Project Deed**) for the development of the Sydney Gateway Project.
- B. The Principal and John Holland Pty Ltd (ABN 11 004 282 268) and Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187) (**Contractor**) have entered into a contract dated 28 October 2020 (**Main Contract**) for the design and construction of the relevant Project Works and Temporary Works (as defined in the Main Contract) of the Sydney Gateway Project. The Contractor is responsible for the design and construction of the Project Works and Temporary Works on behalf of the Principal.
- C. The Principal, the Contractor, Sydney Airport and the Independent Verifier have entered into a contract dated on or about the date of this Deed Poll (**Deed of Appointment of IV**).
- D. It is a condition of the Deed of Appointment of IV that the Independent Verifier executes this Deed Poll.

THIS DEED POLL WITNESSES THAT THE INDEPENDENT VERIFIER HEREBY COVENANTS, WARRANTS AND AGREES:

- (a) The Independent Verifier covenants, warrants and agrees with and for the benefit of the Beneficiary as follows that the Independent Verifier will comply with its obligations under the Deed of Appointment of IV, the Project Deed and the Main Contract (the **Project Documents**).
- (b) The aggregate of the Independent Verifier's liability to the Beneficiary under this deed and the Independent Verifier's liability to the Principal under the Deed of Appointment of IV:
- (i) will not exceed the liability which the Independent Verifier would have had under the Deed of Appointment of IV if the Deed of Appointment of IV had named, as principal, the Beneficiary and the Principal jointly and severally; and
- (ii) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Deed of Appointment of IV.
- (c) This Deed Poll is governed by the laws of the State of New South Wales.
- (d) Where terms used in this Deed Poll are defined in the Main Contract, those terms have the meaning given to them in the Main Contract, unless the context indicates otherwise.

Executed as a deed poll

Executed by APP Corporation Pty Limited (ABN 29 003 764 770) in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Attachment 14 - Performance Regime

1. Introduction

The performance regime set out in this Attachment 14 has been included to provide certainty to the Other Parties that the Independent Verifier will deliver the minimum requirements under this Deed for certain key parameters of the Services.

The performance regime set out in this Attachment 14 will be used to:

- (a) monitor the performance of the Independent Verifier against the Key Performance Indicators; and
- (b) calculate any Abatement Amount or Adjustment Amount (as applicable).

2. Definitions

The following definitions apply in this Attachment 14:

Abatement Amount means, in respect of any Quarter, the amount determined by the Principal in accordance with clause 5 of this Attachment 14.

Adjustment Amount means, in respect of any Quarter, the amount determined by the Principal in accordance with clause 6 of this Attachment 14.

Collective KPI Score means, in respect of any Quarter, the aggregate of:

- (a) the Individual KPI Score in respect of KPI A;
- (b) the Individual KPI Score in respect of KPI B; and
- (c) the Individual KPI Score in respect of KPI C,

determined by the Principal in accordance with clause 4 of this Attachment 14.

Completed Month Progress Report means a Monthly Progress Report which satisfies all of the requirements set out in clause 3.8 of this Deed.

Completed Quarterly KPI Report means a Quarterly KPI Report which satisfies all of the requirements set out in clause 3.9 of this Deed.

Individual KPI Score means, in respect of a KPI, the score determined by the Principal in accordance with clause 4 of this Attachment 14.

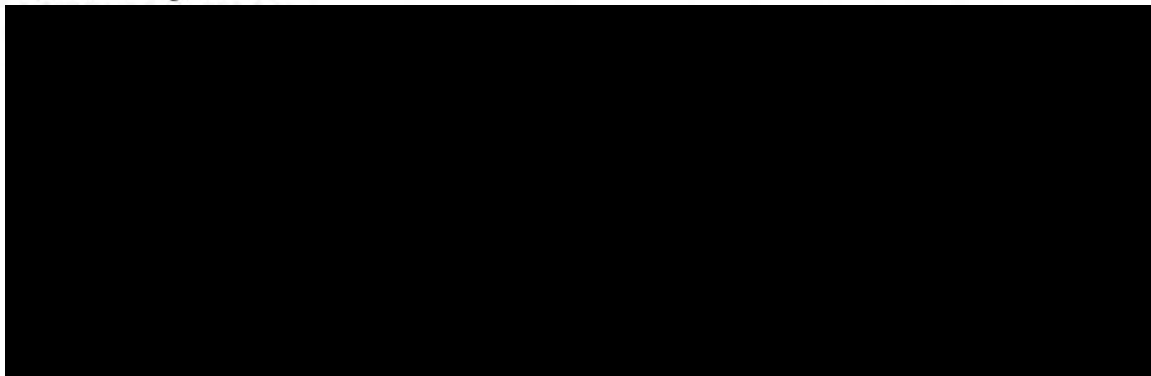
Key Performance Indicator or **KPI** means a key performance indicator as described in clause 7 of this Attachment 14.

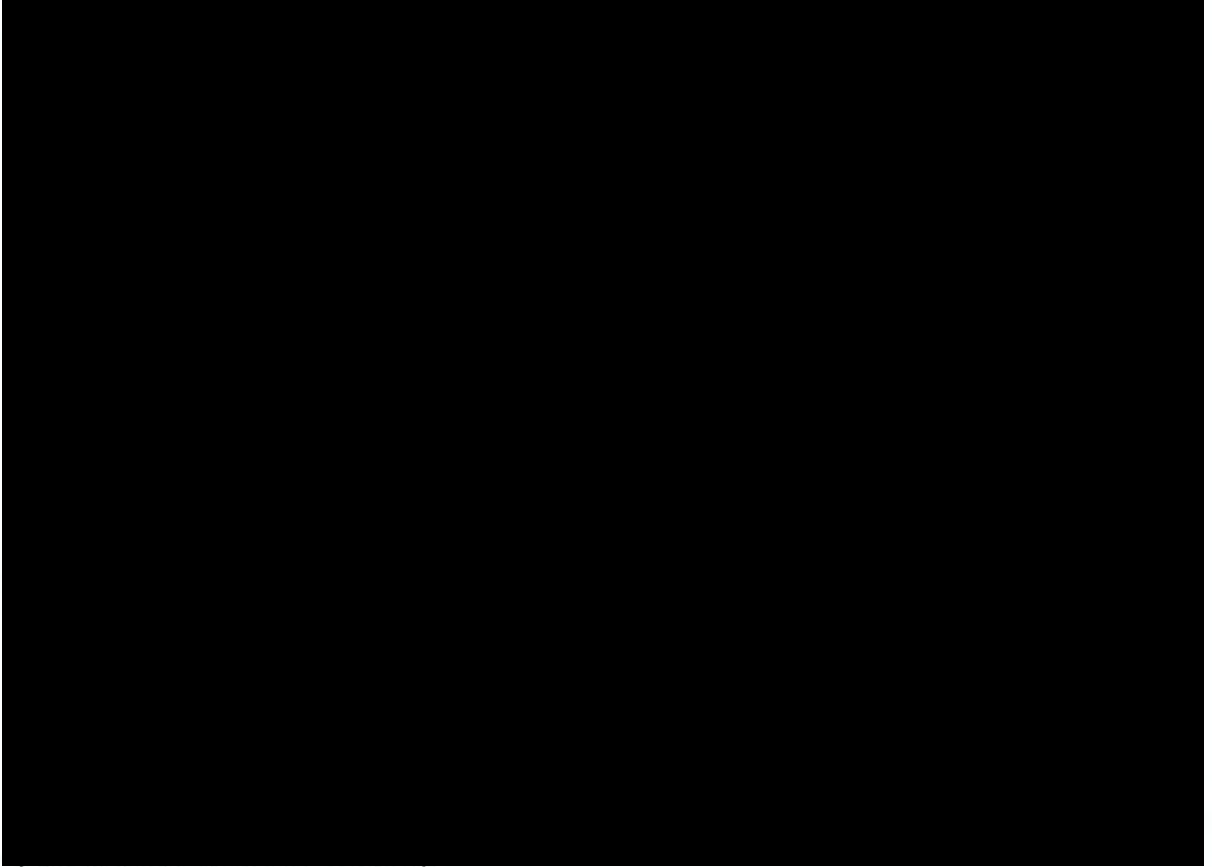
Quarterly Progress Report means the Monthly Progress Report required to be submitted at the end of each Quarter.

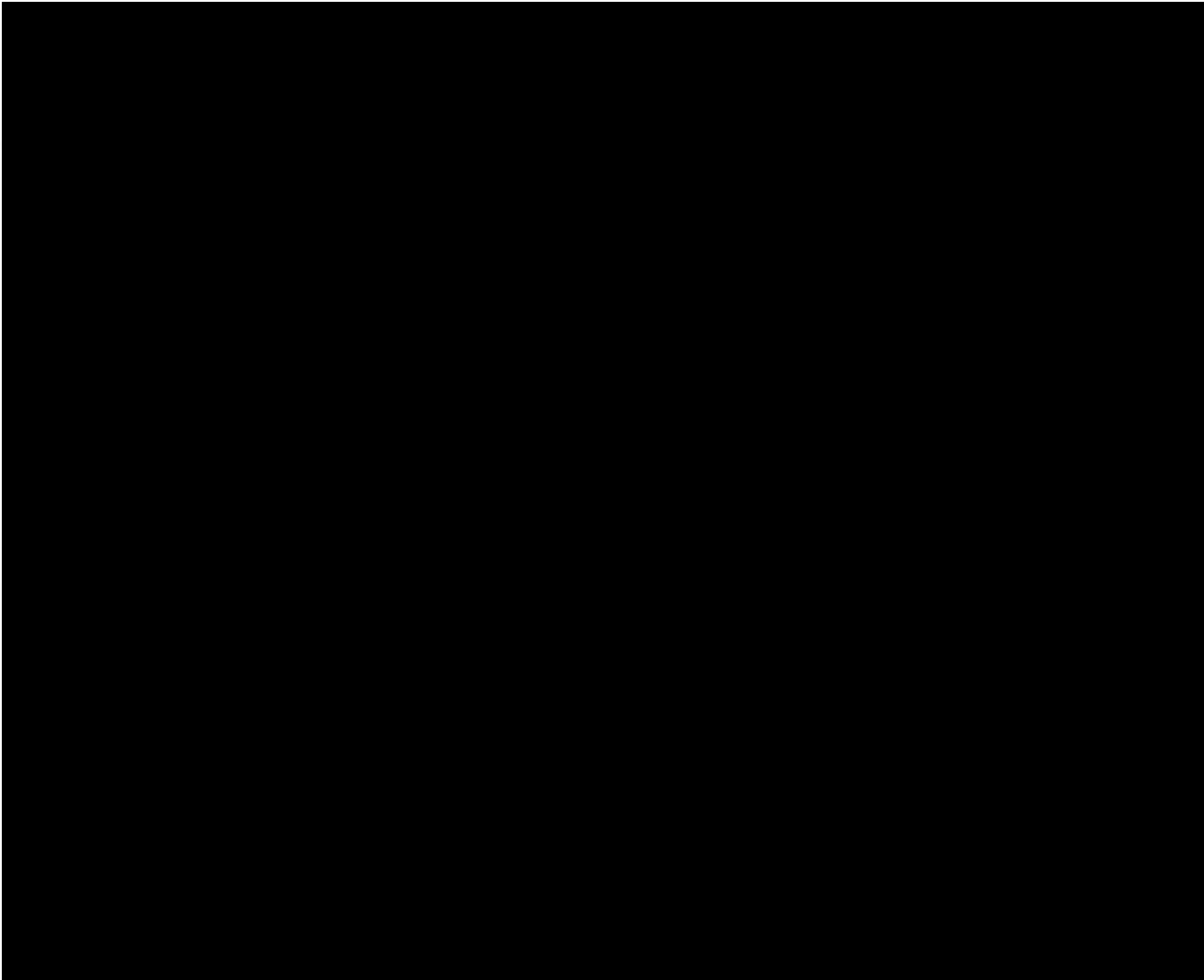
3. Nature of this Performance Regime

- (a) The performance regime set out in this Attachment 14 does not in any way limit or otherwise affect:
 - (i) the Independent Verifier's obligations under this Deed or otherwise at law; or
 - (ii) the Other Parties' rights against the Independent Verifier whether under this Deed or otherwise at law.
- (b) No assessment by the Principal under this Attachment 14 will:
 - (i) constitute an approval of any services performed by the Independent Verifier or prejudice any claim by the Other Parties under this Deed or otherwise at law; or
 - (ii) constitute evidence of the value of any services, an admission of liability or evidence that any services have been performed in accordance with the requirements of this Deed.

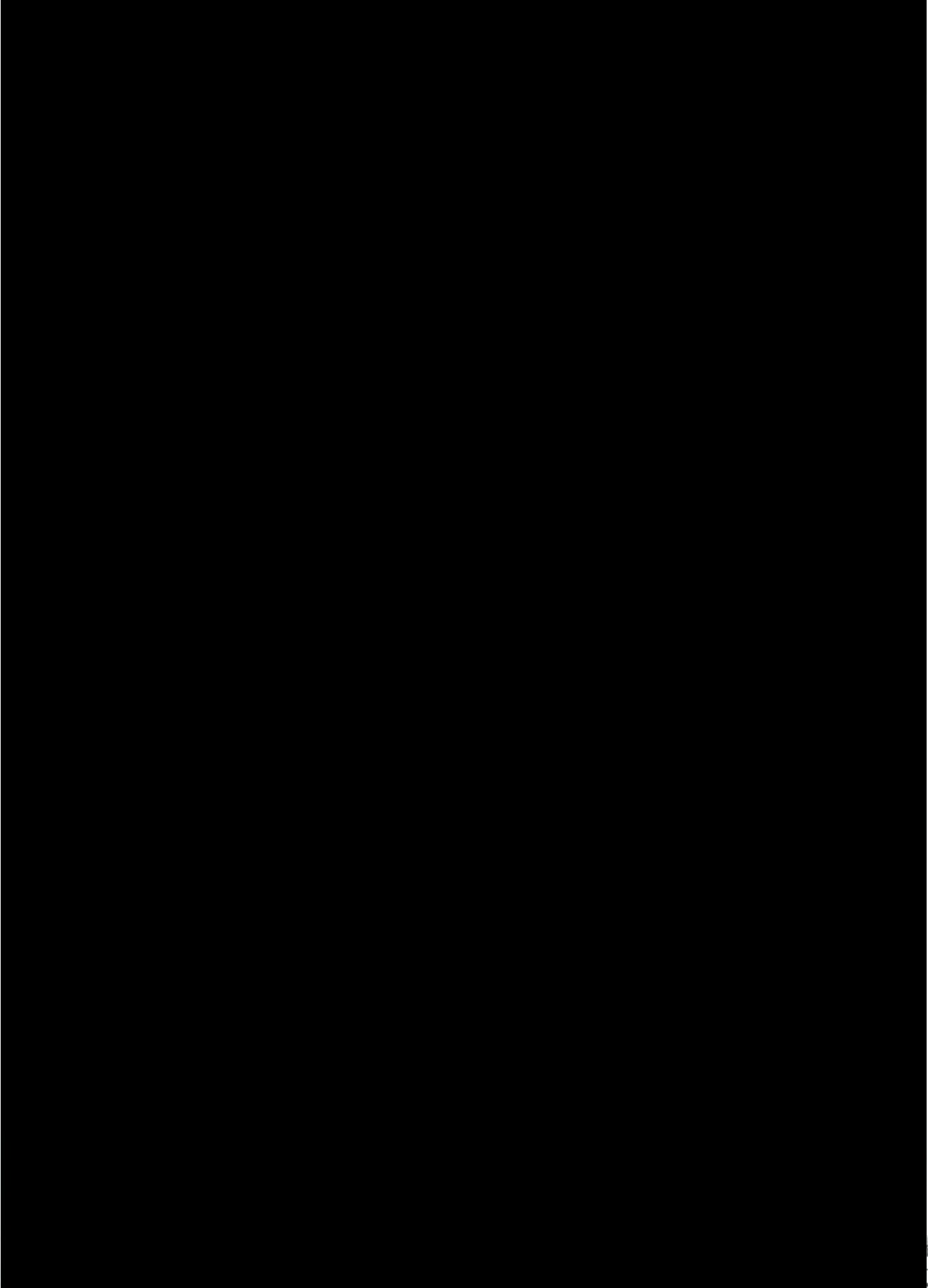
4. Assessment against KPIs

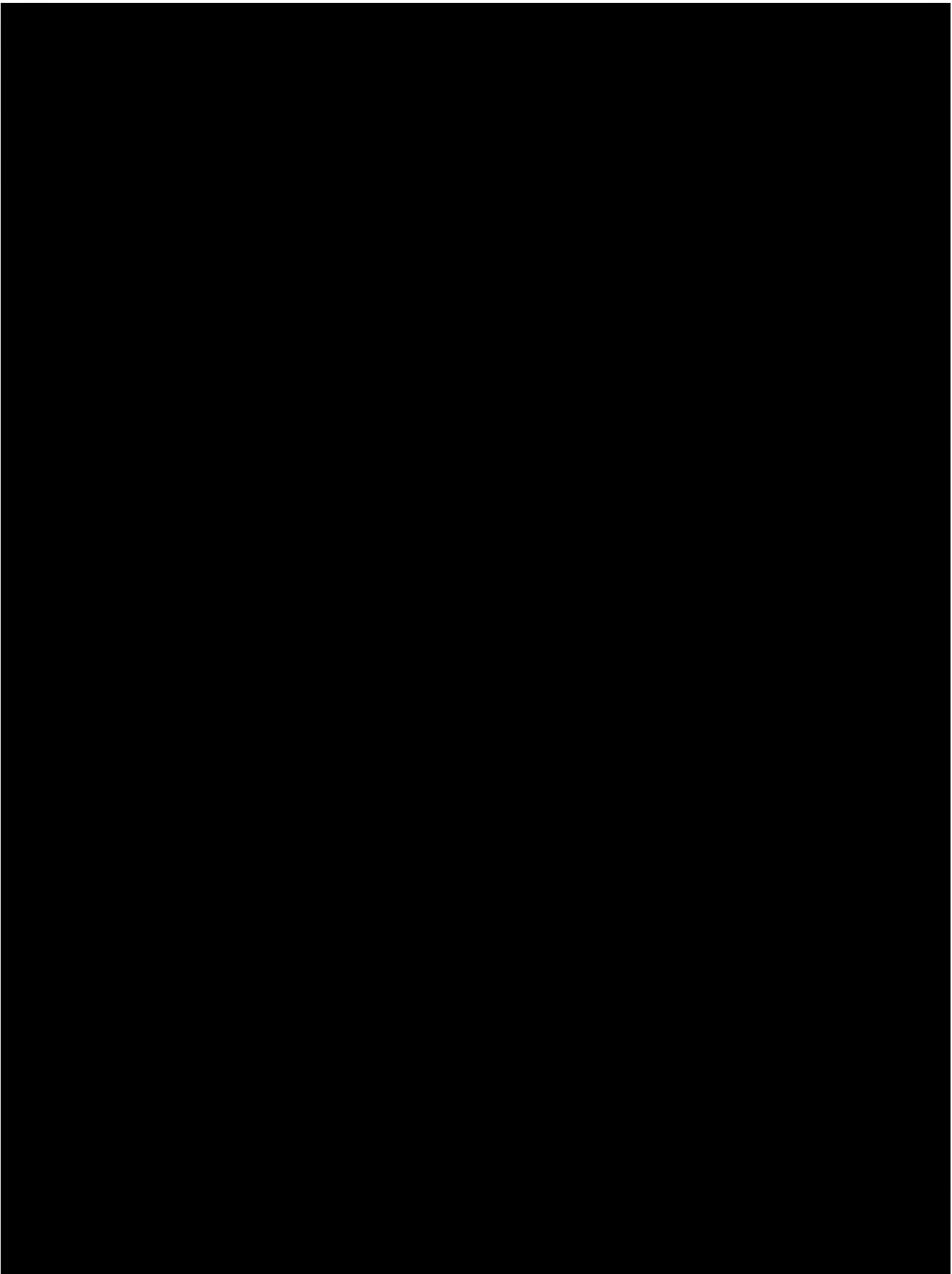




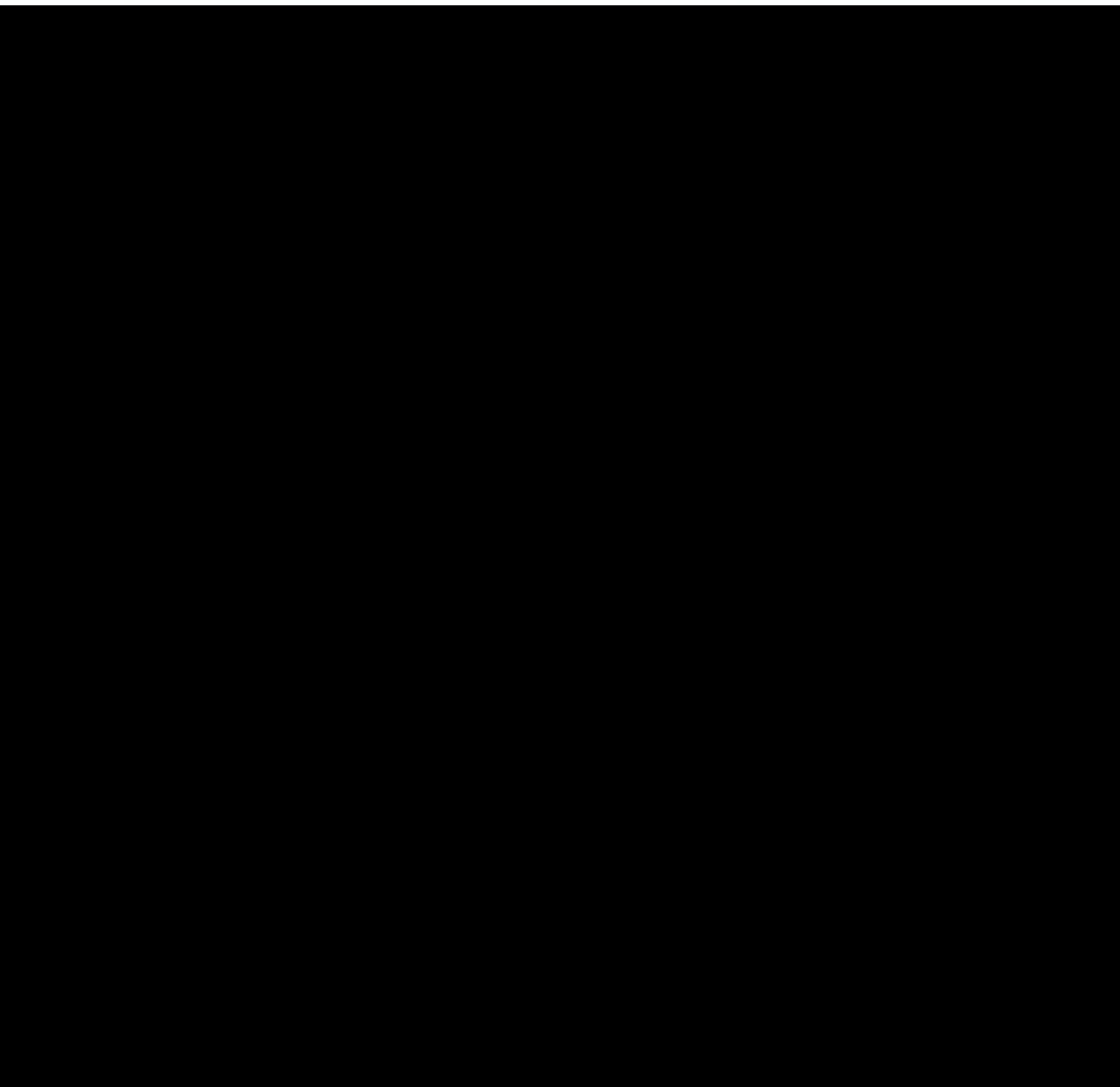


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Gateway Independent Verifier Deed



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Gateway Independent Verifier Deed

Executed as a deed.

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

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of authorised delegate

[Redacted name]

Name of authorised delegate

Executed by **Sydney Airport Corporation Limited (ABN 62 082 578 809)** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signed, sealed and delivered for and on behalf of **John Holland Pty Ltd (ABN 11 004 282 268)** by its attorney under a power of attorney dated 26 October 2020 in the presence of:

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

[Redacted name]

Full name of attorney

Signed, sealed and delivered for and on behalf of **Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187)** by its attorney under a power of attorney dated 26 October 2020 in the presence of:

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

[Redacted name]

Full name of attorney

Executed as a deed.

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

Signature of witness

Signature of authorised delegate

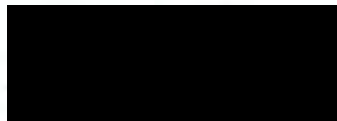
Full name of witness

Name of authorised delegate

Executed by **Sydney Airport Corporation Limited (ABN 62 082 578 809)** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by authority of its directors:



Signature of Director



Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Signed, sealed and delivered for and on behalf of **John Holland Pty Ltd (ABN 11 004 282 268)** by its attorney under a power of attorney dated 26 October 2020 in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of **Seymour Whyte Constructions Pty Ltd (ABN 48 105 493 187)** by its attorney under a power of attorney dated 26 October 2020 in the presence of:

Signature of witness

Signature of attorney who declares that the attorney has not received any notice of the revocation of the power of attorney

Full name of witness

Full name of attorney

Signed, sealed and delivered for and on behalf of
APP Corporation Pty Limited (ABN 29 003 764
770) by its attorney under a power of attorney dated 5
November 2020 in the presence of:

[Redacted signature]

Signature of witness

[Redacted name]

Full name of witness

[Redacted signature]

Signature of attorney who declares that the attorney has not
received any notice of the revocation of the power of
attorney

[Redacted name]

Full name of attorney

Exhibit A - Aboriginal Participation Plan



Transport for NSW

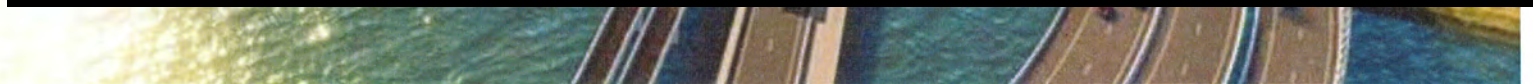
Design and Construction of Sydney Gateway Stage 3

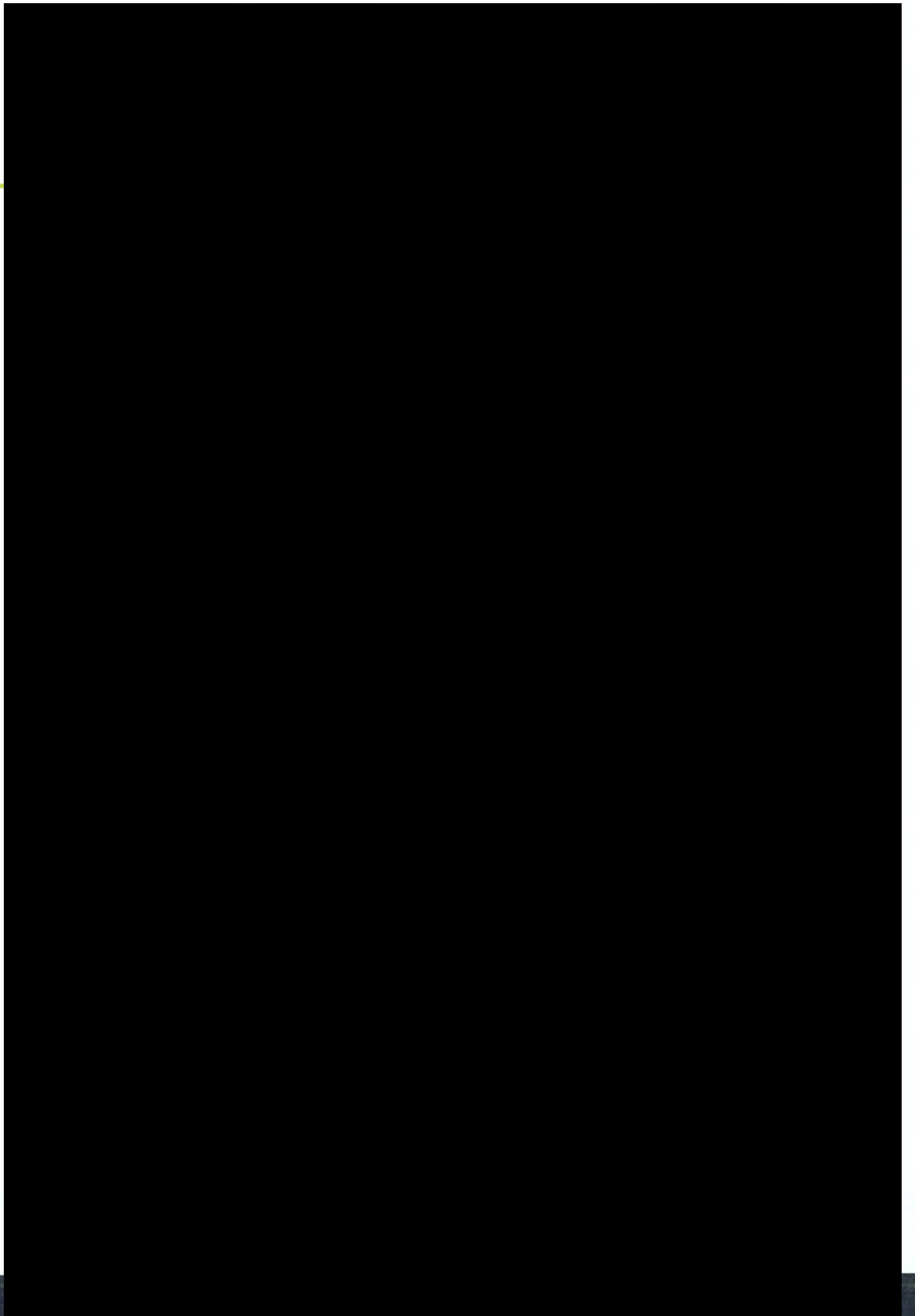
Independent Verifier Deed

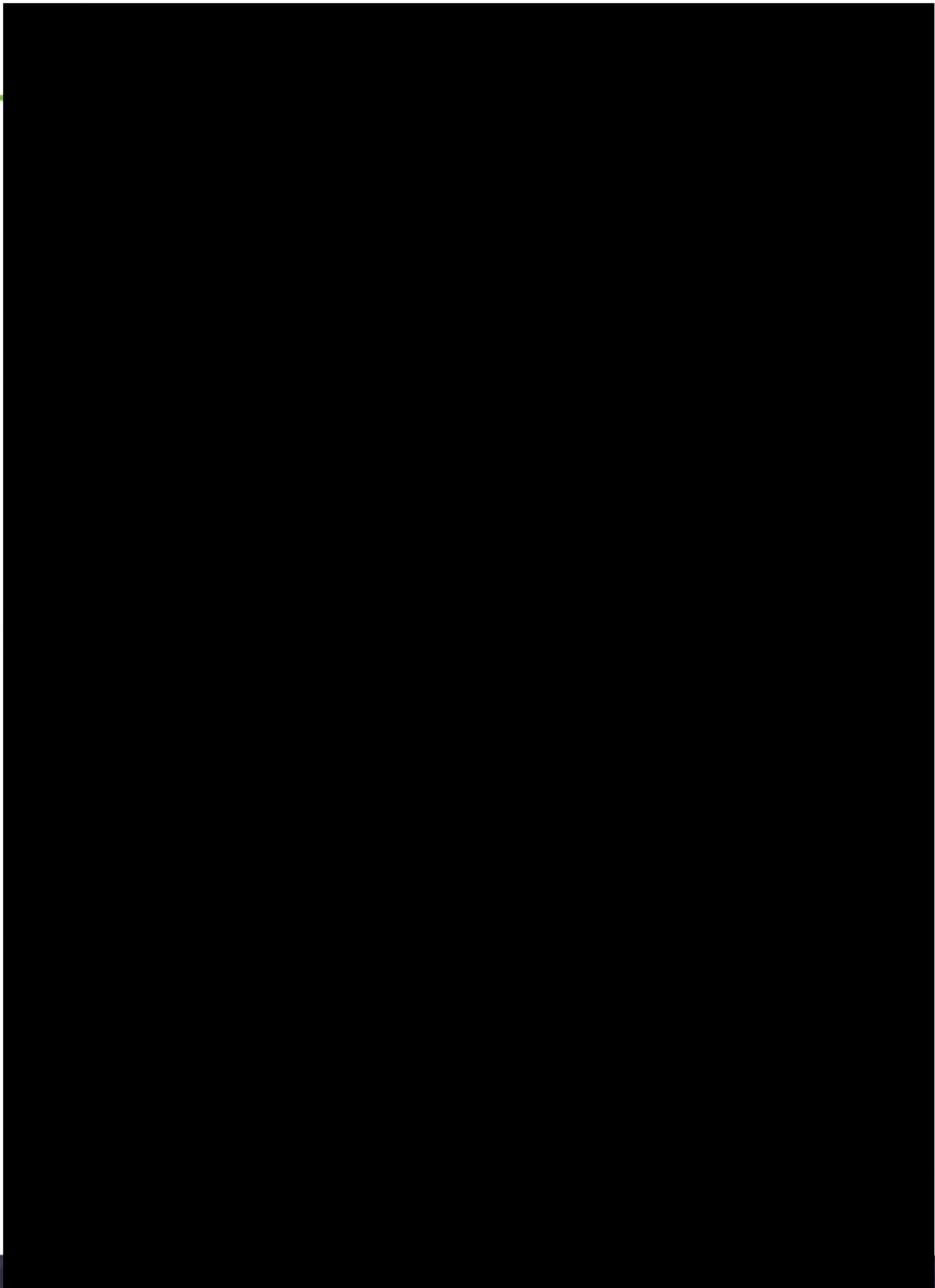
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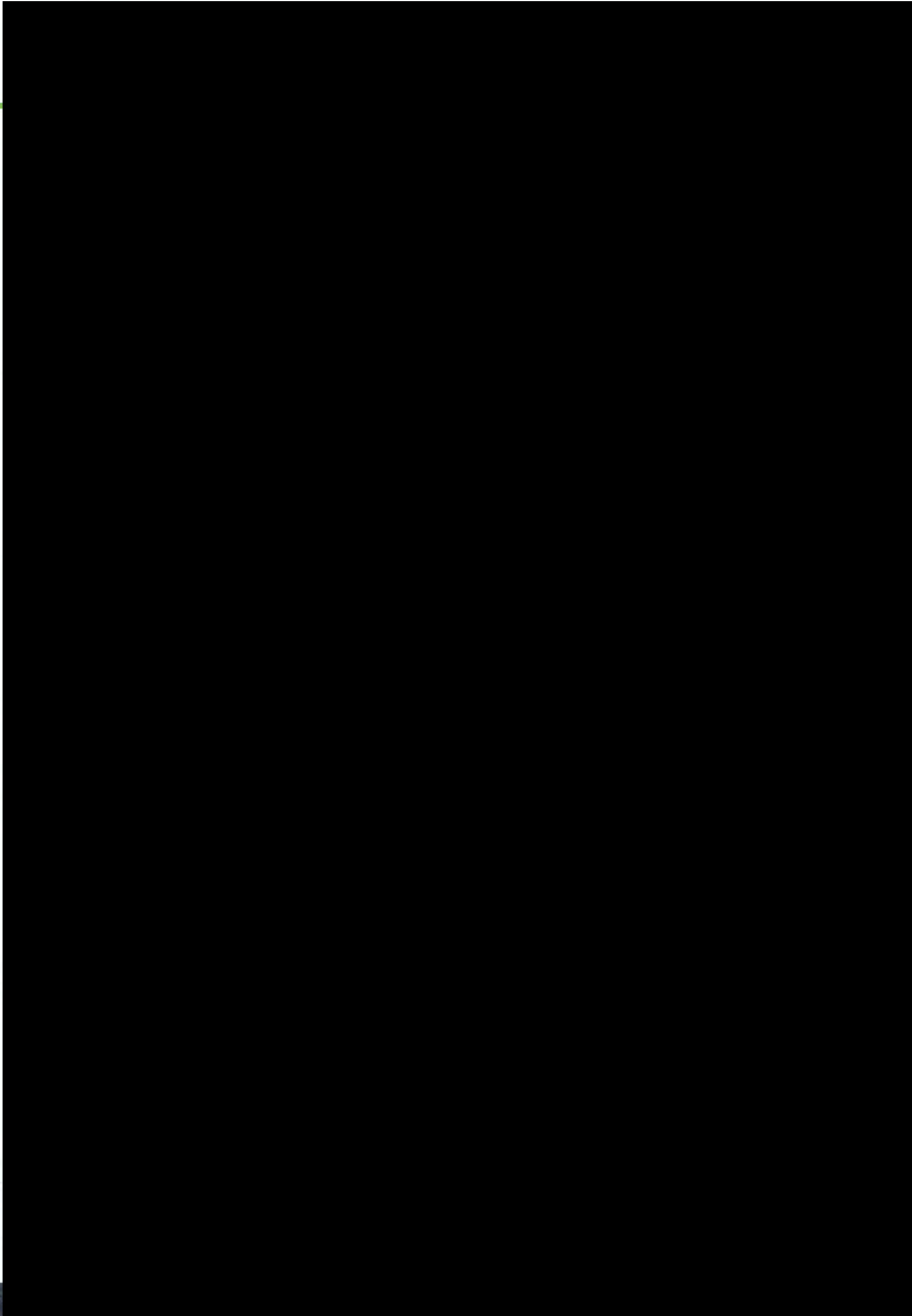
EXHIBIT A (Aboriginal Participation Plan)

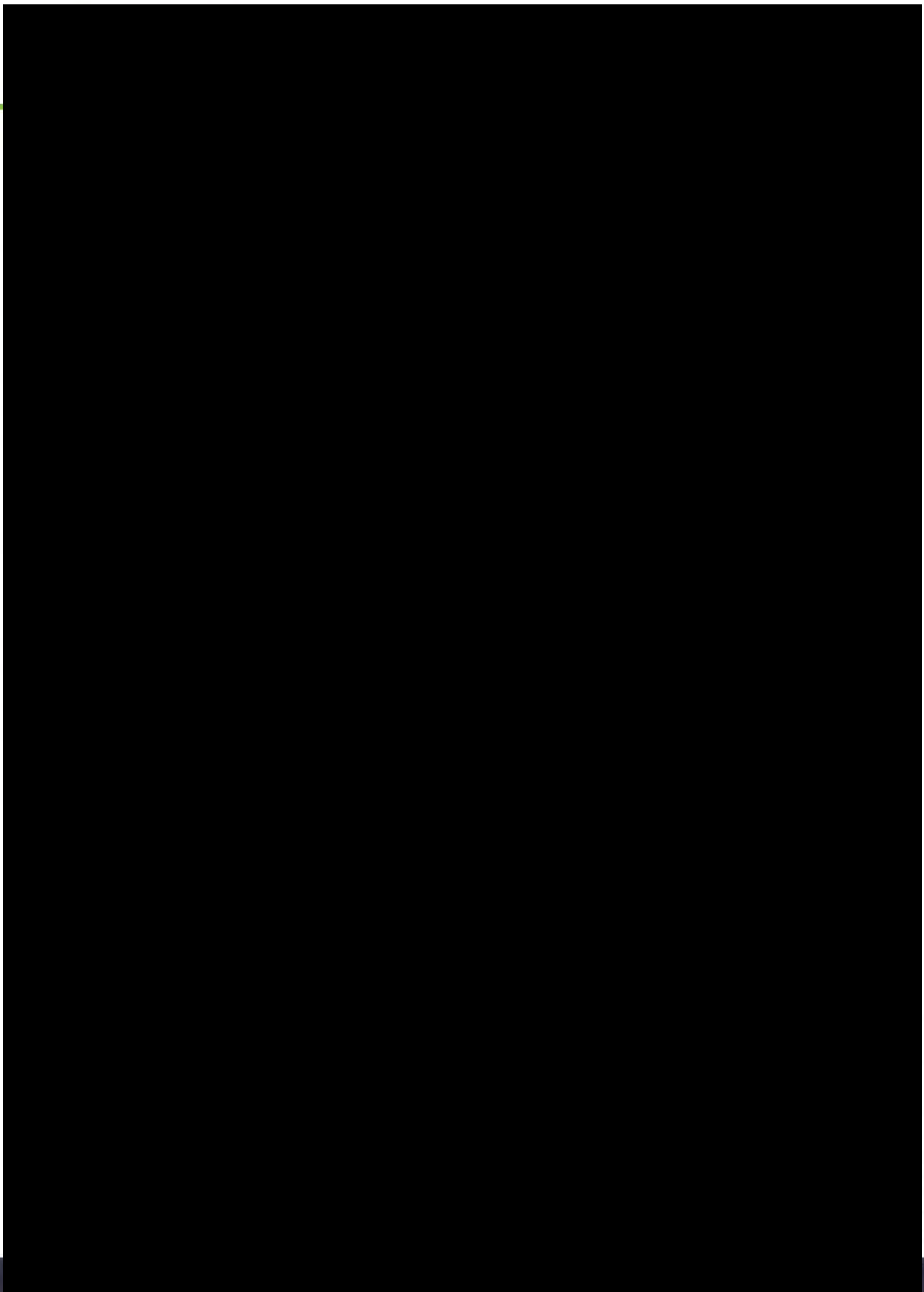


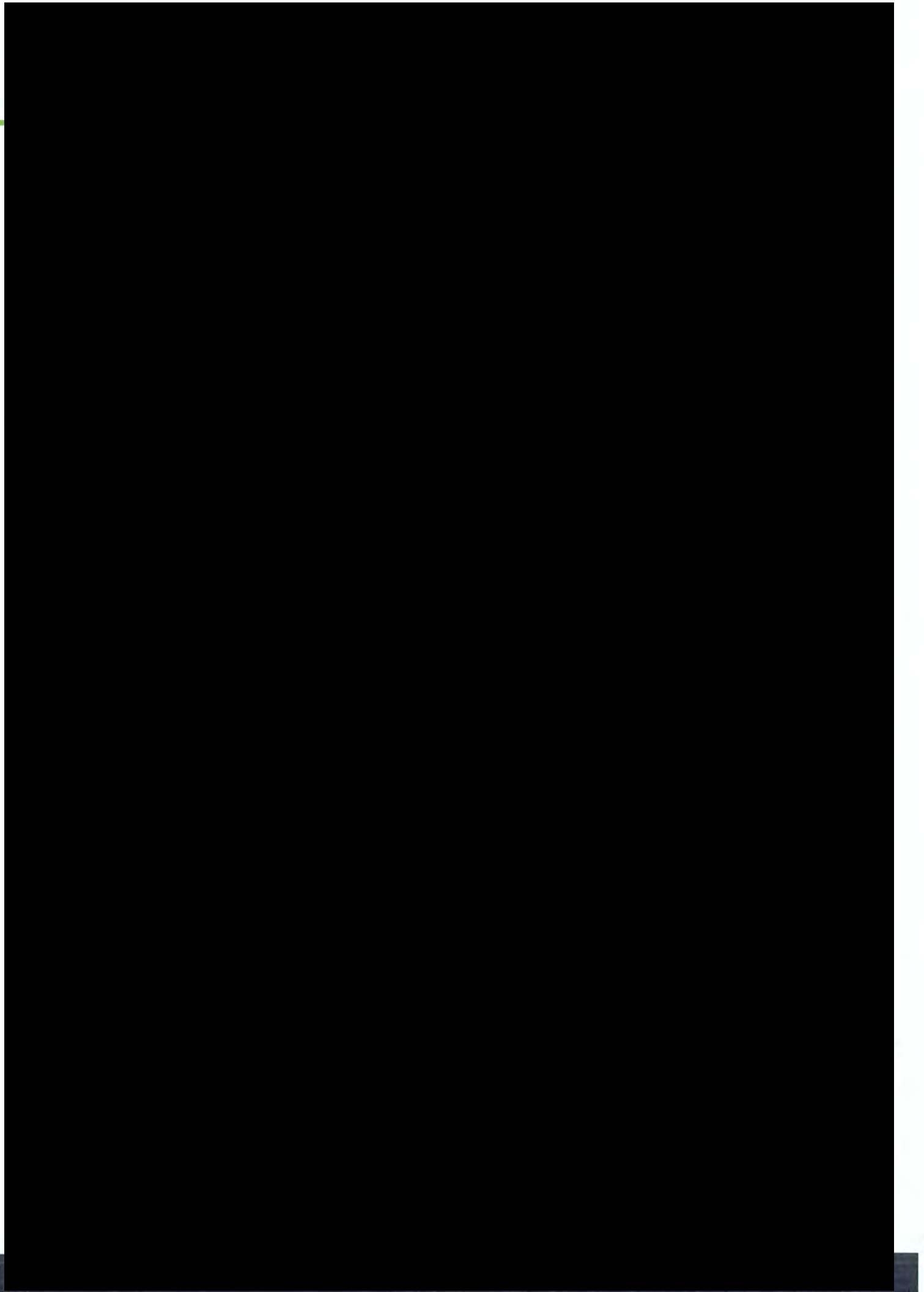


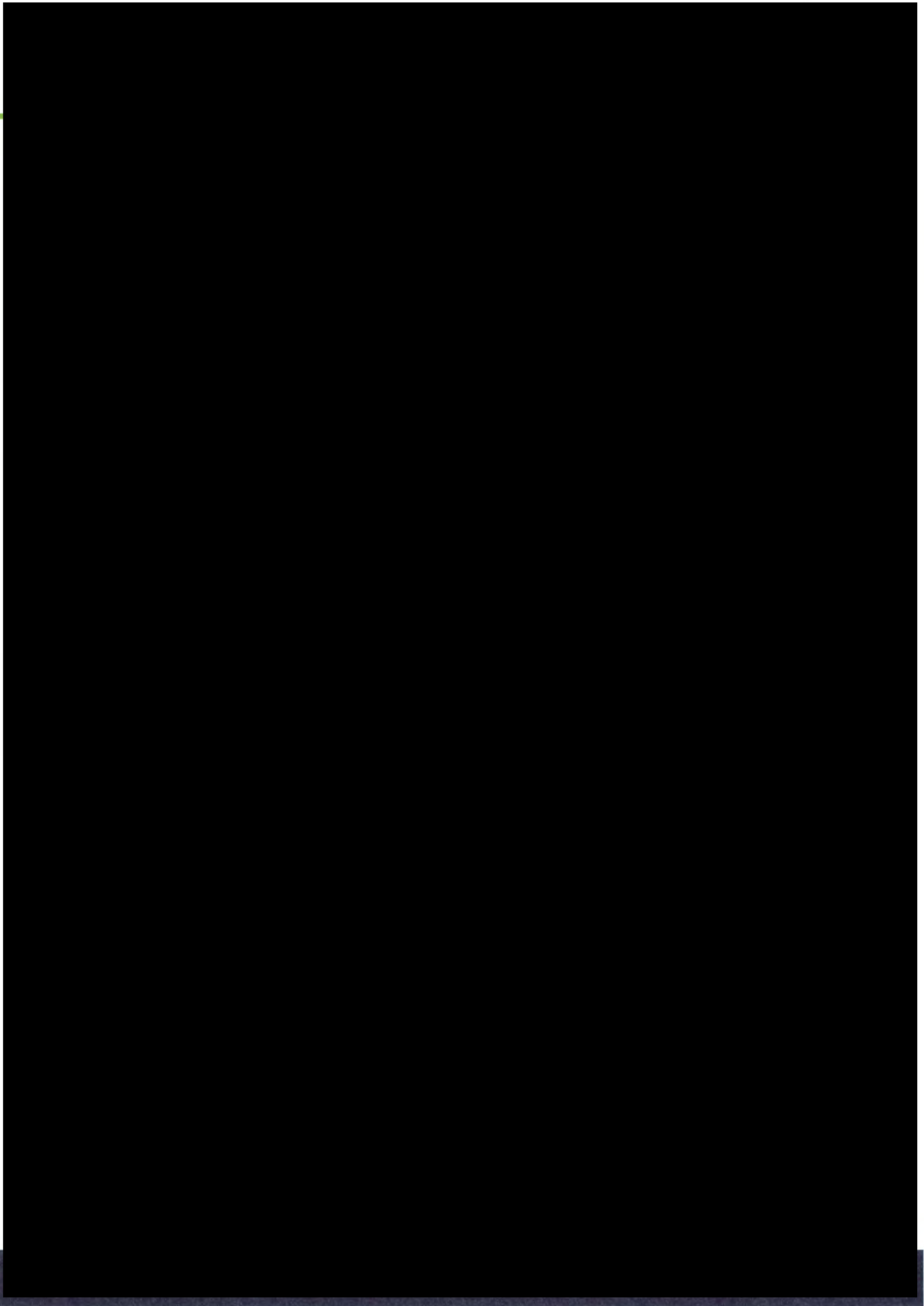


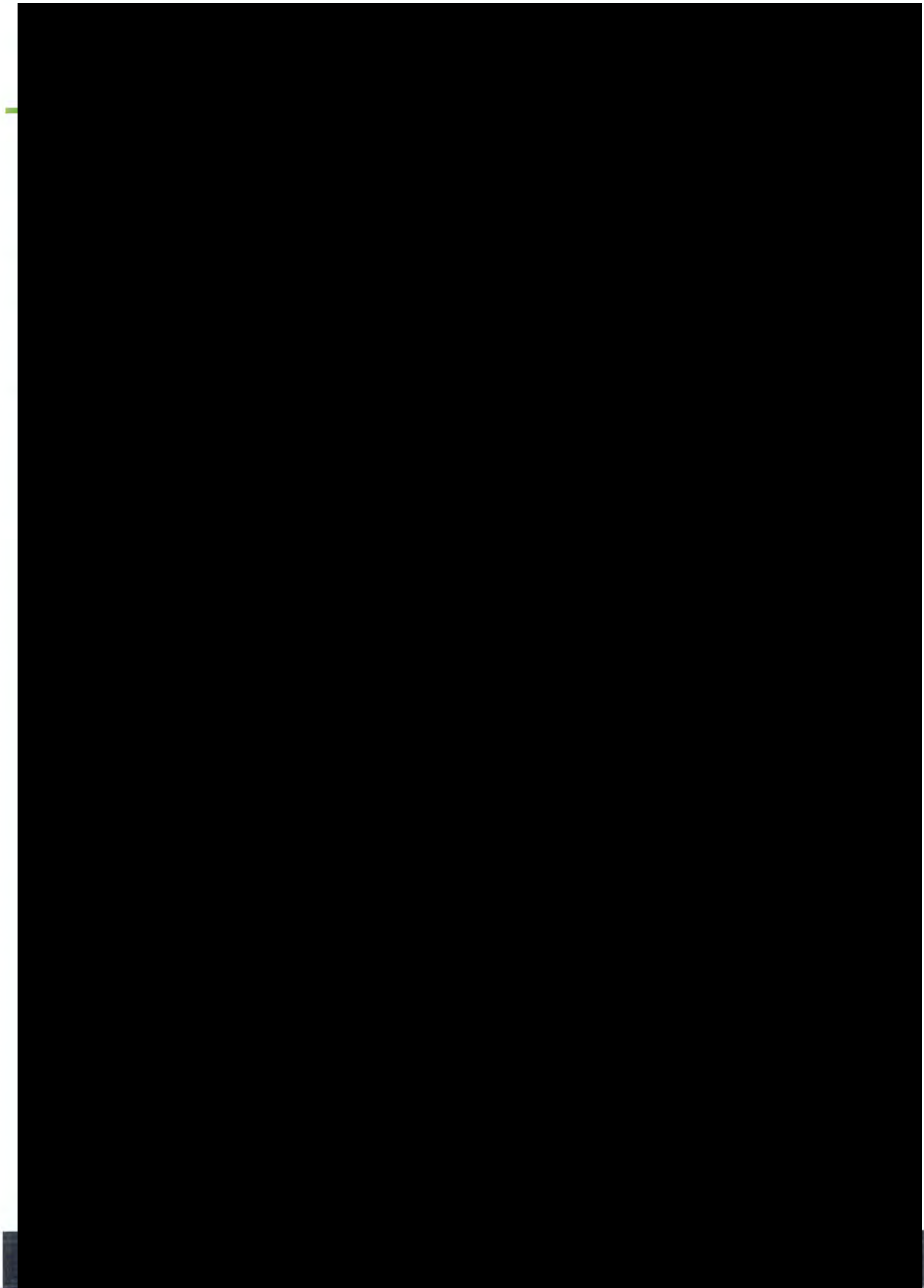


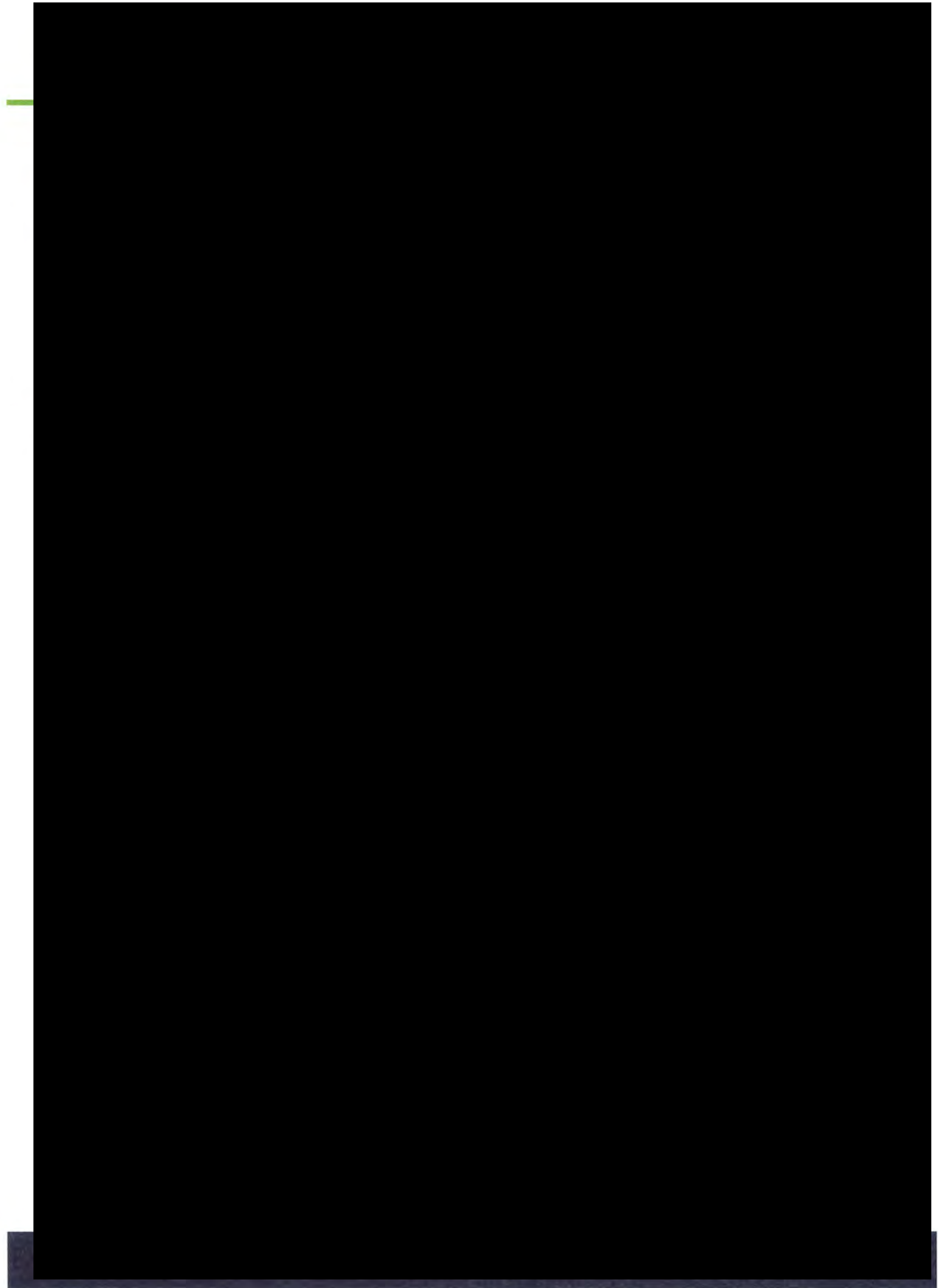


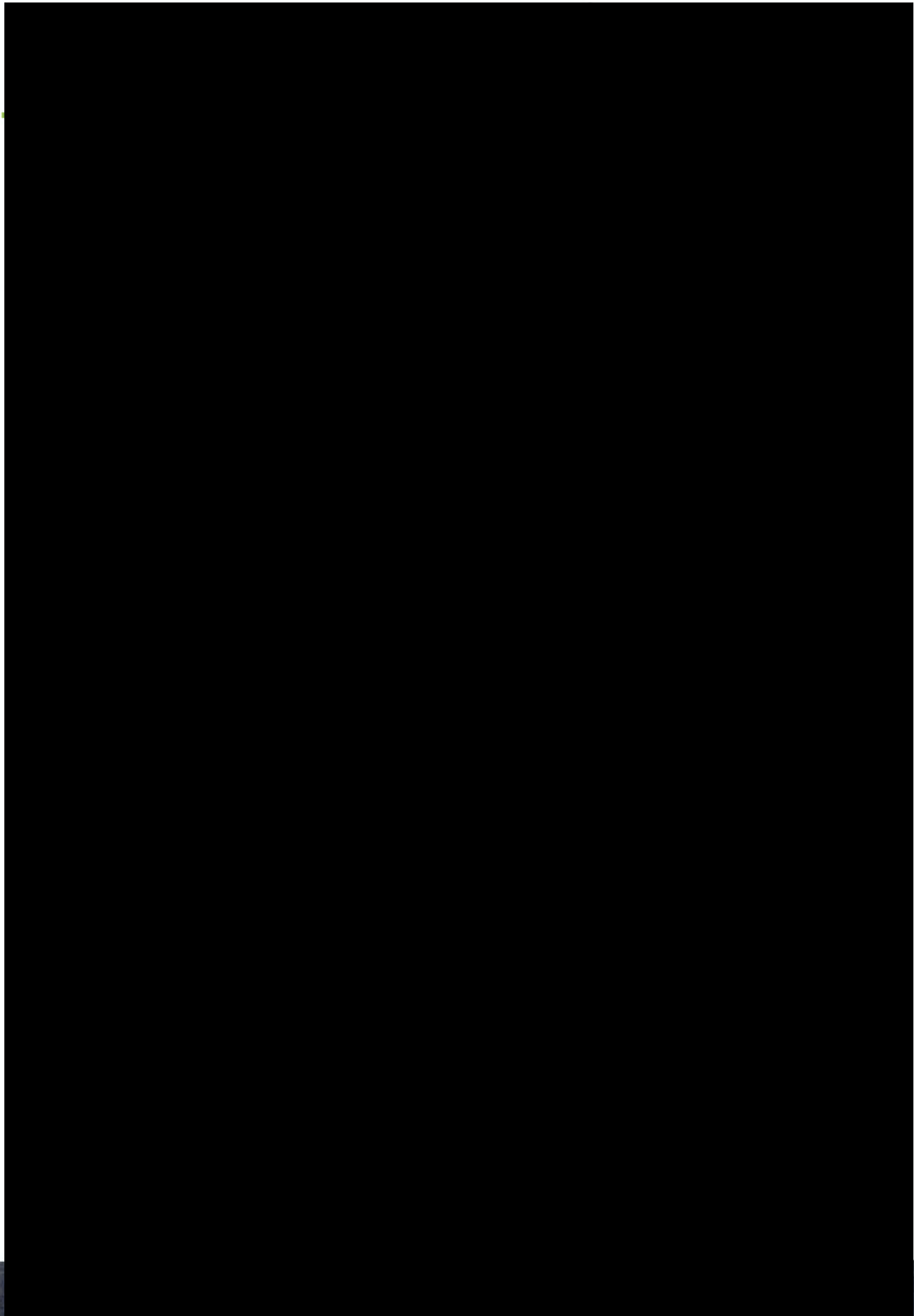


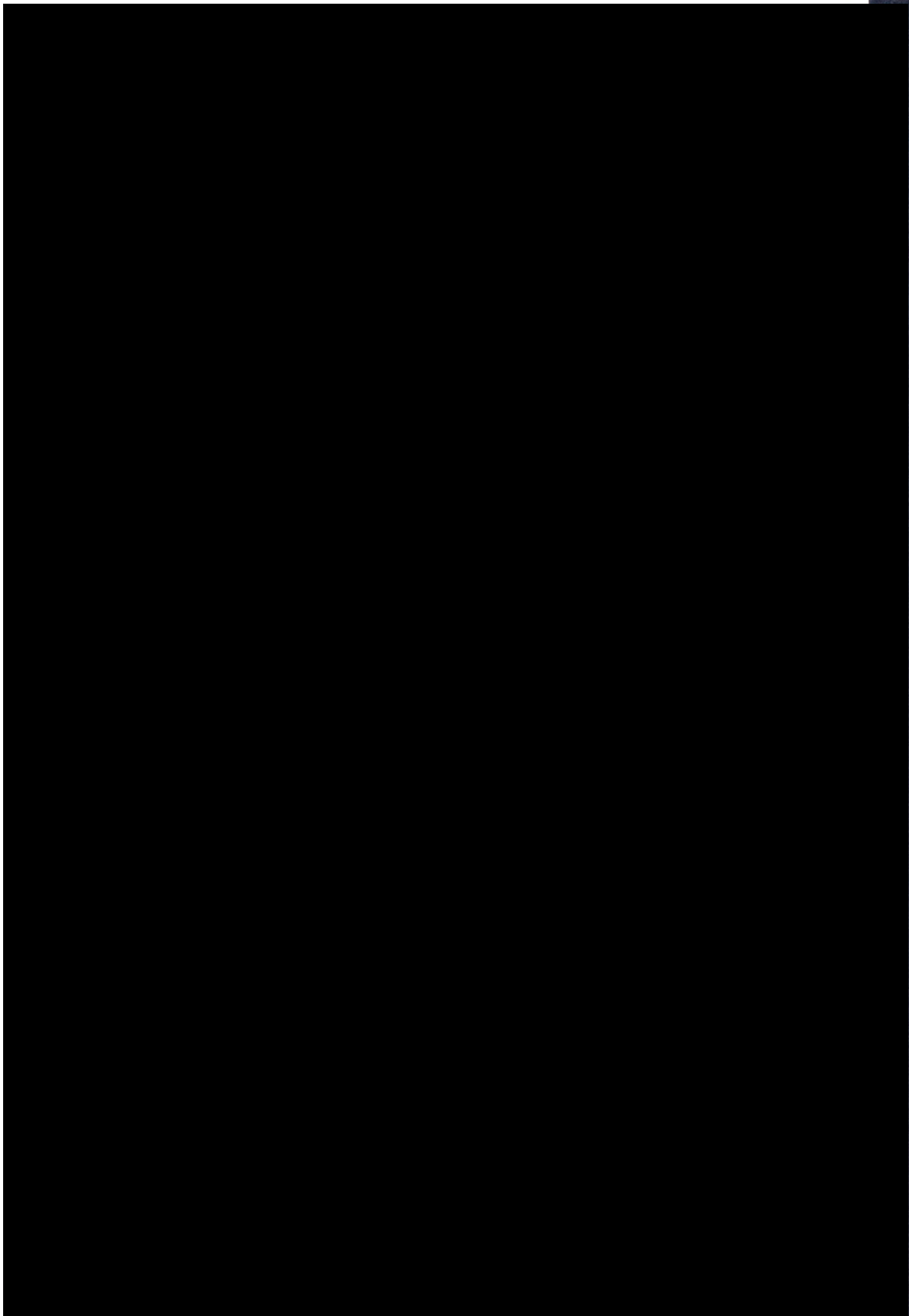




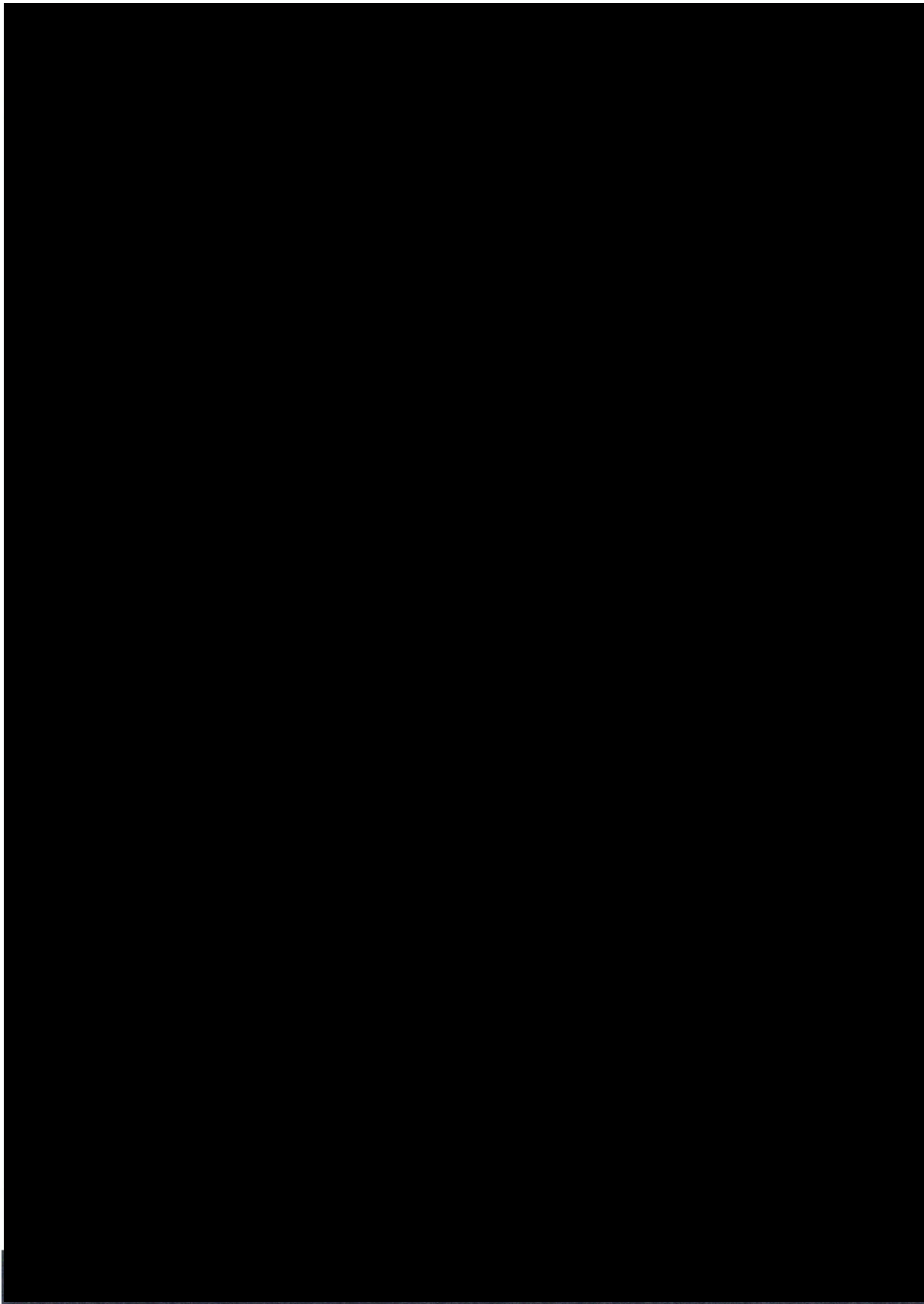


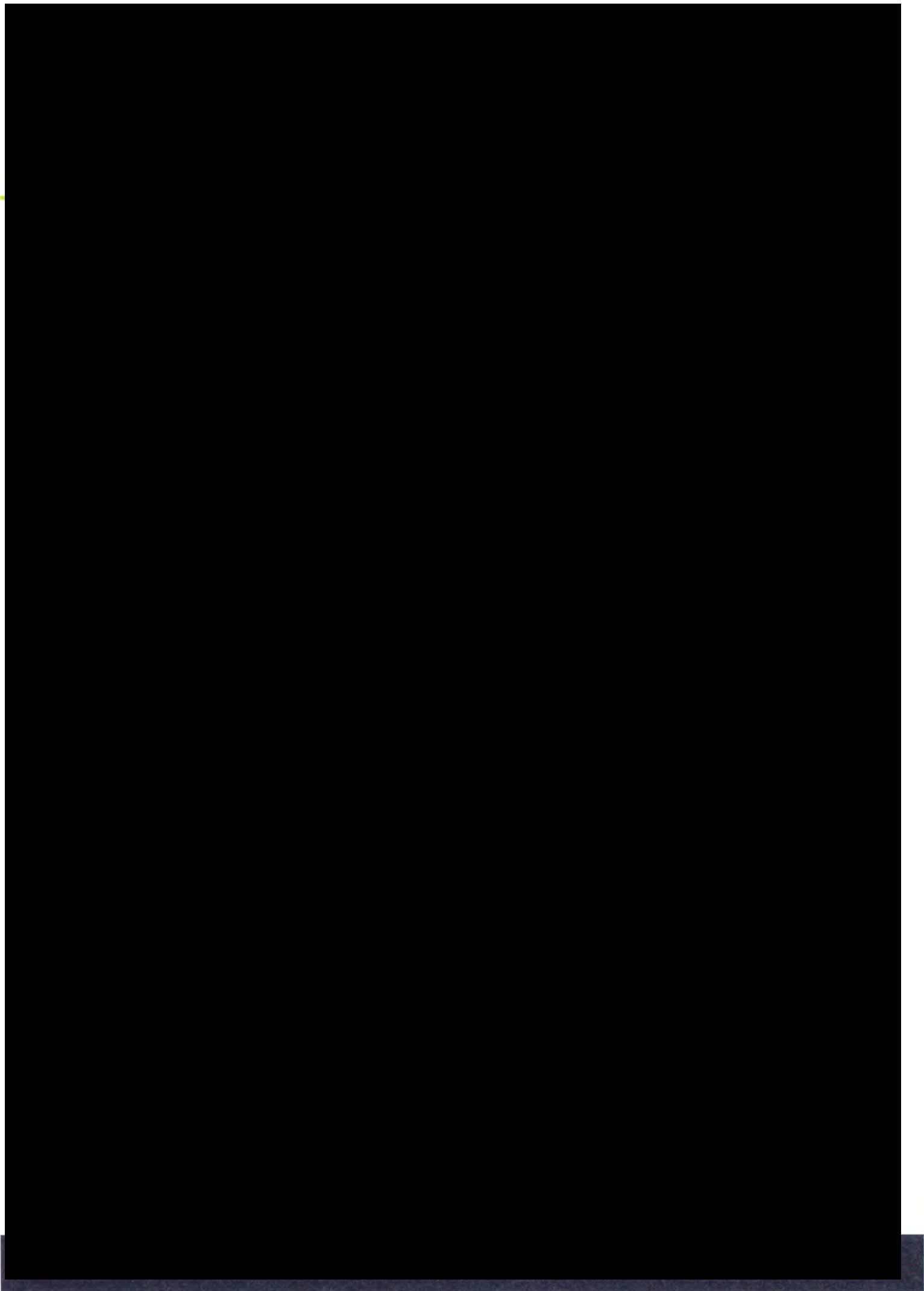


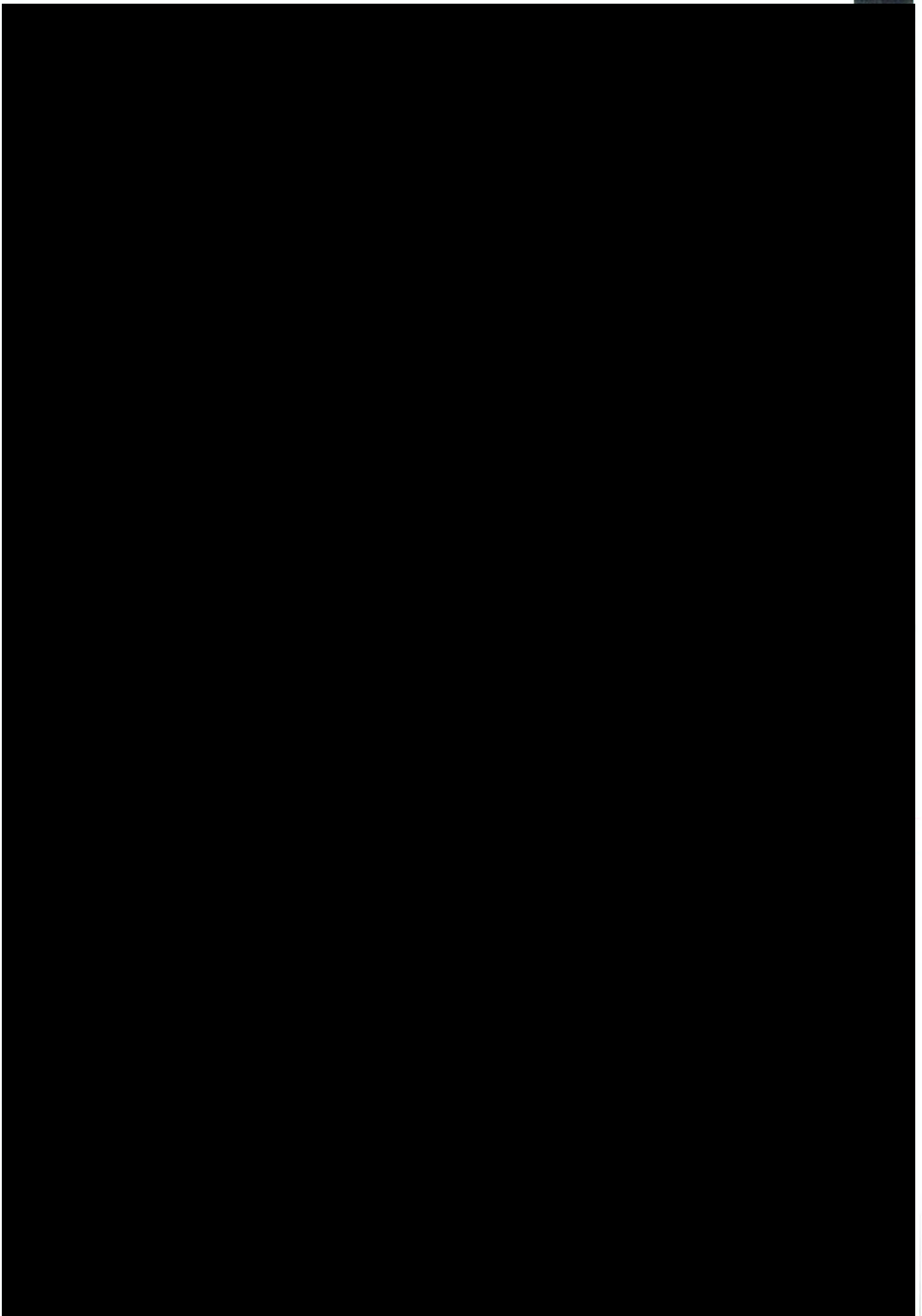


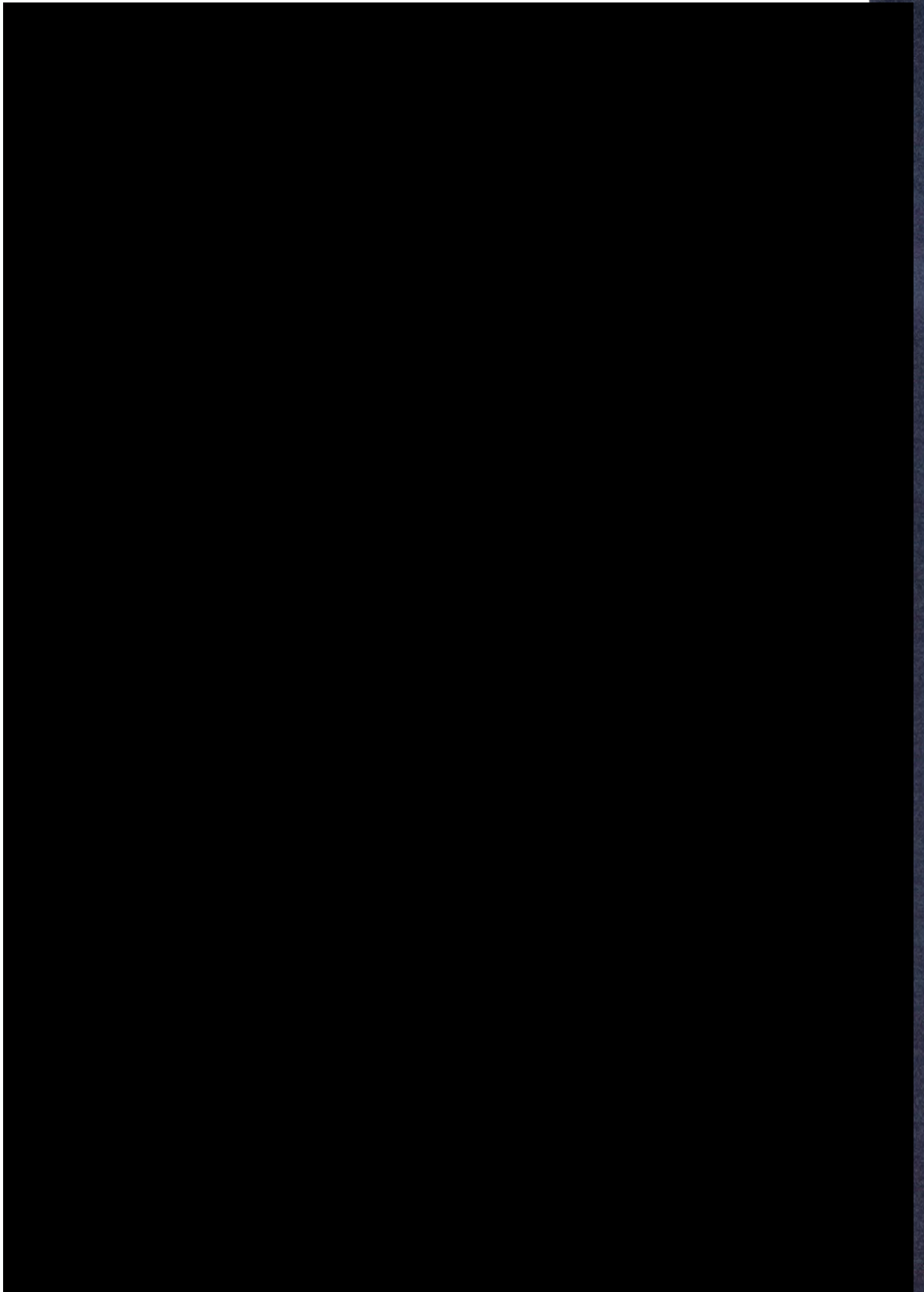


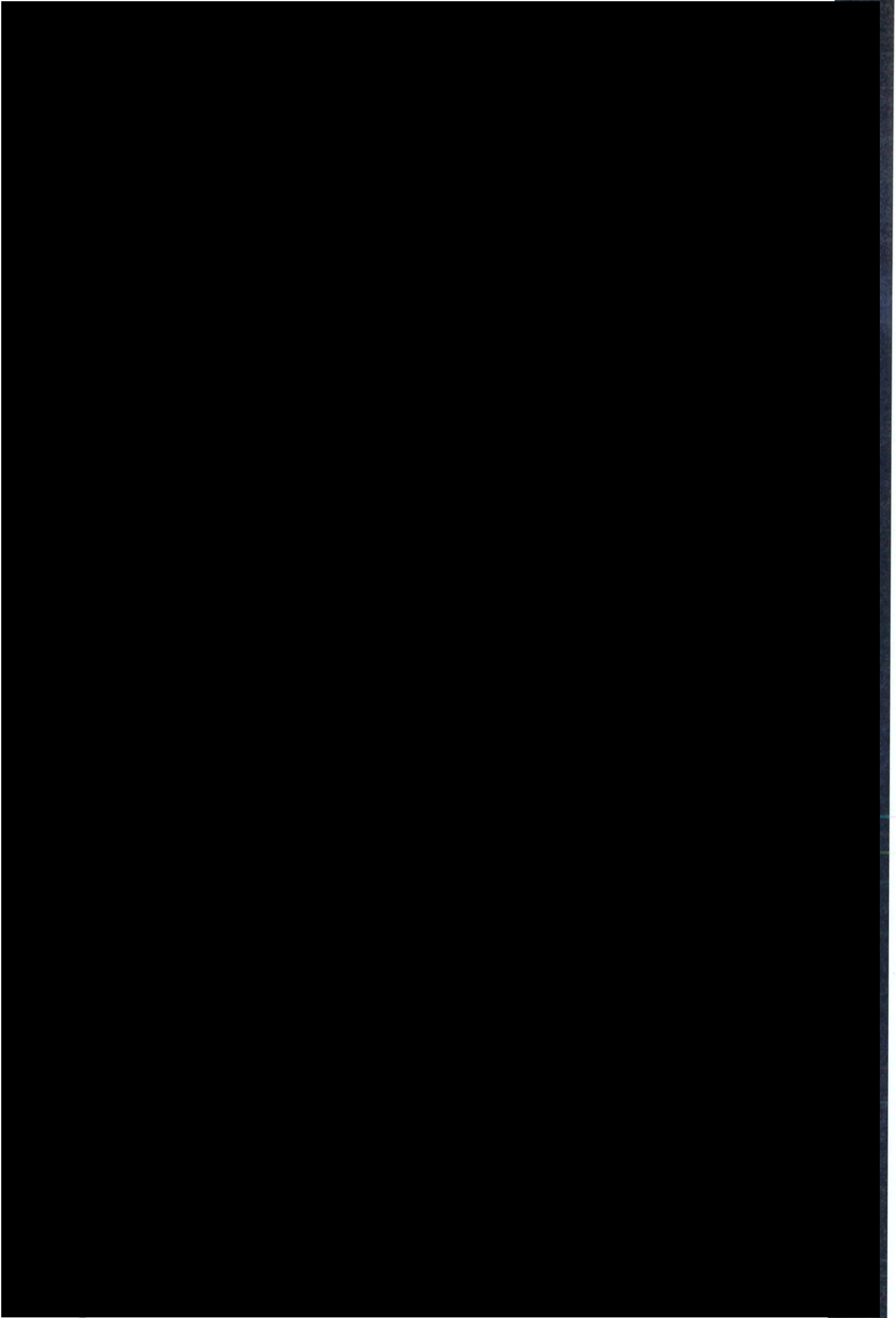


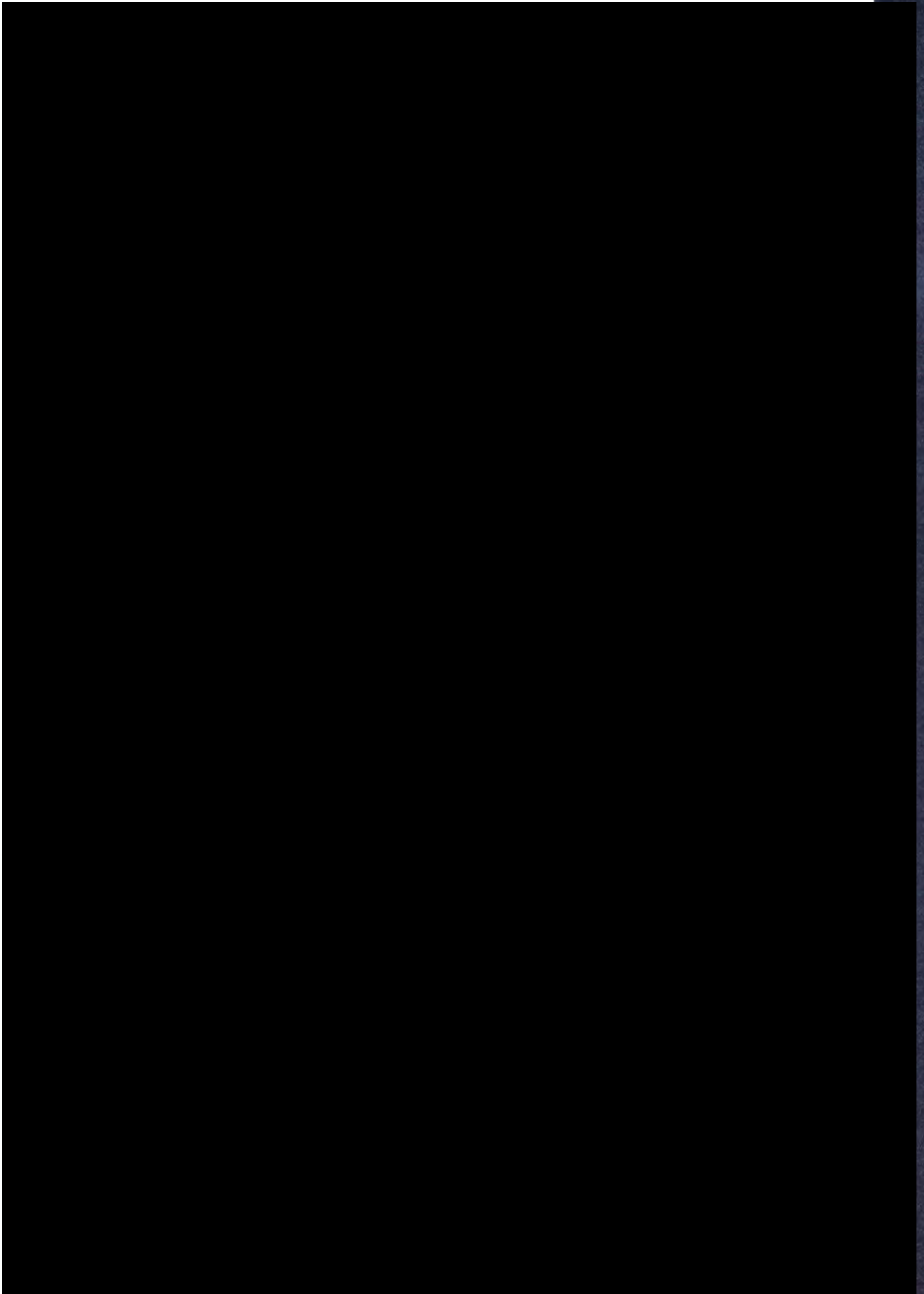


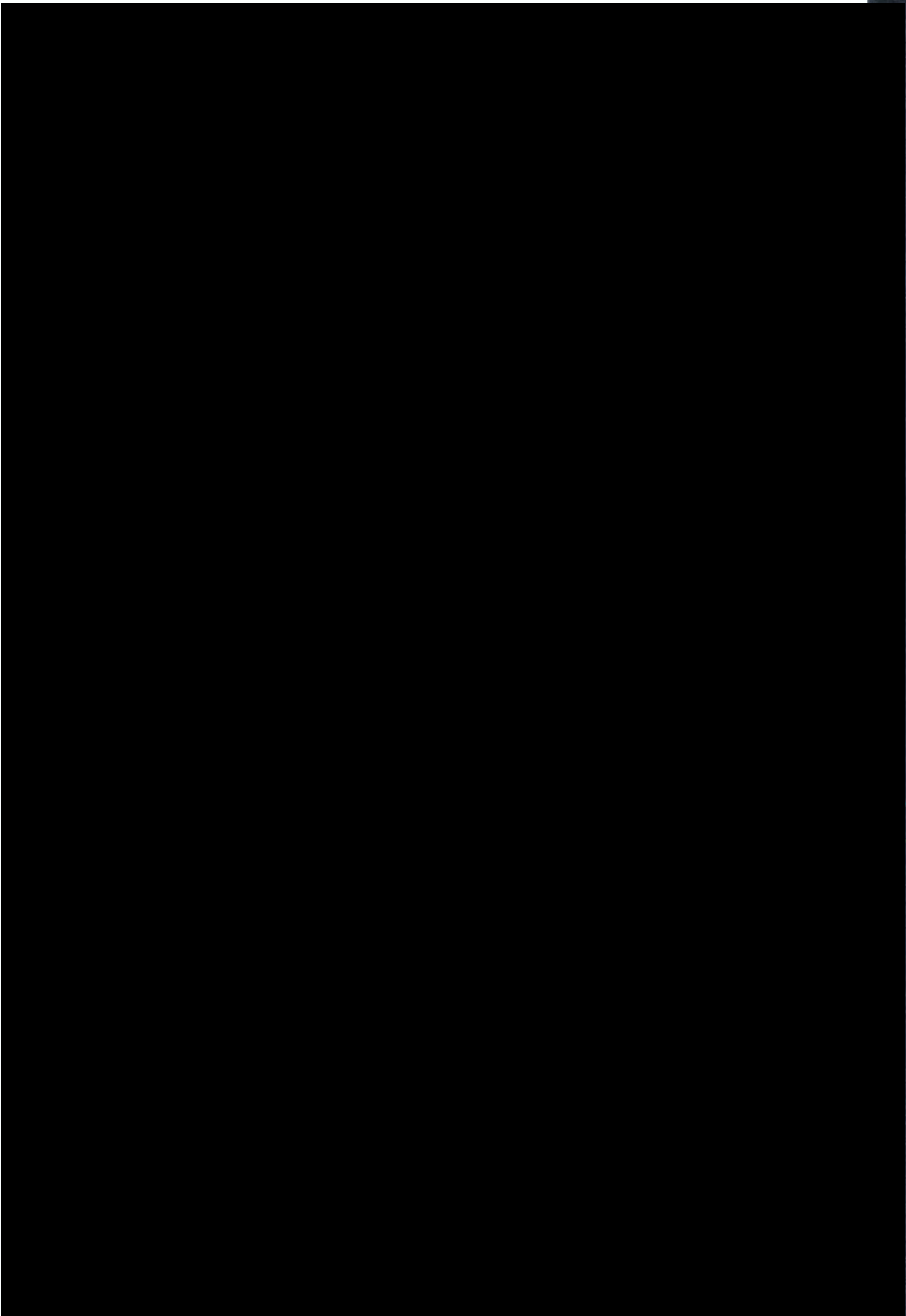


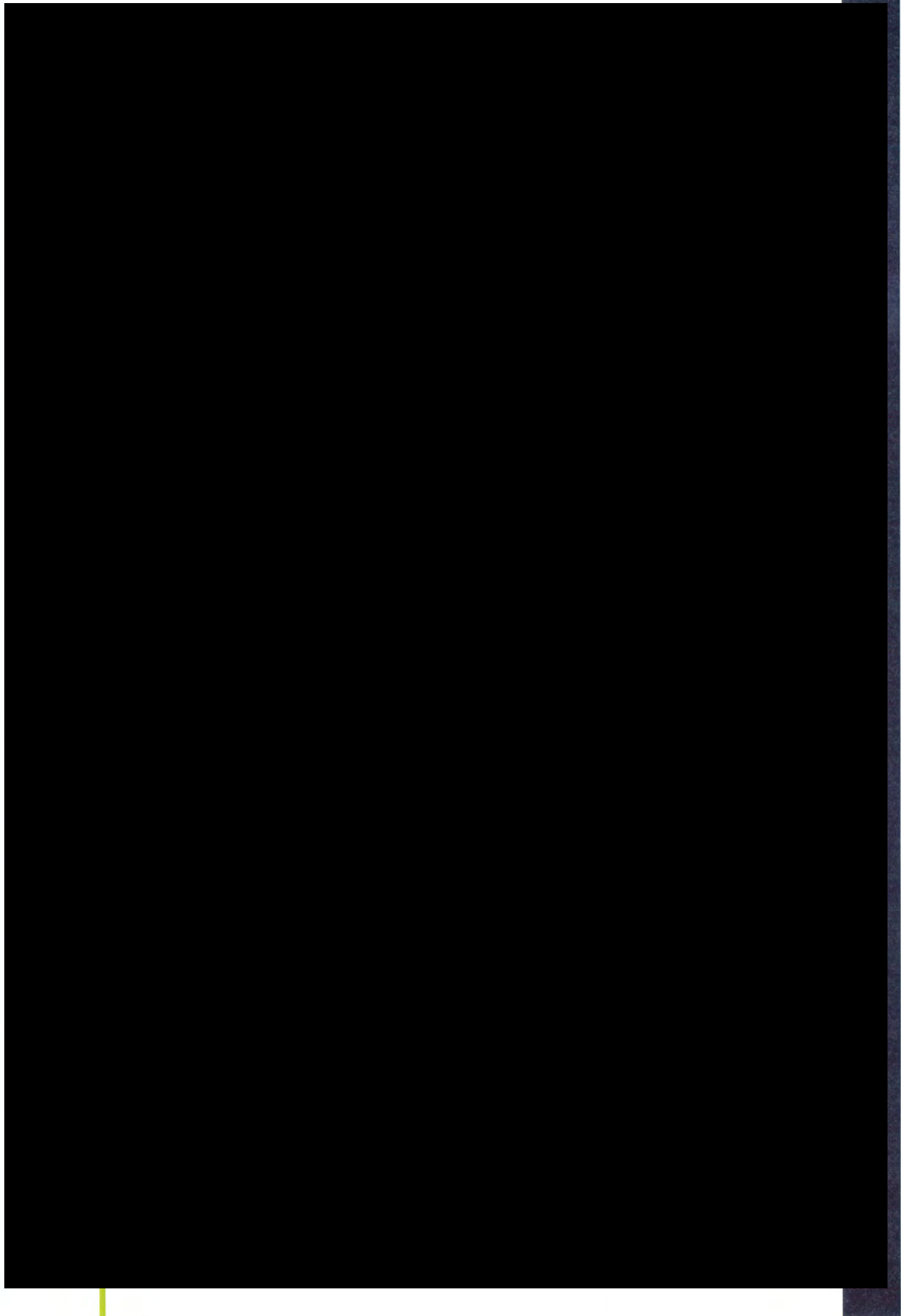


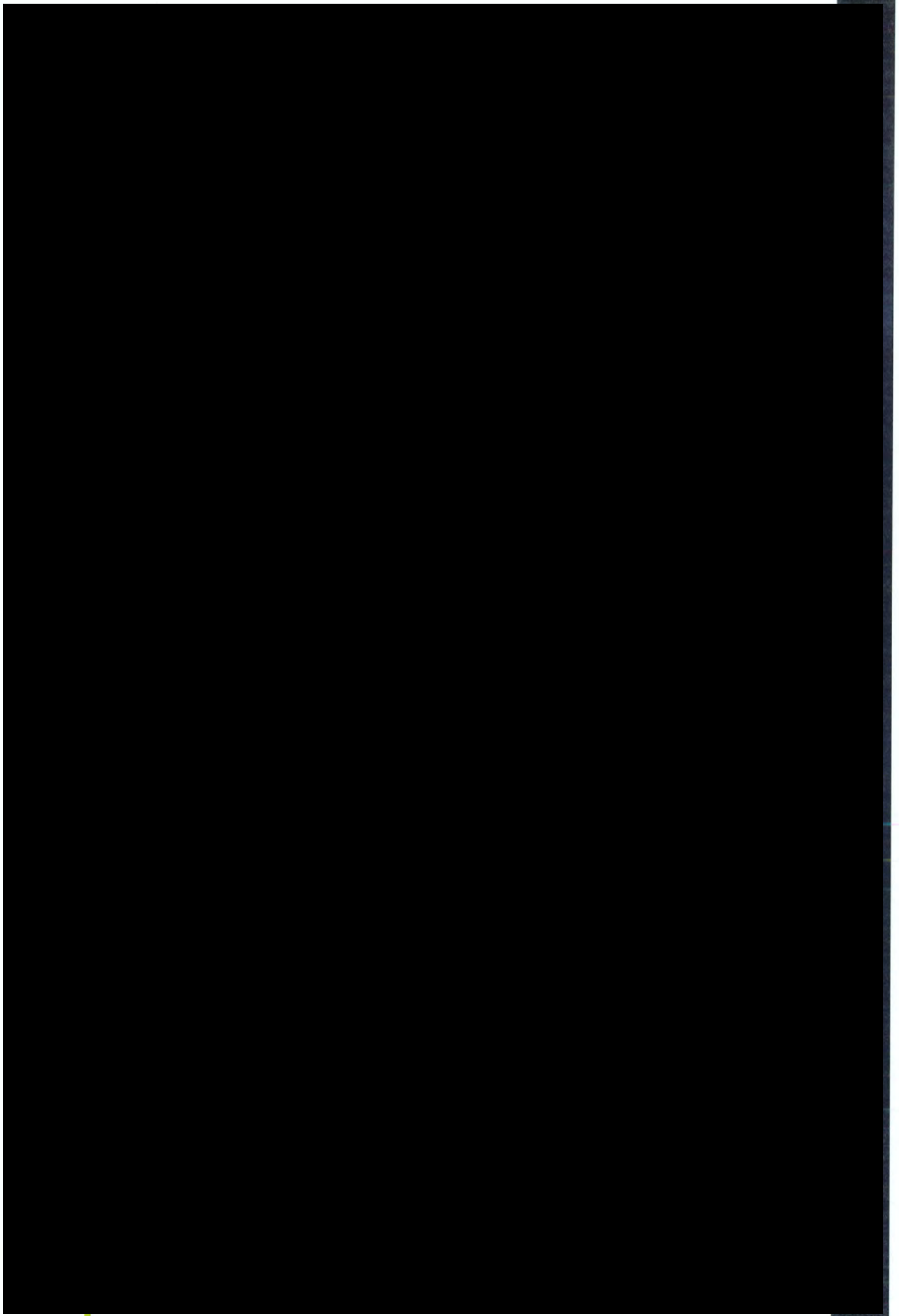


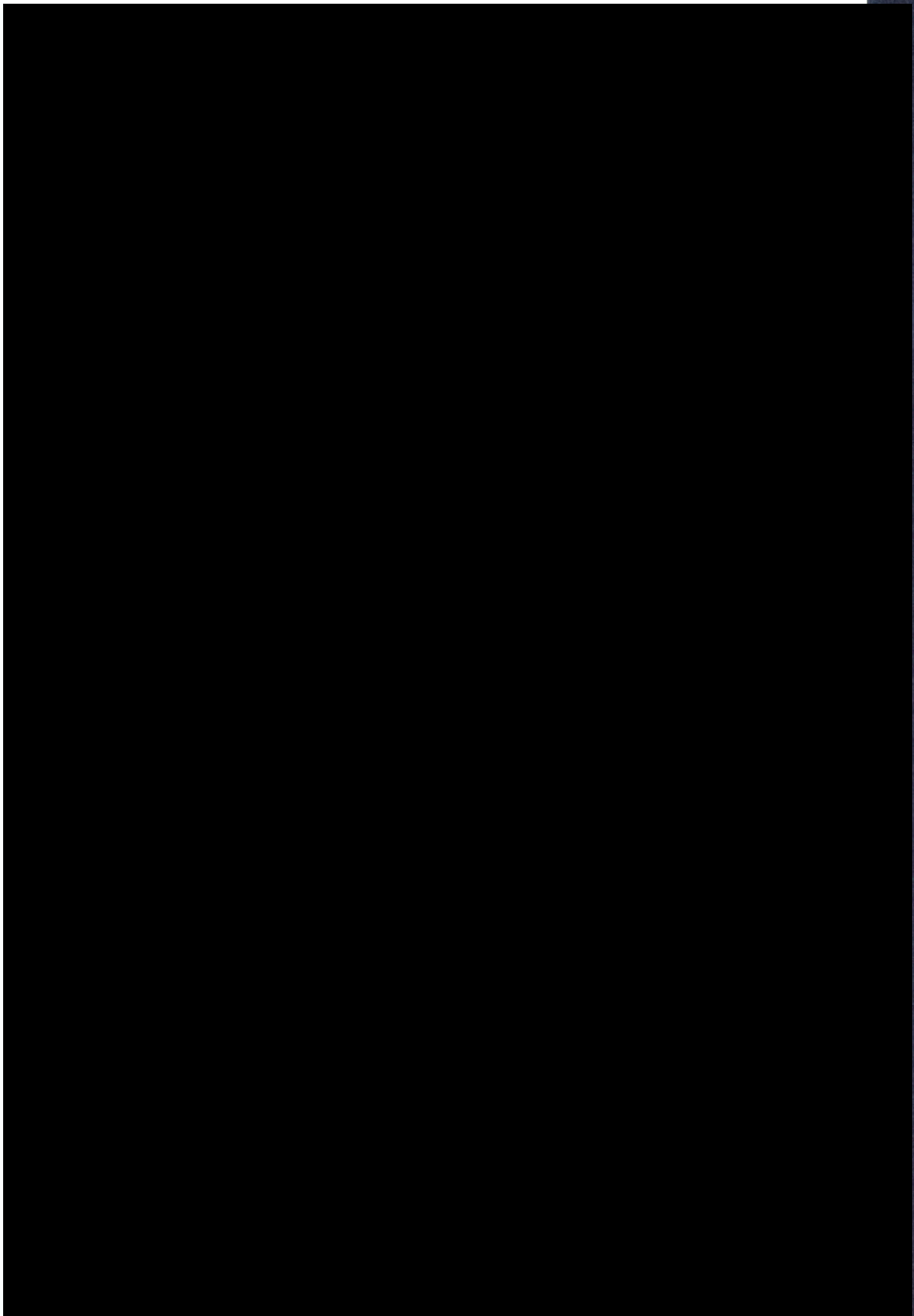


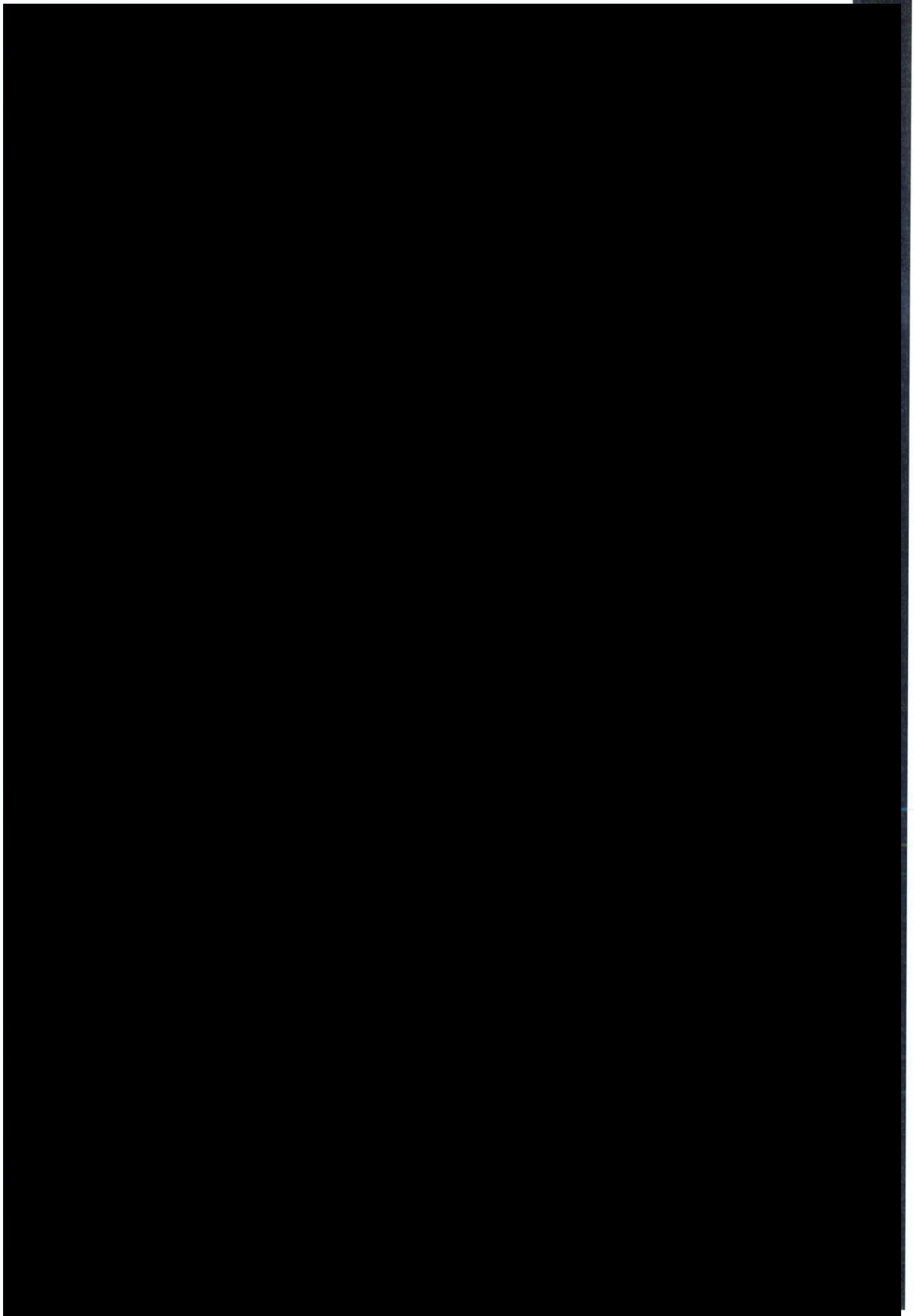


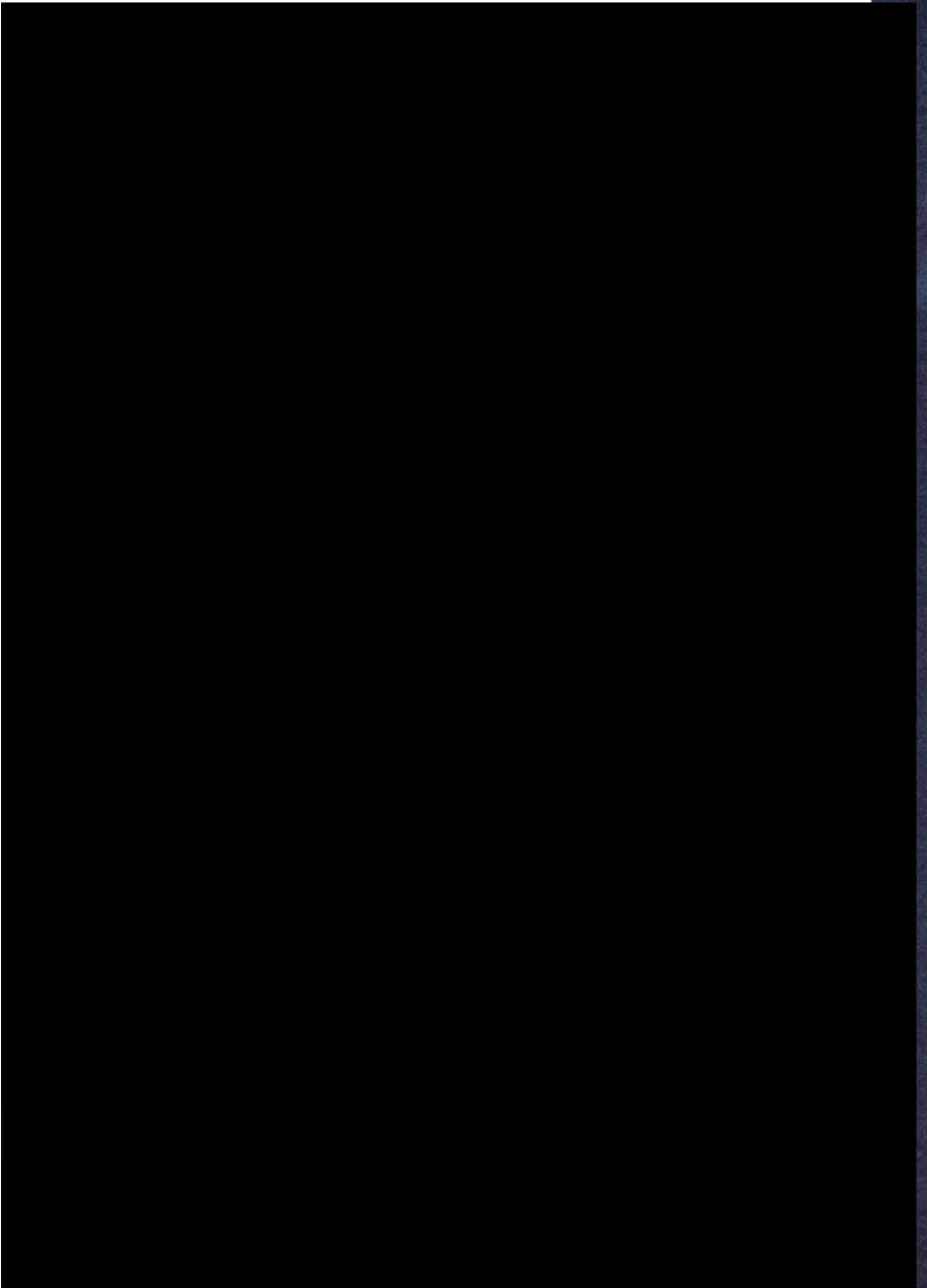


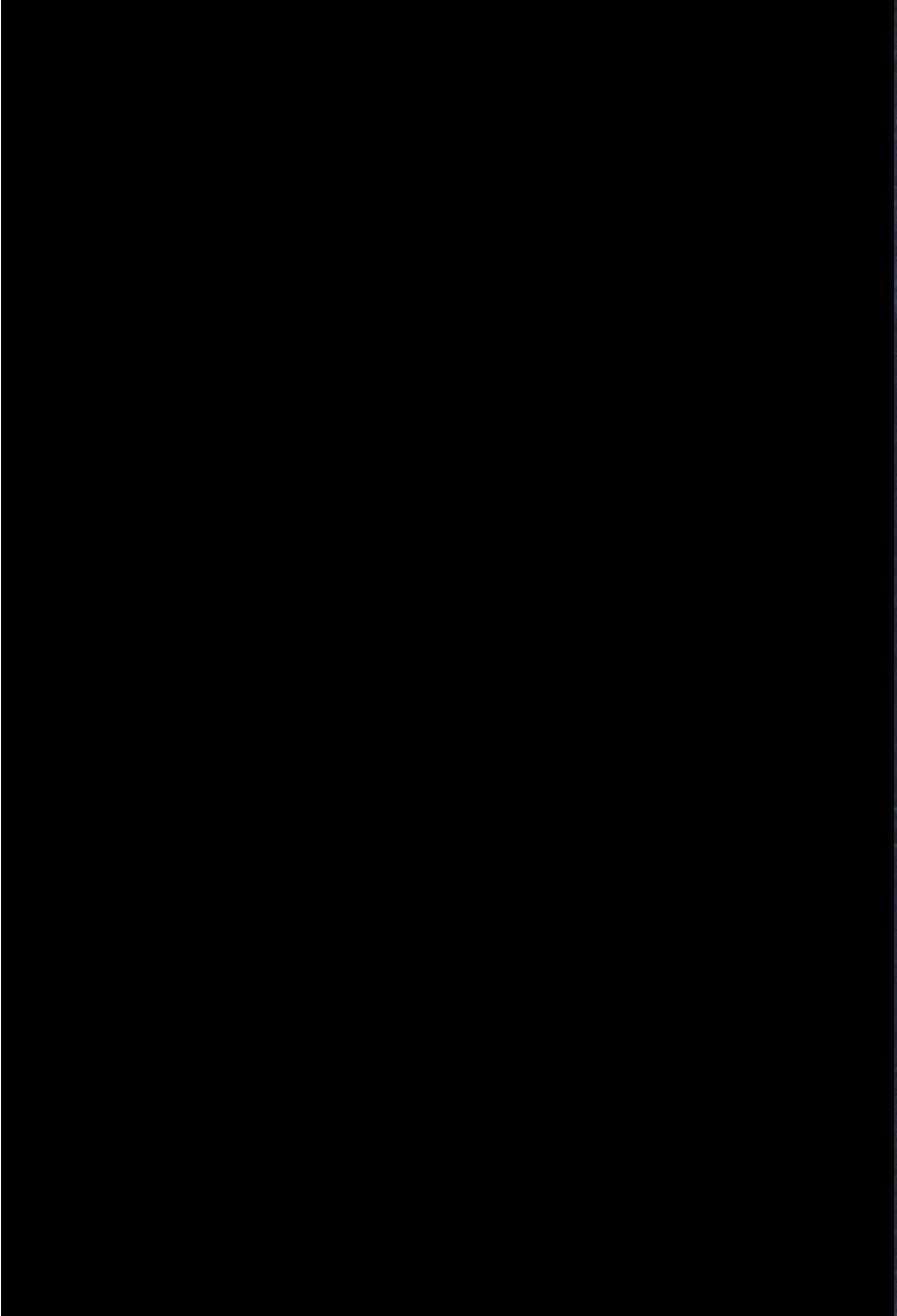


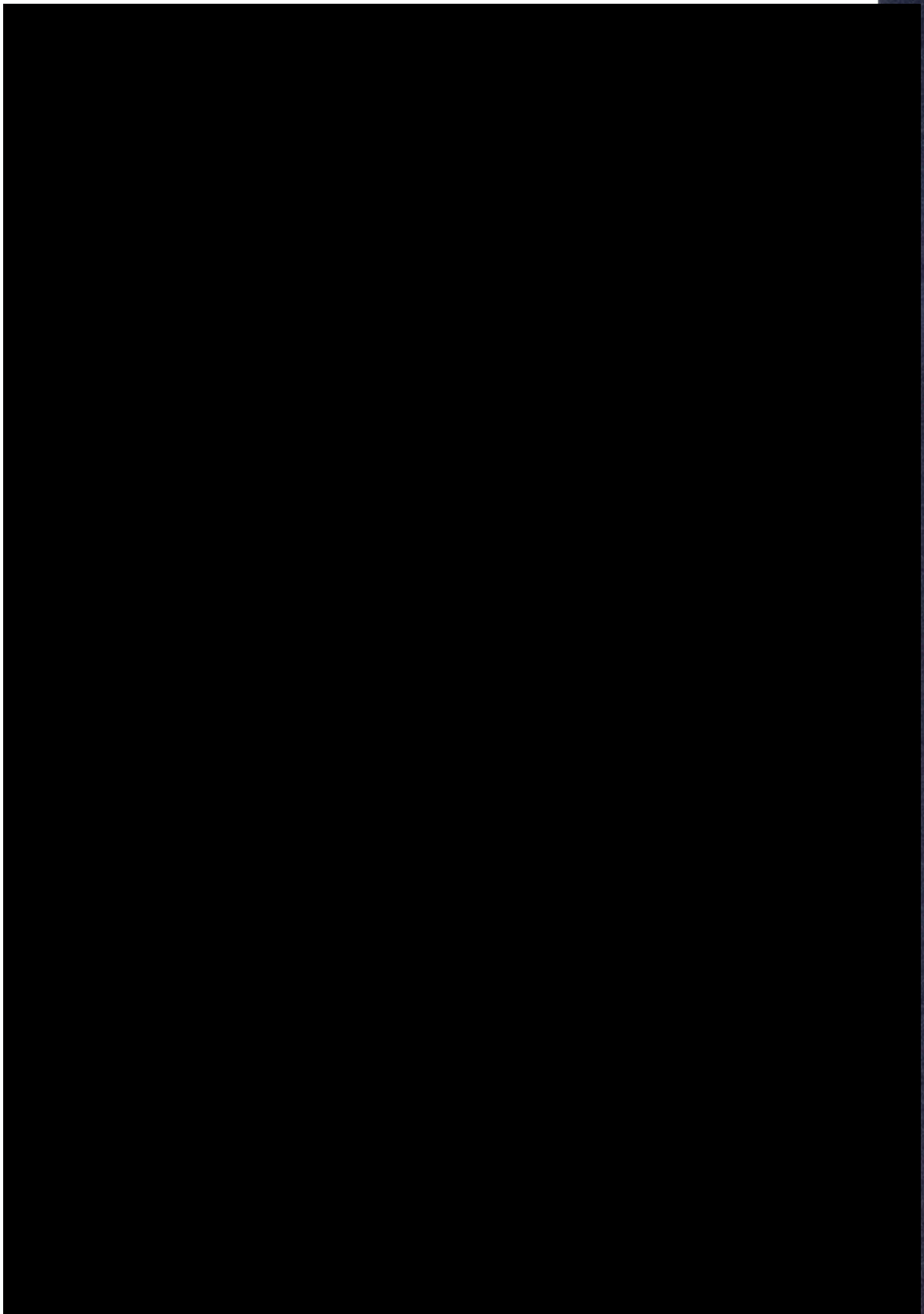


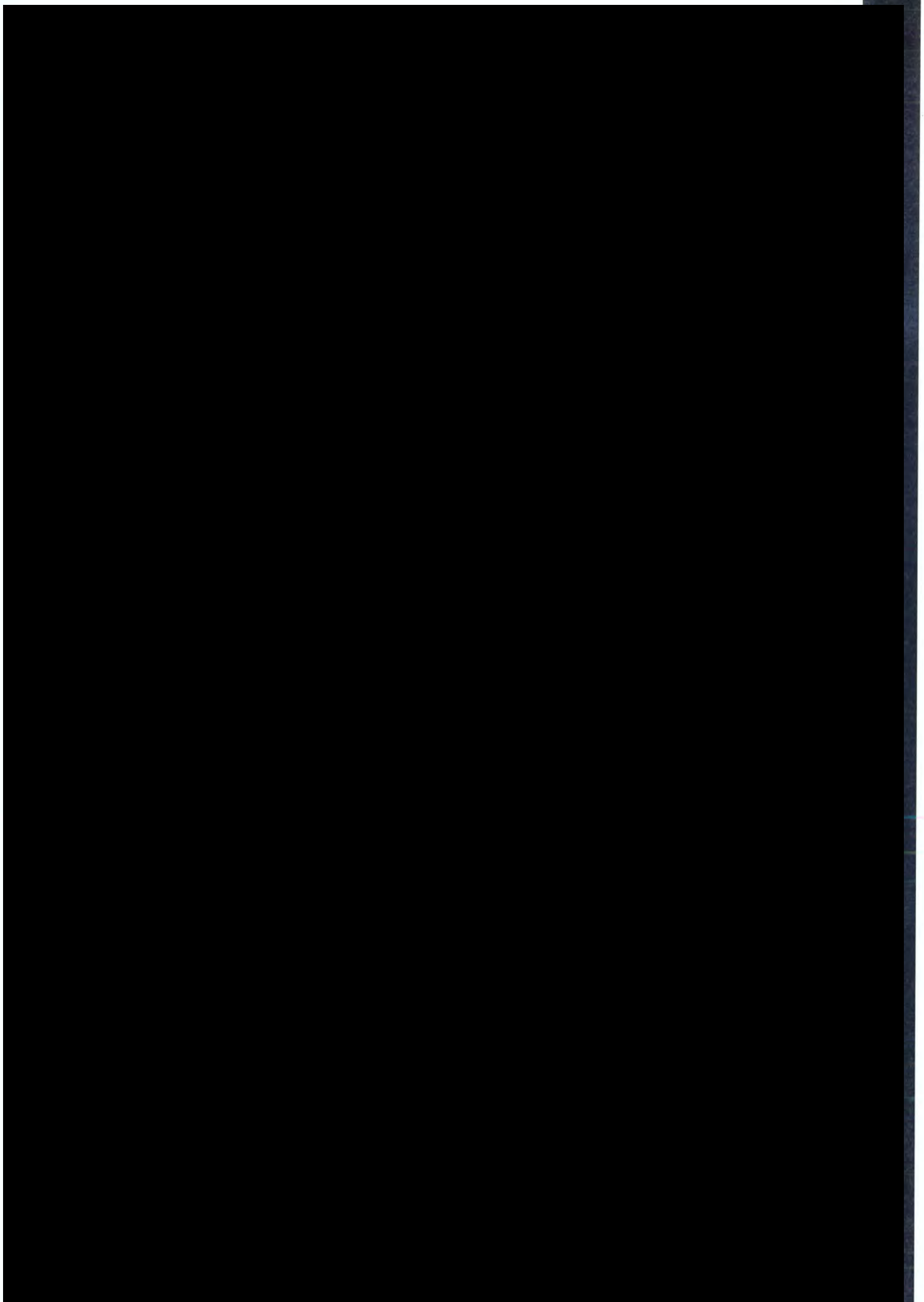


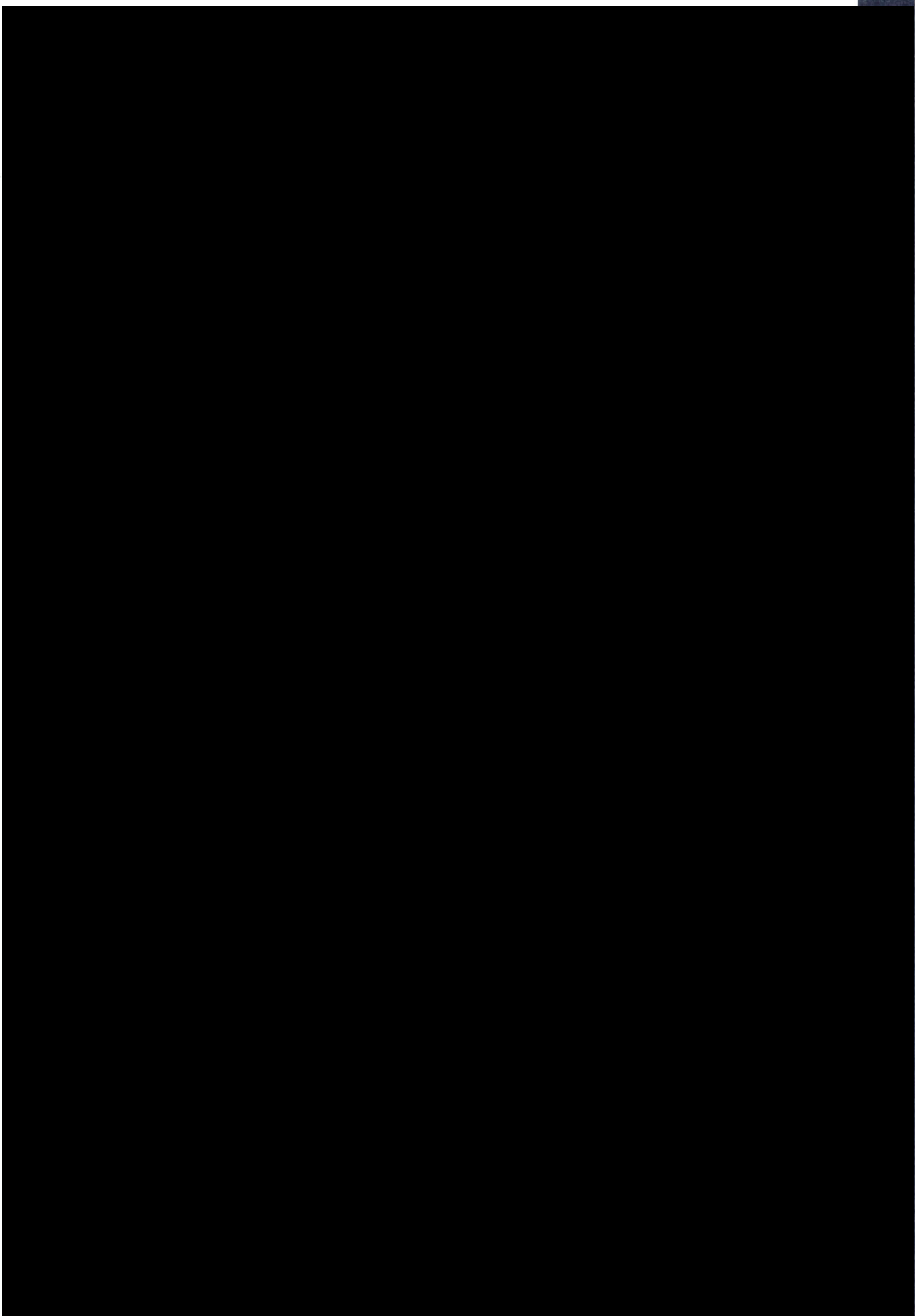


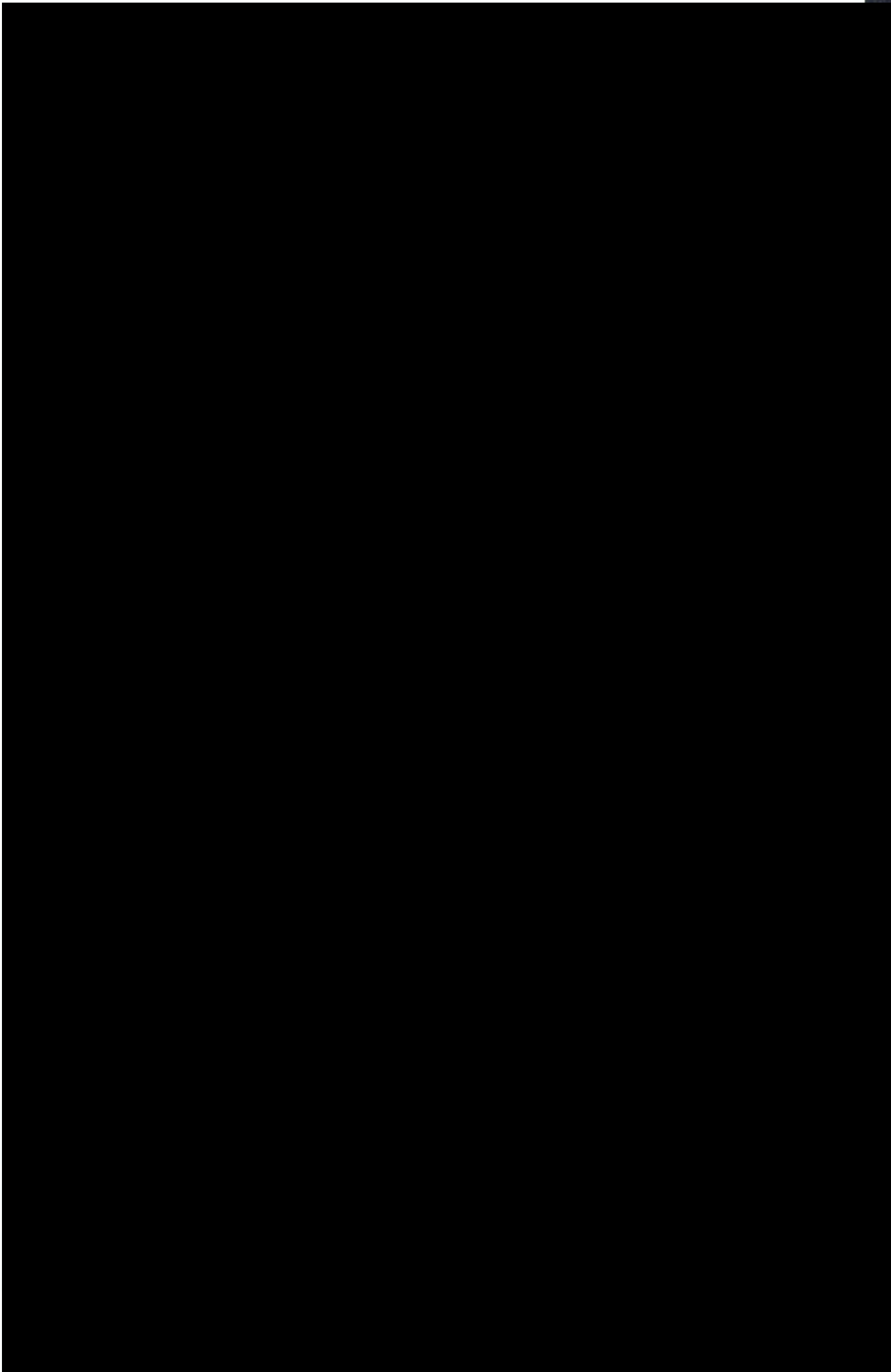


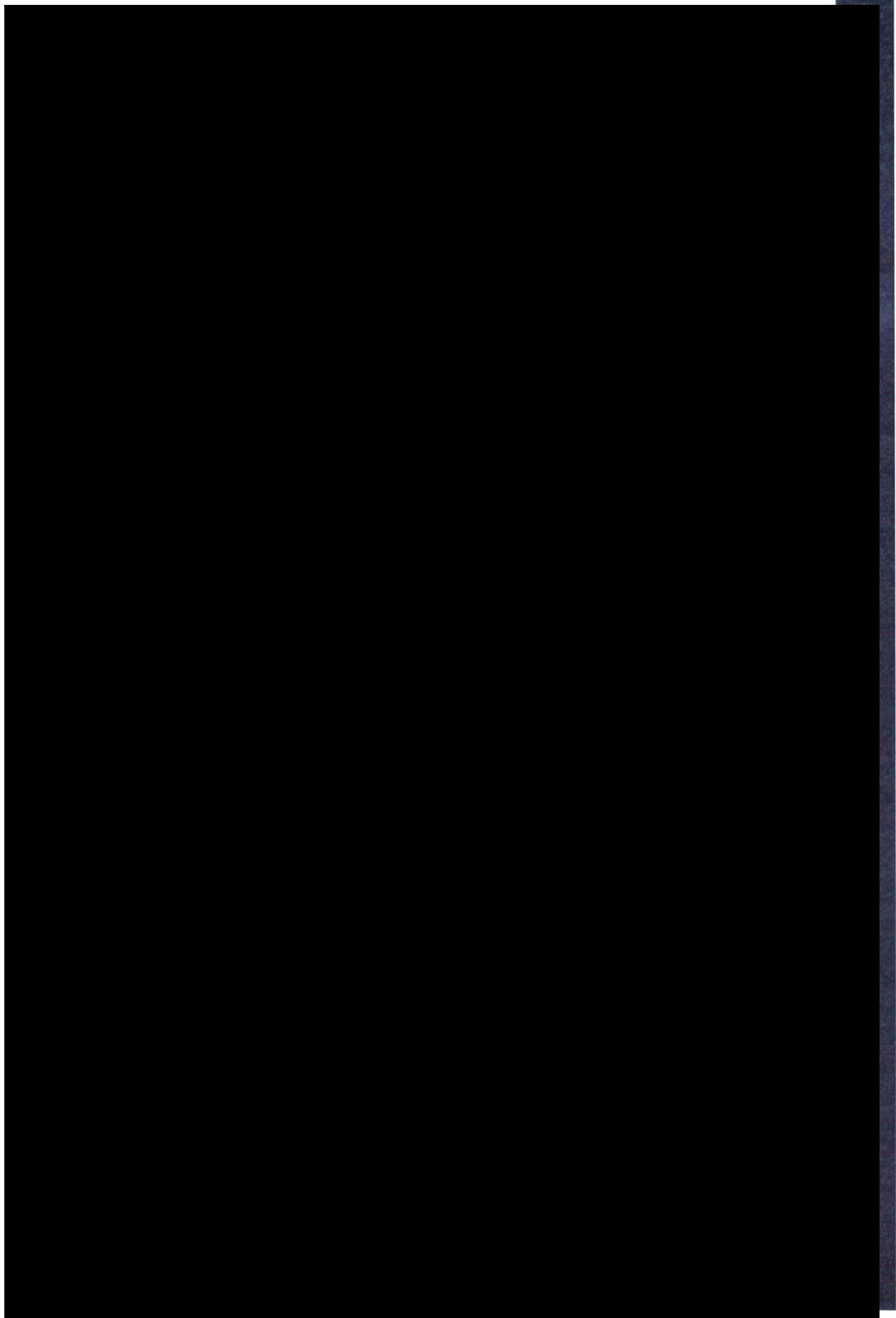


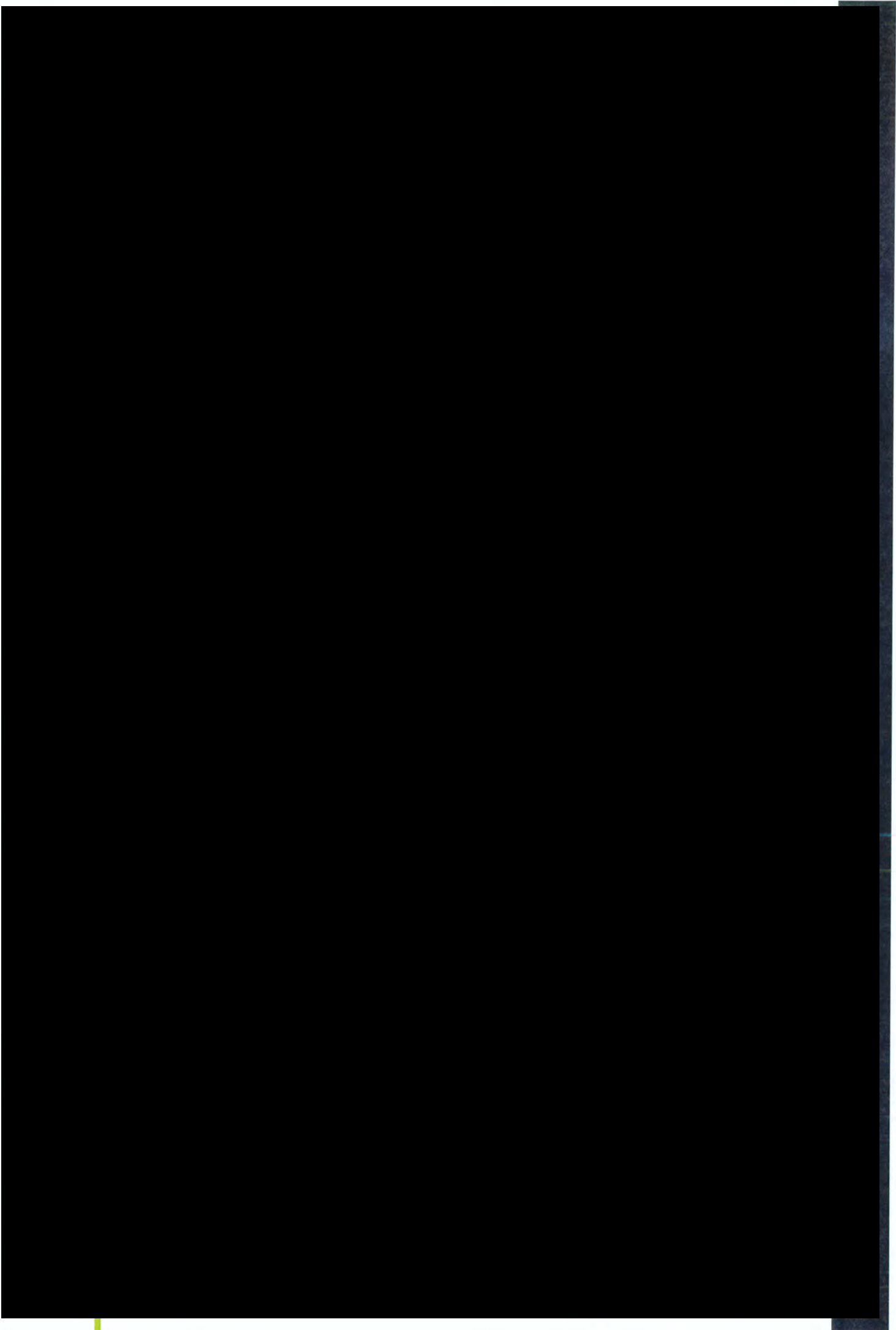


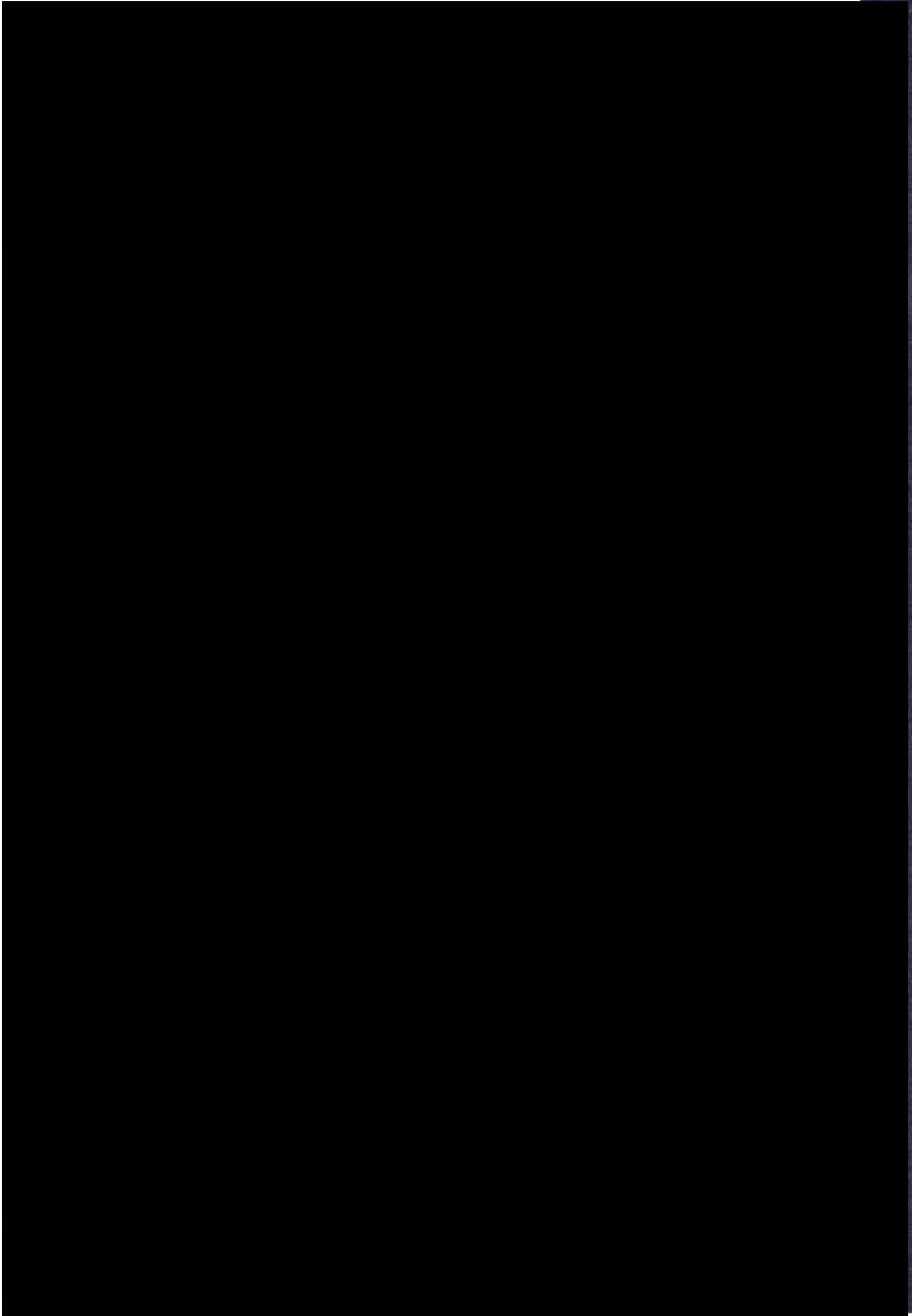


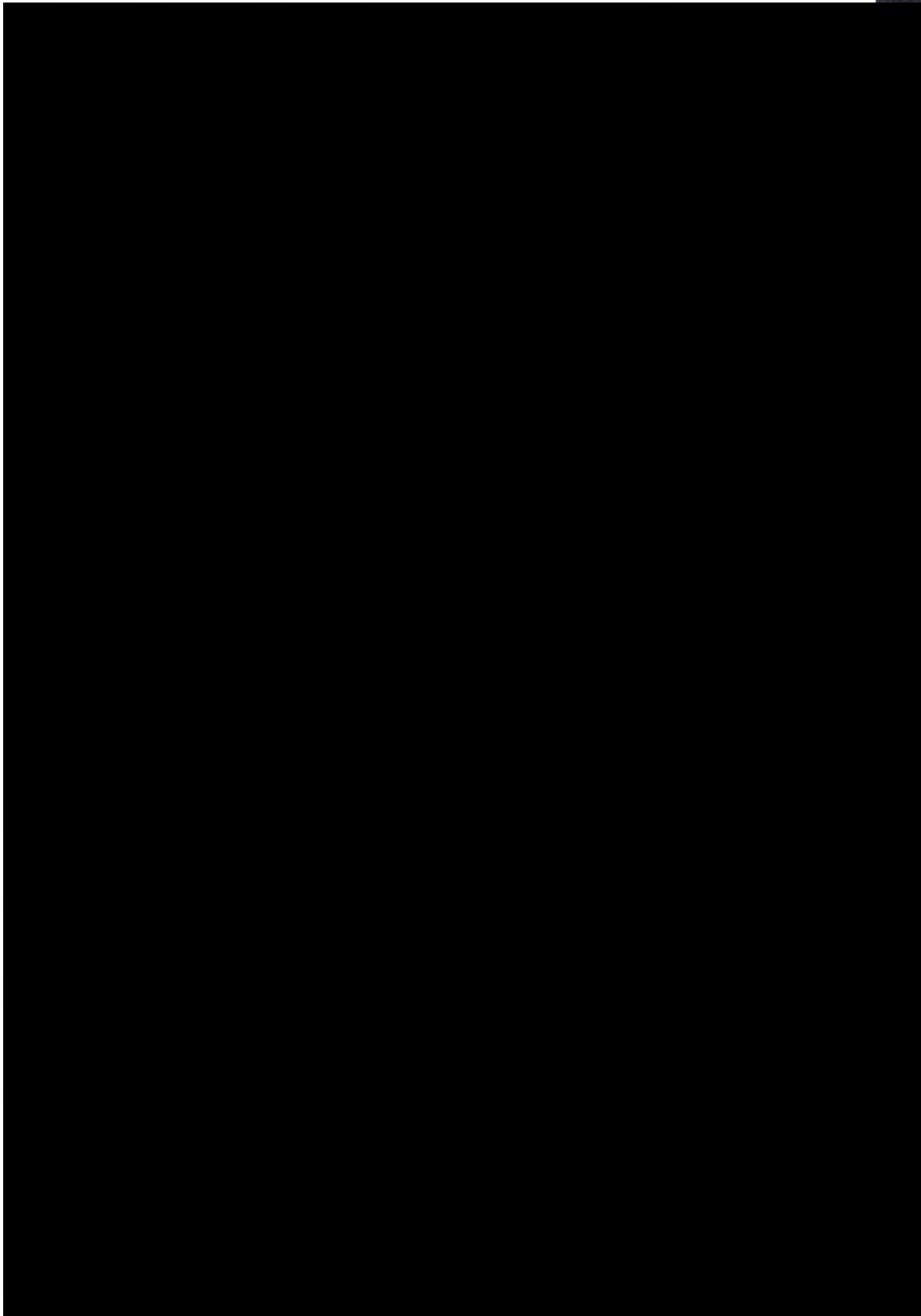


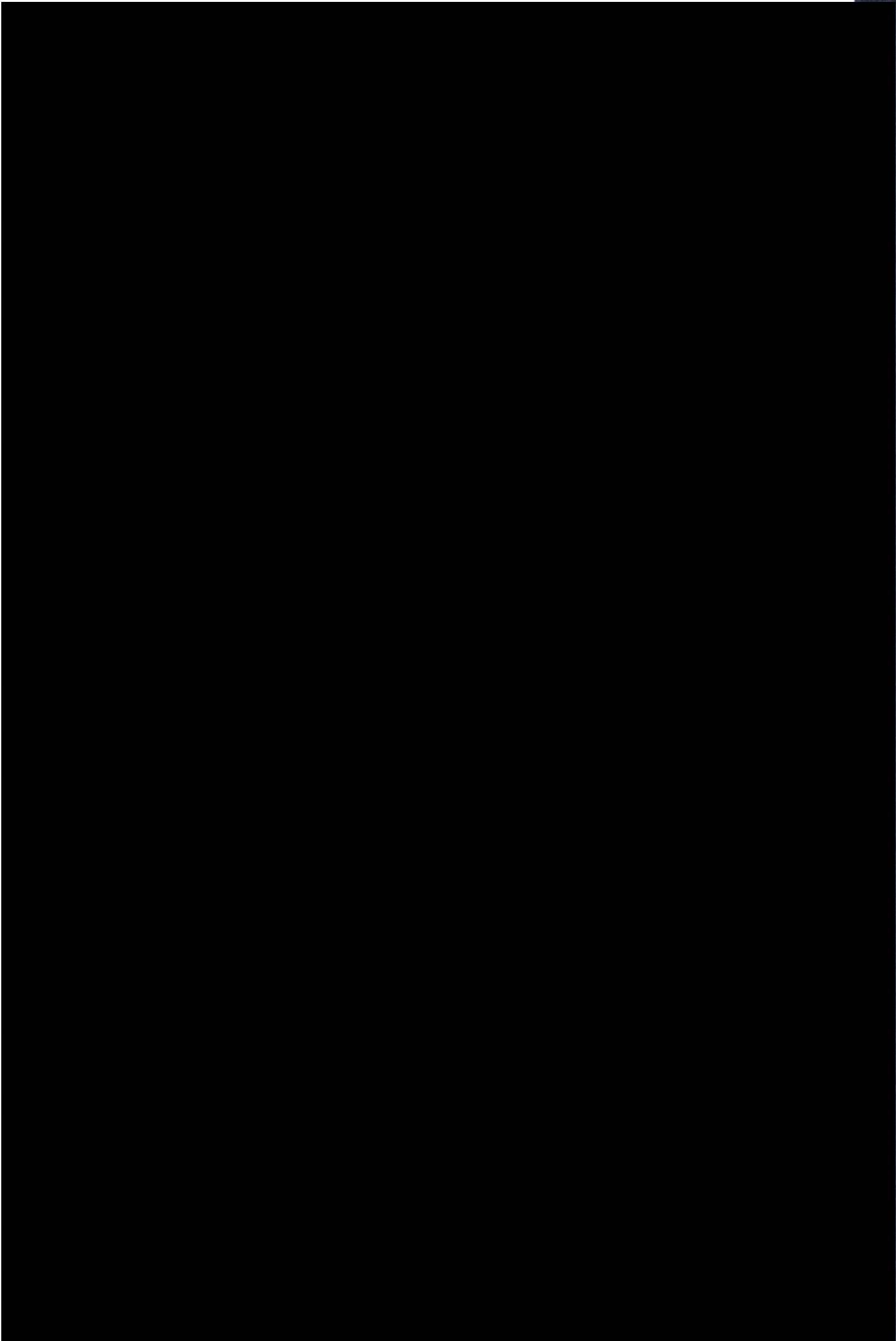


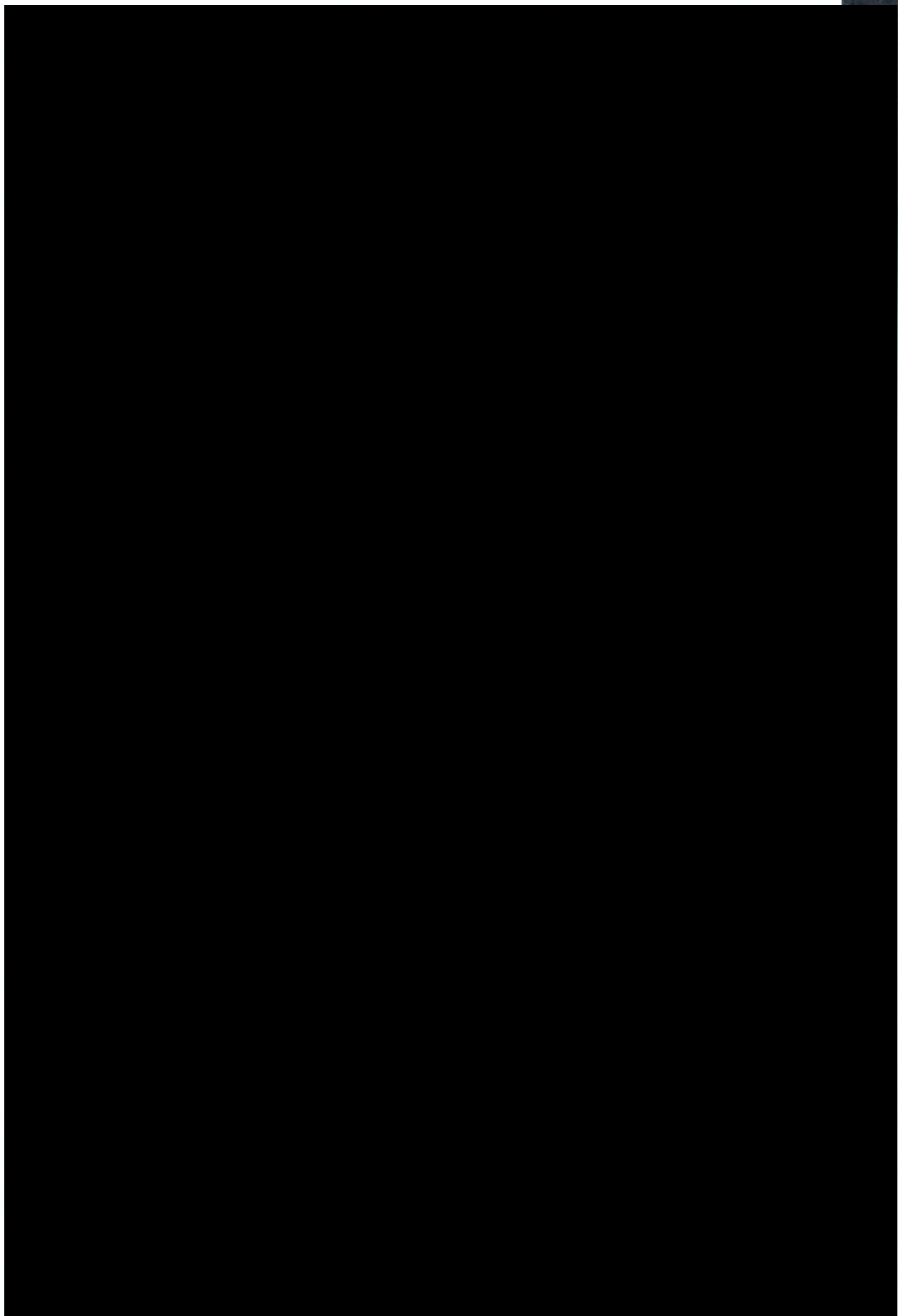


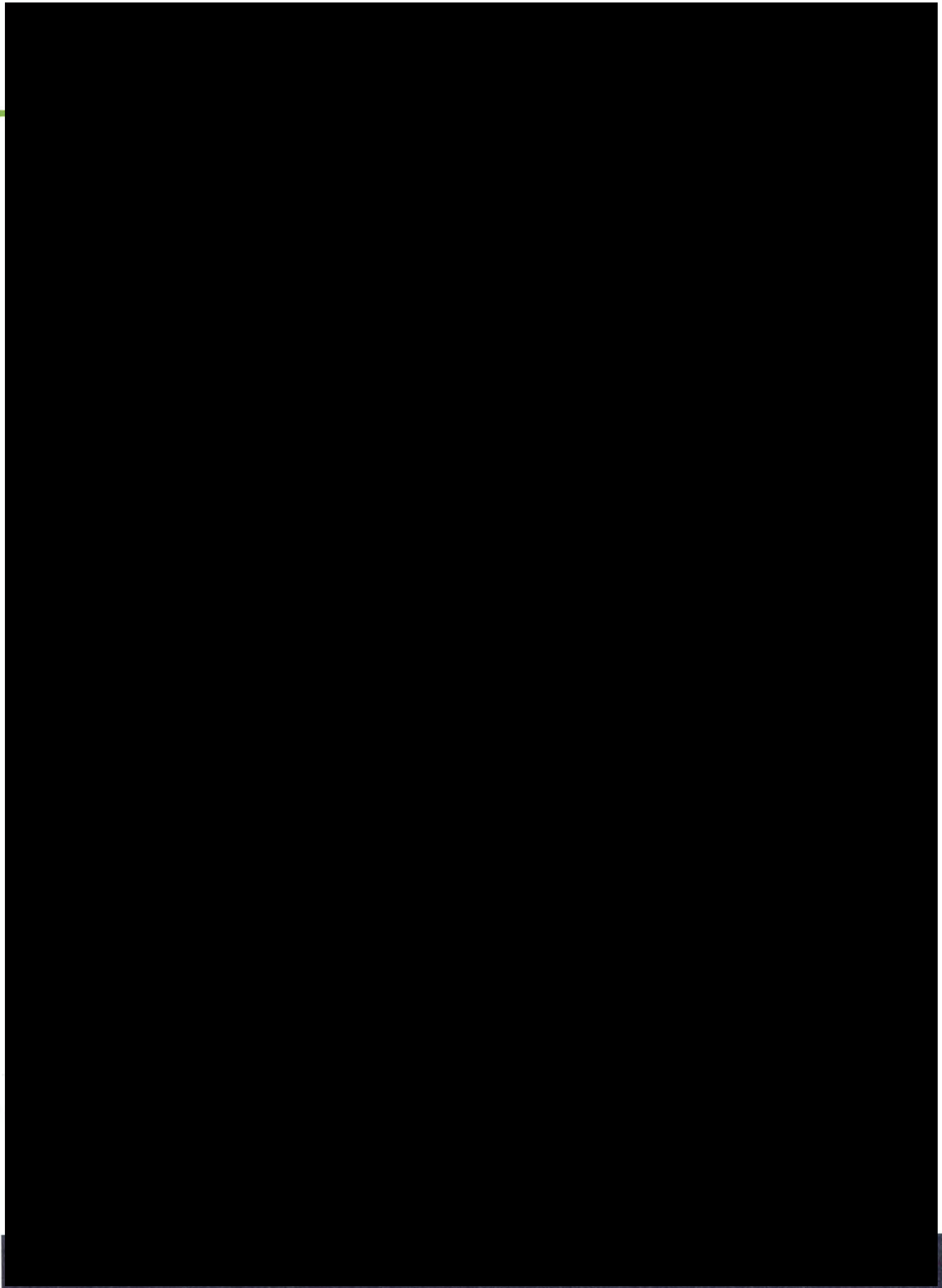


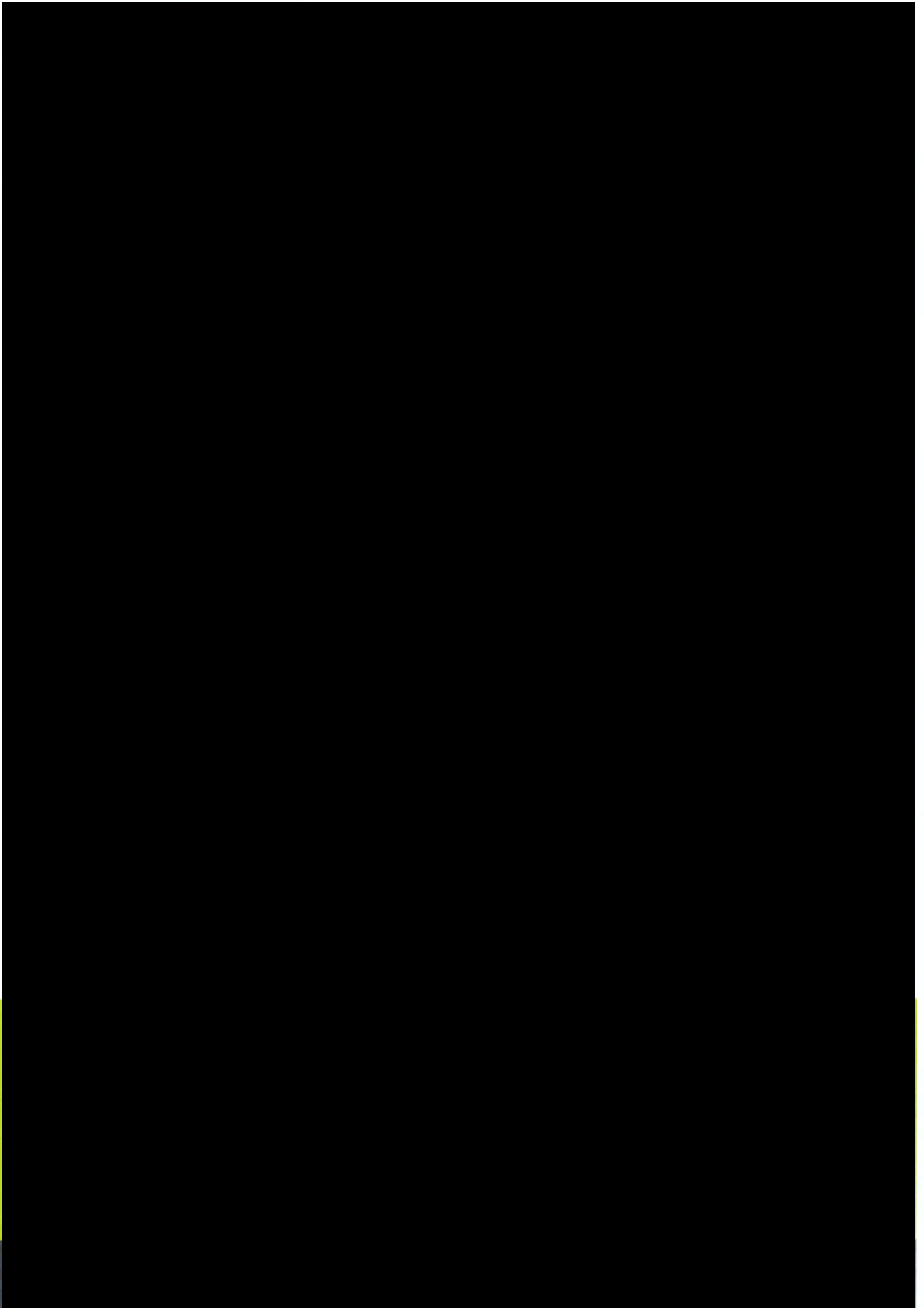












JOHN HOLLAND
Beymour White

L\337314454.4
Gateway Independent Verifier Deed

Exhibit B - Insurance Policy Wording

L\337314454.4
Gateway Independent Verifier Deed



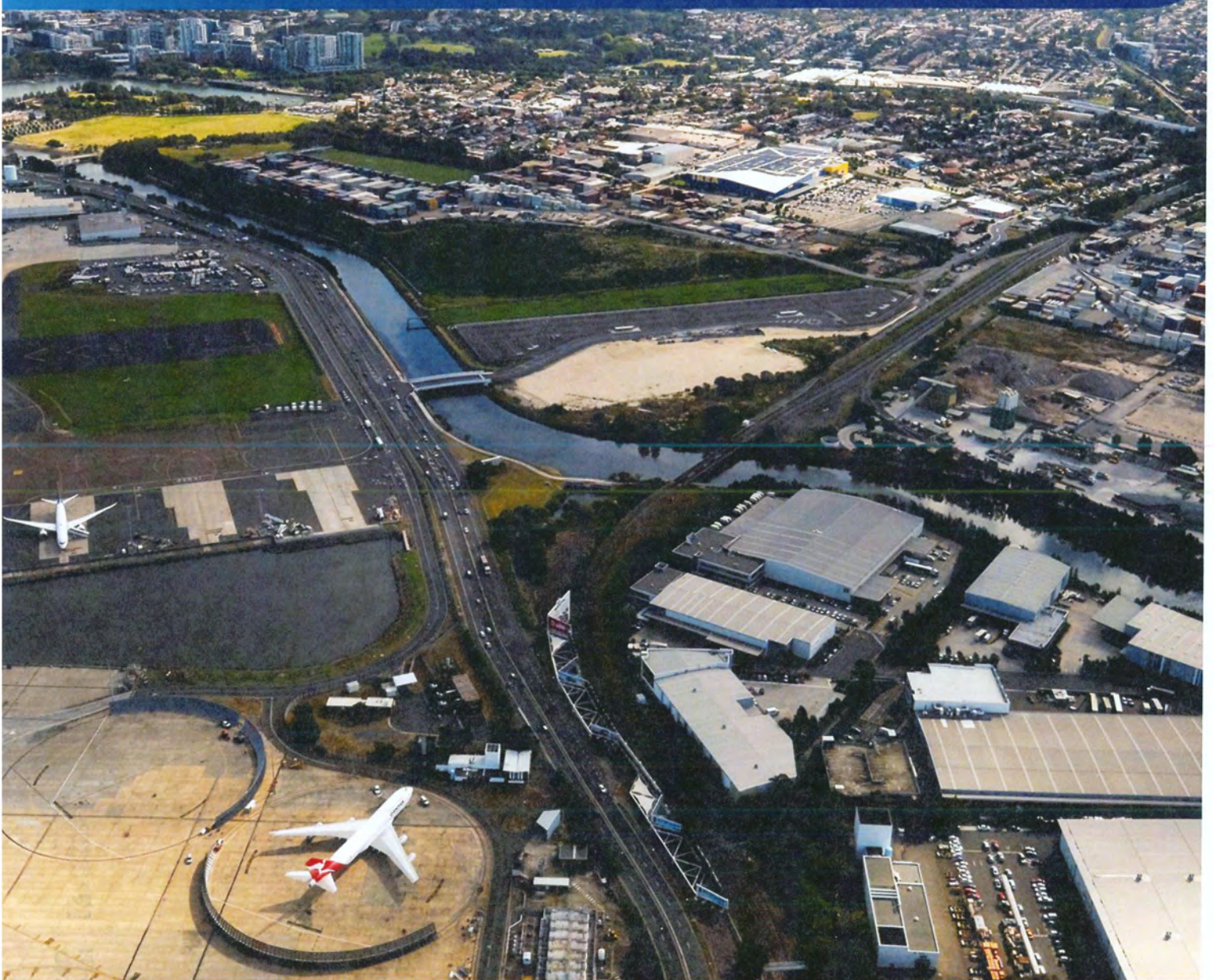
Transport for NSW

Design and Construction of Sydney Gateway Stage 3

Independent Verifier Deed

Contract Number: 20.0000301737.2120

EXHIBIT B (Insurance Policy Wording)



General, Products and Environmental Impairment Liability Policy

Project Insurance



Policy Details

Policy Number:

Project: Sydney Gateway

Period: From: Contract award, estimated to be 28 October 2020
To: 29 November 2024

Principal Insured: Transport for NSW (TfNSW)

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General, Products and Environmental Impairment Liability Policy

Project Insurance

i Introduction

The Construction Risks Insurance Fund (CRIF) is enabled through section 12C of the NSW Self Insurance Corporation Act 2004 (SICorp Act). Through the CRIF, and in accordance with section 8C of the SICorp Act, the NSW Self Insurance Corporation (SICorp) has the function of providing principal arranged construction insurance with respect to major capital works projects in New South Wales. This policy is to be governed by the Insurance Contracts Act 1984 in accordance with Section 5 of the Act.

In consideration of the Named Insured having paid or agreed to pay the Premium, the Insurer agrees to indemnify the Insured to the extent provided herein subject always to the Limits of Liability and Sub-limits of Liability of this Policy.

This Policy incorporates the Introduction, Insuring Clauses, Schedule, Sections, Definitions and Interpretation, Conditions, Extensions, Exclusions, Endorsements and any other terms herein contained, which are to be read together. The Insurer agrees that this Policy and any subsequent attaching Endorsements are accepted as their own.

The liability of the Insurer will in no case exceed the Limits of Liability and Sub-limits stated in the Schedule or elsewhere in this Policy.

Signed for and on behalf of the Insurer:

Insurer	Policy No.	Proportion %	Signature	Place	Date
NSW Self Insurance Corporation					



Policy Number:

Named Insured: Transport for NSW (TfNSW)

All for their respective rights, interests and liabilities.

Insured:

John Holland and Seymour Whyte Joint Venture ABN: TBC
Sydney Airport Corporation Limited (SACL) ABN: 62 082 578 809
Australian Rail Track Corporation Ltd (ARTC) ABN: 75 081 455 754

This Policy also insures other parties as specified in the definition of the Insured herein

Insured Project:

Sydney Gateway including all works of any kind or description in connection with such works or design and construction (D&C) activities including, but not limited to: the design, engineering, procurement, supply, fabrication, installation, testing, construction, civil works and completion, and occupation by the Insured, of any part of the project, Project Site or works and all ancillary works and activities of whatsoever nature in connection with or undertaken by or on behalf of an Insured.

Policy Period:

From: Contract award, estimated to be 28 October 2020
To: 29 November 2024
Both dates at 4:00pm local time in Sydney, NSW

Defects Liability Period:

Defects Liability / Maintenance period: 36 months

Performance Testing Period:

12 months

Completed Operations Hazard Period:

36 months

Geographical Scope:

Anywhere in the Commonwealth of Australia (and overseas locations but only if agreed by the Insurer prior to risk being covered)

Limits of Legal Liability (Insuring Clause 1)

For Public Liability, Limit of Liability each Occurrence:

██████████

And

For Product Liability, Limit of Liability each Occurrence and in the aggregate during the Period of Insurance for all Occurrences:

██████████

Clause 4 - Defence Costs and other costs are in addition to these limits

Limit of Covered Operations and Completed Operations Liability:

(Insuring Clauses 2 & 3)

Limit of Liability each Incident and in the aggregate during the Period of Insurance:

██████████

Clause 5 - Defence Costs and other costs are within these limits

Nominee for Legal Service:

Icare
321 Kent Street, Sydney NSW 2000
Postal: GPO Box 4052, Sydney NSW 2001

Loss Adjuster(s):

The Insurer authorises the following companies to adjust any claim under this Policy, or as otherwise agreed by the Insurer and the Insured:

- TBA

Loss Payee:

For third party claims loss payee to be indemnified party
First party costs to be paid directly to the Insured

Nominee for Insurer's Notices

TBA

Currency: Australian dollars

Excess:	Insuring Clause	Defence and other Costs	Excess
	Insuring Clause 1	Exclusive of Defence and other costs	██████████
	Worker to Worker claims	Inclusive of Defence and other costs	██████████
	Insuring Clause 2	Exclusive of Defence and other costs	██████████
	Insuring Clause 3	Exclusive of Defence and other costs	██████████



We are here to help

If you have any questions, you can contact us at any time:

Phone: (02) 7922 5085
 Email: cpai@icare.nsw.gov.au
 Website: www.icare.nsw.gov.au

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Definitions

Definitions applying to Insuring Clause 1 of this Policy

Advertising Injury means:

- (a) libel, slander or defamation;
- (b) infringement of copyright or of title or of slogan;
- (c) piracy or unfair competition or idea misappropriation under an implied contract; or
- (d) invasion of privacy,

committed or alleged to have been committed during the Period of Insurance in any advertisement, publicity article, broadcast or telecast and arising out of the Insured's advertising activities or any advertising activities conducted on behalf of the Insured, in the course of advertising the Contract, Business, goods or services.

Aircraft means any vessel, craft or thing made or intended to fly or move in or through the atmosphere or space.

Business means the Insured Project stated in the Schedule including the provision and management of canteens, social, sports and welfare organisations for the benefit of the Insured's Employees, first aid, security, fire and ambulance services and maintenance of the Insured's premises and provided in connection with the Insured Project.

Contract means any contract, agreement or undertaking by or on behalf of the Insured in connection with the Insured Project.

Occurrence means an event including continuous or repeated exposure to conditions that result in Personal Injury, Property Damage, or Advertising Injury where such injury or damage is neither expected nor intended from the standpoint of the Insured.

Personal Injury includes:

- (a) bodily injury, death, illness, disease, shock, fright, loss of consortium and loss of amenities, mental anguish or mental injury;
- (b) false arrest, false imprisonment, wrongful detention, malicious prosecution and humiliation;
- (c) the publication or utterance of libel or slander, or of defamatory or derogatory material, or a publication or utterance in violation of any individual's right of privacy except:
 - i. when the first such publication or utterance is related to any publication or utterance made prior to the commencement of this Policy; or
 - ii. when the injury arises out of Advertising Injury as defined in this policy;
- (d) nuisance, wrongful entry or wrongful eviction or other invasion of the right to private occupancy;
- (e) assault and battery not committed by or at the direction of the Insured unless committed for the purpose of preventing or eliminating danger to persons or property.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant including smoke, vapour, soot, fumes, acids, chemicals or waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Products means anything after it has left the custody or control of the Insured, which has been or is deemed by law to have been manufactured, grown, produced, processed, formulated, built and/or constructed, assembled, erected, installed, sold, supplied, imported, exported, distributed, treated, serviced, altered or repaired by the Insured, which includes the Insured Project or other works performed by or for the Insured, containers, labels and packing materials, directions, instructions and advice given or omitted to be given in connection with such Products. Works shall be deemed to be a Product only after they have left the custody or control of the Insured.

Property Damage means:

- (a) physical loss or destruction of or damage to tangible property including the loss of use (total or partial) or any consequential loss resulting therefrom; or
- (b) total or partial interruption of or interference with or loss of use of or deprivation of premises, property, services, facilities, trade or vehicular or pedestrian traffic or the like; or
- (c) obstruction, loss of amenities, trespass, nuisance, interference, denial of access or the like.

Worker to Worker Liability means:

- (a) legal liability of the Insured in respect of recoveries of any payments by any workers' compensation insurer under the provisions of any workers' compensation legislation or policy, or at common law; or
- (b) a claim made by an injured worker (as defined by the relevant workers' compensation legislation) against any Insured other than the worker's direct employer,

solely in respect of workers undertaking work on the Insured Project.

Definitions applying to Insuring Clauses 2 & 3 of this Policy

Biological Contaminants means mould, mildew, fungi, or bacterial matter including any substance produced by, emanating from, or arising out of any such biological contaminants.

Bodily Injury means

- (a) physical injury, sickness or disease sustained by a person, including death resulting therefrom, and solely with respect to Covered Operations (Environmental) Liability under Insuring Clause 2(a), any accompanying medical monitoring; and
- (b) mental anguish or emotional distress.

Clean-up Costs means costs, charges and expenses including reasonable and necessary legal expense incurred with the Insurer's written consent (which shall not be unreasonably withheld or delayed) to investigate, neutralise, remove, remediate, monitor or dispose of Pollutants to the extent required by Environmental Laws or costs, charges and expenses that have actually been incurred by any governmental entity duly acting under the authority of Environmental Laws, or that have actually been incurred by third parties. "Clean-up Costs" also includes Restoration Costs and Emergency Response Costs.

Covered Operations means all things done in connection with the Insured Project.

Emergency Response Costs means reasonable and necessary expenses, including legal expenses for the remediation of soil, surface water, groundwater, or other contamination in connection with any Loss for which the Insured is indemnified by this Policy. The Insurer shall not be liable for reasonable and necessary expenses for Emergency Response Costs, including legal expenses, where indemnity is not provided by the Policy or where the Insurer's consent or subsequent agreement (not to be unreasonably withheld or delayed) have not been given.

Enforceable Undertaking means, a document executed by the Insured, in which the Insured agrees to undertake tasks that are necessary to remediate any and all environmental damage caused to the environment and community by the Insured's actions, but only if:

- a) the environmental regulatory agency alleges in writing a breach by the Insured of relevant environmental laws in relation to the environment and community referenced in the document; and
- b) the Insurer has provided prior written consent to the Insured's execution of this document

Environmental Damage means the injurious presence of Pollutants resulting (or which may result) in Clean-up Costs, whether or not involving or incurring Property Damage.

Environmental Laws means any legislatively or administratively enacted law, rule, regulation or order applicable within the jurisdiction in which the Insured Project or activities are being or have been performed.

First Incurred means:

- (a) in the case of Bodily Injury, the date of the first exposure of any person to the Pollutants; and
- (b) in the case of Environmental Damage or Property Damage, the date of the first discharge, dispersal, seepage, migration, release, emission or escape of the Pollutants.

If the date of first exposure as described above is before the inception date of this Policy or cannot be immediately determined, but the progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage continues in fact to exist during the Construction Period, the date of first exposure will be deemed to have occurred only on the inception date of this Policy.

Incident means an event giving rise to Pollution Conditions that result in Loss regardless of whether such Loss is neither expected nor intended from the standpoint of the Insured.

Loss means:

- (a) monetary awards or settlements of compensatory damages arising out of Bodily Injury, or Property Damage, and where allowable and insurable by law punitive, exemplary, aggravated, liquidated or multiple damages for such Bodily Injury, and Property Damage;
- (b) civil fines, civil penalties where allowable by law;
- (c) Clean-up Costs;
- (d) Environmental Damage;
- (e) Emergency Response Costs;
- (f) Defence Costs; or
- (g) Enforceable Undertakings.

Mitigation Expense means

- (a) Reasonable and necessary costs incurred to mitigate Pollution Conditions constituting an emergency situation where in the absence of such mitigation, Bodily Injury or Property Damage to third parties is imminent;
- or

(b) Clean-up Costs which are incurred pursuant to Environmental Laws.

Natural Resources means land, fish, wildlife, biota, air, surface water, groundwater, drinking water supplies and other such resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the Commonwealth, any state or local government, any foreign government, or any native tribe.

Non-Owned Disposal Site means:

Any treatment, storage, transfer, disposal or recycling site or facility located within Australia that has not at any time been owned or operated, in whole or in part, by the Named Insured, which receives, or has historically received, waste resulting from Covered Operations; provided that such treatment, storage, transfer, disposal or recycling site or facility:

- a) was properly permitted and licensed to accept the wastes at the time of such disposal by the Federal, state, commonwealth, municipal or other local government agencies or bodies with applicable jurisdiction;
- b) was not owned or operated by any person, corporation or unincorporated association that was in bankruptcy at the time the waste was received for disposal; and
- c) was not specifically identified on any schedule of Non-Owned Disposal Sites Endorsement that may be attached to this Policy.

Pollutants means any solid, liquid, gaseous, thermal irritant or contaminant or poisonous, noxious or polluting matter, including but not limited to smoke, vapour, soot, fumes, odours, acids, alkalis, Biological Contaminants, chemicals including Polychlorinated Biphenyl, low level radioactive materials, electromagnetic fields and waste. Waste includes materials to be recycled, reconditioned or reclaimed, medical including infectious and pathological waste materials; and abandoned or illicit materials. This includes, in any form and of any kind, any goods, products, materials, structures or buildings containing asbestos, asbestos fibres, asbestos dust and asbestos containing materials.

Pollution Conditions means the emission, discharge, dispersal, migration, release, seepage or escape of Pollutants. This includes Biological Contaminants including growth thereof. If the Pollutants are naturally occurring, these Pollutants only constitute Pollution Conditions to the extent they are exacerbated by the Insured Project, Covered Operations or activities. The entirety of any such emission, discharge, release or escape or any series of interrelated, associated, repeated, or continuous emissions, discharges, releases or escapes shall be deemed to be one Pollution Condition.

Project Site means the situation(s) where the Insured is performing the works or has property stored or being processed together with all surrounding areas in connection with the Project. Project Site shall extend to include overseas situations stated in the Schedule or subsequently endorsed onto this Policy.

Property Damage means:

- (a) physical damage to or destruction of Natural Resources and other tangible property of parties (other than the Insured the subject of legal liability under this policy) including all resulting loss of use and diminution in value of that property; or
- (b) loss of use but not diminution in value of Natural Resources and other tangible property of parties (other than the Insured the subject of legal liability under this policy) that is not physically damaged.

Property Damage does not include Environmental Damage.

Responsible Insured means:

- (a) an officer director or partner or any Insured; or
- (b) the manager or supervisor of any Insured responsible for environmental affairs or compliance.

Restoration Costs means reasonable and necessary costs incurred by the Insured with the Insurer's consent, which shall not be unreasonably withheld or delayed, to restore, repair or replace Natural Resources and other tangible property of third parties to substantially the same condition it was in prior to being damaged during work performed in the course of incurring Clean-up Costs. However such restoration shall not exceed the net present value of such property immediately prior to incurring Clean-up Costs or include costs associated with improvements or betterments.

Transportation means the movement of waste derived from Covered Operations or materials reasonably related to Covered Operations by automobile, aircraft, watercraft, rolling stock or other conveyance, including any associated loading or unloading thereof, by or on behalf of an Insured, provided that any such movement, and associated loading and unloading activities are:

- a) Within the boundaries of a Project Site;
- b) To or from a Project Site; or
- c) From a Project Site to a Non-Owned Disposal Site

General Definitions applying to this Policy

Claim means a written demand received by the Insured seeking a remedy or asserting liability or responsibility on the part of the Insured for Loss and includes any writ, statement of claim, summons, application or other originating legal or arbitral process, cross claim, counterclaim or third or similar party notice issued against or served upon the Insured.

Completed Operations Hazard Period means the Period stated in the Policy Schedule starting at the earlier of the expiration date or the date on which the policy is cancelled, if applicable, or otherwise in accordance with Insuring clause 3(a), 3(b) or 3(c).

Construction Period means the period commencing with the entering into of each Contract, provided such Contract is entered into during the Policy Period, until at the option of the Insured:

- (a) the Contract Works have been formally accepted in their entirety by the principal or owner as having achieved practical completion under the relevant Contract and completed any relevant commissioning and/or performance testing periods, notwithstanding the fact that portions of the Contract(s) may have been handed over, put into use or accepted by the principal or owner prior to that time; or
- (b) with respect to each separable portion of the Contract Works, the time it is taken over and put into use by the principal or owner and completed any relevant commissioning and/or performance testing periods.

Contract Value means the total value of work and construction costs incurred by or on behalf of the Insured in respect of the Insured Project. It includes the value of principal supplied and other supplied materials if liability for such work is required to be insured under this Policy. The Named Insured and/or Insured may reduce the Contract Value by subtracting the non-recurring construction costs.

Data means any corporate or personal information in any format and includes, but is not limited to, records, reports, designs, plans, formulas, processes, trade secrets, patents, financial information, medical or healthcare information, contact information, account numbers, account histories, passwords or credit or debit card details, whether or not in electronic form, and whether or not belonging to the Insured.

Defects Liability Period means the period described in any Contract during which an Insured is obliged to rectify defects, shrinkages, errors, omissions or other faults and/or to complete its obligations under such Contract (the initial Defects Liability Period), which includes a further period, following rectification of defects under the initial Defects Liability Period.

Defence Costs means fees charged by any lawyer designated by the Insurer and agreed to by the Insured, and all other fees, costs and expenses resulting from the investigation, defence, negotiation, settlement or appeal of any Claim. Defence Costs shall not include the wages, overtime, travel or accommodation costs of the Insured's Employees.

Employee means any person under a contract of service or apprenticeship with the Insured.

Excess means the relevant amount specified as the Excess in the Schedule for Insuring Clauses 1, 2 or 3 (as applicable) which is the amount retained by the Insured and:

- (a) in the case of cover under Insuring Clause 1 of this Policy (and corresponding cover under Insuring Clause 4), applies to each Occurrence indemnified by Insuring Clause 1 and/or 4 of this Policy;
- (b) in the case of cover under Insuring Clauses 2 and 3 of this Policy (and corresponding cover under Insuring Clause 5), applies to each Incident indemnified by Insuring Clause 2, 3 and/or 5 of this Policy.

Insured means:

- (a) the Named Insured stated in the Schedule.
- (b) the Government Agency and/or department for all contracts declared to the Insurer for the purpose of this insurance.
- (c) any Government Agency and/or department of any Named Insured, or any other government or non-government organisation under the control of any insured party and over which it is exercising active management.
- (d) if not a Named Insured, any of the following persons or entities for whom or for which the insured parties above are obliged to arrange insurance by virtue of a Contract or assumption of responsibility, but only to the extent required by such Contract or assumed responsibility and in any event only for such coverage and Limits of Liability as provided in this Policy;
 - i. principal or owner or agent of the principal or owner or joint venture partner;
 - ii. construction manager or project manager;
 - iii. contractor or sub-contractor of any tier subject to the limitations in iv. and v.;
 - iv. architect, engineer or other consultant, but only in respect of their on-site, manual activities;
 - v. vendor or manufacturer, but only in respect of their on-site, manual activities;
 - vi. lessor, financier, mortgagee or trustee;
 - vii. government body not included in i to v. above;
 - viii. other party with an insurable interest in the Insured Project not included in the above

For the purposes of this policy those Insured's specified in iv. and v. above are not considered to be included under any other Insured definition.

- (e) any director, executive officer, Employee, partner, contract staff, or member of any safety, security or medical facility of any of the Insured's whilst acting as such;
- (f) any office bearer or member of any social, sporting, or welfare facility of any of the Insured's whilst acting as such; and

all for their respective rights and interests.

Insured Project has the meaning specified in the Schedule.

Insurer means Insurance and Care NSW (icare) on behalf of Self Insurance Corporation of NSW

Local Time means the official government time set on Co-ordinated Universal Time (UCT) (which includes daylight savings time where observed) at Sydney, New South Wales.

Period of Insurance means the Construction Period and, where relevant to an Insuring Clause, includes the Defects Liability Period or Completed Operations Hazard Period.

Policy Period means the period stated in the Schedule, and shall include any subsequent periods for which the Insurer has agreed to renew this Policy.

Vehicle means any type of machine on wheels or intended to be propelled other than by manual or animal power and any trailer or attachment made or intended to be drawn by any such machine whilst attached thereto.

Watercraft means any vessel, craft or thing in excess of 12 metres in length (measured at the waterline) made or intended to float on or travel on or through water.

Interpretation

The following Interpretation will apply to this Policy.

Headings

Headings have been included for ease of reference. The terms and conditions of this Policy are not to be construed or interpreted by reference to such headings.

Include/Including

Use of the word include or including is not to be taken as limiting the meaning of the words preceding it.

Singular/Plural

In this Policy, where the context admits, words denoting the singular shall include the plural and vice versa.

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Insuring Clauses

1. Legal Liability

The Insurer will indemnify the Insured against the Insured's legal liability to pay damages or compensation in respect of a Claim for:

- (a) Personal Injury;
- (b) Property Damage; or
- (c) Advertising Injury,

due to an Occurrence happening:

- i. during the Construction Period or Defects Liability Period in respect of the Insured Project;
or
- ii. during the Period of Insurance in respect of the Insured's Products,

2. Covered Operations (Environmental) Liability

The Insurer will indemnify the Insured against the Insured's legal liability (or legal liability of any entity for which the Insured is legally liable) to pay for Loss arising from an Incident in connection with the Insured Project (including during Transportation or at a Non-Owned Disposal Site).

The cover provided under this insuring clause only applies to Loss that is for:

- (a) Bodily Injury, Environmental Damage or Property Damage if it is First Incurred or occurs during the Construction Period or Defects Liability Period; and
- (b) Emergency Response Costs, Restoration Costs, or Clean-up Costs if it is First Incurred during the Construction Period or Defects Liability Period.

Progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage that occurs over a period of days, weeks, months or longer caused by Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions.

The date of first exposure is:

- i. in the case of Bodily Injury, the date of the first exposure of any person to the Pollutants; and
- ii. in the case of Environmental Damage or Property Damage, the date of the first discharge, dispersal, seepage, migration, release, emission or escape of the Pollutants.

If the date of first exposure as described above is before the inception date of the first Policy issued to the Insured by the Insurer providing coverage for Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions resulting from Covered Operations, or cannot be immediately determined, but the progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage continues in fact to exist during the Period of Insurance, the date of first exposure will be deemed to have occurred only on the inception date of the first Policy issued to the Insured by the Insurer that is applicable to the Covered Operations from which the Bodily Injury, Environmental Damage or Property Damage caused by Pollution Conditions arose. Further, provided this policy responds, no other policy issued to the Insured by the Insurer will be applicable to the Covered Operations from which the Bodily Injury, Environmental Damage, or Property Damage caused by Pollution Conditions arose.

3. Completed Operations Hazard

The Insurer will indemnify the Insured for those sums the Insured become legally obliged to pay for Loss arising from an Incident connected with the Insured Project and incurred within the Completed Operations Hazard Period. The Completed Operations Hazard Period is as per the period noted in the Schedule and will commence:

- (a) when all of the Insured Project or activities called for in the contract have been completed; and/or
- (b) when all of the Insured Project or activities to be done at the job site have been completed if the contract calls for Insured Project or activities to be rendered at more than one job site; and/or
- (c) when that part of the Insured Project or activities done at a job site have been put to its intended use by any person or organisation other than another contractor or subcontractor working on the same project.

4. Defence Costs and other Costs and Expenses relating to Insuring Clause 1

In addition to the Limit of Legal Liability specified in the Schedule for Insuring Clause 1 the Insurer will pay:

- (d) Defence Costs incurred by or on behalf of the Insured provided that such amounts are incurred in connection with the:

- i. investigation, defence, negotiation or settlement of any Claim made against the Insured including but not limited to any appeals against any judgments against the Insured, with the consent of the Insurer (which shall not be unreasonably withheld or delayed);
 - ii. investigation, defence, negotiation or settlement of any prosecution (criminal or otherwise) of the Insured or attendance by any of the Insured at any official investigation, examination, coroner's inquest, inquiry or other proceedings provided that the Insurer shall not be liable for any fines or penalties imposed against the Insured;
- (e) reasonable costs and expenses incurred by or on behalf of the Insured provided that such amounts are incurred in connection with the:
- i. provision of immediate medical, surgical or other aid to any person;
 - ii. protection of property, including but not limited to temporary repairs and/or shoring up, the purchasing and/or hiring and the erection and dismantling of hoardings, barriers, fences and any other form of temporary protection (including but not limited to such temporary protection which the Insured must provide in order to comply with the requirements of any statutory authority);
 - iii. mitigation, containment, elimination or suppression of actual or possible Loss; or
 - iv. any other reasonable cost or expense which is recoverable by any claimant from the Insured.

5. Defence Costs and other Costs and Expenses relating to Insuring Clauses 2 & 3

Within the Limit of Covered Operations and Completed Covered Operations specified in the Schedule the Insurer will pay:

- (a) Defence Costs incurred by or on behalf of the Insured provided that such amounts are incurred in connection with:
- i. investigation, defence, negotiation or settlement of any Claim made against the Insured including but not limited to any appeals against any judgements against the Insured. with the consent of the Insurer (which shall not be unreasonably withheld or delayed); or
 - ii. investigation, defence, negotiation or settlement of any prosecution (criminal or otherwise) of the Insured or attendance by any of the Insured at any official investigation, examination, coroner's inquest, inquiry or other proceedings imposed or brought against the Insured;
- (b) reasonable costs and expenses incurred by or on behalf of the Insured provided that such amounts are incurred in connection with:
- i. provision of immediate medical, surgical or other aid to any person;
 - ii. protection of property, including but not limited to temporary repairs and/or shoring up, the purchasing and/or hiring and the erection and dismantling of hoardings, barriers, fences and any other form of temporary protection (including but not limited to such temporary protection which the Insured must provide in order to comply with the requirements of any statutory authority);
 - iii. mitigation, containment, elimination or suppression of actual or possible loss; or
 - iv. any other reasonable cost or expense which is recoverable by any claimant from the Insured.

Exclusions applying to Insuring Clause 1 of this Policy

Notwithstanding anything to the contrary in Insuring Clause 2 or 3, the Insurer will not pay for any amounts insured under Insuring Clause 1 of this Policy for, arising out of or in connection with:

1. Aircraft and Watercraft

liability arising from the ownership, possession or use by the Insured of any Aircraft or Watercraft, but this Exclusion 1 shall not apply to:

- (a) Aircraft or Watercraft which are not owned or operated by the Insured when such craft are hired, leased or chartered to or by the Insured with a pilot/master and crew supplied;
- (b) liability arising out of construction plant or equipment mounted upon or operating from any Watercraft;
- (c) the use or existence of explosives on or from any Watercraft whether in, over or under water or otherwise;
- (d) liability in respect of work undertaken on Watercraft.

Notwithstanding this Exclusion 1, the Insurer agrees to include liability arising out of the operation of UAV's (Unmanned Aerial Vehicles), subject to all other policy terms, conditions and exclusions, provided that:

1. cover applies only to UAV's that are restricted to 500m in altitude and UAV's that have a range of up to 1km from the operator;
2. operators of UAV's are either qualified where required by local aviation authority or specifically trained ("specifically trained" will mean general in-house or external training);
3. no cover applies to UAV's used for military purposes;
4. no cover applies to UAV's used in USA airspace.

2. Loss of use

loss of use of tangible property that forms part of a Contract, which has not been physically damaged or destroyed, resulting from a delay in or lack of performance by or on behalf of the Insured of any Contract or agreement.

3. Defective Product

liability for the cost of replacing or repairing any defective Product but this Exclusion 3 shall apply only to that part of the Product which is in itself defective and shall not apply to any other part(s) of the Product, works or any other property which may be lost or damaged as a consequence.

For the purposes of this Exclusion 3, it is agreed that wherever the word "part" appears it means that individual piece or fragment of the structure, plant, machine or equipment which is defective.

4. Recall

the cost of or damages claimed in relation to the withdrawal, recall, inspection, repair, replacement, or loss of use of the Products or any property of which such Products form a part, if such Products or property are withdrawn from the market or from use solely because of any known or suspected defect or deficiency therein.

5. Pollution and contamination

- (a) liability arising out of discharge, dispersal, seepage, release or escape of Pollutants into or upon land, the atmosphere, or water; but this Exclusion 5(a) does not apply if such discharge, dispersal, seepage, release or escape is sudden and accidental and neither expected nor intended from the standpoint of the Insured;
- (b) any costs and expenses incurred in the prevention, removing, nullifying or cleaning up of Pollutants, but this Exclusion 5(b) does not apply where clean-up, removal or nullifying expenses are incurred consequent upon a sudden and accidental happening neither expected nor intended from the standpoint of the Insured, which results in Property Damage and/or Personal Injury.

For the avoidance of doubt, this Exclusion 5 shall not apply to Insuring Clauses 2 and/or 3 of this Policy, or any amounts insured under Insuring Clauses 2 and 3.

6. Asbestos liability

claims directly or indirectly caused by, contributed to, by or arising from asbestos or materials containing asbestos.

For the avoidance of doubt, this Exclusion 6 shall not apply to Insuring Clauses 2 and/or 3 of this Policy, or any amounts insured under Insuring Clauses 2 and 3.

7. Fines and penalties

liability arising from or attributable to any fine or penalty, including but not limited to any civil penalty, but this Exclusion 7 does not apply to civil awards in the nature of compensatory damages.

8. Insuring Clause 2 and/or 3

Any Claim(s), Liability, Defence Costs, costs and expenses to the extent it is paid or payable under Insuring Clause 2 and/or 3 of this Policy.

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Exclusions applying to Insuring Clause 2 & 3 of this Policy

Notwithstanding anything to the contrary to anything in Insuring Clause 1, the Insurer will not pay for any amounts insured under Insuring Clause 2 or Clause 3 of this Policy for, arising out of or in connection with:

1. Contractual Liability

Loss arising from the Insured's assumption of liability in a contract or agreement. This exclusion does not apply to liability for loss:

(a) assumed in a contract or agreement pertaining to the Insured's business (including without limitation any written contract or agreement between the Insured and any person for the purposes of carrying out works or providing services in relation to the Insured Project) under which the Insured assumes the tort liability of another party to pay for Bodily Injury, Environmental Damage, Property Damage or Clean-Up Costs to a third party organisation, provided the Bodily Injury, Environmental Damage, Property Damage or Clean-Up Costs occur subsequent to the execution and before the termination of the contract or agreement. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement; or

(b) that the Insured would have in the absence of the contract or agreement.

2. Products Liability

Loss arising from the Insured's Product. This exclusion does not apply to liability for Loss arising from the performance of Insured Project or activities involving the fabrication, assembly or installation of goods or materials provided by the Insured.

3. Related or Affiliated Entities

Loss arising from activities performed as part of the Insured Project or Covered Operations by or on behalf of any business enterprise that wholly or partly owns the Insured or which to any extent controls, operates, or manages the Insured, or that is wholly or partly owned by an Insured, or in which an Insured is an officer, partner or Employee, or which is to any extent controlled, operated, or managed by the Insured.

4. Intentional and Illegal Acts

Loss arising from any dishonest, criminal, fraudulent, malicious, intentional or illegal act or omission of any Responsible Insured.

5. Criminal Fines and Penalties

liability arising from or attributable to any criminal fine or criminal penalty.

6. Known Circumstances and Non-Disclosure

Loss arising from any Pollution Conditions caused by Insured Project or activities which occurred prior to the Period of Insurance if any Responsible Insured knew or could have reasonably foreseen that such Pollution Conditions would give rise to a Claim and the Insured did not disclose such Pollution Conditions to the Insurer.

7. Non-compliance

Loss arising from any Responsible Insured's intentional, wilful or deliberate non-compliance with any statute, regulation, ordinance, administrative complaint, notice of violation, notice letter, executive order or instruction of any governmental agency or body.

General Exclusions applying to this Policy

Notwithstanding anything to the contrary to anything in this Policy the Insurer will not pay for any amounts for, arising out of or in connection with:

1. Workers compensation/employers' liability

liability for which the Insured is entitled to indemnity under any policy of insurance required to be taken out pursuant to any legislation relating to workers and workmen's compensation, whether or not the Insured has effected such a policy, except in respect of:

- (a) any amount in excess of any limits applicable under any such policy which has been effected to comply with legal requirements. Coverage provided under this Exclusion 1(a) shall not apply in respect of Personal Injury sustained by any Employee, to the extent that it is the subject of indemnity under any of the Insured's workers' compensation or employer's liability policies or any policy issued in substitution thereof;
- (b) any liability of others which has been assumed by the Insured under contract;

2. Competition Matters

any liability arising out of the infringement by the Insured of prohibitions in the Competition and Consumer Act 2010 (Cth) as amended from time to time, or any fair trading legislation of a State or Territory of the Commonwealth of Australia, against anti-competitive conduct that has the purpose, effect or likely effect of substantially lessening competition in a market.

3. Vehicles

liability caused by the ownership, possession or use by the Insured of any Vehicle where such liability at the time and place of the Occurrence giving rise to a claim under this Policy is insured by virtue of any legislation governing the use of motor vehicles. This Exclusion 3 shall not apply to liability in respect of:

- (a) the loading or unloading of or the delivery or collection of goods to or from any Vehicle;
- (b) a Vehicle whilst situated or being used on or adjacent to any site or the premises of the Insured;
- (c) Personal Injury to the extent that indemnity is not provided by a compulsory third party bodily injury liability insurance.

4. Professional liability

liability arising out of the rendering of or failure to render professional advice or service by the Insured or error or omission connected therewith, but this Exclusion 4 does not apply to:

- (a) Personal Injury or Property Damage arising therefrom; or
- (b) the rendering of or failure to render professional medical advice by medical persons employed by the Insured and to provide first aid and other medical services on the Insured's premises or sites and provided in connection with the Insured Project.

5. Property owned by or in care, custody or control of the Insured

damage to property:

- (a) owned by the Insured; or
- (b) held in trust or in the custody or control of the Insured,

but only for which and to the extent that indemnity is provided under the Insured's construction (material damage) insurance policy or other similar policy covering such property.

6. Data Risk

the modification, corruption, loss, destruction, theft, collection, misuse, extortion of, illegitimate or unauthorized access, restricted or inability to access, or unlawful or unauthorised processing or disclosure of Data or the loss, destruction or theft of any computer, electronic device, hardware or component thereof which contains Data.

7. Trade sanctions

where cover provided by this Policy would be in violation of any United Nations resolutions or the economic or trade sanctions, laws or regulations of the European Union, United Kingdom, Australia or the United States of America, such coverage shall be null and void and the Insurer shall have no obligation to pay any amounts insured under the Policy if to do so would breach of that sanction or law.

8. Nuclear risks

liability directly or indirectly caused by or contributed to, by or arising from:

- (a) ionising, radiations or contamination by radioactivity from any nuclear waste or from the combustion of nuclear fuel. For the purpose of this Exclusion clause 8(a) only, combustion shall include any self-sustaining process of nuclear fission;
- (b) nuclear weapons materials.

This Exclusion 8 shall not apply to liability resulting from the use of commercial radioactive isotopes.

9. War

liability occasioned by or through or in consequence directly or indirectly of any of the following occurrences:

War, invasion, act of foreign enemy, hostilities or warlike operations (whether war be declared or not), civil war, mutiny, civil commotion assuming the proportions of or amounting to a popular rising, military rising, insurrection, rebellion, revolution, military or usurped power;

This Exclusion also excludes liability of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to the above.

10. Uninsurable Amounts

amounts uninsurable at law.

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Conditions applying to Insuring Clause 1 of this Policy

The following Conditions apply to cover under Insuring Clause 1 of this Policy.

1. Limits of Liability

- (a) The liability of the Insurer under this Policy in respect of each Occurrence shall not exceed the Limits of Liability stated in the Schedule. All Personal Injury, Property Damage or Advertising Injury arising out of continuous or repeated exposure to substantially the same general conditions will be construed as arising out of one Occurrence.
- (b) The Limits of Liability shall apply in excess of the amount of the applicable Excess.
- (c) The total aggregate liability of the Insurer for all claims arising out of Products shall not exceed the Limit of Liability stated in the Schedule for each Policy Period.

2. Alterations in material fact, error or omission

- (a) The Insured will not be prejudiced under this Policy in the event of:
 - i. any alteration in material fact, construction methods or procedures;
 - ii. an unintentional or inadvertent error, omission or mis-description,in any underwriting information supplied to the Insurer.
- (b) The Named Insured undertakes to immediately notify the Insurer as soon as the alteration or omission becomes known to them, and the Insurer shall be entitled to make reasonable variations to this Policy's terms and Conditions as may be mutually agreed between the Insurer and the Named Insured.

3. Claims procedure

The Insured shall upon becoming aware of an event or loss giving rise or likely to give rise to a claim exceeding the Excess under this Policy:

- (a) give notice thereof as soon as reasonably practicable to the Insurer;
- (b) at the expense of the Insurer take all reasonable steps to mitigate the actual or potential amount of the claim;
- (c) as soon as reasonably practicable thereafter submit a claim in writing to the Insurer; and
- (d) produce to the Insurer or to any person officially designated by it all such details, proof and particulars of the event or loss as may be reasonably required by it and permit extracts and copies of such documentation to be made and retained.

Notwithstanding the foregoing, any Insured shall be entitled to take immediate action to avoid danger to persons or property and such action shall in no way prejudice or invalidate the relevant Insured's position or entitlement with respect to any claim hereunder.

The Insured will also maintain accurate claims data in respect of all claims under the Excess payable in respect of this Policy.

4. Hold harmless agreements

Where, in connection with or in relation to a Contract, the Insured enters into an agreement with another party and where such agreement provides, inter alia, that the Insured shall indemnify and/or hold harmless and/or release from liability such other party in respect of any indemnifiable event under this Policy, this Policy shall not be prejudiced or invalidated by the Insured agreeing to such provisions and that indemnity and/or hold harmless and/or release from liability given by the Insured shall be equally binding upon the Insurer.

Conditions applying to Insuring Clauses 2 & 3 of this Policy

The following Conditions apply to cover under Insuring Clauses 2 and 3 of this Policy.

1. Limits of Liability

- (a) The liability of the Insurer under this Policy in respect of each Incident shall not exceed the Limits of Liability stated in the Schedule. Progressive, continuous, intermittent or indivisible Bodily Injury, Environmental Damage or Property Damage that occurs over a period of days, weeks, months or longer caused by Pollution Conditions shall be deemed to have occurred only on the date of first exposure to such Pollution Conditions (i.e. when First Incurred).
- (b) This Policy provides different scopes of cover for different circumstances of loss. Such losses will be subject to individual limits as specified in the Schedule.
- (c) The Limits of Liability shall apply in excess of the amount of the applicable Excess.
- (d) The total aggregate liability of the Insurer for all claims arising out of Covered Operations (Environmental) Liability and Completed Operations (Hazard) coverage shall not exceed the Limit of Liability stated in the Schedule for each Period of Insurance.

2. Discharge of Liability

The Insurer may at any time discharge its total liability to the Insured under Insuring Clause 2 or 3 in respect of any one Claim or series of Claims arising from one Pollution Condition by paying to or on behalf of the Insured up to the aggregate Limit of Liability as stated in the Schedule:

- (a) The total amount in respect of such Claim to which the Insured is entitled to indemnity under this Policy;
- (b) The total amount sought by the claimant for such Claim; or
- (c) The total amount for which such Claim can be settled.

In such an event, the Insurer will pay defence costs incurred up to the date of payment of any Claim or series of Claim. That payment together with the Claim payment will not exceed the applicable aggregate Limit of Liability.

Upon such payment, the Insurer shall relinquish conduct or control of such Claim and be under no further liability under the Insuring Clause pursuant to which it has discharged its liability but only in connection with such Claim including but not limited to defence costs.

3. Duties in the Event of Pollution Conditions or Claim

- (a) The Insured must notify the Insurer in writing as soon as reasonably practicable of any Pollution Conditions. To the extent possible, such written notification must include:
 - i. how, when and where the Pollution Conditions took place;
 - ii. the names and addresses of any injured persons and of any witnesses; and
 - iii. the nature and location of any injury or damage arising out of the Pollution Conditions.
- (b) The Insured must as soon as reasonably practicable:
 - i. immediately send to the Insurer copies of any demand, notice, summons or legal paper received in connection with the Claim;
 - ii. authorise the Insurer in writing to obtain records and other information regarding the matters set out in 3(a) above;
 - iii. cooperate with the Insurer in the investigation, settlement or defence of the Claim; and
 - iv. assist the Insurer in the enforcement of any right against any person or organisation which may be liable to the Insured because of Bodily Injury, Property Damage, or Environmental Damage for which this Policy provides cover.
- (c) The Insured shall have the duty to incur Mitigation Expense and to clean up Pollution Conditions to the extent required by Environmental Laws by retaining competent professionals or contractors mutually acceptable to the Insurer and the Named Insured. The Insurer shall have the right but not the duty to review and approve all such actions. The Named Insured shall notify the Insurer of actions and measures taken pursuant to this paragraph.
- (d) When Emergency Response Costs have been incurred, the Insured shall forward to the Insurer as soon as reasonably practicable all information including but not limited to: the cause and location of the Pollution Conditions, technical reports, laboratory data, field notes, expert reports, investigations, data collected, invoices, regulatory correspondence or any other documents relating to such Emergency Response Costs.

4. **Rights of the Insurer in the Event of Pollution Condition**

Provided the Insured is unable, the Insurer shall have the right but not the duty to clean-up or mitigate Pollution Conditions upon receiving written notice as provided in Condition 3 of this Policy.

Any sums expended by the Insurer under the preceding paragraph will be deemed incurred or expended by the Insured, shall be subject to the applicable Excess and shall reduce the Limits.

5. **Voluntary Payments**

No Insured will voluntarily make a payment, assume any obligation to make a payment or incur any expense, other than for first aid, under this Policy with respect to a Claim or Incident without the Insurer's written consent (which shall not be unreasonably withheld or delayed).

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General Conditions applying to this Policy

The following General Conditions apply to this Policy.

1. Application of Excess

- (a) The Insured shall be liable to pay the amount of the applicable Excess stated in the Schedule in respect of each Occurrence or Incident. If a series of claims are made arising out of the one Occurrence (for Section 1) or Incident (for Sections 2 and 3) then only one Excess shall apply. For clarity, where an Occurrence or Incident are the same event, only one Excess shall apply.
- (b) The Excess shall also apply to Defence Costs and other costs as described in Insuring Clause 4 and 5 once these costs have been established.
- (c) Worker to Worker claims are subject to the Excess appearing in the Schedule.

2. Investigation and Defence

The Insurer has the right to:

- (a) defend any Claim in the name of the Insured;
- (b) conduct the defence or settlement of any Claim;
- (c) prosecute in the name of the Insured for the Insured's benefit any claim for indemnity or damages or otherwise related to the defence of the Claim;

and shall have full discretion in the conduct of any proceedings and in the settlement of any Claim, provided that the Insurer agrees to consult with the Insured regarding the conduct, defence, prosecution or settlement of any Claim or proceedings involving that Insured prior to taking action or effecting settlement.

The Insured must:

- (a) not agree to any waiver, limitation of or delay as to its rights of recovery against any other party,
- (b) not admit liability, negotiate any settlement or incur any Defence Costs without the prior written consent of the Insurer (which consent shall not be unreasonably withheld or delayed);
- (c) provide the Insurer with all the information and assistance as the Insurer may reasonably require for the purpose of investigating the cause and consequences, liability and defence or settlement of any Claim or the investigation, conduct of any matter or claim insured under the Policy.

The Insurer will defend any Claim brought against the Insured which is covered under the Policy (or would be if the Claim was sustained) even if the allegations are groundless, false or fraudulent.

In the event the Insured is a party to a demand, legal proceeding, inquiry or hearing which is covered only in part by this Policy, the Insured and the Insurer will use their best efforts to agree upon a fair and reasonable allocation of Defence Costs or any other amount insured under this Policy which relates solely to what is covered under this Policy.

In the event that an agreement on whether to admit liability or enter into a settlement cannot be reached between the Insurer and the Insured having regard to the prospects for success in the defence of the relevant Claim or proceeding, a Senior Counsel (to be mutually agreed upon by the Insurer and the Insured) shall, as an expert and not an arbitrator, make a determination on the prospects for success in the defence of the relevant Claim or proceeding. Until the Senior Counsel has made a determination the Insurer may, in its absolute discretion, pay such Defence Costs or any other amount insured under this Policy as it considers appropriate.

In the event that agreement on the appointment of a Senior Counsel cannot be reached, such Senior Counsel shall be appointed by the then President of the Law Society or the Law Institute in the relevant State or Territory.

All the Insurer's duties under this Policy end when the applicable limits are exhausted. This applies to Claims pending at the time and those filed thereafter.

3. Representations

By accepting this Policy, the Insured agrees that:

- (a) Statements in the Insured's risk declaration and any material submitted in connection with such Declaration are the Insured's agreements and representations;
- (b) This Policy is issued upon the truth of such representations; and
- (c) This Policy embodies all agreements between the Insured and the Insurer relating to this insurance.

4. Appointment of Loss Adjuster

- (a) Loss Adjusters appointed to investigate and quantify losses that are potentially indemnifiable under this Policy are agents of the Insurer and their fees and related expenses shall be payable by the Insurer. The Insurer is authorised to appoint a loss adjuster from the Loss Adjusters stated in the Schedule.
- (b) The Insurer agrees that all documents, transcripts, reports (verbal and written) shall be made available to the Insurer and the Insured.

5. Insurer's rights and subrogation

- (a) Upon the payment of any claim under this Policy, subject to any restrictions imposed by the Commonwealth Insurance Contracts Act 1984, the Insurer shall be subrogated to all the rights and remedies of the Insured arising out of such claim against any person or corporation whatsoever.
- (b) No admission, offer, promise, payment or indemnity shall be made or given by or on behalf of the Insured without the consent of the Insurer (which shall not be unreasonably withheld or delayed) who will take over and conduct in the name of the Insured the defense or settlement of any claim or to prosecute in the name of the Insured for the Insurer's own benefit any claim for indemnity or damages or otherwise, and shall have full discretion in the conduct of any proceedings or in the settlement of any claim, however the Insurer shall discuss the conduct, defense, prosecution or settlement of any claim or proceeding with the Insured prior to taking action or effecting settlement. The Insurer may pay to the Insured, the amount of the applicable Limit of Liability of the Insurer or such lesser sum for which the claim can be settled subject in either case to deduction of any sum or sums already paid as compensation in respect of such claim and the Insurer shall thereafter be under no further liability in respect of such claim except for the payment of costs and expenses for which the Insurer is liable hereunder incurred prior to the date of such payment.
- (c) Any claim amount recovered shall be applied in the following order of priority:
 - i. firstly to reimburse the Insured for the uninsured proportion of the loss, which includes any Excess paid by the Insured;
 - ii. secondly, to reimburse the Insurer of any excess insurance policy to the extent of their payment over the indemnity by this Policy;
 - iii. thirdly, to reimburse the Insurer to the extent of their actual payment under this Policy; and
 - iv. fourthly, if then remains unpaid, to reimburse the Insurer of any primary or Underlying Insurance as their interest may appear.

The expenses of all such recovery proceedings shall be apportioned in the ratio of respective recoveries. If there is no such recovery in proceedings conducted solely by the Insurer, they shall bear the expenses thereof.

6. Multiple Insured's clause

- (a) If the Insured comprises more than one insured party each operating as a separate and distinct entity, then cover hereunder shall apply in the same manner and to the same extent as if individual policies had been issued to each such insured party provided that the total liability of the Insurer to all of the Insureds collectively shall not exceed the Limits of Liability or Sub-limits in this Policy.
- (b) The Insureds will, to the extent allowed under contract, at all times preserve the various contractual rights and agreements entered into by the Insureds and contractual remedies of such parties in the event of loss or damage.
- (c) The Insurer shall be entitled to reduce or avoid liability (as may be appropriate) to an Insured in circumstances of such Insured committing fraud, deliberate misrepresentation, material non-disclosure or deliberate breach of any warranty or condition of this Policy (referred to in this General Condition 6 as a "Vitiating Act").
- (d) However any non-disclosure, breach of any duty or act or omission by one Insured shall not prejudice the right to claim or indemnity of any other Insured.
- (e) The Insurer agrees to waive all rights of subrogation or action that it may have or acquire against all or any of the persons comprising the Insured.

except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act, in which circumstances the Insurer may enforce such rights against the party committing the Vitiating Act.

7. Extension to Construction Period

The Insurers agree to automatically grant any required alteration / extension to the estimated Period of Insurance as stated in the Schedule.

Extensions to the Period of Insurance as stated in the Schedule of up to 30 days shall be at no additional cost. For extensions beyond 30 days, the Insurer shall be entitled to charge the Named Insured an additional premium not exceeding pro-rata up to a maximum of 90 days after the Period of Insurance shown in the Schedule. For extensions beyond 90 days after the Period of Insurance shown in the Schedule, terms and conditions are to be agreed between the Insured and the Insurer.

8. Notices

- (a) The Insured shall address all notices or communications required by this Policy to the Insurer. The Insurer shall also address all notices or communications required by this Policy to the Named Insured.
- (b) The Insurer will accept notice of a claim by any Insured as notice by all Insured's under this Policy. Where the Insured is required under contract to include a provision that the Insurer provide any notice under this Policy to all Insured's, the Insurer agree to be bound by this undertaking.
- (c) If a Nominee for Insurer's Notices is shown in the Schedule, the Insurer agree to give such nominee 60 business days prior notice in the event of:
 - i. the cancellation or expiry of this Policy before completion of the Defects Liability Period for any reason, including non payment of premium;
 - ii. the Insurer giving any notice under this Policy.

9. Declarations and Premium payment

As soon as is practicable following the expiry of the Policy Period, the Named Insured will declare to the Insurer the total final Contract Value of the Insured Project commenced and completed during the Policy Period.

Subject to any minimum premium applicable, the provisional Premium will be adjusted by payment to the Insurer of an additional premium or by allowance to the Named Insured of a return premium, as the case may be, calculated by applying the agreed rate on the difference between the estimated and, in respect of the Insured Project, the final and projected (as applicable) Contract Values

10. Resolution of a dispute over values

In the event of any dispute or difference between the Insurer and the Named Insured as to the quantum of declared values, both parties agree that such values shall be determined by the President for the time being of the Australian Institute of Quantity Surveyors, or his nominee, acting as an expert and not as an arbitrator. The cost of any such determination shall be borne by the Insurer.

11. Insolvency or bankruptcy

The insolvency or bankruptcy of any party comprising the Insured shall not release the Insurer from any of their obligations assumed hereunder.

12. Assignment

The Insurer may not assign this Policy to a third party. The Named Insured may not assign this Policy without the prior written consent of the Insurer, which consent shall not be unreasonably withheld or delayed.

13. Cancellation or non-renewal of this Policy

- (a) By the Insurer

Subject to General Condition 5 and 8(c) the Insurer may cancel this Policy in accordance with Section 60 of the Insurance Contracts Act 1984 (Cth) by serving on the Named Insured sixty (60) days' notice in accordance with Section 59 of that Act, in which case the Named Insured will be entitled to a pro-rata refund of the Premium.

- (b) By the Named Insured

The Named Insured (on behalf of itself and all other Insured's unless otherwise specified) may cancel this Policy at any time by giving notice in writing to the Insurer.

14. Currency

All monetary amounts expressed in this Policy are in the currency stated in the Schedule.

15. Jurisdiction and service of suit

The Insurer agrees that:

- (a) this Policy is governed by the laws of Australia;

- (b) in the event of a dispute arising under this Policy, at the request of the Named Insured, the Insurer will submit to the jurisdiction of any competent court in the Commonwealth of Australia. Such dispute shall be determined in accordance with the law and practice applicable in such court;
- (c) any summons notice or process to be served upon the Insurer may be served upon the Nominee for Legal Service stated in the Schedule. Such nominee has authority to accept service and to enter an appearance on the Insurer's behalf. If directed by the Named Insured, the nominee shall give a written undertaking that the nominee will enter an appearance on the Insurer's behalf.

16. Non Contribution Clause / Primary

The Insurer agrees that despite the existence of other policy/ies which may provide cover in part or in full in respect of any liability or expense insured by this Policy, the Insurer will not seek contribution in respect of liability or expense indemnified by this insurance. It is understood that the Insurer will be unable to seek contribution under section 76(3) of the Insurance Contracts Act 1984. The Insurer agrees this insurance policy will be the Insured's primary indemnity.

DRAFT

NOTYING
TO THE
[Signature]

L337314454.4
Gateway Independent Verifier Deed

Exhibit C - Initial Verification and Monitoring Plan



Transport for NSW

Design and Construction of Sydney Gateway Stage 3

Independent Verifier Deed

Contract Number: 20.0000301737.2120

EXHIBIT C (Initial Verification and Monitoring Plan)

