



New South Wales Government

GC21 (Edition 2)

General Conditions of Contract

Preface

GC21 (Edition 2) General Conditions of Contract

- **Contract framework**
- **Carrying out the Works**
- **Claim and Issue resolution**
- **Termination**
- **Miscellaneous**
- **Meanings**
- **Contract Information**
- **Schedules**
- **Attachments**

GC21 (Edition 2) General Conditions of Contract
1 January 2010

Report number (find)

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Cataloguing-in-Publication data

**New South Wales.
Construction Consultative Committee**

GC21 (Edition 2) General Conditions of Contract

The electronic version is available in 'Procurement System for Construction' in the NSW Procurement website www.nswprocurement.com.au

ISBN (check) (electronic version)

1. Construction contracts - New South Wales.

I. Title

Government Codes and Guidelines

Copies of the Guidelines referred to in the GC21 (Edition 2) General Conditions of Contract may be obtained from the NSW Procurement or NSW Industrial Relation websites as follows:

Work, Health and Safety Management Systems Guidelines

Procurement Guideline *Skills and Training in the Construction Industry*

Policy on Aboriginal Participation in Construction

www.industrialrelations.nsw.gov.au

NSW Industrial Relations Guidelines: Building and Construction Procurement



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Preface

The GC21 Edition 2 General Conditions of Contract

The GC21 Edition 2 General Conditions of Contract build on the experience and project success delivered with Edition 1 which had a highly effective emphasis on co-operative contracting and enhanced communication between the parties.

Edition 2 focuses on streamlining, updating and improving the operation of the contract to reflect experience and practice.

The requirement for Contractors to use the GC21 Subcontract has been discontinued in Edition 2, and replaced with a short list of mandatory requirements to give the Contractor and subcontractors flexibility in their commercial arrangements.

Using this document

All defined words and phrases have initial capitals and are in italics in the GC21 General Conditions of Contract unless they are one of the following basic terms, which appear too often for italics to be used:

- Contract
- Contract Information
- Contractor
- Consultant
- Date of Contract
- Principal
- Site
- Subcontract
- Subcontractor
- Supplier
- Valuer
- Works



Contract framework

Roles and relationships

1 General responsibilities

- .1 The Contractor must:
 - .1 construct the Works in accordance with the Contract; and
 - .2 perform and observe all its other obligations under the Contract
- .2 The Principal must:
 - .1 pay the Contractor the *Contract Price* for its performance, in accordance with and subject to the Contract; and
 - .2 perform and observe all its other obligations under the Contract
- .3 The Principal may give instructions to the Contractor concerning the Works and anything connected with the Works, and the Contractor must comply at its own cost unless the Contract expressly provides otherwise.

2 Authorised persons

Contractor's Authorised Person

- .1 The Contractor must ensure that, at all times, there is a person appointed to act as the *Contractor's Authorised Person*. The *Contractor's Authorised Person* acts with the Contractor's full authority in all matters relating to the Contract. The Contractor must promptly notify the Principal of the name and contact details of the *Contractor's Authorised Person* and of any change in those details. If the Principal reasonably objects to the *Contractor's Authorised Person* at any time, the Contractor must replace that person.

Principal's Authorised Person

- .2 The Principal must ensure that, at all times, there is a person appointed to act as the *Principal's Authorised Person*. The Principal must promptly notify the Contractor of the name and contact details of the *Principal's Authorised Person* and of any change in those details.
- .3 The *Principal's Authorised Person* does not act as an independent certifier, assessor or valuer. The *Principal's Authorised Person* acts only as an agent of the Principal.
- .4 The *Principal's Authorised Person* may delegate any of its contractual functions and powers to others by written notice to the Contractor.

3 Co-operation

- .1 The parties must do all they reasonably can to co-operate in all matters relating to the Contract, but their rights and responsibilities under the Contract (or otherwise) remain unchanged unless the parties agree in writing to change them.
- .2 Each party will, subject to and in accordance with the Contract, perform its obligations under the Contract having regard to the achievement of the *Project Values*.
- .3 Each party will adhere to and uphold the *Project Values* and work collaboratively in a spirit of mutual trust and cooperation in the performance of their obligations under the Contract
- .4 The obligations under this clause 3 will not affect the exercise of a right or discretion under the Contract by the Principal or the *Principal's Authorised Person*.

4 Duty not to hinder performance

- .1 Each party must do all it reasonably can to avoid hindering the performance of the other under the Contract.

5 Early warning

- .1 Each party must promptly inform the other if it becomes aware of anything that is likely to affect the time for *Completion*, or the cost or quality of the Works. The parties must then investigate how to avoid or minimise any adverse effect on the Works and *Scheduled Progress*.
- .2 Information provided by a party under clause 5.1 must not be used against that party as an admission of breach of the Contract.



6 Evaluation and monitoring

- .1 The parties must meet regularly to evaluate and monitor performance of the Contract
- .1A [REDACTED]
- .2 The parties must decide jointly who will participate in the meetings, provided the parties agree that [REDACTED] will always be able to participate. Other participants may include Subcontractors, Suppliers, Consultants and, if appropriate, representatives of government authorities, end users and local communities. Participation in meetings does not give the participants any additional rights or responsibilities.
- .3 Nothing concerning or in connection with completed evaluation forms changes either party's rights and responsibilities, or can be relied on or used by one party against another in any proceedings.
- .4 Participants in the evaluation and monitoring meetings must meet their own costs for attendance, and the parties must share equally the other costs.

The Contract

7 The Contract

- .1 The Contract is made up solely of the *Contract Documents*, which supersede all understandings, representations and communications made between the parties before the Date of Contract in relation to the subject matter of the Contract. The *Contract Documents* are:
 - .1 these GC21 General Conditions of Contract;
 - .2 the Contract Information;
 - .3 the annexed Schedules;
 - .3A the Attachments;
 - .4 the *Principal's Documents* as at the Date of Contract; and
 - .5 the other *Contract Documents* listed in Contract Information item 26.
- .2 The *Contract Documents* must be read as a whole, and anything included in, or reasonably to be inferred from, one or more documents must be read as included in all other documents, unless the context requires otherwise.
- .3 The terms of the Contract cannot be amended or waived unless both parties agree in writing.
- .4 The Principal must give the Contractor the number of copies of the *Principal's Documents* stated in Contract Information item 27.
- .5 Where the Principal sends a *Letter of Award* to the Contractor, no contract is formed until a formal agreement or deed is executed or some other specified condition is satisfied. The Contractor must execute and return to the Principal two copies of the agreement or deed within 14 days after the *Letter of Award* and the Principal will return an executed copy to the Contractor.

Access to Contract Compliance Information

- .6 At any time during the Contract, the Contractor must provide the Principal with sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow the Principal to carry out reviews and audit of the Contractor's compliance with all Contract requirements. This access may include, but is not limited to:
 - .1 details of the Contractor's subcontract arrangements for the project;
 - .2 information relating to the Contractor's payment of subcontractors, suppliers and employees; and
 - .3 where the Contractor has submitted to the Principal a signed Contractor Statement and Supporting Statement (Schedule 6), evidence to support these statements.
- .7 Where the Contractor is an unincorporated joint venture comprising each of the *Joint Venture Participants*, the provisions in Schedule 16 shall apply.



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8 Scope of the Works, Temporary Work and work methods

- .1 The Works are described in brief in Contract Information item 3 and in more detail in the *Contract Documents*, and include:
 - .1 all work specifically referred to in or contemplated by the Contract; and
 - .2 all work and items necessary to achieve the effective and efficient use and operation of the Works.
- .2 Other work required in connection with the Contract includes:
 - .1 all work and items, other than the Works, specifically referred to in or contemplated by the Contract;
 - .2 all work and items necessary to properly carry out and complete the Works; and
 - .3 all work and items reasonably inferred from the *Contract Documents* as necessary to properly perform the other obligations of the Contractor under the Contract
- .3 The Contractor acknowledges that:
 - .1 it is both experienced and expert in work of the type, complexity and scale of the Works;
 - .2 it has made full allowance in the *Contract Price* for the matters referred to in clauses 8.1 and 8.2; and
 - .3 unless the Contract expressly provides an entitlement to payment, everything required to be done by the Contractor under the Contract is to be done at the Contractor's own cost.
- .4 The Contractor acknowledges that *Variations* instructed by the Principal may change the scope of the Works.
- .5 Unless the Contract specifies, or the Principal instructs, that the Contractor use a particular work method or perform particular *Temporary Work*, the Contractor is solely responsible for determining the work methods and the requirements for all *Temporary Work* and warrants that the *Temporary Work* will at all relevant times be fit for its intended purposes.
- .6 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 its price (excluding all costs of delay or disruption) for any proposal by the Principal to use a particular work method or perform particular *Temporary Work* proposed by the Principal or to change a work method or *Temporary Work* specified in the Contract;
 - .2 the anticipated effect of the Principal's proposal on achieving *Completion*; and
 - .3 the effect of the Principal's proposal on any other matter specified by the Principal.
- .7 If the parties agree in writing on the effects of the Principal's proposal and the Principal instructs the Contractor to carry out the proposal, the *Contractual Completion Dates* and *Contract Price* must be adjusted as agreed.
- .8 Subject to clause 8.9, if the Principal instructs the Contractor to use a particular work method or perform particular *Temporary Work* or to change a specified work method or *Temporary Work* without first agreeing in writing with the Contractor the effects of the instruction, the Contractor may claim:
 - .1 an extension of time in accordance with clause 50 and consequent delay costs due under clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable costs incurred by it additional to what it would have incurred if the Principal had not given the instruction.
- .9 If the need for the instruction given under clause 8.8 arises from the Contractor's own act or omission, the Contractor is not entitled to any extension of time or adjustment to the *Contract Price*.

9 Assignment

- .1 The Contractor must not assign a right or benefit under the Contract without first obtaining the Principal's written consent.

10 Governing law of the Contract

- .1 The Contract is governed by the laws of New South Wales, and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales.

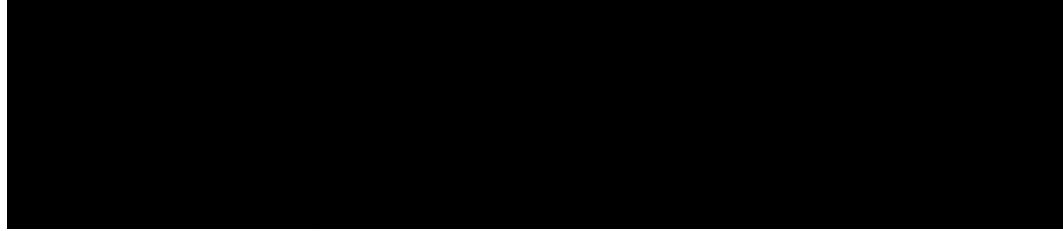


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11 Notices and instructions

- .1 Notices must be sent to the relevant persons at the addresses in Contract Information items 4 to 11 or 52, or at the address for service most recently notified in writing by the addressee.
- .2 All notices must be in writing, and all instructions by the Principal must be in writing or, if given orally, must be confirmed in writing as soon as practicable.

11A Novation



Statutory and Government Requirements

12 Statutory Requirements

- .1 The Principal must ensure that the licences, authorisations, approvals and consents listed in Contract Information item 14 are obtained and paid for.
- .2 The Contractor is responsible for:
 - .1 compliance with all *Statutory Requirements*, subject to clauses 49 and 49A, except if, because of the nature of the requirement, only the Principal can comply (in which case the Contractor will perform the Works so as not to put the Principal in breach of any *Statutory Requirements*);
 - .2 giving all notices necessary to comply with *Statutory Requirements*;
 - .3 obtaining all licences, authorisations, approvals and consents necessary to carry out the work in connection with the Contract, other than those listed in Contract Information item 14; and
 - .4 the payment of all necessary fees and charges, other than those listed in Contract Information item 14.
- .3 As a condition of achieving *Completion*, the Contractor must give to the Principal originals of all licences, authorisations, approvals, consents and other documents issued by authorities or providers of services in connection with the Works or the Site.

13 Codes of Practice

NSW Industrial Relations Guidelines: Building and Construction Procurement

Terminology

- .1 In addition to terms defined in this document, terms used in this clause have the same meaning as is attributed to them in the New South Wales Government's NSW Industrial Relations Guidelines: Building and Construction Procurement (NSW Guidelines) (as published by the NSW Treasury July 2013 and updated in September 2013). The *NSW Guidelines* are available at www.industrialrelations.nsw.gov.au.

Primary Obligation

- .2 The parties must comply with and meet any obligations imposed by the *NSW Guidelines*.
- .3 The Contractor must notify the CCU and the Principal of any possible non-compliance with the *NSW Guidelines* and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- .4 Where the Contractor engages a Subcontractor, Supplier or Consultant, the Contractor must ensure that the Subcontract imposes on the Subcontractor, Supplier or Consultant equivalent obligations to those in Clause 13.2 (under the heading *NSW Guidelines*), including that the Subcontractor, Supplier or Consultant must at all times comply with, and meet any obligations imposed by, the *NSW Guidelines*.



- .5 The Contractor must not appoint or engage another party in relation to the Contract where that appointment or engagement would breach a sanction imposed on the other party in relation to the *NSW Guidelines*.

Access and information

- .6 The Contractor must maintain adequate records of compliance with the *NSW Guidelines* by it, its Subcontractors, Suppliers, Consultants and their related entities.
- .7 The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
- .1 enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;
 - .2 inspect any work, material, machinery, appliance, article or facility;
 - .3 access information and documents;
 - .4 inspect and copy any record relevant to the Contract;
 - .5 have access to personnel; and
 - .6 interview any person;

as is necessary for the authorised personnel to monitor and investigate compliance with the *NSW Guidelines*, by the Contractor, its Subcontractors, Suppliers, Consultants, and related entities.

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

Sanctions

- .9 The Contractor warrants that at the time of entering into this Contract, neither it, nor any of its related entities, are subject to a sanction in connection with the *NSW Guidelines* that would have precluded it from responding to a procurement process for work to which the *NSW Guidelines* apply.
- .10 If the Contractor does not comply with, or fails to meet any obligation imposed by, the *NSW Guidelines*, a sanction may be imposed against it in connection with the *NSW Guidelines*.
- .11 Where a sanction is imposed:
- .1 it is without prejudice to any rights that would otherwise accrue to the parties; and
 - .2 the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - .1 record and disclose details of noncompliance with the *NSW Guidelines* and the sanction; and
 - .2 take them into account in the evaluation of future procurement processes and responses that may be submitted by the Contractor, or its related entities, in respect of work to which the *NSW Guidelines* apply.

Compliance

- .12 The Contractor bears the cost of ensuring its compliance with the *NSW Guidelines*, including in respect of any positive steps it is obliged to take to meet its obligations under the *NSW Guidelines*. The Contractor is not entitled to make a claim for reimbursement or an extension of time from the Principal or the State of NSW for such costs.
- .13 Compliance with the *NSW Guidelines* does not relieve the Contractor from responsibility to perform the Works and any other obligation under the Contract, or from liability for any defect in the Works or from any other legal liability, whether or not arising from its compliance with the *NSW Guidelines*.
- .14 Where a change in the Contract or Works is proposed, and that change may, or may be likely to, affect compliance with the *NSW Guidelines*, the Contractor must immediately notify the Principal (or nominee) of the change, or likely change and specify:
- .1 the circumstances of the proposed change;
 - .2 the extent to which compliance with the *NSW Guidelines* will be, or is likely to be, affected by the change; and
 - .3 what steps the contractor proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a *Workplace Relations Management Plan (State)* or Work Health and Safety Management Plan); and



the Principal will direct the contractor as to the course it must adopt within 10 *Business Days* of receiving notice.

TfNSW

- .15 The parties must comply with Principal's Statement of Business Ethics available from TfNSW's website.
- .16 The parties must comply with Principal's Customer Charter available from TfNSW's website.

14 No collusive arrangements

- .1 The Contractor warrants that it has not engaged in any collusive or anti-competitive arrangement or understanding in connection with its tender for, or entry into, the Contract.
- .2 Without limiting any other right or remedy, the Principal may recover from the Contractor the value of any payment or other benefit made directly or indirectly to an unsuccessful tenderer or a trade or industry association in breach of the warranty in clause 14.1.

15 Compliance with NSW Government Requirements

Compliance with NSW Government Guidelines and Policies

- .1 The Contractor must implement and maintain the systems, strategies and plans required to comply with the following NSW Government Guidelines and Policies, and as required by Contract Information item 15:
 - .1 The Work, Health and Safety Management Systems Guidelines;
 - .2 the NSW Industrial Relations Guidelines: Building and Construction Procurement;
 - .3 the NSW Government Procurement Guideline *Skills and Training in the Construction Industry*; and
 - .4 the NSW Government *Policy on Aboriginal Participation in Construction*.
- .2 The requirements of relevant NSW Government Guidelines and Policies are additional to any other requirements of the Contract and *Statutory Requirements*.
- .3 The Contractor must submit and implement the plans identified in Contract Information item 15 by the times stated there. Those plans must comply with all requirements of the relevant NSW Government Guidelines and the Contract.
- .3A The Contractor must also implement and maintain the Workforce Development and Industry Participation requirements specified in section 44 of G2.
- .4 The Contractor must:
 - .1 systematically manage its obligations under the Contract and applicable *Statutory Requirements* according to the systems, plans and procedures required under clauses 15.1 and 15.3;
 - .2 review and update its systems, plans and procedures to ensure ongoing compliance with the Contract;
 - .3 control non-conformances and undertake corrective and preventive action as and when necessary; and
 - .4 provide sufficient access to the workplace, and to information, records and other relevant documentation, resources (including personnel) and all other things necessary to allow the Principal to carry out reviews and audit of the Contractor's plans and procedures and confirm compliance with the Contract.

Aboriginal Participation in Construction

- .5 The Minimum Aboriginal Participation Spend amount is stated in Contract Information item 15D and is in accordance with the Workforce Development and Industry Participation requirements specified in section 44 of G2.
- .5A The Contractor must comply with and report on aboriginal participation in accordance with the NSW Government's NSW Aboriginal Participation in Construction Policy (available at <https://www.procurepoint.nsw.gov.au>).
- .6 The Contractor must:
 - .1 provide any report to the Principal for the Principal's review and comment prior to submitting it to the NSW Procurement Board;



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- .2 submit the Aboriginal Participation in Construction Policy (APIC) Plan within 50 *Business Days* after the date of this Contract (unless otherwise agreed with the Principal); and
- .3 within 50 *Business Days* after the date of this Contract (unless otherwise agreed with the Principal), provide the Principal with the details of the APIC exclusions in the form of the APIC Exclusions Template as referred to in section 44 of G2.

Environmental and social sustainability

- .6A The Contractor must:
- .1 hold and maintain an environment management system which complies with the *Principal's Documents* for so long as its activities are carried out;
 - .2 develop, implement and maintain a contract specific *Construction Environmental Management Plan* for the management of environmental matters in accordance with the *Principal's Documents*;
 - .3 carry out its activities in accordance with the *Construction Environmental Management Plan*;
 - .4 ensure that its *Subcontractors* comply with all relevant laws and approvals and the *Principal's Documents* in relation to environmental management on the Site; and
 - .5 use, and be able to demonstrate the use of, ecologically sustainable development principles (including any of the Principal's sustainability initiatives under the *Sustainability Management Plan*) in the construction of the Works, any *Temporary Work* and its other activities.

Compliance with the Heavy Vehicle National Law - Chain of Responsibility Provisions

- .7 The Contractor must:
- .1 comply with the chain of responsibility provisions of the *Heavy Vehicle National Law (NSW)* (2013);
 - .2 develop, implement and maintain a *CoR Management Plan* in accordance with the *Principal's Documents*;
 - .3 update the *CoR Management Plan* as required by the *Principal's Documents* or as directed from time to time by the *Principal's Authorised Person*; and
 - .4 carry out its activities in accordance with the *CoR Management Plan*.

.7A

Financial Assessment

- .8 Without limiting or otherwise restricting clause 19, the Contractor acknowledges and agrees that:
- .1 the Principal may, during the term of the Contract, undertake or procure the undertaking of ongoing financial assessments (Financial Assessment) of the Contractor;
 - .2 the Financial Assessment may be undertaken at three monthly (or longer) intervals from the Date of Contract; and
 - .3 it must, if requested by the Principal, within 10 *Business Days* of receiving such request, provide any documents, information and evidence as is reasonably required by the Principal in connection with the Financial Assessment.
- .9 If:
- .1 the Contractor fails to comply with clause 15.8.3; or
 - .2 the Principal determines, acting reasonably, that it is not satisfied with the findings of any Financial Assessment,
- the Principal may, at any time before *Completion*:
- .3 notify the Contractor that one or more *Parent Company Guarantee(s)* is or are required and the Contractor must, within 14 days of receiving the notice, give the Principal that or those *Parent Company Guarantee(s)* duly executed by the relevant *Parent Company*



Guarantor. If required by the Principal, the Contractor must also provide evidence satisfactory to the Principal of proper execution, as referred to in clause 33.7.3 (which may include a requirement for a legal opinion in a form acceptable to the Principal from a foreign law firm acceptable to the Principal); and/or

- .4 require the Contractor to implement a *Subcontractors and Suppliers Proof of Payment Procedure*, in which case the Contractor must implement a *Subcontractors and Suppliers Proof of Payment Procedure*.

16 Appointment of principal contractor for WHS

- .1 In this clause 16, the terms "principal contractor", "workplace" and "construction work" have the same meaning assigned to those terms under the *Work Health & Safety Regulation 2017* (NSW).
- .1A Unless otherwise stated in Contract Information item 17A, subject to clause 16.2, to the extent that the Contractor's activities carried out on the Site includes construction work, the Principal:
 - .1 engages the Contractor as principal contractor in respect of the construction work on the Site; and
 - .2 authorises the Contractor to have management and control of the workplace at which the construction work is to be carried out and to discharge the duties of a principal contractor under the *Work Health & Safety Regulation 2017* (NSW).
- .1B The Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the *Work Health & Safety Regulation 2017* (NSW).
- .1C The Contractor must also comply with and satisfy the requirements of the Sydney Metro Principal Contractor Health & Safety Standard (SM PS-ST 221).

The Principal authorises the Contractor to exercise such authority of the Principal as is necessary to do this.
- .2 Where the Contractor is a joint venture:
 - .1 the Principal:
 - .1 engages the *Joint Venture Participant* stated in Contract Information item 17B as the *Joint Venture Principal Contractor* in respect of the construction work on the Site for the purposes of Schedule 16; and
 - .2 authorises the Contractor to have management and control of the workplace at which construction work is to be carried out and to discharge the duties of a principal contractor under the *Work Health & Safety Regulation 2017* (NSW);
 - .2 subject to the provisions of Schedule 16, the *Joint Venture Principal Contractor* is the principal contractor referred to in clause 16.1A and the *Joint Venture Principal Contractor* accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor under the *Work Health & Safety Regulation 2017* (NSW) and must discharge the responsibilities of the Contractor under clause 16.1.

17 Compliance with Australian Government requirements

Building Code

- .1 If Contract Information item 16A specifies that the *Building Code* applies, the Contractor must comply with the requirements of the *Building Code* and the obligations set out in Schedule 12.

Work Health and Safety Accreditation Scheme

- .2 If required by Contract Information item 16B, the Contractor must:
 - .1 maintain accreditation under the Work Health and Safety Accreditation Scheme (**Scheme**) established by section 43 of the *BCHIP Act* while carrying out *Building Work*; and
 - .2 comply with all conditions of the Scheme accreditation.

Australian Industry Participation Plan (AIP Plan)

- .3 If required by Contract Information item 16C, the Contractor must comply with and implement the Certified AIP Plan.



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18 Working hours and working days

- .1 The Contractor must observe:
 - .1 *Statutory Requirements* which regulate working hours and working days; and
 - .2 any requirements in Contract Information item 18.

19 Authorisation to release and use information

- .1 The Contractor authorises the Principal to:
 - .1 provide information about the Contractor, including information provided by the Contractor and information related to the Contractor's performance, to [REDACTED] Commonwealth, State or local government agencies at any time or for any reason; and
 - .2 take account of information about the Contractor, including reports of unsatisfactory performance, from [REDACTED] any government agency or other reputable source, when deciding whether to offer the Contractor future opportunities for work.
- .2 The Contractor agrees and acknowledges that the Principal is entitled to rely on the defence of qualified privilege for the purposes of section 30 of the *Defamation Act 2005* (NSW) in making information available to others as contemplated by clause 19.1.1.
- .3 The Contractor releases and indemnifies the Principal from and against any claim, action, loss, damage, expense or liability the Principal may sustain or incur in connection with anything authorised by clause 19 or anything done by a recipient of the information.

20 Long service levy

- .1 The Contractor must:
 - .1 pay to the Long Service Corporation or that body's agent all amounts payable for the long service levy in respect of the Contractor's Work under the Building and Construction Industry Long Service Payments Act 1986 (NSW) (in this clause, the Long Service Payments Act), at the times and in the amounts as are due and payable under the Long Service Payments Act, including:
 - .1 before commencing any construction work under this contract; and
 - .2 if the Long Service Corporation serves a notice under section 41 of the Long Service Payments Act requiring payment of an additional amount of long service levy, within the time specified in the notice; and
 - .2 produce to *Principal's Authorised Person* the documents evidencing payment of the amounts referred to in clause 20.1.1.

21 Registration and licences

- .1 All vehicles and plant used in carrying out work in connection with the Contract must be registered as required by law.
- .2 All drivers who operate vehicles or plant in carrying out work in connection with the Contract must be licensed to operate those vehicles or plant as required by law.
- .3 Whenever requested, the Contractor must promptly provide documentary evidence of compliance with clause 21.

Planning Approval

21A.1 Planning Approval Application

- .1 The parties acknowledge and agree that:
 - .1 the Principal is the proponent under the *EP&A Act* in respect of the *Planning Approval*; and
 - .2 as at the date of this deed, the Principal has prepared and submitted the *Planning Approval Application*, including all associated plans and specifications.
- .2 Except to the extent expressly stated otherwise in this clause 21A, the Contractor acknowledges and agrees that it is responsible for bearing all costs and expenses of complying with its obligations arising out of or in connection with the *Planning Approval* and that:
 - .1 it will not be entitled to make, and the Principal will not be liable upon, any *Claim*; and



- .2 the relief given by the Principal to the Contractor under this clause 21A is in full satisfaction of all *Claims* and the Contractor will have no other entitlement arising out of or in any way in connection with:

- .2 the *Early Works*;
- .3 any *Variation* instructed by the Principal in relation to the *Planning Approval*; or
- .4 any other matters arising out of or in connection with this clause 21A.

21A.2 Baseline Conditions

- .1 The Contractor acknowledges and agrees that:
 - .1 while the *Baseline Conditions* constitute the Principal's considered estimation of the conditions and requirements that may be imposed under the *Planning Approval*, the terms of any planning approval which the Minister for Planning and Public Spaces may issue arise from the exercise of a statutory discretion in accordance with the terms of the *EP&A Act*;
 - .2 the exercise of the statutory discretion under the *EP&A Act* rests with the Minister for Planning and Public Spaces, whose decision will be informed by a detailed environmental impact assessment; and
 - .3 its tender was based on the *Baseline Conditions* and the terms of the Contract

21A.3 Issue of the Planning Approval

- .1 The Principal will give notice to the Contractor, together with a copy of the *Planning Approval*, within 2 *Business Days* of the *Planning Approval* being issued by the Minister for Planning and Public Spaces.
- .2 The Principal must:
 - .1 within 20 *Business Days* of the *Planning Approval* being issued, provide the Contractor with a revised version of Schedule 21 (with such revisions as are reasonable and necessary to reflect the terms of the *Planning Approval*) which will identify the requirements of the *Planning Approval* the Contractor must comply with; and
 - .2 instruct a *Variation* to ensure the Contractor can comply with the revised version of Schedule 21 and clause 48 applies to the *Variation* except the value any unavoidable additional work that the Contractor is required to carry out is to be determined or assessed as the sum of the additional reasonable direct cost to the Contractor (provided that no item cost claimed by the Contractor will exceed the relevant rate for labour, plant, *Materials*, services and other items as provided in Schedule 8 (Daywork) for any such items).

21A.4 Early Works

- .1 Prior to the Principal's notice being issued under clause 21A.3.1:
 - .1 the Contractor may only carry out the *Early Works* and must not carry out any other *Works*, *Temporary Works* or any other activities under this Contract without the prior written approval of the Principal;
 - .2 without limiting clause 12.2, the Contractor must carry out the *Early Works* in accordance with the *Sydney International Speedway Early Works – Environmental Assessment Checklist (Exempt Development permissible without consent)* and the *Western Sydney Parklands State Environmental Planning Policy*;
 - .3 the Principal's liability to the Contractor in respect of the *Early Works* and any other activities carried out by the Contractor during this period will be limited to the *Early Works Sum*; and
 - .4 where the period in which the *Early Works* are performed [REDACTED], the Principal may require the Contractor to continue to perform the *Early Works* and in such event, the Contractor will be entitled to claim:
 - .1 an extension of time in accordance with clause 50; and
 - .2 delay costs in accordance with clause 51.



Management duties

22 Time management

Contract Program

- .1 The Contractor must submit a *Contract Program* to the Principal within 14 days after the Date of Contract. If the Principal so instructs, the program submitted by the Contractor with its tender is the *Contract Program* until the Contractor submits a *Contract Program*.
- .2 The *Contract Program* must:
 - .1 reflect *Scheduled Progress* and show the *Contractual Completion Dates* for the whole of the Works and all *Milestones*;
 - .2 show, and be consistent with, all constraints on access, performance and coordination;
 - .3 show the start and finish dates or, in the case of future activities, the intended start and finish dates, of all construction activities and other significant events;
 - .4 show the logical relationship between activities and events, the sequence of activities which constitutes the critical path or paths, time leads and lags, and resource and other constraints;
 - .5 show the dates when the Contractor will require information, documents, instructions or materials from the Principal and the dates when the Contractor will provide information or documents to the Principal; these dates must be consistent with dates which the Principal could reasonably have anticipated at the Date of Contract;
 - .6 be accurate, comprehensive and complete;
 - .7 comply with any other specific requirements of the Contract, including any specified format or software; and
 - .8 comply with any reasonable requirements of the Principal.
- .3 The Contractor must update the *Contract Program* at the following times:
 - .1 at least once every month; and
 - .2 whenever there is a significant change in scheduling; and
 - .3 within 7 days after receiving an instruction from the Principal to do so; and
 - .4 when required to comply with clause 50.4; and
 - .5 following the granting of an extension of time under clause 50.
- .4 Updated *Contract Programs* must take account of the Contractor's actual progress to the date of the update (status date), and must be submitted promptly to the Principal.
- .5 The Principal need not respond to the Contractor about a *Contract Program*, but if the Principal advises the Contractor that the *Contract Program* submitted does not comply with the requirements of the Contract, or otherwise instructs the Contractor, the Contractor must revise the *Contract Program* so that it complies with the requirements of the Contract and the instructions of the Principal, and must submit the revised *Contract Program* to the Principal within 7 days after receiving the Principal's advice or instructions.

Scheduled Progress

- .6 The Contractor must carry out all work in connection with the Contract so as to achieve *Scheduled Progress*.
- .7 Whenever requested, the Contractor must demonstrate to the Principal that it is achieving *Scheduled Progress*.
- .8 If the Contractor does not demonstrate to the Principal that it is achieving *Scheduled Progress*, the Principal may instruct the Contractor to take all reasonable steps to achieve *Scheduled Progress* at its own cost. An instruction under this clause is not an *Acceleration Notice*.

Minimisation of delay

- .9 When there is any change in work in connection with the Contract, or the program or sequence of the work, the Contractor must take all reasonable steps to:
 - .1 carry out any additional work concurrently with other work; and
 - .2 otherwise minimise any effects on the time for *Completion*.



23 Intellectual property

- .1 The Contractor assigns or otherwise transfers *Intellectual Property Rights* in all *Data* created specifically for the Contract, upon its creation, to the Principal [REDACTED]
[REDACTED] The Contractor, at its own cost, will do all things necessary, including execution of all necessary documentation, to vest ownership of all such *Intellectual Property Rights* in the Principal [REDACTED]
- .2 The Contractor must include provisions in all Subcontracts and agreements with Consultants to ensure that *Intellectual Property Rights* in all *Data* created specifically for the Contract are, upon their creation, assigned or otherwise transferred to the Principal [REDACTED]
[REDACTED]
- .3 The Contractor, Subcontractors and Consultants are granted royalty-free licences to use the *Data* for the purposes of the Contract.
- .4 For *Data* not created specifically for the Contract but required to use, operate, maintain, modify and decommission the Works, the Contractor must obtain irrevocable royalty-free licences to allow the Principal [REDACTED] to use that *Data* for those purposes, including a right to sub-licence.
- .5 Licences referred to in clause 23.4 apply in perpetuity from the Date of Contract or (if the *Data* has not then been created) from the date the *Data* is created.
- .6 The Contractor is responsible for the timely payment of all royalties and fees for *Intellectual Property Rights* it uses in connection with the Contract and the Works.
- .7 The Contractor indemnifies the Principal against any claims (including *Claims*), actions, loss or damage arising out of any failure to make such payments or any infringement or alleged infringement of *Intellectual Property Rights* in relation to *Data* created or provided by the Contractor in connection with the Contract, including any related design, materials, documents or methods of working, or otherwise in the course of the Contractor's performance of the Contract.
- .8 The Contractor warrants that the *Data* created or provided by the Contractor under the Contract, including any related design, materials, documents and methods of working, will not infringe any *Intellectual Property Rights*.
- .9 The Contractor must ensure that *Data* created specifically for the Contract by or for the Contractor is only used for the purposes of the Contract
- .10 The Principal may grant the Contractor a royalty-free licence to use innovations developed during the course of the Contract for purposes agreed by the Principal.

24 Confidentiality

- .1 The Contractor must maintain all *Data* secret and confidential and disclose it only to those persons to whom disclosure is reasonably necessary for the purposes of the Contract. This provision does not relate to *Data* which is generally available to the public or which is required to be disclosed by law.

25 Media releases and enquiries

- .1 The Contractor must obtain the Principal's prior written consent to:
 - .1 any press release or promotional advertisement it wishes to make or place concerning the Contract, the Principal or the Works; and
 - .2 the release for publication in any media of any information concerning the Contract, the Principal or the Works.
- .2 The Contractor must refer any media enquiries concerning the Contract, the Principal or the Works to the Principal. The Contractor must not respond to any media enquiry without the Principal's prior written consent.
- .3 The Contractor must ensure that all Consultants, Subcontractors and Suppliers comply with clause 25 and obtain the Principal's prior written consent (through the Contractor) before doing anything which, if done by the Contractor, would require the Principal's prior written consent.
- .4 The Principal may give or refuse its consent, in its absolute discretion.



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26 Care of people, property and the environment, indemnities and limitations

Obligations of care

- .1 The Contractor is responsible for all of the following:
 - .1 preventing personal injury, illness or death;
 - .2 preventing loss or damage to the Site and the Works;
 - .3 preventing loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works;
 - .4 locating and caring for existing services;
 - .5 repairing or making good loss or damage to the Works and the Site; and
 - .6 bearing the cost of repairing, or making good, loss or damage to adjoining and other properties and the environment arising in connection with carrying out the Works.
- .2 If, in the opinion of the Principal, urgent action is required to avoid death, injury, illness, loss or damage, and the Contractor does not take the necessary action immediately when the Principal requests it, the Principal may take the action (without relieving the Contractor of its obligations), at the Contractor's cost, and the Principal's costs of doing so will be recoverable as a deduction from the *Contract Price*.

Indemnities for property, personal injury, illness or death

- .3 The Contractor indemnifies the Principal against loss or damage to:
 - .1 the Works, from the date the Contractor begins carrying out the Works; and
 - .2 the Site and anything brought onto the Site for the purposes of the Contract from the date the Contractor is given access to the Site, or the relevant part of the Site, until and including the *Actual Completion Date* of the whole of the Works except that, in respect of any part of the Works which is occupied or taken into use by the Principal under clause 64, this indemnity ceases when that part is occupied or taken into use and the indemnity in clause 26.4 then applies as if the *Actual Completion Date* had been achieved with respect to that part.
- .4 After the *Actual Completion Date* of the whole of the Works, the Contractor indemnifies the Principal against loss or damage to the Works, the Site, and anything brought onto the Site for the purposes of the Contract:
 - .1 arising out of carrying out its obligations under the Contract, including carrying out *Variations*, making good *Defects* and removing *Materials* from the Site; or
 - .2 which occurred while the Contractor indemnified the Principal under clause 26.3.
- .5 The Contractor's liability for loss or damage under clauses 26.3 and 26.4 is reduced to the extent that the loss or damage is contributed to or caused by:
 - .1 any act or omission of the Principal;
 - .2 any risk specifically excepted in the Contract;
 - .3 war, invasion, act of foreign enemies, hostilities, (whether war be declared or not), act of terrorism, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Government or public authority; or
 - .4 ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or any of its Subcontractors, Consultants or Suppliers.
- .6 The Contractor indemnifies the Principal against the following where they arise in connection with carrying out the Works:
 - .1 all damage to, loss or destruction of, or loss of use of or access to (whether total or partial) property other than property covered under clause 26.3;
 - .2 all claims (including *Claims*), actions, other liability, and loss, including loss of use, in connection with property other than property covered under clause 26.3; and
 - .3 all claims (including *Claims*), actions, other liability, and loss in connection with personal injury, illness or death.



- .7 The Contractor's liability to indemnify the Principal under clause 26.6 is reduced to the extent that the loss, damage, injury, illness or death is contributed to or caused by an act or omission by the Principal.

Limitation of liability

- .8 Subject to clauses 26.9, 26.10 and 26.10A, the Contractor's total liability to the Principal under the Contract is:
- .1 in respect of any event that occurs or a liability that arises for which insurance is required by clause 27 (Risk Event) is limited to the sum of the total aggregate limits of liability or sums insured (Policy Limits) of all insurances applicable to the Risk Event. The amount which represents the Contractor's total liability is determined by reference to the Policy Limits of the insurances, whether or not the insurance actually provides cover for the Risk Event; and
 - .2 in respect of any other event that occurs or a liability that arises, the amount stated in *Contract Information* item 19.
- .9 Subject to clause 26.10, clause 26.8 does not limit the Contractor's liability:
- .1 in respect of liability which:
 - .1 cannot be limited at law;
 - .2 arises under clause 23;
 - .3 is due to the Contractor's wilful or reckless misconduct, negligence, fraud or criminal conduct; or
 - .4 arises in connection with the Contractor's abandonment of its obligations under the Contract;
 - .2 to the extent that any insurer under a policy referred to in clauses 27.12 to 27.15 inclusive seeks to exercise a right of subrogation against the Contractor;
 - .3 to the extent that (ignoring the application of clause 26.8), the Contractor is entitled to recover that liability from any other third party (including any *Subcontractor*), or would have been entitled to recover for that liability but for any act or omission of the Contractor;
 - .4 to pay interest or other amounts which the Contract expressly treats as a recoverable debt;
 - .5 not used; or
 - .6 for personal injury (including death) or illness to any person,
- and those liabilities will not be included in any calculation of the Contractor's total liability under clause 26.8.

Classes of excluded loss

- .10 [REDACTED] the Contractor is not liable to the Principal for:
- .1 loss of business opportunity;
 - .2 loss of goodwill;
 - .3 loss of contracts;
 - .4 loss arising from business interruption;
 - .5 loss of or corruption of data;
 - .6 loss of anticipated savings; or
 - .7 the cost of capital or other financing costs,
- which loss or cost arises due to the performance of the work under the Contract, except to the extent that such loss or cost arises out of or in connection with:
- .8 a breach by the Contractor of the Contract; or
 - .9 the Contractor's negligence.

.10A [REDACTED]

- .11 The Principal will not be liable to the Contractor for:



- .1 loss of business opportunity;
- .2 loss of goodwill;
- .3 loss of contract;
- .4 loss arising from business interruption;
- .5 loss of or corruption of data;
- .6 loss of anticipated savings; or
- .7 the cost of capital or other financing costs,

arising out of or in connection with the performance of the work under the Contract or the Contract, except to the extent that such loss or cost arises out of or in connection with:

- .8 a breach by the Principal of the Contract; or
- .9 the Principal's negligence.

Exclusion of proportionate liability

- .12 If Contract Information item 20 states that proportionate liability is excluded from the Contract then, to the extent permitted by law, the operation of Part 4 of the *Civil Liability Act 2002* (NSW), and any equivalent statutory provision, is excluded in relation to all rights, obligations and liabilities in connection with the Contract whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.

27 Insurance

Principal Arranged Insurance

- .1 The Principal has effected an insurance policy or policies to cover the Principal, the Contractor and all *Subcontractors* employed from time to time in relation to the Works for their respective rights, interests and liabilities with respect to:
 - .1 liability for loss or damage referred to in clauses 26.3 and 26.4, including loss or damage to *Materials* (excluding constructional plant, motor vehicles, appliances and things (including scaffolding, formwork and the like), clothing, tools and sundry equipment) of the Contractor or any *Subcontractor* used in or in relation to the carrying out of the Works or entrusted to the Contractor by the Principal for that purpose, but not forming or intended to form part of the Works; and
 - .2 liabilities to third parties of the type set out in clauses 26.1 and 26.6 and subject to the maximum limits of liability set out in the policy documents referred to in Schedule 10. Asbestos liability cover will be included within this policy, as specified in Contract Information item 24A.
- .2 The Principal may in its discretion have other insureds named or included in the policy or policies referred to in clauses 27.1.1 and 27.1.2, including any other government entity with an interest in the Works or the Site.
- .3 The policy or policies will be maintained by the Principal until the issue of the *Final Payment Schedule*.
- .4 Before the earlier of:
 - .1 10 Business Days after the Date of Contract; or
 - .2 the Contractor commencing to carry out any part of the Works,
 the Contractor must contact the Principal and must provide all details reasonably requested for the purpose of the insurances referred to in clauses 27.1.1 and 27.1.2.
- .5 The Contractor acknowledges that extracts of the policy terms have been exhibited to the Contractor prior to the Date of Contract and are attached as Schedule 10. Full copies of the policy terms are available for inspection by arrangement with the Principal's insurer.
- .6 The Contractor acknowledges that the insurance cover under clauses 27.1.1 and 27.1.2 is subject to exclusions. These are set out in the policy terms referred to in clause 27.5 and include the following exclusions:
 - .1 damages for delay in completing or for the failure to complete the Works;
 - .2 loss or damage resulting from ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel;
 - .3 loss or damage resulting from the risks listed in clauses 26.5.2 and 26.5.3; and



- .4 matters required to be insured under clause 27.14.
- .7 The Contractor shall be responsible for paying or bearing all excesses in relation to insured matters under any policy referred to in clauses 27.1.1 and 27.1.2 in accordance with the policy terms. The Contractor may effect its own insurance to cover the amount of any excess.
- .8 The Contractor acknowledges that:
 - .1 the insurances referred to in clauses 27.1.1 and 27.1.2 have been obtained at the Principal's cost; and
 - .2 the Contractor shall not be entitled to payment of any allowance for the cost of obtaining such insurances or any additional insurance cover it considers necessary in relation to the subject matter of that insurance.
- .9 The obtaining of insurance by the Principal in accordance with this clause shall not reduce, vary, or otherwise affect the Contractor's liabilities and obligations pursuant to clause 26, warranties given or otherwise under the Contract or in connection with the Works.
- .10 If there is a claim for significant damage or destruction under the policy of insurance referred to in clause 27.1.1 (as determined by the Principal, acting reasonably):
 - .1 all settlement amounts must be paid by the insurer directly to the Principal;
 - .2 the Principal may decide to have the Works reinstated, or may decide not to proceed with the Works, without creating any default by the Principal under the Contract; and
 - .3 the Contractor must reinstate the Works if instructed to by the Principal and except as otherwise provided in the Contract may only make a claim for payment for reinstatement of the Works up to the amount of any insurance settlement
- .11 The provisions of clauses 27.22 and 27.23 also apply to insurance arranged by the Principal.

Contractor Insurance

- .12 Before starting any work for or in connection with the Contract, the Contractor must arrange and have in place insurance (irrespective of whether it has then been invoiced by or on behalf of the insurer for the cost of the insurance premiums) for the minimum amounts specified in the applicable Contract Information item and pay all premiums for:
 - .1 Workers Compensation and related liability insurance in accordance with the requirements of the *Workers Compensation Act 1987*, as specified in Contract Information item 23, and where possible, extended to indemnify the Principal against statutory liability to persons employed by the Contractor;
 - .2 Professional Indemnity insurance, if required by Contract Information item 24 in the amount (if any) set out in Contract Information item 24; and
 - .3 either comprehensive motor vehicle/mobile plant insurance or third party property damage insurance, as specified in Contract Information item 25A, and where possible in the joint names of the Principal, the Contractor and all *Subcontractors* employed from time to time in relation to the Works for their respective rights and interests to cover their liabilities to third parties in connection with the use of each motor vehicle in relation to the Contract.
- .13 The Contractor must ensure that every *Subcontractor*, *Supplier* and *Consultant* is insured at all times for Workers Compensation and related liability in accordance with the requirements of the *Workers Compensation Act 1987*.
- .14 If any work for or in connection with the Contract includes the use of waterborne craft of 12 or more metres in length, the Contractor must pay all premiums and insure under a marine liability policy and a marine protection and indemnity policy to cover the use of such craft, as specified in Contract Information item 25.
- .15 The Contractor must obtain the written approval of the Principal for all of its insurers and for the terms and conditions of the policies and provide copies of the approved policies to the Principal.
- .16 The Contractor must ensure that each policy required to be effected and maintained under the Contract or under *Subcontracts* is in effect for the relevant period specified in the applicable Contract Information item.
- .17 All policies must:
 - .1 require the insurer to notify the Principal (other than in relation to Workers Compensation and professional indemnity) at the same time as the insurer receives or gives any notice



concerning the policy, and at least 7 days before any proposed cancellation of a policy;
and

- .2 provide that a notice of claim given to the insurer by the Principal, the Contractor, or a *Subcontractor, Supplier or Consultant* will be accepted by the insurer as a notice of claim given by all of the insured.
- .18 The policy referred to in clause 27.14 must be in the name of the Contractor with the Principal as an additional named insured and must cover the Contractor, the Principal, the *Principal's Authorised Person* and all *Subcontractors, Suppliers and Consultants* employed from time to time for or in relation to the Contract and the Works for their respective rights and interests and cover their liabilities to third parties.

The policy must also include a cross-liability clause in which the insurer agrees to waive all rights of subrogation or action against any of the persons covered and for the purpose of which the insurer accepts the term 'insured' as applying to each of the persons covered as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result).

The Contractor must:

- .1 ensure that in respect of each insurance required to be effected or taken out as required by clause 27 by the Contractor or any *Subcontractor, Supplier or Consultant*, it:
 - .1 does not do anything which prejudices any insurance;
 - .2 if necessary, rectifies anything which might prejudice any insurance;
 - .3 reinstates an insurance policy if it lapses;
 - .4 does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Principal;
 - .5 immediately notifies the Principal of any event which may result in an insurance policy lapsing or being cancelled; and
 - .6 gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance;
 - .2 ensure that any insurance required to provide coverage to *Subcontractors* acknowledges that the same coverage applies to *Suppliers and Consultants*;
 - .3 ensure that any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
 - .4 ensure that a notice to the insurer by one insured will be deemed to be notice by all insured parties.
- .19 Before the Contractor starts any work for or in connection with the Contract and whenever requested in writing by the Principal, the Contractor must supply proof that all insurance policies required under the Contract are current.
- .20 The Principal need not make any payment under the Contract to the Contractor unless the Contractor has complied with and continues to comply with clause 27.19.
- .21 If the Contractor fails to comply with clauses 27.12, 27.14, and 27.19, the Principal may effect and maintain that insurance and pay the necessary premiums. The Principal may recover from the Contractor the cost of the premiums and the Principal's reasonable costs of effecting and maintaining the insurance, as a debt due by the Contractor.

Insurance notification and liability

- .22 The Contractor must, as soon as practicable, inform the Principal in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by the Contract and must ensure that the Principal is kept fully informed of subsequent action and developments concerning the claim. The Contractor must take such steps as are necessary or appropriate to ensure that a *Subcontractor, Supplier or Consultant* (as applicable) will, in respect to an event or claim of a like nature arising out of or relating to the operations or responsibilities of the *Subcontractor, Supplier or Consultant* (as applicable), take in relation to the Principal similar action to that which the Contractor is required to take under this clause 27.22.



- .23 The requirements for insurance to be effected and maintained do not affect or limit the Contractor's liabilities (including, without limitation, indemnities given under clause 26) or other obligations under the Contract.

Subcontractors, Suppliers and Consultants

28 Subcontractor relationships

- .1 The Contractor is solely responsible for all Subcontractors (including Subcontractors engaged in accordance with clause 29.3) and is liable for their acts and omissions as if such acts or omissions were those of the Contractor. Subcontracting of any obligation under the Contract does not affect the Contractor's obligations or liability under the Contract
- .2 The Contractor indemnifies the Principal against all claims (including *Claims*), actions, loss or damage and all other liability arising out of any acts or omissions of Subcontractors.
- .3 The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction:
 - .1 implement a *Subcontractors and Suppliers Proof of Payment Procedure*; and
 - .2 submit the documents required by the *Subcontractors and Suppliers Proof of Payment Procedure*;
in Schedule 17 (Subcontractors and Suppliers Proof of Payment Process).
- .4 If required to implement the *Subcontractors and Suppliers Proof of Payment Procedure*, in addition to implementing the process set out in Schedule 17 (Subcontractors and Suppliers Proof of Payment Process), the Contractor acknowledges and agrees:
 - .1 to pay, within 3 *Business Days* of receiving payment of a *Scheduled Amount*, all outstanding amounts owed to Subcontractors and Suppliers listed in the Contractor's Statement and Supporting Statement for each of its *Payment Claims*;
 - .2 within 5 *Business Days* of receiving payment of a *Scheduled Amount* to:
 - .1 provide proof, to the Principal's satisfaction, of payment of all outstanding amounts to Subcontractors and Suppliers; and
 - .2 confirm that no monies remain outstanding to Subcontractors and Suppliers in respect of each *Payment Claim*;
 - .3 that if it fails to provide the required proof of payment:
 - .1 it will issue, no later than the 5th *Business Day* from receipt of payment from the Principal, an irrevocable payment direction in the form of an irrevocable authority in writing to the Principal in favour of each unpaid Subcontractor and Supplier identified on the Contractor's Statement and Supporting Statement; and
 - .2 that the Principal will be entitled to rely on any irrevocable payment directions as a reason for withholding an amount from the Contractor in the next month's *Payment Schedule* and
 - .4 that if it fails to either provide the required proof of payment or issue an irrevocable payment direction as required by this clause 28 the Principal may have recourse to the *Undertaking* provided under clause 33.
- .5 The Contractor must include in every Subcontract:
 - .1 details of the Contractor's obligations in connection with the Contract which are to be carried out by the Subcontractor;
 - .2 the relevant provisions of clauses 13, 14, 15 (clause 15.6 must be included), 23, 24 and 25;
 - .3 a requirement to implement a *Subcontractors and Suppliers Proof of Payment Procedure* if instructed by the Principal;
 - .4 consent for the Subcontract to be novated to the Principal (or its nominee) [REDACTED] if required by the Principal in the circumstances contemplated by clause 73.6.3; and
 - .5 when possible, a right of termination for convenience.
- .6 In addition, the Contractor must include:
 - .1 in each Subcontract valued at or over the amount stated in Contract Information item 29:



- .1 a requirement to implement a *Subcontractors and Suppliers Proof of Payment Procedure* when instructed by the Principal; and
- .2 written provisions giving effect to the requirements set out in Schedule 9 (Subcontract requirements).
- .2 in each Subcontract valued below the amount stated in Contract Information item 29, a written provision requiring the Contractor to pay the Subcontractor within the number of days stated in Contract Information item 30 after the Subcontractor has claimed payment in accordance with the Subcontract.
- .7 The Contractor must immediately inform the Principal and provide a copy of the relevant documents if it receives:
 - .1 a *Contractor's Statement and Supporting Statement* from a Subcontractor or Supplier with a payment claim (submitted as required by the *Building and Construction Industry Security of Payment Act 1999 (NSW)*) that identifies as unpaid any subcontractor or supplier to a Subcontractor or Supplier;
 - .2 a payment withholding request (within the meaning of and served under the *Building and Construction Industry Security of Payment Act 1999 (NSW)*); or
 - .3 any other written advice received by the Contractor in respect to non-payment of a subcontractor or a supplier to a Subcontractor and Supplier.
- .8 The Contractor agrees that if required by the Principal it will, at no additional cost and to the Principal's reasonable satisfaction, instruct a Subcontractor or a Supplier (for a Subcontract valued at or over the amount stated in Contract Information item 29):
 - .1 to implement a *Subcontractors and Suppliers Proof of Payment Procedure*; and
 - .2 submit the documents required by the *Subcontractors and Suppliers Proof of Payment Procedure*,
as set out in Schedule 17 (Subcontractors and Suppliers Proof of Payment Process).

29 Engaging Subcontractors

- .1 The Contractor must not subcontract the whole of the Works, but may subcontract parts of the Works in accordance with clauses 28 and 29.
- .2 If requested, before engaging any Subcontractor and at any other time, the Contractor must provide the Principal with the name and address of the proposed Subcontractor. The Principal may object to the appointment of any proposed Subcontractor on reasonable grounds. If the Principal objects to any proposed Subcontractor, the Contractor must propose another Subcontractor.
- .3 If Contract Information item 31 includes a list of *Preferred Subcontractors* for a particular class of work, the Contractor must only engage a Subcontractor from that list for work of that class. If no *Preferred Subcontractor* on the list will subcontract to carry out the work, the Contractor must provide a revised list and the provisions of clause 29.2 will apply.
- .4 If instructed by the Principal, the Contractor must accept novations of the contracts of specified Principal's consultants, contractors or suppliers, on the terms specified in the Contract.

30 Subcontractor warranties

- .1 For each trade, item or area of work listed in Contract Information item 32, the Contractor must obtain from each relevant Subcontractor, before that Subcontractor completes its work, a warranty to the Principal in the form of Schedule 1 (Subcontractor's Warranty).
- .2 Clause 30.1 does not affect any of the Contractor's other obligations under the Contract.

31 Consultant and Supplier relationships

- .1 Clauses 28.1 to 28.6 inclusive and 29 apply to Consultants in the same way they apply to Subcontractors.
- .2 Clauses 28, 29 and 30 apply to Suppliers in the same way they apply to Subcontractors, unless the context requires otherwise.



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31A Details of Subcontractors, Consultants and Suppliers

- .1 The Contractor must keep the Principal informed at all times of the name, address, relevant contact and telephone number of each Subcontractor, Consultant or Supplier engaged by the Contractor in connection with the project or the Works.
- .2 The Contractor must update and submit the *Subcontractors, Suppliers and Consultants Register* (Attachment 8) to the Principal each month.
- .3 In addition to the requirements of clause 31A.1 and 31A.2, the Principal may request that the Contractor provide it with any other information as may reasonably be required by the Principal in relation to such contracts with each Subcontractor, Consultant or Supplier.

31B Key Personnel

- .1 The Contractor must employ the individuals nominated by the Contractor and listed in Contract Information item 9A in the positions specified or equivalent positions and subject to clause 31B.2 must not replace the individuals referred to in Contract Information item 9A without the *Principal's Authorised Person's* prior written consent which will not be unreasonably withheld.
- .2 If any of the individuals referred to in Contract Information item 9A:
 - .1 dies;
 - .2 becomes unable to continue in their positions due to illness; or
 - .3 resigns from the employment of the Contractor (other than to accept other employment with the Contractor or any "related body corporate" of the Contractor (as that term is defined in section 9 of the *Corporations Act 2001* (Cth))),the Contractor must replace them with personnel of at least equivalent experience, ability, knowledge and expertise approved by the *Principal's Authorised Person*.
- .3 The *Principal's Authorised Person* may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in Contract Information item 9A from the Site).
- .4 The Contractor must then cease to engage that person involved in its activities in respect of the Works and appoint a replacement.



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Carrying out the Works

Starting

32 Start-up workshop

- .1 The Principal must convene a start-up workshop within 28 days after the Date of Contract or such other period as the parties agree.
- .2 The parties must attend the start-up workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.
- .3 The objective of the start-up workshop is to promote a culture of co-operation and teamwork for the management of the Contract. The parties agree to conduct the workshop collaboratively and in accordance with Attachment 1 so as to achieve this objective and the *Project Values*.

33 Undertakings and Parent Company Guarantee

- .1 Within 14 days after the Date of Contract (and before starting work on the Site), the Contractor must give the Principal the *Completion Undertaking* and the *Post-Completion Undertaking* for amounts calculated in accordance with Contract Information items 33 and 34 respectively. The *Undertakings* must be in the form specified in Schedule 2 (Undertaking).
- .2 Unless the Principal has made or intends to make a demand against an *Undertaking*, the Principal must return the *Undertakings* (or, if applicable, the balance remaining after a demand on the *Undertakings*) to the Contractor as follows:
 - .1 the *Completion Undertaking* within 14 days after the *Actual Completion Date* of the whole of the Works; and
 - .2 the *Post-Completion Undertaking* at the end of the period stated in Contract Information item 35 after the *Actual Completion Date* of the whole of the Works provided that at that time:
 - .1 there are no outstanding *Defects* or unresolved *Issues*; and
 - .2 there are no moneys of any nature, including debts, damages and indemnity claims, payable by the Contractor to the Principal.
- .3 When any of the circumstances in clause 33.2.2 apply, the *Post-Completion Undertaking* will be returned when those circumstances no longer apply.
- .4 When *Completion* of a *Milestone* is achieved, the Principal may (in its absolute discretion) agree to a proportionate reduction in the amount held as *Undertakings*, based on the proportion of the Works included in the *Milestone*.
- .5 *Undertakings* must be provided by a bank, building society, credit union or insurance company acceptable to the Principal.
- .6 The Contractor must not take any steps to prevent the Principal making a demand against the *Undertakings*, or to prevent the provider of an *Undertaking* from complying with the *Undertaking* or any demand by the Principal.
- .7 If Contract Information item 35B specifies that a *Parent Company Guarantee* is required:
 - .1 subject to clause 33.7.2, the Contractor must within 14 days after the Date of Contract, give the Principal a *Parent Company Guarantee* duly executed by the *Parent Company Guarantor*;
 - .2 if the Contractor comprises more than one entity, each entity comprising the Contractor must within 14 days after the Date of Contract, give the Principal a *Parent Company Guarantee* duly executed by its *Parent Company Guarantor*; and
 - .3 if required by the Principal, the Contractor (and where relevant, each entity comprising the Contractor) must also provide evidence satisfactory to the Principal (in its sole discretion, which, where a *Parent Company Guarantor* is domiciled in a foreign jurisdiction, may include a requirement for a legal opinion in a form acceptable to the Principal from a foreign law firm acceptable to the Principal) that the *Parent Company Guarantor* has properly executed the *Parent Company Guarantee* and is legally bound by it



34 Site access

- .1 The Principal must give the Contractor access to sufficient areas of the *Site* to allow the Contractor to start work by the later of:
 - .1 when the Contractor has complied with relevant requirements of the Contract; and
 - .2 the time stated in Contract Information item 13.
- .2 If the Principal does not give the Contractor access to the *Site* as required by clause 34.1, the Contractor has no remedy or entitlement other than:
 - .1 an extension of time in accordance with clause 50 and consequent delay costs due in accordance with clause 51; and
 - .2 when an entitlement arises under clause 75, to terminate the Contract.
- .3 The Contractor must permit the Principal [REDACTED], including their authorised employees and agents, to have access to the *Site* and to the premises of the Contractor at all reasonable times and must arrange for equivalent access to premises of Subcontractors, Suppliers and Consultants.
- .3A The Principal [REDACTED] may require access for any reasonable purpose connected with the Contract, including surveillance, audit, inspection, *Testing*, certification and recording of information.
- .4 Without limiting any other requirement, the Contractor must meet all its obligations under the Contract to provide *Undertakings* and effect insurance before it is entitled to start any work for or in connection with the Contract.
- .5 [REDACTED]
- .6 [REDACTED]

35 Engagement and role of Valuer

- .1 If Contract Information item 50A states that a Valuer must be engaged or if the parties agree to engage a Valuer, then:
 - .1 the parties, acting reasonably, must endeavour to agree in writing on the identity of the Valuer within 21 days after the Date of Contract or, failing agreement, the Principal must request the person named in Contract Information item 50B to select the Valuer;
 - .2 within a further 21 days after the date of selection of the Valuer, the Principal and the Contractor must jointly engage the Valuer using the form in Schedule 4 (Agreement with Valuer); and
 - .3 a Valuer's certificate will be final and binding unless the net amount of the Valuer's determination (excluding any amount for interest) exceeds the amount stated in Contract Information item 50C, in which case either party may commence litigation in respect of the matters referred to the Valuer, but only within 56 days after receiving the determination.
- .2 The parties may agree at any time to engage a Valuer in accordance with this clause, either for a single valuation or on an ongoing basis. When the parties agree to engage a Valuer after the Date of Contract, "Date of Contract" for the purposes of clause 35.1.1 refers to the date the parties agree to appoint the Valuer.

The Site

36 Site information

- .1 The parties acknowledge that:



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- .1 at the Date of Contract, the Principal has provided in good faith the information concerning the Site identified in Contract Information items 36A and 36B;
 - .2 the information identified in Contract Information items 36A and 36B do not form part of the Contract;
 - .3 the Principal does not guarantee the completeness of the information identified in Contract Information item 36A;
 - .4 the Principal does not guarantee the accuracy, quality or completeness of the information identified in Contract Information item 36B; and
 - .5 the Principal has no duty of care in connection with information identified in Contract Information item 36B, or with having provided it.
- .2 The Contractor warrants that it:
- .1 has made its own inquiries concerning the Site, including checking information provided by the Principal;
 - .2 has examined the Site and surrounds and satisfied itself through its own investigation as to the *Site Conditions* which might reasonably be expected;
 - .3 has made its own assessment of the risks, contingencies and other circumstances which might affect the work in connection with the Contract and has allowed fully for these in the *Contract Price* (subject to clause 37);
 - .4 did not in any way rely on the completeness of the information identified in Contract Information item 36A other than as a guide for ascertaining what further Site information the Contractor considers it needs to obtain;
 - .5 did not rely on the accuracy, quality or completeness of information identified in Contract Information item 36B; and
 - .6 has made its own interpretations, deductions and conclusions and did not in any way rely on interpretations, deductions and conclusions made by or for the Principal.

37 Site Conditions

- .1 The Contractor is solely responsible for dealing with any adverse *Site Conditions*:
 - .1 so as to minimise delay;
 - .2 so as to minimise increased costs; and
 - .3 without awaiting any instruction from the Principal,
 but must comply with any instruction given by the Principal.
- .2 Clauses 37.3 to 37.8 do not apply if it is stated in Contract Information item 37 that the Contractor is to bear the risk of adverse *Site Conditions*.
- .3 Subject to clause 37.2, if the Contractor becomes aware of adverse *Site Conditions* that differ materially from those it should reasonably have expected at close of tenders, the Contractor must notify the Principal in writing as soon as possible and in any event within 7 days after becoming aware of those *Site Conditions*. Where practicable, the notification should be given before the *Site Conditions* are disturbed. The notification must include details of:
 - .1 the *Site Conditions* the Contractor claims are adverse;
 - .2 the manner in which the Contractor contends they differ materially from the *Site Conditions* the Contractor should reasonably have expected at close of tenders (having regard to the warranty in clause 36.2), including any information supporting this contention;
 - .3 the effect on the Works;
 - .4 the effect on achieving *Completion*;
 - .5 the additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
 - .6 any other matters the Contractor considers relevant.
- .4 The Principal may request the Contractor to provide further information about the matters notified under clause 37.3.
- .5 After considering the Contractor's notification under clause 37.3, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 37.3.1 and 37.3.2 as



to the nature of the conditions encountered and whether or not the Contractor should reasonably have expected them.

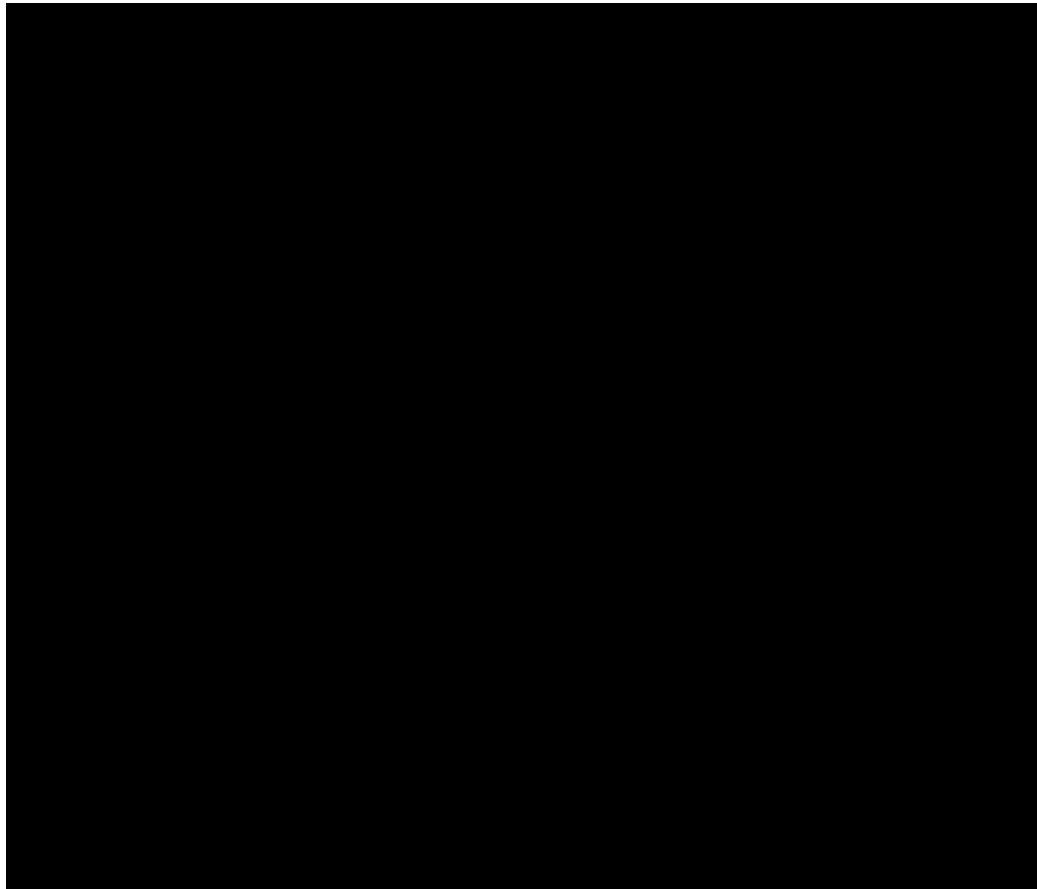
- .6 If the Principal agrees that there are adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders and the Contractor has given the notice required by clause 37.3:

.1

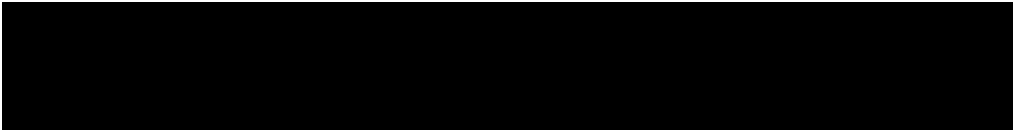
- .1 the parties may agree in writing as to the effects of the unexpected adverse *Site Conditions* (including any *Variation* necessary), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed;
- .2 if the parties are unable to agree in writing as to the effects of the unexpected adverse *Site Condition*, the Principal may instruct a *Variation* and clause 48 applies to the *Variation*;
- .3 in addition to the entitlements the Contractor has as a result of any *Variation* instructed under clause 37.6.1.2, the Contractor may also claim:
 - .1 an extension of time in accordance with clause 50 and any consequent delay costs due under clause 51, for any delay incurred by it as a result of the unexpected adverse *Site Conditions* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*, but excluding any costs included in the valuation of the *Variation*; and
- .4 if no *Variation* is instructed in clause 37.6.2, the Contractor may claim:
 - .1 an extension of time in accordance with clause 50 and consequent delay costs due under clause 51; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor as a result of the unexpected adverse *Site Conditions*; and

.2

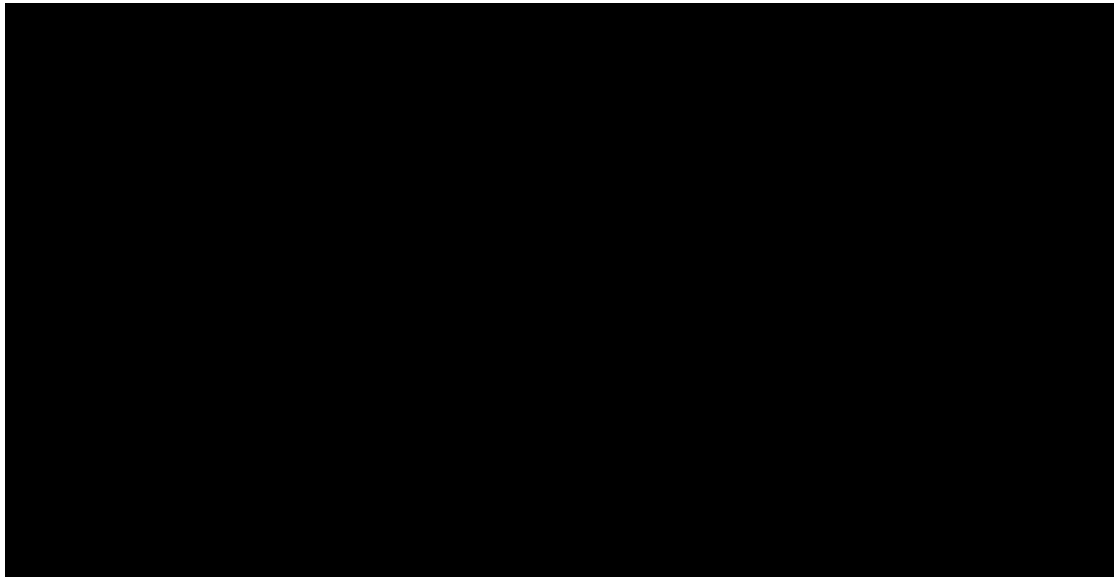




- .7 If the Principal does not agree with the Contractor's contentions under clauses 37.3.1 and 37.3.2, the Contractor may notify an *Issue* under clause 69.
- .8 Costs and delay incurred by the Contractor as a result of unexpected adverse *Site Conditions* before it gave the notice required by clause 37.3 must not be counted in any valuation or extension of time.
- .9



37A

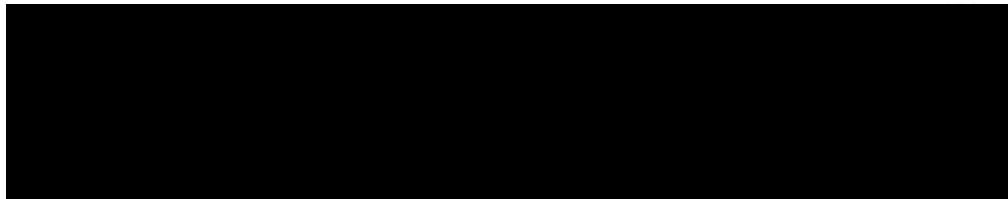




Design

38 Faults in Contract Documents

- .1 The Contractor must check the Contract Documents and immediately, and at least 21 days before the Contractor proposes to use those *Contract Documents*, notify the Principal in writing of *Faults* in any Contract Documents including appropriate details of the *Fault* and how the Contractor considers the *Fault* should be resolved.
- .2 Not used.
- .3 If the Contractor has notified the Principal of a *Fault* in accordance with clause 38.1, then subject to clause 38.4:



- .1 to the extent that the Principal resolves the *Fault* by instructing a *Variation*, clause 48 applies; and
- .2 to the extent that the Principal resolves the *Fault* other than by instructing a *Variation*:
 - .1 if the resolution delays the Contractor in achieving *Completion*, the Contractor may claim an extension of time and delay costs due in



accordance with clause 51, or the Principal may assess a reduction of time in accordance with clause 50; and

- .2 if the resolution results in the Contractor incurring costs that are greater or less than the Contractor should reasonably have foreseen at the close of tenders, the *Contract Price* may be increased or decreased in accordance with clause 47.

- .4 [REDACTED] *Contract Documents* while [REDACTED] was not notified in accordance with clause 38.1, the Contractor is not entitled to any costs for delay or the cost of any aborted work.

39 Design

Design responsibilities

- .1 The Contractor must carry out:
 - .1 Not used;
 - .2 Not used; and
 - .3 full design of elements referred to in Contract Information item 38A.2.
- .2 The Contractor must carry out its design responsibilities so that elements referred to in Contract Information item 38A.2 are fit for the purposes required by the Contract and comply with the other requirements of the Contract.
- .3 Not used.
- .4 Subject to clause 39.6, design or design development does not constitute a *Variation* or reduce the Contractor's design responsibilities under clause 39.

Departures from the design provided by the Principal

- .5 Subject to clause 39.7, the Contractor must not depart from the *Principal's Documents* unless instructed in writing by the Principal.
- .6 If the Contractor considers that some departure from the *Principal's Documents* is desirable to ensure the effectiveness and efficiency of the Works, then the Contractor may propose a *Variation* under clause 48.
- .7 In carrying out the design and design development of the elements referred to in Contract Information item 38A.3, the Contractor may depart from the *Principal's Documents*, but only to the extent that:
 - .1 any such departure does not adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract; and
 - .2 the Contractor has notified the Principal in writing (specifying that it relates to a proposed departure from the design) of the proposed departures and the Principal has not notified the Contractor of any objection within 7 days after receiving the notification.

Design review

- .8 To the extent specified in the Contract, the Contractor must review its design in consultation with persons nominated by the Principal, and develop the design and the *Contractor's Documents* allowing for any matters identified in the review.

.8A [REDACTED]



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.8B

Contractor's Documents

- .9 The Contractor must produce *Contractor's Documents* which:
- .1 will ensure that the elements referred to in Contract Information item 38A.2 are fit for purposes required by the Contract; and
 - .2 meet the requirements of all of the following:
 - .1 the Contract;
 - .2 *Statutory Requirements*;
 - .3 the Principal's instructions;
 - .4 the *National Construction Code* (if stated in Contract Information item 38B) and relevant Australian Standards; and
 - .5 if no other standard is specified in the Contract, good industry standards applicable to the Works.
- .10 The requirements of clause 39.9 are not affected by any *Variation*.

40 Submitting Contractor's Documents

- .1 Unless the Contract provides otherwise, the Contractor must submit *Contractor's Documents* to the Principal at least 21 days before the date the Contractor proposes to use them for procurement, manufacture, fabrication or construction. *Contractor's Documents* must be submitted progressively with sufficient detail to demonstrate what is proposed. The number of copies must be as stated in Contract Information item 28.
- .2 The Principal need not respond to the Contractor about the *Contractor's Documents*.
- .3 If the Principal objects to the *Contractor's Documents*, the Contractor must take the objections into account and discuss them with the Principal. The Contractor must correct any *Fault*, error or omission in the *Contractor's Documents*.
- .4 Nothing the Principal does or omits to do in connection with the *Contractor's Documents* makes the Principal responsible for the *Contractor's Documents*, or prevents the Principal from relying on or enforcing any right under the Contract or otherwise.

41 Innovation

- .1 The Contractor may submit in writing to the Principal, a proposal for changes to the Works, including the design or *Materials*, which are likely to offer significant long-term or repeated improvement and value to the Principal. The Contractor's proposal must include details of:
 - .1 the proposed change to the Works and the proposed change in the Contract Price;
 - .2 potential risks to the Principal and the Contractor if the proposal is accepted;
 - .3 any changes required to *Contractual Completion Dates*;
 - .4 projected changes in operating and maintenance costs;
 - .5 projected changes in whole-of-life costs;
 - .6 any resulting financial benefit to the Principal and any other improvement and value the Principal will receive; and
 - .7 any resulting financial benefit to the Contractor.
- .2 The proposal must not include anything which might adversely affect the construction, operation or maintenance of the Works or their performance or fitness for the purposes required by the Contract.
- .3 The Principal must consider the Contractor's proposal, but is not bound to accept it. The Principal, at its sole discretion, will determine:
 - .1 whether the proposal constitutes innovation; and
 - .2 whether the Principal agrees to accept the proposal.



The Principal may accept the Contractor's proposal subject to conditions.

- .4 No *Claim* will arise out of the Principal's consideration of, or failure to accept, any proposal.
- .5 Before any proposal proceeds, the parties must agree on the financial benefit each will receive.

Construction

42 Setting out the Works and survey

- .1 The Contractor must set out the Works in accordance with the Contract
- .2 The Contractor may request from the Principal any additional information that is necessary for setting out the Works and is not included in the *Contract Documents*. Such a request must be made at least 14 days before the information is planned to be used for setting out. As soon as practicable, the Principal must provide any additional information which it has or can reasonably obtain.
- .3 If at any time the Contractor discovers or is made aware of any error in the location, level, dimensions or alignment of the Works:
 - .1 the Contractor must notify the Principal; and
 - .2 unless instructed otherwise by the Principal, the Contractor must rectify the error to ensure that the Works comply with the Contract
- .4 If an error notified in accordance with clause 42.3.1 is due to a *Fault* in the *Contract Documents*, clause 38 applies.
- .5 The Contractor must give the Principal a copy of a survey showing the Works as constructed on the Site, including the relationship of the Works to any relevant property boundaries, easements (including any right of way) and improvements on the Site. If requested in writing by the Contractor, the Principal may agree in writing that certain matters can be excluded from the survey. The survey must be carried out by a registered surveyor or other surveyor to whom the Principal has no objection.

43 Construction

- .1 The Contractor must supply all *Materials* and construct the Works in accordance with all of the following:
 - .1 the Contract;
 - .2 the *Contractor's Documents*;
 - .3 *Statutory Requirements*;
 - .4 the Principal's instructions;
 - .5 the *National Construction Code* (if stated in Contract Information item 38B) and relevant Australian Standards; and
 - .6 if no other standard is specified in the Contract, good industry standards applicable to the Works.

44 Testing

- .1 The Contractor must *Test*, all parts of the Works that are specified in the Contract to be *Tested*, give the Principal the opportunity to witness the *Tests* by giving reasonable notice, and make the results available to the Principal.
- .2 The Principal may instruct the Contractor at any time to carry out any other *Test* of any part of the Works.
- .3 The Principal must pay for any *Test* instructed under clause 44.2, as an addition to the *Contract Price*, if the results of the *Test* show compliance with the Contract. Otherwise the Contractor bears the cost, including any costs of opening up and reinstating any part covered up.
- .4 The Contractor must make good any part of the Works where *Testing* has not shown compliance with the Contract and must repeat the *Testing*, at its own cost, until the results of the *Tests*, as reported in writing to the Principal, confirm that the Works comply with the Contract.

45 Defects



- .1 The Contractor must identify and promptly make good all *Defects* so that the Works comply with the Contract.
- .2 At any time before *Completion*, the Principal may instruct the Contractor to make good *Defects* within the time specified in a *Defect Notice*.
- .3 If the Contractor fails to make good the *Defects* in the time specified in the *Defect Notice*, the Principal may have the *Defects* made good by others and then:
 - .1 the cost of doing so will be a debt due from the Contractor to the Principal; and
 - .2 the Contractor will be responsible for the work involved in making good the *Defects* as if the Contractor had carried out the work.
- .4 Nothing in clause 45 reduces the Contractor's warranties and other liabilities and obligations under the Contract, or affects the Principal's common law right to damages or any other right or remedy.
- .5 If at any time before *Completion* the Contractor becomes aware of any defect or deficiency which results from design or other work or actions for which it is not responsible, it must:
 - .1 promptly notify the Principal; and
 - .2 carry out any *Variation* instructed by the Principal to make good the defect or deficiency.

46 Acceptance with Defects not made good

- .1 The Principal, in its absolute discretion, may agree that specific *Defects* need not be made good.
- .2 Before the Principal does so, the Principal may propose reductions from the *Contract Price* and any terms it requires, and:
 - .1 If the Contractor agrees with the proposed reductions and terms, the *Contract Price* must be adjusted accordingly.
 - .2 If the Contractor agrees with the proposed terms but not with the proposed reductions, the appropriate decrease in the *Contract Price* will be valued in accordance with clause 47. A valuation of this kind must take into account any increased future costs, loss of income or reduction in asset life.
 - .3 If the parties do not agree in writing on the Principal's proposed terms, the Contractor must make good the *Defects* identified by the Principal.
- .3 The Contractor remains liable for all *Defects* (whether known or not known) other than the specific *Defects* identified, in a written agreement made under clause 46, as not to be made good.

Changes to work and time

47 Valuation of changes

- .1 When the Contract provides for valuation of an increase or decrease in the *Contract Price* or requires a valuation to be made in accordance with clause 47, the process and principles set out below apply.
- .2 If a Valuer is engaged, either party may by giving notice to the other party and to the Valuer, request the Valuer to determine the increase or decrease in the *Contract Price*. If no Valuer is engaged at the relevant time, the parties may agree to engage a Valuer for the purposes of making the valuation.
- .3 If no Valuer is engaged and the parties do not agree to engage a Valuer, the Principal will assess the amount of the increase or decrease in the *Contract Price*, applying the valuation principles set out in clauses 47.5 to 47.10.
- .4 Regardless of the appointment of a Valuer or any other provision of clause 47, if the valuation relates to additional work, the Principal may instruct the Contractor to carry out additional work as *Daywork* and the requirements of Schedule 8 (*Daywork*) apply.

Valuation principles

- .5 Subject to clause 47.8, the value of additional or increased work is to be determined or assessed as the sum of:
 - .1 the additional reasonable direct cost to the Contractor including labour, *Materials* and plant of the additional or increased work (not including the *Contractor's Margin*);



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- .2 the additional reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the additional or increased work (not including the *Contractor's Margin*); and
- .3 an additional amount for the *Contractor's Margin*, calculated as the percentage stated in Contract Information item 44 of the total of the costs under clauses 47.5.1 and 47.5.2,
- .6 The value of decreased or omitted work and any reduction in costs under clause 38, is to be determined or assessed as that of work or costs included in the *Contract Price* based on the rates and lump sums in the Contract or, if there are no applicable rates or lump sums in the Contract, on the basis of reasonable rates and prices applying at the close of tenders. The deduction must include a reasonable amount for any time-dependent costs which will not be incurred by the Contractor and profit on the decreased or omitted work.
- .7 Subject to clause 47.8, the value of a claim for unavoidable additional costs (where the Contractor is entitled to make one) is to be determined or assessed as the sum of:
 - .1 the value of any additional or increased work necessary and unavoidable to respond to the circumstances that arose, after taking all reasonable steps to minimise the impact of those circumstances; and
 - .2 any other reasonable costs incurred by the Contractor that were necessary and unavoidable to respond to the circumstances that arose, after taking all reasonable steps to minimise the impact of those circumstances (excluding any costs the Contractor would have incurred if the circumstances had not arisen).
- .8 A valuation under clauses 47.5 and 47.7 must not include:
 - .1 any costs, losses or expenses attributable to any default or negligence of the Contractor, Subcontractors or Consultants;
 - .2 any amount for costs that the Contractor would have incurred anyway or should reasonably have allowed for at the Date of Contract;
 - .3 any allowance for delay or delay costs; or
 - .4 any amount that the Contractor is not entitled to claim under clause 37.8 or 49.6.
- .9 A valuation under clause 46 must take into account the specific matters required by that clause.
- .10 When a valuation under clause 47 relates to a *Variation* or to any other circumstance where any *Contractual Completion Date* may require adjustment, the applicable extension or reduction of time and any delay costs due are to be determined at the same time and by the same entity (Valuer or Principal, as the case may be) as the valuation.

Application of adjustments

- .11 The *Contract Price* must be adjusted as determined or assessed under clause 47.

48 Variations

Instructing and commencing Variations

- .1 The Principal may instruct a *Variation* in writing at any time before *Completion* of the whole of the Works (and after *Completion* in accordance with clause 67.1.3) and the Contractor must comply.
- .2 Unless instructed otherwise by the Principal, the Contractor must not start carrying out a *Variation* until its effect on achieving *Completion* and its value have been agreed in writing or, if they have not been agreed, the necessary adjustments have been determined or assessed in accordance with clause 47.
- .3 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 its price (excluding all costs of delay or disruption) for a proposed *Variation*;
 - .2 the anticipated effect of the proposed *Variation* on achieving *Completion*; and
 - .3 the effect of the proposed *Variation* on any other matter specified by the Principal.
- .4 If the parties have agreed in writing on the effects of a proposed *Variation*, and the Principal instructs the Contractor to carry out the *Variation*, the *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed.
- .5 If the parties have not agreed in writing on the effects of a proposed *Variation*, the Principal may instruct the *Variation* and then:



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- .1 any consequent adjustment of the *Contract Price* will be determined or assessed in accordance with clause 47; and
- .2 the Contractor may claim an extension of time or the Principal may assess a reduction in time in accordance with clause 50.

Variations proposed by the Contractor

- .6 The Contractor may make a written proposal for a *Variation* for the Contractor's convenience.
- .7 The Principal may accept the Contractor's proposal but is not obliged to do so. The Principal's acceptance may be subject to conditions, including that the *Variation* is at the Contractor's risk. If the Principal accepts the Contractor's proposal, the Principal must instruct a *Variation*, stating any conditions, and make any agreed adjustments to the affected *Contractual Completion Dates* and the *Contract Price*.
- .8 If the Contractor considers that a *Variation* is necessary but the Principal has not instructed a *Variation*, the Contractor must notify the Principal within 7 days after the Contractor should reasonably have known that a *Variation* was necessary.
- .9 If the Principal does not agree that a *Variation* is necessary, all issues relating to the claimed *Variation* must be dealt with under clauses 68 to 71.
- .10 The Contractor acknowledges that development of the design by the Contractor does not constitute a *Variation*.

49 Changes to Statutory Requirements

- .1 If the Contractor becomes aware of changes in *Statutory Requirements* (excluding any change in a *Statutory Requirement* which is a *COVID-19 Change in Statutory Requirement*) that require a change to work in connection with the Contract (not including changes that the Contractor should reasonably have expected at close of tenders), the Contractor must notify the Principal in writing within 7 days after becoming aware of the changes in *Statutory Requirements*. The notification must include details of:
 - .1 the changes to *Statutory Requirements*;
 - .2 why the changes to *Statutory Requirements* should not reasonably have been expected by the Contractor at close of tenders;
 - .3 the changes to work in connection with the Contract that the Contractor considers necessary;
 - .4 any delays in achieving *Completion*;
 - .5 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
 - .6 any other matters the Contractor considers relevant.
- .2 The Principal may request the Contractor to provide further information about the matters notified under clause 49.1.
- .3 After considering the Contractor's notification under clause 49.1, the Principal must notify the Contractor whether it agrees with the Contractor's contentions under clause 49.1.1 and 49.1.2 as to the change in *Statutory Requirements* and whether or not the Contractor should reasonably have expected them.
- .4 If the Principal agrees that there are changes in *Statutory Requirements* that require changes to the work in connection with the Contract (that the Contractor should not reasonably have expected at the close of tenders) and if the Contractor has given the notice required by clause 49.1 then:
 - .1 the parties may agree in writing as to the effects of the change in *Statutory Requirements* (including any *Variation* necessary), and any affected *Contractual Completion Dates* and the *Contract Price* must be adjusted as agreed; and
 - .2 if the parties are unable to agree in writing as to the effects of the unexpected change in *Statutory Requirements* the Principal may instruct a *Variation*, and clause 48 applies to the *Variation*.
 - .3 in addition to the entitlements the Contractor has as a result of any *Variation* instructed under clause 49.4.2, the Contractor may also claim:
 - .1 an extension of time in accordance with clause 50 and any consequent delay costs due under clause 51, for any delay incurred by it as a result of the unexpected



- change in *Statutory Requirements* that has not been taken into account in any extension of time granted as a result of the *Variation*; and
- .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for unavoidable additional costs incurred by the Contractor as a result of the unexpected change in *Statutory Requirements*, but excluding any additional or increased work included in the *Variation*; or
- .4 if no *Variation* is instructed, the Contractor may claim:
 - .1 an extension of time in accordance with clause 50 and consequent delay costs due under clause 51, subject to the requirements of those clauses; and
 - .2 an increase in the *Contract Price* to be valued in accordance with clause 47 for any unavoidable additional costs incurred by the Contractor because of the unexpected change in *Statutory Requirements*.
- .5 If the Principal does not agree with the Contractor's contentions under clauses 49.1.1 and 49.1.2, the Contractor may notify an *Issue* under clause 69.
- .6 Costs and delay incurred by the Contractor as a result of changes in *Statutory Requirements* before it gave the notice required by clause 49.1 must not be counted in any valuation or extension of time.

49A COVID-19 Change in Statutory Requirement

- .1 Where there is a change in *Statutory Requirements* that is a *COVID-19 Change in Statutory Requirement* and any measures set out in the then current *COVID-19 Management Plan* are:
 - .1 required to be changed in order for the Contractor to comply with the *COVID-19 Change in Statutory Requirement*; or
 - .2 no longer necessary following the *COVID-19 Change in Statutory Requirement* in order for the Contractor to comply with *Statutory Requirements*,
 and such changes to the measures set out in the then current *COVID-19 Management Plan* result in an increase or decrease in the Contractor's costs of carrying out its activities, then:
 - .3 if either party wishes this clause 49A to apply, that party must notify the other in writing within 7 days after becoming aware of the *COVID-19 Change in Statutory Requirement* stating that this clause 49A applies. Where the notification is given by the Contractor, it must also include details of:
 - .1 the impact of the *COVID-19 Change in Statutory Requirement* on the Contractor's costs of carrying out its activities;
 - .2 any delays in achieving *Completion*;
 - .3 any additional work and resources involved and the Contractor's estimate of its entitlement to any adjustment to the *Contract Price*; and
 - .4 any other matters the Contractor considers relevant.
 - .2 The Principal may request the Contractor to provide further information about the matters notified under clause 49A.1.3.
 - .3 If:
 - .1 the Principal issues a notice under clause 49A.1.3; or
 - .2 the Contractor issues a notice under clause 49A.1.3 and the Principal agrees that the change in *Statutory Requirements* is a *COVID-19 Change in Statutory Requirement*,
 where such a *COVID-19 Change in Statutory Requirement*:
 - .3 decreases the Contractor's costs in carrying out its activities, the Principal will determine a reasonable amount reflecting the changes being required to the measures set out in the then current *COVID-19 Management Plan* as the amount of the decrease; or
 - .4 increases the Contractor's costs in carrying out its activities, the Principal will determine the amount of the unavoidable additional costs reasonably and necessarily incurred by the Contractor in implementing the changes required to the measures set out in the then current *COVID-19 Management Plan* on the basis that the Contractor took all reasonable steps to mitigate those increased costs,
 and the *Contract Price* will be increased or decreased by that amount.



- .4 The Contractor may also claim an extension of time in accordance with clause 50 and any consequent delay costs due under clause 51, for any delay incurred by it as a result of the *COVID-19 Change in Statutory Requirement* as described in clause 49A.1.
- .5 The Contractor must comply with the *COVID-19 Change in Statutory Requirement*.
- .6 If the Principal does not agree with the Contractor's contentions under clause 49A.3, the Contractor may notify an *Issue* under clause 69.
- .7 Costs and delay incurred by the Contractor as a result of a *COVID-19 Change in Statutory Requirement* before it gave the notice required by clause 49A.1.3 must not be counted in any valuation or extension of time.
- .8 The Contractor warrants that:
 - .1 the initial *COVID-19 Management Plan* includes:
 - .1 all mitigation measures that the Contractor is implementing with respect to *COVID-19* (including, but not limited to, supply chain impacts and any relevant work, health and safety *Statutory Requirements*), and those in response to any and all:
 - .1 *Statutory Requirements* in response to *COVID-19*; and
 - .2 public health orders issued by the relevant authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant authority in another Australian jurisdiction under the equivalent public health legislation in response to *COVID-19*, ("*COVID-19 Statutory Requirements*") that are in place at the *Date of Contract*; and
 - .2 any relevant *COVID-19* related assumptions on which the *Contract Price* is based and *Contract Program* will be based;
 - .2 the *Contract Price* contains, and the *Contract Program* will contain, sufficient allowances for the assumption by the Contractor of all risk in relation to the impact of *COVID-19* on the performance of the Contractor's activities under the Contract as at the *Date of Contract*, including for complying with and implementing the measures set out in the initial *COVID-19 Management Plan*; and
 - .3 any updated *COVID-19 Management Plan* will include all mitigation measures the Contractor is implementing with respect to *COVID-19* (including, but not limited to, supply chain impacts and any relevant work, health and safety *Statutory Requirements*), and those in response to any and all *COVID-19 Statutory Requirements* in place at the date of the relevant update.

50 Changes to Contractual Completion Dates

Extensions of time

- .1 The Contractor is entitled to an extension of time to any *Contractual Completion Date*, for the number of days assessed by the Principal, if the Contractor satisfies the Principal that:
 - .1 the Contractor is or will be delayed in achieving *Completion* by a cause beyond the control of the Contractor which occurs on or before the *Contractual Completion Date*, including an act, default or omission of the Principal, but not including any cause which the Contract expressly states is at the Contractor's risk or for which the Contract expressly precludes a claim for extension of time; and
 - .2 the Contractor has given the Principal the notices and other information required by clauses 50.3 and 50.4.
- .2 The Contractor must take all reasonable steps to avoid delay and its effects.
- .3 If the Contractor wishes to claim an extension of time for any delay, it must submit to the Principal:
 - .1 an initial notice within 7 days after the start of the delay, setting out the cause of the delay, relevant facts, and the expected effect on any *Contractual Completion Dates*;
 - .2 a claim within 28 days after the start of the delay, setting out the extension of time claimed and other information sufficient for the Principal to assess the claim; and
 - .3 updates to that claim every subsequent 28 days while the delay continues.
- .4 With every claim made under clause 50.3.2 or 50.3.3, the Contractor must submit an updated *Contract Program* which shows the effects of the delay on the critical path and *Completion*.



- .5 The Contractor is only entitled to an extension of time for delays occurring on days on which the Contractor usually carries out work for the Contract.
- .6 The Contractor is not entitled to an extension of time for any period when the Contractor:
 - .1 is delayed by multiple causes, where at least one of those causes is a cause that does not give an entitlement to an extension of time under clause 50.1.1; or
 - .2 would have been delayed anyway by another delay (or cause of delay) for which the Contractor has no entitlement to an extension of time (regardless of which delay commenced first, or the time of commencement of the respective delays).
- .7 The Contractor is not entitled to an extension of time for any days which are expressly not to be counted under clause 37.8 or 49.6.
- .8 Without limiting clause 50.3, where the initial notice required by clause 50.3.1 is submitted later than 7 days after the start of the delay, any entitlement to an extension of time applies only to the period of delay assessed from the date which is 7 days prior to the date of submission of the initial notice to the Principal.
- .9 The Principal may, in its absolute discretion but without any obligation to do so, extend any *Contractual Completion Date* at any time and for any reason, whether or not the Contractor has claimed an extension of time.

Reductions in time

- .10 If a *Variation* or resolution of a *Fault* under clause 38 leads to less time being required for *Completion*, the Principal may determine a reasonable adjustment to the affected *Contractual Completion Date*.

Adjustment to Contractual Completion Dates

- .11 The relevant *Contractual Completion Dates* must be adjusted to account for any extension or reduction of time assessed under clause 50.

51 Delay costs and liquidated damages

Delay costs

- .1 The Contractor is entitled to delay costs, being those additional costs reasonably and necessarily incurred by the Contractor as a result of the delay, only for delay or disruption to the whole of the Works caused by:
 - .1 a *Variation* (other than a *Variation* for the Contractor's convenience);
 - .2 failure to give the Contractor access to the Site within the time stated in Contract Information item 13;
 - .3 subject to clause 8.9, an instruction under clause 8.8;
 - .4 adverse *Site Conditions* that differ materially from those the Contractor should reasonably have expected at the close of tenders (subject to clause 37.8 and Contract Information item 37);
 - .5 resolution of a *Fault* notified in accordance with clause 38.1 [REDACTED];
 - .6 changes in *Statutory Requirements* (excluding any change in a *Statutory Requirement* which is a *COVID-19 Change in Statutory Requirement*) that the Contractor should not reasonably have expected at the close of tenders and that require changes to work in connection with the Contract (subject to clause 49.5);
 - .7 a suspension instruction under clause 53 if the need for the suspension arises from the Principal's act or omission;
 - .8 a breach of the Contract by the Principal;
 - .9 [REDACTED];
 - .10 a change in *Statutory Requirements* which is a *COVID-19 Change in Statutory Requirement* which requires such changes to the measures set out in the then current *COVID-19 Management Plan* as contemplated by clause 49A.1,



- .1A The Contractor's entitlement to delay costs as contemplated by clause 51.1. will be capped at the applicable daily rate in Contract Information item 49A (and subject to the limitation in clause 25A.1.3 where the cause of delay is listed in clause 51.1.9) for each working day the *Contractual Completion Date* for the whole of the Works is extended in accordance with this Contract because of a cause (or combination of causes) listed in clause 51.1. A working day means a working day as described in Contract Information item 18.
- .2 Notwithstanding clause 51.1, the Contractor is not entitled to delay costs for any period when the Contractor:
- .1 is delayed by multiple causes, where at least one of those causes is not listed in clause 51.1; or
 - .2 would have been delayed anyway by another delay (or cause of delay) for which the Contractor has no entitlement to delay costs pursuant to clause 51.1 (regardless of which delay commenced first, or the time of commencement of the respective delays).
- .3 The applicable daily cap in Contractor Information item 49A will be reduced where any part of the Works is being used or occupied prior to *Completion* under clause 64. The reduced rate of delay costs will be in the same proportion to the original daily rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
- .4 The Contractor has no remedy or entitlement connected with delay or disruption other than:
- .1 the amounts to be paid under clause 51;
 - .2 an extension of time to any *Contractual Completion Date* to which it is entitled under clauses 48 or 50; or
 - .3 any remedy it may have under clause 74 or 75.

Liquidated damages

- .5 [REDACTED] if Contract Information item 49B states that liquidated damages do not apply, the Principal may claim general damages if the Contractor fails to achieve *Completion* of the Works or any Milestone by its *Contractual Completion Date*.
- .6 [REDACTED] if Contract Information item 49B states that liquidated damages apply and the Contractor fails to achieve *Completion* of the Works or any Milestone by a *Contractual Completion Date* to which liquidated damages apply, the Contractor will be liable to pay the Principal:
- .1 liquidated damages at the rate stated in Contract Information item 49B, for every day after the *Contractual Completion Date*, up to and including the *Actual Completion Date*; and
 - .2 [REDACTED]
- .7 If, however, the Contract is terminated before the Contractor achieves *Completion*, any liquidated damages will apply only up to the date of termination of the Contract.
- .8 A failure by the Principal at any time to demand payment or to deduct, withhold or set-off the liquidated damages does not amount to a waiver of, or otherwise affect, the Principal's rights and entitlements.
- .9 If any *Contractual Completion Date* is extended after the Contractor has paid or the Principal has deducted liquidated damages, the Principal must re-pay any excess liquidated damages to the Contractor, subject to any right of set-off.
- .10 The applicable rate of liquidated damages will be reduced where any part of the Works is being used or occupied prior to *Completion*, under clause 64. The reduced rate of liquidated damages will be in the same proportion to the original rate as the value of the remaining work is to the *Contract Price* (as adjusted to the time of occupation). The value of the remaining work will be assessed by the Principal, acting reasonably.
- .11 The Contractor acknowledges that the rates for liquidated damages in Contract Information item 49B [REDACTED] are a genuine pre-estimate of the Principal's loss and agrees that it will not challenge any rate for liquidated damages as being in the nature of a penalty.



.12



52 Acceleration

- .1 The Principal may issue an *Acceleration Notice* instructing the Contractor to accelerate progress of the Works. The Contractor must comply unless, before taking any steps to accelerate, it demonstrates to the satisfaction of the Principal that the acceleration instructed cannot reasonably be achieved.
- .2 If requested in writing by the Principal, the Contractor must, within the time specified in the request, advise the Principal of:
 - .1 its price (excluding all costs of delay or disruption) for a proposed acceleration; and
 - .2 the effect of a proposed acceleration on any other matter specified by the Principal.
- .3 Whenever possible, the parties must agree on the steps to be taken, and the basis for reimbursing the Contractor's costs for acceleration, before the Contractor takes those steps.
- .4 If the Contractor achieves the acceleration instructed, taking into account any relevant extension of time that has been given, the *Contract Price* must be adjusted as agreed, or if not agreed, by a valuation made in accordance with clause 47.

53 Principal's suspension

- .1 The Principal may instruct the Contractor to suspend progress of the Works, and the Contractor must comply with that instruction.
- .2 The Contractor must resume carrying out the Works when instructed by the Principal.
- .3 If the need for the suspension arises from the Principal's act or omission, and causes the Contractor delay, or unavoidable costs, additional to what the Contractor would have incurred had the suspension not been instructed, the Contractor may claim:
 - .1 an extension of time in accordance with clause 50, without the Contractor meeting the preconditions required by clause 50 other than provision of an updated *Contract Program* demonstrating the delays caused by the suspension;
 - .2 any consequent delay costs due under clause 51; and/or
 - .3 an increase in the *Contract Price* to be valued in accordance with clause 47, with no double counting of delay costs.
- .4 The Contractor has no other remedy or entitlement in connection with a suspension by the Principal.

54 Contractor's suspension

- .1 If the Contractor suspends work at any time in accordance with the *Building and Construction Industry Security of Payment Act 1999* (NSW), it may be entitled to an extension of time under clause 50, but despite clause 51, it will not be entitled to any payment for delay or disruption.
- .2 Clause 54 is not intended to limit any rights of the Contractor under the *Building and Construction Industry Security of Payment Act 1999* (NSW).

Payment

55 The Contract Price

- .1 The *Contract Price* (at the Date of Contract), and the basis of calculating it, are stated in Contract Information item 40.
- .2 If stated in Contract Information item 41, the *Contract Price* (and the rates and/or lump sums it includes) will be adjusted for rise or fall in costs, on the terms set out in Schedule 7 (Costs Adjustment Formula).

Schedules of Rates

- .3 If Contract Information item 40 states that a *Schedule of Rates* is the basis of calculation of the *Contract Price*, then without limiting clause 8:



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- .1 the *Contract Price* is a notional price only, determined by adding together the products of the stated quantity for each item and its rate;
- .2 all quantities are estimated, and none are guaranteed;
- .3 some of the items may be provisional (that is, they may not be required at all); and
- .4 the Contractor will be paid at the applicable rate stated in the *Schedule of Rates* for the measured quantity of work actually carried out in accordance with the Contract.

Provisional Sums

- .4 If Contract Information item 42 states that the *Contract Price* includes a *Provisional Sum*, then:
 - .1 the Contractor must not carry out the work specified against that *Provisional Sum* unless instructed by the Principal;
 - .2 if the Principal does not instruct the Contractor to carry out the work, the *Provisional Sum* for that work must be deducted from the *Contract Price*;
 - .3 if requested by the Principal, the Contractor must, to the extent possible taking into account the nature of the work, the timing of the request and within the time specified by the Principal, confirm in writing:
 - .1 the work and items necessary to properly carry out and complete the work specified against the *Provisional Sum*;
 - .2 the Contractor's reasonable estimated price to carry out the work; and
 - .3 the effect of the proposed work on any other matter specified by the Principal;
 - .4 if the Principal instructs the Contractor to carry out the work:
 - .1 the Contractor must comply with the instruction;
 - .2 the *Contract Price* will be adjusted by deducting the *Provisional Sum* from the *Contract Price* and adding to the *Contract Price* the following actual direct costs reasonably incurred by the Contractor for the works specified against the *Provisional Sum* and instructed by the Principal, as assessed by the Principal acting reasonably and without double counting:
 - .1 additional labour, *Materials* and plant;
 - .2 mobilisation and demobilisation of any additional construction plant and vehicles (where brought to Site only for the *Provisional Sum* work instructed by the Principal);
 - .3 additional supervisory and administrative staff (where brought to Site only for the *Provisional Sum* work instructed by the Principal);
 - .4 work carried out by a *Subcontractor*, *Supplier* or *Consultant* (excluding any amount payable due to default or negligence on their part or that of the Contractor in the performance of the *Provisional Sum* work instructed by the Principal),
plus the *Provisional Sum Margin*; and
 - .3 the costs of supervisory, technical and administrative personnel who are already engaged (including off Site) by the Contractor to carry out the Works and who are engaged to carry out the *Provisional Sum* work will not be included in the Principal's assessment of the cost of the *Provisional Sum* work for the purpose of adjusting the *Contract Price*.

Provisional Quantities

- .5 If the Principal instructs the Contractor to carry out work which is the subject of a *Provisional Quantity* and that instruction requires the Contractor to carry out a greater or lesser quantity of work than the *Provisional Quantity*, the *Contract Price* must be adjusted by the amount calculated by multiplying the contract rate applicable to the *Provisional Quantity* work by the difference between the *Provisional Quantity* and the quantity of work carried out.

56 Goods and Services Tax (GST)

- .1 Unless otherwise expressly stated in the Contract, all prices, rates or other sums payable in accordance with the Contract include an amount for GST.
- .2 The Principal will issue a tax invoice for each taxable supply it makes to the Contractor.



- .3 The Principal will issue to the Contractor a Recipient Created Tax Invoice (RCTI) for each taxable supply (other than an excluded supply) made by the Contractor to the Principal, and will issue an adjustment note for any adjustment event. The parties may agree in writing from time to time which supplies are excluded supplies.
- .4 The Contractor must not issue a tax invoice in respect of any supply it makes to the Principal, other than an excluded supply. The Contractor must give the Principal a tax invoice for an excluded supply at or before the time the Contractor makes a *Payment Claim* or otherwise invoices the Principal for that supply.
- .5 Each party must be registered for GST and must notify the other party if it ceases to be registered for GST or to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.

Reimbursable expenses

- .6 If the Contract requires a party to pay for, reimburse or contribute to any expense, loss or outgoing ("reimbursable expense") suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party must be the sum of:
 - .1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and
 - .2 to the extent that the other party's recovery from the first party is consideration for a taxable supply to the first party, any GST payable in respect of that supply.

57 Prepayment

- .1 The Contractor may claim *Prepayment*, as an advance payment against the *Contract Price* (but not as a *Payment Claim*), at any time before achieving *Completion* of the whole of the Works if all the following apply:
 - .1 the total amount claimed for *Prepayment* is no more than the amount stated in Contract Information item 45;
 - .2 the *Prepayment* does not exceed the remaining balance of the *Contract Price* less any amount that the Principal considers payable by the Contractor to the Principal;
 - .3 no more than one-third of the *Prepayment* amount is retained by the Contractor and the balance is assigned directly to Subcontractors, Suppliers and Consultants in the proportions notified to the Principal;
 - .4 the Contractor has established to the Principal's satisfaction that the *Prepayment* will be utilised for a purpose related to the Contract;
 - .5 the Contractor has provided *Undertakings* to the Principal for the amounts of the *Prepayment*; and
 - .6 the Contractor has assigned to Subcontractors, Suppliers and Consultants their respective shares of the *Prepayment* by effective written assignments, and has notified the Principal of the assignments, including the amounts assigned to each Subcontractor.
- .2 The Principal must pay the amount claimed within 14 days after the Contractor provides evidence that all the conditions in clause 57.1 have been met.
- .3 The Contractor must repay the *Prepayment* by way of progressive deductions from payments otherwise due under the Contract.
- .4 The Principal must return *Undertakings* provided for *Prepayment* when the amount of the *Prepayment* has been fully repaid.
- .5 The Principal may have recourse to the *Undertakings* provided for *Prepayment* if the *Prepayment* has not been fully repaid and:
 - .1 the unpaid balance of the *Contract Price* is insufficient to cover the outstanding balance of the *Prepayment*;
 - .2 the Contract is terminated; or
 - .3 the Contractor's employment under the Contract is terminated.

58 Payment Claims

- .1 Subject to clauses 58.2 and 58.3, the Contractor must submit a *Payment Claim* each month, on the date in the month specified in Contract Information item 46A, for work carried out up to that date.



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- .2 For *Milestones* for which Contract Information item 46B states that payments will be made after they reach *Completion*, each *Payment Claim* may only include the value of work in those *Milestones* if they reached *Completion* before the *Milestones' Contractual Completion Dates*.
- .3 The Contractor must submit the *Final Payment Claim* within the time specified in clause 61.
- .4 *Payment Claims* must be in the form of, and include all of the information required by, Schedule 3 (*Payment Claim Worksheet*) or in another form agreed by the Principal.
- .5 Every *Payment Claim* must:
 - .1 identify the work and *Materials* to which the *Payment Claim* relates;
 - .2 state the value of that work and those *Materials*;
 - .3 identify and state the amount the Contractor claims for any other *Claim* that the Principal has agreed or is required to pay under clause 68 or any other provision of the Contract;
 - .4 state the amount of interest, if any, that the Contractor claims under clause 62; and
 - .5 state the *Claimed Amount*, after allowing for retention of the *Completion Amount* specified in clause 60 and for payments already made.
- .6 Every *Payment Claim* must be accompanied by:
 - .1 completed and true Contractor's Statement and Supporting Statement in the form of Schedule 6 executed on the date of the *Payment Claim*;
 - .2 all relevant calculation;
 - .3 all relevant *Conformance Records*; and
 - .4 any other information specified in the Contract

Unincorporated Materials

- .7 *Payment Claims* must not include any amount for *Materials* intended for incorporation in the Works but not yet incorporated unless all of the following conditions are satisfied:
 - .1 the Principal has agreed in writing to pay the Contractor for the unincorporated *Materials*;
 - .2 where the value of the unincorporated *Materials* is greater than \$100,000, the Contractor has provided:
 - .1 an *Undertaking* equal to the value of the unincorporated *Materials* (to be returned when the *Materials* are incorporated into the Works); and
 - .2 a statement in the terms in Schedule 11;
 - .3 the Contractor provides evidence no later than 14 days before submitting the *Payment Claim* that:
 - .1 the unincorporated *Materials* are, or upon payment will become, the property of the Principal free of any *Encumbrance*;
 - .2 the unincorporated *Materials* are clearly identified as the property of the Principal and are insured for their full value;
 - .4 upon the *Materials* becoming the property of the Principal, they are entrusted to the Contractor for the purpose of carrying out the Works and the Contractor is solely liable for their care; and
 - .5 for any unincorporated *Materials* imported or to be imported into Australia, the Contractor has given the Principal a clean on board bill of lading drawn or endorsed to the order of the Principal, appropriate insurance certificates and a customs invoice.
- .8 The Contractor warrants that no *Encumbrance* exists over any *Materials* paid for by the Principal or incorporated into the Works.
- .9 If the Contract or the Contractor's employment under the Contract is terminated by the Principal, the Contractor must ensure that, in respect of any unincorporated *Materials* for which payment has been made or which have been appropriated to the Contract, the Principal may enter upon any premises where the *Materials* are stored and take possession of these *Materials*.

59 Payments

- .1 Within 10 *Business Days* after being served a *Payment Claim* by the Contractor, the Principal must provide a *Payment Schedule* to the Contractor that:
 - .1 identifies the *Payment Claim* to which it relates;
 - .2 indicates the amount the Principal proposes to pay, as the *Scheduled Amount*, and



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- .3 if the *Scheduled Amount* is less than the *Claimed Amount*, provides reasons explaining why it is less and why any money is being withheld. Reasons why the *Scheduled Amount* is less than the *Claimed Amount* may include failure by the Contractor to comply with any outstanding obligations under:
 - .1 clause 33 (Undertakings);
 - .2 clause 27 (Insurances);
 - .3 clause 28 (Subcontractor relationships) and Schedule 17 (Subcontractors and Suppliers Proof of Payment Process);
 - .4 clause 57 (Prepayment);
 - .5 clause 58.6.1(Contractor's Statement and Supporting Statement (Schedule 6)).
 - .6 clause 58.6.2 to 58.6.4 (other items to accompany a *Payment Claim*);
 - .7 clause 58.9 (Unfixed Materials); and
 - .8 any provision of the Contract requiring the Contractor to submit anything or provide proof of any state of affairs at the time of a *Payment Claim*.
- .2 The Principal must pay the Contractor the *Scheduled Amount* within 15 *Business Days* after being served with the *Payment Claim*.
- .3 All payments to the Contractor must be made by electronic funds transfer to the Contractor's account notified to the Principal for that purpose. Changes to the Contractor's account details must be notified in accordance with protocols established by the Principal.
- .4 Payment by the Principal is payment on account only and is not evidence that the Principal accepts the value, quantity or quality of work or that the Contractor has complied with the Contract or that the Contractor has any particular entitlement

59A Performance Incentive Payments

- .1 The Contractor will be entitled to claim *Performance Incentive Payments* in accordance with Schedule 19.

60 Completion Amount

- .1 If Contract Information item 47 specifies a *Completion Amount*, the Contractor may claim it in the next *Payment Claim* after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*, subject to the Principal's right to set-off under clause 63.
- .2 The Principal will retain the *Completion Amount* from payments when the amount paid to the Contractor exceeds 50% of the *Contract Price* at the Date of Contract. The amount retained against each payment must not exceed 50% of the value of the payment.
- .3 The Principal will own any interest earned on the monies retained for the *Completion Amount*.

61 Final payment

- .1 The Contractor must submit a *Final Payment Claim* within 13 weeks after achieving *Completion* of the whole of the Works. The *Final Payment Claim* must include any *Claim* not previously included in a *Payment Claim*. Any *Claim* not submitted before or with the *Final Payment Claim* is barred.
- .2 Within 10 *Business Days* after receiving the *Final Payment Claim* or, if the Contractor has not submitted a *Final Payment Claim*, within 15 weeks after the whole of the Works reaches *Completion*, the Principal must provide a *Final Payment Schedule* to the Contractor.
- .3 If the Principal proposes to make no payment to the Contractor and claims that the Contractor must pay the Principal money, the *Final Payment Schedule* must state the amount that the Principal claims the Contractor must pay, and include reasons and particulars supporting that claim.
- .4 Payments identified in the *Final Payment Schedule* as due from the Contractor to the Principal must be made within 14 days after the *Final Payment Schedule* is provided. Payments due from the Principal to the Contractor must be made in accordance with clause 59.
- .5 The issue of the *Final Payment Schedule* is conclusive evidence that all necessary adjustments to the *Contract Price* have been made and all entitlements of the Contractor have been met, except for those required by:
 - .1 arithmetical error; or



- .2 resolution of:
 - .1 any *Claim* made in accordance with clause 61.1;
 - .2 any *Issue* properly notified under clause 69 prior to the *Final Payment Claim*; or
 - .3 any *Issue* arising out of the *Final Payment Schedule*, but only if it is notified to the Principal within 28 days after the date of the *Final Payment Schedule*.
- .3 clause 61.6.
- .6 The Contractor's liability under the Contract or otherwise is not affected by the issue of the *Final Payment Schedule*. The Contractor's liability continues until any limitation period under statute expires.

62 Interest on late payments

- .1 A party which fails to make a payment within the time specified in the Contract must pay interest to the other party on the unpaid amount, at the rate stated in Contract Information item 48, for the period the payment is late.

63 Set-off

- .1 If the Principal claims a sum in connection with the Contract or any other contract between the Principal and the Contractor, the Principal may:
 - .1 withhold, deduct or set-off the claimed sum against any amount to which the Contractor is otherwise entitled in connection with the Contract; and
 - .2 make a demand against the *Undertakings* provided under the Contract for any amount of the claimed sum in excess of the amount to which the Contractor is otherwise entitled.

Completion

64 Early use

- .1 Before the Contractor achieves *Completion*, the Principal [REDACTED] or anyone authorised by the Principal [REDACTED] may use or occupy any part of the Works which is sufficiently complete and then:
 - .1 the Contractor's responsibilities are not affected, except if they are reduced under clauses 26.3 or 26.7 or if the Principal [REDACTED], or anyone authorised by the Principal [REDACTED] to use or occupy any part of the Works, causes the Contractor's work to be hindered; and
 - .2 the Principal becomes responsible for any additional insurance required.
- .2 If the Principal [REDACTED] requires use or occupation of any part of the Works before the Contractor achieves *Completion*, the Principal must give not less than 21 days' notice in writing to the Contractor and must specify those parts to be used or occupied.
- .3 The Contractor must assist and cooperate with those using or occupying the Works.
- .4 No later than 21 days after receipt of a notice under clause 64.2, the Contractor must provide to the Principal all the documents and other things listed in the definition of *Completion* that are relevant to the parts of the Works to be used or occupied.

65 Completion

- .1 The Contractor must achieve *Completion* by the *Contractual Completion Date*.
- .2 When the parties, each acting reasonably, agree that *Completion* has been achieved, the Principal must give the Contractor a notice stating the *Actual Completion Date*.

66 Close-out workshop

- .1 The Principal must convene a close-out workshop within 21 days after *Completion* of the whole of the Works.
- .2 The parties must attend the close-out workshop and must jointly decide who else will attend. Clause 6.4 applies to the costs of the workshop.

67 Defects after Completion

- .1 At any time after *Completion*:



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- .1 the Principal may instruct the Contractor to make good any *Defect* within the time specified in a *Defect Notice*;
 - .2 if the Contractor fails to make good the *Defect* in the time specified in the *Defect Notice*, the provisions of clauses 45.3 and 45.4 will apply; and
 - .3 the Principal may instruct a *Variation* in connection with any *Defect* instead of requiring the *Defect* to be made good under clause 67.1.1.
- .2 Clause 67 does not reduce the Contractor's liability, whether arising under the Contract or otherwise. The Contractor's liability continues until any limitation period under statute expires.
 - .3 Clause 67 does not affect the Principal's rights under clause 46.

67A Final Completion

- .1 The Principal will issue to the Contractor a certificate:
 - .1 in a form that the Principal considers appropriate; and
 - .2 stating that all *Defects* have been made good,
 at the end of the period stated in Contract Information item 35 after the *Actual Completion Date* of the whole of the Works provided that at that time there are no outstanding *Defects* or unresolved *Issues*.

Claim and Issue resolution

Claim resolution

68 Contractor's Claims

- .1 If the Contractor makes:
 - .1 a *Claim* under a provision of the Contract that does not specify a time for making the *Claim*; or
 - .2 a *Claim* in connection with the Contract or the Works, but not under a provision of the Contract,
 the *Claim* must be submitted within 28 days after the later of the start of the event giving rise to the *Claim*; and the time the event should have become known to the Contractor, with reasonable diligence on its part.
- .2 If the Contractor fails to make a *Claim* within the applicable specified time, the Contractor will not be entitled to interest on any amount paid in relation to the *Claim* for the period before the Contractor made the *Claim*. However, any *Claim* not made within the time specified in clause 61.1 is barred.
- .3 Each *Claim* must include information sufficient for the Principal to assess the *Claim*, including the factual and legal basis, detailed quantification and responses by the Contractor to the questions set out in paragraphs 1.1.1 and 1.1.2 of Schedule 5 (Expert Determination Procedure).
- .4 The Principal must assess a *Claim*, and reach agreement with the Contractor or reject, within 28 days, or other agreed period, after receiving the information required under clause 68.3. The Principal must provide an outline in writing for the basis of assessment or rejection, as relevant.
- .5 If the Principal agrees to a *Claim* involving money, the Contractor may claim the agreed amount only by including it in a *Payment Claim*.
- .6 If a *Claim* is rejected or not agreed within the period referred to in clause 68.4 it will become an *Unresolved Claim*, and the Contractor may notify the Principal of an *Issue* under clause 69.1.
- .7 The provisions of clauses 68.2 to 68.6 apply generally to all *Claims*, whether made under clause 68 or under another provision of the Contract, unless determination of the *Claim* is regulated by a separate procedure under any applicable legislation.

Issue resolution

69 Notification of Issue

- .1 The Contractor may dispute an assessment, determination or instruction of the Principal, or seek resolution of an *Unresolved Claim*, by giving notice to the Principal (with a copy to the



Principal's senior executive named in Contract Information item 7) of an *Issue* within 28 days after notification of the assessment, determination or instruction, or within 28 days after it becomes an *Unresolved Claim*. The Contractor's notice to the Principal must include a statement of:

- .1 the basis for the Contractor disputing the assessment, determination or instruction of the Principal with reasons; and
 - .2 where the Contractor's position with regard to the *Claim* has changed, the reasons for the change in position.
- .2 Either party may give notice to the other (with a copy to that party's senior executive) of an *Issue* (excluding an *Issue* referred to in clause 69.1, but including a claim by the Principal) about the meaning or effect of the Contract, or about any matter connected with the Contract, within 28 days after becoming aware of the *Issue*. The notice must include a statement outlining:
- .1 the basis for notifying the *Issue* with reasons; and
 - .2 the party's position with regard to the *Issue* and where the position has changed, the reasons for the change in position
- .3 Subject to clause 69.6, the parties must follow the *Issue* resolution procedures in clauses 69, 70 and 71 before either commences litigation or takes similar action.
- .4 If notice of an *Issue* under clause 69.1 or 69.2 is given outside the time prescribed by those clauses, the party giving the notice is not entitled to claim or recover interest for the period before the notice was given. This clause does not affect the absolute time bar in clause 61.
- .5 The Principal is not liable to pay damages (whether in contract, for negligence or otherwise) for making an incorrect assessment, determination or instruction.
- .6 The *Issue* resolution procedure in clauses 69, 70 and 71 does not prevent a party from seeking an urgent declaration or injunction from a court.

70 Resolution by senior executives

- .1 If a party gives notice of an *Issue* under clause 69, the senior executives named in Contract Information items 7 and 11 must promptly confer to try to resolve the *Issue*.
- .2 The parties may agree at any time after notice of an *Issue* is given under clause 69 to engage in an Alternative Dispute Resolution Procedure in respect of that *Issue*. An agreement to engage in an Alternative Dispute Resolution Procedure must specify:
 - .1 whether the decision, finding, determination, result or agreed outcome of the *Alternative Dispute Resolution Procedure* will be final and binding on the parties within any agreed monetary limit;
 - .2 that the *Alternative Dispute Resolution Procedure* may, by agreement between the parties, be varied or extended from time to time to include additional or fewer processes; or
 - .3 that if the *Alternative Dispute Resolution Procedure* has not produced a decision, finding, determination, result or agreed outcome of the *Issue* in question within a specified period of time, either party may commence court proceedings in respect of the *Issue*.
- .3 If the parties have agreed that the Alternative Dispute Resolution Procedure is to be final and binding on the parties to some extent and that procedure produces a decision, finding, determination, result or agreed outcome of the *Issue*, neither party is entitled to commence, conduct or continue court proceedings in respect of that *Issue* to that extent.
- .4 If the *Alternative Dispute Resolution Procedure* engaged by the parties under clause 70.2 is *Expert Determination* then unless otherwise agreed, clause 71 will apply to the *Expert Determination*.
- .5 If the parties, within 28 days after a notice of an *Issue* is given under clause 69, have not agreed to engage in an *Alternative Dispute Resolution Procedure* under clause 70.2, then the parties will be deemed to have agreed to engage in *Expert Determination* under clause 71.

71 Expert Determination

- .1 The representative of the Principal for the purposes of clause 71 is the person named in Contract Information item 52. This person may differ from the *Principal's Authorised Person*.
- .2 If an *Issue* is to be referred to *Expert Determination* under clause 70, the parties must endeavour to agree on the *Expert* to be engaged. If they cannot agree within 28 days after receipt of a



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notice under clause 70.3, the *Expert* will be nominated (on the application of either party) by the person named in Contract Information item 53. That person must not nominate:

- .1 an employee of the Principal or the Contractor;
 - .2 a person who has been connected with the Works or the Contract; or
 - .3 a person who the Principal and the Contractor have already considered and not been able to agree on.
- .3 When the person to be the *Expert* has been agreed or nominated, the Principal, on behalf of both parties, must engage the *Expert* by a letter of engagement (with a copy to the Contractor) that sets out:
- .1 the *Issues* referred to the *Expert* for determination;
 - .2 the *Expert's* fees;
 - .3 the procedure for *Expert Determination* in Schedule 5 (*Expert Determination Procedure*); and
 - .4 any other matters which are relevant to the engagement.
- .4 The Principal and the Contractor must share equally the *Expert's* fees and out-of-pocket expenses for the determination, and bear their own costs.
- .5 The procedure for *Expert Determination* is set out in Schedule 5 (*Expert Determination Procedure*).
- .6 In response to any *Issue* referred to the *Expert* by a party, the other party may raise any defence, set-off or cross-claim.
- .7 Subject to clauses 71.8 and 71.9, the parties must treat each determination of an *Expert* as final and binding and a party that owes money to the other pursuant to the determination must pay that amount to the other party within 28 days after receiving the determination.
- .8 Neither party may commence litigation in respect of the matters determined by the *Expert* unless the determination:
- .1 does not involve paying a sum of money; or
 - .2 requires one party to pay the other an amount in excess of the amount stated in Contract Information item 54, calculated without having regard to:
 - .1 any interest that may be payable; and
 - .2 any amount that has been paid pursuant to the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- .9 Neither party may commence litigation in respect of the matters determined by the *Expert* unless they do so within 56 days after receiving the determination.

72 Parties to perform the Contract

- .1 The parties must continue to perform their obligations under the Contract at all times, regardless of any *Claim* or *Issue* or the conduct of any *Issue* resolution procedures under clauses 69 to 71.

Termination

Termination

73 Termination for Contractor's Default or Insolvency

- .1 The Principal may terminate the Contractor's employment under the Contract for *Contractor's Default* or *Contractor's Insolvency* by giving notice in accordance with clause 73.
- .2 Nothing in clause 73 affects or negates the Principal's common law rights to terminate or for damages.
- .3 In the case of *Contractor's Default*, the Principal must first give the Contractor notice that it has 7 days after receipt of that notice to remedy the *Contractor's Default*.
- .4 If the Contractor fails to:
 - .1 give the Principal a notice containing clear evidence that it has remedied a *Contractor's Default*; or
 - .2 propose steps reasonably acceptable to the Principal to remedy the *Contractor's Default*.



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- the Principal may give the Contractor a notice terminating its employment under the Contract.
- .5 In the case of *Contractor's Insolvency*, the Principal may give the Contractor a notice terminating its employment under the Contract
 - .6 If the Principal terminates the Contractor's employment under clause 73 it may, at its sole discretion, employ others to complete the Works and all the following will then apply:
 - .1 The Contractor must leave the Site as soon as reasonably practicable and remove all *Temporary Work* and *Materials* it has brought onto the Site, apart from any *Temporary Work* and *Materials* identified by the Principal as being necessary to have the Works completed.
 - .2 The Contractor must assign to the Principal the Contractor's rights and benefits in all its contracts and agreements in connection with the Works, warranties and unconditional undertakings, bank guarantees, insurance bonds, other security of a similar nature or purpose and retention held by the Contractor, with effect from the date of termination of its employment under the Contract
 - .3 The Contractor must consent to a novation to the Principal or its nominee of all Subcontracts and its other contracts concerning the Works, as required by the Principal. The Principal may at any time make payments and may deduct, withhold or set-off any amounts to be paid under the novated contracts from amounts otherwise payable to the Contractor or from any *Undertakings* given on the Contractor's behalf.
 - .4 The Contractor must do everything and sign all documents necessary to give effect to clause 73, and it irrevocably appoints the Principal as its attorney to do this in its name if it fails to do so.
 - .5 If, on *Completion*, the cost to the Principal of completing the Works exceeds the amount that would have been paid to the Contractor to complete, then the difference will be a debt due from the Contractor to the Principal.
 - .6 The Principal may make provisional assessments of the amounts payable to the Principal under clause 73.6.5 and may, without limiting any other right of recourse, demand them against the *Undertakings*.

74 Termination for Principal's convenience

- .1 The Principal may terminate the Contract, by giving notice with effect from the date stated in the notice, for its convenience and without the need to give reasons.
- .2 The Contractor must comply with any instructions of the Principal to wind down and stop work.
- .3 The Contractor must leave the Site by the date stated in the termination notice and remove all *Temporary Work*, *Materials* and other unfixed things it has brought onto the Site apart from *Materials* for which payment has been made or is due under clause 58 and any other items identified in the termination notice as to be retained on the Site.
- .4 After termination under clause 74.1, subject to its rights under the Contract (including clause 63), the Principal must pay the Contractor:
 - .1 the amount due to the Contractor for all work carried out (as determined under clauses 58 and 59) to the date the termination notice takes effect, after taking into account previous payments including any *Prepayments* and any deductions, retentions or set-offs under clauses 59, 60 and 63;
 - .2 the cost of *Materials* reasonably ordered by the Contractor for the Works which the Contractor is legally liable to accept, but only if on payment these unincorporated *Materials* become the property of the Principal, free of any *Encumbrance*;
 - .3 the reasonable, direct costs incurred by the Contractor for the removal of the *Temporary Work* and other things from the Site in accordance with clause 74.3, but only to the extent that the Contractor complies with a strict duty to mitigate costs;
 - .4 an amount of 2% of the unpaid portion of the *Contract Price*, less the amounts payable under clauses 74.4.1 and 74.4.2; and
 - .5 the costs reasonably incurred by the Contractor prior to receiving notice of termination in the expectation of completing the Works, where those costs have not been recovered through any other payment by the Principal, but only to the extent that the Contractor complies with a strict duty to mitigate costs.
- .5 The Principal must return the *Undertakings*, subject to its rights under the Contract.



- .6 The payments referred to in clause 74.4 are full compensation for termination under clause 74 and the Contractor has no *Claim* for damages or other entitlement, whether under the Contract or otherwise.

75 Termination for Principal's default

- .1 If the Principal:
 - .1 fails to pay the Contractor any amount in accordance with the Contract which is not in dispute;
 - .2 commits any fundamental breach of the Contract; or
 - .3 fails to give the Contractor access to the Site sufficient to start work required by the Contract within 3 months after the Date of Contract (or longer period specified in the Contract or agreed by the parties),

the Contractor may give a notice requiring the Principal to remedy the default within 28 days after receiving the notice.

- .2 If the Principal fails to remedy the default, or to propose steps reasonably acceptable to the Contractor to do so, the Contractor may issue a notice terminating the Contract and clauses 74.3 to 74.6 will then apply. The Contractor's sole remedy for the Principal's breach will be the applicable amounts referred to in clause 74.4.

76 Termination notices

- .1 Notices under clauses 73, 74 and 75 must be in writing and be delivered by TeamBinder, unless otherwise agreed in writing between the parties.

77 Survival

- .1 Without limiting the survival of any clause by operation of law, clauses 23, 24, 25 and all indemnities in the Contract survive termination.

Miscellaneous

77A Counterparts

- .1 The Contract may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

Meanings

Meanings

78 Interpretation

- .1 Words in the singular include the plural, and vice versa.
- .2 No legal interpretation applies to the disadvantage of any party on the basis that the party provided the *Contract Documents*, or any part of them.
- .3 "Including" and similar words are not words of limitation.
- .4 Headings and notes are provided to guide the parties and form part of the Contract.

79 Definitions

- | | |
|------------------------|-----------------|
| • Contract | • Site |
| • Contract Information | • Subcontract |
| • Contractor | • Subcontractor |
| • Consultant | • Supplier |
| • Date of Contract | • Valuer |
| • Principal | • Works |

Wherever the following words and phrases are used in this Contract with initial capitals, they have the special meanings set out in clause 79.



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ABC Commissioner

Has the meaning given in the *BCIIP Act*.

ABCC

Has the meaning given in the *Building Code*.

Acceleration Notice

A written instruction under clause 52.1, from the Principal to the Contractor, to accelerate progress of the Works, identified as an "Acceleration Notice".

Actual Completion Date

The date on which *Completion* of the Works or a *Milestone* (as applicable) is achieved by the Contractor.

Baseline Conditions

The indicative conditions of the planning approval to be granted by the Minister for Planning Public Spaces under the *EP&A Act* in relation to the *Planning Approval Application* set out in Schedule 20.

BCIIP Act

The *Building and Construction Industry (Improving Productivity) Act 2016* (Cth).

Building Code

The Building Code issued under subsection 34(1) of the *BCIIP Act*, being the document titled 'Code for the Tendering and Performance of Building Work 2016'.

Building Code Entity

Each of:

- .1 the Contractor;
- .2 the Contractor's Subcontractors; and
- .3 the Contractor's related entities (as contemplated by section 3(2) of the *Building Code*).

Building Contractor

Has the meaning given in the *BCIIP Act*.

Building Industry Participant

Has the meaning given in the *BCIIP Act*.

Building Work

For the purposes of:

- .1 clause 17.1, Contract Information item 16A and Schedule 12, has the meaning given in the *Building Code*; and
- .2 clause 17.2 and Contract Information item 16B, has the meaning given in the *BCIIP Act*.

Business Day

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

Certified AIP Plan

An Australian Industry Participation Plan drafted by the Principal, updated with the Contractor's details (where relevant) and certified by the relevant authority.

CoR Management Plan

The plan of that name required to be developed, implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

Chain of Responsibility Provisions

Sections of the *Heavy Vehicle National Law (NSW) (2013)* under which the Contractor may be a party to the chain of responsibility.

Claim

A claimed entitlement of the Contractor in connection with the Contract, in tort, in equity, under any statute, or otherwise. It includes a claimed entitlement to an extension of time or for breach of contract by the Principal.

Claimed Amount

The amount claimed by the Contractor in a *Payment Claim*.

Commonwealth

The Commonwealth of Australia.

Completion

The state of the Works or a *Milestone* being complete, with no *Defects* or omissions, except for *Defects* not known.

This includes:

- .1 the supply to the Principal of:
 1. all *Subcontractor's* warranties, operation and maintenance manuals, licences, access codes, as-built drawings or work-as-executed drawings required by the Contract or required for the use and maintenance of the Works;
 2. certificates, authorisations, approvals and consents from statutory authorities and service providers;
 3. those certificates required for the occupation, use and maintenance of the Works; and
 4. all other documents;
- .2 *Testing* required by the Contract;
- .3 the provision of all training required by the Contract; and
- .4 all other requirements specified in the Contract

Completion Amount

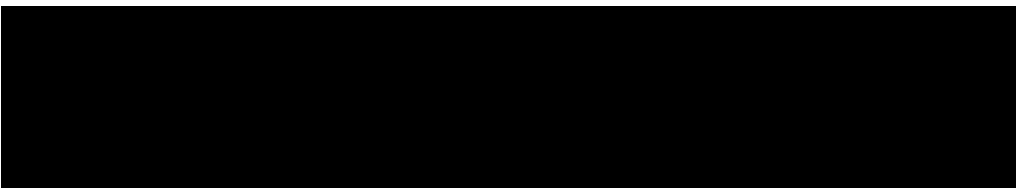
An amount stated in Contract Information item 47 and included in the *Contract Price*, which becomes payable only after *Completion* of the whole of the Works or, if applicable, a specified *Milestone*.

Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 33.

Conformance Records

Records which show conformance by the Contractor with particular requirements of the Contract

**Construction Environmental Management Plan**

The plan of that name required to be developed, implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

Consultant

A consultant engaged by the Contractor to design parts of the Works or to provide other professional services. It includes a consultant whose contract with the Principal is novated to the Contractor.



Contract

The agreement between the Contractor and the Principal constituted by the *Contract Documents*.

Contract Documents

All the documents listed or referred to in clause 7.1.

Contract Information

The document described as such in the *Contract Documents*, which sets out information for the purposes of the Contract.

Contract Price

The amount stated as such in Contract Information item 40 including *Provisional Sums*, subject to adjustment in accordance with the Contract.

Contract Program

The program described in clause 22.

Contractor

The party named in Contract Information item 8A or, where the Contractor is an unincorporated joint venture, the *Joint Venture Participants* named in item 8B, including its (or their) successors and permitted assignees.

Contractor's Authorised Person

The person appointed to act on behalf of the Contractor under clause 2, named in Contract Information item 9 or as subsequently notified to the Principal.

Contractor's Default

A substantial breach of the Contract by the Contractor, including any of the following:

- .1 abandoning the carrying out of the Works;
- .2 suspending progress of the carrying out of the Works in whole or part without the written agreement or instruction of the Principal, except for suspension under clause 54;
- .3 significantly failing to achieve *Scheduled Progress*;
- .4 failing to comply with an instruction in writing or confirmed in writing by the Principal;
- .5 failing to carry out the Works with professional skill, care and competence;
- .6 failing to maintain any registration or licence required by law to carry on activities required under the Contract;
- .7 failing to provide *Undertakings* or *Parent Company Guarantee(s)* as required under clause 33 or *Parent Company Guarantee(s)* as required under clause 15.9;
- .8 failing to effect and maintain insurance policies as required under the Contract;
- .9 failing to hold and maintain prequalification under the National Prequalification System for Civil (Road and Bridge) Construction Contracts, or failing to use a Subcontractor, Consultant or Supplier who holds and maintains prequalification, or who is registered with the Principal in the category or accredited for the class of work, for the relevant part of the Works, as required under the Contract and the *Principal's Documents*; or
- .10 failing to implement or maintain a *Subcontractors and Suppliers Proof of Payment Procedure* in accordance with clauses 28.3 and 28.4.

Contractor's Documents

Drawings, specifications, calculations and other documents and information, meeting the requirements of clause 39, which the Contractor must produce to construct the Works in accordance with the Contract.



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Contractor's Insolvency

Any of the following applying to the Contractor:

- .1 the Contractor is insolvent;
- .2 the Contractor indicates it does not have the resources to perform the Contract;
- .3 an application for winding up is made which is not stayed within 14 days;
- .4 a winding-up order is made;
- .5 a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed;
- .6 a mortgagee enters into possession of any property of the Contractor;
- .7 notice is given of a meeting of creditors for the purposes of a deed of arrangement;
or
- .8 any actions having a similar effect are taken.

Contractor's Margin

An amount added to the costs calculated under clauses 47.5.1 and 47.5.2, to allow for profit and off Site overhead costs.

Contractual Completion Date

The last day of the period stated in Contract Information item 13, by which the Contractor must achieve *Completion* of the Works or of a *Milestone* (as applicable), as adjusted under the Contract

COVID-19

The infectious disease so named by the World Health Organisation.

COVID-19 Change in Statutory Requirement

Where it takes effect after the *Date of Contract*:

- .1 a change in (including any extension, repeal, revocation or expiry of) an existing *Statutory Requirement* in response to *COVID-19*;
- .2 a new *Statutory Requirement* in response to *COVID-19*;
- .3 a new public health order or a change to (including any extension, repeal, revocation or expiry of) an existing public health order issued by the relevant authority in New South Wales under the *Public Health Act 2010* (NSW) or by the relevant authority in another Australian jurisdiction under the equivalent public health legislation in response to *COVID-19*.

COVID-19 Management Plan

The plan of that name required to be developed, implemented, maintained and updated by the Contractor in accordance with the *Principal's Documents*, the initial version of which is included in Schedule 24.

COVID-19 Statutory Requirement

Has the meaning given to that term in clause 49A.8.

Data

The *Contractor's Documents* and all other drawings, sketches, specifications, digital records, computer software, data and information relating to the Contract

Date of Contract

- .1 If a specific date is nominated in Contract Information item 12, Date of Contract means that date.
- .2 If no specific date is nominated in Contract Information item 12, Date of Contract is to be determined as follows:
 - .1 Unless the Principal expressly states, in the *Letter of Award* or any other document given to the Contractor before the *Letter of Award*, that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date of the *Letter of Award*, irrespective of whether the *Letter of Award* is conditional or unconditional and irrespective of whether the Principal also requires execution of a formal agreement or deed.



- .2 If the Principal has expressly stated that no contract is formed until a formal agreement or deed is executed, Date of Contract means the date the formal agreement or deed is executed by the Principal after the Contractor has executed it

Daywork

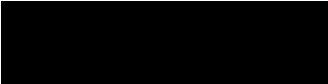
Work carried out by the Contractor for which payment is made on the basis of daily time and cost records for labour, plant, *Materials*, services and other items as provided in Schedule 8 (Daywork).

Defect

An error, omission, shrinkage, blemish in appearance or other fault in the Works or which affects the Works, resulting from a failure of the Contractor to comply with the Contract

Defect Notice

A notice issued by the Principal under clause 45.2 or 67.1.



Designated Building Law

Has the meaning given in the *BCHP Act*.

Early Works

That part of the Works described in Contract Information item 13B.

Early Works Sum

The amount set out in Contract Information item 41A.

Encumbrance

A mortgage, charge, lien, title retention, trust, power or other encumbrance.

Environmental Management Plan

The plan of that name required to be developed, implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

EP&A Act

The *Environmental Planning and Assessment Act 1979* (NSW).

Essential Works

Those elements of the Works specified in Contract Information item 13A that are to be completed as part of Milestone 2 (as specified in Contract Information item 13).

Expert

A person engaged to determine *Issues* under clause 71.

Expert Determination

The process of determination of an *Issue* by an *Expert*, under clause 71 and the procedure in Schedule 5 (Expert Determination Procedure).

Fault

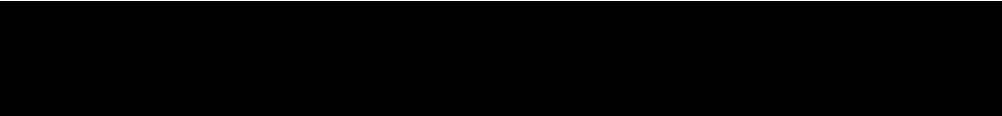
Error, omission, ambiguity, inconsistency or discrepancy.

Final Payment Claim

A *Payment Claim* given by the Contractor to the Principal under clause 61.1.

Final Payment Schedule

A *Payment Schedule* given by the Principal to the Contractor under clause 61.2.



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Intellectual Property Rights

Any copyright, patent right, registered design or other protected right

Issue

Any issue, dispute or difference raised by either party under clause 69.

Joint Venture Participant

Each person that comprises the Contractor, as identified in Contract Information item 8B.

Joint Venture Principal Contractor

The relevant *Joint Venture Participant* identified in Contract Information item 17B.

Letter of Award

A letter from the Principal to the Contractor awarding the Contract to the Contractor.

Materials

Includes materials, plant, equipment and other goods.

Milestone

A part of the Works specified as such in Contract Information item 13.

Minimum Aboriginal Participation Spend

The amount identified in Contract Information item 15D. It represents [REDACTED] of the *Contract Price* at the Date of Contract (excl GST) less allowable exclusions, in line with the NSW Government *Policy on Aboriginal Participation in Construction* goals.

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

- .1 specialised capital equipment (for example, tunnel exhaust fans, tunnel boring machines, batch plants);
- .2 imported materials;

where no suitable Australian supplier exists in the market, and

- .3 value of existing and new non-Contract/project specific assets apportioned to the Contract or to the project, where they are used in delivery of the Contractor the project;
- .4 property acquisitions, indirect leasing costs, extra land, adjustments; and
- .5 non-construction related services,

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

National Construction Code

The National Construction Code produced and maintained by the Australian Building Codes Board, as in force from time to time.

NSW Guidelines

Has the meaning given in clause 13.1.

Parent Company Guarantee

A parent company guarantee in the form of Schedule 15.

Parent Company Guarantor

The person or persons specified in Contract Information item 35B, or such other entity as is consented to by the Principal.

Payment Claim

A claim for payment made by the Contractor to the Principal under clauses 58 or 61.



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Payment Schedule

A schedule containing the Principal's assessment of a *Payment Claim* and stating the amount the Principal proposes to pay, as referred to in clauses 59 and 61.

Performance Incentive Payments

The performance incentive payments as described in and calculated in accordance with Schedule 19.

Planning Approval

The approval granted by the Minister for Planning and Public Spaces under the *EP&A Act* in relation to the *Planning Approval Application*, including all conditions to such approval and documents incorporated by reference.

Planning Approval Application

The application for approval under Part 5.2 of the *EP&A Act*, submitted by the Principal to the Minister for Planning and Public Spaces in accordance with clause 21A.2.

Post-Completion Undertaking

The *Undertaking* required under clause 33.1, for the percentage of the *Contract Price* (at the Date of Contract) stated in Contract Information item 34.

Preferred Subcontractor

A Subcontractor, Supplier or Consultant listed in Contract Information item 31 for a specified trade or area of work.

Prepayment

The amount to be advanced by the Principal in accordance with clause 57 and Contract Information item 45.

Principal

The entity named in Contract Information item 4, including its successors and assignees.

Principal's Authorised Person

The person appointed to act on behalf of the Principal under clause 2, named in Contract Information item 5 or as subsequently notified to the Contractor.

Principal's Documents

The drawings, specifications, and other documents provided by the Principal to the Contractor and containing the Principal's requirements in respect of the Works, and which include the documents identified in Contract Information item 27A.

Project Values

The values that will guide the delivery of Sydney Metro West, being safety and wellbeing, collaboration, integrity, innovation, excellence and achievement.

Provisional Quantity

The quantity of an item of work specified in the Contract for which it is not known, at the Date of Contract, whether the work will be required or what the actual quantity will be.

Provisional Sum

A sum included in the *Contract Price* and identified as a provisional, monetary, prime cost, contingency or other such sum or allowance for the work specified in the Contract against that sum.

Provisional Sum Margin

An amount calculated by applying the percentage stated in Contract Information item 43 to the costs assessed under clauses 55.4.4.2.1 to 55.4.4.2.4 to allow for profit and off Site overhead costs.



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Schedule of Rates

Any document included in the Contract identified as a *Schedule of Rates*, or which shows rates payable for carrying out items of work described in that document

Scheduled Amount

The amount of payment (if any) stated in a *Payment Schedule*, that the Principal proposes to make in relation to a *Payment Claim* as referred to in clause 59.1.2.

Scheduled Progress

The rate of progress consistent with carrying out the work required by the Contract expeditiously and without undue delay, so that the Works and all *Milestones* will be completed by their respective *Contractual Completion Dates*.

Site

The lands and other places to be made available by the Principal to the Contractor for the purpose of executing the Works, including any existing buildings, services or other improvements, as briefly described in Contract Information item 2.

Site Audit Statement

Has the meaning given in the *Contaminated Land Management Act 1997* (NSW) and in this instance specifically refers to a Section A1 or Section A2 *Site Audit Statement* indicating that the Site is suitable for the proposed use and/or the Site is suitable for the proposed use subject to compliance with the *Environmental Management Plan*.

Site Conditions

Any physical conditions of the Site (including sub-surface conditions, but excluding weather conditions or physical conditions which are a consequence of weather conditions) encountered in carrying out work in connection with the Contract.



Statutory Requirements

The laws relating to the Works or the Site, or the lawful requirements of any authority or provider of services having jurisdiction over the Works, the Site, the environment or the Contract, or anyone or anything connected with the Works or the Site or the Contract.

Sydney International Speedway Early Works – Environmental Assessment Checklist (Exempt Development permissible without consent)

The environmental assessment of that name set out in Schedule 22.

Subcontract

An agreement between the Contractor and a Subcontractor or a Supplier.

Subcontractor

An entity (including one engaged in accordance with clause 29.3) engaged by the Contractor to carry out part of the Works or the *Temporary Work*, or both, other than a Consultant or a Supplier.

Subcontractors and Suppliers Proof of Payment Procedure

The administrative procedure set out in clauses 28.3 and 28.4 and as required by clause 28.6 by which:

- .1 the monthly process set out in Schedule 17 (Subcontractors and Suppliers Proof of Payment Process) is implemented;
- .2 the Contractor:
 - .1 provides proof to the Principal that it has paid Subcontractors and Suppliers; and
 - .2 satisfies the Principal that subcontractors and suppliers to Subcontractors and Suppliers have been paid; and
- .3 as relevant:



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- .1 the Principal obtains an irrevocable payment direction in favour of each unpaid Subcontractor and Supplier if the Contractor fails to provide proof of payment; or
- .2 the Contractor obtains an irrevocable payment direction in favour of each unpaid subcontractor and supplier if a Subcontractor or Supplier fails to provide proof of payment.

Subcontractors, Suppliers and Consultants Register

A register in the form of Attachment 8 prepared by the Contractor in accordance with clause 31A.2.

Supplier

An entity engaged by the Contractor to supply *Materials* in connection with the Works.

Sustainability Management Plan

The plan of that name required to be developed, implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

Sydney Metro West Aboriginal Participation Plan

The plan of that name required to be implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

Sydney Metro West Workforce Development and Industry Participation Plan

The plan of that name required to be implemented and maintained by the Contractor in accordance with the *Principal's Documents*.

Temporary Work

Temporary structures, amenities, physical services and other work, including *Materials*, plant and equipment used to carry out the Works but not forming part of the Works.

Test

Examine, inspect, measure, prove and trial, including uncovering any part covered up, if necessary; *Testing* and other derivatives of *Test* have a corresponding meaning.

Undertaking

An unconditional undertaking to pay on demand, in the relevant form of Schedule 2 (Undertaking).

Unresolved Claim

A *Claim* rejected or not agreed under clause 68.6.

Value Completed

The value of work (including design work) carried out by the Contractor and included in a *Payment Claim*, as referred to in Schedule 3 (Payment Claim Worksheet).

Valuer

The entity engaged to determine time and value matters under clause 35.

Variation

Any change to the Works including additions, increases, omissions and reductions to and from the Works, but not including:

- .1 such changes in respect of the development by the Contractor of the design of the elements in Contract Information item 38A (including development of shop drawings and other *Contractor's Documents*) in accordance with the requirements of the Contract; or
- .2 Contract Information item 38A.
- .3 work specified against a *Provisional Sum*.



Works

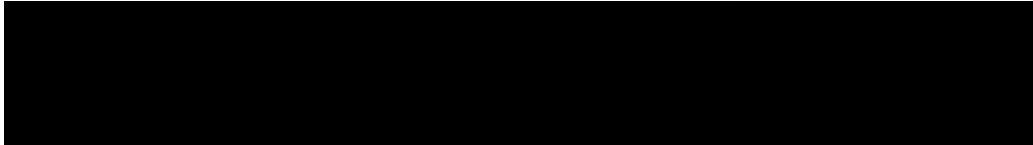
The works to be constructed and handed over to the Principal on *Completion* by the Contractor, including all work and items of the types referred to in clause 8.1, work specified against a *Provisional Sum* (where instructed) and *Variations*, including *Early Work* but excluding *Temporary Work*. The term applies to the Works as a whole and also to any part of the Works unless the context requires otherwise. Contract Information item 3 briefly describes the Works.

Workplace Relations Management Plan (Commonwealth)

Has the meaning given to 'WRMP' in the *Building Code*.

Workplace Relations Management Plan (State)

The Workplace Relations Management Plan contemplated by the *NSW Guidelines*.



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Contract Information

Contract

Item

1 Contract name

The Contract name is: Sydney International Speedway Construct Only Package

The Contract number is: 00013/11864

2 Site

Defined in clause 79

The Site is: Motorsport Precinct 5, Western Sydney Parklands, Eastern Creek as shown on drawing SIS-00013.11814-TD-GE-0021 GENERAL-KEY PLAN

3 Description of the Works

Mentioned in clause 8

The Works are: The construction of the Sydney International Speedway including, but not limited to, enabling and temporary works, earthworks and land forming activities, construction of project infrastructure, prefabricated buildings, environmental management measures, roadworks, car parks, drainage, sewerage, utilities connections, grandstand and clay racing track, motor racing track safety provisions such as walls and fences, landscaping, and finishing works.
The Works are defined in further detail in Specification TfNSW G1 clauses 1 and 2.

Principal's details

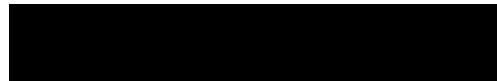
4 Principal

The Principal is: Sydney Metro

5 Principal's Authorised Person

Mentioned in clause 2

The Principal's Authorised Person is:



6 Notices to the Principal

Mentioned in clause 11

Notices must go to the *Principal's Authorised Person* named above, at the address or number shown here.



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Office address:
(for delivery by hand) None

Postal address:
(for delivery by post) None

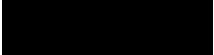
Facsimile number: None

e-mail address: None

PDCS: TeamBinder

7 Principal's Senior executive

Mentioned in clauses 69 & 70

The Principal's senior executive is: 

Office address:
(for delivery by hand) None

Postal address:
(for delivery by post) None

e-mail address: None

PDCS: Team Binder

Contractor's details

8 Contractor

A -- Contractor

The Contractor is: Abergeldie Contractors Pty Limited
ACN 004 533 519 / ABN 47 004 533 519

B -- Joint Venture Participants

The Contractor comprises the following *Joint Venture Participants* jointly and severally: *Mentioned in clause 7.7*

.....

.....

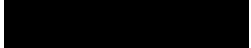
ACN

.....

.....

ACN

9 Contractor's Authorised Person

The Contractor's Authorised Person is: 

Mentioned in clause 2

9A Contractor's Key Personnel

The Contractor's Key Personnel is: 

Mentioned in clause 31B



10 Notices to the Contractor

Mentioned in clause 11

Notices must go to the Contractor's Authorised Person named above, at the address or number shown here.

Office address: (for delivery by hand)	None
Postal address: (for delivery by post)	None
e-mail address:	None
PDCS:	TeamBinder

11 Contractor's senior executive

Mentioned in clause 70

The Contractor's senior executive is: 

Office address: (for delivery by hand)	None
Postal address: (for delivery by post)	None
Facsimile number:	None
e-mail address:	None
PDCS:	TeamBinder

Dates and times

12 Date of Contract

Defined in clause 79

The Date of Contract is:	The date the formal agreement is executed by the Principal after the Contractor has executed it.
--------------------------	--

13 Times for Site access and Completion

*Site access: Mentioned in clause 34
Contractual Completion Date and Completion: Mentioned in clause 65*

Time periods for Site access and for calculating *Contractual Completion Dates* are as shown.

A -- Whole of the Works

Description	Time Period for giving Site access	Time Period for Completion
The whole of the Works:		

B - Milestones

Milestone number	Description	Time Period for giving Site access	Time Period for Completion
		("as for the whole of the Works" applies in the boxes below if not filled in)	("as for the whole of the Works" applies in the boxes below if not filled in)
1			
2			

13A Essential Works

That part of the Works referred to in section 10.2 of G2.

13B Early Works

Early Works

That part of the Works referred to in section 9.1 of G1.

Statutory and Government requirements

14 Fees, charges and approvals

Mentioned in clause 12

Approvals that have been obtained or will be obtained, and fees and charges that have been paid or will be paid, by the Principal are:

Planning Approval

15 Compliance with NSW Government guidelines

A - Work Health and Safety (WHS)



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Mentioned in clause 15.1

Is the Contractor required to implement a Corporate WHS Management System? (Yes/No) Yes

Is the Contractor required to submit a Project WHS Management Plan? (Yes/No) Yes

B – Workplace Relations (WR)

Mentioned in clause 15.1

Is the Contractor required to submit a Workplace Relations Management Plan (State)? (Yes/No) Yes

within 14 days after the Date of Contract

C – Skills and Training

Mentioned in clause 15.1

Is the Contractor required to meet and report at three monthly intervals, using reporting template in Schedule 13, on commitments for engaging apprentices and trainees for the Works?

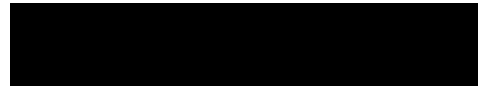
Refer to requirements related to reporting in section 44 Workforce Development and Industry Participation G2

D – Aboriginal Participation

Mentioned in clauses 15.1 and 15.5

The Aboriginal Participation Project Category is: Category 2

The Minimum Aboriginal Participation Spend amount at the Date of Contract is:



Is the Contractor required to submit an Aboriginal Participation Plan and Participation Reports? (Yes/No)

Yes - Refer to section 44 "Workforce Development and Industry Participation" in specification TfNSW G2-C2

The frequency of submission of the Aboriginal Participation Report is:

Monthly – Refer to section 44 "Workforce Development and Industry Participation" in specification TfNSW G2-C2

16 Requirements for Commonwealth Funded projects

A – Building Code

Mentioned in clause 17.1

Does the *Building Code* apply to the Works as there is *Commonwealth* funding (above the minimum thresholds specified in Schedule 1 of the Building) No



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Code) for the project which the Works form part of?

On or after 2 December 2016, has the Contractor or a related entity of the Contractor submitted a response to an expression of interest or tender (howsoever described) for Commonwealth funded Building Work (regardless of whether or not that project was procured by the Principal or whether or not the Contractor or the Contractor's related entity were successful)?

Not applicable

Is a Workplace Relations Management Plan (Commonwealth) required?

No

B – Work Health and Safety Accreditation Scheme

Mentioned in clause 17.2

Is the Contractor required to maintain accreditation under the Work Health and Safety Accreditation Scheme?

No

C – Australian Industry Participation Plan

Mentioned in clause 17.3

Is the Contractor required to implement the Certified Australian Industry Participation Plan?

Yes

17 Principal contractor

A – Single entity Contractor

Mentioned in clause 16

Is the Contractor appointed as principal contractor? (Yes/No)

Yes

Where the Contractor is a joint venture, Contract Information item 17B applies also.

B – Joint Venture Contractor

Mentioned in clause 16 and Schedule 16

Which Joint Venture Participant is the Joint Venture Principal Contractor?

.....
.....
ACN

18 Working hours and working days

Mentioned in clause 18

Working hours and working days are:

working hours that allow for 24 hours a day, 7 days per week but excluding proclaimed



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public holidays and the Contractor's rostered days off

Liability

19 Limitation of liability

[REDACTED] of Contract Price

20 Proportionate liability

Mentioned in clause 26.12

Is proportionate liability excluded from the Contract? (Yes/No) Yes

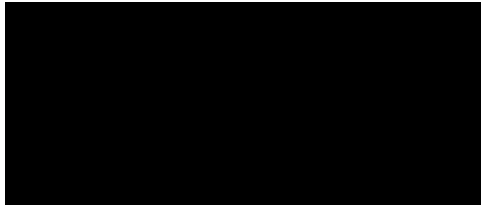
Insurance

21 Works insurance

Mentioned in clauses 27.1 and 27.2

Minimum cover is:
Insurer:
Policy number:
Period of cover is:

Principal's Insurance
As per Schedule 10



22 Public liability insurance

Minimum cover is:
Insurer:
Policy number:
Period of cover is:

Principal's Insurance
As per Schedule 10

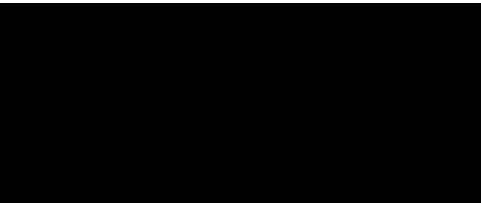


23 Workers compensation insurance

Mentioned in clause 27.12

Minimum cover is:
Insurer:
Policy number:
Period of cover is:

as required by law.
Icare workers insurance



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24 Professional indemnity insurance

Mentioned in clause 27.12.2

Minimum cover is:

Insurer:

Policy Number:

Period of cover is:



24A Asbestos liability insurance

Mentioned in clause 27.1.2

Minimum cover (Third Party Property Damage)

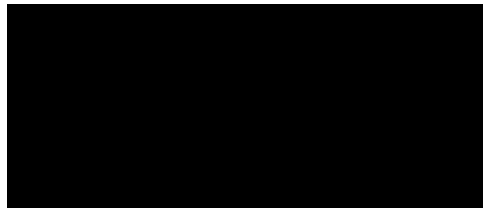
Principal's Insurance

Insurer:

As per Schedule 10

Policy number:

Period of cover is:



25 Marine liability insurance

Mentioned in clause 27.14

Marine liability

Minimum cover is:

Not required.

Insurer:

Policy number:

Period of cover is:

Marine protection and indemnity

Minimum cover is:

Not required.

Insurer:

Policy number:

Period of cover is:

25A Motor Vehicle Fleet/ Mobile Plant Insurance

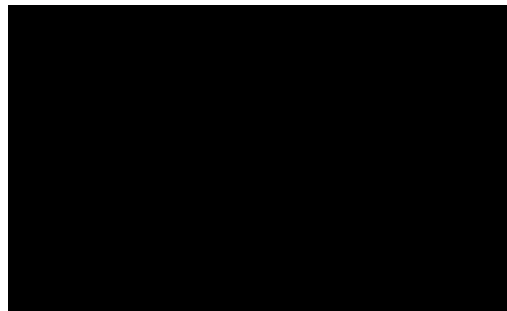
Mentioned in clause 27.12.3

Minimum cover (Third Party Property Damage)

Insurer:

Policy number:

Period of cover is:



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Contract Documents

26 Other Contract Documents

Mentioned in clause 7.1.5

Other *Contract Documents* (not listed in clause 7) are:

1. the *Letter of Award*, and any formal agreement or deed constituting the Contract;
2. any written communications between the parties listed in the *Letter of Award*, formal agreement or deed as documents forming part of the Contract;

Principal's Documents

27A Principal's Documents

Principal's Documents

The *Principal's Documents* listed in Schedule 25 (*Principal's Documents Register*) are provided in an electronic folder called '27A Principal's Documents' on the USB initialled by the Principal and the Contractor.

27 Copies of Principal's Documents

Mentioned in clause 7.4

The number of copies of the *Principal's Documents* to be provided to the Contractor is:

("1 electronic copy" applies if not filled in).

Contractor's Documents

28 Copies of Contractor's Documents

Mentioned in clause 40.1

The number of copies of the *Contractor's Documents* to be provided to the Principal is:

1 electronic copy in a format acceptable to the Principal

Subcontract work

29 Inclusion of consistent requirements in Subcontracts

Mentioned in clause 28.6.1

The Subcontract value requiring inclusion of the provisions set out in Schedule 9 (Subcontract requirements) is:



30 Payment period for Subcontracts

Mentioned in clause 28.6.2



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The maximum period before payment, for Subcontracts less than the value stated in Contract Information item 29, is: 30 *Business Days*.

31 Preferred Subcontractors

Mentioned in clause 29.3

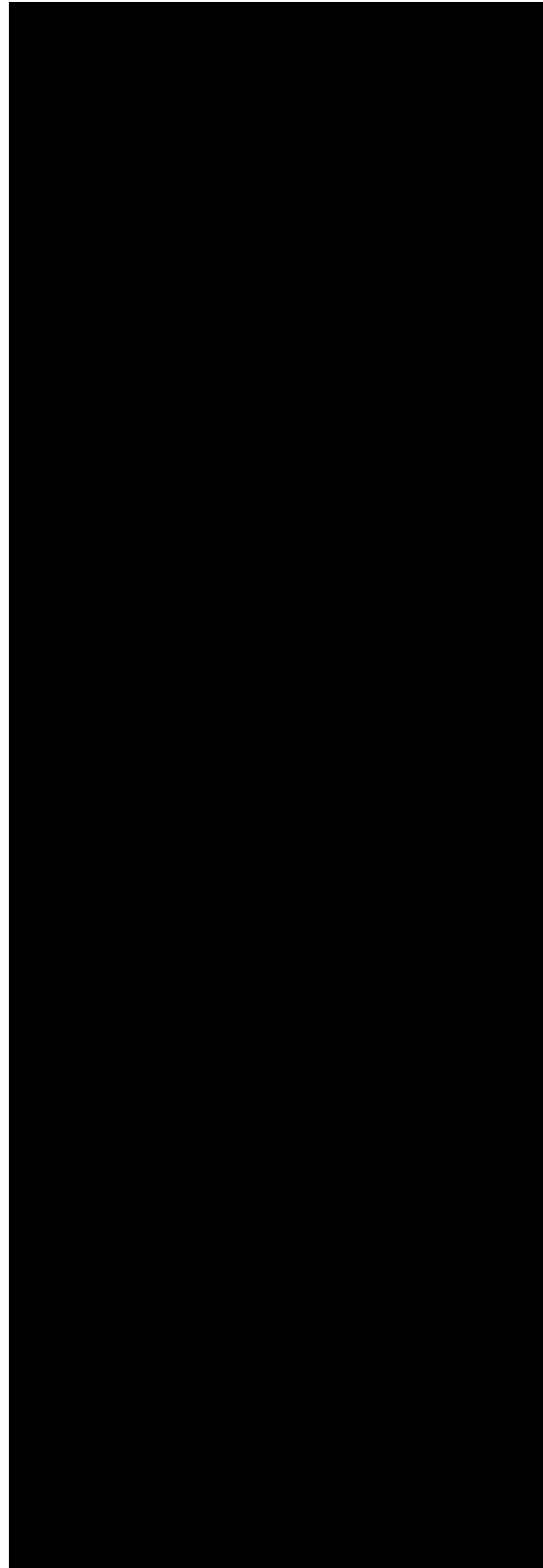
The *Preferred Subcontractors* referred to in clause 29 are:

<i>Names of Preferred Subcontractors</i>	Class of work

32 Subcontractor's warranty

Mentioned in clause 30.1

Trades or areas of work requiring a Subcontractor's warranty are:



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Undertakings and Parent Company Guarantee

33 Completion Undertaking

The amount of the *Completion Undertaking* is:

██████ of the *Contract Price*

Mentioned in clause 33.1

34 Post-Completion Undertaking

The Amount of *Post-Completion Undertaking* is:

██████ of the *Contract Price*

Mentioned in clause 33.1

35 Return of Post-Completion Undertaking

The period at the end of which the *Post-Completion Undertaking* must be returned is:

██████████

Mentioned in clause 33.2.2

35B Parent Company Guarantee

Is a *Parent Company Guarantee* required? (yes/no)

Yes.

(Subject to Principal's right to require a Parent Company Guarantee at any time in accordance with clause 15.9)

Mentioned in clause 15.9 and 33.7

The *Parent Company Guarantor(s)* is / are:

██

350

Site information

36 Site information

Information contained in the documents identified in *Contract Information* items 36A and 36B does not form part of the *Contract*.

Mentioned in clause 36

A - Documents not guaranteed for completeness

Documents not guaranteed for completeness are:

None

B Documents not guaranteed for accuracy, quality or completeness

Documents not guaranteed for accuracy, quality or completeness are:

Documents listed in Schedule 26 (*Site Information Documents Register*) are provided in an electronic folder called '36B Site Information Documents' on the USB initialled by the Principal and the Contractor.

37 Site Conditions

Is the Contractor to bear the full risk, including cost and time implications, of encountering and dealing with

No

Mentioned in clause 37.2



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materially adverse *Site Conditions*?
(Yes/No)

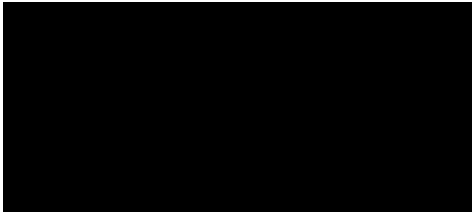
Design and documentation

38 Scope of design activities

Mentioned in clause 1.1.1

A - Design by the Contractor

Mentioned in clause 39

- .1 Items, services and components of the Works for which the Contractor is responsible for developing the design provided by the Principal (clause 39.1.2): None
- .2 Items, services and components of the Works which the Contractor must fully design (clause 39.1.3): 
- .3 Items, services and components of the Works in respect of which the Contractor may depart from the design provided by the Principal (clause 39.7): None

B - National Construction Code

Mentioned in clauses 39 and 43

Does the *National Construction Code* apply? (Yes/No) Yes for those parts of the Works which meet one or more of the classifications of buildings described in the *National Construction Code*

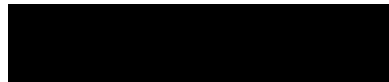
39 Not Used

Payments

40 Contract Price at the Date of Contract

Mentioned in clauses 55.1 and 55.3

The *Contract Price* at the Date of Contract is:



Basis of payment:

The basis of payment is:
(Lump sum / *Schedule of Rates* / *Schedule of Rates* and lump sums)



41 Rise or fall adjustments

Mentioned in clause 55.2

Are rise or fall adjustments applicable to the Contract? (Yes/No) As specified in Schedule 7.

41A Early Works Sum

Mentioned in clause 21A

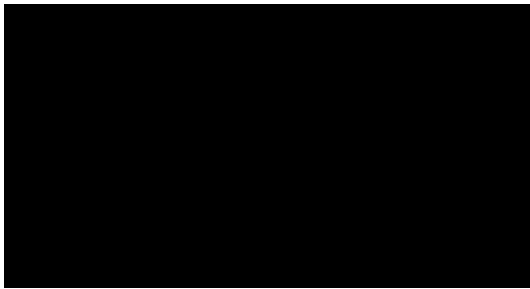
The Early Works Sum at the Date of Contract is:



42 Provisional Sums

Mentioned in clause 55.4

Provisional Sum items referred to in clause 55.4 are:



43 Provisional Sum margin

Mentioned in clause 55.4

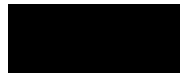
The percentage for Provisional Sum margin is:



44 Contractor's Margin

Mentioned in clauses 47 and 79

The percentage for Contractor's Margin is:



45 Amount of Prepayment

Mentioned in clause 57.1.1

The amount of Prepayment is: [redacted] of the Contract Price

46 Payment date and method

A - Date for Payment Claims

Mentioned in clause 58.1

The date in the month for making Payment Claims is:

The first Business Day of each calendar month.

B - Method of payment

Mentioned in clause 58.2

Milestones for which payment will not be made until after they reach Completion:

Not used.



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47 Completion Amount

Mentioned in clause 60

The *Completion Amount* is:



48 Interest on late payments

Mentioned in clause 62

The rate of interest per annum is:

the rates as determined by the Uniform Civil Procedure Rules 2005 on unpaid judgments for the period in which the amount remains unpaid

Delay costs

49 Delay costs and liquidated damages

Mentioned in clauses 34 and 51

A - Delay costs

The following daily delay cost cap per working day apply. These rates* are exclusive of GST.

Daily delay cost cap per working day



B - Liquidated damages

Mentioned in clauses 51.5 and 51.6

Do liquidated damages apply to this Contract? (Yes/No)

Yes

The rate per day for liquidated damages for the whole of the Works* is:



The rates per working day for liquidated damages for *Milestones** are: (exclusive of GST)



Limit of liability for liquidated damages



** The rates for each are separate and distinct from each other.*

Engagement of Valuer

50 Engagement of Valuer

A - Engagement of Valuer

Mentioned in clause 35

Must a Valuer be engaged? (Yes/No)

No



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B - Person to select the Valuer

Mentioned in clause 35

The person is: Not used

Telephone number: »

Facsimile number: »

C - Litigation Threshold

Mentioned in clause 35

The threshold amount for litigation following a Valuer's determination is: Not used

Expert Determination

51 Not used

52 Expert Determination representative

Mentioned in clause 71

The representative of the Principal for all of the purposes in clause 71, and under Schedule 5 (Expert Determination Procedure) is:



Office address:
(for delivery by hand) None

Postal address:
(for delivery by post) None

e-mail address: None
PDCS: TeamBinder

53 Person to nominate an Expert

Mentioned in clause 71

The person is: Chairperson,
Engineers Australia Sydney Division
Level 3
8 Thomas Street
Chatswood 2067

Telephone number: Telephone (02) 9410 5600

Facsimile number: Facsimile (02) 9410 0000

54 Threshold amount for litigation

Mentioned in clause 71

The threshold amount for litigation following an *Expert's* determination is:



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EXECUTED as a deed on

25 September

2020

EXECUTED by **SYDNEY METRO** (ABN 12
354 063 515) [REDACTED]

EXECUTED by **ABERGELDIE
CONTRACTORS PTY LTD** (ABN 47 004
533 519) [REDACTED]



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Schedules

Schedule 1	Subcontractor's Warranty
Schedule 2	Undertaking
Schedule 3	Payment Claim Worksheet
Schedule 4	Agreement with Valuer
Schedule 5	Expert Determination Procedure
Schedule 6	Contractor's Statement and Supporting Statement
Schedule 7	Costs Adjustment Formula
Schedule 8	Daywork
Schedule 9	Subcontract requirements
Schedule 10	Principal's Insurance Policy Terms
Schedule 11	Statement regarding Materials
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Schedule 14	Not Used
Schedule 15	Parent Company Guarantee
Schedule 16	Joint venture provisions
Schedule 17	Subcontractors and Suppliers Proof of Payment Process
Schedule 18	Form of Deed of Novation
Schedule 19	Performance Incentive Payment Schedule
Schedule 20	Baseline Planning Approval Conditions
Schedule 21	Planning Approval Conditions - Responsibility allocation
Schedule 22	Sydney International Speedway Early Works - Environmental Assessment Checklist (Exempt Development permissible without consent)
Schedule 23	Contract Price
Schedule 24	Initial COVID-19 Management Plan
Schedule 25	Principal's Documents Register
Schedule 26	Site Information Documents Register

Schedule 1

Subcontractor's Warranty

Refer to clause 30.1 of the GC21 General Conditions of Contract.

Definitions

Deed dated:
between

Subcontractor or Supplier:

 ABN
and

The Principal: »
concerning

The Contract: The contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Works: The works to be designed (to the extent specified) and constructed by the Contractor, as described in the Contract.

The Contractor:
 ABN

Subcontract Work or Products:

Warranty Period:years from the *Actual Completion Date* of the whole of the Works.

Other words and phrases in this Deed have the meanings given in the Contract.

In this Deed, the term Subcontractor includes Supplier. The terms Subcontractor, Contractor and Principal include their successors and permitted assignees.

Terms of Deed

1. Warranty
 - .1 The Subcontractor warrants that all work performed and all *Materials* supplied by the Subcontractor as part of the Subcontract Work or Products will:
 - .1 comply in all respects with the requirements of the Contract;
 - .2 to the extent that the quality of *Materials* or standard of workmanship is not specified in the Contract, comply with the applicable industry standards, including (without limitation) the Building Code of Australia and any applicable Australian Standards; and
 - .3 be fit for their intended purposes for which they are required.
 - .2 The Subcontractor warrants that it will use reasonable skill and care in performing all work associated with the Subcontract Work or Products.

2 Replacement or making good

- .1 The Subcontractor promises to replace or make good, to the reasonable satisfaction of the Principal, any of the Subcontract Work or Products which are found, within the Warranty Period, to:
 - .1 be of a lower standard or quality than referred to in clause 1 of this Deed; or
 - .2 have deteriorated to such an extent that they are no longer fit for their intended purposes for which they were required.



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- .2 The liability of the Subcontractor is reduced to the extent that deterioration is caused by:
 - .1 mishandling, damage before installation, or incorrect installation, in each case caused by others;
 - .2 normal wear and tear;
 - .3 incorrect operational procedures or maintenance, in each case not attributable to the Subcontractor; or
 - .4 any other cause beyond the control of the Subcontractor.
- .3 Nothing in this Deed affects the Subcontractor's liability with respect to the Subcontract Work or Products.

3 Costs

- .1 The Subcontractor promises to undertake, and meet the reasonable cost of, any work necessary to:
 - .1 carry out any part of the Works to enable the requirements of clause 2 of this Deed to be met; or
 - .2 restore or make good the Works after meeting those requirements,whichever the Principal requires.

4 Indemnity

- .1 The Subcontractor indemnifies the Principal against claims (including *Claims*, actions and loss or damage) arising out of breach by the Subcontractor of clauses 1 or 2 of this Deed.

5 Notice of Defects

- .1 The Principal may notify the Subcontractor in writing if it considers there has been any breach of the warranty in clause 1 of this Deed or if the Principal requires the Subcontractor to replace or make good any of the Subcontract Work or Products under clause 2 of this Deed.

6 Time to remedy

- .1 The Subcontractor must do everything to remedy any breach notified to it, or to carry out any replacement or making good required under clause 5 of this Deed, within a reasonable time after receiving the Principal's notice.

7 Failure to remedy

- .1 If the Subcontractor fails to complete the work specified in the Principal's notice under clause 5 of this Deed within a period determined by the Principal to be reasonable in the circumstances, the Principal may give written notice to the Subcontractor that the Principal intends to have that work carried out by others. This notice must allow a reasonable period for the Subcontractor to respond.
- .2 If the Subcontractor fails to complete the work by the date specified in clause 7.1 of this Deed, or another date agreed by the parties, the Principal may have the work carried out by others, and the Subcontractor indemnifies the Principal for the reasonable costs and expenses of doing so.

8 Urgent action by Principal

- .1 The Principal may take any urgent action necessary to protect the Works, other property or people as a result of a breach of clause 1 of this Deed.
- .2 The Subcontractor agrees that the Principal taking such action does not affect the warranty or any other obligation of the Subcontractor under this Deed.
- .3 The Subcontractor indemnifies the Principal for the reasonable costs and expenses paid or payable in taking that action.

9 Assignment

- .1 The Principal may assign its rights and benefits under this Deed to [REDACTED] the owner or operating authority of the Works and must give notice of that assignment to the Subcontractor.

10 Operation of Deed

- .1 This Deed comes into effect when executed by the Subcontractor, and is effective whether or not executed by the Principal.



Executed as a deed

The common seal of the Subcontractor was affixed in accordance with its Articles of Association in the presence of:

Signature of Director/Secretary:

Name of Director/Secretary:

Signature of Director:

Name of Director:

or (if the Subcontractor is not a corporation)

Signed, sealed and delivered on behalf of the Subcontractor by:

Signature of Authorised Person:

Name of Authorised Person:

and witnessed by:

Signature of witness:

Name of witness (in full):

Signed, sealed and delivered on behalf of the Principal by:

Signature of Authorised Person:

Name of Authorised Person:

and witnessed by:

Signature of witness:

Full name of witness:

Place:



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Schedule 2

Undertaking

Refer to clauses 33, 57 and 58 of the GC21 General Conditions of Contract.

On behalf of the Contractor

Name of Financial Institution:

The Principal: »

The Contractor:

ABN

Security Amount: \$

The Contract: The contract between the Principal and the Contractor

Contract Name: »

Contract Number: »

Undertaking

- .1 At the request of the Contractor and the Financial Institution, and in consideration of the Principal accepting this *Undertaking* from the Financial Institution in connection with the Contract, the Financial Institution unconditionally undertakes to pay on demand any amount or amounts demanded by the Principal to the maximum aggregate sum of the Security Amount.
- .2 The Financial Institution unconditionally agrees that, if notified in writing by the Principal (or someone authorised by the Principal) that it requires all or some of the Security Amount, the Financial Institution will pay the Principal at once, without reference to the Contractor and despite any notice from the Contractor not to pay.
- .3 The Principal must not assign this *Undertaking* without the prior written agreement of the Financial Institution, which must not be unreasonably withheld.
- .4 This *Undertaking* continues until one of the following occurs:
 - .1 the Principal notifies the Financial Institution in writing that the Security Amount is no longer required;
 - .2 this *Undertaking* is returned to the Financial Institution; or
 - .3 the Financial Institution pays the Principal the whole of the Security Amount, or as much as the Principal may require overall.
- .5 At any time, without being required to, the Financial Institution may pay the Principal the Security Amount less any amounts previously paid under this *Undertaking* (or a lesser sum specified by the Principal), and the liability of the Financial Institution will then immediately end.

Dated at

Execution by the Financial Institution:



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Schedule 3

Payment Claim Worksheet

Refer to clause 58 of the GC21 General Conditions of Contract.

The Contractor: »
 ABN »
The Contract: The contract between the Principal and the Contractor
Contract Title: »
Contract Number: »
Name of Financial Institution: »
Account Name: »
Account Number: »

Where the Contract includes a schedule of prices for work covered by a lump sum.

Item no	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for schedule of prices					

Where the Contract includes a Schedule of Rates

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Schedule of Rates					

Materials

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Materials					

Variations

Pay Item	Description of work	Quantity	Unit	Rate *	Value Completed \$*
Total Value Completed for Variations					

Total Value Completed \$

GST

Total Value including GST

* Amounts and rates are GST exclusive.



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Schedule 4

Agreement with Valuer

Refer to clause 35 of the GC21 General Conditions of Contract.

Definitions

Agreement dated:
between:
The Valuer:
ABN
and:
The Principal: »
and:
The Contractor:
ABN
concerning:
The Contract: The contract between the Principal and the Contractor
Contract Name: »
Contract Number: »
Dated:
The Works: The works to be designed and constructed by the Contractor, as described in the Contract.

Unless the context requires otherwise, other words and phrases in this agreement have the meanings given in the Contract.

The terms Contractor and Principal include their successors and permitted assignees.

Terms of agreement

1 Request to determine and acceptance

- .1 The parties request the Valuer to determine the value and time associated with *Variations* and other matters referred to the Valuer under the Contract. The Valuer agrees to comply with this request in accordance with this agreement.

2 Determination by Valuer

- .1 When a matter is referred to the Valuer by either party, the Valuer must consult with both parties, determine the matter in accordance with this agreement and as specified in the Contract, and issue a certificate stating the determination within 28 days (or another period agreed by the parties) after the matter is referred to the Valuer.
- .2 If a certificate issued by the Valuer contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the Valuer must correct the certificate.

3 Principles for valuation

- .1 The Valuer must determine all matters referred to it in accordance with the principles and procedures set out in the Contract.



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4 Meeting

- .1 The Valuer may meet with the parties together to discuss a matter referred under this agreement. The parties agree that such a meeting is not a hearing which would give anything under this agreement the character of an arbitration.

5 Documents

- .1 The Valuer must take into consideration:
 - .1 documents, information and other written material which has been exchanged by the parties before the request to the Valuer;
 - .2 any submission or submission in reply made by a party to the Valuer (which must be copied to the other party); and
 - .3 information or material provided under clause 6.1.2 of this agreement.
- .2 The Valuer must fix appropriate times for the provision of any submissions and submissions in reply.
- .3 The parties acknowledge that when a matter referred to the Valuer involves a claim from a Subcontractor, Supplier or Consultant's, the Valuer will give the relevant Subcontractor, Supplier or Consultant the opportunity to be involved in the valuation process. The Valuer must wherever possible include in the certificate details of the entitlement determined for each Subcontractor, Supplier or Consultant.

6 Role of Valuer

- .1 The Valuer:
 - .1 acts as an expert and not as an arbitrator;
 - .2 is not expected or required to obtain or refer to any information or material relating to trade information or other third party material but may do so if the Valuer wishes; and
 - .3 must issue a certificate in a form the Valuer considers appropriate, stating the Valuer's determination, with reasons.

7 Certificate final

- .1 Subject to clause 35.1.3 of the GC 21 General Conditions of Contract, the parties agree to accept the determination in the Valuer's certificate as final and binding.

8 Liability of Valuer

- .1 The Valuer is not liable for anything done or omitted by the Valuer under this agreement, other than fraud.

9 Fees and expenses

- .1 The Principal and the Contractor must share equally the fees and out-of-pocket expenses of the Valuer for the determination. However, the Principal alone must pay all such fees and out-of-pocket expenses related to any *Variation* which the Principal proposes but does not later instruct.
- .2 The fees payable to the Valuer under this agreement are:
 - .1 An administration fee of \$» for reviewing the *Contract Documents*
 - .2 An amount for the time involved in performing the Valuer's duties under this agreement based on these hourly rates:

Director	\$...../hour
Associate	\$...../hour
Senior Quantity Surveyor / Engineer	\$...../hour
Quantity Surveyor / Engineer	\$...../hour
Technician	\$...../hour
 - .3 Substantiated out-of-pocket expenses.



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10 Confidentiality

- .1 The parties and the Valuer must keep confidential all proceedings and submissions relating to a determination by the Valuer. They must not divulge information to any other person except with the prior written consent of the other party, or as required by law, or in order to enforce a determination of the Valuer.

11 Termination of agreement

- .1 This agreement may be terminated by a written notice to the Valuer signed by both the Principal and the Contractor. The Principal and the Contractor may then, separately or together, recover all documents each had provided to the Valuer. They must then pay all the Valuer's outstanding fees and expenses in accordance with clause 9 of this agreement.

12 Payment

- .1 The Principal and the Contractor must pay the Valuer within 14 days after receiving an invoice which complies with this agreement.
- .2 The Principal and the Contractor must advise the Valuer of the necessary details for invoicing if they have agreed that one of them will make payments to the Valuer on behalf of both.

13 Period of engagement of Valuer

- .1 Unless this agreement is terminated under clause 11 of this agreement, the Valuer is engaged until the time of issue of the *Final Payment Schedule*, plus any further period of time required for any referred matter which has not been determined by the Valuer by the time the *Final Payment Schedule* is issued.

Signed by the Contractor:

Signature of Authorised Person:
Name of Authorised Person:
Date:

Signed by the Principal:

Signature of Authorised Person:
Name of Authorised Person:
Date:

Signed by the Valuer:

Signature of Valuer:
Name of Valuer:
Date:



Schedule 5

Expert Determination Procedure

Refer to clause 71 of the GC21 General Conditions of Contract.

1 Questions to be determined by the Expert

- .1 For each *Issue*, the *Expert* must determine the following questions, to the extent that they are applicable to the *Issue* and unless otherwise agreed by the parties:
 - .1 Is there an event, act or omission which gives the claimant a right to compensation, or assists in otherwise resolving the *Issue* if no compensation is claimed:
 - .1 under the Contract,
 - .2 for damages for breach of the Contract, or
 - .3 otherwise in law?
 - .2 If so:
 - .1 what is the event, act or omission?
 - .2 on what date did the event, act or omission occur?
 - .3 what is the legal right which gives rise to the liability to compensation or resolution otherwise of the *Issue*?
 - .4 is that right extinguished, barred or reduced by any provision of the Contract, estoppel, waiver, accord and satisfaction, set-off, cross-claim or other legal right?
 - .3 In light of the answers to the questions in clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 - .1 what compensation, if any, is payable by one party to the other and when did it become payable?
 - .2 applying the rate of interest specified in the Contract, what interest, if any, is payable when the *Expert* determines that compensation?
 - .3 if compensation is not claimed, what otherwise is the resolution of the *Issue*?
- .2 The *Expert* must determine, for each *Issue*, any other questions identified or required by the parties, having regard to the nature of the *Issue*.

2 Submissions

- .1 The procedure for submissions to the *Expert* is as follows:
 - .1 The party to the Contract which referred the *Issue* to *Expert Determination* must make a submission in respect of the *Issue*, within 15 *Business Days* after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract
 - .2 The other party must respond within 15 *Business Days* after receiving a copy of that submission or such longer period as the other party may reasonably require, having regard to the nature and complexity of the *Issue* and the volume of the submission. If the parties do not agree on that longer period, the party desiring the longer period may make a submission on the point to the *Expert*, within the time specified by the *Expert*, and the *Expert* will promptly determine any extra time permitted. The response to the submission in clause 2.1.1 may include cross-claims.
 - .3 The party referred to in clause 2.1.1 may reply to the response of the other party, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the response, and must not raise new matters.
 - .4 The other party may comment on the reply, but must do so within 10 *Business Days* or such longer period as that party may reasonably require (in the same terms as in clause 2.1.2) after receiving the reply, and must not raise new matters.
- .2 The *Expert* must ignore any submission, response, reply, or comment not made within the time given in clause 2.1 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.

- .3 The *Expert* may request further information from either party. The request must be in writing, with a time limit for the response. The *Expert* must send a copy of the request and the response to the other party, and give the other party a reasonable opportunity to comment on the response.
- .4 All submissions, responses, replies, requests and comments must be in writing. If a party to the Contract gives information to the *Expert*, it must at the same time give a copy to the other party. All documents to be sent to the Principal under this Expert Determination Procedure must be sent to the relevant person at the relevant postal or other address or method of delivery stated in Contract Information item 52.

3 Conference

- .1 The *Expert* may request a conference with both parties to the Contract. The request must be in writing, setting out the matters to be discussed.
- .2 The parties agree that such a conference is not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4 Role of Expert

- .1 The *Expert*:
 - .1 acts as an *Expert* and not as an arbitrator;
 - .2 must make its determination on the basis of the submissions of the parties, including documents and witness statements, and the *Expert's* own expertise; and
 - .3 must issue a certificate in a form the *Expert* considers appropriate, stating the *Expert's* determination and giving reasons, within 16 weeks, or as otherwise agreed by the parties, after the date of the letter of engagement of the *Expert* referred to in clause 71.3 of the GC21 General Conditions of Contract.
- .2 If a certificate issued by the *Expert* contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the *Expert* must correct the certificate.



Schedule 6

Contractor's Statement and Supporting Statement

Refer to clause 58.6.1 of the GC21 General Conditions of Contract

Statutory Declaration	Oaths Act 1900 (NSW) Ninth Schedule						
<p>I, _____ _____</p> <p>of _____ _____</p> <p>do solemnly and sincerely declare that:</p>							
<p>1. I am the representative of: _____ ("the Contractor") in the Office Bearer capacity of: _____</p>							
<p>2. The Contractor has a contract with the [_____]: _____ ("the Contract")</p>							
<p>3. I personally know the facts which I have set out in this declaration.</p>							
<p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <ul style="list-style-type: none">a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, andb) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation, <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table border="0"><thead><tr><th>Employee:</th><th>Amount unpaid or not accrued:</th></tr></thead><tbody><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr></tbody></table>		Employee:	Amount unpaid or not accrued:	_____	_____	_____	_____
Employee:	Amount unpaid or not accrued:						
_____	_____						
_____	_____						
<p>4A. All subcontractors who have at any time been engaged by the Contractor for work done under the Contract have been paid to the date of this declaration in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), with the exception of the subcontractors and respective amounts unpaid for each subcontractor listed below:</p> <table border="0"><thead><tr><th>Subcontractor:</th><th>Amount unpaid:</th></tr></thead><tbody><tr><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td></tr></tbody></table>		Subcontractor:	Amount unpaid:	_____	_____	_____	_____
Subcontractor:	Amount unpaid:						
_____	_____						
_____	_____						
<p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p>							
<p>5A. Where the Contractor holds any retention money from a subcontractor, the Contractor has complied with all requirements under Part 2 of the Building and Construction Industry Security of Payment Regulation 2008 (NSW), with the exception of the items listed below: _____</p>							

6. In all cases where a subcontractor or supplier to the Contractor has provided services and/or materials in respect of the Contract and has submitted a claim to the Contractor for these services or materials which as at the date of this statutory declaration would have been due and payable but which the Contractor disputes, the reasons for such dispute have been notified in writing to the subcontractor or supplier by the Contractor prior to the date of this statutory declaration. Where such dispute relates to part only of the subcontractor or supplier's claim, that part of the claim not in dispute has been paid by the Contractor to the subcontractor or supplier as at the date of this statutory declaration except for the amounts listed in 5 above.

7. The provisions of the Contract relating to the payment of employees, subcontractors and suppliers of the Contractor have been complied with by the Contractor.

8. The Contractor has been informed by each subcontractor to the Contractor (except for subcontracts not exceeding \$25,000 at their commencement) by statutory declaration in equivalent terms to this declaration (made no earlier than the date 14 days before the date of this declaration):

(a) that their subcontracts with their subcontractors and suppliers comply with the requirements of the Contract relating to payment of employees and subcontractors, and

(a1) that all their subcontractors, as at the date of the making of such a declaration, have been paid in accordance with the relevant subcontracts and any applicable industrial instruments (as defined in the Industrial Relations Act 1996 (NSW)), and

(b) that all their employees, as at the date of the making of such a declaration:

i) have been paid all remuneration and benefits due and payable to them by; or

ii) had accrued to their account all benefits to which they are entitled from;

the subcontractor of the Contractor or from any other subcontractor (except for subcontracts not exceeding \$25,000 at their commencement) in respect of any work under the Contract, and

(c) of details of any amounts due and payable or benefits due to be received or accrued described in 8(a1) and 8(b) above which have not been paid, received or accrued,

except for the following subcontractors to the Contractor who have failed to provide such a declaration:

Subcontractor:

Due amount unpaid:

.....
.....
.....
.....

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

Employee, subcontractor or supplier:

Amount unpaid or not accrued:

.....
.....
.....

10. In relation to the statutory declaration provided by each subcontractor to the Contractor, I am not aware of anything to the contrary of what is contained therein, and on the basis of the contents of those statutory declarations, I believe that information to be true.

11. Attached to and forming part of this declaration, as Annexure B, is a "Subcontractor's Statement" given by the Contractor in its capacity as 'subcontractor' (as that term is defined in the Workers Compensation Act 1987, Payroll Tax Act 2007 and Industrial Relations Act 1996) which is a written statement:

(a) under section 175B of the Workers Compensation Act 1987 in the form and providing the detail required by that legislation;

(b) under section 18(6) of part 5 of schedule 2 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and

(c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.

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

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



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12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987, the Payroll Tax Act 2007 and the Industrial Relations Act 1996 ("Acts"); and
 - (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

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

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

.....
 (Signature of Declarant)

Before me:

.....
 (Signature of person before whom the declaration is made)

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

.....
 (Title* of the person before whom the declaration is made)

And as a witness, I certify the following matters concerning the person who made this declaration (declarant):

[*strike out the text that does not apply]

1. *I saw the face of the declarant.
 OR

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

2. *I have known the declarant for at least 12 months.
 OR

*I confirmed the declarant's identity using the following identification document:

.....
 Identification document: relied on
 (may be original or certified copy)

.....
 Signature of person before whom the declaration is made

Before me:

.....
 (Signature of person before whom the declaration is made)

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

.....
 (Title* of the person before whom the declaration is made)

* The declaration must be made before one of the following persons:

- where the declaration is sworn within the State of New South Wales:

- (i) a justice of the peace of the State of New South Wales;
- (ii) a solicitor of the Supreme Court of New South Wales with a current practising certificate; or
- (iii) a notary public.

- where the declaration is sworn in a place outside the State of New South Wales:

- (i) a notary public; or



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(ii) any person having authority to administer an oath in that place.



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Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

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

Contract number/identifier: [contract number/identifier]

OR

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

* [Delete whichever of the above does not apply]

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

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

Signature: Date:

Full name: Position/Title:



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Attachment

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

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



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Annexure B

SUBCONTRACTOR'S STATEMENT

REGARDING WORKERS COMPENSATION, PAYROLL TAX AND REMUNERATION
(Note 1 - see back of form)

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

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

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

Subcontractor: ABN:

.....
(Business name)
of
.....

.....
(Address of subcontractor)

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

(Business name of principal contractor)
(Note 2)

Contract number/identifier
(Note 3)

This Statement applies for work between:/...../..... and/...../..... inclusive, (Note 4)
subject of the payment claim dated:/...../..... (Note 5)

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

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



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



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Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relations Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.
A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called *the subcontractor*) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of s127 *Industrial Relations Act 1996*, a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.
Section 127(6) of the *Industrial Relations Act 1996* defines remuneration 'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'
Section 127(11) of the *Industrial Relations Act 1996* states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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



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Schedule 7

Costs Adjustment Formula

Refer to clause 55.2 of the GC21 General Conditions of Contract.

1 No adjustment if contract period less than 52 weeks

- .1 Except for cost adjustment for the supply of bitumen calculated under clause 7 of this schedule, if the time stated in the Contract Information for Completion of the Works is 52 weeks or less from the Date of Contract, the Contract is not subject to adjustment for rise and fall in costs.

2 Method of cost adjustment

- .1 If the time stated in the Contract Information for Completion of the Works is more than 52 weeks from the Date of Contract, each payment under clause 59 of the Contract shall be adjusted in accordance with this clause 2.
- .2 The method of adjustment is as follows (in the order set out below):-
 - .1 Deduct from the value of the Payment Schedule otherwise proposed to be made by the Principal under clause 59 of the Contract the sum of:-
 - (1) the value of the immediately preceding Payment Schedule; and
 - (2) amounts payable to the Contractor for items referred to in clause 6 for work carried out in performance of the Contract and incorporated in the Works since the date of the immediately preceding Payment Schedule.
 - .2 Multiply the result by the Costs Adjustment Factor in clause 3.
 - .3 If the net Costs Adjustment Factor is positive, add the result to the value of the payment to be made.
 - .4 If the net Costs Adjustment Factor is negative, subtract the result from the value of the payment to be made.

3 Costs adjustment formula

- .1 Subject to clause 4, the Costs Adjustment Factor is determined by the following formula:-

$$C = r \left(\frac{R_n}{R_o} \times \frac{X_n - X_o}{100 + X_o} + \frac{R_n}{R_o} \times \frac{Y_n - Y_o}{100 + Y_o} \right) + 0.85 \left(\frac{R_n - R_o}{R_o} \right)$$

where

- C = Costs Adjustment Factor
- r = Labour costs proportion of the Contract which for the purposes of this clause is 0.425 only for bridge construction contracts (and the bridge construction portion of combined road and bridge construction contracts) and 0.350 only for roadworks, earthworks and drainage contracts (and the roadworks construction portion of combined road and bridge construction contracts).
- R_n = Road and Bridge Construction New South Wales Index Number 3101, which is in 6427.0 - Producer Price Indexes, Australia Division E Table 17 as published by the Australian Bureau of Statistics applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant payment schedule was carried out.
- R_o = Road and Bridge Construction New South Wales Index Number 3101, which is in 6427.0 - Producer Price Indexes, Australia Division E Table 17 as published by the Australian Bureau of Statistics applicable to the calendar month preceding the calendar month during which tenders closed.
- X_n = Current Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable to the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.



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- Xo = Base Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable as at the calendar month immediately preceding the calendar month during which tenders closed.
- Yn = Current Works' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable as at the calendar month immediately preceding the last calendar month in which the work the subject of the relevant Payment Schedule was carried out.
- Yo = Base Workers' Compensation Premium Rate, which is the rate shown in Table A Division E Subdivision 41 of the Workers' Compensation Act 1987, Insurance Premiums Order for Road and Bridge Construction (Group 412 Class 412100) applicable on the first day of the calendar month immediately preceding the calendar month during which tenders closed.

NOTE: Rates published by Australian Bureau of Statistics are for quarterly periods and the rate for the calendar month will be the rate for the quarter containing that calendar month.

4 Adjustment of new rates

- .1 If the Principal instructs a Variation under clause 48 of the Contract which is not, in the opinion of the Principal, of the same class of works provided in the Contract schedules, every payment made under clause 59 of the Contract for the Variation will be adjusted in the following manner:-
- .1 the value of the Works to be certified by the Principal in a Payment Schedule under clause 59 of the Contract will be multiplied by the Costs Adjustment Factor referred to in clause 3 as varied by clause 4.1.3;
 - .2 the amount which is produced as a result of the operation of clause 4.1.1 will, where the Costs Adjustment Factor (as varied by this clause) is positive, be added to, or where the Cost Adjustment Factor (as varied by this clause) is negative, be subtracted from the Principal's assessment value of the Works under clause 59 of the Contract; and
 - .3 for the purposes of clause 4, the words "the calendar month in which the Contractor submitted or the Principal assessed the rate or price" referred to in clause 4 replace the words "the calendar month during which tenders closed" in the definition of each of the terms "R", "Xo" and "Yo" in clause 3.

5 Index Numbers as first published

- .1 The Index Numbers referred to in this clause as being published by the Australian Bureau of Statistics are the numbers as first published for a particular month by the Australian Bureau of Statistics. For the purposes of this clause, those numbers are not subject to alteration following publication of revised, amended or corrected numbers.

6 Items not to be adjusted

- .1 Payments made to the Contractor for the following items will not be adjusted at all:-
- .1 extra work instructed by the Principal under clause 48 of the Contract to be executed by the Contractor at a price or prices agreed between the Principal and the Contractor unless the agreement expressly provides for cost adjustment;
 - .2 items paid for as Provisional Sums in accordance with the Contract; and
 - .3 items subject to a separate cost adjustment under clause 7.

7 Cost adjustment for the supply of bitumen

- .1 The Contract Price shall be subject to adjustments for variations in the cost of bitumen supplied by the Contractor. The adjustment shall be effected in the Payment Claims submitted by the Contractor in accordance with clause 58 of the Contract and the Payment Schedules issued under clause 59 of the Contract.
- .2 Any cost adjustment under this clause 7 shall be calculated from the formula:-

$$D = (C - B) \times A$$



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where –

A = the quantity of bitumen derived from –

1. The calculation of residual bitumen at 15 degrees Centigrade where the product is sprayed bituminous surfacing or a tack coat
2. The approved design binder content where the product is asphalt
3. The approved residual binder content where the product is a bituminous slurry surfacing.

B = the Price of Class 170 bitumen applicable on the last day of the month immediately preceding the month during which the tenders closed;

C = the Price of Class 170 bitumen on the last day of the month immediately preceding the month during which the work is performed; and

D = the applicable cost adjustment for this payment claim.

The Price of Class 170 bitumen shall be the average of the prices for the suppliers contracted to supply Sydney Metro on its panel contract for the Supply of Bitumen and Related Products.

8 No other costs adjustment

- .1 Unless expressly provided elsewhere in the Contract, there is no adjustment for any costs changes except as provided by clauses 2-7 inclusive. The Contractor accepts the provisions under clauses 2-7 inclusive in full compensation for all costs changes which occur after the closing date of tenders irrespective of their nature and including those consequent upon alteration in the standard working hours and industrial conditions applicable to or prescribed for any industry generally by an Act, Court, Commission or Authority.



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Schedule 8

Daywork

Refer to clause 47.4 of the GC21 General Conditions of Contract.

1 Daywork procedure and determination

- .1 If the Principal instructs that a *Variation* be carried out as *Daywork*, the Principal and Contractor must agree the amount, type and conditions of use of labour, plant and materials to be used in the *Variation*.
- .2 The Contractor must record the particulars of all resources used by the Contractor each day in carrying out the *Variation*. The method of recording the resources must be agreed by the Contractor and the Principal.
- .3 When submitting a claim for payment for the *Variation* in a *Payment Claim* under clause 58, the Contractor must submit the records and all time sheets, wages sheets, invoices, receipts and other documents that are necessary to support this *Payment Claim*.
- .4 The Principal must assess the value of the *Variation* to be paid to the Contractor in respect of each *Payment Claim* and in making its assessment under clause 59 must have regard to the following:
 - .1 the amount of wages and allowances for labour calculated by multiplying the hourly rate of the nearest appropriate labour classification in Annexure E of Specification G2-C2, by the relevant labour hours worked on the *Variation*;
 - .2 the amount of hire charges for construction plant and vehicles hired from third parties or owned by the Contractor, calculated by multiplying the hourly rate of the nearest appropriate construction plant and vehicle classification in Annexure E of Specification G2-C2, by the relevant plant or vehicle hours worked on the *Variation*;
 - .3 where there is no appropriate construction plant or vehicles listed in Annexure E of QA Specification G2-C2, then the reasonable actual amount of hire charges for that construction plant and vehicles hired from third parties or owned by the Contractor as recorded on invoices or other relevant documentation;
 - .4 the reasonable actual mobilisation and demobilisation costs of construction plant and vehicles (where brought to Site only for the directed *Daywork*);
 - .5 the reasonable costs to the Contractor of Subcontractor and Consultant work involved in carrying out the *Variation*;
 - .6 the reasonable actual cost at the Site of all materials; and
 - .7 the reasonable actual cost of additional supervisory and administrative staff brought to the Site only for the directed *Daywork*.
- .5 In addition to the amounts assessed for the items in clause 1.4 above, the value of the *Variation* will include an additional amount for the *Contractor's Margin for Daywork* calculated as 12% of the total of the assessed costs under clause 1.4.
- .6 The hourly rates referred to under clause 1.4.1 and 1.4.2 are subject to cost adjustment in accordance with Schedule 7.

2 Amounts included in and excluded from *Daywork*

- .1 Assessment by the Principal of the valuation of a *Variation* carried out as *Daywork* will include valuation of all reasonable and necessary costs incurred of personnel, plant, vehicles, Subcontractor, Consultant and materials used by the Contractor in carrying out the *Variation* as instructed by the Principal, subject to:
 - .1 the valuation of the *Variation* will only include costs for actual time of any resources which are employed on the *Variation*; and



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- .2 the costs of supervisory, technical and administrative personnel that are normally engaged on the Works and continue to be so during the *Daywork* will not be included in the Principal's assessment of the valuation of the *Variation*.
- .2 Subject to clause 2.1, no other costs are to be included in the Principal's valuation of the *Variation* carried out by *Daywork*, other than those costs outlined in clause 1.



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Schedule 9

Subcontract requirements

Refer to clause 28.6.1 of the GC21 General Conditions of Contract.

General requirements for specified subcontracts

In addition to its obligations under clause 28.3 to 28.8 inclusive, for all Sub contracts valued at or over the amount stated in Contract Information item 29, the Contractor must include requirements consistent with the provisions of the following clauses and schedules of this Contract:

1. clause 3 – Co-operation
2. clause 4 – Duty not to hinder performance
3. clause 5 – Early warning
4. clause 6 – Evaluation and monitoring
5. clause 10 – Governing law of the Contract
6. clause 13 – Codes of Practice
7. clause 14 – No collusive arrangements
8. clause 15.1.1 – Work Health and Safety management, except that the submission and implementation of the Safe Work Method Statements is subject to the decision of the Contractor as principal contractor for Work, Health and Safety matters.
9. clause 15.1.4 – Aboriginal Participation in Construction
10. clause 17.3 – Compliance with the Certified AIP Plan, where required by Contract Information item 16C
11. clause 23 – Intellectual Property
12. clause 24 – Confidentiality
13. clause 25 – Media releases and enquiries
14. clause 26 – Care of people, property and the environment, indemnities and limitations
15. clauses 27.13, 27.19.1.1, 27.19.1.2, 27.19.1.5 and 27.19.1.6 - Insurances
16. clause 28 – Subcontractor relationships
17. clause 58 – Payment Claims
18. clause 59 – Payments
19. Schedule 1 (Subcontractor's Warranty) together with an obligation to execute and deliver the Warranty to the Principal (only if the Subcontractor is required by clause 30 to provide the warranty)
20. Schedule 9 (Subcontract requirements)
21. Schedule 17 (Subcontractors and Suppliers Proof of Payment Process)



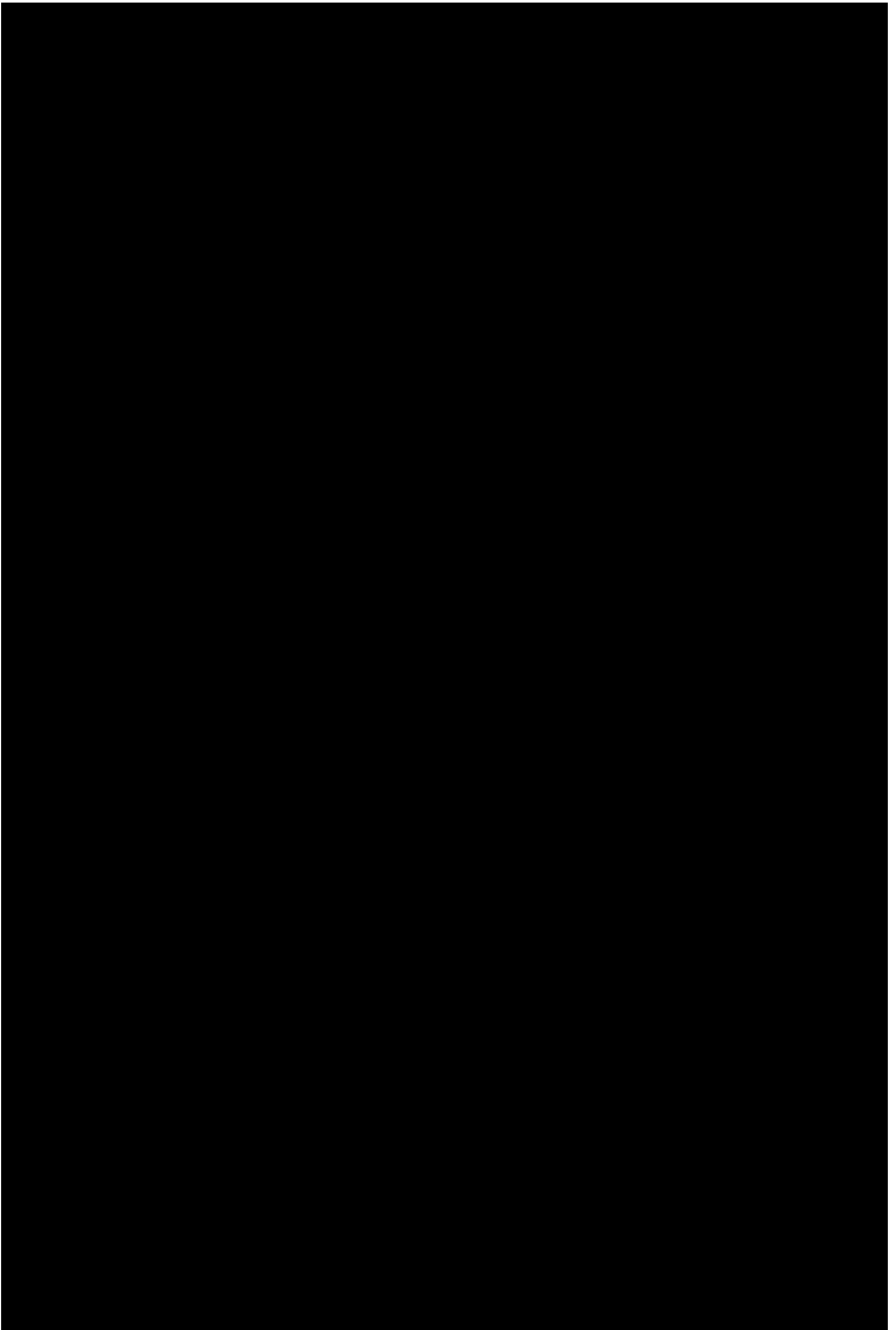
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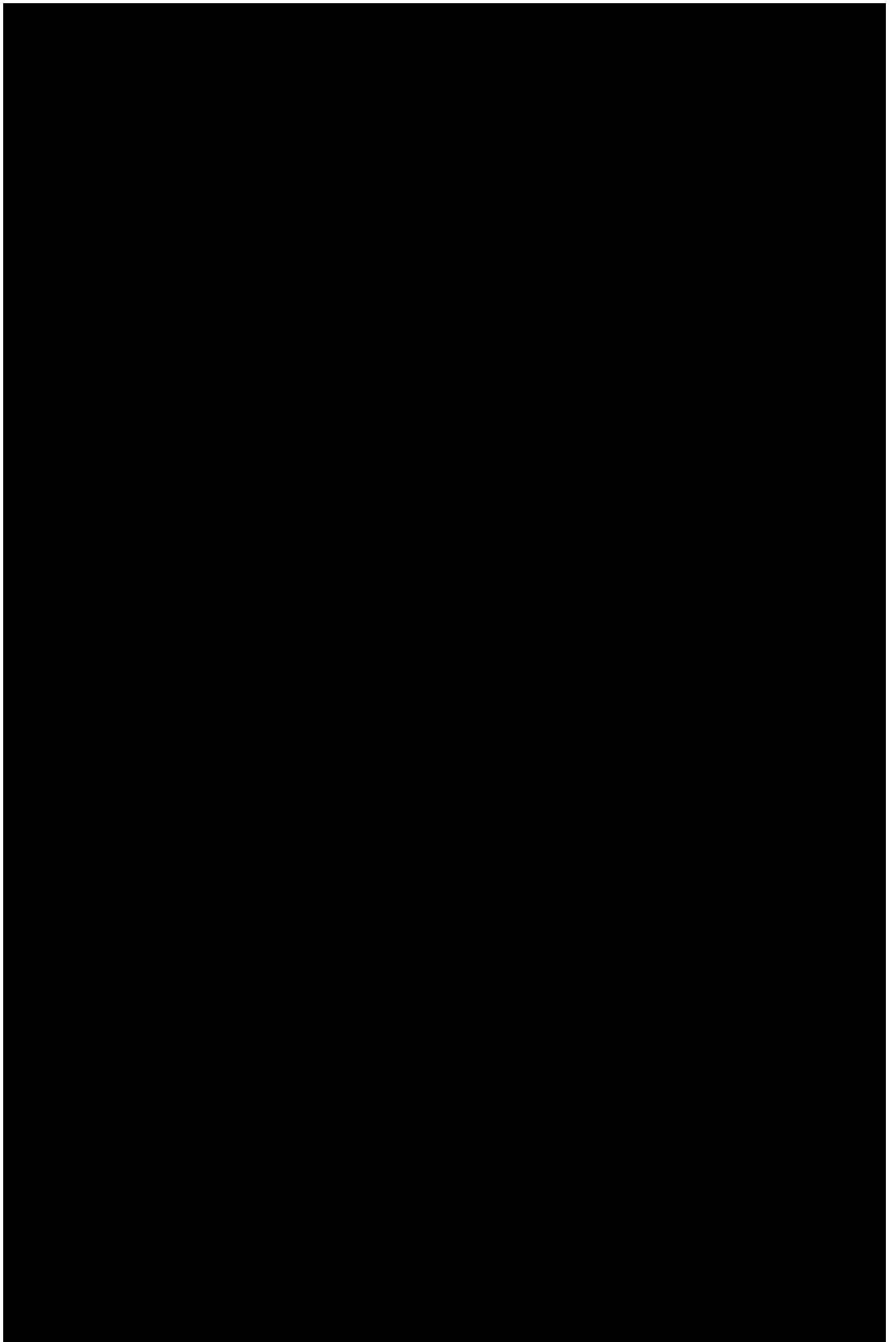
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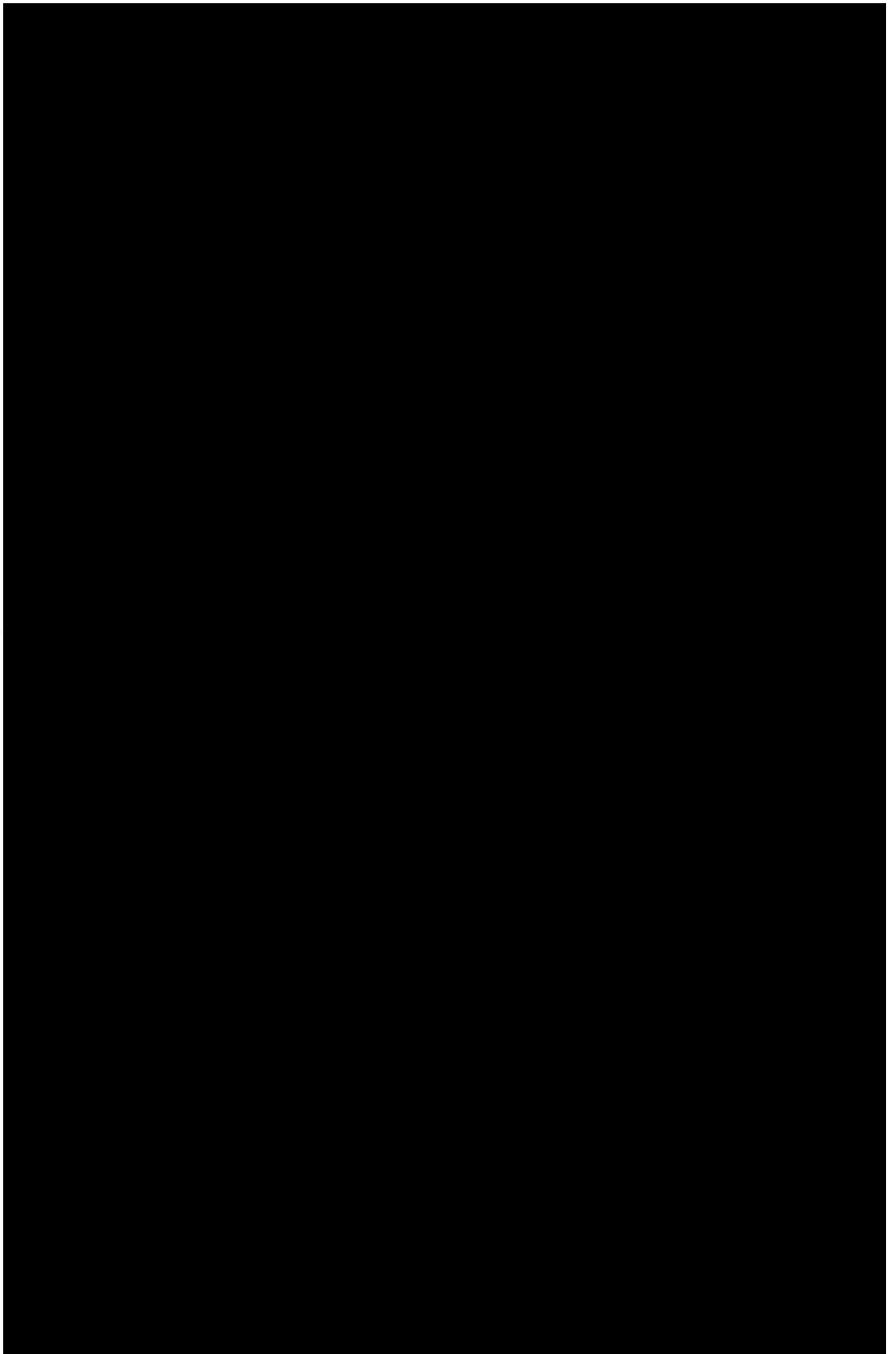
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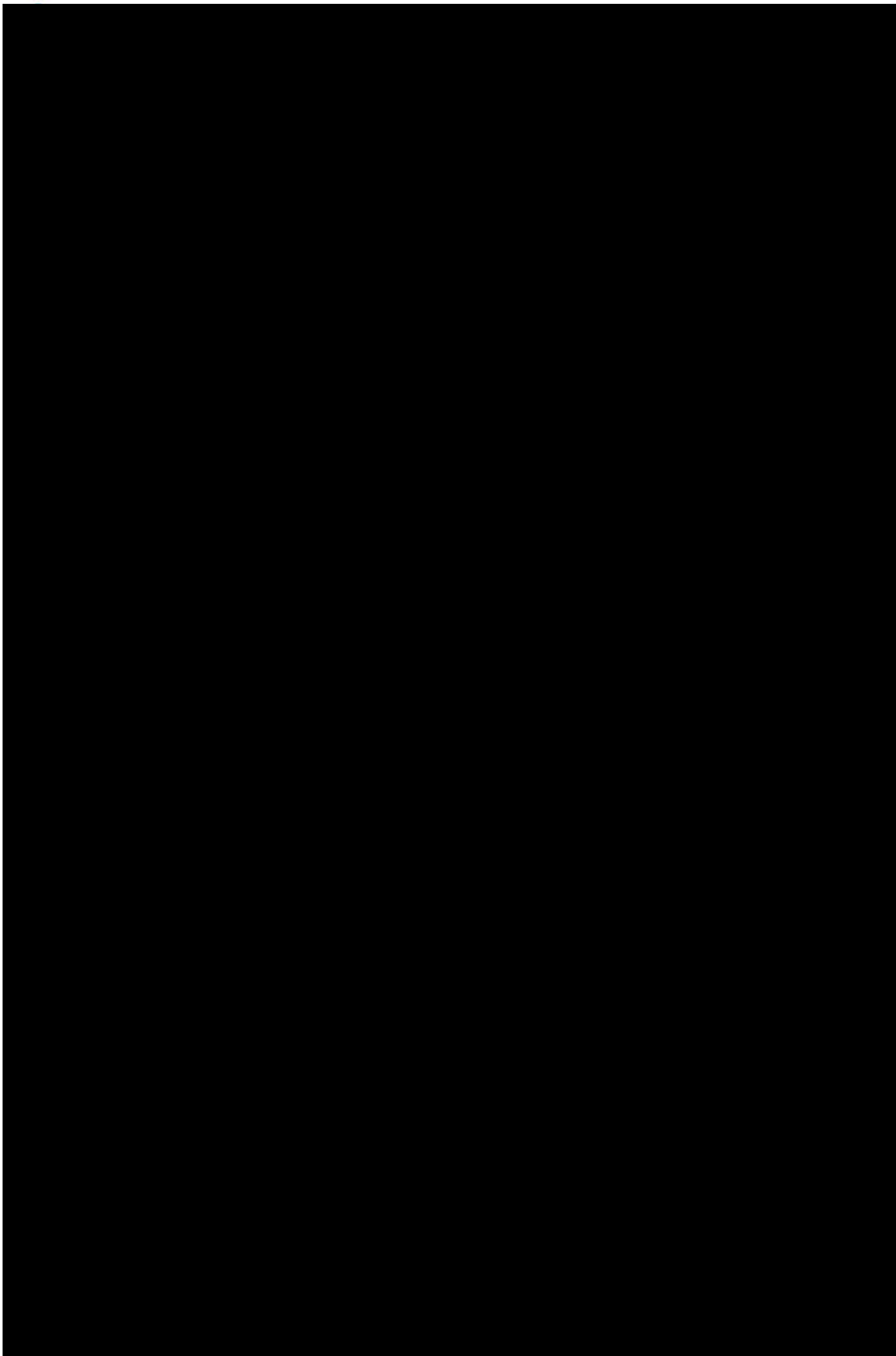


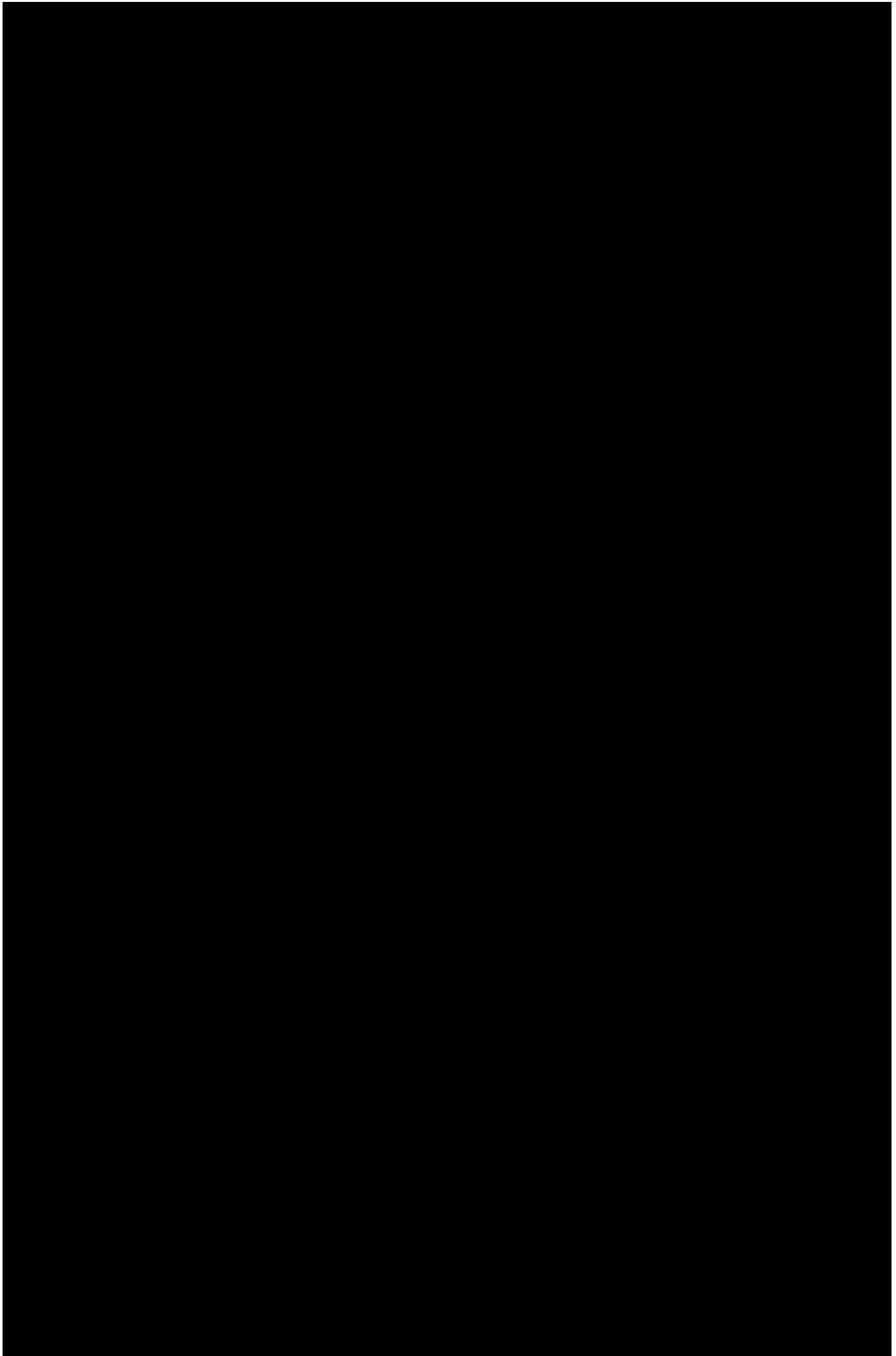
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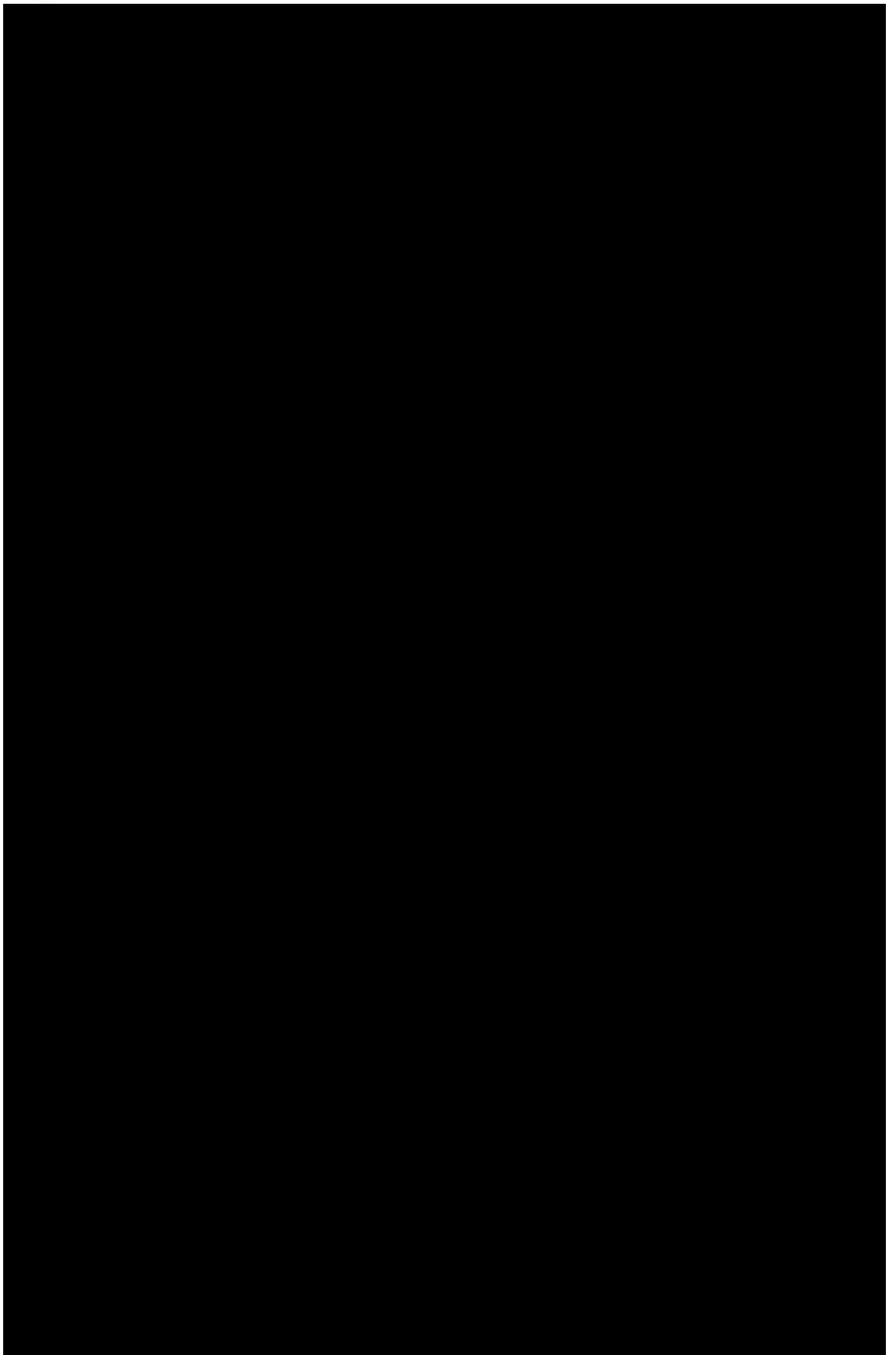


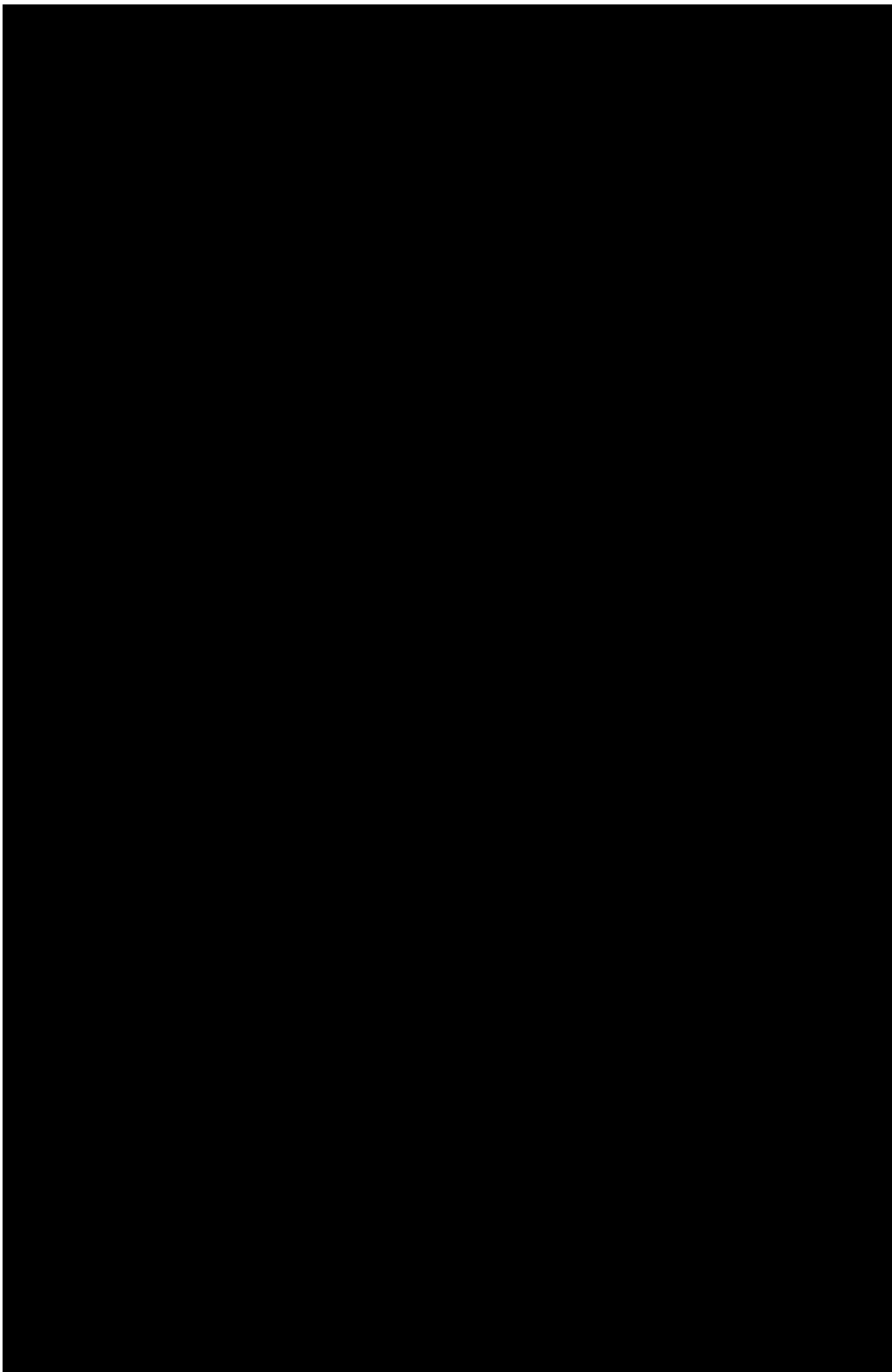


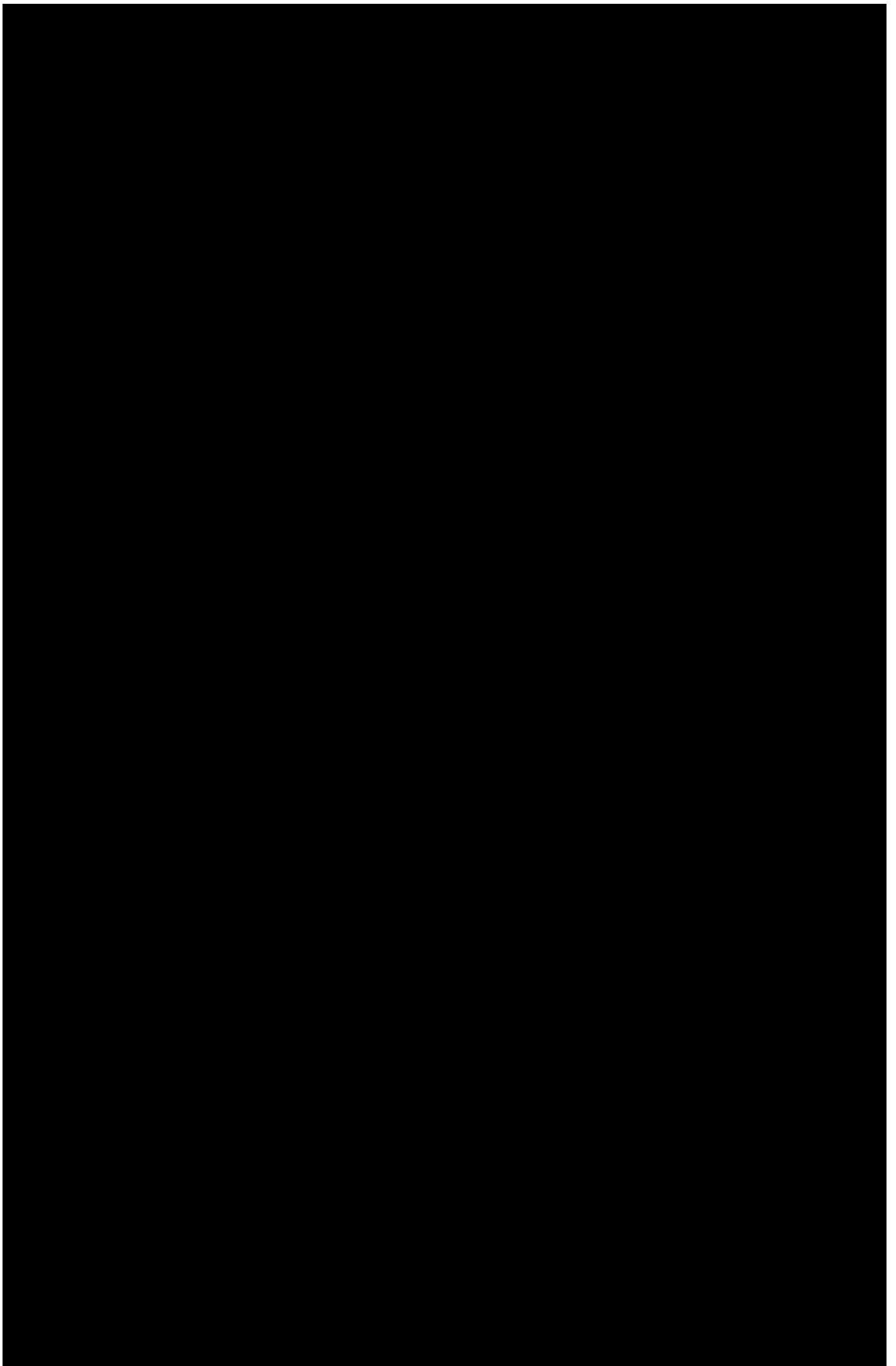


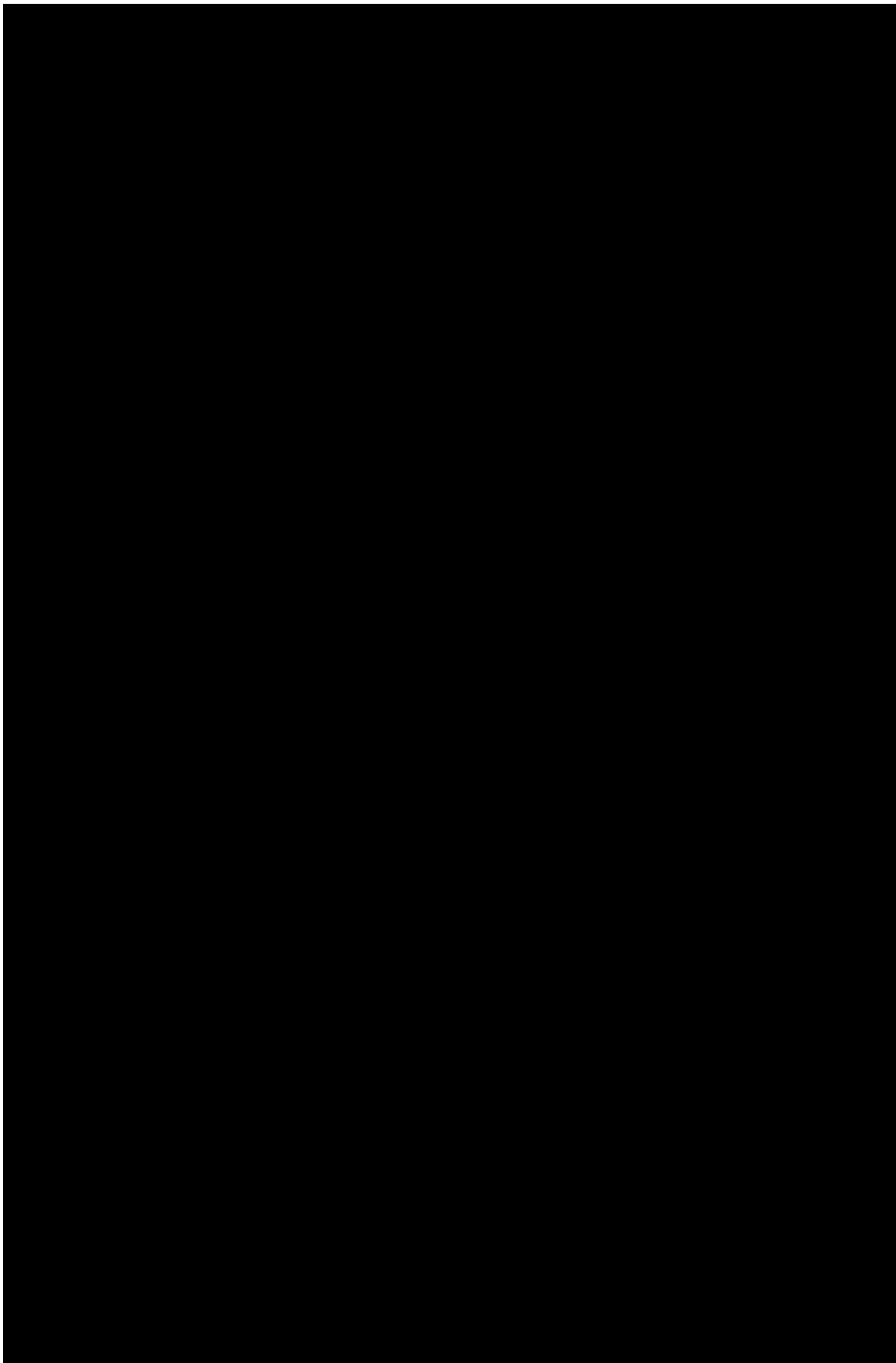


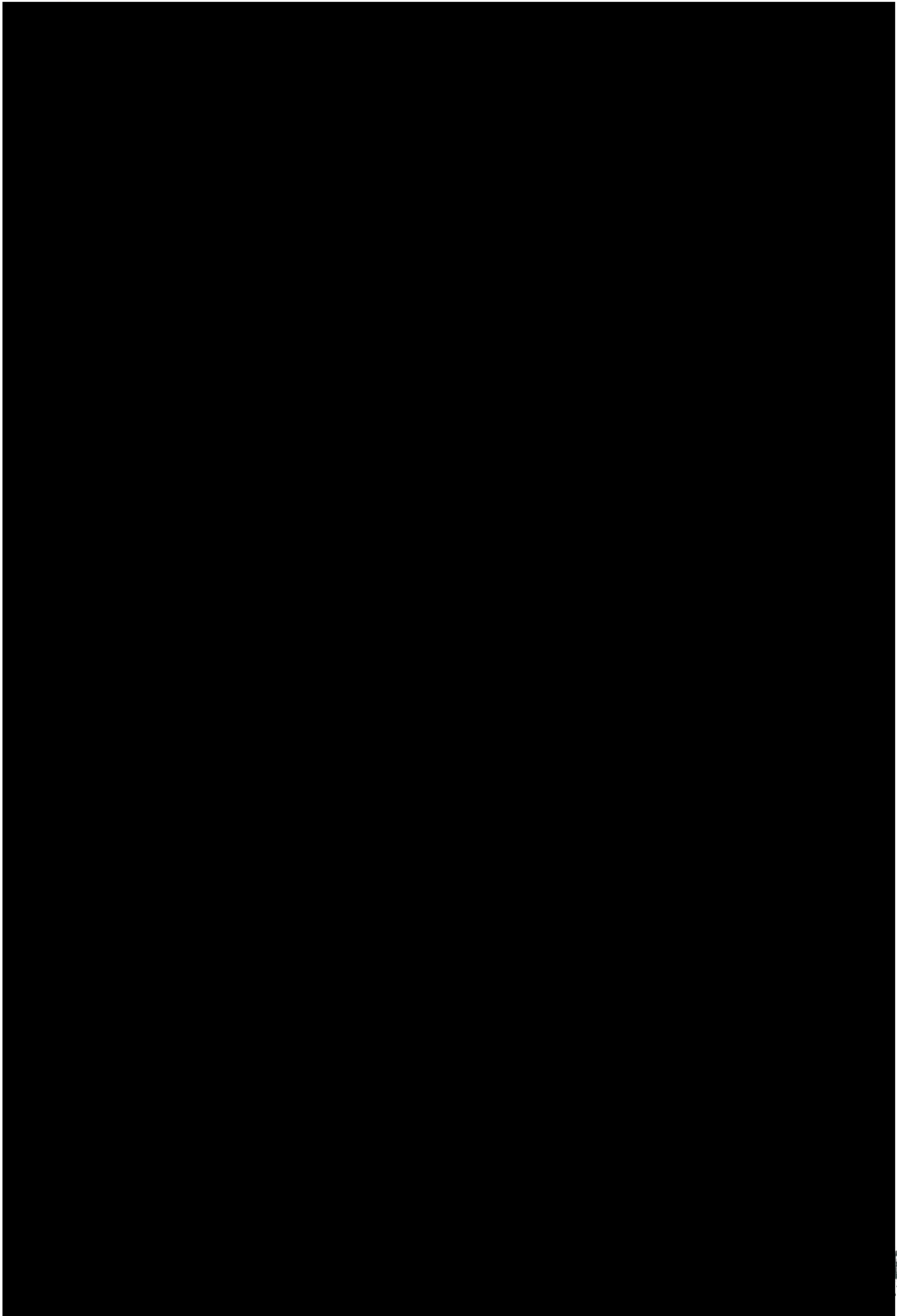




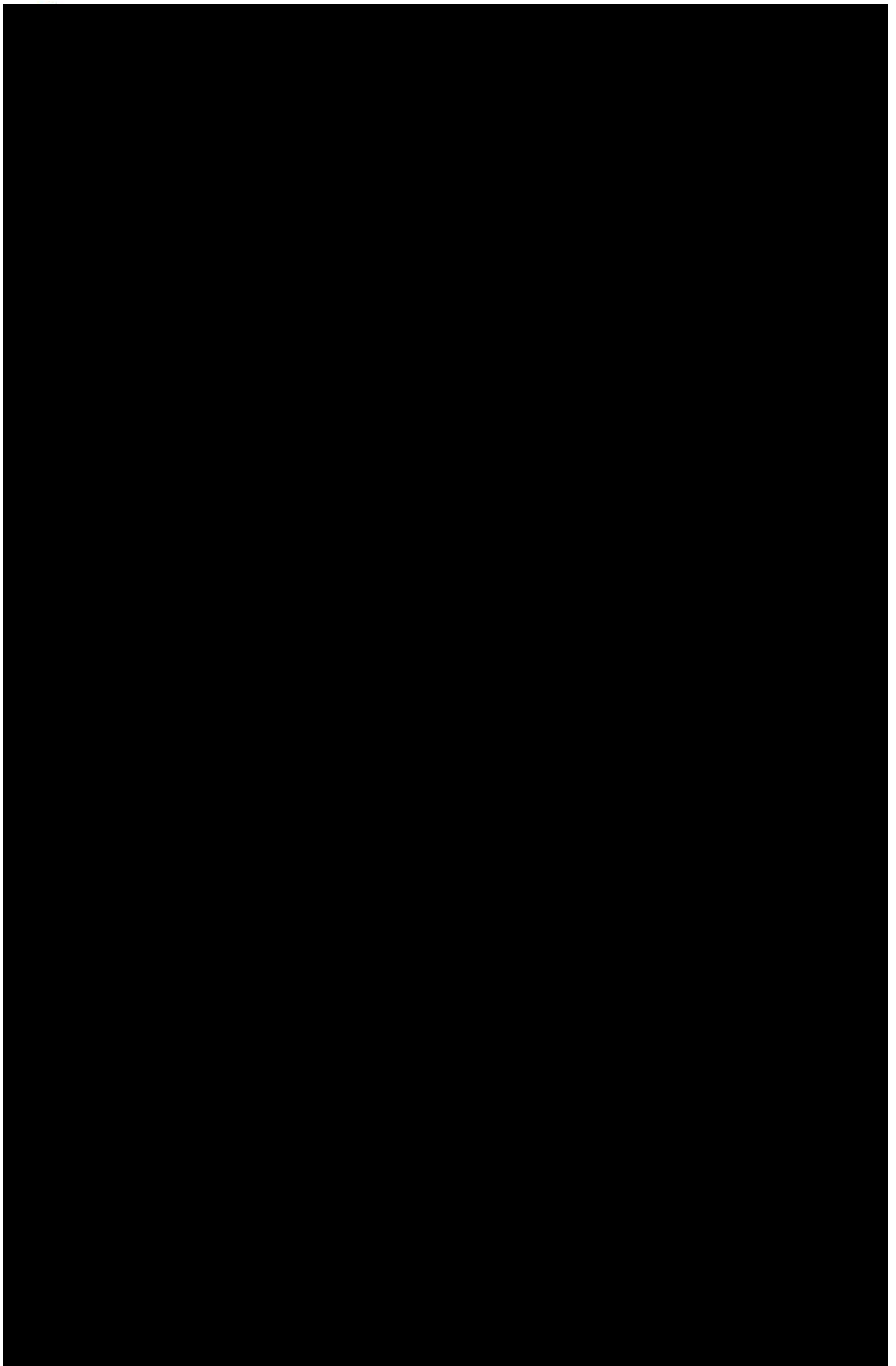


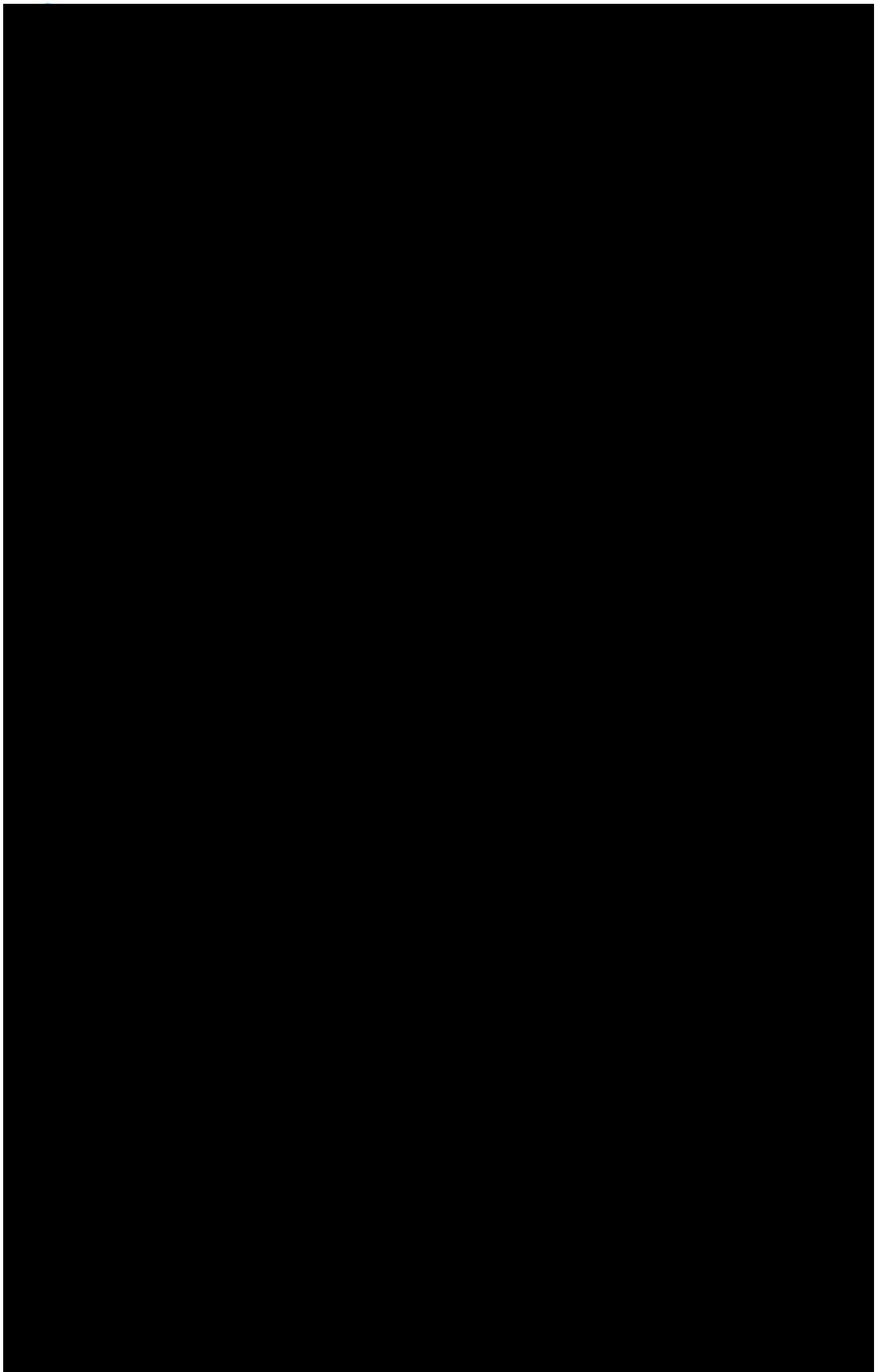


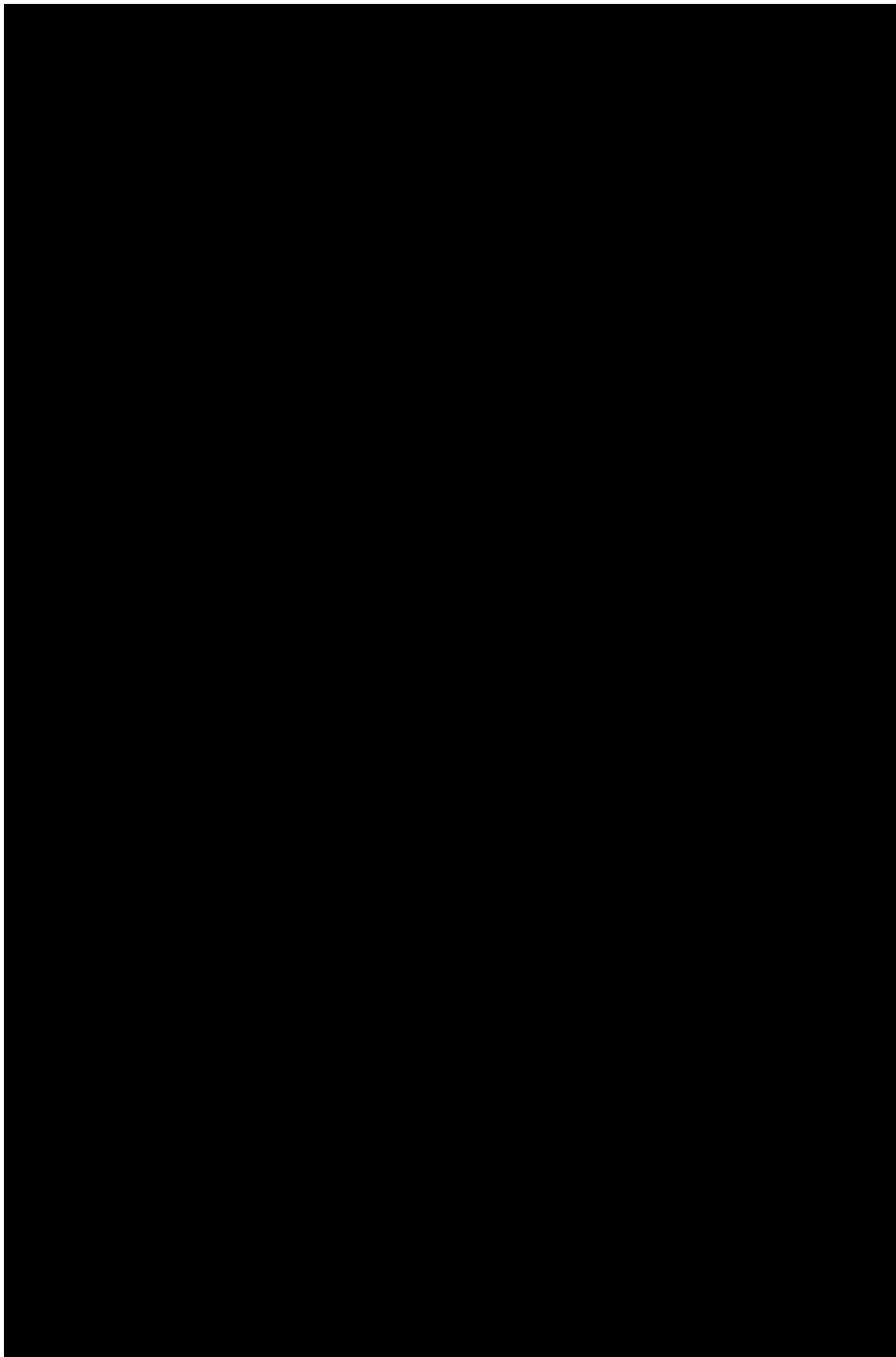


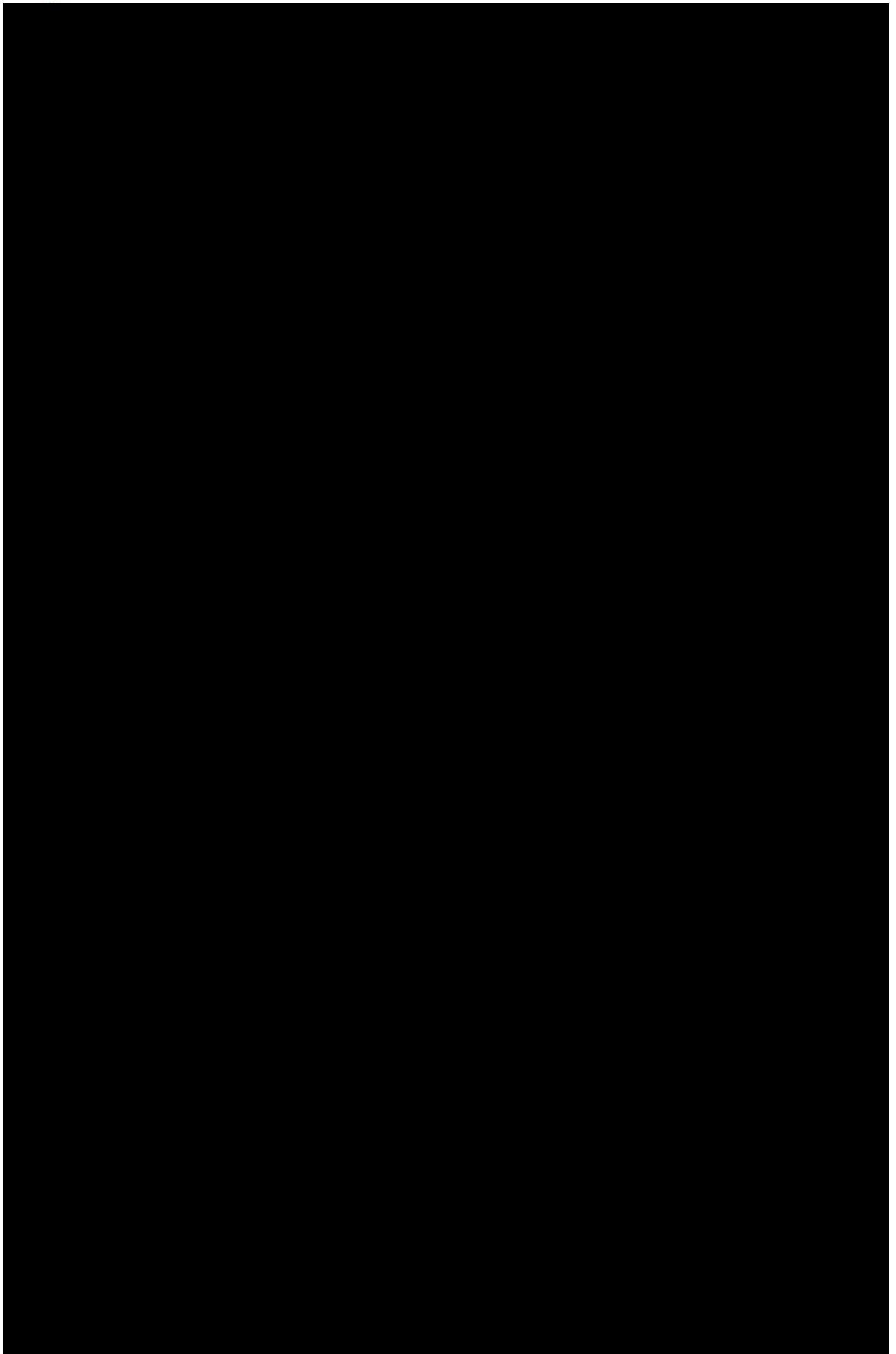


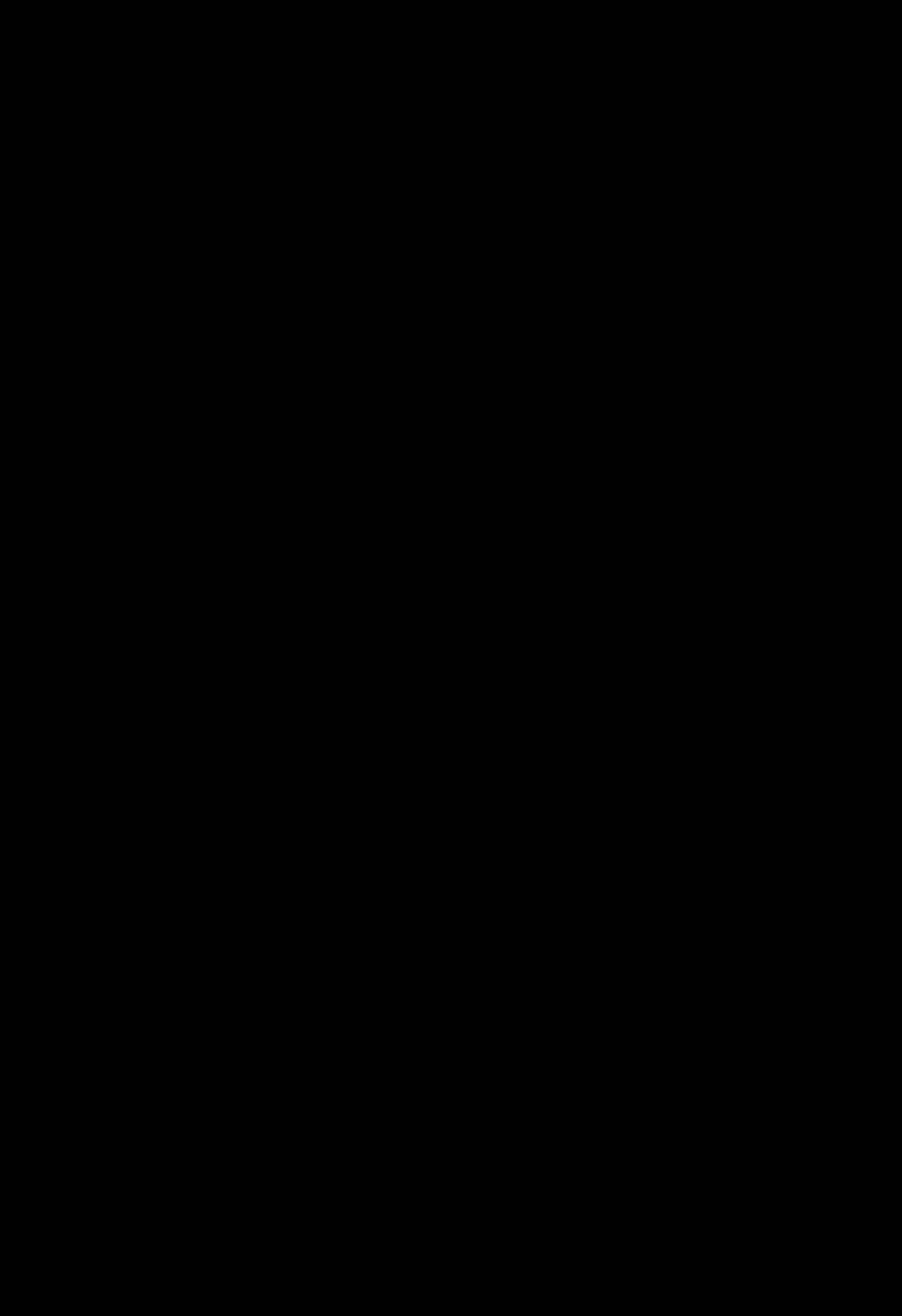
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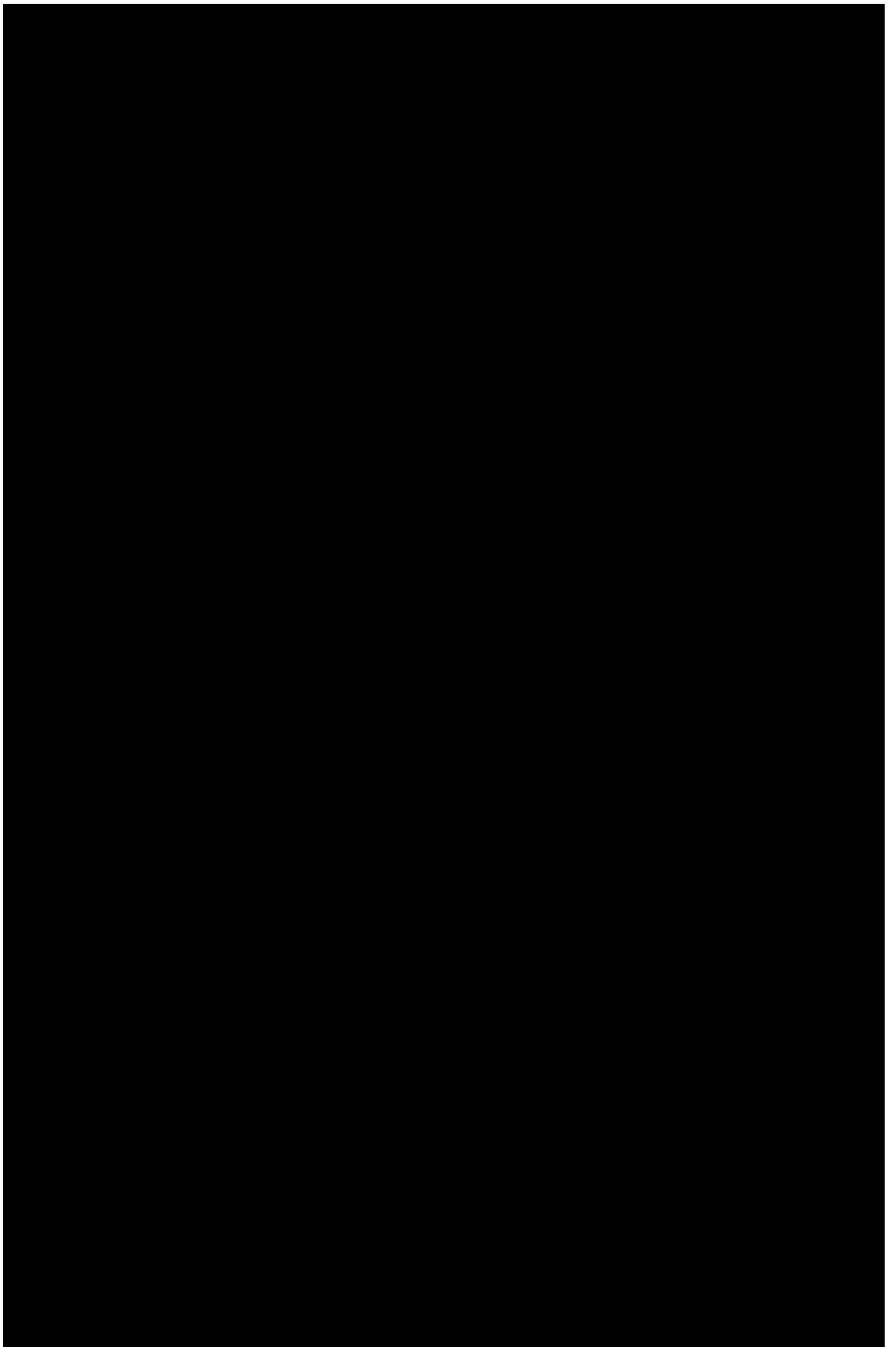


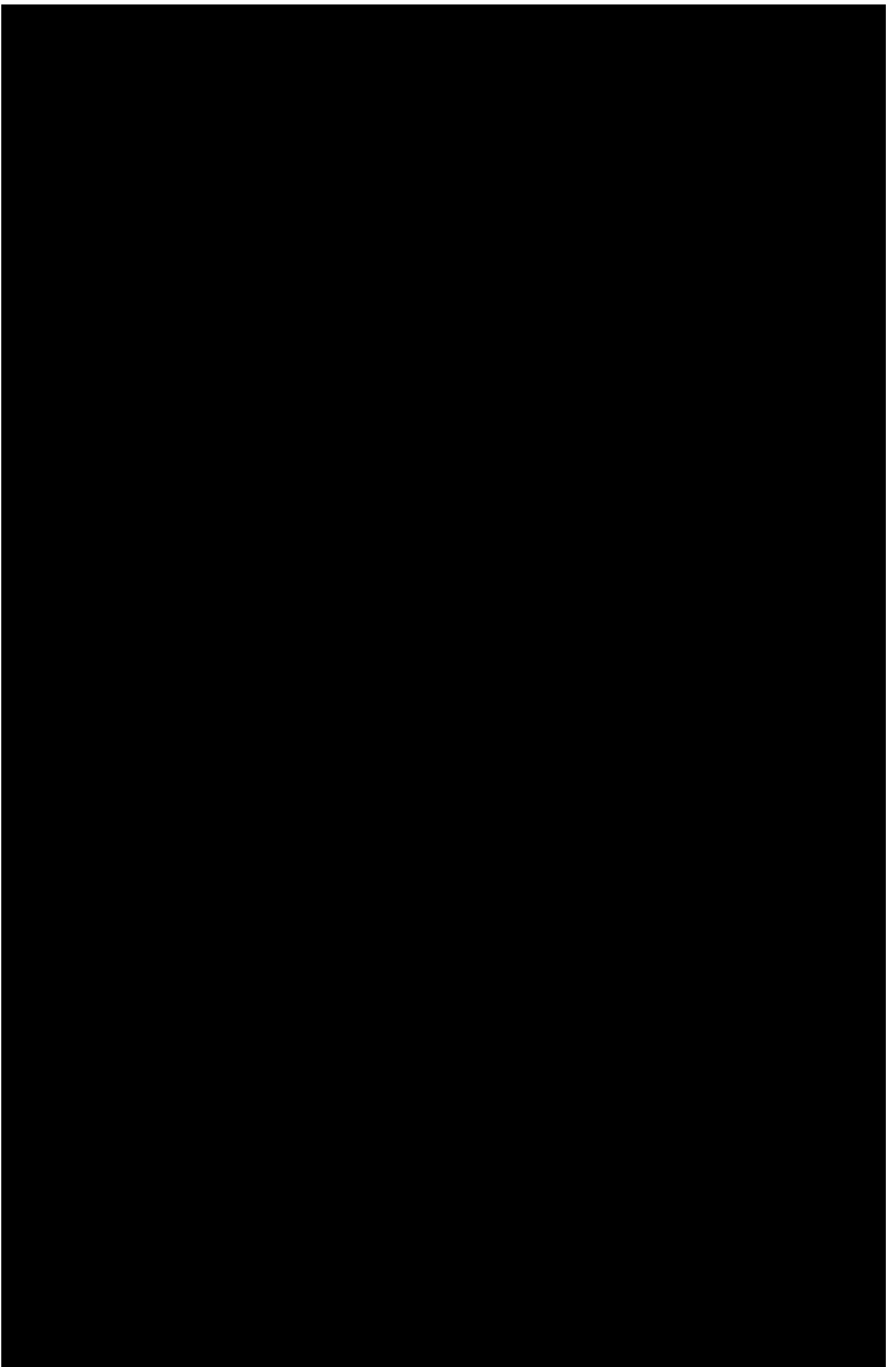


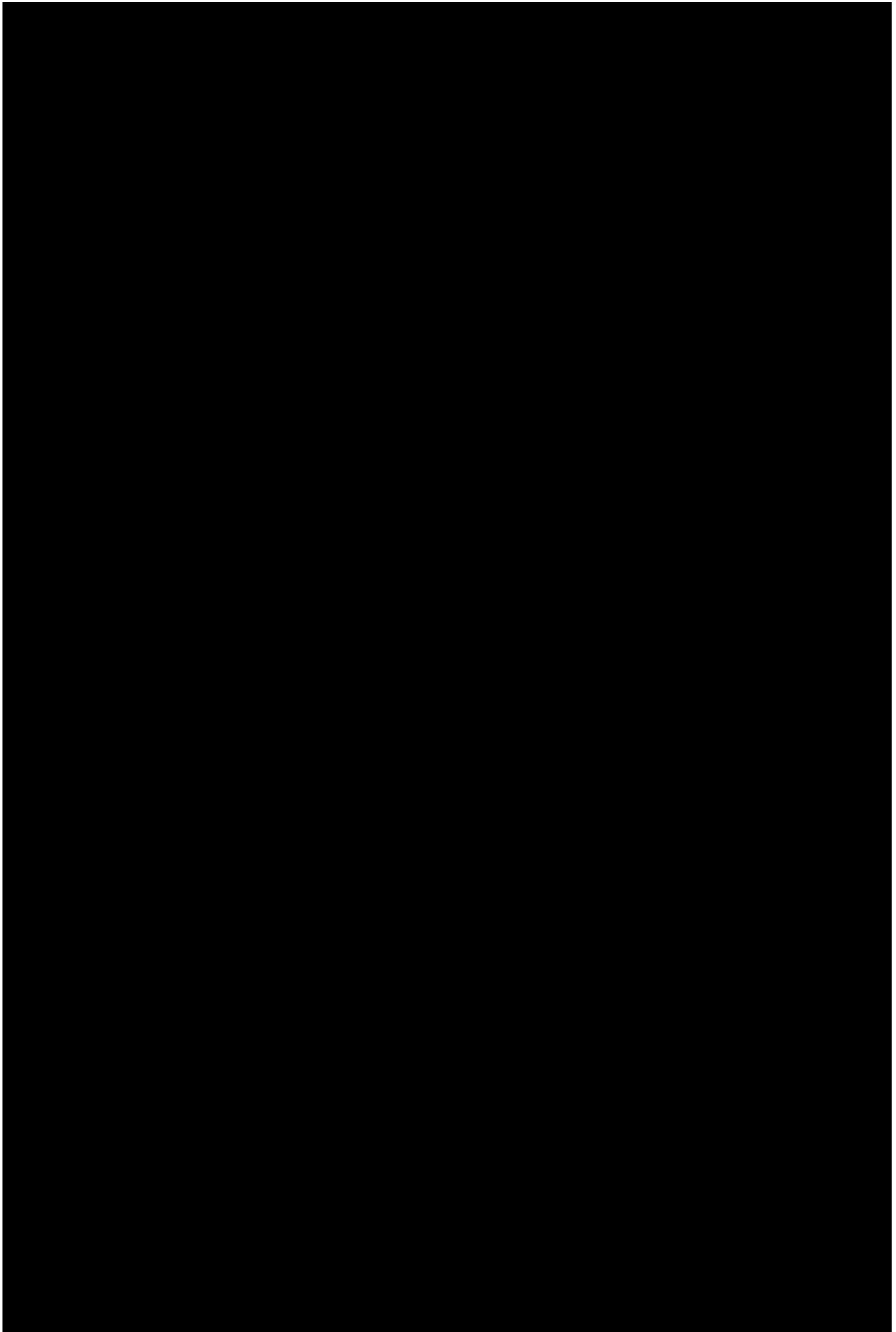


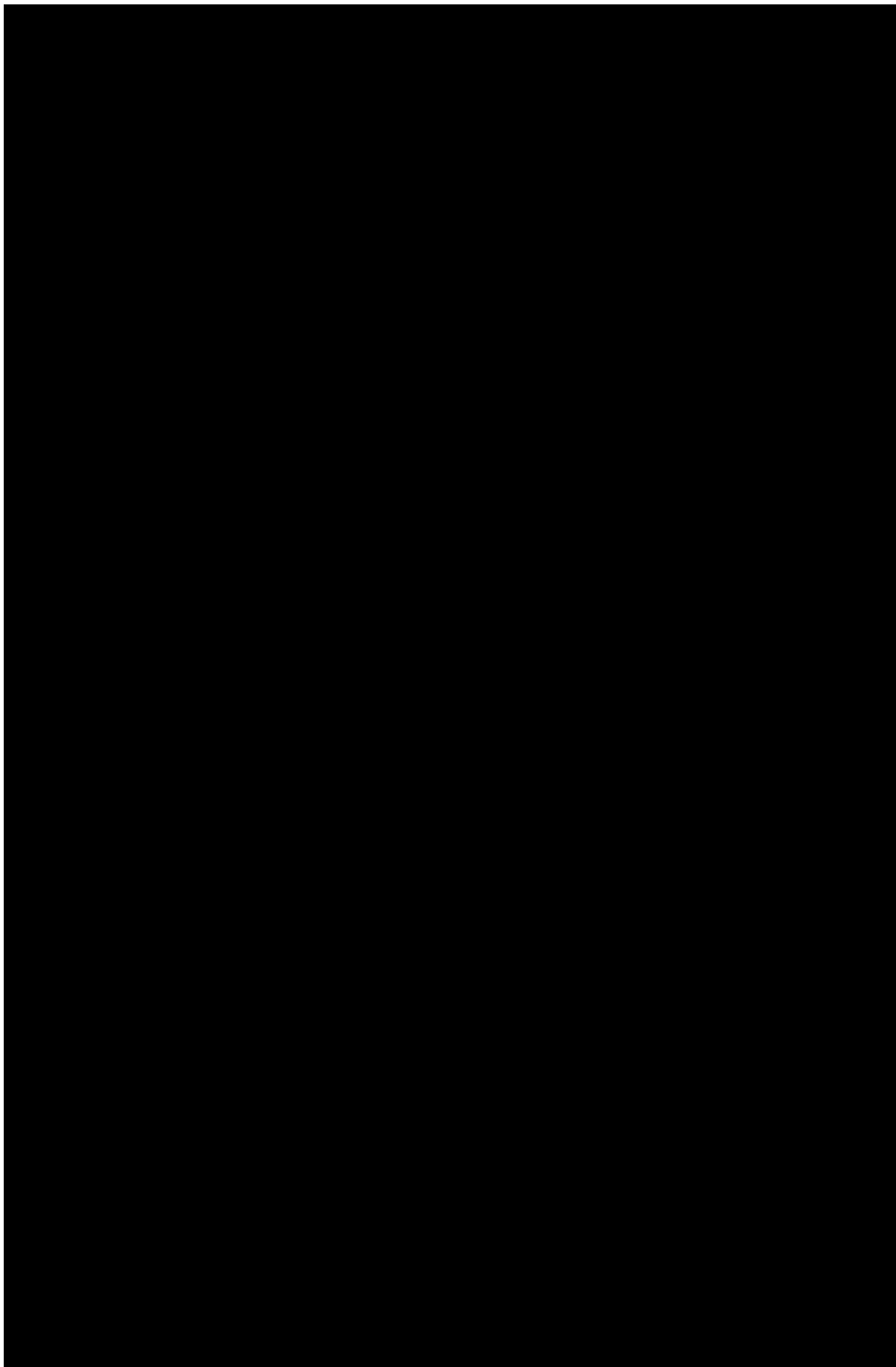


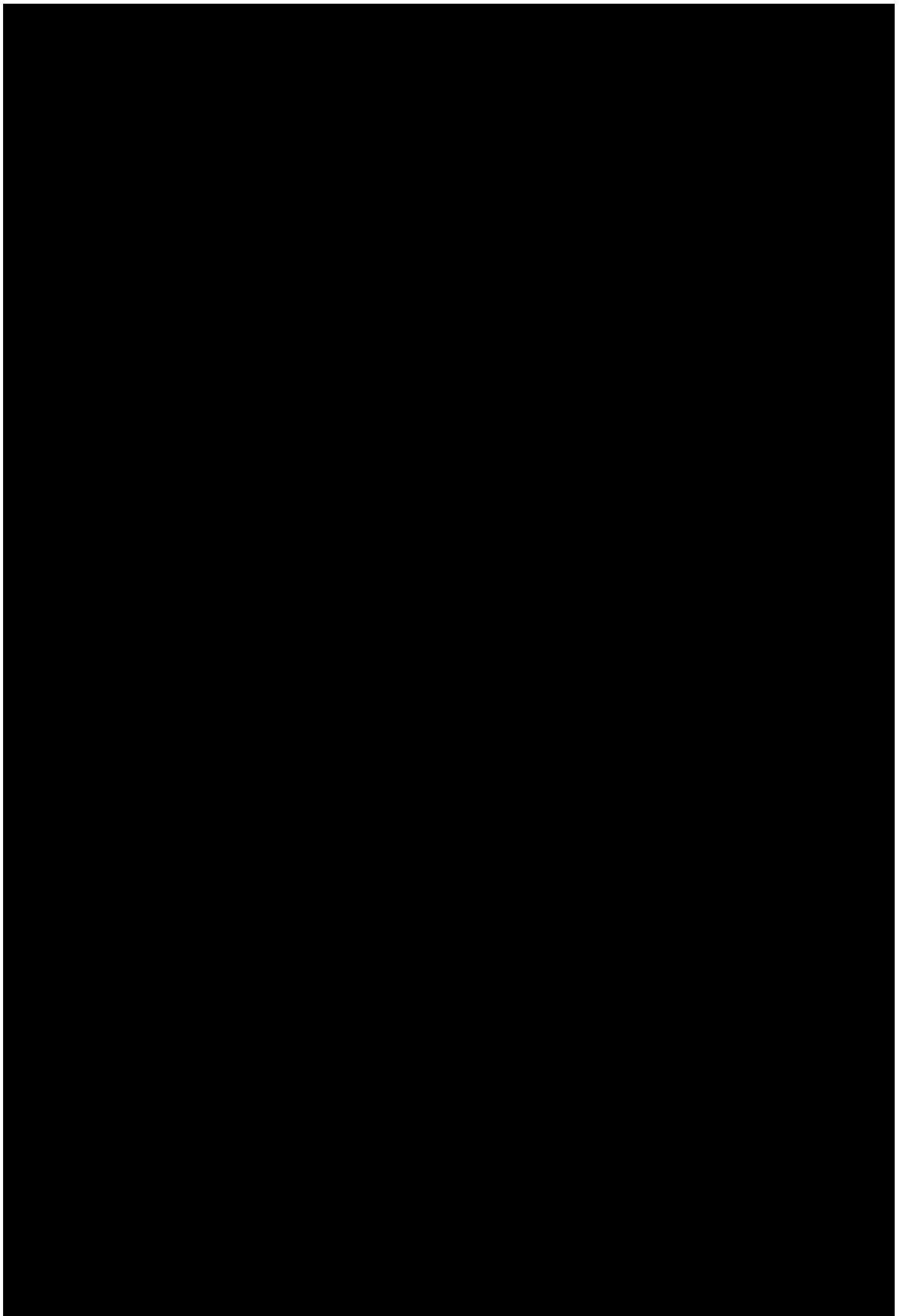


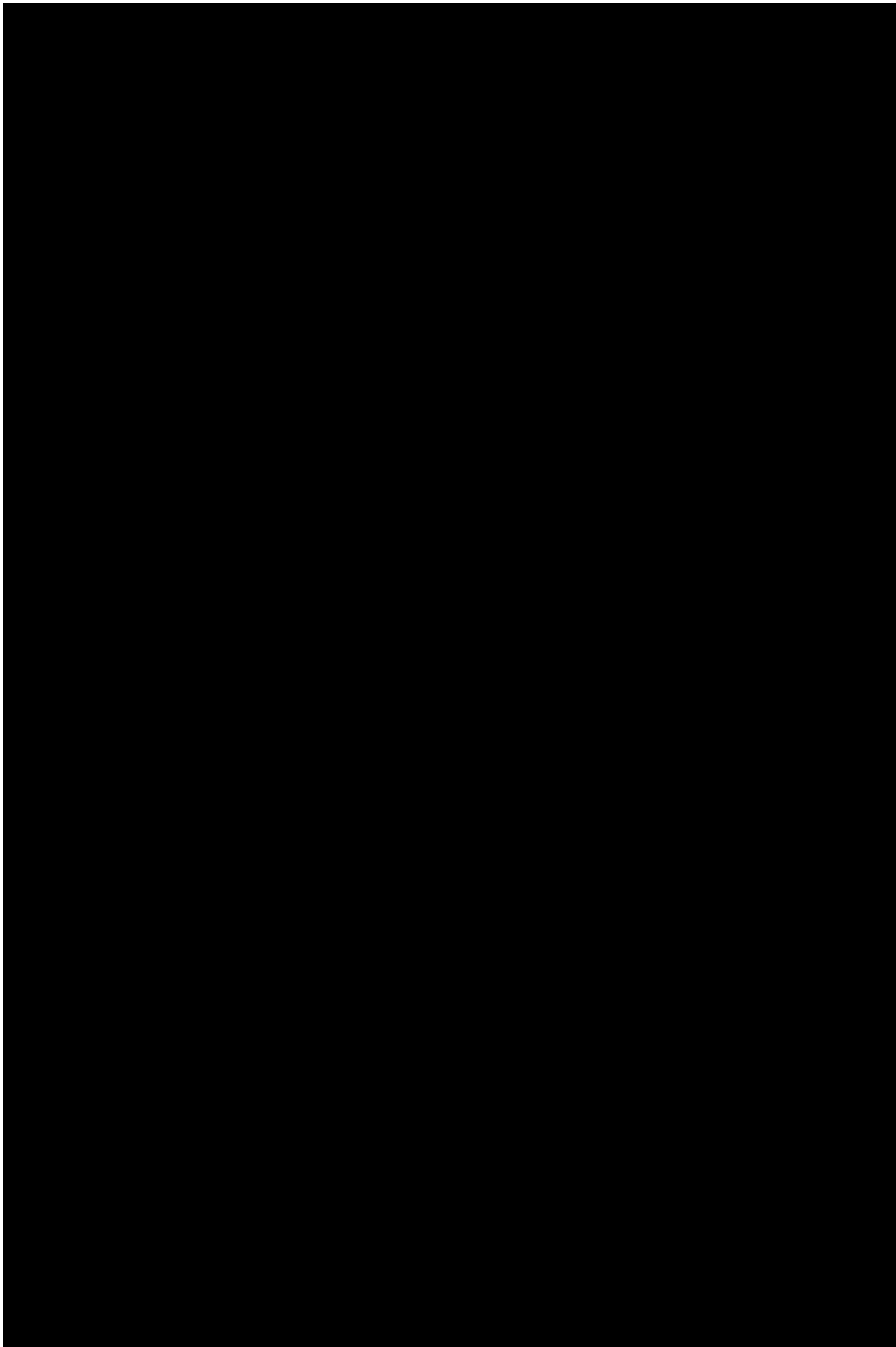


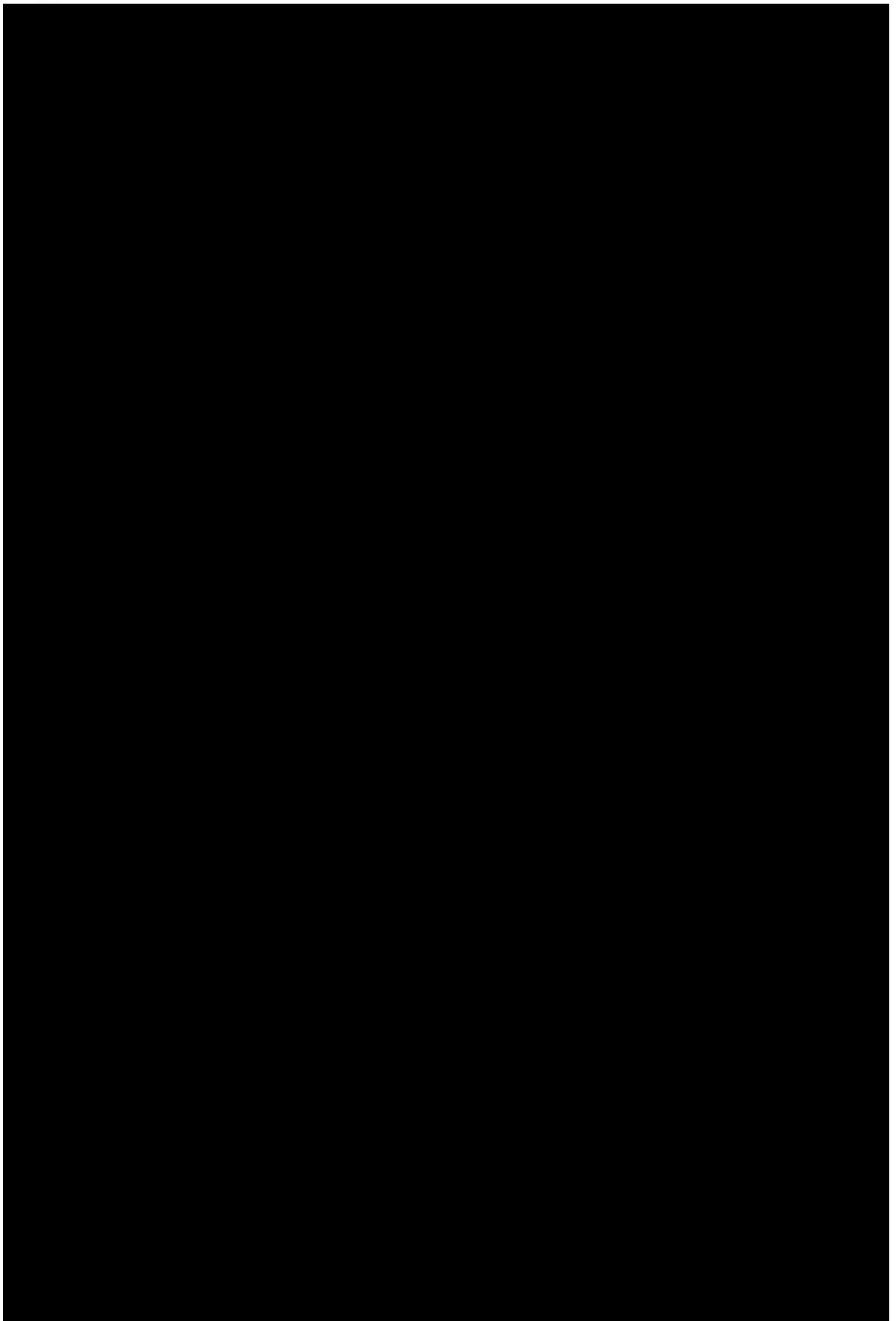


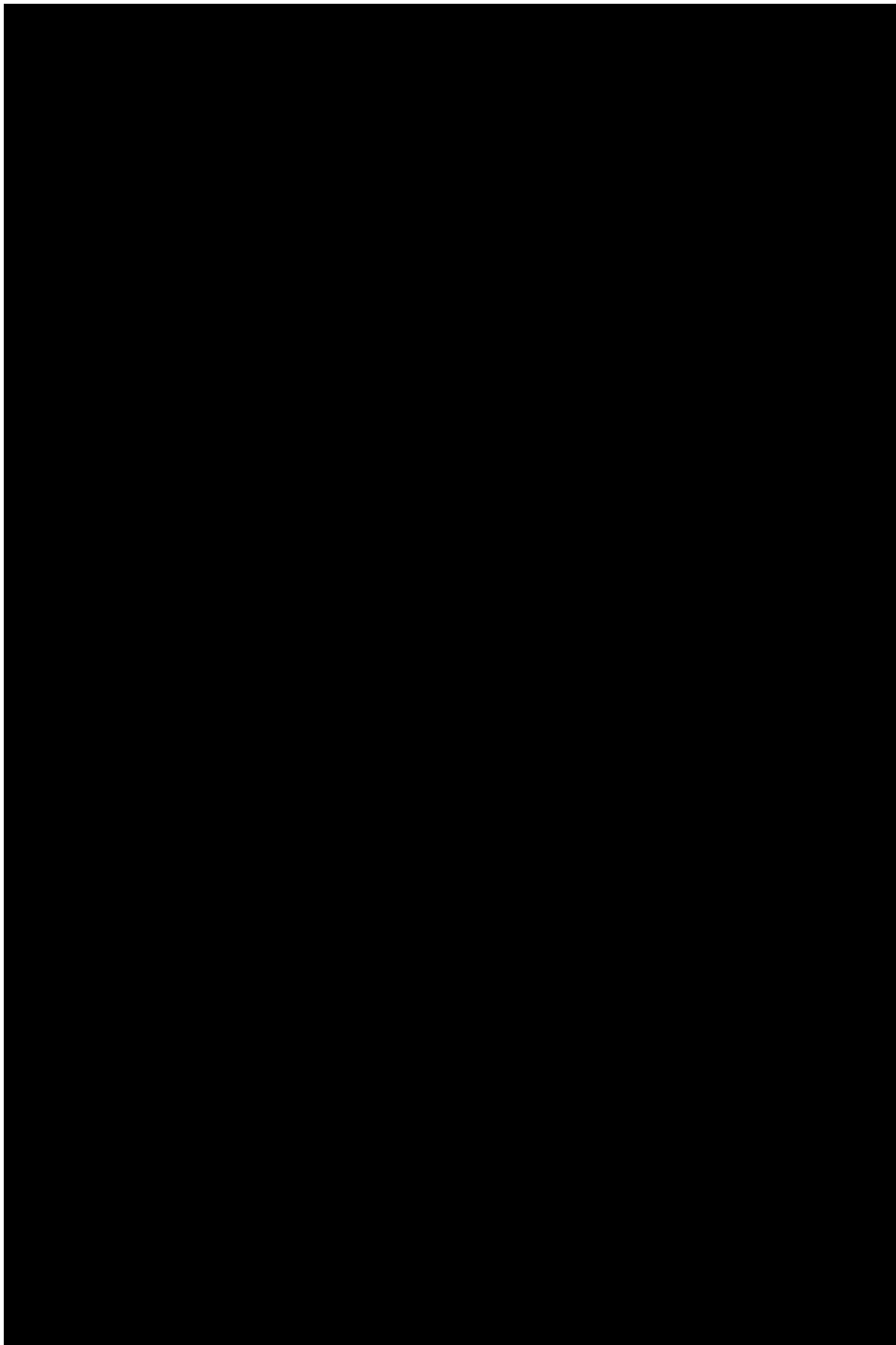


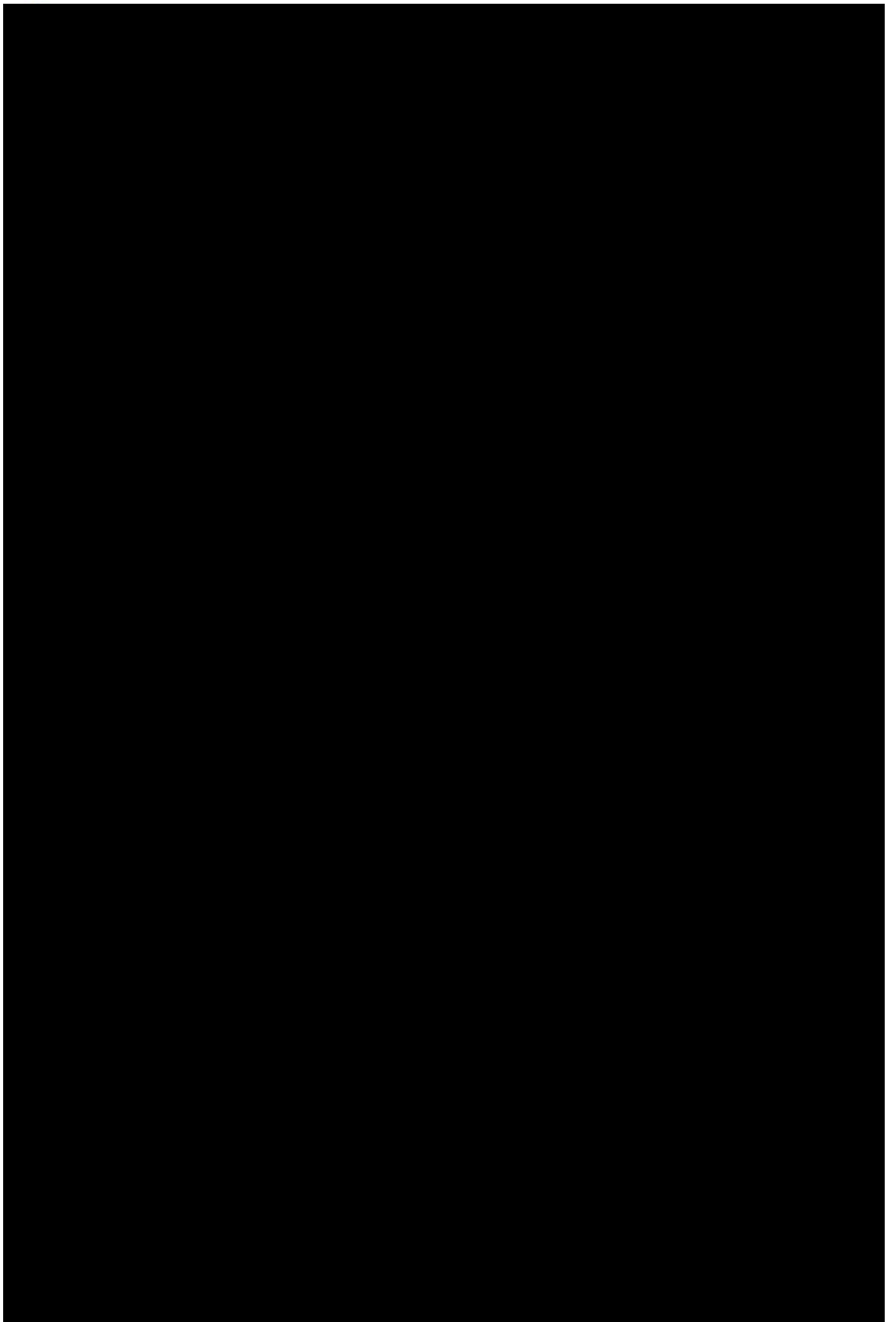


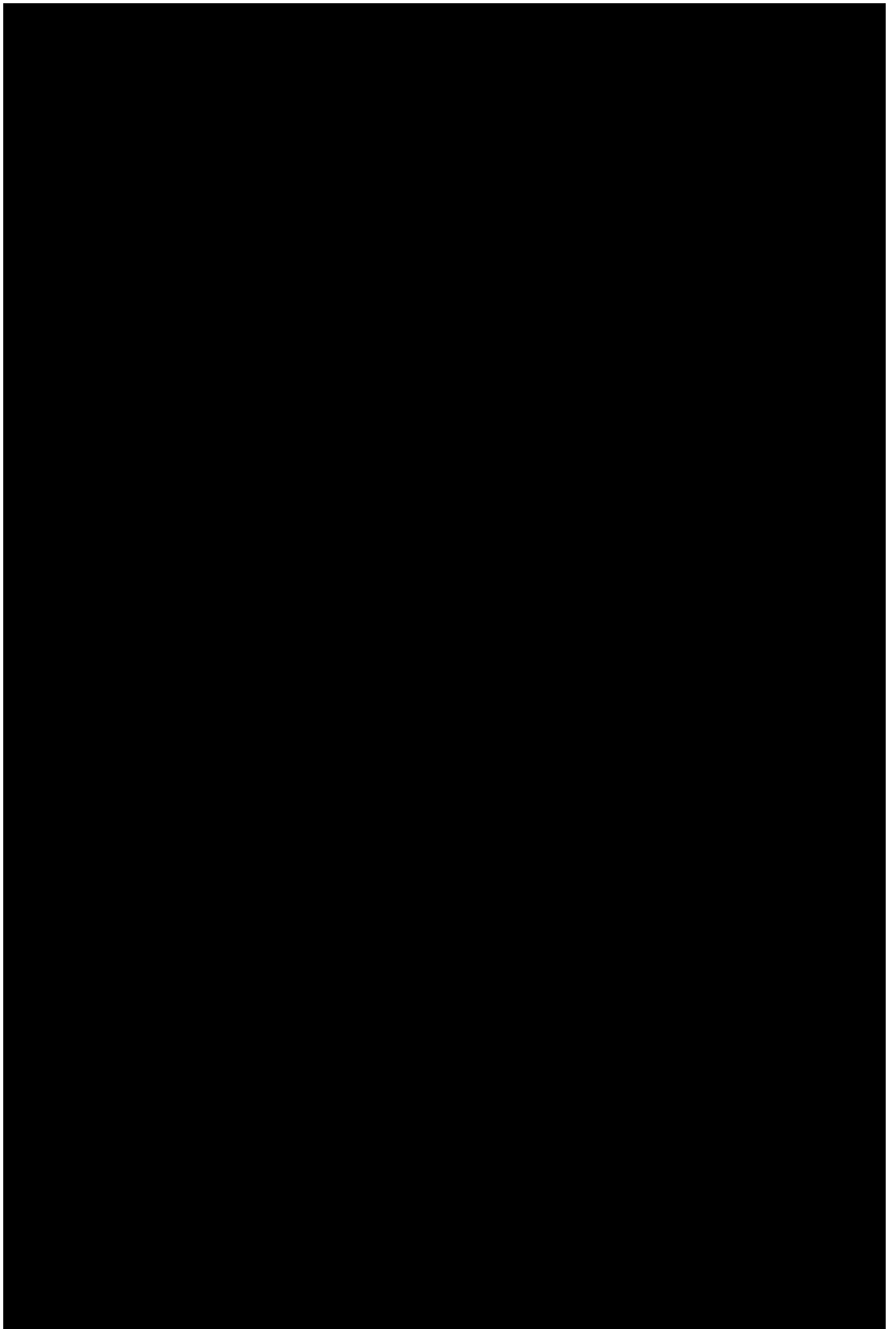


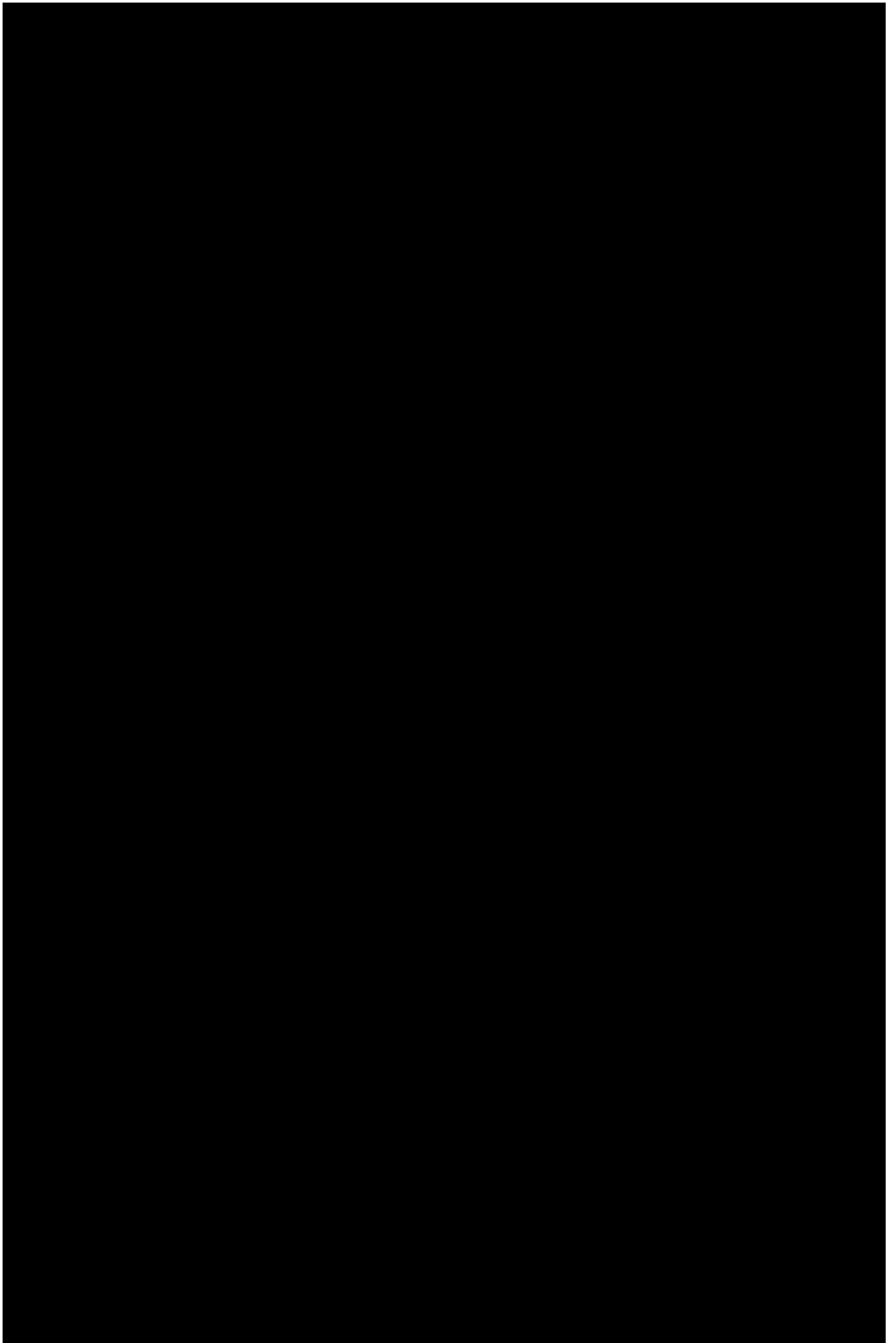


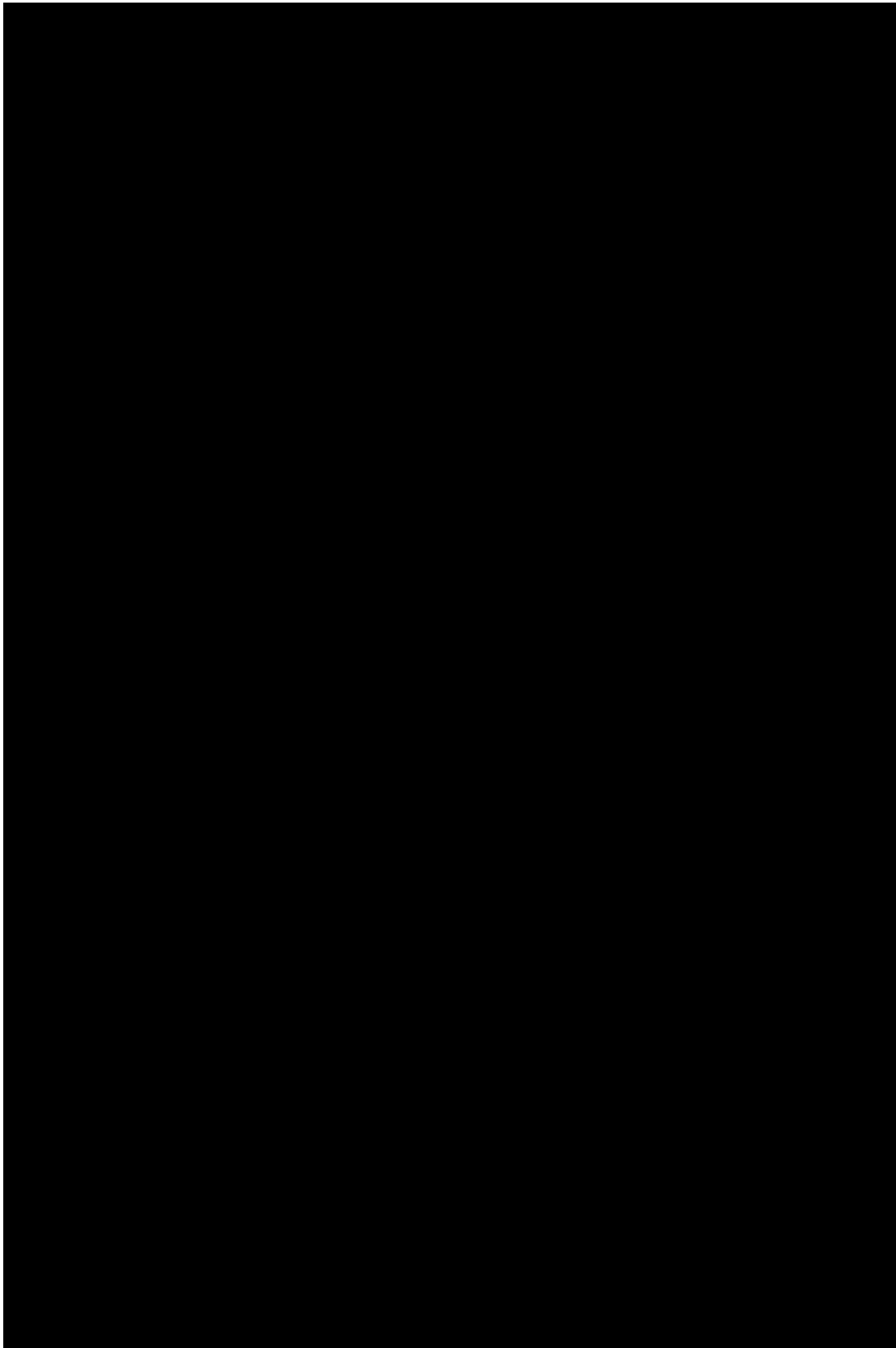


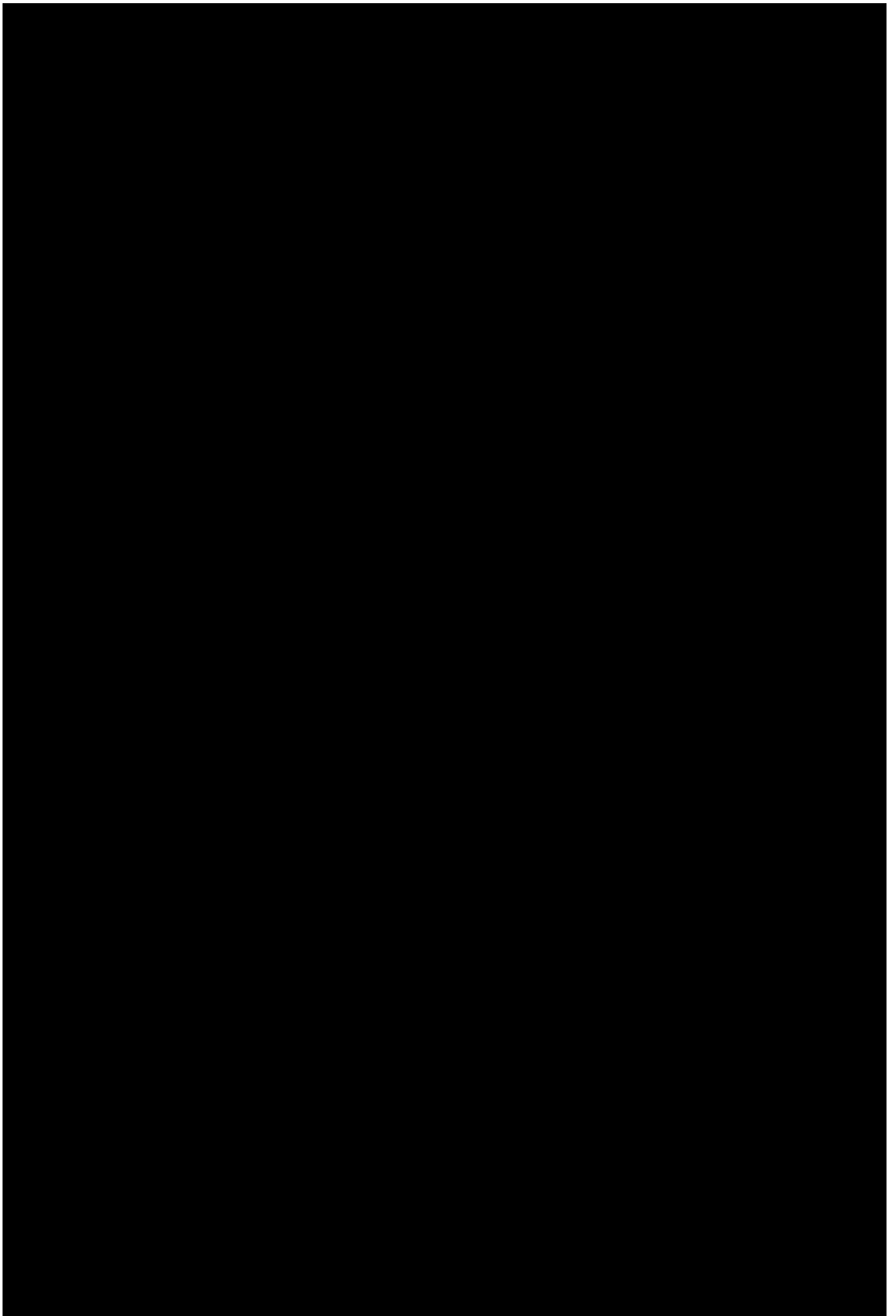


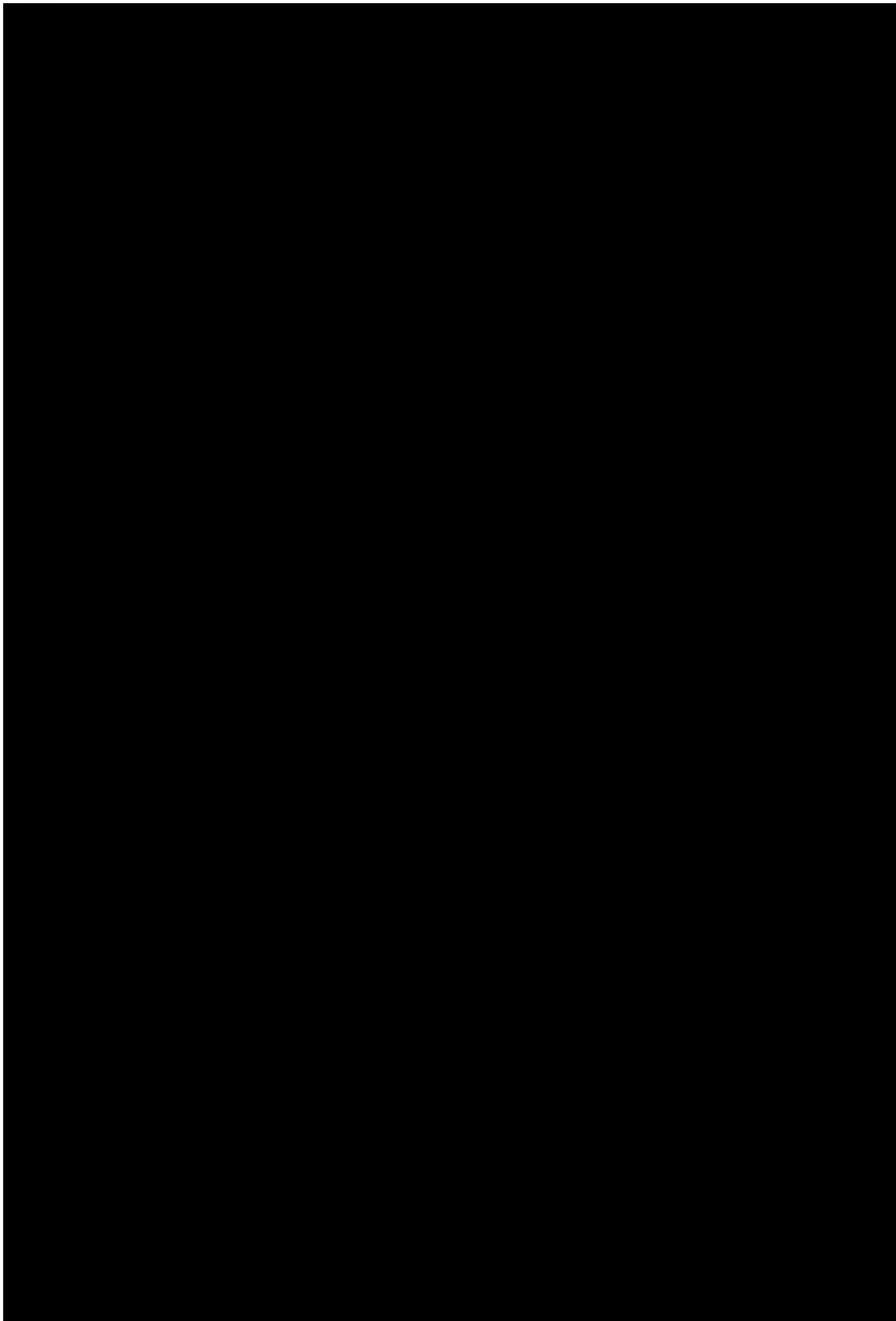


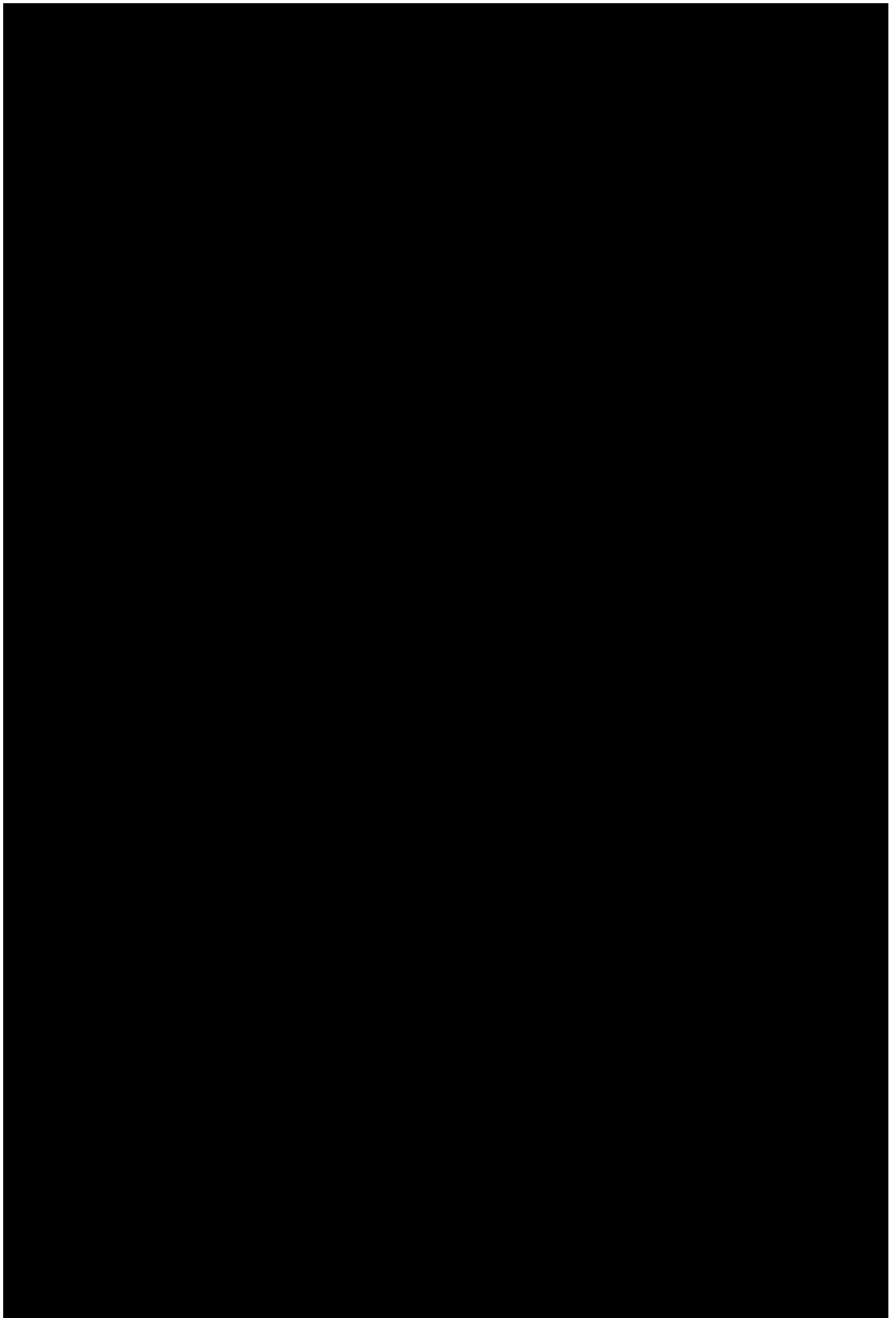


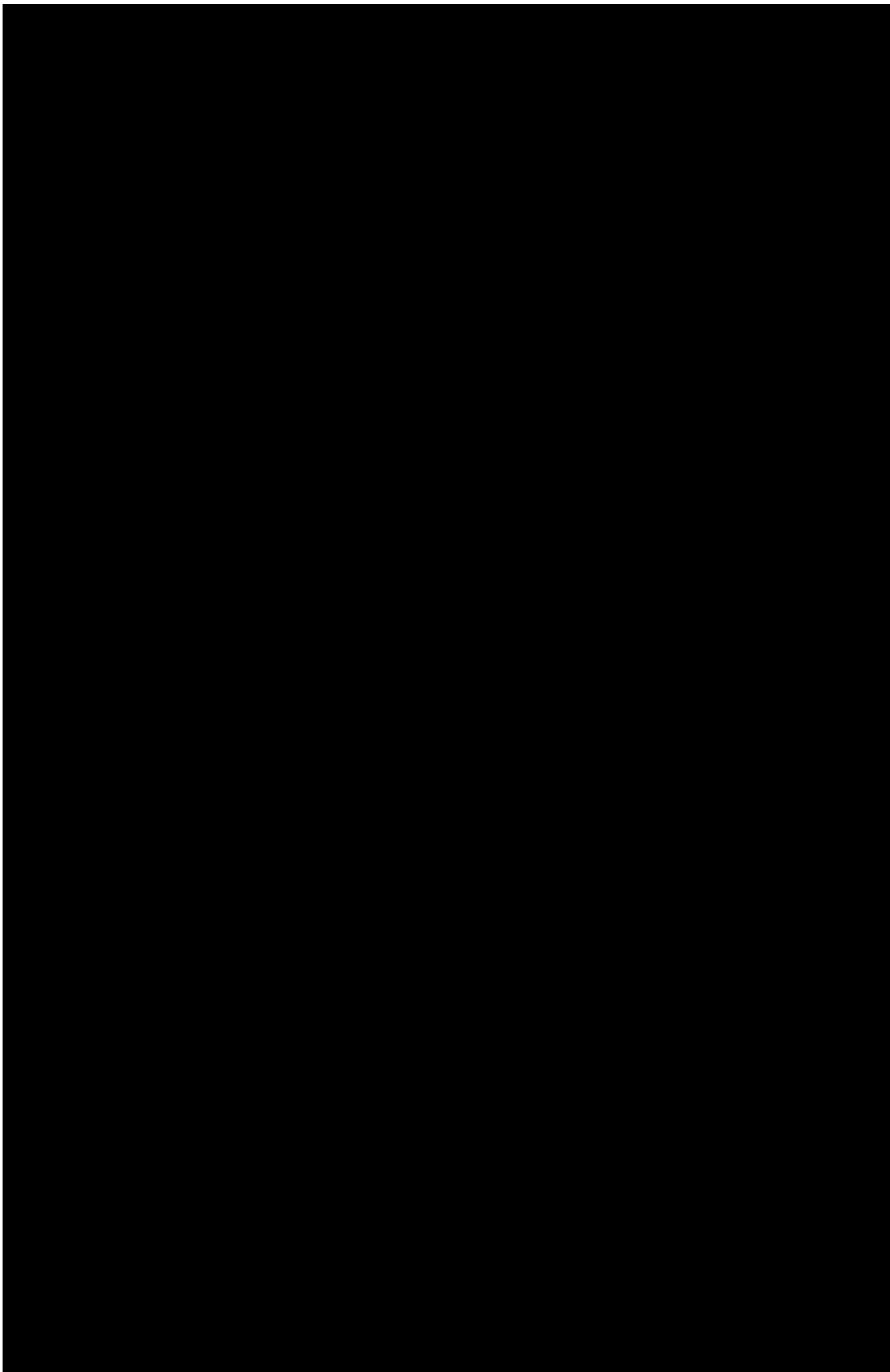


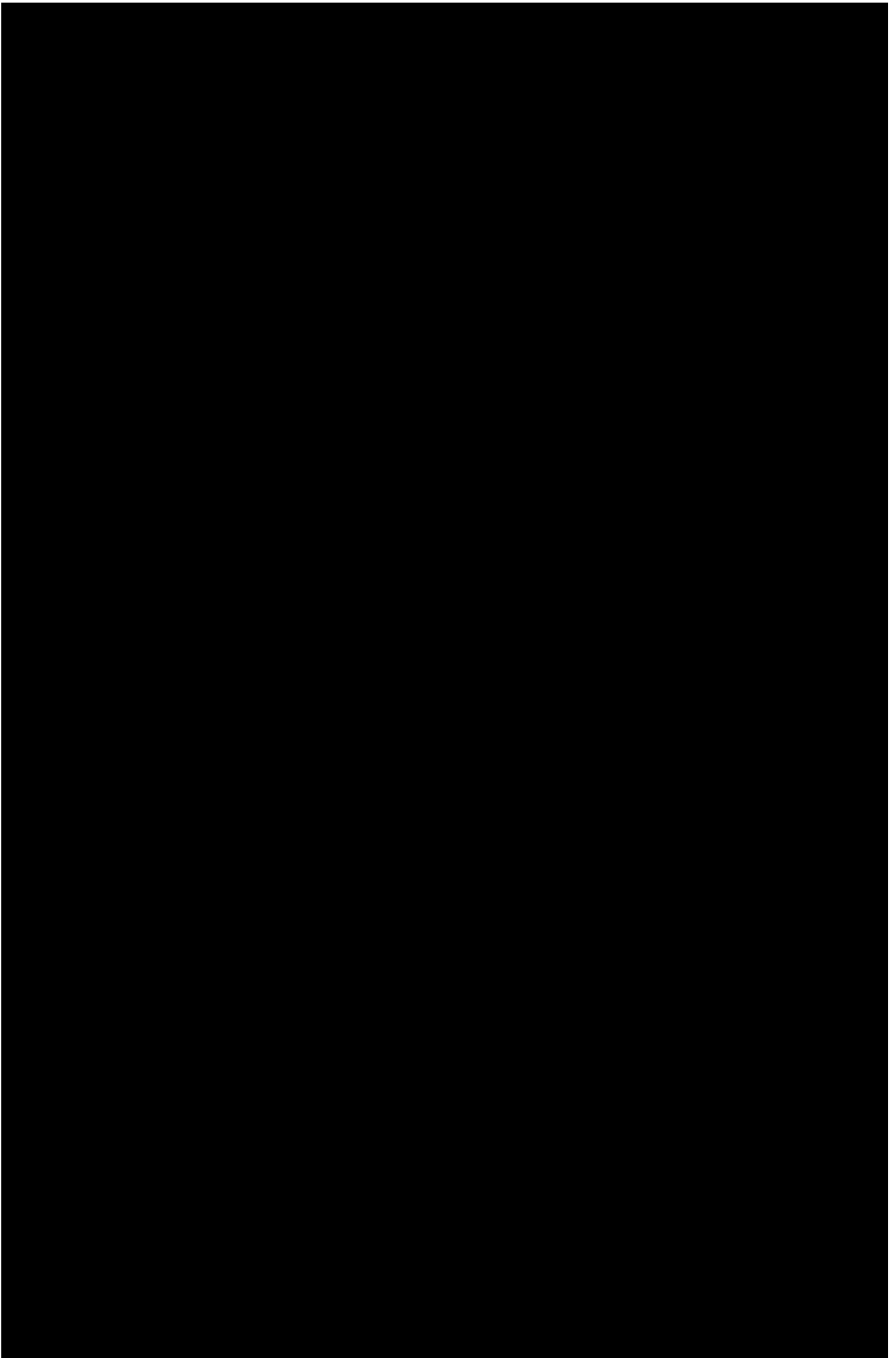


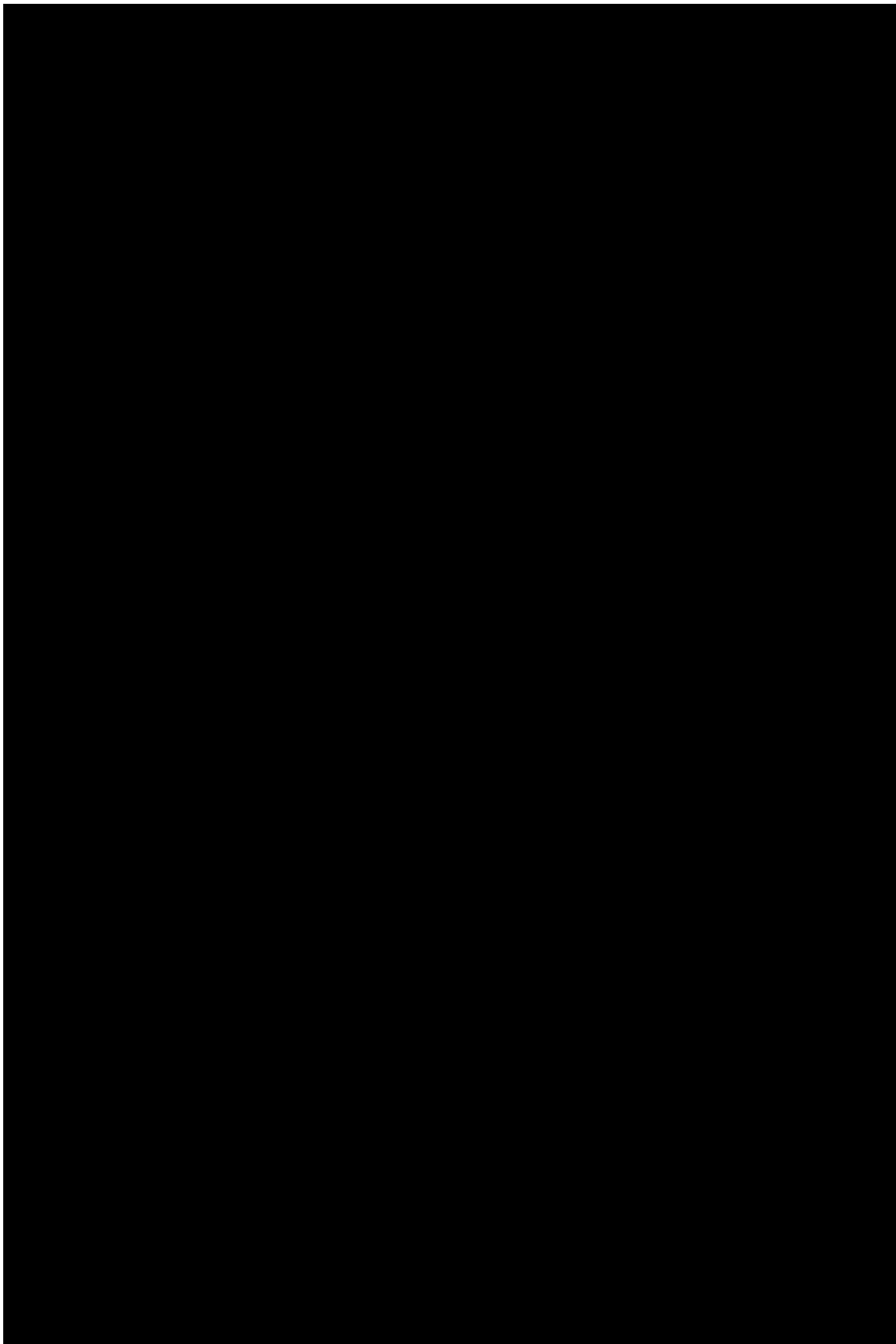


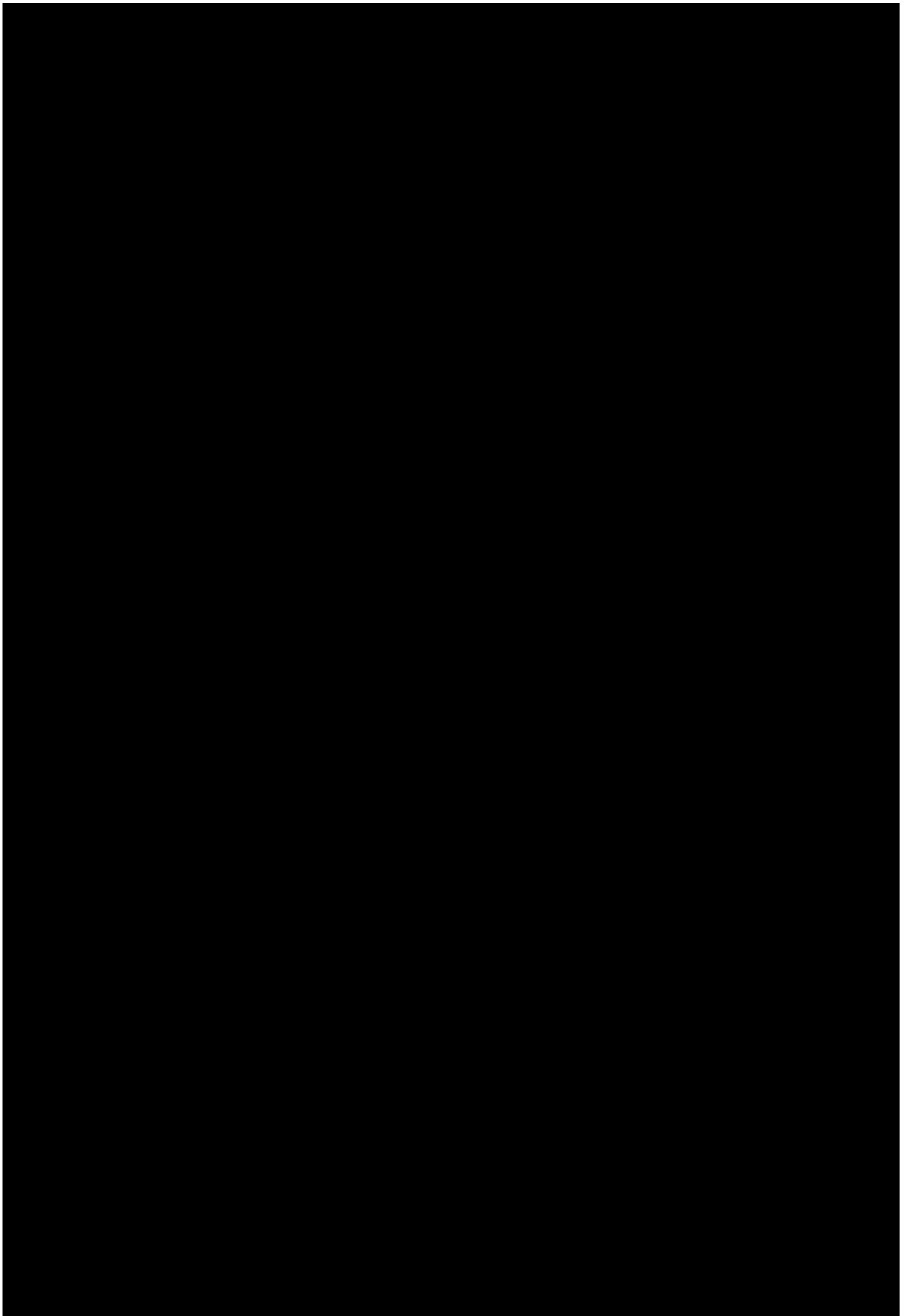


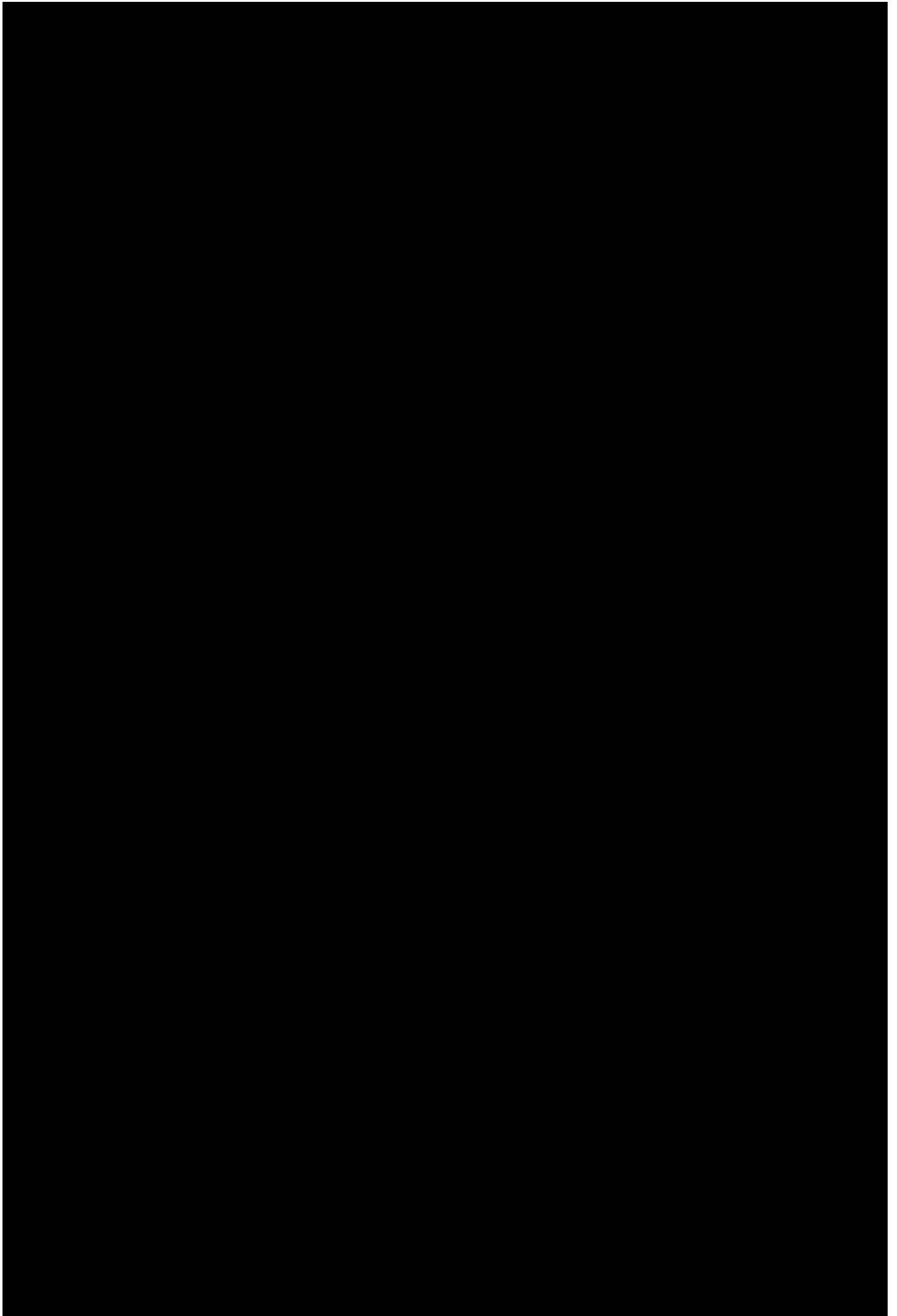


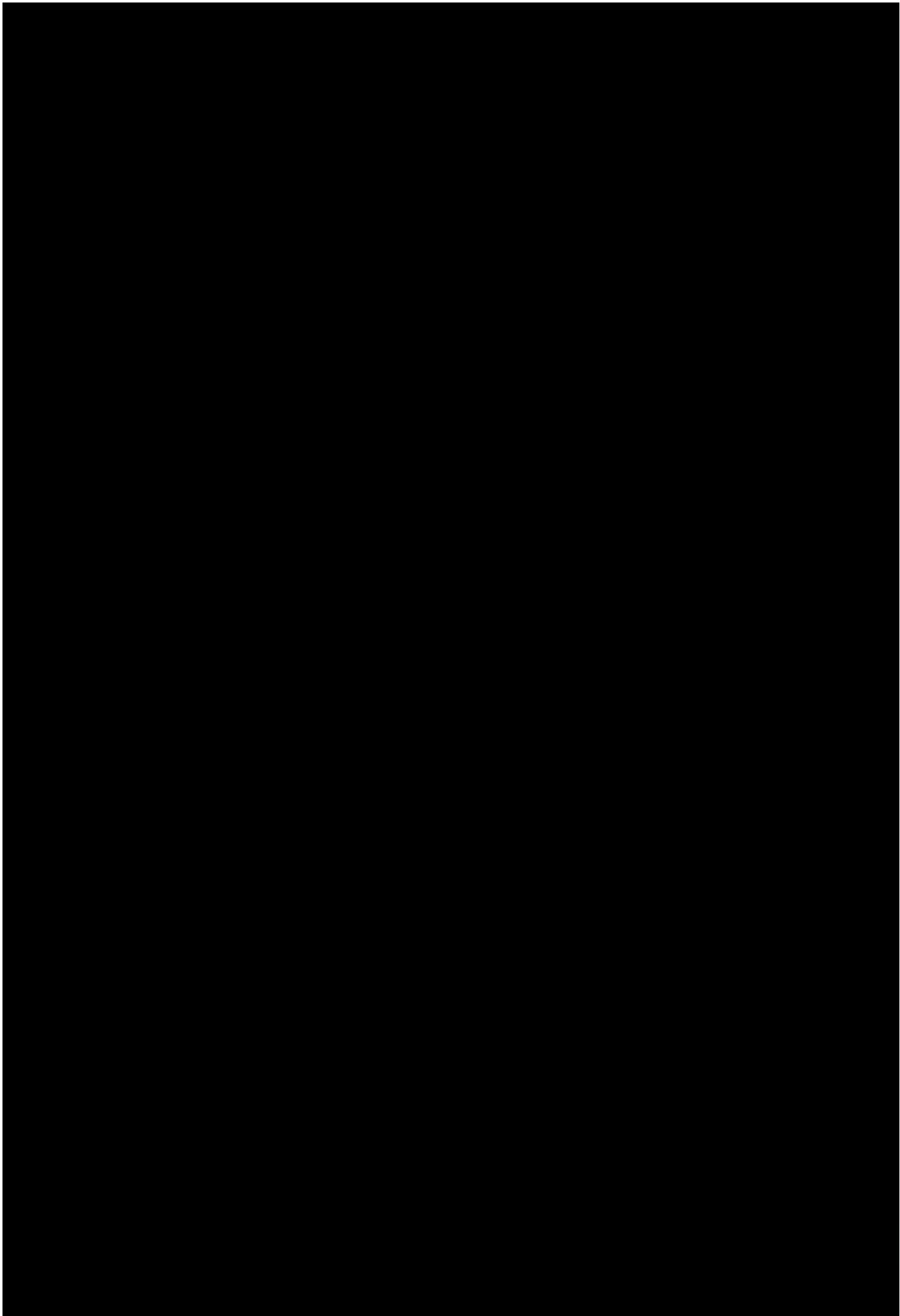


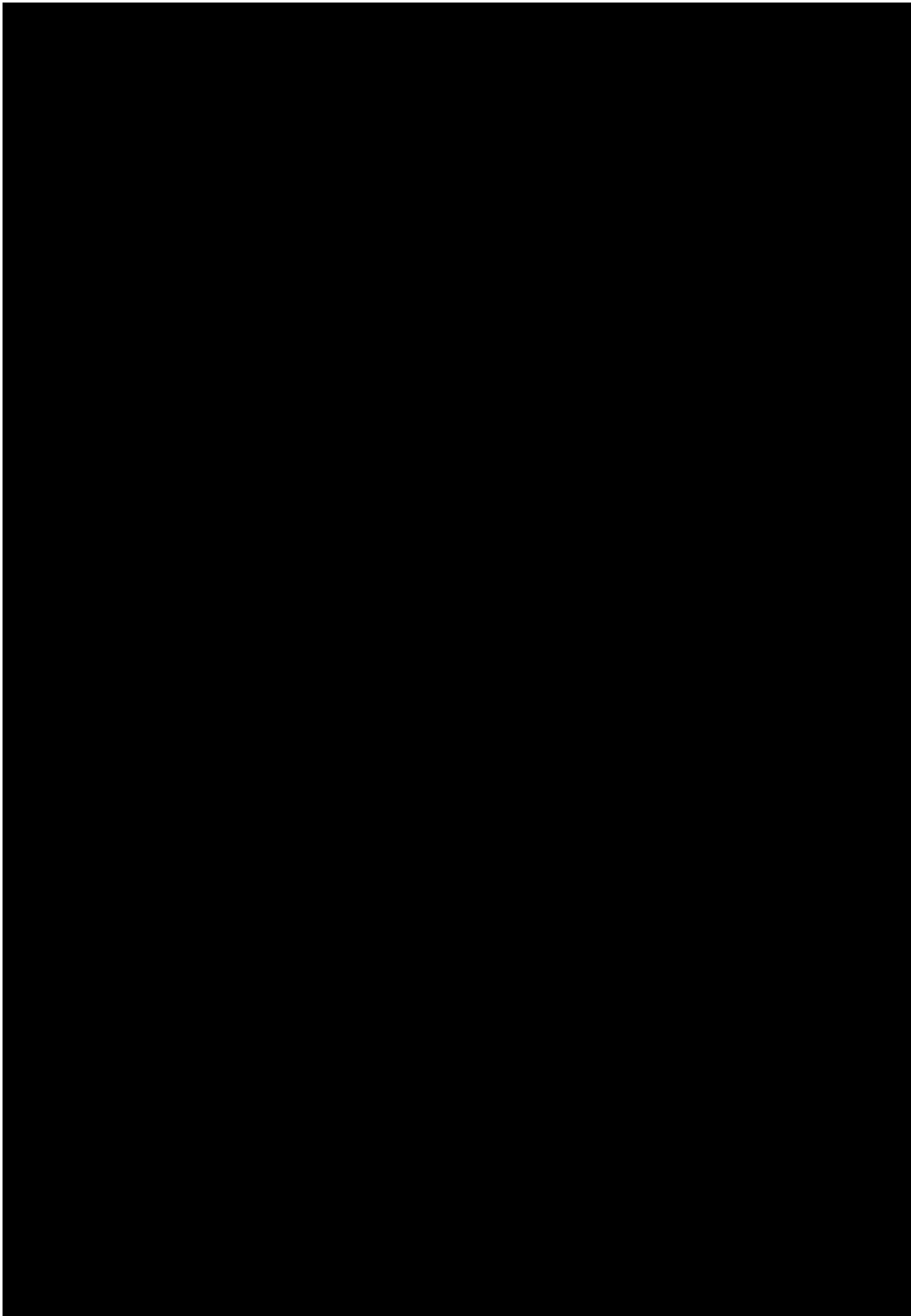


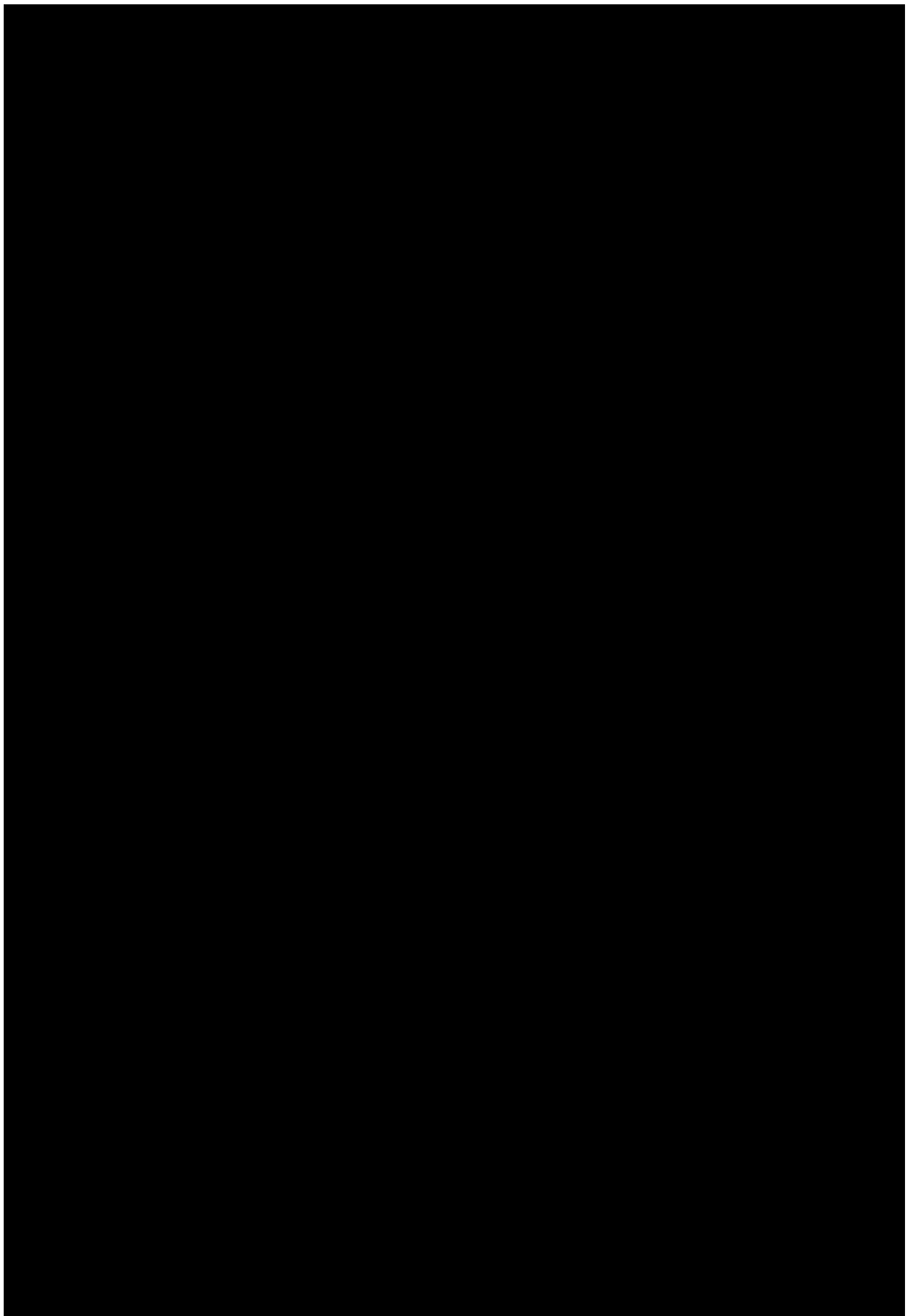


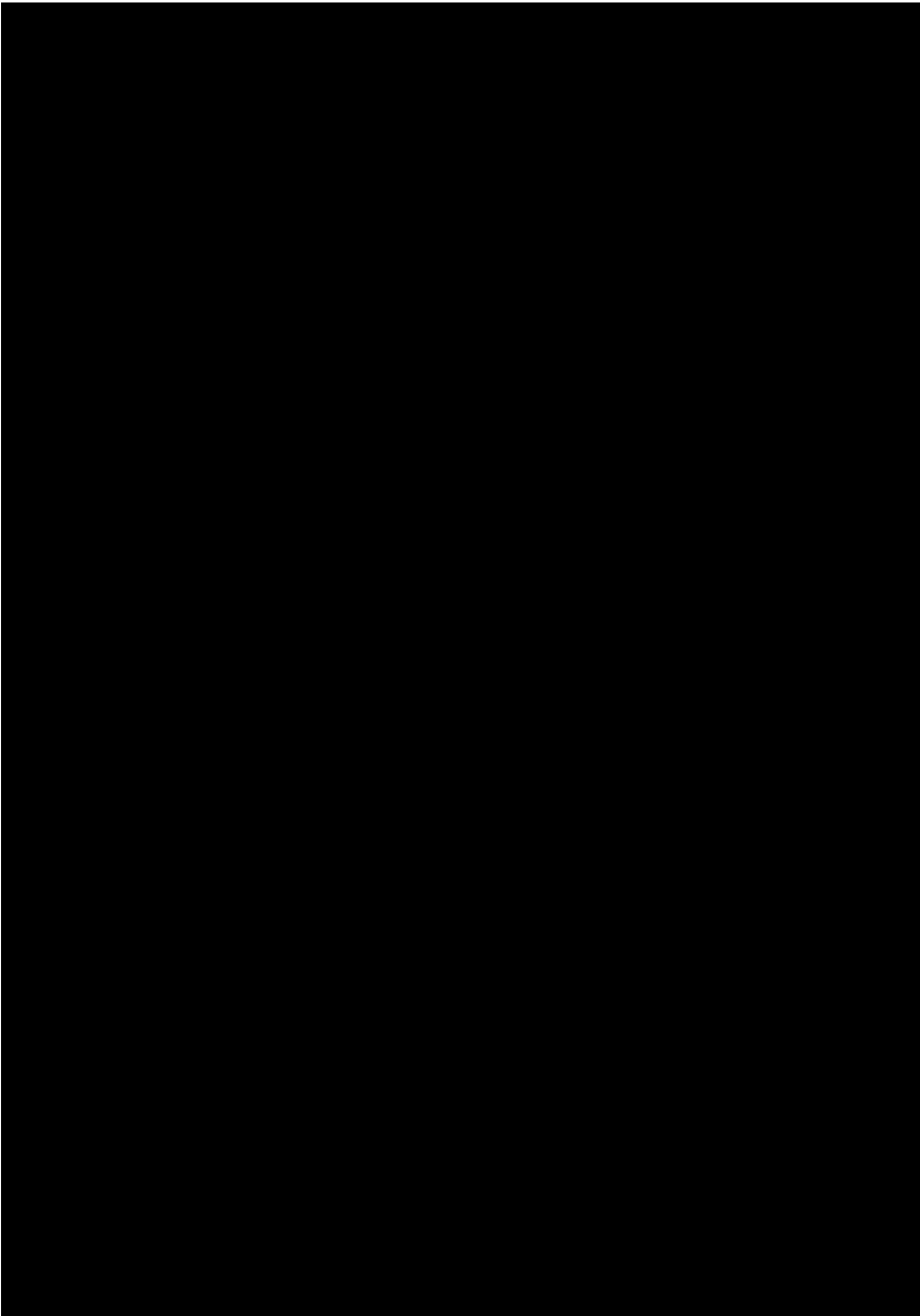


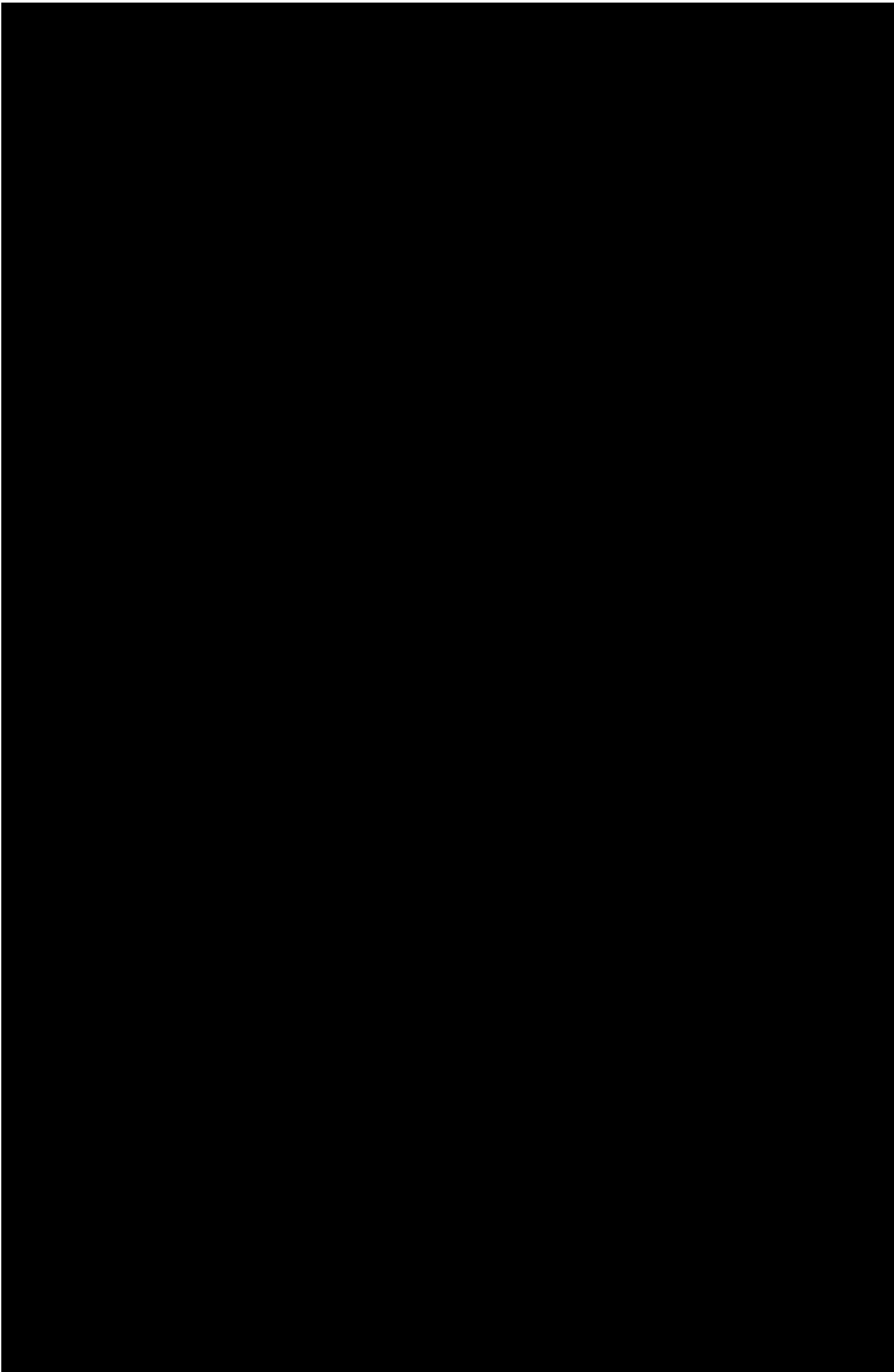


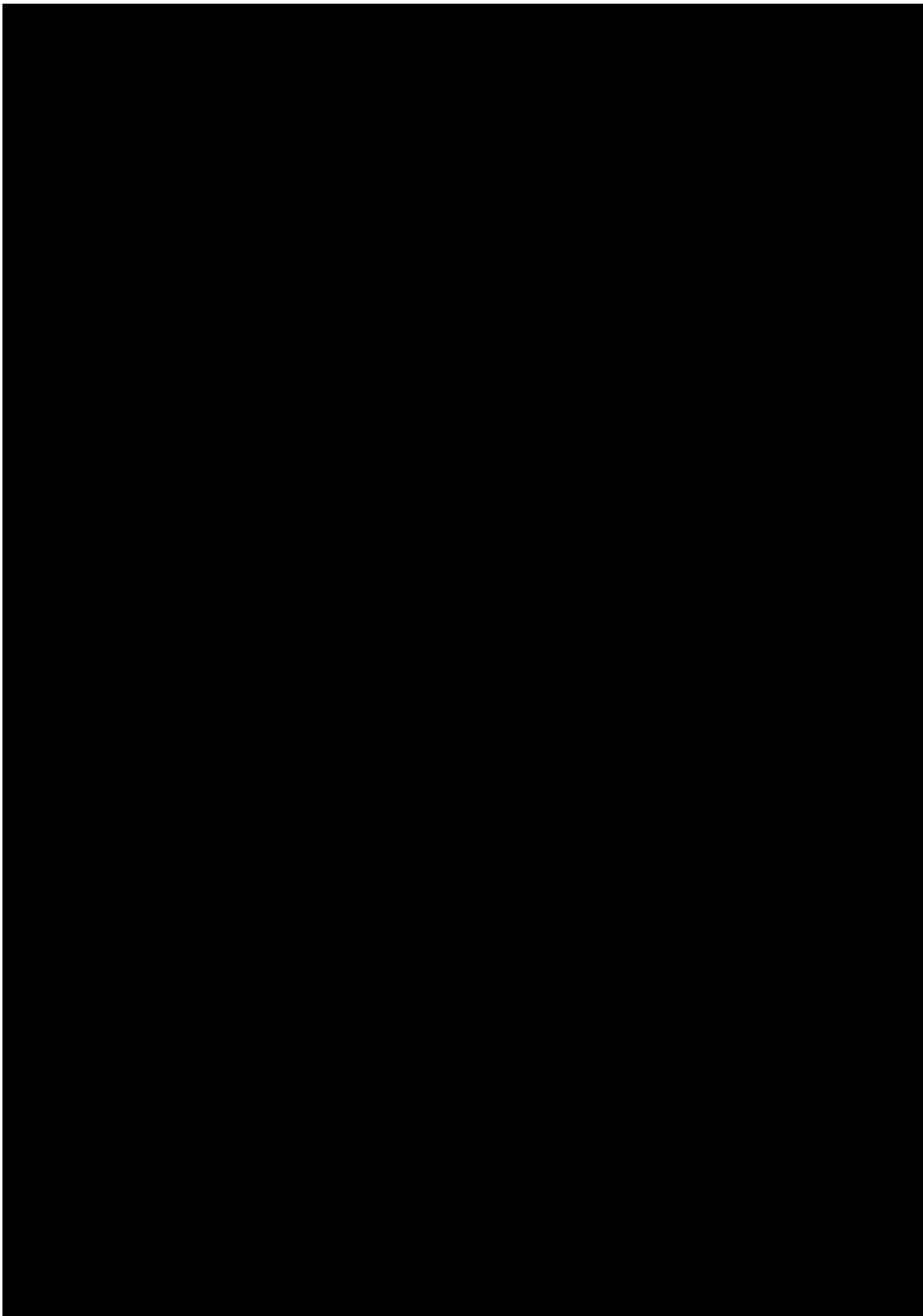


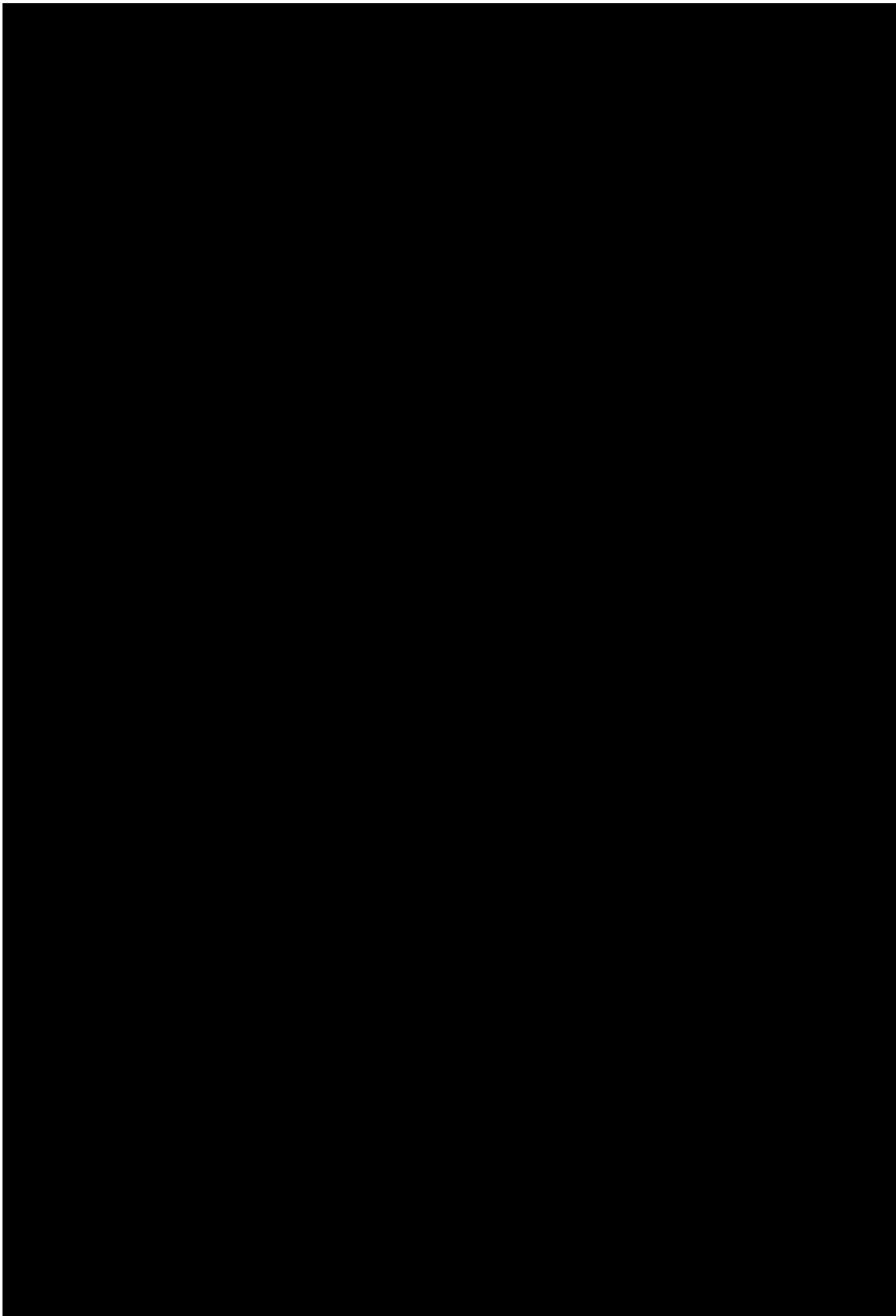


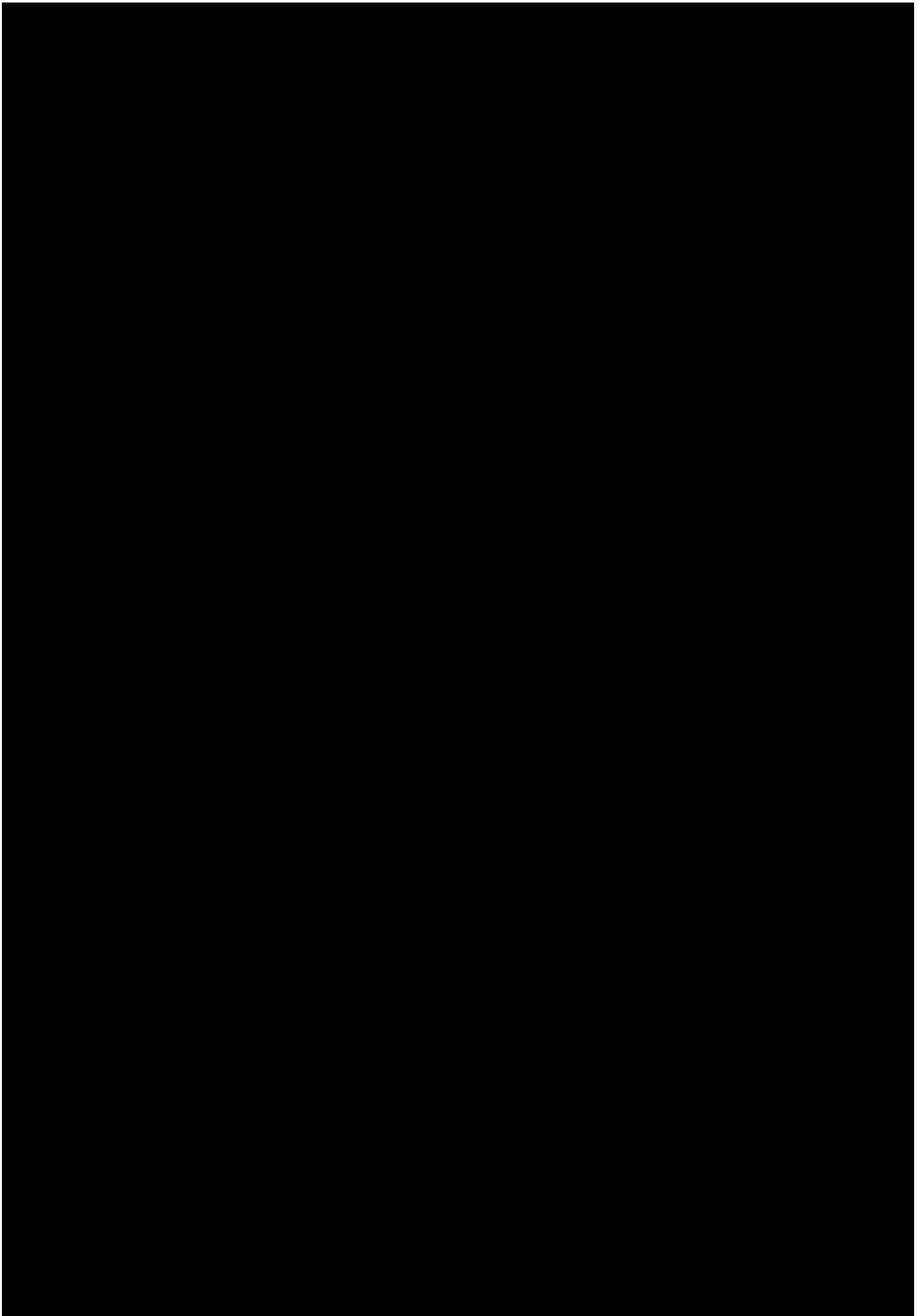


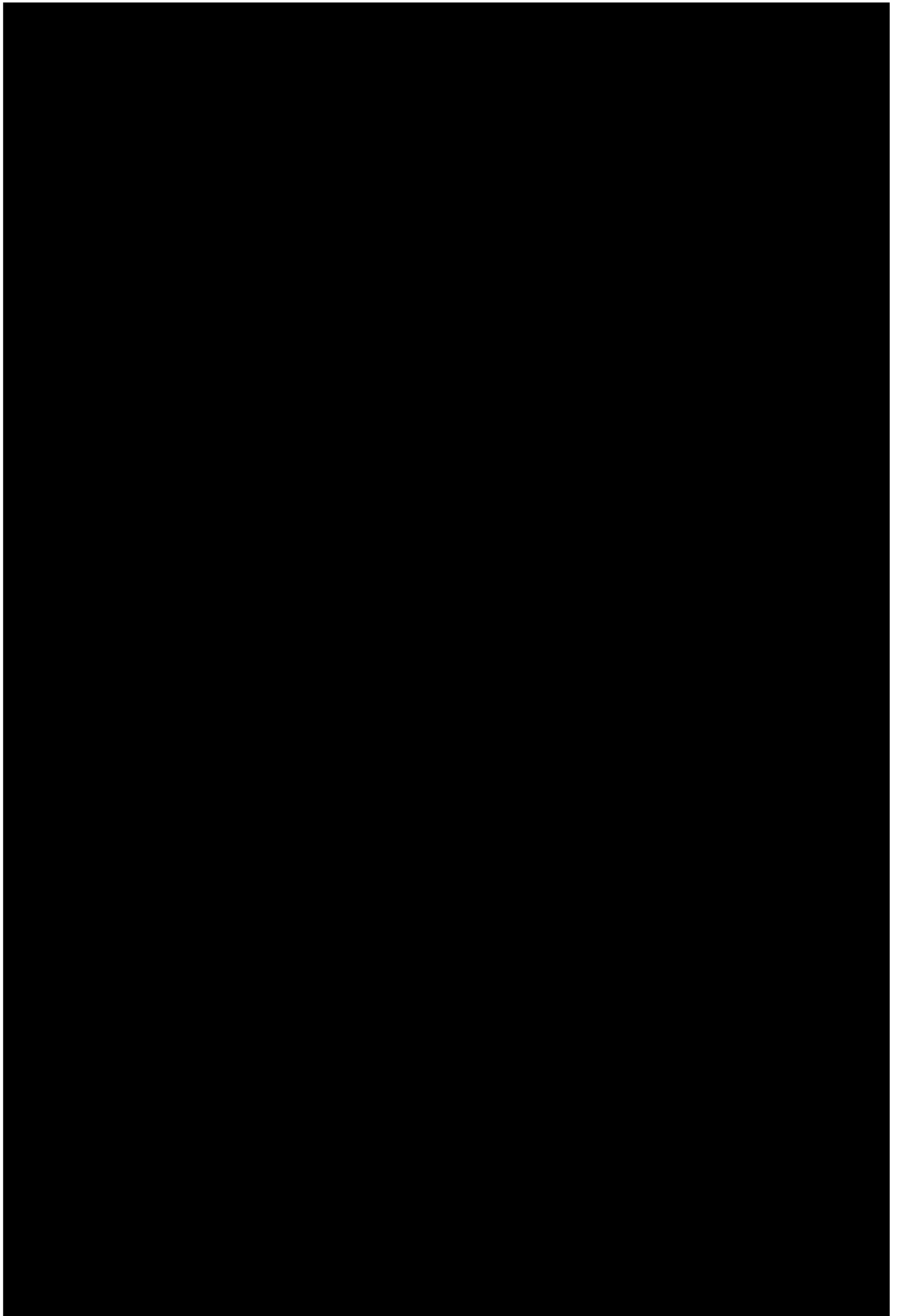


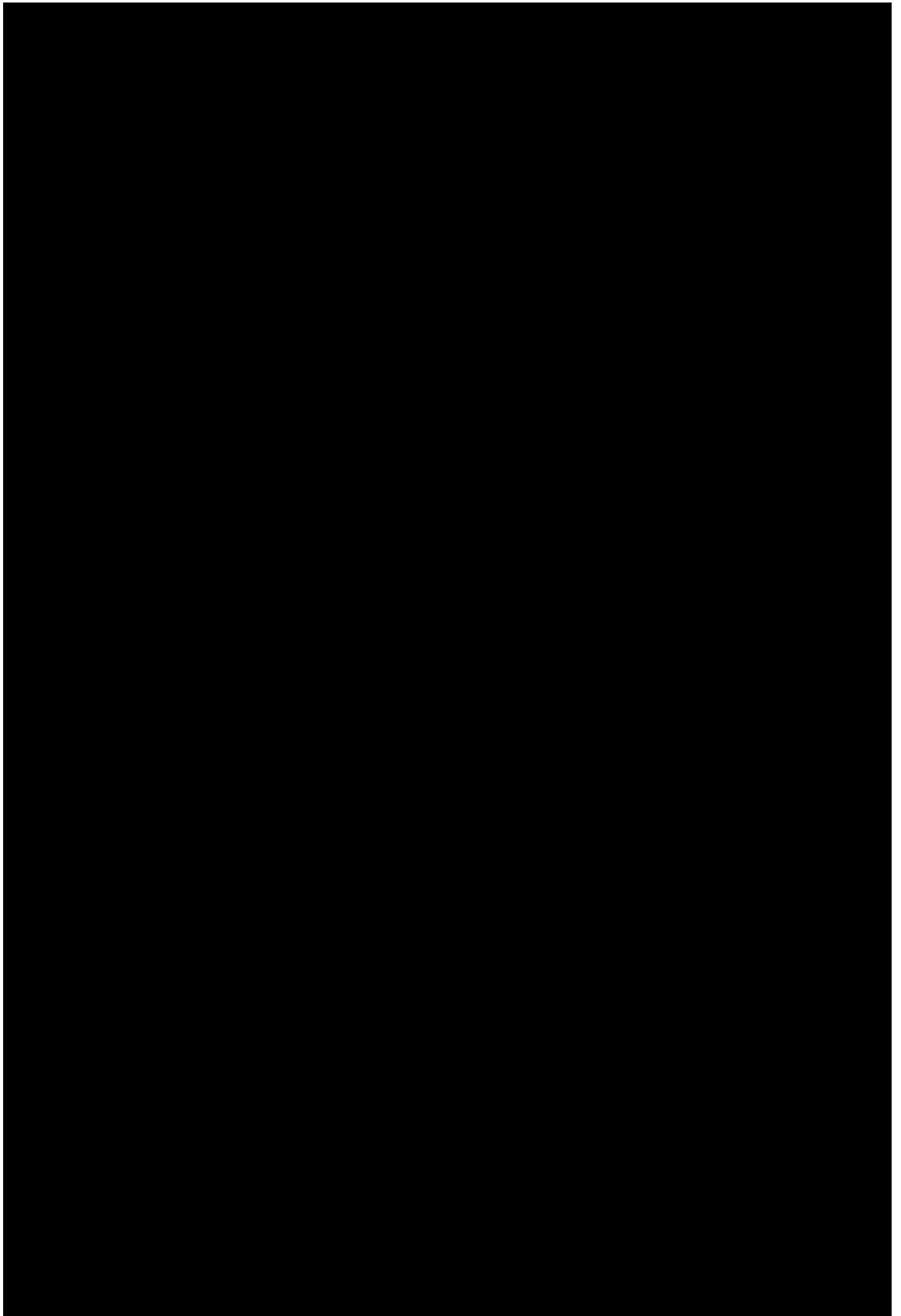


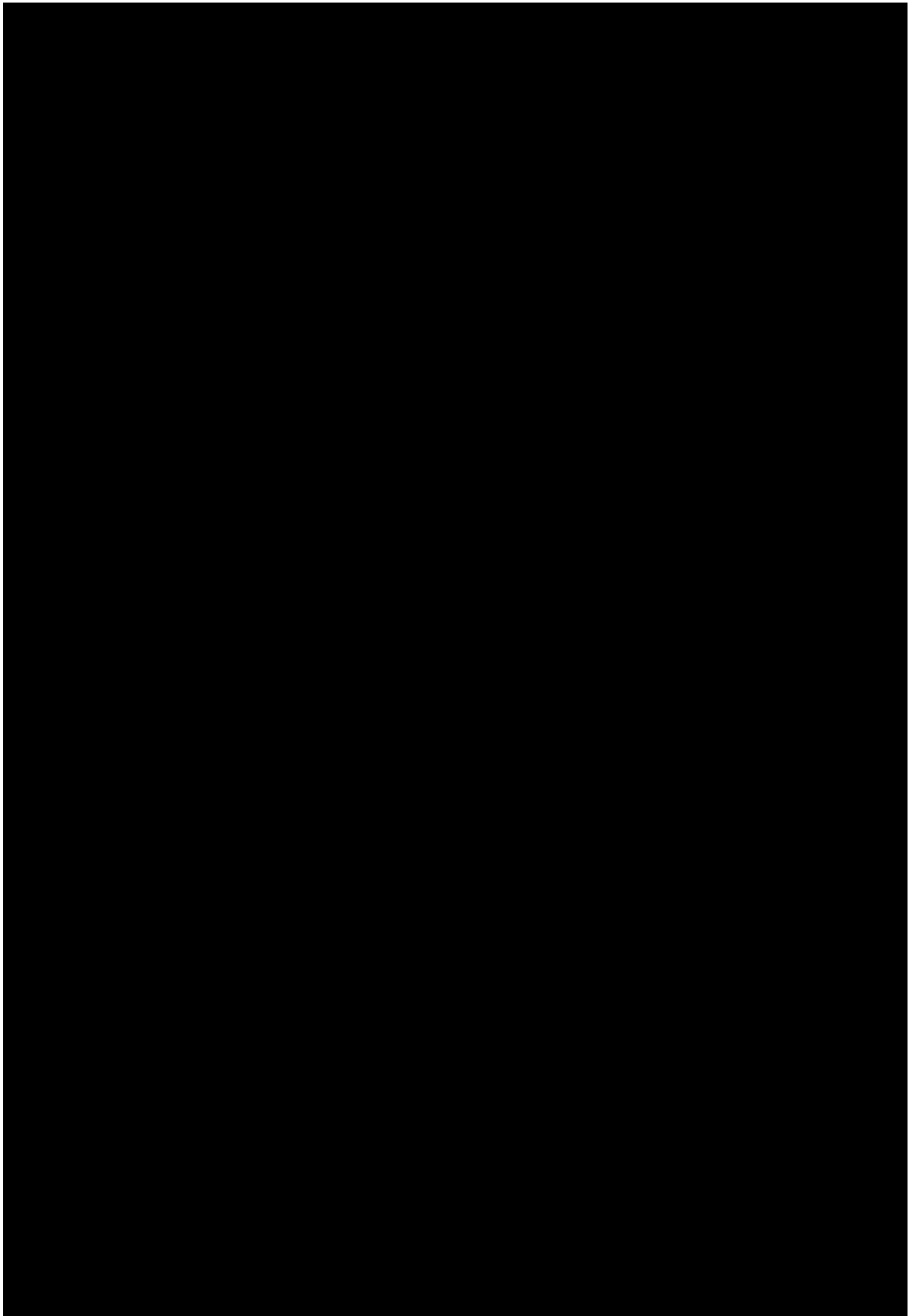


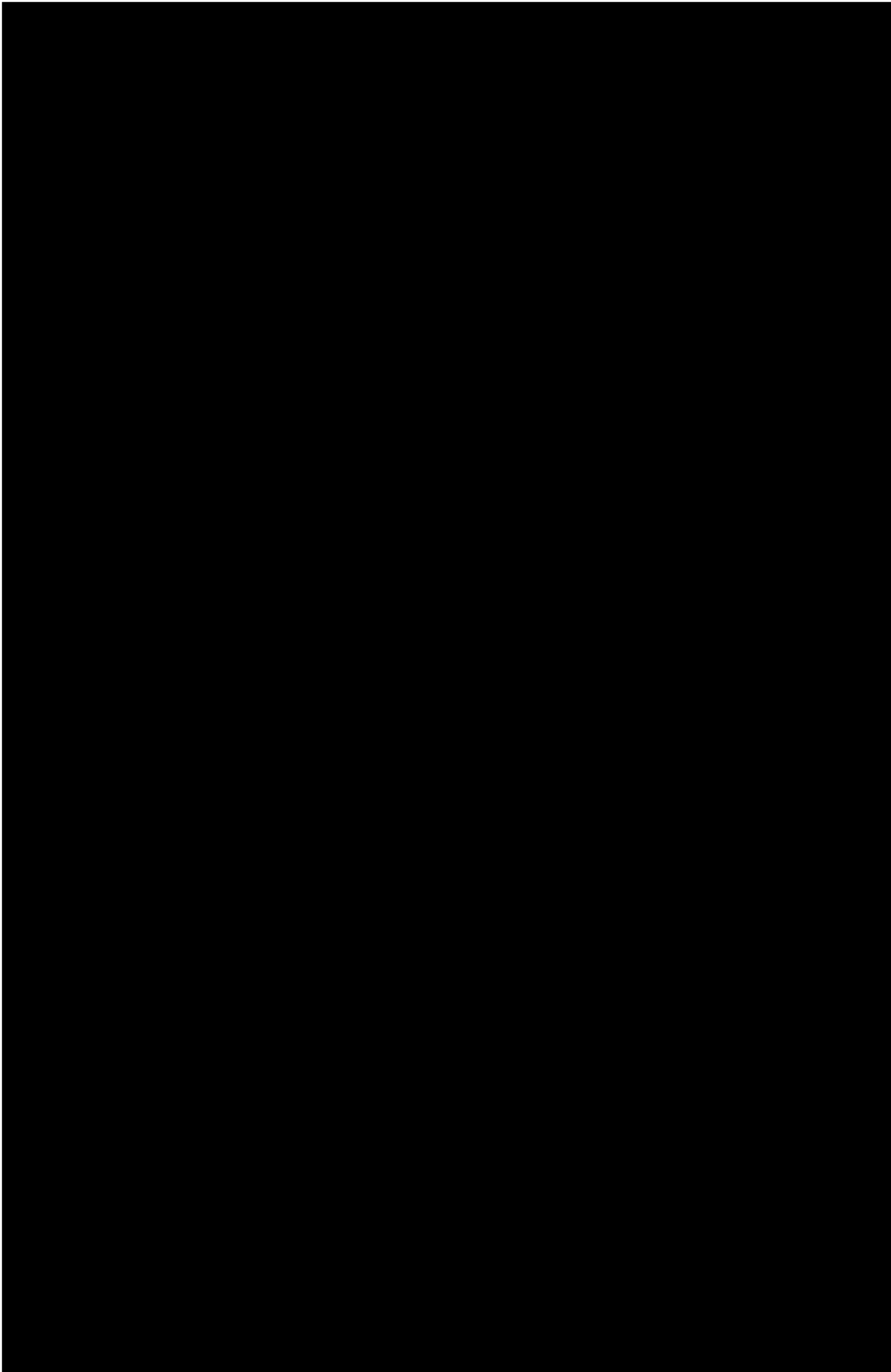


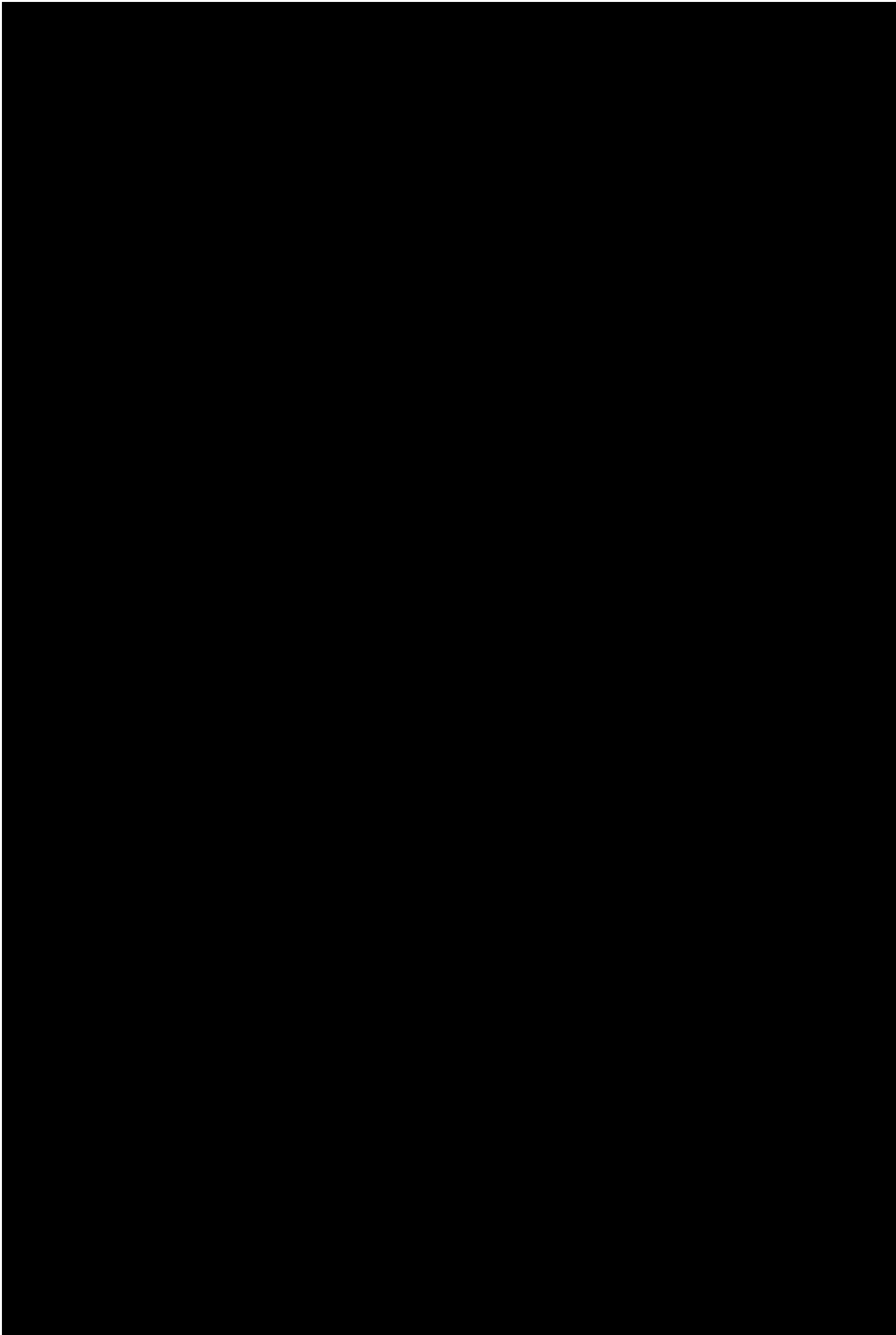


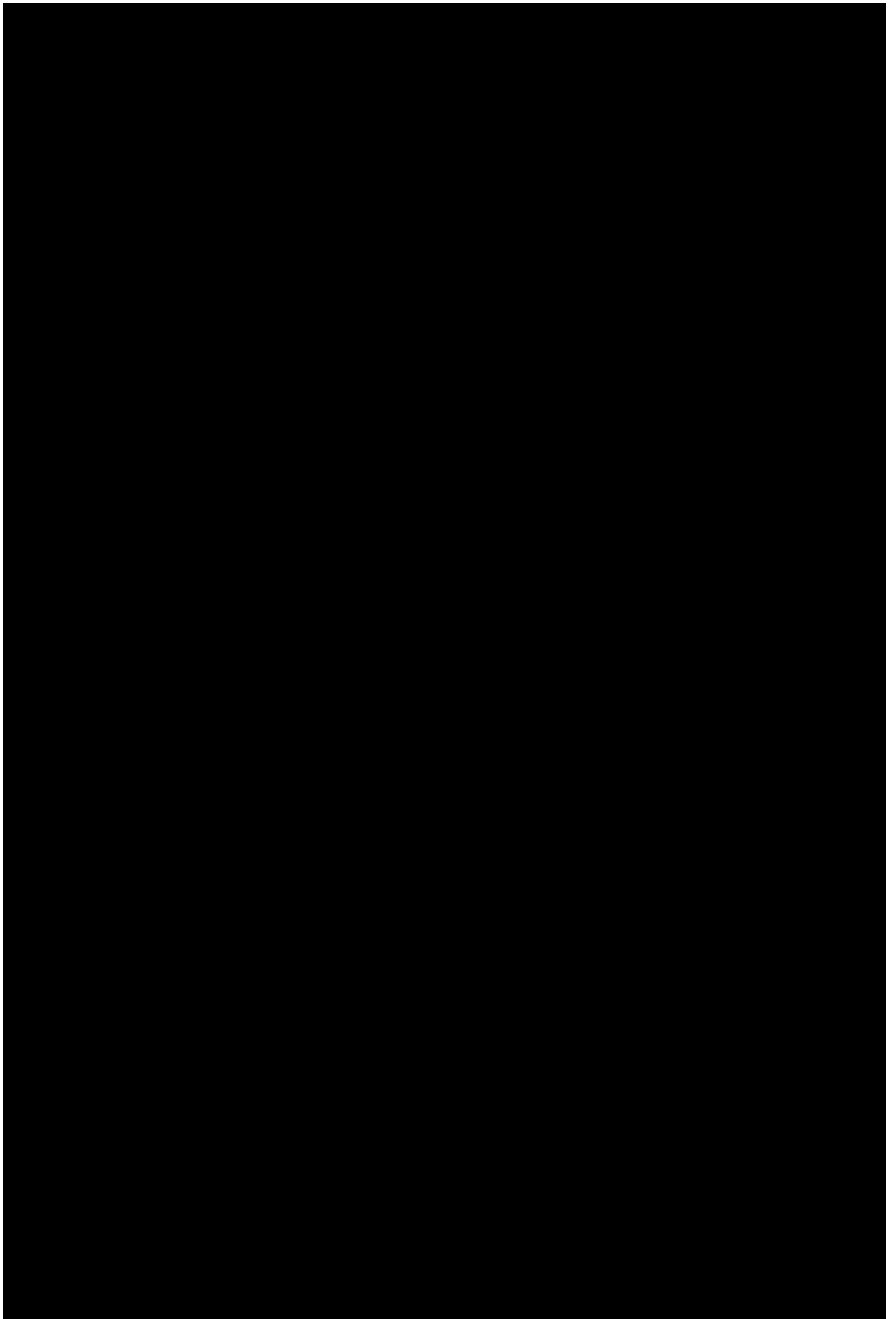


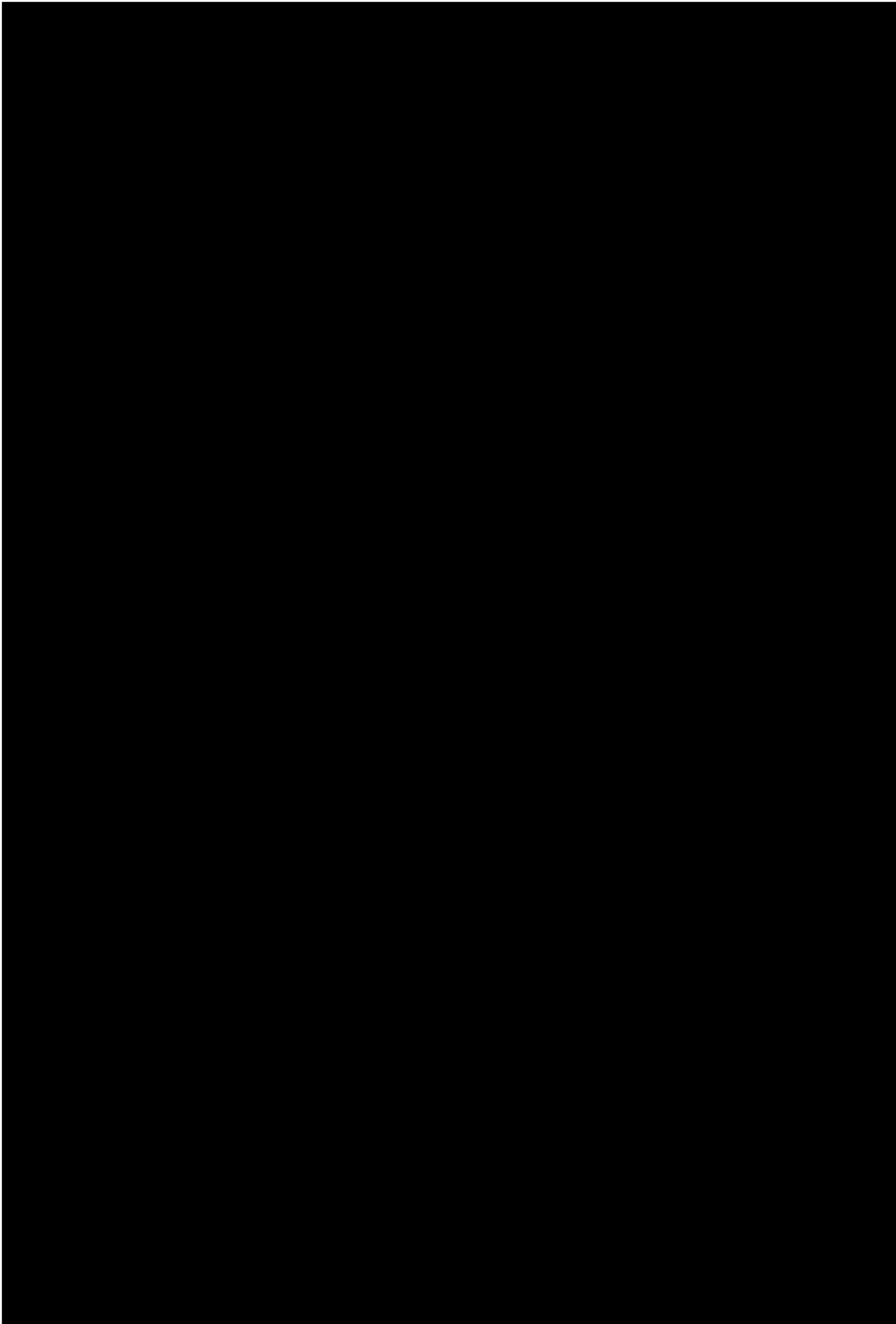


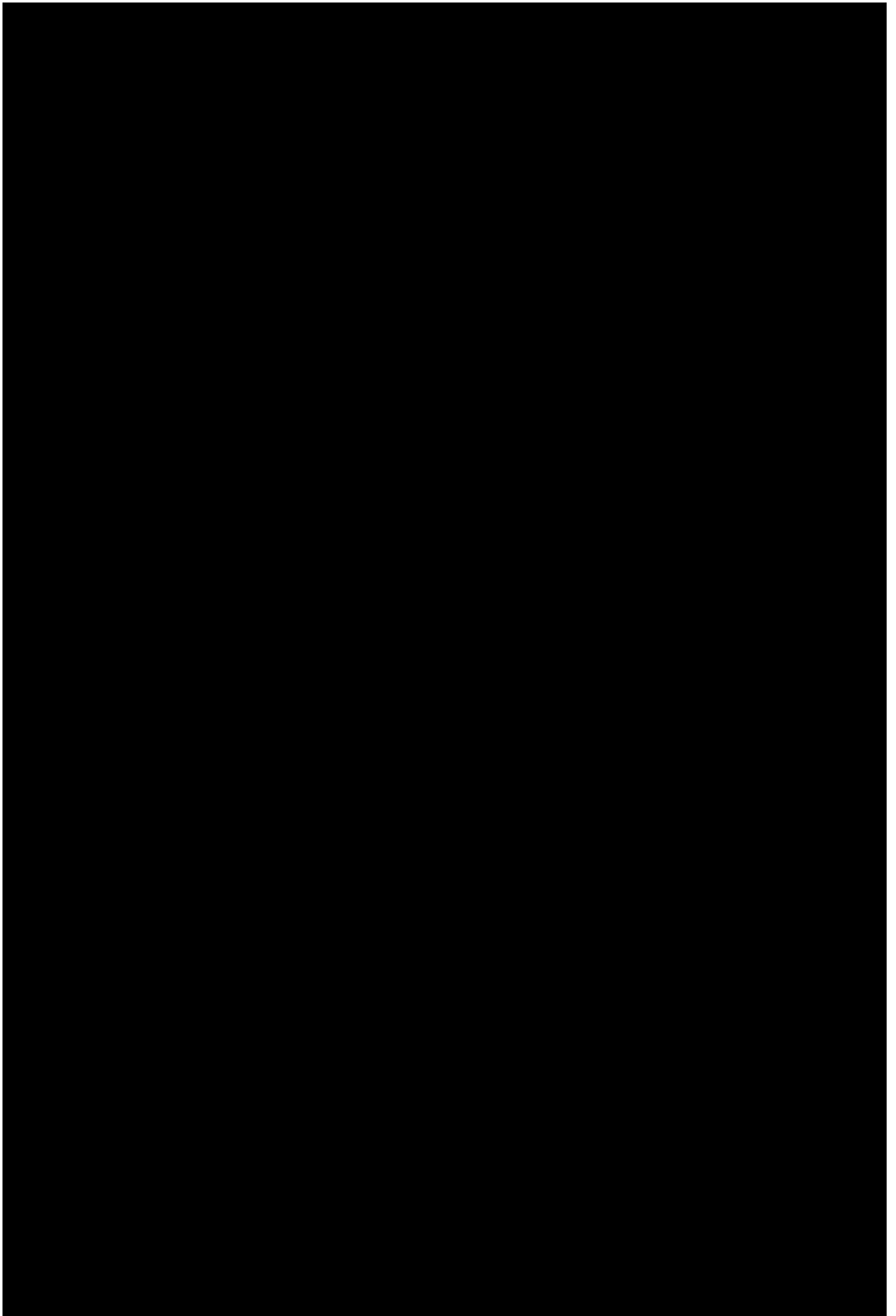


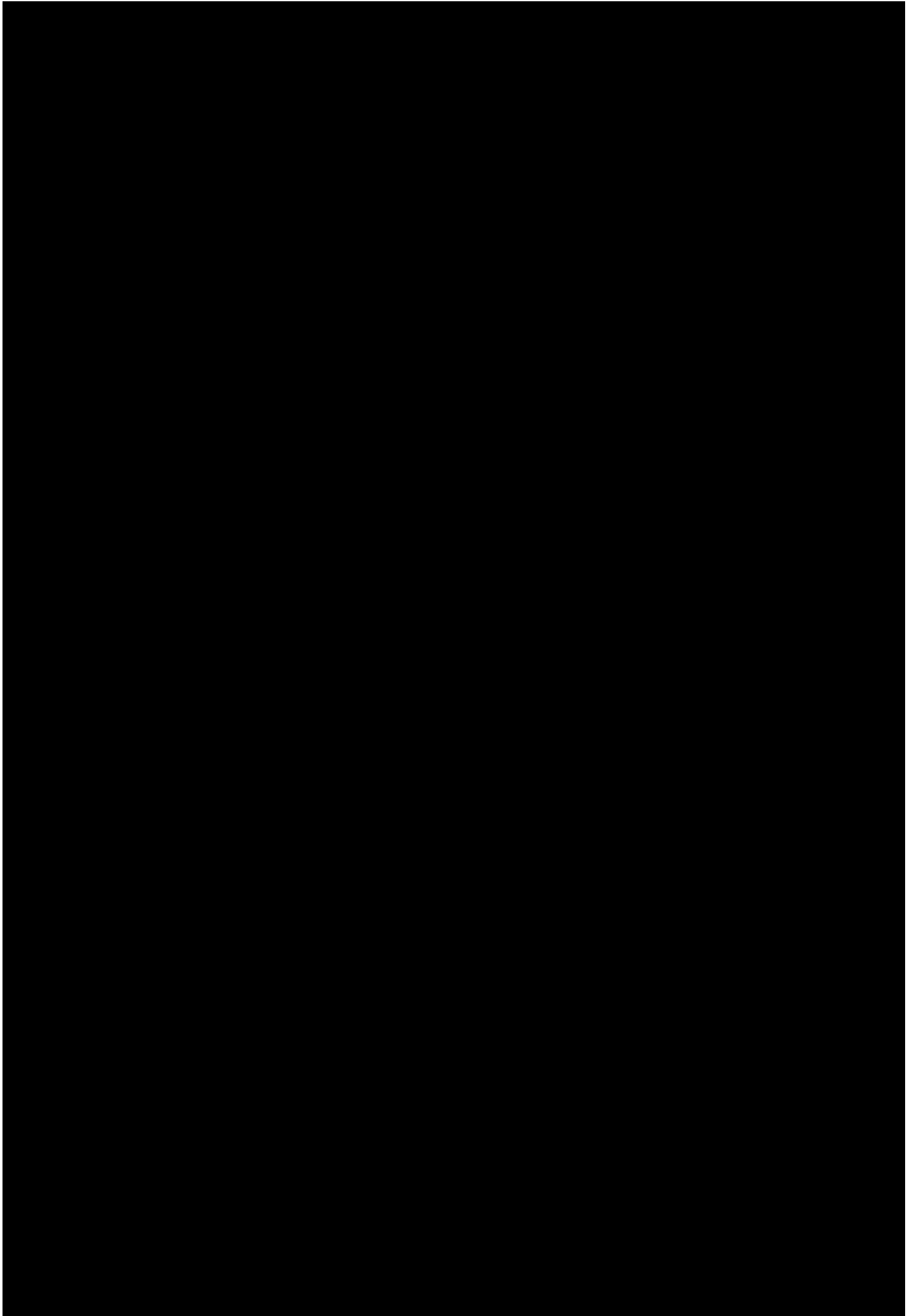


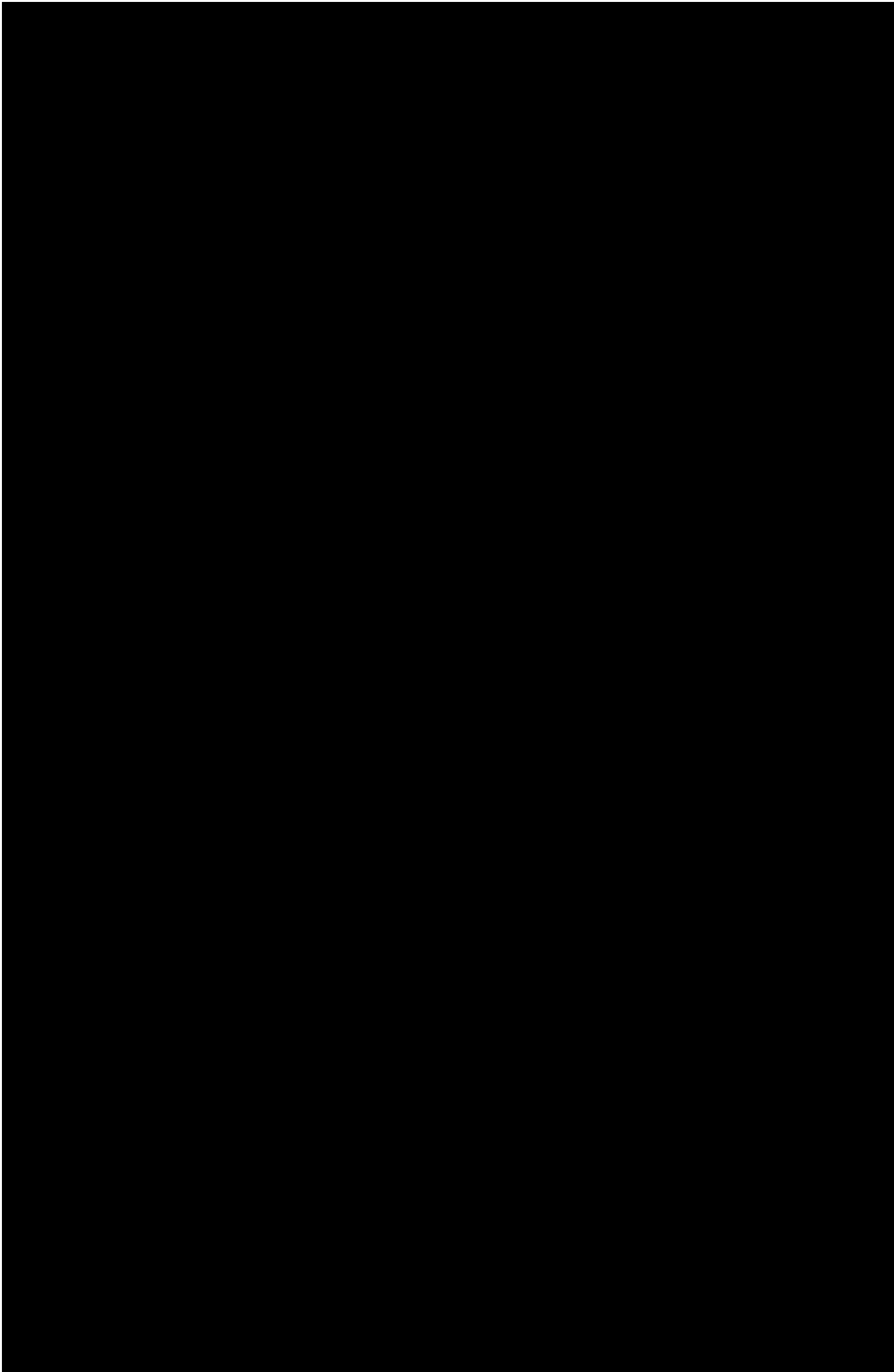


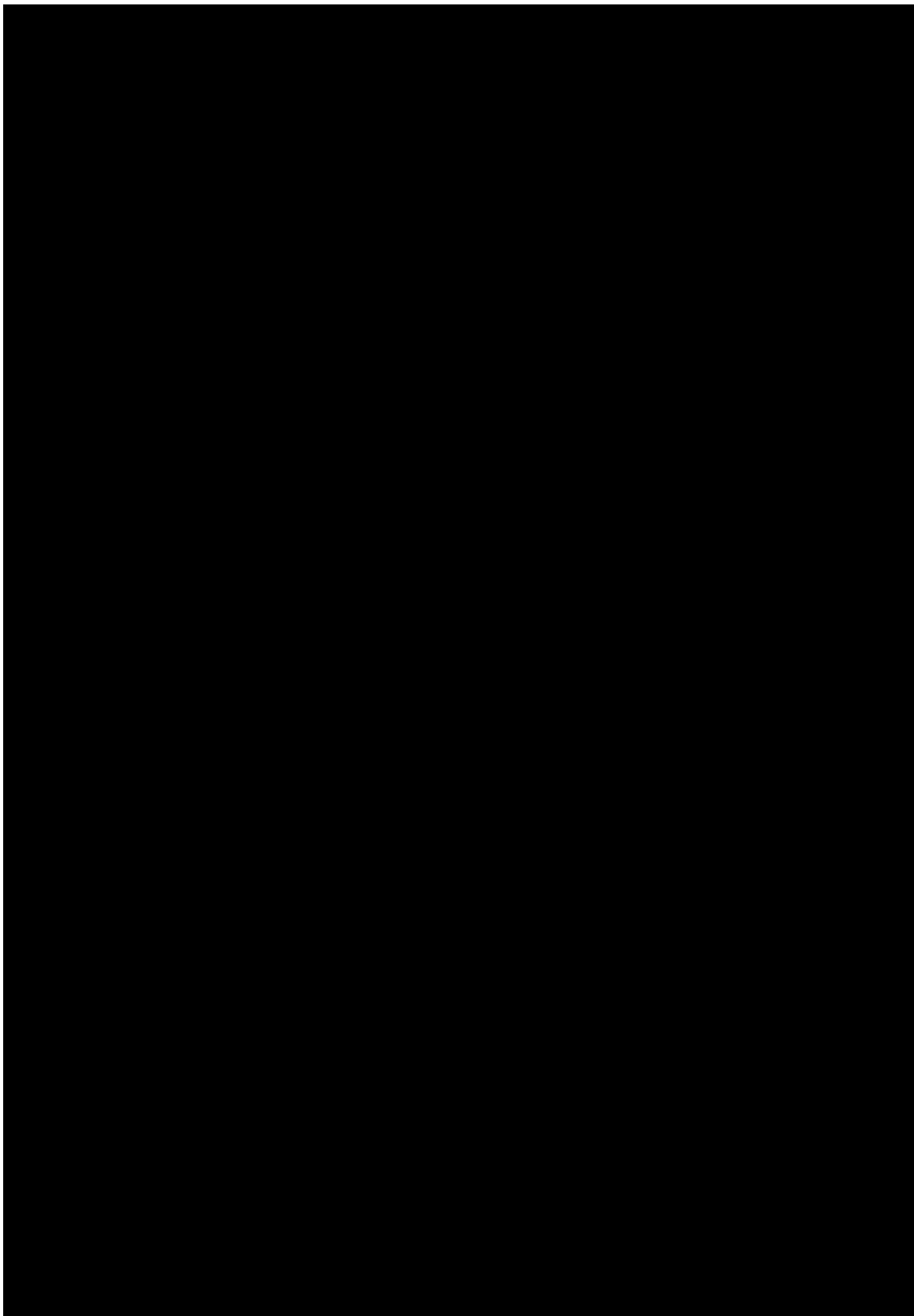












Schedule 11

Statement regarding Materials

Refer to clause 58.7 of the GC21 General Conditions of Contract.

I am a representative of *[name of company/entity with custody of the Materials or on whose land the Materials are stored]* in the capacity of *[insert position]* and I am authorised to make this statement on behalf of the Company. I confirm that the Company has no lien, charge or other encumbrance over the materials listed in the schedule to this statement ("Materials"). I acknowledge that the Materials are the property of the Principal named in the schedule to this statement ("Principal") and I hereby irrevocably authorise the Principal or its officers or others acting with its authority to enter the premises where the Materials are stored at any reasonable hour to inspect or remove the Materials. I undertake to make no claim or charge against the Principal in respect of the storage of the Materials.

SCHEDULE

Materials

[list the Materials]

Principal

Sydney Metro

SIGNED

DATE:.....



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Schedule 12

Compliance with Building Code

Refer to clause 17.1 of the GC21 General Conditions of Contract.

- .1 The Contractor must comply, and ensure that each other *Building Code Entity* complies, in the performance of the Contract, with the requirements of the *Building Code* and the *BCIIP Act*, including by ensuring that no Subcontractor:
 - .1 where Contract Information item 16A specifies that the *Building Code* applies because *Commonwealth* funding (above the minimum thresholds specified in Schedule 1 of the *Building Code*) has been obtained for the project which the Works form part of:
 1. is, at the date of their engagement subject to an 'enterprise agreement' (as that term is defined in the *Fair Work Act 2009* (Cth)) that does not meet the requirements of section 11 of the *Building Code*;
 2. is, at the date of their engagement subject to an 'exclusion sanction' (as that term is defined in section 3(3) of the *Building Code*) or is excluded from undertaking work funded by a state or territory government, unless approval to engage that *Building Code Entity* has been obtained from the *ABC Commissioner*; and
 3. without limiting any other obligation on the Contractor under the Contract, uses any *Materials* in the performance of the *Works* that do not, at a minimum, comply with the relevant Australian standards published by, or on behalf of, Standards Australia Limited (ABN 85 087 326 690); or
 - .2 at the date of their engagement, has failed to fully comply with any adverse decision, direction or order made by a court or tribunal for a breach of the *BCIIP Act*, a *Designated Building Law*, a work health and safety law (including, but not limited to, the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW)) or competition and consumer and consumer law (including, but not limited to, the *Competition and Consumer Act 2010* (Cth)).
- .2 Compliance with the *Building Code* will not relieve the Contractor from its responsibility to perform the Contract, or from liability for any *Defect* in the Works arising from compliance with the *Building Code*.
- .3 Where Contract Information item 16A states that a *Workplace Relations Management Plan (Commonwealth)* is required, the Contractor must comply, and must ensure that each of its Subcontractors complies, with the version of the *Workplace Relations Management Plan (Commonwealth)* provided by the Contractor that the Principal notifies the Contractor has been approved by the *ABCC*.
- .4 The Contractor must maintain adequate records of the compliance with the *Building Code* by each *Building Code Entity*.
- .5 The Contractor must notify the *ABCC* of any breach or suspected breach of the *Building Code* as soon as practicable but no later than 2 working days after becoming aware of the breach or suspected breach and of the steps proposed to be taken to rectify the breach.
- .6 The Contractor acknowledges the powers and functions of the *ABC Commissioner* and the *ABCC* under the *BCIIP Act* and the *Building Code* and will ensure that each *Building Code Entity* complies with any requests made by the *ABCC* and the *ABC Commissioner* within those powers and functions, including but not limited to requests for entry under section 72 of the *BCIIP Act*, requests to interview any person under section 74 of the *BCIIP Act*, requests to produce records or documents under sections 74 and 77 of the *BCIIP Act* and requests for information concerning matters relating to the *Building Code* under section 7(c) of the *Building Code*.
- .7 If the Contractor does not comply with the requirements of the *Building Code* or the *BCIIP Act* in the performance of the Contract such that a sanction is applied by the *ABC Commissioner*, the *ABCC* or the Minister for Employment, without prejudice to any rights that would otherwise accrue, those parties will be entitled to record that non-compliance and take it, or require it to be taken, into account in the evaluation of any future tenders that may be lodged by the Contractor or a related entity in respect of work funded by the *Commonwealth* or its agencies.



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- .8 The Contractor agrees that it and each other *Building Code Entity* will agree to a request from the Principal, the Commonwealth (or any person authorised by the *Commonwealth*) or any person contemplated by the *BCIP Act* or the *Building Code* as having a right to obtain information from a *Building Code Entity*, to provide such information as is relevant to confirming whether a *Building Code Entity* has complied with the *Building Code* within a specified period, in person, by fax, by post or other means.
- .9 Where Contract Information item 16A specifies that *Commonwealth* funding (above the minimum thresholds specified in Schedule 1 of the *Building Code*) has been obtained for the project which the Works form part of, the Contractor must, prior to engaging any Subcontractor, obtain and retain from each proposed Subcontractor a copy of a 'Declaration of Compliance', substantially in the form set out in the document titled '*Code for the Tendering and Performance of Building Work 2016 – Model Clauses Type B: Model Clauses for Tender and Contract Documentation for Contractors and Subcontractors*'.
- .10 Without limiting any other obligation on a *Building Code Entity* under the *Building Code*, the Contractor must ensure that all Subcontracts impose obligations on Subcontractors equivalent to the requirements of this Schedule 12.



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Schedule 13

Workforce Development and Industry Participation reporting

Refer to clause 15.5 and Contract Information Item 15C of the GC21 General Conditions of Contract.

A copy of the Sydney Metro West Workforce Reporting Template is included in the Principal's Documents.



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Schedule 14

Not Used



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Schedule 15

Parent Company Guarantee

Refer to clause 33.7 and Contract Information Item 35B of the GC21 General Conditions of Contract.

Deed of Guarantee and Indemnity

made at _____ on _____ 20____

between **Sydney Metro** (ABN 12 354 063 515) a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Sydney Metro**) (**Beneficiary**)

and [insert Guarantor's name] (ABN [insert Guarantor's ABN]) of [insert Guarantor's address] (**Guarantor**)

Recitals

- A The Beneficiary has agreed to enter into the Contract with the Contractor on the condition that the Guarantor provides this Deed.
- B The Guarantor considers that by providing this Deed there will be a commercial benefit flowing to the Guarantor.

This Deed witnesses

1. Definitions and interpretation

1.1 Definitions

In this Deed:

Contract means the deed dated on or about the date of this Deed between the Beneficiary and the Contractor for the construction of the [insert project description].

Contractor means [insert Contractor's name, ABN and address].

Contractor's Obligations means the due and punctual performance by the Contractor of all of its liabilities, obligations and agreements (present or future, actual or contingent) to the Beneficiary pursuant to or in connection with the Contract and each other Transaction Document but excluding all of the Contractor's Obligations with respect to payment of the Guaranteed Money.

Encumbrance means a mortgage, charge, pledge, lien, hypothecation, guarantee (including the guarantee under this Deed), indemnity, letter of credit, letter of comfort, performance bond or other avoidance against loss which secures any obligation which is or may be or becomes owing by any other Relevant Person to the Guarantor.

Government Agency means a government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any applicable law.

Guaranteed Money means all money which the Contractor (whether alone or with any other person) is or at any time becomes actually or contingently liable to pay to, or for the account of, the Beneficiary on any account whatsoever under or in connection with the Contract or other Transaction Document including, without limitation, by way of interest, fees, costs, indemnities, charges, duties and expenses, or through payment of damages under or in relation to, or as a consequence of any breach or default of, the Contract or any other Transaction Document.

Guaranteed Obligations means the due and punctual payment of the Guaranteed Money and the due and punctual performance of the Contractor's Obligations.

Material Adverse Effect means, in respect of a person, a material adverse effect on:

- (a) its business, assets or financial condition; or
- (b) its ability to perform its obligations under any Transaction Document

Relevant Person means the Contractor, the Guarantor and any person who has executed a Security in favour of the Beneficiary.



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

Specified Rate means 2% above the Overdraft Index Rate fixed from time to time by the Commonwealth Bank of Australia.

Tax means any present or future tax, GST, levy, impost, deduction, charge, duty, compulsory loan or withholding (together with any related interest, penalty, fine and expense in connection with any of them) levied or imposed by any Government Agency, other than any imposed on overall net income.

Transaction Document means each of:

- (a) this Deed;
- (b) the Contract;
- (c) any other document which the Guarantor and the Beneficiary so designate in writing;
- (d) each other document contemplated by or required in connection with any of the above or the transactions they contemplate; and
- (e) each document entered into for the purpose of amending, novating, restating or replacing any of the above.

Unpaid Amount means an amount which is not paid on the date on which it is due and payable under this Deed.

1.2 The Contract

Defined words and expressions used in this Deed have the meanings given to them in the Contract

1.3 Interpretation

In this Deed unless the context indicates a contrary intention:

- (a) if the "Contractor" is more than one person, "Contractor" means each of them severally and every two or more of them jointly;
- (b) if the Guarantor is more than one person, "Guarantor" means each of them severally and every two or more of them jointly;
- (c) "person" includes an individual, a body politic, a corporation and a statutory or other authority or association whether incorporated or unincorporated;
- (d) a reference to any party includes that party's executors, administrators, successors, substitutes and assigns, including any person taking by way of novation;
- (e) a reference to any document or agreement is to such document or agreement as amended, novated, supplemented or replaced from time to time;
- (f) the singular includes the plural (and vice versa) and words denoting a given gender include all other genders;
- (g) headings are for convenience only and do not affect interpretation; and
- (h) unless otherwise stated, a reference to any amount is a reference to all or part of the amount.

1.4 No contra proferentem

No term or provision of this Deed shall 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 Beneficiary:

- (a) the due and punctual payment by the Contractor of the Guaranteed Money; and
- (b) the due and punctual performance by the Contractor of all of the Contractor's Obligations.

2.2 Payment of Guaranteed Money

If the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.



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2.3 Perform obligations

If the Contractor defaults in the performance or observance of any of the Contractor's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Contractor's Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Contractor's Obligations.

3. Indemnity

Subject to clause 3A, as a covenant separate and distinct from that contained in clause 2.1, the Guarantor irrevocably and unconditionally agrees to indemnify the Beneficiary and at all times to keep the Beneficiary indemnified against any loss or damage suffered by the Beneficiary arising out of or in connection with:

- (a) any failure by the Contractor to pay the Guaranteed Money duly and punctually; or
- (b) any failure by the Contractor to observe or perform any of the Contractor's Obligations; or
- (c) any Transaction Document being wholly or partly void, voidable or unenforceable against the Contractor or the Guarantor for any reason and whether or not the Beneficiary knew or ought to have known of that reason, with the result in any such case that:
 - (i) sums which would (but for the voidness, voidability or unenforceability) have been Guaranteed Money are not recoverable by the Beneficiary under clause 2; or
 - (ii) obligations which would (but for the voidness, voidability or unenforceability) have been Contractor's Obligations are not guaranteed under clause 2.3; or
- (d) a disclaimer of any contract (including the Contract) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or any other applicable laws.

3A. Limitation

- (a) Notwithstanding any other clause in this Deed but subject to paragraphs (b) and (c) below:
 - (i) the aggregate liability of the Guarantor under this Deed will not exceed the aggregate liability of the Contractor under the Contract;
 - (ii) the liability of the Guarantor under this Deed in connection with a breach of the Contract by the Contractor shall not be greater than the liability of the Contractor under the Contract in respect of the breach;
 - (iii) nothing in this Deed is intended to render the Contractor and the Guarantor liable for the same loss twice for the one breach of the Contract by the Contractor; and
 - (iv) payment by one of the Contractor or the Guarantor to or in favour of the Beneficiary shall be deemed to be good discharge against the Beneficiary in respect of that payment.
- (b) The limitation of liability under this clause 3A does not apply to liability to pay any GST in accordance with clause 7.3 of this Deed or otherwise.
- (c) Nothing in this clause shall limit the Guarantor's liability for Contractor's Obligations which arise from or would have arisen from unenforceable Contractor's Obligations referred to in clause 3(c) of this Deed (if those Contractor's Obligations had not been voided, avoided or unenforceable), subject to such liability not exceeding the liability that the Contractor would have had if the Contractor's Obligations had not been unenforceable Contractor's Obligations.

4. Nature and preservation of liability

4.1 Absolute liability

The liability of the Guarantor under this Deed arises immediately on execution and delivery of this Deed by the Guarantor and:

- (a) arises notwithstanding that any person expressed to be a party to this Deed does not execute and deliver this Deed, that there is any invalidity, forgery or irregularity in the execution or purported execution of this Deed by any person, or that this Deed is or becomes unenforceable against any such person for any reason; and



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- (b) is not conditional on the entering into by any other person of any other document or agreement which might benefit (directly or indirectly) the Guarantor, or on the satisfaction of any other condition.

4.2 Unconditional liability

The liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (a) **(Invalidity etc.):** any Security or any Transaction Document being terminated or discharged (whether by any party thereto or by operation of law) or being or becoming void, voidable or unenforceable for any reason;
- (b) **(Other Securities):** the Beneficiary accepting or declining to accept any Security from any person;
- (c) **(Time or indulgence):** the Beneficiary 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 any person whether or not pursuant to any Transaction Document;
- (d) **(Forbearance):** the Beneficiary not exercising or delaying in the exercise of any remedy or right it has at any time to terminate or enforce its rights under this Deed, any Transaction Document or any Security;
- (e) **(Variation):** any variation, novation or alteration to or substitution of this Deed, any Transaction Document or any Security, whether or not that variation, novation or alteration permits or results in a change in the Guaranteed Obligations including the amount of the Guaranteed Money or a change in the date by which it must be paid, or a change in the identity of the Contractor;
- (f) **(Release):** the partial or conditional release or discharge by the Beneficiary or by operation of law of any Relevant Person from its obligations under any Transaction Document or any Security except only to the extent that the Beneficiary has, in writing, provided a release or discharge which has the effect of reducing the obligations of the Relevant Person;
- (g) **(Securities):** the Beneficiary enforcing, releasing, disposing of, surrendering, wasting, impairing, destroying, abandoning, prejudicing, or failing or delaying to perfect, maintain, preserve, realise or enforce any Transaction Document or any Security, whether negligently or otherwise;
- (h) **(Accounts):** the opening or operation of any new account with the Beneficiary by the Contractor;
- (i) **(Change of constitution):** any change for any reason in the name or manner in which the Beneficiary or any Relevant Person carries on business, including any change in any partnership, firm or association of which the Beneficiary or any Relevant Person is a member;
- (j) **(Disclosure):** any failure by the Beneficiary to disclose to the Guarantor any material or unusual fact, circumstance, event or thing known by, or which ought to have been known by, the Beneficiary relating to or affecting any Relevant Person before or at any time after the date of this Deed;
- (k) **(Prejudicial conduct):** any breach by the Beneficiary of any term of any Transaction Document or Security or any other act or omission (negligent or otherwise) of the Beneficiary with regard to any Transaction Document, any Security or any Relevant Person which is prejudicial to the interests of the Guarantor;
- (l) **(Preference):** any claim by any person that a payment to, receipt by, or other transaction in favour of the Beneficiary in or towards satisfaction of the Guaranteed Money is void, voidable or capable of being set aside under any law relating to bankruptcy, insolvency or liquidation being upheld, conceded or compromised;
- (m) **(Assignment):** the transfer, assignment or novation by the Beneficiary or any Relevant Person of all or any of its rights or obligations under any Transaction Document or Security to which it is a party;
- (n) **(Death or incapacity):** (where the Guarantor is an individual) the death or mental incapacity of the Guarantor;
- (o) **(Administration):** the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
- (i) the enforcement of this Deed against the Guarantor; and/or
- (ii) any claim for contribution against the Guarantor; or



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

4.3 No marshalling

The Beneficiary 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 Beneficiary holds, has a claim on, or is entitled to receive.

4.4 Void or voidable transactions

If:

- (a) the Beneficiary has at any time released or discharged:
- (i) the Guarantor from its obligations under this Deed or any Security executed by the Guarantor; 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 Beneficiary;
- (b) 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 a law relating to bankruptcy, insolvency or liquidation; and
- (c) that claim is upheld, conceded or compromised,
- then:
- (d) **(Restitution of rights):** the Beneficiary will immediately become entitled against the Guarantor to all such rights (including under any Security) as it had immediately before that release or discharge;
- (e) **(Restore Beneficiary's position):** the Guarantor must immediately do all things and execute all documents as the Beneficiary may reasonably require to restore to the Beneficiary all those rights; and
- (f) **(Indemnity):** the Guarantor must indemnify and keep indemnified the Beneficiary against costs, losses and expenses suffered or incurred by the Beneficiary as a result of the upholding, concession or compromise of the claim.

4.5 No double proof

This Deed constitutes a guarantee of the whole of the Guaranteed Obligations, even if the Beneficiary and the Guarantor have agreed or agree at any time that the Guarantor's liability under this Deed will be limited to a maximum amount. Accordingly, the Guarantor is not entitled to:

- (a) lodge any proof of debt in the winding up of the Contractor;
- (b) exercise any right of subrogation; or
- (c) otherwise be entitled to the benefit of any Security held by the Beneficiary,

with respect to any claim arising as a result of the Guarantor making a payment under this Deed, unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

4.6 Suspense account

The Beneficiary may retain and carry to a suspense account and appropriate at the discretion of the Beneficiary any dividend received by the Beneficiary in the winding up of any Relevant Person, plus any other sums received by the Beneficiary on account of the Guaranteed Money, until the Beneficiary has received the full amount of the Guaranteed Money.

4.7 Proof of debt in competition with Beneficiary

The Guarantor must prove in the winding up of any Relevant Person in respect of any claim it has against that Relevant Person other than a claim arising as a result of the Guarantor making a payment under this Deed, and agrees to hold any dividend received in respect of that proof on trust for the Beneficiary in or towards satisfaction of the Guarantor's obligations under this Deed.



4.8 Claim on the Guarantor

The Beneficiary is not required to take any steps to enforce its rights under any Transaction Document or any Security before enforcing its rights against the Guarantor under this Deed.

4.9 No representation by Beneficiary

The Guarantor acknowledges that in entering into this Deed it has not relied on any representation, warranty or statement by the Beneficiary.

4.10 No contribution

The Guarantor must not make a claim under or enforce any right of contribution it may have against any other Relevant Person unless and until the Guaranteed Obligations have been paid, discharged or recovered by the Beneficiary in full.

5. Corporate representations and warranties

5.1 Representations and warranties

If the Guarantor is a body corporate, it represents and warrants to the Beneficiary that:

- (a) **(Constitution)**: the execution, delivery and performance of this Deed does not violate its constitution or any other document, agreement, law or rules by which it is bound;
- (b) **(Corporate power)**: it has taken all 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;
- (c) **(Filings)**: it has filed all notices and effected all registrations with the Australian Securities and Investments Commission or similar office in its jurisdiction of incorporation and in any other jurisdiction as required by law, and those filings and registrations are current, complete and accurate;
- (d) **(Corporate benefit)**: the execution of this Deed is in the best commercial interests of the Guarantor;
- (e) **(Consideration)**: this Deed is executed for valuable consideration, the receipt and adequacy of which the Guarantor acknowledges;
- (f) **(Status)**: it is not in liquidation, provisional liquidation or receivership, or under administration, and no matter relating to it or any of its subsidiaries is the subject of a direction under, or having effect as if it were a direction under, section 14 of the *Australian Securities and Investments Commission Act 2001* (Cth) ('ASC Law'), or the subject of an investigation under, or taken to be under, the ASC Law;
- (g) **(Ownership of property)**: it has full legal capacity and power to own its property and assets and carry on its business as it is now being conducted;
- (h) **(Ranking of obligations)**: this Deed constitutes a valid and legally binding obligation, enforceable in accordance with its terms, to rank at all times at least equally with all of its other present and future unsecured payment obligations (including, without limitation, contingent obligations), other than those which are mandatorily preferred by law and that the Guarantor has taken all action required to ensure that its obligations under this Deed so rank and will continue to so rank;
- (i) **(No litigation)**: no litigation, arbitration or administrative proceedings are taking place, pending or, to the knowledge of any of its officers, threatened against it or any of its subsidiaries or any of its or their property which, if adversely determined, would be likely to have either separately or in aggregate a Material Adverse Effect on it or any of its subsidiaries;
- (j) **(Financial statements)**: its financial statements current as at the date of this Deed have been prepared in accordance with the laws of Australia and (except where inconsistent with those laws) generally accepted accounting principles consistently applied, and give a true and fair view of the financial condition of it and its subsidiaries as at the date to which they are made up, and of the results of operations for the financial year then ended, and there has been no change since that date having a Material Adverse Effect on it, or on it and its subsidiaries on a consolidated basis;
- (k) **(Other information)**: the written information and reports (if any) which it has given to the Beneficiary in connection with the negotiation and preparation of this Deed:
 - (i) was, when given, true and accurate in all material respects and not misleading, whether by omission or otherwise; and



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- (ii) contain forecasts and opinions all of which were made or formed after due and careful consideration on the part of its relevant officers based on the best information available to it and were fair and reasonable when made or formed; and
- (l) **(No filings or Taxes):** it is not necessary or desirable to ensure the legality, validity, enforceability or admissibility in evidence of this Deed that this Deed or any other instrument be filed or registered with any Government Agency or that any Taxes be paid.

5.2 Reliance on representations and warranties

The Guarantor acknowledges that the Beneficiary entered into the Contract in reliance on the representations and warranties in this clause 5.

5.3 No representations to Guarantor

The Guarantor confirms that it has not executed this Deed as a result of or in reliance upon any promise, representation, statement or information of any kind or nature whatever given or offered to it by or on behalf of the Beneficiary whether in answer to any inquiry by or on behalf of the Guarantor or not.

6. Payments

6.1 On demand

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

6.2 Payment in gross

All money received or recovered by the Beneficiary on account of the Guaranteed Money will be treated as payments in gross.

6.3 Appropriation of payments

The Beneficiary may appropriate any money received by it under or in respect of this Deed, any Transaction Document or any Security in the manner and order and at all times as the Beneficiary in its absolute discretion determines.

6.4 Interest

The Guarantor must on demand by the Beneficiary from time to time pay interest on all Unpaid Amounts. Interest will accrue on those amounts from day to day from the due date up to the date of actual payment at the Specified Rate and, if not paid when due, will itself bear interest in accordance with this clause 6.4. Interest is calculated on the basis of the actual number of days on which interest has accrued and on a 365 day year.

6.5 Merger

If the liability of the Guarantor to pay to the Beneficiary any money under this Deed becomes merged in any judgment or order, then as an independent obligation the Guarantor must pay interest on the amount of that money at the rate which is the higher of that payable under clause 6.4 and that fixed by or payable under the judgment or order.

6.6 Withholding for Taxes

All payments by the Guarantor under this Deed will be without deduction or withholding for any present or future Taxes unless the Guarantor is compelled by law to make any deduction or withholding and if this is the case, the Guarantor must pay to the Beneficiary any additional amounts as are necessary to enable the Beneficiary to receive, after all those deductions and withholdings, a net amount equal to the full amount which would otherwise have been payable had no deduction or withholding been required to be made.

7. Expenses, stamp duty and GST

7.1 Expenses

The Guarantor must on demand indemnify and keep indemnified the Beneficiary against all reasonable expenses, including legal fees, costs and disbursements on a solicitor/own client basis, incurred by the Beneficiary in connection with the successful enforcement, attempted enforcement or preservation of any rights under this Deed.



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7.2 Stamp duties

The Guarantor must:

- (a) **(Payment of all duties)**: pay all stamp duties, registration and similar Taxes, including fines and penalties, financial institutions duty (if any) and debits tax (if any) in connection with the execution, delivery, performance, enforcement or attempted enforcement of this Deed or any payment or other transaction under or contemplated in this Deed; and
- (b) **(Indemnity)**: indemnify and keep indemnified the Beneficiary against any loss or liability incurred or suffered by it as a result of the delay or failure by the Guarantor to pay Taxes.

7.3 Goods and Services Tax

- (a) Capitalised expressions which are not defined in this clause 7.3 but which have a defined meaning in the GST Law have the same meaning in this clause 7.3.

In this clause 7.3 and elsewhere in this Deed where relevant:

- (i) **GST** means the goods and services tax imposed by the GST Law including, where relevant, any related interest, penalties, fines or other charge arising directly as a result of a default by the Guarantor of an obligation under this Deed;
 - (ii) **GST Amount** means, in relation to a Payment, an amount arrived at by multiplying the Payment (or the relevant part of a Payment if only part of a Payment is the consideration for a Taxable Supply) by the prevailing rate of GST;
 - (iii) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or, if that Act is not valid or does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act; and
 - (iv) **Payment** means:
 - (A) the amount of any monetary consideration (other than a GST Amount payable under this clause 7.3); and
 - (B) the GST Exclusive Market Value of any non-monetary consideration, paid or provided by the Guarantor for any Supply made under or in connection with this Deed or the Contract and includes an amount payable by way of indemnity, reimbursement, compensation or damages.
- (b) The parties agree that:
 - (i) all Payments have been set or determined at an amount which is net of GST;
 - (ii) if the whole or any part of a Payment is the consideration for a Taxable Supply made by the Beneficiary, the GST Amount in respect of the Payment must be paid by, or on behalf of, the Guarantor to the Beneficiary as any additional amount, either concurrently with the Payment or as otherwise agreed in writing; and
 - (iii) the Beneficiary will provide a Tax Invoice, before any GST Amount is payable under this clause 7.3(b).
 - (c) If a payment (including a Payment as defined in this clause 7.3) to the Beneficiary by the Guarantor under this Deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by the Beneficiary, then the payment will be reduced by the amount of any input tax credit to which the Beneficiary is entitled for that loss, cost or expense.

8. Assignments

The Beneficiary may at any time assign or otherwise transfer all or any part of its rights under this Deed to any party to whom it validly assigns the benefit of the Contract and may disclose to a proposed assignee or transferee any information in the possession of the Beneficiary relating to the Guarantor.

9. Governing law and jurisdiction

9.1 Governing law

This Deed and where applicable, the arbitration reference contained in clause 9.3 of Schedule 1, is governed by and will be construed in accordance with the laws of the State or Territory which govern the Contract.



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9.2 Jurisdiction

- (a) **(Acceptance of jurisdiction):** The Guarantor irrevocably submits to and accepts, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State or Territory whose laws govern this Deed with respect to any legal action or proceedings which may be brought at any time relating in any way to this Deed.
- (b) **(No objection to inconvenient forum):** The Guarantor irrevocably waives any objection it may now or in the future have to the venue of any action or proceeding, and any claim it may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

10. Miscellaneous

10.1 Certificate of Beneficiary

A certificate in writing of the Beneficiary certifying the amount payable by the Contractor or the Guarantor to the Beneficiary or stating any other act, matter or thing relating to this Deed, any Transaction Document or any Security will be prima facie evidence of the contents of the certificate.

10.2 Notices

Every notice or other communication to be given or made under or arising from this Deed:

- (a) must be in writing;
- (b) must be signed by a person duly authorised to do so by the sender;
- (c) will be deemed to have been duly given or made to a person if delivered or posted by prepaid post to the address, or sent by fax to the fax number of that person set out in clause 10.3 (or any other address or fax number as is notified in writing by that person to the other parties from time to time); and
- (d) will be deemed to be given or made:
 - (i) (in the case of prepaid post) on the fifth day after the date of posting;
 - (ii) (in the case of delivery by hand) on delivery; and
 - (iii) (in the case of fax) on receipt of a transmission report confirming successful transmission.

10.3 Address for notices

The addresses and fax numbers of the parties for the purposes of clause 10.2 are:

The Guarantor

Address: **[insert Guarantor's address]**
Fax No.: **[insert Guarantor's facsimile]**
Attention: **[insert]**

The Beneficiary

Address: **[insert Beneficiary's address]**
Fax No.: **[insert Beneficiary's facsimile]**
Attention: **[insert]**

10.4 Continuing obligation

This Deed will be a continuing obligation notwithstanding any termination by the Guarantor, settlement of account, intervening payment, a disclaimer of any contract (including any Transaction Document) or property made by a liquidator of the Contractor pursuant to Part 5.6 Division 7A of the *Corporations Act 2001* (Cth) or other applicable laws, express or implied revocation or any other matter or thing, and continues to entitle the Beneficiary to the due and punctual payment of any of the Guaranteed Money which becomes due or owing or is incurred after termination, settlement of account, payment, revocation or other matter or thing until a final discharge has been given to the Guarantor.

10.5 Further assurance

The Guarantor will immediately on demand by the Beneficiary, and at the entire cost and expense of the Guarantor, perform all things and execute all agreements, assurances and other documents as the



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Beneficiary reasonably requires, to perfect or give effect to the rights and powers of the Beneficiary created, or intended to be created, by this Deed.

10.6 Form of demand

A demand on the Guarantor for performance under this Deed may be in the form and contain any information as the Beneficiary determines. Where the demand relates to the payment of Guaranteed Money it shall specify the amount demanded and the basis of the calculation.

10.7 Severability of provisions

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

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

10.8 Remedies cumulative

The rights and remedies conferred by this Deed on the Beneficiary are cumulative and in addition to all other rights or remedies available to the Beneficiary by law or by virtue of any Transaction Document or any Security.

10.9 Waiver

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

10.10 Consents and approvals

Where under this Deed the consent or approval of the Beneficiary is required to any act or thing then, unless expressly provided otherwise in this Deed, that consent or approval may be given or withheld in the absolute and unfettered discretion of the Beneficiary.

10.11 Moratorium legislation

To the fullest extent permitted by law, the provisions of all legislation whether existing now or in the future, operating directly or indirectly:

- (a) to lessen or otherwise to vary or affect in favour of the Guarantor any obligation under this Deed; or
- (b) to delay or otherwise prevent or prejudicially affect the exercise of any rights or remedies conferred on the Beneficiary under this Deed,

are expressly waived and excluded.

10.12 Debit accounts and set-off

The Beneficiary may without prior notice to the Guarantor set-off any amount which is owing on any account whatsoever by the Beneficiary to the Guarantor against any liability of the Guarantor to the Beneficiary under this Deed. The rights of the Beneficiary under this clause 10.12 are without prejudice and in addition to any other right or remedy to which it is at any time entitled.

10.13 Counterparts

This Deed may be executed in any number of counterparts and by the different parties on different counterparts, each of which constitutes an original of this Deed, and all of which together constitute one and the same instrument.

10.14 Execution by less than all parties

This Deed binds each of the persons executing it notwithstanding:



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- (a) that one or more of the persons named in this Deed as a Guarantor may not execute or may not become or may cease to be bound by this Deed; or
- (b) that the Beneficiary may not execute or may only subsequently execute this Deed.

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on the Guarantor and the Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.

10.16 No right to be heard

To the fullest extent permitted by law, the Guarantor waives and expressly disclaims any right to be heard at or appear in any proceedings (whether judicial, arbitral, administrative or of any other nature including but not limited to any alternative dispute resolution) conducted for the purpose of settling or resolving or attempting to settle or resolve any dispute referred to in clause 10.15 or otherwise to be involved in the settlement or resolution of any such dispute.

10.17 Civil Liability Act

- (a) It is agreed that the operation of Part 4 of the *Civil Liability Act 2002* (NSW) is excluded in relation to all and any rights, obligations and liabilities under this Deed whether such rights, obligations or liabilities are sought to be enforced as a breach of contract or a claim in tort or otherwise.
- (b) Without limiting the generality of clause 10.17(a), it is further agreed that the rights, obligations and liabilities of the Beneficiary and the Guarantor (including those relating to proportionate liability) are as specified in this Deed and not otherwise whether such rights, obligations and liabilities are sought to be enforced by a claim in contract, tort or otherwise.



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Executed as a deed.

Executed by [insert Guarantor's name and ABN] by or in the presence of:

Signature of Director

Name of Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full



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Schedule 1 - Dispute provisions for certain foreign Guarantors

(Clause 9)

Explanatory Note: Where the Guarantor is a foreign entity and resident in a jurisdiction with reciprocity of treatment in relation to the enforcement of judgments for the purposes of the *Foreign Judgments Act 1991* (Cth), clause 9.2 of the Deed will apply. If, however, the Guarantor is a foreign entity and resident in a jurisdiction where there is no reciprocity, clause 9.1 of the Deed and clauses 9.3 to 9.8 of this Schedule will apply.

9.3 Reference to arbitration

- (a) Any controversy, claim or dispute directly or indirectly based upon, arising out of, relating to or in connection with this Deed (including but not limited to any question relating to the existence, validity or termination of this Deed) shall be referred to and finally resolved by arbitration in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration (known as the ACICA Arbitration Rules).
- (b) The seat of the arbitration will be Sydney.
- (c) The number of arbitrators will be three.
- (d) The language of the arbitration will be English.

9.4 General principles

The parties further agree to the following general principles relating to the procedure of the arbitration:

- (a) that they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any dispute;
- (b) that any arbitration conducted pursuant to this clause 9 shall not necessarily mimic court proceedings and the practices of those courts will not regulate the conduct of the proceedings before the arbitral tribunal;
- (c) that in conducting the arbitration, the arbitral tribunal must take into account the matters set out above, particularly in deciding issues such as:
 - (i) how many written submissions will be allowed;
 - (ii) where appropriate, the length of written submissions;
 - (iii) the extent of document discovery permitted, if any;
 - (iv) the consolidation of arbitration proceedings, when requested;
 - (v) the joinder of parties or the consolidation of proceedings, when requested;
 - (vi) the length of any hearing; and
 - (vii) the number of experts, if any, each party is allowed to appoint; and
- (d) that the arbitral tribunal has the power to grant all legal, equitable and statutory remedies, except punitive damages.

9.5 Expedited proceedings

- (a) The parties agree that the arbitral tribunal will conduct the arbitration as expeditiously as possible and no party will unnecessarily delay the arbitration proceedings.
- (b) All evidence in chief will be in writing, unless otherwise ordered by the arbitral tribunal.
- (c) Each party may only rely upon one expert witness in respect of any recognised area of specialisation, unless otherwise ordered by the arbitral tribunal.
- (d) After consultation with the parties the arbitral tribunal will determine whether to conduct the proceedings on the basis of documents and other materials only or whether an oral hearing will be held. In doing so the arbitral tribunal shall have particular regard to the parties' request for an expedited procedure and the rules of natural justice.
- (e) If the arbitral tribunal determines that an oral hearing will be conducted, the following principles will apply in respect of the oral hearing:
 - (i) the duration of the oral hearings shall be fixed by the arbitral tribunal;
 - (ii) unless otherwise ordered by the arbitral tribunal, the oral hearing shall be conducted on a stop-clock basis with the effect that the time available to the parties will be split equally between the parties so that each party shall have the same time to conduct its case unless,



in the opinion of the arbitral tribunal, such a split would breach the rules of natural justice or is unfair to one of the parties;

- (iii) oral evidence in chief at the hearing shall be permitted only with the permission of the arbitral tribunal for good cause;
- (iv) not less than 14 days prior to the date fixed for the oral hearing, or any other period of time specified by the arbitral tribunal, each party shall give written notice of those witnesses (both factual and expert) of the other party that it wishes to attend the hearing for cross-examination; and
- (v) in exceptional circumstances the arbitral tribunal may extend the time for the oral hearing set pursuant to clause 9.5(e)(i) above.

9.6 Consolidation

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

9.7 Joinder

The arbitral tribunal has the power, on the application of any party to this arbitration agreement, to allow a third party who the arbitral tribunal 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 arbitral tribunal has the power to make a single final award, or separate awards, in respect of all parties so joined in the arbitration.

9.8 Award final and binding

Any award will be final and binding upon the parties.



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Schedule 2 - Joint Venture provisions

Explanatory Note: If the Contractor is a joint venture, the following amendments to the Deed apply:

- (a) the definition of 'Relevant Person' is amended to read:

Relevant Person means the Contractor, each Guarantor and any person who has executed a Security in favour of the Beneficiary.

- (b) clause 2.2 is amended to read:

2.2 Payment of Guaranteed Money

- (a) Subject to clause 2.2(b), if the Contractor does not pay the Guaranteed Money when due, the Guarantor must on demand pay to the Beneficiary the Guaranteed Money which is then due and payable.
- (b) The Guarantor shall not be liable to pay to the Beneficiary any part or parts of the Guaranteed Money which have been paid to the Beneficiary by another Guarantor.

- (c) clause 2.3 is amended to read:

2.3 Perform obligations

- (a) Subject to 2.3(b), if the Contractor defaults in the performance or observance of any of the Contractor's Obligations, the Guarantor shall, in addition to its obligations under clause 2.2 of this Deed, on demand from time to time by the Beneficiary, immediately perform (or procure the performance of) any of the Contractor's Obligations then required to be performed by the Contractor in the same manner and on the same terms as the Contractor is required to perform the Contractor's Obligations.
- (b) The Guarantor shall not be responsible for performing the Contractor's Obligations to the extent the relevant Contractor's Obligations have been performed by another Guarantor.

- (d) the first paragraph of clause 4.2 is amended to read:

4.2 Unconditional liability

Except to the extent of a reduction in the Guarantor's liability expressly provided for in clauses 2.2(b) or 2.3(b), the liability of the Guarantor under this Deed will not be affected by any thing which, but for this clause 4.2, would release the Guarantor from or reduce that liability, including but not limited to:

- (e) clause 4.2(o) is amended to read:

- (o) (**Administration**): the provisions of section 440J of the *Corporations Act 2001* (Cth) so operating as to prevent or delay:
- (i) the enforcement of this Deed against any Guarantor; and/or
- (ii) any claim for contribution against any Guarantor; or

- (f) clause 4.3 is amended to read:

4.3 No marshalling

The Beneficiary is under no obligation to marshal or appropriate in favour of any Guarantor or to exercise, apply, transfer or recover in favour of any Guarantor any Security or any funds or assets that the Beneficiary holds, has a claim on, or is entitled to receive.

- (g) clause 10.15 is amended to read:

10.15 Resolution of disputes binding

The settlement or the final resolution of any dispute arising under or in connection with the Contract, including any dispute as to the Contractor's liability under or in connection with the Contract, in accordance with the procedures provided for in the Contract or otherwise as agreed between the parties in the Contract, will be final and binding on each of the Guarantors and a Guarantor will not reopen, revisit or otherwise dispute that settlement or resolution and the subject matter of that settlement or resolution.



Schedule 16

Joint venture provisions

Refer to clause 7.7 of the GC21 General Conditions of Contract.

1. The Contractor acknowledges and agrees that it is constituted by more than one person or body, being an unincorporated joint venture between each of the *Joint Venture Participants*.
2. Each *Joint Venture Participant*:
 - .1 warrants to the Principal that as at the Date of Contract, it has entered into a joint venture agreement (in a form which has been previously provided to the Principal) with each other *Joint Venture Participant*, for the purposes of performing its obligations under the Contract;
 - .2 agrees not to abandon, vary or terminate the joint venture agreement referred to in clause 2.1 of this Schedule 16 without the prior written consent of the Principal (given or withheld, or subject to conditions, at the absolute discretion of the Principal);
 - .3 agrees that except as provided under clauses 3.1 and 3.2 of this Schedule 16, the obligations of the Contractor under the Contract are joint and several and each person or body constituting the Contractor acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this agreement) of the other as if those acts or omissions were its own;
 - .4 agrees that the term *Contractor's Insolvency* as it applies to the joint venture constituting the Contractor will be taken to mean that any of the criteria identified in the definition of that term apply to any of the *Joint Venture Participants*; and
 - .5 agrees to comply with any additional conditions in relation to the joint venture agreement required by the Principal in any *Contract Document* given to the Contractor before the Date of Contract.
3. Without limiting the Contractor's obligations under any other provision of the Contract:
 - .1 the *Joint Venture Principal Contractor* acknowledges that where it has been engaged as the principal contractor pursuant to clause 16 of the Contract and Contract Information items 17A and 17B, its appointment is subject to clause 3.3 of this Schedule 16;
 - .1A the *Joint Venture Principal Contractor* agrees that it will comply with and satisfy the requirements of the Sydney Metro Principal Contractor Health & Safety Standard (SM PS-ST 221).
 - .2 the *Joint Venture Principal Contractor* agrees that for the purposes of the *Work Health and Safety Act 2011 (NSW)* and the *Work Health and Safety Regulation 2017 (NSW)* (**WHS Laws**) it is the "person conducting a business or undertaking" (**PCBU**) carrying out the construction work and the PCBU in respect of the work to be carried out by the Contractor, including the Works; and
 - .3 the Principal may, at its sole discretion, notify the Contractor that it has terminated the engagement of the *Joint Venture Principal Contractor* as principal contractor and advise the Contractor of the new principal contractor for the purposes of the WHS Laws. If the engagement of the *Joint Venture Principal Contractor* as principal contractor is terminated, then the Contractor must comply (at no additional cost to the Principal) with all requirements of the new principal contractor in executing the Works and its other obligations under the Contract so as to enable the new principal contractor to meet its obligations under the WHS Laws.



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Schedule 17

Subcontractors and Suppliers Proof of Payment Process

Refer to clauses 28 and clause 58 of the GC21 General Conditions of Contract.

Business Day each Month	Action	Documents Required
1 st Business Day	Contractor issues <i>Payment Claim</i>	<ul style="list-style-type: none"> Contractor's Statement and Supporting Statement (<i>Refer Schedule 6</i>)
10 th Business Day	Principal issues <i>Payment Schedule</i>	
15 th Business Day	Principal pays Contractor the <i>Scheduled Amount</i>	
18 th Business Day	Contractor must issue Subcontractors and Suppliers Payments List, Accounts Payable Retention Summary and Accounts Payable Statement reconciled to the <i>Scheduled Amount</i>	<ul style="list-style-type: none"> Subcontractors and Suppliers Payments List (<i>Refer Attachment 4</i>) Accounts Payable Retention Summary (<i>Refer Attachment 5</i>) Accounts Payable Statement for total value of completed work due for payment (<i>Refer Schedule 3 and Attachment 6</i>)
20 th Business Day	Contractor must issue Payment Details and Banker's Statement no later than 5 Business days after payment of <i>Scheduled Amount</i> reconciled to Subcontractors and Suppliers Payments List	<ul style="list-style-type: none"> Payment Details (<i>Refer Attachment 7</i>) Banker's Statement evidencing payment of each item on the Accounts Payable Statement (<i>Refer Attachment 6</i>)

Note:

The Subcontractors and Suppliers Proof of Payment Process is indicative of a work flow predicated on Payment Claims being issued on the 1st day of each month. The Principal and the Contractor must align the Subcontractors and Suppliers Proof of Payment Process with the agreed date for making Payment Claims as set out in item 46A of Schedule 1 (Contract Information).



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Schedule 18

Form of Deed of Novation

Refer to clauses 28 and clause 58 of the GC21 General Conditions of Contract.

DEED OF NOVATION made at _____ on _____ 20____

BETWEEN:

(1) **Sydney Metro** (ABN 12 354 063 515) a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Retiring Party**);

(2) [Insert name and ABN] of [Insert] (**Continuing Party**); and

(3) [Insert name and ABN] of [Insert] (**Substitute Party**).

RECITALS:

(A) The Retiring Party and the Continuing Party are parties to the Contract.

(B) The Retiring Party and the Substitute Party have asked the Continuing Party to agree to the novation of the Contract on the terms of this deed.

(C) The Continuing Party has agreed to the novation of the Contract on the terms of this deed.

THIS DEED PROVIDES

.1 Definitions and interpretations

.1 Definitions

Defined terms in the Contract have the same meanings in this deed, unless the contrary intention appears.

In this deed:

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgment whether based in contract, tort, statute or otherwise.

Contract means the agreement between the Retiring Party and the Continuing Party [*described in the Schedule or insert description here*].

Contract Guarantees means the guarantees issued or required to be issued under the Contract in respect of the performance by a party to the Contract, by a bank or insurer and/or, where required by the Contract, by a *Related Entity* of that party.

Effective Date means [*the date of this deed or the date agreed by the parties from which the novation will be effective*].

GST means the Goods and Services Tax as defined in the *A New Tax System (Goods and Services) Act 1999* (Cth).

Liability means all liabilities, losses, Claims, damages, outgoing, costs and expenses of whatever description.



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Related Entity has the meaning ascribed to that term in section 9 of the *Corporations Act 2001* (Cth).

.2 Interpretation

In this deed:

- .1 headings are for convenience only and do not affect interpretation;
- .2 and unless the context indicates a contrary intention:
- .3 an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- .4 "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;
- .5 a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- .6 a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- .7 a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re enactments and replacements;
- .8 a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- .9 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;
- .10 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;
- .11 "includes" in any form is not a word of limitation; and
- .12 a reference to "\$" or "dollar" is to Australian currency.

.3 Novation

- .1 Novation

From the *Effective Date*:

- .1 the parties novate the Contract so that the Substitute Party and the Continuing Party are parties to a new agreement on the same terms as the Contract; and
 - .2 any reference in the Contract to the Retiring Party will be read as a reference to the Substitute Party.
- .2 Assumptions of rights and obligations
 - .1 From the *Effective Date* the Substitute Party:
 - i. will be bound by and will comply with the terms of the Contract as amended by this deed, and will enjoy the rights and benefits conferred on the Retiring Party under the terms of the Contract; and
 - ii. will assume the obligations and *Liability* of the Retiring Party under the terms of the Contract,
in all respects as if the Substitute Party had originally been named in the Contract as a party instead of the Retiring Party.
 - .2 From the *Effective Date* the Continuing Party will comply with the terms of the Contract on the basis that the Substitute Party has replaced the Retiring Party under the Contract in accordance with this deed.
 - .3 Release by Continuing Party



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From the *Effective Date*:

- .1 the Continuing Party releases the Retiring Party from:
 - i.any obligation or *Liability* under or in respect of the Contract; and
 - ii.(any action, claim and demand it has against the Retiring Party under or in respect of the Contract; and
- .2 this release does not affect any rights the Continuing Party may have against the Substitute Party as a result of the assumption by the Substitute Party under the terms of this deed of the obligations and *Liability* of the Retiring Party under the terms of the Contract.

.4 Release by Retiring Party

From the *Effective Date* the Retiring Party releases the Continuing Party from:

- .1 any obligation or *Liability* under or in respect of the Contract; and
 - .2 any action, Claim and demand it has, or but for this clause would have had against the Continuing Party under or in respect of the Contract,
- except that nothing in this clause affects the obligations of the Continuing Party to the Substitute Party under the Contract.

.5 Insurance

From the *Effective Date*:

- .1 the Substitute Party must have in place insurances which replace the insurances required to be effected and maintained by the Retiring Party under the terms of the Contract; and
- .2 the Continuing Party must take the necessary steps to ensure that, for all insurances required to be effected by the Continuing Party under the terms of the Contract, the Substitute Party is named in place of the Retiring Party as required by the Contract.

.6 Replacement of Guarantees

From the *Effective Date* the Substitute Party must have in place guarantees which replace the *Contract Guarantees* on similar terms in favour of the Continuing Party.

.7 Indemnity

The Retiring Party must indemnify the Substitute Party and each of their officers, employees and agents from and against any Loss (including legal costs on a full indemnity basis) in respect of or arising out of any *Liability* the Substitute Party has to the Continuing Party under or in connection with the Contract as a result of the Substitute Party assuming the obligations and Liabilities of the Retiring Party under or in connection with the Contract to the extent that those Liabilities arose prior to, or relate to any period prior to, the *Effective Date*.

.8 Liability

To the extent that there is specified in the Contract any limitation on the Continuing Party's liability to the Retiring Party, that limitation will continue to apply as between the Continuing Party and the Substitute Party, and any liabilities accruing towards that limitation prior to the *Effective Date* will continue to count towards that limitation.

.4 Overriding effect

The parties agree that the execution and operation of this deed will for all purposes be regarded as due and complete compliance with the terms of the Contract relating to any requirement for consent to assignment of the Contract so far as any such provisions would apply with respect to the novation of the Contract to the Substitute Party.

.5 Representations and warranties

- .1 Authority
Each party represents and warrants to each other party that it has full power and authority to enter into and perform its obligations under this deed.
- .2 Authorisations



Each party represents and warrants to each other party that it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms.

.3 Binding obligations

Each party represents and warrants to each other party that this deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms.

.6 Duties, costs and expenses

.1 Stamp Duty

The Substitute Party must pay all stamp duty, duties or other taxes of a similar nature (including but not limited to any fines, penalties and interest) in connection with this deed or any transaction contemplated by this deed (except to the extent the terms of the Contract provide otherwise).

.2 Costs

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

.3 GST

.1 Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates.

.2 If *GST* is payable on a supply made under this deed by an entity (Supplier), the party providing the consideration for that supply must, in addition to any other amounts payable under any provision of this deed, pay an additional amount equal to the *GST* payable by the Supplier on that supply. The additional amount must be paid, and the Supplier must provide a tax invoice, at the same time as the other consideration for that supply is to be provided under this deed. Terms used in this clause 6.3 have the meanings given to those terms by the *A New Tax System (Goods and Services Tax) Act 1999*.

.7 General

.1 Governing Law

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

.2 Jurisdiction

Each party irrevocably:

.1 submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating to this deed; and

.2 waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 7.2.1.

.3 Amendments

This deed may only be varied by a document signed by or on behalf of each party.

.4 Waiver

.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement of, a right, power or remedy provided by law or under this deed by a party does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right, power or remedy provided by law or under this deed.



- .2 A waiver or consent given by a party under this deed is only effective and binding on that party if it is given or confirmed in writing by that party.
- .3 No waiver of a breach of a term of this deed operates as a waiver of any other breach of that term or of a breach of any other term of this deed.

.5 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.

.6 Severance

If at any time a 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:

- .1 the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
- .2 the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this deed.

.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

.8 Assignment

A party cannot assign, novate or otherwise transfer any of its rights or obligations under this deed without the prior consent of each other party.



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Schedule *[if needed]*



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Executed as a deed.

Executed by *[Insert Name and ABN of Retiring Party]* in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by *[Insert Name and ABN of Continuing Party]* in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

Executed by *[Insert Name and ABN of Substitute Party]* in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of Director

Signature of Secretary/other Director

Name of Director in full

Name of Secretary/other Director in full

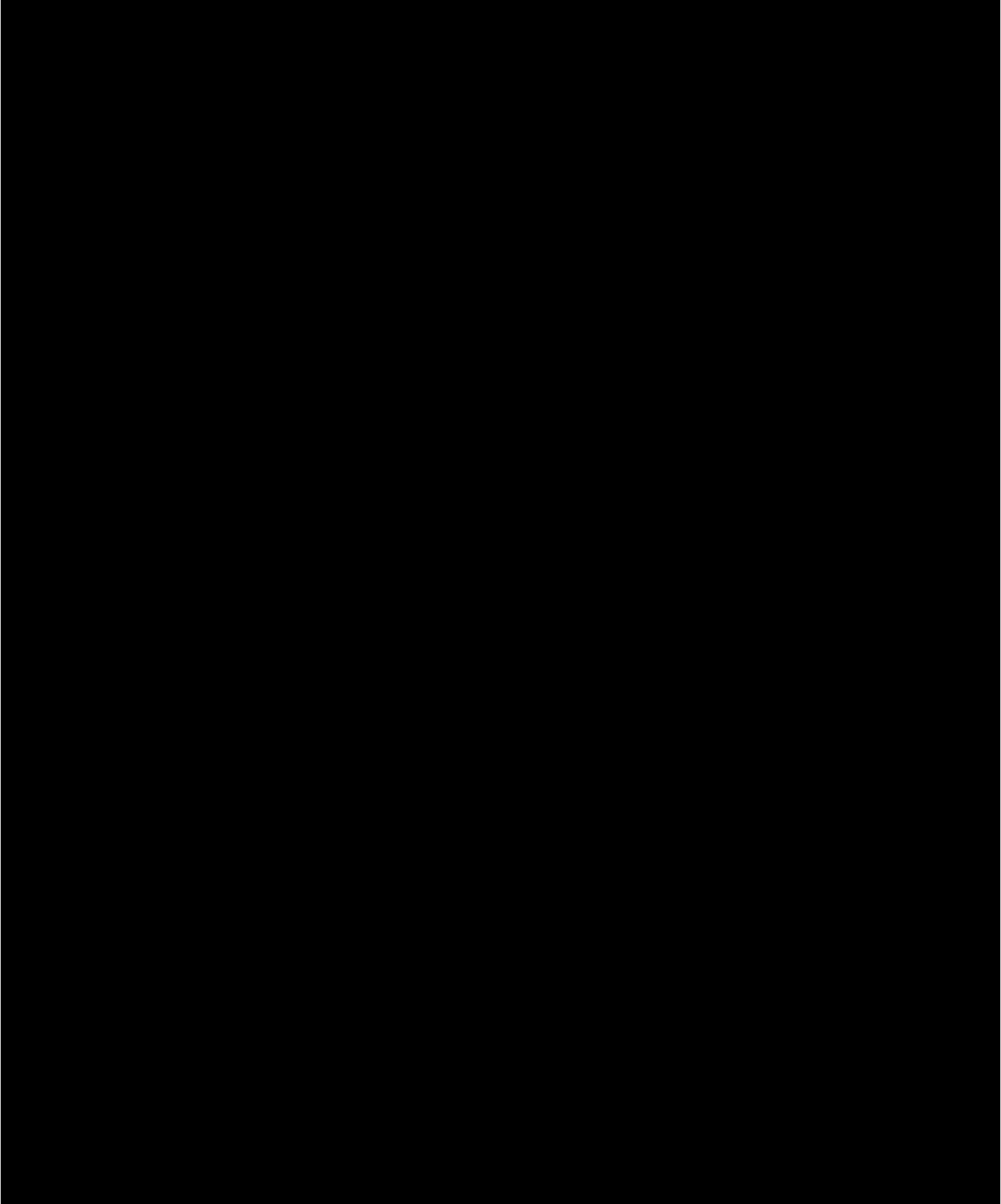


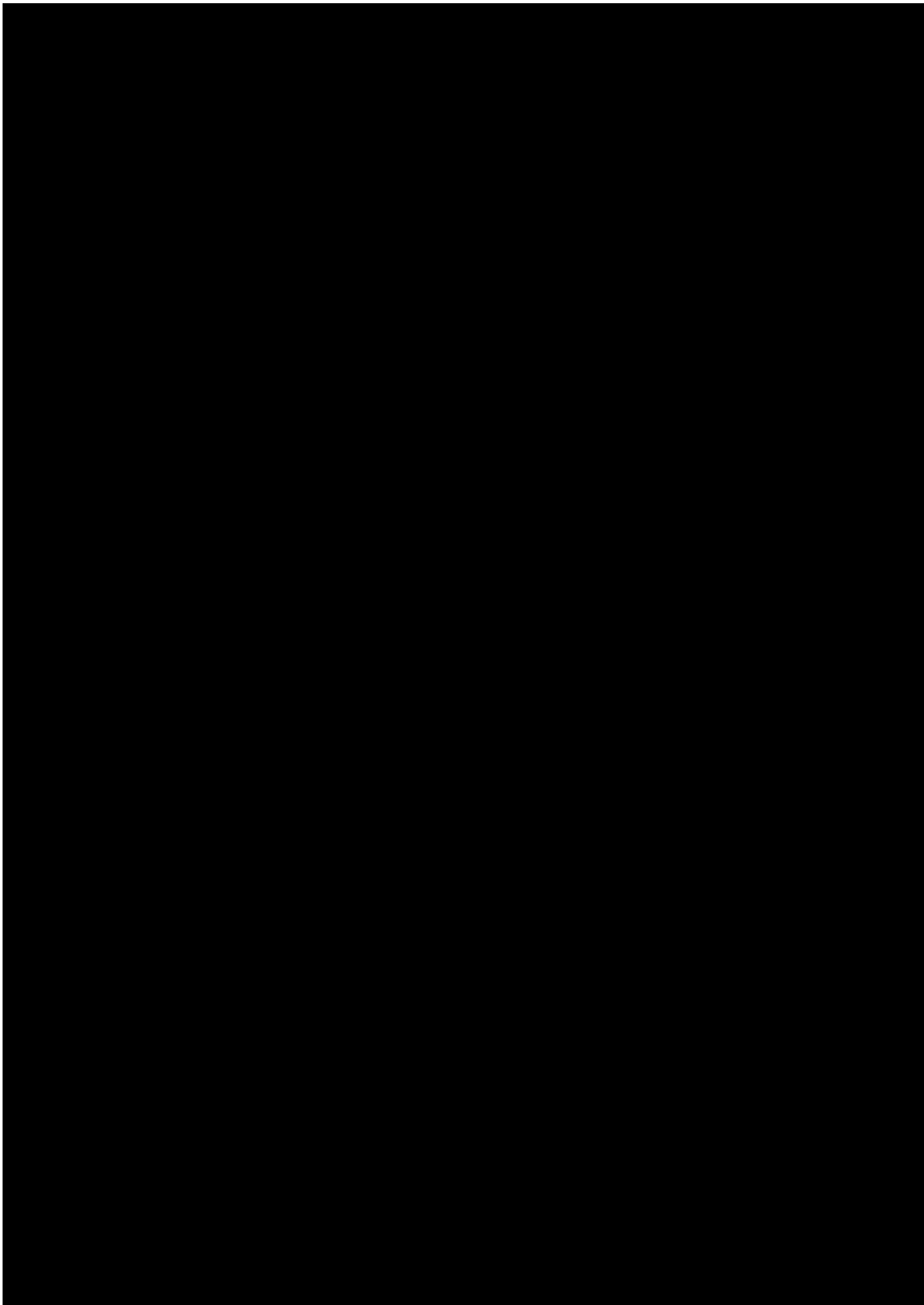
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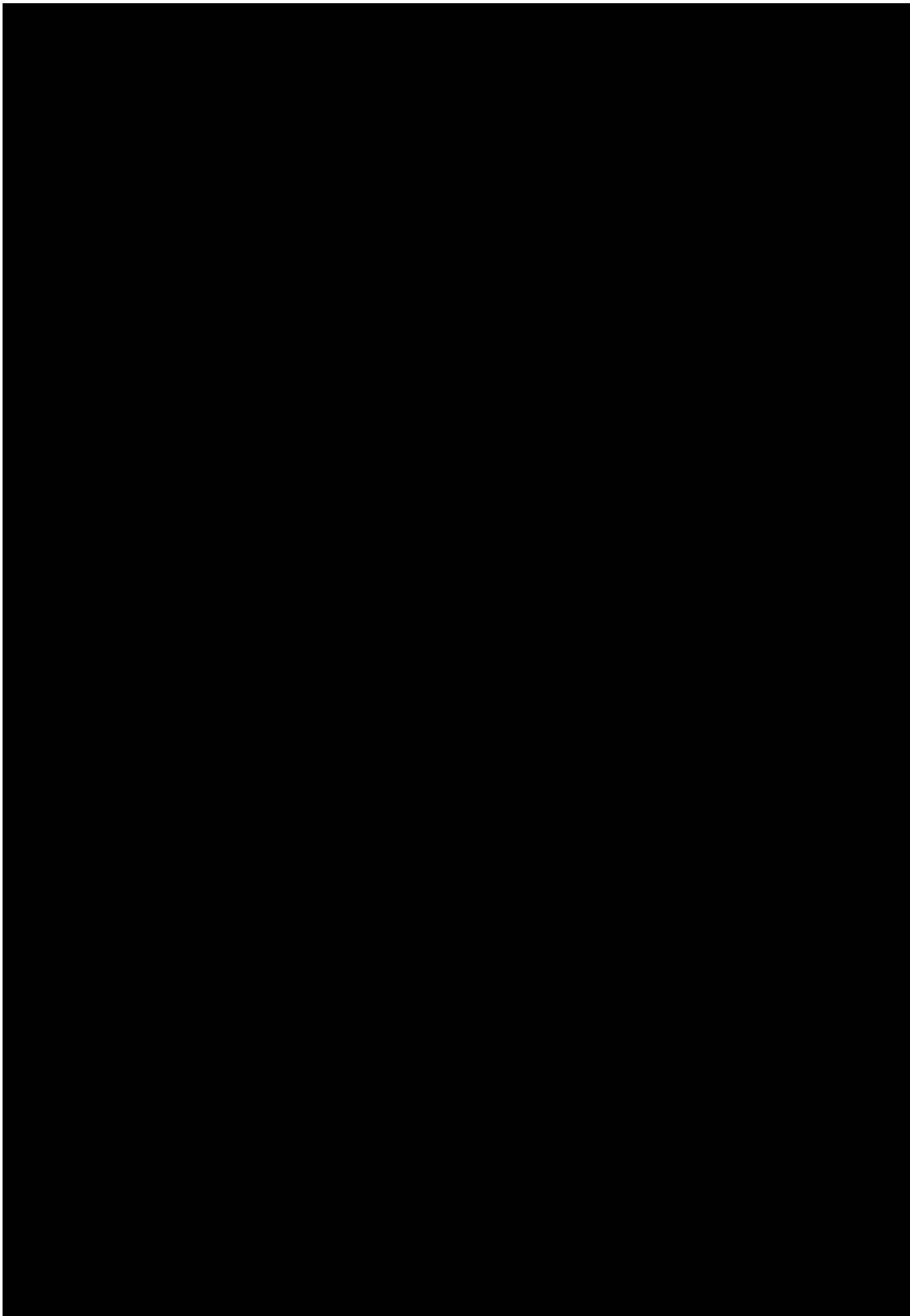
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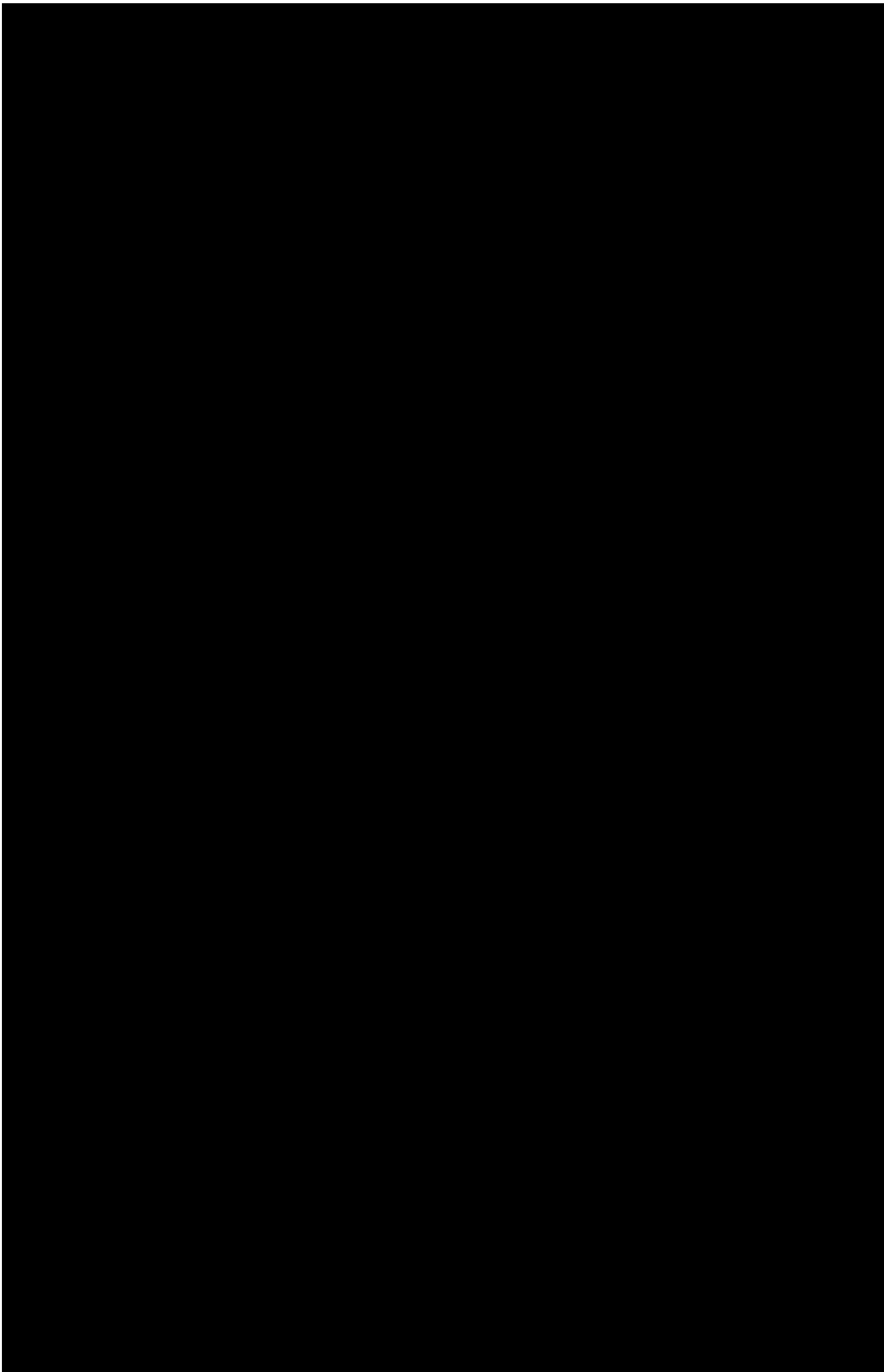
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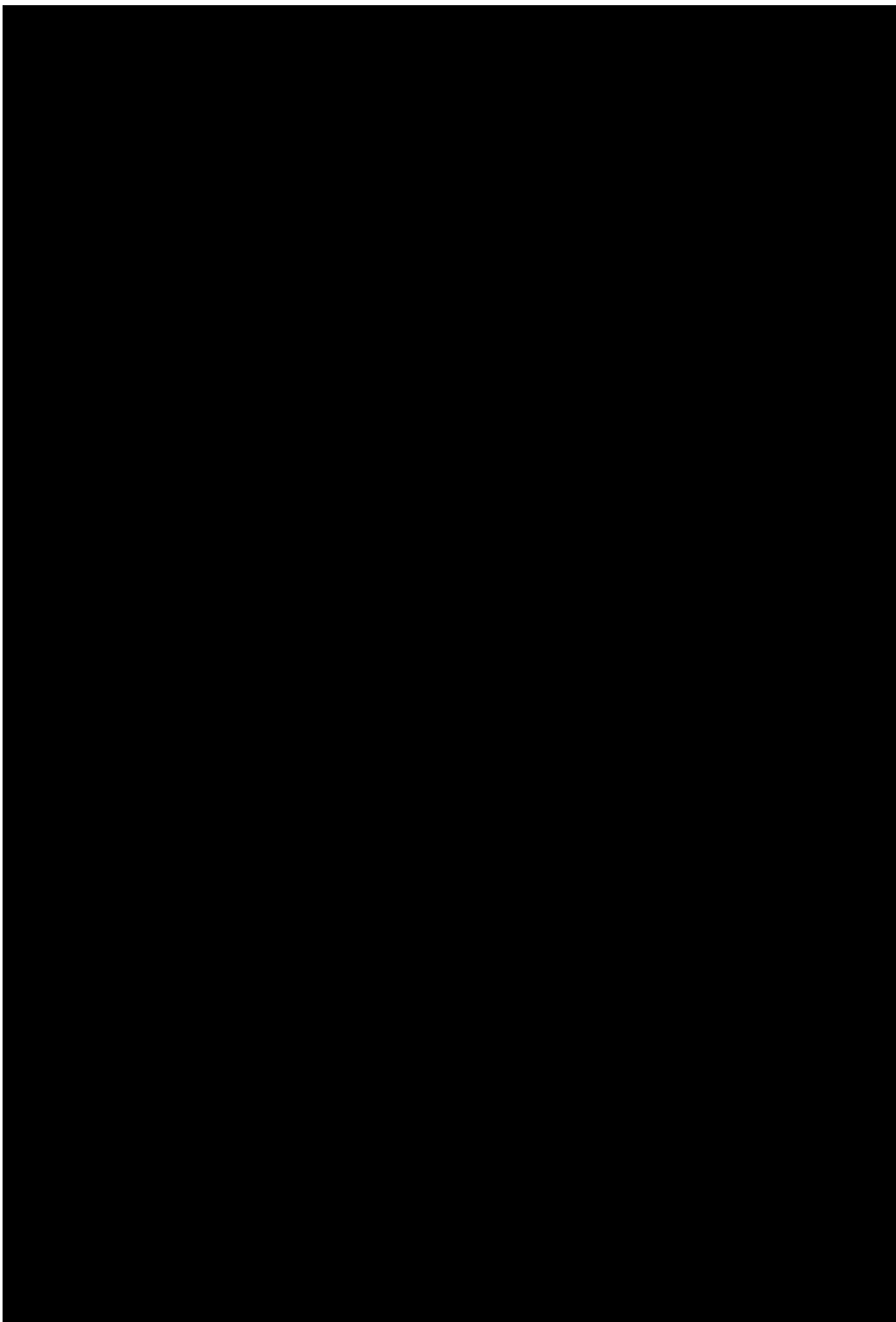
Refer to clause 59A of the GC21 General Conditions of Contract.









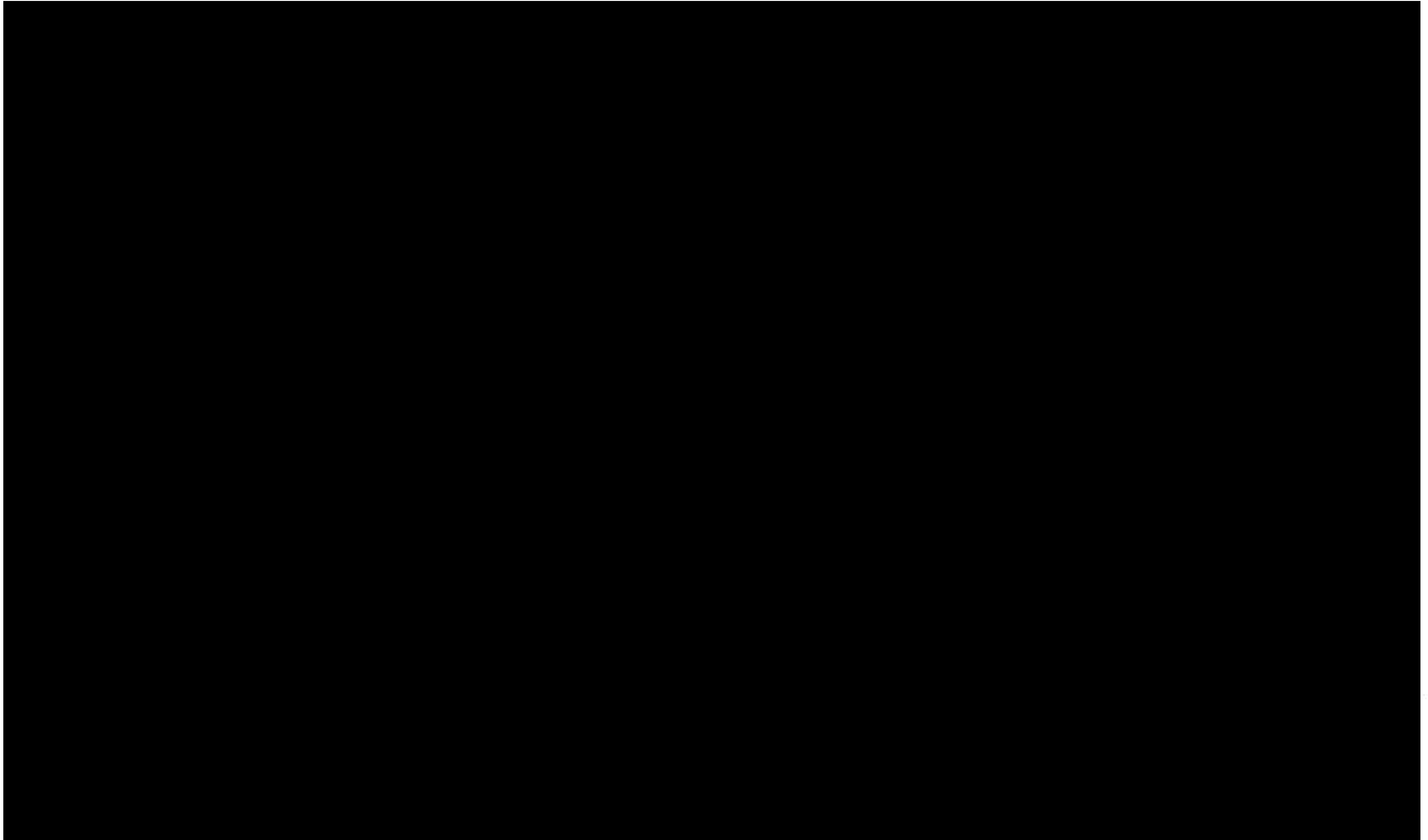


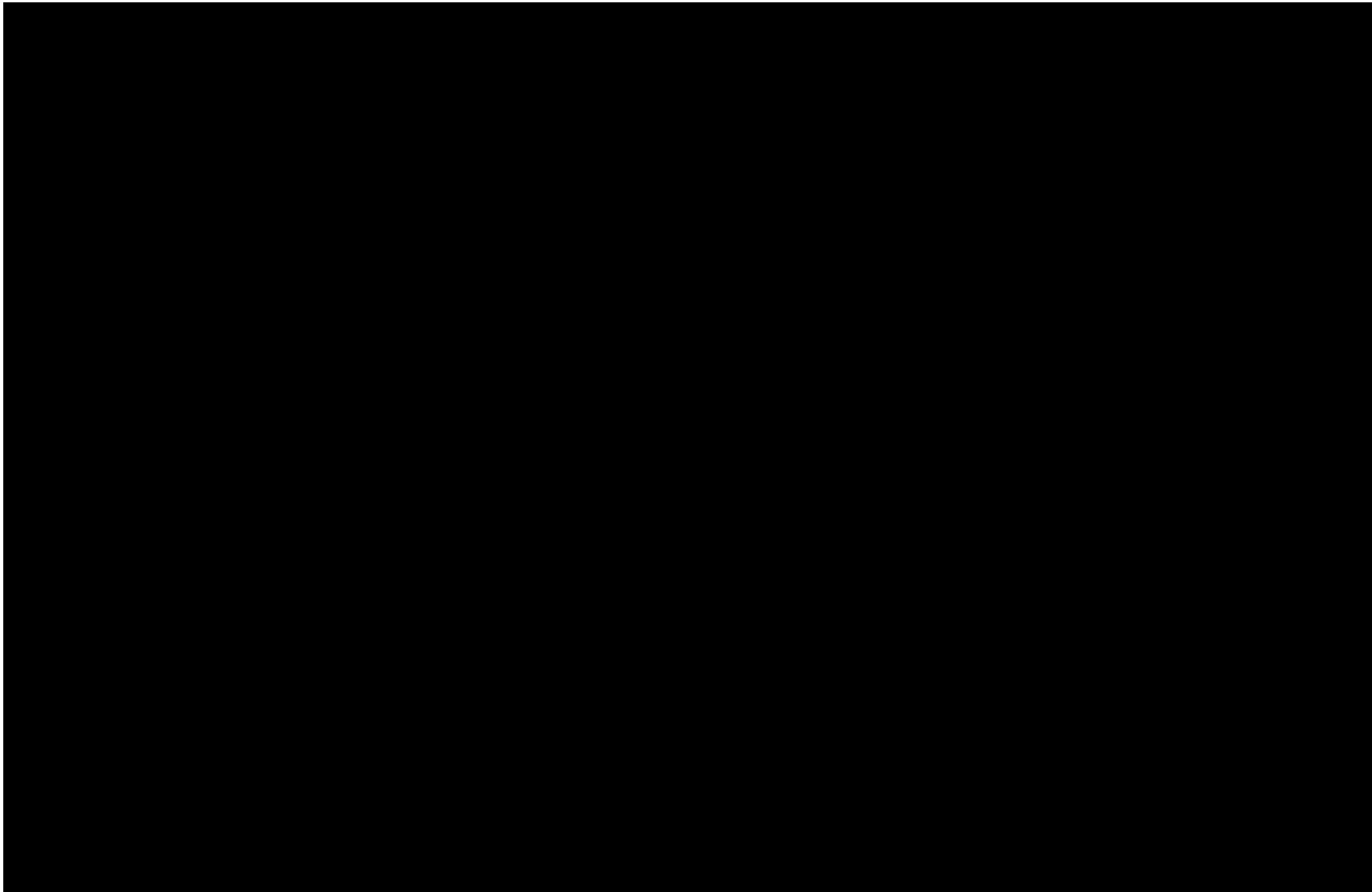
Schedule 20

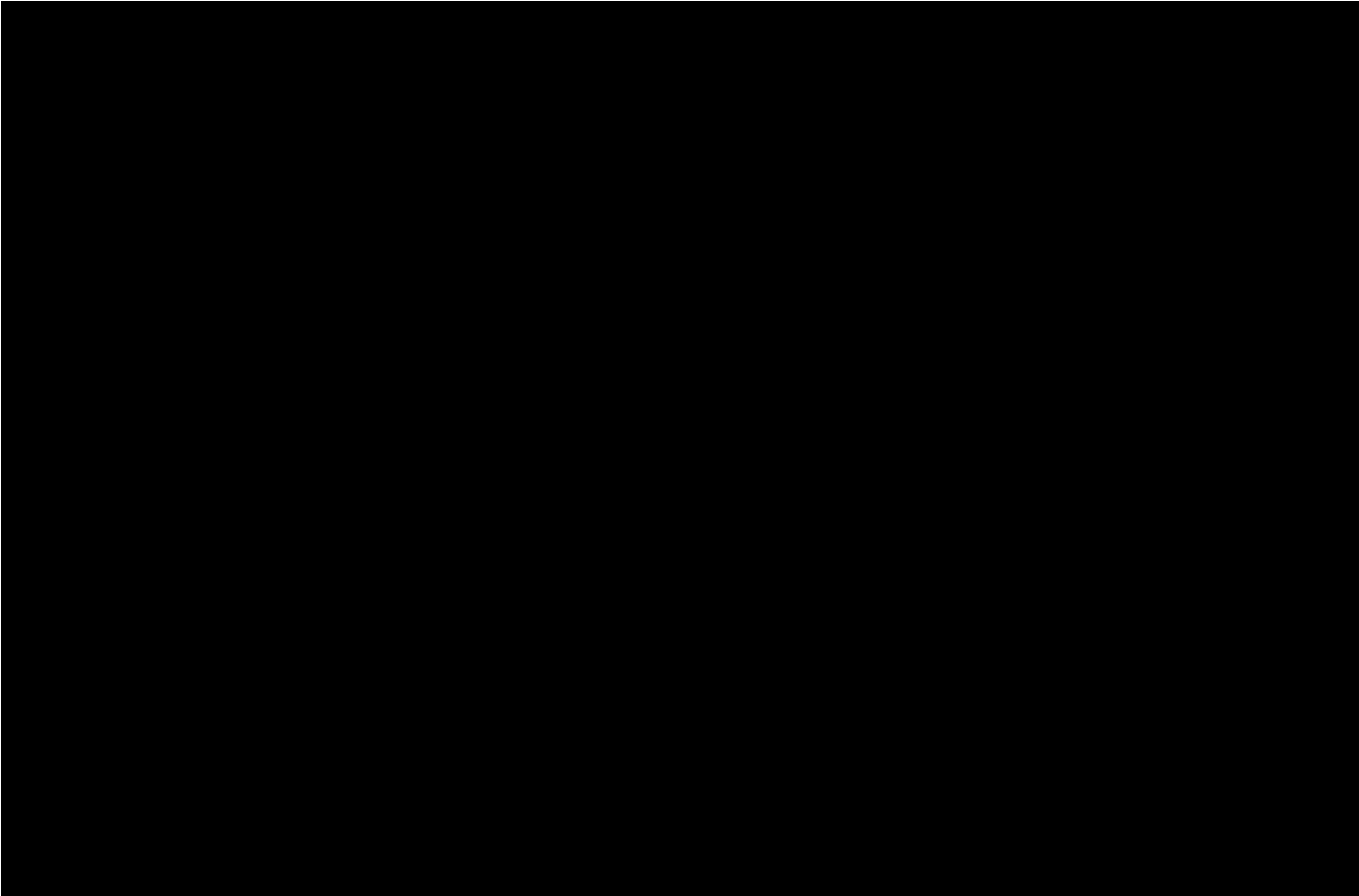
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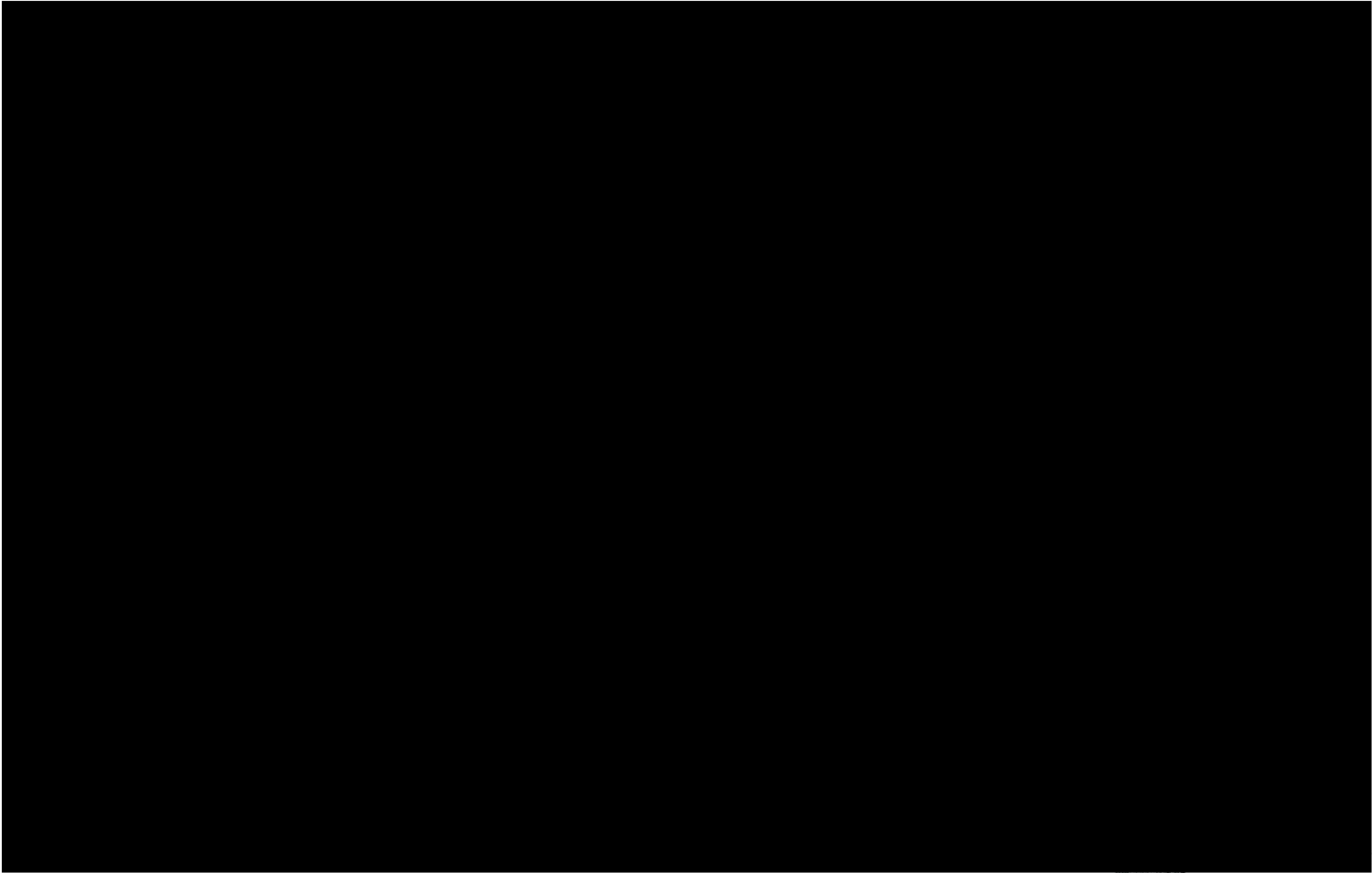


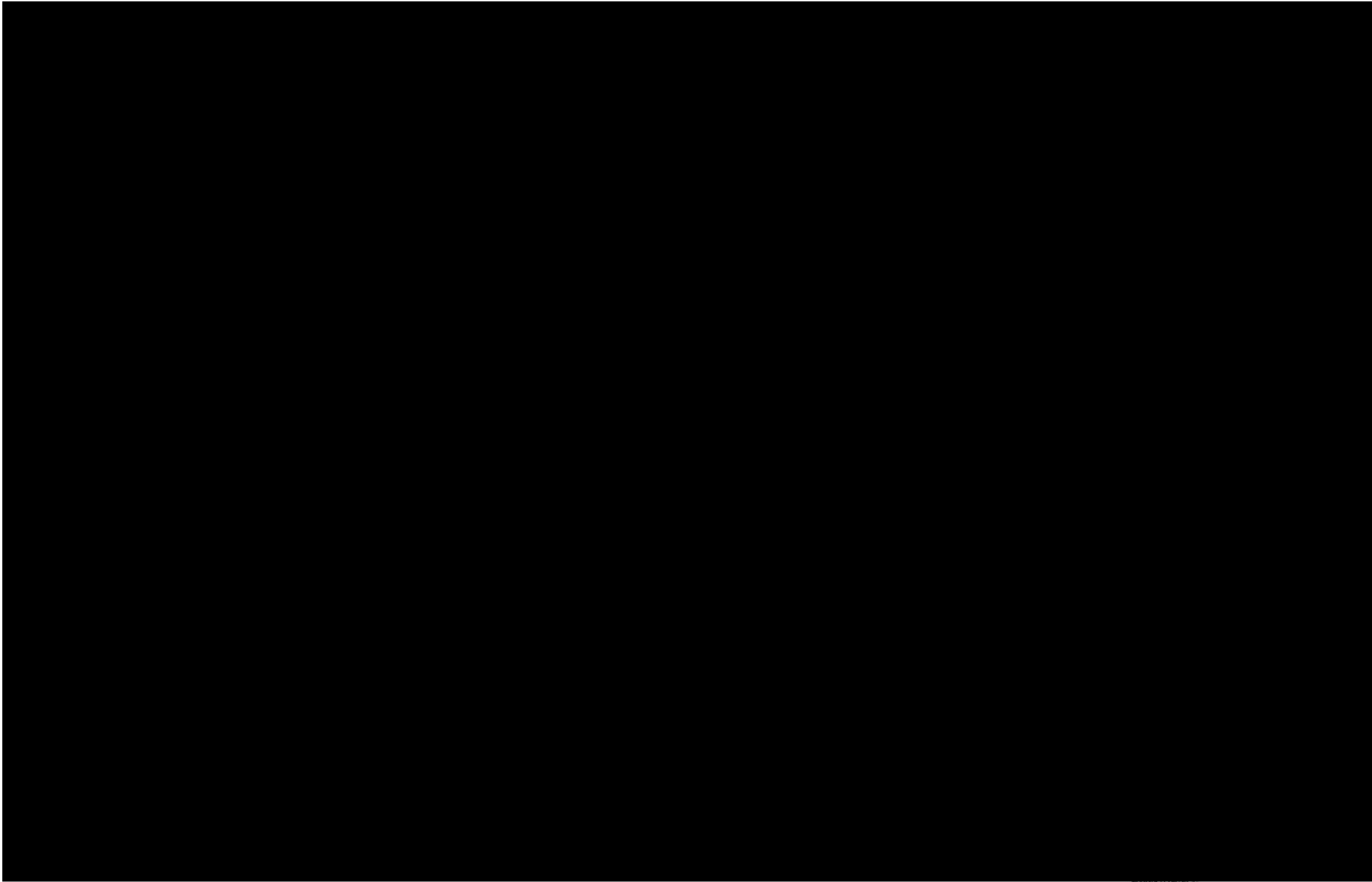
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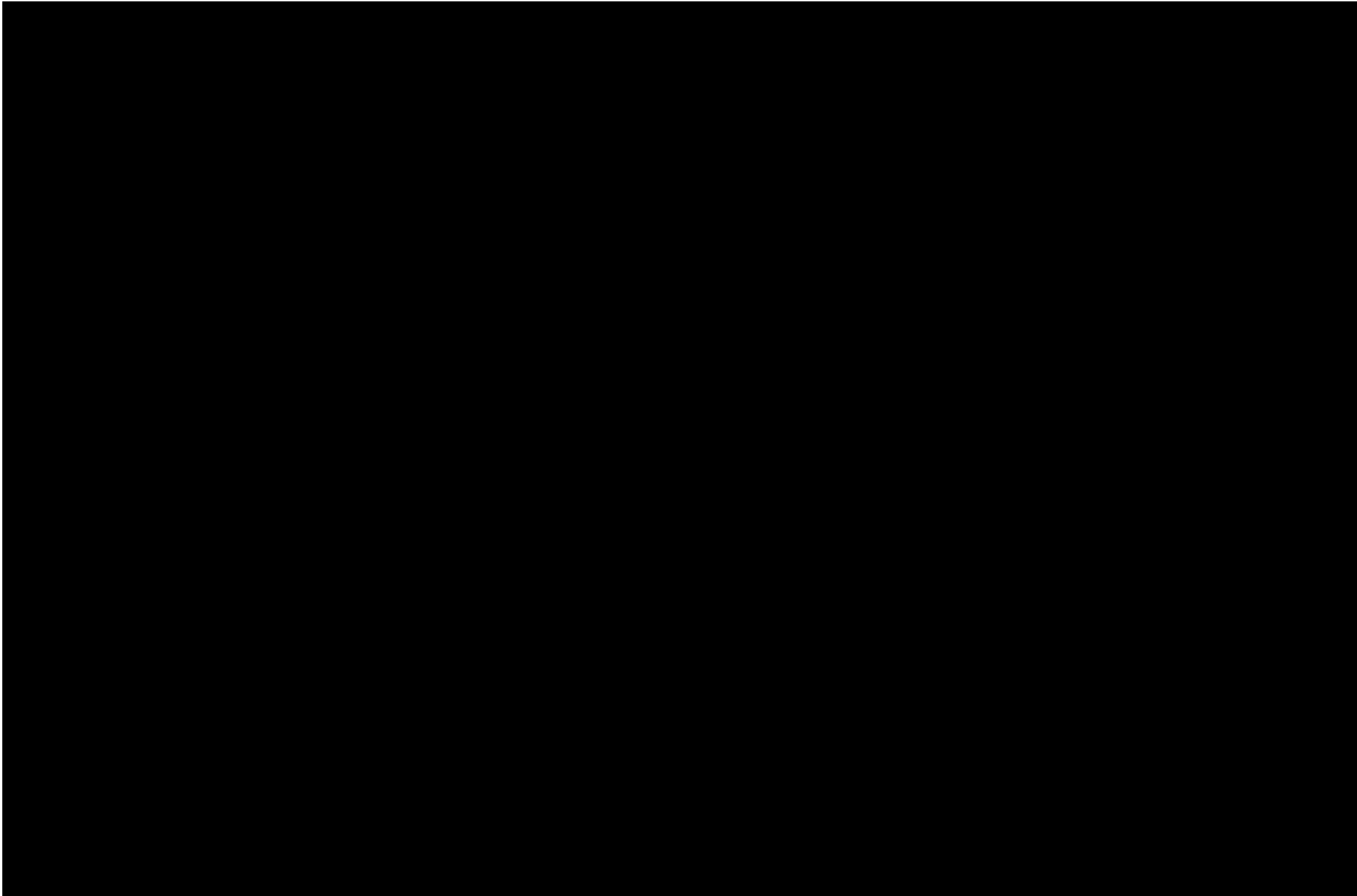


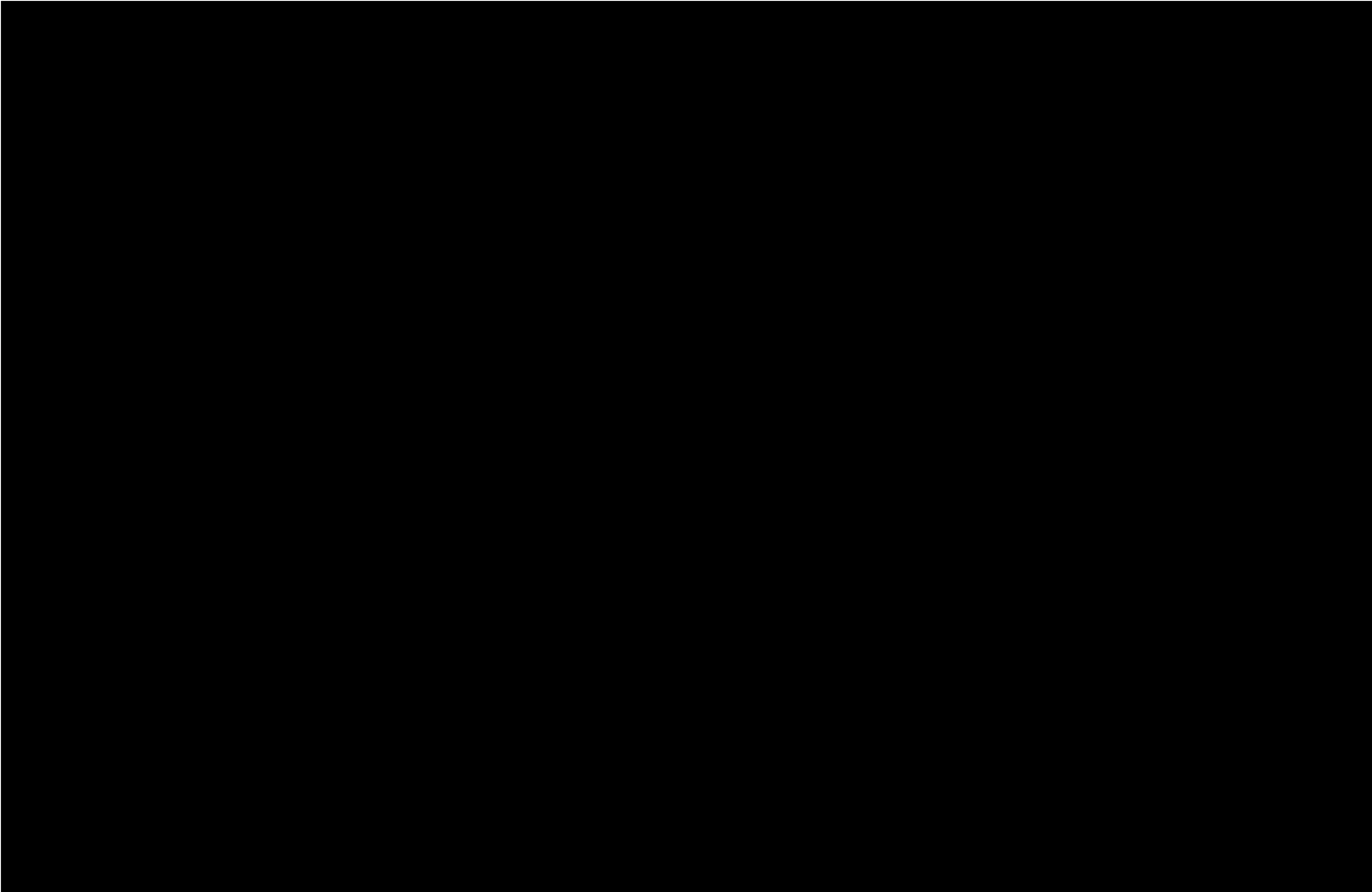






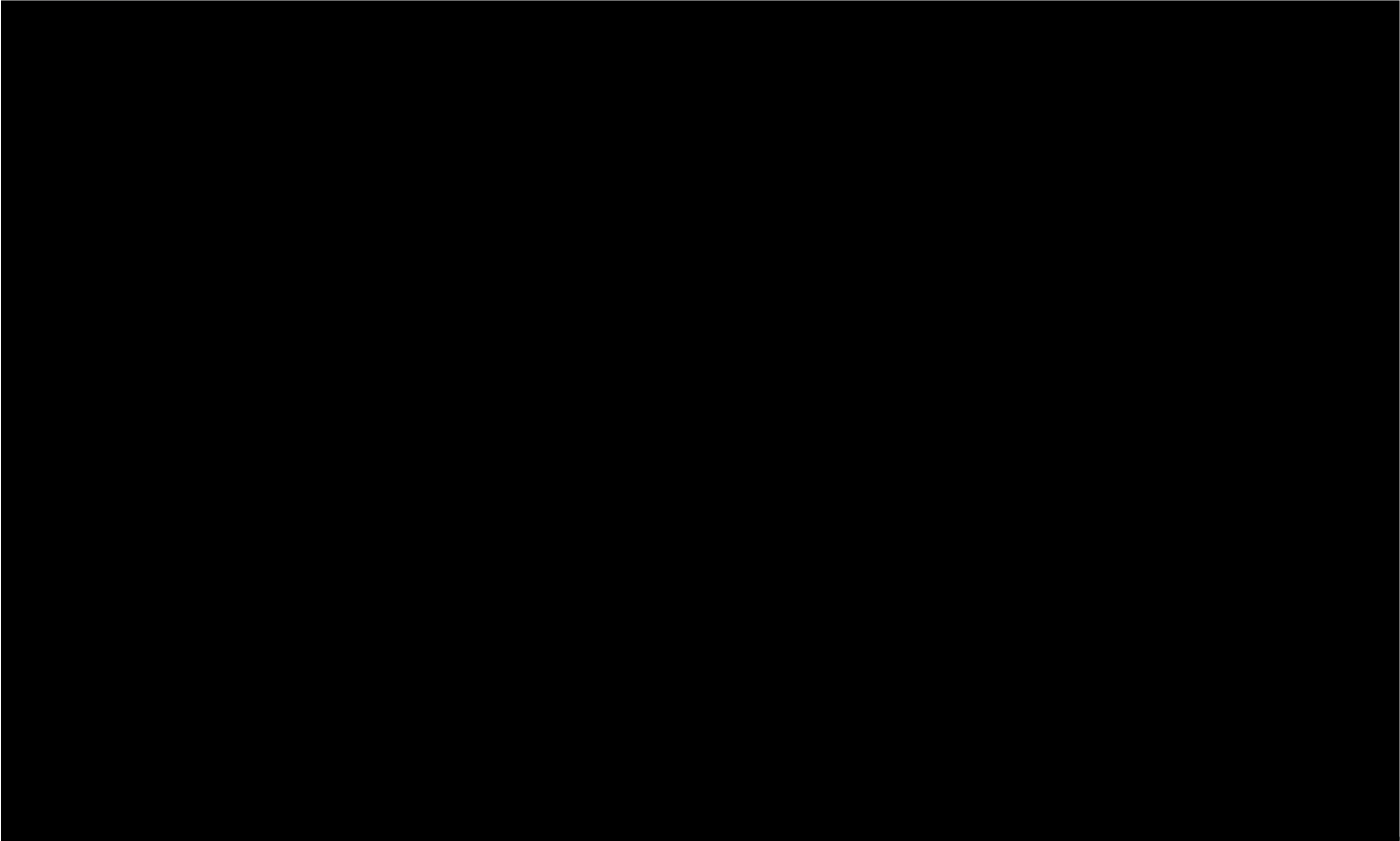


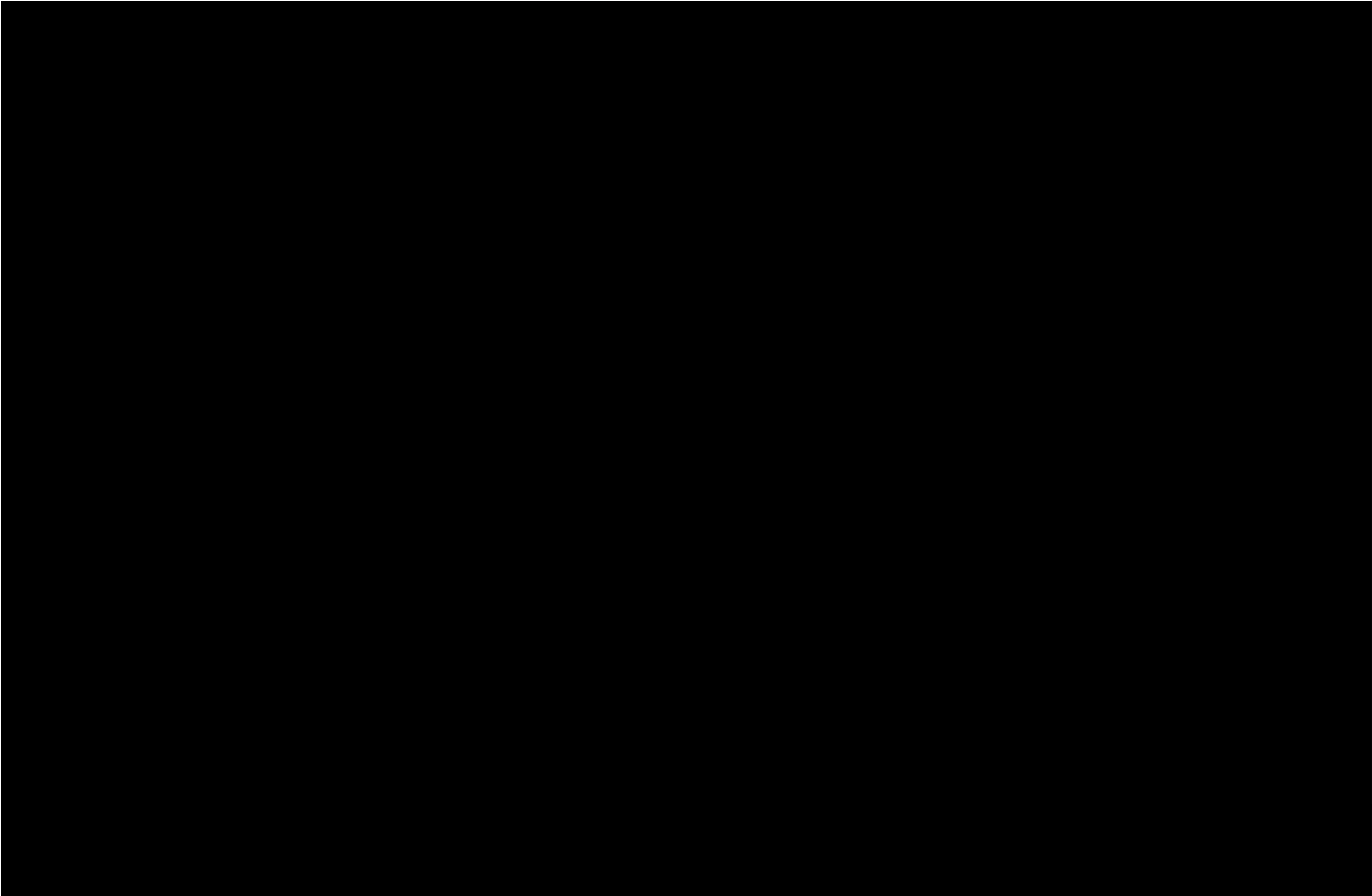


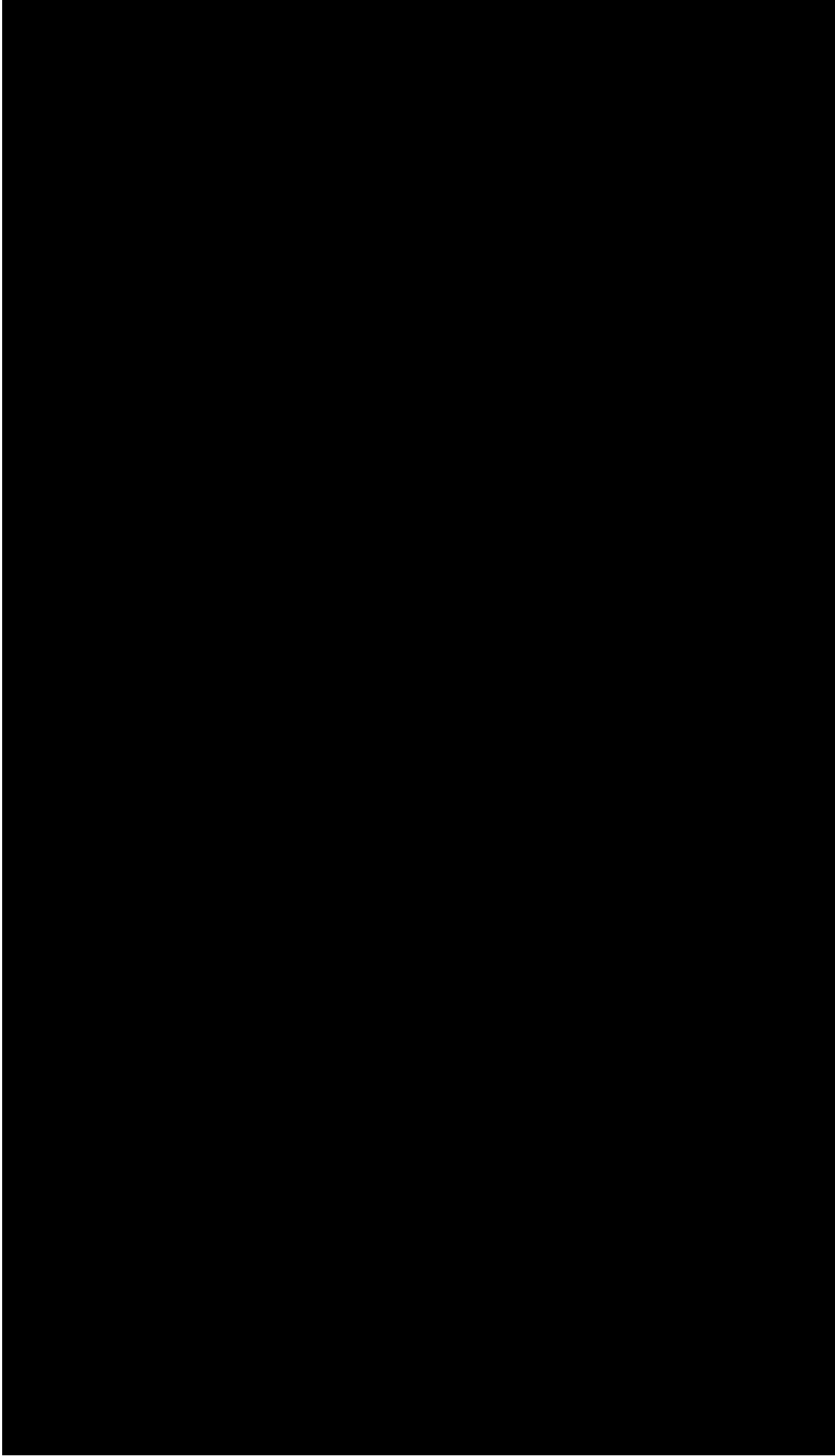


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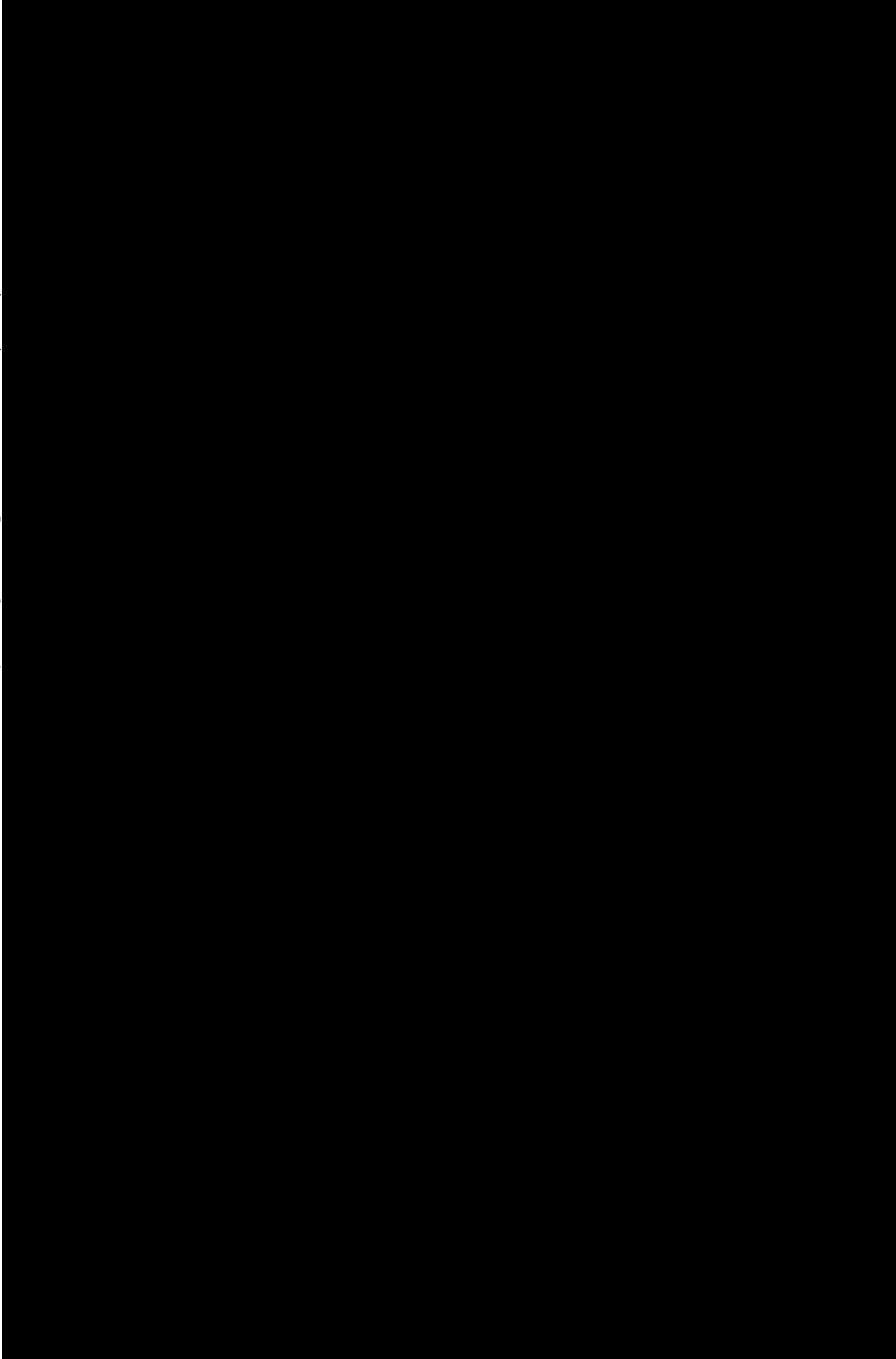






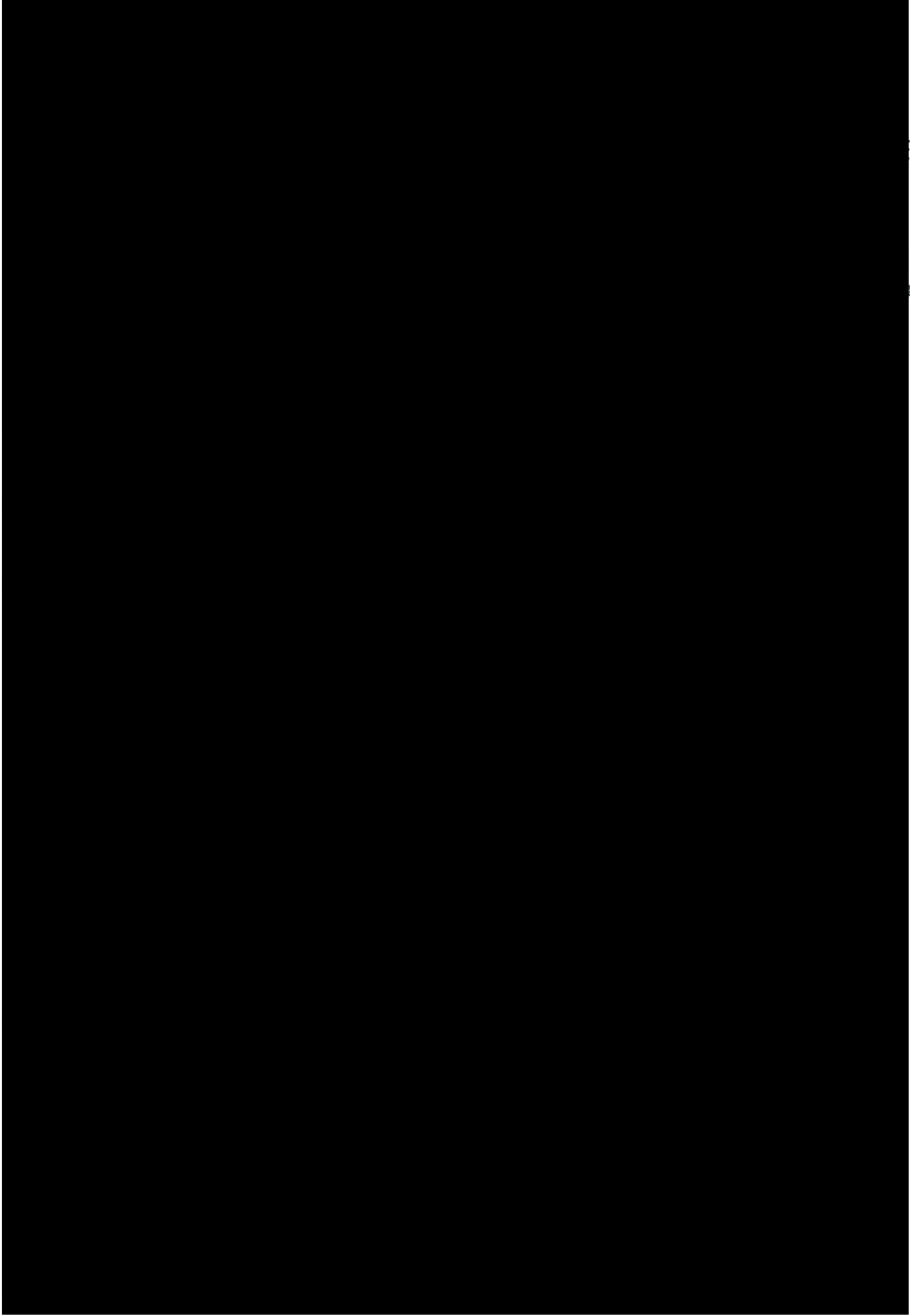


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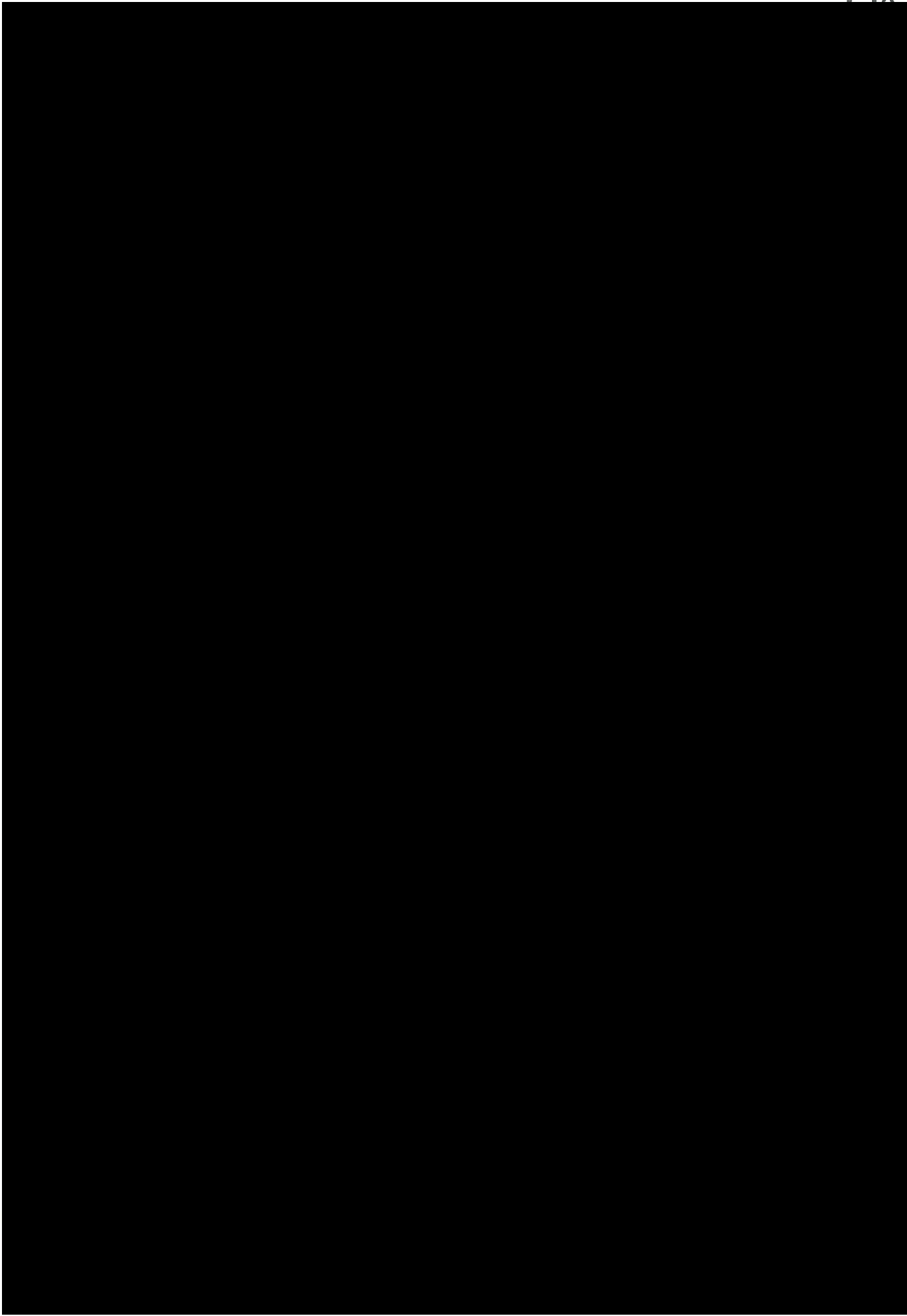


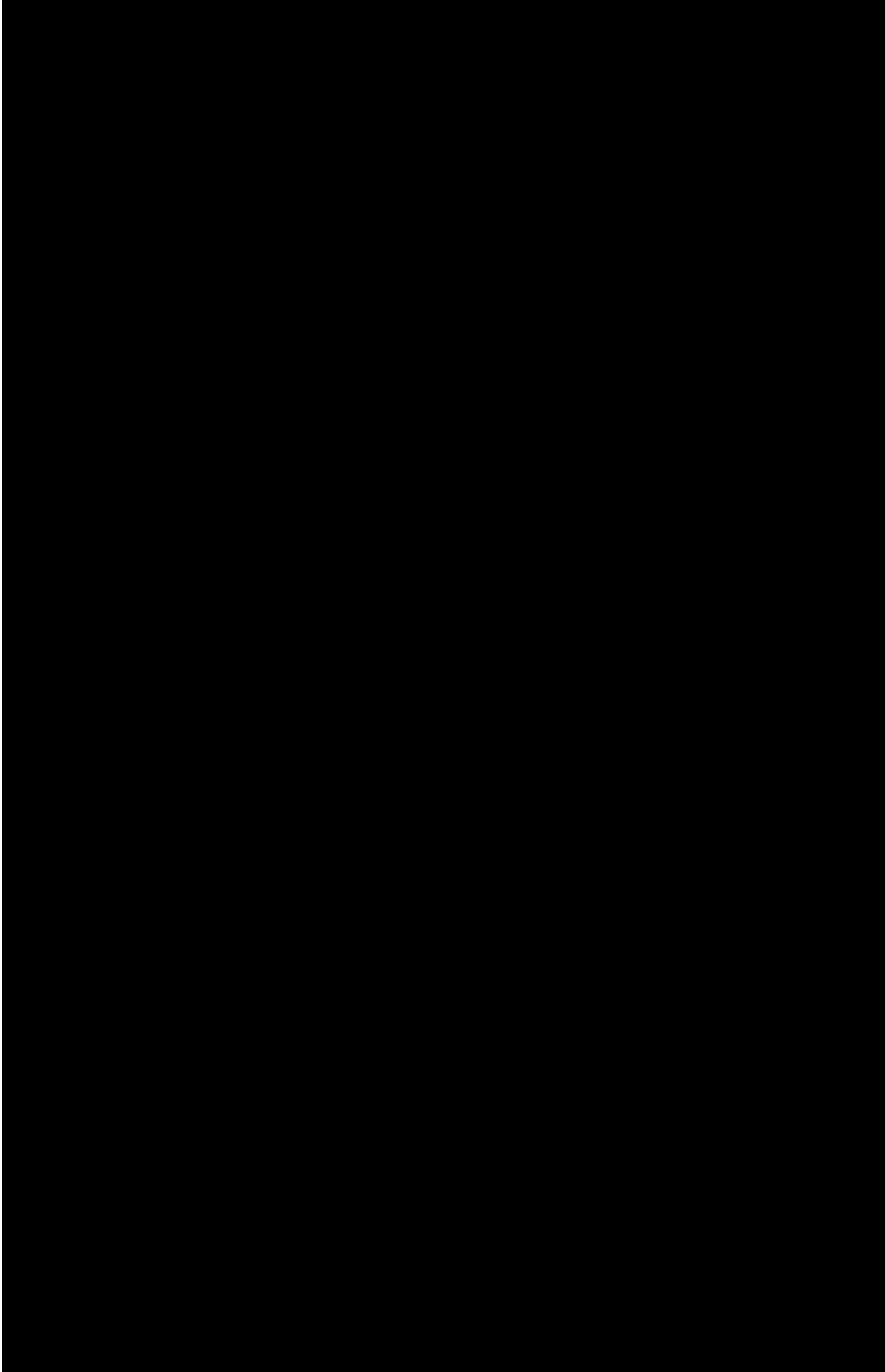
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Schedule 20 - Sydney International Speedway EIS Mitigation Measures v2 (3-8-20)

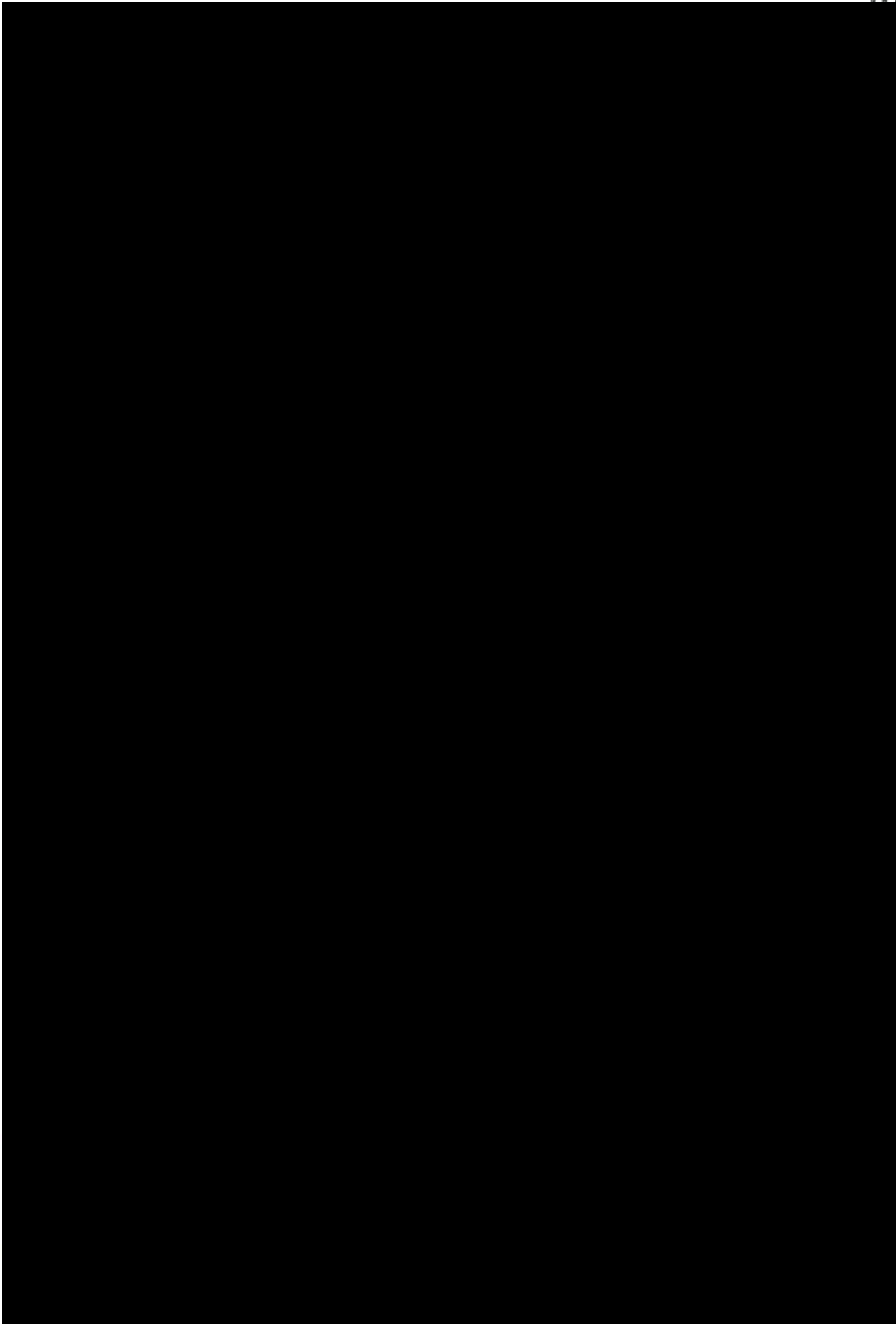


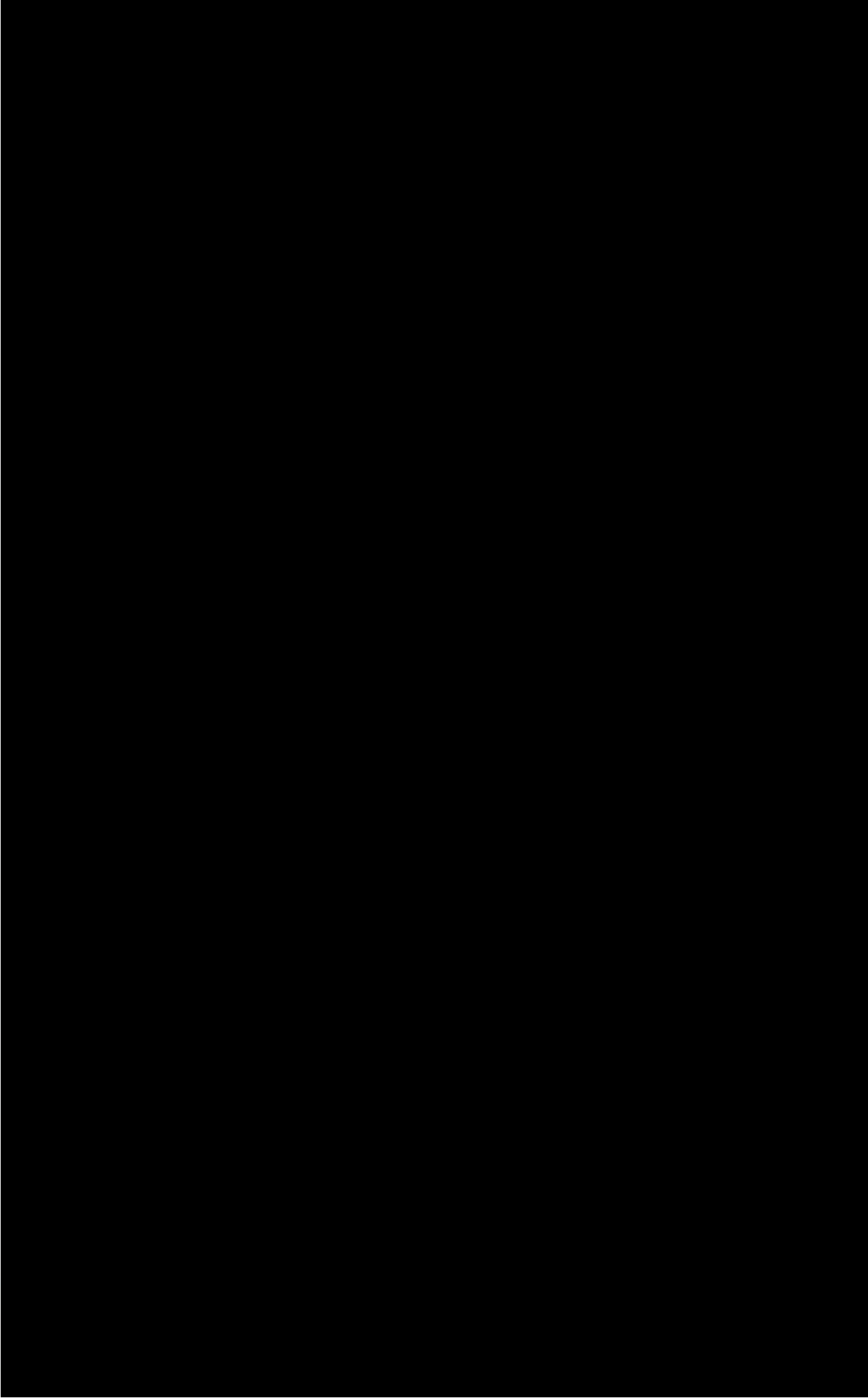
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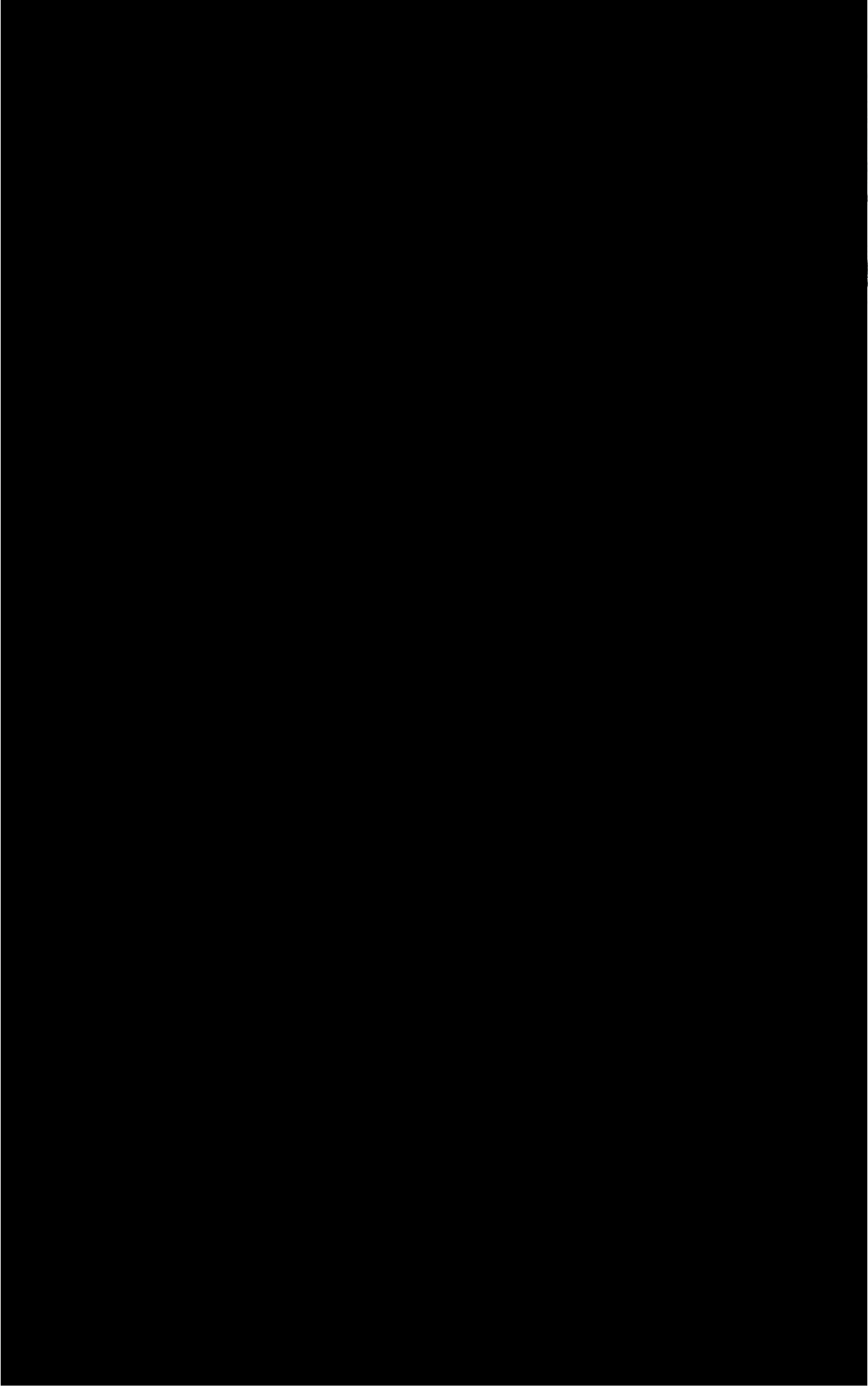


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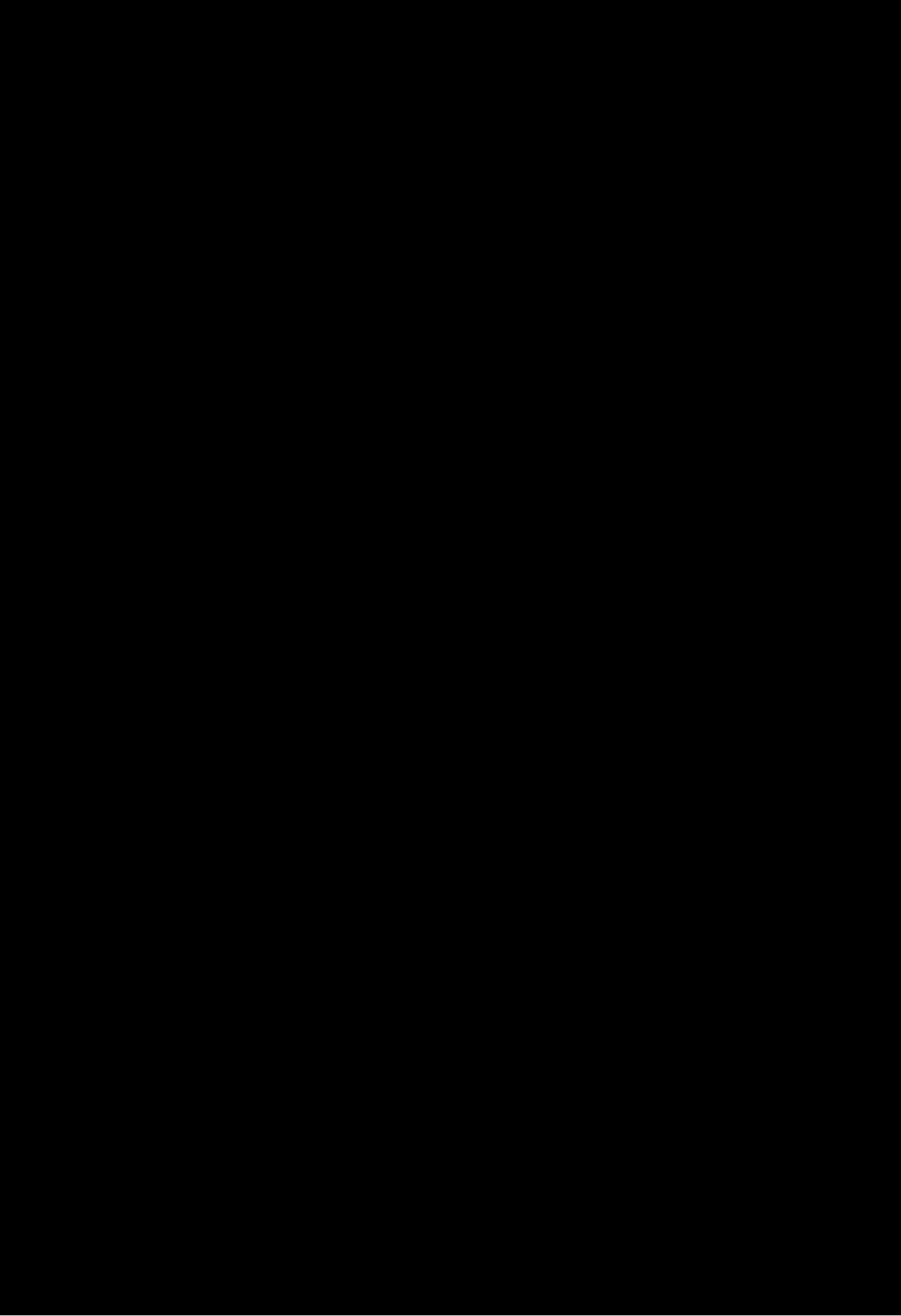


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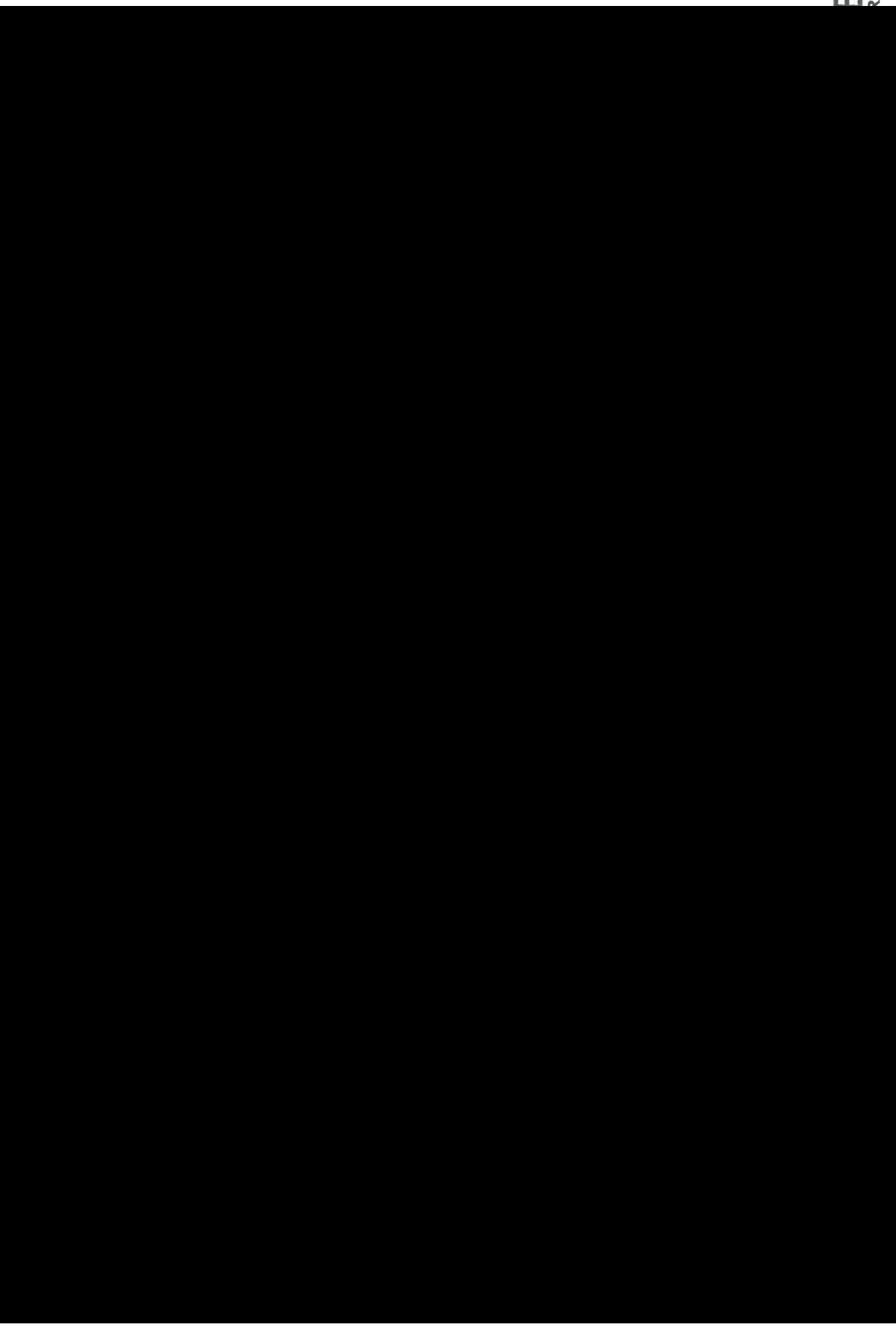


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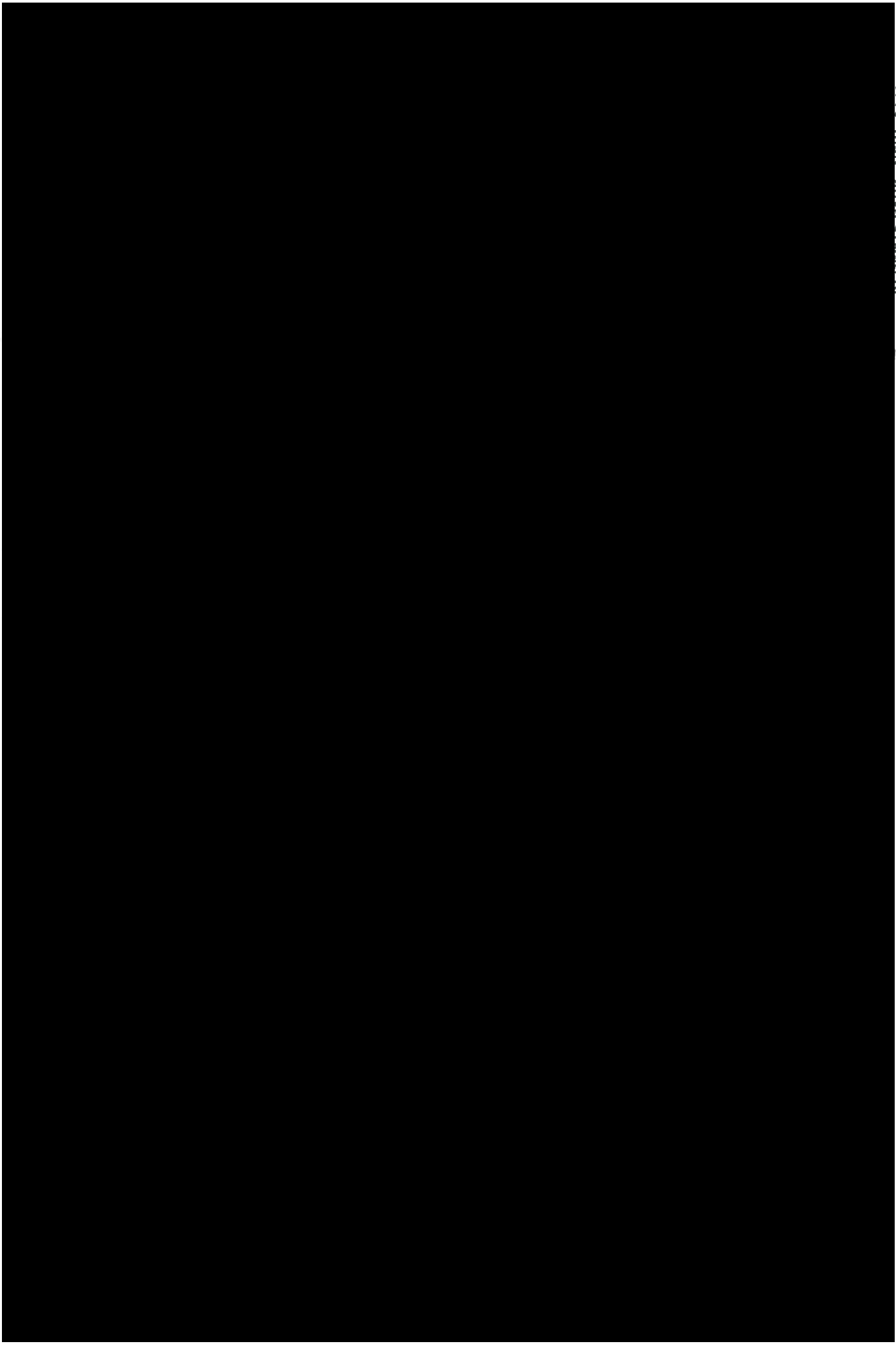
Schedule 20 - Sydney International Speedway EIS Mitigation Measures v2 (3-8-20)

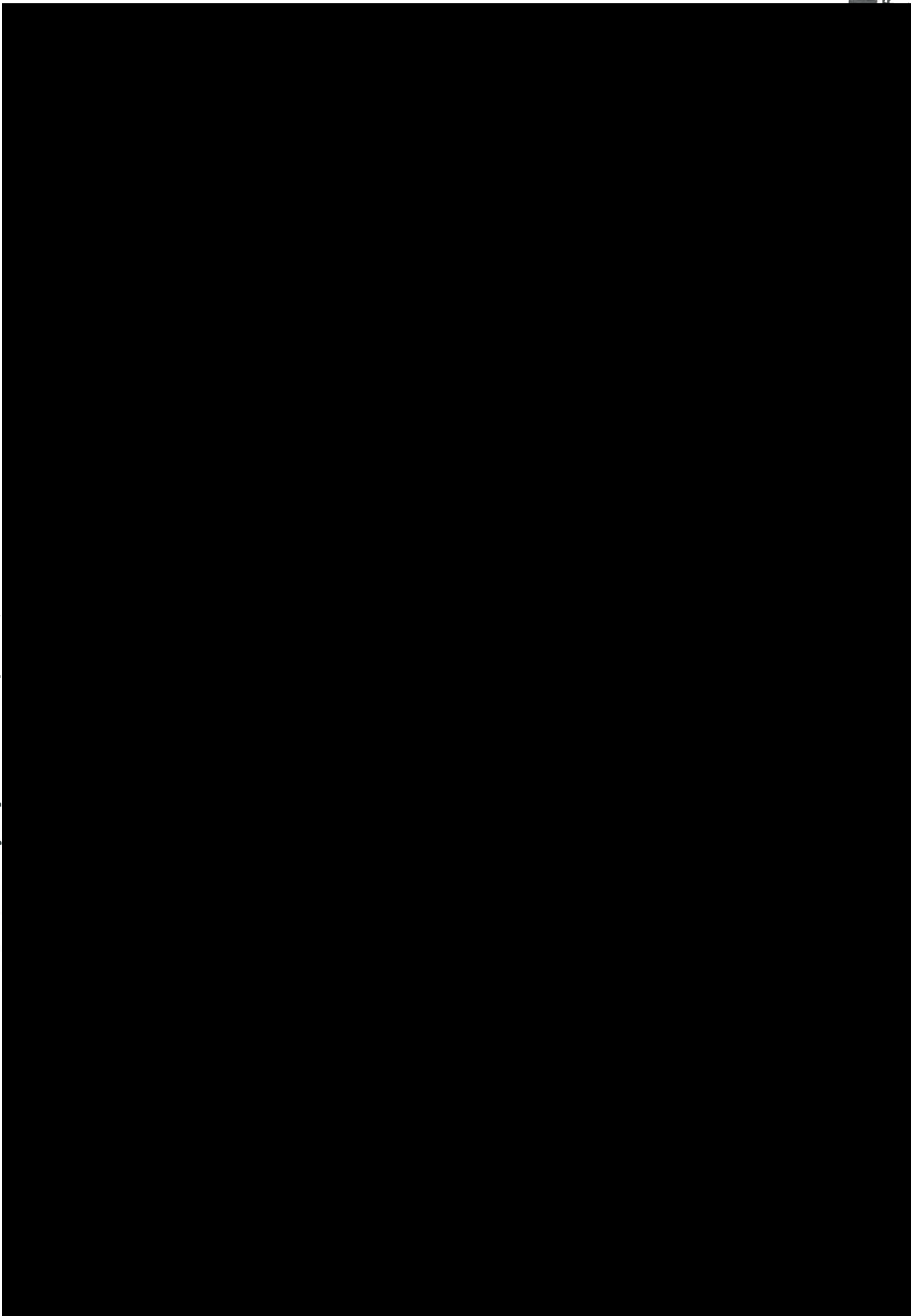


Schedule 20 - Sydney International Speedway EIS Mitigation Measures v2 (3-8-20)



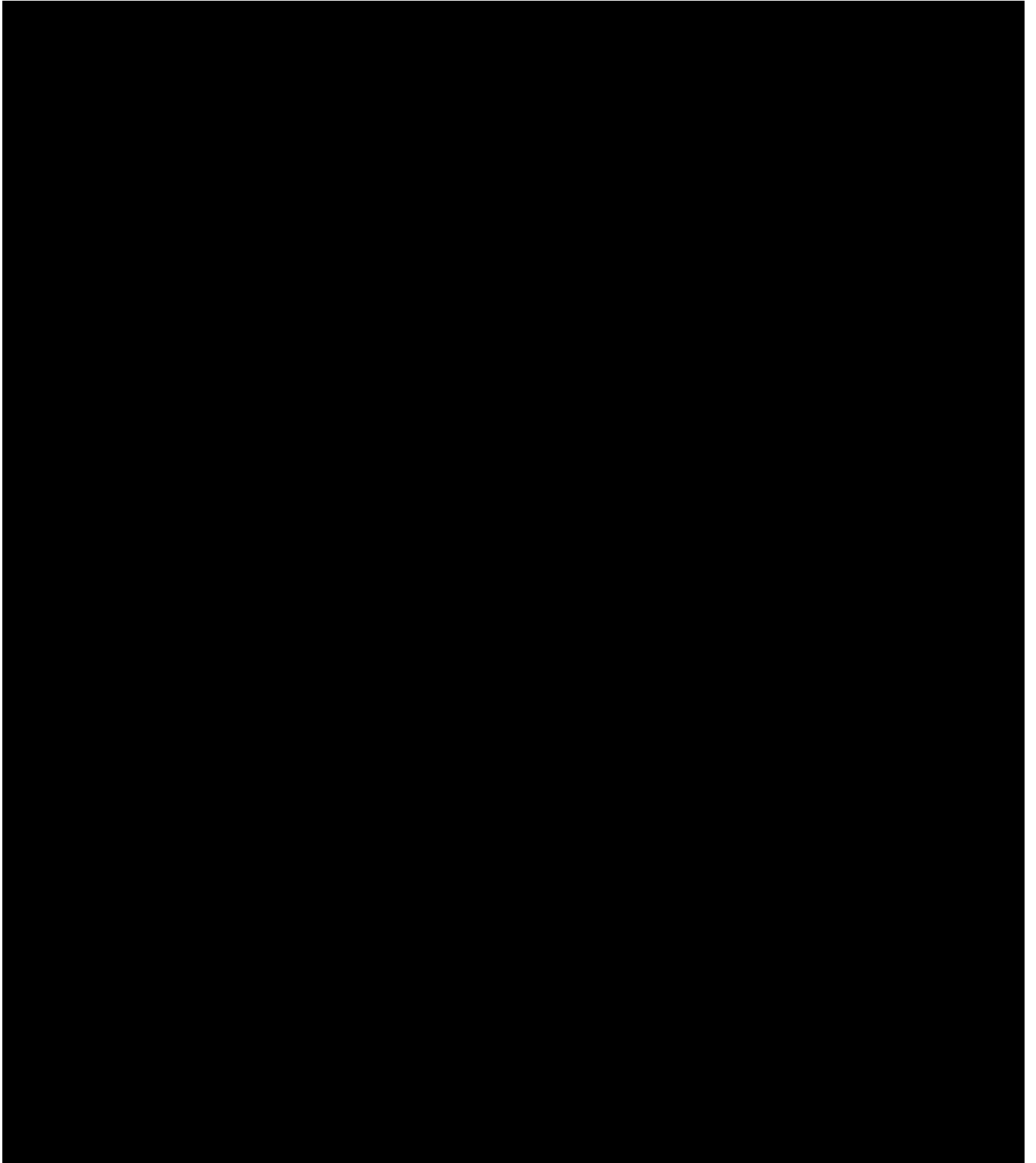
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Schedule 21

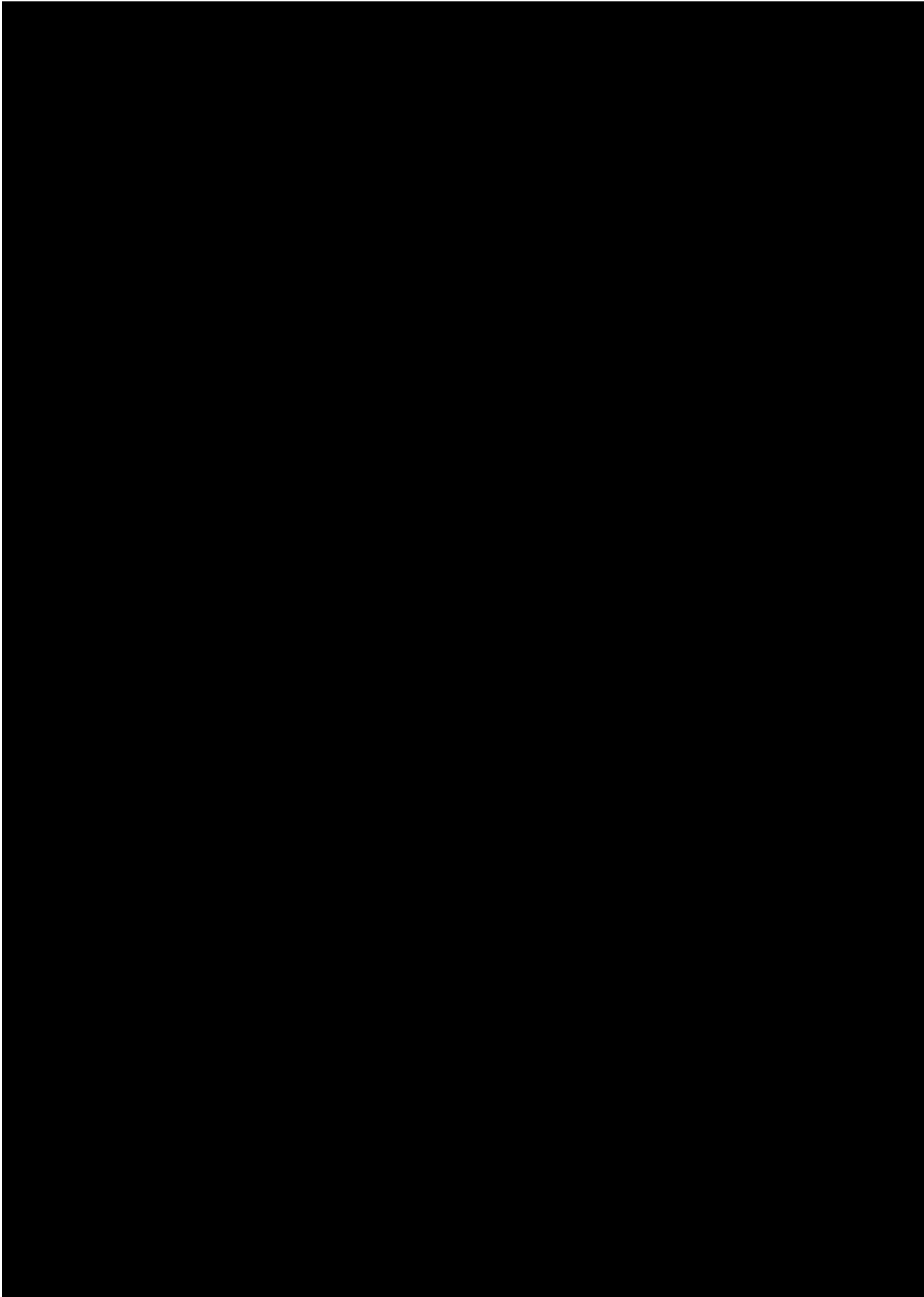
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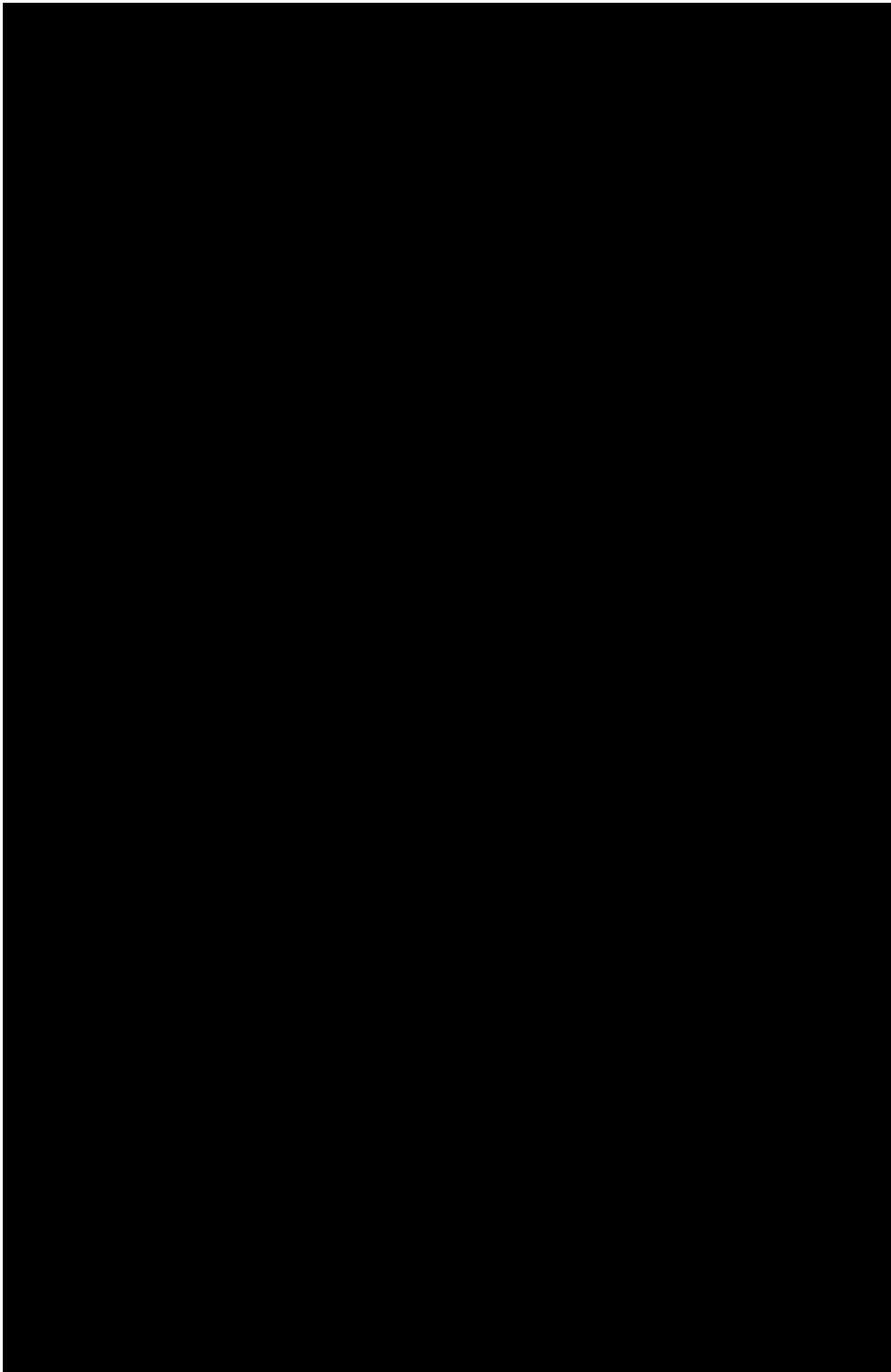
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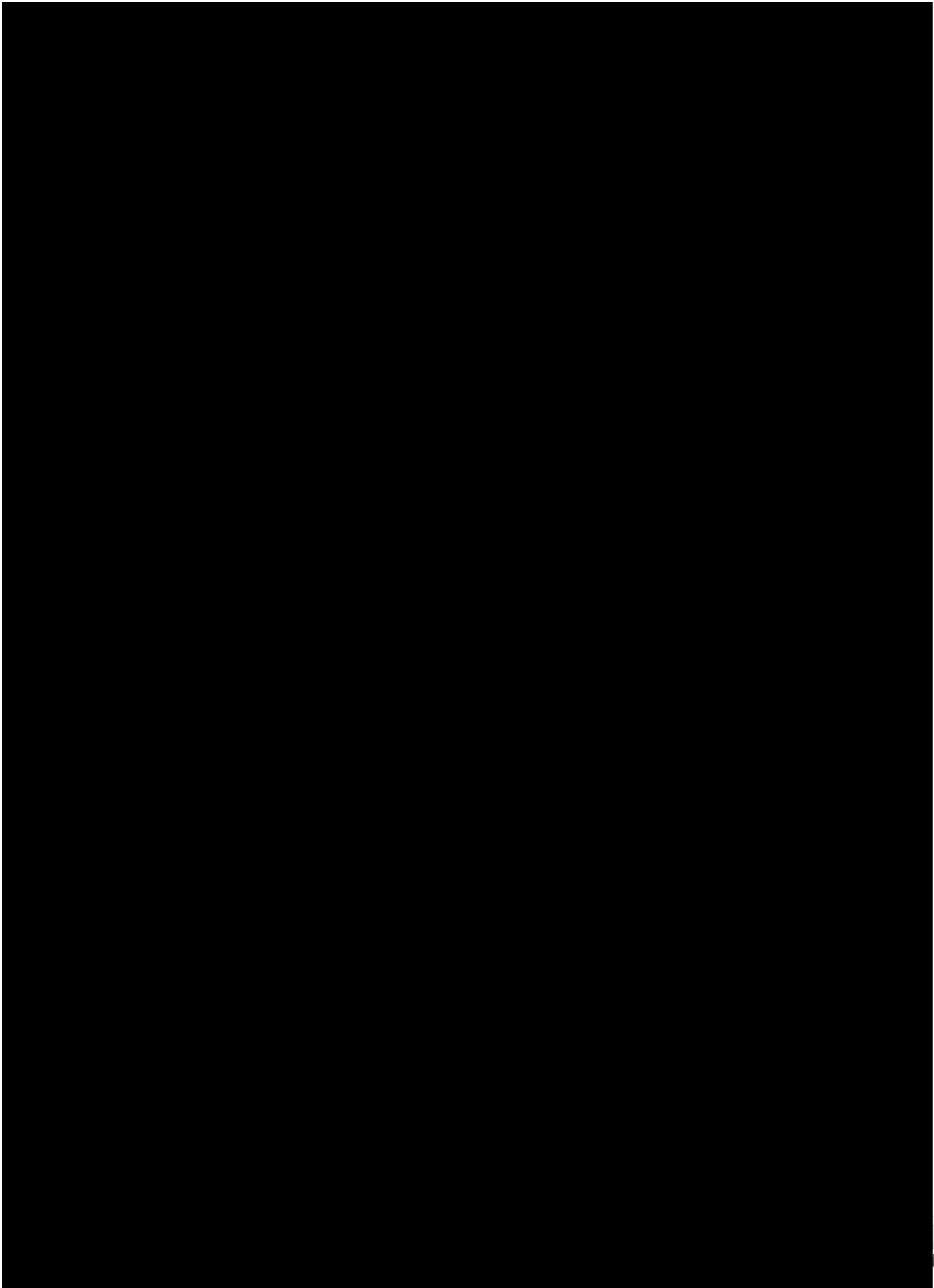
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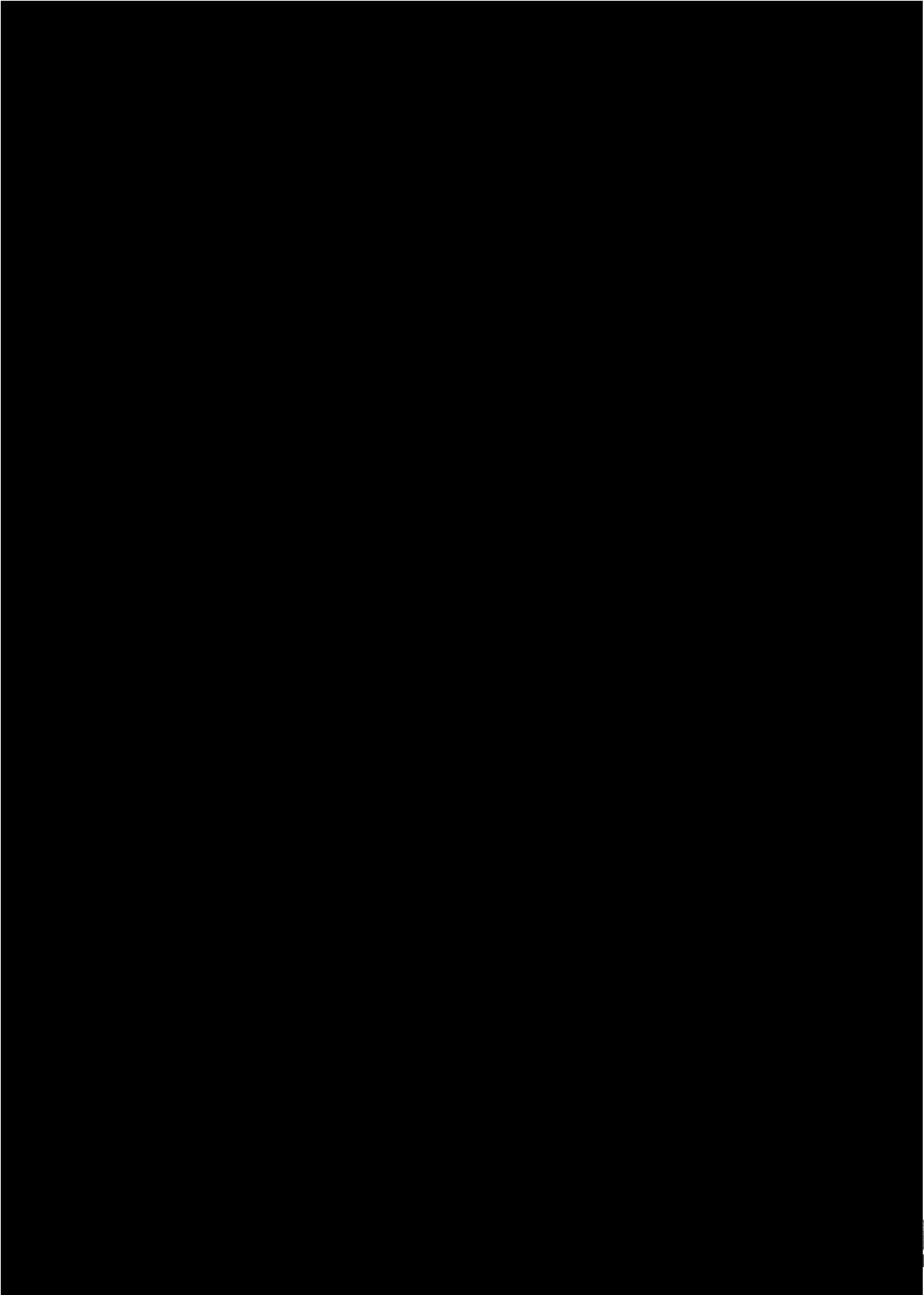
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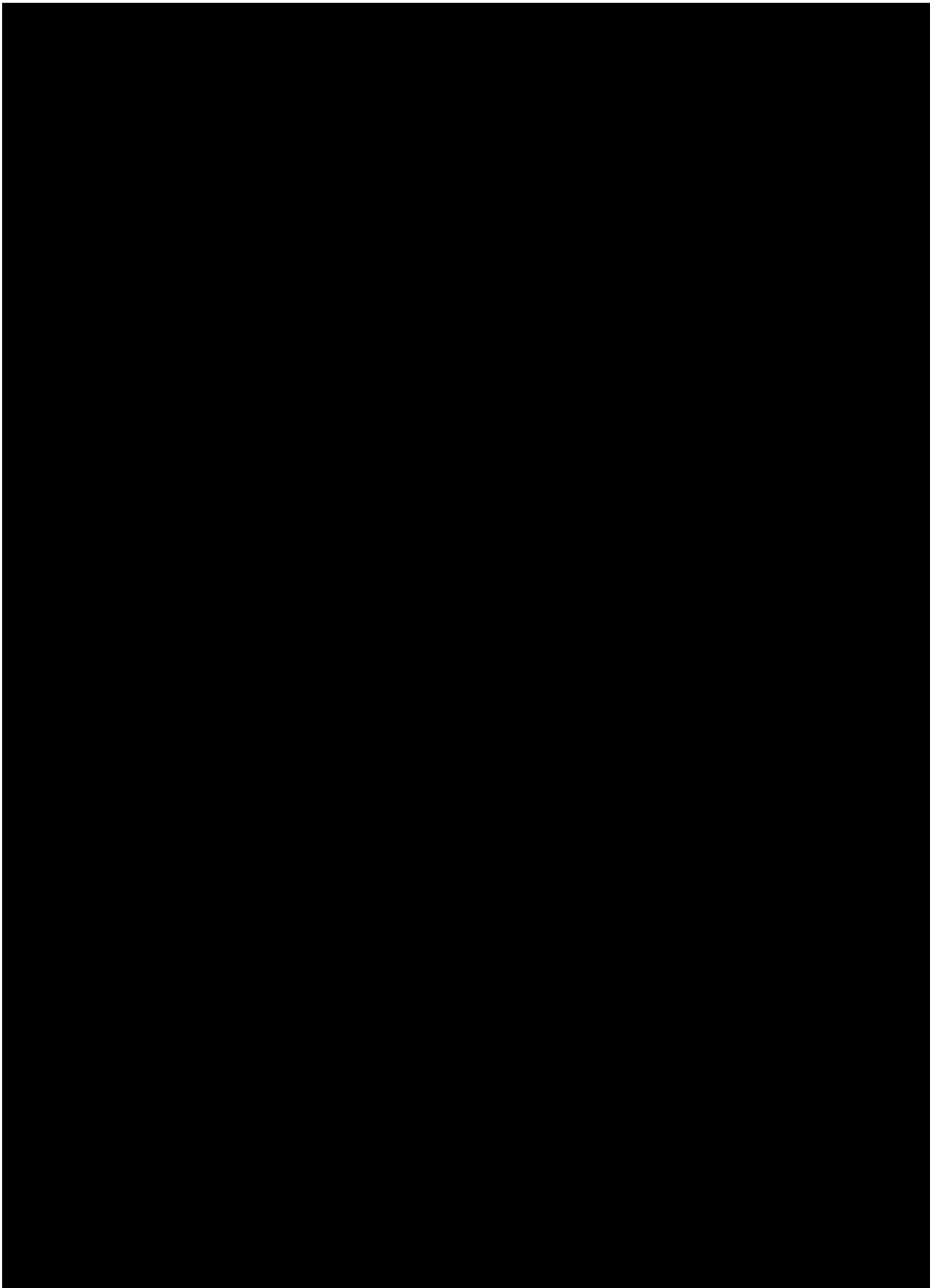
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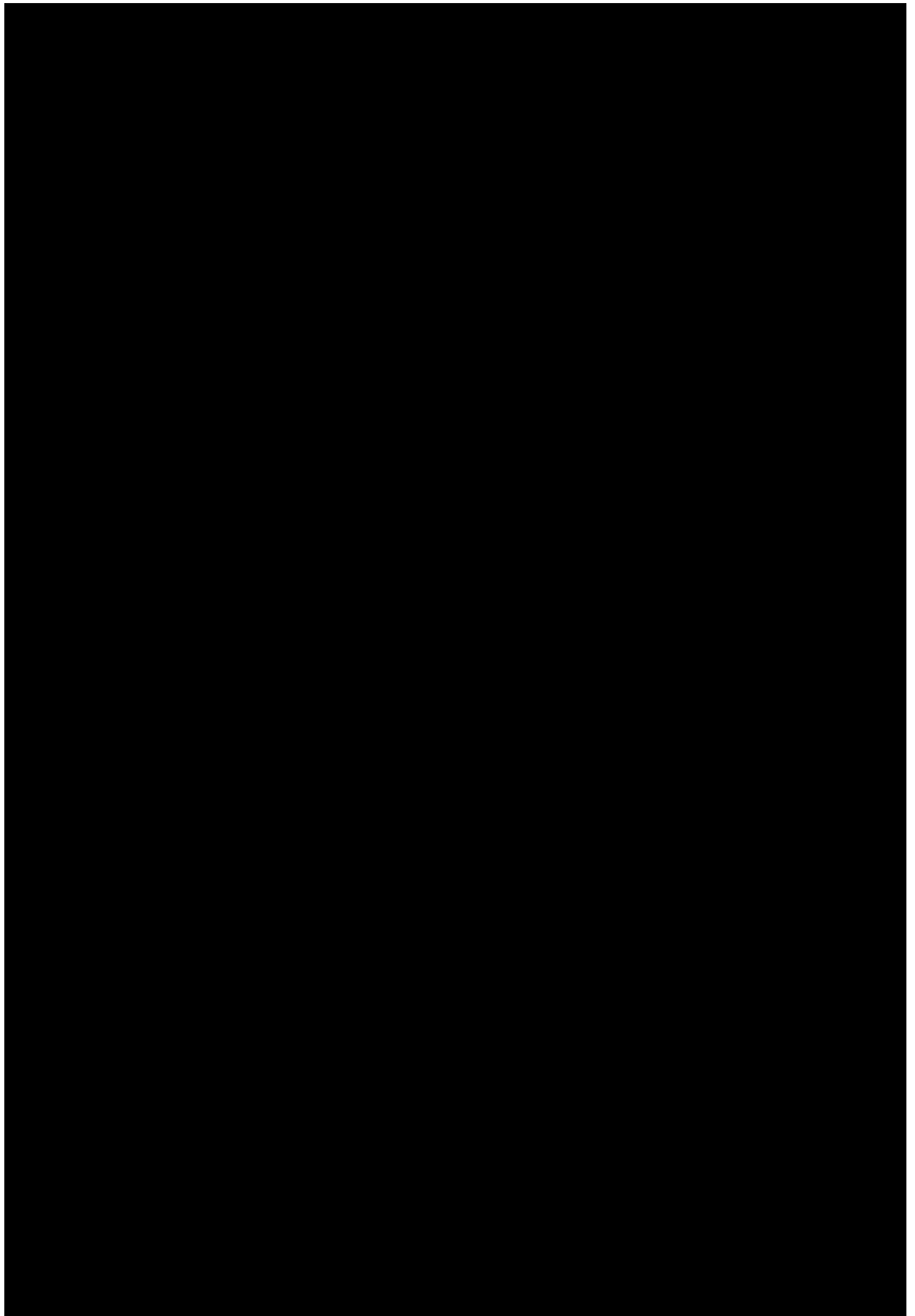
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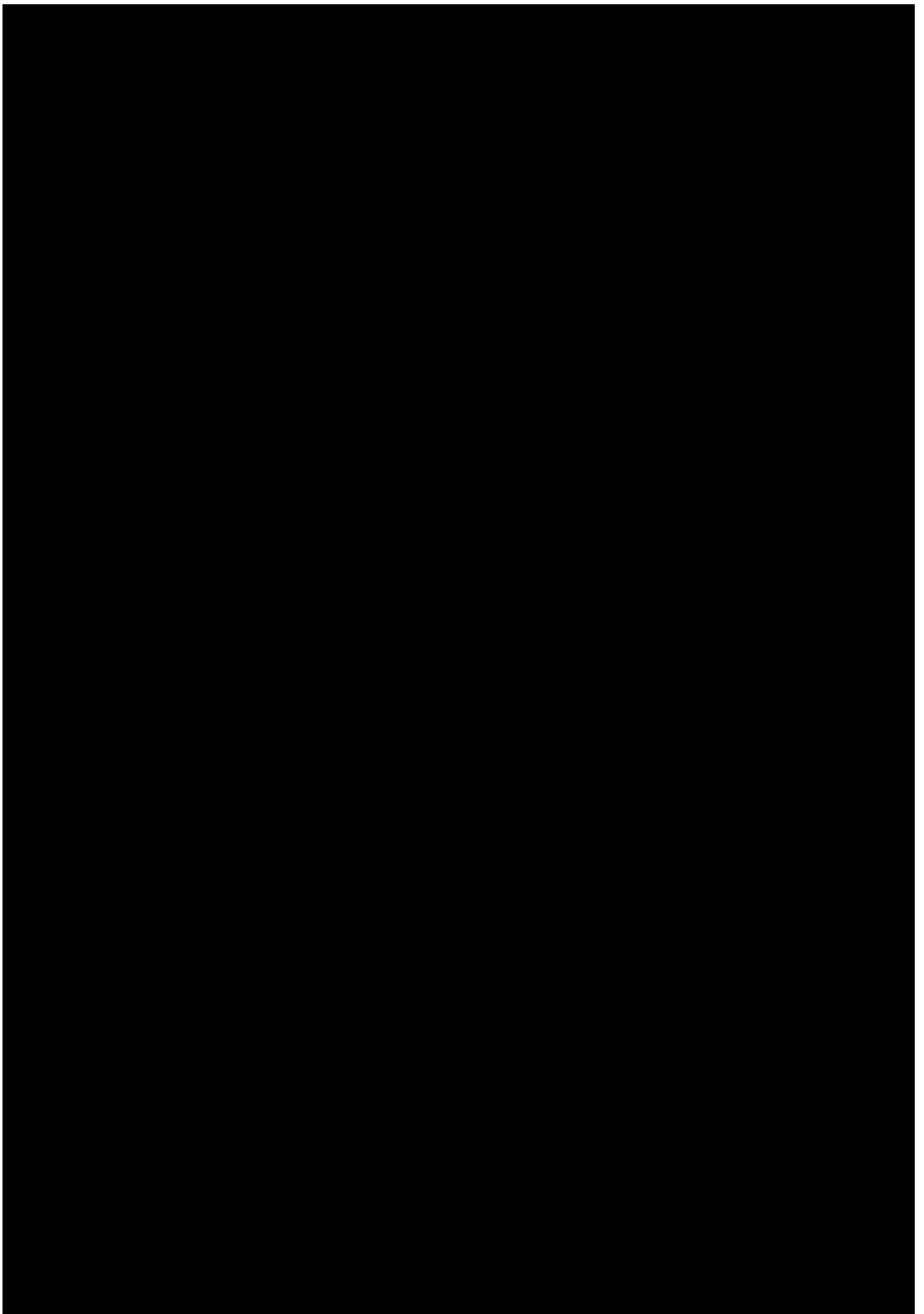


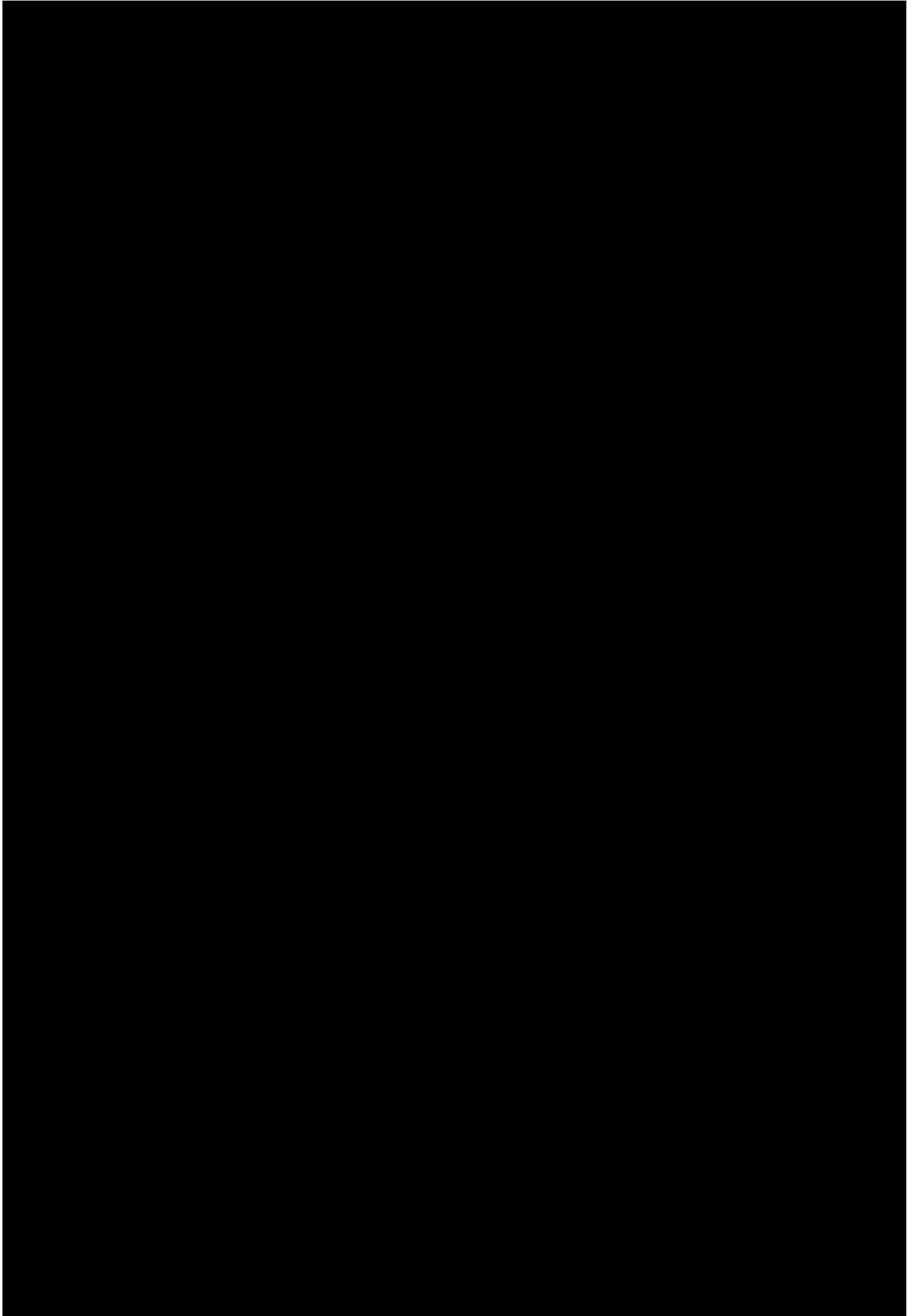
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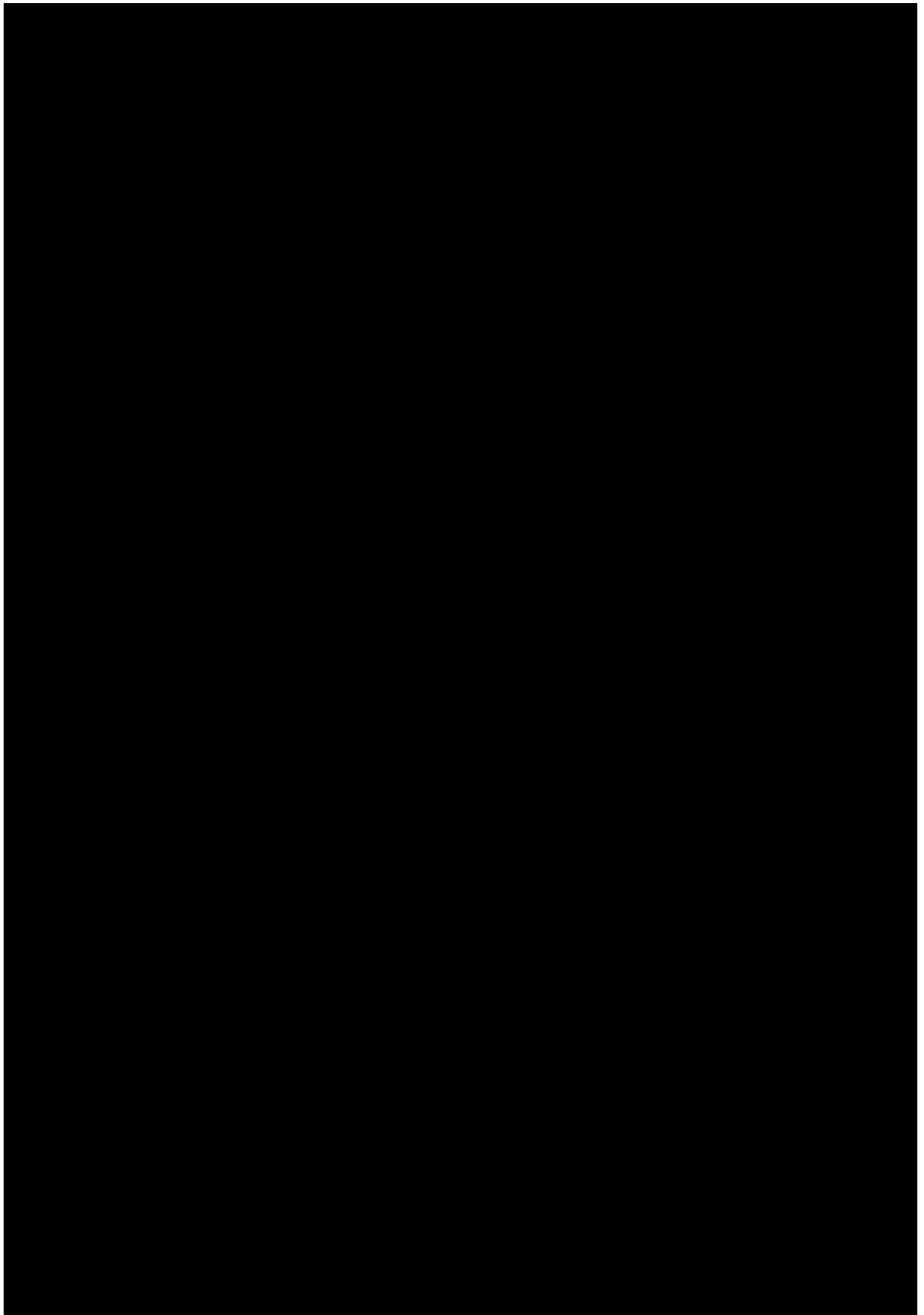
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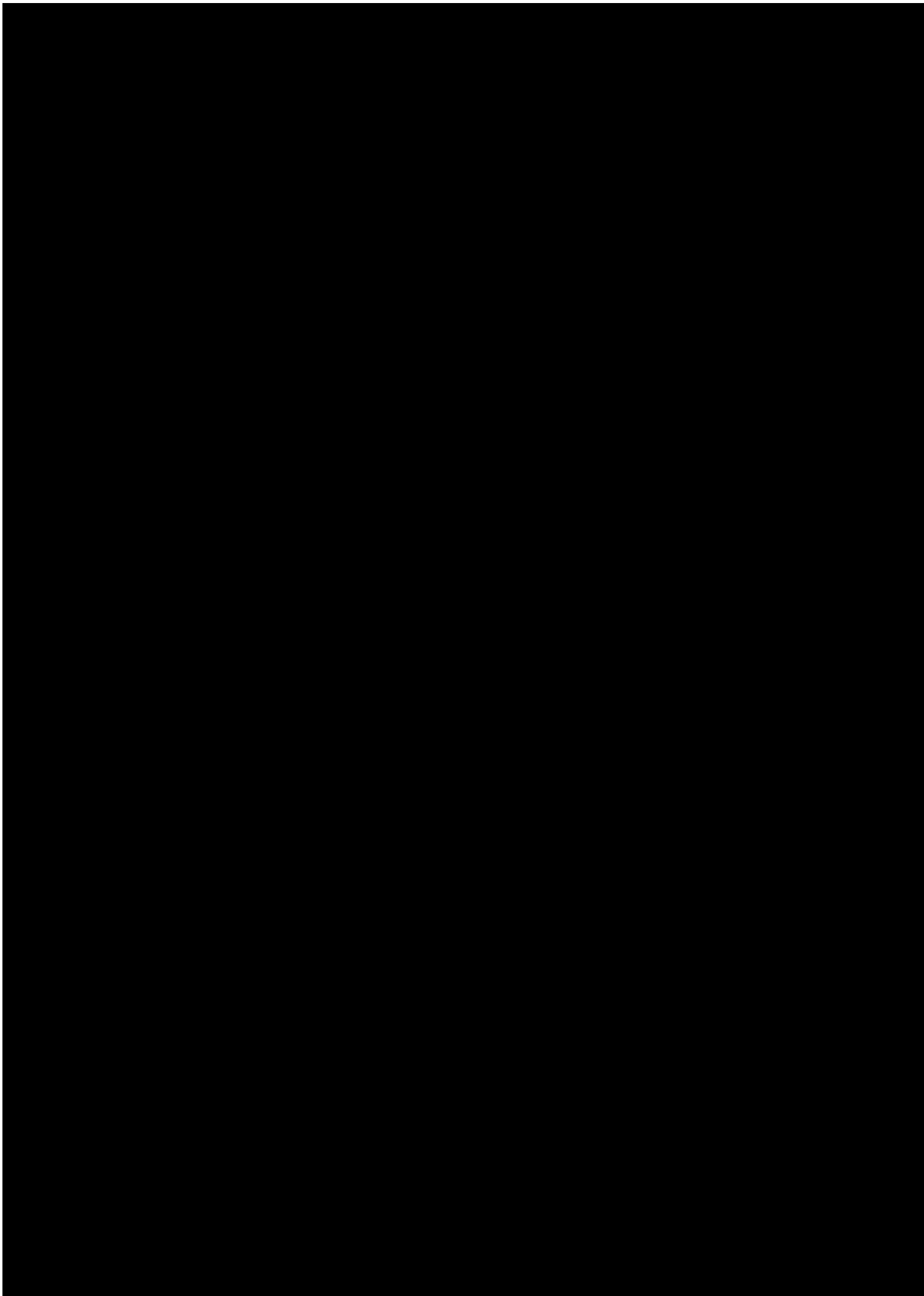
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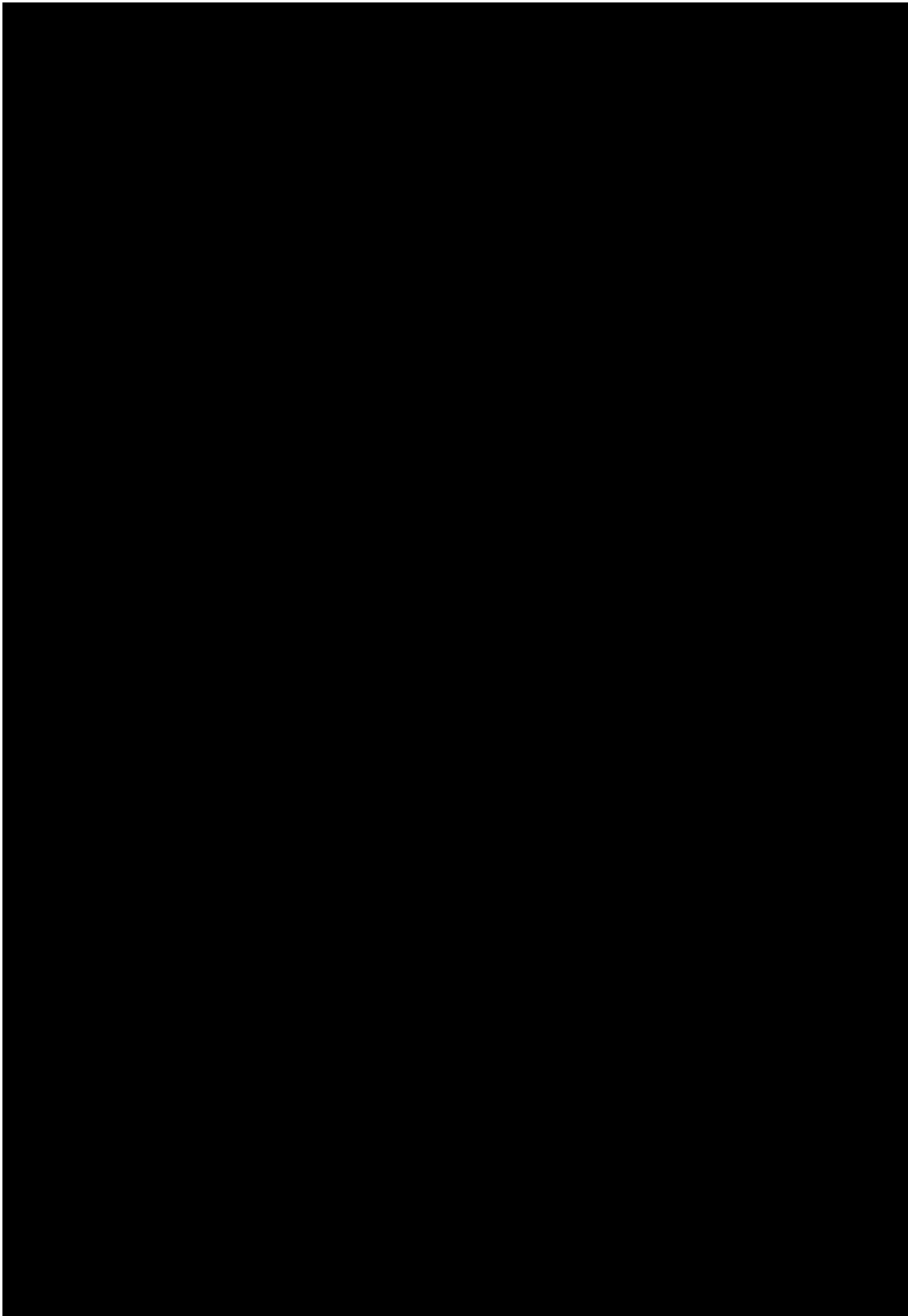


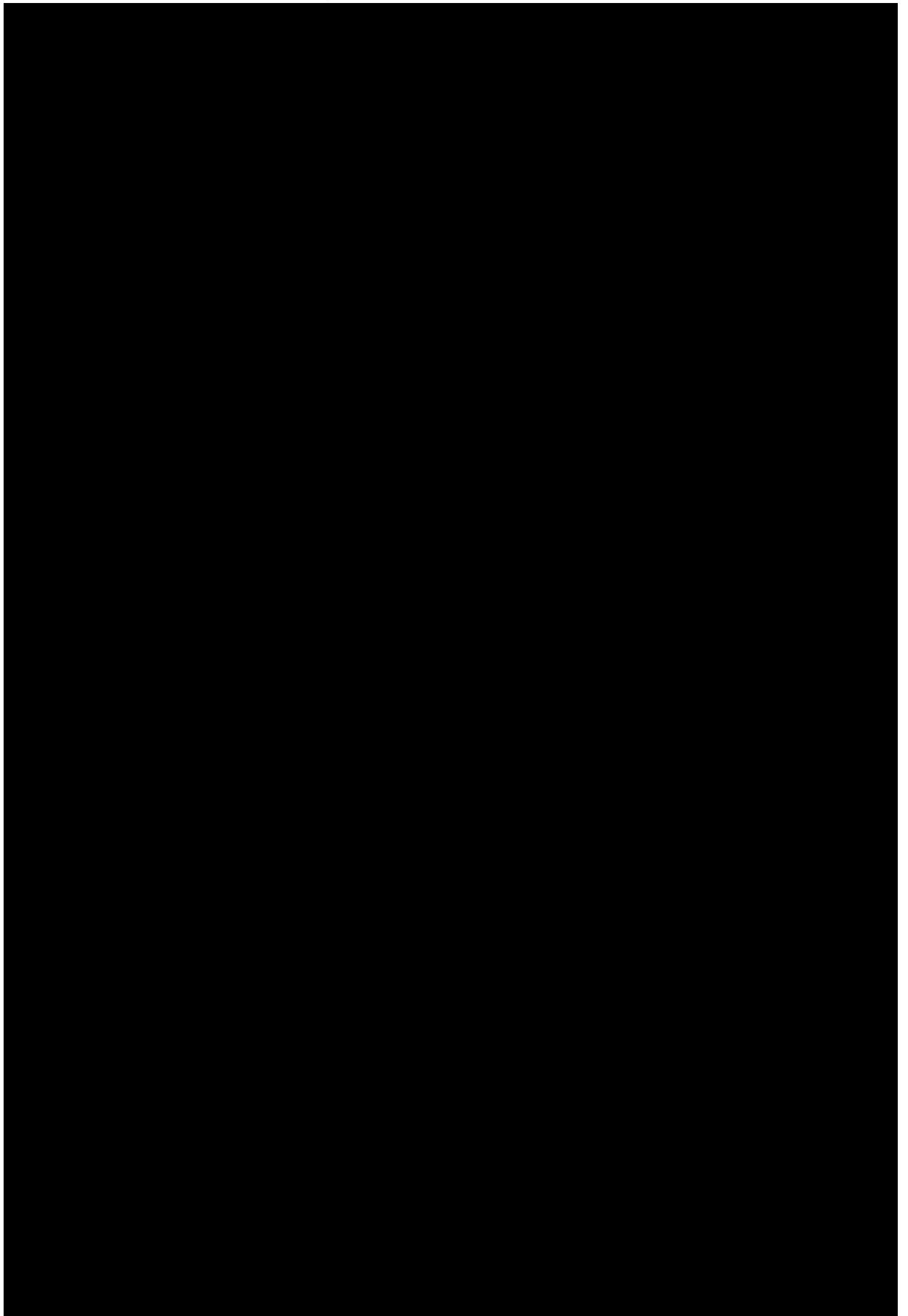


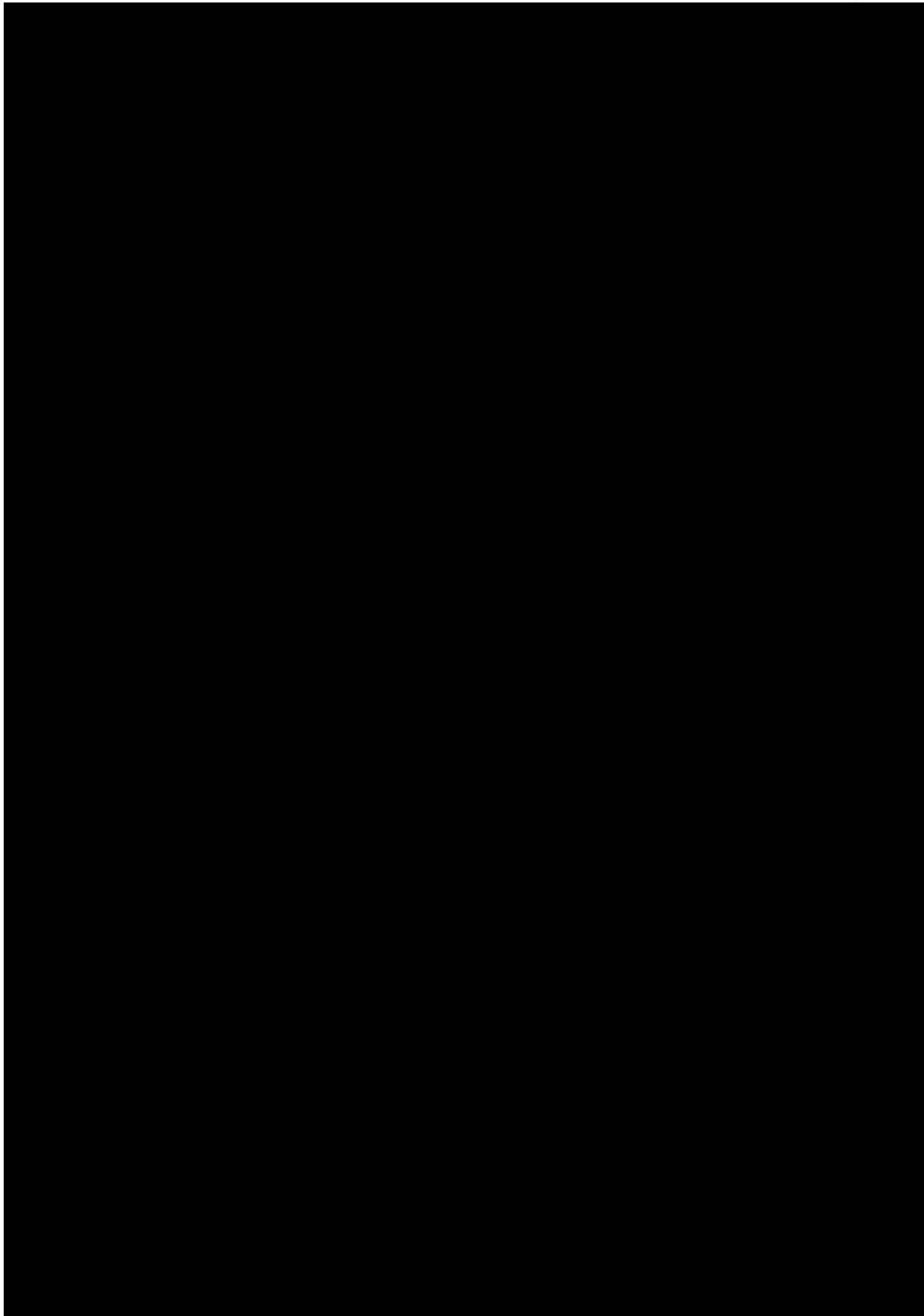


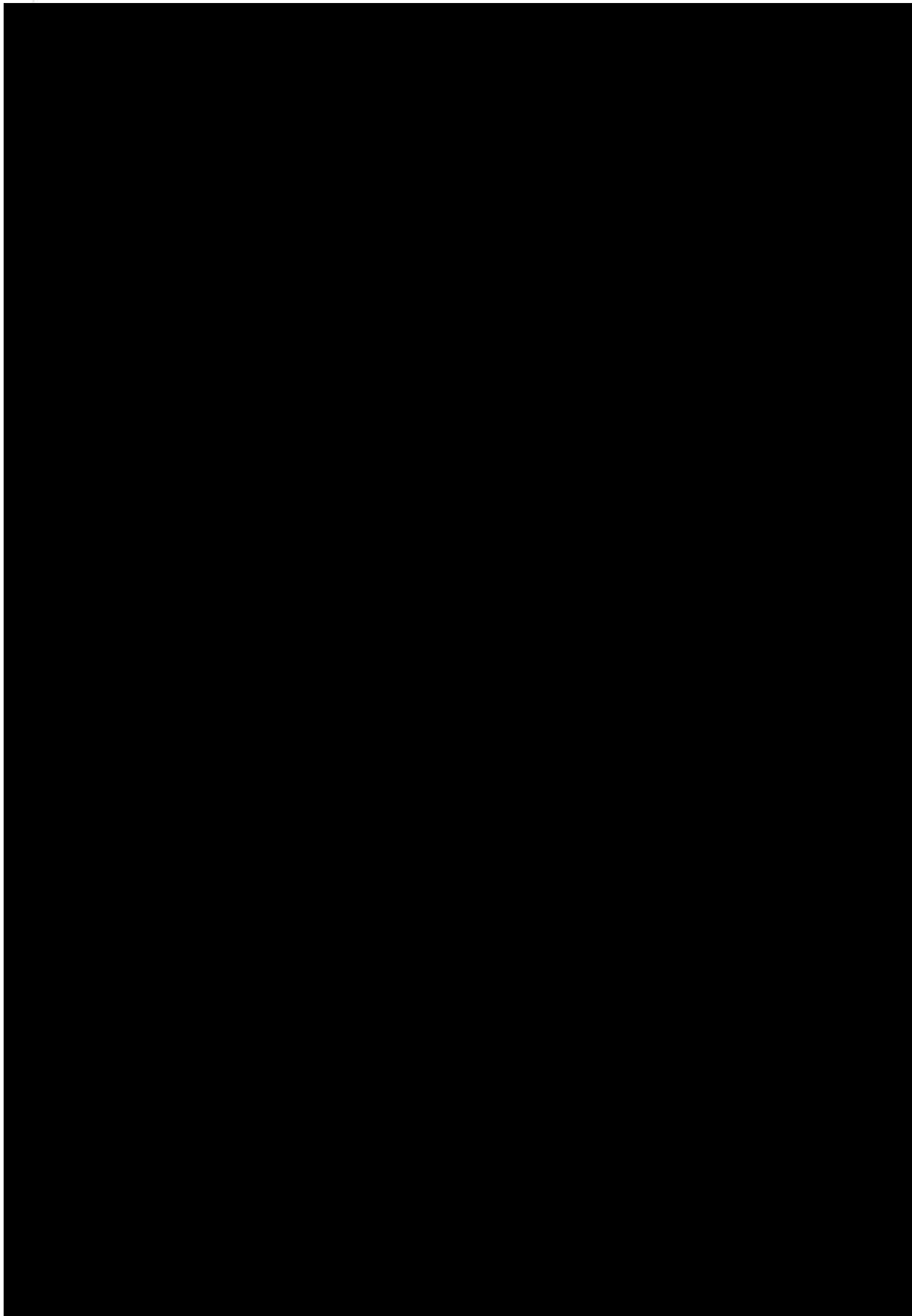


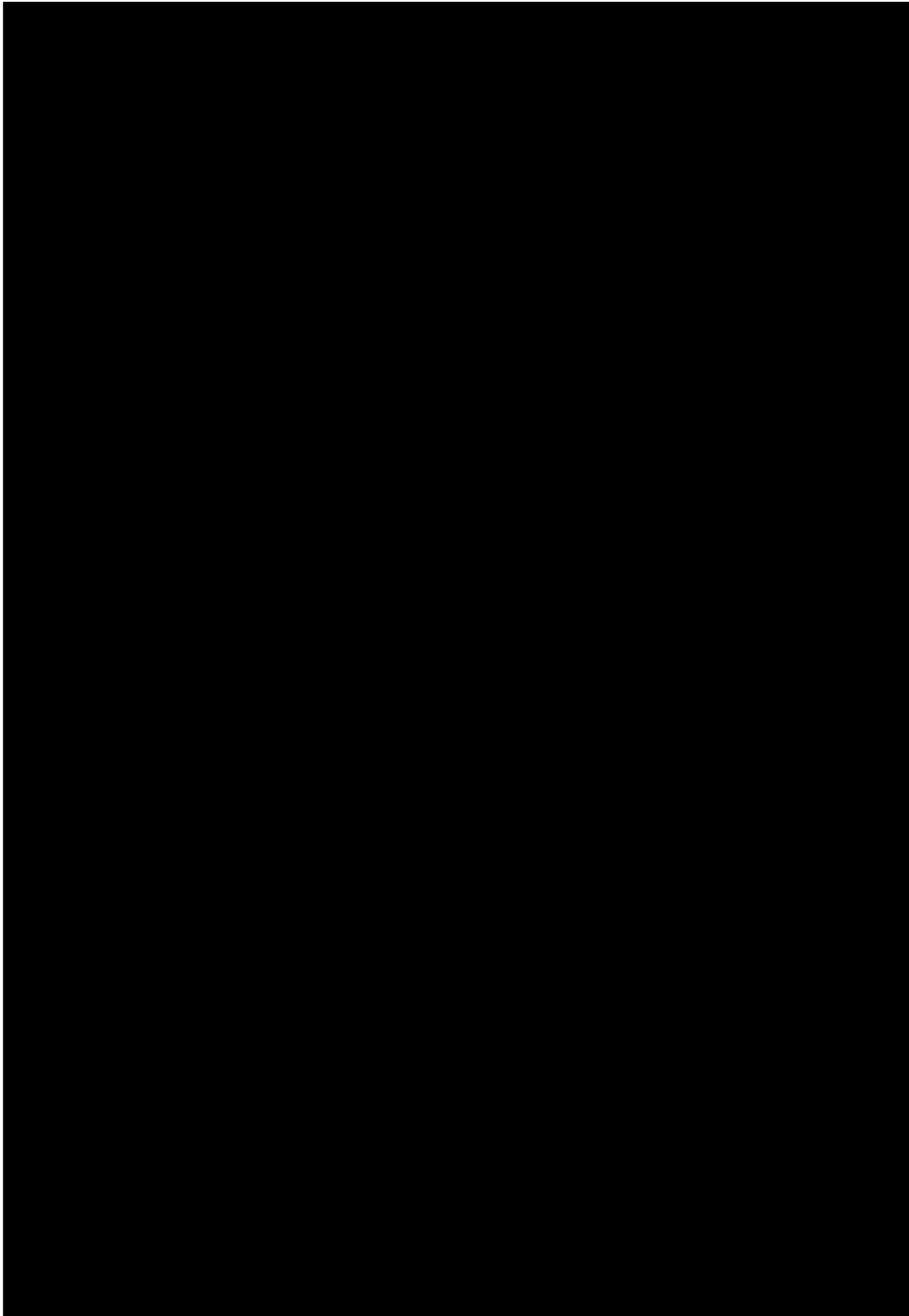


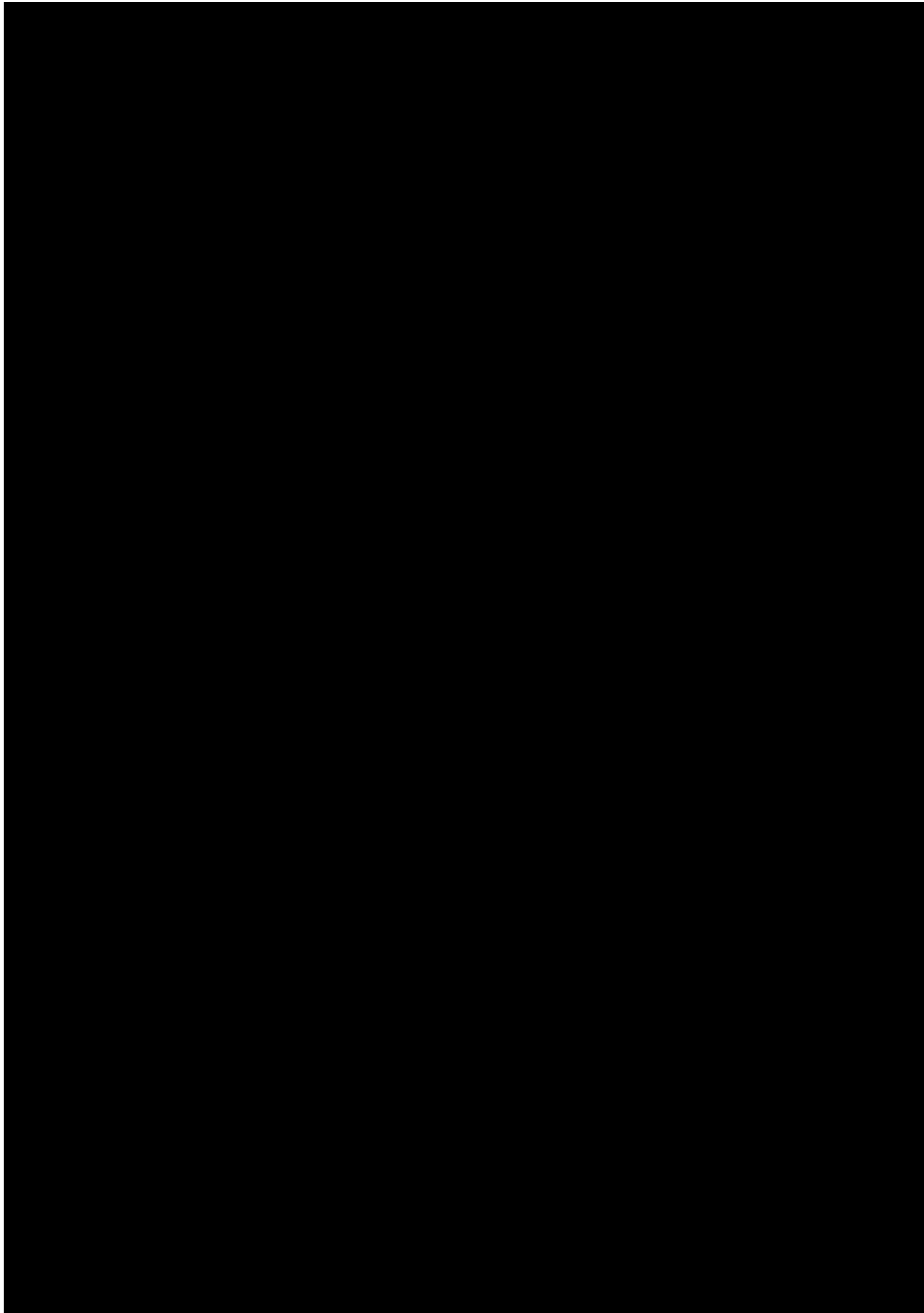


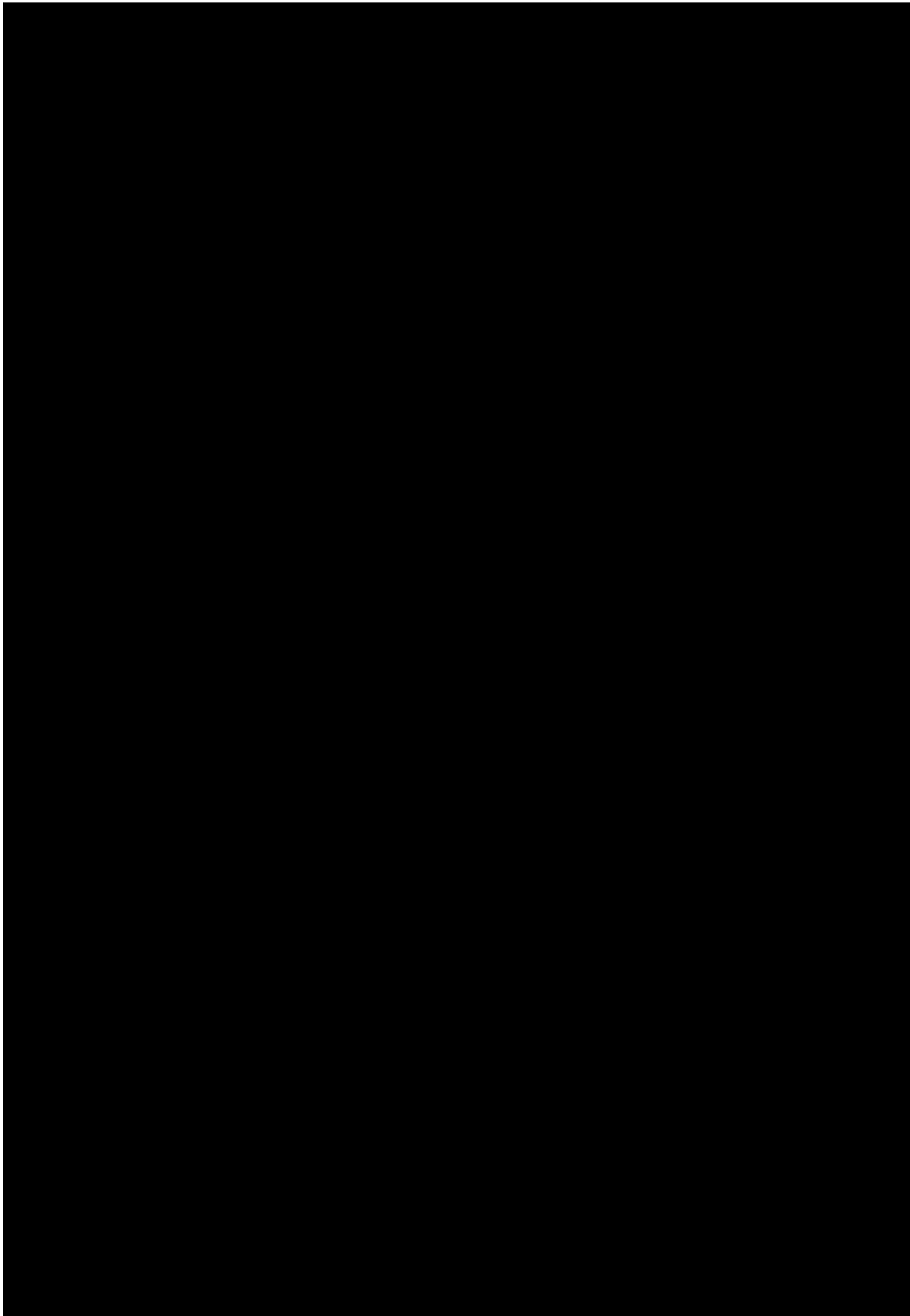


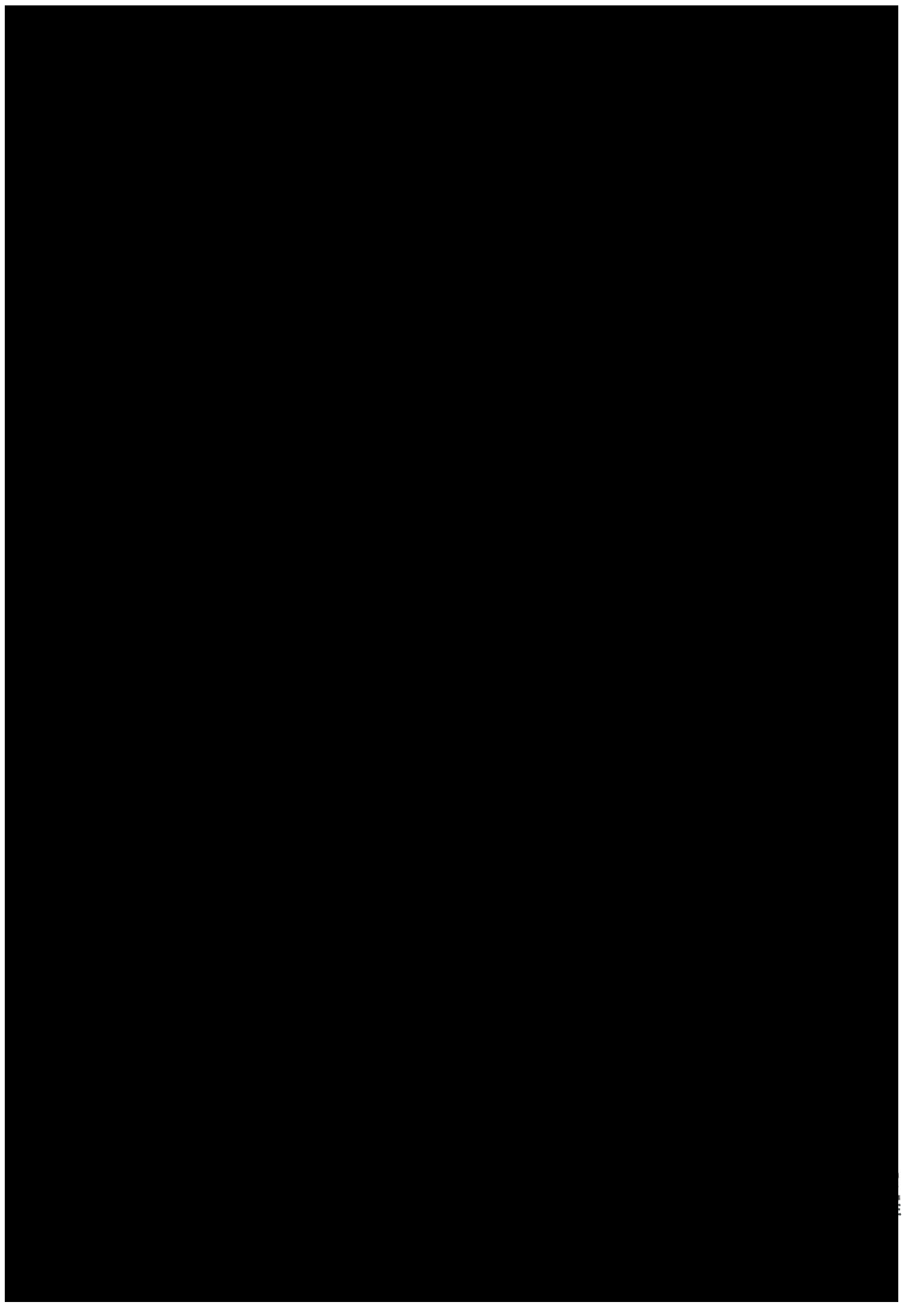


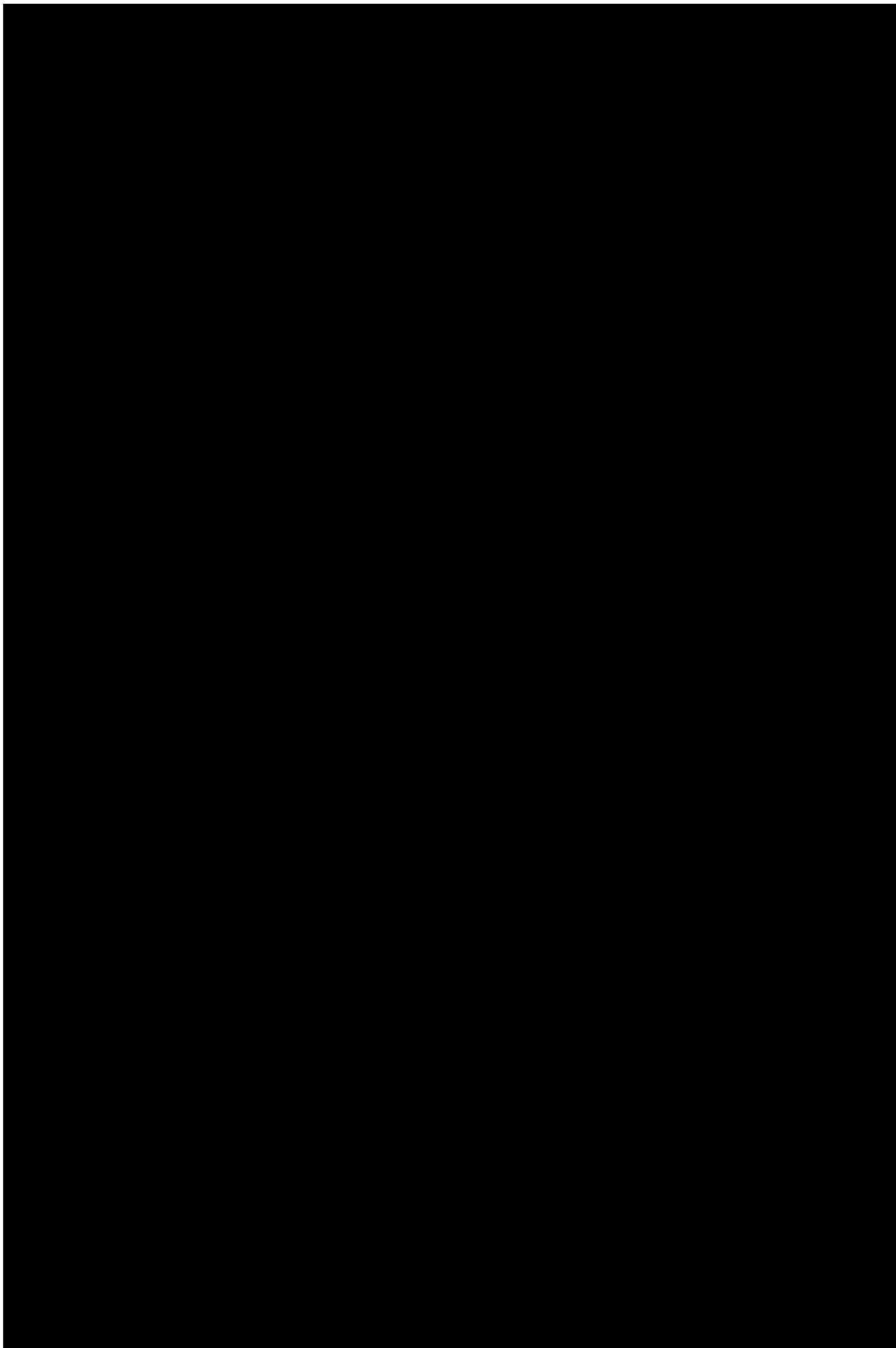


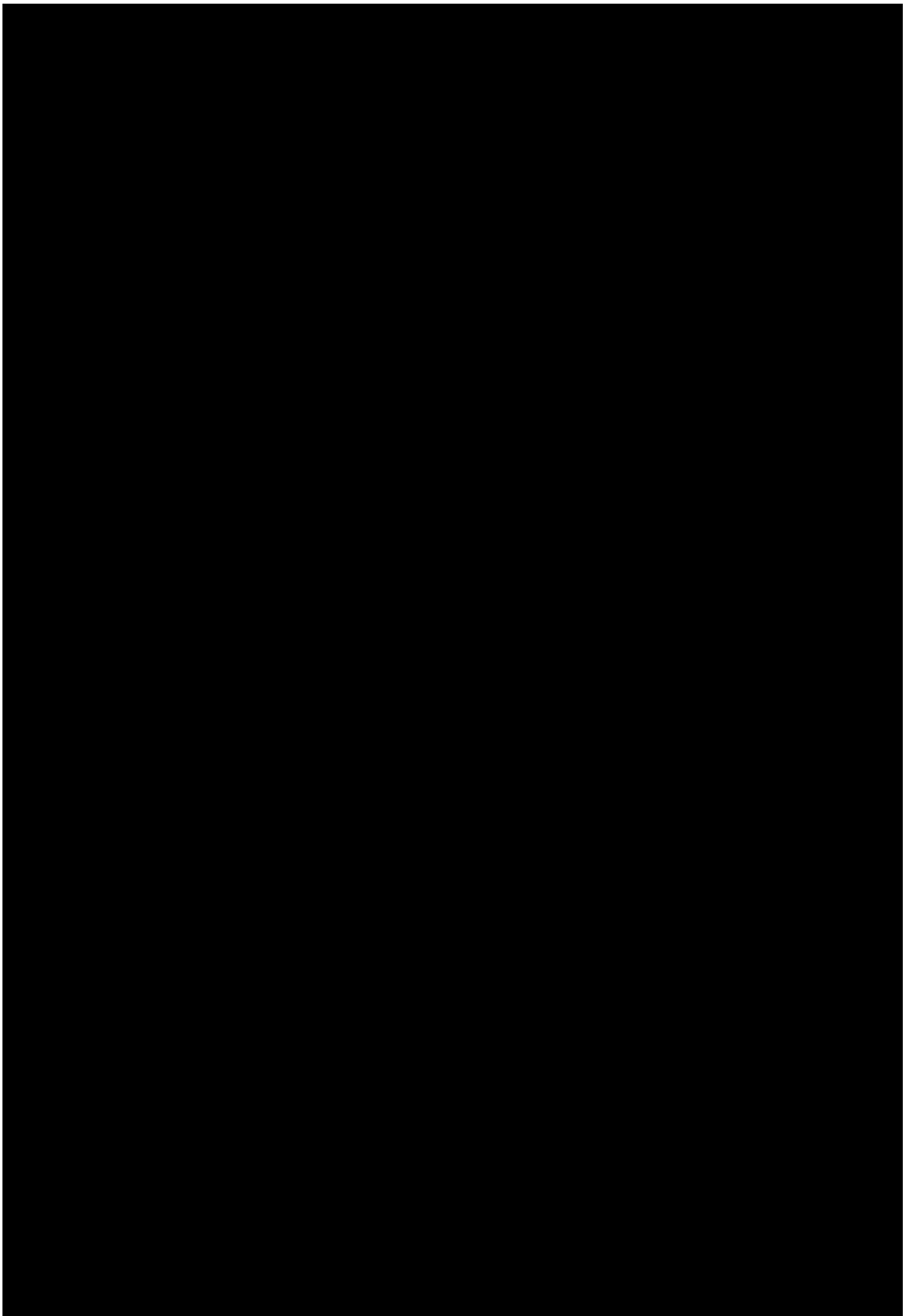


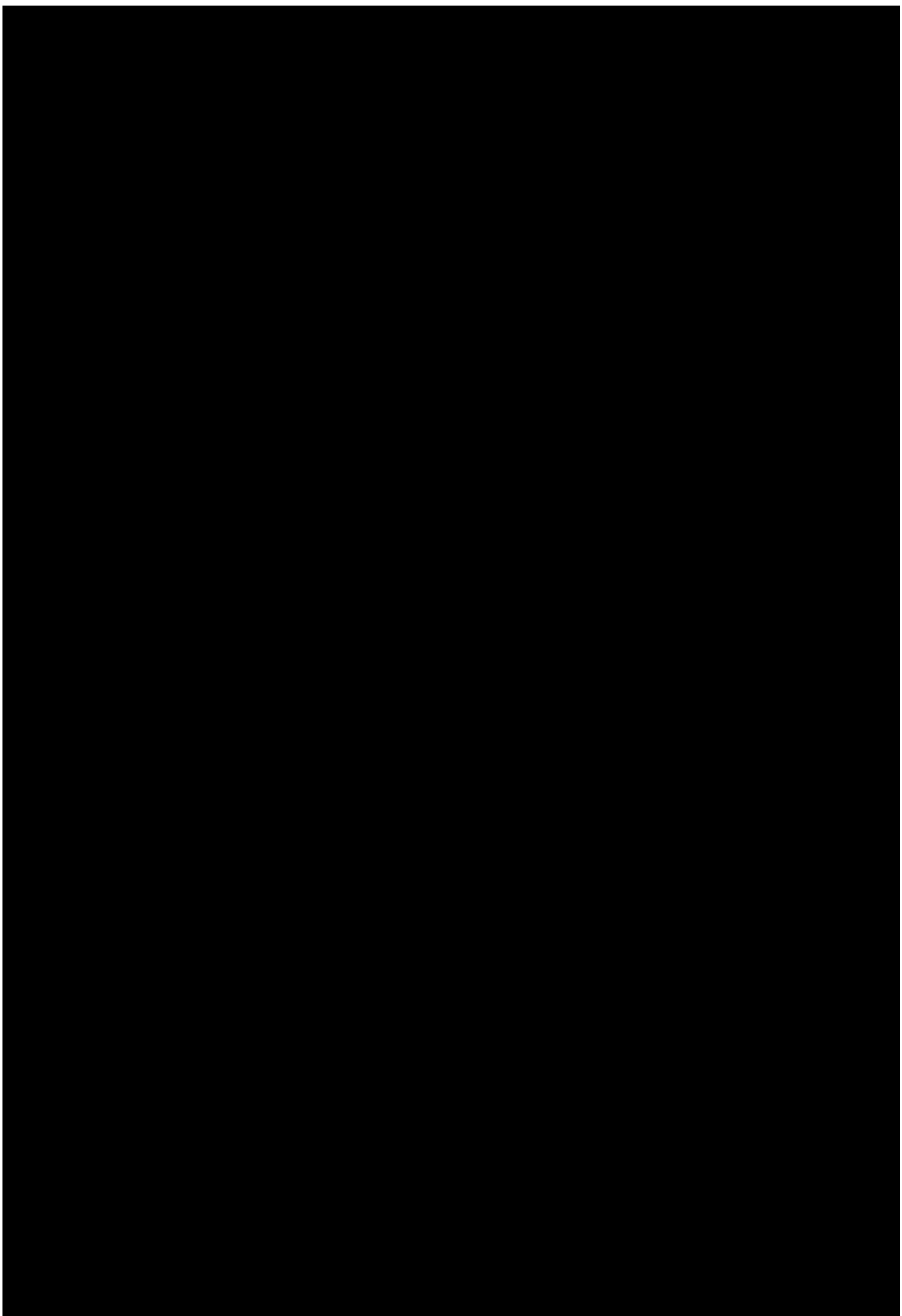


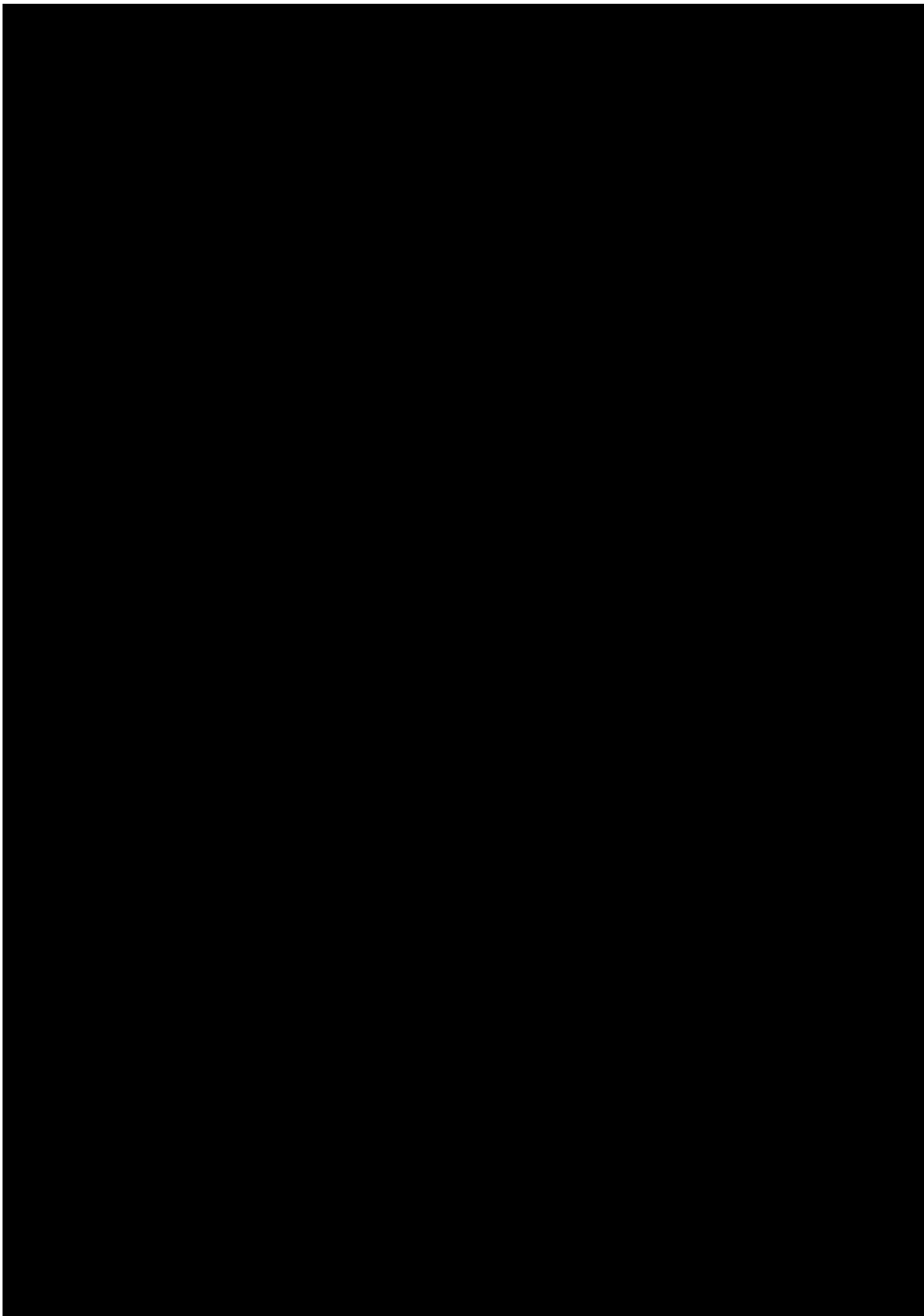


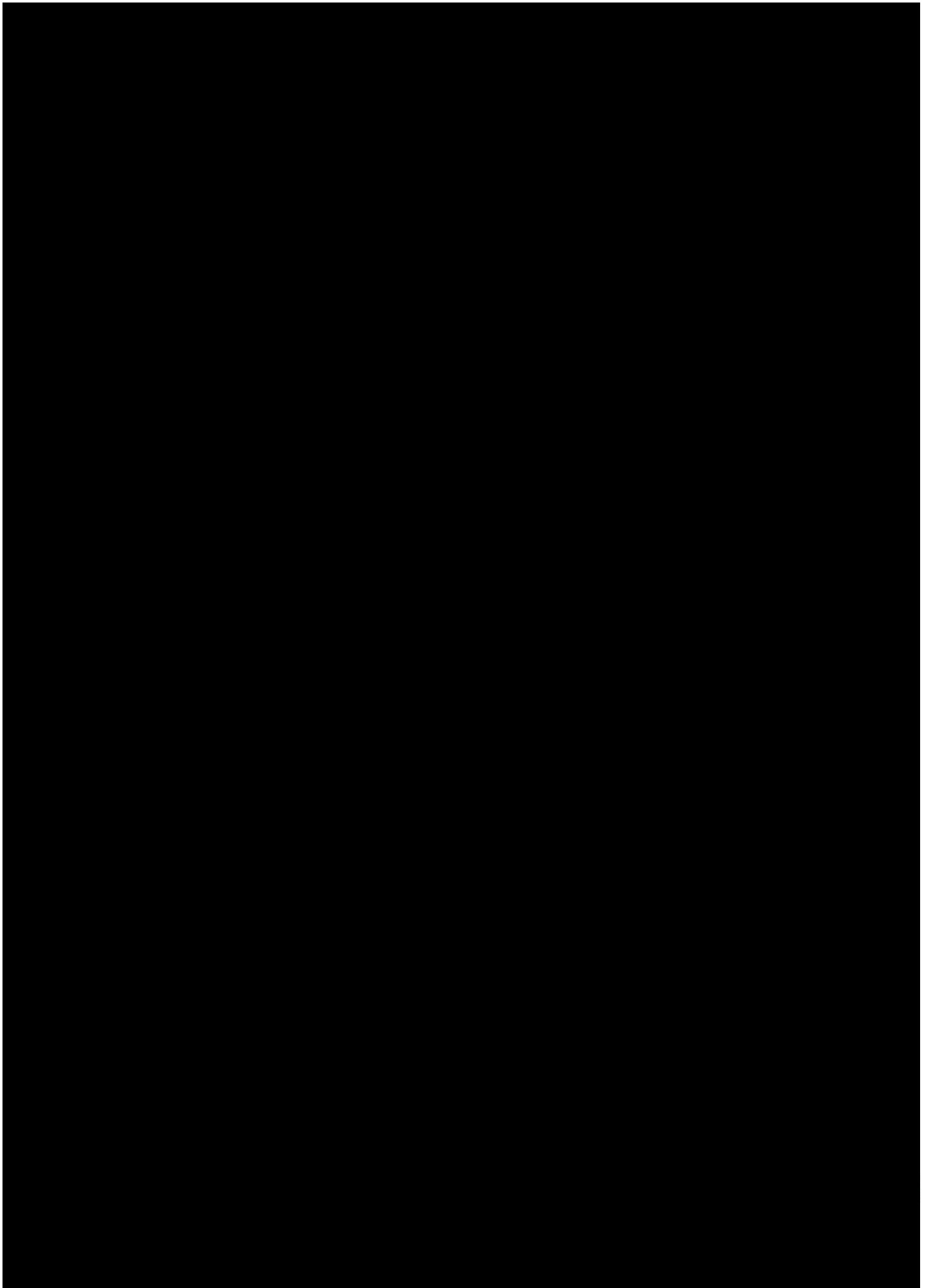


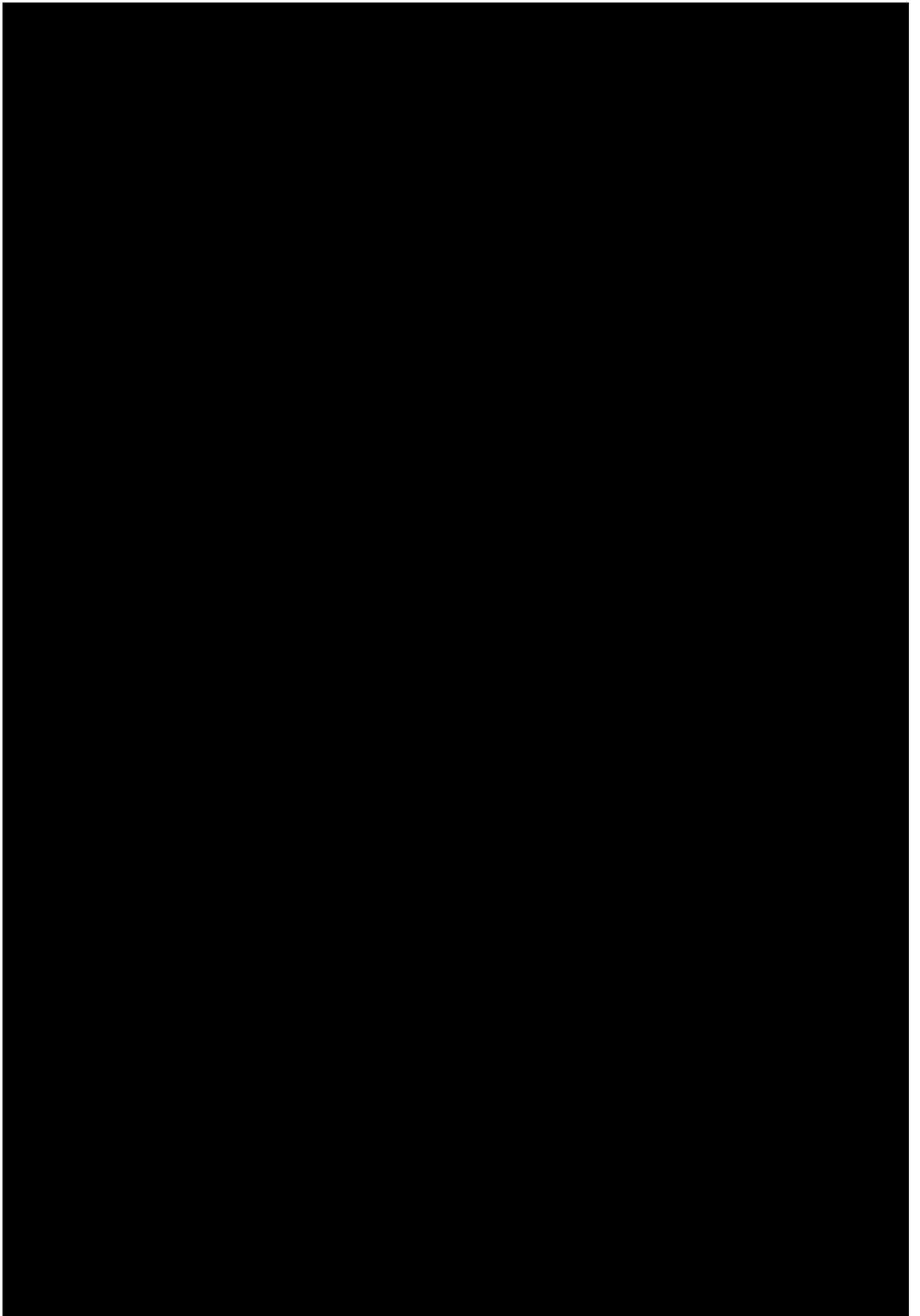


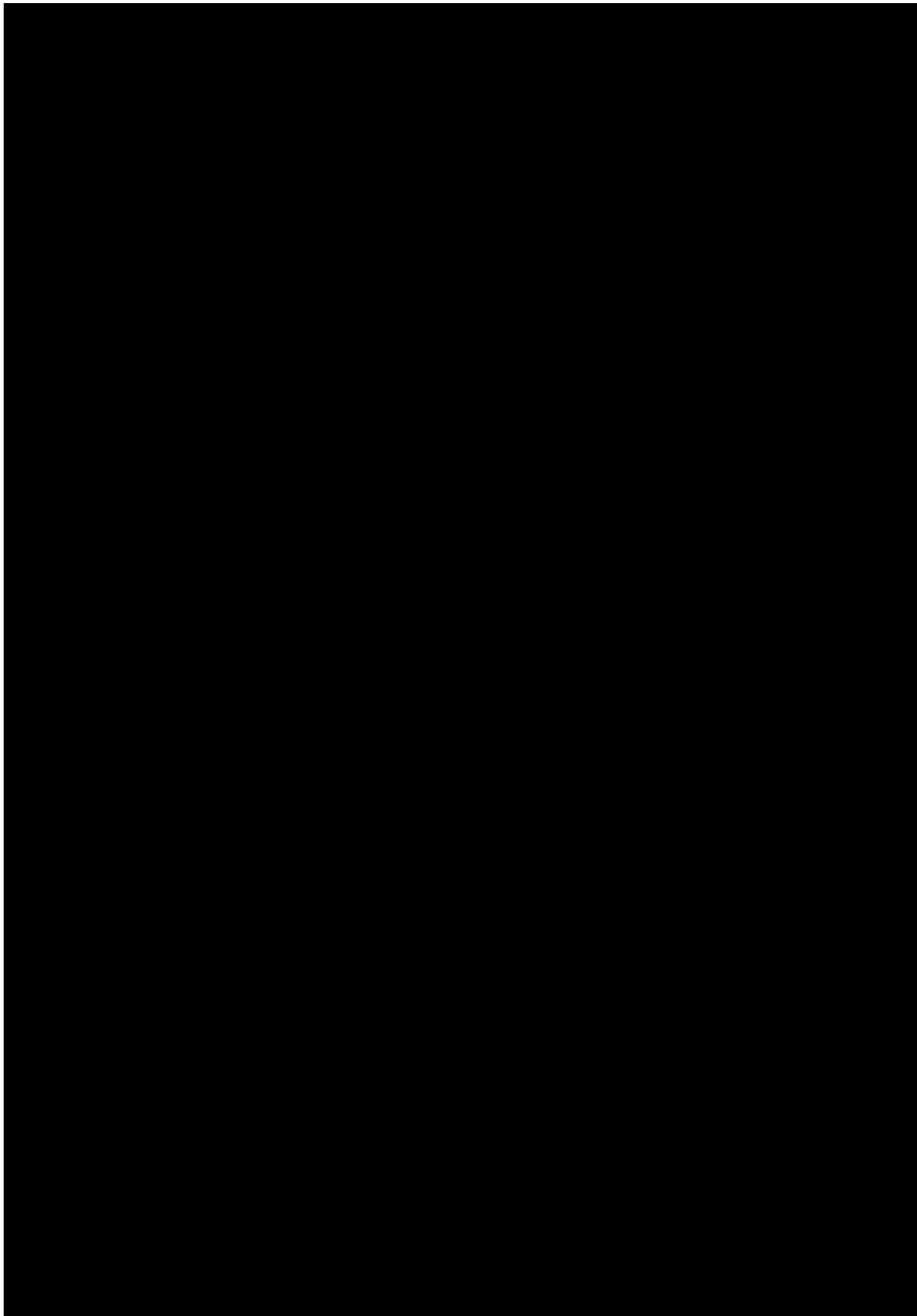


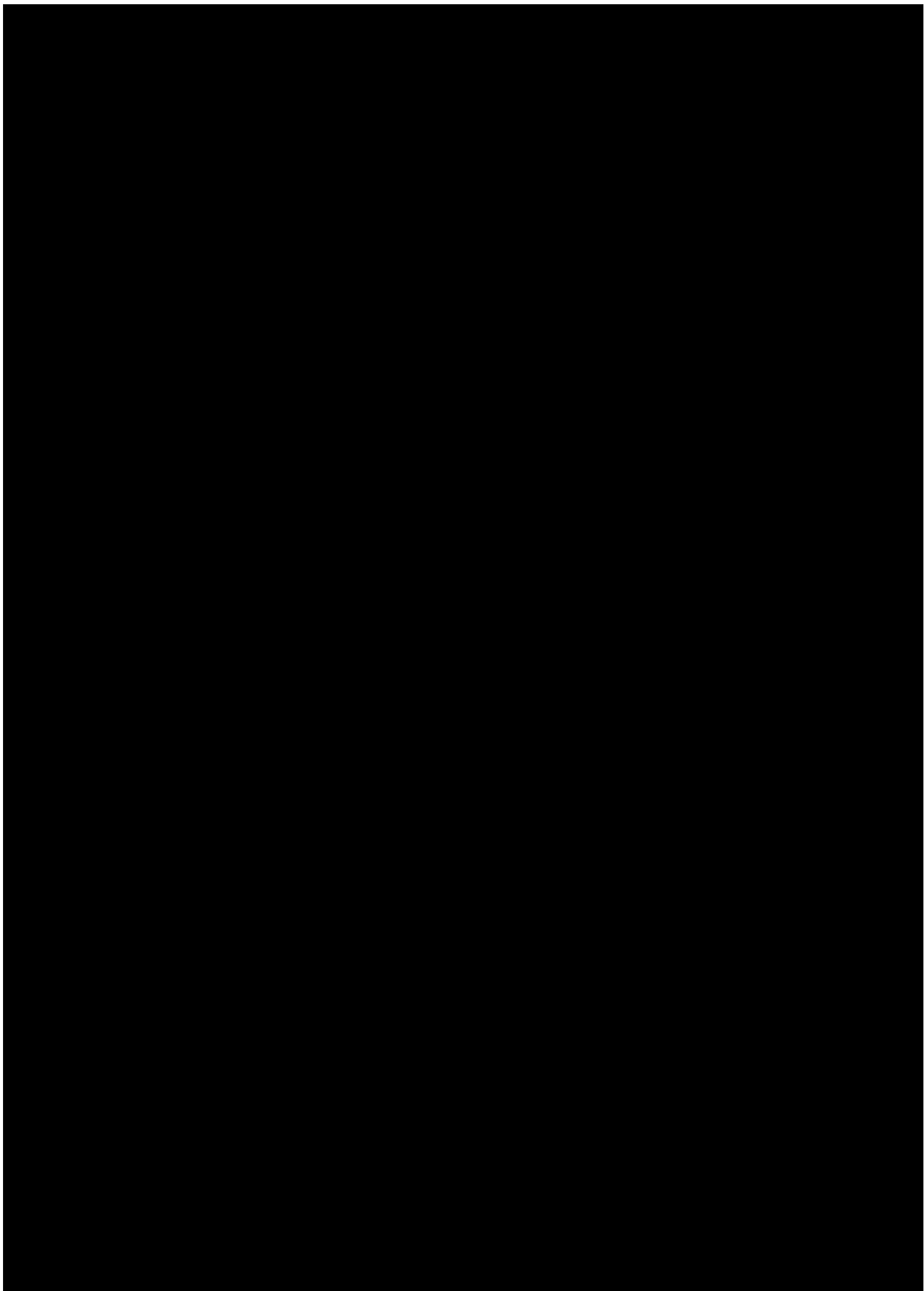


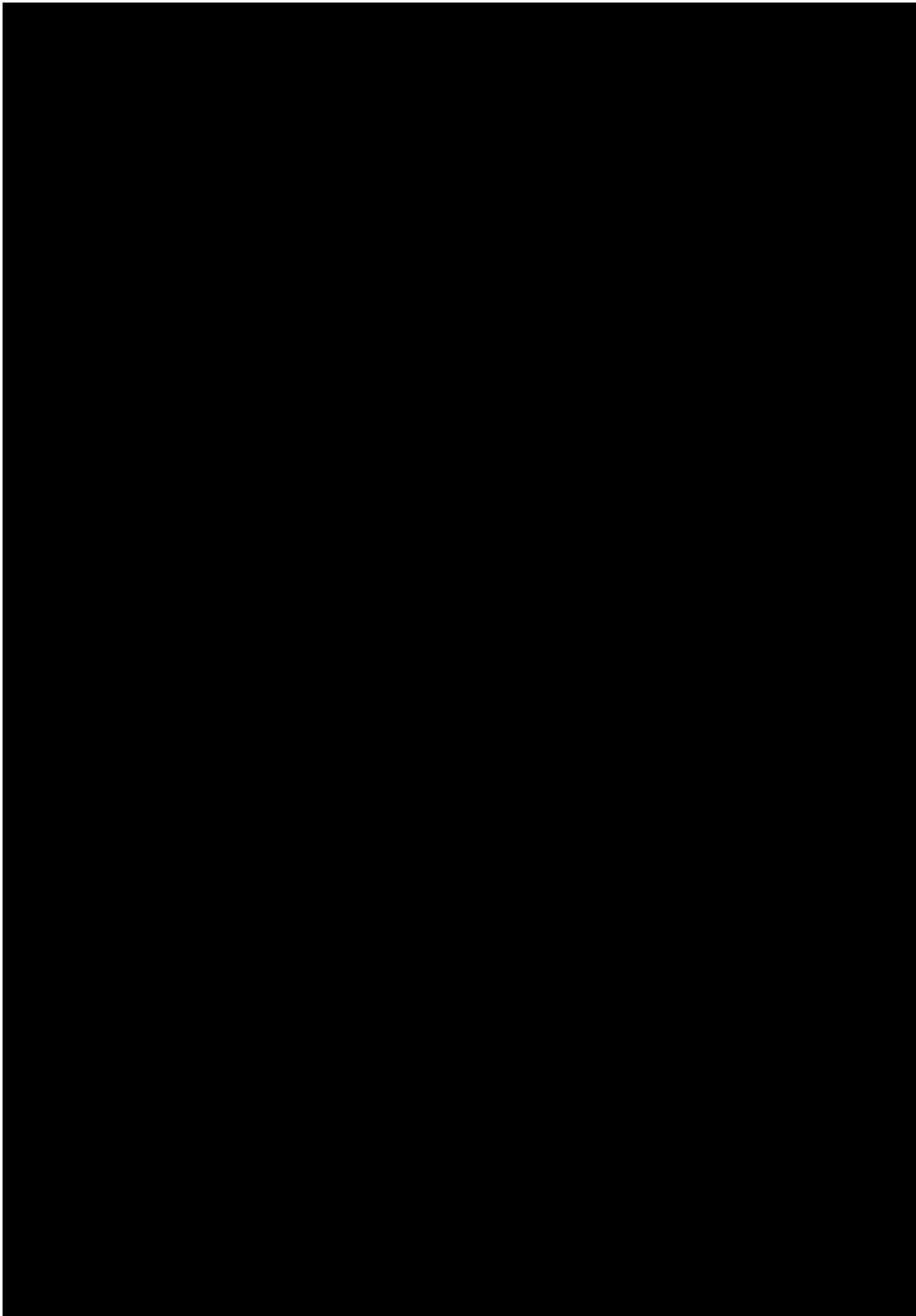


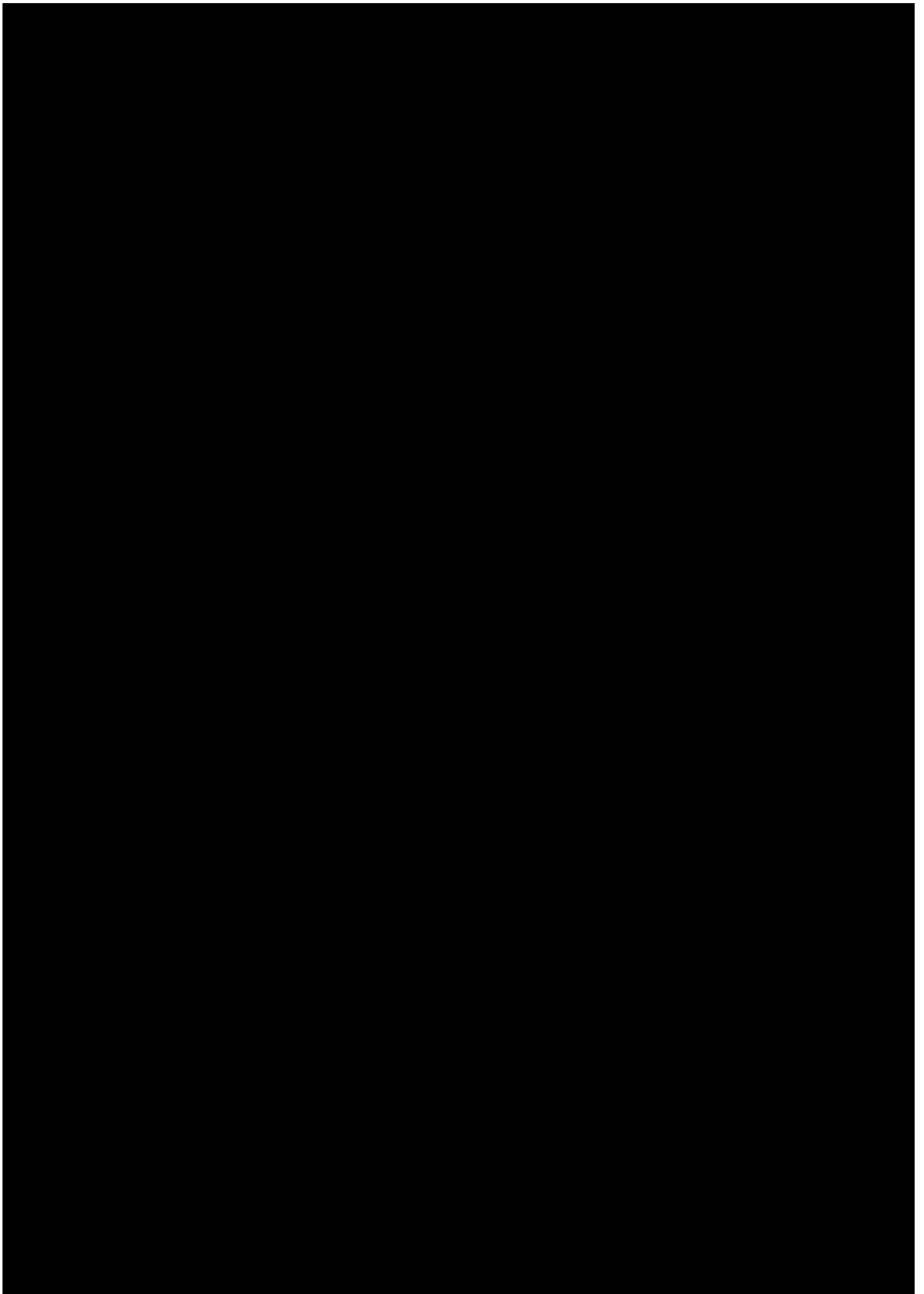


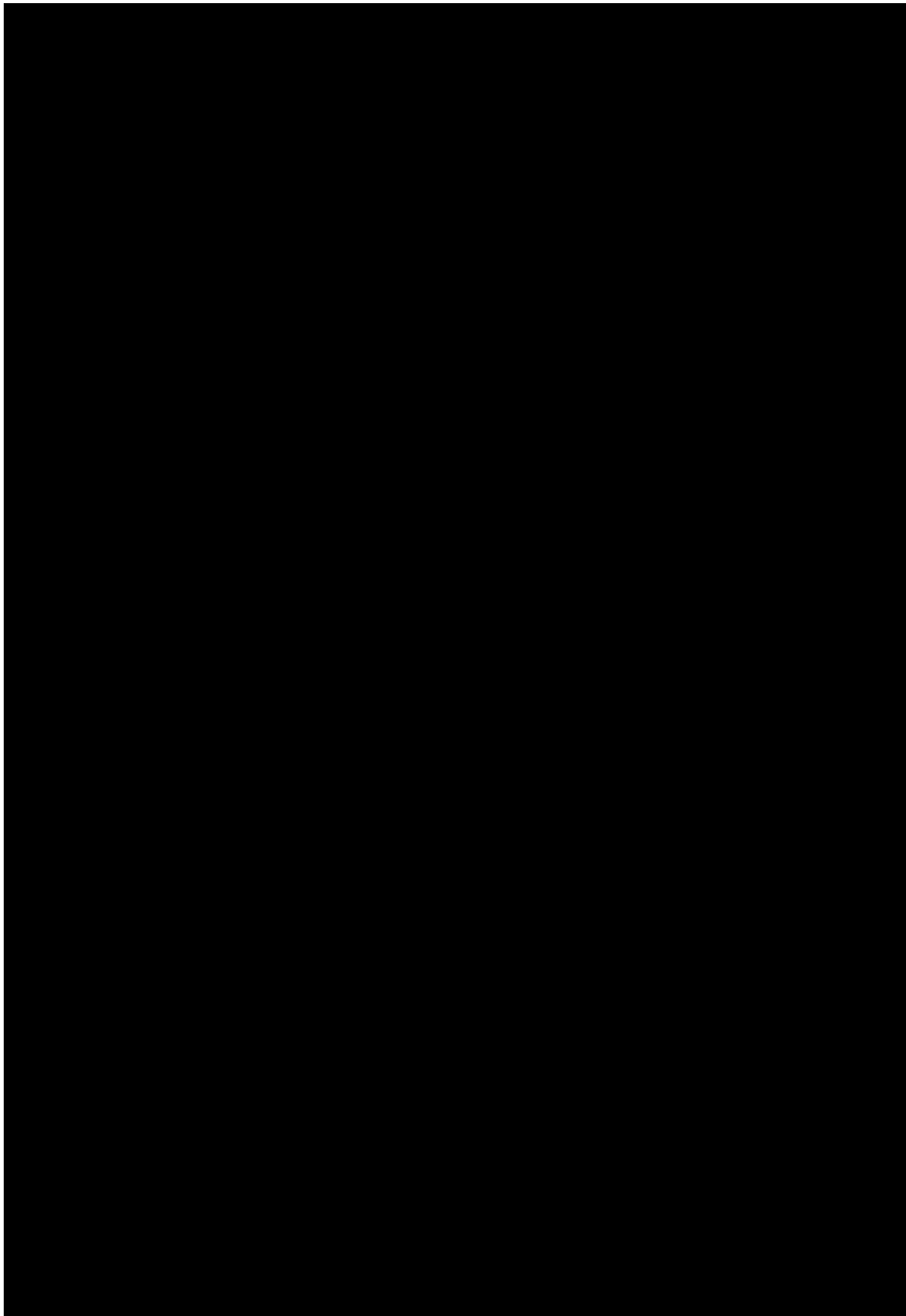


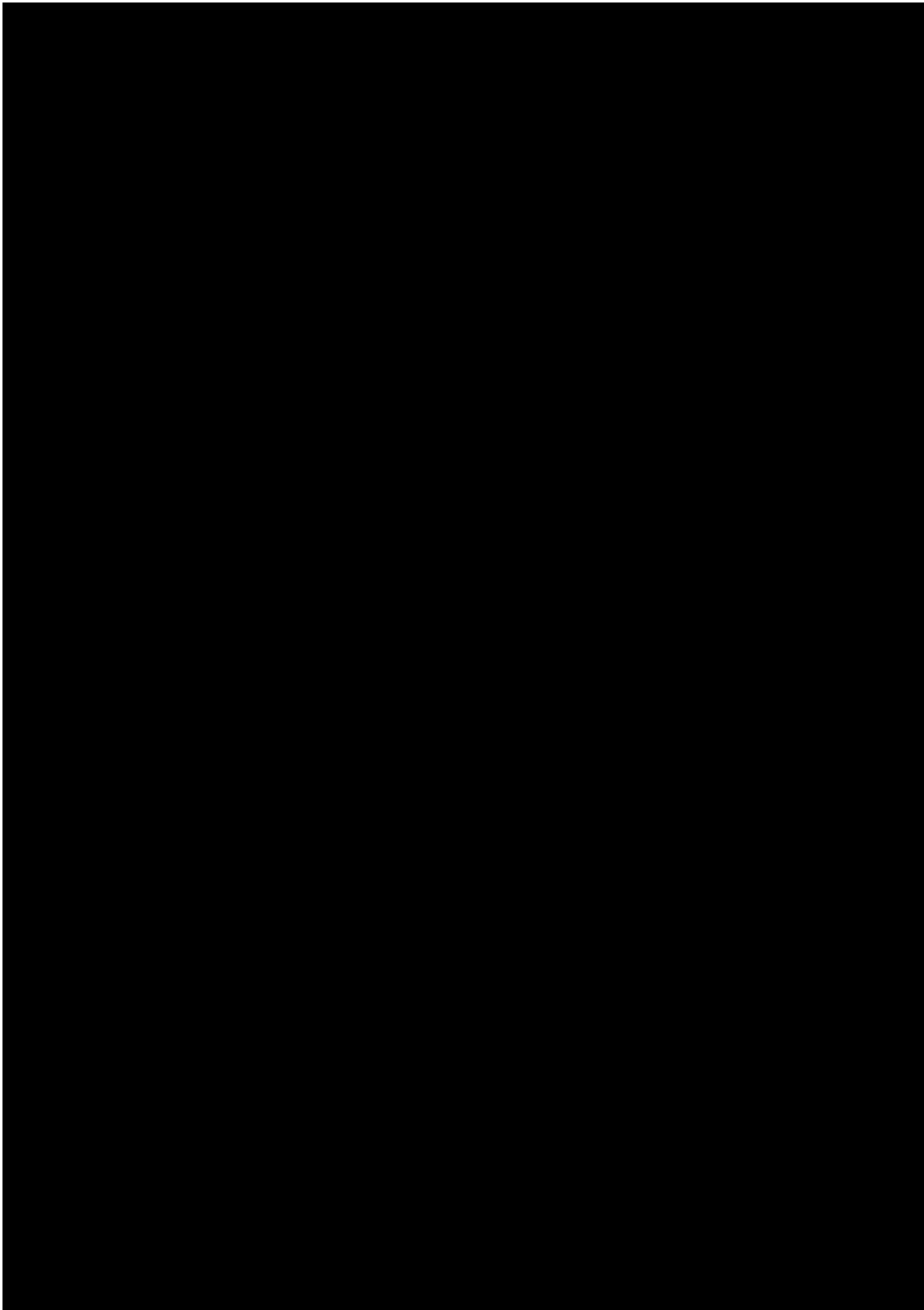


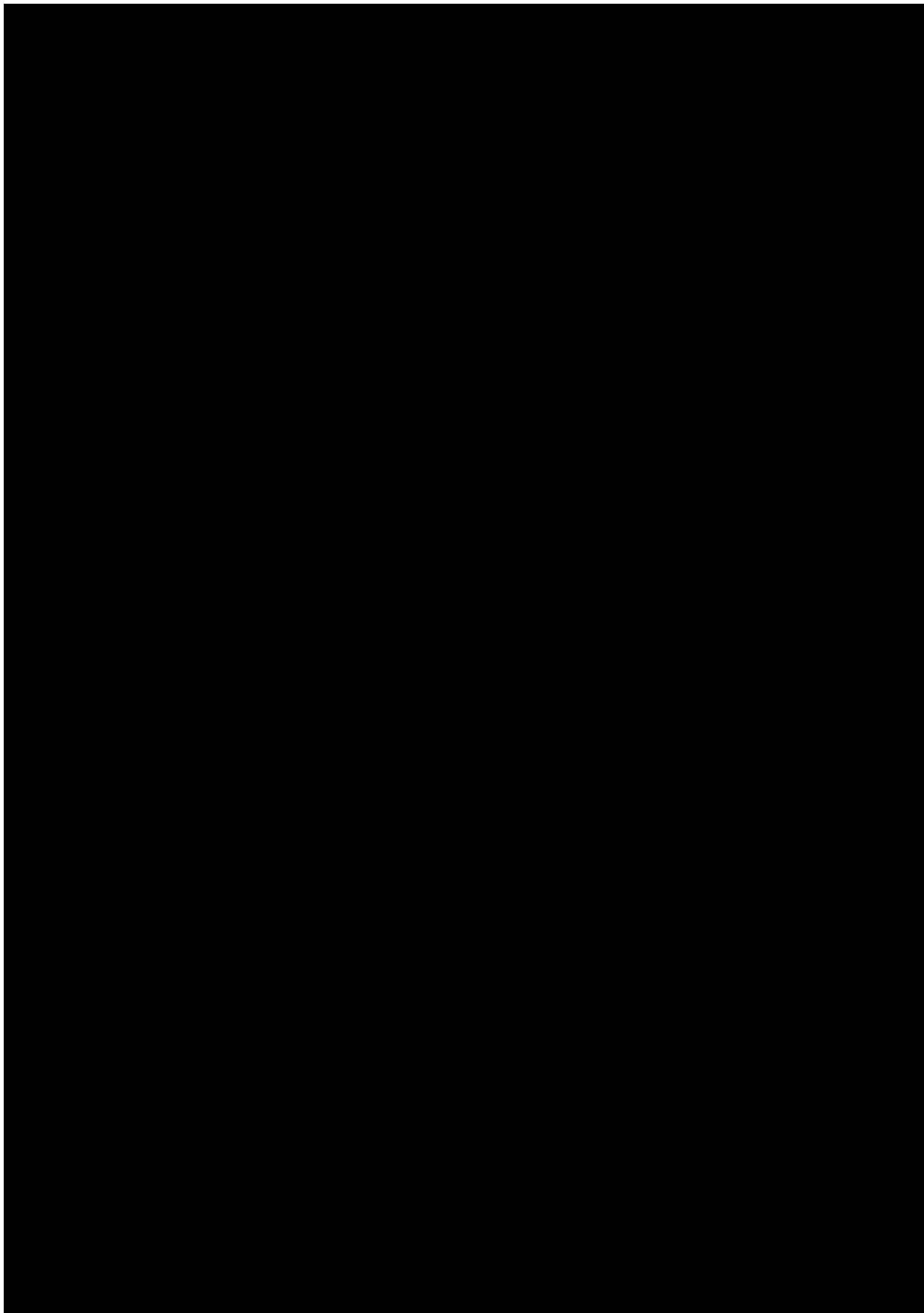


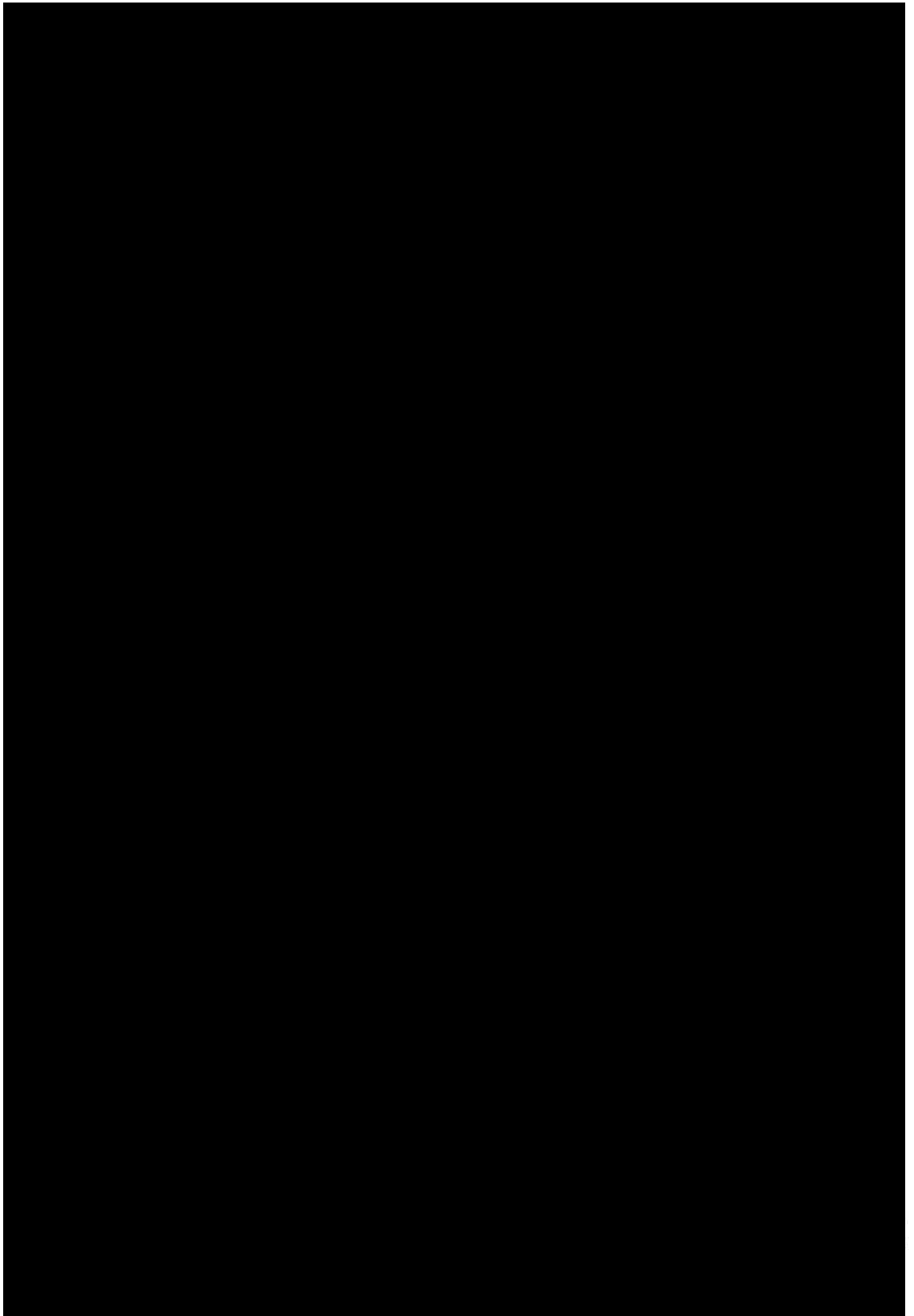


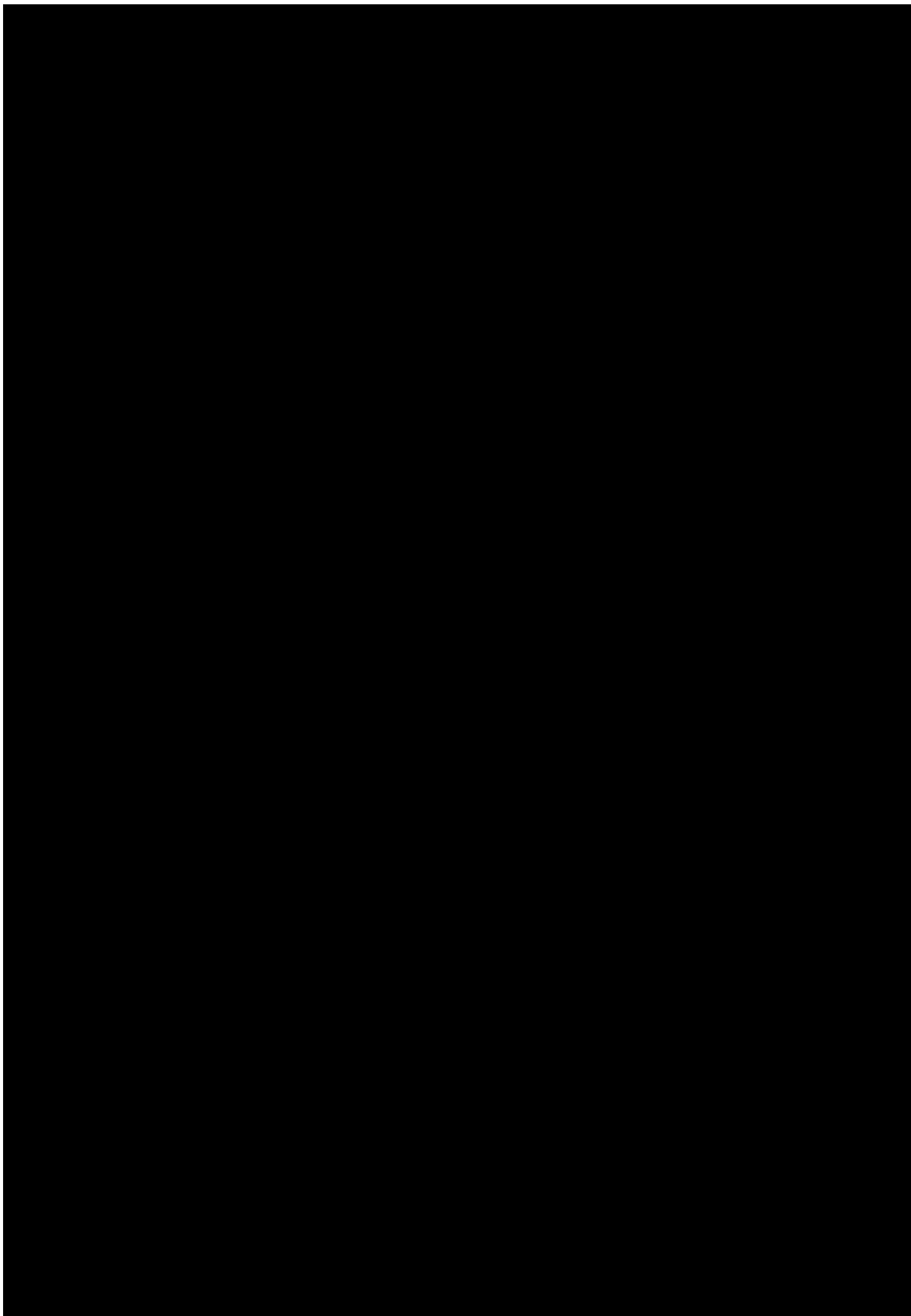


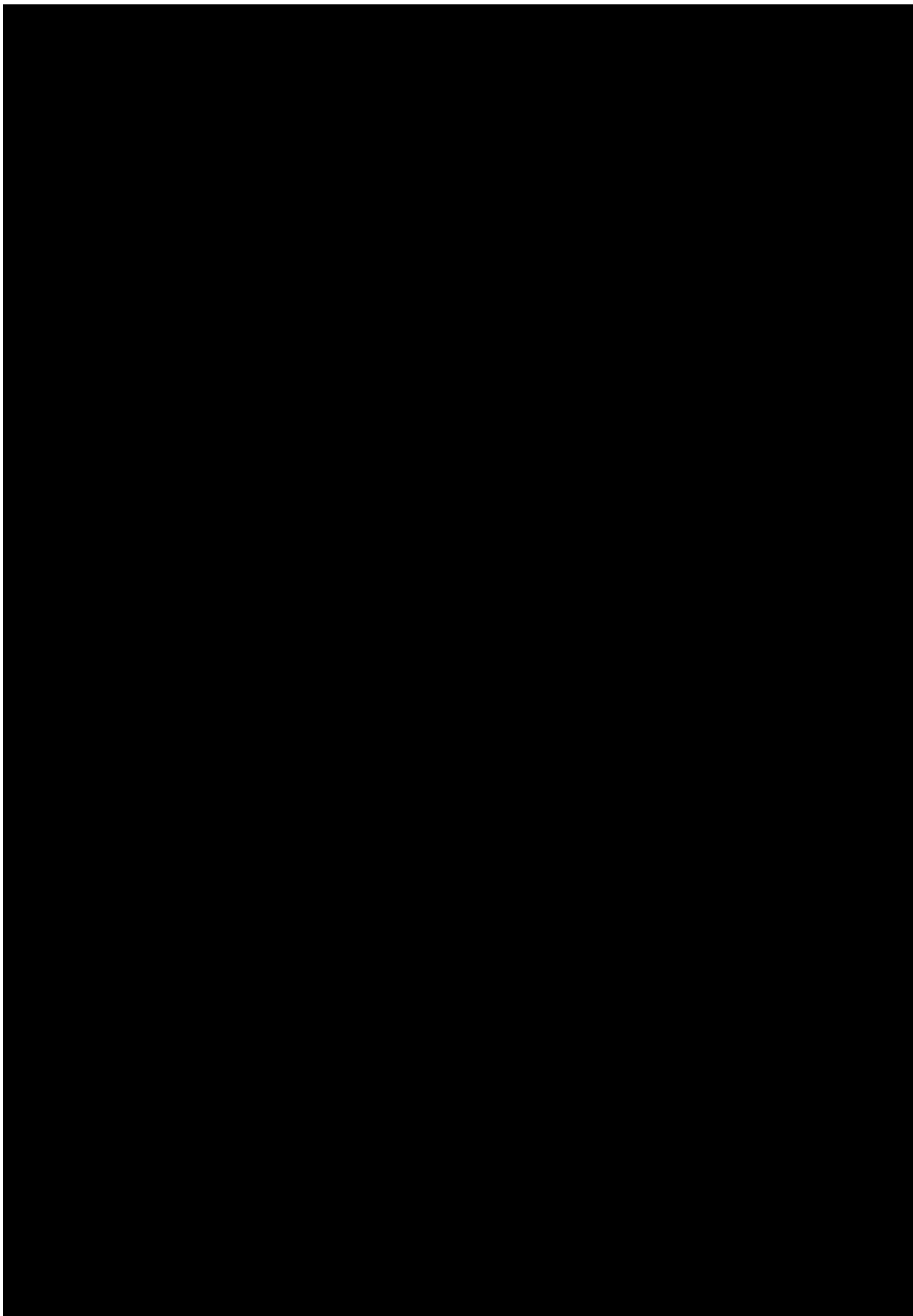


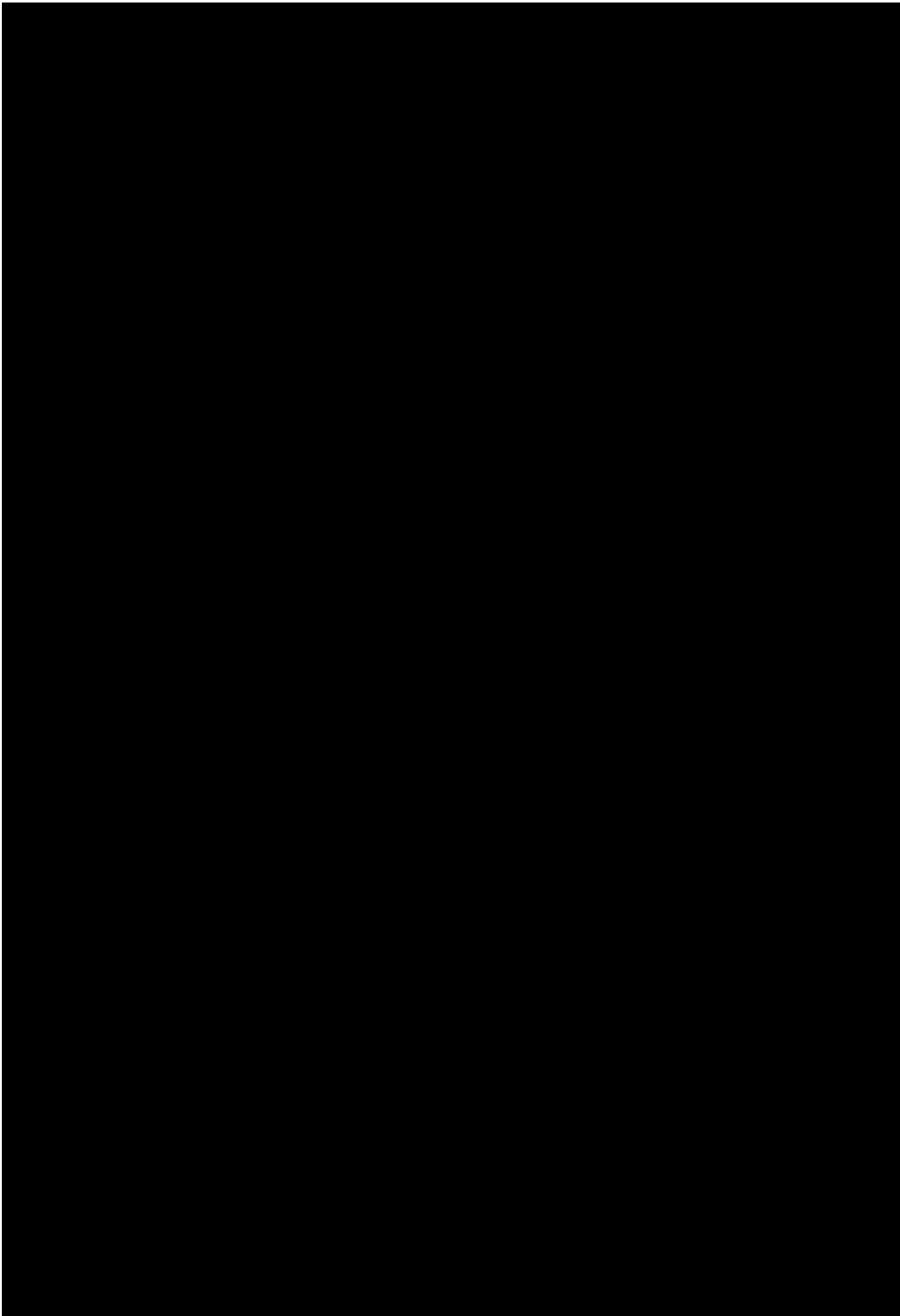


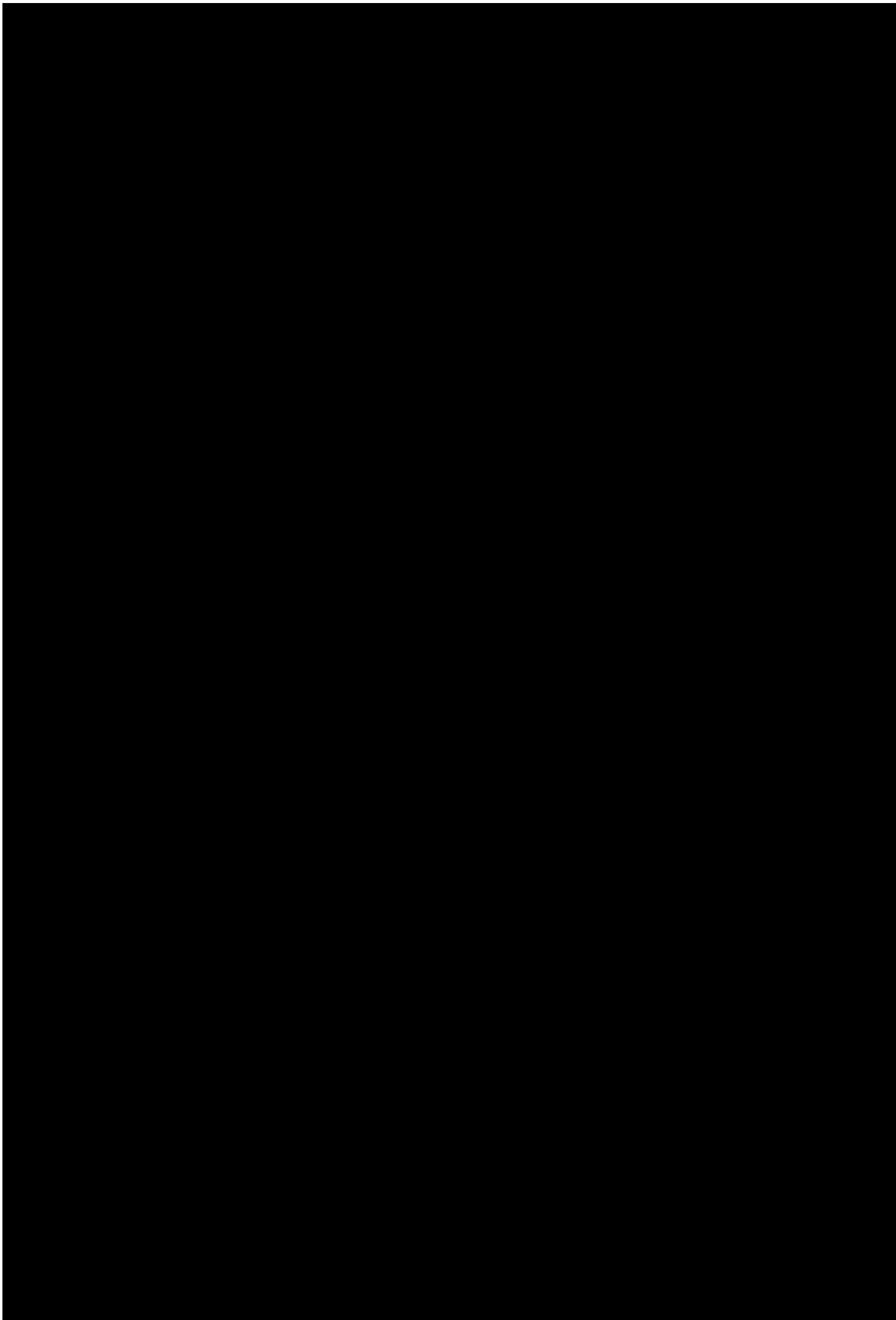


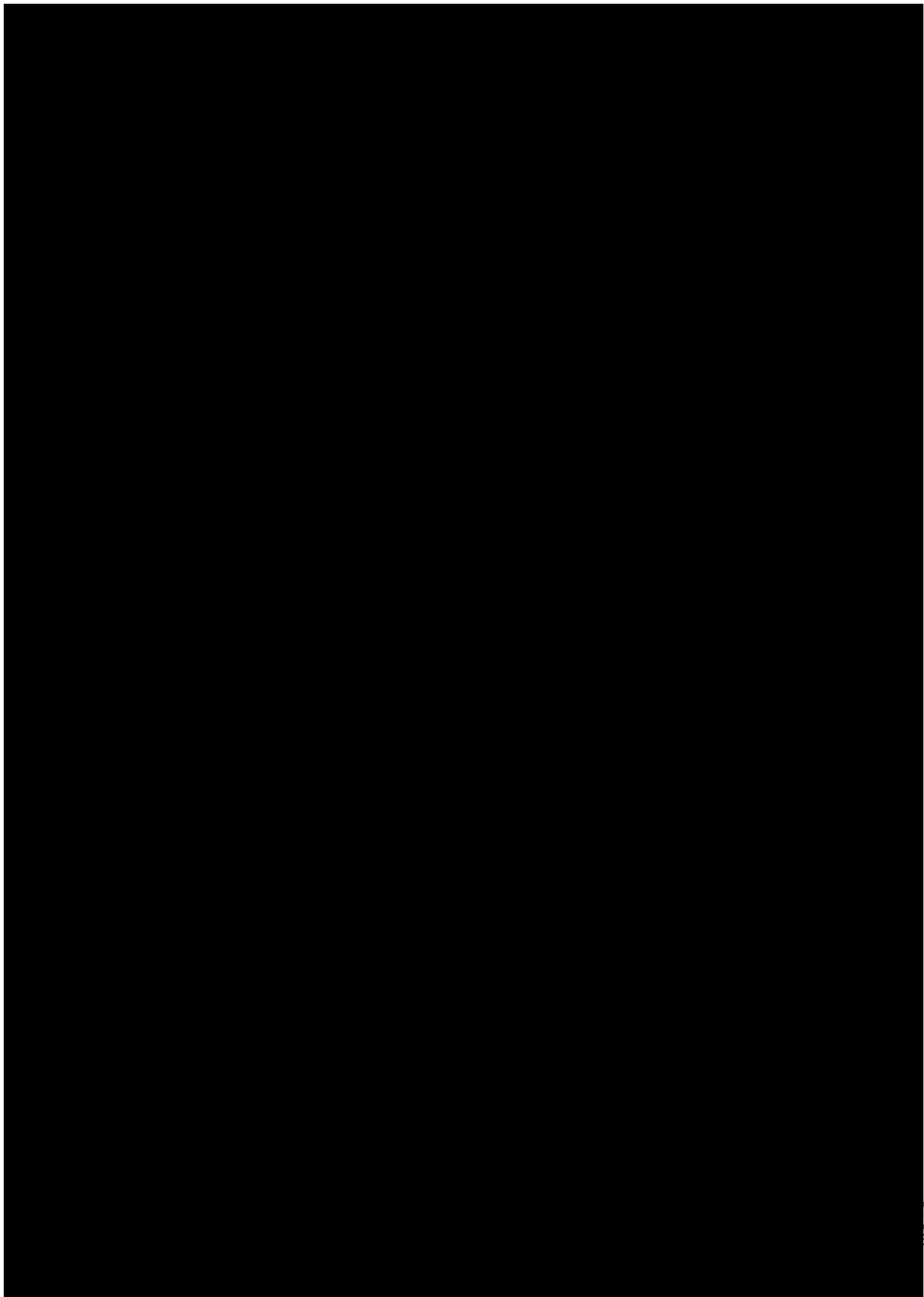


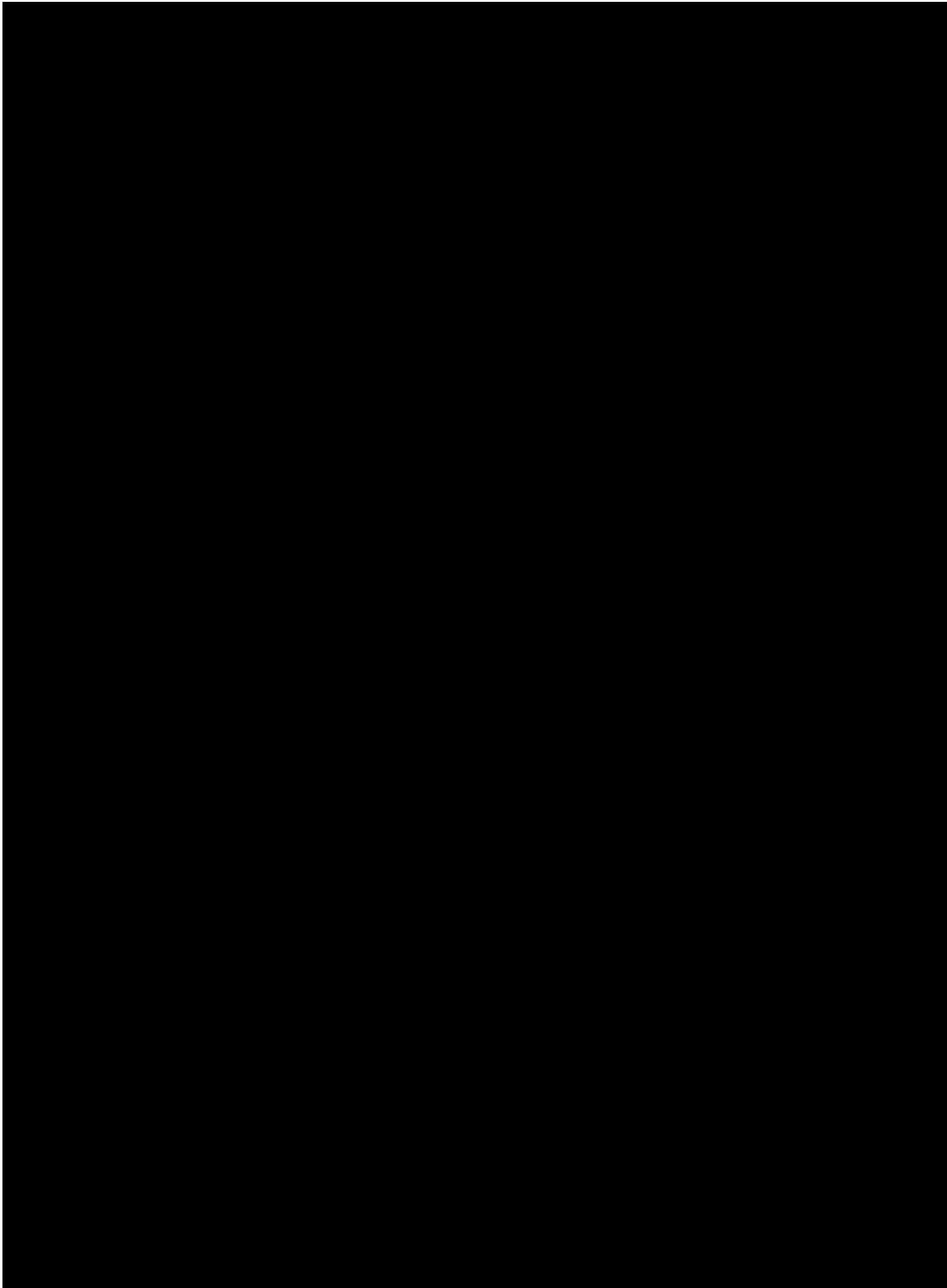










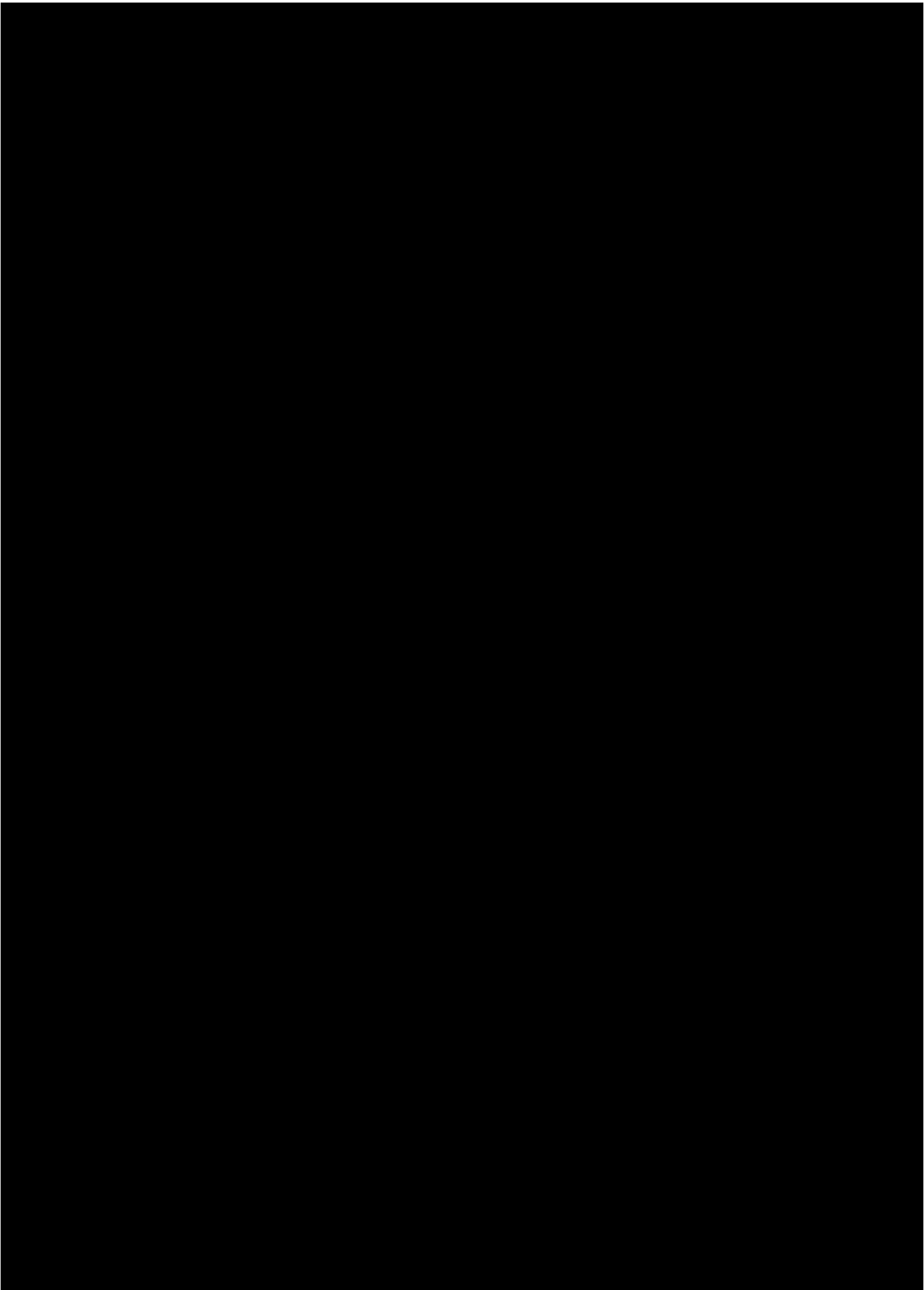


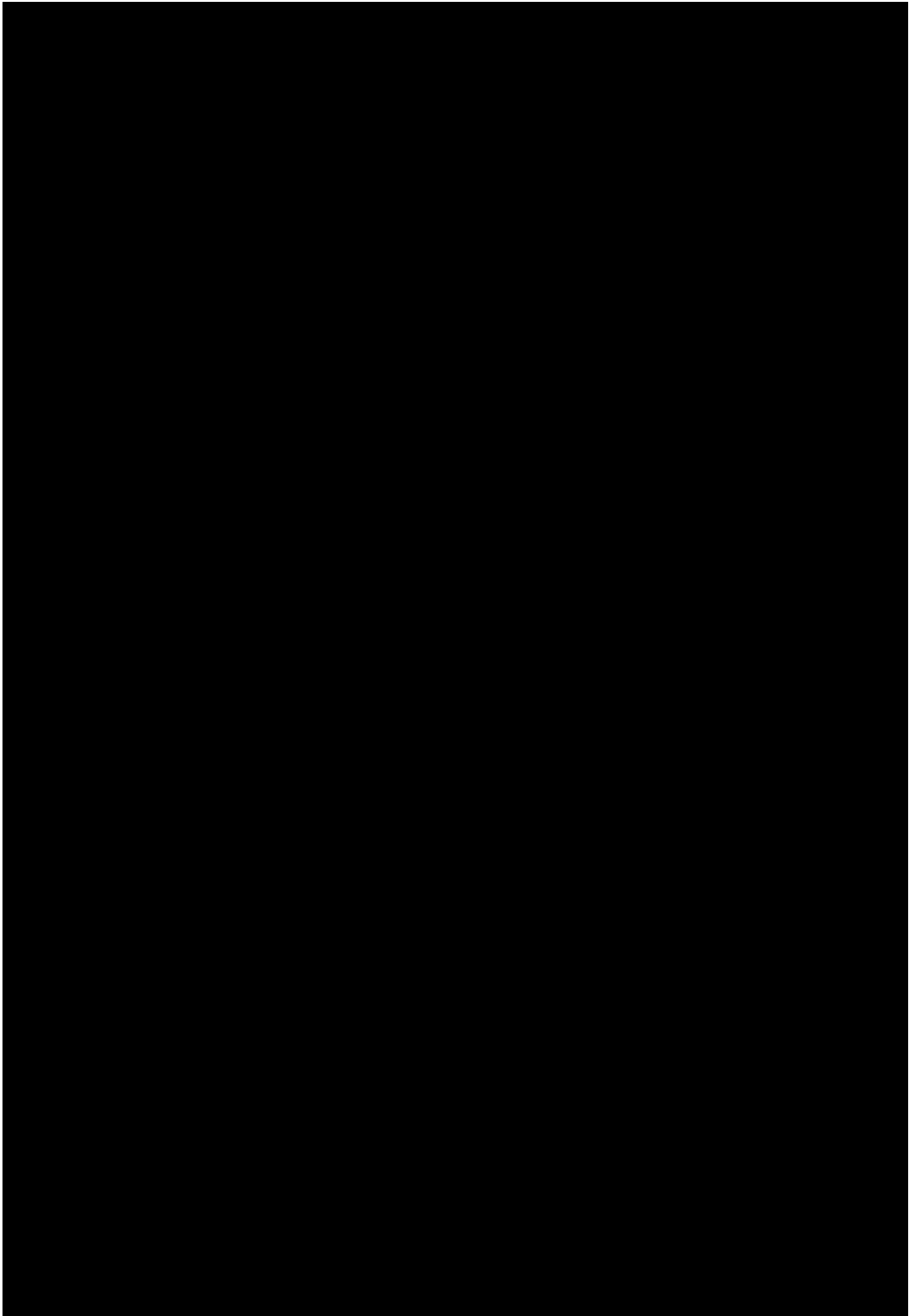
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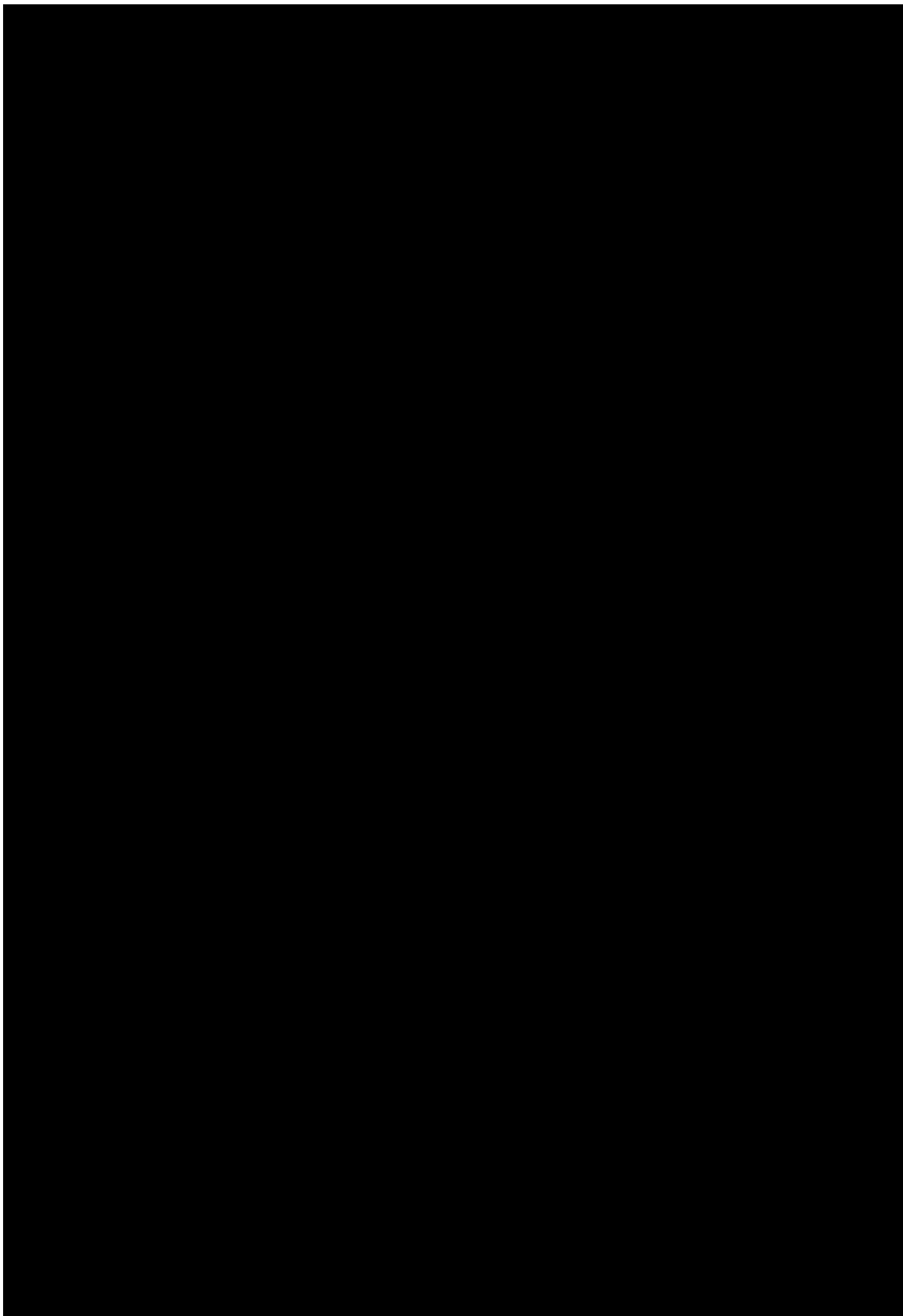
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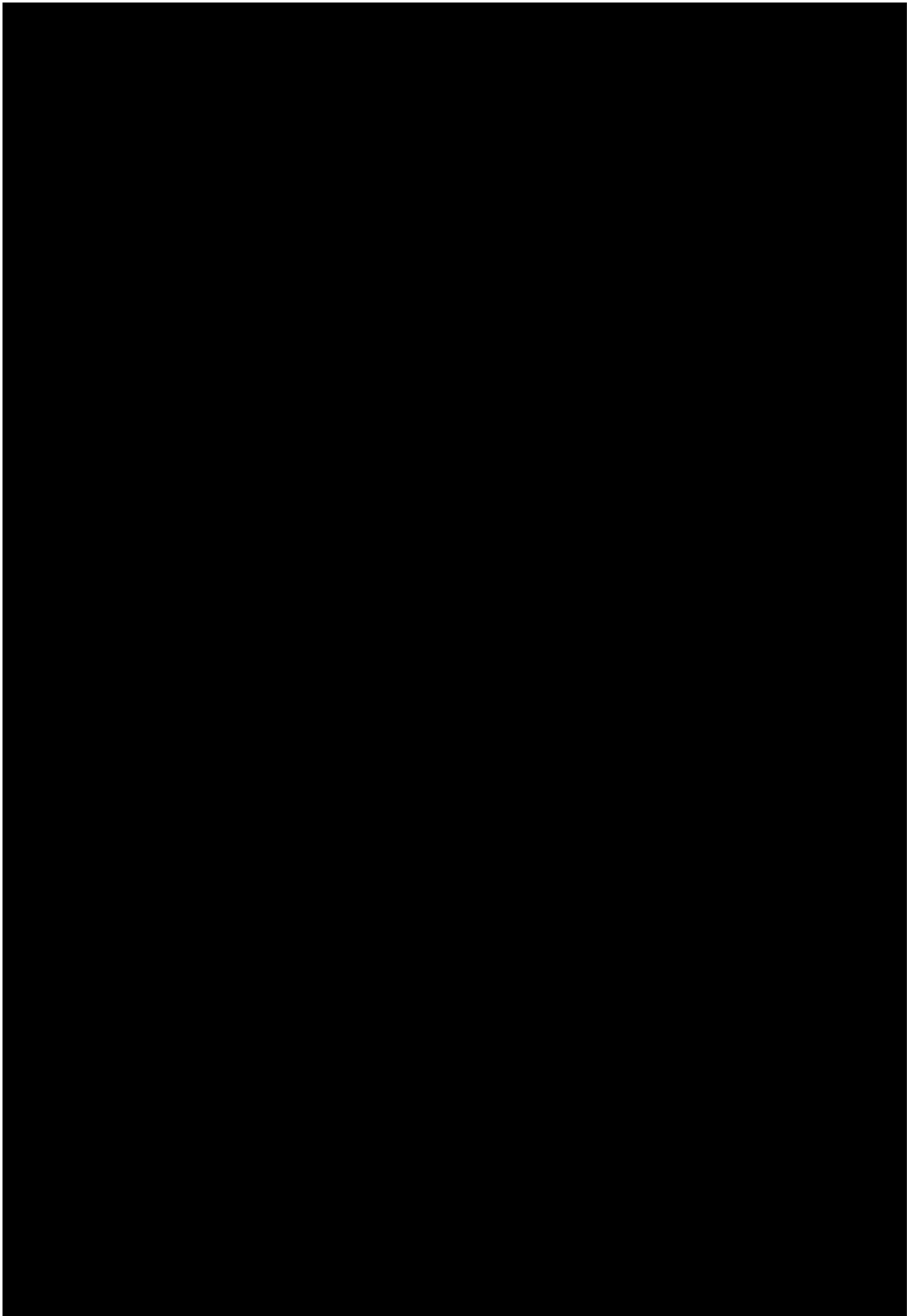


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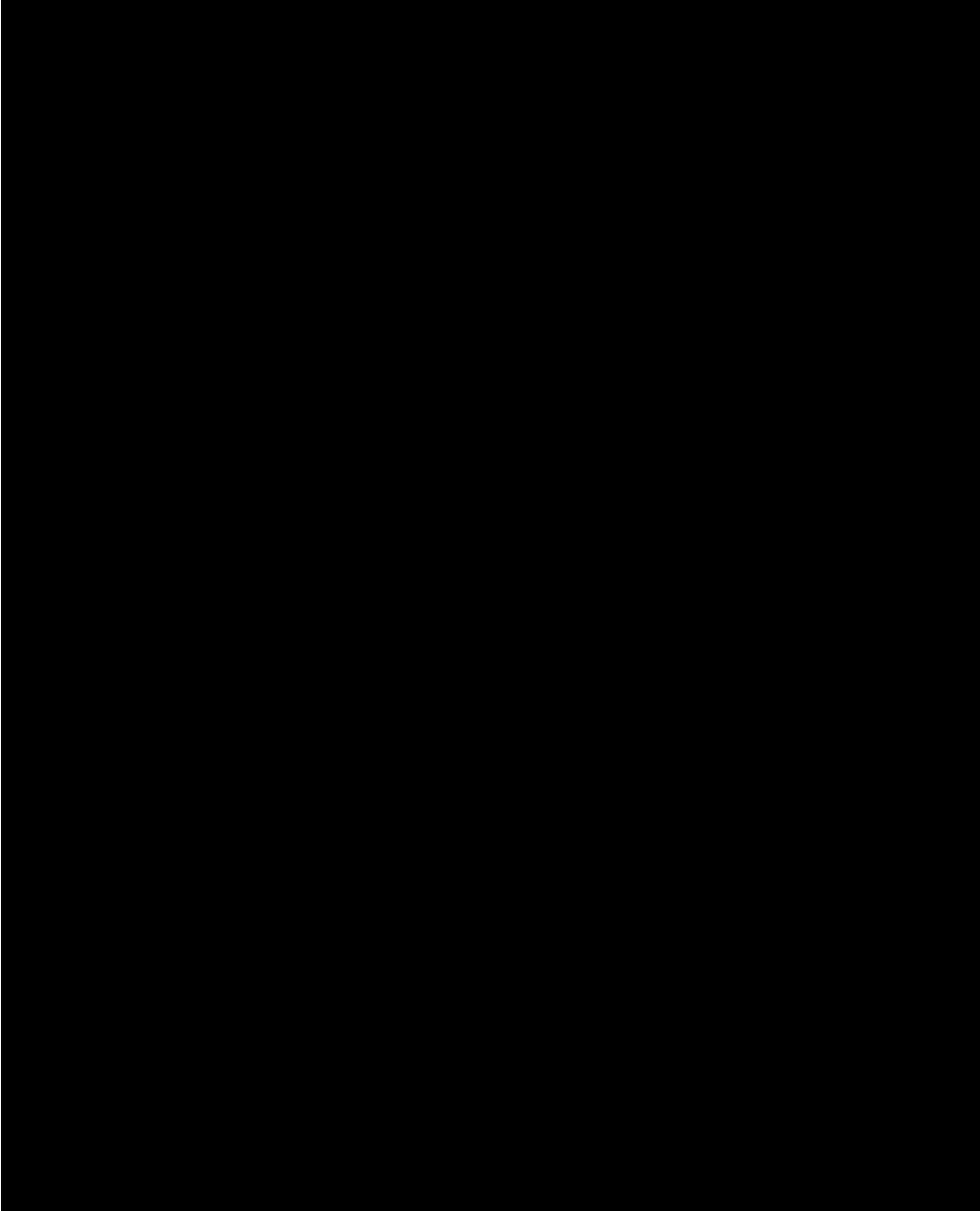




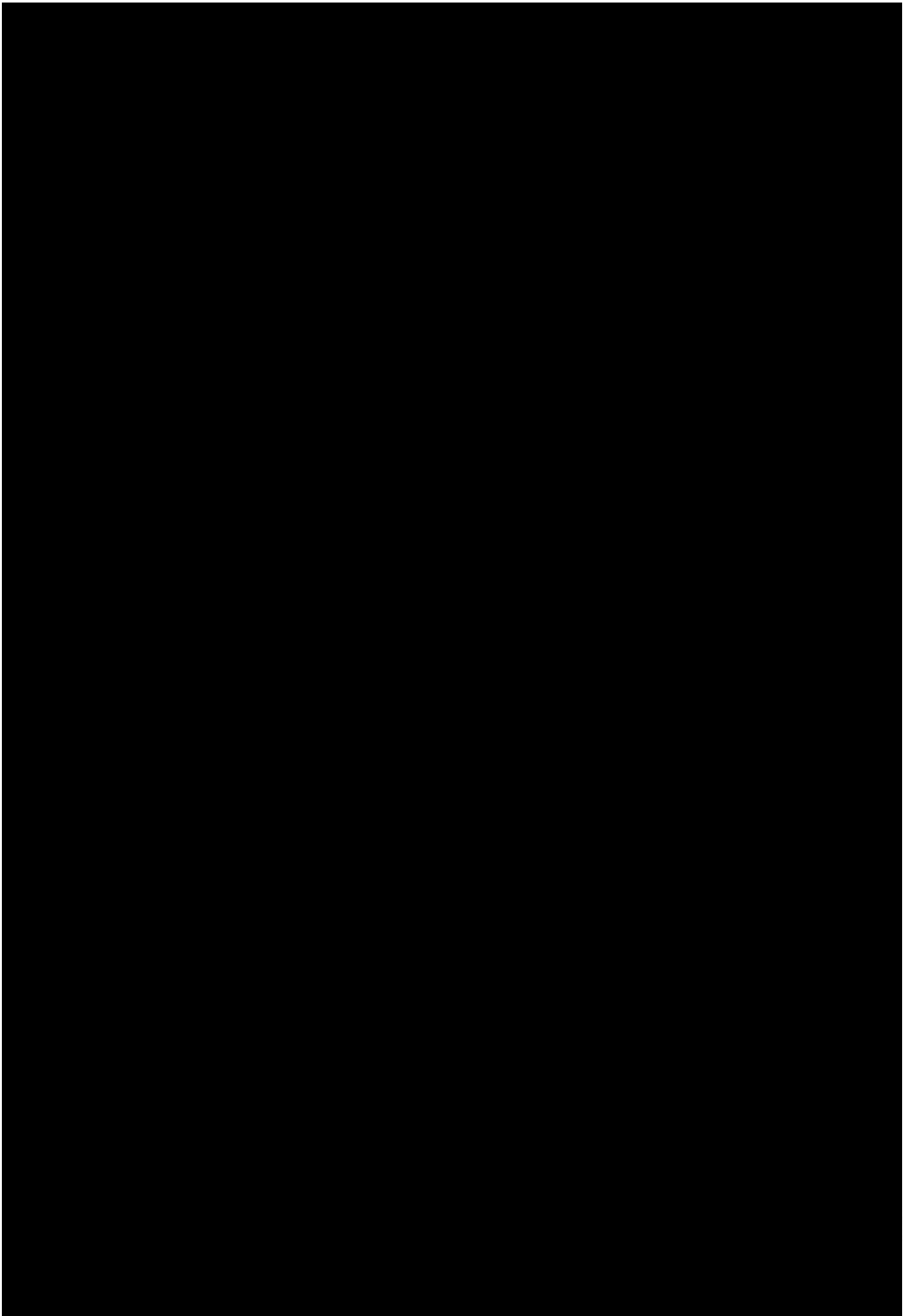


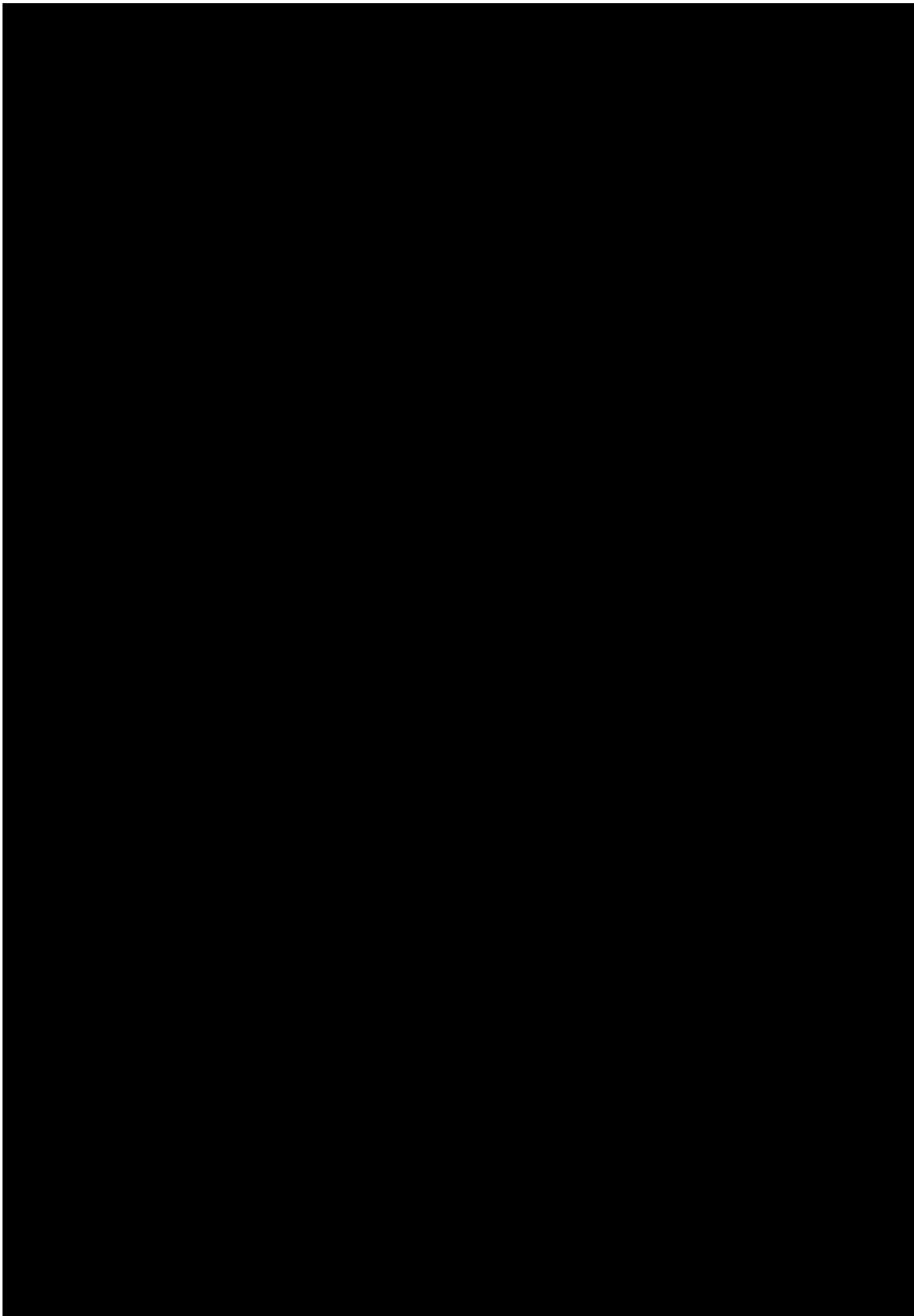
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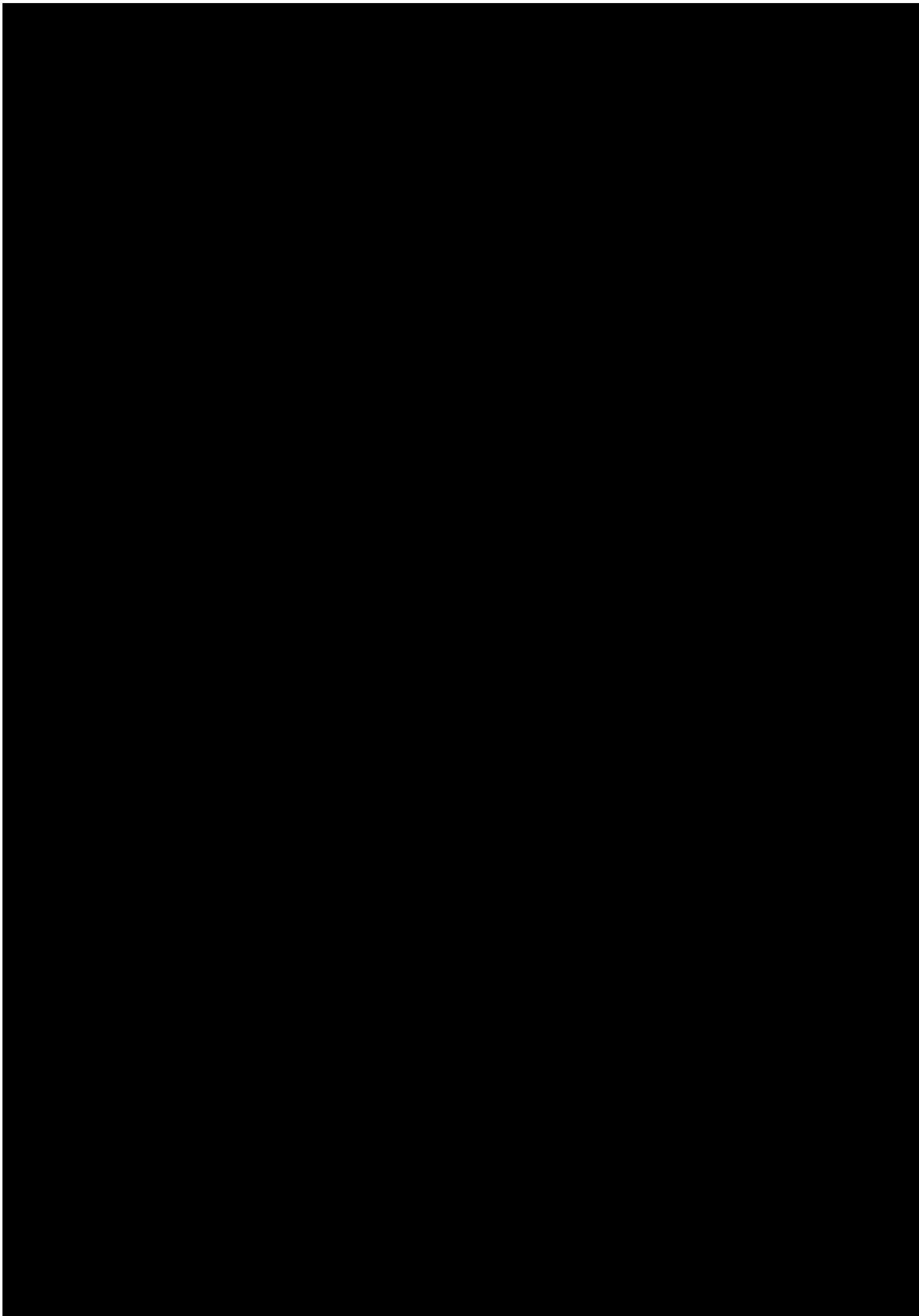
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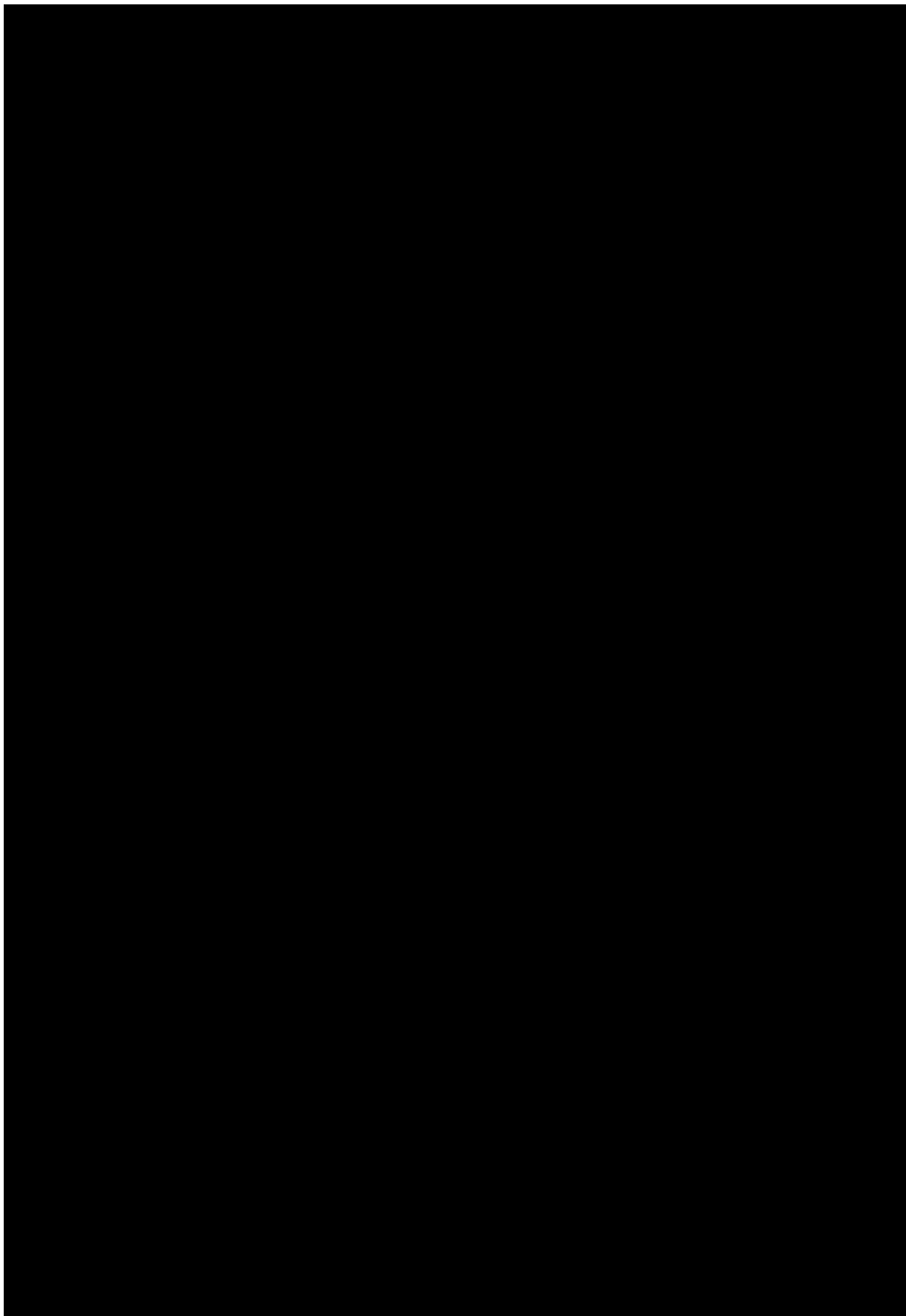


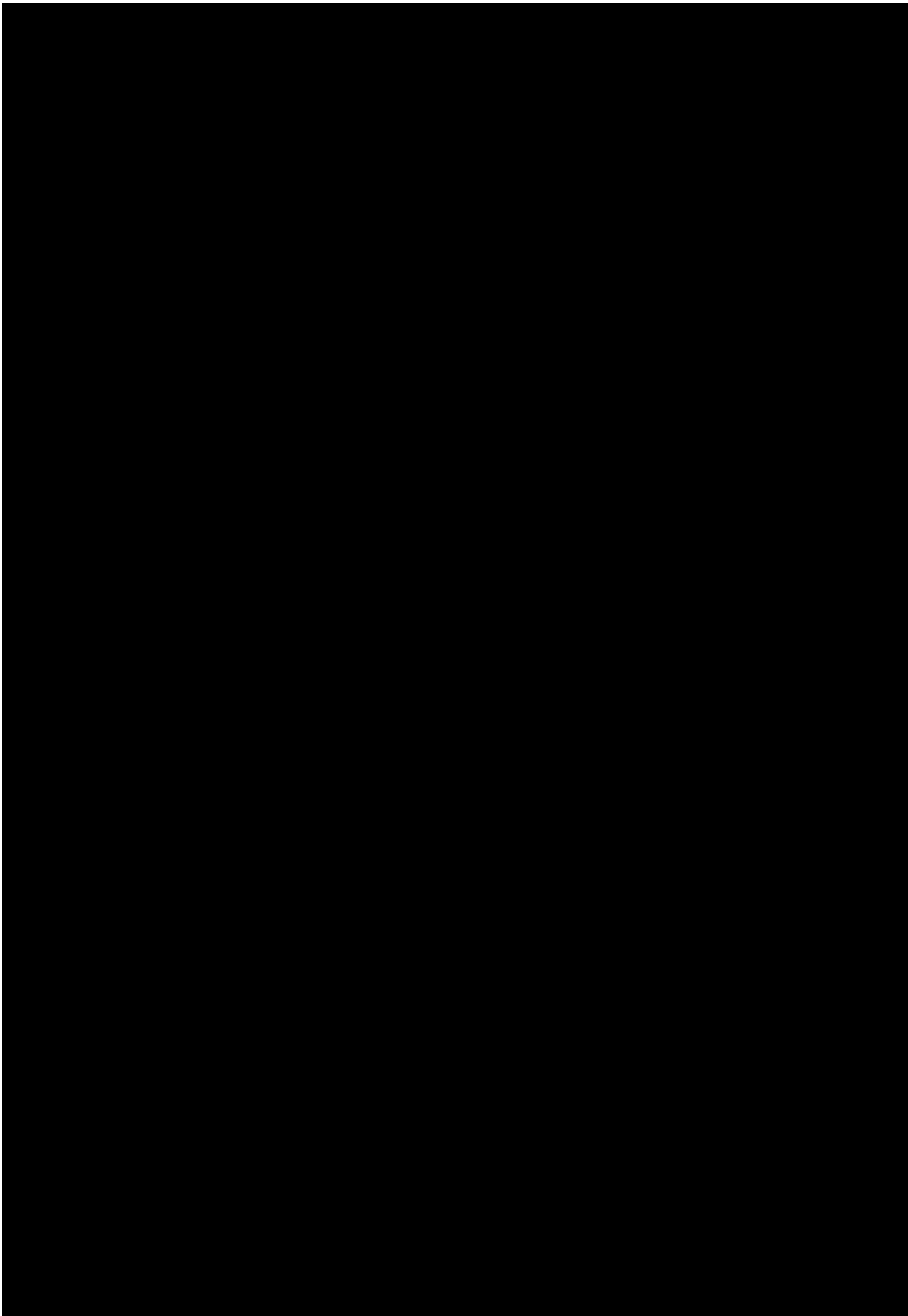
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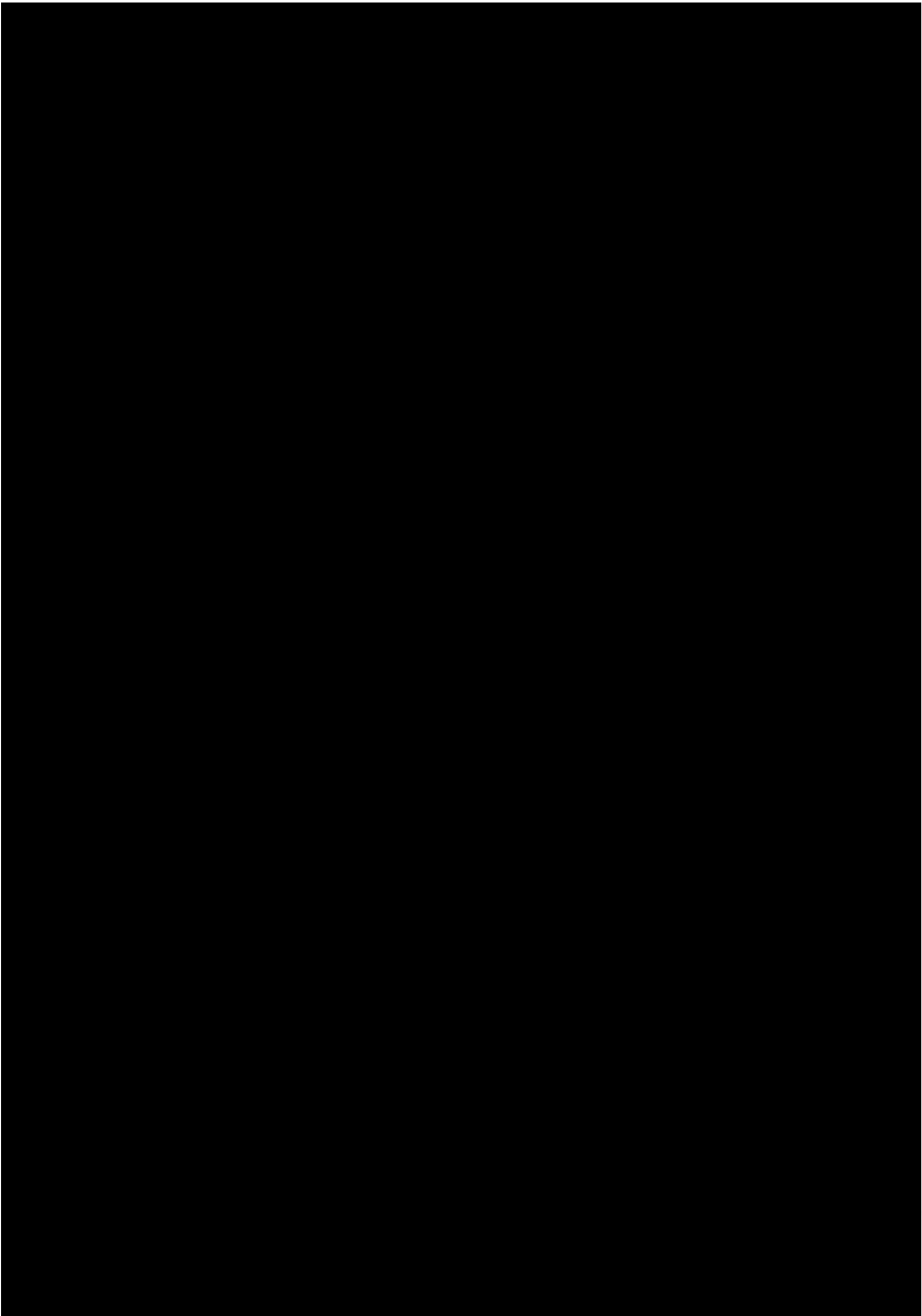


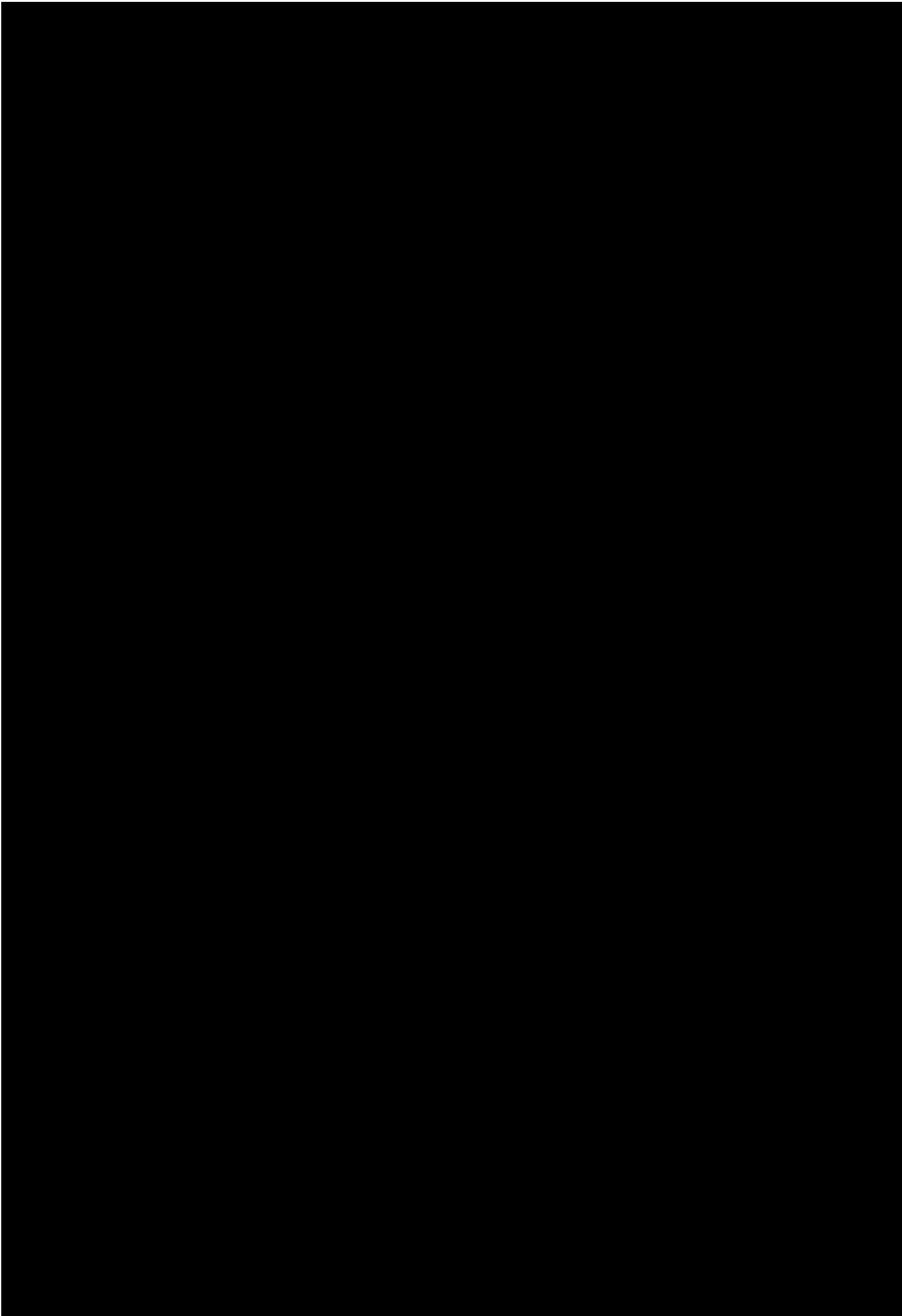


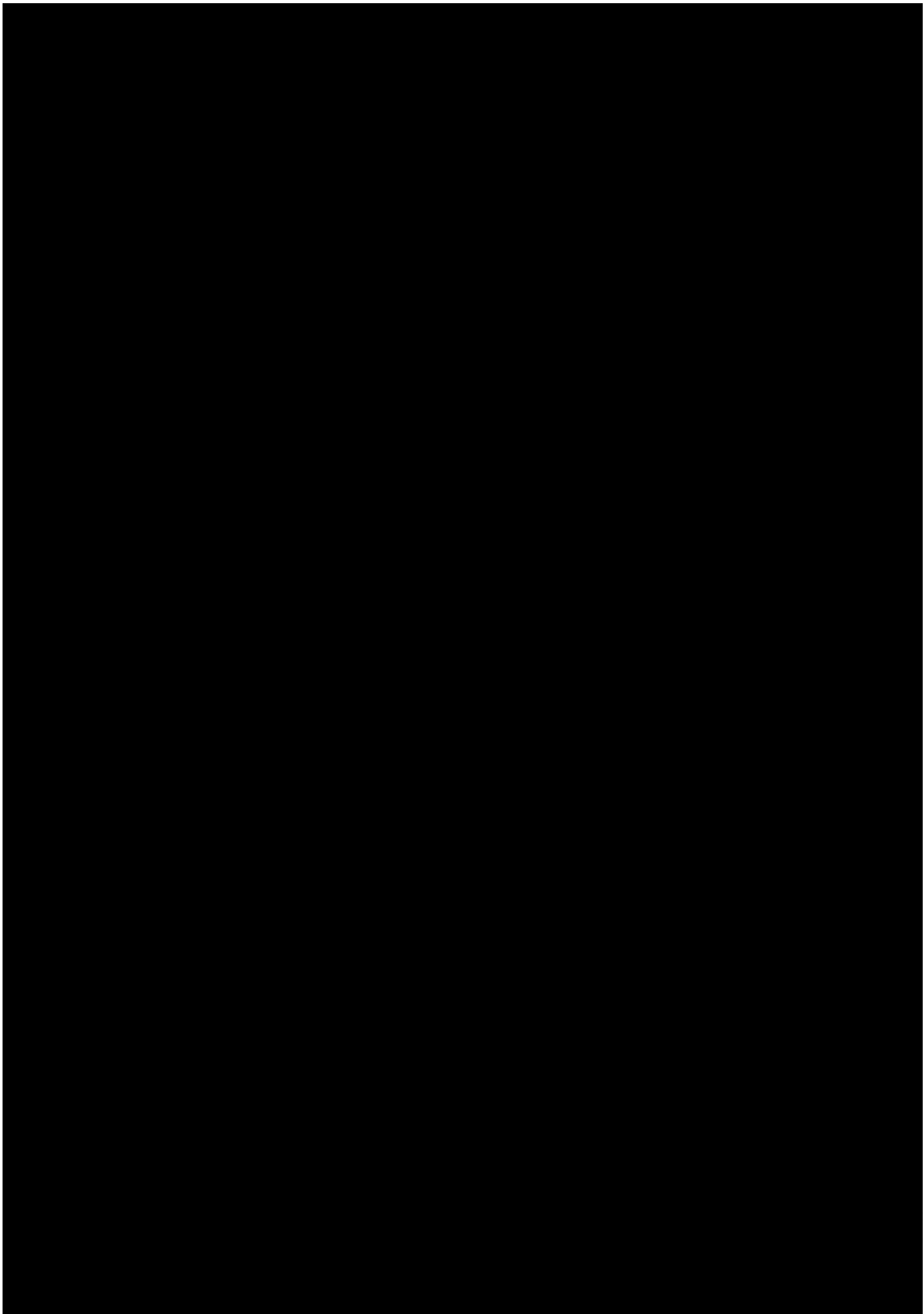


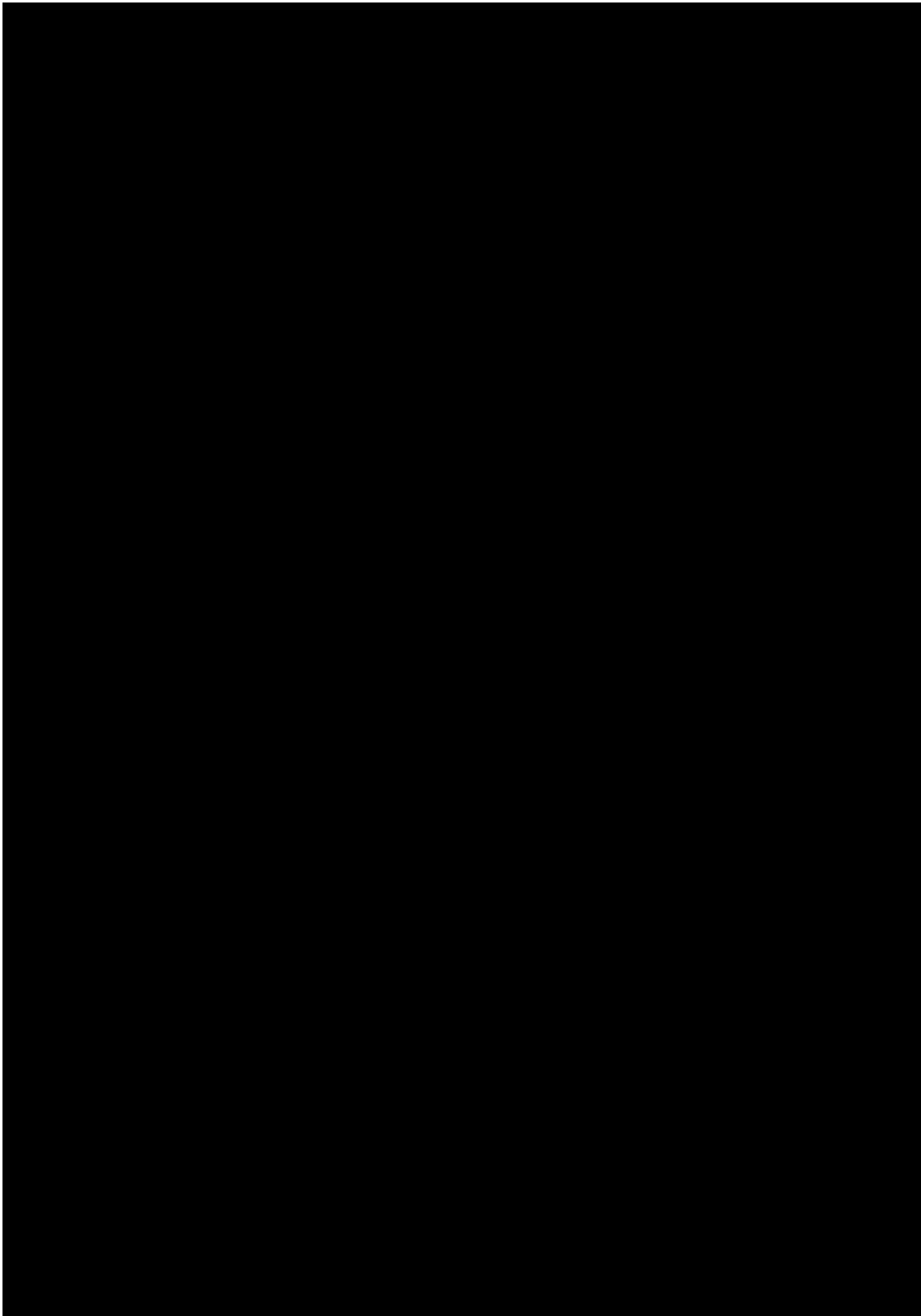


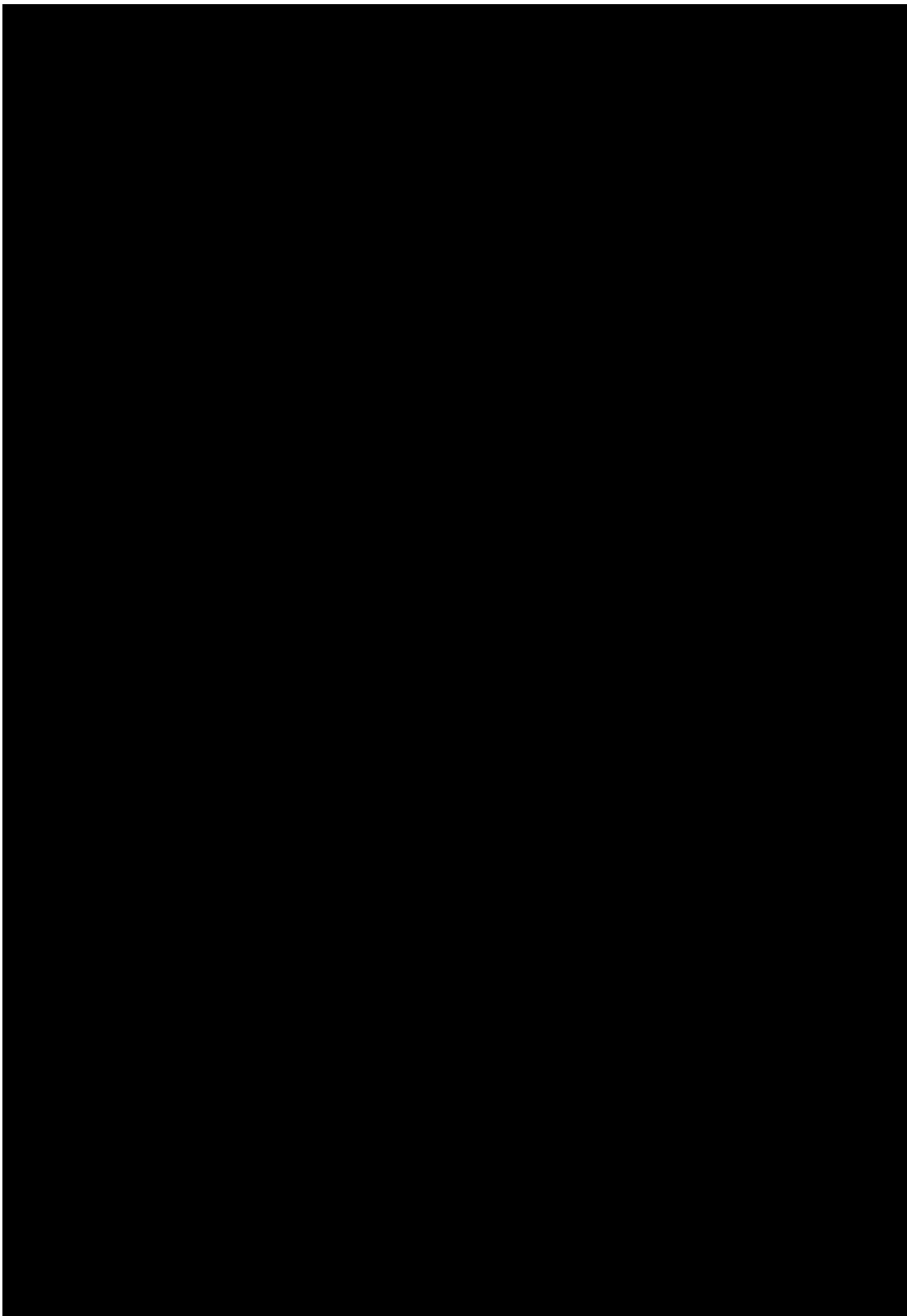


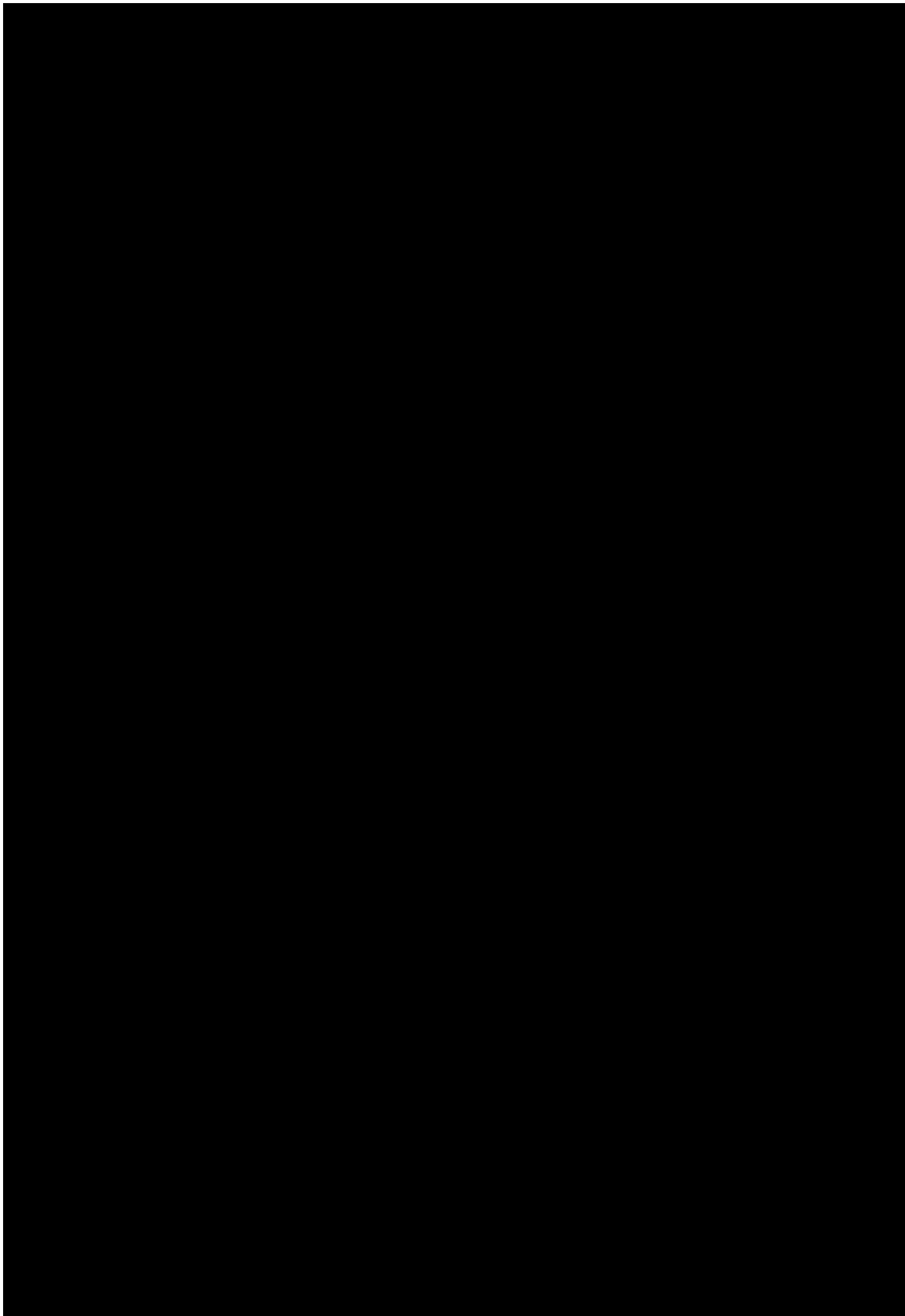


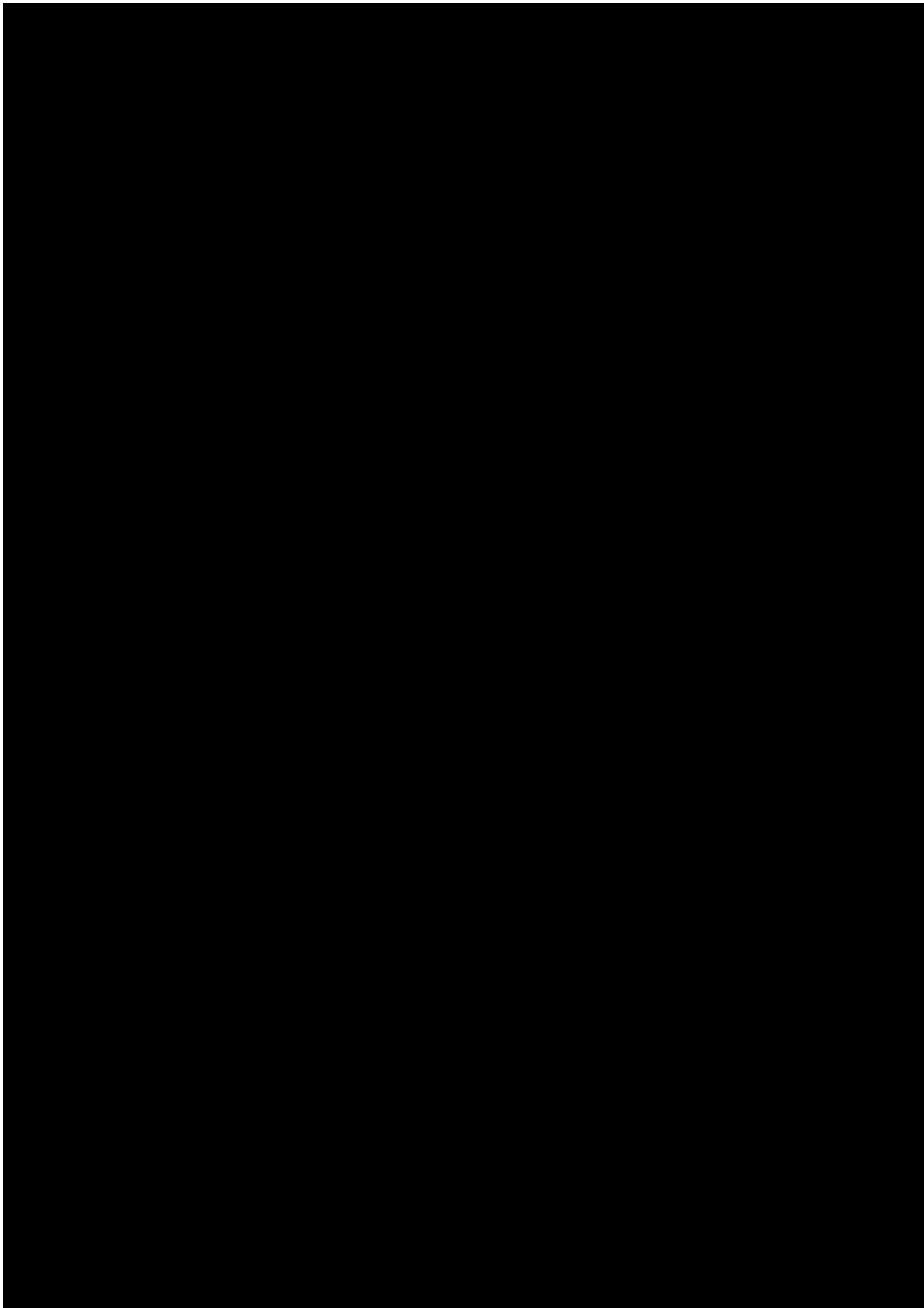


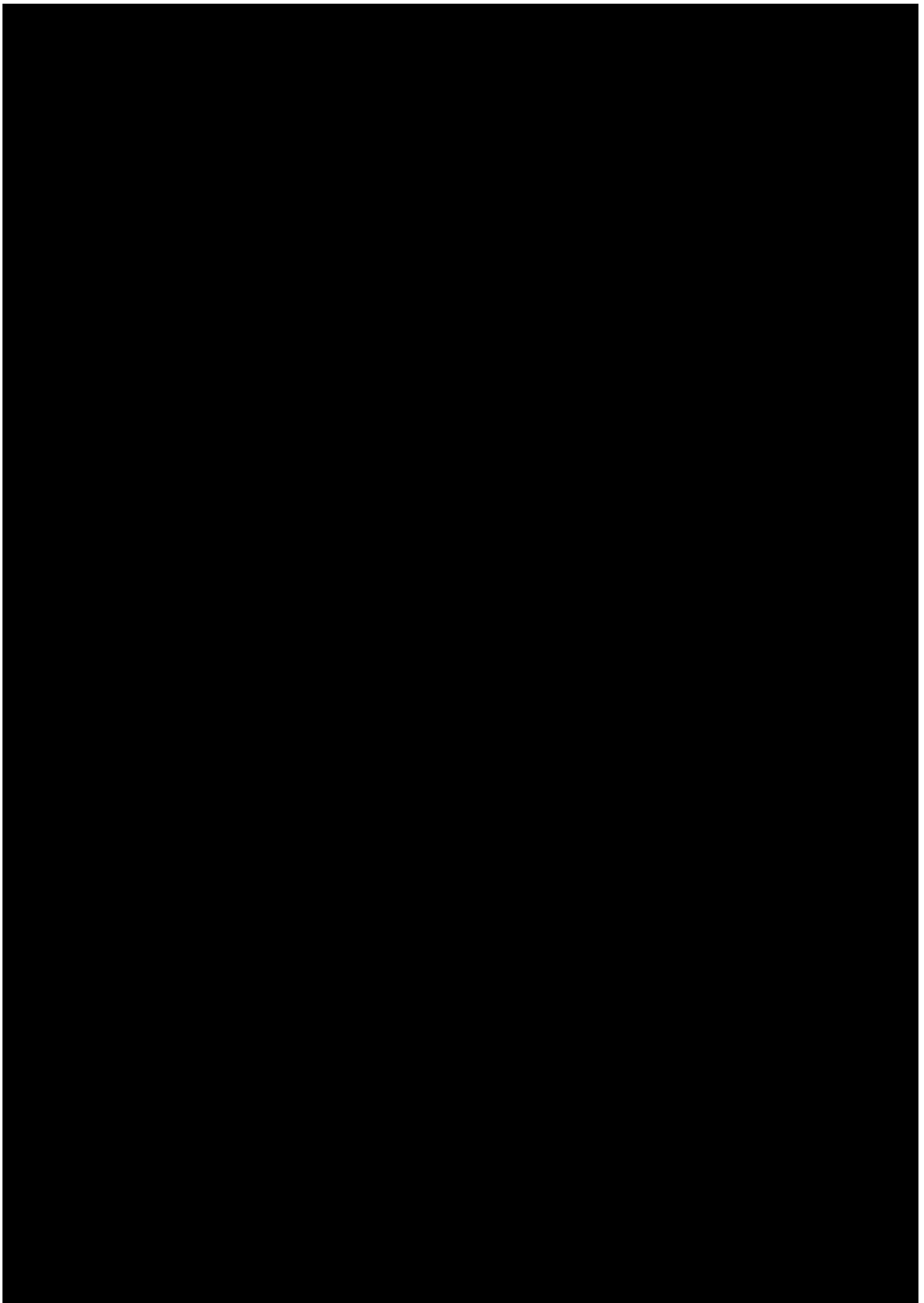


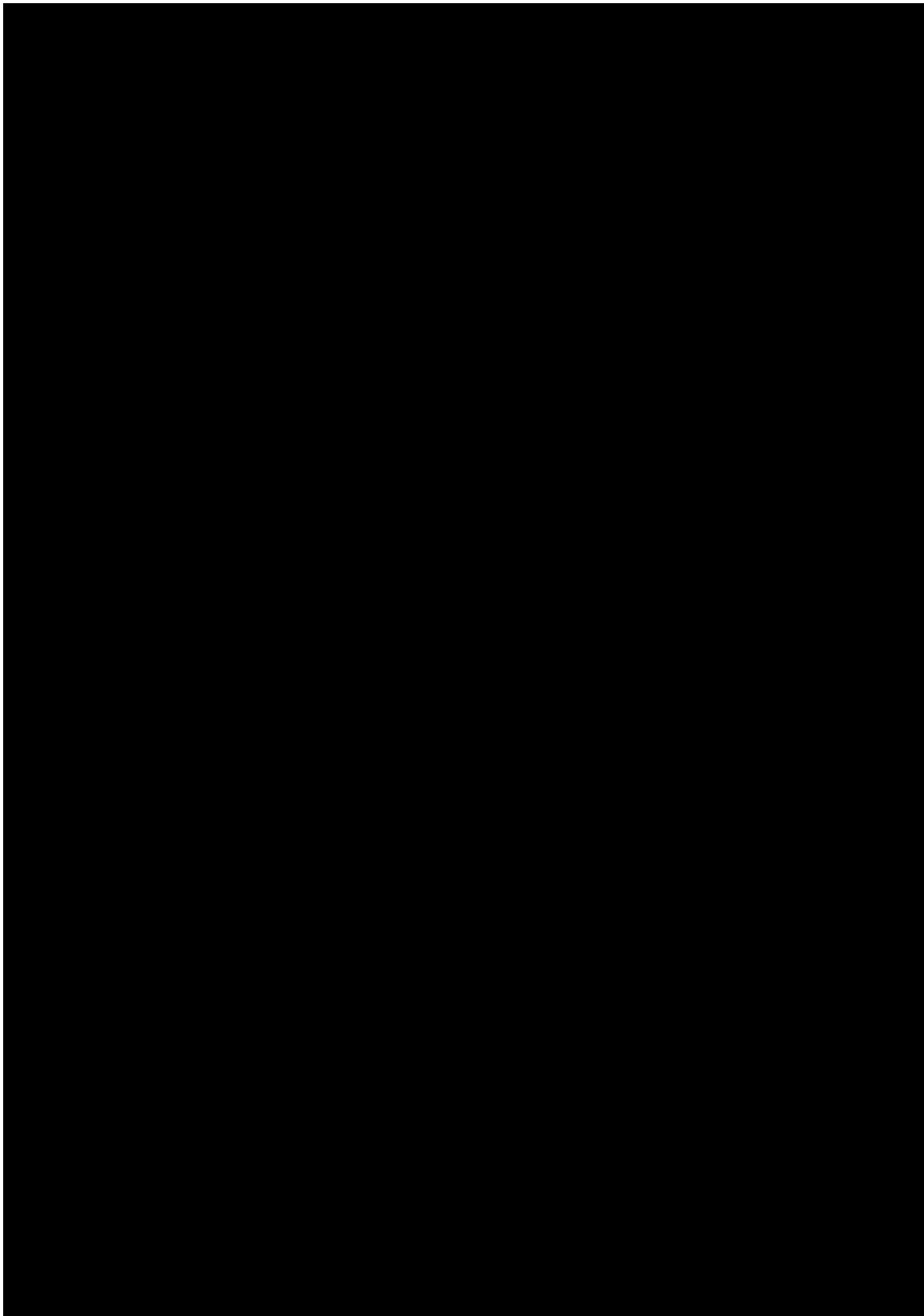


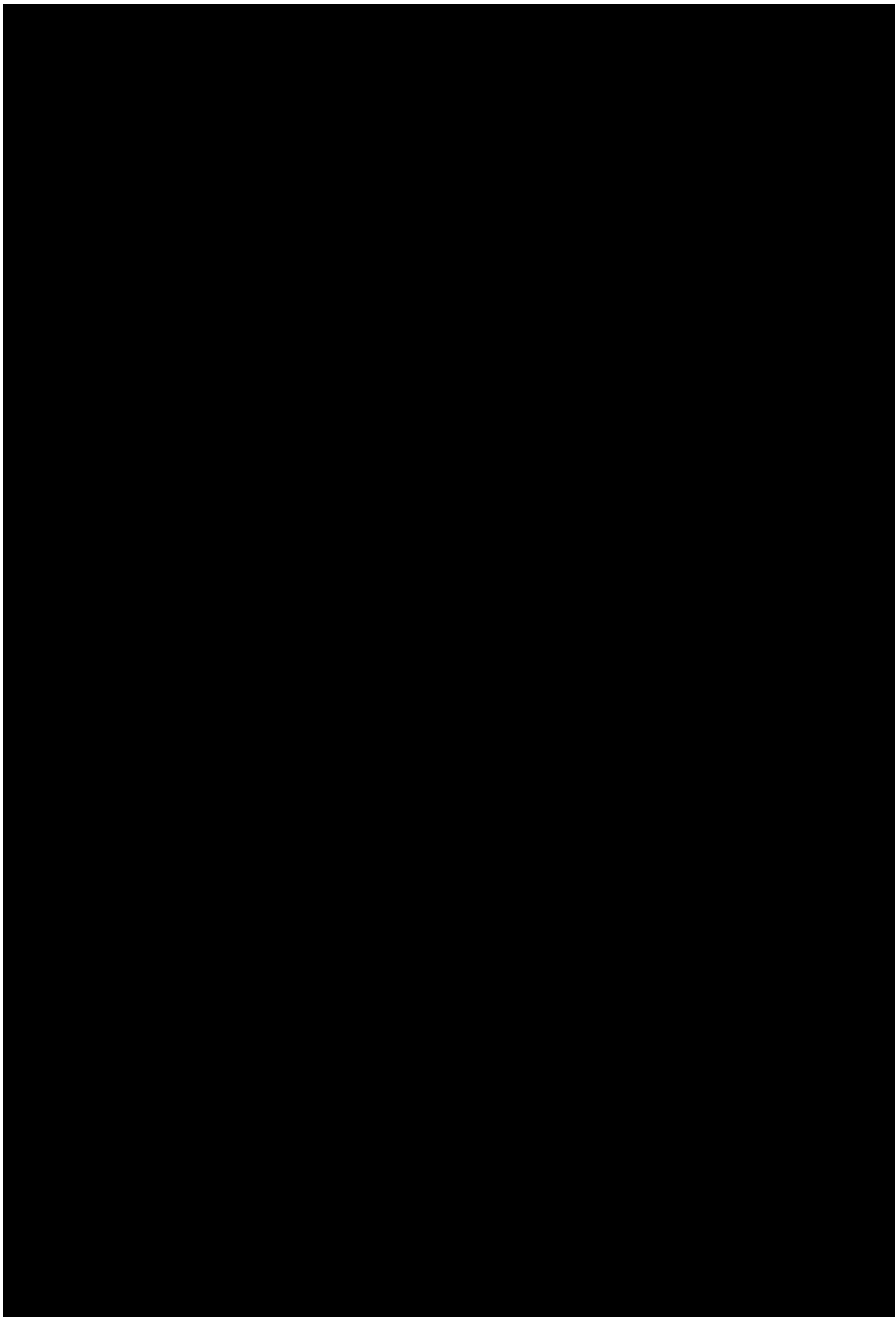


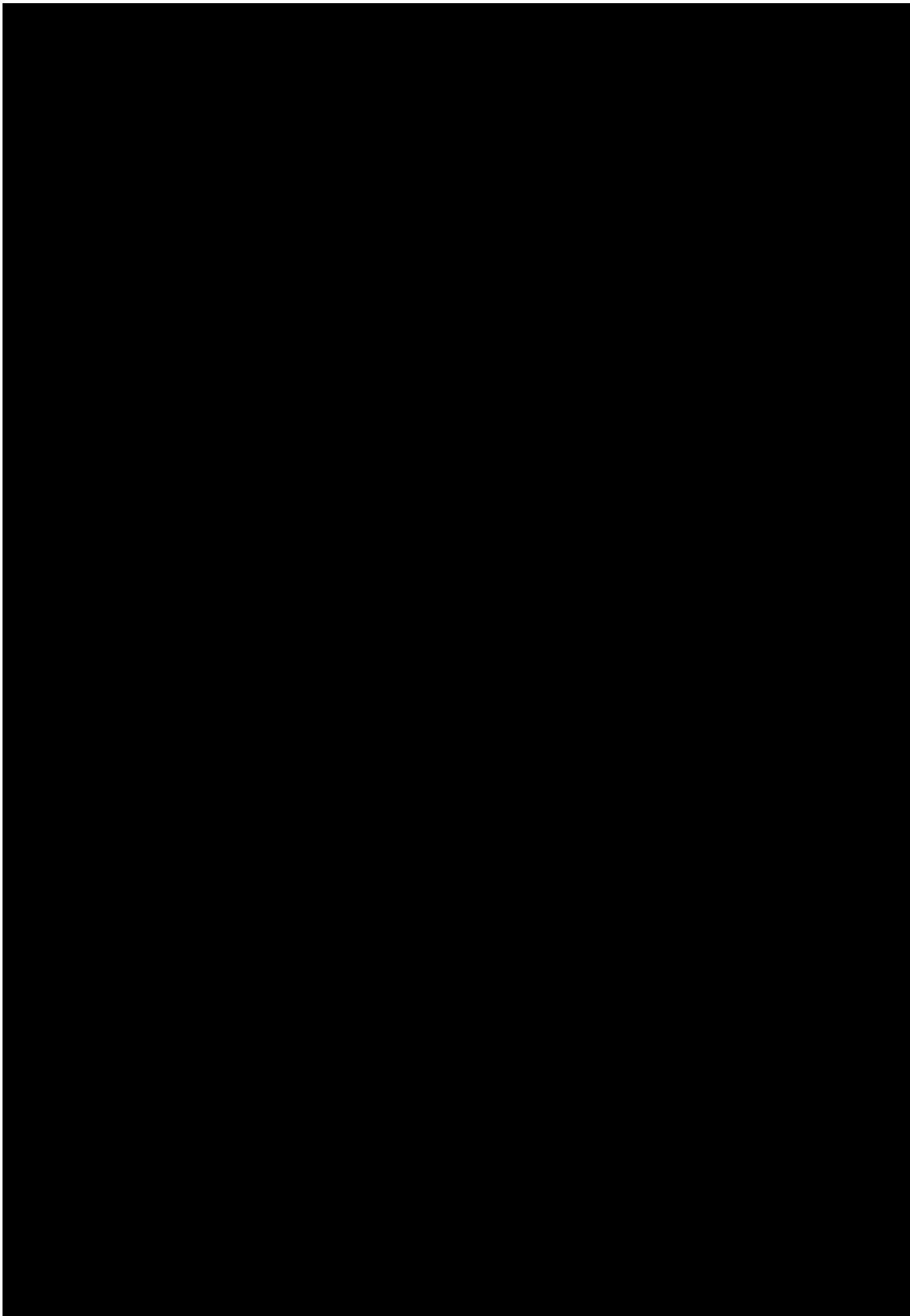


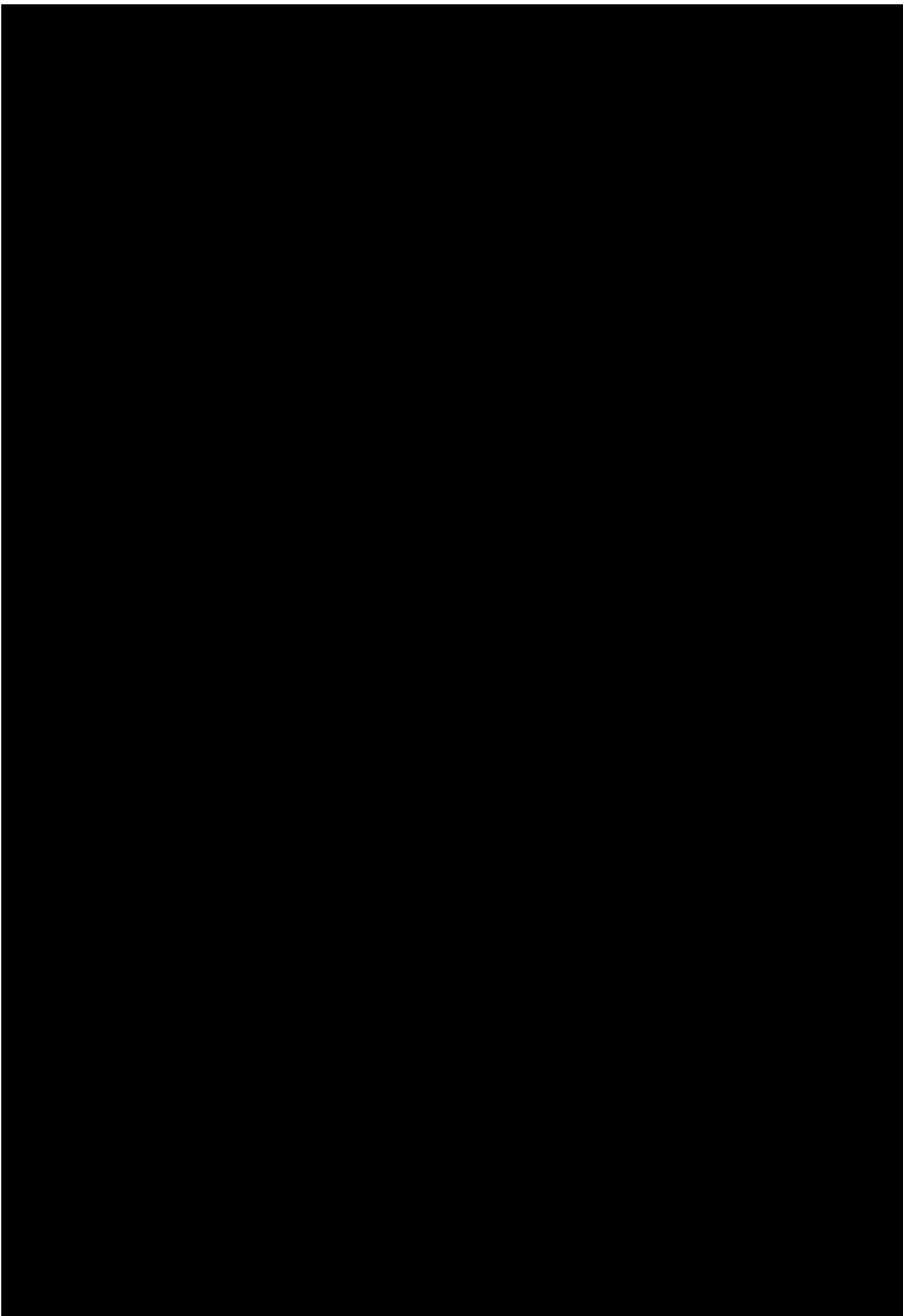


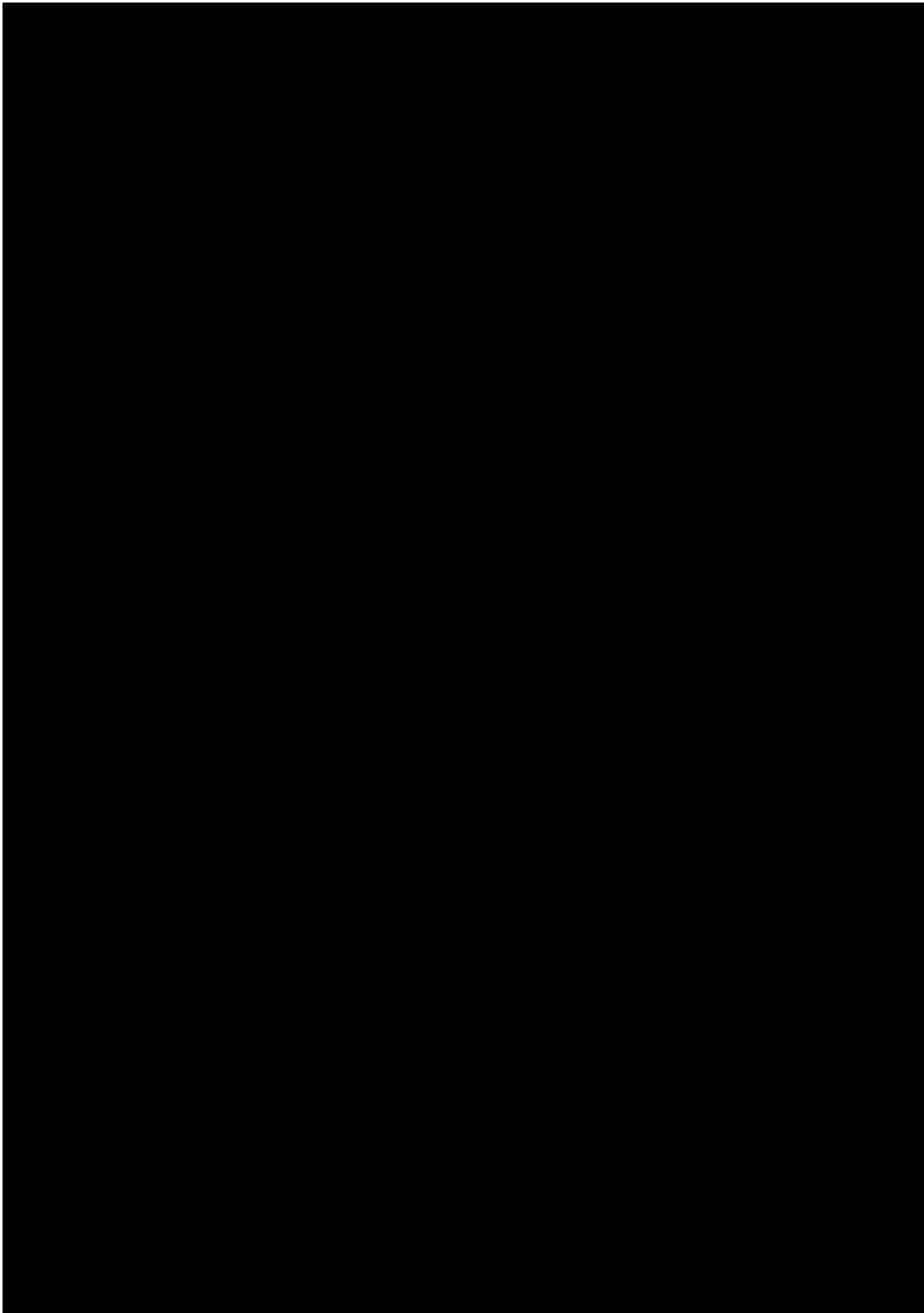


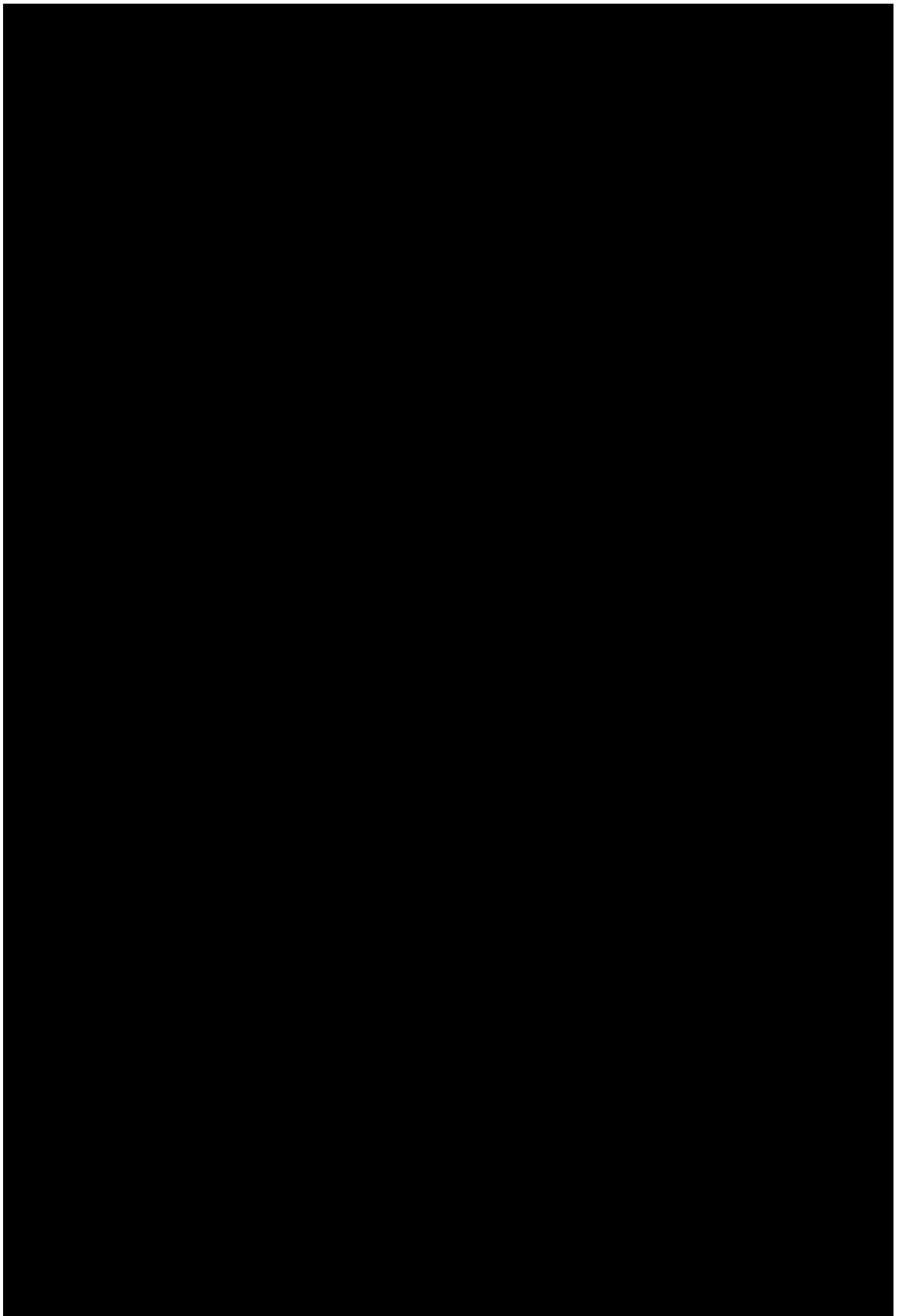


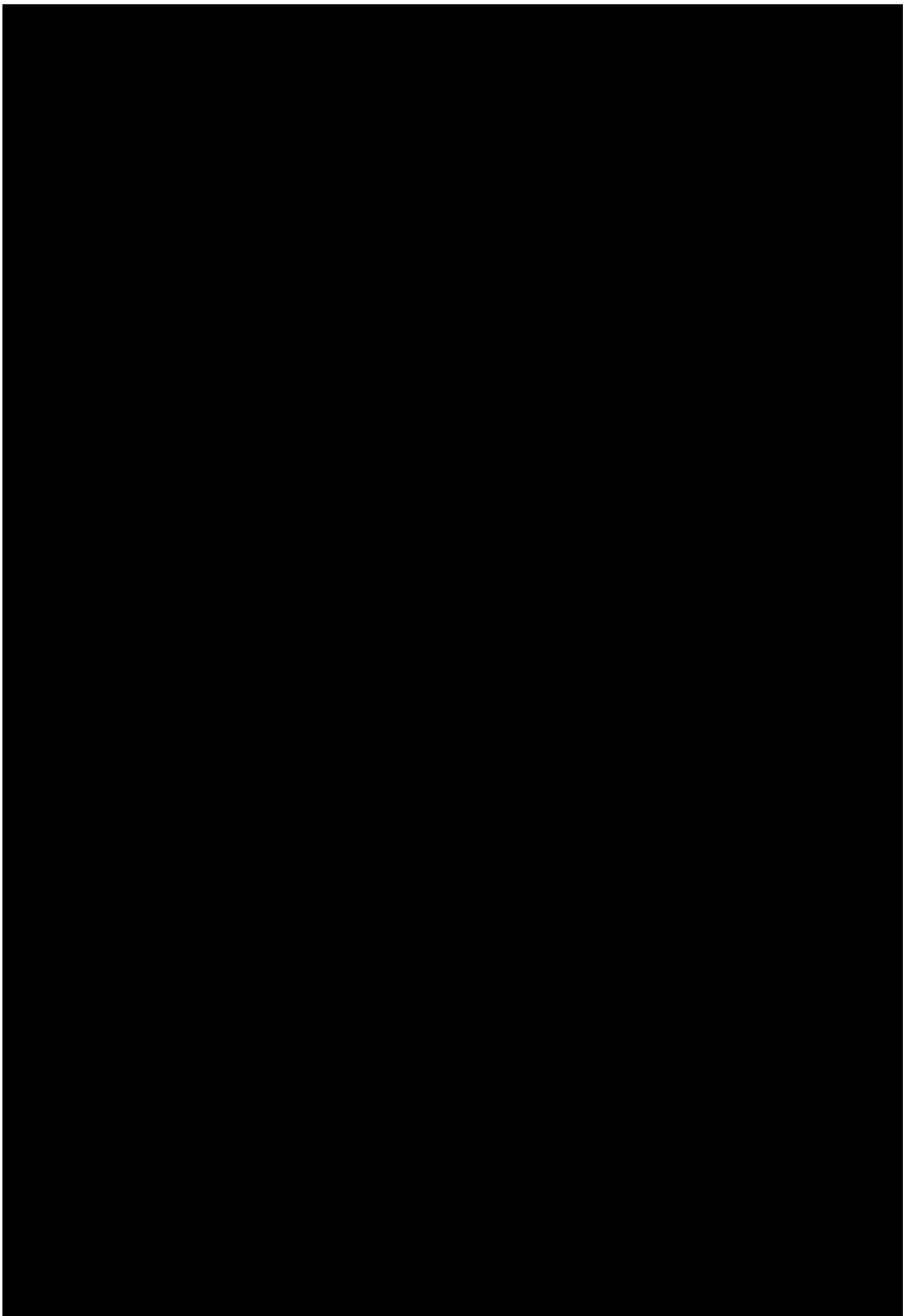


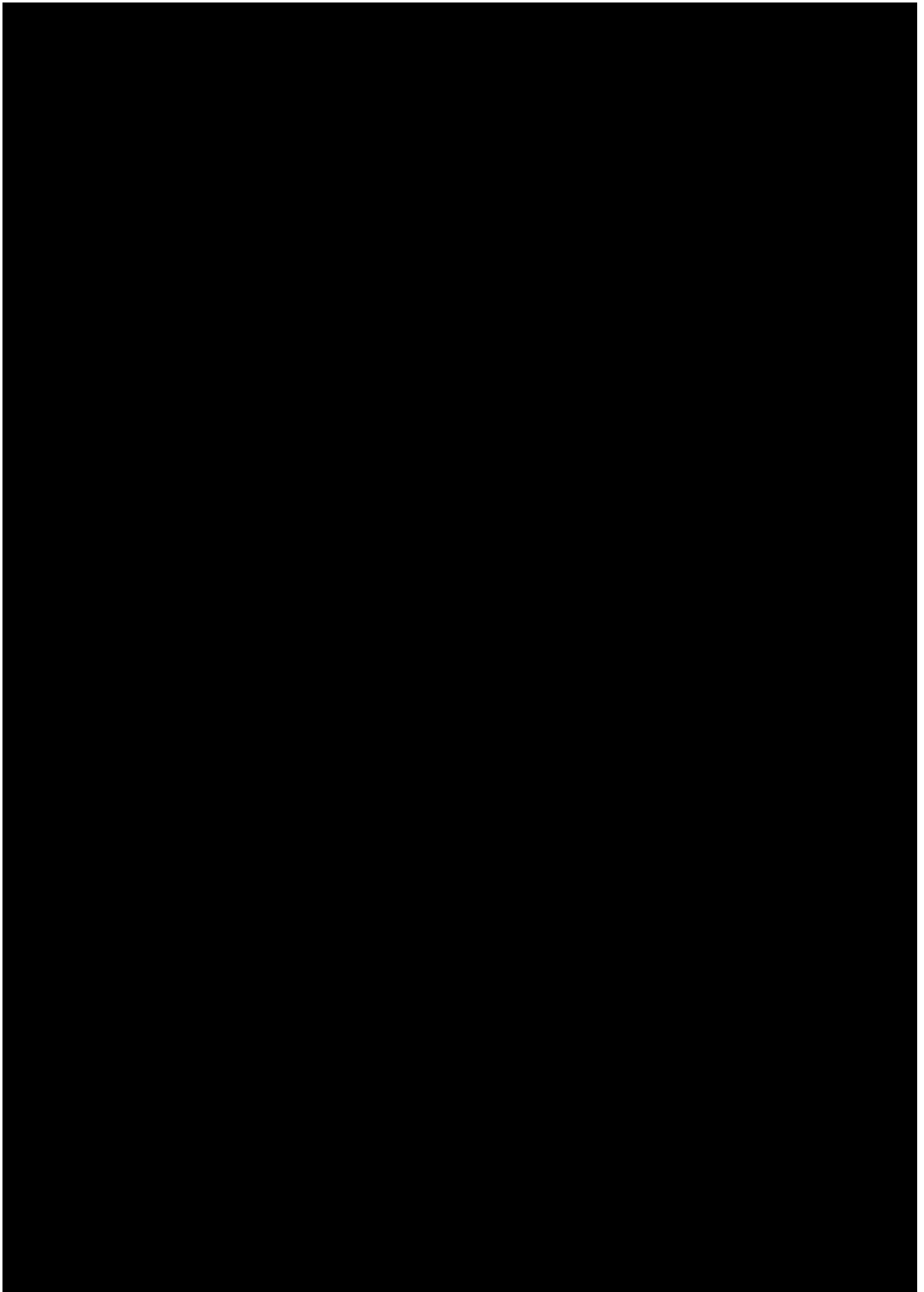


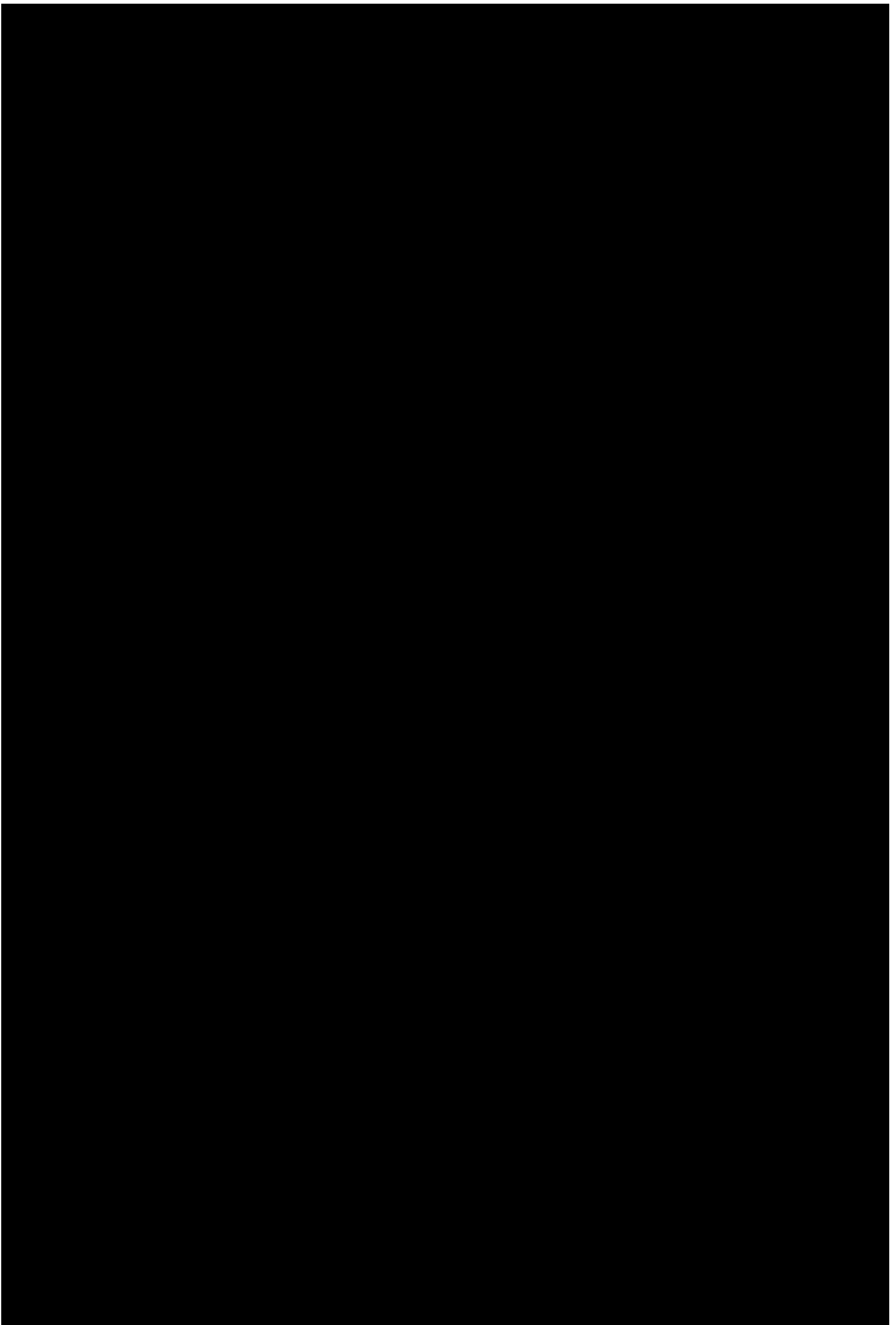


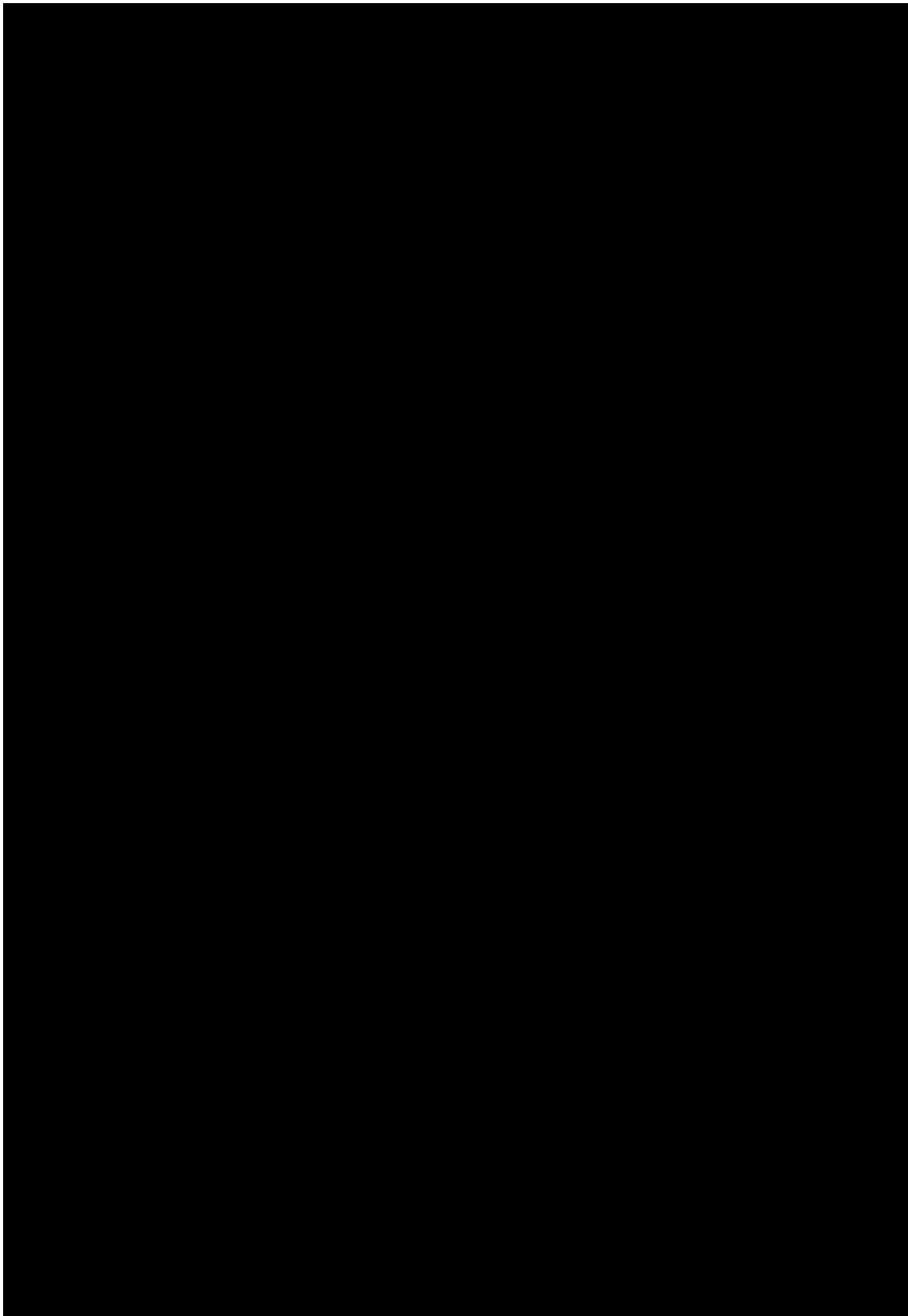


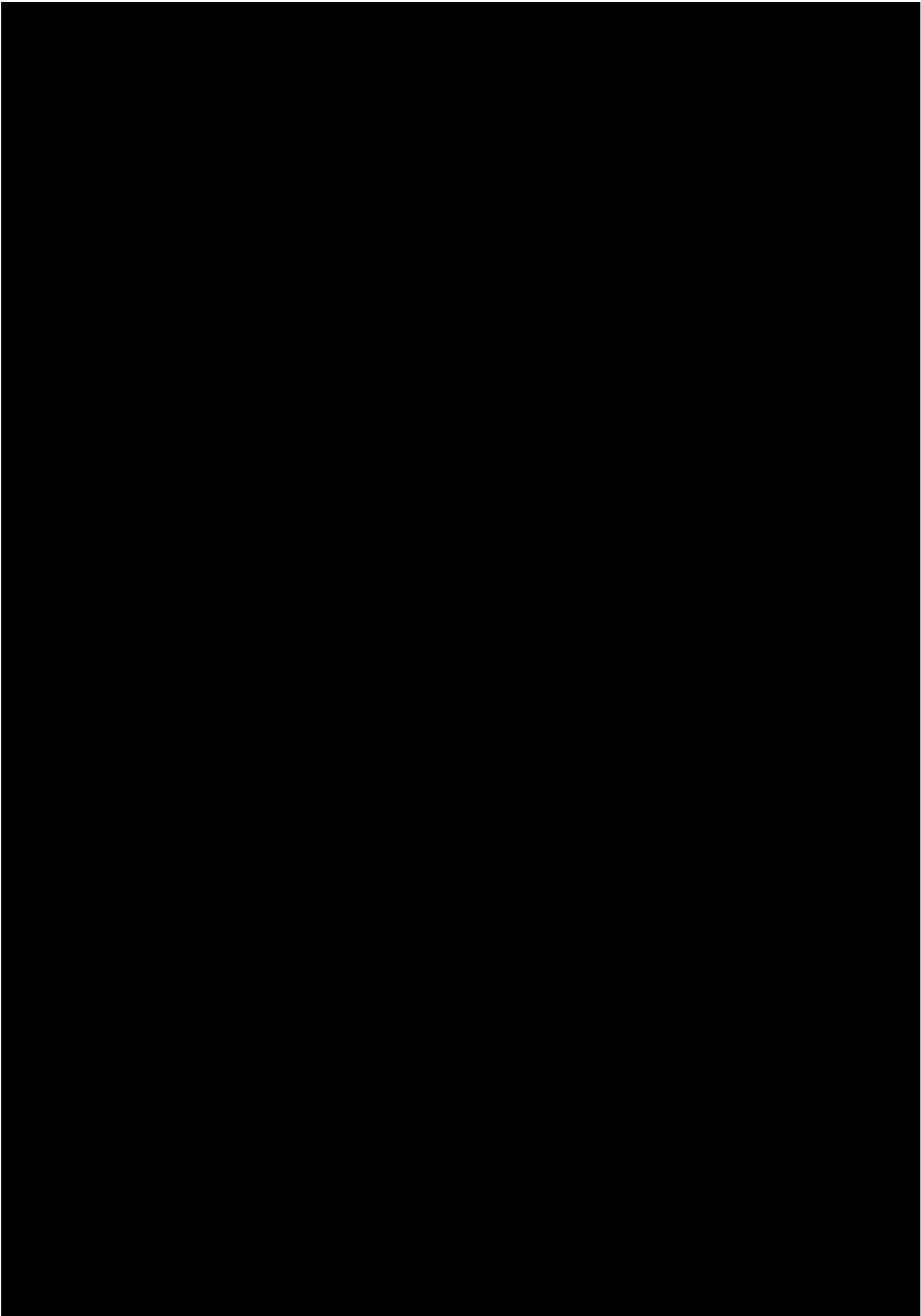


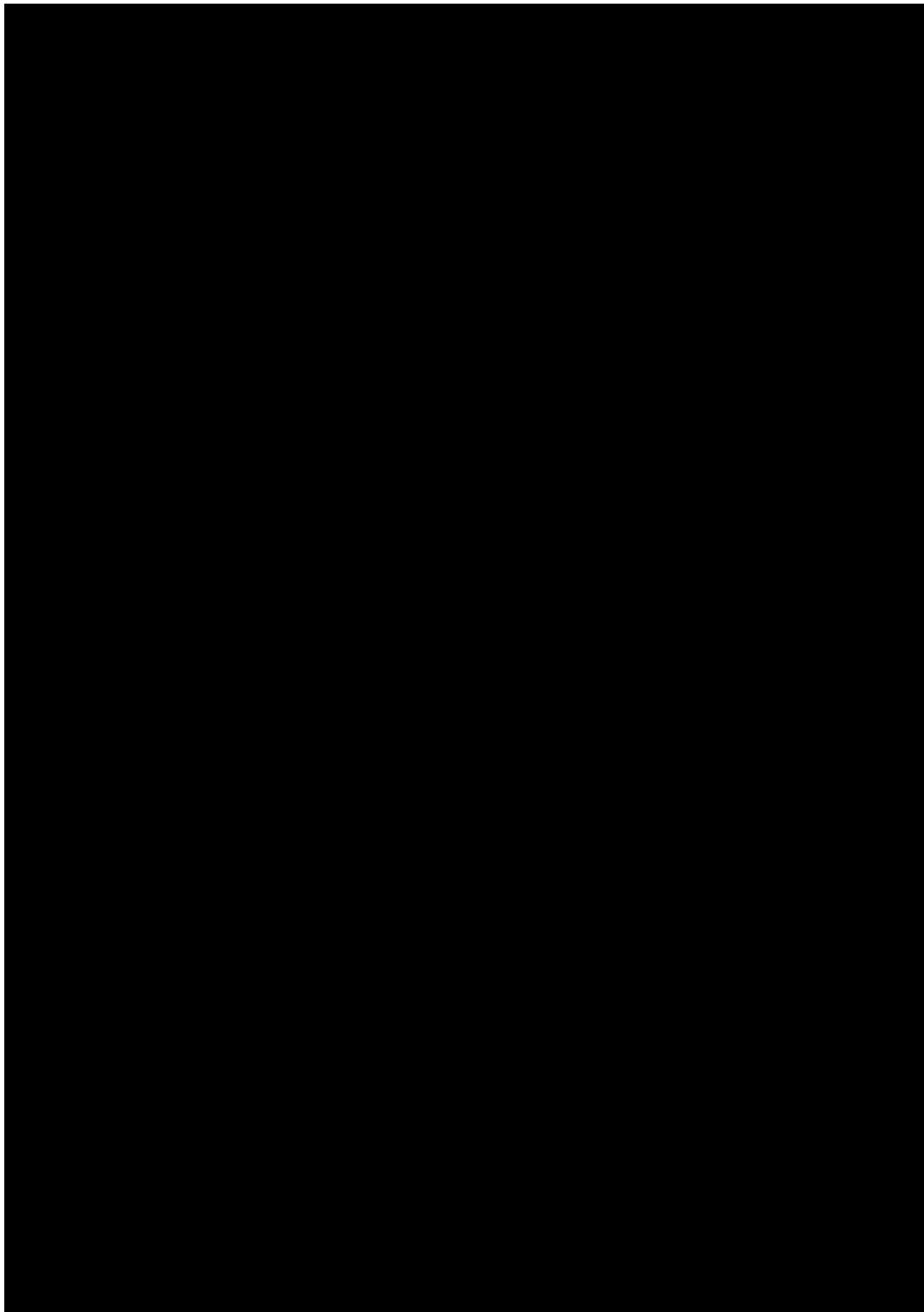


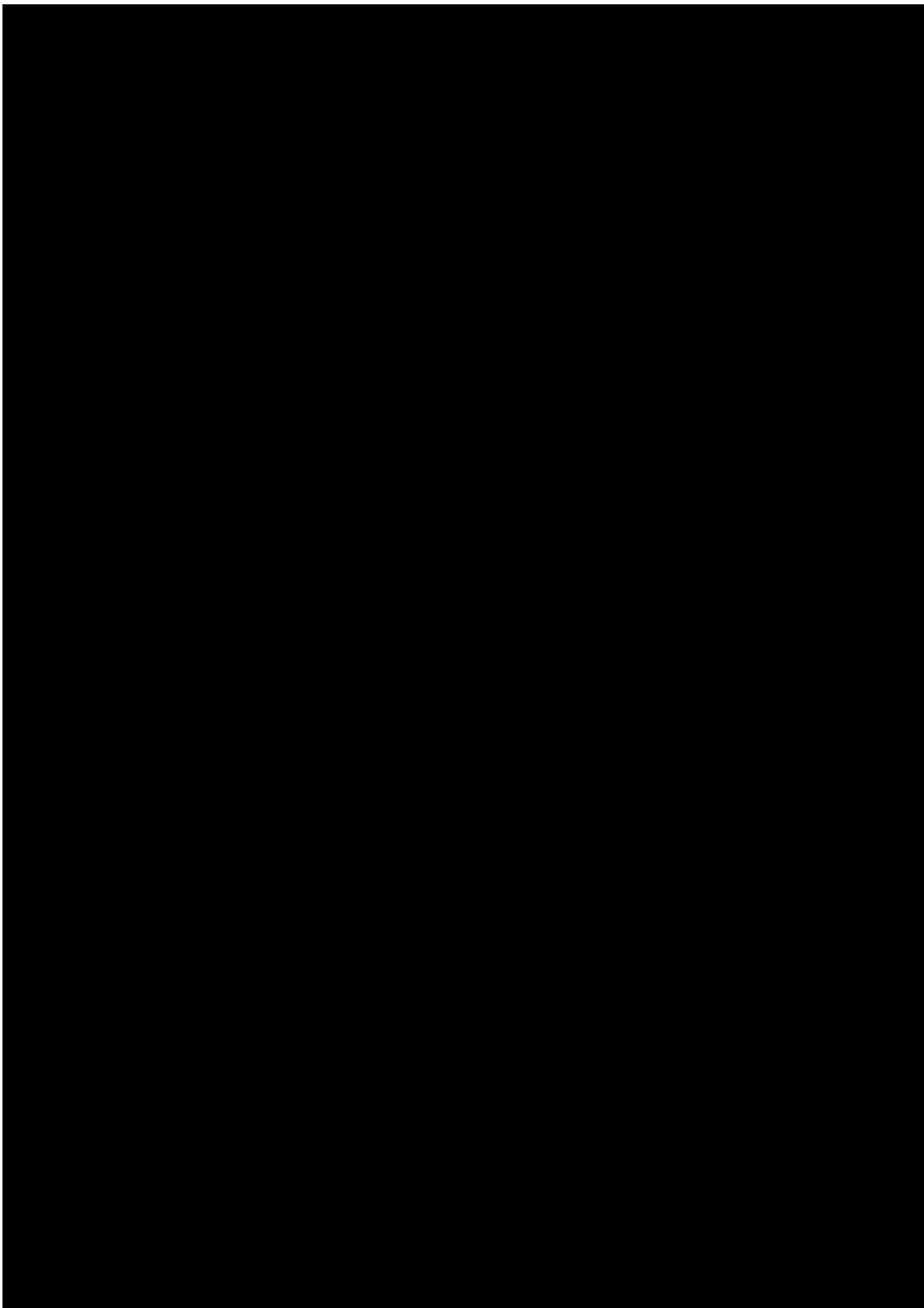


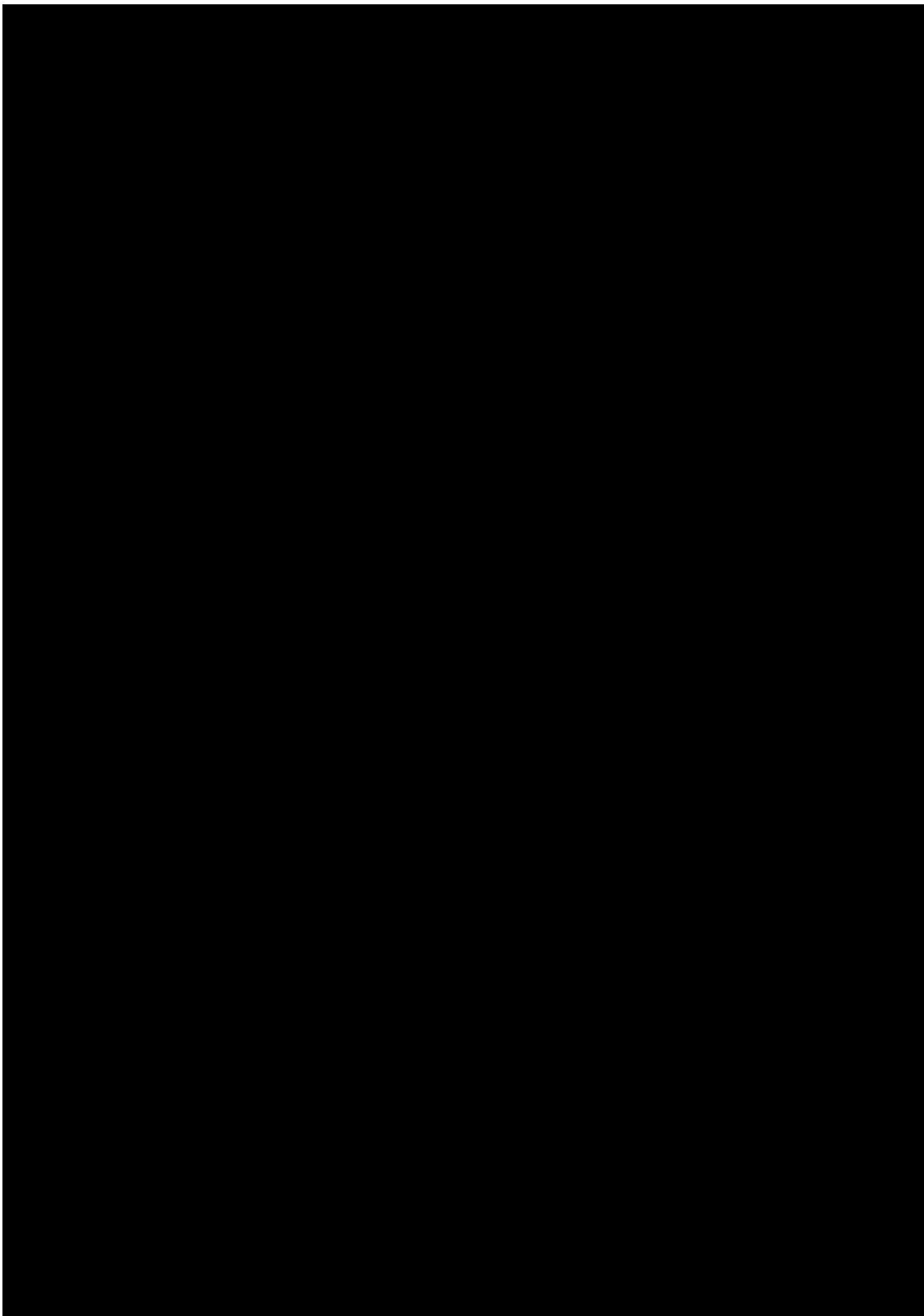


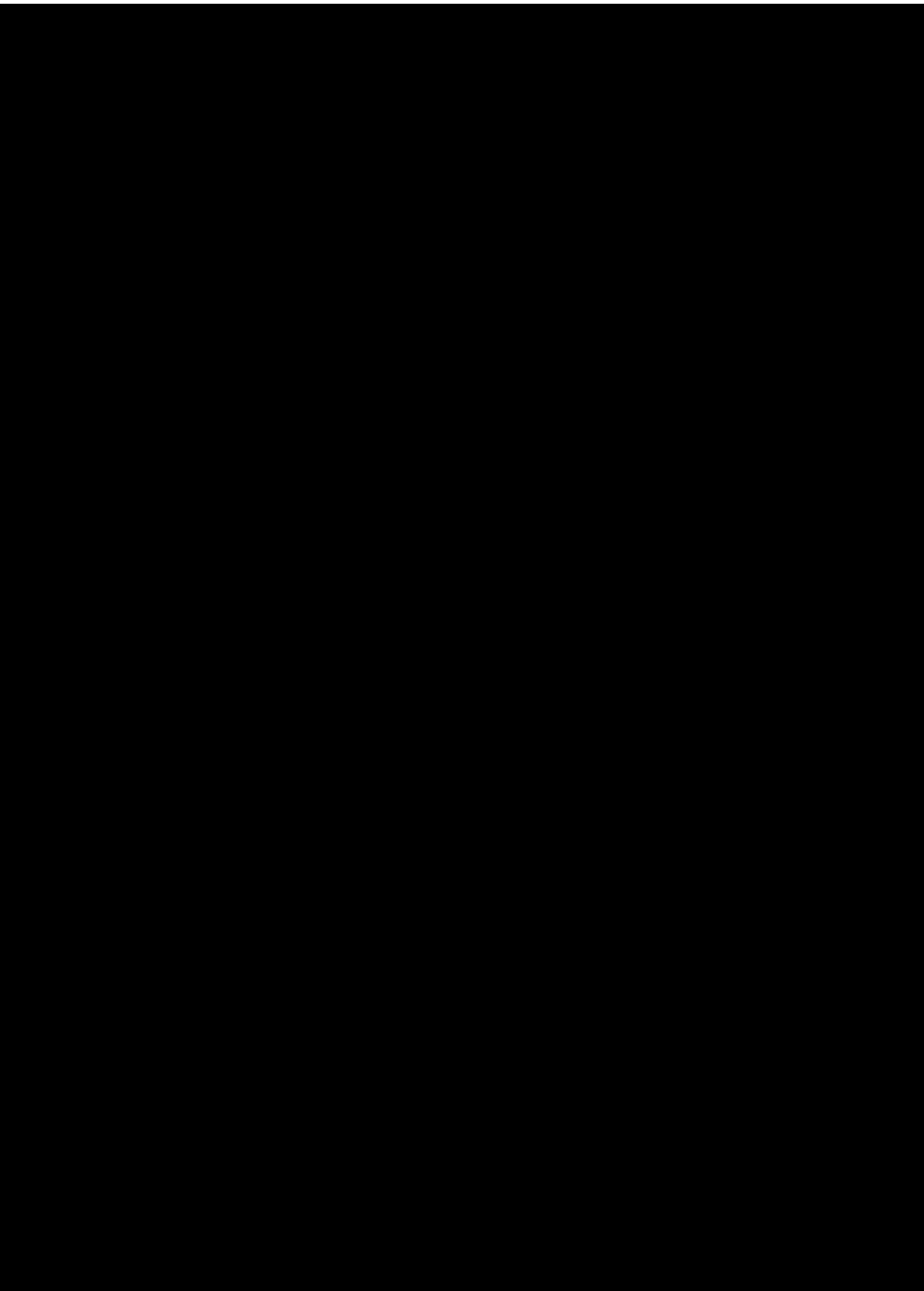










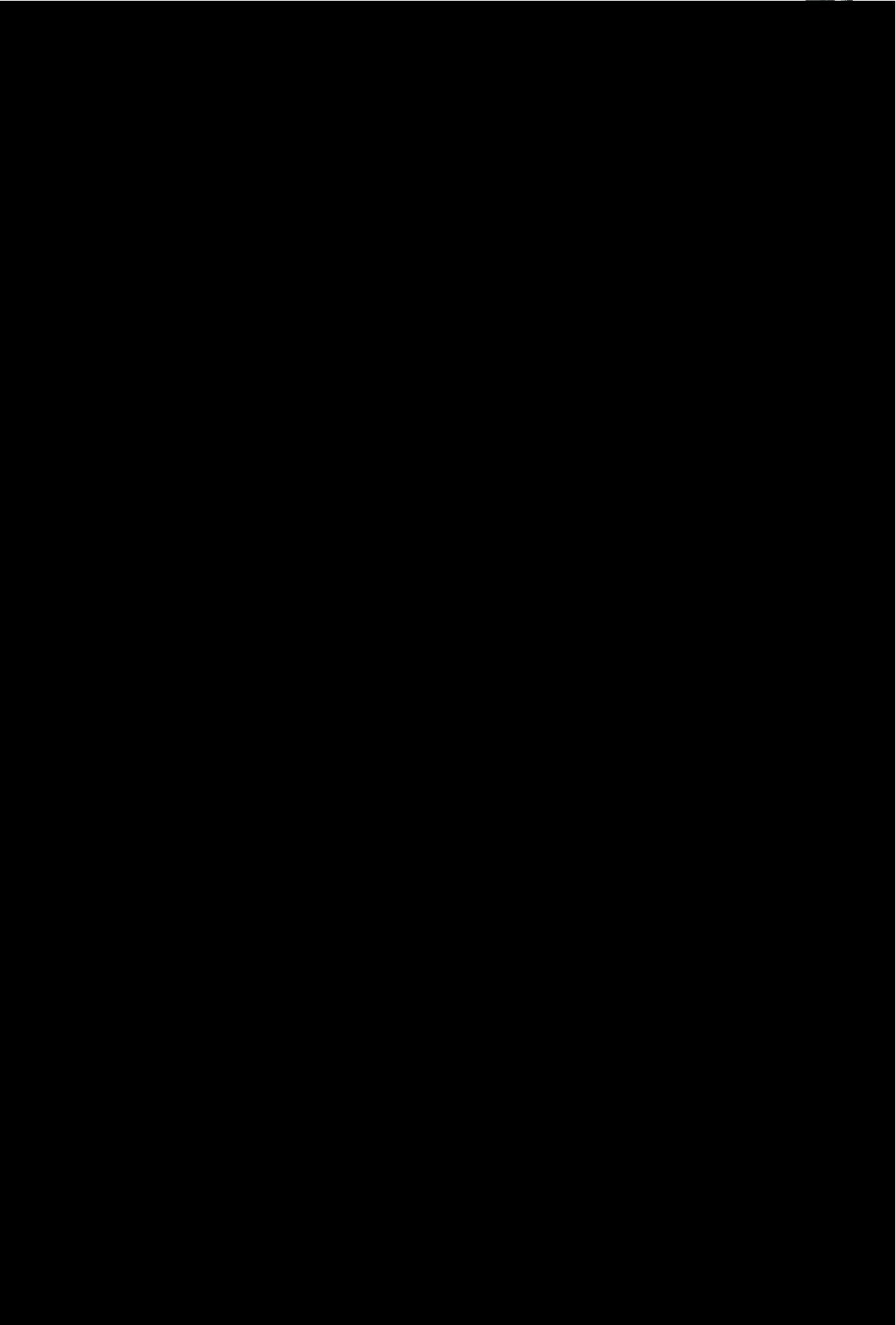


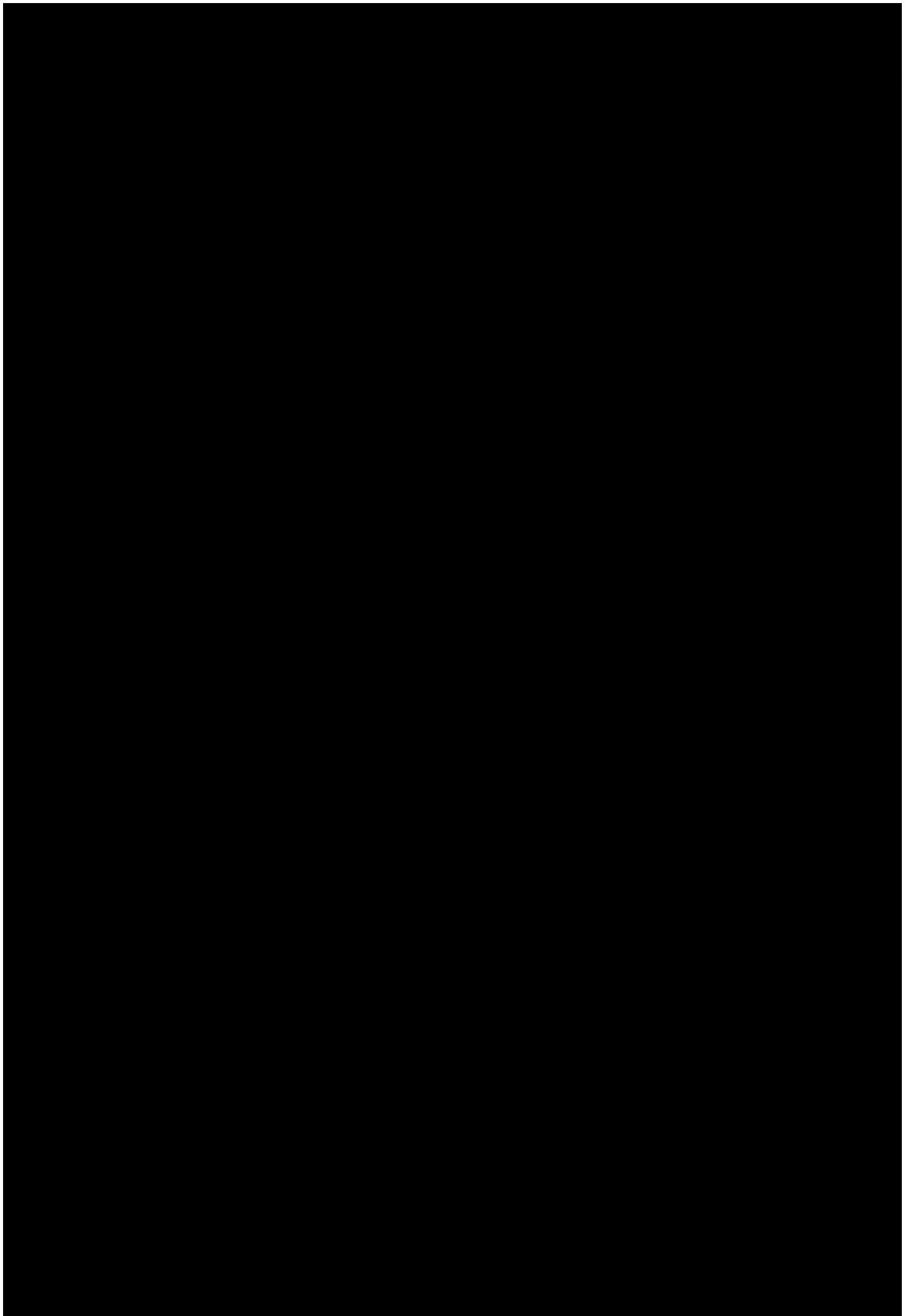
Schedule 25

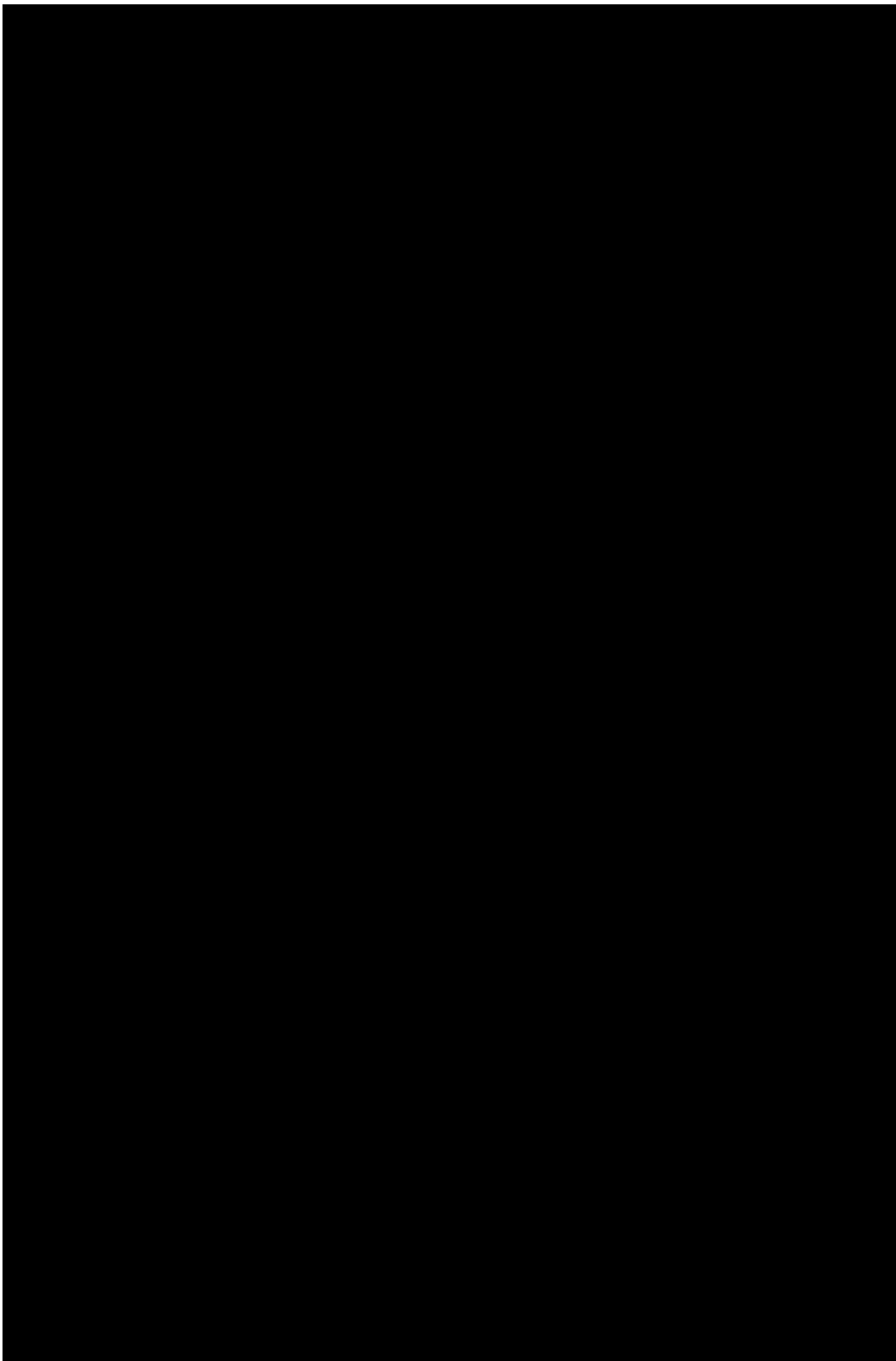
Principal's Documents Register



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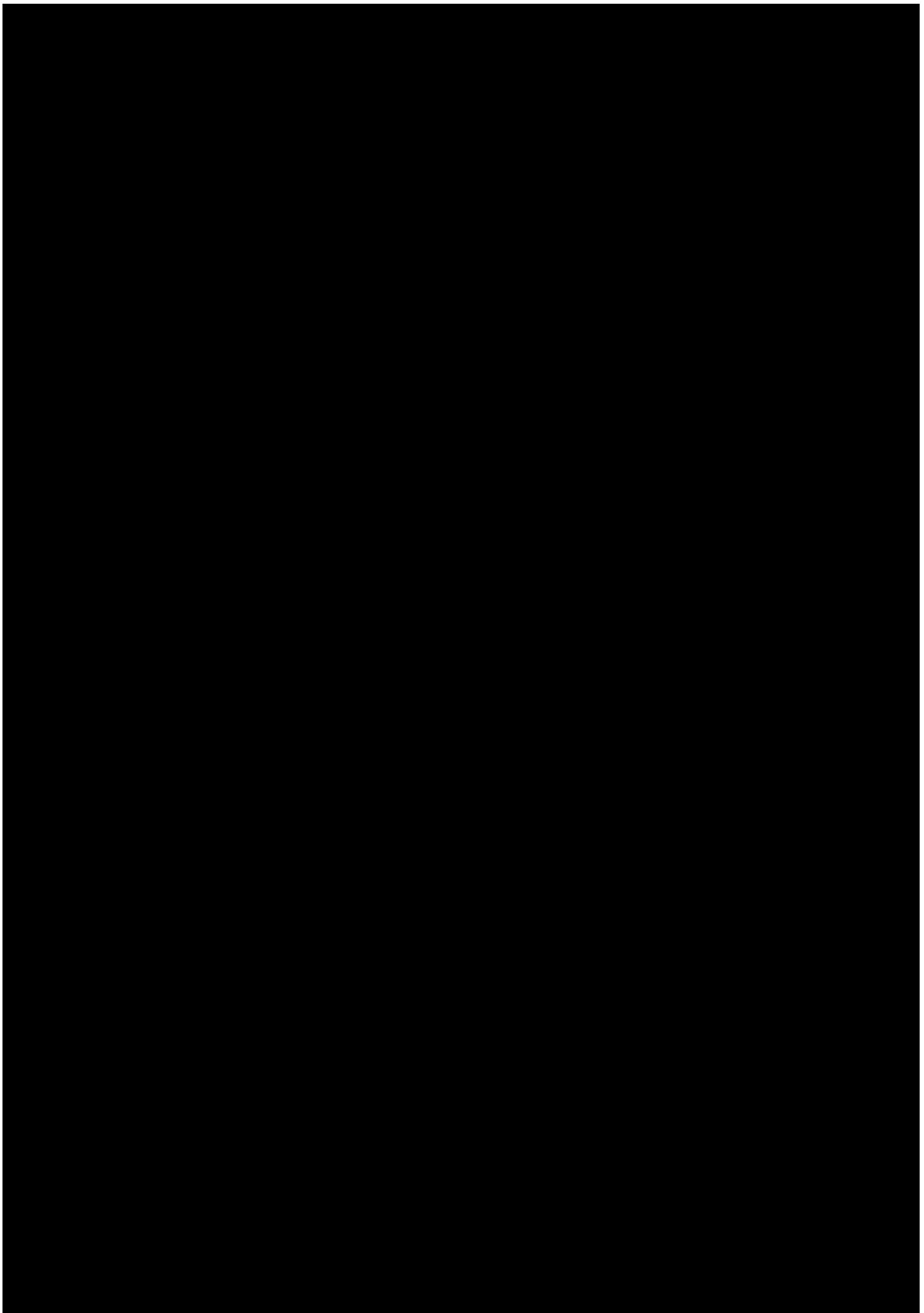


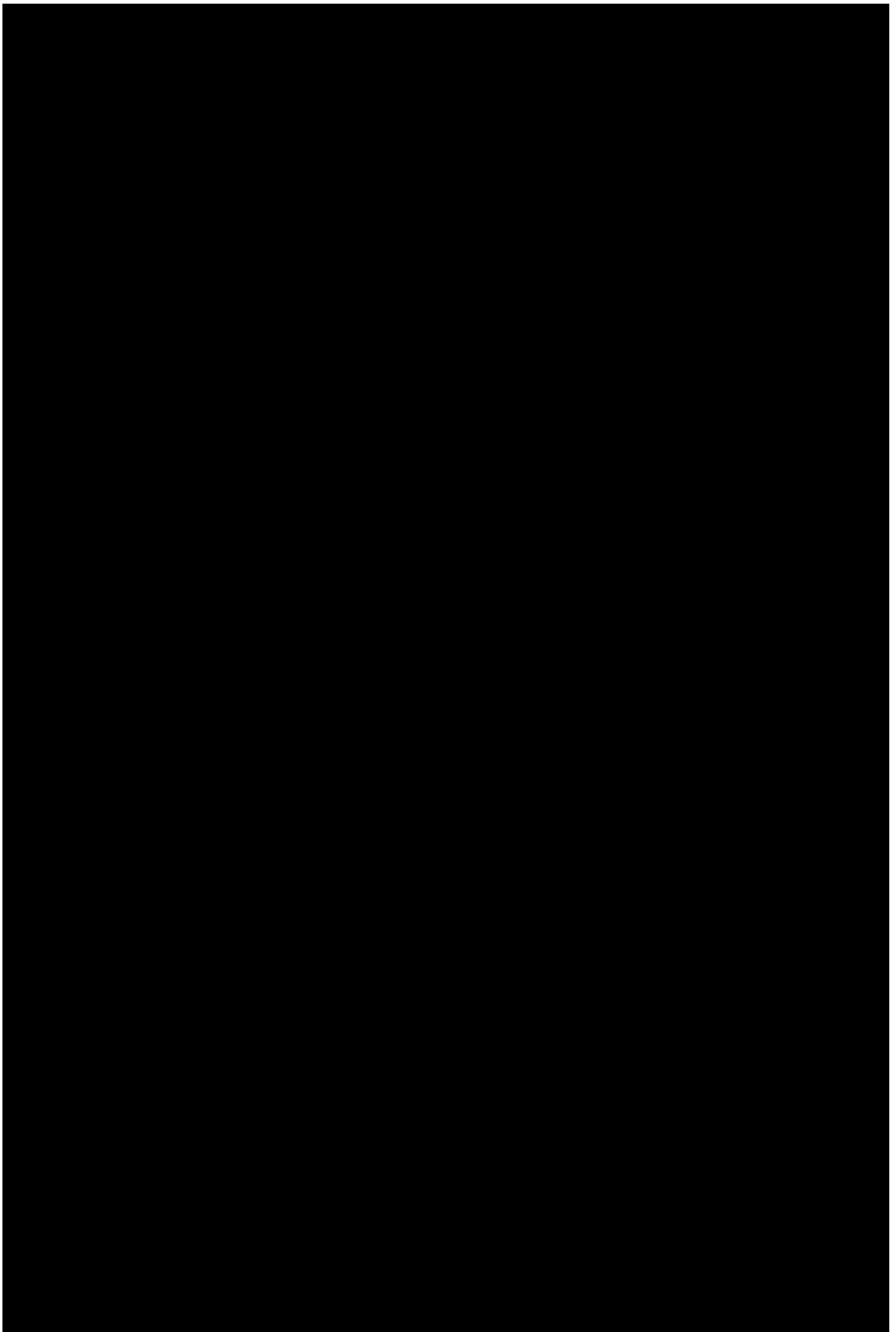
Schedule 26

Site Information Documents
Register



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Attachments

- Attachment 1 The GC21 Start-up Workshop**
- Attachment 2 Performance Evaluation (example)**
- Attachment 2A Performance Evaluation**
- Attachment 3 Performance Evaluation Record**
- Attachment 4 Subcontractors and Suppliers Payments List**
- Attachment 5 Accounts Payable Retentions Summary**
- Attachment 6 Accounts Payable Statement**
- Attachment 7 Payment Details**
- Attachment 8 Subcontractors, Suppliers and Consultants Register**



Attachment 1

The GC21 Start-up Workshop

Refer to clause 32 of the GC21 General Conditions of Contract.

Participants

The workshop participants include representatives of the Principal, the Contractor and others concerned with the Works. This might include representatives of authorities, eventual users of the Works, the local community, Consultants, Subcontractors and Suppliers.

Program

Opening

The first speaker's tasks should be to focus the participants on goals and on issues such as teamwork, co-operation, achieving a successful project, and the major foreseeable challenges.

Discussions on co-operation

The parties aim to promote a culture of co-operation which participants in the workshop should understand and be committed to.

The workshop participants may break into small groups to discuss sections of the Contract dealing with co-operation, and how they apply to the Works.

Communication framework and directory

The workshop participants should reach consensus on a framework to allow participants to co-operate on all aspects of the project. Communication arrangements should be recorded and names and contact information exchanged.

Concerns and problems

The participants should identify concerns or possible future problems and jointly prepare an action plan for their resolution.

Opportunities for innovation

The parties aim to encourage innovation. Opportunities may be lost if they are recognised too late. Participants may identify, discuss opportunities and plan for pursuing innovation and present them to the workshop. These ideas may then be developed if feasible and appropriate.

Evaluation and monitoring process

This process is explained so that participants understand their roles at the regular monitoring meetings. The evaluation and monitoring forms are discussed, and altered if necessary to suit particular needs of the project and Contract. The participants decide when the regular monitoring meetings will occur, and who will attend.

Conclusion

Before the workshop concludes, all participants should have an opportunity to comment and provide feedback for possible improvements to future workshops and monitoring meetings.

A copy of the Procurement Practice Guide *GC21 meetings and workshops* may be obtained from the NSW Government Procurement System for Construction at:

http://www.nswprocurement.com.au/psc/ppg/gc21_meetings_and_workshops.pdf



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Attachment 2

Performance Evaluation (example)

Refer to clause 6 of the GC21 General Conditions of Contract.

Contract name:
 Contract number:
 Date:

Rating system
 5 excellent
 4 above expectation
 3 meeting expectation
 2 below expectation
 1 unsatisfactory

Topic	Objectives	Your rating (this period)	Group rating (this period)
Communication	Open, honest, constructive, timely, efficient and effective communications. <ul style="list-style-type: none"> Quality communications including co-operation between parties, observing the duty not to hinder performance, providing early warning, and evaluation and monitoring. 	<input type="text"/>	<input type="text"/>
Time	<i>Completion by Contractual Completion Dates</i> <ul style="list-style-type: none"> time management - milestone achievement on or before the due date. extensions of time 	<input type="text"/>	<input type="text"/>
Cost	Financial success for all parties by meeting or bettering budget targets <ul style="list-style-type: none"> Cost/Financial management. Including early warning and agreement to Variations, pre-payment, quantity measurement, payments, final payment. 	<input type="text"/>	<input type="text"/>
Quality	Meets or exceeds specified/agreed requirements <ul style="list-style-type: none"> Quality management. Including quality standards, design requirements, fitness for purpose, innovation, faults and defects rectification, defect free completion, post completion. Encourage continuous improvement and personnel development through planning, innovation, flexibility and common sense. 	<input type="text"/>	<input type="text"/>
Safety	Safe working environment for project team and general public. <ul style="list-style-type: none"> Work, Health and Safety management. Including co-operation between parties, minimising WHS incidents, evaluation and monitoring 	<input type="text"/>	<input type="text"/>
Site incidents and/or injuries	No Lost Time Injuries (LTI) and/or major safety investigations.	<input type="text"/>	<input type="text"/>
Claims and Issue Resolution	<ul style="list-style-type: none"> Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency 	<input type="text"/>	<input type="text"/>
Environment	Environmental management. Including planning energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment <ul style="list-style-type: none"> Pro-active management of impacts and commitments. Minimise environmental incidents 	<input type="text"/>	<input type="text"/>
Environment - ER	No reoccurring items raised in the Environmental Representative's (ER) inspections for action	<input type="text"/>	<input type="text"/>
Contract Relations	Co-operative contract relationships including compliance with NSW Government codes of practice and Guidelines; industrial relations management; and subcontractor, supplier and consultant performance, <ul style="list-style-type: none"> Enjoy work and working together. Enhanced reputations of personnel and organisations involved. 	<input type="text"/>	<input type="text"/>
Community Relations	<ul style="list-style-type: none"> Proactively enhance and maintain good community relations Minimise impacts on the community. Proactive management of commitments to individuals and groups. 	<input type="text"/>	<input type="text"/>



Traffic Management	<ul style="list-style-type: none"> • Minimise disruption and inconvenience to traffic and provide safe traffic conditions. • Safe access to the Site for the project team, subcontractors, suppliers and visitors. • Safe access for adjacent residents. 	<input type="checkbox"/>	<input type="checkbox"/>
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- **IMPORTANT:** During each meeting, the evaluation team should decide on an action plan for items needing improvement.



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Attachment 2A

Performance Evaluation

Contract title: »
 Contract number: »
 Date: »

Rating system
 1 excellent
 2 above expectation
 3 meeting expectation
 4 below expectation
 5 unsatisfactory

Topic	Objectives	Your rating (this period)	Group rating (this period)
Communication	Open, honest, constructive, timely, efficient and effective communications. <ul style="list-style-type: none"> Quality communications including co-operation between parties, observing the duty not to hinder performance, providing early warning, and evaluation and monitoring. <i>Refer to Contract clauses 3 - 6</i>	<input type="text"/>	<input type="text"/>
Time	<i>Completion by Contractual Completion Dates</i> <ul style="list-style-type: none"> time management - milestone achievement on or before the due date. extensions of time <i>Refer to Contract clauses 22,50 64- 67.</i>	<input type="text"/>	<input type="text"/>
Cost	Financial success for all parties by meeting or bettering budget targets <ul style="list-style-type: none"> Cost/Financial management. Including early warning and agreement to Variations, pre-payment, quantity measurement, payments, final payment. <i>Refer to Contract clauses 5,47,48,55-63</i>	<input type="text"/>	<input type="text"/>
Quality	Meets or exceeds specified/agreed requirements <ul style="list-style-type: none"> Quality management. Including quality standards, design requirements, fitness for purpose, innovation, faults and defects rectification, defect free completion, post completion. Encourage continuous improvement and personnel development through planning, innovation, flexibility and common sense. <i>Refer to Contract clauses 15, 38-46, 48, 50, 69, and 71.</i>	<input type="text"/>	<input type="text"/>
Safety	Safe working environment for project team and general public. <ul style="list-style-type: none"> Work, Health and Safety management. Including co-operation between parties, minimising WHS incidents, evaluation and monitoring <i>Refer to Contract clause 16, 26 in regard to WHS.</i>	<input type="text"/>	<input type="text"/>
Site incidents and/or injuries	No Lost Time Injuries (LTI) and/or major safety investigations.	<input type="text"/>	<input type="text"/>
Claims and Issue Resolution	<ul style="list-style-type: none"> Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency <i>Refer to Contract clauses 68-72 in regard to Claims and issue resolution.</i>	<input type="text"/>	<input type="text"/>
Environment	Environmental management. Including planning energy & water conservation, waste management, resource conservation, pollution reduction, protection of environment, healthy work environment <ul style="list-style-type: none"> Pro-active management of impacts and commitments. Minimise environmental incidents <i>Refer to Contract clauses 15, 18, 26 and 29.</i>	<input type="text"/>	<input type="text"/>
Environment - ER	No reoccurring items raised in the Environmental Representative's (ER) inspections for action	<input type="text"/>	<input type="text"/>
Contract Relations	Co-operative contract relationships including compliance with NSW Government codes of practice and Guidelines; industrial relations management; and subcontractor, supplier and consultant performance, <ul style="list-style-type: none"> Enjoy work and working together. Enhanced reputations of personnel and organisations involved. <i>Refer to Contract clauses 12-21,32</i>	<input type="text"/>	<input type="text"/>
Community Relations	<ul style="list-style-type: none"> Proactively enhance and maintain good community relations Minimise impacts on the community. Proactive management of commitments to individuals and groups. <i>Refer to clause 6,15</i>	<input type="text"/>	<input type="text"/>



Traffic Management	<ul style="list-style-type: none">• Minimise disruption and inconvenience to traffic and provide safe traffic conditions.• Safe access to the Site for the project team, subcontractors, suppliers and visitors.• Safe access for adjacent residents.	<input type="checkbox"/>	<input type="checkbox"/>
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Attachment 3

Performance Evaluation Record

Contract title: »
 Contract number: »
 Date: »

Rating system
 1 excellent
 2 above expectation
 3 meeting expectation
 4 below expectation
 5 unsatisfactory

Objectives		Score	Comments
Communication	Open, honest, constructive, timely, efficient, effective		
Time	Milestone achievement on or before due date		
Cost	Meeting or bettering budget and avoiding cost overruns		
Quality	Meets or exceeds specified/agreed requirements		
Safety	Safe working environment for project team and general public.		
Site incidents and/or injuries	No Lost Time Injuries (LTI) and/or major safety investigations.		
Claim and Issue Resolution	Resolve issues and claims early at an appropriate level. Open and frank discussions. Transparency		
Environment	Planning, conservation of resources, protection of environment, healthy work environment. Pro-active management of impacts and commitments. Minimise environmental incidents		
Environment - ER	No reoccurring items raised in the Environmental Representative's (ER) inspections for action		
Contract Relations	Co-operative relationships, compliance with NSW Government codes of practice and Guidelines; I.R. management; and Subcontractor, Supplier and Consultant performance, Enjoy work and working together. Enhanced reputations.		
Community	Proactively enhance and maintain good community relations. Minimise impacts on the community. Proactive management of commitments to individuals and groups.		
Traffic Management	Minimise disruption and inconvenience to traffic and provide safe traffic conditions.		
AVERAGE			



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Attachment 3 (continued)

Performance Evaluation Record

Group

Contract title: »
 Contract number: »
 Date: »

Rating system

- 1 excellent
- 2 above
- 3 meeting
- 4 below
- 5 unsatisfactory

Group Members	TNSW Team							Contractor team							Other			Overall			
							TNSW							COMPANY X					SUB-CONTRACTOR		
1	Communication						0							0				0			0
2	Time						0							0				0			0
3	Cost						0							0				0			0
4	Quality						0							0				0			0
5	Safety						0							0				0			0
6	Claim and Issue Resolution						0							0				0			0
7	Environment						0							0				0			0
8	Contract Relations						0							0				0			0
9	Community Relations						0							0				0			0
10	Traffic Management						0							0				0			0
	AVERAGE	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
No	Month																				
1	Jan-03																				
2	Feb-03																				
3	Mar-03																				
4	Apr-03																				
5	May-03																				
6	Jun-03																				
7	Jul-03																				
8	Aug-03																				
9	Sep-03																				
10	Oct-03																				
11	Nov-03																				
12	Dec-03																				



Attachment 4

Subcontractors and Suppliers Payments List

Project: »

Contractor: » Contractor's Bank: »
ABN » A/C Name: »

Date: »

Payment Claim: » Period: »

The Contractor will pay monies to Subcontractors and Suppliers in accordance with this Payment List

Subcontract Retentions (Refer Accounts Payable Retention Summary)

	<i>Amount (incl GST)</i>
Total Retentions for current period	\$ »
Less Total Retentions for previous period	\$ »
Payment to Contractor for held retentions	\$ »

Payments by Contractor to Subcontractors and Suppliers

	<i>Scheduled Amount (incl GST)</i>
Payments to Subcontractors and Suppliers (Refer Accounts Payable Statement)	\$ »
Payment to Contractor for held retentions	\$ »
Payment to Contractor	\$ »
PAYMENT OF CERTIFIED CLAIM AMOUNT	\$ »

Signed by:

Contractor

Name: »
Signature:
Date: »



Attachment 5

**Accounts Payable Retentions
Summary (GST inclusive)**

Contractor Name:

ABN:

Payment Claim:

Date:

Month	Trans	Invoice eDate	AP Ref	Description	Total Retention	Held Retention	Released Retention	Retention Paid
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Subcontractor:								
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
»	»	»	»	»	»	»	»	»
Total for Subcontractor:					»	»	»	»
Total for Project:					»	»	»	»
Total for Contractor:					»	»	»	»
Grand Totals:					»	»	»	»



Attachment 6

Accounts Payable Statement

AP Ref	Subcontractor/Supplier Name	Total Amount Owning
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Grand Total:



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Attachment 7

Payment Details

Month: »

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Project: »

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Contract: »

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Payment
Method*

Payment
Method*

Payment
Method*

Payment
Method*

Date:

»

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»

Subcontractors and Suppliers listed on the
Contractor's Statement and Supporting
Statement

Payment
Claim No

Payment
Claim No

Payment
Claim No

Payment
Claim No

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Payment Batch Totals

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***Note:**

State in each case whether payment was by EFT, credit card, cheque or other method.



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Attachment 8

Subcontractors, Suppliers and Consultants Register

Project: »
 Contractor: »
 Contract Description: »
 Contract Number: »
 Month: »

SUBCONTRACTOR/ SUPPLIER /CONSULTANT			CONTACT DETAILS				Sydney Metro Prequalification /Registration (Enter all Sydney Metro prequalifications or registrations. If none, enter N/A)	CONTRACT DETAILS	
Registered Company Name	Trading Name (if applicable)	Aust. Business Number (ABN)	Street Address	Postal Address	Phone Number	Email address		Package Description (type of works/services performed)	Contract Status (Proposed, Awarded, Completed)