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## Sydney Metro

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### PROFESSIONAL SERVICES CONTRACT

PSC No. 00013/11693 – SHADOW OPERATOR

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Between

**Sydney Metro**

**PRINCIPAL**

ABN 12 354 063 515

and

**Ricardo Rail Australia Pty Ltd**

**SERVICE PROVIDER**

ABN 47 097 900 206

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Level 43, 680 George Street  
Sydney NSW 2000

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**THIS AGREEMENT** is made on

**BETWEEN:**

1. Sydney Metro ABN 12 354 063 515, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
2. Ricardo Rail Australia Pty Ltd ABN 47 097 900 206, located at Suite 201, Level 2, Tower B, The Zenith, 821 Pacific Highway, Chatswood NSW 2067 (the **Service Provider**).

**RECITALS**

- A. The Principal wishes to enter into a long-term relationship based contract with the Service Provider for early operator involvement in the design of projects for Sydney Metro West. The Principal may, at its sole discretion, decide to expand the scope of this Agreement to include services in respect of Sydney Metro Greater West or other Sydney Metro projects.
- B. The Services are critical to the Principal to support the operation and maintenance of Sydney Metro West projects, and require a high level of integration and collaboration with the Principal.
- C. Following the completion of a request for tender process, the Principal selected the Service Provider as the successful tenderer for the delivery of the Services.
- D. The Principal and the Service Provider now wish to enter into this Agreement to record the terms on which the Services will be delivered by the Service Provider to the Principal.

**THE PARTIES AGREE AS FOLLOWS:**

## **1 DEFINITIONS AND INTERPRETATION**

### **1.1 Definitions**

In this Agreement:

**"Agreement"** means the contractual relationship between the Principal and the Service Provider constituted by:

- (a) these General Conditions, all Schedules including the Contract Particulars attached to these General Conditions and any Exhibits; and
- (b) the other documents (if any), referred to in the Contract Particulars.

**"Approved Metro Operator"** means:

- (a) the Initial Approved Metro Operator; and
- (b) any other Qualifying Metro Operator in respect of which the Principal approves a Subcontractor Proposal pursuant to clause 6.2(c)(i).

**"Associates"** means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors or officers of the Principal and the Principal's Representative, but excludes:
  - (i) the Service Provider, each entity that comprises the Service Provider and its Subcontractors;
  - (ii) any Interface Parties and their respective Subcontractors; and
  - (iii) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (iii) above; and
- (b) in respect of the Service Provider, any employees, agents, consultants, contractors or officers of the Service Provider, or any of the Service Provider's Subcontractors, each entity that comprises the Service Provider and any of the respective employees, agents, contractors or officers of its Subcontractors.

**"Authority"** means any Federal, State or local government, semi-government, or other body, authority or person, statutory or otherwise, including any court or tribunal, having jurisdiction over the

Project, the Services or the performance by the Service Provider of its obligations under this Agreement or with whose utility services the Services are or will be connected.

**"Background Intellectual Property Rights"** means Intellectual Property Rights and Intellectual Property Material (whether owned or licensed) which are:

- (a) already in existence at the Commencement Date; or
- (b) brought into existence other than for the purposes of the Services,

and which the Service Provider or any of its Associates uses at any time in connection with the Services or the performance of the Service Provider's obligations under this Agreement.

**"Business Day"** means any day other than:

- (a) a Saturday, Sunday or public holiday in New South Wales, or
- (b) 27, 28, 29, 30 or 31 December.

**"CCU"** means Construction Compliance Unit, the unit established within NSW Industrial Relations to monitor compliance with and receive reports of alleged breaches of the NSW Guidelines.

**"Commencement Date"** means the date on which this Agreement has been signed by the last party to sign.

**"Confidential Information"** includes, but is not limited to, the following:

- (a) the documents specified in the Contract Particulars;
- (b) any material produced by the Service Provider under this Agreement; and
- (c) any other information or data that the Service Provider is given or which comes to the Service Provider's knowledge during the course of providing the Services that:
  - (i) the Service Provider is told is confidential; or
  - (ii) a reasonable person would expect to be confidential from its nature and content,

but does not include:

- (d) information which, at the time of disclosure, was already in the public domain;
- (e) information which, subsequent to disclosure, enters the public domain except through breach of this Agreement, through breach of the Confidentiality Deed Poll in Schedule 2 by a recipient of disclosed information, or through breach of any other obligation of confidence; or
- (f) information which the Service Provider or a recipient of disclosed information (who has signed a Confidentiality Deed Poll in Schedule 2) is required to disclose by law or the listing rules of the Australian Securities Exchange.

**"Construction Contractor"** means a contractor that will be engaged by the Principal for the purposes of completing the design, construction, manufacture, supply, installation, testing or commissioning of any works, services or supplies in connection the Project (excluding the Service Provider and its Associates).

**"Contract Particulars"** means the particulars in Schedule 1.

**"Control"** has the meaning given to that term in section 50AA of the Corporations Act 2001 (Cth).

**"Defect"** means any:

- (a) defect, deficiency, fault, error or omission in the Services; or
- (b) other aspect of the Services that are not in accordance with the requirements of this Agreement, including non-compliances, non-conformances and non-conformities.

**"Deliverables"** means all things created or required to be created under this Agreement by the Service Provider, including any documents, drawings, plans and reports (including the Reviewable Deliverables and Intellectual Property Materials) whether physical or electronic, and includes the underlying data and models used by the Service Provider in order to create any such thing.

**"Event of Insolvency"** means if:

- (a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with this Agreement;
- (b) execution is levied against a party by a creditor;
- (c) a party is an individual person or a partnership including an individual person, and if that person:
  - (i) commits an act of bankruptcy;
  - (ii) has a bankruptcy petition presented against him or her or presents his or her own petition;
  - (iii) is made bankrupt;
  - (iv) makes a proposal for a scheme of arrangement or a composition; or
  - (v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration order made, under part X of the *Bankruptcy Act 1966* (Cth); or
- (d) in relation to a party being a corporation:
  - (i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;
  - (ii) the party enters a deed of company arrangement with creditors;
  - (iii) a controller, administrator, receiver, receiver and manager, liquidator or similar office holder is appointed;
  - (iv) an application is made to a court for the winding-up of the party and not stayed within 14 days;
  - (v) a winding-up order is made in respect of the party;
  - (vi) that party resolves by special resolution that the party be wound up voluntarily (other than for a members' voluntary winding-up); or
  - (vii) a mortgagee of any property of the party takes possession of that property.

**"Expiry Date"** means the date stated in the Contract Particulars, as may be extended in accordance with clause 2.2.

**"General Conditions"** means clause 1 to clause 36 of this Agreement.

**"Governance Group"** means the group referred to in clause 12.4.

**"Initial Approved Metro Operator"** means the entity identified as such in the Contract Particulars.

**"Intellectual Property Material"** means any software, firmware, documented methodology or process, documentation or other material whatsoever (including any reports, specifications, plans, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions) in either or both human readable or computer readable form and which wholly or partly embody or contain Intellectual Property Rights.

**"Intellectual Property Rights"** means all present and future rights throughout the world conferred by any law in or in relation to any patent, design, registered design, trademark, name (including domain names), copyright, circuit layout, software, database, invention, know-how, business process or other protected right, in each case whether registered or unregistered and including all rights in all applications to register, renew or extend these rights.

**"Interface Party"** means:

- (a) each Construction Contractor;
- (b) Sydney Trains;
- (c) the Operator;
- (d) TfNSW;
- (e) the LWC Contractor;

- (f) the TSOM Contractor; and
- (g) any other person identified by the Principal's Representative as an Interface Party that is carrying out, or that will carry out, Interface Work.

**"Interface Work"** means the works, operations, services, supplies and/or maintenance to be executed by Interface Parties, which will interface with or affect or be affected by the Services.

**"Key People"** means those Approved Persons nominated in the Contract Particulars, as may be adjusted in accordance with clause 12.2.

**"Key Performance Indicator" or "KPI"** means a key performance indicator set out in Attachment A of Schedule 11, [REDACTED]

**"LWC Contractor"** means the contractor engaged by the Principal to perform the track and tunnel services (drainage, lighting, fire systems, low voltage supplies), high voltage power supply, overhead line and traction supply, tunnel ventilation system and stabling for the Sydney Metro City & Southwest project.

**"Management Plans"** means the plans referred to in the Services Brief.

**"Monthly Service Payment"** has the meaning given in Schedule 5.

**"NSW Guidelines"** means the New South Wales Industrial Relations Guidelines: Building and Construction Procurement July 2013 (updated September 2017).

**"NSW Trains"** means the corporation by that name constituted by Part 2B of the Transport Administration (General) Regulation 2005 (NSW).

**"Operator"** means any entity that is engaged by the Principal from time to time to operate or maintain (or both) all or any part of the Project.

**"Option"** means an option referred to in Schedule 7.

**"Other Contractor"** means any consultant, contractor, supplier or other person engaged by the Principal in relation to the Project other than the Service Provider and its Subcontractors, the Key People and the Service Provider's Representative.

**"Performance Regime"** means the regime for measuring the Service Provider's performance under this Agreement, as set out in Schedule 11.

**"Personal Information"** has its meaning in the *Privacy and Personal Information Protection Act 1998* (NSW).

[REDACTED]

**"Principal's Contract Delegate"** means the person nominated in the Contract Particulars, or any replacement notified to the Service Provider by the Principal's Representative.

**"Principal's Representative"** means the person nominated in the Contract Particulars or any other person appointed from time to time by the Principal under clause 12.3.

**"Principal Supplied Information"** means any reports, documents, records, designs, drawings, plans, samples, patterns, moulds, information, data or other material provided from time to time to the Service Provider or its Associates by or on behalf of the Principal (whether in electronic, computer readable, written, physical or any other form).

**"Program"** means the program submitted by the Service Provider to the Principal's Representative as updated by the Service Provider in accordance with clause 19.1 and the Services Brief.

**"Project"** means the project or projects stated in the Contract Particulars in respect of which the Services are provided.

**"PSMP"** means the Sydney Metro Program Safety Management Plan, as amended from time to time.

**"Qualifying Metro Operator"** means an entity that is currently undertaking the operation of a metro railway and which has sufficient experience, expertise, ability and resources to provide significant expertise, advice and input on operational issues to support the provision of the Services and the development and delivery of the Project.



**"RailCorp"** means Rail Corporation New South Wales (ABN 59 325 778 353), a corporation constituted by section 4(1) of the Transport Administration Act 1988 (NSW).

**"Rail Safety National Law"** means the Rail Safety National Law (NSW), as defined in the *Rail Safety (Adoption of National Law) Act 2012*, and any associated regulations.

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

**"Resourcing Plan"** means the Management Plan of that name.

**"Reviewable Deliverable"** means:

- (a) the Management Plans;
- (b) any other Deliverable specified as reviewable in the Services Brief; and
- (c) any other Deliverable identified as such by the Principal from time to time.

**"Service Provider's Employee"** means any:

- (a) employee or officer of the Service Provider; or
- (b) other individual engaged directly by the Service Provider or through any entity under the Control of that individual or any trust in respect of which that individual is a direct or indirect beneficiary,

who is, was, or is proposed to be, engaged in the performance of the Services.

**"Service Provider's Representative"** means the person nominated in the Contract Particulars, or any substitute approved by the Principal under clause 12.1.

**"Services"** means the whole of the services to be carried out and completed by the Service Provider in accordance with this Agreement, including any changes required as a result of the exercise of an Option by the Principal's Representative under clause 17.5 or due to variations provided for by this Agreement, as generally described in the Contract Particulars.

**"Services Brief"** means the document at Schedule 6 of this Agreement.

**"Services Management Plan"** the plan of that name set out in Schedule 12, as amended or updated from time to time in accordance with this Agreement.

**"SME"** has the meaning given to it in the "NSW Government Small and Medium Enterprise and Regional Procurement Policy".

**"SOP Act"** means the *Building and Construction Industry Security of Payment Act 1999* (NSW).

**"Statutory Requirements"** include:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State of New South Wales;
- (b) certificates, licences, consent, permits, approvals and requirements of organisations having jurisdiction applicable to the Services; and
- (c) relevant Australian Standards applicable to the Services.

**"Subcontractor"** means any contractor, agent or consultant (excluding any Service Provider's Employee) of the Service Provider who is, was or is proposed to be engaged in the performance of the Services and includes any Approved Metro Operator from time to time engaged by the Service Provider in connection with the Services.

**"Subcontractor Proposal"** means a proposal issued by the Service Provider to the Principal under clause 6.2(b)(iii).

**"Sydney Trains"** means the corporation by that name constituted by Part 2A of the Transport Administration (General) Regulation 2005 (NSW).

**"Term"** has the meaning given in clause 2.2.

**"TfNSW"** means Transport for NSW (ABN 18 804 239 602), a New South Wales Government Agency constituted under the *Transport Administration Act 1988* (NSW).

**"TfNSW Statement of Business Ethics"** means the document titled "Transport for NSW Statement of Business Ethics" which can be found on the TfNSW website.

**"Third Party Intellectual Property Rights"** means Intellectual Property Rights and Intellectual Property Materials owned by third parties which the Service Provider or any of its Associates uses at any time in connection with the Services or the performance of the Service Provider's obligations under this Agreement.

**"Third Party Licensed Software"** means Third Party Intellectual Property Rights in respect of standard off-the-shelf software.

**"TSOM Contractor"** means the contractor appointed by the Principal or the Operator to perform the signalling system, central control system and communication system works.

**"Use"** in relation to any Intellectual Property Rights and Intellectual Property Material expressly includes the accessing, possessing, using, storing, copying and adapting of that Intellectual Property Right or Intellectual Property Material, and includes the incorporation of that Intellectual Property Right or Intellectual Property Material with other rights and materials and the creation of new versions of, or derivatives from, that Intellectual Property Right or Intellectual Property Material.

**"WHS Act"** means the *Work Health and Safety Act 2011* (NSW).

**"WHS Legislation"** means the following as it may apply from time to time:

- (a) the WHS Act and the WHS Regulation; and
- (b) all other acts, regulations, codes of practice and Australian Standards relating to work health and safety which apply in the State in which the Services are being provided.

**"WHS Regulation"** means the *Work Health and Safety Regulation 2011* (NSW).

**"worker"** has the same meaning as in the WHS Act.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an Authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";
- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
  - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
  - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
  - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and

- (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
  - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Agreement; and
  - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where otherwise designated as a Business Day), "day" means calendar day and "week" means a period of 7 calendar days;
- (l) a reference to \$ is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part;
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (o) a reference to writing includes an email and any other means of reproducing words in a tangible and permanently visible form;
- (p) a reference to obligations includes indemnities, warranties, representations and undertakings and a reference to breach or breach of obligations includes breach of any indemnities, warranties, representations and undertakings; and
- (q) any reference in this Agreement to "the Contract" or "this Contract" will be taken to be a reference to this Agreement.

### 1.3 Authorities

- (a) This Agreement will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Principal, TfNSW (and each of its divisions), Sydney Trains, NSW Trains or RailCorp to exercise any of their respective functions and powers pursuant to any Statutory Requirements.
- (b) Without limiting clause 1.3(a), anything the Principal, TfNSW (and each of its divisions), Sydney Trains, NSW Trains or RailCorp do, or fail to do or purport to do, pursuant to their respective functions and powers under any Statutory Requirements will be deemed not to be an act or omission by the Principal under this Agreement.
- (c) The Service Provider:
  - (i) waives any claims that it may have against the Principal as a result of the exercise by the Principal, TfNSW (and each of its divisions), Sydney Trains, NSW Trains or RailCorp of their respective functions and powers under any Statutory Requirements; and
  - (ii) acknowledges and agrees that:
    - A. there are many Authorities with jurisdiction over aspects of the Services;
    - B. such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Services (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and

- C. it bears the full risk of all occurrences of the kind referred to in clause 1.3(c)(ii)B and will not be entitled to make, and the Principal will not be liable upon, any claim arising out of or in any way in connection with such occurrences.

## **2 TERMS OF ENGAGEMENT**

### **2.1 Engagement**

The Principal engages the Service Provider to perform the Services in accordance with this Agreement.

### **2.2 Term**

This Agreement comes into effect on the Commencement Date and continues until the Expiry Date, unless it is extended in accordance with clause 2.3 or terminated earlier in accordance with its terms (**Term**).

### **2.3 Extension**

- (a) The Principal may, in its absolute discretion:

- (i) extend the Term for any period of time; and
- (ii) exercise its rights under clause 2.3(a)(i) more than once,

by giving the Service Provider written notice at least 60 Business Days prior to the end of the then current Term, provided that the aggregate Term including all extensions under this clause 2.3(a) must not exceed ten years.

- (b) In considering whether to extend the Term, the Principal may take into account, without limitation, the Service Provider's performance under this Agreement, including its performance against the KPIs, and the Principal's upcoming program of work and ongoing requirements.
- (c) Any extension exercised in accordance with this clause 2.3 will be on the terms and conditions in effect on, and takes effect from, the end of the then current Term.

## **3 SERVICE PROVIDER'S OBLIGATIONS**

### **3.1 General**

The Service Provider must:

- (a) perform the Services in accordance with this Agreement (including the Services Brief) in consideration of the payments to be made by the Principal under clause 18;
- (b) perform the Services in compliance with the TfNSW Statement of Business Ethics;
- (c) perform the Services to that standard of skill, care and diligence to be expected of a Service Provider who regularly acts in the capacity in which the Service Provider is engaged and who possesses the knowledge, skill and experience of a service provider qualified to act in that capacity;
- (d) use all reasonable efforts to inform itself of the requirements of the Principal and regularly consult with the Principal during the performance of the Services;
- (e) liaise, co-operate and confer with others as directed by the Principal;
- (f) promptly give written notice to the Principal if and to the extent the Service Provider becomes aware that any document or other information provided by the Principal is ambiguous or inaccurate or is otherwise insufficient to enable the Service Provider to carry out the Services;
- (g) make reasonable enquiries to ascertain the requirements of the Principal regarding the Services, including in respect of any hazards and risks at the site upon which the Project is to be constructed of which the Principal is aware;
- (h) regularly consult the Principal regarding the carrying out of the Services;

- (i) as soon as practicable after becoming aware of any matter or circumstances which may adversely affect or has adversely affected the scope, Monthly Service Payments, timing or carrying out of the Services, give written notice to the Principal detailing the matter or circumstances and its anticipated effect on the Services; and
- (j) ensure that any person employed or engaged by the Service Provider and its Subcontractors who undertakes any work in connection with the Services complies with all Statutory Requirements.

The Service Provider warrants that it has done and will do everything that would be expected of a skilled, prudent, experienced and professional consultant in assessing the risks which it is assuming under this Agreement [REDACTED]

### 3.2 Complying with Statutory Requirements

The Service Provider must comply with:

- (a) all Statutory Requirements;
- (b) the requirements of the Building Code of Australia; and
- (c) the requirements of any other standards or codes,

which apply to the Services.

### 3.3 Non-Complying Services

If the Principal discovers or believes that the Services, or any part thereof, have not been performed in accordance with this Agreement (including any Deliverable not complying with the requirements of this Agreement), the Principal may give the Service Provider a direction specifying the non-complying Services and do one of the following:

- (a) require the Service Provider to:
  - (i) re-perform the non-complying Services (including by amending any Deliverable) within a specified time period; and
  - (ii) take all such steps as are reasonably necessary to:
    - A. mitigate the effect on the Principal of the failure to perform the Services in accordance with this Agreement; and
    - B. put the Principal (as closely as possible) in the position in which it would have been if the Service Provider had performed the Services in accordance with this Agreement; or
- (b) advise the Service Provider that the Principal will accept the non-complying Services despite the non-compliance, in which event the Principal will be entitled to recover from the Service Provider any additional costs which will be incurred by the Principal as a result of the non-compliance, including any costs incurred by the Principal in having the non-complying Services re-performed by an Other Contractor; or
- (c) advise the Service Provider that the Principal will accept the non-complying Services despite the non-compliance, in which event:
  - (i) the value of the non-complying Services, as determined by the Principal's Representative or [REDACTED], will be a debt due and payable by the Service Provider to the Principal which may be deducted from the Monthly Service Payment; and
  - (ii) the Service Provider will have no entitlement to make any payment claim against the Principal arising out of or in connection with the non-complying Services.

### 3.4 Re-performance of the Non-complying Services

If a direction is given under clause 3.3(a), the Service Provider must, at its own cost, re-perform the non-complying Services:

- (a) within the time specified in the Principal's instruction; and
- (b) so as to minimise the delay and disruption to the performance of the Services.

If the Service Provider fails to comply with a direction under clause 3.3(a) as required by this clause 3.4, the Principal may give the Service Provider a direction under clauses 3.3(b) or 3.3(c).

### 3.5 Health and Safety

(a) The Service Provider must:

- (i) comply with and ensure that each of its Associates engaged in providing the Services, comply with the WHS Legislation, the Rail Safety National Law and the Agreement as a minimum;
- (ii) continuously promote a safer, healthier, more productive workplace;
- (iii) provide strong leadership and promote safety as a core value, establishing and enforcing high standards of performance and ensuring relevant expertise is available;
- (iv) ensure open and effective consultation and further mutual trust with the Principal, providing timely response to safety issues and concerns;
- (v) provide the Principal with all information and documents the Principal requests and consult with the Principal as requested, so that the Principal may comply with its duties under the WHS Legislation and Rail Safety National Law including creating any document the Principal may request;
- (vi) consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (vii) if required by the Principal, develop, implement and comply with, a Safety Management Plan that complies with the requirements of the PSMP and the Services Brief.

(b) Safety Risk Management

The Service Provider must manage risks in accordance with the WHS Legislation, the Rail Safety National Law and the PSMP.

(c) Failure to comply

If the Principal's Representative is of the opinion that the Service Provider, the Service Provider's workers or a Subcontractor have not complied, or are not complying with, any health and safety requirements in this Agreement, under the Rail Safety National Law or WHS Legislation, including the requirement to eliminate or minimise risks so far as is reasonably practicable, then the Principal's Representative or their delegate or nominee may:

- (i) direct the Service Provider to immediately comply (and, where applicable, procure that the relevant worker or Subcontractor immediately complies) with the obligation; and
- (ii) where there is an immediate risk to the health, safety or welfare of any persons as a result of the non-compliance, direct the Service Provider to immediately suspend carrying out all or any part of the Services until such time as the Service Provider (and, where applicable, the relevant worker or Subcontractor) is compliant,

and the Service Provider must immediately comply with any such direction.

(d) Personnel management

The Service Provider must:

- (i) prior to appointing any Subcontractor, assess the work health and safety management capability of such Subcontractor and institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation and Rail Safety National Law;
- (ii) prior to providing the Services on any site of the Project, ensure that all Key People have undertaken any induction or training required by the Principal;
- (iii) in the provision of the Services, comply with and procure that any Subcontractor and its workers comply with all the requirements of the WHS Legislation, Rail Safety National Law and any other requirements of this Agreement for work health and safety and rehabilitation management;

- (iv) comply with, and procure that any Subcontractor complies with, any reasonable directions issued by the Principal's Representative in relation to work, health and safety including where the direction is given because Key People are not complying with their obligations under this clause 3.5;
- (v) provide written assurances obtained pursuant to clause 3.5(d)(i), together with written assurances from the Subcontractor and its employees about the Subcontractor's and its employees' ongoing compliance with the WHS Legislation, to the Principal;
- (vi) comply with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter including co-operate with the Principal's Representative and any contractor engaged by the Principal with respect to the Project and co-ordinate the Services with the work of the Principal's Representative and any contractor engaged by the Principal with respect to the Project; and
- (vii) ensure its subcontracts include provisions equivalent to the obligations of the Service Provider in this clause 3.5 and any other provisions of this Agreement concerning work health and safety matters.

### 3.6 Licensing and Authorisation

The Service Provider must:

- (a) ensure that if any Statutory Requirement (including the WHS Legislation) requires that:
  - (i) a person:
    - A. be authorised or licensed (in accordance with the WHS Legislation) to carry out any part of the Services at that workplace, that person is so authorised or licensed, and complies with any conditions of such authorisation or licence; and/or
    - B. has prescribed qualifications or experience to carry out any part of the Services or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
  - (ii) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
- (b) not direct or allow a person to carry out work or use plant or substance at a workplace unless the requirements under clause 3.6(a) are met (including any requirement to be authorised, licensed, qualified or supervised); and
- (c) if requested by the Principal, the Principal's Representative or required by the WHS Legislation, produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal before the Service Provider commences such work.

### 3.7 Warranty regarding Deliverables

- (a) The Service Provider acknowledges and agrees that any Deliverables to be provided as part of the Services will be relied upon by the Principal.
- (b) The Service Provider warrants the accuracy and adequacy of the Deliverables to be provided as part of the Services and warrants that all such Deliverables will be fit for the purpose intended under this Agreement.
- (c) The Service Provider acknowledges that the Principal has entered into this Agreement in reliance upon the acknowledgments and warranties in this clause 3.7.

### 3.8 Cooperation and coordination with Interface Parties

- (a) The Service Provider must at all times:

- 
- (i) cooperate with the Interface Parties and do everything reasonably necessary to facilitate the execution of Interface Work, including providing the Interface Parties with such assistance as may be directed by the Principal's Representative;
  - (ii) carefully coordinate and interface the Services with the Interface Work and for this purpose:
    - A. make proper allowance in its programs for the Interface Work;
    - B. review any programs provided by Interface Parties and confirm whether they adequately allow for the Services and the interface of the Interface Work with the Services;
    - C. notify the Principal's Representative of any interface or sequence of activities that may affect the progress of the Services; and
    - D. provide the Interface Parties with sufficient information about the Services to assist them to coordinate their Interface Work with the Services;
  - (iii) perform the Services so as to minimise any interference with, or disruption or delay to, or other adverse effect on, the Interface Work;
  - (iv) where directed by the Principal, work directly with the Interface Parties as required to complete the Services and provide all necessary information to the Interface Parties in respect of the Services to the extent relevant to the performance of the Interface Works;
  - (v) attend and participate in such interface coordination meetings as may be required by the Principal's Representative from time to time;
  - (vi) when any information is requested by the Principal or the Interface Parties in connection with any interface between the Services and the Interface Works:
    - A. provide the information within the time requested, provided that this time is reasonable; and
    - B. ensure and warrant that the information provided is accurate and complete; and
  - (vii) promptly advise the Principal's Representative of all matters arising out of the Interface Work that may involve a change to the Services under this Agreement or otherwise have an adverse effect upon the ability of the Service Provider to comply with this Agreement.
- (b) If, despite the Service Provider having complied with all of its obligations under clause 3.8(a), the Service Provider and any Interface Party fail to resolve any interface issue or dispute between them, the Service Provider must:
- (i) promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Party (with a copy to the relevant Interface Party); and
  - (ii) at all times thereafter, work collaboratively, reasonably and in good faith with the Principal's Representative and the relevant Interface Party to resolve the issue or dispute as soon as reasonably practicable.
- (c) The Service Provider:
- (i) acknowledges and agrees that:
    - A. no act or omission by an Interface Party will, whether or not it causes any delay, disruption or interference to the Services, constitute an act or omission of the Principal or the Principal's Representative (including any breach of this Agreement or variation directed by the Principal's Representative);
    - B. except where the Principal's Representative directs a variation in circumstances where the Service Provider has fully complied with clause



3.8(a), the Principal will not be liable upon any claim by the Service Provider arising out of or in any way in connection with:

- 1) the Interface Parties carrying out their work; or
  - 2) any act or omission of an Interface Party; and
- C. the Service Provider's program must accommodate requirements for design iterations as part of the Interface Work; and

(ii)

### 3.9 Services Management Plan

The Service Provider must:

- (a) implement and comply with the Services Management Plan; and
- (b) update the Services Management Plan as directed by the Principal's Representative.

### 3.10 No authority to act

Other than as expressly authorised in writing by the Principal, the Service Provider has no express or implied authority to, and must not:

- (a) enter into any contracts, commitments or other legal documents or arrangements in the name of, or on behalf of, the Principal; or
- (b) take any act or step to bind or commit the Principal in any manner.

### 3.11 Principal may act

The Principal may, either itself or by a third party, carry out an obligation under this Agreement which the Service Provider was obliged to carry out but which it failed to carry out within the time required by this Agreement, and the costs, expenses and damages suffered or incurred by the Principal in carrying out such an obligation will be a debt due from the Service Provider to the Principal.

## 4 DELIVERABLES

### 4.1 Principal Supplied Information

- (a) The Deliverables prepared by or on behalf of the Service Provider must:
  - (i) satisfy the requirements of the Services Brief and the other requirements of this Agreement; and
  - (ii) be and remain at all relevant times fit for their intended purpose.
- (b) The Service Provider warrants and represents that:
  - (i) it has carefully examined the Services Brief and determined that it is suitable, appropriate and adequate for the purpose of this Agreement;
  - (ii) it enters into this Agreement based on its own investigations, interpretations, deductions, information and determinations; and
  - (iii) it did not and will not rely upon any Principal Supplied Information (or the accuracy, adequacy, suitability or completeness of any Principal Supplied Information) for the purposes of entering into this Agreement or delivering the Services.
- (c) To the maximum extent permitted by law, the Principal and its Associates will have no liability to the Service Provider in relation to:
  - (i) the completeness, correctness, accuracy, appropriateness, suitability and adequacy of:
    - A. the Services Brief; or
    - B. any Principal Supplied Information; or

- (ii) any omissions, ambiguities, discrepancies or inconsistencies in or between the Services Brief and any Principal Supplied Information.
- (d) The Service Provider releases and indemnifies the Principal from and against any claim or liability suffered or incurred by the Principal arising out of or in any way in connection with the provision of, or the purported reliance upon, or use of, the Principal Supplied Information to or by the Service Provider or any other person to whom the Principal Supplied Information is disclosed by the Service Provider.

#### 4.2 Reviewable Deliverables

- (a) The Service Provider must:
  - (i) prepare, update, and submit to the Principal the Reviewable Deliverables:
    - A. in accordance with the requirements of the Services Brief and otherwise as reasonably required by the Principal; and
    - B. in a manner and at a rate which will give the Principal a reasonable opportunity to review the Reviewable Deliverables; and
  - (ii) provide the Reviewable Deliverables in a form (including written, oral or electronic), and containing such information, as the Services Brief requires and otherwise as reasonably directed by the Principal.
- (b) The Principal may review any Reviewable Deliverable submitted by the Service Provider, but is not required to do so.
- (c) If the Principal issues a written notice to the Service Provider stating that a Reviewable Deliverable does not comply with the requirements of the Services Brief or any Work Package Brief, the Service Provider must:
  - (i) amend that Reviewable Deliverable; and
  - (ii) resubmit the Reviewable Deliverable to the Principal within 5 Business Days of the Principal's notice and the process in this clause 4.2 will re-apply.

#### 4.3 No duty to review

The Service Provider acknowledges and agrees that:

- (a) neither the Principal nor the Principal's Representative assume a duty or owe any duty to the Service Provider to review any Deliverable for errors, omissions or compliance with the requirements of this Agreement or to consult with the Service Provider or make any comments regarding any Deliverable; and
- (b) none of:
  - (i) any review of, or consultation or comments by the Principal, or the Principal's Representative, nor any failure by the Principal or the Principal's Representative regarding any Deliverable or any other direction by the Principal's Representative in respect of any Deliverable; or
  - (ii) the acceptance, rejection or non-rejection of any Deliverable by the Principal or the Principal's Representative as contemplated in this clause 4 or otherwise;
 will lessen or otherwise affect:
  - (iii) any of the Service Provider's liabilities or responsibilities under this Agreement or otherwise according to law; or
  - (iv) the Principal's rights against the Service Provider, whether under this Agreement or otherwise according to law.

## 5 JOINT AND SEVERAL LIABILITY

If the Service Provider comprises more than one person, those persons are jointly and severally liable for the performance and obligations of the Service Provider.

## 6 SUBCONTRACTING

### 6.1A Approved Metro Operator

- (a) The Service Provider must engage an Approved Metro Operator as a Subcontractor at all times during the Term to provide the Service Provider with significant operational expertise, advice and input in relation to the Services and the development and delivery of the Project.
- (b) Except as otherwise contemplated by this clause 6, the Service Provider must not, without the Principal's prior written consent (to be given or withheld at the absolute discretion of the Principal), permit any:
  - (i) material variation or amendment to;
  - (ii) material departure or waiver from; or
  - (iii) termination, novation, assignment or expiry of,
    - any contract or other arrangement under which an Approved Metro Operator is engaged by the Service Provider.
- (c) The Principal may at any time and in its sole discretion notify the Service Provider that it requires the Service Provider to replace the entity which is then currently engaged by the Service Provider as the Approved Metro Operator in which event:
  - (i) the Service Provider must promptly submit a Subcontractor Proposal to the Principal in respect of the engagement of a new Approved Metro Operator; and
  - (ii) following the Principal's approval of the Subcontractor Proposal pursuant to clause 6.2(c)(i), the Service Provider must promptly terminate the engagement of the then current Approved Metro Operator and appoint the new Approved Metro Operator in its place.
- (d) For the avoidance of doubt, clauses 6.1 and 6.2 below shall also apply in relation to the appointment of any Approved Metro Operator in addition to and without limiting this clause 6.1A.
- (e) For the purposes of clause 6.1(a) below, the Principal hereby consents to the appointment by the Service Provider of the Initial Approved Metro Operator.

### 6.1 General requirements

- (a) The Service Provider must not subcontract any part of the Services without the prior written approval of the Principal.
- (b) An approval given by the Principal permitting the Service Provider to subcontract any portion of the Services does not relieve the Service Provider from its obligations and liabilities pursuant to this Agreement and the Service Provider will be vicariously liable for the acts and omissions of its Subcontractors and consultants.
- (c) The Principal may revoke any Subcontractor approval provided under this clause 6 if, in the opinion of the Principal, that Subcontractor is incompetent or negligent, is not suitably qualified or experienced, or is otherwise undesirable to perform work or any part of the Services.

### 6.2 Procurement of Subcontractors

- (a) Prior to commencing procurement of any Subcontractor, the Service Provider must provide written notice to the Principal identifying the Services that it is proposing to subcontract.
- (b) The Service Provider must:
  - (i) unless otherwise agreed by the Principal, request proposals from at least 3 Subcontractors and examine and analyse all proposals received; and
  - (ii) submit a Subcontractor Proposal to the Principal setting out:
    - A. the proposed Subcontractor that will provide best value for money for the Principal, taking into account the NSW Guidelines, including reasons; and
    - B. [REDACTED]

- (c) The Principal will consider any Subcontractor Proposal and (in its absolute discretion):
  - (i) approve the Subcontractor Proposal; or
  - (ii) reject the Subcontractor Proposal.
- (d) The Service Provider must ensure that any procurement process for a Subcontractor is conducted:
  - (i) with a core principle being to achieve a value for money outcome;
  - (ii) in accordance with the NSW Guidelines;
  - (iii) having due regard to appropriate standards of probity, ethics and fairness;
  - (iv) on an arm's length basis; and
  - (v) in accordance with all laws.
- (e) For the purposes of this clause 6.2, the Subcontractors named in the Contract Particulars are deemed to be approved for the role specified in the Contract Particulars. No Subcontractor Proposal from the Service Provider, or further approval by the Principal, is required in respect of such a Subcontractor performing Services in respect of the role specified in the Contract Particulars.

**7 CONTRACTOR PERFORMANCE REPORTING**

**7.1 Performance review**

The Service Provider acknowledges that the Principal has in place processes for assessing the performance of its contractors and service providers and that these processes will apply to this Agreement.

**7.2** [Redacted]

[Redacted]

**7.3** [Redacted]

- [Redacted]
- [Redacted]

**7.4** [Redacted]

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

**7.5 Rights and obligations not affected**

The parties' rights and obligations will not be affected or limited by the provisions of this clause 7.

**7.6 Exchange of Information between Government Departments and Agencies**

The Service Provider authorises the Principal, its employees and agents to make information concerning the Service Provider available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Service Provider to the Principal and any information relating to the Service Provider's performance under this Agreement.

The Service Provider acknowledges that:

- (a) any information about the Service Provider from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Service Provider future opportunities for NSW government work; and
- (b) the Principal may be required to publish information concerning this Agreement in accordance with sections 27 to 35 of the *Government Information (Public Access) Act 2009* (NSW). If the Service Provider reasonably believes that any part of this Agreement contains information which is commercial-in-confidence or could reasonably be expected to affect public safety or security, the Service Provider must immediately advise the Principal in writing, identifying the provisions and providing reasons so that the Principal may consider exempting those provisions from publication.

**8 INTELLECTUAL PROPERTY****8.1 Deliverables**

- (a) The Intellectual Property Rights in or relating to any Deliverable (excluding any Background Intellectual Property Rights or Third Party Intellectual Property Rights) will vest in the Principal at the time of its creation and at each and every stage of its development.
- (b) To the extent that such Intellectual Property Rights vest in the Principal under clause 8.1(a), the Principal grants to the Service Provider an irrevocable licence to Use those Intellectual Property Rights for the purposes of carrying out the Services and performing the Service Provider's obligations under this Agreement. The Service Provider must not Use such Intellectual Property Rights for any other purpose.

**8.2 Background Intellectual Property Rights and Third Party Intellectual Property Rights**

Subject to clause 8.3 (which applies in relation to Third Party Licensed Software), the Service Provider grants to the Principal an irrevocable, perpetual, royalty-free licence (which includes the right to grant sub-licences) to Use the Background Intellectual Property Rights and the Third Party Intellectual Property Rights for any purposes in connection with the Services, the Project or this Agreement.

**8.3 Third Party Licensed Software**

Clause 8.2 does not apply in relation to any Third Party Licensed Software.

To the extent that the Principal requires a licence to Use Third Party Licensed Software in order to:

- (a) receive the benefit of the Services;
- (b) access or Use any Deliverable for any purposes in connection with the Services or Project;  
or
- (c) otherwise exercise its rights under this Agreement,

then if requested to do so by the Principal, the Service Provider must use reasonable endeavours to either:

- (d) grant a sub-licence in favour of the Principal in respect of such Third Party Licensed Software for the purposes set out above and on such terms as are reasonably acceptable to the Principal; or
- (e) procure that the relevant third party grants a direct licence in favour of the Principal in respect of such Third Party Licensed Software for the purposes set out above and on such terms as are reasonably acceptable to the Principal.

#### 8.4 Warranty and Indemnity

The Service Provider warrants and represents to the Principal that the Service Provider owns or is licensed to use the Intellectual Property Rights in the Deliverables for the purposes of this Agreement, the Services and the Project.

The Service Provider indemnifies the Principal and must keep it indemnified from and against any action, claim, demand, liability, loss or damage suffered or incurred by the Principal or any of its licensees or sub-licensees arising out of or in connection with any alleged or actual infringement of the Intellectual Property Rights of a third party arising in connection with:

- (a) the performance of the Services or the Service Provider's obligations under this Agreement;
- (b) the Use by the Principal or any of its licensees or sub-licensees of any Deliverable (excluding any Background Intellectual Property Rights, Third Party Intellectual Property Rights or Third Party Licensed Software) for any purposes whatsoever; or
- (c) the Use by the Principal or any of its licensees or sub-licensees of any Background Intellectual Property Rights, Third Party Intellectual Property Rights or Third Party Licensed Software in accordance with the terms of the relevant licence granted under clause 8.2 or 8.3 (as applicable).

The Principal warrants that documents and materials provided by the Principal to the Service Provider under this Agreement (but excluding any documents or materials which are the subject of the licence granted by the Principal pursuant to clause 8.1) will not infringe the Intellectual Property Rights of a third party, provided that such documents and materials are only used by the Service Provider for the purposes of providing the Services.

#### 8.5 Moral Rights

If the Service Provider in performing the Services includes or makes use of any work or other subject matter in which copyright subsists, the Service Provider must procure from every person (whether a Subcontractor or an officer, employee or consultant of the Service Provider or of a Subcontractor, and including the Service Provider's Representative and the Key People) who is an author of that work or subject matter a written consent signed by that person for the benefit of the Principal and the Service Provider, under which (to the maximum extent permitted by law) that person irrevocably and unconditionally:

- (a) consents to the Principal and the Service Provider:
  - (i) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter anywhere in the world in whatever form the Principal and the Service Provider thinks fit (including, but not limited to, the making of any distortions, additions, or alterations to that work or subject matter or any adaptation thereof, or to any part of that work or subject matter or of any such adaptation in a manner which but for the consent, infringes or may infringe that person's moral rights in the work or other subject matter) as so used, disclosed, reproduced, transmitted, exhibited, communicated, adapted or published; and
  - (ii) using, disclosing, reproducing, transmitting, exhibiting, communicating, adapting, publishing or otherwise exercising its rights in relation to that work or subject matter or any adaptation thereof (or any part of that work or subject matter or of any such adaptation) anywhere in the world including pursuant to the *Copyright Act 1968* without making any identification of that person in relation thereto; and
- (b) waives, to the extent permitted by law, all and any moral rights to which that person may be entitled anywhere in the world in relation to any Deliverable.

### 9 CONFLICT OF INTEREST

- (a) The Service Provider warrants that no conflict of interest exists in relation to the Services at the Commencement Date.
- (b) The Service Provider must immediately provide the Principal with written notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Services.

- (c) On receipt of a notice under clause 9(b), the Principal may:
  - (i) approve the Service Provider continuing to perform the Services, which approval may be subject to conditions specified by the Principal (including requirements relating to separation arrangements) to ensure appropriate management of the conflict; or
- (d) where in the Principal's view the conflict of interest cannot be appropriately managed, and without limiting clause 22, terminate this Agreement by notice in writing to the Service Provider effective from the date specified in the notice.
- (e) The Principal may, at its sole discretion and at any time, require the Service Provider to sign and procure that each of its Associates involved in the performance of the Services signs and delivers to the Principal a Statement of Interests and Associations in the form attached in Schedule 4.

## 10 INDEMNITY BY SERVICE PROVIDER

The Service Provider indemnifies the Principal and must keep it indemnified from and against:

- (a) loss of or damage to property of the Principal including, but not limited to, any Deliverable; and
- (b) claims by any person against the Principal in respect of personal injury or death or loss of or damage to any other property,

arising out of or in consequence of carrying out the Services but the Service Provider's liability to indemnify the Principal will be reduced proportionally to the extent that the act or omission of the Principal or its Associates contributed to the loss, damage, injury or death.

## 11 INSURANCE

### 11.1 Professional Indemnity Insurance

Before the Service Provider commences carrying out the Services, the Service Provider must effect and maintain professional indemnity insurance for the Services with a total aggregate limit of cover not less than the amount stated in the Contract Particulars.

The policy must include provisions for one automatic reinstatement of the sum insured and for loss of documents. The policy and such level of cover must be maintained until the Service Provider completes carrying out the Services and thereafter for a period as stated in the Contract Particulars.

The Service Provider must maintain the policy and such level of cover until the end of the Term, and thereafter for a period as stated in the Contract Particulars.

The Service Provider must ensure that the policy includes a provision for the loss of documents.

The Service Provider must ensure that its Subcontractors have professional indemnity insurance to a level approved by the Principal.

### 11.2 Public Liability Insurance

The Service Provider must effect and maintain public liability insurance for the amount stated in the Contract Particulars. The policy must be maintained until the expiry of the Term. The Service Provider must ensure that the insurance covers the Service Provider in respect of liability to the Principal and third parties in respect of any claim arising from the acts or omissions of the Service Provider and its Associates in the course of carrying out the Services and must extend to indemnify the Principal as one of the class of persons constituting the "Insured" for the purposes of the policy.

### 11.3 Workers Compensation Insurance

The Service Provider must effect and maintain workers compensation insurance against liability under any law for death or, or injury to, persons employed by, or deemed to be workers of, the Service Provider or its Associates in carrying out the Services. The Service Provider must maintain the insurance cover until the Service Provider completes carrying out all of the Services.

Where permitted by law, the Service Provider must extend the insurance cover to indemnify the Principal for the Principal's statutory liability for persons employed by the Service Provider. The Service Provider must ensure that employees of the Service Provider's Subcontractors are similarly insured.

**11.4 Service Provider's Insurance Obligations**

The Service Provider must:

- (a) provide the Principal's Representative with a copy of, or certificate of currency for, any insurance policies required by this clause 11 prior to commencement of the Services and evidence satisfactory to the Principal's Representative that each policy is current as required by the Principal's Representative from time to time; and
- (b) ensure that it:
  - (i) does not do anything (or fail to do anything) which prejudices any of the insurance policies;
  - (ii) if necessary, promptly rectifies anything which might prejudice any insurance;
  - (iii) immediately reinstates any insurance policy if it lapses or is cancelled for any reason;
  - (iv) does not cancel, vary or allow any insurance policy to lapse without providing prior written notification to the Principal's Representative. Such notification will not constitute a waiver of the Principal's rights under this Agreement;
  - (v) immediately notifies the Principal's Representative of any event which may result in an insurance policy lapsing or being cancelled; and
  - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

**11.5 Risk of deductibles or excesses**

The Service Provider must pay all insurance deductibles, excesses or self-insured retentions in respect of any event and claim made under an insurance policy which the Service Provider is required to effect under this clause 11.

**12 REPRESENTATIVES****12.1 Service Provider's Representative**

The person nominated in the Contract Particulars is the Service Provider's Representative for this Agreement.

The Service Provider warrants that the Service Provider's Representative:

- (a) has the legal power to bind the Service Provider in respect of any matter arising in connection with the Services;
- (b) has the authority to receive directions on behalf of the Service Provider from the Principal and the Principal's Representative; and
- (c) is competent to be the Service Provider's Representative.

The Service Provider's Representative must not be discharged or replaced without the written consent of the Principal, which cannot be unreasonably withheld. Any substitute representative must be notified promptly in writing to the Principal.

**12.2 Key People**

- (a) The Service Provider must:
  - (i) engage the Key People in the performance of the Services and in the positions (if any) specified in the Contract Particulars;
  - (ii) ensure the Key People (including any replacement) are available on a full-time basis to perform the Services throughout the Term and will devote sufficient time to the services they are retained to do such that the Services are performed promptly, efficiently, skilfully, in a timely fashion and in accordance with this Agreement;
  - (iii) subject to clause 12.2(a)(iv), not replace the Key People without the Principal's Representative's prior written approval which will not be unreasonably withheld;
  - (iv) if any of the Key People:



- A. dies;
- B. becomes unable to continue in their positions due to illness; or
- C. resigns from the employment of the Service Provider (other than to accept other employment with the Service Provider or any Related Body Corporate of the Service Provider,

promptly notify the Principal's Representative and replace those Key People with personnel of at least equivalent experience, ability, knowledge and expertise approved by the Principal's Representative; and

- (v) immediately take steps to replace any Key People who are requested by the Principal, acting reasonably, to be removed from the Services with a replacement of equivalent expertise and experience, and obtain the written approval of the Principal, which will not be unreasonably withheld, to the replacement prior to engaging the replacement; and

- (vi) [REDACTED]

- (b) [REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

**12.3 Principal's Representative**

The person nominated in the Contract Particulars is the Principal's Representative for this Agreement and has the legal power to bind the Principal in respect of any matter arising in connection with the Services. Any substitute representative must be notified promptly in writing to the Service Provider.

The Principal's Representative may by notice in writing to the Service Provider delegate any or all of its functions to another person.

**12.4 Governance Group**

- (a) Within 5 Business Days of the Commencement Date, the parties must establish a Governance Group consisting of:
  - (i) the Principal's Representative;
  - (ii) the Principal's Contract Delegate;
  - (iii) two other representatives of the Principal;
  - (iv) the Service Provider's Representative;
  - (v) the Key People; and
  - (vi) such other persons as the Principal and the Service Provider agree.
- (b) The role of the Governance Group is to:
  - (i) facilitate the development of a collaborative working relationship between the parties;

- (ii) monitor and discuss the overall performance and progress of the Services, including the Service Provider's performance against the KPIs set out in the Performance Regime and the Principal's upcoming program of work and ongoing requirements;
  - (iii) assist with the resolution of any differences or disputes between the parties prior to a party giving a Dispute Notice to the other party in accordance with clause 20.1; and
  - (iv) review and consider such other matters relating to the Services as are agreed by the parties from time to time.
- (c) The Governance Group must meet monthly until the expiry of the Term, unless the parties agree otherwise.
  - (d) The Principal's Contract Delegate will convene meetings of the Governance Group and will act as chairperson.
  - (e) At the Principal's request, the Service Provider must procure the attendance of any additional representatives of the Service Provider at meetings of the Governance Group.
  - (f) The parties acknowledge and agree that the Principal's Representative and the Service Provider's Representative are not required to attend meetings of the Governance Group unless the agenda for the meeting includes the resolution of any differences or disputes between the parties as referred to in clause 12.4(b)(iii).

## 12.5 Personnel Requirements

- (a) The Service Provider must:
  - (i) provide suitably experienced and skilled personnel to perform its obligations under this Agreement; and
  - (ii) ensure that the Service Provider's personnel and Subcontractors hold all necessary authorisations and prescribed qualifications in order to perform the relevant aspect of the Services.
- (b) The Principal may:
  - (i) object to the proposed engagement in the performance of any of activity connected with the Services; or
  - (ii) direct the Service Provider to remove from the performance of the Services or from any activity connected with the Services,

any person who, in the opinion of the Principal is incompetent or negligent, is not suitably qualified or experienced, or is otherwise undesirable to perform work or any part of the Services, in which case the Service Provider must promptly propose a suitable replacement person for the Principal's approval [REDACTED]

## 13 DIRECTIONS

### 13.1 Directions

The Service Provider must comply with the directions of the Principal or the Principal's Representative. Except where this Agreement otherwise provides, a direction may be given orally.

If the Service Provider in writing requests the Principal to confirm an oral direction in writing, the Principal must do so as soon as practicable.

### 13.2 Programming

The Service Provider must give the Principal reasonable advance notice of when the Service Provider needs information, materials, documents or instructions from the Principal.

The Principal shall not be obliged to give any information, materials, documents or instructions earlier than the Principal should reasonably have anticipated at the Commencement Date and in any event no earlier than 10 Business Days after the request for the information, materials, document or instruction was made by the Service Provider.

The Principal may direct in what order and at what time the various stages of the Services must be carried out and the Service Provider must comply with any such direction.

## **14 MANAGEMENT PLANS, RECORD KEEPING AND PROGRAM REPORTING**

### **14.1 Management Plans**

- (a) The Service Provider warrants that:
  - (i) each Management Plan will at all times be fit for its intended purposes; and
  - (ii) each Management Plan will be prepared, developed and updated using good industry practice and in accordance with this Agreement and all laws.
- (b) The Service Provider must comply with each Management Plan.

### **14.2 Meetings**

The Service Provider must attend meetings with the Principal and, if required by the Principal or other Interface Party, as set out in the Services Brief and otherwise as required by the Principal.

### **14.3 Record Keeping and Program Reporting**

- (a) The Service Provider must:
  - (i) keep, and ensure its Subcontractors keep, accurate records of the performance of the Services;
  - (ii) ensure that all persons engaged in the performance of the Services produce and maintain:
    - A. a daily diary record of tasks performed; and
    - B. a daily timesheet accurately recording the time spent in the performance of the Services;
- (b) at the Principal's request, provide, and ensure that its Subcontractors provide, the records referred to in this clause 14 for their inspection and copying by the Principal;
  - (i) if required, provide the Principal's Representative with periodic program reports on the engagement as required by this Agreement;
  - (ii) ensure that all records required to be kept by this Agreement are current and accurate; and
  - (iii) whenever requested by the Principal's Representative provide the Principal's Representative with a written report containing details on all work health and safety matters arising out of the Services, including in respect of any matters concerning or arising out of clause 3.2 and clauses 3.5 to 3.6.
- (c) The records referred to in this clause 14 must be retained for seven (7) years after completion of the Services.

## **15 QUALITY AND COLLABORATIVE AUDITING PROCESS**

- (a) The Service Provider:
  - (i) must implement a quality management system for the management of all aspects of the Service Provider's obligations under this Agreement and in accordance with the requirements of the Services Brief;
  - (ii) must allow the Principal access to the quality management system of the Service Provider and its Subcontractors and consultants so as to enable monitoring and quality auditing; and
  - (iii) will not be relieved from compliance with any of its obligations under this Agreement or from any of its liabilities whether under this Agreement or otherwise according to law as a result of:
    - A. the implementation of, and compliance with, the quality management system or quality management requirements under this Agreement;

- B. any direction by the Principal concerning the Service Provider's quality management system or its compliance or non-compliance with that system; or
  - C. any audit or other monitoring by the Principal of the Service Provider's compliance with the quality management system.
- (b) The Service Provider and the Principal will, on a collaborative basis, develop, agree and implement, a scope and program for the Principal's Representative to undertake audits of the Service Provider's compliance with the requirements of the Service Provider's quality management system as these may apply to the Services and obligations under this Agreement and:
- (i) the Service Provider agrees to participate and assist in the development and completion of these audits; and
  - (ii) the Service Provider and the Principal's Representative shall when requested share the results of any self verification by the Service Provider and/or the outcome of any audits completed.

## 16 ACCESS TO SERVICE PROVIDER'S PREMISES

The Service Provider must, at all reasonable times and upon reasonable notice, permit the Principal access to the Service Provider premises in order for the Principal to inspect, discuss and assess any Deliverable and any other material obtained by the Service Provider from any person in connection with this Agreement.

## 17 VARIATIONS

### 17.1 Proposal

- (a) The Principal may direct in writing that the Service Provider vary the Services, including, but not limited to, addition to, omission from or deletion of any part of the Services, or the timing of the Services (or part of the Services) or both ("variation"), and may include the addition of Services in relation to a Sydney Metro project other than the Project.
- (b) If a variation the subject of a direction by the Principal omits or deletes any part of the Services, the Principal may thereafter carry out the omitted or deleted Services either itself or engage an Other Contractor to carry out the omitted or deleted Services or part of the Services and the Service Provider will have no entitlement to make any payment claim against the Principal arising out of or in connection with the omitted or deleted Services or any part thereof.
- (c) If the Principal gives such a direction where the need for the variation is in order to overcome any Defect in or from the Services, any costs or losses suffered or incurred by the Principal in having the Services which have been deleted or omitted carried out by an Other Contractor will be a debt due and payable by the Service Provider to the Principal which may be deducted from the Monthly Service Payment.
- (d) Nothing in clause 17.1(c) limits the Principal's rights under clauses 3.3(b) and (c).
- (e) If the Principal directs a variation, the Principal will specify in the direction a reasonable time by which the Service Provider must provide a written estimate of the time, cost (including the estimated effect, if any, on ██████████ the Service Provider's cash flow forecast for payment of the Monthly Service Payment in respect of each quarter) and programming effects of the proposed variation. If no time is specified, the Service Provider must provide the estimate within 14 days.

### 17.2 Variation Direction

Whether or not the Service Provider provides a written estimate under clause 17.1(e), the Principal may direct in writing the Service Provider to carry out a variation, and the Service Provider must comply with such direction.

A variation excludes any changes to the Services that are required due to the exercise of an Option by the Principal's Representative under clause 17.5.

**17.3** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**17.4 Variation due to a Change in a Statutory Requirement**

If a new Statutory Requirement or a change in a Statutory Requirement:

- (a) necessitates a change to the Services;
- (b) has effect after the Commencement Date; and
- (c) could not reasonably have been anticipated at that date,

then the extent to which the Services are changed by the Statutory Requirement shall be deemed to be a variation [REDACTED]

**17.5 Variation Proposed by the Service Provider**

- (a) The Service Provider may propose a variation by giving the Principal a written notice containing details of:
  - (i) the proposed variation;
  - (ii) the reason for the proposed variation; and
  - (iii) the value for money for the Principal arising out of the variation.
- (b) The Principal must consider the Service Provider's proposed variation, and may, in its absolute discretion, reject it or direct a variation under clause 17.1.

**17.6 Option**

The Principal's Representative may, by written notice given to the Service Provider at any time within the period stated in Schedule 7, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Service Provider must perform their obligations under this Agreement [REDACTED] and the provisions of this Agreement will be adjusted as set out in Schedule 7 for the relevant Option.

For the avoidance of doubt:

- (a) the Principal is not under any obligation whatsoever to exercise; and
- (b) the Service Provider is not entitled to make, nor will the Principal be liable upon, any claim in respect of the Principal not exercising,

any Option.

Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

The exercise of an Option by the Principal's Representative under this clause 17.5 will not:

- (c) relieve the Service Provider from its liabilities or obligations (including those arising out of any warranties given under this Agreement); or
- (d) limit or otherwise affect the Principal's rights against the Service Provider or the Service Provider's rights against the Principal (including those arising out of any warranties given under this Agreement);

whether under this Agreement or otherwise according to any law.

**17.7 Notice of potential variation**

- (a) If the Service Provider considers that any direction given by the Principal or the Principal's Representative (excluding any direction specifically expressed to be given under clause 17.1, 17.2 or 17.5) constitutes or involves a variation for the purposes of this clause 17, the Service Provider must provide notice to this effect to the Principal within 3 Business Days of receipt of the relevant direction.
- (b) Within 3 Business Days after receipt of a notice from the Service Provider pursuant to clause 17.7(a), the Principal must notify the Service Provider in writing that:
  - (i) it agrees that the direction constitutes or involves a variation, in which case the foregoing provisions of this clause 17 will apply;
  - (ii) it disagrees that the direction constitutes or involves a variation, in which case either the Principal or the Service Provider may refer the matter for resolution in accordance with the Dispute Procedure; or
  - (iii) it withdraws the direction.
- (c) If the Service Provider does not provide a notice in accordance with clause 17.7(a), the Service Provider:
  - (i) will not be entitled to claim that the direction constitutes or involves a variation;
  - (ii) must comply with the direction in accordance with its terms; and
  - (iii) will not be entitled to any relief [REDACTED] additional payment or other compensation in connection therewith.

**18 PAYMENT****18.1 Payment Claim issued by Service Provider**

- (a) Subject to the Service Provider performing the Services, the Principal must pay the Service Provider the:
  - (i) Monthly Service Payments calculated in accordance with Schedule 5; and
  - (ii) [REDACTED]
 in accordance with this clause 18.
- (b) The Service Provider may prepare and submit to the Principal's Representative a payment claim in respect of Services completed calculated in accordance with clause 18.1(a) upon the later of:
  - (i) satisfaction of each of the following which is a condition precedent to the Service Provider's right to submit a payment claim under this clause 18.1:
    - A. providing the Principal with a duly completed and signed statutory declaration and Subcontractor's statement in the form contained in Schedule 3 (or in any other form requested and/or approved by the Principal's Representative); and
    - B. the Service Provider providing the Principal with certificates of currency in respect of its workers compensation, public liability, professional indemnity and any other insurances which must be effected by the Service Provider under this Agreement; and
  - (ii) the times set out in the Contract Particulars.
- (c) Each payment claim must:
  - (i) contain the details required by the Principal;
  - (ii) be addressed to the Principal;
  - (iii) refer to the Professional Services Contract No. on the cover page of this Agreement;

- (iv) itemise the amount claimed (including by separately identifying any amount claimed in respect of Monthly Service Payments, variations [REDACTED]);
  - (v) set out the aggregate of all amounts claimed for Services up to and including the relevant month; and
  - (vi) set out the aggregate of all amounts claimed for Services up to and including the relevant month [REDACTED]
- (d) Payment claims on a time basis must be for the period up to the last calendar day of the month prior to the issue of the payment claim and accompanied by timesheets and a summary of the Services performed in the time period of the claim.

[REDACTED]

[REDACTED]

[REDACTED]

**18.2 Payment Schedule issued by Principal**

If the Principal intends making a payment that is less than the amount claimed by the Service Provider, the Principal must, within 10 Business Days following receipt of a payment claim give the Service Provider a payment schedule which sets out:

- (a) the value of the Services completed in accordance with this Agreement;
- (b) the amount already paid to the Service Provider;
- (c) the amount that the Principal is entitled to retain, deduct, withhold or set-off under this Agreement;
- (d) the amount (if any) which the Principal proposes to pay to the Service Provider;
- (e) the reason why the amount under clause 18.2(d) is less than the amount claimed in the payment claim; and
- (f) if the reason for the difference is that the Principal is retaining, deducting, withholding or setting-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

The failure of the Principal to set out in a payment schedule an amount which it is entitled to retain, deduct, withhold or set off under this Agreement will not prejudice its right to subsequently exercise such right.

**18.3 Payments**

The Principal must, within 15 Business Days following receipt of a payment claim, pay the amount stated in the payment schedule or the amount claimed by the Service Provider in its payment claim (as the case may be).

The making of a payment by the Principal under this clause 18.3 is not evidence of the value of the Services performed, does not constitute an admission by the Principal that any Services provided by the Service Provider conform with the requirements of this Agreement and is a payment on account only.

**18.4 Set Off**

The Principal may, at any time withhold, set-off or deduct from amounts otherwise payable to the Service Provider:

- (a) any debt or other moneys due from the Service Provider to the Principal including any due debt from the Service Provider to the Principal pursuant to section 26C of the SOP Act; or
- (b) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act,

under this Agreement or in respect of the Services.

**18.5 Security of Payment**

- 
- (a) This clause applies if the SOP Act applies to the Services.
  - (b) For the purposes of section 17(3)(b) of the SOP Act the Service Provider irrevocably chooses the Resolution Institute as the authorised nominating authority (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Agreement.
  - (c) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Service Provider:
    - (i) the amount will be taken into account by the Principal in issuing a payment schedule under clause 18.2;
    - (ii) if it is subsequently determined pursuant to the Contract that the Service Provider was not entitled under the Contract to payment of some or all of the adjudicated amount that was paid by the Principal ("**overpayment**"), the overpayment will be a debt due and payable by the Service Provider to the Principal which the Service Provider must pay to the Principal upon demand and in respect of which the Service Provider is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
    - (iii) to the extent that the adjudicator's determination is quashed, overturned, set aside or declared to be void, the adjudicated amount then becomes a debt due and payable by the Service Provider to the Principal upon demand and in respect of which the Service Provider is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
    - (iv) the Principal:
      - A. is not bound by the adjudication determination;
      - B. may reassess the value of the work that was valued by the adjudicator; and
      - C. may, if it disagrees with the adjudication determination, express its own valuation in any payment statement; and
    - (v) the payment statement referred to in clause 18.5(c)(iv) will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 20.
  - (d) Without limiting clause 18.4, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act.
  - (e) If the Principal withholds from money otherwise due to the Service Provider any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to division 2A of the SOP Act, then:
    - (i) the Principal may plead and rely upon division 2A of the SOP Act as a defence to any claim for the money by the Service Provider from the Principal; and
    - (ii) the period during which the Principal retains money due to the Service Provider pursuant to an obligation under division 2A of the SOP Act will not be taken into account for the purpose of determining:
      - A. any period for which money owed by the Principal to the Service Provider has been unpaid; and
      - B. the date by which payment of money owed by the Principal to the Service Provider must be made.
  - (f) The Service Provider agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with division 2A of the SOP Act.
  - (g) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due from the Service Provider to the Principal.



(h) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to division 2A of the SOP Act and the Service Provider:

- (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
- (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn and no new adjudication has been made,

then the Service Provider must so notify the Principal within 5 days of the occurrence of the event under the clauses 18.5(h)(i) and 18.5(h)(ii) (as applicable) by providing to the Principal a statement in writing in the form of a statutory declaration together with such other evidence as the Principal may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

**18.6**

[REDACTED]

**19 TIME**

**19.1 Time for Commencement and programming**

- (a) The Service Provider must immediately commence the performance of the Services and thereafter regularly and diligently progress the Services with due expedition and without delay.
- (b) The Service Provider must, without limiting or otherwise restricting clauses 13.2, 14 and 15:
  - (i) provide an initial Program to the Principal's Representative within 5 Business Days of the Commencement Date; and
  - (ii) regularly update the Program and provide the Principal's Representative with an updated Program on the first Business Day of each calendar month, which contains such details as may be required by this Agreement and reflects any milestone dates provided by the Principal from time to time.
- (c) The Program is a Reviewable Deliverable to which clause 4.2 applies.
- (d) Without limiting clause 19.1(a), the Service Provider must not depart from the current version of the Program that has been submitted to the Principal's Representative under clause 19.1(b) and has not been rejected by the Principal's Representative, except to the extent agreed by the Principal's Representative.

**19.2 Suspension**

- (a) The Principal may, at any time by prior written notice to the Service Provider, suspend the carrying out of the Services or any part thereof.
- (b) Subject to clause 19.2(d), the Principal must pay the Service Provider any costs and expenses reasonably incurred by the Service Provider by reason of the suspension.
- (c) If the suspension under clause 19.2(a) arises as a result of the Service Provider's failure to carry out its obligations under this Agreement, the Service Provider will not be entitled to make, and the Principal will not be liable upon, any claim arising out of, or in any way in connection with, the suspension.

- (d) The Principal may, at any time after giving a notice in accordance with clause 19.2(a), give the Service Provider reasonable notice to recommence carrying out those Services so suspended.

## **20 DISPUTE RESOLUTION**

### **20.1 Dispute Notice**

If a difference or dispute (together called a "dispute") between the parties arises in connection with the subject matter of this Agreement then either party will give the other party written notice of a dispute by hand or by registered post which adequately identifies the details of the dispute ("Dispute Notice").

### **20.2 Negotiation**

The Service Provider and the Principal must endeavour to resolve any dispute expeditiously by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice. At such negotiations each party must be represented by a person who has the authority to agree to such resolution. All aspects of the negotiation (except the fact that the negotiations took place) will be privileged.

### **20.3 Expert Determination**

If a dispute between the Service Provider and the Principal is not resolved by negotiation within 20 Business Days (or any other time period agreed by the parties in writing) after receipt of the Dispute Notice ("Negotiation Period") then, subject to the parties' right to seek injunctive or urgent declaratory relief, and before either party has recourse to any litigation, the parties must submit the dispute to expert determination by an independent expert.

If the Service Provider and the Principal do not agree upon an independent expert within 10 Business Days of the end of the Negotiation Period then either party may request the President of the Resolution Institute to nominate an expert.

The parties must enter into an agreement with the agreed or nominated expert on the terms of the agreement in Schedule 10 or such other terms as the parties and the expert may agree.

Except where the parties otherwise agree in writing:

- (a) each party must bear its own costs and pay one half of the expert's fees and expenses;
- (b) the expert must not act as an arbitrator;
- (c) the determination of the expert will be final and binding on the parties except where:
  - (i) the expert's determination relating to a dispute is that one party shall pay to the other an amount, or carry out works to an amount, greater than the amount stated in the Contract Particulars, or if no amount is stated, [REDACTED]; and
  - (ii) a party gives notice of appeal to the other party within 15 Business Days of the determination being given; and
- (d) the determination is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in clause 20.4 below.

### **20.4 Litigation**

If the determination of the expert is not final and binding on the parties, but without limiting clause 20.3(d), either party may commence litigation in relation to the dispute.

### **20.5 Continuation**

Each party must continue to perform its obligations under this Agreement notwithstanding the existence of a dispute.

## **21 NOTICE OF BREACH**

If the Service Provider is in breach of this Agreement, then the Principal may give a written notice to the Service Provider stating:

- (a) that it is a notice under this clause 21;
- (b) the breach relied upon; and

- (c) that this Agreement will be terminated unless the breach is remedied within the period set out in the notice, which must be no less than 10 Business Days.

## **22 TERMINATION**

### **22.1 Termination for Breach or Financial Difficulty**

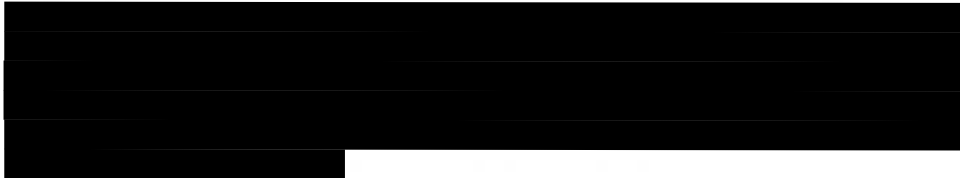
The Principal may, without prejudice to any other right, terminate this Agreement by notice in writing to the Service Provider from the date stated in the notice if:

- (a) the Service Provider fails to remedy a breach of this Agreement within the time stated in a notice under clause 21; or
- (b) an Event of Insolvency occurs to the Service Provider whether or not there has been a breach of contract by the Service Provider.

If this Agreement is terminated pursuant to this clause 22.1 the parties' remedies, rights and liabilities will be the same as they would have been under the law governing this Agreement had the Service Provider repudiated this Agreement and the Principal elected to treat this Agreement as at an end and recover damages.

### **22.2 Termination for Any Reason**

- (a) The Principal may at any time for any reason, terminate this Agreement by giving one month's written notice to the Service Provider.
- (b) If the Principal terminates this Agreement pursuant to this clause 22.2;
  - (i) the Principal may, in its absolute discretion, complete the uncompleted part of the Services itself or by engaging any third party; and
  - (ii)



### **22.3 Rights on termination**

Within 5 Business Days of the date of termination under this clause 22, the Service Provider must:

- (a) deliver to the Principal all documents, books, records, plans, drawings, papers, models and information of any kind relating to the Project which are the property of the Principal;
- (b) provide to the Principal a copy of all Deliverables (whether complete or not) and if required by the Principal, the Service Provider must provide a copy of all documents in electronic form; and
- (c) if requested by the Principal, assign to the Principal all rights and benefits under contracts with third parties which relate to the Services or the Project.

### **22.4 Survival**

This clause 22 survives the termination of this Agreement by the Principal under clause 22.1 or 22.2.

## **23 CONFIDENTIALITY**

### **23.1 Acknowledgement**

The Service Provider acknowledges that all of the Confidential Information is and will be the sole and exclusive property of the Principal.

### **23.2 Warranty and Covenant**

- (a) The Service Provider warrants and covenants that it will treat and keep the Confidential Information in the strictest of confidentiality and expressly acknowledges and agrees that the Confidential Information is of a confidential nature.
- (b) The Service Provider warrants and covenants that it will do everything reasonably necessary to protect and maintain the confidentiality of the Confidential Information.

- (c) The Service Provider may not disclose to any person other than:
- (i) the Principal; or
  - (ii) a person who has signed a Confidentiality Deed Poll in the form of Schedule 2 in favour of the Principal,
- any Confidential Information, that the Confidential Information has been made available to the Service Provider or that discussions or negotiations are taking place concerning this Agreement, and undertakes:
- (iii) to protect and safeguard Confidential Information against unauthorised publication or disclosure; and
  - (iv) not to use Confidential Information for any reason or purpose except as directed by the Principal; and
  - (v) to comply with any security measures in connection with Confidential Information that may be required by the Principal.

### 23.3 Personal Information

Without limiting any obligation that the Service Provider has under any applicable privacy laws, where the Service Provider has access to Personal Information in order to fulfil its obligations under this Agreement, it must where collecting Personal Information on behalf of the Principal, comply with the *Privacy and Personal Information Protection Act 1998 (NSW)* as if it were the Principal.

### 23.4 Authorised Disclosure

If the Principal's Representative approves in writing the disclosure of Confidential Information, the Service Provider may disclose that Confidential Information in accordance with the terms of that approval.

### 23.5 Return of Confidential Information

If the Principal requests it, the Service Provider must:

- (a) promptly return to the Principal all documents and other physical records of Confidential Information in its possession, custody, power or control;
- (b) if any Confidential Information in the possession, custody, power or control of the Service Provider is in a form that cannot be detached from valuable equipment (including Confidential Information stored by electronic, electromagnetic or other means), the Service Provider must permanently delete and erase the Confidential Information; and
- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or deleted and erased, as appropriate.

Notwithstanding this clause 23.5 or any other provision of this Agreement, the Principal authorises the Service Provider to retain for record purposes one copy of material provided to the Service Provider by the Principal and one copy of any Deliverable. The Service Provider must treat all material retained under this provision as Confidential Information.

### 23.6 Confidentiality Deed Poll

Unless otherwise agreed, the Service Provider must procure each Associate of the Service Provider involved in the performance of the Services including all Key People to sign and deliver to the Principal a Confidentiality Deed Poll in the form of Schedule 2.

### 23.7 Obligations To Continue

The obligations of the Service Provider under this clause 23 survive completion of the Services or termination of this Agreement and are enforceable at any time at law or in equity and continue to the benefit of and are enforceable by the Principal.

### 23.8 Injunctive Relief

In the event of a breach by the Service Provider of the Service Provider's obligations under this clause 23, then in addition to, and without prejudice to, any other remedy that the Principal may have, the Principal will be entitled to seek and obtain injunctive relief in any court of competent jurisdiction.

**23.9 Further Assurances**

The Service Provider must do all things and execute all documents, including executing any agreements of assignment, or agreements under hand or seal, which may reasonably be required by the Principal, to give effect to the provisions of this Agreement.

**24 DISCLOSURE OF CONTRACT INFORMATION**

The Service Provider acknowledges that the Principal may disclose this Agreement (and information concerning the terms of this Agreement) under or in accordance with any one or more of the following:

- (a) the *Government Information (Public Access) Act 2009* (NSW);
- (b) the *Ombudsman Act 1974* (NSW); and
- (c) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of parliamentary accountability.

**25 GOVERNING LAW**

This Agreement is subject to the laws of the State of New South Wales.

**26 GST**

The Principal and the Service Provider agree:

- (a) unless otherwise stated all dollar amounts referred to in this Agreement are GST exclusive;
- (b) except where an amount is stated to be GST inclusive, if either party ("supplier") is or becomes liable to pay GST arising out of or in connection with any supplies under or in connection with this Agreement or the Services, the supplier will, in addition to any amount it may be entitled to recover for the relevant supply ("consideration"), also be entitled to recover the amount of any GST liability incurred as a result of the supply;
- (c) where under this Agreement a party is entitled to any adjustment to the Monthly Service Payment or otherwise to the payment of money and such adjustment is based on the reasonable or actual cost to the party of performing any work, any input tax credits available to the party in relation to performing such work will be deemed to reduce the cost of such work;
- (d) the supplier must as a condition precedent to the obligation of the other party to make a payment under clause 26(b) provide the other party with a valid tax invoice in respect of the supply;
- (e) the Service Provider must ensure that each insurance policy referred to in clause 11 covers any liability to GST such that the proceeds of any claim under the policy (after payment of GST) are sufficient to fully indemnify the party who suffers the loss that is claimed; and
- (f) in this clause 26:
  - (i) "GST" means the tax payable on taxable supplies under GST Law;
  - (ii) "GST Law" means the *A New Tax System (Goods & Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax; and
  - (iii) terms which are defined in GST Law have the meaning provided by GST Law.

Subject to clauses 26(a) to 26(f) (inclusive), the Service Provider must pay all taxes, duties, levies, imposts and charges which may be payable arising out of or in any way in connection with the Services.

**27 LIMITATION OF LIABILITY**

- (a) Subject to clauses 27(b), 27(c) and 27(d), the Service Provider's total aggregate liability to the Principal in contract, tort (including negligence) or otherwise under this Agreement is limited to the amount stated in the Contract Particulars.

- (b) The Service Provider's liability is unlimited in circumstances where bodily injury or death of a person results as a consequence of an act or omission of the Service Provider or which arise from any fraud, wilful misconduct or criminal conduct by the Service Provider or any of the Service Provider's Associates.
- (c) In respect of liabilities or losses which the Service Provider is (or will be) entitled to be indemnified under an insurance policy that is required to be effected under this Agreement (or which, but for a failure by the Service Provider to comply with its obligations under this Agreement or under the insurance policy, the Service Provider would have been so entitled), the Service Provider's liability is limited to the amount of the insurance stated in the Contract Particulars that is required to be effected by the Service Provider for the relevant type of insurance under this Agreement.
- (d) The Service Provider's aggregate limit of liability to the Principal under clause 26(a) will not be reduced by the amount of any liabilities or losses that are indemnified under an insurance policy that is required to be effected under this Agreement.

## 28 NO WAIVER

Failure by the Principal to enforce or compel performance of any term or condition of this Agreement does not constitute a waiver of that term or condition and does not impair the right of the Principal to enforce it at a later time or to pursue remedies it may have for any subsequent breach of that term or condition.

## 29 RETURN OF DOCUMENTS

On completion of the Services or upon the termination of this Agreement, the Service Provider must deliver to the Principal:

- (a) all Deliverables produced by the Service Provider regardless of its stage of completion; and
- (b) the Principal's documents, samples, patterns, moulds and other information provided to the Service Provider in carrying out those Services.

## 30 ENTIRE AGREEMENT

To the extent permitted by law, in relation to its subject matter, this Agreement:

- (a) embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties; and
- (b) supersedes any prior written or other agreement of the parties.

## 31 PROPORTIONATE LIABILITY

- (a) To the extent permitted by law, part 4 of the *Civil Liability Act 2002 (NSW)* (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or liabilities of either party under this Agreement whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting the above, the rights, obligations and liabilities of the Service Provider and the Principal under this Agreement with respect to proportionate liability are as specified in this Agreement and not otherwise, whether such rights, obligations or liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by law:
  - (i) the Service Provider must not seek to apply the provisions of part 4 of the *Civil Liability Act 2002 (NSW)* in relation to any claim by the Principal against the Service Provider (whether in contract, tort or otherwise); and
  - (ii) if any of the provisions of part 4 of the *Civil Liability Act 2002 (NSW)* are applied to any claim by the Principal against the Service Provider (whether in contract, tort or otherwise), the Service Provider will indemnify the Principal against any loss, damage, cost or expense which the Principal is not able to recover from the Service Provider because of the operation of part 4 of the *Civil Liability Act 2002 (NSW)*.

**32 SEVERABILITY**

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

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

**33 ASSIGNMENT AND NOVATION**

- (a) The Service Provider must not assign, transfer or novate any of its rights, interests or obligations in this Agreement without the prior written consent of the Principal and except on such terms as are determined in writing by the Principal.
- (b) The Principal may, for its sole convenience and at its absolute discretion, assign, novate or otherwise deal with its rights and obligations without the Service Provider's consent to any other Authority. The Service Provider must execute any document reasonably required to give effect to the assignment, novation or other dealing.

**34 NSW GUIDELINES****34.1 Introduction**

In addition to terms defined in this document, terms used in this clause 34 have the same meaning as is attributed to them in the NSW Guidelines.

**34.2 Primary Obligation**

The Service Provider must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.

The Service Provider must notify the CCU and the Principal of any possible non-compliance with the NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.

Where the Service Provider engages a Subcontractor or consultant, the Service Provider must ensure that the contract imposes on the Subcontractor or consultant equivalent obligations to those in this clause 34 (under the heading NSW Guidelines), including that the Subcontractor or consultant must at all times comply with, and meet any obligations imposed by, the NSW Guidelines.

The Service Provider must not appoint or engage another party in relation to the project where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Guidelines.

**34.3 Access and information**

The Service Provider must maintain adequate records of compliance with the NSW Guidelines by it, its Subcontractors, consultants and related entities.

The Service Provider must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:

- (a) enter and have access to sites and premises controlled by the Service Provider, including any Site;
- (b) inspect any work, material, machinery, appliance, article or facility;
- (c) access information and documents;
- (d) inspect and copy any record relevant to the project;
- (e) have access to personnel; and
- (f) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Guidelines, by the Service Provider, its Subcontractors, consultants and related entities.

The Service Provider, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

**34.4 Sanctions**

The Service Provider warrants that at the time of entering into this Agreement, neither it, nor any of its related entities, are subject to a sanction in connection with the NSW Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Guidelines apply.

If the Service Provider does not comply with, or fails to meet any obligation imposed by, the NSW Guidelines, a sanction may be imposed against it in connection with the NSW Guidelines.

Where a sanction is imposed:

- (a) it is without prejudice to any rights that would otherwise accrue to the parties; and
- (b) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
  - (i) record and disclose details of non-compliance with the NSW Guidelines and the sanction; and
  - (ii) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Service Provider, or its related entities, in respect of work to which the NSW Guidelines apply.

**34.5 Compliance**

The Service Provider bears the cost of ensuring its compliance with the NSW Guidelines, including in respect of any positive steps it is obliged to take to meet its obligations under the NSW Guidelines. The Service Provider is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.

Compliance with the NSW Guidelines does not relieve the Service Provider from responsibility to perform the Services and any other obligation under this Agreement, or from liability for any Defect in the works or from any other legal liability, whether or not arising from its compliance with the NSW Guidelines.




Where a change in this Agreement or Services is proposed, and that change may, or may be likely to, affect compliance with the NSW Guidelines, the Service Provider must immediately notify the Principal (or nominee) of the change, or likely change and specify:

- (a) the circumstances of the proposed change;
- (b) the extent to which compliance with the NSW Guidelines will be, or is likely to be, affected by the change; and
- (c) what steps the Service Provider proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan); and
- (d) the Principal will direct the Service Provider as to the course it must adopt within 10 Business Days of receiving notice.

**35 NOT USED**

**36 EXCLUSIVITY**

**36.1 Exclusivity of the Service Provider**

- (a) 
- (b) The Service Provider must not, and must procure that its Related Bodies Corporate do not, provide services to or advise any person other than the Principal in relation to the procurement or delivery of any aspect of the Project prior to the earlier of the date that is:
  - (i) 
  - (ii) 



except with the prior written consent of the Principal which may be withheld or granted in its sole discretion.

(c) [Redacted]

- (d) The Service Provider agrees that:
- (i) having regard to the Project and the Services, clauses 36.1(a) to 36.1(c) are reasonable as regards the nature of the activities restrained and the duration and scope of the restraint and that the restraints are reasonably necessary for the probity of the Project and to ensure the best value for money for the Project; and
  - (ii) damages may not be a sufficient remedy for the breach of clauses 36.1(a) to 36.1(c) and the Principal may be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by the Service Provider, in addition to any other remedies available at law or in equity.

**36.2**

[Redacted]

**37 NOTICES**

- (a) Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement must:
  - (i) be in writing;

- 
- (ii) be delivered or posted by prepaid post to the address, or sent by email to the email address, set out in the Contract Particulars (or as otherwise notified by either party from time to time); and
  - (iii) be signed by the party making it (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party.
- (b) A communication is taken to be received by the addressee:
- (i) (in the case of prepaid post) on the third working day after the date of posting to an address within Australia, and on the fifth working day after the date of posting by airmail to an address outside Australia;
  - (ii) (in the case of delivery by hand) on delivery; and
  - (iii) (in the case of email):
    - A. if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
    - B. if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day – on the next Business Day,

but if the communication is taken to be received on a day which is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day, where working day means a day that:

- (iv) is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered; and
- (v) does not fall during the period commencing on the Monday before 24 December in any given year and ending on the Friday following 1 January of the following year.

**SCHEDULE 1 – CONTRACT PARTICULARS**

**Principal:** **Sydney Metro**  
ABN 12 354 063 515  
Address: Level 43, 680 George Street  
Sydney NSW 2000  
Tel: 02 8265 9400 Email:

**Service Provider:** **Ricardo Rail Australia Pty Ltd**  
ABN 47 097 900 206  
Address: Suite 201, Level 2, Tower B, The Zenith  
821 Pacific Highway  
Chatswood NSW 2067  
Tel: 02 8328 0784 Email: [REDACTED]

**Confidential Information:** (clause 1)  
Any documentation, drawings or other information that is provided to the Service Provider by or on behalf of a tenderer or contractor for a contract package in respect of the Project or any other project relating to the Sydney Metro system or as part of any other market process being undertaken by the Principal in respect of the Sydney Metro system.

**Expiry Date:** (clause 1)  
The date that is 3 years after the Commencement Date

**Initial Approved Metro Operator** (clause 1)  
[REDACTED]

**Other Documents:** (clause 1.1, refer to "Agreement")  
None

**Project:** (clause 1)  
Sydney Metro West and Sydney Metro Western Sydney Airport (formerly known as "Greater West")

**Services:** (clause 1)  
As set out in the Services Brief

[REDACTED]

[REDACTED]

**Pre-Approved Subcontractors**  
(Clause 6.2(e))

Name: Connley Walker Pty Ltd  
ACN/ABN: 68 075 110 539  
Role: Security SME

Name: Middleton Group Engineering Pty Ltd  
ACN/ABN: 67 607 858 551  
Role: Lead Maintenance SME

**Minimum Level of Professional Indemnity Insurance:**  
(clause 11.1)

[REDACTED] for each claim and in the aggregate

**Time for maintaining Professional Indemnity Insurance:**  
(clause 11.1)

[REDACTED]

**Minimum Level of Public Liability Insurance:**  
(clause 11.2)

[REDACTED] for each and every occurrence

**Service Provider's Representative:**  
(clause 12.1)

[REDACTED]

Tel: [REDACTED]

Email: [REDACTED]

**Key People:**  
(clause 12.2)

Name	Role
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[Redacted]

**Principal's Representative:**  
(clause 12.3)

[Redacted]

Tel: [Redacted] Email: [Redacted]

**Principal's Contract Delegate:**  
(clause 12.3)

[Redacted]

Tel: [Redacted]  
Email: [Redacted]

[Redacted]

[Redacted]

**Disbursements for which the Service Provider is entitled to be paid:**  
(clause 18.1)

As set out in clause 3.3 of Schedule 5.

**Times for Payment Claims:** (clause 18.1)

Claims to cover period up to last calendar day of the previous month and to be submitted by the fifth Business Day of the month

**Expert Determination final and binding amount:**  
(clause 20.3(c))

**Limit of Service Provider's Liability:**  
(clause 27)

[Redacted]

**Address for notices:**  
(clause 37)

**Principal:**

Address: Level 43, 680 George Street  
Sydney NSW 2000

Email: [REDACTED]

Attention: [REDACTED]

Any Notice in relation to a claim or a dispute must also be addressed to the  
General Counsel – Sydney Metro and sent to  
[REDACTED]

**Service Provider:**

Address: Suite 201, Level 2, Tower B, The Zenith  
821 Pacific Highway  
Chatswood NSW 2067

Email: [REDACTED]

Attention: [REDACTED]

**SCHEDULE 2 – CONFIDENTIALITY DEED POLL**

# Sydney Metro

## Confidentiality Deed Poll

<b>Date</b>	
<b>Name</b>	<b>(Recipient)</b>
<b>Organisation</b>	
<b>In favour of</b>	Sydney Metro (ABN 12 354 063 515) ( <b>Sydney Metro</b> )
<b>In relation to the</b>	Confidential Information in respect of Sydney Metro ( <b>Permitted Use</b> )

### 1. Background

- (a) Sydney Metro is considering disclosing to the Recipient certain Confidential Information for the Permitted Use.
- (b) Improper use or disclosure of the Confidential Information could damage Sydney Metro's ability to perform its governmental/ statutory functions and could result in irreparable harm to Sydney Metro.
- (c) The Recipient acknowledges the desire and right of Sydney Metro to protect Confidential Information.
- (d) The parties have agreed that Sydney Metro will disclose the Confidential Information to the Recipient on the terms and conditions of this Deed.

### 2. Agreed Covenants

#### 2.1. Definitions and Interpretation

##### 2.1.1. Definitions

In this Deed, unless the context otherwise requires:

- (a) **Confidential Information** means:
  - i. information disclosed by or on behalf of Sydney Metro to the Recipient or its Representatives (or of which the Recipient or its Representatives becomes aware) in the course of discussions in relation to the Permitted Use;
  - ii. information acquired by the Recipient or its Representatives in the course of discussions prior to the date of this Deed in relation to the Permitted Use;
  - iii. information designated as confidential by Sydney Metro from time to time; and
  - iv. any other information or Documents which by its nature should reasonably be considered to be the confidential information of Sydney Metro,

whether or not marked as "Commercial in Confidence", "Proprietary" or "Confidential", and which may be provided in writing, electronically, verbally or otherwise, but does not include any information which the Recipient can demonstrate to be in the public domain or was known to the Recipient at the time of disclosure other than through a breach of this Deed.

- (b) **Deed** means this Deed Poll.
- (c) **Document** includes:
  - i. paper or other material on which there is writing, printing, marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
  - ii. any notes which include the Confidential Information or any summary, extract or part of it; or
  - iii. any material from which sounds, images, writing or messages can be reproduced.
- (d) **Law** means any statute, law, order of a court, tribunal, governmental or regulatory body or the listing rules of the ASX Limited.
- (e) **Representative** means an employee, officer, agent, adviser or consultant of the Recipient engaged in connection with the Permitted Use.

## 2.2. Interpretation

Except where the context otherwise requires:

- (a) the clause and clause headings are for reference only and have no effect in limiting or extending the language of the provisions to which they refer;
- (b) words in the singular include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to a person includes a partnership and a body whether corporate or otherwise;
- (e) a reference to a clause or a clause heading is a reference to a clause or clauses in this Deed; and
- (f) whether a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## 2.3. Disclosure and Use of Confidential Information

### 2.3.1. Recipient obligations

The Recipient warrants and represents that it will:

- (a) keep confidential and not disclose to any person the Confidential Information;
- (b) not do any act or thing involving the use or disclosure of the Confidential Information which may cause loss or damage to Sydney Metro;
- (c) not use or permit the use of the Confidential Information for any purpose other than the Permitted Use unless authorised by a separate agreement between the parties in a form approved by Sydney Metro in writing;
- (d) not introduce any Confidential Information into any computer system or other device operated, controlled or which may be accessed to any extent by a person other than Sydney Metro, the Recipient or any Representatives;



- (e) not copy or reproduce the Confidential Information except to the extent necessary for the Permitted Use; and
- (f) not make Documents except to the extent necessary for the Permitted Use.

### 2.3.2. Security measures

The Recipient must establish and maintain comprehensive security measures to ensure that any Confidential Information in its possession, custody or control is secure at all times. Without limiting this obligation, the Recipient must keep the Confidential Information no less secure than its own confidential information.

### 2.3.3. When Recipient may disclose

The Recipient may disclose the Confidential Information:

- (a) with the prior written consent of Sydney Metro;
- (b) to its Representatives to the extent that each has a need to know the information for the purposes of the Permitted Use; and
- (c) to the extent required by Law (subject to complying with clause 2.4).

### 2.3.4. Disclosure required by Law

If the Recipient is required by Law to disclose any Confidential Information the Recipient must before doing so:

- (a) immediately notify Sydney Metro;
- (b) if possible, give Sydney Metro a reasonable opportunity to take any steps it considers necessary to protect the confidentiality of the Confidential Information; and
- (c) notify the third party that the information is the confidential information of Sydney Metro.

## 2.4. Representatives

### 2.4.1. Breach by Representative

- (a) The Recipient must ensure that each of its Representatives comply with the terms of this Deed as if the Representative was the Recipient.
- (b) A breach of this Deed by a Representative will be deemed to be a breach of this Deed by the Recipient.

### 2.4.2. Inspections

The Recipient consents, and must procure the necessary consents from its Representatives, to such inspections and audits as may be reasonably required by Sydney Metro for the purpose of auditing compliance by the Recipient and its Representatives with the terms of this Deed.

## 2.5. Return of Confidential Information

If requested by Sydney Metro, the Recipient must:

- (a) promptly return to Sydney Metro all documents and other physical records of Confidential Information in its possession, custody, power or control;
- (b) delete the Confidential Information from any computer system or other device operated, controlled or which may be accessed by the Recipient and its Representatives; and
- (c) provide a statutory declaration to the Principal confirming that all those records and any copies have been returned or erased, as appropriate.

## 2.6. Sydney Metro may enforce Deed

- (a) The Recipient agrees that the obligations in this Deed are for the benefit of Sydney Metro, and that Sydney Metro may enforce the obligations herein.
- (b) The Recipient acknowledges that:
  - i. the Confidential Information is valuable to Sydney Metro;
  - ii. damages may not be an adequate remedy for Sydney Metro for any breach of this Deed by the Recipient; and
  - iii. (Sydney Metro is entitled to seek injunctive relief as a remedy for any breach or threatened breach of this Deed by the Recipient, in addition to any other remedies available at law or in equity under or independently of this Deed.

## 2.7. No Exclusion of Law or Equity

This Deed must not be construed to exclude the operation of any principle of law or equity intended to protect and preserve the confidentiality of the Confidential Information.

## 2.8. Waiver

- (a) No waiver by Sydney Metro of one breach of any obligation or provision herein contained or implied shall operate as a waiver of another breach of the same or of any other obligation or provision herein contained or implied.
- (b) None of the provisions hereof shall be taken either at law or in equity to have been varied, waived, discharged or released by Sydney Metro unless by its express consent in writing.

## 2.9. Governing Law

The laws of New South Wales apply to the construction and interpretation of this Deed.

## 2.10. Continuing Obligation

The obligations of the Recipient under this Deed continue after the completion or termination of any employment, engagement or assignment in respect of the Permitted Use.

## 2.11. Indemnity

The Recipient indemnifies and must keep indemnified Sydney Metro in respect of any liability, loss, damage, cost or expense, suffered or incurred in connection with, or arising from, any breach of this Deed by the Recipient or its Representatives or any disclosure of the Confidential Information by the Recipient or its Representatives.

## 2.12. Breach of Confidentiality Obligations

- (a) The Recipient must immediately notify Sydney Metro of, and take all steps necessary to prevent, any actual, threatened or suspected breach of this Deed by the Recipient or its Representatives and comply with any directions issued by Sydney Metro or its authorised representative regarding any unauthorised use or disclosure of the Confidential Information by the Recipient or its Representatives.

- (b) The Recipient must provide such assistance as may be reasonably requested by Sydney Metro in relation to any claim or proceedings that Sydney Metro may take against any third party for unauthorised use or disclosure of the Confidential Information.

### 2.13. Further Assurances

The Recipient must do all things and execute all documents, including but not limited to executing any agreements of assignment, which may be required by Sydney Metro to give effect to the provisions of this Deed.

### 2.14. No Revocation

This Deed may not be revoked or otherwise modified without the prior written consent of Sydney Metro.

### Executed as a deed poll

<b>Signature of Recipient:</b>	
<b>Name of Recipient:</b>	
<b>Signature of Witness:</b>	
<b>Name of Witness:</b>	

**SCHEDULE 3 – FORM OF STATUTORY DECLARATION AND SUBCONTRACTOR'S STATEMENT**

<b>Statutory Declaration</b>	<b>Oaths Act (NSW) Ninth Schedule</b>
<p>I,.....</p> <p>of .....</p> <p>do solemnly and sincerely declare that:</p> <p>1. I am the representative of:</p> <p>.....(ABN.....)</p> <p><b>("the Contractor")</b> in the Office Bearer capacity of:</p> <p>.....</p> <p>2. The Contractor has a contract with the [ ..... ]:</p> <p>..... <b>("the Contract")</b></p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p>(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p>(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <p>Employee: ..... Amount unpaid or not accrued: .....</p> <p>.....</p> <p>4A All subcontractors who have at any time been engaged by the Contractor for work done under the Contract have been paid to the date of this declaration in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), with the exception of the subcontractors and respective amounts unpaid for each subcontractor listed below:</p> <p>Subcontractor: ..... Amount unpaid: .....</p> <p>.....</p>	<p>insert full name of Declarant</p> <p>insert address</p> <p>insert name of Contractor, and ABN if applicable</p> <p>insert position title of Declarant</p> <p>Insert name of Principal insert name of Contract</p> <p>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</p>
<p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A Where the Contractor holds any retention money from a subcontractor, the Contractor has complied with all requirements under Part 2 of the Building and Construction Industry Security of Payment Regulation 2008 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.</p>	
<p>7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.</p> <p>8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding [REDACTED] at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):</p> <p>(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors; and</p> <p>(a1) that all their subcontractors, as at the date of the making of such a declaration, have been paid in accordance with the relevant subcontracts and any applicable industrial</p>	

- (b) instruments (as defined in the Industrial Relations Act 1996 (NSW)), and that all their employees, as at the date of the making of such a declaration:
  - (i) have been paid all remuneration and benefits due and payable to them by; or
  - (ii) had accrued to their account all benefits to which they are entitled from; the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding [redacted] at their commencement) in respect of any work under the Contract, and
- (c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued, except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:	Due amount unpaid:
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....

insert names and addresses of the Contractor's subcontractors who have not submitted a declaration, and unpaid amounts due or otherwise due to each of them by the Contractor in respect of this claim

9. Where a subcontractor to the Contractor has provided a declaration as in 8 above, and it includes unpaid amounts or benefits either not received or not accrued, details of the subcontractor, details of the affected employees, suppliers and subcontractors of the subcontractor, and the respective amounts or benefits either unpaid or not accrued are as follows:

Employee, subcontractor or supplier	Amount unpaid or not accrued:
.....	.....
.....	.....
.....	.....
.....	.....

insert names of the subcontractors, the name and addresses of the unpaid employees, subcontractors and suppliers and amounts listed as unpaid or not accrued to them.

- 10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.
- 11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'Subcontractor' (as that term is defined in the Workers Compensation Act 1987 (NSW), Pay-Roll Tax Act 2007 (NSW) and Industrial Relations Act 1996 (NSW) which is a written statement:
  - (a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;
  - (b) under section 18(6) of Schedule 2 of part 5 of the Pay-Roll Tax Act 2007 in the form and providing the detail required by that legislation; and
  - (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.
- 12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
- 13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:
  - (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Pay-Roll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and
  - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
- 14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths Act 1900 (NSW). I am aware that I may be subject to punishment by law if I wilfully make a false statement in this declaration.

Declared at ..... on .....  
 (place) (day) (month) (year)

(Signature of Declarant)

Before me:

(Signature of person before whom the declaration is made)

(Name of the person before whom the declaration is made)

(Title\* of the person before whom the declaration is made) And as a witness, I certify the following matters concerning the person who made this declaration (**declarant**):  
 [\*strike out the text that does not supply]

1. \*I saw the face of the declarant.  
 OR  
 \*I did not see the face of the declarant because the declarant was wearing a face covering, but I am satisfied that the declarant had a special justification for not removing the covering.

2. \*I have known the declarant for at least 12 months.  
 OR  
 \*I confirm the declarant's identity using the following identification document:  
 \_\_\_\_\_ Identification document relied on (may be original or certified copy)

Signature of person before whom the declaration is made \_\_\_\_\_

Declared at  
 this .....day  
 of .....20  
 Before me: \_\_\_\_\_

Signature of person before whom the declaration is made \_\_\_\_\_ Signature of declarant \_\_\_\_\_

Full name and qualifications of person before whom the declaration is made \_\_\_\_\_

\* The declaration must be made before one of the following persons:  
 - where the declaration is sworn within the State of New South Wales:  
 (i) a justice of the peace of the State of New South Wales;  
 (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or  
 (iii) a notary public.  
 - where the declaration is sworn in a place outside the State of New South Wales:  
 (i) a notary public; or  
 (ii) any person having authority to administer an oath in that place.

**Note:** From 30 April 2012 new requirements to confirm the identity of the declarant became mandatory in NSW. Witnesses must certify that they have seen the face of the declarant and either that they have known the declarant for more than 12 months, or confirmed their identity by sighting an approved identification document. For more detail see Affidavits and Statutory Declarations – How to administer an oath, affirmation or declaration in NSW (100086819).

**Annexure A**

**Supporting statement by head contractor regarding payment to subcontractors**

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

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

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

ABN: *[ABN]*

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

ABN: *[ABN]*

Contract number/identifier: *[contract number/identifier]*

OR

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

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

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

I, *[full name]*, being the head contractor, a director of the head contractor or a person authorised by the head contractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters that are contained in this supporting statement and declare that, to the best of my knowledge and belief, all amounts due and payable to subcontractors have been paid (not including any amount identified in the attachment as an amount in dispute).

Signature:..... Date: .....

Full name: ..... Position/Title: .....

**Attachment**

<b>Schedule of subcontractors paid all amounts due and payable</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number/ identifier</b>	<b>Date of works (period)</b>	<b>Date of payment claim (head contractor claim)</b>

<b>Schedule of subcontractors for which an amount is in dispute and has not been paid</b>				
<b>Subcontractor</b>	<b>ABN</b>	<b>Contract number/ identifier</b>	<b>Date of works (period)</b>	<b>Date of payment claim (head contractor claim)</b>



Annexure B

SUBCONTRACTOR'S STATEMENT

Note to the parties

For the purpose of this Subcontractor's Statement:

- "the subcontractor" is the Service Provider; and
- "the principal contractor" is Sydney Metro

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION

(Note 1 - see back of form)

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

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

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

Subcontractor: ..... ABN: .....

(Business name)

of: .....

(Address of subcontractor)

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

(Business name of principal contractor)

(Note 2)

Contract number/identifier: .....

(Note 3)

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive,

(Note 4)

subject of the payment claim dated: ...../...../.....

(Note 5)

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

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

(f) Signature: ..... Full Name: .....

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

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

### Notes

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

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

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

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

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

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

### Statement Retention

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

### Offences in respect of a false Statement

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

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

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

### Further Information

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

**SCHEDULE 4 – FORM OF STATEMENT OF INTERESTS AND ASSOCIATIONS**

# Sydney Metro

## Statement of Interests and Associations

<b>Date</b>	
<b>Name</b>	(Recipient)
<b>Organisation</b>	
<b>In favour of</b>	Sydney Metro (ABN 12 354 063 515) (Sydney Metro)
<b>In relation to the</b>	Sydney Metro (Permitted Use)

I \_\_\_\_\_, [insert full name] of

\_\_\_\_\_ [insert business address]

agree and acknowledge that, except for the matters disclosed below:

To the best of my knowledge, I do not have:

1. any financial or other interest, either directly or indirectly in;
2. any immediate family members (spouse, children, parents or siblings) or close friends with any financial or other interest in;
3. any other interest or association, either directly or indirectly with,

the entities listed on the attached sheet (if supplied) or known to be involved in the Sydney Metro Project.

## Disclosure

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_

(if further space is required please attach a signed separate letter)

I undertake to:

1. notify the Principal as soon as possible after I become aware of any matter which could affect the accuracy or completeness of the statements made in this deed or which would make them incorrect if this deed was given again; and
2. make a further updated declaration as soon as practicable.

I confirm that the statements set out in this deed are true and correct as at the date indicated below.

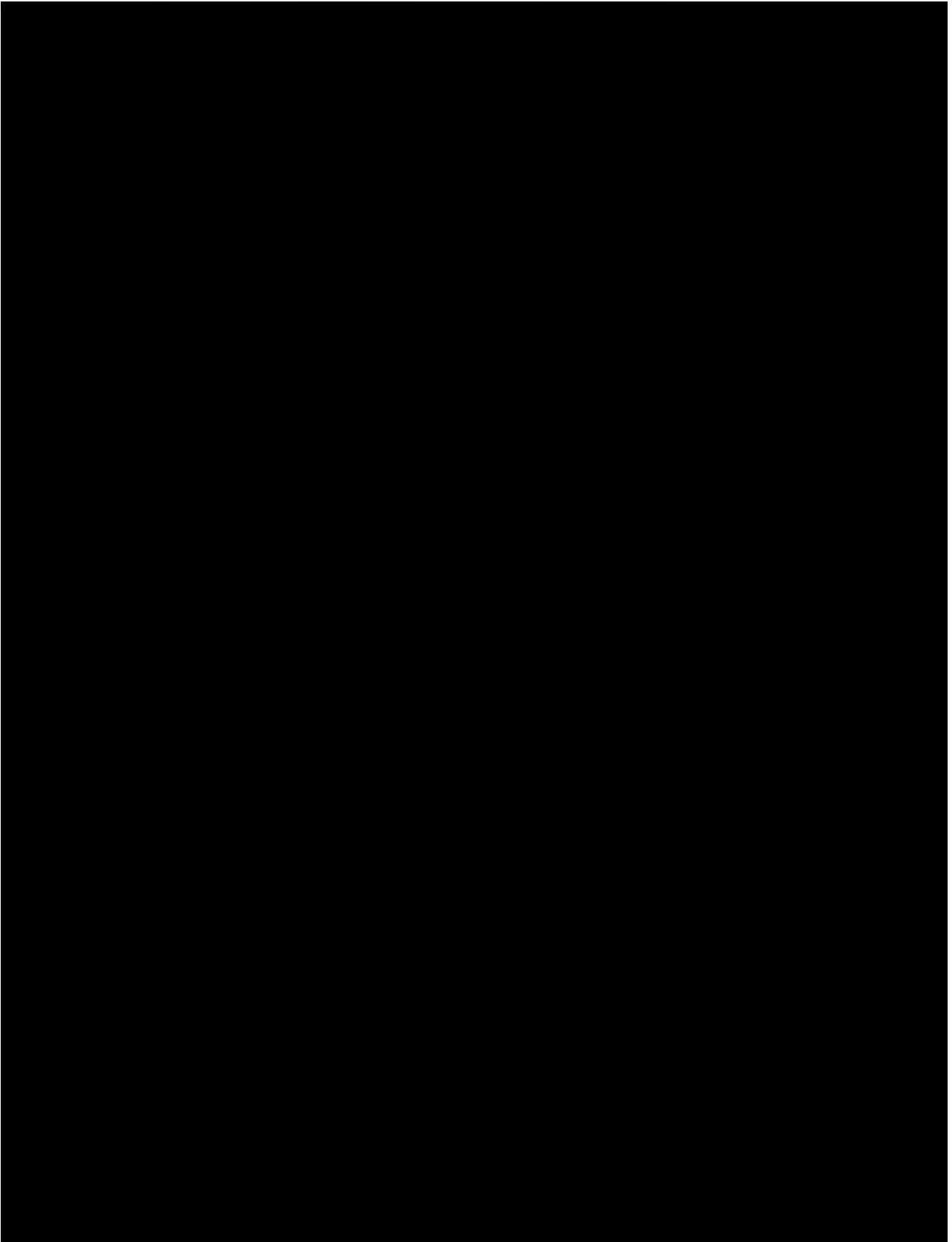
## Executed as a Deed

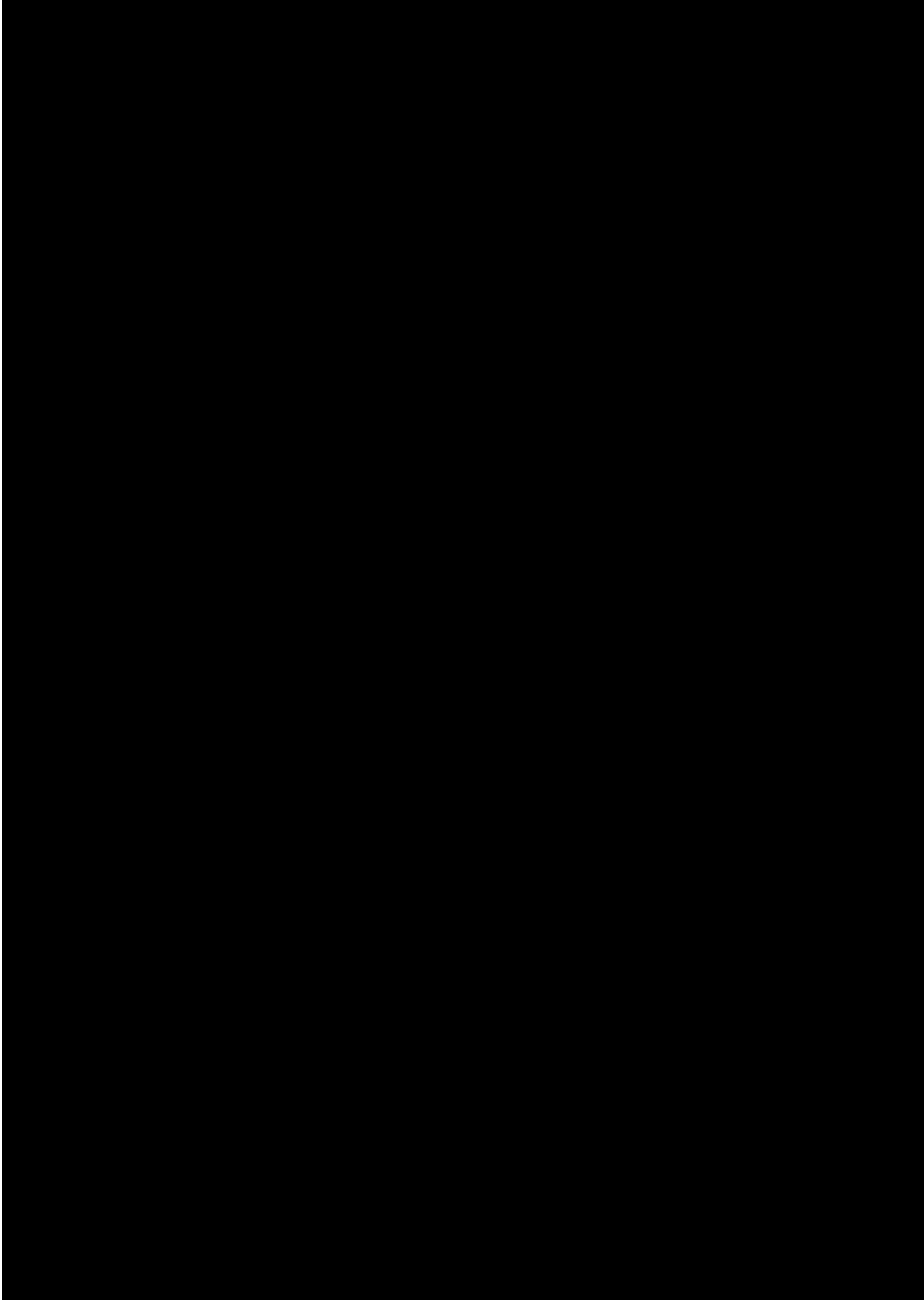
Signed, sealed and delivered

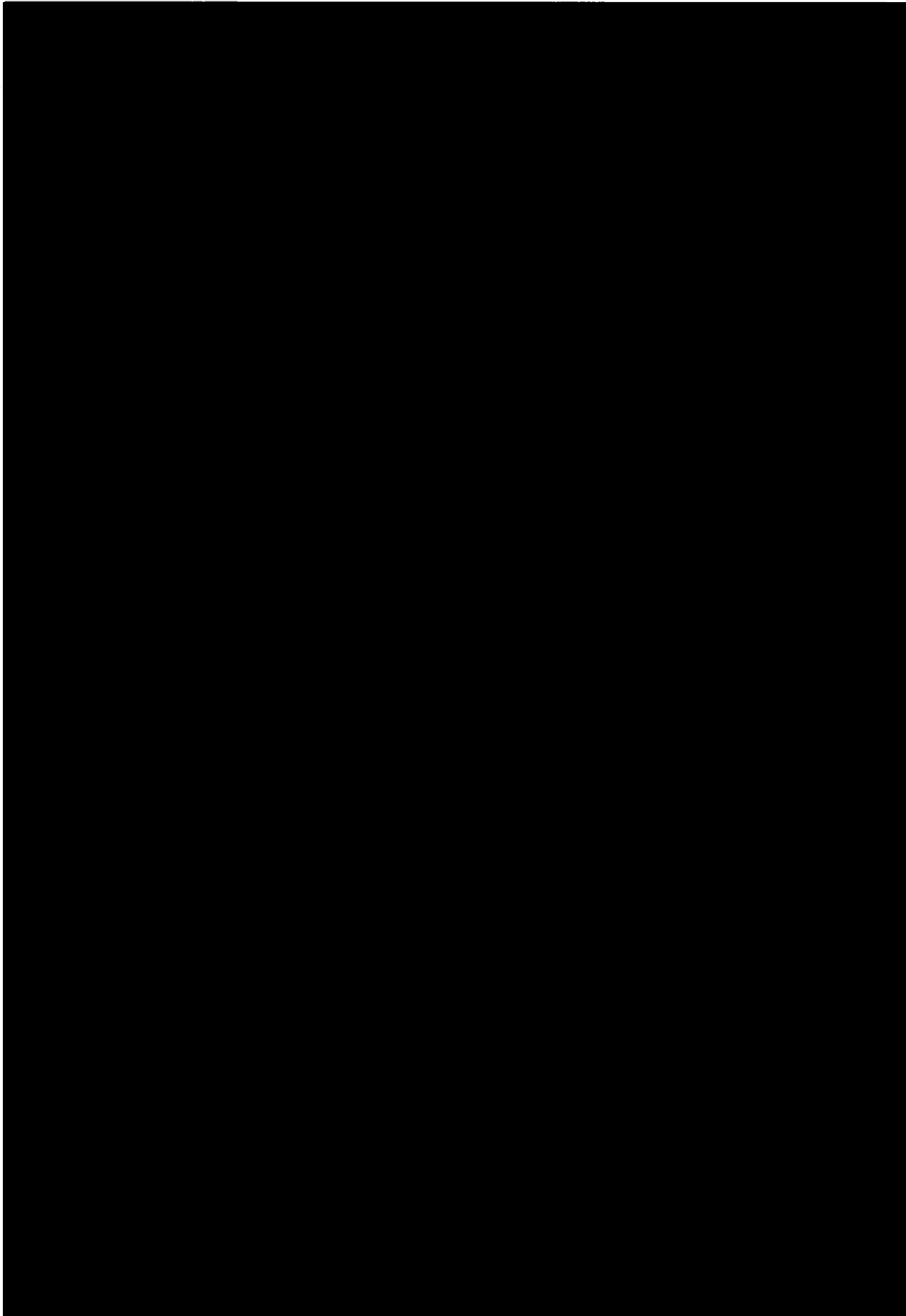
<b>Signature of Declarant:</b>	
<b>Name of Declarant:</b>	
<b>Signature of Witness:</b>	
<b>Name of Witness:</b>	

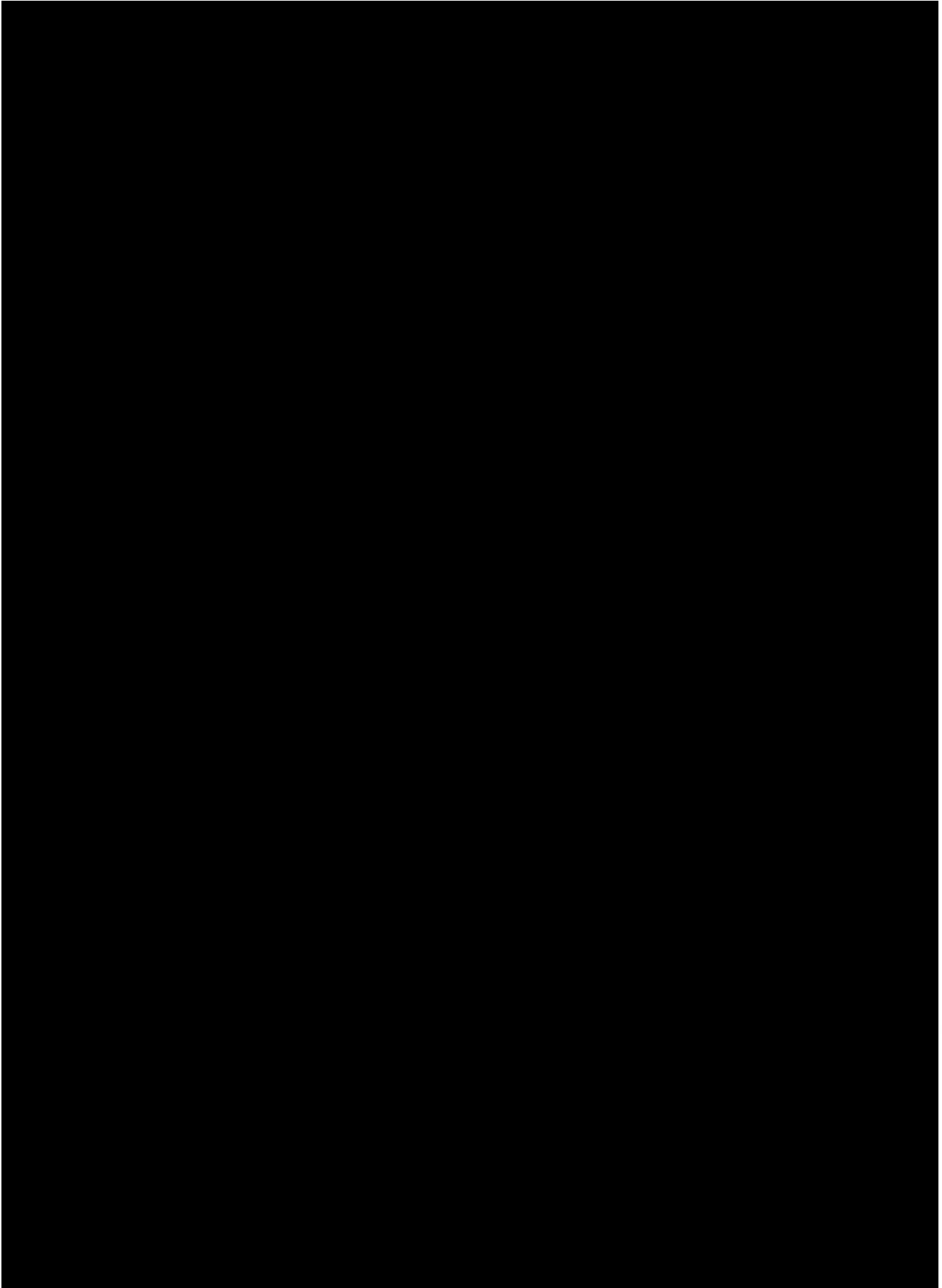
**SCHEDULE 5 – PAYMENT SCHEDULE**

(clause 1)

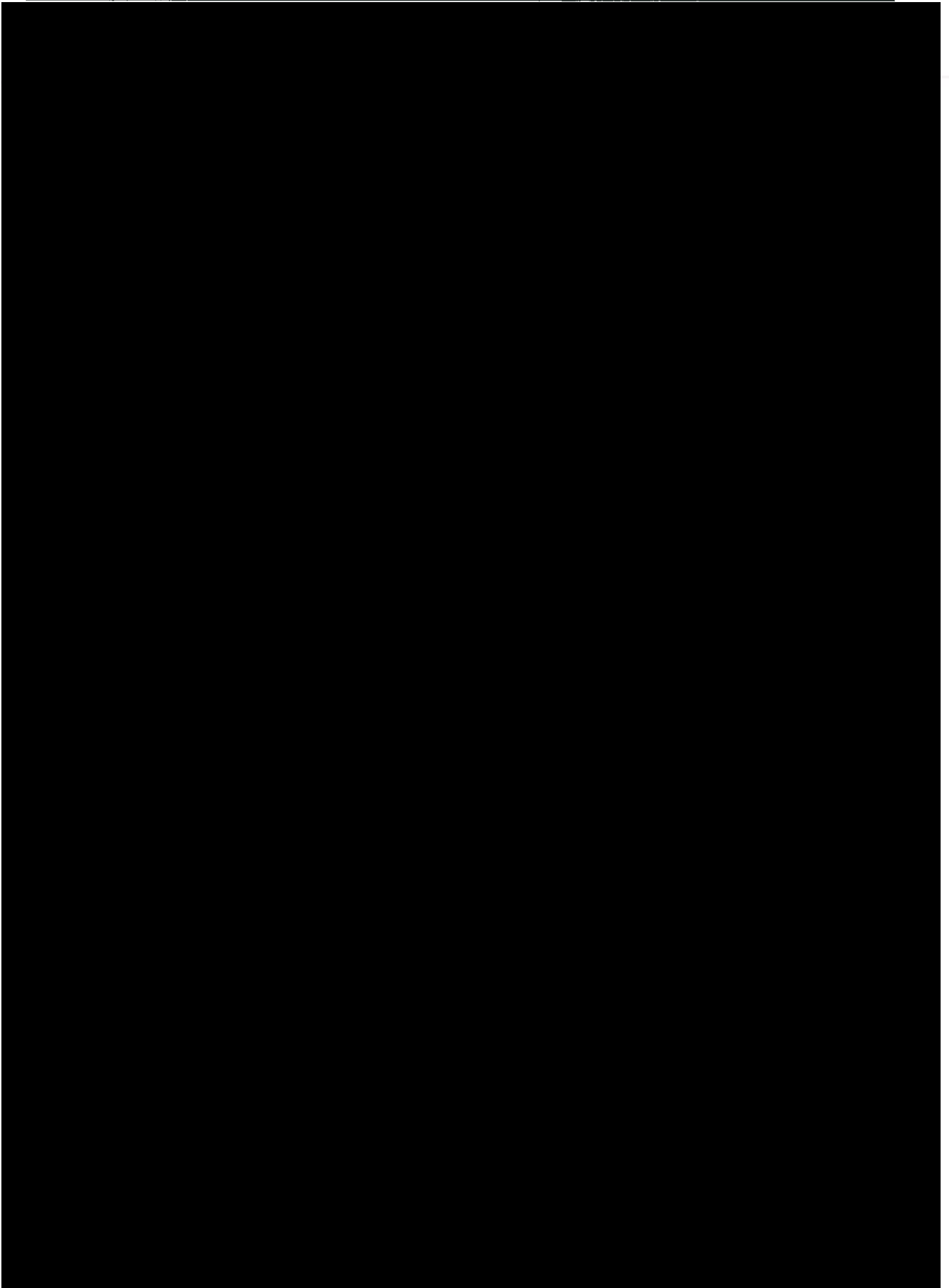


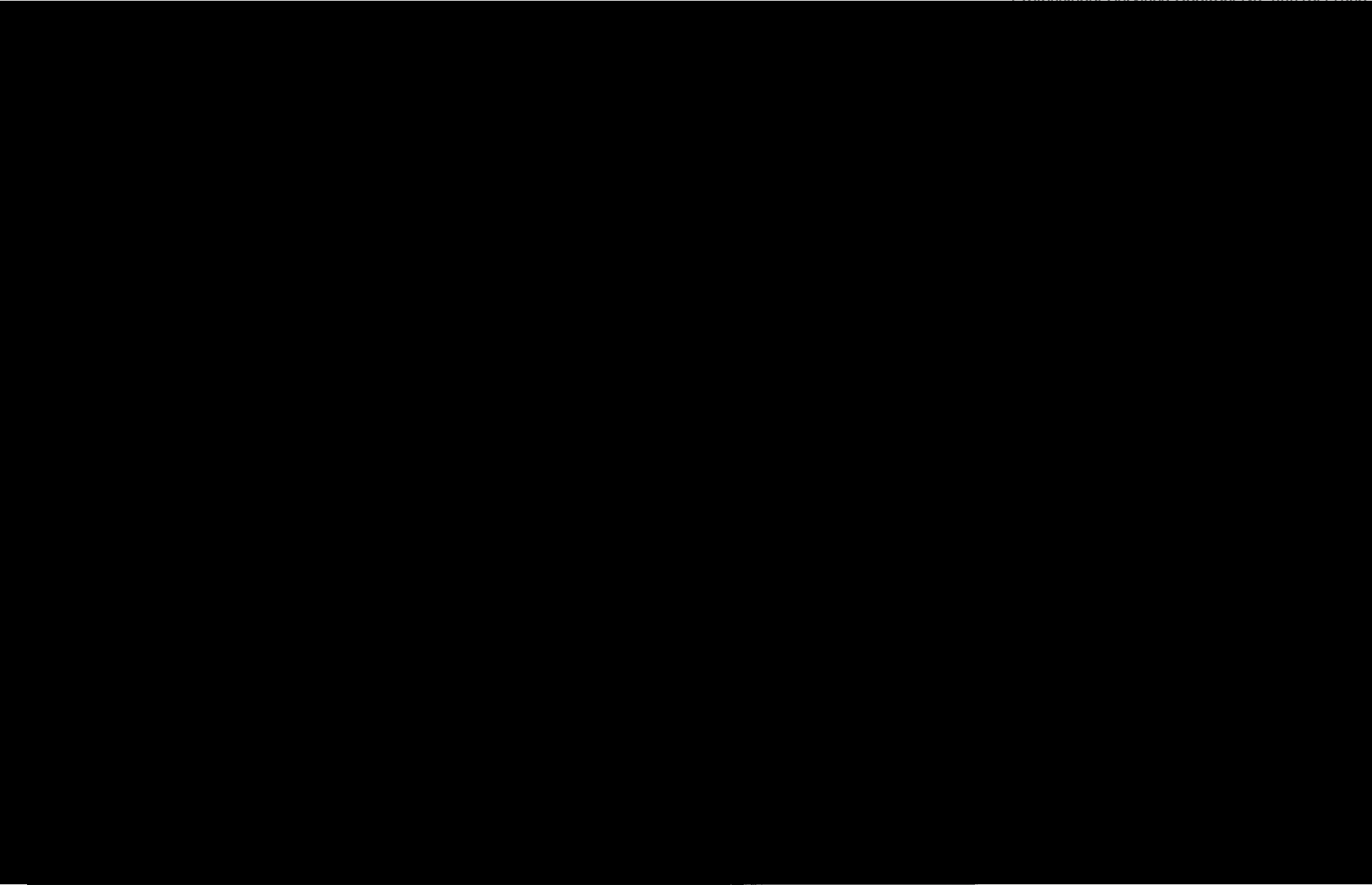


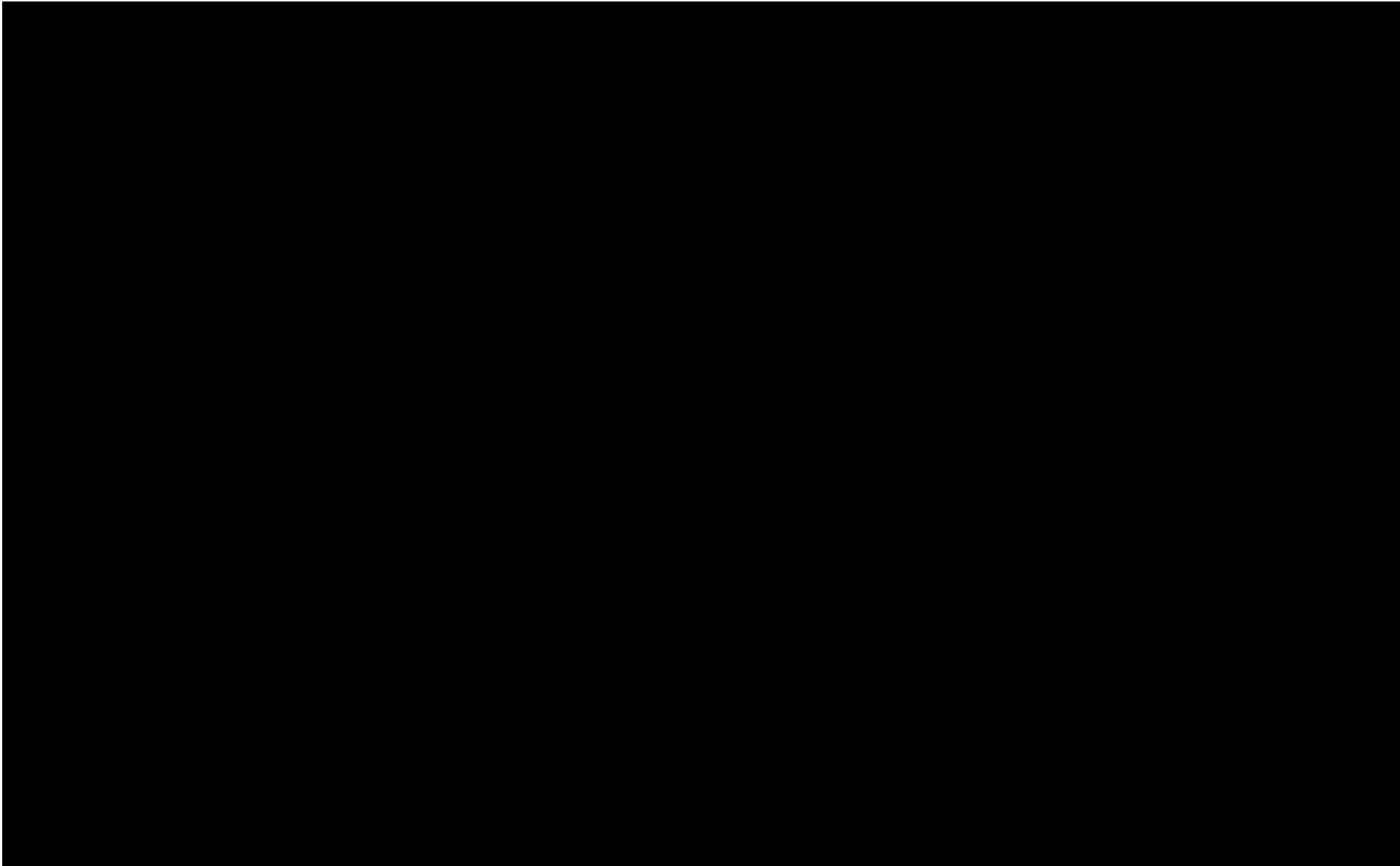


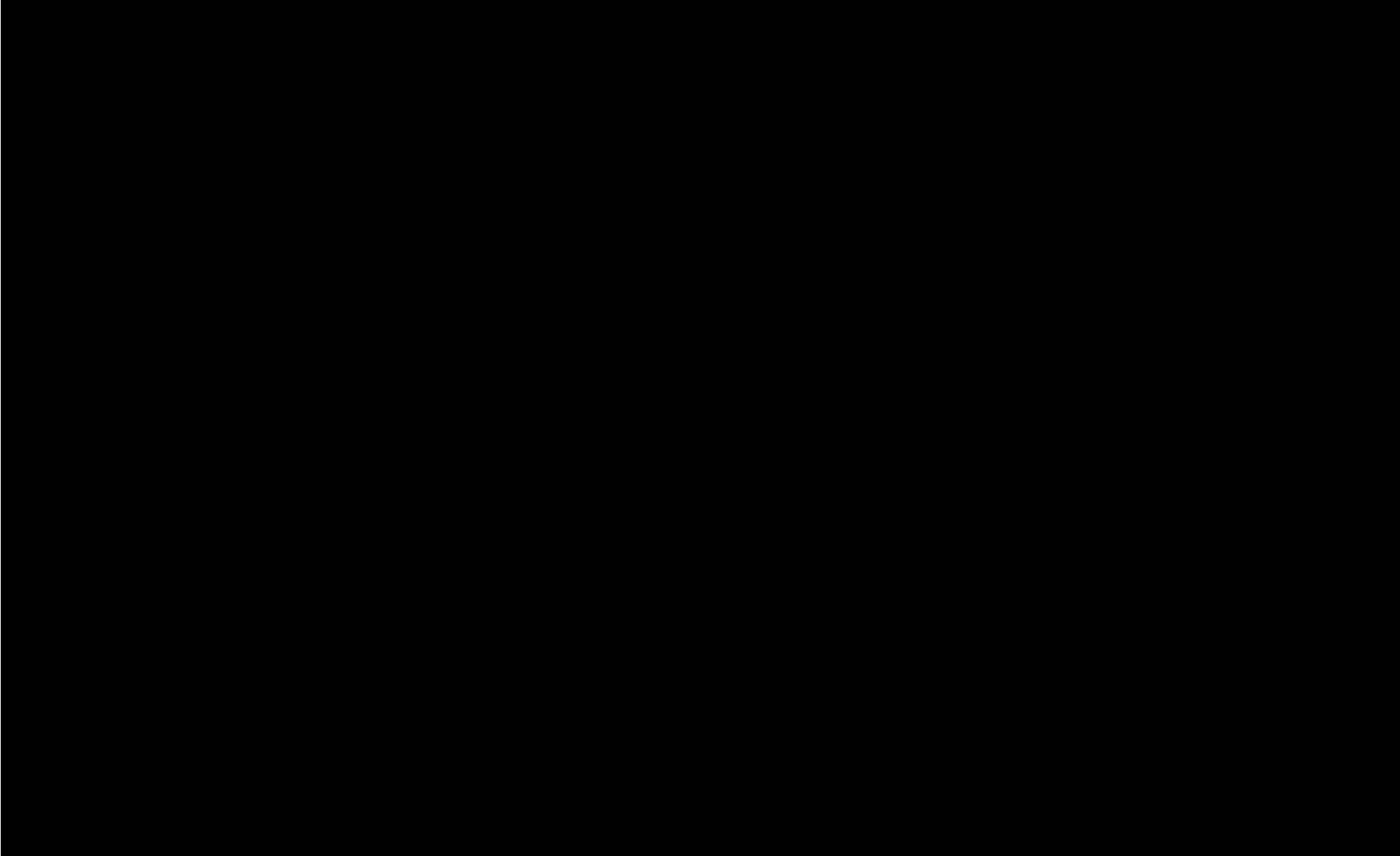








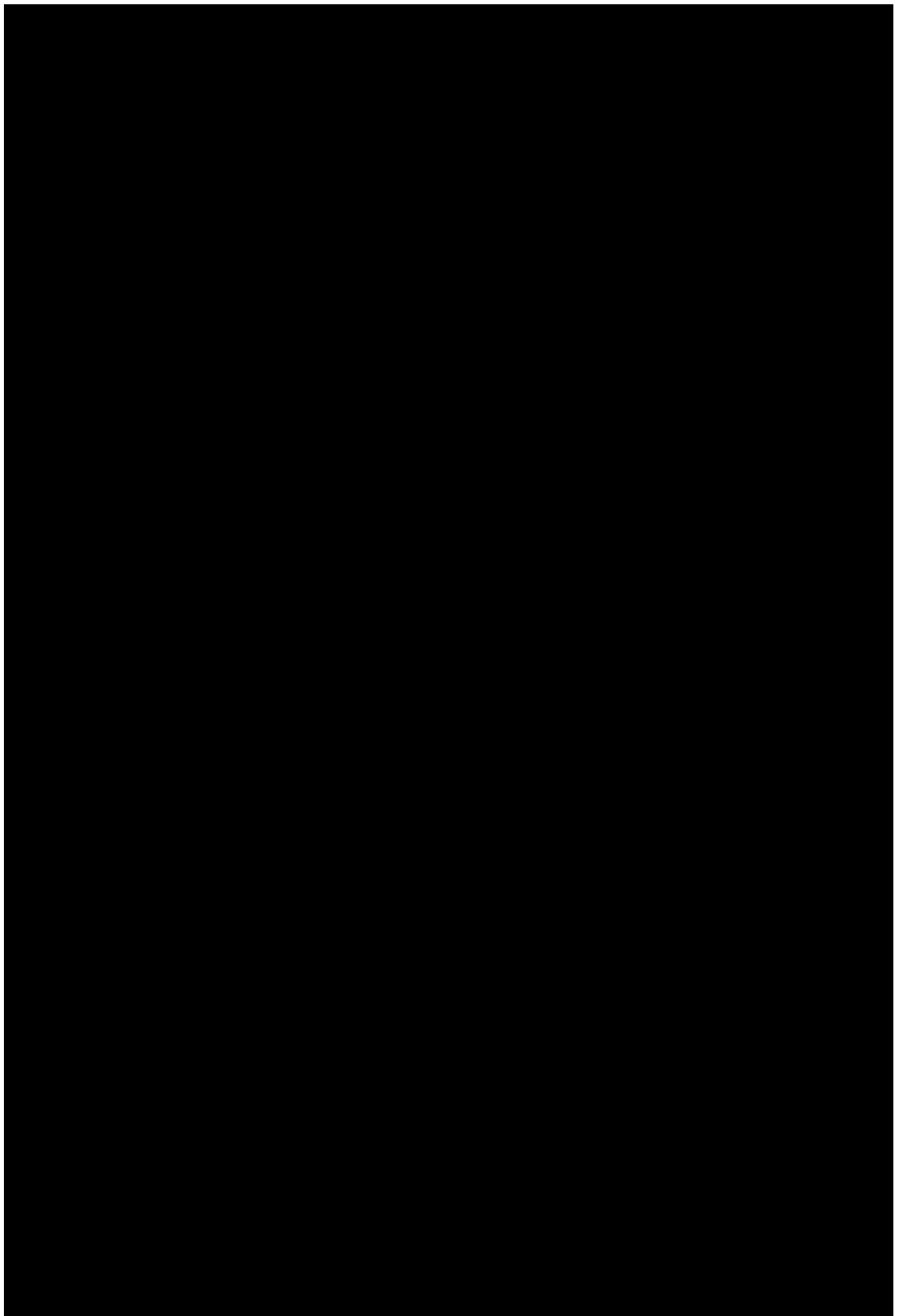


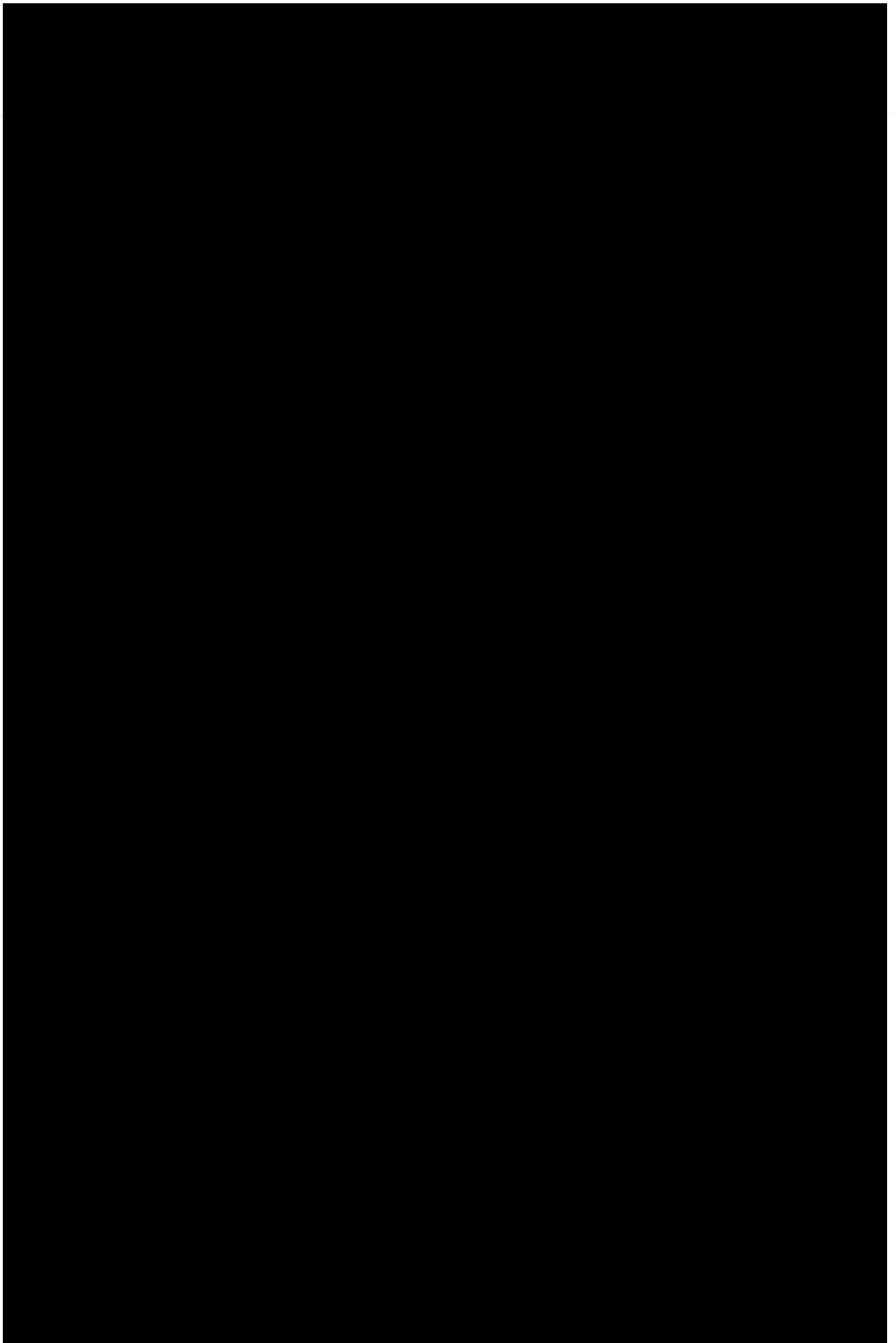


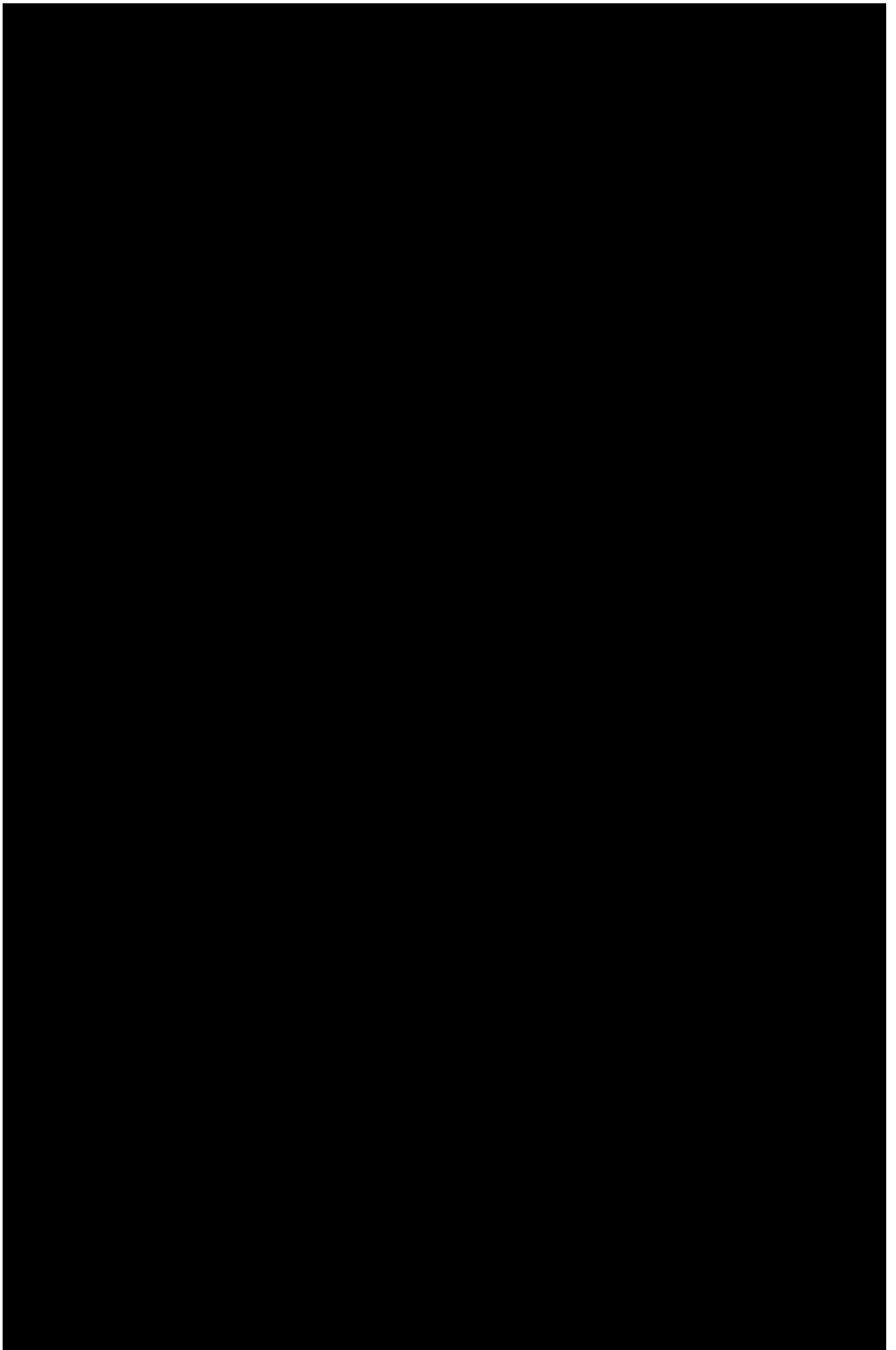
**SCHEDULE 6 – SERVICES BRIEF**

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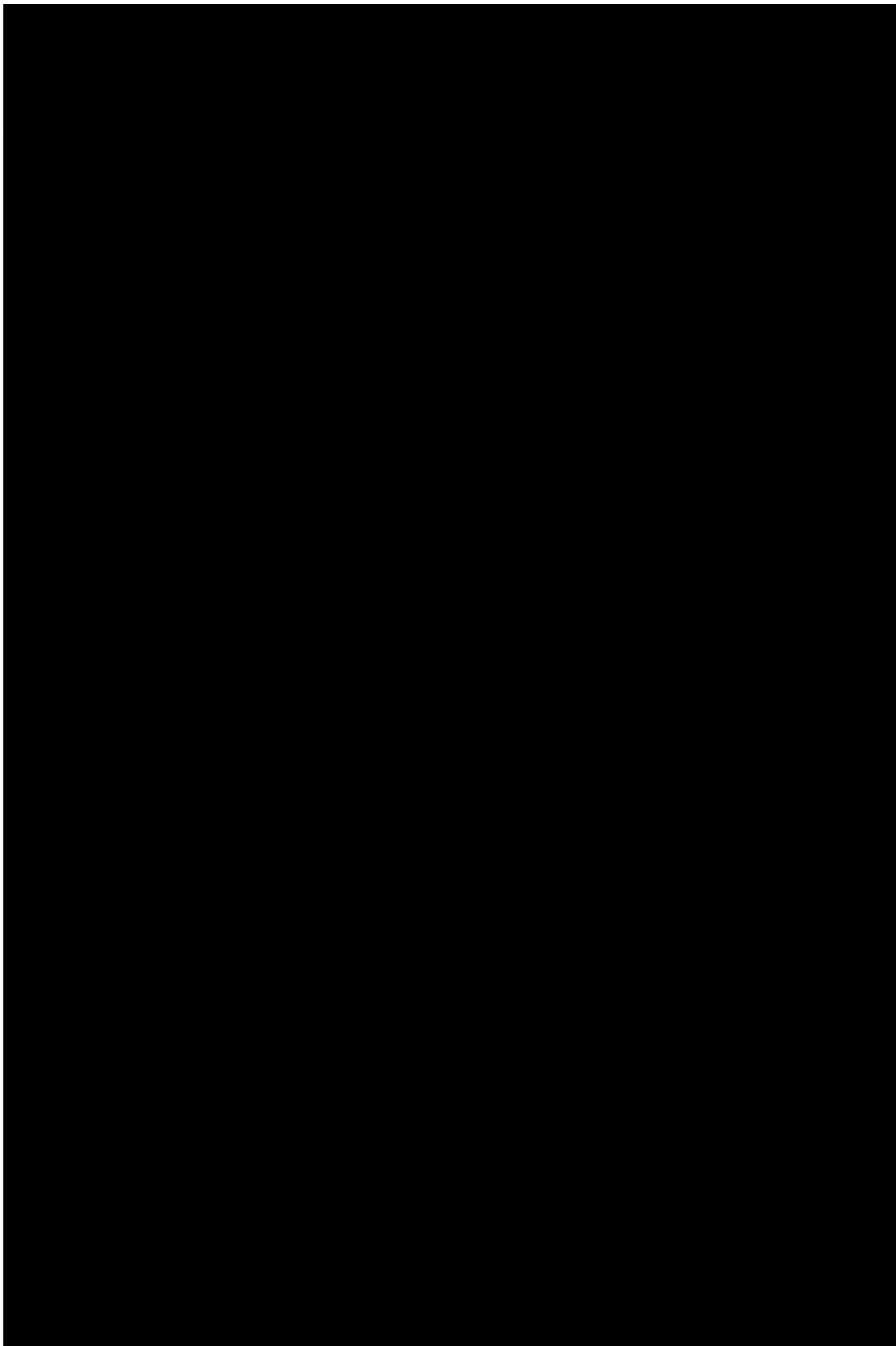
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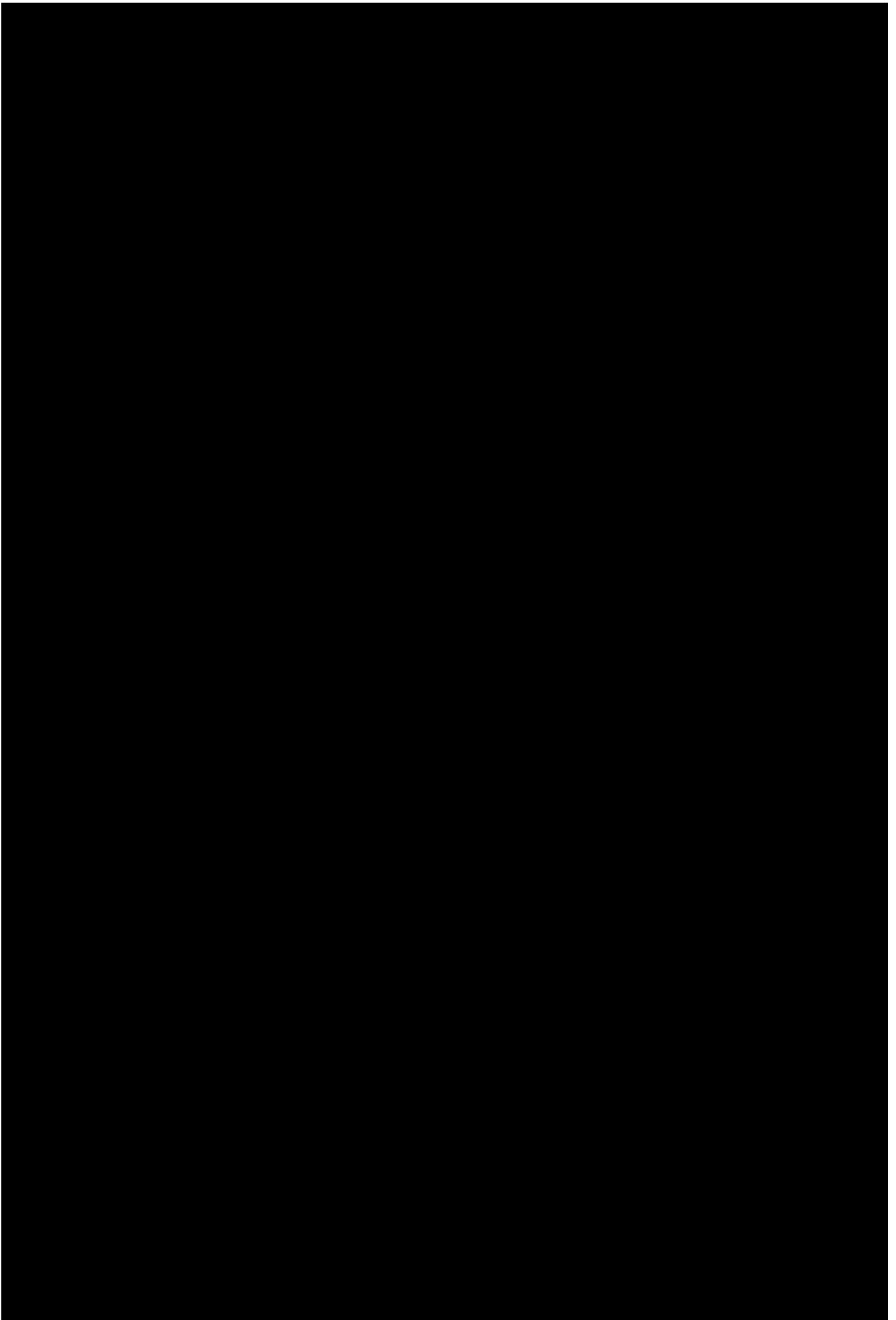


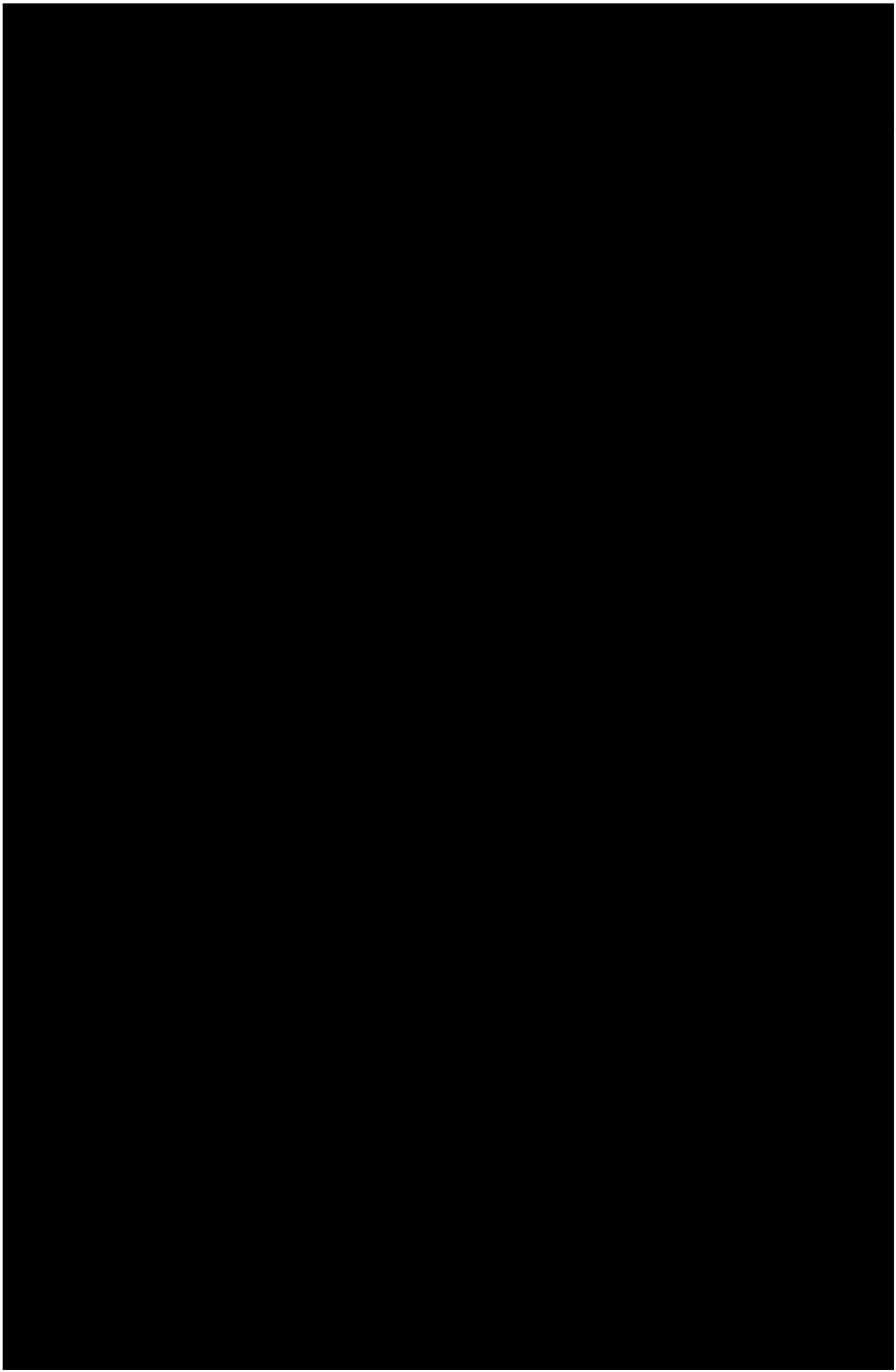


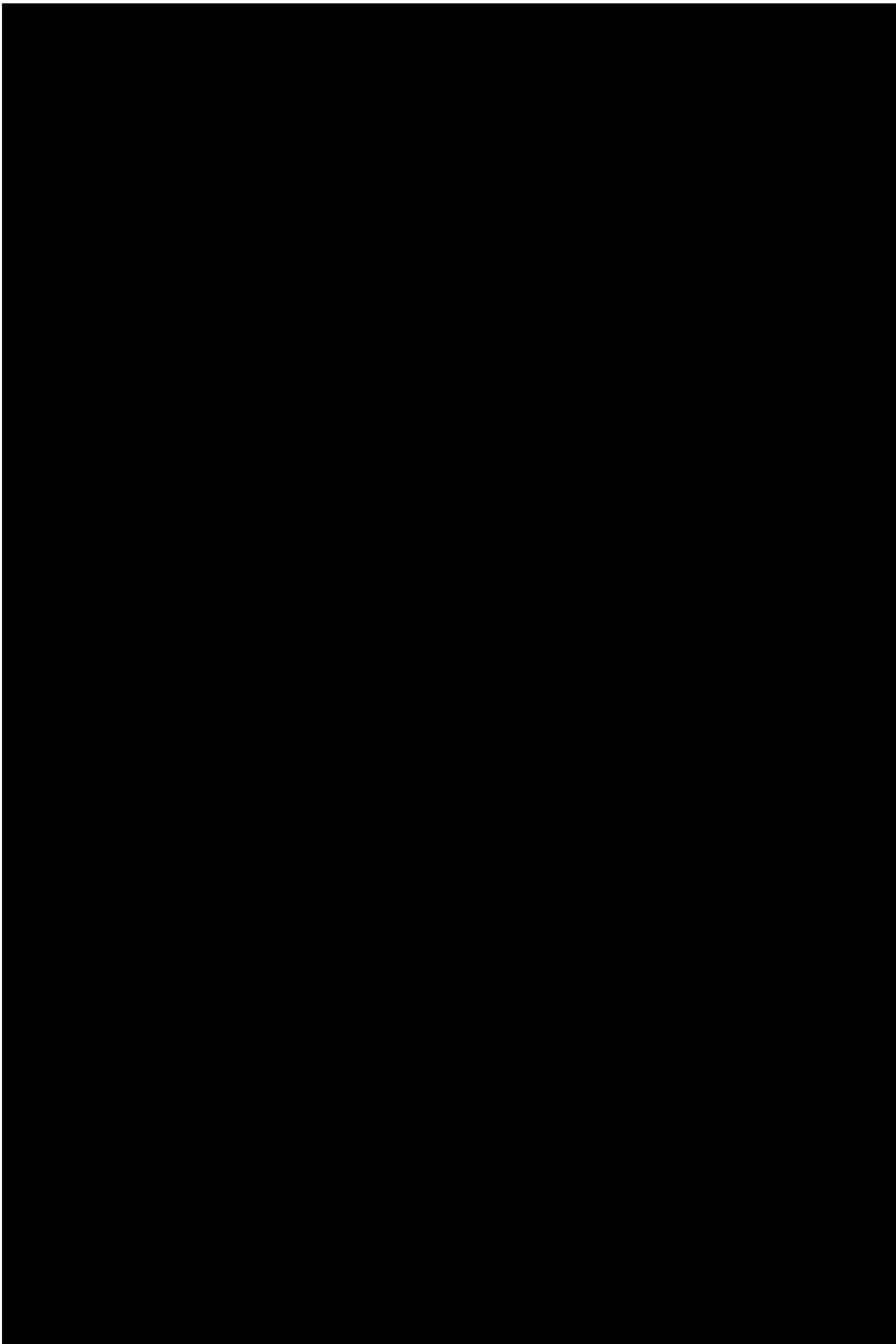


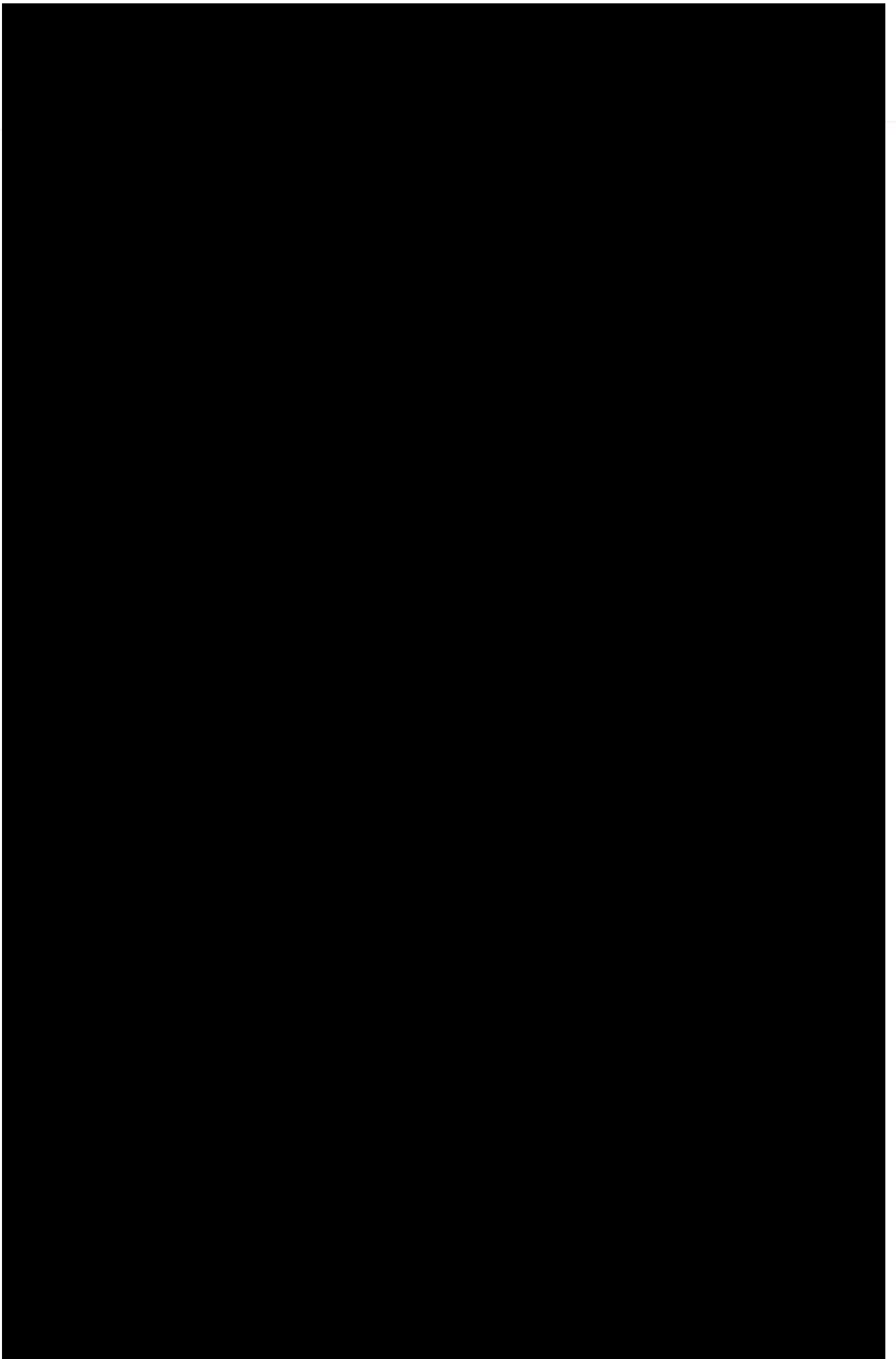


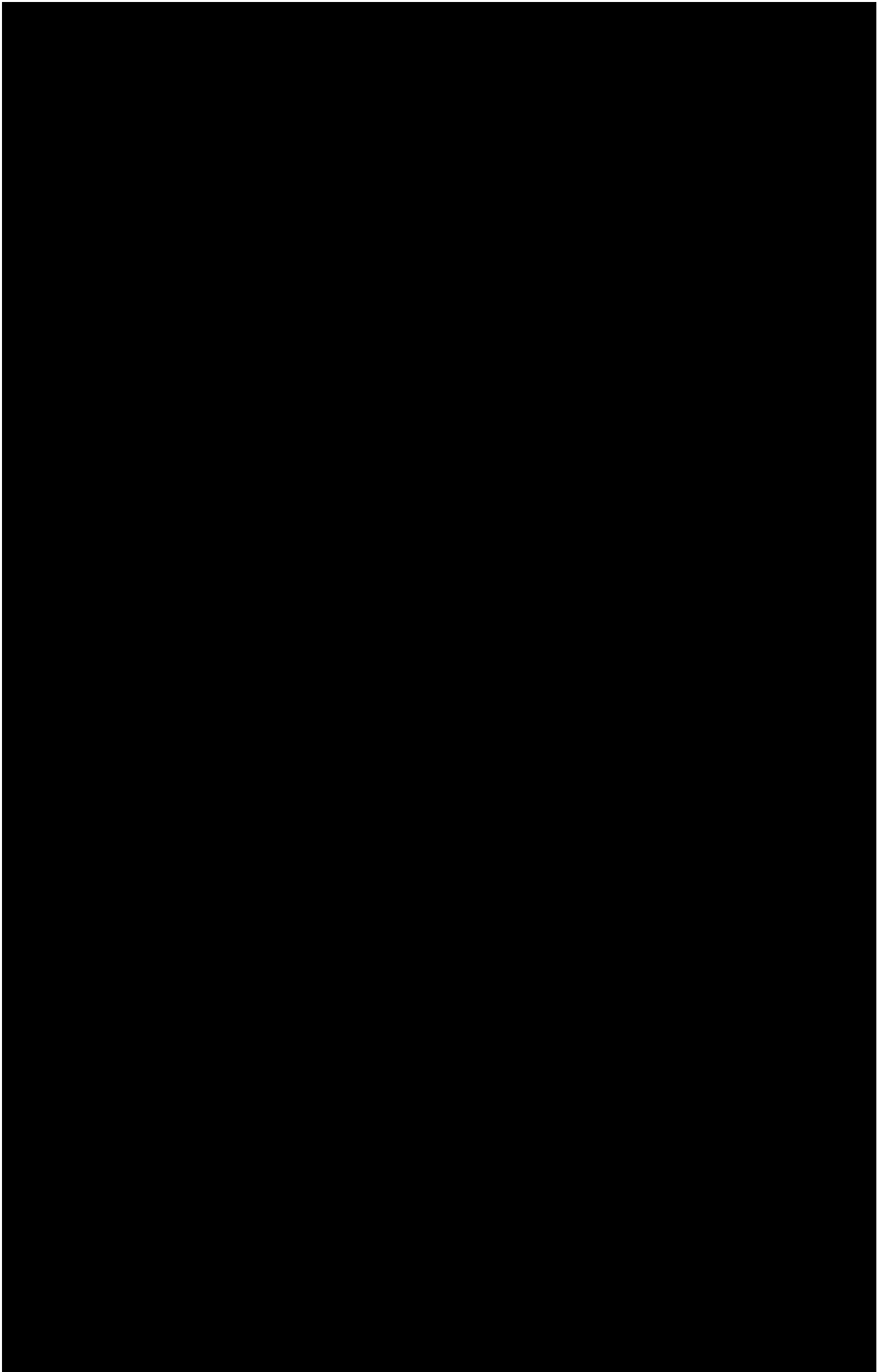


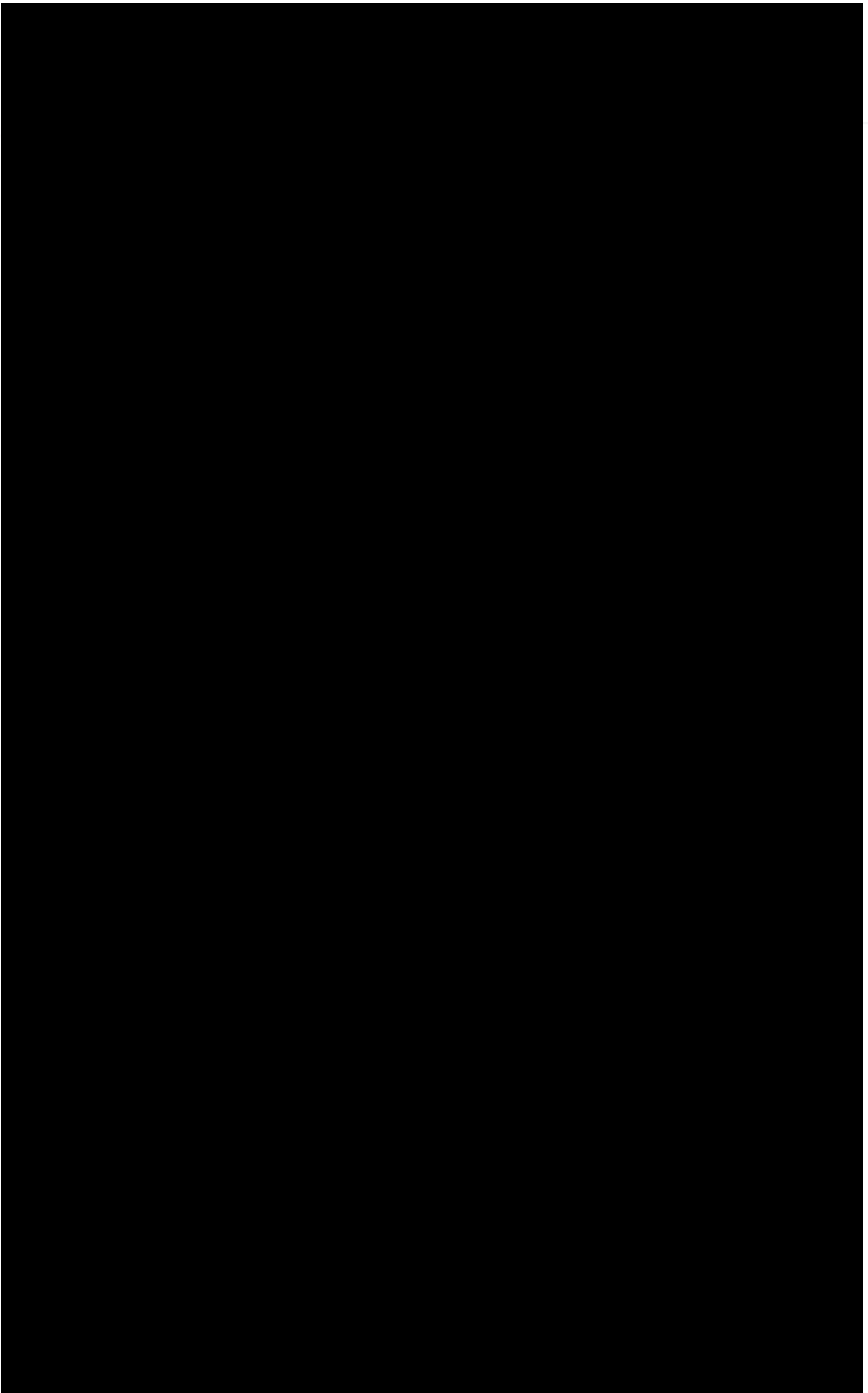


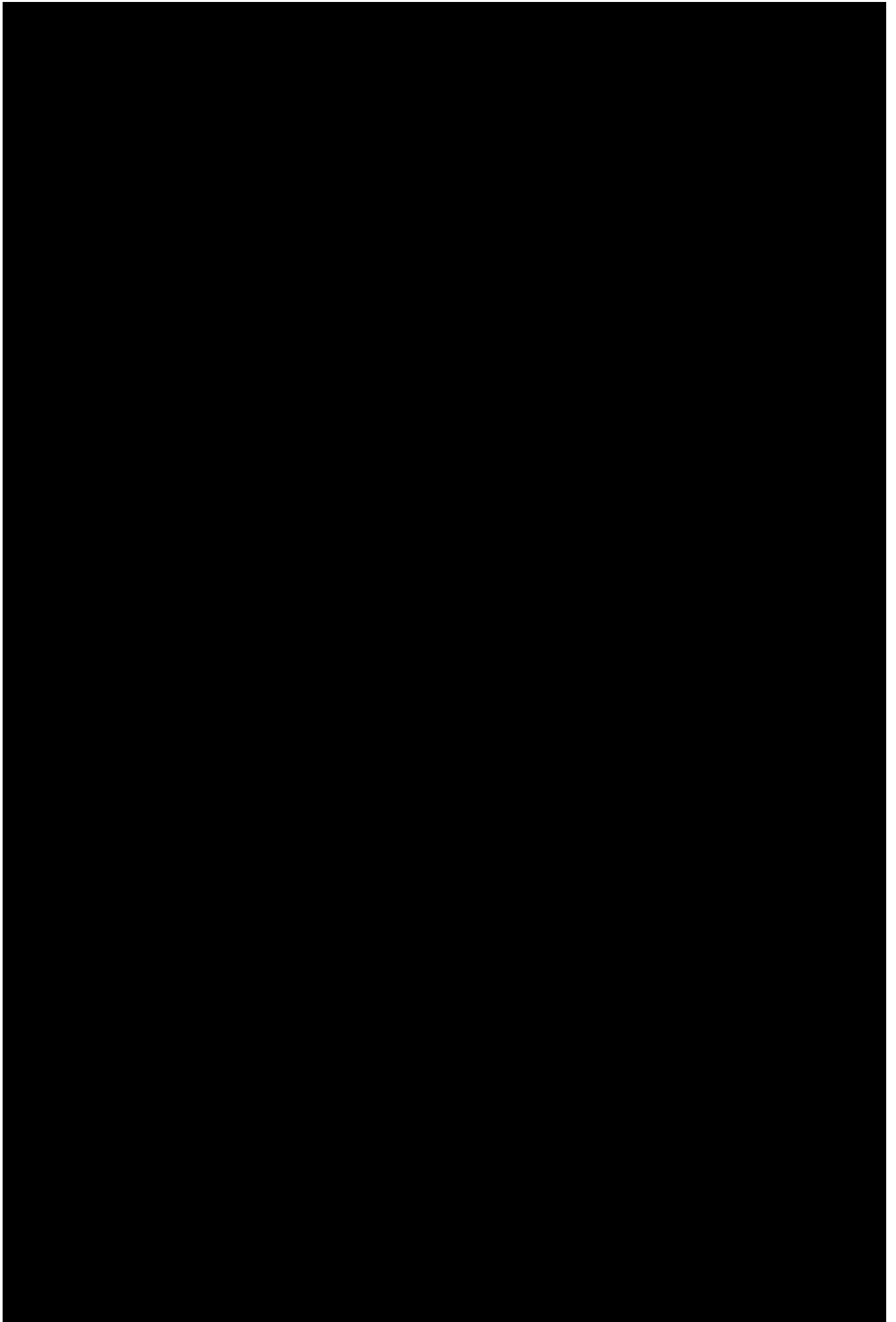




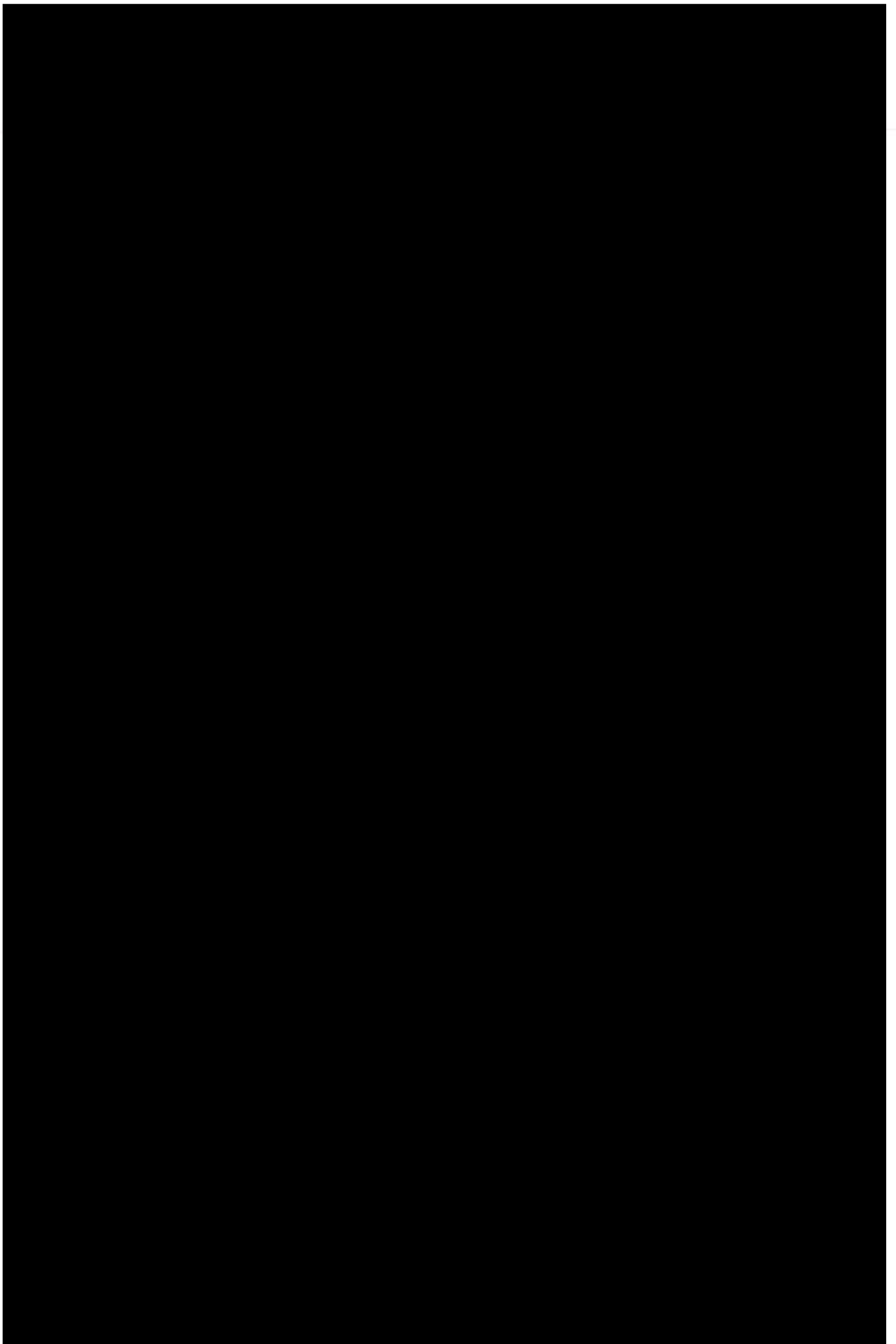


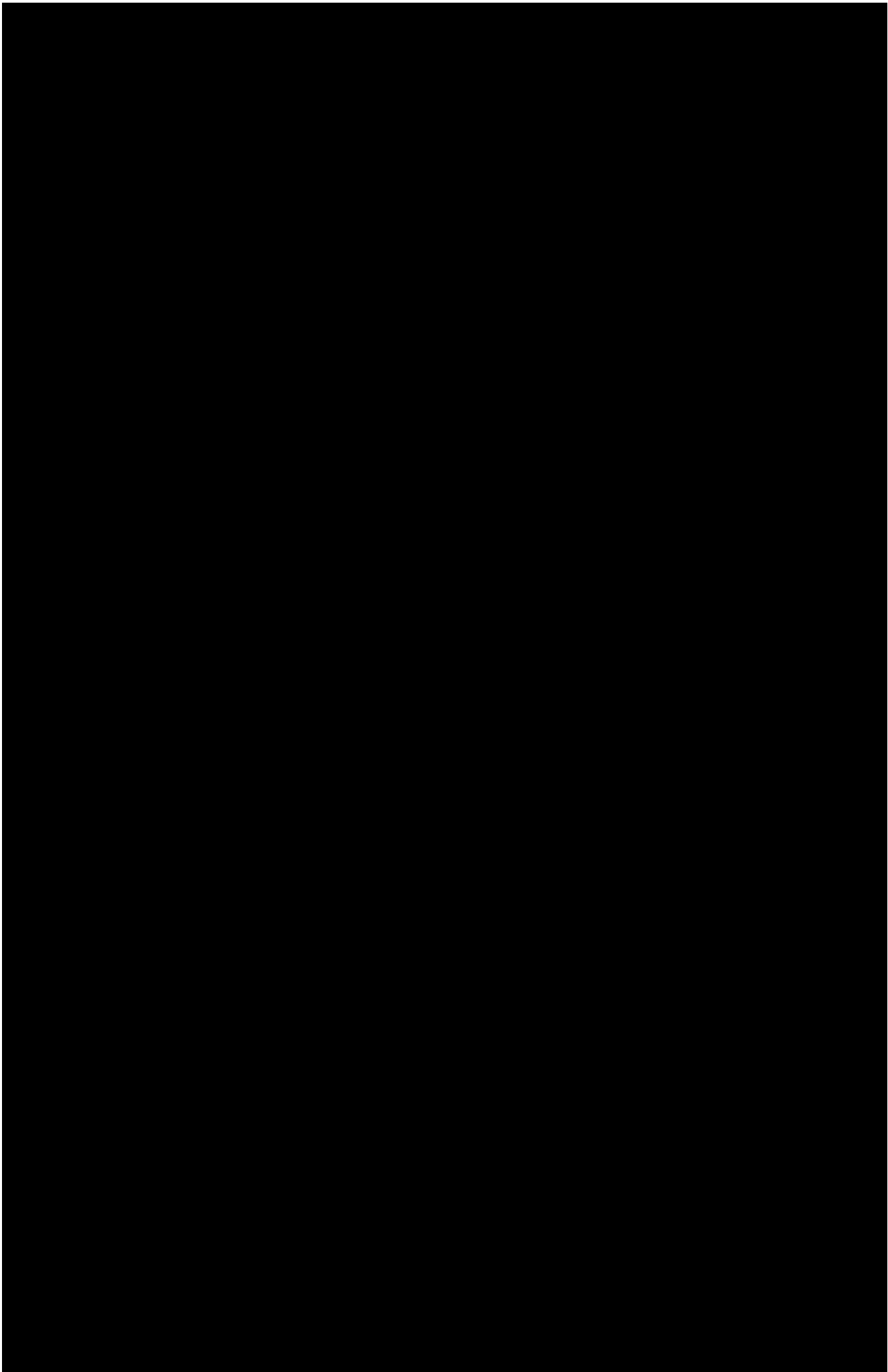


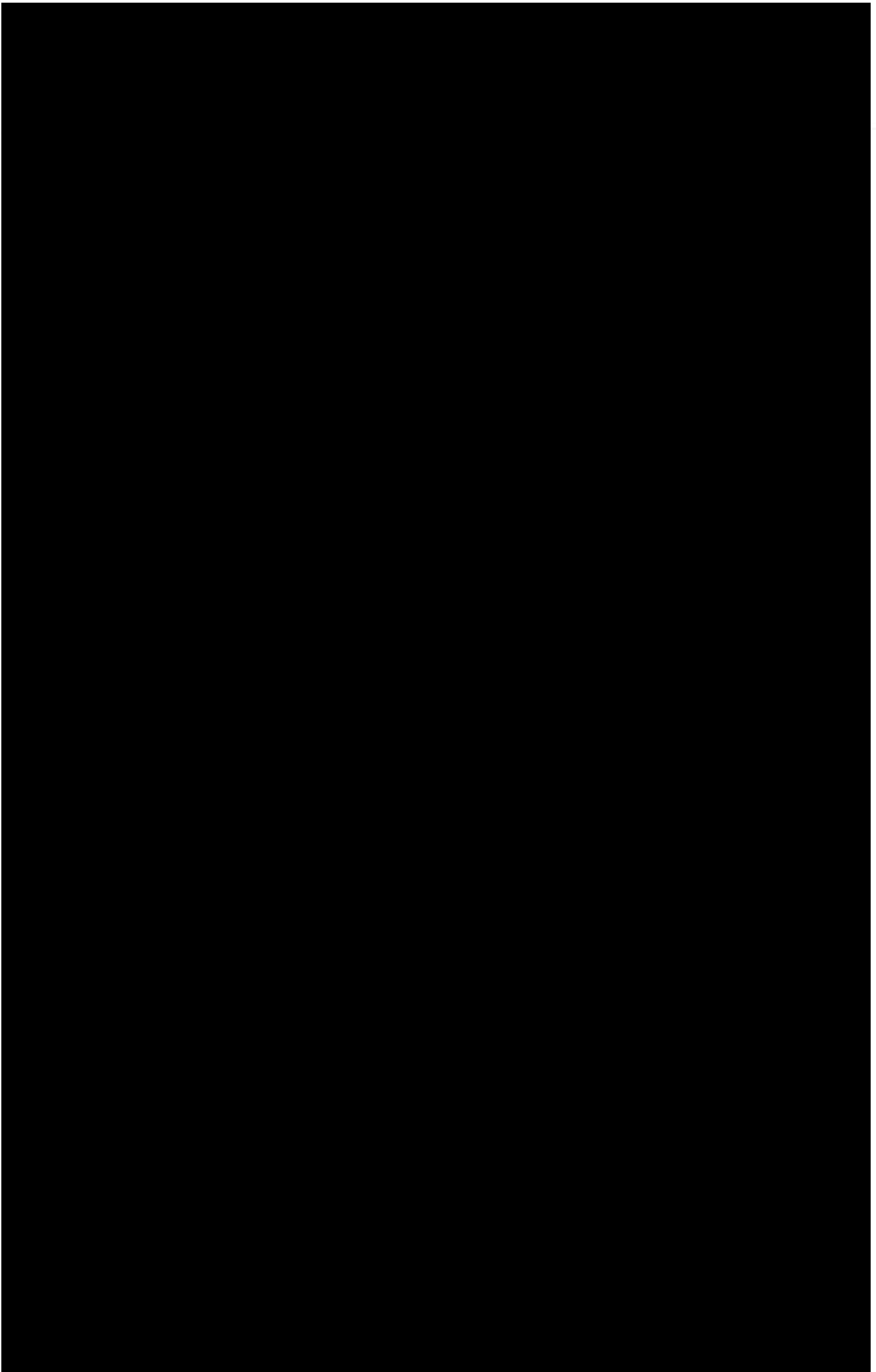


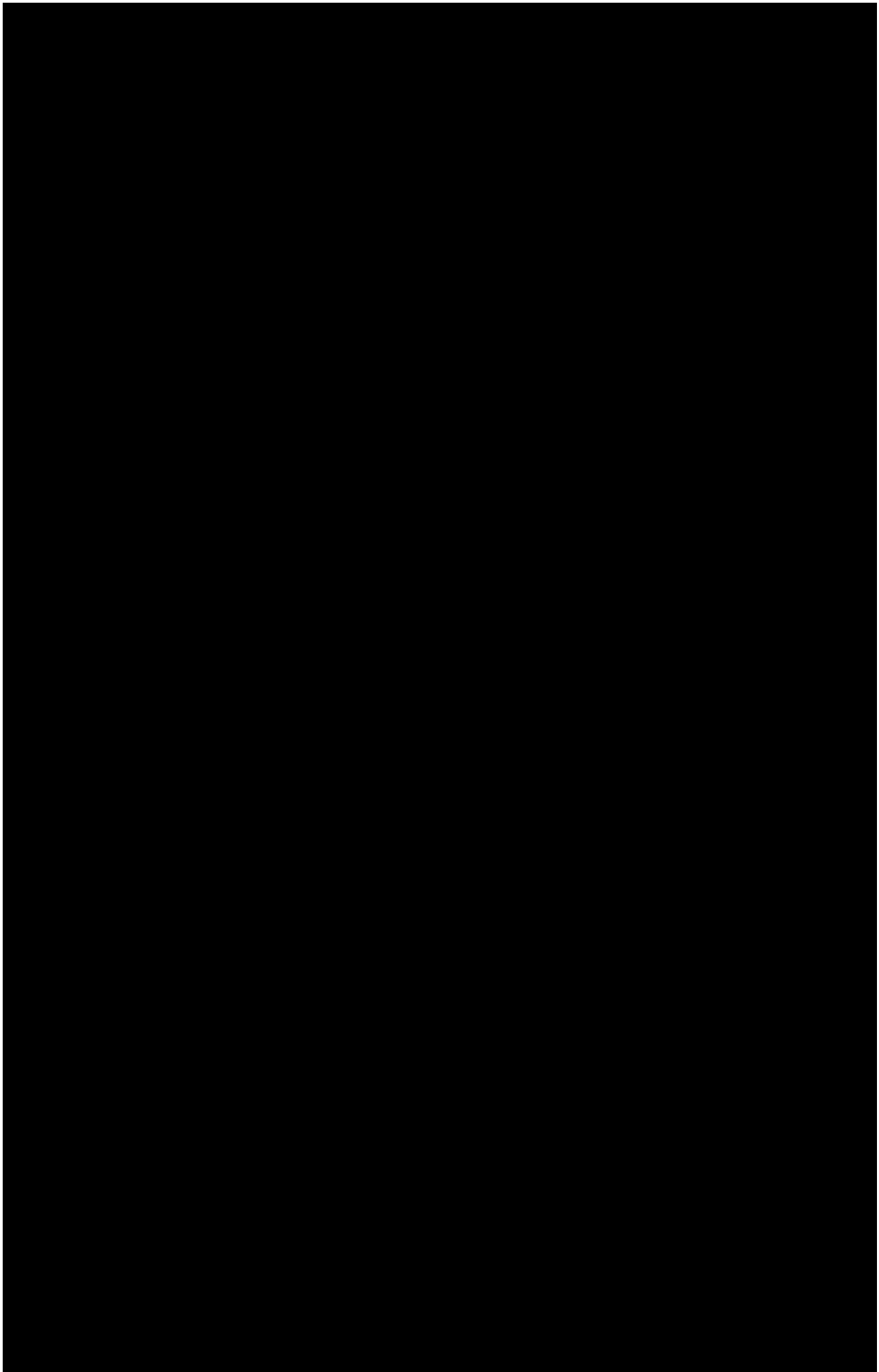


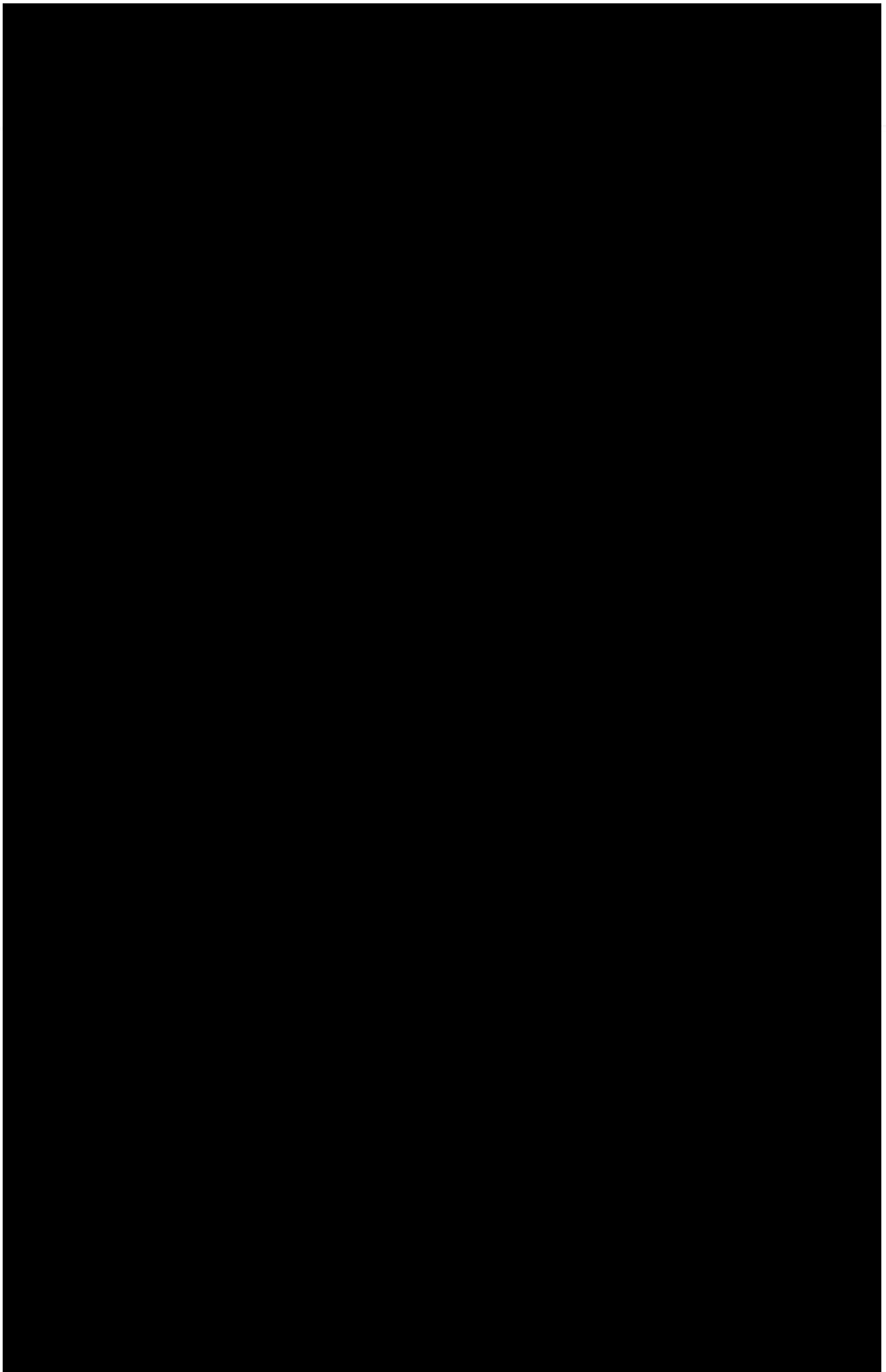


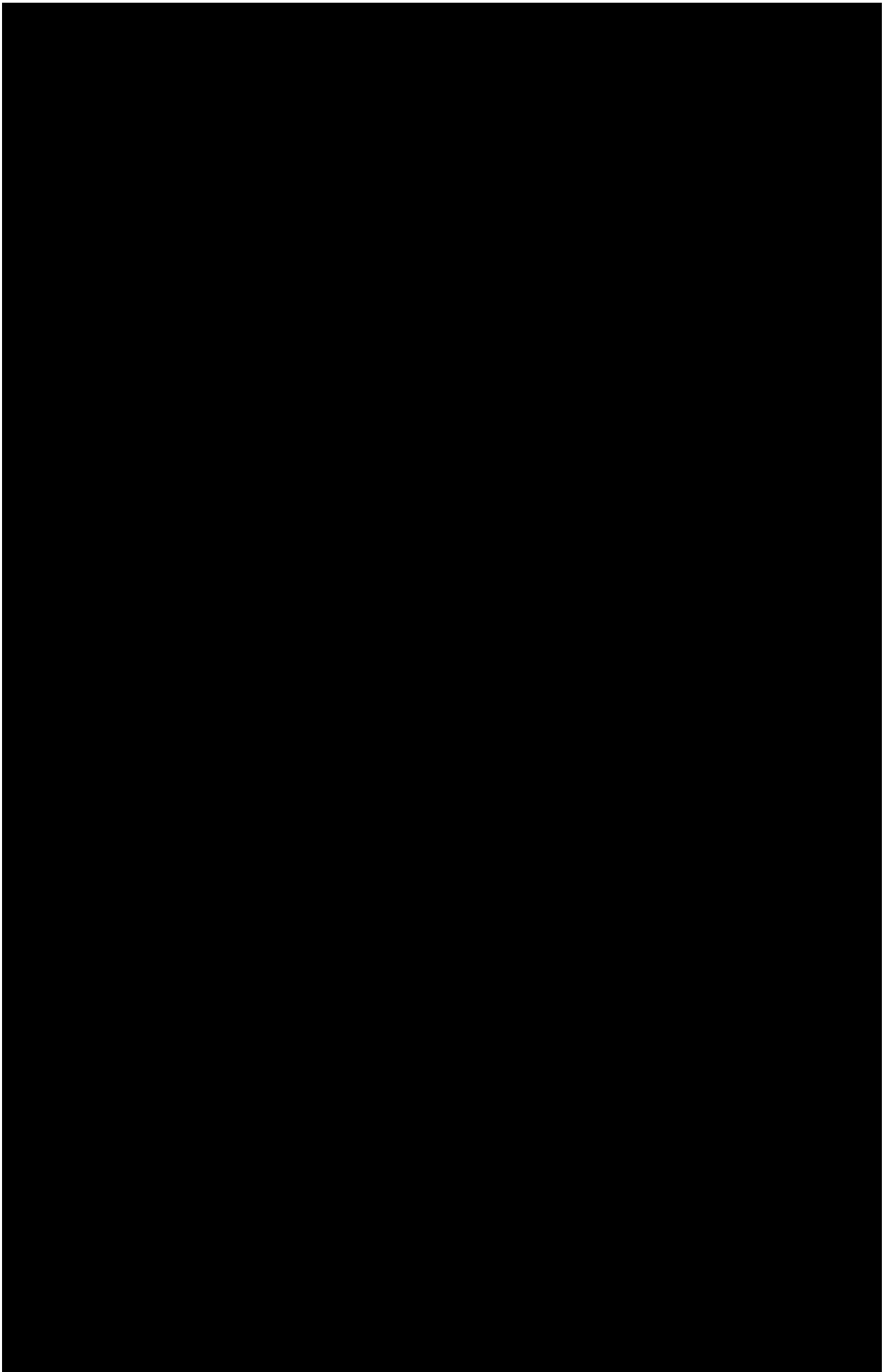


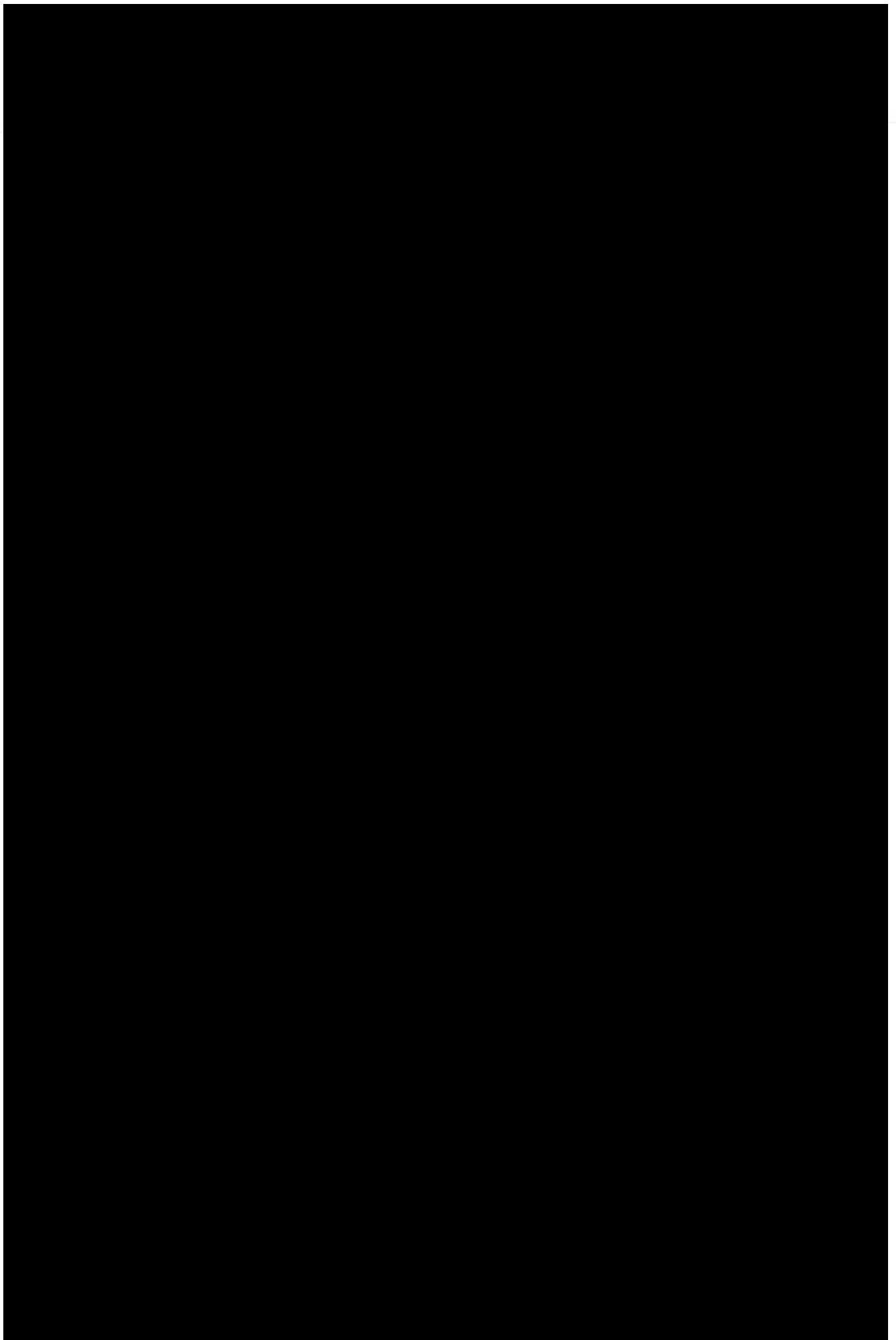


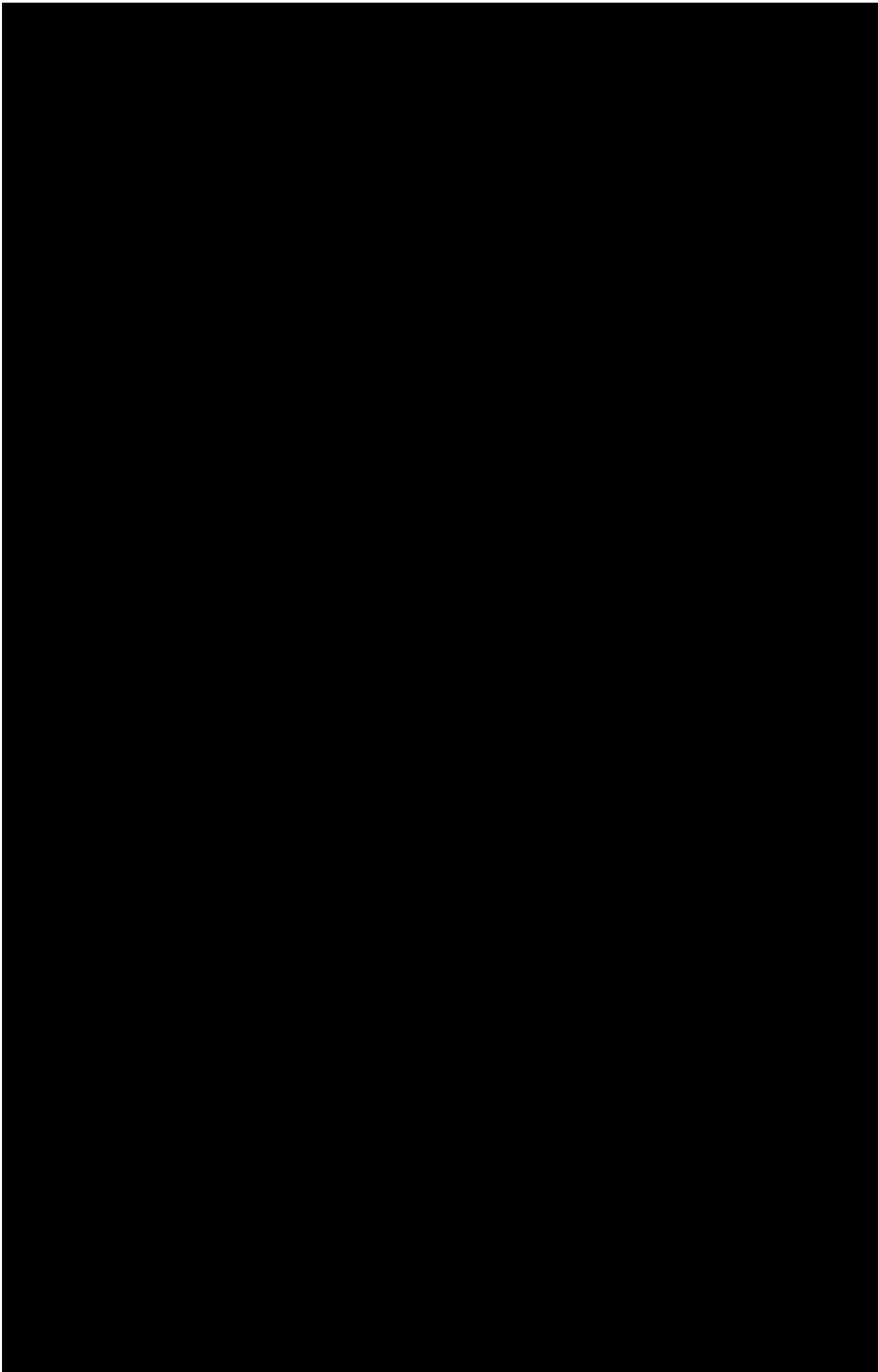




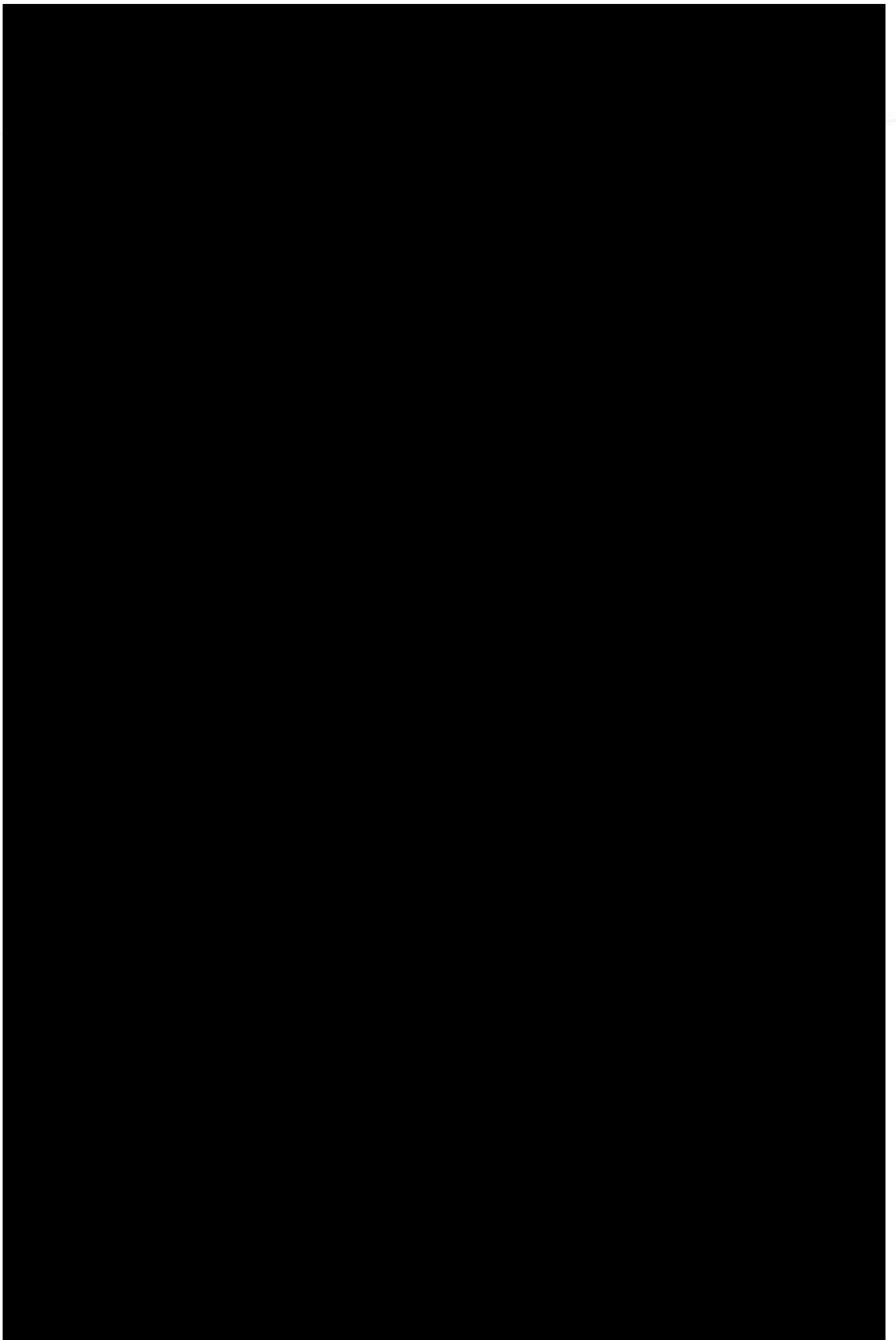


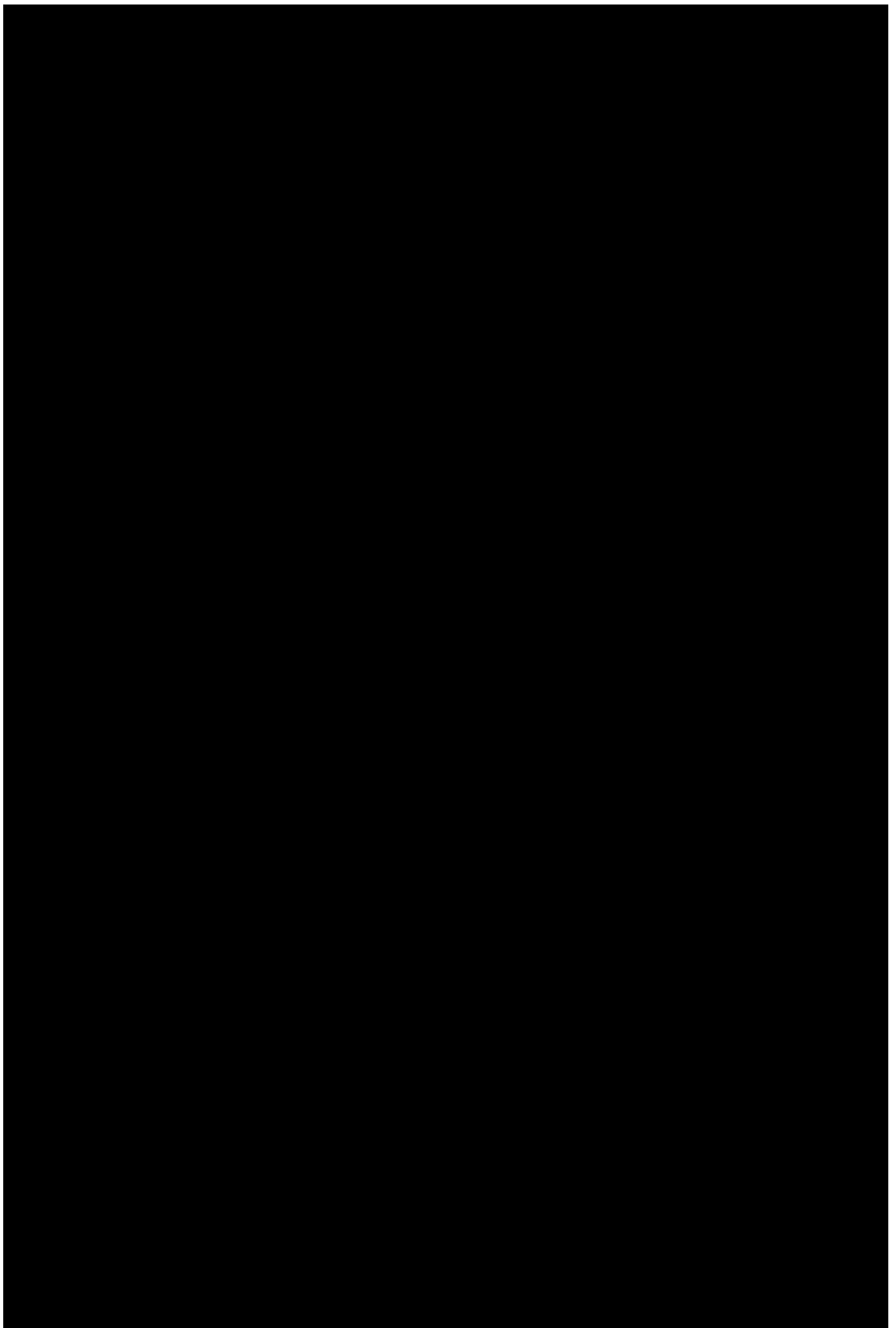


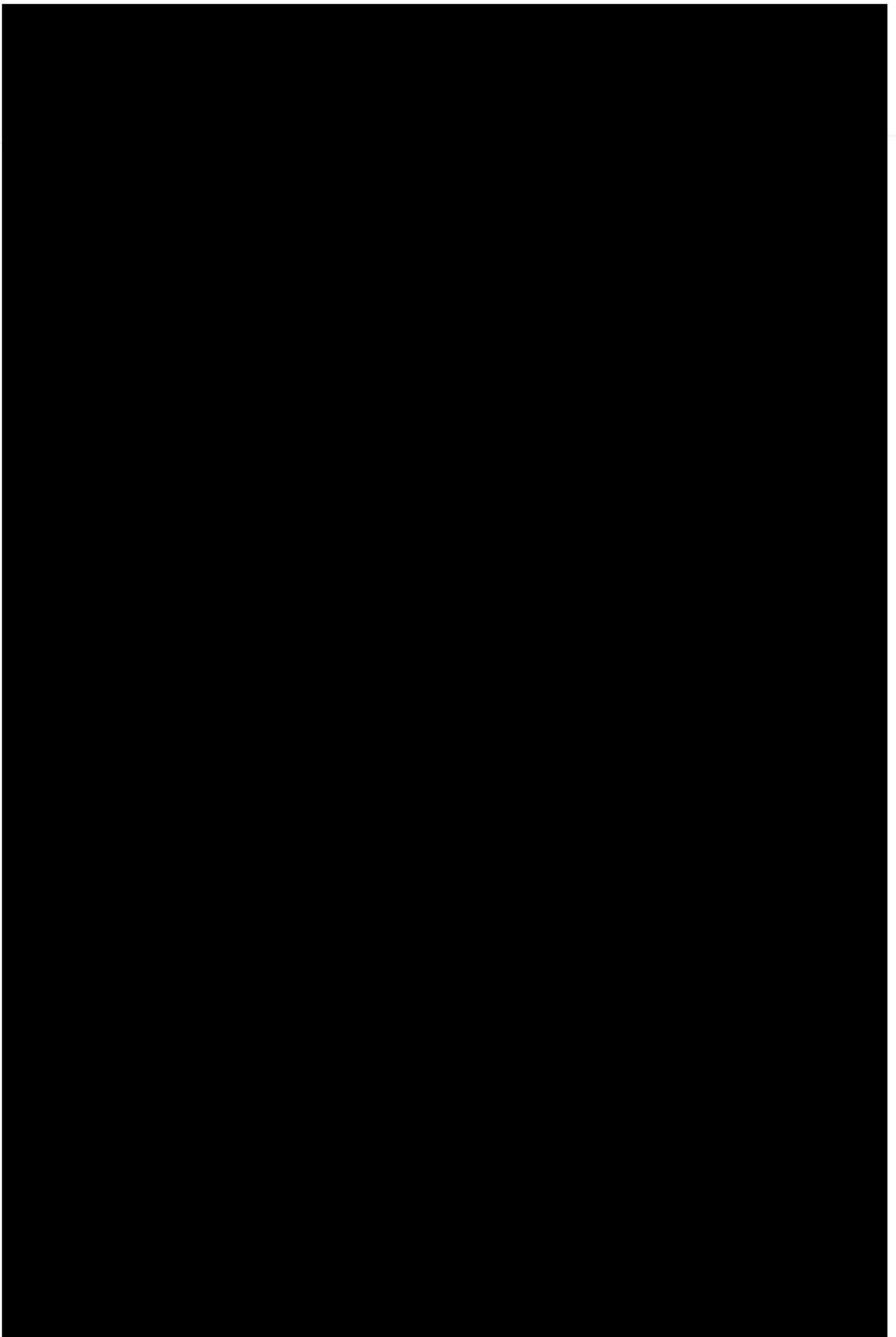


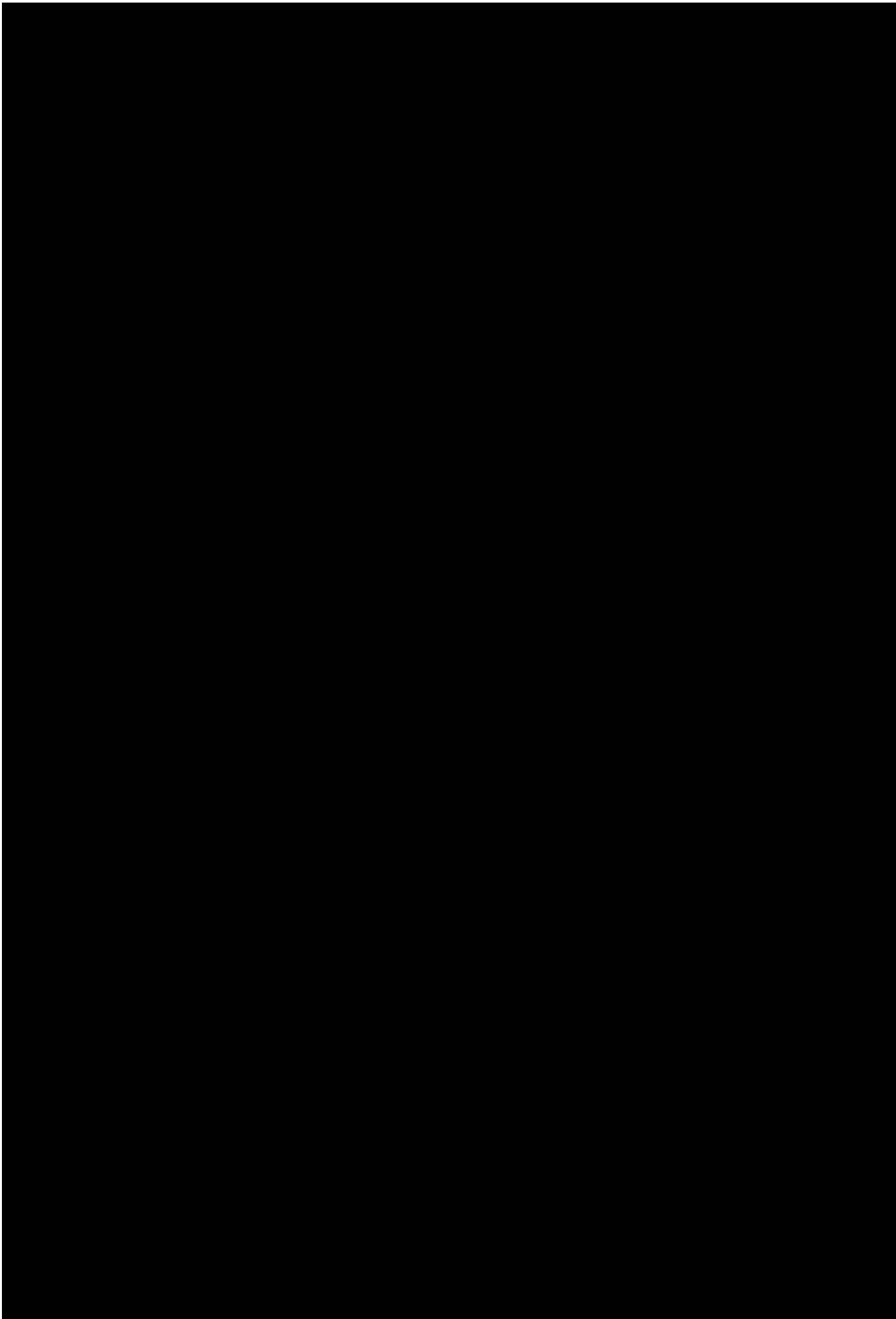


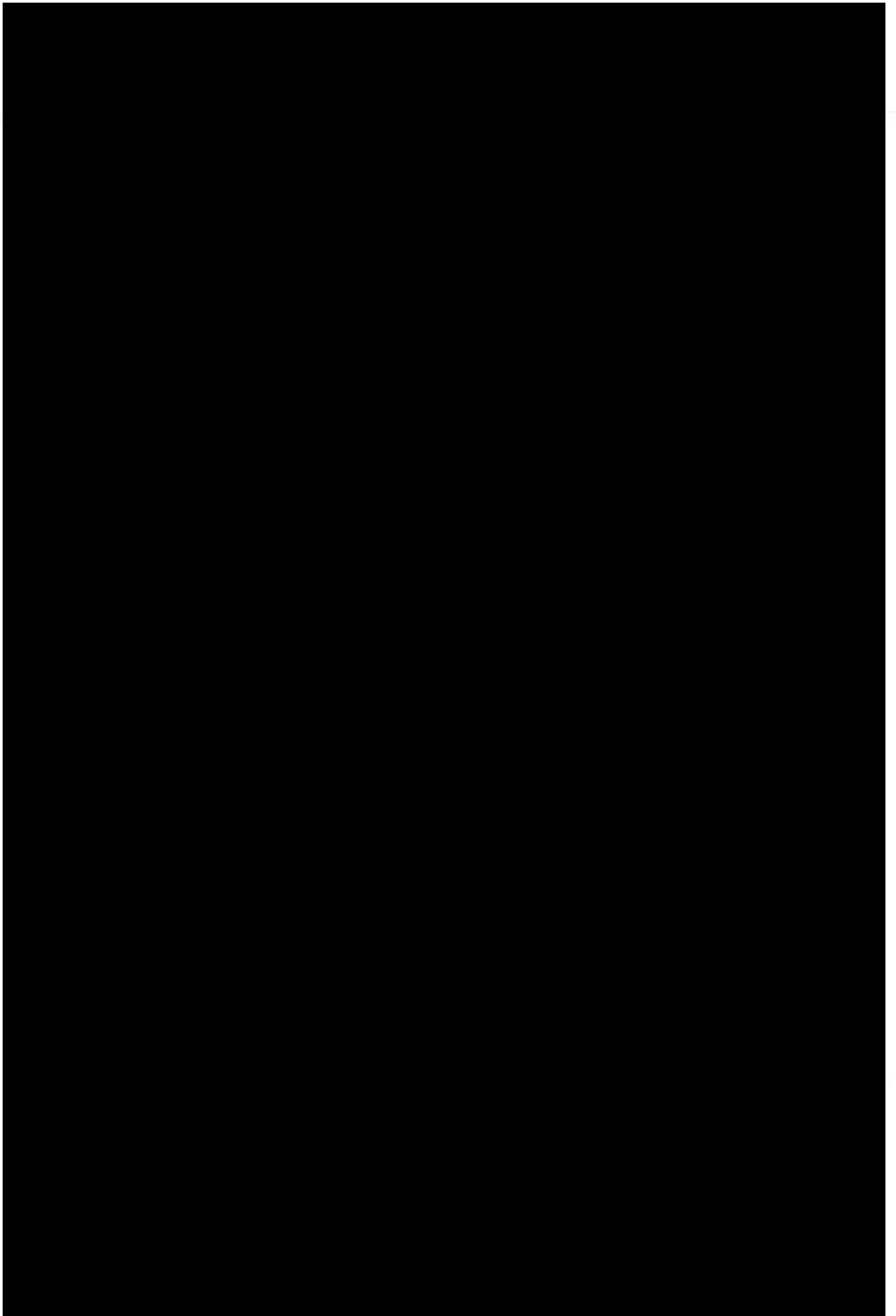


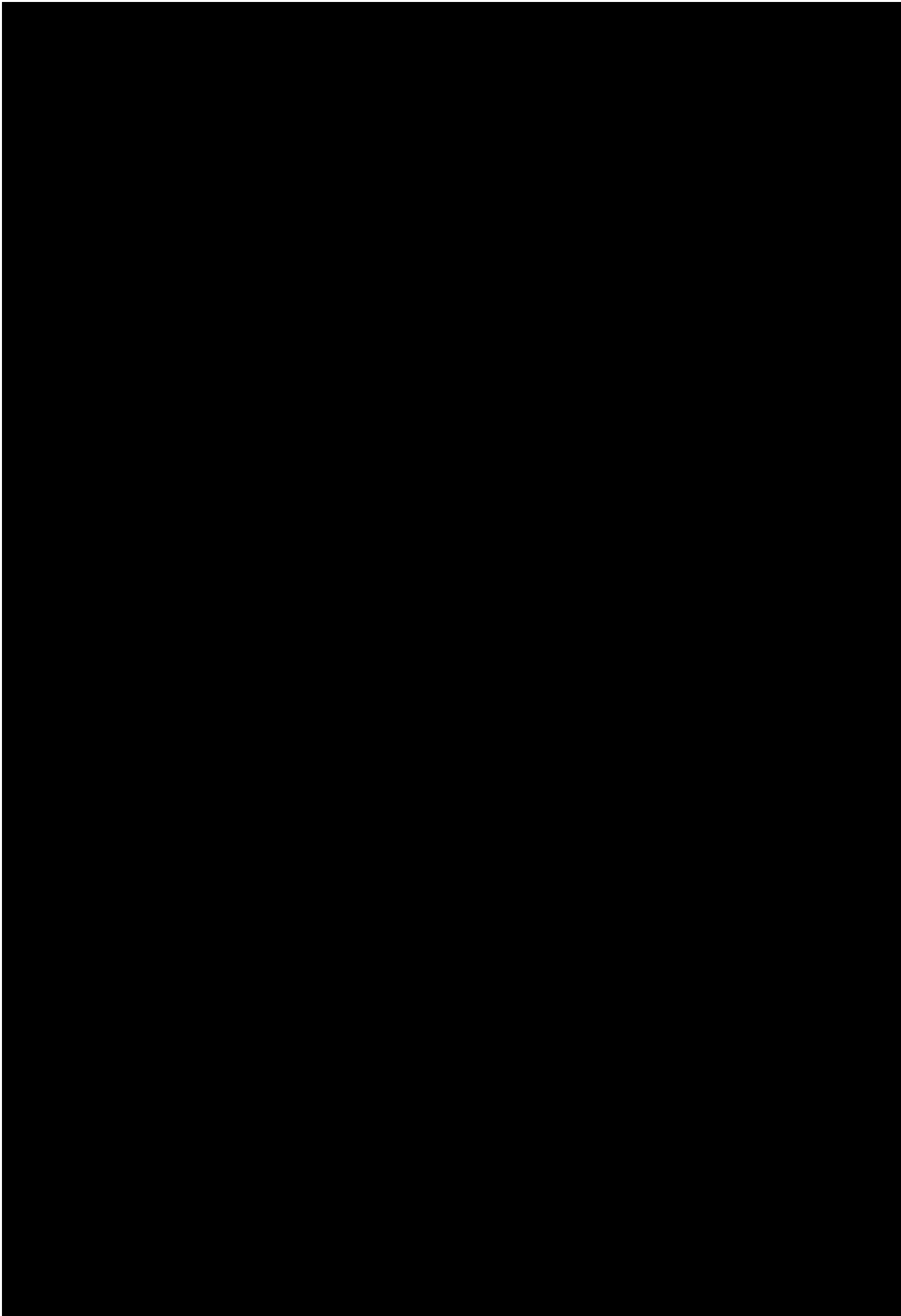


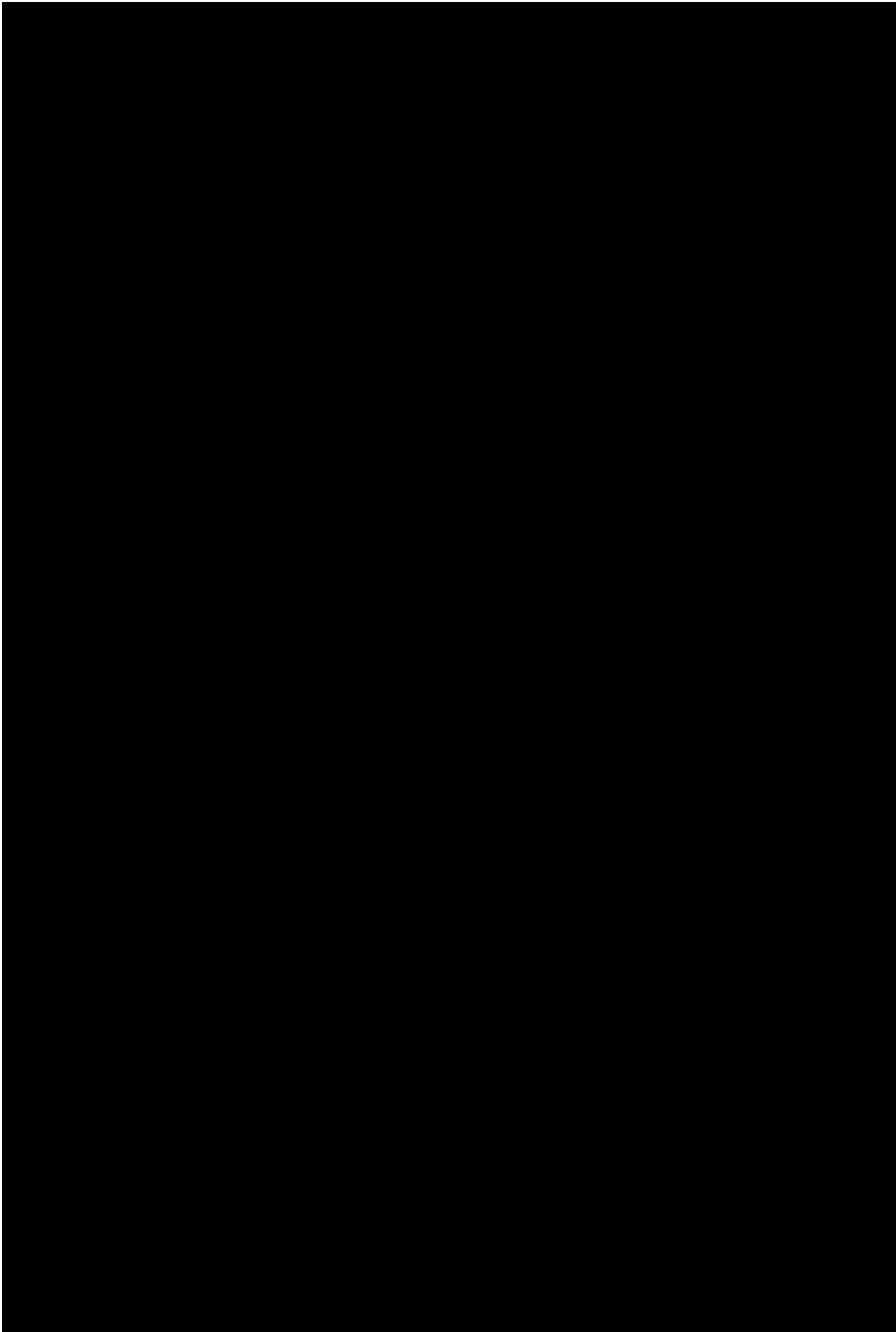


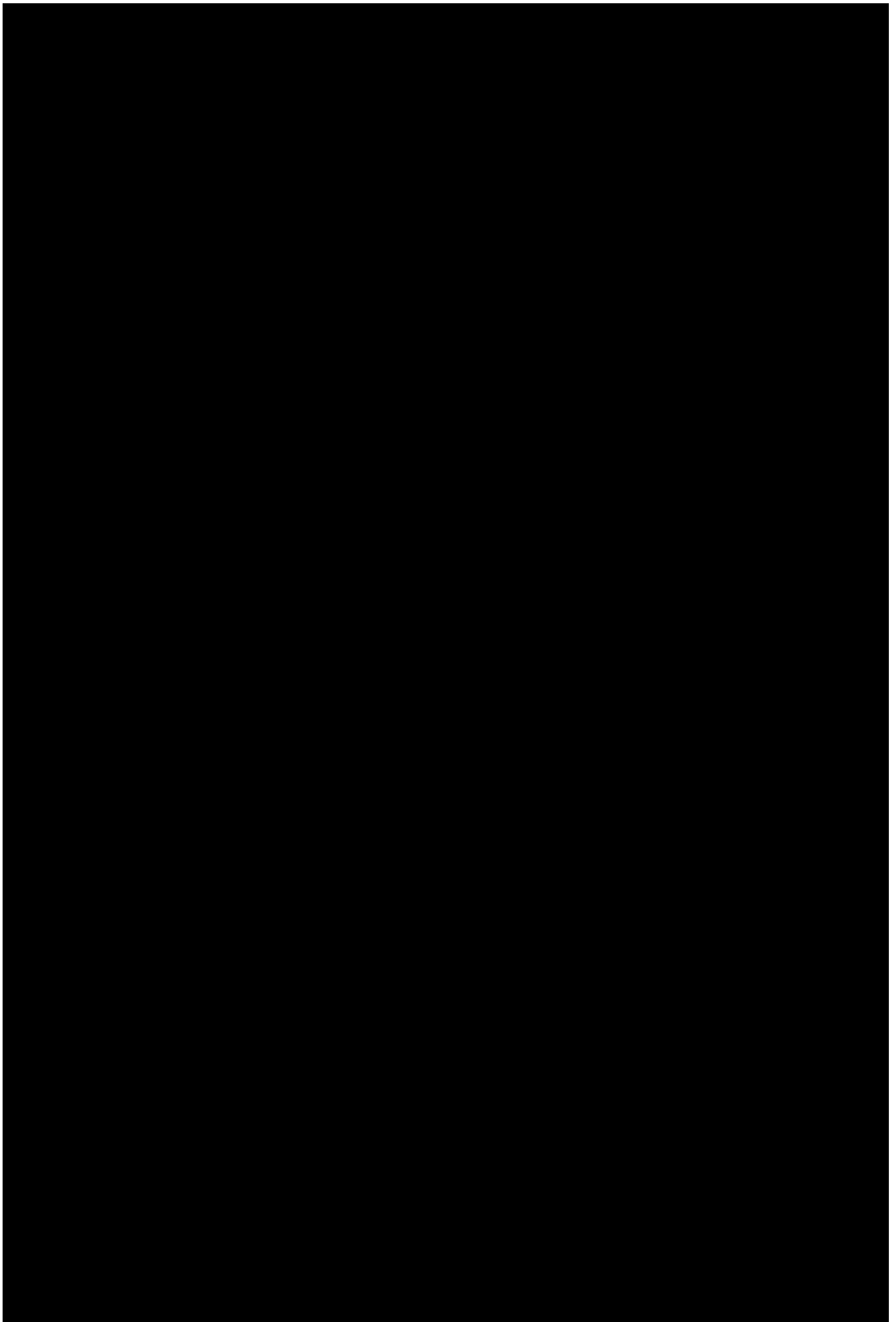




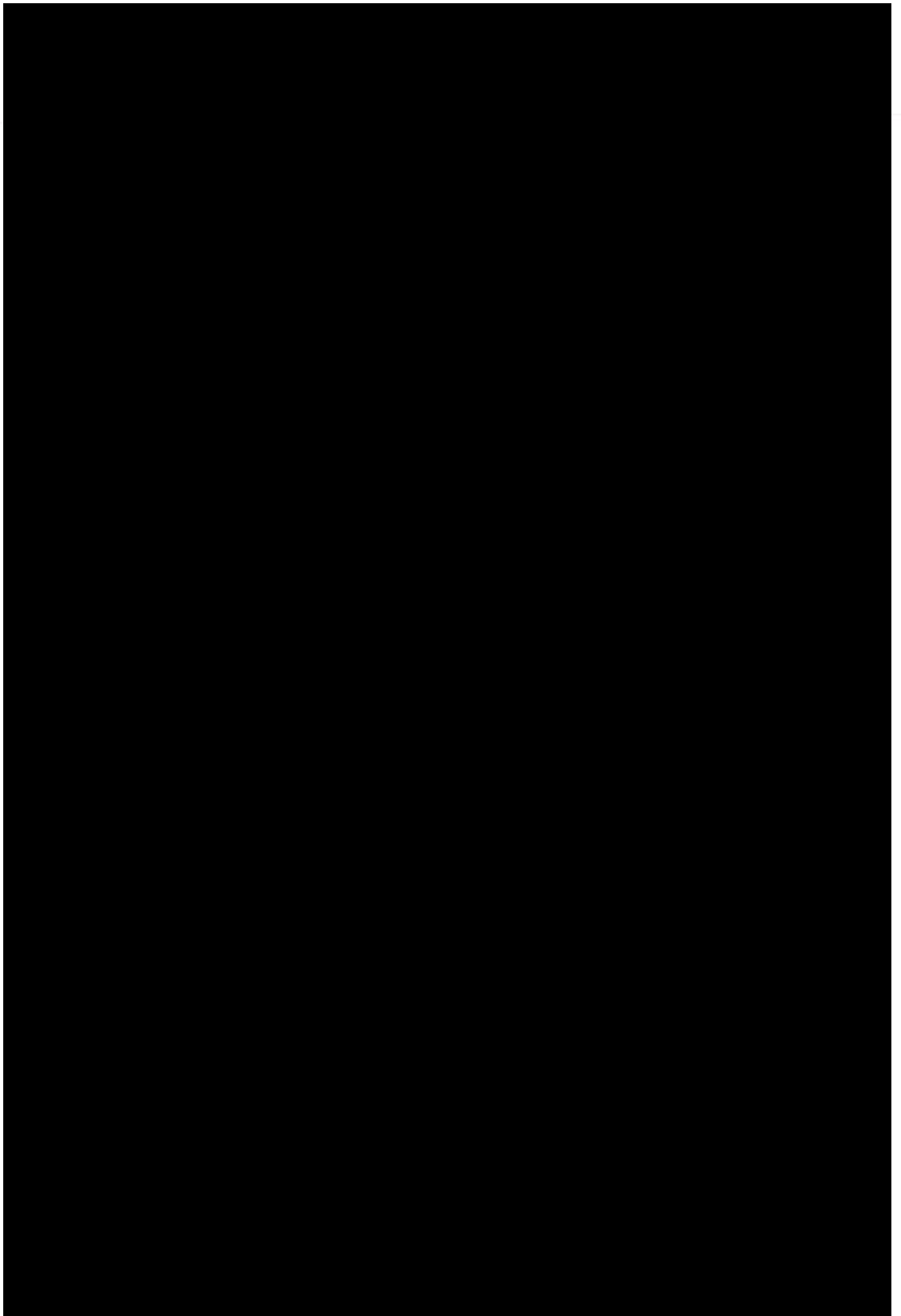


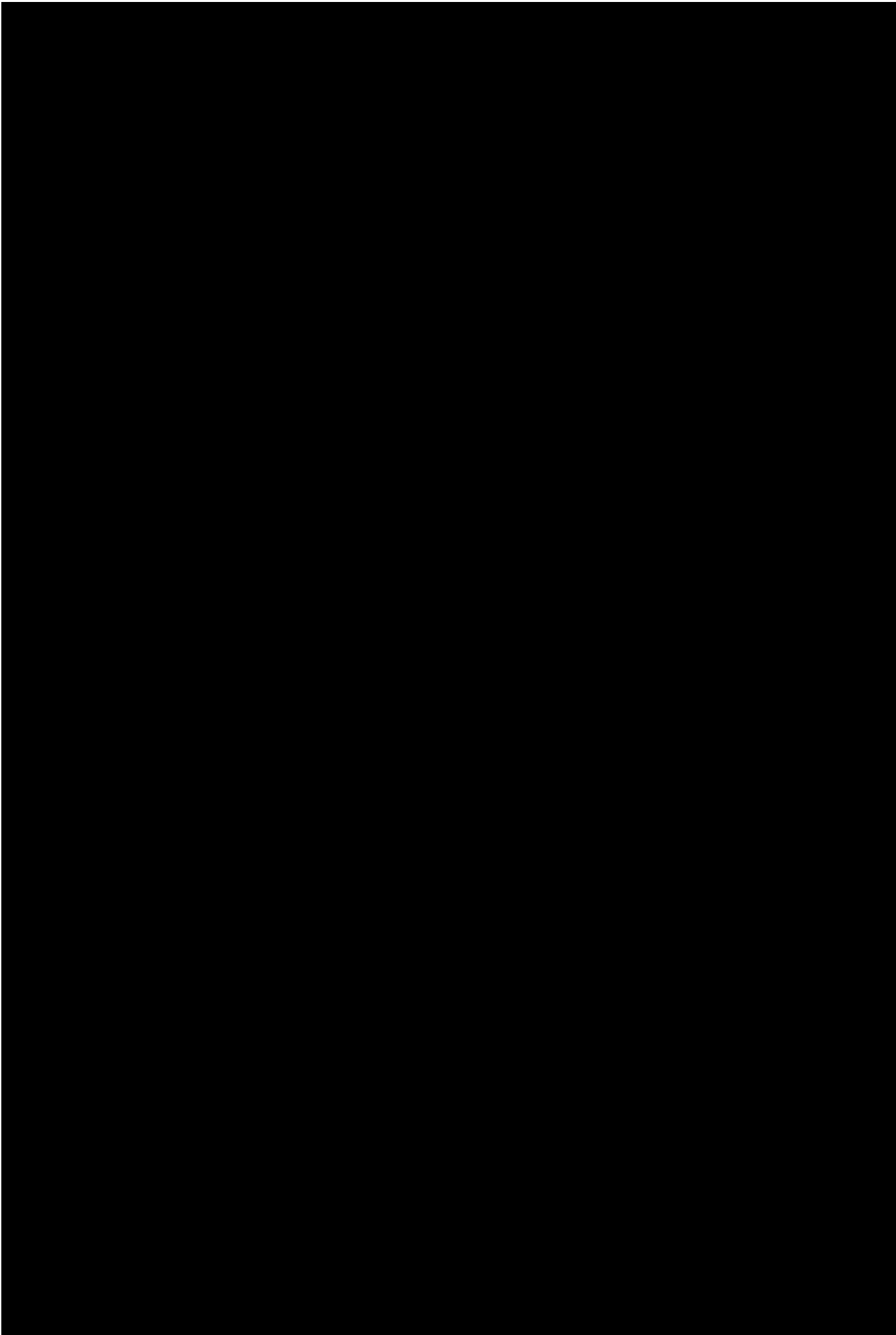


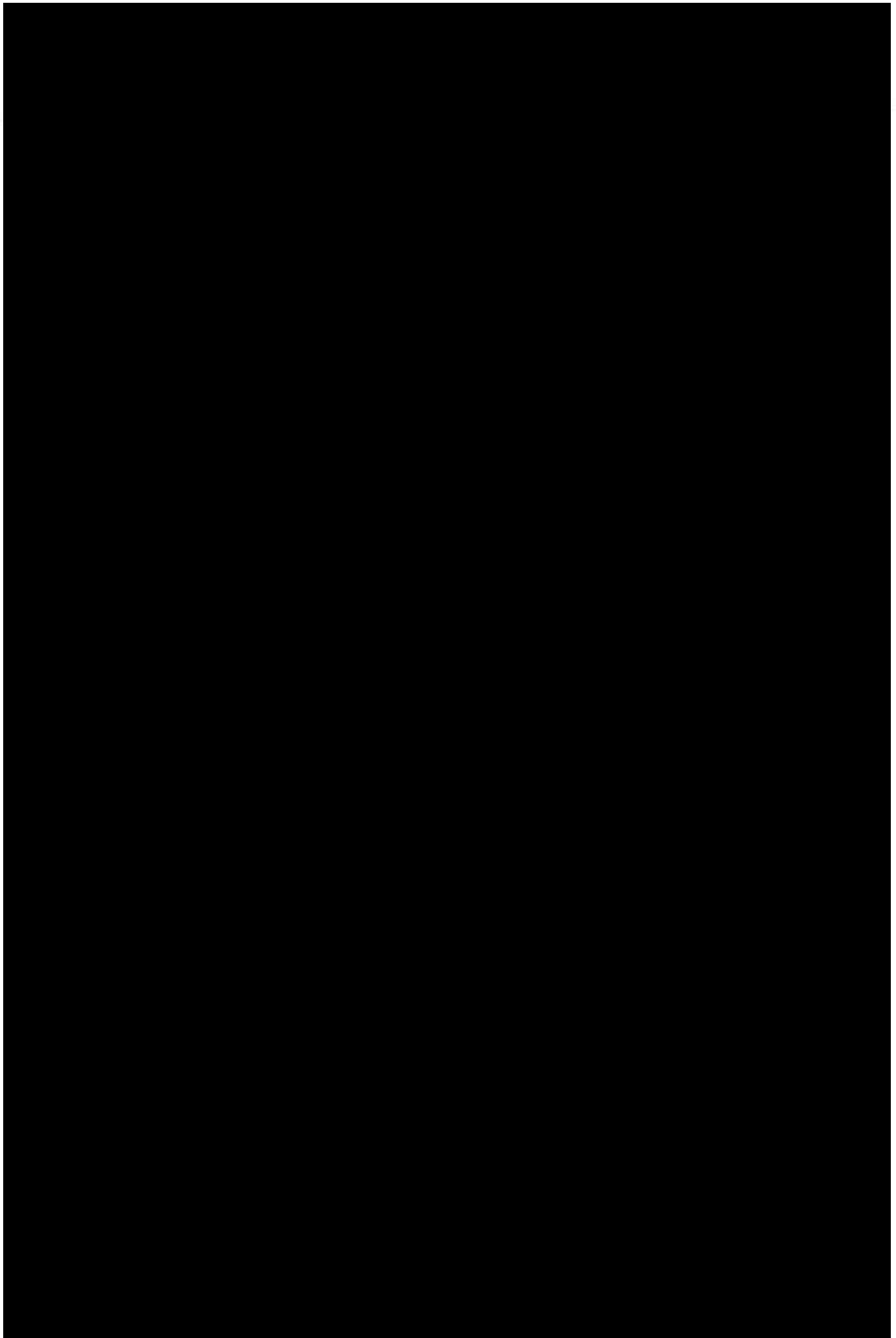


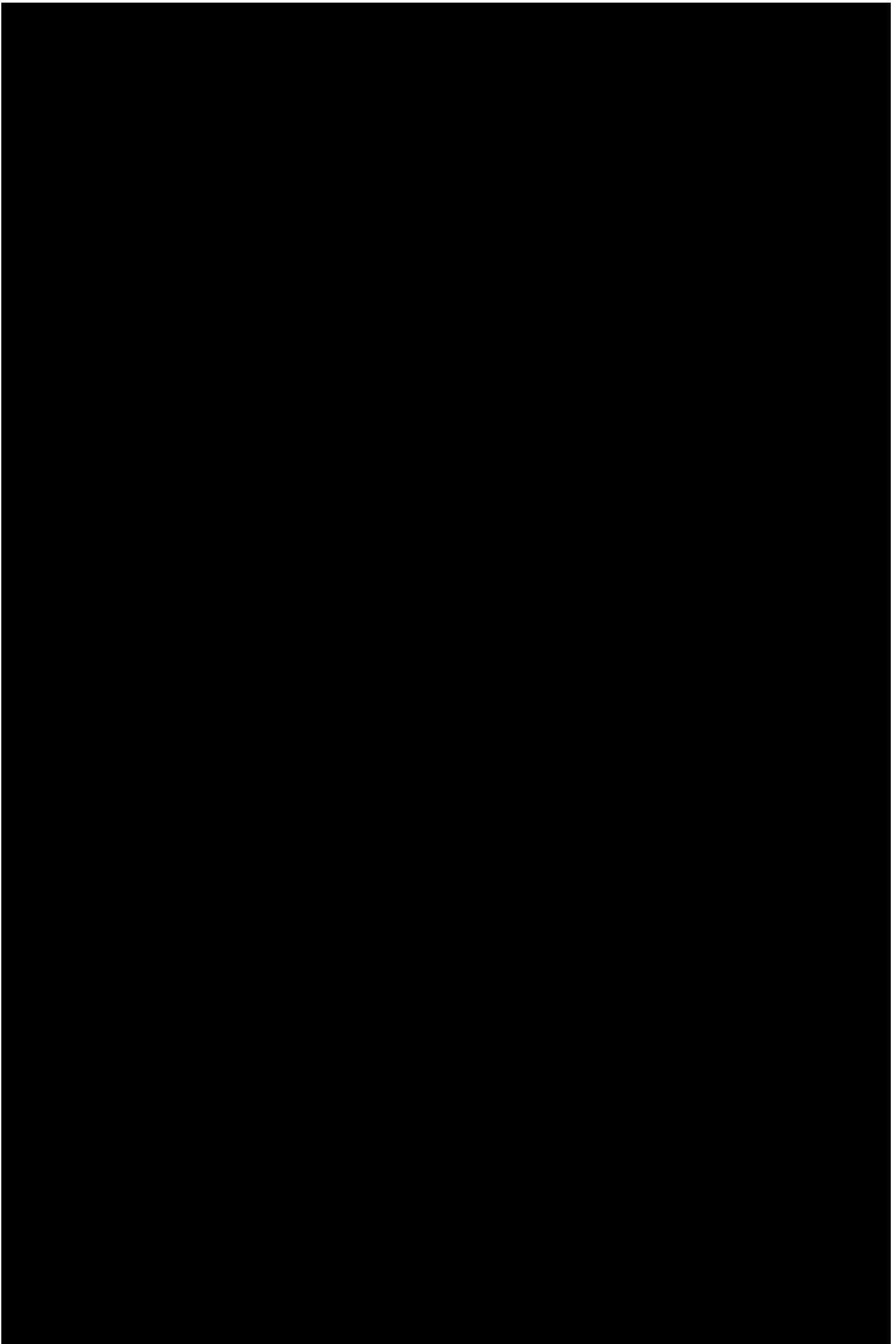


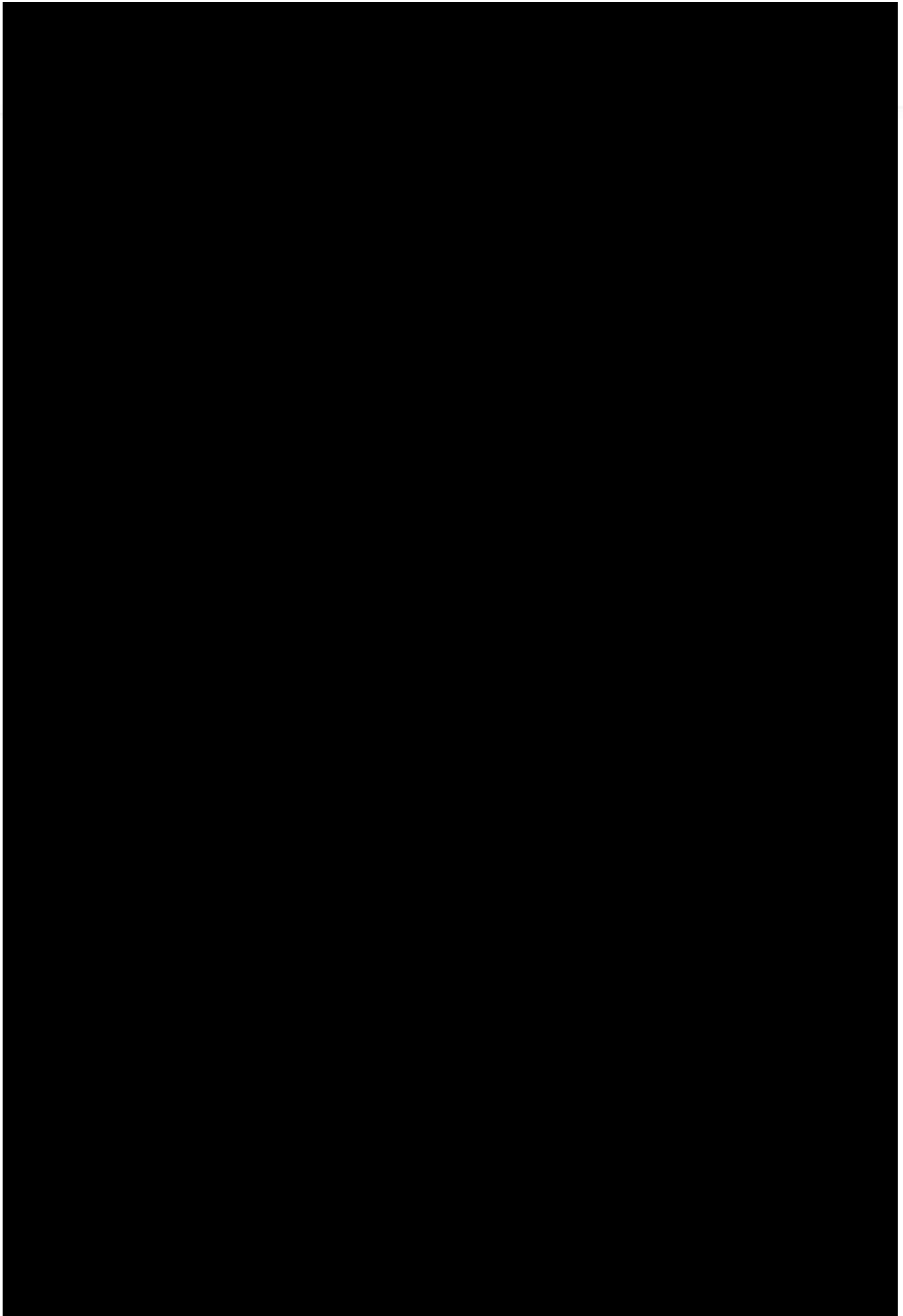


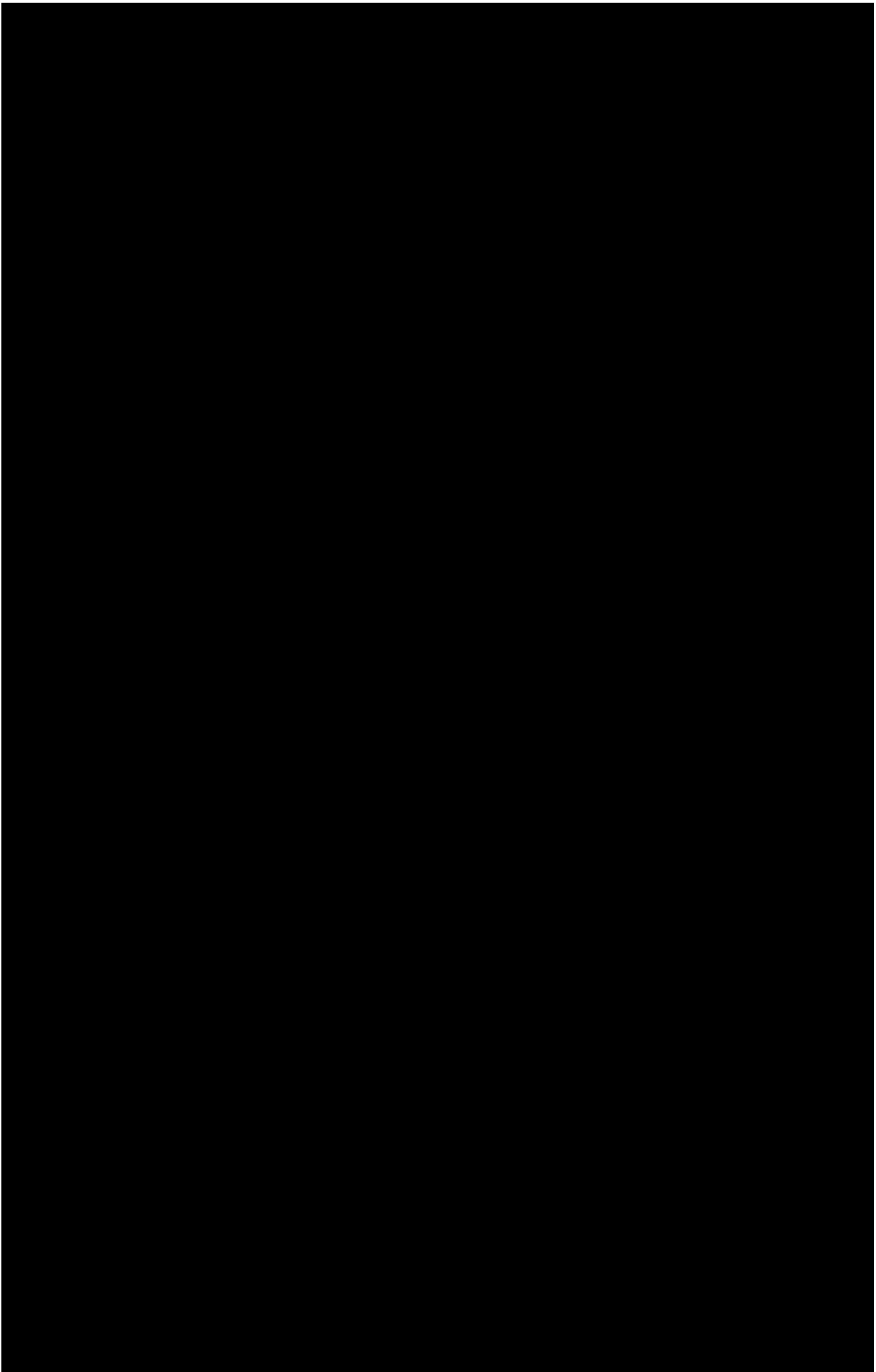


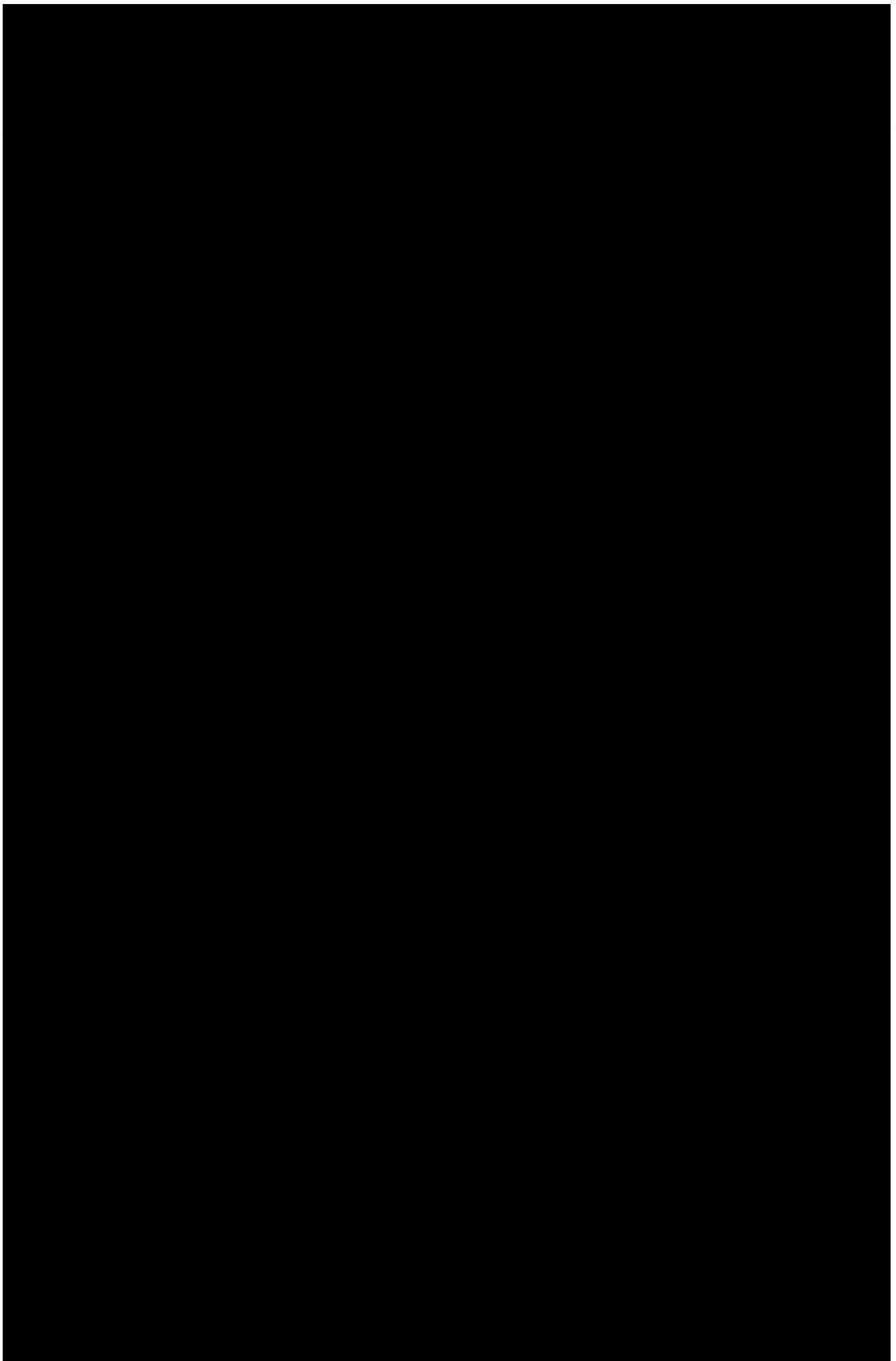


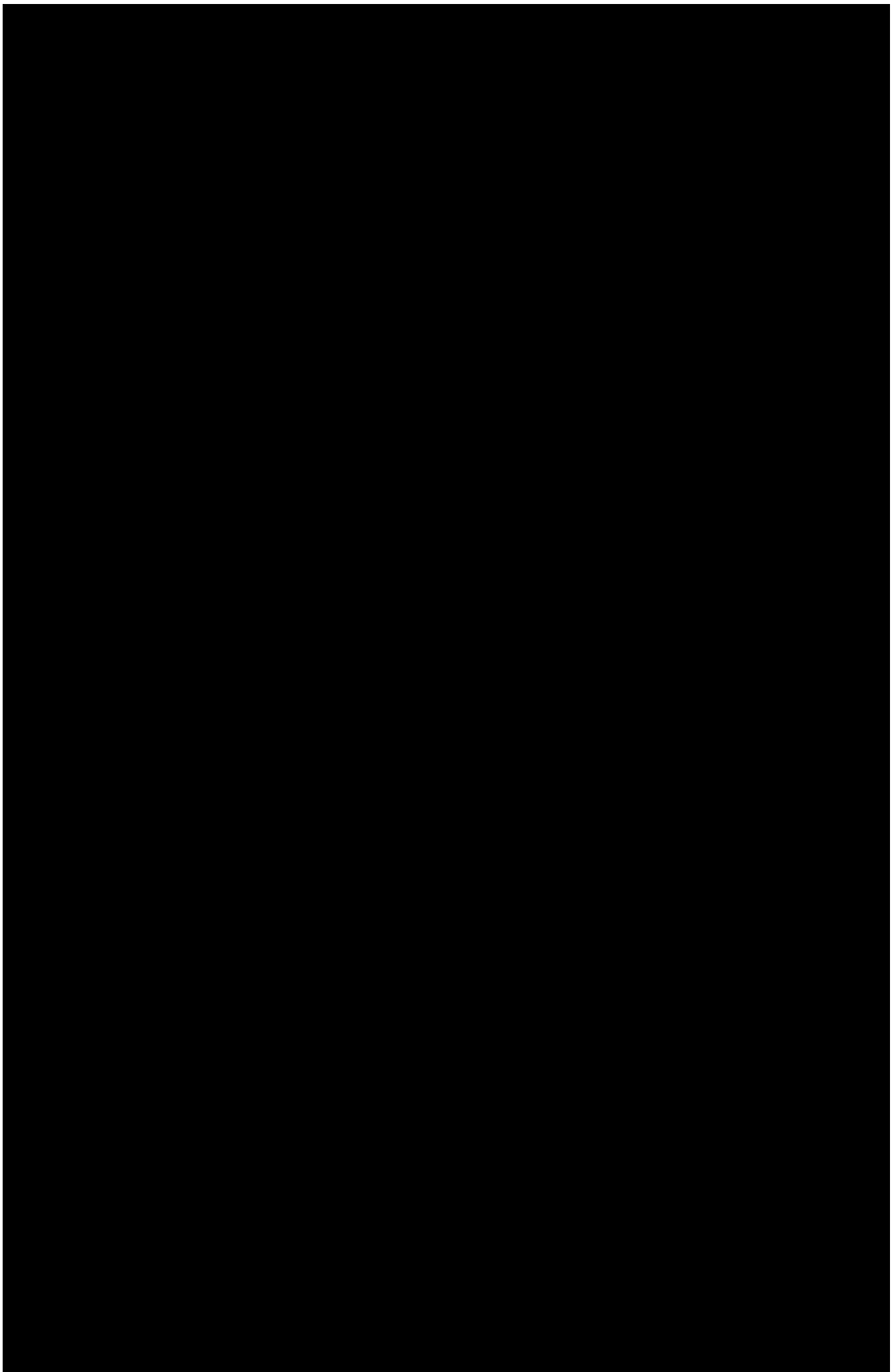




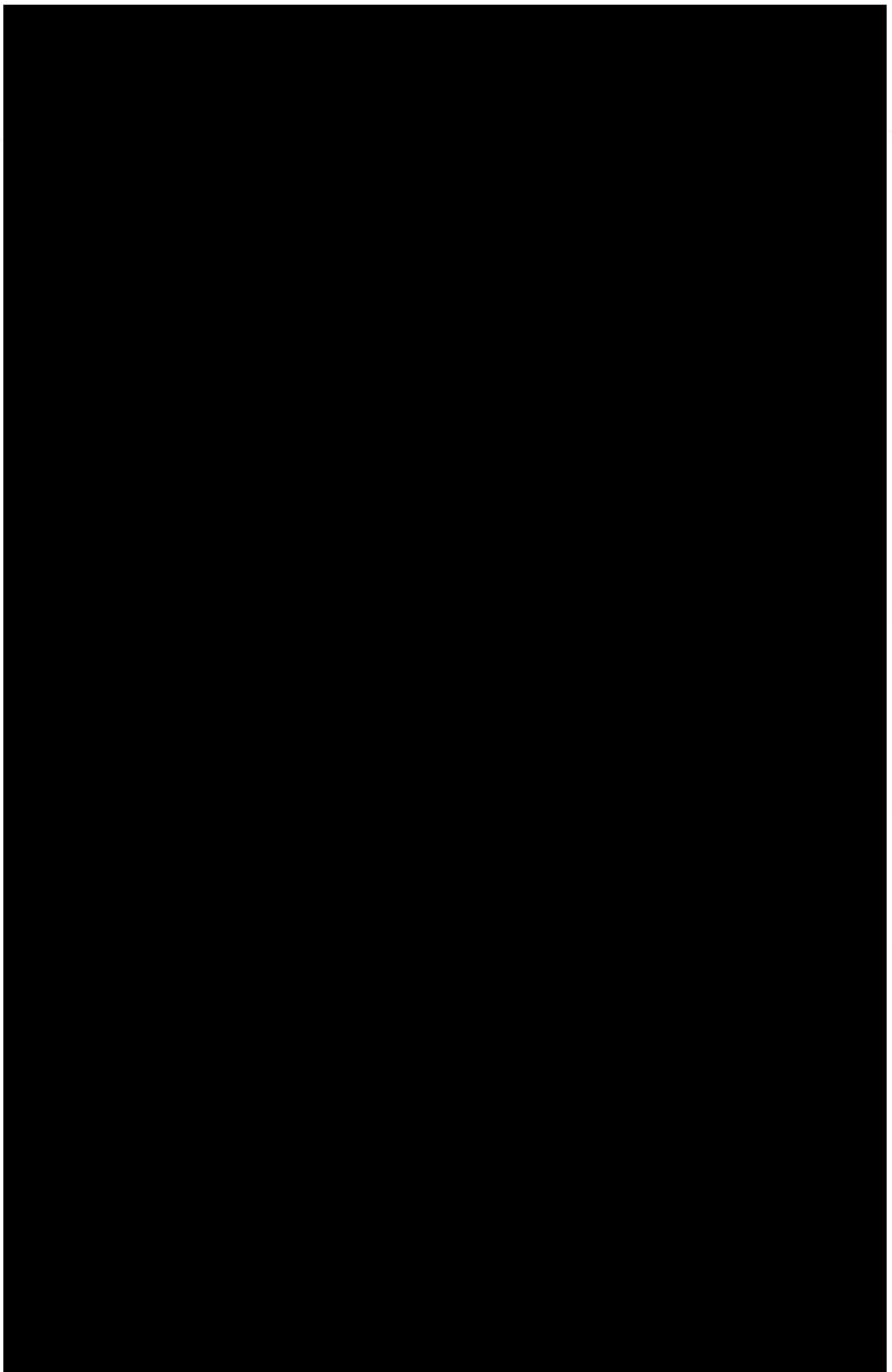


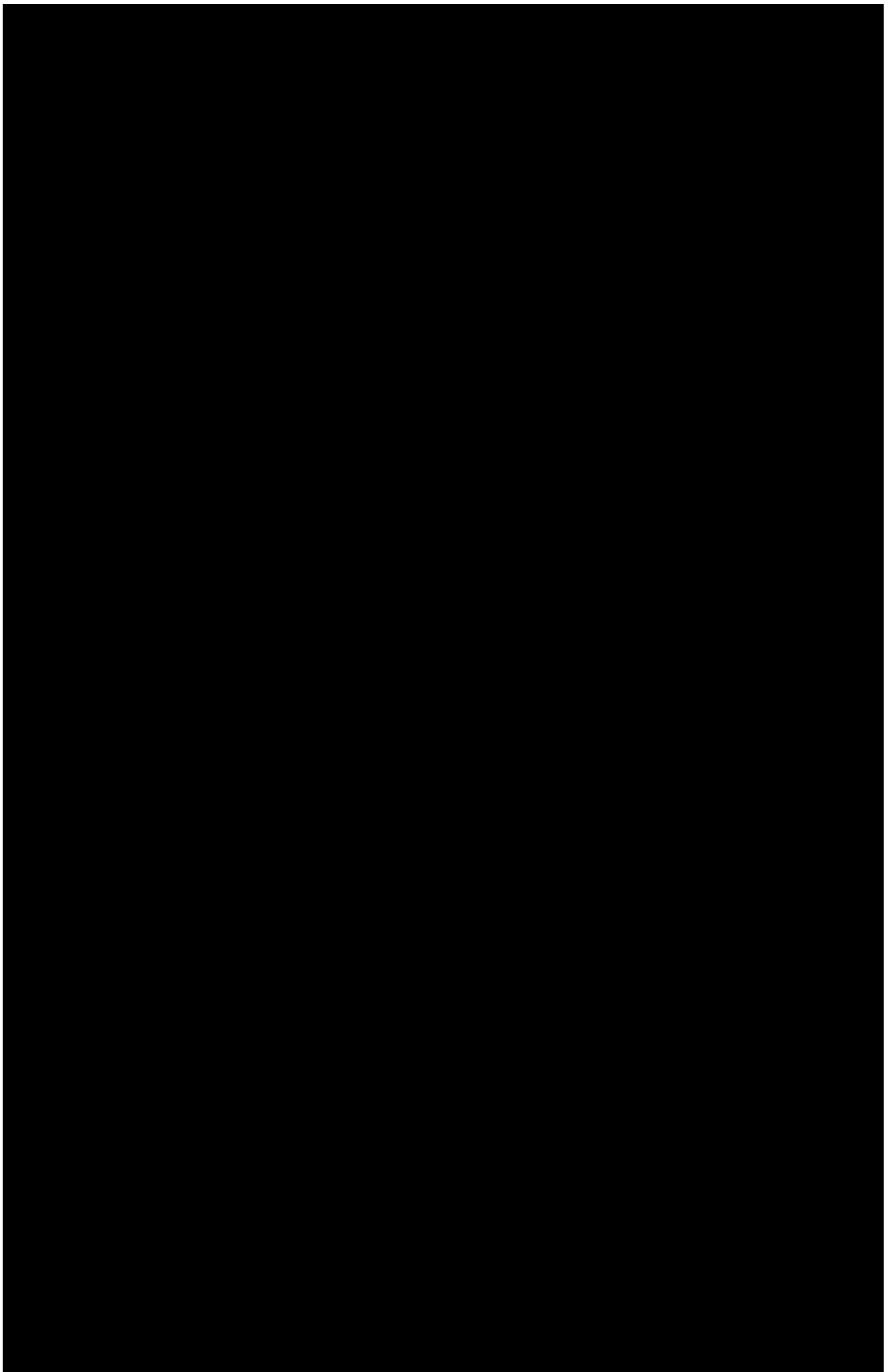


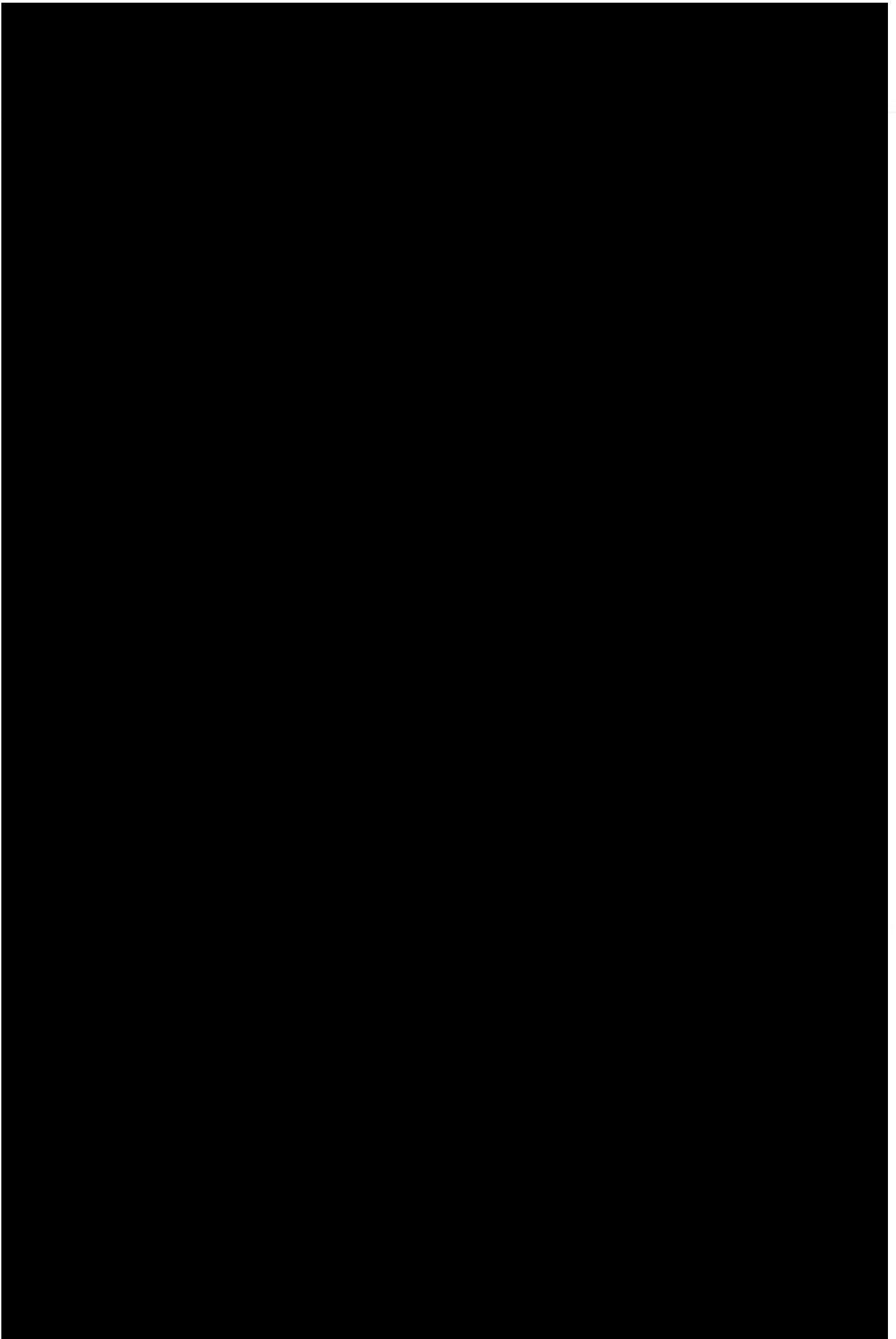















**SCHEDULE 7 – OPTIONS**

(Clause 17.5)

Option No.	1
Description:	# ("Option 1 Services")
Transaction Package	#
Scope of Services:	#
	 
Period for exercising Option 1:	Within # Business Days of the Commencement Date

**SCHEDULE 8 – NOT USED**

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**SCHEDULE 9 – NOT USED**

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**SCHEDULE 10 - EXPERT DETERMINATION AGREEMENT**

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**Expert Determination Agreement**

**[Insert name of Principal]**  
Principal

**[Insert name of Service Provider]**  
Contractor

**[Insert name of Expert]**  
Expert

**Expert Determination Agreement made at \_\_\_\_\_ on \_\_\_\_\_**

**Parties [Insert name and address of Principal] ("Principal")**

**[Insert name and address of Service Provider] ("Service Provider")**

**[Insert name and address of Expert agreed between the Parties or appointed pursuant to clause [to be inserted] of the PSC Contract] ("Expert")**

## Recitals

- A. The Principal and the Service Provider (together "**the Parties**" and each "**a Party**") are parties to a contract (the "**PSC Contract**") for *[to be inserted]*.
- B. By written notice dated *[to be inserted]*, the *[insert Principal or Service Provider as applicable]* has required that the matter described in Schedule 1, being a matter that the PSC Contract requires or permits to be referred to an Expert for determination, be determined by an Expert appointed under clause 19.3 of the PSC Contract (the "**Matter**").
- C. Pursuant to clause 20.3 of the PSC Contract, the Expert has been appointed to determine the Matter in accordance with the process set out in this Agreement.

## Operative part

### 1. APPOINTMENT OF EXPERT

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

### 2. CONFIDENTIALITY

All proceedings and submissions relating to the determination (including the fact that any step in the determination is occurring), and all documents prepared for the purposes of



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

**3. COSTS AND FEES**

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

**4. EXCLUSION OF LIABILITY AND INDEMNITY**

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

**5. CO-OPERATION OF THE PARTIES**

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

**6. GOVERNING LAW**

This Agreement is governed by and is to be construed in accordance with the laws in force in the State of New South Wales.

**7. JURISDICTION**

- (a) The Parties and the Expert irrevocably submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the courts to which the appeals from those courts may be made.
- (b) The Parties and the Expert irrevocably waive any objection they may now or in the future have to the venue of any proceedings, and any claim they may now or in the future have that any proceeding has been brought in an inconvenient forum, where that venue falls within clause 7(a).

**Schedule 1 - The Matter**

*[To be inserted when it comes time for expert determination]*

---

**Schedule 2 - Rules for Expert Determination Process****1. Commencement**

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

**2. Written Submissions**

2.1 Within 7 days after the date this process begins, Party A (ie the Party who gave notice of dispute under clause 20.1 of the PSC Contract) must, in addition to any particulars provided by Party A under clause 20.1 of the PSC Contract, give the other Party and the Expert a written statement of the Matter referred for Expert determination, any agreed statement of facts and a written submission on the Matter in support of Party A's contentions.

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

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

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

**3. Conference**

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

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

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

3.4 The Parties:

- (a) may be accompanied at a conference by legal or other advisers; and
- (b) will be bound by any procedural directions as may be given by the Expert in relation to the conference both before and during the course of the conference.

3.5 The conference must be held in private.

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

**4. General**

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

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

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

4.3 The Expert must:

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

## 5. **The Determination**

5.1 As soon as possible after receipt of the submissions or after any conference and, in any event not later than 90 days after the Expert's acceptance of appointment, the Expert must:

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

5.2 The determination of the Expert must:

- (a) be in writing stating the Expert's determination and giving reasons;
- (b) be made on the basis of the submissions (if any) of the parties, the conference (if any) and the Expert's own expertise; and
- (c) meet the requirements of the PSC Contract.

5.3 Subject to clause 5.4, to the extent permitted by law, the Expert's determination will be final and binding on the Parties in the circumstances set out in clause 20.3(c) of the PSC Contract.

5.4 If the Expert's determination contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Expert must correct the determination.

## 6. **Costs**

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

7. **Modification**

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

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## **APPENDIX 1 TO RULES FOR EXPERT DETERMINATION PROCESS**

### **Code of Conduct for an Expert**

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

---

**Schedule 3 - The Expert's Fees and Disbursements**

*[To be inserted when it comes time for expert determination]*

**Signed** as an agreement.

**Signed** for and on behalf of the Principal by  
**[insert name]** in the presence of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name of witness]

\_\_\_\_\_  
[Signature of witness]

**Signed** for and on behalf of the Service  
Provider by  
**[insert name]** in the presence of:

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Name of witness]

\_\_\_\_\_  
[Signature of witness]

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

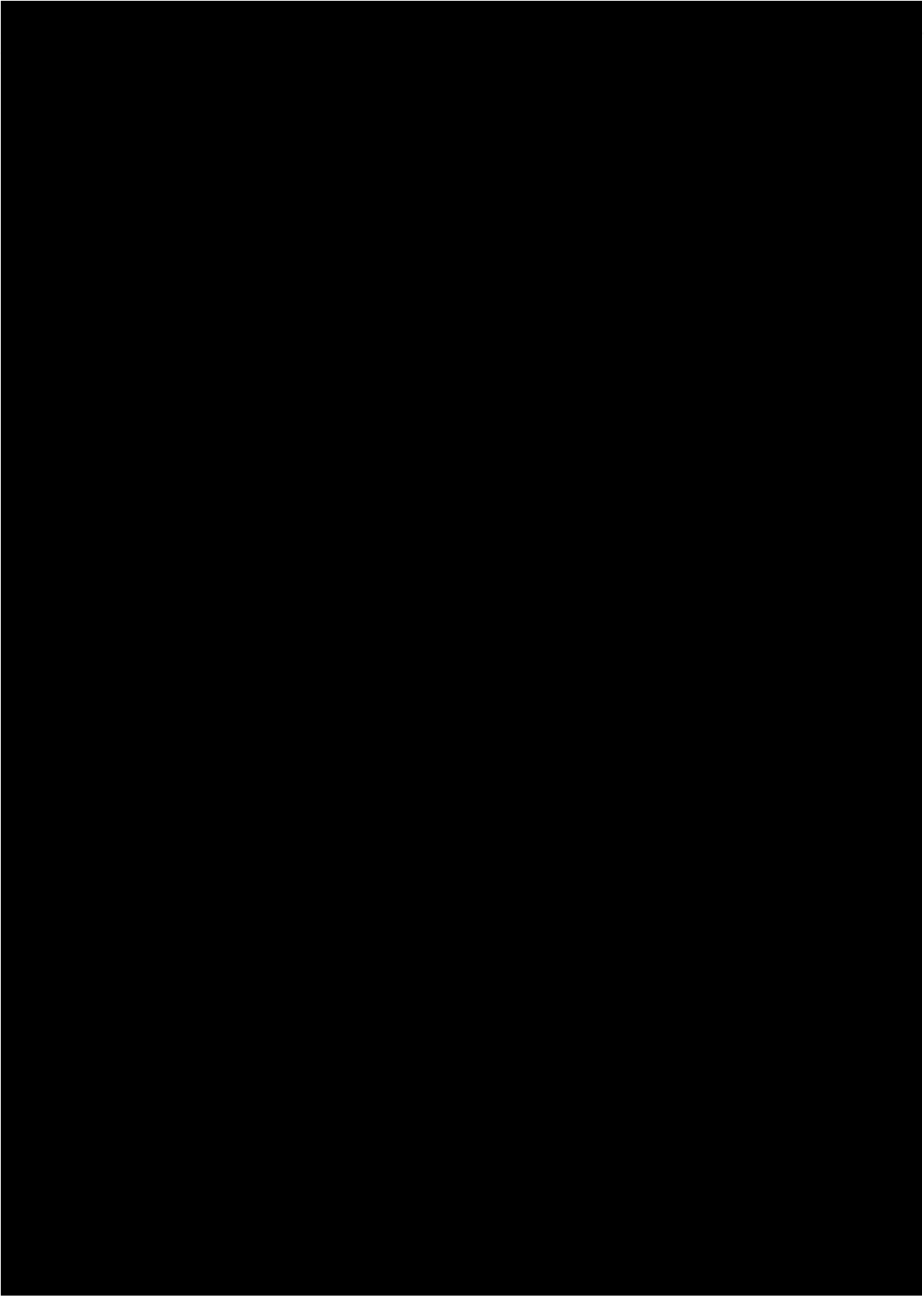
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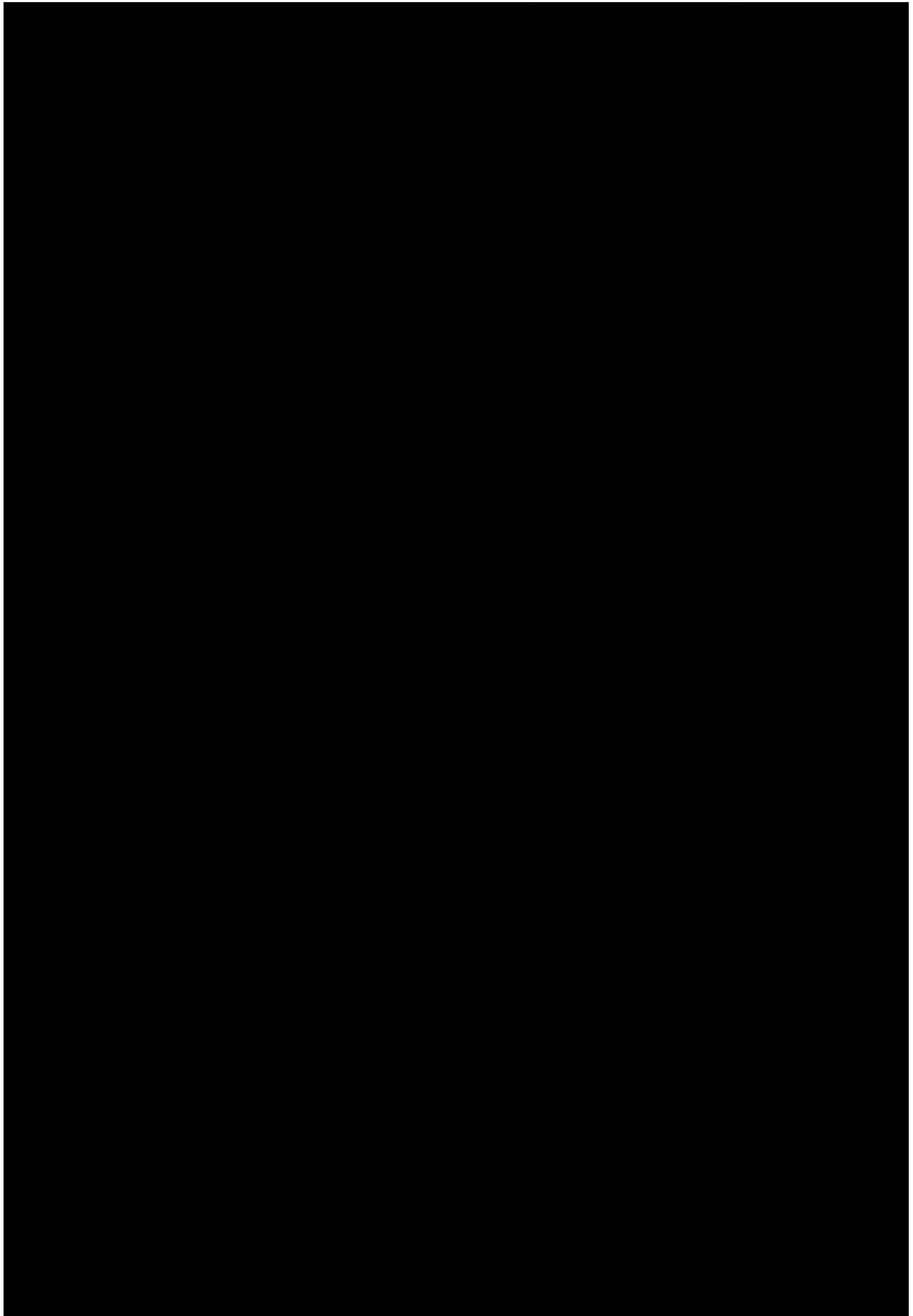
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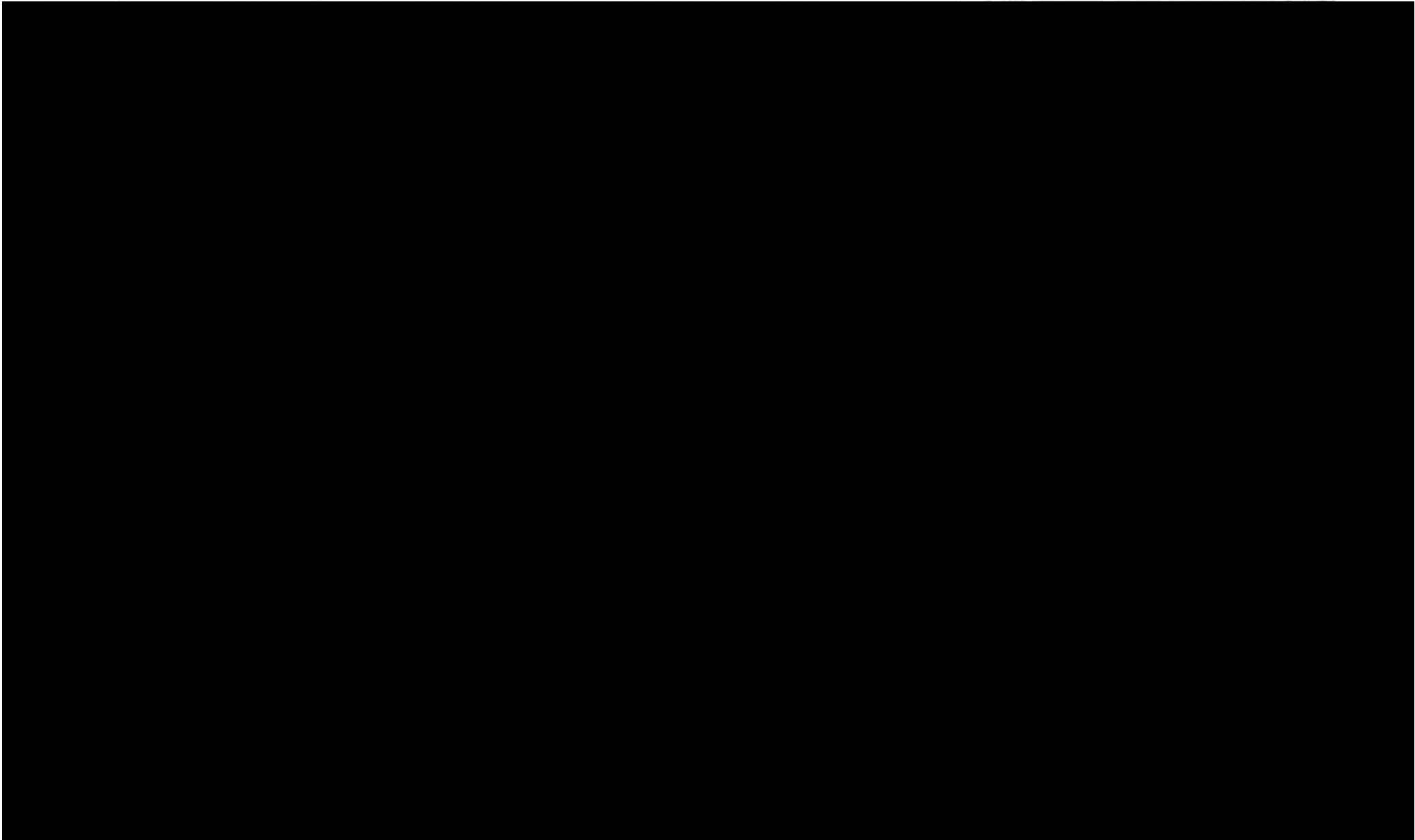
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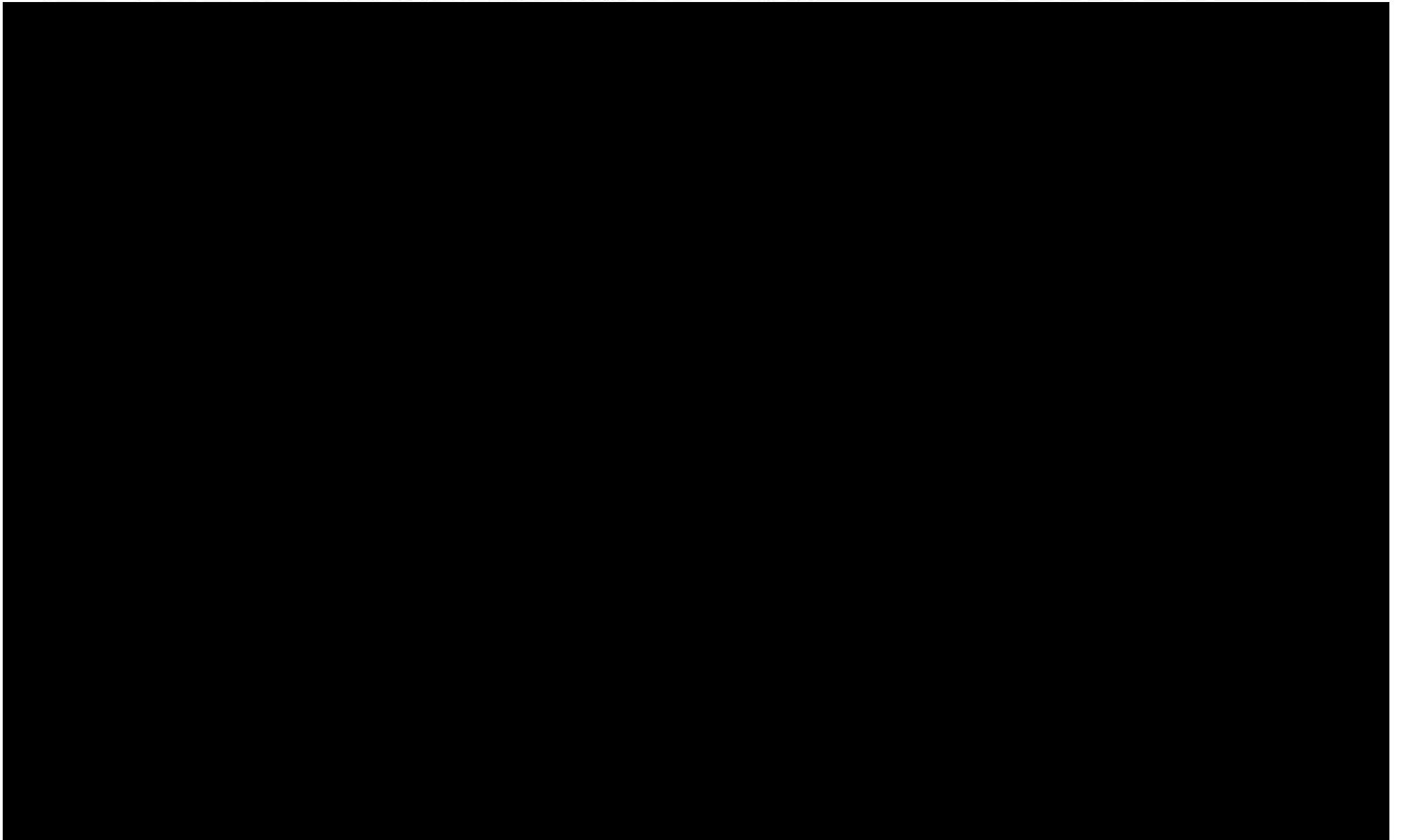


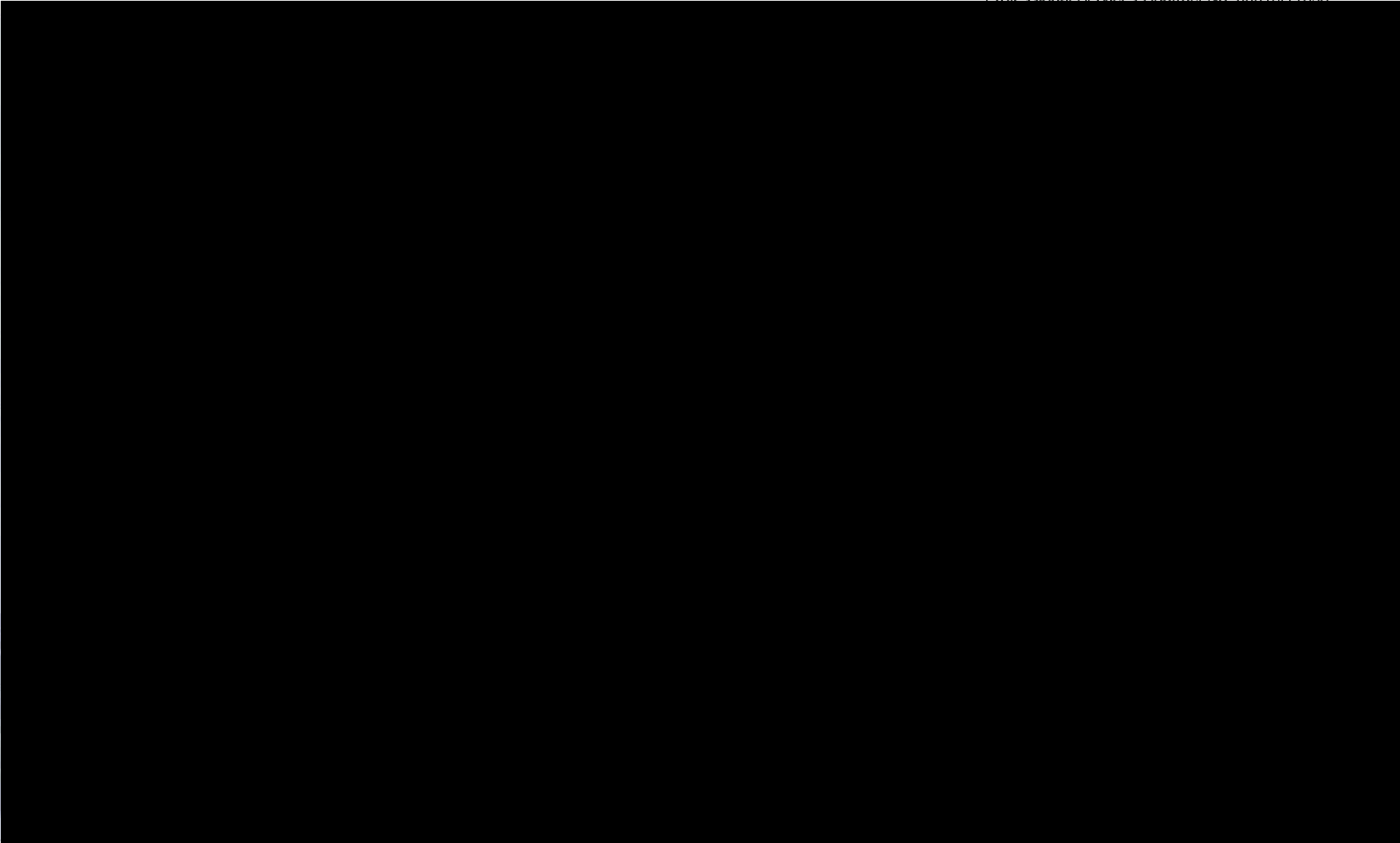
**SCHEDULE 11 – PERFORMANCE REGIME**

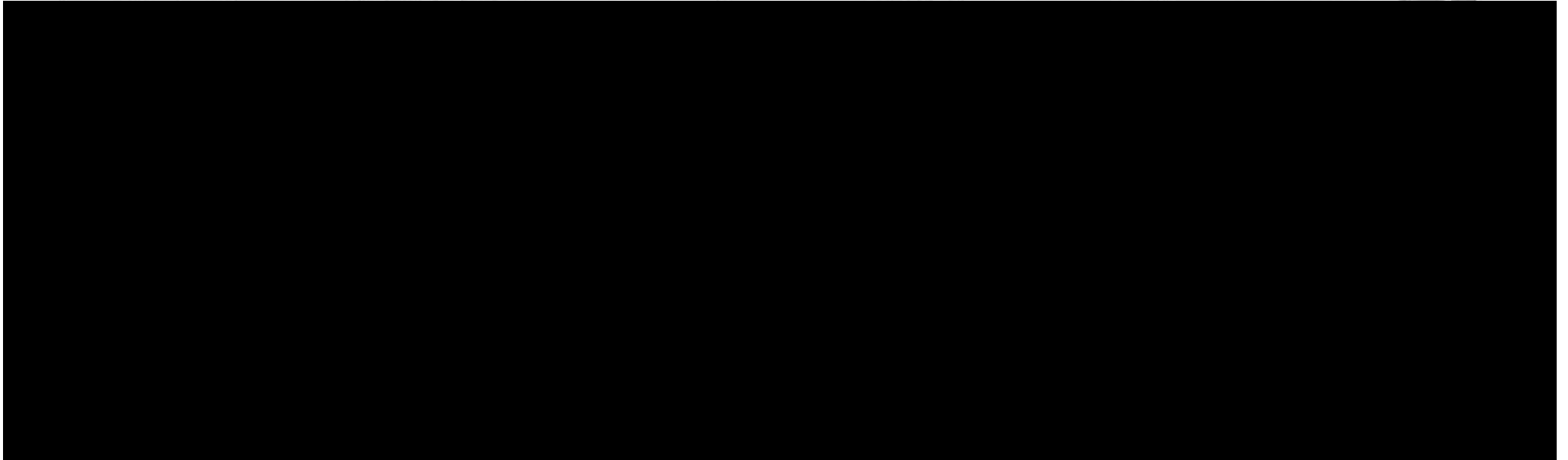








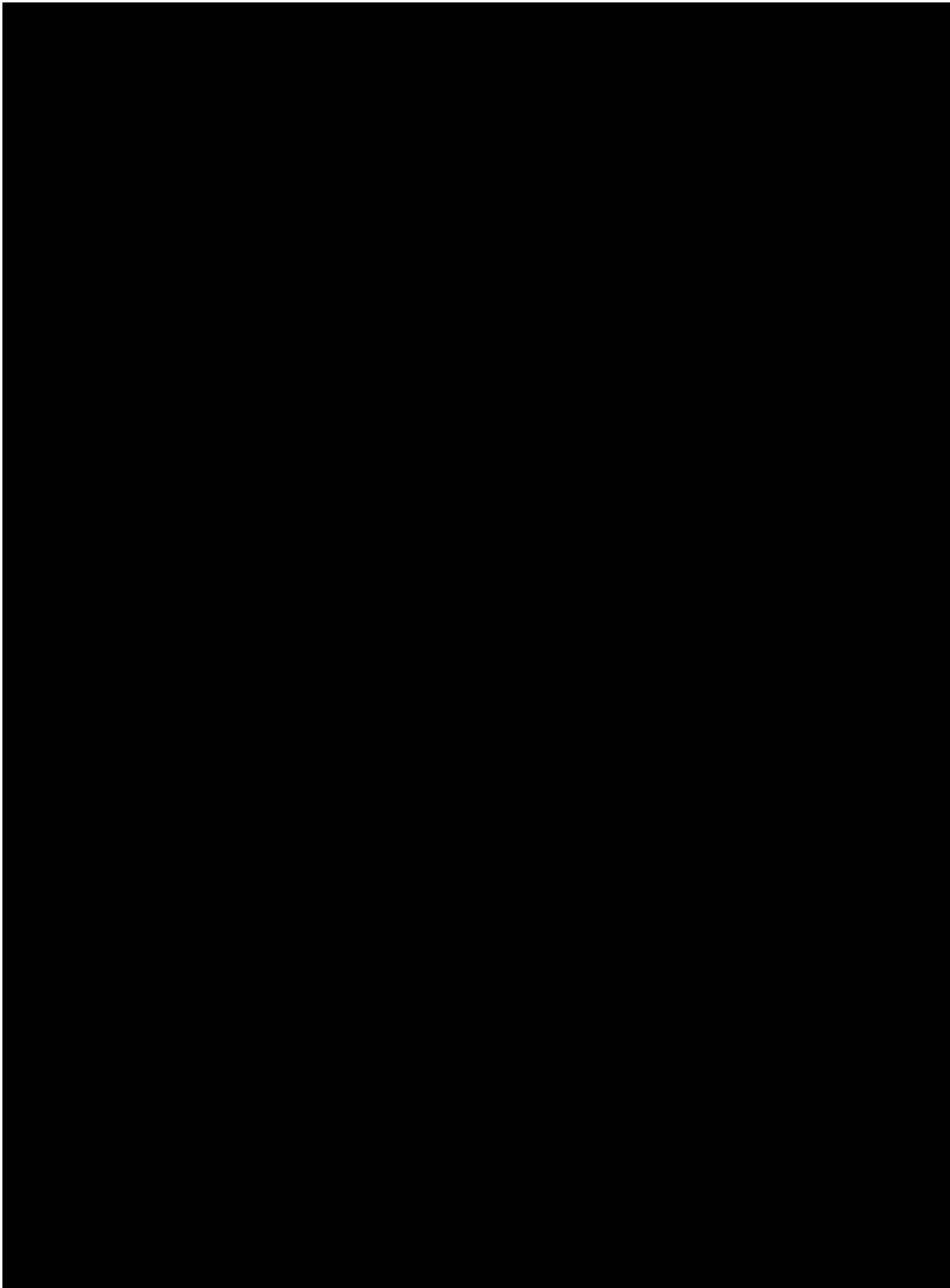




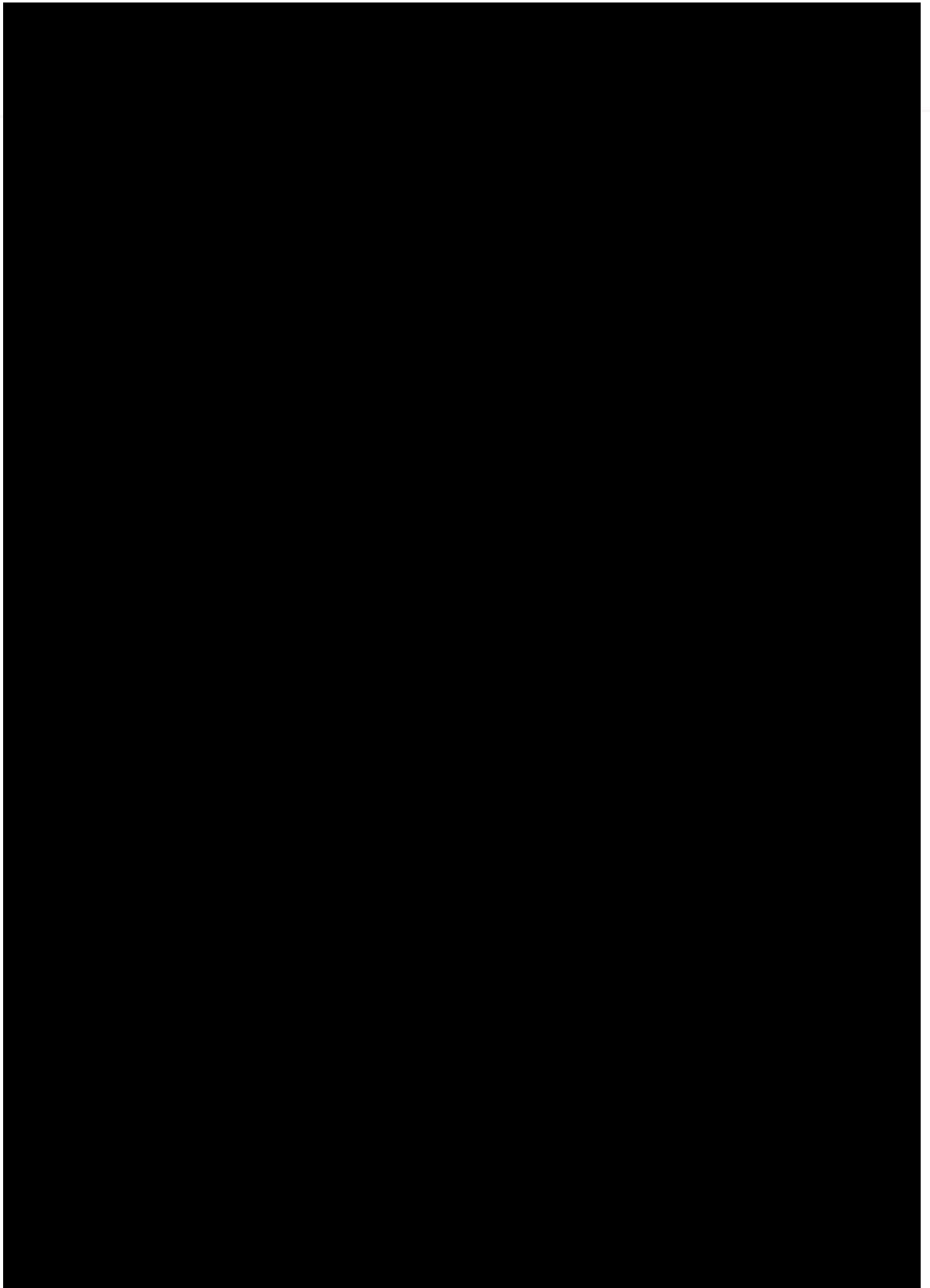
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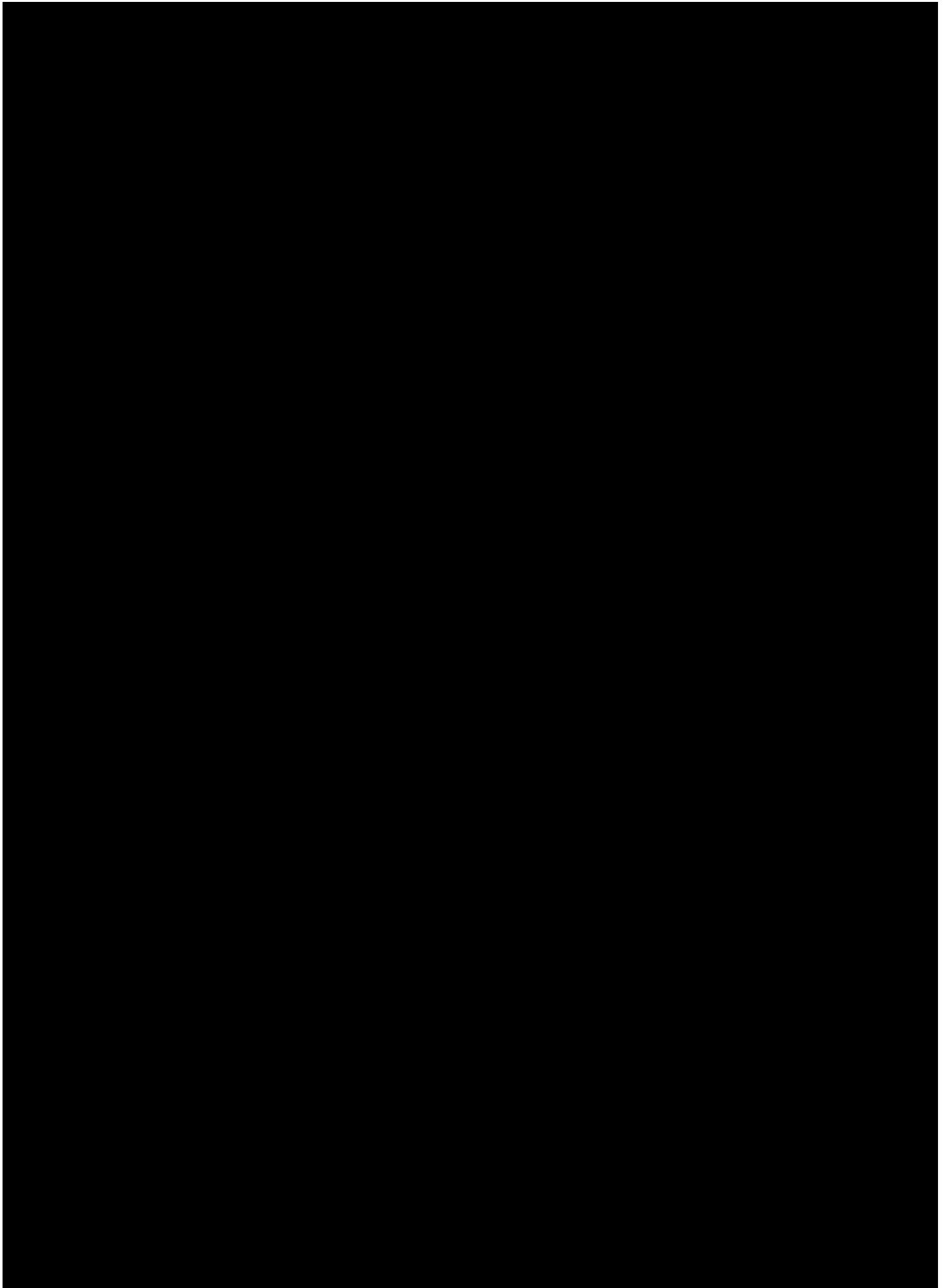
**SCHEDULE 12 – SERVICES MANAGEMENT PLAN**

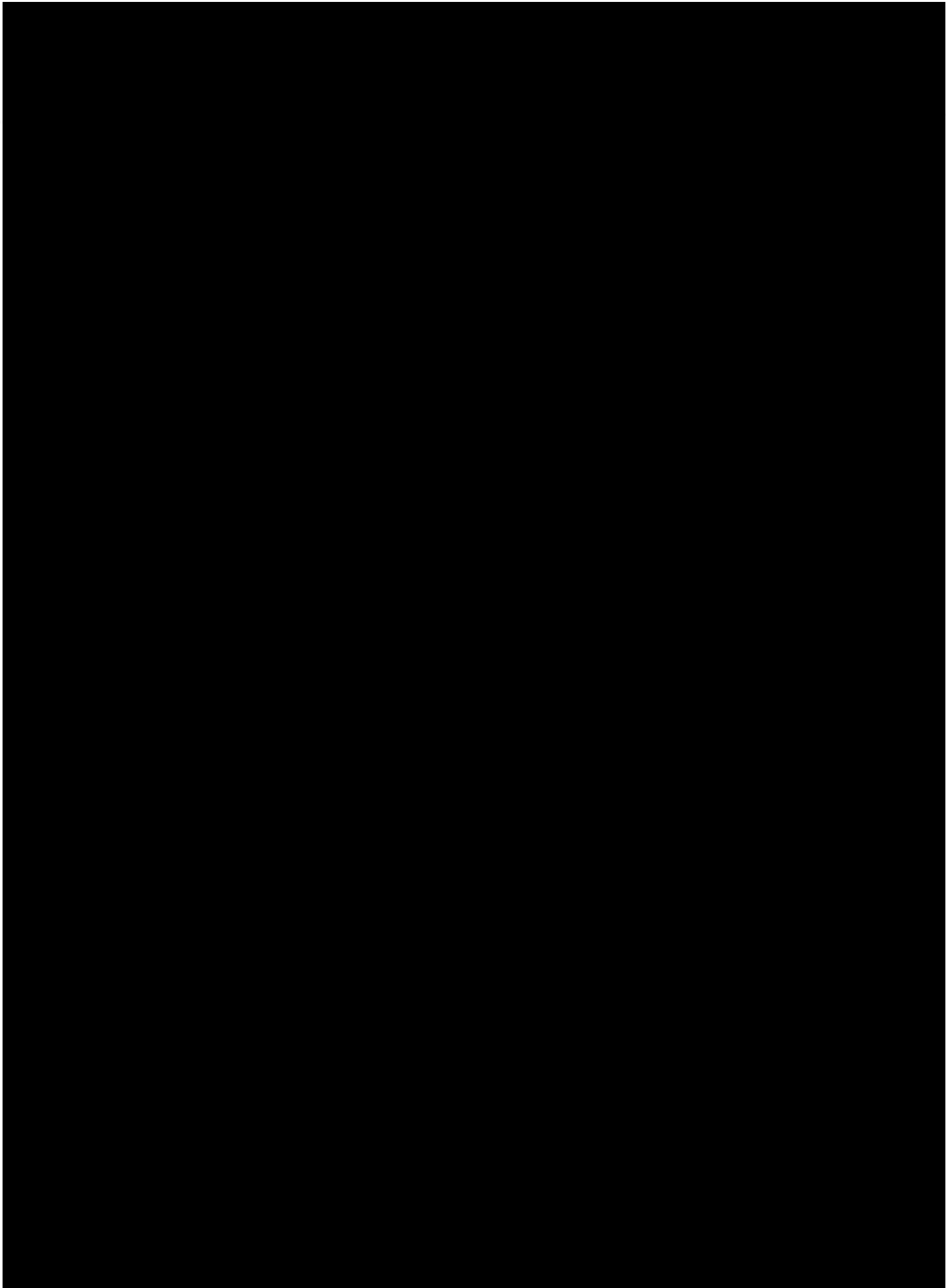
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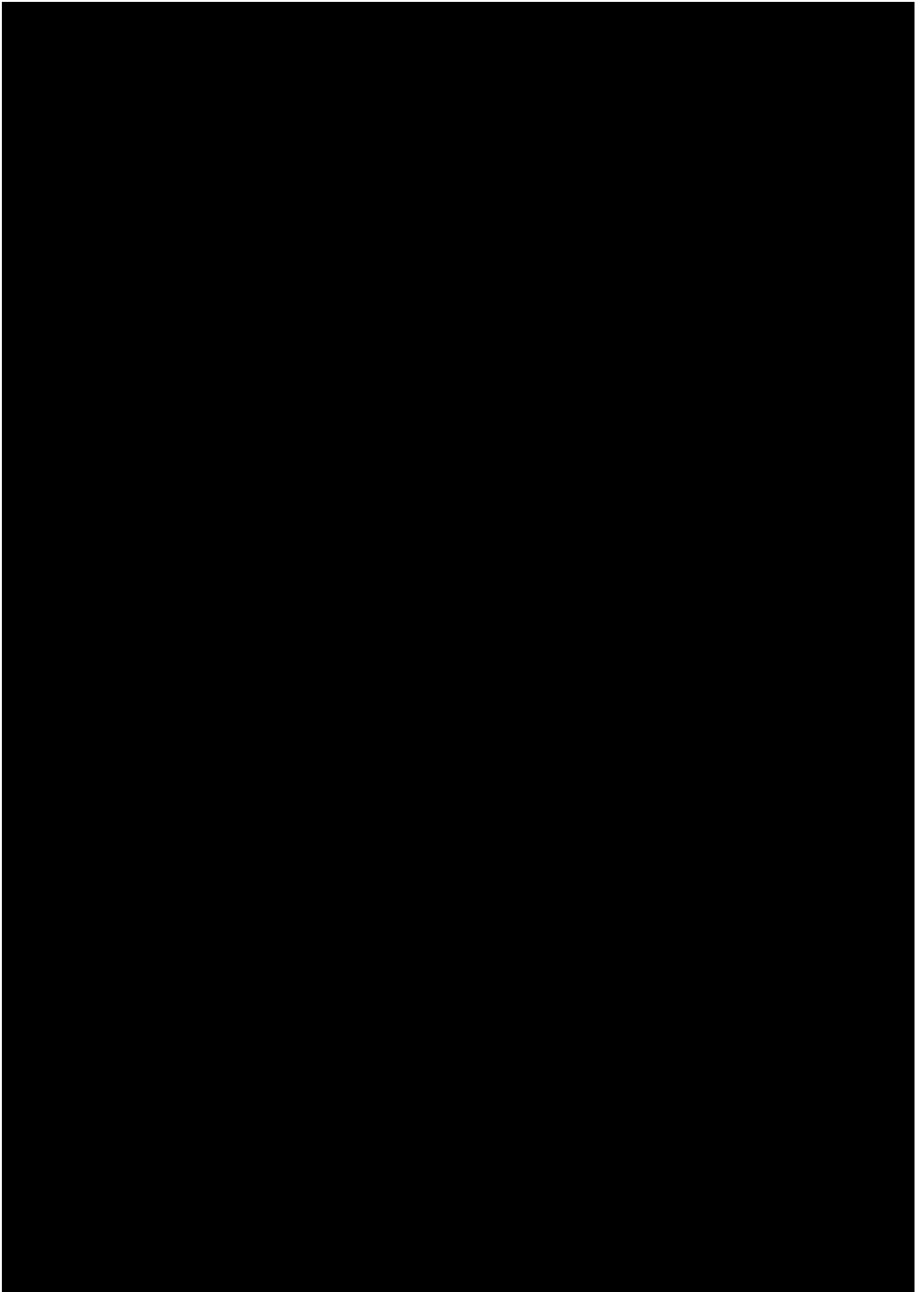


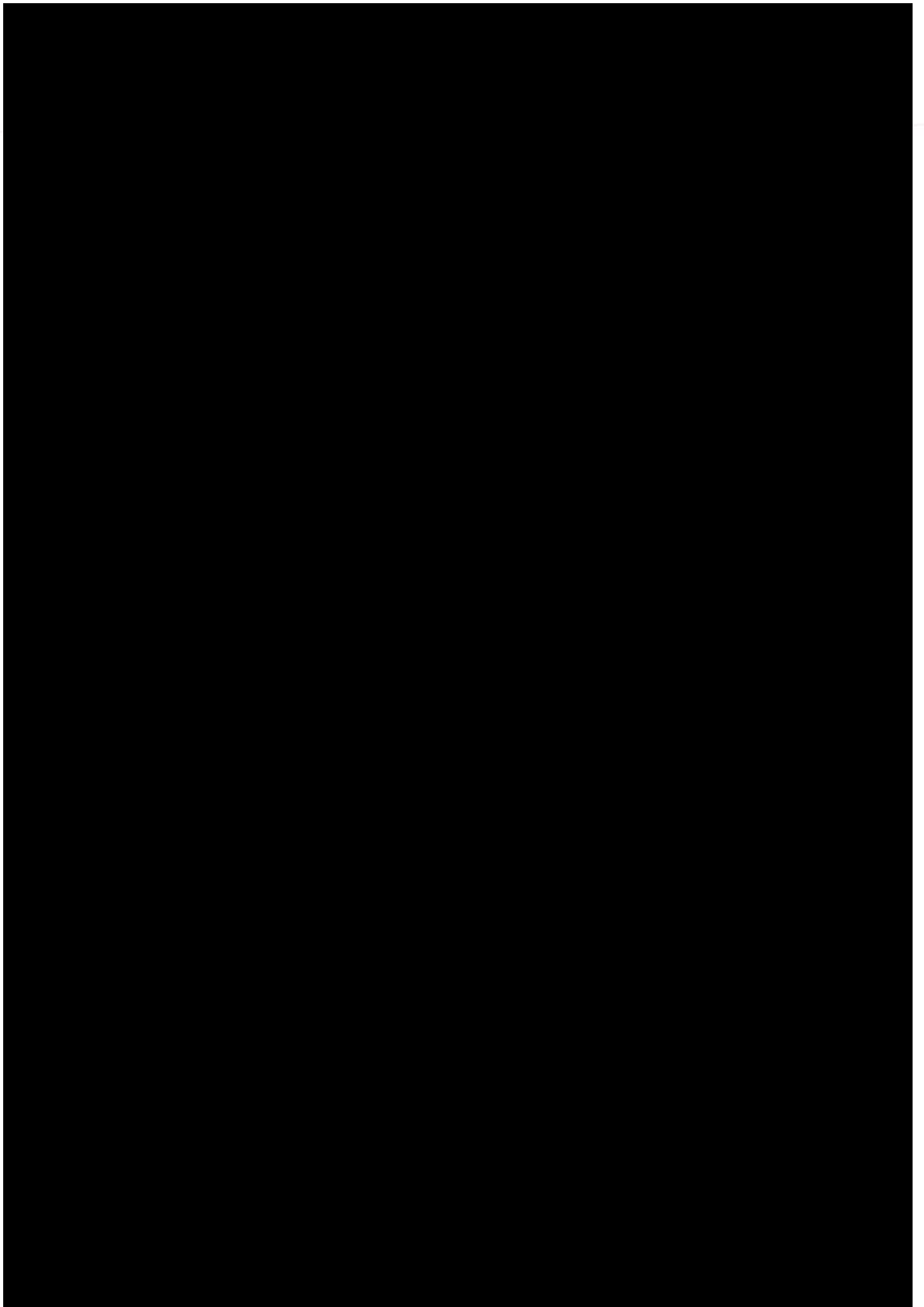


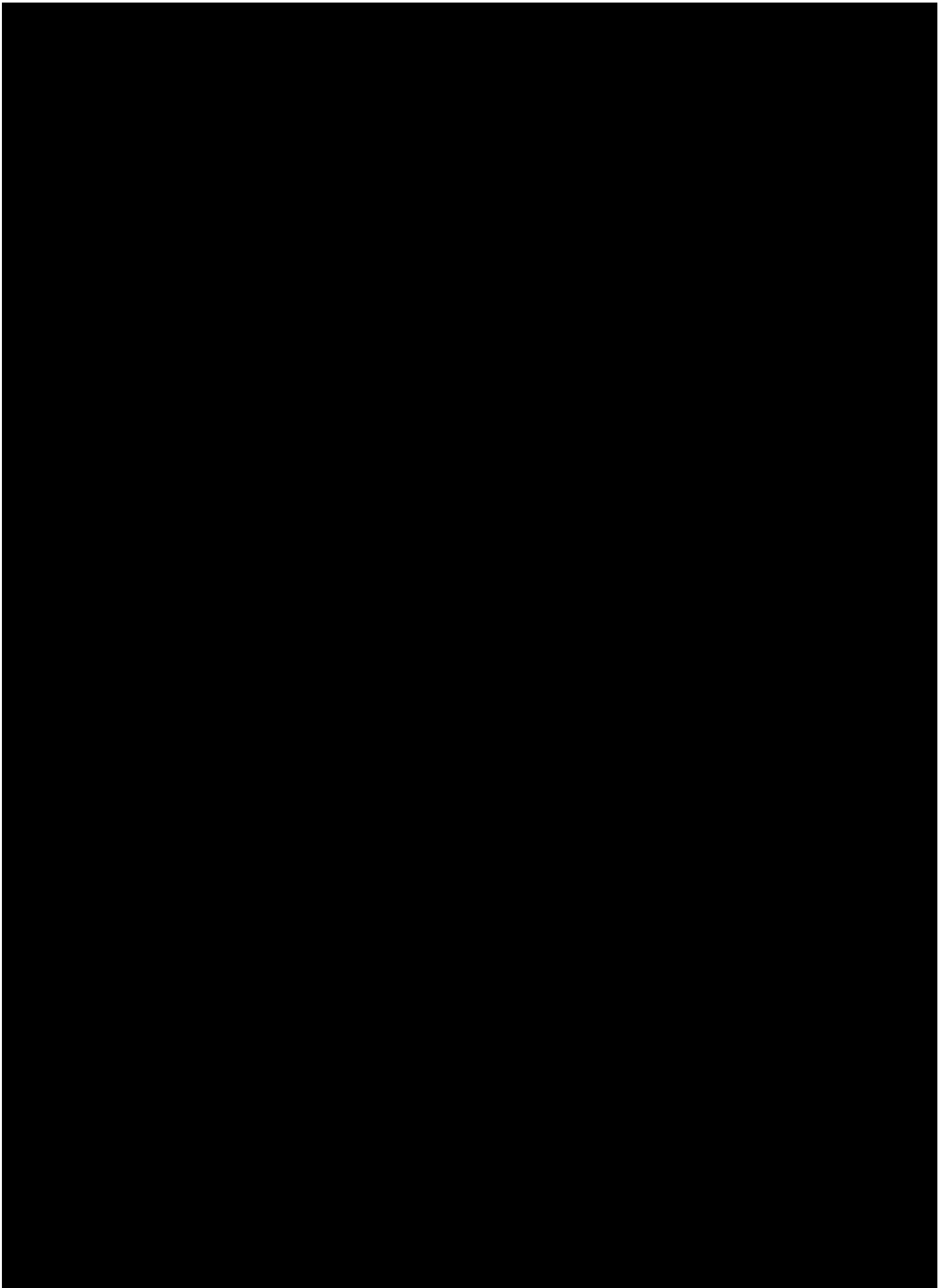


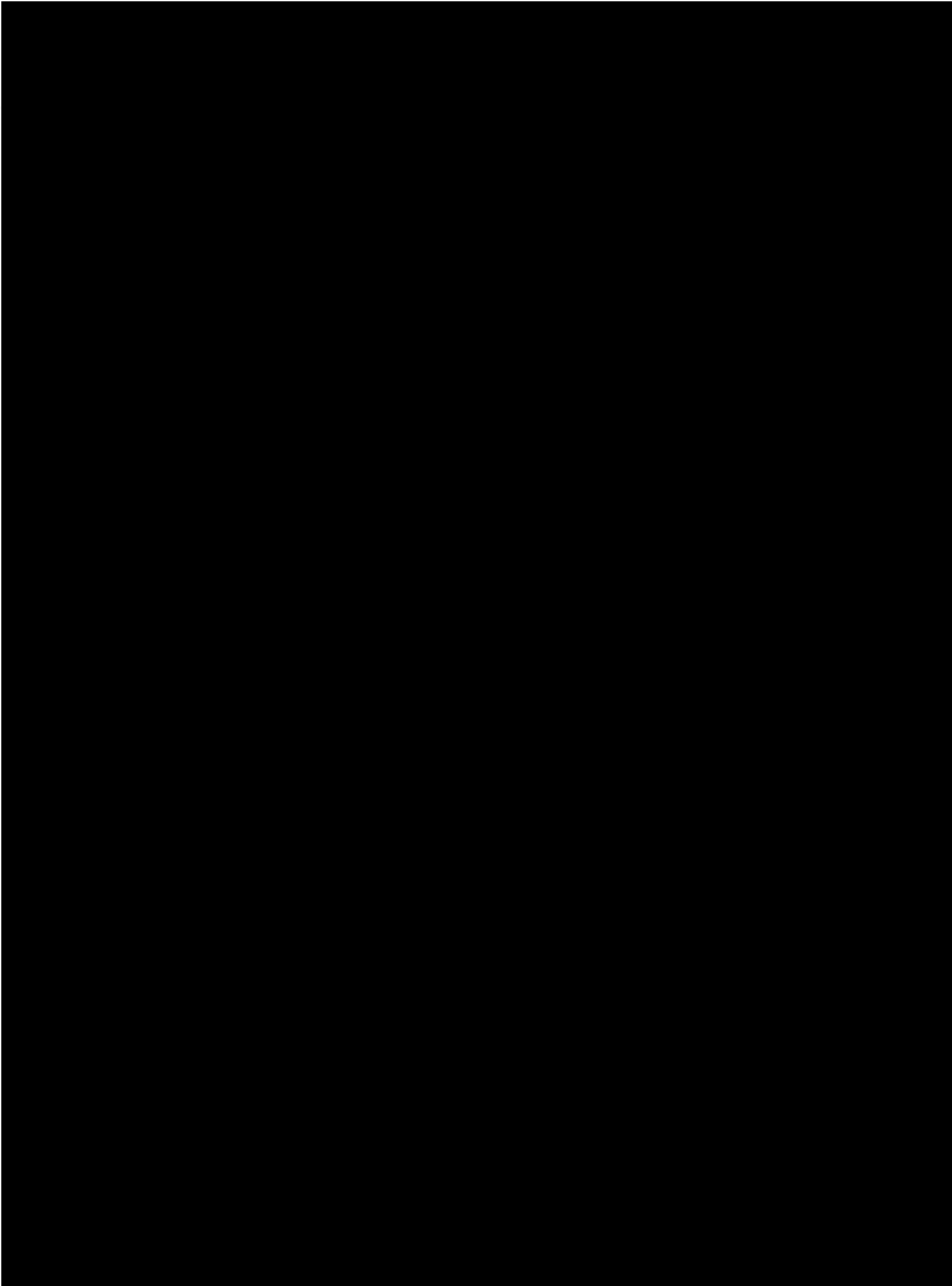


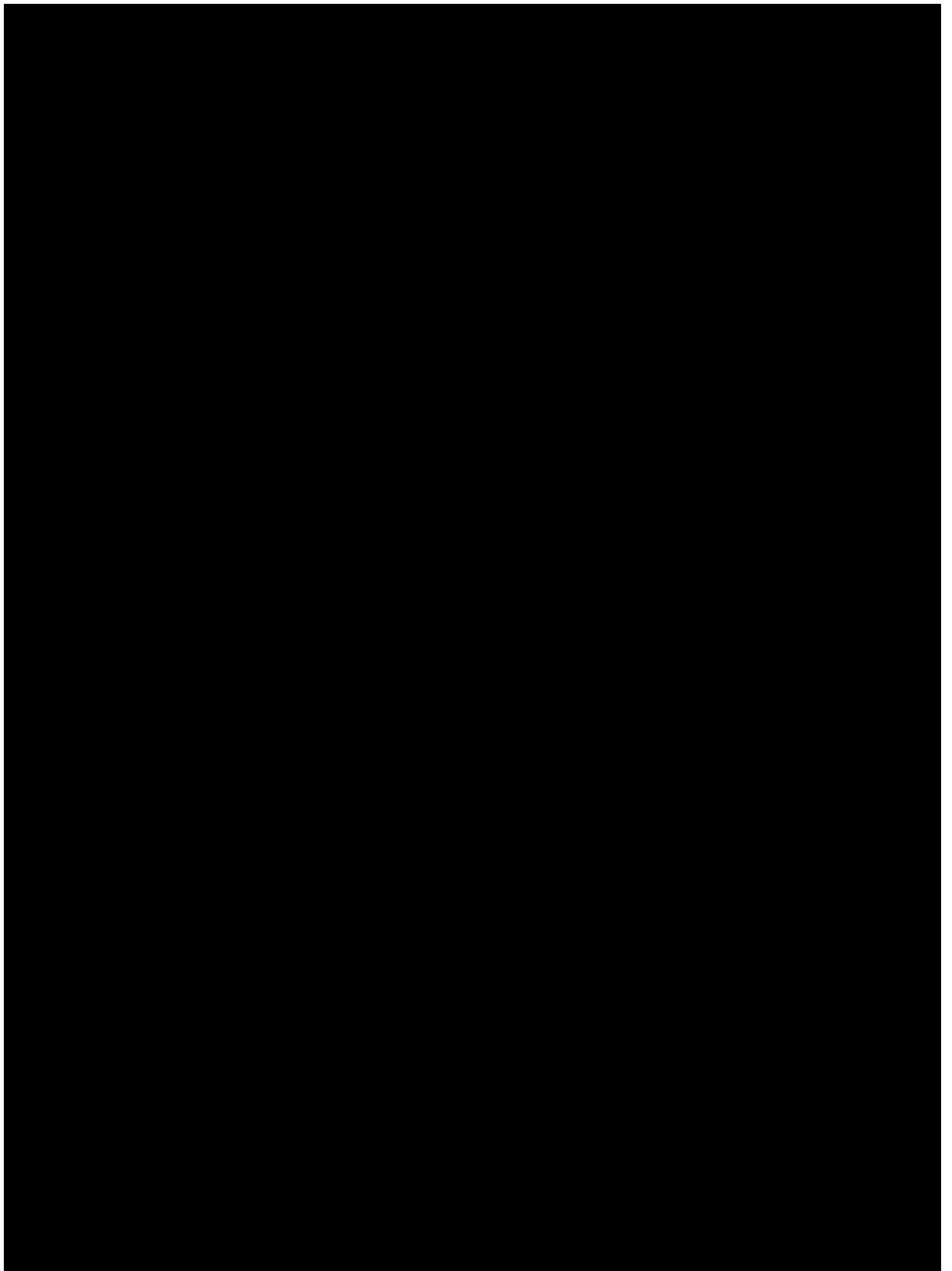




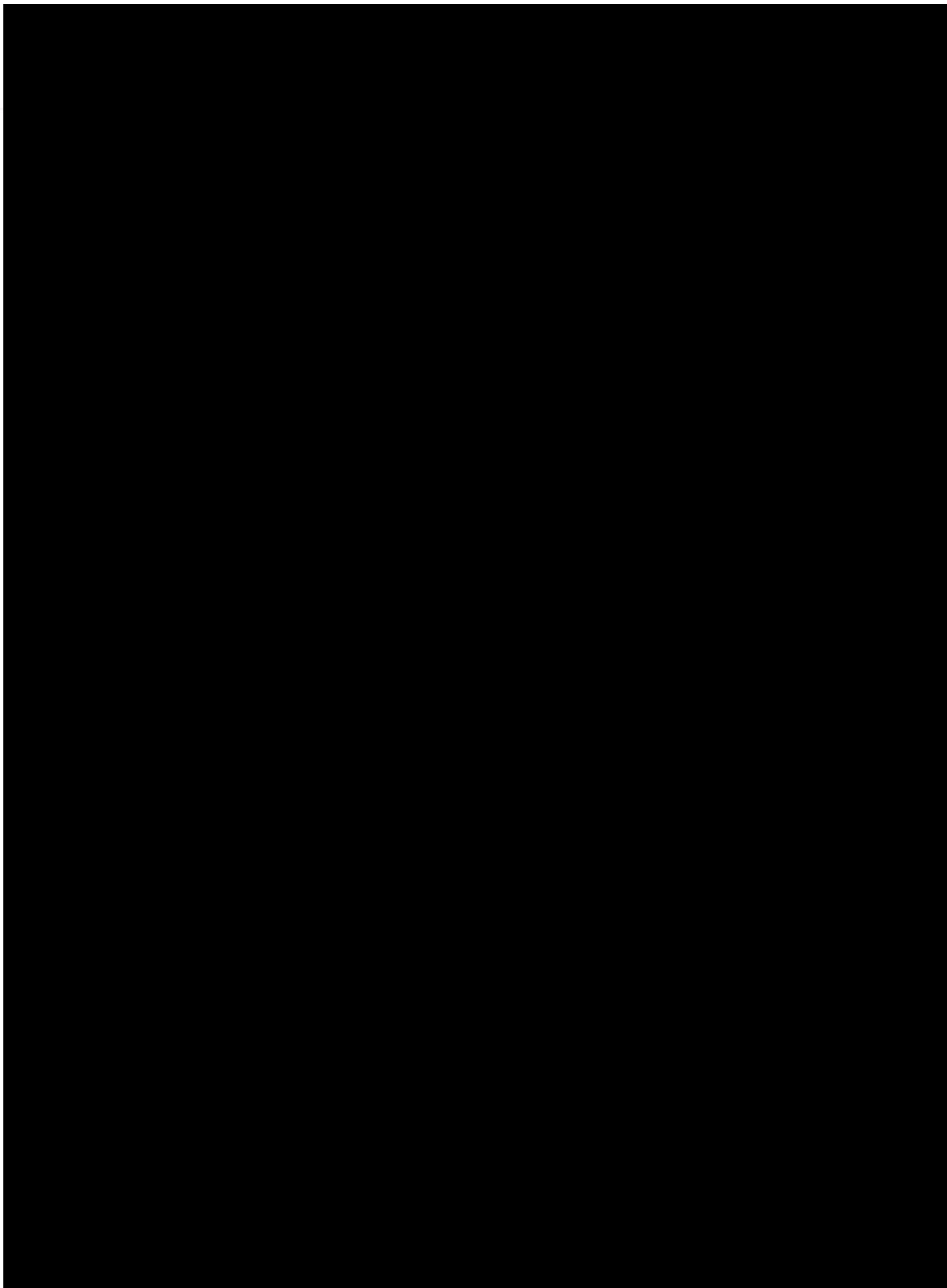


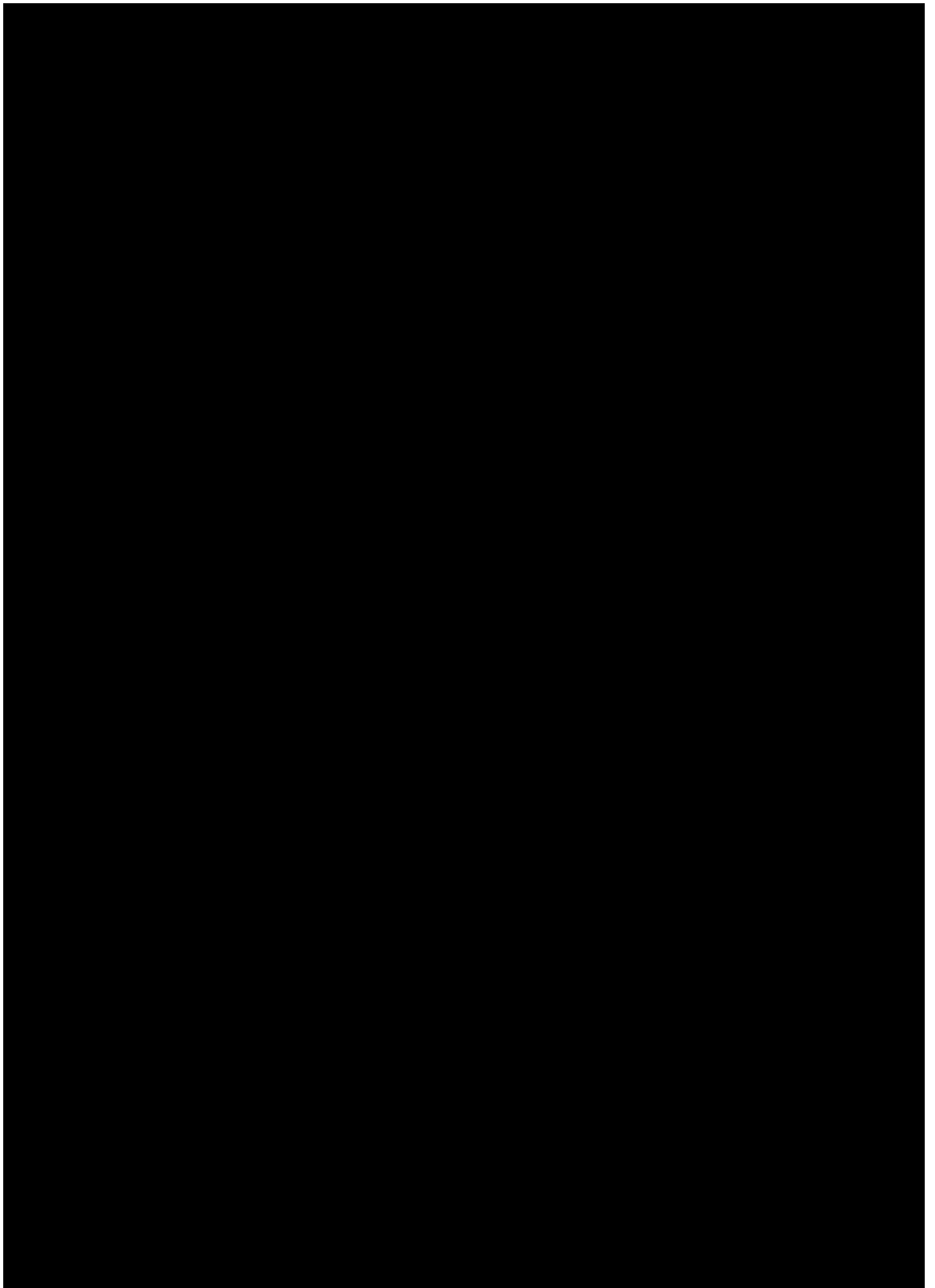


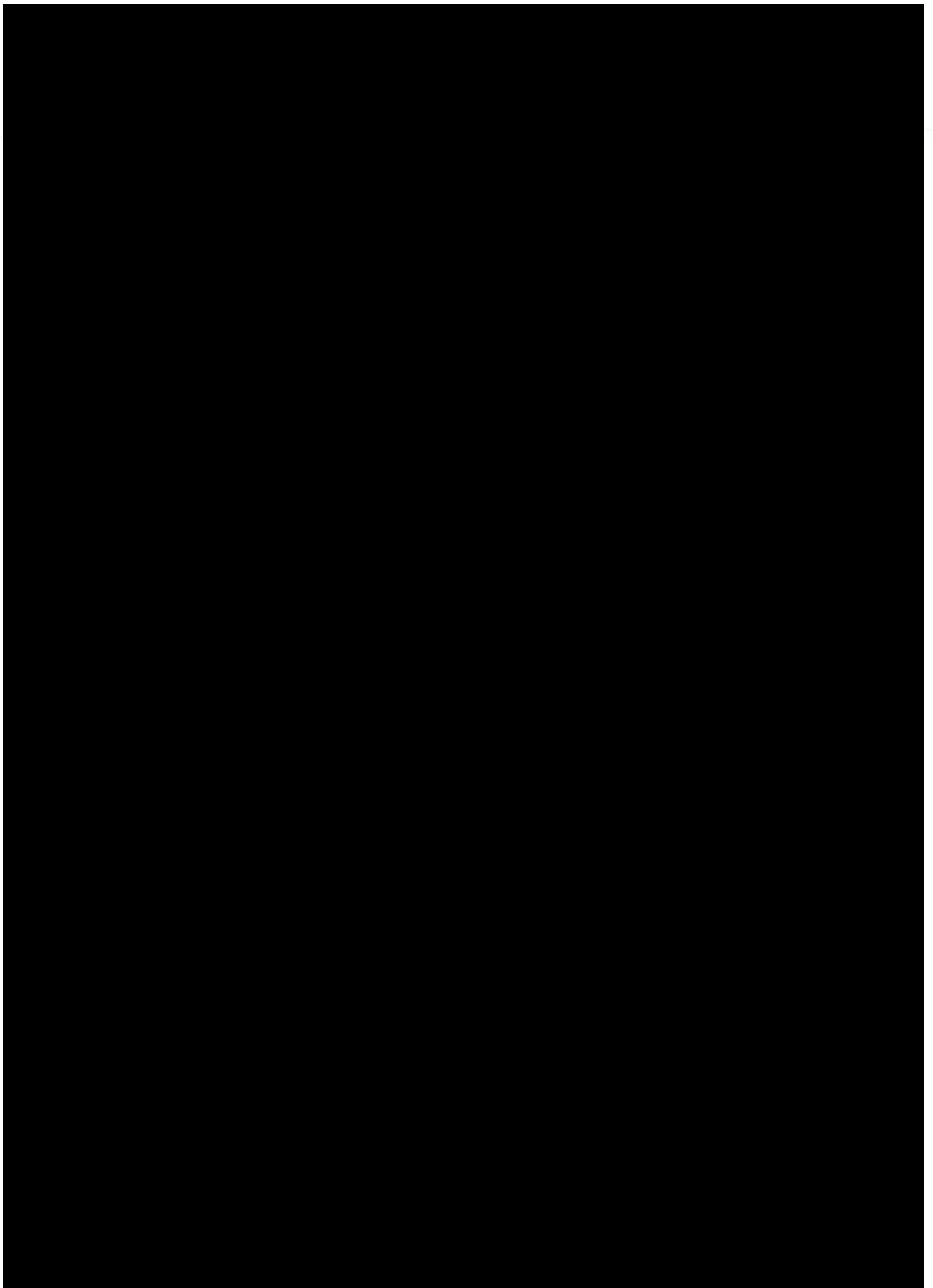


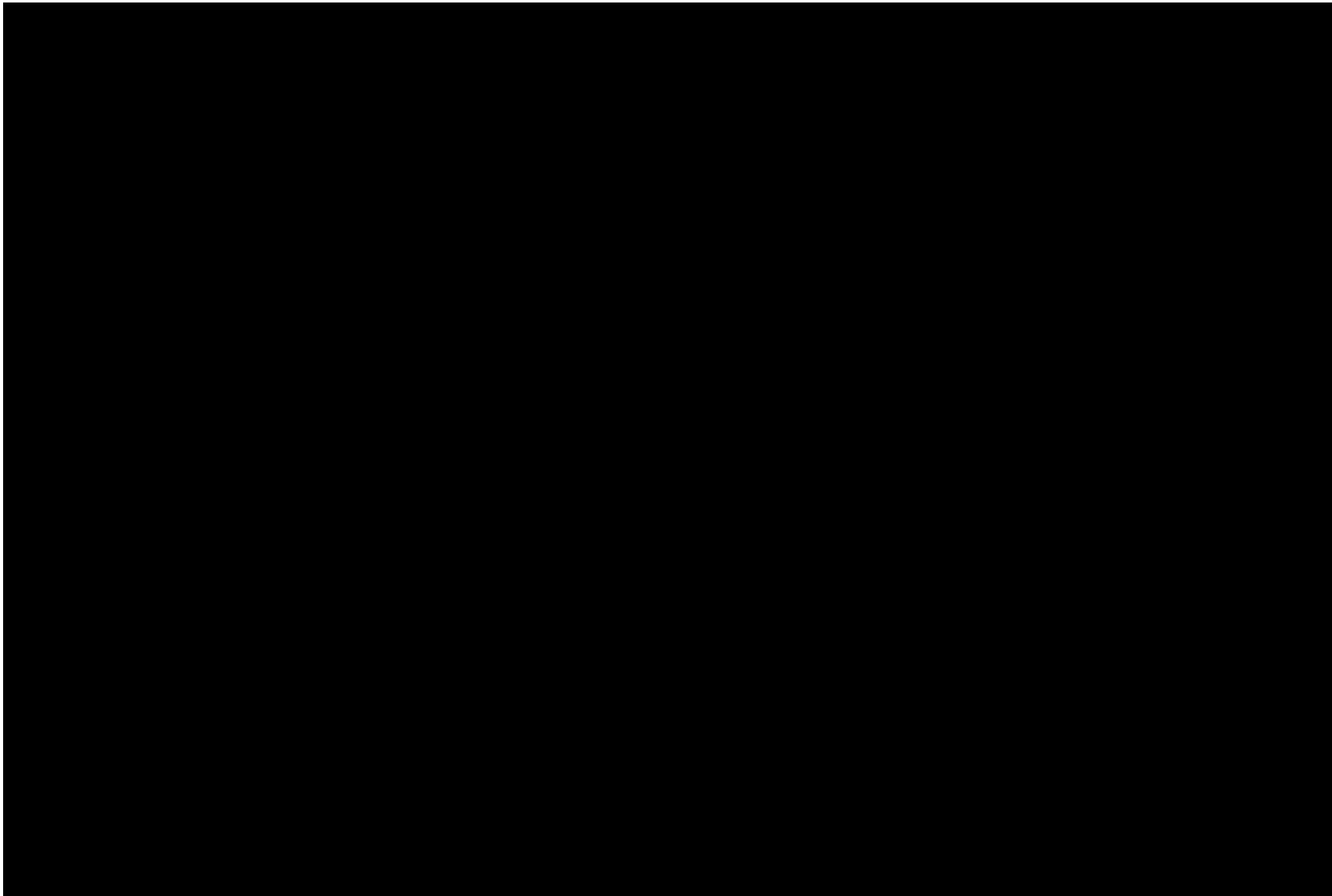


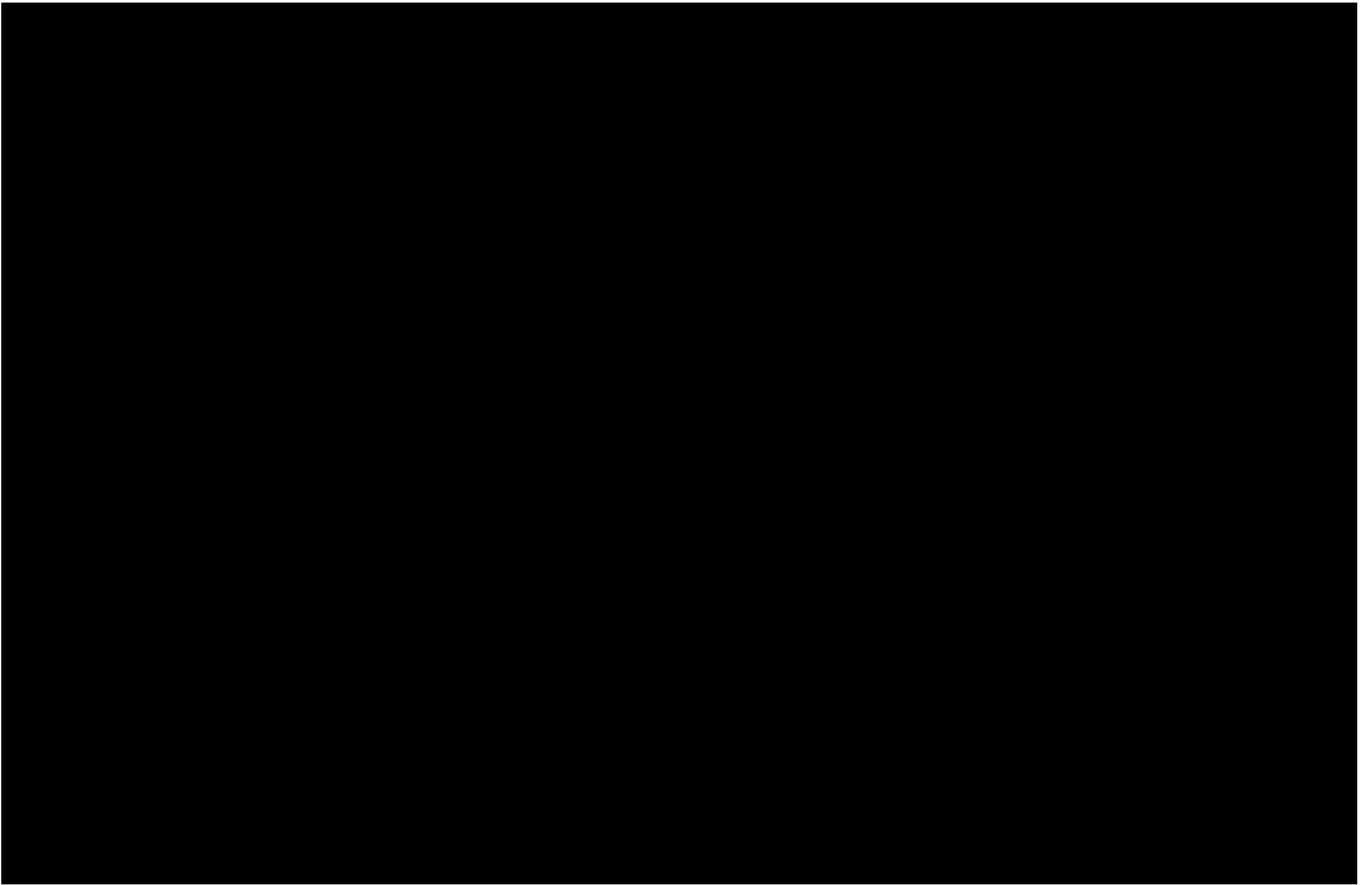




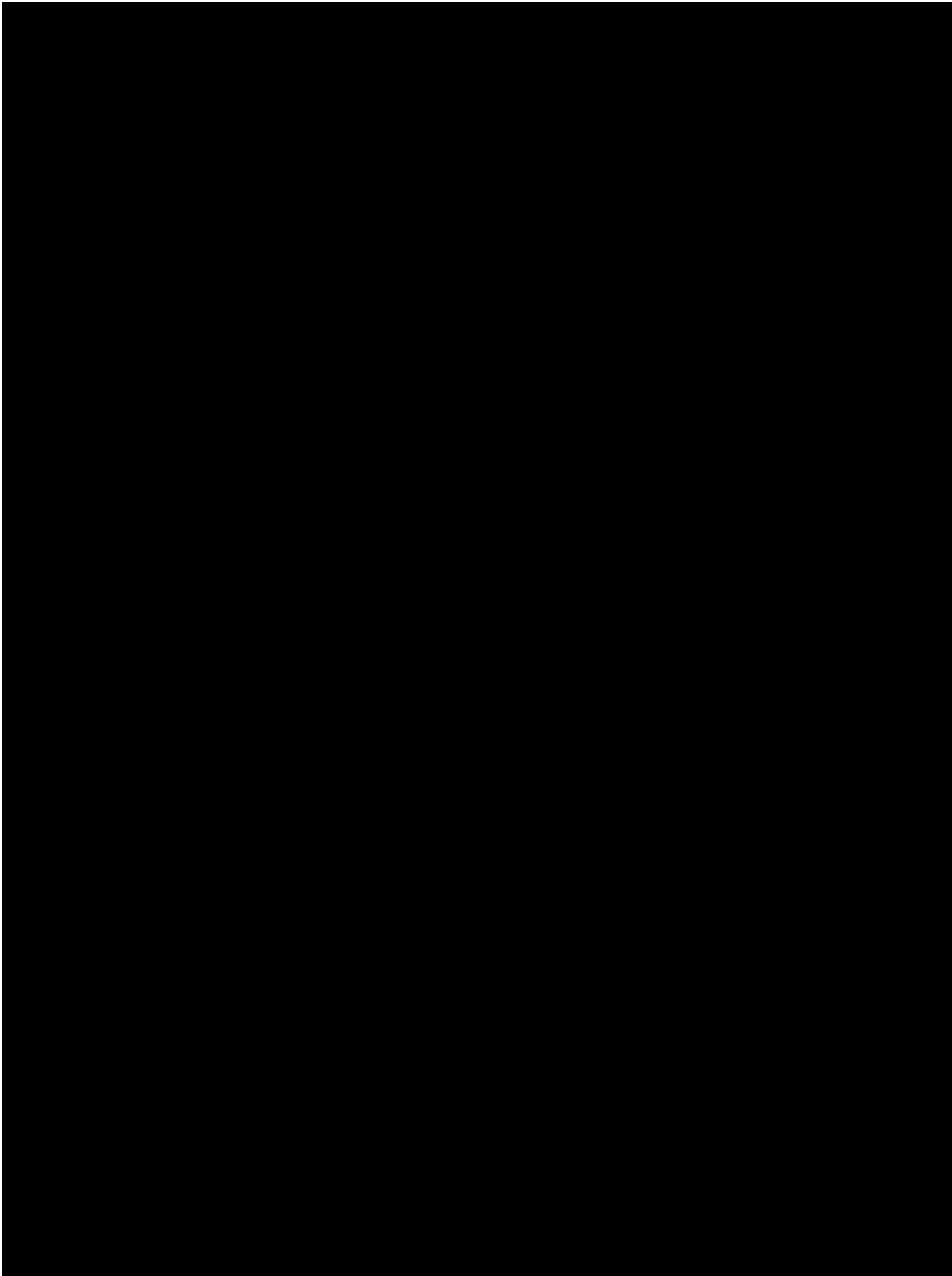


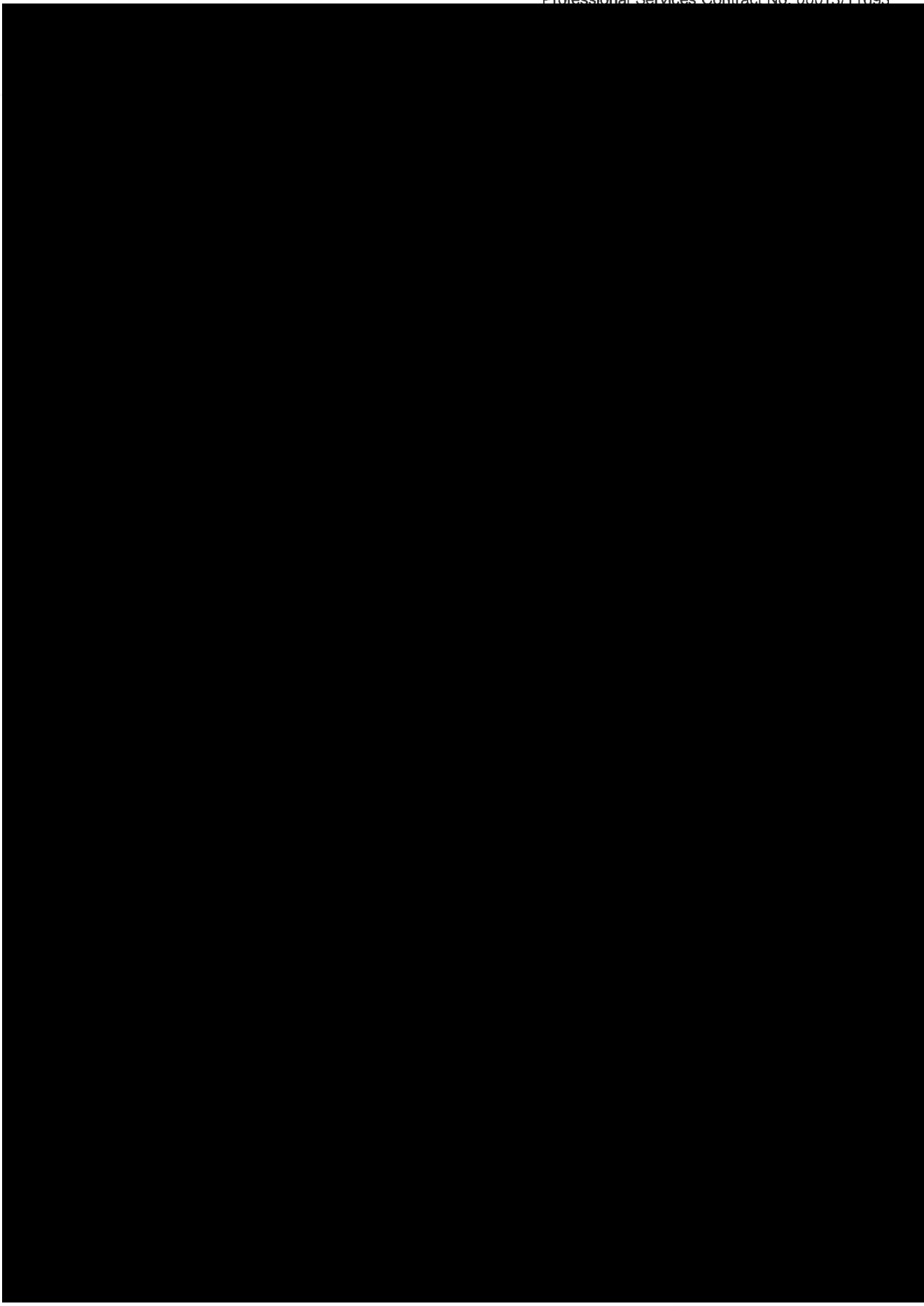




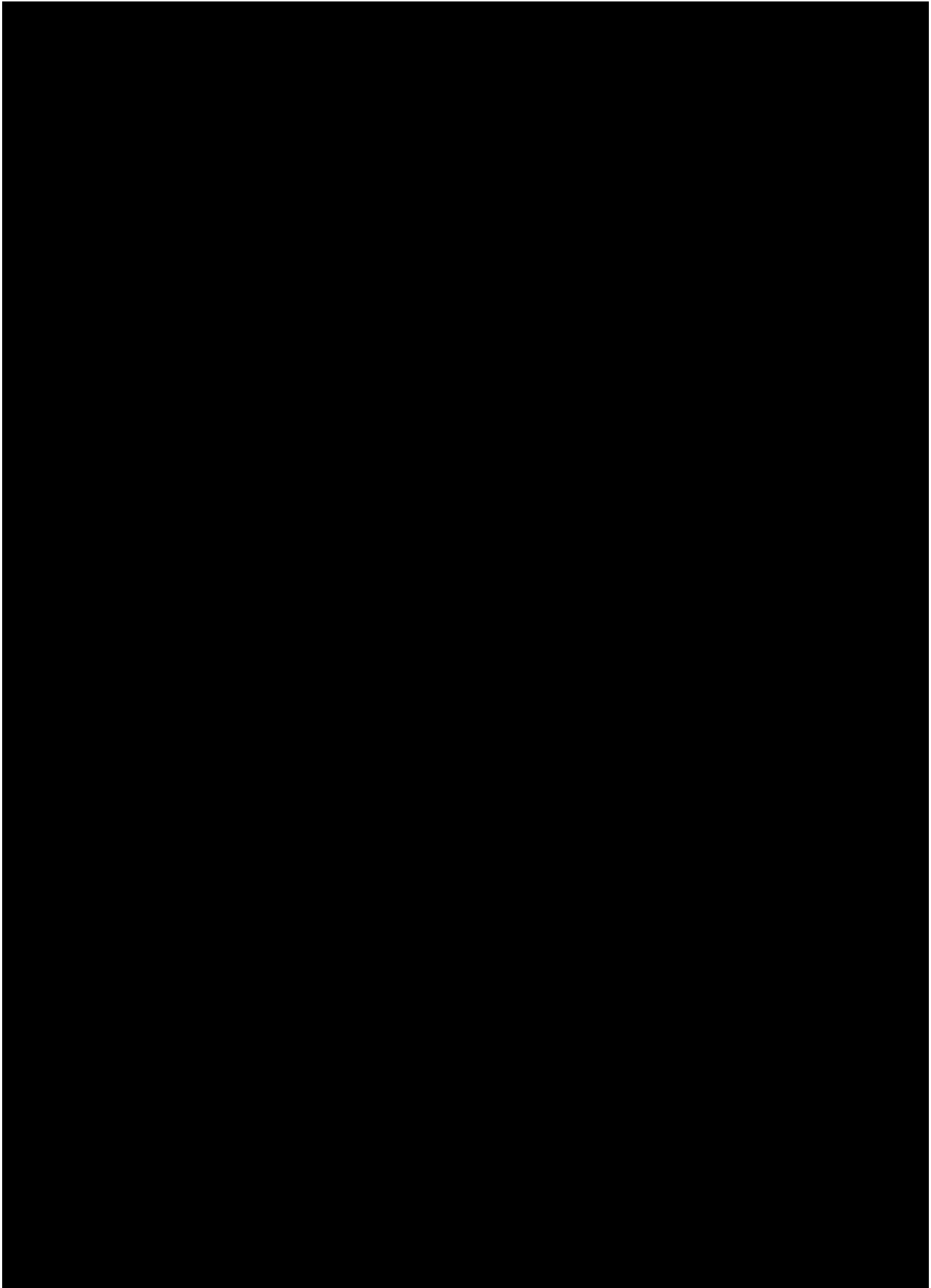


**SCHEDULE 13** 





**SCHEDULE 14** [REDACTED]





**AGREEMENT EXECUTION PAGE**

DATED 4 day of SEPTEMBER 2020

