

**CAF Rail UK Limited**

(as Service Provider)

and

**Northern Trains Limited**

(as Operator)

and

**Eversholt Rail Leasing Limited**

(as Owner)

**Technical Support and Spares Supply Agreement**

in respect of a fleet of 33 x 3-car and 25 x 2-car Class 195 diesel multiple units and associated equipment

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## Agreement

Dated

2025

### Between:

- (1) **CAF Rail UK Limited** a company incorporated in Northern Ireland with registered number NI051735 whose registered office is at 10d Clarendon Dock, Belfast, Northern Ireland, BT1 3BH (the **Service Provider**);
- (2) **Northern Trains Limited** a company incorporated in England with registered number 03076444 and whose registered office is at George Stephenson House, Toft Green, York, England, YO1 6JT (the **Operator**); and
- (3) **Eversholt Rail Leasing Limited** a company incorporated in England with registered number 02720809 and whose registered office is at First Floor, Chancery House, 53-64 Chancery Lane, London WC2A 1QS (the **Owner**)

### Background

- (A) The Operator is the operator under the Service Agreement and wishes to enter into an agreement with the Service Provider under which the Service Provider will provide Technical Support Services and Spares Supply Services in connection with the Units and Spares.
- (B) This Agreement (including the Schedules) formalises the agreement of the parties in respect of the foregoing.

### It is agreed as follows:

#### 1 Definitions and interpretation

##### Definitions

In this Agreement (including the recitals and Schedules hereto) terms and expressions shall have the meanings as follows:

**Additional Insured** has the meaning given to that term in clause 21.5(a);

**Additional Services** means the services referred to in clause 8;

**Additional Services Payment** means the payment to be made by the Operator to the Service Provider in respect of the Additional Services, calculated in accordance with clause 8 and Schedule 2;

**Agreement** means this agreement and includes the Schedules;

**Applicable Laws and Standards** means, depending on the context, all or any laws, statutes, proclamations, by-laws, directives, regulations, statutory instruments, rules, orders, rules of court, delegated or subordinate legislation, rules of common law or Industry Standards at any time or from time to time in force in the United Kingdom and which are or may become applicable to this Agreement, any agreement or document referred to in this Agreement or any Spare including, without limitation, Industry Standards;

**Authority for Variation to Contract** means the forms set out in Appendix B to Schedule 8;

**Change in Law** means the application to any person of any Applicable Laws and Standards which did not apply to them at the date hereof, or the change

in application or interpretation after the date hereof of any Applicable Laws and Standards, but excluding any application or change which:

- (i) has been enacted or promulgated prior to the date hereof as coming into effect on a specified future date; or
- (ii) which is referred to in the Manuals; or
- (iii) which is a Foreseeable Change in Law;

**Claims Allocation and Handling Agreement** or "**CAHA**" means the agreement entered into by the CAHA Registrar Limited and the CAHA Parties (as set out in Schedule 6 to the CAHA) on 1 December 2009, as amended from time to time;

**Commencement Date** means 02:00 on 1 April 2025;

**Commercially Available Software** means any computer program which:

- (a) has not been modified to enable the Manufacturer to perform its obligations under the MSA or the Service Provider to perform its obligations under this Agreement; and
- (b) is:
  - (i) available for off-the-shelf purchase on reasonable terms; or
  - (ii) freely available (without charge) on an open source basis;

**Confidential Information** means the terms of this Agreement, all documents related hereto and all data and information furnished hereunder and all information or data concerning the Intellectual Property Rights, designs, operations, commercial or financial arrangements or affairs of the Service Provider, the Operator or the Owner and includes, without limitation, in the case of the Operator and the Owner, all information and documentation made available during the negotiations resulting in the award of this Agreement and in the case of information furnished by the Service Provider, the TSSSA IPR;

**Consumable Spares** means all spare parts of any description that wear and are replaced with a new component including fluids, consumable items, parts and assemblies, as set out in the Manuals;

**Contract Year** means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods;

**Critical Spares** means a Spare categorised as such in accordance with the Spares Supply and Stores Joint Working Strategy including all Overhaul Spares, Owner Owned Spares, Overhaul Kits, and any other Spares that would immediately restrict a Unit from entering passenger revenue earning service if unavailable for planned or corrective maintenance;

**Default Interest Rate** means the rate of two per cent [REDACTED] per annum over the base rate from time to time of HSBC Bank Plc;

**Demobilisation Costs** means all such costs, losses, expenses and liabilities as may be suffered or incurred by the Service Provider in relation to the initial mobilisation and subsequent demobilisation of its activities under this Agreement as result of its termination, including in respect of:

- (a) labour costs reasonably and properly incurred (or committed to) by the Service Provider prior to such termination, insofar as the same relate to the provision of the Services;
- (b) materials purchased or ordered by the Service Provider, prior to such termination, for use in connection with this Agreement;
- (c) any and all such other demonstrable costs, losses, expenses and liabilities which may be suffered, incurred or sustained by the Service Provider as a direct result of such termination, including (without limitation) any unavoidable costs of demobilisation (including, if applicable, redundancy costs),

in any such case, only to the extent that such costs, losses, expenses and liabilities: (1) are corroborated by reasonable supporting evidence; and (2) have been mitigated by reasonable action on the part of the Service Provider;

**Depot** means [REDACTED];

**Design Authority Libraries** means the technical specifications and documents relating to the Fleet, including Licensed Design Documents, Service Provider's Technical Library, Asset of Changes, and other relevant documents;

**Direct Agreement** means the direct agreement entered into between the Service Provider and the Secretary of State dated [REDACTED];

**Direct Competitor** means a company that manufactures rolling stock;

**Director Notice** has the meaning given to it in clause 43.1;

**Dispute** means any dispute, controversy or claim of whatever nature between the parties arising out of, under or in connection with this Agreement (including any question of the breach, interpretation, validity, effect, performance or termination of this Agreement and any claims for set-off or counterclaim);

**Disputes Secretary** means the secretary appointment by the Access Disputes Committee;

**Employment Losses** means all losses, liabilities, damages, costs, claims and expenses (including any claim or demand by an employee or employee representative or trade union and reasonable legal fees on a solicitor and own client basis and other professional advisors' fees, and disbursements and costs of investigation, litigation, settlement, judgment, interest, penalties and remedial actions);

**Employment Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time, and other relevant laws and regulations;

**Excluded Dispute** means any dispute (whether as to liability or quantum or both) as to:

- (a) any obligation to pay liquidated damages under the TARR; or
- (b) any obligation to make any other payment under this Agreement;

**Exonerating Event** means:

- (a) the occurrence of a Force Majeure Event;

- (b) the breach, negligence, recklessness or wilful default of the Operator or its sub-contractors, agents or employees under its control;
- (c) the Operator authorising, according to this Agreement, the Services to be carried out by any person other than the Service Provider and, following the completion of such work, the Service Provider reasonably believing that its ability to perform the Services is adversely affected;
- (d) vandalism, suicide or attempted suicide, collision or accidental damage to a Unit (other than any such event in respect of which the Manufacturer, the Service Provider any of their respective sub-contractors or suppliers, or any of their respective employees or agents is directly responsible);
- (e) Improper Use; and
- (f) any failure to maintain the Units in accordance with the Maintenance Plan;

**Expert** has the meaning given to it in Schedule 8;

**Expert Determination** has the meaning given to it in Schedule 8;

**Expiry Date** means 0159 on 1 April 2035;

**Fault** means, in relation to any Spare, that such Spare:

- (a) does not comply with the Train Specification (insofar as the same relates to such Spare); or
- (b) is not Fit for Purpose,

in each case:

- (i) whether in consequence of faulty design, faulty materials, bad workmanship, negligence; or
- (ii) for any other reason attributable to the Manufacturer or the Service Provider or any of its sub-contractors or suppliers or any of their respective employees or agents;

**Fit for Purpose** means:

- (a) in relation to each Spare, that such Spare, when incorporated into a Unit, does not of itself prevent such Unit from being Fit for Purpose as defined in paragraph (c) below;
- (b) in relation to each On Train System, that such On Train System does not of itself prevent such Unit from being Fit for Purpose as defined in paragraph (c) below;
- (c) in relation to each Unit, on the assumption that such Unit is operated in accordance with the Manuals and all Applicable Laws and Standards, and on the further assumption that such Unit has been maintained in accordance with the Maintenance Plan and all Applicable Laws and Standards, that:
  - (i) all Relevant Approvals in respect of that Unit have been obtained and remain valid and in full force and effect; and

- (ii) such Unit is in a condition which meets the Train Specification and is suitable to enable the Operator to operate such Unit in Unrestricted Passenger Revenue-Earning Service on the Designated Routes (as defined in the MSA) in accordance with the Train Plan (as defined in the MSA) and the Operator's Safety Certificate (as defined in the MSA);

**Fleet** means together, all of the Units;

**FOIA** has the meaning given to it in clause 38.1;

**Force Majeure Event** means any of the following events:

- (a) act of God, or insurrection, flood, fire, extreme weather condition, riot or revolution, or explosion affecting directly or indirectly the Units;
- (b) any industrial action, strike or labour dispute including any national or federal or regional strike or any strike affecting the entire railway industry in the jurisdiction concerned but otherwise excluding any industrial action, strike and/or labour dispute (whether official or unofficial, legal or illegal) which:
  - (i) exclusively involves the staff of (A) the Service Provider and/or (B) any Sub-Contractor, in each case who are employed in any of their respective plants, factories, offices or other workplaces and are involved in the performance of the Service Provider's obligations under this Agreement or the management or administration of such performance; or
  - (ii) has arisen from a dispute that originated from or commenced in any plant or workplace of (A) the Service Provider and/or (B) any Sub-Contractor, however widely such industrial action, strike and/or labour dispute may subsequently extend; or
- (c) circumstances of war, hostilities (whether declared or undeclared), invasion, armed conflict, act of a foreign enemy, embargo, government restriction/prohibition or act of terrorism;

**Foreseeable Change in Law** means any foreseeable change in law which is specified in part 4 of schedule 1 to the MSA;

**Good Industry Practice** means standards, practices, methods and procedures conforming to Applicable Laws and Standards and exercising that degree of skill and care, diligence, prudence, quality and control, management, and foresight which would (at the relevant time) be adopted by a leading professional supplier of the Services;

**Government Authority** means any United Kingdom national, state or local government, any political subdivision thereof or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other similar entity and includes the Department for Transport, the Secretary of State, Network Rail, RSSB and ORR;

**Guarantor** means [REDACTED];

**Holding Company** means any holding company within the meaning of section 1159 of the Companies Act 2006;

**ICTA** means the Income and Corporation Taxes Act 1988;

**Improper Use** means, in respect of any Unit, Vehicle, Spare or Part, any misuse or abuse of such Unit, Vehicle, Spare or Part in contravention of any Applicable Laws and Standards and/or any Relevant Approvals and/or any relevant Manuals by any person when such Unit, Vehicle, Spare or Part is in the care, custody and control of the Operator provided that:

- (a) in the case of Manuals, the same shall have been provided by the Manufacturer to the Operator in accordance with the MSA; and
- (b) there shall be deemed to have been Improper Use in any case where such Unit, Vehicle, Spare or Part has not been used in compliance with any current relevant Manuals which have been provided by the Manufacturer to the Operator unless such non-compliance is as a result of compliance with any conflicting Applicable Laws and Standards and/or Relevant Approvals.

A Unit, Vehicle, Spare or Part shall be in the care, custody and control of the Operator where such Unit, Vehicle, Spare or Part is in the care, custody and control of a contractor or other third party, in either case as employed by the Operator;

**Industry Standards** means all the laws, rules, regulations, directions, recommendations and instructions, including codes of practice and conduct which have the force of law or with which it is generally accepted within the rail industry in the United Kingdom that it is good practice to comply, relating to the performance of this Agreement and/or applicable to the Units or the Spares which are or have been issued by the ORR, Network Rail, the Railway Safety Directorate, HSE, the "Safety Authority" (as defined in the RIRs), a Notified Body, a Designated Body, ATOC, RSSB (in each case to the extent acting in its capacity as a relevant authority under Applicable Laws and Standards) or any other Competent Authority or other person from time to time legally authorised to set standards in respect of the rail industry and shall include Railway Group Standards, Network Rail Standards, the Rule Book, NTSNs, the NTRs and/or any equivalent standard or any standard amending, replacing or superseding any of the foregoing;

**Initial Technical Support Services** means the technical support services set out in Part A of Schedule 1;

**Insolvency Event** means:

- (a) an order is made or resolution is passed for (or any other formal step is taken with a view to commencing) the administration, winding up, bankruptcy or dissolution of that party (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other parties);
- (b) if a voluntary arrangement under section 1 of the Insolvency Act 1986 (as amended) is made in respect of a party (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other parties);
- (c) if a party makes any arrangement or composition with its creditors generally (except for the purposes of an amalgamation or reconstruction, the terms of which have been previously notified to and approved by the other parties);

- (d) if any distress, execution, sequestration or other process is levied or enforced or sued out or upon or against the whole or any material part of the assets of a party and the same is not discharged within five (5) Working Days;
- (e) if any encumbrancer takes possession or an administrative or other receiver or manager is appointed of the whole or any material part of the assets of a party and is not removed or discharged within five (5) Working Days in any such case;
- (f) if a party is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (save that the amount referred to in section 123(1)(a) shall be [REDACTED] for the purposes of this definition);

**ITSS Expiry Date** means 1 April 2027;

**Joinder Notice** has the meaning given to it in clause 43.4;

**Joint Spares and Maintenance Management System Protocol** means the maintenance management system interface developed pursuant to paragraph 3.3 of Part D of Schedule 1;

**Lease** means the agreement between the Owner and the Operator originally entered into between the Owner and Arriva Rail North Limited on 21 January 2016 and subsequently amended and restated from time to time (including a further amendment and restatement with effect from 01:58 on 1 April 2025) and novated from Arriva Rail North to the Operator on 1 March 2020, pursuant to which the Operator leases the Units from the Owner;

**Licensed Design Documents** has the meaning given to it in the MSA;

**Maintenance Management System** has the meaning given to it in paragraph 3.2 of Part D of Schedule 1;

**Maintenance Period** means the period from the Commencement Date to the termination or expiry of this Agreement;

**Maintenance Plan** has the meaning given to it in the MSA;

**Maintenance Production Plan** means the Operator's plan to deliver the requirements of the Maintenance Plan;

**Managing Director** has the meaning given to that term in clause 43.1(a);

**Mandatory Modification** has the meaning given to it in the MSA;

**Manuals** has the meaning given to it in the MSA;

**Manufacturer** means [REDACTED];

**Month** means a period beginning on a particular day in one calendar month and ending on the numerically corresponding day in the next calendar month following that on which it started; provided that if there is no such numerically corresponding day in the next calendar month following that on which it started, it shall end on the last day in such next calendar month, and **months** and **monthly** shall be interpreted accordingly;

**MSA** means the manufacture and supply agreement, dated 21 January 2016, entered into originally between the Manufacturer, Owner and Arriva Rail

North Limited, Arriva Rail North Limited's interests and rights subsequently being transferred to the Operator;

**Non-Critical Spares** means a Spare that would not immediately restrict a Unit from entering passenger revenue earning service if unavailable for planned or corrective maintenance;

**Northern Network** means those railway routes over which the Operator is authorised to operate passenger services pursuant to the Service Agreement and Track Access Agreement;

**Objection** has the meaning given to it in clause 43.4(d);

**On Train System** means all on train borne software, information and data systems and databases;

**Operational Damage Spare** means all spare parts of any description that are required as a result of limbs (b) or (d) of the definition of Exonerating Event;

**Operator Event of Default** has the meaning given to that term in clause 24;

**Operator Representative(s)** has the meaning given to that term in paragraph 1 of Schedule 7;

**Operator's Code of Conduct** means the code of conduct as set out in Schedule 11;

**Operator's Group** means the Operator and its ultimate Holding Company (if any) from time to time, any company which is, from time to time, a Subsidiary of that Holding Company, and any company which is, from time to time, a Subsidiary of the Operator;

**Original Equipment Manufacturer or OEM** means the manufacturer that manufactured a part or piece of equipment;

**ORR** means the Office of Rail and Road and includes any successor to all or any of its functions;

**OTIF Performance Level Measures** has the meaning given in paragraph 1.1 of Schedule 14;

**OTIF Performance Review Period** means the period commencing on the Commencement Date and expiring on 1 April 2029;

**OTS Baseline** has meaning given in paragraph 1.1 of Schedule 13;

**Overhaul Activities** means the overhaul of spares in accordance with the Maintenance Plans;

**Overhaul Kit** has the meaning given in paragraph 5.1(b) of Part D of Schedule 1;

**Overhaul Mobilisation Plan** means the plan to be prepared and updated annually by the Service Provider in accordance with paragraph 5 of Part D of Schedule 1;

**Overhaul Production Plan** means the plan describing the overhaul of all of the Units as set out in the Overhaul Mobilisation Plan;

**Overhaul Spare** means all spare parts of any description that are removed and/or replaced to undertake Overhaul Activities;

**Owner Owned Spares** has the meaning given to that term in the MSA;

**Owner Representative(s)** means the representative(s) of the Owner appointed under paragraph 1.3 of Schedule 7;

**Parent Company Guarantee** means the parent company guarantee to be provided pursuant to clause 12, in substantially the form set out in Schedule 10;

**Part** means any part, component (which may comprise a number of parts), including, without limitation, an assembly and sub-assembly which is incorporated in, or fixed to, or is designated for incorporation in or fixing to any Unit, Vehicle or Spare, or any furnishing or equipment furnished with such Unit, Vehicle or Spare under this Agreement, provided always that such part, component, assembly or sub-assembly, furnishing or equipment and all documents relating thereto are fitted or supplied by the Service Provider;

**Parts Rate** means the rate for any Part as determined from the Spares List from time to time;

**Payee** has the meaning given to that term in clause 13.5(b);

**Payer** has the meaning given to that term in clause 13.5(b);

**Performance Review Meeting** means the performance review meetings referred to in the TARR;

**Performance Review Period** means the period commencing on the Commencement Date and expiring on the fourth anniversary of the Commencement Date;

**Permitted Use** has the meaning given to that term in the MSA;

**Persistent Breach** has the meaning given to that term in the MSA;

**person** refers to a person (including the Service Provider, the Operator and the Owner) and shall be construed as including references to an individual, firm, company, corporation, unincorporated association or body of persons or any Government Authority or any of its agencies;

**Planned Repairable Spare** means all spare parts of any description that are removed and/or replaced in accordance with the Maintenance Plan, and are repaired and/or serviced by the Service Provider and returned to the Depot or the Service Provider's Storage Location, as set out in the Manuals, other than as part of Overhaul Activities;

**Proceedings** has the meaning given to that term in clause 42(b);

**Prohibited Corruption Acts** means:

- (a) offering, giving or agreeing to give to any director, officer, employee, representative or agent of a Public Sector Body any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with a Public Sector Body; or

- (ii) for showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with a Public Sector Body;
- (b) entering into this Agreement or any contract with a Public Sector Body in connection with which commission has been paid or has been agreed to be paid by the relevant party or on its behalf, or to its knowledge, unless before the relevant agreement is entered into particulars of any such commission and of the terms and conditions of any such agreement for the payment thereof have been disclosed in writing to the other party;
- (c) committing any offence:
  - (i) under the Modern Slavery Act 2015; or
  - (ii) under the Bribery Act 2010; or
  - (iii) under the Criminal Finance Act 2017; or
  - (iv) under the Economic Crime and Corporate Transparency Act 2023;
  - (v) under legislation creating offences in respect of fraudulent acts; or
  - (vi) at common law in respect of fraudulent acts in relation this Agreement or any other contract with a Public Sector Body; or
- (d) defrauding or attempting to defraud or conspiring to defraud a Public Sector Body;
- (e) without prejudice to limbs (a) to (d) above, committing any of the offences set out in Schedule 6 of the Procurement Act 2023; or
- (f) being or becoming:
  - (i) the subject of any sanctions administered or enforced by His Majesty's Treasury (including the Sanctions and Anti-Money Laundering Act 2010), the United Nations Security Council, the United States of America Department of the Treasury and/or the European Union (collectively, "**Sanctions**");
  - (ii) located, organised or resident in a country or territory that is the subject of Sanctions (provided that the foregoing shall not apply to individual officers or directors); or
  - (iii) knowingly engaged in any dealings or transactions in any country or territory that is the subject of Sanctions;

**Prohibited Employment Act** are those activities defined in clause 9.2.5;

**Public Sector Body** means all ministers of the crown, government departments, crown agencies and authorities, local authorities or similar public sector bodies and anybody corporate owned or controlled by any of them (including, for the avoidance of doubt, the Operator);

**Railway Group Standards** means, to the extent applicable to the Units, Vehicles, Spares or Parts and their operation, those standards to which railway assets or equipment used on or as part of railway assets must

conform, and operating procedures with which the operators of railway assets must comply known generally as Railway Group Standards and which are established and maintained by RSSB;

**Railways Act** means the Railways Act 2005;

**Referral Notice** has the meaning given to that term in clause 43.1(a)(i);

**Relevant Approval** means a consent or approval granted or required to be granted (as the context may require) by a Government Authority in relation to the Units in order to permit the operation of such Units with or without passengers on the Northern Network;

**Relevant Employee** has the meaning given to that term in clause 9.2.5(b)(i);

**Relevant Policies** means the policies of the Operator which it requires its employees to observe, including policies in relation to drugs and alcohol, as the same may be provided to the Service Provider and updated from time to time;

**Relevant Terms** has the meaning given to that term in clause 36.1(b);

**Relief** means any relief, allowance, exemption, set-off, deduction, right of repayment, loss or credit of a similar nature available in relation to tax pursuant to any legislation or otherwise;

**Replacement Service Provider** has the meaning given to that term in clause 9.2.2(a);

**Reporting Period** means each or any of the twenty-eight (28) day periods for the calculation of the Standard Service Payment and (if applicable) the Additional Service Payment to the Service Provider, as such period coincide with the reporting periods commonly used in the railway industry;

**Request for Information** means a request for information relating to the subject matter of this Agreement under FOIA and/or EIR (as applicable);

**Retail Prices Index** means retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or there is, in the reasonable opinion of the Operator, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Operator may, after consultation with the Service Provider, determine to be appropriate in the circumstances (acting reasonably);

**Response** has the meaning given to that term in paragraph 11.4 of Schedule 8;

**Sanctions** has the meaning given to it in the definition of Prohibited Corruption Acts;

**Secondary Technical Support Services** means the technical support services set out in Part B of Schedule 1;

**Service Agreement** means the contract for rail services relating to the Northern Network dated 24 February 2022 between (1) the Secretary of State (2) DfT Operator Limited and (3) the Operator pursuant to section 30 of the

Railways Act 1993 (as amended by the Passenger Railway Services (Public Ownership) Act 2024)(as varied, amended and restated from time to time);

**Service Cessation Date** means the date on which the Service Provider ceases to provide the Services;

**Service Provider Cancellations** has the meaning given in paragraph 5.3 of Schedule 4;

**Service Provider Event of Default** means any of the events set out in clause 23;

**Service Provider Insurances** has the meaning given to that term in clause 21;

**Service Provider Representative(s)** means the representative(s) of the Operator appointed under paragraph 1.2 of Schedule 7;

**Service Provider's Group** means the Service Provider and its ultimate Holding Company (if any) from time to time, any company which is, from time to time, a Subsidiary of that Holding Company, and any company which is, from time to time, a Subsidiary of the Service Provider;

**Service Provider's Storage Location** means the Service Provider's independent central storage location that is not contained on the Depot, as specified in the Spares Supply and Stores Joint Working Strategy;

**Service Provider T-3 Performance** has the meaning given in paragraph 4.3 of Schedule 4;

**Services** means the Technical Support Services, the Spares Supply Services and any Additional Services;

**Software** means all computer programs or applications (whether provided via a cloud, on-premises or otherwise):

- (a) installed in, or on or used by, a Unit, Vehicle, Part or Spare;
- (b) installed in, or on or used by any Special Tool;
- (c) used to maintain or diagnose problems on or perform the Services in respect of Units, Vehicles, Parts, or Spares; or

and produced by the Service Provider or any Sub-Contractor in connection with this Agreement, other than Commercially Available Software;

**Spares** means the Consumable Spares, the Operational Damage Spares, the Overhaul Spares, the Planned Repairable Spares and the Unplanned Repairable Spares;

**Spares List** means the document entitled as such as updated in accordance with clause 7;

**Spares Management System** has the meaning given to it in paragraph 3.1 of Part D of Schedule 1;

**Spares Supply and Stores Joint Working Strategy** has the meaning given to it in paragraph 4 of Part D of Schedule 1;

**Spares Supply Services** means the services set out in clause 6.3 and Part D of Schedule 1;

**Standard Service Payment** means the payment made by the Operator to the Service Provider in respect of the Technical Support Services and the Spares Supply Services, calculated in accordance with this Agreement;

**Step-in Obligations** has the meaning given to it in paragraph 6.2 of Schedule 7;

**Sterling** and **£** means the lawful currency for the time being of the United Kingdom;

**Sub-Contractor** means any person with whom the Service Provider has entered into a contract, written or unwritten, for any work or services to be performed as part of, or in connection with, the performance of the Service Provider's obligations under this Agreement, and, unless the context herein requires otherwise, includes a sub-contractor or supplier of any such person;

**Subsidiary** means a subsidiary of any party or of any Holding Company within the meanings ascribed in the Companies Act 2006;

**TARR** means the Train Availability and Reliability Regime set out in Schedule 4;

**Taxes, Tax** and **Taxation** means all present and future taxes, charges, imposts, duties or levies of any kind whatsoever, payable at the instance of or imposed by any Government Authority, together with any penalties, additions, fines, surcharges or interest, if and to the extent that any of the said penalties, additions, fines, surcharges or interest arises as a consequence of the act or omission of any party who indemnifies another party under this Agreement in respect of the Tax to which such penalty, addition, fine, surcharge or interest relates;

**Technical Documentation** means the drawings, specification and descriptions with respect to the Services including all documentation associated with modifications that the Service Provider creates or updates during the term of this Agreement;

**Technical Support Personnel** means the staff of the Service Provider who are responsible for the provision of the Technical Support Services in accordance with clause 9.1;

**Technical Support Services** means the Initial Technical Support Services and the Secondary Technical Support Services and which shall include the services performed by the Service Provider in accordance with Schedule 13;

**Termination Notice** means a notice in the form set out in Schedule 5;

**Track Access Agreement** means the track access agreement entered into or to be entered into between the Operator and Network Rail;

**Train Specification** means the Specification as that term is defined in the MSA;

**Transferring Employees** means the individuals named in a Transferring Employee list (as agreed between the Service Provider and the Operator, both acting reasonably), who the parties agree would transfer from the Service Provider or Sub-Contractor to the Operator or Replacement Service

Provider under the Employment Regulations on the cessation of the Services under this Agreement;

**TSSSA IPR** means all copyright (including rights in computer software), patents, trademarks, trade names, service marks, business names (including internet domain names), design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as trade secrets and inventions (whether patentable or not)) and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights for registration) which may now or in the future subsist anywhere in the universe, used or created in connection with the Services, including as part of any Technical Documentation;

**Unit** means each of the diesel multiple units within the Fleet as listed in Schedule 12;

**Unplanned Repairable Spare** means all spare parts of any description that fail and are removed and/or replaced earlier than as set out in the Maintenance Plan, and are repaired and/or serviced by the Service Provider and returned to the Depot or the Service provider's Storage Location, as set out in the Manuals;

**Unrestricted Passenger Revenue Earning Service** has the meaning given to that term in the MSA;

**Variation** means any variation authorised by the Operator and the Owner in accordance with the Variation Procedure;

**Variation Costs** has the meaning given to that term in Schedule 8 at paragraph 10.2;

**Variation Dispute** has the meaning given to that term in Schedule 8 at paragraph 11.1;

**Variation Order** means an order issued by the Operator Representative and Owner Representative pursuant to Schedule 8 in the form set out in Appendix B;

**Variation Procedure** means the procedure for amending this Agreement, as referred to in clause 15 and detailed at Schedule 8;

**Variation Proposal** means a written proposal made (as the case may be) by: (i) the Operator and Owner; or (ii) the Service Provider to amend this Agreement in accordance with the Variation Procedure;

**Vehicle** means any vehicle of any category which forms part of a Unit;

**Working Day** means a weekday (other than a Saturday) on which banks are open for domestic business in the City of London; and

**Work Rates** has the meaning given to it in paragraph 4.1(a) of Schedule 8.

## 1.2 Construction

Save where the contrary is indicated:

- (a) the headings in this Agreement are only for convenience and shall not affect its interpretation;

- (b) where appropriate, the singular includes the plural and vice versa;
- (c) a reference to a clause or a schedule shall be to a clause of or, as the case may be, a schedule to, this Agreement and references to this Agreement include its Recitals and Schedules;
- (d) references to (or to any specified provision of) this Agreement or any other document shall be construed as references to this Agreement, that provision or that document as in force for the time being and as from time to time amended in accordance with the terms of this Agreement or, as the case may be, with the agreement of the relevant parties and (where consent is, by the terms of this Agreement or the relevant document, required to be obtained as a condition to such amendment being permitted) prior written consent;
- (e) references to a party or person shall include their successors, transferees and permitted assignees;
- (f) reference to a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;
- (g) without prejudice to any provision of this Agreement providing for calculations to be adjusted in the event of a change in law, reference to Applicable Laws and Standards or Industry Standards also includes a reference to such Applicable Laws and Standards or Industry Standards as from time to time amended, extended or re-enacted;
- (h) references to a statutory provision shall include reference to: (i) the statutory provision as modified or re-enacted or consolidated from time to time whether before or after the date of this Agreement; and (ii) any subordinate legislation made under the statutory provision whether before or after the date of this Agreement; and
- (i) capitalised terms and expressions used but not defined in this Agreement shall have the meaning given to them in the MSA.

### 1.3 **Contract precedence**

In the event of any conflict or inconsistency between the elements of this Agreement, the following order of precedence shall apply:

- (a) clauses 1 to 43 of this Agreement;
- (b) Schedule 1 (Services); and
- (c) the Schedules to this Agreement (other than Schedule 1).

## 2 **Conditions Precedent**

### 2.1 **Operator / Owner Conditions**

Except as set out in clause 2.2, all of the Operator's and Owner's obligations hereunder, including but not limited to the Operator's obligations to make any payments hereunder, are subject to the satisfaction of each of the following by the Service Provider:

- (a) receipt by each of the Operator and Owner of a fully executed Parent Company Guarantee in the form set out in Schedule 10;
- (b) receipt by each of the Operator and Owner of the following:
  - (i) evidence that the requisite Service Provider Insurances are in place;
  - (ii) a Spanish legal opinion, in respect of the Guarantor and its entry into the Parent Company Guarantee, from counsel and in a form acceptable to the Operator, acting reasonably.

## 2.2 **Agreement effective**

All provisions of this Agreement shall come into effect on the date of this Agreement.

## 2.3 **Satisfaction of conditions precedent**

If a party agrees to defer the satisfaction of a condition precedent the other relevant party shall use reasonable endeavours to satisfy the condition precedent as soon as reasonably practicable.

## 3 **Term and Early Termination**

- (a) Subject to the remaining terms of this clause 3, this Agreement shall commence as set out in clause 2.2 and shall terminate on the Expiry Date or the date of any earlier termination pursuant to this Agreement.
- (b) If the Lease terminates or is terminated before the termination or expiry of this Agreement, the Operator may immediately terminate this Agreement by service of a Termination Notice on the Service Provider.
- (c) Where the termination of the Lease:
  - (i) is as a result of a Service Provider Event of Default, the termination of this Agreement by the Operator pursuant to clause 3(b) shall be treated for all purposes under this Agreement as a termination for Service Provider Event of Default;
  - (ii) is as a result of an Operator Event of Default, the termination of this Agreement by the Operator pursuant to clause 3(b) shall be treated for all purposes under this Agreement as a termination for Operator Event of Default; and
  - (iii) is not as a result of a Service Provider Event of Default or an Operator Event of Default, the termination of this Agreement by the Operator pursuant to clause 3(b) shall entitle the Service Provider to the payment calculated pursuant to clause 25.4.
- (d) With the exception of clause 3(e) and the termination of this Agreement in accordance with section 78 of the Procurement Act 2023, the Operator shall not exercise any termination right available to it under this Agreement without the prior written consent of the Owner, such consent not to be unreasonably withheld or delayed. It shall be reasonable for the Owner to withhold its consent, in this regard, in circumstances where the Operator is unable to demonstrate to the reasonable satisfaction of the Owner that, upon such termination of this Agreement, the Operator will either:

- (i) have in place suitable alternative arrangements for the provision of services equivalent to the Services; or
  - (ii) have accrued such sufficient in-house knowledge and capabilities as to no longer require the provision of such Services by a third party.
- (e) If:
- (i) the circumstances in paragraph 3.2 of Schedule 14 apply;
  - (ii) in the fourth Contract Year, Service Provider Cancellations exceed [REDACTED] or
  - (iii) in the fourth Contract Year, Service Provider T-3 Performance is less than [REDACTED]

then the Operator may terminate this Agreement by serving a written notice on the Service Provider at any time following [REDACTED] but in any event by no later than [REDACTED]. Any such notice shall take effect on [REDACTED] and the definition of Expiry Date shall be deemed to be amended to be that date. Any payment as a consequence of the exercise of such right shall be calculated pursuant to clause 25.4.

- (f) If the Operator has not issued a notice to terminate in accordance with clause 3(e) then the parties shall, from [REDACTED] undertake a joint review of the Overhaul Production Plan, Spares Supply and Stores Joint Working Strategy, TARR and other service levels specified in this Agreement. Such review shall be completed by no later [REDACTED]. As part of such review the parties shall, in collaboration, agree:
- (i) enhancements to the Overhaul Production Plan, Spares Supply and Stores Joint Working Strategy; and
  - (ii) the quantum of liquidated damages to apply to the service levels agreed in accordance with paragraph 5 of Schedule 13; and
  - (iii) the quantum of liquidated damages that will be applied to the OTIF Performance Levels Measures in accordance with paragraph 4 of Schedule 14; and
  - (iv) other measures that will support improvements in service delivery and the reliability and availability of the Fleet.

The package of such enhancements will be documented by the parties following the review (the “**TSSSA Enhancements**”). The parties agree that the TSSSA Enhancements shall be given effect from [REDACTED] by way of a Variation to this Agreement save that there shall be no adjustment to the Service Payment (or any other prices under this Agreement) as a result of such Variation unless agreed by the Operator.

## 4 **Statements of Fact**

### 4.1 **Statements by the Service Provider**

The Service Provider makes the following statements of fact on and as of the date of this Agreement. The Service Provider understands that the Operator

and Owner are relying on the statements of fact and are entering into this Agreement on the basis of them:

- (a) the Service Provider is a company properly organised and validly existing under the laws of Northern Ireland as a limited liability company. It has power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Service Provider has power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise the entry into, performance and delivery of this Agreement;
- (c) entering into this Agreement and performing its obligations under this Agreement will not:
  - (i) conflict with the Service Provider's Memorandum and Articles of Association; or
  - (ii) conflict with, or result in a breach of, any existing contract or in the creation of any Security Interest over the Service Provider or any of its property;
- (d) except as disclosed on or before this statement of fact is made, no legal proceedings are pending or, to the Service Provider's knowledge, threatened against it which if decided against the Service Provider would have a material adverse effect upon the Service Provider's financial condition or business or its ability to perform its obligations under this Agreement;
- (e) the audited accounts and unaudited management accounts of the Service Provider supplied to the Operator are the latest available accounts and have been prepared in accordance with generally accepted accounting principles and practice in the United Kingdom and give a true and fair view of the state of affairs of the Service Provider as at the date to which they were drawn up. There has been no change in the financial position of the Service Provider since the date to which the accounts were drawn up which would have a material adverse effect upon the Service Provider's ability to perform its obligations under this Agreement;
- (f) the Service Provider does not know, nor should it know, of any information in existence at the time this statement of fact is made which would cause the Operator or Owner not to enter into this Agreement if the Operator or Owner were aware of that information; and
- (g) none of the Service Provider Events of Default has happened.

#### 4.2 **Statements by the Operator**

The Operator makes the following statements of fact on and as of the date of this Agreement. The Operator understands that the Service Provider and Owner are relying on the statements of fact and are entering into this Agreement on the basis of them:

- (a) the Operator is a company properly organised and validly existing under the laws of England as a limited liability company. It has power

to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;

- (b) the Operator has power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise its entry into, performance and delivery of this Agreement;
- (c) entering into this Agreement and performing its obligations under this Agreement will not:
  - (i) conflict with the Operator's Memorandum and Articles of Association; or
  - (ii) conflict with, or result in a breach of, any existing contract to which the Operator is a party or in the creation of any Security Interest over any of the Operator's property;
- (d) the Operator is a wholly owned Subsidiary of DfT Operator Limited;
- (e) except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Operator's knowledge threatened against it which if decided against the Operator would have a material adverse effect upon the Operator's financial condition or business or its ability to perform its obligations under this Agreement;
- (f) the Operator does not know, nor should it know, of any information in existence at the time this statement of fact is made which would cause the Service Provider or Owner not to enter into this Agreement if the Service Provider or Owner were aware of that information; and
- (g) none of the Operator Events of Default has happened.

#### 4.3 **Statements by the Owner**

The Owner makes the following statements of fact on and as of the date of this Agreement. The Owner understands that the Service Provider and Operator are relying on the statements of fact and are entering into this Agreement on the basis of them:

- (a) the Owner is a company properly organised and validly existing under the laws of England as a limited liability company. It has power to carry on its business as it is now being conducted and has all licences, consents, approvals, permits, authorisations, exemptions and certifications required for that purpose;
- (b) the Owner has power to enter into and perform its obligations under this Agreement. All necessary corporate, shareholder and other action has been taken to authorise its entry into, performance and delivery of this Agreement;
- (c) entering into this Agreement and performing its obligations under this Agreement will not:
  - (i) conflict with the Owner's Memorandum and Articles of Association; or

- (ii) conflict with, or result in a breach of, any existing contract to which the Owner is a party or in the creation of any Security Interest over any of the Owner's property;
- (d) except as disclosed on or before this statement of fact is made, no legal proceedings are pending or to the Owner's knowledge threatened against it which if decided against the Owner would have a material adverse effect upon the Owner's financial condition or business or its ability to perform its obligations under this Agreement; and
- (e) the Owner does not know, nor should it know, of any information in existence at the time this statement of fact is made which would cause the Service Provider or Operator not to enter into this Agreement if the Service Provider or Operator were aware of that information.

## 5 **Services**

### 5.1 **Duration and location**

- (a) The Service Provider shall provide:
  - (i) the Spares Supply Services during the Maintenance Period;
  - (ii) the Initial Technical Support Services from the Commencement Date until the ITSS Expiry Date; and
  - (iii) the Secondary Technical Support Services from the ITSS Expiry Date until the expiry of the Maintenance Period.
- (b) The Service Provider shall provide:
  - (i) the Spares Supply Services at the Depot; and
  - (ii) the Technical Support Services, Secondary Technical Support Services and Additional Services at such location as shall be necessary in the context of the services being provided at any location within the Northern Network.
- (c) Without prejudice to the Operator's obligation to pay the Standard Service Payment and Additional Service Payment pursuant to clause 13, the Service Provider shall provide the Services at its own cost and shall be responsible for providing all labour, plant, materials, tools, Spares, test equipment, support services and other facilities and resources necessary for the full performance by the Service Provider of its obligations under this Agreement.
- (d) The Operator shall have the right to vary the provision of the whole or any part of the Services whenever there is a Suspension Notice (as defined in the Track Access Agreement) served by Network Rail which is continuing in effect. If the Services are varied in accordance with this clause 5.1(d) (except if and to the extent that the Suspension Notice is caused by the Operator), the Variation Procedure shall apply in determining the Standard Service Payment and the Additional Service Payment to be made to the Service Provider in respect of the varied Services.

### 5.2 **Standard of performance**

- (a) The Service Provider shall at all times in performing its obligations under this Agreement:
  - (i) perform its obligations with all due skill, care, diligence, prudence and foresight to be expected of an appropriately qualified and experienced service provider with experience of providing services of a similar scope, type, nature and complexity to the Services and in accordance with the terms of this Agreement;
  - (ii) perform its obligations in a safe manner and free (to the extent possible using the best modern principles and practices) from any material risk to the health and well-being of persons using, operating or maintaining, or involved in the management of, the Units and free from any material risk of pollution, nuisance, interference or hazard;
  - (iii) without prejudice to the foregoing, exercise all due skill, care, diligence and good safety practice in the performance of its obligations under this Agreement and not in any manner endanger the health and safety or unreasonably interfere (except as expressly provided in this Agreement) with the proper performance of the duties of the Operator's employees or those of any third parties and comply with the Health and Safety at Work etc. Act 1974 and the Transport and Works Act 1992;
  - (iv) use materials, goods and Spares which are of sound, good and satisfactory quality and in accordance with the Manuals;
  - (v) comply with any Applicable Laws and Standards, all relevant standards (including Railway Group Standards); and
  - (vi) comply with all Relevant Policies.
- (b) Subject to the obligations of the Operator in relation to the provision and condition of the Depot, the Service Provider shall obtain all necessary governmental, administrative and regulatory authorisations, licences, permits, permissions and consents, and shall pay all fees, to enter into and to perform its obligations under this Agreement.
- (c) No examination or lack of examination or giving or issue of any consent, certificate or approval shall relieve or absolve the Service Provider from any of its obligations to the Operator and Owner under this Agreement.
- (d) The Service Provider shall be deemed prior to the date of this Agreement to have obtained all necessary information as to the risks, contingencies, and other circumstances which may influence or affect the amount payable to the Service Provider or the Service Provider's ability to perform its obligations under this Agreement.

### 5.3 Depot

- (a) The Operator shall procure that the Service Provider is granted such non-exclusive access to the Depot as is necessary for the Service Provider to perform its obligations under this Agreement from the Commencement Date.
- (b) The Service Provider shall not cause any damage, destruction or loss to any part of the Depot.

- (c) The Service Provider shall be allocated reasonable storage space in the Depot (having regard to the space available and the task required) to carry out work in accordance with its obligations under this Agreement.

#### 5.4 **Service Provider as an independent contractor**

In entering into and performing its obligations under this Agreement, the Service Provider shall be an independent service provider and is not and shall not hold itself out as, and shall ensure that none of its employees or Sub-Contractors or their employees, holds themselves out as an agent of either the Operator or the Owner. All personnel used by the Service Provider in the performance of its obligations under this Agreement shall be employees of the Service Provider, or a permitted Sub-Contractor or agent of the Service Provider and shall be suitably qualified to perform such obligations.

#### 5.5 **On Train Systems**

The Operator and the Service Provider shall comply with their respective obligations with respect to the management of On Train Systems as set out in Schedule 13.

#### 5.6 **Sustainability**

The Service Provider's Group is a signatory of the Science Based Targets Initiative standards (the "**SBTi Standards**") and the Service Provider shall on each anniversary of the Commencement Date deliver to the Operator and the Owner a report detailing and demonstrating the progress that the Service Provider's Group has made against meeting its commitments under the SBTi Standards (or, if applicable, any alternative carbon reduction framework to which the Service Provider signs up, in place of SBTi).

#### 5.7 **Waste**

The Service Provider shall ensure that any waste, refuse or rubbish it generates in performing the Services is disposed of in compliance with all Applicable Laws and Standards.

#### 5.8 **Maintenance Plan**

No later than six months after the Commencement Date, the Service Provider, Owner and Operator shall undertake a joint review of the Maintenance Plan and agree (each acting reasonably) a Variation to optimise the then current Maintenance Plan as well as to reflect a reduction in the operating hours of the power packs through the implementation of certain software changes to be proposed by the Service Provider (such software changes to be subject to the terms of this Agreement and the Engineering Change Control Procedure (as defined in the MSA)). Such Variation to the Maintenance Plan shall also reflect the consequential extensions to the half-life and full-life overhaul periodicities. As part of such optimisation, the Service Provider:

- (a) agrees to waive its right to any cost reductions or savings that will be derived from such Variation to the Maintenance Plan (and accordingly the provisions of clause 15.4 that shall not apply); and

- (b) shall provide confirmation to the Operator of the anticipated reductions in overhaul costs for the power packs for the period after [REDACTED] as a result of the extensions to the applicable overhaul periodicities.

## 5.9 **Joint Planning**

Notwithstanding any other provision of this Agreement, the Service Provider agrees that it shall support and collaborate with the Operator to assist with the planning of the Operator's maintenance activities (including overhauls). The Operator and the Service Provider shall seek to agree (each acting reasonably), as soon as practicable after the Commencement Date, a set of indicators that will measure the Service Provider's performance in providing such support and assistance to the Operator as contemplated in this clause.

## 6 **Technical Support Services, Responsibility Matrix, Spares Supply Services and Mobilisation**

### 6.1 **Technical Support Services**

The Service Provider shall provide the Technical Support Services as set out in Parts A and B of Schedule 1 in accordance with the terms of this Agreement.

### 6.2 **Responsibility Matrix**

The Operator and the Service Provider shall comply with the responsibility table set out in Part C of Schedule 1 provided that where there is a conflict between the responsibility table set out in Part C of Schedule 1 and the provisions of Parts A and B of Schedule 1, the provisions of Parts A and B of Schedule 1 shall prevail.

### 6.3 **Spares Supply Services**

- (a) The Service Provider shall provide the Spares Supply Service as set out in Part D of Schedule 1 in accordance with the terms of this Agreement.
- (b) The Operator shall perform its obligations as set out in Part D of Schedule 1 in accordance with the terms of this Agreement.

## 7 **Spares List**

7.1 It is agreed and acknowledged that the Spares List (and any update to it) shall be in the format set out in Schedule 15 and shall specify:

- (a) all Parts which may be required by the Operator to maintain the Units in Unrestricted Passenger Revenue Earning Service in accordance with the Maintenance Plans and the Manuals;
- (b) the manufacturer, OEM and/or current supplier, and part numbers (being the manufacturer, OEM or supplier part number and Service Provider part number) of such Parts;
- (c) the price (in pounds sterling) for Consumable Spares, Operational Damage Spares, Planned Repairable Spares and Unplanned Repairable Spares (in respect of Repairable Spares both for new and repair);
- (d) the lead time for:

- (i) obtaining Consumable Spares, Operational Damage Spares, Overhaul Spares;
    - (ii) repairing and replacing the Repairable Spares; and
  - (e) all other data/information noted in Schedule 15.
- 7.2 On or prior to the date falling three (3) months after the Commencement Date, the Service Provider shall provide to the Operator a draft spares list (the “**Draft Spares List**”), which shall be updated only to ensure compliance with the requirements of clause 7.1.
- 7.3 The Operator shall provide its comments on the Draft Spares List as soon as reasonably practicable following its receipt by the Operator. The Service Provider shall provide a revised Draft Spares List to the Operator which takes account of the Operator's comments within one (1) month of the receipt of such comments. The Service Provider and the Operator shall thereafter discuss any comments and, if appropriate, the Service Provider shall further revise the Draft Spares List to ensure that it is acceptable to the Operator and complies with clause 7.1. The Draft Spares List once approved by the Operator shall become the Spares List for the purposes of this Agreement.
- 7.4 The prices in the Spares List shall be subject to annual indexation in accordance with Schedule 2 and shall be subject to market testing in accordance with paragraph 19 of Part D of Schedule 1.
- 7.5 The Spares List will only be used for the purposes expressly provided in this Agreement.
- 7.6 The Spares List shall be updated from time to time to reflect any changes required as a result of obsolescence.

## 8 **Additional Services**

### 8.1 **Services beyond scope of the Technical Support Services and the Spares Supply Services**

The Service Provider shall provide any service beyond the scope of the Technical Support Services and the Spares Supply Services which the Operator may request the Service Provider to provide and which the Service Provider agrees to provide. Without prejudice to clauses 8.2 to 8.5, the terms and conditions for the provision of any such service shall be agreed pursuant to the Variation Procedure.

### 8.2 **Services arising from Exonerating Events**

- (a) The Service Provider shall provide any Operational Damage Spares in accordance with the terms of this Agreement. The Service Provider shall be entitled to an Additional Service Payment calculated in respect of such Operational Damage Spares calculated at the Parts Rates shown in the Spares List provided that the Operator shall be given credit for Spares not used as a consequence of the occurrence of the Exonerating Event.
- (b) The Service Provider shall provide any services (including Parts) requested by the Operator resulting from an Exonerating Event and shall be entitled to an Additional Service Payment calculated in accordance with the Work Rates and Parts Rates save that where the

relevant labour rates are not specified in the Work Rates or the Additional Service involves more than additional Parts and labour the terms and conditions for the provision of the Additional Service pursuant to this clause 8.2(b) shall be agreed pursuant to the Variation Procedure.

### **8.3 Change in Law**

- (a) The Service Provider shall promptly on becoming aware of the same, notify the Operator and Owner of any Change in Law that will affect the performance by the Service Provider of its obligations under this Agreement.
- (b) If the cost to the Service Provider of providing the Services is increased or decreased by reason of a Change in Law, the Service Provider, the Operator and the Owner shall, by utilising the Variation Procedure, make such changes to this Agreement as are necessary to ensure that the Service Provider does not bear the financial consequences of the Change in Law on the provision of the Services. The Additional Service Payment shall be calculated in accordance with the Work Rates and Parts Rates save that where the relevant labour rates are not specified in the Work Rates or the Additional Service involves more than additional parts and labour the terms and conditions for the provision of the Additional Service pursuant to this clause 8.3 shall be agreed pursuant to the Variation Procedure.

### **8.4 Train the Trainer Services**

Without prejudice to clause 8.1, the Service Provider shall provide training services as may be requested by the Operator and such services shall be Additional Services for which the Service Provider shall be paid an Additional Service Payment. The Additional Service Payment shall be calculated in accordance with the Work Rates save that where the relevant labour rates are not specified in the Work Rates or the Additional Service involves more than additional labour the terms and conditions for the provision of the Additional Service pursuant to this clause 8.4 shall be agreed pursuant to the Variation Procedure.

### **8.5 MSA Mandatory Modifications**

The provision of any Services in relation to any Mandatory Modification required pursuant to the MSA shall be agreed pursuant to the Variation Procedure as Additional Services for which the Service Provider shall be paid in an Additional Service Payment. The Additional Service Payment shall be calculated in accordance with the Work Rates and Parts Rates save that where the relevant labour rates are not specified in the Work Rates or the Additional Service involves more than additional parts and labour the terms and conditions for the provision of the Additional Service pursuant to this clause 8.5 shall be agreed pursuant to the Variation Procedure.

### **8.6 Calculation of the Additional Service Payment**

- (a) Where the Additional Service Payment is calculated other than pursuant to the Variation Procedure:
  - (i) in addition to any sum calculated by reference to the Work Rates or the Parts Rates, the Service Provider shall also be entitled to an agreed mark-up of [REDACTED] on relevant parts and materials; and

- (ii) the Service Provider shall at all times act reasonably and shall use reasonable endeavours to price each Additional Service at the least possible additional cost to the Operator that it is reasonably and economically practicable for the Service Provider to offer.

## **9 Technical Support Personnel and Employment Arrangements**

### **9.1 Technical Support Personnel**

- (a) The Service Provider shall, during the Maintenance Period, ensure that the Technical Support Personnel are employed by the Service Provider on an exclusive and full time basis for the provision of the Technical Support Services. It is acknowledged that the Initial Technical Support Services shall be performed by the Service Provider utilizing thirty (30) full time equivalent technicians.
- (b) The Service Provider shall ensure that the Technical Support Personnel provide the Technical Support Service:
  - (i) with reasonable skill, care and competence; and
  - (ii) for 24 hours a day, 7 days a week.
- (c) The Technical Support Personnel shall provide the Technical Support Services at the Depot, and at such location as shall be necessary in the context of the Technical Support Services being provided at any location within the Northern Network.
- (d) The Technical Support Personnel shall be employed by the Service Provider. The Technical Support Personnel shall at all times during the provision of the Technical Support Services remain the responsibility of the Service Provider, including in relation to the payment of all wages, salaries, the provision of benefits, insurances, all contractual and statutory obligations and duties to the Technical Support Personnel (including in relation to management, appraisals and, if necessary, disciplining of and dealing with any grievances brought by Technical Support Personnel) and in relation to any corresponding obligations to third parties, and the Service Provider and agrees with each of the Operator and the Owner that the Technical Support Personnel will not become the responsibility or employee(s) of either the Operator or the Owner, save (in the case of the Operator) as a consequence of the Employment Regulations.
- (e) The Service Provider acknowledges and agrees that any information of a confidential nature which the Operator or Owner provides to the Technical Support Personnel in connection with the provision of the Technical Support Services or which they otherwise obtain during the provision of the Technical Support Services shall be covered by the definition of Confidential Information in this Agreement and the Service Provider shall procure that the Technical Support Personnel treat such information in accordance with the obligations of confidentiality set out in this Agreement.
- (f) The Service Provider shall indemnify and hold harmless the Operator against all Employment Losses which the Operator may incur arising from any breach of the Service Provider's duties and obligations in

respect of the provision of the Technical Support Services (including any third party claims, and excluding any losses arising out of the termination of employment at the direction of the Operator, as referred to in clause 9.1(g) and 9.2.10(a)) during the period in which the Service Provider provides the Services, including in relation to termination of such employment.

- (g) The Operator shall be entitled (on reasonable grounds) to require that any of the Technical Support Personnel be removed from the provision of the Technical Support Services in which case the Service Provider shall provide a suitable alternative replacement (subject to agreement between the Service Provider and the Operator regarding the identity and competence of such person) to carry out the Technical Support Services.
- (h) The Service Provider shall identify a Schedule of key personnel ("**Key Personnel**") who shall be employed by the Service Provider in the performance of the Services.
- (i) The Service Provider shall provide to the Operator an organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel one (1) month after the Commencement Date and shall update and provide to the Operator such chart within a reasonable time of any changes occurring.
- (j) The Service Provider and the Operator shall ensure that all Technical Support Personnel are from time to time properly trained in respect of all relevant discrimination and harassment obligations under all Applicable Laws and shall use all reasonable endeavours to ensure that no Technical Support Personnel act or omit to act in any manner which amounts to harassment or discrimination in respect of any Operator or Owner personnel.

## 9.2 **Employment Arrangements**

### 9.2.1 **Commencement of Services**

- (a) The Operator and the Service Provider acknowledge and agree that the commencement of this Agreement is not intended to give rise to a relevant transfer for the purposes of the Employment Regulations.

### 9.2.2 **Cessation of Services**

- (a) The Operator and the Service Provider acknowledge and agree that where all or part of the Services cease to be provided by the Service Provider or by a Sub-Contractor for any reason and all or part of the Services which the Service Provider or that Sub-Contractor ceases to provide are then provided by the Operator or by a third party contracted by the Operator (a "**Replacement Service Provider**") that there may be a relevant transfer (within the meaning of the Employment Regulations) of the Transferring Employees, such transfer to take effect from the Service Cessation Date on the terms set out in this clause 9.2. The Service Provider shall (and shall ensure that any Sub-Contractor will), within a reasonable time (in any event not to exceed 28 days) of any request by the Operator, provide the information as is required under clause 9.2.7 in respect of any employees who it reasonably believes would then be Transferring Employees (modified in such form

as required to comply with any Applicable Law regarding data privacy and/or confidentiality). The Service Provider shall (and shall ensure that any Sub-Contractor will) update the information in the event of any factual changes within a reasonable time (in any event not to exceed 28 days from the date of the change). The Service Provider shall warrant the material accuracy of any information provided to the Operator under this clause 9.2.2(a), except where the Service Provider relies on the information provided by a Sub-Contractor, where the Service Provider shall warrant to use its reasonable endeavours to ensure the Sub-Contractor provides materially accurate information.

- (b) Regardless of when they fall due for payment, all emoluments and outgoings in respect of the Transferring Employees (including without limitation all wages, holiday pay, bonuses, commissions, allowances, PAYE, National Insurance contributions, pension contributions and otherwise) which relate to the period:
  - (i) after the Service Cessation Date shall be borne by the Replacement Service Provider or the Operator, as appropriate; and
  - (ii) on or before the Service Cessation Date shall be borne by the Service Provider.
- (c) Except as provided in clause (d) below, the Service Provider shall indemnify the Operator for itself and/or as trustee for any Replacement Service Provider and hold it harmless from and against all Employment Losses arising out of any act, fault or omission on the part of the Service Provider, or any Sub-Contractor, in relation to the employment of the Transferring Employees and/or termination thereof on or before the Service Cessation Date, including in respect of any breach of Regulation 11 of the Employment Regulations by the Service Provider or any Sub-Contractor.
- (d) The Operator will indemnify the Service Provider for itself and/or as trustee for any Sub-Contractor for any Employment Losses incurred by the Service Provider and/or any Sub-Contractor in respect of any proposal by the Operator or any Replacement Service Provider prior to or following the Service Cessation Date to make a change which amounts or would amount to a repudiatory breach of contract of employment of any employee of the Service Provider or Sub-Contractor or is or would be a substantial change in working conditions to the material detriment of that employee as provided for by the Employment Regulations.
- (e) The Operator shall indemnify the Service Provider for itself and/or as trustee for any Sub-Contractor and hold it harmless from and against all Employment Losses arising out of any act, fault or omission on the part of the Operator or any Replacement Service Provider in relation to the employment of the Transferring Employees and/or the termination before or after the Service Cessation Date (including the obligation pursuant to Regulation 13(4) of the Employment Regulations), except to the extent that such Employment Losses arise from any breach of its obligations under 9.2.2(a) and/or clause 9.2.7.
- (f) If the contract of employment of any employee of the Service Provider or the Sub-Contractor who is not a Transferring Employee is found or

alleged to have effect on or after the Service Cessation Date as if originally made with the Operator or any Replacement Service Provider as a consequence of the Employment Regulations:

- (i) the Operator agrees that it or the Replacement Service Provider will immediately, or if not reasonably practicable to do so then as soon as reasonably practicable thereafter, notify the Service Provider in writing of the identity of the individual;
  - (ii) the Service Provider shall, if it wishes to do so, forthwith make an offer in writing to employ that individual under a new contract of employment; and
  - (iii) within seven (7) days of the offer referred to in clause 9.2.2(f)(ii) above being rejected (or at any time after the expiry of fourteen (14) days after notification by the Operator or the Replacement Service Provider if the offer is not made), but in any event within three (3) months following the Service Cessation Date, the Operator or any Replacement Service Provider may terminate the employment of the person concerned.
- (g) The Service Provider shall indemnify the Operator for itself and/or as a trustee for any Replacement Service Provider against any Employment Losses incurred in connection with the employment of any person referred to in clause 9.2.2(f) on or after the Service Cessation Date until such termination or, if the Service Provider or Sub-Contractor does not exercise its right to terminate under clause 9.2.2(f)(iii), three (3) months following the Commencement Date and in connection with that termination, including any liabilities or costs relating to that person which transfer to the Operator or any Replacement Service Provider under the Employment Regulations. The Service Provider shall also indemnify the Operator for itself and/or as trustee for any Replacement Service Provider in relation to any Employment Losses which the Operator or any Replacement Service Provider may inherit as a result of the acts or omissions of the Service Provider in relation to any employee of the Service Provider or a Sub-Contractor who is not a Transferring Employee who, prior to the Service Cessation Date, was engaged in the provision of the Services (provided always that the Operator shall use reasonable endeavours to minimise any such Employment Losses).
- (h) Clause 9.2.2 shall survive termination of this Agreement however it arises and whether or not either party has broken a fundamental term of this Agreement.

### **9.2.3 Agreements with third parties**

If any part of the Services is to be provided to the Operator by any Sub-Contractor, the Service Provider shall ensure that the terms of this clause 9.2 are repeated in any Sub-Contract, incorporating such essential changes as are necessary to ensure the sense of the clause.

### **9.2.4 Indemnities cumulative**

The Service Provider's and the Operator's respective liabilities in this clause 9.2 shall be severable and cumulative.

### 9.2.5 Prohibited Employment Acts

- (a) Neither the Service Provider nor its Sub-Contractors or agents shall:
  - (i) in the event of notice of termination of this Agreement for any reason with effect from the date on which such notice is given;
  - (ii) from a date six months before the end of the Maintenance Period; or
  - (iii) in the event of notice of termination of some or all of the Services for any reason with effect from the date on which such notice is given,

carry out a Prohibited Employment Act without the Operator's prior consent, provided that the Service Provider or its Sub-Contractors or agents will be entitled to do so without the Operator's consent if it is to give effect to any pre-existing contractual obligations to any such Relevant Employees.

- (b) The Prohibited Employment Acts are:
  - (i) the termination of the employment of any employee of the Service Provider or a Sub-Contractor who is employed wholly or mainly in the provision of the Services at the time that the notice referred to in clause 9.2.5(a)(i) or clause 9.2.5(a)(iii) is given or the date referred to in clause 9.2.5(a)(ii) is reached (a "**Relevant Employee**") for any reason whatsoever except for gross misconduct, gross negligence or repeated (after warning) poor performance;
  - (ii) the alteration or change in any way of any terms and conditions of employment of any Relevant Employee (whether with or without the consent of such Relevant Employee);
  - (iii) the recruitment (except as a replacement for a Relevant Employee whose employment is terminated and where the replacement is being recruited on terms which are not materially better than the terms of the employee being replaced) of any employee to provide the Services or any part of the Services except where the Operator's prior written consent has been given, in which case such employees will be deemed to be Relevant Employees;
  - (iv) the relocation or assignment to new duties of any Relevant Employee; and
  - (v) the assignment or deployment of any employee of the Service Provider or its Sub-Contractor who is not already engaged in the provision of the Operator Services to the provision of the Services.

### 9.2.6 Relevant Employees

Within 14 days following the date that the notice referred to in clause 9.2.5(a)(i) is given, the date referred to in clause 9.2.5(a)(ii) or the date referred to in clause 9.2.5(a)(iii) is reached, the Service Provider shall provide to the Operator a list of the names of the Relevant Employees.

### 9.2.7 Personnel records

- (a) If clause 9.2.2 applies and without prejudice to 9.2.2(a) not later than 28 days before the Service Cessation Date the Service Provider shall (and shall ensure that any Sub-Contractor will), to the extent that it is able to do so without breaching any other legal obligation in which case the Service Provider shall use all reasonable endeavours to procure such disclosure without breach of obligation, deliver promptly or procure the delivery to the Operator copies of all personnel and employment records (including without limitation national insurance and PAYE records), including full particulars of:
  - (i) each Relevant Employee, including name, sex, age, job title and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
  - (ii) terms and conditions of employment of each Relevant Employee;
  - (iii) all payments, benefits or changes to terms and conditions of employment promised to any Relevant Employee;
  - (iv) benefits (including bonuses), whether contractual or discretionary;
  - (v) dismissals of Relevant Employees or termination of employment effected within the previous 12 months and disciplinary records relating to Relevant Employees;
  - (vi) working arrangements relating to shift patterns and hours worked;
  - (vii) all agreements or arrangements entered into in relation to the Relevant Employees between the Service Provider or any relevant Sub-Contractor or relevant employer and any trade union or association of trade unions or organisation or body of employees including elected representatives;
  - (viii) all strikes or other industrial action taken by any Relevant Employee within 12 months of the date of termination of this Agreement; and
  - (ix) any other information which is employee liability information for the purposes of Regulation 11 of the Employment Regulations.
- (b) It is expressly acknowledged that the Operator may pass such documentation over to any Replacement Service Provider and the Operator will use reasonable endeavours to ensure that the Replacement Service Provider undertakes to keep such information confidential.

### 9.2.8 Consultation

- (a) If the Employment Regulations apply on the Service Cessation Date, the Service Provider shall (and shall procure that any Sub-Contractor will) comply with its obligations to inform and consult with the Transferring Employees, including without limitation, under Regulation 13 of the Employment Regulations, the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005.

- (b) The Operator shall (and shall procure that any Replacement Service Provider will) as soon as reasonably practicable, but in any event in accordance with the Employment Regulations, before the Service Cessation Date provide to the Service Provider such information in writing as is necessary concerning any measures (within the meaning of Regulation 13 of the Employment Regulations) that the Operator envisages taking in relation to any Transferring Employees to enable the Service Provider to discharge its obligations under Regulation 13 of the Employment Regulations and clause 9.2.9.
- (c) The Service Provider shall enable and assist the Operator and any Replacement Service Provider to communicate with and meet Transferring Employees and their trade union or employee representatives as the Operator may reasonably request, and the Operator shall indemnify the Service Provider for itself and/or as trustee for any Sub-Contractor against any Employment Losses arising as a result of the communications made by the Operator and any Replacement Service Provider to the Transferring Employees.
- (d) The Service Provider shall cooperate with the Operator and any Replacement Service Provider to the extent the Operator may reasonably require to ensure a smooth transition from an employee relations and operation perspective on the Service Cessation Date.

#### **9.2.9 Service Provider indemnity**

The Service Provider shall indemnify the Operator and any Replacement Service Provider, on demand against all Employment Losses arising out of any claim by any trade union, works council, staff association, worker representative (whether or not recognised by the Service Provider or relevant Sub-Contractor) or Relevant Employee, arising out of a failure or alleged failure by the Service Provider or relevant Sub-Contractor to comply with its statutory and contractual obligations to consult (including but not limited to the obligations under Regulation 13 of the Employment Regulations, Sections 188 to 192 of the Trade Union and Labour Relations (Consolidation) Act 1992, the Pensions Act 2004 and the Transfers of Employment (Pension Protection) Regulations 2005) save to the extent that such failure arises directly and solely from a failure by the Operator to comply with its obligations hereunder.

#### **9.2.10 Removal of Employees**

- (a) The Operator shall be entitled to direct that any employee of the Service Provider or Sub-Contractor engaged in providing the Services be removed from working in connection with this Agreement if, in the reasonable opinion of the Operator, he or she misconducts themselves, is incompetent or negligent in the performance of his or her duties, act in a manner which is or may be prejudicial to safety or should be moved for other good cause. The Service Provider shall promptly comply with any such direction.
- (b) The removal of any person pursuant to clause 9.2.10(a) above shall be without prejudice to the Service Provider's obligations under this Agreement.

- 10      **TSSSA Services Management**
- 10.1     The parties agree to comply with their respective obligations as to TSSSA services management set out in Schedule 7.
- 10.2     Where the Operator is required or entitled to attend meetings pursuant to the terms of this Agreement, including the meetings described in Schedule 7, it shall have the right at all times to be accompanied by a representative or representatives of the Secretary of State.
- 11      **Train Availability and Reliability Regime (TARR)**
- The Service Provider and the Operator will comply with the provisions of Schedule 4 (Train Availability and Reliability Regime).
- 12      **Parent Company Guarantee**
- The Service Provider shall ensure that a fully executed Parent Company Guarantee is provided to the Operator and Owner (as joint beneficiaries) on or before the date of this Agreement.
- 13      **Service Payments**
- 13.1     **Standard Service Payment and Additional Service Payment**
- The Operator shall, in respect of each Reporting Period, pay to the Service Provider the aggregate of:
- (a)    the Standard Service Payment, calculated in accordance with clause 13.2; and
- (b)    the Additional Service Payment, calculated in accordance with clause 13.3.
- 13.2     **Standard Service Payment**
- The Operator shall pay the Service Provider in arrears the Standard Service Payment in respect of each Reporting Period following the Commencement Date calculated in accordance with Schedule 2.
- 13.3     **Additional Service Payment**
- The Operator shall, in respect of each Reporting Period following the Commencement Date, pay the Service Provider in arrears the Additional Service Payment in respect of that Reporting Payment, determined in accordance with clause 8 and Schedule 2.
- 13.4     **Invoicing**
- (a)    The Service Provider shall submit:
- (i)    an invoice (setting out in reasonable detail a description of the Services performed and the Standard Service Payment related thereto) to the Operator within twenty (20) Working Days of the end of the Reporting Period to which it relates; and
- (ii)    an invoice (setting out in reasonable detail a description of the Additional Service performed and the Additional Service Payment related thereto) to the Operator within twenty (20) Working Days of the end of the Reporting Period to which it relates.

- (b) The Operator shall, subject to receipt by it of an appropriate invoice in accordance with clause 13.4(a) and the provisions of clause 13.9, pay to the Service Provider within thirty (30) calendar days of receipt of such invoice, the amount set out therein as due and payable.

### 13.5 Method of Payment

- (a) Subject to clause 13.5(b), all payments required to be made under this Agreement will be made on the due date in cleared funds to such account at a bank in the United Kingdom as the payee shall have notified to the payer by not less than three (3) Working Days' notice, free and clear of any deduction, withholding, or counterclaim whatsoever except to the extent deduction is required by Applicable Laws and Standards. If the due date for any payment falls on a day which is not a Working Day, payment shall be made on the next Working Day thereafter unless such day would fall in another Reporting Period, in which case payment shall be made on the immediately preceding Working Day.
- (b) If any party is required by law to make any deduction or withholding from any payment hereunder (such party referred to herein as the **Payer**), it shall do so and the sum due from the Payer in respect of such payment shall be increased to the extent necessary to ensure that, after the making of such deduction or withholding, the party to whom such payment is due (such party referred to herein as the **Payee**) receives and retains (free of any liability in respect of any such deduction or withholding) a net sum equal to the sum it would have received and retained had no deduction or withholding been required to be made.
- (c) If following the making of any deduction or withholding in respect of sums payable hereunder and the payment by the Payer of any increased amount in accordance with the provisions of clause 13.5(b), the Payee receives or is granted a credit against, remission for or repayment of any Tax payable by it, which credit, remission or repayment is referable to that increased amount so paid by the Payer, the Payee shall, to the extent that it is satisfied that it can do so without prejudice to the retention of such credit, remission or repayment, reimburse the Payer with such amount as the Payee shall certify to be the proportion of such credit, remission or repayment as will leave the Payee (after such reimbursement and taking into account the time any Taxation was payable and any such credit, remission or repayment was received by the Payee) in no worse or no better position (after Taxation) than it would have been in had there been no such deduction or withholding from the said sums payable by the Payer hereunder. Such reimbursement shall be made as soon as possible upon such credit or remission or repayment having, in the reasonable opinion of the Payee, been received or granted.

### 13.6 Default Interest

- (a) If either the Service Provider or the Operator fails to pay any amount payable under this Agreement on the date when it is due, interest will accrue (both before and after judgement) on such unpaid amount from day to day (compounding in each successive Reporting Period) during the period commencing on the due date and ending on the date of payment in full, at the Default Interest Rate. All such interest will be

calculated on the basis of the actual number of days elapsed and a 365 day year and will be payable on demand of the non-defaulting party.

- (b) The Late Payment of Commercial Debts (Interest) Act 1998 and related regulations (as from time to time amended, extended or re-enacted) shall not apply to the late payment of any sums due under this Agreement.

#### **13.7 Payments in Sterling**

All payments to be made pursuant to this Agreement are denominated in, and shall be made in, Sterling.

#### **13.8 Taxes on indemnity payments**

If and to the extent that any sums payable by the Operator or Service Provider to the other (as applicable) under this Agreement by way of indemnity prove to be insufficient, by reason of any Taxation suffered thereon, for the receiving party to discharge its corresponding liability to a third party, the paying party shall on the receiving party's demand pay to the receiving party such additional sum as (after taking into account any Relief to which the receiving party is entitled as a result of the liability which gives rise to the indemnity and any Taxation suffered by the receiving party on the additional sum and the time that the same is suffered) shall be required to make up the relevant deficit.

#### **13.9 Disputed Invoices**

The Operator shall notify the Service Provider in writing of any disputed amounts or invoices stating the reasons for such dispute within ten (10) Working Days of receipt of such invoice.

#### **13.10 No Set-Off**

Unless expressly stated otherwise in this Agreement no party shall be entitled to set off any liability for payment under this Agreement against any sum owed to it by the other parties under this Agreement.

#### **13.11 VAT**

- (a) All payments made or to be made under this Agreement, unless expressly stated otherwise, are exclusive of any Value Added Tax chargeable thereon or by reference thereto. If any payment hereunder constitutes the whole or part of the consideration for a taxable or deemed taxable supply (whether that supply is taxable pursuant to the exercise of an option or otherwise), an amount shall be paid on demand by the party which receives the supply to the party making such supply in addition to that payment which is equal to the amount of Value Added Tax which is chargeable in respect of the taxable or deemed taxable supply in question and the party making the supply shall provide the party which receives it with an appropriate Value Added Tax invoice in respect thereof.
- (b) Where under this Agreement one party has agreed to reimburse or indemnify another party in respect of any payment made or cost incurred by the other then the first party shall also reimburse the VAT paid by such other party which forms part of its payments made or cost incurred to the extent that such VAT is not available for credit (whether

by way of set-off or repayment) by such other party under ss 24 - 26 (inclusive) of the Value Added Tax Act 1994 or any regulations made thereunder or any similar or equivalent legislation replacing or introduced in addition to the same.

**13.12 Indexation**

The Standard Service Payment shall be indexed in accordance with Schedule 2.

**14 Removing Units from service**

**14.1** The Service Provider acknowledges that when it or the Manufacturer wishes to take a Unit out of revenue earning service to rectify a Fault (or a Fault as defined in the MSA) then no work shall be undertaken on a Unit to remedy a Fault unless:

- (i) in respect of work that will require the relevant Unit to be out of revenue earning service for up to one (1) day or in the case of an emergency, the parties have consulted in good faith with a view to finding a mutually convenient time for such Unit to be taken out of revenue earning service;
- (ii) save as provided in clause 14.1(i) above, in respect of work that will require the relevant Unit to be out of revenue earning service for up to one (1) week, at least four (4) weeks' notice has been given to the Operator in writing of the date on which such work is to begin; or
- (iii) save as provided in clauses 14.1(i) or 14.1(ii) above, in respect of work that will require the relevant Unit to be out of revenue earning service for up to two (2) weeks, at least eight (8) weeks' notice has been given to the Operator in writing of the date on which such work is to begin; or
- (iv) in respect of work that will require the relevant Unit to be out of revenue earning service for more than two (2) weeks, at least twelve (12) weeks' notice has been given to the Operator in writing of the date on which such work is to be begin; and
- (v) the Operator has agreed the timetable for the work to remedy the Fault including the maximum downtime each Unit will be away and unavailable for revenue earning service.

**14.2** The Service Provider shall procure that the Manufacturer complies with this clause 14.

**14.3** This clause 14 is without prejudice to the operation of the TARR. The agreement by the Operator to a Unit being taken out of revenue earning service shall not relieve the Service Provider of its obligations or the Operator of its rights pursuant to the TARR.

**15 Variation Procedure**

**15.1** Unless otherwise agreed by the parties in writing, any proposed variation to this Agreement shall be made in accordance with the Variation Procedure set out in Schedule 8.

- 15.2 Once agreed pursuant to the Variation Procedure, any Variations shall be implemented in accordance with the Operator's safety management system.
- 15.3 The parties shall collaborate in good faith to identify opportunities for improvements to the Manuals, to be implemented pursuant to the Variation Procedure, and the Operator and Service Provider shall, unless otherwise specified in this Agreement, share the benefits of any cost savings arising out of Variations initiated under this clause 15.3 on the following basis:
- (a) where the cost savings relate to materials, the Service Provider shall receive seventy five per cent [REDACTED] of such savings and the Operator shall receive twenty five per cent [REDACTED] of such savings; and
  - (b) where the cost savings relate to labour, the Service Provider shall receive twenty five per cent [REDACTED] of such savings and the Operator shall receive seventy five per cent [REDACTED] of such savings.

## 16 **Force Majeure**

- 16.1 No party to this Agreement shall be in breach of its obligations under this Agreement to the extent that it is unable to perform its obligations in whole or in part by reason of the occurrence of a Force Majeure Event. This shall not affect payment obligations.
- 16.2 If any party seeks to rely on this clause 16, it shall immediately give notice to the other parties with full particulars of the act or matter claimed as a Force Majeure Event. The party so affected shall use all reasonable endeavours to mitigate the effect of the Force Majeure Event and to continue to perform its obligations under this Agreement and keep the other parties informed of those steps. Such party shall in addition notify the other parties of any proposals, including any reasonable alternative means for performance of the affected obligations. If, at the request of the Operator, the Service Provider agrees to incur expenditure on steps to mitigate or limit the damaging effects of a Force Majeure Event which it would not, had the Force Majeure Event not occurred, otherwise have incurred in performing its obligations under this Agreement then the Operator shall pay an amount to the Service Provider equal to that excess.
- 16.3 If one or more Force Majeure Events occur which prevent the Service Provider from carrying out all (or substantially all) of its obligations under this Agreement for more than one hundred and eighty (180) days, the Operator may, following consultation with the Service Provider with a view to resolving the matter for a period of not less than thirty (30) days, terminate this Agreement by thirty (30) days' notice in writing to the Service Provider.
- 16.4 Notwithstanding the provisions of this clause 16, the party whose performance is affected shall use all reasonable endeavours to mitigate the effects of the event(s) affecting performance.

## 17 **Service Provider Relief**

The Service Provider shall not be in breach of its obligations under this Agreement to the extent that such breach was attributable to:

- (a) any work carried out by the Operator or any third party employed by the Operator in accordance with this Agreement or otherwise, and/or

- (b) the Operator failing to provide reasonable Depot space for the Service Provider to carry out its obligations, in breach of the Operator's obligations under this Agreement.

## **18 Intellectual Property Rights**

### **18.1 TSSSA IPR**

- (a) All TSSSA IPR shall remain vested in the Service Provider or its licensors or shall be owned by and unconditionally vest on their creation in the Service Provider or such third party as the Service Provider may direct.
- (b) The Service Provider hereby warrants that it shall be the owner, or the licensee (with a right to sub-licence) of all TSSSA IPR.
- (c) The Service Provider hereby warrants that the use of the TSSSA IPR by the Operator, the Owner and/or their respective sub-licensees as permitted under this Agreement shall not infringe any third party intellectual property rights. The Service Provider shall be liable to the Operator and Owner for any infringement or alleged infringement of any third party intellectual property rights and the consequences thereof arising out of a breach by the Service Provider or its Sub-Contractors of its obligations or warranties under this Agreement or where the infringement arises out of the proper use as permitted under this Agreement by the Operator, the Owner and/or their respective sub-licensees of the TSSSA IPR and the Service Provider hereby indemnifies and shall keep indemnified and hold harmless the Operator and Owner against all actions, claims, loss and damages and costs (including legal costs) arising from or claimed by, any third party in relation to such infringement or alleged infringement or breach (whether or not reasonably foreseeable as a result of the infringement, alleged infringement or breach).
- (d) The indemnity given in clause 18.1(c) by the Service Provider shall not apply to the extent that the relevant actions, claims, loss or damages and costs (including legal costs) suffered by a party are due to a breach by that party of any of its obligations under this Agreement or any modifications or additions made by that party without the consent of the Service Provider to any Spare or to any TSSSA IPR.

### **18.2 Licences**

- (a) The Service Provider hereby grants (or shall procure the grant) to each of the Operator and Owner a royalty-free, irrevocable, unconditional, perpetual licence (together with the right to sub-license) to use all TSSSA IPR:
  - (i) to use and operate the Units (including staff training);
  - (ii) to maintain, service, repair, refurbish and overhaul the Units, and to have such actions performed by a third party;
  - (iii) if this Agreement has expired or been terminated or where and to the extent that the Operator is entitled to place work with a reputable and competent third party pursuant to the terms of this Agreement, or where and to the extent that such actions are

outside the scope of the Service to be performed under this Agreement:

- (A) to manufacture, modify, or convert any parts or equipment which are not supplied by the Service Provider under this Agreement and which are or shall be for use in connection with the Units, including enabling any of the above to be connected to other railway vehicles, or have such actions performed by a third party; and/or
- (B) to invite tenders for parts or services, or have such actions performed by a third party which is not a Direct Competitor,

in each case subject to the proviso that, where performance under this clause 18.2(a)(iii) requires the use of any third party Intellectual Property Rights, then the licence granted pursuant to this clause 18.2(a)(iii) shall only be granted to the extent that the Service Provider is entitled to grant such a licence upon the above terms having used reasonable endeavours to do so; and

- (iv) in circumstances where either the Service Provider has suffered an Insolvency Event or has otherwise been liquidated, wound-up or has ceased to carry on its business, to manufacture spares or any other equipment for use in the maintenance, service, repair, overhaul, refurbishment, modification, conversion, or adaptation of the Units, or have such actions performed by a reputable and competent third party (which is not a Direct Competitor), in each case subject to the proviso that, where performance under this clause 18.2(a)(iv) requires the use of any third party Intellectual Property Rights, then the licence granted pursuant to this clause 18.2(a)(iv) shall only be granted to the extent that the Service Provider is entitled to grant such a licence upon the above terms having used reasonable endeavours to do so.
- (b) Notwithstanding the provisions of any other clause, the Service Provider's liability to the Operator and Owner under the indemnity in clause 18.1(b) shall not be subject to any limitation or restriction whatsoever, whether financial or otherwise.
- (c) No rights under this Agreement shall be granted to a party in (or to use) any of the trademarks of another party unless otherwise as expressly set out in this Agreement.
- (d) Neither the Operator nor the Owner shall not be entitled to sub-licence or assign any TSSSA IPR to any person who is:
  - (i) a manufacturer of rolling stock; or
  - (ii) a member of a group which includes a company or companies that manufacture rolling stock,

without the prior written consent of the Service Provider (not to be unreasonably withheld or delayed) other than following an Escrow Release Event when a sub-license shall be permitted without the consent of the Service Provider.

- (e) The provisions of this clause 18.2 shall survive termination of the Agreement for whatever reason.

## 19 Warranties

19.1 The Service Provider warrants and undertakes to each of the Operator and Owner that:

- (a) it shall at all times comply (and ensure that all Sub-Contractors shall at all times comply) with the Operator's Code of Conduct as set out in Schedule 11;
- (b) it is selling the Spares provided under this Agreement with full title guarantee and free and clear of all encumbrances;
- (c) it is able and has taken all necessary action: (i) to sell the Spares to the Operator; and (ii) to make available or license to the Operator and Owner all relevant TSSSA IPR referred to in clause 18;
- (d) the entering into and performance of this Agreement by the Service Provider has not involved any breach of covenant, term or condition of any other contract by it;
- (e) the Spares are complete and in all respects in satisfactory working order and condition to perform in accordance with its specification and all safety regulations (including the Operator's safety management system) and all Applicable Laws and Standards in relation to such item have been complied with and all required or recommended safety apparatus or appliances (if any) have been properly installed;
- (f) each Spare is Fit for Purpose; and
- (g) as far as it is aware, and having made all reasonable and proper enquiries, there are no outstanding disputes, claims or proceedings relating to or arising from this Agreement or the construction, testing, supply, delivery, condition, possession or operation of any Spare with any Sub-Contractor or any other person involving the Service Provider.

## 19.2 Third Party Warranties

The Service Provider shall extend to the Operator the benefit of any guarantee, condition or warranty which may have been expressly given to it in respect of any Spare, and shall use its reasonable endeavours to extend to the Operator the benefit of any guarantee, condition or warranty which may have been expressly given to it by any other person in respect of any Spare.

## 19.3 General Warranty

- (a) Without prejudice to the Operator's rights under the TARR and save to the extent that the Manufacturer does so, the Service Provider shall, at its own expense, as soon as is reasonably practicable having become aware or being notified of any Fault make good any Fault which occurs in any Spare in the period of twelve [REDACTED] following its supply to the Operator or use, provided that the Service Provider is given sufficient access to the relevant Spare for these purposes. The Operator shall notify the Service Provider in writing as soon as reasonably practicable after it becomes aware of such Fault.
- (b) In respect of any Fault, if either:
  - (i) such Fault is not remedied within seven (7) days (or such longer period as the parties may agree is reasonable to remedy such

Fault) of being notified to the Service Provider by the Operator (except where such failure to remedy is due to the occurrence of a Force Majeure Event); or

- (ii) the Service Provider has not put forward a plan satisfactory to the Operator (each acting reasonably) for rectification of such Fault within seven (7) days of the Fault being notified to the Service Provider by the Operator (save where the reason the Service Provider has not rectified the Fault is due to the occurrence of a Force Majeure Event),

the Operator may, unless the Manufacturer is taking reasonable steps to remedy the Fault, proceed to remedy or have remedied the Fault at the Service Provider's expense.

- (c) The warranty set out in this clause 19.3 shall not apply to any Spare which is acquired by the Operator from a third party or otherwise in any way other than pursuant to this Agreement or the MSA.

## 20 **Liabilities and indemnity**

### 20.1 **Indemnity**

Subject to clause 22.3, the Service Provider shall be liable for, and shall indemnify on an after-tax basis each of the Operator and Owner, including any of their respective employees, servants, agents, sub-contractors, directors and officers against all expense, liability, loss and claims suffered or incurred by the Operator or Owner in respect of:

- (a) death or personal injury to any person to the extent arising from the performance or non-performance of the Service Provider's obligations under this Agreement;
- (b) loss of or damage to property (including property belonging to the Operator or Owner, or for which it is responsible) to the extent arising from the performance or non-performance of the Service Provider under this Agreement;
- (c) the negligence, breach of contract or breach of statutory duty or wilful misconduct by the Service Provider, its employees, servants, agents, Sub-Contractors, directors or officers, except to the extent that:
  - (i) such expense, liability, loss or claim is due to the negligence, breach of this Agreement or statutory duty or wilful misconduct, in respect of any of the foregoing, of the party claiming an indemnity Operator or any of its employees, servants, agents, sub-contractors, directors or officers; or
  - (ii) in the case of the Operator, the Operator has been compensated for such expense, liability, loss or claim by the payment of liquidated damages pursuant to this Agreement; and
- (d) all third party claims arising from the non-performance of the Service Provider under this Agreement;
- (e) all claims in respect of environmental damage relating to the performance or non-performance of the Service Provider under this Agreement.

This clause 20.1 shall survive the termination of this Agreement however arising.

**20.2 No Double Recovery**

No party shall be entitled to recover (by way of indemnity or otherwise) more than once in respect of the same loss or damage suffered by it under this Agreement or the MSA.

**20.3 Notification of claims procedures and assistance in defending claims**

- (a) Each party shall, as soon as reasonably practicable, notify the others of any actual or threatened claim (of whatever nature) in respect of which a party may seek to be indemnified and held harmless by either of the others under the provisions of this Agreement.
- (b) In respect of the subject matter of a claim against the Operator or Owner for which the Operator or Owner is indemnified by the Service Provider under this Agreement, the Operator or Owner (as the case may be) shall:
  - (i) have the right to conduct all negotiations and court, tribunal or other proceedings in respect of such actual or threatened claim, at the cost of the Service Provider;
  - (ii) keep the Service Provider fully informed and consult with it about the conduct of the claim and comply with the reasonable requirements of the Service Provider in respect of such claims, but the Service Provider shall not be entitled to defend or conduct any claim in its own name;
  - (iii) not admit, settle or compromise any claim in respect of which it may seek to be indemnified by the Service Provider under this Agreement without the consent of the Service Provider (such consent not to be unreasonably withheld or delayed).
- (c) The parties shall give to each other and their respective advisers such co-operation, access and assistance as each may reasonably require in defending claims in respect of which a party seeks to be indemnified by another party under this Agreement.
- (d) Where a party makes a claim under any indemnity arising under this Agreement, that party shall take reasonable steps to avoid or mitigate the loss and/or damage in respect of which such claim is made and the party against which such claim is made shall not be liable in respect of any incremental costs to the extent such costs are incurred as a result of the party making such claim failing to take such steps.

**20.4 Claims Allocation and Handling Procedure**

In relation to any apportionment of liability as between the Operator and the Service Provider, nothing in the CAHA shall affect the apportionment of liability and indemnity provisions set out in this Agreement.

**21 Insurance**

- 21.1** Without prejudice to clause 20.1, the Service Provider must maintain in full force and effect and at its own cost and with reputable insurers the following insurances:

- (a) all risks property insurance against physical loss of or damage to the Spares which shall:
  - (i) be for an amount not less than the replacement cost of the Spares;
  - (ii) be maintained whilst such Spares are in the care, custody and control of the Service Provider; and
  - (iii) include all risks cover in relation to the Spares whilst the same are in transit (including any air or marine transit) from Spain to the United Kingdom, such cover being provided for the full reinstatement value of the insured property;
- (b) employer's liability cover which complies with the Employer's Liability (Compulsory Insurance) Act 1969 and any statutory orders made thereunder or any amendment or re-enactment thereof of not less than [REDACTED] for any one occurrence or series of occurrences consequent upon one such event or original cause;
- (c) public and product liability insurance in respect of the Service Provider's liability for death or injury to any person (other than the employees of the Service Provider) and loss or damage to any property (excluding the Spares to be supplied by the Service Provider under this Agreement) in an amount of not less than [REDACTED] [REDACTED] for any one occurrence or series of occurrences consequent upon one event or original cause and annually in the aggregate shall not exceed [REDACTED] and
- (d) professional indemnity insurance in an amount of at least [REDACTED] [REDACTED] for any one occurrence.

For the avoidance of doubt, the minimum amounts of cover stated above shall not be altered except by agreement between the parties. The insurances required to be obtained by the Service Provider pursuant to this clause 21.1 are hereinafter called **Service Provider Insurances**.

- 21.2 The Service Provider shall from time to time upon request by the Operator provide the Operator with evidence satisfactory to the Operator (and the Operator agrees that a confirmation to this effect from a duly authorised officer from the Service Provider's in-house insurance department shall constitute satisfactory evidence) that any premiums which have become payable in respect of the insurances have been paid in accordance with the terms of the relevant policy. In addition the Service Provider shall furnish to the Operator, as and when required by the Operator, certificates of brokers or other evidence which shows to the satisfaction of the Operator acting reasonably that the requirements of this clause 21 as to Service Provider Insurances are being complied with.
- 21.3 The Service Provider shall not, without the prior written consent of the Operator, prejudice the Service Provider Insurances or any recovery thereunder or create or permit to exist any encumbrance over such insurances.
- 21.4 If the Service Provider Insurances in accordance with the requirements of clause 21.1 are not maintained in full force and effect and in accordance with

the provisions of this Agreement, the Operator, without prejudice to any other rights it may have, shall be entitled (but not bound) to pay the premiums due (to the extent that the premiums payable by the Service Provider in relation to the Service Provider Insurances can be separately identified from insurance premiums generally paid by the Service Provider) or to take out and maintain new insurances complying with the requirements of clause 21.1 in such form as the Operator may reasonably require, and any reasonable sums so expended by the Operator shall become immediately due and payable to the Operator by the Service Provider together with interest thereon at the Default Interest Rate from the date of notification of incurring such expenditure by the Operator until the date of reimbursement thereof by the Service Provider (both before and after any relevant judgment).

21.5 All Service Provider Insurances pursuant to clause 21.1(a) shall:

- (a) name the Operator as additional insured (the **Additional Insured**) for its respective rights and interests; and
- (b) include a joint insured's clause in substantially the following terms (or the equivalent in the Spanish language):

*"It is noted and agreed that the Insured comprises more than one party, each operating as a separate and distinct entity and that cover hereunder shall apply in the same manner and to the same extent as if individual insurances had been issued to each such party.*

*The rights and indemnity of any of the parties who are not guilty of any act of neglect, error or omission, fraud, material misrepresentation, material non-disclosure or any breach of any term or any condition of this Policy shall not be prejudiced by any act of neglect, error or omission, fraud, material misrepresentation, material non-disclosure or by any breach of any term or any condition of this Policy by any other insured party.*

*Provided always that nothing herein shall increase the limit of liability under this Policy."*

21.6 All Service Provider Insurances in respect of public and product liability risks described in clauses 21.1(c) shall:

- (a) include a provision whereby the insurers agree to indemnify in terms of such insurances the Operator and its directors, employees, agents and servants against legal liability in respect of which the Service Provider is liable to indemnify the Operator under the terms of this Agreement;
- (b) be primary to and without right of contribution from any other insurance which may be available to the Operator;
- (c) without prejudice to accepted exclusions, be without exclusion of liability for loss of or damage to property or death of or injury or illness to persons arising out of defects in any Spare; and
- (d) not contain a provision pursuant to which the Operator would be liable for any premiums in respect thereof.

21.7 All Service Provider Insurances referred to in clause 21.1 shall:

- (a) provide that the Additional Insured will not be liable for any premiums in respect thereof, save that the insurers may set-off any unpaid premiums due to them against any monies payable by them under the insurance;
- (b) provide that such insurances shall continue unaltered for the benefit of the Additional Insured, for at least thirty (30) days after written notice by recorded delivery to the Additional Insured's respective addresses as last notified to the insurers of any cancellation, change or modification which materially affects the interests of the Additional Insured or lapse by reason of non-payment of premium or instalment or otherwise has been received by the Additional Insured;
- (c) provide for such insurance to cover the risk of terrorism provided that such cover is available in the normal insurance markets and on terms and at a premium which is reasonable and provided further that the insurers agree that cover will extend to the terms of this clause 21; and
- (d) provide that the insurers shall not waive any right of recourse and/or subrogation that they may have or acquire against any insured.

## 22 **Limitations of Liability**

22.1 In all cases the party establishing or alleging a breach of this Agreement shall be under a duty to use reasonable endeavours to mitigate the loss which has occurred or may occur as a result thereof.

22.2 Without prejudice to any party's rights under the terms of this Agreement, no party shall be liable to another party to this Agreement by way of indemnity, or by reason of any breach of statutory duty or by reason of tort (including but not limited to negligence) for:

- (a) any loss of profit, loss of use, loss of production, or loss of contracts (whether direct, indirect or consequential); or
- (b) any other like form of other indirect or consequential losses.

## 22.3 **Caps and Sub-Caps**

- (a) Except in respect of the Service Provider's liability:
  - (i) in respect of personal injury or death (which shall be subject to no limit) in accordance with clause 20.1(a) and any other liability which cannot lawfully be limited or excluded;
  - (ii) in respect of fraud, deceit or breach of the obligations arising from Section 12 of the Sale of Goods Act 1979;
  - (iii) in respect of infringement of third party intellectual property rights as set out in clause 18;
  - (iv) in respect of the cost of rectifying Faults in accordance with clause 19;
  - (v) to pay any reasonable sums expended by the Operator under clause 21.4 together with any interest thereon; and
  - (vi) up to the value of the Service Provider's insurances, as provided for in this Agreement;

which liability shall be unlimited (or limited where specified in accordance with such clauses), the Service Provider's aggregate liability under this Agreement, in respect of any Contract Year, whether arising in contract, tort or otherwise shall not exceed [REDACTED] of the aggregate Standard Service Payment and Additional Service Payment in respect of that Contract Year.

- (b) Subject to clause 22.3(c), the Operator's aggregate liability under this Agreement, in respect of any Contract Year, whether arising in contract, tort or otherwise shall not exceed [REDACTED] of the aggregate Standard Service Payment and Additional Service Payment in respect of that Contract Year.
- (c) Nothing in this Agreement shall limit or exclude the Operator's liability under this Agreement:
  - (i) for personal injury, death or fraud; or
  - (ii) to make payments under clause 13.
- (d) The limitations on liability set out in this clause are without prejudice to the Operator's right to terminate this Agreement under clause 23.

## 23 Service Provider Events of Default

The Operator may, subject to clause 3(d), terminate this Agreement forthwith by a notice in writing (in the form set out at Schedule 5) signed by the Operator to the Service Provider should any of the following occur:

- (a) if the Service Provider or the Guarantor suffers an Insolvency Event; or
- (b) if the Service Provider is in breach (except to the extent that such breach results from a Force Majeure Event) of any obligation under this Agreement in any material respect or is in Persistent Breach of any obligation under this Agreement (except to the extent that such breach results from a Force Majeure Event) and, if such breach is capable of remedy, the breach is not remedied by the Service Provider after having been required to do so by notice from the Operator to the Service Provider by such date as is specified in the notice which shall not be less than thirty (30) days from the date of such notice; or
- (c) if the Service Provider fails to effect and maintain the insurances required by clause 21;
- (d) if the Parent Company Guarantee becomes wholly or partly invalid or unenforceable for any reason whatsoever; or
- (e) the Service Provider fails to pay to the Operator any uncontested sum in excess of [REDACTED] which has become due and payable by the Service Provider under this Agreement, and remains outstanding for a period of thirty (30) Working Days or more beyond its due date; or
- (f) the Service Provider has not provided the Operator with sufficient information to enable it to carry out satisfactory know your customer or other similar checks under all applicable laws and regulations within 30 working days of control (as defined in section 416 of ICTA) in the Service Provider becoming vested directly or indirectly in a person or

group of persons other than the person or group of persons in whom such control is vested at the date of this Agreement; or

- (g) if the Operator suspects (acting reasonably) that the Service Provider or any of its Sub-Contractors has breached any part of Operator's Code of Conduct.

## 24 **Operator Event of Default**

24.1 The Service Provider shall have the right to terminate its obligations under this Agreement forthwith by notice in writing to the Operator (with a copy to the Owner) in the event that:

- (a) the Operator is in breach (except to the extent that such breach results from a Force Majeure Event) of any obligation under this Agreement in any material respect or is in Persistent Breach of any obligation under this Agreement (except to the extent that such breach results from a Force Majeure Event) and, if such breach is capable of remedy, the breach is not remedied by the Operator after having been required to do so by notice from the Service Provider to the Operator by such date as is specified in the notice which shall not be less than thirty (30) days from the date of such notice;
- (b) any undisputed amount in excess of [REDACTED] which is payable by the Operator to the Service Provider under this Agreement remains unpaid from whatever source for a period of thirty (30) Working Days after the due date for payment of that amount provided that the Service Provider has notified the Operator in writing of the non-receipt of that amount on or after its due date and the Operator has failed to pay the Service Provider within thirty (30) days of that notification;
- (c) the Operator suffers an Insolvency Event; or
- (d) the Service Agreement is terminated and upon such termination:
  - (i) a successor service agreement to such Service Agreement between the Secretary of State and the Operator does not commence;
  - (ii) this Agreement is not novated, assigned or otherwise transferred to a successor operator,

(each an **Operator Event of Default**).

24.2 The Service Provider acknowledges that its rights of termination are subject to the terms of the Direct Agreement (if applicable) and any proper and timely exercise by the Secretary of State of his rights under the Direct Agreement (if applicable).

24.3 In the event that the Service Agreement is terminated and the Operator's rights and obligations pursuant to this Agreement are not, within 10 Working Days of the date of termination of the Service Agreement, novated or otherwise transferred to a successor operator of the Service Agreement:

- (a) where the consent of the Secretary of State is required in order to terminate this Agreement, the Service Provider shall use all reasonable endeavours to obtain such consent and will, within one Working Day of

receipt of such consent, serve a notice to terminate this Agreement pursuant to clause 24.1; or

- (b) in all other case will, within one Working Day of the expiry of such 10 Working Day period, the Service Provider shall serve a notice to terminate this Agreement pursuant to clause 24.1.

## **25 Consequence of termination and expiry**

### **25.1 Accrued rights**

- (a) Termination of this Agreement shall not affect the accrued rights and liabilities of the parties as at the date of termination, and all provisions which are expressed to survive this Agreement shall remain in full force and effect.
- (b) This clause 25.1 shall survive the termination or expiry of this Agreement.

### **25.2 Termination for Service Provider default**

- (a) If this Agreement is terminated pursuant to clause 23, the Service Provider shall indemnify the Operator against any loss, expense or liability incurred by reason of such termination including, but not limited to:
  - (i) the amount by which the cost of performing, or having performed by others, any services which but for such termination would have been carried out by the Service Provider under this Agreement exceeds the amount which would have been payable under this Agreement in respect of that work; and
  - (ii) all other relevant direct losses of the Operator,and the Operator shall as soon as reasonably practicable issue in writing to the Service Provider an invoice in respect of such sums.
- (b) Subject to clause 25.2(c) below, the Service Provider shall within thirty (30) calendar days of receipt of such invoice, pay the amount set out in such invoice.
- (c) In the event of a dispute arising between the Service Provider and the Operator as to the assessment of the matter referred to in invoice, either the Operator or the Service Provider may, within fourteen (14) days of a dispute arising, appoint an independent expert who, at the joint cost of the Operator and the Service Provider, will assess such matters. The assessment of such independent expert shall be final and binding upon both parties. If the parties are unable to agree the identity of an expert within fourteen (14) days of a dispute arising, the parties agree to accept an expert appointed at the request of either party by the President of the Institute of Chartered Accountants.

### **25.3 Termination for Operator default**

- (a) If this Agreement is terminated by the Service Provider under and in accordance with clause 24, the Service Provider shall within fourteen (14) days of notice of termination issue in writing to the Operator an invoice setting out:

- (i) the Service Provider's Demobilisation Costs;
  - (ii) the aggregate of all Service Payments relating to all Services provided or performed by the Service Provider to the date of termination and any other amounts payable to the Service Provider which have fallen due under this Agreement but which remain unpaid; and
  - (iii) the Service Provider's anticipated loss of profit for the shorter of (i) twelve (12) months or (ii) the remaining term of this Agreement.
- (b) Subject to clause 25.3(c) below, the Operator shall within thirty (30) calendar days of receipt of such invoice, pay the amount set out in such invoice.
- (c) In the event of a dispute arising between the Service Provider and the Operator as to the assessment of the Service Provider's Demobilisation Costs and/or anticipated loss of profit for the purposes of clause 25.3(a) above, either the Operator or the Service Provider may, within fourteen (14) days of a dispute arising, appoint an independent expert who, at the joint cost of the Operator and the Service Provider, will assess the Demobilisation Costs and/or anticipated loss of profit of the Service Provider. The assessment of such independent expert shall be final and binding upon both parties. If the parties are unable to agree the identity of an expert within fourteen (14) days of a dispute arising, the parties agree to accept an expert appointed at the request of either party by the President of the Institute of Chartered Accountants.

#### **25.4 Operator Voluntary Termination**

- (a) If this Agreement is terminated in accordance with: (A) clause 3(c)(iii); (B) clause 3(e); or (C) section 78 of the Procurement Act 2023, then the Service Provider shall within fourteen (14) days of notice of termination issue in writing to the Operator an invoice setting out:
  - (i) the Service Provider's Demobilisation Costs; and
  - (ii) the aggregate of all Service Payments relating to all Services provided or performed by the Service Provider up to the date of termination and any other amounts payable to the Service Provider which have fallen due under this Agreement but which remain unpaid.
- (b) Subject to clause 25.4(c) below, the Operator shall within thirty (30) days of receipt of such invoice, pay the amount set out in such as due and payable.
- (c) In the event of a dispute arising between the Service Provider and the Operator as to the assessment of the Service Provider's Demobilisation Costs, either the Operator or the Service Provider may, within fourteen (14) days of a dispute arising, appoint an independent expert who, at the joint cost of the Operator and the Service Provider, will assess the Demobilisation Costs of the Service Provider. The assessment of such independent expert shall be final and binding upon both parties. If the parties are unable to agree the identity of an expert within fourteen (14) days of a dispute arising, the parties agree to accept an expert appointed at the request of either party by the President of the Institute of Chartered Accountants.

## **25.5 Force majeure termination**

Following termination of this Agreement pursuant to clause 16, each of the parties shall do all such reasonable acts or things necessary or desirable to accomplish a smooth termination and/or transfer of the provision of the Services.

## **25.6 Assignment of Contracts and Warranties on Termination**

Upon termination or expiry of this Agreement the Service Provider agrees in so far as it is reasonably able to without incurring any material cost or expense:

- (a) to assign to the Operator the benefit of any contracts which it has in place solely in relation to the supply, storage, maintenance and/or disposal of Spares; and
- (b) to the extent not already assigned pursuant to clause 19.2 or 25.6(a), to assign to the Operator the benefit of any warranties related to the Spares and/or any other rights it may have against any third party in respect of the Spares.

## **26 Handback**

26.1 Within three (3) months of the date of this Agreement, the Service Provider shall prepare a detailed handback plan, which shall be acceptable to the Operator and Owner (acting reasonably), and which shall specify in detail the supporting process and timeframes for the demobilisation of its activities under this Agreement on its expiry and the handback of the Spares, assets and documentation to the Owner, or (where the Lease remains in place) the Operator, including:

- (a) provision for the handback of the Spares, relevant assets and documentation at the Depot(s) or other such location where the Services are performed (as agreed between the parties) including the processes to be followed to give effect for such handback;
- (b) demonstration of how the Service Provider will develop the strategy for monitoring and evidencing the performance of its obligations under this Agreement;
- (c) identification and description of the interfaces between the Service Provider and Operator for required demobilisation activities and how these are to be managed;
- (d) an outline of the Service Provider's arrangement for disbandment of resource;
- (e) a communication plan detailing the Service Provider's proposals on how stakeholders will be communicated with about any demobilisation required on expiry of this Agreement;
- (f) a contract system support plan detailing the systems and application processes which are to be closed or remain open (as the case may be) during demobilisation and/or following the end of the Maintenance Period; and
- (g) the Service Provider's arrangements for completing all outstanding deliverables to be delivered by the Service Provider in accordance with

this Agreement and a wash-up meeting to discuss all such outstanding deliverables.

- 26.2 If the Operator and Owner require the detailed handback plan to be amended, then the Operator will notify the Service Provider of any proposed amendments within six (6) weeks of receipt of the draft detailed handback plan from the Service Provider.
- 26.3 The parties agree to discuss comments on the handback plan in good faith. Following any discussion, the Service Provider will incorporate the amendments reasonably required by the Operator and Owner with no further amendment and, at least six (6) months after the date of this Agreement, produce a final version of the detailed handback plan for approval by the Operator and Owner (such approval not to be unreasonably withheld or delayed). This final version, once approved, shall be deemed to be the detailed handback plan as defined for the purposes of this Agreement subject to any amendments agreed or required pursuant to clause 26.4.
- 26.4 During the Maintenance Period, the parties shall regularly review the handback plan in order to identify any updates that may be required. The parties agree to discuss any updates to the handback plan in good faith. Following any discussion, the Service Provider will incorporate the amendments reasonably required by the Operator and Owner and shall within one (1) month of such discussion, produce an updated version of the handback plan for approval by the Operator and Owner (such approval not to be unreasonably withheld or delayed). This updated version, once approved, shall be deemed to be the latest version of the final handback plan as defined for the purposes of this Agreement (subject to any subsequent amendments agreed or required pursuant to this clause 26.4).
- 26.5 Nine (9) months prior to the expiry of this Agreement the Operator shall be entitled to undertake (or procure that a third party undertakes) a handback inspection to identify any outstanding breaches of this Agreement. The Service Provider shall promptly rectify any such breaches and, if any such breaches are identified, pay the costs of the handback inspection.
- 26.6 Within six (6) weeks of the parties agreeing the final service quality report in accordance with paragraph 2.2(a) of Schedule 7, the Service Provider shall deliver to the Operator a service quality close-out report to include details of the Service Provider's:
- (a) reasonable opinion of its accomplishments in respect of its delivery of the Services in accordance with this Agreement, together with relevant supporting evidence of that opinion;
  - (b) key learnings in relation to this Agreement and interfacing with the Operator; and
  - (c) reasonable opinion of the successes and challenges of its approach to the management of risk in relation to this Agreement, together with relevant supporting evidence of that opinion.
- 26.7 No less than three (3) months prior to the expiry of this Agreement, the parties shall convene a wash-up meeting at which the parties shall discuss the completion by the Service Provider of all outstanding deliverables as identified by the Service Provider in accordance with the arrangements specified in the handback plan.

- 26.8 At the end of the Maintenance Period:
- (a) the Service Provider shall provide the Operator with (and copy to the Owner) all books and records (including computer records which shall be in a readable form) relating to the performance of its obligations under this Agreement; and
  - (b) to the extent not already assigned pursuant to clause 19.2 or clause 25.6, the Service Provider shall assign to the Operator the benefit of any warranties relating to the Spares, to the extent that such warranties are assignable.

27 **Illegality**

If at any time any one or more of the provisions of this Agreement becomes invalid, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

28 **Waiver**

Except as expressly stated in this Agreement, no failure or delay by either of the parties to this Agreement at any time to enforce any of the provisions of this Agreement shall be construed as a waiver by such party of such provision or in any way affect the validity of this Agreement or any part of it. The respective rights of the parties (whether arising under this Agreement or under the general law) shall not be capable of being waived otherwise than by an express waiver in writing.

29 **Survival**

Notwithstanding the termination or expiry of this Agreement, the provisions of clauses 9.2.2, 18.2, 20.1, 25.1, 37, and of paragraphs 20 and 21 of Schedule 1, Part D and shall expressly survive such termination or expiry and continue in full force and effect, along with any other clauses or Schedules of this Agreement necessary to give full and proper effect to those clauses and Schedules.

30 **Rights Cumulative**

Each of the Operator's, Owner's and Service Provider's rights and remedies provided in this Agreement are cumulative, may be exercised as often as either of them considers appropriate and no failure or neglect to exercise or delay in exercising any such rights or remedies and no single or partial exercise shall preclude any further exercise of such rights or remedies.

31 **Further Assurance**

Each party shall at its own cost do and execute, or arrange for the doing and executing of, each necessary act, document and thing to implement this Agreement.

32 **Entire Agreement**

This Agreement supersedes any previous written or oral agreement between the parties in relation to the matters dealt with in this Agreement and contains the whole agreement between the parties relating to the subject matter of this Agreement at the date hereof to the exclusion of any terms implied by law

which may be excluded by contract, and shall not be varied otherwise than by an instrument in writing of even date herewith or subsequent hereto executed by or on behalf of each of the parties hereto. Each party acknowledges that it has not been induced to enter into this Agreement by any representation, warranty or undertaking not expressly incorporated into it. So far as permitted by law and except in the case of fraud, each party agrees and acknowledges that its only rights and remedies in relation to any representation, warranty or undertaking made or given in connection with this Agreement shall be for breach of the terms of this Agreement, to the exclusion of all other rights and remedies (including those in tort or arising under statute). In this clause this Agreement includes all other documents entered into pursuant to this Agreement.

**33 Service Provider to inform itself fully**

The Service Provider shall be deemed to have inspected and examined all documents, and all terms, and all established Applicable Laws and Standards, associated specifications and material requirements and to have obtained for itself all necessary information as to risks, contingencies and other circumstances which may influence or affect its ability to perform its obligations under this Agreement. The Operator shall not grant any extension of time or additional payment on grounds of misunderstanding or misinterpretation of any such matter, nor shall the Service Provider be released from any of the risks accepted or obligations undertaken by it in relation to this Agreement on the grounds that it did not or could not have reasonably foreseen any matter which might affect or have affected the performance of the Services under this Agreement.

**34 Assignment and Sub-contracting**

- 34.1 Save as provided in clause 34.4, the Service Provider shall not assign, transfer, novate or sub-contract its rights and/or obligations under this Agreement or any part thereof, nor sub-contract any of the performance of this Agreement without the prior written consent of the Operator and the Owner (such consent not to be unreasonably withheld or delayed).
- 34.2 The Operator may assign, transfer or novate or subcontract its rights and/or obligations under this Agreement or part thereof to a third party within the Operator's Group, to the Secretary of State or any nominee of the Secretary of State or a successor operator without the consent of the Service Provider, or otherwise to any other third party with the prior consent of the Service Provider (such consent not to be unreasonably withheld).
- 34.3 It shall be reasonable for the Service Provider to withhold its consent under clause 34.2 where any assignment, transfer, novation or sub-contract of any of the rights and/or obligations under this Agreement is to be made to a company which is part of a transport group listed on the United Kingdom stock exchange.
- 34.4 The Service Provider may sub-contract its obligations to any member of the Service Provider's Group without consent, and to other Sub-Contractors subject to the approval by the Operator (such consent not to be unreasonably withheld) and subject to any such Sub-Contractor being accredited in accordance with the Railway Group Standards and satisfying Railway Industry Standard RIS-2750-RST Issue 1.1 (*Supplier Assurance*) in respect of safety critical materials, where applicable.

- 34.5 The Service Provider shall retain responsibility in full for all of its obligations and shall be responsible for any acts, omissions, breach or negligence of any such Sub-Contractor.
- 34.6 The Owner may assign or otherwise transfer any of its interests, rights and/or obligations under this Agreement without the consent of the Operator or the Service Provider, provided that there shall be no additional obligations or liability imposed on the Operator or the Service Provider, nor shall the Operator or the Service Provider suffer any diminution in their respective rights under this Agreement as a result of such assignment or transfer.
- 34.7 All reasonable costs, expenses, charges and taxes incurred by:
- (a) the Operator and the Owner in connection with the assignment, transfer, novation or sub-contracting under clause 34.1 or clause 34.4 shall be borne by the Service Provider;
  - (b) the Service Provider and the Owner in connection with the assignment, transfer or novation under clause 34.2 shall be borne by the Operator; and
  - (c) the Service Provider and the Operator in connection with the assignment, transfer or novation under clause 34.6 shall be borne by the Owner.
- 34.8 Any assignment, transfer, novation or sub-contracting pursuant to clauses 34.1, 34.2, 34.4 and 34.6 shall not impose on the Operator, the Service Provider or the Owner (as relevant) any further liabilities, duties, obligations or taxes in addition to those that such party is subject to under this Agreement.

## 35 Notices

- 35.1 All notices under, or in connection, with this Agreement will, unless otherwise stated, be given in writing by letter or email. Any such notice is considered to be received as follows:
- (a) if it is sent by registered letter or postage, when it is delivered; and
  - (b) if it is sent by email, when it is received in a legible form.
- 35.2 The address and email address of the Operator, the Service Provider and the Owner are as follows (or such other address which may be subsequently notified by the relevant party):

<b>Service Provider:</b>	Address	[REDACTED]
	Attn:	[REDACTED]
<b>Operator:</b>	Email:	[REDACTED]
	Address	[REDACTED]
	Attn:	[REDACTED]
	Email:	[REDACTED]
<b>Owner:</b>	Address	[REDACTED]
		[REDACTED]

Attn:  
Email:



## 36 Anti-bribery and anti-corruption compliance

### 36.1 General

- (a) The parties to this Agreement shall each:
  - (i) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
  - (ii) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - (iii) have and shall maintain in place throughout the term of this Agreement their own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with all applicable laws, statutes, regulations, codes relating to anti-bribery and anti-corruption (including the Bribery Act 2010) and clause 36.1(a)(ii), and the Service Provider, and/or Owner and/or the Operator (as applicable) will enforce them where appropriate;
  - (iv) promptly report to each other party any request or demand for any undue financial or other advantage of any kind received by that party in connection with the performance of this Agreement;
  - (v) promptly notify each other party (in writing) if a foreign public official becomes an officer or employee of the notifying party or acquires a direct or indirect interest in that notifying party;
  - (vi) warrant that it has no foreign public officials as direct or indirect owners, officers or employees at the date of this Agreement; and
  - (vii) provide the others with such supporting evidence of compliance with this clause 36 as that other party may reasonably request in writing, from time to time.
- (b) Each party shall ensure that any person associated with it who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on a party in this clause 36 ("**Relevant Terms**"). Each party shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to each other party for any breach by such persons of any of the Relevant Terms; and
- (c) For the purposes of this clause 36, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 36 a person

associated with a party includes but is not limited to any Sub-Contractor or agent of that party.

**36.2 Prohibited Corruption Acts**

Each party warrants to and agrees with the other parties to this Agreement that it shall not commit a Prohibited Corruption Act.

**37 Confidentiality of Information**

37.1 No party shall without the other parties' prior consent in writing, such consent not to be unreasonably withheld, advertise, announce or otherwise publish the fact of the existence of this Agreement or that it is a party to, and is carrying out, this Agreement for the other parties.

37.2 Each of the Service Provider, Operator, and Owner agrees that it shall keep confidential the Confidential Information of the other parties supplied to it in connection with this Agreement and save as provided in clauses 37.3 and 37.5 below, a party receiving Confidential Information (whether the Service Provider, Operator or the Owner as the case may be) shall not reveal that Confidential Information to any third party save with the prior written consent of the party who owns the Confidential Information.

37.3 For the avoidance of doubt, the Service Provider and the Operator agree that any Unit-borne data provided to the Service Provider in relation to the Service Provider's performance of its obligations under this Agreement shall constitute Confidential Information. The Service Provider shall only use such Confidential Information referred to in this clause in relation to the performance of its obligations under this Agreement, and shall not disclose such Confidential Information to any third party (except with regards disclosure to companies within the Service Provider's Group or Sub-Contractors of the Service Provider, which shall be permitted if the Operator so consents in its absolute discretion).

37.4 Each of the Service Provider, the Operator and the Owner agrees that it shall require its employees who have access to the Confidential Information to be subject to appropriate confidentiality undertakings. The disclosing party (whether the Service Provider, the Operator or the Owner (as the case may be)) shall be responsible to the party that owns the Confidential Information for any abuse by the recipient employee of such Confidential Information.

37.5 Where the Operator is entitled to use the Intellectual Property Rights of the Service Provider in accordance with clause 18 and in order to do so wishes to disclose the Confidential Information of the Service Provider to a third party, the following provisions shall apply:

- (a) the Operator shall reveal the Confidential Information of the Service Provider only as reasonably necessary and shall at all times seek to minimise both the number of such third party recipients and the amount of Confidential Information of the Service Provider passed to such third parties as is reasonably necessary;
- (b) the Operator shall obtain an appropriate undertaking of confidentiality from all third party recipients of Confidential Information; and
- (c) the Operator shall not require any consent of the Service Provider to disclose the Confidential Information where permitted to do so under clause 17.

37.6 The restrictions in clause 37.2 and 37.3 shall not apply in respect of the disclosure of an item of Confidential Information:

(a) to the ORR or to the Secretary of State or any other Government Authority or the Financial Services Authority or the London Stock Exchange or the Bank of England or any taxation authority where that item is required to be disclosed by law or by any written requirements of any taxation authority or to the extent that such disclosure is required pursuant to the Service Agreement or in connection with any discussions relating to the re-leasing of the Fleet to a potential subsequent operator;

(b) to:

(i) any solvent member of the group of companies of which the disclosing party is a member;

(ii) any financier or lawyers, accountants, insurers or others providing professional services other than any engineering or design services (including, without limitation, train manufacturers) to the Service Provider, the Operator or the Owner;

(iii) any financier of the Operator, Owner or the Service Provider or any permitted Sub-Contractors,

provided that in any such case:

(A) the disclosing party, acting reasonably, needs to disclose that item in order to comply with the provisions of this Agreement or otherwise in order to run its business; and

(B) (save with respect to lawyers or accountants) the party disclosing such information has obtained an appropriate undertaking of confidentiality from persons referred to in (i), (ii) and (iii) to whom disclosures are made;

(c) where the item is required in connection with any litigation (in which context, any such disclosure of Confidential Information shall only be considered as "required" if: (i) it is ordered by a court, tribunal or regulatory body of competent jurisdiction; or (ii) having applied due rigour to the question of whether it is appropriate to make the requested disclosure, the disclosing party considers in good faith that there are inadequate grounds for refusing to make the relevant disclosure) provided that the disclosing party shall reveal only such Confidential Information as is reasonably necessary for such litigation and shall seek to minimise both the number of third party recipients of such Confidential Information and the amount of Confidential Information disclosed;

(d) where the item is in the public domain other than as a result of the breach of any obligation of confidentiality;

(e) where the item is required in connection with an assignment, transfer or other disposition of rights permitted hereunder where the proposed assignee or transferee has agreed in writing to be bound by the provisions of this clause 37;

- (f) where the item is required in connection with an actual or proposed sale or other disposition of shares in the Service Provider, the Operator, the Owner or any parent company of any party provided always that any recipient of such information has provided an undertaking of confidentiality in substantially the same form as set out in this clause 37;
- (g) where the item was made available to the disclosing party on a non-confidential basis;
- (h) where the item is disclosed to the Secretary of State pursuant to the Direct Agreement;
- (i) any disclosure to the Secretary of State in connection with any discussions relating to the Service Agreement (including the Operator's performance thereunder);
- (j) which is made to any actual or potential successor operator of the Northern Network; and
- (k) to the extent that such disclosure is either required pursuant to Applicable Laws and Standards, or expressly permitted by this Agreement.

37.7 In fulfilling its obligations under this clause 37, each party shall be required to use a proper standard of care, which shall in no event be less than the same degree of care to prevent unauthorised disclosure of the Confidential Information as it would use to prevent the disclosure of its own commercial and financial information of the same or similar nature and which it considers proprietary or confidential.

37.8 No party shall issue any press release or announcement, or undertake any other communication with, or to be published by or in, the media or otherwise concerning this Agreement without the prior written approval of the other parties.

37.9 The obligations of the parties under this clause 37 shall survive the expiry or the termination of this Agreement for whatever reason.

## 38 **Freedom of Information**

38.1 The Owner and the Service Provider acknowledge (and shall procure that their respective agents and sub-contractors acknowledge) that the Operator is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and/or the Environmental Information Regulations 2004 ("EIR"). Accordingly the Owner and the Service Provider shall (and shall procure that their respective agents and sub-contractors):

- (a) provide all necessary assistance and co-operation as reasonably requested by the Operator to enable the Operator to comply with its obligations under the FOIA, including compliance with the timescales for compliance set out in section 10 of FOIA or Regulation 5 of EIR as applicable;
- (b) transfer to the Operator any Request for Information received by the Owner or the Service Provider (or their respective agents or sub-contractors) (as applicable) as soon as practicable and in any event

within two (2) Working Days of receiving any such Request for Information; and

- (c) provide the Operator with a copy of all information stipulated in a Request for Information which is in the Owner or the Service Provider's possession or control (or that of the relevant agent or sub-contractor) (as applicable) in the form that the Operator requires within five (5) Working Days (or such other period as the Operator may reasonably specify) of the Operator's request for such information.

38.2 The Service Provider and the Owner shall not respond to any Request for Information unless expressly authorised to do so by the Operator.

38.3 The Service Provider and the Owner acknowledge that the Operator may be required under the FOIA and/or EIR (as applicable) to disclose information without consulting or obtaining consent from the Service Provider and/or Owner. However, to the extent that it is permissible and reasonably practical for it to do so, the Operator agrees to promptly:

- (a) notify the Service Provider and/or Owner (as applicable) of any Request for Information that seeks disclosure of Confidential Information of the Service Provider and/or Owner; and
- (b) liaise with the Service Provider and/or Owner in good faith (taking reasonable cognisance of any representations made by the Service Provider and/or Owner) as to whether (and on what legally-justified basis) it is possible to treat any of the information stipulated in the given Request for Information as exempt from disclosure in accordance with the provisions of FOIA and/or EIR (as applicable) ("**Commercially Sensitive Information**").

38.4 The Service Provider and Owner acknowledge, however, that (notwithstanding any other provision in this Agreement), the Operator shall ultimately be the party responsible for determining in its absolute discretion whether any particular piece(s) of information (including Confidential Information) can be treated as Commercially Sensitive Information and/or be otherwise exempt from disclosure in accordance with the FOIA and/or EIR (as applicable).

38.5 Without prejudice to the requirements of this clause 38, any disclosure in accordance with clause 37.6 to an entity to which FOIA and/or the EIR applies shall be disclosed on the basis that the information which is being disclosed should, to the extent possible, be treated as exempt information for the purposes of FOIA on the basis that:

- (a) it is Confidential Information;
- (b) either party considers that disclosure of some or all of that information under FOIA would, or would be likely to, prejudice substantially the commercial interests of the other party; and
- (c) the other party should be notified of any information disclosure request relating to such Confidential Information and given an opportunity to make representations that such Confidential Information should not be disclosed in response to such request.

38.6 It is agreed that the determination as to whether or not it is possible to treat any information which is being disclosed as exempt under FOIA or EIR (as

the case may be) is a matter at the sole discretion of the entity to which FOIA and EIR applies (or as otherwise determined by any relevant regulator, tribunal or other applicable court) and accordingly the Operator shall not be in breach of the provisions of this clause if despite compliance with these provisions such information is not treated as exempt information under FOIA and/or EIR (as the case may be).

38.7 The parties acknowledge that the Secretary of State is subject to the requirements of FOIA and EIR and shall facilitate the Secretary of State's compliance with its information disclosure requirements pursuant to the same, in the manner provided for in clause 38.8 below.

38.8 Where a party receives a notice from the Secretary of State that the Secretary of State has received a Request for Information that includes a Request for Information which relates to the other party, the receiving party shall as soon as practicable after receiving such notice:

- (a) notify the other party and facilitate communications with the Secretary of State so that the other party may seek an appropriate remedy to prevent disclosure of its Confidential Information; and
- (b) keep the other party fully informed of all developments relating to any such disclosure.

38.9 The obligations of the parties under this clause 38 shall survive the expiry or the termination of this Agreement for whatever reason.

#### 39 **Costs**

Except as otherwise agreed in this Agreement, each party shall bear its own costs (including legal fees) incurred in connection with the execution and implementation of this Agreement.

#### 40 **Language**

All documentation or information required or produced in the course of or in connection with a party's performance of this Agreement shall be in English.

#### 41 **Rights of Third Parties**

The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and this Agreement shall not confer any right on a third party whether under that Act or otherwise.

#### 42 **Governing Law and Jurisdiction**

- (a) This Agreement and all matters (including, without limitation, any contractual or non-contractual obligation) arising out of or in connection with it, its subject matter or formation shall be governed by and construed in accordance with the laws and England.
- (b) Save where clause 43 expressly provides for alternative means of dispute resolution, each party hereto hereby agrees for the benefit of the other party, that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement or any non-contractual obligation arising out of or in connection with this Agreement and that accordingly any suit, action or proceedings arising out of or in connection with this

Agreement (together referred to as "**Proceedings**") may be brought in such courts. To this end, the Service Provider irrevocably submits to the jurisdiction of the Courts of England.

#### 43 **Disputes**

The parties shall in all instances use their reasonable endeavours to negotiate in good faith and settle amicably and expeditiously any Dispute.

##### 43.1 **Escalation Procedure**

- (a) Subject to clause 43.5 and save where Schedule 8 expressly provides for a different procedure, any Dispute shall, except as expressly provided in this Agreement and unless otherwise agreed, be resolved or determined in accordance with the following procedure:
  - (i) the Representative of the party referring the Dispute shall deliver a referral notice to each other party's Representative (**Referral Notice**);
  - (ii) if no agreement can be reached within ten (10) Working Days of the date of the Referral Notice pursuant to clause 43.1(a)(i) (or such further period as the parties shall agree in writing), the Dispute shall then be referred by any party to each party's managing director (or the nominee appointed by each party for the purposes of the Dispute in question) (the **Managing Director**) by giving written notice of such referral (the **Director Notice**). The Director Notice shall be accompanied by a copy of the Referral Notice delivered in accordance with clause 43.1(a)(i) and if the party delivering the Director Notice intends at the Managing Directors' level to raise any matter(s) or seek any relief relating to that Dispute that is additional to, or differs from, the matter(s) and relief identified in the Referral Notice, that party shall, at the same time as it delivers the Director Notice, provide written particulars to each party's Managing Director of the additional, or differing, matter(s) and/or relief sought by that party; and
  - (iii) the Managing Directors shall consider the Dispute and try to reach agreement to resolve the Dispute within twenty eight (28) Working Days of the date of the Director Notice, or such further period as the parties shall agree in writing.
- (b) The conduct of the escalation period in clause 43.1, including all documents created in respect of it with the purpose of resolving the Dispute and which have been disclosed to the other parties, shall not be admissible in any subsequent arbitration or litigation commenced to resolve the issues that were the subject matter of that escalation.
- (c) Each party shall bear its own costs in respect of any Dispute resolution under this clause 43.1.

##### 43.2 **Excluded Disputes**

All Excluded Disputes not resolved by the Managing Directors pursuant to clause 43.1(a)(iii) within twenty eight (28) Working Days of the Director Notice shall be subject to the exclusive jurisdiction of the English Courts.

##### 43.3 **Arbitration**

- (a) In the event that the parties are unable to resolve the Dispute pursuant to clause 43.1 within the timescales set out in clause 43.1, the Dispute shall be resolved by arbitration in accordance with the Arbitration Acts.
- (b) Unless otherwise agreed between the parties, arbitration proceedings shall:
  - (i) be in the English language;
  - (ii) have as the seat, or legal place, of arbitration London, England; and
  - (iii) be and remain confidential.
- (c) The parties agree that there shall be one arbitrator who shall, in the absence of prior agreement of his or her identity, within ten (10) Working Days of a party referring the Dispute to arbitration in accordance with this clause, be appointed by the Disputes Secretary appointed by the Access Disputes Committee (and the party referring the dispute to resolution in accordance with this clause shall pay such fees as are required to the Access Disputes Committee to obtain such appointment).
- (d) The arbitrator shall have full power in his or her absolute discretion to decide all matters relating to the arbitration including without limitation in relation to procedure, evidence and costs (including the degree to which any party shall pay the costs of the tribunal and/or the other parties of participation in the arbitration or parts of it).
- (e) All parties to this agreement irrevocably agree that they may be joined to or required to participate in any arbitration commenced under this clause.

#### 43.4 **Associated Disputes**

- (a) Where a Dispute is referred to arbitration in accordance with clause 43.3 above and an Associated Dispute arises, the Associated Dispute may be determined in the same reference to arbitration as the Dispute in question.
- (b) A party to the Dispute must give notice in writing to all of the other parties to the Dispute and all of the parties to the Associated Dispute within ten (10) Working Days of the Dispute being referred to arbitration in accordance with clause 43.3 above (the **Joinder Notice**).
- (c) All necessary dispute resolution rules to permit determination of such joined proceedings shall be agreed by the parties, and the arbitrator appointed or to be appointed in the arbitration of the Dispute shall have the same powers in relation to the Associated Dispute as he has in relation to the Dispute and as if the procedure of the Courts of England in relation to co-defendants and non-parties was available to the arbitrator and to the parties to the Dispute and the Associated Dispute.
- (d) Any party to the Dispute or the Associated Dispute may, within three (3) Working Days of receiving the Joinder Notice or, if later, within three (3) Working Days of the arbitrator being appointed in the Dispute (or such other time as may be agreed by the parties to the Associated Dispute and the Dispute), by written notice to all other parties and the

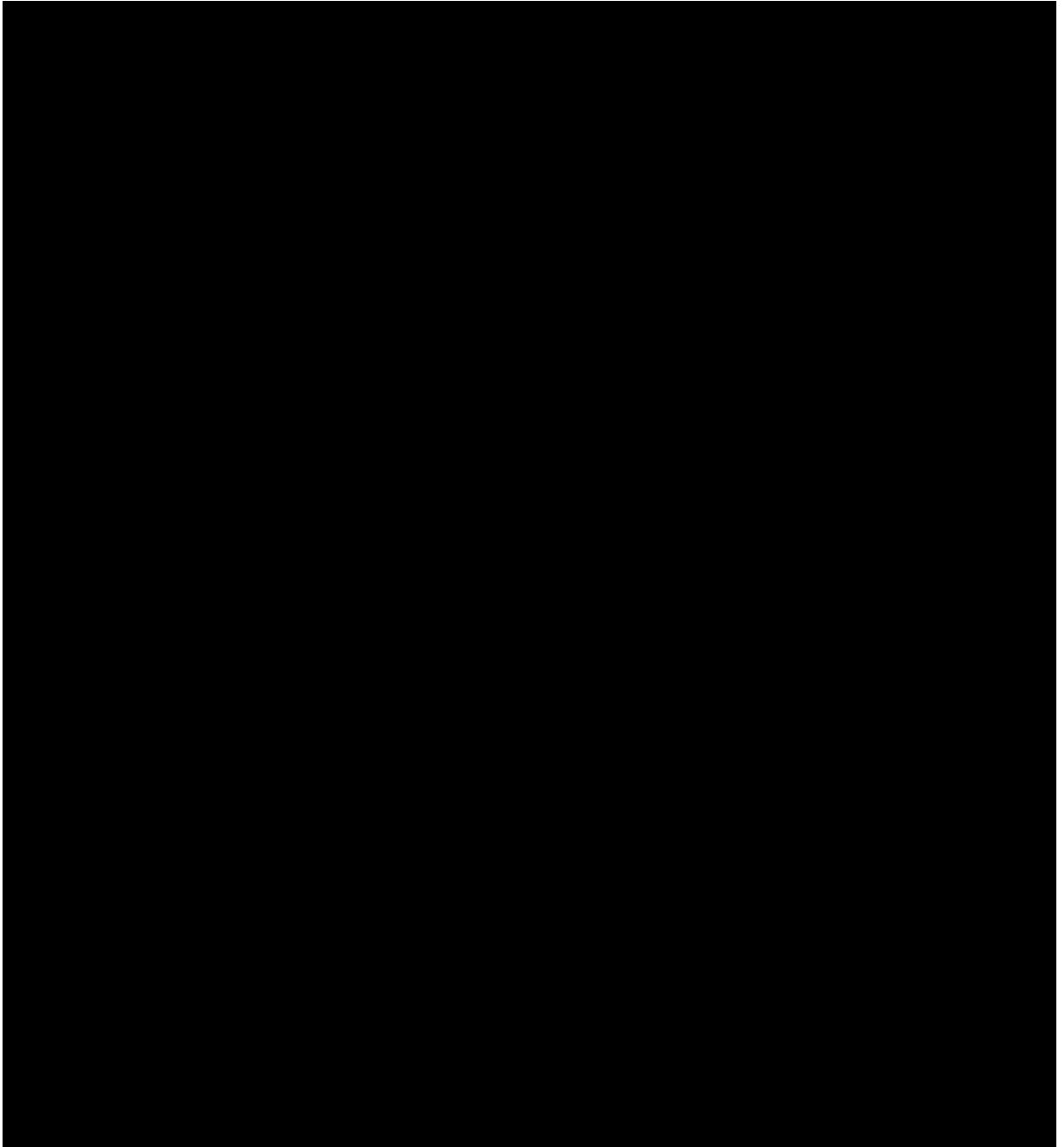
arbitrator appointed or to be appointed in the Dispute object to the joinder on the grounds that the Associated Dispute does not arise out of circumstances that are substantially the same as or closely connected with the issues in the Dispute or does not raise issues which are substantially the same as or closely connected with issues raised in the Dispute (the **Objection**).

- (e) Any of the other parties to the Dispute and the Associated Dispute may, within two (2) Working Days from the date of the Objection, provide a written submission to the arbitrator and all other parties to the Dispute and the Associated Dispute responding to the Objection.
- (f) Within five (5) Working Days of receiving the Objection, the arbitrator shall advise the parties to the Dispute and the parties to the Associated Dispute of his decision concerning the Objection and his decision as to whether the Associated Dispute should proceed and be determined in the same arbitration reference as the Dispute. The decision of the arbitrator shall be final and binding upon the parties to the Dispute and the parties to the Associated Dispute.
- (g) The obligations and liabilities of the parties under this Agreement shall not be increased in any way by virtue of any such joinder proceedings.

#### 43.5 **Court Proceedings**

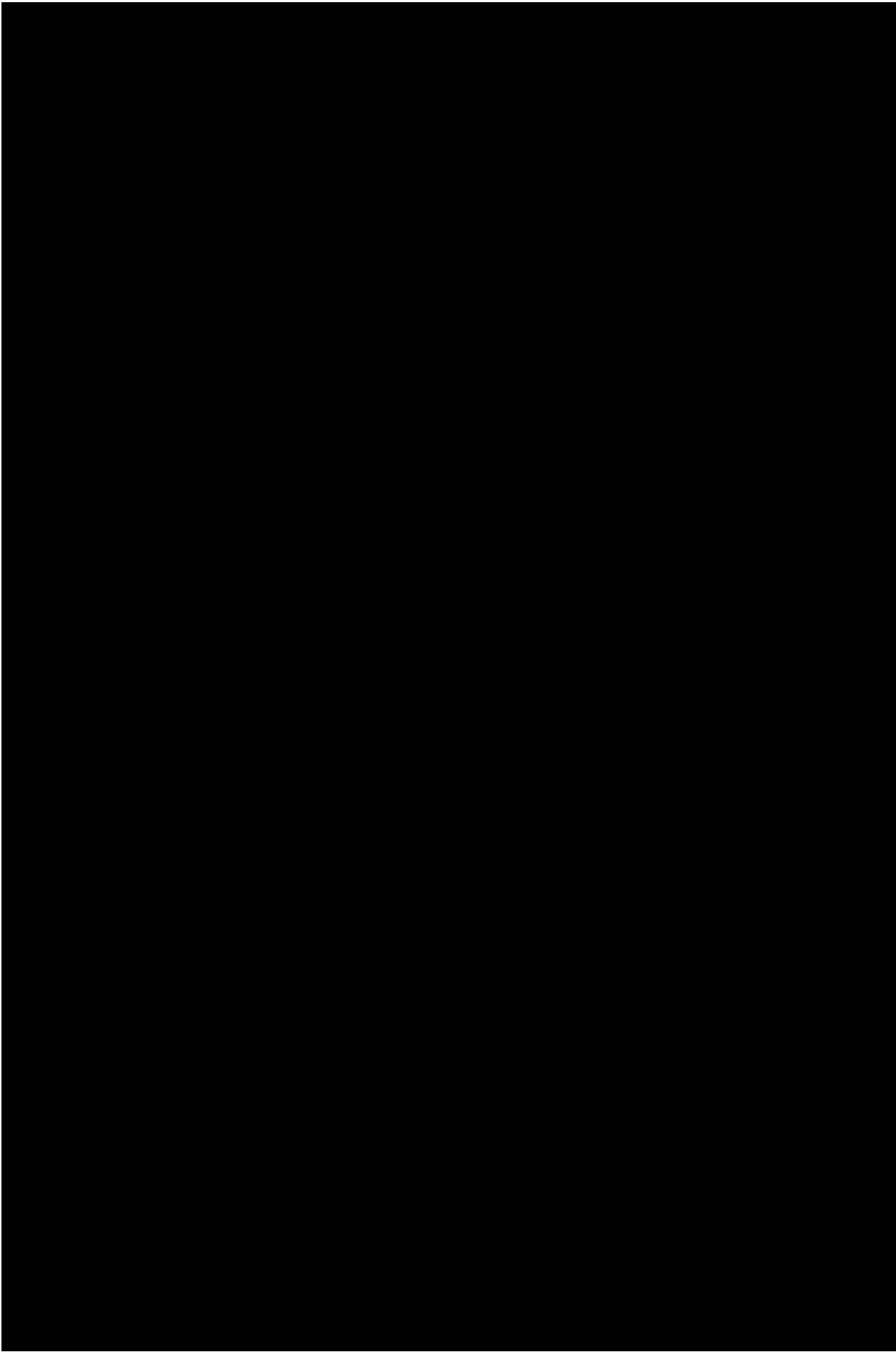
- (a) Notwithstanding the terms of clauses 33 to 42 inclusive, nothing in this Agreement shall prevent any party applying to the Court to:
  - (i) obtain any injunctive relief;
  - (ii) apply to obtain any summary judgement;
  - (iii) recover any debt due under this Agreement; or
  - (iv) in the case of arbitration, to enforce an arbitrator's award,and for such purposes each party irrevocably submits to exclusive jurisdiction of the English Courts.

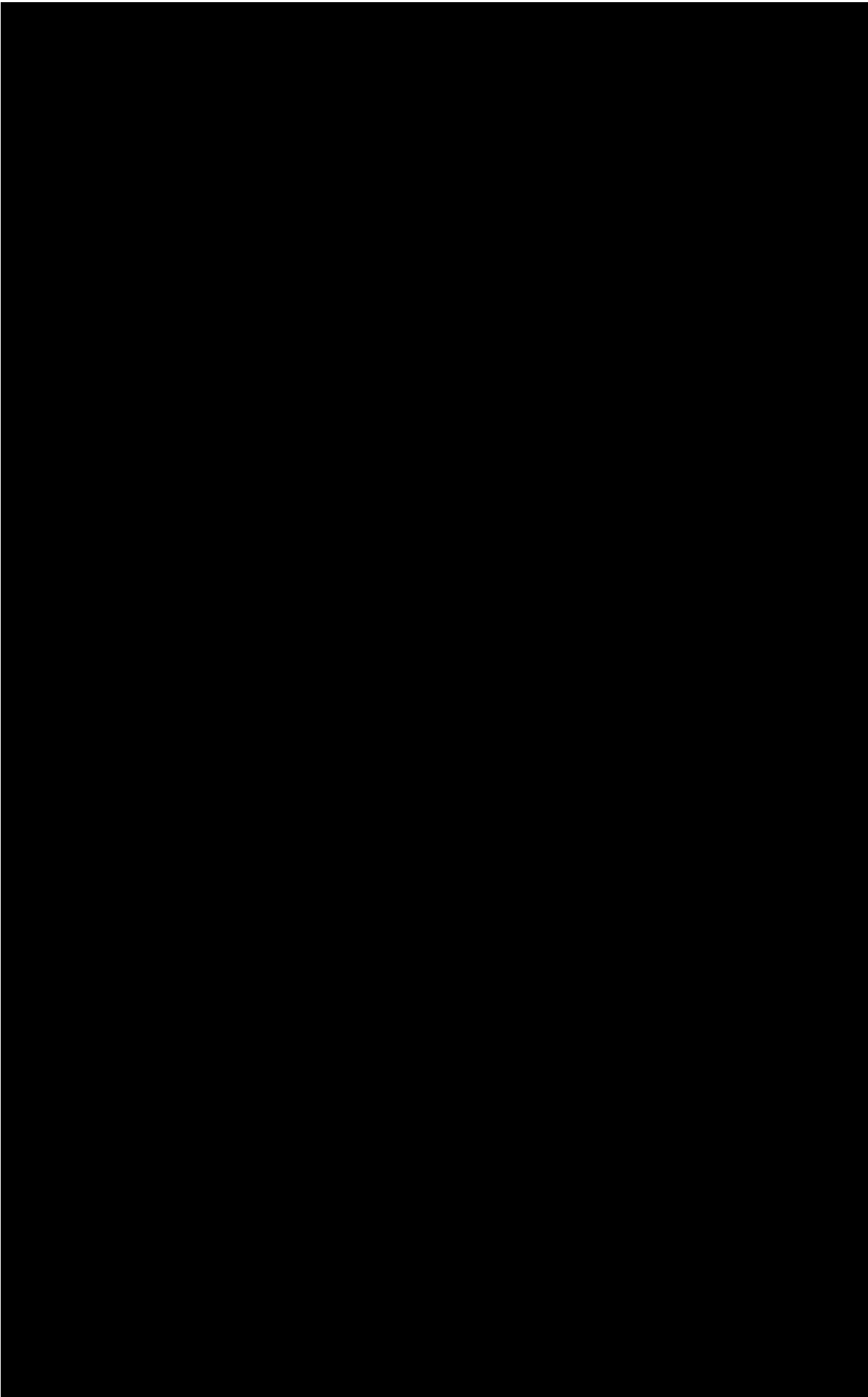
In witness whereof each of the Service Provider, the Operator and the Owner has entered into this Agreement on the date first before written.

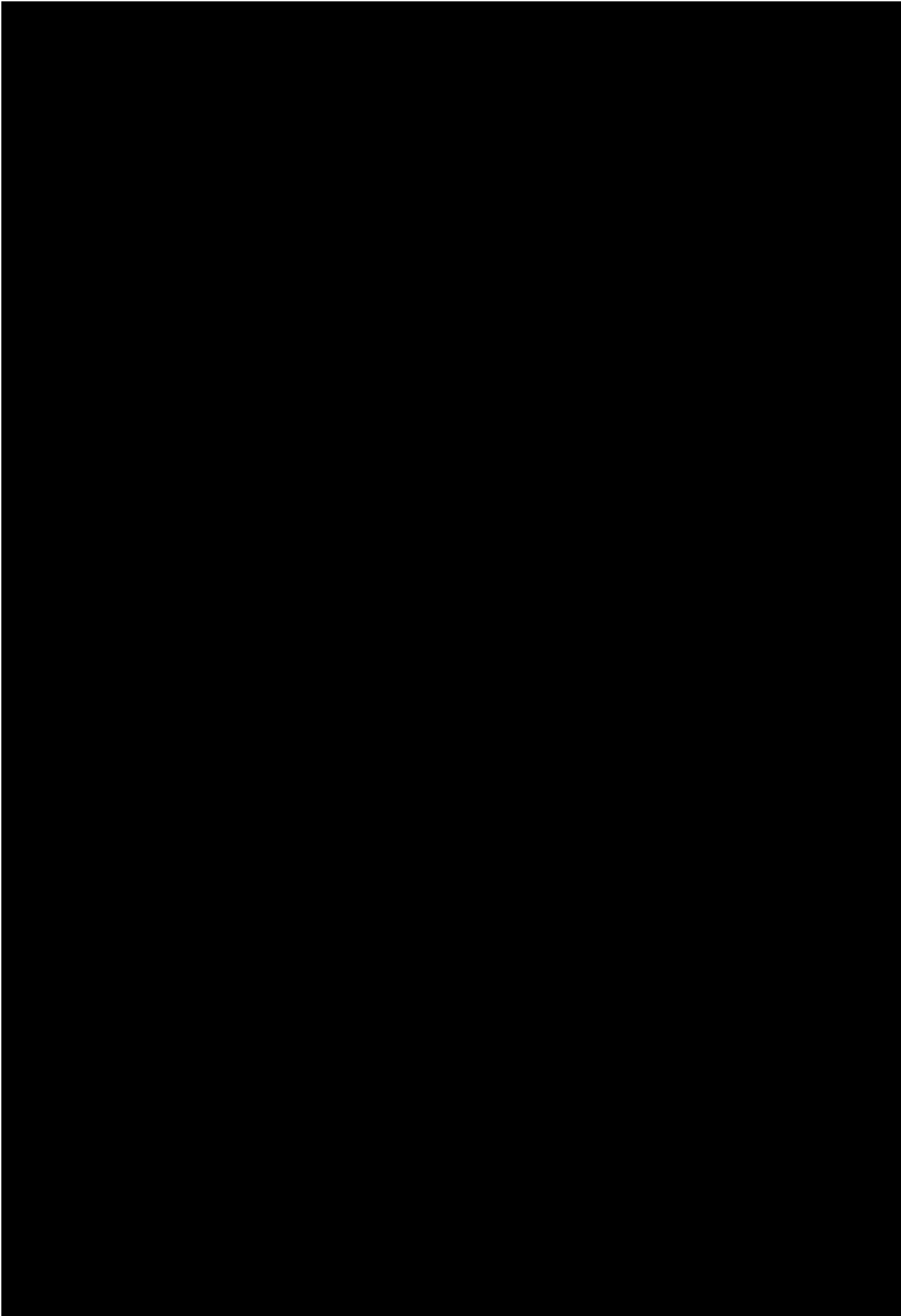


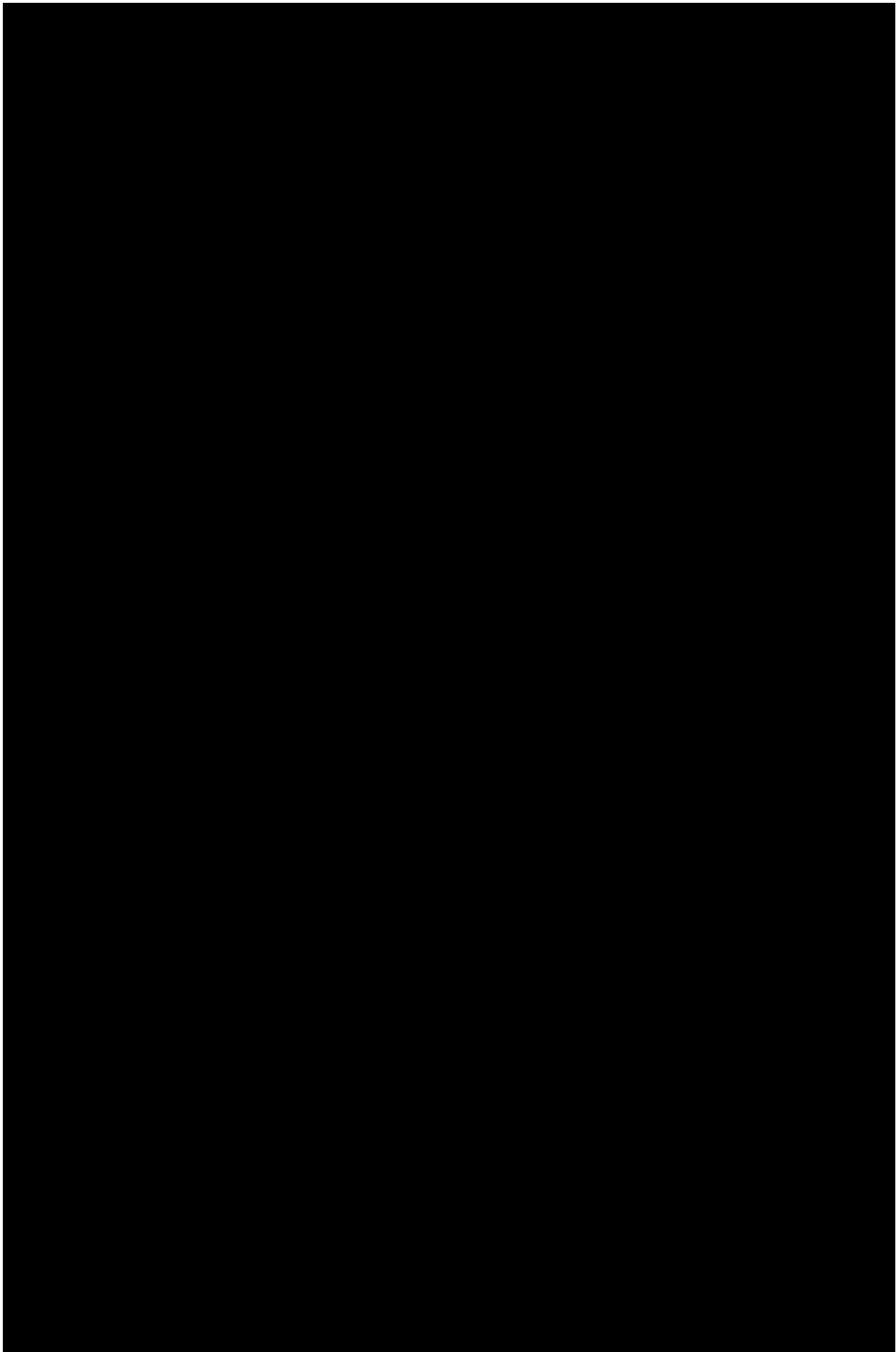
## Schedule 1 - Services

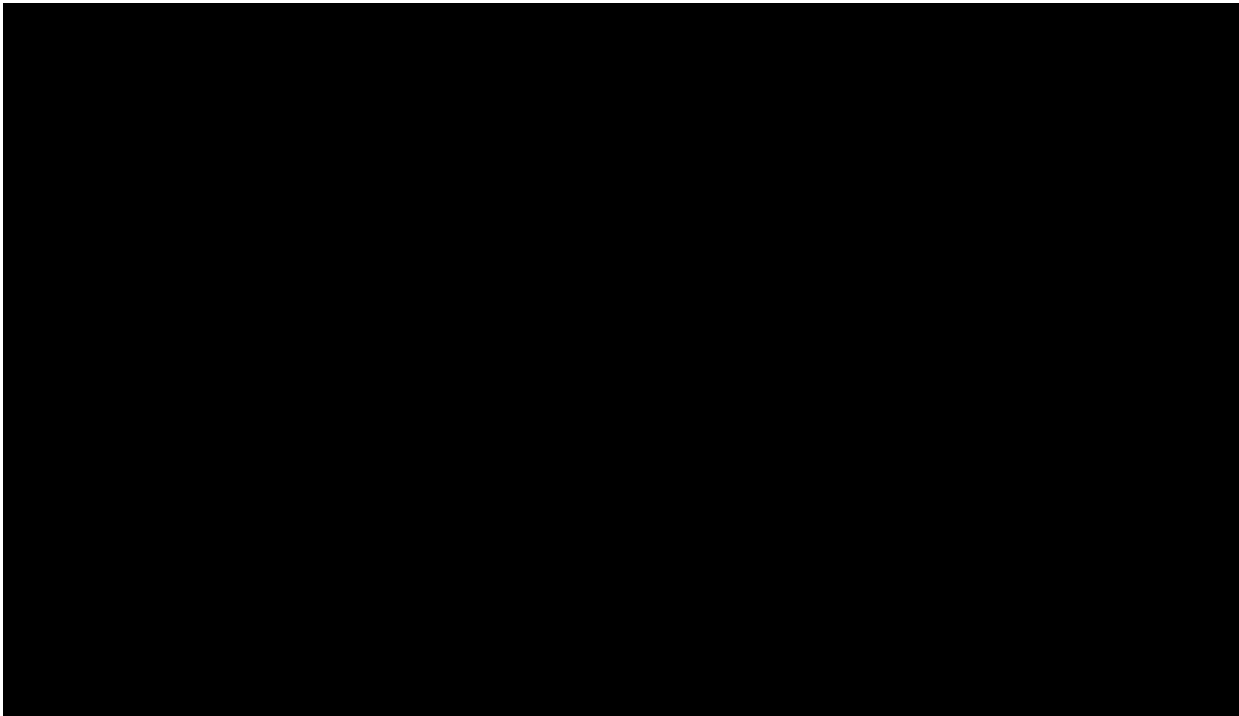
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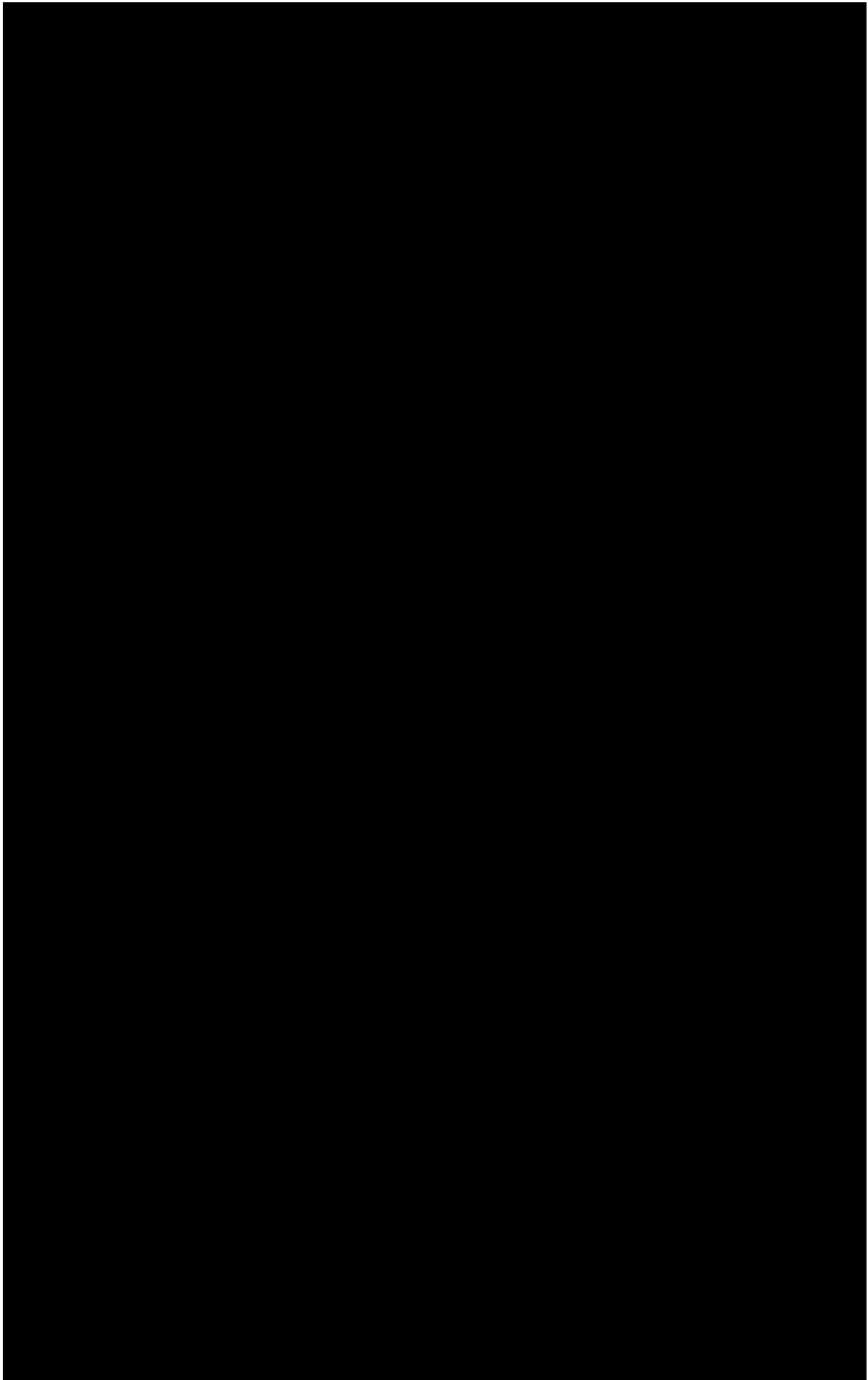


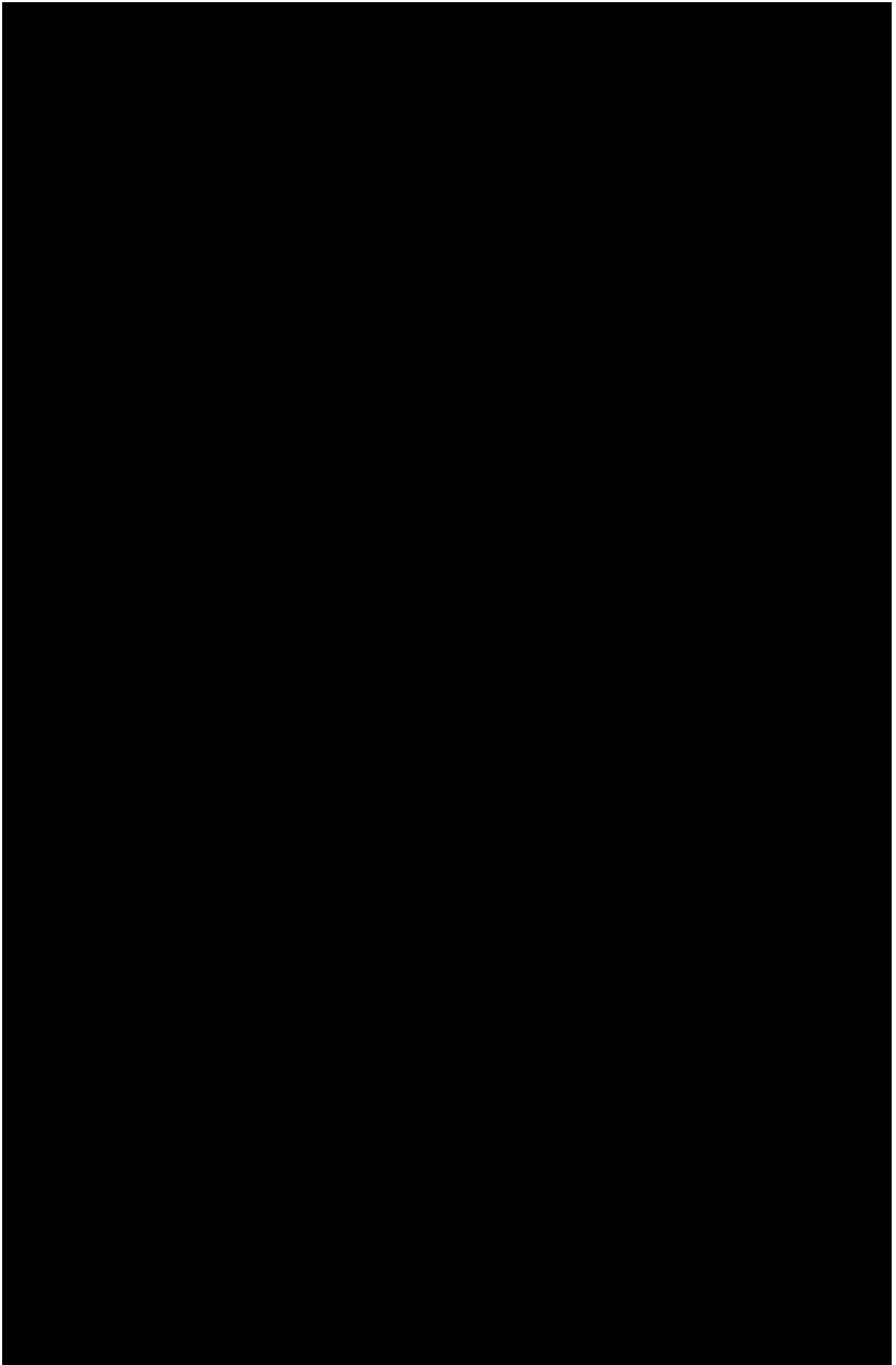


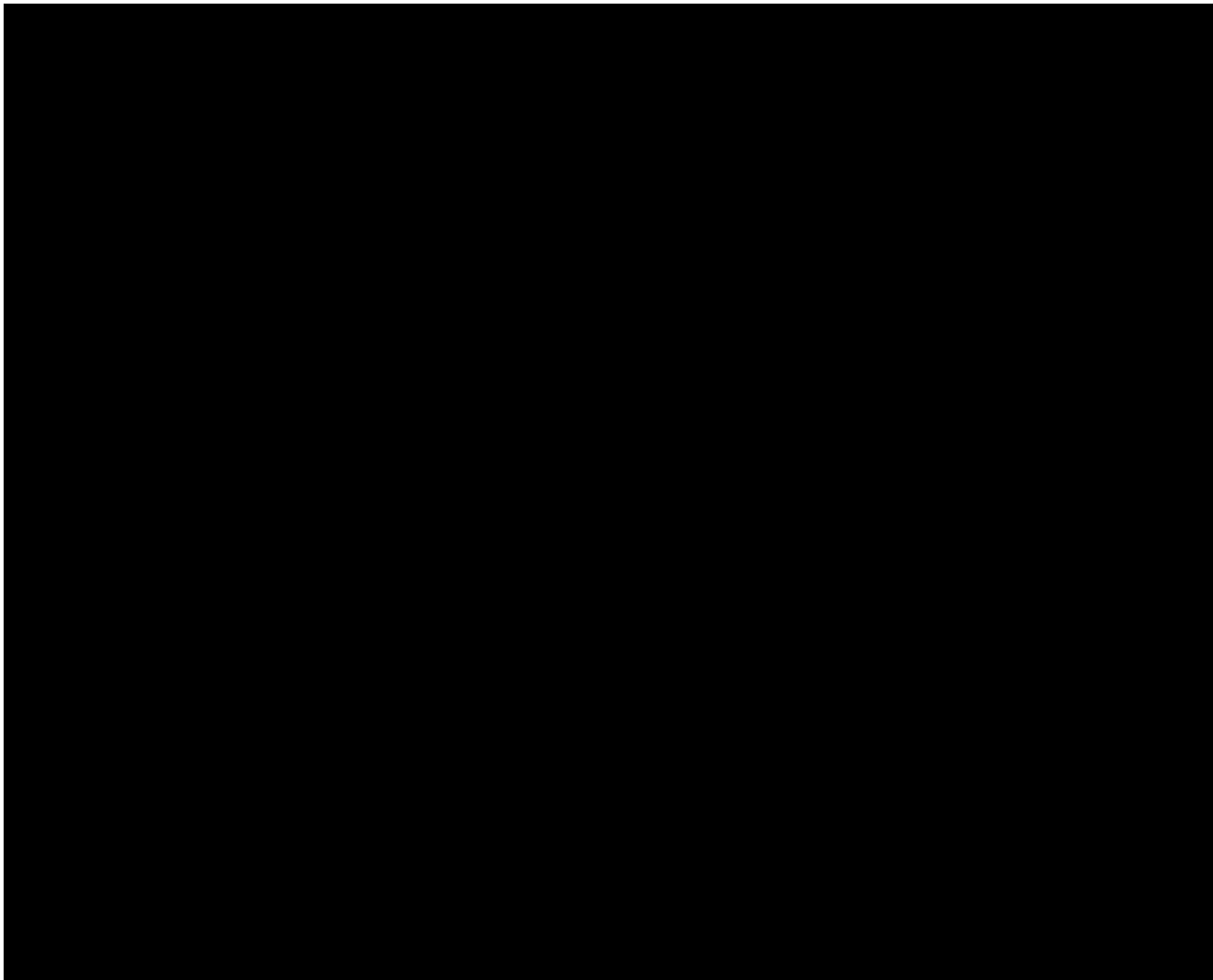




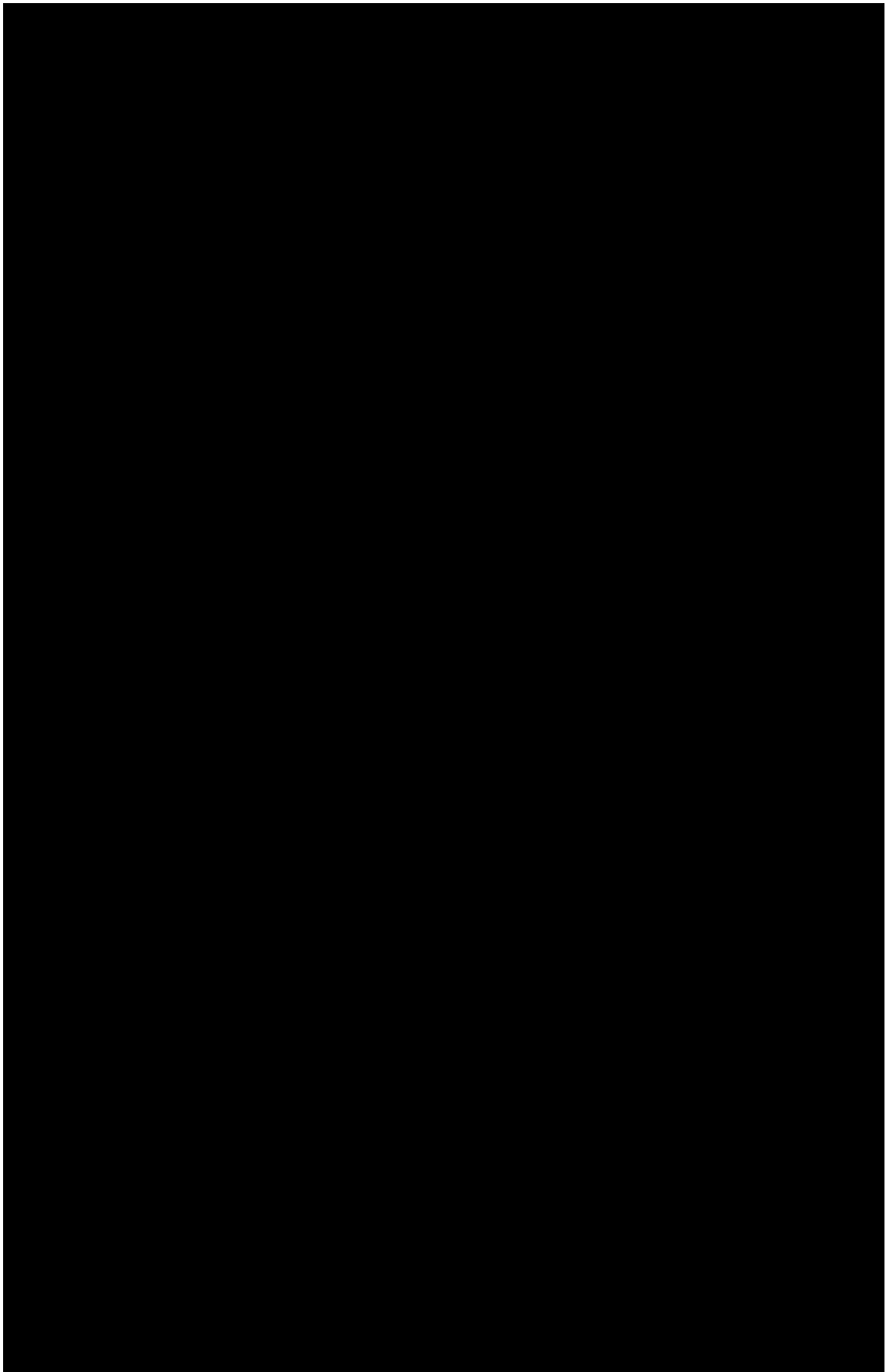


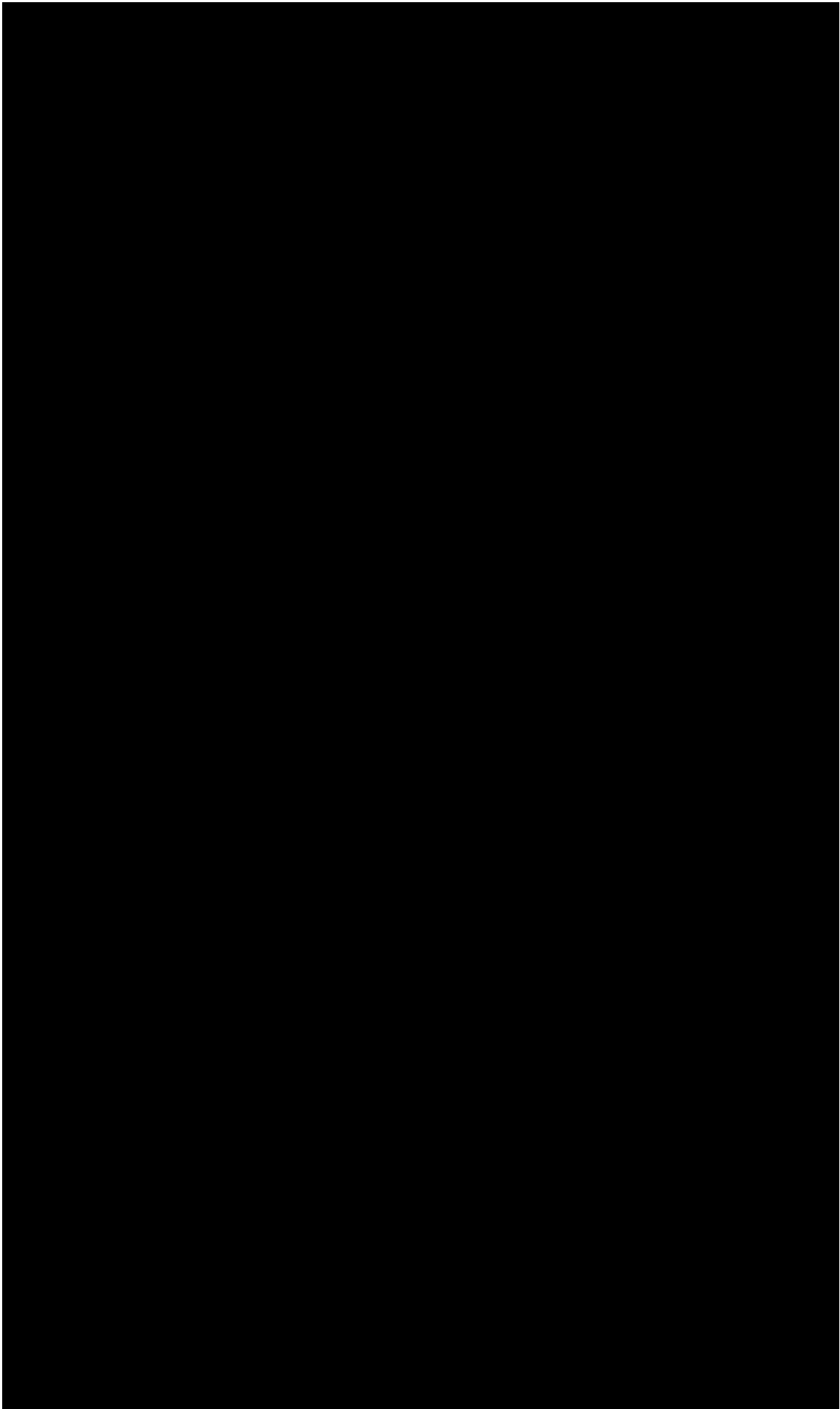


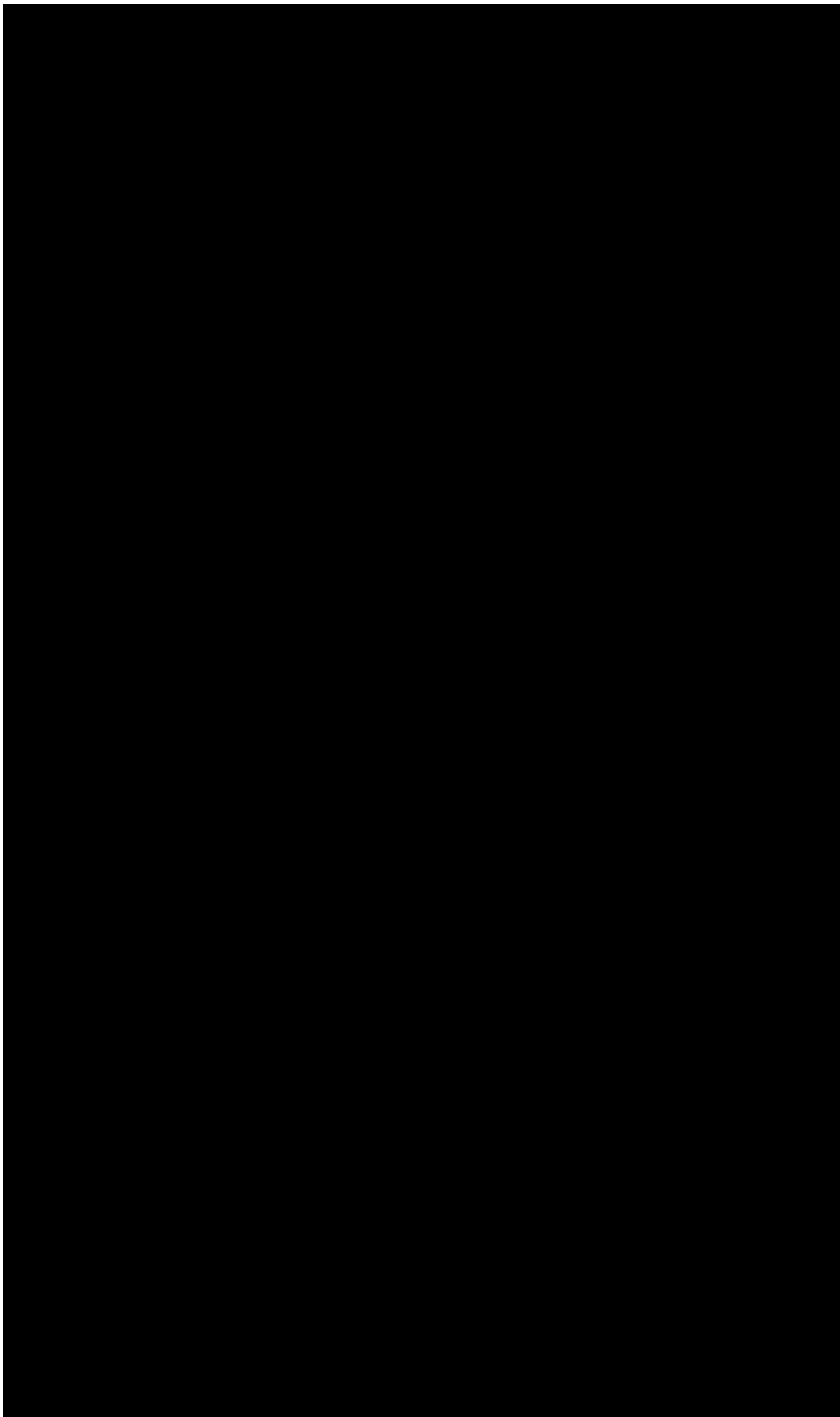


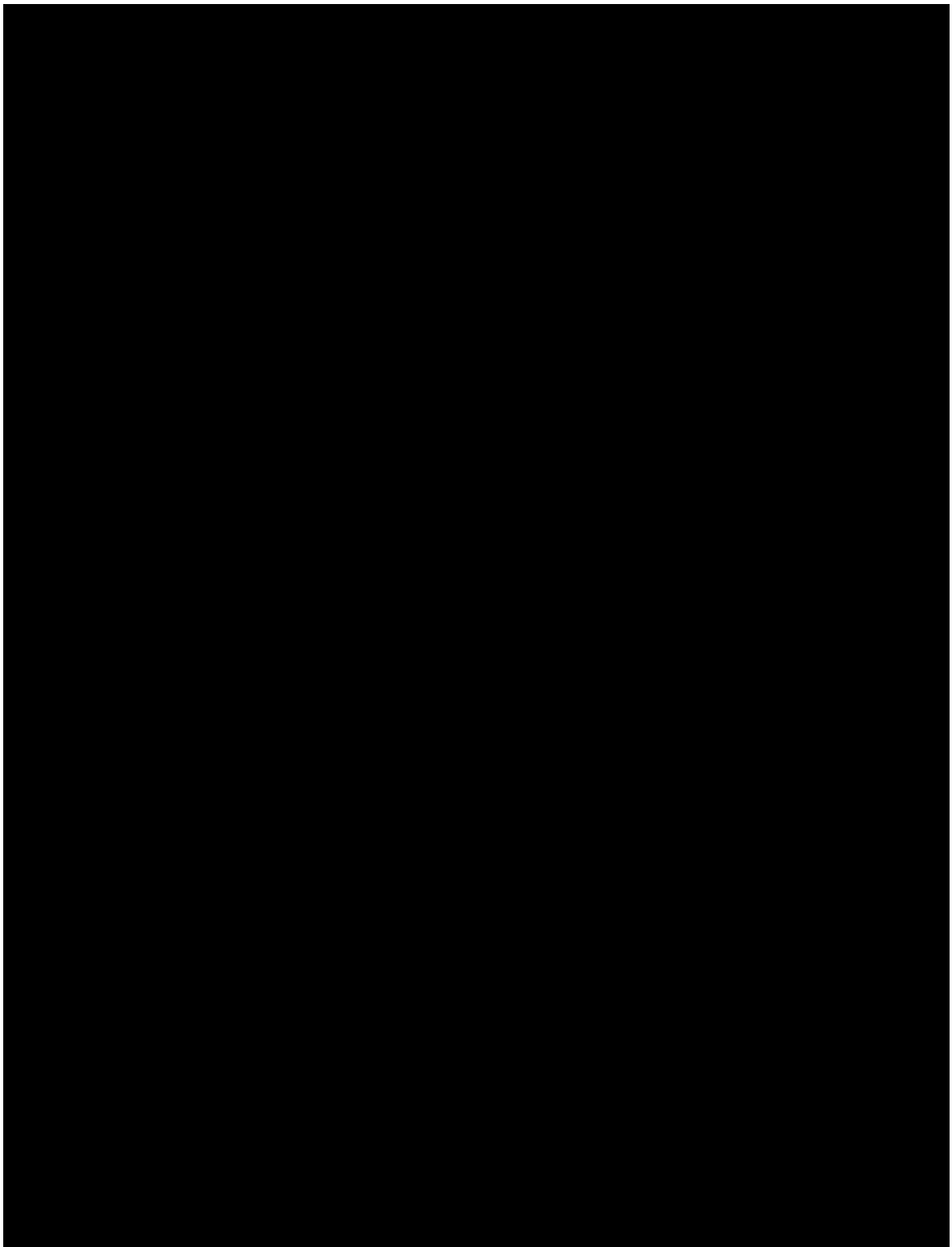


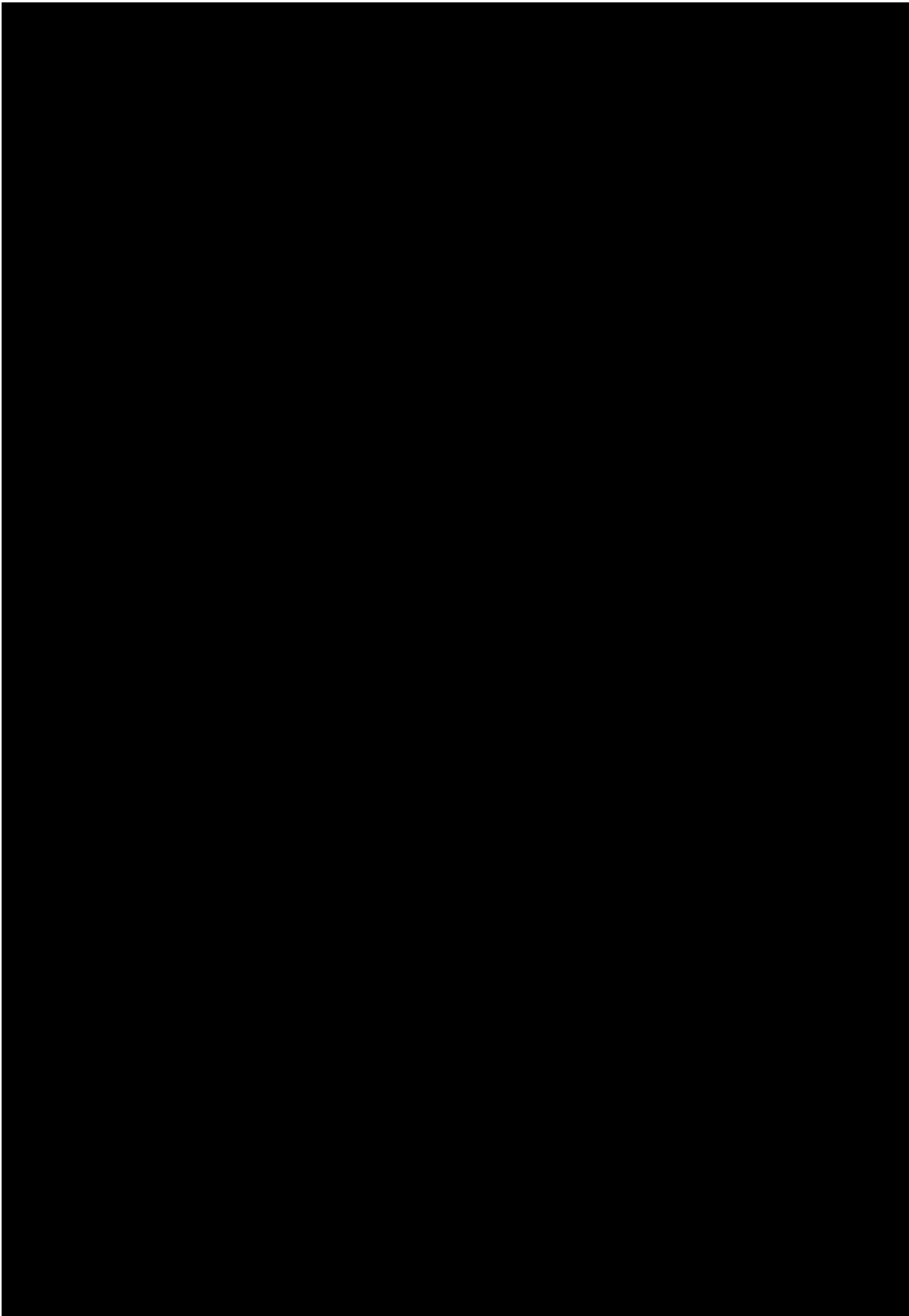
## Part C – Responsibility Tables



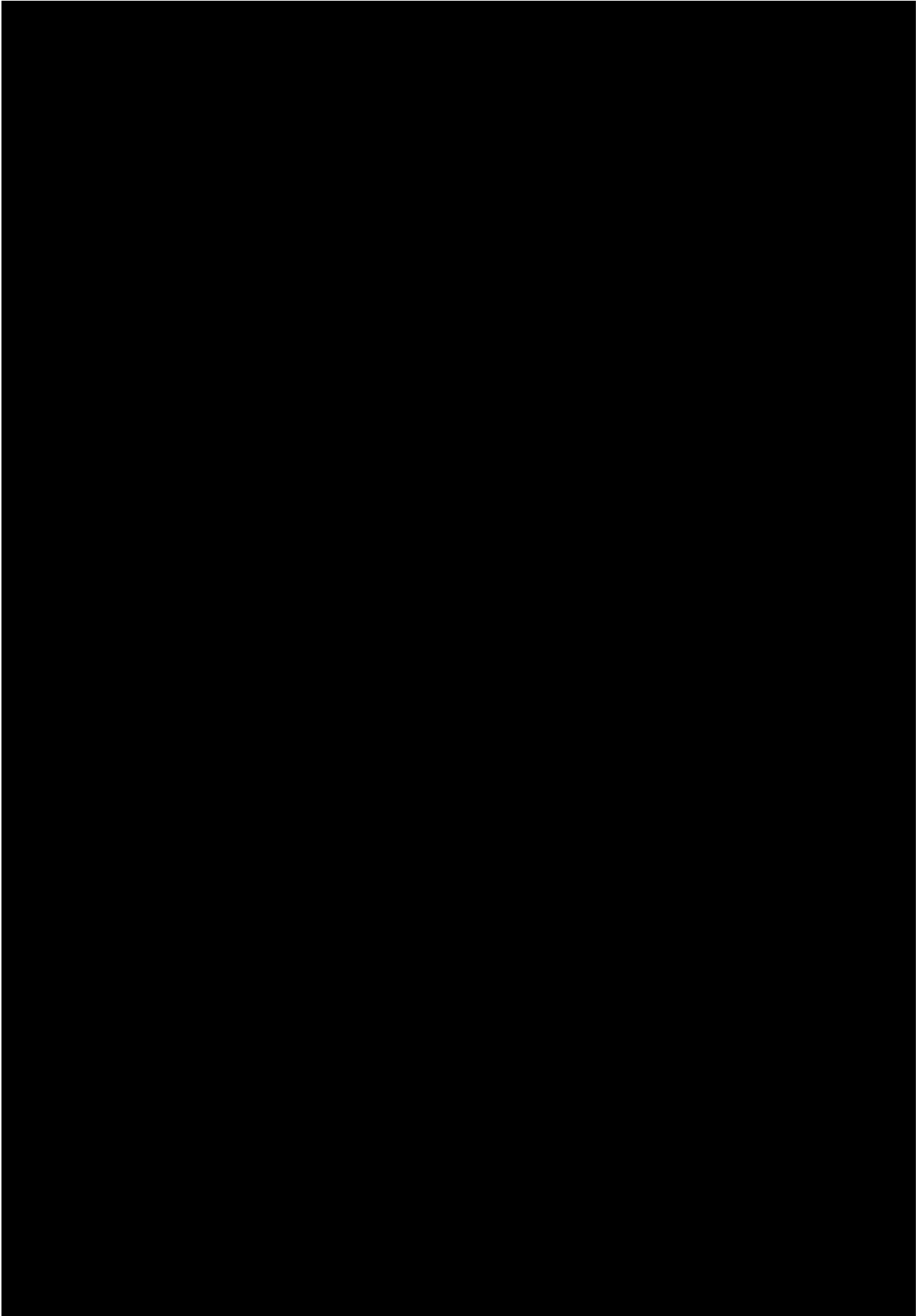


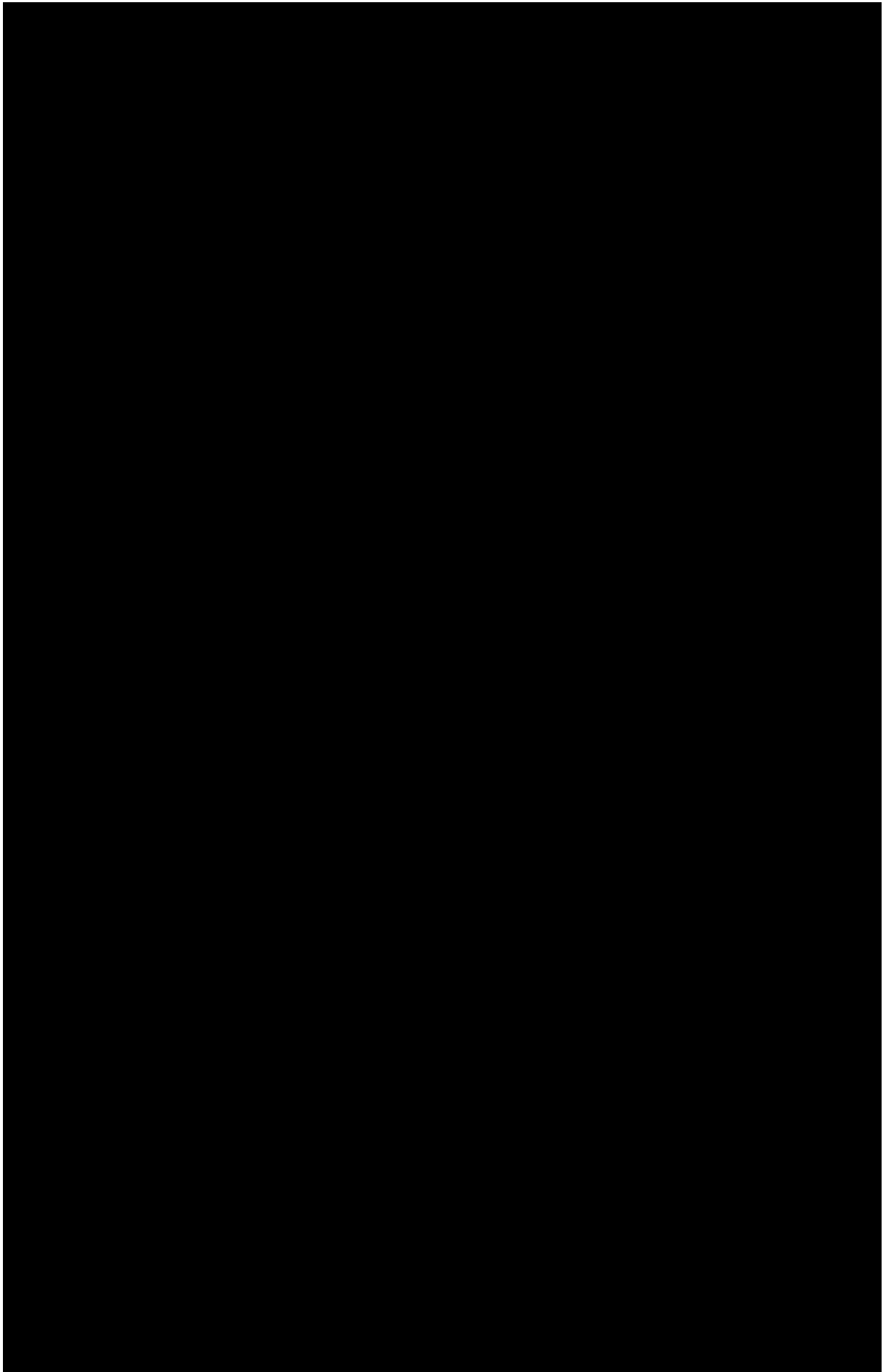


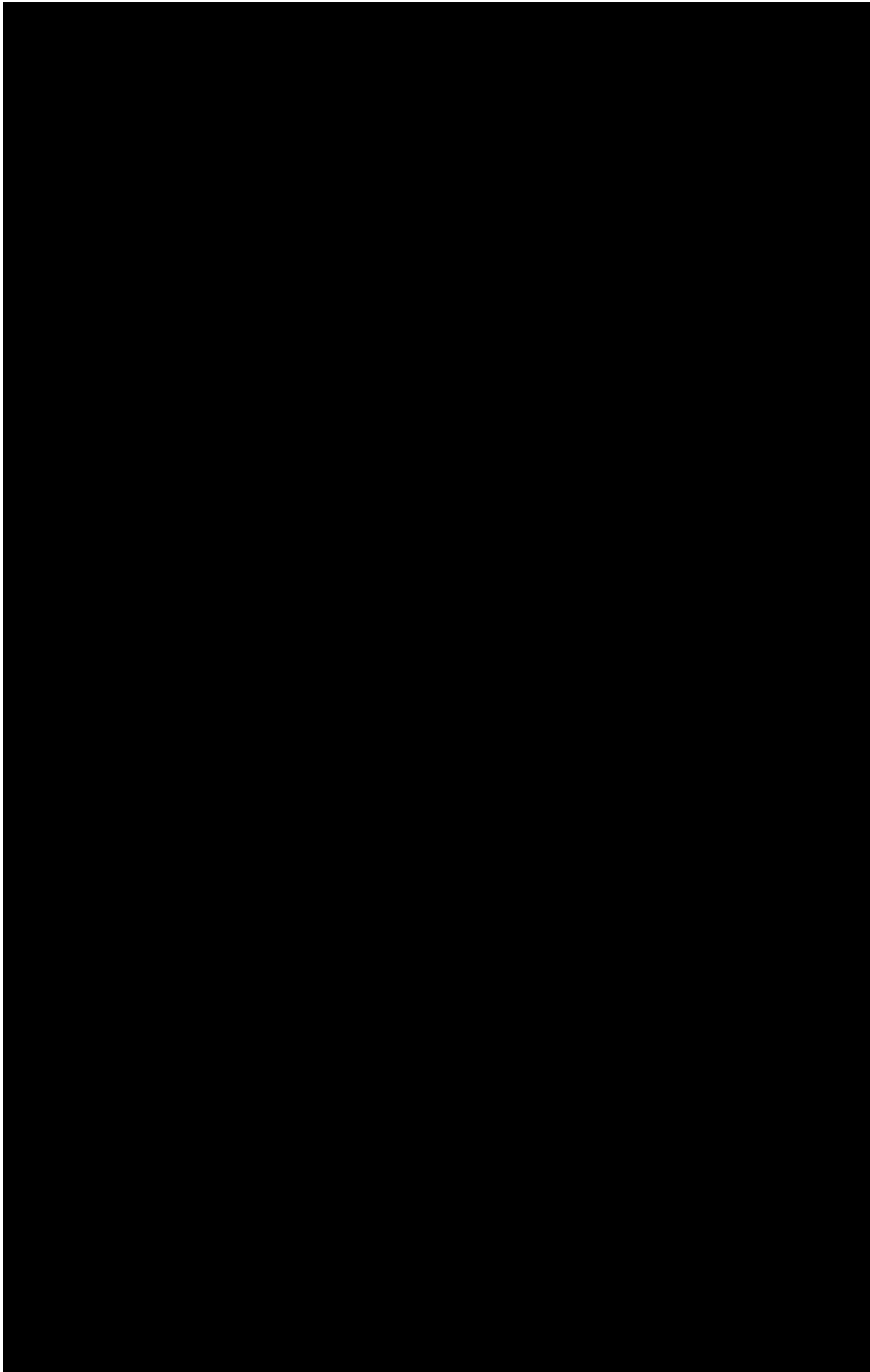


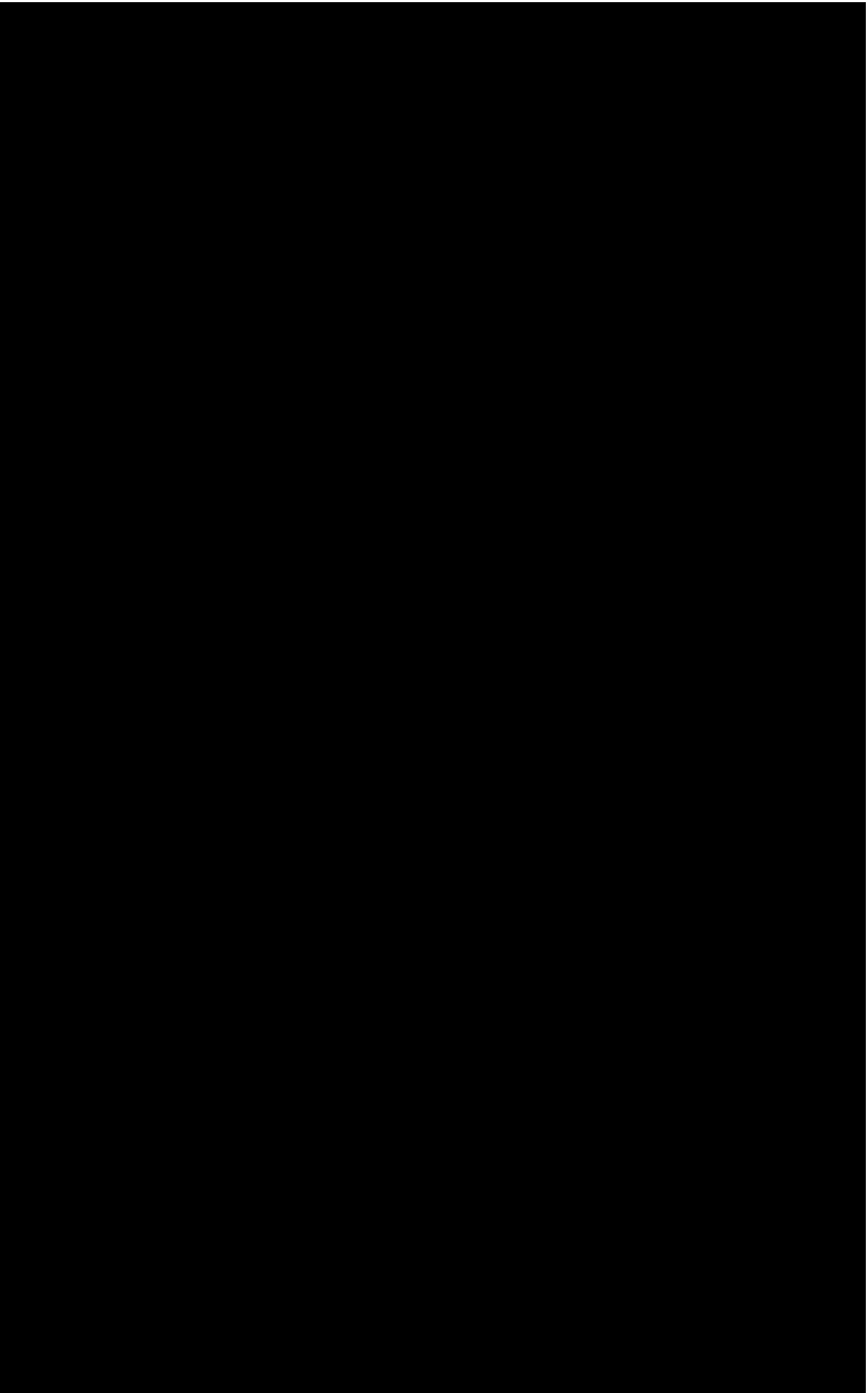


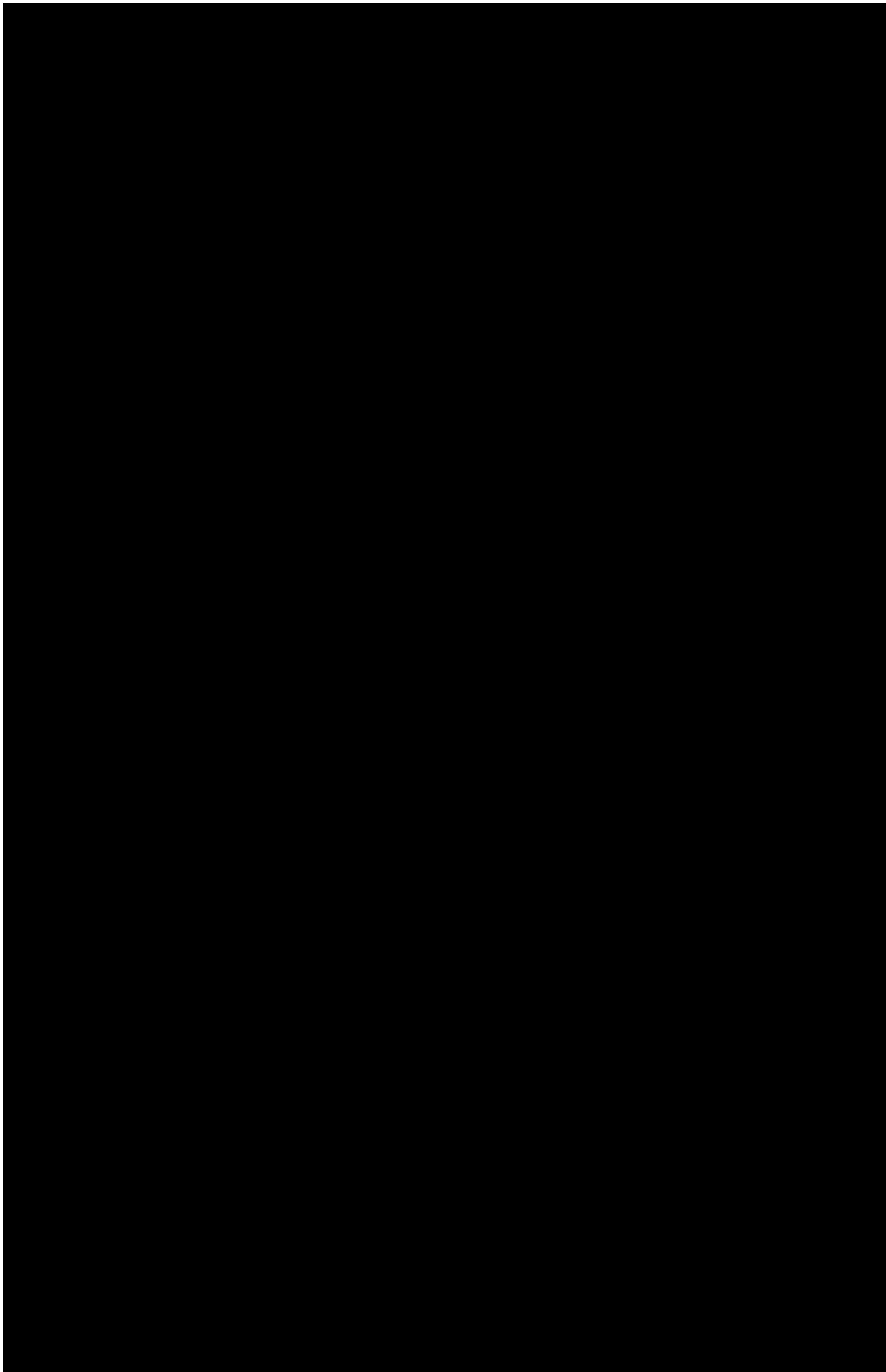
## Part D – Spares Supply Service

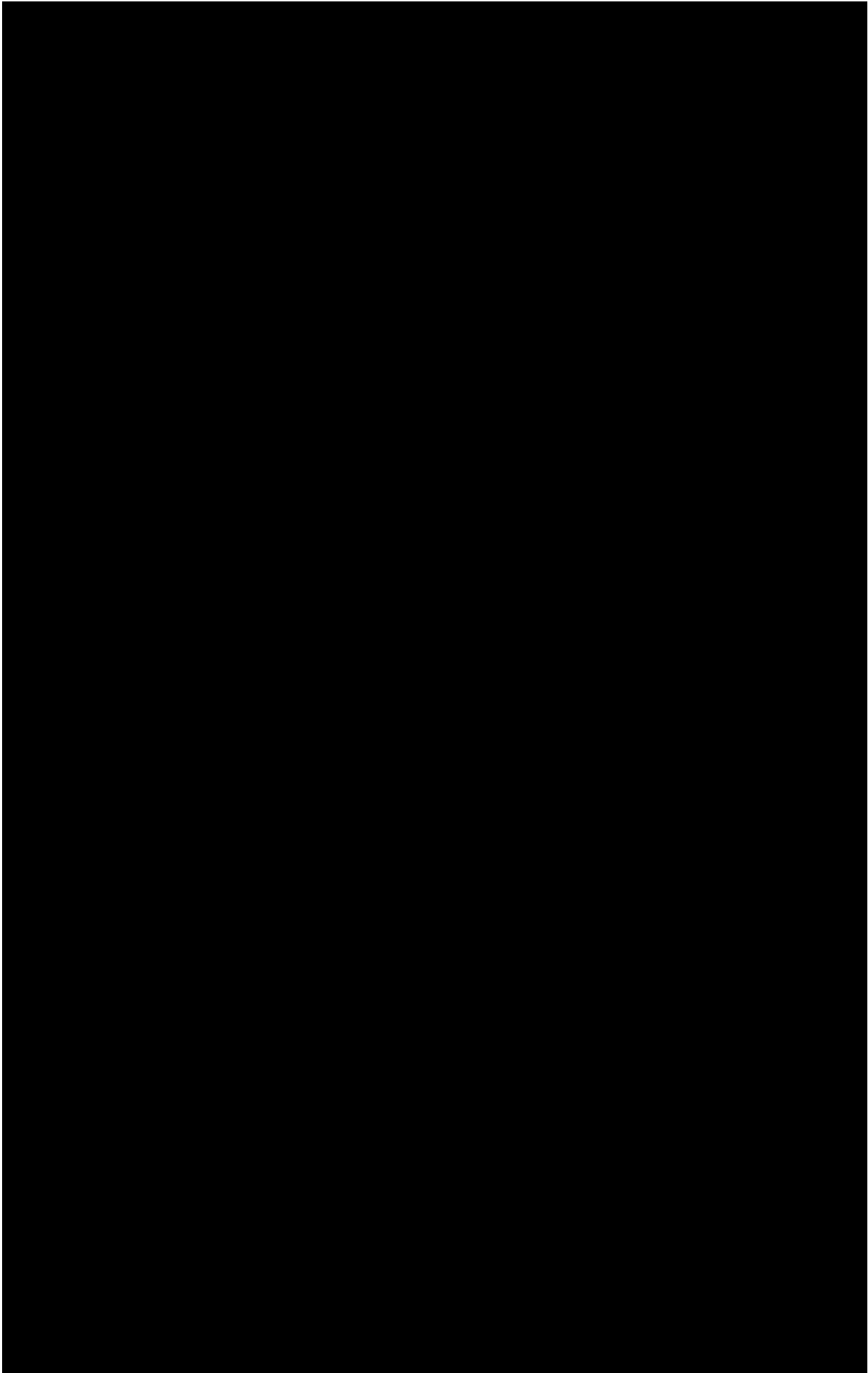


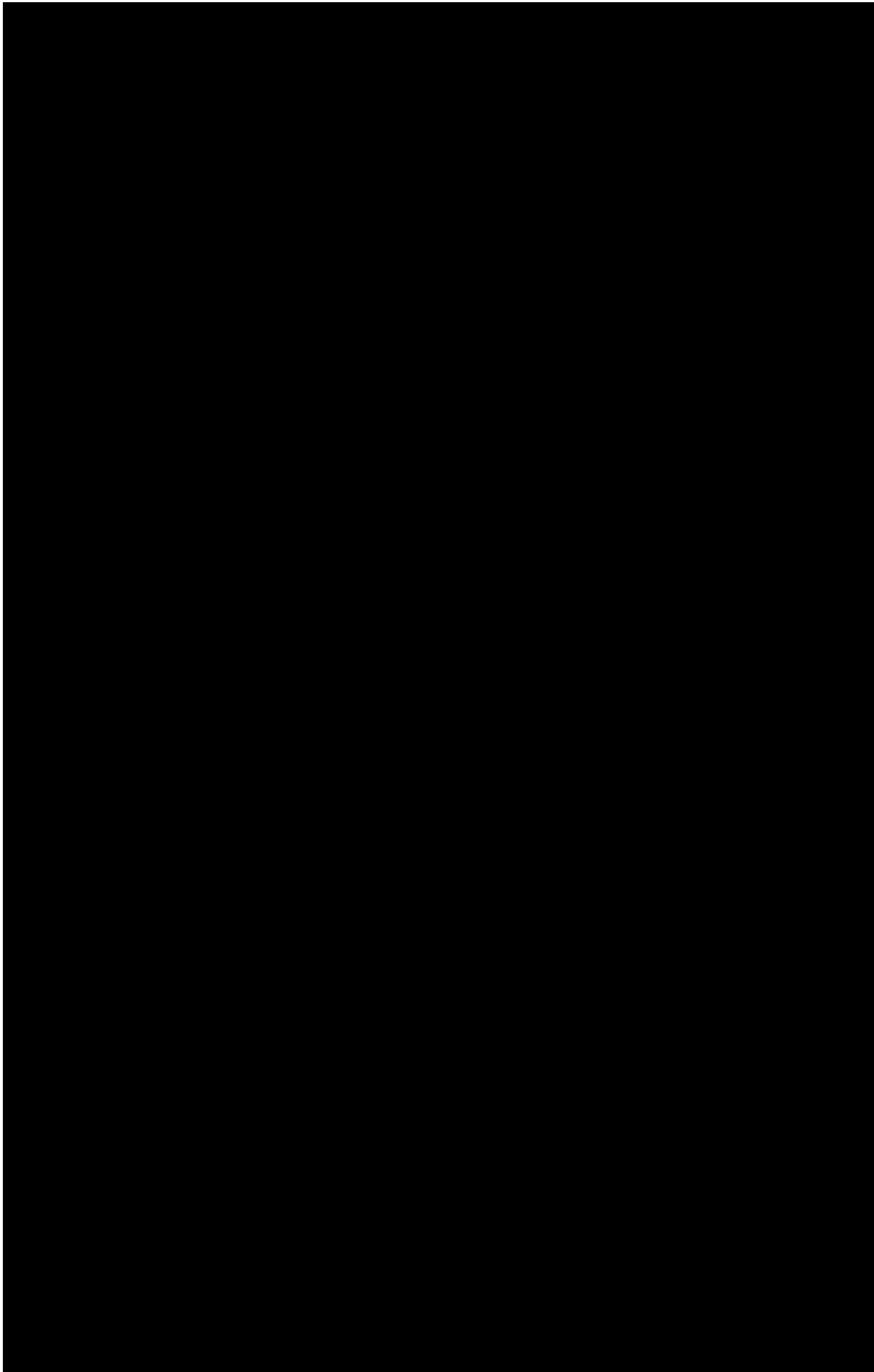


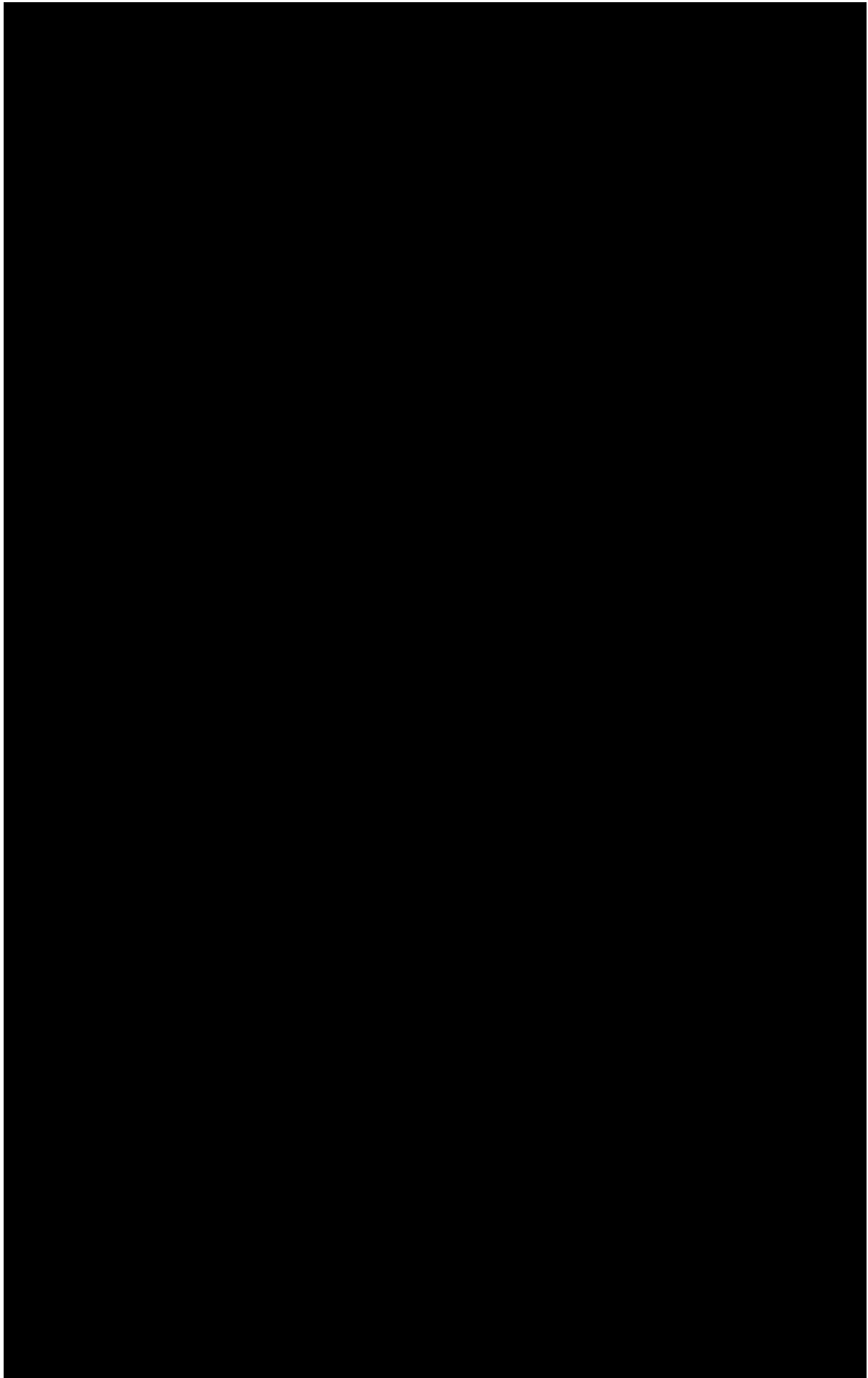


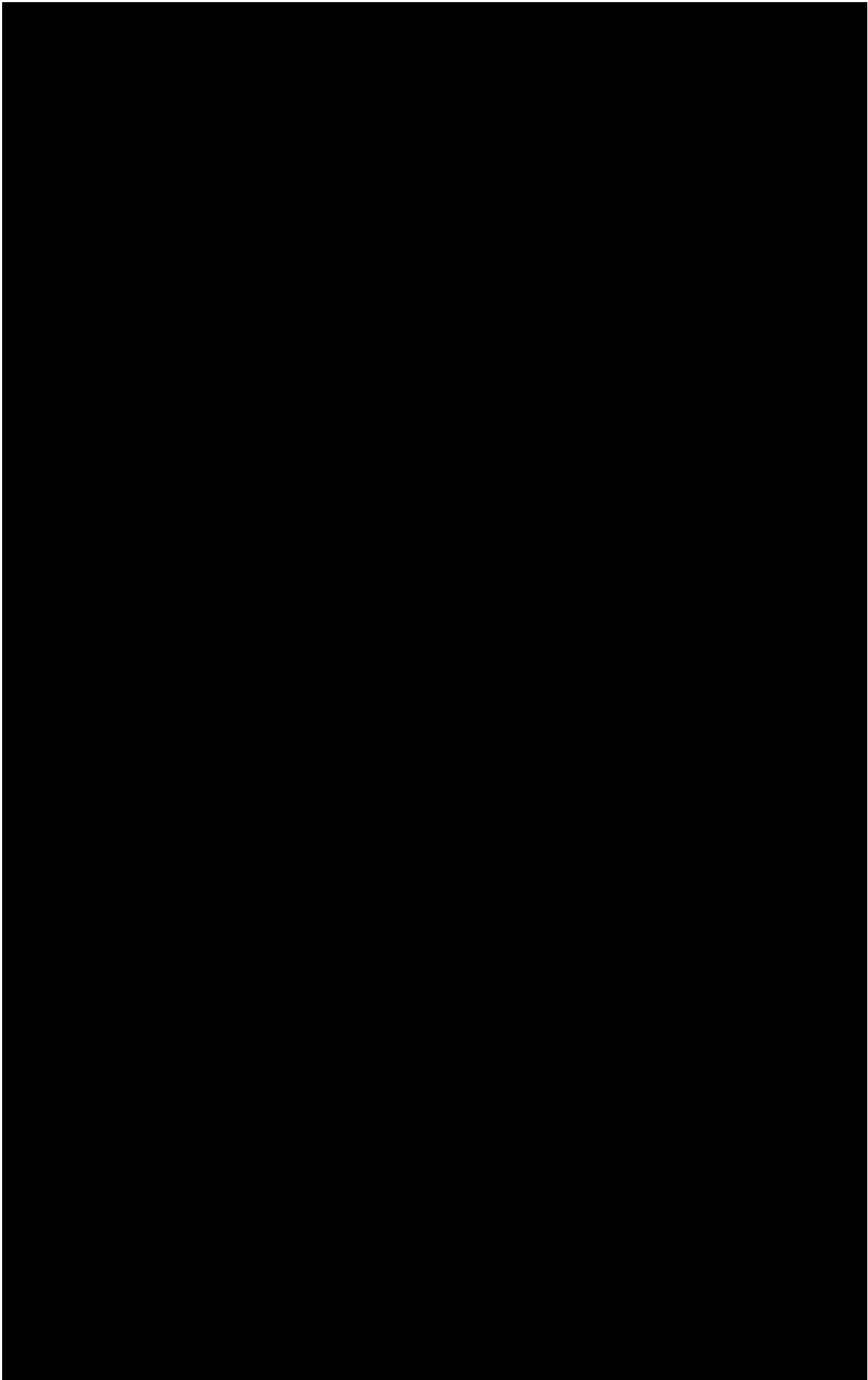


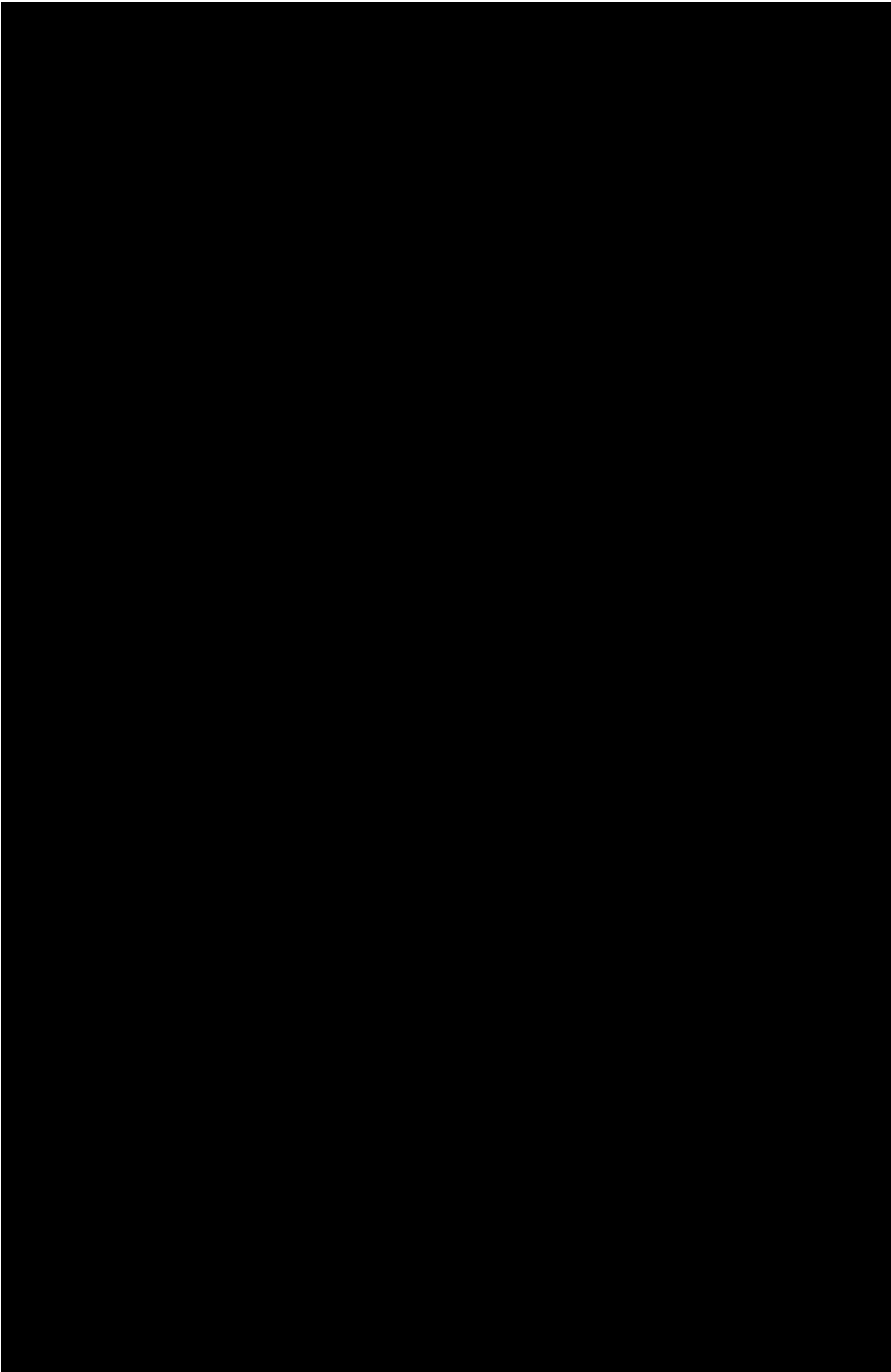


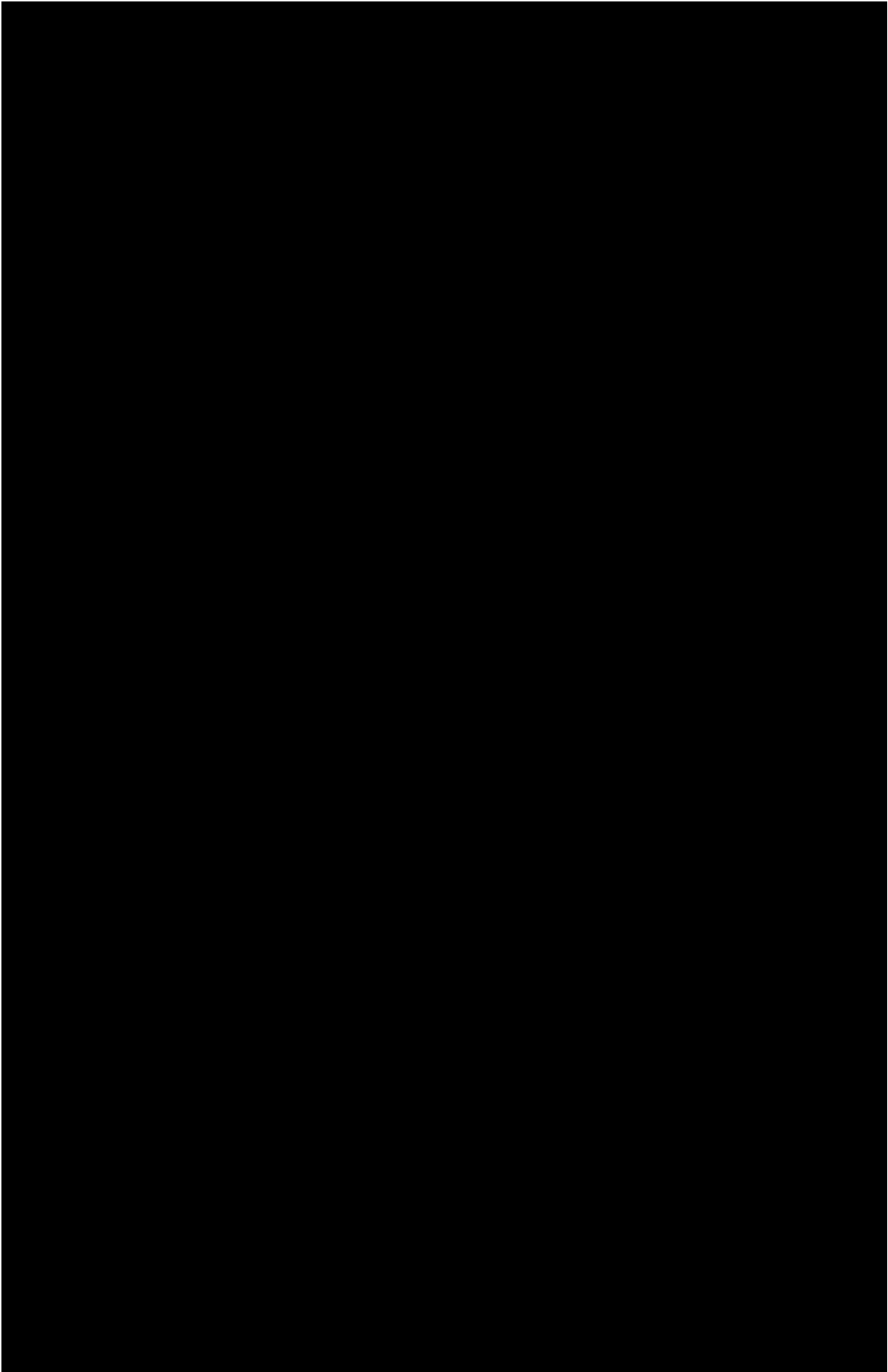


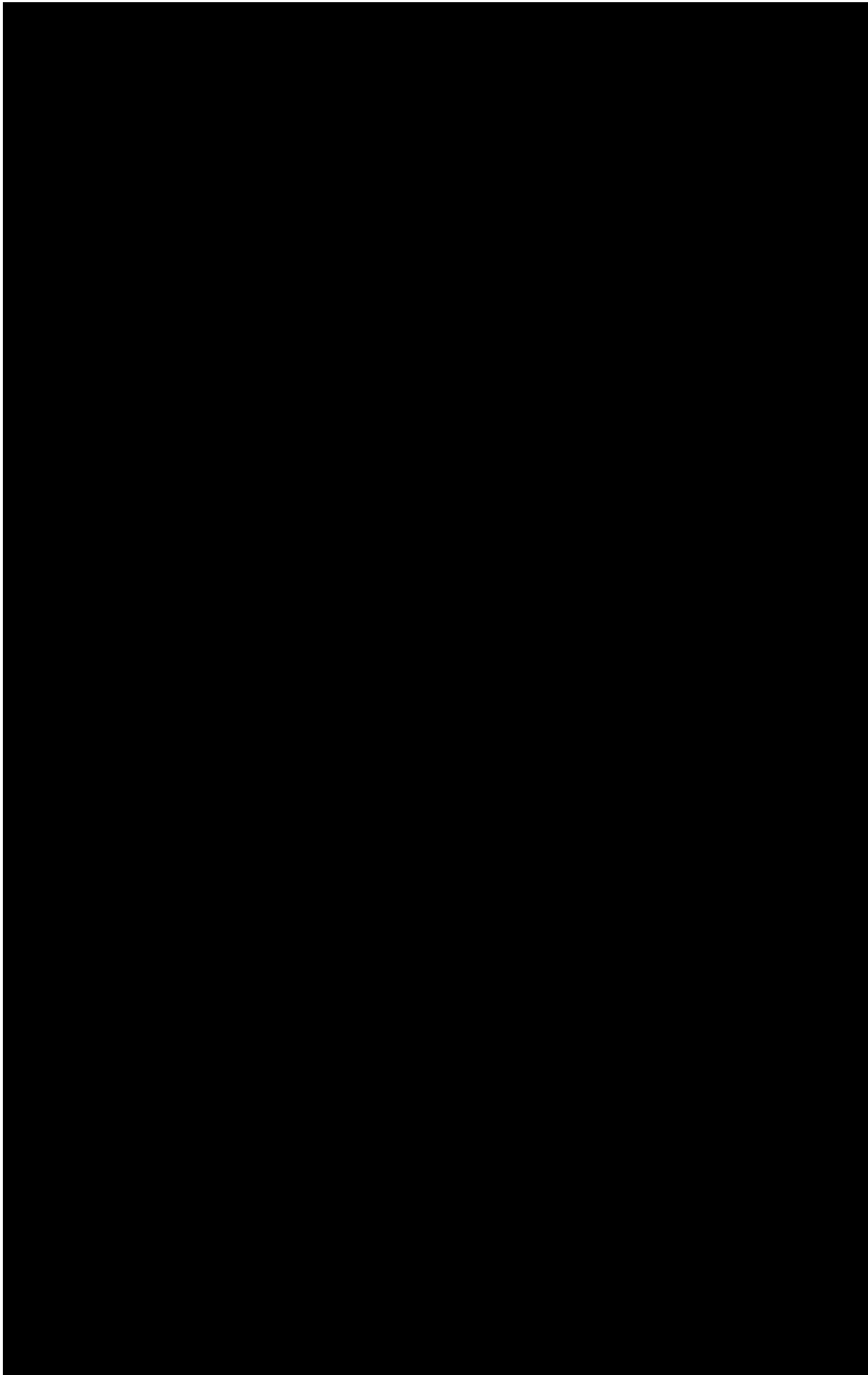


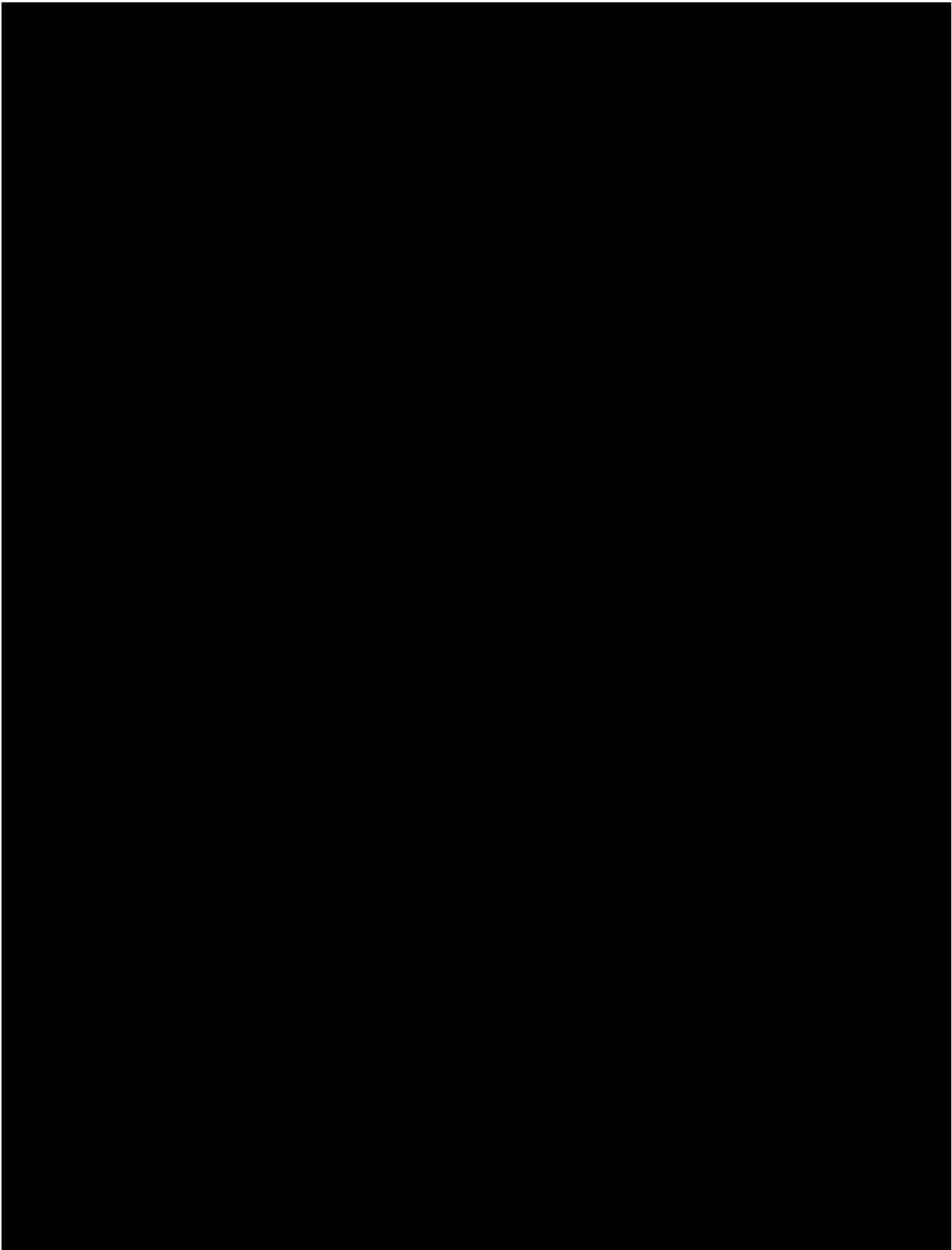


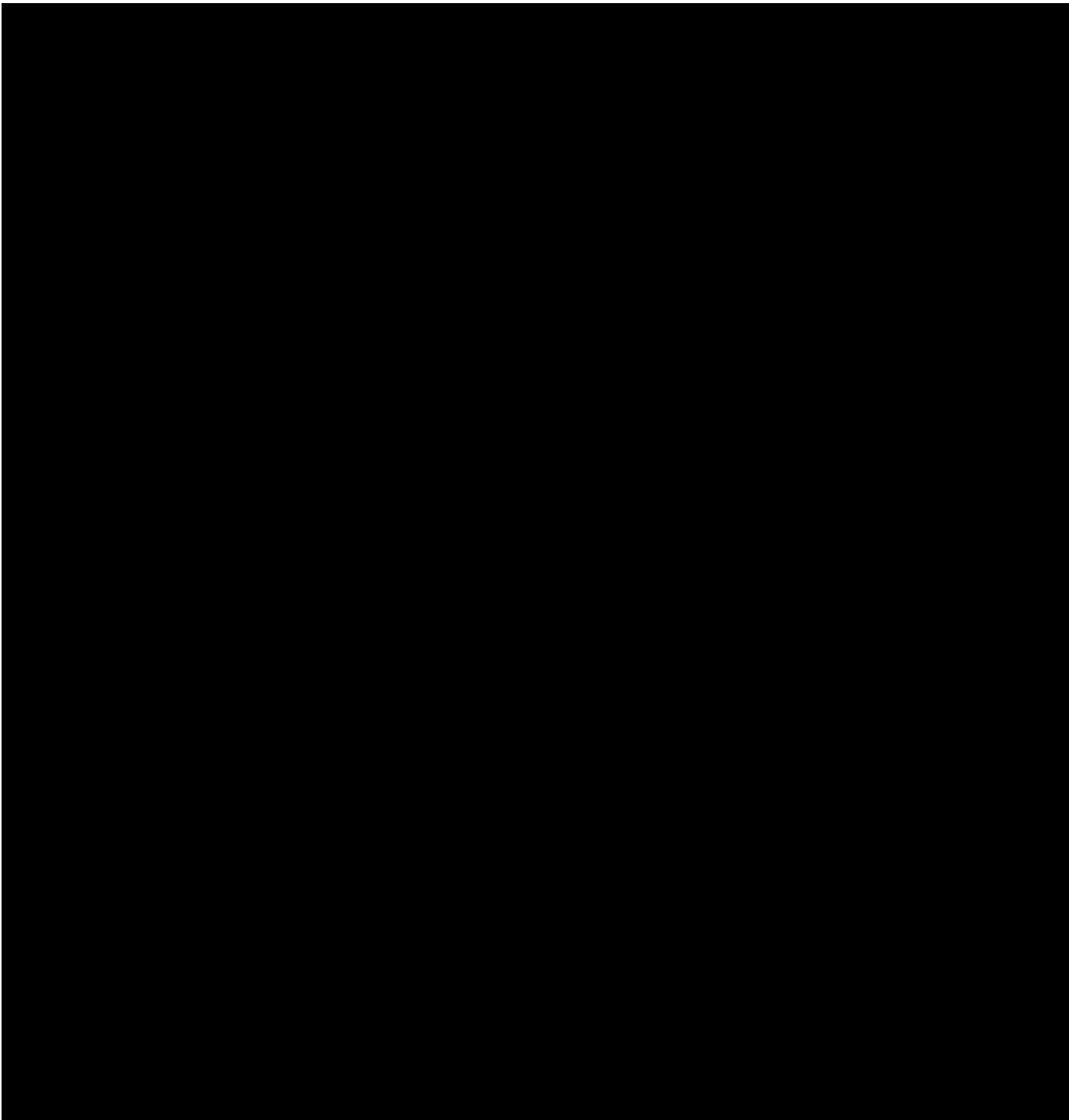












**B) OH costs.**



The Service Provider confirms that the above schedule of overhauls covers all overhaul requirements over the entire term of this Agreement subject to the Fleet aggregate mileage (over the entire term of this Agreement) not exceeding the highest Base Band mileage (as specified in Schedule 3), such highest Base Band mileage being aggregated for all Units in the Fleet and for all Contract Years during the term.

## Schedule 2 – Payments

### 1 Standard Service Payment

- (a) Unless otherwise modified or varied in accordance with the provisions of this Agreement, the Standard Service Payment for the duration of the Maintenance Period under this Agreement and the Services contemplated hereunder shall be, in respect of each Reporting Period, the aggregate of the sums referred to in paragraphs 1(b) and (c) for that Reporting Period.
- (b) In respect of the Technical Support Services the Standard Service Payment shall be [REDACTED] for each Reporting Period from the Commencement Date until the Expiry Date;
- (c) In respect of the Spares Supply Services the Standard Service Payment from the Commencement Date until the Expiry Date shall be:
  - (i) [REDACTED] for each Reporting Period in respect of the 3 car DMUs, adjusted pro rata for each part of a Reporting Period; and
  - (ii) [REDACTED] for each Reporting Period in respect of the 2 car DMUs, adjusted pro rata for each part of a Reporting Period,as the same are adjusted and updated in accordance with paragraph 3.

### 2 Initial calculation of the Service Payment in respect of the Spares Supply Service

#### 3 car DMUs

- (a) The parties acknowledge and agree that the Standard Service Payment in respect of the Spares Supply Service for the 3 car DMU during the Maintenance Period shall be calculated on the following basis:
  - (i) on the assumption that the Annual Aggregate Mileage of each such Unit will be [REDACTED]
  - (ii) on the assumption that there are [REDACTED] such Units in the Fleet; and
  - (iii) on the assumption that based on the appropriate table set out in Schedule 3, the Unit Rate for such Units will be [REDACTED]

so that:

- the annual payment in respect of the Spares Supply Service for the 3 car DMUs will be [REDACTED] being, in respect of each such DMU, the product of the relevant assumed Annual Aggregate Mileage referred to in paragraph 2(a)(i) and the relevant Unit Rate referred to in paragraph 2(a)(iii) for that DMU, aggregated across all such DMUs in that Contract Year, and
- (iv) the charge for the Spares Supply Service for the 3 car DMUs for each Reporting Period will be [REDACTED] being, in each case, one thirteenth of the relevant figure referred to in paragraph 2(a)(iv).

## 2 car DMUs

- (b) The parties acknowledge and agree that the Standard Service Payment in respect of the Spares Supply Service for the 2 car DMUs shall be calculated on the following basis:
- (i) on the assumption that the Annual Aggregate Mileage of each such Unit will be [REDACTED]
  - (ii) on the assumption that there will be [REDACTED] such Units in the Fleet; and
  - (iii) that, based on the appropriate table set out in Schedule 3, the Unit Rate for such Units will be [REDACTED]

so that:

the annual payment in respect of the Spares Supply Service for the 2 car DMUs will be [REDACTED] being, in respect of each such DMU, the product of the relevant assumed Annual Aggregate Mileage referred to in paragraph 2(b)(i) and the relevant Unit Rate referred to in paragraph 2(b)(iii) for that DMU, aggregated across all such DMUs in that Contract Year; and

- (iv) the charge for the Spares Supply Service for the 2 car DMUs for each Reporting Period will be [REDACTED] being, in each case, one thirteenth of the relevant figure referred to in paragraph 2(b)(iv).

## 3 **Price adjustment in respect of the Service Payment for the Spares Supply Service for each Contract Year**

- (a) At the end of the each Contract Year, the Operator shall provide to the Service Provider, the Annual Aggregate Mileage of each 3 car DMU.
- (b) As soon as reasonably practicable (and in any event, not later than 2 weeks following receipt of the figures in paragraph 3(a)), the Service Provider shall provide to the Operator, in respect of the 3 car DMUs (save in respect of any Excluded Unit to which paragraph 3(h) shall apply):
- (i) the Annual Aggregate Mileage for such Units, provided that for the purposes of calculating the Annual Aggregate Mileage, it is agreed that if the average Annual Aggregate Mileage for such Units is below [REDACTED] it shall be deemed to be [REDACTED]
  - (ii) subject to paragraph 3(e), based on the appropriate table set out in Schedule 3 and the Annual Aggregate Mileage referred to in paragraph 3(b)(i), the Unit Rate for such Units;
  - (iii) subject to paragraph 3(e), the total charge per Unit, being the product of the Annual Aggregate Mileage referred to in paragraph 3(b)(i) and the Unit Rate for such Unit (as the same is referred to in paragraph 3(b)(ii)); and
  - (iv) subject to paragraph 3(e), the sum of the charges for all such Units, being the product of the sum calculated pursuant to paragraph 3(b)(iii).

- (c) At the end of each Contract Year, the Operator shall provide to the Service Provider, the Annual Aggregate Mileage of each 2 car DMU.
- (d) As soon as reasonably practicable (and in any event, not later than 2 weeks following receipt of the figures in paragraph 3(c)), the Service Provider shall provide to the Operator, in respect of the 2 car DMUs (save in respect of any Excluded Unit to which paragraph 3(h) shall apply):
  - (i) the Annual Aggregate Mileage for such Units, provided that for the purposes of calculating the Annual Aggregate Mileage, it is agreed that if the Annual Aggregate Mileage for such Units is below [REDACTED] it shall be deemed to be [REDACTED]
  - (ii) subject to paragraph 3(e), based on the appropriate table set out in Schedule 3 and the Annual Aggregate Mileage referred to in paragraph 3(d)(i), the Unit Rate for such Units;
  - (iii) subject to paragraph 3(e), the total charge per Unit, being the product of the Annual Aggregate Mileage referred to in paragraph 3(d)(i) and the Unit Rate for such Unit (as the same is referred to in paragraph 3(d)(ii)); and
  - (iv) subject to paragraph 3(e), the sum of the charges for all such Units, being the product of the sum calculated pursuant to paragraph 3(d)(iii).
- (e) If the Annual Aggregate Mileage referred to in paragraph 3(b)(i) or paragraph 3(d)(i) do not correspond with any of the bands contained in the appropriate table set out in Schedule 3, then the Variation Procedure set out in Schedule 8 (*Variation Procedure*) shall apply in determining the adjustment required to the Standard Service Payments in respect of the additional Spares and any other additional work required by virtue of the average Annual Aggregate Mileage being outside such parameters, such costs being calculated, where possible, in accordance with the Spares List.
- (f) If the aggregate of the two sums referred to in paragraphs 3(b)(iv) and 3(d)(iv) (together with any sum calculated in accordance with paragraphs 3(e) and/or 3(h)) is greater than the total Standard Service Payment in respect of the Spares Supply Service paid for that Contract Year, the Operator shall, within 30 days of the end of that Contract Year, pay the difference to the Service Provider.
- (g) If the aggregate of the two sums referred to in paragraphs 3(b)(iv) and 3(d)(iv) (together with any sum calculated in accordance with paragraphs 3(e) and/or 3(h)) is less than the total Standard Service Payment in respect of the Spares Supply Service for that Contract Year, the Service Provider shall, within 30 days of the end of that Contract Year, pay the difference to the Operator.
- (h) In relation to any Unit which is Removed From Service for a minimum of 1 Reporting Period and up to 13 consecutive Reporting Periods (an **"Excluded Unit"**) then the charges applicable to such Excluded Unit shall not be calculated in accordance with paragraphs 3(b) and/or 3(d) (as the case may be) but shall be calculated in accordance with this paragraph 3(h). As soon as reasonably practicable (and in any event,

not later than 2 weeks following receipt of the figures in paragraphs 3(a) and 3(c) (as the case may be)), the Service Provider shall provide to the Operator, in respect of any Excluded Unit:

- (i) the Annual Aggregate Mileage for such Unit excluding any mileage accrued during that part of the relevant Contract Year when such Excluded Unit was Removed From Service;
- (ii) based on the appropriate table set out in Schedule 3 and the Annual Aggregate Mileage referred to in paragraph 3(h)(i), the Unit Rate for such Excluded Unit provided that if the Annual Aggregate Mileage referred to in paragraph 3(h)(i) is less than [REDACTED] miles then the Unit Rate shall be prorated by the actual Annual Aggregate Mileage for such Unit; and
- (iii) the total charge for that Excluded Unit, being the product of the Annual Aggregate Mileage referred to in paragraph 3(h)(i) and the Unit Rate for such Unit (as referred to in paragraph 3(h)(ii). Accordingly the Unit Price for an Excluded Unit may be [REDACTED] where no Annual Aggregate Mileage has accrued in a Contract Year.

#### 4 Additional Service Payments

- (a) All Additional Services shall be undertaken in accordance with clause 8 of this Agreement and priced in accordance with the provisions of clause 8 and this Schedule 2 (*Payments*).
- (b) As far as reasonably possible, the costs of any Additional Services shall be calculated using the Parts Rates and Work Rates.
- (c) The Service Provider shall be entitled to adjust the Parts Rates and Work Rates at each Indexation Date in accordance with the Indexation Formula set out in paragraph 6 below.

#### 5 Indexation

- (a) Where in this Agreement a figure is subject to indexation in accordance with this Schedule 2 or is followed by "(Indexed)", such figure shall be adjusted in accordance with the Indexation Formula, which shall take effect with effect from the first day of the first Reporting Period to commence during the month of April in each calendar year from and including [REDACTED] and on the first day of the first Reporting Period to commence during the month of April thereafter (each an "**Indexation Date**").
- (b) The "**Indexation Formula**" is:

[REDACTED]

Where:

Amount 1 is the new amount, price or rate applicable from the Indexation Date;

Amount 0 is the amount, price or rate applicable immediately prior to the relevant Indexation Date;

L1 is the Retail Price Index in the year as published in respect of the most recent January prior to the Indexation Date; and

L0 is the Retail Price Index for January 2025.

## 6 Definitions

In this Schedule 2 (*Payments*):

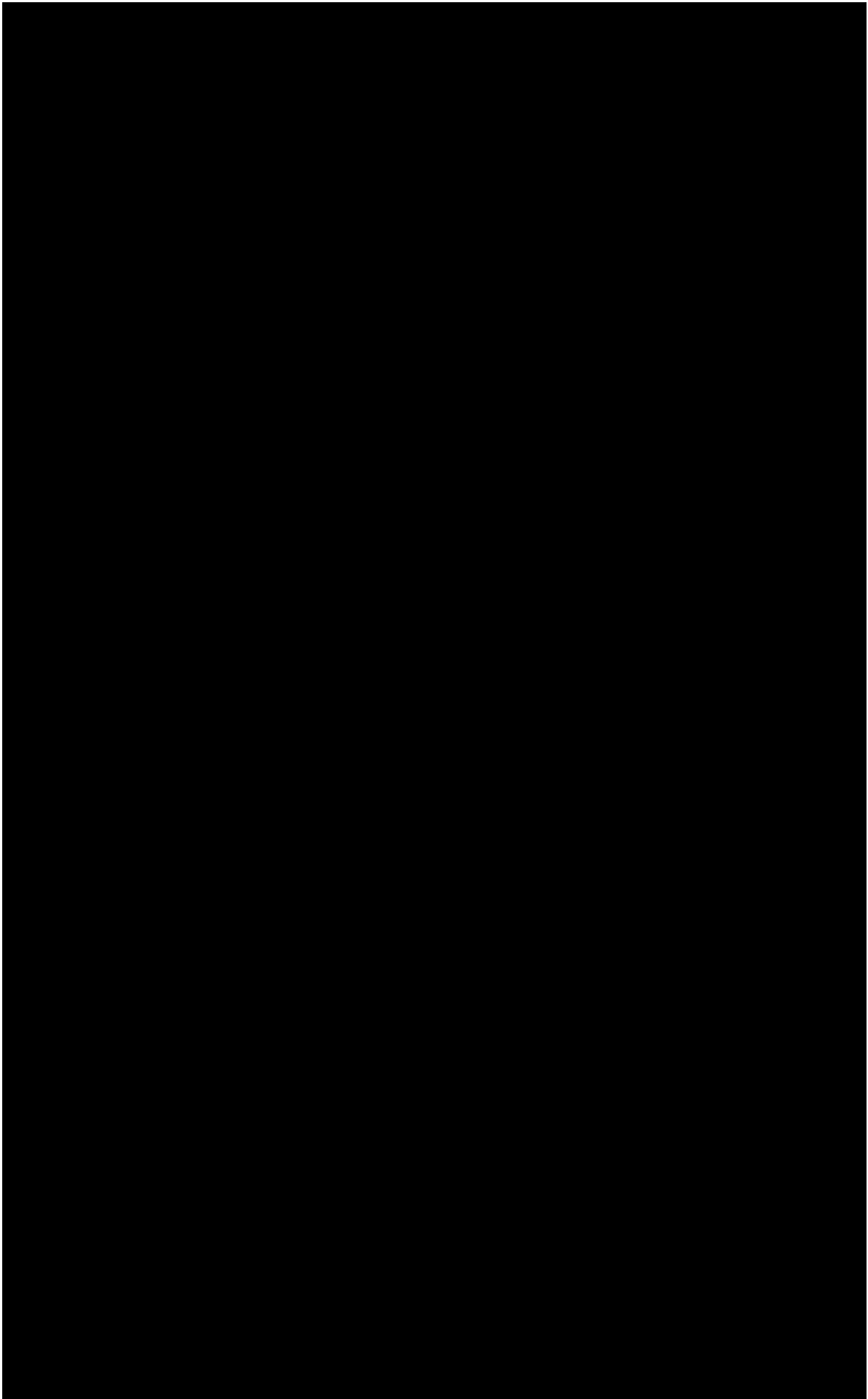
**"Annual Aggregate Mileage"** means the aggregate number of miles operated by a particular Unit in a Contract Year;

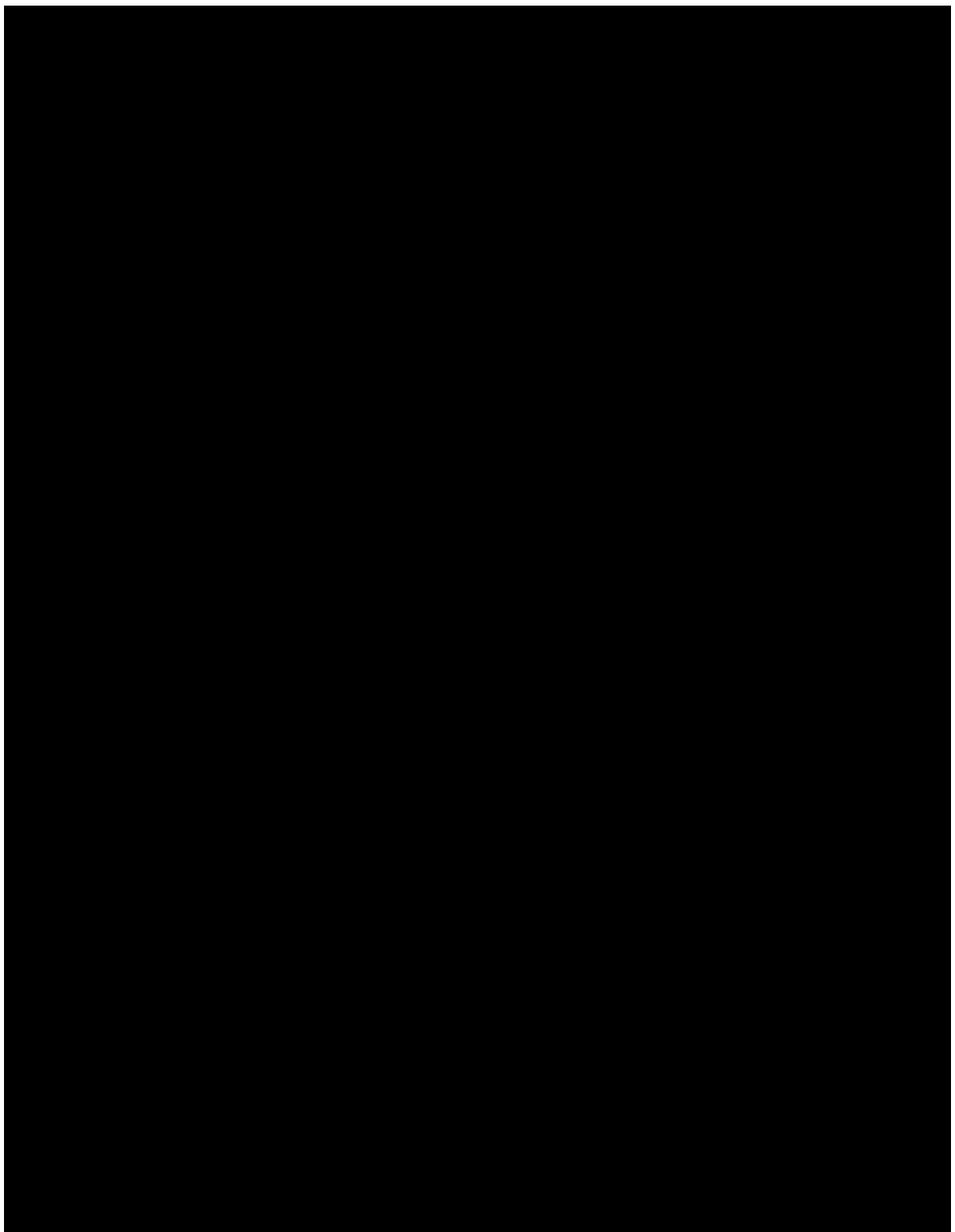
**"Contract Year"** means the period commencing on 1 April in a particular year and ending on the immediately following 31 March in the subsequent year (in each case, inclusive); and

**"Removed From Service"** means a Unit that has been removed from the Operator's service diagrams and has not therefore been scheduled by the Operator to operate passenger revenue earning services.

### Schedule 3 – Schedule of Prices

[Redacted Content]					
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## Schedule 4 – Train Availability and Reliability Regime

### 1 Definitions

1.1 In this Schedule, unless otherwise defined in clause 1 then the following terms shall have the following meanings below:

**Ad-hoc Train Move** means the movement of a Unit (which suffers a Fault whilst in passenger earning service) back to a Depot that is required outside of its planned service which is required as a consequence of a Fault excluding any Ad-hoc Train Move directly caused by an Allowable Event.

**Allowable Event** means a Fault which:

- (a) results from any act of vandalism, suicide or attempted suicide by any person (other than any such incident which occurs where the Unit is under the control of the Service Provider, the Manufacturer or any of their Sub-Contractors or employees, directors and agents);
- (b) results from any Force Majeure;
- (c) results from crash damage or accident (other than crash damage which is caused by any act or omission of the Service Provider, the Manufacturer or any of their Sub-Contractors or employees, directors and agents);
- (d) results from Improper Use of the relevant Unit(s);
- (e) results from non-compliance by the Operator with the Manuals and the Maintenance Plan; or
- (f) reoccurs on a second or subsequent occasion where the Operator has (following a period of 24 hours after the second or subsequent reoccurrence of the Fault) chosen not to rectify that Fault when it has had reasonable opportunity to do so (other than in circumstances where the Service Provider has advised the Operator not to attempt to rectify the Fault pursuant to the Technical Support Service);

**Available** means, in relation to a Unit that such Unit is Fit for Purpose and is either:

- (a) at its departure location thirty (30) minutes in advance of the first diagrammed departure time on any day; or
- (b) available in a condition suitable for use in Unrestricted Passenger Revenue-Earning Service whether or not the Unit is scheduled to be used or required for use in passenger service.

**Cancellation** means a Qualifying Passenger Revenue Earning Service which is cancelled or completes less than 50% of its scheduled mileage for reasons attributed to the Operator as recorded in TRUST excluding any cancellation directly caused by an Allowable Event.

**Degraded Mode** means a Unit which is capable of operating in passenger earning service: (i) with restrictions; or (ii) but which does not otherwise comply with the Specification (as defined in the MSA), save in either case

where such degraded mode is caused by an Allowable Event.

**Delay or Delayed** means the arrival, passing or departure of Unit at a Monitoring Point three (3) minutes or more after its scheduled time as recorded and allocated by TRUST. For the avoidance of doubt, Delay only means the primary delay of a Unit but not any delay of any other Units arising out of the primary delay.

**Delay Minutes** means the minutes recorded and allocated by TRUST to a Delay of a Qualifying Passenger Revenue Earning Service, excluding any minutes caused by an Allowable Event.

**Fault** means:

- (a) from the date of this Agreement until the ITSS Expiry Date, in relation to any Unit, that such Unit:
  - (i) does not comply with the Train Specification (insofar as the same relates to the Unit); or
  - (ii) is not Fit for Purpose,in each case whether:
  - (iii) in consequence of faulty design, faulty materials, bad workmanship or negligence; or
  - (iv) for any other reason attributable to the Manufacturer, the Service Provider or any of their respective sub-contractors, suppliers, employees or agents; and
- (b) from the ITSS Expiry Date, in relation to any Spare or On Train System, that such Spare or On Train System:
  - (i) does not comply with the Train Specification (insofar as the same relates to such Spare or On Train System); or
  - (ii) is not Fit for Purpose,in each case:
  - (iii) whether in consequence of faulty design, faulty materials, bad workmanship, negligence; or
  - (iv) for any other reason attributable to the Manufacturer or the Service Provider or any of its sub-contractors or suppliers or any of their respective employees or agents;

**Part Cancellation** means a Qualifying Passenger Revenue Earning Service which completes 50% or more but less than 100% of its scheduled mileage for reasons attributed to the Operator as recorded in TRUST excluding any partial cancellation directly caused by an Allowable Event.

**Performance Failures** means:

- (c) any Unavailability;
- (d) any Delay Minutes;
- (e) any Cancellations;

- (f) any Unplanned Work;
- (g) the operation of a Unit in Degraded Mode; and
- (h) any Ad-Hoc Train Moves.

**Qualifying Passenger Revenue Earning Service** means a passenger service that is operated by or scheduled to be operated by a Unit which suffers a Fault.

**Qualifying Reporting Period** means the fourth Reporting Period falling after the Commencement Date and each Reporting Period thereafter.

**Qualifying T-3 Delays** means the total number of Qualifying Passenger Revenue Earning Services that were Delayed in the fourth Contract Year excluding any Delay caused by an Allowable Event.

**Total Scheduled Passenger Revenue Earning Services** means the total number of passenger services that were scheduled to be operated by a Unit.

**Unavailable** means a Unit that is not Available excluding where that Unit is not Available due to an Allowable Event.

**Unplanned Work** means any maintenance performed on a Unit by the Operator which is required earlier than scheduled in the Maintenance Plan excluding any such maintenance that is required due to an Allowable Event.

## 2 **Performance Monitoring and Notification**

2.1 The Operator Representative shall, promptly following the end of each week:

- (a) prepare individual reports in respect of the occurrence, during the relevant week, of any and all Performance Failures which shall include the Operator's understanding of the cause and, where applicable, the duration of such Performance Failure as well as any substantiating evidence thereof (the "**Weekly Performance Report**"); and
- (b) issue a copy of each Weekly Performance Report to the Service Provider Representative.

2.2 If the Service Provider disagrees with an attribution made by the Operator as set out in a Weekly Performance Report it shall, at each weekly review meeting to be convened between the parties, notify the Operator that it disagrees with the attribution made by the Operator and provide full particulars of the matters to which it objects together with evidence available to the Service Provider in support of its position. The parties shall discuss the Performance Failures which are not agreed as attributable to the Service Provider and shall use their reasonable endeavours to agree whether or not the Performance Failures were attributable to the Operator.

2.3 Within five (5) working days of the end of each Reporting Period, the Operator shall deliver to the Service Provider a statement showing the calculation of all liquidated damages payable by the Service Provider to the Operator based on the Performance Failures that the Service Provider considers have arisen during that Qualifying Reporting Period, together with such supporting information as is reasonably required to verify the figures contained therein ("**Performance Statement**").

2.4 The Service Provider shall be deemed to have accepted and agreed with the Performance Statement unless, within five (5) Working Days after the date of the Performance Report the Service Provider notifies the Operator in writing providing full particulars of the matters to which it objects.

2.5 Any dispute between the Operator and the Service Provider as to the details of Performance Failures in any case which is outstanding after ten (10) Working Days of a Qualifying Railway Period shall be referred to the Service Provider's Operations Manager and Operator's Head of Fleet Commercial for resolution. If the dispute remains unresolved after a further five (5) Working Days, either party may elect to refer the dispute for resolution pursuant to Clause 43.

### 3 Unit Unavailability

3.1 In accordance with paragraph 2, during each Reporting Period, the Unavailability of a Unit shall be determined daily by the Operator. Each instance of a Unit being Unavailable during each Reporting Period shall be included in the Performance Statement applicable to that Reporting Period.

3.2 In respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of [REDACTED] (indexed) per Vehicle comprising a Unit for each day that a Unit is Unavailable.

### 4 Delay Minutes

4.1 In accordance with paragraph 2, during each Reporting Period, the number of Delay Minutes shall be determined daily by the Operator and aggregated at the end of each Reporting Period and included in the Performance Statement applicable to that Reporting Period.

4.2 In respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of [REDACTED] (indexed) per Delay Minute accruing during the relevant Reporting Period.

4.3 Following the expiry of the fourth Contract Year the Operator shall calculate the Service Provider T-3 Performance as follows:

[REDACTED]

Where:

SPT3	means the Service Provider T-3 Performance for the fourth Contract Year
QT3D	means the total number of Qualifying T-3 Delays in the fourth Contract Year
SPS	means the Total Scheduled Passenger Revenue Earning Services in the fourth Contract Year

### 5 Cancellations

5.1 In accordance with paragraph 2, during each Reporting Period, the number of Cancellations and Partial Cancellations shall be determined daily by the Operator and aggregated at the end of each Reporting Period and included in the Performance Statement applicable to that Reporting Period.

5.2 In respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of:

5.2.1 [REDACTED] (indexed) per Unit for each Cancellation; and

5.2.2 [REDACTED] (indexed) per Unit for each Part Cancellation.

5.3 Following the expiry of the fourth Contract Year the Operator shall calculate the Service Provider Cancellations as follows:

[REDACTED]

Where:

SPC	means the Service Provider Cancellations for the fourth Contract Year
C	means the total number of Cancellations in the fourth Contract Year
PC	means the total number of Partial Cancellations in the fourth Contract Year
SPS	means the Total Scheduled Passenger Revenue Earning Services in the fourth Contract Year

## 6 Rework

6.1 In accordance with paragraph 2, during each Reporting Period, the number of resource hours expended by the Operator in undertaking Unplanned Work shall be determined daily by the Operator and aggregated at the end of each Reporting Period and included in the Performance Statement applicable to that Reporting Period.

6.2 In respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of [REDACTED] (indexed) per resource hour incurred by the Operator in carrying out Unplanned Work.

## 7 Degraded Mode

7.1 In accordance with paragraph 2, during each Reporting Period, the number of Units which have been operated in Degraded Mode (for part or the whole of a day) shall be determined daily by the Operator and aggregated at the end of each Reporting Period and included in the Performance Statement applicable to that Reporting Period.

7.2 In respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of [REDACTED] (indexed) per Unit per day (including any part day) that a Unit is operated in Degraded Mode.

## 8 Ad-hoc Train Moves

8.1 In accordance with paragraph 2, during each Reporting Period the number of Ad Hoc Train Moves shall be determined daily by the Operator and aggregated at the end of each Reporting Period and included in the Performance Statement applicable to that Reporting Period.

- 8.2 Subject to paragraph 8.3, in respect of each Qualifying Reporting Period, the Service Provider shall pay to the Operator liquidated damages at the rate of [REDACTED] (indexed) per Ad-Hoc Train Move.
- 8.3 If a Unit is subject to two or more successive Ad-hoc Train Moves arising out of the same Fault, such Ad-hoc Train Moves should only be treated as one Ad-hoc Train Move for the purposes of paragraph 8.2.

## 9 **Payment**

- 9.1 With respect to each Qualifying Reporting Period, the Operator shall, at the same time as delivering a Performance Statement, submit an invoice to the Service Provider for the aggregate amount of any liquidated damages as stated in such Performance Statement. The Operator shall be entitled to deduct such amount of liquidated damages against future Standard Service Payments and/or Additional Service Payments payable by the Operator to the Service Provider.

## 10 **Miscellaneous**

- 10.1 The payment of liquidated damages pursuant to this Schedule 4 are in full and final settlement of any losses suffered by the Operator as a result of the matters to which they relate and are a genuine pre-estimate of the loss which the Operator is likely to suffer by virtue of the matters to which they relate.
- 10.2 Where any values are expressed to be indexed, they shall be indexed in accordance with Schedule 2.
- 10.3 Liquidated Damages paid by the Service Provider may be reinvested by the Operator, at the Operator's discretion, into initiatives or measures identified by the Operator and the Service Provider that are intended to improve the availability and reliability of the Fleet. For the avoidance of doubt, any such reinvestment is not intended to relieve the Service Provider of its obligations under this Agreement or the MSA.
- 10.4 If a Unit is Delayed, subject to a Cancellation or Part Cancellation or operates in Degraded Mode in the same Diagram Leg, then such Unit shall be simultaneously be considered to have been Delayed, subject to a Cancellation or Part Cancellation and/or operating in Degraded Mode (as the case may be) in such Diagram Leg.
- 10.5 If a Unit is subject to a Cancellation or Part Cancellation and is then subject to an Ad-Hoc Train Move, such Unit shall be considered to be subject to both a Cancellation or Part Cancellation and an Ad-Hoc Train Move.
- 10.6 The parties acknowledge that where the provisions of paragraph 10.4 and 10.5 apply, the recovery of liquidated damages shall not amount to double recovery in such circumstances and therefore clause 20.2 shall not apply.
- 10.7 The provisions of this Schedule 4 shall apply from the Commencement Date in order to provide the Operator and the Service Provider with a period of familiarisation with the performance measures specified herein. The Operator's right to apply liquidated damages shall apply from (and including) the fourth Reporting Period after the Commencement Date such that the Service Provider will be provided with a grace period of three Reporting Periods from the Commencement Date.

## **Schedule 5– Form of Termination Notice**

From: Northern Trains Limited

To: CAF Rail UK Limited

Dated: [●]

Terms defined in this notice shall have the same meaning as in the Technical Support and Spares Supply Agreement, dated [●], and entered into between CAF Rail UK Limited, Northern Trains Limited and Eversholt Rail Leasing Limited (the "TSSSA").

We hereby give you notice that, with effect from the date hereof, the TSSSA is terminated as a consequence of a Service Provider Event of Default under clause [●] of the TSSSA, namely:

[Set out nature and details of Service Provider Event of Default]

The Appendix contains details of the sums claimed by the Operator, as at today's date, in accordance with the remedies made available to it under the TSSSA.

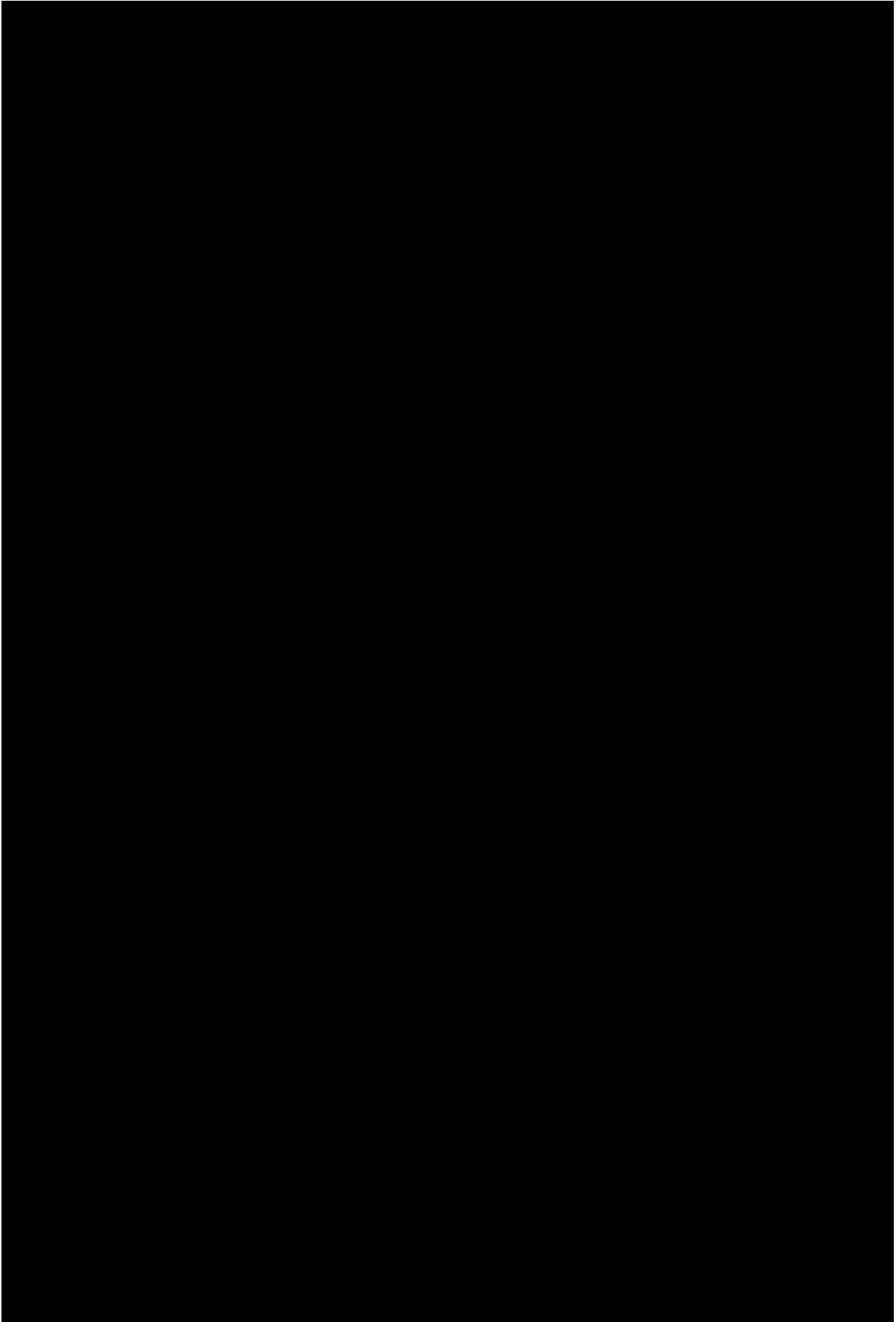
The Operator reserves the right to make further claims for any losses, expenses or liabilities incurred by then, in consequence of such termination pursuant.

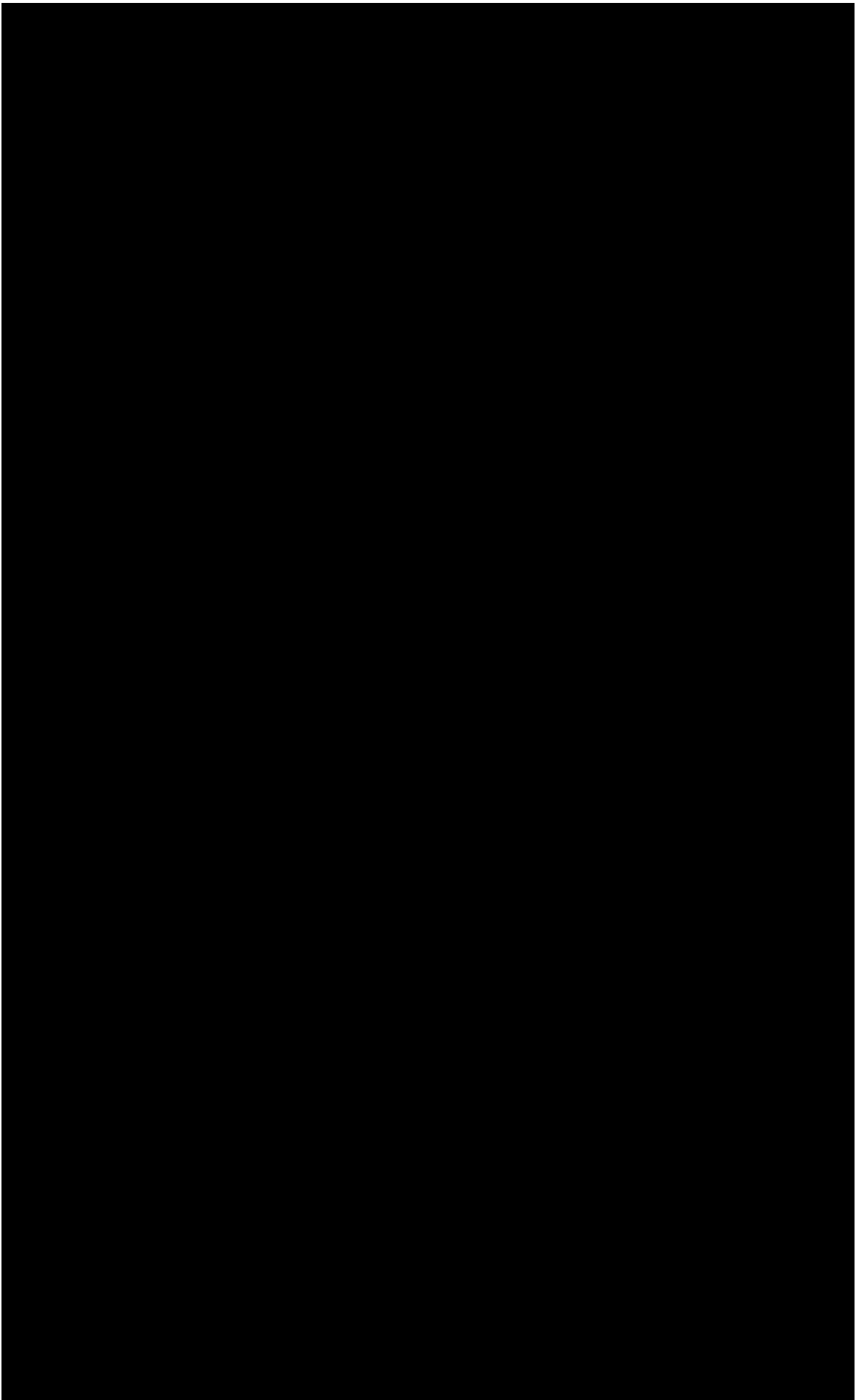
Service of this Termination Notice has been approved by the Owner, pursuant to clause 3(d) of the TSSSA.

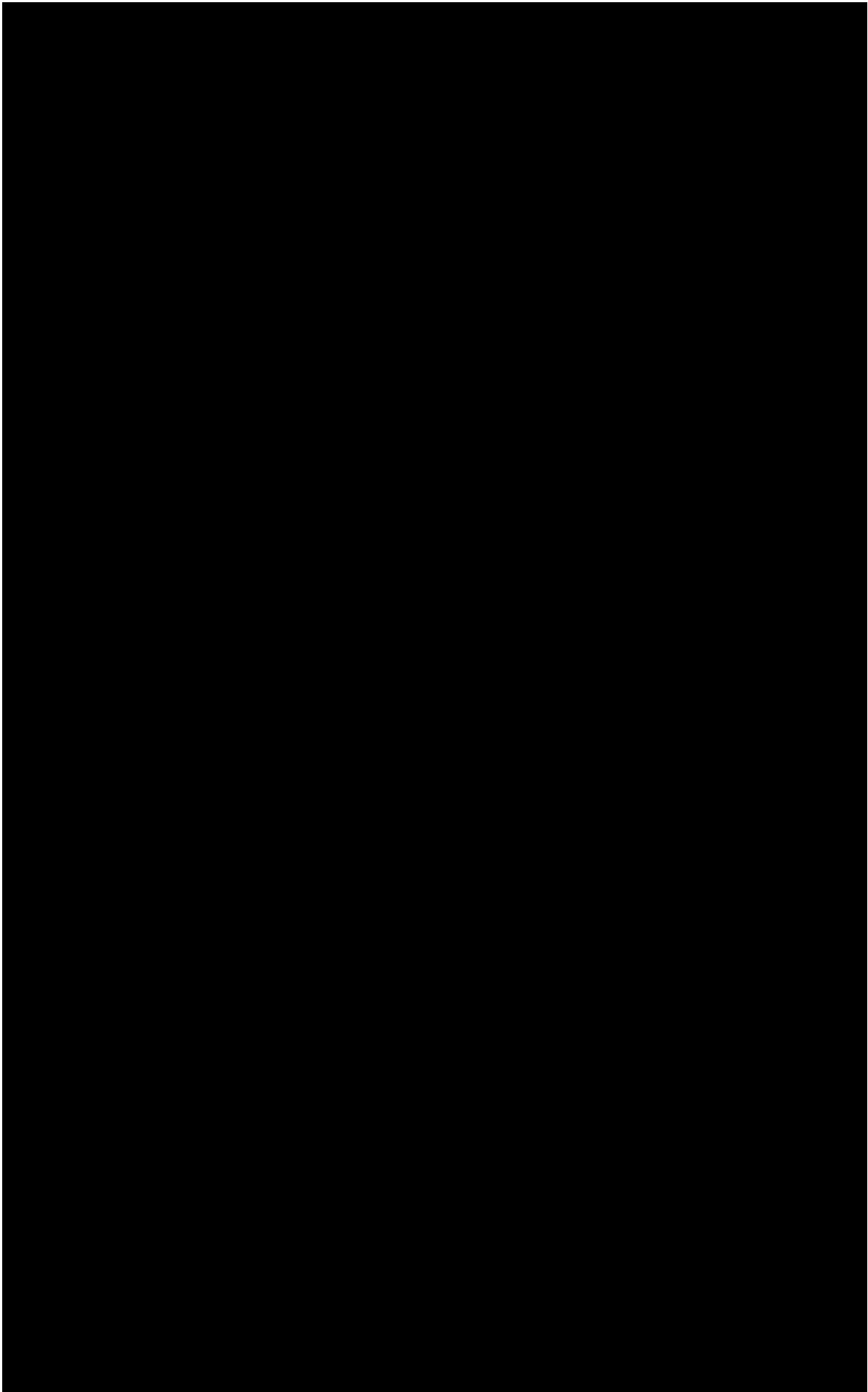
## **Appendix – Summary of Claims by Operator**

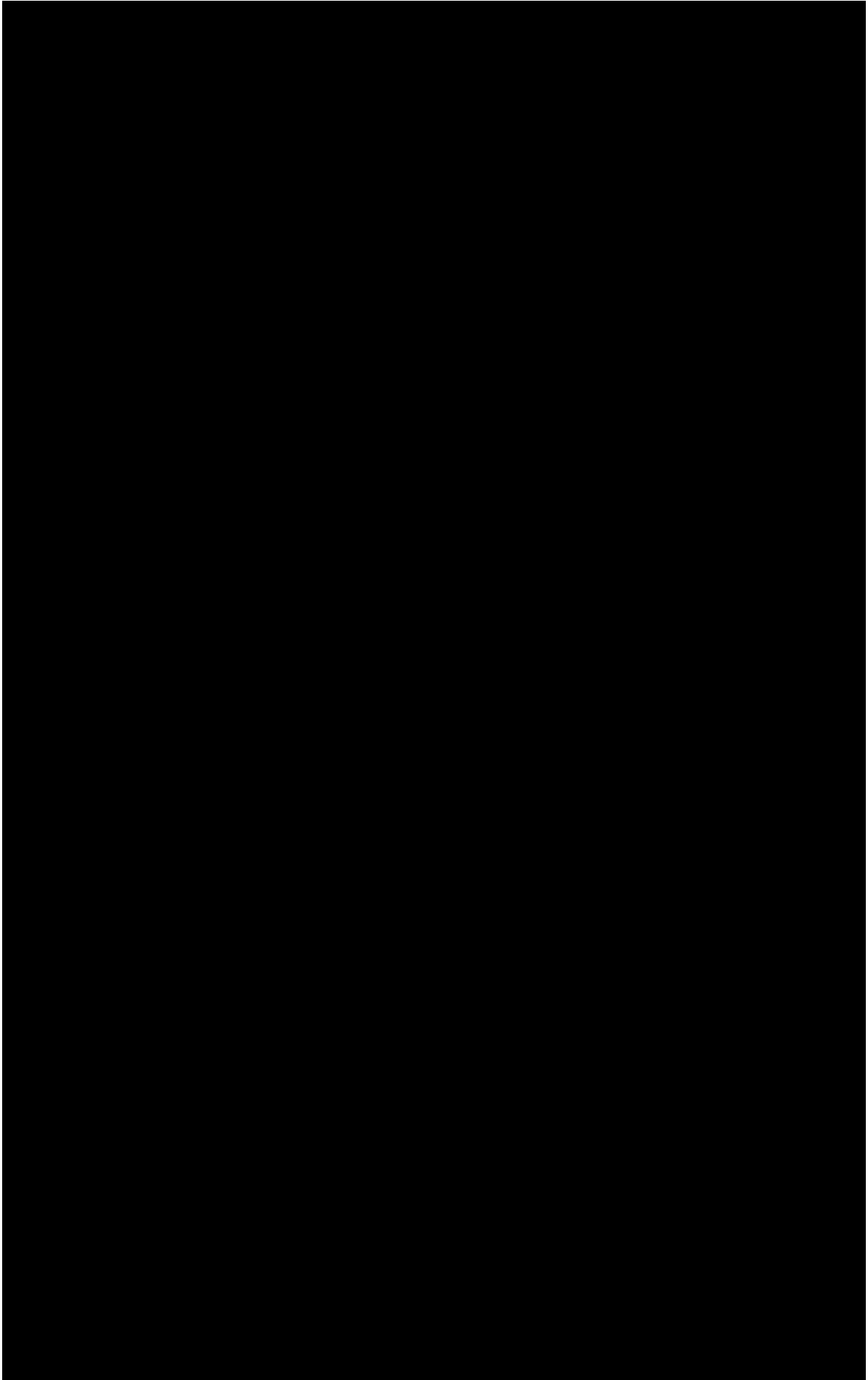
## **Schedule 6 – Not Used**

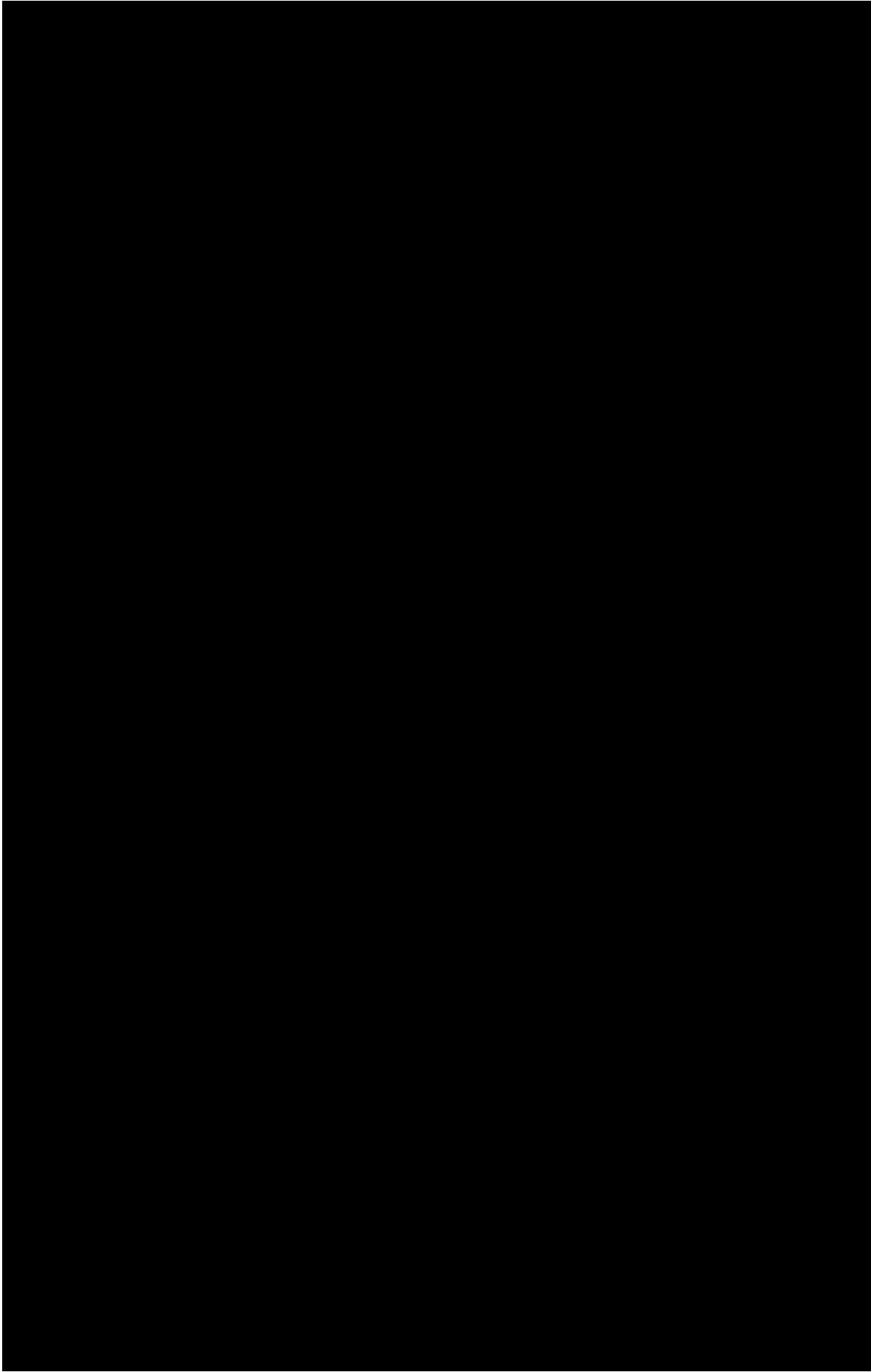
## Schedule 7- TSSSA Services Management

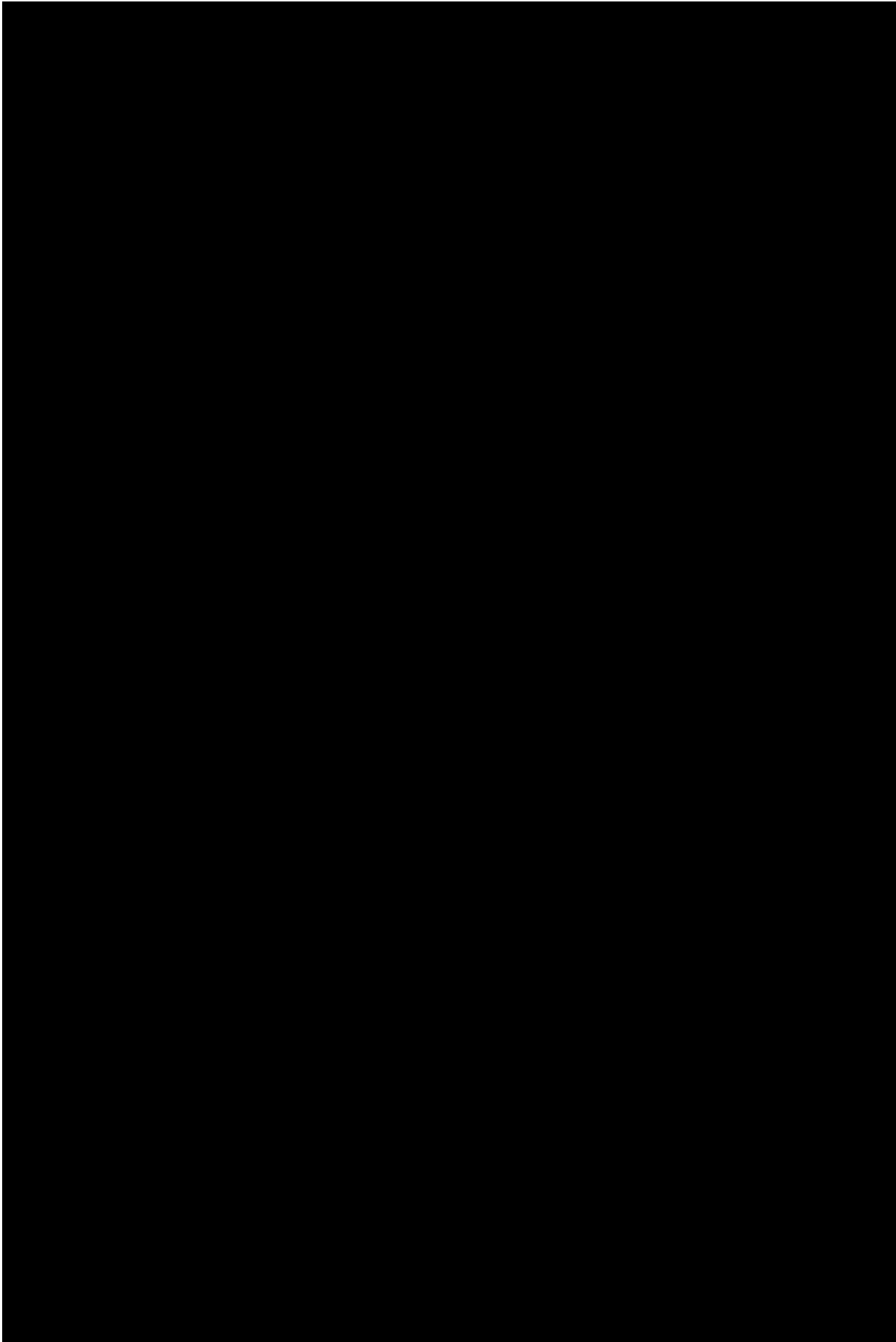


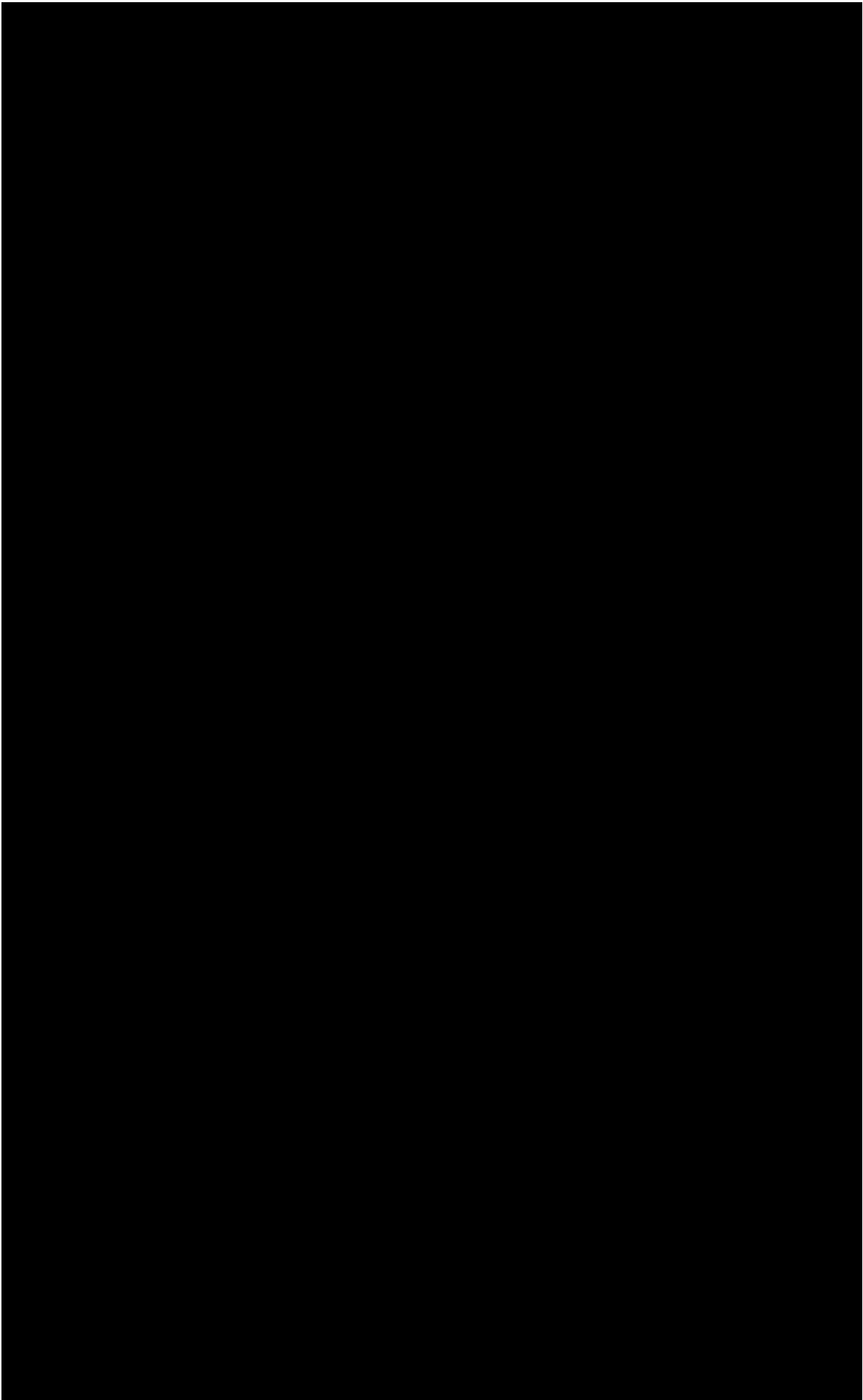


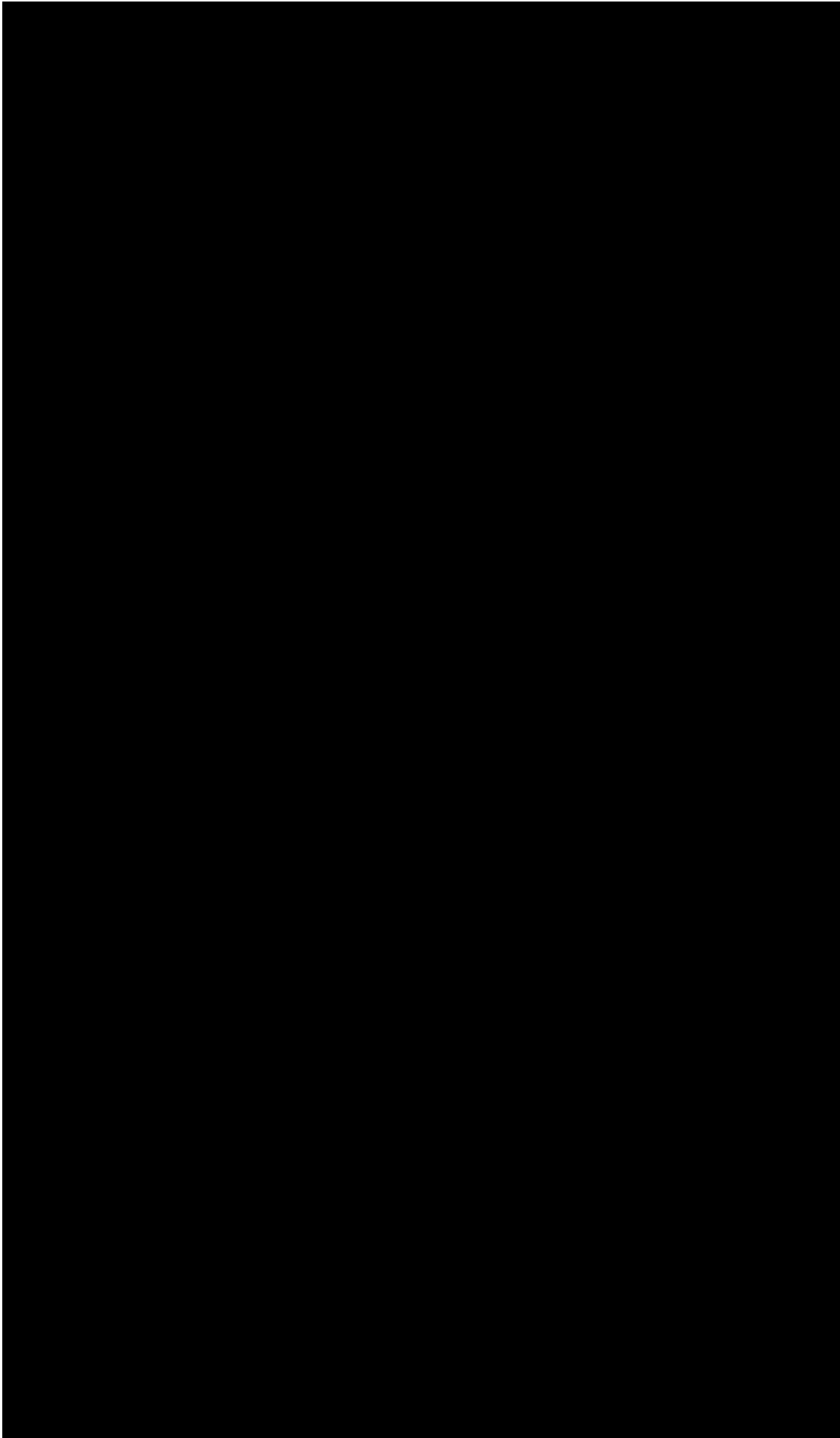


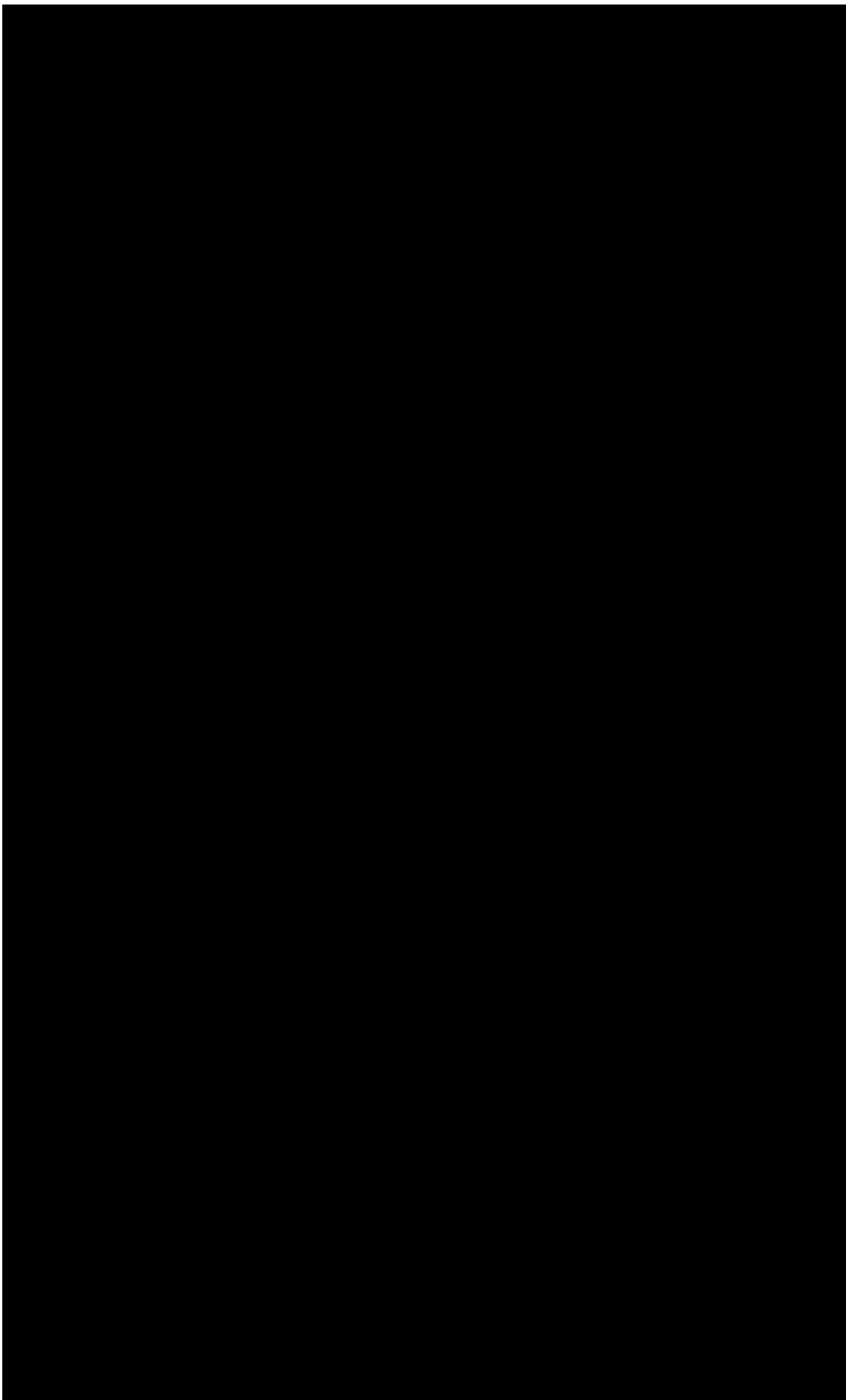


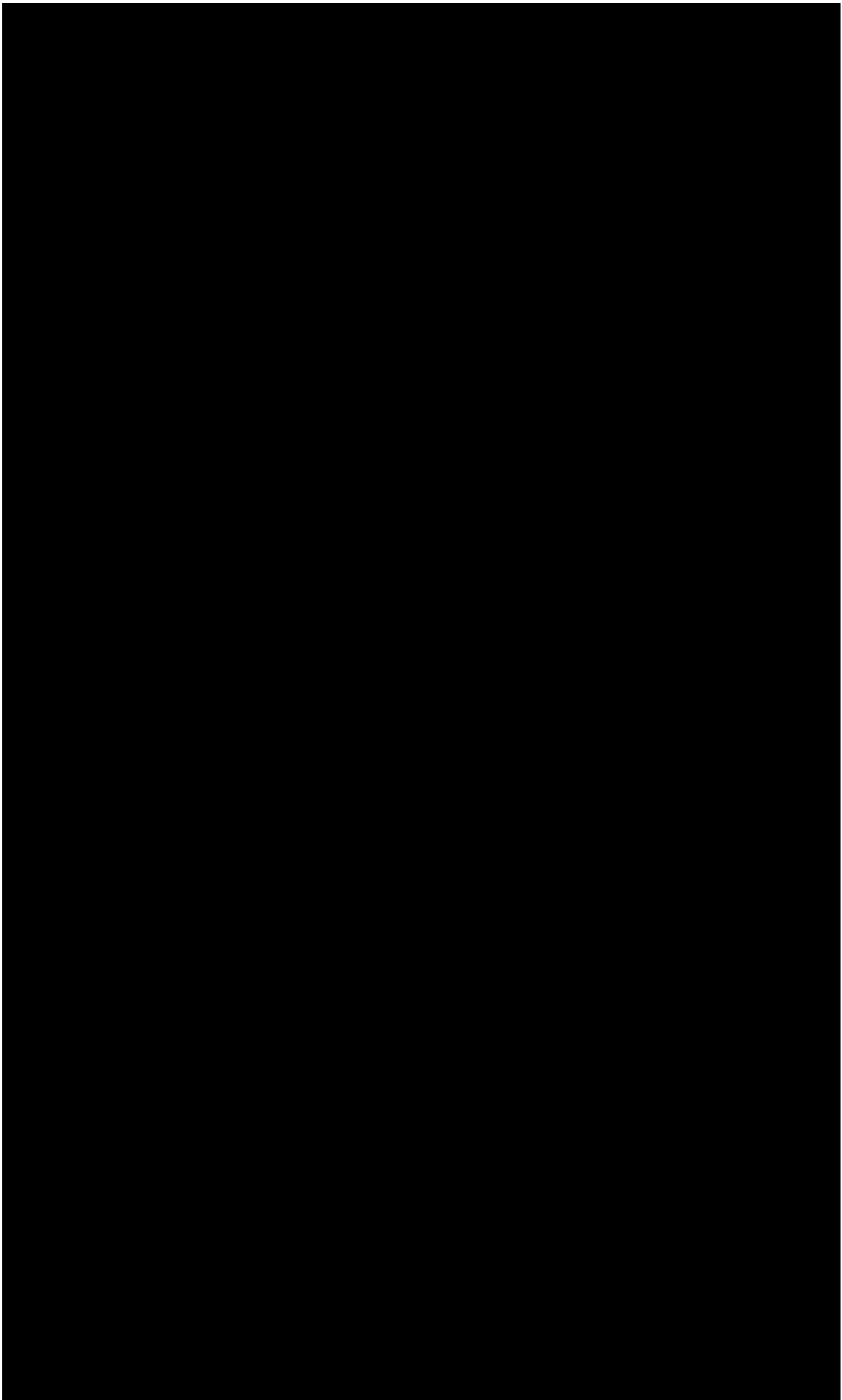


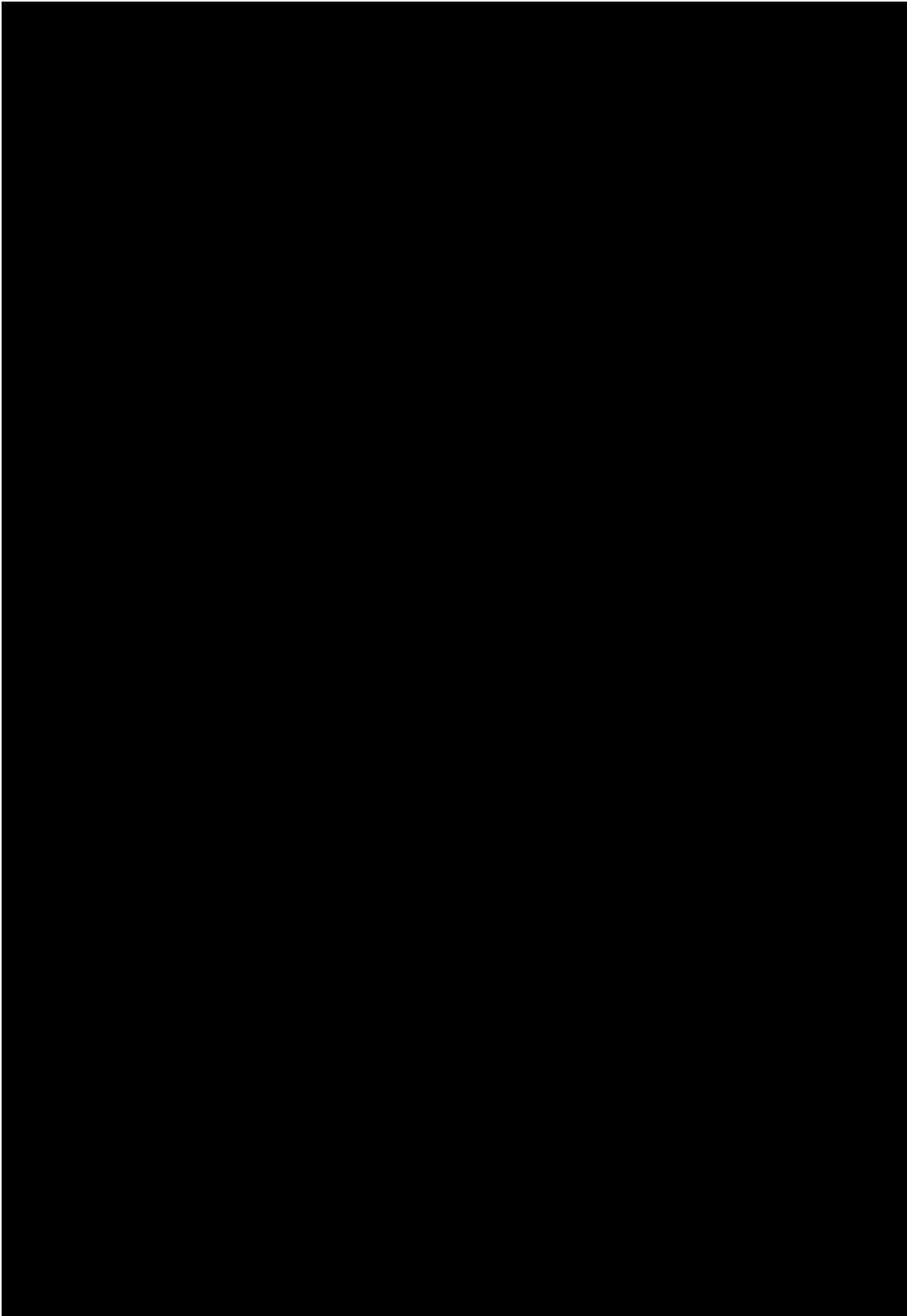












## Schedule 8 – Variation Procedure

### Variation Procedure

#### 1 Purpose

This Schedule has been produced to outline the procedure which will be adopted in the administration of Variation Orders.

#### 2 Scope

Any amendment to the terms of this Agreement shall be made by Variation Order and in accordance with the procedure set out in this Schedule 8, except where agreed otherwise between the parties.

#### 3 Implementation

The Operator or the Service Provider may initiate proposals seeking approval for changes to the obligations of the Operator or the Service Provider under this Agreement.

Should the Owner wish to propose a variation, it shall first discuss the matter with the Operator, who will then have jurisdiction to determine whether or not it wishes to proceed with raising the relevant Variation Proposal.

#### 4 Variations to Standard Service Payments or Additional Service Payments

4.1 The Service Provider shall price any adjustments to the Standard Service Payment or the Additional Service Payment resulting from a Variation Proposal (whether as a result of changes proposed by the Operator or by the Service Provider) with a full breakdown and shall be entitled to seek to claim only for the actual cost to it of carrying out such Variation Proposal by reference to:

- (a) the agreed fixed labour rates set out in Appendix C to this Schedule (which shall be subject to indexation in accordance with the formula set out in Appendix C (the "**Work Rates**");
- (b) the Parts Rates; and
- (c) an agreed mark-up of [REDACTED] on relevant parts and materials, and reasonably incurred and justified expenses such as accommodation, food allowance and parking.

4.2 Each Variation Proposal shall be priced in Sterling.

4.3 The Service Provider shall at all times act reasonably and shall use reasonable endeavours to price each Variation Proposal at the least possible additional cost to the Operator that it is reasonably and economically practicable for the Service Provider to offer and which has the least possible impact on the terms of this Agreement.

#### 5 Changes Proposed by the Operator

If the Operator wishes to introduce a variation of any kind to this Agreement (including as may be suggested to it by the Owner), the Operator will complete the relevant portions of a Notification of Variation Proposal (in the form set out in Appendix 1 to this Schedule) and will send the completed

portions to the Service Provider (with a copy to the Owner). The Service Provider shall acknowledge receipt of the Variation Proposal in writing and propose a timescale (being not more than twenty eight (28) days from the date of receipt of the Variation Proposal) within which it will make a full written response to such Variation Proposal. The Service Provider shall then respond in full to such Variation Proposal within such period, and the Service Provider's response will state:

- (a) the effect (if any) of the Variation Proposal on this Agreement and any impact on any other maintenance arrangements;
- (b) if implementation of the Variation will result in any increase in cost, any increase in any element of the Standard Service Payment or the Additional Service Payment otherwise payable which the Service Provider will require in order to implement the Variation;
- (c) if implementation of the Variation will result in a cost saving, any reductions in any element of the Standard Service Payment or the Additional Service Payment and specify the basis on which the increase or reduction is calculated; and
- (d) any other consequence of the Variation Proposal.

5.2 The Service Provider shall hold its Variation Proposal open for thirty (30) days and shall endorse the Variation Proposal to this effect.

5.3 On receipt of the returned Variation Proposal from the Service Provider, the Operator shall, in agreement with the Owner, either:

- (a) if satisfied, authorise the Variation Proposal (including any consequential effect on this Agreement, the Standard Service Payment, any Additional Service Payment or any maintenance arrangements and any other consequence of the Variation Proposal) by completing an "Authority for Variation to Contract" in the form set out in Appendix 2 to this Schedule;
- (b) if not satisfied (acting reasonably), require the Service Provider to reconsider and make a further proposal; or
- (c) inform the Service Provider in writing that the Operator does not wish the Variation Proposal to be carried out.

5.4 The Operator shall have the right to require the Service Provider to produce reasonably detailed supporting documentation in relation to cost, time and any other consequences specified in the Service Provider's response provided pursuant to paragraph 5.1 above, in respect of quotations submitted under the Variation Proposal.

5.5 The Owner shall not veto any Variation Proposal introduced by the Operator unless the same (if enacted) would import cost or risk to the Owner, or be otherwise prejudicial to the Owner's interests, including its interests in the Units and Owner Owned Spares, and the preservation of their residual value.

## **6 Changes proposed by the Service Provider**

6.1 If the Service Provider wishes to introduce an amendment of any kind to the Agreement, the Service Provider will complete the relevant portions of the Notification of Variation Proposal (in the form set out in Appendix 1 to this

Schedule) and will send a copy to the Operator and Owner. The Service Provider will state the effect (if any) of the Variation Proposal on this Agreement, the Standard Service Payment, any Additional Service Payment or any other maintenance arrangements and any other consequence of the Variation Proposal.

6.2 On receipt of a Variation Proposal, the Operator shall, in agreement with the Owner, either:

- (a) if satisfied, authorise the Variation Proposal (including any consequential effect on this Agreement, the Standard Service Payment, the Additional Service Payment or any maintenance arrangements and any other consequences of the Variation Proposal) by completing an "Authority for Variation to Contract" in the form set out in Appendix 2 to this Schedule; or
- (b) if not satisfied (acting reasonably), require the Service Provider to reconsider and make a further proposal; or
- (c) inform the Service Provider in writing that the Operator does not wish the Variation Proposal to be carried out; or
- (d) inform the Service Provider in writing that the Operator does not consider the Variation Proposal to be necessary and instruct the Service Provider to perform its obligations in accordance with the terms of this Agreement without the benefit of a Variation Order.

6.3 The Operator shall have the right to require the Service Provider to produce any reasonable information or any other supporting documentation, in relation to cost, time and any other consequences specified in the Variation Proposal provided by the Service Provider, in respect of quotations submitted under the Variation Procedure.

6.4 The Owner shall not veto any Variation Proposal introduced by the Service Provider unless the same (if enacted) would import cost or risk to the Owner, or be otherwise prejudicial to the Owner's interests, including its interests in the Units and Owner Owned Spares, and the preservation of their residual value.

## **7 No retrospective claims**

7.1 The Operator will not accept any retrospective claims arising from a Variation, including but not limited to, claims for an increase to the Standard Service Payment or the Additional Service Payment, after a Variation Order has been entered into in respect of that Variation.

7.2 The Operator will not accept any retrospective claims, including but not limited to, claims for an increase to the Standard Service Payment or the Additional Service Payment arising from work which is being or has already been carried out by the Service Provider and which was not the subject of a Variation Proposal prior to such work being commenced.

## **8 Emergency variation procedure**

8.1 If the Operator wishes to introduce a variation of any kind to this Agreement and there is a need to implement the variation as a matter of urgency, the Operator may (with the Owner's agreement, not to be unreasonably withheld or delayed) require the Service Provider to implement the related Variation

Proposal immediately upon receipt of such Variation Proposal by the Service Provider. In such circumstances the Operator shall endorse the Variation Proposal with the wording "Emergency variation - to be implemented immediately".

8.2 Receipt of any such Variation Proposal shall be acknowledged in writing by the Service Provider within two (2) Working Days. If the Service Provider believes that it is impractical to implement the Variation Proposal immediately, it shall inform the Operator within two (2) Working Days of receipt of such Variation Proposal. In the event that the Service Provider accepts the Variation Proposal it shall commence implementation of such Variation Proposal immediately and in all other respects it shall follow the procedure set out in paragraph 5.1 of this Schedule.

8.3 If, after receipt of the Service Provider's written acknowledgement, the Operator declines to proceed with the Variation Proposal, the Operator shall be responsible for any costs, delay or any other consequences incurred by the Service Provider in responding to the Operator's instruction to commence implementation of such Variation Proposal.

## 9 **Service Provider's right of refusal**

The Service Provider shall be entitled to refuse any Variation Proposal (including any emergency Variation Proposal as described above) where the effect of such proposal would be contrary to law or not technically feasible.

## 10 **Costs**

10.1 Without prejudice to paragraph 8.3 and subject to paragraph 10.2, each of the parties shall be liable for the costs incurred by it in evaluating and preparing a Variation Proposal. Each party agrees to act reasonably and not to require any other party to undertake unnecessary and onerous work in relation to a Variation Proposal.

10.2 Each party acknowledges and agrees that, subject to this paragraph 10, each party shall be entitled to reimbursement of certain of its costs (the "**Variation Costs**") as further detailed in paragraph 10.3, reasonably and properly incurred in the evaluation of any Variation Proposal submitted by the applicable other party, whether or not a Variation Order is issued in respect of the relevant Variation Proposal unless such Variation Proposal relates to a Change in Law, in which case each party shall be liable for its own Variation Costs and shall not be entitled to claim reimbursement of such Variation Costs from the other party.

10.3 Without prejudice to paragraph 10.2, no party shall have any liability for the Variation Costs of the other party unless:

(a) such Variation Costs:

- (i) are agreed between the party making the Variation Proposal and the other party prior to the Service Provider initiating the relevant Variation; or
- (ii) constitute exceptional costs (and not the normal day-to-day or administrative costs) of the other party in relation to the evaluation of relevant Variation Proposal; and

- (b) the aggregate amount of the Variation Costs that the other party wishes to recover in respect of any Variation Proposal pursuant to this paragraph 10 is more than [REDACTED] in respect of any one Variation Proposal.

10.4 If any Variation Costs are payable in accordance with this paragraph 10 then the party responsible for the payment of those Variation Costs (the "**Payer**") shall pay to the other party(ies) entitled to receipt of those Variation Costs in accordance with this paragraph 10 (the "**Payee**") an amount equal to the agreed Variation Costs within thirty (30) days of receipt by the Payer of an invoice from the Payee in respect of such Variation Costs. The Payee shall be entitled to submit such an invoice:

- (a) in relation to any Variation Proposal in respect of which a Variation Order is issued, following the issue of that Variation Order; or
- (b) if no Variation Order is issued in respect of the relevant Variation Proposal, following notice to the Service Provider that the Operator does not wish the Variation Proposal to be carried out.

## 11 Disputes

11.1 Any dispute, controversy or claim of whatever nature between the parties arising out of, under or in connection with a Variation Proposal, including a dispute as to whether a Variation Proposal should be dealt with as such because one party believes the matter raised in the Variation Proposal is already covered under the terms of this Agreement (a "**Variation Dispute**") shall be referred for determination by, and resolved exclusively by, an independent expert (the "**Expert**") in accordance with the procedure set out in this paragraph 11 (an "**Expert Determination**"), and the provisions of clause 41 of this Agreement shall not apply to a Variation Dispute.

11.2 A Variation Dispute shall be referred to Expert Determination by any party to the Variation Dispute giving written notice to the other parties to the Variation Dispute in question identifying the matter in dispute and the relief sought and requesting that the Variation Dispute be referred to Expert Determination (the "**Referral Notice**"). Within five (5) Working Days of the party receiving the Referral Notice, the parties shall endeavour to agree a person (who has experience in the discipline(s) or area(s) of expertise that the parties agree are appropriate to the Variation Dispute in question) to accept the reference of the Variation Dispute in question and act as Expert to determine that Variation Dispute. In the event of the parties failing to agree on a person willing and suitable to act as Expert within five (5) Working Days of the parties receiving the Referral Notice, any party to the Variation Dispute may apply in writing (copied simultaneously to the other parties) to the Disputes Secretary appointed by the Access Disputes Committee to select a person to be appointed as the Expert to determine the Variation Dispute. If the person selected by the Disputes Secretary is unwilling or unable to accept the appointment, another person shall be selected by the Disputes Secretary to be appointed as the Expert to determine the Variation Dispute.

11.3 Each party to the Variation Dispute shall submit a written statement on the matters in dispute, together with copies of all documents that the party wishes to rely upon (the "**Statement**"), to the Expert and to the other party to the Variation Dispute within five (5) Working Days of the date of the Expert being appointed.

- 11.4 Each party to the Variation Dispute shall be entitled to submit a written response to the other party's Statement, together with copies of any further documents the party wishes to rely upon (the "**Response**"), to the Expert and to the other party to the Variation Dispute within five (5) Working Days of receiving the other party's Statement.
- 11.5 If any party fails to submit a Statement in accordance with paragraph 11.3 within the time specified, the Expert shall proceed with the Expert Determination on the basis of the Statement(s) and Response(s) provided to him by the other parties to the Variation Dispute.
- 11.6 The Expert may request clarification or additional information from any party to the Variation Dispute and each party shall comply with any such request as soon as reasonably practicable and in any event within five (5) Working Days of receiving such a request. The Expert shall at the time he or she makes such a request notify the other parties to the Variation Dispute of the request and the party providing a response to the request shall simultaneously provide the other parties to the Variation Dispute with a copy of the response given to the Expert.
- 11.7 The Expert may, in his or her discretion, convene meetings upon reasonable notice to the parties to the Variation Dispute, at which all parties to the Variation Dispute shall be entitled to be present.
- 11.8 The Expert may, in his or her discretion, but shall not be obliged to:
- (a) hold a hearing at which the parties to the Variation Dispute and their representatives shall be present and entitled to make oral submissions to the Expert;
  - (b) submit lists of questions for the parties to the Variation Dispute to be answered in writing within such reasonable time as the Expert may require; and
  - (c) otherwise take such action and adopt such procedures as do not conflict with any of the provisions of this Agreement or this paragraph 11 and are reasonable and proper for the just, expeditious and economical determination of the Variation Dispute.
- 11.9 The Expert may, with the consent of the parties to the Variation Dispute, seek legal or technical advice from consultants on matters that fall outside of the areas of expertise of the Expert, provided the appointment of the consultant (including the terms of remuneration) are approved by the parties to the Variation Dispute. The fees and expenses of the consultant shall be dealt with in accordance with paragraph 11.17 of this Schedule.
- 11.10 All information and communications of whatever nature provided to the Expert by any party, and vice versa, shall be simultaneously copied to the other party to the Variation Dispute.
- 11.11 All meetings and hearings (if any) shall be private and save as expressly provided for in this paragraph 11 or as required by law, the parties to the Variation Dispute and the Expert shall keep confidential the fact that the Expert Determination is taking or has taken place, and shall as well keep confidential the Expert's decision, the outcome of the Expert Determination and all documentation and information of whatever nature provided to the Expert by or on behalf of any party to the Variation Dispute.

- 11.12 The Expert shall adopt any other procedures (including any variation of the procedures provided for in this paragraph 11) which may be agreed in writing by the parties to the Variation Dispute for determination of the Variation Dispute in question.
- 11.13 The Expert shall provide his or her written decision (including a summary of the Expert's findings and a statement of the reasons for his or her decision) by no later than the twenty eighth (28th) Working Day after the date that the Expert was appointed in accordance with paragraph 11.2.
- 11.14 The Expert shall act impartially and as expert and not as arbiter in the conduct of the Expert Determination and in reaching his or her decision and the Expert's decision shall be final and binding upon the parties.
- 11.15 The time limits in this paragraph 11 may be extended only by agreement between the parties to the Variation Dispute in question or, failing such agreement, by the Expert, however the Expert shall not extend any time limit without first giving both parties to the Variation Dispute in question an opportunity to be heard concerning the proposed extension of time.
- 11.16 The parties to the Variation Dispute may agree and jointly terminate the Expert's appointment at any time. In such case, or if the Expert fails to give his or her decision within the period referred to in paragraph 11.13 (or such extended period as may apply pursuant to paragraph 11.15), and the parties do not agree to extend the time for the Expert to give his or her decision, or if at any time the Expert declines to act or is unable to act as a result of his or her death, disability, resignation or otherwise, a person shall be appointed to replace the Expert in accordance with the provisions of paragraph 11.2. In any case where an Expert is appointed as a replacement, the parties to the Variation Dispute shall both send to the replacement Expert as soon as reasonably practicable copies of all Statements, Responses and documents supplied by them to the Expert who has been replaced and the reference shall continue as if there had been no change of Expert.
- 11.17 Unless agreed otherwise by the parties, the Expert shall allocate between the parties to the Variation Dispute payment of his or her remuneration and expenses and the parties agree to be bound by the Expert's allocation. If the Expert fails to allocate payment of his or her remuneration and expenses, the parties shall bear the Expert's remuneration and expenses in equal amounts (unless agreed otherwise in writing by the parties).
- 11.18 If the Expert requires payment of his or her remuneration and expenses prior to giving his or her decision to the parties, the parties to the Variation Dispute shall pay such remuneration and expenses in equal amounts and shall make any adjustment payments between themselves as are necessary following allocation or agreement pursuant to paragraph 11.17 of this Schedule.

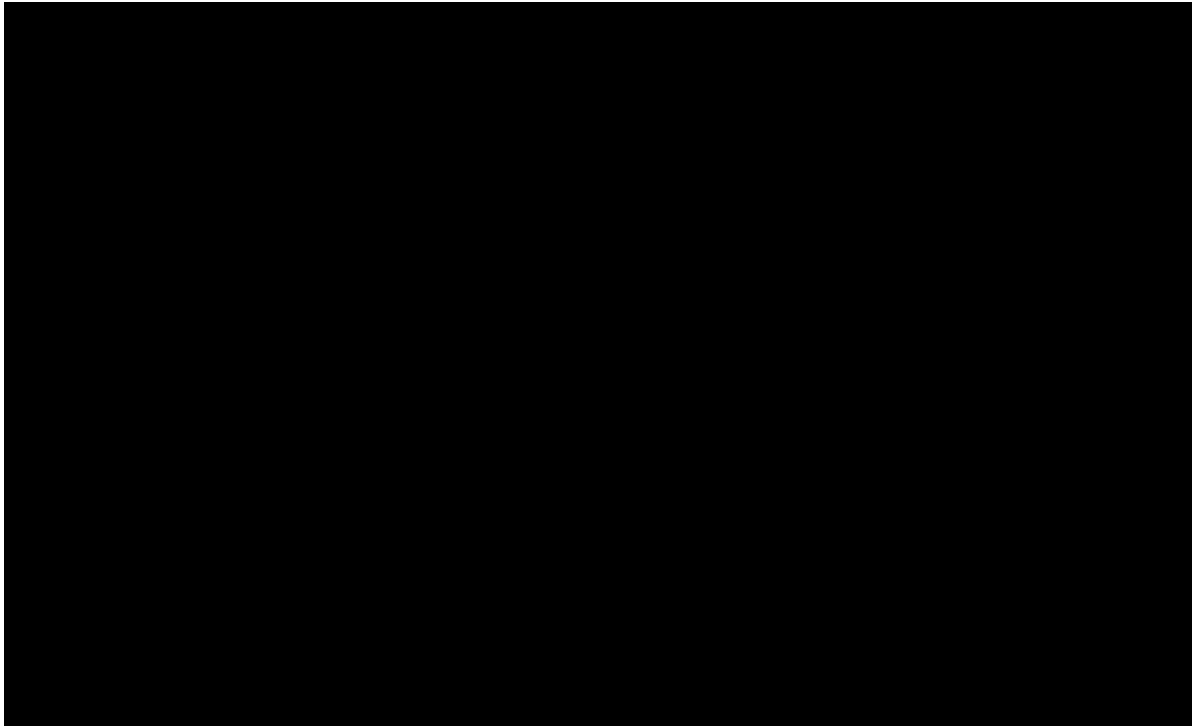
## Appendix A - Notification of Variation Proposal

VARIATION PROPOSAL	NUMBER: VP
Contract No: Technical Support and Spares Supply Agreement	
<b>PART A (to be completed by the originator of the Variation Procedure)</b>	
Description of Variation Proposal:	
Quantity affected by this Variation Proposal:	
Signature: _____	[Not applicable if Variation Proposal is made by the Service Provider] Designation: Operator's Representative
Date: _____	
Signature: _____	[Not applicable if Variation Proposal is made by the Service Provider] Designation: Owner's Representative
Date: _____	
<b>PART B (to be completed by Service Provider)</b>	
Agreement Effect(s): Standard Service Payment or Additional Service Payment Effect(s): Other Effect(s):	
Comments on Parts A or B:	
Service Provider's Representative Signature: _____ Date: _____ When complete, this form must be returned to the Operator's Representative and the Owner's Representative.	

## Appendix B - Authority for Variation to Contract

VARIATION ORDER	NUMBER: VP
Contract No: Technical Support and Spares Supply Agreement	
<b>PART C</b>	
Description of Variation:	
Comments:	
Related Variation Proposal: VP	Dated:
Agreement Effect(s): Standard Service Payment or Additional Service Payment Effect(s): Other Effect(s):	
<p>You are hereby authorised to proceed with the above variation.</p> <p>All other terms of the Technical Support and Spares Supply Agreement remain unchanged.</p>	
Signature: _____ Date: _____ Operator's Representative	Signature: _____ Date: _____ Owner's Representative
Variation accepted by Service Provider	
Signature: _____ Date: _____	Designation: _____ Service Provider's Representative

## Appendix C - Work Rates



## **Schedule 9 – NOT USED**

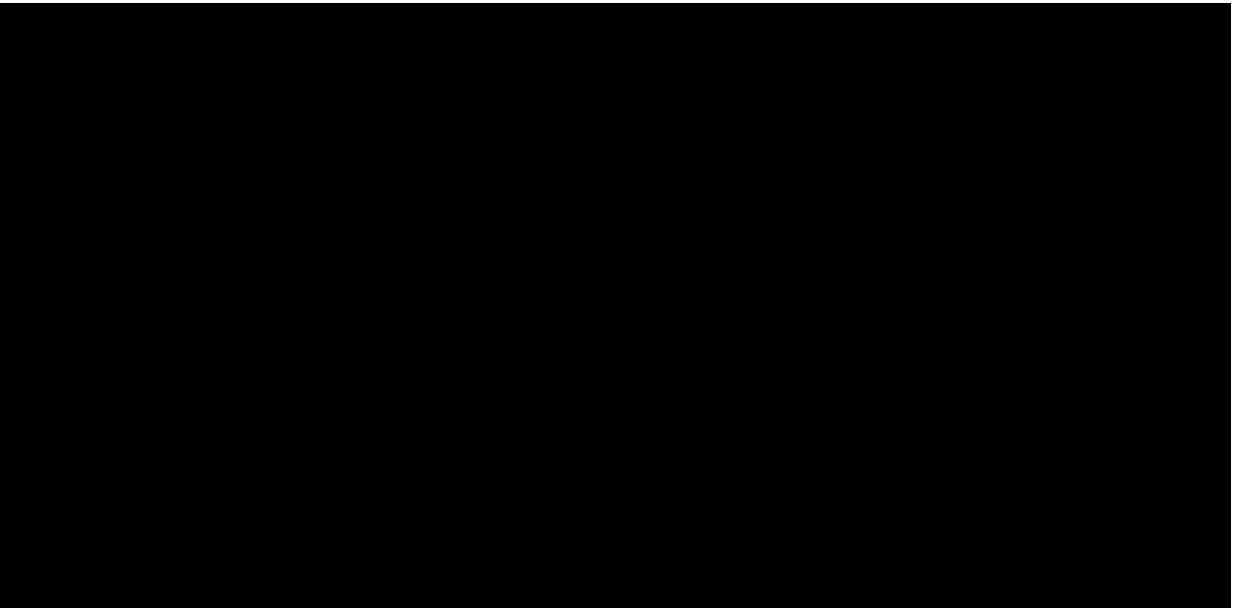
## **Schedule 10 - Form of Parent Company Guarantee**



## Parent Company Guarantee

Dated [●]

Between:



### Whereas:

- (A) The Operator and Owner have entered into a Technical Support and Spares Supply Agreement dated [●] (the **TSSSA**, which expression shall mean such agreement as amended, varied or supplemented from time to time) with CAF Rail UK Limited whose registered office is at c/o The Company Shop, Forsyth House, Cromac Square, Belfast, BT2 8LA (the **Service Provider**) in relation to the provision of Technical Support Services and spares supply services in connection with the trains, spares and special tools and such other services as are required by the Operator as more particularly described in the TSSSA (the **Services**).
- (B) The Guarantor is the ultimate parent company of the Service Provider.
- (C) The Guarantor has agreed to guarantee the performance of all of the Service Provider's obligations under the TSSSA in the manner appearing below.

### Now this Deed Witnesses as follows:

#### 1 Interpretation

- 1.1 Unless expressly defined otherwise in this Guarantee, any defined term in this Guarantee shall have the same meaning given to such term in the TSSSA.
- 1.2 Clause headings shall not affect the interpretation of this Guarantee.
- 1.3 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.4 Any obligation in this Guarantee on a person not to do something includes an obligation not to agree or allow that thing to be done.

## 2 **Guarantee**

In consideration of the Beneficiaries entering into the TSSSA with the Service Provider, the Guarantor hereby irrevocably and unconditionally guarantees to the Beneficiaries the due performance by the Service Provider of all of its obligations and liabilities under and in accordance with the TSSSA (the **Obligations**).

## 3 **Performance Obligations**

3.1 If, at any time, the Service Provider fails or has failed to observe or perform any of the Obligations the Guarantor shall perform (or procure the performance of) such Obligations and shall pay any sums that may be payable under the TSSSA in consequence of the non-performance of the Service Provider of any of the Obligations.

3.2 The Guarantor agrees to indemnify each of the Beneficiaries against all loss, debt, damage, interest, cost and expense (including legal expenses) incurred or suffered by such Beneficiary by reason of a failure by the Service Provider to perform any or all of the Obligations when they are due and performable and undertakes to pay to the Beneficiaries immediately on the each such Beneficiary's first written demand the amount of that loss, debt, damage, interest, liability, cost or expense without set-off or counterclaim and free and clear of, and without deduction for or on account of, any present or future taxes, duties, charges, fees, deductions or withholdings of any nature whatsoever.

## 4 **Liability Of the Guarantor**

4.1 The Guarantor's maximum liability under this Guarantee shall be limited to an amount equal to the Service Provider's maximum liability under the TSSSA.

4.2 The Guarantor shall not be discharged nor shall its liability be affected by:

4.2.1 The insolvency, bankruptcy, liquidation, winding-up, dissolution, administration, receivership, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Service Provider or the Guarantor;

4.2.2 any change in the status, function, constitution, control or ownership of the Service Provider or the Guarantor;

4.2.3 any incapacity, lack of power, authority or legal personality or any change in the constitution of or any amalgamation or reconstruction of, the Service Provider or any other person;

4.2.4 any variation to or amendment of the TSSSA so that references to the TSSSA in this Guarantee shall include each such variation or amendment;

4.2.5 any provision of the TSSSA being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever;

4.2.6 any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Guarantor under this Guarantee or any of the rights, powers or remedies conferred on either Beneficiary by this Guarantee or by law.

## 5 **Assignment**

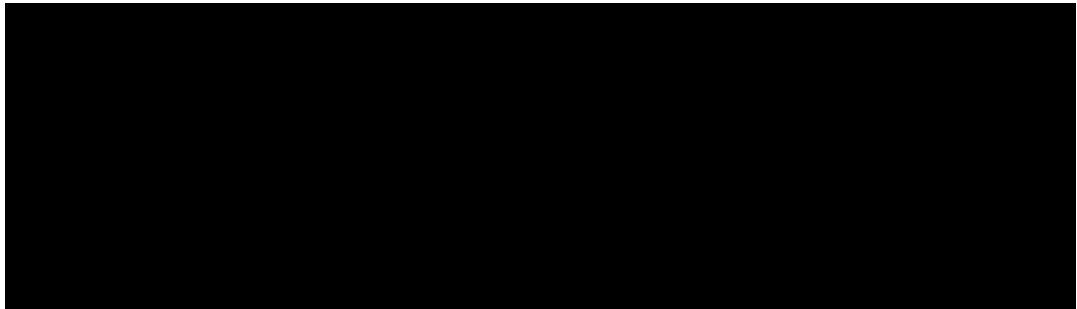
- 5.1 The Guarantor shall not be entitled to assign or otherwise transfer this Guarantee in whole or in part to any persons at any time without the consent of the Beneficiaries (such consent not to be unreasonably withheld or delayed).
- 5.2 Each Beneficiary shall be entitled to assign its respective rights and interests under this Guarantee in whole or in part to any persons at any time without the consent of the Guarantor provided it has given prior written notice of the assignment to the Guarantor.
- 5.3 This Guarantee and the rights and obligations hereunder will not be affected by any change in legal or beneficial ownership of the Service Provider or either Beneficiary.

## 6 **Expiry**

This Guarantee shall expire on the date that is twelve (12) months after the date of expiry or, if earlier, termination of the TSSSA, and any claim received thereafter shall be ineffective. However, neither Beneficiary shall be entitled to enforce its rights and claims under this Guarantee to the extent that such Beneficiary has already received payment or other performance under any other security that such Beneficiary may hold in respect of the Service Provider's obligations which are secured by this Guarantee.

## 7 **Notices**

- 7.1 Any notice or other communication required to be given under this Guarantee shall be in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or by commercial courier to each party required to receive the notice or communication at its address:



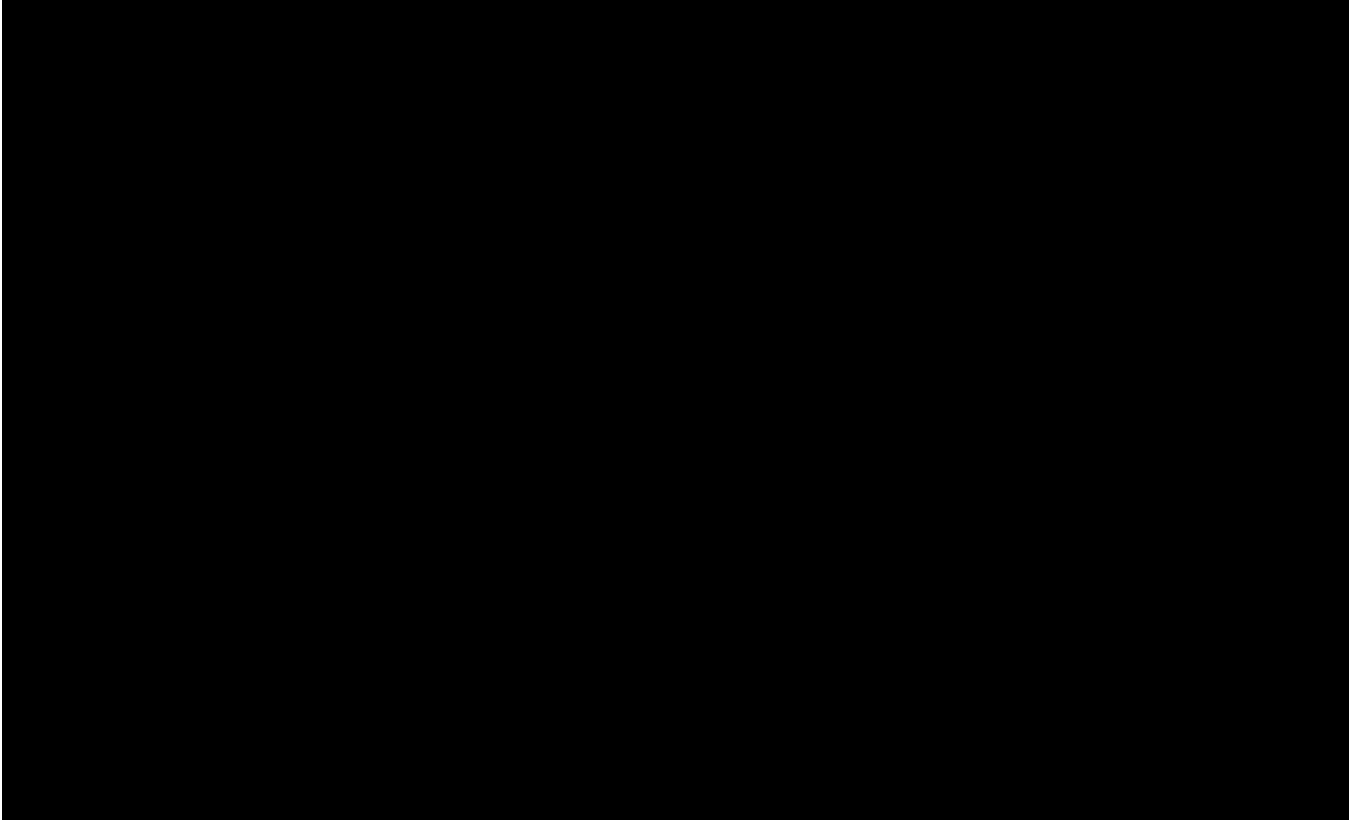
- 7.2 communications to another address but only by prior written notice to the others. All such communications must be in writing.

## 8 **Governing law**

This Guarantee and any non-contractual obligations arising out of or in connection with this Guarantee shall be governed by and construed in accordance with English Law.

If at any time any dispute or difference (whether contractual or non-contractual in nature) shall arise between the parties in connection with this Guarantee, the parties agree that the provisions of clause 41 (*Disputes*) of the TSSSA will apply mutatis mutandis to this Guarantee.

**In Witness** whereof the Guarantor has executed this Guarantee as a Deed on the day and year first written above.



## **Schedule 11– Operator's Code of Conduct**

## NTL Supply Chain Code of Conduct

### Supply Chain Code of Conduct

#### Northern Trains Limited Code of Conduct for Business Partners

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**Purpose of the NTL Supply Chain Code of Conduct** In this Northern Trains Limited (NTL) Code of Conduct for Business Partners, NTL has defined its requirements and principles for its business dealings with its business partners, in particular those relating to compliance with ethical standards, applicable laws as well as integrity. Business partners are all suppliers that supply goods and services to NTL.

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#### General Principles

NTL is committed to sustainability and passionate about making a difference to the communities we serve. Commercial success and socially responsible actions do not contradict each other - in fact, they are interdependent. We see sustainable and responsible conduct as an important foundation in relation to business dealings with our business partners.

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#### Corporate Social Responsibility of our Business Partners

NTL considers social responsibility is a key factor for the long-term success of our company and consequently an indispensable element of our value-driven corporate management. We therefore expect our business partners to align their conduct with the following principles:

<b>Human Rights</b>	Our business partners respect commonly accepted human rights.
<b>Slavery and Human Trafficking</b>	NTL supports the objectives of the Modern Slavery Act 2015 of eliminating slavery and human trafficking and expects that its business partners comply with the same principles and all applicable laws to reject any forced labor or trafficking.
<b>Equal Opportunities</b>	Our business partners promote diversity within their organisations and do not tolerate any discrimination with respect to hiring and employment of employees.
<b>Safety</b>	Putting the safety of people first is at the core of our business partners' values. Together with their employees our business partners provide both for a safe working environment and safety related qualifications as well as for the safety of their products and services.
<b>Occupational Health and Safety</b>	By means of preventative occupational safety measures and good working conditions our business partners seek to avert dangers to individuals and to promote and preserve the health of their employees. Our business partners ensure they comply with all applicable laws and regulations. Their employees' safety is a central requirement of our business partners' corporate activities.

<b>Environmental Protection</b>		<p>Our business partners comply with all applicable environmental legislation and standards. Our business partners employ best available techniques to ensure that our natural environment is protected and where possible enhanced, and resources including materials and energy are conserved.</p> <p>NTL aim to be Net Zero in line with UK Government objectives and the Paris Agreement, business partners are expected to align to this approach and take the necessary steps to decarbonise their offer of products and services to Northern</p>
<b>Labour and Employment Conditions</b>		<p>Applicable laws and agreements with their social partners are respected by our business partners. Our business partners remunerate their employees adequately.</p>
<b>Data Protection</b>		<p>Our business partners comply with all applicable laws for the protection of personal data, particularly of employees, business partners and customers.</p>
<hr/>		
		<p><b>Anti-Corruption</b></p> <p>NTL does not tolerate any form of corruption, canvassing or collusion and other unfair business practices. Transparency and openness are essential requirements for NTL.</p>
<b>Corruption</b>		<p>Our business partners should not tolerate any form of corruption and bribery and should comply with all applicable laws.</p>
<b>Consultants / Agents / Brokers</b>		<p>Any remuneration paid to consultants, agents, brokers and/or other intermediaries must not serve to provide business partners, customers and other third parties with unfair advantages.</p>
<b>Avoidance of Conflicts of Interest</b>		<p>Our business partners avoid conflicts of interest that may lead to corruption risks.</p>
<b>Invitations and Gifts</b>		<p>In connection with their business activities for NTL, our business partners accept invitations only or grant invitations only if they are appropriate, not in anticipation of any improper benefits in return or any other preferential treatment.</p>
<b>Behavior towards Public Officials</b>		<p>Our business partners do not tolerate any form of unlawful tangible and intangible benefits (including their offering) to public officials or persons comparable to these (irrespective of whether these are made directly or indirectly through third parties).</p>
<b>Political Parties</b>		<p>Any unlawful tangible and intangible benefits of any kind to political parties, their representatives or to holders of public offices or candidates for political offices will also not be tolerated by our business partners.</p>
<b>Donations Sponsoring</b>	/	<p>Donations are only made on a voluntary basis by our business partners and not in anticipation of any consideration in return. Sponsoring of individuals, groups or organisations will not be used in order to obtain unlawful business advantages.</p>

<b>Money Laundering</b>	Our business partners take appropriate measures to prevent money laundering in their organisations.
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<b>Corporate Criminal Offence</b>	Our business partners take appropriate measures to comply with the Criminal Finances act and have proactive controls in place to ensure they or their partners do not facilitate tax evasion.
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**Conduct of our Business Partners in Competition**

NTL strives to always act as a fair and responsible market participant and expects the same from its business partners.

<b>Competition Laws</b>	Our business partners comply with all relevant competition laws. In particular, they do not make agreements and arrangements that influence prices, conditions, strategies or customer relations, especially regarding participations in tender procedures.
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<b>Export- and Import Controls / Combating Terrorism</b>	Our business partners observe compliance with all applicable laws regarding the import and export of goods, services, and information as well as the laws on combating international terrorism.
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**Compliance with the NTL Supply Chain code of conduct**

<b>Compliance</b>	As a business partner to NTL you shall ensure that the principles set out in this <i>NTL Supply Chain code of conduct</i> are complied with.
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<b>Reports to the NTL Group</b>	Our business partners use the opportunity to make reports on crimes that were committed in the course of their business activities for NTL and which may have effects on NTL through the existing reporting systems of NTL.
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<b>Protection of Whistleblowers</b>	Our business partners do not tolerate any discrimination against persons who report violations of the principles set out in this <i>NTL Supply Chain Code of Conduct</i> .
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<b>Supply Chain</b>	Our business partners choose their suppliers, which they retain in relation to their business activities for NTL, diligently, communicate the principles set out in this <i>NTL Supply Chain Code of Conduct</i> or equivalent principles to them and promote compliance of their suppliers with these principles.
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<b>Where to find further Information</b>	In case of doubt or questions, please contact your nominated contact person at NTL.
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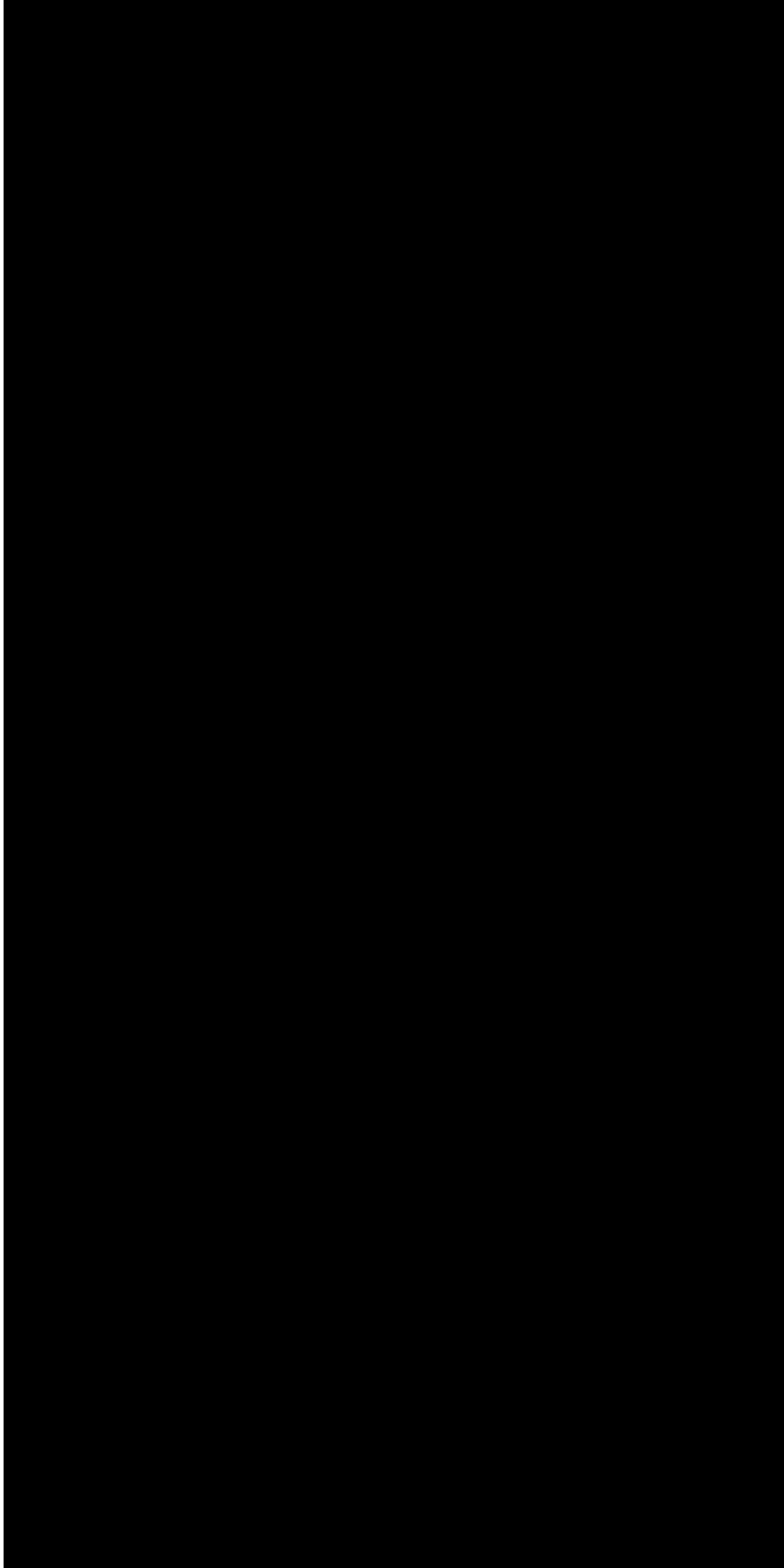
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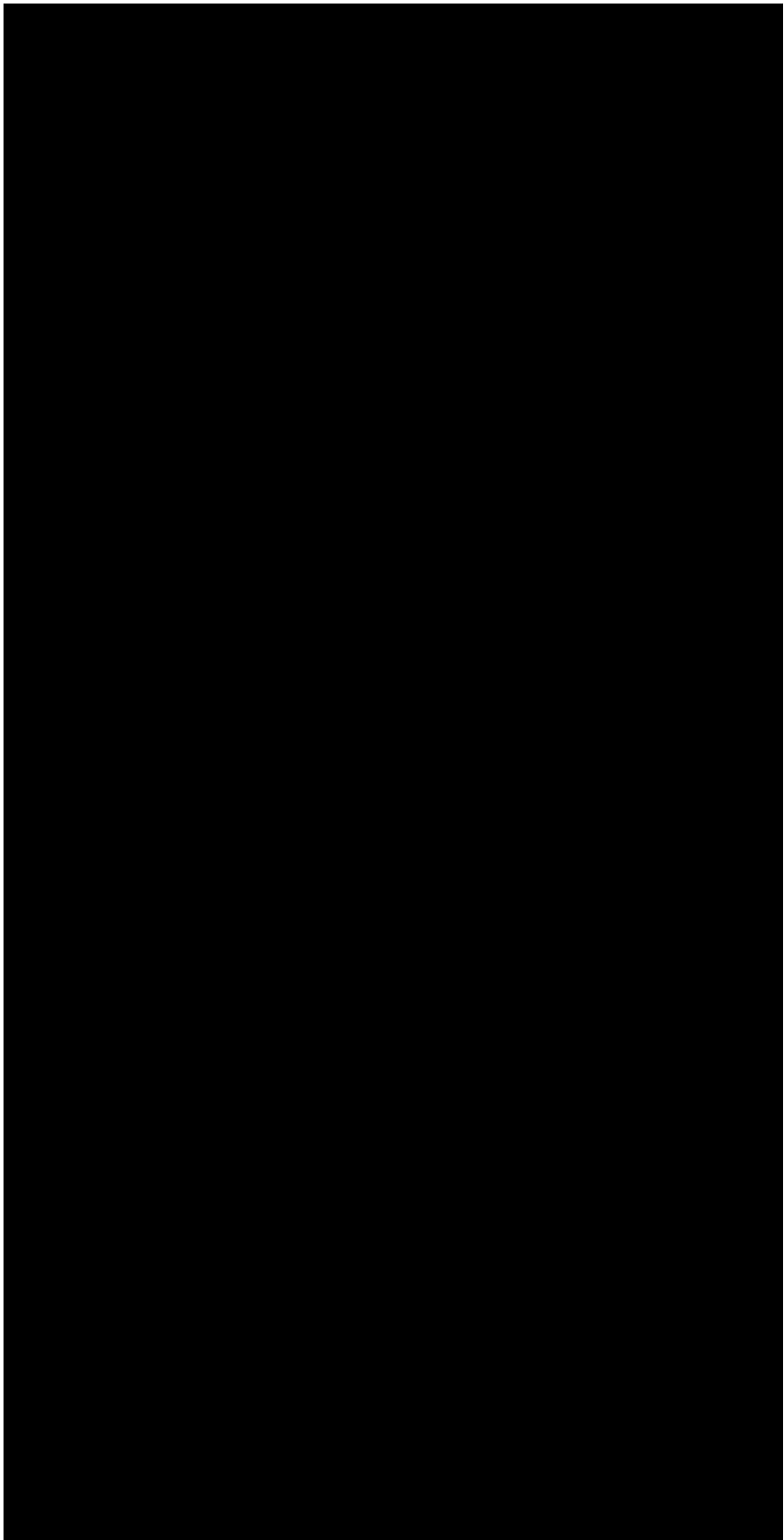
This Policy will be used as the foundation for our relationships with business partners. We will include this Policy in our tenders, and when offering and awarding business to suppliers. This Policy will be integrated into supplier contracts.

We will engage with our suppliers to encourage continuous improvement in performance and measure progress. Suppliers' performance against the principles of this Policy will be reviewed at regularly scheduled business meetings, complemented by supply chain risk assessments.

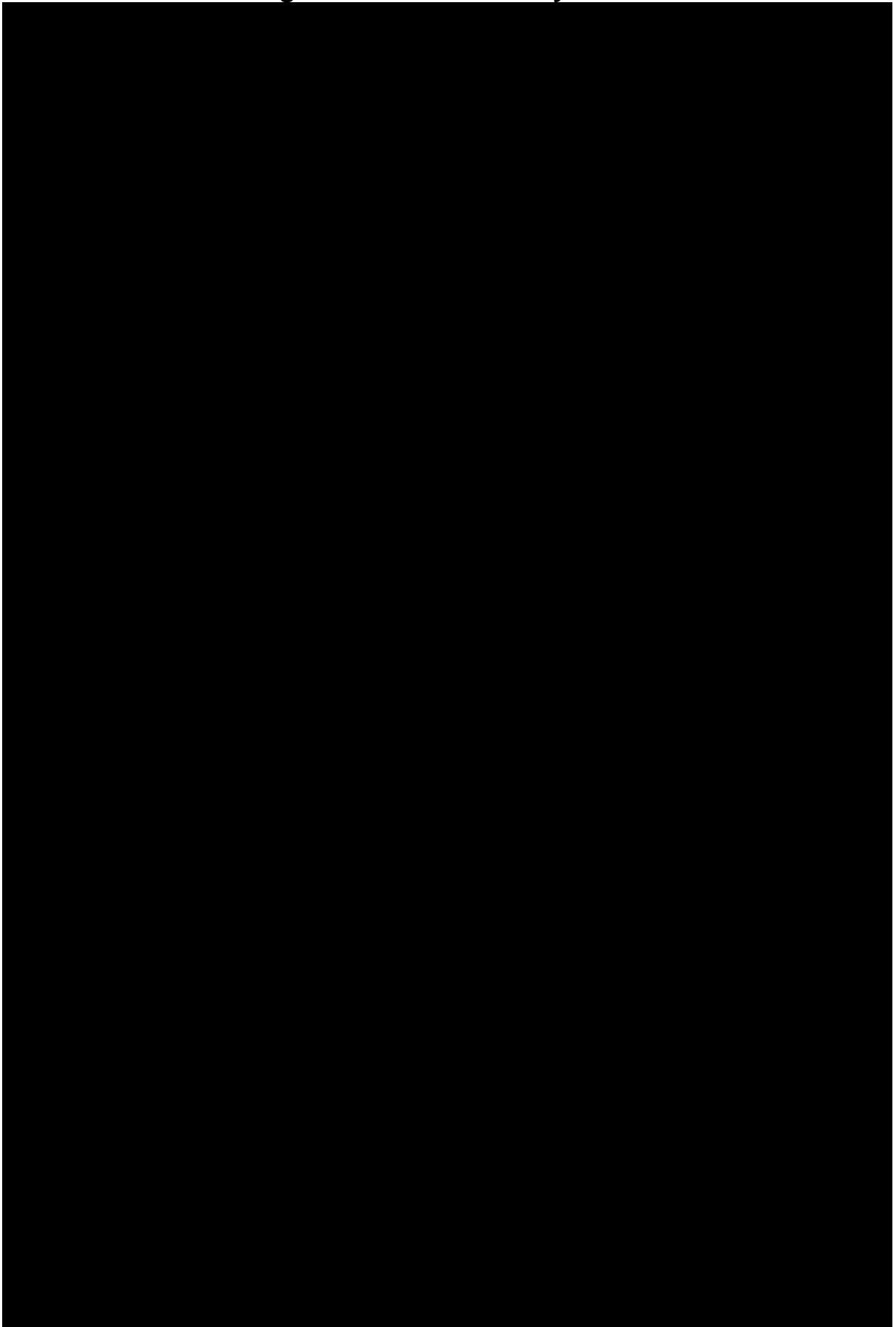
We will monitor compliance with this Policy and reserve the right to visit suppliers' and subcontractors' facilities to audit performance. Further, we reserve the right to monitor any tier of our supply chain. Equally, and where necessary, we will work with suppliers to create a corrective action plan for achieving compliance in clearly defined and reasonable timeframes. If non-compliance is deemed serious, we reserve the right to apply sanctions, which can include immediate termination of our business relationship as further set out in relevant contracts.

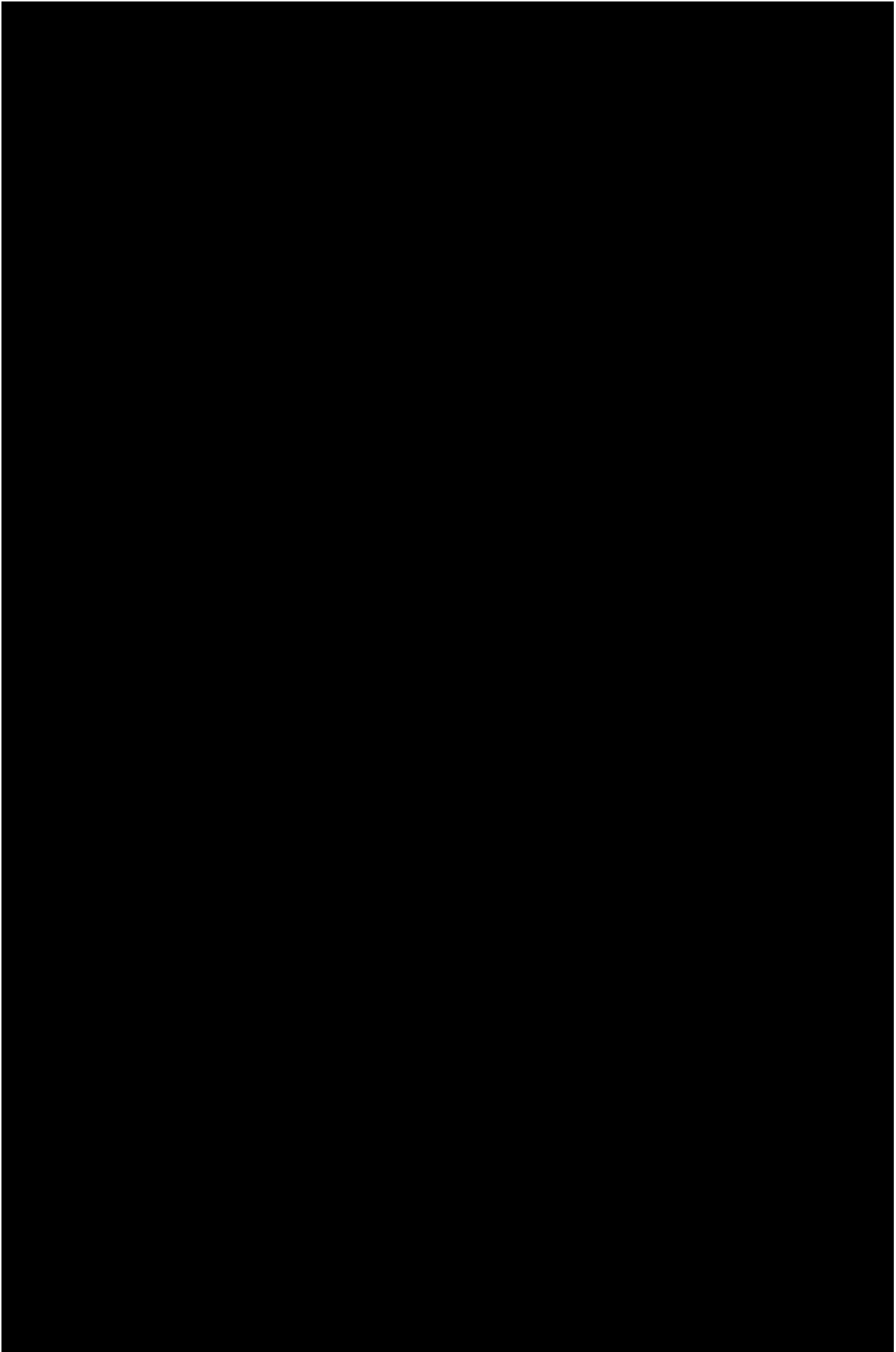
## Schedule 12 – Units

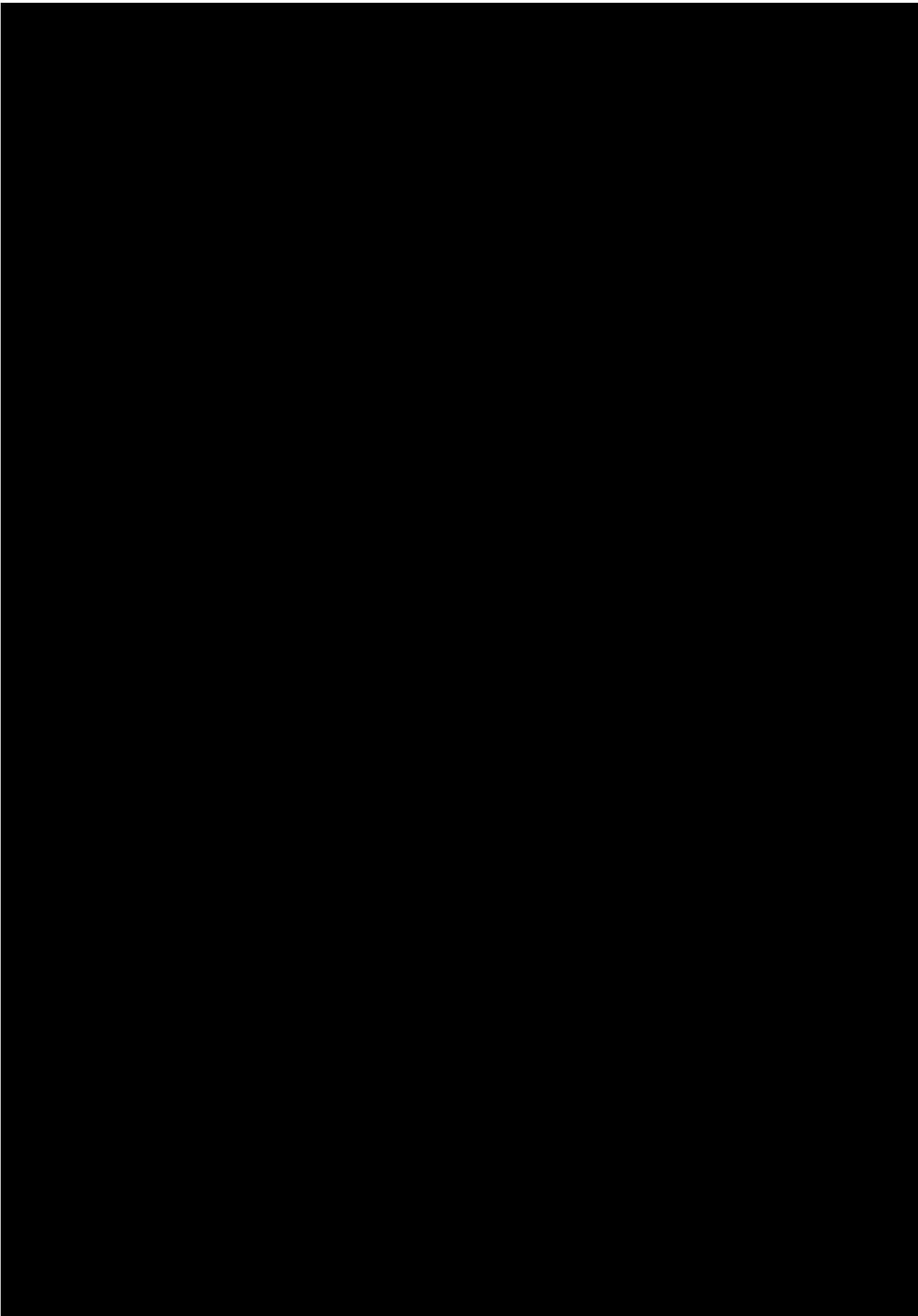


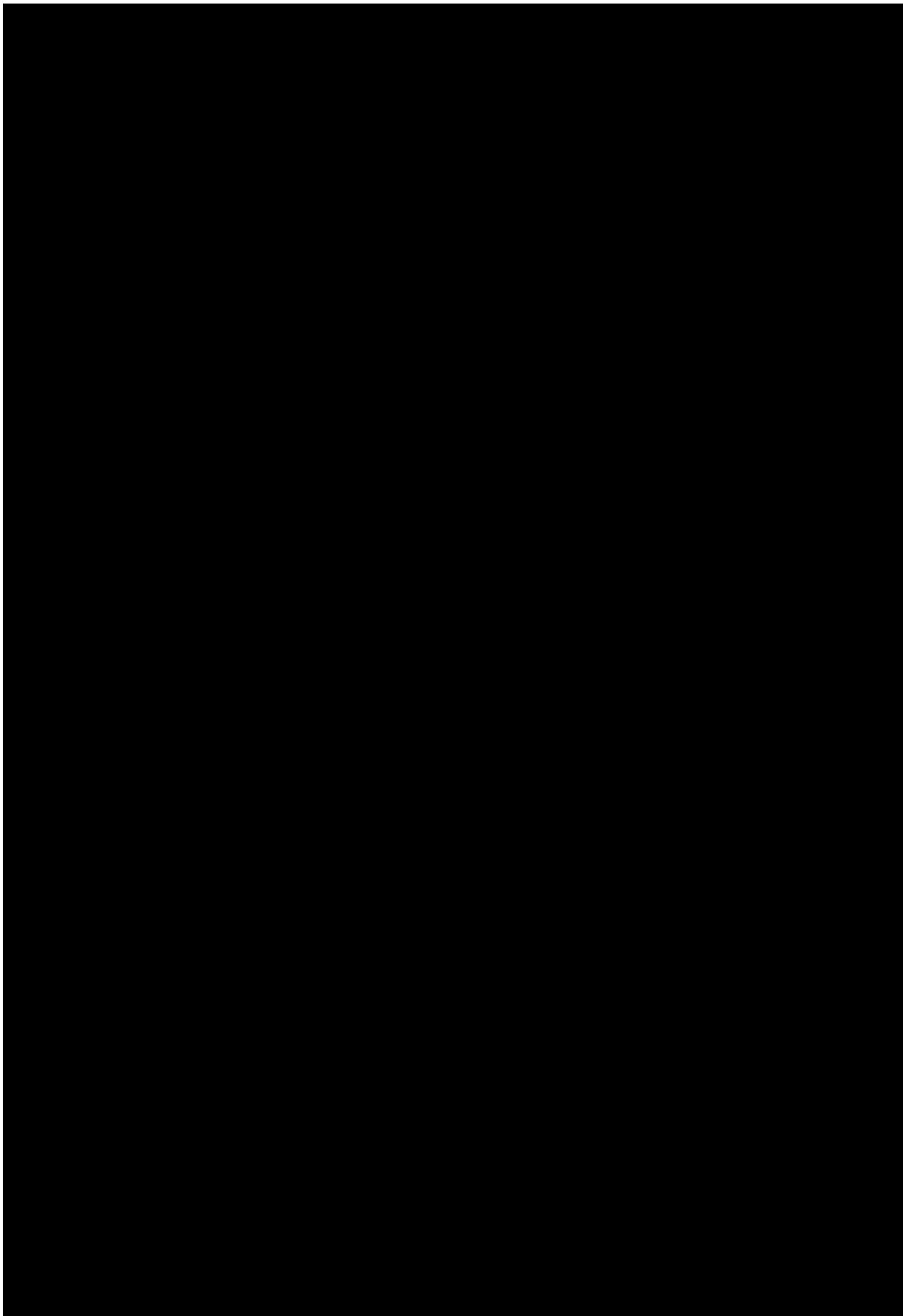


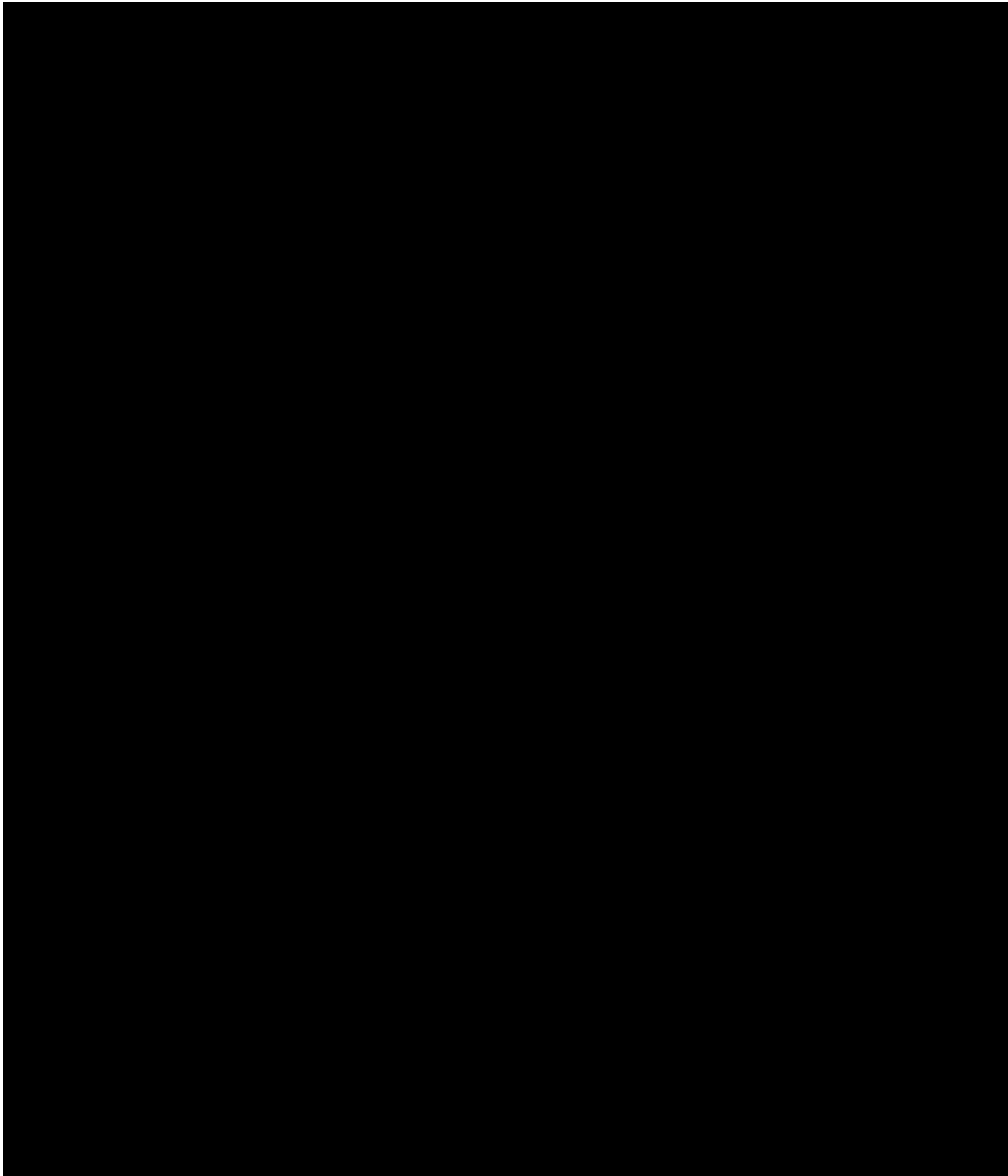
## Schedule 13 – Management of On Train Systems



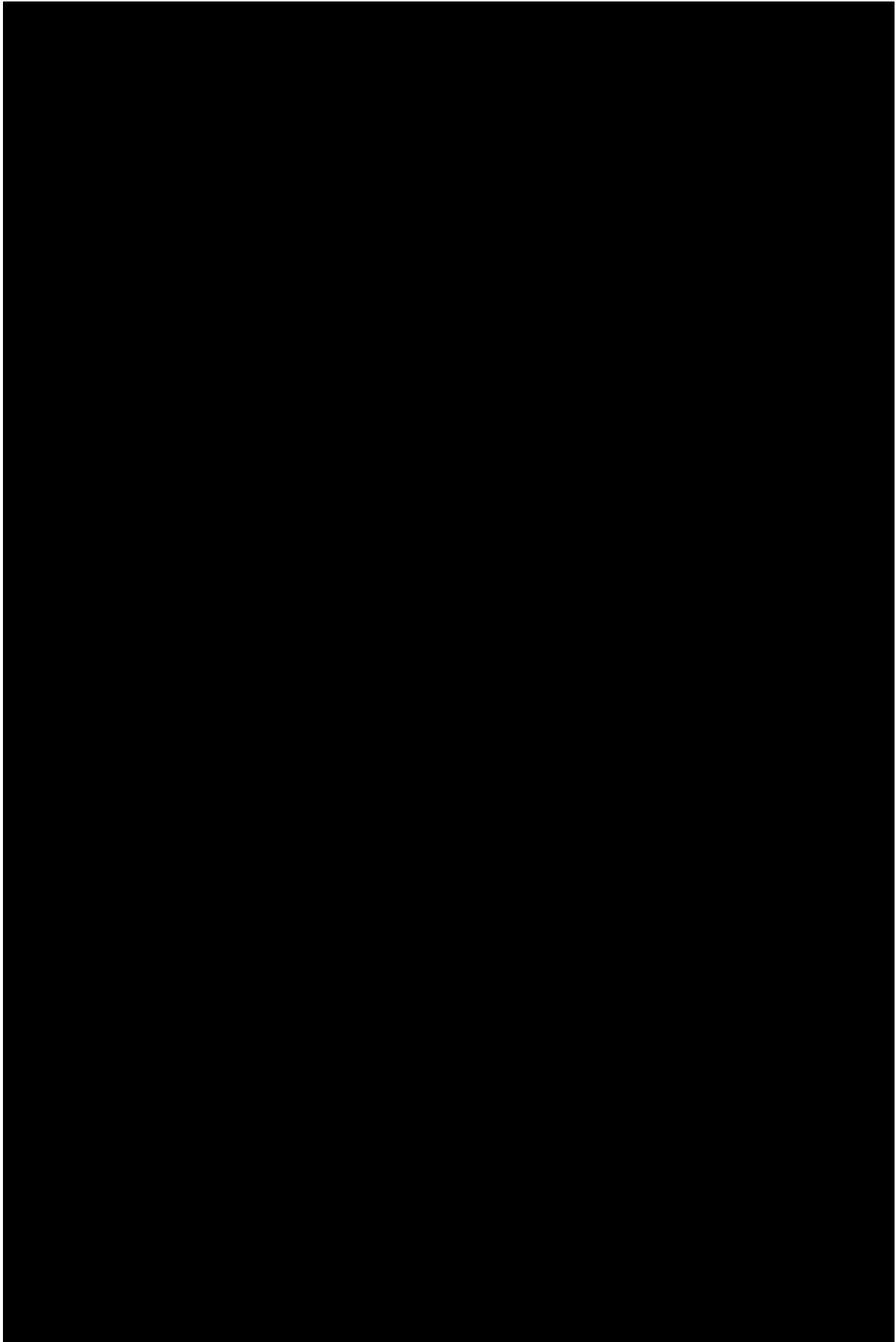


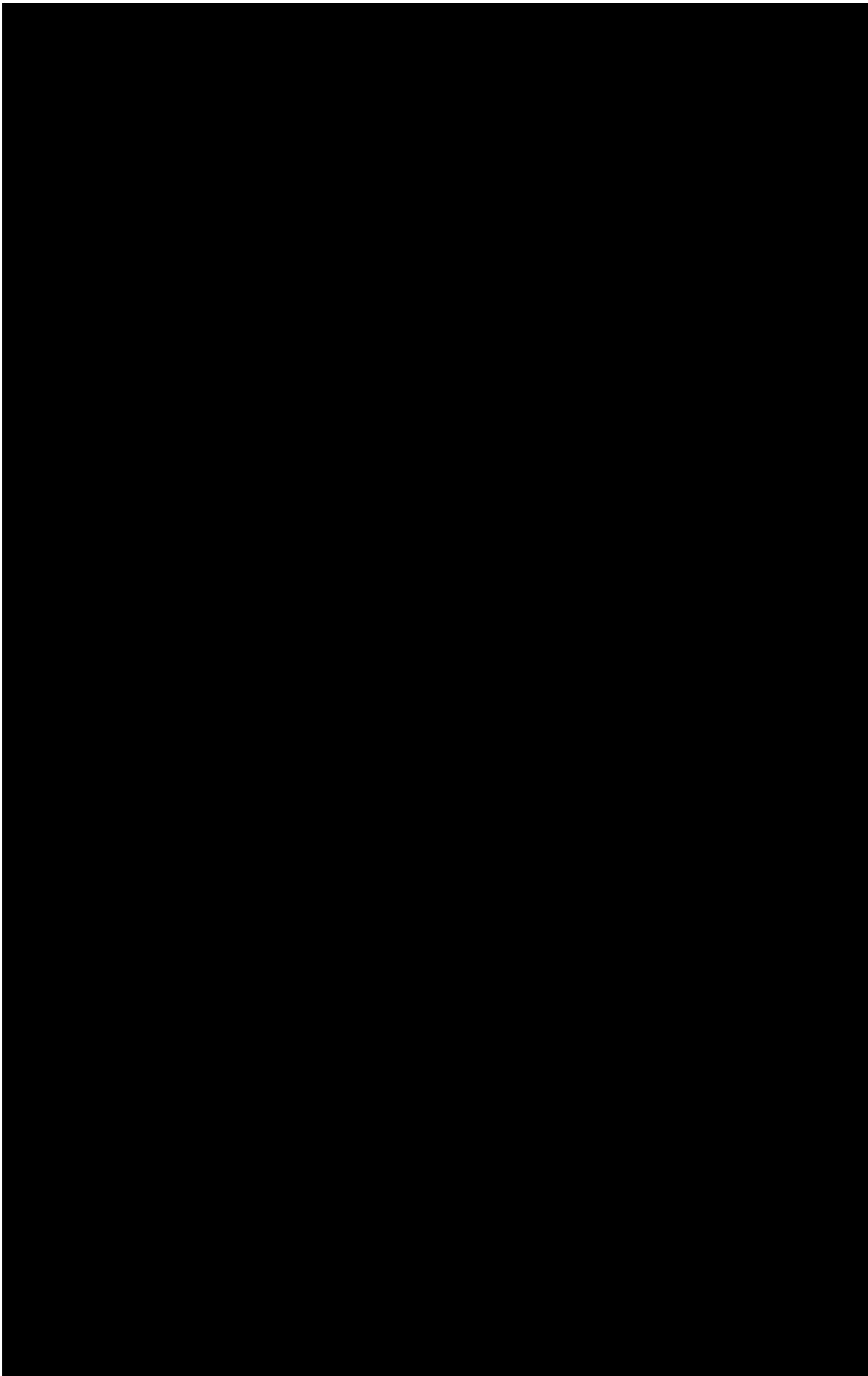


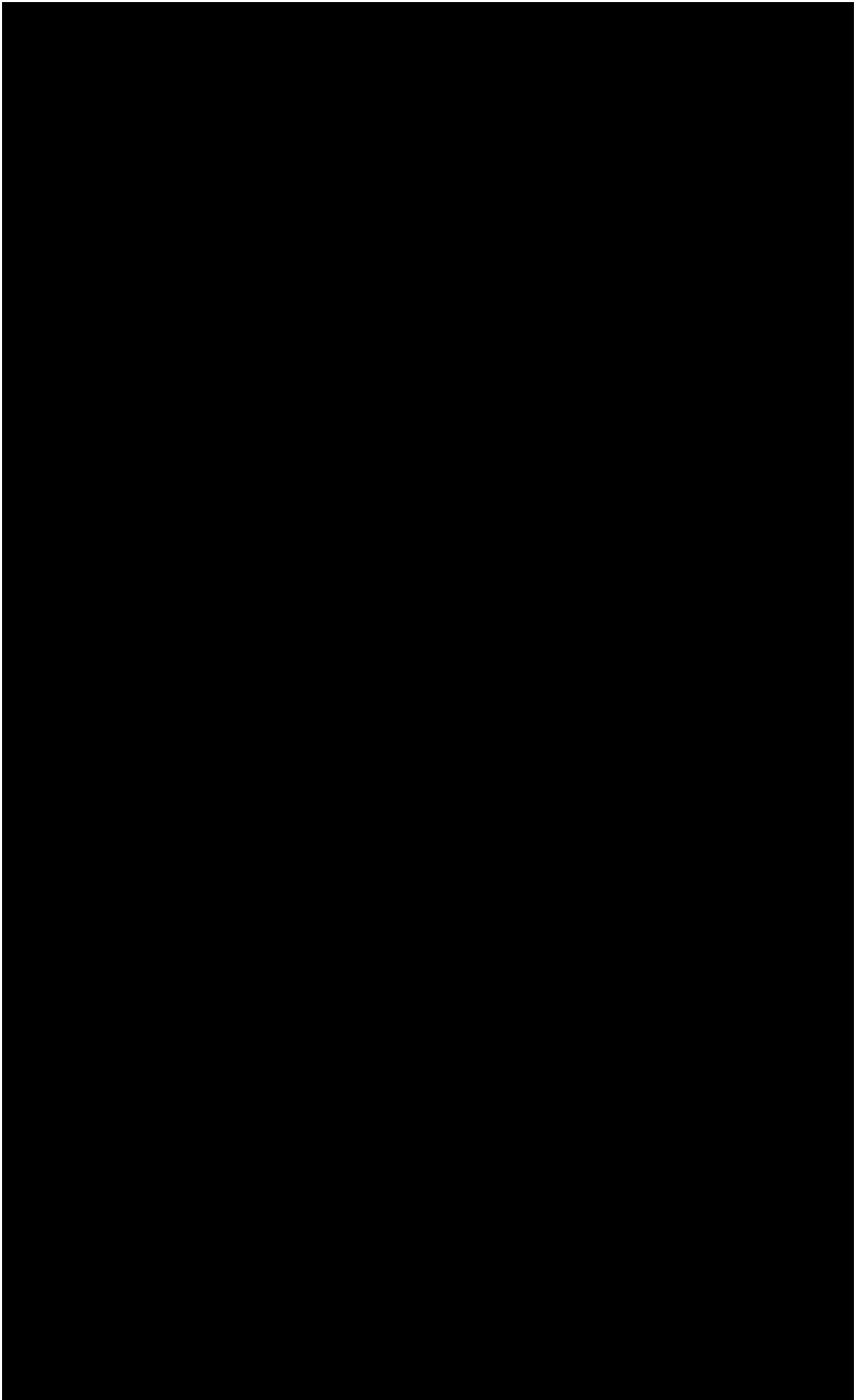


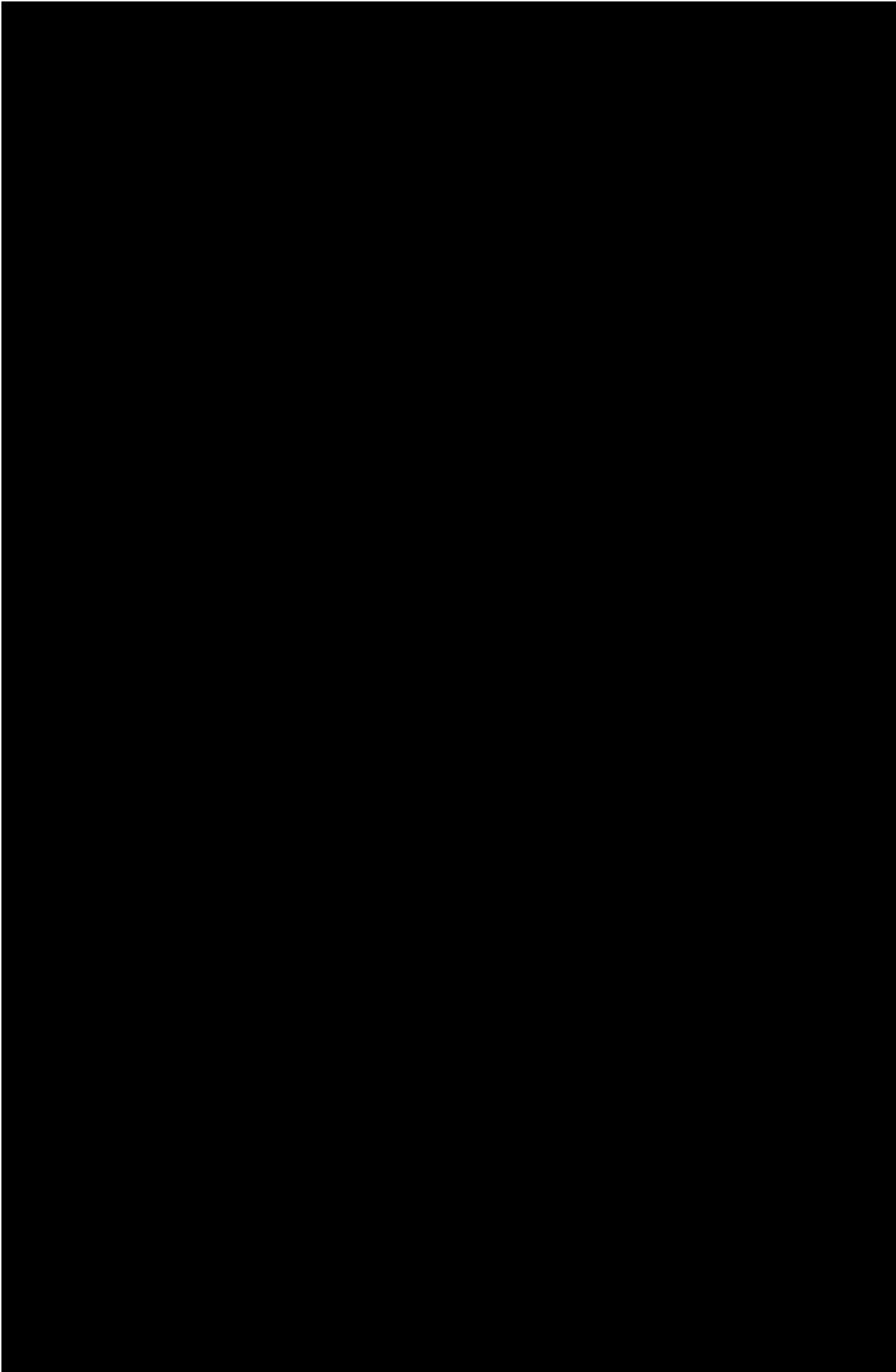


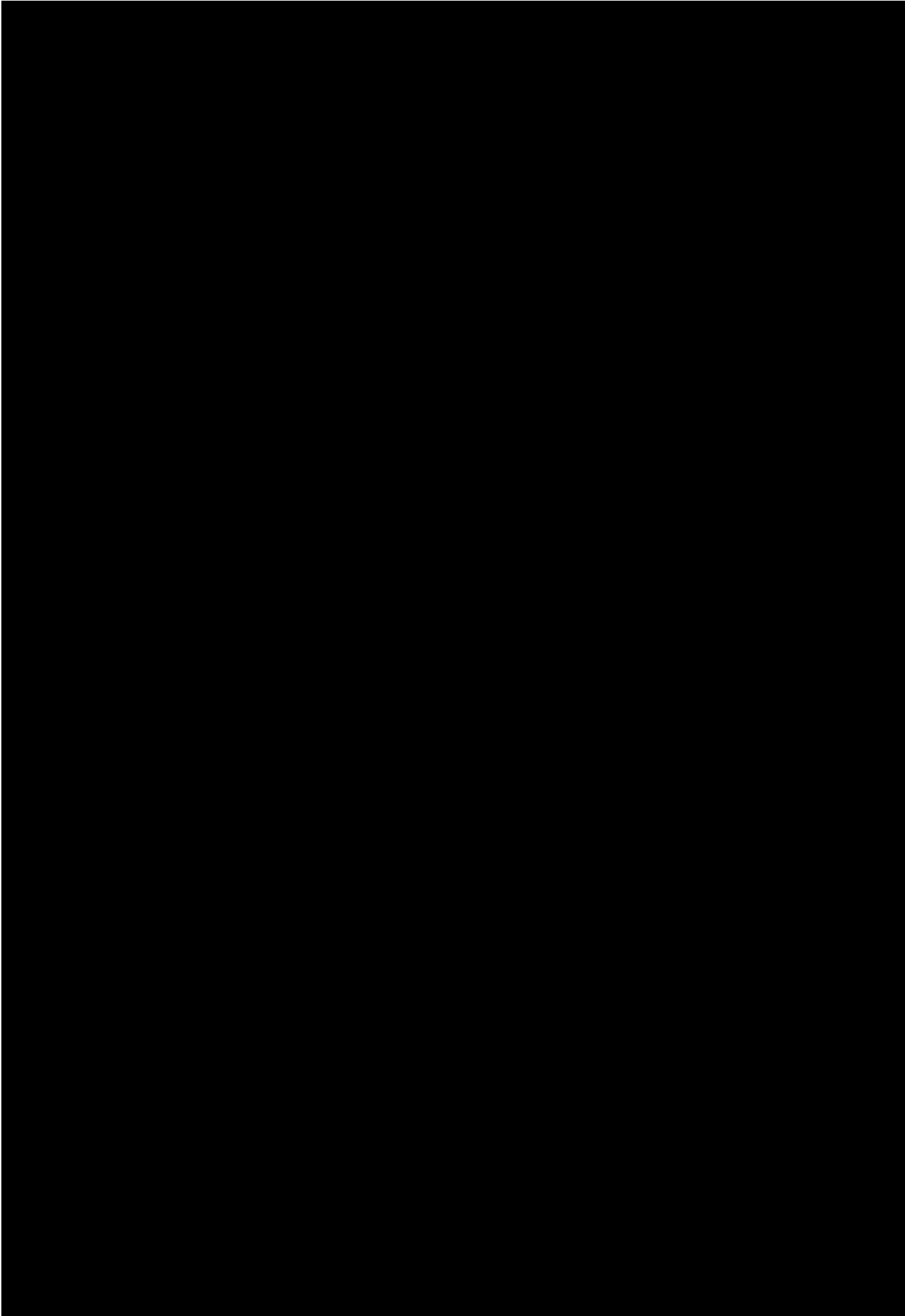
## Schedule 14 – Service Performance Regime (SPR)

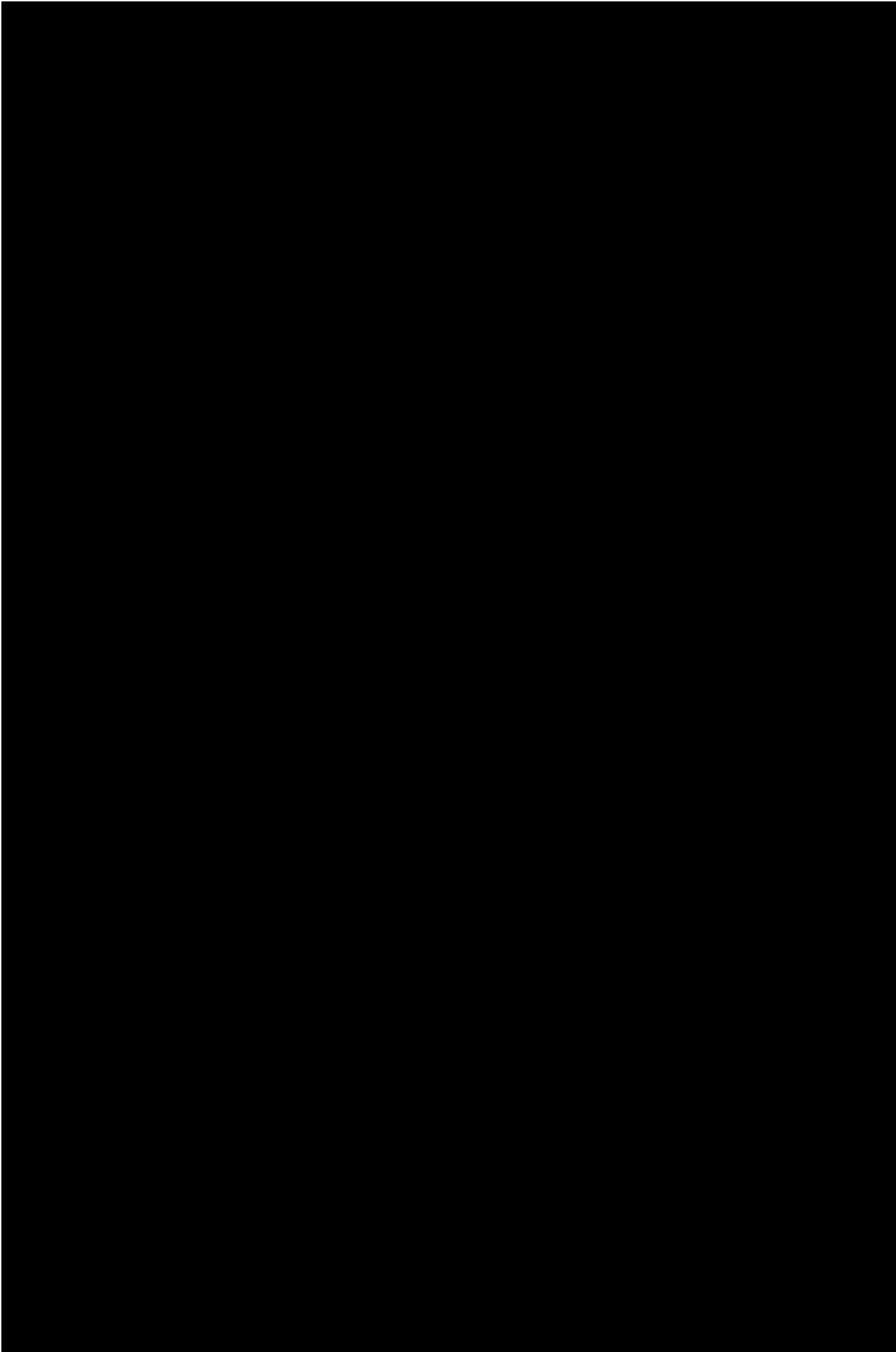














## **Schedule 15 – Template Spares List**

