



Rozelle Interchange and Western Harbour
Tunnel Enabling Works
Design and Construction Deed Schedules

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PART A
GENERAL

SCHEDULE 1

Conditions precedent

(Clause 5)

1. All of the D&C Documents, other than:
 - (a) the Moral Rights Consent;
 - (b) the Significant Subcontracts (other than the IOMCS and OMCS Works Subcontract);
 - (c) the Escrow Agreements;
 - (d) the Collateral Warranty Deed;
 - (e) the Collateral Warranty Guarantees;
 - (f) [REDACTED];
 - (g) [REDACTED];
 - (h) the WHT Independent Certifier Deed;
 - (i) the WHT Independent Certifier Deed Poll; and
 - (j) the Western Harbour Tunnel – Rozelle Interchange Interface Deed,have been executed by all parties to them in a form satisfactory to the Principal and:
 - (k) all conditions precedent to those D&C Documents have been satisfied (other than the conditions precedent to the Collateral Warranty Deed and any condition precedent which requires the satisfaction or waiver of the conditions precedent to this deed); and
 - (l) the Principal has received evidence satisfactory to it (in its absolute discretion) that all stampings, registrations and filings required by Law or by the law of any foreign jurisdiction in relation to each D&C Guarantee, have been stamped, registered or filed in form and substance satisfactory to the Principal (in its absolute discretion).
2. Each party's Project Insurance has been effected substantially in the form of the wording set out in Exhibit F (where relevantly set out there) or as otherwise agreed by the parties and a certified copy of those insurance policies has been provided to the other party.
3. The Principal has received the Security Bonds required to be provided by the Contractor under clause 10.1.
4. The Contractor has provided legal opinions:
 - (a) in a form satisfactory to the Principal;
 - (b) on which the Principal is entitled to rely; and
 - (c) given by a qualified legal practitioner satisfactory to the Principal,confirming that the execution by each of:
 - (d) John Holland;

- (e) CPB Contractors;
- (f) CIMIC Group; and
- (g) CCCC,

of each D&C Document (other than the Moral Rights Consent, the Significant Subcontracts (other than the IOMCS and OMCS Works Subcontract), the Escrow Agreements, the Collateral Warranty Deed, the Collateral Warranty Guarantees, [REDACTED] [REDACTED] the WHT Independent Certifier Deed, the WHT Southern Tunnel Works Independent Certifier Deed Poll and the Western Harbour Tunnel – Rozelle Interchange Interface Deed) to which they are a party, is valid under the laws of each respective entity's place of incorporation and that those documents are binding upon and enforceable against each respective entity in accordance with its terms.

SCHEDULE 1A

The Contractor's obligations in respect of the Scope of Works and Technical Criteria

(Clause 2.3)

The Contractor must, in performing the Contractor's Activities (as defined in this deed), comply with all of the obligations, conditions and requirements of the Scope of Works and Technical Criteria as if it is the "Project Company" named in the SWTC, except to the extent that Table 1 below expressly provides that a particular exclusion or limitation on the Contractor's obligations in respect of the SWTC.

For the purposes of this Schedule 1A (other than for the purpose of Table 1) and unless the context requires otherwise:

- any reference to the "Deed" or the "Project Deed" in the Scope of Works and Technical Criteria must be read as a reference to "this deed";
- any reference to the "Project Company" in the Scope of Works and Technical Criteria must be read as a reference to the "Contractor";
- any reference to the "Project Company's Work" in the SWTC (Rozelle Interchange) must be read as a reference to the "Contractor's Activities (Rozelle Interchange)";
- any reference to the "Project Company's Work" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Contractor's Activities (WHT Southern Tunnel Works)";
- any reference to "RMS' Representative" in the Scope of Works and Technical Criteria must be read as a reference to the "Principal's Representative";
- any reference to the "Motorway" in the SWTC (Rozelle Interchange) must be read as a reference to the "Rozelle Interchange", except for in Appendix B.31 of the SWTC (Rozelle Interchange);
- any reference to the "Motorway" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Western Harbour Tunnel";
- any reference to the "Motorway Stratum" in the SWTC (Rozelle Interchange) must be read as a reference to the "Rozelle Interchange Motorway Stratum";
- any reference to the "Project Site" in the SWTC (Rozelle Interchange) must be read as a reference to the "Rozelle Interchange Works Site";
- any reference to the "Project Site" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "WHT Southern Tunnel Works Site";
- any reference to the "Temporary Areas" in the SWTC (Rozelle Interchange) must be read as a reference to the "Rozelle Interchange Temporary Areas";
- any reference to the "Temporary Areas" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "WHT Southern Tunnel Temporary Areas"; and
- any reference to "RMS" in the Scope of Works and Technical Criteria must be read as a reference to the "Principal" except for any reference to RMS publications.

For the purposes of this Schedule 1A (including for the purpose of Table 1):

- any reference to "Concept Design" in the SWTC (Rozelle Interchange) must be read as a reference to the "Concept Design (Rozelle Interchange)" as defined in this deed;

- any reference to "Concept Design" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Concept Design (WHT Southern Tunnel Works)" as defined in this deed;
- any reference to "Construction Plan" in the Scope of Works and Technical Criteria must be read as a reference to the " Construction Plan" as defined in this deed;
- any reference to "Defect" in the Scope of Works and Technical Criteria must be read as a reference to the "Defect" as defined in this deed;
- any reference to "Defects Correction Period" in the Scope of Works and Technical Criteria must be read as a reference to the "Defects Correction Period" as defined in this deed;
- any reference to "Environmental Manager" in the Scope of Works and Technical Criteria must be read as a reference to the "Environmental Manager" as defined in this deed;
- any reference to "Environmental Representative" or "ER" in the SWTC (Rozelle Interchange) must be read as a reference to the "Environmental Representative (Rozelle Interchange)" as defined in this deed;
- any reference to "Environmental Representative" or "ER" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Environmental Representative (WHT)" as defined in this deed;
- any reference to "Quality Manager" in the Scope of Works and Technical Criteria must be read as a reference to the "Quality Manager" as defined in this deed;
- any reference to "D&C Independent Certifier" in the SWTC (Rozelle Interchange) must be read as a reference to the "D&C Independent Certifier" as defined in this deed;
- any reference to "D&C Independent Certifier" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "WHT Independent Certifier" as defined in this deed;
- any reference to "Independent Certifier" in the SWTC (Rozelle Interchange) must be read as a reference to the "D&C Independent Certifier" as defined in this deed;
- any reference to "Independent Certifier" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "WHT Independent Certifier" as defined in this deed;
- any reference to "Independent Certifier Deed" in the SWTC (Rozelle Interchange) must be read as a reference to the "D&C Independent Certifier Deed" as defined in this deed;
- any reference to "Independent Certifier Deed" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to "WHT Independent Certifier Deed" as defined in this deed;
- any reference to the "Construction Site" in the Scope of Works and Technical Criteria must be read as a reference to the "Construction Site" as defined in this deed;
- any reference to the "Maintenance Site" in the Scope of Works and Technical Criteria must be read as a reference to the "Maintenance Site" as defined in this deed;
- any reference to the "Licensed Maintenance Areas" in the Scope of Works and Technical Criteria must be read as a reference to the "Licensed Maintenance Areas" as defined in this deed;
- any reference to the "Local Area Works" in the Scope of Works and Technical Criteria must be read as a reference to the "Local Area Works" as defined in this deed;

- any reference to the "Project Works" in the SWTC (Rozelle Interchange) must be read as a reference to the "Project Works (Rozelle Interchange)" as defined in this deed;
- any reference to the "Project Works" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "WHT Southern Tunnel Works " as defined in this deed;
- any reference to the "Utility Service Works" in the Scope of Works and Technical Criteria must be read as a reference to the "Utility Service Works" as defined in this deed;
- any reference to the "Property Works" in the Scope of Works and Technical Criteria must be read as a reference to the "Property Works" as defined in this deed;
- any reference to the "Temporary Works" in the SWTC (Rozelle Interchange) must be read as a reference to the "Temporary Works (Rozelle Interchange)" as defined in this deed;
- any reference to the "Temporary Works" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Temporary Works (WHT Southern Tunnel Works)" as defined in this deed;
- any reference to the "Date for WHT Interface Milestone Completion" in the Scope of Works and Technical Criteria must be read as a reference to the "Date for WHT Interface Milestone Completion" as defined in this deed;
- any reference to the "Date for Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Date for Completion" as defined in this deed;
- any reference to the "Date for Completion" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Date for Final Completion" as defined in this deed;
- any reference to the "Date for Opening Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Date for Opening Completion" as defined in this deed;
- any reference to the "Date for Opening Completion" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Date for Completion (WHT Southern Tunnel Works)" as defined in this deed;
- any reference to the "Date of WHT Interface Milestone Completion " in the Scope of Works and Technical Criteria must be read as a reference to the "Date of WHT Interface Milestone Completion" as defined in this deed;
- any reference to the "Date of Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Date of Completion" as defined in this deed;
- any reference to the "Date of Completion" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Date of Final Completion" as defined in this deed;
- any reference to the "Date of Opening Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Date of Opening Completion" as defined in this deed;
- any reference to the "Date of Opening Completion" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Date of Completion (WHT Southern Tunnel Works)" as defined in this deed;
- any reference to the "WHT Interface Milestone Completion" in the Scope of Works and Technical Criteria must be read as a reference to the "WHT Interface Milestone Completion" as defined in this deed;
- any reference to "Opening Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Opening Completion" as defined in this deed;

- any reference to "Opening Completion" in the SWTC(WHT Southern Tunnel Works) must be read as a reference to the "Completion (WHT Southern Tunnel Works)" as defined in this deed;
- any reference to "Completion" in the SWTC (Rozelle Interchange) must be read as a reference to the "Completion" as defined in this deed;
- any reference to "Completion" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Final Completion" as defined in this deed;
- any reference to the "Operational Readiness Evaluation" or "ORE" in the Scope of Works and Technical Criteria must be read as a reference to the "Operational Readiness Evaluation" or "ORE" as defined in this deed;
- any reference to the "Overall D&C Program" in the SWTC (Rozelle Interchange) must be read as a reference to the "Overall D&C Program (Rozelle Interchange)" as defined in this deed;
- any reference to the "Overall D&C Program" in the SWTC (WHT Southern Tunnel Works) must be read as a reference to the "Overall D&C Program (WHT Southern Tunnel Works)" as defined in this deed; and
- any references to the "Term" in the Scope of Works and Technical Criteria must be read as a reference to the "Term" as defined in this deed.

Table 1: Limitations on the Contractor's obligations in respect of the SWTC	
Scope of Works and Technical Criteria section reference	Limitation on the Contractor's obligations in respect of the requirements of the Scope of Works and Technical Criteria
General 2.1(a)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work during the Term.
General 2.1(b)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work to be undertaken during the Term.
General 2.1(c)(i), (ii), (vi), (vii) and (ix)	The Contractor must comply with these subparagraphs, except to the extent they apply to the O&M Work during the Term.
Utility Services Work 2.3.4	The Contractor must comply with this section (including Appendix B.39), except to the extent: <ul style="list-style-type: none"> • section 1(e) of Appendix B.39 applies to the O&M Work during the Term; and • section 1(k) of Appendix B.39 applies to the O&M Work during the Term.
O&M Work 2.5	The Contractor must comply with this section, except to the extent it applies to the O&M Work during the Term.
Transition Period 2.6.2(a)(iv)	The Contractor is not required to comply with the requirements of this subparagraph.

Table 1: Limitations on the Contractor's obligations in respect of the SWTC	
Scope of Works and Technical Criteria section reference	Limitation on the Contractor's obligations in respect of the requirements of the Scope of Works and Technical Criteria
Transition Period 2.6.2(a)(v)	The Contractor must comply with this subparagraph, except to the extent the SWTC has identified that the mobilisation of O&M plant, equipment and other resources will be undertaken by others.
Work Health & Safety 3.2(a)(i)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work during the Term.
Environmental Manager 3.3.2(a)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work during the Term.
Certification 3.6(a)(i)	The Contractor must comply with this section, except to the extent it applies to certifying the O&M Work during the Term.
Quality Assurance 3.7	The Contractor must comply with this section (including the requirements of Appendix C.7), except to the extent the requirements of Appendix C.7 apply to the O&M Work during the Term.
Project Plans 3.8(a)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work after the date which is the later of the Date of Opening Completion and the Date of Completion (WHT Southern Tunnel Works).
Reporting 3.9(a)	The Contractor must comply with this section (including preparing and submitting reports in accordance with the requirements of Appendix C.2), except to the extent: <ul style="list-style-type: none"> • section 1.2 in Appendix C.2 applies during the Term; • subparagraph 5(f)(ii) in Appendix C.2 applies during the Term; and • paragraphs 5(g) and 5(h) in Appendix C.2 apply during the Term.
Training 3.10(a)(iii), 3.10(a)(iv)	The Contractor must comply with these subparagraphs, except to the extent they apply to the obligation to provide inductions of employees and persons engaged after the Date of Opening Completion for the O&M Work.
Traffic and Transport Management and Safety 3.12(d)	The Contractor must comply with this paragraph, except to the extent it applies to providing a Traffic Representative as part of the O&M Work during the Term.
Traffic and Transport Management and Safety 3.12(e)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work during the Term.
Effects of the Project Works and O&M Works	The Contractor must comply with this paragraph, except to the extent it must demonstrate that the O&M Work has no adverse impacts during the Term.

Table 1: Limitations on the Contractor's obligations in respect of the SWTC	
Scope of Works and Technical Criteria section reference	Limitation on the Contractor's obligations in respect of the requirements of the Scope of Works and Technical Criteria
4.3(a)	
Effects of the Project Works and O&M Works 4.3(c) to 4.3(g)	The Contractor must comply with these paragraphs, except to the extent they apply to the O&M Work during the Term.
Codes, Standard and Specifications 4.5	The Contractor must comply with this section, except to the extent it applies to undertaking the O&M Work during the Term.
Sustainability 4.8	<p>The Contractor must comply with this section (including Appendix D.5), except to the extent:</p> <ul style="list-style-type: none"> • paragraphs 3.1(d) and 3.1(e) of Appendix D.5 apply to the O&M Work during the Term; and • Items 7 and 8 of Table D.5-2 in Appendix D.5 apply to the O&M Work during the Term. <p>For the avoidance of doubt, the Contractor must design and construct the Project Works (Rozelle Interchange) to enable the O&M Contractor to comply with the requirements of Item 7 and Item 8 of Table D.5-2 in Appendix D.5.</p>
Toll Collection Systems 5.12	<p>The Contractor must comply with this section (including the requirements of Appendix B.10), except to the extent it applies to:</p> <ul style="list-style-type: none"> • designing and constructing the Tolling Back Office; and • undertaking the O&M Work during the Term. <p>For the avoidance of doubt, the Contractor must comply with all other obligations allocated to the Project Company and the RSS Contractor in Appendix B.10 (and its attachments).</p>
Traffic and Road User Management and Safety 5.13(a)	The Contractor must comply with this paragraph, except to the extent it applies to the O&M Work during the Term.
Motorway Reliability and Availability 5.14	The Contractor must comply with this section, except to the extent it applies to the O&M Work during the Term.
Geotechnical 5.25	The Contractor must comply with this section, except to the extent it applies to the O&M Work during the Term.
Information Security Management System 5.32	The Contractor must comply with this section, except to the extent it applies to maintaining and continually improving the security management system as part of the O&M Work during the Term.

Table 1: Limitations on the Contractor's obligations in respect of the SWTC	
Scope of Works and Technical Criteria section reference	Limitation on the Contractor's obligations in respect of the requirements of the Scope of Works and Technical Criteria
Asset Information System 7.2.1(a)	The Contractor must comply with this paragraph, except to the extent it applies to maintaining the AIS as part of the O&M Work during the Term.
Asset Information System 7.2.2, 7.2.3, 7.2.4, 7.2.6 and 7.2.8	The Contractor must comply with the requirements of these sections, except to the extent the requirements apply to providing the AIS. For clarity: <ul style="list-style-type: none"> • the computerised information system or AIS, as a software system, will be purchased, configured, populated and managed throughout the Term by the Principal; • the Contractor must develop the Asset Register, a spare parts register and defects register in a form to be agreed with the Principal, and which comply with section 7.2.2 for input into the AIS by the Principal; and • the Code of Maintenance Standards developed by the Contractor must be suitable for inclusion by the Principal into the AIS maintenance management routines.
Operation and Maintenance 8.1 to 8.7	The Contractor is not required to comply with these sections.
Operation and Maintenance Appendix C.1, section 20(f)	The Contractor is not required to comply with section 20(f) of Appendix C.1 to the extent that it applies to the O&M Work.

SCHEDULE 2

Commercially Sensitive Information

(Clause 1.1 definition of "Commercially Sensitive Information" and clause 30)

	Deed Reference	Commercially Sensitive Information
1.	Clause 1.1, definition of 'Collateral Warranty General Cap'	All percentages
2.	Clause 1.1, definitions of 'D&C Deed Sum (Rozelle Interchange)' and 'D&C Deed Sum (WHT Southern Tunnel Works)'	All dollar amounts
3.	Clause 1.1, definition of 'D&C Margin'	All percentages
4.	Clause 1.1, definitions of 'General Cap (Rozelle Interchange)' and 'General Cap (WHT Southern Tunnel Works)'	All percentages
5.	Clause 1.1, definitions of 'Liquidated Damages Cap (Rozelle Interchange)' and 'Liquidated Damages Cap (WHT Southern Tunnel Works)'	All percentages
6.	Clause 1.1, definitions of 'Liquidated Damages (Opening Completion)', 'Liquidated Damages (WHT Southern Tunnel Works)' and 'Liquidated Damages (WHT Southern Tunnel Design Milestone)'	All dollar amounts
7.	Clause 1.1, paragraph (a) of the definition of 'Significant Subcontract'	All dollar amounts
8.	Clause 1.1, definition of 'Transferred Works Price'	All dollar amounts
9.	Clause 9.2(d), (g) and (k)	All dollar amounts
10.	Clause 9.19(ca)	All dollar amounts
11.	Clauses 10.1 and 10.1A	All percentages
12.	Clauses 10.6(a)(i) and 10.6A(a)(i)	All percentages
13.	Clause 11A.2(h)	All dollar amounts
14.	Clause 11B.4(g)	All dollar amounts
15.	Clause 11B.4(i)(v)	All dollar amounts
16.	Clause 14.3(b)	All percentages
17.	Clause 16.9(d)	All dollar amounts
18.	Clause 16.10(aa)	All dollar amounts
19.	Clause 21.17(d), (e) and (f)	All percentages

20.	Clause 25.2(b)	All dollar amounts and percentages
21.	Clause 31.4(c)(iii)	All percentages
22.	Clause 31.6(b)	All dollar amounts
23.	Clause 31.10(b)(vii)	All percentages
24.	Clause 43.21(b)	All percentages
25.	Schedule 4B: Key Personnel	All information
26.	Schedule 4C: Significant Subcontracts	All dollar amounts
27.	Schedule 5: Escrow Agreement	All information
28.	Schedule 22: Pre-Agreed Changes	All dollar amounts
29.	Schedule 29: Lane Occupancy Fees	All information
30.	Schedule 30: Project Insurances	All dollar amounts
31.	Schedule 30A: D&C Payment Schedule	All dollar amounts
32.	Schedule 34: Delay Cost Caps	All dollar amounts
33.	Schedule 35: Spares List	All dollar amounts
34.	Schedule 37A: WHT Interface Milestones	All dollar amounts
35.	Schedule 37AA: WHT Southern Tunnel Works Design Milestones	All information
36.	Exhibit A: Rozelle Interchange D&C Independent Certifier Deed	All dollar amounts
37.	Exhibit F: Insurance Policies	All information
38.	Exhibit O: Collateral Warranty Deed	All dollar amounts, rates, numerical figures, percentage amounts and any other information deemed commercially sensitive in this deed.
39.	Exhibit R: WHT Independent Certifier Deed	All dollar amounts

SCHEDULE 3

Dispute Resolution Procedure

(Clause 32)

1. DEFINITIONS

In this Schedule:

DAB Agreement means the agreement entered into between the Contractor, the Principal and each member of the Dispute Avoidance Board substantially in the form set out in Appendix B to this Schedule 3.

Dispute Avoidance Board means the board consisting of the initial members specified in section 2 as replaced in accordance with section 3.

Technical Issue means, subject to section 15 of the Dispute Resolution Procedure, an issue involved in a Dispute in the period before the expiry of the Defects Correction Period in respect of the WHT Southern Tunnel Works that relates to:

- (a) the existence, nature and extent of a Defect in relation to the WHT Southern Tunnel Works;
- (b) whether or not an aspect or component of the WHT Southern Tunnel Works comply with the requirements of the D&C Documents, including the requirements of the SWTC (WHT Southern Tunnel Works), the requirements relating to the Third Party Agreements and the obligations under the Planning Approvals; or
- (c) whether or not an element of works is within the scope of the WHT Southern Tunnel Works or the requirements in the SWTC (WHT Southern Tunnel Works).

2. FORMATION OF DISPUTE AVOIDANCE BOARD

- (a) The Dispute Avoidance Board is formed by each of the three initial members of the Dispute Avoidance Board, the Principal and the Contractor entering into the DAB Agreement.
- (b) It is intended that the DAB Agreement will be signed by the parties as soon as is reasonably practicable following the date of execution of this deed.
- (c) The Principal will:
 - (i) decide which of the two persons nominated in the Contractor's Proposal as candidates for appointment as Dispute Avoidance Board members will be appointed to the Dispute Avoidance Board; and
 - (ii) nominate a second member in accordance with the criteria set out in Appendix C of this Schedule 3.
- (d) The parties must request the selected nominees to confer to nominate the third member of the Dispute Avoidance Board in accordance with the criteria set out in Appendix C of this Schedule 3, which third member is subject to the approval of the Principal and the Contractor.
- (e) If, within 21 days of the parties' request for the selected nominees to nominate the third member of the Dispute Avoidance Board, the third

member has not been nominated and approved in accordance with section 2(d) above, either party may request the Resolution Institute to nominate the third member in accordance with the criteria set out in Appendix C of this Schedule 3. This nomination will be final and conclusive.

- (f) The role of the Dispute Avoidance Board will be to:
 - (i) perform the functions and activities identified in Annexure 1 of the DAB Agreement;
 - (ii) make decisions on matters that this deed expressly requires be decided by the Dispute Avoidance Board; and
 - (iii) otherwise perform the functions and activities identified in the DAB Agreement.
- (g) The parties acknowledge and agree that the Dispute Avoidance Board must act honestly, impartially, without bias and independently of the Contractor, the Principal and their Related Parties.
- (h) Nothing that the Dispute Avoidance Board does or fails to do pursuant to the purported exercise of its functions and activities under the DAB Agreement will entitle the Contractor to make any Claim against the Principal.

3. **REPLACEMENT OF DISPUTE AVOIDANCE BOARD MEMBER**

- (a) If a member of the Dispute Avoidance Board declines to act or is unable to act as a result of death, disability, resignation or termination of appointment, the remaining two members will select a replacement member, who must be approved by the Principal and the Contractor.
- (b) If, within 42 days after a member declines to act or is unable to act on the Dispute Avoidance Board as contemplated by section 3(a), the member has not been replaced by a person selected in accordance with section 3(a), either party may request the Resolution Institute to select a replacement member. This selection will be final and conclusive.
- (c) Any selection made under section 3(a) or 3(b) must be made in accordance with the criteria set out in Appendix C of this Schedule 3 and the Dispute Avoidance Board re-formed by the continuing and replacement members of the Dispute Avoidance Board, the Principal and the Contractor signing a replacement DAB Agreement in accordance with clause 14.3 of the DAB Agreement.

4. **TERMINATION OF DISPUTE AVOIDANCE BOARD**

- (a) The appointment of any member of the Dispute Avoidance Board may be terminated by mutual agreement of both parties, but not by the Principal or the Contractor acting alone.
- (b) Unless otherwise agreed by both parties, the Dispute Avoidance Board will terminate on the later of:
 - (i) 1 month after the date which is the later of the Date of Completion and the Date of Final Completion; and
 - (ii) the Dispute Avoidance Board having made a decision in accordance with section 5 in respect of all Disputes that were referred to it prior to the date under section 4(b)(i).

5. **APPLICATION OF PROCEDURE**

Unless otherwise expressly provided in this deed, all Disputes between the Principal (on the one hand) and the Contractor (on the other hand) must be resolved in accordance with this Dispute Resolution Procedure.

6. **NOTICE OF DISPUTE**

(a) Where a Dispute arises, either party may serve a notice in writing on the other party specifying:

- (i) that it is a notice of Dispute under this section 6;
- (ii) the Dispute;
- (iii) particulars of the Dispute;
- (iv) identify any Technical Issues relevant to the Dispute; and
- (v) the position which the party believes is correct,

(Notice of Dispute).

(b) The parties acknowledge and agree that, if all elements of a Dispute constitute Technical Issues and there are no other matters for determination or resolution in relation to such Dispute, then the WHT Independent Certifier's determination of the Technical Issue is final and binding and the relevant Dispute will not be referred for determination in accordance with section 6 to section 15 (inclusive) except where the Dispute is referred to the dispute resolution process under clause 6 of the Western Harbour Tunnel – Rozelle Interchange Interface Deed.

7. **SENIOR NEGOTIATION**

(a) If a Notice of Dispute is served, the persons holding the position of senior representative of the Principal (on the one hand) and senior representative of the Contractor (on the other hand) or their nominees (the **Representatives**) must meet and undertake good faith negotiations for the purpose of attempting to resolve the Dispute (the **Negotiation**).

(b) Unless otherwise agreed in writing, all communications at or related to the Negotiation are without prejudice and are inadmissible in any process under the Dispute Resolution Procedure or in any other legal proceeding.

(c) Any agreement reached at the Negotiation must be in writing and signed by both parties.

(d) If the Dispute is not fully resolved within 28 days after a Notice of Dispute is given under section 6, either party may, by giving notice in writing to the other party and the Dispute Avoidance Board in accordance with section 8 require the Dispute to be referred to the Dispute Avoidance Board for resolution under section 8.

8. **REFERRAL TO DISPUTE AVOIDANCE BOARD**

(a) If a party wishes to refer a Dispute to the Dispute Avoidance Board under section 7(d), it must give notice in writing to the other party and the Dispute Avoidance Board (**Notice of Referral to DAB**).

(b) A Notice of Referral to DAB must:

- (i) state that it is a Notice of Referral to DAB under this section 8; and
- (ii) include or be accompanied by reasonable particulars of the Dispute referred to the Dispute Avoidance Board for resolution.

9. OBTAINING DISPUTE AVOIDANCE BOARD'S DECISION

- (a) If a Dispute is referred to the Dispute Avoidance Board in accordance with section 8, the Dispute Avoidance Board will be deemed to have received such reference on the date when the Notice of Referral to DAB is received by the chairperson of the Dispute Avoidance Board. The decision of a Dispute by the Dispute Avoidance Board under this section 9 must be made in accordance with the rules in Annexure 2 of the DAB Agreement, or such other rules as are agreed between the parties and the Dispute Avoidance Board in writing.
- (b) Both parties must promptly make available to the Dispute Avoidance Board:
 - (i) all such additional information;
 - (ii) access to the Construction Site, any Extra land and all other places at which the Contractor's Activities are being undertaken, provided that the members of the Dispute Avoidance Board must comply with the reasonable directions of the Principal Contractor as the principal contractor (as defined in the WHS Legislation);
 - (iii) the details of the determination by the WHT Independent Certifier of any Technical Issues relevant to the Dispute (if applicable); and
 - (iv) appropriate facilities,

as the Dispute Avoidance Board may require for the purposes of making a decision on the Dispute.
- (c) The function of the Dispute Avoidance Board is not arbitration and the members of the Dispute Avoidance Board do not act as arbitrators.
- (d) Despite anything else, to the extent permitted by Law, the Dispute Avoidance Board will have no power to apply or have regard to the provisions of Part 4 of the *Civil Liability Act 2002* (NSW).
- (e) Within 21 days after the later of close of submissions, receipt of the details of the determination by the Independent Certifier of any Technical Issues relevant to the Dispute (if applicable) or conclusion of any conference in relation to a Dispute referred to a Dispute Avoidance Board under section 8, or within such other period as may be proposed by the Dispute Avoidance Board and approved by both parties, the Dispute Avoidance Board must give its decision. The decision of the Dispute Avoidance Board:
 - (i) must, without limiting the operation of Annexure 2 of the DAB Agreement, be in writing, must state that it is given under this section 9(e) and must set out reasons for the decision;
 - (ii) will be final and binding, unless a party gives a notice of its dissatisfaction to the other party in accordance with section 9(f); and
 - (iii) subject to sections 9(i) and 10, is to be given effect to by the parties unless and until it is reversed, overturned or otherwise changed under the procedure in the following clauses.

- (f) If the Dispute Avoidance Board gives a decision that either party is dissatisfied with, then, subject to section 9(i) , and section 15(a)(ii)(B) in relation to any Technical Issues, the dissatisfied party may give a notice to the other party of its dissatisfaction within 56 days after receipt of the decision.
- (g) If the Dispute Avoidance Board fails to give its decision within the period of 21 days (or such other period as is approved by both parties) after the later of close of submissions or conclusion of any conference in relation to a Dispute referred to a Dispute Avoidance Board under section 8, then either party may give notice to the other party of its dissatisfaction.
- (h) If a notice of dissatisfaction is given in accordance with either section 9(f) or 9(g), the notice of dissatisfaction must state that it is given under section 9(f) or 5(g) (as the case may be), and must set out the matter in dispute and the reasons for dissatisfaction. Except as provided under section 11 or 12, neither party will be entitled to commence arbitration of a Dispute, and a decision (if any) of the Dispute Avoidance Board will be final and binding, unless a notice of dissatisfaction has been given in accordance with section 9(f) or 9(g).
- (i) Where the decision of the Dispute Avoidance Board requires that one party (**first party**) owes the other (**second party**) money, the first party must pay the second party the money within 28 days of receipt of the decision, provided that:
 - (i) if either party has given a notice of dissatisfaction to the other party under section 9(f) within 28 days of receipt of the decision, the first party is not required to pay the money within 28 days of receipt of the decision; and
 - (ii) neither payment of the money, nor a failure by the first party to give a notice of dissatisfaction, within 28 days of receipt of the decision prejudices the rights of the first party under section 9(f).
- (j) Once a decision of the Dispute Avoidance Board has become final and binding under section 9(e), 9(h) or 10(b) (as the case may be), neither party will be entitled to challenge the decision on the basis that a member of the Dispute Avoidance Board did not, at the time of making the decision, meet the criteria set out in Appendix C to this Schedule 3.

10. **AMICABLE SETTLEMENT**

Where a notice of dissatisfaction has been given under section 9(f) or 9(g), the parties may attempt to settle the Dispute amicably before the commencement of arbitration. However, if no amicable settlement has been reached by the 14th day after the day on which the notice of dissatisfaction was given (or such longer period as the parties agree in writing):

- (a) subject to section 10(b), either party may refer the Dispute to arbitration under section 13; or
- (b) if neither party has referred the matter to arbitration under section 13 within 56 days after the day on which the notice of dissatisfaction was given, the decision of the Dispute Avoidance Board will be final and binding.

11. **FAILURE TO COMPLY WITH DISPUTE AVOIDANCE BOARD'S DECISION**

If, in respect of any binding or final and binding decision of the Dispute Avoidance Board, a party fails to comply with the decision, then the other party may, without prejudice to any other rights it may have, refer the failure itself as a Dispute to arbitration under section 13. In these circumstances sections 5 to 9 will not apply to this reference and in making an award the arbitrator will not be entitled to open up and review the decision of the Dispute Avoidance Board, including any decision in respect of which a notice of dissatisfaction was given in accordance with section 9(f) or 9(g)

12. **NO DISPUTE AVOIDANCE BOARD IN PLACE**

If a Dispute arises and there is no Dispute Avoidance Board in place, whether by reason of the expiry of the Dispute Avoidance Board's appointment or otherwise (including the Dispute Avoidance Board not being properly constituted, by reason of unavailability of one or more members), section 7(a) will still apply, and if the Dispute is not resolved within 28 days after a Notice of Dispute is given under section 6:

- (a) sections 7(b), 8, 9, 10 and 11 will not apply; and
- (b) the Dispute may be referred by either party directly to arbitration under section 13.

13. **ARBITRATION**

- (a) If any Dispute is referred to arbitration:
 - (i) the seat of the arbitration shall be Sydney, Australia;
 - (ii) the arbitration shall be conducted in accordance with the ACICA Arbitration Rules 2016, as modified by Appendix A to this Schedule 3;
 - (iii) the number of arbitrators shall be one;
 - (iv) the language of arbitration shall be English; and
 - (v) the arbitration shall be administered by ACICA.
- (b) The parties agree that an appeal may be made in accordance with section 34A of the *Commercial Arbitration Act 2010* (NSW) on a question of law arising out of any award issued pursuant of this section 13.
- (c) Subject to section 15, this section 13 is governed by the laws of New South Wales, Australia.

14. **EXCLUSION OF PROPORTIONATE LIABILITY FROM DETERMINATION OR AWARD**

In respect of any arbitrator appointed in relation to a Dispute, the parties agree that, to the extent permitted by law:

- (a) the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by the *Civil Liability Act 2002* (NSW) are not conferred or imposed on him or her; and

- (b) the arbitrator (as the case may be) has no power to make any determination or award by applying or considering the provisions of the *Civil Liability Act 2002* (NSW).

15. **TECHNICAL ISSUES**

- (a) The parties acknowledge and agree that:
 - (i) any Technical Issues involved in a Dispute will be determined by the WHT Independent Certifier in accordance with this section 15; and
 - (ii) if a Dispute involves any Technical Issues, the Technical Issues will not be re-considered or re-determined by:
 - (A) the Representatives under section 7;
 - (B) the Dispute Avoidance Board under section 9; or
 - (C) the arbitrator under section 13.
- (b) Where a Notice of Dispute identifies that the relevant Dispute involves any Technical Issues, the relevant Referring Party must give a notice in writing to the Responding Party and the WHT Independent Certifier at the same time as issuing the proposed Notice of Referral to DAB under section 8(a) setting out:
 - (i) that it is a notice issued under this section 15(b);
 - (ii) the Technical Issues and the particulars of the Technical Issues relevant to the Dispute, including all documents that are relied on in support of the position on the Technical Issues; and
 - (iii) the factual position that the party asserts is correct in relation to the Technical Issue,
(Technical Issue Notice).
- (c) Within 5 Business Days of the issue of a Technical Issue Notice, the Responding Party may make submissions in writing to the WHT Independent Certifier in relation to the relevant Technical Issues, with copies to Referring Party.
- (d) Within 10 Business Days of its receipt of a Technical Issue Notice, the WHT Independent Certifier must review the Technical Issues and must give its determination in relation to the Technical Issues in writing, including comprehensive reasons for its determination.
- (e) The determinations of the WHT Independent Certifier made pursuant to section 15(d) will be final and binding on the parties except:
 - (i) to the extent that the determination contains a manifest error of fact or Law; or
 - (ii) in relation a Dispute to which section 16(c) applies.
- (f) The Contractor acknowledges and agrees that:
 - (i) pursuant to the terms of the WHT Independent Certifier Deed, the Principal may elect to instruct the WHT Independent Certifier to continue performing its services under the WHT Independent

Certifier Deed in relation to determining Technical Issues after the expiry of the final Defects Correction Period in respect of the WHT Southern Tunnel Works; and

- (ii) if the Principal elects to extend the WHT Independent Certifiers time for performance of its services in this way, the definition of "Technical Issue" in clause 1.1 will be deemed to be amended such that the period referred to in the preamble of that definition refers to the period for which the WHT Independent Certifier is engaged to deliver its services in relation to determining Technical Issues.

16. **DETERMINATION UNDER THE WESTERN HARBOUR TUNNEL – ROZELLE INTERCHANGE INTERFACE DEED**

The Contractor acknowledges and agrees that:

- (a) the Principal may, in its absolute discretion and at any time, require a Dispute which relates to WHT Southern Tunnel Works or the Contractor's Activities (WHT Southern Tunnel Works) under this deed be dealt with as a "Joint Dispute" (as defined in the Western Harbour Tunnel – Rozelle Interchange Interface Deed) under the Western Harbour Tunnel – Rozelle Interchange Interface Deed;
- (b) if the Principal elects to have a Dispute dealt with as "Joint Dispute" as contemplated in section 16(a):
 - (i) the dispute resolution process in this Schedule 3 will not apply to such Disputes; and
 - (ii) any determination made by the WHT Independent Certifier in relation to a Technical Issue pursuant to section 15 will not be final and binding on the parties; and
- (c) where a Dispute is referred by the Principal for resolution under the Western Harbour Tunnel – Rozelle Interchange Interface Deed, the outcome of the dispute resolution process in the Western Harbour Tunnel – Rozelle Interchange Interface Deed will be binding on the parties under this deed in relation to such Dispute.

17. **URGENT RELIEF**

Nothing in this Schedule 3 will prejudice any right a party may have to seek urgent interlocutory relief from a court in respect of a Dispute.

18. **LIMITATION PERIODS**

If a limitation period applicable to a cause of action relating to a Dispute expires during any of the processes set out in sections 6 to 16 each party agrees that:

- (a) the limitation period will be deemed to be extended by a period equal to the number of days between the date the Notice of Dispute was served and the later of the date the Negotiation process concludes and the date the Dispute Avoidance Board process concludes; and
- (b) it will not rely, in any proceeding, on the expiry of a limitation period other than as calculated in accordance with this section 16.

19. **SURVIVE TERMINATION**

This Dispute Resolution Procedure will survive termination of this deed.

20. **SEVERANCE**

If at any time any provision of this Schedule 3 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 Schedule 3; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this Schedule 3.

21. **CONTINUATION OF CONTRACTUAL OBLIGATIONS**

Despite the existence of a Dispute between the parties to this deed, the parties must continue to comply with and perform their obligations under this deed.

APPENDIX A

Modification of the ACICA Arbitration Rules

Pursuant to sub-Rule 2.1 of the rules of arbitration of the Australian Centre for International Commercial Arbitration (2016 edition), the parties agree to modify the application of those Rules as follows. All Rules that are not referred to below remain unchanged.

1. **RULE 36 WAIVER OF RULES**

Delete Rule 36 in its entirety.

APPENDIX B

Dispute Avoidance Board Agreement

This Agreement made at Sydney on the day of 20
between the following parties:

Parties **CPB Contractors Pty Limited** (ABN 98 000 893 667) and **John Holland Pty Ltd** (ABN 11 004 282 268) (together, the "**Contractor**")

of:

c/- John Holland Pty Ltd
Level 3, 65 Pirrama Road
Pyrmont NSW 2009

Fax no: N/A

Attention: 

Email: 

and

Roads and Maritime Services (ABN 76 236 371 088) ("**Principal**")

of:

20-44 Ennis Road
Milsons Point NSW 2061

(for delivery of notices by hand)

or:

Locked Bag 928
North Sydney NSW 2059

(for delivery by post)

Fax no: N/A

Attention: Executive Director, Technical and Project Services

Email: 

and

Members of the Dispute Avoidance Board, namely:

[DAB Member 1 Name] of ***[DAB Member 1 Company's Name, ABN and address], [DAB Member 1 email address and/or facsimile number]***

[DAB Member 2 Name] of ***[DAB Member 2 Company's Name, ABN and address], [DAB Member 2 email address and/or facsimile number]***

[DAB Member 3 Name] of ***[DAB Member 3 Company's Name, ABN and address], [DAB Member 3 email address and/or facsimile number]***

(collectively "**Members**" or "the **Dispute Avoidance Board**")

Recitals

- A. On or about the date of this Agreement, the Contractor entered into the D&C Deed with the Principal in respect of the Project Works.
 - B. The D&C Deed provides for a dispute resolution process through the establishment and the operation of a dispute avoidance and resolution board to assist the parties in preventing disputes from arising under the D&C Deed and if a dispute cannot be prevented, to decide it.
 - C. The Members represent that they are experienced generally in construction and project management and, in particular, in the construction and project management of, and the resolution of issues and disputes in relation to, works similar to the Project Works and offer their expertise in those fields.
 - D. The D&C Deed contemplates that the Members will discharge those functions set out in Annexure 1 to this Agreement.
 - E. This Agreement sets out the rights, obligations and duties of the Members, the Principal and the Contractor in relation to the Dispute Avoidance Board.
-

This Agreement provides:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

D&C Deed means the deed titled "Rozelle Interchange and Western Harbour Tunnel Enabling Works Design and Construction Deed" between the Principal and the Contractor.

Members means the three individuals appointed to the Dispute Avoidance Board in accordance with this Agreement, or the continuing Members and any replacement Member in the circumstances contemplated under clause 13(b) of this Agreement, as the case may be.

Other Parties means the Principal and the Contractor.

Rules has the meaning in clause 4(b) of this Agreement.

1.2 Terms defined in the D&C Deed

Terms used in this Agreement which are not otherwise defined will have the meaning given to them in the D&C Deed.

1.3 Interpretation

In this Agreement unless the context otherwise requires:

- (a) references to a person include an individual, a body politic, the estate of an individual, a firm, a corporation, an authority, an association or joint venture (whether incorporated or unincorporated), or a partnership;
- (b) the words "including", "includes" and "include" will be read as if followed by the words "without limitation";

- (c) a reference to any party to this Agreement includes that party's executors, administrators, successors, and permitted substitutes and assigns, including any person taking part by way of novation;
- (d) a reference to any Authority, institute, association or body is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed or replaced or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or objects as that Authority, institute, association or body;
- (e) a reference to this Agreement or to any other deed, agreement, document or instrument is deemed to include a reference to this Agreement or such other deed, agreement, document or instrument as amended, novated, supplemented, varied or replaced from time to time;
- (f) a reference to any legislation or to any section or provision of it includes:
 - (i) any statutory modification or re-enactment of, or any statutory provision substituted for, that legislation, section or provision; and
 - (ii) ordinances, by-laws, regulations of and other statutory instruments issued under that legislation, section or provision;
- (g) words in the singular include the plural (and vice versa) and words denoting any gender include all genders;
- (h) headings are for convenience only and do not affect the interpretation of this Agreement;
- (i) a reference to:
 - (i) a party or clause is a reference to a party or clause of or to this Agreement; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or subparagraph in the clause in which the reference appears;
- (j) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (k) for all purposes (other than where designated as a Business Day), "day" means calendar day;
- (l) a reference to "\$" is to Australian currency;
- (m) no rule of construction applies to the disadvantage of a party on the basis that the party put forward or drafted this Agreement or any part; and
- (n) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans

and other documents in all forms including the electronic form in which it was generated.

2. **D&C DEED TO PREVAIL**

- (a) The parties agree that if there is any inconsistency between the terms of this Agreement and the D&C Deed, the terms of the D&C Deed will prevail to the extent of the inconsistency.
- (b) This Agreement is effective as of the date all parties sign this document and will continue, unless terminated earlier, until it terminates in accordance with section 4 of Schedule 3 to the D&C Deed.

3. **FORMATION OF THE DISPUTE AVOIDANCE BOARD**

3.1 **Appointment of Members**

- (a) Each of the Other Parties appoints each of the Members to perform the functions, activities and obligations contemplated for the Dispute Avoidance Board under the D&C Deed and this Agreement.
- (b) The Members each confirm their acceptance of the appointment referred to in clause 3.1(a).

3.2 **Formation**

The parties acknowledge that the Dispute Avoidance Board:

- (a) has been formed;
- (b) is constituted by the Members; and
- (c) must perform its obligations and functions under Schedule 3 to the D&C Deed and this Agreement.

3.3 **Chairperson**

The Members will determine which of them will act as chairperson from time to time.

4. **ESTABLISHMENT OF PROCEDURES**

- (a) During the first meeting of the Dispute Avoidance Board, the Dispute Avoidance Board will establish procedures for the conduct of its regular meetings, site visits and other matters (excluding the rules governing the Dispute Avoidance Board determination of a Dispute referred to it pursuant to section 8 of Schedule 3 to the D&C Deed) in accordance with the procedures included in Annexure 1 to this Agreement (unless otherwise agreed by the parties).
- (b) The parties agree to comply with:
 - (i) the general operating procedures in Annexure 1 to this Agreement; and
 - (ii) the rules for the Dispute Avoidance Board decision process (**Rules**) set out in Annexure 2 to this Agreement in respect of any Dispute referred to the Dispute Avoidance Board pursuant to Schedule 3 to the D&C Deed.

5. **DISPUTE AVOIDANCE BOARD MEMBER'S OBLIGATIONS**

5.1 **Dispute Prevention**

Each Member agrees to do all things and to take such action as may be practicable in accordance with this Agreement to assist the Other Parties in preventing Disputes from arising under the D&C Deed and if a Dispute cannot be prevented, to decide it in accordance with Schedule 3 to the D&C Deed and this Agreement.

5.2 **Impartiality**

Each Member agrees to consider fairly and impartially the Disputes and other matters referred to the Dispute Avoidance Board.

5.3 **Independence**

Each Member agrees to act honestly, impartially, without bias and independently of the Other Parties and any of their Subcontractors in the performance of his or her obligations under this Agreement (including the consideration of facts and conditions relating to a Dispute) and in accordance with clause 5 of this Agreement.

5.4 **General duties**

Each Member agrees to carry out his or her obligations as a Member of the Dispute Avoidance Board:

- (a) with due care and diligence;
- (b) in compliance with Schedule 3 to the D&C Deed and this Agreement; and
- (c) in compliance with all applicable Laws.

6. **COSTS AND FEES**

- (a) The Other Parties are jointly and severally liable for the payment of the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3.
- (b) The Other Parties agree as between themselves that:
 - (i) they will each pay one half of:
 - (A) the Members' fees and disbursements, calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3;
 - (B) any third party costs incurred in holding any conference referred to in clause 2 of the Rules, including any booking fee, room hire and transcript costs; and
 - (ii) they will each bear their own costs of and incidental to the preparation of this Agreement (and any replacement) and their participation in any decision process of the Dispute Avoidance Board.
- (c) Each Member agrees that they will submit separate tax invoices to each of the Principal and the Contractor at one monthly intervals (unless a different frequency is agreed by the Other Parties), covering the preceding month's activities by the Member. The invoice is to separately identify the activities performed and the calculation of the relevant fees and disbursements (excluding GST) (**Payment Amount**) in sufficient detail to enable the Other

Parties to review that the invoice is calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3. If either of the Other Parties is not satisfied that the Payment Amount is calculated in accordance with the Schedule of Fees and Disbursements set out in Annexure 3, then either of the Other Parties may request clarification from the relevant Member.

- (d) Each Member agrees that they will issue separate tax invoices to each of the Principal and the Contractor, for one half of the agreed Payment Amount.
- (e) The Other Parties must pay the amounts payable in tax invoices issued in accordance with clause 6(d) within 30 days of receipt.
- (f) The Members are not entitled to engage any third party consultants or advisers in the performance of their obligations under this Agreement unless the Other Parties agree in writing for them to do so, and on the terms on which they may do so.

7. **PRINCIPAL'S COMMITMENT AND RESPONSIBILITIES**

The Principal acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in Schedule 3 to the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the prevention and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

8. **CONTRACTOR'S COMMITMENTS AND RESPONSIBILITIES**

The Contractor acknowledges and agrees that it must:

- (a) act in good faith towards each Member and the Dispute Avoidance Board;
- (b) comply with the reasonable requests and directions of the Dispute Avoidance Board; and
- (c) except for its participation in the Dispute Avoidance Board's activities as provided in Schedule 3 to the D&C Deed and this Agreement, not solicit advice or consultation from the Dispute Avoidance Board or the Members on matters dealing with the avoidance and resolution of Disputes which may compromise the Dispute Avoidance Board's integrity or compliance with this Agreement.

9. **CONFIDENTIALITY**

In relation to all confidential information disclosed to the Dispute Avoidance Board at any time each Member agrees:

- (a) to keep that information confidential;
- (b) not to disclose that information except if compelled by Law to do so;

- (c) not to use that information for a purpose other than complying with its obligations under this Agreement or the resolution of any Dispute referred to the Dispute Avoidance Board; and
- (d) to be bound by this obligation of confidentiality whether or not such confidential information is or later becomes in the public domain.

10. **CONFLICT OF INTEREST**

- (a) If a Member, during the term of appointment as a Member, becomes aware of any circumstance that might reasonably be considered to affect the Member's capacity to act independently, impartially and without bias, the Member must inform the Principal and the Contractor and the other Members of the Dispute Avoidance Board.
- (b) The other Members of the Dispute Avoidance Board will within five Business Days of notification under clause 10(a) confer and inform the Other Parties and the Member, whether they believe the circumstances notified are such that the Member should be replaced. In the event that one or both of the other Members believe that the Member should be replaced, the Member must immediately resign from the Dispute Avoidance Board and a reappointment will occur pursuant to clause 14.3.

11. **LIABILITY**

Except in the case of fraud:

- (a) the Members shall not be liable to the Other Parties or any of them upon any cause of action whatsoever for anything done or omitted to be done by the Dispute Avoidance Board or the Members; and
- (b) the Other Parties jointly and severally hereby release the Members against all actions, suits, proceedings, disputes, differences, accounts, claims, demands, costs, expenses and damages of any kind whatsoever (hereafter "claims") (including, but not limited to, defamation, bias or other misconduct) whether such claims arise:
 - (i) under or in any connection with this Agreement;
 - (ii) in tort for negligence, negligent advice or otherwise; or
 - (iii) otherwise at law (including by statute to the extent it is possible so to release, exclude, or indemnify) and in equity generally, including without limitation for unjust enrichment,

arising out of, or in connection with, the Project or the Dispute Avoidance Board's activities or any other process conducted pursuant to this Agreement.

12. **INDEMNITY**

The Principal and the Contractor jointly and severally indemnify and must keep indemnified the Members against all claims including without limitation claims by third parties upon any of the bases set out in clause 11 (or otherwise):

- (a) against the Other Parties, or any of them; and
- (b) against the Members or any of them,

arising out of anything done or omitted to be done by the Dispute Avoidance Board or the Members in the proper performance of their duties under this Agreement and Schedule 3 to the D&C Deed.

13. **TERMINATION OF AGREEMENT**

- (a) This Agreement may be terminated by written agreement of the Principal and the Contractor or may terminate otherwise in accordance with section 4 of Schedule 3 to the D&C Deed.
- (b) Where:
 - (i) a Member resigns under clause 10(b) or 14.1; or
 - (ii) the appointment of a Member is terminated by the Principal and the Contractor under clause 14.2,
- (c) then despite the resignation or termination taking effect in accordance with its terms, this Agreement will remain in force until a replacement to this Agreement has been fully executed pursuant to clause 14.3(d), at which time this Agreement terminates.

14. **MEMBERS' TERMINATION**

14.1 **Resignation**

A Member may resign from the Dispute Avoidance Board by providing 30 Business Days' written notice to the other Members, the Principal and the Contractor (unless the Principal and the Contractor agree to a shorter notice period).

14.2 **Termination**

A Member may be terminated at any time by written agreement of the Principal and the Contractor.

14.3 **Replacement**

The parties acknowledge and agree that if:

- (a) a Member resigns under clause 10(b) or 14.1; or is unable to act as a result of death or disability; or
- (b) the appointment of a Member is terminated by the Other Parties under clause 14.2,

then:

- (c) a replacement Member may be appointed in accordance with section 3 of Schedule 3 to the D&C Deed; and
- (d) the Principal, the Contractor, the continuing Members and the replacement Member must enter into a replacement agreement substantially similar to this Agreement as a condition of a valid re-appointment and re-constitution of the Dispute Avoidance Board under the terms of this Schedule 3.

15. **GOVERNING LAW**

- (a) This Agreement shall be governed by and construed in accordance with the Laws of the State of New South Wales.

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

16. **RELATIONSHIP OF THE PARTIES**

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

17. **NOTICES**

- (a) Any formal notices contemplated by this Agreement must be in writing and delivered to the relevant address or sent to the facsimile number or email address (subject to clause 17(e)) as set out in the parties' details on page 1 of this Agreement (or to any new address or facsimile number or email address that a party notifies to the others).
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) A notice sent by facsimile will be taken to have been received on the next day which is a Business Day after the day shown on the transmission record showing the number of the person to whom it is addressed in accordance with clause 17(a).
- (d) Any notice contemplated by this Agreement to be given to the Principal must be delivered to the Principal address or sent by facsimile in accordance with the Principal' details on page 1 of this Agreement.
- (e) In relation to any notice, information or documentation under sections 6, 7, 8 and 9 of Schedule 3 to the D&C Deed:
 - (i) the Principal, the Principal's Representative, the Contractor and the DAB Members will only be permitted to give such a notice by email if the notice is concurrently delivered to the other party's address or sent by facsimile in accordance with details on page 1 of this Agreement; and
 - (ii) will be taken to have been received at the times set out in clause 17(b) for notices sent by post and clause 17(c) for notices given by facsimile.
- (f) Subject to clause 17(e), a notice given by email is taken to have been received on the next Business Day after the day on which the email was issued, provided the sender does not receive notification that the email was not successfully received in the recipient's inbox.

18. **GIVING EFFECT TO THIS AGREEMENT**

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

19. **SURVIVAL OF TERMS**

The parties agree that clauses 6, 9, 11, 12 and 15 and this clause 19 (and any other terms of this Agreement necessary for or incidental to the operation of the preceding terms) will survive the termination or expiry of this Agreement.

20. **WAIVER OF RIGHTS**

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

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

21. **OPERATION OF THIS AGREEMENT**

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

22. **GOODS AND SERVICES TAX**

22.1 **Interpretation**

Words or expressions used in this clause 22 which are defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.

22.2 **Consideration is GST exclusive**

Any consideration to be paid or provided for a supply made under or in connection with this Agreement, unless specifically described in this Agreement as 'GST inclusive', does not include an amount on account of GST.

22.3 **Gross up of consideration**

Despite any other provision in this Agreement, if a party (**Supplier**) makes a supply under or in connection with this Agreement on which GST is imposed (not being a supply the consideration for which is specifically described in this Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply under this Agreement but for the application of this clause (**GST exclusive consideration**) is increased by, and the recipient of the supply (**Recipient**) must also pay to the Supplier an amount equal to the GST payable on the supply (**GST Amount**); and

- (b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

22.4 **Reimbursements (net down)**

If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

22.5 **Tax invoices**

The Recipient need not make a payment for a taxable supply made under or in connection with this Agreement until the Supplier has given the Recipient a Tax Invoice for the supply to which the payment relates.

22.6 **Adjustment event**

If an adjustment event occurs in relation to a taxable supply made under or in connection with this agreement then the consideration payable in respect of the supply shall also be adjusted as follows:

- (a) if the adjustment event gives rise to an increase in the GST payable by the Supplier in relation to the supply a payment equal to that increase will be made by the Recipient to the Supplier; and
- (b) if the adjustment event gives rise to a decrease in the GST payable by the Supplier in relation to the supply payment equal to that decrease will be made by the Supplier to the Recipient.

Any payment that is required under this clause 22.6 will be made within ten Business Days of the issuing of an adjustment note or an amended Tax Invoice, as the case may be, by the Supplier. If the adjustment event gives rise to an adjustment, the Supplier must issue an adjustment note to the Recipient as soon as it becomes aware of the adjustment event.

23. **AMENDMENT**

This Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

24. **COUNTERPARTS**

- (a) This Agreement may be executed in counterparts, which taken together constitute one instrument.
- (b) A party may execute this Agreement by executing any counterpart.

25. **ATTORNEYS**

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

EXECUTED as an agreement

SIGNED FOR AND ON BEHALF OF
ROADS AND MARITIME SERVICES
(ABN 76 236 371 088) by its duly
authorised representative in the presence of:

Signature of Witness

Signature of Representative

Name of Witness (Please Print)

Name of Delegate (Please Print)

Signed for
John Holland Pty Ltd
under Power of Attorney dated

in the presence of

sign here ▶ _____
Attorney

sign here ▶ _____
Witness

print name _____

print name _____

Signed for
CPB Contractors Pty Limited
under Power of Attorney dated

sign here ► _____
Attorney Attorney

print name _____

in the presence of

sign here ► _____
Witness Witness

print name _____

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

SIGNED BY THE MEMBER in the presence of:

Signature of Witness

Name of Witness (Please Print)

Signature of Member

Name of Member in full (Please Print)

ANNEXURE 1

Dispute Avoidance Board General Operating Procedures

1. General

- 1.1 The role of the Dispute Avoidance Board is to provide independent and specialised expertise in technical and administration aspects of the D&C Deed in order to assist the Other Parties in firstly attempting to avoid or prevent and, if unable to avoid or prevent, in determining Disputes under Schedule 3 to the D&C Deed in a timely manner.
- 1.2 The Other Parties will furnish to each of the Dispute Avoidance Board Members all documents necessary for the Dispute Avoidance Board to perform its functions, including copies of all D&C Documents plus periodic reports, such as progress reports, minutes of weekly or other project control meetings, site meetings or similar meetings and any other documents that would be helpful in informing the Dispute Avoidance Board Members of matters in relation to the Contractor's Activities.
- 1.3 The individual Dispute Avoidance Board Members are not the representative of the party which appointed that representative. The entire Dispute Avoidance Board must function as an objective, impartial and independent body at all times.
- 1.4 The Members shall make prompt disclosure from time to time of any new or previously undisclosed circumstance, relationship or dealing, which comes to their attention and which might give rise to a conflict of interest or apprehension of bias.
- 1.5 Communications between the Other Parties and the Dispute Avoidance Board for the purpose of attempting to avoid or prevent Disputes are without prejudice communications and may not be adduced as evidence in any dispute resolution process under Schedule 3 to the D&C Deed.

2. Frequency of Regular Meetings and Construction Site Visits

- 2.1 The frequency and scheduling of meetings and site visits necessary to keep the Dispute Avoidance Board properly informed of the project circumstances will generally be agreed between the Dispute Avoidance Board and the Other Parties.
- 2.2 In the case of a failure to agree between the Dispute Avoidance Board and the Other Parties, the Dispute Avoidance Board will schedule the meetings and visits as it sees fit.
- 2.3 The frequency of meetings of the Dispute Avoidance Board should generally be two or three monthly and coincide with the same day as meetings (which the Members will attend upon request by the Principal) of the Project Group, but the meeting schedule may be influenced by work progress, unusual events and the number and complexity of potential Disputes. In any event, meetings of the Dispute Avoidance Board may be convened separately to meetings of the Project Group.
- 2.4 The first Dispute Avoidance Board meeting should be held within one month of the date of this Agreement.

3. Agenda for Regular Meetings

- 3.1 The chairperson of the Dispute Avoidance Board will develop an agenda for each regular meeting in accordance with the requirements of the D&C Deed and this Agreement.
- 3.2 Dispute Avoidance Board meetings held for the purposes of briefing and updating the Members on performance and progress of the work under the D&C Deed and issues or potential issues arising between the Other Parties shall be held on an in-confidence and "without prejudice" basis to encourage full and frank disclosure and discussions.

- 3.3 The provisions of clause 3.2 of this Annexure 1 as they relate to a "without prejudice basis" shall not apply to any inspection or conference convened in accordance with Annexure 2 - Rules for Dispute Avoidance Board Decisions in relation to a Dispute referred to the Dispute Avoidance Board for determination.
- 3.4 Prior to or at the conclusion of regular Dispute Avoidance Board meetings contemplated by clause 3, the Dispute Avoidance Board will generally inspect the Project Works, the Temporary Works, the Construction Site and any Extra Land in the company of representatives of both of the Other Parties. Any areas of the Project Works, the Temporary Works, the Construction Site or Extra Land that are or may be the subject of any potential issue or Dispute will be pointed out by the Other Parties.

4. Minutes of Meetings

- 4.1 In accordance with clause 3.2 above, the minutes of the Dispute Avoidance Board meetings, held other than in accordance with Annexure 2 - Rules for Dispute Avoidance Board Decisions, shall be marked "in-confidence, without prejudice".
- 4.2 The minutes of Dispute Avoidance Board meetings will be prepared by the chairperson of the Dispute Avoidance Board and will be circulated to the attendees at the Dispute Avoidance Board meeting for comments, additions and corrections.
- 4.3 Minutes as may be amended will be adopted by the Dispute Avoidance Board Members at the next meeting.

5. Communications

- 5.1 Except when participating in the Dispute Avoidance Board's activities as contemplated by Schedule 3 to the D&C Deed and this Agreement, the Other Parties shall not communicate with the Dispute Avoidance Board or its Members on matters dealing with the conduct of the work or resolution of problems.
- 5.2 There must be no communication between Dispute Avoidance Board Members and employees of the Other Parties during the life of the Dispute Avoidance Board without the Dispute Avoidance Board Members informing the Other Parties. The Other Parties must direct any matters needing attention between meetings of the Dispute Avoidance Board to the chairperson of the Dispute Avoidance Board.
- 5.3 All communications to the Dispute Avoidance Board by the Other Parties outside the Dispute Avoidance Board meetings should be directed in writing to the chairperson and copied to the other Members and to the other party. All communications by the Members to the Other Parties should be addressed to the Principal's Representative and the Contractor's Representative.
- 5.4 Except as required under this Agreement or under the D&C Deed, communication by email is an acceptable alternative to physical delivery or facsimile transmission.

6. Representation

Where required by the Dispute Avoidance Board, the Other Parties shall each ensure they are represented at Dispute Avoidance Board meetings by at least one senior project executive and at least one senior off-site executive to whom the on-site executive reports. The Other Parties shall inform the chairperson of the names and project roles of each of their respective representatives and, if applicable, the names and roles of any alternates.

7. Advisory Opinions

Where requested by the Other Parties, the Dispute Avoidance Board may provide an advisory opinion on any issue referred to it by the Other Parties. Any such advisory opinion will not be a decision as that term is referred to in Annexure 2.

8. Other Attendees

Where requested by the Other Parties, and approved by the Members, or where requested by the Members, and approved by the Other Parties, other persons who may be involved in the Project (such as the design manager or independent verifier) may be invited to make special presentations to the Dispute Avoidance Board on matters or issues relevant to the Project.

ANNEXURE 2

Rules for Dispute Avoidance Board Decisions

1. Written submissions

- 1.1 Within 7 days after the referral of a Dispute to the Dispute Avoidance Board under section 8 of Schedule 3 to the D&C Deed, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, Party A (i.e. the party who gave the Notice of Referral to DAB under section 8 of Schedule 3 to the D&C Deed) must, in addition to any particulars provided by Party A in the relevant Notice of Referral to DAB, give the other party and the Dispute Avoidance Board a written statement of the Dispute referred to the Dispute Avoidance Board, any agreed statement of facts, and a written submission (which may include witness statements) on the Dispute in support of Party A's contentions.
- 1.2 Within 14 days after the statement in clause 1.1 is served, or such other time as the Dispute Avoidance Board may consider reasonable in the circumstances, the other party (Party B) must give Party A and the Dispute Avoidance Board a written response to Party A's submissions.
- 1.3 If the Dispute Avoidance Board considers it appropriate, Party A may reply in writing to Party B's response in clause 1.2 within the time allowed by the Dispute Avoidance Board.
- 1.4 If the Dispute Avoidance Board decides further information or documentation in relation to the relevant facts, matters or circumstances existing at the time the claim was to be assessed under the D&C Deed is required for the determination of the Dispute, the Dispute Avoidance Board may direct one or more of the Other Parties to provide such further submissions, information or documents as the Dispute Avoidance Board may require.
- 1.5 The Dispute Avoidance Board must disclose to both of the Other Parties all submissions, further submissions, information and documents received.
- 1.6 Any failure by a party to make a written submission will not terminate or discontinue the decision making process.

2. Conference

- 2.1 Either of the Other Parties may, in writing, request the Dispute Avoidance Board to call a conference of the parties. Any such request shall include a summary of the matters the party considers should be included in the conference.
- 2.2 If neither of the Other Parties requests the Dispute Avoidance Board to call a conference, the chairperson of the Dispute Avoidance Board may nevertheless call a conference if they think it appropriate.
- 2.3 Unless the Members and the Other Parties agree otherwise, the conference will be held at the Construction Site.
- 2.4 At least five days before the conference, the Dispute Avoidance Board must inform the Other Parties in writing of the date, venue and agenda for the conference.
- 2.5 The Other 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 2.4, the Dispute Avoidance Board and the other party may nevertheless proceed with the conference and the absence of that party will not terminate or discontinue the decision making process.
- 2.6 The Other 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 Dispute Avoidance Board in relation to the conference both before and during the course of the conference.

2.7 The conference must be held in private.

2.8 If agreed between the parties, transcripts of the conference proceedings may be taken and made available to the Dispute Avoidance Board and the Other Parties.

3. The decision

3.1 As soon as possible after receipt of the submissions referred to in clause 1 or after any conference referred to in clause 2 and, in any event not later than 21 days after the later of close of submissions or conclusion of any conference in relation to a Dispute referred to the Dispute Avoidance Board under section 8 of Schedule 3 to the D&C Deed (or such other period as the parties may agree), the Dispute Avoidance Board must:

(a) decide the Dispute between the Other Parties; and

(b) notify the Other Parties of that decision.

3.2 The decision of the Dispute Avoidance Board must:

(a) be in writing stating the Dispute Avoidance Board's decision and giving reasons;

(b) be made on the basis of the submissions (if any) of the Other Parties, the conference (if any), and the Dispute Avoidance Board's own expertise; and

(c) meet the requirements of the D&C Deed.

3.3 If the Dispute Avoidance Board's decision contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a material mistake in the description of any person, matter or thing, or a defect in form, the Dispute Avoidance Board must correct the decision.

4. Modification

These rules may be modified only by agreement in writing of the Principal and the Contractor.

ANNEXURE 3

Schedule of Fees and Disbursements

APPENDIX C

Criteria for Members of Dispute Avoidance Board

1. CRITERIA

The Dispute Avoidance Board Members must meet the following criteria:

- (a) Experience
 - (i) At least one Dispute Avoidance Board Member (and preferably all) must be experienced in the type of construction required for the Contractor's Activities, interpretation of project documents and resolution of construction issues or disputes.
 - (ii) At least two of the Dispute Avoidance Board Members must be experienced in Dispute Avoidance Boards or Dispute Resolution Boards.
- (b) Neutrality
 - (i) The Members must be neutral, act impartially and be free of any conflict of interest.
 - (ii) For the purposes of this clause 1, the term "Member" also refers to the Member's current primary or full time employer, and "involved" means having a contractual relationship with either party to the D&C Deed, or any other entity, such as a subcontractor, design professional or consultant having a role in the project.
- (c) Prohibitions and disqualifying relationships for prospective Members

Members must not have:

 - (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board;
 - (ii) previous employment by, or financial ties to, any party involved in the project within a period of 2 years prior to award of the D&C Deed, except for fee-based consulting services on other projects;
 - (iii) a close professional or personal relationship with any key member of any entity involved in the project which, in the reasonable opinion of either party, could suggest partiality; or
 - (iv) prior involvement in the project of a nature which could compromise that member's ability to participate impartially in the Dispute Avoidance Board's activities.
- (d) Prohibitions and disqualifying relationships for Members

The following matters may be construed as a conflict of interest in respect of a Member:

 - (i) an ownership interest in any entity involved in the project, or a financial interest in the project except for payment for services on the Dispute Avoidance Board; or

- (ii) the Member entering into discussions concerning, or making an agreement with, an entity involved in the project regarding employment after the project is completed.

2. **DISCLOSURE STATEMENT**

A disclosure statement for each prospective Member must be submitted to the Principal and the Contractor (including for a person nominated by the remaining two Members under section 2(d) or 3(a) of Schedule 3 to the D&C Deed). Each disclosure statement must include:

- (a) a resume of relevant experience;
- (b) a declaration describing all past, present, anticipated and planned future relationships, including indirect relationships through the prospective Member's primary or full time employer, to the project and with all entities involved in the project, including subcontractors, designers and consultants;
- (c) disclosure of a close professional or personal relationship with any key members of any entity involved in the project; and
- (d) disclosure of any other matter relevant to the criteria identified in clause 1(c) above.

SCHEDULE 4

Moral Rights Consent

(Clause 29.4)

PART A

MORAL RIGHTS CONSENT

THIS DEED POLL is made on the day of .

BY: [*Name of individual*] of [*address*], [*occupation*] (**Author**)

IN FAVOUR OF:

Transport for NSW of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (the **Principal**);

and

WCX M4-M5 Link PT Pty Limited (ACN 624 153 788) in its personal capacity and in its capacity as trustee of the **WCX M4-M5 Link Project Trust** (ABN 67 667 191 375) of Level 33, 259 George Street Sydney, NSW 2000 (the **Project Trustee**);

and

WCX M4-M5 Link AT Pty Limited (ACN 624 153 742) in its personal capacity and in its capacity as trustee of the **WCX M4-M5 Link Asset Trust** (ABN 18 934 919 866) of Level 33, 259 George Street Sydney, NSW 2000 (the **Asset Trustee**)

(together, the **Beneficiaries**).

WHEREAS:

- A. The Principal proposes to contract out the design, construction and commissioning of the Project Works (Rozelle Interchange) and operation of the Motorway (each as defined in the D&C Deed) (the **Project**).
- B. The Principal, the Project Trustee and the Asset Trustee have entered into the deed dated 12 June 2018 in relation to the carrying out of the Project (**Project Deed**).
- C. The Principal has engaged CPB Contractors Pty Limited (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney NSW 2060 and John Holland Pty Ltd (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004 (together, the **Contractor**) under the deed dated [] (**D&C Deed**) to carry out the Contractor's Activities (Rozelle Interchange) (as defined in the D&C Deed) for which the Principal is responsible to the Project Trustee and the Asset Trustee under the Project Deed.
- D. The Author may create or have created one or more literary works, artistic works or other copyright material (whether created before or after the date of this Moral Rights Consent) for the purposes of or otherwise for use in connection with the Project (**Copyright Material**).

THE AUTHOR COVENANTS as follows:

1. The Author, in consideration of the Contractor (on behalf of the Beneficiaries) paying the Author ██████████ (\$█) (receipt of which is hereby acknowledged):
 - (a) agrees, to the extent permitted by law, not to sue, enforce any claim, bring any action or exercise any remedy in respect of any, or any alleged, breach, infringement

or other wrongdoing, howsoever or whatsoever occurring, including without limitation for the breach or alleged breach of any of the Author's "moral rights" under the *Copyright Act 1968* (Cth) (as amended), (whether before or after the date of this Moral Rights Consent) by:

- (i) any or all of the Beneficiaries;
- (ii) any contractor which any or all of the Beneficiaries engages;
- (iii) any third party to whom any or all of the Beneficiaries sub-licenses (whether express or implied), or grants any other right to use, possess, modify, vary or amend any of the Copyright Material; or
- (iv) any third party to whom any or all of the Beneficiaries assigns rights it has in, or in relation to any of the Copyright Material,

(together, the **Beneficiaries and Associated Persons**) in relation to any of the Copyright Material;

- (b) without limiting section 1(a) above, consents to any of the Beneficiaries and Associated Persons:

- (i) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;
- (ii) falsely attributing authorship of any of the Copyright Material;
- (iii) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:
 - (A) results in a material distortion, destruction or mutilation of any of the Copyright Material; or
 - (B) is prejudicial to the honour or reputation of the Author; and

- (c) without limiting sections 1(a) or 1(b), consents to any of the Beneficiaries and Associated Persons:

- (i) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;
- (ii) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and
- (iii) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

2. In respect of the Beneficiaries:

- (a) the Principal may at any time give notice to the Author that another entity is to become an additional Beneficiary under this Deed. The Principal may give multiple notices under this clause. The Author agrees that on and from the date of the Principal's notice, the entity identified by the Principal will be a Beneficiary under this Deed;

- (b) if for any reason a Beneficiary is unable to enforce against the Author its promises under this Deed, the Author agrees that the Principal may do so on behalf of any and all Beneficiaries; and
- (c) nothing in this Deed amounts to an obligation on the Beneficiaries to comply, or a warranty by the Beneficiaries that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

EXECUTED as a deed poll.

SIGNED, SEALED and DELIVERED by
[NAME OF PARTY] in the presence of:

Signature of party

Signature of witness

Name

Name

Address of witness

(iv) any third party to whom any or all of the Beneficiaries assigns rights it has in, or in relation to any of the Copyright Material,

(together, the **Beneficiaries and Associated Persons**) in relation to any of the Copyright Material;

(e) without limiting section 1(a) above, consents to any of the Beneficiaries and Associated Persons:

(i) failing to acknowledge or attribute the Author's authorship of any of the Copyright Material;

(ii) falsely attributing authorship of any of the Copyright Material;

(iii) making any modification, variation or amendment of any nature whatsoever to any of the Copyright Material, whether or not it:

(A) results in a material distortion, destruction or mutilation of any of the Copyright Material; or

(B) is prejudicial to the honour or reputation of the Author; and

(f) without limiting sections 1(a) or 1(b), consents to any of the Beneficiaries and Associated Persons:

(i) using any of the Copyright Material for any purpose for which it was intended at the time the Copyright Material was created;

(ii) altering any of the Copyright Material by adding to, removing elements from, or rearranging elements of, the Copyright Material, including without limitation by combining elements of any of the Copyright Material with any other material; and

(iii) changing, relocating, demolishing or destroying any building which incorporates, is based on, or is constructed in accordance with, any of the Copyright Material.

2. In respect of the Beneficiaries:

(a) the Principal may at any time give notice to the Author that another entity is to become an additional Beneficiary under this Deed. The Principal may give multiple notices under this clause. The Author agrees that on and from the date of the Principal's notice, the entity identified by the Principal will be a Beneficiary under this Deed;

(b) if for any reason a Beneficiary is unable to enforce against the Author its promises under this Deed, the Author agrees that the Principal may do so on behalf of any and all Beneficiaries; and

(c) nothing in this Deed amounts to an obligation on the Beneficiaries to comply, or a warranty by the Beneficiaries that it will comply, with the *Competition and Consumer Act 2010* (Cth) or any equivalent provision of State or Territory legislation.

EXECUTED as a deed poll.

SIGNED, SEALED and **DELIVERED** by
[NAME OF PARTY] in the presence of:

Signature of party

Signature of witness

Name

Name

Address of witness

SCHEDULE 4A

Form of D&C Guarantee

(Clause 10.7)

PART A

DATE:

BETWEEN:

- (1) **Roads and Maritime Services** of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**Principal**); and
- (2) **China Communications Construction Company Limited** of Building A, No. 85, Deshengmenwai Street, Beijing-100099, China (**Guarantor**).

RECITALS

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

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

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

Contract means the D&C Deed dated on or about the date of this Deed between the Principal and the Contractor for the design and construction of the Project Works and the Temporary Works.

Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667) of Level 5, 177 Pacific Highway, North Sydney NSW 2060 and John Holland Pty Ltd (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004.

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

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

Insolvency Event means:

- (a) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;

- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
 - (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,

or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

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

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

- (a) are liquidated or unliquidated;
- (b) are present, prospective or contingent;
- (c) are in existence before or come into existence on or after the date of this Deed;

- (d) relate to the payment of money or the performance or omission of any act;
- (e) sound in damages only; or
- (f) accrue as a result of any Event of Default,

and irrespective of:

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

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

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

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

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

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

Subsidiary means John Holland Pty Ltd ABN 11 004 282 268 of Level 5, 380 St Kilda Road Melbourne VIC 3004.

Taxes means income, stamp, indirect or other taxes (including payroll tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Transaction Document means:

- (a) this Deed;
- (b) the Contract;
- (c) any other document which the Principal and the Guarantor so designate in writing;

- (d) each other D&C Document to which the Principal and the Contractor are a party; and
- (e) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

1.2 **Defined terms**

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

1.3 **Interpretation**

In this Deed:

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

and unless the context indicates a contrary intention:

- (b) if the Contractor is more than one person, Contractor means each of them severally and all of them jointly;
- (c) **person** includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted substitutes and assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a document (including this Deed) is to that document as amended, varied, novated, ratified, supplemented or replaced from time to time;
- (f) 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;
- (g) a reference to a statute its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) for all purposes (other than where designated as a Business Day), **day** means calendar day;
- (i) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (j) a reference to a **party, clause, schedule, exhibit, attachment** or **annexure** is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this Deed, and a reference to this Deed includes all schedules, exhibits, attachments and annexures to it;

- (k) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);
- (l) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (m) **includes** in any form is not a word of limitation; and
- (n) a reference to **\$** or **dollar** is to Australian currency.

1.4 **Joint and several liability**

The expression "Guarantor" refers to each person identified as a Guarantor, and the obligations of the Guarantor under this Deed bind each person identified as a Guarantor, jointly and severally.

1.5 **Nature of Guarantor's Obligation**

Each obligation of the Guarantor under this Deed constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.

1.6 **No contra proferentem**

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

2. **GUARANTEE**

2.1 **Guarantee**

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

2.2 **Payment by Guarantor**

If the Subsidiary does not pay the Guaranteed Money when due, the Guarantor must, within 5 Business Days of written demand, pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 **Perform Obligations**

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

3. **INDEMNITY**

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

- (a) any failure by the Subsidiary to perform the Obligations duly and punctually;
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Subsidiary for any reason, and whether or not the Principal knew or ought to have known of that reason; or
- (c) a disclaimer of any contract or property (including the Contract) made by a liquidator of the Subsidiary pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

4. **LIABILITY AS GUARANTOR AND INDEMNIFIER**

4.1 **Liability of Guarantor**

- (a) Any reference in this Deed to the obligations or liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this Deed.
- (b) The use of the expression "Guarantor" in this Deed in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Deed.
- (c) The provisions of this Deed which preserve the liability of the Guarantor as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this Deed.

4.2 **Limitation of Guarantor's Liability**

The liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract if the Guarantor had been named in the Contract as the Subsidiary.

5. **NATURE AND PRESERVATION OF LIABILITY**

5.1 **Absolute liability**

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

5.2 **Unconditional liability**

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

- (a) **(Insolvency Event)**: the occurrence before, on or at any time after the date of this Deed, of any Insolvency Event in relation to any member of the Contractor or the Guarantor;
- (b) **(Distribution)**: the receipt by the Principal of any payment, dividend or distribution under any Insolvency Provision in relation to the Contractor or the Guarantor;
- (c) **(Event of Default)**: the occurrence of any Event of Default;
- (d) **(Invalidity etc)**: any Transaction Document or any payment or other act, the making or doing of which would otherwise form part of the Obligations being or becoming or being conceded to be frustrated, illegal, invalid, void, voidable, unenforceable or irrecoverable in whole or in part for any reason whether past, present or future;
- (e) **(Further Security)**: the Principal accepting or declining to accept any Security from any person at any time;
- (f) **(Time or indulgence)**: the Principal granting or agreeing with the Guarantor or the Contractor to grant, time, waiver or other indulgence or concession to, or making any composition or compromise with, the Contractor or the Guarantor;
- (g) **(Forbearance)**: the Principal not exercising or delaying (whether deliberately, negligently, unreasonably or otherwise) in the exercise of any Power it has to enforce any Obligation or its rights under any Transaction Document;
- (h) **(Acquiescence or other omission)**: any laches, acquiescence or other act, neglect, default, omission or mistake by the Principal;
- (i) **(Repudiation)**: the determination, rescission, repudiation or termination, or the acceptance of any of the foregoing, by the Principal or the Contractor or the Guarantor of the Contract or any Obligation;
- (j) **(Variation)**: any variation to any Transaction Document or any Obligation, whether or not that variation is substantial or material, or imposes any additional liability or Obligations on or disadvantages the Contractor or the Guarantor;
- (k) **(Release)**: the full, partial or conditional release or discharge by the Principal or by operation of law, of the Contractor or the Guarantor from any Transaction Document or any Obligation;
- (l) **(Change of constitution)**: any change in membership (whether by death or retirement of an existing member, admission of a new member, or otherwise) or in the name of any partnership, firm or association in which the Contractor or the Guarantor is a member;
- (m) **(Transfer)**: the transfer, assignment or novation by the Principal or the Contractor or the Guarantor of all or any of its rights or obligations under any Transaction Document or under any other Obligation;
- (n) **(Disclosure)**: any failure by the Principal to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known to, or which ought to have been known by, the Principal relating to or affecting the Contractor or the Guarantor at any time before or during the currency of this Deed, whether prejudicial or not to the rights and liabilities of the Guarantor and whether or not the Principal was under a duty to disclose that fact, circumstance, event or thing to the Guarantor or to the Contractor;

- (o) **(Covenant not to take action)**: the Principal agreeing with the Contractor or the Guarantor not to sue, issue process, sign or execute judgment, commence proceedings for bankruptcy or liquidation, participate in any administration, scheme or deed of arrangement or reconstruction, prove in any bankruptcy or liquidation, or do anything else in respect of the liability of the Contractor or the Guarantor;
- (p) **(Death or incapacity)**: (where the Guarantor is an individual) the death or mental incapacity of the Guarantor;
- (q) **(Administration)**: the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against the Guarantor; or
 - (ii) any claim for contribution against the Guarantor; or
- (r) **(Disclaimer)**: a disclaimer of any contract or property (including the Contract) made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

5.3 **No merger**

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

5.4 **No obligation to gain consent**

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

5.5 **Appropriation**

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

5.6 **Void or voidable transactions**

If:

- (a) the Principal has at any time released or discharged:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security,

in either case in reliance on a payment, receipt or other transaction to or in favour of the Principal; or

- (b) any payment or other transaction to or in favour of the Principal has the effect of releasing or discharging:
 - (i) the Guarantor from its obligations under this Deed; or
 - (ii) any assets of the Guarantor from a Security; and
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason, including under an Insolvency Provision or under the general law; and
- (d) that claim is upheld or is conceded or compromised by the Principal,

then:

- (e) **(Restitution of rights)**: the Principal will immediately become entitled against the Guarantor to all rights (including under any Security) as it had immediately before that release or discharge;
- (f) **(Restore the Principal's position)**: the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and
- (g) **(Indemnity)**: the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 **Claim on the Guarantor**

The Principal is not required to make any claim or demand on the Contractor, or to enforce any Transaction Document, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.8 **No representation by the Principal**

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

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **General representations and warranties**

The Guarantor or, if there is more than one Guarantor, each Guarantor, represents and warrants to the Principal at the date of this Deed:

- (a) **(Legally binding obligation)**: this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;
- (b) **(Execution, delivery and performance)**: the execution, delivery and performance of this Deed by the Guarantor does not breach any Law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;

- (c) **(No material adverse effect)**: no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, are reasonably likely to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;
- (d) **(Information)**: all information relating to the Guarantor provided to the Principal in connection with this Deed was, at the time it was provided, true in all material respects and is not, by omission or otherwise, misleading in any material respect; and
- (e) **(No trusts)**: the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

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

- (a) **(Due incorporation)**: it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) **(Constitution)**: the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) **(Corporate power)**: it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) **(Filings)**: the Guarantor has filed all corporate notices and effected all registrations (that are required to be filed or registered either by Law or by the law of any foreign jurisdiction) with the relevant Authority and all of those filings and registrations are current, complete and accurate to the extent they are material to this Deed or to the enforceability or performance of the obligations of the Guarantor under this Deed (other than any filing or registration referred to in clause 12 in relation to the expatriation of any amounts payable under this Deed).

6.3 Representations and warranties repeated

Except for the representations and warranties in clause 6.1(c) which will not be repeated, each other representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. PAYMENTS

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor in accordance with clause 2.2 to the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

All money received or recovered by the Principal on account of the Guaranteed Money will be treated as payments in gross without any right on the part of the Guarantor to claim the

benefit of any money received or recovered by the Principal or any Security, until the Principal has been paid ■■■ cents in the dollar in respect of the Guaranteed Money.

7.3 **Interest**

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

7.4 **Merger**

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

7.5 **No set-off or deduction**

All payments by the Guarantor under this Deed will be without any set-off or counterclaim, other than a set-off or counterclaim available to the Contractor against the Principal.

7.6 **No deduction for Taxes**

- (a) All payments by the Guarantor under this Deed will be without deduction or withholding for or on account of any present or future Taxes unless the Guarantor is compelled by law to deduct or withhold the same.
- (b) If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:
 - (i) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
 - (ii) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
 - (iii) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.7 **Currency indemnity**

- (a) The Australian Dollar is the currency of payment by the Guarantor under or in connection with this Deed, except that payment by the Guarantor of or in relation to any Obligation which is denominated in a foreign currency must be made in that foreign currency.

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

8. EXPENSES AND STAMP DUTIES

8.1 Expenses

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

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

8.2 Stamp duties

- (a) (**Payment of all duties**): The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment or receipt contemplated by this Deed.
- (b) (**Indemnity**): The Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay any amount specified in clause 8.2(a).

8.3 Goods and Services Tax

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

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

9. ASSIGNMENT

9.1 The Guarantor

The Guarantor must not assign, novate or otherwise deal with all or any part of its rights and obligations under this Deed without the prior written consent of the Principal.

9.2 **The Principal**

- (a) The Principal may:
 - (i) assign or novate or otherwise transfer all or any part of its rights under or novate any Transaction Document at the same time and to the same entity as set out in clause 37.1(c) of the Contract; and
 - (ii) grant a Security Interest in respect of the right, title and interest of the Principal under any Transaction Document in favour of any Debt Financiers; and
 - (iii) disclose to a proposed assignee or transferee or any Debt Financier who is granted a Security Interest pursuant to clause 9.2(a)(ii) any information in the possession of the Principal relating to the Guarantor.
- (b) The Principal may at any time novate any Transaction Document in accordance with clause 9.2(a)(i) and may disclose to a proposed novatee any information in the possession of the Principal relating to the Guarantor. The Guarantor must, on request by the Principal, execute a deed of novation in the form set out in Schedule 4D to the Contract and do any other thing necessary to give full effect to the novation.

10. **GOVERNING LAW, JURISDICTION AND ARBITRATION**

10.1 **Governing law**

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

10.2 **Jurisdiction**

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

10.3 **Reference to arbitration**

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)) or where the Principal gives a written notice to the Guarantor that it requires a Dispute (as defined in clause 10.3(b)) to be determined by arbitration.
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) (**Dispute**) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (2016 edition) (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.

- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.
- (f) Subject to clause 10.6, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.4 **Consolidation**

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

10.5 **Joinder**

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

10.6 **Exclusion from determination or award**

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with clause 10.3.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

10.7 **Award final and binding**

Any award of the arbitral tribunal will be final and binding upon the parties.

11. **MISCELLANEOUS**

11.1 **Notices**

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Principal

Name: Roads and Maritime Services
Address: 20-44 Ennis Road
Milsons Point, NSW, 2061
Fax no: N/A
Attention: Executive Director, Motorways

Guarantor

Name: China Communications Construction Company Limited
Address: c/- John Holland Group Pty Ltd
Level 5, 380 St Kilda Road,
Melbourne, VIC, 3004

Fax no: N/A
Attention: [REDACTED]
(Chief Financial Officer - John Holland Group Pty Ltd)

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

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 11.1(b); and
- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax was sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non-business day, or is after 5:00 pm on a business day, when that communication will be deemed to be received at 9:00 am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 11.1(b), unless that delivery is made on a non-business day, or after 5:00 pm on a business day, when that communication will be deemed to be received at 9:00 am on the next business day,

where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

11.2 **Continuing obligation**

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

11.3 **Further assurance**

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

11.4 **Form of demand**

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

11.5 **Entire agreement**

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

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

11.6 **Severance**

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

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

11.7 **Remedies cumulative**

The Powers conferred by this Deed are cumulative and in addition to all other Powers available to the Principal by law.

11.8 **Waiver**

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

11.9 **Consents**

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

11.10 **Vienna Convention**

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

11.11 **Moratorium legislation**

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to:

- (a) lessen or affect in favour of the Guarantor any obligation under this Deed; or
 - (b) delay or otherwise prevent or prejudicially affect the exercise of any Power,
- are expressly waived.

11.12 **Variations**

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

11.13 **Provisions limiting or excluding liability**

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

11.14 **Counterparts**

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart, and all together constitute one document.

12. **UNDERTAKING BY GUARANTOR**

Where:

- (a) a demand is made by the Principal for payment of any amount claimed by the Principal to be due and payable by the Guarantor under this Deed;
- (b) liability to pay the amount the subject of the demand (**Demanded Amount**) is not disputed by the Guarantor; and
- (c) in order to pay the Demanded Amount to the Principal, this Deed must be verified with the State Administration of Foreign Exchange of the People's Republic of China (**SAFE**),

the Guarantor must:

- (d) lodge this Deed for verification with SAFE;
- (e) on or before the date which is 15 working days in Beijing after the date of the demand for payment, procure and provide evidence satisfactory to the Principal (acting reasonably) that this Deed has been lodged for verification with SAFE;
- (f) use all reasonable endeavours to obtain SAFE's verification of this Deed in a timely manner, including providing all documents and information and doing all other things as required by SAFE for the verification of this Deed; and
- (g) on or before the date which is 5 months after the date of the demand for payment (or such longer period agreed by the Principal, acting reasonably) procure and provide evidence satisfactory to the Principal that this Deed is verified by SAFE.

EXECUTED as a deed.

**SIGNED, SEALED AND DELIVERED
FOR China Communications
Construction Company Limited** under
Power of Attorney dated
in the presence of:

Attorney

Witness

Name

Name

The Seal of **Roads and Maritime Services** was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988* (NSW):

Signatory Name

PART B

DATE:

BETWEEN:

- (1) **Roads and Maritime Services** of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**Principal**); and
- (2) **CIMIC Group Limited** (ABN 57 004 482 982) of Level 25, 177 Pacific Highway, North Sydney NSW 2060 (**Guarantor**).

RECITALS

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

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed:

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

Contract means the D&C Deed dated on or about the date of this Deed between the Principal and the Contractor for the design and construction of the Project Works and the Temporary Works.

Contractor means CPB Contractors Pty Limited (ABN 98 000 893 667) of Level 5, 177 Pacific Highway, North Sydney NSW 2060 and John Holland Pty Ltd (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004.

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

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

Insolvency Event means:

- (a) a controller (as defined in section 9 of the *Corporations Act 2001* (Cth)), administrator or similar officer is appointed in respect of a person or any asset of a person;
- (b) a liquidator or provisional liquidator is appointed in respect of a person;
- (c) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, an order is made, a meeting is convened or a resolution is passed, for the purpose of:

- (i) appointing a person referred to in paragraph (a) or (b) of this definition;
 - (ii) winding up or deregistering a person; or
 - (iii) proposing or implementing a scheme of arrangement, other than with the prior approval of the Principal under a solvent scheme of arrangement pursuant to Part 5.1 of the *Corporations Act 2001* (Cth);
- (d) any application (not withdrawn or dismissed within 7 days) is made to a court for an order, a meeting is convened, a resolution is passed or any negotiations are commenced, for the purpose of implementing or agreeing:
- (i) a moratorium of any debts of a person;
 - (ii) any other assignment, composition or arrangement (formal or informal) with a person's creditors; or
 - (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of that person's creditors or a trustee,
- or any agreement or other arrangement of the type referred to in this paragraph (d) is ordered, declared or agreed to;
- (e) as a result of the operation of section 459F(1) of the *Corporations Act 2001* (Cth), a person is taken to have failed to comply with a statutory demand (as defined in the *Corporations Act 2001* (Cth));
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment or other process is made, levied or issued against or in relation to any asset of a person;
- (g) anything analogous to anything referred to in paragraphs (a) to (f) (inclusive) of this definition, or which has a substantially similar effect, occurs with respect to a person under any law; or
- (h) a person is, or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts.

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

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

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

(f) accrue as a result of any Event of Default,

and irrespective of:

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

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

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

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

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

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

Subsidiary means CPB Contractors Pty Limited (ABN 98 000 893 667) of Level 5, 177 Pacific Highway, North Sydney NSW 2060.

Taxes means income, stamp, indirect or other taxes (including payroll tax), levies, imposts, deductions, charges (including any superannuation guarantee charge), duties (including import duty), workers compensation insurance premiums, compulsory loans and withholdings (including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person) together with interest thereon or penalties, if any, and charges, fees or other amounts made on, or in respect thereof.

Transaction Document means:

- (a) this Deed;
- (b) the Contract;
- (c) any other document which the Principal and the Guarantor so designate in writing;
- (d) each other D&C Document to which the Principal and the Contractor are a party; and
- (e) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

1.2 **Defined terms**

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

1.3 **Interpretation**

In this Deed:

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

and unless the context indicates a contrary intention:

(b) if the Contractor is more than one person, Contractor means each of them severally and all of them jointly;

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

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

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

(f) 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;

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

(h) for all purposes (other than where designated as a Business Day), **day** means calendar day;

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

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

(k) where the day on or by which any sum is payable or any act, matter or thing is to be done is a day other than a Business Day, that sum will be paid or that act, matter or thing will be done on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not);

- (l) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (m) **includes** in any form is not a word of limitation; and
- (n) a reference to **\$** or **dollar** is to Australian currency.

1.4 **Joint and several liability**

The expression "Guarantor" refers to each person identified as a Guarantor, and the obligations of the Guarantor under this Deed bind each person identified as a Guarantor, jointly and severally.

1.5 **Nature of Guarantor's Obligation**

Each obligation of the Guarantor under this Deed constitutes a principal, not a secondary or ancillary obligation, to the intent that, without limiting in any way the operation of any of the other provisions of this Deed, any limitation on the liability of the Guarantor which would otherwise arise by reason of its status as a guarantor, co-guarantor, indemnifier or co-indemnifier, is negated.

1.6 **No contra proferentem**

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

2. **GUARANTEE**

2.1 **Guarantee**

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

2.2 **Payment by Guarantor**

If the Subsidiary does not pay the Guaranteed Money when due, the Guarantor must, within 5 Business Days of written demand, pay to the Principal the Guaranteed Money which is then due and unpaid or which later becomes due, owing or payable.

2.3 **Perform Obligations**

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

3. **INDEMNITY**

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

- (a) any failure by the Subsidiary to perform the Obligations duly and punctually;
- (b) any obligation or liability that would otherwise form part of the Obligations being void, voidable or unenforceable against or irrecoverable from the Subsidiary for any

reason, and whether or not the Principal knew or ought to have known of that reason;
or

- (c) a disclaimer of any contract or property (including the Contract) made by a liquidator of the Subsidiary pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

4. **LIABILITY AS GUARANTOR AND INDEMNIFIER**

4.1 **Liability of Guarantor**

- (a) Any reference in this Deed to the obligations or liabilities of the Guarantor will be construed as a reference to its obligations or liabilities, whether as a guarantor or an indemnifier or both, under this Deed.
- (b) The use of the expression "Guarantor" in this Deed in relation to a party is not to be construed as diminishing that party's obligations as an indemnifier under this Deed.
- (c) The provisions of this Deed which preserve the liability of the Guarantor as a guarantor apply, appropriately modified, to any liability which arises whether in regard to that party's guarantee or its indemnity under this Deed.

4.2 **Limitation of Guarantor's Liability**

The liability of the Guarantor under this Deed will not exceed the liability which the Guarantor would have had to the Principal arising out of or in connection with the Contract if the Guarantor had been named in the Contract as the Subsidiary.

5. **NATURE AND PRESERVATION OF LIABILITY**

5.1 **Absolute liability**

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

5.2 **Unconditional liability**

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

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

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

- (q) **(Administration)**: the provisions of section 440J of the *Corporations Act 2001* (Cth) operating to prevent or delay:
 - (i) the enforcement of this Deed against the Guarantor; or
 - (ii) any claim for contribution against the Guarantor; or
- (r) **(Disclaimer)**: a disclaimer of any contract or property (including the Contract) made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws.

5.3 **No merger**

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

5.4 **No obligation to gain consent**

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

5.5 **Appropriation**

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

5.6 **Void or voidable transactions**

If:

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

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

(d) that claim is upheld or is conceded or compromised by the Principal,

then:

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

(f) **(Restore the Principal's position)**: the Guarantor must immediately do all things and execute all documents as the Principal may reasonably require to restore to the Principal all those rights; and

(g) **(Indemnity)**: the Guarantor must indemnify the Principal against costs, losses and expenses suffered or incurred by the Principal in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

5.7 **Claim on the Guarantor**

The Principal is not required to make any claim or demand on the Contractor, or to enforce any Transaction Document, or any other right, power or remedy against the Contractor, before making any demand or claim on the Guarantor.

5.8 **No representation by the Principal**

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

6. **REPRESENTATIONS AND WARRANTIES**

6.1 **General representations and warranties**

The Guarantor or, if there is more than one Guarantor, each Guarantor, represents and warrants to the Principal at the date of this Deed:

(a) **(Legally binding obligation)**: this Deed constitutes a valid and legally binding obligation of the Guarantor in accordance with its terms;

(b) **(Execution, delivery and performance)**: the execution, delivery and performance of this Deed by the Guarantor does not breach any Law, or any document or agreement to which the Guarantor is a party or which is binding on it or any of its assets;

(c) **(No material adverse effect)**: no litigation, arbitration, mediation, conciliation, criminal or administrative proceedings are current, pending or, to the knowledge of the Guarantor, threatened, which, if adversely determined, are reasonably likely to have a material adverse effect on the ability of the Guarantor to perform its obligations under this Deed;

(d) **(Information)**: all information relating to the Guarantor provided to the Principal in connection with this Deed was, at the time it was provided, true in all material respects and is not, by omission or otherwise, misleading in any material respect; and

- (e) **(No trusts)**: the Guarantor has not entered into this Deed as the trustee of any trust.

6.2 Corporate representations and warranties

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

- (a) **(Due incorporation)**: it is duly incorporated and has the corporate power to own its property and to carry on its business as is now being conducted;
- (b) **(Constitution)**: the execution, delivery and performance of this Deed does not breach the constitution of the Guarantor and, if the Guarantor or any of its subsidiaries is listed on the Australian Stock Exchange Limited or on any other stock exchange, those listing requirements or business rules;
- (c) **(Corporate power)**: it has the power, and has taken all corporate and other action required, to enter into this Deed and to authorise the execution and delivery of this Deed and the performance of its obligations under this Deed; and
- (d) **(Filings)**: the Guarantor has filed all corporate notices and effected all registrations (that are required to be filed or registered either by Law or by the law of any foreign jurisdiction) with the relevant Authority and all of those filings and registrations are current, complete and accurate to the extent they are material to this Deed or to the enforceability or performance of the obligations of the Guarantor under this Deed (including the expatriation of any amounts payable under this Deed).

6.3 Representations and warranties repeated

Except for the representations and warranties in clause 6.1(c) which will not be repeated, each other representation and warranty in this Deed will be repeated on each day whilst any of the Guaranteed Money remains outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting, as if made on each such day.

7. PAYMENTS

7.1 On demand

All money payable by the Guarantor under this Deed must be paid by the Guarantor in accordance with clause 2.2 to the Principal in immediately available funds to the account and in the manner notified by the Principal to the Guarantor.

7.2 Payment in gross

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

7.3 Interest

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

payable under this clause to the extent that interest for late payment to the Principal is incorporated into the calculation of the amount payable under the Contract.

7.4 **Merger**

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

7.5 **No set-off or deduction**

All payments by the Guarantor under this Deed will be without any set-off or counterclaim, other than a set-off or counterclaim available to the Contractor against the Principal.

7.6 **No deduction for Taxes**

- (a) All payments by the Guarantor under this Deed will be without deduction or withholding for or on account of any present or future Taxes unless the Guarantor is compelled by law to deduct or withhold the same.
- (b) If the Guarantor is compelled by law to make any deduction or withholding for or on account of any present or future Taxes (not being Taxes on the overall net income of the Principal), then the Guarantor must:
 - (i) pay to the Principal any additional amounts necessary to enable the Principal to receive (after all deductions and withholdings for those Taxes) a net amount equal to the full amount which would otherwise be payable to the Principal if no deduction or withholding was required to be made;
 - (ii) promptly (and within the time prescribed by law) pay to the relevant taxing authority the amount of those Taxes which it is compelled by law to deduct or withhold, and indemnify the Principal for any Taxes and interest or penalties to which the Principal may become liable consequent on the failure of the Guarantor to pay those Taxes; and
 - (iii) deliver to the Principal, promptly on request from the Principal, a copy of any receipt issued by the relevant taxing authority on payment of those Taxes.

7.7 **Currency indemnity**

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

8. EXPENSES AND STAMP DUTIES

8.1 Expenses

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

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

8.2 Stamp duties

- (a) **(Payment of all duties)**: The Guarantor must pay all stamp duties, transaction, registration and similar Taxes, including fines and penalties which may be payable to or required to be paid by any appropriate authority, or determined to be payable in connection with the execution, delivery, performance or enforcement of this Deed or any payment or receipt contemplated by this Deed.
- (b) **(Indemnity)**: The Guarantor must indemnify the Principal against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay any amount specified in clause 8.2(a).

8.3 Goods and Services Tax

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

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

9. ASSIGNMENT

9.1 The Guarantor

The Guarantor must not assign, novate or otherwise deal with all or any part of its rights and obligations under this Deed without the prior written consent of the Principal.

9.2 The Principal

- (a) The Principal may:
 - (i) assign or novate or otherwise transfer all or any part of its rights under or novate any Transaction Document at the same time and to the same entity as set out in clause 37.1(c) of the Contract; and
 - (ii) grant a Security Interest in respect of the right, title and interest of the Principal under any Transaction Document in favour of any Debt Financiers; and

- (iii) disclose to a proposed assignee or transferee or any Debt Financier who is granted a Security Interest pursuant to clause 9.2(a)(ii) any information in the possession of the Principal relating to the Guarantor.
- (b) The Principal may at any time novate any Transaction Document in accordance with clause 9.2(a)(i) and may disclose to a proposed novatee any information in the possession of the Principal relating to the Guarantor. The Guarantor must, on request by the Principal, execute a deed of novation in the form set out in Schedule 4D to the Contract and do any other thing necessary to give full effect to the novation.

10. **GOVERNING LAW, JURISDICTION AND ARBITRATION**

10.1 **Governing law**

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

10.2 **Jurisdiction**

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

10.3 **Reference to arbitration**

- (a) Clauses 10.3 to 10.7 will only apply where the Guarantor is a foreign company (as defined in section 9 of the *Corporations Act 2001* (Cth)) or where the Principal gives a written notice to the Guarantor that it requires a Dispute (as defined in clause 10.3(b)) to be determined by arbitration.
- (b) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) (**Dispute**) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (2016 edition) (known as the ACICA Arbitration Rules).
- (c) The seat of the arbitration will be Sydney.
- (d) The number of arbitrators will be one.
- (e) The language of the arbitration will be English.
- (f) Subject to clause 10.6, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages.

10.4 **Consolidation**

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

10.5 Joinder

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

10.6 Exclusion from determination or award

- (a) The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with clause 10.3.
- (b) The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any dispute referred to the arbitral tribunal.

10.7 Award final and binding

Any award of the arbitral tribunal will be final and binding upon the parties.

11. MISCELLANEOUS

11.1 Notices

Any communication under or in connection with this Deed:

- (a) must be in writing;
- (b) must be addressed as shown below:

Principal

Name: Roads and Maritime Services
Address: 20-44 Ennis Road
Milsons Point, NSW, 2061
Fax no: N/A
Attention: Executive Director, Motorways

Guarantor

Name: CIMC Group Limited
Address: Level 25, 177 Pacific Highway, North Sydney NSW 2060
Fax no: N/A
Attention: XXXXXXXXXX
(Company Secretary - CIMIC Group Limited)

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

- (c) must be signed by the party making the communication or (on its behalf) by the solicitor for, or by any attorney, director, secretary, or authorised agent of, that party;
- (d) must be delivered or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 11.1(b); and

- (e) will be deemed to be received by the addressee:
 - (i) (in the case of prepaid post) on the third business day after the date of posting to an address within Australia, and on the fifth business day after the date of posting to an address outside Australia;
 - (ii) (in the case of fax) at the local time (in the place of receipt of that fax) which then equates to the time at which that fax was sent as shown on the transmission report which is produced by the machine from which that fax is sent and which confirms transmission of that fax in its entirety, unless that local time is a non-business day, or is after 5:00 pm on a business day, when that communication will be deemed to be received at 9:00 am on the next business day; and
 - (iii) (in the case of delivery by hand) on delivery at the address of the addressee as provided in clause 11.1(b), unless that delivery is made on a non-business day, or after 5:00 pm on a business day, when that communication will be deemed to be received at 9:00 am on the next business day,

where "business day" means a day (not being a Saturday or Sunday) on which banks are generally open for business in the place of receipt of that communication.

11.2 **Continuing obligation**

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

11.3 **Further assurance**

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

11.4 **Form of demand**

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

11.5 **Entire agreement**

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

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

11.6 **Severance**

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

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

11.7 **Remedies cumulative**

The Powers conferred by this Deed are cumulative and in addition to all other Powers available to the Principal by law.

11.8 **Waiver**

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

11.9 **Consents**

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

11.10 **Vienna Convention**

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

11.11 **Moratorium legislation**

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to:

- (a) lessen or affect in favour of the Guarantor any obligation under this Deed; or
 - (b) delay or otherwise prevent or prejudicially affect the exercise of any Power,
- are expressly waived.

11.12 **Variations**

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

11.13 Provisions limiting or excluding liability

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

11.14 Counterparts

This Deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart, and all together constitute one document.

EXECUTED as a deed.

Signed sealed and delivered for
CIMIC Group Limited
under Power of Attorney dated

sign here ► _____
Attorney

Attorney

print name _____

in the presence of

sign here ► _____
Witness

Witness

print name _____

The Seal of **Roads and Maritime Services** was affixed to this document in the presence of the Chief Executive or member of staff authorised in that behalf by the Chief Executive pursuant to section 109 of the *Transport Administration Act 1988* (NSW):

Signatory Name

[Redacted]

Name	Position
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]

SCHEDULE 4C

Significant Subcontracts

(Clause 1.1 definition of "Significant Subcontract" and clause 9.2)

Significant Subcontracts include the Tolling Equipment Works Subcontract and the IOMCS and OMCS Works Subcontract.

SCHEDULE 4D

Form of Deed of Novation

DATE:

PARTIES:

- (1) [Name of Novatee] [ABN/ACN of Novatee] (the **Novatee**);
- (2) **Transport for NSW** of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (the **Principal**);
- (3) **CPB Contractors Pty Limited** (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney NSW 2060 and **John Holland Pty Ltd** (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004 (together, the **Contractor**); and
- (4) [**Guarantor**] (ABN [insert]) of [*insert address*] (the **Guarantor**),

RECITALS:

- (A) The Principal and the Contractor are parties to a deed for the design and construction of the Rozelle Interchange Works dated [**Insert Date**] (the **D&C Deed**).
- (B) The Principal and the Guarantor are parties to a deed of guarantee dated [**Insert Date**] (the **D&C Guarantee**).
- (C) The Principal wishes to exercise its right to novate its interests, rights and obligations under the D&C Deed, pursuant to clause 37.1 of the D&C Deed.
- (D) In connection with the novation of the D&C Deed, the Principal wishes to exercise its rights to novate its interests, rights and obligations under the D&C Guarantee, pursuant to clause 9.2 of the D&C Guarantee.
- (E) The parties to this Deed have agreed to novate the D&C Deed and the D&C Guarantee on the terms of this Deed.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause is a reference to a clause of this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document, and includes the recitals, schedules, and annexures to that agreement or document.

- (g) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (h) A reference to a right or obligation of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (i) Except as otherwise defined in this Deed, terms used in this Deed that are defined in the D&C Deed have the same meanings in this Deed.
- (j) The word "include" in any form is not a word of limitation.

2. **NOVATION**

2.1 **Novation**

The parties agree to novate the D&C Deed, such that on and from the date of execution of this Deed (the **Effective Date**):

- (a) the Novatee is substituted for the Principal under the D&C Deed as if the Novatee had originally been a party to the D&C Deed instead of the Principal; and
- (b) each reference in the D&C Deed to the Principal is to be read as if it were a reference to the Novatee.

2.2 **Assumption of rights and obligations**

On and from the Effective Date:

- (a) the Novatee:
 - (i) will be bound by, and must comply with, the D&C Deed as it relates to the Principal;
 - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the D&C Deed (whether arising before or after the Effective Date) subject to any dilution of the Liquidated Damages Cap (Rozelle Interchange), the Liquidated Damages Cap (WHT Southern Tunnel Works), the General Cap (Rozelle Interchange) and the General Cap (WHT Southern Tunnel Works) which occurred before the Effective Date; and
 - (iii) will assume all the obligations and liabilities of the Principal under or in respect of the D&C Deed arising or accruing on or after the Effective Date (but will not assume any obligation or liability of the Principal under or in respect of the D&C Deed arising or accruing before the Effective Date); and
- (b) the Contractor will comply with the D&C Deed on the basis that the Novatee has replaced the Principal under it in accordance with the terms of this Deed.

3. **RELEASE**

3.1 **Release by Contractor**

The Contractor releases the Principal from:

- (a) their respective obligations and liabilities under or in respect of the D&C Deed; and

- (b) all claims, actions, demands, proceedings and liability that the Contractor may have or claim to have, or but for this release might have had, against the Principal in connection with the D&C Deed,

arising on or after the Effective Date.

3.2 **No release by Contractor**

- (a) The Contractor does not release the Principal from:
 - (i) any of its obligations or liabilities under or in respect of the D&C Deed; or
 - (ii) any claims, actions, demands, proceedings or liability that the Contractor may have or claim to have, or but for this release might have had, against the Principal in connection with the D&C Deed,accruing or arising before the Effective Date.
- (b) The Principal remain liable to the Contractor for all its obligations and liabilities under the D&C Deed accruing or arising before the Effective Date.

4. **INDEMNITY**

4.1 **Indemnity by the Principal**

The Principal indemnifies the Novatee against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Novatee by the Contractor or any other person in connection with any matter relating to, or any act or omission of the Principal with respect to, the D&C Deed before the Effective Date.

4.2 **Indemnity by Novatee**

The Novatee indemnifies the Principal against each claim, action, proceeding, judgment, damage, loss, expense or liability incurred or suffered by or brought or made or recovered against the Principal by the Contractor or any other person in connection with any matter relating to, or any act or omission of the Novatee with respect to, the D&C Deed on or after the Effective Date.

5. **NOVATION OF D&C GUARANTEE**

On and from the Effective Date:

- (a) the Novatee:
 - (i) is substituted for the Principal under the D&C Guarantee as if the Novatee had originally been a beneficiary under the D&C Guarantee instead of the Principal; and
 - (ii) will enjoy all the rights and benefits conferred on the Principal under or in respect of the D&C Guarantee (whether arising before or after the Effective Date); and
- (b) the Guarantor:
 - (i) will be bound by, and must comply with, its D&C Guarantee as it relates to the Novatee;

- (ii) will continue to bear, for the benefit of the Novatee, all its obligations and liabilities under or in respect of its D&C Guarantee arising or accruing on or after the Effective Date; and
 - (iii) will continue to bear, for the benefit of the Principal, any obligation or liability of the Guarantor under or in respect of its D&C Guarantee arising or accruing before the Effective Date.
- (c) Each reference in the D&C Guarantee to the Principal is to be read as if it were a reference to the Novatee.

6. **INSURANCE AND UNCONDITIONAL UNDERTAKINGS**

The Contractor will:

- (a) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the Contractor's Project Insurance;
- (b) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under the Contractor's Project Insurance, take out replacement policies of insurance with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clause 26.5 of the D&C Deed and Schedule 30 in all respects;
- (c) take all steps necessary to ensure that the Novatee will enjoy all of the rights, benefits and entitlements on and from the Effective Date that the Principal enjoyed prior to the Effective Date under the unconditional undertakings that must be provided pursuant to clauses 10.1 and 10.1A of the D&C Deed; and
- (d) if the Novatee is unable to enjoy all of the rights, benefits and entitlements that the Principal enjoyed under those unconditional undertakings, provide replacement unconditional undertakings (for the undrawn amounts) with effect on and from the Effective Date that will provide such rights, benefits and entitlements to the Novatee and will otherwise comply with the requirements of clauses 10.1 and 10.1A of the D&C Deed in all respects.

7. **NOTICES UNDER THE D&C DEED**

For the purposes of all provisions in the D&C Deed regarding service of notices, the address for the Novatee is the address set out at the start of this Deed.

8. **REPRESENTATIONS AND WARRANTIES**

- (a) Each party represents and warrants to each other party that:
 - (i) the execution and delivery of this Deed has been properly authorised by all necessary corporate action of the party;
 - (ii) it has full corporate power and lawful authority to execute and deliver this Deed and to consummate and perform or cause to be performed its obligations under this Deed; and
 - (iii) this Deed constitutes a legal, valid and binding obligation of the party enforceable in accordance with its terms by appropriate legal remedy.
- (b) Each of the Contractor and the Principal represents and warrants to the Novatee that, as at the Effective Date, neither the Contractor nor the Principal is in default under any provision of the D&C Deed.

9. **DELIVERY OF DOCUMENTS**

The Principal will deliver to the Novatee on request a copy of all documents in its possession, custody or control connected with or evidencing its rights under the D&C Deed.

10. **FURTHER ASSURANCES**

At the reasonable request of another party, each party must do anything necessary or desirable (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it.

11. **ASSIGNMENT**

A party cannot assign, charge, encumber or otherwise deal with any of its rights or obligations under this Deed, or attempt or purport to do so, without the prior written consent of each other party, which may not be unreasonably withheld.

12. **AMENDMENT**

This Deed may be amended only by another deed executed by all the parties.

13. **COSTS AND DUTY**

The Principal must bear the costs arising out of the negotiation, preparation and execution of this Deed. All duty (including stamp duty and any fines, penalties and interest) payable on or in connection with this Deed and any instrument executed under or any transaction evidenced by this Deed must be borne by the Novatee.

14. **GOVERNING LAW AND JURISDICTION**

This Deed is governed by the laws of New South Wales. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there.

Executed and delivered as a Deed.

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

Signatory Name

Witness Name

Signed sealed and delivered for
John Holland Pty Ltd
under Power of Attorney dated

in the presence of

sign here ► _____
Attorney

sign here ► _____
Witness

print name _____

print name _____

Signed sealed and delivered for
CPB Contractors Pty Limited
under Power of Attorney dated

sign here ► _____
Attorney

Attorney

print name _____

in the presence of

sign here ► _____
Witness

Witness

print name _____

Executed as a deed in accordance with section 127 of the *Corporations Act 2001* by **[the Novatee]**:

Director Signature

Director/Secretary Signature

Print Name

Print Name

SIGNED, SEALED and **DELIVERED** for **[GUARANTOR]** (ABN [insert]) under Power of Attorney dated [insert] (and the Attorney declares that it has not received any notice of the revocation of the Power of Attorney) in the presence of:

Attorney

Witness

Name

Name

SCHEDULE 4E

Subcontractor Requirements

(Clause 9.2)

PART A

The following terms must be included in each Subcontract referred to in clause 9.2(g)(i)(C) of this deed:

- (a) provisions equivalent to clauses 9.21, 11.7, 29, 30, 40, 41 of this deed;
- (b) a requirement that, if:
 - (i) this deed is terminated or rescinded for any reason;
 - (ii) otherwise comes to an end for any reason; or
 - (iii) the Principal takes over the Contractor's Activities and the Principal has given a Direction to the Contractor to novate the Subcontract,then the Subcontractor consents to a novation of the Subcontract to the Principal or its nominee and will execute a deed of novation in the form reasonably required by the Principal; and
- (c) when possible, a right of termination for the convenience of the Contractor.

PART B

The following terms must be included in each Subcontract referred to clause 9.2(g)(iii) of this deed.

- (a) Options as to form of security
 - (i) A clause which allows the Subcontractor to lodge an unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
 - (ii) A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, any retention moneys or other cash security then held will be promptly released to the Subcontractor.
- (b) Trust for Cash Security and Retention Moneys
 - (i) A clause which has the effect that:
 - (A) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into a trust account with a bank within 24 hours of receipt or conversion;
 - (B) the trust money is beneficially owned by the party which provided the security at all times unless the other party becomes entitled to receive them under the Subcontract; and
 - (C) the security holder must account to the security provider for the trust moneys.

(c) Payment Provisions

(i) A clause which has the effect:

- (A) of requiring the Contractor to pay the Subcontractor for work for which payment is claimed by the Subcontractor no later than 30 Business Days after a payment claim was made by the Subcontractor for such work;
- (B) that states nothing in the clause referred to in paragraph (A) is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
- (C) that if anything in the clause referred to in paragraph (A) is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

(ii) A clause which prescribes an interest rate for overdue payments which is not less than the interest rate specified in clause 43.21 of this deed.

(d) Alternative Dispute Resolution

(i) A clause incorporating expert determination procedures.

(ii) A clause making it optional for the Subcontractor to comply with the expert determination process if the only remedy it seeks is an order for payment of money which is not disputed to be due and payable under the Subcontract.

(e) Documents to be provided to Subcontractors

A clause which requires the Contractor to provide the Subcontractor with copy of extracts from this deed before the Subcontractor starts work under the Subcontract. The extracts which are required to be provided are:

- (a) clause 21;
- (b) clause 32; and
- (c) clause 43.21.

(f) *Civil Liability Act 2002* (NSW)

A clause that complies with the requirements set out in clause 43.19.

(g) PPS Act

A clause substantially the same as clause 43.16, except that references to 'the Contractor' must be replaced with references to 'the Subcontractor' and references to 'the Principal or 'the Principal's Representative' must be replaced with references to 'the Contractor'.

(h) Work Health and Safety Obligations

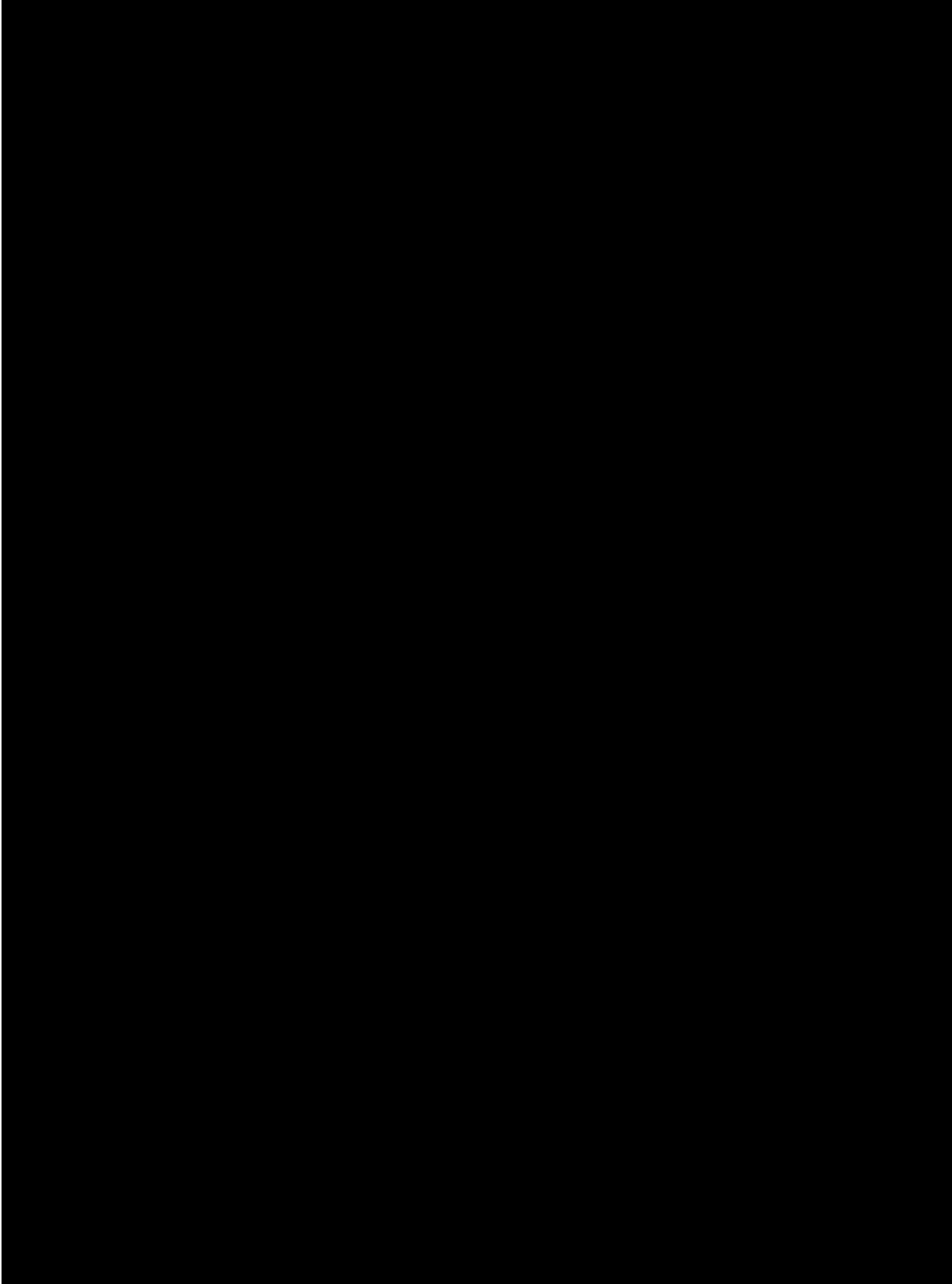
A clause requiring the Subcontractor to comply with all reasonable directions of the Principal Contractor.

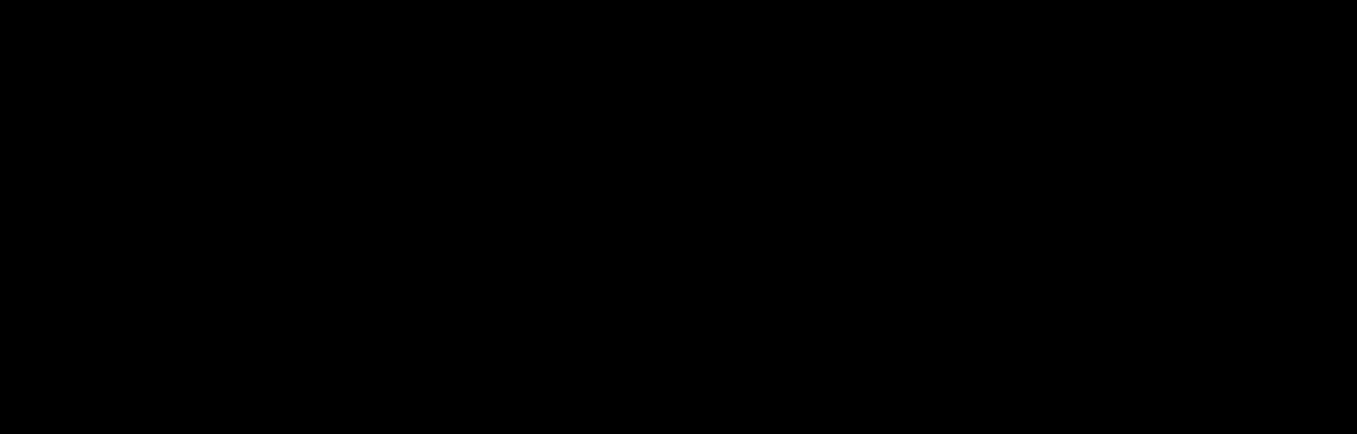
(i) WestConnex AIP Plan Obligations

A clause requiring the Subcontractor to comply with the WestConnex AIP Plan.

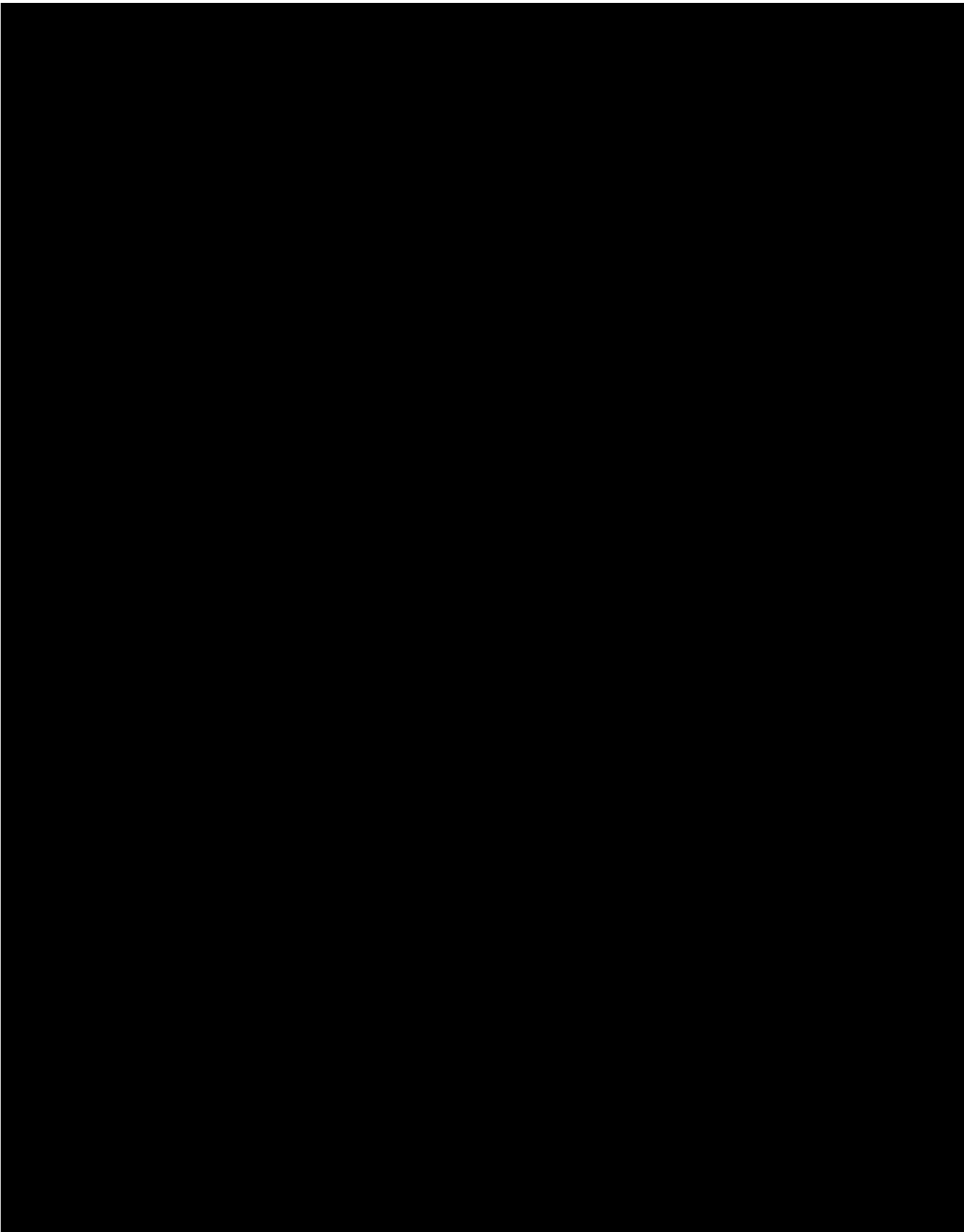
SCHEDULE 4F

Letters of Affirmation





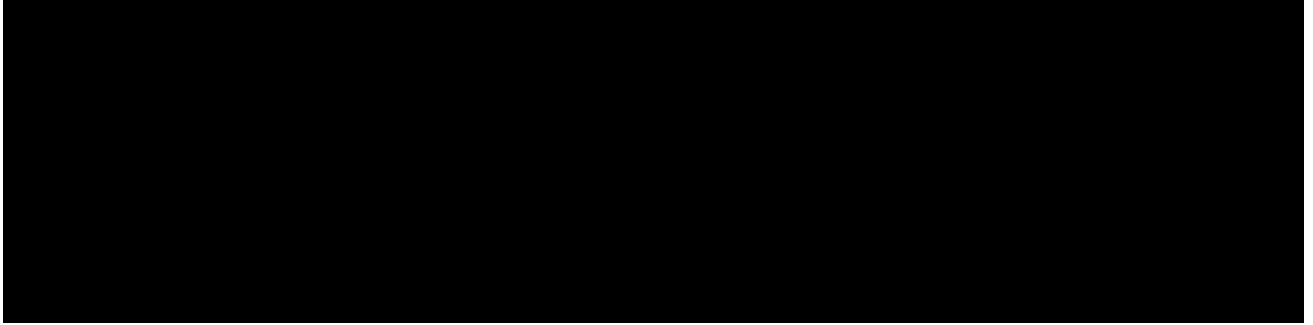
PART B

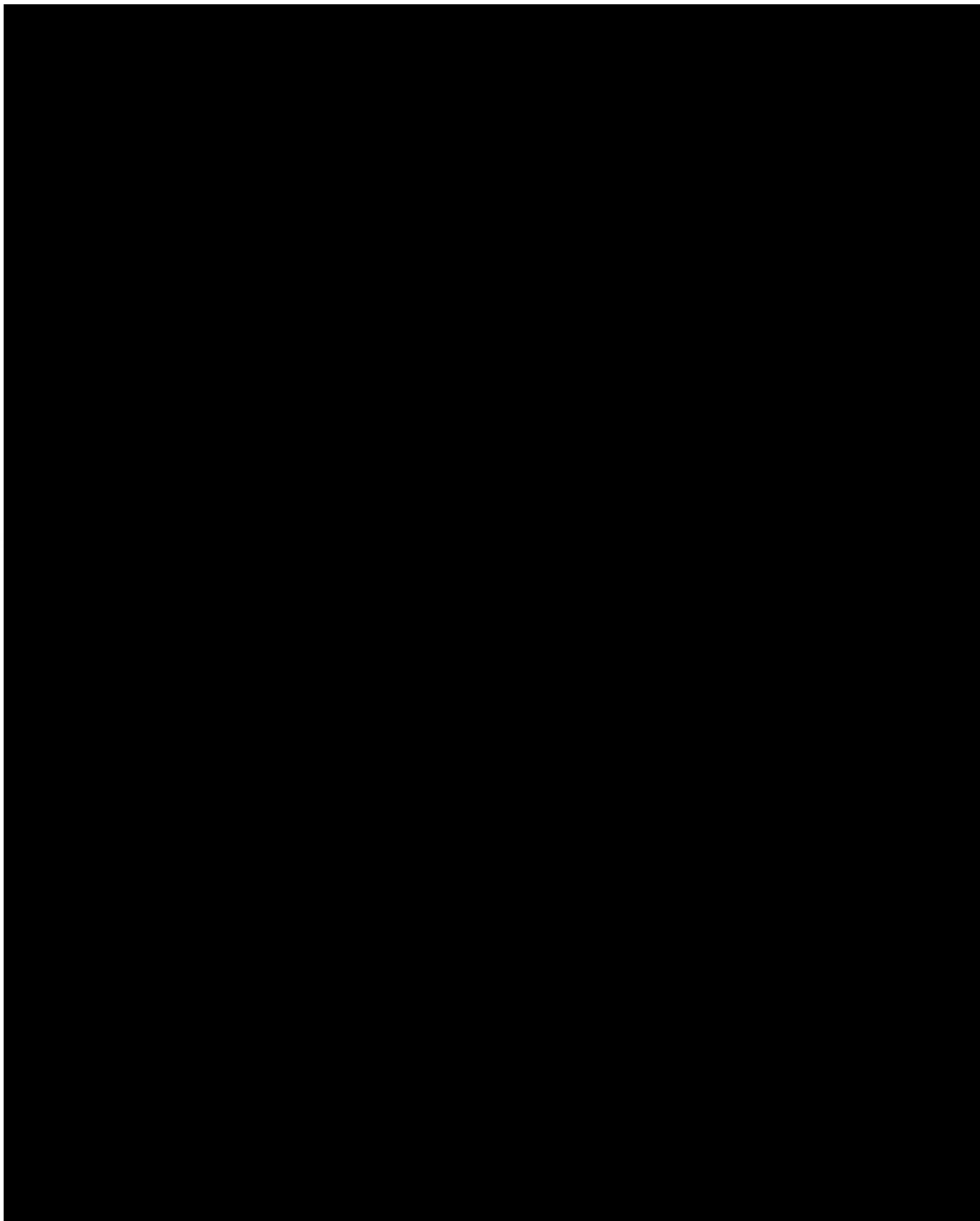


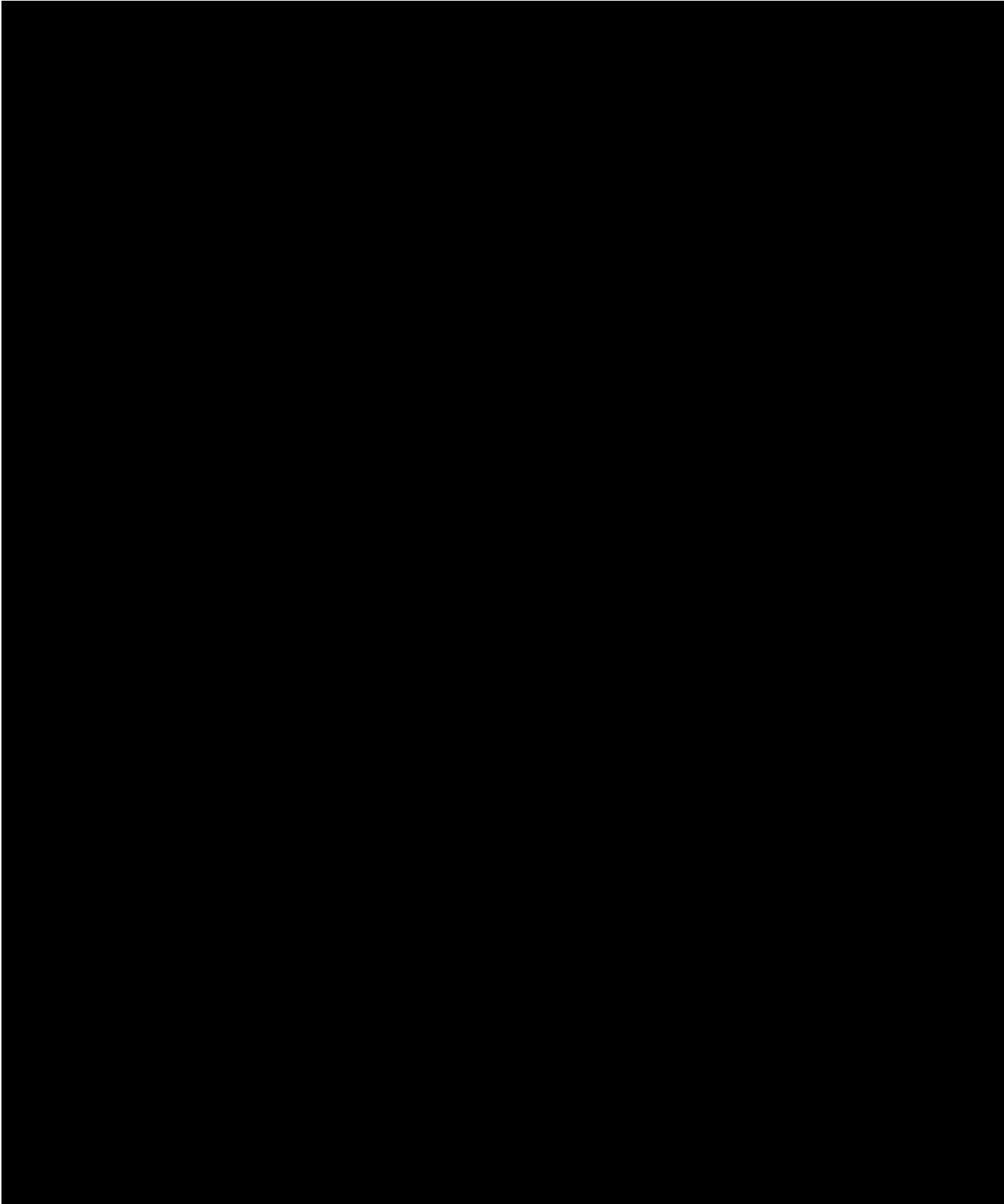


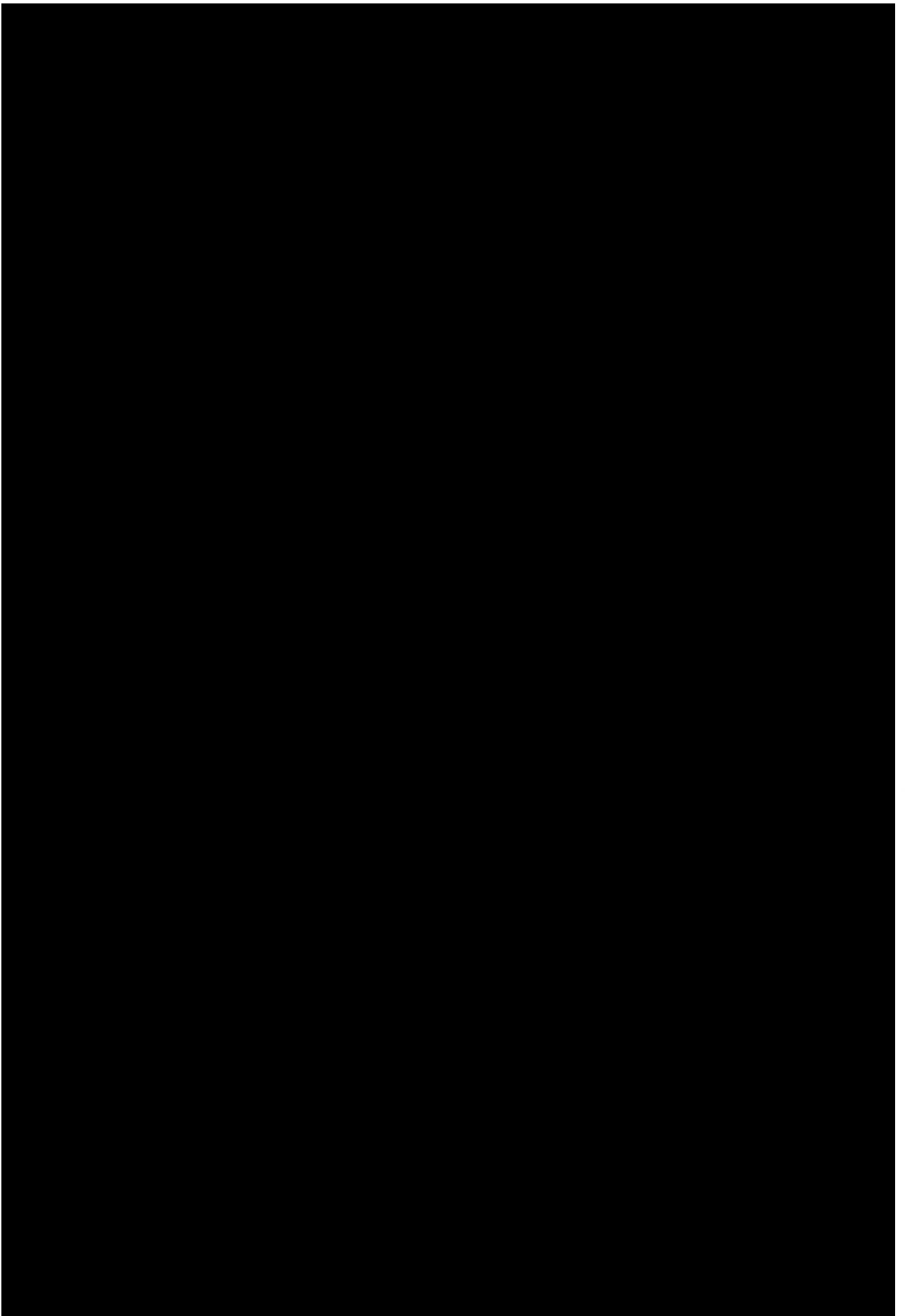
SCHEDULE 5

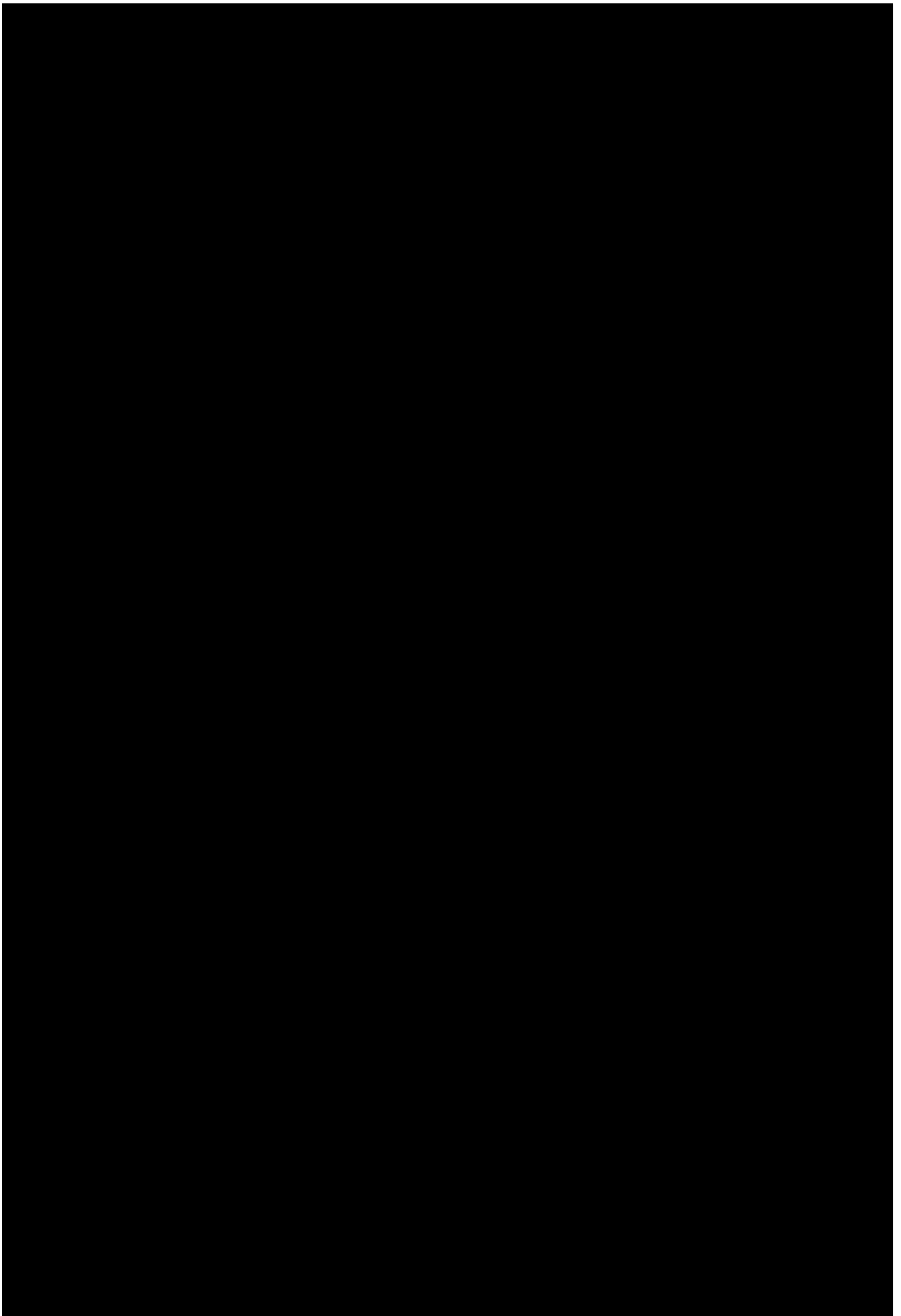
Escrow Agreement

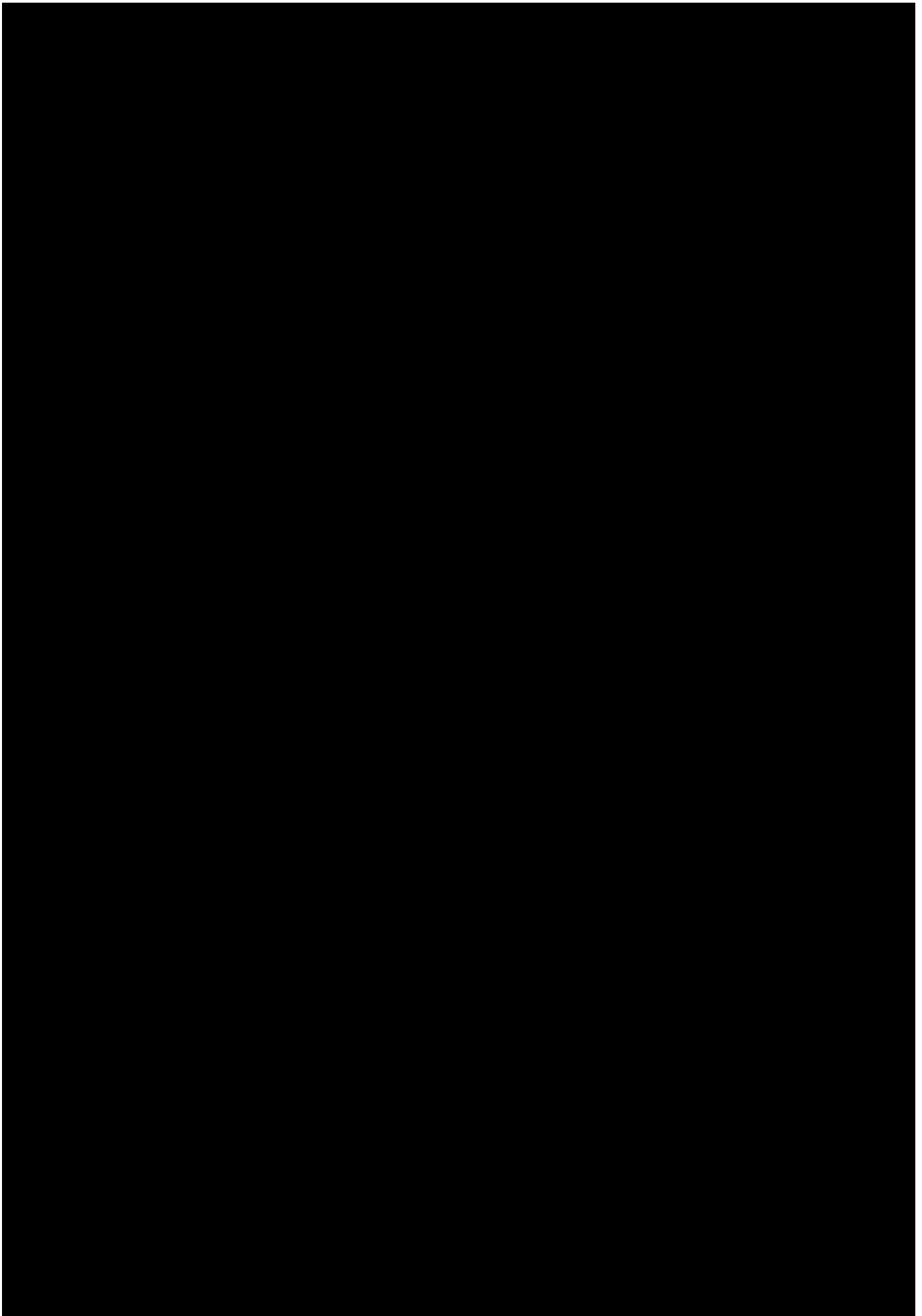


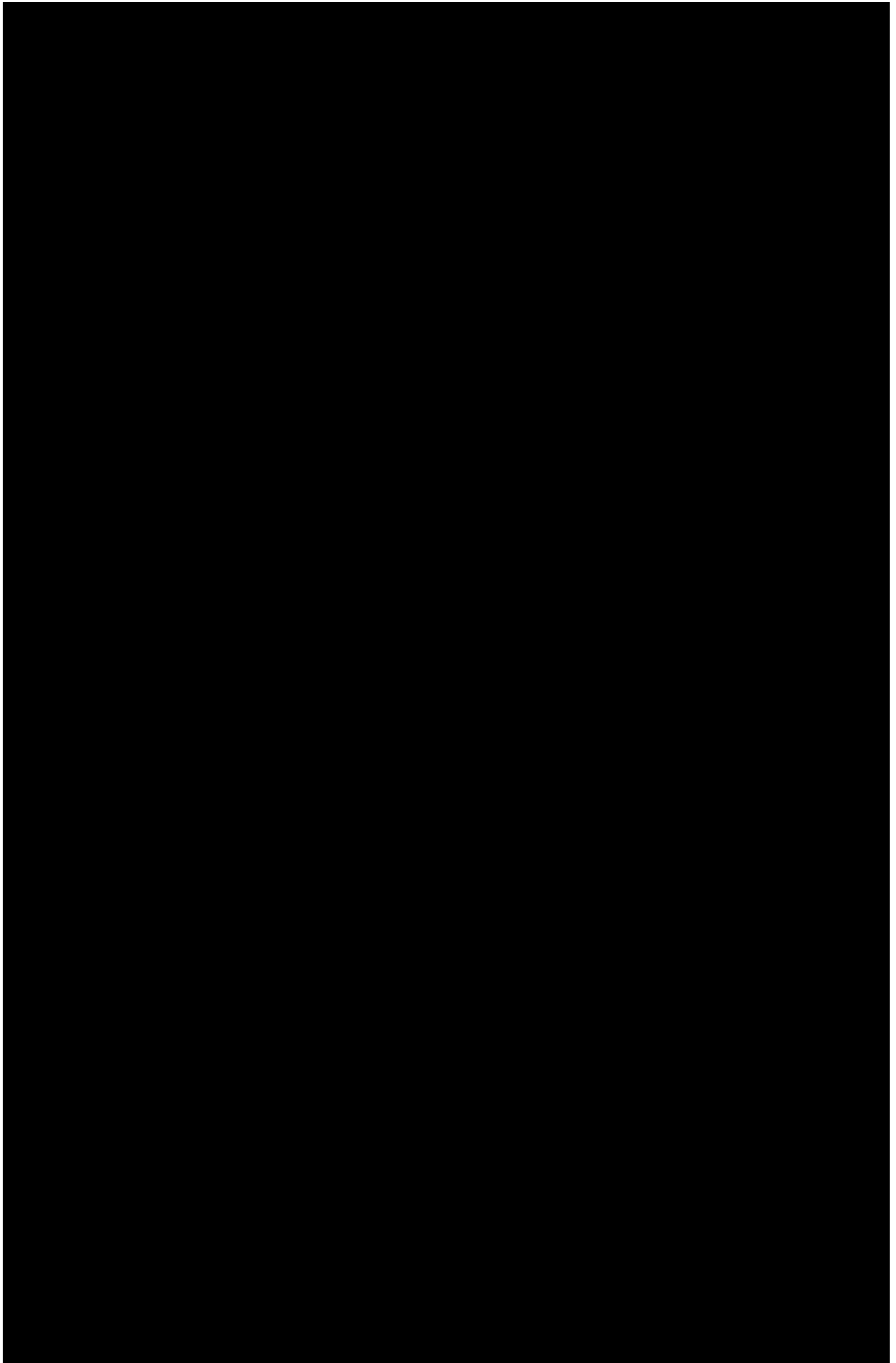


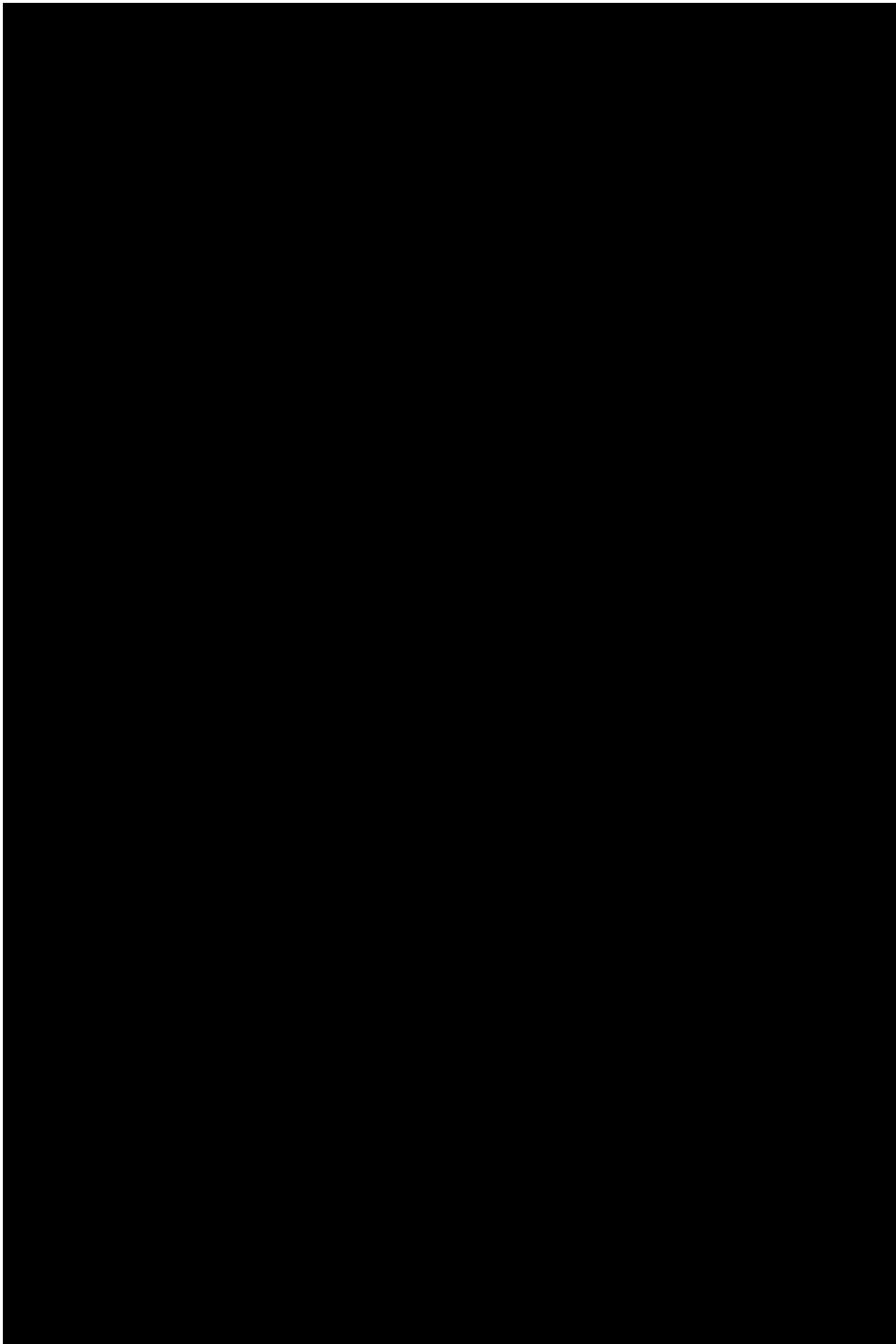


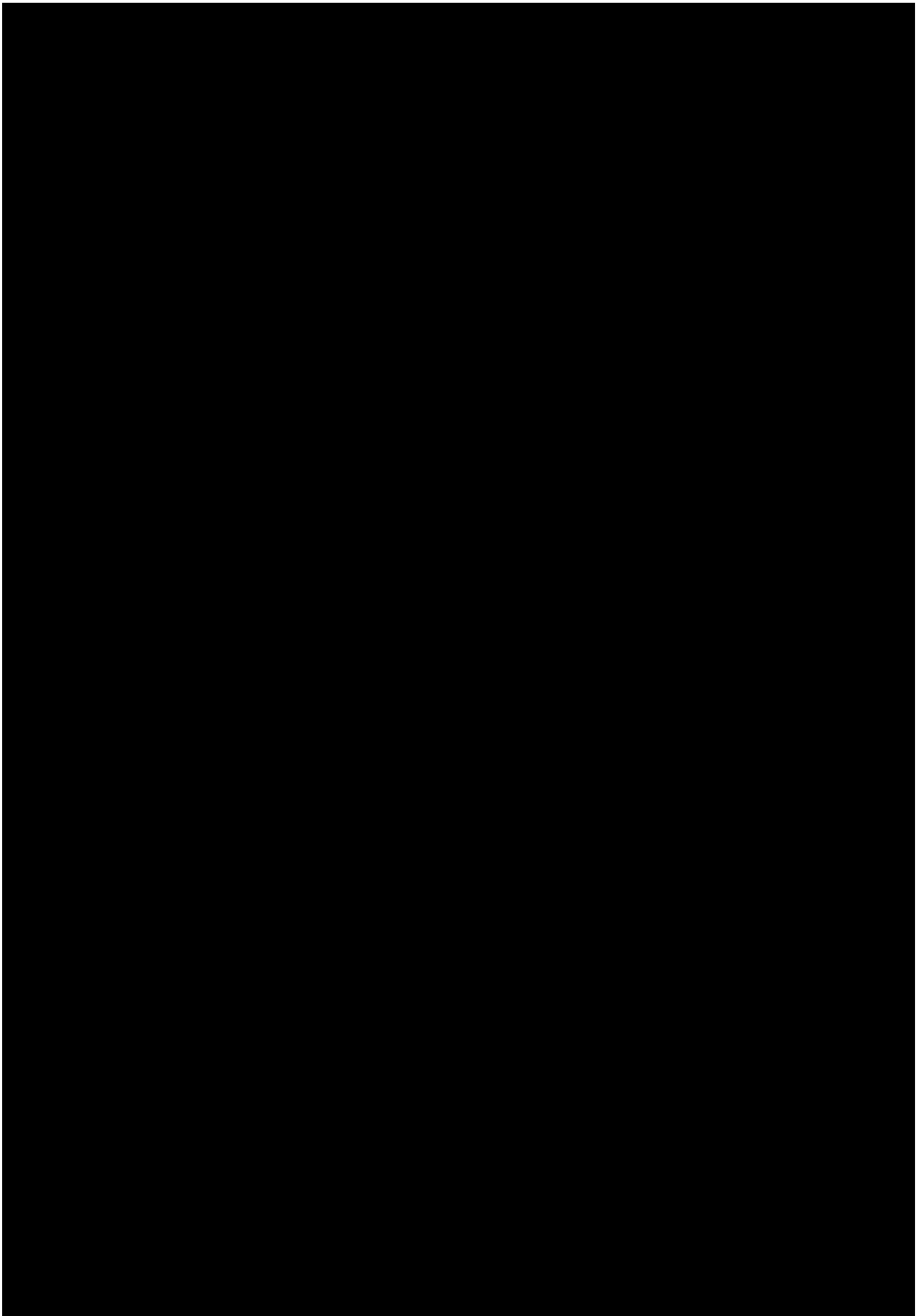


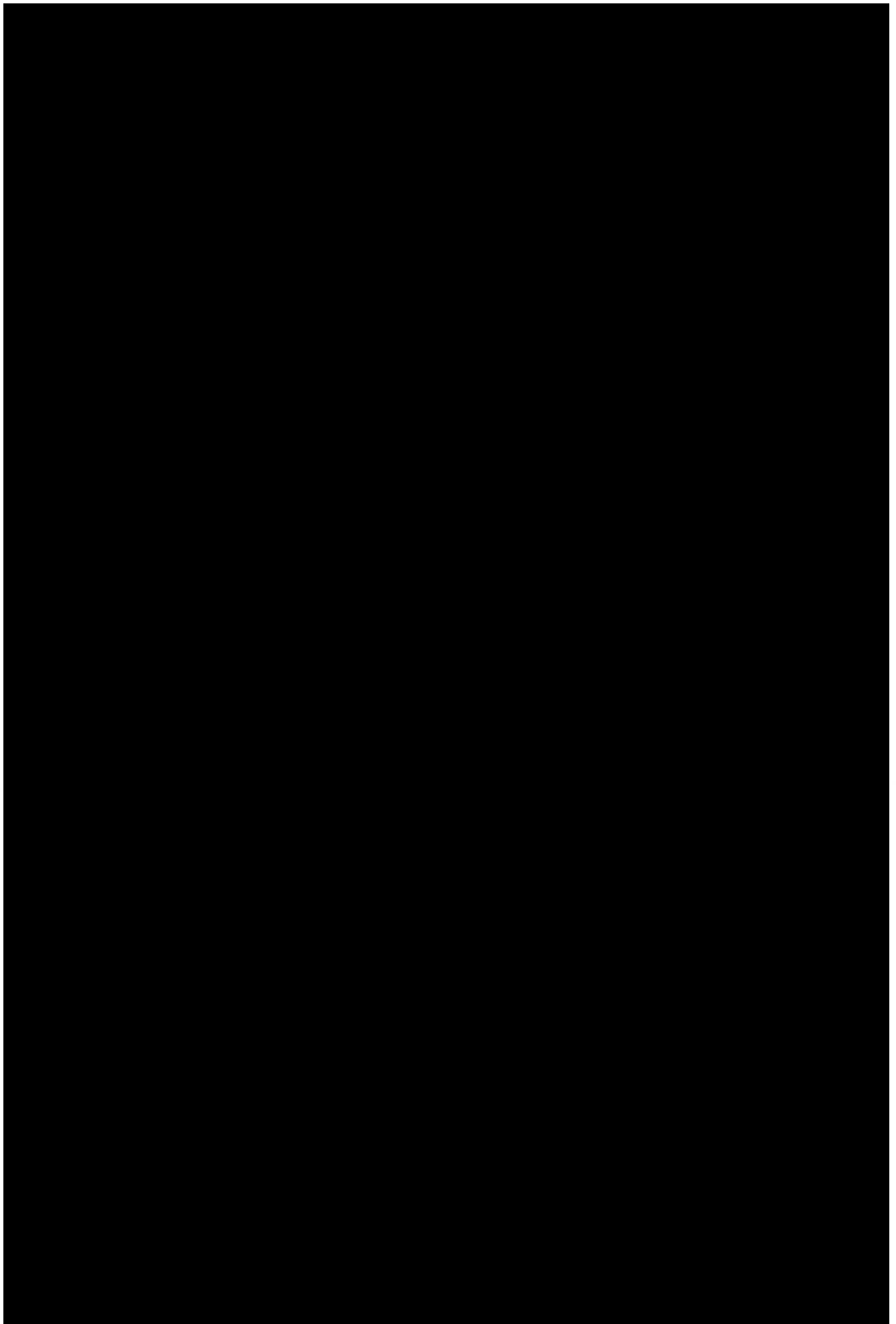


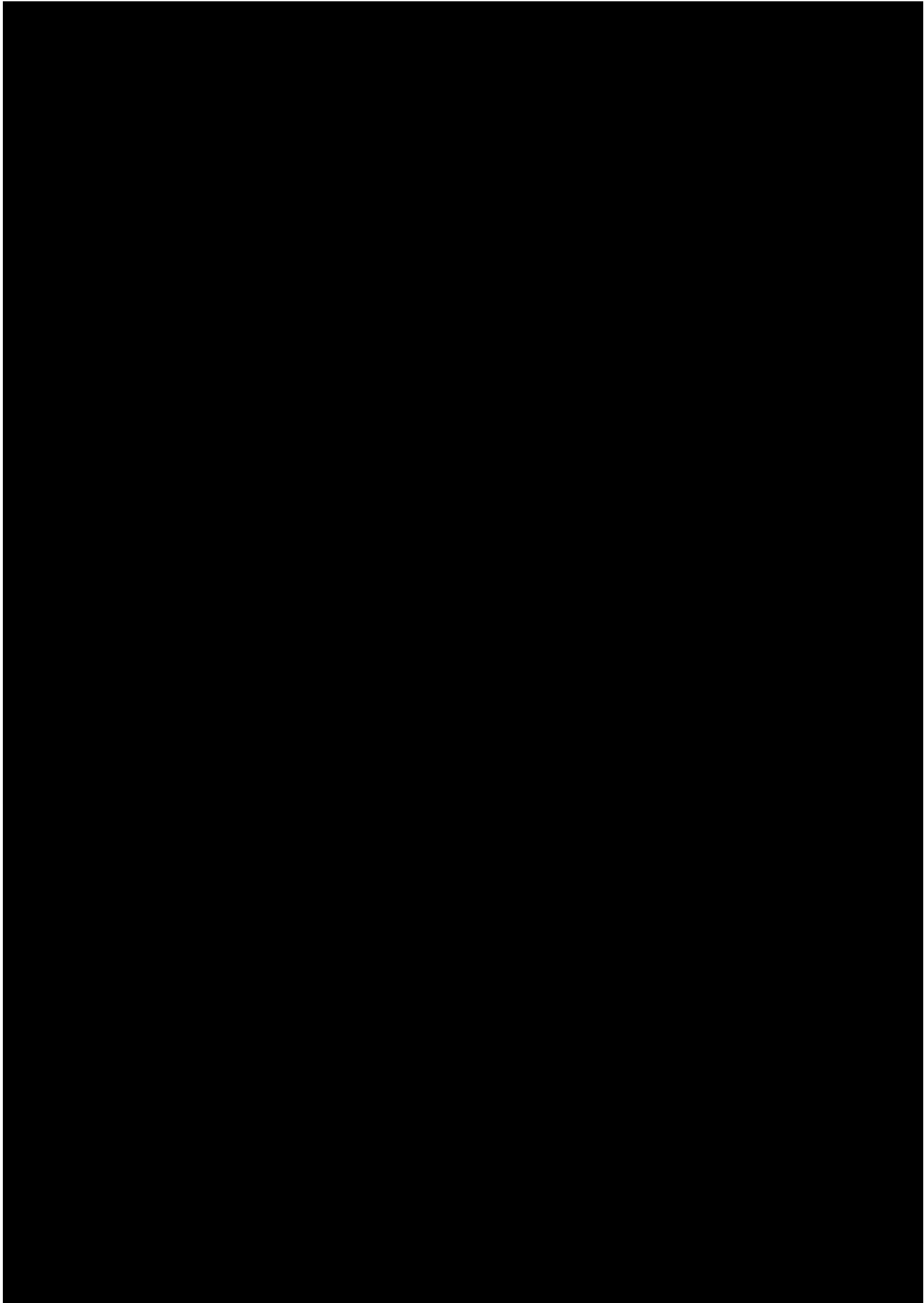


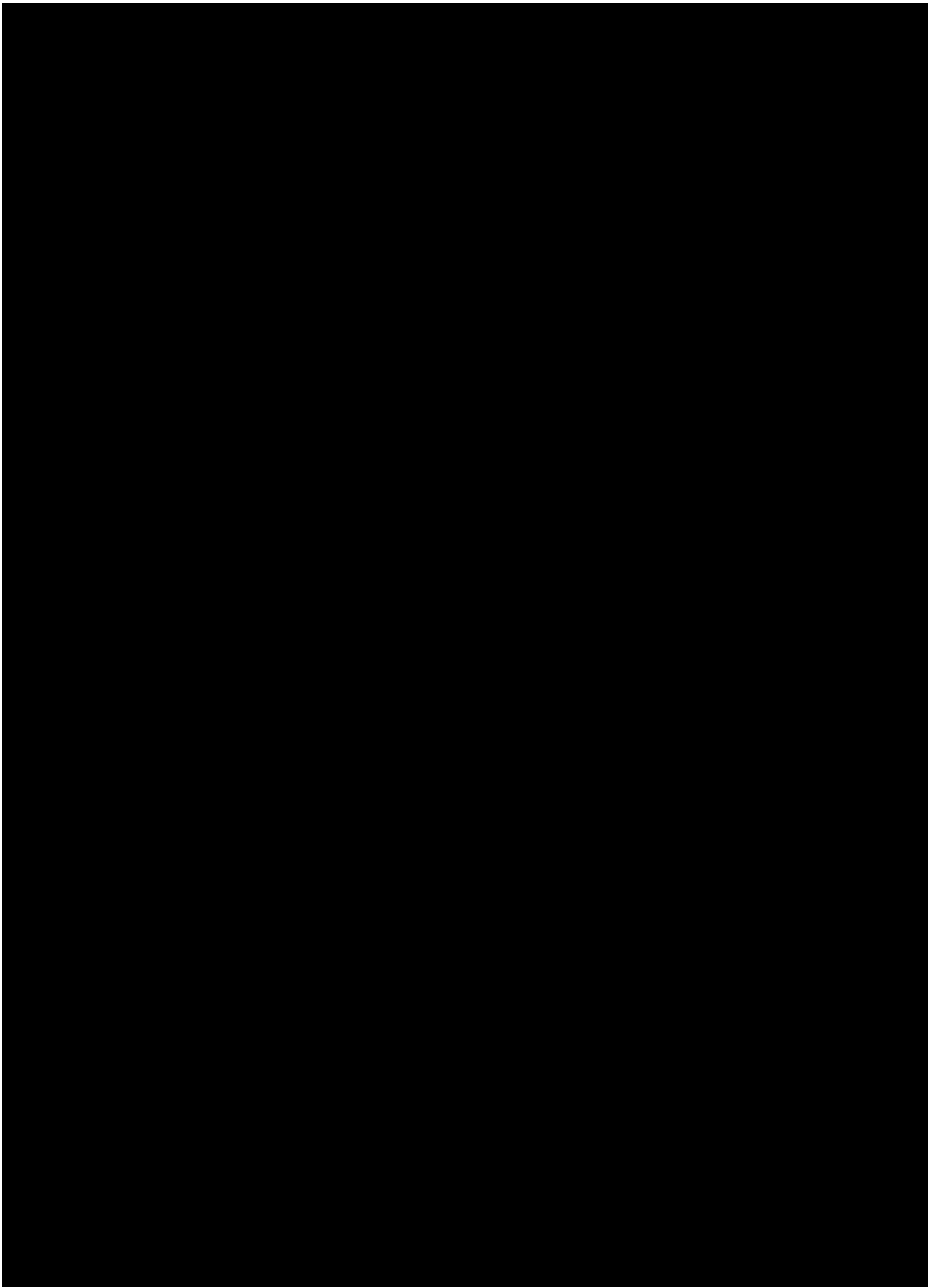


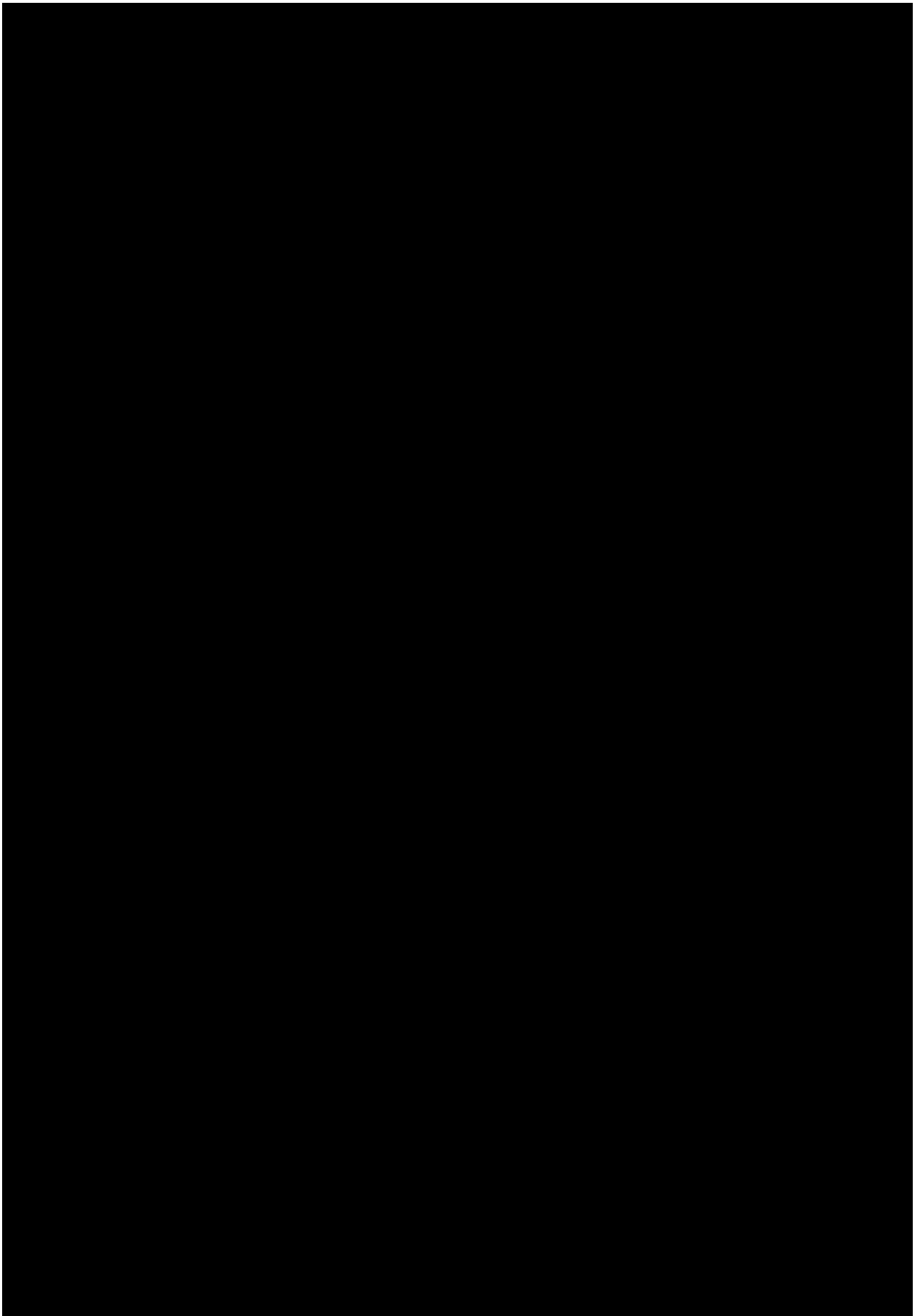


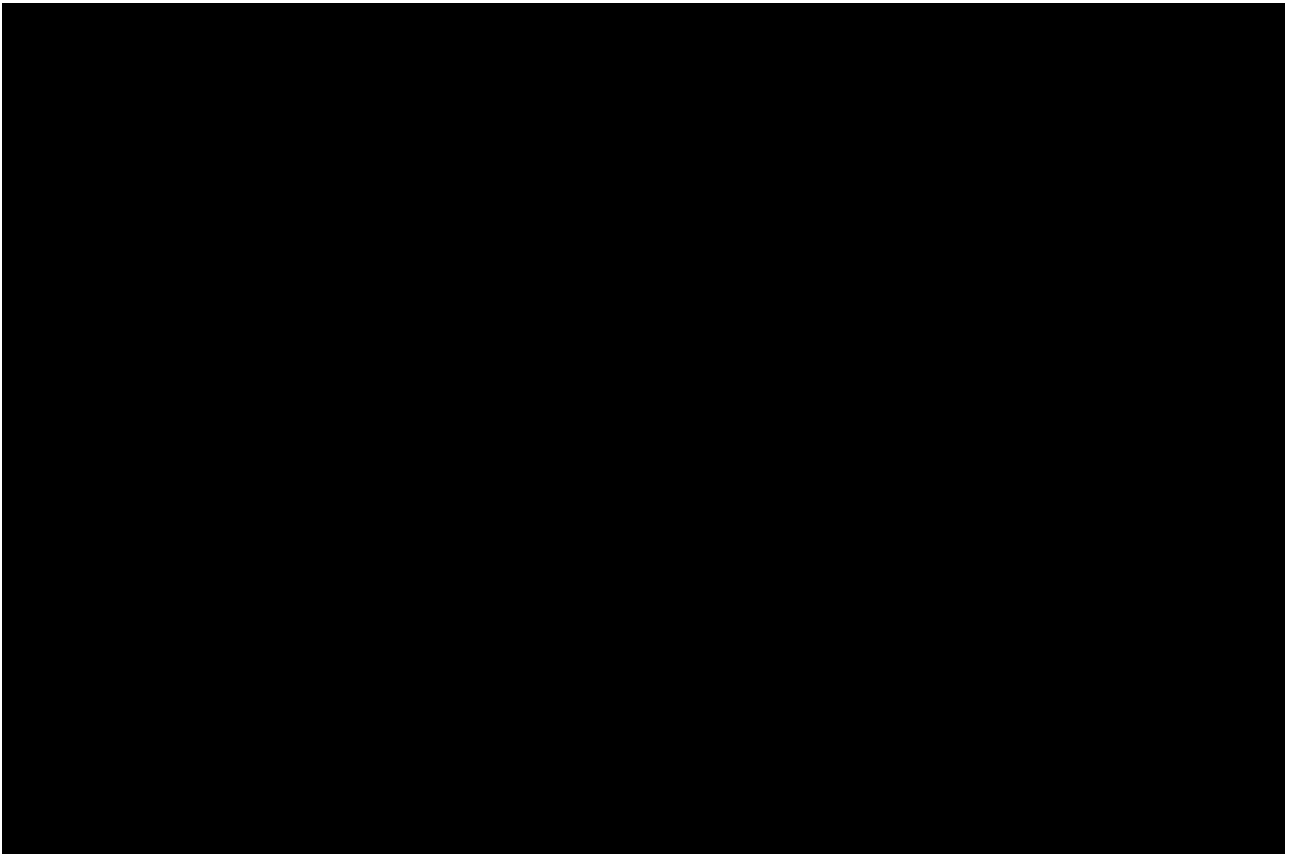


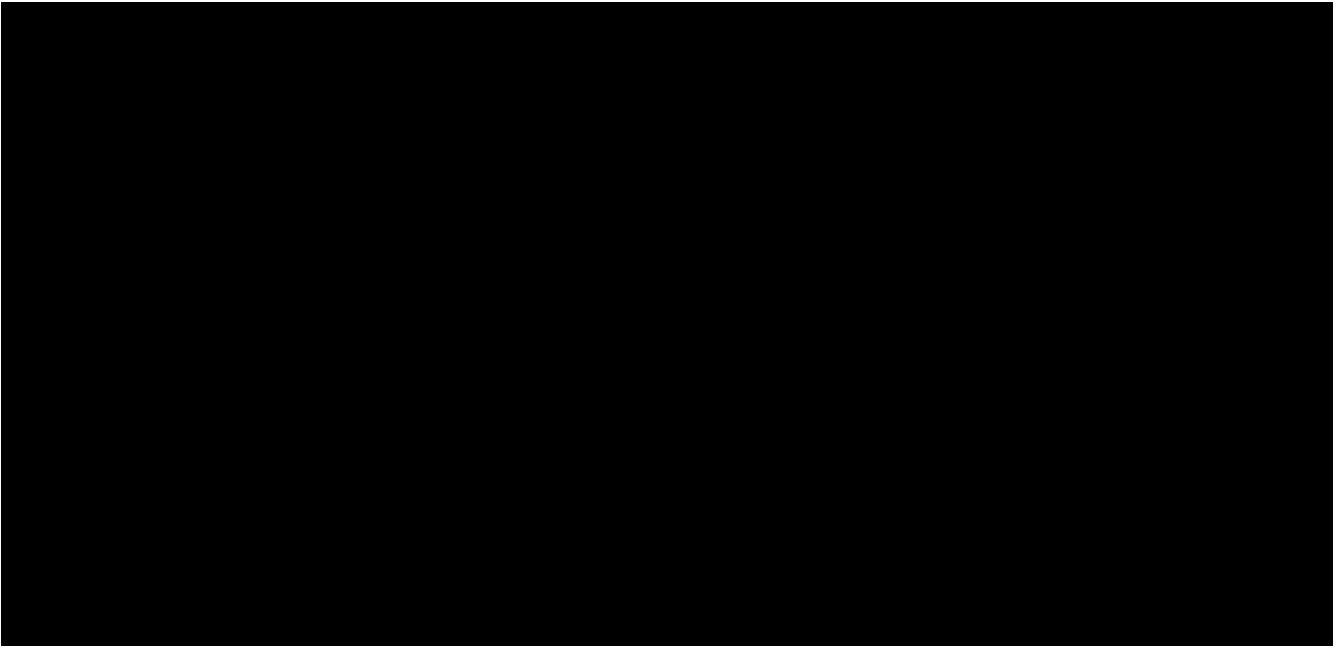




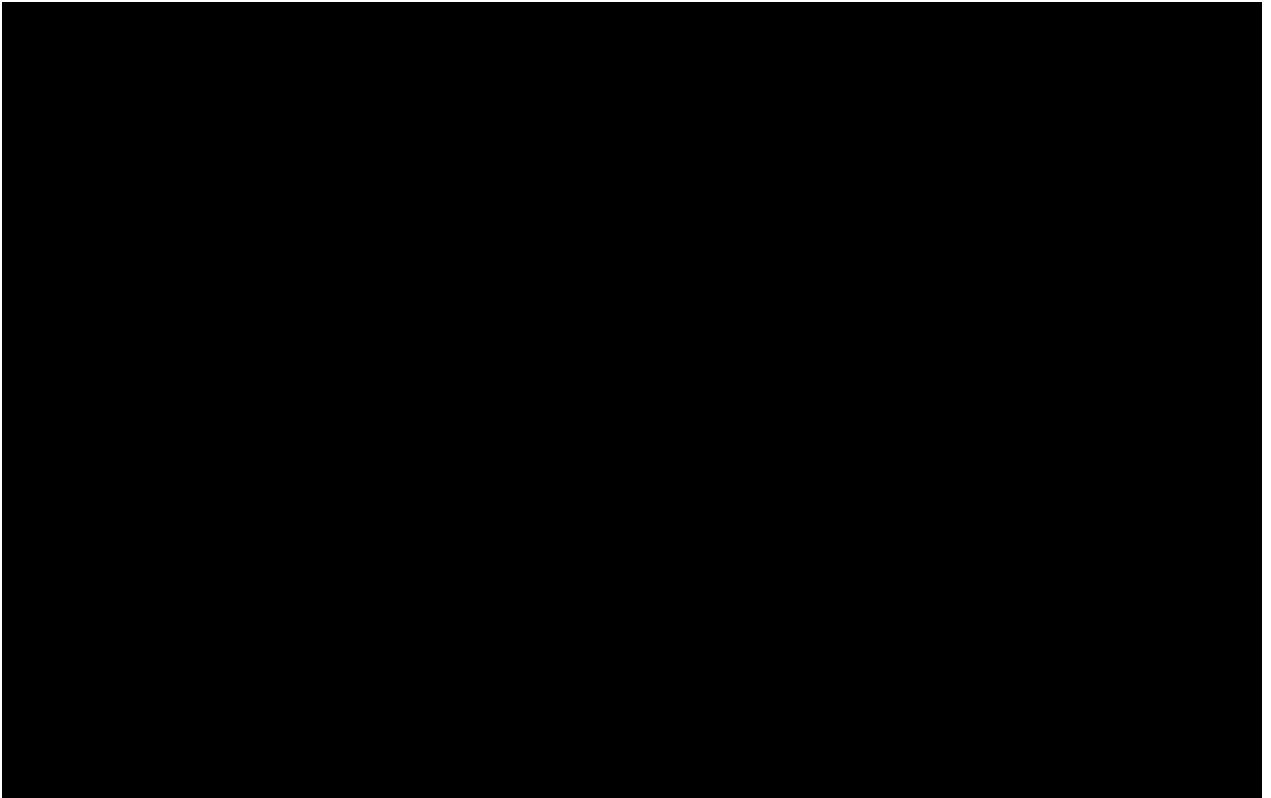




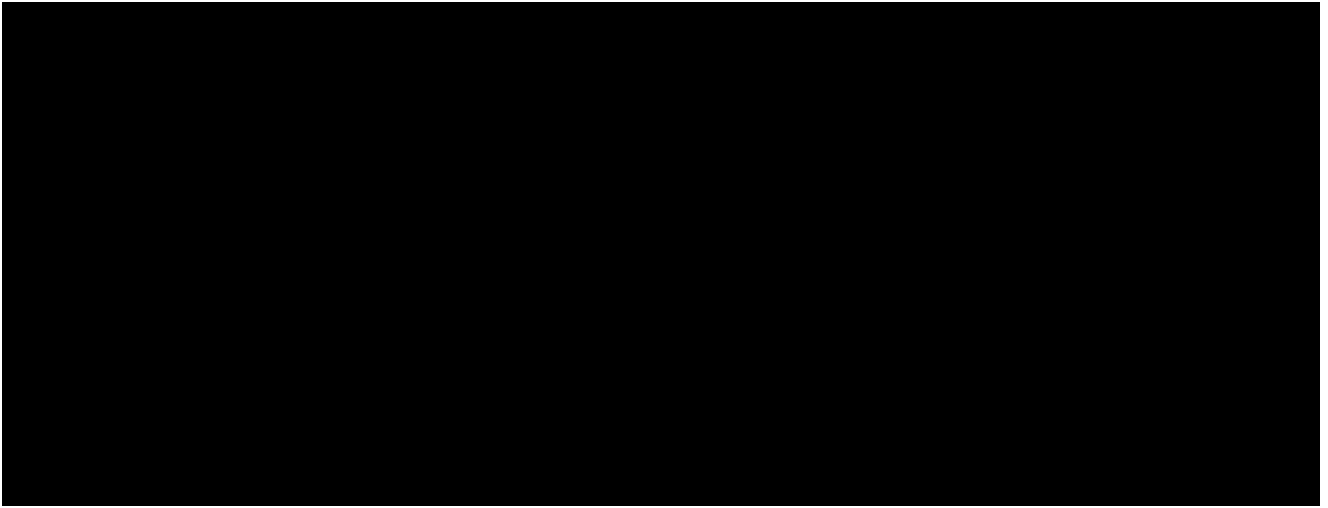




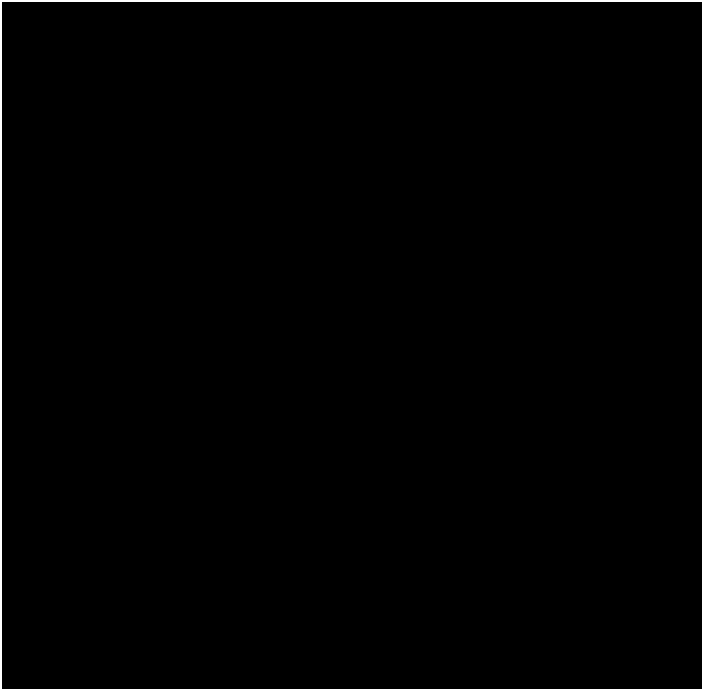




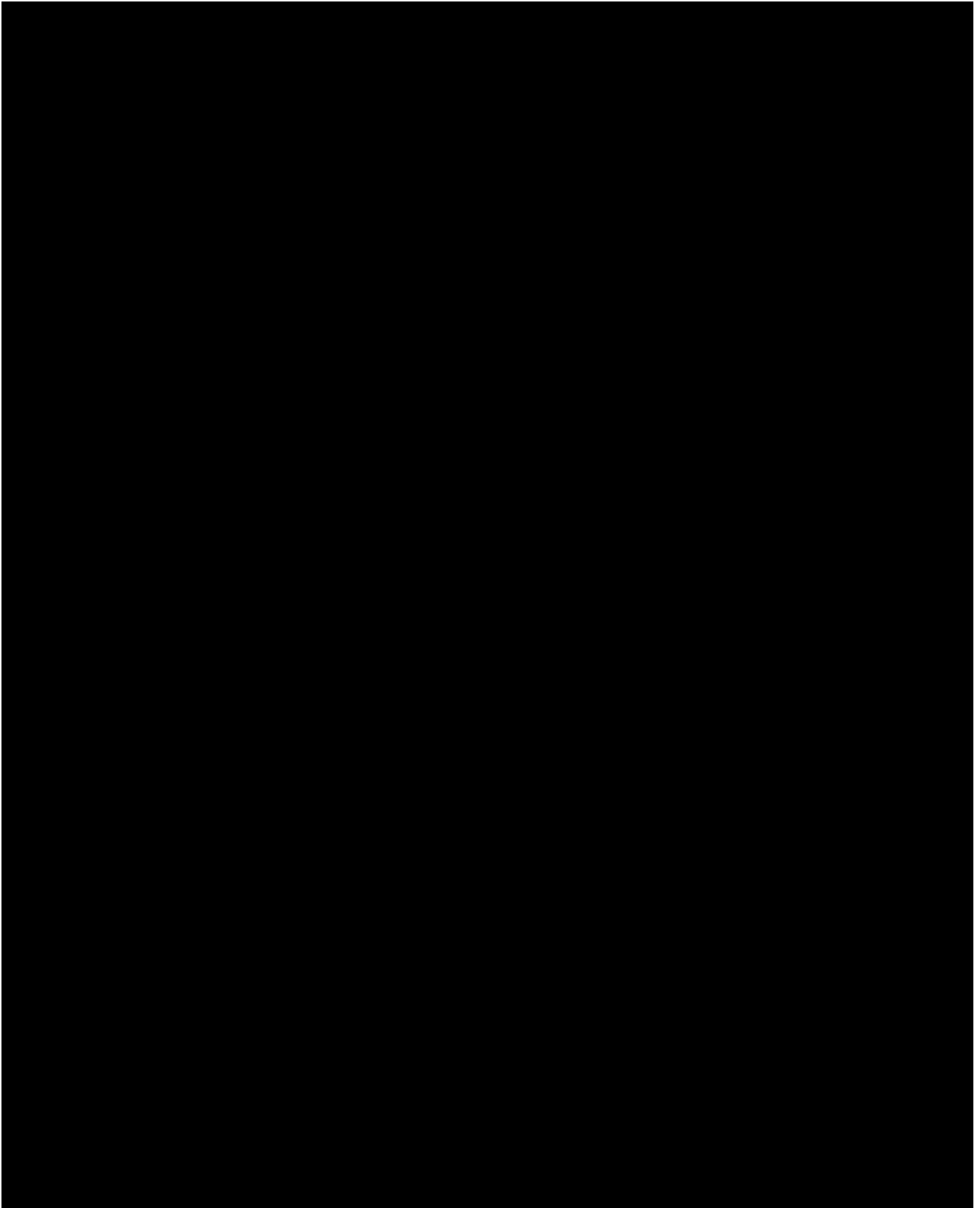








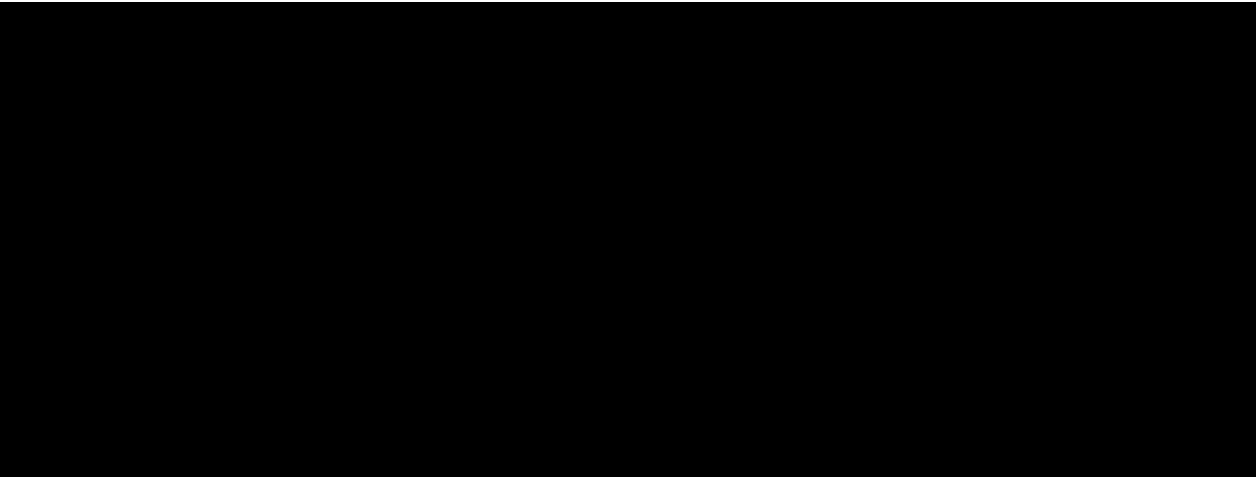
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Attachment 2

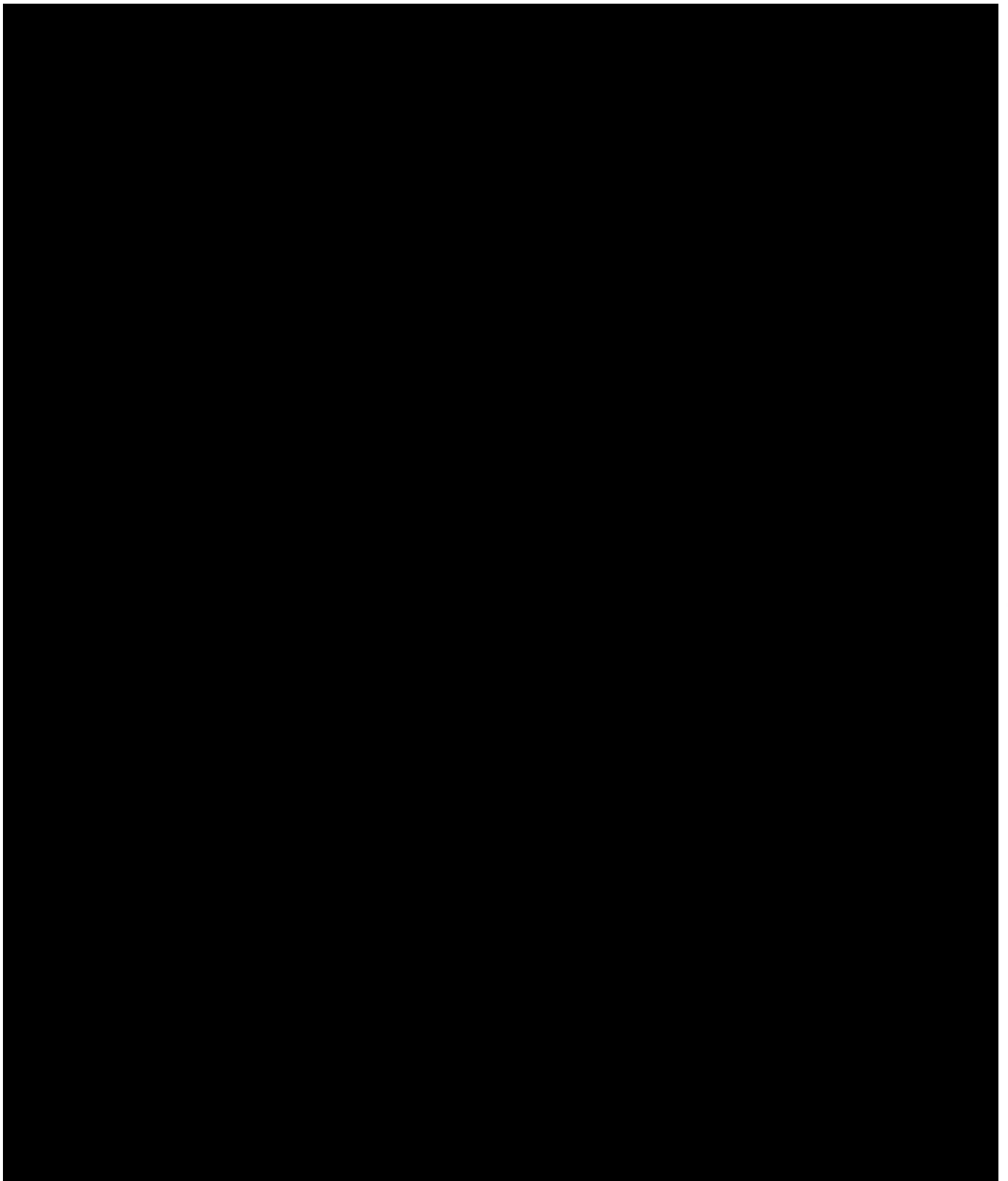


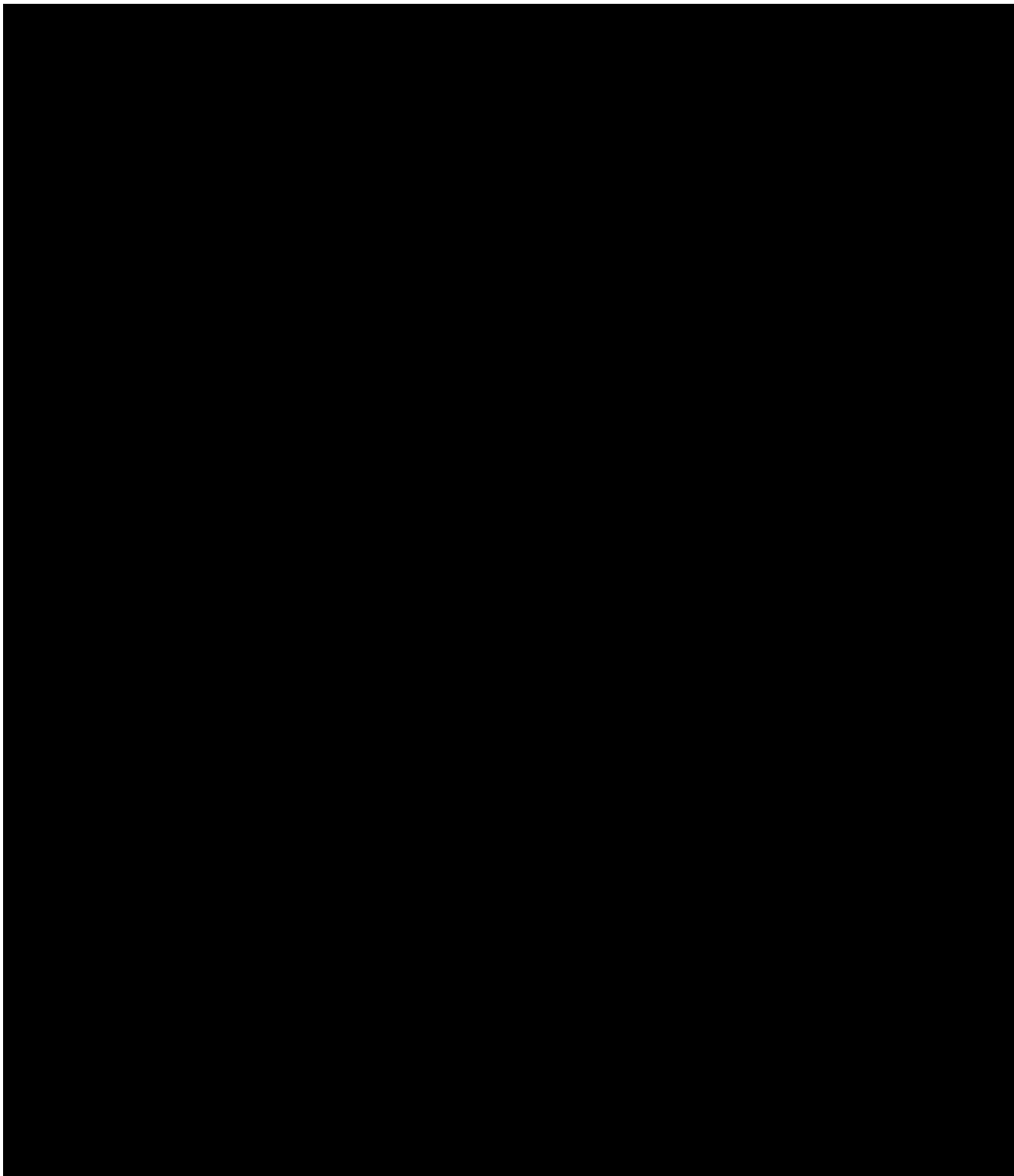
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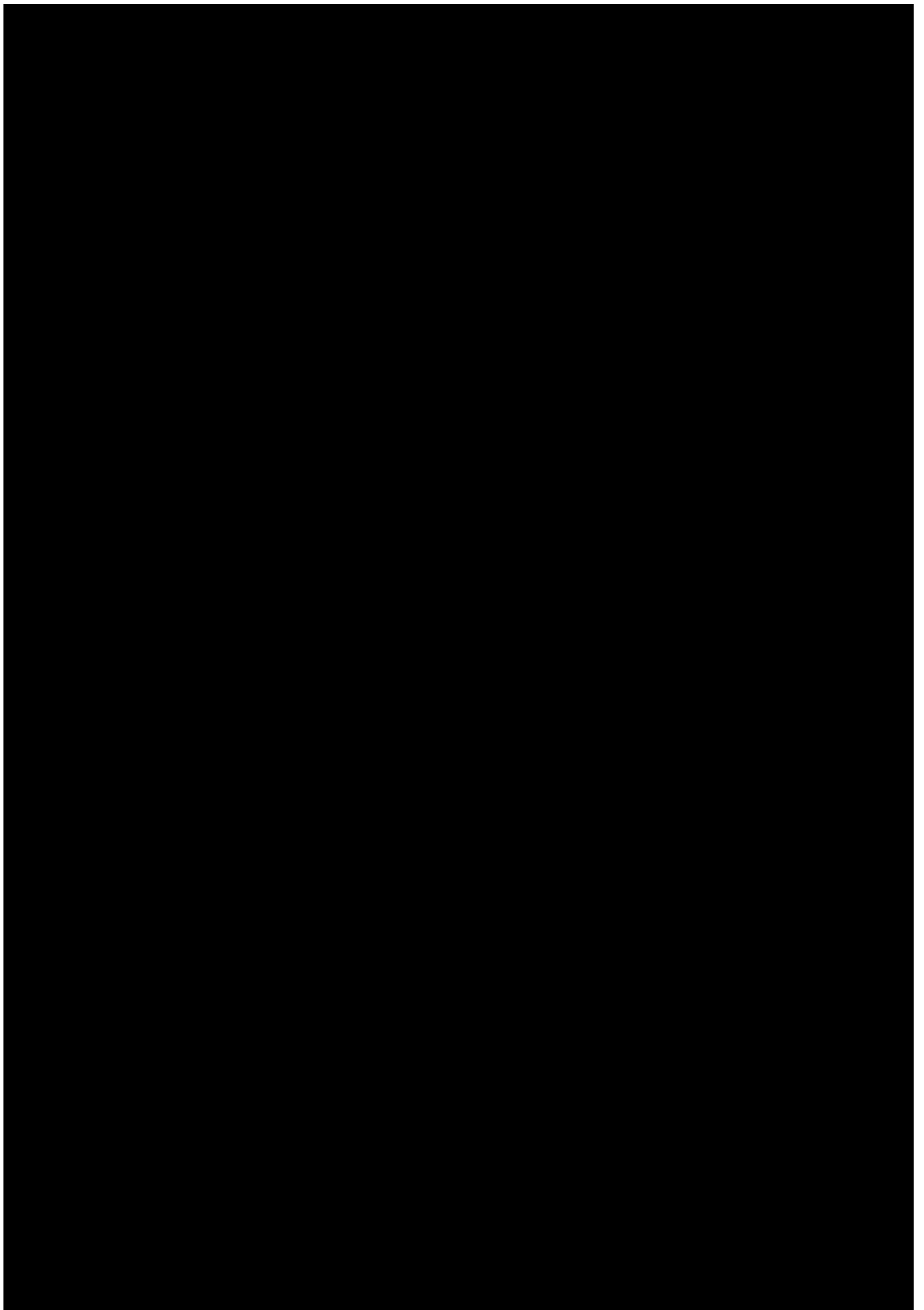


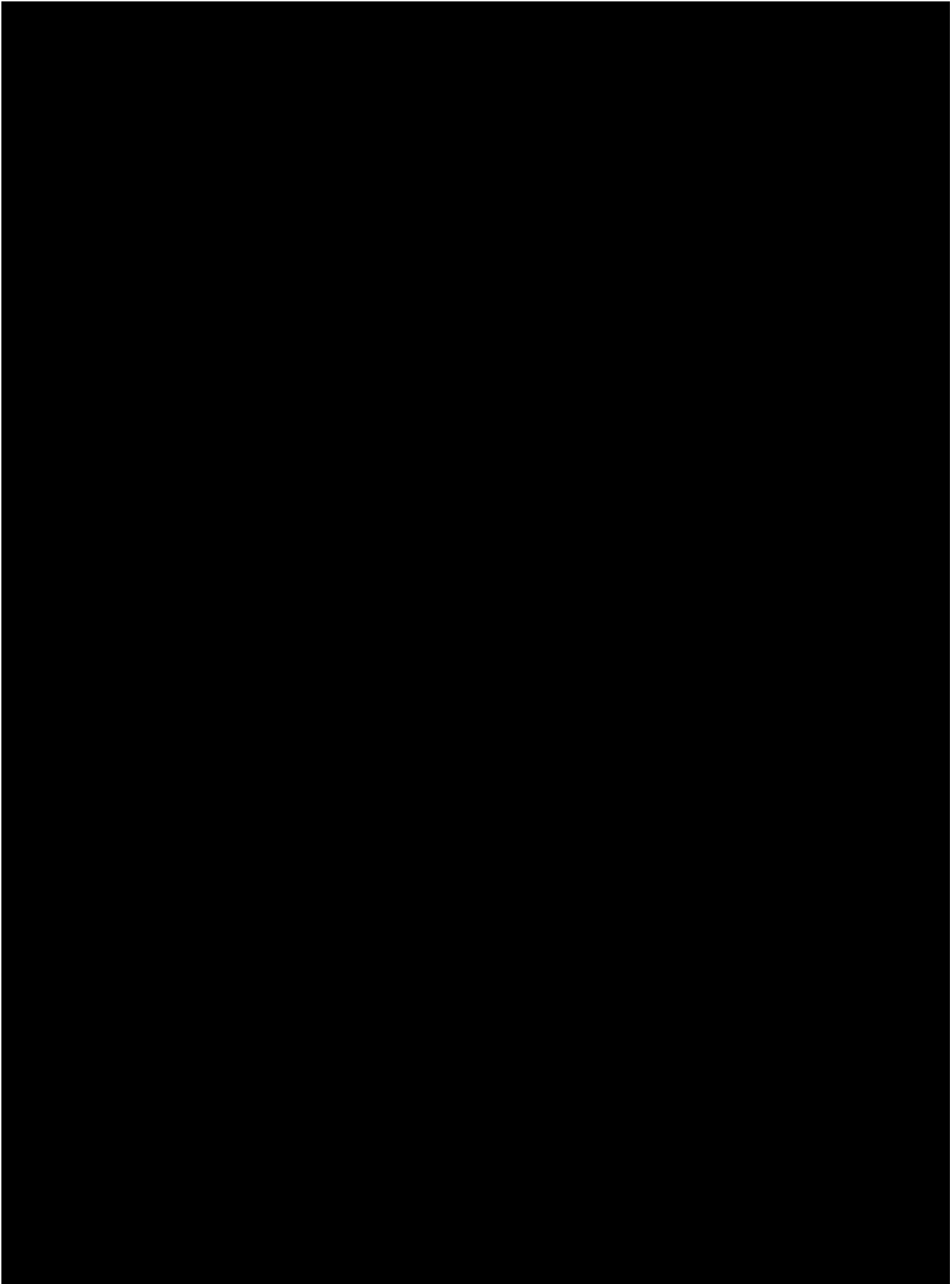
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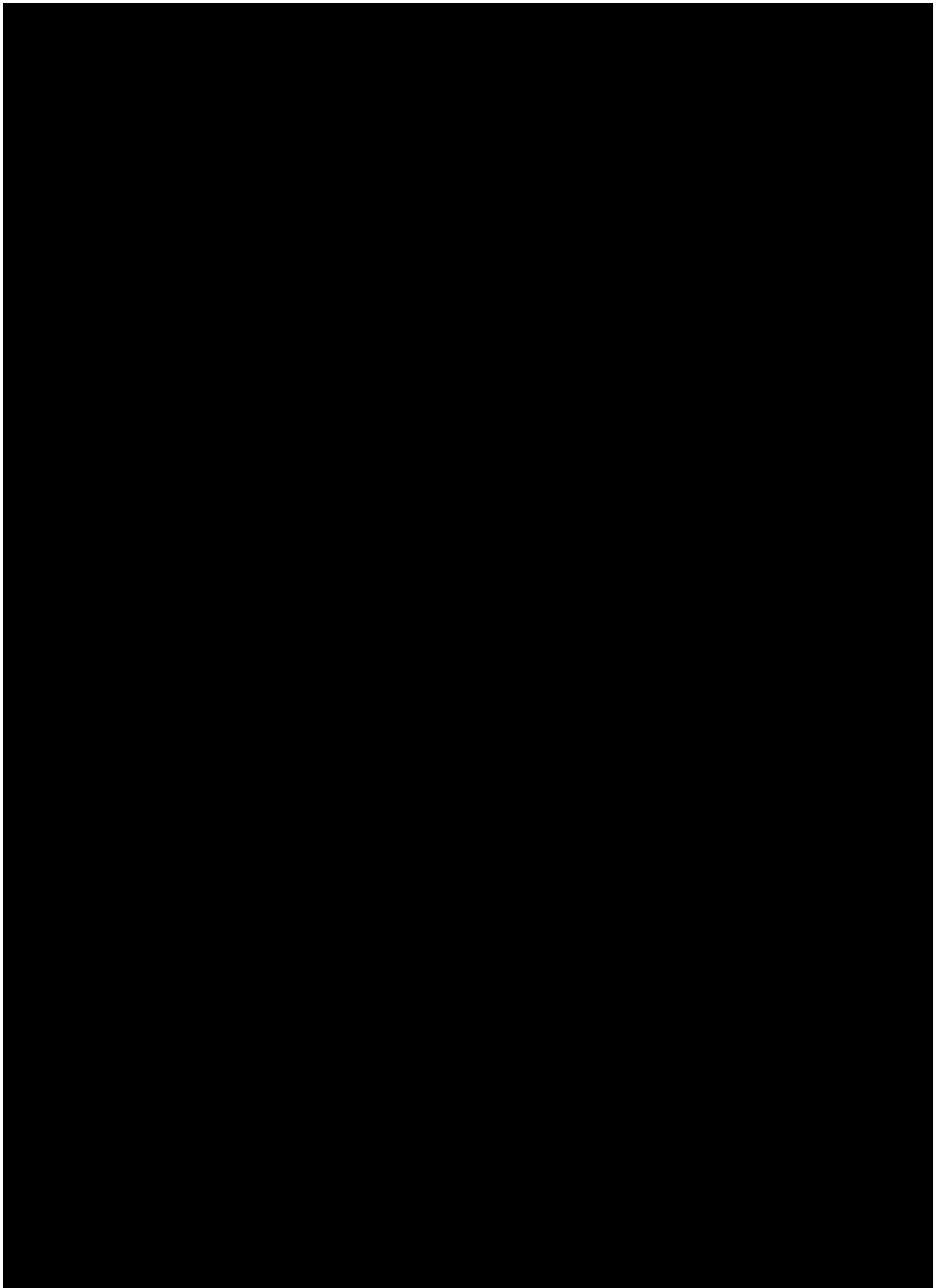


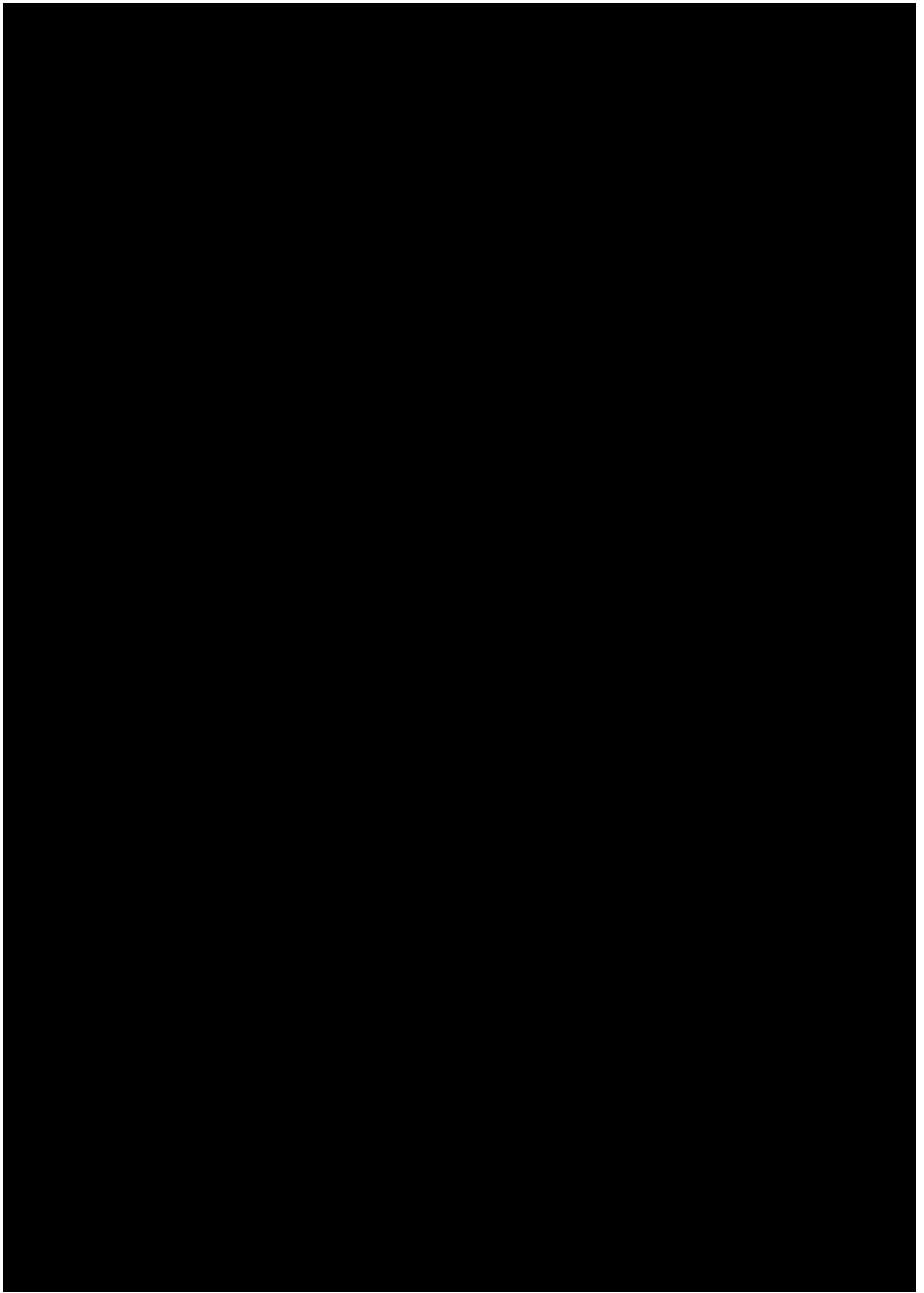


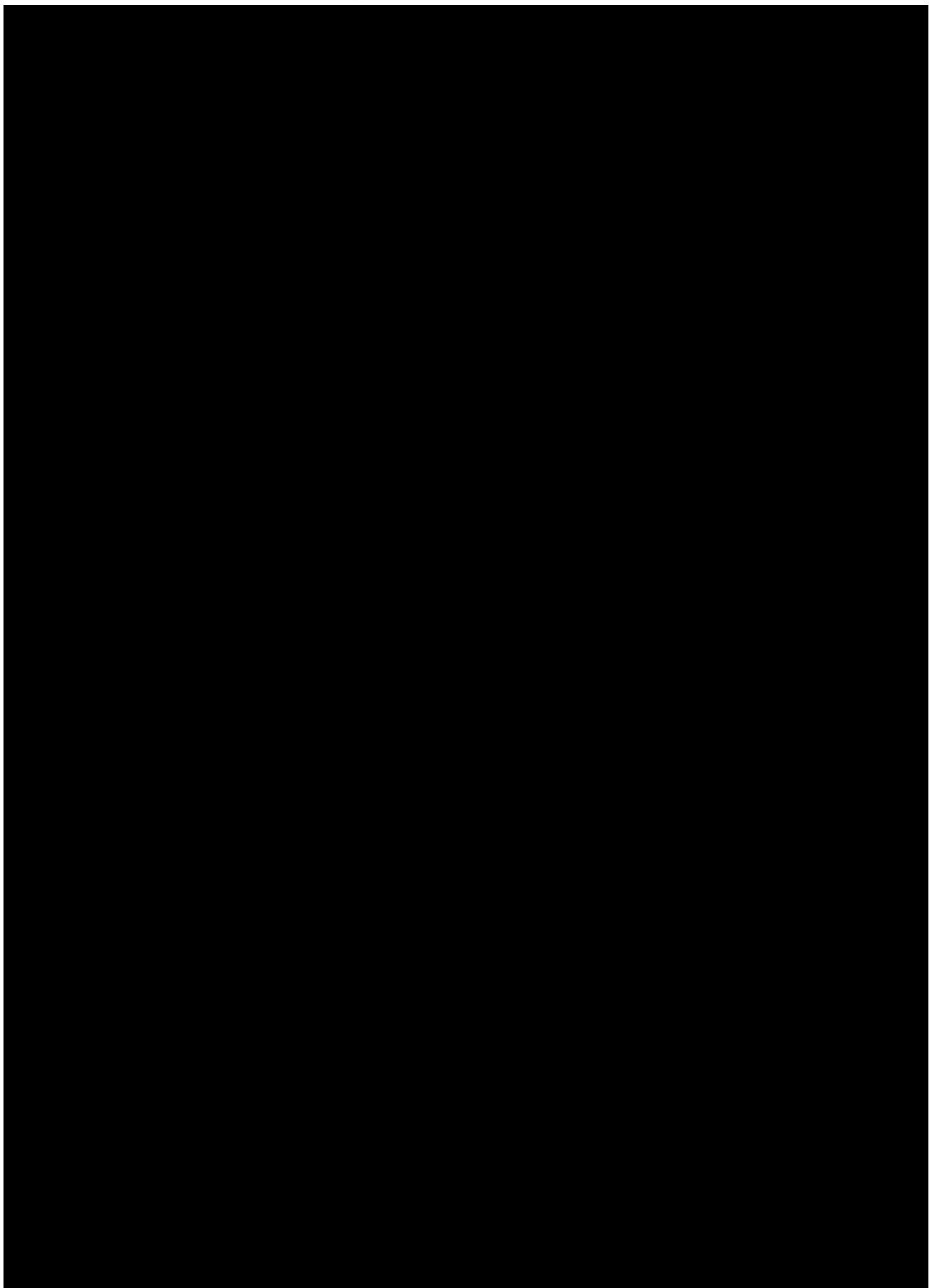


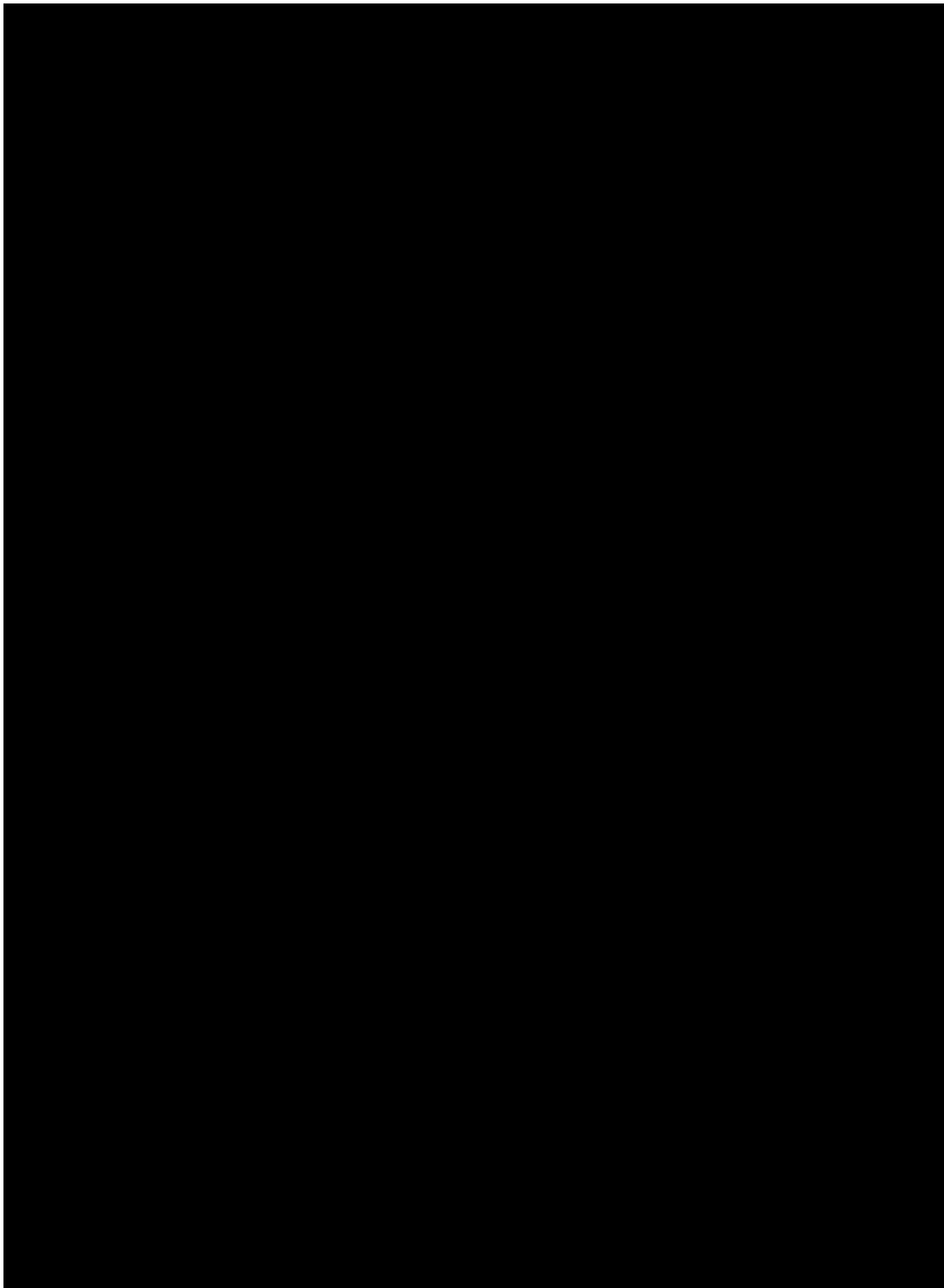


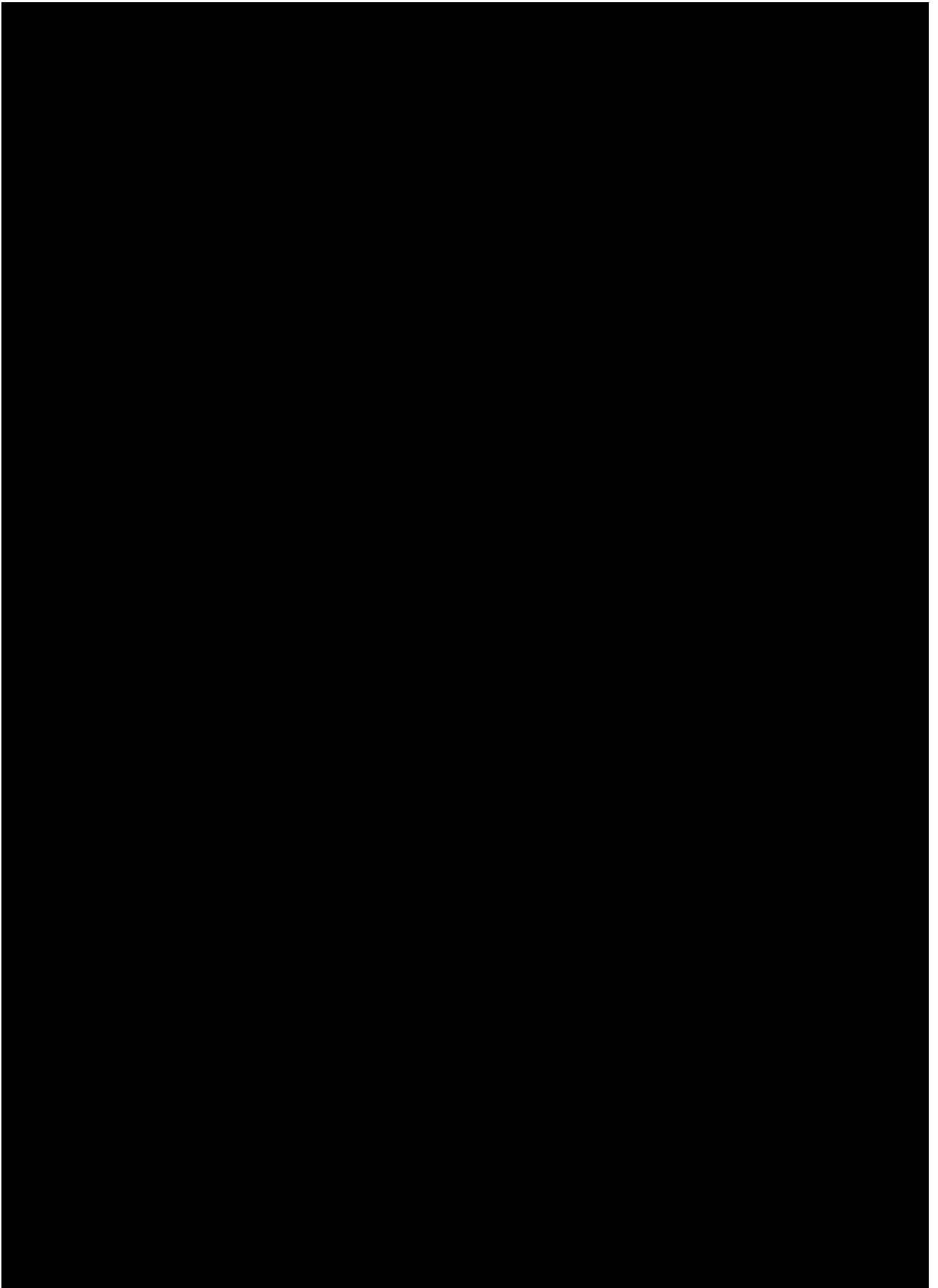


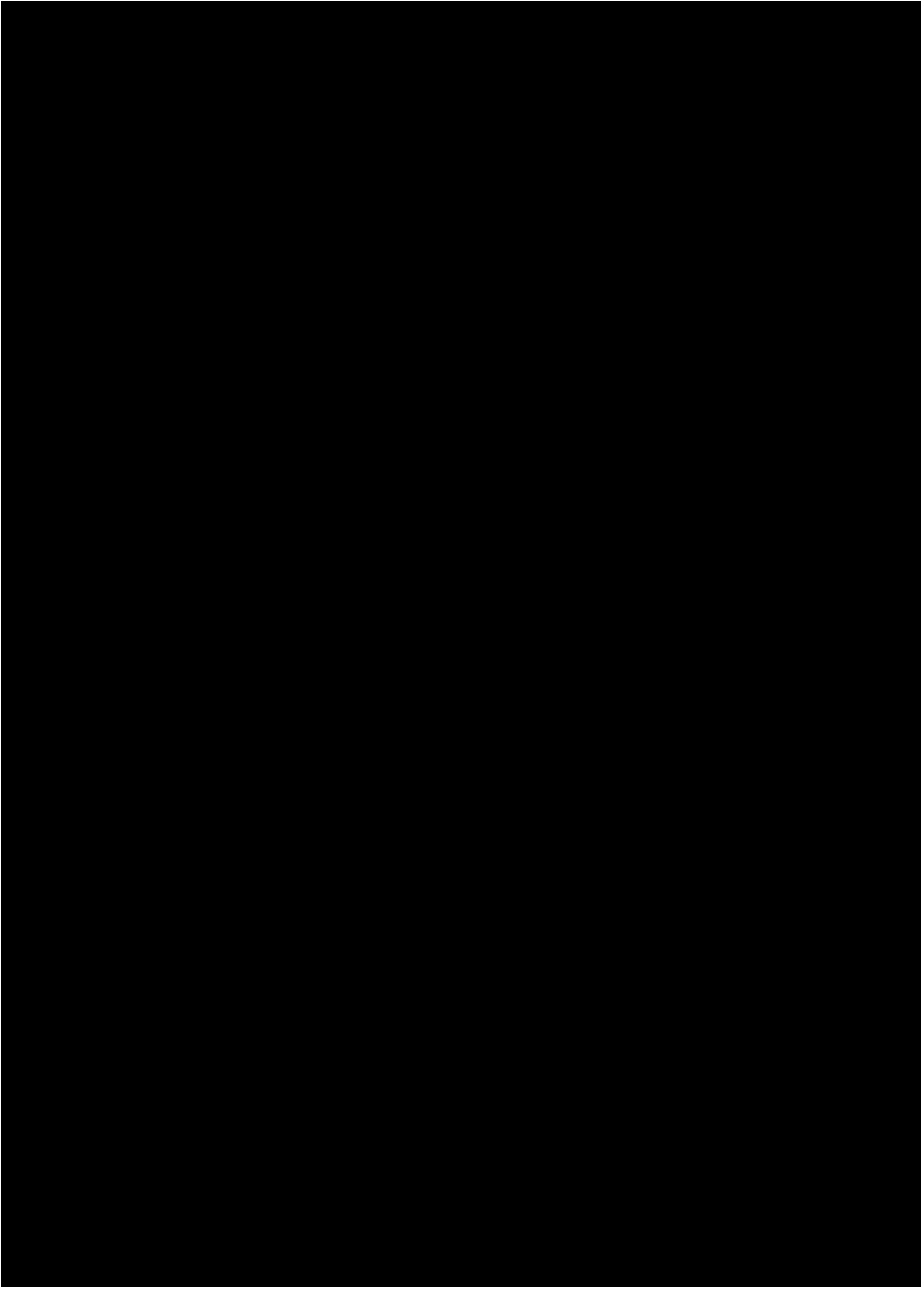


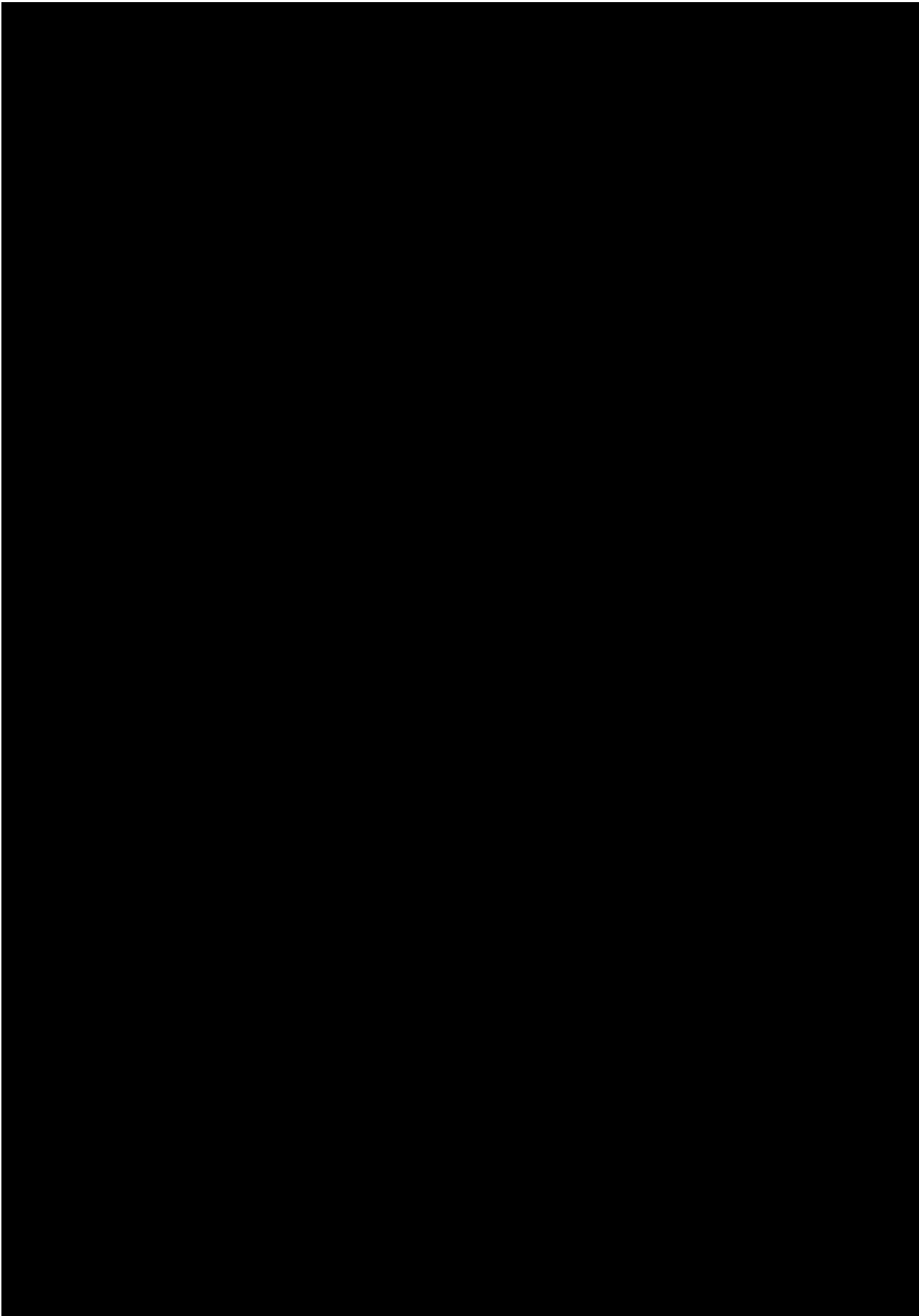


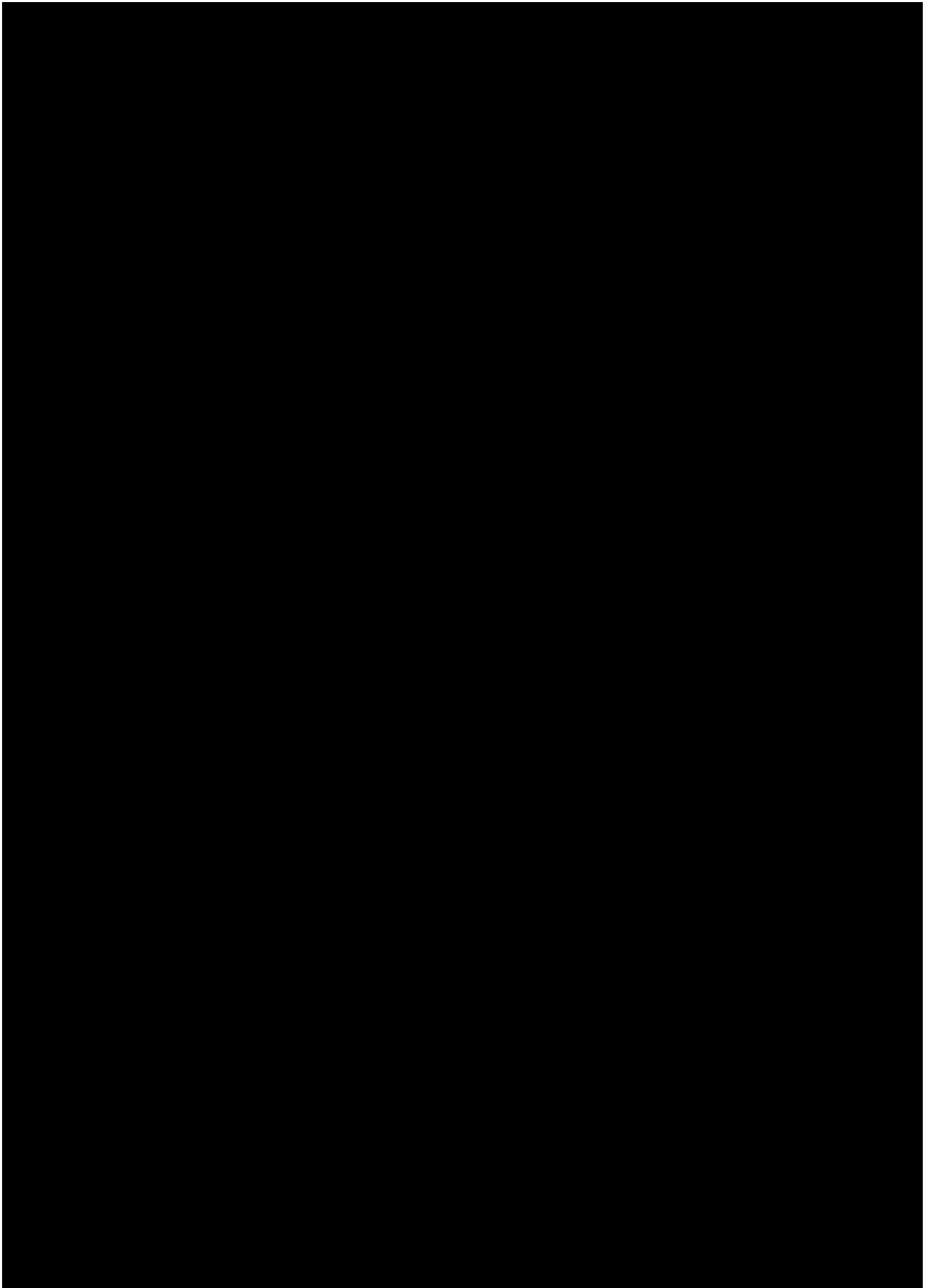


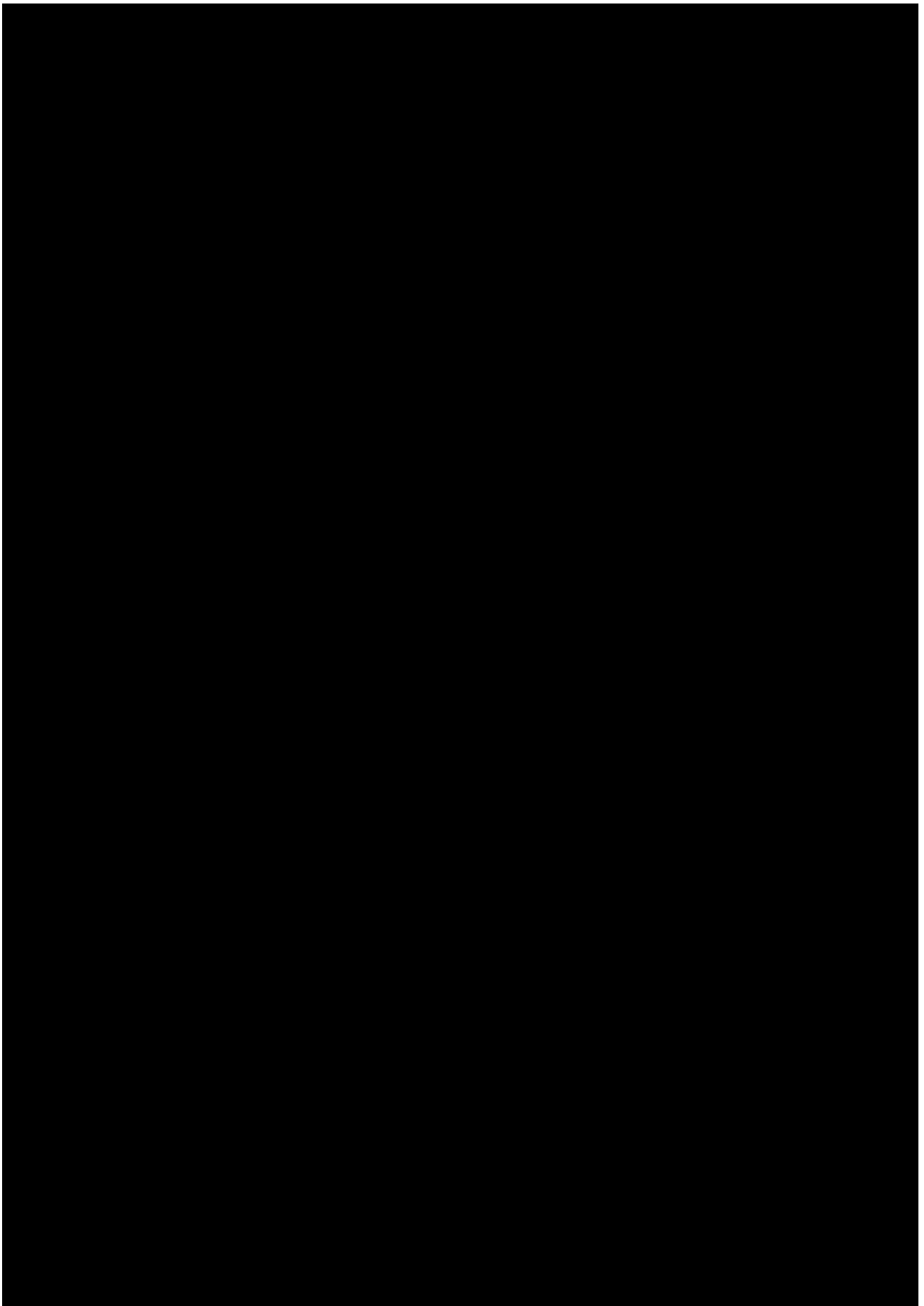








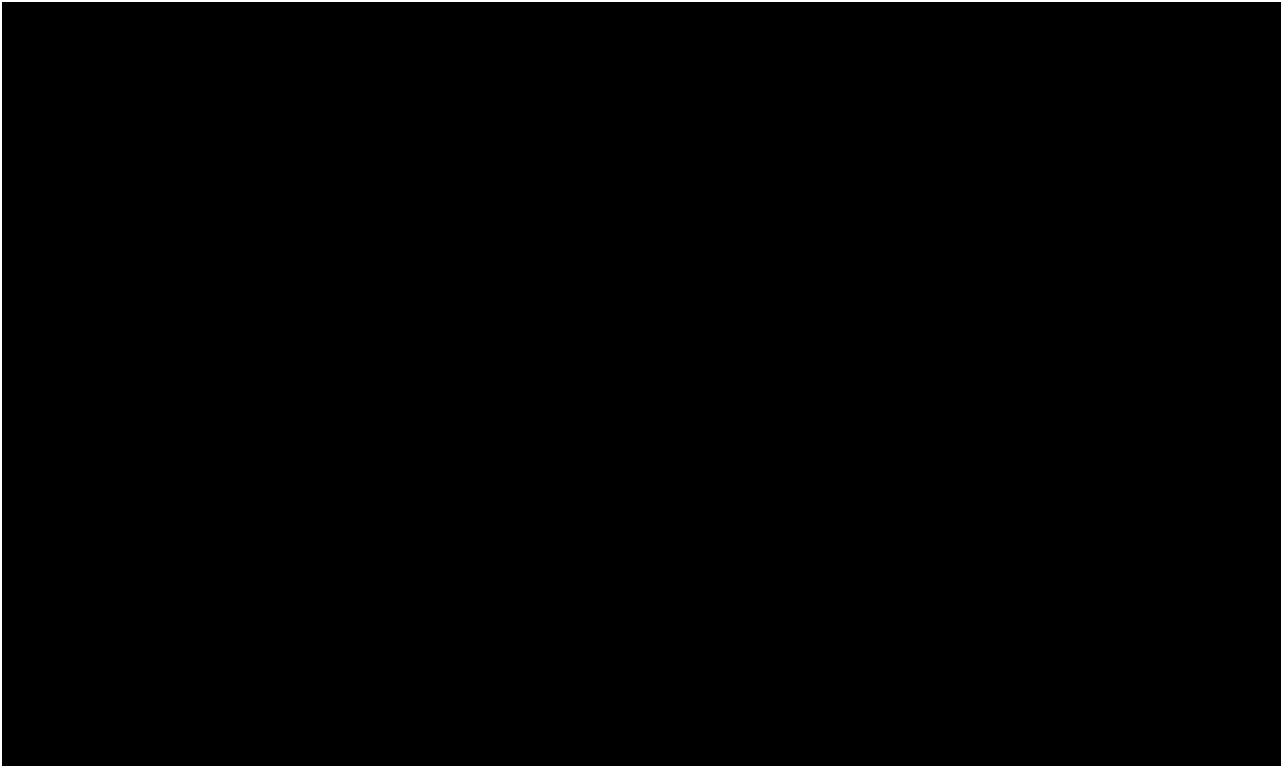








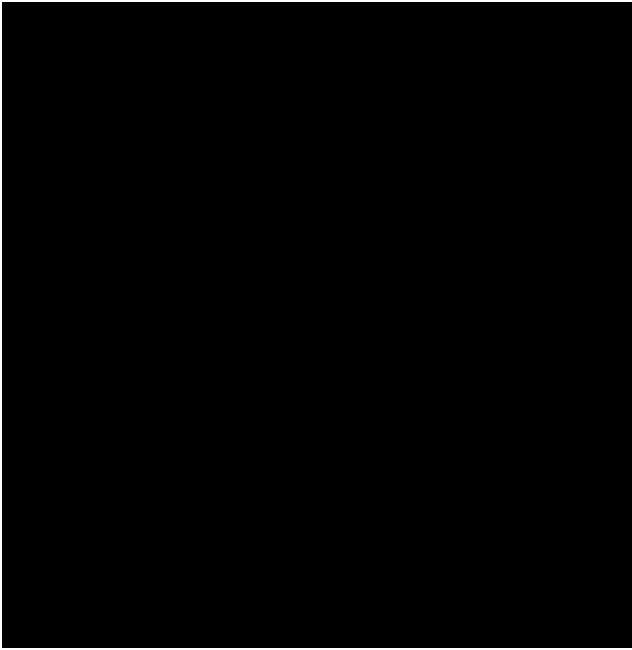




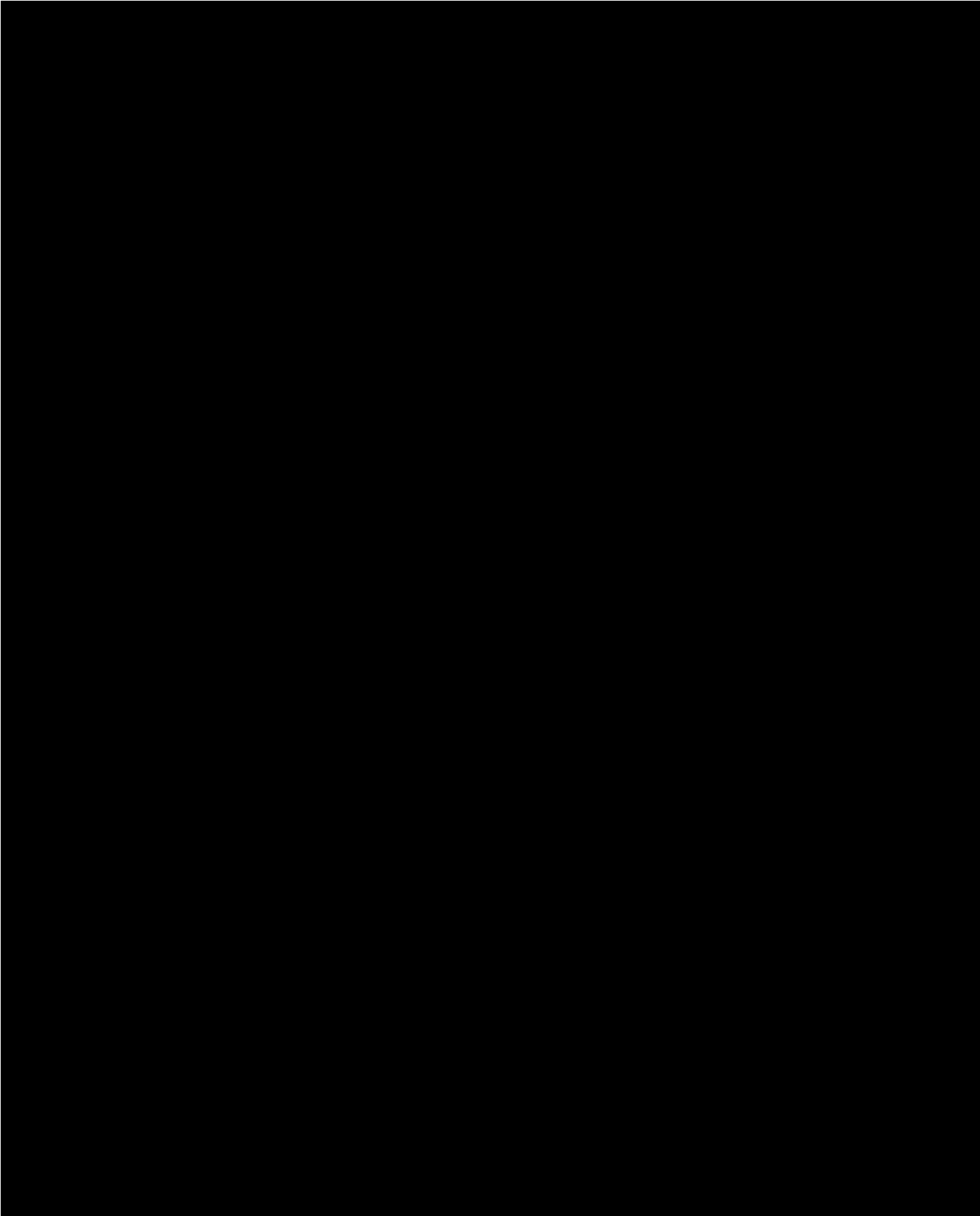




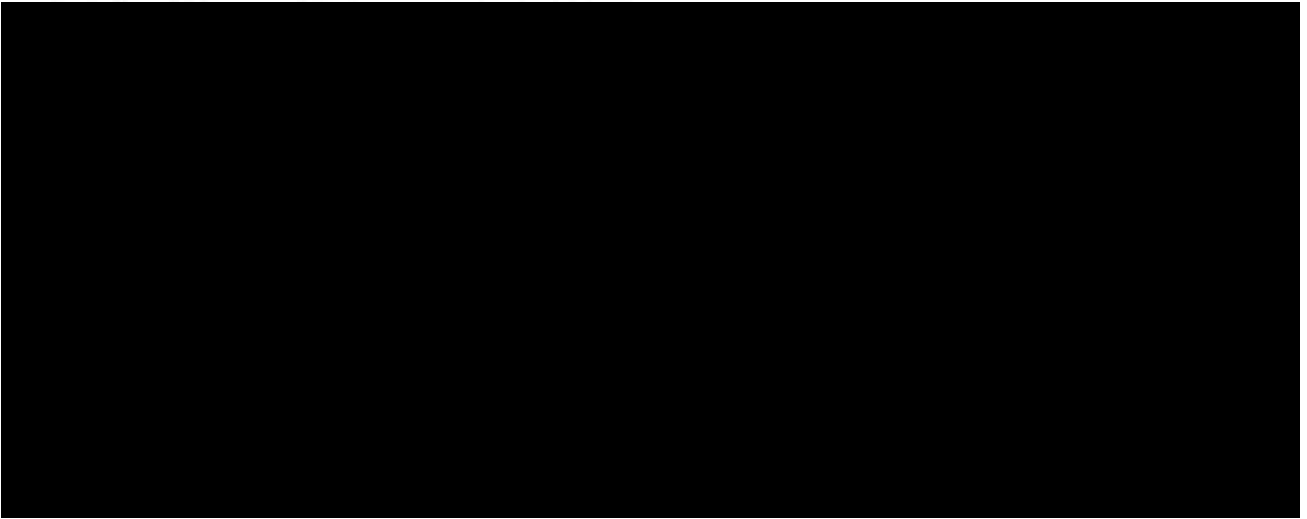




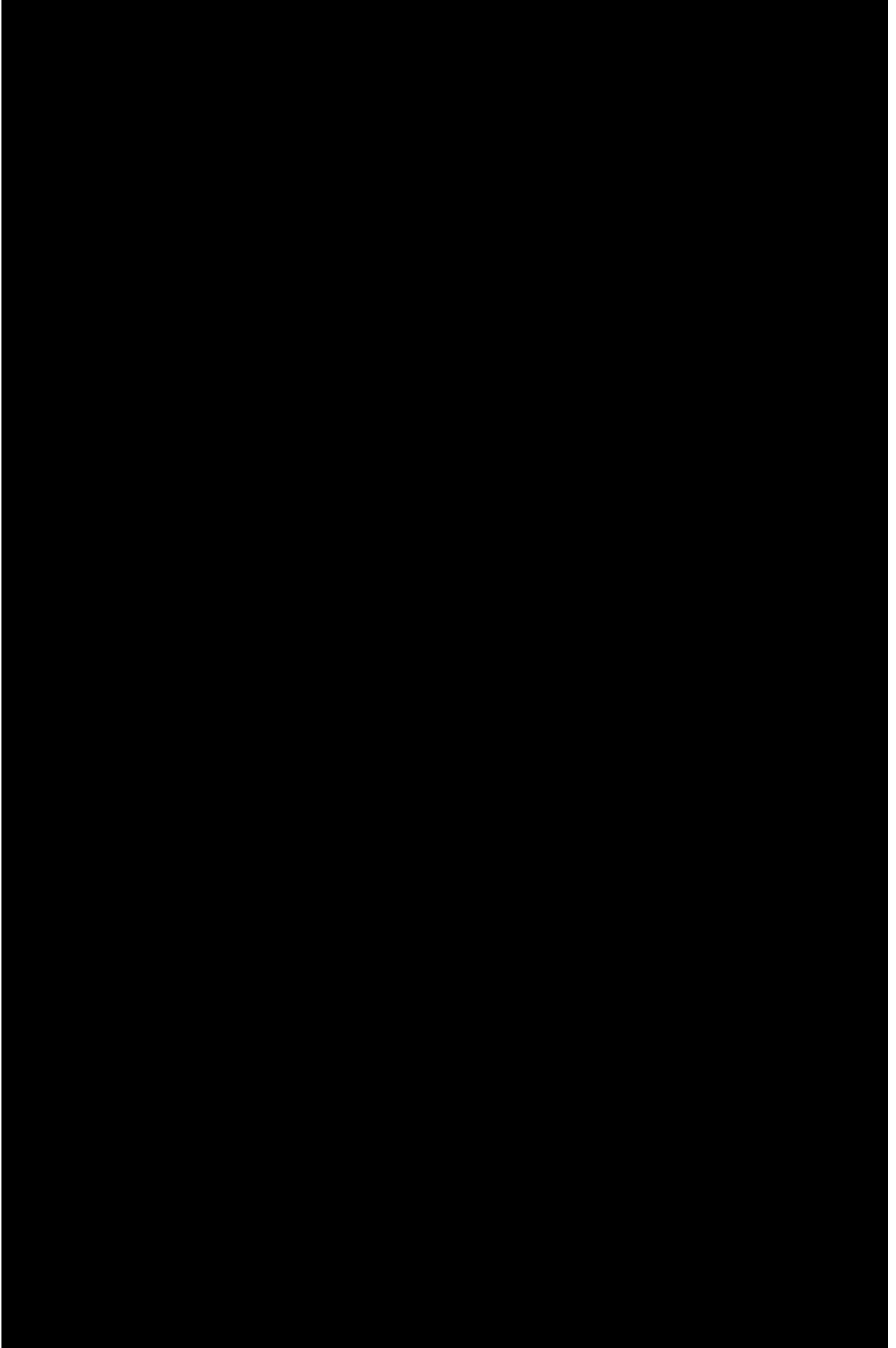
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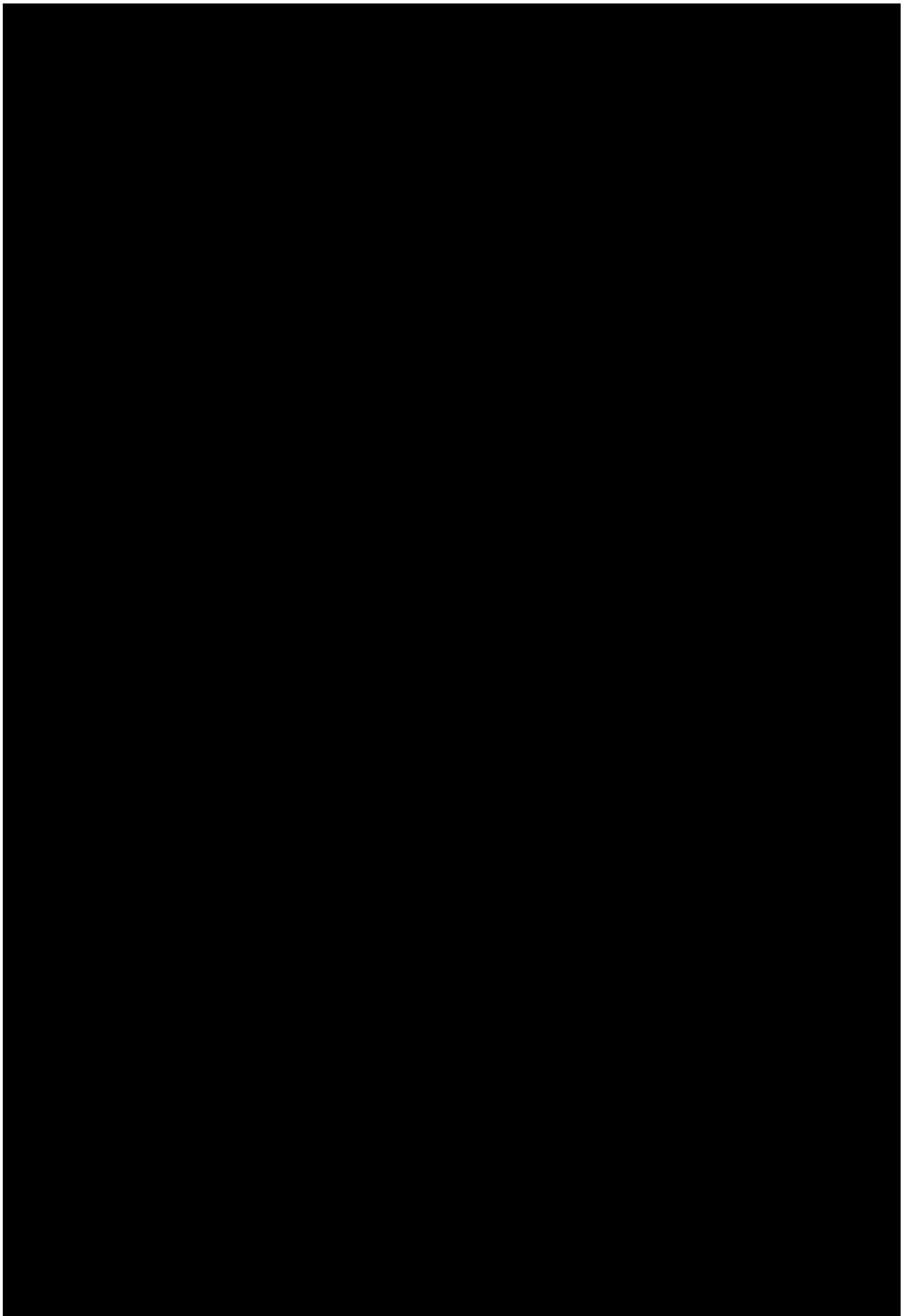


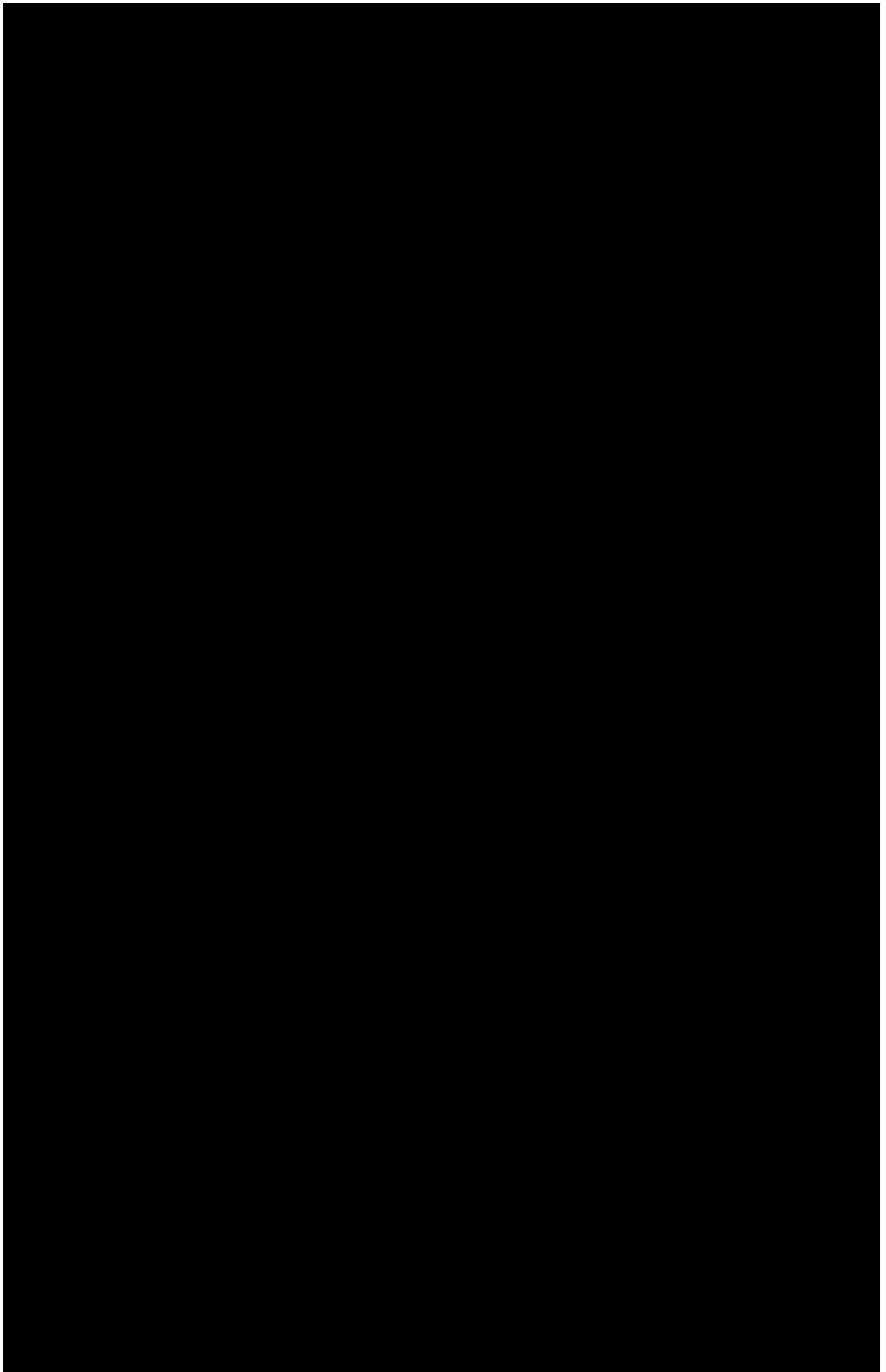
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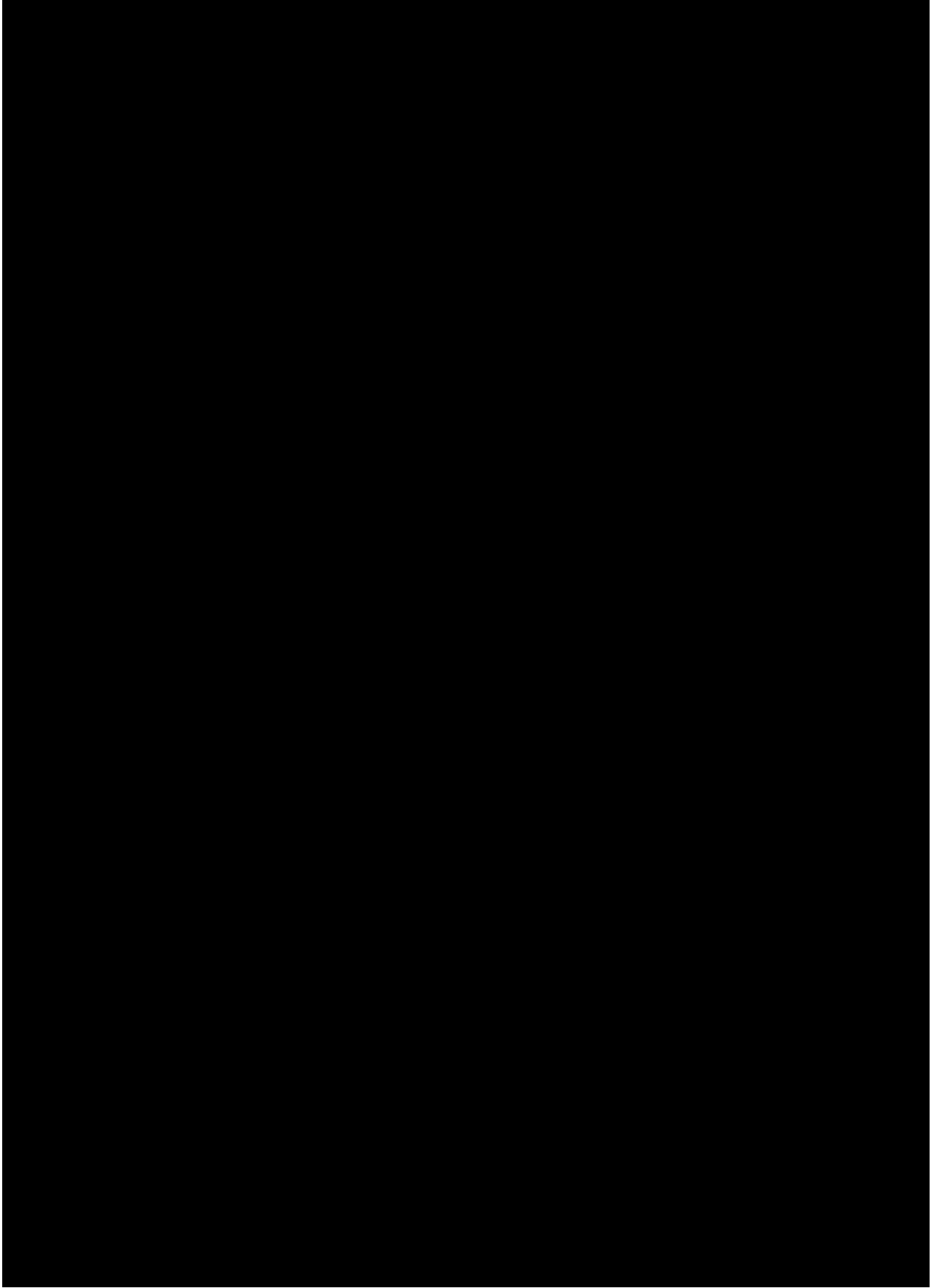


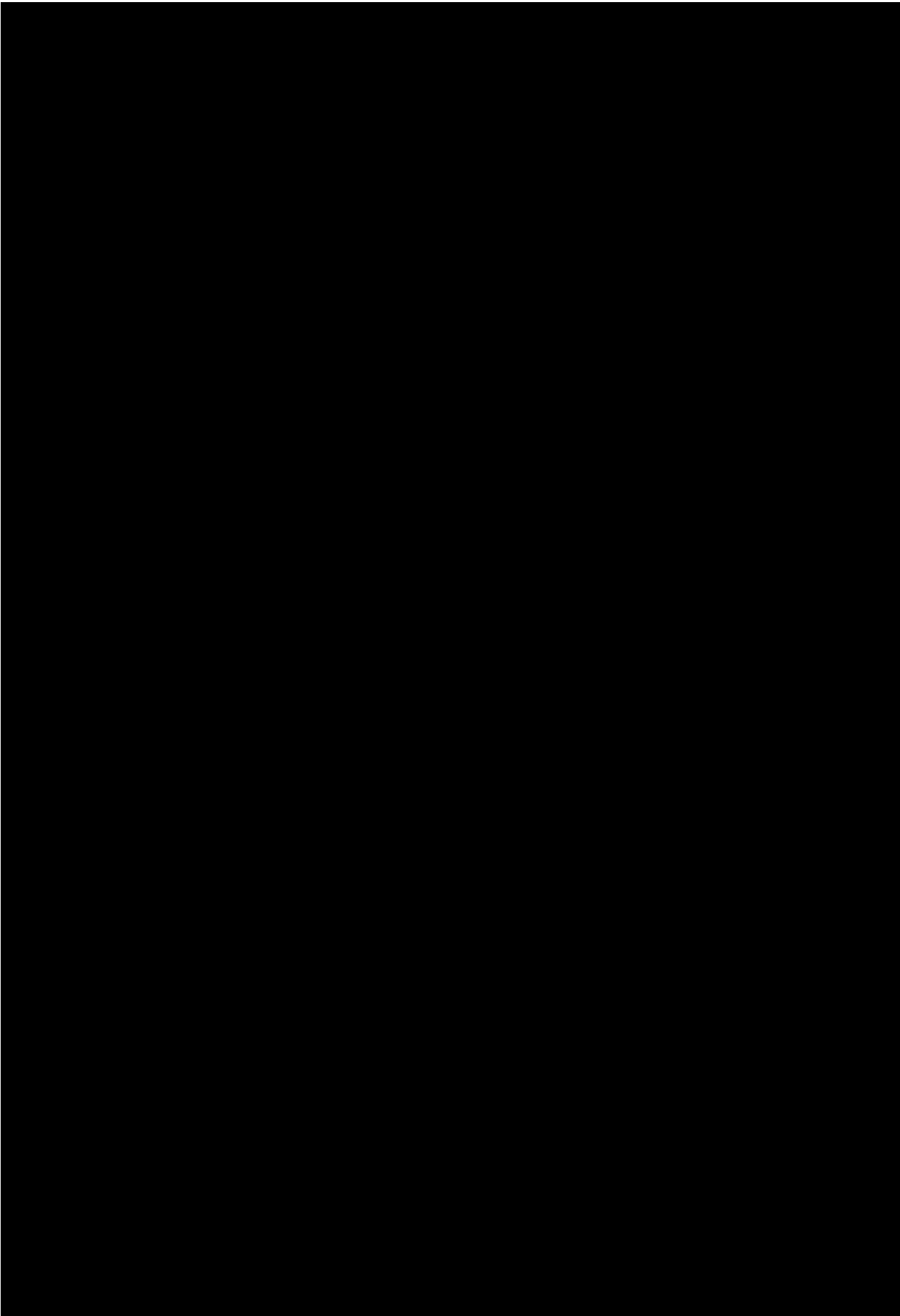


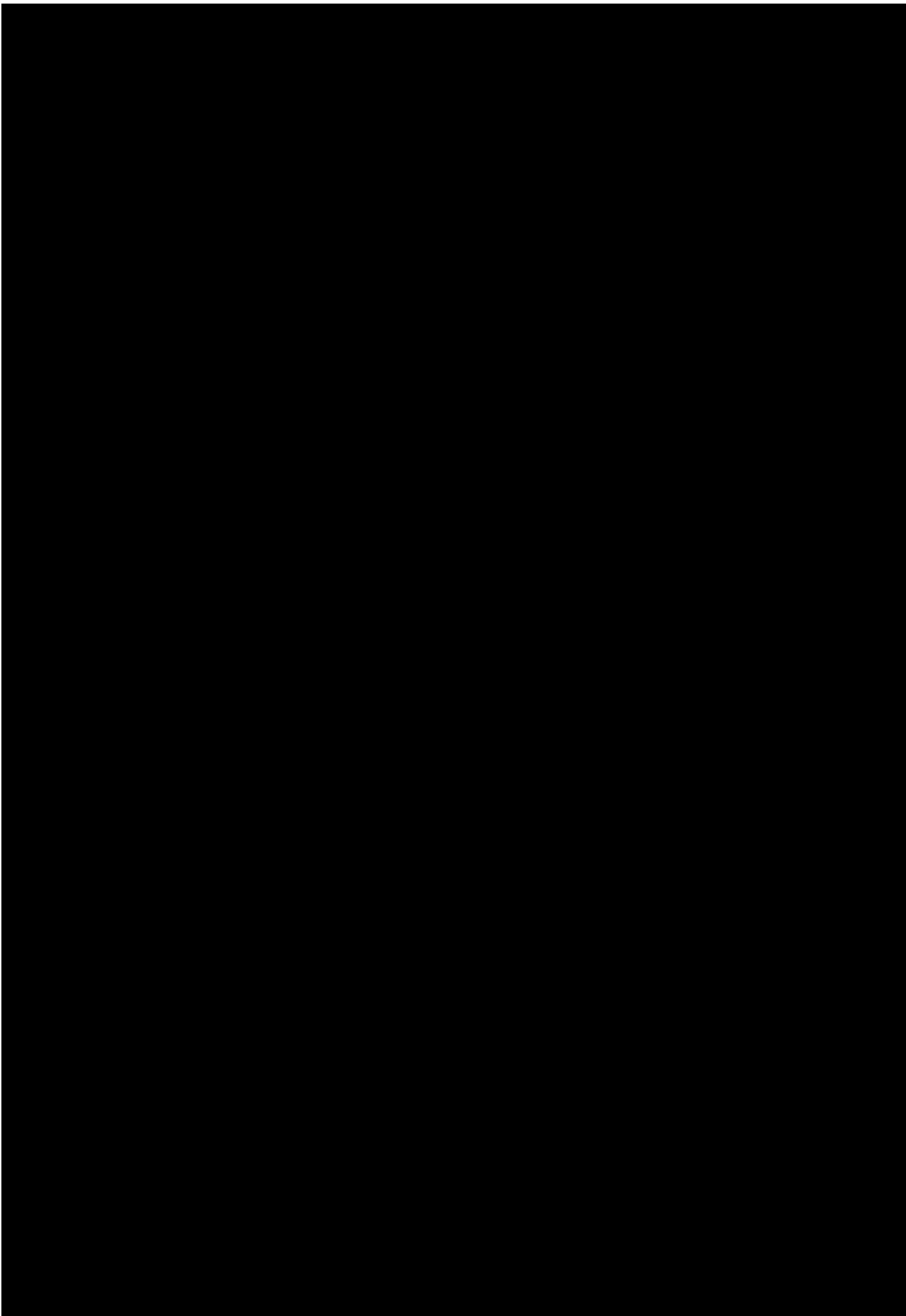


SCHEDULE 5A

COVID-19 Mitigation Measures









SCHEDULE 6

Approvals

(Clause 6)

Part A: Approvals to be obtained by Principal

The Planning Approvals.

The EPBC Act Approval, to the extent required by Law.

Part B: Approval conditions to be undertaken by Principal or Contractor

1. The Contractor must fulfil all the conditions and requirements of the Primary Planning Approval to the extent related to the Contractor's Activities, the Project Works or the Temporary Works except to the extent to which this Part B of this Schedule 6 or the table below expressly states otherwise or expressly allocates responsibility to the Principal.
2. The Principal is responsible for fulfilling all the conditions and requirements of the Primary Planning Approval to the extent applicable to:
 - (a) any early work performed by a contractor engaged by the Principal other than the Contractor;
 - (b) the design, construction, commissioning and completion of the Main Tunnel Works;
 - (c) the operation, maintenance, repair and renewal of the Main Tunnel Works after the Main Tunnel Date of Opening Completion; or
 - (d) the design, construction and completion of the WHT Southern Tunnel Works,except to the extent the table below expressly states otherwise or expressly allocates responsibility to the Contractor.
3. Except to the extent the table below expressly states otherwise, where the Contractor is required to submit any information, reports, plans, notifications and other documents required by or for the purposes of the Primary Planning Approval (**Approval Document**) to the Secretary of the Department of Planning, Industry and Environment (**Secretary**), the Principal will submit the Approval Document prepared by the Contractor to the Secretary, subject to the Contractor having first provided to the Principal drafts of the Approval Documents in a form which meets the requirements of this deed in accordance with the following timetable:
 - (a) provide a first draft to the Principal not less than 25 Business Days in advance of the date upon which the Approval Document(s) are required to be submitted to the Secretary;
 - (b) if a second draft is required by the Principal, provide a second draft to the Principal not less than 4 Business Days in advance of the date upon which the Approval Document(s) are required to be submitted to the Secretary; and
 - (c) provide the form of Approval Document(s) to be submitted to the Principal 1 Business Day prior to the date upon which the Approval Document(s) are required to be submitted to the Secretary.
4. The Contractor must keep the Principal informed of all information, notifications, reports, plans and other documentation which it is required to submit to the Secretary or to any other third party in accordance with this Schedule 6 by providing the Principal with a copy of any such documents as soon as practicable after any such submission. This section 4 does not apply to information, notifications, reports, plans and other documentation which the Principal submitted in accordance with section 3 of this Part B of this Schedule 6.

5. Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule 6 will not limit any of the Contractor's obligations under this deed. The Contractor must provide information and assistance as reasonably required by the Principal to enable the Principal to comply with conditions for which the Principal is responsible (in full or in part) under this Schedule 6.
6. For the purposes of this Schedule 6, "Primary Planning Approval" means each of:
 - (a) the approval granted by the Minister for Planning under the EP&A Act in relation to the Planning Approval Application, including all conditions to such approval and documents incorporated by reference;
 - (b) any modification to the Primary Planning Approval; and
 - (c) any other consent, concurrence or approval, or determination of satisfaction with any matter, which is made, given or issued under the Primary Planning Approval from time to time and all conditions to any of them, and includes all documents incorporated by reference, as that consent, concurrence or approval may be modified from time to time.

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
A12	The Principal must comply with this condition A12.
A13	The Principal must comply with this condition A13.
A16	<p>The Principal must comply with this condition A16 except to the extent stated below.</p> <p>Where the Contractor wishes to propose a change to the Staging Report which the Principal has submitted to the Secretary, the Contractor will be responsible for compliance with this condition A16 and the Contractor must obtain the Principal's approval to the revised Staging Report before it is submitted to the Secretary.</p>
A18	The Principal must comply with this condition A18.
A19	The Principal is responsible for ensuring that the selected Environmental Representative (Rozelle Interchange) meets the requirements of this condition A19.
A20	The Principal must comply with this condition A20.
A21	The Principal and the Contractor must jointly comply with this condition A21.
A23	The Principal and the Contractor must jointly comply with this condition A23.
A24	<p>The Principal must select a suitably qualified Acoustic Advisor and obtain the Secretary's approval in accordance with this condition A24.</p> <p>The Contractor must engage the approved Acoustic Advisor and otherwise comply with this condition A24 to the extent required by section 1 of this Part B of this Schedule 6.</p>

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
A27	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must give the Contractor information and assistance in relation to its compliance with that condition as reasonably required by the Contractor to comply with its obligations in relation to this condition A27.</p> <p>The Contractor is otherwise responsible for complying with this condition A27 to the extent required by section 1 of this Part B of this Schedule 6, including incorporating the information provided by the Principal into the Compliance Tracking Program.</p>
A28	<p>The Principal must ensure that the information it provides for incorporation into the Compliance Tracking Program is satisfactory to the Environmental Representative (Rozelle Interchange) and Secretary. The Contractor is otherwise responsible for complying with this condition A28 to the extent required by section 1 of this Part B of this Schedule 6.</p>
A29	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A29.</p> <p>The Contractor is otherwise responsible for complying with this condition A29 to the extent required by section 1 of this Part B of this Schedule 6 or relevant to the Rozelle Interchange for the time period required by this condition A29.</p>
A30	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A30.</p> <p>The Contractor is otherwise responsible for complying with this condition A30 to the extent required by section 1 of this Part B of this Schedule 6, including incorporating the information provided by the Principal into the Pre-Construction Compliance Report.</p>
A31	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A31.</p> <p>The Contractor is otherwise responsible for complying with this condition A31 to the extent required by section 1 of this Part B of this Schedule 6, including incorporating the information provided by the Principal into the Pre-Construction Compliance Report.</p>

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
A33	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A33.</p> <p>The Contractor is otherwise responsible for complying with this condition A33 to the extent required by section 1 of this Part B of this Schedule 6, including incorporating the information provided by the Principal into the Construction Compliance Reports.</p>
A34	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A34.</p> <p>The Contractor is otherwise responsible for complying with this condition A34 in relation to the Project Works, including incorporating the information provided by the Principal into the Pre-Operation Compliance Report.</p>
A36	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A36.</p> <p>The Contractor is otherwise responsible for complying with this condition A36 to the extent required by section 1 of this Part B of this Schedule 6, including incorporating the information provided by the Principal into the Environmental Audit Program.</p>
A37	<p>To the extent the Principal is responsible under this Schedule 6 for complying with a condition of the Primary Planning Approval, the Principal must provide the information and assistance relating to compliance with that condition reasonably required by the Contractor to comply with its obligations in relation to this condition A37.</p> <p>The Contractor is otherwise responsible for complying with this condition A37 to the extent required by section 1 of this Part B of this Schedule 6.</p>
A40	<p>Section 3 of this Part B of this Schedule 6 does not apply to any notification required by this condition A40.</p>
A41	<p>Section 3 of this Part B of this Schedule 6 does not apply to any notification required by this condition A41.</p>
A43	<p>Section 3 of this Part B of this Schedule 6 does not apply to any notification required by this condition A43.</p>
B1	<p>The Principal must provide information and assistance reasonably required by the Contractor to enable the Contractor to comply with its obligations in relation to this condition B1.</p>

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
B2	The Principal must provide information and assistance reasonably required by the Contractor to enable the Contractor to comply with its obligations in relation to this condition B2.
B5	<p>The Contractor is not required to comply with this condition after the Date of Opening Completion, except where B5 relates to WHT Southern Tunnel Works. Where B5 relates to WHT Southern Tunnel Works, the Contractor is not required to comply with this condition after the Date of Completion (WHT Southern Tunnel Works).</p> <p>The Principal must provide information and assistance reasonably required by the Contractor to enable the Contractor to comply with its obligations in relation to this condition B5.</p>
B7	The Principal must comply with this condition B7.
B8	<p>The Principal must provide the system and templates for the Complaints Register required by this condition B8 to the Contractor.</p> <p>The Contractor is otherwise responsible for complying with this condition B8 to the extent required by section 1 of this Part B of this Schedule 6 or relevant to the Rozelle Interchange for the time period required by this condition B8.</p>
B9	<p>The Principal must provide the templates for the Complaints Register required by this condition B9 to the Contractor.</p> <p>The Contractor is otherwise responsible for complying with this condition B8 to the extent required by section 1 of this Part B of this Schedule 6 or relevant to the Rozelle Interchange for the time period required by this condition B9.</p>
B11	The Principal must comply with this condition B11.
B12	The Principal must publish the requisite information in a newspaper circulating in the local area as required by this condition B12. The Contractor is otherwise responsible for complying with this condition B12 to the extent required by section 1 of this Part B of this Schedule 6.
B13	The Principal must comply with this condition B13.
B14	The Principal must comply with this condition B14.
B15	The Principal must comply with this condition B15.
B16	The Principal must comply with this condition B16.
B17	<p>The Principal is responsible for providing the Contractor with access to a website for the purpose of this condition.</p> <p>The Contractor must upload to the website all information in relation to the CSSI to the extent required by section 1 of this Part B of this Schedule 6.</p> <p>The Contractor must give the Principal a reasonable opportunity to review information to be uploaded to the website before it is uploaded.</p>

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
C12	<p>The Principal must comply with this condition C12 only in relation to paragraphs (d)(i) and (d)(v).</p> <p>The Contractor is otherwise responsible for complying with this condition C12 to the extent required by section 1 of this Part B of this Schedule 6.</p>
C19	The Principal must comply with this condition C19.
C20	The Principal must comply with this condition C20.
C21	The Principal must comply with this condition C21.
D1	The Contractor is responsible for preparing and obtaining the Secretary's approval to an Operational Environmental Management Plan in relation to the Project Works (OEMP).
D2	The parties agree that this condition D2 will not apply to the Project Works because the Contractor is required to prepare an OEMP for the Project Works under Condition D1.
D3	The Contractor is responsible for preparing and obtaining the Secretary's approval to the OEMP Sub-plans in relation to the Project Works.
D4	The Contractor is responsible for preparing and obtaining the Secretary's approval to the OEMP Sub-plans in relation to the Project Works.
D5	The Contractor is responsible for preparing and obtaining the Secretary's approval to the OEMP Sub-plans in relation to the Project Works.
D6	The Contractor is responsible for preparing and obtaining the Secretary's approval to the OEMP in relation to the Project Works before and as a condition precedent to Opening Completion.
D7	The Contractor must comply with this condition only in relation to initially making the OEMP or EMS or equivalent as agreed with the Secretary publicly available prior to the commencement of operation.
D11	The Principal must comply with this condition D11 only in relation to paragraphs (d)(i) and (d)(v).
D12	The Principal must comply with this condition D12.
D16	The Principal must comply with this condition D16.
D17	The Principal must comply with this condition D17.
E2	The Principal must comply with this condition E2, except the Contractor must attend and participate in meetings of the AQCCC, and prepare information and materials in relation to the AQCCC, if required by the Principal.
E3	The Contractor is responsible for compliance with this condition E3 to the extent that compliance can be achieved through the design and construction of the Project Works.

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
E4	The Contractor is responsible for compliance with this condition E4 to the extent that compliance can be achieved through the design and construction of the Project Works.
E5	The Contractor is responsible for compliance with this condition E5 to the extent compliance can be achieved through the design and construction of the Project Works.
E8	Section 3 of this Part B of this Schedule 6 does not apply to any notification required by this condition E8.
E9	The Contractor is responsible for compliance with this condition E9 to the extent compliance can be achieved through the design and construction of the Project Works.
E13	The Contractor is responsible for preparing Tunnel Ventilation, Traffic Incident Response and Traffic Management Systems Integration Protocol, consulting with TMC and obtaining endorsement of the protocol in relation to the Project Works as required by this condition E13.
E15	The Contractor must comply with this condition E15 in relation to the Project Works.
E16	The Principal must comply with this condition E16.
E17	The Contractor must comply with this condition E17 in relation to the Project Works.
E18	<p>The Principal must ensure the relevant information (provided by the Contractor) is placed on a website and the website is maintained throughout the operation of the CSSI as required by this condition E18.</p> <p>The Contractor is otherwise responsible for complying with this condition E18 to the extent required by section 1 of this Part B of this Schedule 6.</p>
E19	The Principal must comply with this condition E19.
E20	The Contractor is responsible for compliance with this condition E20 to the extent compliance can be achieved through the design and construction of the Project Works.
E23	The Principal must comply with this condition E23
E24	The Principal must comply with this condition E24.
E26	The Principal must perform monitoring as required by this condition E26 on and from the Date of Opening Completion. The Contractor is otherwise responsible for complying with this condition E26 to the extent required by section 1 of this Part B of this Schedule 6.
E27	<p>The Contractor is responsible for developing and obtaining the Secretary's approval to the reporting system in relation to the Project Works as required by this condition E27.</p> <p>The Principal is otherwise responsible for complying with this condition E27.</p>

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
E28	The Principal must comply with this condition E28.
E29	The Principal will assist the Contractor in compliance with this condition by providing details of the website referred to in condition E28, but otherwise the Contractor is responsible for compliance with this condition in relation to the Project Works.
E30	The Principal must comply with this condition E30.
E31	The Principal must comply with this condition E31.
E33	The Principal must comply with this condition E33.
E34	The Principal must comply with this condition E34.
E35	<p>The Principal must comply with this condition E35 to the extent that compliance is required on and from the Date of Opening Completion. For the avoidance of doubt, the provision, operation and maintenance (including all auditing and validation of data) of air quality monitoring and reporting required by condition C9(e) must be funded by the Contractor.</p> <p>The Contractor must otherwise comply with this condition E35 to the extent required by section 1 of this Part B of this Schedule 6, including establishing the monitoring stations.</p>
E36	<p>The Principal must comply with this condition E36 to the extent that compliance is required on and from the Date of Opening Completion.</p> <p>The Contractor must otherwise comply with this condition E36 to the extent required by section 1 of this Part B of this Schedule 6.</p>
E37	The Principal must comply with this condition E37.
E38	The Principal must comply with this condition E38.
E39	The Principal must comply with this condition E39.
E40	The Principal must comply with this condition E40.
E41	<p>Each party is responsible for compliance with this condition E41 to the extent relevant to monitoring that it is required to do under this Schedule 6.</p> <p>The Principal must select a suitably qualified independent expert and obtain the Secretary's approval in accordance with this condition E41.</p> <p>The Contractor must engage the approved independent expert.</p>
E42	The Principal must comply with this condition E42.
E48	The Principal must comply with this condition E48.
E50	The White Bay Civil Site does not form part of the Construction Site and is not included in the Site Access Schedule. Notwithstanding, the Contractor must comply with condition E50.

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
E56	The Principal must comply with this condition E56 only to the extent the Principal will select the person to undertake the independent Road Safety Audit(s) from a list of suitably qualified and experienced persons provided by the Contractor.
E58	The Principal must comply with this condition E58.
E59	The Principal must comply with this condition E59 only to the extent related to Leichhardt North light rail stop.
E60	<p>The Principal must provide the Contractor information in relation to E58 suitable for integration into the document required by this condition E60.</p> <p>The Contractor must otherwise comply with this condition E60 to the extent required by section 1 of this Part B of this Schedule 6.</p>
E63	The Principal must comply with this condition E63.
E64	The Principal must comply with this condition E64.
E65	The Principal must comply with this condition E65.
E88	The Principal must comply with this condition E88.
E89	<p>The Principal must comply with this condition E89 in respect of receivers at/to which the requirements of condition E88 apply.</p> <p>The Contractor is otherwise required to comply with this condition E89 to the extent required by section 1 of this Part B of this Schedule 6.</p>
E90	<p>The Principal must comply with this condition E90 in respect of receivers at/to which the requirements of condition E88 apply.</p> <p>The Contractor is otherwise required to comply with this condition E89 to the extent required by section 1 of this Part B of this Schedule 6.</p>
E93	<p>The Principal must comply with this condition E93 in respect of receivers at/to which the requirements of condition E88 apply.</p> <p>The Contractor is otherwise required to comply with this condition E93 in relation to the Contractor's Activities.</p>
E95	The Contractor must comply with this condition E95 in relation to the Project Works.
E109	The Principal must comply with this condition E109 except that the Contractor must provide the Principal and the Independent Property Impact Assessment Panel with all available information, documents, details and data relating to the Contractor's Activities and Project Works in order for the Panel to perform their function.
E110	The Principal must comply with this condition E110.
E111	The Principal must comply with this condition E111.
E112	The Principal must comply with this condition E112.

Primary Planning Approval Condition number	Exceptions to general allocations of responsibilities
E113	The Principal must comply with this condition E113 only to the extent that an end use as required in the SWTC nominates a condition which exceeds the condition required by SWTC Main Body sections 5.1(c)(iv) and 6.9.
E114	The Principal must comply with this condition E114.
E115	The Principal must comply with this condition E115.
E128	The Principal must comply with this condition E128 only to the extent it will attend as an observer in accordance with this condition E128.
E133	The Principal must comply with this condition E133 only to the extent that it will provide information and assistance as reasonably required by the Contractor to enable the Contractor to comply with its obligations in relation to this condition E133.
E134	The Principal must comply with this condition E134 only to the extent that it will provide information and assistance as reasonably required by the Contractor to enable the Contractor to comply with its obligations in relation to this condition E134.
E139	The Contractor is not required to comply with this condition E139 after the Date of Opening Completion.
E144	The Contractor is not required to comply with this condition E144.
E145	The Contractor is not required to comply with this condition E145.
E150	The Contractor is not required to comply with this condition E150 on and from the Date of Opening Completion.
E153	The Contractor is not required to comply with this condition E153 on and from the Date of Opening Completion.
E160	The Contractor is not required to comply with this condition E160 to the extent that it relates to the façade of the former Bank of NSW building (164 Parramatta Road).
E164	The Contractor is not required to comply with this condition E164 to the extent that it relates to the façade of the former Bank of NSW building (164 Parramatta Road).

SCHEDULE 6A

WHT Planning Approval

(Clause 6)

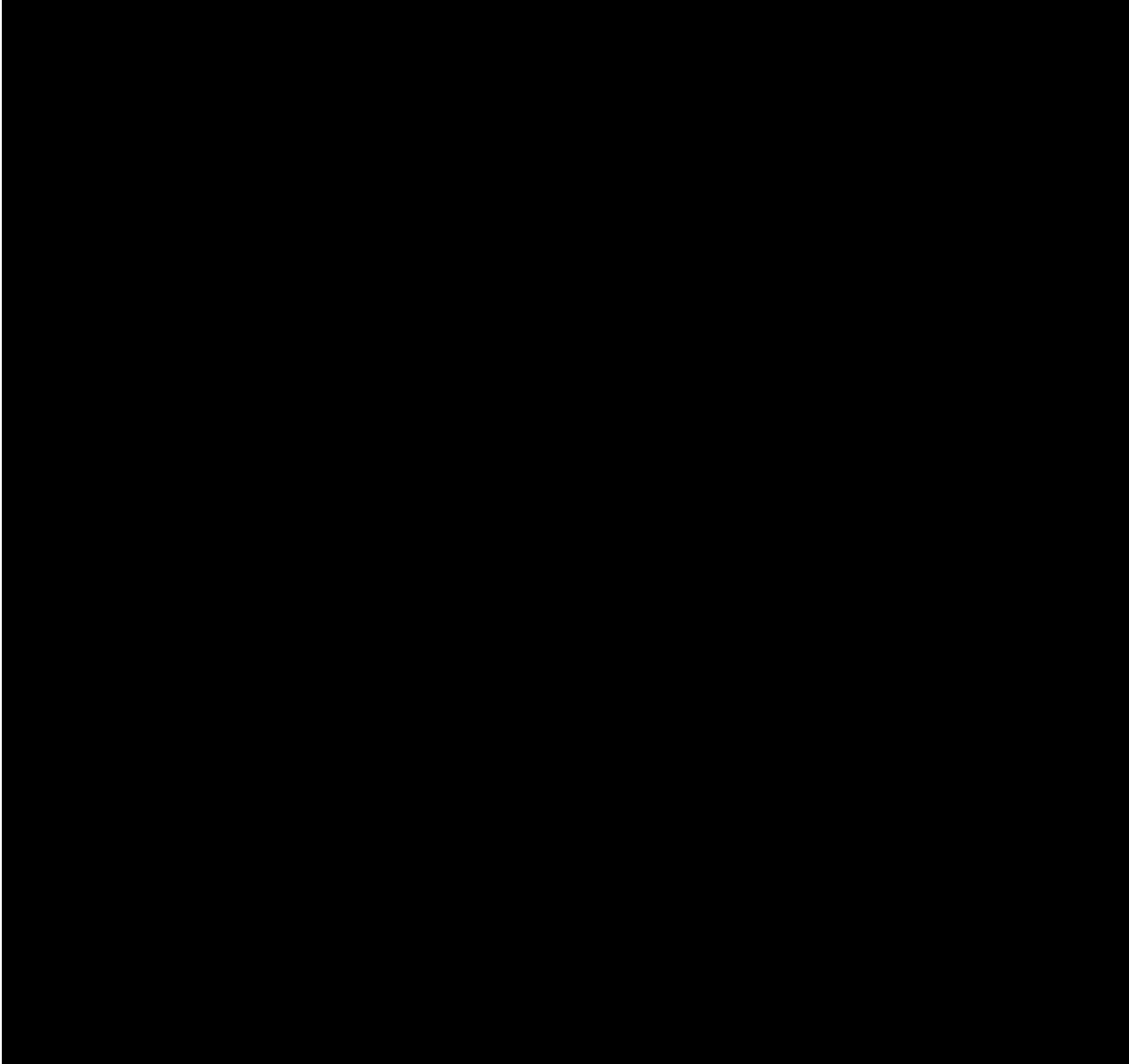
1. OBLIGATIONS IN RESPECT OF THE WHT PLANNING APPROVAL

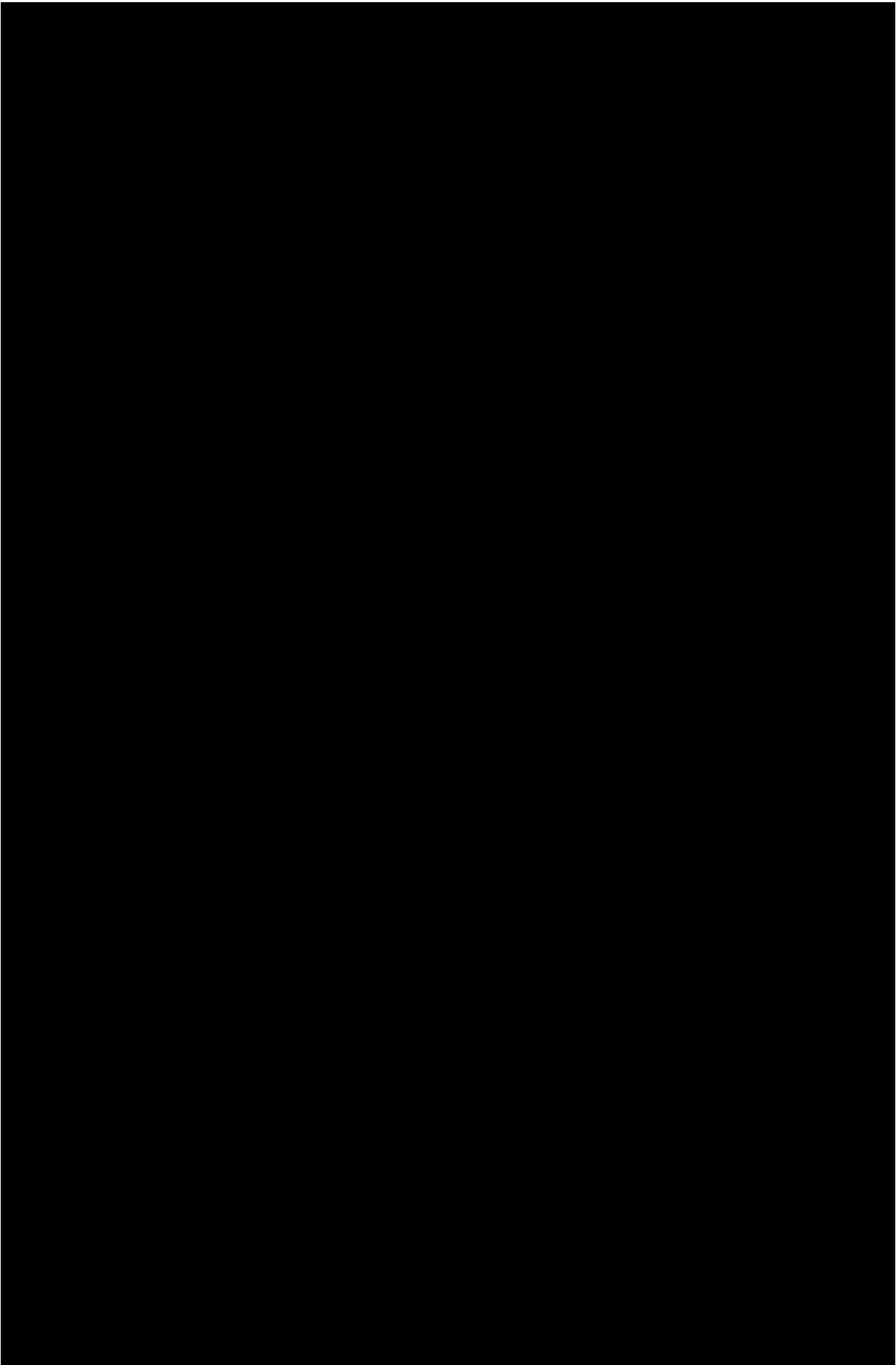
- (a) The Contractor must, in performing the Contractor's Activities, comply with all of the obligations, conditions and requirements of the WHT Planning Approval, as if it were the Principal, to the extent that they relate to the Contractor's Activities except to the extent that this Schedule 6A provides that the Principal will comply with the obligation, condition or requirement or this Schedule 6A limits the Contractor's obligation in respect of that obligation, condition or requirement.
- (b) Nothing in this Schedule 6A in any way limits, affects or relieves the Contractor from complying with any obligation set out elsewhere in this deed.

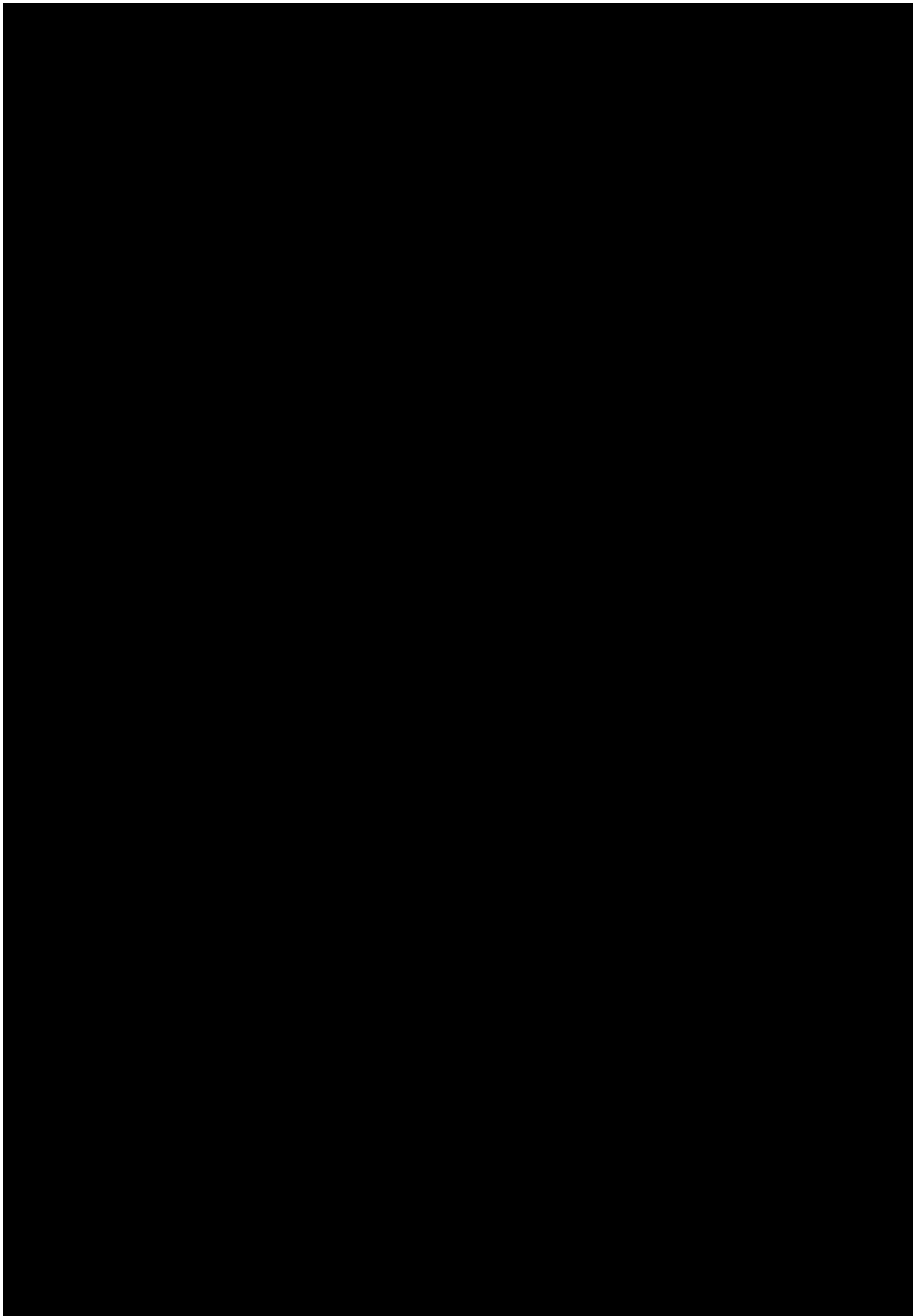
2. THE PRINCIPAL'S OBLIGATIONS IN RESPECT OF THE WHT PLANNING APPROVAL

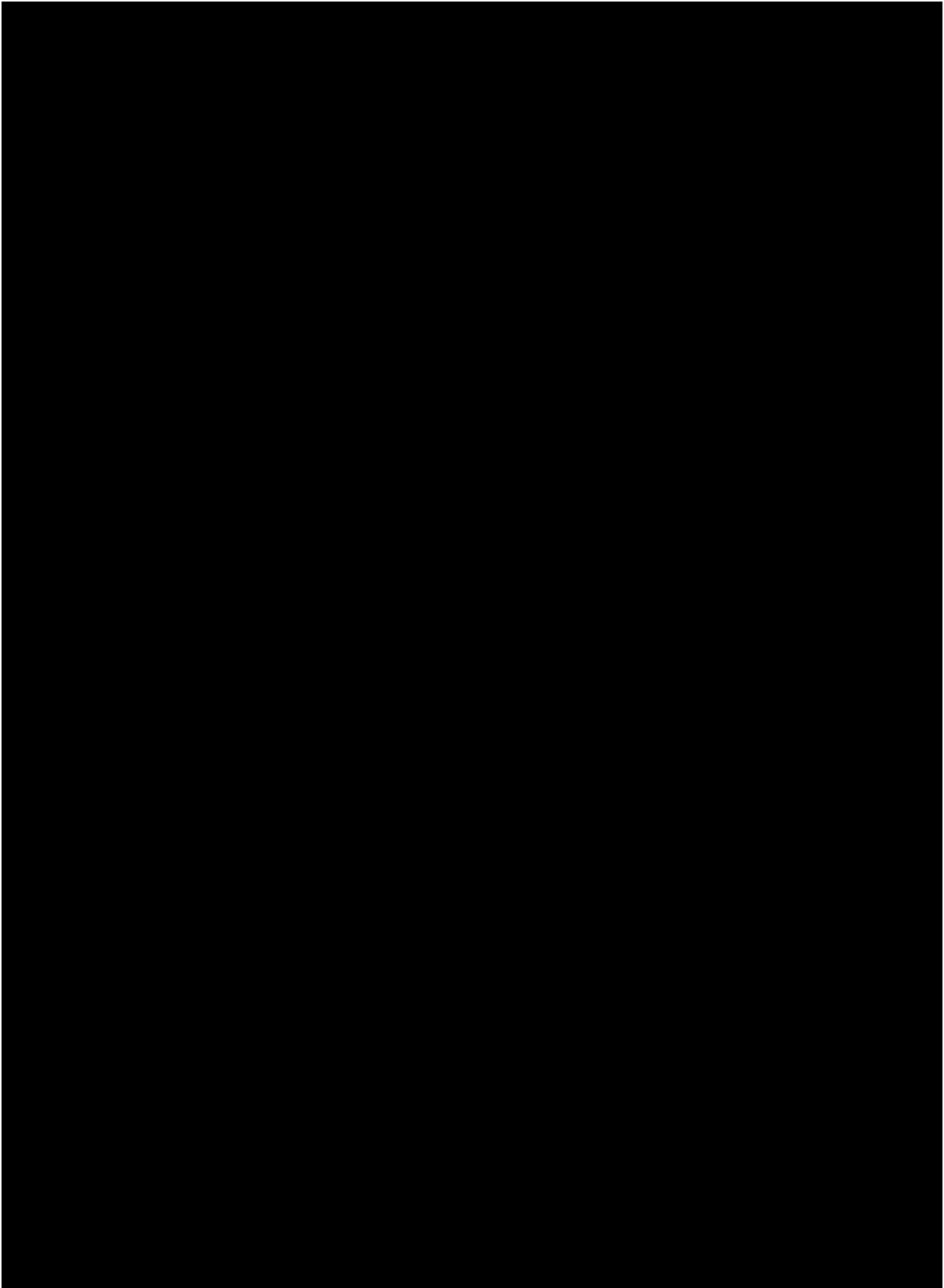
- (a) The Contractor must fulfil all the conditions and requirements of the WHT Planning Approval to the extent related to the Contractor's Activities or the Project Works except to the extent the table below expressly states otherwise or expressly allocates responsibility to the Principal.
- (b) The Principal is responsible for fulfilling any obligations to the extent that they arise or continue after the Date of Final Completion, except to the extent the table below expressly states otherwise, or expressly allocates the responsibility to the Contractor.
- (c) Any allocation of responsibility to the Principal (whether in full or in part) pursuant to this Schedule 6A will not limit any of the Contractor's obligations under this deed.
- (d) The Contractor must provide information and assistance as reasonably required by the Principal to enable the Principal to comply with conditions for which the Principal is responsible (in full or in part) under this Schedule 6A.
- (e) Without limiting any other requirements of this deed, in respect of any plans, submissions, surveys, investigations, reports, programs, responses, studies or other documents required to be submitted by a conditions of the WHT Planning Approval, and which this Schedule 6A indicates that the Principal will submit, the Contractor must:
 - (i) prior to their submission pursuant to the WHT Planning Approval and in sufficient time to enable their submission in accordance with the WHT Planning Approval, prepare, carry out and provide to the Principal any such plans, submissions, surveys, investigations, reports, programs, responses, studies or other documents:
 - (A) requested by the Principal's Representative;
 - (B) to the standard reasonably directed by the Principal's Representative; and
 - (C) within the time reasonably directed by the Principal's Representative or specified in the table below; and

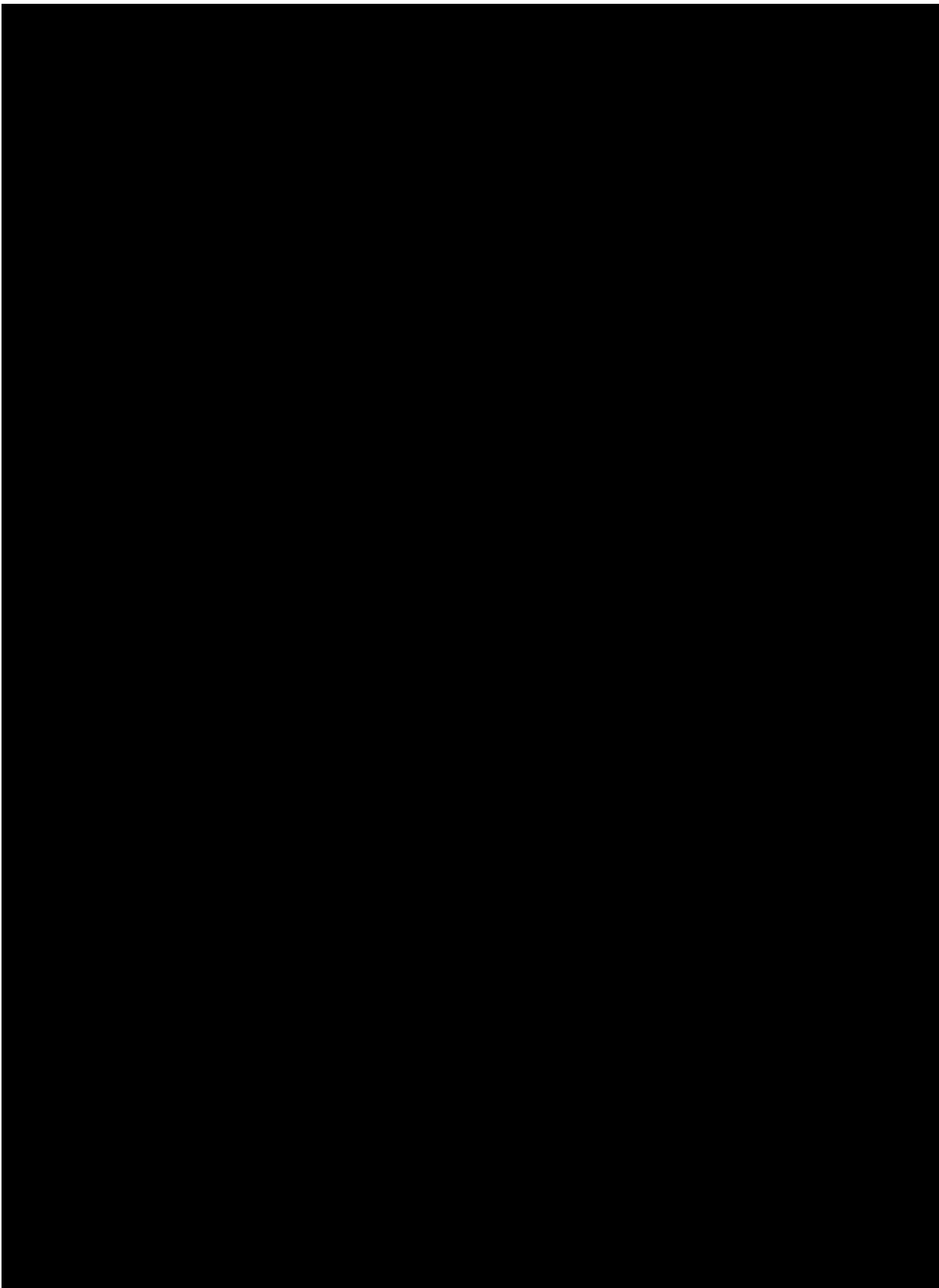
- (ii) provide whatever other assistance and information the Principal's Representative reasonably requests within the time reasonably requested by the Principal's Representative.
- (f) Any document provided to the Principal under paragraph (e) of section 2 of this Schedule 6A must be of a standard and contain all relevant matters to enable it to be approved by an Authority if required by the terms of the WHT Planning Approval.
- (g) The Principal:
 - (i) in submitting a document provided under paragraph (e) of section 2 of this Schedule 6A to an Authority does not represent or agree that the document is of a standard and contains all relevant matters to enable it to be approved by an Authority if required by the terms of the WHT Planning Approval;
 - (ii) will not be liable for any delays or other costs occasioned by an Authority electing not to approve any such document; and
 - (iii) will ensure the Contractor is invited to be present for all discussions and conversations and is included in all correspondence for conditions allocated for the Contractor's responsibility below.

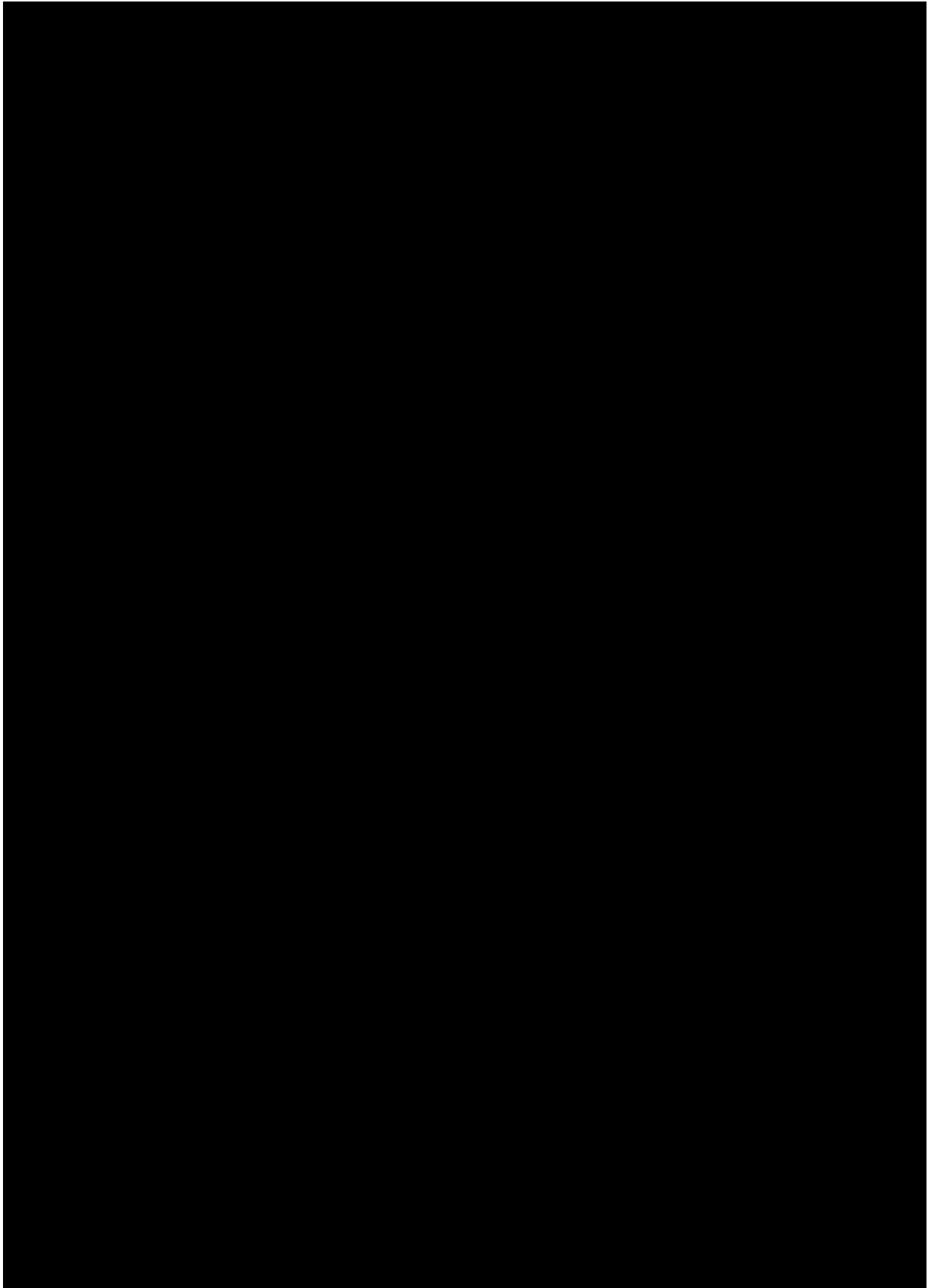


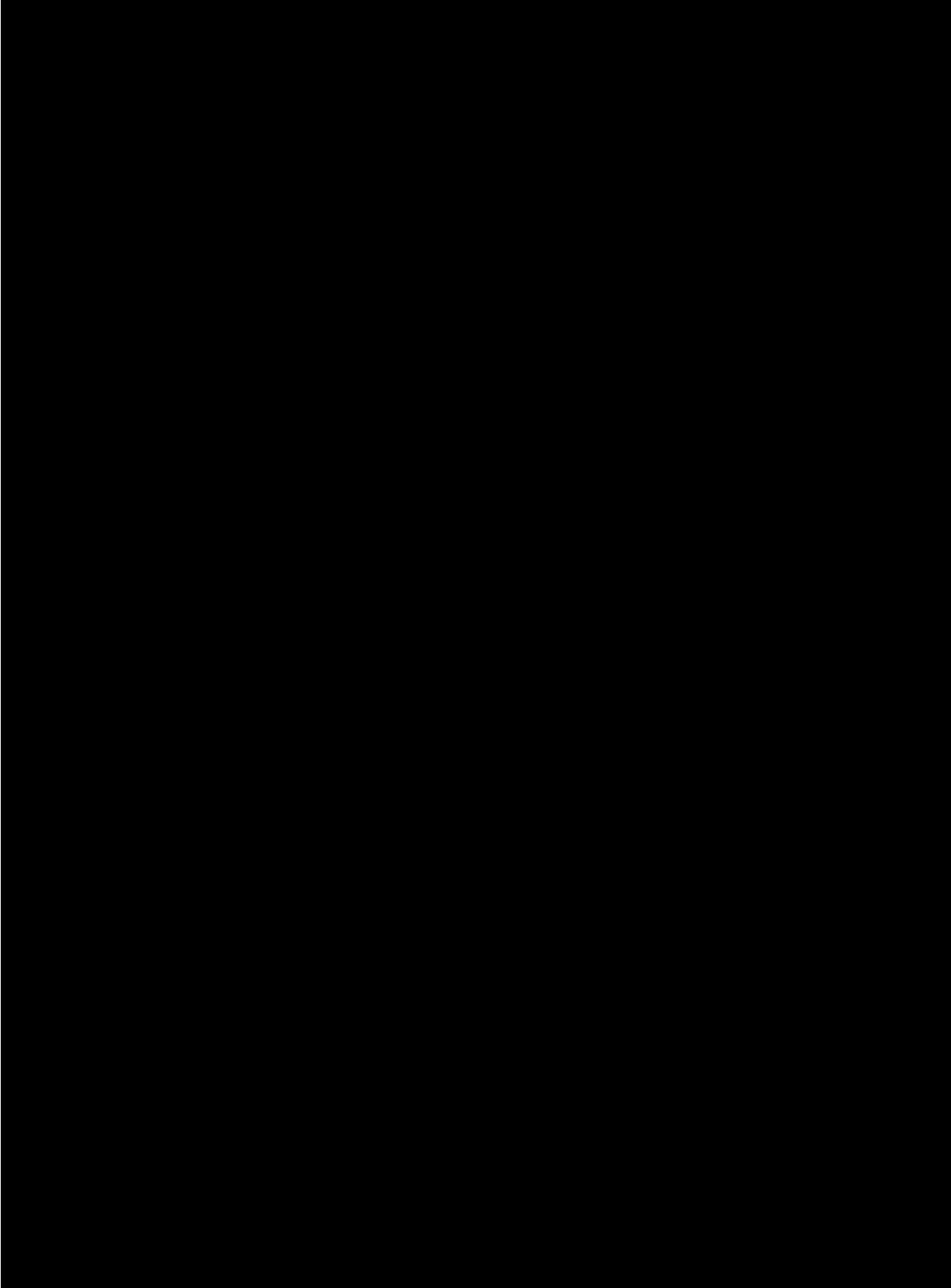


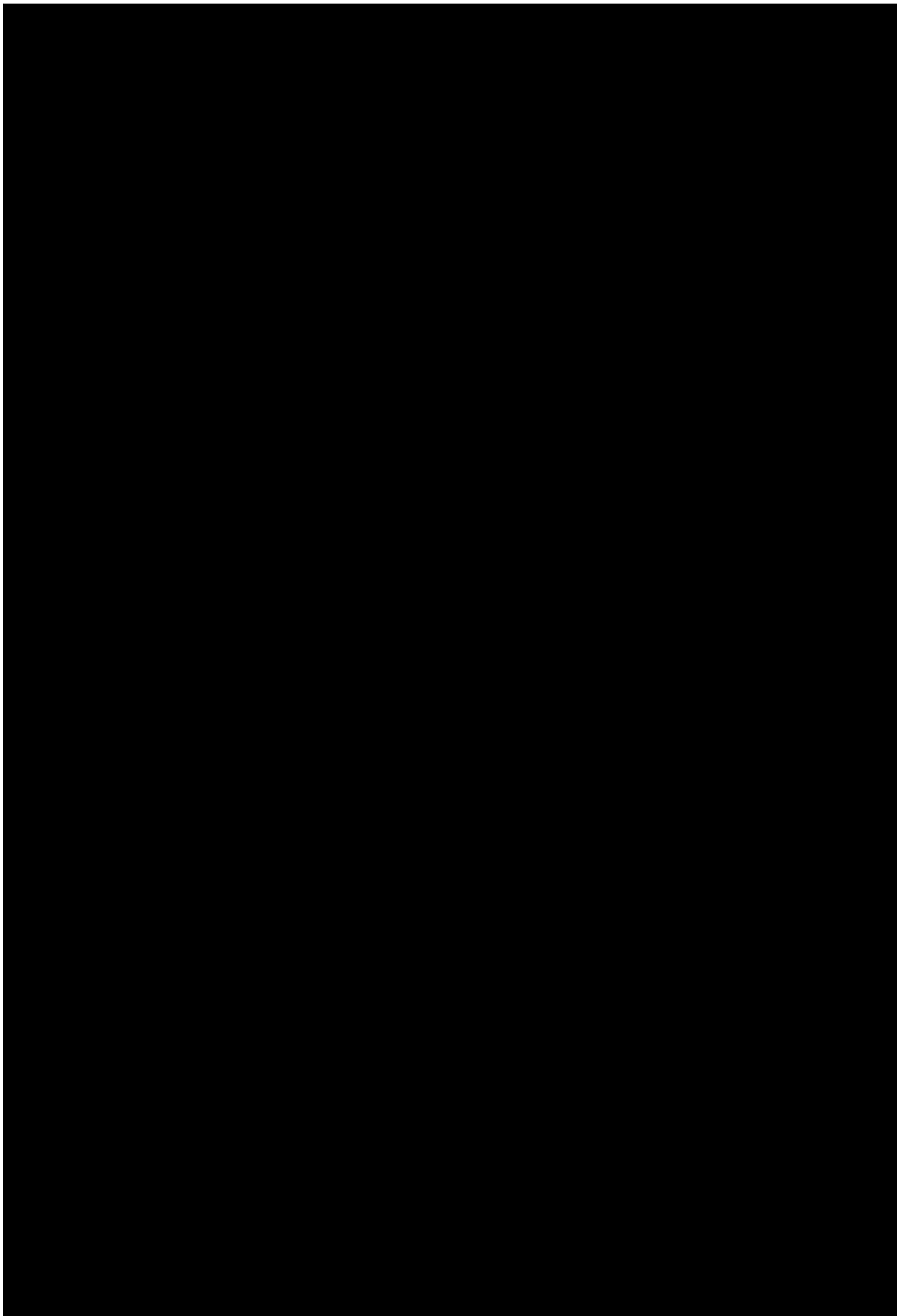


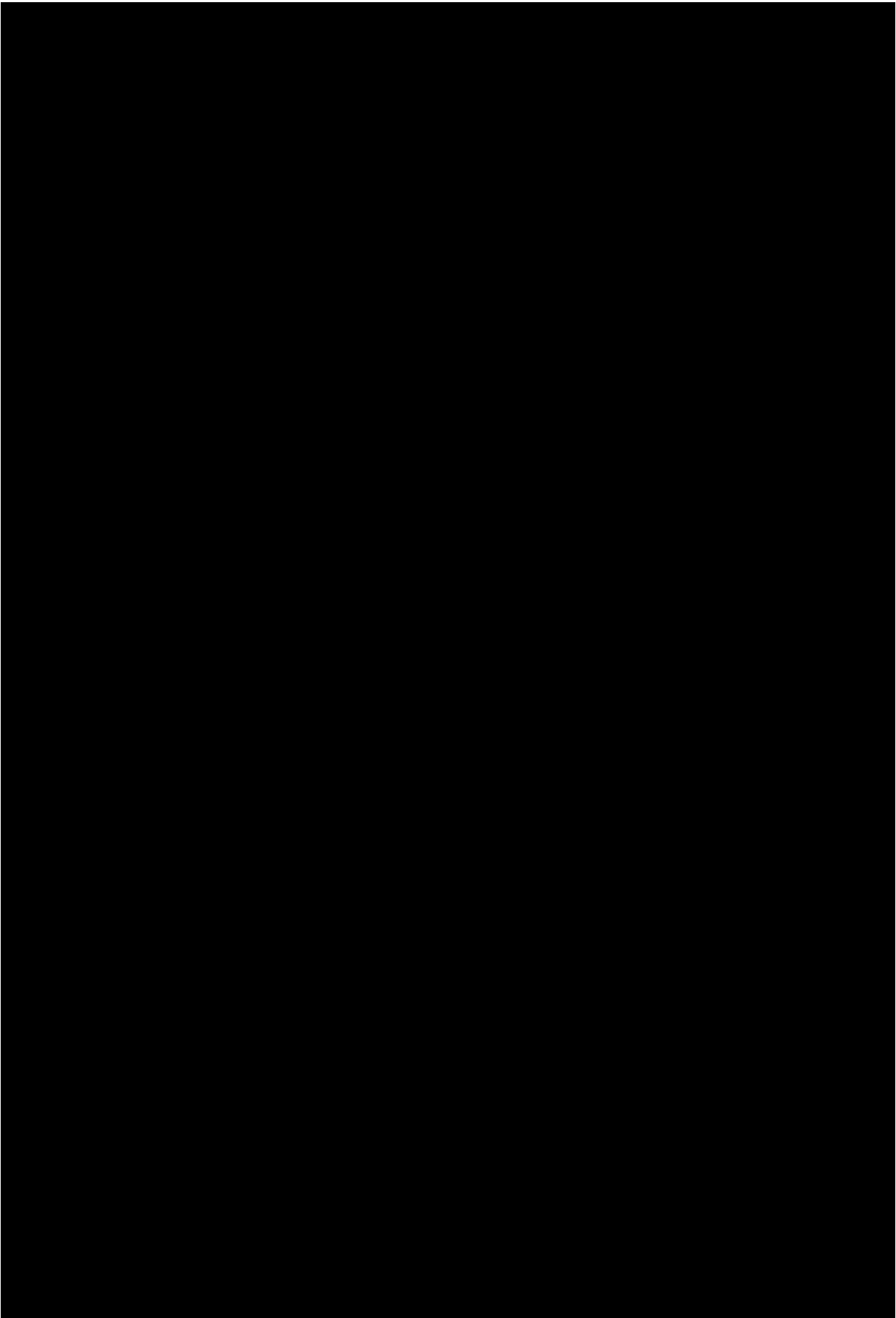


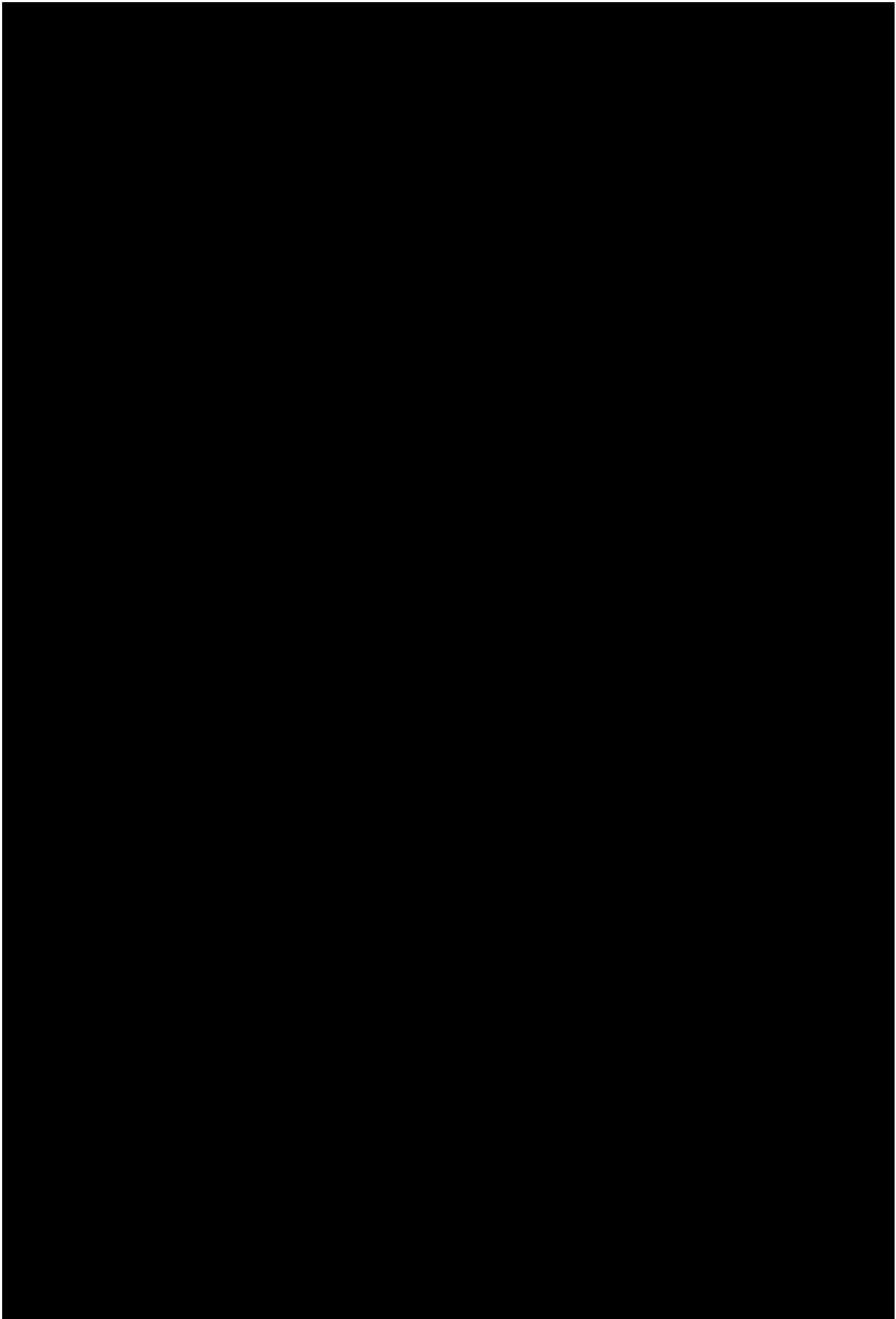


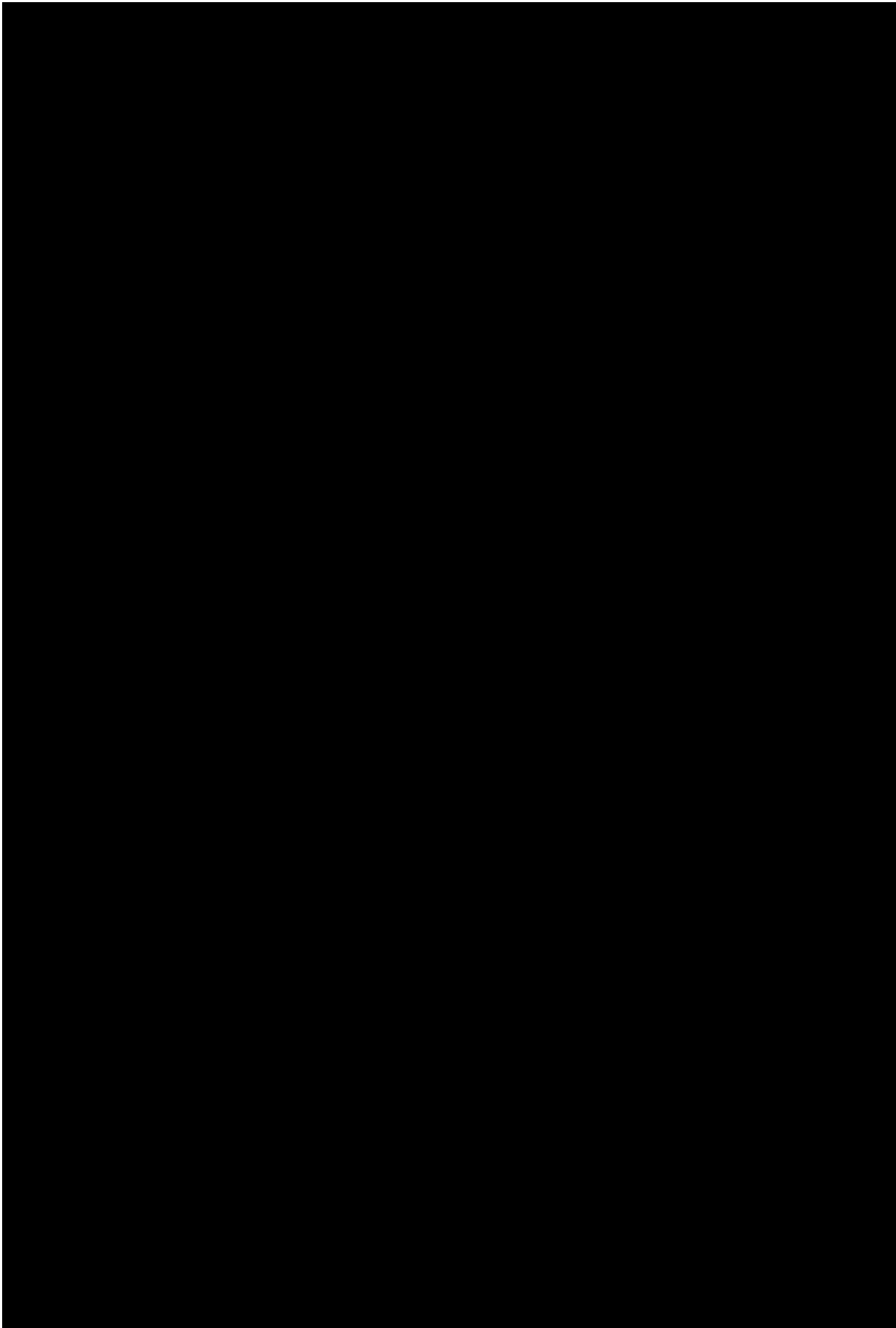


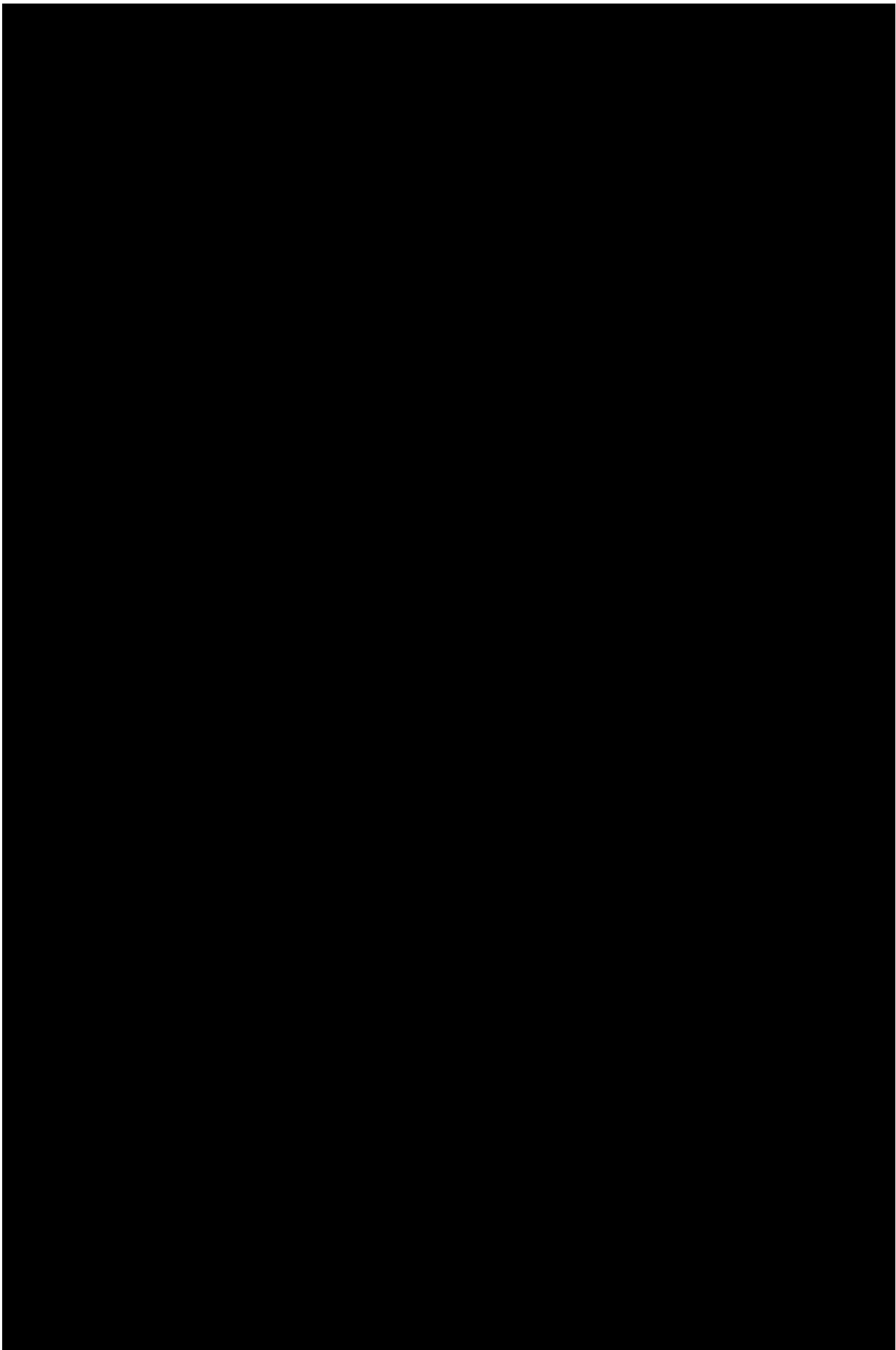


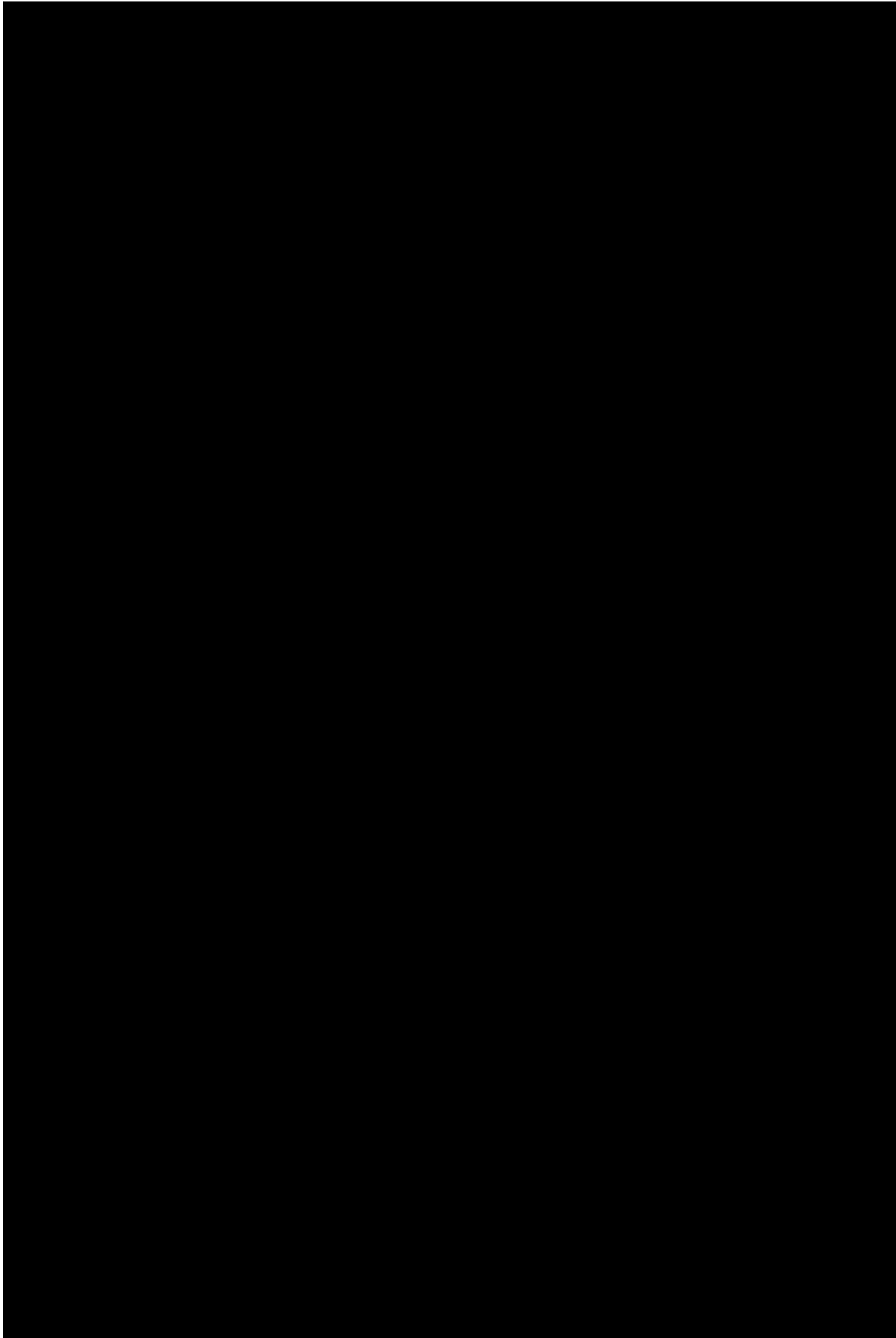


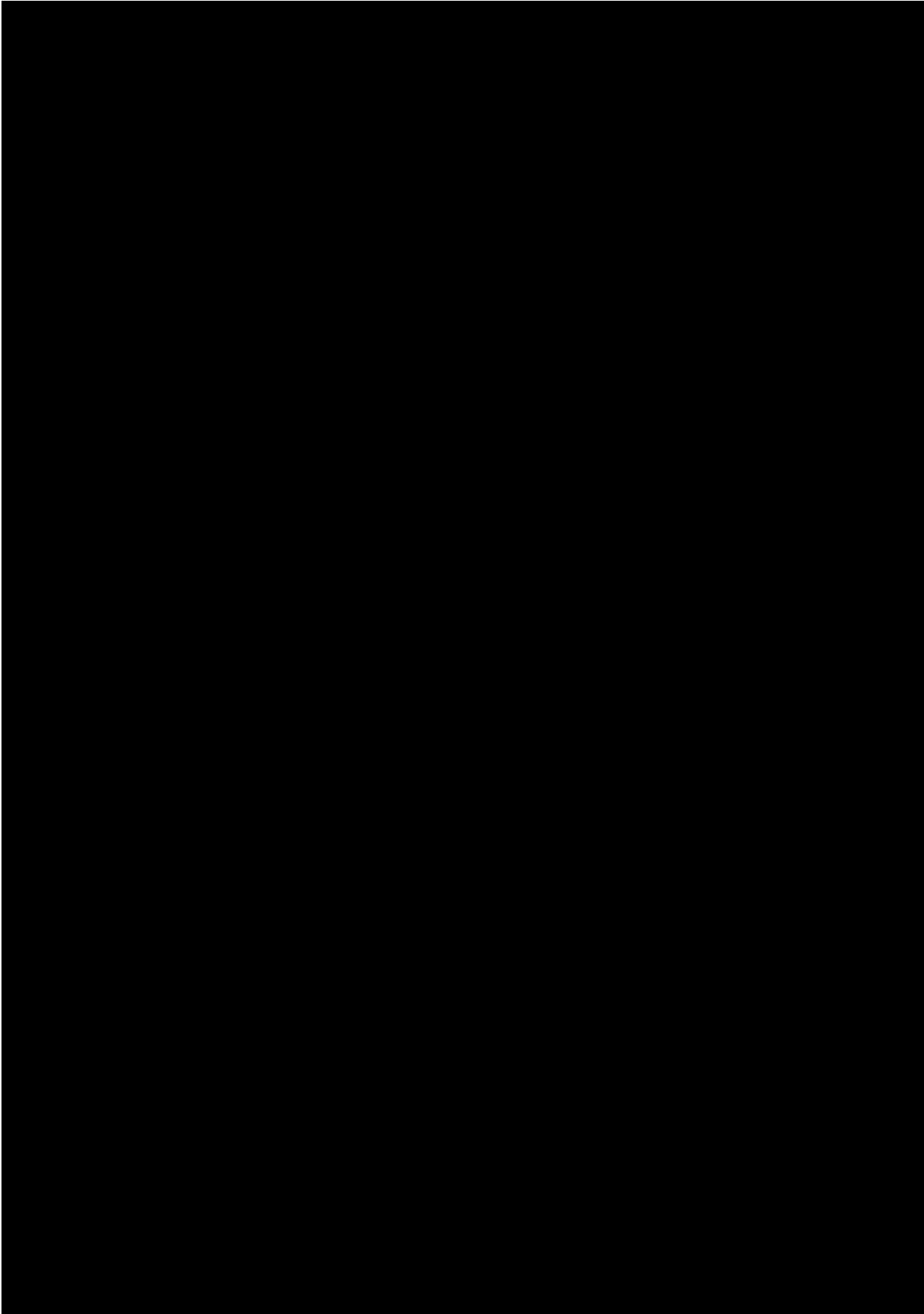


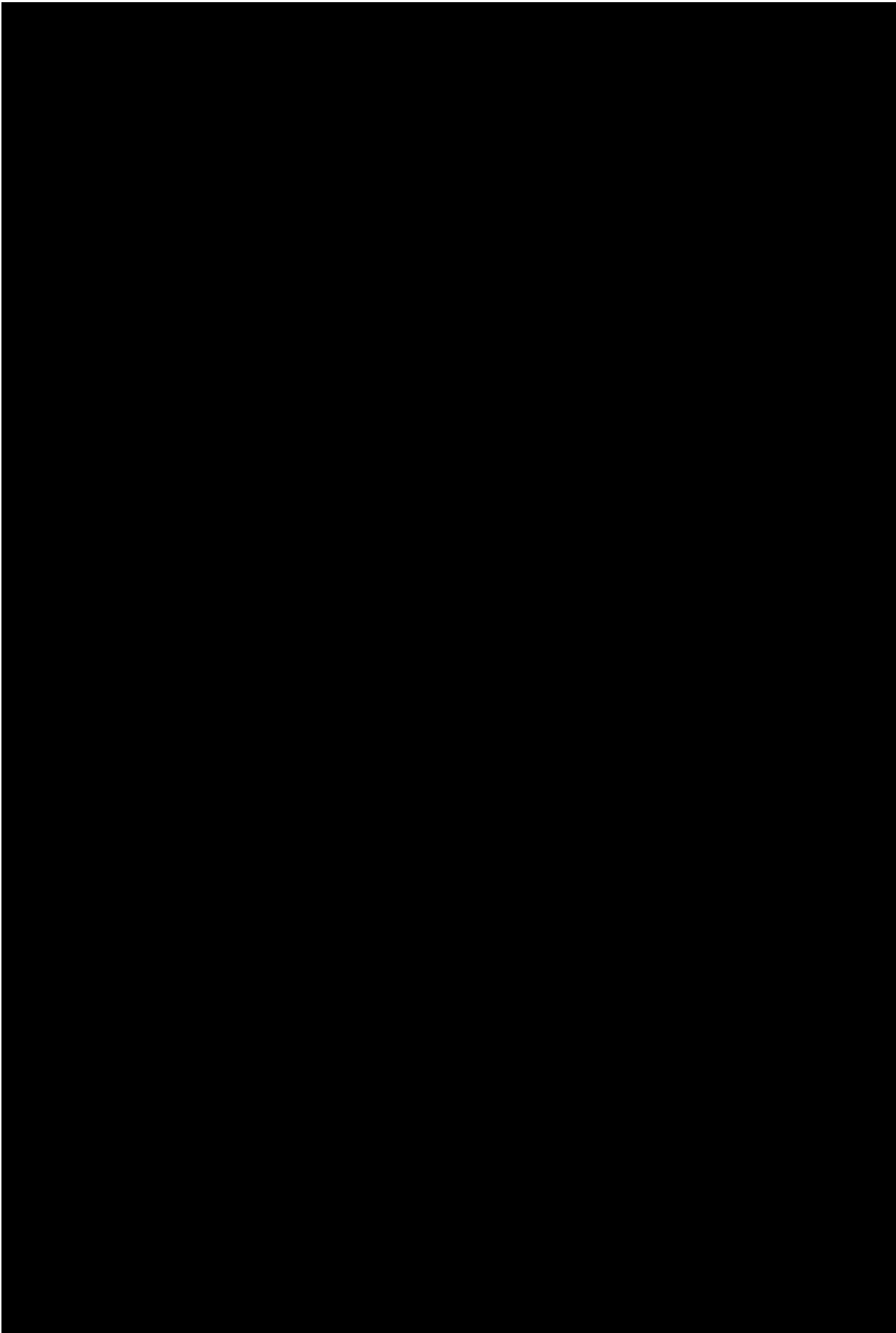


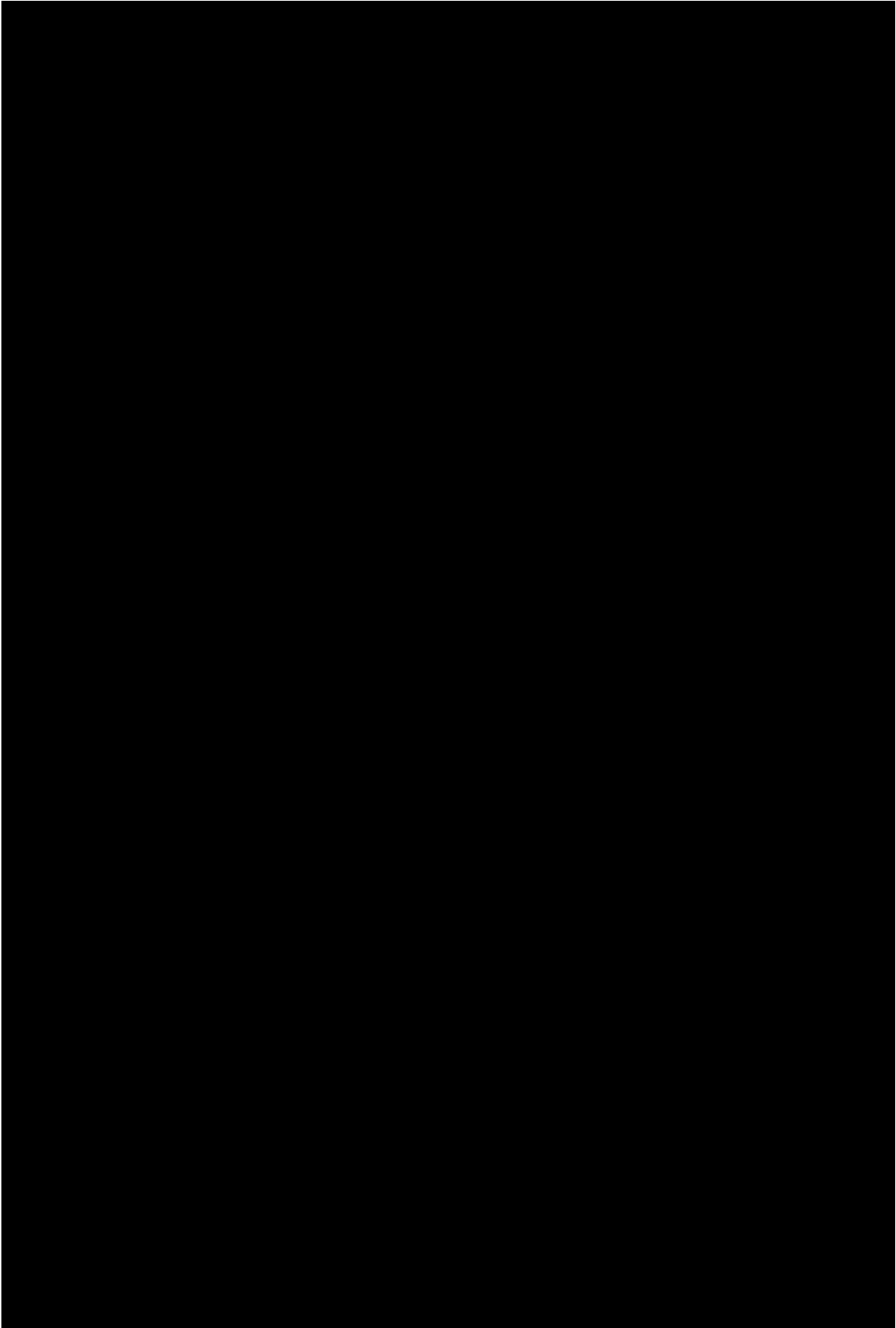


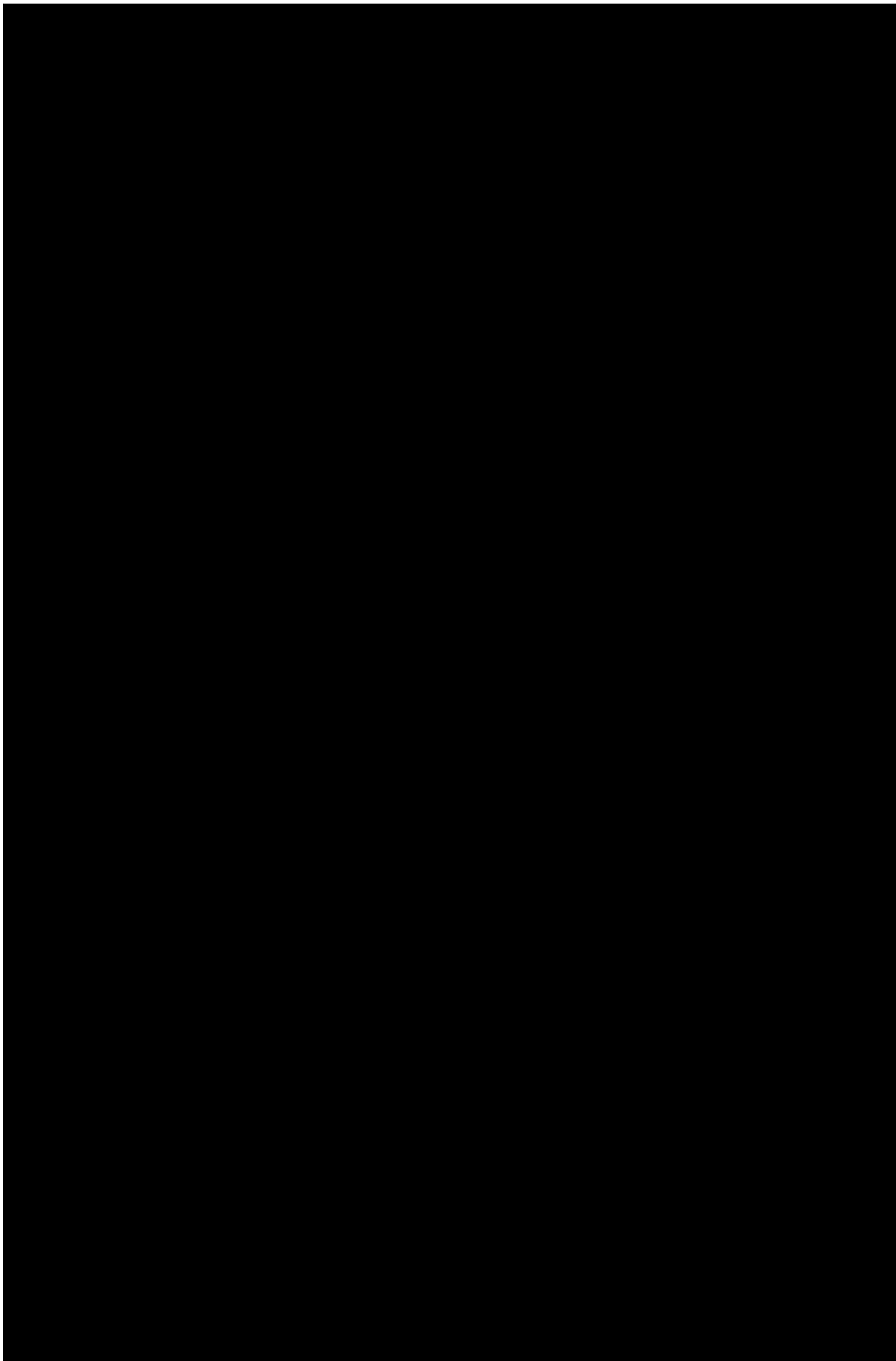


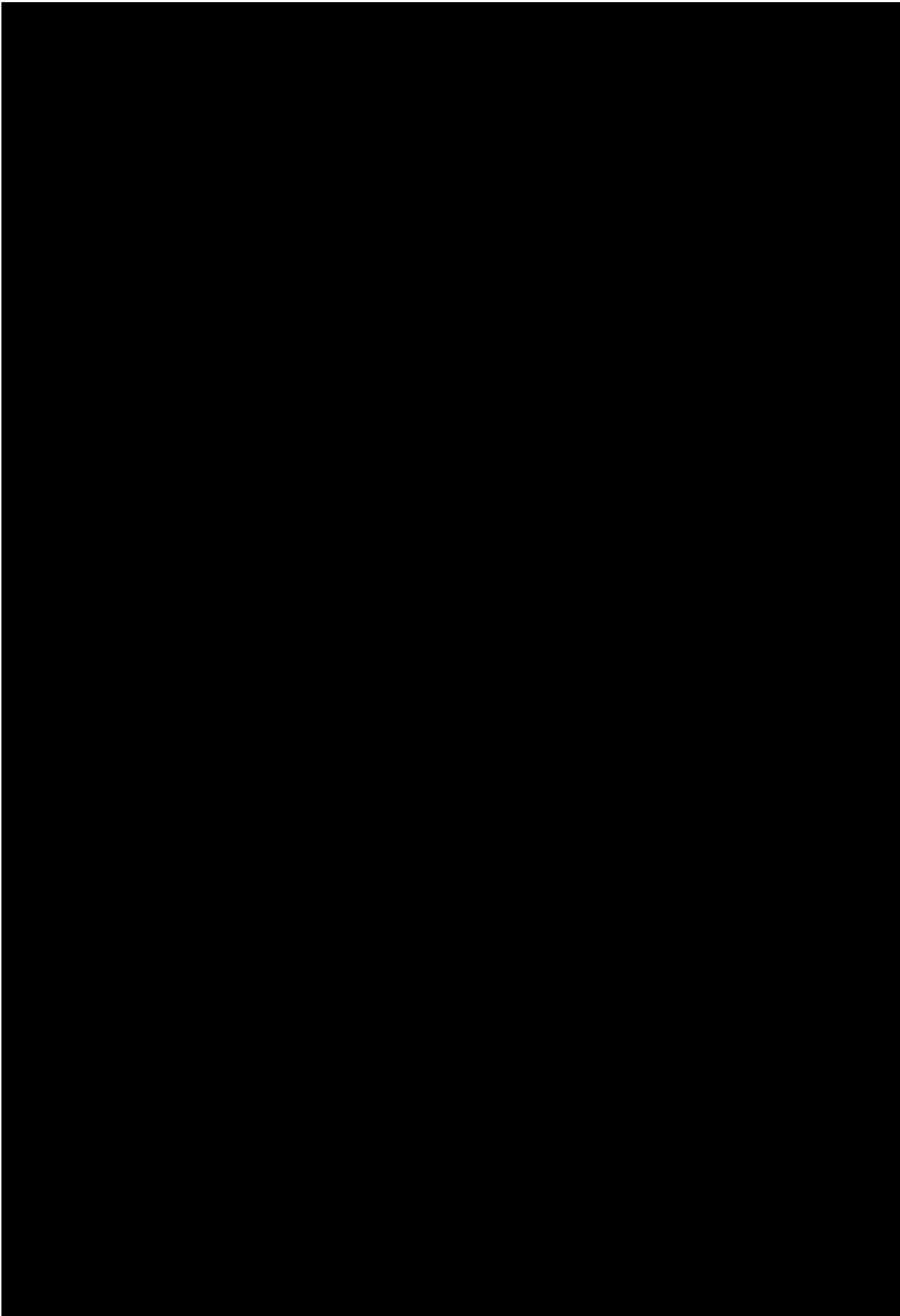


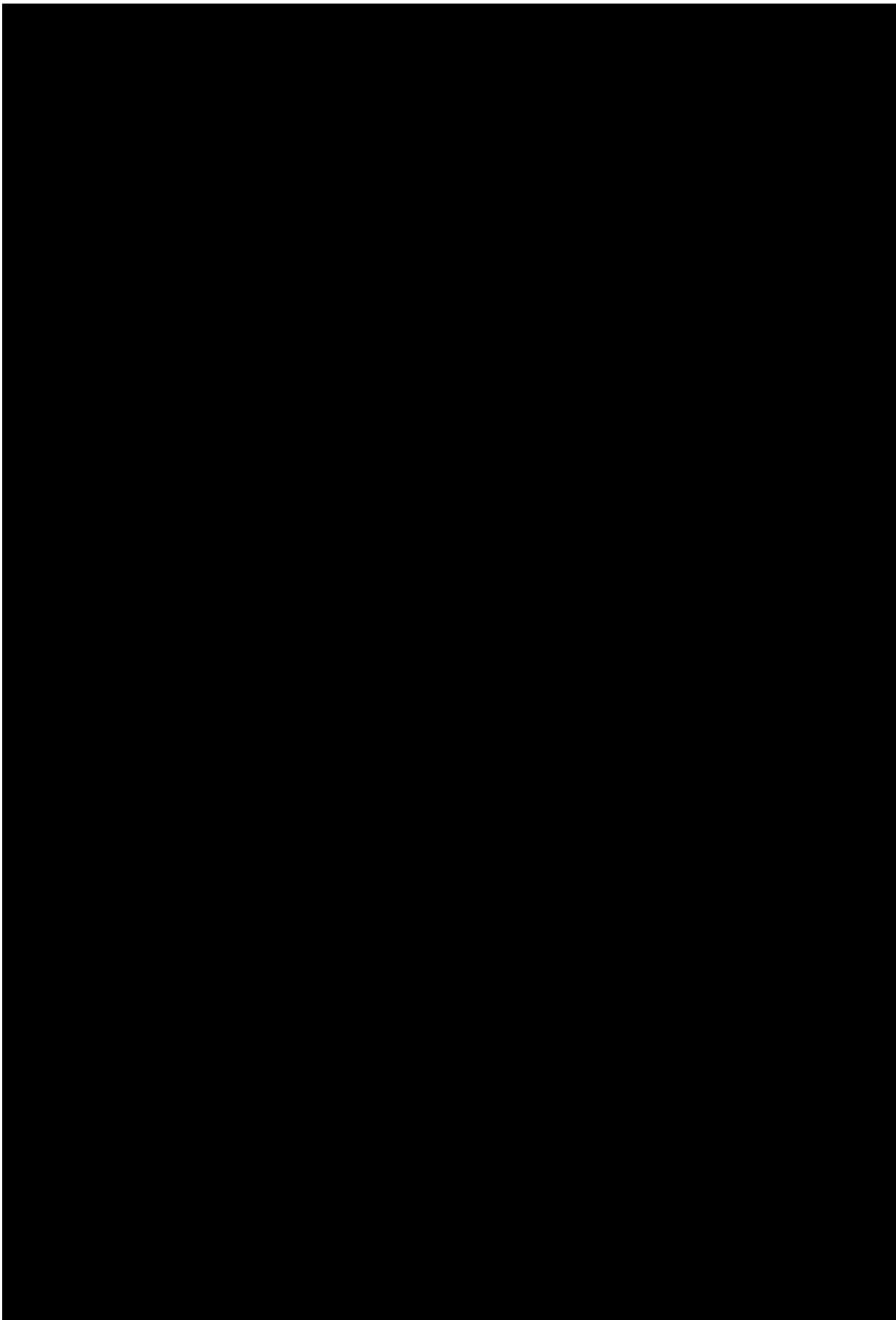


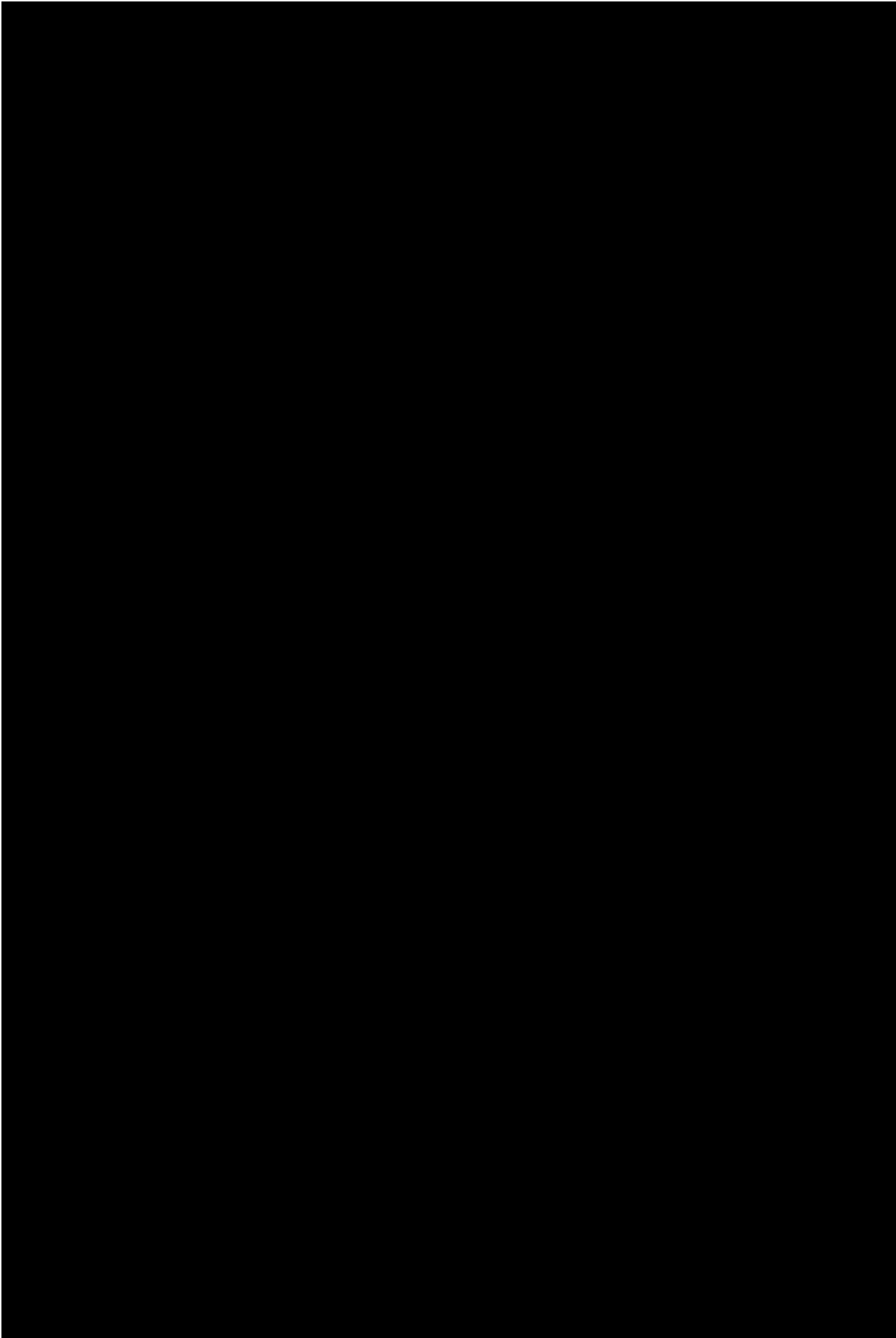


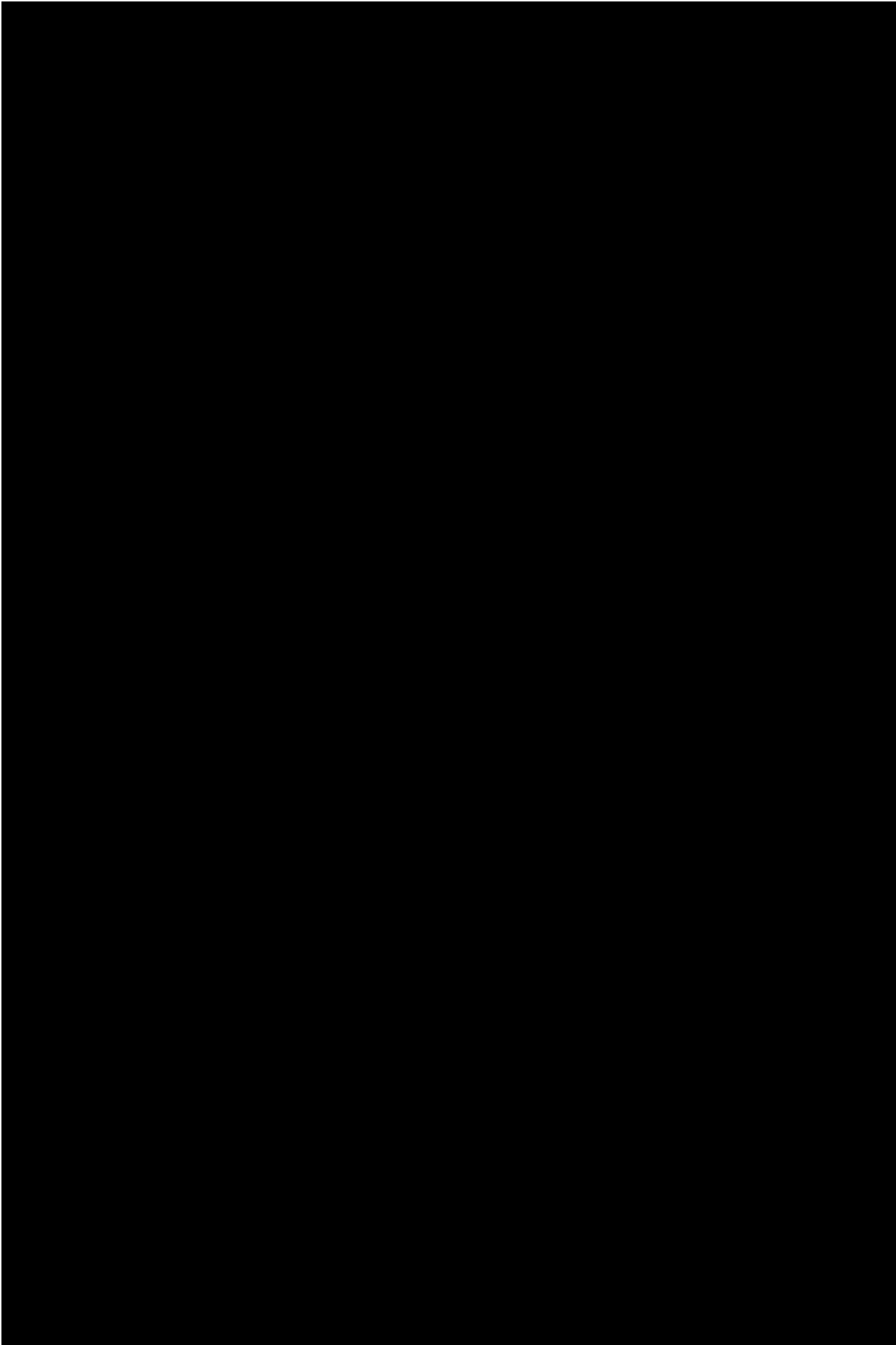


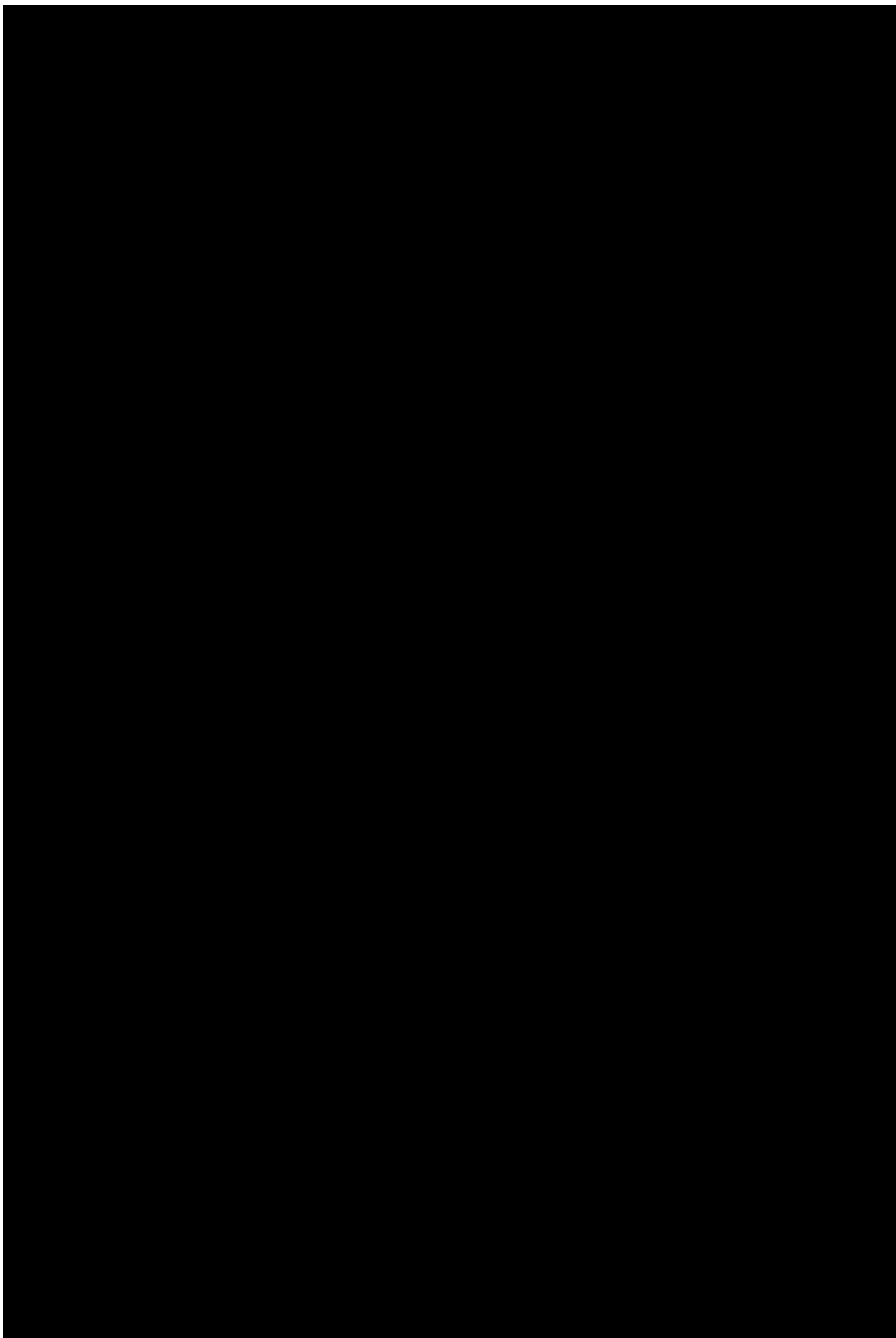


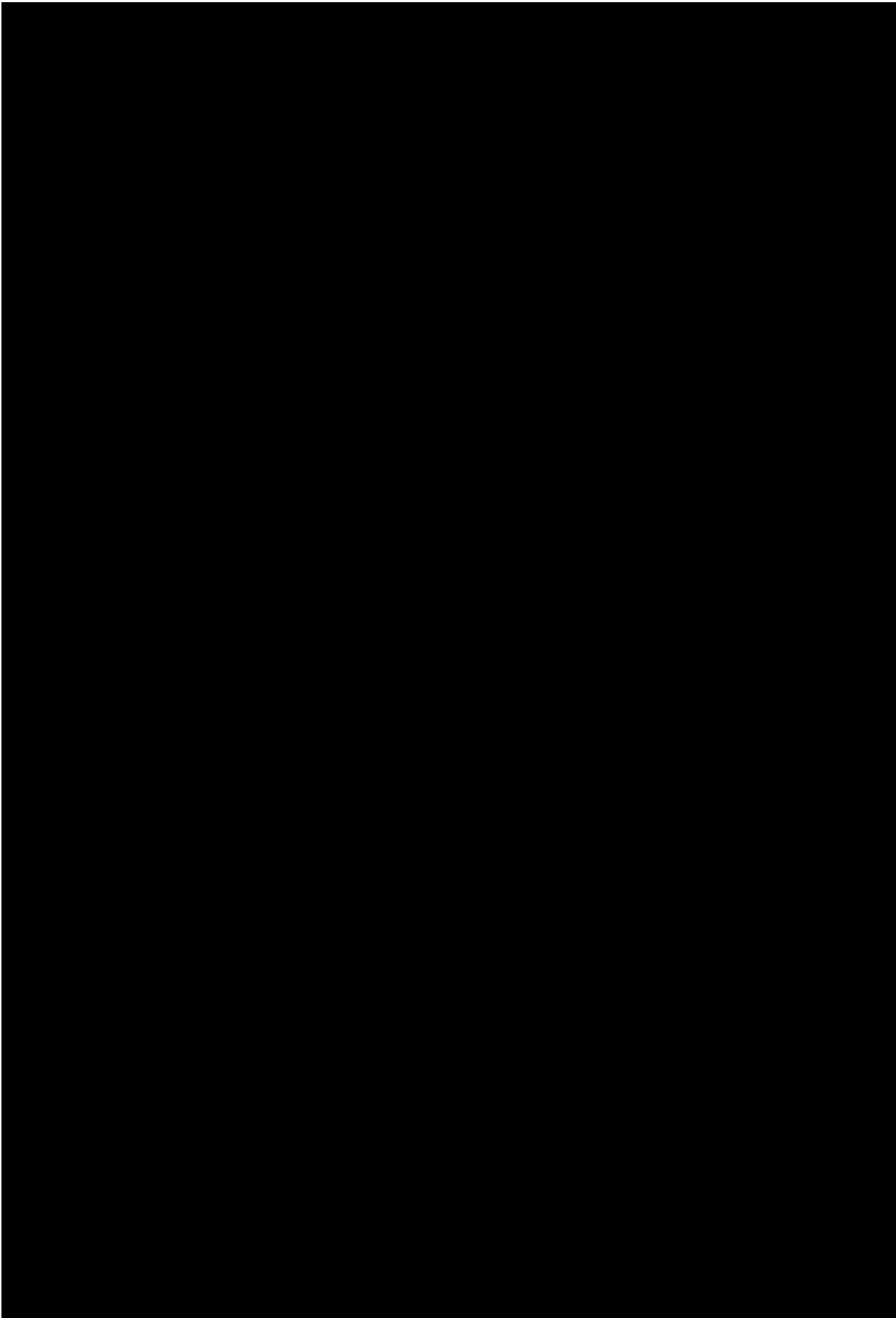


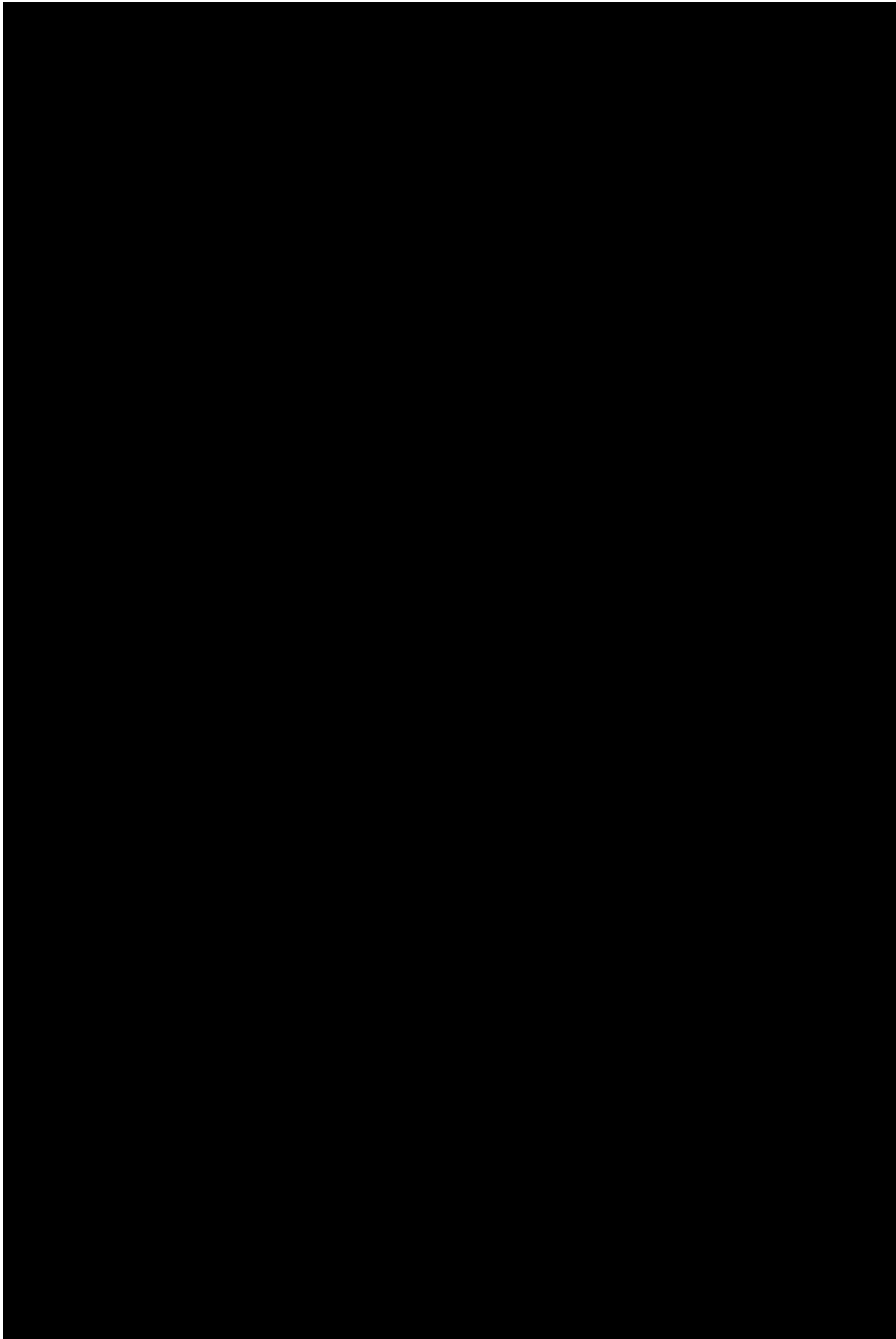


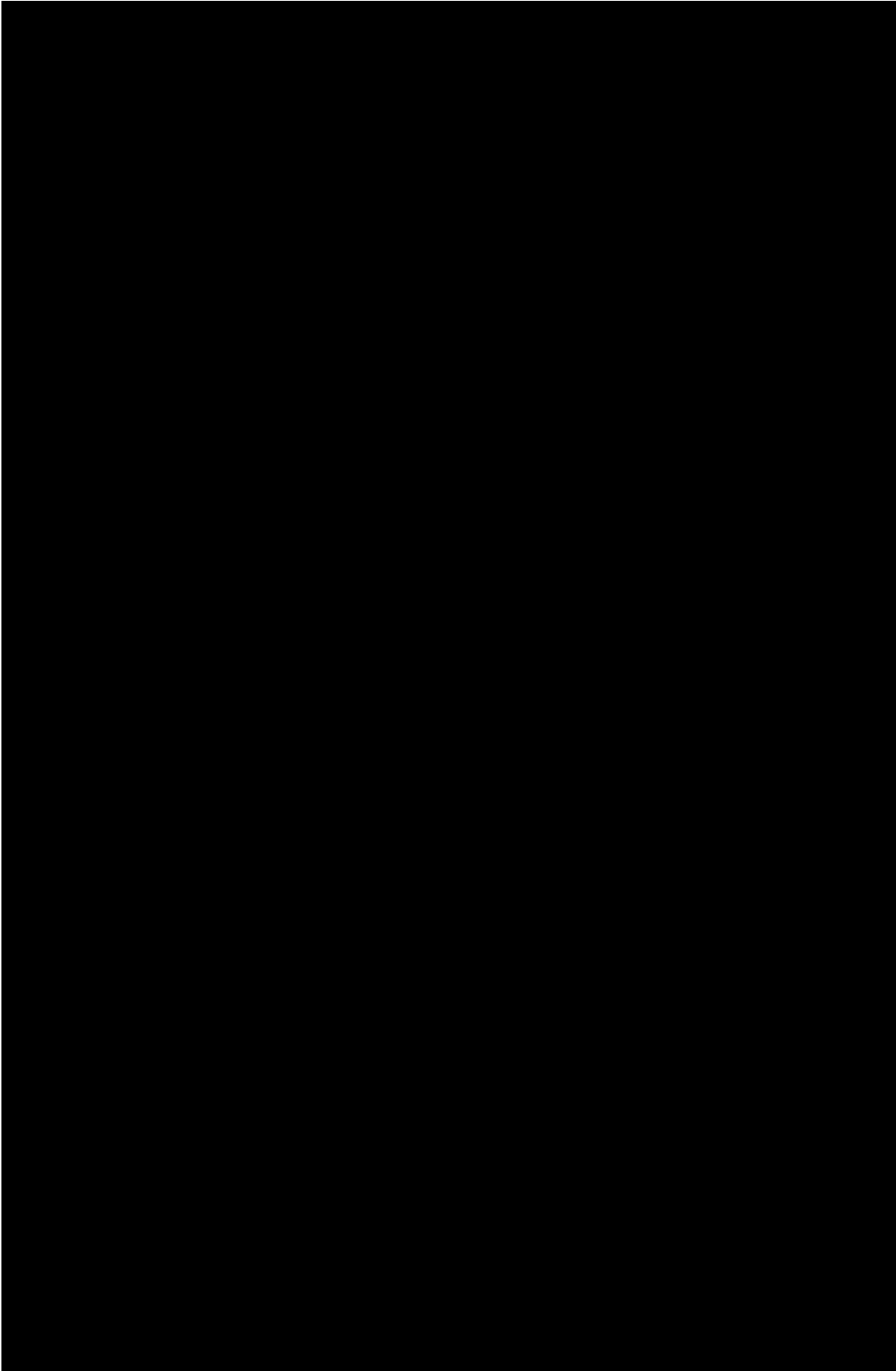


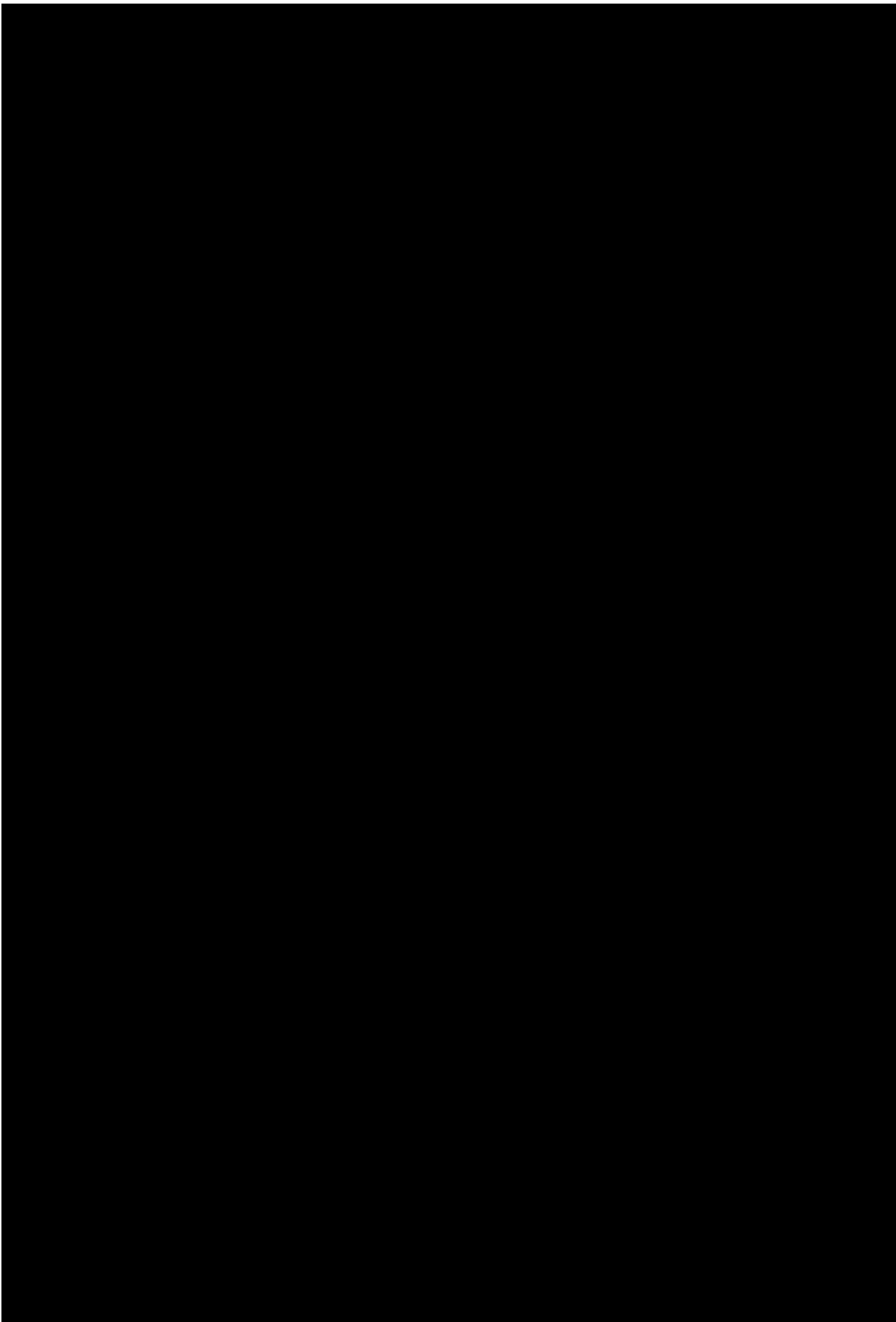


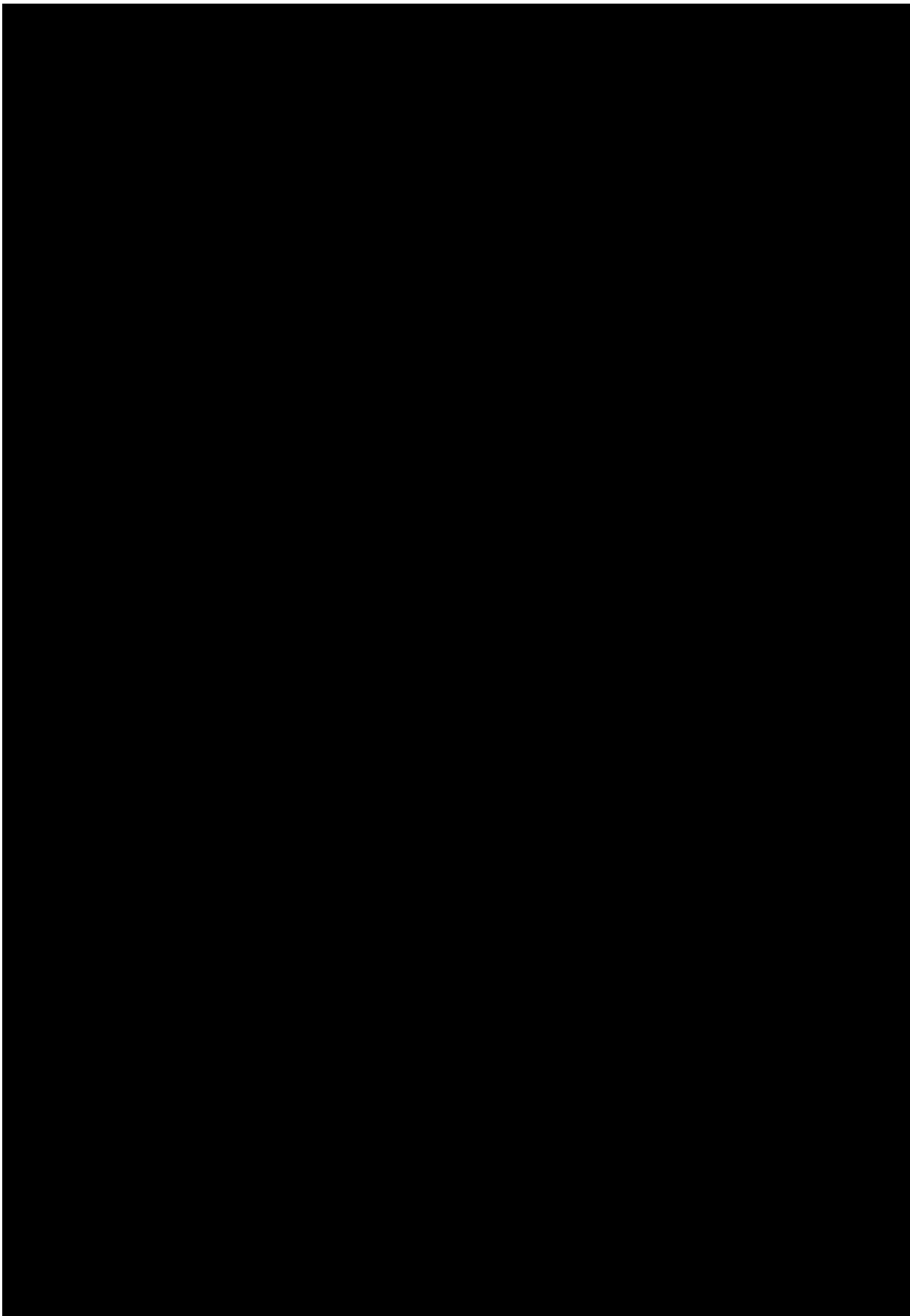


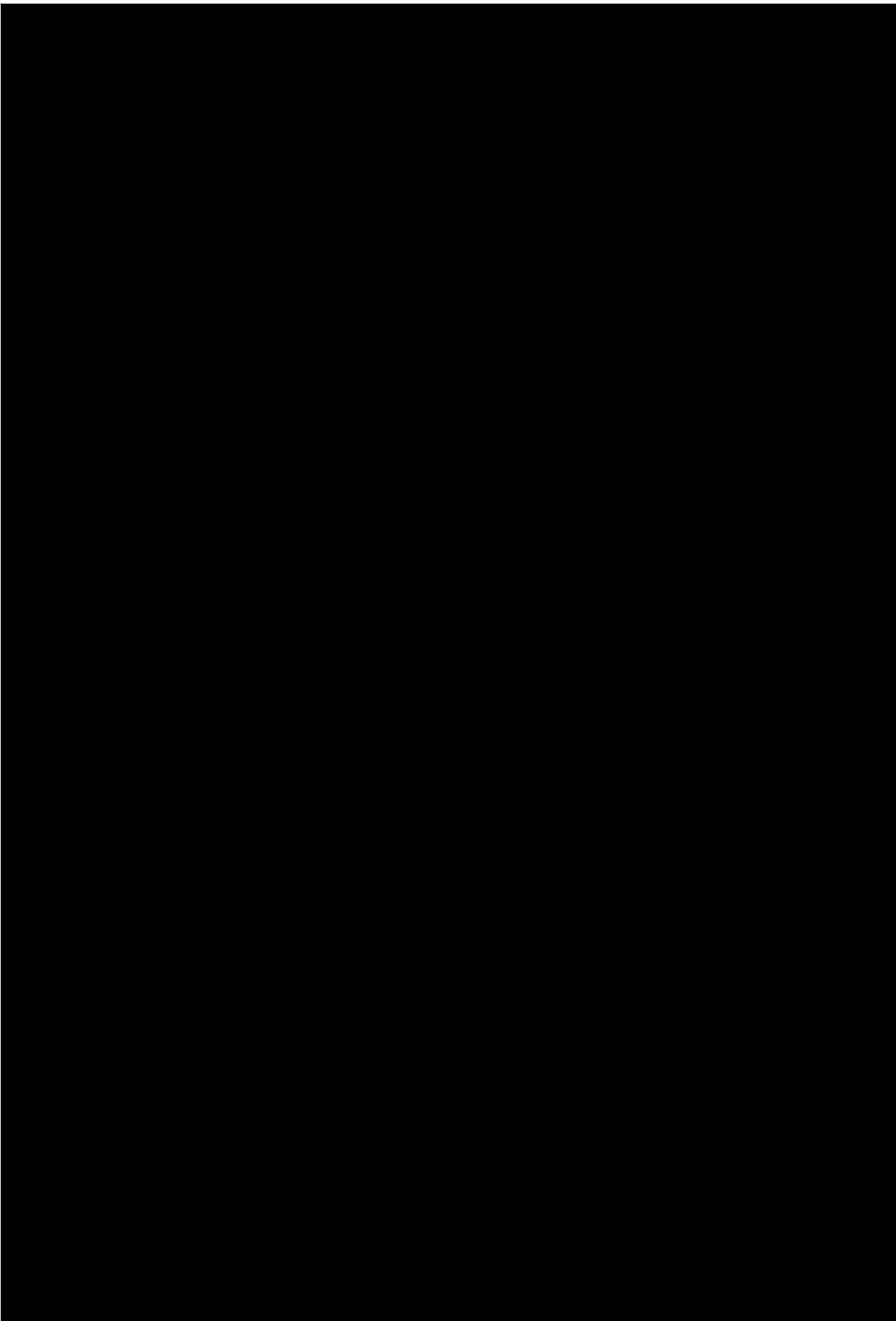


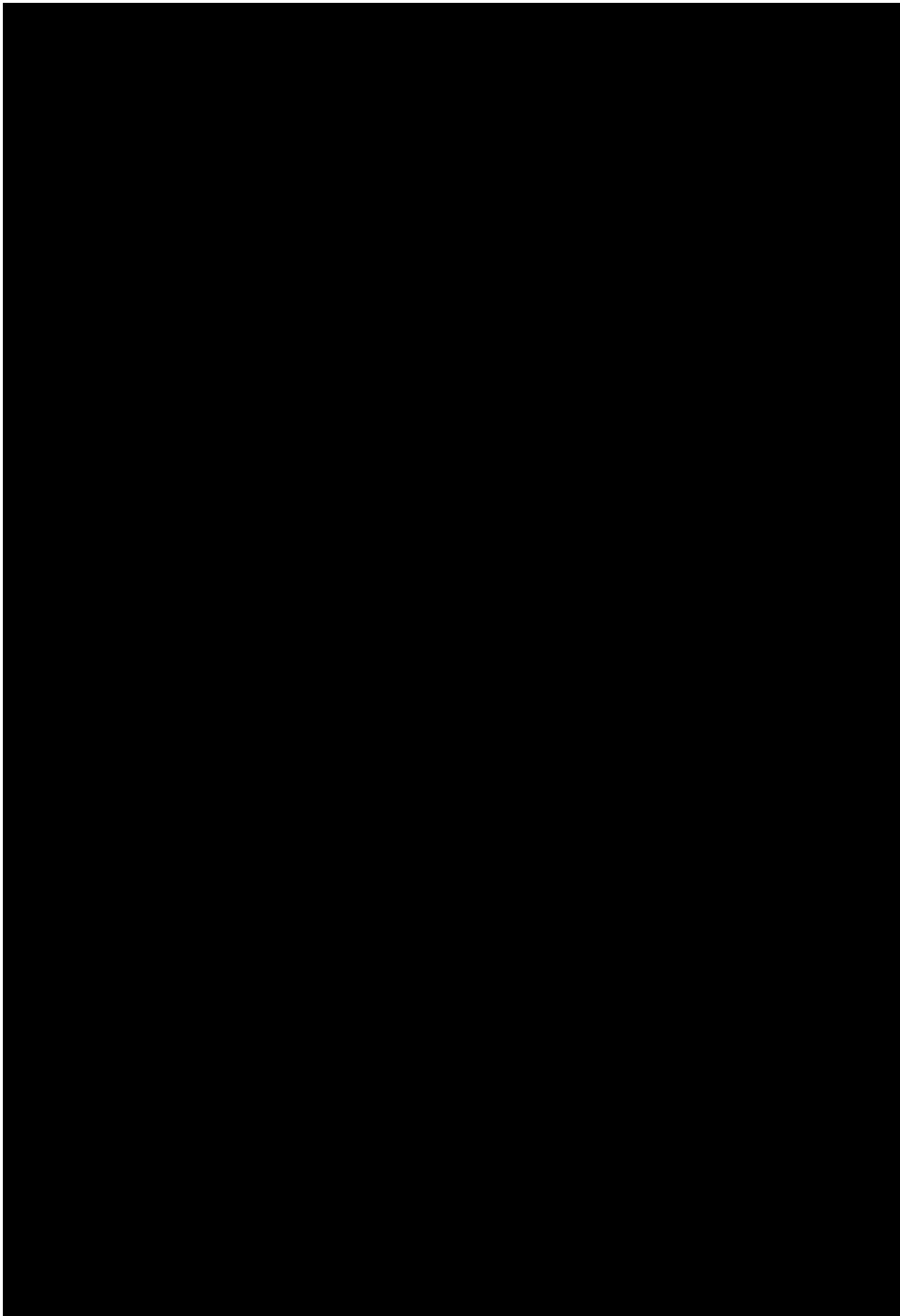


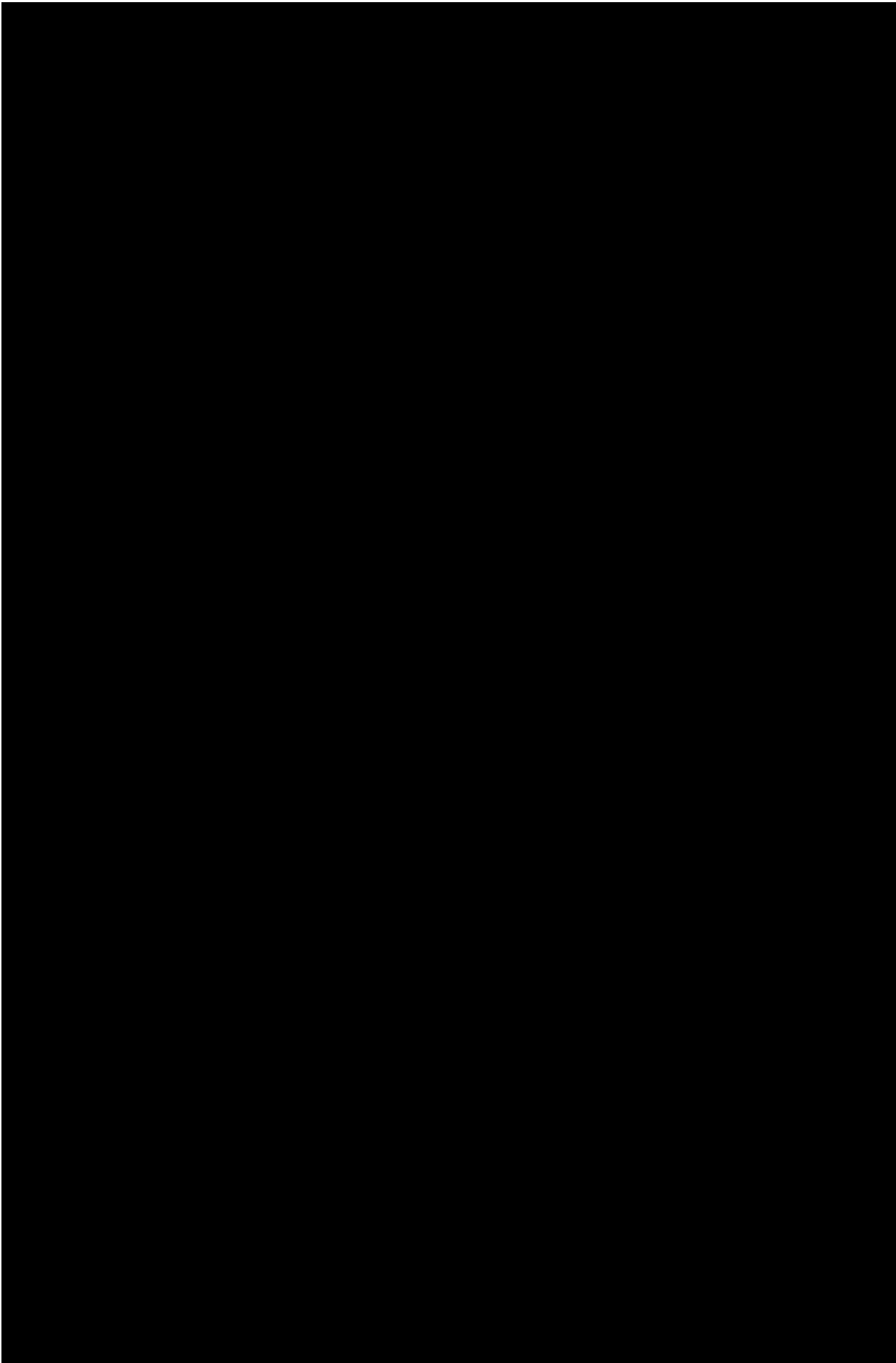


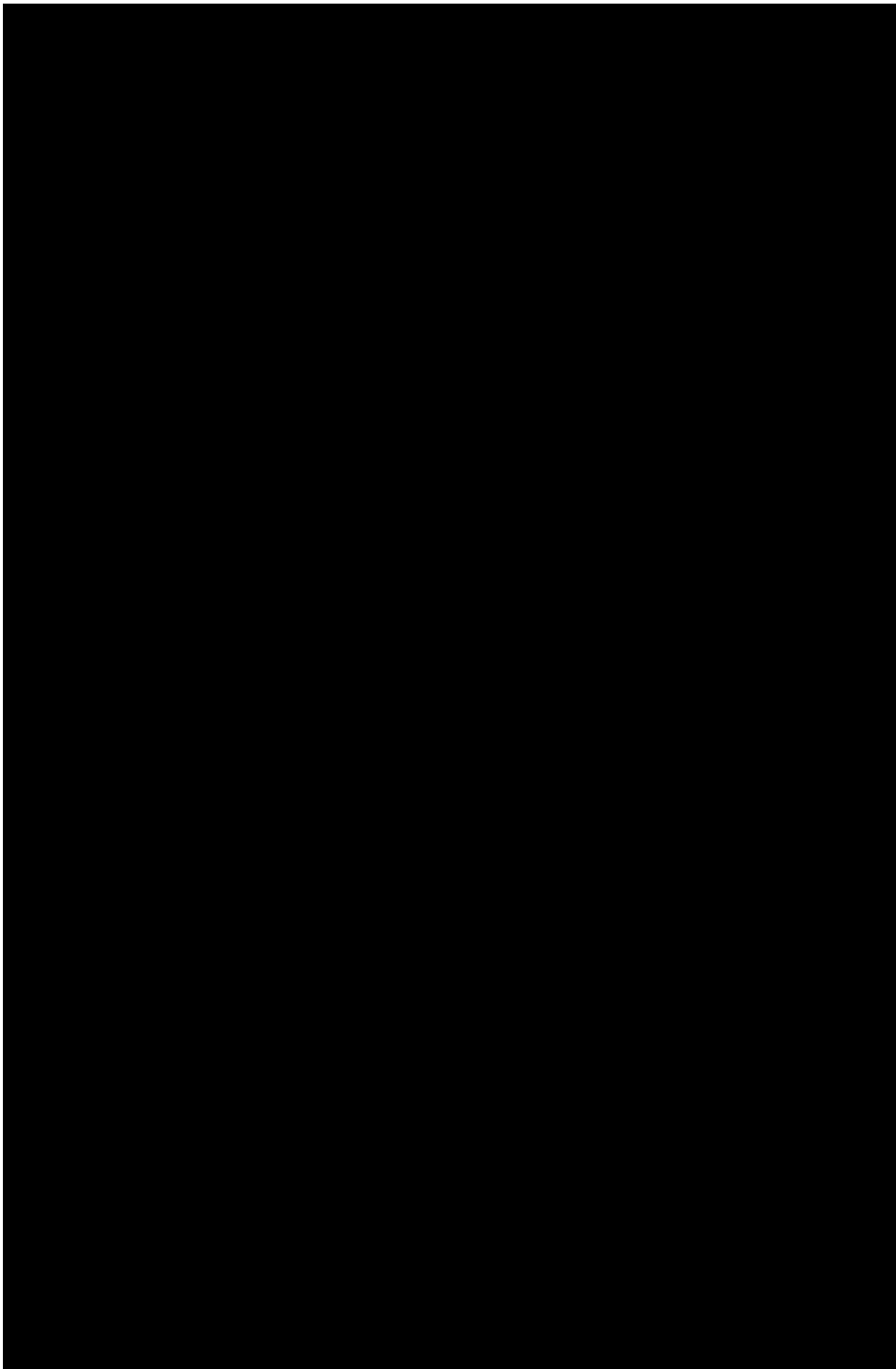


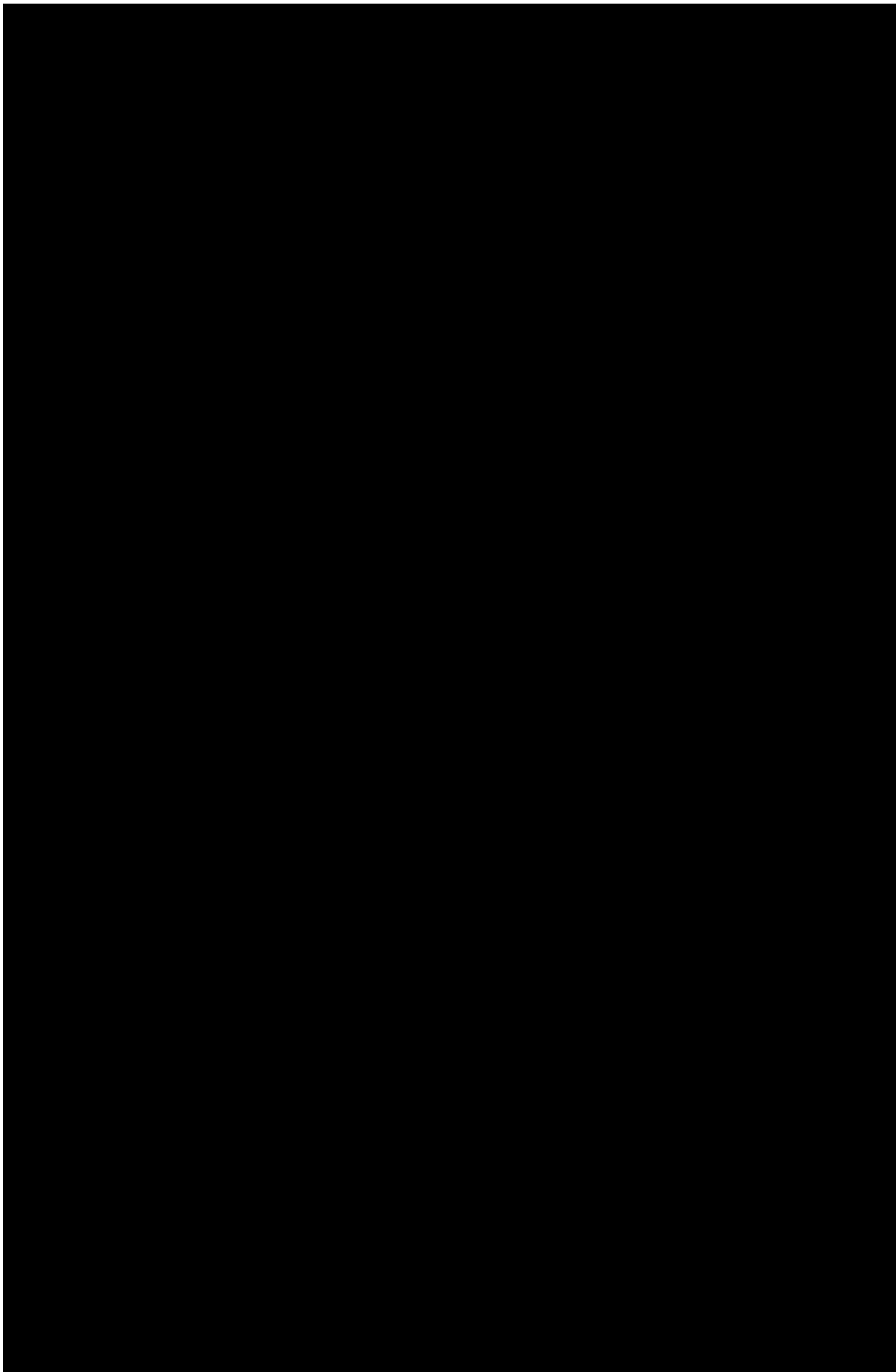


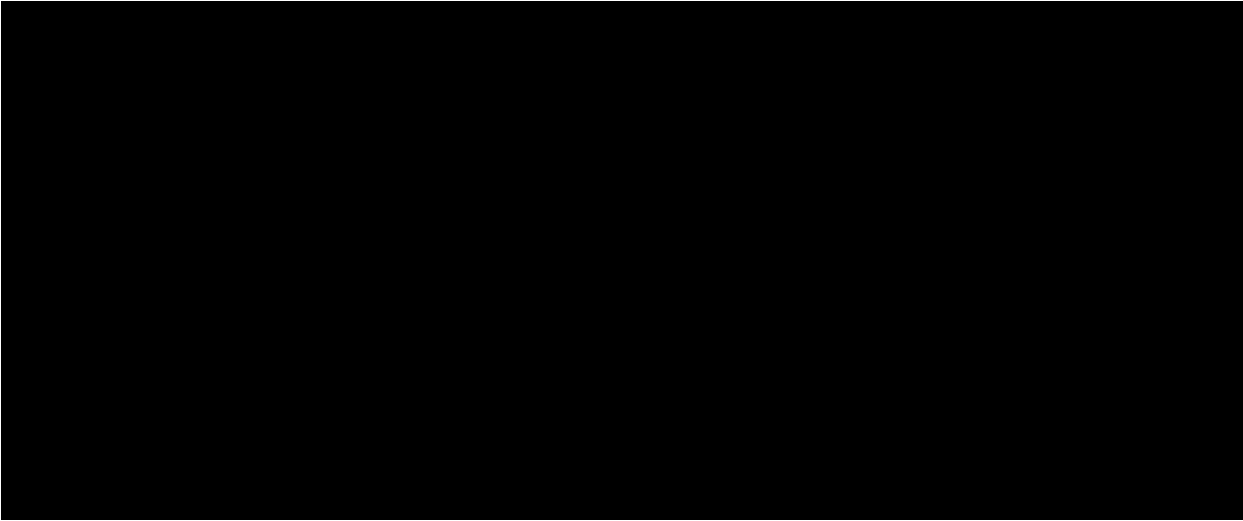






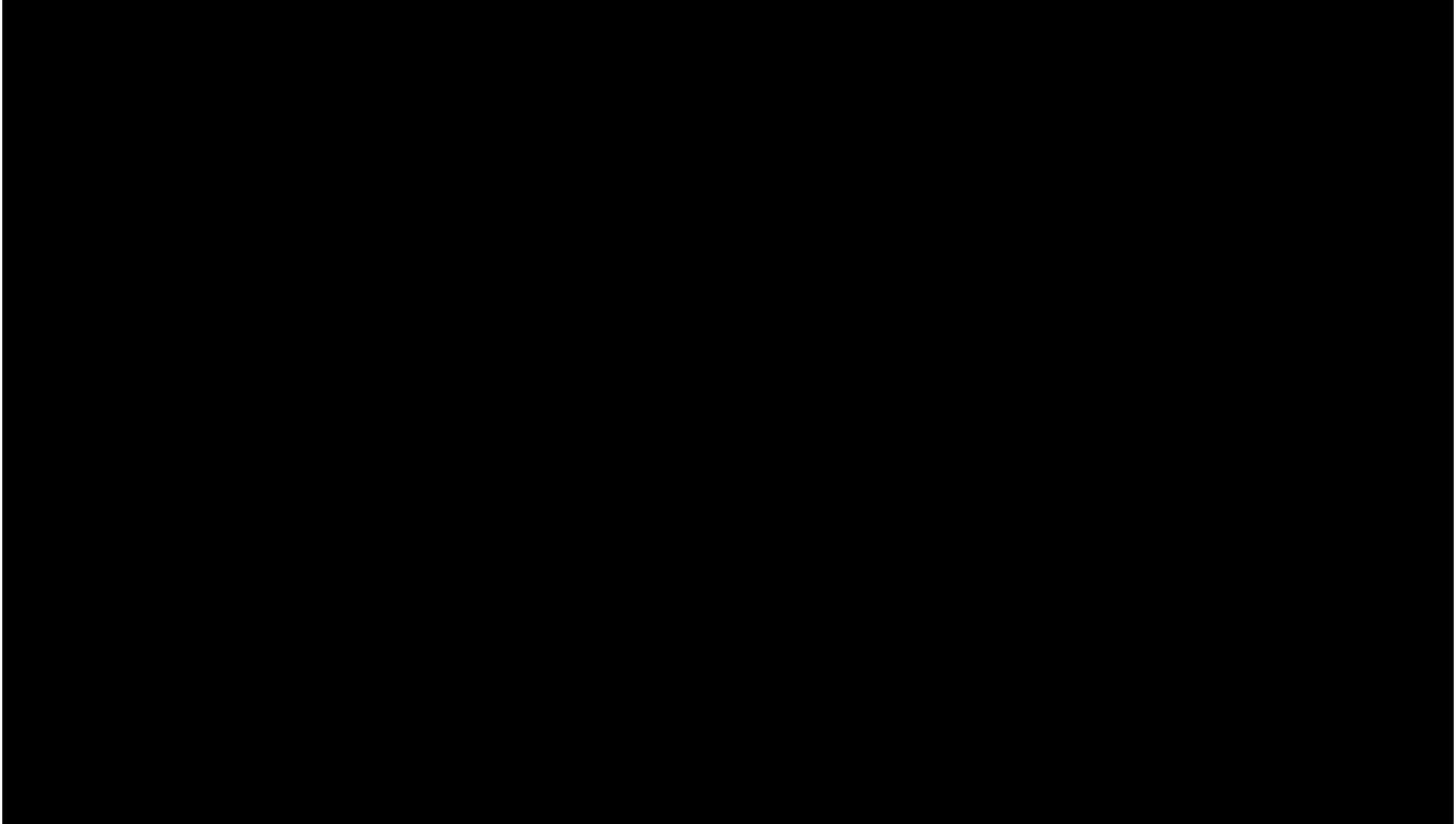


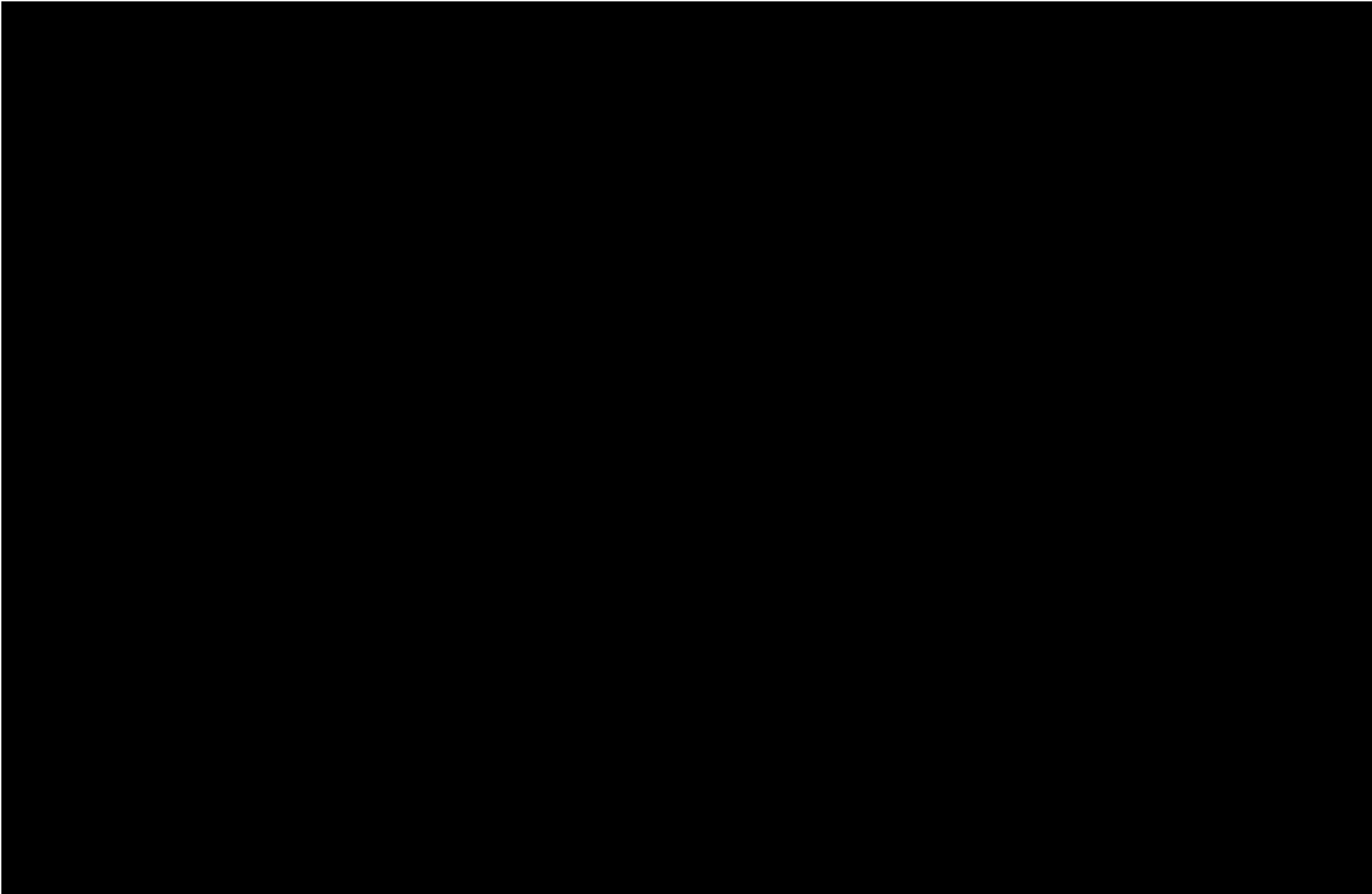


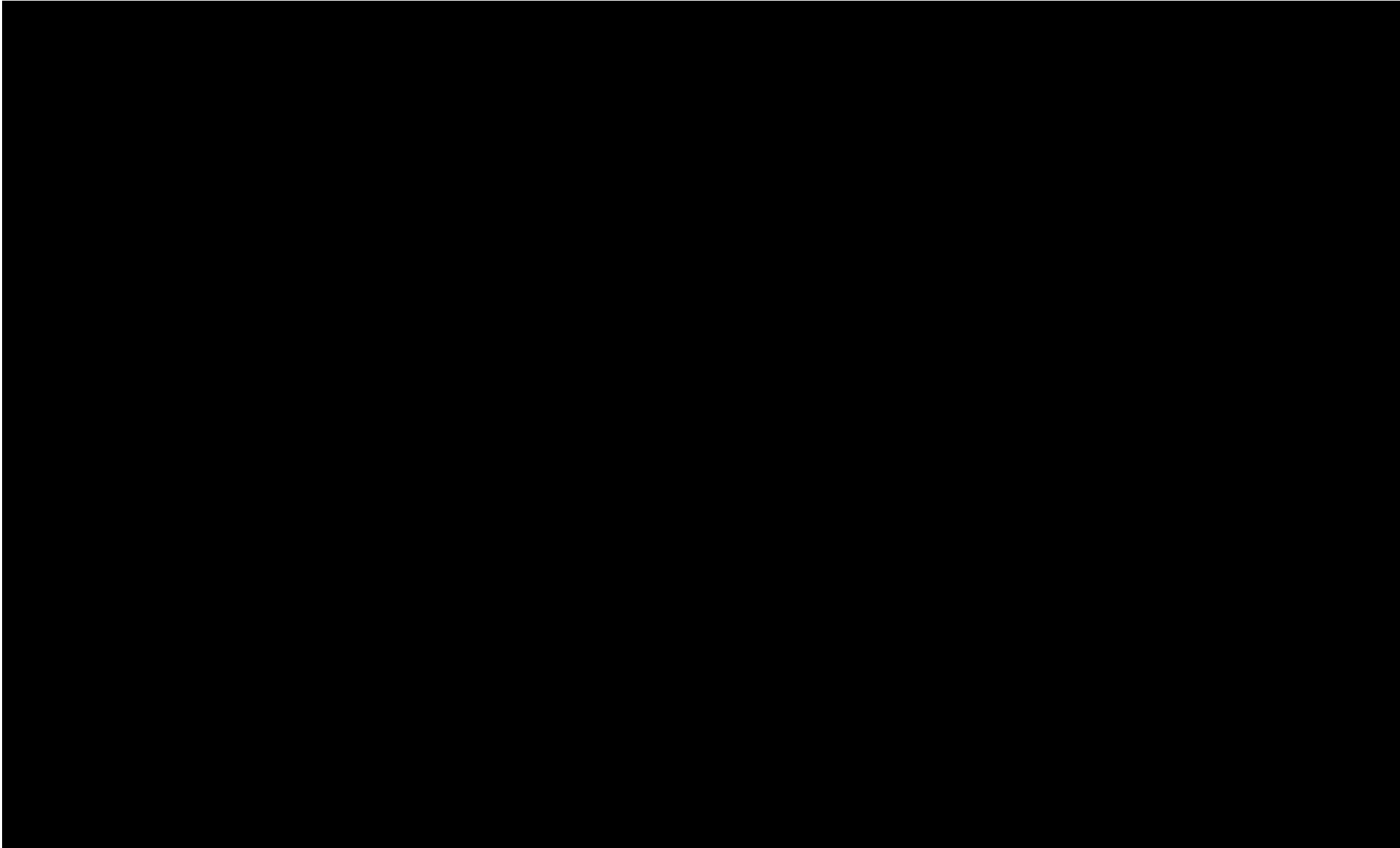


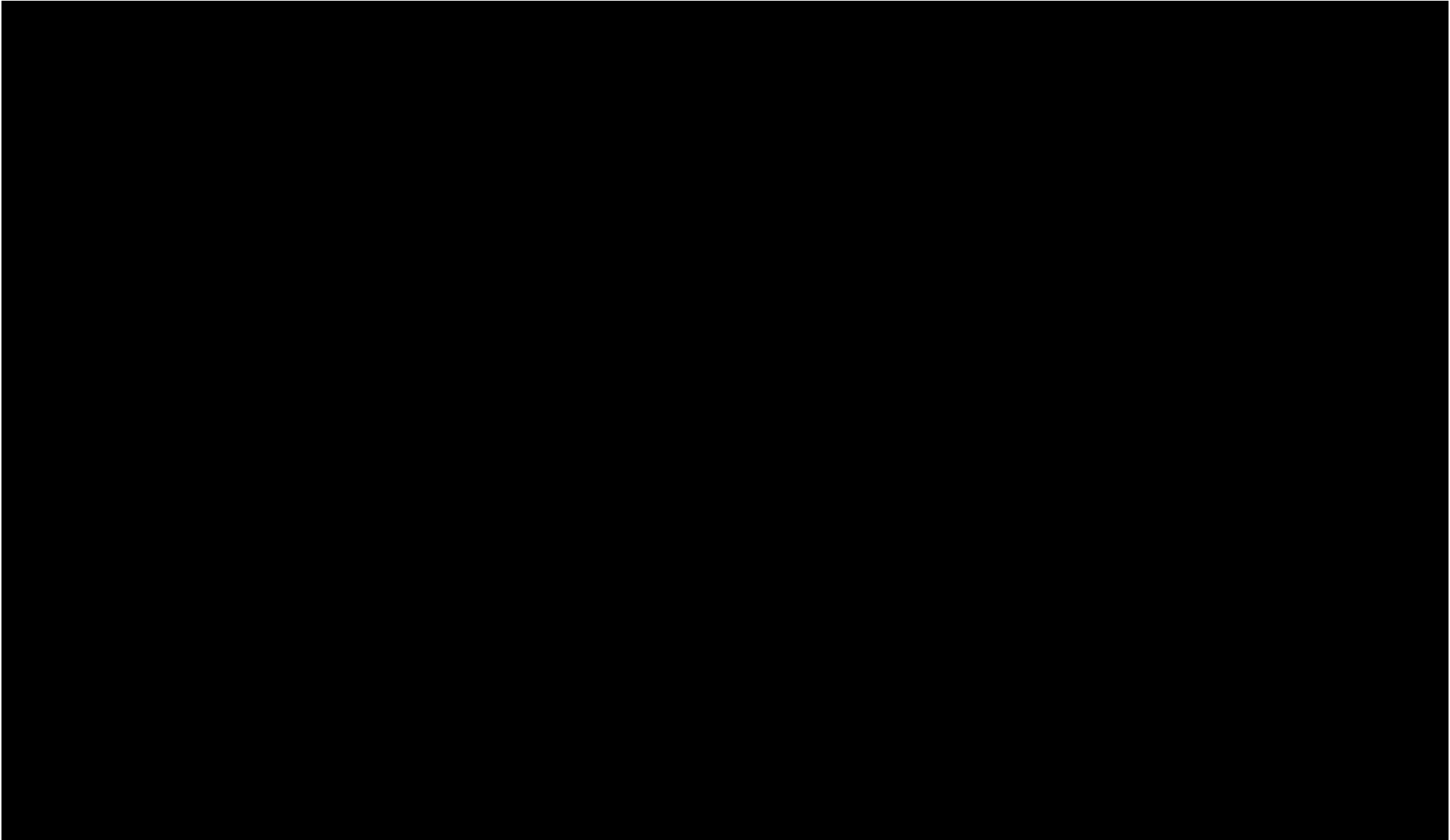
SCHEDULE 6B

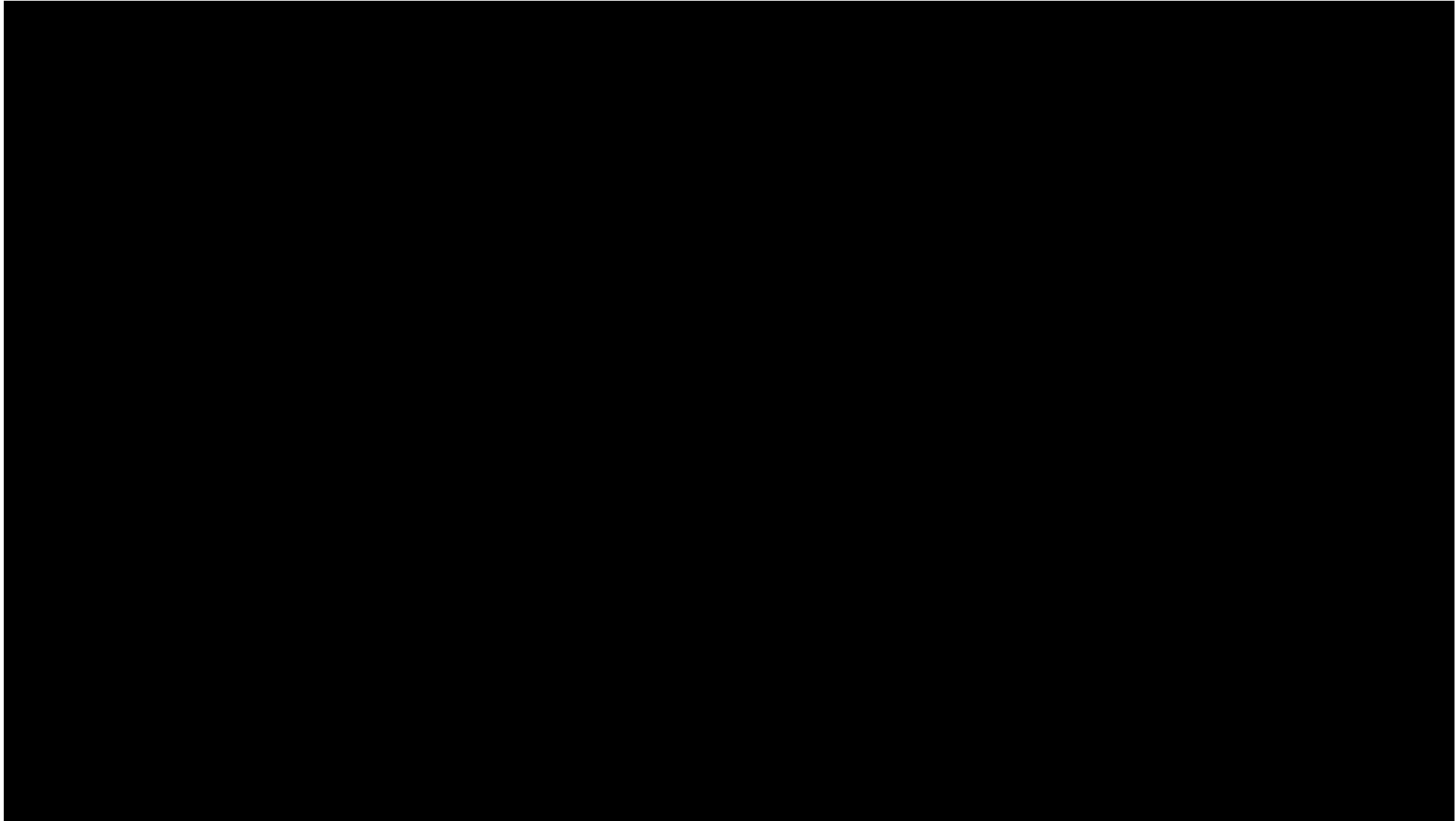
WHT Southern Tunnel Works Water Discharge

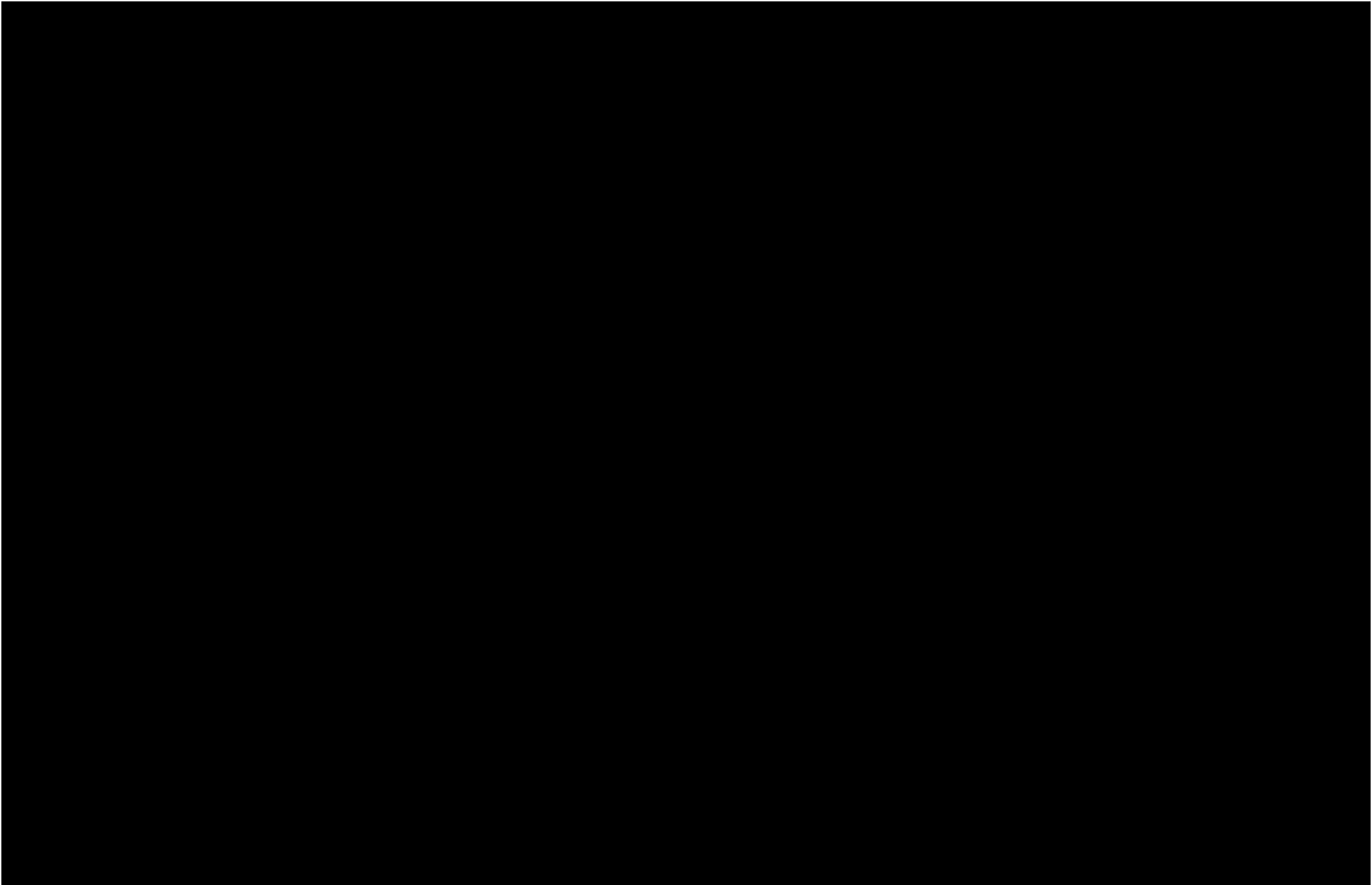


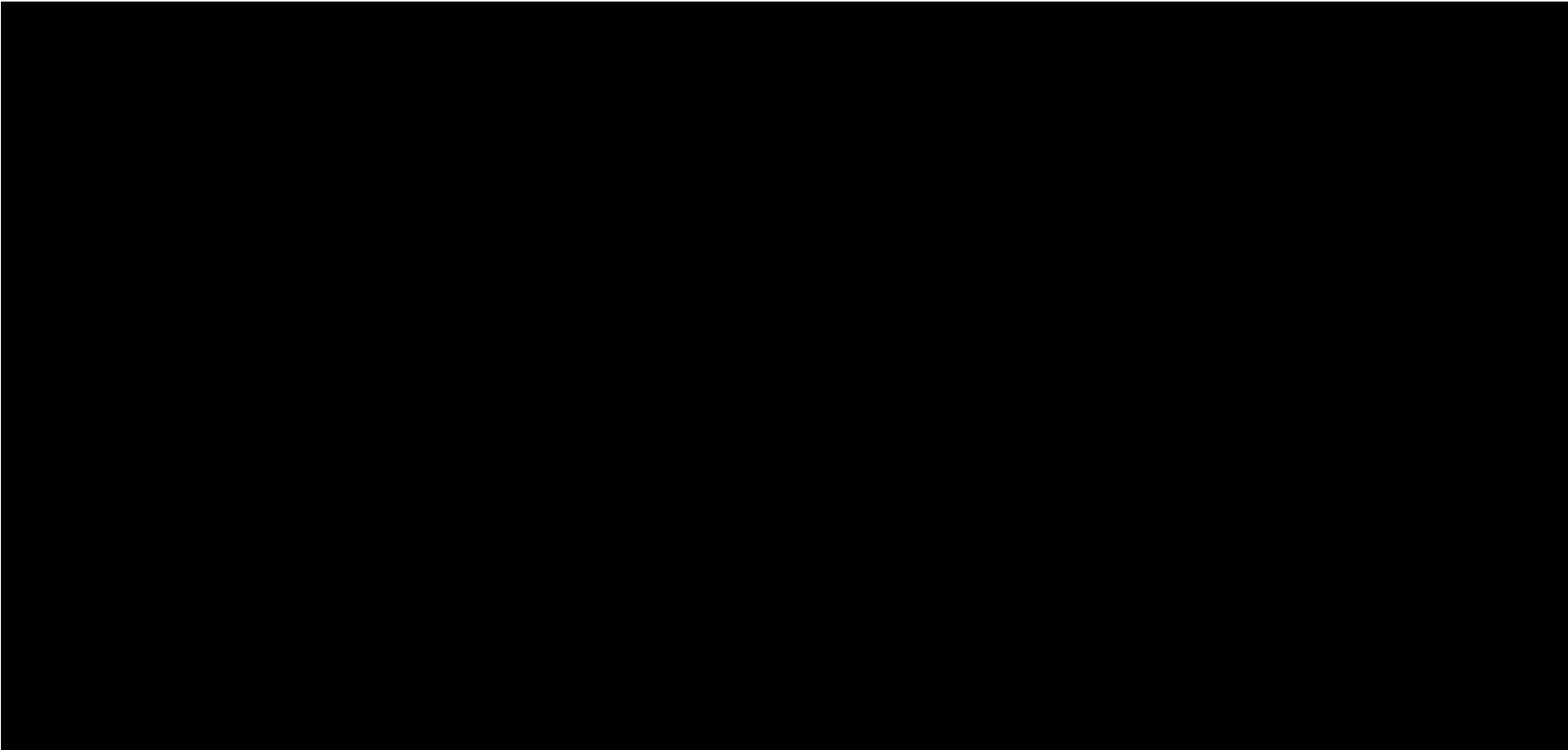












SCHEDULE 7

Environmental Requirements

(Clause 9.12)

1. ENVIRONMENT PROTECTION LICENCE

The Contractor must:

- (a) obtain an Environment Protection Licence in respect of the Contractor's Activities prior to undertaking any Scheduled Activity as contemplated by Schedule 1 to the *Protection of the Environment and Operations Act 1997* (NSW); and
- (b) hold an Environment Protection Licence in respect of the Contractor's Activities until the Date of Final Completion.

2. CROWN BUILDING WORK

- (a) The Contractor must, in relation to any part of the Project Works or the Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify (on behalf of the Principal) as required by section 109R of the EP&A Act.
- (b) Any certification under section 2(a) of this Schedule 7 will not lessen or otherwise affect:
 - (i) the Contractor's other Liabilities or responsibilities under this deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this deed or otherwise according to Law.

3. ENVIRONMENTAL REQUIREMENTS

- (a) The Contractor must not use the Construction Site or any Extra Land, or allow its Related Parties to use the Construction Site or any Extra Land, so that:
 - (i) any Hazardous Substance is abandoned or dumped on the Construction Site or any Extra Land;
 - (ii) any Hazardous Substance is handled in a manner which is likely to cause a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics; or
 - (iii) to the extent prohibited by clause 11.10 of this deed, any other substance is released from, deposited to, or emanates from, the Construction Site or any Extra Land such that a state of Contamination occurs.
- (b) The Contractor must at all times carry out, and ensure that its Related Parties carry out, the Contractor's Activities in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment.
- (c) The Contractor must, without limiting clause 7.1 of this deed:
 - (i) comply with, and ensure that its Related Parties in performing the Contractor's Activities comply with:

- (A) all Laws relating to the Environment;
 - (B) all Environmental Notices; and
 - (C) the Project Plans; and
- (ii) obtain and comply with all requirements of, and ensure that its Related Parties in performing the Contractor's Activities obtain and comply with all requirements of, any Approvals required in order to release or emit anything from the Construction Site or any Extra Land into the air or water or onto the ground or otherwise into the Environment, including to emit any substantial noise or vibrations.
- (d) Unless otherwise specified in this Schedule 7 and without limiting the Contractor's other obligations under this deed, and insofar as they apply to the Project Works, the Temporary Works or the Contractor's Activities, the Contractor must comply with, carry out and fulfil the conditions and requirements of all Environmental Documents, including those conditions and requirements which the Principal is expressly or impliedly required under the terms of the Environmental Documents to comply with, carry out and fulfil but only to the extent that those conditions and requirements relate to the scope and extent of the Project Works, the Temporary Works and the Contractor's Activities.
- (e) The Contractor must immediately notify the Principal in writing as soon as the Contractor:
- (i) becomes aware of any breach or potential breach or non-compliance or potential non-compliance with the conditions or requirements of any Law, Approval or Environmental Document regarding the Environment in the performance of the Contractor's Activities;
 - (ii) becomes aware of any information, fact or circumstance where, if the Principal was to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law relating to the Environment (without limiting any other obligation of the Contractor in relation to the information, fact or circumstance); or
 - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification.
- (f) The Contractor must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with a failure by the Contractor to comply with any obligation under this section 3.

4. **NOT USED**

5. **NOT USED**

6. **SUSTAINABILITY**

- (a) The Contractor must comply with the sustainability requirements set out in section 4.8 and Appendix D.5 of the SWTC (Rozelle Interchange) and Appendix D.5 of the SWTC (WHT Southern Tunnel Works).
- (b) Without limiting section 6(a), the Contractor must achieve:

- (i) a "Design" rating score of at least 55/100 for the design of the Project Works and the Temporary Works; and
- (ii) an "As Built" rating score of at least 55/100 for the construction of the Project Works and the Temporary Works,

from the Infrastructure Sustainability Council of Australia.

- (c) Without limiting section 6(b) of this Schedule 7, in order to achieve the ratings referred to in section 6(b) of this Schedule 7 the Contractor must:
 - (i) register with the Infrastructure Sustainability Council of Australia for the purposes of obtaining a rating;
 - (ii) cooperate and liaise with the Infrastructure Sustainability Council of Australia as required; and
 - (iii) provide any documentation required by the Infrastructure Sustainability Council of Australia.

7. **WASTE DISPOSAL**

- (a) Subject to section 7(e) of this Schedule 7, the Contractor must:
 - (i) remove from the Construction Site and any Extra Land; and
 - (ii) dispose of,

any Contamination or other waste pursuant to its obligations under this deed to a licensed waste facility in accordance with all relevant Law and Approvals.
- (b) The Contractor must:
 - (i) ensure that the entity that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Construction Site or Extra Land holds all relevant Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Approvals to the Principal's Representative upon request.
- (c) The Contractor must ensure that its employees and agents, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.
- (d) The Contractor must dispose of all Contamination, Hazardous Substances or other spoil or waste in New South Wales, unless it has the written consent of the Principal to do otherwise (with such consent to be given or withheld by the Principal in its absolute discretion).
- (e) The Contractor must indemnify the Principal from and against any Claims against the Principal, or Loss suffered or incurred by the Principal, arising out of or in any way in connection with any failure by the Contractor to comply with any obligation under this section, provided that the Contractor's liability to indemnify the Principal will be reduced proportionally to the extent that an act or omission of the Principal contributed to the Claim or Loss.
- (f) The Contractor is not required to remove or dispose of acid sulphate soil where it treats the acid sulphate soil in situ in accordance with the requirements of this deed.

SCHEDULE 8

Terms of Access

(Clauses 11, 11A, 11B and 17.11)

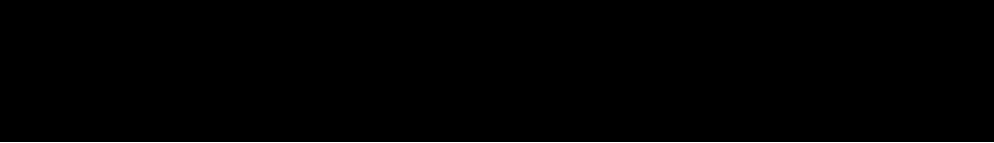
PART A – Access to Construction Site

- (a) The Contractor acknowledges and agrees that:
 - (i) it may not be given exclusive access to the Construction Site; and
 - (ii) access to the Construction Site or any part thereof will be subject to the Contractor complying with clause 11.1, this Schedule 8 and the Site Access Schedule.
- (b) The Contractor acknowledges that:
 - (i) its rights under clause 11.1 and this Schedule 8 are subject to any restrictions upon the access, possession and use of the Construction Site, the Motorway and the Western Harbour Tunnel imposed by the Principal under the express terms of this deed; and
 - (ii) it must comply with all:
 - (A) access conditions that apply to an area of the Construction Site as specified in the Site Access Schedule; and
 - (B) terms of any easement, restrictions on use, covenants, agreements or other similar arrangements burdening the land contained in the Construction Site as recorded in the register maintained by NSW Land Registry Services under the *Real Property Act 1900* (NSW).
- (c) The Contractor acknowledges that it will have no entitlement to access:
 - (i) subject to section (c)(ii) of this Part A, the Construction Site under clause 11.1 and this Schedule 8 until the Contractor has submitted the Project WHS Management Plan to the Principal's Representative and the Principal's Representative has had 20 Business Days to review the Project WHS Management Plan and has not rejected the Project WHS Management Plan; and
 - (ii) the WHT Southern Tunnel Works Site and the WHT Southern Tunnel Temporary Areas under clause 11.1 and this Schedule 8 until the Contractor has updated and resubmitted the Project WHS Management Plan to the Principal's Representative in accordance with section 2.3 of the Technical Requirements and the Principal's Representative has had 20 Business Days to review the Project WHS Management Plan and has not rejected the Project WHS Management Plan.
- (d) Subject to the express terms of this deed, the Principal makes no express or implied warranty that the Construction Site is now or will remain suitable or adequate for all or any of the purposes contemplated in this deed and save as aforesaid all warranties (if any) implied by Law are, to the extent permitted by Law, hereby expressly negative.

Part B – Access to Motorway and the Western Harbour Tunnel in accordance with clauses 11B.2(b) and 17.11

- (a) The Contractor must comply with, and procure that its Related Parties comply with, the following conditions when accessing the Rozelle Interchange Motorway Stratum

and the Main Tunnel Motorway Stratum in accordance with clauses 11B.2(b) and 17.11:

- (i) any constraints on and qualifications to access imposed on the Asset Trustee under the Project Deed or the M4-M5 Link Leases which have been notified by the Principal to the Contractor;
 - (ii) applicable requirements in the Project Deed and the 'Project Plans' (in each case, as notified by the Principal to the Contractor), this deed and other reasonable management requirements of the Principal, including;
 - (A) complying with paragraphs (c) to (e) of Part B of this Schedule 8 below;
 - (B) submitting Project Works Traffic Management Plans and complying with the Approved Project Works Traffic Management Plans; and
 - (C) complying with its obligations under this deed in respect of a road occupancy, including obtaining a ROL from Customer Journey Management in accordance with the requirements of Appendix C.4 of the SWTC (Rozelle Interchange) and submitting an application for a work permit in respect of the Motorway from the O&M Contractor; and
 - (iii) agreeing to pay the relevant "Lane Occupancy Fees" calculated in accordance with Schedule 29.
- (aa) The Contractor must comply with, and procure that its Related Parties comply with, the following conditions when accessing the Western Harbour Tunnel after opening of the Western Harbour Tunnel in accordance with clause 17.11:
- (i) 
 - (ii) applicable requirements in the project deed for the Western Harbour Tunnel and the 'Project Plans' (in each case, as notified by the Principal to the Contractor), this deed and other reasonable management requirements of the Principal, including:
 - (D) complying with paragraphs (c) to (e) of Part B of this Schedule 8 below;
 - (A) submitting Project Works Traffic Management Plans and complying with the Approved Project Works Traffic Management Plans;
 - (B) complying with its obligations under this deed in respect of a road occupancy, including obtaining a ROL from Customer Journey Management in accordance with the requirements of Appendix C.4 of the SWTC (WHT Southern Tunnel Works) and submitting an application for a work permit in respect of the Western Harbour Tunnel from the WHT Asset Manager; and
 - (C) where the access is required from the WHT Asset Manager during the period on and from the Date of Opening Completion (WHT) until the expiry of the Defects Correction Period in respect of the WHT Southern Tunnel Works, agreeing to pay the relevant costs calculated in accordance with clause 11C.2.
- (b) The Contractor acknowledges and agrees that, despite any ROL issued for any lane or shoulder closure, the Principal, the Asset Trustee, the Project Trustee or the WHT Asset Trustee may at any time direct the Contractor and its Related Parties to temporarily suspend any Contractor's Activities and to re-open the lane or shoulder.

- (c) Before the Contractor undertakes any of the Contractor's Activities which would have the effect of restricting, closing, interfering with or obstructing the free flow of traffic on any road, the Contractor must undertake all matters necessary to carry out such Contractor's Activities including:
- (i) obtaining all relevant Approvals (subject to clause 7.2);
 - (ii) preparing and submitting a traffic management plan for each stage of the Contractor's Activities (**Project Works Traffic Management Plan**) to Customer Journey Planning, Customer Journey Management and the Principal; and
 - (A) in a timely manner (and in any event at least 30 Business Days prior to the commencement of physical works for that stage) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the Project Works Traffic Management Plan prior to the commencement of physical works for that stage; and
 - (B) in accordance with Good Industry Practice;
 - (iii) preparing and submitting all applications for a Road Occupancy Licence to Customer Journey Planning and Customer Journey Management (with a copy to the Principal):
 - (A) in a timely manner (and in any event at least 30 Business Days prior to any road occupancy that requires a ROL) so as to allow all relevant entities sufficient time to consider, amend (if necessary) and agree the ROL prior to any road occupancy that requires a ROL;
 - (B) in accordance with the requirements of Appendix C.4 of the SWTC (Rozelle Interchange) or Appendix C.4 of the SWTC (WHT Southern Tunnel Works) (as applicable); and
 - (C) in accordance with Good Industry Practice;
 - (iv) using all reasonable endeavours in accordance with Good Industry Practice to agree and obtain approved Project Works Traffic Management Plans and ROLs;
 - (v) complying with road occupancy requirements, including all Project Works Traffic Management Plans and ROLs; and
 - (vi) accepting and implementing the reasonable requirements of the parties who have input into the approval of the Project Works Traffic Management Plans (once approved, the **Approved Project Works Traffic Management Plans**) and ROLs.
- (d) The Contractor:
- (i) is responsible for the control, direction and protection of all road, cyclist and pedestrian traffic in any way affected by the carrying out of the Contractor's Activities;
 - (ii) must manage all such traffic to ensure:
 - (A) its continuous, safe and efficient movement;
 - (B) the traffic carrying capacity of Local Areas is maintained; and
 - (C) that any delays and disruptions to such traffic and the movement of such traffic are kept to an absolute minimum;

- (iii) must coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or the operations of Authorities;
- (iv) must at all times comply with any construction traffic management plan prepared in accordance with the Planning Approvals, the requirements of the SWTC and any Third Party Agreement in respect of road traffic management and safety;
- (v) must comply with the directions of any relevant Authority (including Customer Journey Planning, Customer Journey Management and the Principal in its capacity as an Authority) with respect to such management; and
- (vi) acknowledges and agrees that Customer Journey Planning and Customer Journey Management each exercise their own discretion in the exercise of delegated statutory functions and powers of the Principal, and that nothing that Customer Journey Planning or Customer Journey Management do, fail to do or purport to do pursuant to such delegation (including a decision not to grant a ROL) will:
 - (A) be considered as an act or omission of the Principal;
 - (B) constitute an Act of Prevention; or
 - (C) entitle the Contractor to make any Claim.
- (e) The Contractor must give the public sufficient notice of the arrangements agreed under paragraph (c) of Part B of this Schedule above and in designing and implementing the Project Works Traffic Management Plans and all aspects of the Contractor's Activities, seek to minimise delays and disruption to traffic to the extent consistent with the performance of the Contractor's Activities in accordance with this deed.

Part C – Access to Other WestConnex Assets or Systems in accordance with clause 11.2A

- (a) The Contractor must not access Other WestConnex Assets or Systems in respect of the Other WestConnex Motorways under clause 11.2A before "Opening Completion" has been achieved in relation to those Other WestConnex Assets or Systems under the project deed for the relevant Other WestConnex Motorway.
- (b) The Contractor must ensure that the access under clause 11.2A to Other WestConnex Assets or Systems in respect of the Other WestConnex Motorways does not:
 - (i) prevent the relevant WestConnex Concessionaire from undertaking the relevant Other WestConnex Motorway project in accordance with the project deed for that Other WestConnex Motorway;
 - (ii) materially adversely affect the workmanship, durability or functional integrity of any element of the relevant Other WestConnex Motorway;
 - (iii) materially adversely affect the relevant WestConnex Concessionaire's ability to achieve "Final Handover" (as defined under the project deed for the M4 Motorway or the M5 Motorway, as applicable) of the relevant Other WestConnex Motorway in accordance with the requirements of the project deed for the M4 Motorway or the M5 Motorway, as applicable; or
 - (iv) in the case of:
 - (A) the M4 Motorway, impede; and
 - (B) the M5 Motorway, without the consent of the Principal, impede,

the safe and free flow of traffic along, onto or from the Other WestConnex Motorway at its design speed and volume.

- (c) The Contractor must give the Principal reasonable notice before accessing any Other WestConnex Assets or Systems in respect of the Other WestConnex Motorways under clause 11.2A.
- (d) The Contractor must:
 - (i) co-ordinate all activities associated with the access to the Other WestConnex Asset or System in respect of the Other WestConnex Motorway;
 - (ii) minimise any interference with the construction, operation and use of the Other WestConnex Motorway;
 - (iii) pay the relevant "Lane Occupancy Fees" calculated in accordance with Schedule 29; and
 - (iv) ensure that its Related Parties comply with the requirements of Part C of this Schedule 8.

SCHEDULE 9

Property Owner's Certificate

(Clauses 11.3 and 11.4)

This Deed Poll is in favour of:

1. **Transport for NSW** of 20-44 Ennis Road, Milsons Point, New South Wales, 2061 (**TfNSW**); and
2. **CPB Contractors Pty Limited** (ABN 98 000 893 667) of Level 18, 177 Pacific Highway, North Sydney NSW 2060 and **John Holland Pty Ltd** (ABN 11 004 282 268) of Level 5, 380 St Kilda Road Melbourne VIC 3004 (the **Contractor**),

and their successors and permitted assigns (together, the **Beneficiaries**).

PROPERTY ADDRESS:

1. I/We confirm that the following works have been carried out and completed on my/our property to my/our satisfaction:

[Insert description of property works]
2. I/We confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release the Beneficiaries from all claims and actions which I/we may have arising out of or in connection with the works referred to in item 1.

SIGNED as a Deed Poll.

SIGNED, SEALED and DELIVERED by
in the presence of:

Signature

Signature of witness

Name of witness in full

SCHEDULE 10

Not used

SCHEDULE 11

Licensed Maintenance Areas

The parties acknowledge and agree that:

- (a) the Licensed Maintenance Areas for the Rozelle Interchange will be those areas necessary to operate any intelligent transportation system devices (such as variable message signs, closed circuit television, tunnel closure traffic lights and moveable medians) which are:
 - (i) located outside of the Rozelle Interchange Motorway Stratum;
 - (ii) required for the operation of the Rozelle Interchange Rozelle Interchange Motorway Stratum; and
 - (iii) connected to the Operations Management Control System;
- (b) the Licensed Maintenance Areas for the Rozelle Interchange will only comprise those areas of land (if any) generally as shown in the indicative outline plans and drawings which appear in Appendix A to this Schedule 11, subject to any changes to those areas of land which have been notified by the Principal to the Contractor; and
- (c) the Licensed Maintenance Areas for the Rozelle Interchange must not include any areas over which the Principal has granted a lease or other right of exclusive possession to a third party.

APPENDIX A - LICENSED MAINTENANCE AREAS

Indicative Motorway Licensed Maintenance Area Plans – Rozelle Interchange







