



Crows Nest Station Development Over Station Development

Project Delivery Agreement (Development Lot B)

Contract No: 505B

Sydney Metro

ABN 12 354 063 515

and

Thirdi Crows Nest Lot B Pty Ltd

ACN 663 888 275

CONTENTS

CLAUSE	PAGE
1. DEFINITIONS AND INTERPRETATION	1
1.1 Definitions	1
1.2 Interpretation.....	32
1.3 Order of precedence.....	34
1.4 No bias against drafter	35
1.5 Business Day	35
1.6 Authorities.....	35
1.7 Best or reasonable endeavours.....	35
1.8 Principal's rights do not affect risk allocation	36
1.10 Electronic files	41
2. DEVELOPER'S GENERAL OBLIGATIONS	41
2.1 Design, construction and carrying out of the OSD Works	41
2.2 Acceptance of risk.....	41
3. SECURITY	42
3.1 Parent Company Guarantees	42
3.2 Legal opinion.....	42
4. CONSTRUCTION	45
4.1 Construction obligations	45
4.2 Commencement of construction.....	45
4.3 Utility Services	46
4.4 Environmental obligations.....	46
4.5 Prevention of disturbance and interference	47
4.6 Home Building Act	48
5. SAFETY AND ENVIRONMENT.....	50
5.1 Care of people, property and the Environment.....	50
5.2 Work health and safety.....	50
5.3 Principal contractor	51
5.4 Incident management	52
5.5 Rail safety	52
5.6 Cleaning up.....	53
5.7 NGER Legislation	53
6. LAW AND APPROVALS	53
6.1 Compliance with Laws	53
6.2 Change in Law.....	54
6.3 Approvals	54
6.4 Concept SSD Consent.....	55
6.5 Detailed SSD Application and Detailed SSD Consent.....	55
6.7 Residential Building Legislation	56
7. GOVERNANCE AND ADMINISTRATION	56
7.1 Principal's Representative	56
7.2 Appointees of the Principal's Representative.....	56
7.3 Developer's Representative	57
7.4 Developer's acknowledgement.....	57
7.5 Release in favour of Principal's Representative	57
7.6 Approved Engineer.....	57

7.7	Project Control Group	60
7.8	Exchange of information between government agencies	60
8.	ACCESS AND CONSTRUCTION SITE	61
8.1	Rights to land.....	61
8.2	Early access to the Construction Site.....	61
8.3	Access to the Construction Site on or after the Site Access Date	62
8.4	Period and terms of Construction Licence.....	62
8.5	Licence Fees	63
8.6	Access to the Construction Site.....	63
8.7	Principal's right of entry to Construction Site	63
8.8	Access to Crows Nest Station	64
8.9	Existing Operations	66
8.10	Encumbrances.....	66
9.	PHYSICAL CONDITIONS.....	67
9.1	Acceptance of site.....	67
9.2	Information Documents	69
9.3	Native Title Claims and Threatened Species Claims	70
10.	INTERFACE WITH INTERFACE CONTRACTORS	71
10.1	Master Interface Protocols Deed Poll	71
10.2	Cooperation and Integration Deeds	71
10.3	Cooperation and co-ordination with Interface Contractors	72
10.4	Disputes between the Developer and Interface Contractors.....	74
10.5	No Claims arising out of Interface Work.....	75
11.	THIRD PARTY RIGHTS AND COMMUNITY RELATIONS.....	75
11.1	Third party rights.....	75
11.2	Community relations	75
12.	DESIGN AND CONSTRUCTION OF THE OSD ENABLING WORKS	76
12.1	Acceptance of the OSD Enabling Works	76
12.2	Principal's liability in relation to the OSD Enabling Works	77
12.3	Collateral Warranty Deed Poll	77
12.4	OSD Enabling Works Information	78
12.5	Amendments to the OSD Enabling Works Design Documentation	78
13.	MODIFICATIONS TO THE OSD ENABLING WORKS	78
13.1	Modifications to the OSD Enabling Works	78
13.2	Exhaustive code	80
14.	DEFECTS IN THE OSD ENABLING WORKS	81
14.1	Notice of anticipated Station Completion.....	81
14.2	Notice of Station Completion	81
	[REDACTED]	
14.5	Access by Station Contractor and Interface Contractors	83
15.	MODIFICATIONS.....	83
16.	RECORDS, ACCESS TO RECORDS AND NOTICES.....	84
16.1	Records	84
16.2	Providing documents to the Principal	84
16.3	ASIC and ASX notices.....	85
17.	SUBCONTRACTING.....	85
17.1	Subcontracting by the Developer	85
17.2	Significant Subcontracts	85

17.3	Provisions to be included in Subcontracts.....	86
17.4	D&C Contract.....	87
18.	PROJECT PLANS AND STRATEGIES.....	88
18.1	Project Plans.....	88
18.2	Strategies.....	88
18.4	Hoarding Plan.....	89
20.	TIME.....	90
20.1	Developer's Program.....	90
20.2	Delay Events.....	91
20.3	Extensions of time.....	91
20.4	Limiting factors.....	92
20.5	Determination of extension of time claim.....	93
20.6	Delay Costs.....	93
21.	DIRECTIONS TO SUSPEND.....	94
21.1	Suspension.....	94
22.	COMPLETION.....	95
22.1	Notice of anticipated Completion.....	95
22.2	Notice of Completion and joint inspection of OSD Works.....	95
22.3	Effect of Certificate of Completion.....	96
23.	INTELLECTUAL PROPERTY RIGHTS.....	96
23.1	Licence to the Developer.....	96
23.2	Licence to the Principal.....	96
23.3	Principal's IPRs.....	97
24.	DEFECTS RECTIFICATION – OSD WORKS.....	97
24.1	Notice of Defect.....	97
24.2	Developer's obligations.....	98
24.3	Failure to rectify Defect.....	98
24.4	Access.....	98
25.	TRANSFER OF TITLE AND SUBDIVISION.....	99
25.1	Subdivision.....	99
25.2	Entry into Call Option Deed.....	99
25.3	Operation of the Management Statement.....	99
25.4	Restrictions on access, possession and use.....	100
26.	DEVELOPER PAYMENTS.....	101
26.1	Developer Payments.....	101
26.3	Developer Payment is non-refundable.....	101
27.	GST.....	101
27.1	Payment of GST.....	101
27.2	Later adjustment to price or GST.....	102
27.3	Tax invoice/adjustment note.....	102
27.4	Indemnities and reimbursement.....	102
27.5	Non-monetary consideration.....	102
28.	CARE OF THE OSD WORKS, RISKS AND INSURANCE.....	102

28.1	Responsibility for the care of the OSD Enabling Works.....	102
28.2	Responsibility for the care of the OSD Works.....	103
28.3	Principal's Insurance	103
28.4	Developer's Insurance obligations.....	103
28.5	Periods of Insurance	104
28.6	Evidence of policies.....	104
28.7	Premiums	105
28.8	Undertaking to inform	105
28.9	Reinstatement.....	106
28.10	Application of the insurance proceeds.....	106
[REDACTED]		
28.12	Change to limits and Insurances.....	107
[REDACTED]		
28.14	Liabilities of Developer not affected.....	108
[REDACTED]		
29.	INDEMNITY AND LIABILITY EXCLUSIONS.....	109
29.1	Indemnity by the Developer.....	109
29.2	Contribution by the Principal	111
29.3	Obligations not affected.....	111
[REDACTED]		
30.	DEFAULT AND TERMINATION	117
30.1	Event of Default	117
30.2	Default Notice	118
30.3	Rights of the Principal following Default Notice	119
30.4	Developer Termination Events.....	119
30.5	Termination for Developer Termination Event.....	119
30.6	Access termination event.....	119
[REDACTED]		
[REDACTED]		
30.9	Principal's rights after termination.....	121
30.10	Termination Payments.....	122
30.11	Preservation of rights.....	123
30.12	No other termination rights.....	123
31.	CONFIDENTIALITY AND PERMITTED DISCLOSURE.....	123
31.1	Confidentiality	123
31.2	Principal's Public Disclosure Obligations	124
31.3	Media requests	125
32.	ASSIGNMENT AND CHANGE IN OWNERSHIP	125
32.1	Assignment by the Developer	125
32.2	Change in ownership.....	126
32.3	Permitted changes in ownership	126
32.4	Assignment and novation by the Principal	127
33.	FINANCING.....	127
33.1	Financing documents.....	127
33.2	Negotiating terms of the Financier's Side Deed	128

33.3	Principal's right to withhold consent	128
34.	DISPUTE RESOLUTION	128
34.1	Disputes	128
34.2	Dispute under related contracts	128
35.	REPRESENTATIONS AND WARRANTIES	128
35.1	Principal's representations and warranties	128
35.2	Developer representations and warranties	129
35.3	Repetition of representation and warranties	130
35.4	Obligations not affected	130
35.5	Undertakings by each party	130
36.	COSTS AND OTHER AMOUNTS	131
36.1	Cost of OSD Works	131
36.2	Developer claims	131
36.3	Taxes, Outgoings and other fees and levies	132
36.4	Stamp duty	132
36.5	Each party to pay its costs	132
36.6	Right of set-off	132
36.7	General payment requirements	133
36.8	Principal's right to reimbursement	134
37.	NOTICES	134
38.	GENERAL	135
38.1	Governing Law and jurisdiction	135
38.2	Amendments	135
38.3	Waiver	135
38.4	Survival of certain provisions; no merger	135
38.5	Further acts and documents	136
38.6	Consents	136
38.7	No representation or reliance	136
38.8	Exercise of remedies	136
38.9	Entire agreement	137
38.10	Joint and several liability	137
38.12	Excluding liability	138
38.13	Severability	138
38.14	Relationship between the Principal and Developer	138
38.15	Transfer of functions or Public Transport Agency assets	138
38.16	Principal not Liable	139
38.17	Supervening legislation	139
38.18	Set off of unliquidated amounts	139
38.19	Continuing breaches	139
38.20	Step-in	139
38.21	Personal Property Securities Act	140
38.22	Vienna Convention	141
38.23	Attorneys	141
38.24	Counterparts	141

SCHEDULES

Part A – General

- A1 Reference Schedule
- A2 Subcontract Requirements

- A3 Modification Procedure
- A4 Dispute Procedure
- A5 NGER Legislation
- A6 Program Requirements
- A7 Developer's Initial Program
- A8 Project Plan Requirements
- A9 Requirements of Approved Engineer
- A10 Developer Insurance Requirements
- A11 Insurance Policies
- A12 Site Interface Deed Poll
- A13 D&C Side Deed
- A14 Station Cooperation and Integration Deed
- A15 Operator Cooperation and Integration Deed
- A16 LW Contractor Cooperation and Integration Deed
- A17 Moral Rights Consent
- A18 Master Interface Protocols Deed Poll
- A19 Approved Engineer Deed Poll
- A20 Collateral Warranty Deed Poll
- A21 Information Documents
- A22 Project Structure Diagram
- A23 Not used
- A24 Hoarding Area

Part B – Administration and Certificates

- B1 Governance Groups
- B2 Notice of Completion
- B3 Certificate of Completion
- B4 Approved Engineer's Certificate (Pre-Commencement)
- B5 Approved Engineer's Certificate (Post-Completion)

Part C – Technical

- C1 OSD Enabling Works
- C2 OSD Enabling Works Design Documentation

C3 [REDACTED]

Part D - Access, Land and Property

- D1 Site Access Schedule
- D2 Existing Encumbrances
- D3 Transfer of title
- D4 Form of Call Option Deed
- D5 Subdivision Requirements
- D6 Subdivision Principles
- D7 Subdivision Plan
- D8 Section 88B Instrument
- D9 Management Statement

Part E - Financial

- E1 Termination Payment Schedule
- E2 Delay Cost Caps
- E3 Form of Parent Company Guarantee
- E4 Form of Financier's Side Deed
- E5 Not used
- E6 [REDACTED]
- E7 [REDACTED]

Part F - Electronic Files

- F1 Electronic Files

THIS DEED is made on 22 December 2022

BETWEEN:

- (1) **Sydney Metro ABN 12 354 063 515**, a NSW Government agency constituted by section 38 of the *Transport Administration Act 1988* (NSW) and located at Level 43, 680 George Street, Sydney NSW 2000 (**Principal**); and
- (2) the entity referred to in item 1 of the Reference Schedule (**Developer**).

RECITALS:

- (A) The Principal is procuring Sydney Metro City & Southwest on behalf of the NSW Government and the people of New South Wales.
- (B) Following completion of a request for proposals process, the Principal selected the Developer as the successful proponent for procuring the delivery of the Over Station Development.
- (C) The Principal and the Developer now wish to enter into this deed to set out the terms on which the Developer will:
 - (1) procure the financing, design, construction, commissioning, supervision and completion of the OSD Works;
 - (2) make payments to the Principal as consideration for the rights and benefits granted to the Developer under this deed; and
 - (3) otherwise perform its obligations under this deed.
- (D) As between the Principal and the Developer, the Principal will:
 - (1) grant to the Developer the right to procure the undertaking of the Over Station Development; and
 - (2) grant each Call Option over the Development Lot which, upon exercise, will result in the transfer of the freehold title in the Development Lot to the Purchaser.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context or express provisions otherwise indicate:

AMB or **Asset Management Branch** means the independent unit of that name established within Transport for NSW, the functions of which include developing engineering governance and frameworks to support industry delivery in assurance of design, safety, integrity, construction and commissioning of transport assets for the whole asset life cycle.

AMB Charter means the document titled "Charter of the Asset Standards Authority" (the Asset Standards Authority being a precursor to the AMB) which identifies the AMB's objectives, functions, powers and governance and the duties of Public Transport Agencies and TAOs in relation to the AMB (as amended from time to time), a copy of which can be found on <https://www.transport.nsw.gov.au/industry/asset-management-branch#About>.

API means the Australian Property Institute Inc.

Applicable Transfer Area means the part of the Land comprising the Development Lot or, if the Developer has exercised its right to subdivide the Development Lot under clause 25.1(c) (*Subdivision*) into an OSD Residential Stratum Lot and one or more OSD Retail Stratum Lots, each of those stratum lots.

Applicable Transfer Date means, in respect of an Applicable Transfer Area, the date on which completion of the Contract for Sale applying to that Applicable Transfer Area occurs.

Application means an application for any Approval or, if the relevant Authority in respect of that Approval does not require a particular form of application in order to grant that Approval, the plans, specifications or other documents to be submitted to the Authority in connection with that Approval.

Appointed Principal Contractor means the entity referred to in item 9 of the Reference Schedule or such other entity approved by the Principal in writing.

Approval means any licence, permit, consent, approval, determination, authorisation, exemption, certificate or permission from any Authority or under any Law, or any requirement made under any Law, including any Development Consent, which must be obtained or satisfied (as the case may be) to perform the Developer's obligations under this deed, including to procure the carrying out of the OSD Works, but does not include:

- (a) any Direction given by the Principal or the Principal's Representative pursuant to this deed; or
- (b) the exercise by the Principal of its rights under this deed or any other OSD Contract Document.

Approved Engineer means the person or persons engaged from time to time by the Developer in accordance with clause 7.6 (*Approved Engineer*) to perform the role set out in clause 7.6(c).

Approved Engineer's Certificate (Post-Completion) means a certificate issued by the Approved Engineer under clause 7.6(c)(ii), in the form set out in Schedule B5 (*Approved Engineer's Certificate (Post-Completion)*) and in accordance with any requirements under clause 7.6 (*Approved Engineer*).

Approved Engineer's Certificate (Pre-Commencement) means a certificate issued by the Approved Engineer under clause 7.6(c)(i), in the form set out in Schedule B4 (*Approved Engineer's Certificate (Pre-Commencement)*) and in accordance with any requirements under clause 7.6 (*Approved Engineer*).

Approved OSD Enabling Works Modification means any OSD Enabling Works Modification notified to the Developer under clause 13.1(a) (*Modifications to the OSD Enabling Works*) and to which clause 13.1(e) (*Modifications to the OSD Enabling Works*) applies.

Artefact means any fossils, bones, artefacts, coins, articles of antiquity, structures or other remains or things of scientific, geological, historical or archaeological interest.

Asset Lifecycle has the meaning assigned to it in the AMB Charter.

Asset Management Information has the meaning given in clause 12.4 (*OSD Enabling Works Information*).

Associate means:

- (a) in respect of the Principal, the Principal's Representative and any of the employees, agents, contractors or officers of the Principal or the Principal's Representative to the extent they are engaged on Sydney Metro City & Southwest, but excludes:
 - (i) the Developer and each person listed in paragraph (b) of this definition;
 - (ii) any Interface Contractor;
 - (iii) the Development Lot A Developer; and
 - (iv) the employees, agents, consultants and officers of the persons listed in paragraphs (a)(i) to (a)(iii) (inclusive) of this definition; and
- (b) in respect of the Developer:
 - (i) any Subcontractor (including the D&C Contractor and the Development Manager);
 - (ii) the D&C Contractor Guarantor;
 - (iii) each Developer Guarantor;
 - (iv) the Purchaser;
 - (v) each Approved Engineer; and
 - (vi) each of the employees, agents, contractors, consultants, officers, licensees and invitees of the Developer and those persons listed in paragraphs (b)(i) to (b)(v) (inclusive) of this definition (excluding any Interface Contractor and its employees, agents, consultants and officers).

Authority means:

- (a) any governmental, semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, minister, statutory corporation or instrumentality;
- (b) any other person having a right to impose a requirement, or whose consent is required, under Law with respect to any part of the performance of the obligations or the exercise of any right of the Developer under this deed; or
- (c) any other person having jurisdiction over, or ownership of, any Utility Services or Utility Service Works.

Bank Bill means a bill of exchange (under the *Bills of Exchange Act 1909* (Cth)) which has been accepted by any bank authorised under a Law of the Commonwealth of Australia or any State to carry on banking business.

Bank Bill Rate is, for the relevant period:

- (a) the rate, expressed as a yield percent per annum (rounded downwards to 2 decimal places) quoted as the average bid rate on the Reuters monitor system page "BBSY" (or any page which replaces that page) at about 12:00pm (Sydney time) on the first day of the relevant period, for Bank Bills having a tenor of approximately 90 days; or

- (b) if no average bid rate is published for Bank Bills of that tenor in accordance with paragraph (a) of this definition, the bid rate agreed in good faith by the parties having regard to the rates otherwise bid for Bank Bills having a tenor as described above at or around that time.

Business Day means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday, public holiday or 27, 28, 29, 30 or 31 December).

Call Option Deed means, as applicable:

- (a) the call option deed between the Principal, the Developer and the Purchaser in respect of the Development Lot, in the form of Schedule D4 (*Form of Call Option Deed*) and entered into in accordance with Schedule D3 (*Transfer of title*);
- (b) the OSD Residential Stratum Lot Call Option Deed; and
- (c) each OSD Retail Stratum Lot Call Option Deed.

Certificate of Completion means a certificate issued by the Principal's Representative under clause 22.2(d) (*Notice of Completion and joint inspection of OSD Works*) certifying that Completion has been achieved.

Chain of Responsibility Provisions refers to any section of the Heavy Vehicle National Law under which the Developer is "a party in the chain of responsibility" (within the meaning given to that term under the Heavy Vehicle National Law).

Change in Law means any of the following which take effect on or after the date of this deed:

- (a) the amendment, repeal or change of an existing Law (other than an Approval);
- (b) a new Law (other than an Approval); or
- (c) a judgment of a court of law which changes a binding precedent.

Claim means a claim, action, proceeding or demand, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Clean Energy Regulator means the Clean Energy Regulator established under the *Clean Energy Regulator Act 2011* (Cth).

Codes of Practice means a code of practice which has been approved as a code of practice for the purposes of the WHS Legislation.

Collateral Warranty Deed Poll means [REDACTED]

Community Communications Strategy means the Project Plan of that name.

Completion means the point in time at which:

- (a) the Developer has provided the Approved Engineer's Certificate (Post-Completion);
- (b) an Occupation Certificate for all of the OSD Works has been issued and is in force to enable occupation of the OSD;
- (c) the Developer has reinstated any areas outside of the Construction Site to a condition at least equivalent to the condition existing before that occupation or use; and

Compliance Cost Notice has the meaning given to it in the RAB Act.

Compliant Tender means any tender submitted that meets the qualification criteria as reasonably determined by the Principal and notified to the Developer in accordance with clause 5(f) of Schedule E1 (*Termination Payment Schedule*).

Concept SSD Consent means the determination for development application SSD-9579 granted on 20 December 2020 by the NSW Minister for Planning and Public Spaces, in accordance with Part 4 of the EP&A Act, as modified from time to time.

Consent Authority means, in relation to an Application, the Authority having the function to determine that Application pursuant to Part 4 of the EP&A Act.

Consequential Loss means any:

(a) loss of income, loss of revenue, loss of profit, loss of rent, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use or loss of production (whether the loss is direct or indirect); or

(b) direct or indirect financing costs,

whether present or future, fixed or unascertained, actual or contingent.

Construction and Site Management Plan means the Project Plan of that name.

Construction Licence means the licence granted by the Principal to the Developer pursuant to clause 8.1(a) (*Rights to land*).

Construction Licence Commencement Date means the date on which access is first given to the Developer for the Construction Site.

Construction Licence Sunset Date means the date specified as the "Construction Licence Sunset Date" in the Site Access Schedule.

Construction Materials means any equipment, plant, materials, fixtures, fittings, furniture, machinery, goods, parts, components and other items incorporated or to be incorporated into the OSD Works.

Construction Plant means plant, equipment (including hand-held tools), machinery, apparatus, vehicles, appliances and things used in the carrying out of the OSD Works but not forming part of the OSD Works.

Construction Site means the land and other places identified in section 3 of the Site Access Schedule.

Construction Site Interface Work has the meaning given in clause 5.3(a)(ii) (*Principal contractor*).

Consumer Price Index or **CPI** means:

(a) the "Weighted Average of Eight Capital Cities: All Groups Consumer Price Index" as maintained and published quarterly by the Australian Bureau of Statistics; or

- (b) if that index is no longer published or there is a change in its coverage or periodicity either:
- (i) such other index as may be agreed by the parties for the purposes of the OSD Contract Documents; or
 - (ii) if the parties cannot agree an alternative index in time for a relevant calculation to be made under the OSD Contract Documents, the parties must request the President of the Institute of Actuaries Australia (or his nominee) to nominate a suitable substitute index which is a general indicator of the rate of price change for consumer goods and services to apply for the purposes of the OSD Contract Documents, and his determination is final and binds the parties.

Contamination means the presence in, on or under land or any other aspect of the Environment of:

- (a) a substance (whether occurring naturally or otherwise) which is at a concentration above the concentration at which the substance (whether occurring naturally or otherwise) is normally present in, on or under land or any other aspect of the Environment in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment; or
- (b) a Hazardous Chemical.

Contract for Sale means the contract for the sale of the Development Lot (or each contract for sale of the OSD Residential Stratum Lot and of each OSD Retail Stratum Lots, as applicable) between the Principal as vendor, the Developer and the Purchaser as purchaser, in the form required pursuant to Schedule D3 (*Transfer of title*) (and, if required, amended in accordance with clause 1.1(b) of Schedule D3 (*Transfer of title*)) and annexed to the Call Option Deed.

Contractor Licence means a contractor licence authorising its holder to carry out Home Building Work, as required under the Home Building Act for the purpose of carrying out those works.

Control means:

- (a) "Control" as defined in the Corporations Act;
- (b) being in a position to cast, or control the casting of, 20% or more of the maximum number of votes that may be cast at a general meeting; or
- (c) having a relevant interest (as defined in section 608 of the Corporations Act) in 20% or more of the securities,

of an entity.

Cooperation and Integration Deed means each of:

- (a) each Interface Contractor Cooperation and Integration Deed; and
- (b) the Operator Cooperation and Integration Deed.

Corporations Act means the *Corporations Act 2001* (Cth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Crows Nest CODD means the deed titled "Sydney Metro City & Southwest – Crows Nest Station Development – Construct Only Delivery Deed" dated 16 October 2020 between the Principal and the Station Contractor in relation to the construction of the Crows Nest Station (including the OSD Enabling Works), a redacted copy of which is included in electronic form in Schedule F1 (*Electronic files*).

Crows Nest Station means the new underground metro station for Sydney Metro City & Southwest known as "Crows Nest Station".

CSSI Approval means the approval granted by the Minister for Planning and Infrastructure under section 5.19 of the EP&A Act dated 9 January 2017, including all conditions to such approval and all documents incorporated by reference, as modified from time to time.

Customers means all users and potential users of Sydney Metro City & Southwest or any services associated with Sydney Metro City & Southwest.

D&C Contract means the contract to be entered into between the Development Manager and the D&C Contractor in relation to the design, construction, commissioning, supervision and completion of the OSD Works.

D&C Contractor means the entity referred to in item 3 of the Reference Schedule or such other entity approved by the Principal in writing (which approval may be given or withheld in the Principal's absolute discretion).

D&C Contractor Guarantor means the entity referred to in item 4 of the Reference Schedule or such other entity approved by the Principal in writing.

D&C Contractor Margin means [REDACTED].

D&C Side Deed means the document titled "Crows Nest Station Development – D&C Side Deed (Over Station Development Project Delivery Agreement) (Development Lot B)" to be entered into between the Principal, the Developer, the Development Manager, the D&C Contractor and the D&C Contractor Guarantor, in the form of Schedule A13 (*D&C Side Deed*) or as amended in accordance with clause 17.4(f) (*D&C Contract*).

Date for Completion means the date set out in item 13 of the Reference Schedule, as extended in accordance with this deed.

[REDACTED]

[REDACTED]

Date of Completion means:

- (a) the date certified in a Certificate of Completion as the date that Completion was achieved; or
- (b) where another date is determined under the Dispute Procedure as the date on which Completion was achieved, that date.

DBP Act means the *Design and Building Practitioners Act 2020* (NSW).

Default Notice means a notice given by the Principal under clause 30.2 (*Default Notice*).

[REDACTED]

Delay Event means an event referred to in clause 20.2 (*Delay Events*).

Design Contract means the deed titled "Sydney Metro – Professional Services Contract – PSC No. 00013/11441 – Design and Technical Services Crows Nest Station" dated 28 February 2019 between the Principal and the Design Contractor in relation to the design of the Crows Nest Station, a redacted copy of which is included in electronic form in Schedule F1 (*Electronic Files*).

Design Contractor means SMEC Australia Pty Ltd ABN 47 065 475 149.

Design Documentation means all:

- (a) design documentation (including design standards, concrete mix designs, design reports, durability reports, specifications, models, samples, prototypes, calculations, drawings, shop drawings, digital records, business rules, system processes and all other relevant data) in electronic, computer readable and written or physical forms, or stored by any other means; and
- (b) computer software,

which are required for the performance of the OSD Works, or which the Developer, the Development Manager or any other person creates in relation to the OSD Works.

Detailed SSD means the detailed design resolution for the OSD Works and to authorise the construction of those OSD Works.

Detailed SSD Application means an Application to be lodged by the Developer with the Consent Authority seeking a Detailed SSD Consent.

Detailed SSD Consent means a consent granted in respect of the Detailed SSD in accordance with Part 4 of the EP&A Act, and any modification to it.

Developer Guarantor means the entities referred to in item 2 of the Reference Schedule or such other entity (or entities) approved by the Principal in writing (which approval may be given or withheld in its absolute discretion).

Developer Margin means [REDACTED].

Developer Payments means the OSD Payment.

Developer's Initial Program means the initial detailed program for the design and construction of the OSD Works contained in Schedule A7 (*Developer's Initial Program*).

Developer's Program means the detailed program for the design and construction of the OSD Works, as updated from time to time in accordance with Schedule A6 (*Program Requirements*).

Developer's Representative means the person referred to in item 6 of the Reference Schedule or, any person appointed by the Developer as its replacement representative from time to time, as notified by the Developer to the Principal in writing.

Developer Termination Event means any event specified in clause 30.4 (*Developer Termination Events*).

Development Consent means any consent issued under Part 4 of the EP&A Act to carry out the OSD Works and includes the:

- (a) Concept SSD Consent; and
- (b) Detailed SSD Consent.

Development Lot means the stratum lot limited in depth indicatively shown as Lot 3 in the Subdivision Plan which will be created by way of Subdivision pursuant to this deed in which the completed OSD will sit or, if the Developer exercises its right under clause 25.1(c) (*Subdivision*) to subdivide that stratum lot into an OSD Residential Stratum Lot and one or more OSD Retail Stratum Lots, will mean and include each of those stratum lots.

Development Lot A means the stratum lot limited in depth indicatively shown as Lot 2 in the Subdivision Plan which will be created by way of Subdivision pursuant to clause 25.1 (*Subdivision*) or, if the Development Lot A Developer exercises its right under the OSD PDA (Development Lot A OSD) to subdivide that stratum lot into multiple stratum lots, will mean and include each of those stratum lots.

Development Lot A Developer mean the entity or entities (as applicable) which enter into or have entered into the OSD PDA (Development Lot A OSD) with the Principal.

Development Lot A Developer's Associates means each person referred to in paragraph (b) of the definition of "Associates" in the OSD PDA (Development Lot A OSD).

Development Lot A OSD Contract Documents has the meaning given to the term "OSD Contract Documents" in the OSD PDA (Development Lot A OSD).

Development Lot C means the stratum lot limited in depth indicatively shown as Lot 4 in the Subdivision Plan which will be created by way of Subdivision pursuant to clause 25.1 (*Subdivision*).

[REDACTED]

Development Manager means [REDACTED].

[REDACTED]

Direction means any certificate, decision, demand, determination, direction, instruction, notice, order, rejection, request or requirement.

Dispute has the meaning given to that term in clause 34.1 (*Disputes*).

Dispute Procedure means the procedure for the resolution of Disputes set out in Schedule A4 (*Dispute Procedure*).

Duties Act means the *Duties Act 1997* (NSW).

Early Site Access Date means the date specified as the "Early Site Access Date" in the Site Access Schedule.

Encumbrance means any interest, right, licence, lease, affectation, encumbrance, easement, covenant or restriction on use registered on title or otherwise created and validly existing from time to time.

Environment means components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) human-made or modified structures and areas; and
- (e) interacting natural ecosystems that include components referred to in paragraphs (a) to (c) (inclusive) of this definition.

Environment Protection Licence or EPL means an environment protection licence issued under the Protection of the *Environment Operations Act 1997* (NSW).

Environmental Hazard means a state of danger to human beings or the Environment whether imminent or otherwise resulting from the location, storage, handling or release of any substance having toxic, corrosive, flammable, explosive, infectious or otherwise dangerous characteristics.

Environmental Law means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development, the erection of a building or the subdivision of land (including the EP&A Act);
- (b) emissions of substances into the atmosphere and land;
- (c) Pollution and Contamination of the atmosphere and land; and
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances;
 - (iii) dangerous goods;
 - (iv) threatened, endangered and other flora and fauna species;
 - (v) conservation, heritage and natural resources; and
 - (vi) the health and safety of people,

whether made or in force before or after the date of this deed.

Environmental Liabilities means any of the following liabilities arising before the expiration or termination of this deed:

- (a) all Costs associated with undertaking the remediation of any Contamination ordered or required by any Authority or court of any land or building;
- (b) any compensation or other monies that an Authority or court requires to be paid to any person under an Environmental Law for any reason;

- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other Claims or Loss payable under in respect of an Environmental Law.

Environmental Notice means any notice (including any notice of an intention to issue an order under the EP&A Act), order or request for information and/or documents issued by an Authority in respect of a matter concerning the Environment.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Error means a discrepancy, omission, mistake, lack of co-ordination, ambiguity or inconsistency between documents or between different parts of the same document.

Event of Default has the meaning given in clause 30.1 (*Event of Default*).

Excluded Costs [REDACTED]

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

Executive Negotiator means:

- (a) for the Principal, the person referred to in item 7 of the Reference Schedule; and
- (b) for the Developer, the person referred to in item 8 of the Reference Schedule,

together the Executive Negotiators, or any other person appointed by the Principal or the Developer, as applicable, as its replacement Executive Negotiator from time to time, as notified by the Principal or the Developer to the other party in writing.

Existing Encumbrances means the Encumbrances registered on the title of the land comprising the Construction Site and set out in Schedule D2 (*Existing Encumbrances*).

Existing Operations means:

- (a) all infrastructure (including existing infrastructure and Utility Services) which is owned, operated or under the control of an Existing Operator; and
 - (b) the businesses and operations undertaken by an Existing Operator,
- on or in the vicinity of the Construction Site.

Existing Operator means:

- (a) Ausgrid, being the statutory State owned corporation of that name established under the *Energy Services Corporations Act 1995* (NSW);
- (b) Jemena Limited ABN 95 052 167 405;

- (c) Sydney Water Corporation ABN 49 776 225 038;
- (d) State Transit Authority, being the operating agency of Transport for NSW responsible for, amongst other things, buses in the Sydney CBD;
- (e) Transport for NSW;
- (f) the Council of the City of Willoughby;
- (g) Telstra Corporation Limited ABN 33 051 775 556 and other telecommunication operators;
- (h) owners and occupiers of adjoining properties; or
- (i) any other person who:
 - (i) owns, operates or controls any infrastructure (including existing infrastructure and the Utility Services); or
 - (ii) undertakes any business or operation on or in the vicinity of the Construction Site,

and any of their employees, agents, contractors or Related Entities.

Expert means the person appointed to determine a Dispute pursuant to clause 2.3(a) of Schedule A4 (*Dispute Procedure*).

Extra Land means the land and buildings referred to in clause 8.1(b)(i) (*Rights to land*).

FATA means the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

Final Plans and Specifications means the Design Documentation which the D&C Contractor is entitled to use for construction purposes in accordance with the D&C Contract.

Financiers means the providers of any facilities, financial arrangements or accommodation provided from time to time for the purposes of the OSD Project and may, where the context permits, include any agent or trustee of such providers.

Financier's Side Deed means a deed to be entered into between the Principal, the Developer, each Developer Guarantor and the Financiers and, where applicable, the Development Manager, substantially in the form of Schedule E4 (*Form of Financier's Side Deed*), subject to any amendments under clause 33.2 (*Negotiating terms of the Financier's Side Deed*).

General Conditions means the provisions of this deed, excluding the schedules.

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GFA has the meaning given to the term "gross floor area" in the *North Sydney Local Environmental Plan 2013*.

██

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

Good Industry Practice means that degree of skill, care, prudence, foresight and practice which would reasonably be expected of a skilled and experienced person, engaged in the

same or a similar type of undertaking as that of the Developer or its Associates, as the case may be, under the same or similar circumstances as the delivery of the OSD Works.

GST has the meaning it has in the GST Law.

GST Law means the same as "GST law" means in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hazardous Chemical means any substance which would or might reasonably be expected to cause damage or injury to human beings, any property or the Environment and includes any "Hazardous Chemical" as defined in the WHS Legislation.

HBA Defect means:

- (a) any defect, deficiency, fault, error or omission in; or
- (b) any:
 - (i) cracking, shrinking, movement or subsidence in; or
 - (ii) other aspect of,

the Residential OSD Works arising out of or in any way in connection with a breach of any of the warranties in clauses 4.6(c)(iv) and 4.6(c)(v) (*Home Building Act*).

Heavy Vehicle National Law means the *Heavy Vehicle National Law (NSW) No. 42a* and all associated regulations.

Hoarding Area means that area highlighted orange on the plan in Schedule A24 (*Hoarding Area*).

Hoarding Plan means the Project Plan of that name.

Home Building Act or **HBA** means the *Home Building Act 1989* (NSW) and all associated regulations.

Home Building Work means residential building works or specialist work for the purposes of the Home Building Act.

Incident means any work health and safety, environmental or security incident arising out of or in connection with the carrying out of the OSD Works including:

- (a) a non-compliance with an Approval;
- (b) any public complaint; or
- (c) any incident that may cause harm to a worker or visitor or short term disruption in the workplace, but which can be dealt with by available resources, whether or not the emergency services are called.

Independent Valuer means an independent valuer jointly appointed by the parties in accordance with [REDACTED].

Information Documents means any information, data, document or material (in any format or medium including any electronic form and whether oral or written) which:

- (a) is referred to in Schedule A21 (*Information Documents*);

- (b) is issued or made available by, or on behalf of, the Principal or its Associates or the State to the Developer or its Associates in connection with the Proposal, the OSD Works, the OSD Enabling Works, the Design Contract, the Crows Nest CODD, the OSD Enabling Works Design Documentation, the Construction Site, the Land, the OSD Project or Sydney Metro City & Southwest regardless of whether, at the time of issue (or being made available), was expressly classified or stated to be an "Information Document"; or
- (c) is referred to, or incorporated by reference, in an Information Document unless such information, data, document or material is otherwise expressly stated to form part of this deed,

whether issued or made available on, before or after the date of execution of this deed, other than any information, data, document or material which the Principal is obliged by the terms of this deed to provide to the Developer and the Developer is expressly permitted by the terms of this deed to rely on.

Insolvency Event means, in relation to a person, the occurrence of any of the following events:

- (a) an application is made for the winding up or deregistration of a person and, where an application has been made for the dismissal or withdrawal of the application for winding up within 10 Business Days, and the application is not dismissed or withdrawn within 30 Business Days;
- (b) an order is made for the winding up of a person, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Principal before that order is made where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of the approval;
- (c) a person passes a resolution for its winding up or deregistration, except for the purpose of a reconstruction, amalgamation, merger or consolidation on terms approved by the Principal before that resolution is passed where the reconstruction, amalgamation, merger or consolidation is implemented in accordance with the terms of that approval;
- (d) a receiver, receiver and manager, liquidator, provisional liquidator, compulsory manager trustee for creditors or in bankruptcy or analogous person is appointed to take possession of any property of a person;
- (e) the holder of a Security Interest takes (or appoints an agent to take) possession of any property of the person or otherwise enforces its Security Interest;
- (f) a person or any other person appoints an administrator to the person, or takes any step to do so;
- (g) a person:
 - (i) suspends payment of its debts (other than as the result of a failure to pay a debt or Claim which is the subject of a good faith dispute);
 - (ii) ceases or threatens to cease to carry on all or a material part of its business;
 - (iii) is or states that it is unable to pay its debts; or
 - (iv) is deemed insolvent by virtue of its failure to comply with a statutory demand, which is not withdrawn or set aside within 10 Business Days;

- (h) a person enters into a readjustment or rescheduling of its indebtedness or makes a general assignment for the benefit of or a composition with its creditors, without the prior consent of the Principal, except for the purposes of a solvent reconstruction or amalgamation permitted by this deed; or
- (i) any act is done or event occurs which has an analogous or similar effect to any of the events in paragraphs (a) to (h) (inclusive) of this definition.

Insurances means the insurances required to be effected and maintained under any OSD Contract Document.

Intellectual Property Right or **IPRs** means all present and future rights conferred by law in or in relation to inventions, patents, designs, circuit layouts, copyright, confidential information, trade secrets, trade-marks and any other right in respect of intellectual property as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation of July 1967 and includes all rights in all applications to register these rights, all renewals and extensions of these rights and all rights in the nature of these rights, excluding Moral Rights.

Interface Contractor means any contractor engaged by the Principal or its Associates to do Interface Work on or adjacent to the Construction Sites (including their respective subcontractors all the way down the contracting chain), including:

- (a) the Station Contractor;
- (b) the LW Contractor;
- (c) the TSOM Contractor;
- (d) the Operator; or
- (e) any other contractor otherwise identified by the Principal's Representative as an Interface Contractor,

but not including the Developer, the Development Lot A Developer and their subcontractors of any tier.

Interface Contractor Cooperation and Integration Deed means:

- (a) in relation to the Station Contractor, a deed to be entered into between the Principal, the Developer and the Station Contractor substantially in the form of Schedule A14 (*Station Cooperation and Integration Deed*);
- (b) in relation to the LW Contractor, a deed to be entered into between the Principal, the Developer, the D&C Contractor and the LW Contractor substantially in the form of Schedule A16 (*LW Contractor Cooperation and Integration Deed*); and
- (c) in relation to any other Interface Contractor, each deed to be entered into between the Principal, the Developer, the D&C Contractor and the relevant Interface Contractor substantially in the form of either Schedule A14 (*Station Cooperation and Integration Deed*), Schedule A15 (*Operator Cooperation and Integration Deed*) or Schedule A16 (*LW Contractor Cooperation and Integration Deed*) (as directed by the Principal's Representative) in each case subject to any amendments required to reflect party details, appropriate clause cross-references and other similar changes.

Interface Work means any activities undertaken by an Interface Contractor which interface with or affect, or are affected by, the carrying out of the OSD Works.

IPR Claim means a Claim that the rights, including IPRs or Moral Rights, of or duties owed to any person are infringed or alleged to be infringed by the Developer or any person engaged by or through the Developer in connection with this deed.

Known Defect means a Defect (as that term is defined in the Crows Nest CODD) which is listed in the Notice of Station Completion.

Known Defects Correction Period means [REDACTED].

Land means each of the following parcels of land:

- (a) Lot 100 in Deposited Plan 747672 (Folio Identifier 100/747672);
- (b) Lot 101 in Deposited Plan 747672 (Folio Identifier 101/747672);
- (c) Lot A in Deposited Plan 442804 (Folio Identifier A/442804);
- (d) Lot 2 in Deposited Plan 575046 (Folio Identifier 2/575046);
- (e) Lot 1 in Deposited Plan 575046 (Folio Identifier 1/575046);
- (f) Lot 3 in Deposited Plan 655677 (Folio Identifier 3/655677);
- (g) Lot 4 in Deposited Plan 1096359 (Folio Identifier 4/1096359);
- (h) Lot 10 in Deposited Plan 1060663 (Folio Identifier 10/1060663);
- (i) Lot A in Deposited Plan 374468 (Folio Identifier A/374468);
- (j) Lot B in Deposited Plan 374468 (Folio Identifier B/374468);
- (k) Lot 1 in Deposited Plan 1223850 (Folio Identifier 1/1223850);
- (l) Lot 61 in Deposited Plan 1232021 (Folio Identifier 61/1232021);
- (m) Lot 62 in Deposited Plan 1232021 (Folio Identifier 62/1232021);
- (n) that part of CT1478-35, CT1470-125 and CT1194-242 marked as Lot 63 on the Plan of Acquisition DP1269952; and
- (o) that part of CT1478-35, CT1255-126 and CT1227-10 marked as Lot 64 on the Plan of Acquisition DP1269952,

known as 477 – 495 Pacific Highway, Crows Nest, 497 – 543 Pacific Highway, Crows Nest and 14 Clarke Street, Crows Nest.

Law means:

- (a) Commonwealth of Australia, New South Wales or local government legislation, including regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Approvals (including any condition or requirement under them).

Liability includes any liability of any kind whether for debt, cost (including legal costs, deductibles or increased premiums), expense, loss, damage, compensation or charge and

includes any claim relating to Delay Costs, for payment of money, for an extension of time, or for a reduction of the Developer's obligations or the Principal's rights and whether:

- (a) liquidated or not;
- (b) arising from or in connection with any obligation (whether as a principal obligation, a surety or an indemnity);
- (c) legal or equitable, and whether arising under or for breach of contract, in tort (including negligence), restitution or at Law;
- (d) present, prospective or contingent;
- (e) owed, incurred or imposed by or to or on account of or for the account of any person alone or severally or jointly with another or others;
- (f) under, arising out of, or in any way in connection with, this deed, including any Direction of the Principal's Representative;
- (g) arising out of, or in any way in connection with the OSD Works or the carrying out of the OSD Works or either party's conduct before or after the date of this deed; and
- (h) otherwise at Law including:
 - (i) by statute;
 - (ii) in tort for negligence or otherwise, including negligent misrepresentation; and
 - (iii) for restitution (as a result of unjust enrichment or otherwise).

Licence Fee means the amount set out in item 12 of the Reference Schedule.

[REDACTED]

Loading Dock means the area identified as the "Development Lot B Loading Dock" in the "Shared Facilities Plan" attached to the Management Statement.

Loss means any Cost, expense, loss, damage, Liability, fine, penalty or other amount whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential Loss.

[REDACTED]

LRS means NSW Land Registry Services.

LW Contract means a contract between the Principal and the LW Contractor for the provision of the LW Works.

LW Contractor means any entity that is engaged by the Principal to carry out the LW Works.

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

Modification means any change to the requirements of the deed in respect of the OSD Works, including:

- (a) any addition, reduction, increase to or decrease to or omission or deletion from the OSD Works;
- (b) any change to the character or quality, or demolition or removal, of any material or work;
- (c) any change to the levels, lines, positions or dimensions of any part of the OSD Works;
- (d) changes to the Construction Site; or
- (e) any design works, surveys or site investigations in respect of a potential or proposed change referred to in paragraphs (a), (b), (c) or (d) of this definition.

Modification Costs [REDACTED]

■ [REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

Modification Order means a notice titled "Modification Order" issued by the Principal's Representative under clause 2.2(a) of Schedule A3 (*Modification Procedure*) which directs the Developer to implement a Modification and which:

- (a) details the Modification that is required to be implemented by the Developer;
- (b) states the Modification Costs of the proposed Modification; and
- (c) states the extent to which the Developer will be relieved of any of its obligations under this deed,

as set out in the Developer's Modification Proposal (if any) or as otherwise determined by the Principal's Representative (acting reasonably).

Modification Procedure means the procedure for Modifications set out in Schedule A3 (*Modification Procedure*).

Modification Proposal means a proposal submitted by the Developer under clause 2.1(b) of Schedule A3 (*Modification Procedure*).

Modification Proposal Request means a notice titled "Modification Proposal Request" issued by the Principal's Representative under clause 2.1(a)(i) or clause 2.1(a)(ii) of Schedule A3 (*Modification Procedure*).

Modification Savings means:

- (a) the savings in the cost of the carrying out of the OSD Works and arising out of or in connection with a Modification (including any savings in relation to construction costs and associated on-site overheads);
- (b) the applicable D&C Contractor Margin on the amounts referred to in paragraph (a) of this definition to the extent the savings are savings of the D&C Contractor; and
- (c) the applicable Developer Margin on the amounts referred to in paragraph (a) of this definition to the extent the savings are savings of the Developer.

Moral Rights means the right of attribution of authorship, the right not to have authorship falsely attributed and the right of integrity of authorship conferred by the *Copyright Act 1968* (Cth) or any Law outside Australia and rights of a similar nature anywhere in the world, that exists now or in the future.

Native Title Claim means any application made pursuant to the *Native Title Act 1993* (Cth) or the *Native Title (New South Wales) Act 1994* (NSW).

[REDACTED]

[REDACTED]

[REDACTED]

■ [REDACTED]

■ [REDACTED]

[REDACTED]

Net Saleable Area or **NSA** means the final net sellable area as at the Date of Completion, determined by calculating the 'floor area' of each 'lot' (as each of those terms is defined in *Strata Schemes Development Act 2015 (NSW)*), but excluding:

- (a) any uninhabitable external areas such as balconies and patios;
- (b) storage areas located outside of the dwelling; and
- (c) car parking spaces.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007 (Cth)* and the regulations and any other legislative instruments under that legislation.

Non-Project Party Liability means a liability or claim:

- (a) a State Indemnified Party incurs to or from a party who is not:
 - (i) an Associate of the Principal; or
 - (ii) a party to an OSD Contract Document; and
- (b) for which the third party can make or could have made a bona fide claim in respect of which it has a cause of action at Law, or under contract with the Developer or any of its Associates, directly against the Developer.

Notice of Station Completion has the meaning given to the term "Notice of Completion" under the Crows Nest CODD in respect of the last Portion to achieve Station Completion.

NSW Trains means the corporation by that name constituted by section 37(1) of the Transport Administration Act.

Occupation Certificate means a certificate referred to in section 6.9(1)(a) of the EP&A Act.

ONRSR means the Office of the National Rail Safety Regulator constituted under the Rail Safety National Law.

Open Book Basis means the provision of any pricing, costing and other information on an open book basis to enable an assessment of actual costs and margins, being a breakdown sufficient to separately identify all relevant preliminaries, insurances, labour, equipment, materials, subcontract price, indexation adjustments for inflation, currency components and the Developer Margin and the D&C Contractor Margin, in a clear and transparent manner.

Operator means:

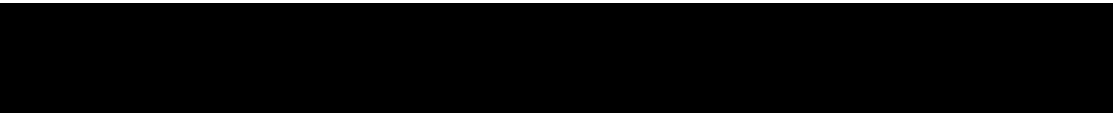
- (a) the TSOM Contractor; or
- (b) any other entity that the Principal engages to operate and, if required by the Principal, maintain Sydney Metro City & Southwest or any part of it.

Operator Cooperation and Integration Deed means a deed to be entered into between the Principal, the Developer, the D&C Contractor and the Operator substantially in the form of Schedule A15 (*Operator Cooperation and Integration Deed*).

OSD or **Over Station Development** means the development in the Development Lot, to be procured in accordance with this deed.

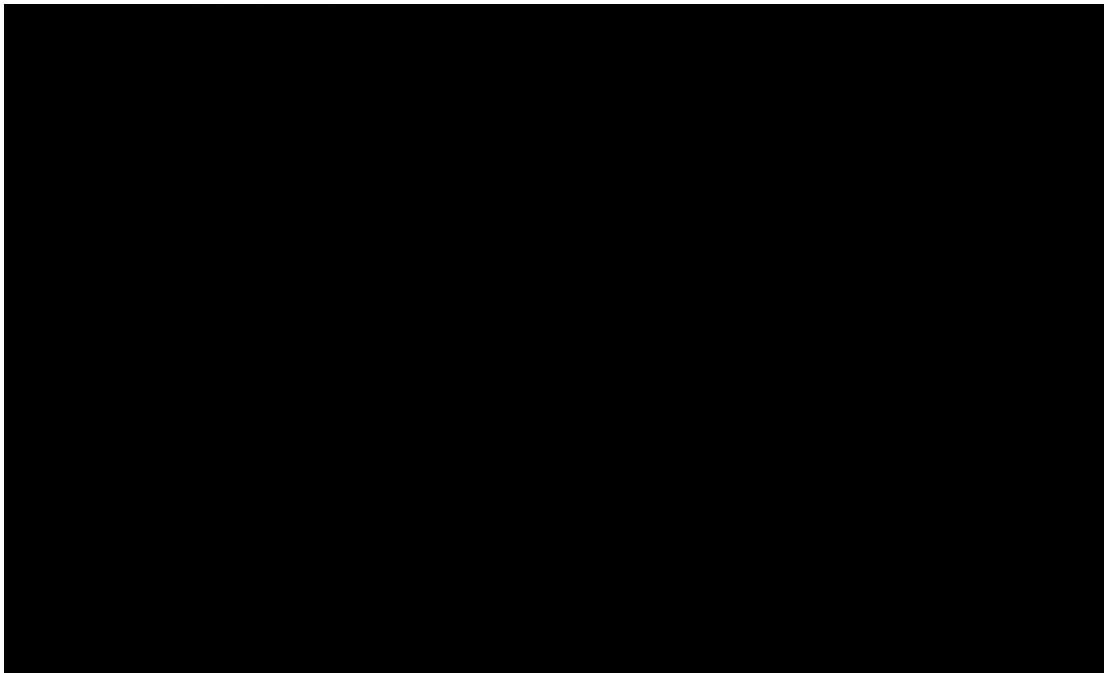
OSD Contract Documents means:

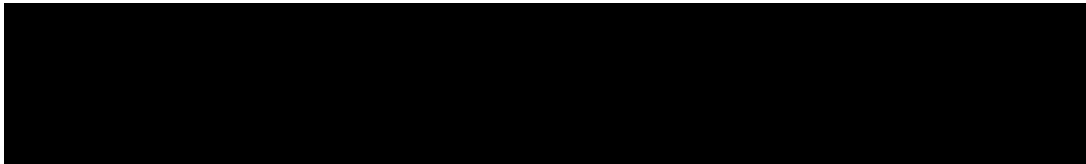
- (a) this deed;
- (b) each Parent Company Guarantee;
- (c) the D&C Contract;
- (d) the D&C Side Deed;
- (e) any Significant Subcontractor Direct Deed;
- (f) the Financier's Side Deed;
- (g) each Cooperation and Integration Deed;
- (h) the Master Interface Protocols Deed Poll;
- (i) each Contract for Sale;
- (j) each Call Option Deed;
- (k) any deed appointing an Approved Engineer; and
- (l) any document which the Principal and the Developer acknowledge in writing to be an OSD Contract Document.



OSD Enabling Works means those works described in Schedule C1 (*OSD Enabling Works*).

OSD Enabling Works Defect means any defect, deficiency, fault, error or omission in the OSD Enabling Works (which includes any subsidence, shrinkage or movement in the OSD Enabling Works) which is not in accordance with the OSD Enabling Works Design Documentation and which will:





OSD Enabling Works Defect Modification has the meaning given in clause 2.1(a)(i) of Schedule A3 (*Modification Procedure*).

OSD Enabling Works Defects Correction Period means the period commencing on the Station Date of Completion and expiring on:

- (a) [REDACTED]; and
- (b) in respect of rectification work only, a period of [REDACTED] months commencing on the date of completion of those rectification works,

provided that the OSD Enabling Works Defects Correction Period will not extend beyond [REDACTED]

OSD Enabling Works Demarcation Drawings has the meaning given in clause 1.2(e) of Schedule C1 (*OSD Enabling Works*).

OSD Enabling Works Design Documentation means the design documentation set out in Schedule C2 (*OSD Enabling Works Design Documentation*), as may be amended from time to time in accordance with clause 12.5 (*Updates to the OSD Enabling Works Design Documentation*) and clause 13 (*Modifications to the OSD Enabling Works*) and for any Approved OSD Enabling Works Modifications.

OSD Enabling Works Design Error means any error or omission in the OSD Enabling Works Design Documentation.

OSD Enabling Works Modification means any change by the Principal to the OSD Enabling Works after the date of this deed including:

- (a) any addition or increase to, or decrease, omission or deletion from, the OSD Enabling Works;
- (b) any change to the character or quality, or demolition or removal, of any material or work comprising part of the OSD Enabling Works; or
- (c) any change to the levels, lines, positions or dimensions of any part of the OSD Enabling Works.

OSD Payment means the amount set out in item 14 of the Reference Schedule.



OSD PDA (Development Lot A OSD) means the deed entitled "Crows Nest Station Development - Over Station Development - Project Delivery Agreement (Development Lot A) (Contract No: 505A)" entered into between the Principal and the Development Lot A Developer on or about the date of this deed.

OSD Project means:

- (a) the investigation, financing, planning, design, construction and completion of the OSD by or procured by the Developer; and
- (b) the performance, carrying out, exercise or provision of the obligations and rights of the Developer under and in accordance with this deed.

OSD Residential Stratum Lot means, if the Developer elects to subdivide the Development Lot as contemplated under clause 7 of the Subdivision Requirements to create a residential stratum lot, that stratum lot.

OSD Residential Stratum Lot Call Option Deed means the call option deed between the Principal, the Developer and the OSD Residential Stratum Lot Purchaser in respect of the OSD Residential Stratum Lot, in the form of Schedule D4 (*Form of Call Option Deed*) (and, if required, amended in accordance with clause 1.1(b) of Schedule D3 (*Transfer of title*)) and entered into in accordance with Schedule D3 (*Transfer of title*).

OSD Residential Stratum Lot Purchaser means the entity notified by the Developer to the Principal in writing in accordance with clause 1.1(a) of Schedule D3 (*Transfer of title*).

OSD Residential Stratum Lot Sale Contract means a contract for the sale of the OSD Residential Stratum Lot between the Principal as vendor, the Developer and the OSD Residential Stratum Lot Purchaser as purchaser, in the form annexed to the OSD Residential Stratum Lot Call Option Deed.

OSD Retail Stratum Lot means, if the Developer elects to subdivide the Development Lot as contemplated in clause 7 of the Subdivision Requirements to create one or more retail stratum lots, each such stratum lot.

OSD Retail Stratum Lot Call Option Deed means the call option deed between the Principal, the Developer and an OSD Retail Stratum Lot Purchaser in respect of an OSD Retail Stratum Lot, in the form of Schedule D4 (*Form of Call Option Deed*) (and, if required, amended in accordance with clause 1.1(b) of Schedule D3 (*Transfer of title*)) and entered into in accordance with Schedule D3 (*Transfer of title*).

OSD Retail Stratum Lot Purchaser means each entity notified by the Developer to the Principal in writing in accordance with clause 1.1(a) of Schedule D3 (*Transfer of title*).

OSD Retail Stratum Lot Sale Contract means a contract for the sale of an OSD Retail Stratum Lot between the Principal as vendor, the Developer and an OSD Retail Stratum Lot Purchaser as purchaser, in the form annexed to the OSD Retail Stratum Lot Call Option Deed.

OSD Value has the meaning given in Schedule E1 (*Termination Payment Schedule*).

OSD Works means all works and activities required to be performed or carried out by the Developer or procured by the Developer to complete the OSD as required by this deed.

OSD Works (Development Lot A) means all works and activities performed or carried out by or on behalf of the Development Lot A Developer to complete an over station development on Development Lot A.

Outgoings means all amounts of any kind whatsoever assessed, incurred or levied on land, including:

- (a) Rates, Taxes and other charges imposed by any Authority;

- (b) Costs for Utility Services and upgrading those Utility Services to comply with any Law; and
- (c) any other Costs necessarily incurred because of ownership of land.

Parent Company Guarantee means a deed of guarantee and indemnity between the Principal and each of the Developer Guarantors in the applicable form as set out in Schedule E3 (*Form of Parent Company Guarantees*).

Portion has the meaning given in the Crows Nest CODD.

[REDACTED]

PPS Act means the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth).

Principal Approvals means the Concept SSD Consent and the CSSI Approval, but excludes the Detailed SSD Consent and, if applicable, any consent granted in respect of an application for modification to the Concept SSD Consent required by the Developer.

Principal OSD Contract Document means any OSD Contract Document to which the Principal is a party.

Principal's Insurances means a policy or the policies of insurance which the Principal has obtained or is required to obtain under clause 28.3(a) (*Principal's Insurance*).

Principal's Representative means the person referred to in item 5 of the Reference Schedule or any person appointed by the Principal as a replacement from time to time, as notified by the Principal to the Developer.

Prohibition Order has the meaning given to it in the RAB Act.

Project Control Group means the group established in accordance with clause 7.7(a) (*Project Control Group*).

Project Health and Safety Management Plan means the Project Plan of that name.

Project Plan Requirements means the requirements set out in Schedule A8 (*Project Plan Requirements*).

Project Plans means the plans listed in Schedule A8 (*Project Plan Requirements*), including all subsidiary plans and supporting documents and information, as updated from time to time in accordance with the Project Plan Requirements.

Proposal means the Developer's response to the request for proposals titled "Crows Nest Development Lots – Request for Proposal" dated [REDACTED], as amended.

Proposed OSD Enabling Works Modification has the meaning given in clause 13.1(a) (*Modifications to the OSD Enabling Works*).

Public Transport Agency means the Principal, TfNSW (and each of its divisions), TAHE, Sydney Trains and NSW Trains.

Purchaser means each entity or person notified by the Developer to the Principal in writing as the grantee under a Call Option Deed in accordance with clause 1.1(a) of Schedule D3 (*Transfer of title*).

Quarter End means the last day of each 3 month period ending 31 March, 30 June, 30 September or 31 December.

RAB Act means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).

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

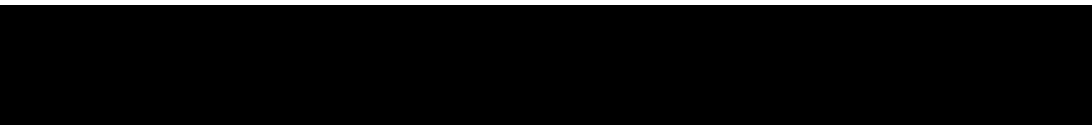
Rail Safety Regulations means the regulations made under the Rail Safety National Law or the *Rail Safety (Adoption of National Law) Act 2012* (NSW).

Rates means rates, land taxes, assessments and other charges (including charges for consumption and garbage and waste removal) imposed by any Authority, in respect of land together with any interest, fines and penalties in connection with them.

Record has the meaning given in clause 16.1(a) (*Records*).

Rectification Order has the meaning given to it in the RAB Act.

Reference Schedule means Schedule A1 (*Reference Schedule*).



Related Entity of a corporation means:

- (a) a related body corporate of that corporation within the meaning of section 50 of the Corporations Act; and
- (b) a unit trust in relation to which that corporation directly or indirectly:
 - (i) controls the right to appoint the trustee;
 - (ii) is in a position to control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units in the trust; or
 - (iii) holds or is in a position to control the disposal of more than one half of the issued units of the trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital).

Remedy means, in respect of an Event of Default, to remedy or cure the Event of Default or otherwise overcome the consequences of the Event of Default.

Remedy Plan has the meaning given in clause 30.2(b) (*Default Notice*).



Residential Building Legislation means the RAB Act and the DBP Act and any regulations issued in connection with them.

Residential OSD Works means any part of the OSD Works which are Home Building Works.

Revenue NSW means the division of that name within the New South Wales Department of Customer Service.

Section 88B Instrument means the section 88B instrument (the draft form of which is set out in Schedule D8 (*Section 88B Instrument*) prepared and finalised by the Principal in accordance with clause 3 of Schedule D5 (*Subdivision Requirements*)), to be registered pursuant to the relevant Subdivision Legislation with or after the Subdivision Plan, with or without any changes permitted by this deed.

Security Interest means any mortgage, charge, pledge, lien, encumbrance, assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, contractual right of set-off or any other security agreement or arrangement in favour of any person or any interest in relation to personal property provided for by a transaction that in substance secures payment or performance of an obligation or otherwise would be considered to be a "security interest" under section 12(1) of the PPS Act.

Shared Facilities has the meaning given in the Management Statement.

Significant Subcontract means each of the following:

- (a) the D&C Contract; and
- (b) any other contract that the parties agree in writing from time to time is a Significant Subcontract,

but, for the avoidance of doubt, does not include the [REDACTED]

Significant Subcontractor means a party (other than the Developer or the Development Manager) to a Significant Subcontract.

Significant Subcontractor Direct Deed means a deed between the Principal, the Developer and the Development Manager (if a party to that Significant Subcontract) and any Significant Subcontractor (other than the D&C Contractor).

Site Access Date means the date specified as the "Site Access Date" in the Site Access Schedule.

Site Access Schedule means Schedule D1 (*Site Access Schedule*).

Site Conditions are any physical conditions and characteristics of, on, above, below or over the surface, or in the vicinity, of the Construction Site or its surroundings including:

- (a) Artefacts and any other natural and artificial conditions;
- (b) physical and structural conditions, including old footings, underground structures, buildings, improvements, partially completed structures and in-ground works;
- (c) the OSD Enabling Works;
- (d) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (e) surface water, ground water, ground water hydrology and the effects of any dewatering;
- (f) any Contamination, Hazardous Chemical or other spoil or waste;

- (g) topography of the Construction Site, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Construction Site;
- (h) geological, geotechnical and subsurface conditions or characteristics;
- (i) any underground strata;
- (j) all Utility Services, systems and facilities, above or below ground level and all facilities with which such Utility Services and systems are connected;
- (k) the Environment, water, weather or climatic conditions, or the effects of the Environment, water, weather or climatic conditions, including rain, surface water runoff and drainage, water seepage, wind-blown dust and sand, seasons and physical conditions that are a consequence of weather or climatic conditions;
- (l) any adjoining property; and
- (m) any latent conditions.

State means the Crown in right of the State of New South Wales.

State Indemnified Party means:

- (a) the Principal;

■ [REDACTED]

■ [REDACTED]
 [REDACTED]

Station Completion has the meaning given to the term "Completion" in the Crows Nest CODD in respect of the last Portion to achieve Completion.

Station Contractor means A.W. Edwards Pty Ltd ABN 76 000 045 849.

Station Date of Completion has the meaning given to the term "Date of Completion" in the Crows Nest CODD.

Station Lot means the stratum lot limited in height indicatively shown as Lot 1 in the Subdivision Plan which will be created by way of Subdivision pursuant to clause 25.1 (*Subdivision*) in which the Crows Nest Station will sit.

Station Specification has the meaning given in the Crows Nest CODD.

Station Variation has the meaning given to the term "Variation" in the Crows Nest CODD.

Step-in Event means each of the following:

- (a) a Developer Termination Event; and
- (b) an event or circumstance which arises out of or in connection with the OSD Works that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the health or safety of persons;
 - (ii) the Environment;

- (iii) any property (including the Crows Nest Station); or
- (iv) the safe and secure performance of the OSD Works.

Strata Lots means the individual residential strata units that will be created within the Development Lot.

Stop Work Order means an order within the definition of a "stop work order" under either the RAB Act or the DBP Act.

Subcontract means an agreement for supply of goods or services (including professional services and plant hire) or both, and includes the D&C Contract and the [REDACTED].

Subcontractor means:

- (a) for the purposes of clause 31.1(c) (*Confidentiality*), any person who enters into a contract in connection with the carrying out of the OSD Works with the Developer or the Development Manager (as applicable); and
- (b) otherwise, any person who enters into a contract in connection with the carrying out of the OSD Works with the Developer or the Development Manager (as applicable) or whose subcontract is in connection with the carrying out of the OSD Works and is in a chain of contracts where the ultimate contract is with the Developer or the Development Manager (as applicable).

Subdivide or **Subdivision** means a subdivision, consolidation or dedication of land (or to create land) under the Subdivision Legislation.

Subdivision Document means any management statement, development contract, by-laws, or other instrument creating rights, interests, easements, covenants or restrictions under the Subdivision Legislation, including:

- (a) the Subdivision Plan;
- (b) the Section 88B Instrument; and
- (c) the Management Statement,

as amended and updated in accordance with clause 25.1 (*Subdivision*) and Schedule D5 (*Subdivision Requirements*).

Subdivision Legislation means any of the *Conveyancing Act 1919* (NSW), *Real Property Act 1900* (NSW), *Community Land Development Act 1989* (NSW), *Strata Schemes Development Act 2015* (NSW), *Strata Schemes Management Act 2015* (NSW), *Roads Act 1993* (NSW) or the EP&A Act.

Subdivision Plan means the plans (including easement plans) set out in Schedule D7 (*Subdivision Plan*).

Subdivision Principles means the principles set out in Schedule D6 (*Subdivision Principles*).

Subdivision Requirements means the requirements set out in Schedule D5 (*Subdivision Requirements*).

Sydney Metro means Sydney Metro, a NSW government agency constituted by section 38 of the Transport Administration Act.

Sydney Metro City & Southwest means the construction, maintenance and operation of the railway line from Chatswood to Bankstown, including:

- (a) the upgrade and conversion of the existing Bankstown line to metro standard, the stabling yard and maintenance depot at Marrickville, stations, tunnels, viaduct, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure; and
- (b) the integration of Sydney Metro Northwest to form a single end to end metro system from Cudgegong Road to Bankstown.

Sydney Metro Northwest means the railway line from Chatswood to Cudgegong Road, including the stabling yard and maintenance depot at Tallawong Road, the stations, tunnels, viaducts, bridges, earthworks, landscaping, equipment, systems, trackwork and support structures, rolling stock and ancillary infrastructure.

Sydney Trains means the corporation by that name constituted by section 36(1) of the Transport Administration Act.

TAO or **Technically Assured Organisation** means an organisation providing a defined engineering service or product that has been assessed and granted authorised engineering status by the AMB.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

Termination Payment means an amount payable under and calculated in accordance with the Termination Payment Schedule.

Termination Payment Schedule means Schedule E1 (*Termination Payment Schedule*).

Threatened Species means a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the *Threatened Species Conservation Act 1995 (NSW)*, the *National Parks and Wildlife Act 1974 (NSW)* or the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*.

Threatened Species Claim means a claim made or legal proceedings commenced in connection with the existence of a Threatened Species.



Transport Administration Act means the *Transport Administration Act 1988 (NSW)*.

Transport Asset Holding Entity or **TAHE** means Transport Asset Holding Entity, the corporation constituted by section 4 of the Transport Administration Act.

Transport Assets has the meaning assigned to it in the AMB Charter.

Transport for NSW or **TfNSW** means Transport for NSW, a NSW government agency constituted by section 3C of the Transport Administration Act.

Treasurer means the Treasurer of the Commonwealth of Australia.

TSOM Contract means a contract between the Principal and the TSOM Contractor for the provision of the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

TSOM Contractor means any entity that is engaged by the Principal to carry out the TSOM Works and, if required by the Principal, the operation and maintenance of Sydney Metro City & Southwest.

TSOM Works means all things, works and materials (including all systems and software incorporated in, or necessary to enable their operation) that the TSOM Contractor must, in accordance with the TSOM Contract, design, construct, manufacture, install, test and commission for the purposes of completing the Sydney Metro City & Southwest, including equipment, systems (including all information, systems, central control systems and communications systems), hardware and software, rolling stock, platform screen doors and control centre.

Updated OSD Enabling Works Design Documentation has the meaning given in clause 12.5(a)(i) (*Amendments to the OSD Enabling Works Design Documentation*).

Utility Service means any service utility, service facility or item of public or private infrastructure, including for the provision or measurement of water, electricity, gas, fuel, telephone, drainage, stormwater, sewerage, industrial waste disposal and electronic communications service (including power, electricity, gas, water, sewerage and telecommunications and all pipes, wires, cables, ducts and other conduits in connection with them).

Utility Service Works means the construction, modification, or relocation of Utility Services to be procured by the Developer and handed over to an Authority or any other person.

[REDACTED]

[REDACTED]

[REDACTED]

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW); and
- (b) any legislation in other states and territories of Australia addressing work health and safety which applies to the OSD Works.

Wilful Misconduct means an act or failure to act by a party or its Associates that was intended to cause, or was in reckless disregard of or wanton indifference to, harmful consequences, excluding any innocent act, omission, mistake or error of judgement.

1.2 Interpretation

In this deed, headings (including headings in parentheses in sub-clauses) are for convenience only and do not affect the interpretation of this deed and unless the context indicates a contrary intention:

- (a) "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;

- (b) a reference to a "party" to this deed or a "person" or "entity" includes that party's, person's or entity's executors, administrators, successors and permitted substitutes and assigns, including persons taking part by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (c) a reference to a "document", "contract", "deed" or "agreement" is to that document, contract, deed or agreement as updated, varied, novated, ratified or replaced from time to time;
- (d) a reference to any "Authority", "institute", "association" or "body" is:
 - (i) if that Authority, institute, association or body is reconstituted, renamed, replaced or restructured or if the powers or functions of that Authority, institute, association or body are transferred to another organisation, deemed to refer to the reconstituted, renamed, restructured or replaced organisation or the organisation to which the powers or functions are transferred, as the case may be; and
 - (ii) if that Authority, institute, association or body is dissolved or ceases to exist, deemed to refer to the organisation which serves substantially the same purposes or object as that Authority, institute, association or body;
- (e) a reference to a "statute" includes its delegated legislation and a reference to a statute or delegated legislation or any section or provision of either of these includes:
 - (i) all ordinances, by-laws, regulations of and other statutory instruments (however described) issued under the statute or delegated legislation; and
 - (ii) any consolidations, amendments, re-enactments and replacements;
- (f) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (g) a reference to:
 - (i) a "part" or a "schedule" is a reference to a part or schedule to or of this deed; and
 - (ii) this deed includes all schedules to it;
- (h) 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;
- (i) "includes" in any form is not a word of limitation;
- (j) a reference to "\$" or "dollar" is to Australian currency;
- (k) any reference to "information" will be read as including information, representations, statements, data, samples, bore logs, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (l) anything (including an amount) is a reference to the whole and each part of it and the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (m) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (n) words and terms defined in the GST Law have the same meaning in clauses concerning GST;
- (o) if a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled;
- (p) references to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled;
- (q) a time of day is a reference to Sydney time; and
- (r) words in parentheses after a cross reference to a clause must not be used in the interpretation of this deed.

1.3 **Order of precedence**

- (a) The documents which comprise this deed are to be regarded as mutually explanatory and anything contained in one but not the others will be equally binding as if contained in all of them.
- (b) If there is any Error in or between the various documents that comprise this deed then:
 - (i) if the Error is between the documents comprising this deed, the documents will be given precedence in accordance with the following:
 - (A) the General Conditions, Schedule A3 (*Modification Procedure*), Schedule A4 (*Dispute Procedure*), Schedule A10 (*Developer Insurance Requirements*), Schedule D3 (*Transfer of title*), Schedule D5 (*Subdivision Requirements*) and Schedule D6 (*Subdivision Principles*); and
 - (B) the remaining schedules;
 - (ii) if the Error is in or between Schedule C1 (*OSD Enabling Works*) and Schedule C2 (*OSD Enabling Works Design Documentation*), Schedule C1 (*OSD Enabling Works*) will be given precedence over Schedule C2 (*OSD Enabling Works Design Documentation*); and
 - (iii) to the extent clause 1.3(b)(i) and clause 1.3(b)(ii) do not apply or resolve the Error and the Error is between figured and scaled dimensions, figured dimensions will prevail over the scaled dimensions.
- (c) To the extent that the Developer is required to comply with a Project Plan, the terms of this deed will have precedence over the Project Plan to the extent of any Error. A Project Plan cannot impose an obligation on the Principal to do something different to, or earlier than, what is required by this deed.
- (d) Where the Developer considers that there is an Error in or between the provisions of this deed, it must promptly notify the Principal's Representative in writing, who must give the Developer a direction as to the interpretation to be followed. The Principal

will have no Liability to the Developer arising out of or in any way in connection with any such direction as to interpretation.

1.4 **No bias against drafter**

No provision of this deed is to be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.

1.5 **Business Day**

If the day on or by which anything must be done under this deed is not a Business Day, that thing must be done no later than the next Business Day.

1.6 **Authorities**

- (a) **(No fettering of discretion)** The OSD Contract Documents [REDACTED] will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
- (i) the Principal or any other Public Transport Agency to exercise any of their respective functions and powers pursuant to any Law; or
 - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter.
- (b) **(No act or omission)** Without limiting clause 1.6(a), anything the Principal, any other Public Transport Agency or the AMB does, or fails to do or purports to do, pursuant to their respective functions and powers either as a TAO or an Authority or under any Law or pursuant to the AMB Charter, will be deemed not to be an act or omission by the Principal, the Public Transport Agency or the AMB under this deed (including a breach of contract) or otherwise and the Principal will have no Liability to the Developer in relation thereto.
- (c) **(Breach by the Principal)** Clause 1.6(a) and clause 1.6(b) do not limit any Liability which the Principal would have had to the Developer under this deed as a result of a breach by the Principal of a term of this deed but for clause 1.6(a) and clause 1.6(b).
- (d) **(Exercise of statutory functions)** The Developer acknowledges that:
- (i) Authorities (other than the Principal) that have jurisdiction over aspects of the OSD Works, parts of the Construction Site and other areas affected by the OSD Works may, from time to time, exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the carrying out of the OSD Works; and
 - (ii) except to the extent expressly stated otherwise in this deed, the Developer bears the risk of all occurrences of the kind referred to in clause 1.6(d)(i), and the Principal will have no Liability to the Developer arising out of or in any way in connection with such occurrences.

1.7 **Best or reasonable endeavours**

If the Principal is required under the terms of this deed to exercise best or reasonable endeavours:

- (a) the Principal will only be obliged to bring about the relevant outcome to the extent that it is reasonably able to do so, having regard to its resources and other responsibilities;

- (b) the Principal is not obliged to expend any money or make any payment to the Developer or any other person;
- (c) the Principal is not required to ensure the relevant outcome; and
- (d) the Principal does not agree to:
 - (i) interfere with or influence the exercise by any person of a statutory power or discretion;
 - (ii) exercise a power or discretion or otherwise act in a manner that promotes the objectives and expected outcomes of the OSD Contract Documents if the Principal regards that exercise as not in the public interest;
 - (iii) develop policy or legislate by reference only or predominantly to the objectives and expected outcomes of the OSD Contract Documents;
 - (iv) procure legislation in the future in a manner that is only consistent with the objectives and expected outcomes of the OSD Contract Documents; or
 - (v) act in any other way that the Principal regards as not in the public interest.

1.8 Principal's rights do not affect risk allocation

- (a) **(Monitoring performance)** The Principal has various rights under this deed which are designed to give the Principal the ability to monitor (but not co-ordinate or supervise) the performance of the Developer's obligations under the OSD Contract Documents. Those rights include:
 - (i) the right to review Project Plans, Applications, the Developer's Program and other documents which the Developer must submit to the Principal or the Principal's Representative pursuant to this deed (**Developer Submissions**); and
 - (ii) rights to inspect and monitor the OSD Works.
- (b) **(No relief)** Neither the exercise of, nor the failure to exercise, such rights will:
 - (i) relieve the Developer from, or alter or affect, the Developer's Liabilities, obligations or responsibilities;
 - (ii) prejudice or limit the Principal's rights against the Developer; or
 - (iii) preclude the Principal from subsequently asserting that the Developer has not fulfilled its obligations,

whether under this deed or otherwise according to Law.
- (c) **(No assumption of risk)** Unless otherwise expressly provided for in this deed:
 - (i) acceptance of any certificate, statement, assessment or report provided by the Developer to the Principal or the Principal's Representative is not approval by the Principal or the Principal's Representative of the Developer's performance of its obligations under this deed;
 - (ii) neither the Principal nor the Principal's Representative is obliged to review, assumes or owes any duty of care to the Developer to review, or if it does review, in reviewing any Developer Submissions for errors, omissions or compliance with this deed or any Law;

- (iii) no review of, comments on, consent to, information supplied to or notice in respect of, or any failure to review, provide information, comment on, consent to or give any notice in respect of any Developer Submissions will:
 - (A) relieve the Developer from, or alter or affect, the Developer's Liabilities, obligations, warranties or responsibilities or prejudice or limit the Principal's rights against the Developer whether under this deed or otherwise according to Law;
 - (B) constitute an instruction to accelerate, disrupt, prolong or vary any of the OSD Works; or
 - (C) affect the time for the performance of the Developer's obligations;
 - (iv) the Developer will not be relieved from compliance with any of its obligations under this deed or from any of its Liabilities as a result of:
 - (A) compliance with any Project Plan;
 - (B) any audits or other monitoring by the Principal of the Developer's compliance with any Project Plan;
 - (C) any failure by the Principal, or anyone acting on behalf of the Principal, to detect any non-compliance including where any failure arises from any negligence on the part of the Principal or anyone acting on behalf of the Principal; or
 - (D) any consent provided by the Principal or any failure or refusal by the Principal to provide consent;
 - (v) neither the Principal nor the Principal's Representative assumes or owes any duty of care to the Developer to inspect, or if it does so inspect, in inspecting, the performance of the Developer's obligations or the OSD Works for errors, omissions or compliance with the requirements of this deed;
 - (vi) any inspection of such matters (or lack of inspection) by or on behalf of the Principal will not in any way:
 - (A) relieve the Developer from, or alter or affect, the Developer's Liabilities, obligations, warranties or responsibilities; or
 - (B) prejudice or limit the Principal's rights against the Developer, whether under this deed or otherwise according to Law; and
 - (vii) the Developer is relying on its own skill and judgment, and that of the Developer's Associates, in relation to all aspects of the Developer Submissions, the OSD Works and the OSD Project and is not relying on the skill or judgment of the Principal or any of the Principal's Associates.
- (d) **(No Liability)** The Principal will have no Liability to the Developer and is released from any Loss incurred or suffered by the Developer or its Associates because of any defect or omission in, or any issue arising out of any Developer Submissions.

(e) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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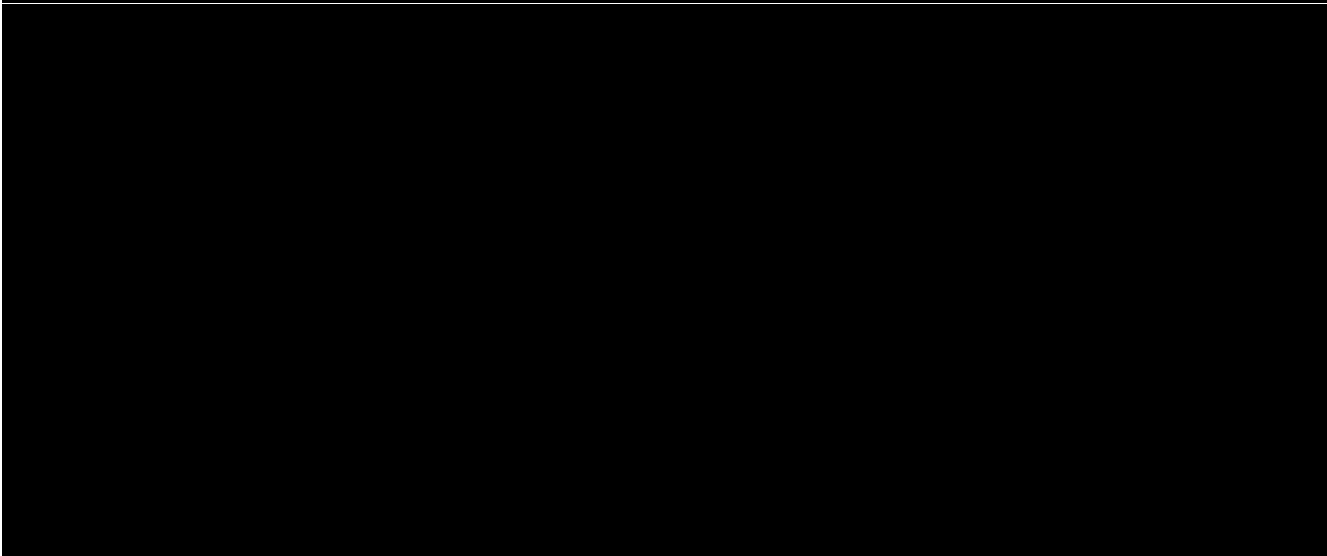
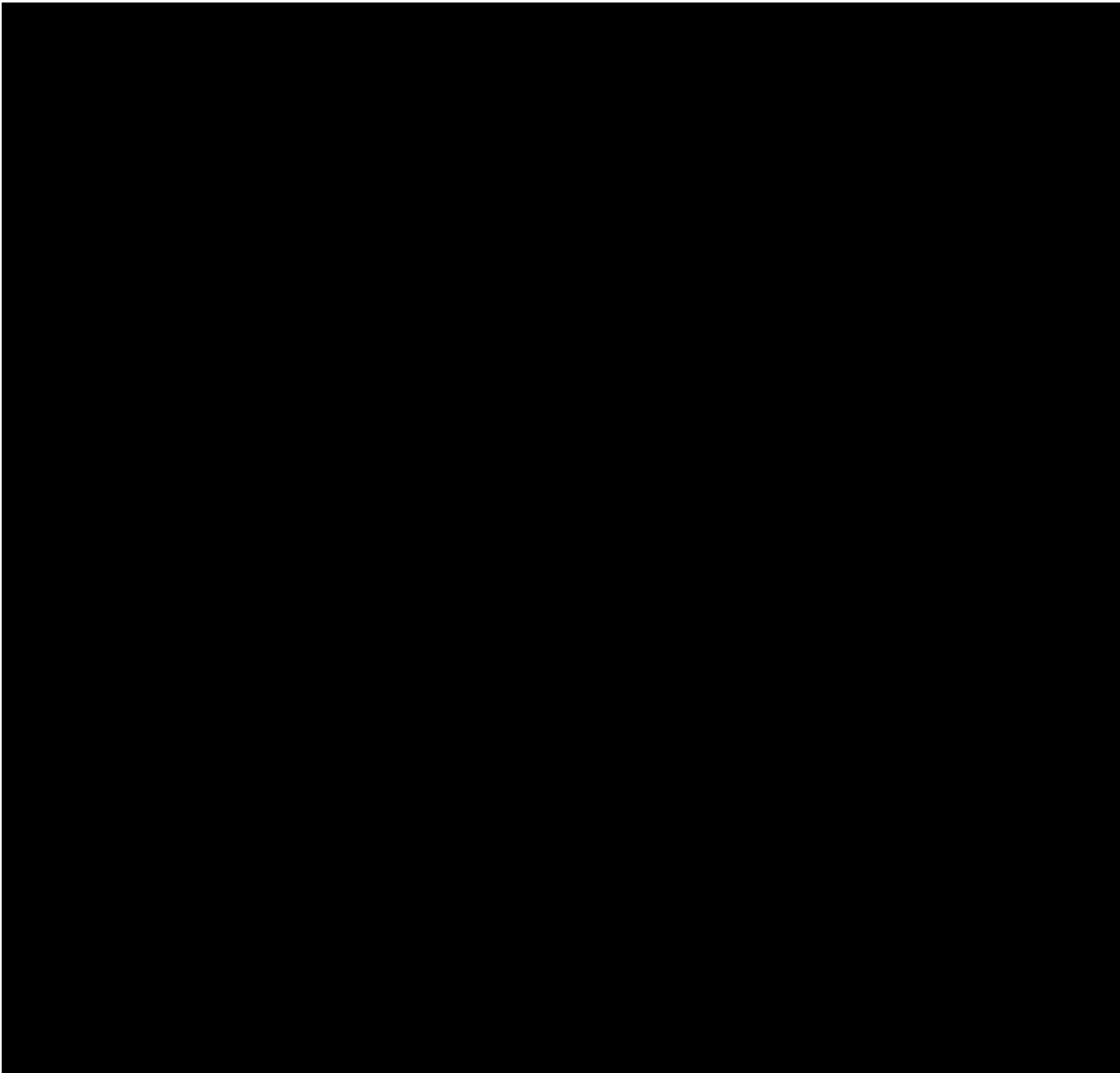
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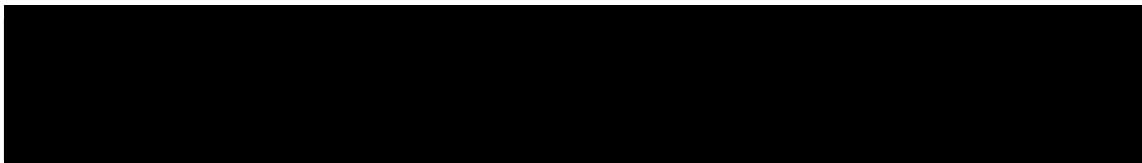
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1.10 **Electronic files**

Where this deed refers to an electronic file on a separate disc or other electronic storage device which forms part of this deed, those electronic files are contained in the disc or other electronic storage device identified in Schedule F1 (*Electronic Files*).

2. **DEVELOPER'S GENERAL OBLIGATIONS**

2.1 **Design, construction and carrying out of the OSD Works**

(a) **(General obligations)** The Developer must procure the carrying out, design, construction and supervision of the OSD Works:

(i) in accordance with:

- (A) Good Industry Practice;
- (B) the CSSI Approval (where relevant) and all relevant Approvals; and
- (C) this deed; and

(ii) so that at all times:

- (A) prior to and on, in respect of an Applicable Transfer Area, the Applicable Transfer Date, the OSD Works and the OSD comply with all applicable Laws; and
- (B) the OSD Works and the OSD comply with this deed and do not, and will not in the future, cause or contribute to a [REDACTED]

(b) [REDACTED]

2.2 **Acceptance of risk**

(a) **(Acceptance of risk)** Except to the extent that this deed expressly provides otherwise, the Developer accepts all responsibility for and the risk of all Loss, delays and disruptions which it suffers or incurs arising out of or in any way in connection with the OSD Works, the procurement of the OSD Works, the OSD and the Developer's obligations under this deed, including:

- (i) all Costs of the OSD Project and financing of the OSD Project (including the ability to finance any aspect of the OSD Project);
- (ii) any risks and Liabilities of the Developer and others arising out of or in connection with the OSD Contract Documents [REDACTED] from time to time;
- (iii) any financial return, income, revenue or profit derived or to be derived in connection with the OSD Project being less than the financial return, income, revenue or profit estimated by the Developer; and

- (iv) the construction and achievement of Completion, including the achievement of Completion by a particular time or at all.
- (b) **(Breach by the Principal)** Clause 2.2(a) does not limit any Liability which the Principal has to the Developer which results from a breach by the Principal of a term of this deed.

3. SECURITY

3.1 Parent Company Guarantees

On or before the date of this deed, the Developer must give the Principal a duly executed Parent Company Guarantee from each of the Developer Guarantors and must ensure that, in relation to each Parent Company Guarantee, all stampings, registrations and filings required by:

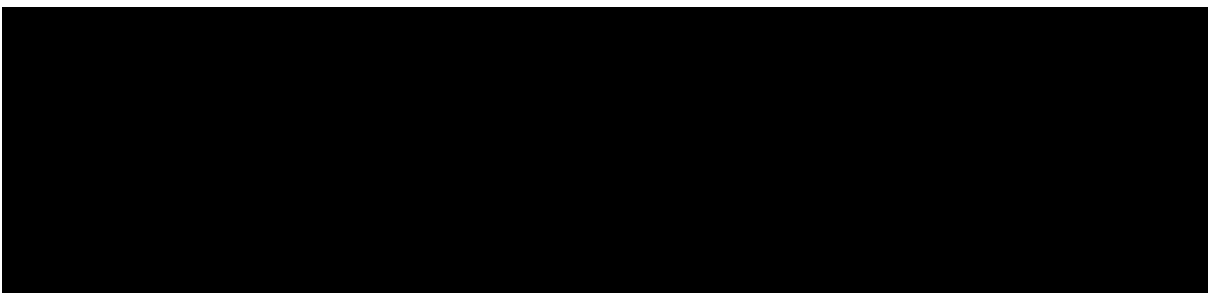
- (a) Law (or by the law of any foreign jurisdiction); or
- (b) the Principal to ensure that it is able to expatriate from any foreign jurisdiction any amounts that may be payable under each Parent Company Guarantee,

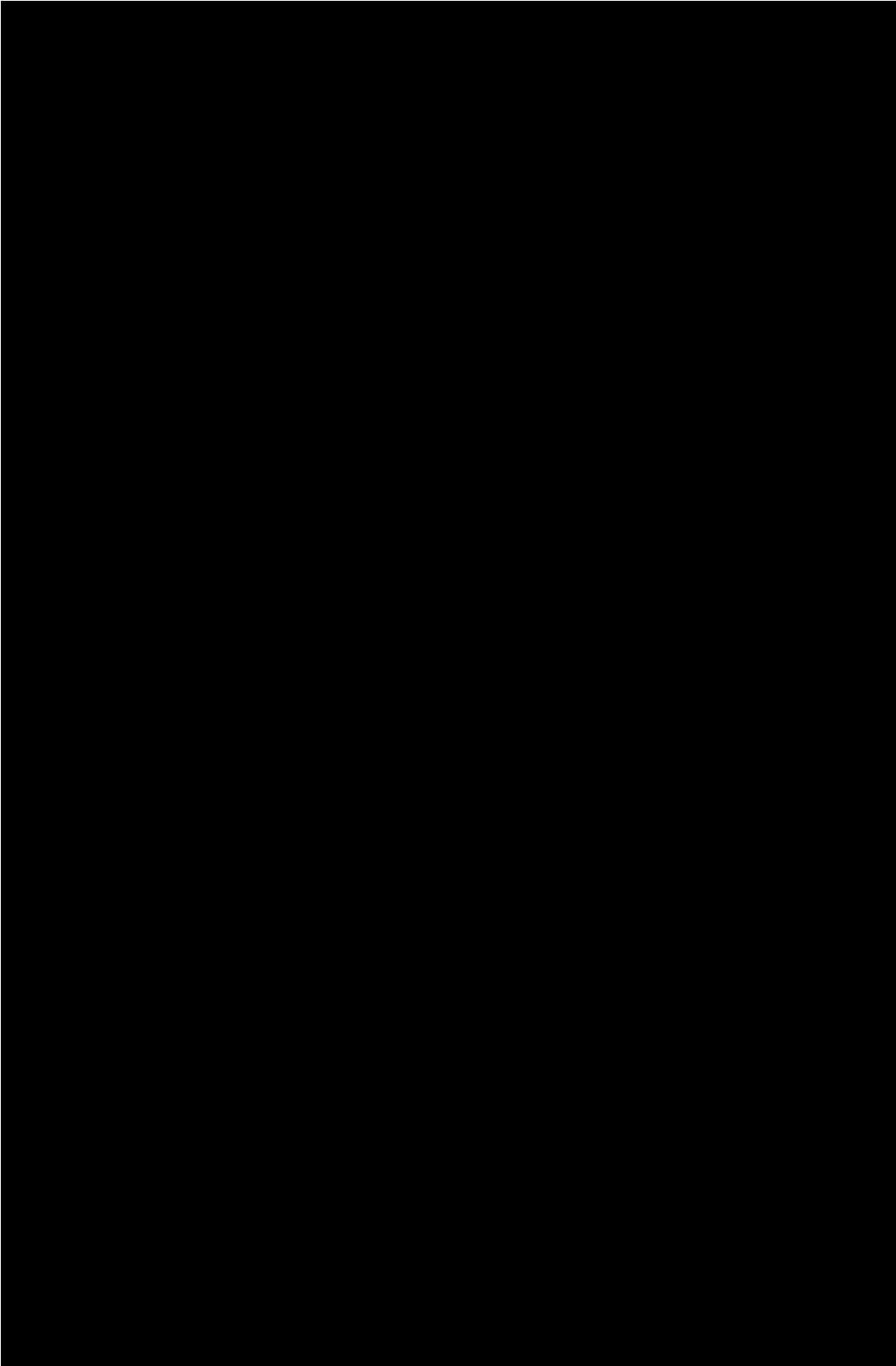
have been completed in the form and substance satisfactory to the Principal (in its absolute discretion).

3.2 Legal opinion

On or before the date of this deed, the Developer must provide to the Principal a legal opinion in respect of the Parent Company Guarantee referred to in item 2(a) of the Reference Schedule:

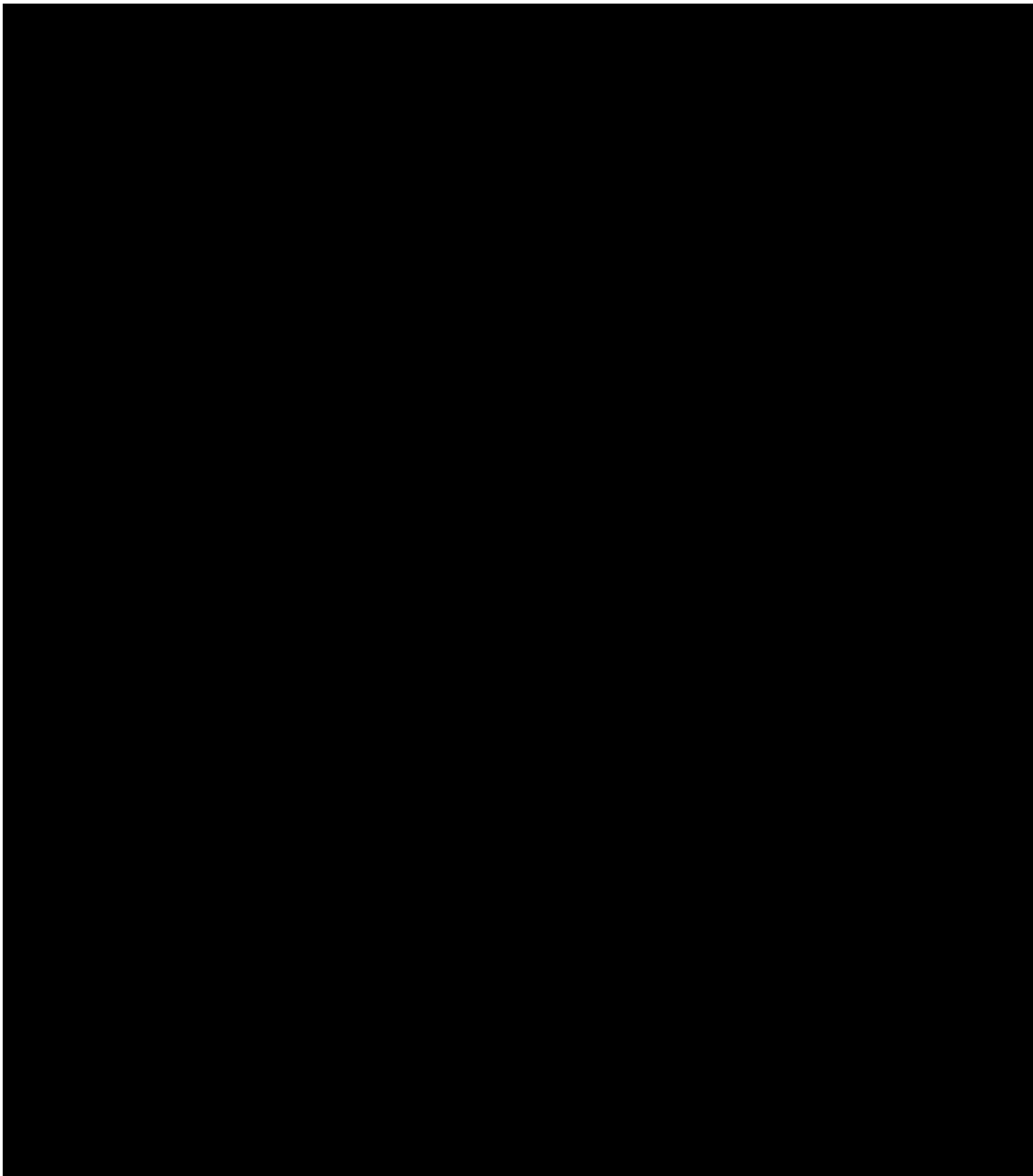
- (a) on which the Principal is entitled to rely;
- (b) in form and substance satisfactory to the Principal (in its absolute discretion); and
- (c) from appropriately qualified legal practitioners satisfactory to the Principal, confirming, amongst other things:
 - (d) the due execution of that Parent Company Guarantee by the Developer Guarantor;
 - (e) that such Parent Company Guarantee is valid, binding and enforceable under the relevant laws of the jurisdiction in which the Developer Guarantor is incorporated; and
 - (f) that the choice of New South Wales law under clause 10 of that Parent Company Guarantee will be upheld by the relevant [REDACTED] and that the relevant [REDACTED] will recognise and enforce an arbitral award obtained in accordance with clause 10.3 of the Parent Company Guarantee against the Developer Guarantor following enforcement of the Parent Company Guarantee.

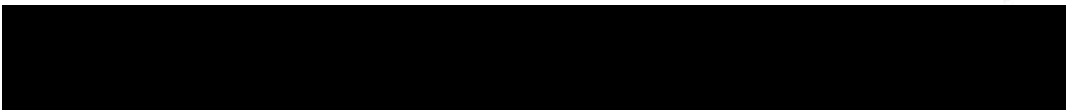






3.4





4. **CONSTRUCTION**

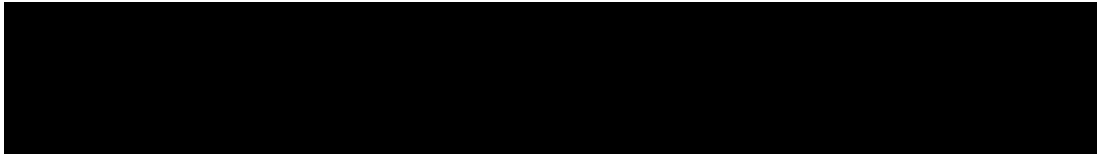
4.1 **Construction obligations**

- (a) **(General obligations)** The Developer must procure the construction of the OSD Works:
 - (i) in accordance with:
 - (A) the CSSI Approval (where relevant), the Development Consents and all Approvals; and
 - (B) all other requirements of this deed;
 - (ii) in a proper and workmanlike manner;
 - (iii) with due skill, care and diligence and in accordance with Good Industry Practice; and
 - (iv) so that, at all times prior to and on, in respect of an Applicable Transfer Area, the Applicable Transfer Date, the OSD Works and the OSD comply with all applicable Laws.
- (b) **(Boundaries)** The Developer must ensure that the OSD Works are constructed within the boundaries of the Construction Site.

4.2 **Commencement of construction**

The Developer must not permit any work to be commenced on the Construction Site until:

- (a) **(Project Plans)** each of the following Project Plans have been submitted to the Principal's Representative and have not been rejected by the Principal's Representative within the review period specified in the Project Plan Requirements:
 - (i) Construction and Site Management Plan; and
 - (ii) Project Health and Safety Management Plan;
- (b) **(Security)** the Developer has complied with clause 3 (*Security*);
- (c) **(Condition and Dilapidation Survey)** the Developer has provided the Principal's Representative with a condition and dilapidation survey as required by clause 2.6 of Schedule A8 (*Project Plan Requirements*);
- (d) **(Pre-Commencement Certificate)** the Developer has provided the Principal's Representative with a copy of the Approved Engineer's Certificate (Pre-Commencement);
- (e) **(Approved Engineer deed poll)** the Developer has complied with clause 7.6(g) (*Approved Engineer*);



- (g) **(Approvals)** the Developer has obtained all Approvals necessary for commencement of the OSD Works;
- (h) **(D&C Contract)** the Developer has provided the Principal with evidence that the Development Manager and the D&C Contractor have entered into a D&C Contract which complies with clause 17.4 (*D&C Contract*);
- (i) **(D&C Side Deed)** the Principal, the Developer, the Development Manager, the D&C Contractor and the D&C Contractor Guarantor have entered into the D&C Side Deed; and
- (j) **(Insurances)** the Developer has effected or caused to be effected the Insurances required by clause 28.4 (*Developer's Insurance obligations*) and, if relevant, has complied with clause 4.6(c)(i)(D) (*Home Building Act*).

4.3 Utility Services

- (a) **(Risk)** Subject to clause 4.3(b), the Developer bears the risk of the existence, location, condition and availability of all Utility Services (in so far as they affect the carrying out of the OSD Works) and must procure the investigation, protection, relocation, removal, modification, disconnection, support, reinstatement and provision of all Utility Services necessary for the carrying out of the OSD Works and to otherwise comply with its obligations or exercise its rights under the OSD Contract Documents.
- (b) **(OSD Enabling Works)** Clause 4.3(a) does not apply to any OSD Enabling Works Defects in Utility Services which are OSD Enabling Works, in which case clause 14 (*Defects in the OSD Enabling Works*) will apply [REDACTED].
- (c) **(Payment)** The Developer must obtain, pay for and contract for the provision of all Utility Services required for the carrying out of the OSD Works.
- (d) **(Consent)** The Developer must:
 - (i) obtain the Principal's prior written consent in respect of any new connections for Utility Services forming part of or in relation to the OSD Works or changes or modifications to existing connections for such Utility Services to the extent those connections will or may reasonably be expected to result in a [REDACTED]; and
 - (ii) consult with and keep the Principal fully informed as to the Developer's dealings with the Authorities providing the Utility Services referred to in clause 4.3(d)(i).
- (e) **(Disruption)** The Developer must ensure that, as a consequence of or in relation to the carrying out of the OSD Works, there are no unplanned disruptions to the Utility Services which have or may have a [REDACTED].

4.4 Environmental obligations

- (a) **(Contamination)** The Developer bears the risk of, and must pay all its costs arising from, all Contamination on, in, over, or about the Construction Site.

- (b) **(Hazardous Chemicals)** The Developer must ensure that:
 - (i) Hazardous Chemicals are:
 - (A) handled in a manner that will not cause or create an Environmental Hazard; and
 - (B) not abandoned or dumped on the Construction Site; and
 - (ii) no other substance is released from, deposited to, or emanates from, the Construction Site such that a state of Contamination occurs.
- (c) **(Environmental responsibility)** The Developer must, at all times, carry out, and ensure that its Subcontractors carry out, the obligations of the Developer in an environmentally responsible manner, in accordance with Good Industry Practice, and so as to protect the Environment and keep the Construction Site in a good and safe condition.

4.5 **Prevention of disturbance and interference**

- (a) **(Developer to procure prevention)** In procuring the carrying out of the OSD Works, the Developer must, and must ensure its Subcontractors:
 - (i) **(minimise nuisance)** minimise nuisance and prevent unreasonable noise, dust, vibration and disturbances except to the extent such nuisance, noise, dust, vibration or disturbance is permitted by Law;
 - (ii) **(take precautions)** take all reasonable precautions to avoid obstruction of and damage to any property (including the property of the Principal) and Utility Services;
 - (iii) **(no interference)** not restrict, close, interfere with or obstruct the free flow of people and vehicles, access to any premises, car parks, roads, pedestrian ways, public spaces, parks, bicycle paths or facilities, or traffic on any lane or shoulder of the existing road network, or the operations or activities carried out on, adjacent to or in the vicinity of the Construction Site, including the Crows Nest Station:
 - (A) unless and to the extent that it is reasonably necessary for the performance of the OSD Works; and
 - (B) without first obtaining the consent of all relevant Authorities and, to the extent it impacts on the Principal or the Crows Nest Station (including the use and occupation of the Crows Nest Station), without first obtaining the consent in writing of the Principal's Representative; and
 - (iv) **(instructions of Authorities)** comply with the instructions of all relevant Authorities in relation to any restriction, closure, interference or obstruction contemplated by clause 4.5(a)(iii).
- (b) **(Co-ordinate)** The Developer must ensure its Subcontractors program and co-ordinate the OSD Works in accordance with Good Industry Practice and take steps reasonably available to minimise the effect of the carrying out of the OSD Works on the occupants and users of land adjoining, or in the vicinity of, the Construction Site (including Existing Operators and adjoining property owners).

4.6 Home Building Act

- (a) **(Developer to procure compliance)** Any provision of this deed that imposes an obligation on the Developer to carry out, co-ordinate or supervise the OSD Works or perform any other obligation under this deed which comprises Home Building Work is to be read as the Developer having an obligation to procure appropriately qualified and licensed Subcontractors to perform or procure the performance of those obligations in order to achieve the requirements of this deed, and the Developer must discharge that obligation by procuring that an appropriately qualified and licensed Subcontractor performs or procures the performance of those obligations so as to achieve the requirements of this deed.
- (b) **(Acknowledgement)** The parties acknowledge and agree that:
- (i) as at the date of this deed, the Developer does not have a Contractor Licence which permits it to do Home Building Work;
 - (ii) neither this deed nor any other OSD Contract Document requires the Principal to perform Home Building Work;
 - (iii) neither this deed nor any other OSD Project Document requires the Developer to perform Home Building Work itself and, by entering into this deed, the Developer is not contracting to itself to do Home Building Work and, rather, clause 4.6(a) applies in relation to the performance of any Home Building Work; and
 - (iv) the Developer will not itself perform any Home Building Work unless and to the extent that the Developer does have a Contractor Licence which permits it to do Home Building Work.
- (c) **(Compliance with Home Building Act)** The Developer:
- (i) must:
 - (A) procure the carrying out of any Home Building Work in accordance with the Home Building Act and by Subcontractors who hold appropriate Contractor Licences under the Home Building Act;
 - (B) in performing the obligations of the Developer or exercising any rights of the Developer, including procuring the carrying out of the OSD Works, not breach, and ensure that its Subcontractors do not breach, the Home Building Act;
 - (C) procure from suppliers and manufacturers of all goods, plant, machinery and equipment forming part of the Residential OSD Works market standard guarantees and warranties in respect of all such goods, plant, machinery and equipment and, without limiting the Subcontractor's obligations under its contract, procure that the right to enforce those guarantees and warranties is assigned to the Developer and the Principal (exercisable at the discretion of the Developer or the Principal (as applicable)); and
 - (D) procure that any insurances required under the Home Building Act are effected;
 - (ii) warrants to the Principal that any Subcontract it or the Development Manager has entered into or will enter into for the carrying out of Residential OSD

Works will require that those works be done in accordance with, and will comply with, the Home Building Act;

- (iii) must ensure that all warranties required to be given by a Subcontractor carrying out Residential OSD Works will apply for the benefit of the Principal and the Principal's successors in title;
- (iv) in addition to any other warranties required under the Home Building Act from time to time, must procure that and warrants for the benefit of the Principal and the Principal's successors in title that:

- (A) the Residential OSD Works will be done with due care and skill and in accordance with the Final Plans and Specifications;
- (B) all materials used in connection with the Residential OSD Works will be good and suitable for the purpose for which they are used and that those materials will be new;
- (C) the Residential OSD Works will be done in accordance with, and will comply with, the Home Building Act and any other Law;
- (D) the Residential OSD Works will be done with due diligence and within the time stipulated in any contract relating to the works, or if no time is stipulated, within a reasonable time;
- (E) the Residential OSD Works, to the extent those works consist of the construction of a dwelling, will result in a dwelling that is reasonably fit for occupation as a dwelling;
- (F) the Residential OSD Works and any materials used in doing the Residential OSD Works will be reasonably fit for purpose; and
- (G) the Residential OSD Works will comply with the Building Code of Australia and where a person for whom the work is done has made known the particular purpose for which the work is required or the result the work is to achieve, the work will be fit for that purpose,

for the warranty period that would have applied in respect of that warranty under the Home Building Act if that warranty had been given under the Home Building Act rather than under this deed, including any warranty period which applies in respect of any defects rectification work relating to the OSD;

- (v) must, to the extent that the Home Building Act, or any other Law, implies a warranty or requires an owner or developer to provide a warranty, in relation to the Residential OSD Works, provide the same warranty to the Principal; and
 - (vi) must, prior to completion of the Residential OSD Works, provide to the Principal a copy of each of the guarantees and warranties referred to in clause 4.6(c)(i)(C) and allow the Principal or procure that the Principal is allowed to enforce the guarantees and warranties directly if the Principal notifies the Developer that it wishes to do so. All reasonable Costs incurred by the Principal in enforcing such guarantees and warranties will be a debt due and payable by the Developer to the Principal.
- (d) **(Strata Schemes Management Act)** If applicable, the Developer must comply with all obligations imposed on a developer under Part 11 of the *Strata Schemes Management Act 2015* (NSW).

5. SAFETY AND ENVIRONMENT

5.1 Care of people, property and the Environment

The Developer must procure the carrying out of the OSD Works in a manner that:

- (a) does not put the health or safety of persons at risk and prevents injury or death;
- (b) protects and prevents damage to property and the Environment; and
- (c) protects and prevents damage to the Crows Nest Station and the Interface Works.

5.2 Work health and safety

The Developer must:

- (a) **(WHS Legislation)** in carrying out its obligations or exercising its rights under this deed, comply, and must ensure that its Subcontractors comply, with the WHS Legislation and other applicable Laws (including the Chain of Responsibility Provisions), Codes of Practice and Australian standards relating to work health and safety;
- (b) **(corporate work health and safety management system)** have a corporate work health and safety management system which complies with the Law and is otherwise in accordance with the Office of the Federal Safety Commissioner's Audit Criteria Guidelines and New South Wales Government Work Health and Safety Management Systems and Auditing Guidelines (5th Edition) (September 2013, updated May 2014);
- (c) **(notify)** notify the Principal's Representative in accordance with the Project Health and Safety Management Plan of all work health and safety Incidents;
- (d) **(assurances to the Principal)** following commencement of construction of the OSD Works on the Construction Site and at the end of March, June, September and December of each year, provide the Principal's Representative with written assurances from:
 - (i) the Developer about the Developer's and the Development Manager's ongoing compliance; and
 - (ii) all Significant Subcontractors about each Significant Subcontractor's ongoing compliance,with all applicable Laws, Codes of Practice and Australian standards and other requirements of this deed for work health and safety and rehabilitation management;
- (e) **(report)** provide the Principal's Representative with written reports on any work health and safety and rehabilitation matters connected with the OSD Works as the Principal's Representative may require from time to time;
- (f) **(cooperate)** consult, cooperate and co-ordinate and procure that its Subcontractors consult, cooperate and co-ordinate with the Interface Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
- (g) **(duties)** carry out the Developer's duties and procure that its Subcontractors carry out their duties under the WHS Legislation to enable the Principal to discharge its duties under the WHS Legislation and other applicable Laws; and

- (h) (**safety leadership**) provide strong safety leadership and continuously promote safety as a core value.

5.3 **Principal contractor**

- (a) (**Definitions**) In clause 5.2 (*Work health and safety*) and this clause 5.3, the terms "principal contractor", "workplace", "construction work" and "construction project" have the meaning given to those terms in the WHS Legislation. For the purposes of the WHS Legislation and this deed:

- (i) the construction work involved in the OSD Works; and
- (ii) any construction work carried out on a Construction Site by the Station Contractor under the Crows Nest CODD, any Interface Contractor, the Principal or any other person which is performed during any period in which the Appointed Principal Contractor has been engaged as principal contractor (**Construction Site Interface Work**),

are taken to be part of the same "construction project".

- (b) (**Engagement as principal contractor**) The parties acknowledge and agree that:

- (i) the Developer:
 - (A) is a person conducting a business or undertaking that is commissioning a construction project comprising the OSD Works and the Construction Site Interface Work;
 - (B) will engage the Appointed Principal Contractor or will procure that the Appointed Principal Contractor is engaged as the principal contractor in respect of the OSD Works and the Construction Site Interface Work; and
 - (C) will authorise the Appointed Principal Contractor or will procure that the Appointed Principal Contractor is authorised to have management and control of each workplace at which the OSD Works and the Construction Site Interface Work is to be carried out and to discharge the duties of a principal contractor under the WHS Legislation;
- (ii) the Developer will procure that the Appointed Principal Contractor will accept the engagement as principal contractor and agree to discharge the duties imposed on a principal contractor under the WHS Legislation and this deed; and
- (iii) the Principal must:
 - (A) give the Appointed Principal Contractor prior notice of any Interface Contractor undertaking Construction Site Interface Work before such Construction Site Interface Work commences; and
 - (B) provide the Appointed Principal Contractor and the Developer with executed deed polls in favour of the Appointed Principal Contractor in the form set out in Schedule A12 (*Site Interface Deed Poll*) from each Interface Contractor engaged by the Principal undertaking Construction Site Interface Work.

- (c) **(Period of engagement)** The Appointed Principal Contractor's engagement and authorisation as a principal contractor for the OSD Works will continue until the earlier of:
 - (i) the termination of this deed; and
 - (ii) in respect of an Applicable Transfer Area, the Applicable Transfer Date.
- (d) **(If engagement not effective)** If the engagement of the Appointed Principal Contractor as principal contractor is not effective for any reason, the Developer must:
 - (i) exercise and fulfil the functions and obligations of a principal contractor under the WHS Legislation as contemplated by clause 5.3(b); or
 - (ii) otherwise, ensure that the Appointed Principal Contractor exercises and fulfils the functions and obligations of a principal contractor under the WHS Legislation as if the Appointed Principal Contractor had been validly engaged and authorised as principal contractor as contemplated by clause 5.3(b).

5.4 Incident management

- (a) **(Establishment of procedures)** The Developer must, within 20 Business Days of the date of this deed, identify clear guidelines for responding to any Incident and establish procedures to ensure that the Principal's Representative is promptly notified of any Incident.
- (b) **(Reporting of Incidents)** If an Incident occurs, the Developer must immediately report the Incident to the Principal's Representative and to any Authority required by Law.
- (c) **(Developer must take action)** Without limiting clause 4.4 (*Environmental obligations*) and clause 6.1 (*Compliance with Laws*), in relation to any environmental or safety Incident involving Contamination or waste, the Developer must, at its own Cost:
 - (i) promptly take all appropriate action to manage and dispose of all Contamination or waste arising from the Incident; and
 - (ii) manage the Incident in a manner which minimises damage to the reputation of the Principal including complying with any reasonable request of the Principal's Representative.

5.5 Rail safety

- (a) **(No interference with safe operation)** The Developer must not do anything, and must procure that its Associates do not do anything, that would interfere with or compromise the safe operation of Sydney Metro City & Southwest.
- (b) **(No breach)** The Developer must ensure that it does not do anything or fail to do anything, and must ensure that its Associates do not do anything or fail to do anything, that would cause the Principal or any of the Principal's Associates to be in breach of the Rail Safety National Law or the Rail Safety Regulations.
- (c) **(No release)** Compliance by the Developer with its obligations under this clause 5.5 does not discharge the Developer from complying with its other obligations under this deed and is not evidence of compliance by the Developer with its other obligations under this deed.

5.6 **Cleaning up**

In procuring the carrying out of the OSD Works, the Developer must ensure that its Subcontractors:

- (a) **(clean and tidy)** keep the Construction Site and the OSD Works clean and tidy and free of refuse; and
- (b) **(removal of rubbish)** regularly remove rubbish, litter, graffiti and surplus material (including Construction Materials) from the Construction Site.

5.7 **NGER Legislation**

The Developer must at all times comply with the requirements of Schedule A5 (*NGER Legislation*) in relation to the NGER Legislation.

6. **LAW AND APPROVALS**

6.1 **Compliance with Laws**

The Developer must, in performing the obligations or procuring the performance of the obligations of the Developer or exercising any rights of the Developer, including procuring the carrying out of the OSD Works:

- (a) **(compliance)** comply (and ensure that its Associates comply) with all applicable Laws (including any Environmental Notices) arising out of or in connection with the carrying out of the OSD Works and ensure that at all times prior to and on, in respect of an Applicable Transfer Area, the Applicable Transfer Date, the OSD complies with all applicable Laws;
- (b) **(not put the Principal in breach)** not do, or fail to do (and ensure that its Associates do not do, or fail to do), anything that may cause the Principal to be in breach of any Law;
- (c) **(notify)** notify the Principal in writing as soon as practicable after the Developer or the Development Manager:
 - (i) becomes aware of any non-compliance with the requirements of any Law in connection with the OSD Works, the Construction Site or the carrying out of the OSD Works;
 - (ii) becomes aware of any information, fact or circumstance in any way connected with the OSD Works or the Construction Site or the carrying out of the OSD Works where:
 - (A) if the Principal were to be aware of such information, fact or circumstance, the Principal would be required to notify any Authority of that information, fact or circumstance pursuant to any Law (without limiting any other obligation of the Developer in relation to the information, fact or circumstance); and
 - (B) the Developer or the Development Manager is aware of that notification obligation of the Principal; or
 - (iii) notifies any Authority of any matter pursuant to any Law which is in any way connected with the OSD Works or the Construction Site or the carrying out of the OSD Works, in which case the Developer must give the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and

- (d) **(copies to the Principal)** give the Principal's Representative copies of:
 - (i) all notices that the Developer (or its Associates) gives to any Authority at the time or before it submits such notices to an Authority;
 - (ii) all documents (including Approvals and other notices) that any Authority issues to the Developer (or its Associates); and
 - (iii) any other material communications between the Developer (or its Associates) and an Authority,

in connection with or arising from the carrying out of the OSD Works.

6.2 Change in Law

The Developer agrees that:

- (a) **(acceptance of risk)** it accepts all risk in relation to any Change in Law; and
- (b) **(no relief)** a Change in Law will not relieve the Developer from, or alter or affect, the Developer's Liabilities, obligations or responsibilities whether under this deed or otherwise according to Law.

6.3 Approvals

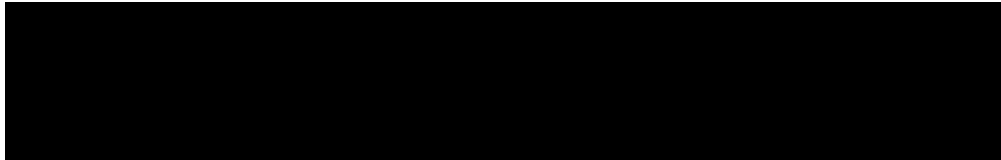
- (a) **(Obligations)** The Developer must:
 - (i) **(obtain and maintain)** obtain and maintain all Approvals required to perform the obligations of the Developer, except for the Principal Approvals;
 - (ii) **(comply with conditions)** comply with, carry out and fulfil (or procure the compliance with, carrying out or fulfilment of) the conditions and requirements of all Approvals, including those conditions and requirements which the Principal is, under the terms of the Approvals, required to comply with, carry out or fulfil (unless and to the extent that it is only possible for the Principal to comply with, carry out or fulfil those conditions or requirements and the Principal will comply with, carry out or fulfil those conditions or requirements at the Cost of the Developer to the extent they relate to or are required for the OSD Works); and
 - (iii) **(provide assistance)** provide the Principal with such assistance as may be reasonably required by the Principal to enable the Principal to:
 - (A) obtain any Principal Approvals which are to be obtained by the Principal after the date of this deed; or
 - (B) subject to clause 6.3(a)(ii), satisfy or fulfil the conditions and requirements of Approvals which must be satisfied or fulfilled by the Principal.
- (b) **(Acceptance of risk)** The Developer accepts all risk arising out of or in connection with obtaining all Approvals required for the OSD Project, including the risk of appeals or modifications to such Development Consents and Approvals (other than the Principal Approvals).

6.4 **Concept SSD Consent**

- (a) **(Copy of Concept SSD Consent)** Prior to the date of this deed the Principal applied for and received the Concept SSD Consent and provided the Developer with a copy of the Concept SSD Consent.
- (b) **(No Liability)** The Principal has no Liability to the Developer by reason of the form and content of the Concept SSD Consent.

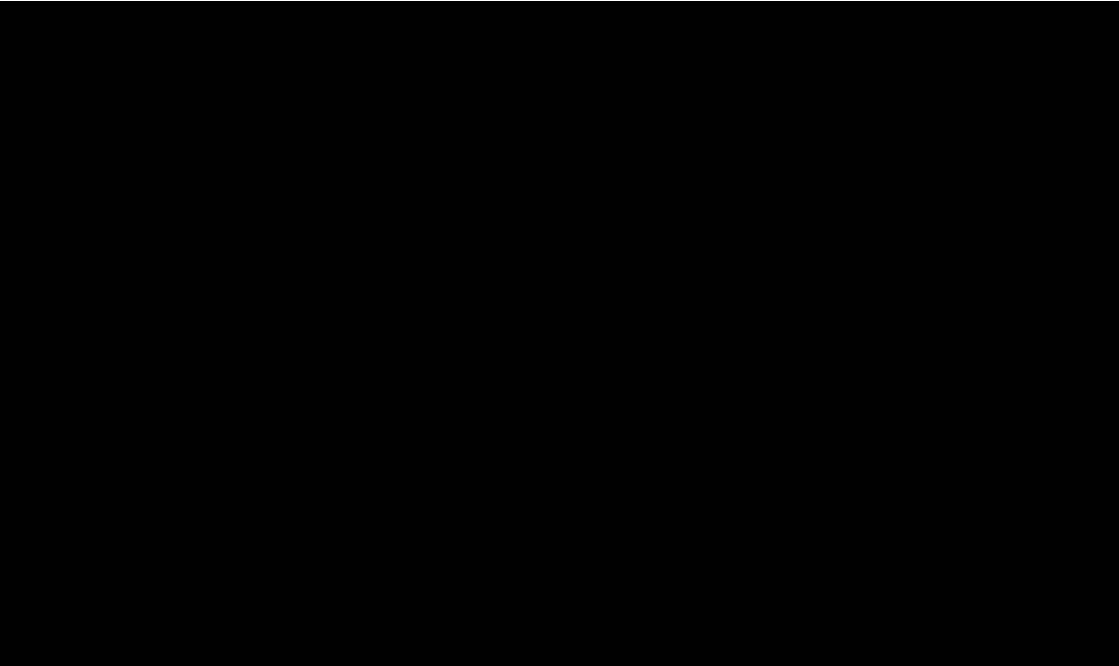
6.5 **Detailed SSD Application and Detailed SSD Consent**

- (a) **(Prepare and progress Detailed SSD Application)** The Developer is responsible for preparing and progressing the Detailed SSD Application.
- (b) **(Submission to Principal for landowner's consent)** The Developer must provide to the Principal's Representative a full copy of the Detailed SSD Application (including the full and final set of design documentation proposed to be submitted by the Developer with the Detailed SSD Application) in the form that it is proposed to be lodged with the Consent Authority.
- (c) **(Principal's consent)** The Principal's Representative must, as soon as reasonably practicable (but not later than 20 Business Days) after receiving a full and complete copy of the proposed Detailed SSD Application:
 - (i) provide the Principal's consent in writing (including landowner's consent) to the lodgement of the proposed Detailed SSD Application; or
 - (ii) notify the Developer in writing that it is withholding landowner's consent to the proposed Detailed SSD Application, in which case the Principal must provide the grounds on which it is withholding such consent and provide any comments and recommendations in respect of amendments to the Application.
- (d) **(Right to withhold consent)** The Principal may only withhold its consent under clause 6.5(c)(ii) if the Principal's Representative determines that the proposed Detailed SSD Application:



- (e) **(Developer to amend)** If the Principal withholds landowner's consent to the proposed Detailed SSD Application or requires amendments to the proposed Detailed SSD Application under clause 6.5(c)(ii), the Developer must amend the proposed Detailed SSD Application to take into account the requirements of the Principal and re-submit the proposed Detailed SSD Application for the Principal's review, and the provisions of clauses 6.5(b) to 6.5(e) (inclusive) will re-apply.
- (f) **(Lodgement of Application)** The Developer must lodge the Detailed SSD Application with the Consent Authority in the same form as the one to which the Principal has provided landowner's consent.
- (g) **(No Liability)** The Principal has no Liability to the Developer by reason of the form and content of any Detailed SSD Application or Detailed SSD Consent.

6.6



6.7 **Residential Building Legislation**

The Developer must:

- (a) comply with;
- (b) ensure that its Subcontractors comply with; and
- (c) ensure that the OSD Works are designed and constructed in accordance with, the Residential Building Legislation.

7. **GOVERNANCE AND ADMINISTRATION**

7.1 **Principal's Representative**

- (a) The Principal's Representative will carry out all of its functions under this deed as the agent of the Principal (and not as an independent certifier, assessor or valuer).
- (b) The Developer must comply with, and procure that its Subcontractors comply with, all Directions given by the Principal's Representative in accordance with this deed.

7.2 **Appointees of the Principal's Representative**

- (a) **(Principal appointees)** The Principal's Representative:
 - (i) may by written notice to the Developer, appoint persons to exercise any of the functions of the Principal's Representative under this deed;
 - (ii) must not appoint more than one person to exercise a specific function at any one time;
 - (iii) may vary or revoke any appointment under clause 7.2(a)(i) by written notice to the Developer; and
 - (iv) may continue to exercise a function under this deed despite appointing another person to exercise the function under clause 7.2(a)(i) (provided that

any Directions of the Principal's Representative take precedence over those of any other representatives to the extent of any inconsistency).

- (b) **(References include appointees)** All references in this deed to the Principal's Representative include a reference to an appointee under clause 7.2(a)(i).

7.3 **Developer's Representative**

- (a) **(Developer's Representative)** The Developer must ensure that at all times from the date of this deed until the last Applicable Transfer Date to occur there is a Developer's Representative.
- (b) **(Appointment)** The Developer may, by written notice to the Principal, appoint persons to exercise any of the functions of the Developer's Representative under this deed.
- (c) **(Communications in English)** All communications by the Developer's Representative must be in the English language.
- (d) **(Authority)** The Developer's Representative, and any replacement, at all times has or will have authority to act on behalf of the Developer in respect of this deed.

7.4 **Developer's acknowledgement**

- (a) **(Developer is bound)** Any notice, consent, approval or other communication given or sighted by the Developer's Representative or any Developer's Representative's delegate will bind the Developer.
- (b) **(Knowledge of the Developer)** All matters within the knowledge of the Developer's Representative or any Developer's Representative's delegate will be deemed to be within the knowledge of the Developer.
- (c) **(Directions deemed to be given to the Developer)** Any Directions given by the Principal's Representative, or by a delegate appointed under clause 7.2(a) (*Appointees of the Principal's Representative*) on behalf of the Principal's Representative, to any Developer's Representative or Developer's Representative's delegate, will be deemed to have been given to the Developer.

7.5 **Release in favour of Principal's Representative**

- (a) **(No Liability for representative)** Neither the Principal's Representative nor any delegates will have any Liability to the Developer in relation to or in connection with this deed.
- (b) **(No reliance for the Principal/Developer)** Nothing in clause 7.5(a) releases:
 - (i) the Principal from any Liability it would otherwise have to the Developer arising out of the conduct of the Principal's Representative and any of the Principal's Representative's delegates; or
 - (ii) the Developer from any Liability it would otherwise have to the Principal arising out of the conduct of the Developer's Representative and any of the Developer's Representative's delegates.

7.6 **Approved Engineer**

- (a) **(Engagement)** The Developer must:
 - (i) engage each Approved Engineer at the Developer's Cost; and

- (ii) not engage or replace an Approved Engineer without the prior written consent of the Principal's Representative (which must not be unreasonably withheld or delayed).
- (b) **(Skill, qualifications and experience)** The Developer warrants that each Approved Engineer and any replacement Approved Engineer has:
- (i) at least the qualifications, experience and expertise described in Schedule A9 (*Requirements of Approved Engineer*) for the role being performed;
 - (ii) the requisite experience and skill to perform the role of Approved Engineer in accordance with clause 7.6(c); and
 - (iii) effected professional indemnity insurance policies which are subject to the usual terms and conditions that apply to such a policy and which provide cover for at least [REDACTED] for one claim or in the aggregate during any one period of insurance.
- (c) **(Role)** The Developer must procure that each person performing the role of the Approved Engineer under this deed:
- (i) provides an Approved Engineer's Certificate (Pre-Commencement) which independently certifies that:
 - (A) the OSD Works as shown in the Final Plans and Specifications will not cause the OSD (during construction and on Completion) to have a [REDACTED] with respect to the relevant element set out in the definition of [REDACTED] which that Approved Engineer has been engaged to certify; and
 - (B) the following considerations and strategies are in place to the relevant Approved Engineer's satisfaction:
 - (aa) induced movement and any cracking caused by the OSD and the OSD Works is considered in the design and structural monitoring strategy for the Crows Nest Station; and
 - (bb) the adverse effects of stray currents and electrolysis caused by the OSD and the OSD Works is considered in the design and electrolysis mitigation and monitoring strategy for the Crows Nest Station; and
 - (ii) provides an Approved Engineer's Certificate (Post-Completion) which independently certifies that:
 - (A) the OSD, as constructed, will not have a [REDACTED] with respect to the relevant element set out in the definition of [REDACTED] which that Approved Engineer has been engaged to certify; and
 - (B) all the strategies referred to in the Approved Engineer's Certificate (Pre-Commencement) have been fully implemented and that the required documented evidence is in place to satisfy this.
- (d) **(Independence)** The Developer must:
- (i) ensure that:
 - (A) an Approved Engineer is not an employee of the Developer, the Development Manager, the D&C Contractor or the Principal. [REDACTED]

[REDACTED]

- (B) all advice and comments (including drafts and calculations) provided by an Approved Engineer to the Developer, the Development Manager or the D&C Contractor are in writing and retained as a record; and
- (ii) upon request, provide the Principal's Representative with any advice or comments referred to in clause 7.6(d)(i)(B).
- (e) **(Provision of information)** The Developer must:
 - (i) allow each Approved Engineer to attend design meetings;
 - (ii) allow access or procure access for an Approved Engineer to the Construction Site and all places at which the OSD Works are being undertaken; and
 - (iii) provide an Approved Engineer with all information and documents as may be:
 - (A) necessary or reasonably required for an Approved Engineer to perform its role under this deed; or
 - (B) requested by an Approved Engineer or directed by the Principal's Representative.
- (f) **(No Claim)** Nothing that an Approved Engineer does or fails to do pursuant to the purported exercise of its functions will give rise to any Liability from the Principal to the Developer.
- (g) **(Deed Poll)** The Developer must procure that each Approved Engineer executes a deed poll in favour of the Principal in the form of the deed poll in Schedule A19 (*Approved Engineer Deed Poll*) prior to the Developer commencing work on the Construction Site.
- (h) **(Not approval or evidence)** No certification or determination by an Approved Engineer will:
 - (i) constitute an approval by the Principal of the Developer's performance of its obligations under this deed;
 - (ii) be taken as an admission or evidence that the OSD Works or any other matters certified or determined by an Approved Engineer comply with this deed; or
 - (iii) prejudice any rights or powers of the Principal under this deed or otherwise according to Law, including any rights which the Principal may have in respect of Defects in the OSD Works.
- (i) **(Certification):**
 - (i) the Principal acknowledges that the Developer may provide:
 - (A) more than one Approved Engineer's Certificate (Pre-Commencement) and that together the certificates will cover each element contained in the definition of [REDACTED] together with certification regarding the strategies set out in clause 7.6(c)(i)(B); and

- (B) more than one Approved Engineer's Certificate (Post-Completion) and that together the certificates will cover each element contained in the definition of [REDACTED]; and
- (ii) the Developer must provide a certificate at the same time as it submits to the Principal:
 - (A) the Approved Engineer's Certificate (Pre-Commencement), which certifies that all elements contained in the definition of [REDACTED] and all strategies referred to in clause 7.6(c)(i)(B) have been certified by the Approved Engineers; and
 - (B) the Approved Engineer's Certificate (Post-Commencement), which certifies that all elements contained in the definition of [REDACTED] have been certified by the Approved Engineers.
- (j) **(No liability for acts)** No act or omission of an Approved Engineer, including any certification or determination by an Approved Engineer:
 - (i) is an act or omission by the Principal (including a breach of contract) under or in connection with the OSD Contract Documents; or
 - (ii) without limiting clause 7.6(h), will give rise to any Liability from the Principal to the Developer.

7.7 **Project Control Group**

- (a) **(Establishment of Project Control Group)** The Developer must establish, and comply with the requirements in respect of, the Project Control Group contemplated in Schedule B1 (*Governance Groups*).
- (b) **(Effect of Project Control Group)** The Project Control Group is consultative and advisory only and nothing which occurs during a meeting of any such group will:
 - (i) affect the rights or obligations of any party under the OSD Contract Documents;
 - (ii) give rise to any Liability from the Principal to the Developer or from the Developer to the Principal;
 - (iii) relieve a party from, or alter or affect, a party's Liabilities or responsibilities whether under this deed or otherwise according to Law;
 - (iv) prejudice a party's rights against the other whether under this deed or otherwise according to Law; or
 - (v) be construed as a Direction by a party to do or not do anything.
- (c) **(OSD PDA (Development Lot A OSD) Project Control Group)** If required by the Principal's Representative, the Developer must attend any meeting, forum or working group that is contemplated by or established under the OSD PDA (Development Lot A).

7.8 **Exchange of information between government agencies**

- (a) **(Authorisation)** The Developer authorises the Principal and its Associates to make information concerning the Developer or the OSD Project available to NSW government departments or agencies. Such information may include any

information provided by the Developer to the Principal and any information relating to the Developer's performance under this deed.

- (b) **(Future opportunities)** The Developer acknowledges that any information about the Developer or the OSD Project from any source, including substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Developer or any Related Entity of the Developer future opportunities for NSW government work.

8. ACCESS AND CONSTRUCTION SITE

8.1 Rights to land

- (a) **(Construction Site)** The Principal grants to the Developer, and the Developer accepts the grant of, a licence to access the Construction Site in accordance with clauses 8.2 (*Early access to the Construction Site*) to 8.7 (*Principal's right of entry to Construction Site*) (inclusive).
- (b) **(Extra Land)** The Developer:
 - (i) must, at its own Cost and risk, procure for itself all rights over any land or buildings in addition to the Construction Site which the Developer requires to exercise any right or perform any obligation under this deed; and
 - (ii) agrees that the Principal will have no Liability to the Developer in connection with:
 - (A) the Developer's obligation under clause 8.1(b)(i); or
 - (B) any delay, additional Costs or other effects on the OSD Works incurred by the Developer or its Subcontractors as a result of the Developer's failure to obtain access to Extra Land, approval to use Extra Land or to integrate Extra Land with the Construction Site.

8.2 Early access to the Construction Site

- (a) **(Option to grant early access)** The Principal may, but is not obliged to, grant the Developer access to the Construction Site prior to the Site Access Date if Station Completion has been achieved prior to the Site Access Date.
- (b) **(Notice)** The Principal may give the Developer one or more written notices of the date or dates (**Site Availability Date**) on which the Construction Site will be available from a specified date that is prior to the Site Access Date. Any such notice must be given at least 2 months prior to the date on which the Construction Site will be available.
- (c) **(Deemed Site Access Date)** If the Site Availability Date is:
 - (i) after the Early Site Access Date, the Construction Licence will be deemed to have commenced on the Site Availability Date; or
 - (ii) prior to the Early Site Access Date, the Construction Licence will be deemed to have commenced on the earlier to occur of:
 - (A) the date on which the Developer (by notice in writing to the Principal) accepts early access to the Construction Site; and
 - (B) the Early Site Access Date.

- (d) **(No grant or deemed grant prior to the Early Site Access Date)** Where the Principal gives the Developer a notice under clause 8.2(b) stating that the Construction Site will be available from a specified date, the Developer will not be required to take, or be deemed to have taken, a Construction Licence of the Construction Site where the date specified in the notice is prior to the Early Site Access Date.
- (e) **(No Liability)** [REDACTED], the Principal will have no Liability to the Developer if the Principal gives the Developer a notice under clause 8.2(b) and the Developer is not given access to the Construction Site on the date specified in the notice.

8.3 Access to the Construction Site on or after the Site Access Date

- (a) **(Principal to give access)** Unless the Principal has granted the Developer access to the Construction Site prior to the Site Access Date in accordance with clause 8.2 (*Early access to the Construction Site*), the Principal must:
 - (i) give the Developer access to the Construction Site by no later than the relevant Site Access Date; and
 - (ii) thereafter continue to allow the Developer to access the Construction Site on the terms of this deed.
- (b) **(Delay)** Delay in providing access to the relevant part of the Construction Site will not be a breach of this deed, but will entitle the Developer to claim:
[REDACTED]

8.4 Period and terms of Construction Licence

- (a) **(Period of Construction Licence)** The Construction Licence:
 - (i) commences on the Construction Licence Commencement Date; and
 - (ii) terminates on the earlier of:
 - (A) in respect of an Applicable Transfer Area, the Applicable Transfer Date; and
 - (B) the date of termination of this deed.
- (b) **(Terms of access)** The Construction Licence:
 - (i) is a non-exclusive licence to the Developer (which may be sub-licensed to the D&C Contractor and the Development Manager);
 - (ii) is personal in nature;
 - (iii) does not create any entitlement or interest in the Construction Site;
 - (iv) is granted to the Developer solely for the purpose of:
 - (A) procuring the carrying out of the OSD Works; and
 - (B) performing its other obligations under the OSD Contract Documents;

- (v) is subject to the Developer complying with clauses 5.2 (*Work health and safety*), 5.3 (*Principal contractor*), 6.1 (*Compliance with Laws*), 6.3 (*Approvals*), 8.6 (*Access to the Construction Site*), 8.9 (*Existing Operations*), 8.10 (*Encumbrances*), 10.3 (*Cooperation and co-ordination with Interface Contractors*), 28.4 (*Developer's Insurance obligations*) and Schedule D1 (*Site Access Schedule*); and
- (vi) is subject to the rights of the Principal and its Associates to access the Construction Site pursuant to clause 8.7 (*Principal's right of entry to Construction Site*) and clause 24.4(b) (*Access*) (if applicable).

8.5 Licence Fees

- (a) (**Licence Fees**) In consideration of the grant of the Construction Licence, the Developer must pay to the Principal the Licence Fee for each month (or part thereof) during which the Developer was provided access to the Construction Site. The obligation to pay the Licence Fee ceases on the earlier of:
 - (i) the last Applicable Transfer Date to occur; and
 - (ii) the date of termination of this deed.
- (b) (**Payment**) The Developer must pay the Licence Fee to the Principal within 10 Business Days after the end of each month during which the Developer was provided access to the Construction Site.
- (c) (**Principal to waive**) The Principal waives the requirement for the Developer to pay the Licence Fee for the period [REDACTED]

8.6 Access to the Construction Site

- (a) (**Access routes**) The Developer must access the Construction Site only at the points of entry and exit and using the routes for ingress and egress set out in the Construction and Site Management Plan.
- (b) (**Developer responsibility**) The Developer:
 - (i) acknowledges that the Principal has not secured rights of access over the routes for ingress and egress set out in the Construction and Site Management Plan; and
 - (ii) except as expressly provided for in this deed, is responsible, at its own Cost and risk, for obtaining access to and from, and securing rights of ingress to and egress from, the Construction Site for the carrying out of the OSD Works.
- (c) (**No Liability**) The Principal will have no Liability to the Developer in connection with routes for ingress and egress, or failure to gain or delay in gaining ingress to or egress from the Construction Site.

8.7 Principal's right of entry to Construction Site

- (a) (**Principal's rights**) Without limiting any other rights of the Principal to access the Construction Site, the Principal (and any person authorised by the Principal, including any Interface Contractor) may, at any time before in respect of an Applicable Transfer Area, the Applicable Transfer Date, enter the Construction Site and any other premises where the OSD Works are being carried out, for:
 - (i) in the case of the Principal, the purpose of:

- (A) observing or inspecting (but not co-ordinating or supervising) the carrying out of the OSD Works;
 - (B) monitoring (but not co-ordinating or supervising) compliance by the Developer and its Associates with their respective obligations under any OSD Contract Document and any Project Plan;
 - (C) exercising any right or performing any obligation which the Principal has under any OSD Contract Document; or
 - (D) any other purpose connected with Sydney Metro City & Southwest; and
- (ii) in the case of an Interface Contractor, carrying out Interface Work.
- (b) **(Developer's assistance)** The Developer must:
- (i) co-ordinate the Developer's activities so they do not interfere with the exercise by the Principal of its rights of entry; and
 - (ii) provide the Principal with every reasonable facility and other assistance necessary for any inspection by the Principal.

8.8 Access to Crows Nest Station

- (a) **(Request for access)** If the Developer requires access to the Crows Nest Station for the purpose of procuring the carrying out of the OSD Works or performing its obligations under this deed, the Developer must give the Principal no less than 10 Business Days' prior written notice, together with details of:
- (i) the area of the Crows Nest Station to which access is required;
 - (ii) the proposed access period and proposed time of the day;
 - (iii) the reason access to the Crows Nest Station is required, including all activities that the Developer and its Associates will undertake in the Crows Nest Station; and
 - (iv) the Developer's Associates who will be accessing the Crows Nest Station and the tools and equipment that the Developer and its Associates propose to bring on site,
- (Station Access Notice).**
- (b) **(Principal to consider request to access)** The Principal must provide a notice in writing to the Developer as soon as reasonably practicable but in any event no later than 10 Business Days after receiving a Station Access Notice stating that either:
- (i) the Developer may access the area of the Crows Nest Station identified in the Station Access Notice on the terms set out in the Station Access Notice and other conditions specified by the Principal; or
 - (ii) the Developer may not access the Crows Nest Station.
- (c) **(Right to withhold)** The Principal may withhold its consent to allow access to the Crows Nest Station under clause 8.8(b)(ii) in its absolute discretion except where the request is:
- (i) to allow the Approved Engineer access in order to perform its role under this deed; or

- (ii) to procure the carrying out of the OSD Works,
in which case the Principal must not unreasonably withhold its consent but may impose conditions.
- (d) **(Developer's obligations)** If the Developer accesses the Crows Nest Station after the Principal grants such access under clause 8.8(b)(i), the Developer:
 - (i) acknowledges that:
 - (A) the Principal will appoint a principal contractor in respect of the works being undertaken in the Crows Nest Station and, if requested by the Principal's Representative, the Developer must execute a deed poll in favour of that principal contractor in the form of Schedule A12 (*Site Interface Deed Poll*); and
 - (A) Interface Contractors may be executing work on parts of the Crows Nest Station at the same time as the Developer is accessing the Crows Nest Station; and
 - (ii) must:
 - (A) procure that the Developer's Associates who will be accessing the Crows Nest Station at all times fully cooperate with any Interface Contractors executing work on parts of the Crows Nest Station;
 - (B) at all times comply and ensure that the Developer's Associates who will be accessing the Crows Nest Station comply with the Directions of the Principal's Representatives in relation to such access;
 - (C) minimise any interference with or disruption or delay to:
 - (aa) the works being undertaken by Interface Contractors; and
 - (bb) users of the Crows Nest Station, Sydney Metro City & Southwest or any services associated with Sydney Metro City & Southwest (where relevant); and
 - (D) not damage the Crows Nest Station, the Land or any other property of the Principal or its Associates.
- (e) **(No Liability)** The Developer:
 - (i) bears all risks associated with the Developer and its Associates accessing the Crows Nest Station pursuant to this clause 8.8; and
 - (ii) releases the Principal and the Principal's Associates from any Loss or Claims arising out of or in connection with the Developer exercising its right of access to the Crows Nest Station under this clause 8.8 (including complying with any Directions of the Principal's Representative) or the Principal's decision to withhold access in accordance with clause 8.8(b)(ii).
- (f) **(Right to request access)** The Developer may request access to the Crows Nest Station under clause 8.8(a) only between the date of this deed and the earlier of:
 - (i) the last Applicable Transfer Date to occur; or
 - (ii) the date this deed terminates.

8.9 Existing Operations

- (a) **(Existing Operators)** The Developer acknowledges that:
- (i) Existing Operators and other persons must continue their Existing Operations during the course of carrying out of the OSD Works; and
 - (ii) the routes of ingress to and egress from the Construction Site are used by Existing Operators and other persons and will not be available exclusively to the Developer.
- (b) **(Risk)** The Developer must procure the co-ordination and supervision of, and bear the risk of such co-ordination and supervision of, its access to and from the Construction Site with any other relevant persons and entities (including Existing Operators) that use the routes for ingress to and egress from the Construction Site and any delay and disruption to the carrying out of the OSD Works which arises from any Existing Operations.
- (c) **(Compliance)** The Developer must comply with the Principal's Representative's reasonable Directions in connection with the Existing Operations (including access to and use of the Construction Site) where the Direction is necessary to meet the requirements of an Authority exercising its statutory functions or powers and comply with all policies, procedures and rules of the Principal applying from time to time (as notified in writing by the Principal) in respect of the Existing Operations (including in relation to work health and safety and/or the Environment).
- (d) **(No Liability)** The Principal will have no Liability to the Developer in relation to:
- (i) the Developer's obligations under this clause 8.9;
 - (ii) any Direction given by the Principal's Representative in accordance with clause 8.9(c); or
 - (iii) any act, omission or requirement of an Existing Operator.
- (e) **(Associates)** The Developer must ensure that its Associates, in performing the obligations of the Developer or exercising any rights of the Developer, including carrying out the OSD Works, at all times comply with this clause 8.9.

8.10 Encumbrances

- (a) **(Existing Encumbrances)** The Principal must ensure that, on and from the Construction Licence Commencement Date, the Construction Site will only be affected by:
- (i) the Existing Encumbrances; and
 - (ii) any Encumbrance created pursuant to clause 8.10(c), clause 25 (*Transfer of Title and Subdivision*), Schedule D5 (*Subdivision Requirements*), Schedule D6 (*Subdivision Principles*) or licence or right of occupation granted by the Principal to Interface Contractors in accordance with clause 10.3(a)(iv) (*Cooperation and co-ordination with Interface Contractors*).
- (b) **(Compliance)** The Developer must, at its Cost, comply with any Encumbrances burdening or benefiting the Construction Site as if the Developer were the owner of that land.
- (c) **(Principal may create)** The Principal may, at any time, and from time to time, create or permit the creation on the title to the Construction Site:

- (i) any Encumbrance necessary, in the opinion of the Principal, to enable the construction, operation, maintenance, repair, replacement and /or alteration of Sydney Metro City & Southwest (including the Crows Nest Station);
 - (ii) any Encumbrance required by an Authority; and
 - (iii) any Encumbrance as contemplated in the Subdivision Documents.
- (d) **(Principal to provide notice)** The Principal must promptly provide the Developer with written notice of any proposed Encumbrance to be created in accordance with clause 8.10(c), and its proposed terms.
- (e) **(Removal of Encumbrances)** Without limiting any other provision in this clause 8.10, if the Principal has created an Encumbrance on the title to the Land (excluding any part of the Land that comprises or will comprise the Station Lot or Development Lot C) in favour of the Principal and solely to enable the construction of Sydney Metro City & Southwest (including the Crows Nest Station) then if, after the commencement of Sydney Metro City & Southwest operations, the Developer requests the Principal to remove that Encumbrance from the title to the relevant land, the Principal must do so promptly and at no cost to the Developer.
- (f) **(No further Encumbrances)** Except as otherwise provided in this deed (including clause 8.10(c), clause 25 (*Transfer of Title and Subdivision*), and clause 10.3(a)(iv) (*Cooperation and co-ordination with Interface Contractors*)), the Principal must not at any time create, or permit the creation of, any Encumbrance or Security Interest in respect of the Construction Site (excluding any part of the Construction Site which comprises or will comprise the Station Lot or Development Lot C) after the date of this deed without the consent of the Developer (such consent not to be unreasonably withheld or delayed).
- (g) **(No Liability)** The Principal will have no Liability in relation to any Encumbrance created, or permitted to be created, by the Principal pursuant to clause 8.10(c).

9. PHYSICAL CONDITIONS

9.1 Acceptance of site

- (a) **(Acceptance of site)** Without limiting clause 12.1 (*Acceptance of OSD Enabling Works*), the Developer accepts:
- (i) the Construction Site; and
 - (ii) any structures or other things on, above or adjacent to, or under the Construction Site,
- in their present condition from time to time, subject to all defects and Site Conditions, and agrees that it is responsible for, and assumes the risk of:
- (iii) all Loss, delay or disruption it suffers or incurs; and
 - (iv) any adverse effect on the carrying out of the OSD Works or the OSD Project, arising out of, or in any way in connection with, any Site Conditions encountered in or on the Construction Site or in the carrying out of the OSD Works and releases the Principal from all Claims and Liabilities in connection with such matters.

- (b) **(Examination and investigation)** The Developer warrants that, prior to the date of this deed, the Developer:
- (i) examined this deed, the OSD Contract Documents, the Crows Nest CODD, the Design Contract, the OSD Enabling Works Design Documentation and the Construction Site and the OSD Enabling Works and their surroundings and any other information that was made available in writing by the Principal or any other person on the Principal's behalf, to the Developer or its Associates during the proposal period;
 - (ii) informed itself of all matters relevant to the employment of labour and all industrial matters on the Construction Site;
 - (iii) was given the opportunity prior to entering into this deed to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of the Information Documents;
 - (B) in connection with the Design Contract, the Crows Nest CODD, the OSD Enabling Works Design Documentation and the OSD Enabling Works; and
 - (C) for design purposes and otherwise;
 - (iv) had sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this deed, the OSD Contract Documents, the Crows Nest CODD, the Design Contract, the OSD Enabling Works Design Documentation, the Information Documents, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Proposal and the performance of its obligations and its potential Liabilities under the OSD Contract Documents;
 - (v) had sufficient access to the Construction Site and the OSD Enabling Works (to the extent the OSD Enabling Works existed as at the date of this deed) and their surroundings, undertook sufficient tests, enquiries and investigations, had sufficient information and obtained a sufficient understanding of the risks involved to enable it to make an informed decision regarding the acceptance of risk in relation to Site Conditions, whether or not to enter into or procure that the Development Manager enters into the OSD Contract Documents and assume the obligations and potential risks and Liabilities which they impose on the Developer and the Development Manager; and
 - (vi) satisfied itself as to the correctness and sufficiency of its Proposal and that it has made adequate allowance for the costs of complying with all of its obligations under the OSD Contract Documents and of all matters and things necessary for the due and proper performance and completion of the OSD Works and the Developer's obligations under this deed.
- (c) **(No representation or warranty)** The Principal makes no representation and gives no warranty to the Developer or its Associates in respect of:
- (i) the Site Conditions which may be encountered during the execution of the OSD Works or otherwise in respect of the condition of:
 - (A) the Construction Site and its surroundings; or
 - (B) any structure or other thing on, under, above or adjacent to the Construction Site;

- (ii) the adequacy or suitability of the Construction Site, the Development Lot or the OSD Enabling Works for the OSD Works or for any other purpose; or
- (iii) the existence, location, condition or availability of Utility Services on, under, above, adjacent to or related to the Construction Site (other than any Utility Services which are OSD Enabling Works, in which case the Principal's sole Liability is pursuant to [REDACTED] or if clause 14 (*Defects in the OSD Enabling Works*) does not apply, the Principal will have no Liability to the Developer).

9.2 Information Documents

- (a) **(No warranty)** Without limiting clause 9.2(b):
 - (i) the Developer acknowledges that the Information Documents may be inaccurate, inadequate, incomplete or unsuitable;
 - (ii) the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, completeness or suitability of the Information Documents;
 - (iii) the Developer acknowledges that where an Information Document or any part of an Information Document is included in a schedule to this deed, it is included only for the purposes of identification of that document or part of that document (unless it is expressly stated in the document that it forms part of this deed); and
 - (iv) the Principal will have no Liability to the Developer or its Associates arising out of or in any way in connection with:
 - (A) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Developer or its Associates or any other person to whom the Information Documents are disclosed; or
 - (B) a failure by the Principal to provide any information to the Developer or its Associates, except where such failure is a breach of this deed (for which the Developer's only remedy will be a claim for breach of contract).
- (b) **(No reliance)** The Developer:
 - (i) warrants that it did not in any way rely upon:
 - (A) any Information Document or any other information, data, representation, statement or document made, or provided to the Developer or its Associates, by the Principal or anyone on behalf of the Principal or any other information, data, representation, statement or document for which the Principal is responsible or may be responsible whether or not obtained from the Principal or anyone on behalf of the Principal; or
 - (B) the accuracy, adequacy, suitability or completeness of such Information Document or other information, data, representation, statement or document,

for the purposes of entering into this deed or procuring the carrying out of the OSD Works;

- (ii) warrants that it and the Development Manager enter into the OSD Contract Documents based on their own investigations, interpretations, deductions, information and determinations; and
- (iii) acknowledges that it is aware that the Principal has entered into this deed relying upon:
 - (A) the warranties, acknowledgements and agreements in clause 9.2(b)(i) and clause 9.2(b)(ii); and
 - (B) the agreements and acknowledgements in the Developer's Proposal.
- (c) **(Release and indemnity)** The Developer releases and indemnifies the Principal from and against:
 - (i) any Claim against the Principal by, or Liability of the Principal to, any person; or
 - (ii) (without being limited by clause 9.2(c)(i)) any Loss incurred by the Principal, arising out of or in any way in connection with:
 - (iii) the provision of, or the purported reliance upon, or use of, the Information Documents to or by the Developer or its Associates or any other person to whom the Information Documents are disclosed by the Developer, or a failure by the Principal to provide any information to the Developer or its Associates;
 - (iv) any breach by the Developer of this clause 9.2; or
 - (v) the Information Documents being relied upon or otherwise used by the Developer or its Associates, or by any other person to whom the Information Documents are disclosed by the Developer, in the preparation of any information or document.

9.3 **Native Title Claims and Threatened Species Claims**

- (a) **(Commencement of application or claim)** If:
 - (i) there is a Native Title Claim; or
 - (ii) a Threatened Species Claim is commenced,
 which affects any part of the Construction Site and/or the carrying out of the OSD Works, the Developer must:
 - (iii) continue to perform its obligations under this deed and the other OSD Contract Documents unless otherwise:
 - (A) directed by the Principal's Representative;
 - (B) ordered by any court or tribunal; or
 - (C) required by Law;
 - (iv) at the request of the Principal, or if required to do so under any Law or by order of a court or tribunal, provide, at its own Cost, all reasonable assistance in connection with dealing with the Native Title Claim or Threatened Species Claim (including giving the Principal and any other person authorised by the Principal access to the Construction Site or that part of the Construction Site

that is the subject of the Native Title Claim or Threatened Species Claim when reasonably required by the Principal for that purpose); and

- (v) take all reasonable steps to mitigate any Loss to the Principal in complying with its obligations under clause 9.3(a)(iii).
- (b) **(Principal's right to suspend)** For the purposes of clause 9.3(a)(iii)(A), the Principal may by written notice, direct the Developer to procure the suspension of the performance of any or all of the OSD Works until such time as the Principal gives the Developer further notice.
- (c) **(No Liability)** The Principal will have no Liability to the Developer as a result of a direction by the Principal under this clause 9.3.

10. INTERFACE WITH INTERFACE CONTRACTORS

10.1 Master Interface Protocols Deed Poll

- (a) The Developer must:
 - (i) on or before the date of this deed, provide to the Principal the Master Interface Protocols Deed Poll, duly executed by the Developer; and
 - (ii) at all relevant times comply with the terms of the Master Interface Protocols Deed Poll.
- (b) The Principal will procure that the Operator and each Interface Contractor nominated by the Principal executes a Master Interface Protocols Deed Poll.

10.2 Cooperation and Integration Deeds

- (a) The Developer must:
 - (i) within 5 Business Days after receipt of a request from the Principal's Representative, provide to the Principal:
 - (A) the Operator Cooperation and Integration Deed; and
 - (B) each Interface Contractor Cooperation and Integration Deed with any Interface Contractor nominated by the Principal,each duly executed by the Developer and, where relevant, the D&C Contractor in the number of counterparts required by the Principal; and
 - (ii) at all relevant times comply, and, if applicable, ensure that the D&C Contractor complies, with the terms of the Cooperation and Integration Deeds.
- (b) If the Principal makes a request under clause 10.2(a)(i) for the Developer to execute and, if applicable, procure that the D&C Contractor executes:
 - (i) an Operator Cooperation and Integration Deed to which the Operator will be party; or
 - (ii) an Interface Contractor Cooperation and Integration Deed to which any Interface Contractor nominated by the Principal will be party,

the Principal must, within 20 Business Days of receiving the executed documents from the Developer, itself execute, and procure that the Operator or the relevant

Interface Contractor nominated by the Principal (as applicable) executes, the relevant document.

10.3 **Cooperation and co-ordination with Interface Contractors**

Without limiting the Developer's obligations under the Cooperation and Integration Deeds, the Developer:

- (a) **(Developer acknowledgement)** acknowledges that:
- (i) the Interface Work forms part of Sydney Metro City & Southwest;
 - (ii) the Developer's activities and its Subcontractors' activities in relation to the OSD Works may interface with the activities of the Interface Contractors;
 - (iii) Interface Contractors will be executing work on areas adjacent to or in the vicinity of the Construction Site and may be executing works on parts of the Construction Site at the same time as the Developer's Subcontractors are performing the OSD Works;
 - (iv) the Principal may grant the Interface Contractors a non-exclusive licence to use and occupy the Construction Site to carry out the Interface Works;
 - (v) Interface Contractors may require information to co-ordinate the Interface Works with the carrying out of the OSD Works, and the Developer must procure that such information is provided in a timely manner; and
 - (vi) any delay in, or failure by the Developer to procure the cooperation and co-ordination of its Subcontractors with any Interface Contractor may adversely impact upon, delay or disrupt any one or more Interface Contractors in a way which may lead to the Principal and Interface Contractors suffering or incurring Loss;
- (b) **(cooperation with Interface Contractors)** must at all times:
- (i) ensure that its Subcontractors permit the Interface Contractors (if the Developer's or its Subcontractors' consent or authority is required) to execute the Interface Work on the applicable parts of the Construction Site or on any property adjacent to or in the vicinity of the Construction Site:
 - (A) at the same time as the Developer's Subcontractors are performing the OSD Works; and
 - (B) at the times agreed with the relevant Interface Contractor, or failing agreement, at the times determined by the Principal's Representative acting reasonably in the context of the Sydney Metro City & Southwest project as a whole,

and for this purpose ensure each Interface Contractor has safe, clean and clear access (including suitable access ways) to those parts of the Construction Site or property adjacent to or in the vicinity of the Construction Site (to the extent controlled by the Developer or its Subcontractors), required by that Interface Contractor for the purpose of carrying out their work subject to, where the relevant Interface Contractor is carrying out Construction Site Interface Work, the Interface Contractor engaged by the Principal for such Construction Site Interface Works executing a deed poll in favour of the Appointed Principal Contractor in the form of Schedule A12 (*Site Interface Deed Poll*);

- (ii) ensure that its Subcontractors protect the OSD Works and other improvements on the Construction Site from damage by Interface Contractors;
- (iii) fully cooperate, and procure that its Subcontractors fully cooperate, with the Interface Contractors, and do everything reasonably necessary to:
 - (A) facilitate the execution of work by the Interface Contractors, including providing each Interface Contractor with such assistance as may be directed by the Principal's Representative acting reasonably in the context of the Sydney Metro City & Southwest project as a whole; and
 - (B) ensure the effective co-ordination of the design and construction of the OSD Works with the design and construction of the Interface Work (where relevant);
- (iv) ensure that its Subcontractors carefully co-ordinate and interface the carrying out of the OSD Works with the Interface Work, and for this purpose:
 - (A) make proper allowance in all programs for the Interface Work;
 - (B) review all programs provided by Interface Contractors and confirm that they adequately allow for the OSD Works and the interfaces between the Interface Work and the OSD Works;
 - (C) monitor the progress of the Interface Work;
 - (D) notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or completion of the OSD Works; and
 - (E) if requested, provide the Interface Contractors with sufficient information about the current and expected OSD Works to assist them to co-ordinate the Interface Work;
- (v) ensure that its Subcontractors cooperate, meet with, liaise and share information so that the Developer and the relevant Interface Contractor each comply with the provisions of the relevant Environment Protection Licence (if applicable);
- (vi) ensure that its Subcontractors perform the OSD Works so as to minimise any interference with or disruption or delay to the Interface Work;
- (vii) ensure that its Subcontractors are responsible for co-ordinating the OSD Works, including work sequencing, construction methods, safety and industrial relations matters, with those affecting, and influenced by, the Interface Contractors' personnel and Interface Work, including providing to the Principal's Representative copies of work method statements for those parts of the OSD Works which are adjacent to, in the vicinity of, or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (viii) attend, and procure that its Subcontractors attend, interface co-ordination meetings chaired by the Principal's Representative with Interface Contractors and others every 10 Business Days, or at other times to be advised by the Principal's Representative, to review current and future issues, including the exchange of information, status, problems, solutions and newly identified interfaces;

- (ix) when information is required from an Interface Contractor, ensure that its Subcontractors provide reasonable written notice to that Interface Contractor requesting that information and specifying the date by which such information is required, which must be as soon as reasonably practicable but in any event at least 10 days after the date of the notice, with a copy to the Principal's Representative;
- (x) ensure that any written notice given under clause 10.3(b)(ix) provides the Interface Contractor with the longest possible time for the provision of the information requested having regard to the circumstances;
- (xi) when any information is requested by the Interface Contractors relating to the OSD Works or the carrying out of the OSD Works, including confirming the compatibility or suitability of work methods to be used in, or any other aspect of, the Interface Work with the OSD Works or the carrying out of the OSD Works, ensure that its Subcontractors:
 - (A) provide the information to the Interface Contractor, with a copy to the Principal's Representative, within a reasonable time requested by the Interface Contractor; and
 - (B) ensure and warrant (as at the date the information is provided) that the information provided is accurate; and
- (xii) ensure that its Subcontractors use their best endeavours to resolve any problems, and work closely and iteratively with the Interface Contractors, including providing work methodologies, to achieve the best solution to such problems, related to:
 - (A) the provision of information;
 - (B) the obtaining of information;
 - (C) the adequacy of information provided to, or received from, the Interface Contractors;
 - (D) co-ordination in accordance with this clause 10.3(b); and
 - (E) technical issues with the information provided to, or received from, the Interface Contractors; and
- (c) **(similar clauses)** acknowledges that the Principal will ensure that conditions similar to those in this clause 10.3 applying to the Developer will apply to all the Interface Contractors engaged by the Principal that are working on the Construction Site.

10.4 Disputes between the Developer and Interface Contractors

- (a) **(Notice)** If, despite the Developer having complied with all of its obligations in clause 10.3(b) (*Cooperation and co-ordination with Interface Contractors*), the Developer and any Interface Contractor fail to resolve any interface issue or dispute between them, the Developer must promptly give the Principal's Representative written notice of any interface issue or dispute with any Interface Contractor (with a copy to the Interface Contractor).
- (b) **(Meeting)** Following receipt of the Developer's notice under clause 10.4(a):
 - (i) the Principal's Representative must promptly convene a meeting between the Developer, the relevant Interface Contractor and any other relevant person (as reasonably determined by the Principal's Representative);

- (ii) the Principal's Representative must work in good faith with the Developer and the Interface Contractor to resolve the issues or dispute; and
- (iii) the Developer must work in good faith with the Principal's Representative and the Interface Contractor to resolve the issues or dispute.

10.5 **No Claims arising out of Interface Work**

The Developer:

- (a) **(Developer acknowledgement)** acknowledges and agrees that:
 - (i) the Interface Contractors may require access to the Construction Site in order to perform their obligations under their respective contracts with the Principal;
 - (ii) [REDACTED]
[REDACTED] no act or omission by an Interface Contractor will, whether or not it causes any delay, disruption or interference to the carrying out of the OSD Works, entitle the Developer to claim an extension of time under this deed or constitute a Direction by the Principal or constitute a breach of this deed; and
 - (iii) [REDACTED] the Principal will not be liable upon any Claim by the Developer arising out of or in any way in connection with:
 - (A) any Interface Contractor carrying out Interface Work; or
 - (B) any act or omission of an Interface Contractor; and
- (b) **(sufficient allowance)** warrants that the Developer's Program contains sufficient allowances for the assumption by the Developer of the obligations and risks under clause 10.3 (*Cooperation and co-ordination with Interface Contractors*) and this clause 10.5.

11. **THIRD PARTY RIGHTS AND COMMUNITY RELATIONS**

11.1 **Third party rights**

The Developer must procure any rights from third parties that it requires to exercise its rights or perform its obligations under this deed, including any arrangements required with:

- (a) adjoining landowners, infrastructure providers and relevant stakeholders; and
- (b) Utility Service providers regarding existing and future Utility Services.

11.2 **Community relations**

The Developer:

- (a) **(community relations)** acknowledges that:
 - (i) the areas where the OSD Works are being carried out are of great importance to many people, including local residents and businesses; and
 - (ii) the Principal will retain a key role in the management of community relations activities for the OSD Project; and

- (b) **(Developer to participate)** must manage and participate in all community relations and involvement programs and activities:
 - (i) contained in the Community Communications Strategy; or
 - (ii) as reasonably required by the Principal from time to time.

12. **DESIGN AND CONSTRUCTION OF THE OSD ENABLING WORKS**

12.1 **Acceptance of the OSD Enabling Works**

- (a) The parties acknowledge and agree that, prior to the date of this deed:
 - (i) the Principal procured the OSD Enabling Works Design Documentation to be prepared by the Design Contractor under the Design Contract;
 - (ii) the Principal entered into the Crows Nest CODD with the Station Contractor for the construction of the Crows Nest Station (including the OSD Enabling Works);
 - (iii) the Station Contractor commenced the construction of the OSD Enabling Works under the Crows Nest CODD; and
 - (iv) the Developer had an opportunity to inspect the OSD Enabling Works.
- (b) The Developer warrants that it has reviewed and carefully considered:
 - (i) the OSD Enabling Works Design Documentation;
 - (ii) the Design Contract;
 - (iii) the Crows Nest CODD;
 - (iv) the Collateral Warranty Deed Poll; and
 - (v) all Information Documents in relation to the OSD Enabling Works and the OSD Enabling Works Design Documentation.

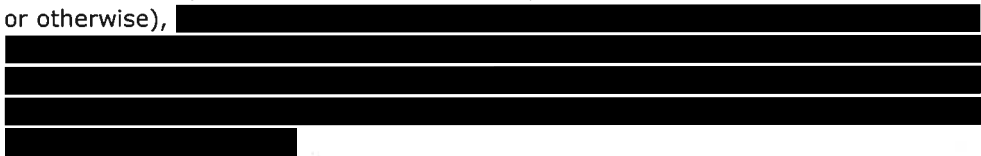
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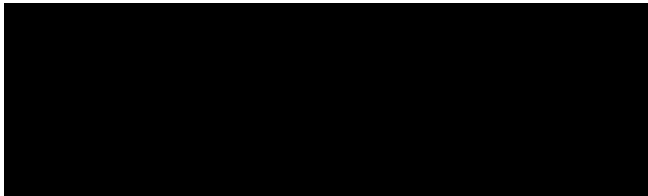


12.2 Principal's liability in relation to the OSD Enabling Works

- (a) Despite any other provision of this deed, the Principal will have no Liability to the Developer or its Associates (whether in contract, tort or otherwise) in respect of the OSD Enabling Works, including arising from an OSD Enabling Works Defect, including as a result of any act or omission of the Principal or its Associates (whether negligent or otherwise),

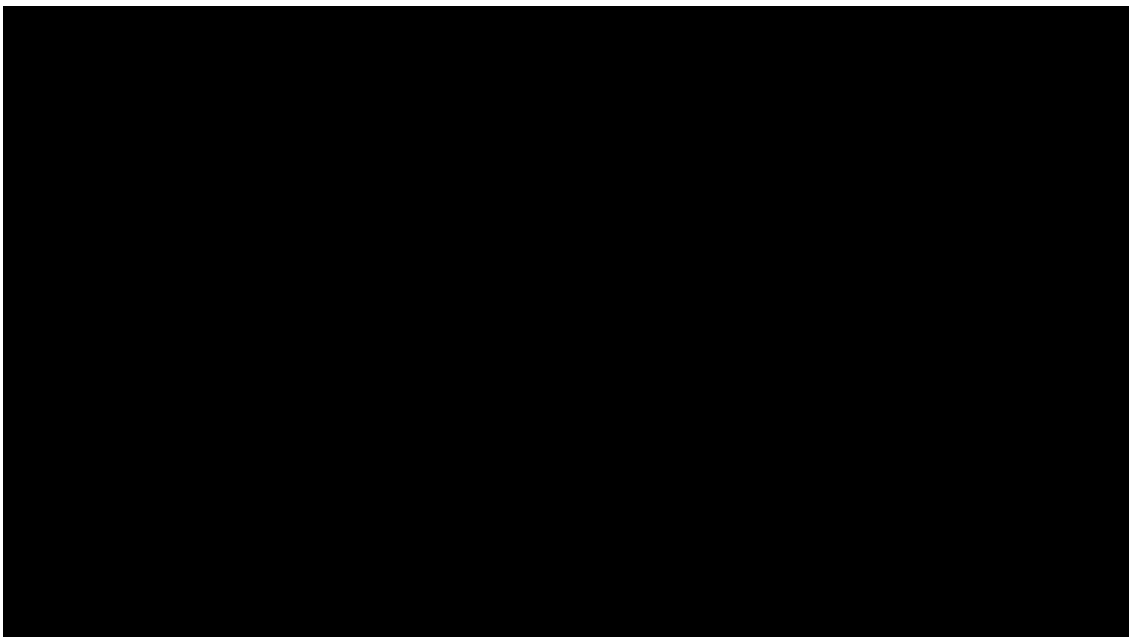


- (b) The Principal's Liability to the Developer or its Associates (however caused or arising, whether in contract, tort or otherwise) in respect of the OSD Enabling Works, including, if clause 14 (*Defects in the OSD Enabling Works*) applies, any OSD Enabling Works Defect (however such OSD Enabling Works Defect is caused or arising), expires on the date which is the earlier to occur of:



and the Developer will not be entitled to make (nor will the Principal be liable for) any Claim arising out of or in any way in connection with the OSD Enabling Works after such date.

12.3 Collateral Warranty Deed Poll



12.4 **OSD Enabling Works Information**

If requested by the Developer in writing, the Principal must provide the Developer with copies of all relevant documents or other relevant information in respect of the use, operation, maintenance and repair of the OSD Enabling Works which the Station Contractor must give and has given to the Principal as a condition precedent to Station Completion under the Crows Nest CODD (**Asset Management Information**).

12.5 **Amendments to the OSD Enabling Works Design Documentation**

(a) **(Principal to procure)** The Principal must within a reasonable period of time after the date of this deed:

(i) procure that the OSD Enabling Works Design Documentation and any drawings identified in Schedule C1 (*OSD Enabling Works*) are updated to provide that [REDACTED] **(Updated OSD Enabling Works Design Documentation)**; and

(ii) provide a copy of the Updated OSD Enabling Works Design Documentation to the Developer.

(b) **(Modification procedure to apply)** The provisions of clause 13.1 (*Modifications to OSD Enabling Works*) will apply to the Updated OSD Enabling Works Design Documentation except that, and despite any other provision of this deed, the Developer will not be entitled to make, and the Principal will not be liable for, any Claim arising out of or in connection with the Updated OSD Enabling Works Design Documentation [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

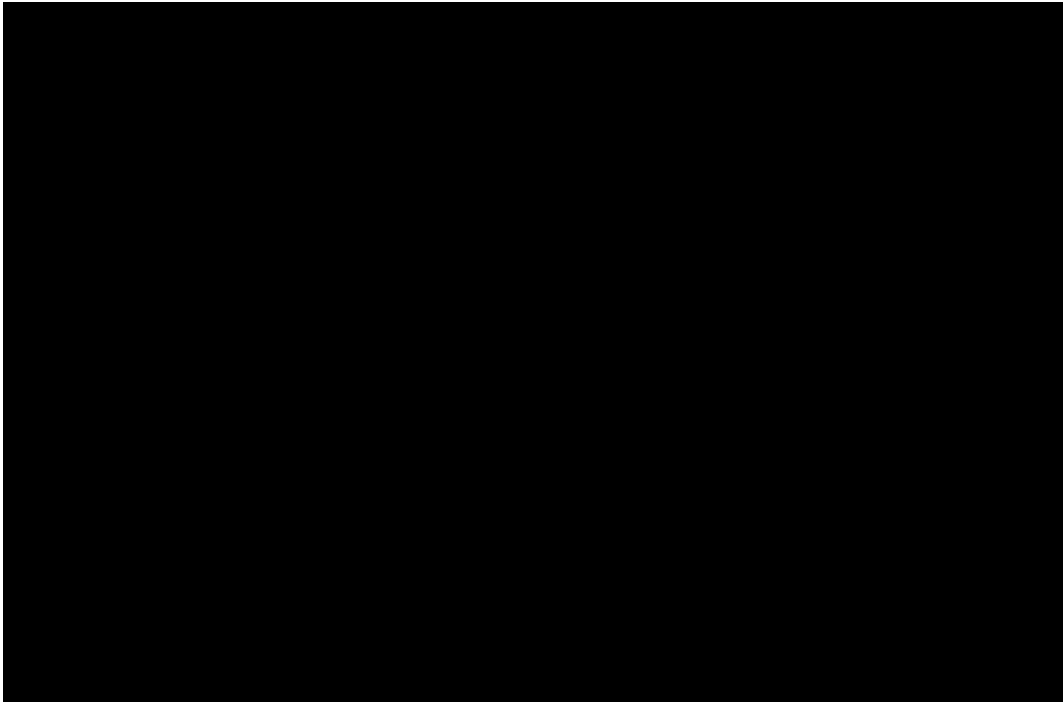
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13. **MODIFICATIONS TO THE OSD ENABLING WORKS**

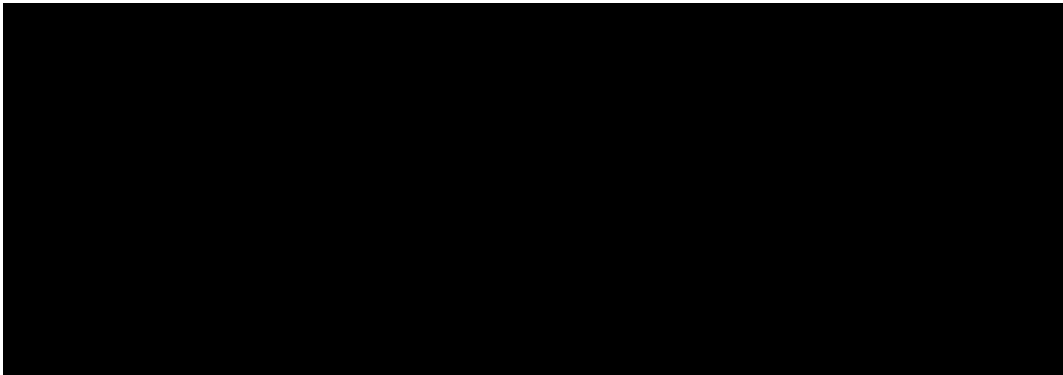
13.1 **Modifications to the OSD Enabling Works**

(a) The Principal's Representative may, at any time after the date of this deed but before the date which is 40 Business Days after the Station Date of Completion, make any variation to the OSD Enabling Works or the OSD Enabling Works Design Documentation by issuing to the Developer written notice of the proposed variation together with the updated OSD Enabling Works and/or OSD Enabling Works Design Documentation (as applicable) (**Proposed OSD Enabling Works Modification**).

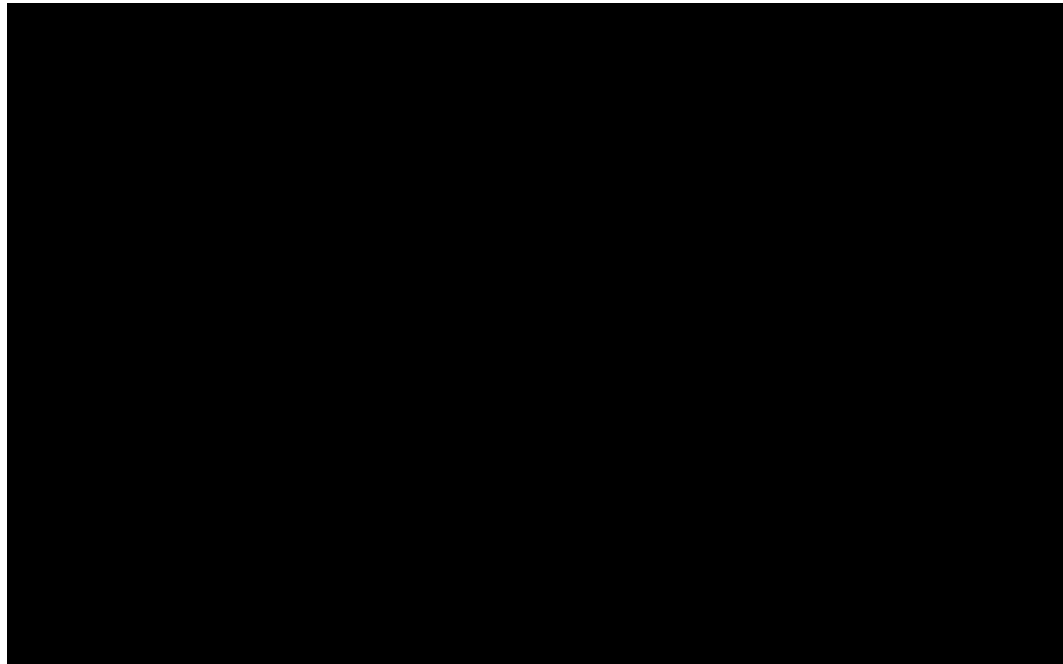
(b) [REDACTED]

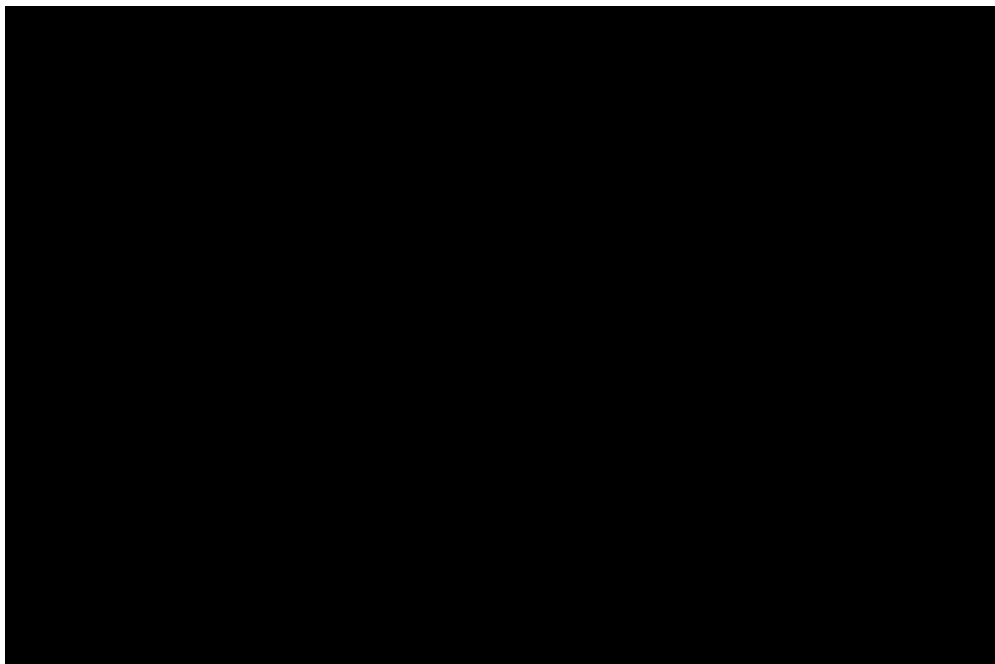


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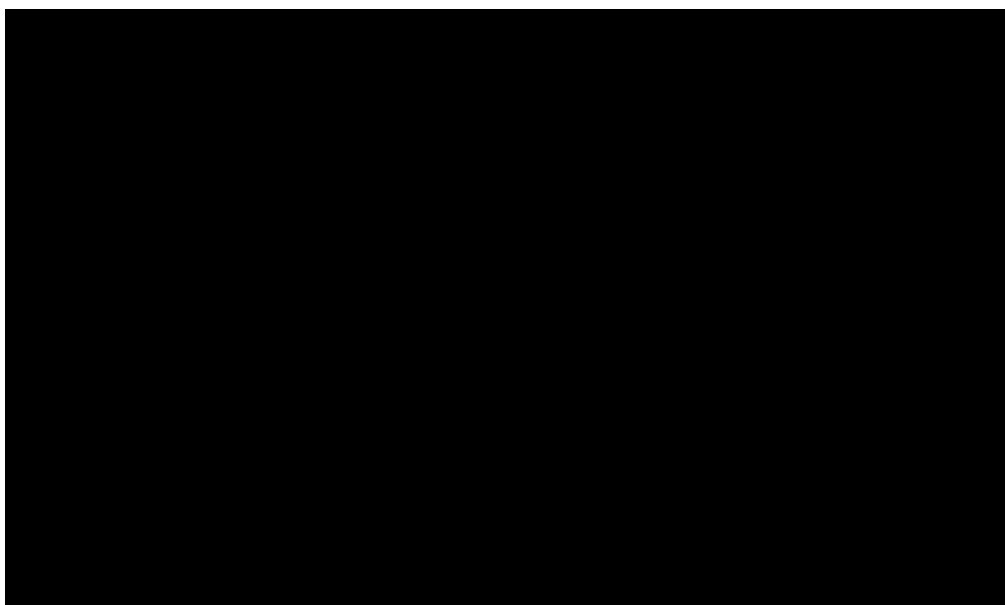


(d)





(e)



- (f) If the Principal proceeds with the Proposed OSD Enabling Works Modification, the relevant parts of Schedule C1 (*OSD Enabling Works*) and/or Schedule C2 (*OSD Enabling Works Design Documentation*) (as applicable) will be deemed to be replaced with the updated OSD Enabling Works and/or OSD Enabling Works Design Documentation (as applicable).

13.2 Exhaustive code

- (a) This clause 13 and Schedule A3 (*Modification Procedure*) is an exhaustive code of the Developer's rights in any way in connection with any variation to the OSD Enabling Works and the OSD Enabling Works Design Documentation.
- (b) The Developer is not entitled to make (nor will the Principal be liable for), any Claim arising out of, or in any way in connection with any updates or amendments to the OSD Enabling Works Design Documentation or any variations to the OSD Enabling

Works and the Developer waives all rights at Law to make any Claim against the Principal in any way in connection with such variations, other than in accordance with the express provisions of this clause 13, clause 30.10 (*Termination Payments*), clause 36.2 (*Developer claims*) and Schedule A3 (*Modification Procedure*).

14. DEFECTS IN THE OSD ENABLING WORKS

14.1A Application of this clause 14

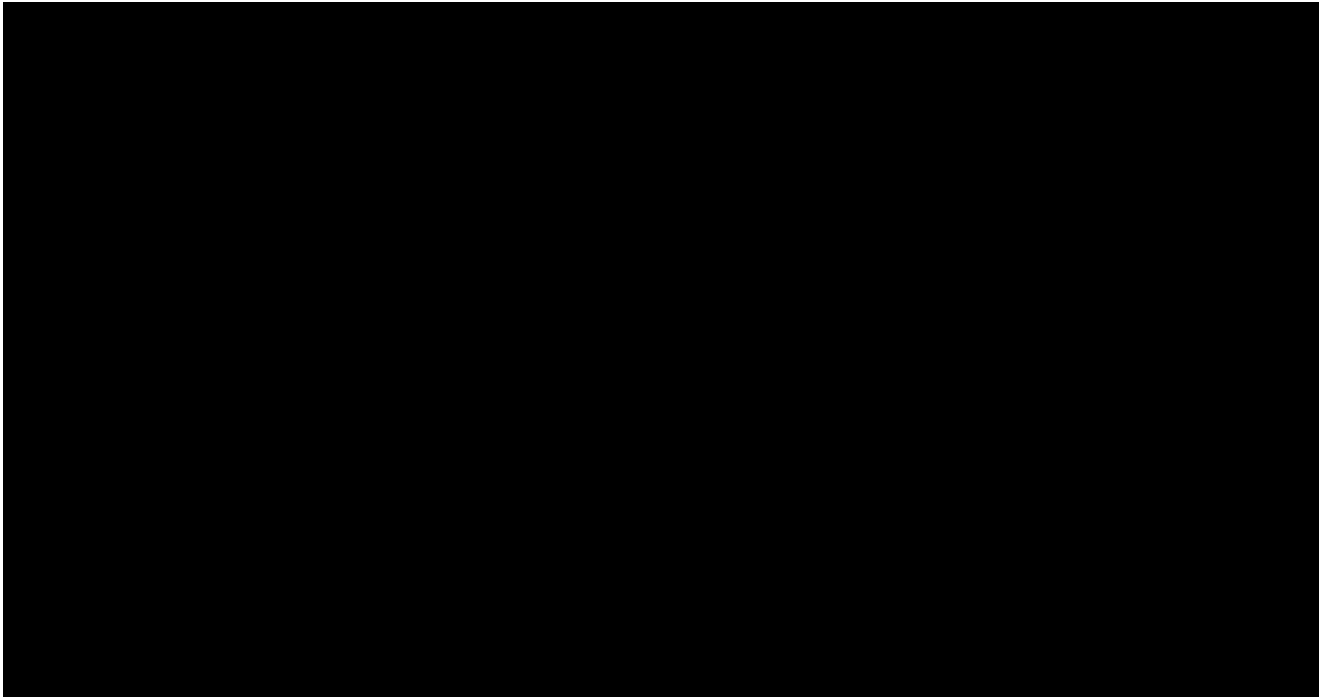


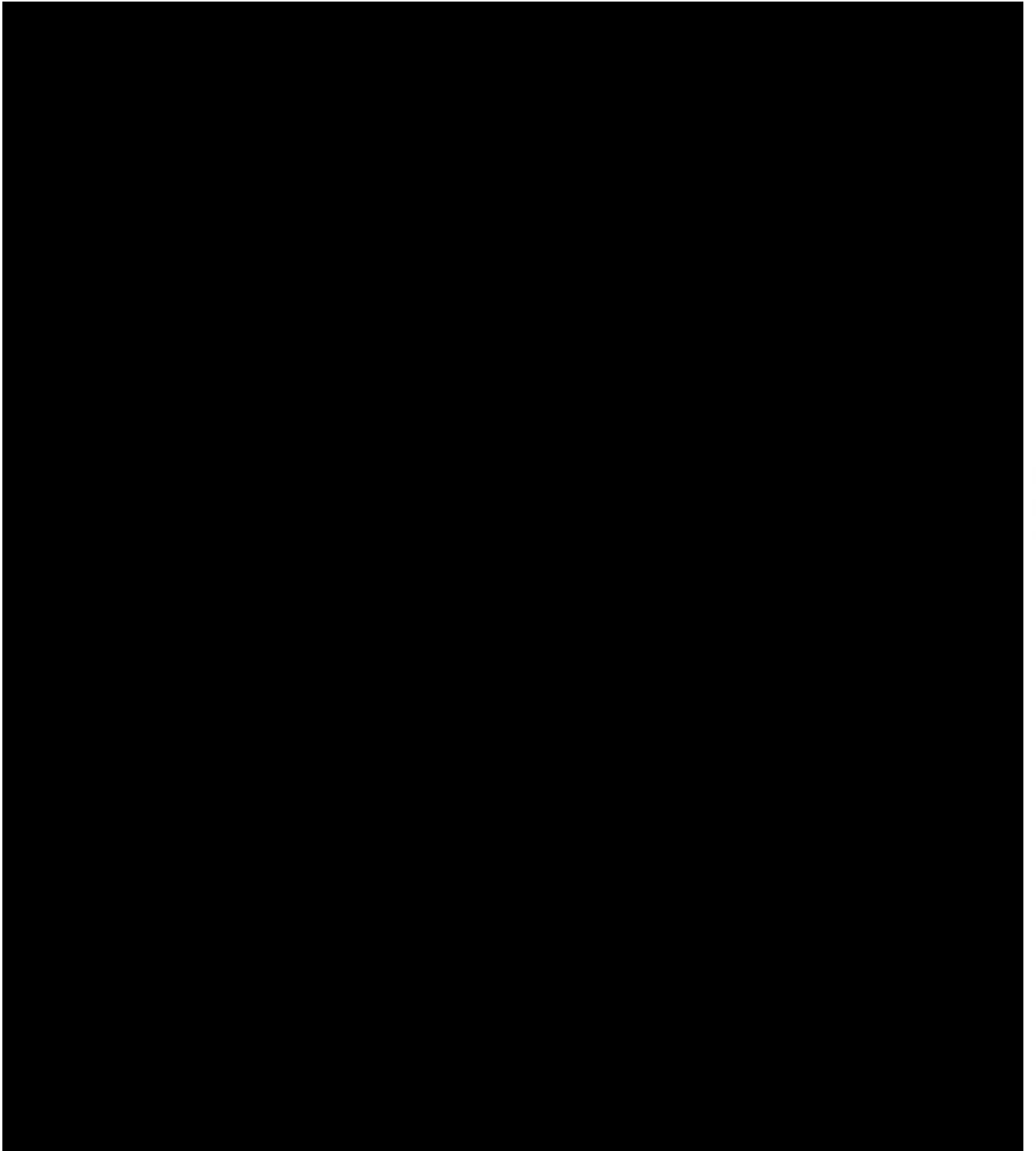
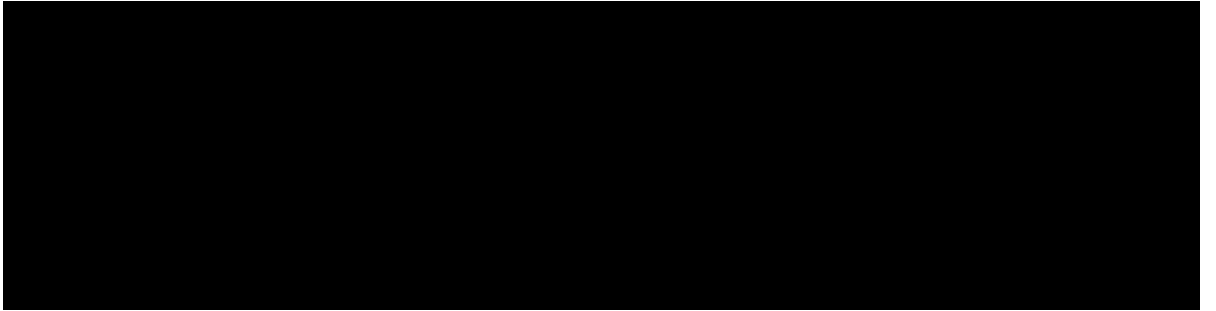
14.1 Notice of anticipated Station Completion

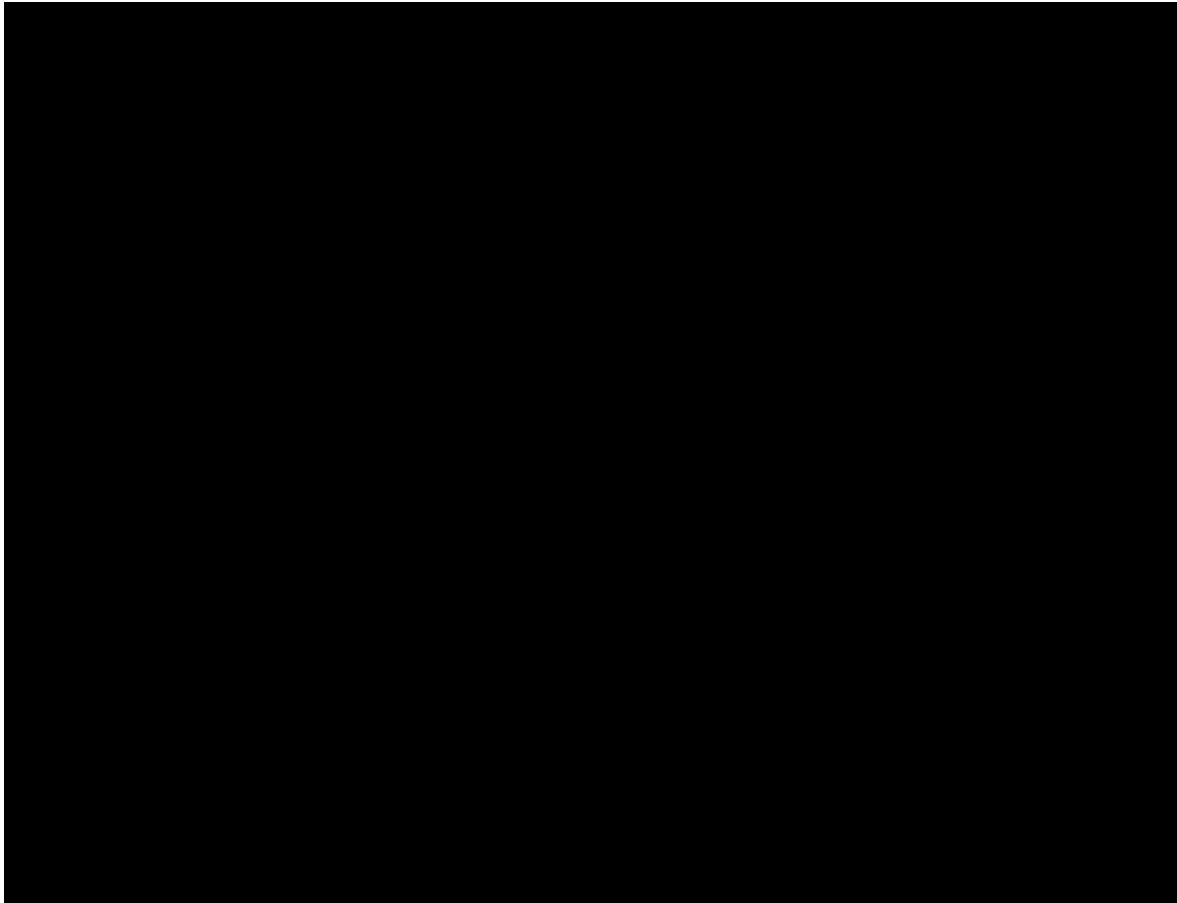
- (a) The Principal must give the Developer at least 10 Business Days written notice of the estimated date on which the Station Contractor is likely to achieve Station Completion under the Crows Nest CODD.
- (b) The Principal's Representative and the Developer's Representative must, within 5 Business Days after receipt of the notice referred to in clause 14.1(a), jointly inspect the OSD Enabling Works at a mutually convenient time.
- (c) If the Developer believes that the OSD Enabling Works are not in accordance with the OSD Enabling Works Design Documentation, the Developer must provide written comments to the Principal's Representative within 2 Business Days after the date of the inspection.
- (d) The Principal's Representative and the Developer's Representative may invite any other person to attend any joint inspection provided for by clause 14.1(b).

14.2 Notice of Station Completion

The Principal must give the Developer a copy of the Notice of Station Completion within 20 Business Days of Station Completion being achieved.







14.5 Access by Station Contractor and Interface Contractors

- (a) The Developer must provide or procure:
 - (i) the Station Contractor (and any person authorised by the Station Contractor) with such access to the Construction Site as is required by the Station Contractor and in order to meet its obligations under the Crows Nest CODD, including the rectification of:
 - (A) any Known Defects; and
 - (B) any OSD Enabling Works Defects; and
 - (ii) Interface Contractors (and any person authorised by an Interface Contractor), with such access to the Construction Site as is required by the Interface Contractor to rectify any OSD Enabling Works Defects.
- (b) Any access provided to the Station Contractor or Interface Contractor pursuant to clause 14.5(a) is subject to the Station Contractor or Interface Contractor (as applicable) complying with the Appointed Principal Contractor's site access and work, health and safety procedures in accordance with the relevant Cooperation and Integration Deed.

15. MODIFICATIONS

Without limiting clause 13 (*Modifications to the OSD Enabling Works*), the Principal's Representative may propose a Modification or require the Developer to procure the carrying out of a Modification in accordance with clause 2 of Schedule A3 (*Modification Procedure*).

16. RECORDS, ACCESS TO RECORDS AND NOTICES

16.1 Records

- (a) **(Keeping Records)** The Developer must make and keep (or procure the making and keeping of) appropriate records which evidence the Developer's and the Development Manager's compliance with the OSD Contract Documents (**Records**).
- (b) **(Right to inspect Records)** The Principal, the Principal's Representative or any nominee of them may, at any time, inspect and make copies of the whole or part of any Record (other than Records relating generally to the financial conduct of the Developer's whole business and board minutes unless the Developer is expressly required to make such Records available to the Principal under this deed) and may access the premises of the Developer or its Subcontractors to have access to the Records.
- (c) **(Records not in writing)** If a Record is stored on a medium other than in writing, the Developer must make available immediately upon request such facilities as may be necessary to enable a legible reproduction of the Record to be produced to the Principal or the Principal's Representative and where a Record is in electronic format, the Developer must provide the Principal with a non-exclusive licence to use the software necessary to view and, where relevant, analyse, the information.
- (d) **(No right to refuse inspection)** The Developer is not entitled to refuse inspection of any Record to which the Principal has the right to inspect pursuant to clause 16.1(b) on any basis except legal professional privilege. If a Record is confidential, the Developer may refuse inspection of the Record until the person who is conducting the inspection has executed an undertaking to keep the information confidential.
- (e) **(Cooperation)** The Developer must cooperate with the Principal, the Principal's Representative or any of their respective nominees when conducting an inspection. Cooperation will include the explanation of all filing and costing systems and the extraction of requested categories of documentation from files upon request.
- (f) **(Maintenance and destruction of records)** The Developer must:
 - (i) keep the Principal informed as to where the Records are being maintained, which must be in Australia; and
 - (ii) maintain all Records for at least 7 years after the Date of Completion.

16.2 Providing documents to the Principal

- (a) **(Provision of information)** The Developer must promptly give the Principal such information relating to the OSD Works or compliance by the Developer of its obligations under this deed as the Principal may reasonably require from time to time.
- (b) **(As-builts and certificates)** As soon as practicable, and in any case within 65 Business Days after the Date of Completion, the Developer must do all things required to procure the issue and delivery to the Principal of copies of the following items:
 - (i) as-built drawings for the OSD Works (in hardcopy and in an electronic format); and

- (ii) if reasonably requested by the Principal, all certificates issued by any Authority in relation to the OSD Works which have not previously been delivered to the Principal.

16.3 **ASIC and ASX notices**

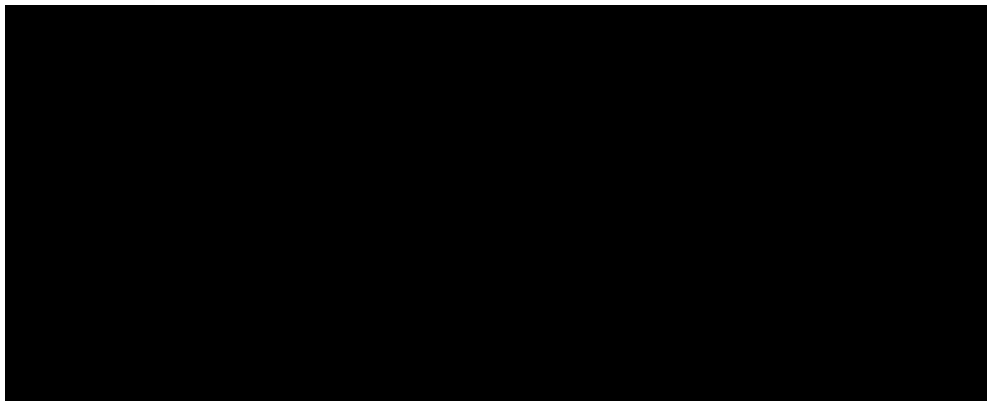
The Developer must give the Principal, as soon as practicable, copies of all notices and other documents relevant to the OSD Project or ability of the Developer to perform its obligations under any OSD Contract Document given or received by the Developer or the Development Manager to or from the Australian Securities and Investments Commission, the ASX Limited or any other recognised stock exchange (to the extent applicable).

17. **SUBCONTRACTING**

17.1 **Subcontracting by the Developer**

- (a) **(Developer may subcontract)** Subject to clause 4.6 (*Home Building Act*) and this clause 17, the Developer:
 - (i) must enter into or procure that the Development Manager enters into Subcontracts for the performance of the OSD Works; and
 - (ii) may enter into Subcontracts for the performance of any of the Developer's rights or obligations under an OSD Contract Document.
- (b) **(Liability for acts of Subcontractors)** The Developer will be liable to the Principal for the acts and omissions of Subcontractors in connection with the performance of any obligation of the Developer, the exercise of any right of the Developer under this deed or the performance of the OSD Works as if such acts or omissions were acts or omissions of the Developer.
- (c) **(No relief)** Subcontracting by the Developer of any obligation under the OSD Contract Documents will not relieve the Developer of, or otherwise affect, any obligation or Liability it has to the Principal under the OSD Contract Documents.

(d)



17.2 **Significant Subcontracts**

- (a) **(Principal consent required)** The Developer must not, and must ensure that the Development Manager and the D&C Contractor do not:
 - (i) where it may impact on the ability of the Developer to perform its obligations under this deed or impact on the rights or increase the Liabilities or obligations of the Principal:

- (A) make or permit any amendment to, or replacement of or waiver of a provision of; or
- (B) enter into any agreement or arrangement which affects the operation or interpretation of;
- (ii) terminate, surrender, rescind or accept repudiation of (or give the relevant Significant Subcontractor an entitlement to terminate, surrender, rescind or accept repudiation of); or
- (iii) permit the novation, assignment or substitution of any counterparty's right, obligation or interest in,

a Significant Subcontract without obtaining the Principal's prior written consent (which consent must not be unreasonably withheld or delayed but may be conditional).

- (b) **(Copy)** The Developer must provide the Principal's Representative with a copy of each Significant Subcontract (subject to, other than the D&C Contract, removal, exclusion or redaction of any "commercial-in-confidence provisions" as that term is defined in the GIPA Act).
- (c) **(Significant Subcontractor direct deed)** If required by the Principal's Representative, the Developer must procure that a Significant Subcontractor (other than the D&C Contractor) and (if applicable) its ultimate parent company enters into a side deed with the Principal in a form reasonably required by the Principal.

17.3 Provisions to be included in Subcontracts

The Developer must (unless otherwise approved in writing by the Principal's Representative having regard to the nature and location of the Subcontractor) ensure that:

- (a) **(Subcontract requirements)** each Subcontract that it, the Development Manager or the D&C Contractor enters into in connection with the OSD Works, regardless of its value, includes the provisions required by part A of Schedule A2 (*Subcontract Requirements*);
- (b) [REDACTED]
- (i) each Significant Subcontract that it, the Development Manager or the D&C Contractor enters into in connection with the OSD Works; and
[REDACTED]
- includes the provisions required by part B of Schedule A2 (*Subcontract Requirements*); and
- (c) **(Home Building Act and Residential Building Legislation)** each Subcontract that it, the Development Manager or the D&C Contractor enters into, regardless of its value:
 - (i) in respect of the D&C Contract [REDACTED] only, includes provisions on substantially the same terms as included in clauses 4.6(c)(i) to 4.6(c)(vi) (*Compliance with Home Building Act*) (inclusive) and clause 6.7 (*Residential Building Legislation*); and
 - (ii) in respect of all other Subcontracts in connection with the Residential OSD Works, complies with the Home Building Act.

17.4 **D&C Contract**

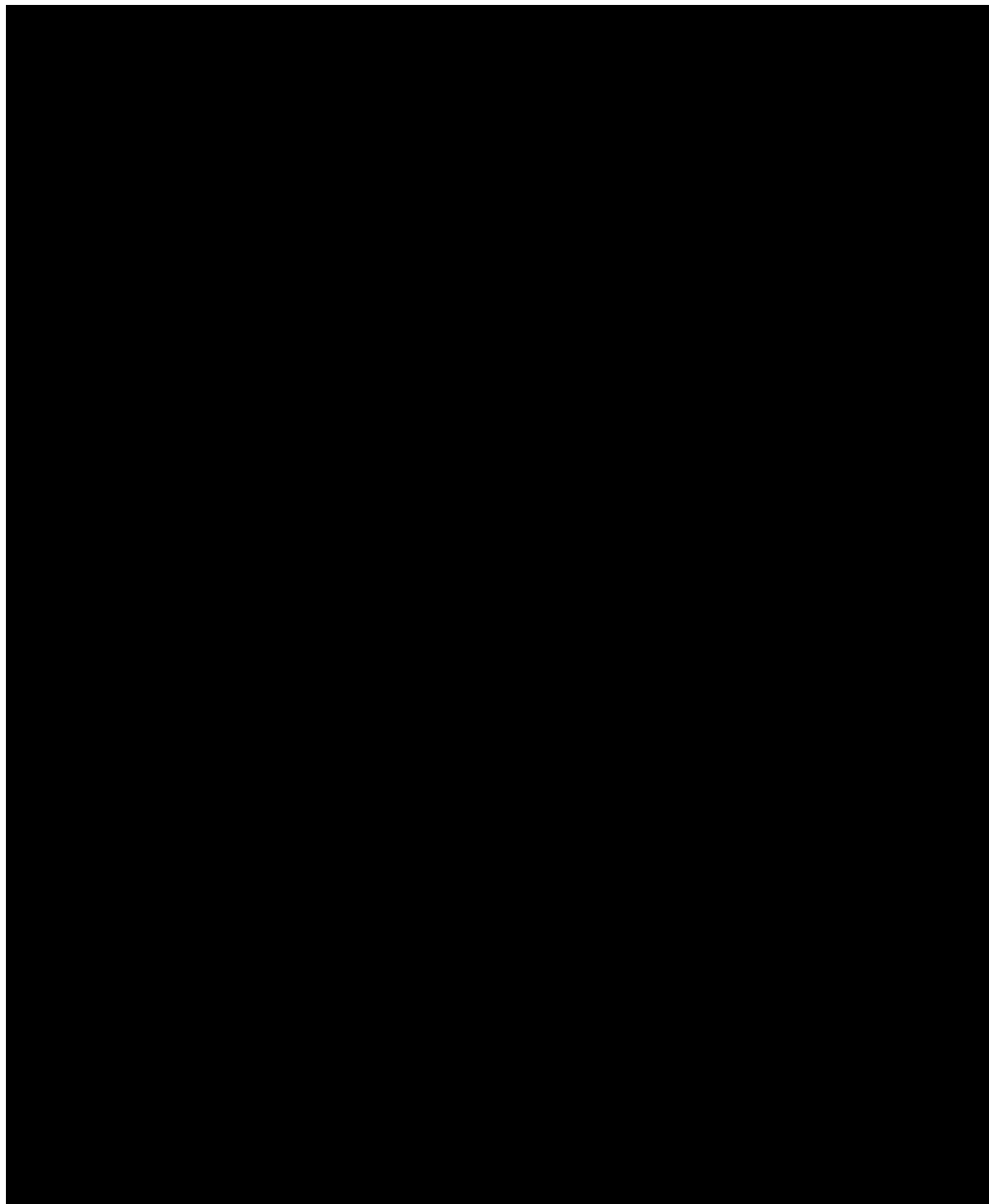
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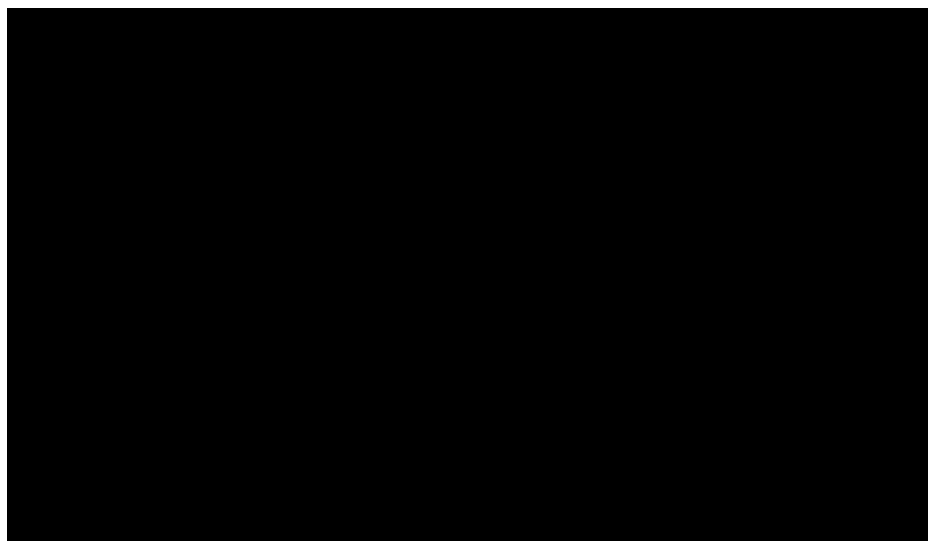


(b) **(Timing of provision of draft D&C Contract)** On or before the date which is 30 Business Days before the Developer reasonably anticipates that commencement of construction of the OSD Works will occur, the Developer must provide to the Principal a draft D&C Contract in the form that the Development Manager proposes to enter into with the D&C Contractor and request that the Principal consents to the D&C Contract.

(c) **(Timing for response)** The Principal's Representative must, as soon as reasonably practicable (but in any event not later than 10 Business Days) after receiving the draft D&C Contract from the Developer under clause 17.4(b), provide the Principal's consent in writing to the draft D&C Contract or notify the Developer in writing that it is withholding consent to the draft D&C Contract in accordance with clause 17.4(d).

(d)





- (e) **(Principal's comments)** If the Principal provides notification that it is withholding consent pursuant to clause 17.4(c) having regard to the criteria set out in clause 17.4(d), the Principal must include in the notification detailed comments as to the basis on which it is withholding consent and the Developer must amend the draft D&C Contract to take into account the Principal's comments and resubmit the draft D&C Contract to the Principal and the process in clause 17.4(c), clause 17.4(d) and this clause 17.4(e) will reapply.
- (f) **(D&C Side Deed)** On or about the date of the D&C Contract, the Developer must enter into and must procure that the Development Manager, the D&C Contractor and its ultimate parent company enters into the D&C Side Deed. If the Financier is required to be a party to the D&C Side Deed, the parties agree, and the Developer must procure that the parties to the D&C Side Deed (other than the Principal) agree, to all amendments to the D&C Side Deed required to include the Financier, including to reflect the Financier's step-in rights, party details, appropriate clause cross-references and other similar changes.

18. **PROJECT PLANS AND STRATEGIES**

18.1 **Project Plans**

The Developer must:

- (a) **(preparation of Project Plans)** develop, update and submit all Project Plans to the Principal's Representative in accordance with the Project Plan Requirements; and
- (b) **(compliance with Project Plans)** without limiting clause 18.4 (*Hoarding Plan*), implement and comply with all Project Plans that have not been rejected by the Principal's Representative in accordance with the Project Plan Requirements.

18.2 **Strategies**

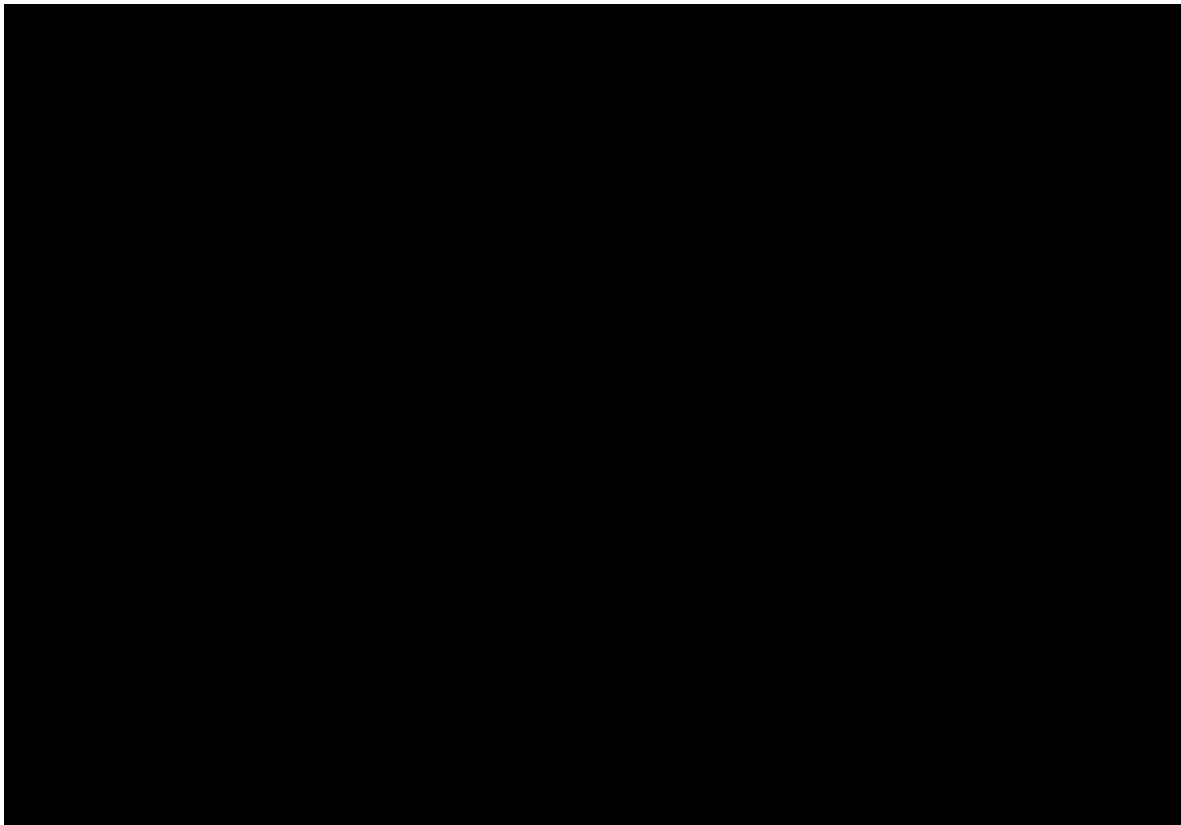
The Developer must:

- (a) **(preparation of strategies)** prior to commencing the OSD Works, prepare the following strategies to the satisfaction of the Approved Engineer under clause 7.6(c)(i)(B) (*Approved Engineer*):
 - (i) a strategy which details how the Developer will monitor induced movement and any cracking caused by the OSD; and

- (ii) a strategy which details how the Developer will mitigate and evaluate adverse effects of stray currents and electrolysis,

in each case, to the extent that access to the Crows Nest Station is required to implement such strategies, the Developer must take into account the Principal's requirements in respect of the safety and operational requirements and other activities in the Crows Nest Station and minimising, avoiding or removing any adverse impacts on such safety, operations and activities; and

- (b) **(compliance with strategies)** implement and comply with the strategies referred to in clause 18.2(a) until Completion, subject to, without limiting clause 8.8 (*Access to Crows Nest Station*) and only to the extent that access to the Crows Nest Station is reasonably necessary to implement and comply with the strategies referred to in clause 18.2(a), the Principal providing such access to the Crows Nest Station.

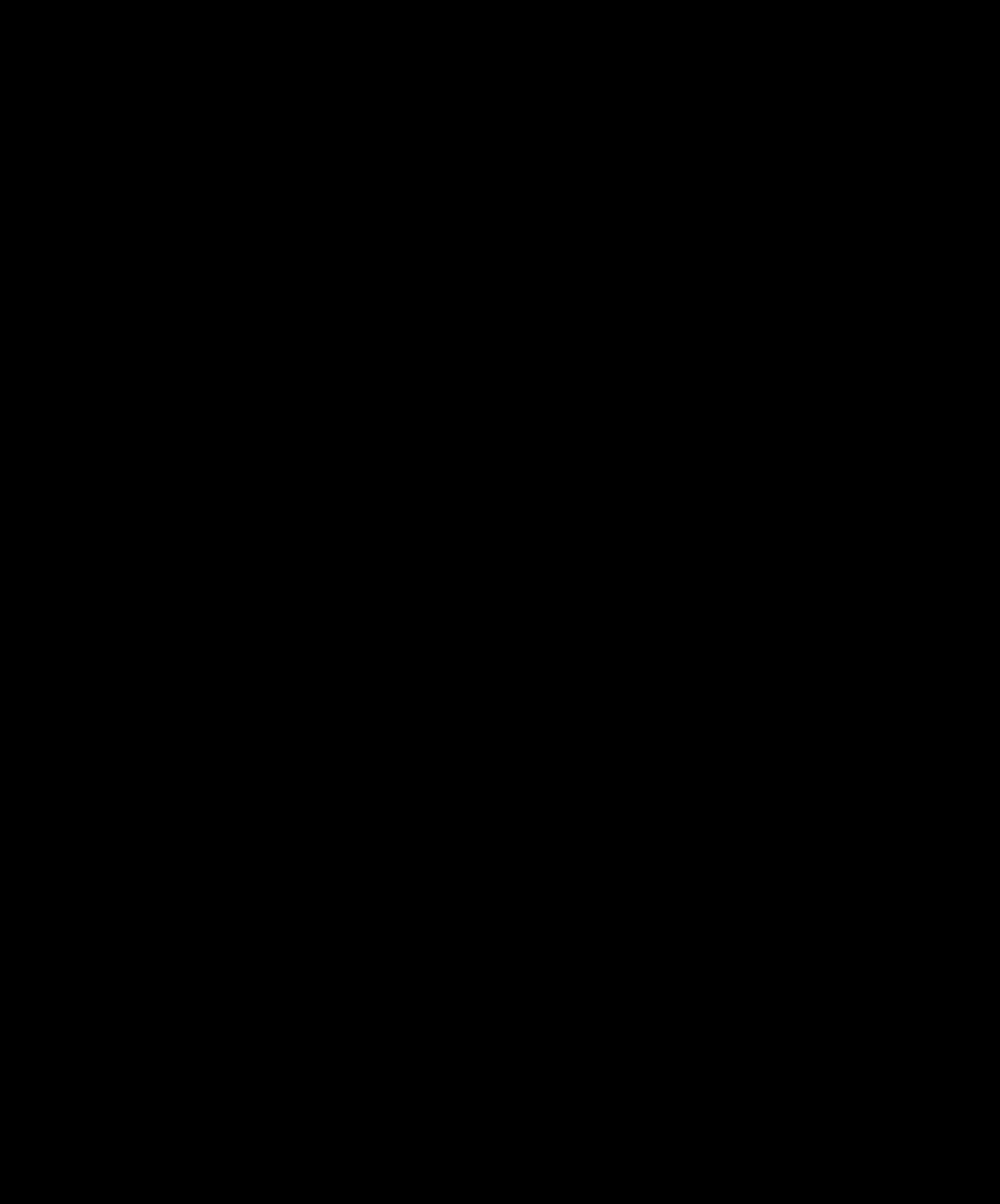


18.4 Hoarding Plan

The Developer must:

- (a) **(preparation of Hoarding Plan)** develop and submit the Hoarding Plan in accordance with Schedule A8 (*Project Plan Requirements*);
- (b) **(implement Hoarding Plan)** implement the Hoarding Plan (to the extent it has not been rejected by the Principal's Representative under Schedule A8 (*Project Plan Requirements*)) on or before the date which is two (2) months after the Construction Licence Commencement Date (or such other period of time approved by the Principal, acting reasonably); and
- (c) **(compliance with Hoarding Plan)** comply with and maintain the Hoarding Plan (to the extent it has not been rejected by the Principal's Representative under Schedule

A8 (*Project Plan Requirements*) until the last Applicable Transfer Date (or such earlier date approved by the Principal, acting reasonably).



20. **TIME**

20.1 **Developer's Program**

- (a) **(Developer's Initial Program)** The Developer's Initial Program is contained in Schedule A7 (*Developer's Initial Program*).

- (b) (**Developer submission**) The Developer must prepare and update the Developer's Program in accordance with the requirements set out in Schedule A6 (*Program Requirements*).

20.2 Delay Events

The Developer may only claim an extension of time to the Date for Completion as a result of:

- (a) a failure by the Principal to provide the Developer with access to part of the Construction Site by the Site Access Date;
- (b) the OSD Works being damaged by:
 - (i) the Principal or the Principal's Associates (excluding an Interface Contractor); or
 - (ii) an Interface Contractor or any of its subcontractors;

- 
- (d) a Modification Order,

(each a **Delay Event**).

20.3 Extensions of time

The Developer is entitled to an extension of time to the Date for Completion only if:

- (a) the Developer has complied with clause 20.1(b) (*Developer's Program*) and Schedule A6 (*Program Requirements*);
- (b) the Developer is delayed in achieving Completion by one or more Delay Events;
- (c) in relation to each event of delay caused by a Delay Event, the Developer has given written notice to the Principal's Representative:
 - (i) promptly upon becoming aware of the Delay Event (and in any event within 10 Business Days after the Developer became aware or ought reasonably to have become aware of the cause of delay) containing:
 - (A) details of the Delay Event;
 - (B) details of the likely delay; and
 - (C) a description of all measures which the Developer has taken and will be taking to preclude the occurrence of the delay and minimise the consequences of the delay; and
 - (ii) in the case of an ongoing delay, every 10 Business Days after the date on which the notice is given pursuant to clause 20.3(c)(i), the Developer has given to the Principal's Representative written notice which provides details of the status of the delay and an update on the details required by clause 20.3(c)(i); and

- (d) the Developer has given the Principal's Representative, within 15 Business Days after the cessation of each delay caused by a Delay Event, a written claim for an extension of time specifying:
 - (i) the number of days claimed;
 - (ii) details of the Delay Event and why the Delay Event actually caused the Developer to be delayed in achieving Completion, including a statement of the facts and the provisions of this deed on which the claim is based;
 - (iii) detailed evidence in satisfaction of the requirements of this clause 20.3;
 - (iv) critical path analysis in the same format as the Developer's Program for the period of the delay;
 - (v) details of the Delay Costs arising from the Delay Event to which it believes it will be entitled; and
 - (vi) all other information reasonably required by the Principal's Representative.

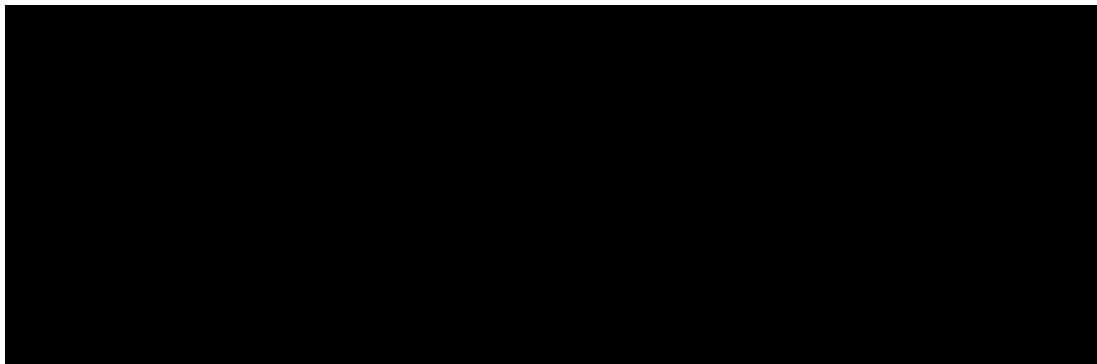
20.4 Limiting factors



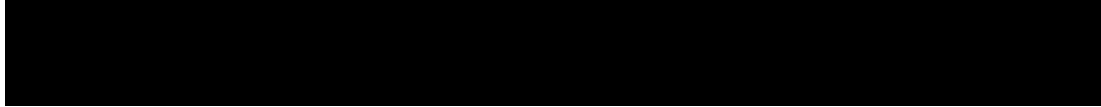
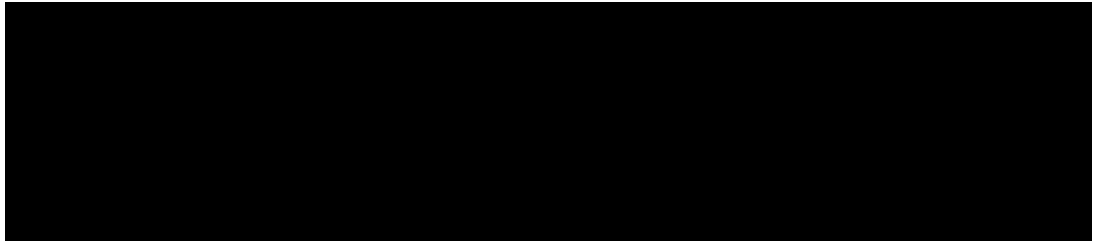
- (a) **(No entitlement)** The Developer is not entitled to any extension of time (and the Principal has no Liability to the Developer) if the Developer fails to deliver notices in the form and within the time required by clause 20.3(c)(i), clause 20.3(c)(ii) and clause 20.3(d).
- (b) **(Reduction of entitlement)** The Developer's entitlement to an extension of time will be reduced to the extent that:
 - (i) this deed provides that the Principal will have no Liability to the Developer;
 - (ii) a delay caused by a Delay Event and a delay caused other than by a Delay Event occur at the same time and the Developer would have been delayed even if the Delay Event had not occurred;
 - (iii) the Developer or any of its Associates caused or contributed to the delay;
 - (iv) the Developer failed to comply with:
 - (A) a Cooperation and Integration Deed; or
 - (B) its obligations under this deed in connection with the Interface Contractors,
 and such failure caused or contributed to the delay the subject of the Developer's claim;
 - (v) the delay was or would have been reduced had the Developer or any of its Associates taken all reasonable steps to preclude the occurrence of the Delay Event and minimise the consequences of the delay (other than applying additional resources to make up the time lost); or
 - (vi) the delay is caused by or contributed to by a failure of the Developer to comply with its obligations under an OSD Contract Document.

20.5 **Determination of extension of time claim**

- (a) **(Principal's determination)** The Principal's Representative must, within 20 Business Days after receiving a claim which complies with clause 20.3(d) (*Extensions of time*), make a determination of the extension of time to which the Developer is entitled and give the Developer:
 - (i) written notice of the determination which includes the extension of time granted and the adjusted Date for Completion; or
 - (ii) if no extension is granted, written notice of that decision.
- (b) **(Principal's discretion to extend)** The Principal may, in the Principal's absolute discretion, extend the Date for Completion at any time, and for any reason, by giving written notice to the Developer regardless of whether:
 - (i) the Developer has claimed or is entitled to an extension of time under this deed; or
 - (ii) the Principal's Representative has previously either rejected any claim or failed to make a determination under clause 20.5(a).
- (c) **(Not for the benefit of Developer)** The Principal is not required to exercise the discretion under clause 20.5(b) for the benefit of the Developer.
- (d) **(No impact on Delay Event)** The Principal's exercise of its discretion under clause 20.5(b) does not limit the Developer's right to claim an extension of time to the Date for Completion or to claim Delay Costs where, but for the exercise of such discretion, the Developer would have been entitled to an extension of time to the Date for Completion and/or to Delay Costs (as applicable).
- (e) **(Principal may take into account)** In determining a claim for an extension of time, the Principal is not obliged to, but may in its sole discretion, take into account:
 - (i) the latest accepted version of the Developer's Program at the time of the relevant extension of time claim; and
 - (ii) any other information available to the Principal's Representative at the time the determination is required to be made, including information regarding the progress of the OSD Works up to the time the determination is required to be made.
- (f) **(Time not at large)** A failure by the Principal's Representative to grant an extension of time in accordance with this clause 20.5 will not cause time to be set at large, but does not affect the right of the Developer to claim damages.

20.6 **Delay Costs**



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- (b) **(Claim)** The Developer must give to the Principal's Representative, within 15 Business Days after the cessation of the Delay Event, a written claim specifying details of the Delay Costs claimed and how those Delay Costs have been calculated.
 - (c) **(Limiting factors)** The Developer agrees that the Developer is not entitled to Delay Costs if the Developer does not strictly comply with the time limits within which the notice and claim must be given under clause 20.6(b).
 - (d) **(Determination of Delay Costs)** The Principal's Representative must, within 20 Business Days after receiving a claim which complies with clause 20.6(b), make a determination of the Delay Costs to which the Developer is entitled and give the Developer written notice of the determination.
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21. **DIRECTIONS TO SUSPEND**

21.1 **Suspension**

- (a) **(Right to suspend)** The Principal's Representative may, at any time, direct the Developer to require its Subcontractors to suspend all or any part of the OSD Works (and, after a suspension has been directed, to procure the re-commencement of the carrying out of all or a part of the OSD Works) if the OSD Works or the carrying out of the OSD Works:
 - (i) have caused:
 - (A) a significant spill of Contamination;
 - (B) any accident or release of Contamination which the Principal's Representative believes may pose a danger to health, life or property;
 - (C) any actual damage to the Environment or a significant risk of harm to the Environment;
 - (D) a fatality or injury to any person including any Incident which must be reported to SafeWork NSW, ONRSR or other work health and safety regulator; or

- (E) a non-compliance with the Construction and Site Management Plan;
- (ii) are likely to pose a threat and/or cause damage to:
 - (A) the Interface Works;
 - (B) the Crows Nest Station;
 - (C) the health and safety of people or property; or
 - (D) the safety and security of the Crows Nest Station; or
- (iii) are directly and materially impacting on, or are likely to directly and materially impact on, the ability of the Principal or the Principal's Associates to comply with:
 - (A) any WHS Legislation, Rail Safety National Law, Rail Safety Regulations or the Heavy Vehicle National Law; or
 - (B) any safety requirements in respect of the work and activities of Interface Contractors,

and the Developer must promptly comply with such direction immediately after receipt of such direction.

22. COMPLETION

22.1 Notice of anticipated Completion

The Developer must, at least 20 Business Days prior to the date on which it reasonably anticipates Completion will be achieved, give a notice in writing to the Principal's Representative, specifying the date it anticipates that Completion will be achieved.

22.2 Notice of Completion and joint inspection of OSD Works

- (a) **(Notice of Completion)** When the Developer considers that Completion has been achieved, the Developer must give the Principal written notice in the form set out in Schedule B2 (*Notice of Completion*) together with a copy of each of:
 - (i) the Approved Engineer's Certificate (Post-Completion); and
 - (ii) the Occupation Certificates for the whole of the OSD Works which have been issued and are in force to enable occupation of the OSD.
- (b) **(Completion joint inspection)** If the Principal requires an inspection of the OSD Works:
 - (i) the Principal must, within 5 Business Days after receipt of the Developer's written notice referred to in clause 22.2(a), notify the Developer that an inspection is required; and
 - (ii) the Principal's Representative and the Developer's Representative must, within 5 Business Days after receipt of the Principal's written notice referred to in clause 22.2(b)(i), jointly inspect the OSD Works at a mutually convenient time.

- (c) **(Attendance at inspection)** The Principal's Representative may invite any other person to attend any joint inspection provided for by clause 22.2(b).
- (d) **(Principal decision)** Within:
 - (i) 5 Business Days after the joint inspection under clause 22.2(b); or
 - (ii) if the Principal does not provide a notice to the Developer requesting an inspection within the timeframe provided for in clause 22.2(b)(i), within 10 Business Days after receipt of the Notice of Completion issued by the Developer pursuant to clause 22.2(a),
 the Principal must:
 - (iii) if Completion have been achieved, provide to the Developer, a Certificate of Completion in the form set out in Schedule B3 (*Certificate of Completion*); or
 - (iv) if Completion has not been achieved, issue a notice to the Developer which states the items that remain to be completed before the Principal can issue a Certificate of Completion (in which case clause 22.2(a) to clause 22.2(d) (inclusive) will re-apply (except that the Developer will not be required to re-submit the documentation referred to in clause 22.2(a)(i) and 22.2(a)(ii))).

22.3 **Effect of Certificate of Completion**

The issue of a Certificate of Completion is evidence that Completion has been achieved but will not:

- (a) constitute an acknowledgment that the Developer has complied with its obligations under this deed;
- (b) be taken as an admission or evidence that the OSD Works comply with this deed; or
- (c) prejudice any rights or powers of the Principal under this deed.

23. **INTELLECTUAL PROPERTY RIGHTS**

23.1 **Licence to the Developer**

- (a) **(Licence)** The Principal grants to the Developer a royalty-free licence to use (including the right to sub-licence) the Principal's IPRs in the OSD Enabling Works Design Documentation solely to the extent necessary to enable the Developer to procure the carrying out of the OSD Works or comply with its obligations under this deed.
- (b) **(Release)** The Developer, to the fullest extent permitted under Law, releases the Principal and the Principal's Associates from and against any Loss or Claims arising out of or in connection with the IPRs granted in relation to the OSD Enabling Works Design Documentation.

23.2 **Licence to the Principal**

- (a) **(Licence)** If this deed is terminated for any reason, or to the extent required to enable the Principal to exercise its rights under clause 30.9 (*Principal's rights after termination*), the Developer must:
 - (i) grant to the Principal, and to the extent that the Developer does not own the IPRs in the Design Documentation, the Developer must ensure that the Principal is granted, a royalty-free, irrevocable and transferable licence in

relation to the IPRs in the Design Documentation to enable the Principal to carry out, maintain, rectify, repair, improve, service, alter or complete the OSD Works or design, construct, complete, operate and occupy the OSD;

- (ii) as soon as reasonably practicable, deliver copies of all Design Documentation (whether complete or not) and all other information, documents and records the Principal reasonably requires for the purpose of carrying out, maintaining, rectifying, repairing, improving, servicing, altering or completing the OSD Works or designing, constructing, completing, operating and occupying the OSD, including in electronic forms, then in existence to the Principal (provided that the Developer is entitled to keep one copy of the Design Documents, information, documents and records for its records); and
 - (iii) do all things reasonably required by the Principal to enable the Principal to exercise its rights to use all Design Documentation for the purpose of carrying out, maintaining, rectifying, repairing, improving, servicing, altering or completing the OSD Works or designing, constructing, completing, occupying and operating the OSD.
- (b) **(Undertaking)** The Developer warrants that it has or will obtain an undertaking (in the form substantially consistent with Schedule A17 (*Moral Rights Consent*)) from any consultant performing any design work in relation to the OSD Works, not to enforce any Moral Rights that author may have, now or in the future, in any such design work in which copyright subsists, so that the Principal may freely exercise its rights pursuant to the licence granted under clause 23.2(a)(i).
- (c) **(Release)** The Principal, to the fullest extent permitted under Law, releases the Developer and the Developer's Associates from and against any Loss or Claims arising out of or in connection with:
- (i) the IPRs granted in relation to the Design Documentation;
 - (ii) the Principal's use of all Design Documentation delivered to the Principal pursuant to clause 23.2(a)(ii); and
 - (iii) any undertaking obtained from any consultant performing any design work in relation to the OSD Works under clause 23.2(b).

23.3 **Principal's IPRs**

If:

- (a) the proposed name of the OSD;
- (b) any signage, branding or marketing of the OSD; or
- (c) any signage or marketing on or in the Construction Site,

will or is likely to infringe the Principal's IPRs, the Developer must obtain the Principal's written consent prior to its use, such consent to be given or withheld in the Principal's absolute discretion.

24. **DEFECTS RECTIFICATION – OSD WORKS**

24.1 **Notice of Defect**

- (a) At any time prior to the expiry of the Defects Correction Period, the Principal's Representative may give the Developer a notice of a Defect (**Defects Notice**).

- (b) Any Defects Notice issued by the Principal under clause 24.1(a) must:
 - (i) identify the Defect; and
 - (ii) specify a reasonable time for rectification of the Defect.

24.2 **Developer's obligations**

The Developer must:

- (a) (**procure rectification**) if a Defect is found (whether or not it is the subject of a Defects Notice) during the Defects Correction Period:
 - (i) if the Defect is the subject of a Defects Notice, within a reasonable period (as specified in a notice under clause 24.1(b)(ii)), procure the prompt rectification of such Defect; or
 - (ii) if the Defect is not the subject of a Defects Notice, procure the prompt rectification of such Defect;
- (b) (**notify**) give notice to the Principal when, in the Developer's opinion, the Defect has been rectified; and
- (c) (**HBA Defect**) in relation to a HBA Defect, procure the rectification of that Defect:
 - (i) in accordance with the relevant provisions of the Home Building Act for rectifying defects under that Act;
 - (ii) in a manner which minimises the impact on and causes as little inconvenience as possible to the users of the OSD; and
 - (iii) in accordance with the reasonable requirements of any owner or occupant of the OSD or relevant part thereof.

24.3 **Failure to rectify Defect**

- (a) (**Developer failure**) If the Developer fails to procure the rectification of a Defect:
 - (i) where a Defects Notice has not been given, within a reasonable period of time; or
 - (ii) where a Defects Notice has been given, within the period of time specified in the Defects Notice,then the Principal's Representative may have the rectification work carried out.
- (b) (**Principal's costs**) The costs of rectification which are suffered or incurred by the Principal as a consequence of exercising its rights under clause 24.3(a) will be a debt due and payable by the Developer to the Principal.

24.4 **Access**

The Developer must:

- (a) (**access to remedy Defect**) ensure that a party which is rectifying or remedying Defects has access to the relevant area of the Construction Site and the Development Lot (as applicable) for the purposes of rectifying those Defects in accordance with this clause 24; and

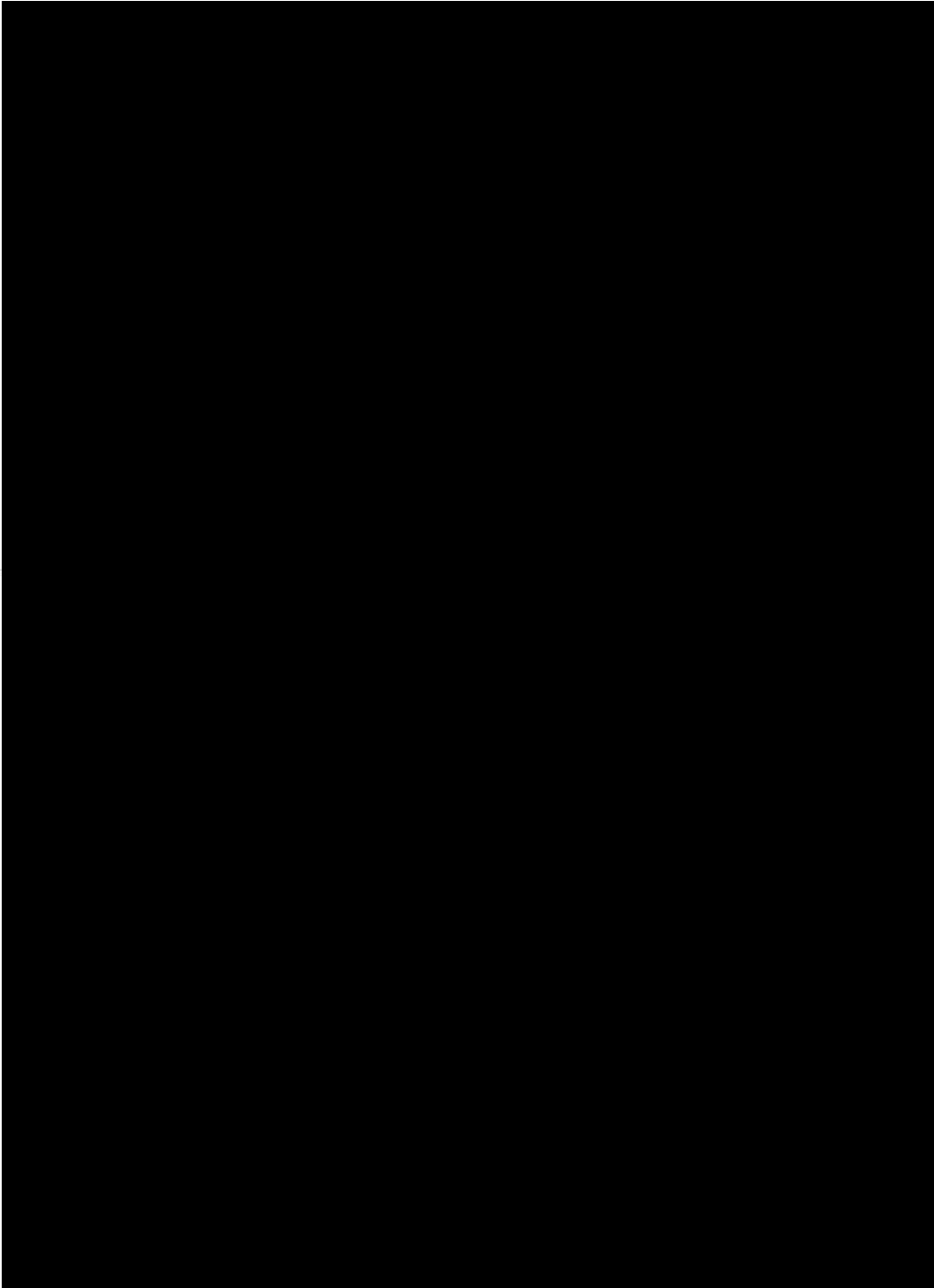
- (b) (**access for the Principal**) allow or procure the Principal and its Associates reasonable access to the Construction Site and the Development Lot (as applicable) during the Defects Correction Period to inspect the OSD Works for the purpose of this clause 24.

25. **TRANSFER OF TITLE AND SUBDIVISION**

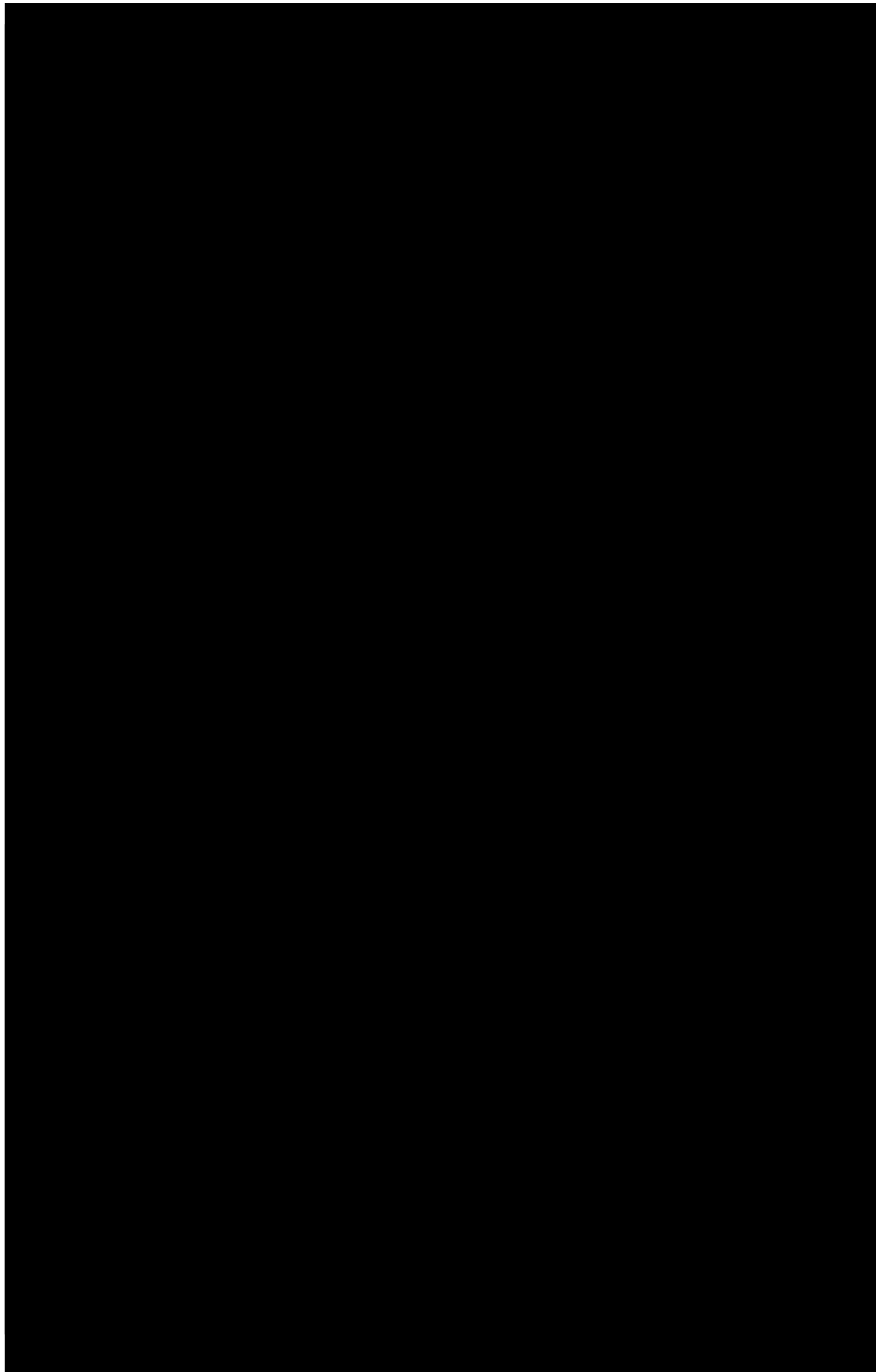
25.1

25.2

25.3



25.4



26. **DEVELOPER PAYMENTS**

26.1 **Developer Payments**

(a) **(Developer to pay)** The Developer must pay the Developer Payments to the Principal in accordance with this clause 26 as consideration for all rights and benefits granted to the Developer under this deed.

(b)



26.2



26.3 **Developer Payment is non-refundable**

Unless otherwise expressly stated in this deed, the Developer Payment is the Principal's property and is not refundable in any circumstances.

27. **GST**

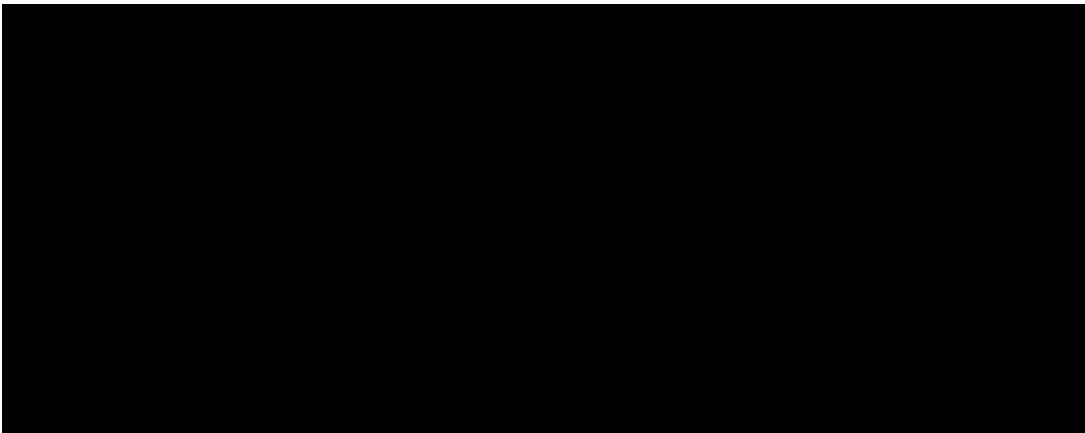
27.1 **Payment of GST**

(a) **(Amounts exclusive of GST)** Unless otherwise expressly stated, all amounts payable under or in connection with this deed are stated exclusive of GST.

(b) **(If payable)** If GST is or will be payable on a supply made under or in connection with this deed:

(i) the consideration otherwise provided for that supply under this deed is increased by the amount of that GST; and

(ii) the recipient must make payment of the increase as and when the consideration otherwise provided for, or relevant part of it, must be paid or provided or, if the consideration has already been paid or provided, within 5 Business Days after receiving a written demand from the supplier.



27.2 **Later adjustment to price or GST**

If there is an adjustment event in relation to a supply which results in the amount of GST on a supply being different from the amount in respect of GST already recovered by the supplier, as appropriate, the supplier:

- (a) may recover from the recipient the amount by which the amount of GST on the supply exceeds the amount already recovered by giving 5 Business Days' written notice; or
- (b) must refund to the recipient the amount by which the amount already recovered exceeds the amount of GST on the supply but only to the extent that the supplier is entitled to a refund or credit from the Commissioner of Taxation,

and, in either case, must issue an adjustment note reflecting the adjustment event in relation to the supply to the recipient within 20 Business Days after the adjustment event.

27.3 **Tax invoice/adjustment note**

The right of the supplier to recover from the recipient any amount in respect of GST under this deed on a supply is subject to the issuing of a tax invoice or adjustment note to the recipient.

27.4 **Indemnities and reimbursement**

Costs actually or estimated to be incurred or revenue actually or estimated to be earned or lost by a party that is required to be reimbursed or indemnified by another party or used as the basis for calculation of consideration for a supply under this deed must exclude the amount of GST referable to the cost to the extent to which an entitlement arises or would arise to claim an input tax credit and in relation to revenue must exclude any amount in respect of GST referable to the revenue.

27.5 **Non-monetary consideration**

If a party notifies the other party that it believes it is providing or receiving non-monetary consideration in respect of a supply made or acquired under this deed, the parties will cooperate in good faith to:

- (a) agree whether there is a provision of non-monetary consideration and its value; and
- (b) if so, take any necessary action, acting at all times in accordance with any rulings and compliance guidelines issued by the Commissioner of Taxation, to minimise any adverse impact on both parties to the extent allowable by Law.

28. **CARE OF THE OSD WORKS, RISKS AND INSURANCE**

28.1 **Responsibility for the care of the OSD Enabling Works**

- (a) The Principal is responsible for the care of, and bears the risk of destruction, loss or damage to, the OSD Enabling Works from the period commencing on the date of this deed and, subject to clause 28.1(b), expiring on the date of the Construction Licence Commencement Date.
- (b) The Principal is responsible for the care of, and bears the risk of destruction, loss or damage to, the OSD Enabling Works which are located within the Station Lot after the Construction Licence Commencement Date until registration of the Management Statement.

- (c) The Developer will be responsible for the care of, and bears the risk of destruction, loss or damage to, the OSD Enabling Works which are located within the Construction Site on and from the Construction Licence Commencement Date.

28.2 Responsibility for the care of the OSD Works

The Developer is responsible for the care of, and bears the risk of destruction, loss or damage to:

- (a) **(OSD Works)** the OSD Works from the date of this deed; and
- (b) **(Construction Site)** each part of the Construction Site (including any improvements on the Construction Site, including the OSD Enabling Works to the extent they are on or in the Construction Site) from the Construction Licence Commencement Date,

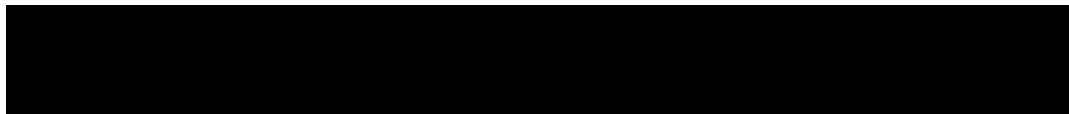
up to and including in respect of an Applicable Transfer Area, the Applicable Transfer Date.

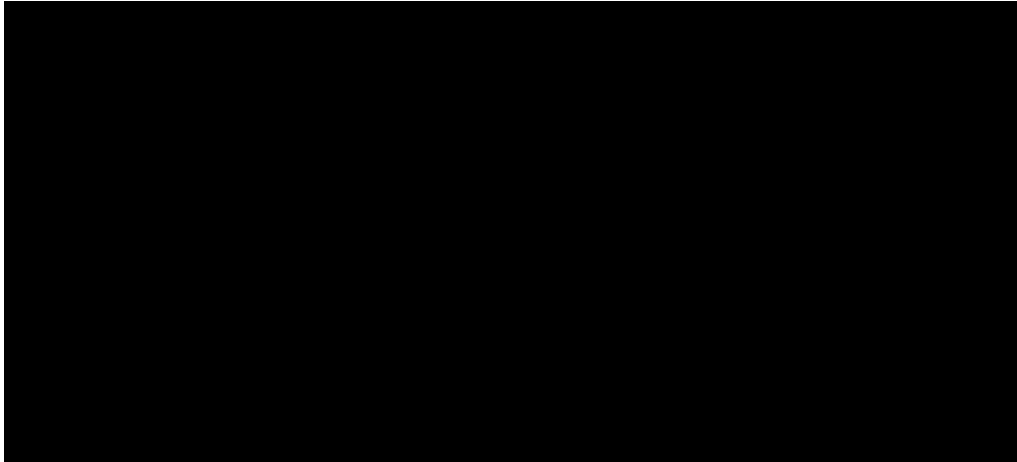
28.3 Principal's Insurance

- (a) **(Requirement to effect)** Within 25 Business Days after the date of this deed, the Principal must effect public and products liability insurance on the terms of the policies set out in Schedule A11 (*Insurance Policies*), including for the benefit of:
 - (i) the Developer (as a named party) and the Development Manager (as a named party);
 - (ii) the D&C Contractor (as a named party); and
 - (iii) any other entity with an insurable interest notified by the Developer to the Principal in writing from time to time (as a named party).
- (b) **(Requirement to maintain)** The Principal must ensure that the public and products liability insurance it is required to take out pursuant to clause 28.3(a) is maintained until 23 December 2024.
- (c) **(Developer acknowledgement)** The public and products liability insurance is subject to the exclusions, conditions, deductibles and excesses noted on the policies set out in Schedule A11 (*Insurance Policies*) and the Developer acknowledges and agrees that:
 - (i) it has satisfied itself of the nature and extent of the cover provided by the public and products liability insurance policies; and
 - (ii) the public and products liability insurance policies do not cover every risk to which the Developer or its Associates may be exposed and are subject to deductibles and limits and the Developer may, at its Cost, elect to effect insurance for any risk or liability which is not covered by the public and products liability insurance.

28.4 Developer's Insurance obligations

- (a) **(Requirement to effect and maintain)** The Developer must effect and maintain, or cause to be effected and maintained, the Insurances required by Schedule A10 (*Developer Insurance Requirements*).





28.5 Periods of Insurance

The Developer must ensure that the Insurances it is required to take out, or cause to be taken out, pursuant to this deed:

- (a) **(requirement to effect)** are effected:
 - (i) in the case of the Insurances referred to in clause 1.2, clause 1.4, clause 1.5 and clause 1.6 of Schedule A10 (*Developer Insurance Requirements*), at least 5 Business Days before the commencement of the OSD Works;
 - (ii) in the case of the Insurance referred to in clause 1.3 of Schedule A10 (*Developer Insurance Requirements*), within 2 Business Days after the date of this deed; and
 - (iii) in the case of the Insurance referred to in clause 1.7 of Schedule A10 (*Developer Insurance Requirements*), on or before 23 December 2024; and
- (b) **(requirement to maintain)** are maintained:
 - (i) in the case of the Insurances referred to in clause 1.2, clause 1.4, clause 1.5 and clause 1.6 of Schedule A10 (*Developer Insurance Requirements*), until the end of all Defects Correction Periods;
 - (ii) in the case of the Insurance referred to in clause 1.3 of Schedule A10 (*Developer Insurance Requirements*), until 7 years after the Date of Completion; and
 - (iii) in the case of the Insurance referred to in clause 1.7 of Schedule A10 (*Developer Insurance Requirements*), until in respect of an Applicable Transfer Area, the Applicable Transfer Date.

28.6 Evidence of policies

- (a) **(Provision of evidence)** The Developer must, in respect of the Insurances which it is required to effect or maintain, or cause to be effected or maintained, pursuant to this clause 28, provide the Principal's Representative within 5 Business Days after a request with:
 - (i) certificates of currency of the Insurances before the relevant commencement date referred to in clause 28.5(a) (*Periods of Insurance*) for each Insurance, which certificates must be in such form and contain such details as may be required by the Principal's Representative;

- (ii) updated certificates of currency for the Insurances whenever requested by the Principal's Representative;
 - (iii) where an Insurance policy insures the Principal, the Developer and Subcontractors, a copy of that Insurance policy whenever requested by the Principal's Representative; and
 - (iv) other evidence of the Insurances which the Principal's Representative reasonably requires.
- (b) **(Principal may effect)** If the Developer does not comply with clause 28.6(a) or clause 28.7 (*Premiums*), or otherwise fails to effect and maintain or cause to be effected and maintained Insurances which the Developer is required to effect and maintain or cause to be effected and maintained under this clause 28, the Principal may (but is not obliged to) effect and maintain the relevant Insurances and any costs incurred by the Principal in doing so will be a debt due and payable by the Developer to the Principal and the Developer must provide the Principal with reasonable assistance and information to allow it to exercise this right.

28.7 Premiums

- (a) **(Punctual payment)** The Developer must punctually pay or cause to be paid all premiums in respect of all Insurances required to be effected by it or caused to be effected under this clause 28 and give the Principal's Representative copies of receipts for payment of premiums if and when requested by the Principal's Representative (or if receipts are not provided by any insurer, notice in writing from the insurer that the relevant premium has been paid).
- (b) **(Failure by Developer)** If the Developer fails to comply with clause 28.5(a) (*Periods of Insurance*) or clause 28.7(a), the Principal may (in its absolute discretion) effect such Insurances or pay such premium or other amount and any costs so incurred by the Principal will be a debt due and payable by the Developer to the Principal.

28.8 Undertaking to inform

The Developer must ensure that, in respect of each Insurance required to be effected under this clause 28, it:

- (a) **(no prejudice)** does not do anything, or allow anything to be done, which prejudices that Insurance;
- (b) **(rectify)** if necessary, rectifies anything which may prejudice that Insurance;
- (c) **(reinstate or replace)** reinstates or replaces any Insurance policy (other than any of the Principal's Insurances);
- (d) **(not cancel)** does not cancel, vary or allow any Insurance policy (other than any of the Principal's Insurances) to lapse without the prior written consent of the Principal's Representative;
- (e) **(notify)** immediately notifies the Principal's Representative if:
 - (i) an Insurance policy is cancelled;
 - (ii) any event occurs which may result in an Insurance policy being cancelled;
 - (iii) it is notified by an insurer that a policy may be cancelled; or

- (iv) it or the Development Manager becomes aware of any actual, threatened or likely claims under any of the Insurances which could materially reduce the available limit of indemnity; and
- (f) (**provision of information**) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which may in any way prejudice or affect any such policy or the payment of all or any benefits under the Insurance.

28.9 Reinstatement

If, prior to the time the Developer ceases to be responsible under clause 28.1 (*Responsibility for the care of the OSD Enabling Works*), any destruction, damage or loss occurs to the OSD Works or any other thing referred to in clause 28.2 (*Responsibility for the care of the OSD Works*) for which the Developer bears the risk under this clause 28, the Developer must:

- (a) (**make secure**) procure that the OSD Works and the parts of the Construction Site which are still under the control of the Developer or the Development Manager are made secure;
- (b) (**consult**) promptly consult with the Principal's Representative to agree on steps to be taken to ensure:
 - (i) the prompt make good, repair or replacement of the destruction, loss or damage so that:
 - (A) any relevant OSD Enabling Works are made good, repaired or replaced so that they comply with the Station Specification contained within the Crows Nest CODD; and
 - (B) there is minimal disruption to the Crows Nest Station and, if applicable, the Interface Works; and
 - (ii) that, to the greatest extent possible, the Developer continues to comply with its obligations under this deed;
- (c) (**make good**) promptly procure that any of the destruction, loss or damage to the OSD Works, the Construction Site or improvements on the Construction Site are made good, repaired or replaced;
- (d) (**manage**) procure that all make good, repair and replacement activities are managed so as to minimise the impact on the Crows Nest Station and, if applicable, the Interface Works; and
- (e) (**keep informed**) keep the Principal's Representative fully informed of the progress of the make good, repair and replacement activities.

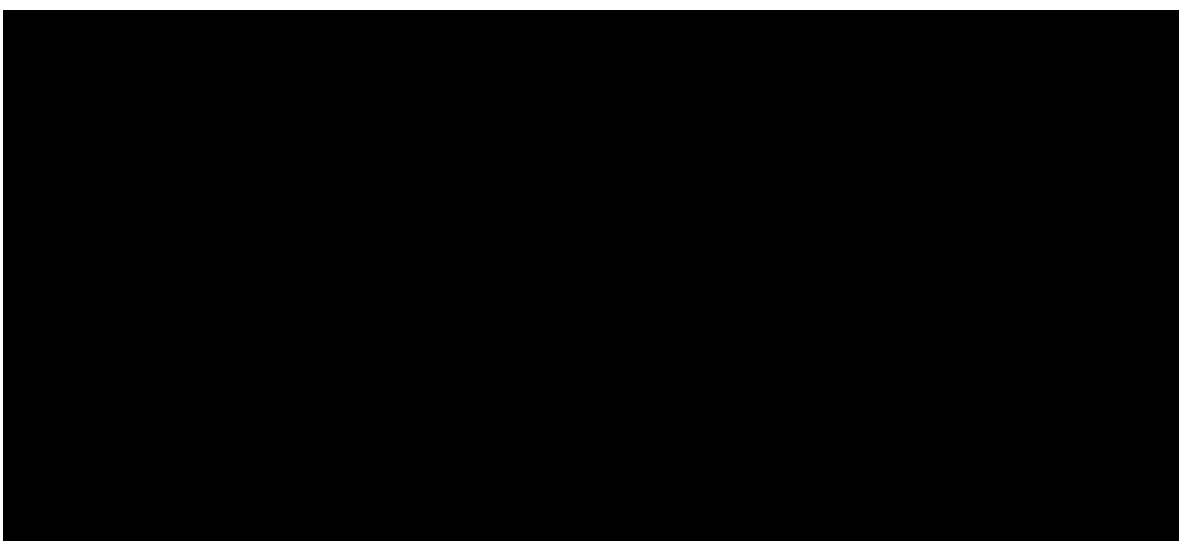
28.10 Application of the insurance proceeds

If all or any part of the OSD Enabling Works within an Applicable Transfer Area are damaged or destroyed on or before the Applicable Transfer Date, the parties agree that:

- (a) if permitted by the insurance policy and agreed to by the insurer, the Principal and the Developer will be joint loss payees in respect of any benefits payable under the Insurance referred to in clause 1.6 of Schedule A10 (*Developer Insurance Requirements*) and all proceeds (less any costs of reinstatement that the Principal is reasonably satisfied that the Developer has already incurred in procuring reinstatement of the OSD Enabling Works) will be paid to an account in the names

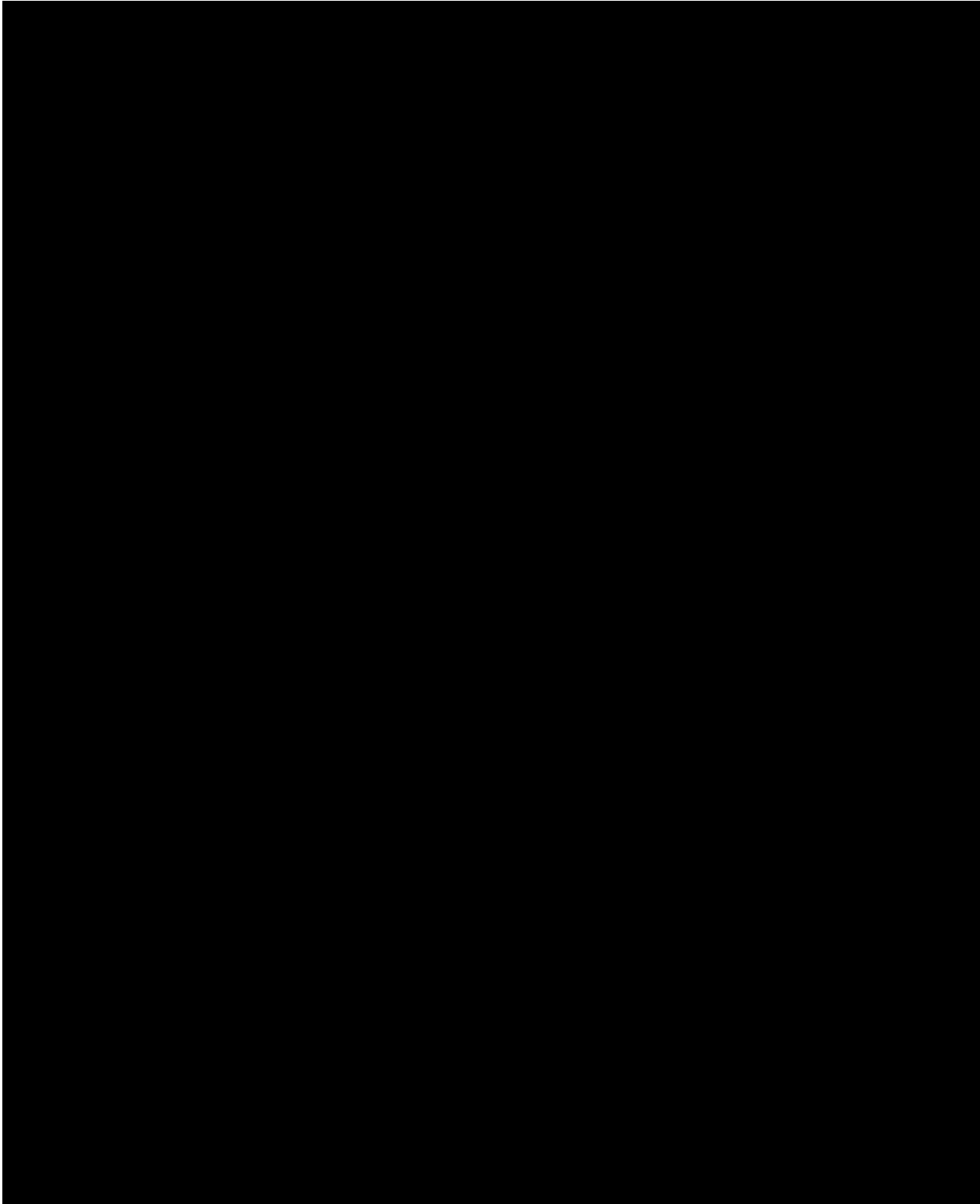
of the Principal and the Developer, which proceeds will then be used for the purpose of reinstating the relevant OSD Enabling Works;

- (b) as the Developer proceeds to procure the reinstatement of the relevant OSD Enabling Works, the Principal and the Developer will consent to the moneys being progressively withdrawn from the joint account for the purposes of satisfying the costs of such reinstatement, provided that the Principal's Representative is reasonably satisfied that the proceeds being withdrawn will be used by the Developer for the procurement of such reinstatement; and
- (c) if the proceeds received under any Insurance in respect of the damage to or destruction of the relevant OSD Enabling Works are less than the cost of procuring the repair or replacement of the relevant OSD Enabling Works (or those Insurances are void or unenforceable or in accordance with their terms do not cover the particular damage or destruction), the Developer must procure completion of the repair and replacement of those OSD Enabling Works at its own Cost.



28.12 Change to limits and Insurances

- (a) **(Principal may change)** The Principal may increase or decrease the limits of indemnity required for the Insurances referred to in, or change the types of Insurances required to be effected or maintained by the Developer under this deed at each renewal date of the relevant Insurance by providing 6 months' prior written notice to the Developer.
- (b) **(Change required to conform)** The Principal may only change the limits of indemnity required for the Insurances referred to in, or require additional insurances under, this deed where it has obtained an opinion from a reputable insurance broker or otherwise appropriately qualified consultant that a change is required in order to conform with current prudent insurance practice for an entity with a risk profile comparable to the Developer.
- (c) **(Developer must change)** The Developer must, within 60 days of receipt of a notice from the Principal to change the limits of indemnity required for the insurances referred to in Schedule A10 (*Developer Insurance Requirements*), or to change the types of insurances required by Schedule A10 (*Developer Insurance Requirements*), effect the required changes.



28.14 Liabilities of Developer not affected

The effecting of Insurances does not limit the Liabilities or obligations of the Developer under this deed.

29. INDEMNITY AND LIABILITY EXCLUSIONS

29.1 Indemnity by the Developer

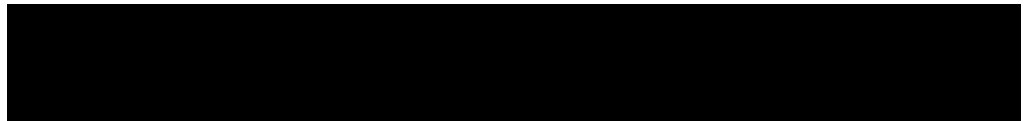
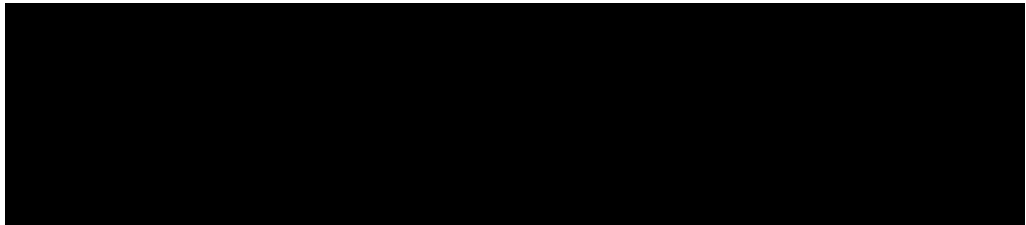
The Developer indemnifies each State Indemnified Party from and against:

- (a) any Losses incurred or suffered by a State Indemnified Party in respect of:
 - (i) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any State Indemnified Party's real or personal property; or
 - (ii) any Claim against a State Indemnified Party (including by another State Indemnified Party) or any Liability a State Indemnified Party may have to third parties in respect of or arising out of or in connection with:
 - (A) any illness, personal injury to, or death of, any person; or

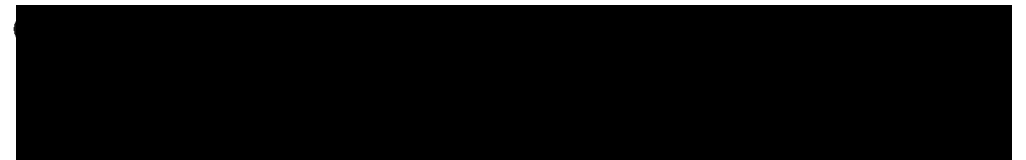
(B) damage to, loss or destruction of, or loss of use of or access to (whether total or partial), any real or personal property,

caused by, arising out of, or in any way in connection with the Developer's activities, including:

- (iii) the use of any or access to the Construction Site by the Developer or its Associates;
 - (iv) performance of the obligations of the Developer; or
 - (v) the carrying out of, or the procurement of the carrying out of, the OSD Works;
- (b) any Losses incurred or suffered by a State Indemnified Party, or any Claim made by or Liability to any other person, arising out of or in any way in connection with:
- (i) any breach of (including breach of warranty), or failure to comply with, the terms of any OSD Contract Document by the Developer or its Associates;
 - (ii) the carrying out of the OSD Works;
 - (iii) any fraudulent, negligent or unlawful act or omission by the Developer or any of its Associates;
 - (iv) the design or construction of the Residential OSD Works or the sale or lease of a Strata Lot or the Development Lot;
 - (v) each Contract for Sale;
 - (vi) any failure by the Appointed Principal Contractor to exercise or fulfil the functions and responsibilities of the principal contractor under the WHS Legislation;
 - (vii) any IPR Claim;



(x) any occupation of the Crows Nest Station pursuant to clause 8.8 (*Access to Crows Nest Station*);



(xii) any breach by the Developer or its Associates of any of the warranties and obligations in clause 4.6 (*Home Building Act*);



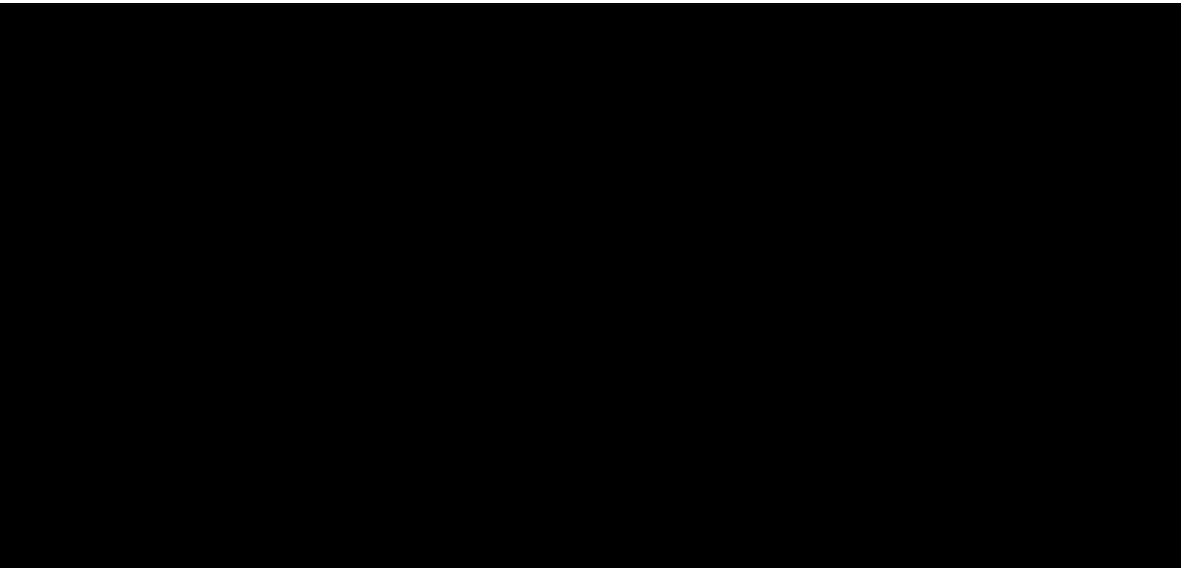
- (c) any Environmental Liabilities arising out of or in connection with:
 - (i) a breach of this deed by the Developer or its Associates;
 - (ii) a negligent, wrongful or reckless act or omission of the Developer or its Associates arising from or in connection with:
 - (A) the carrying out of the OSD Works;
 - (B) accessing or using the Construction Site; or
 - (C) exercising any right or performing any obligation of the Developer or its Associates under any OSD Contract Document;
 - (iii) the carrying out of the OSD Works; or
 - (iv) all Contamination on, in, over or about the Construction Site.

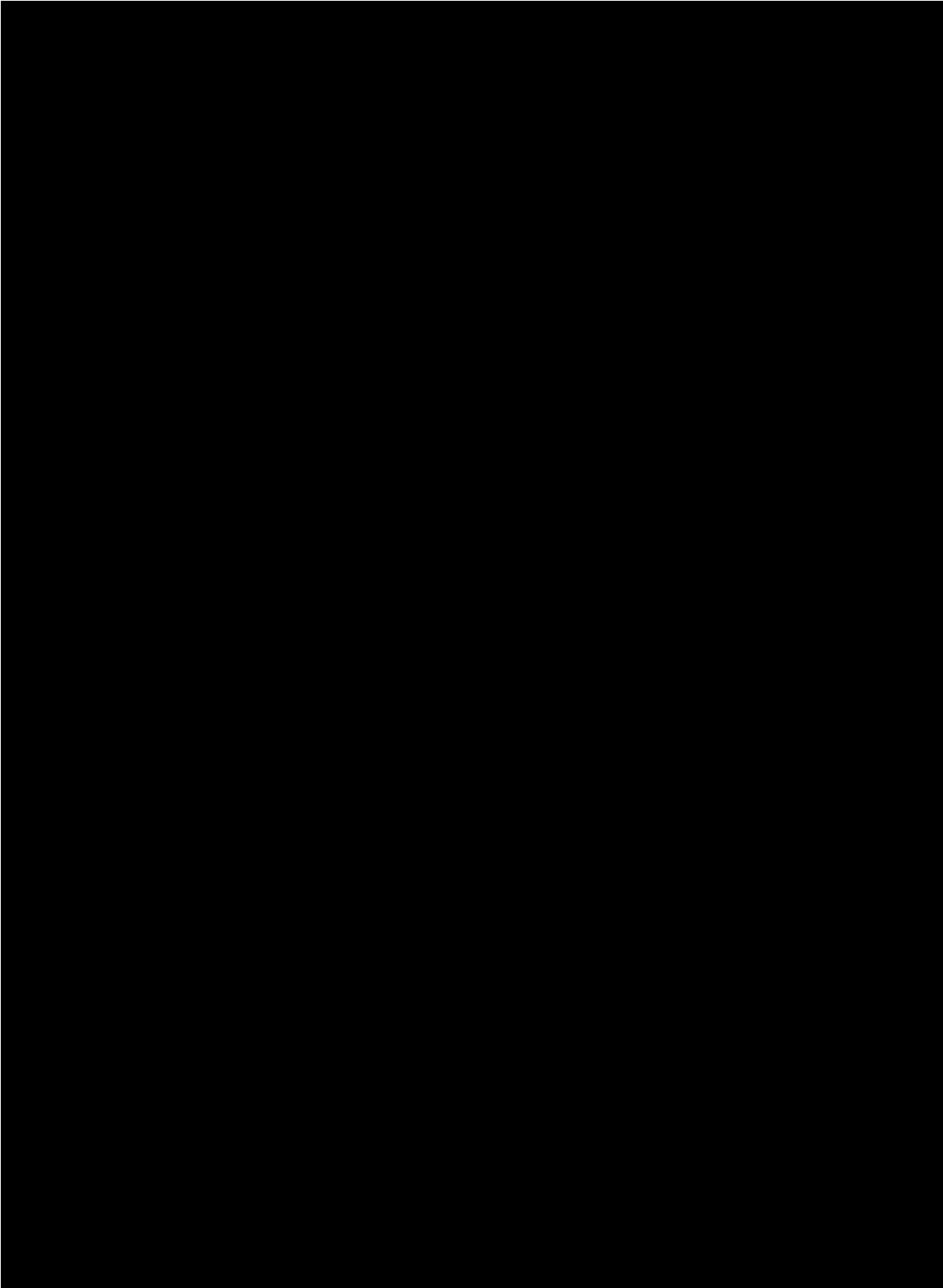
29.2 Contribution by the Principal

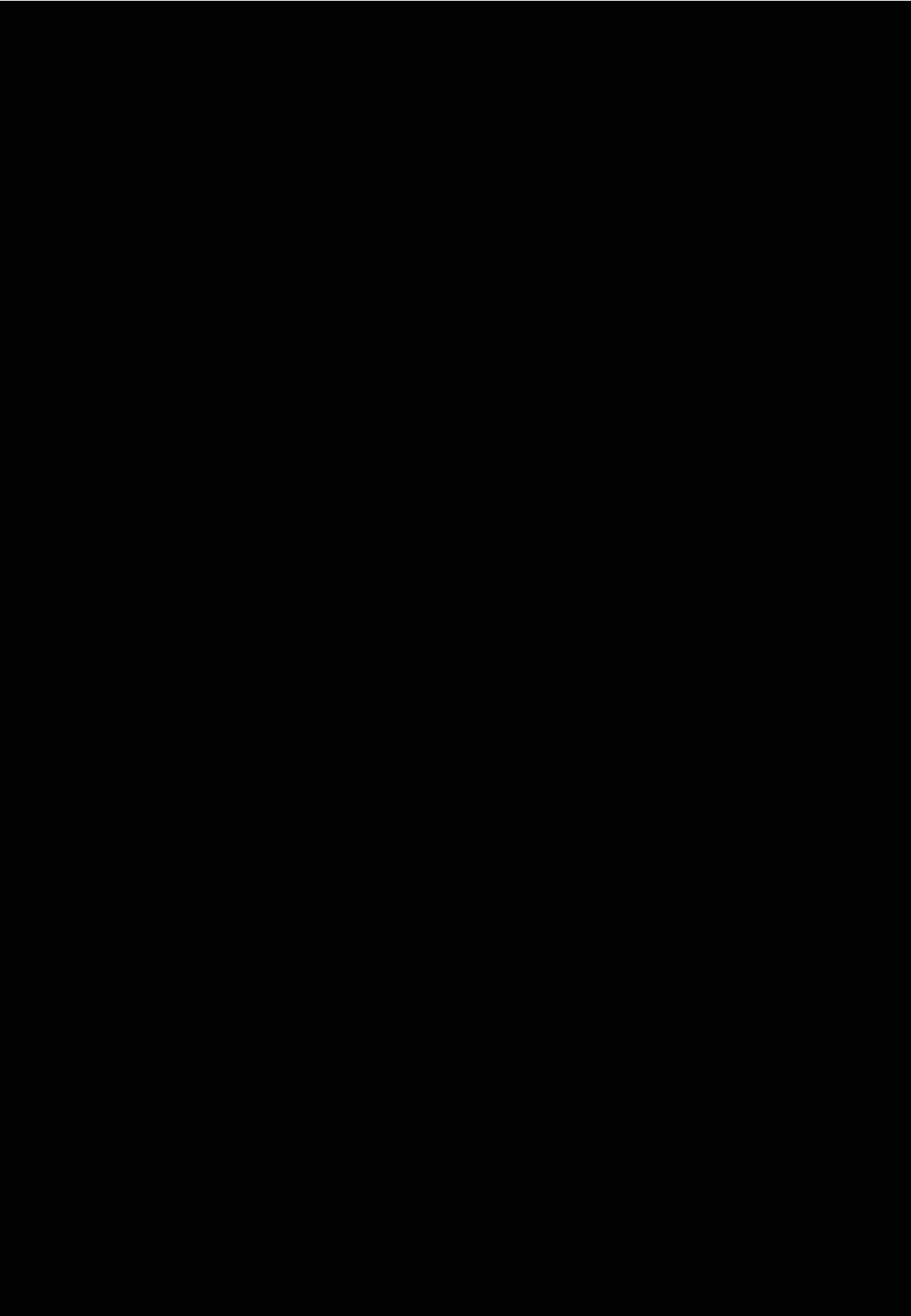
The Developer's liability to indemnify any State Indemnified Party under this deed will be reduced to the extent that a breach of this deed by the Principal or a negligent act or omission of the Principal, its Associates or any other State Indemnified Party contributed to the Liability, Claim or Loss.

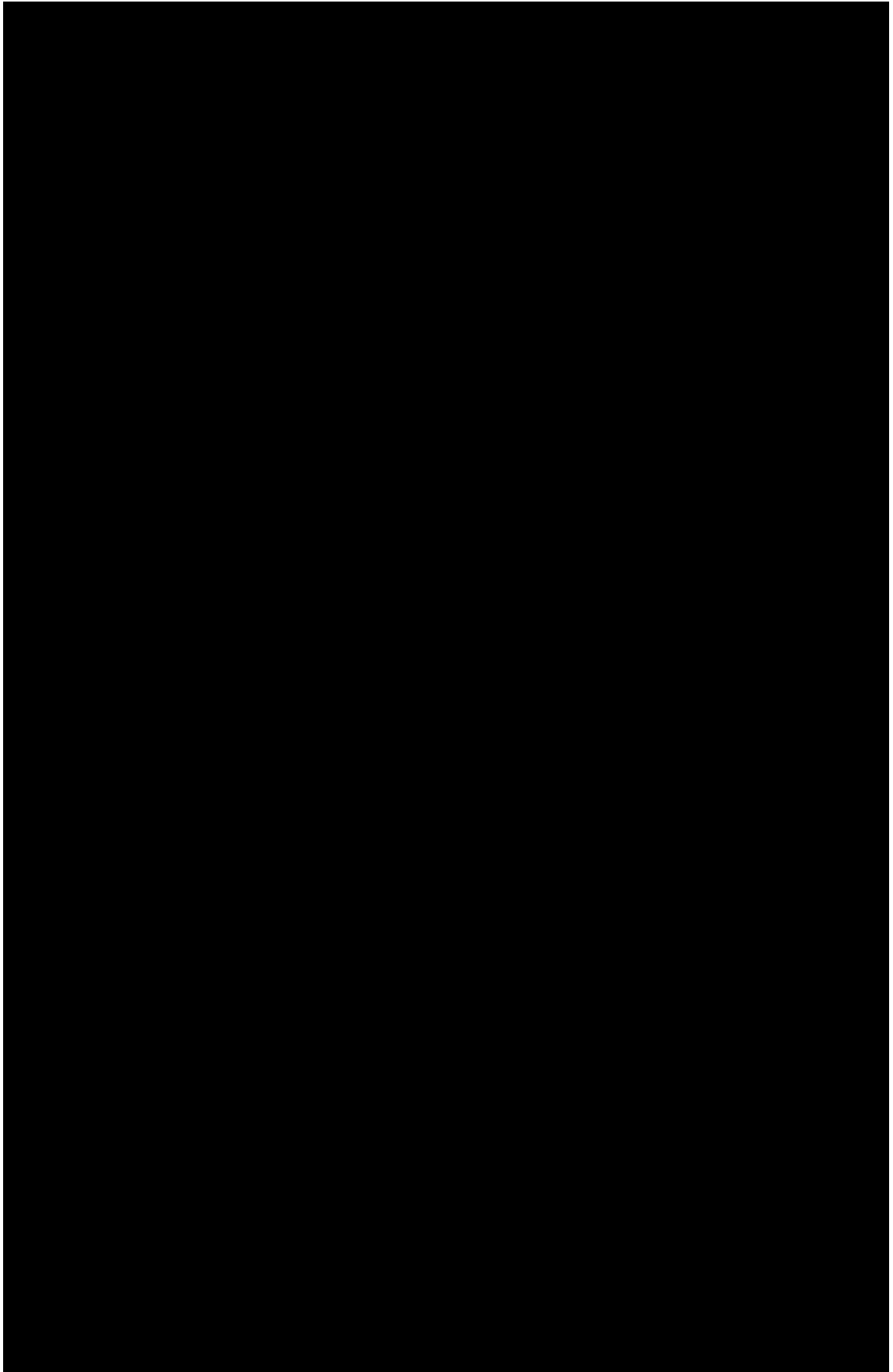
29.3 Obligations not affected

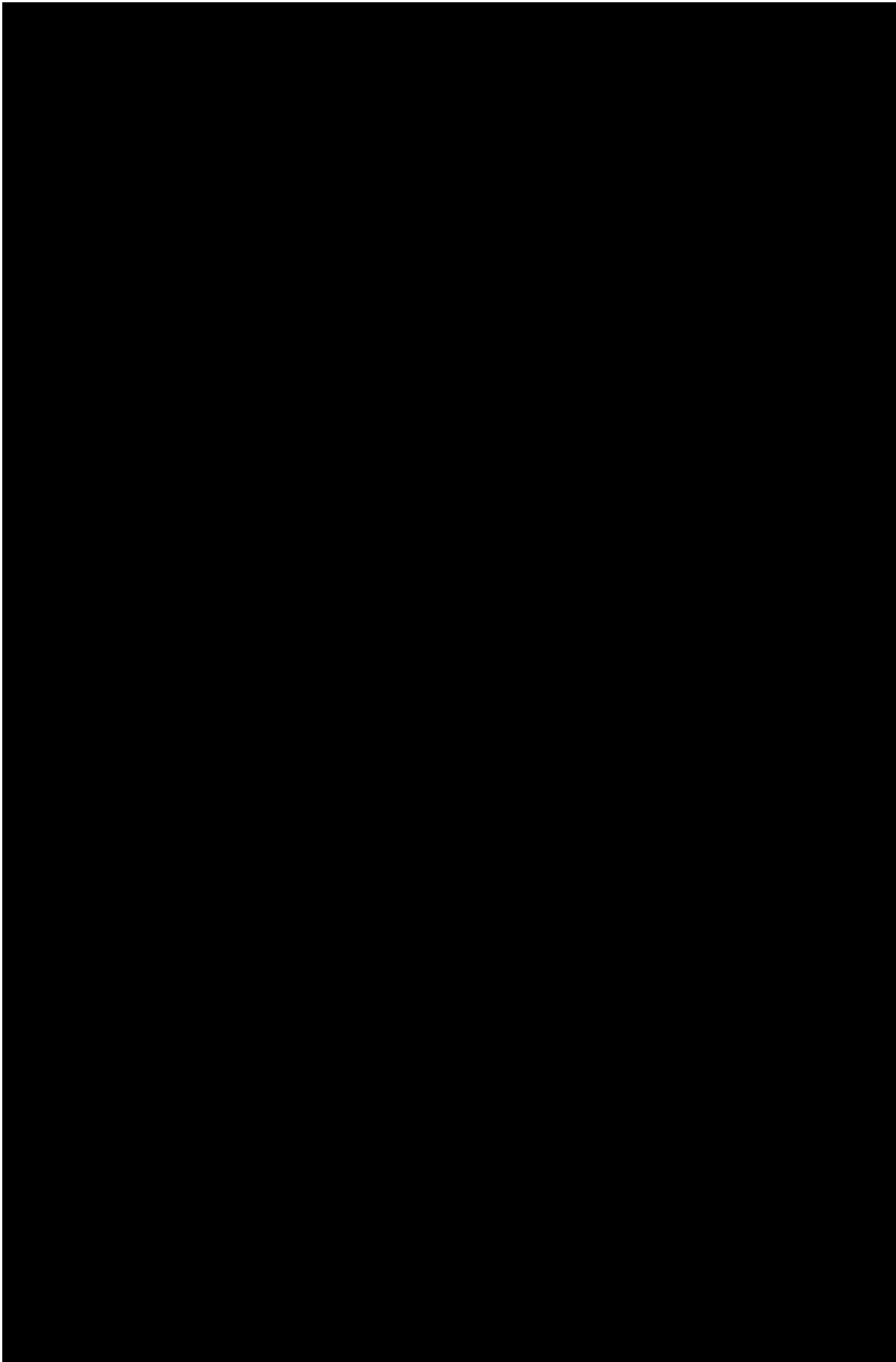
- (a) **(No affect)** Clause 29.1 (*Indemnity by the Developer*) does not limit or otherwise affect the Developer's other obligations under this deed or otherwise according to Law.
- (b) **(No relief from insurance)** The Developer is not relieved of any obligation to indemnify a State Indemnified Party under clause 29.1 (*Indemnity by the Developer*) by reason of effecting or causing to be effected insurance or being an insured party under an insurance policy effected by the Principal.

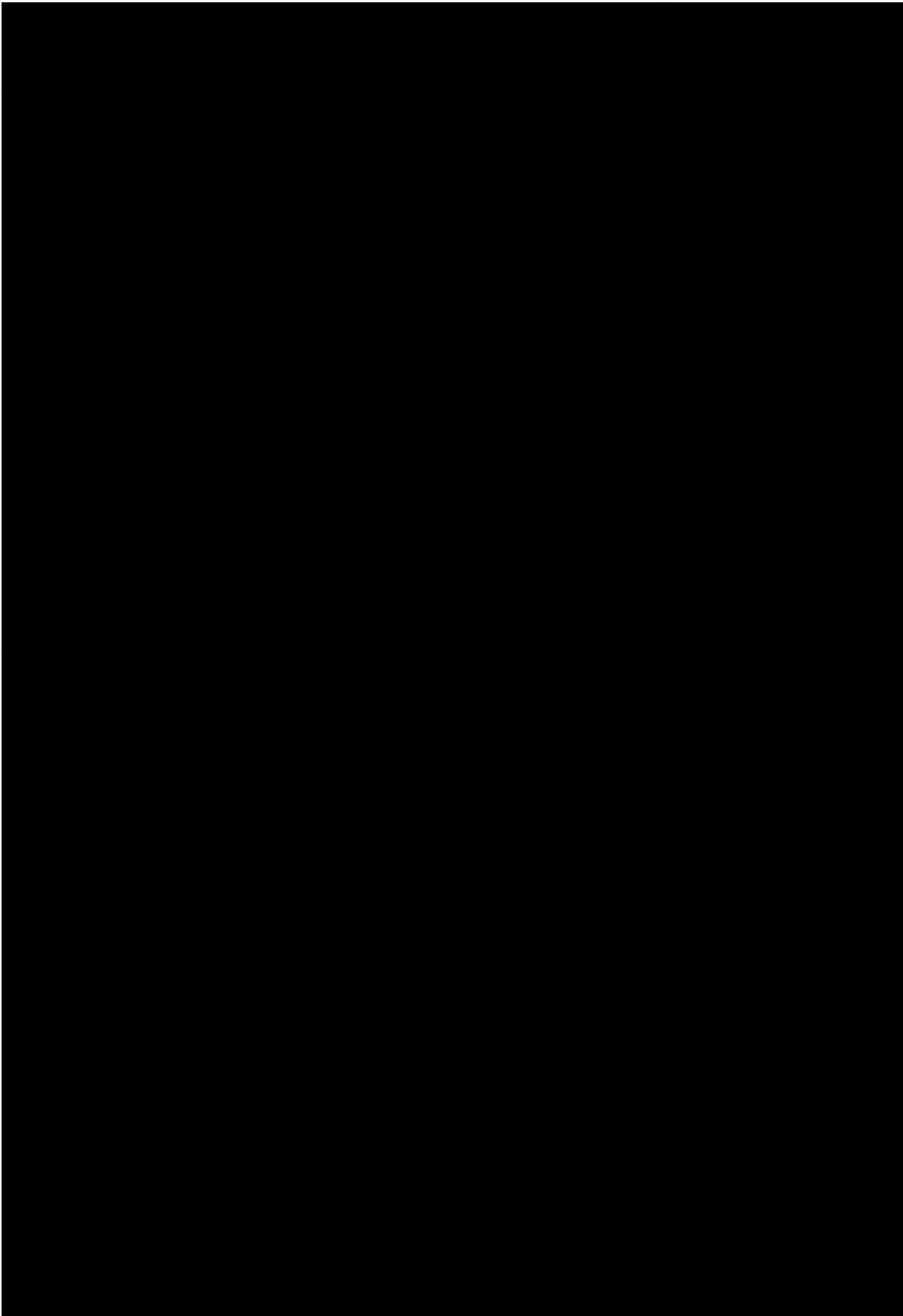




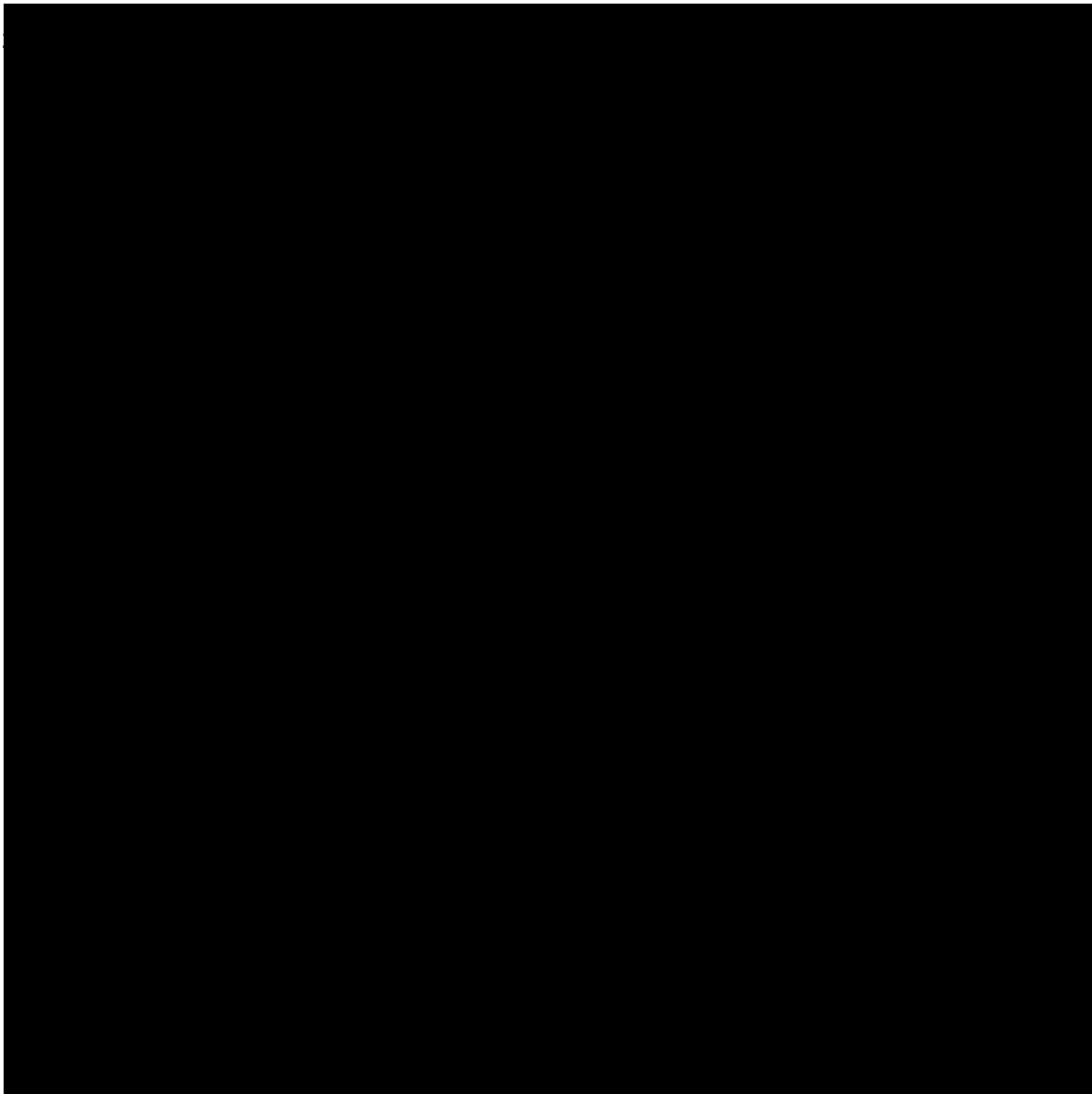








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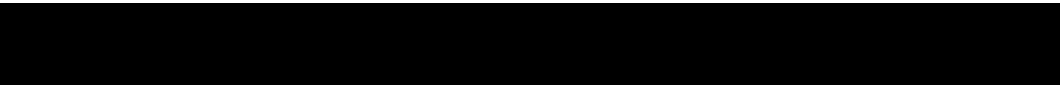
30. **DEFAULT AND TERMINATION**


30.1 **Event of Default**

Each of the following events is an Event of Default:

- (a) **(failure to insure)** the Developer does not effect or maintain (or cause to be effected or maintained) an Insurance which is required to be effected or maintained by the Developer under this deed and fails to do so within 10 Business Days after receipt of a notice from the Principal directing it to do so;
- (b) **(fraud)** the Principal is the victim of any fraud or dishonest conduct by the Developer, the Development Manager or the D&C Contractor in connection with the carrying out of the OSD Works or the Sydney Metro City & Southwest, or the Independent Commission Against Corruption or similar public body determines that the Developer, the Development Manager or the D&C Contractor have engaged in corrupt conduct, collusive pricing or other similar activity;

- (c) **(incorrect representation or warranty)** a representation or warranty made or given by the Developer in this deed or given by the Developer or the Development Manager in any other of the OSD Contract Documents proves to be untrue which has a material adverse effect on the Developer's or the Development Manager's ability to comply with their obligations under the OSD Contract Documents;
- (d) **(Security)** the Developer fails to provide the Parent Company Guarantees under clause 3.1 (*Parent Company Guarantees*) or a legal opinion under clause 3.2 (*Legal opinion*);
- (e) **(Security is void or voidable)** a Parent Company Guarantee becomes void or voidable;



- (g) **(WHS)** the Developer fails to comply with or ensure compliance with the obligations under this deed regarding work health and safety;
- (h) **(failure to provide pre-commencement certificate)** the Developer fails to provide the Approved Engineer's Certificate (Pre-Commencement) as required by this deed;
- (i) **(failure to comply)** the Developer fails to comply with, or ensure compliance with, the Construction and Site Management Plan; and
- (j) **(other breach)** any other material breach by the Developer of this deed or any other of the OSD Contract Documents (including a breach by the Developer of , clause 24.2 (*Developer's obligations*) (to the extent that the relevant Defect is a HBA Defect) or clause 28.9 (*Reinstatement*)).

30.2 Default Notice

- (a) **(Content of Default Notice)** If an Event of Default occurs, the Principal may give the Developer a notice (**Default Notice**):
 - (i) stating that it is a notice under this clause 30.2;
 - (ii) providing details of the Event of Default; and
 - (iii) requiring the Developer to:
 - (A) Remedy the Event of Default; or
 - (B) where the Event of Default cannot be remedied, overcome the Event of Default or make other arrangements to the satisfaction of the Principal,

within a reasonable period of time specified in the Default Notice (which period must not be less than 20 Business Days from the date of the Default Notice).

- (b) **(Compliance and Remedy Plan)** If the Principal gives the Developer a Default Notice:
 - (i) the Developer must comply with the Default Notice; and
 - (ii) unless urgent action is necessary or the relevant Event of Default is a failure to pay money or an Event of Default referred to in clause 30.1(d) or clause 30.1(e) (*Event of Default*):

- (A) the Developer must give the Principal a program and plan (a **Remedy Plan**) outlining the manner in which the Developer will:
 - (aa) Remedy the Event of Default; or
 - (bb) overcome the Event of Default or make other arrangements to the satisfaction of the Principal,
 in accordance with the terms of the Default Notice;
- (B) the Principal must consult with the Developer to develop and agree that Remedy Plan; and
- (C) the Developer must thereafter comply with that Remedy Plan.

30.3 **Rights of the Principal following Default Notice**

If, by the time specified in the Default Notice (or such longer period included in a Remedy Plan and agreed by the Principal), the Developer fails to remedy the breach or make arrangements satisfactory to the Principal or fails to comply with a Remedy Plan, the Principal may, by notice in writing to the Developer, immediately terminate this deed.

30.4 **Developer Termination Events**

Each of the following is a Developer Termination Event:

- (a) **(failure to pay)** the Developer fails to pay any Developer Payment or any other amount which it is obliged to pay to the Principal under this deed and the failure is not remedied within 20 Business Days after a written demand from the Principal;
- (b) **(insolvency)** an Insolvency Event occurs in relation to:
 - (i) the Developer (or where the Developer comprises more than one person, any one of those persons); or
 - (ii) a Developer Guarantor,
 and the Developer is not able to satisfy the Principal (in its absolute discretion) within 10 Business Days of the Insolvency Event occurring (or such longer period agreed by the Principal) that this deed should not be terminated; or
- (c) **(assignment or change in ownership)** the Developer breaches its obligations under clause 32.1 (*Assignment by the Developer*) or clause 32.2 (*Change in ownership*).

30.5 **Termination for Developer Termination Event**

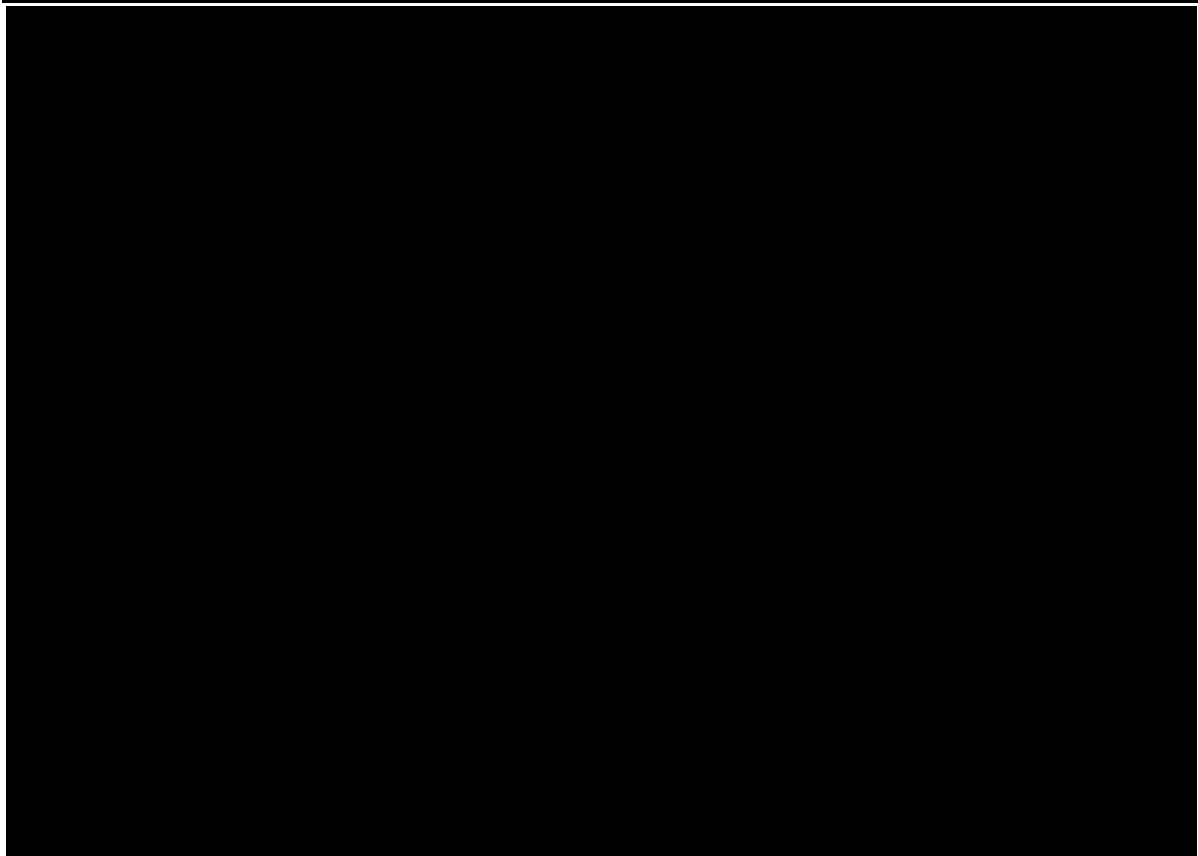
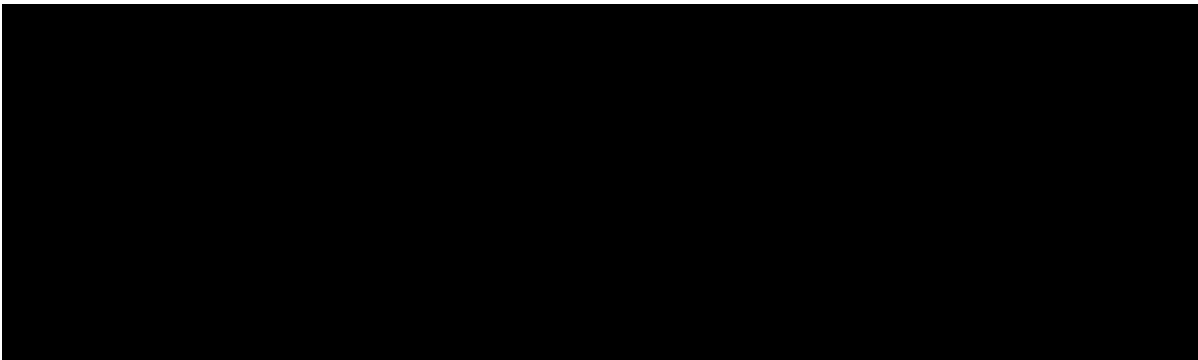
If a Developer Termination Event occurs, the Principal may give a written notice to the Developer immediately terminating this deed. The notice must set out details of the Developer Termination Event for which the Principal is giving the notice.

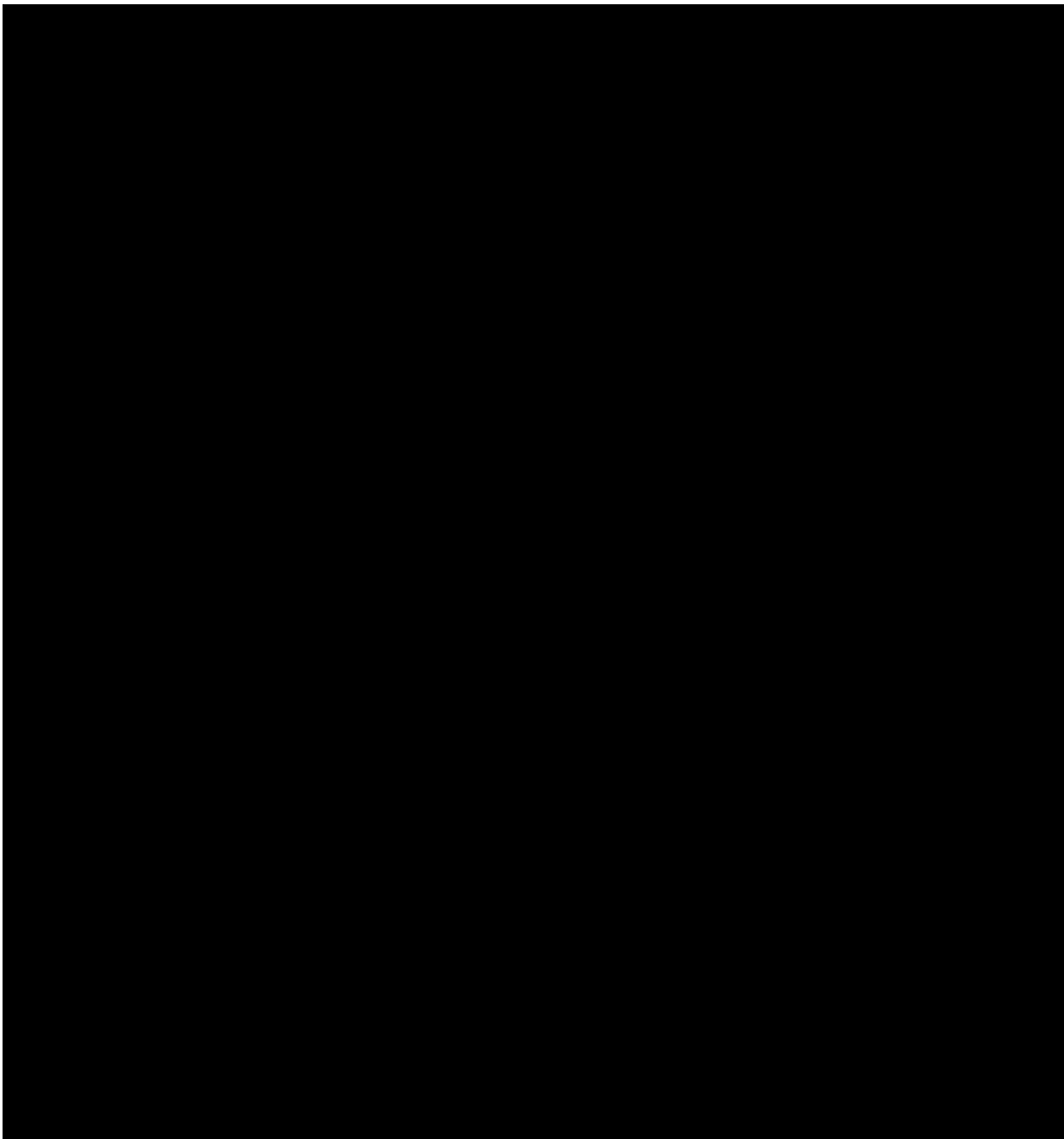
30.6 **Access termination event**

- (a) **(Failure to provide access)** If the Principal fails to provide the Developer with access to any part of the Construction Site by the Construction Licence Sunset Date, the Principal may give the Developer a notice requesting to meet and discuss the Principal's failure to provide the Developer with access to that part of the Construction Site.

- (b) **(Executive Negotiators to meet)** The Executive Negotiators must, within 5 Business Days after the Developer receives a notice under clause 30.6(a), meet and discuss the impact of and an appropriate course of action for managing the Principal's failure to provide the Developer with access to the relevant part of the Construction Site, including the impact of the delay and termination of this deed on the Developer.
- (c) **(Failure to remedy or overcome)** If:
- (i) the parties have been unable to agree on an appropriate course of action for managing the Principal's failure to provide the Developer with access; and
 - (ii) the Principal's failure to provide access has not been remedied or its effects overcome within 30 Business Days' from the date of the notice referred to in clause 30.6(a),

the Principal may, in the Principal's absolute discretion, immediately terminate this deed by giving written notice to the Developer.



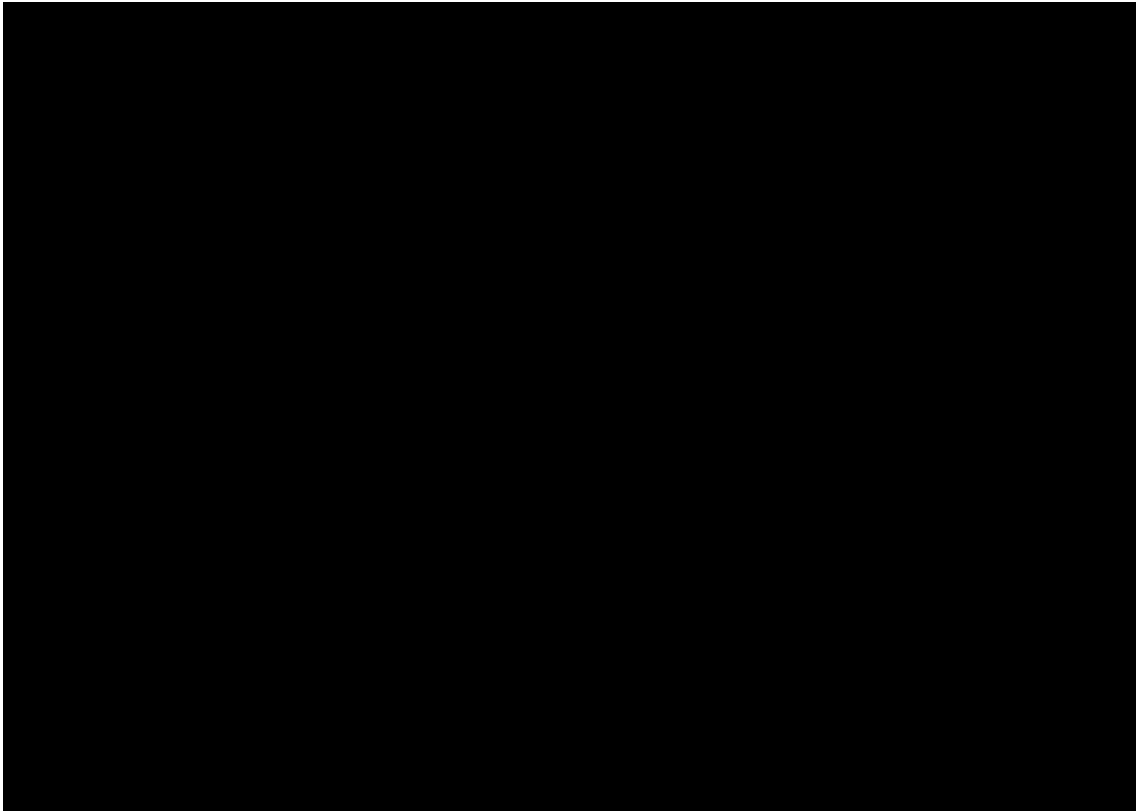


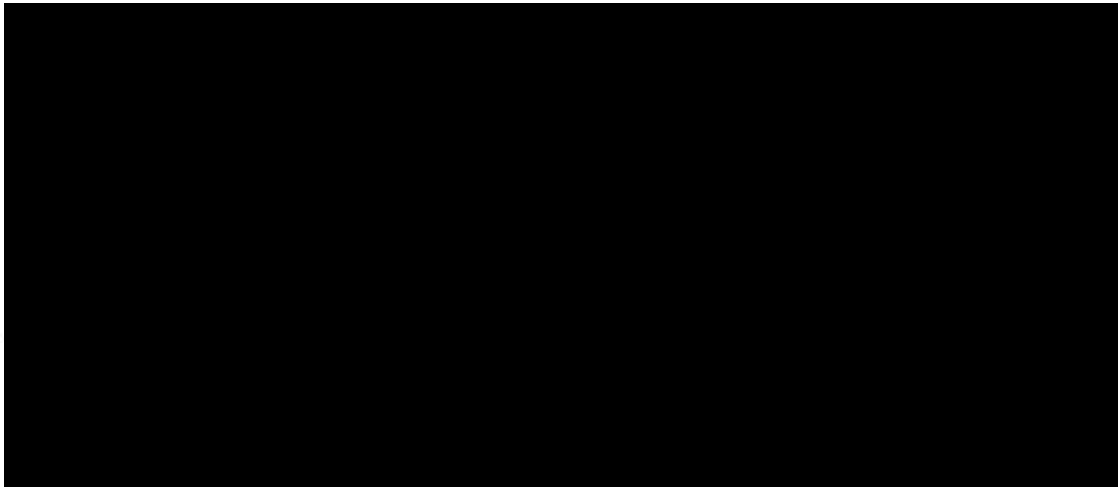
30.9 Principal's rights after termination

- (a) **(Principal's rights)** If this deed is terminated, the Principal may:
 - (i) require the Developer to procure that:

- (A) the Construction Site or any area affected by the OSD Works is made safe; and
 - (B) any Construction Plant and all materials, equipment and other things intended for the OSD Works or the carrying out of the OSD Works are removed from the Construction Site or any area affected by the OSD Works;
- (ii) take possession of and use (and permit others to use) such of the following:
- (A) Construction Plant and other things on or in the vicinity of the Construction Site or the Extra Land as are owned by the Developer or the Development Manager and are reasonably required by the Principal to facilitate completion of the OSD Works; and
 - (B) Design Documentation, Material and other information in connection with the OSD Works in the possession of the Developer or any of the Developer's Associates and the Developer must ensure that all necessary rights for this purpose are licensed to the Principal in accordance with clause 23.2(a) (*Licence to the Principal*);
- (iii) engage third parties to carry out and complete the whole or any part of the OSD Works remaining to be completed;
- (iv) contract with any of the Subcontractors; and
- (v) exclude the Developer and any of the Developer's Associates from the Construction Site and the Extra Land.
- (b) **(Survival)** This clause 30.9 survives the termination of this deed.

30.10 Termination Payments





30.11 **Preservation of rights**

- (a) **(No prejudice)** Nothing in this clause 30 or that the Principal does or fails to do pursuant to this clause 30 will prejudice the right of the Principal to exercise any right or remedy which it may have, including where the Developer breaches or repudiates this deed.
- (b) **(Direct deeds)** The Principal's rights and entitlements set out in this clause 30 are in addition to the Principal's rights and entitlements under the D&C Side Deed, any Financier's Side Deed and any other Significant Subcontractor Direct Deed.

30.12 **No other termination rights**

This clause 30 and the Termination Payment Schedule is an exhaustive code with respect to the Developer's rights arising out of or in any way in connection with any termination and the Developer:

- (a) **(no other termination rights)** cannot otherwise terminate, rescind or treat this deed as repudiated; and
- (b) **(waiver of rights)** waives all rights at Law to terminate, rescind or treat this deed as repudiated, otherwise than in accordance with this clause 30 and the Termination Payment Schedule.

31. **CONFIDENTIALITY AND PERMITTED DISCLOSURE**

31.1 **Confidentiality**

- (a) **(Keep confidential)** Subject to clause 31.1(b) and clause 31.1(c), the Developer must:
 - (i) keep the OSD Contract Documents, [REDACTED] all Information Documents and any information relating to the OSD Works, the OSD Project and any discussions concerning the OSD Contract Documents, [REDACTED] or any Information Documents (together the **Information**) confidential;
 - (ii) not use the Information except as necessary for:
 - (A) the performance of the OSD Works; and
 - (B) in respect of [REDACTED], in the case of the Developer's Associates, its ordinary course of business; and

- (iii) ensure that each of its Associates comply with clause 31.1(a)(i) and clause 31.1(a)(ii).
- (b) **(No obligation to keep confidential)** The Developer is not obliged to keep any Information confidential to the extent:
 - (i) that Information is in the public domain through no fault of the Developer;
 - (ii) that Information is:
 - (A) required to be disclosed by Law or the listing rules of any recognised stock exchange (to the extent applicable to it); or
 - (B) given to a court in the course of proceedings to which the Developer is a party; or
 - (iii) the Principal consents in writing to the disclosure of that Information.
- (c) **(Provision to other parties)** Subject to clause 31.1(a)(iii), each of:
 - (i) the Developer; and
 - (ii) the Developer's Associates to whom Information has been provided,
 may provide:
 - (iii) the Information to their Subcontractors, employees, agents, advisors, equity investors, prospective equity investors, Financiers, prospective Financiers, each Developer Guarantor, their related bodies corporate, and each of these parties' advisors, as is necessary to enable the Developer to perform its obligations under this deed or any other OSD Contract Document (including, without limitation, to the Development Manager's subcontractors, employees, agents, advisors, equity investors, prospective equity investors, Financiers, prospective Financiers, related bodies corporate, and each of these parties' advisors); and
 - (iv) the [REDACTED] to their Subcontractors, employees, agents, advisors, equity investors, prospective equity investors, Financiers, prospective Financiers, each Developer Guarantor, their related bodies corporate, and each of these parties' advisors, as is reasonably necessary in the ordinary course of its business,

provided that the Developer ensures that the relevant recipient is subject to the same or equivalent obligations of confidentiality as those contained in this clause 31.1.

31.2 **Principal's Public Disclosure Obligations**

- (a) **(Developer acknowledgement)** The Developer acknowledges and agrees that the Principal, the State or any Authority may be required to disclose, and may disclose, the OSD Contract Documents and information concerning the OSD Contract Documents, the OSD Project and the performance of the OSD Works:
 - (i) under the GIPA Act or any similar legislation;
 - (ii) by Law;
 - (iii) to satisfy the disclosure requirements of the NSW Auditor General or to satisfy the requirements of Parliamentary accountability;

- (iv) to an Authority;
- (v) with the Developer's consent, which must not be unreasonably withheld; or
- (vi) to the Principal's Associates, Interface Contractors and their subcontractors,
(Public Disclosure Obligations).

- (b) **(Developer assistance)** The Developer must, at its own Cost, use all reasonable endeavours to assist the Principal, the State or an Authority to meet its Public Disclosure Obligations.

31.3 **Media requests**

Without limiting clause 31.1 (*Confidentiality*) and clause 31.2 (*Principal's Public Disclosure Obligations*), if the Developer or the Development Manager receives a request from the media for comment with respect to any aspect of the OSD Works or the OSD Project, the Developer must:

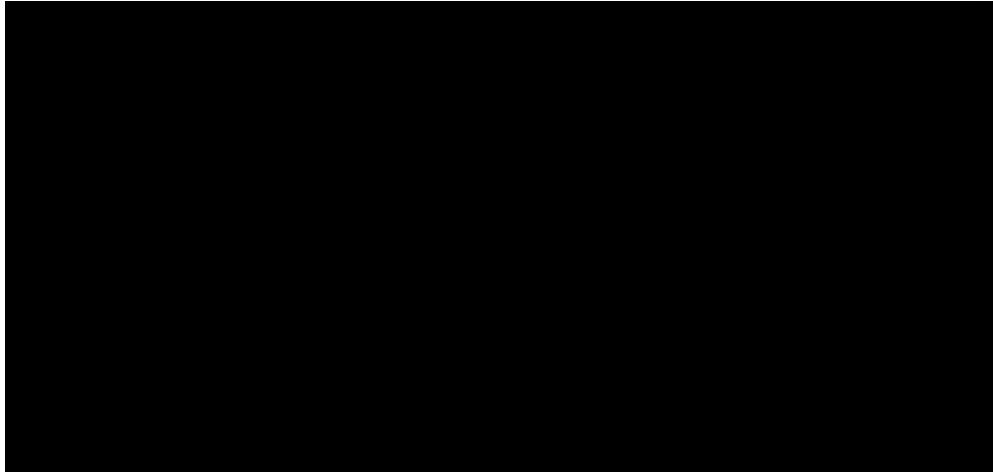
- (a) promptly provide details of the request to the Principal; and
- (b) not respond or permit the Development Manager to respond without the prior written consent of the Principal (such consent not to be unreasonably withheld or delayed).

32. **ASSIGNMENT AND CHANGE IN OWNERSHIP**

32.1 **Assignment by the Developer**

- (a) **(No assignment without consent)** Subject to the remainder of this clause 32 or any Financier's Side Deed, the Developer must not and must procure that the Development Manager does not assign, transfer, novate, grant a Security Interest over, or otherwise dispose of or deal with all or any benefit, right or interest under or in:
 - (i) the OSD Contract Documents; or
 - (ii) prior to the last Applicable Transfer Date to occur, the Construction Site or the Land (except to the extent as expressly permitted under this deed),
without the Principal's prior written consent (which may be given or withheld in its absolute discretion).
- (b) **(Principal to act promptly)** To the extent not already provided for in any Financier's Side Deed, the Principal must act promptly in determining whether to provide its consent to the Developer for the purposes of this clause 32.1, where the provision of a mortgage, charge or other Encumbrance is reasonably required by the Developer and/or the Development Manager in order to raise funds for the purposes of the OSD Project and/or the Developer carrying out its obligations under this deed.
- (c) **(Conditions of assignment or novation)** It will be a condition of any assignment or novation of this deed in accordance with clause 32.1(a) that the proposed counterparty provides a Parent Company Guarantee in a form satisfactory to the Principal from a parent company with a long term credit rating and financial standing acceptable to the Principal (in its absolute discretion).

- (d) **(Permitted Events)** Notwithstanding clause 32.1(a), the Developer will not require the Principal's prior written consent for:
- (i) the transfer to a Purchaser of title to any part of the Development Lot (or conferring upon a Purchaser associated rights) in accordance with the provisions of this deed; or



32.2 Change in ownership

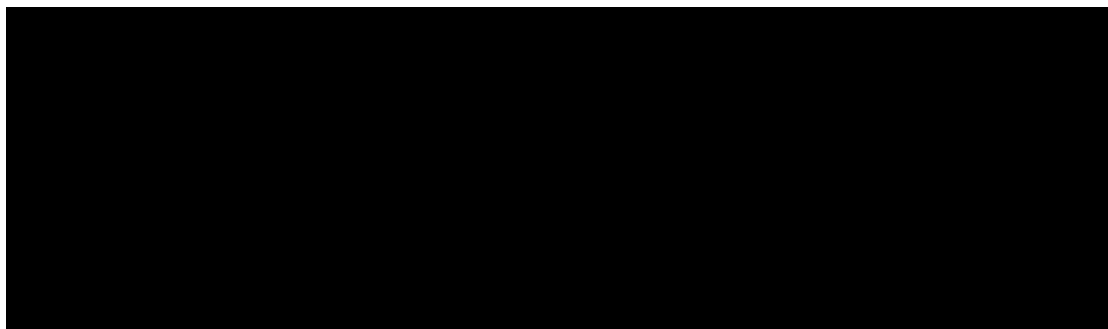
Subject to clause 32.3 (*Permitted changes in ownership*), the Developer:

- (a) **(legal and beneficial ownership)** represents and warrants that the legal and beneficial ownership and Control of the Developer will remain as it was at the date of this deed until the date which is the later of the expiry of the last Defects Correction Period under this deed and the last Applicable Transfer Date to occur; and
- (b) **(no change)** must not permit any direct or indirect change in the Control or the beneficial or legal ownership of any shares, units or other interest in the nature of equity in any member of the Developer until the date which is the later of the expiry of the last Defects Correction Period under this deed and the last Applicable Transfer Date to occur.

32.3 Permitted changes in ownership

Clause 32.2 (*Change in ownership*) does not apply to:

- (a) **(listed on stock exchange)** a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange;
- (b) **(Related Entity)** any transfer of a share or unit or other interest in the nature of equity by a person to a Related Entity of that person, provided the Developer gives the Principal prior written notice of the transfer;



- [REDACTED]
- (d) **(consent provided)** a transfer of any share or unit or other interest in the nature of equity where the Principal has provided its consent in writing to such transfer.

32.4 **Assignment and novation by the Principal**

- (a) Without limiting clause 38.15 (*Transfer of functions or Public Transport Agency assets*), the Principal may:
 - (i) assign, novate or otherwise transfer all or any part of its rights under this deed without the Developer's prior approval, provided that the assignee, novatee or transferee (as applicable) is an authority of the State, a Minister or a government entity including a wholly owned State corporation or any other entity that is wholly owned or controlled by the State;
 - (ii) not otherwise assign, novate or otherwise transfer all or any part of its rights under this deed without the Developer's prior written consent (which must not be unreasonably withheld or delayed); and
 - (iii) disclose to a proposed assignee, novatee or transferee any information in the possession of the Principal relating to the Developer.
- (b) In the case of a novation by the Principal under this clause 32.4:
 - (i) the Principal will be released from its obligations under this deed and the respective rights of the Principal and the Developer against one another under this deed will cease;
 - (ii) the novated deed will be on the same terms as this deed, such that the incoming party and the Developer will assume the same obligations to one another and acquire the identical rights against one another as the rights and obligations discharged under clause 32.4(b)(i), except that the incoming party replaces the Principal for all purposes under the deed; and
 - (iii) the Developer consents to the disclosure by or on behalf of the Principal to the incoming party of their confidential information for the purposes of the novation.
- (c) The Principal may at any time enter into any subcontracting, delegation or agency agreements or arrangements in relation to any of its functions.

33. **FINANCING**

33.1 **Financing documents**

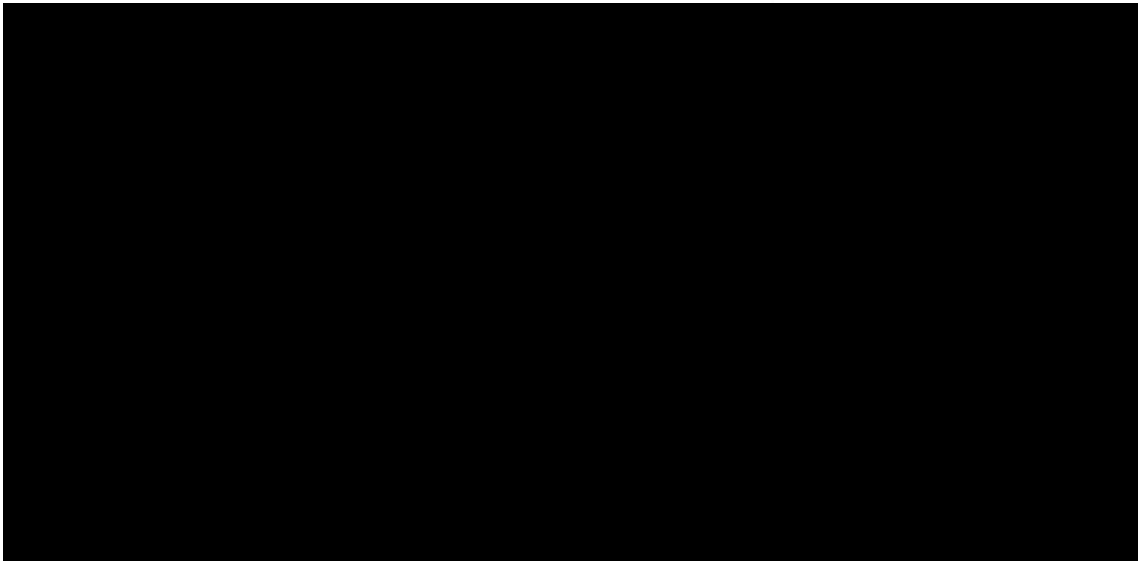
The Principal acknowledges that:

- (a) **(Developer or Development Manager may obtain finance)** the Developer and/or the Development Manager may obtain financial accommodation to fund the OSD Project;
- (b) **(Financier's Side Deed)** it may be a condition of obtaining that financial accommodation that the Principal enters into a Financier's Side Deed with the Financier; and
- (c) **(Principal to sign)** the Principal will, upon written request by the Developer and within a reasonable period of time, enter into a Financier's Side Deed.

33.2 **Negotiating terms of the Financier's Side Deed**

The Principal and the Developer must act reasonably, and the Developer must ensure that the Financier and the Development Manager (as applicable) act reasonably in negotiating any amendments to the Financier's Side Deed which is to be entered into under clause 33.1 (*Financing Documents*).

33.3 **Principal's right to withhold consent**



34. **DISPUTE RESOLUTION**

34.1 **Disputes**

Any dispute, difference, controversy or Claim (**Dispute**) directly or indirectly based upon, arising out of, relating to or in connection with this deed, the OSD Project or the OSD Works, including any questions relating to the existence, validity or termination of this deed, but excluding a failure by a party to comply with a final and binding decision of the Expert, must be resolved in accordance with the Dispute Procedure.

34.2 **Dispute under related contracts**

The parties acknowledge and agree that the Dispute Procedure will not apply to any dispute, difference, controversy or Claim between the parties which is to be resolved under a Cooperation and Integration Deed.

35. **REPRESENTATIONS AND WARRANTIES**

35.1 **Principal's representations and warranties**

The Principal represents and warrants for the benefit of the Developer that:

- (a) (**statutory body**) it is a statutory body validly constituted and existing under the Transport Administration Act;
- (b) (**all authorisations**) it has or will have in full force and effect all authorisations necessary under its constituent legislation to enter into and perform its obligations under each of the Principal OSD Contract Documents (or will have them in full force and effect at the time the obligation is to be performed);

- (c) (**binding obligations**) each of the Principal OSD Contract Documents constitutes a valid and legally binding obligation of it in accordance with its terms; and
- (d) (**non-violation of Law**) the execution, delivery and performance of each of the Principal OSD Contract Document by the Principal does not violate any Law, or any document or agreement to which it is a party or which is binding on it or its assets.

35.2 Developer representations and warranties

The Developer represents and warrants for the benefit of the Principal that:

- (a) (**incorporated**) it has been incorporated as a company limited by shares in accordance with the Law of its place of incorporation, is validly existing under that Law and has power and authority to carry on its business as it is now being conducted;
- (b) (**properly constituted**) it is duly registered, properly constituted and remains in existence;
- (c) (**power**) it has, or will have (in respect of those OSD Contract Documents still to be executed as at the date of this deed), power to enter into the OSD Contract Documents to which it is or will be a party and comply with its obligations under them;
- (d) (**all authorisations**) it has, or will have (in respect of those OSD Contract Documents still to be executed as at the date of this deed) in full force and effect the authorisations necessary for it to enter into the OSD Contract Documents to which it is or will be a party, to comply with its obligations under them and to allow them to be enforced;
- (e) (**binding obligations**) its obligations under the OSD Contract Documents to which it is a party (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (f) (**no contravention**) the OSD Contract Documents and the transactions under them which involve it do not contravene its constituent documents or any Law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (g) (**benefits**) it benefits by entering into the OSD Contract Documents to which it is or will be a party;
- (h) (**trustee**) it is not the trustee or responsible entity of any trust, nor does it hold any property subject to or impressed by any trust;
- (i) (**payment of debts**) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (j) (**no breach**) it is not in breach of a Law or obligation affecting it or its assets in a way which is, or is likely to have, a material adverse effect on its ability to comply with its obligations under this deed and it is not in default of its material obligations under any of the OSD Contract Documents;
- (k) (**consolidated group**) except as disclosed in writing to the Principal prior to the date of this deed, it is not a member of any consolidated group for purposes of the *Income Tax Assessment Act 1997* (Cth);
- (l) (**no Event of Default**) no Event of Default has occurred or is subsisting;

- (m) **(no Liabilities)** it has not traded since its incorporation other than for the purposes of entering into the OSD Contract Documents to which it is a party and has no Liabilities other than those that have arisen in connection with entering into those OSD Contract Documents;
- (n) **(no immunity)** it does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (o) **(no material change)** there has been no material change in the financial condition of the Developer (since its incorporation) which would prejudice the ability of the Developer to perform its obligations under the OSD Contract Documents;
- (p) **(full disclosure)** it is not aware of any material facts or circumstances that have not been disclosed to the Principal and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this deed with the Developer;
- (q) **(no litigation)** no litigation, arbitration, mediation, conciliation, criminal or administrative procedures are current, pending or to its knowledge, threatened, which, if adversely determined, would or could have a material adverse effect on it or its ability to perform its financial or other obligations under any OSD Contract Document to which it is a party; and
- (r) **(FATA)** the Treasurer:
 - (i) cannot prohibit and has not prohibited this deed; and
 - (ii) has not prohibited, cannot prohibit or will not prohibit the transactions contemplated by this deed,
 under the FATA.

35.3 Repetition of representation and warranties

The representations and warranties contained in clauses 35.2(k), 35.2(l), 35.2(p) and 35.2(r) (*Developer representations and warranties*) are made on the date of this deed. Each other representation and warranty contained in clause 35.2 (*Developer representations and warranties*):

- (a) is made on the date of this deed; and
- (b) will be deemed to be repeated on each anniversary of the date of this deed up to and including the date which is the later of the expiry of the last Defects Correction Period under this deed and the last Applicable Transfer Date to occur,

with reference to the facts and circumstances then subsisting.

35.4 Obligations not affected

The Developer acknowledges that the representations and warranties in this clause 35 and the Developer's obligations under the OSD Contract Documents remain unaffected notwithstanding any receipt or review of, or comment or Direction on, documentation prepared by the Developer.

35.5 Undertakings by each party

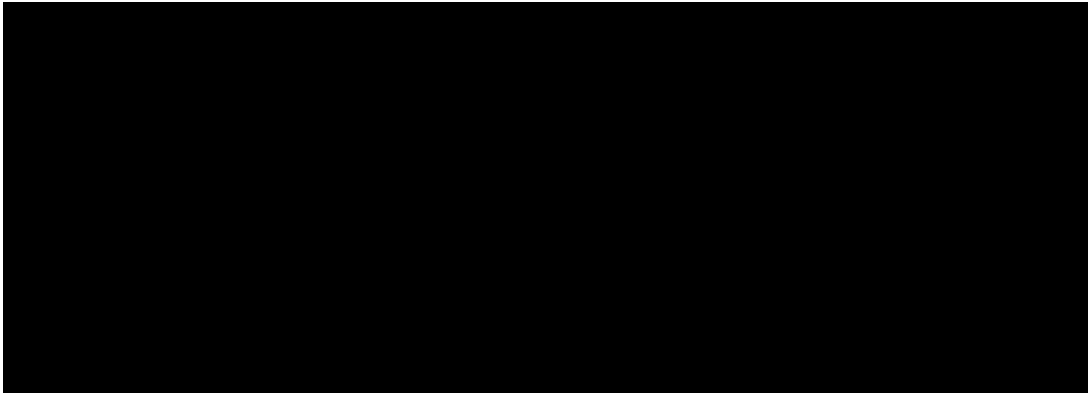
Each party undertakes to notify the other party promptly if any representation or warranty made or taken to be made by or on behalf of the party in connection with an OSD Contract

Document other than this deed is found, having regard to the other party's rights under, or by virtue of this deed, to be materially incorrect or materially misleading when made or taken to be made.

36. **COSTS AND OTHER AMOUNTS**

36.1 **Cost of OSD Works**

Despite any other provision of this deed, in relation to the Cost of the carrying out or procuring the carrying out of the OSD Works:



(b) (**Developer's Costs**) subject to clause 36.1(a), the Developer must bear all other Costs incurred in respect of carrying out or procuring the carrying out of the OSD Works and complying with its obligations under this deed.

36.2 **Developer claims**

(a) (**Progress Claim**) The Developer may give the Principal's Representative a progress claim with respect to a cost referred to in clause 36.1(a)(i) (*Cost of OSD Works*):

- (i) on the twentieth day of each month; and
- (ii) 30 Business Days after the issue of a Certificate of Completion.

(b) (**Format of Claim**) For each progress claim made by the Developer under clause 36.2(a), the Developer must give the Principal's Representative a claim in a format required by the Principal's Representative (including electronic format), together with a tax invoice, showing the amount claimed by the Developer and identifying the work, services, Construction Materials and Construction Plant to which the claim relates.

(c) (**Supporting information**) Each claim made by the Developer under any OSD Contract Document must set out or be accompanied by:

- (i) all details, calculations, supporting documentation and other information required to substantiate the amounts claimed; and
- (ii) such other documentation or information as the Principal's Representative may require from time to time.

(d) (**Principal's payment**) The Principal must, within 15 Business Days after receipt of a claim made by the Developer in accordance with clause 36.2(a), pay the amount due to the Developer, unless the amount is disputed by the Principal in accordance with the Dispute Procedure.

36.3 **Taxes, Outgoings and other fees and levies**

- (a) **(Developer to pay)** Subject to clause 36.3(b), the Developer must pay:
 - (i) all Taxes and Outgoings (except land tax) of whatever description in cash or in kind as lawfully imposed by any Authority in respect of the Construction Site on and from the Construction Licence Commencement Date until in respect of an Applicable Transfer Area, the Applicable Transfer Date; and
 - (ii) all Taxes and fees (including registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with any OSD Contract Document (including any discharge of an OSD Contract Document) or a payment or receipt or any other transaction excluding any fine or penalty incurred due to the default of the Principal.
- (b) **(Principal to pay)** The Principal must pay all council rates, water rates and land taxes imposed by any Authority in respect of the Construction Site until in respect of an Applicable Transfer Area, the Applicable Transfer Date.
- (c) **(Employment and Similar Taxes)** The Developer indemnifies the Principal against, and must pay on demand the amount of, all losses, liabilities and Taxes incurred as a result of the Principal becoming liable to pay any Taxes or withhold any amount in respect of employees, contractors or personnel of the Developer or any of its Associates (including by being treated as the employer of any such persons).

36.4 **Stamp duty**

- (a) The Developer must pay, or procure the payment by the Purchaser, and must indemnify the Principal for, all stamp duty assessed and payable on and in connection with the OSD Contract Documents and the transactions which they contemplate.
- (b) This clause 36.4 does not merge on termination of this deed or completion of any transaction under the OSD Contract Documents.

36.5 **Each party to pay its costs**

Unless otherwise expressly provided for in this deed, each party agrees to pay its own costs of and incidental to the negotiation and execution of this deed.

36.6 **Right of set-off**

- (a) **(Amounts set-off)** The Principal may withhold, set-off or deduct from the money which would otherwise be payable to the Developer or which would otherwise be due to the Developer under this deed:
 - (i) any debt or other moneys due from the Developer to the Principal;
 - (ii) any bona fide claim to money which the Principal may have against the Developer, whether for damages (including liquidated damages) or otherwise; or
 - (iii) any other amount the Principal is entitled to withhold, set-off or deduct under this deed,

under or arising out of or in connection with this deed or the carrying out or procuring the carrying out of the OSD Works and the Principal may make such withholding, set-off or deduction whether or not such amounts were included in a payment schedule issued by the Principal's Representative.

- (b) **(Survival)** This clause 36.6 will survive the termination of this deed.

36.7 **General payment requirements**

- (a) **(Method of payment)** A party must make payments under this deed to the other party (or a person nominated by the other party in a notice to the first party) by the method the other party reasonably requires without deduction, unless prohibited by Law or otherwise provided in this deed.
- (b) **(When to make payments)** A party must make payments to the other party under this deed on the due date in immediately available funds.
- (c) **(No demand)** A party need not make demand for any amount required to be paid by the other party under this deed, unless this deed expressly specifies that demand must be made.
- (d) **(Incorrect amount paid)** If a party pays an amount and it is found later that the amount payable should have been:
- (i) higher, then the other party may demand payment of the difference; or
 - (ii) lower, then the other party must repay the difference,
- even though the other party has given the first party a receipt for payment of the incorrect amount.
- (e) **(Currency)** The parties waive any right which they have in any jurisdiction to pay an amount in a currency other than the currency payable under this deed.
- (f) **(Interest on overdue money)** A party must pay simple interest at the rate of ■■■ above the Bank Bill Rate on any amount under this deed which is not paid on the due date for payment. That interest:
- (i) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days; and
 - (ii) is payable on demand from the other party or, if no such demand is made, on the last day of each calendar month.
- (g) **(Compounding)** Interest payable under clause 36.7(f) which is not paid when due for payment may (at any time before payment) be added to the overdue amount payable by a party monthly or the last day of each calendar month. Interest is payable on the increased overdue amount at the rate of ■■■ above the Bank Bill Rate in the manner set out in clause 36.7(f).
- (h) **(Interest on Liability merged in judgment or order)** If a Liability under this deed becomes merged in a judgment or order, then a party agrees to pay interest to the other party on the amount of that liability as an independent obligation. The interest accrues both before and after that judgment or order from the date the Liability was due for payment until it is paid, at a rate that is the higher of ■■■ above the Bank Bill Rate and the rate payable under the judgment or order.

- (i) **(Tender on termination)** Money tendered by a party after the termination of this deed and accepted by the other party may be applied in the manner the other party decides.

36.8 **Principal's right to reimbursement**

Any moneys paid by the Principal in respect of any Liability expressly imposed on the Developer under this deed, notwithstanding that any Law imposes that Liability on the Principal, becomes a debt due and payable by the Developer to the Principal under this deed.

37. **NOTICES**

- (a) **(Meaning of Notice)** Wherever referred to in this clause 37, **Notice** means each communication (including each notice, consent, approval, request and demand) under or in connection with this deed.
- (b) **(Content of Notice)** Each Notice must:
 - (i) be in writing;
 - (ii) be addressed:
 - (A) in the case of a Notice from the Developer, to the Principal's Representative; or
 - (B) in the case of a Notice from the Principal, to the Developer's Representative;
 - (iii) comply with any requirements for specific notices (eg notices of Claims) specified by the Principal in writing;
 - (iv) be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party; and
 - (v) be delivered or posted to the address or sent to the email address shown in item 10 or item 11 (as relevant) of the Reference Schedule (or to any new address or email address notified by the intended recipient).
- (c) **(Communication received)** A communication is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) 3 Business Days after the date of posting;
 - (ii) (in the case of international post) 7 Business Days after the date of posting;
 - (iii) (in the case of delivery by hand) on delivery; and
 - (iv) (in the case of email):
 - (A) if it is transmitted by 5:00pm (Sydney time) on a Business Day – on that Business Day; or
 - (B) if it is transmitted after 5:00pm (Sydney time) on a Business Day, or on a day that is not a Business Day - on the next Business Day.

- (d) (**Interface Contractor**) If this deed requires the Developer to provide any documents, notices or other communications to an Interface Contractor, the Developer must address those communications to the relevant Interface Contractor at the address notified by the Principal to the Developer.

38. **GENERAL**

38.1 **Governing Law and jurisdiction**

- (a) This deed is governed by and must be constructed according to the Law in force in New South Wales.
- (b) Each party irrevocably and unconditionally 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 that may be brought at any time relating to this deed.

38.2 **Amendments**

This deed may only be amended, varied or replaced by written agreement executed by or on behalf of each party.

38.3 **Waiver**

- (a) 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.
- (b) 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.
- (c) No waiver by the Principal of:
- (i) a breach of a term of this deed; or
- (ii) any other failure by the Developer to comply with a requirement of this deed, including any requirement to give any notice which it is required to give in order to preserve its entitlement to make any Claim against the Principal,

operates as a waiver of another breach of that term or of a breach of any other term of this deed or failure to comply with any other requirement of this deed.

38.4 **Survival of certain provisions; no merger**

- (a) (**Surviving clauses**) [REDACTED] or the schedules to this deed:
- (i) clause 1 (*Definitions and interpretation*), clause 2.2 (*Acceptance of risk*), clause 3 (*Security*), clause 4.6 (*Home Building Act*), clause 7.8 (*Exchange of information between government agencies*), clause 9.2 (*Information Documents*), [REDACTED] clause 23 (*Intellectual Property Rights*), clause 27 (*GST*), clause 29 (*Indemnity and Liability Exclusions*), clause 30.9 (*Principal's rights after termination*), clause 30.10 (*Termination Payments*), clause 30.11 (*Preservation of rights*), clause 31 (*Confidentiality and Permitted Disclosure*), clause 34 (*Dispute Resolution*), clause 36.6 (*Right of set-off*), clause 36.7 (*General payment requirements*), clause 36.8 (*Principal's right to reimbursement*), clause 37

(Notices), clause 38 (General), the representations, warranties and indemnities given by the Developer under this deed and any other provisions which are expressed to survive termination or by implication from their nature are intended to survive termination (together, the **Surviving Clauses**) and any rights arising on termination will survive rescission, termination or expiration of this deed; and

(ii) if this deed is rescinded or terminated, no party will be liable to any other party except:

(A) under the Surviving Clauses; or

(B) in respect of any breach of this deed occurring before such rescission or termination.

(b) (**No merger**) No right or obligation of any party will merge on completion of any transaction under this deed. All rights and obligations under this deed survive the execution and delivery of any transfer or other document which implements any transaction under this deed.

38.5 **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.

38.6 **Consents**

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

38.7 **No representation or reliance**

(a) Each party acknowledges that no party (nor any person acting on a party's behalf) has made any representation or other inducement to it to enter into this deed, except for representations or inducements expressly set out in this deed.

(b) Each party acknowledges and confirms that it does not enter into this deed in reliance on any representation or other inducement by or on behalf of any other party, except for representations or inducements expressly set out in this deed.

38.8 **Exercise of remedies**

(a) If the Developer breaches any of its obligations under this deed or any other OSD Contract Document, the Principal may exercise any or all of the rights and powers and pursue any or all of the remedies available to the Principal under the OSD Contract Documents and/or enforce any other legal or equitable remedy available under applicable Law.

(b) Each and every right, power and remedy of the Principal will be cumulative and in addition to any other right, power and remedy, whether under an OSD Contract Document or applicable Law, which may be exercised by the Principal and the exercise of a right, power or remedy will not be construed to be a waiver of the right to exercise any other right, power or remedy.

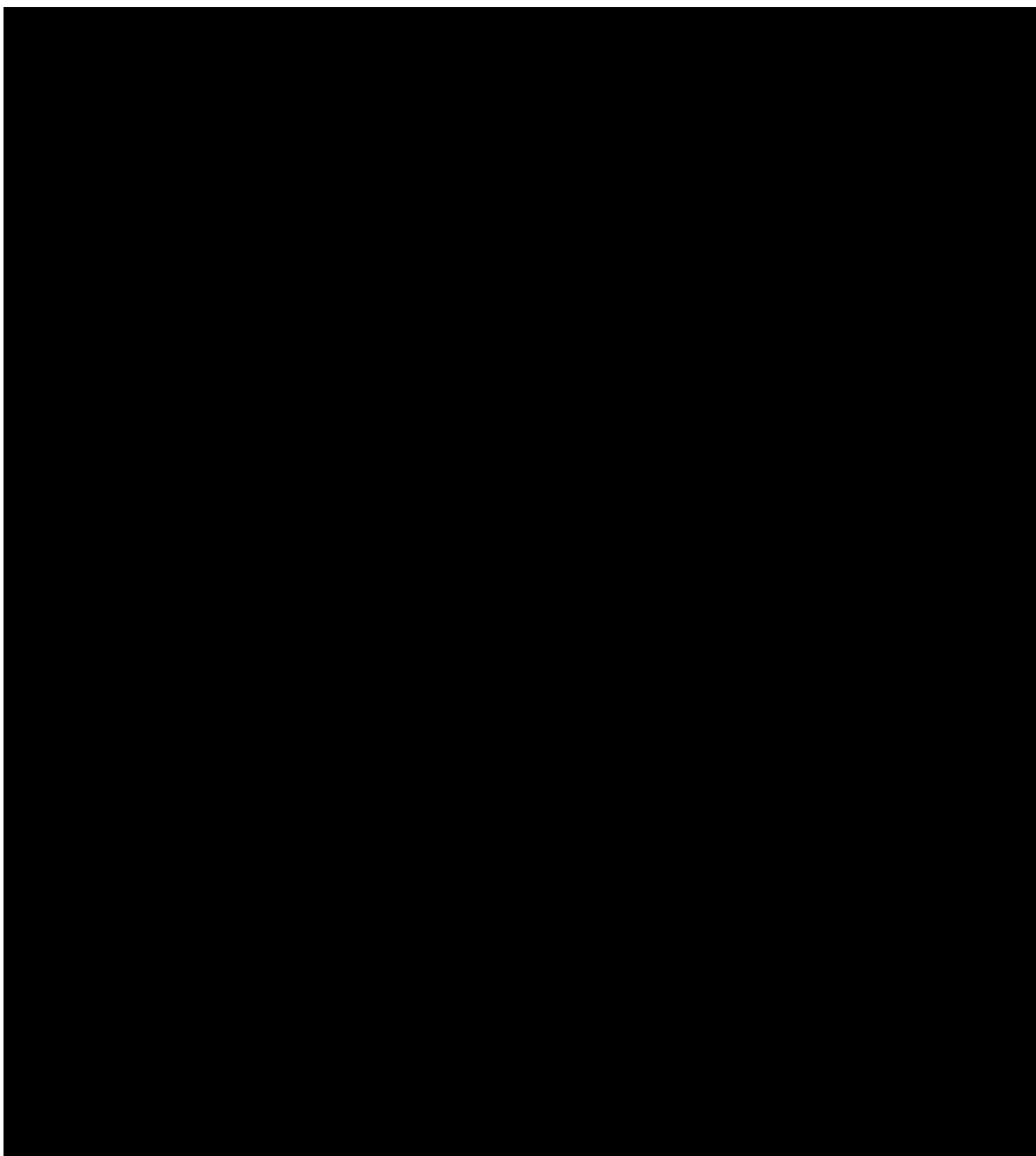
(c) No delay or omission by the Principal in the exercise of any right, power or remedy will impair such right, power or remedy or constitute a waiver of the relevant breach.

38.9 Entire agreement

To the extent permitted by Law, in relation to its subject matter, this deed embodies the entire understanding of the parties, and constitutes the entire terms agreed by the parties and supersedes any prior written or other agreement of the parties.

38.10 Joint and several liability

- (a) The rights and obligations of the Principal and the Developer, if more than one person, under this deed, are joint and several.
- (b) Each person constituting the Developer acknowledges and agrees that it will be causally responsible for the acts and omissions (including breaches of this deed) of the other as if those acts or omissions were its own and the Principal may proceed against any or all of them.



38.12 Excluding liability

Any provision of this deed which seeks to limit or exclude a liability of a party is to be construed as doing so only to the extent permitted by Law.

38.13 Severability

If, at any time, any provision of this deed is or becomes void, illegal, invalid or unenforceable in any respect under the Law of any jurisdiction, then:

- (a) that will not affect or impair:
 - (i) the legality, validity or enforceability in that jurisdiction of any other provision of this deed; or
 - (ii) the legality, validity or enforceability under the Law of any other jurisdiction of that or any other provision of this deed; and
- (b) the provision will be construed in a manner which:
 - (i) avoids the provision being void, illegal, invalid or unenforceable; and
 - (ii) subject to clause 38.13(b)(i), preserves to the maximum possible extent:
 - (A) the enforceability of the provision and the provisions of this deed; and
 - (B) the original effect and intent of this deed.

38.14 Relationship between the Principal and Developer

Nothing in, or contemplated by, this deed or any other OSD Contract Document will be construed or interpreted as:

- (a) constituting a relationship between the Principal and the Developer, or any other person, of partners, joint venturers, fiduciaries, employer and employee or principal and agent;
- (b) imposing any general duty of good faith on the Principal to the Developer or the Developer's Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the Principal under this deed or any other OSD Contract Document on a good faith basis; or
- (c) imposing any general duty of good faith on the Developer to the Principal or the Principal's Associates in relation to or arising out of this deed, other than to comply with the obligations (if any) expressly stated to be assumed by the Developer under this deed or any other OSD Contract Document on a good faith basis.

38.15 Transfer of functions or Public Transport Agency assets

- (a) The parties acknowledge that:
 - (i) a Public Transport Agency may be reconstituted, renamed, dissolved, replaced or restructured and that some or all of the powers, functions, assets, rights, liabilities or responsibilities of a Public Transport Agency may be transferred to or vested in another entity;

- (ii) if a Public Transport Agency is reconstituted, renamed, dissolved, replaced or restructured and/or some or all of that Public Transport Agency's powers, functions, rights or responsibilities are transferred to or vested in another entity, then unless otherwise notified by the Public Transport Agency, references in this deed to that Public Transport Agency must, subject to any facilitative legislation, be deemed to refer, as applicable, to the reconstituted, renamed, restructured or new entity or entity replacing that Public Transport Agency to the extent that such entity has assumed or has had transferred to it or vested in it those powers, functions, rights or responsibilities; and
 - (iii) a Public Transport Agency may be required to or may, at its absolute discretion, elect to (including as a result of changes to New South Wales government policy or directions) acquire, or dispose of, any property or assets.
- (b) The Developer acknowledges and agrees that it must, to the extent required by a Public Transport Agency and without limiting any facilitative legislation, negotiate in good faith, and procure that its Associates (as applicable) negotiate in good faith, any variations required to any OSD Contract Document, or any replacement agreement or agreements for any OSD Contract Document to give effect to a Public Transport Agency being reconstituted, renamed, dissolved, replaced or restructured.
 - (c) The Developer will be taken for all purposes to have consented to, and will not have, and no Public Transport Agency will be liable for, any claim as a result of any action, matter or circumstance referred to in, or contemplated by this clause 38.15.
 - (d) For the purposes of this clause 38.15, "**another entity**" means a government or semi-government entity including any agency, statutory corporation, statutory authority, department or state owned corporation.

38.16 **Principal not Liable**

Except to the extent expressly provided for in this deed, the Principal has no Liability for any Loss caused by or Claim in relation to the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

38.17 **Supervening legislation**

Any present or future legislation which operates to vary the obligations of the Developer in connection with this deed with the result that the Principal's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded, except to the extent that its exclusion is prohibited or rendered ineffective by Law.

38.18 **Set off of unliquidated amounts**

Except to the extent expressly provided for in this deed a party cannot set off any unliquidated amount owing by it to the other party under this deed arising from a breach of this deed by that party, against any liquidated amount owing by that other party.

38.19 **Continuing breaches**

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

38.20 **Step-in**

- (a) (**Principal may act**) Subject to any rights a Financier may have under a Financier's Side Deed, if a Step-in Event occurs, the Principal may, either itself or by a third

party, perform an obligation under this deed that the Developer was obliged to perform but which it failed to perform.

- (b) **(Notice)** Except in an emergency, the Principal must provide the Developer with 5 Business Days' prior written notice of its intention to take action under clause 38.20(a).
- (c) **(Costs)** Any Loss suffered or incurred by the Principal in so performing such an obligation will be a debt due and payable by the Developer to the Principal.
- (d) **(No obligation)** Where the Principal or the Principal's Representative is entitled under this deed to exercise any right or power to:
 - (i) direct or instruct the Developer; or
 - (ii) itself step-in,to take any action, or omit to take any action, it is not obliged to exercise that right or power, and may do so in their absolute discretion.
- (e) **(Developer remains responsible)** Where the Principal or the Principal's Representative does exercise any such right or power, the Developer remains responsible for, controls and assumes the risk of all environmental, health and safety issues relating to the OSD Works.

38.21 **Personal Property Securities Act**

- (a) **(Security Interest)** By signing this deed, the Developer acknowledges and agrees that if this deed and the transactions contemplated by it, operate as, or give rise to, a Security Interest, the Developer must do anything (including amending this deed or any other document, executing any new terms or any other document, obtaining consents, getting documents completed and signed and supplying information) that the Principal considers necessary under or as a result of the PPS Act for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under the PPS Act;
 - (ii) enabling the Principal to apply for any registration, or give any notification, in connection with the Security Interest, including the registration of a financing statement or financing change statement; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest and this deed.
- (b) **(Provisions not applying)** If Chapter 4 of the PPS Act applies to the enforcement of the Security Interest, the Developer agrees that sections 95, 120, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPS Act will not apply to the enforcement of the Security Interest.
- (c) **(Developer agreements)** The Developer:
 - (i) acknowledges that the Security Interests created under or pursuant to this deed relate to collateral and all proceeds in respect of that collateral (until the Principal is paid in full for the collateral);
 - (ii) acknowledges that to the maximum extent permitted by Law, it waives any right to receive a verification statement under the PPS Act in respect of the Security Interest; and

- (iii) agrees to waive any right it may have, or but for this clause may have had, under section 275(7)(c) of the PPS Act to authorise the disclosure of the above information.
- (d) (**No disclosure**) The parties agree that neither of them will disclose information of the kind referred to in section 275(1) of the PPS Act and that this clause constitutes a confidentiality agreement within the meaning of the PPS Act.

38.22 Vienna Convention

The United Nations Convention on Contracts for the *International Sale of Goods and the Sale of Goods (Vienna Convention) Act 1986* (NSW) do not apply to this deed.

38.23 Attorneys

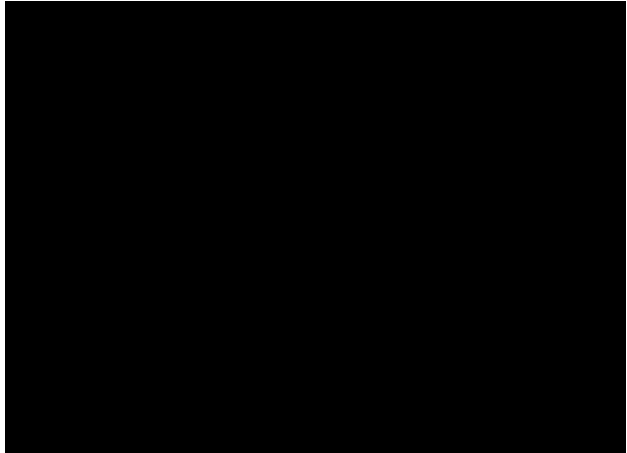
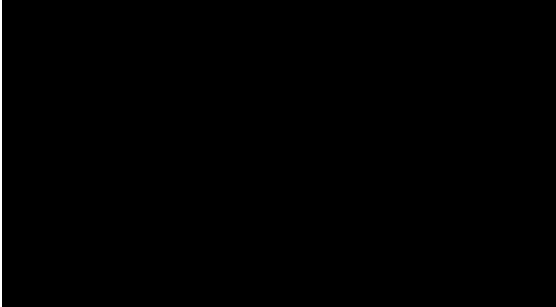
Each person who executes this deed on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

38.24 Counterparts

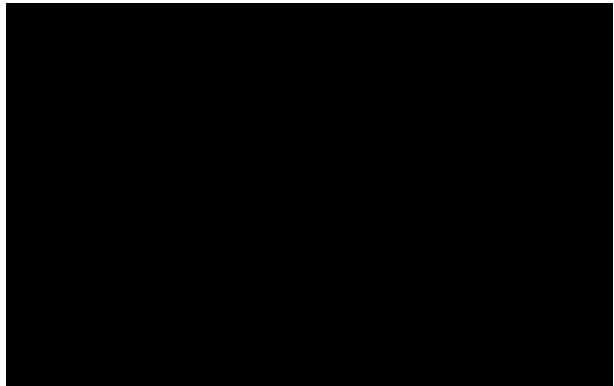
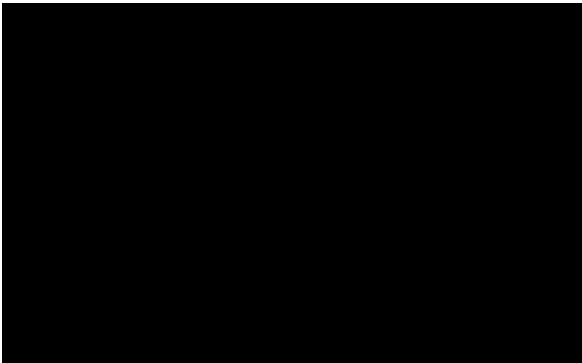
This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the agreement of each party who has executed and delivered that counterpart.

EXECUTED as a deed.

SIGNED for **SYDNEY METRO**
ABN 12 354 063 515 by its duly
authorised delegate, in the presence of:



EXECUTED by **THIRDI CROWS NEST**
LOT B PTY LTD ACN 663 888 275 in
accordance with section 127 of the
Corporations Act 2001 (Cth):





Crows Nest Station Development Over Station Development

Project Delivery Agreement (Development Lot B) –
Schedules

Part A (General)

Contract No: 505B

Sydney Metro

ABN 12 354 063 515

and

Thirdi Crows Nest Lot B Pty Ltd

ACN 663 888 275

SCHEDULE A1

Reference Schedule

(Clause 1.1)

No	Item	Details
1.	Developer <i>(Definition of Developer)</i>	Name: Thirdi Crows Nest Lot B Pty Ltd ACN: 663 888 275 Address: Level 2, 343 Pacific Highway, North Sydney NSW 2060
2.	Developer Guarantor <i>(Definition of Developer Guarantor)</i>	(a) Name: Total Surplus Holdings Limited [REDACTED] Address: [REDACTED] [REDACTED] [REDACTED] [REDACTED] (b) Name: Thirdi Group Pty Ltd ACN: 660 677 314 Address: [REDACTED]
3.	D&C Contractor <i>(Definition of D&C Contractor)</i>	Name: A.W. Edwards Pty Ltd ABN: 76 000 045 849 Address: [REDACTED] 3 [REDACTED]
4.	D&C Contractor Guarantor <i>(Definition of D&C Contractor Guarantor)</i>	Name: [REDACTED] Company Number: [REDACTED] Address: [REDACTED]
5.	Principal's Representative <i>(Definition of Principal's Representative)</i>	Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED] Any Notice in relation to a Claim or a Dispute must also be sent to the General Counsel [REDACTED] and Executive Director Legal – Property, Planning and Placemaking [REDACTED] of Sydney Metro, or such other person as notified by the General Counsel or the Executive Director Legal – Property, Planning and Placemaking in writing

No	Item	Details
6.	Developer's Representative <i>(Definition of Developer's Representative)</i>	Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]
7.	Principal's Executive Negotiator <i>(Definition of Executive Negotiator)</i>	[REDACTED] [REDACTED]
8.	Developer's Executive Negotiator <i>(Definition of Executive Negotiator)</i>	Name: [REDACTED] Email: [REDACTED] Phone: [REDACTED]
9.	Appointed Principal Contractor <i>(Definition of Appointed Principal Contractor and clause 5.3)</i>	Name: A.W. Edwards Pty Ltd ABN: 76 000 045 849 Address: [REDACTED]
10.	Principal's notice details <i>(Clause 37(b)(v))</i>	Address: Level 43, 680 George Street Sydney NSW 2000 Email: [REDACTED] Attention: [REDACTED] and any additional person notified by the Principal in writing. Any Notice in relation to a Claim or a Dispute must also be sent to the General Counsel [REDACTED] and Executive Director Legal - Property, Planning and Placemaking [REDACTED] of Sydney Metro, or such other person as notified by the General Counsel or the Executive Director Legal - Property, Planning and Placemaking in writing
11.	Developer's notice details <i>(Clause 37(b)(v))</i>	Address: [REDACTED] Email: [REDACTED] Attention: [REDACTED]
12.	Licence Fee <i>(Definition of Licence Fee)</i>	[REDACTED]
13.	Date for Completion <i>(Definition of Date for Completion)</i>	[REDACTED]

SCHEDULE A2

Subcontract Requirements

(Clause 17.3)

Item	Requirement
Part A - Subcontracts and Significant Subcontracts	
1.	Each Subcontract that the Developer or the D&C Contractor enters into must contain a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each Subcontract whether these rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
2.	Each Subcontract that the Developer or the D&C Contractor enters into must contain a requirement that in any further contract that a Subcontractor enters into with a third party for the performance of any obligation or right of the Developer under this deed, contains a term that (to the extent permitted by Law) excludes the application of Part 4 of the <i>Civil Liability Act 2002</i> (NSW) in relation to all and any rights, obligations or Liabilities of either party under each further agreement whether such rights, obligations or Liabilities are sought to be enforced by a Claim in contract, tort or otherwise.
3.	Each Subcontract that the Developer or the D&C Contractor enters into must include provisions expressly requiring the Subcontractor to comply with the Chain of Responsibility Provisions and each further Subcontract that a Subcontractor enters into must also contain a clause to the same effect which is binding on the Subcontractor.
Part B - Significant Subcontracts and [REDACTED]	
1.	Each Significant Subcontract and the [REDACTED] must contain provisions equivalent to clause 5.2 (<i>Work health and safety</i>) and requiring Significant Subcontractors and the Development Manager to prepare a safety management plan in accordance with the requirements of Schedule A8 (<i>Project Plan Requirements</i>).
2.	Each Significant Subcontract and the [REDACTED] must contain provisions recognising the Principal's rights under clause 8.7 (<i>Principal's right of entry to Construction Site</i>).
3.	Each Significant Subcontract and the [REDACTED] must contain provisions which are consistent with the Principal's rights under clause 23.2(a) (<i>Licence to the Principal</i>).

SCHEDULE A3

Modification Procedure

(Clauses 1.1, 13 and 36.1)

1. GENERAL

1.1 Purpose

Each party acknowledges and agrees that:

- (a) throughout the term of this deed, a number of changes to the requirements of this deed may be required;
- (b) the purpose of this Schedule A3 is to facilitate and efficiently give effect to such changes by incorporating a number of processes for the implementation of change and structuring each process to minimise transaction time and cost; and
- (c) it must seek to give effect to the purpose stated in clause 1.1(b) of this Schedule A3 in complying with its obligations under this Schedule A3.

1.2 Open Book

All documentation and information provided by the Developer under this Schedule A3 (including any documentation or information prepared by the Developer's Associates) must be provided on an Open Book Basis.

1.3 No Liability unless Modification Order

The Principal will have no Liability to the Developer arising out of, or in any way in connection with, any Modification, except where the Developer is directed to implement a Modification pursuant to a Modification Order.

2. PROPOSED MODIFICATIONS

2.1 Proposed Modifications

- (a) The Principal's Representative may:
 - (i) **(OSD Enabling Works Defect)** if clause 14 (*Defects in the OSD Enabling Works*) applies, at any time after the Station Date of Completion and prior to the expiry of the OSD Enabling Works Defects Correction Period, if the Principal's Representative has given a notice to the Developer in accordance with clause [REDACTED] that it would like to explore whether the Developer could:
 - (A) rectify an OSD Enabling Works Defect; or
 - (B) modify the OSD Works or the carrying out of the OSD Works to accommodate the impact (if any) of the OSD Enabling Works Defect on the OSD Works,**(OSD Enabling Works Defect Modification)**, issue a Modification Proposal Request to the Developer setting out details of the proposed Modification that the Principal is considering; and
 - (ii) **(OSD Enabling Works Modification)** at any time prior to the date which is 40 Business Days after the Station Date of Completion, issue a Modification

Proposal Request to the Developer setting out details of the proposed amendments the Principal is considering together with the updated OSD Enabling Works and/or OSD Enabling Works Design Documentation (as applicable).

- (b) **(Modification Proposal)** As soon as practicable, and in any event within 20 Business Days after receiving a Modification Proposal Request (or such longer period as is agreed by the Principal's Representative, acting reasonably, having regard to the size and complexity of the proposed Modification), the Developer must provide the Principal's Representative with a Modification Proposal setting out:
- (i) the Modification Costs of the proposed Modification;
 - (ii) the effect (if any) that the proposed Modification will have on the Developer's Program (including any extension of time required to the Date for Completion and the measures the Developer proposes to take to avoid, mitigate or minimise the effect of the proposed Modification on the Developer's Program);
 - (iii) any Approvals required to implement the proposed Modification, and the effect of the proposed Modification on any existing Approvals or the Developer's ability to comply with those Approvals;
 - (iv) the effect (if any) which the proposed Modification will have on the Developer's ability to satisfy its obligations under this deed (including any warranties given by the Developer under this deed) or exercise its rights under this deed;
 - (v) where the proposed Modification is an OSD Enabling Works Modification, whether any OSD Enabling Works Design Errors arise as a direct result of the proposed Modification;



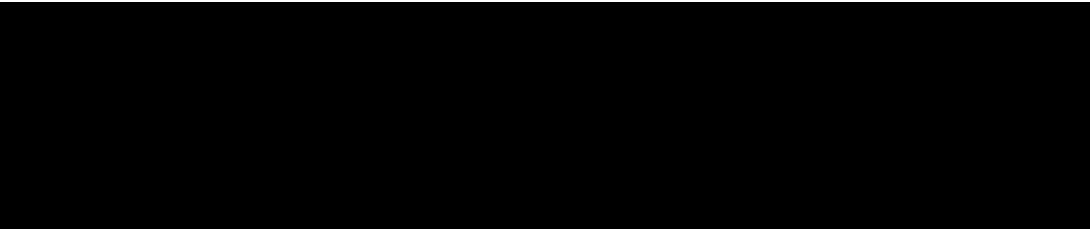
- (vii) any other information requested by the Principal's Representative in the Modification Proposal Request.
- (c) **(No obligation to proceed)** The Principal's Representative will not be obliged to proceed with any proposed Modification that is the subject of a Modification Proposal Request.

2.2 Modification Orders

- (a) **(Modification Order)** Whether or not the Principal has issued a Modification Proposal Request under clause 2.1(a) of this Schedule A3, the Principal's Representative may:
- (i) if clause 14 (*Defects in the OSD Enabling Works*) applies, in respect of an OSD Enabling Works Defect Modification, at any time after the Station Date of Completion and prior to the expiry of the OSD Enabling Works Defects Correction Period; and
 - (ii) in respect of an OSD Enabling Works Modification, at any time prior to the date which is 40 Business Days after the Station Date of Completion,

issue a Modification Order in respect of the OSD Enabling Works Defect Modification or the OSD Enabling Works Modification (as applicable).

- (b) **(No limitation on Principal's power)** Except as expressly set out in clause 2.2 of this Schedule A3, there is no limitation on the power of the Principal's Representative to direct an OSD Enabling Works Defect Modification or an OSD Enabling Works Modification, and no Modification or direction to implement such Modifications will invalidate this deed.
- (c) **(Implementation of Modification Order)** If the Principal's Representative directs the Developer to implement the Modification by issuing a Modification Order:
 - (i) the Developer must promptly implement the Modification on the basis of the Modification Order irrespective of:
 - (A) the nature, extent or value of the work the subject of the Modification;
 - (B) the location or timing (including the impact on the Date for Completion) of the work involved in the Modification; or
 - (C) any Dispute related to the Modification;
 - (ii) the Developer will be relieved of its obligations under this deed to the extent specified in the Modification Order; and
 - (iii) the Principal must pay the Developer the Modification Costs of the Modification in accordance with clause 3.2 of this Schedule A3.



- (e) **(Notice)** Where the Principal's Representative directs a Modification Order but has not issued a Modification Proposal Request, the Developer may, at its own cost and within 10 Business Days of receipt of the Modification Order (or such longer period as the Principal may agree) provide the Principal with a notice setting out the details specified in clause 2.1(b) of this Schedule A3. Without limiting the parties' rights under Schedule A4 (*Dispute Procedure*), the Principal is not required to take any action with respect to the Developer's notice provided under this clause 2.2(e) of this Schedule A3.

2.3 Disputes

If the Developer disagrees with a matter determined by the Principal's Representative under this Schedule A3, the Developer may refer the matter for dispute resolution in accordance with the Dispute Procedure.

3. MODIFICATION COSTS

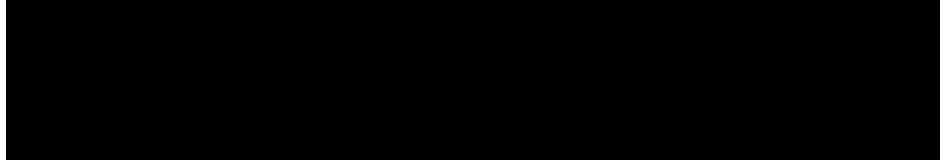
3.1 Principles for calculating Modification Costs

- (a) **(Incremental costs only)** Modification Costs are to be determined on an incremental basis where only costs that would not be incurred but for the Modification Order are taken into account.

(b) **(Fair and reasonable, arm's length arrangements)** All increases or decreases in costs included in the calculation of Modification Costs must:

(i) be reasonably incurred by:

(A) the Developer; or



(ii) reflect commercial arm's length arrangements.

(c) **(Subcontractors)** When calculating the Modification Costs, the Developer must:

(i) ensure that all Subcontractors minimise any increase in costs and maximise any reduction in costs which would have been incurred or derived as a result of the Modification Order; and

(ii) ensure that:

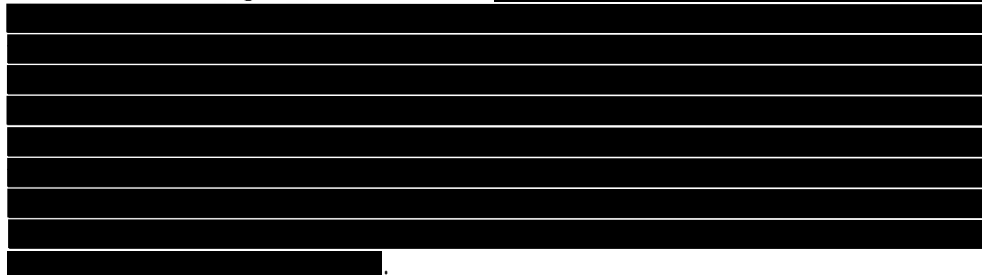
(A) Subcontractors provide all information required to enable an assessment of the Modification Costs on an Open Book Basis; and

(B) the calculation of the Modification Costs applicable to each Subcontractor is calculated in accordance with the principles set out in this clause 3.1 of this Schedule A3.

(d) **(No double counting)** Any Modification Costs must be calculated without double counting of any amounts (including, where Modification Costs are payable in connection with a Delay Event, any double counting of any amounts attributable to delay).

(e) **(No unnecessary contracting layers)** No entity which is a Related Entity of the Developer, the Development Manager or the D&C Contractor may perform work arising out of a Modification Order as a subcontractor to the Developer (other than the Development Manager), the Development Manager or the D&C Contractor or to any other contractor further down the contracting chain without the Principal's Representative's prior written consent.

(f) **(Maximum margin)** In respect of any Modification Order, the aggregate of the margins charged by the Developer and the D&C Contractor must not exceed [redacted] of the applicable amounts referred to in paragraphs (a) and (b) of the definition of "Modification Cost", unless otherwise agreed by the Principal's Representative in writing. The Developer will use its best endeavours to ensure that the Subcontractors' margins are reasonable. [redacted]

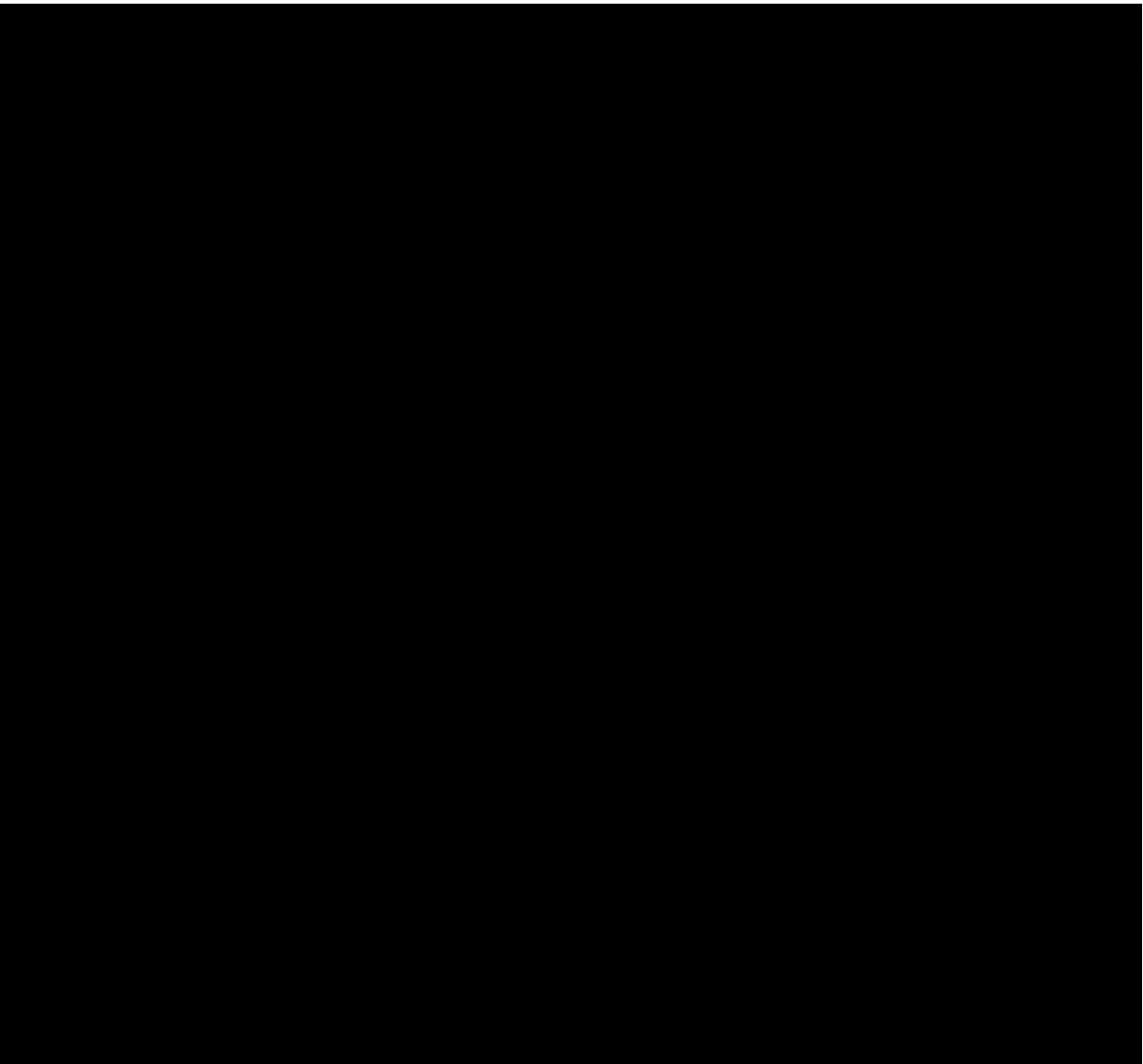


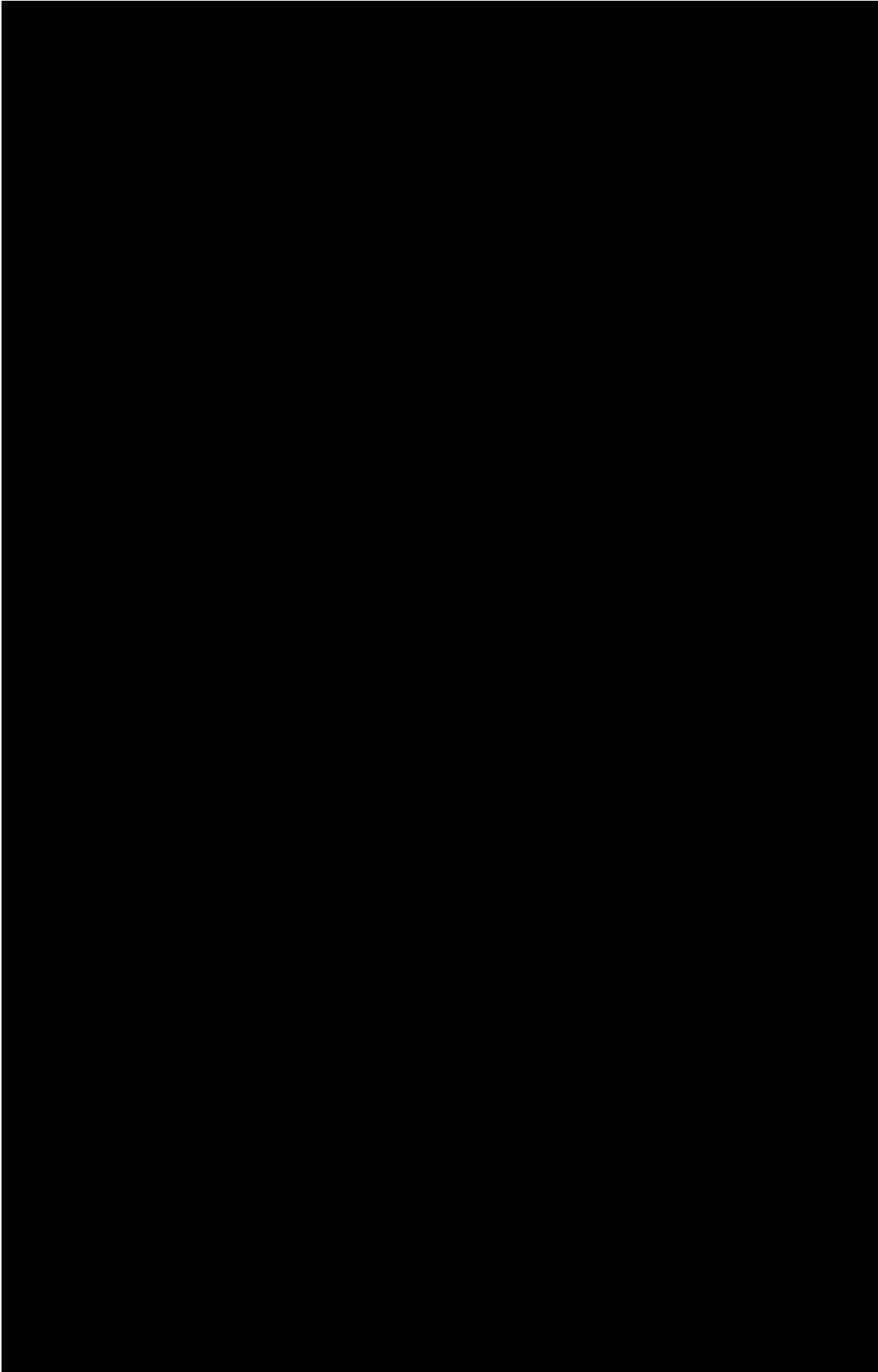
3.2 Modification Costs

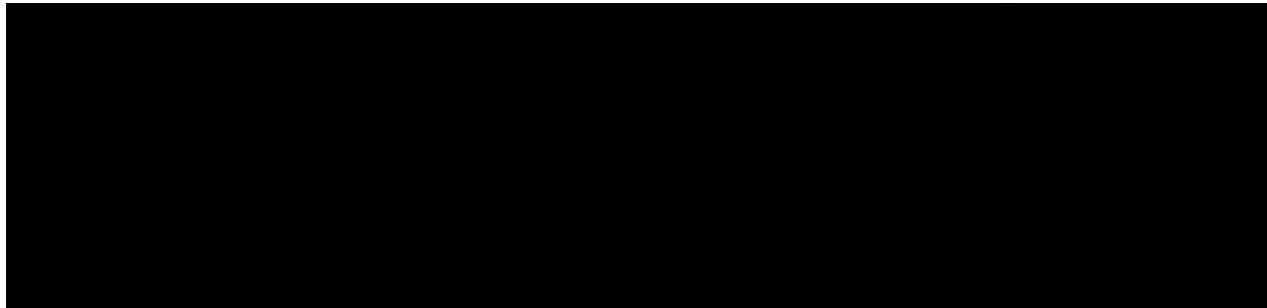
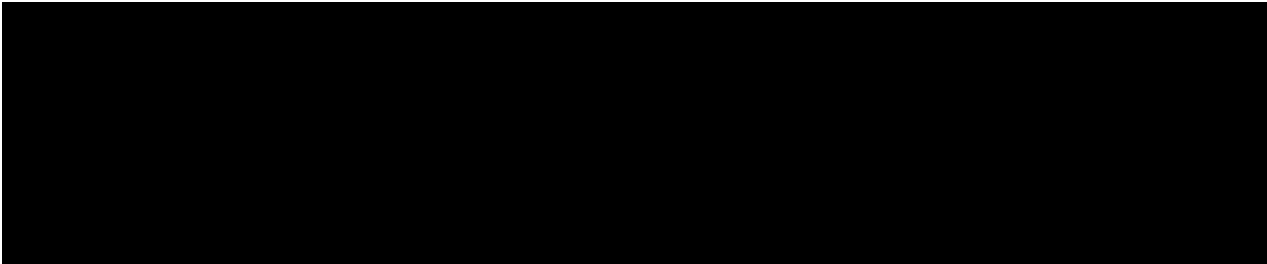
If a Modification directed by the Principal's Representative under clause 2 of this Schedule A3 results in Modification Costs, then the Principal must pay the Developer or, if requested to do so by the Developer in writing must pay the Development Manager, the Modification Costs:

- (a) **(as agreed)** if agreed between the parties, as agreed;
- (b) **(pending agreement)** pending agreement between the parties or determination of the Modification Costs in accordance with the Dispute Procedure, as reasonably determined by the Principal's Representative; and
- (c) **(following agreement)** following determination or agreement between the parties, as so determined or agreed,

progressively in accordance with clause 36.2 (*Developer claims*). If the Modification Costs paid under this clause 3.2 of this Schedule A3 are more or less than the relevant Modification Costs as subsequently determined or agreed, the difference must be paid by the relevant party to the other.







SCHEDULE A4

Dispute Procedure

(Clauses 1.1 and 34)

1. DEFINITIONS

In this Schedule A4:

ACICA means the Australian Centre for International Commercial Arbitration.

Consultation has the meaning given in clause 2.1(b) of this Schedule A4.

Expert means the person appointed to determine a Dispute pursuant to clause 2.3 of this Schedule A4.

Notice of Dispute means a notice given under clause 2.2(b) of this Schedule A4.

Notice of Issue means a notice given under clause 2.1(a) of this Schedule A4.

2. DISPUTE PROCEDURE

2.1 Consultation – Project Control Group

- (a) **(Notice of Issue)** Where a Dispute arises, the Dispute must be notified to the Project Control Group by written notice of the issues in Dispute (**Notice of Issue**) from the dissatisfied party (**Party A**) to the other party (**Party B**) and each other member of the Project Control Group. The Notice of Issue must provide brief particulars of the issues in Dispute.
- (b) **(Parties to consult)** Within 10 Business Days after the date of the Notice of Issue, the Project Control Group must meet (**Consultation**) to undertake genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; or
 - (ii) clarifying and narrowing the issues in Dispute in the event that the Dispute is not resolved.
- (c) **(Referral to executive negotiation)** If the Dispute is not resolved within 15 Business Days of the Notice of Issue, Party A must refer those parts of the Dispute that remain unresolved to executive negotiation in accordance with clause 2.2 of this Schedule A4 by notice to Party B.

2.2 Executive negotiation

- (a) **(Referral to executive negotiation)** If the Dispute is not resolved by Consultation, the Dispute must be referred to the Executive Negotiators and the Executive Negotiators must, within 20 Business Days after the date on which the Notice of Issue was given, meet and undertake genuine and good faith negotiations with a view to:
 - (i) resolving the Dispute; and
 - (ii) agreeing on a procedure to resolve the Dispute in the event that it is not resolved.

- (b) **(Referral to expert determination)** If the Executive Negotiators:
- (i) have not resolved the Dispute; and
 - (ii) have not reached agreement on a procedure to resolve the Dispute,
- within 20 Business Days after the date on which the Notice of Issue was given (or such longer period of time as the parties agree in writing) then, whether or not the Executive Negotiators have met and undertaken negotiations, Party A must refer those parts of the Dispute that remain unresolved to expert determination by notice to Party B (**Notice of Dispute**).
- (c) **(Requirements of Notice)** The Notice of Dispute must:
- (i) be in writing;
 - (ii) state that it is a Notice of Dispute under clause 2.2(b) of this Schedule A4; and
 - (iii) include or be accompanied by reasonable particulars of those parts of the Dispute that remain unresolved including:
 - (A) references to any:
 - (aa) provisions of this deed; and
 - (bb) acts or omissions of any person, relevant to the Dispute;
 - (B) the relief sought and the basis for claiming the relief sought; and
 - (C) copies of, or relevant extracts from, any documents in support of the claim.

2.3 Expert determination

- (a) **(Expert determination in accordance with Rules)** Any Dispute which is referred to expert determination under clause 2.2(b) of this Schedule A4 will be conducted in accordance with the Resolution Institute's Expert Determination Rules, as modified by Annexure 1 of this Schedule A4.
- (b) **(Provision of information)** Both parties must promptly make available to the Expert all such additional information, access to the Construction Site and other relevant places and all appropriate facilities, as the Expert may require for the purposes of making a determination on the Dispute.
- (c) **(Exclusion of Proportionate liability regime)** The parties agree that, to the extent permitted by law:
- (i) the powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on the Expert; and
 - (ii) the Expert has no power to make a binding or non-binding determination or any award in respect of a Dispute by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to expert determination.

- (d) **(Expert to give determination)** Within 50 Business Days after the Expert has been appointed, or within such other period as may be proposed by the Expert and approved by both parties, the Expert must give its determination in writing, which must be reasoned and must state that it is given under this clause 2.3 of this Schedule A4. The determination will be immediately binding on both parties, who must give effect to it unless and until it is revised, overturned or otherwise changed in an amicable settlement or a court judgment or an arbitral award made in court proceedings or an arbitration pursuant to this Schedule A4.

2.4 **Notice of dissatisfaction**

- (a) **(Notice of Dissatisfaction)** If:
 - (i) either party is dissatisfied with a determination made by an Expert under clause 2.3 of this Schedule A4, then either party may, within 10 Business Days after receiving the determination, give notice to the other party of its dissatisfaction; or
 - (ii) an Expert fails to give its determination within a period of 50 Business Days after the Expert has been appointed by the parties (or within such other period as may be proposed by the Expert and approved by both parties), then either party may, within 10 Business Days after this period has expired, give a notice to the other party of its dissatisfaction,

(Notice of Dissatisfaction).

- (b) **(Requirements of Notice)** A Notice of Dissatisfaction issued under clause 2.4 of this Schedule A4 must:
 - (i) state that it is given under clause 2.4 of this Schedule A4; and
 - (ii) set out the matter in Dispute and the reason(s) for dissatisfaction.
- (c) **(Restriction on commencement of proceedings)** Neither party will be entitled to commence court proceedings or arbitration in respect of the Dispute unless a Notice of Dissatisfaction has been given in accordance with this clause 2.4 of this Schedule A4.

2.5 **Final and binding decision**

- (a) **(Determination to become binding)** If an Expert has made a determination as to a Dispute, and no Notice of Dissatisfaction has been given by either party under clause 2.4 of this Schedule A4, within 10 Business Days after it received the Expert's determination, the determination will become final and binding upon both parties.
- (b) **(No challenge of binding determination)** Once a determination of an Expert has become final and binding under clause 2.5(a) of this Schedule A4, neither party will be entitled to challenge the determination on any basis.

2.6 **Litigation or arbitration**

- (a) **(Principal's discretion)** The Principal (in its absolute discretion) may within 5 Business Days after issuing or receiving a Notice of Dissatisfaction issue a notice to the Developer stating that the Dispute is to be determined by litigation pursuant to court proceedings.
- (b) **(Failure to issue notice)** If the Principal does not issue such a notice within the 5 Business Day period, the Dispute will be referred to arbitration.

2.7 Arbitration

- (a) **(ACICA Arbitration Rules)** Any arbitration conducted in relation to a Dispute will be conducted in accordance with the arbitration rules of the Australian Centre for International Commercial Arbitration known as the ACICA Arbitration Rules.
- (b) **(Seat in Sydney)** The seat of the arbitration will be Sydney, Australia.
- (c) **(Arbitration in English)** The language of the arbitration will be English.
- (d) **(Purpose and conduct)** The parties agree that:
 - (i) they have chosen arbitration for the purposes of achieving a just, quick and cost-effective resolution of any Dispute;
 - (ii) any arbitration conducted pursuant to this clause will not necessarily mimic court proceedings and the practices of courts will not regulate the conduct of the proceedings before the arbitral tribunal; and
 - (iii) in conducting the arbitration, the arbitral tribunal must take into account the matters set out in clauses 2.7(d)(i) to 2.7(d)(ii) of this Schedule A4, particularly in deciding issues such as:
 - (A) the procedural timetable;
 - (B) the number of written submissions that will be permitted;
 - (C) where appropriate, the length and scope of written submissions;
 - (D) the extent of document discovery permitted, if any;
 - (E) the consolidation of proceedings, when requested;
 - (F) the joinder of parties, when requested;
 - (G) the length of any hearing, if any; and
 - (H) the number of experts, if any, each party is permitted to appoint.
- (e) **(Arbitrator's powers)** The parties agree that:
 - (i) subject to clause 2.8 of this Schedule A4, the arbitral tribunal will have the power to grant all legal, equitable and statutory remedies, except punitive damages; and
 - (ii) section 24 of the *International Arbitration Act 1974* (Cth) will apply in an international arbitration context.
- (f) **(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 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.
- (g) **(Governing law)** This arbitration agreement will be governed by and must be construed according to the laws applying in New South Wales.

2.8 **Exclusion from determination or award**

- (a) **(Exclusion of Proportionate liability regime)** The powers conferred and restrictions imposed on a court by Part 4 of the *Civil Liability Act 2002* (NSW) are not conferred on an arbitral tribunal appointed in accordance with this Schedule A4.
- (b) **(Arbitral tribunal may not apply Part 4)** The arbitral tribunal has no power to make a binding or non-binding determination or any award in respect of a claim by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provisions in any other state or territory) which might, in the absence of this provision, have applied to any Dispute referred to the arbitral tribunal.

2.9 **Payments**

The Principal may withhold payment of that part of any amount which is the subject of a Dispute.

2.10 **Developer to continue performing obligations**

Despite the existence of any Dispute and notwithstanding the referral of the Dispute for resolution under this Schedule A4, the Developer must:

- (a) continue to procure the OSD Works; and
- (b) perform its other obligations under this deed.

2.11 **Urgent relief**

Nothing in this clause 2 of Schedule A4 will prejudice:

- (a) the right of a party to seek urgent injunctive or declaratory relief from a court; or
- (b) the Principal from making an application to the court pursuant to sections 415E, 434K and 451F of the Corporations Act, when enacted, or an equivalent provision under any Law.

2.12 **Dispute under related contracts**

The parties acknowledge and agree that:

- (a) the provisions of this Schedule A4 will not apply to any dispute, difference, controversy or claim between the parties which is to be resolved under a Cooperation and Integration Deed; and
- (b) the parties will be bound by the outcome of any dispute, difference, controversy or claim between the parties which is resolved pursuant to a Cooperation and Integration Deed.

2.13 **Survive termination**

This Schedule A4 will survive termination of this deed.

ANNEXURE 1: MODIFICATION TO THE EXPERT DETERMINATION RULES

Pursuant to Rule 4(2)(b) of the Resolution Institute Expert Determination Rules (**Rules**), the parties agree to modify the application of the Rules as follows:

Modifications are underlined or struck out.

RULE 1 Definitions

"Business Days" means any day in New South Wales other than a Saturday, Sunday or public holiday or 27, 28, 29, 30 or 31 December.

"Relevant Proportionate Liability Legislation" means:

- (a) Part IV of the *Civil Liability Act 2002* (NSW);
- (b) Part IVAA of the *Wrongs Act 1958* (Vic);
- (c) Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld);
- (d) Part 1F of the *Civil Liability Act 2002* (WA);
- (e) the *Proportionate Liability Act 2005* (NT);
- (f) Chapter 7A of the *Civil Law (Wrongs) Act 2002* (ACT);
- (g) Part 3 of the *Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001* (SA);
- (h) Part 9A of the *Civil Liability Act 2002* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"Relevant Security of Payment Legislation" means:

- (a) the *Building and Construction Industry Security of Payment Act 1999* (NSW);
- (b) the *Building and Construction Industry Security of Payment Act 2002* (Vic);
- (c) the *Building Industry Fairness (Security of Payment) Act 2017* (Qld);
- (d) the *Building and Construction Industry (Security of Payment) Act 2021* (WA);
- (e) the *Construction Contracts (Security of Payment) Act 2004* (NT);
- (f) the *Building and Construction Industry (Security of Payment) Act 2009* (ACT);
- (g) the *Building and Construction Industry Security of Payment Act 2009* (SA);
- (h) the *Building and Construction Industry Security of Payment Act 2009* (Tas); and
- (i) any Regulations enacted pursuant to the Acts listed in (a)-(h) above.

"OSD PDA" means the deed titled "Crows Nest Station Development - Over Station Development Project Delivery Agreement (Development Lot B)" (Contract No: 505B) between the Principal and the Developer dated [insert].

RULE 2 Appointment of the Expert

1. Unless otherwise agreed in writing by the parties, the Process shall be conducted:
 - a. by a person-agreed between the parties; or
 - b. if the parties are unable to agree on the identity of the person to be appointed within 3 Business Days of Party A giving Party B a Notice of Dispute, by a person nominated by the Australian Centre for International Commercial Arbitration (ACICA),
who accepts appointment as Expert.

2. Rule 2.2 is deleted in its entirety.

3. [no modification]

4. [no modification]

5. [no modification]

RULE 3 Agreement to be bound

1. [no modification]

2. Rule 3.2 is deleted in its entirety.

RULE 5 Role of the Expert

1. The Expert shall determine the Dispute as an expert in accordance with these Rules, the OSD PDA, the requirements of procedural fairness and according to law.

2. [no modification]

3. [no modification]

(a) The Expert shall be independent of, and act fairly and impartially as between the parties, giving each a reasonable opportunity of putting its case and dealing with that of any opposing party, and a reasonable opportunity to make submissions on the conduct of the Process.

(b) The Expert must take all reasonable steps to avoid any conflict of interest, potential conflict of interest or other circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly and impartially in relation to the Dispute.

(c) If at any time during the Process, the Expert becomes aware of any circumstances that might reasonably be considered to adversely affect the Expert's independence or capacity to act fairly or impartially in relation to the Dispute, the Expert must inform the parties immediately.

(d) The Expert's mandate will be terminated 7 days after the notice is provided by the Expert under Rule 5.4(c), unless the parties agree otherwise.

4. [no modification]

RULE 9 Conduct of the Process

1. [no modification]

2. [no modification]

3. ~~If The parties agree in writing (in the Agreement or otherwise), that the procedure in Schedule B shall~~ will apply.
4. The rules of evidence do not apply to the Process.

RULE 10 The Expert's Determination

1. ~~As soon as reasonably practicable after receiving the submissions and evidentiary material from the parties pursuant to Rule 9~~ The Expert shall determine the Dispute between the parties and notify such determination in writing to the parties within the time period specified in the OSD PDA.
2. [no modification]
3. ~~Subject to any rule of law or equity or written agreement of the parties to the contrary, Unless otherwise agreed by the parties,~~ the Expert's determination:
 - (a) may include for the payment of interest on any monetary sum determined, in such amount as the Expert considers reasonable;
 - (b) must allow for any amount already paid to a party under or for the purposes of any Relevant Security of Payment Legislation;
 - (c) may make such orders as he or she considers appropriate for the restitution of any amount so paid, and such other orders as he or she considers appropriate; and
 - (d) to the extent permitted by law, will not apply or have regard to the provisions of any Relevant Proportionate Liability Legislation.
4. [no modification]

RULE 12 Waiver of Right to Object

Rule 12 is deleted in its entirety.

SCHEDULE B

1. The reference to "twenty one (21) days" is replaced by "ten Business Days".
2. The reference to "twenty one (21) days" is replaced by "twenty Business Days".
3. The reference to "twenty one (21) days" is replaced by "five Business Days".
4. [no modification]
5. [no modification]
6. [no modification]
7. [no modification]
8. [no modification]

SCHEDULE A5

NGER Legislation

(Clause 5.7)

1. NGER LEGISLATION

1.1 Definitions

In this Schedule A5:

Emissions and Energy Data means any other data, information, records and reports:

- (a) of the type that a registered corporation or any other person is required by the NGER Legislation to keep or to provide to the Clean Energy Regulator concerning greenhouse gas emissions, energy production or energy consumption;
- (b) of the type that a registered corporation or any other person is entitled to provide to the Clean Energy Regulator under the NGER Legislation concerning reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project; and
- (c) concerning environmental emissions or energy production, use, consumption or efficiency of the type that any person is required by any other Law to keep or to provide to any Authority.

1.2 Compliance with NGER Legislation

The Developer acknowledges and agrees that:

- (a) if the OSD Works constitute a "facility" within the meaning of the NGER Legislation, then for the purposes of the NGER Legislation, it has operational control of that facility or facilities and will procure compliance with any obligations arising in respect of the OSD Works under the NGER Legislation;
- (b) if, for the purpose of the NGER Legislation, the Developer is not taken to have operational control of the facility or facilities referred to in clause 1.2(a) of this Schedule A5:
 - (i) the Developer must procure compliance with any obligations arising under the NGER Legislation in respect of the OSD Works as if it was the person with operational control of such facility or facilities; and
 - (ii) where section 11B(1) of the NGER Legislation applies, the Developer agrees that on written request by the Principal, the parties will, for the purposes of the NGER Legislation, jointly nominate the Developer (or, if required by the Developer, the Development Manager) as the person with operational control of such facility or facilities (with such nomination continuing until the completion of the OSD Works) and will do all things reasonably necessary to give effect to such nomination (including providing all relevant information and completing and executing all relevant documents and forms);
- (c) if, despite the operation of clause 1.2(a) and clause 1.2(b) of this Schedule A5, the Principal incurs, or but for this clause would incur, a liability under or in connection with the NGER Legislation as a result of or in connection with the OSD Works, and the NGER Legislation provides:
 - (i) that such liability can be transferred by the Principal to the Developer; or

- (ii) for a declaration or other mechanism by which the Developer (or, if required by the Developer, the Development Manager) can become the person with such liability under the NGER Legislation,

the Developer must, on written request by the Principal, do all things reasonably necessary to achieve such outcome (including providing all relevant information and completing and executing all relevant documents and forms);

- (d) the Developer must ensure that the Developer's Emissions and Energy Data is provided to the Principal's Representative:
 - (i) at such times as may be agreed by the Principal and the Developer, or, if no such agreement is reached, within 10 Business Days after receiving written notice from the Principal indicating that it requires the Developer's Emissions and Energy Data to be provided; and
 - (ii) on each occasion that the Developer is required to ensure that the Developer's Emissions and Energy Data is provided to an Authority under the NGER Legislation or any other applicable Law;
- (e) the Principal may use the Developer's Emissions and Energy Data for any purpose as it sees fit;
- (f) if, despite the operation of clause 1.2(c) of this Schedule A5, the Principal incurs a liability under or in connection with the NGER Legislation as a result of or in connection with the OSD Works:
 - (i) the Developer must assist the Principal to comply with the NGER Legislation in relation to any aspect of the OSD Works;
 - (ii) if the Principal notifies the Developer in writing that the Developer is required to provide the Developer's Emissions and Energy Data to the Principal, then the Developer must:
 - (A) ensure that the Developer's Emissions and Energy Data is provided to the Principal in the same manner, form and level of detail, based on the same methods and at the same times:
 - (aa) as if the Developer were obliged under the NGER Legislation or any other applicable Law to provide Emissions and Energy Data to an Authority and the Principal was that Authority;
 - (bb) in accordance with the requirements or approvals of any Authority and any Directions given by the Principal; and
 - (cc) without limiting clause 1.2(f)(ii)(A)(aa) or clause 1.2(f)(ii)(A)(bb) of this Schedule A5, as required to enable the Principal:
 - (a) to discharge, as and when they fall due, any obligations that it may have to provide the Developer's Emissions and Energy Data to any Authority; and
 - (b) to provide to any Authority any of the Developer's Emissions and Energy Data concerning any greenhouse gas project;

- (B) keep all such Developer's Emissions and Energy Data required to enable it to discharge its obligations under clause 1.2(f)(ii)(A) of this Schedule A5;
 - (C) retain records of its activities that are the basis of the Developer's Emissions and Energy Data for any financial year, for a period of not less than 7 years from the end of the year in which the relevant activities take place; and
 - (D) permit the Developer's Emissions and Energy Data to be examined, monitored, measured, copied, audited and verified by any persons appointed or authorised for that purpose by the Principal or any Authority, and co-operate with and provide all reasonable assistance to any such persons, including giving access to premises, plant and equipment, producing and giving access to documents (including any records kept and retained under clause 1.2(f)(ii)(B) and clause 1.2(f)(ii)(C)) of this Schedule A5 and answering questions; and
- (iii) the following applies:
- (A) the Developer's Emissions and Energy Data is provided to the Principal:
 - (aa) to discharge any obligations that the Principal may have to provide such Emissions and Energy Data to an Authority; and
 - (bb) so that the Principal may provide to any Authority any of the Developer's Emissions and Energy Data concerning any greenhouse gas project;
 - (B) the Principal may provide or otherwise disclose the Developer's Emissions and Energy Data to any Authority; and
 - (C) nothing in this Schedule A5 is to be taken as meaning that the Principal has agreed to perform on behalf of the Developer, any obligation that the Developer itself may have under any legislative requirement regarding the provision of Emissions and Energy Data to any Authority (including any obligation under the NGER Legislation).

SCHEDULE A6

Program Requirements

(Clause 20.1)

1. DEVELOPER'S PROGRAM

1.1 Program submissions, reviews and updates

- (a) The Developer's Program and updates must be submitted to the Principal's Representative for review in accordance with this deed.
- (b) The Developer must submit to the Principal's Representative an updated status of the Developer's Program which complies with clause 1.2 of this Schedule A6 and the anticipated Date of Completion:
 - (i) on the date which is 10 Business Days after the date which is the earlier of:
 - (A) the date the Principal provided the Developer with notice of the Site Availability Date (as that term is defined in clause 8.2(b)); and
 - (B) the date which is 2 months prior to the Site Access Date; and
 - (ii) thereafter:
 - (A) on the first Business Day of each calendar month; and
 - (B) within 10 Business Days of:
 - (aa) an extension of time being granted pursuant to clause 20.5 (*Determination of extension of time claim*); or
 - (bb) the logic to complete the OSD Works significantly changing.
- (c) The Developer's Program must comply with the requirements of clause 1.2 of this Schedule A6.
- (d) The Developer's Program must include an accompanying written "basis of schedule" narrative which clearly describes how the Developer's Program has been developed.

1.2 Program Requirements

The Developer's Program and all its subsequent submissions must meet the following requirements:

- (a) be based upon the Developer's Initial Program;
- (b) is a baseline program stasured appropriately or as required by the Principal's Representative;
- (c) be prepared using Oracle Primavera P6 Professional Release 8.3 or its subsequent upgraded version if permitted by the Principal's Representative;
- (d) represent the contractors plans realistically;
- (e) be practicable;
- (f) shows work activities, data and connectors;

- (g) identify the full scope of the OSD Works, including:
 - (i) design;
 - (ii) Approvals and certifications;
 - (iii) staged works, including items such as traffic management, mobilisation, site establishment, interface management, review periods etc; and
 - (iv) construction activities including commissioning and de-mobilisation;
- (h) clearly identify access requirements and activities, including Construction Site access, service outages, public domain access requirements;
- (i) identify all the dates of the award of all significant contracts and Subcontracts related to the OSD Works;
- (j) identify all significant external events activities that have a bearing on time required to commence and to complete the OSD Works;
- (k) be based on a time-scaled calendar in units of one week and identify working days, non-working days, shifts, statutory holidays, rostered days off, Christmas shutdown and any other shutdowns;
- (l) contain activities, each having an activity ID, activity description, original duration, start date, finish date and dependencies;
- (m) break down all activities into periods of no greater than four weeks with sufficient details to allow accurate monitoring of the progress of the OSD Works;
- (n) identify the critical path and near critical path(s) including assumptions and logic links; and
- (o) the Developer's Program must be submitted in electronic format which must include:
 - (i) electronic format for publishing in Adobe Acrobat .pdf files;
 - (ii) native format (.xer); and
 - (iii) layout and filter files (.plf) together with the native format (.xer) files, and allow interrogation by the Principal's Representative.

1.3 Program narrative requirements

The program narrative required must be provided at the same time as the Developer provides the updated status of the Developer's Program pursuant to clause 1.1(b) of this Schedule A6. The program narrative must also be in sufficient detail to enable the durations, leads and lags in the logic diagram to be assessed and to explain any constraints that may exist within the program network logic, and must include the following:

- (a) an overview of the delivery strategy as reflected in the Developer's Program;
- (b) executive summary program that is a maximum of two pages;
- (c) staging diagrams for the OSD Works;
- (d) fundamental assumptions;
- (e) key indicators of program progress, performance, and trends;

- (f) long lead items, approvals and permits;
- (g) critical path;
- (h) construction staging and major work front configuration;
- (i) approach and frequency for updating the program; and
- (j) mitigation measures that could be implemented in the case of delay.

SCHEDULE A7

Developer's Initial Program



SCHEDULE A8

Project Plan Requirements

(Clauses 1.1, 4.2, 18.1 and 18.4)

1. GENERAL

1.1 Definitions

In this Schedule A8:

Minor Non-Compliances means a minor error, minor omission or minor non-compliance:

- (a) which:
 - (i) does not:
 - (A) prevent the OSD Works from being fit for their intended purpose; or
 - (B) affect the safety and operation of the Sydney Metro City & Southwest;
and
 - (ii) the Principal's Representative determines (acting reasonably) that the Developer has reasonable grounds for not promptly procuring correction of;
or
- (b) which the parties agree in writing is a Minor Non-Compliance.

Sydney Metro Overarching Community Communications Strategy means the document of that name which is included in Schedule F1 (*Electronic Files*) as an electronic file.

1.2 General requirements

- (a) Each Project Plan must contain, as a minimum, the contents specified in the relevant sections of this Schedule A8.
- (b) Where content requirements overlap between Project Plans, the Developer may avoid duplication by cross referencing.
- (c) Where this Schedule A8 requires the same Project Plan to be produced as a Development Consent or other relevant Approval does, a single Project Plan is to be provided which complies with all requirements.
- (d) All Project Plans must describe their interface with other Project Plans.
- (e) The Construction and Site Management Plan must be produced separately. Otherwise Project Plans may be combined for convenience.
- (f) The Principal's Representative may review each Project Plan and, within 10 Business Days following submission of the Project Plan to the Principal's Representative, determine whether the Project Plan complies with the requirements of this Schedule A8 and if the Project Plan does not comply with the requirements of this Schedule A8 (Minor Non-Compliances excepted), notify the Developer of the non-compliances with detailed reasons.
- (g) If any Project Plan does not comply with the requirements of this Schedule A8 or the Developer has not updated any Project Plan in accordance with the requirements of

this Schedule A8 (Minor Non-Compliances excepted), the Principal's Representative may by written notice direct the Developer to amend or update the Project Plan specifying:

- (i) the reasons why such amendment or update is required (or why the Project Plan does not comply with this Schedule A8); and
- (ii) the time within which such updating must occur (which must be reasonable, having regard to the amount of work required),

and the Developer must comply with such direction.

- (h) Each Project Plan that is amended or updated in accordance with clause 1.2 of this Schedule A8 must be submitted by the Developer to the Principal's Representative for review in accordance with this clause 1.2 of this Schedule A8.
- (i) If the Developer receives a notice under clause 1.2(f) of this Schedule A8, the Developer must, within 10 Business Days, submit a revised Project Plan to the Principal's Representative which complies with the requirements of this Schedule A8 whereupon the provisions of this Schedule A8 will re-apply to the revised Project Plan or affected plans (as applicable).
- (j) If the Principal's Representative notifies the Developer of any Minor Non-Compliances:
 - (i) the Principal's Representative may recommend an action that may be taken by the Developer to address the Minor Non-Compliances; and
 - (ii) the Developer must complete the recommended action, or take any other action the Developer deems reasonable in the circumstances to correct the Minor Non-Compliances to the extent required for that Project Plan to comply with this Schedule A8, within the time frame (if any) specified by the Principal's Representative (as applicable).
- (k) If the Principal's Representative does not respond within the 10 Business Day period referred to in clause 1.2(f) of this Schedule A8, the Developer may use the Project Plan at the Developer's own risk.

2. **PROJECT PLAN REQUIREMENTS**

2.1 **Project Plan submission and update**

- (a) All Project Plans identified in this Schedule A8 must be submitted and updated:
 - (i) in accordance with the times set out in Table 1 of this Schedule A8;
 - (ii) where reasonably requested or required by the Principal's Representative or any Authority; and
 - (iii) when a significant change to a methodology has occurred.
- (b) The Project Plans must be progressively reviewed, monitored, amended and updated. The Developer's reviews of the Project Plans must regularly reassess their applicability, suitability and effectiveness for procuring the management of the OSD Works taking into account:
 - (i) status and progress of the OSD Works;
 - (ii) changes to the OSD Works;

- (iii) lessons learnt during the design and/or delivery phases and activities;
- (iv) changes in other related Project Plans;
- (v) requirements and matters that are not covered by the existing Project Plans;
- (vi) changes to the Project Plans as requested by the Principal's Representative;
- (vii) changes in Law;
- (viii) the commencement of new phases or stages of design, construction, testing or commissioning;
- (ix) any direction given by the Principal's Representative under this deed; and
- (x) any breach or potential breach of the warranty under this deed.

2.2 Table 1 Project Plans

Ref	Project Plan	Project Plan submission date	Update frequency
1.	Project Health and Safety Management Plan	40 Business Days prior to construction of the OSD Works commencing	Annually until Completion or following a significant change
2.	Construction and Site Management Plan	40 Business Days prior to construction of the OSD Works commencing	Annually until Completion or following a significant change
3.	Community Communications Strategy	40 Business Days prior to construction of the OSD Works commencing	Every six months until Completion or following a significant change
4.	Condition and Dilapidation Survey	40 Business Days prior to construction of the OSD Works commencing and 20 Business Days prior to Completion	
5.	Hoarding Plan	80 Business Days after the date of this deed	

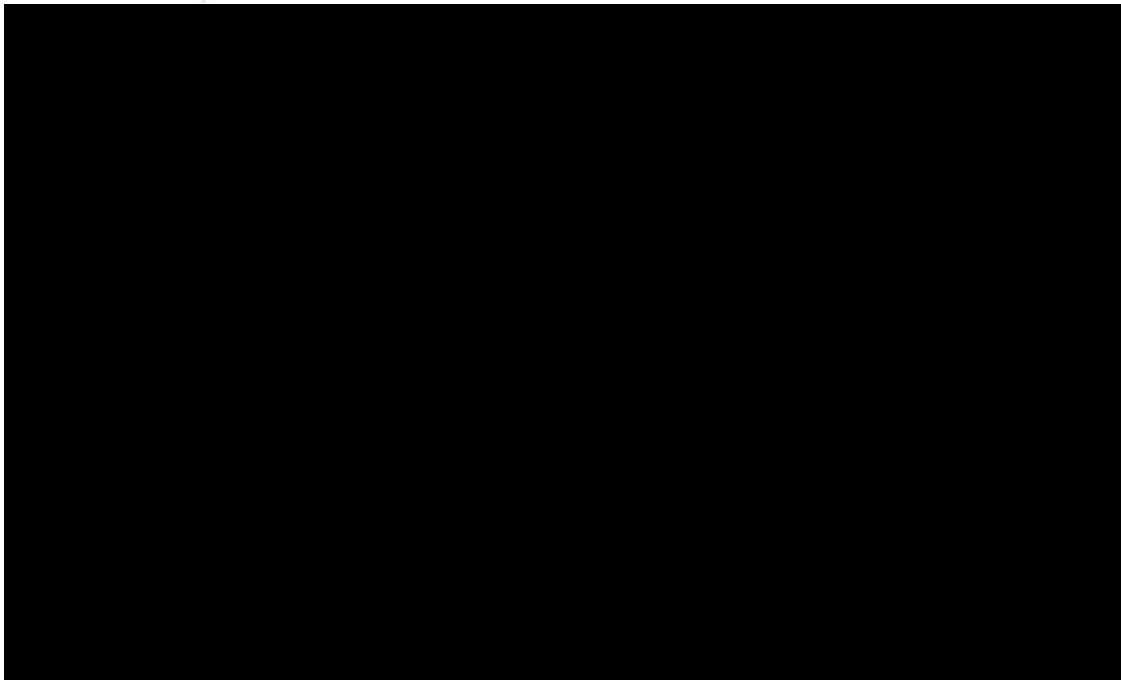
2.3 Project Health and Safety Management Plan

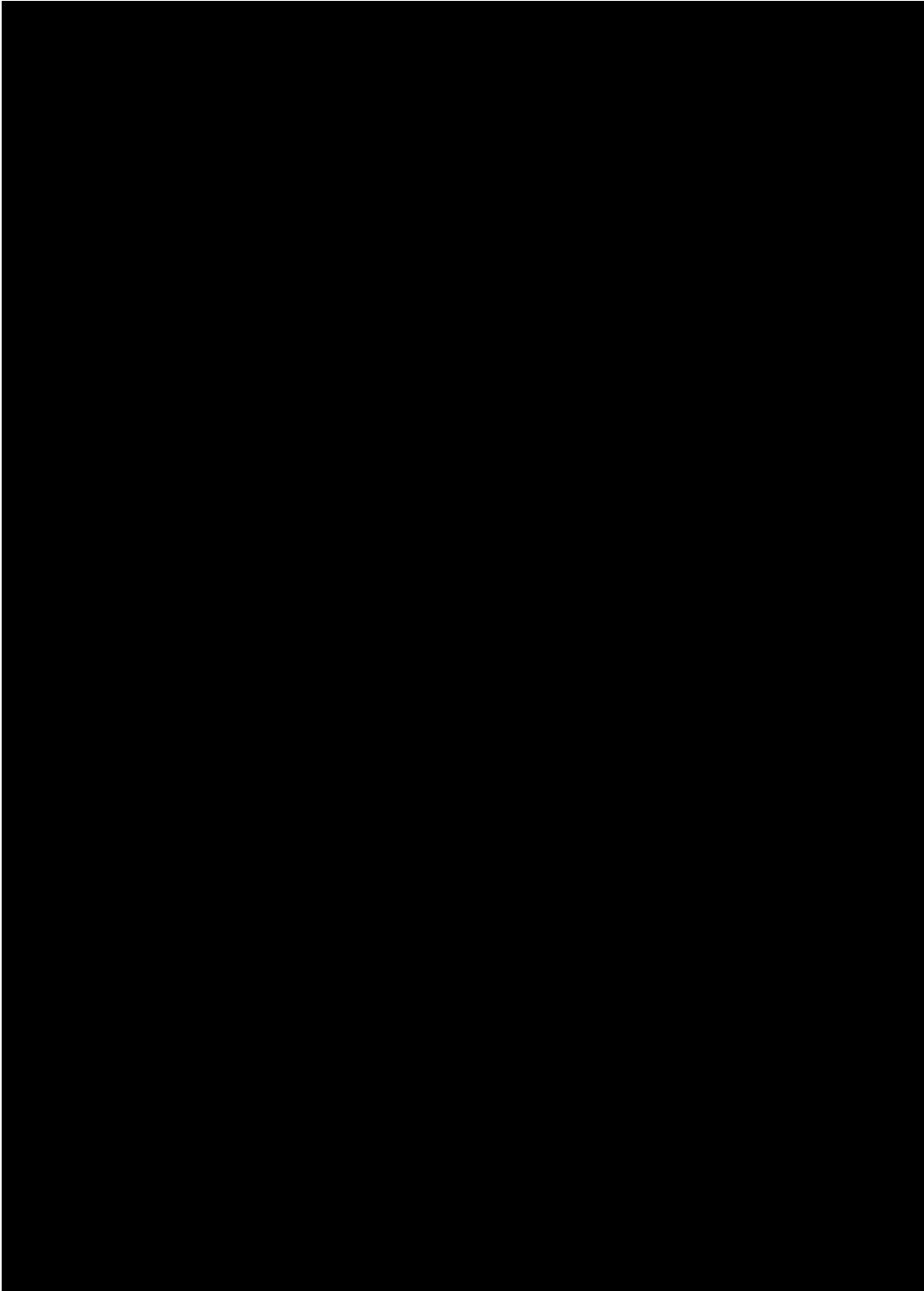
- (a) The Developer must develop, implement and maintain a Project Health and Safety Management Plan (**PHSMP**) that complies with and demonstrates compliance with the requirements of:
 - (i) the WHS Legislation;
 - (ii) the Heavy Vehicle National Law;
 - (iii) the Rail Safety National Law;
 - (iv) other relevant Codes and Standards;

- (v) the latest versions of the New South Wales Government Work Health & Safety Management Systems and Auditing Guidelines;
 - (vi) the latest version of the Office of the Federal Safety Commissioner's Audit Criteria Guidelines; and
 - (vii) relevant requirements imposed on the Developer through this deed.
- (b) The PHSMP must also cover as a minimum the following safety-related topics:
- (i) safety action plan;
 - (ii) risk management;
 - (iii) occupational health, hygiene and wellness;
 - (iv) chain of responsibility;
 - (v) traffic management;
 - (vi) security management;
 - (vii) interface management;
 - (viii) work health and safety Incident reporting;
 - (ix) Subcontractor safety management; and
 - (x) emergency and crisis management.

2.4 **Construction and Site Management Plan**

The Construction and Site Management Plan must describe the procedures and processes that the Developer will undertake to procure the planning and execution of the OSD Works, demonstrating how the Developer will avoid:





2.5 Community Communications Strategy

The Developer must develop, implement and maintain the Community Communications Strategy – Crows Nest, which must comply with, and include all requirements of the Sydney Metro Overarching Community Communications Strategy and detail processes and procedures, for:

- (a) handling complaints and enquiries;
- (b) handling of media and government enquiries; and
- (c) incident and crisis communication management and reporting.

2.6 **Condition and dilapidation survey**

The Developer must prepare a condition and dilapidation survey for the Crows Nest Station:

- (a) 40 Business Days prior to construction of the OSD Works commencing; and
- (b) 20 Business Days prior to Completion.

2.7 **Hoarding Plan**

The Developer must develop, implement and maintain a Hoarding Plan for the Hoarding Area. The Hoarding Plan must:

- (a) include a plan of the Hoarding Area which identifies the location for each type/class of hoarding;
- (b) detail how the Developer will comply, or procure compliance, with the North Sydney Council's "Hoarding Construction Guidelines and Requirements" (a copy of which is available on the North Sydney Council's website);
- (c) detail how the hoarding to be constructed by the Developer will not contravene the Principal's public art strategy (a copy of which is available on the Principal's website);
- (d) detail how the hoarding to be constructed by the Developer will avoid:
 - (i) impacting access, inspection and maintenance of the Crows Nest Station and public area awnings and landscaping;
 - (ii) obstructing sightlines and legibility of signage for the Crows Nest Station;
 - (iii) obstructing CCTV viewing of the Crows Nest Station and public areas;
 - (iv) disconnection or interruption of Utility Services required for the operation of the Crows Nest Station;
 - (v) interrupting or restricting circulation flows of Customers to and from the Crows Nest Station entrances; and
 - (vi) impacting the use or occupation of the Crows Nest Station; and
- (e) detail how the Developer will provide opportunities for public art, Sydney Metro wayfinding, branding of the OSD and other similar activities.

SCHEDULE A9

Requirements of Approved Engineer

(Clause 7.6)

1. Requirements of Approved Engineer

The following are the minimum required qualifications, experience and expertise that must be possessed by any person appointed as the Approved Engineer:

- (a) Quality Management System 3rd party certified to AS/NZS ISO 9001 (where relevant);
- (b) range of suitable structural analysis and CAD software (where relevant); and
- (c) be an Authorised Engineering Organisation for any party providing relevant specialist engineering services during all relevant asset life cycle activities (where relevant).

2. Requirements of Approved Engineer's personnel

The following are the minimum required qualifications, experience and expertise that must be possessed by the Approved Engineer's personnel:

- (a) demonstrated experience in the design of works similar to the OSD Enabling Works and the OSD Works (as appropriate having regard to the role of the personnel);
- (b) be a Chartered Engineer registered with the Institute of Engineers Australia (or such other body satisfactory to the Principal), and with qualifications admitting to MIEAust and National Engineering Register or equivalent;
- (c) knowledge of Australian Standards applicable to the OSD Enabling Works and the OSD Works (as appropriate having regard to the role of the personnel);
- (d) at least 3 years' experience (or such other period satisfactory to the Principal) in undertaking the checking of works design as an approved engineer, proof engineer or equivalent in the past 10 years; and

3. Requirements of Approved Engineer's personnel in relation to structural engineering elements

The Approved Engineer's personnel carrying out the role of the Approved Engineer for structural engineering elements must have, as a minimum, 12 years' experience and proven ability in structural analysis and design of works similar to the OSD Enabling Works and the OSD Works (as appropriate having regard to the role of the personnel).

SCHEDULE A10

Developer Insurance Requirements

(Clause 28)

1. DEVELOPER'S INSURANCE OBLIGATIONS

1.1 General

The Developer must:

- (a) effect and maintain, or cause to be effected and maintained, the following insurances:
 - (i) workers compensation insurance as referred to in clause 1.2 of this Schedule A10;
 - (ii) professional indemnity insurance as referred to in clause 1.3 of this Schedule A10;
 - (iii) Construction Plant insurance as referred to in clause 1.4 of this Schedule A10;
 - (iv) motor vehicle and plant insurance as referred to in clause 1.5 of this Schedule A10;
 - (v) contract works (material damage) insurance as referred to in clause 1.6 of this Schedule A10;
 - (vi) public and products liability insurance as referred to in clause 1.7 of this Schedule A10; and
 - (vii) any other insurances it is required to maintain by Law,

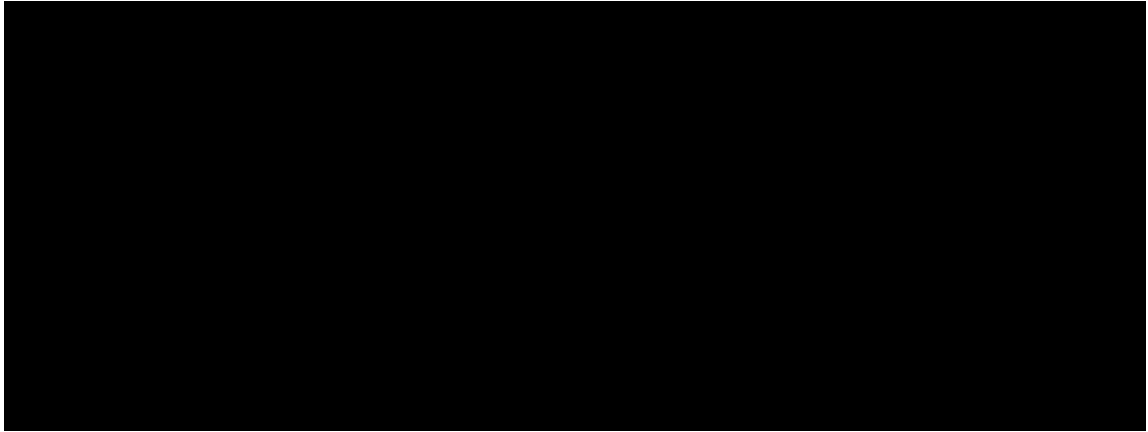
on terms as required by Law, or where the terms are not required by Law, on terms that a prudent insured would effect given the terms offered by the Australian insurance market at the time the policy is incepted.

1.2 Workers compensation insurance

- (a) The Developer must effect and maintain, or cause to be effected and maintained, workers compensation insurance (unless the Developer is a licensed self-insurer under the relevant statutory scheme) which covers workers in accordance with any statute relating to workers or accident compensation:
 - (i) for the amount required by Law; and
 - (ii) in the name of the Developer and, where permissible under the relevant statutory scheme, extended to indemnify the Principal for its statutory liability to persons employed, or deemed to be employed, by the Developer.
- (b) The Developer must ensure that each of its Subcontractors effects and maintains workers compensation insurance which covers employees in accordance with any statute relating to workers or accident compensation:
 - (i) for the amount required by Law; and
 - (ii) in the name of the Subcontractor and, where permissible under the relevant statutory scheme, extended to indemnify the Principal and the Developer and,

where applicable the Development Manager, for their statutory liability to persons employed, or deemed to be employed, by the Subcontractor.

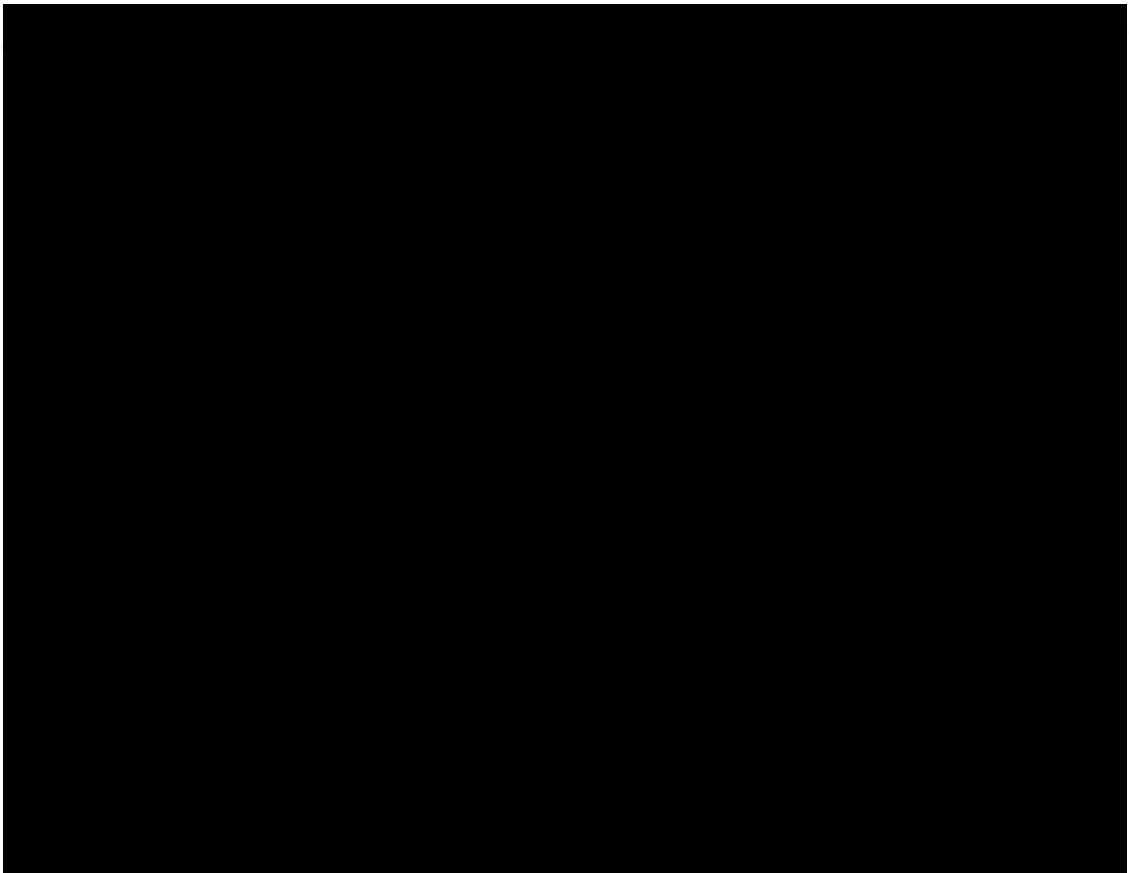
1.3 Professional indemnity insurance



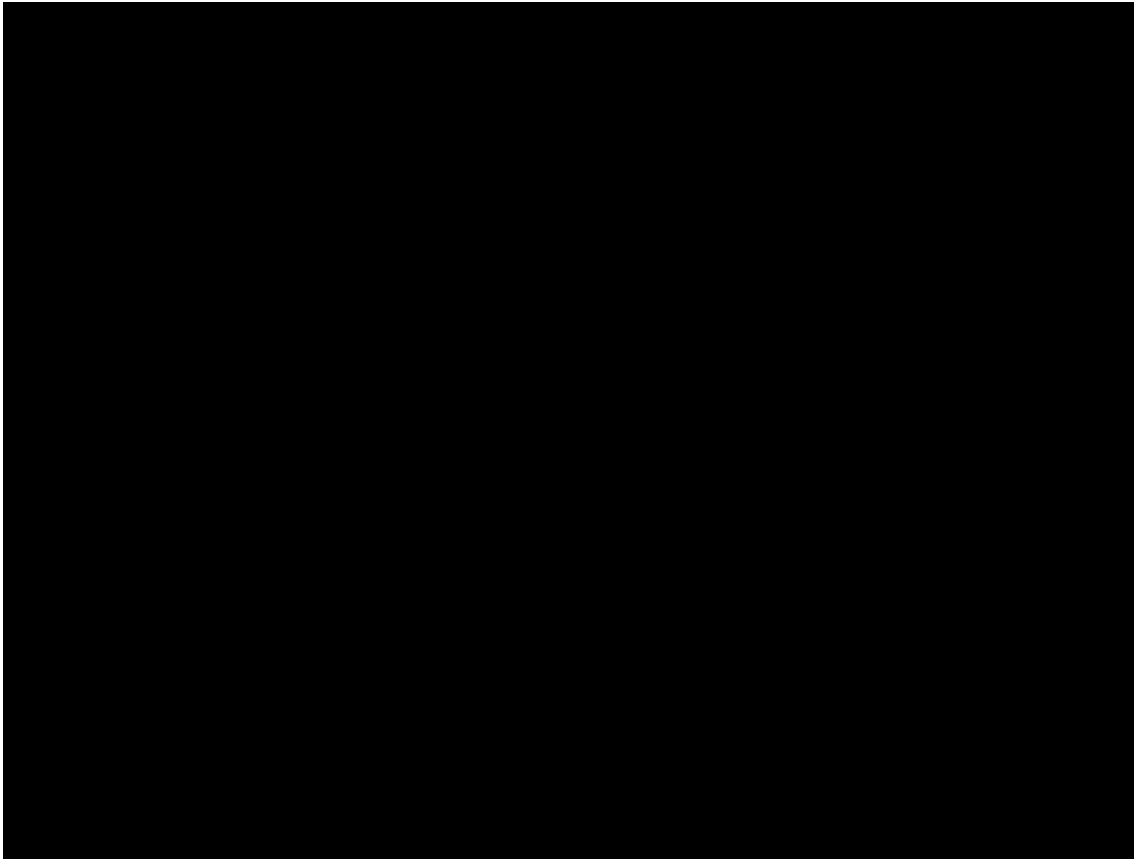
1.4 Construction Plant insurance



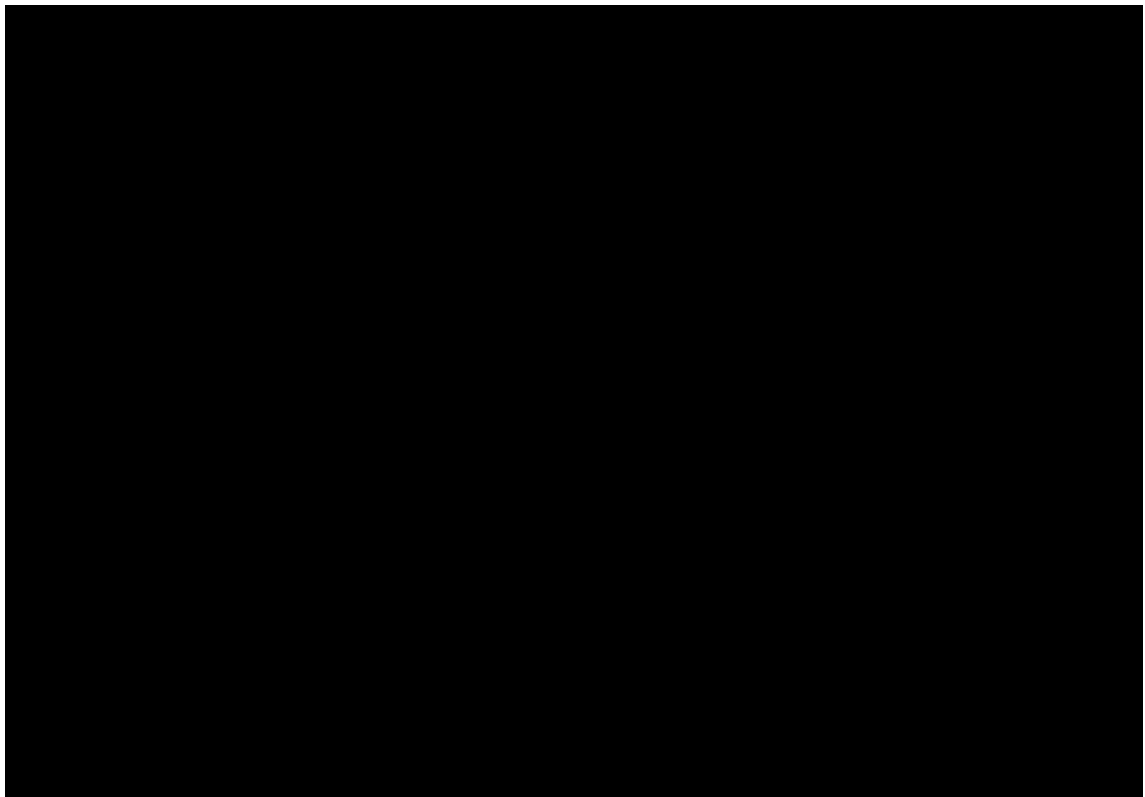
1.5 Motor vehicle and plant insurance



1.6 Contract works (material damage) insurance



1.7 Public and products liability insurance





2. **DEVELOPER'S OBLIGATIONS**

2.1 **Provisions in policies**

The Developer must ensure that:

- (a) the insurance required to be effected by the Developer under clause 1.6 of this Schedule A10 contains a provision approved by the Principal (which approval must not be unreasonably withheld) that requires the insurer to notify the Principal (in writing) whenever:
 - (i) it receives a notice under or in connection with the Insurance policy, including any claim except for a claim by the Principal against any party insured under the policy; and
 - (ii) it gives any insured a notice under or in connection with the policy, which in the case of a notice of cancellation must be given to the Principal 30 days prior to the cancellation of the policy;
- (b) the insurance referred to in clause 1.7 of this Schedule A10 provides that:
 - (i) all insurance agreements and endorsements (with the exception of limits of liability) name, and operate as if there was a separate policy of insurance covering each of the insureds such that any act, error or omission or state of knowledge or intent will not be imputed to any other insured for the purposes of determining rights to indemnity;
 - (ii) failure by any insured to observe and fulfil the terms of the policy does not prejudice the insurance of any other insured;
 - (iii) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy;
 - (iv) a notice to the insurer by one insured will be deemed to be notice by all insured parties; and
 - (v) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against the insureds; and
- (c) each insurance required to be effected by the Developer under clause 1.6 of this Schedule A10 (other than statutory insurances):
 - (i) is effected with insurers approved by the Principal (which approval must not be unreasonably withheld);
 - (ii) is on terms approved by the Principal (which approval must not be unreasonably withheld);
 - (iii) does not contain any exclusion, endorsement or alteration unless it is first approved in writing by the Principal; and
 - (iv) covers any liability for GST such that the proceeds of any claim under each policy (after payment of GST) are sufficient to fully indemnify the insured who suffers the loss that is claimed (including in respect of any liability for GST).

SCHEDULE A11

Insurance Policies

(Clause 28.3)

For the purposes of clause 28.3 (*Principal's insurance*) of this deed, refer to the following insurance policy documents which are included as electronic files in Schedule F1 (*Electronic files*):

Principal's Insurance	Relevant documents	Electronic file name
Public and products liability insurance		

- (b) the Accessing Contractor, its subcontractors and their respective personnel will comply in a timely manner with directions of the Appointed Principal Contractor so that the Appointed Principal Contractor discharges its obligations as principal contractor;
- (c) the Accessing Contractor, its subcontractors and their respective personnel will consult, cooperate and coordinate activities with the Appointed Principal Contractor, the Principal and all other persons who have a work health and safety duty in relation to the same matter;
- (d) the Accessing Contractor, its subcontractors and their respective personnel will comply with the work health and safety plan(s) prepared by the Appointed Principal Contractor while on the Construction Site;
- (e) the Appointed Principal Contractor may exclude the Accessing Contractor, any of its subcontractors and their respective personnel from the Construction Site for work health and safety reasons;
- (f) the Appointed Principal Contractor may direct the Accessing Contractor, any of its subcontractors and their respective personnel to perform or not perform certain acts for work health and safety reasons;
- (g) where high risk construction work, as reasonably determined by the Appointed Principal Contractor, is to be carried out in the performance of the Construction Site Interface Work, the Accessing Contractor must:
 - (i) prepare a safe work method statement that complies with all requirements of the WHS Legislation;
 - (ii) provide a copy of the safe work method statement to the Principal and the Appointed Principal Contractor prior to the commencement of high risk construction work;
 - (iii) review and revise the safe work method statement in accordance with the WHS Legislation;
 - (iv) ensure that the high risk construction work is carried out in compliance with the safe work method statement; and
 - (v) where so directed by the Appointed Principal Contractor, suspend the performance of any high risk construction work;
- (h) the Accessing Contractor will in carrying out the Construction Site Interface Work, comply with, and ensure that all subcontractors and personnel comply with the WHS Legislation; and
- (i) in its contracts with subcontractors, the Accessing Contractor will ensure that the subcontractor is obliged to give the same obligations and rights as required of the Accessing Contractor under this deed poll.

2. The Accessing Contractor indemnifies the Appointed Principal Contractor against any delay, damage, expense, loss, penalty or liability suffered or incurred by the Appointed Principal Contractor as a result of:

- (a) any failure by the Accessing Contractor to comply with any direction given by the Appointed Principal Contractor in accordance with this deed poll; or

(b) any breach by the Accessing Contractor, any of its subcontractors or their respective personnel of:

(i) their respective contractual or legislative work health and safety obligations;
or

(ii) the provisions of this deed poll.

3. This deed poll will be governed by and construed in accordance with the law for the time being of New South Wales.

EXECUTED as a deed poll.

EXECUTED by [Accessing Contractor] in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

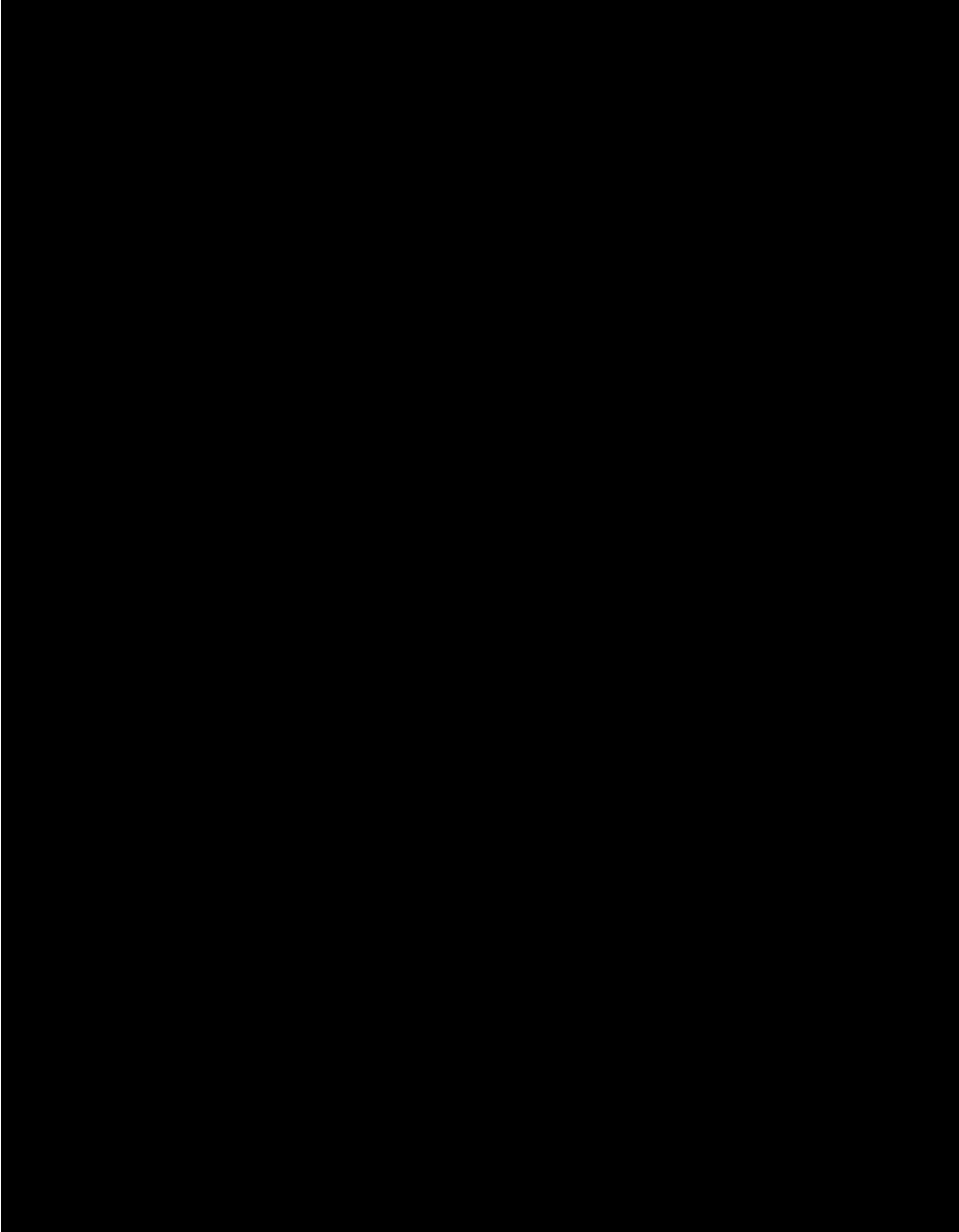
Signature of company secretary/other director

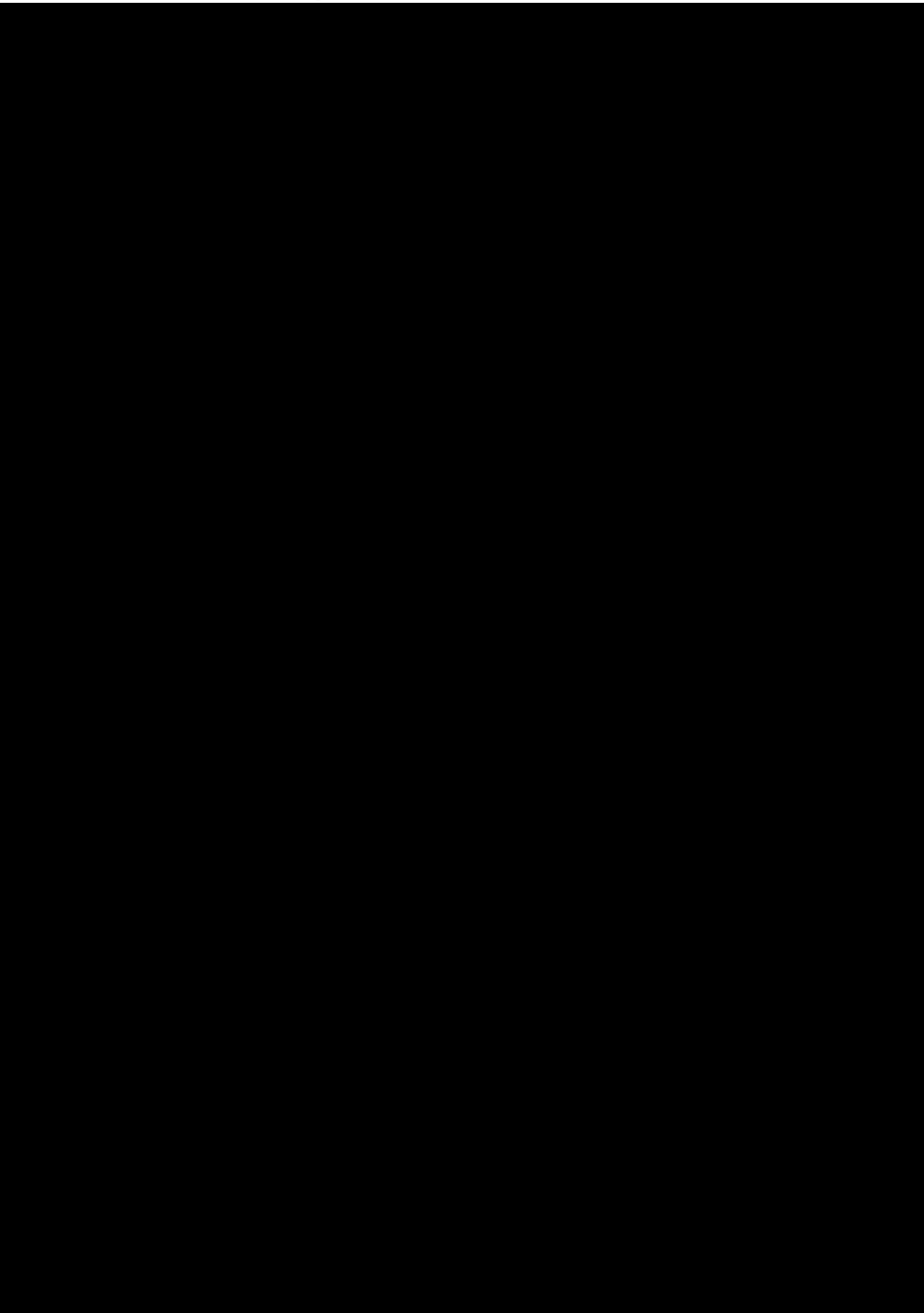
Full name of director

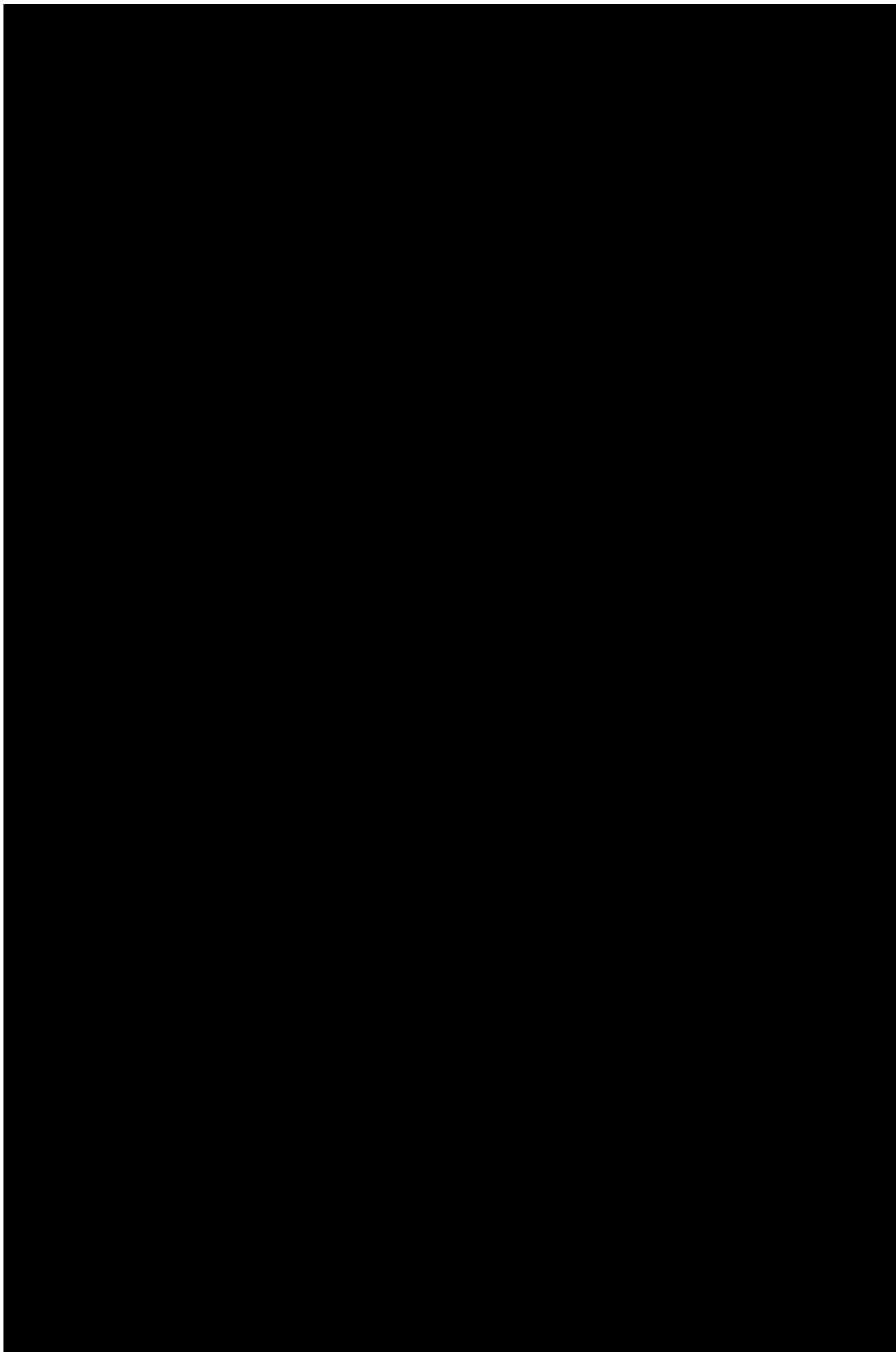
Full name of company secretary/other director

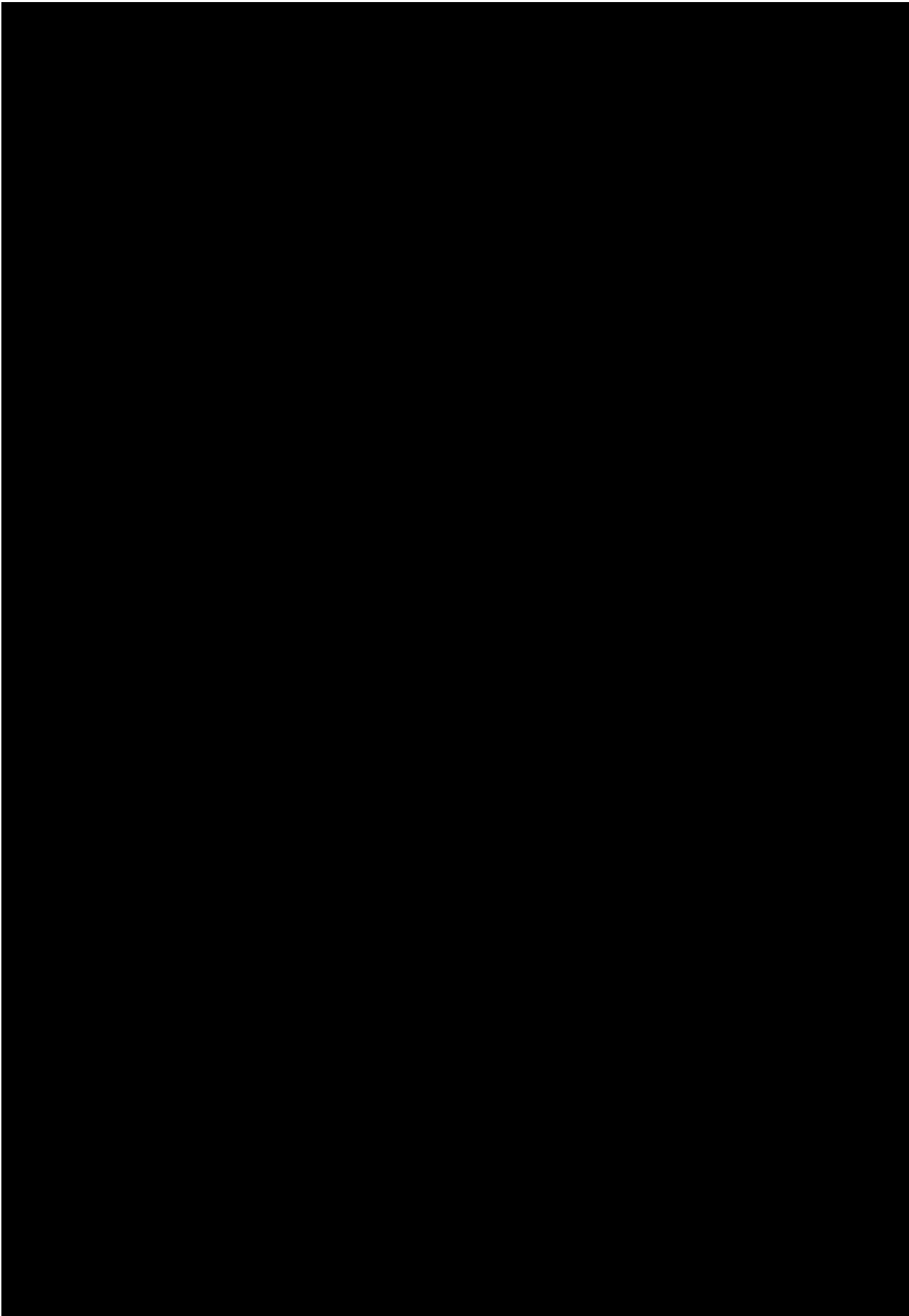
SCHEDULE A13

D&C Side Deed



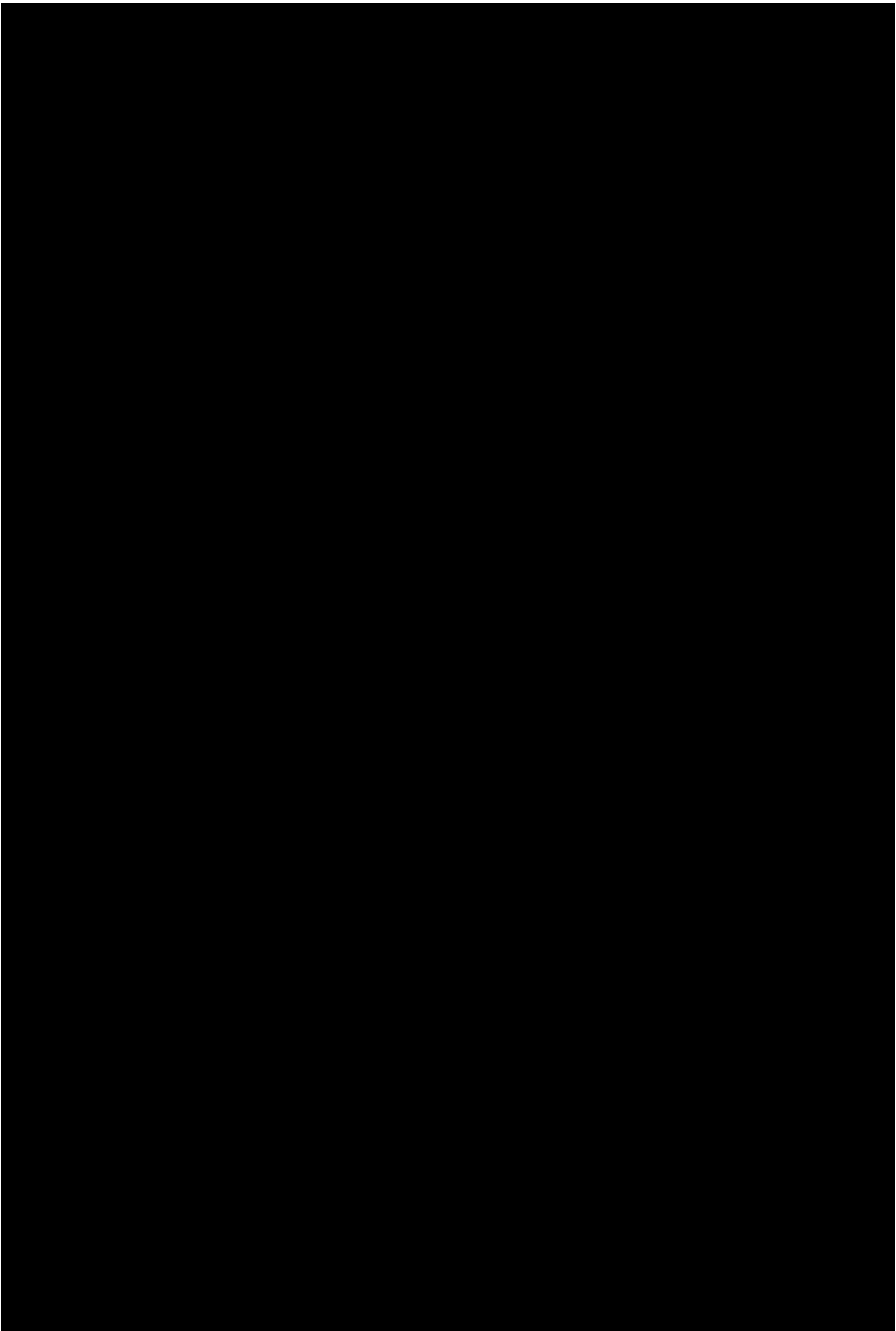






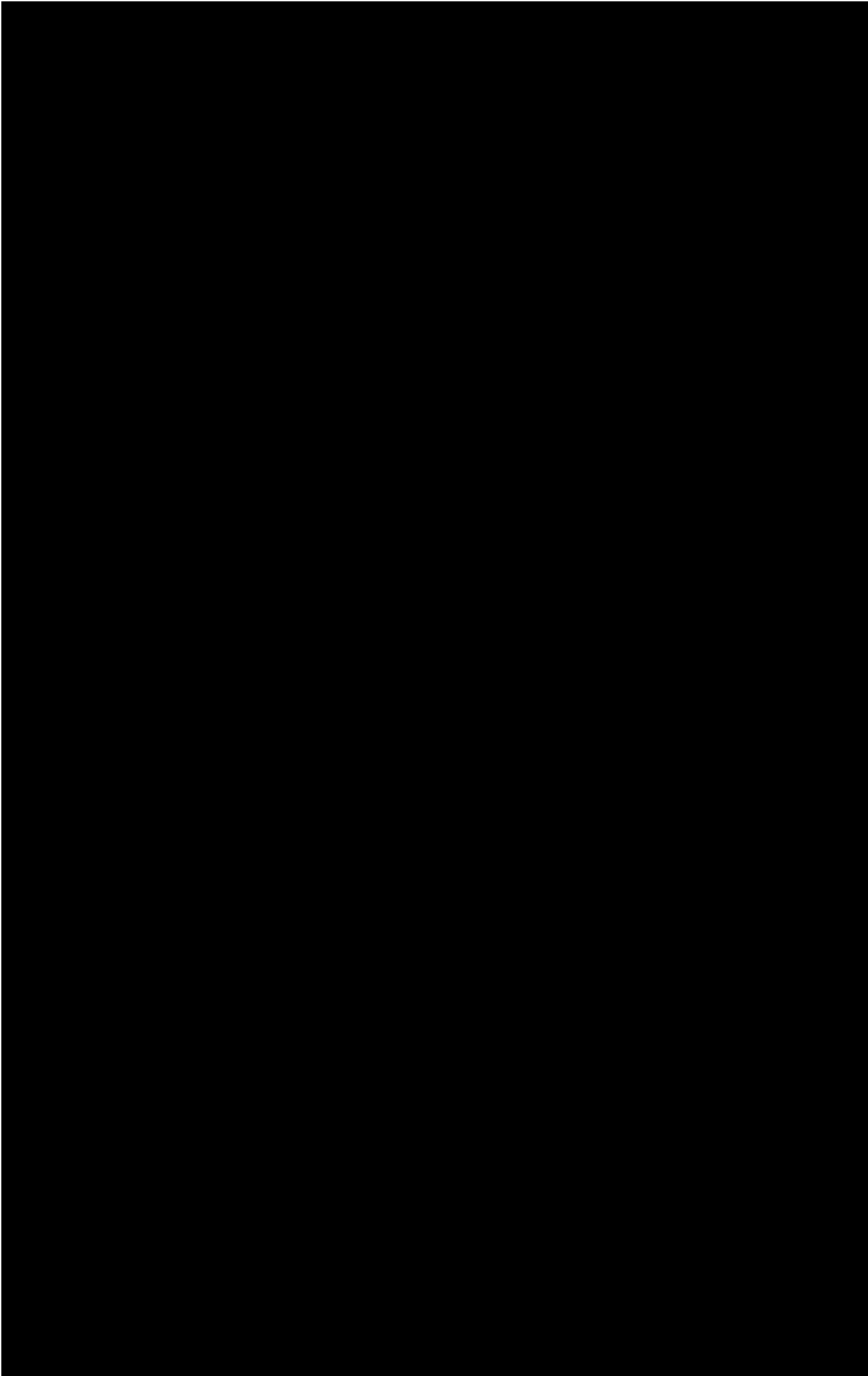
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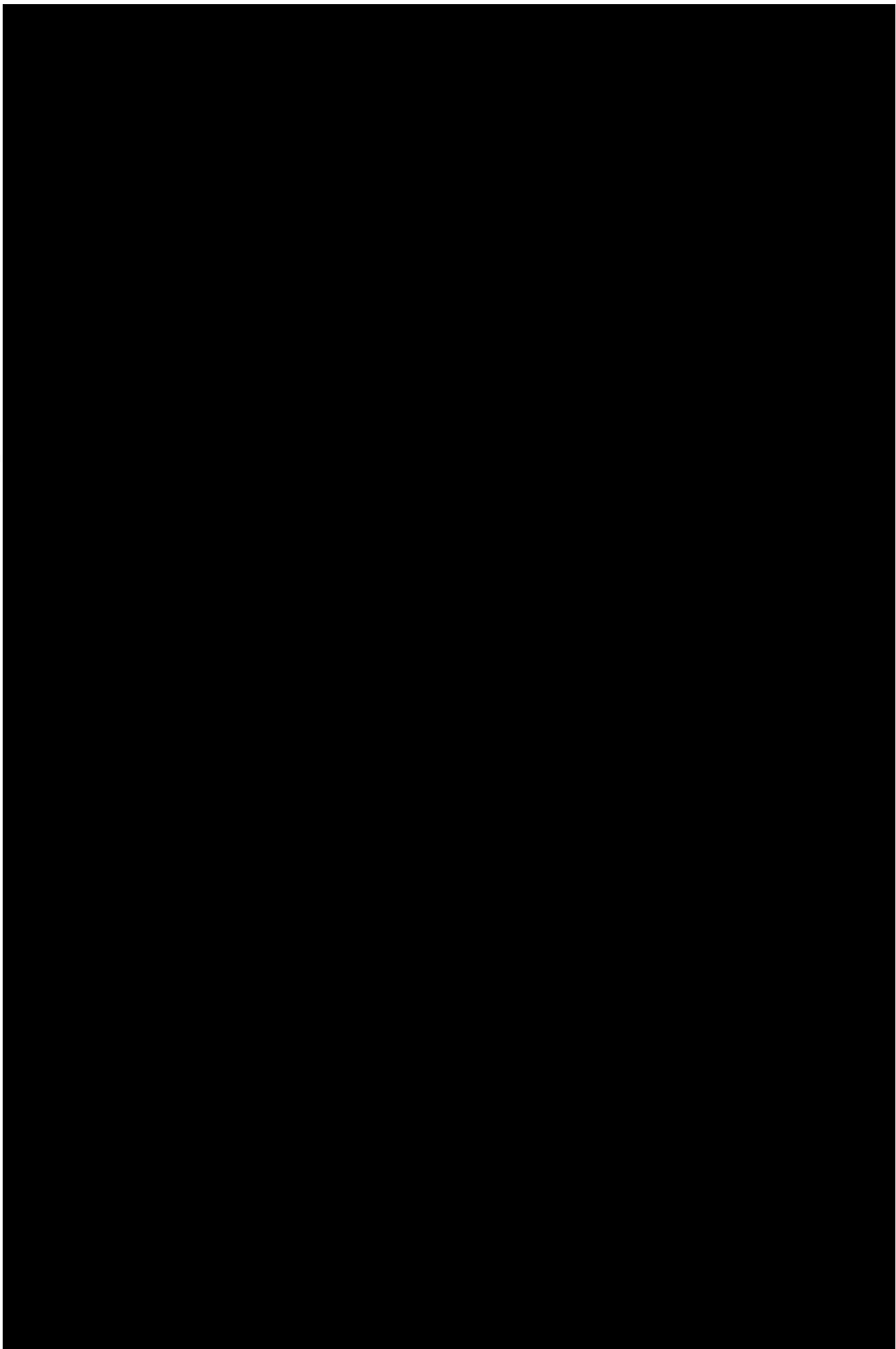


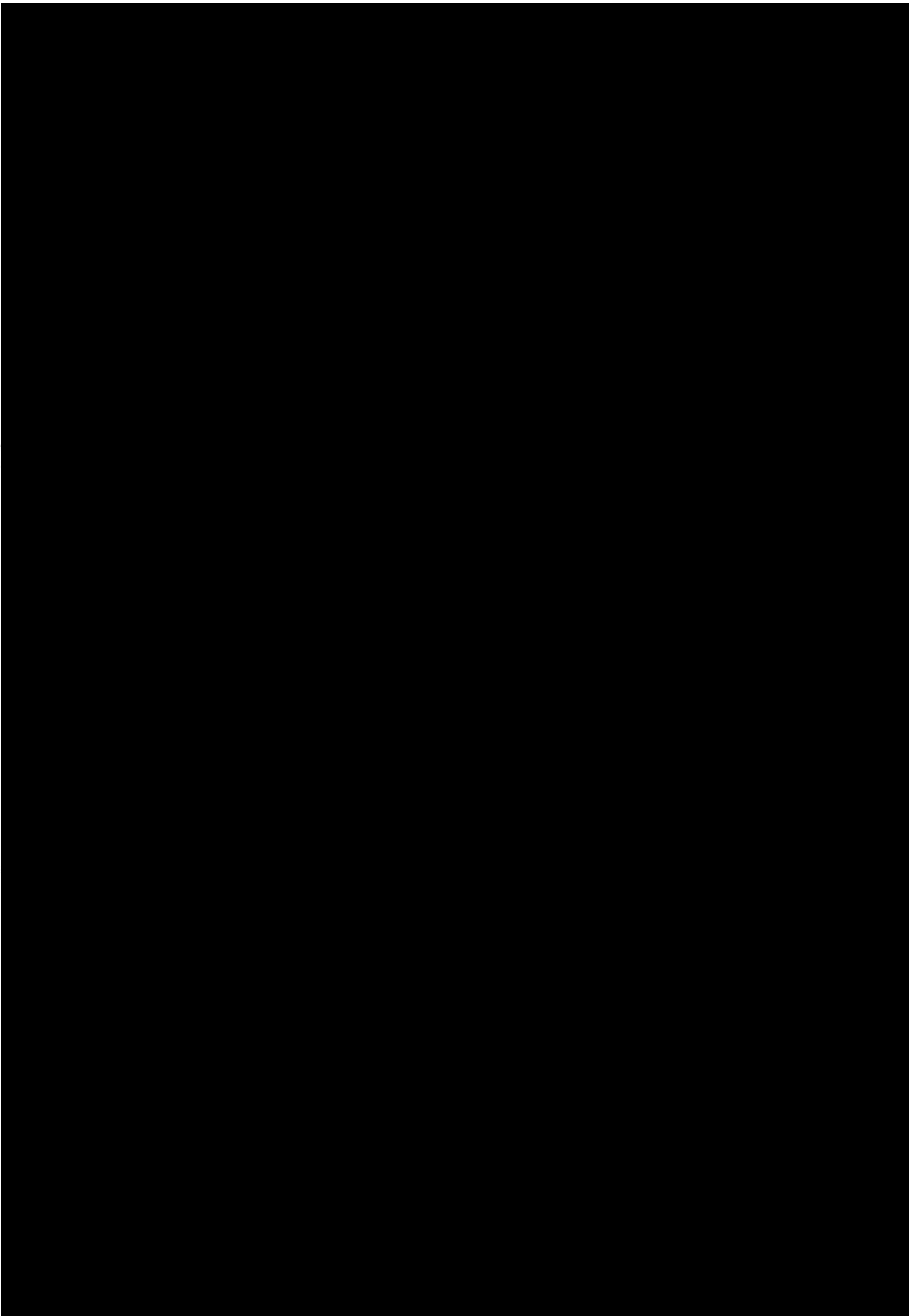
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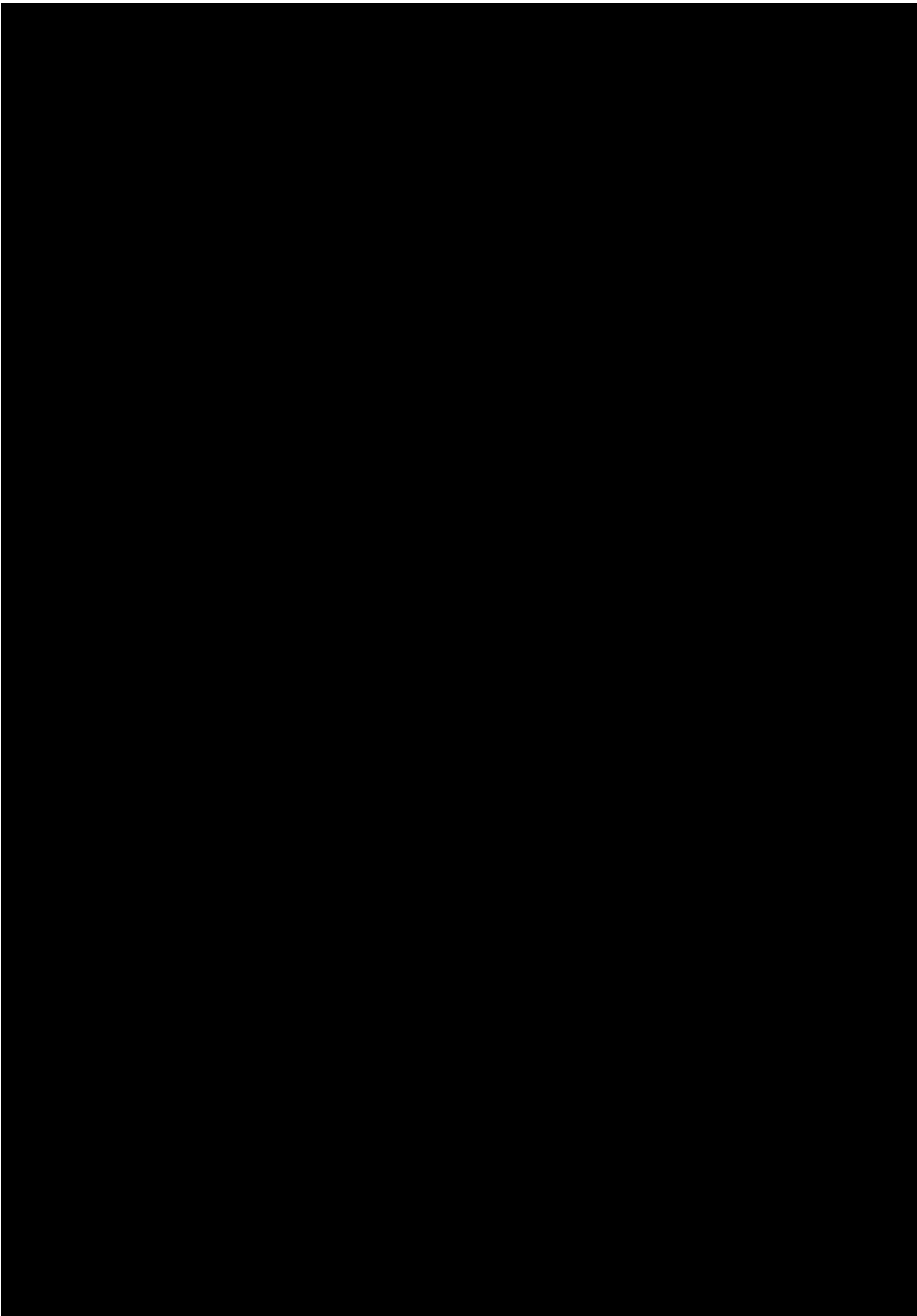
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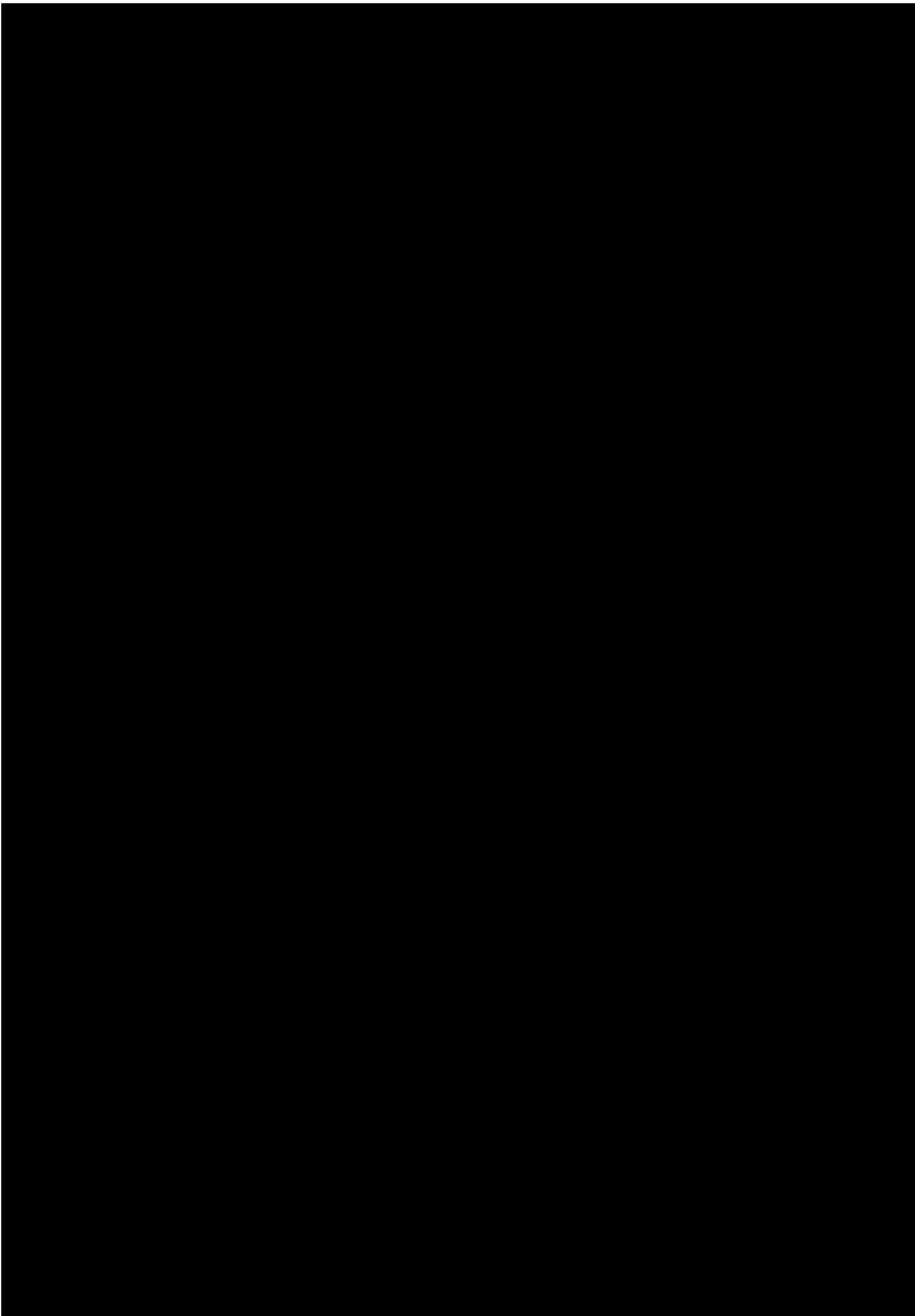


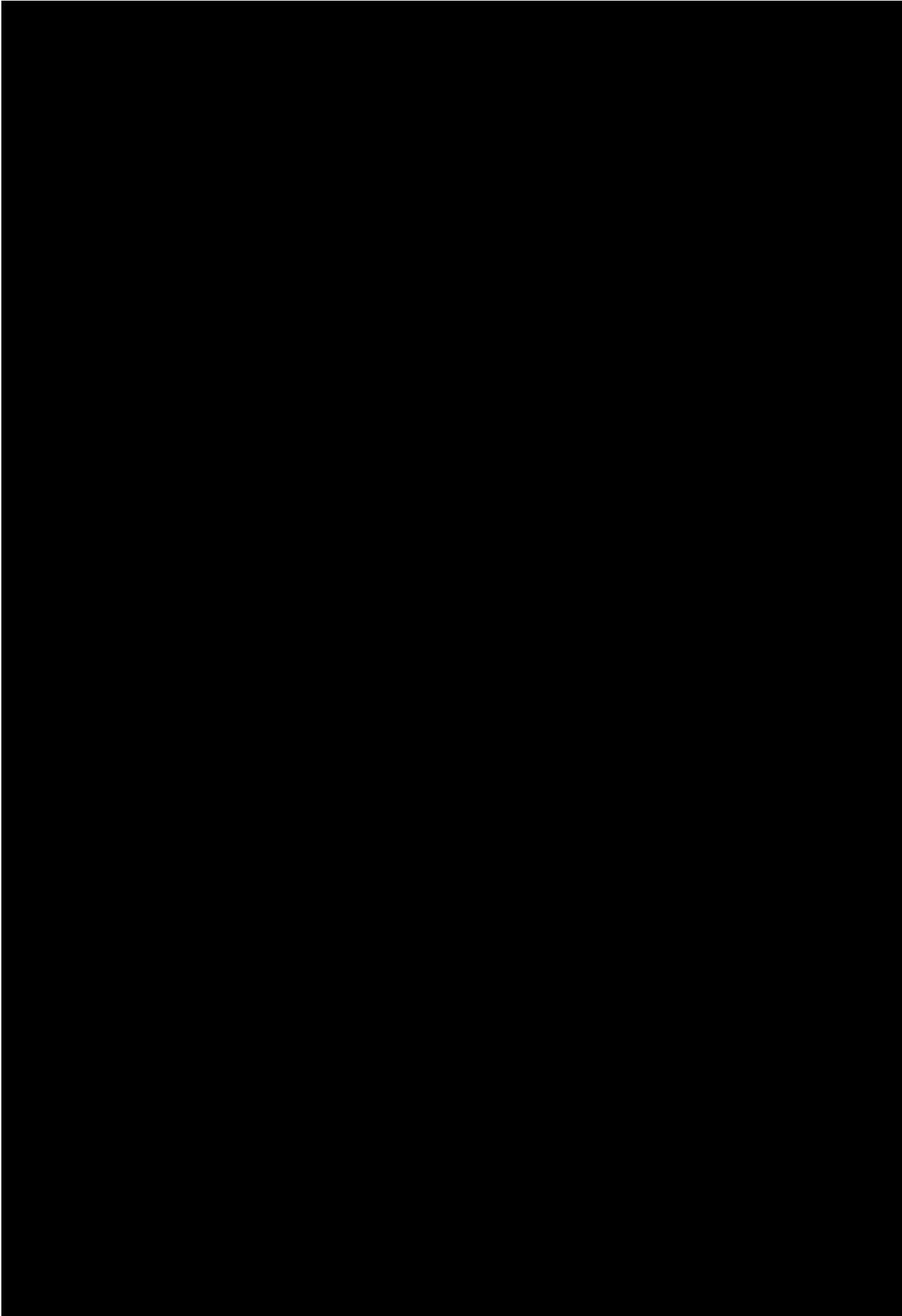




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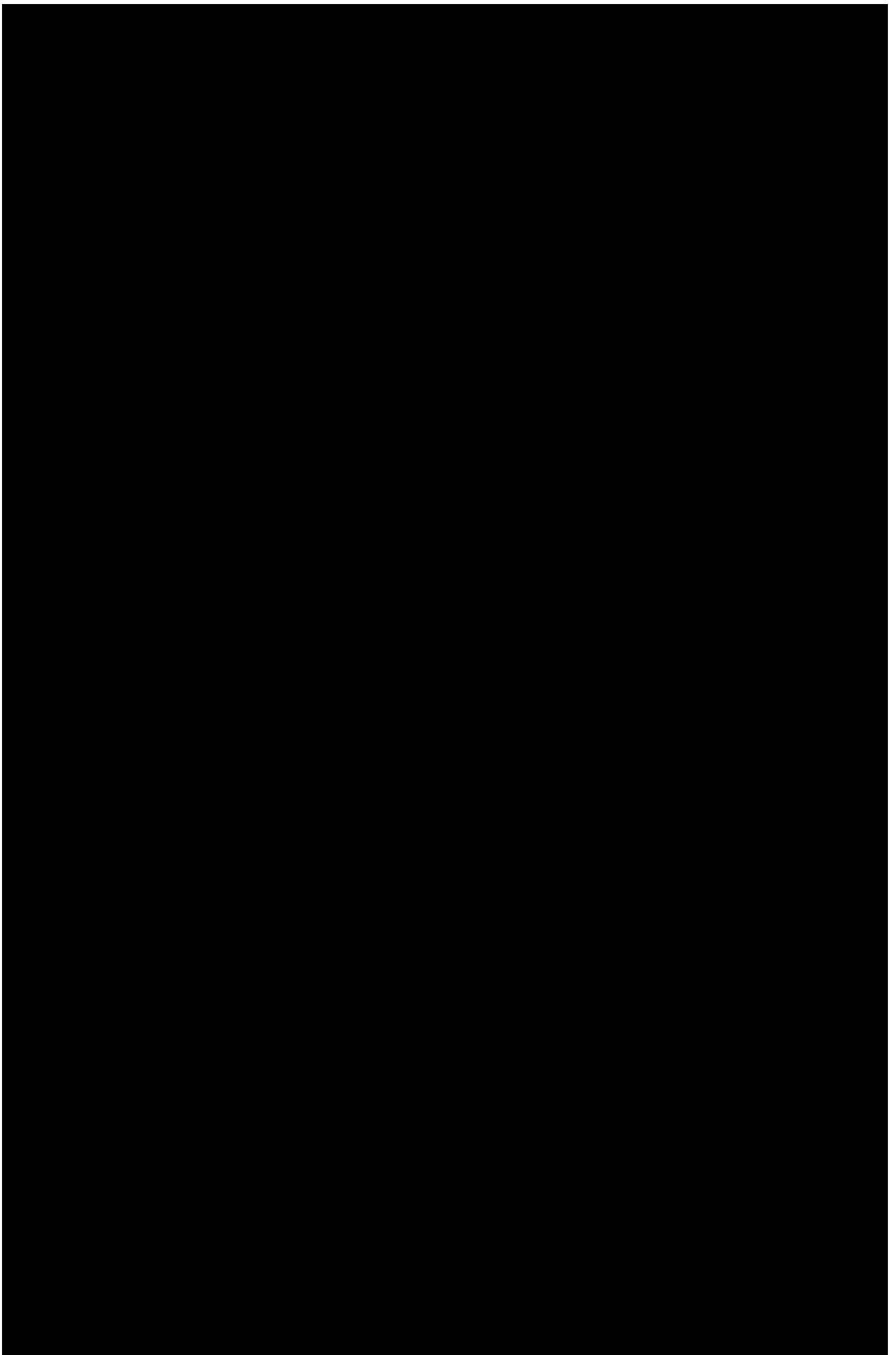
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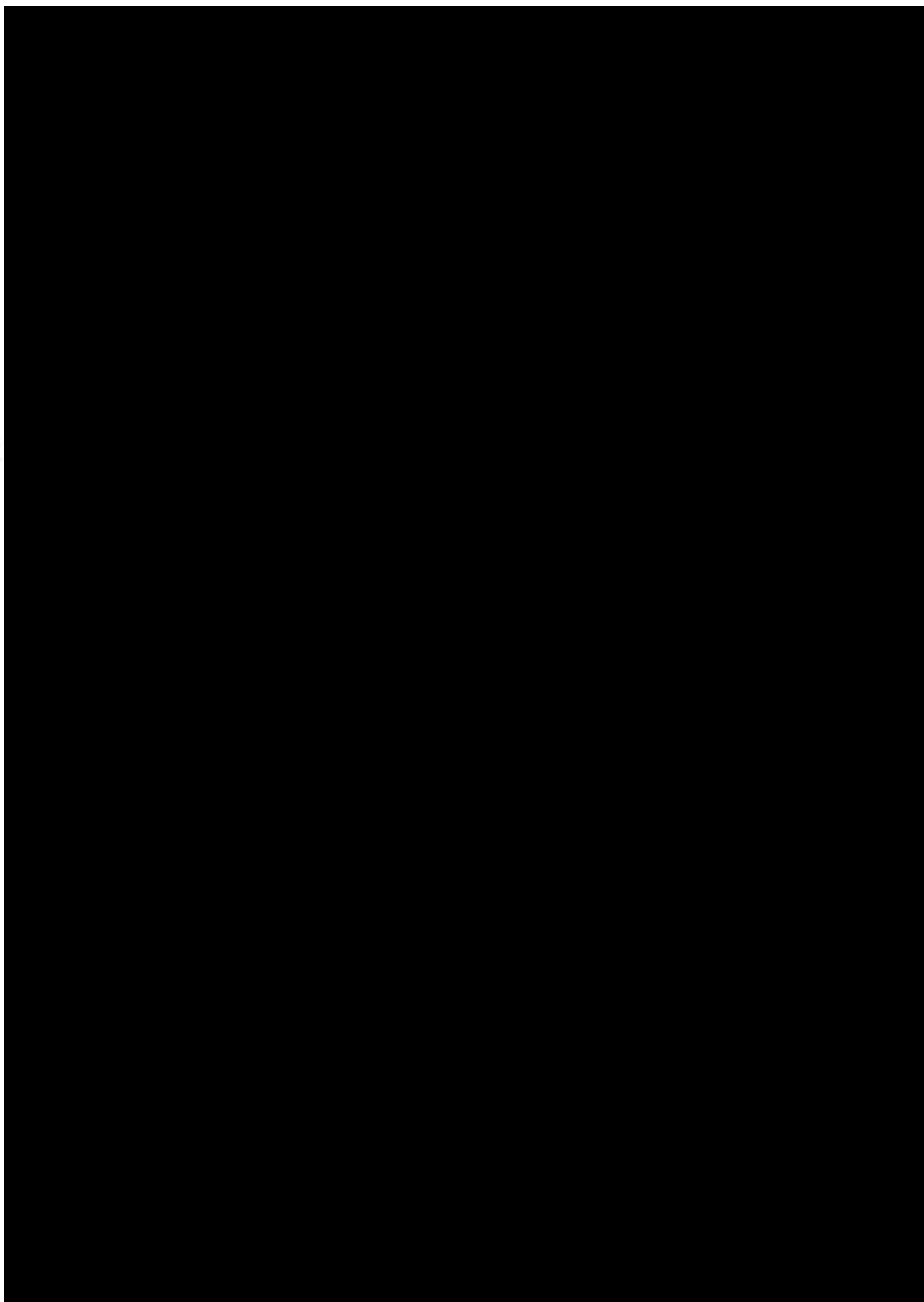




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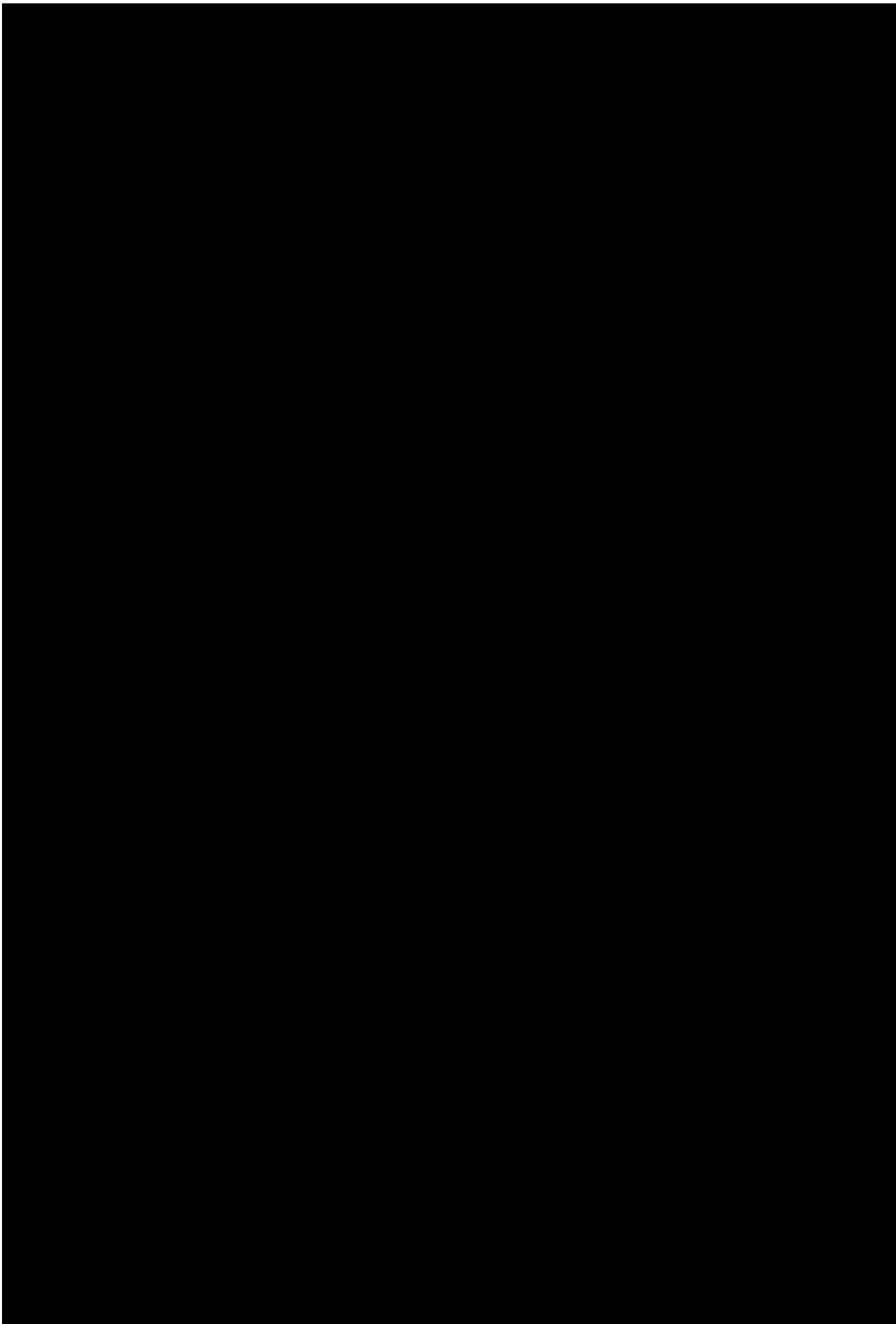


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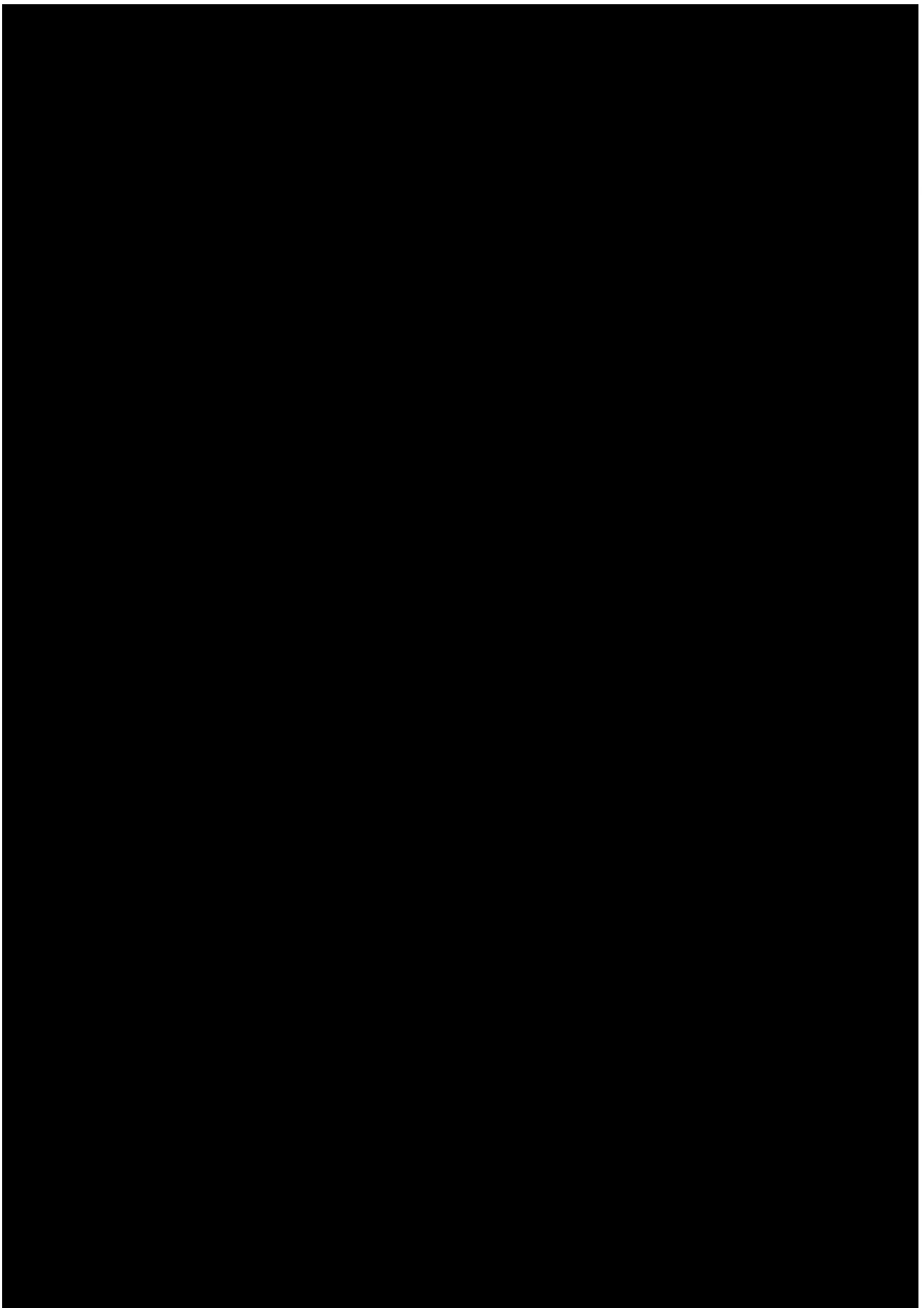
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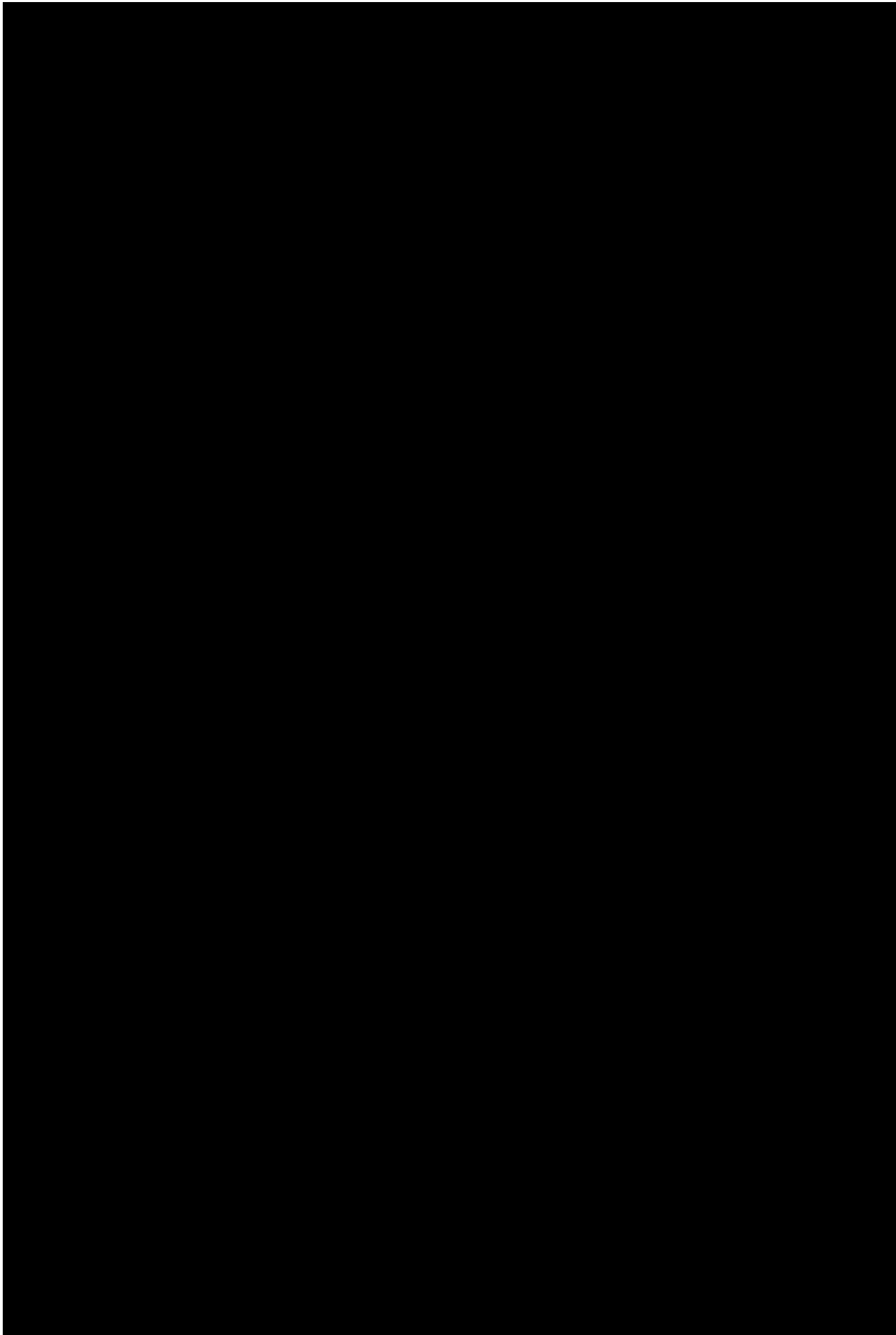
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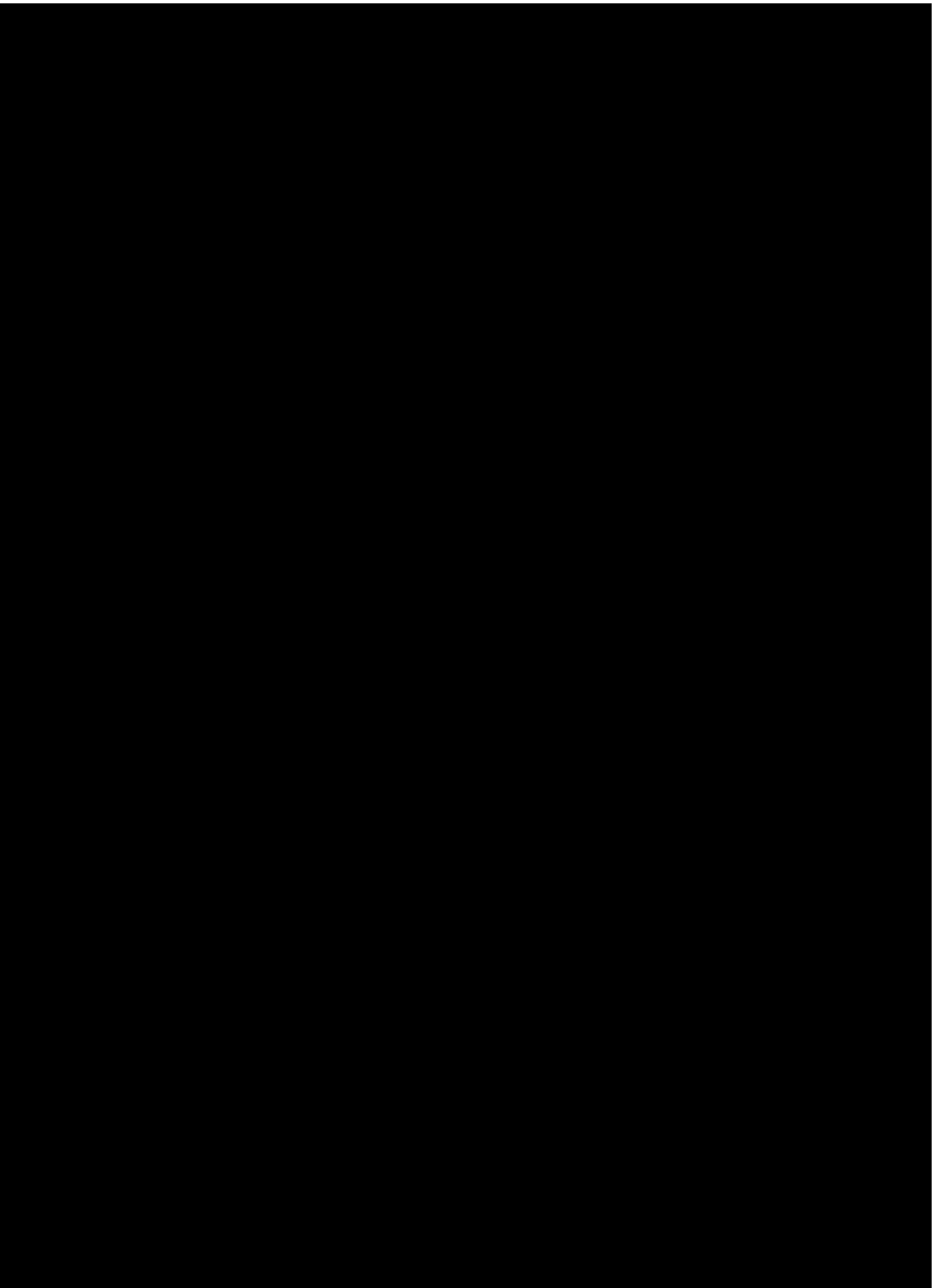
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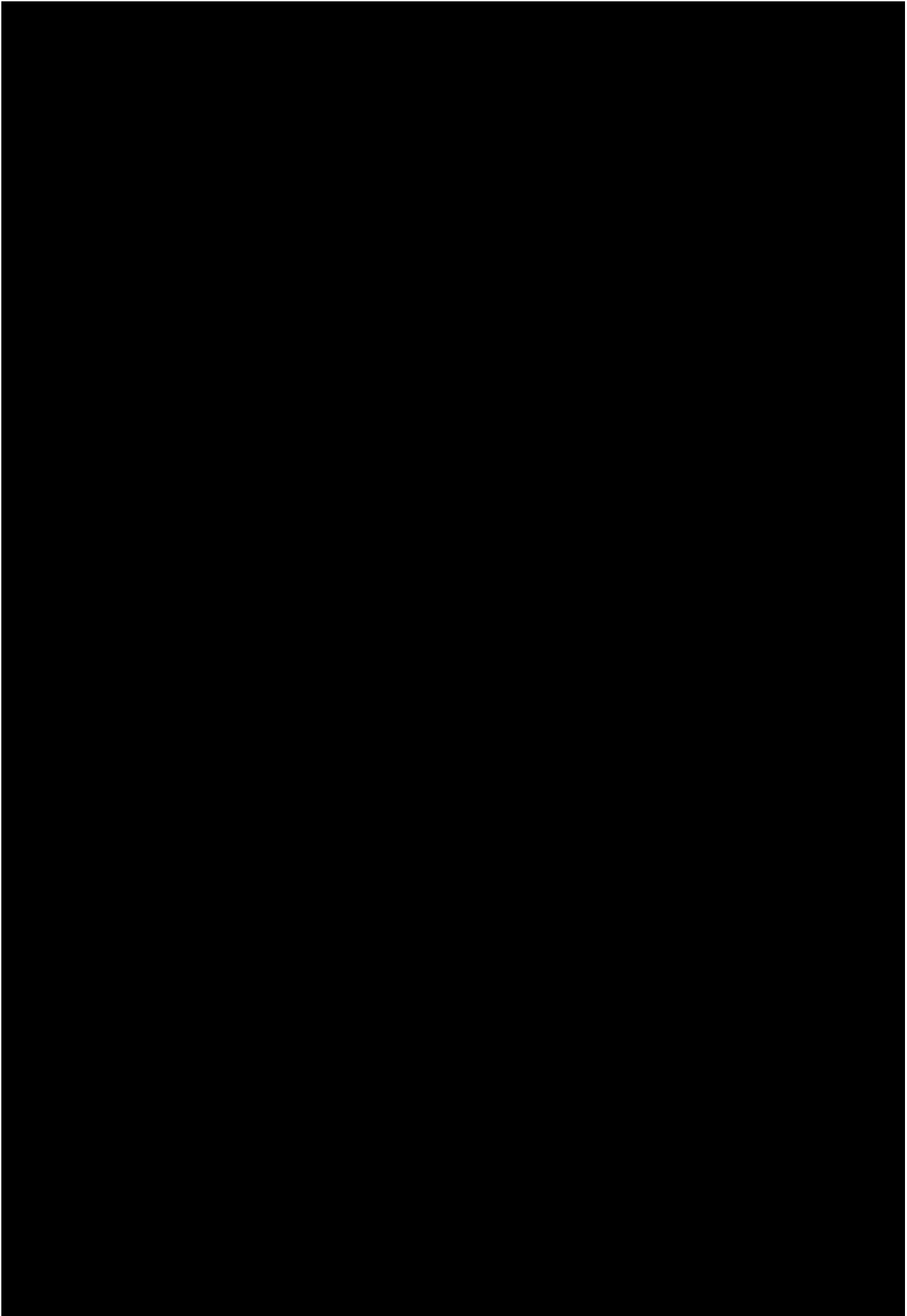


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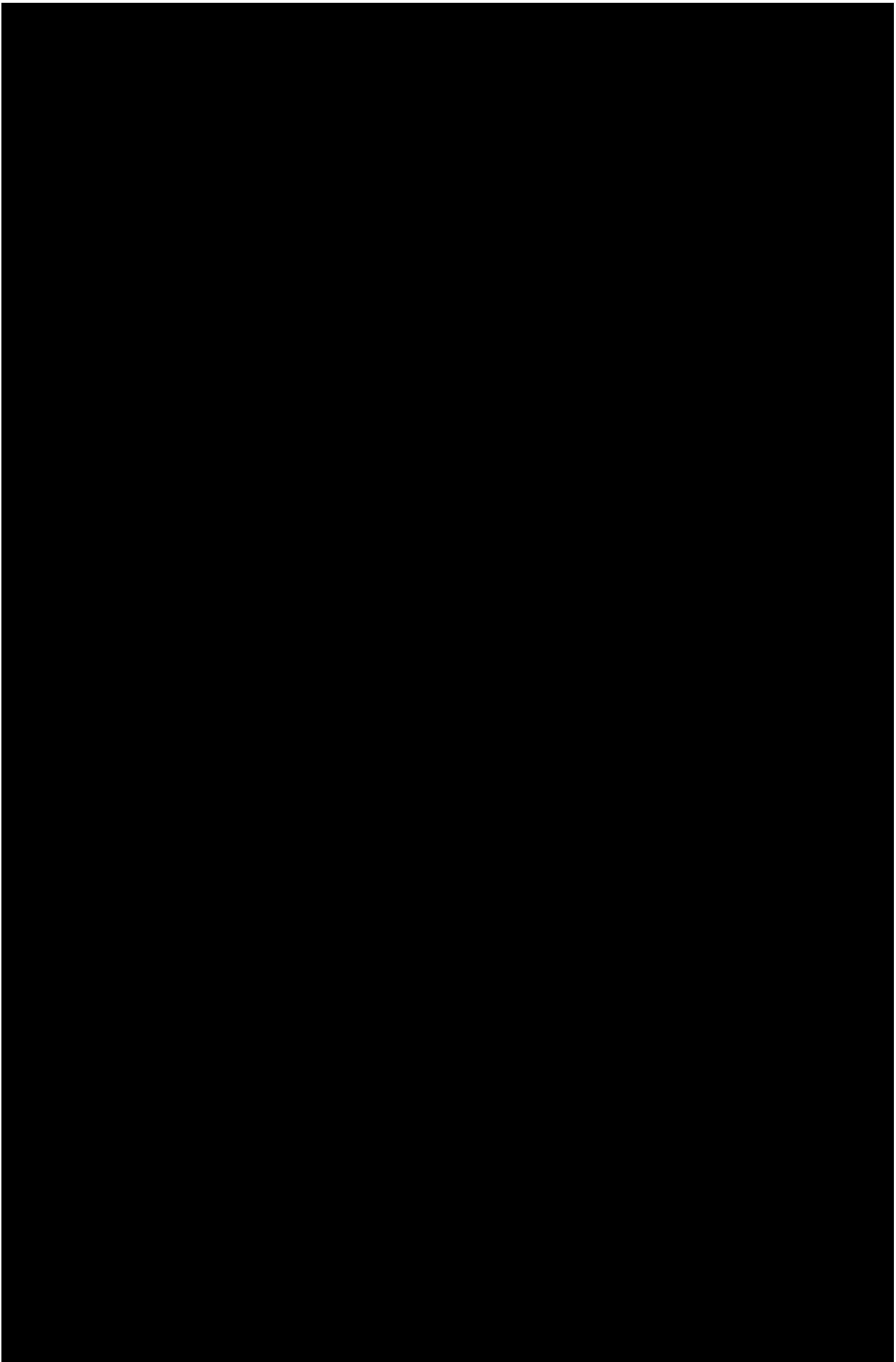


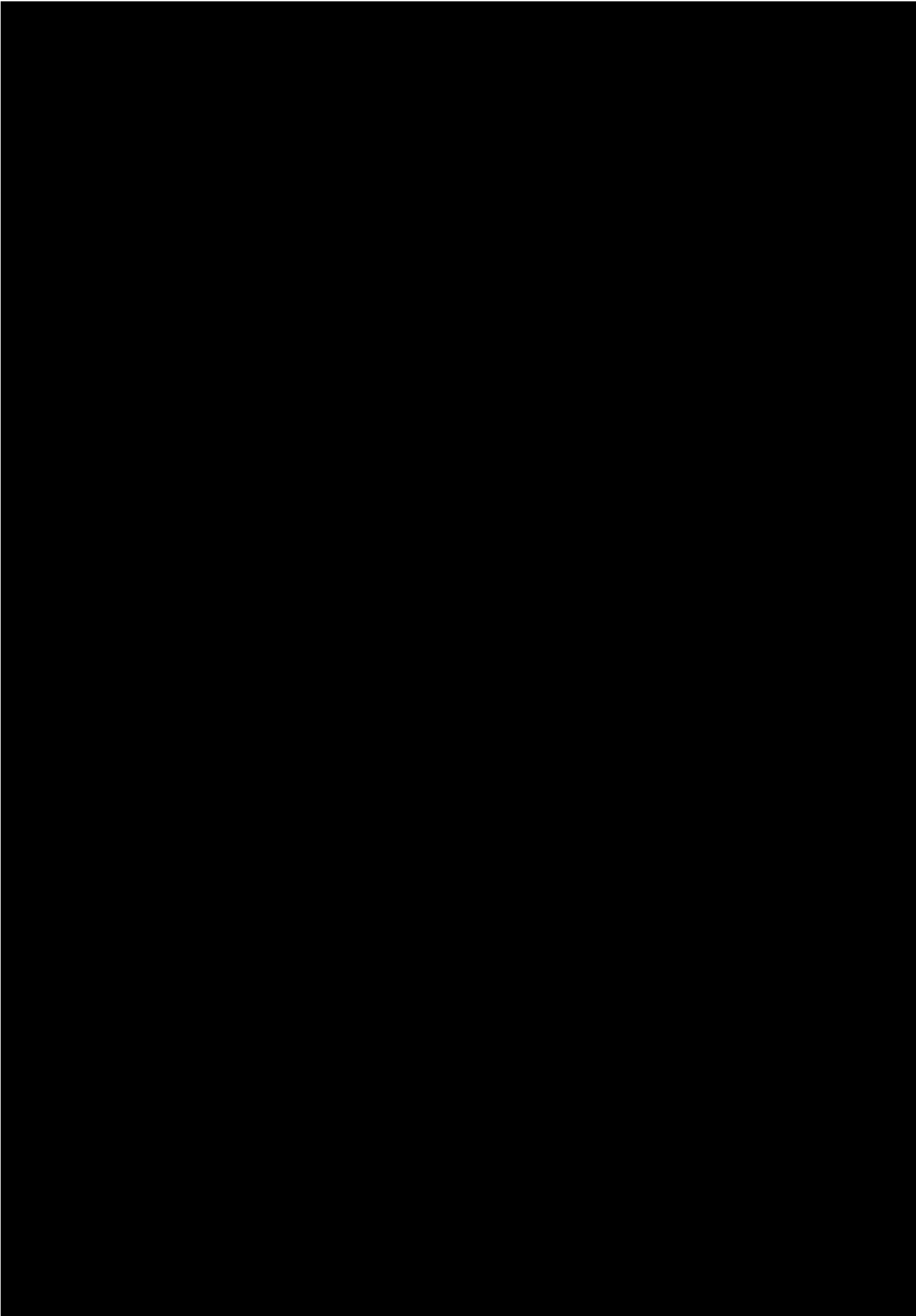




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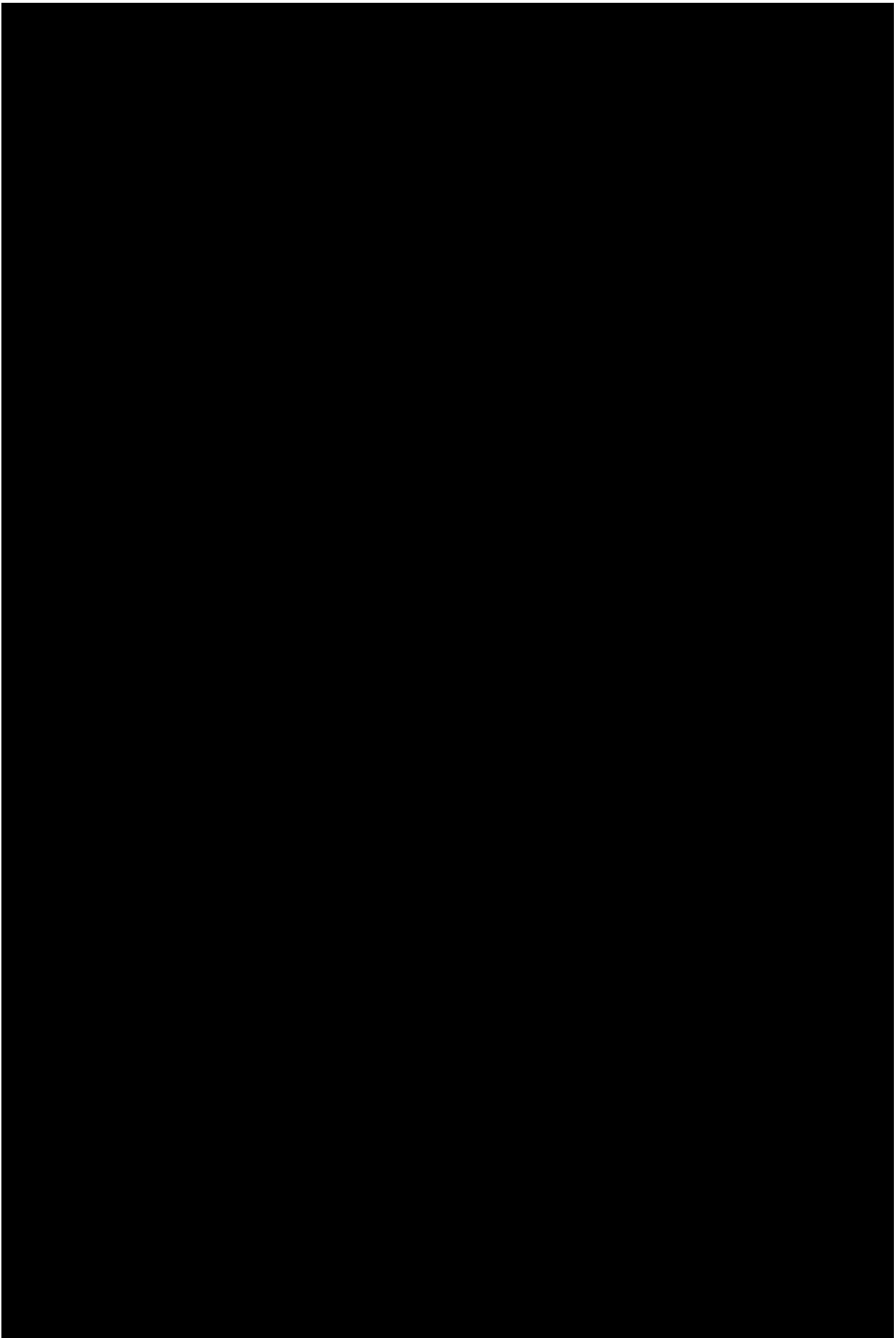




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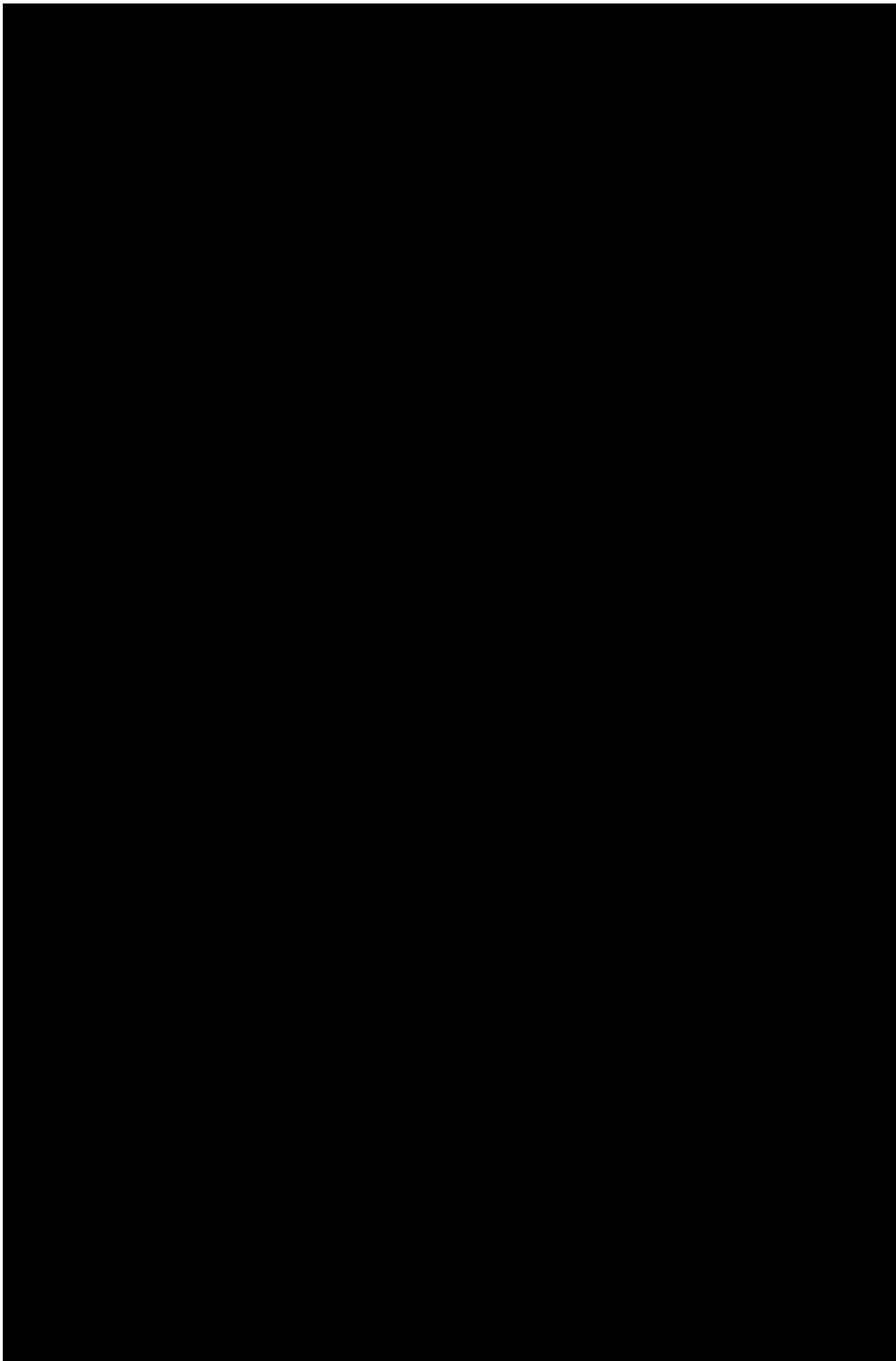
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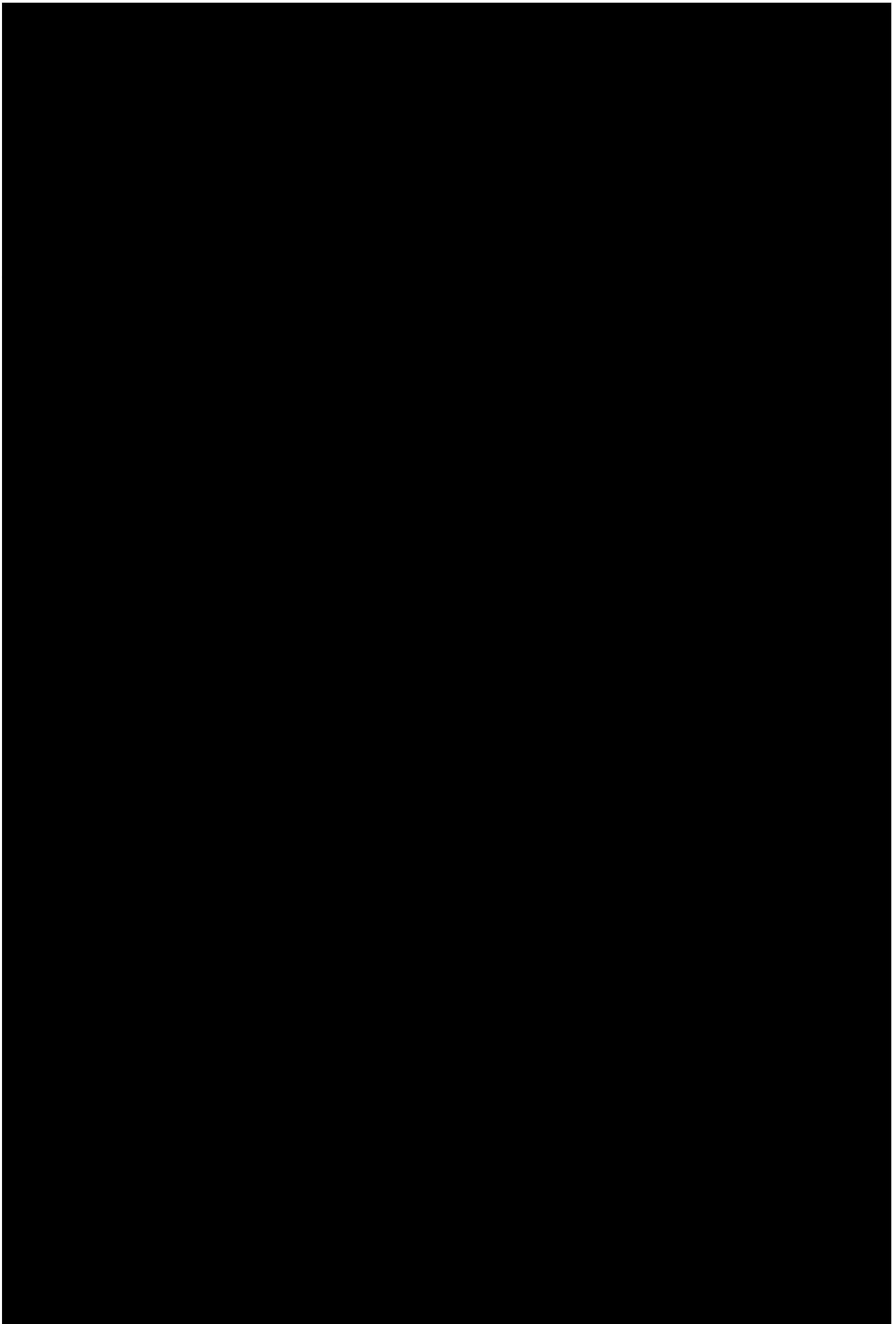


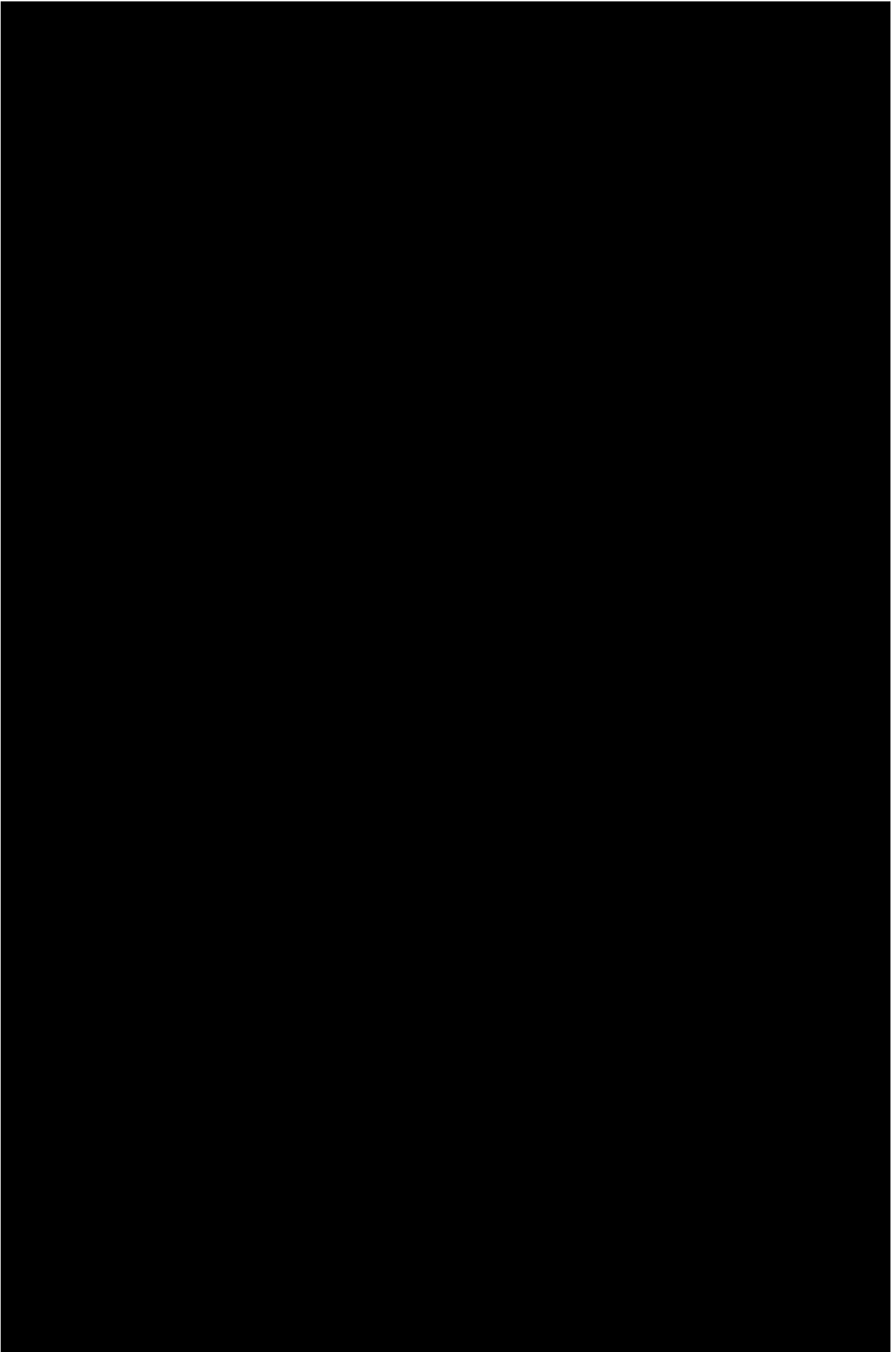
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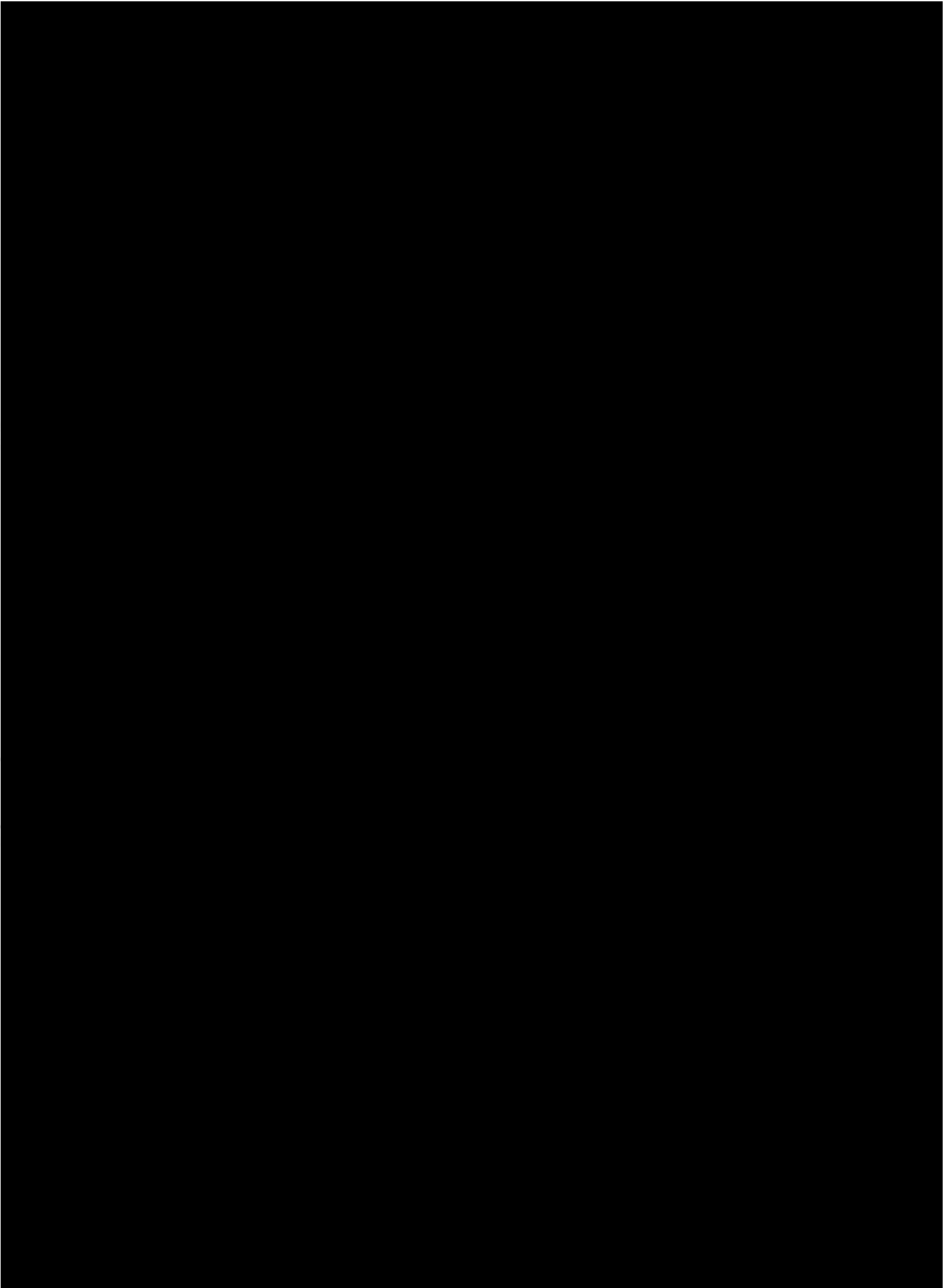
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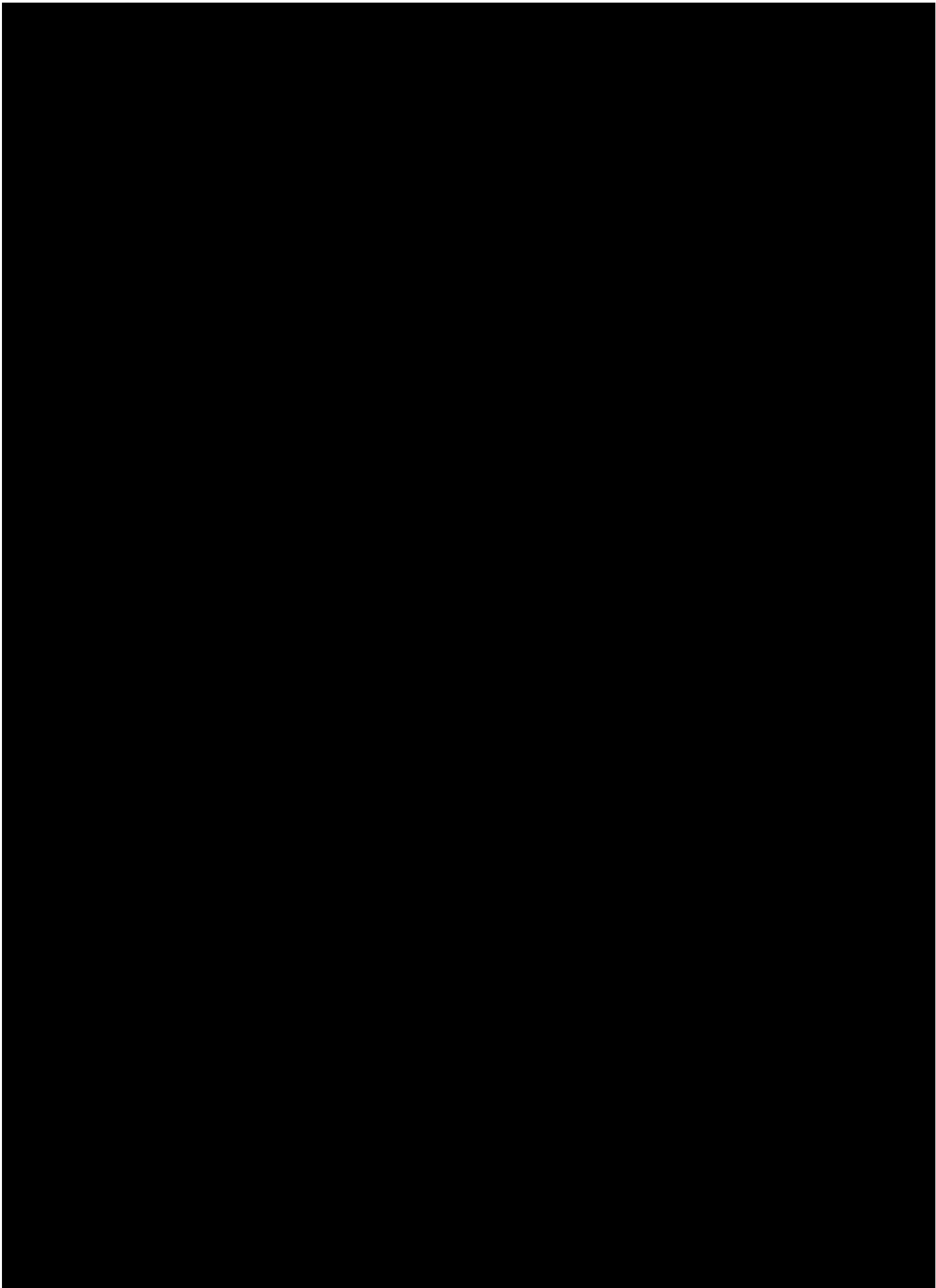
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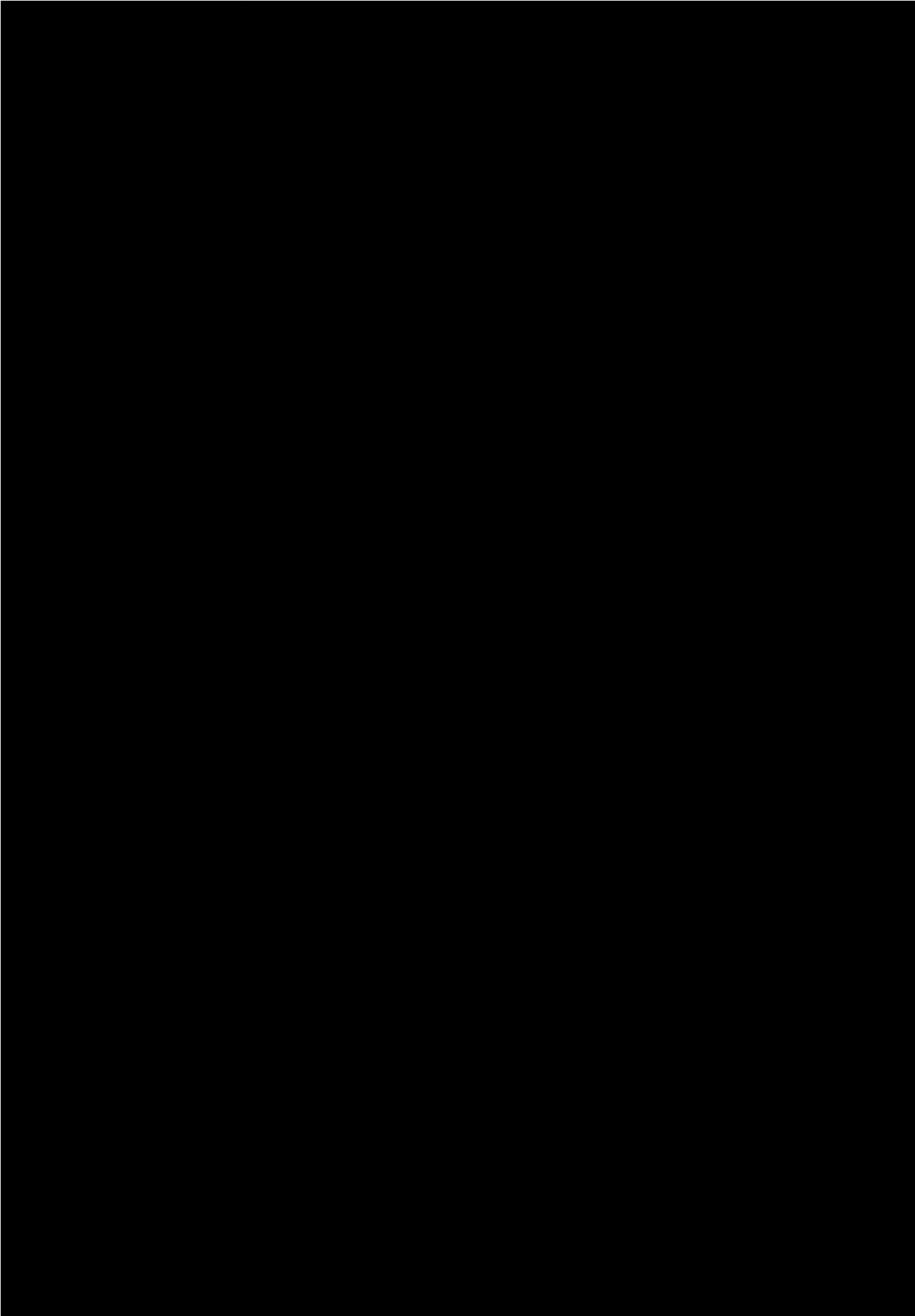




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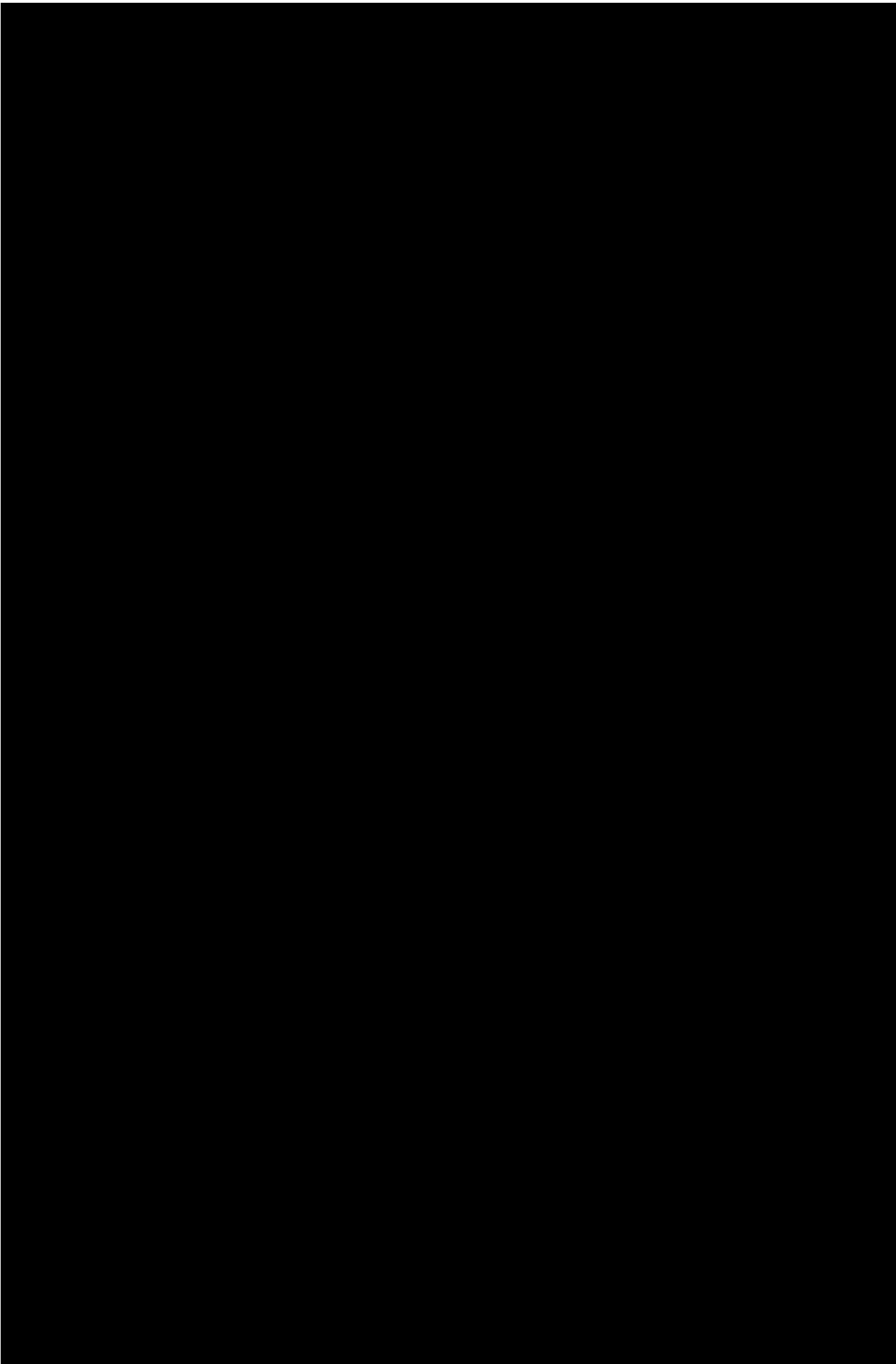
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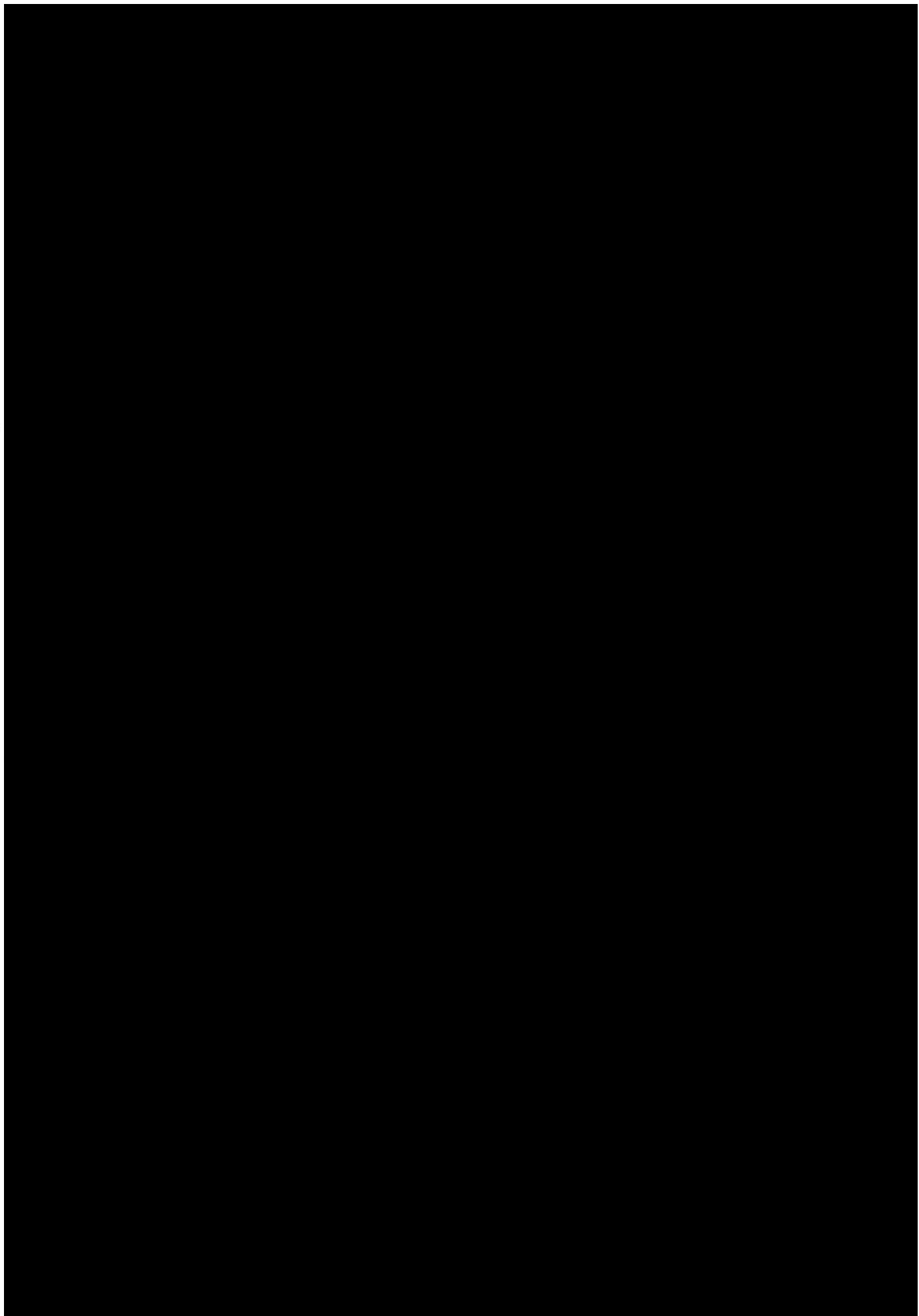
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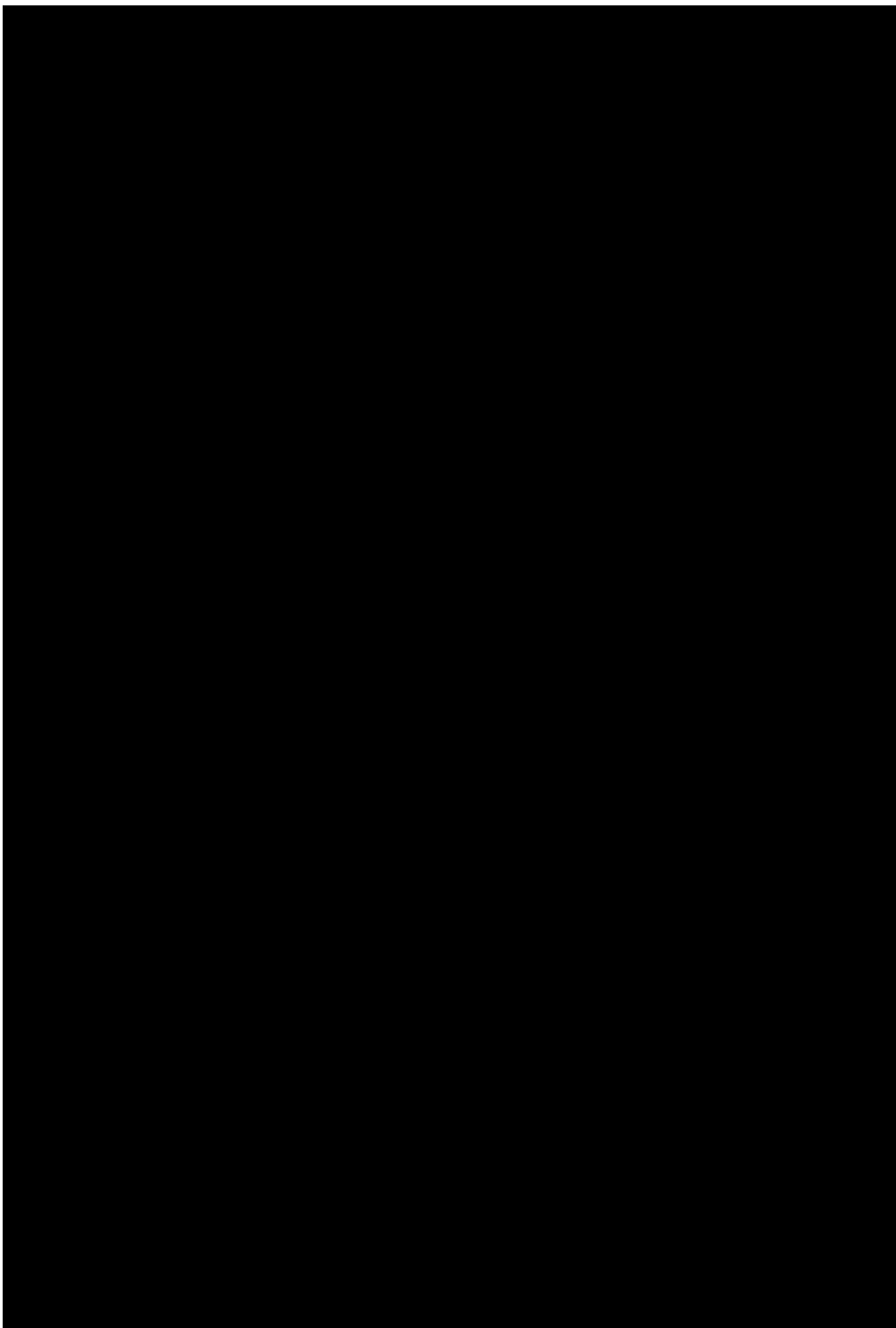
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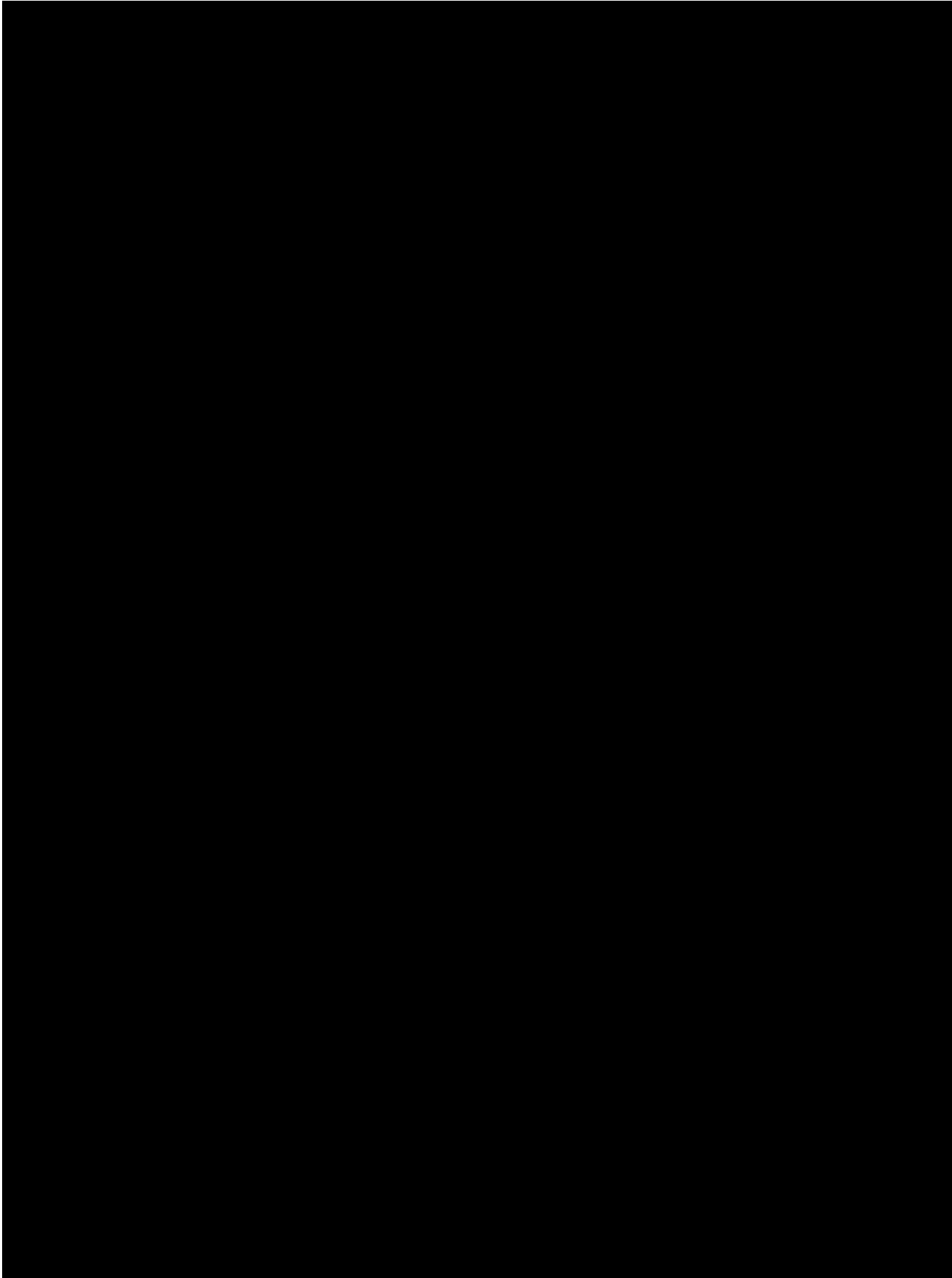
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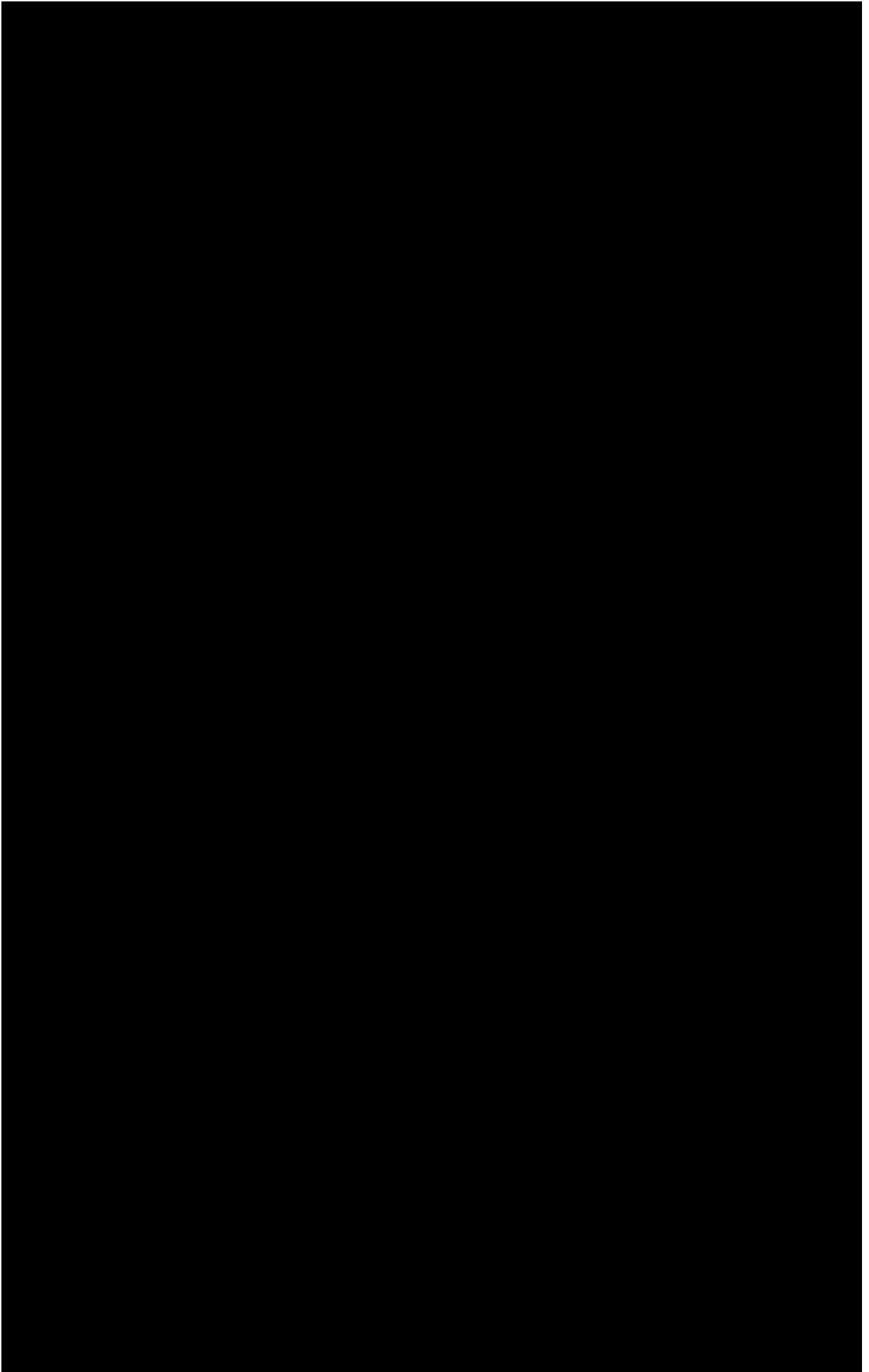
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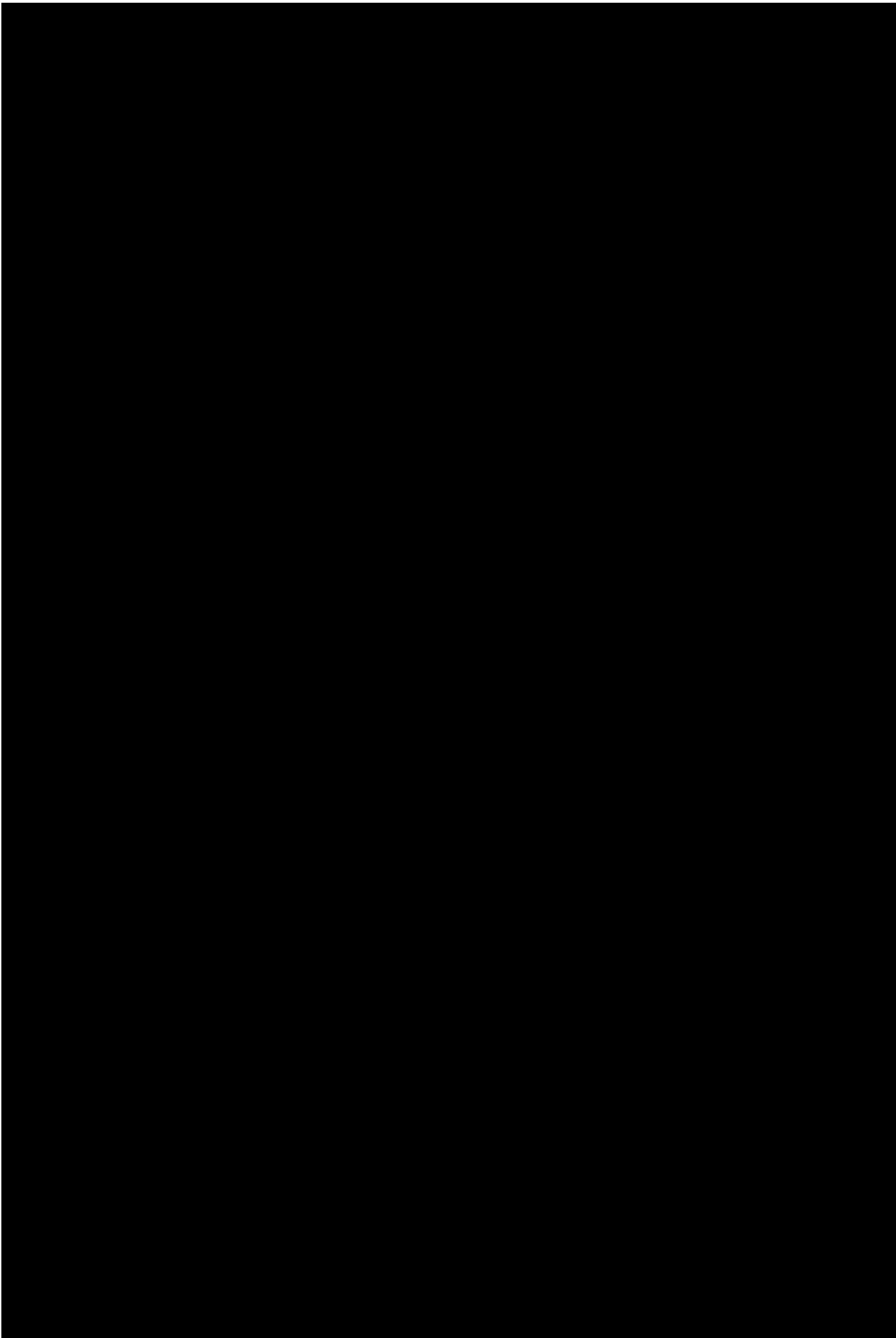


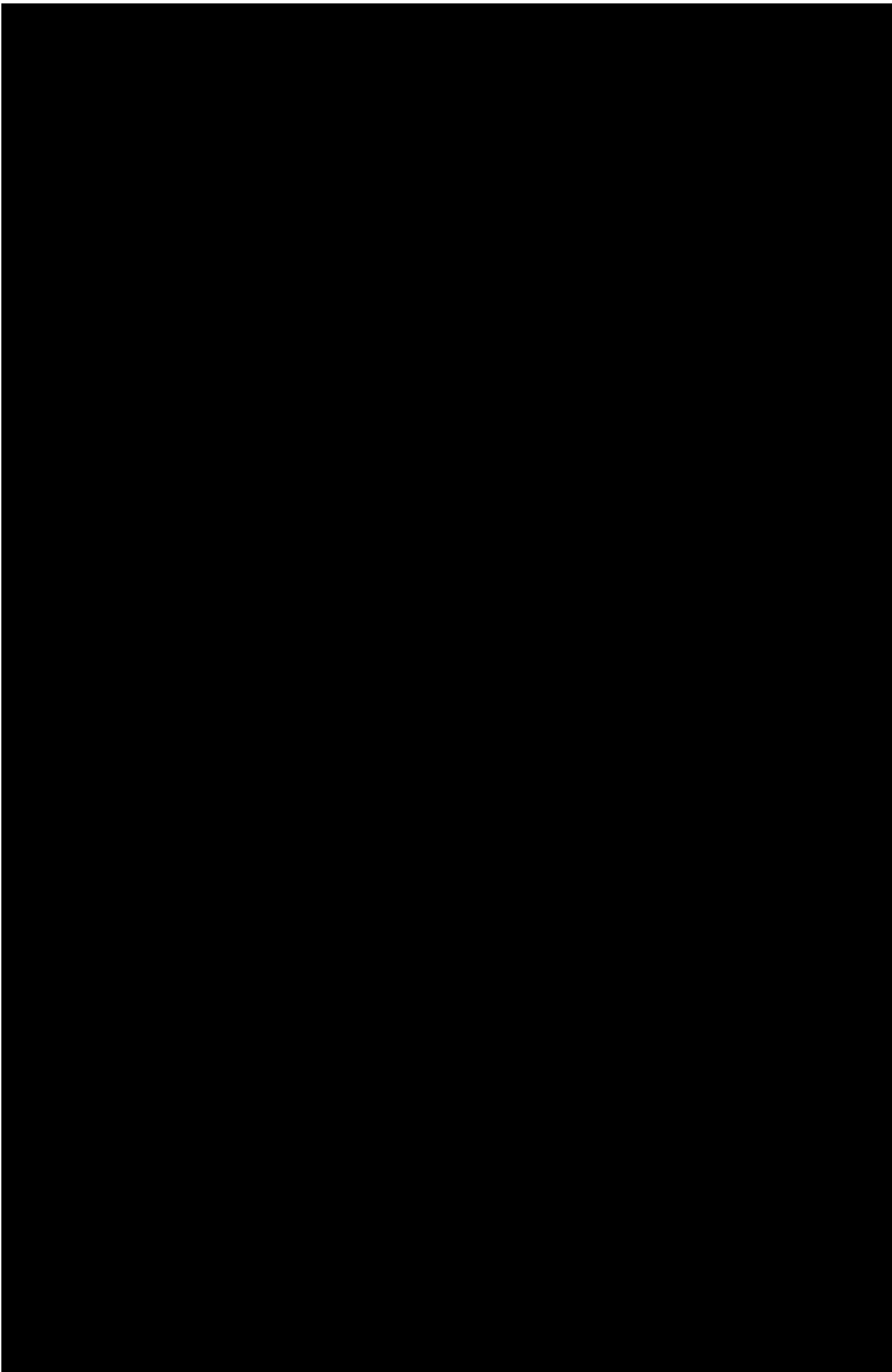
SCHEDULE A14

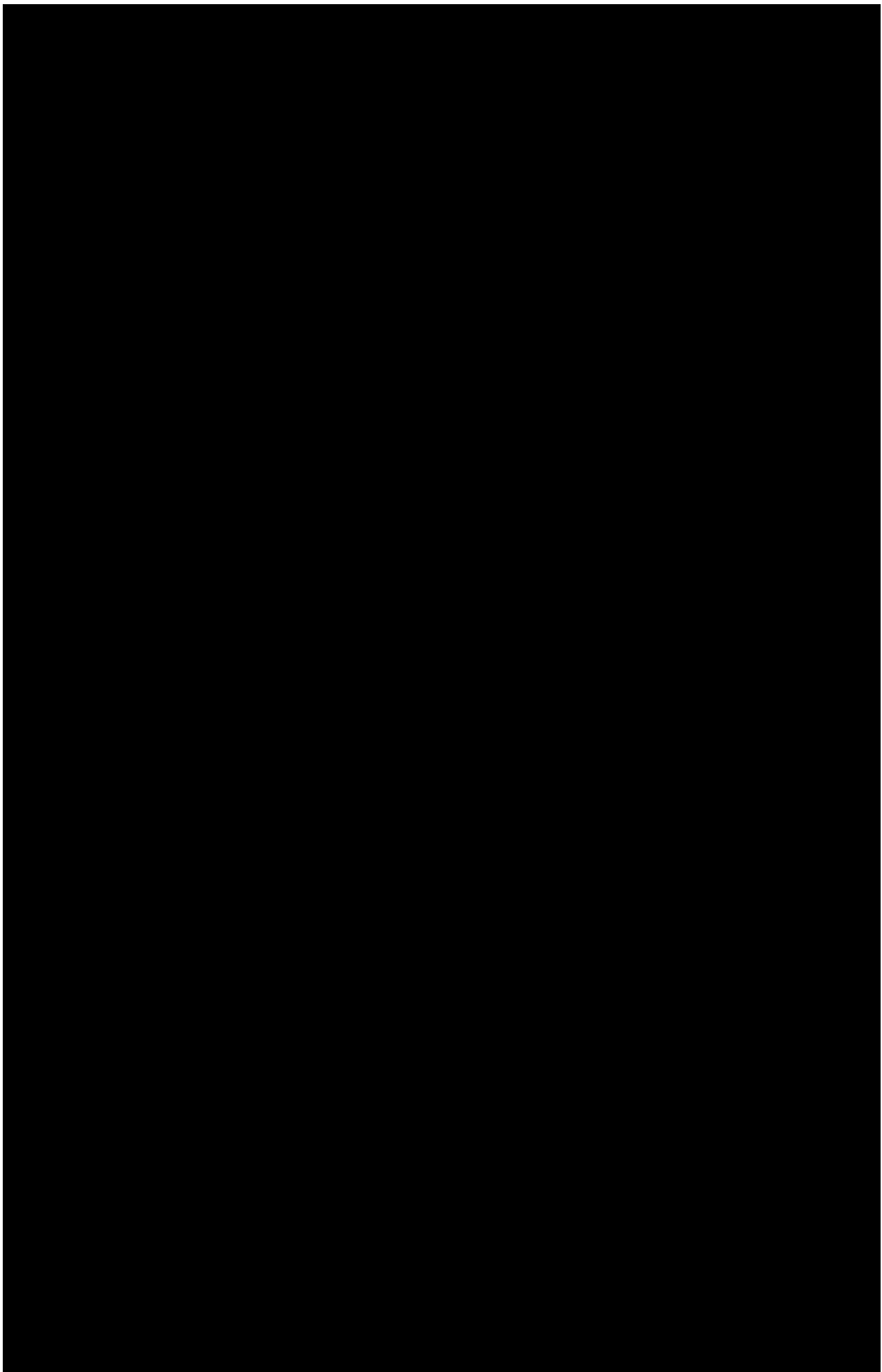
Station Cooperation and Integration Deed

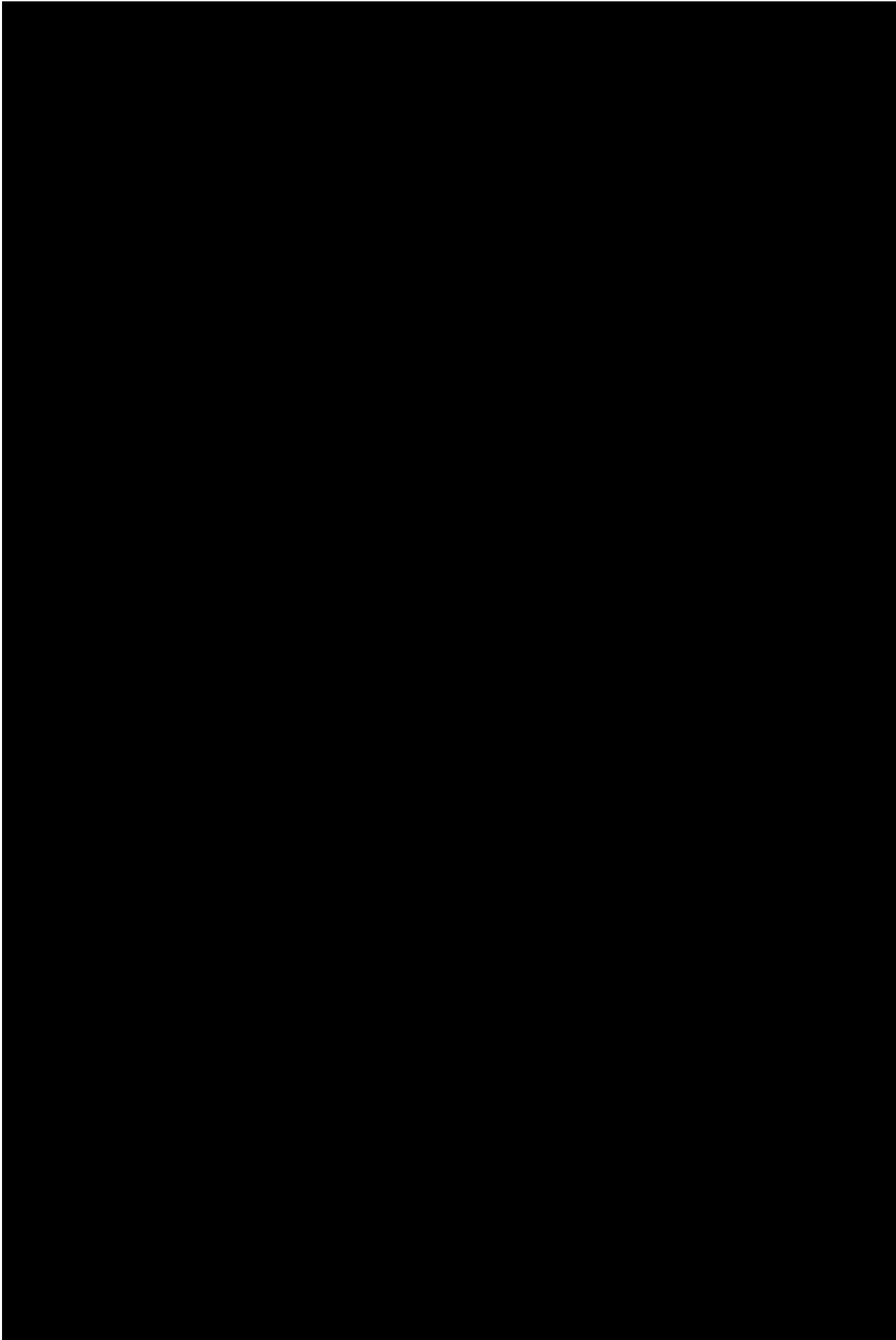


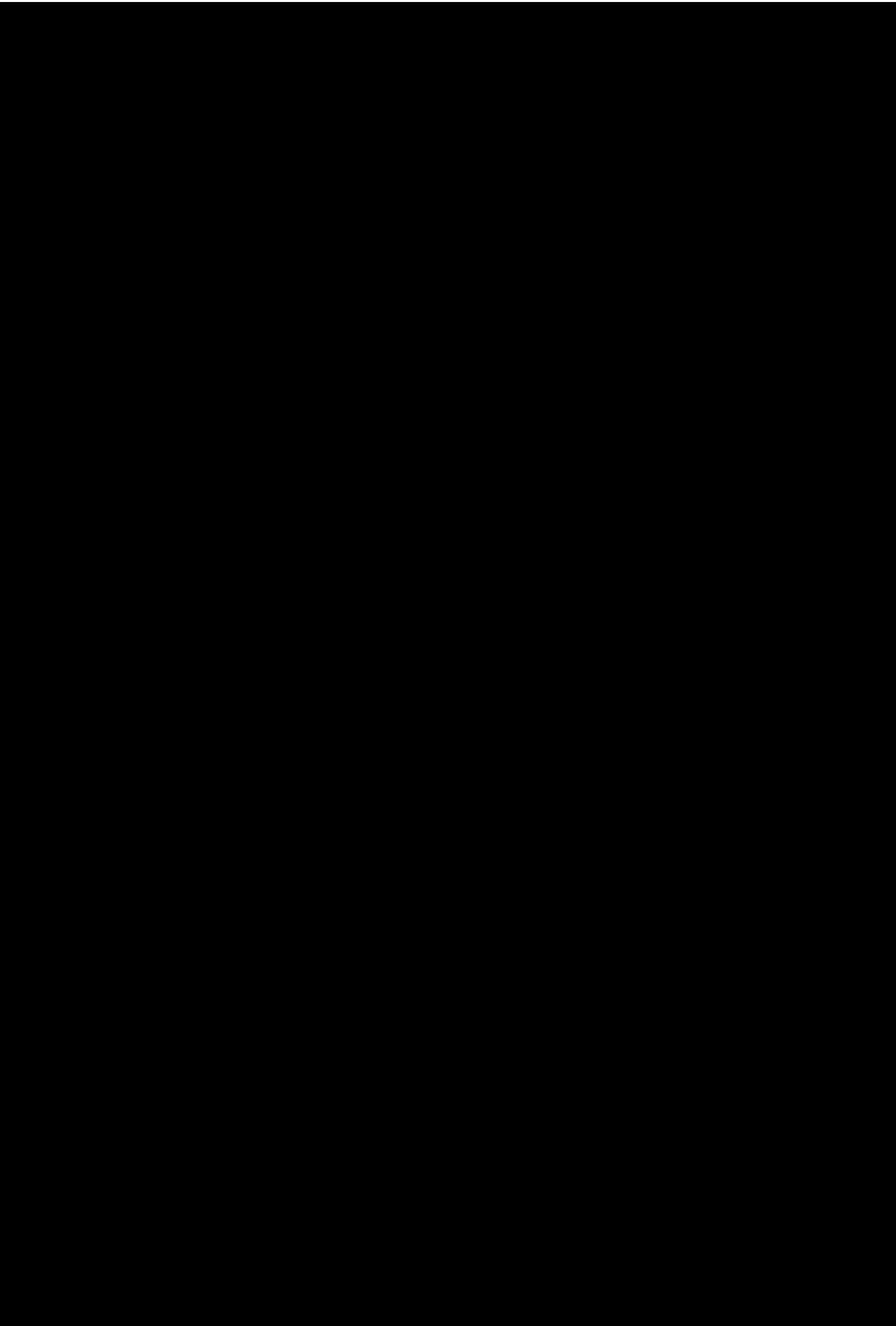


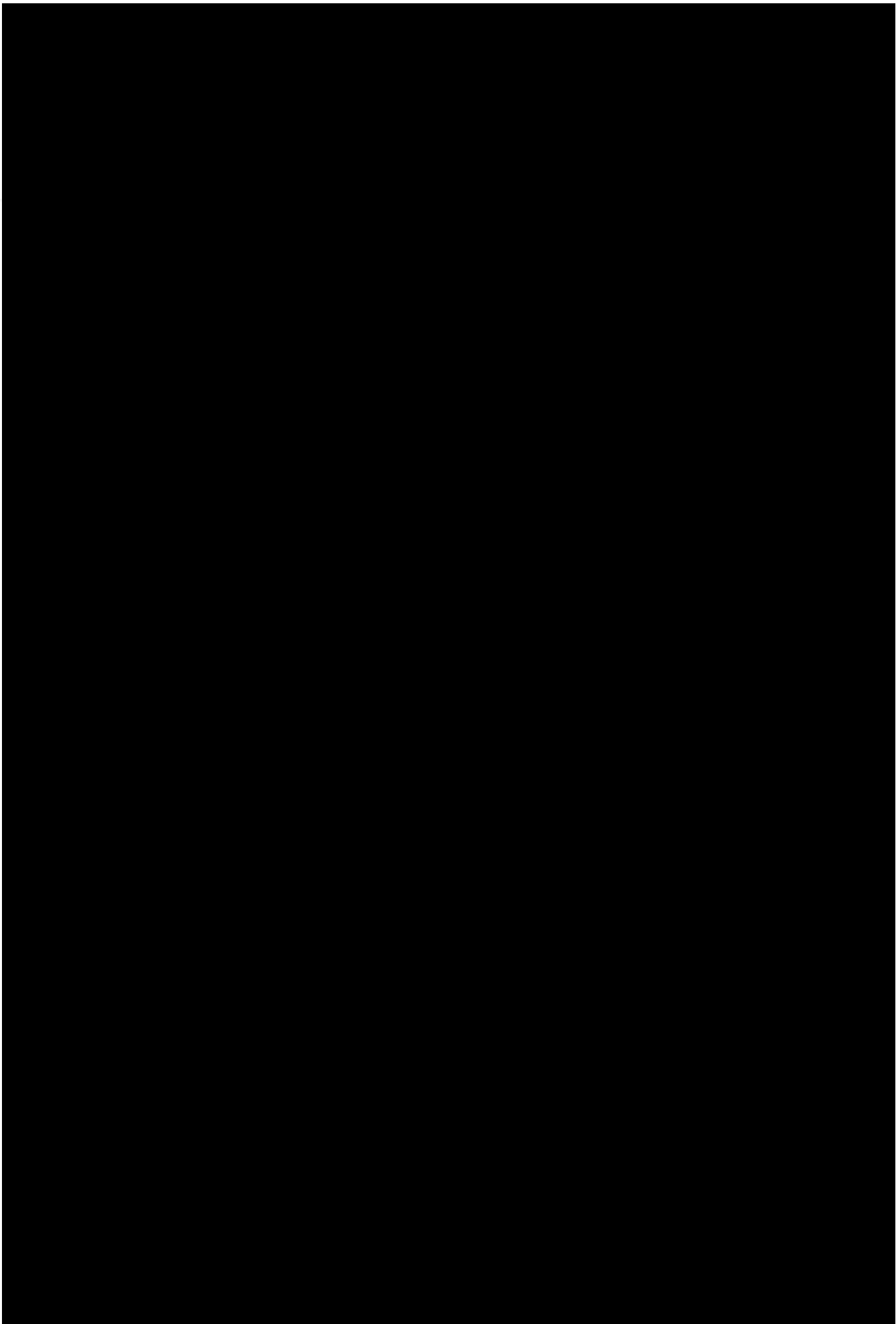


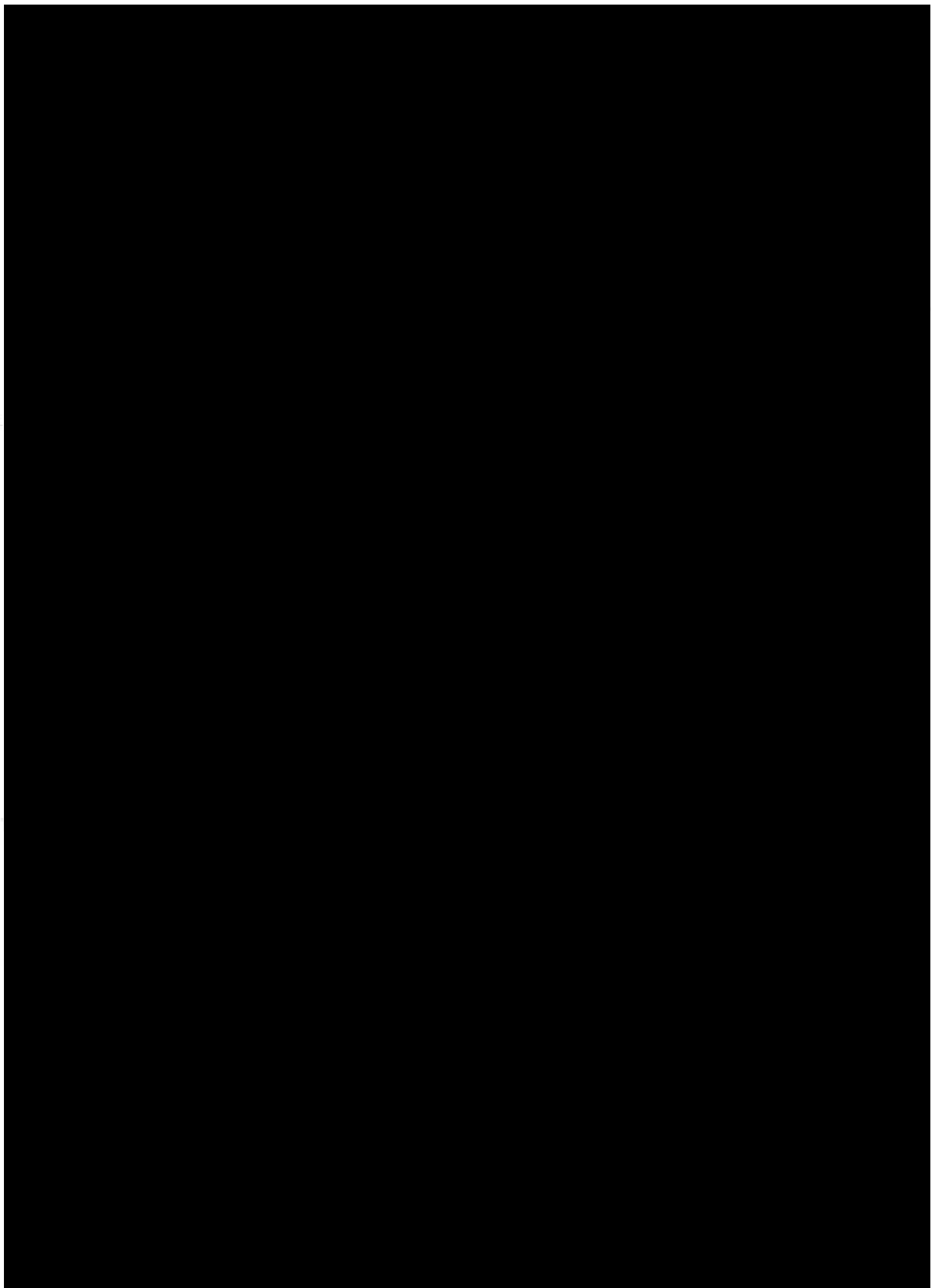


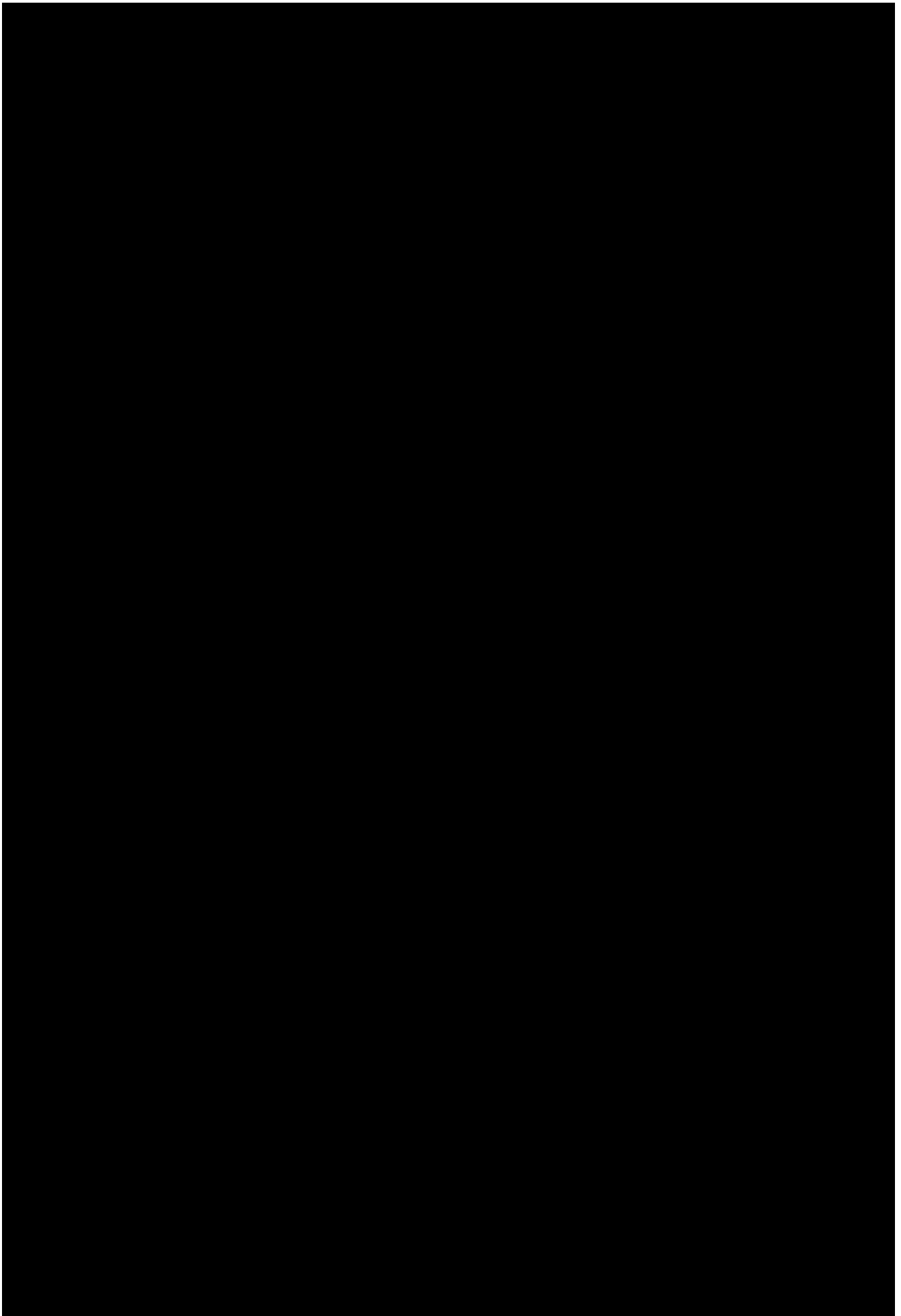


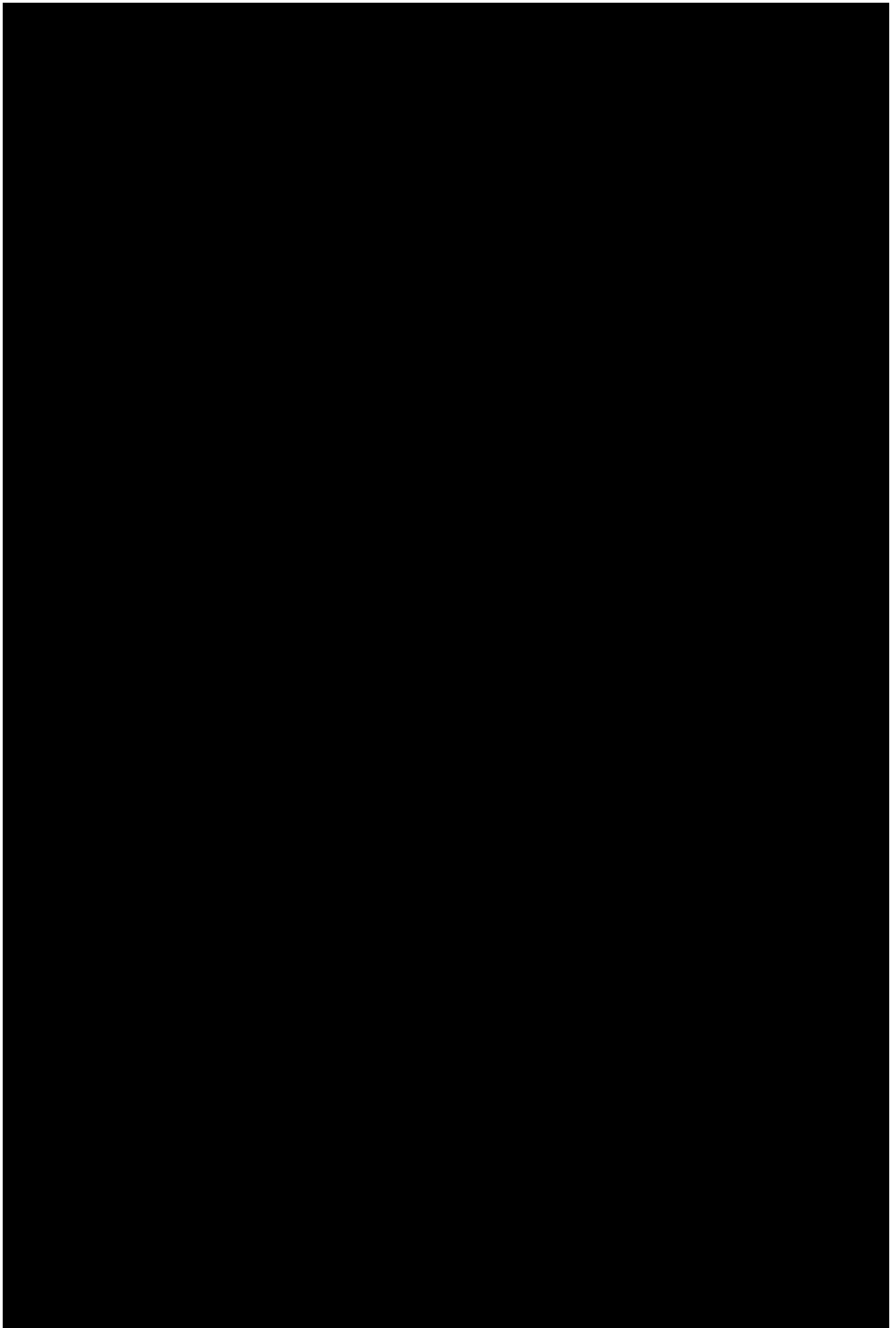


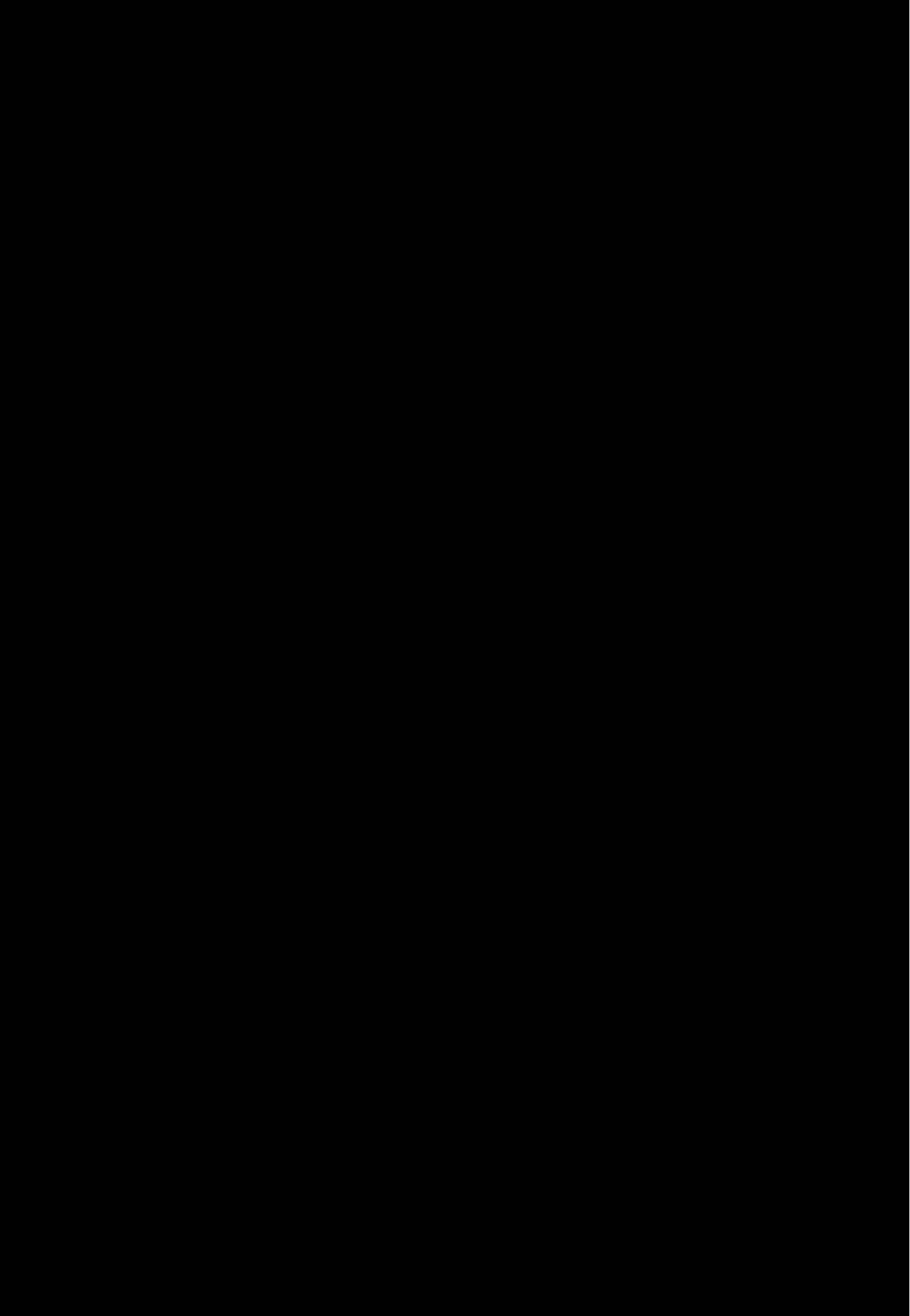






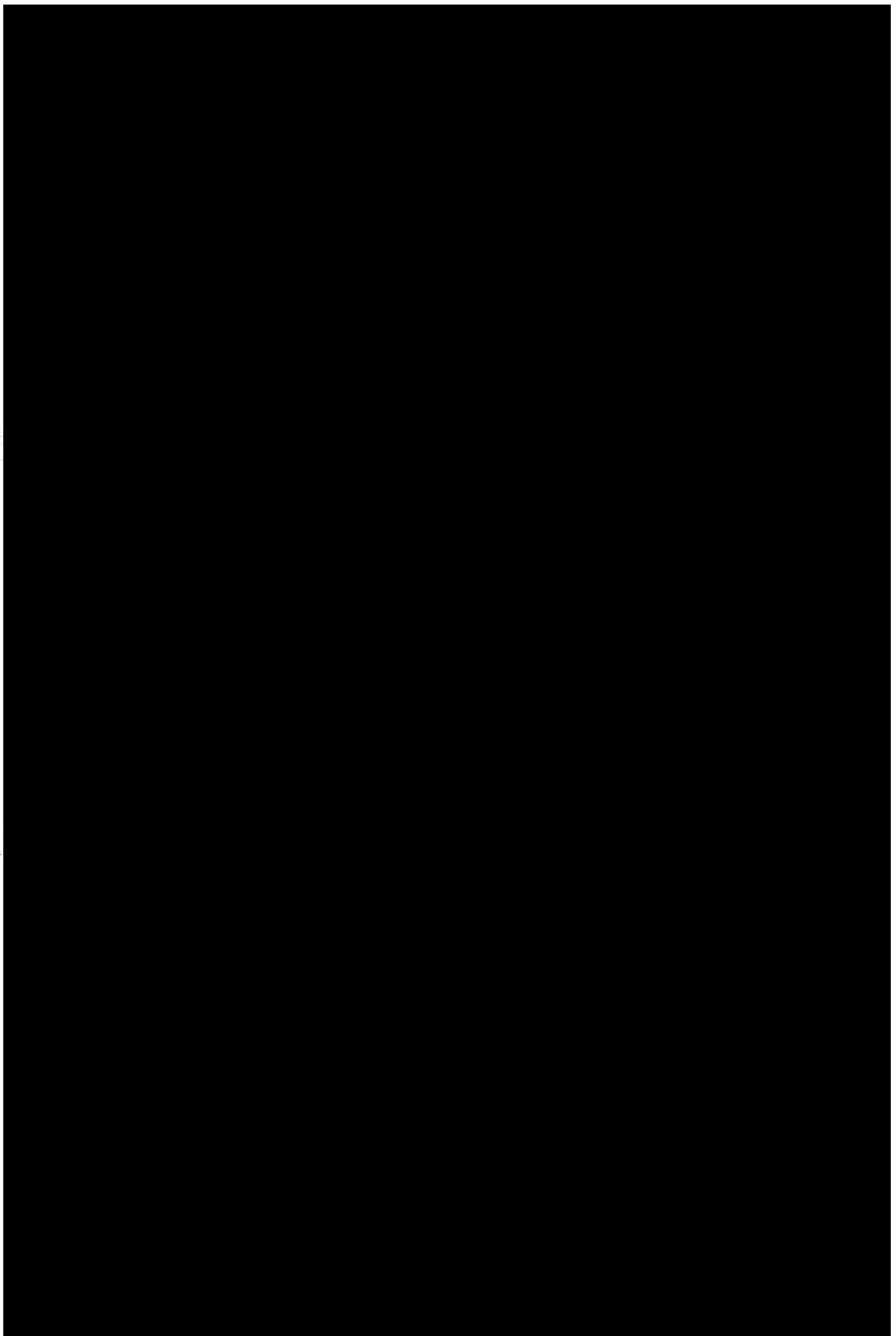




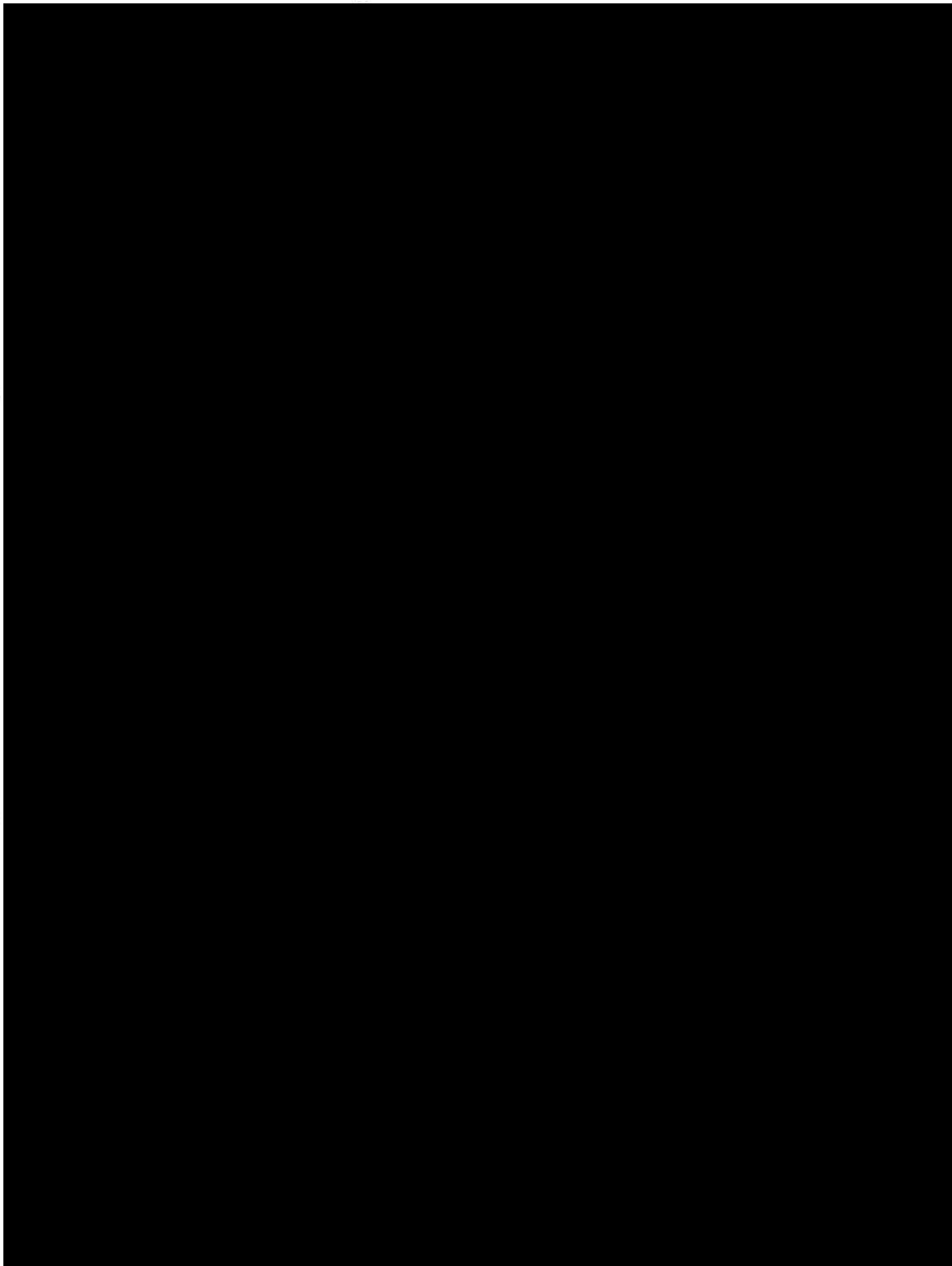


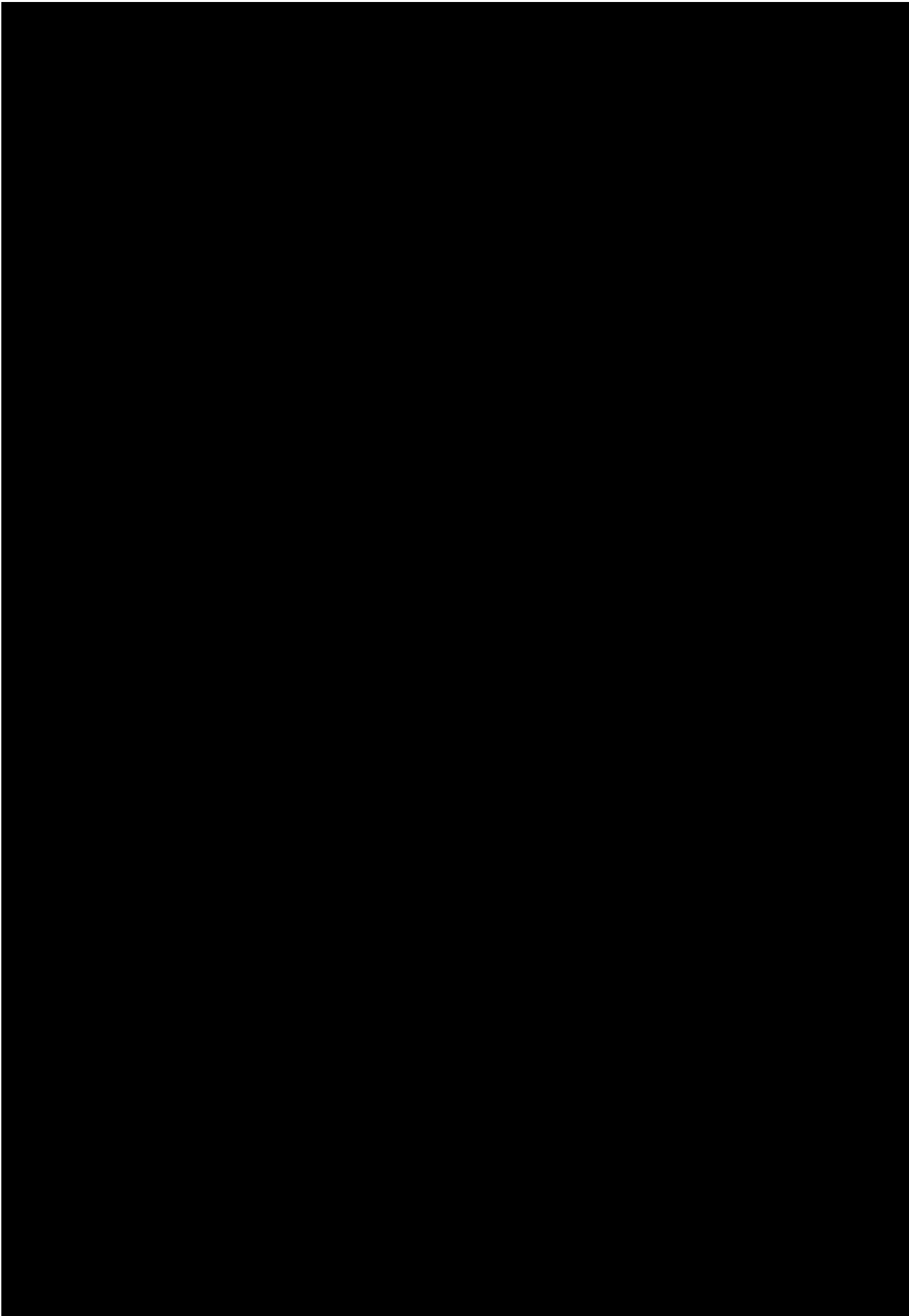
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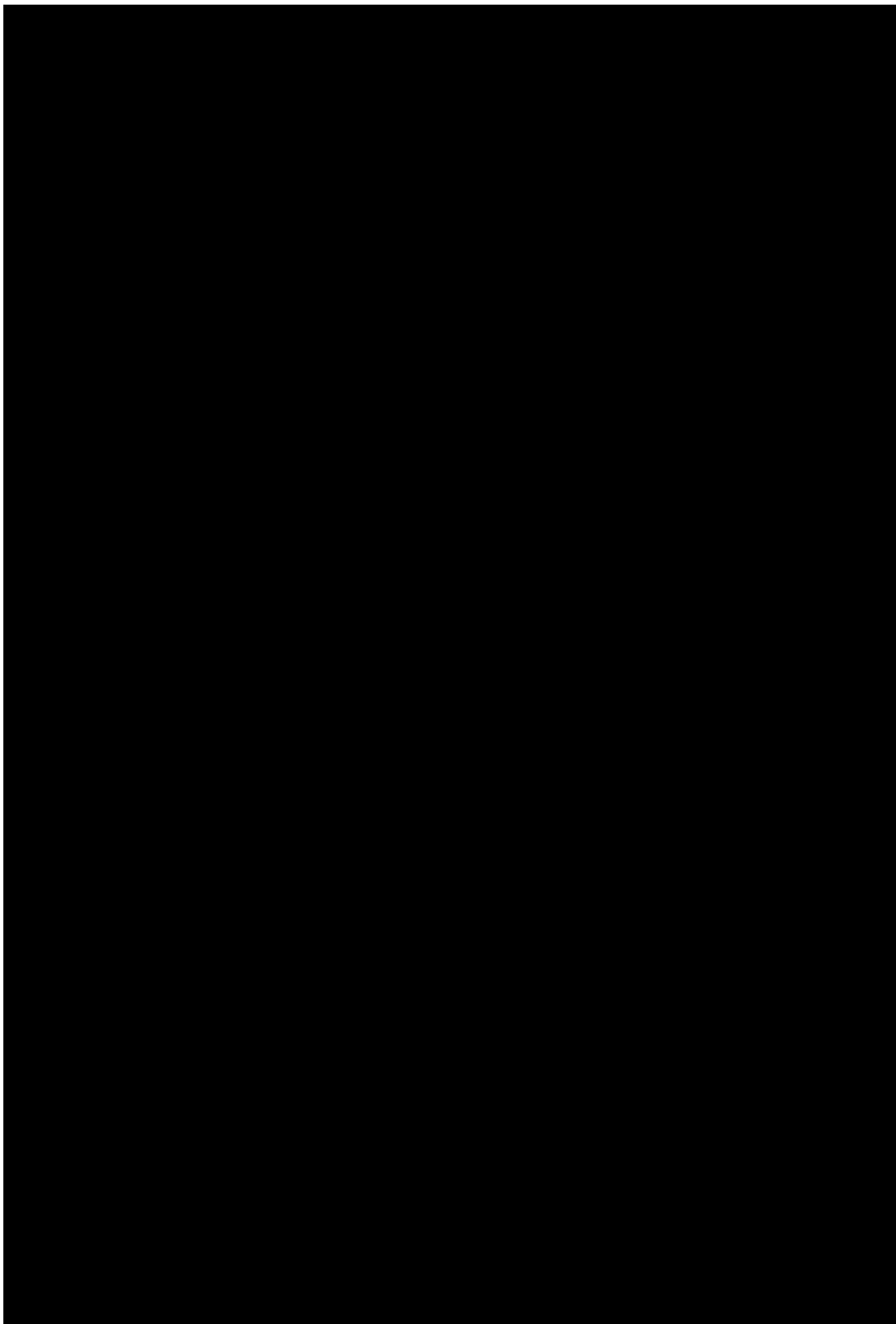
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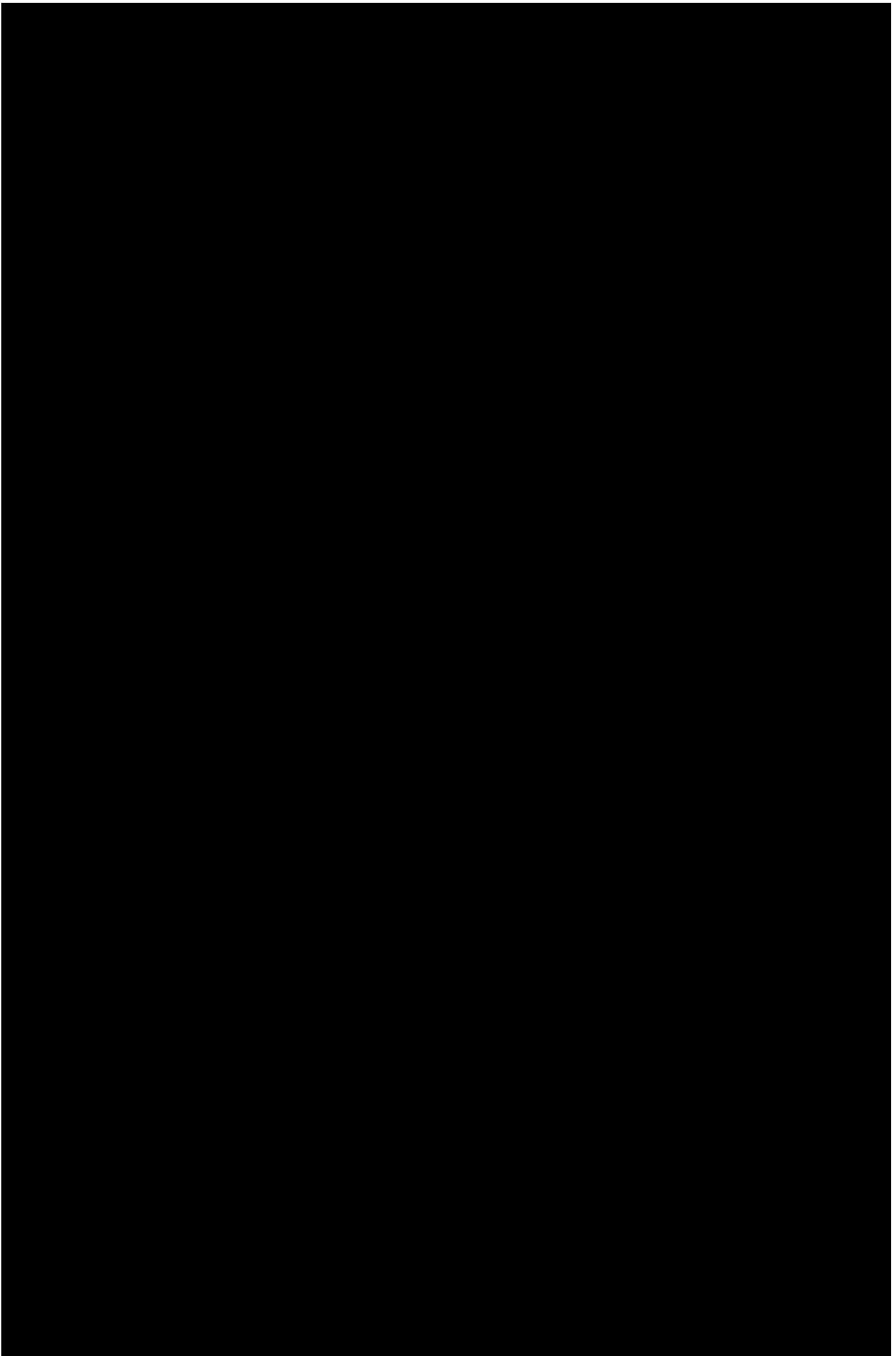


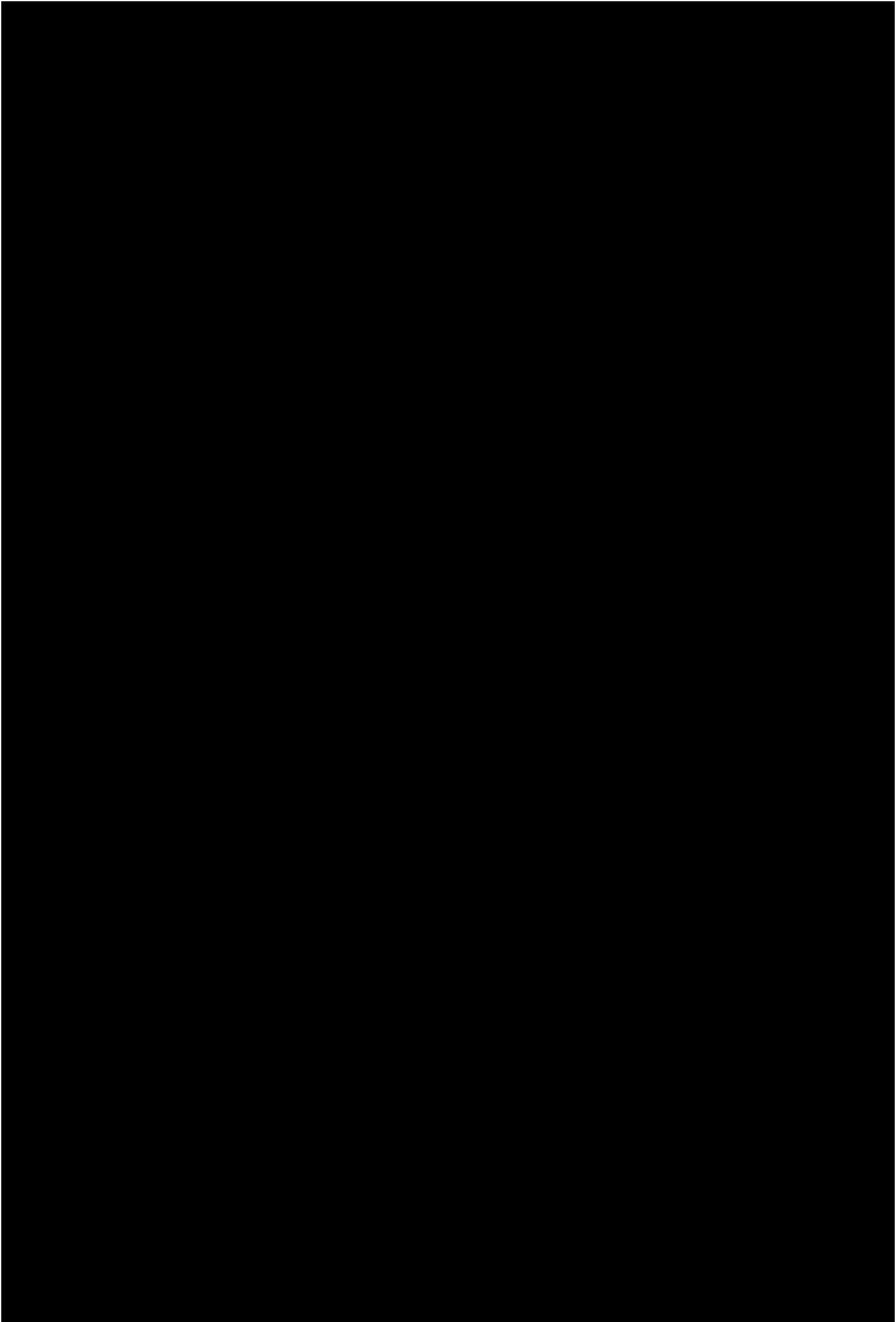


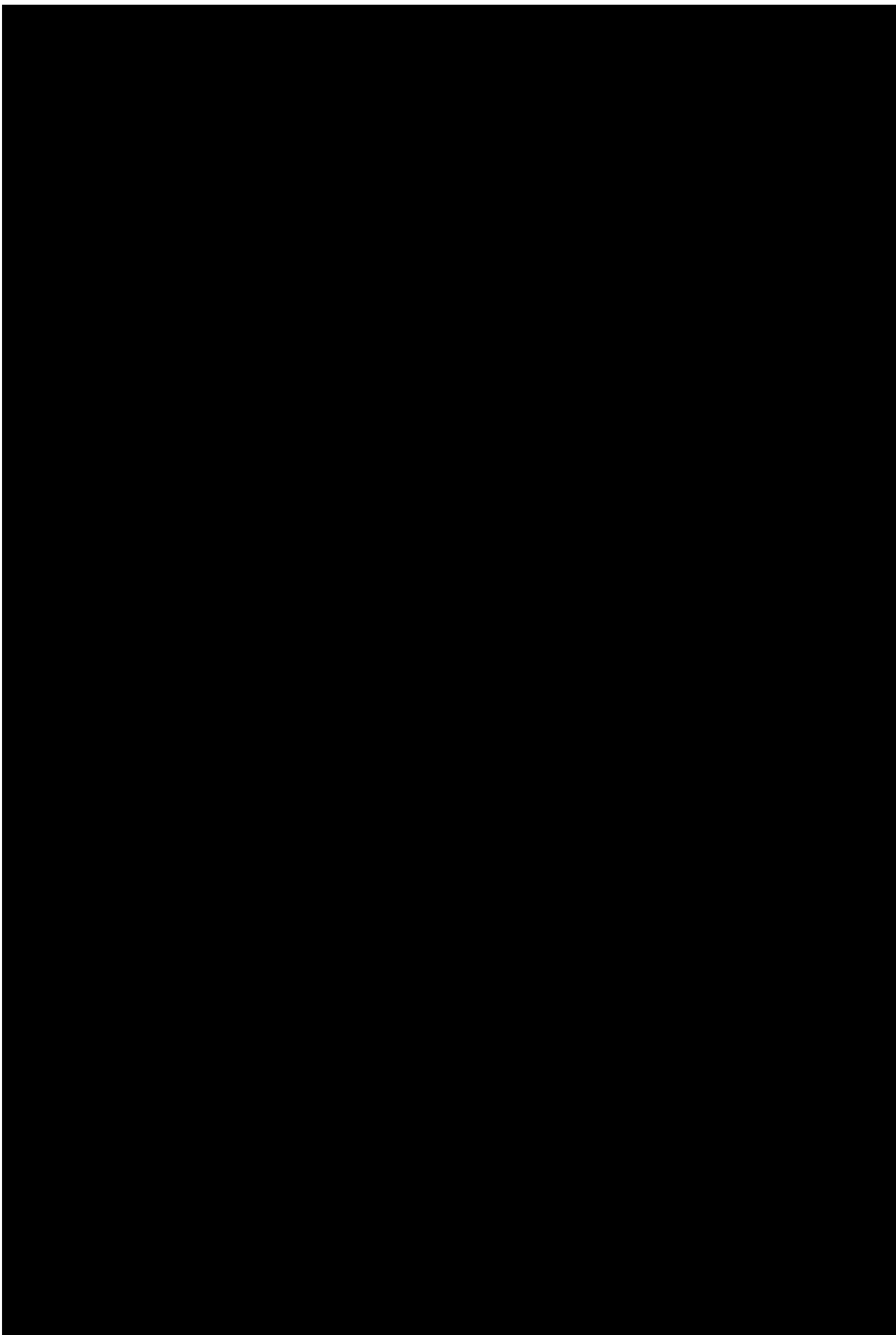


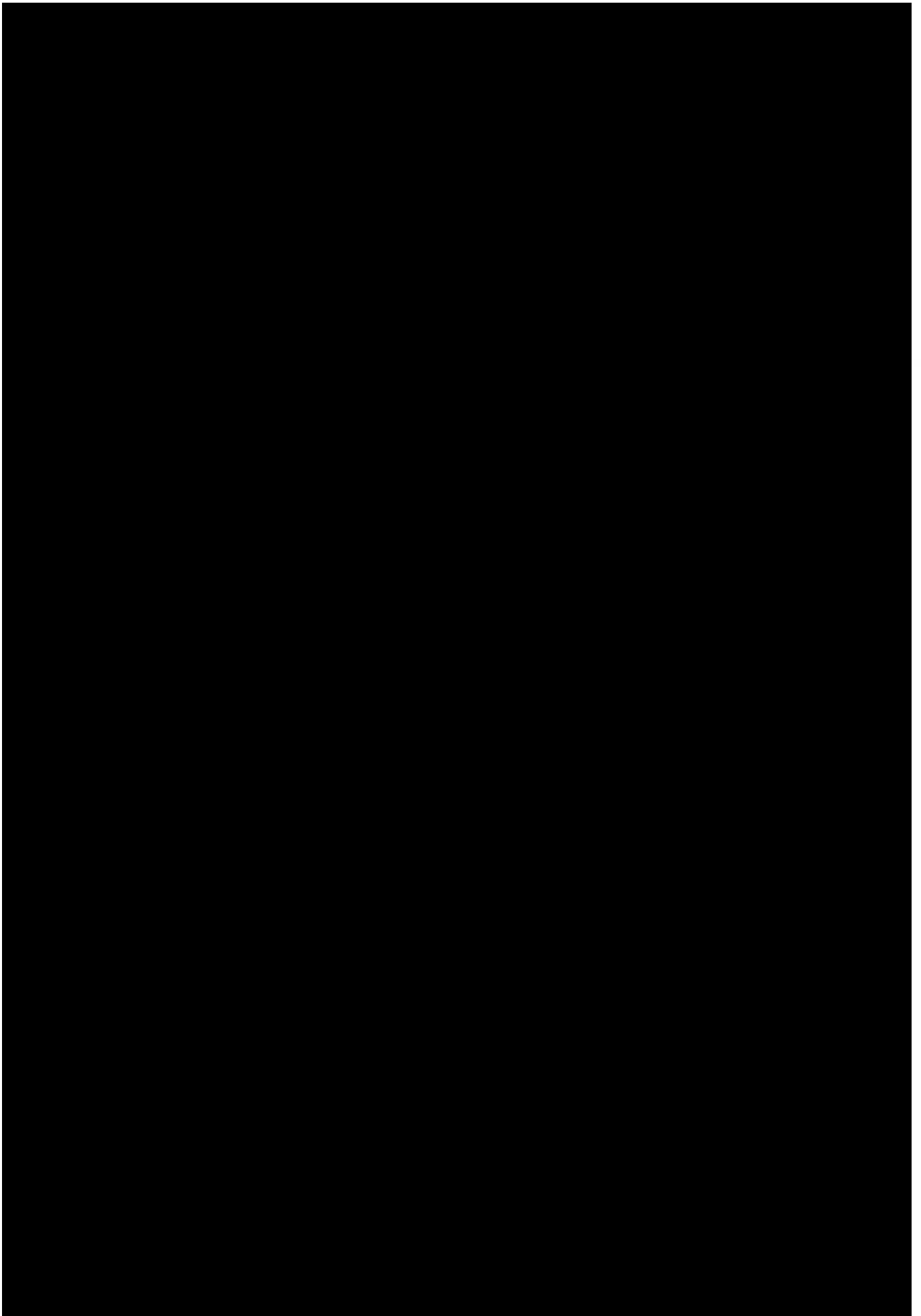


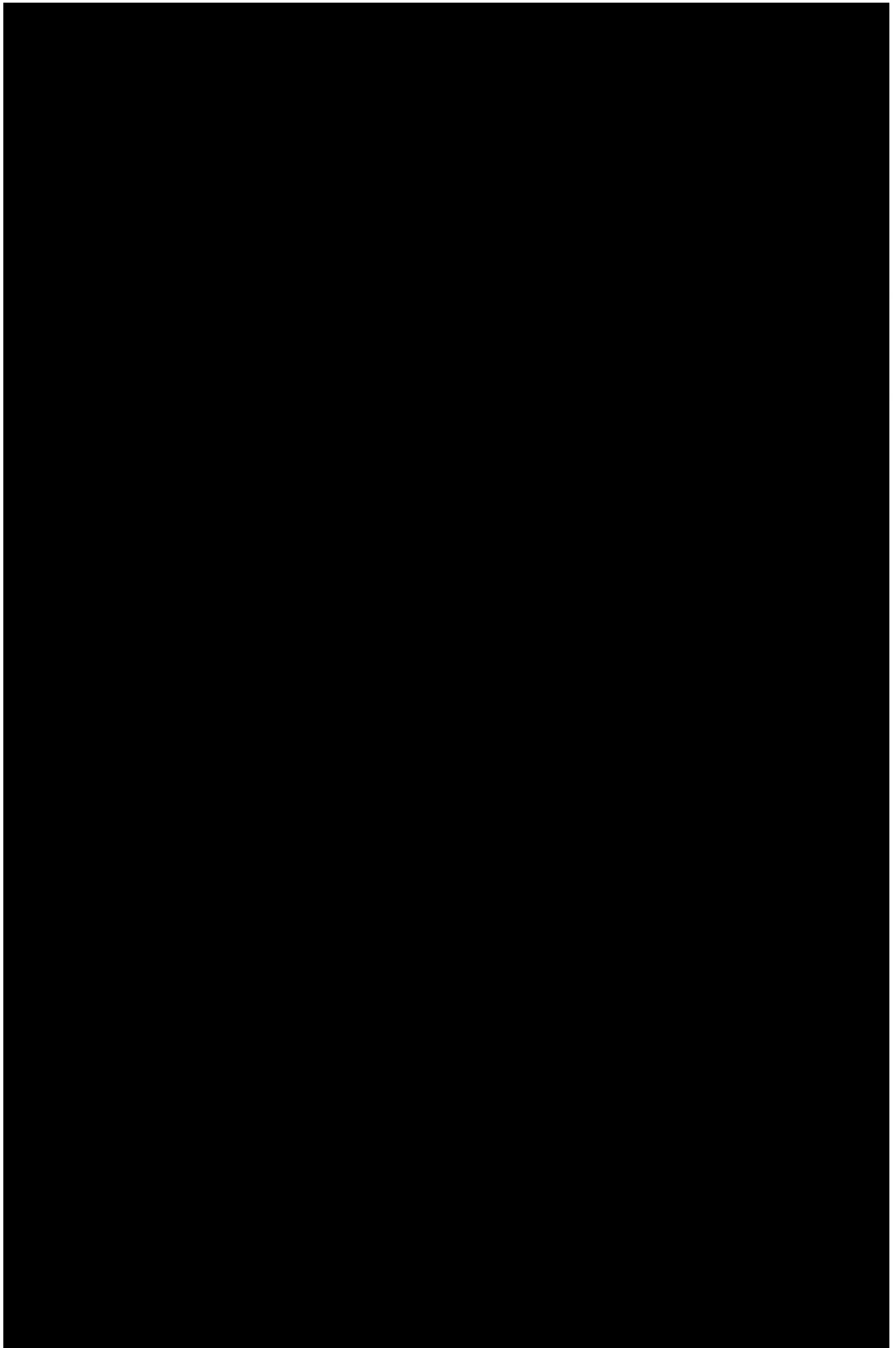


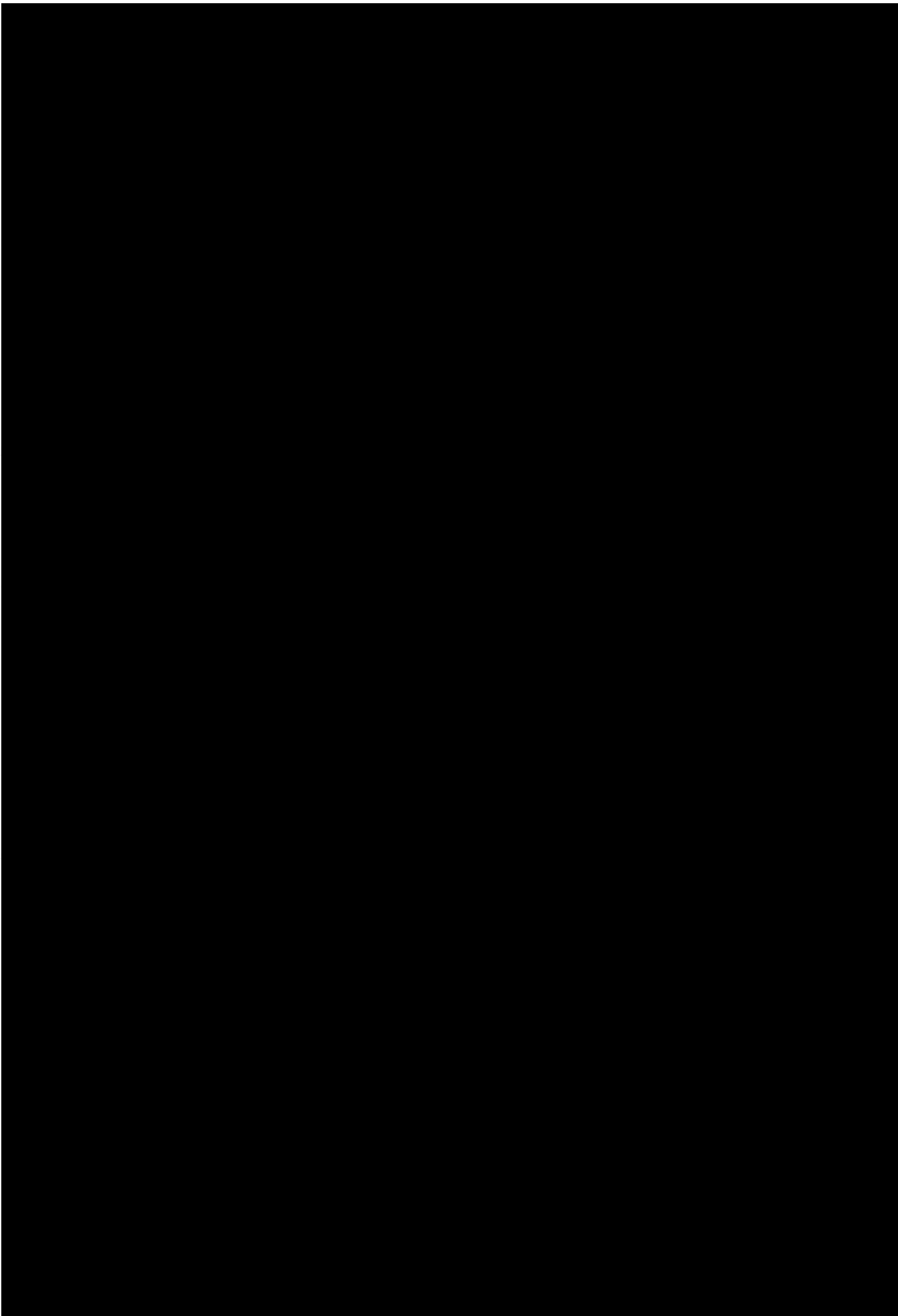




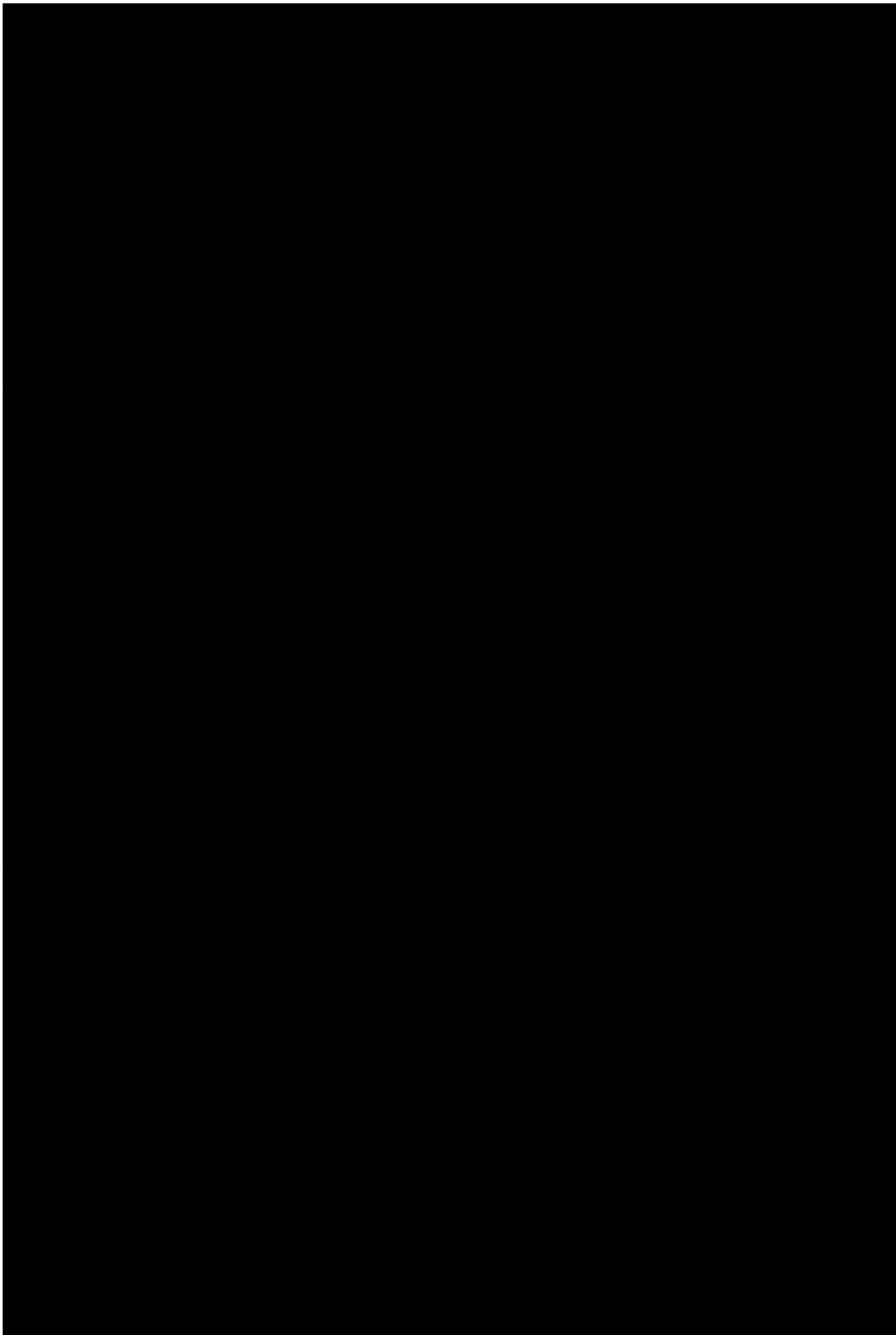


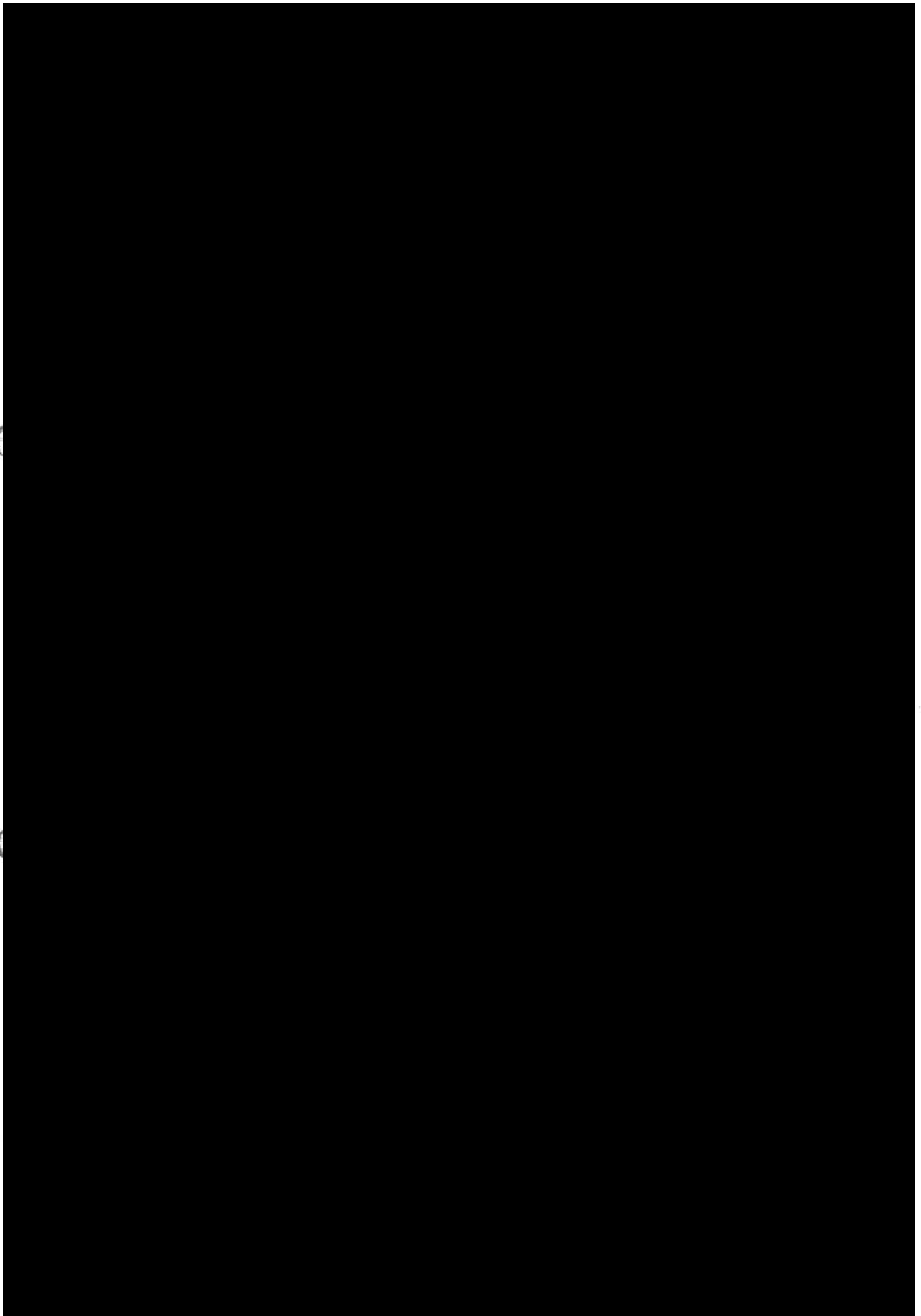


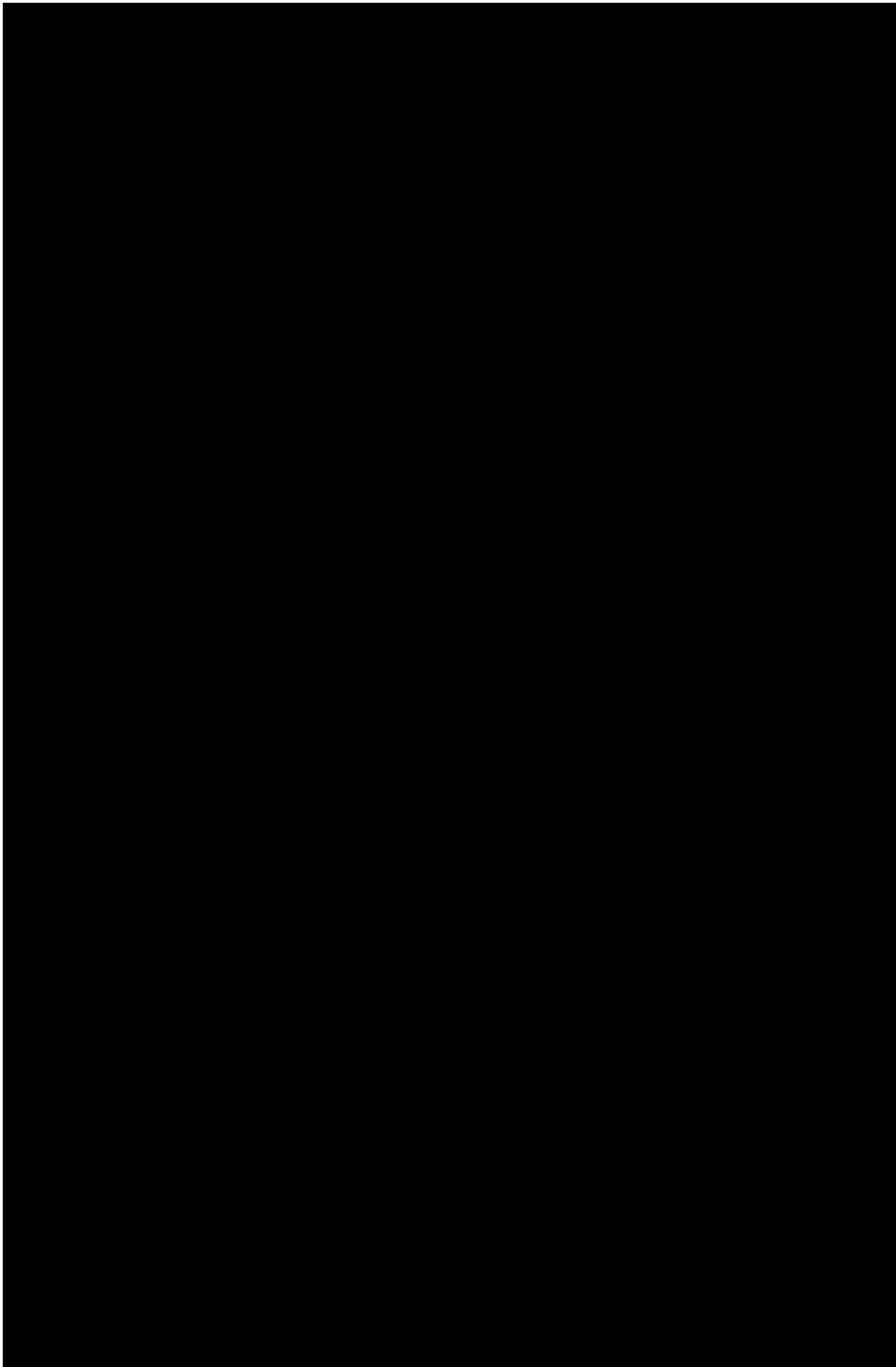


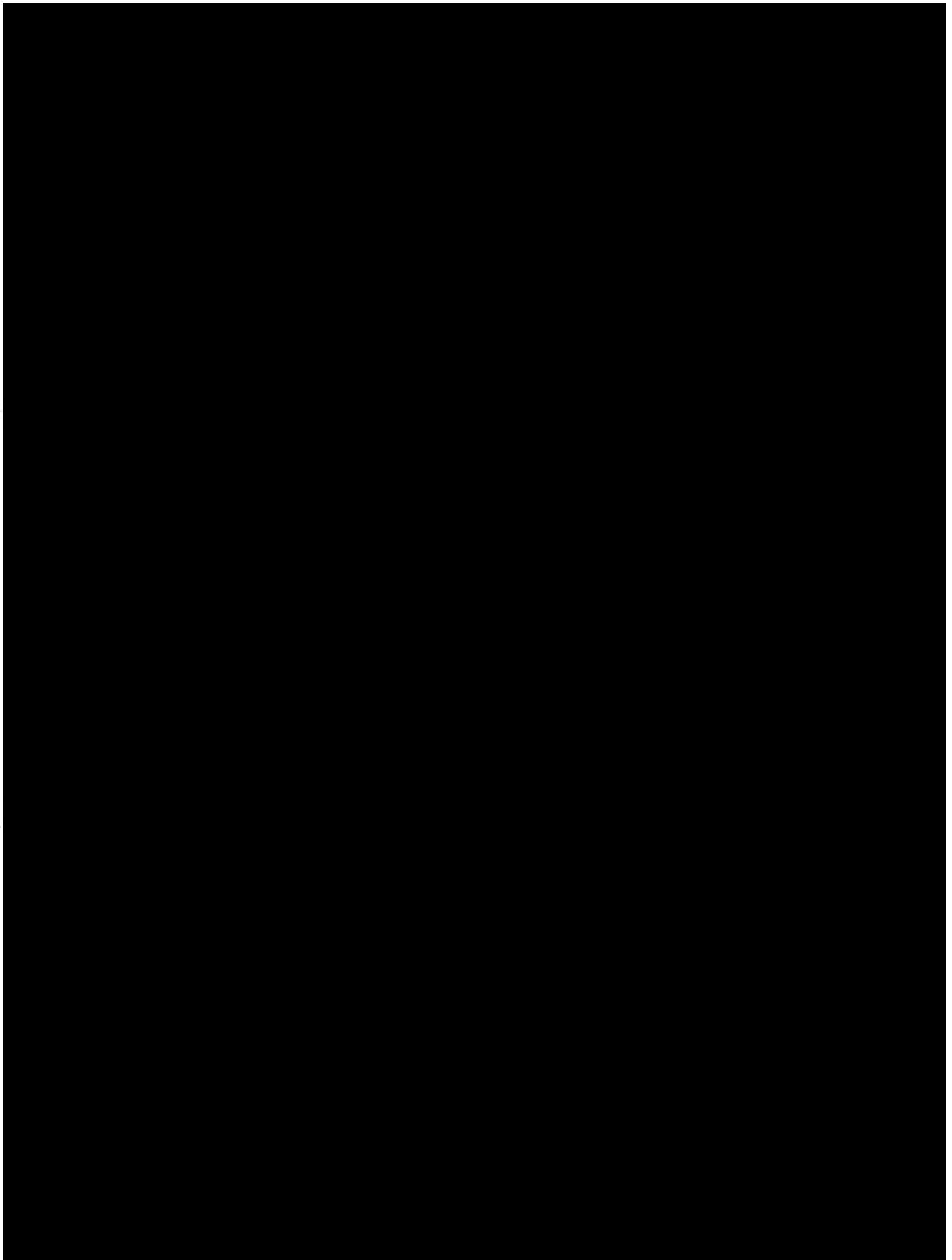




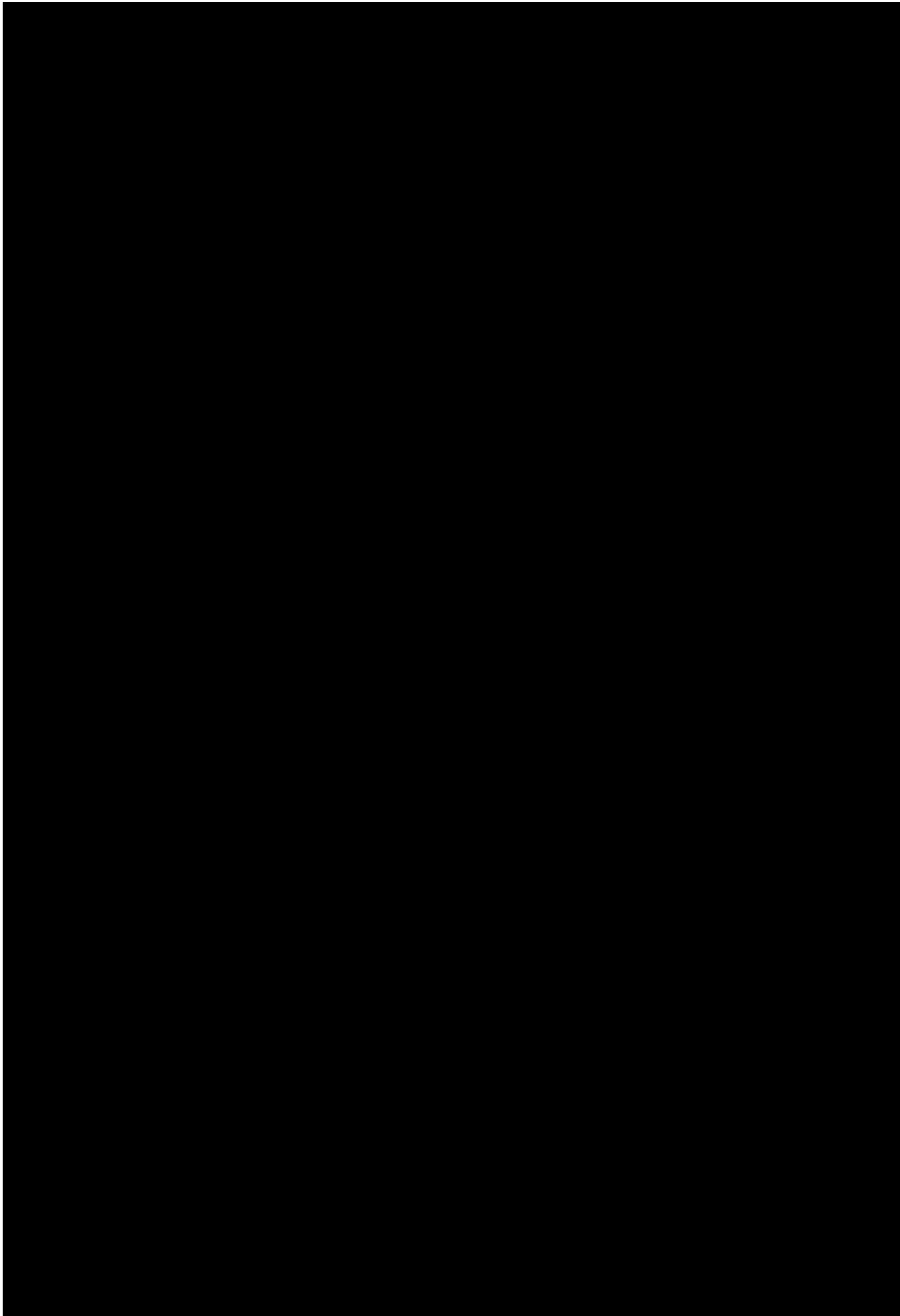


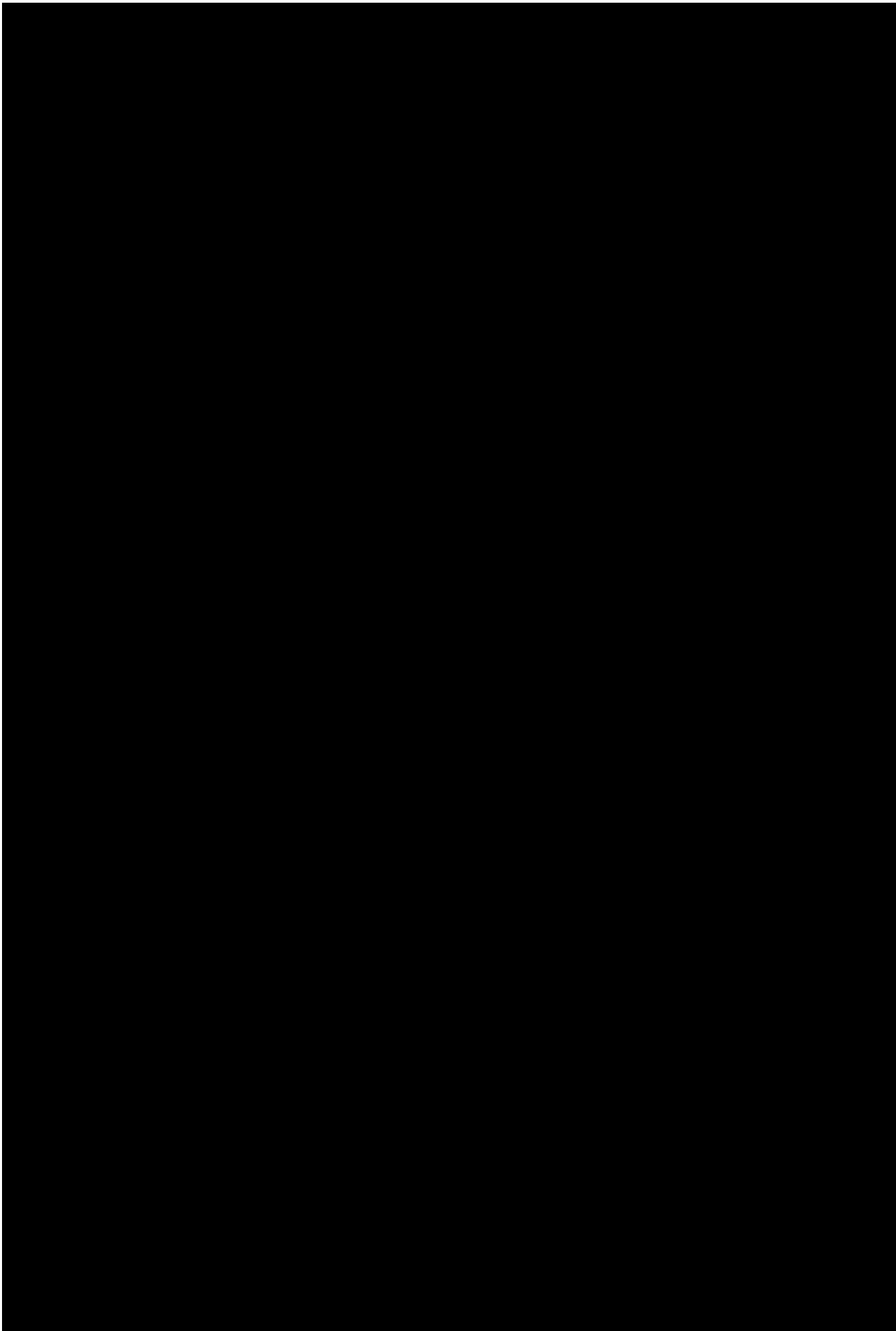


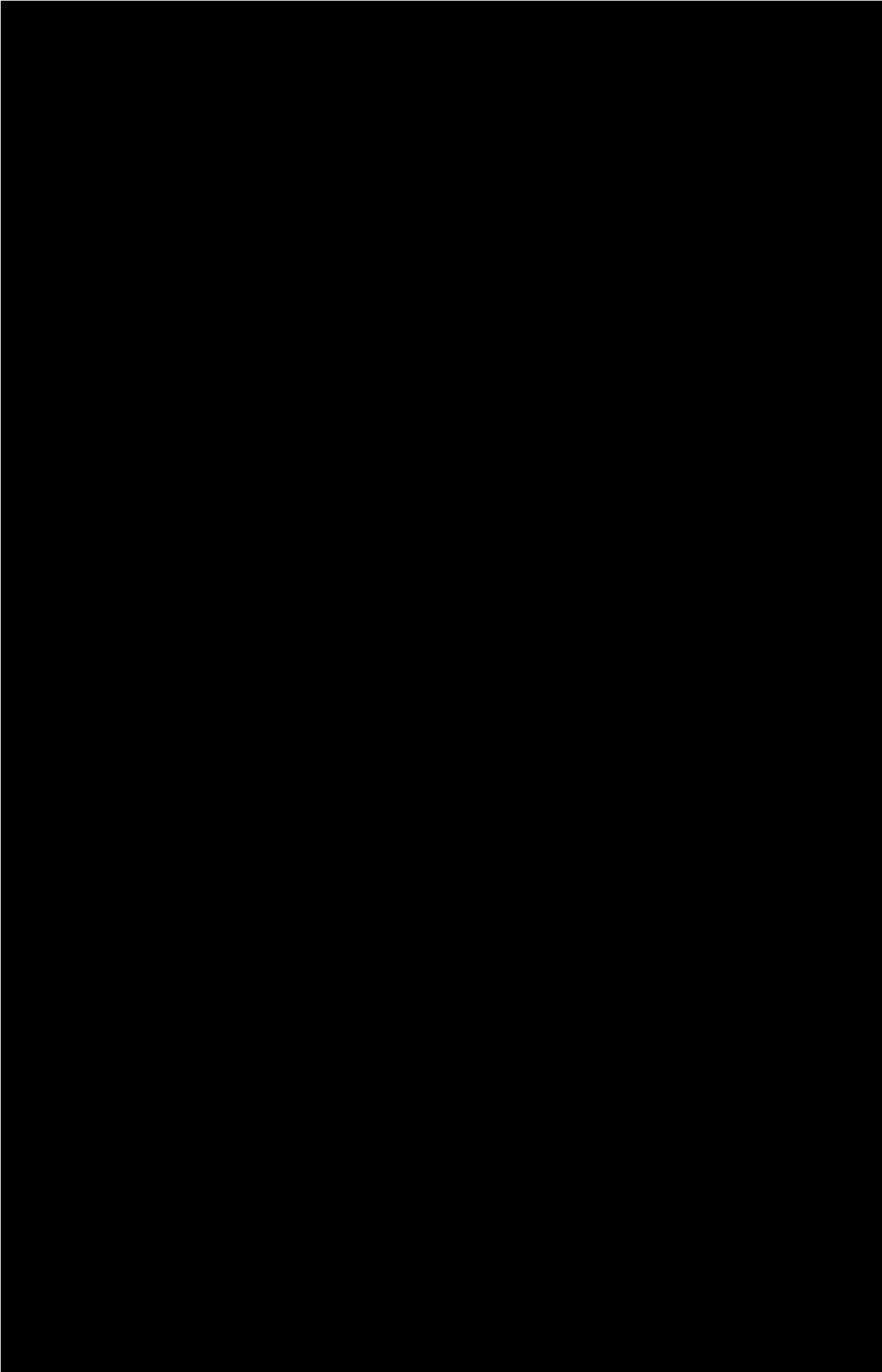


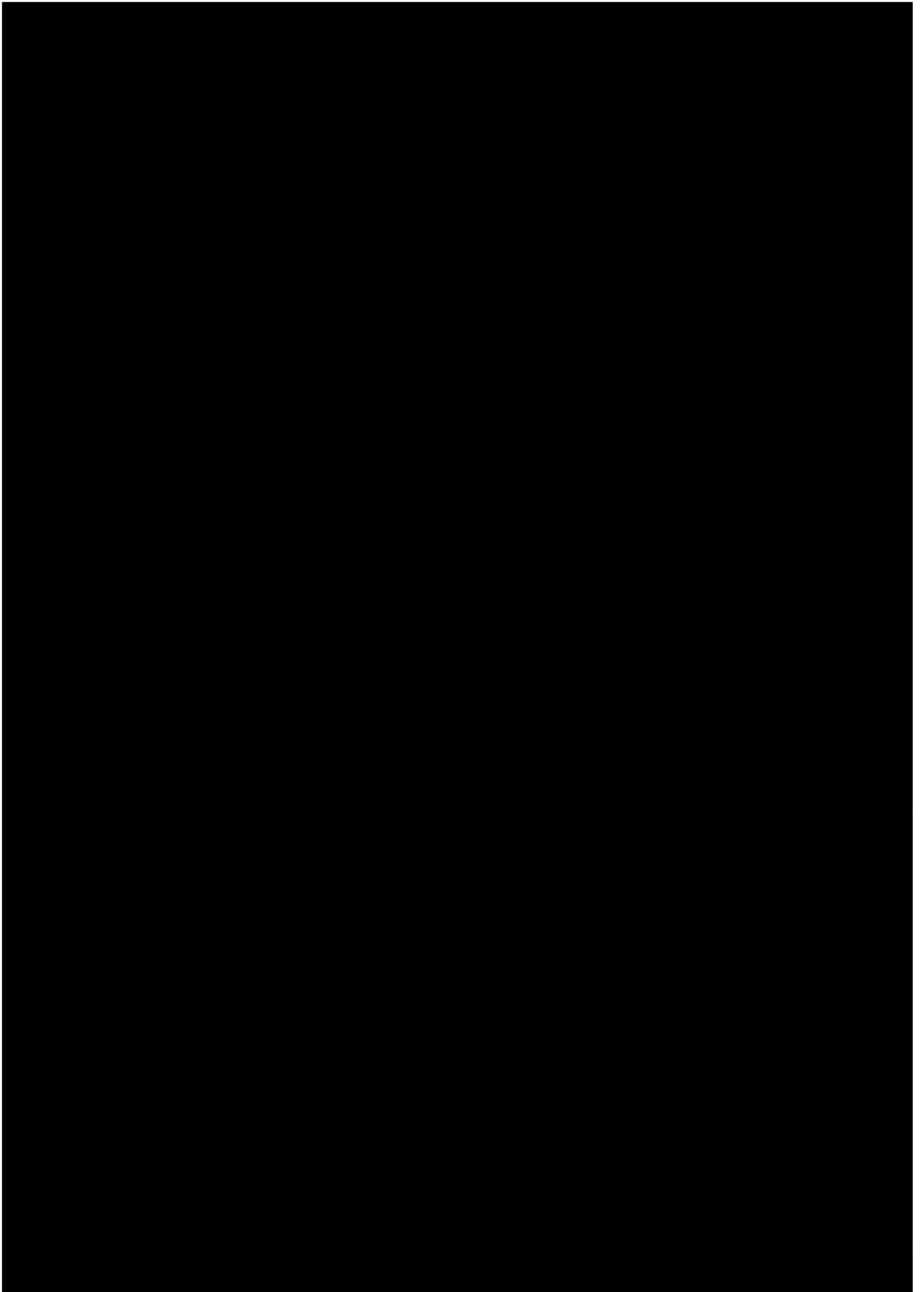


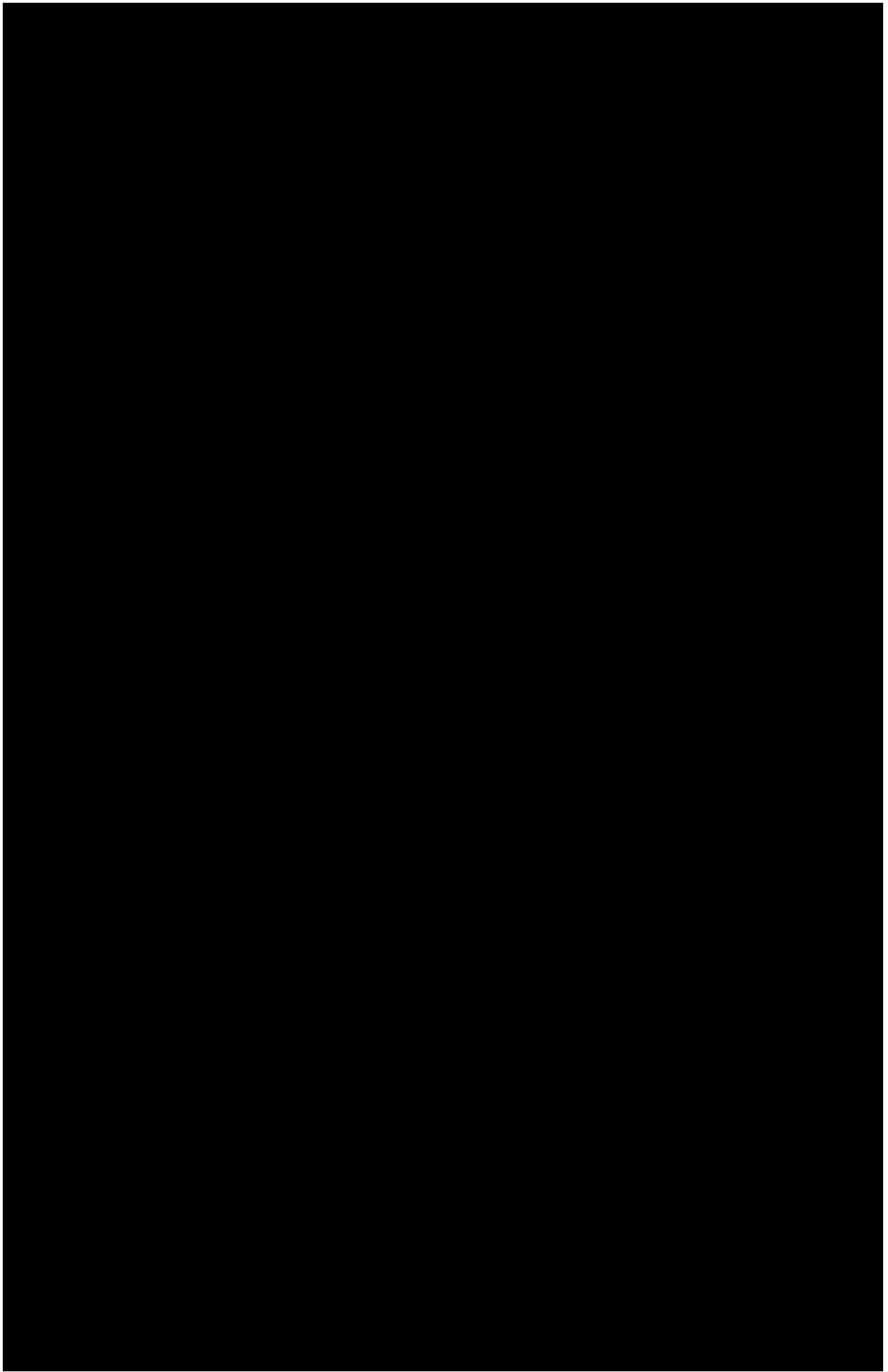






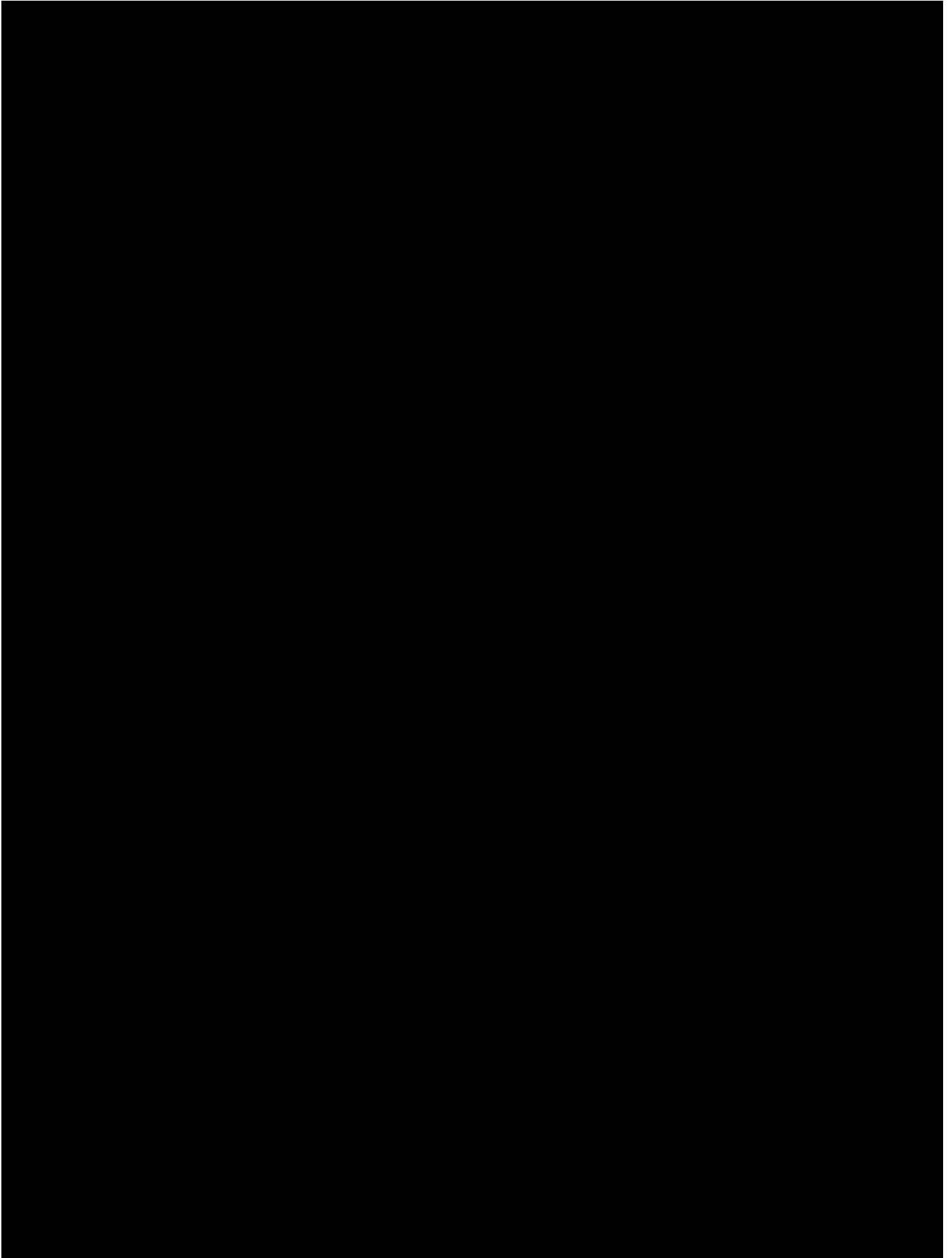


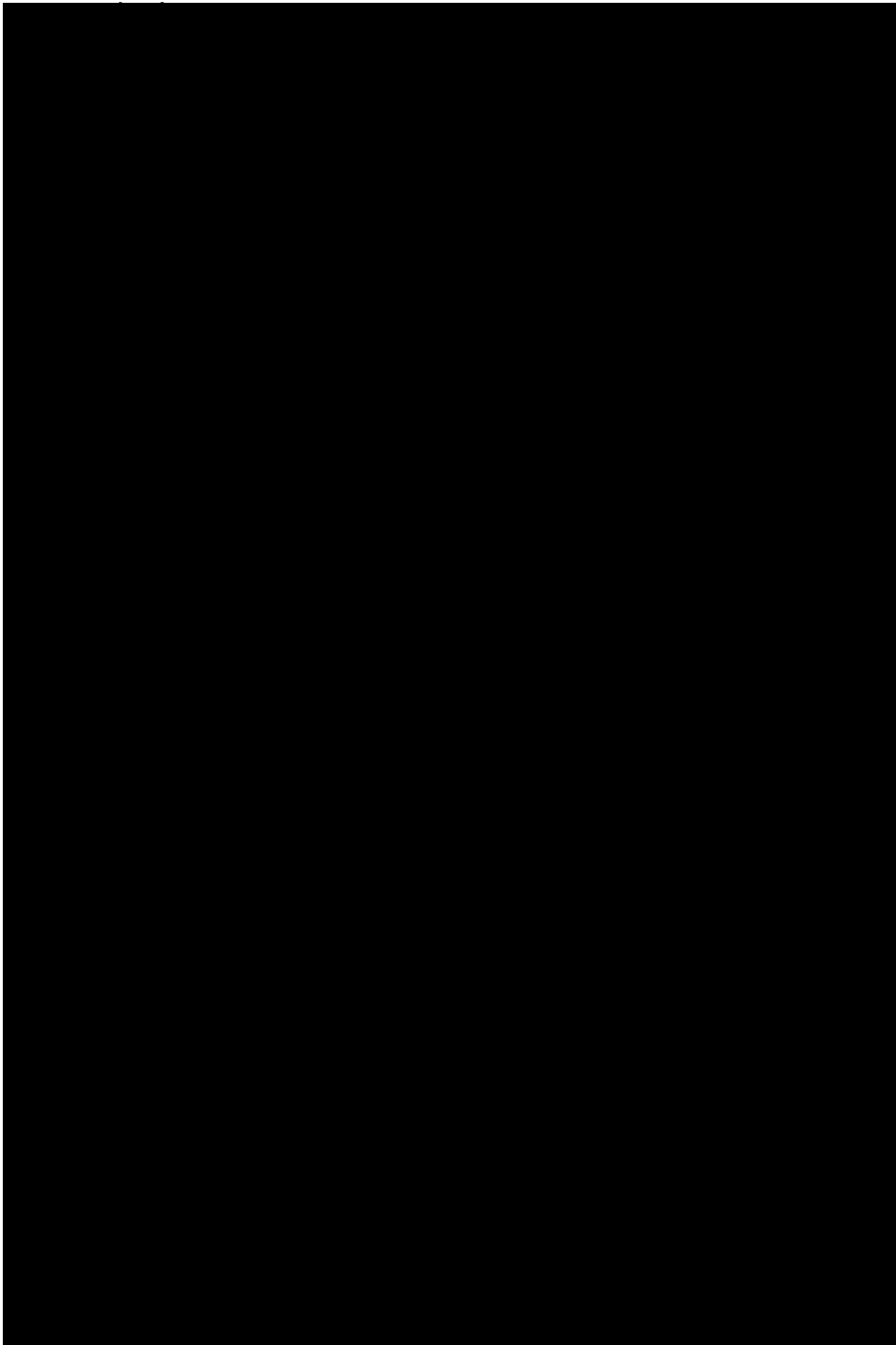


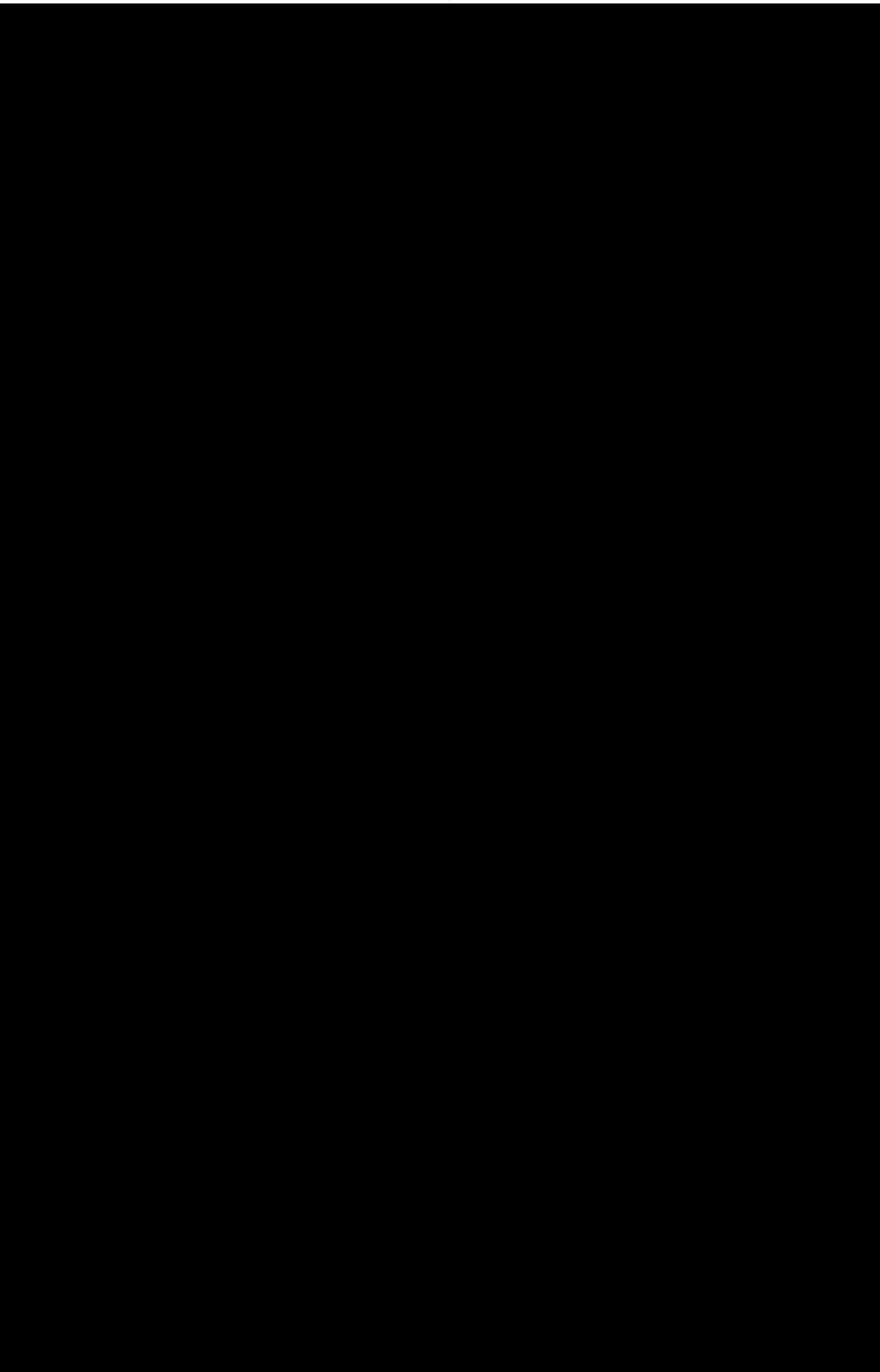


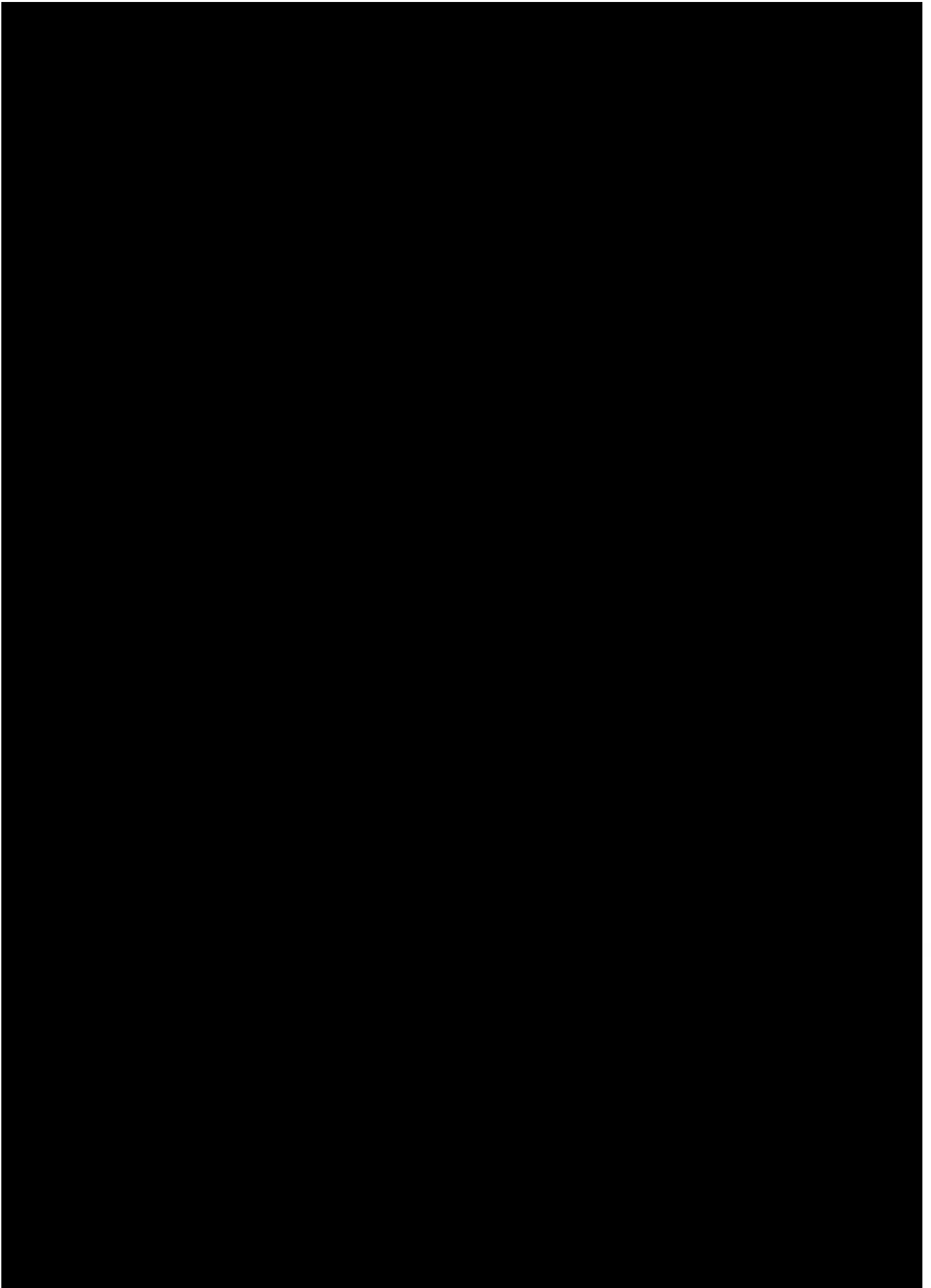
SCHEDULE A15

Operator Cooperation and Integration Deed

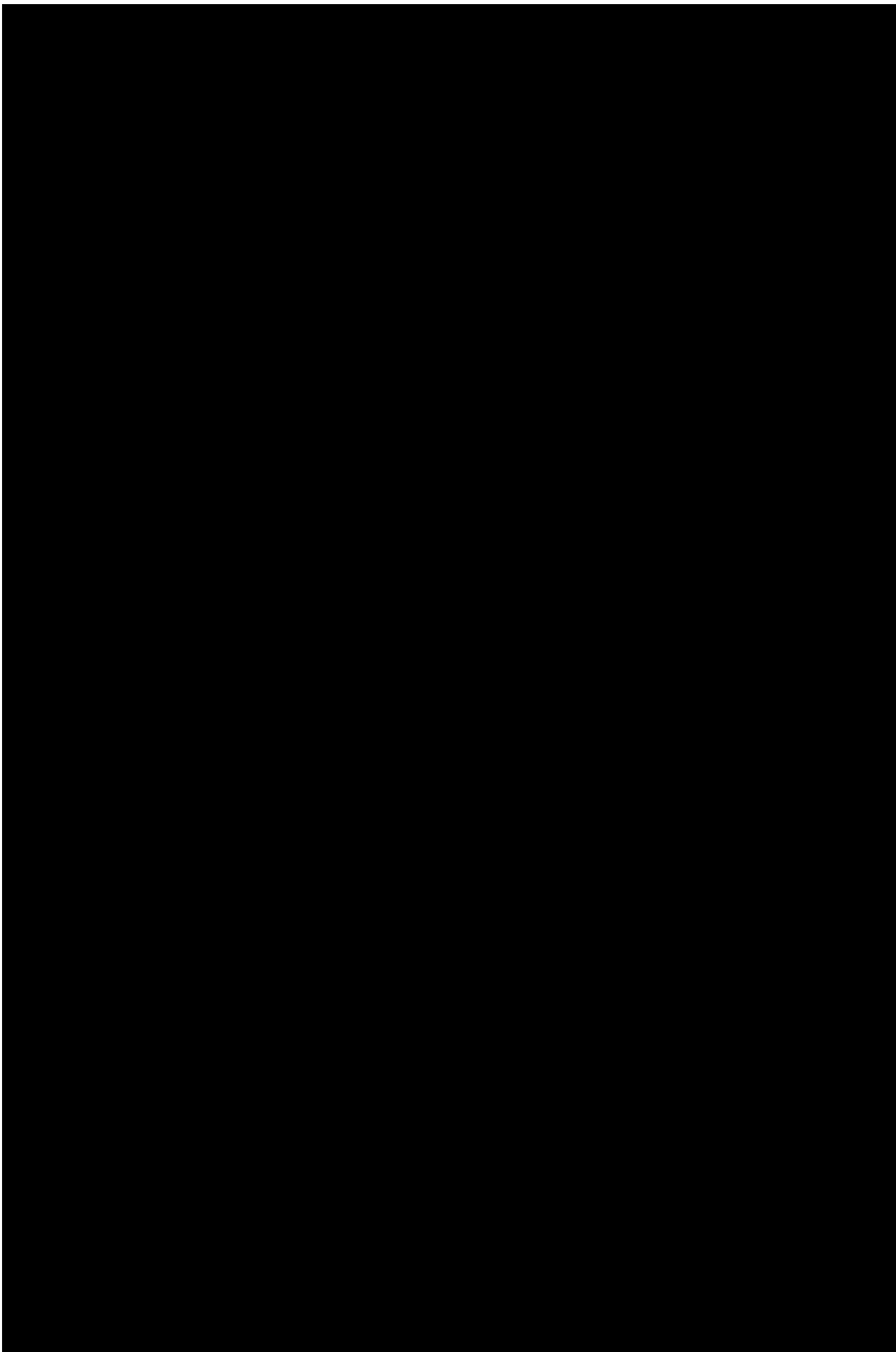


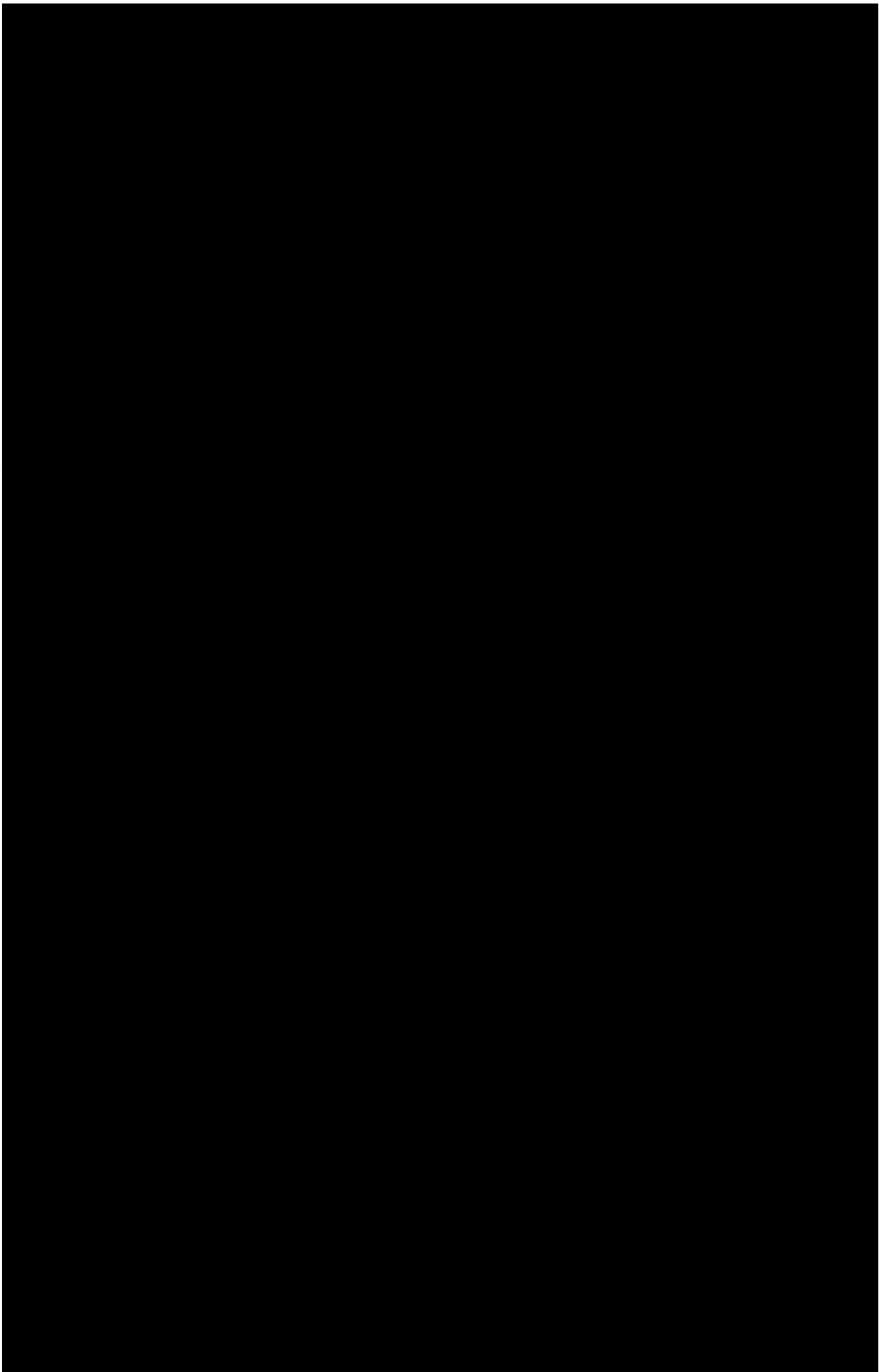


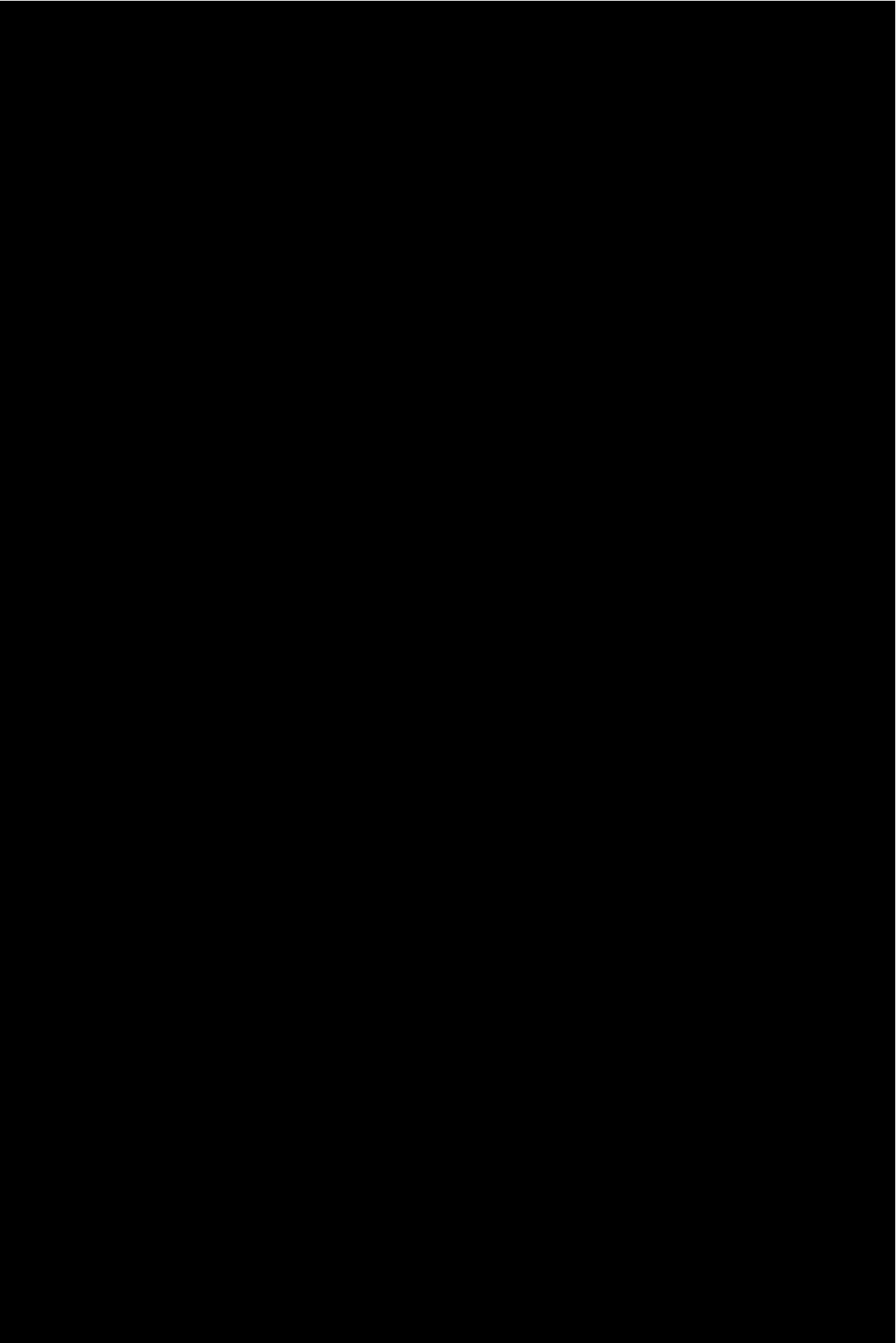


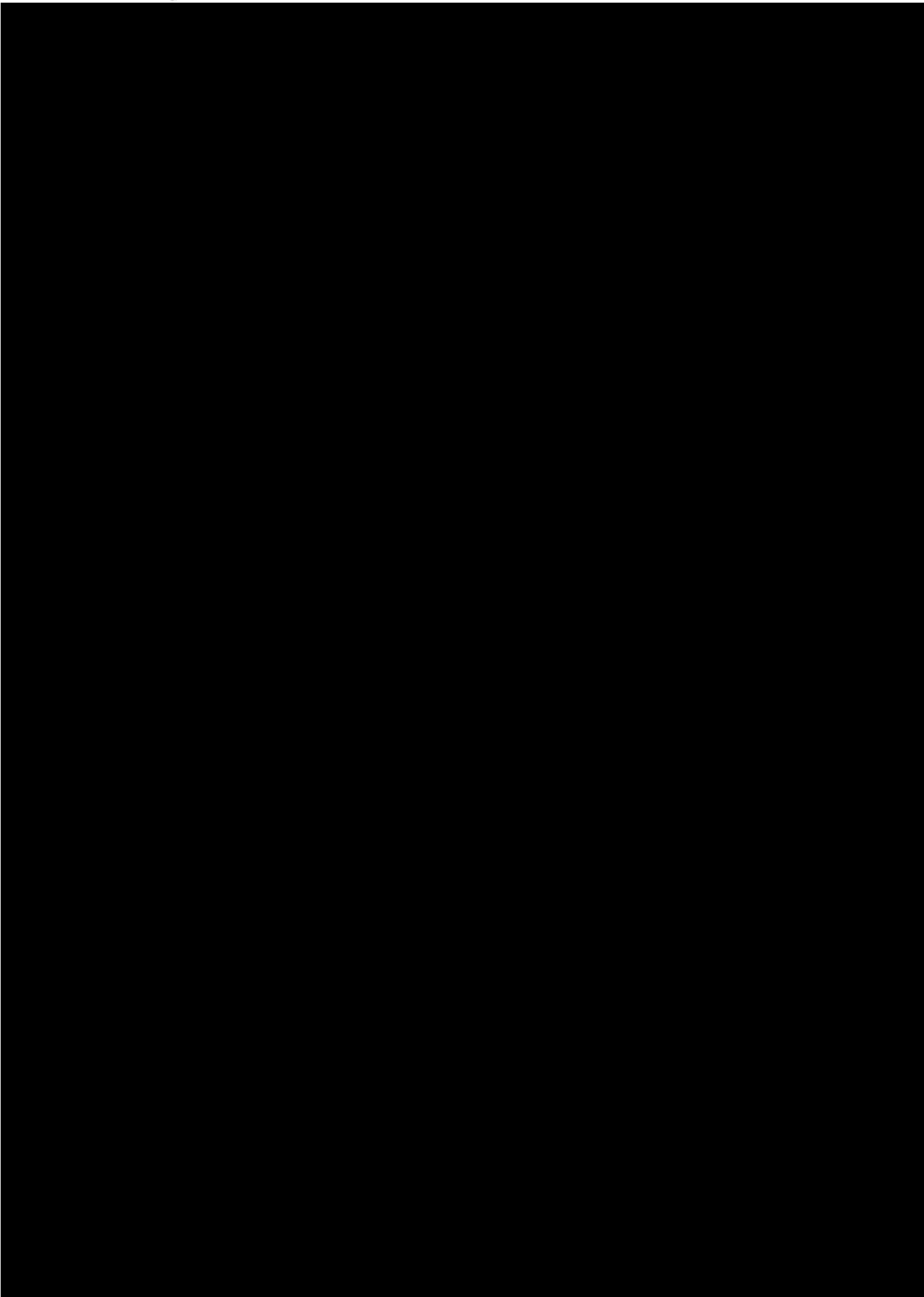


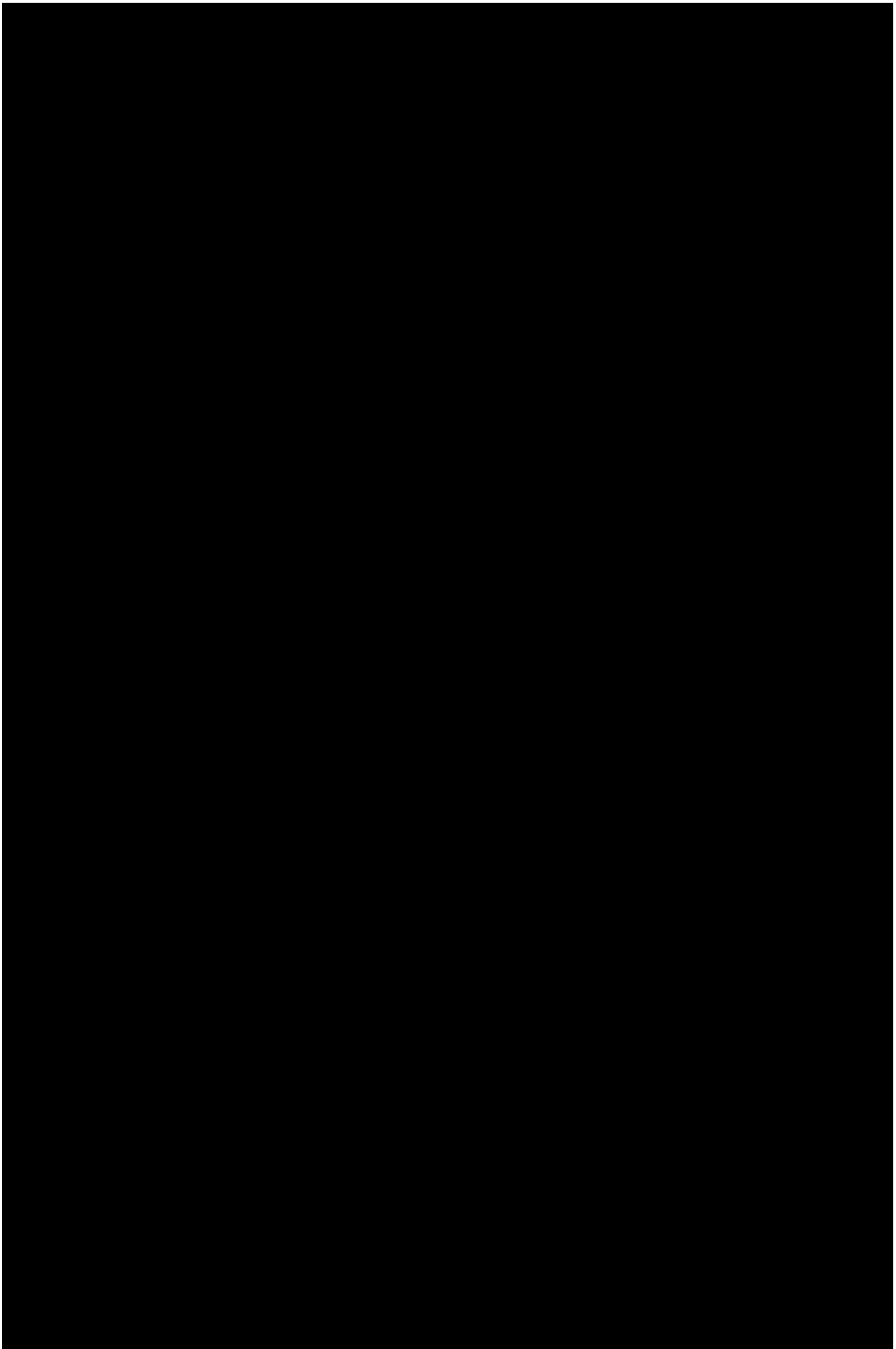


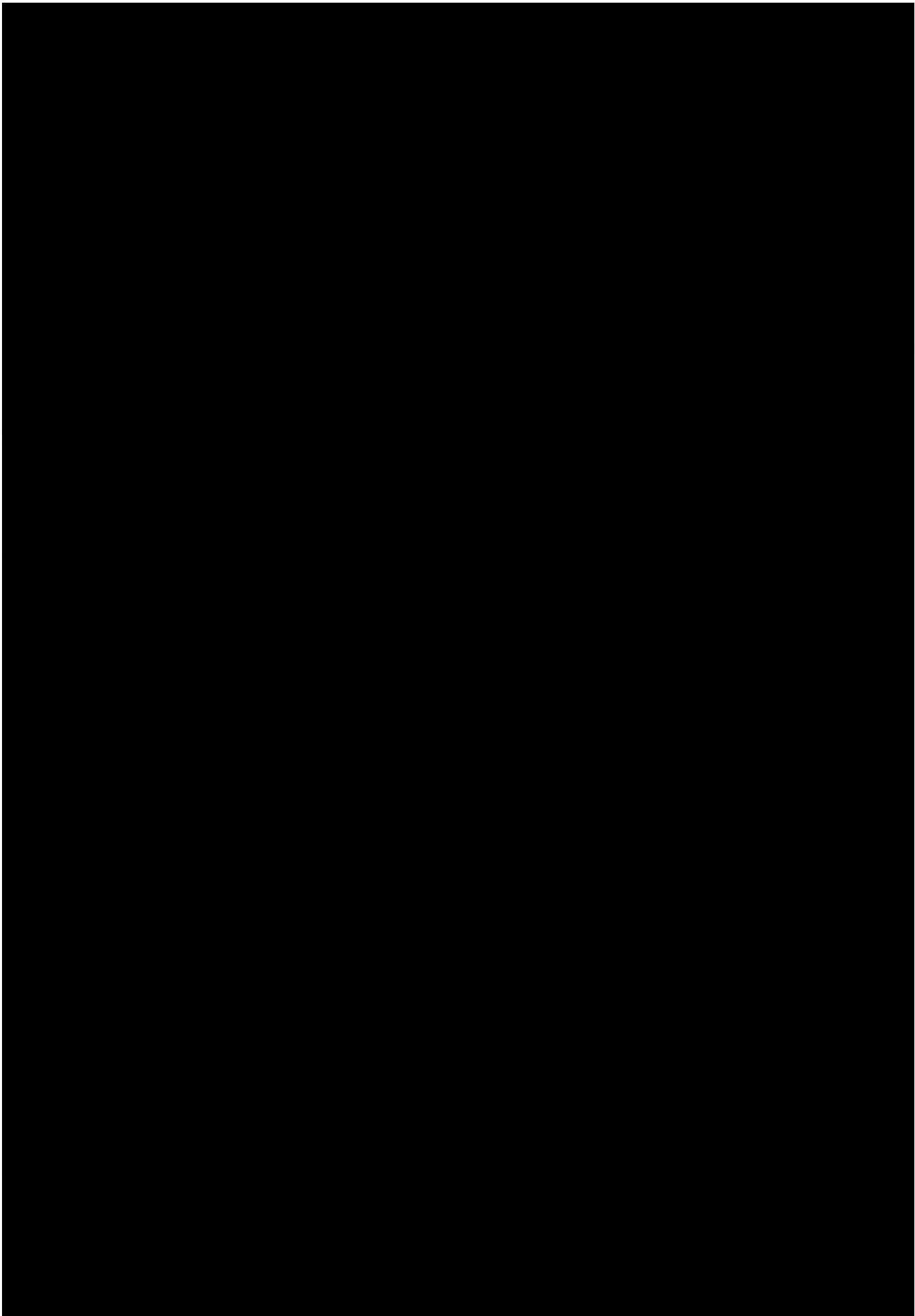


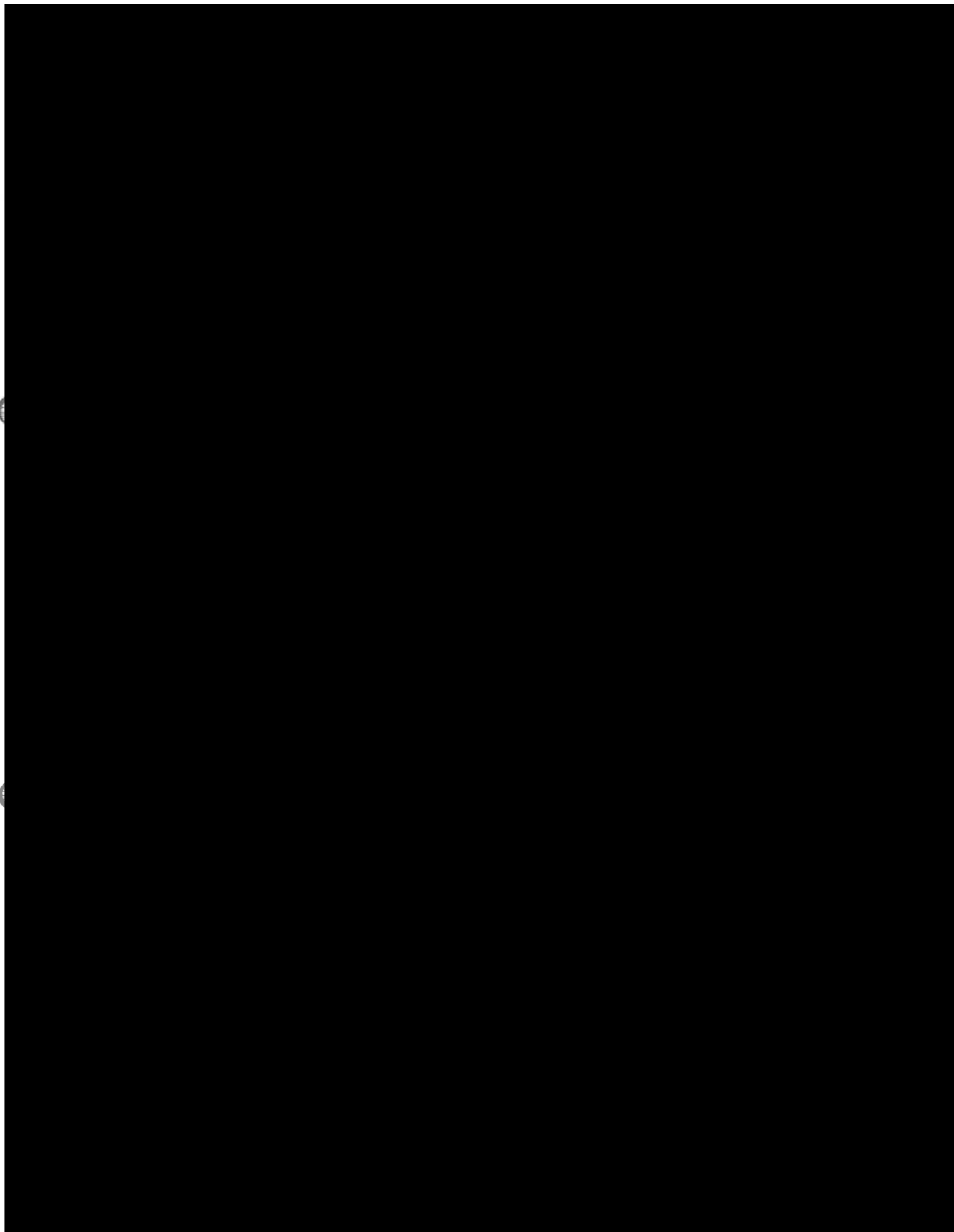


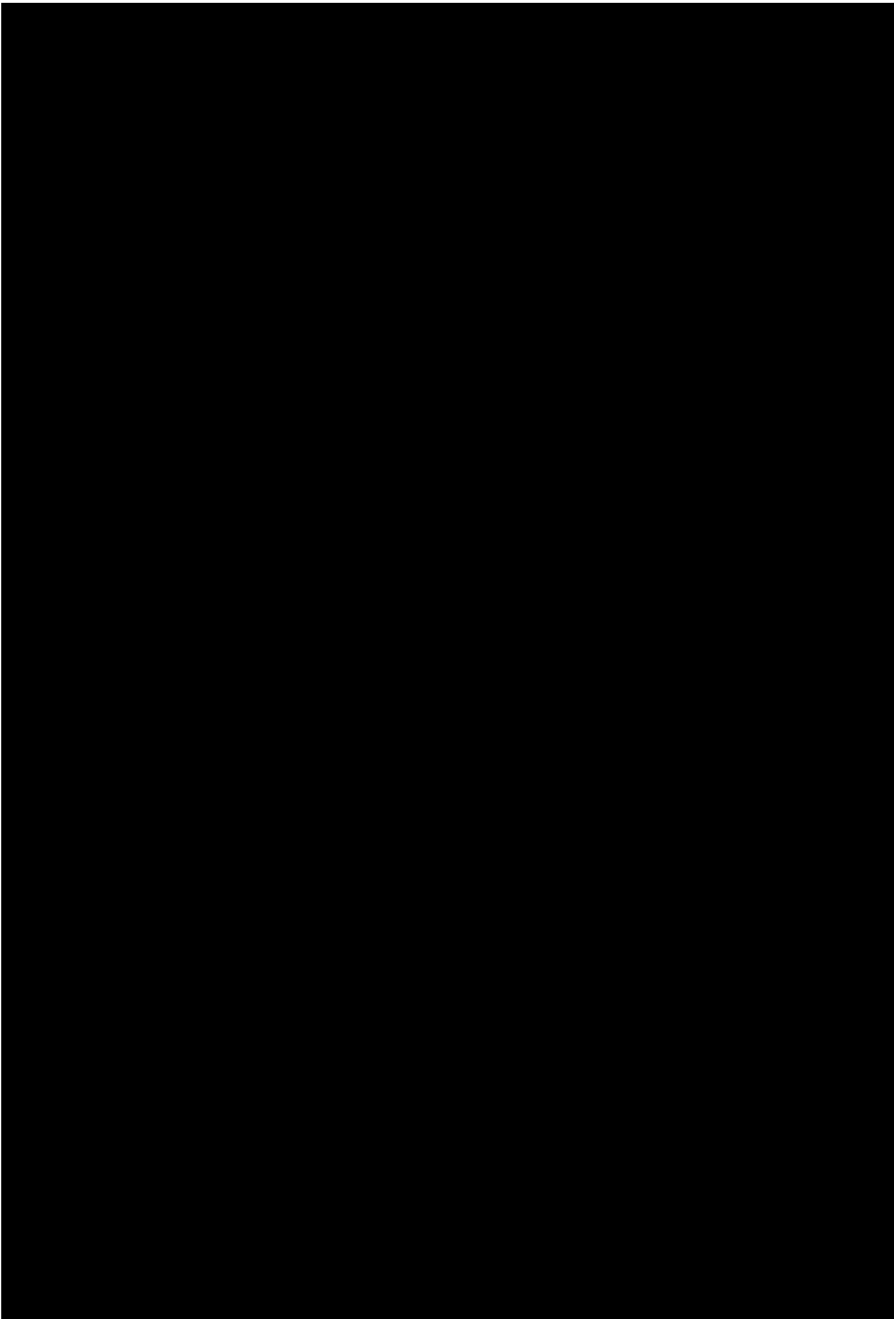


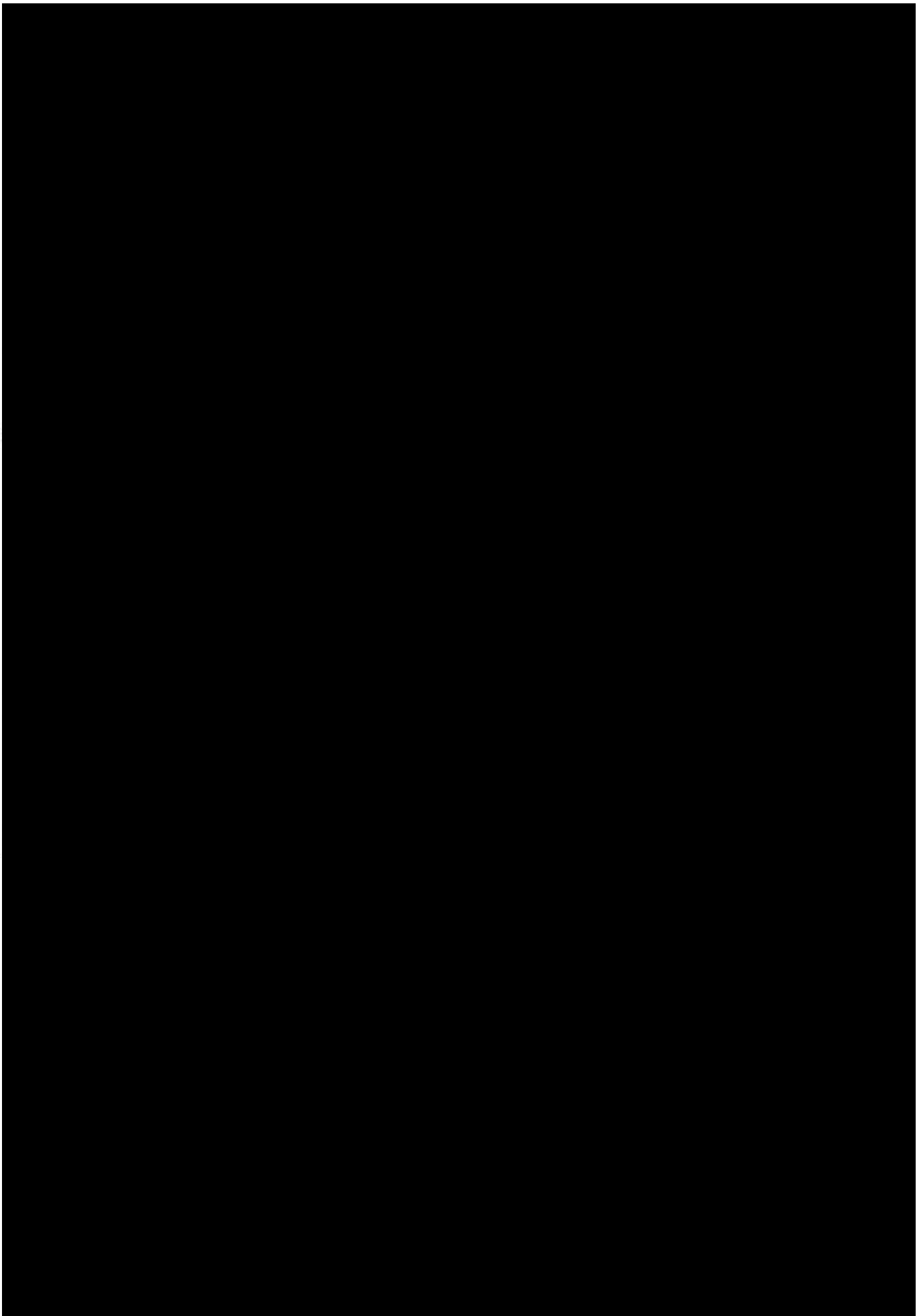


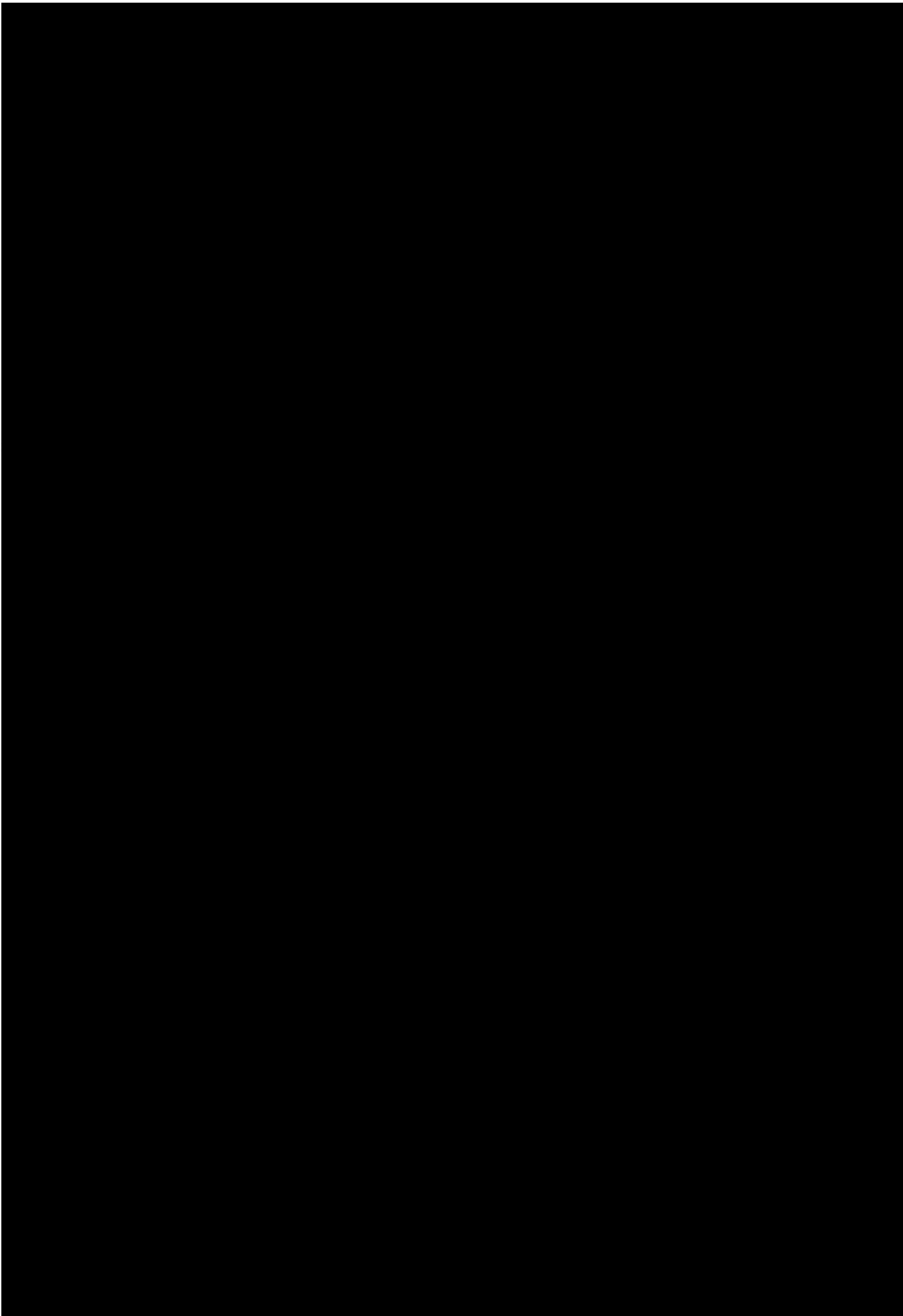


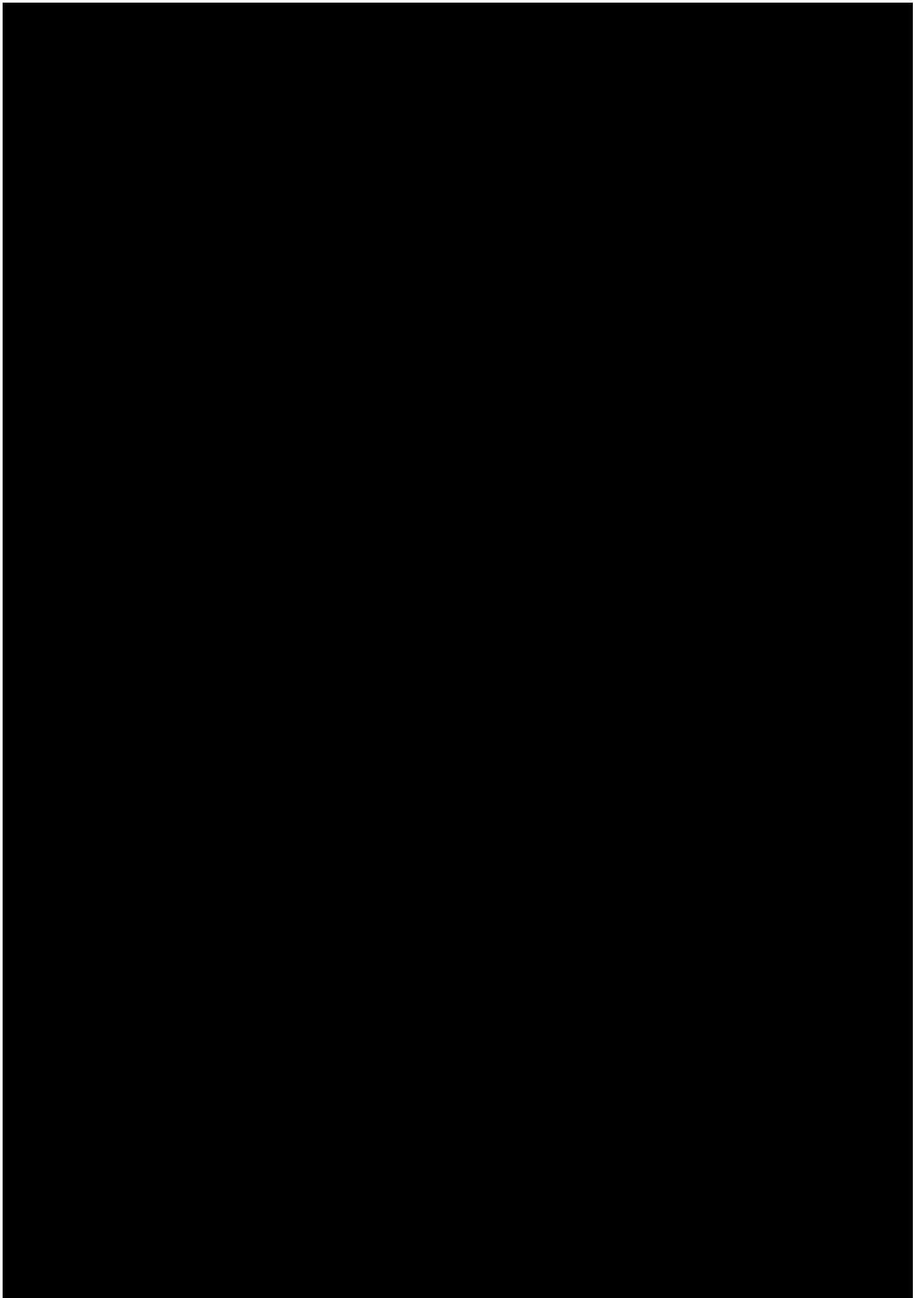


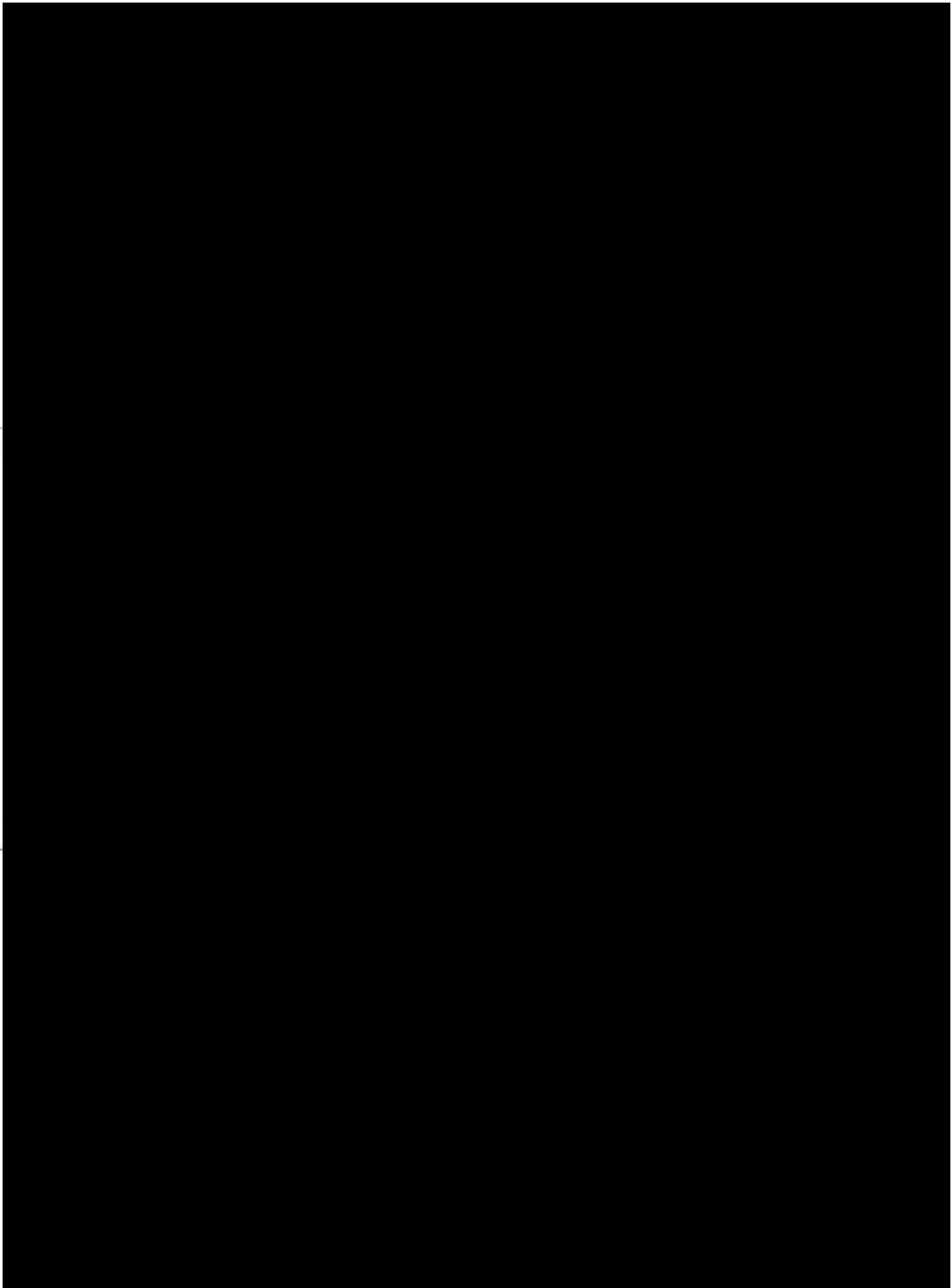


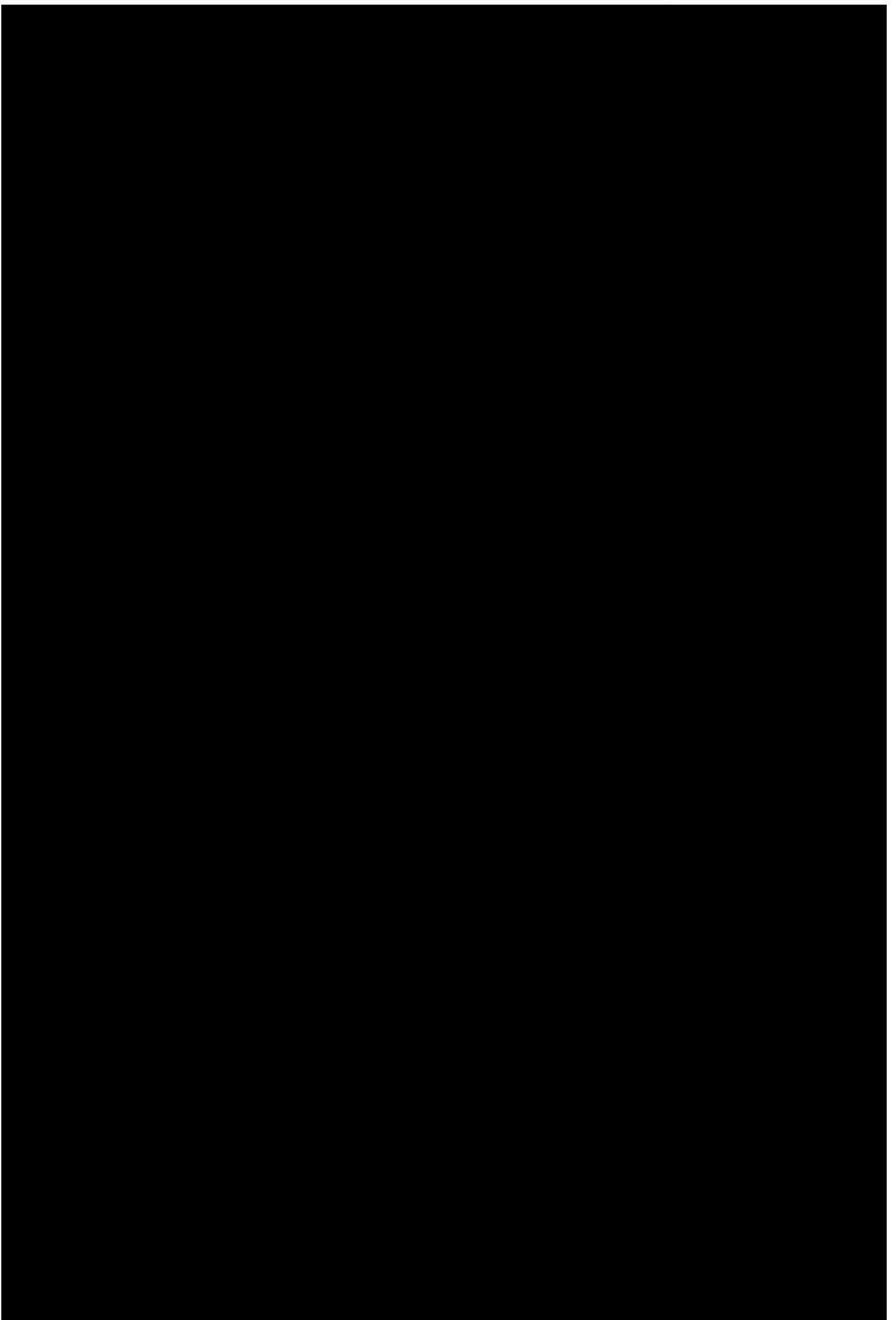


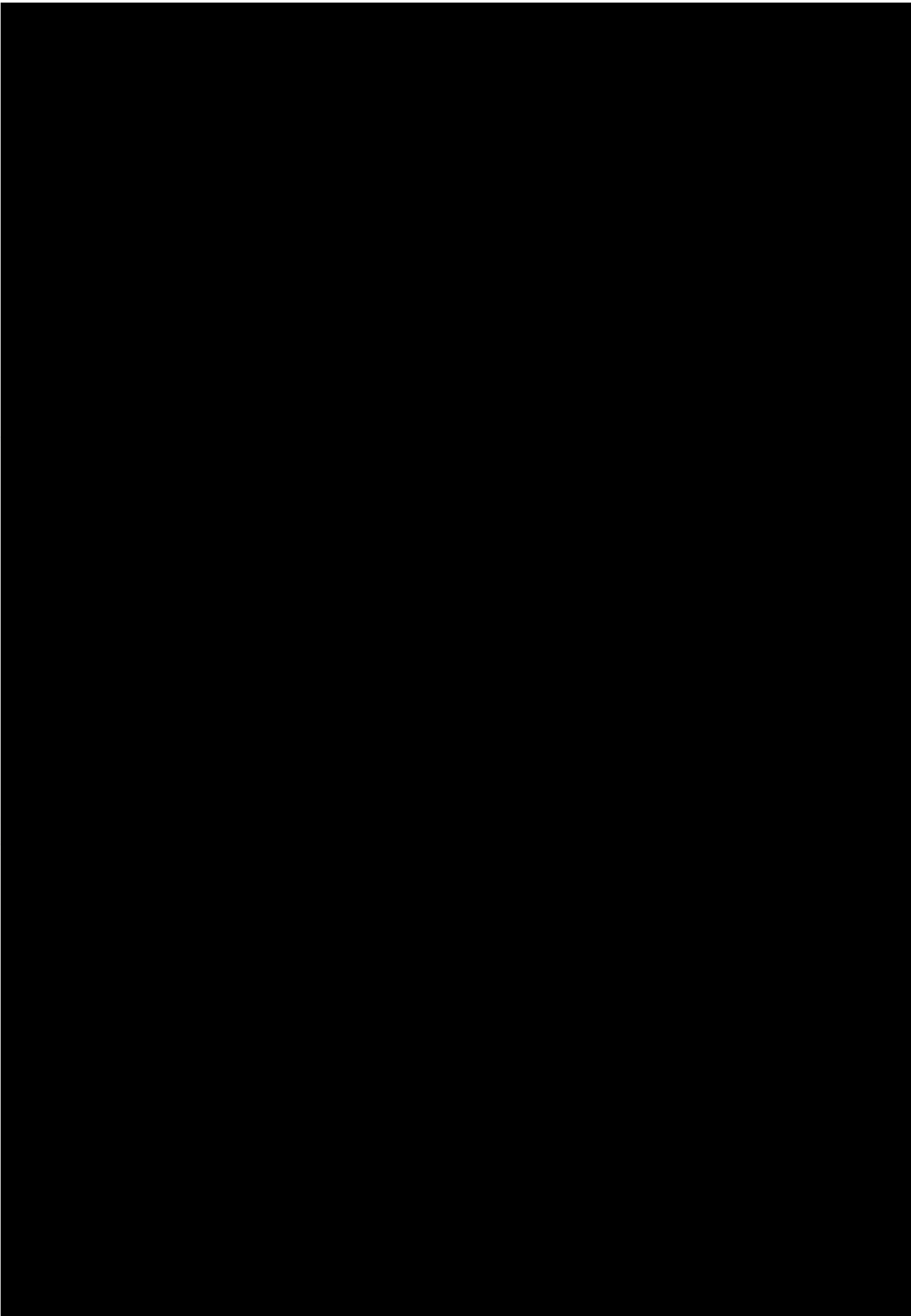


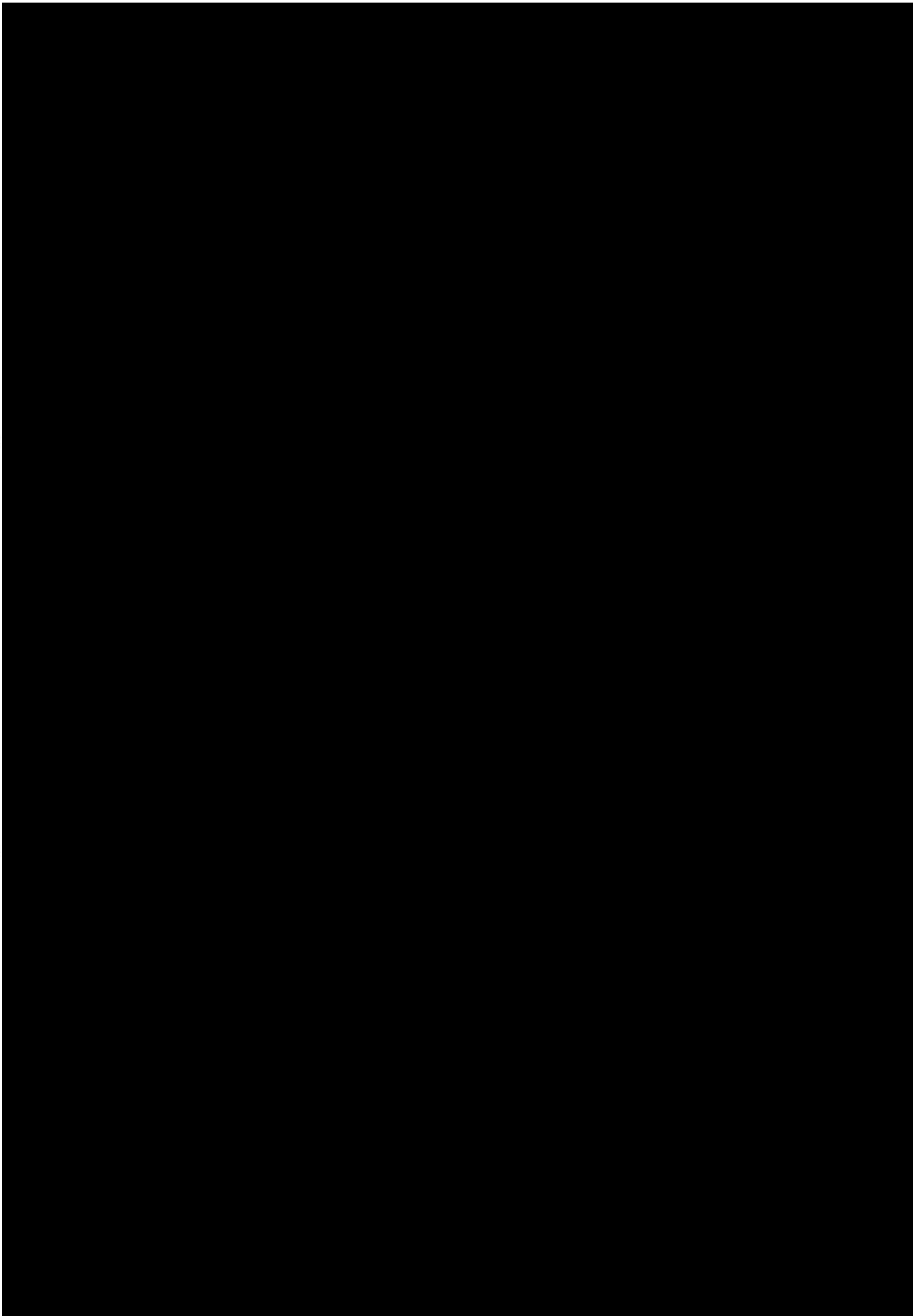


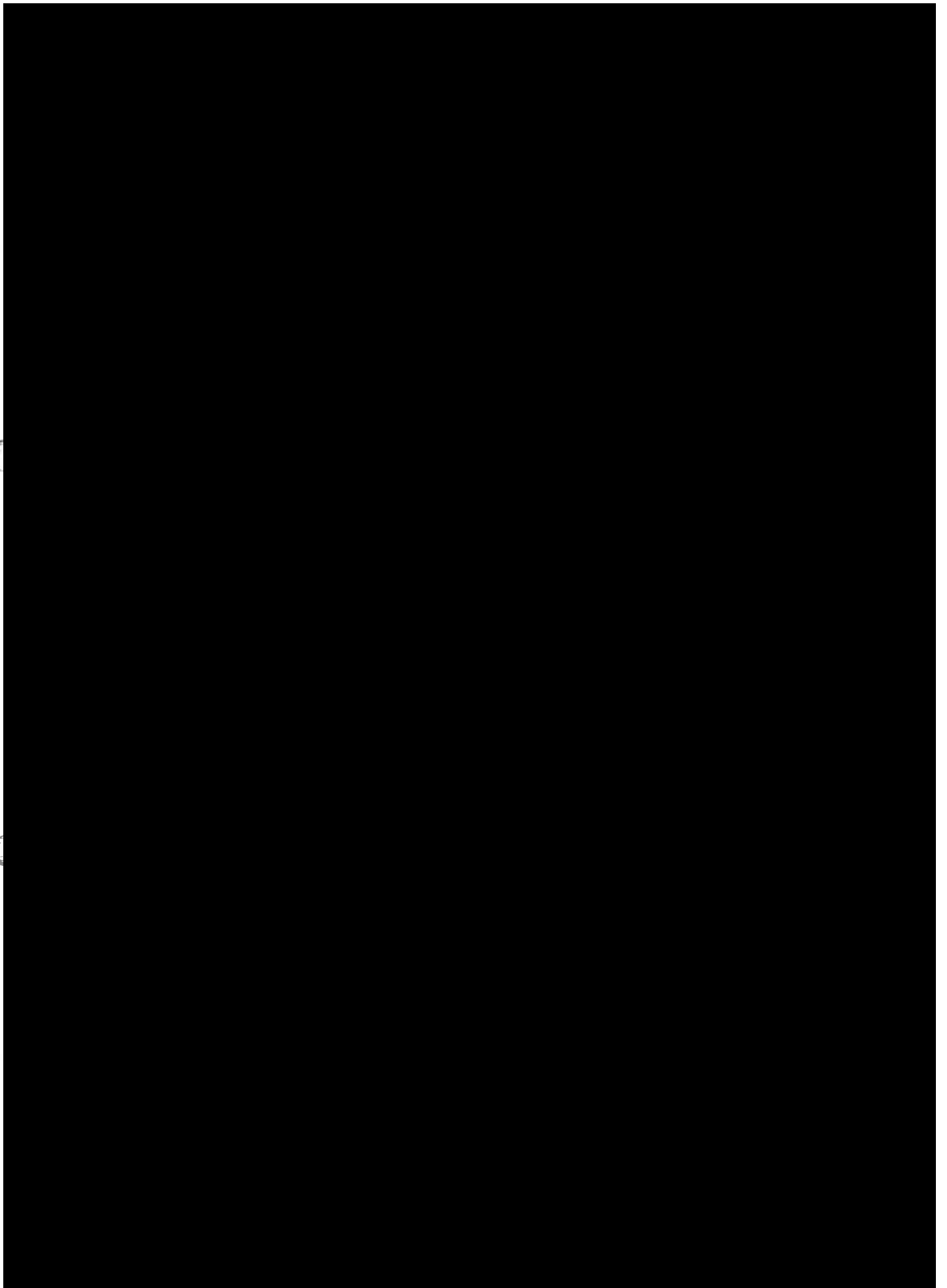


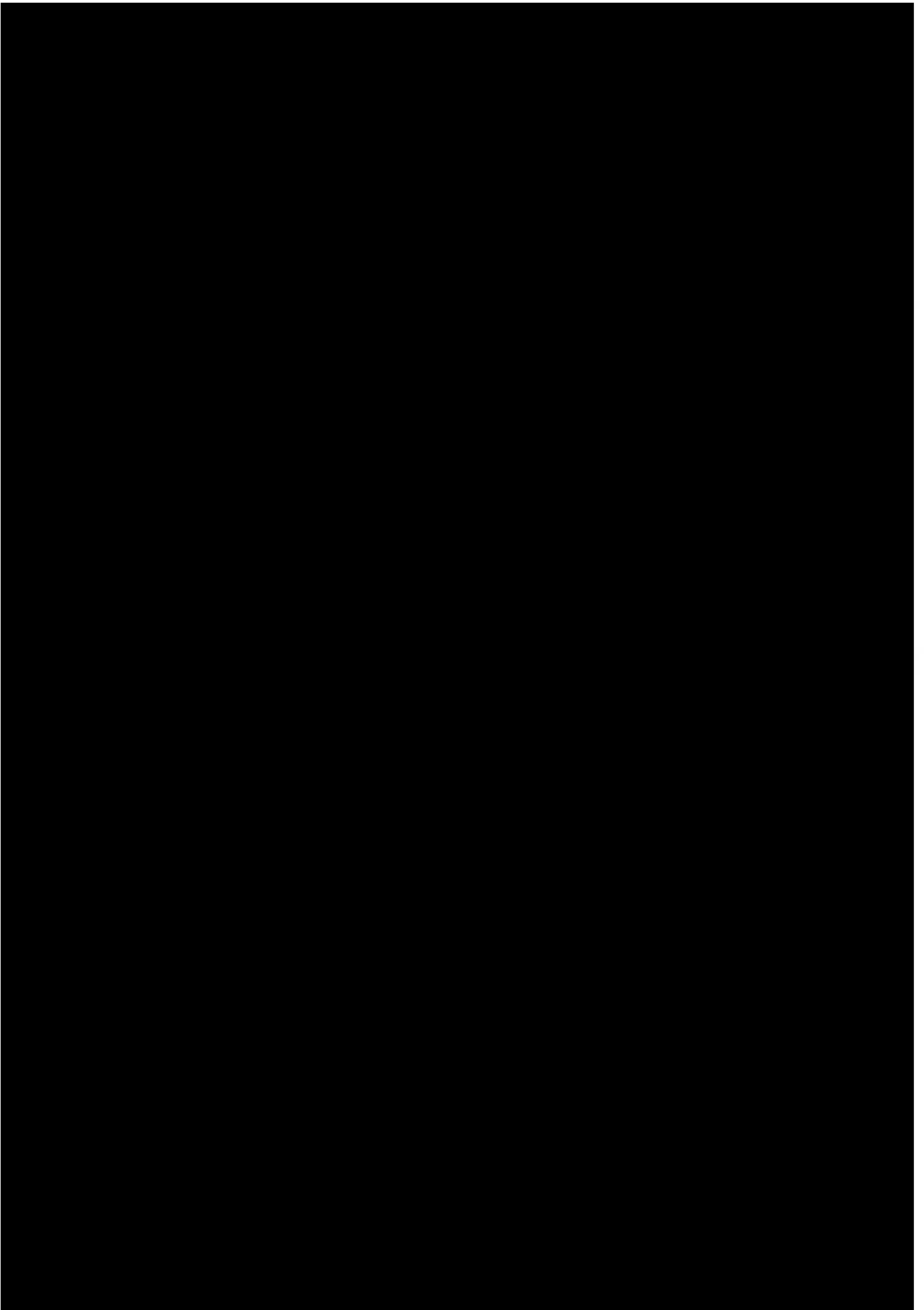


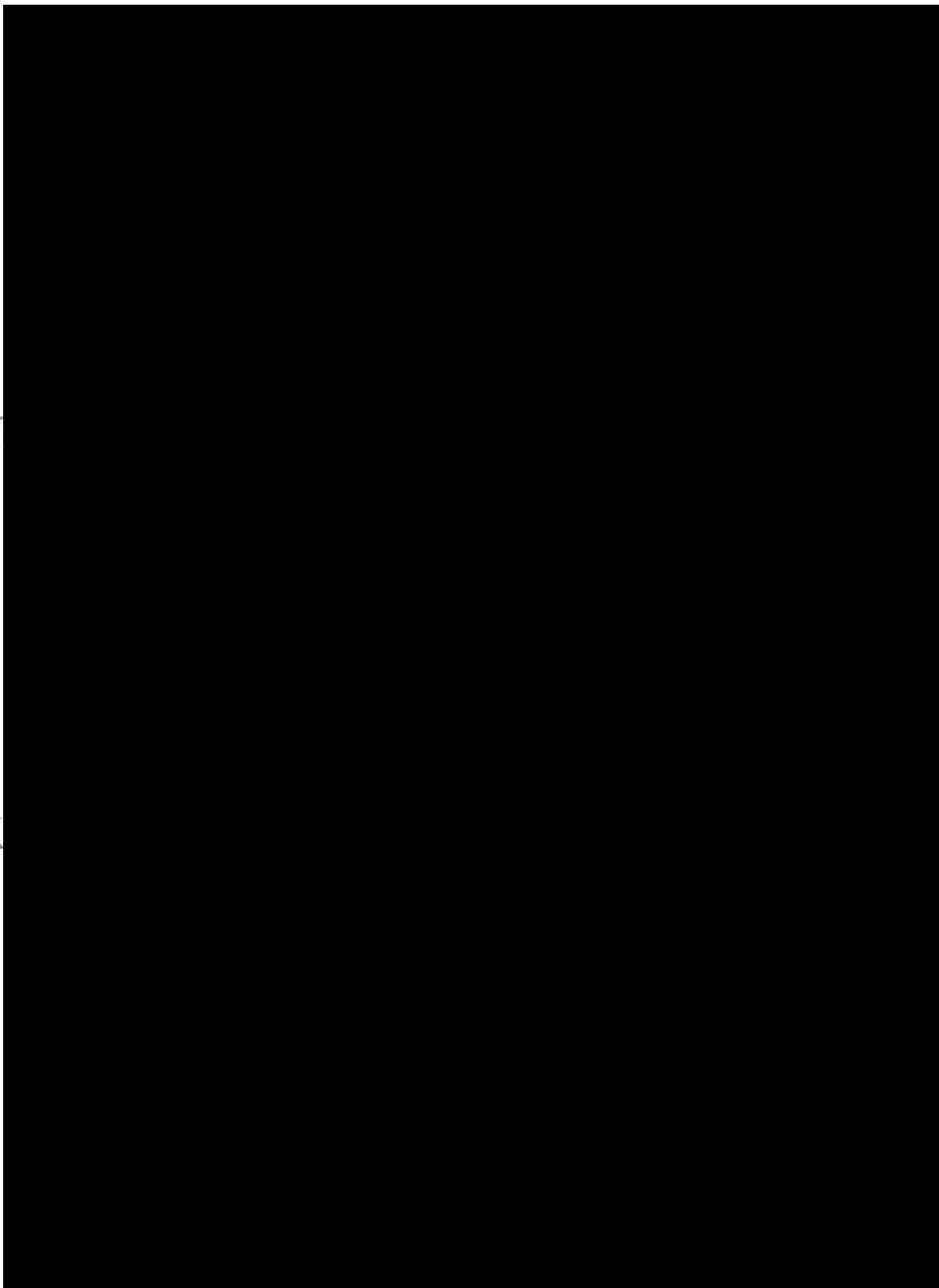


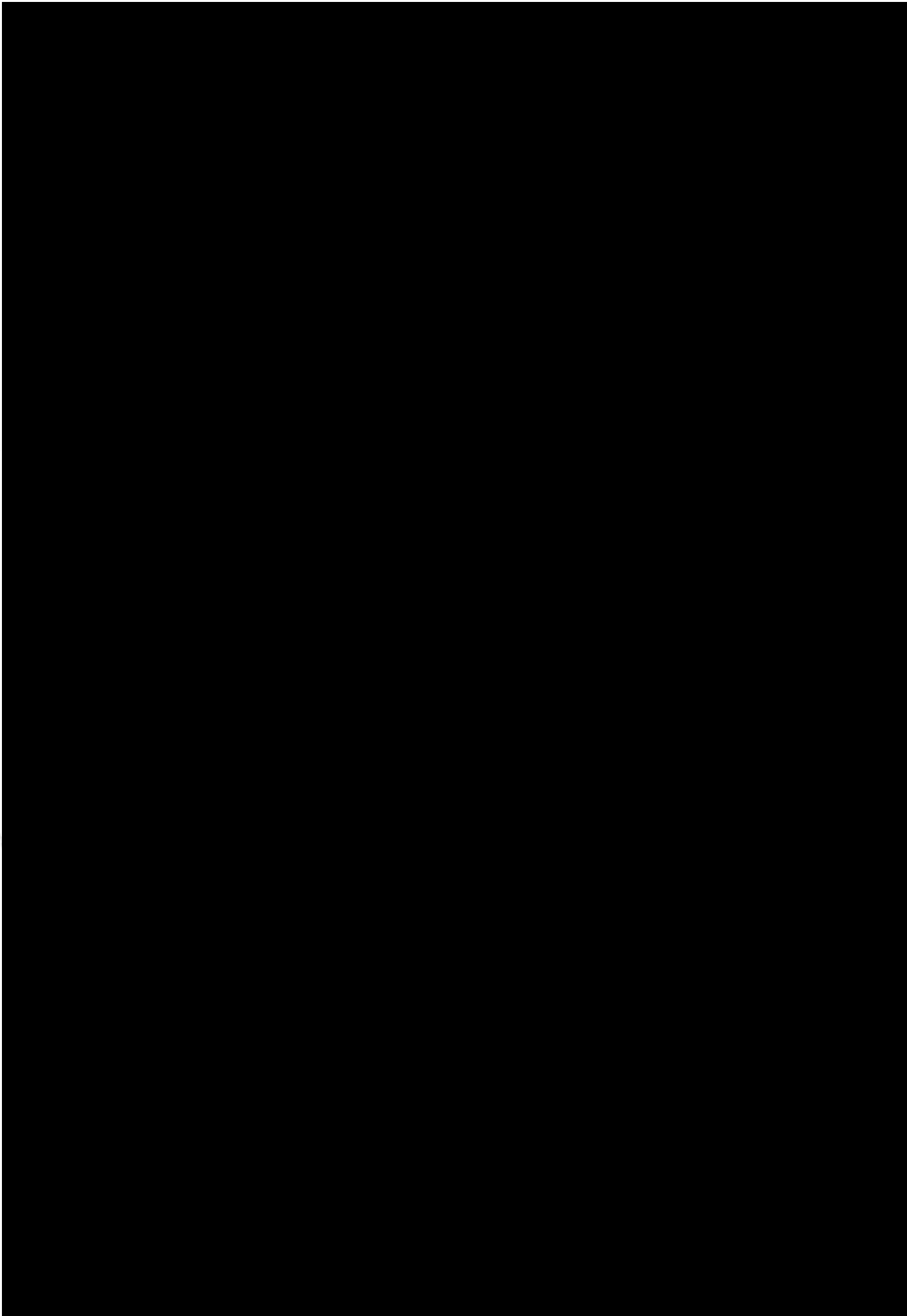


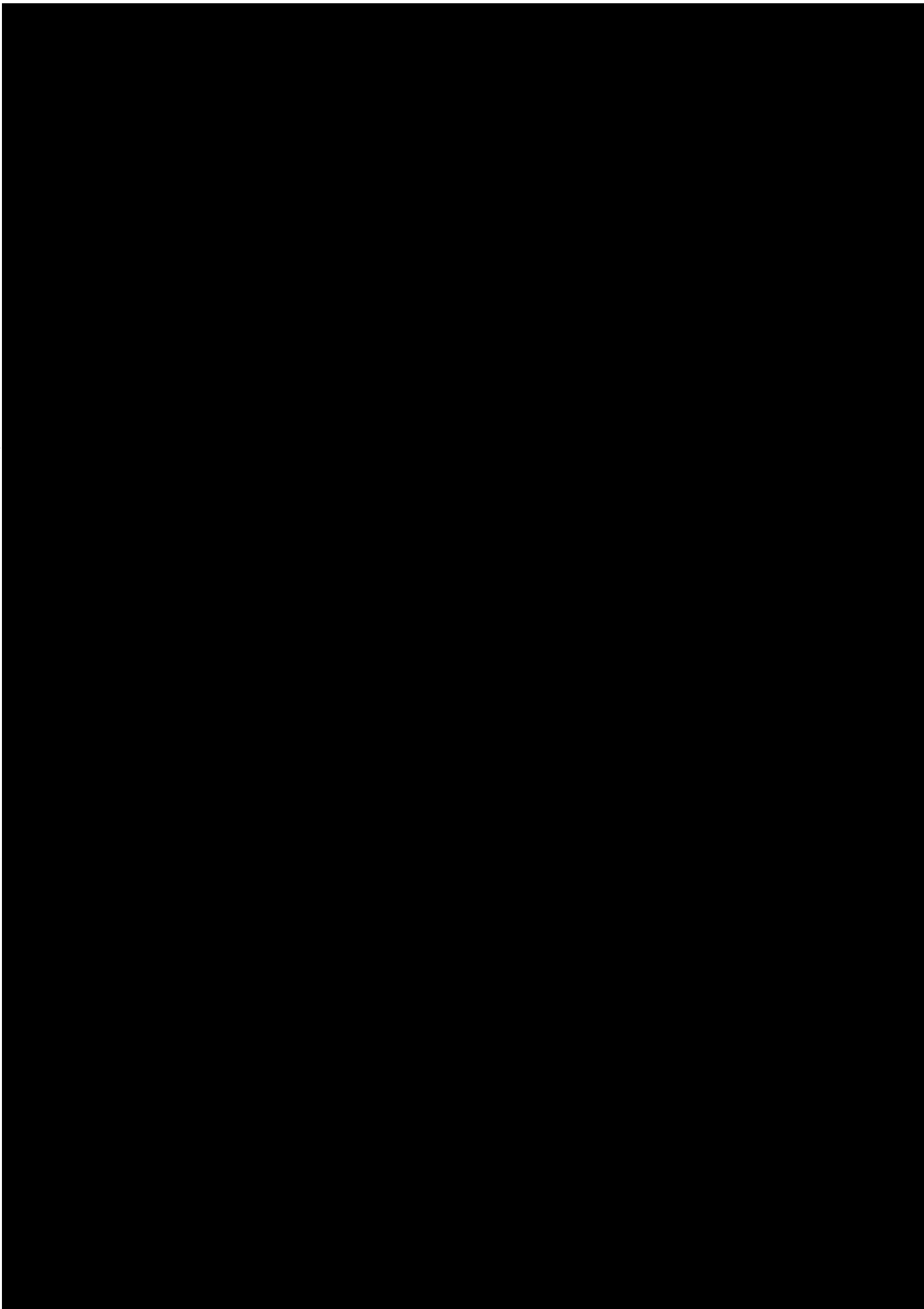


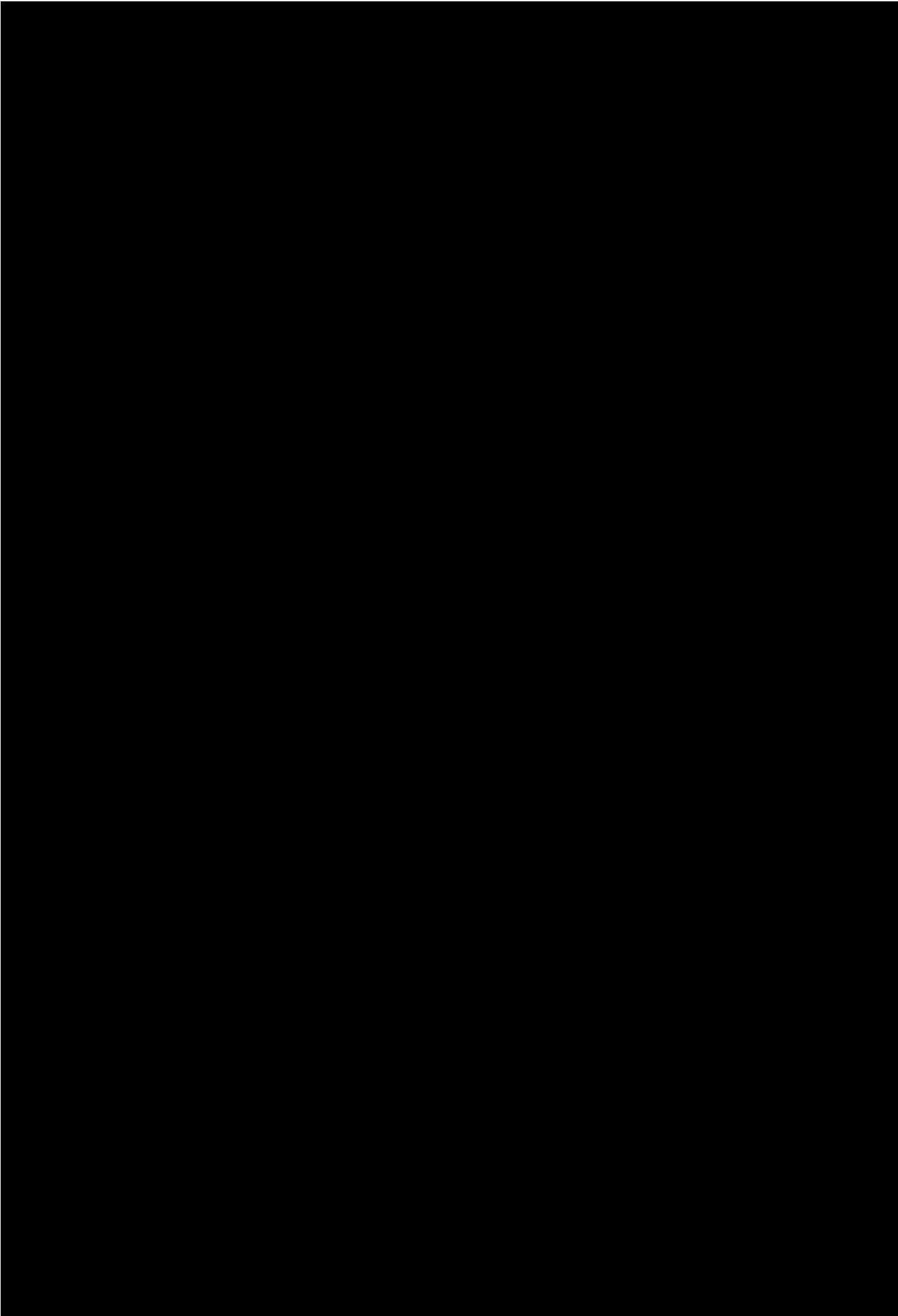


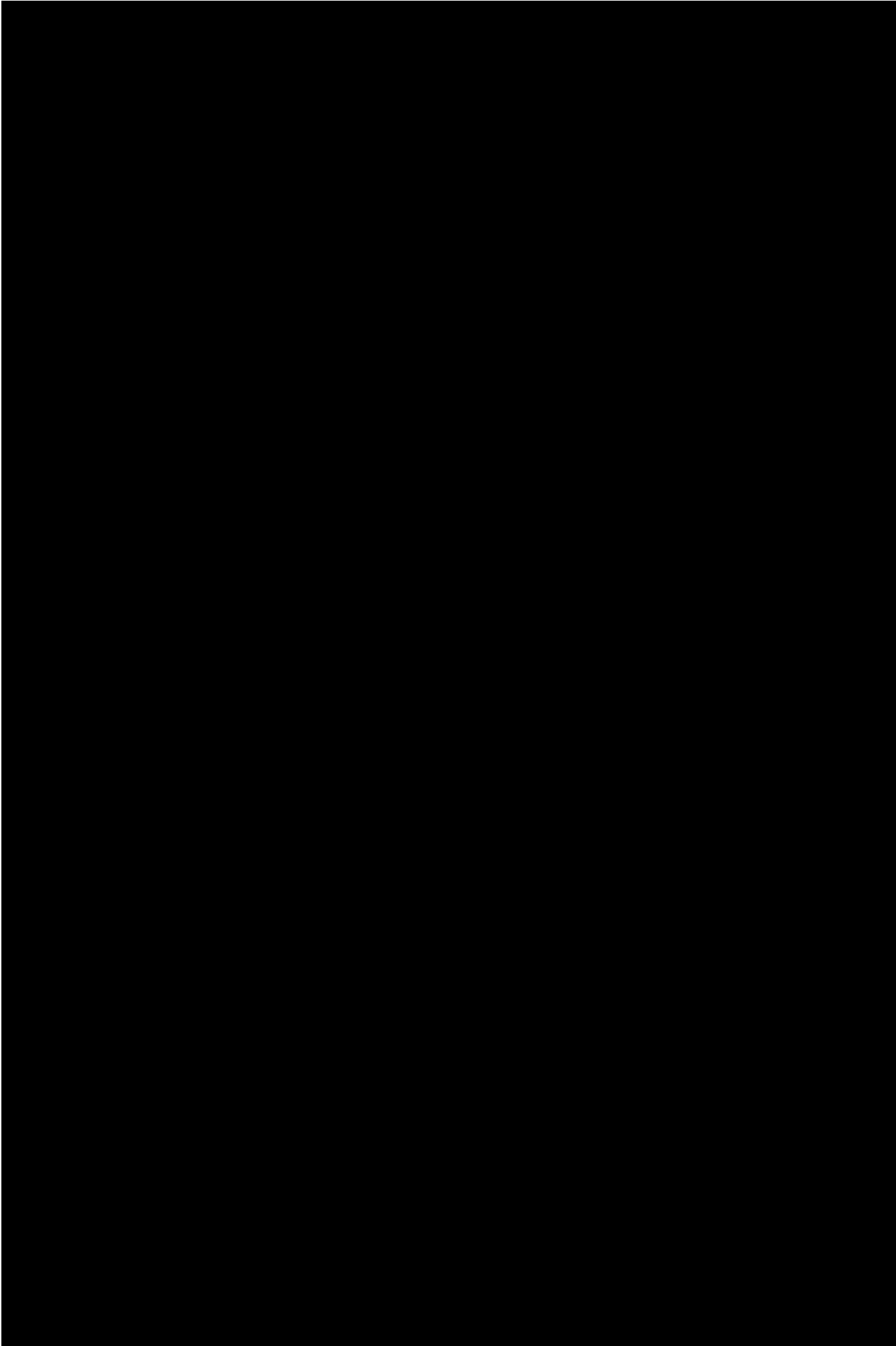


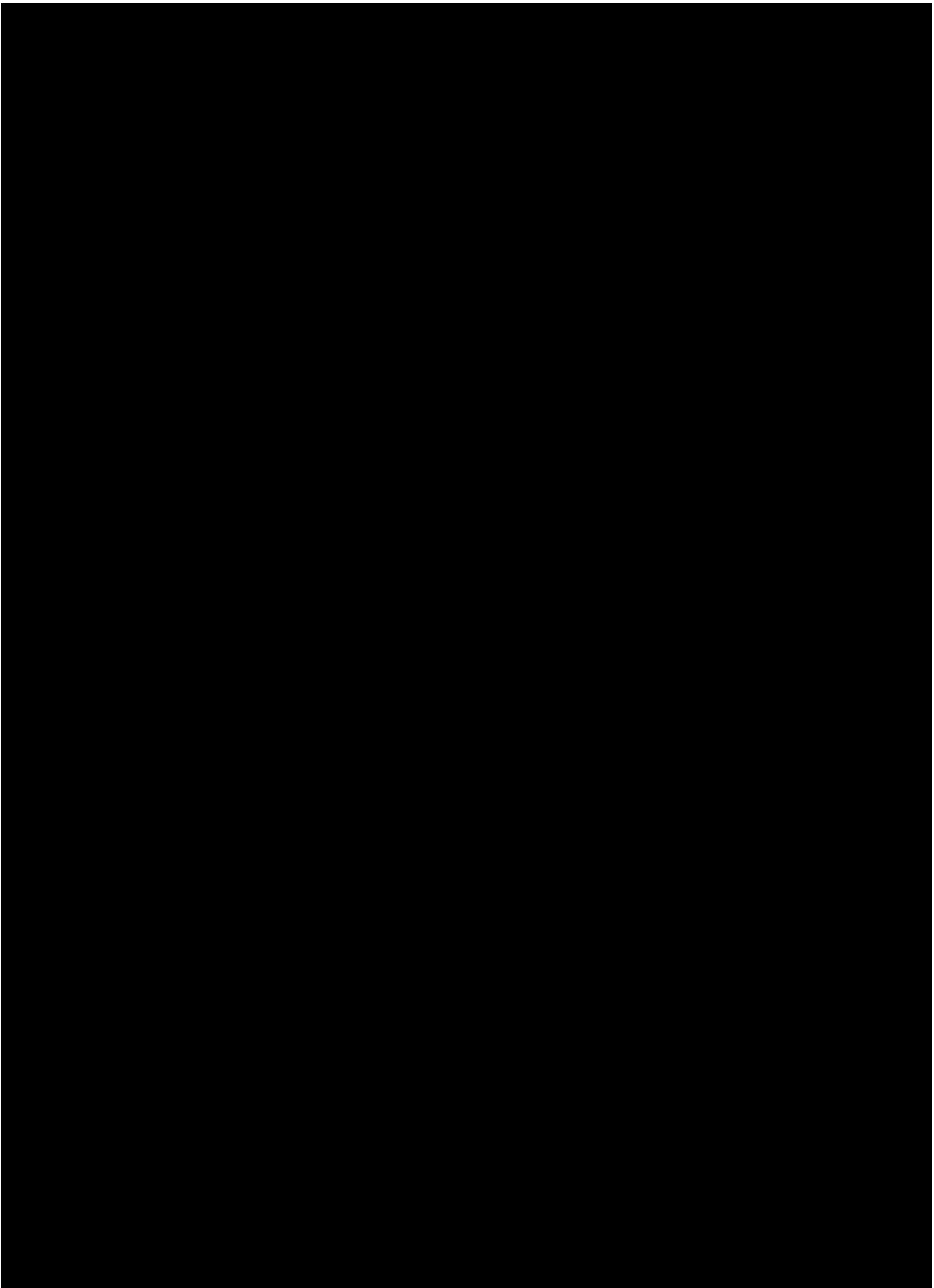


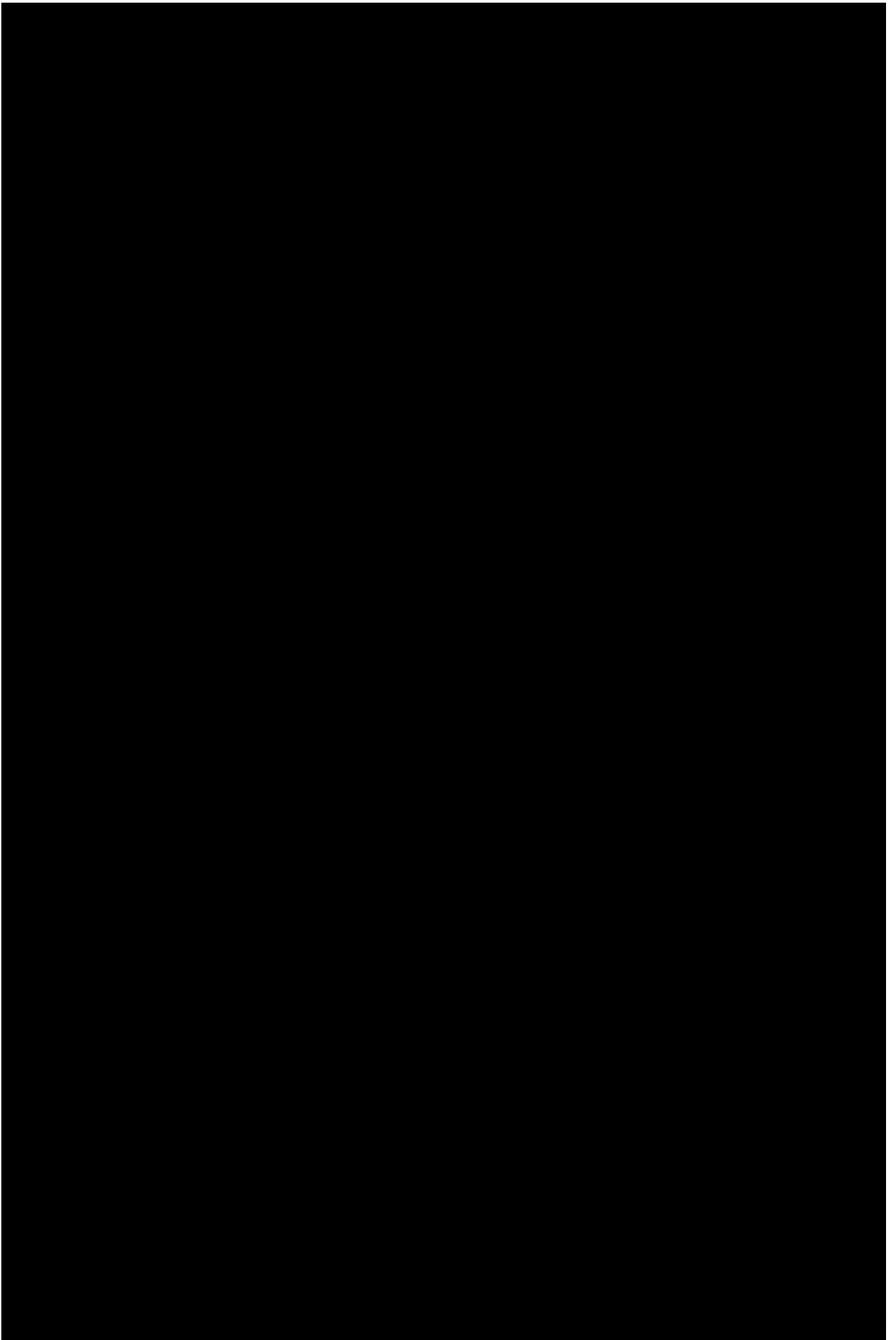


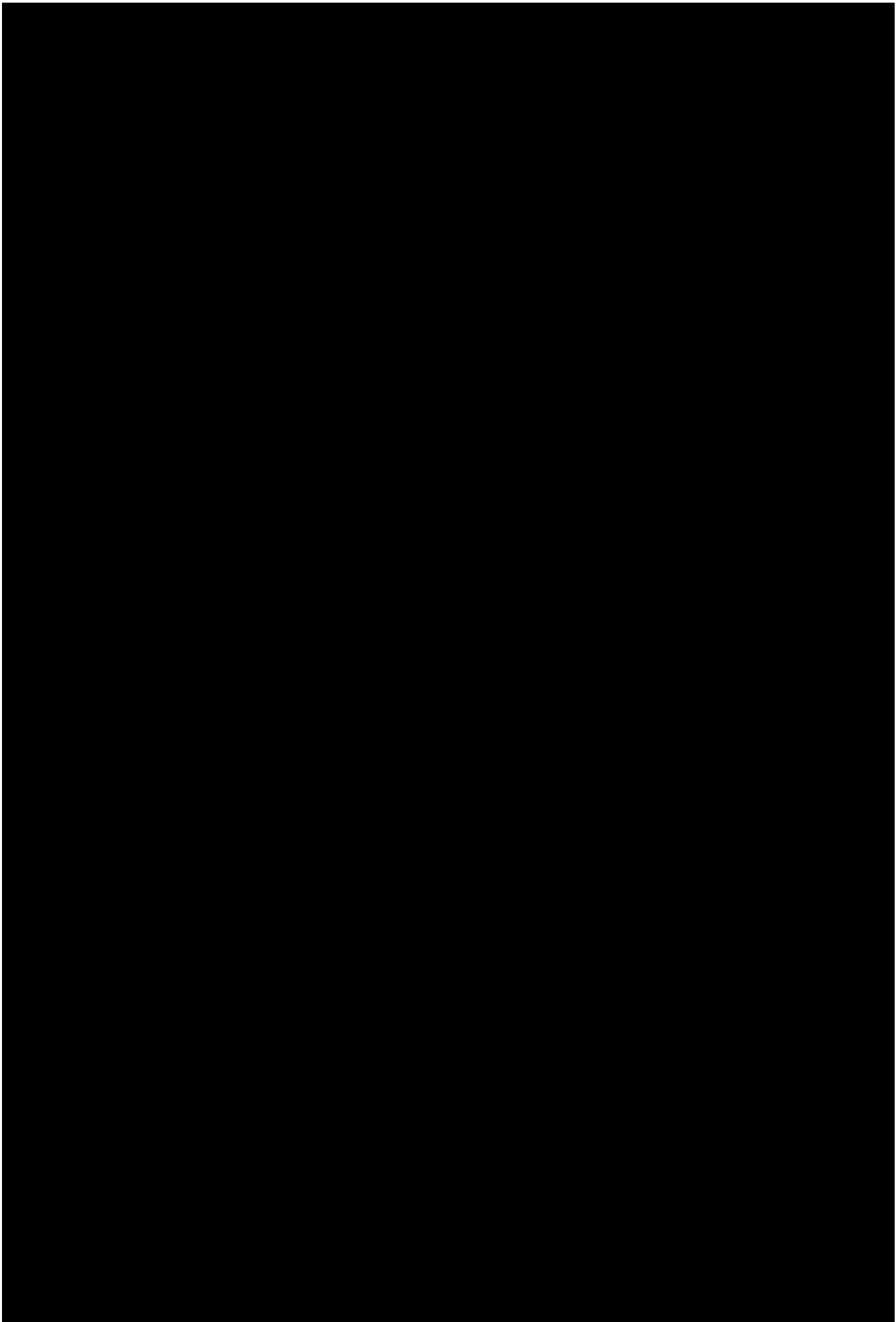






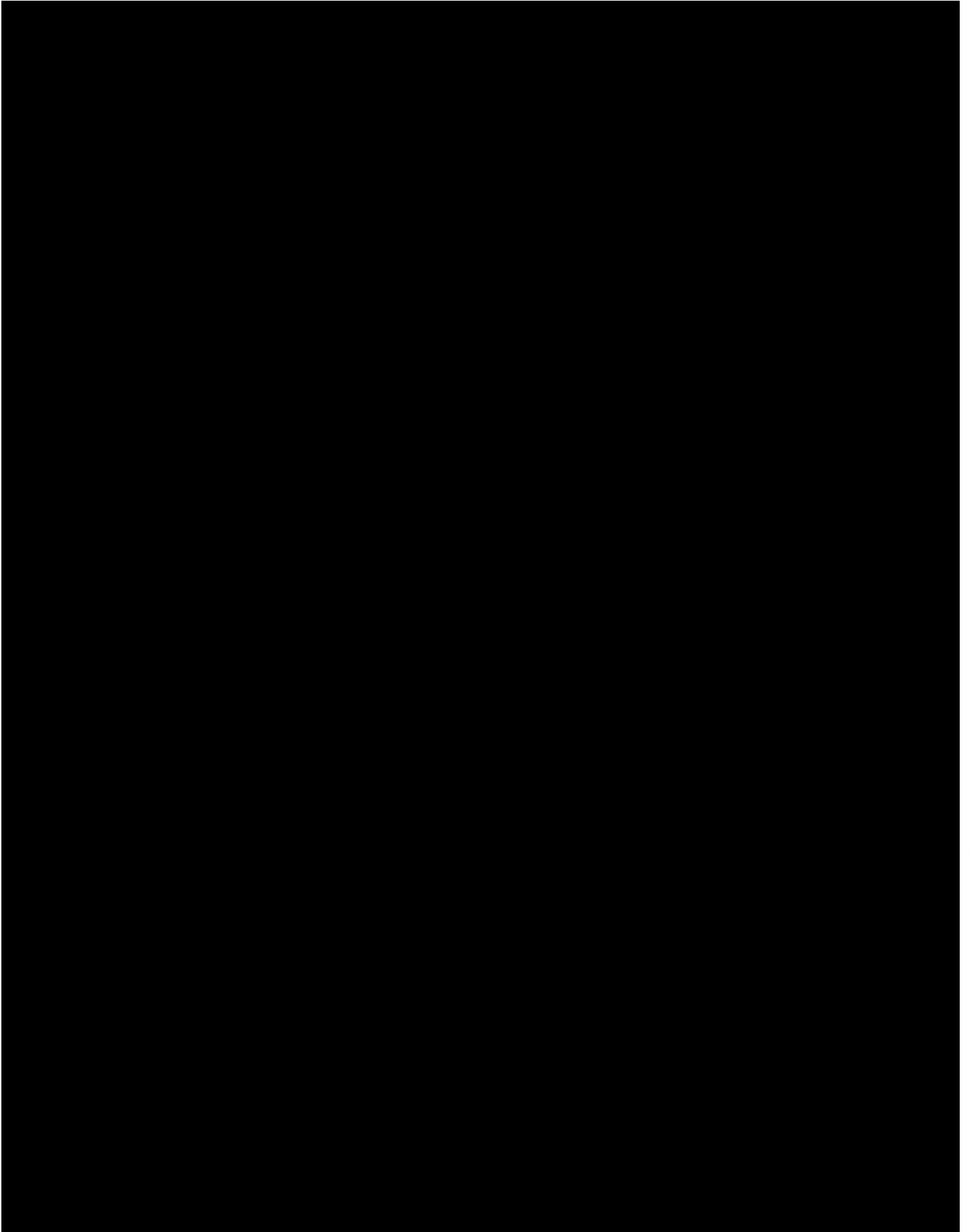


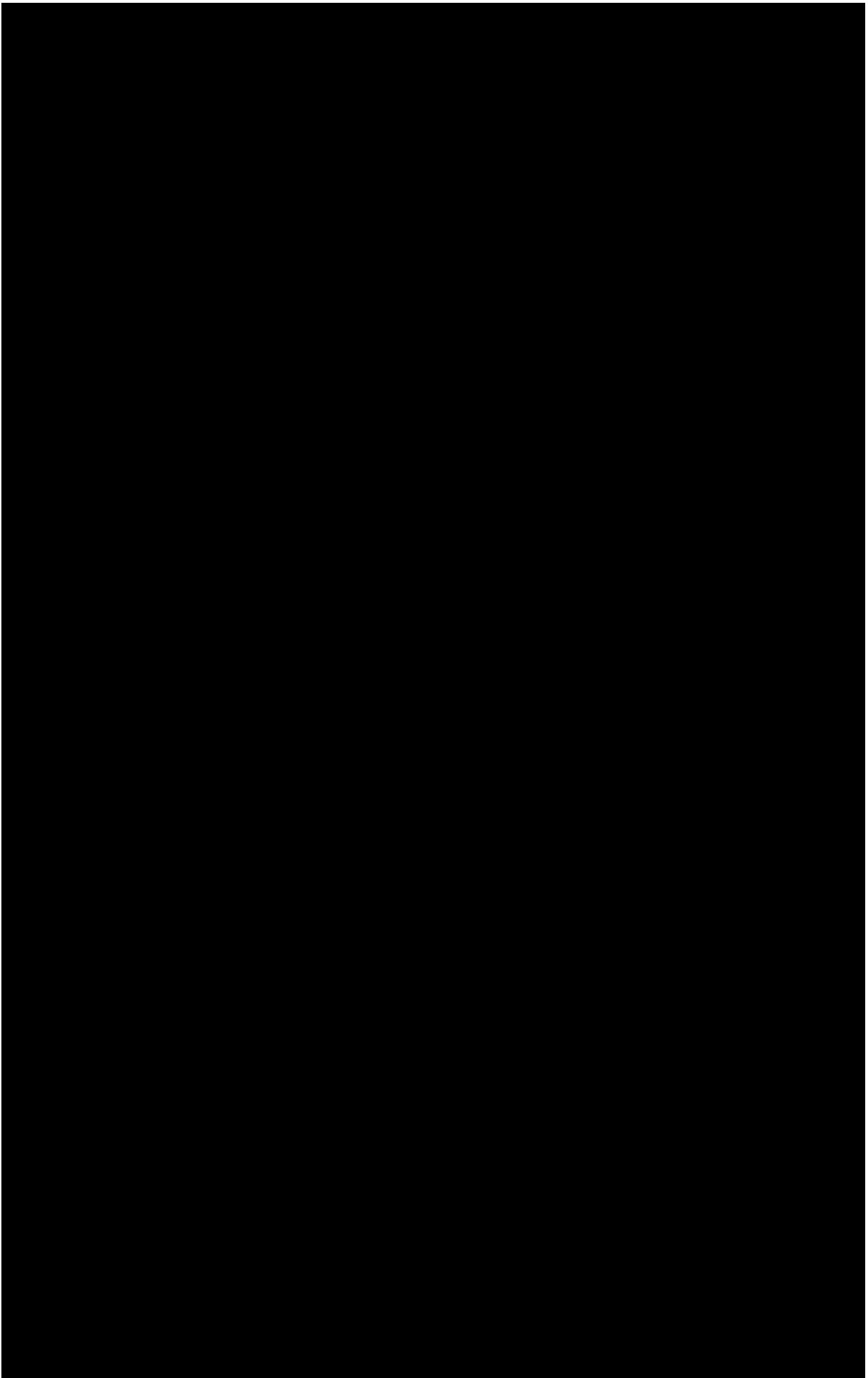


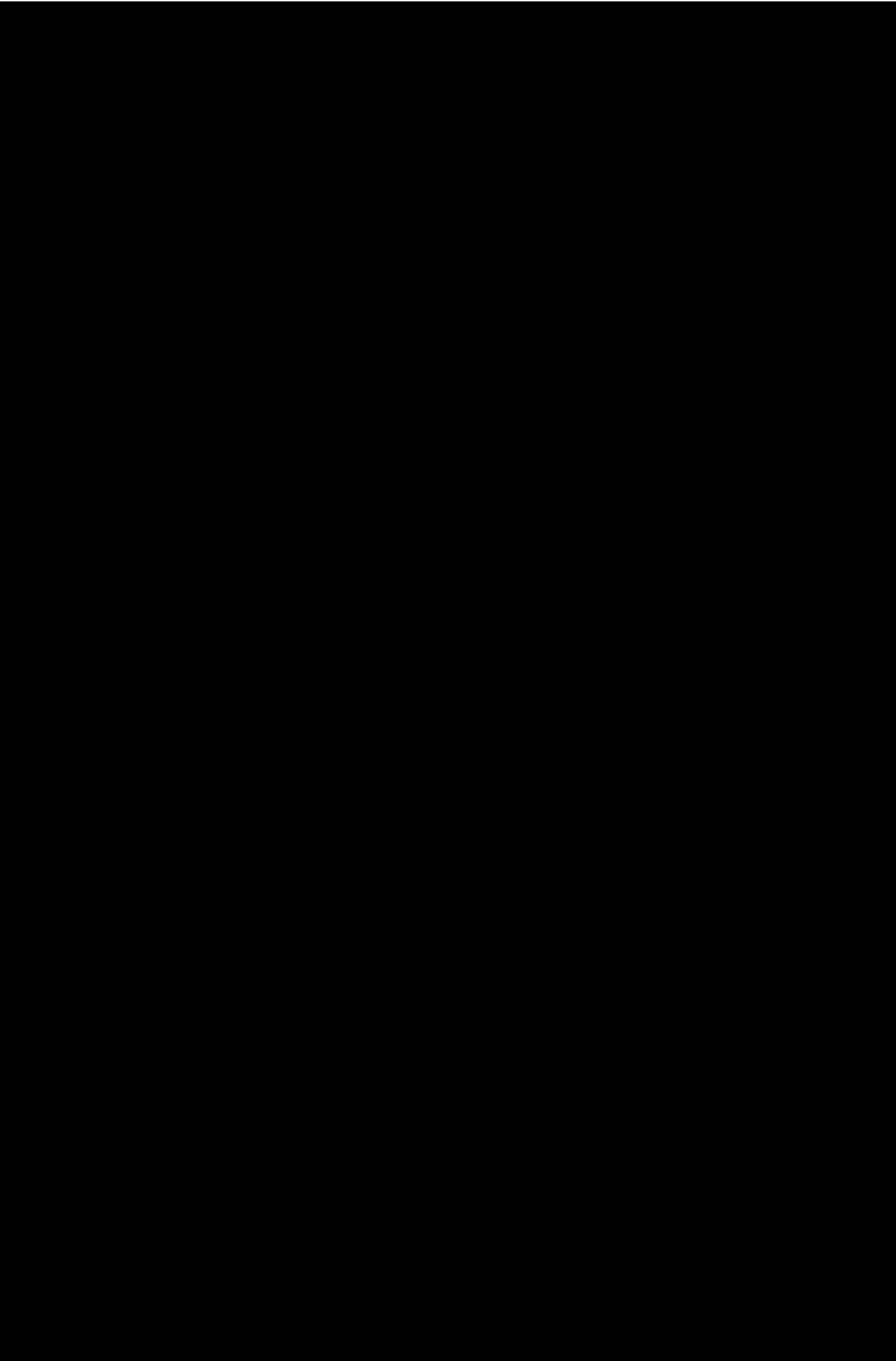


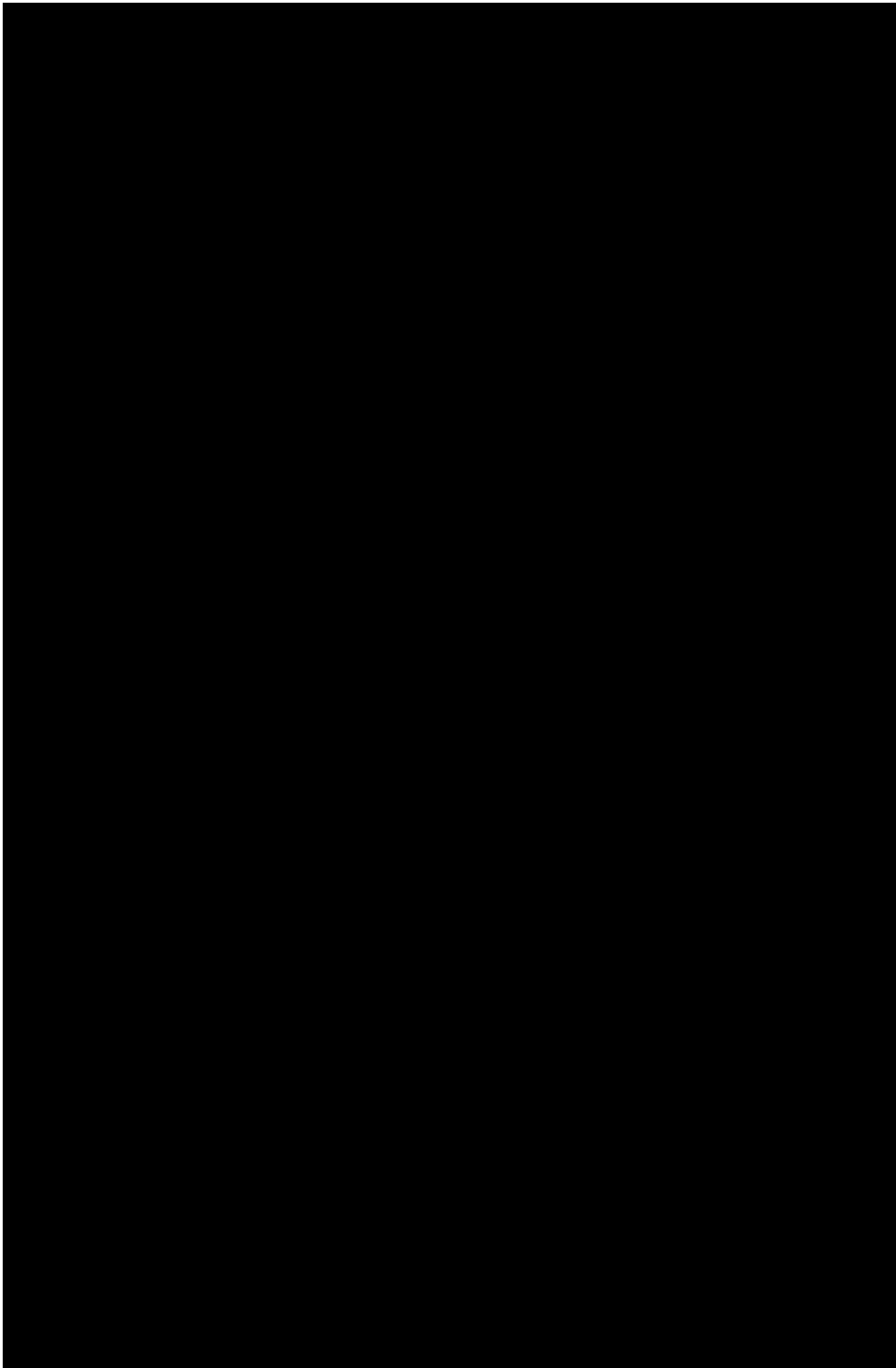
SCHEDULE A16

LW Contractor Cooperation and Integration Deed

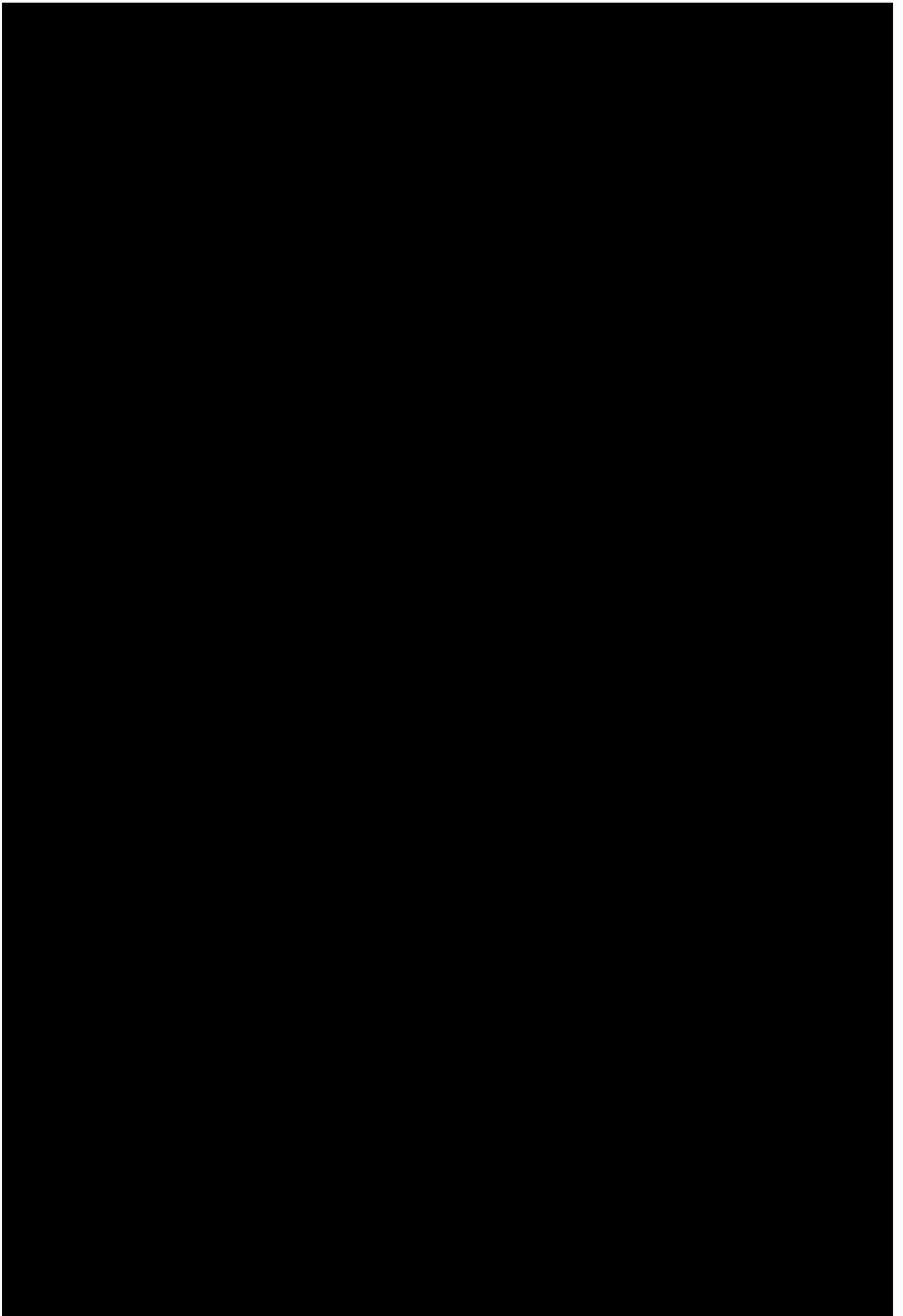


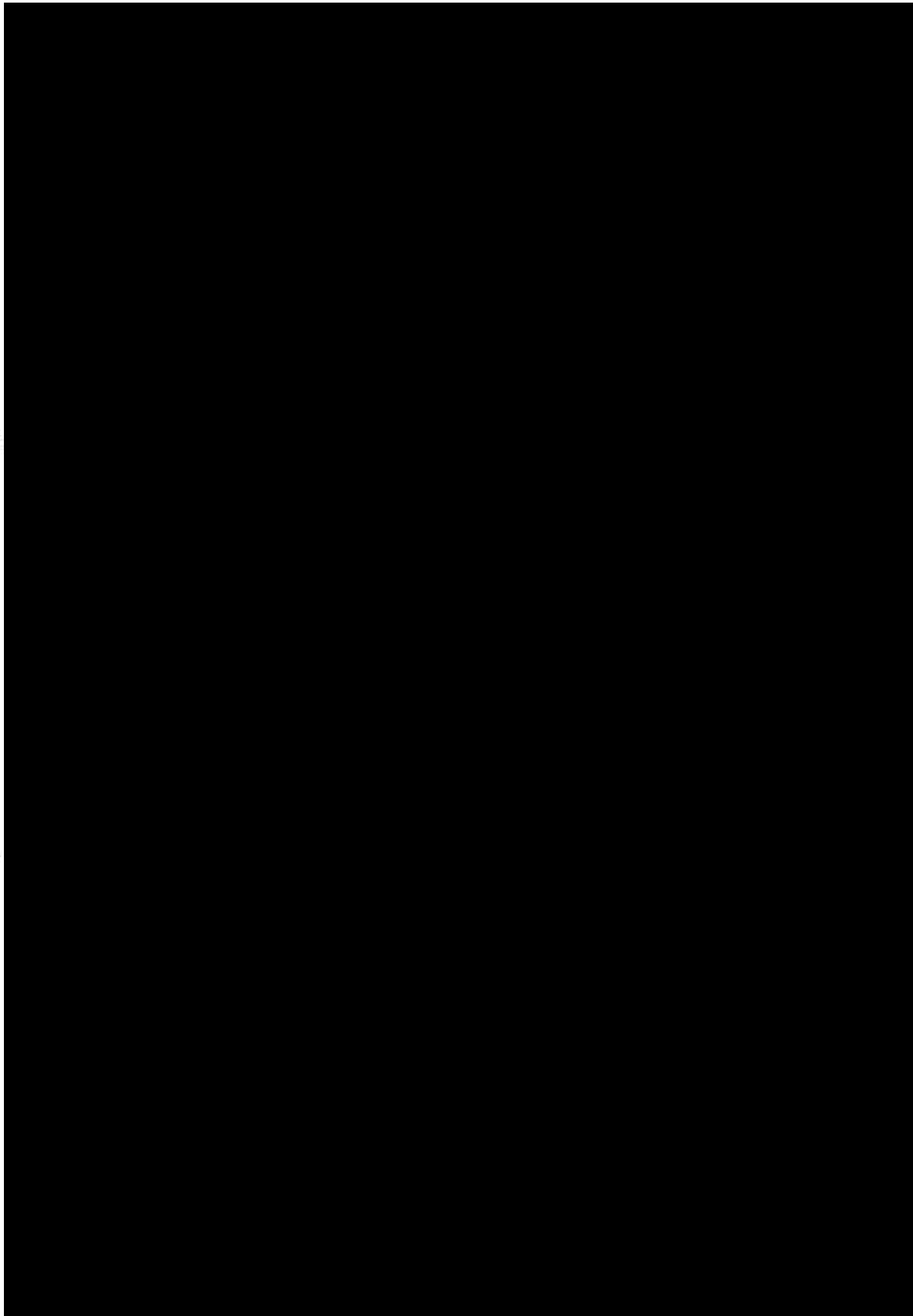


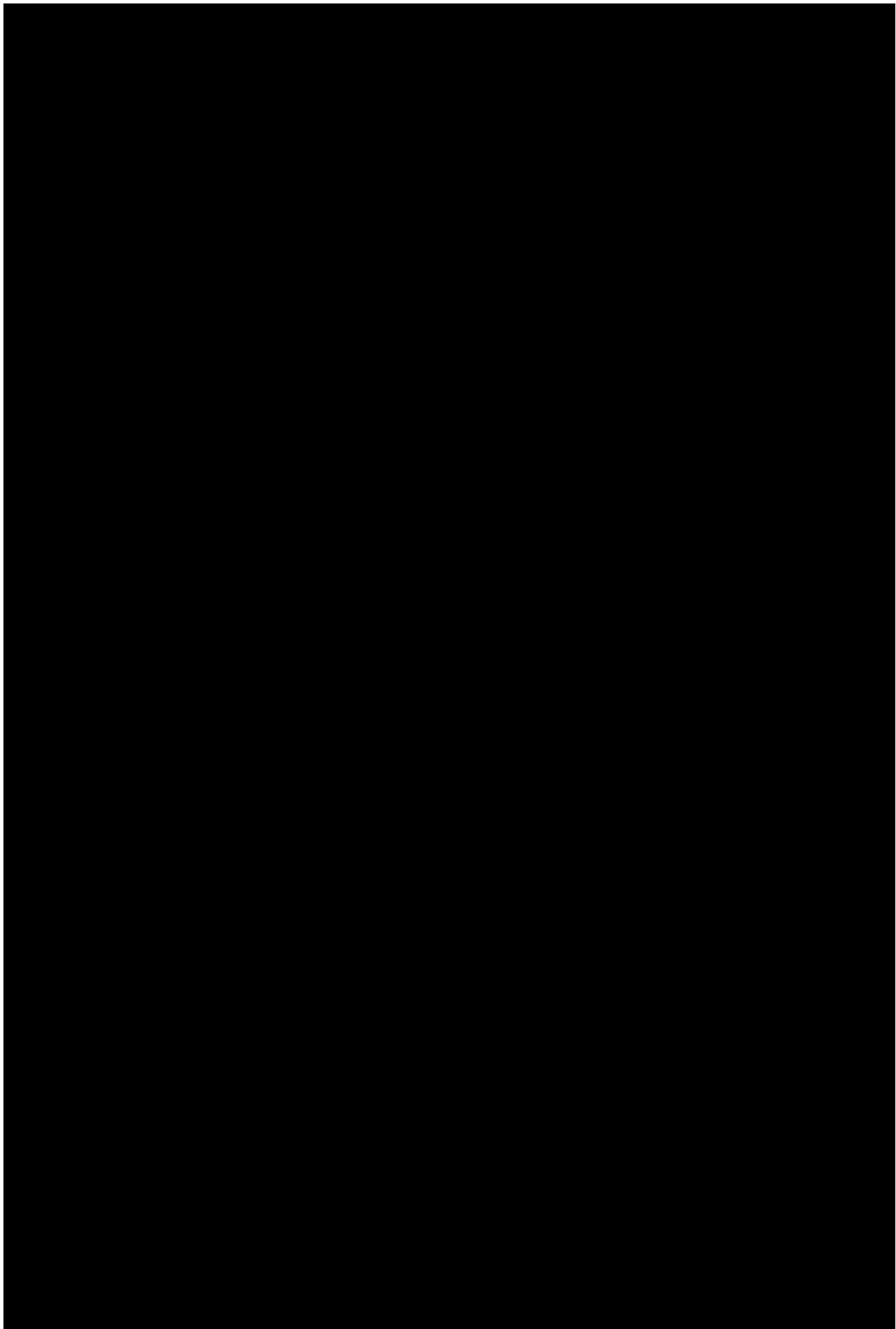


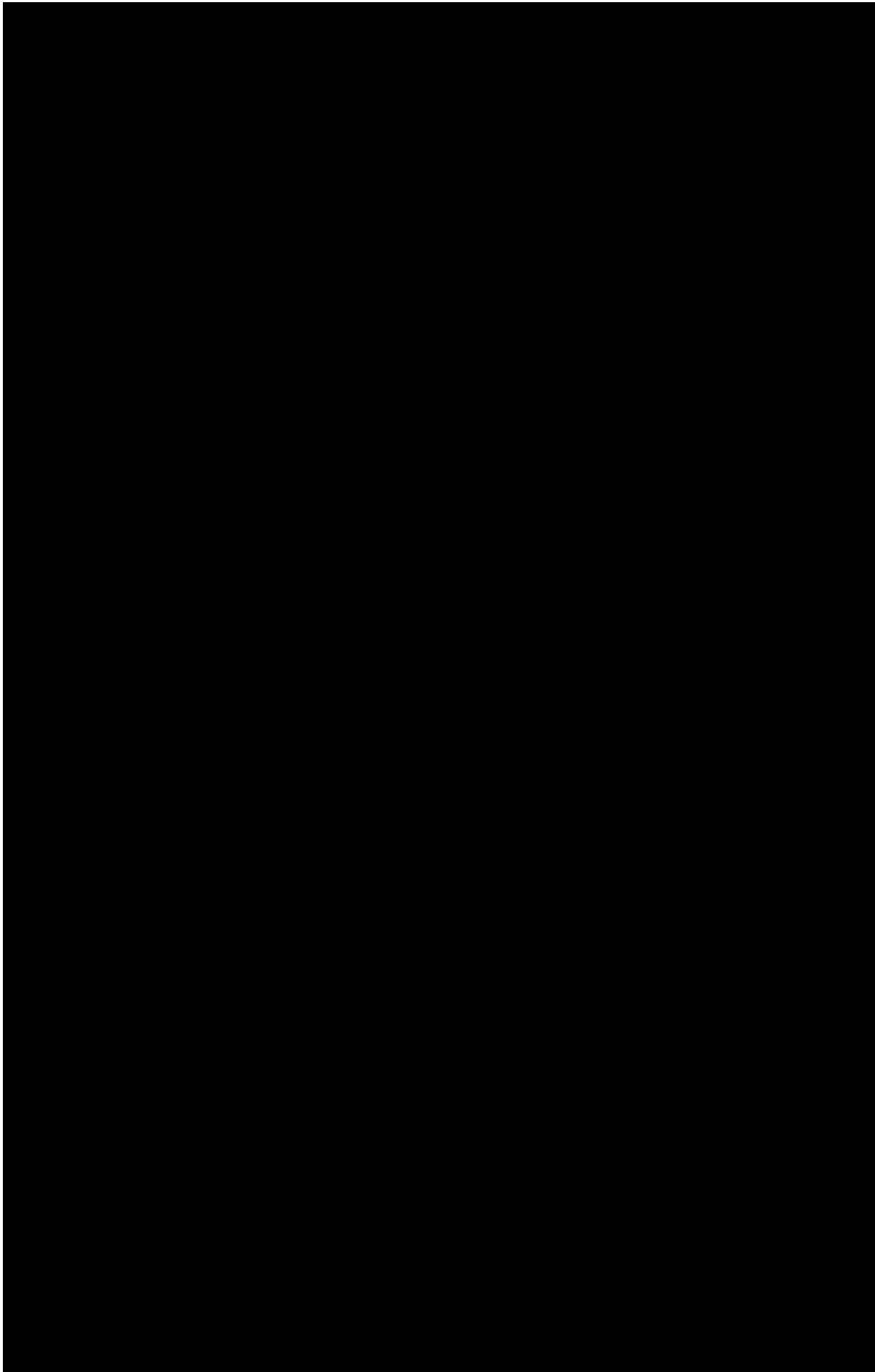


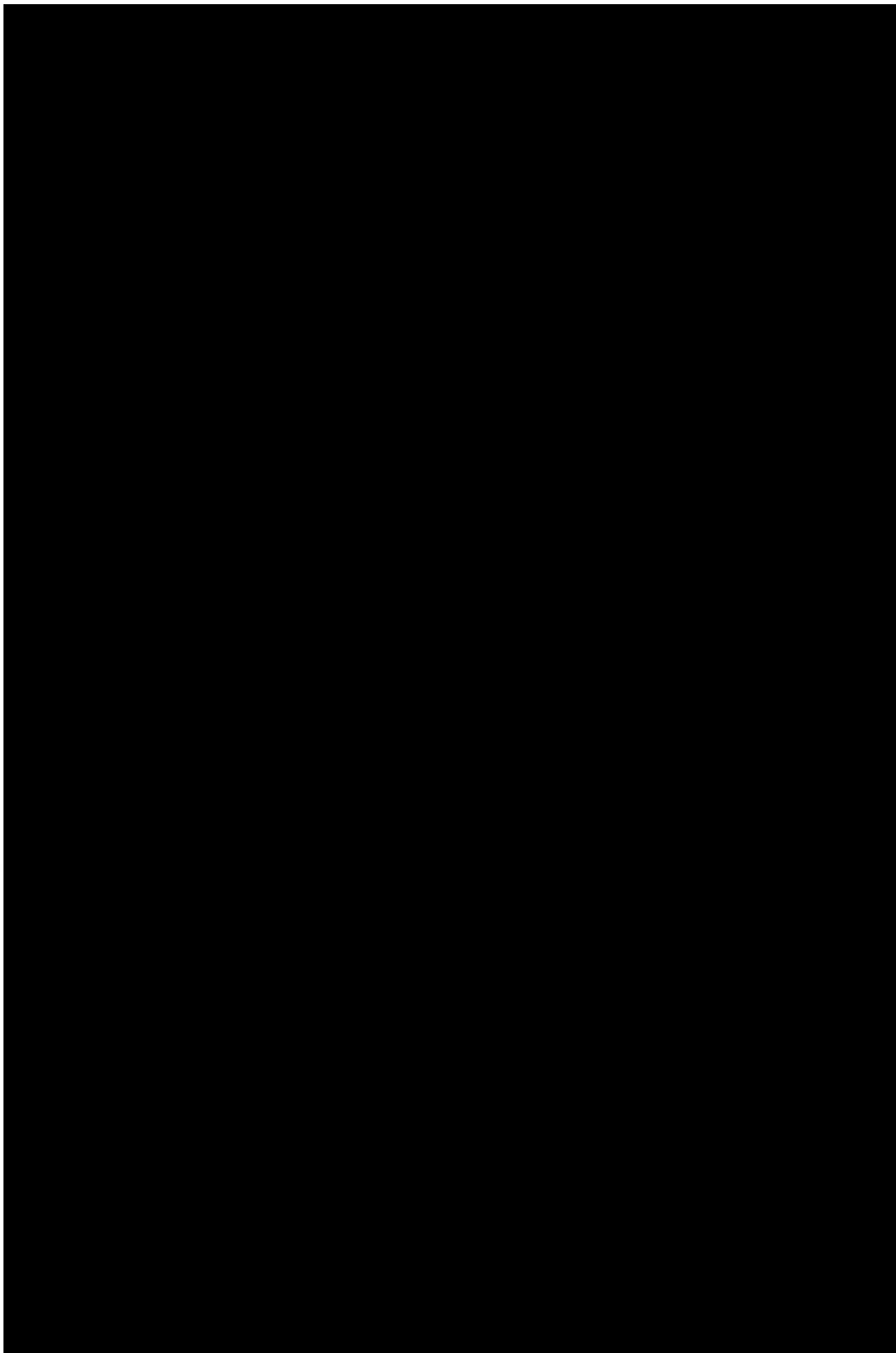


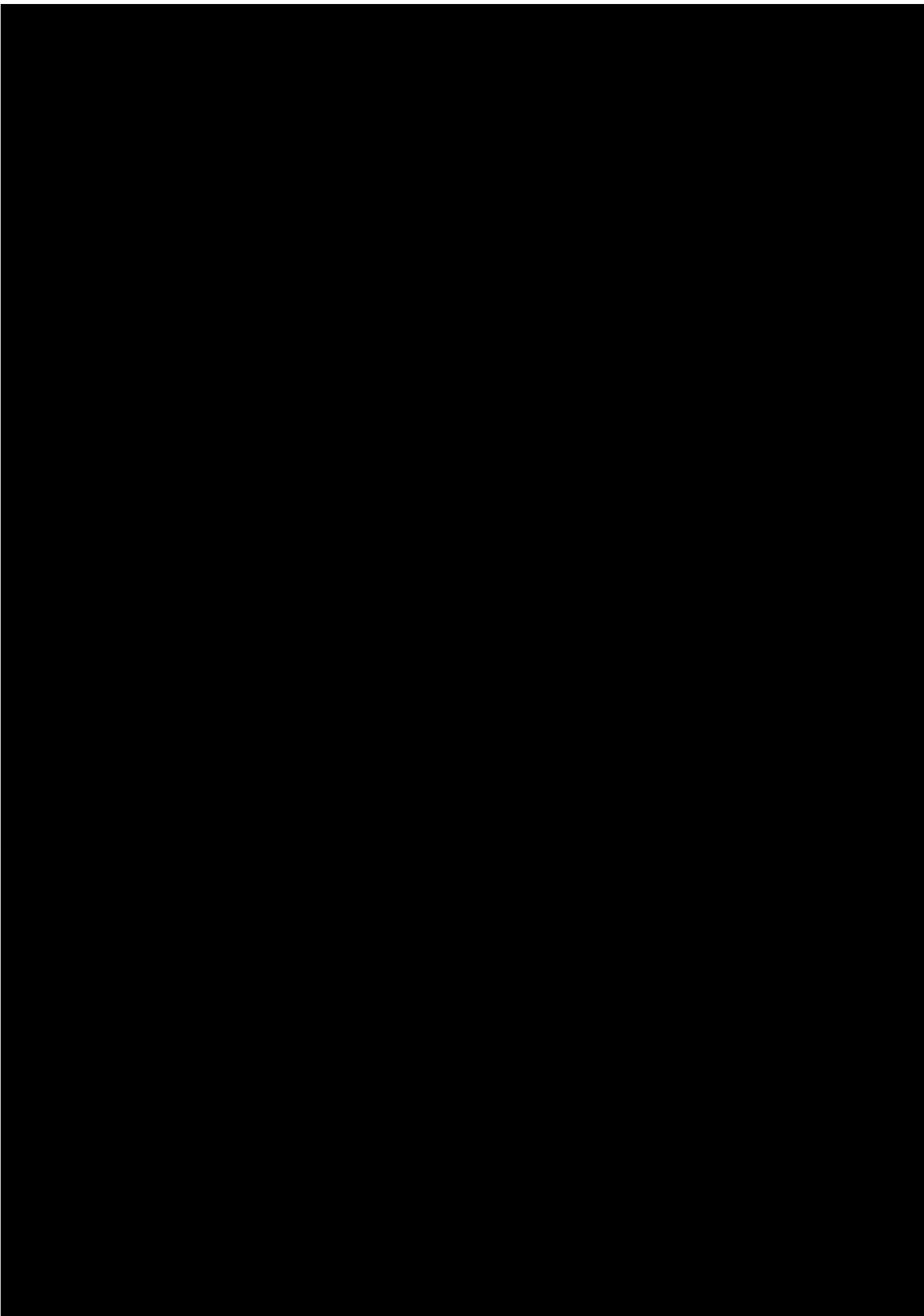


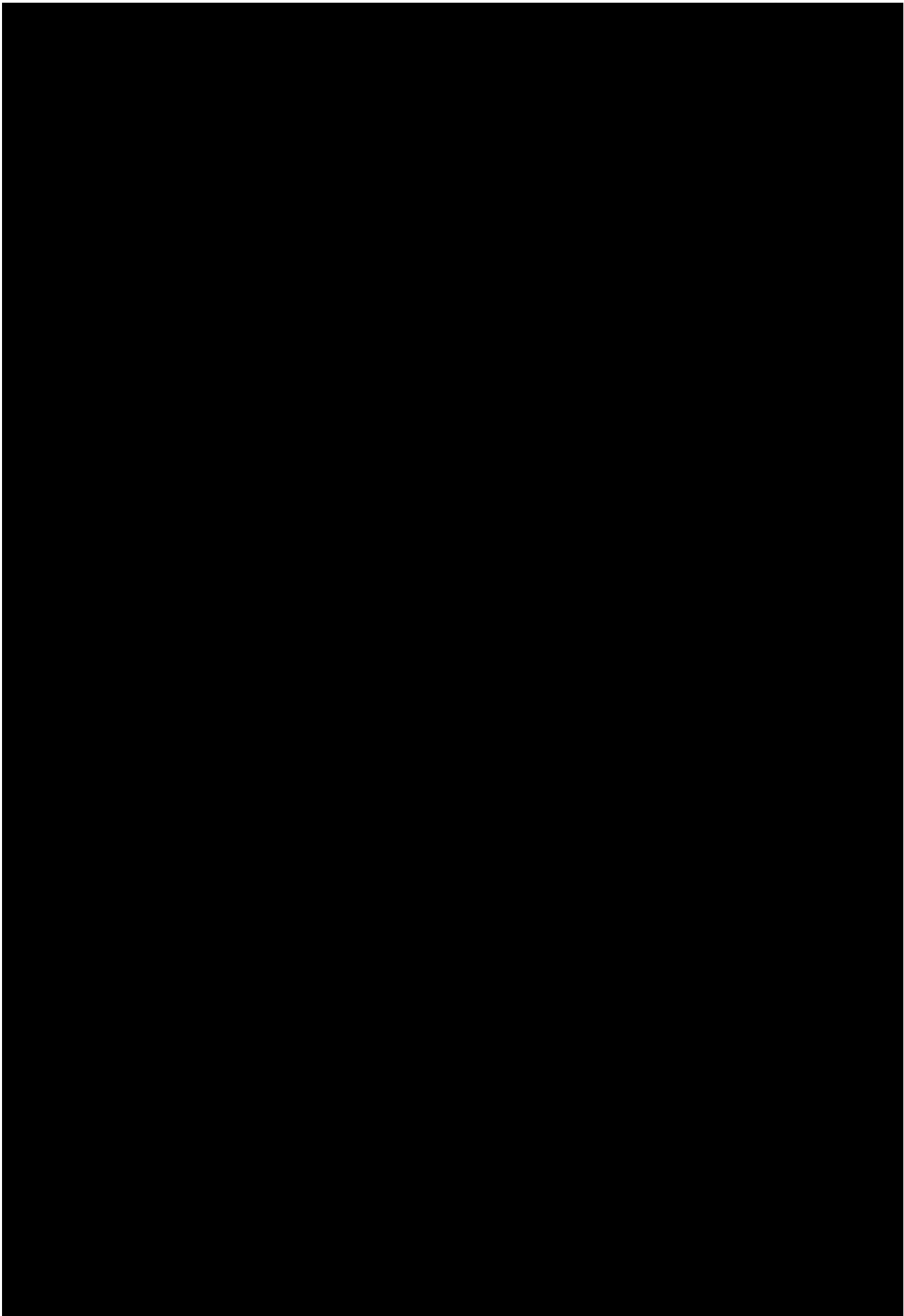


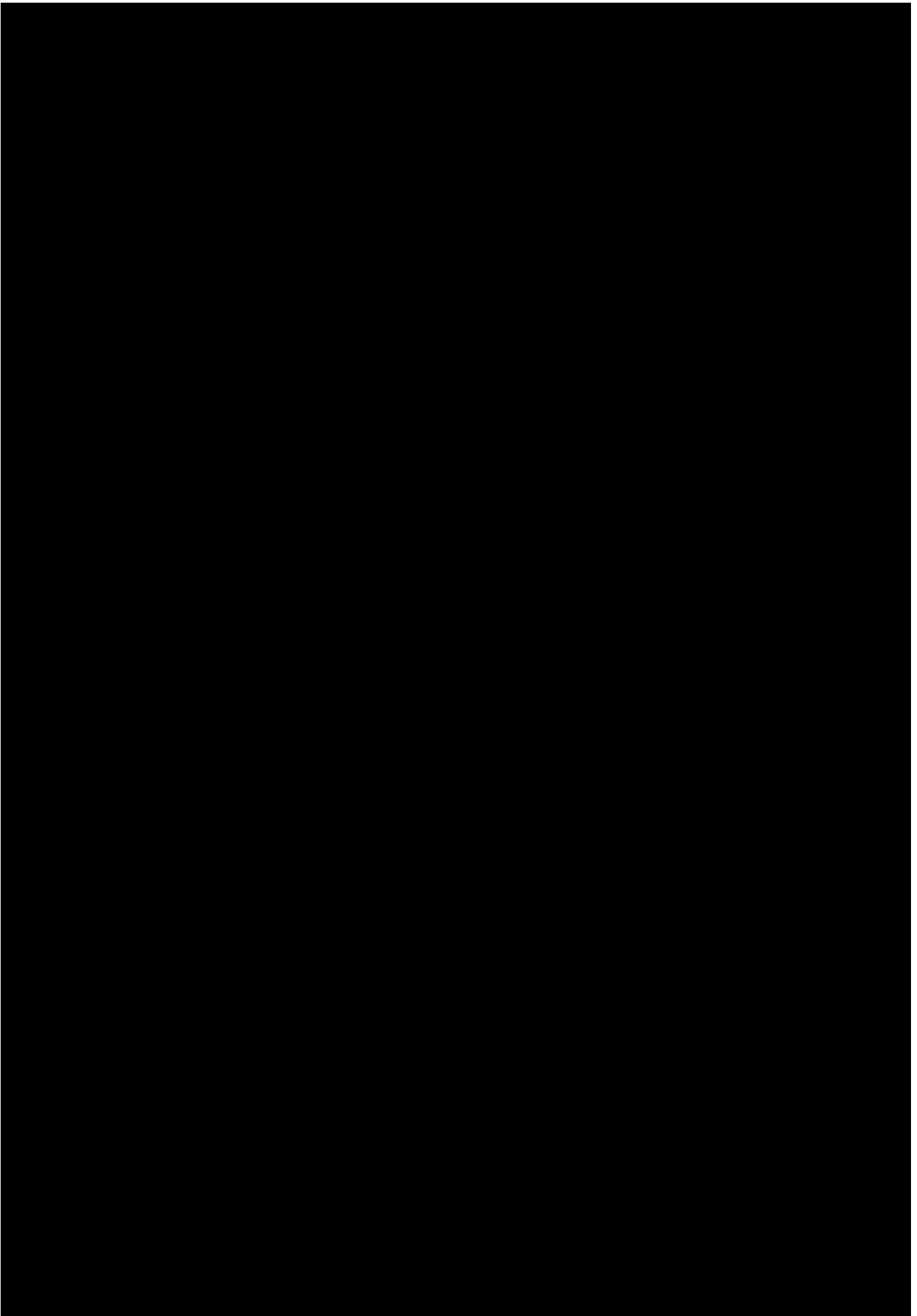






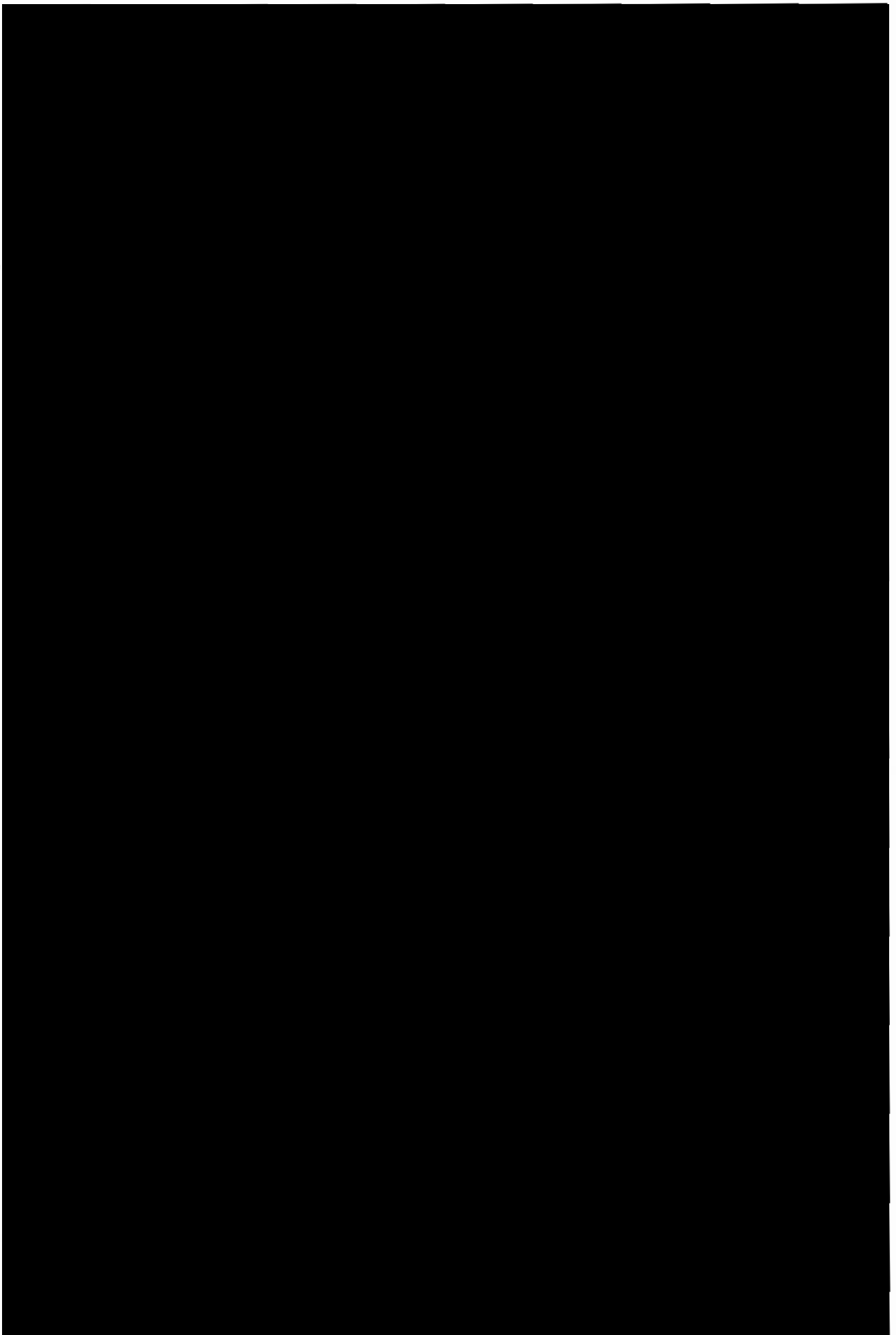


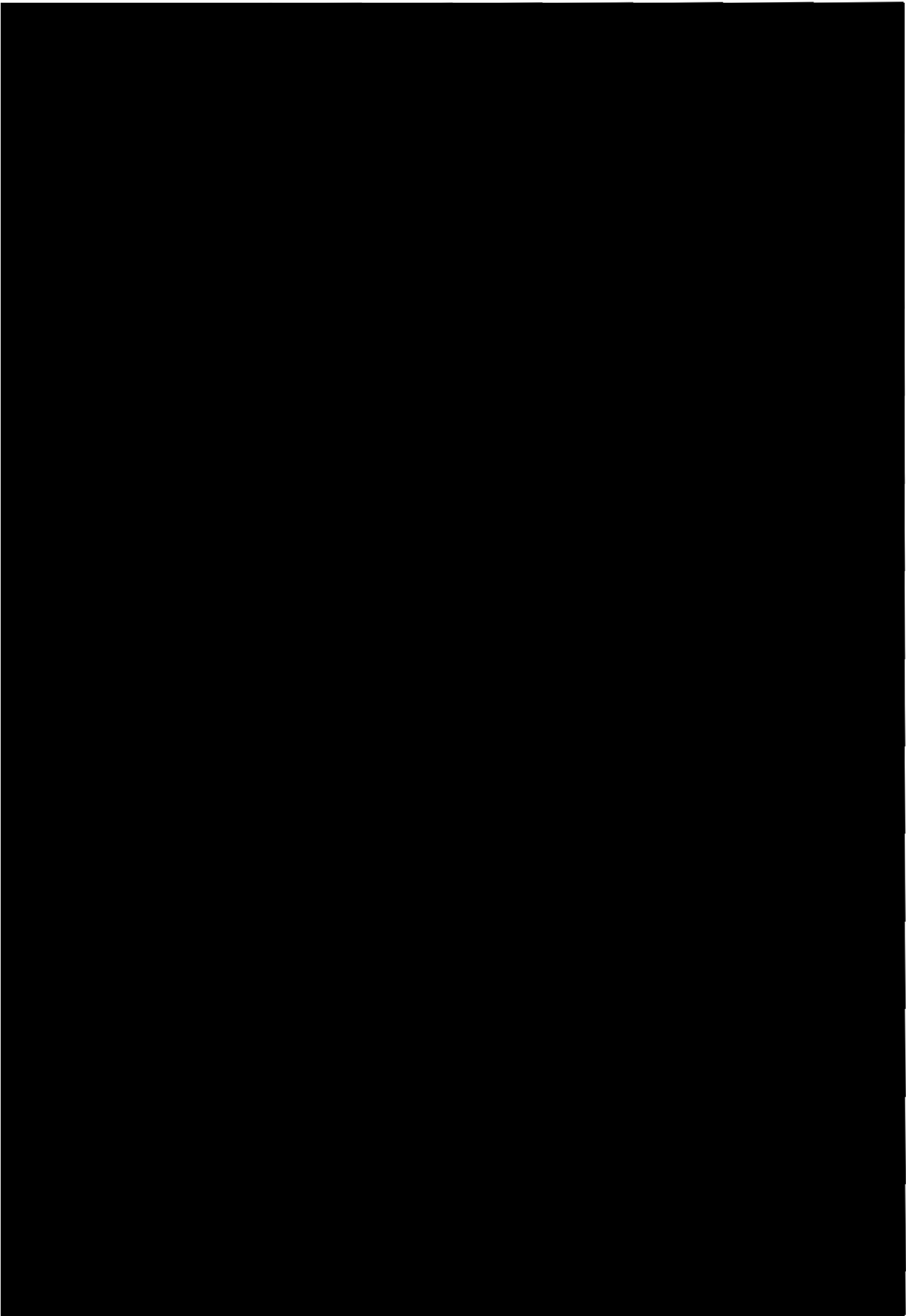




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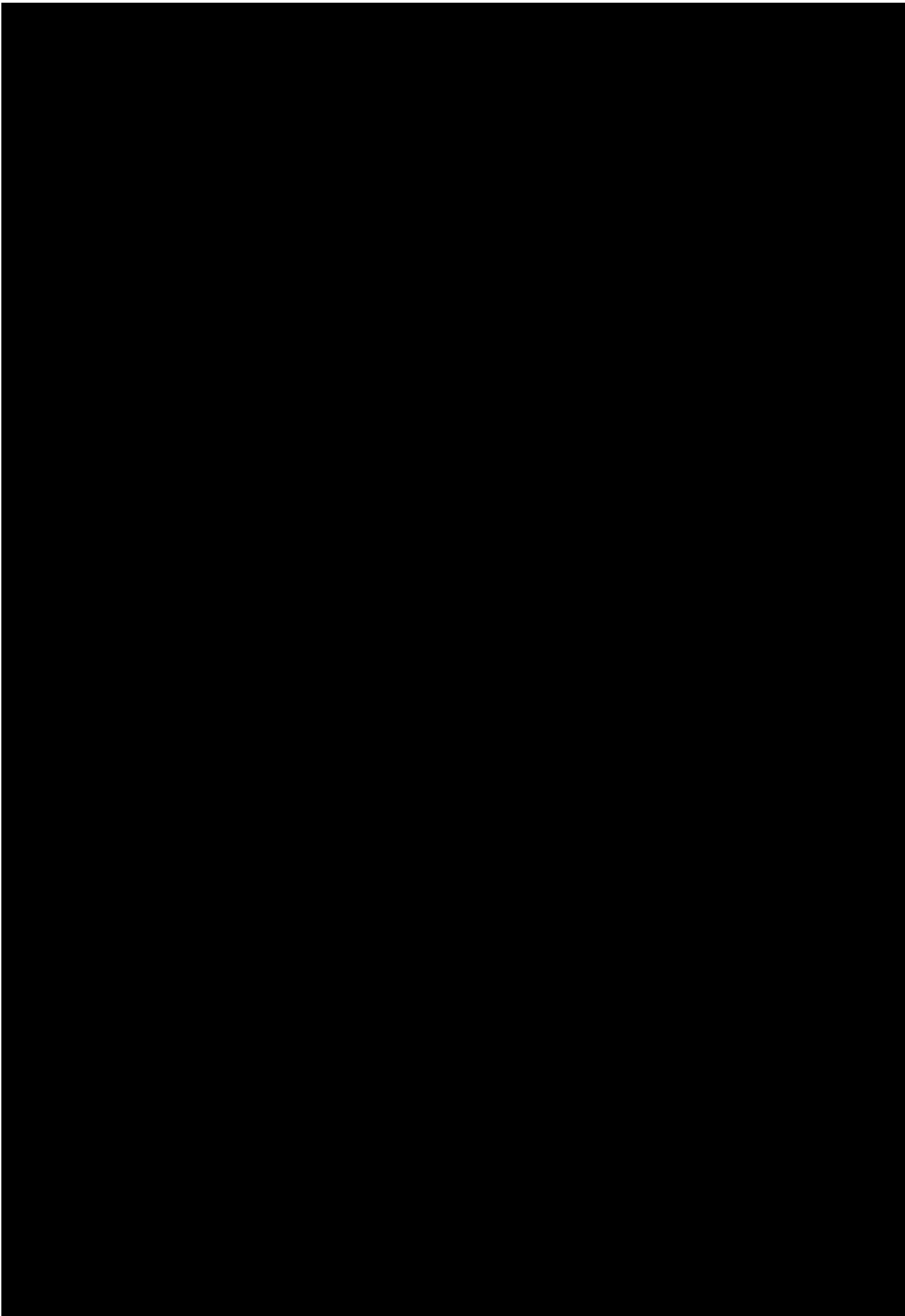
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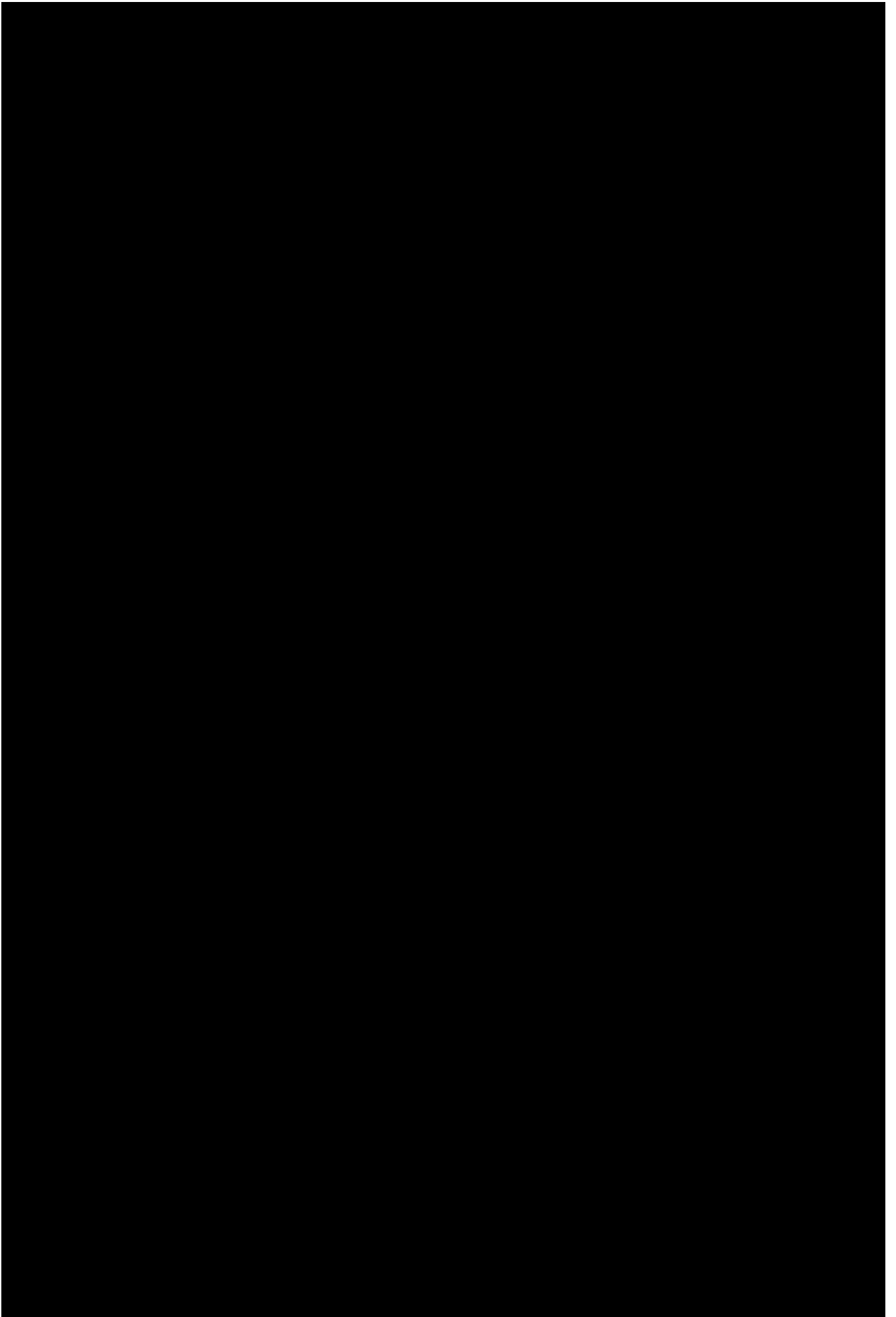


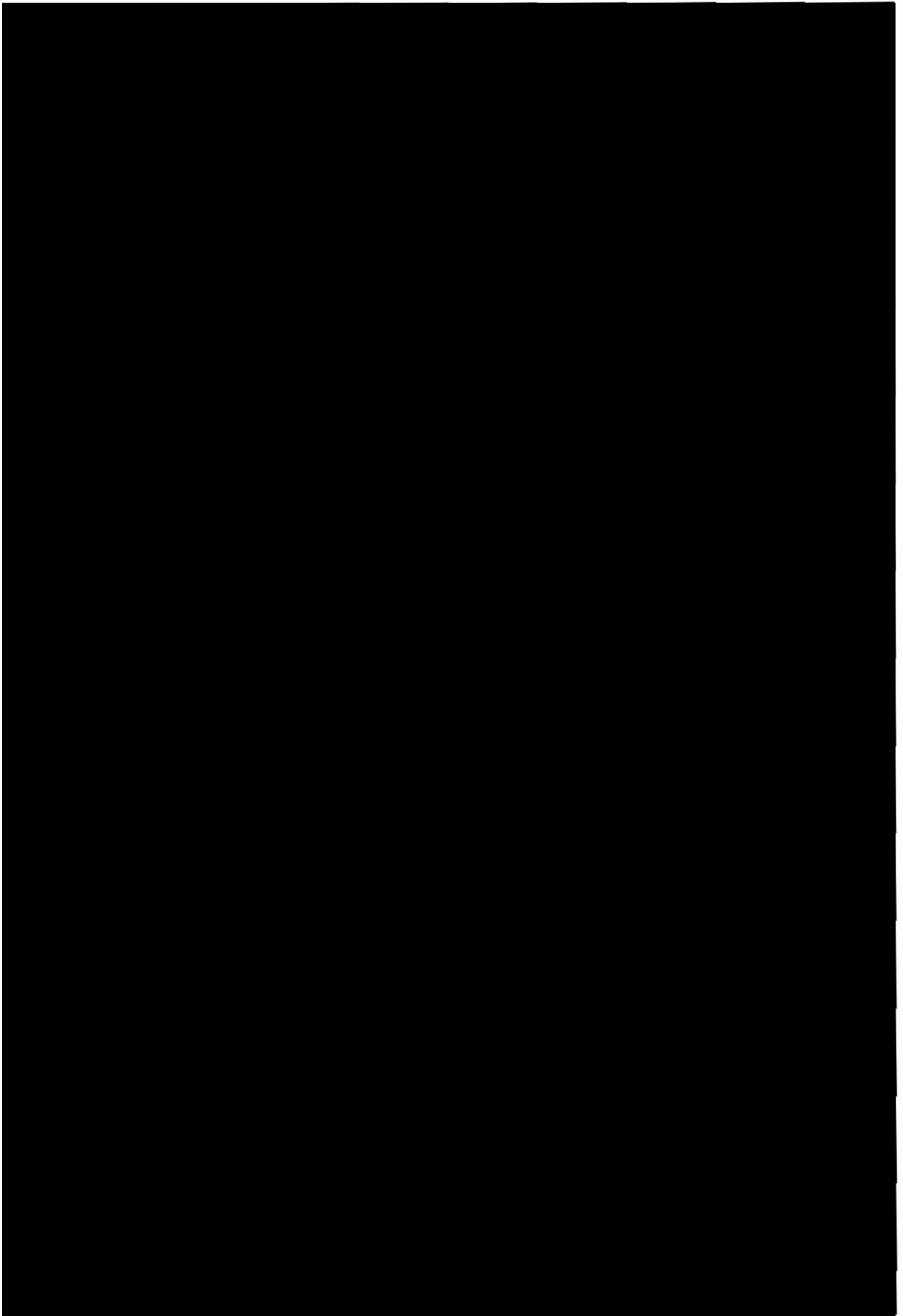


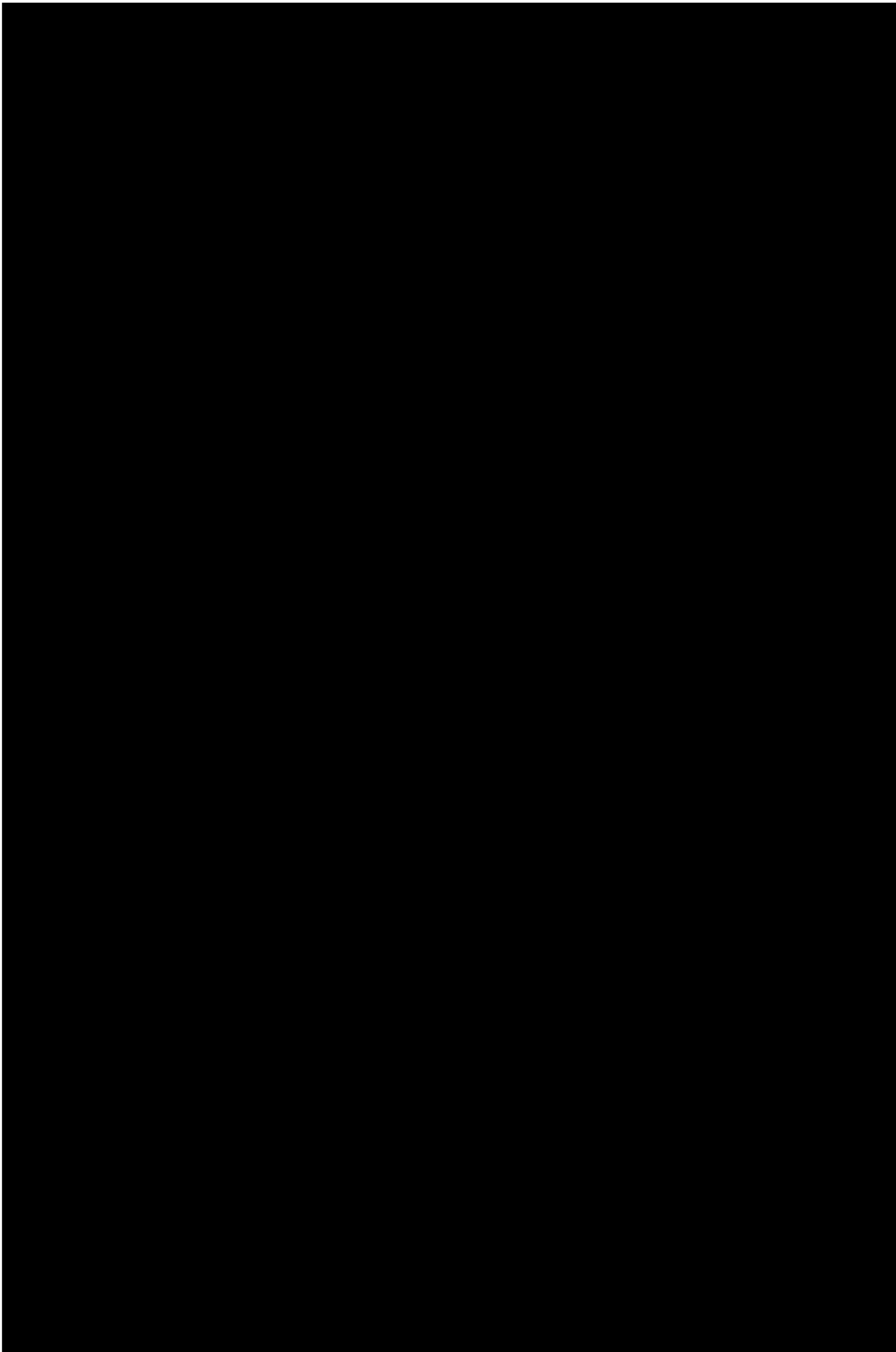
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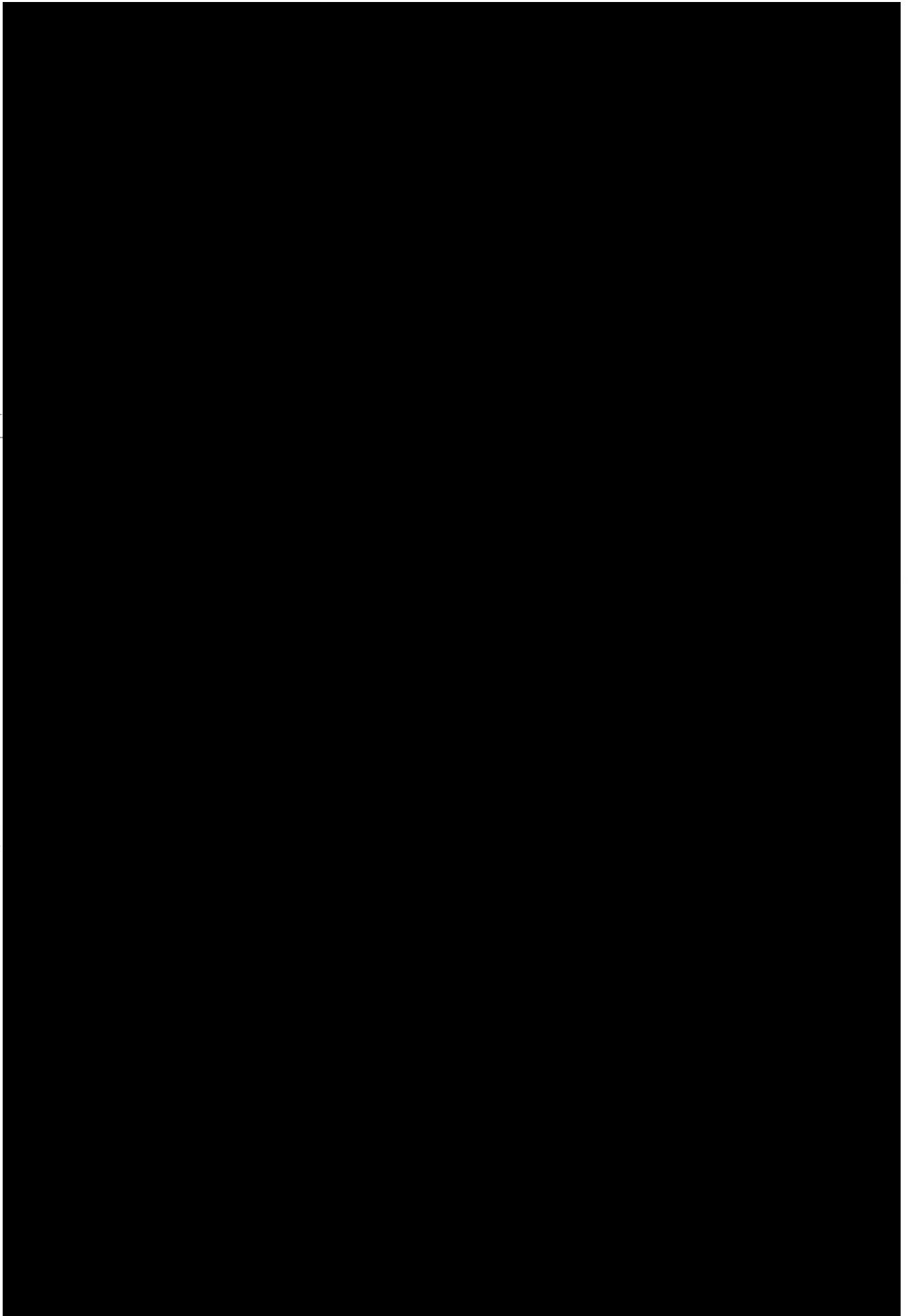




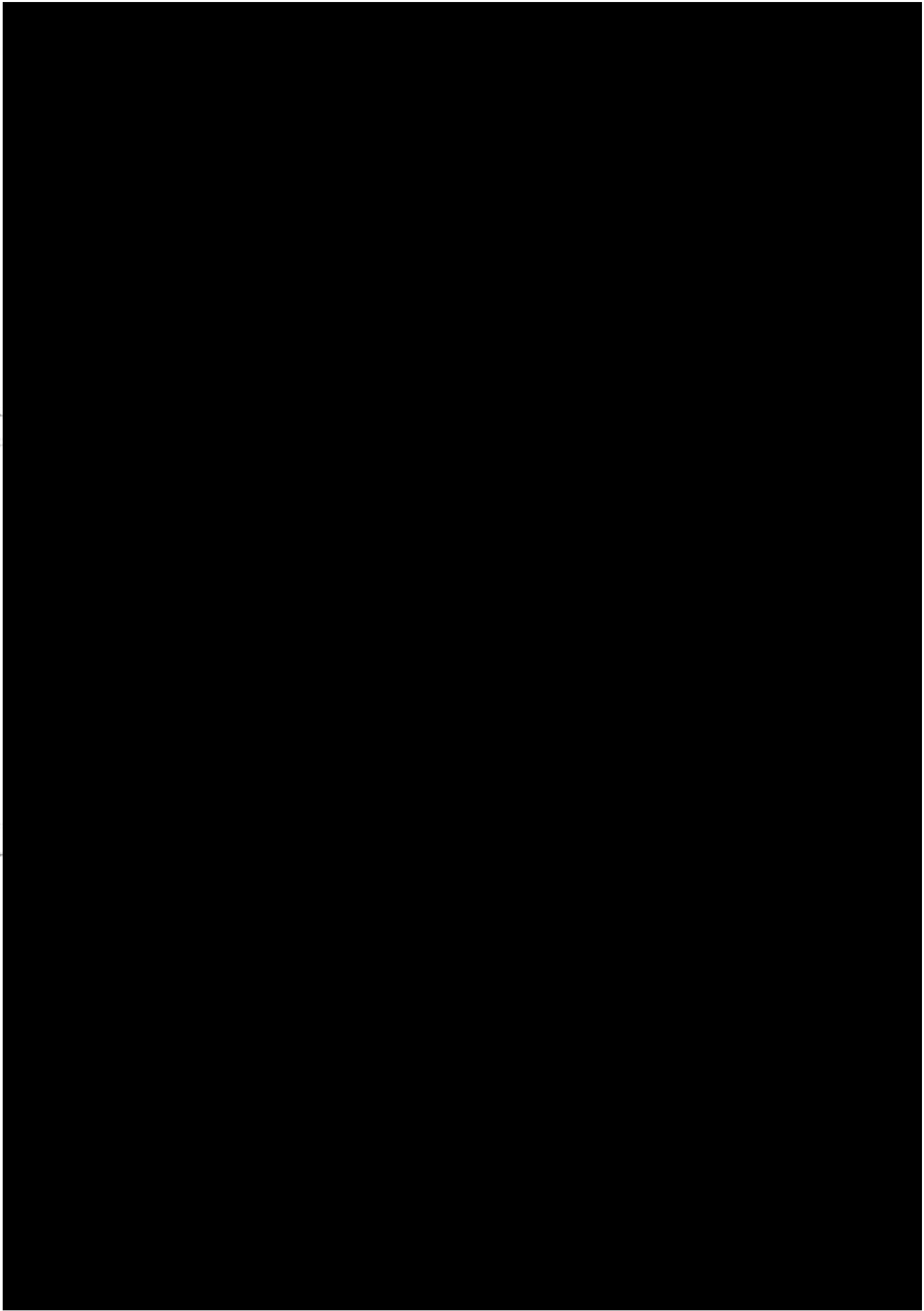


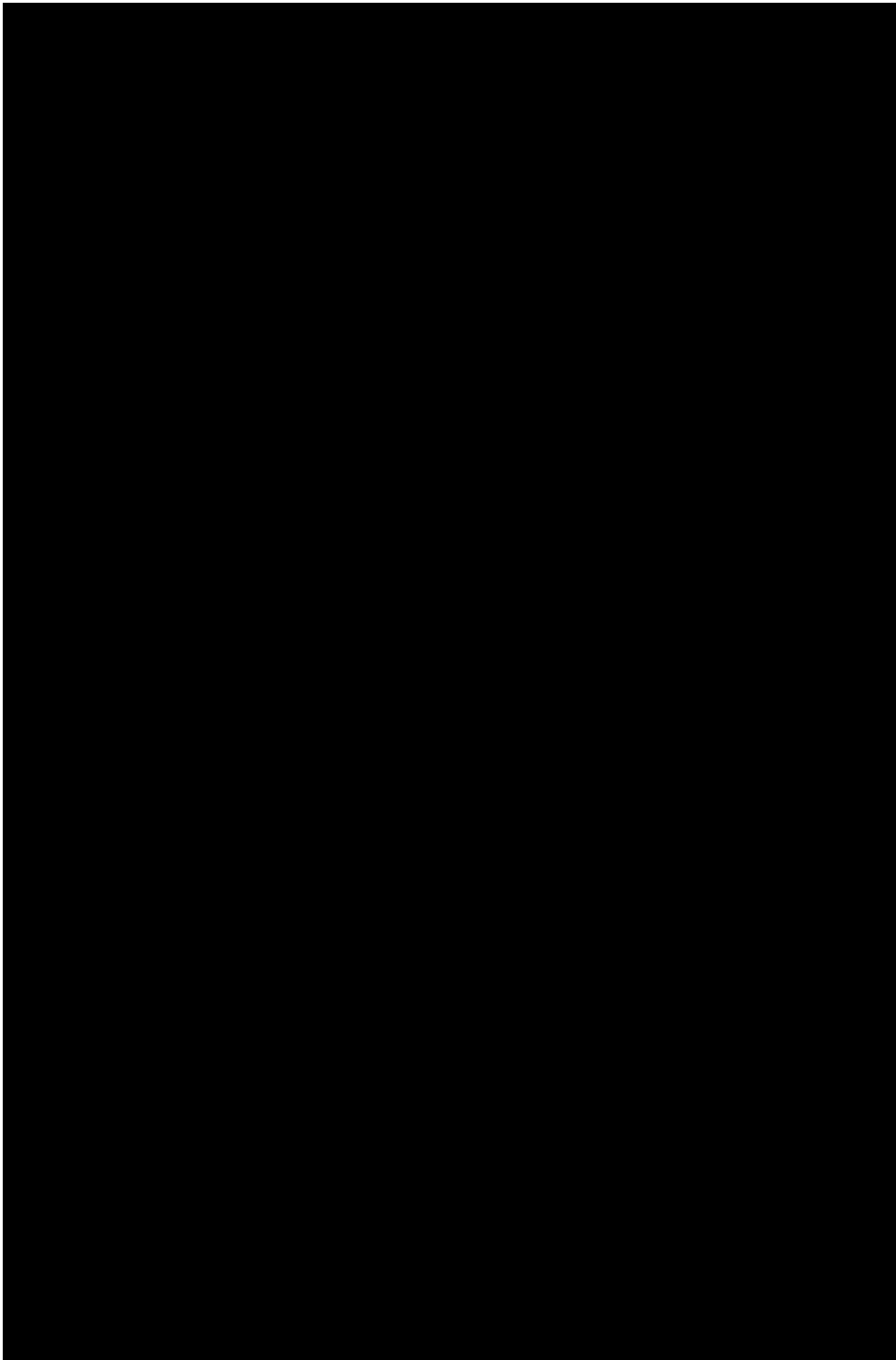






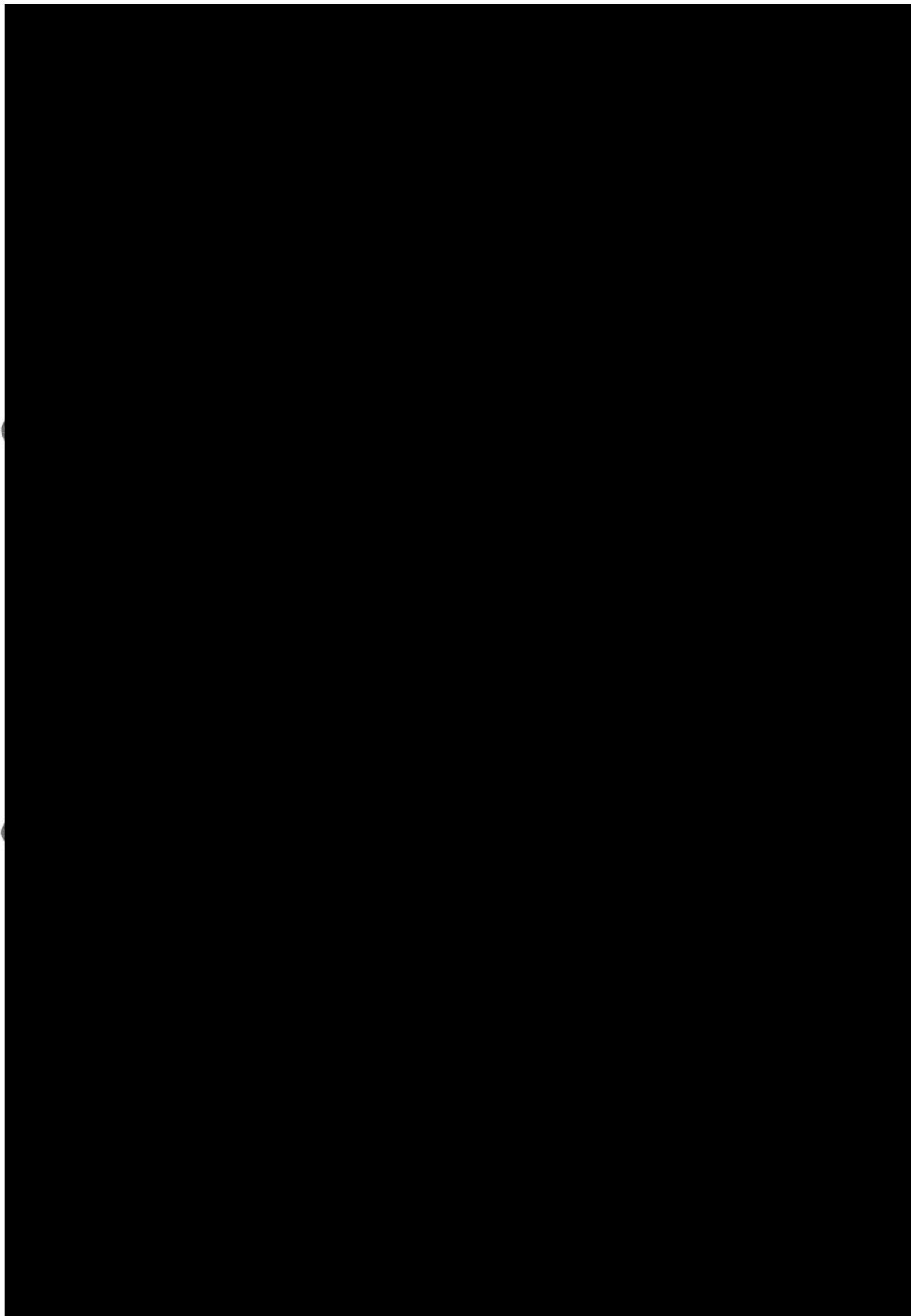


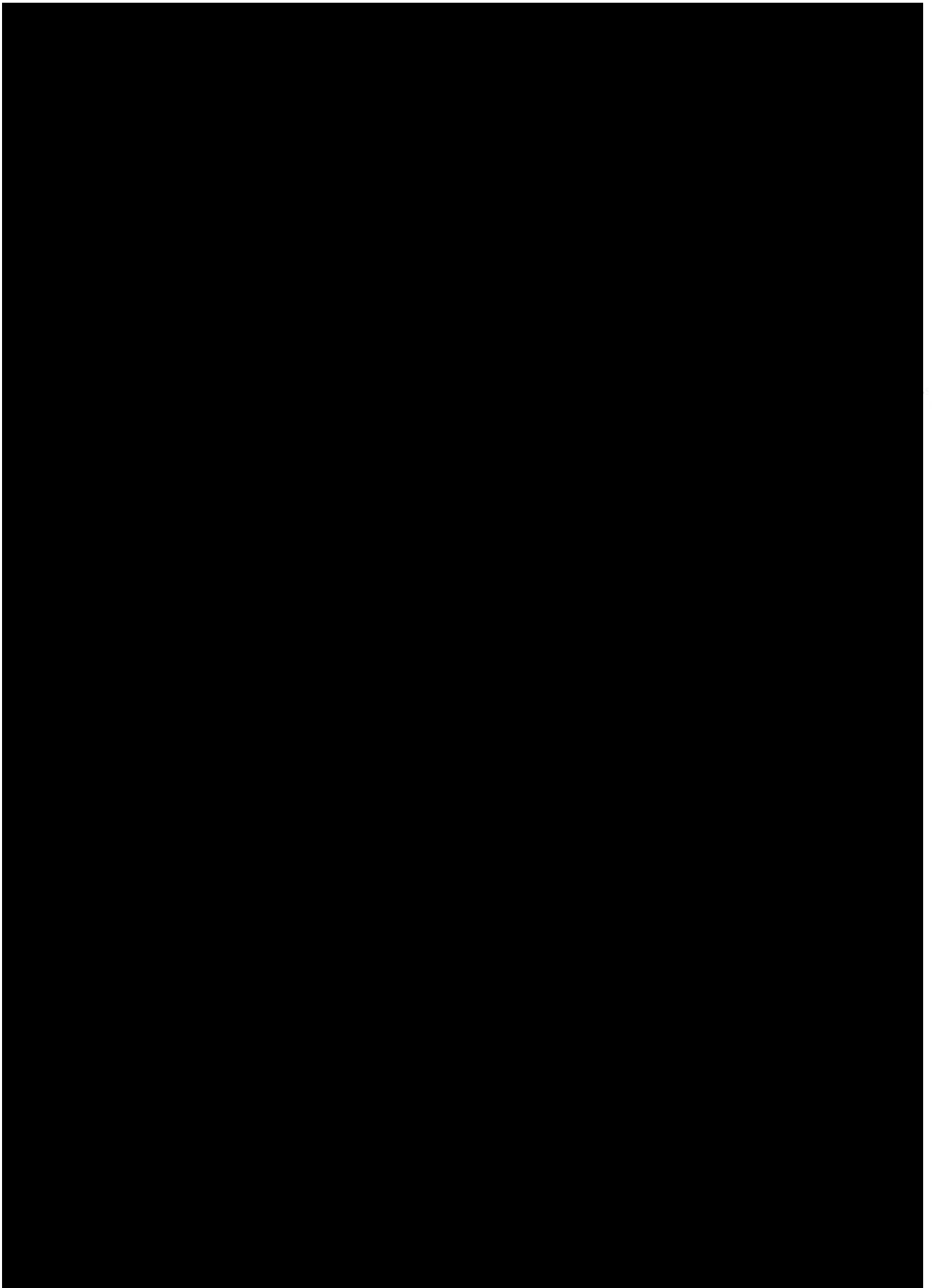


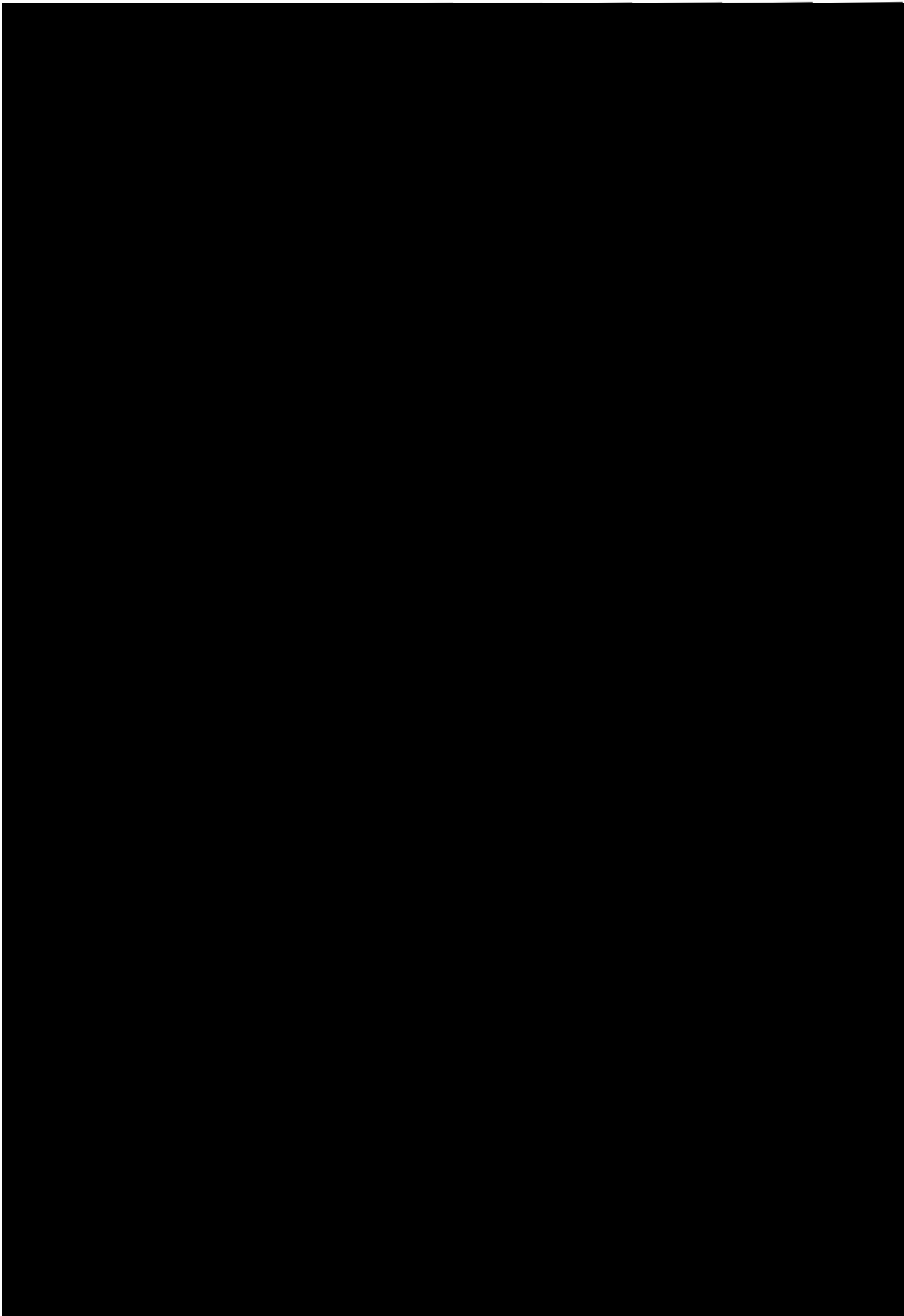


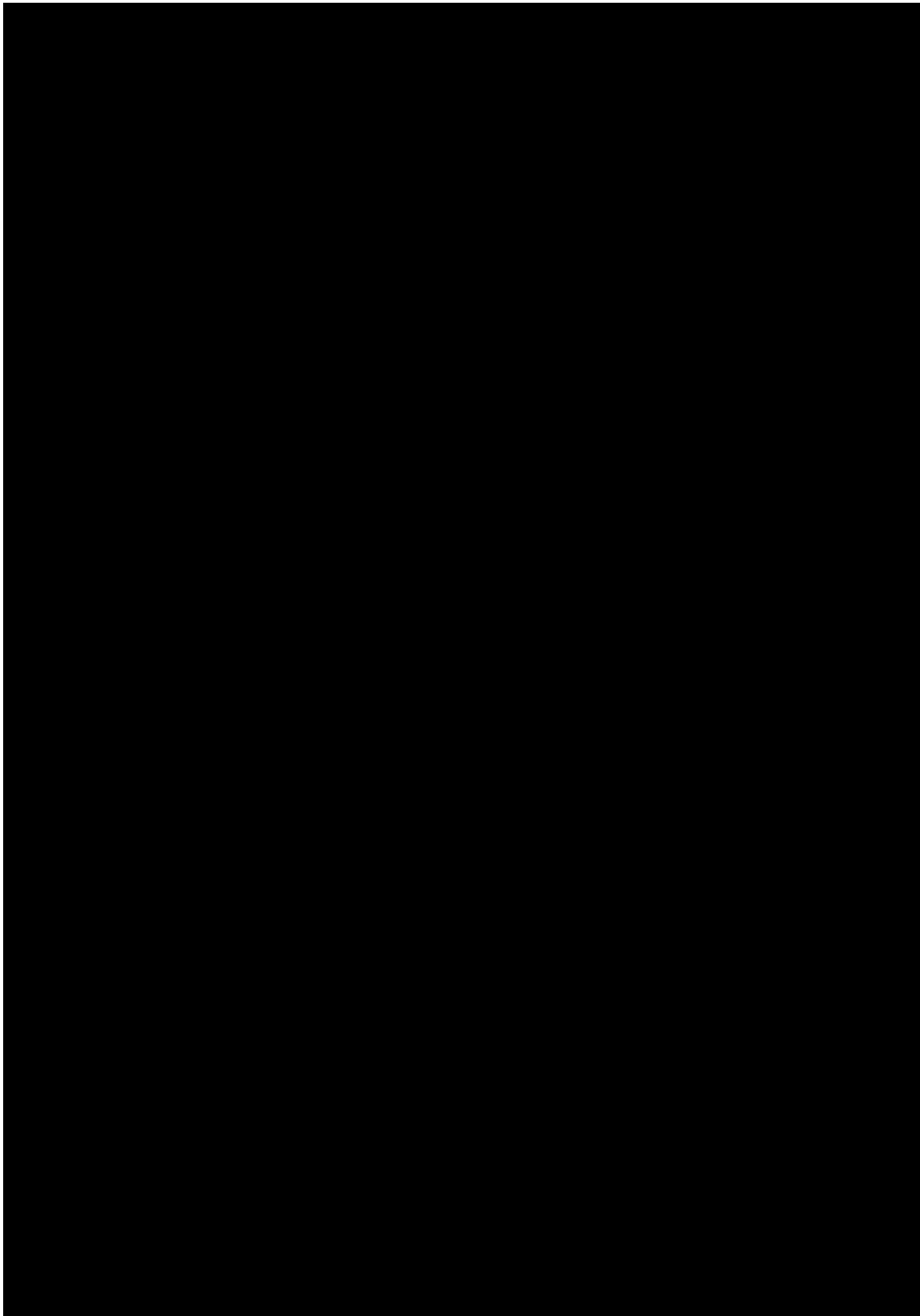
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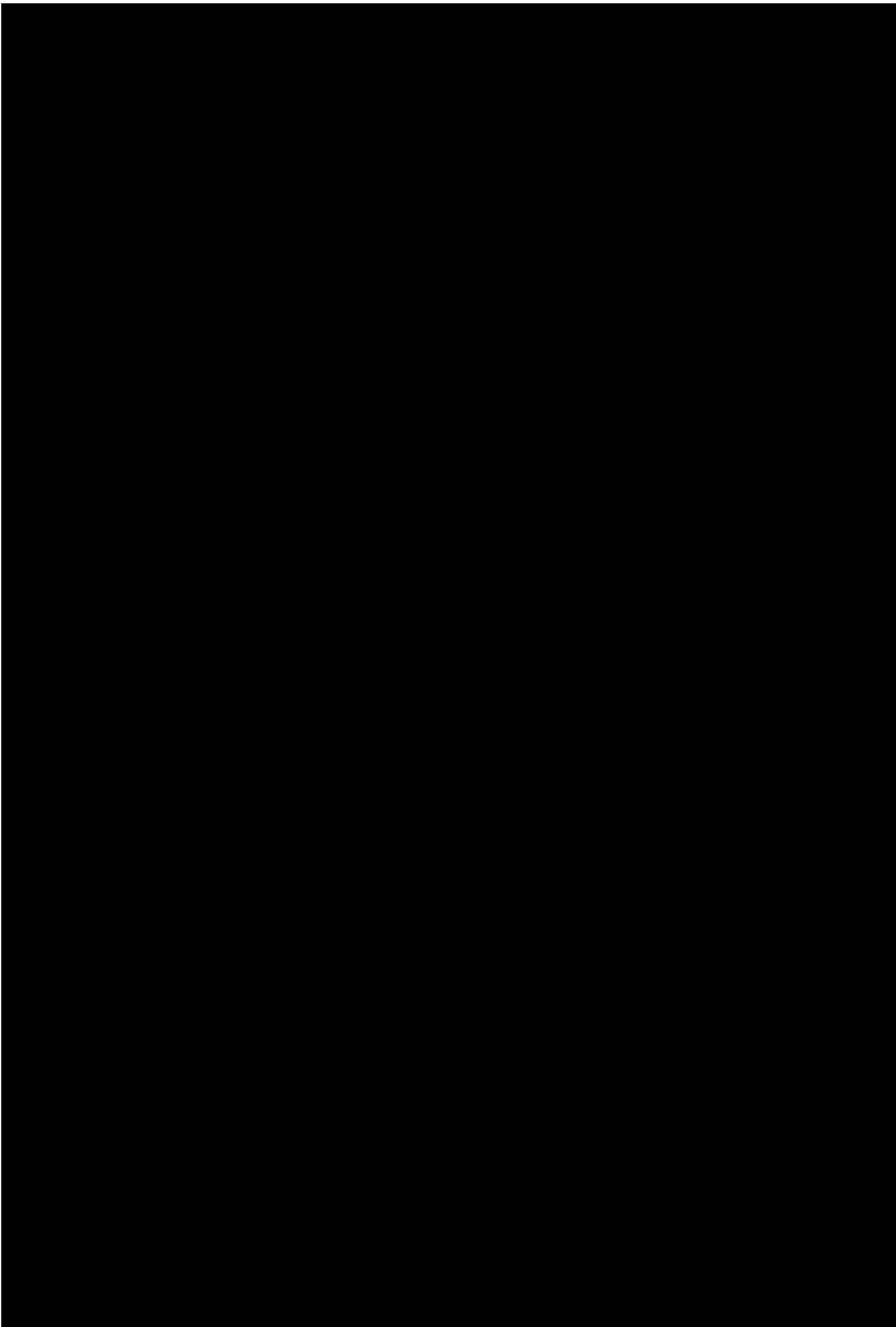
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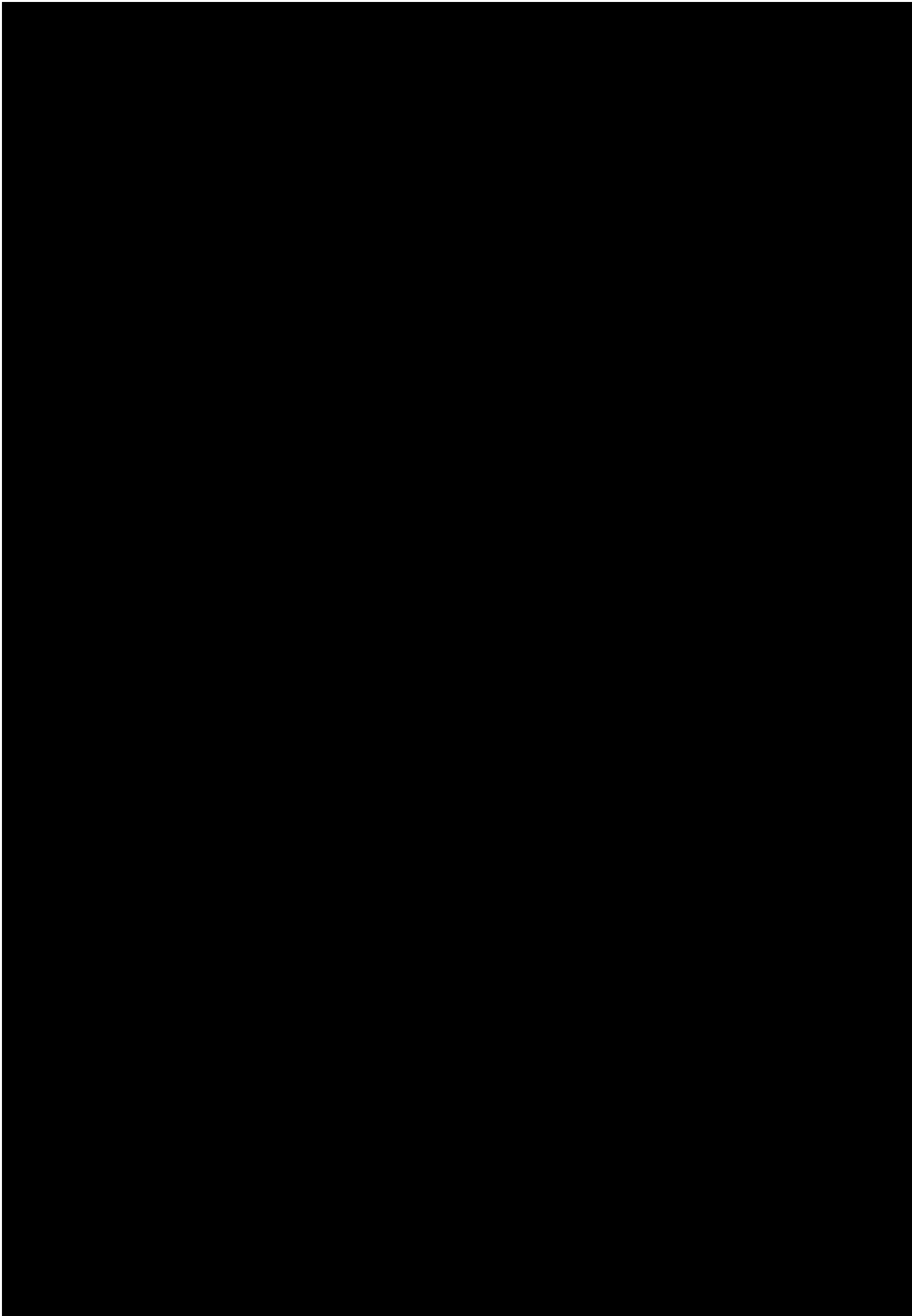






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SCHEDULE A17

Moral Rights Consent

(Clause 23.2(b))

In relation to any Moral Rights the [Author] (**Author**) has in respect of [specify the relevant copyright work(s) – e.g. the relevant architectural plans] (**Copyright Works**), the Author hereby consents to [insert name of Developer] (**Developer**), [insert name of Development Manager] (**Development Manager**) and Sydney Metro ABN 12 354 063 515 (**Principal**), doing or authorising the doing of the following acts or making or authorising the making of the following omissions (whether occurring before or after this consent is given) anywhere in the world:

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- (b) have the Copyright Works bear the name of [to be completed] or such other address of that property, or bear the name of the Developer, the Development Manager, the Principal or any other person associated with the OSD Project; and
- (c) modify, alter, adapt, distort or otherwise change any of the Copyright Works as it sees fit in its absolute discretion, including:
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 - (ii) by changing, relocating, demolishing or destroying any two or three dimensional reproduction of those Copyright Works without notice to, or consultation with, the Author.

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The Author acknowledges that the Developer, the Development Manager and the Principal will be relying on the consents in this document and that those consents are intended to be legally binding.

Dated

SIGNED by [Insert name of Author] in the presence of:

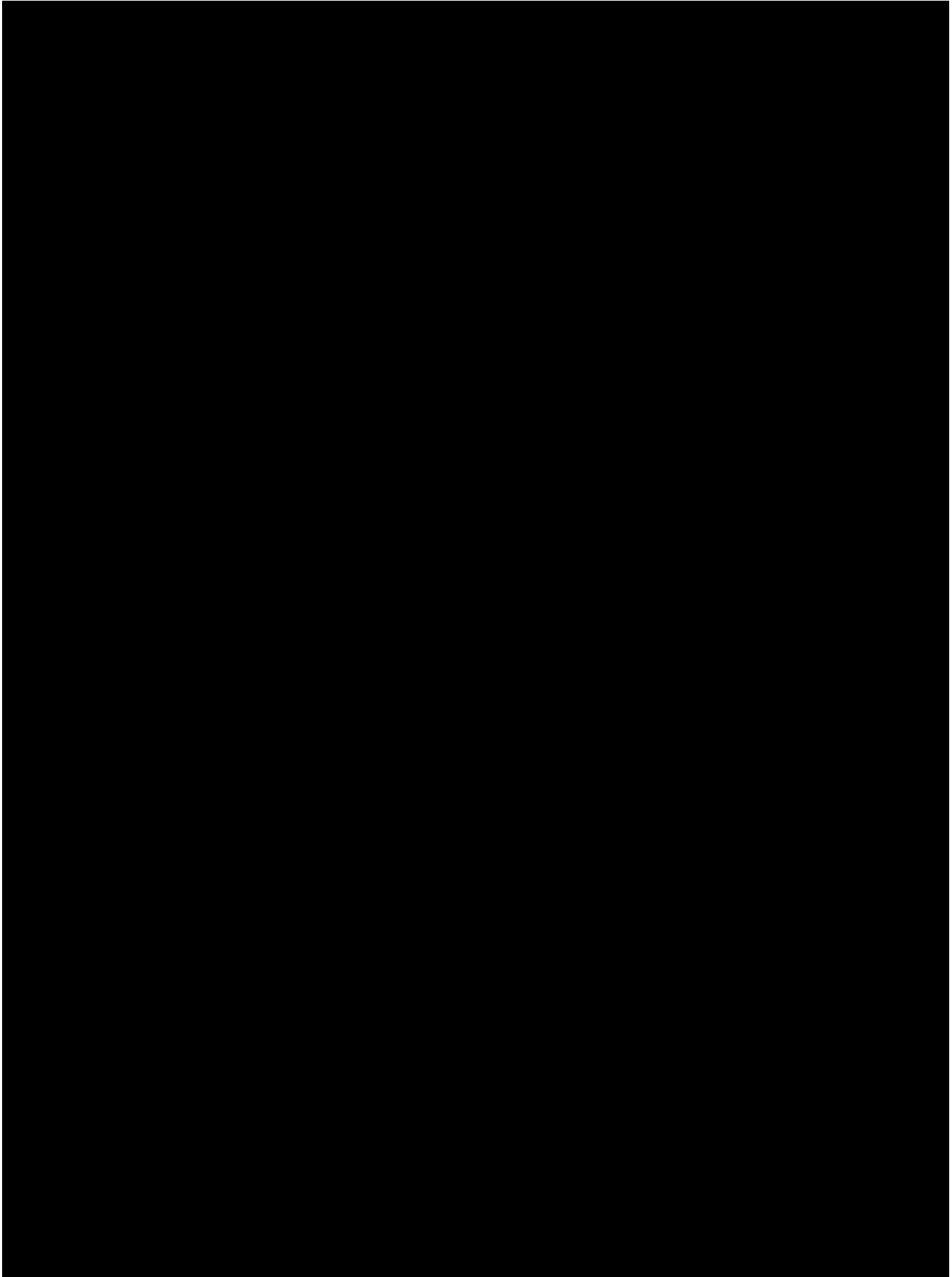
Signature

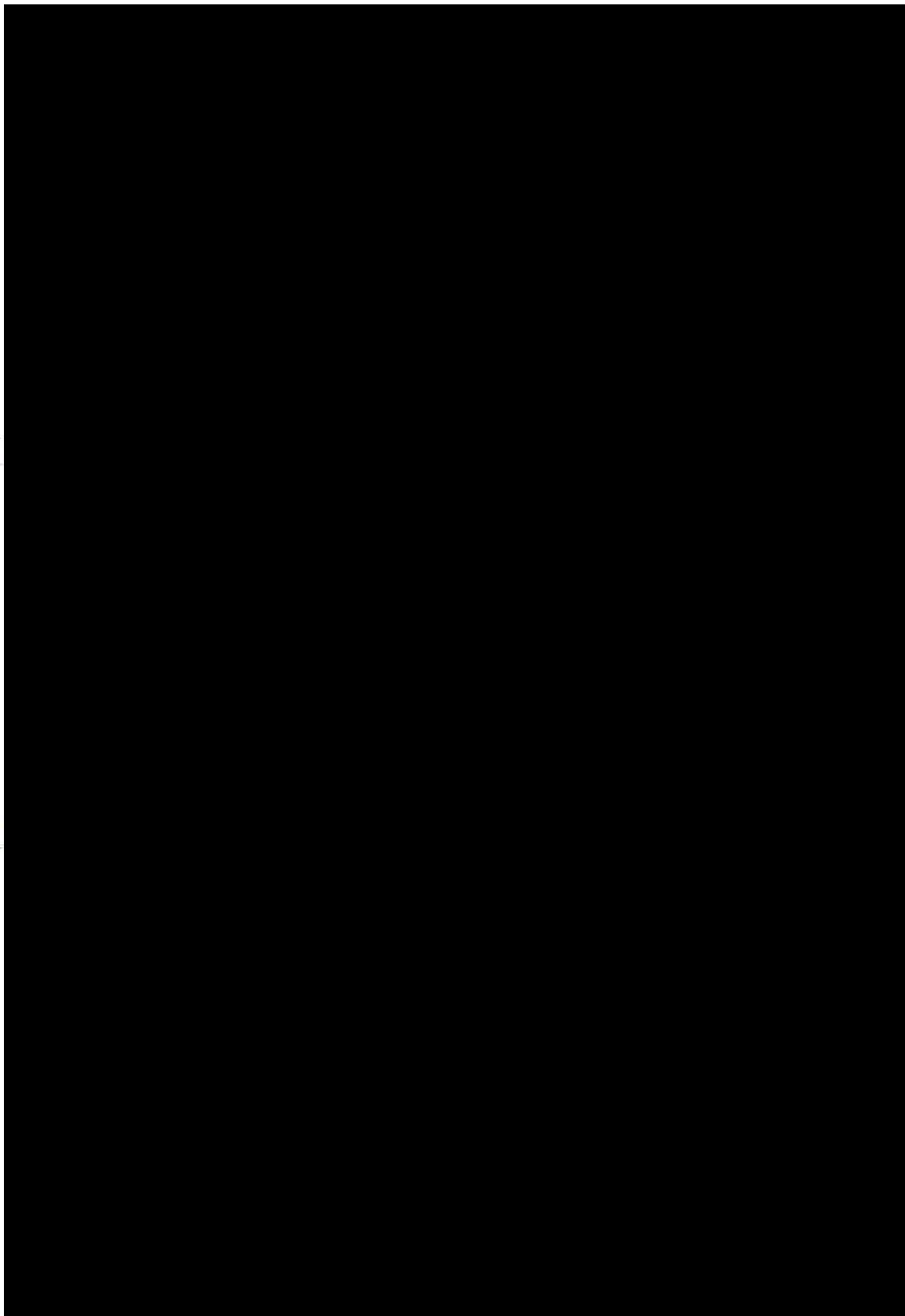
Signature of witness

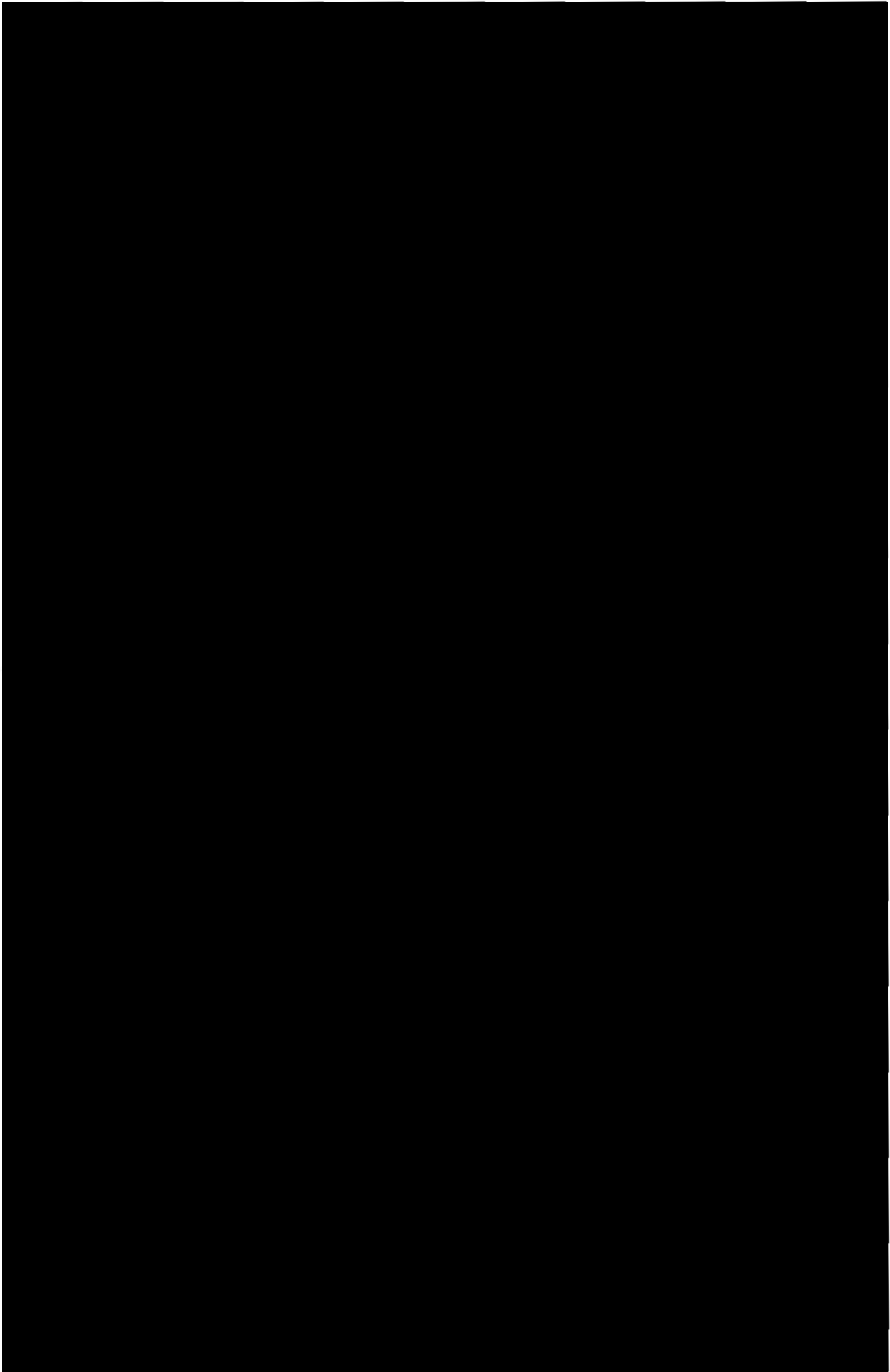
Name of witness in full

SCHEDULE A18

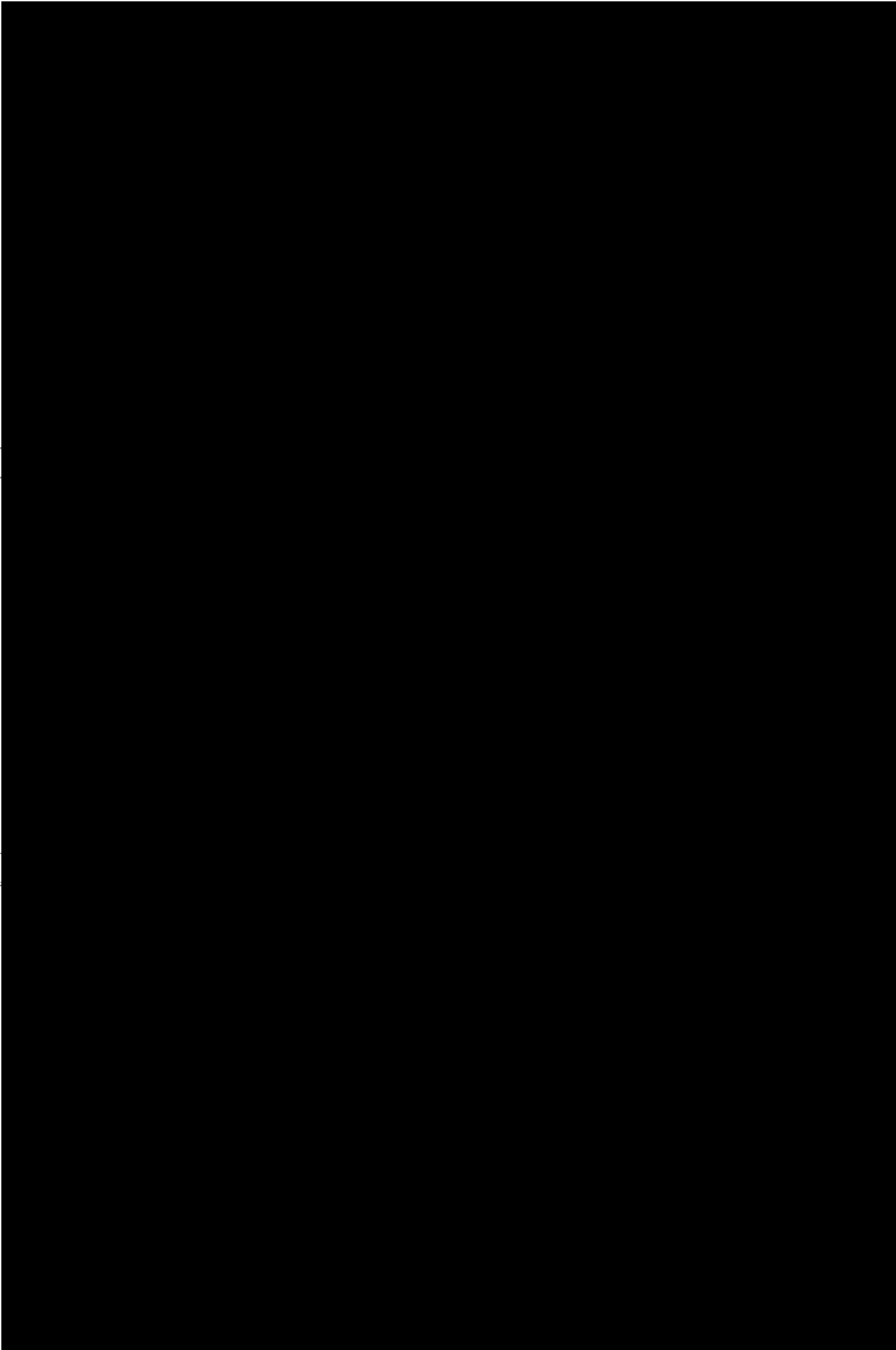
Master Interface Protocols Deed Poll

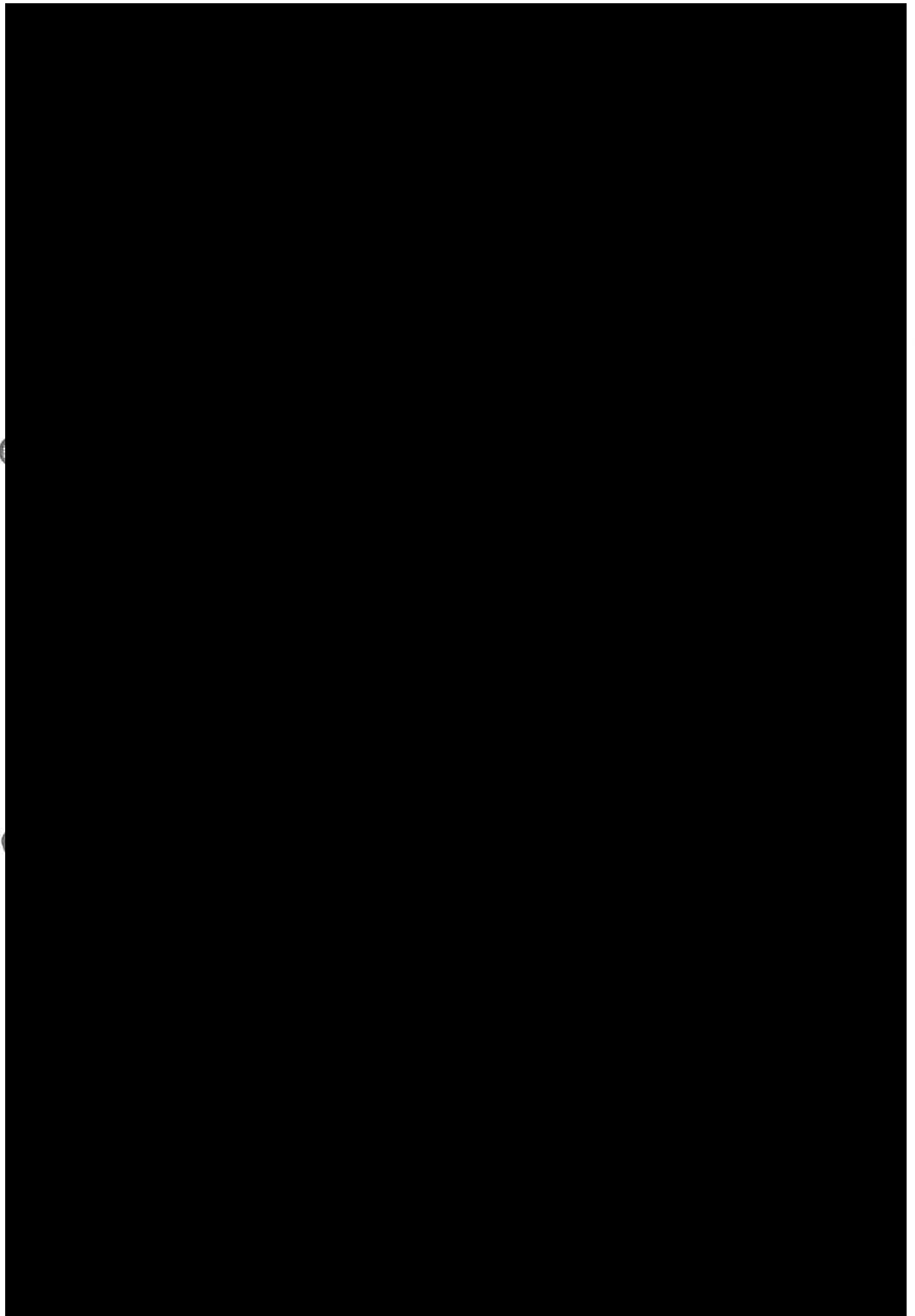


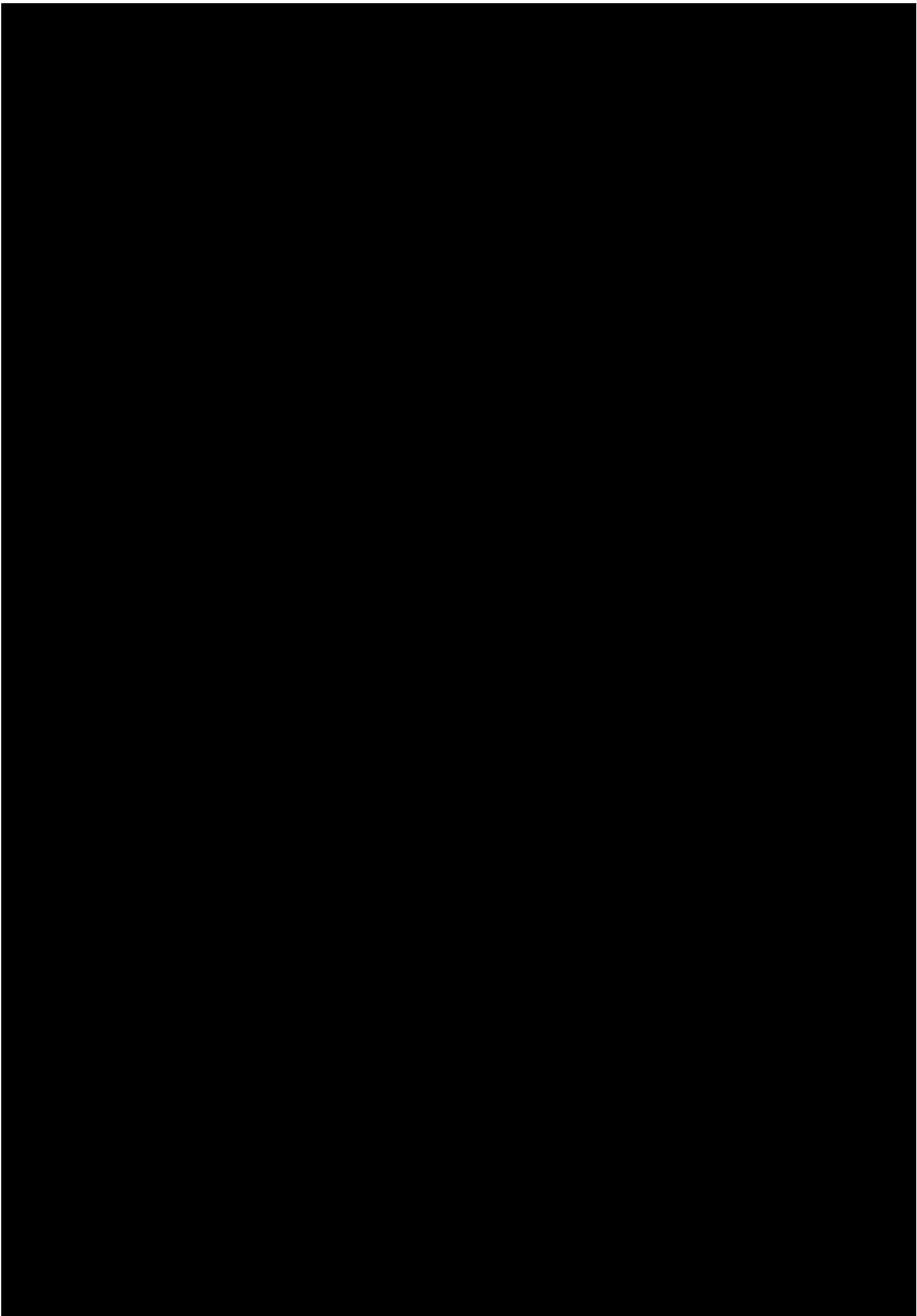






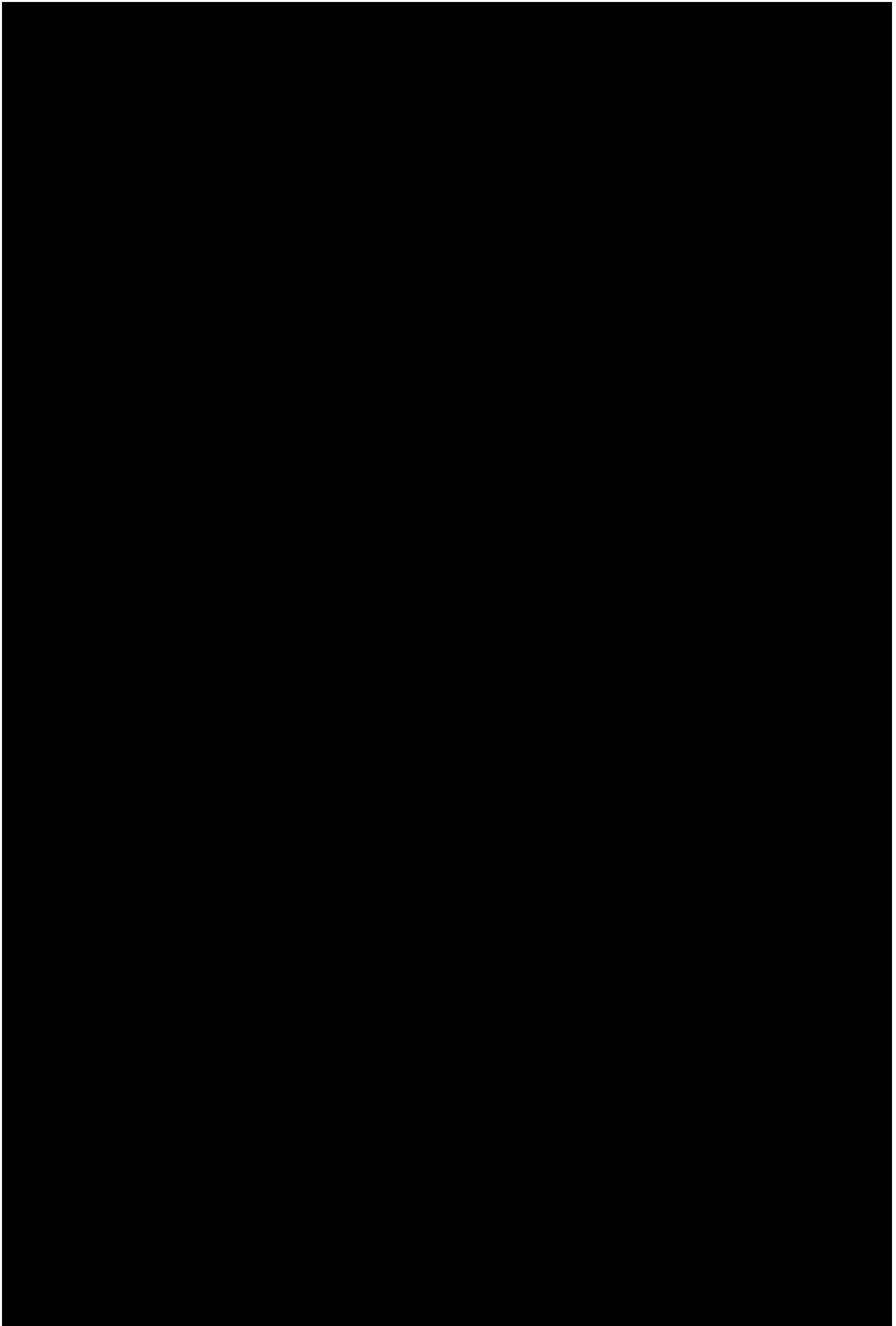






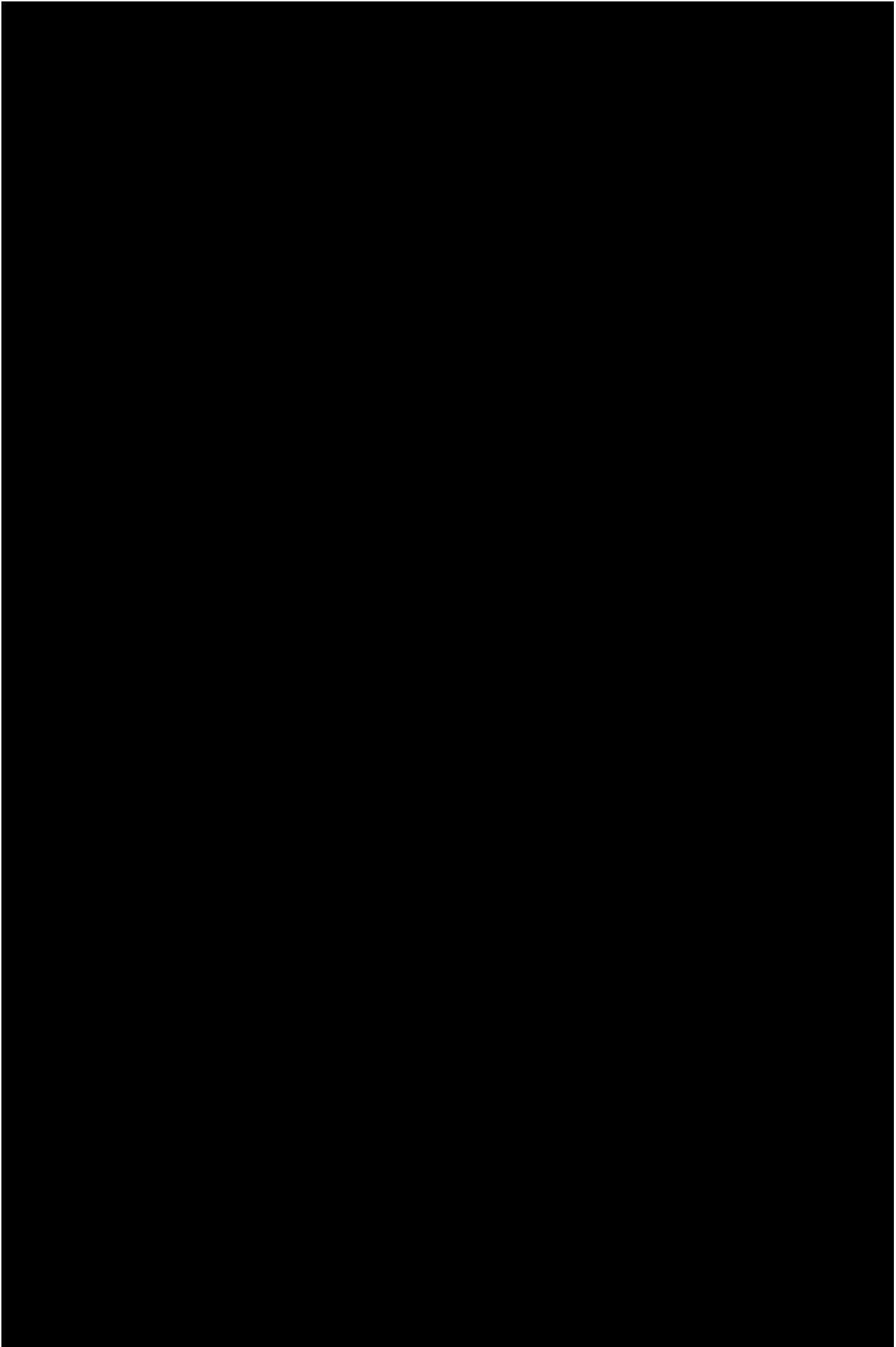
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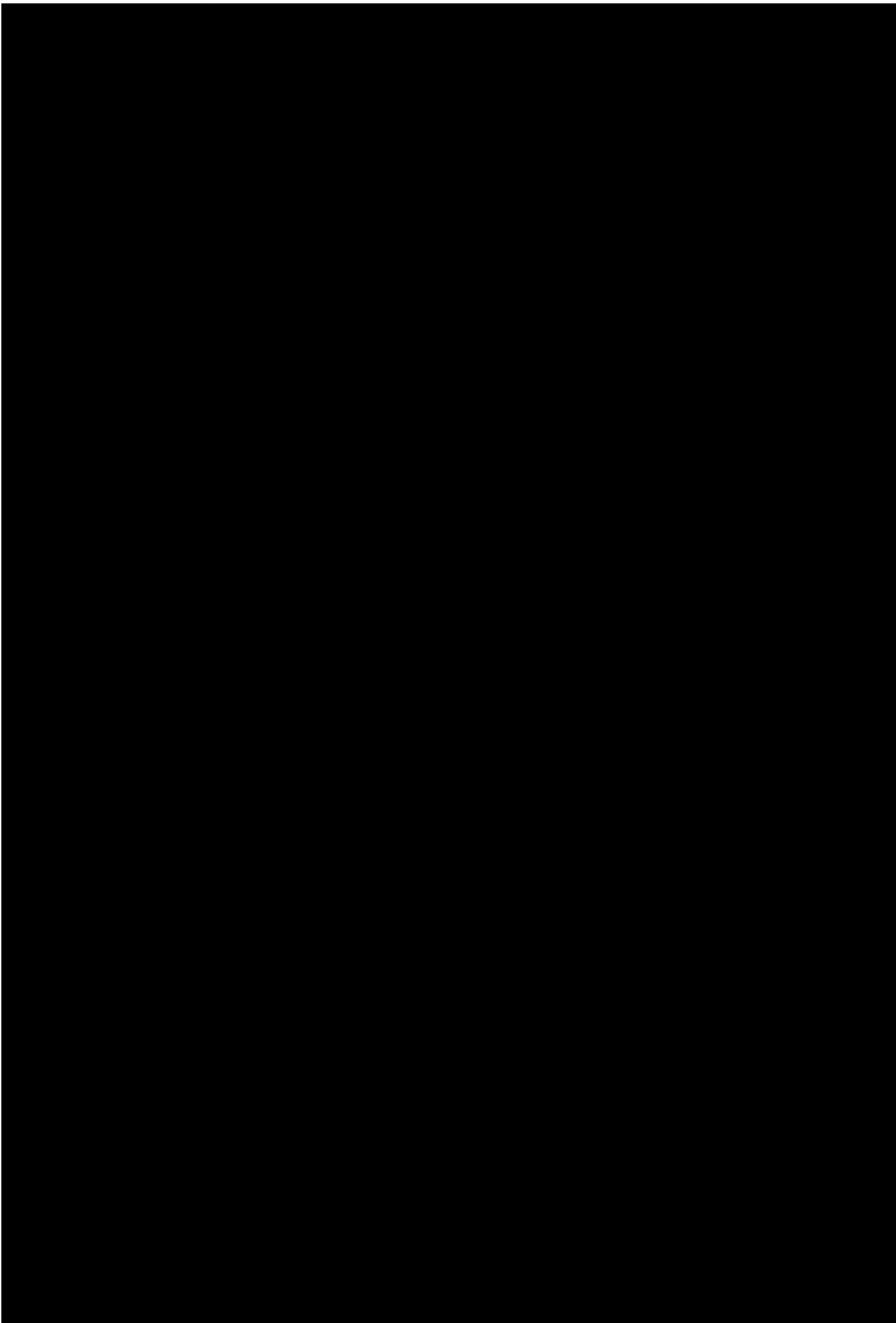
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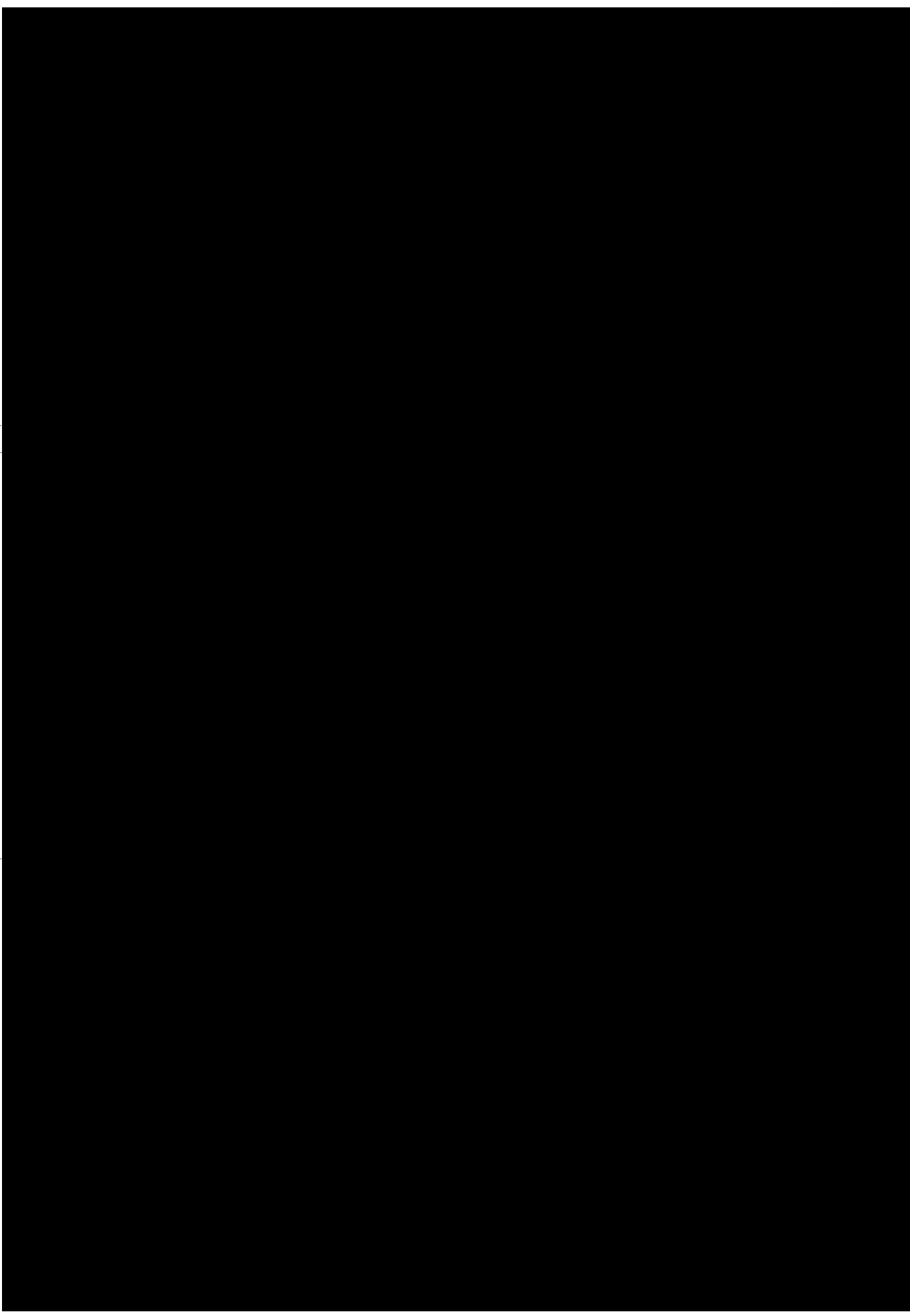


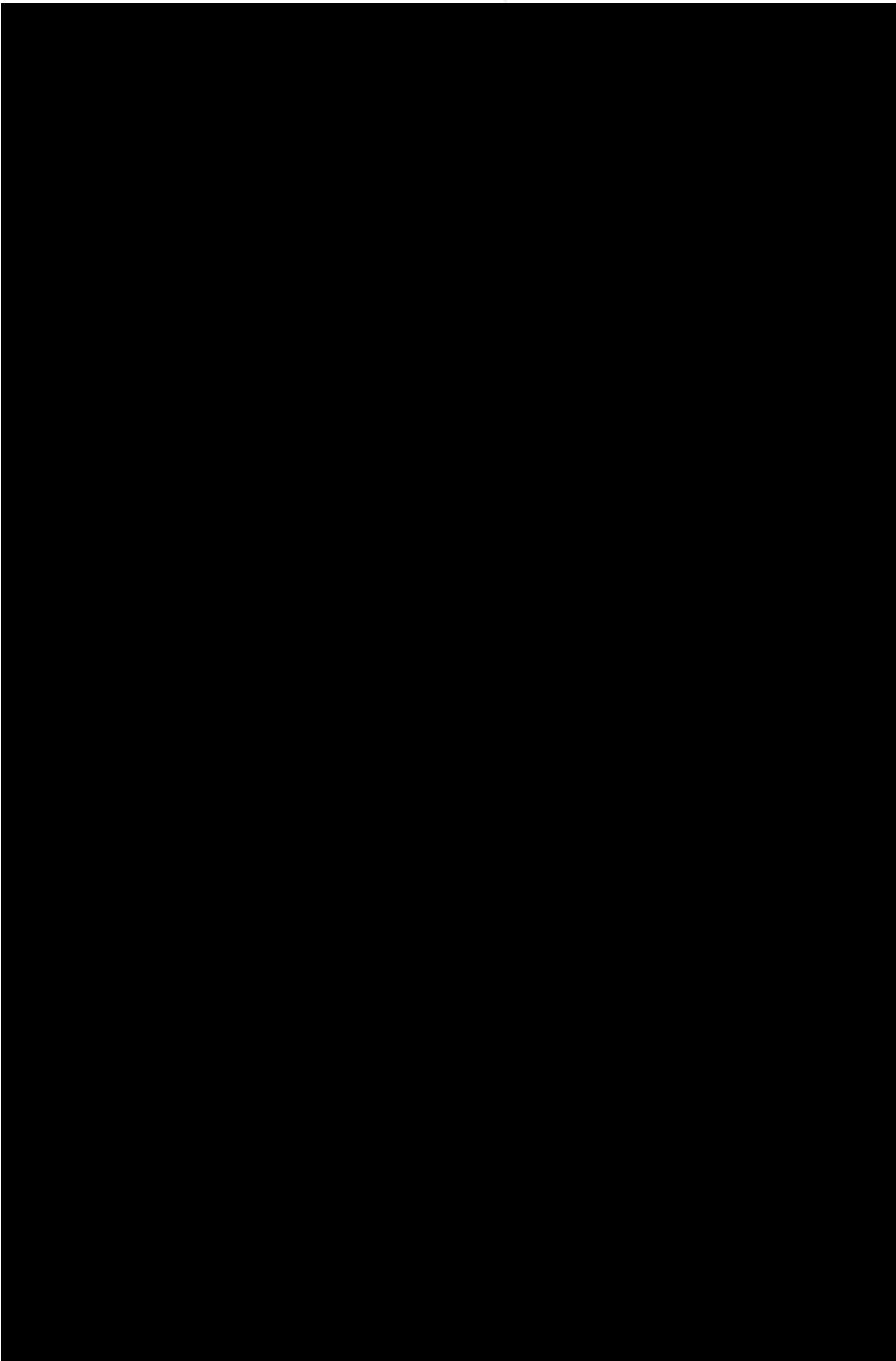
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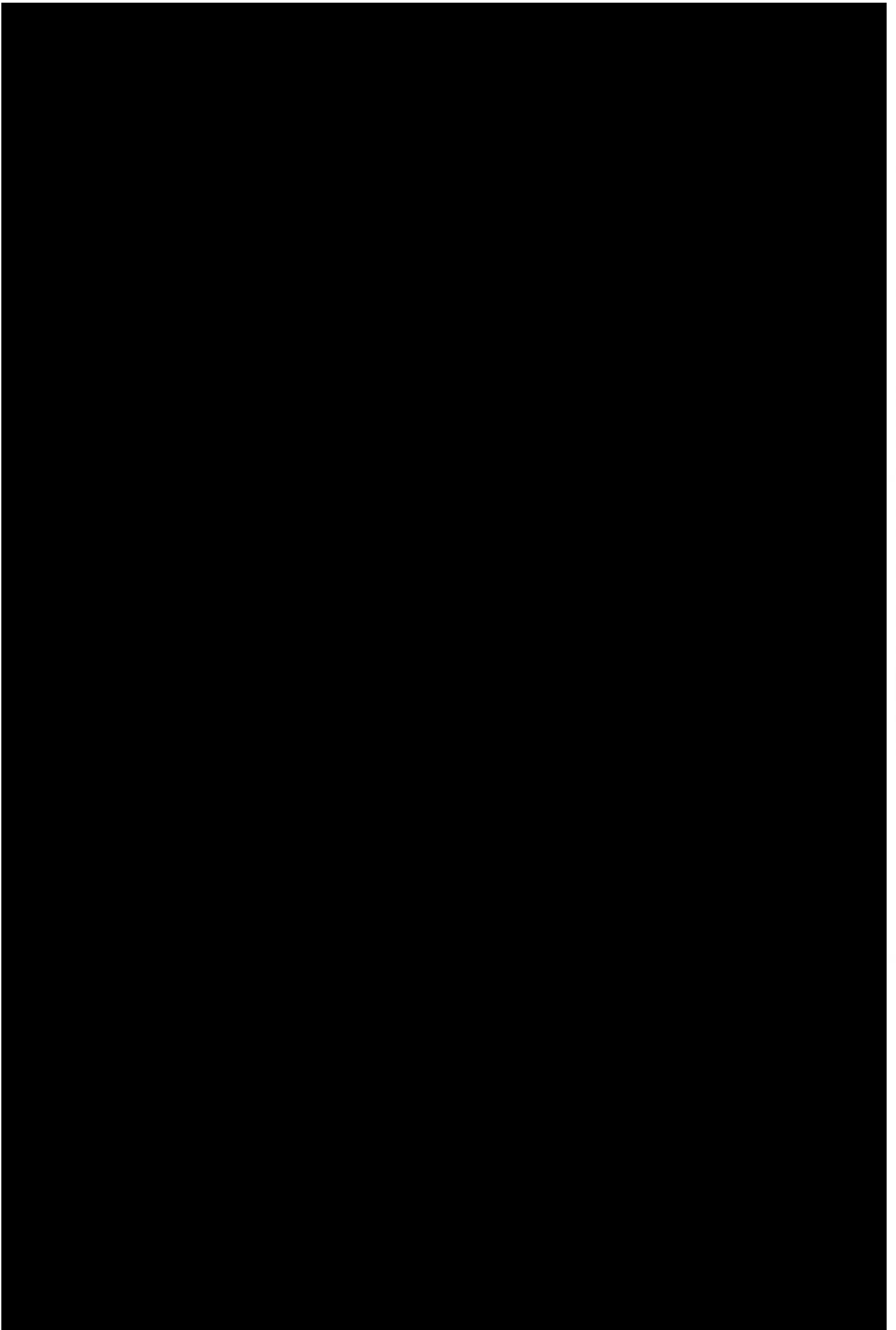
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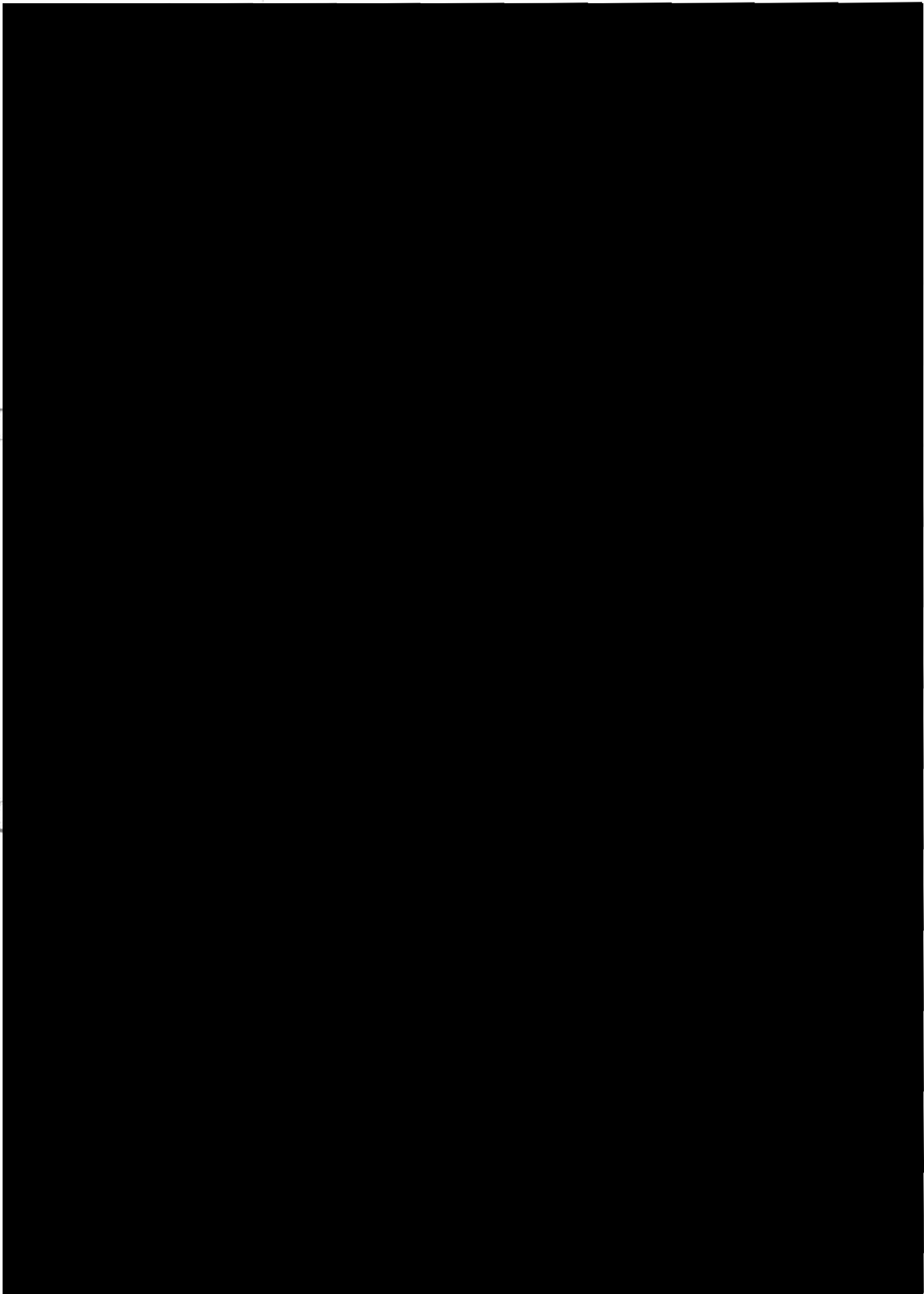


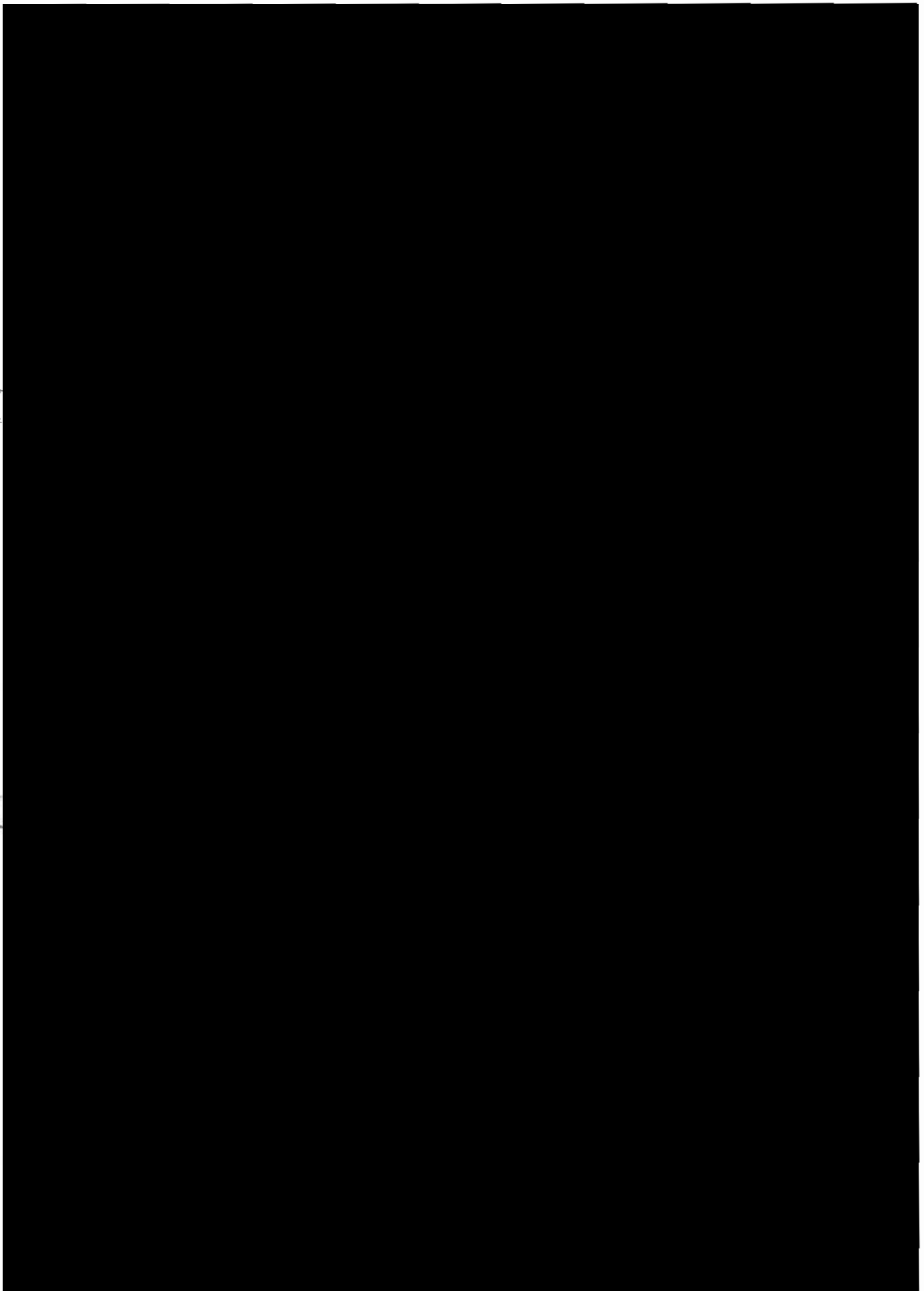




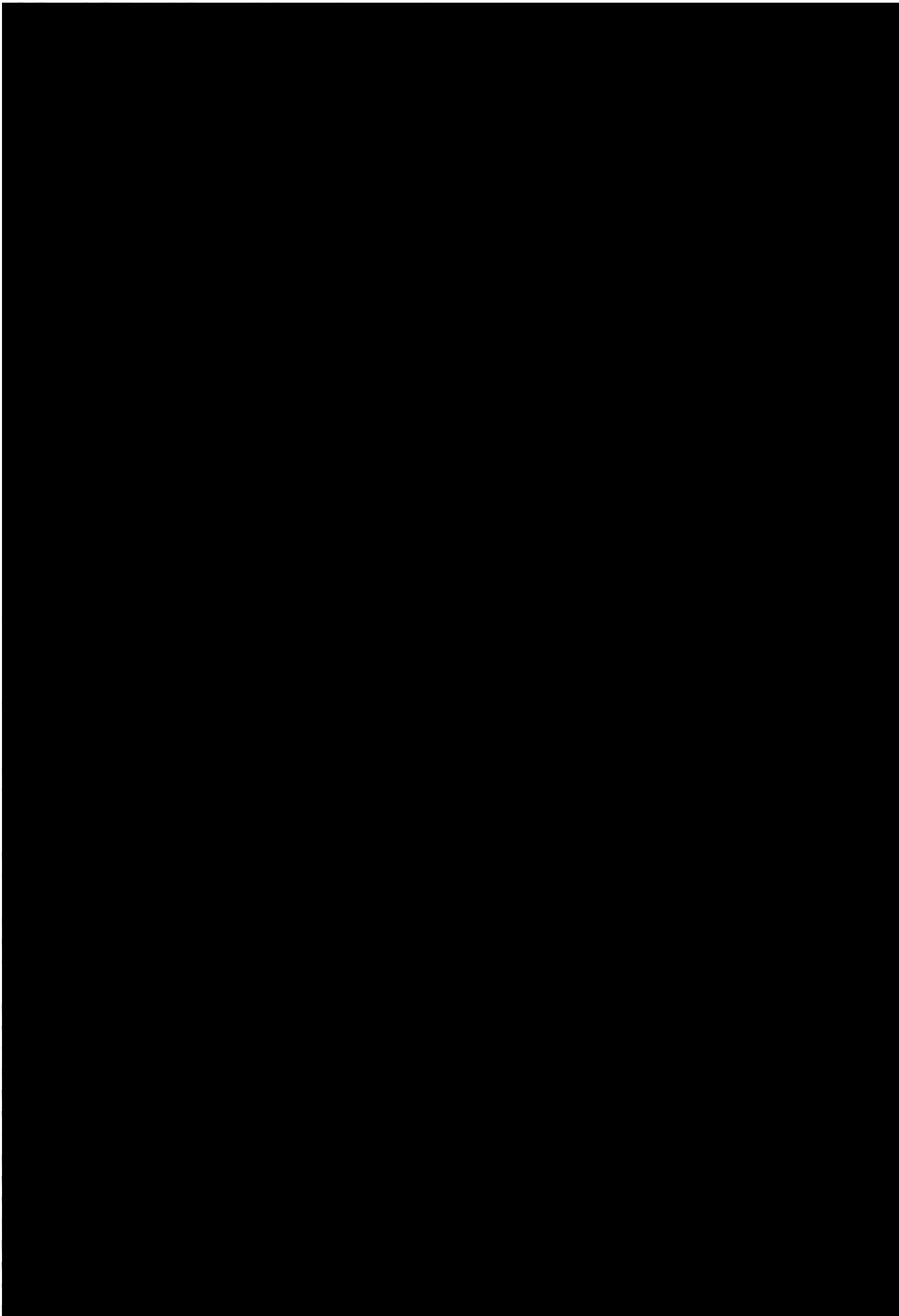


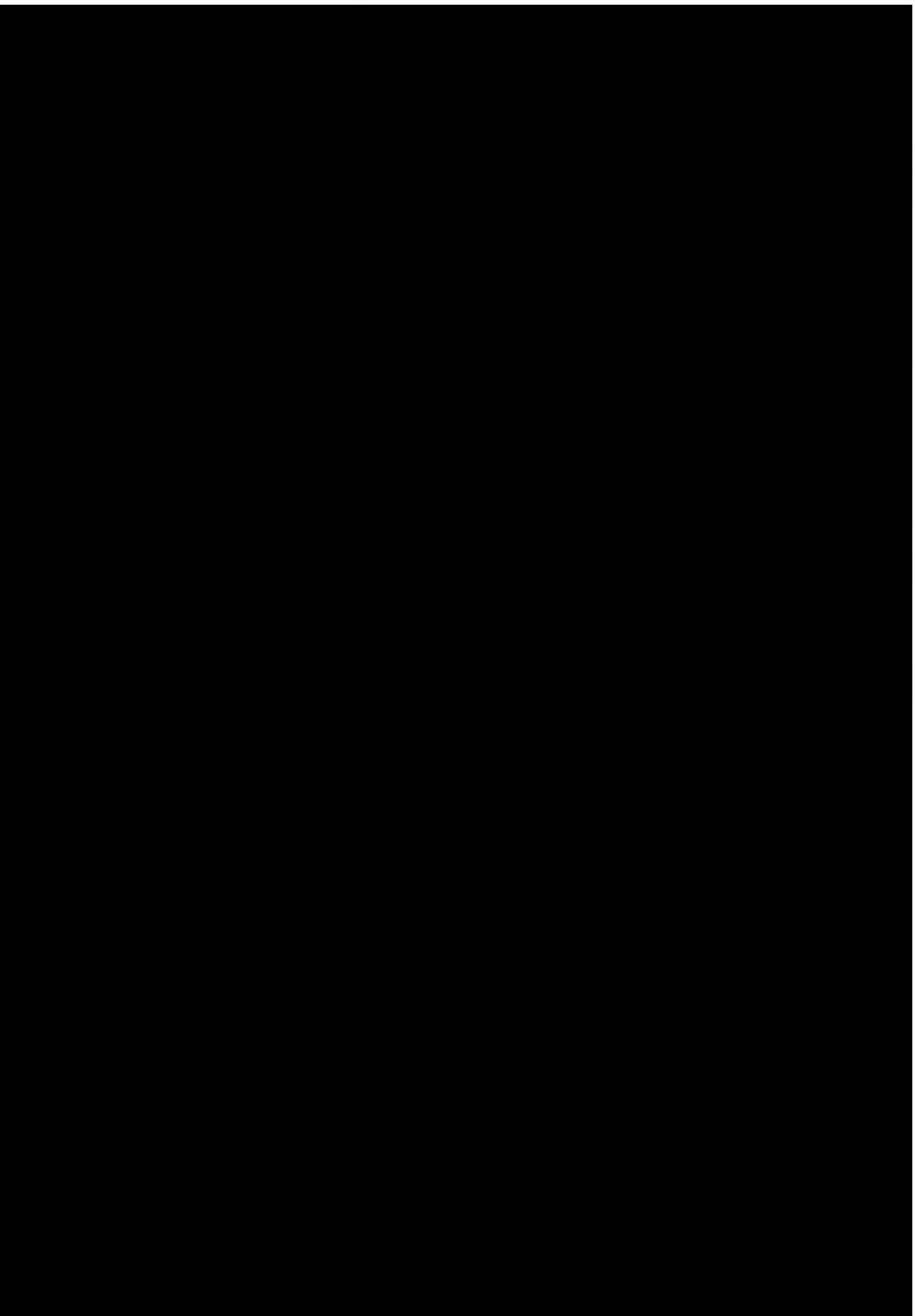






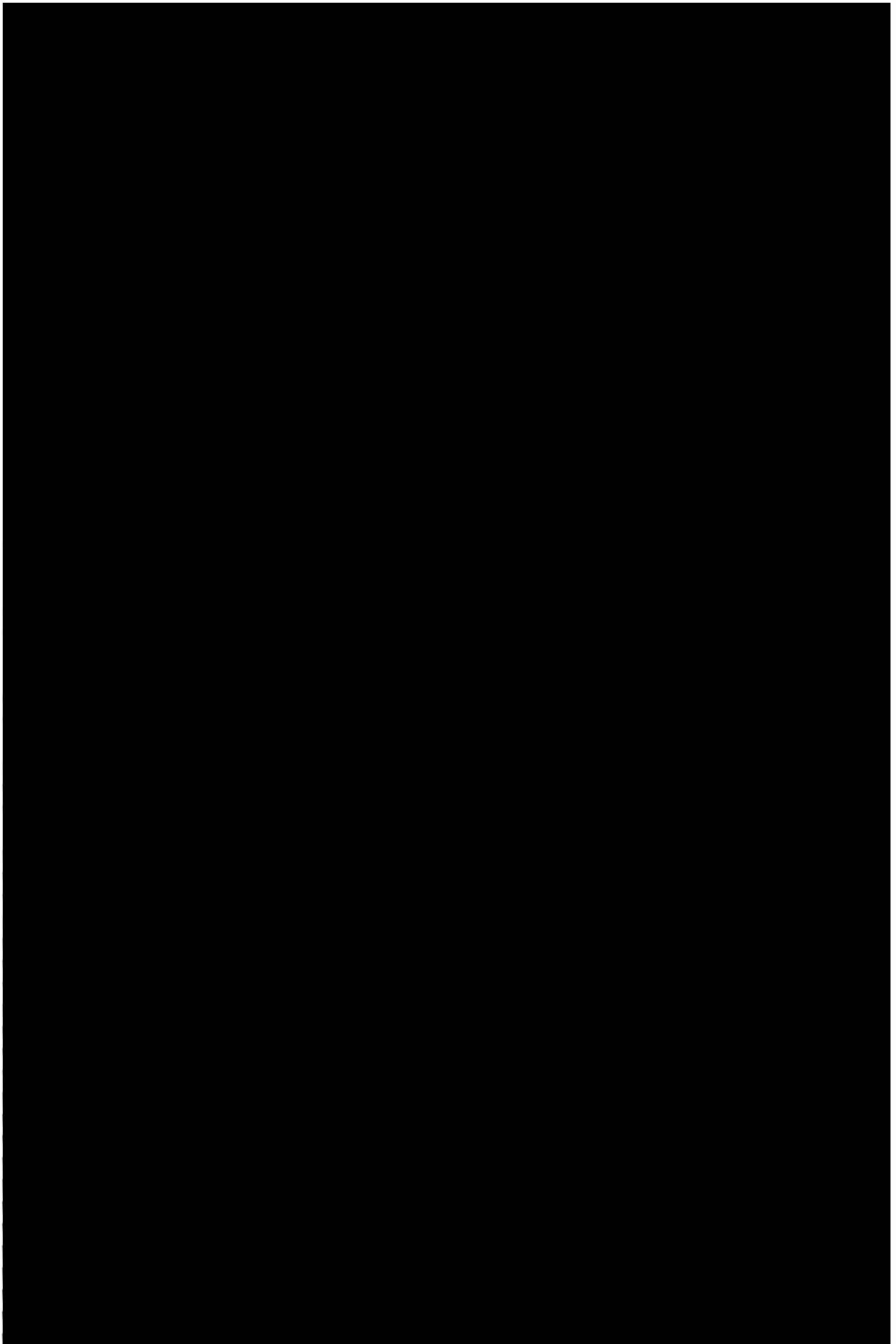


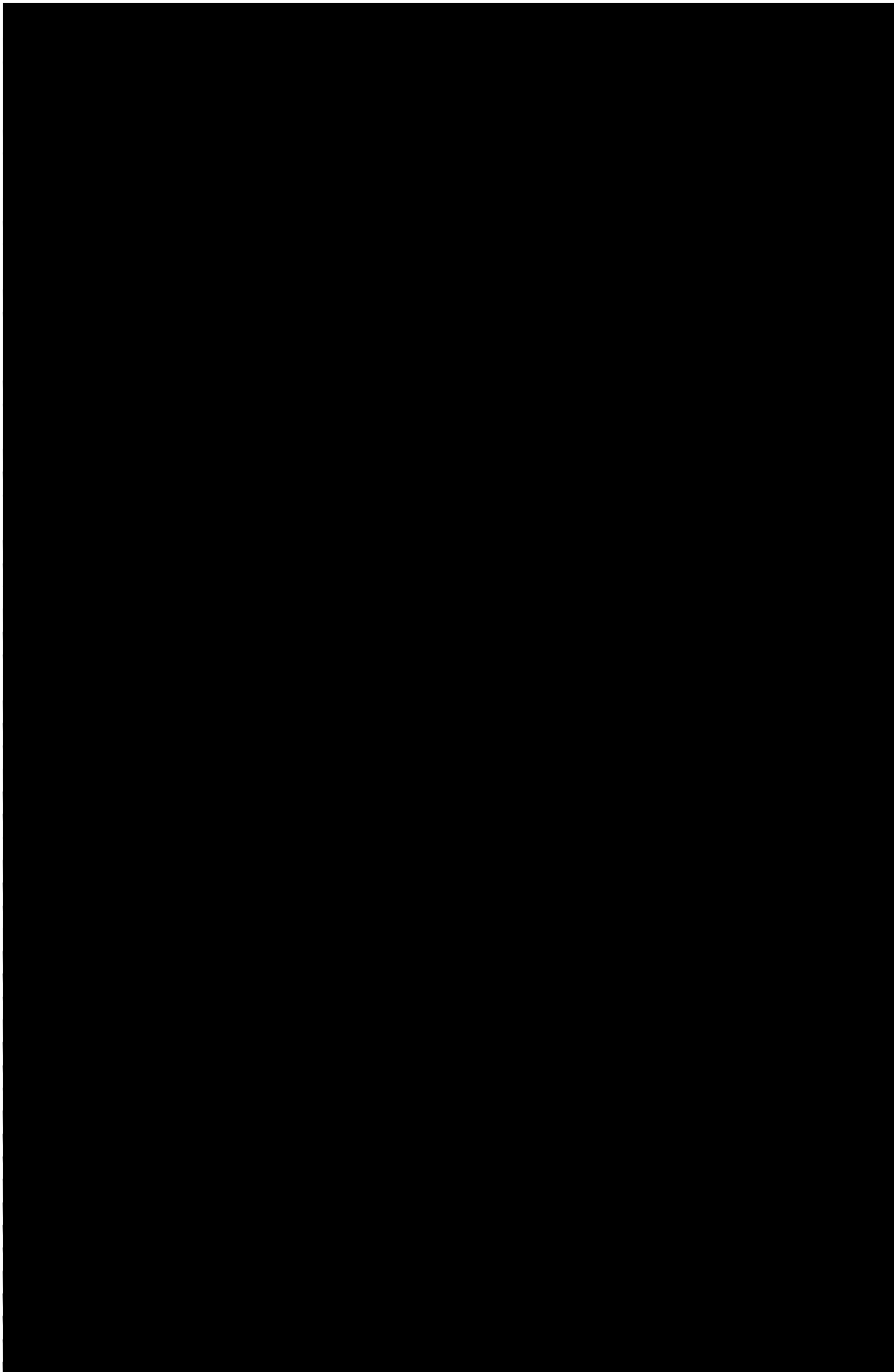


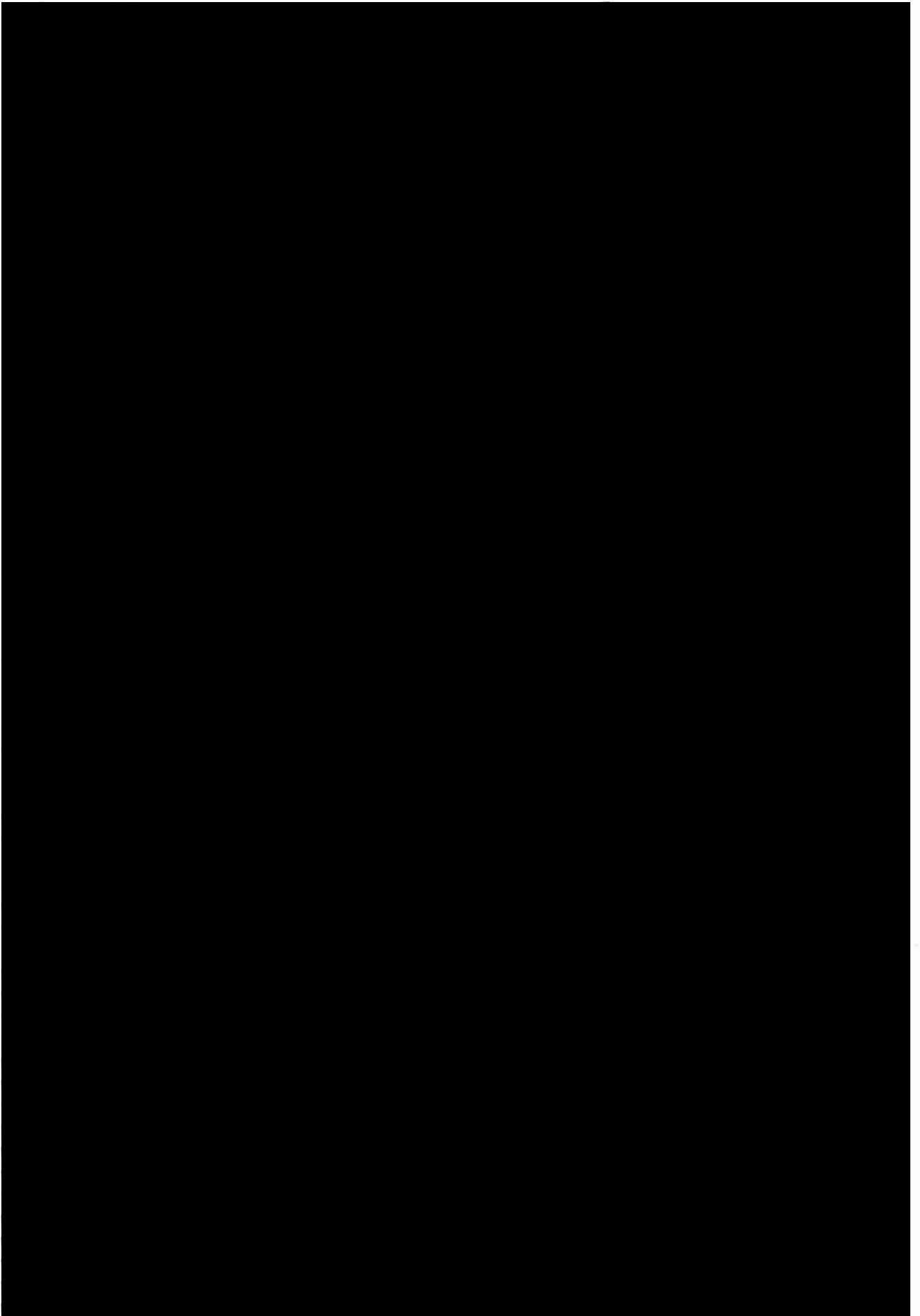


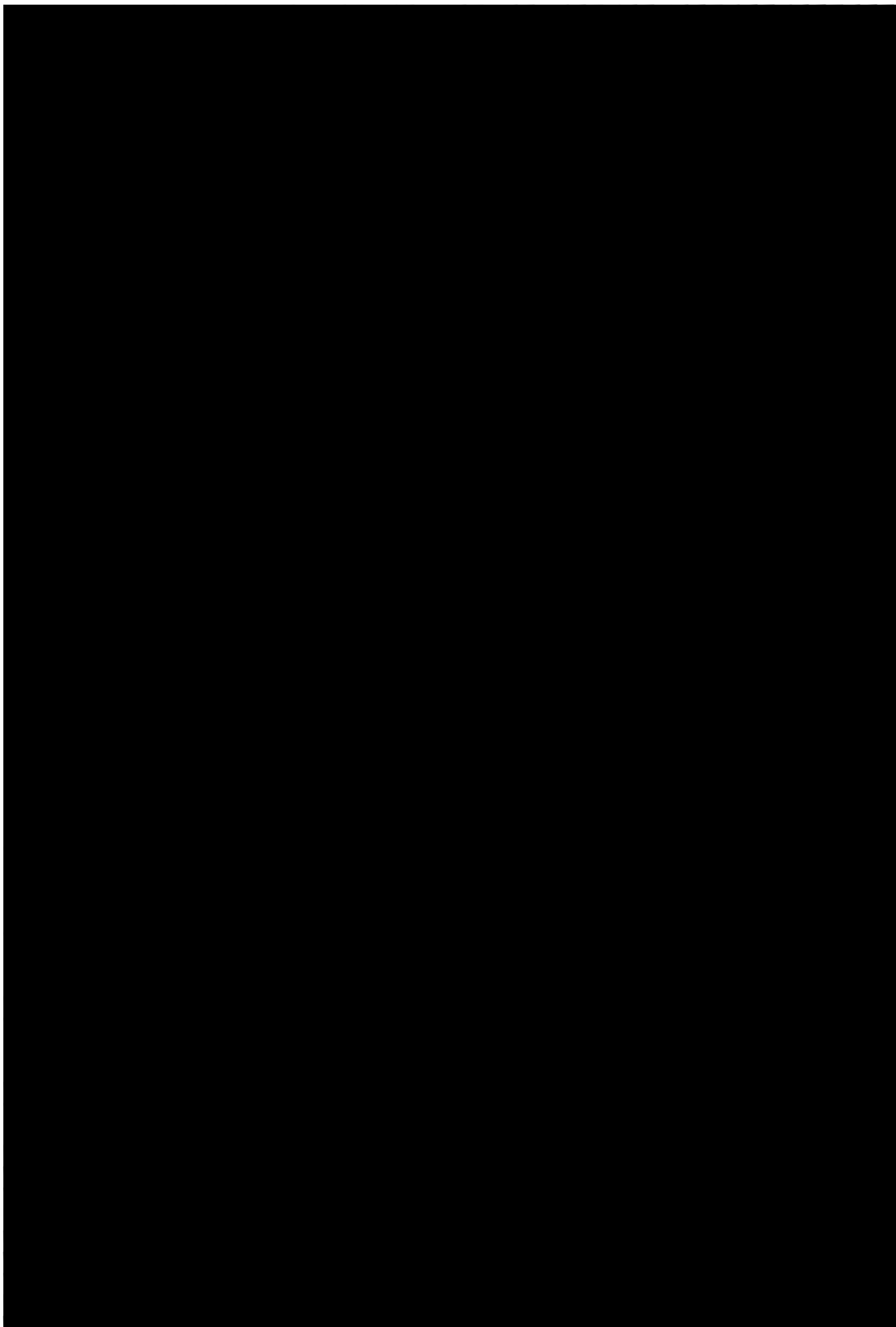
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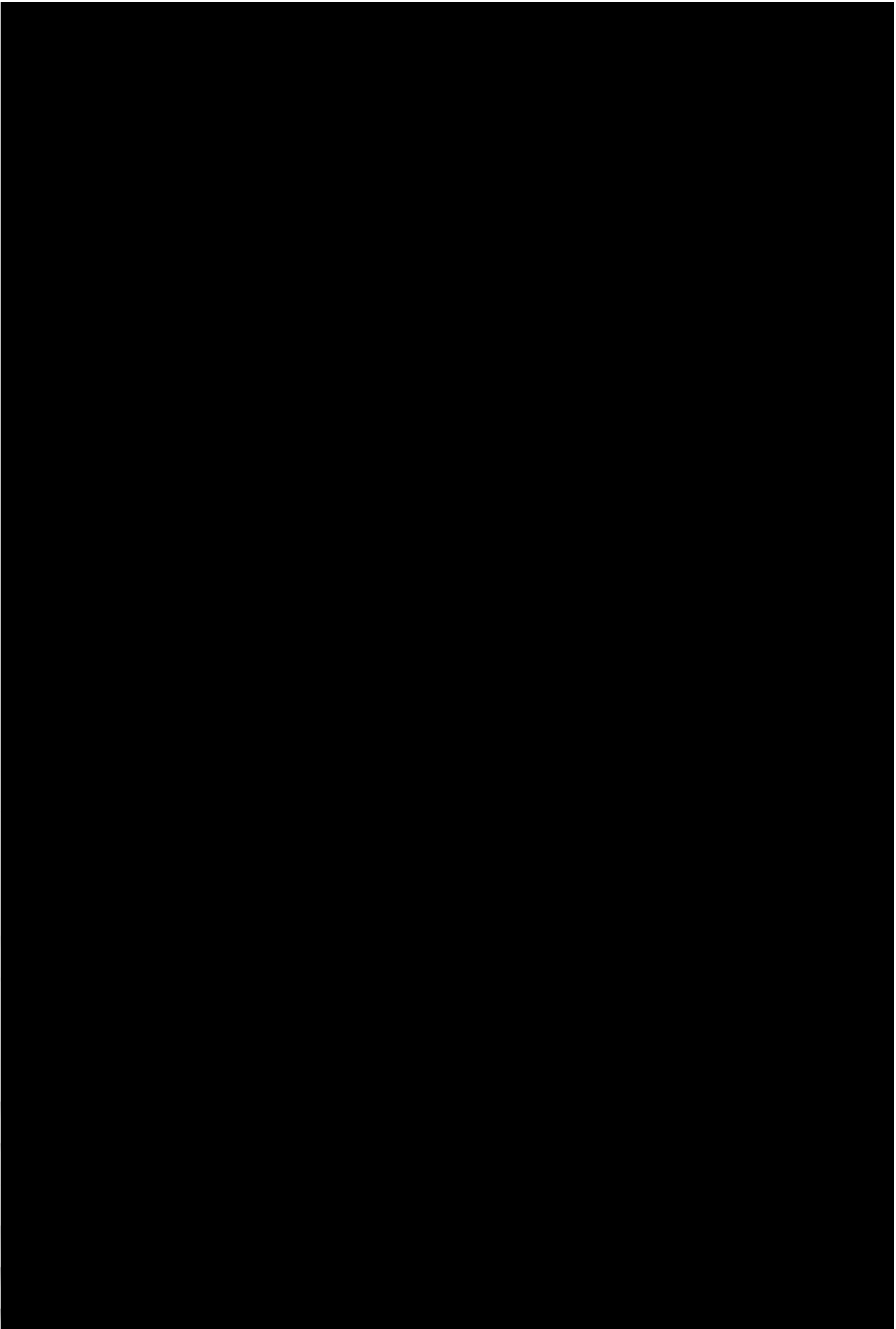
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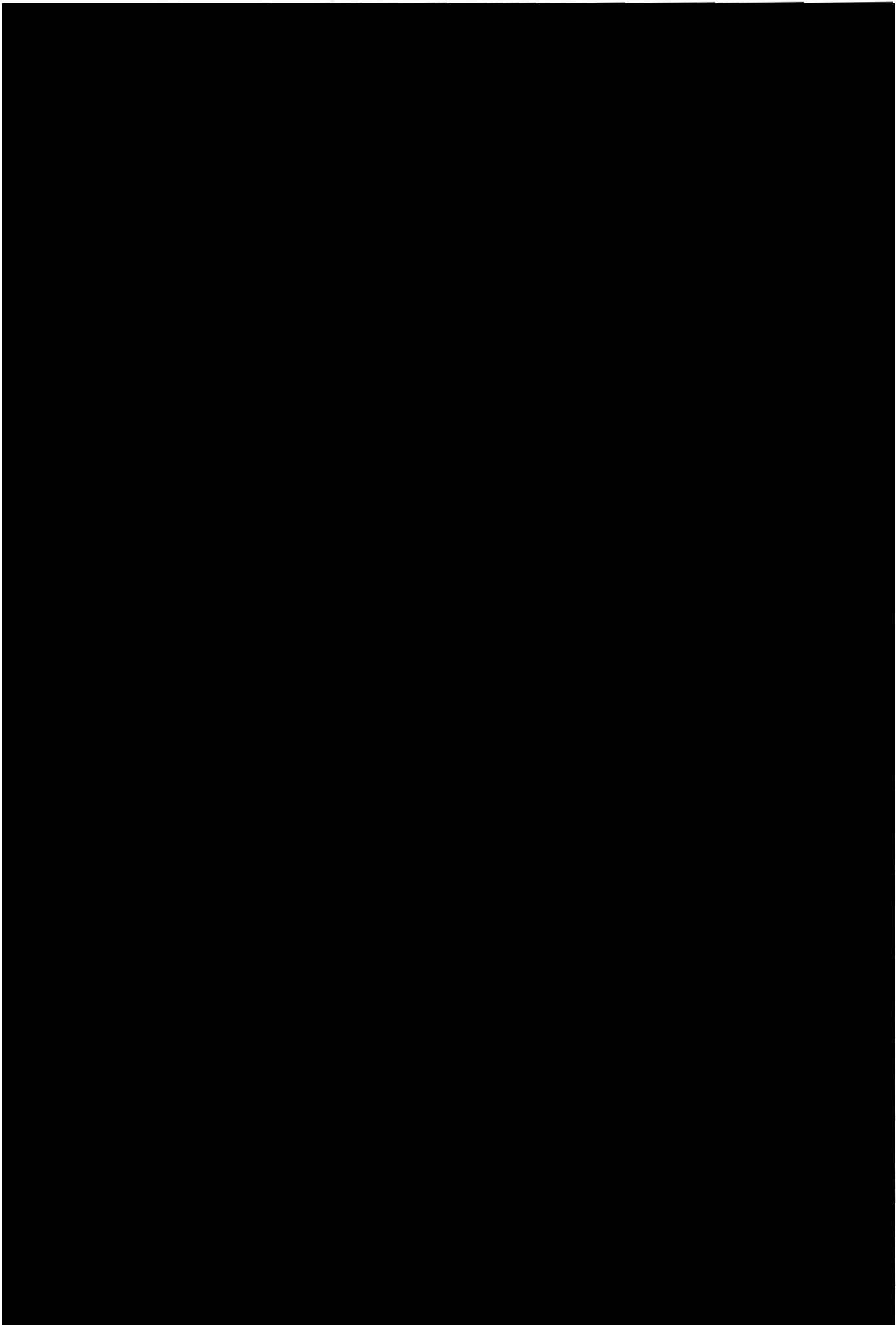




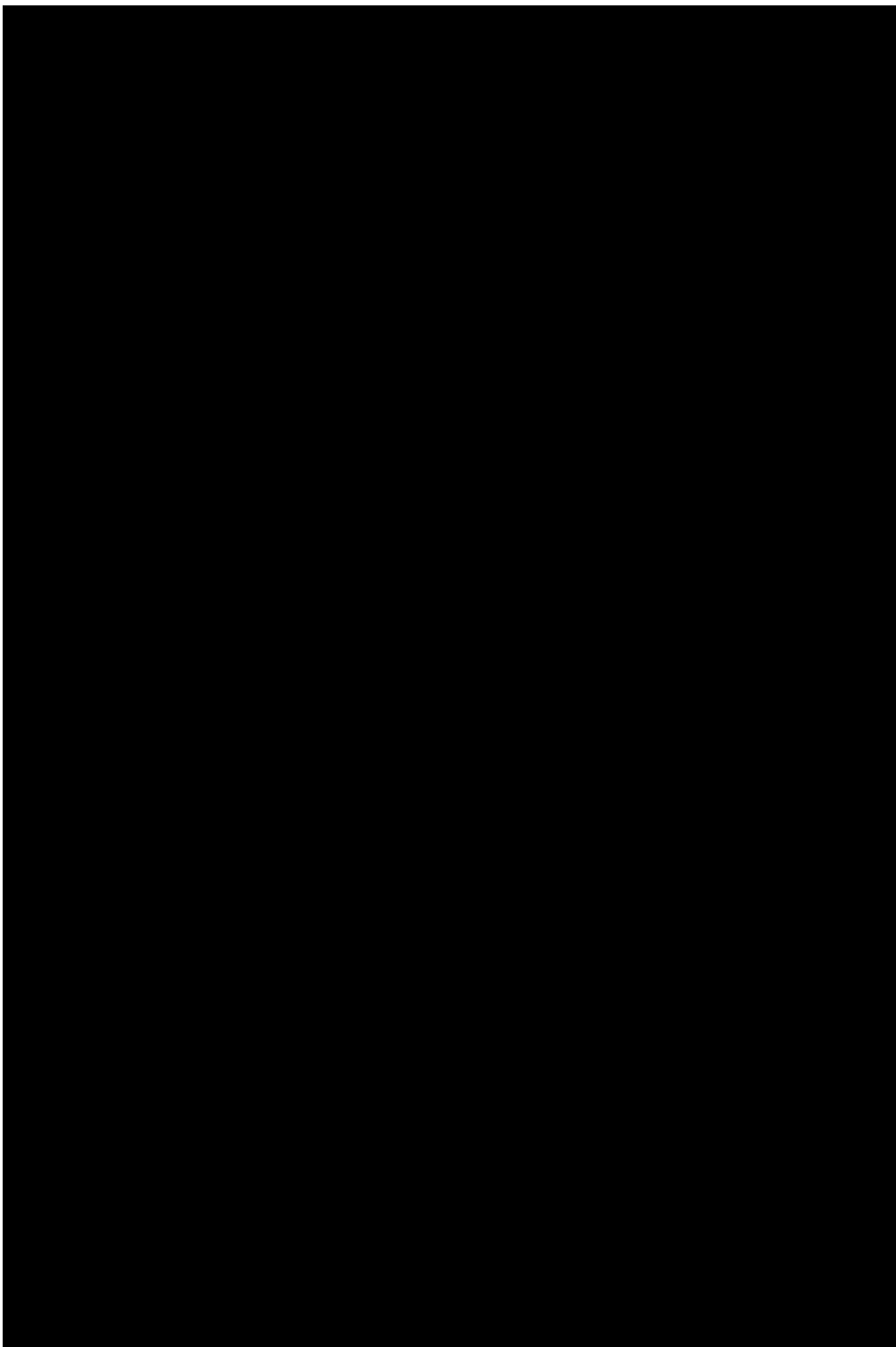


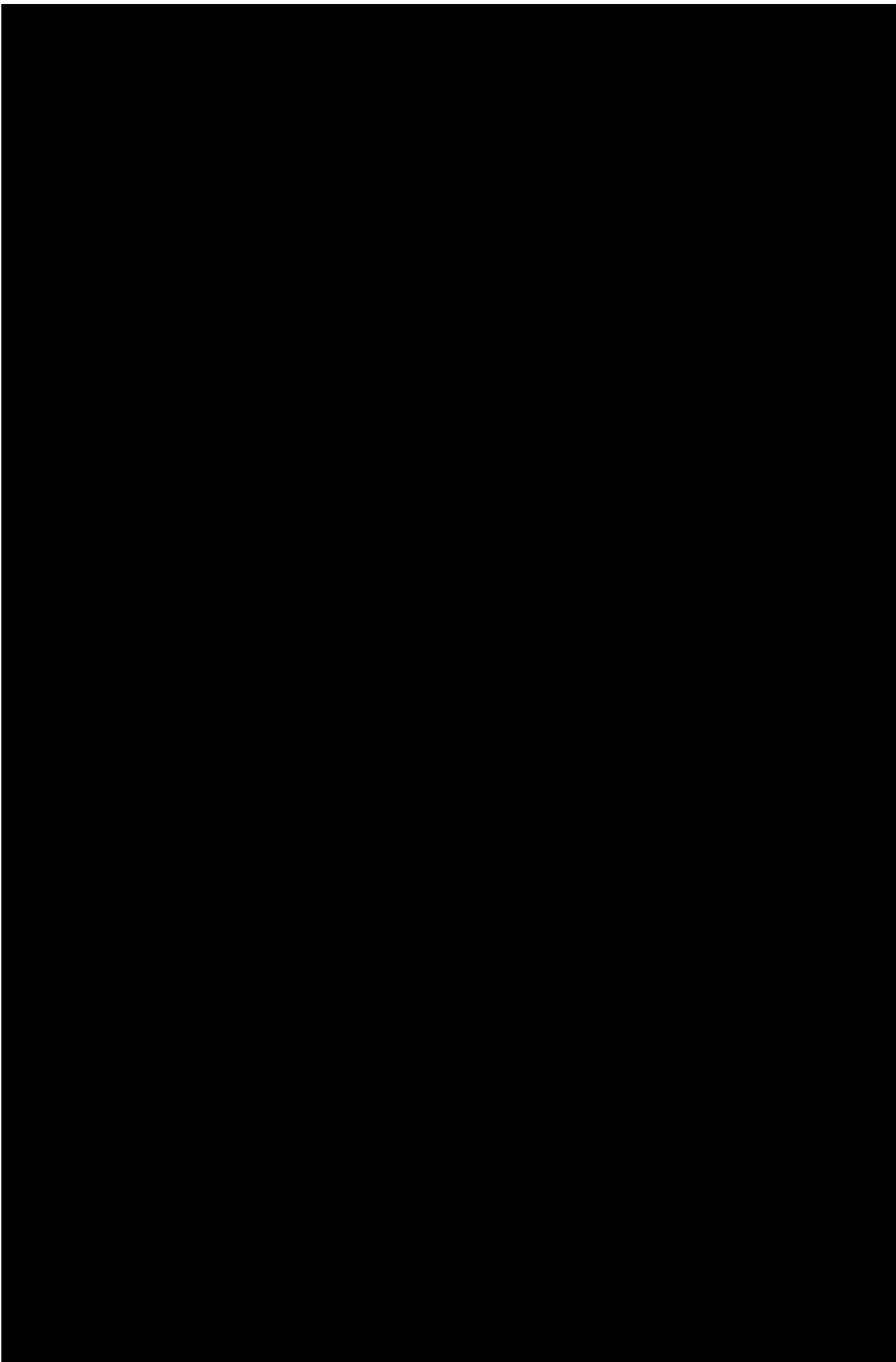


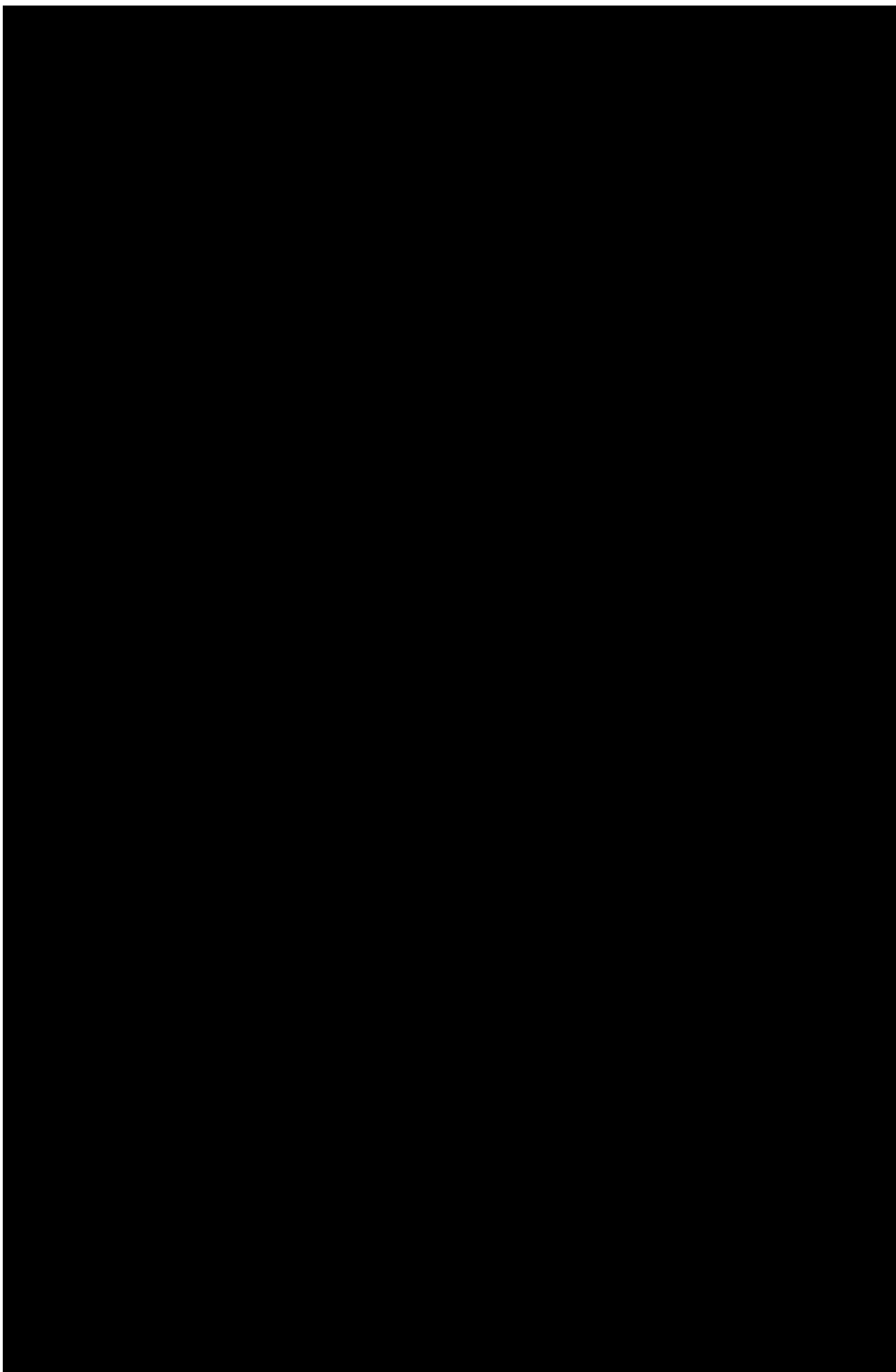


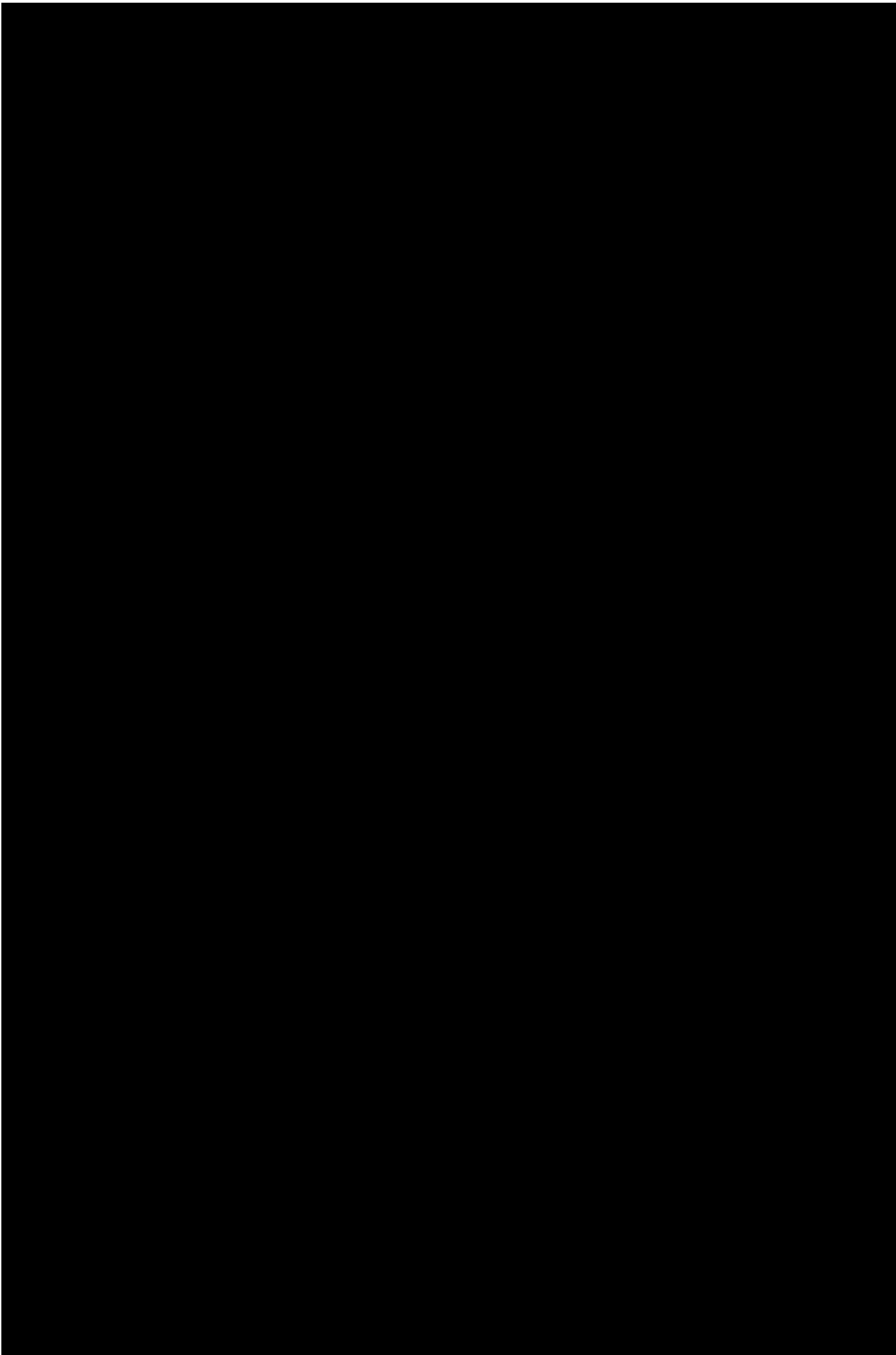






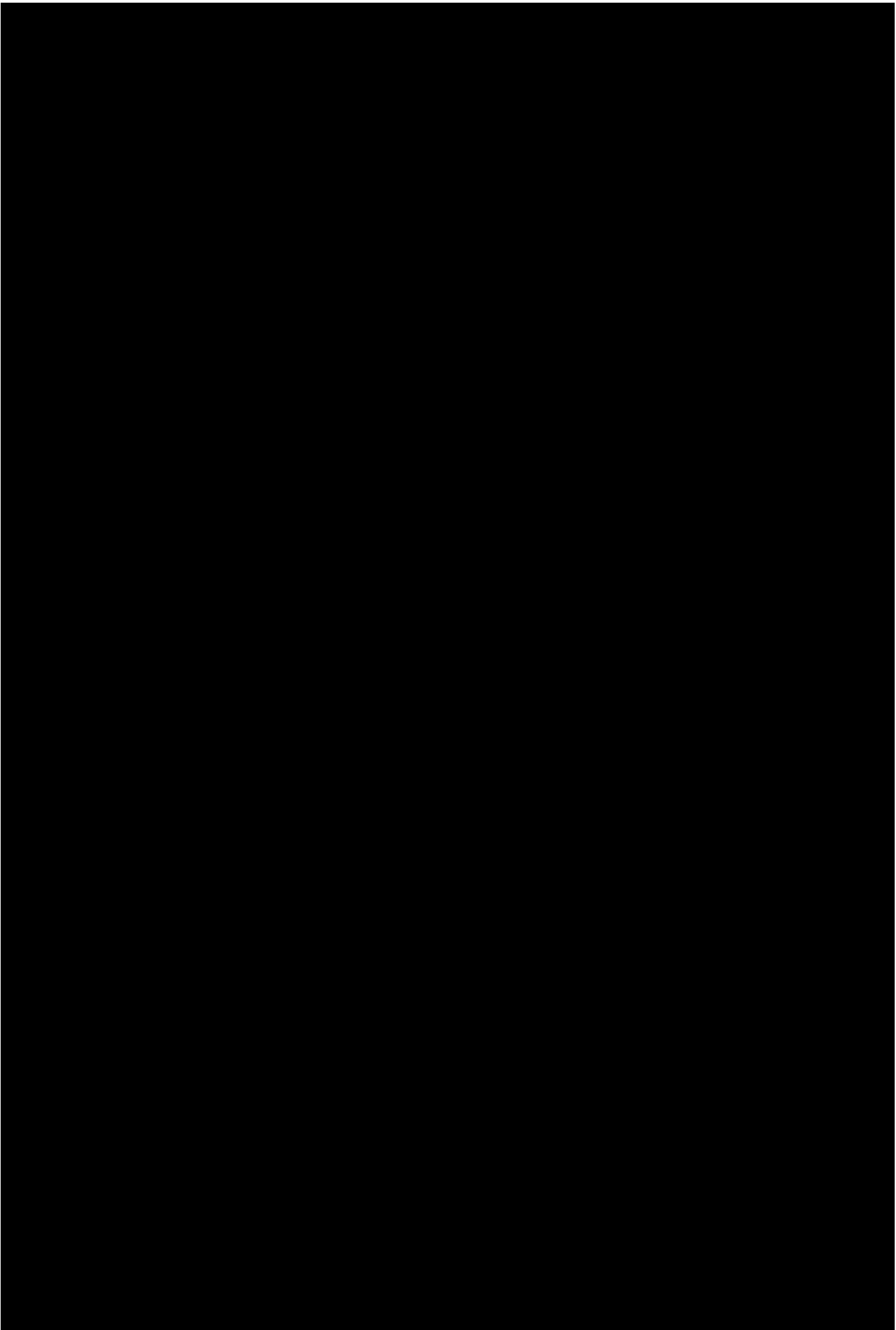


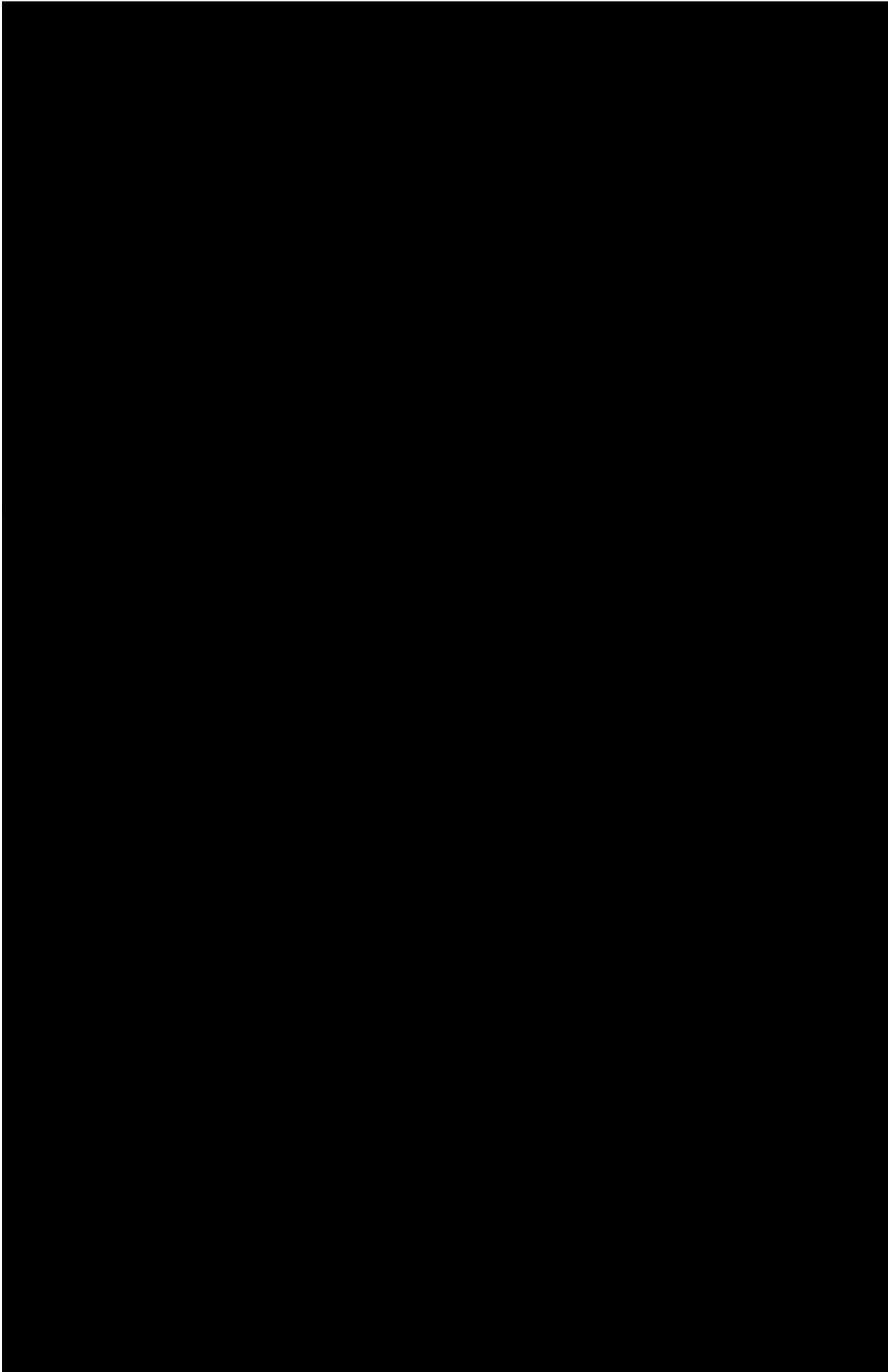


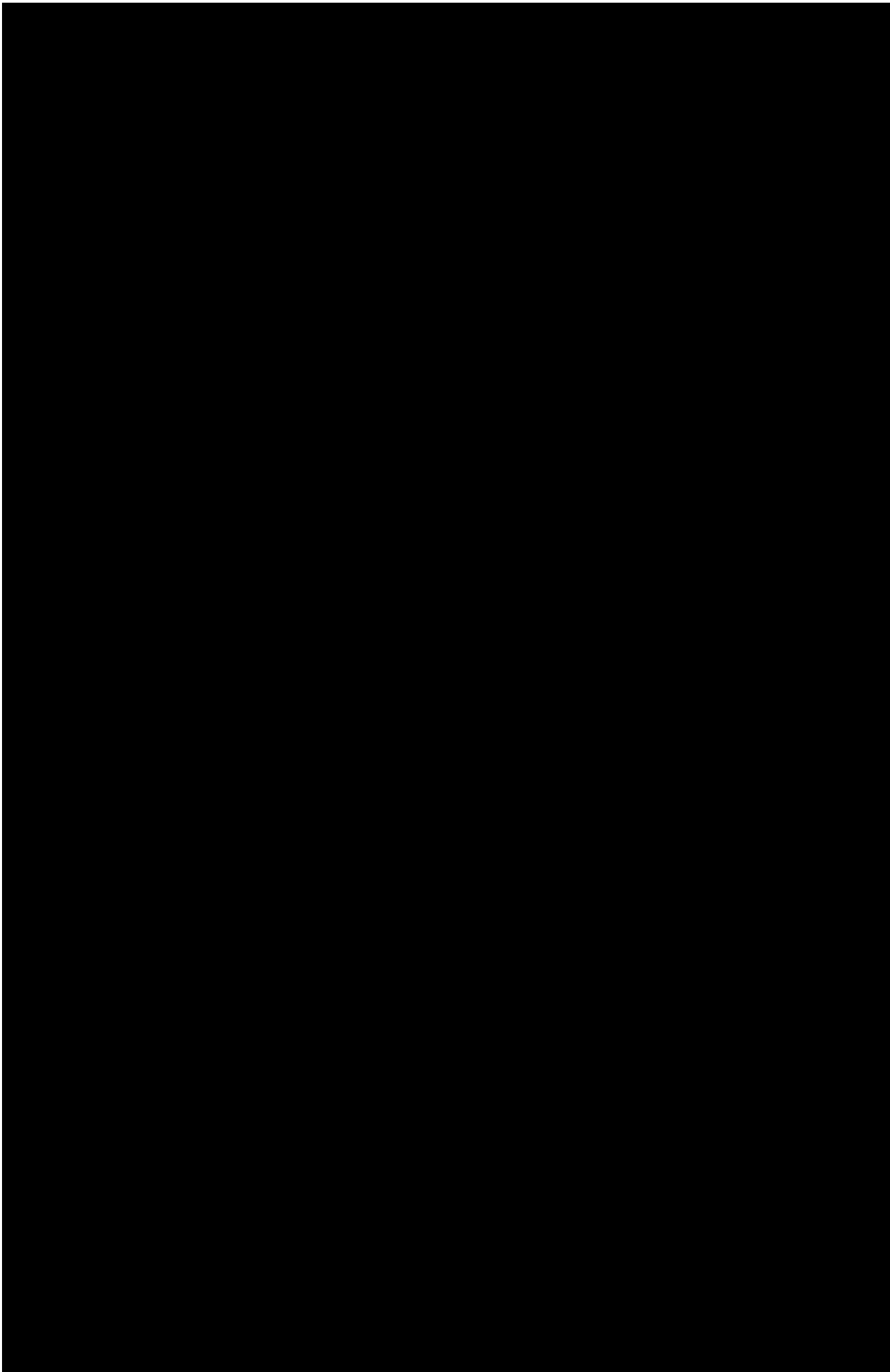


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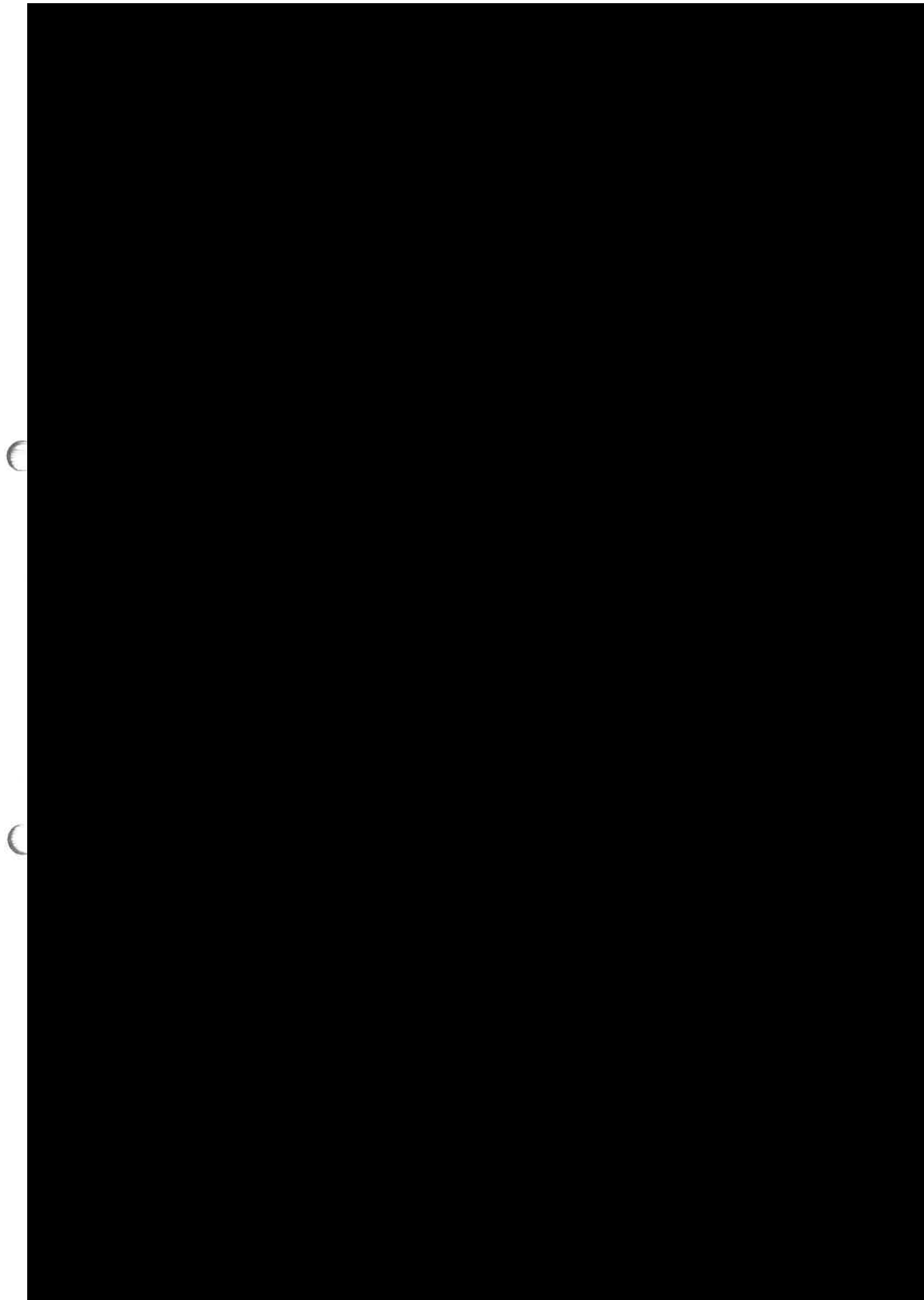


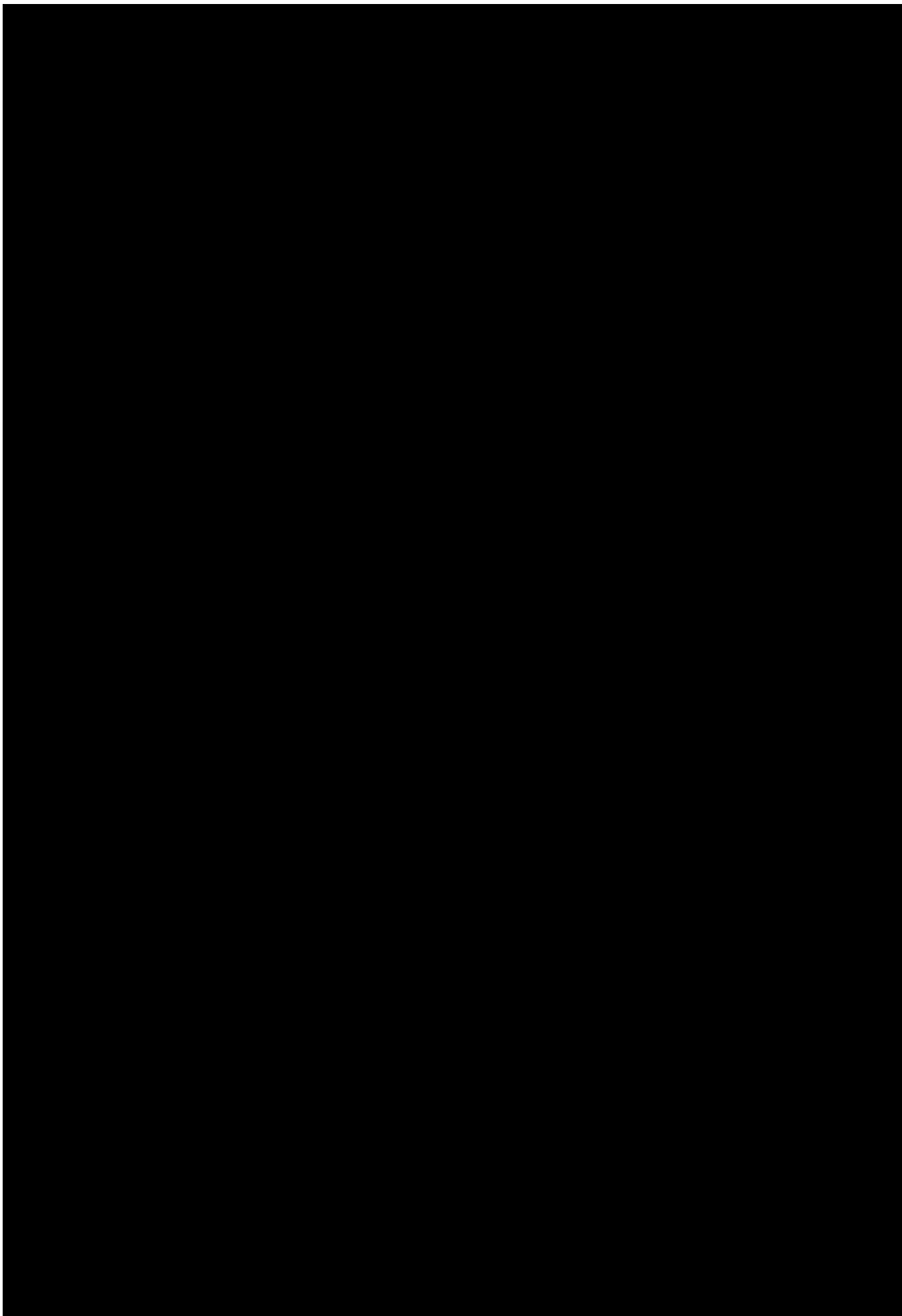


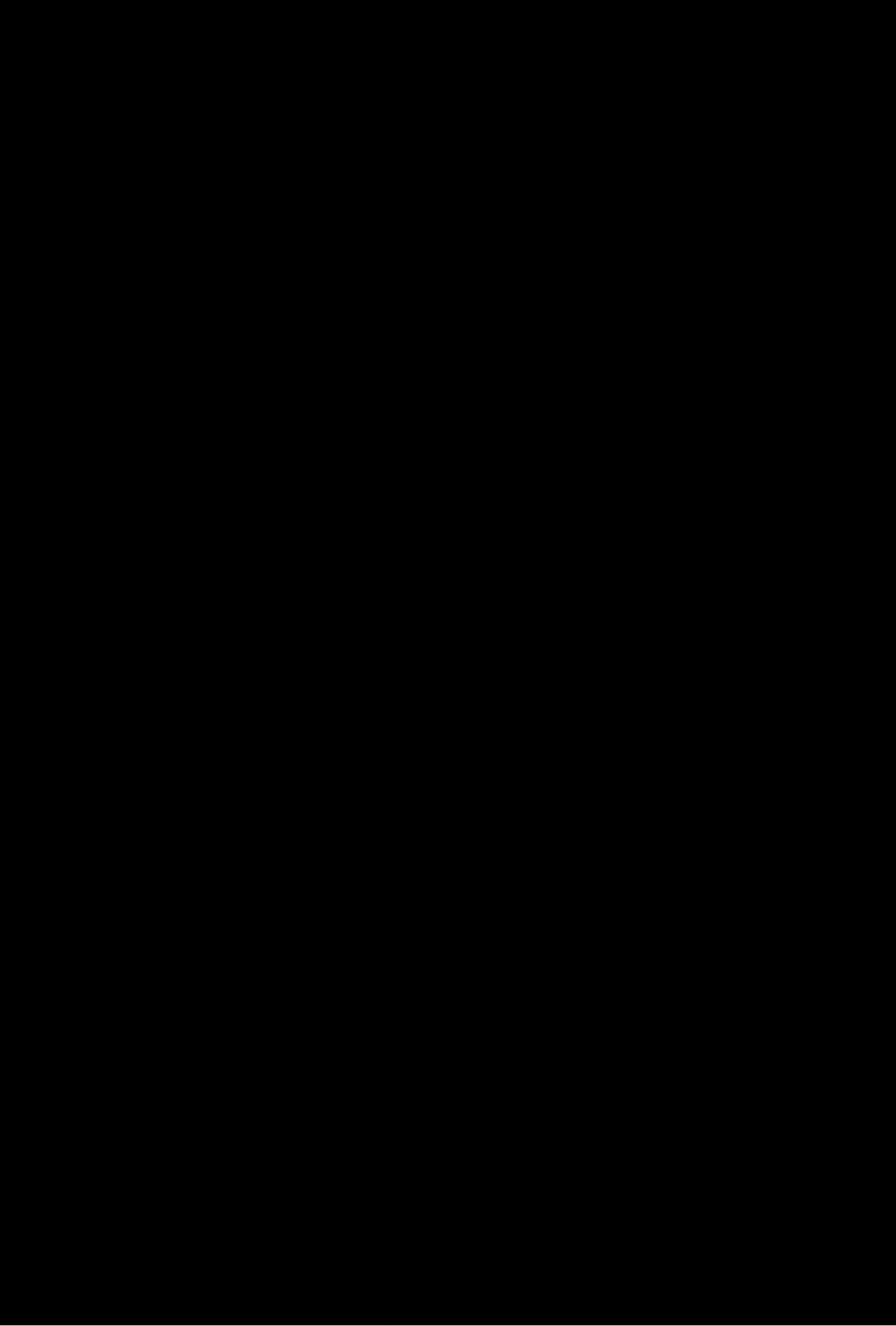
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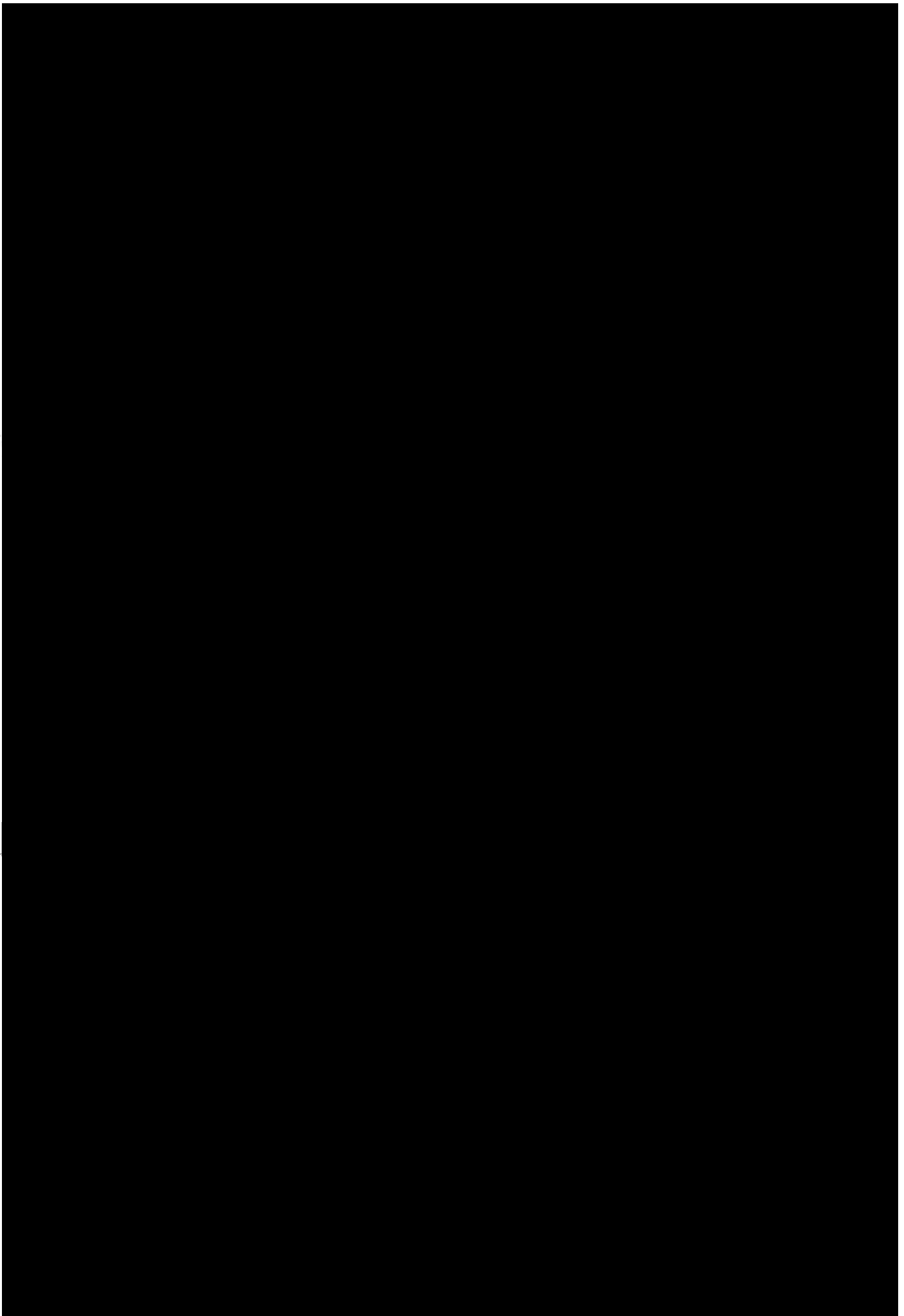
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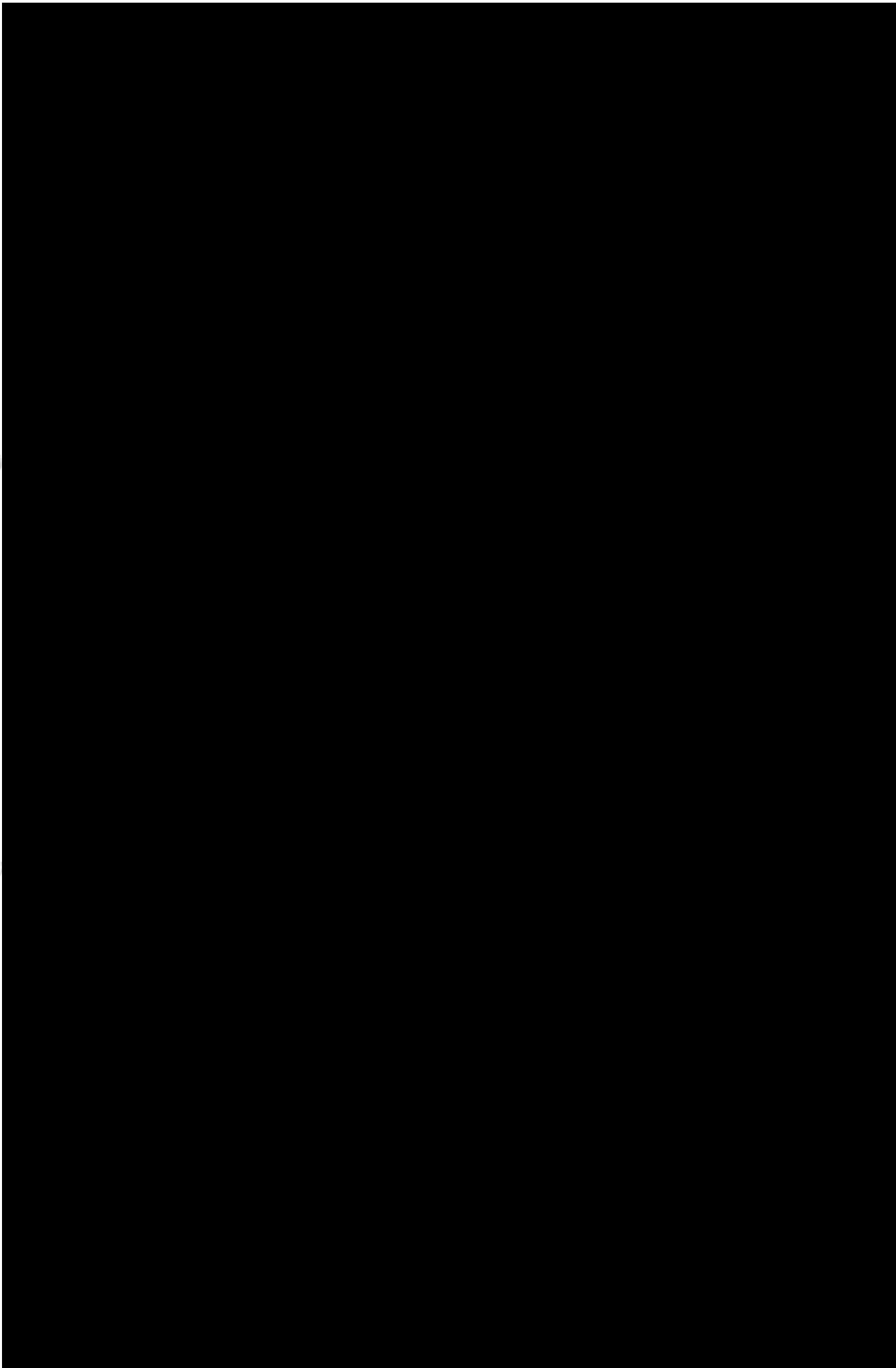


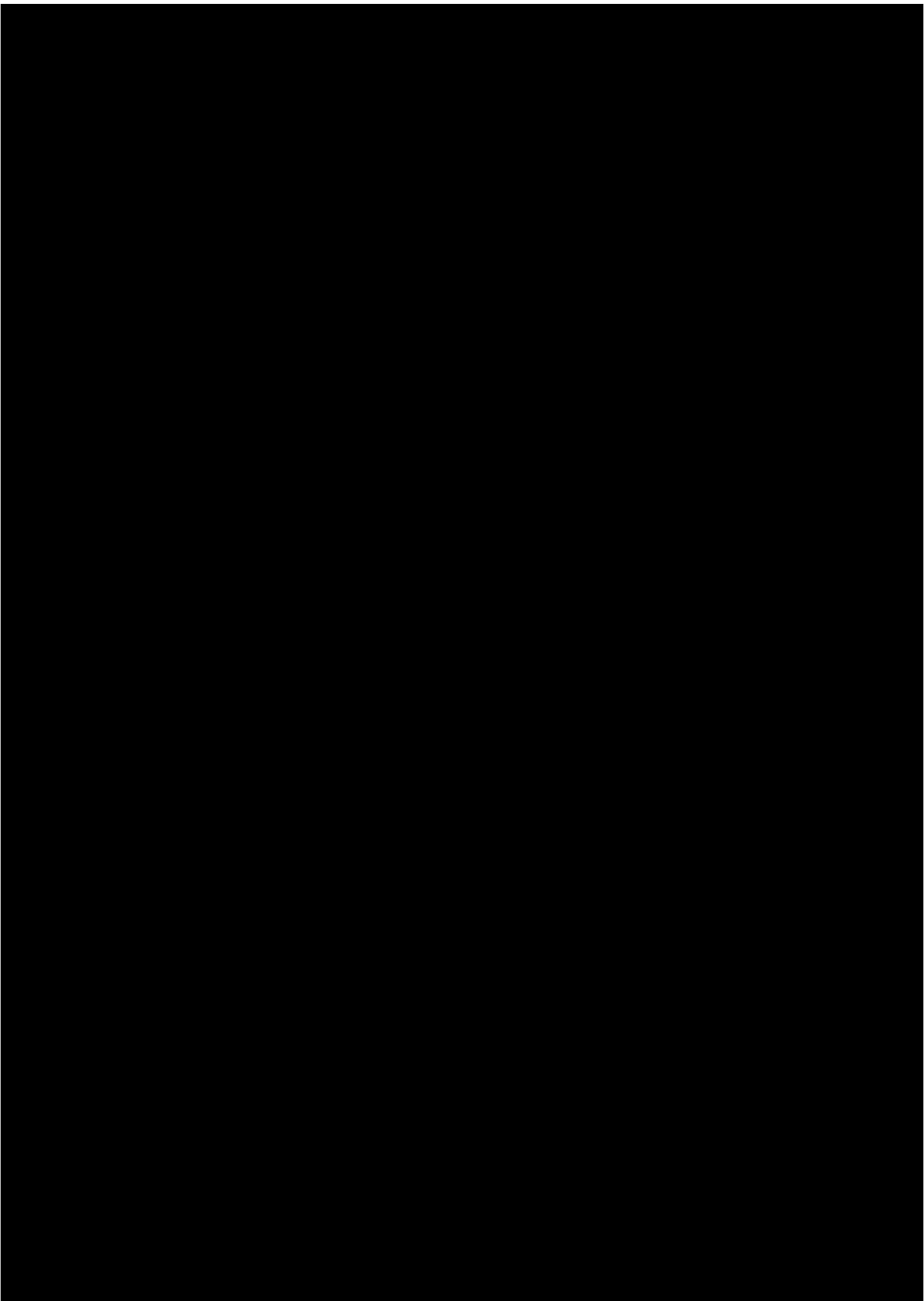


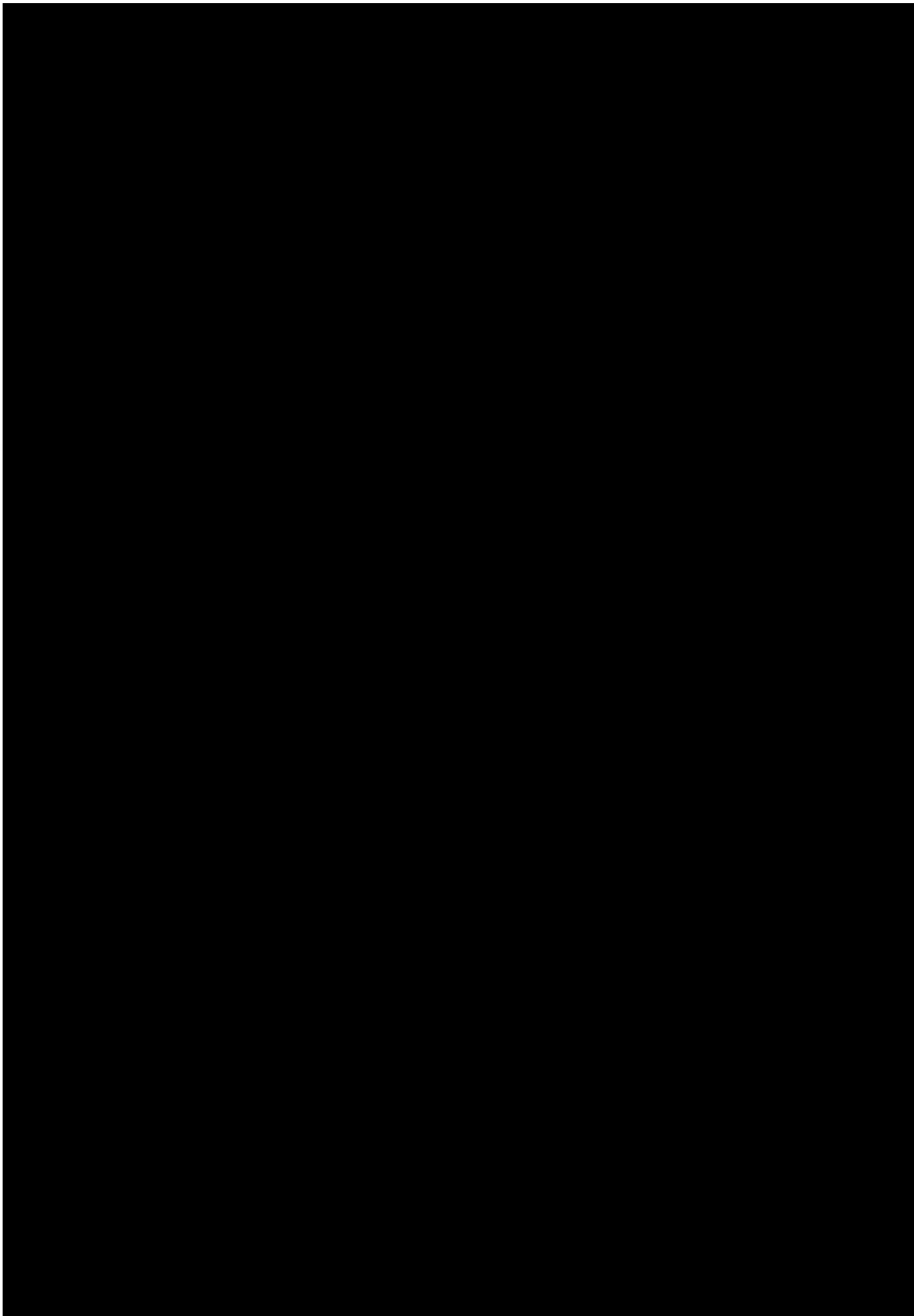


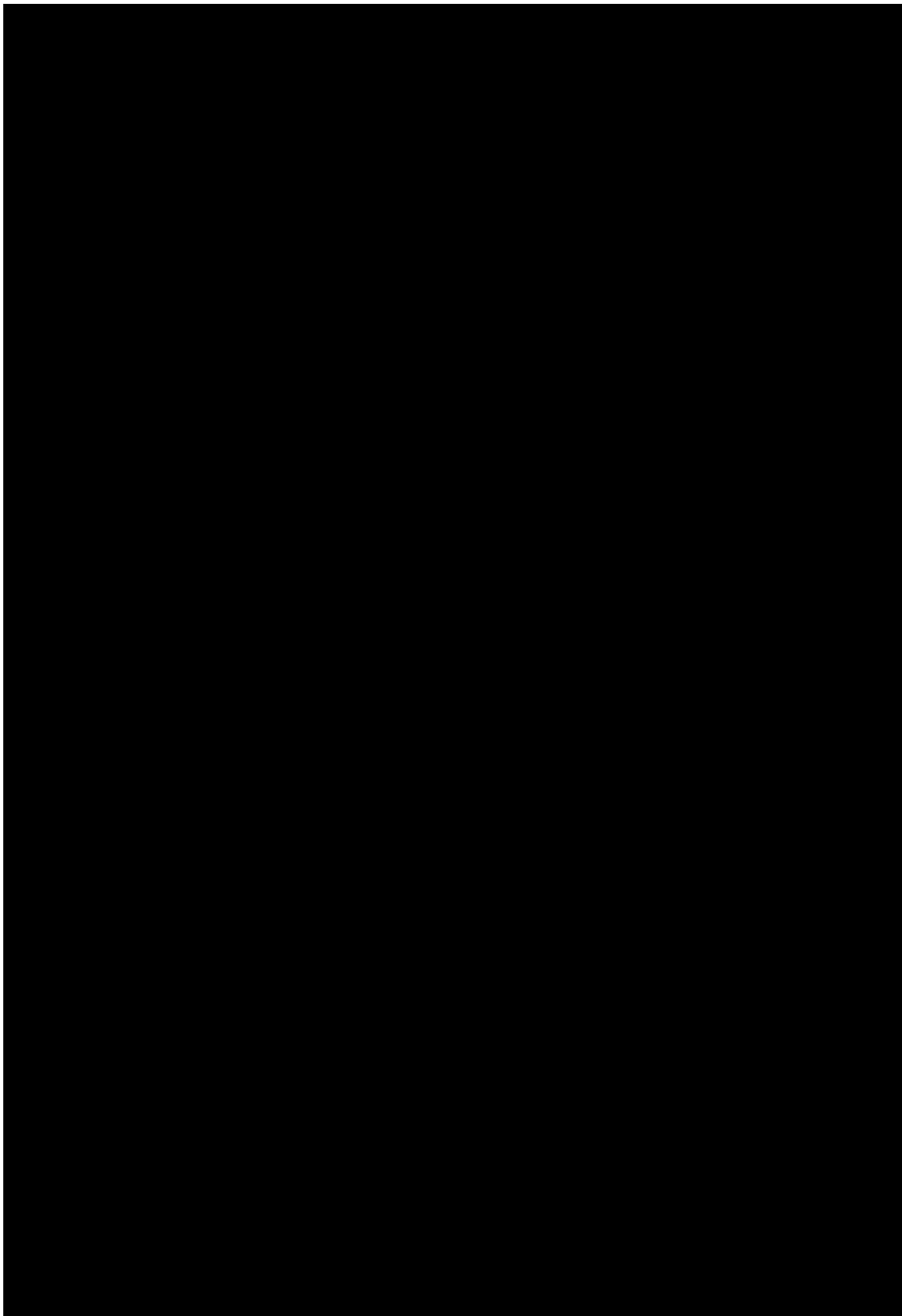










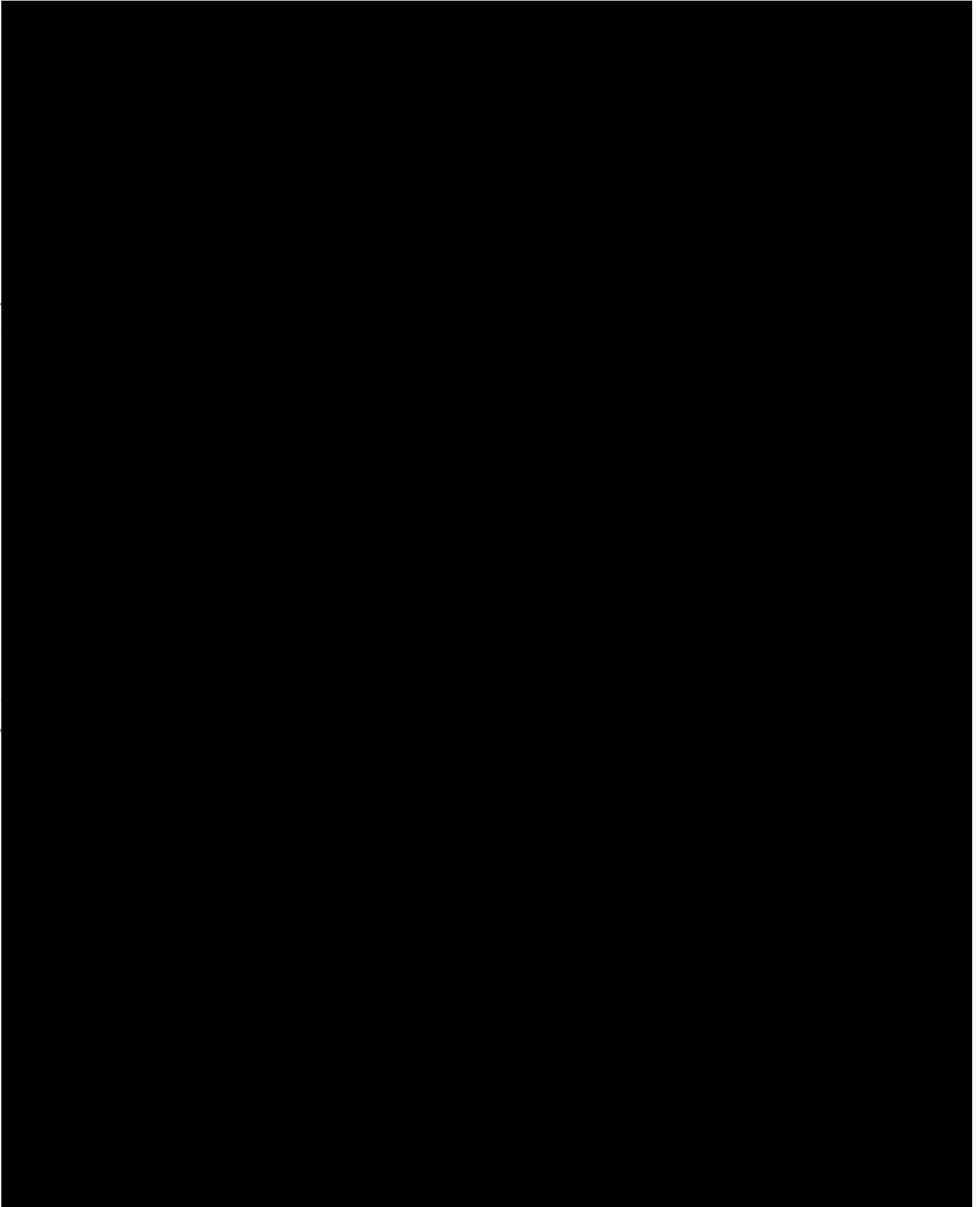


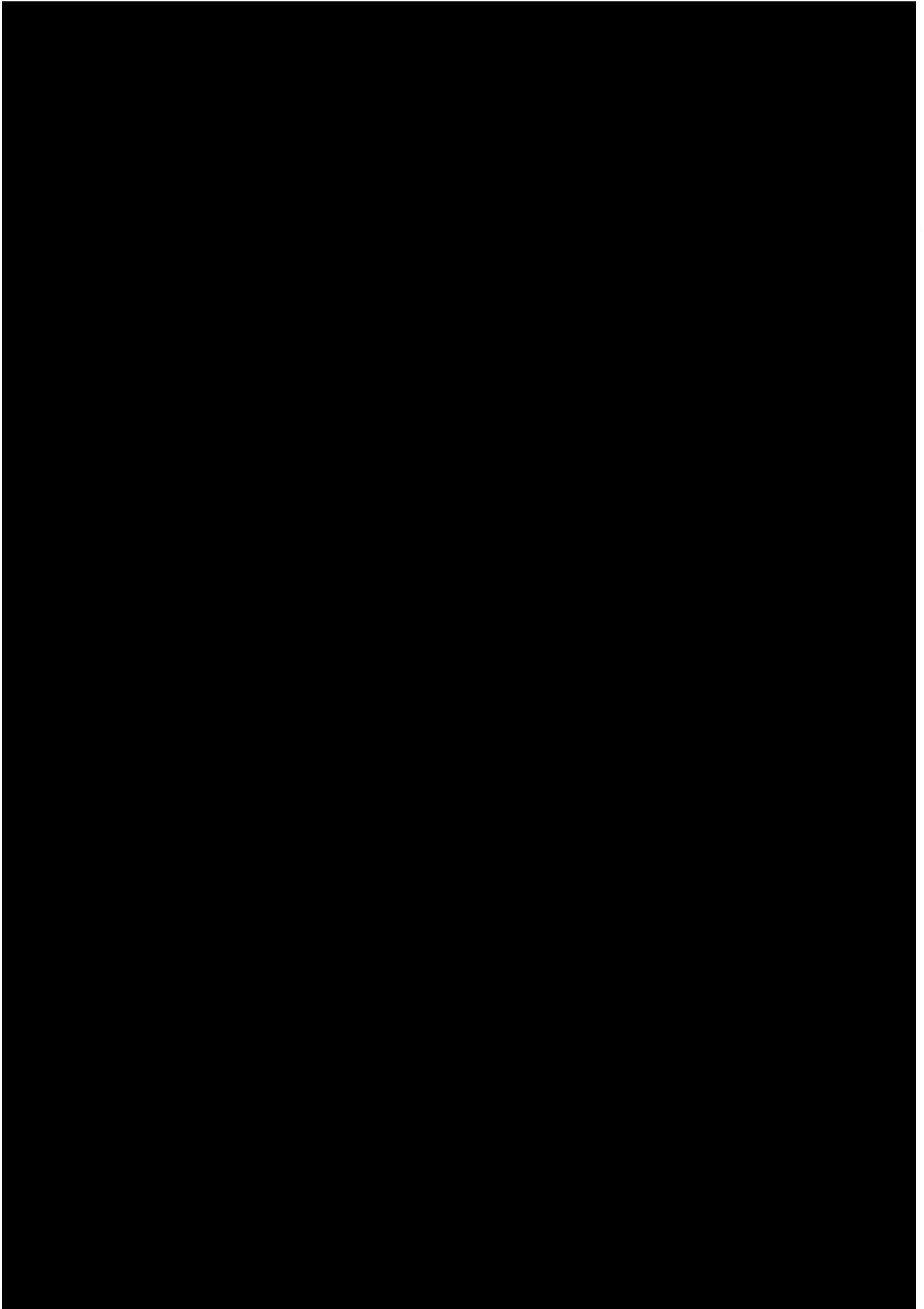
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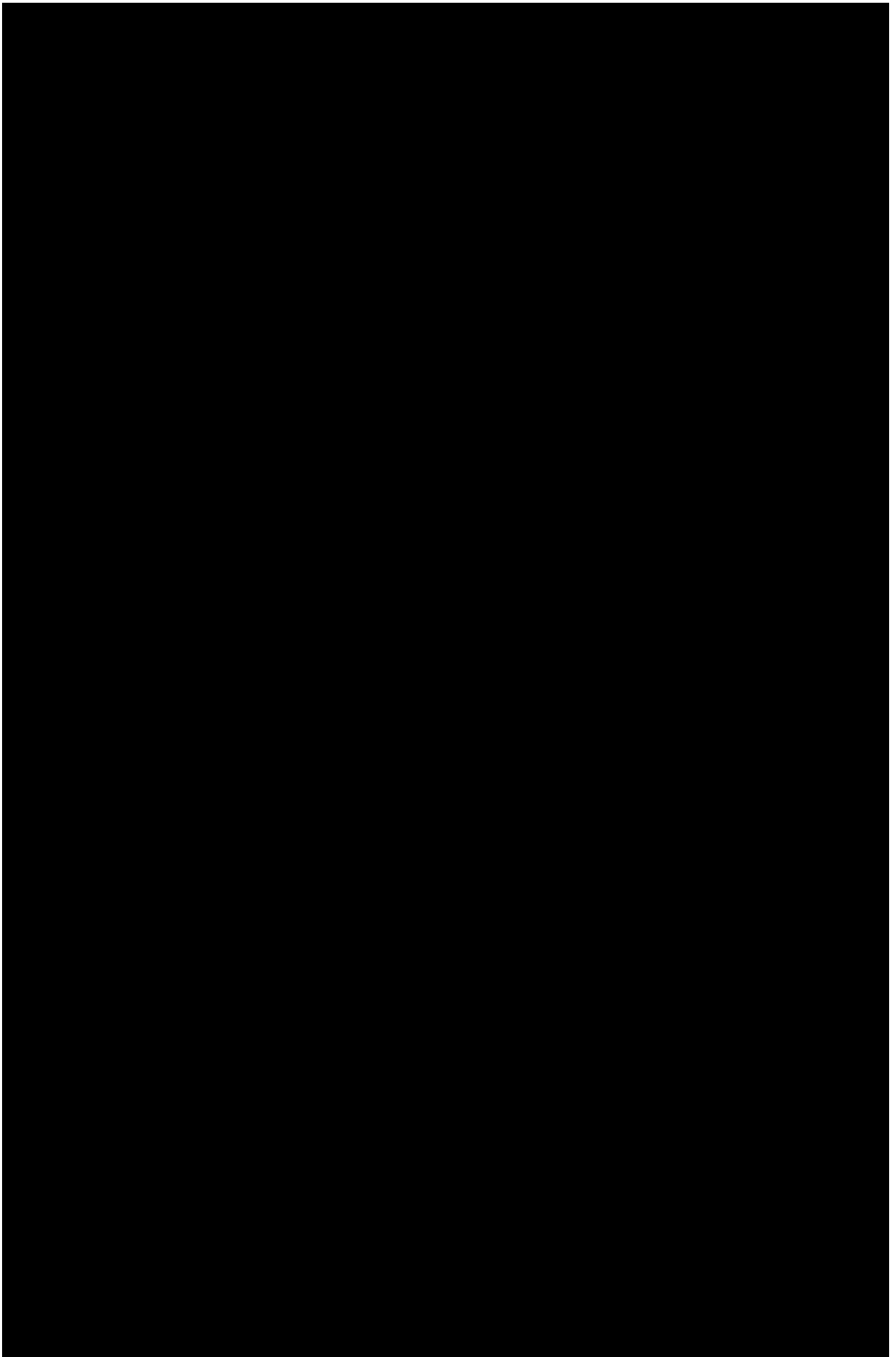
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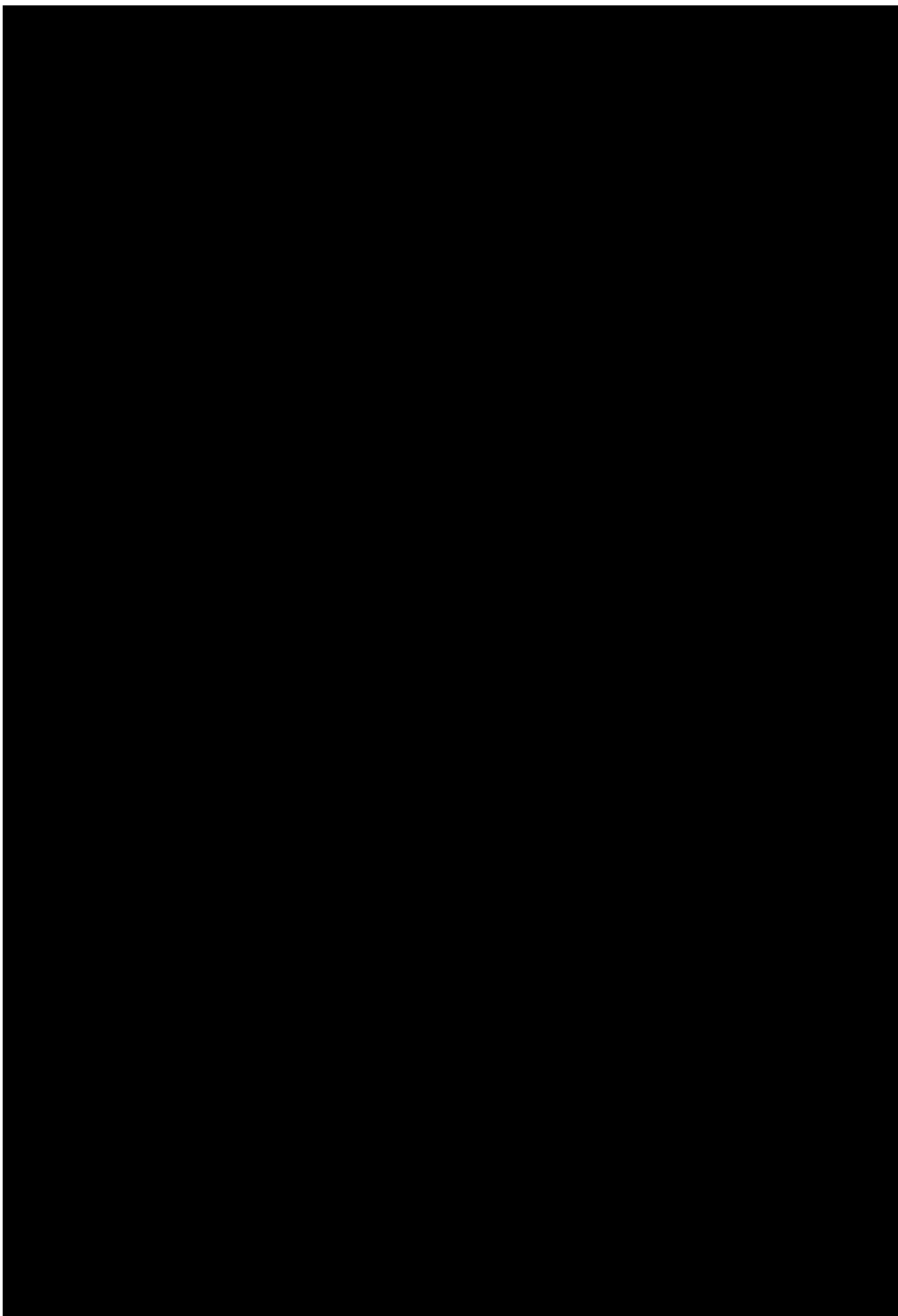
SCHEDULE A19

Approved Engineer Deed Poll



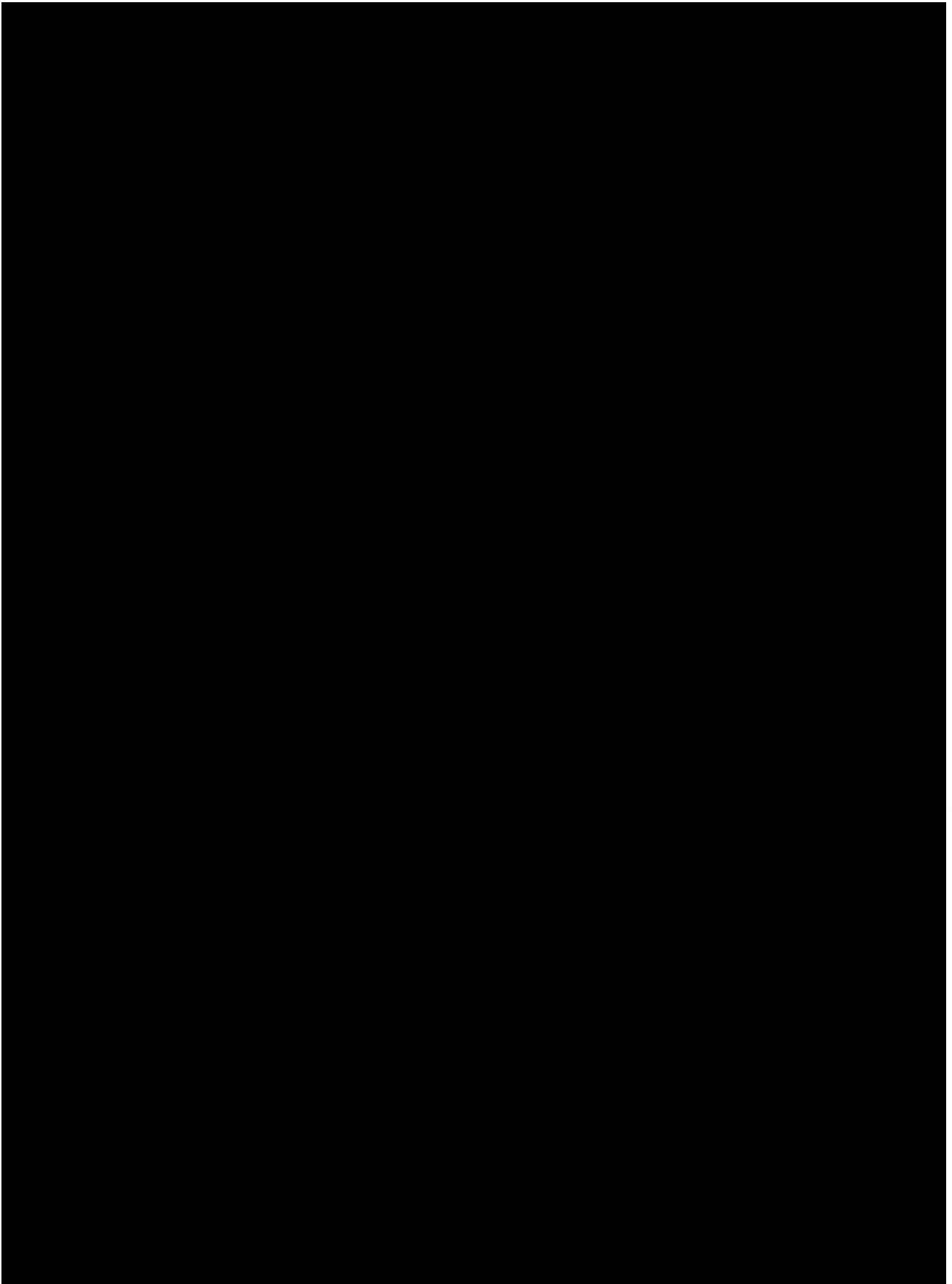


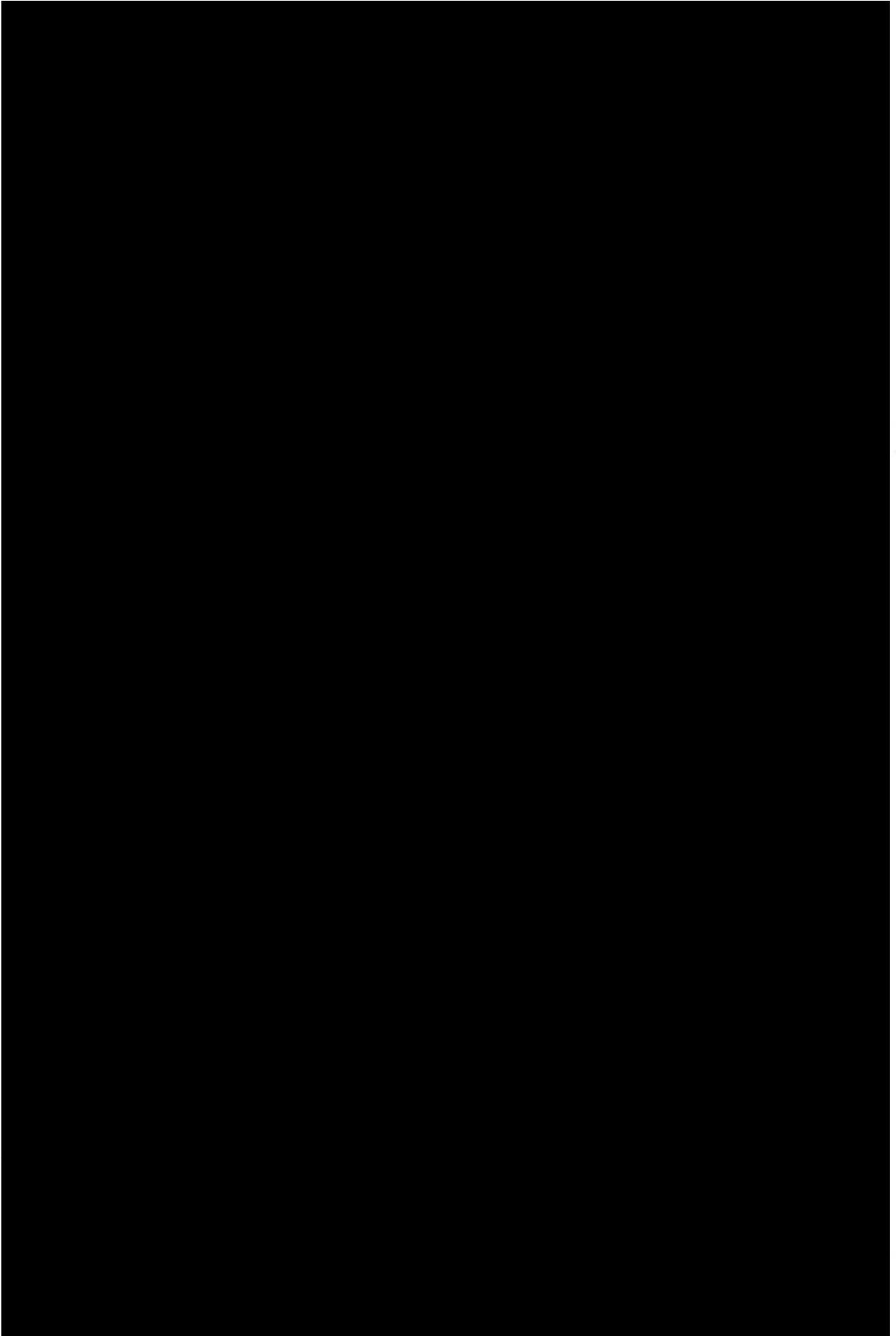


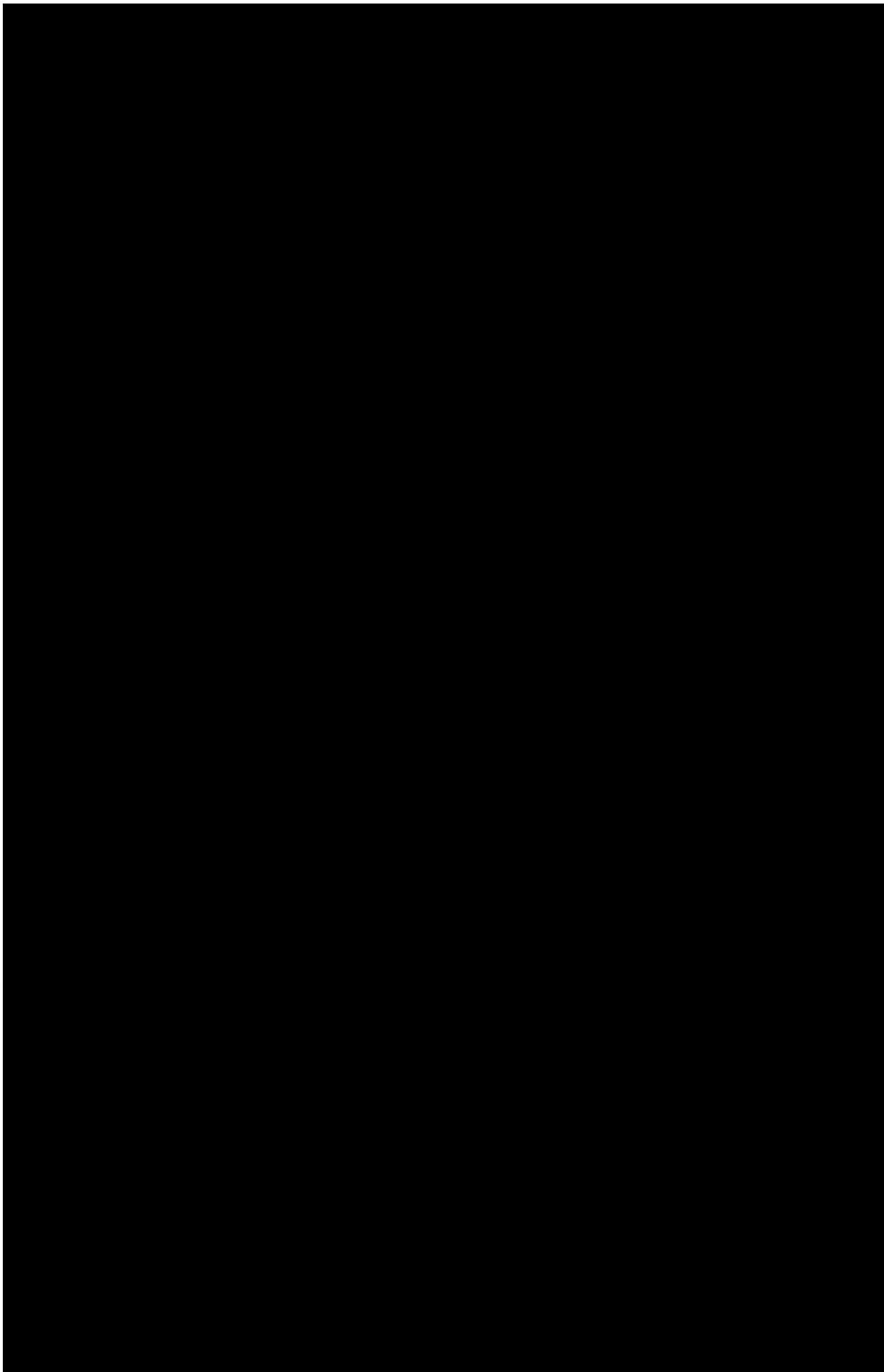


SCHEDULE A20

Collateral Warranty Deed Poll

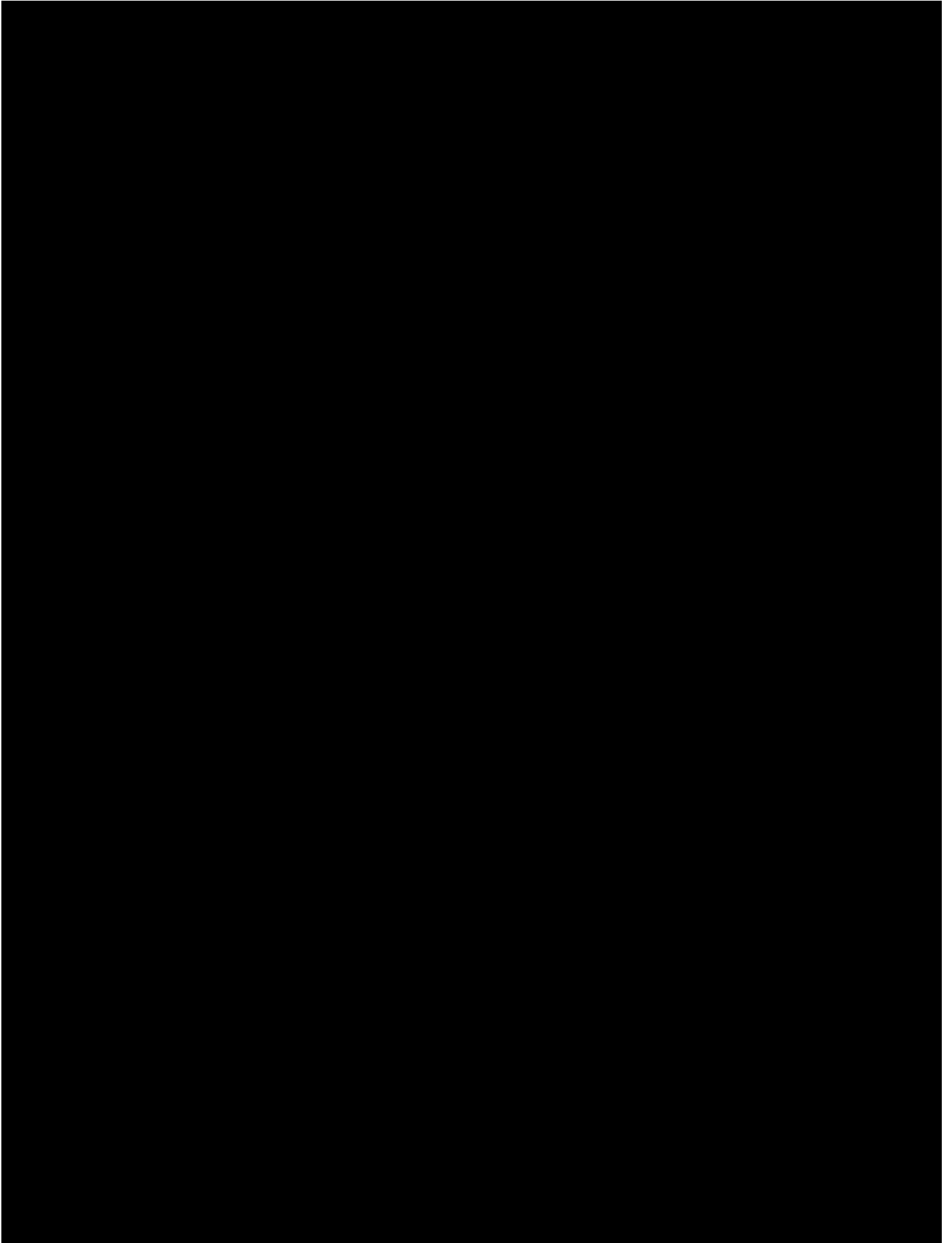


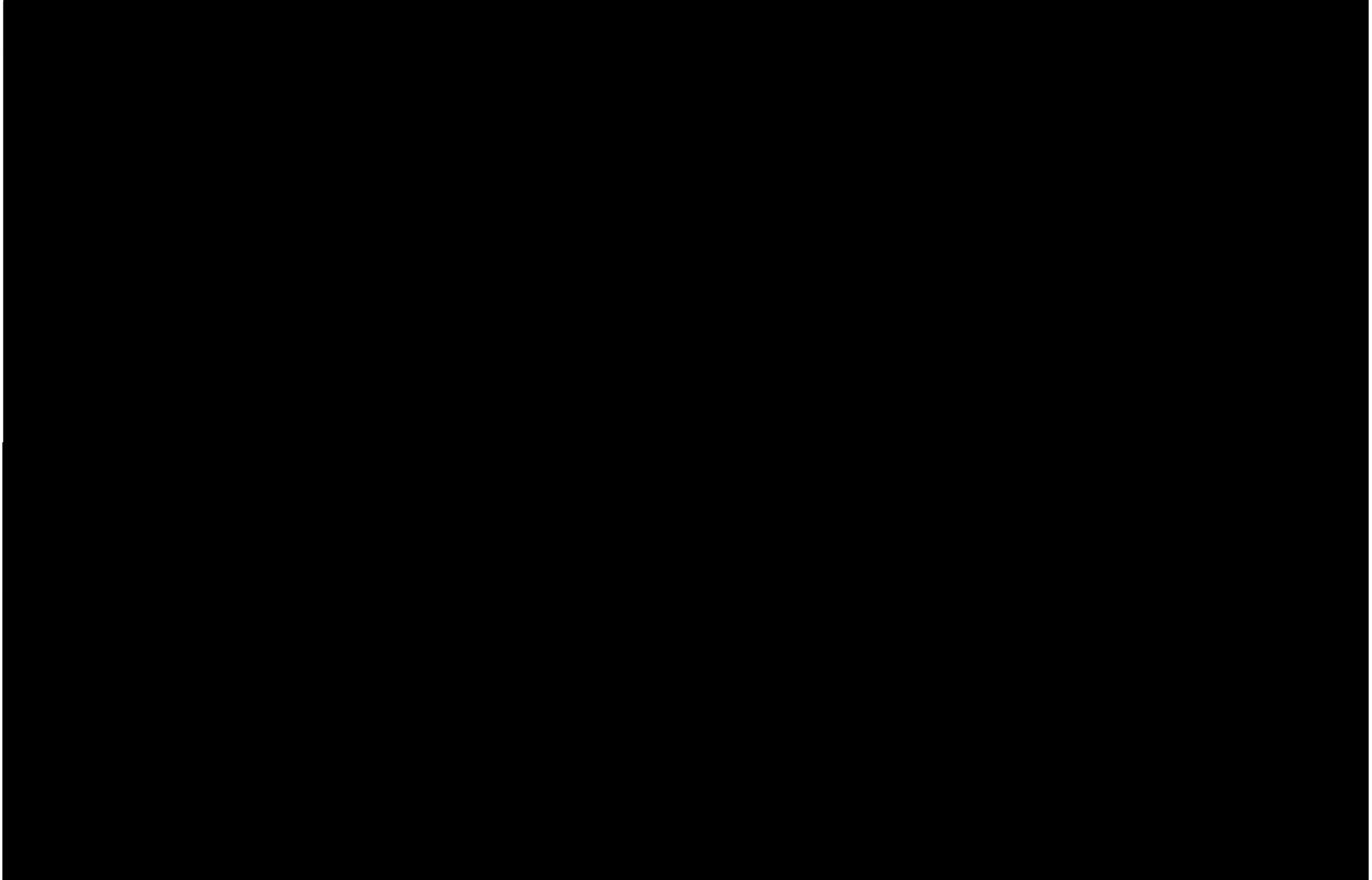


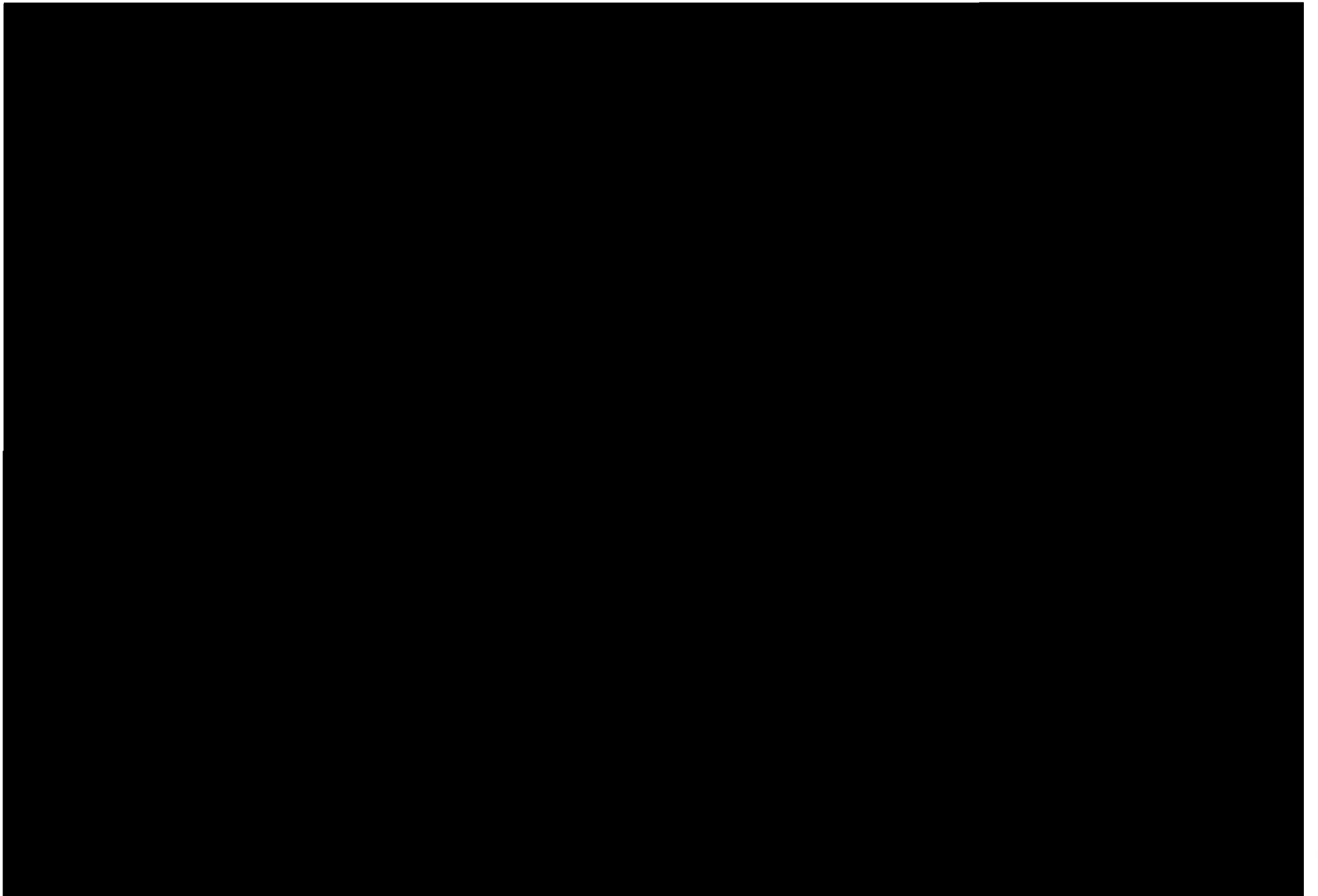


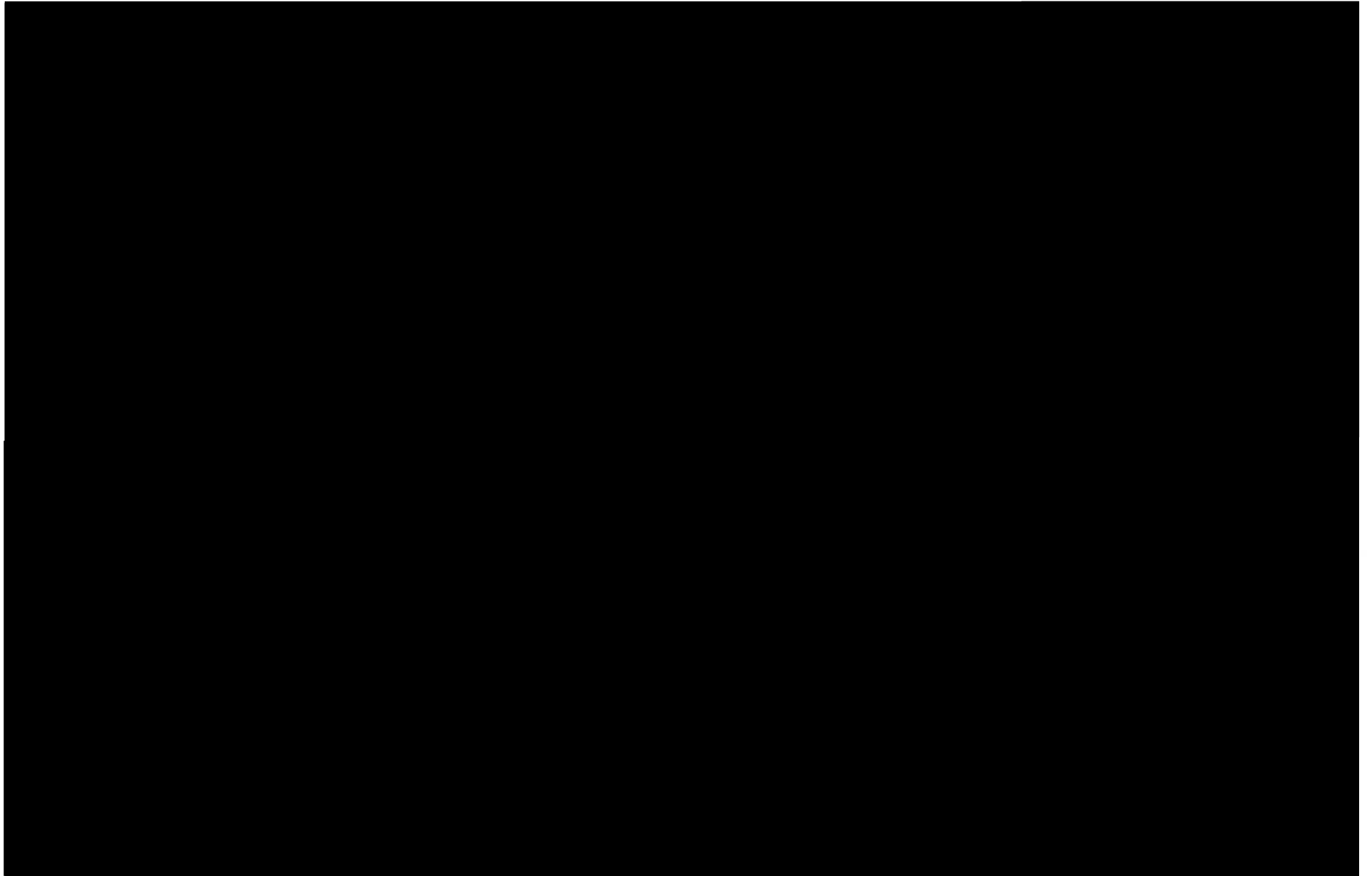
SCHEDULE A21

Information Documents



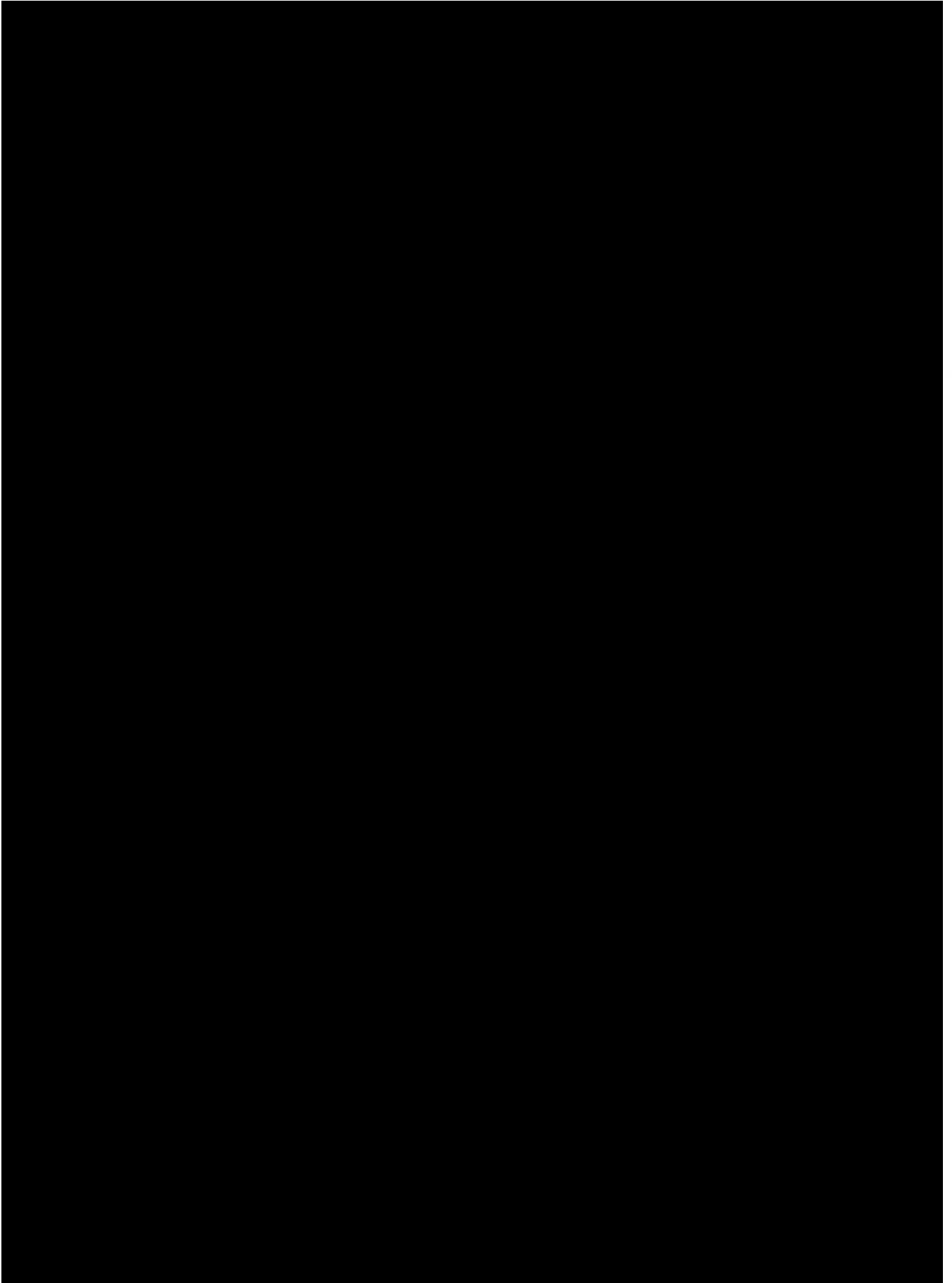


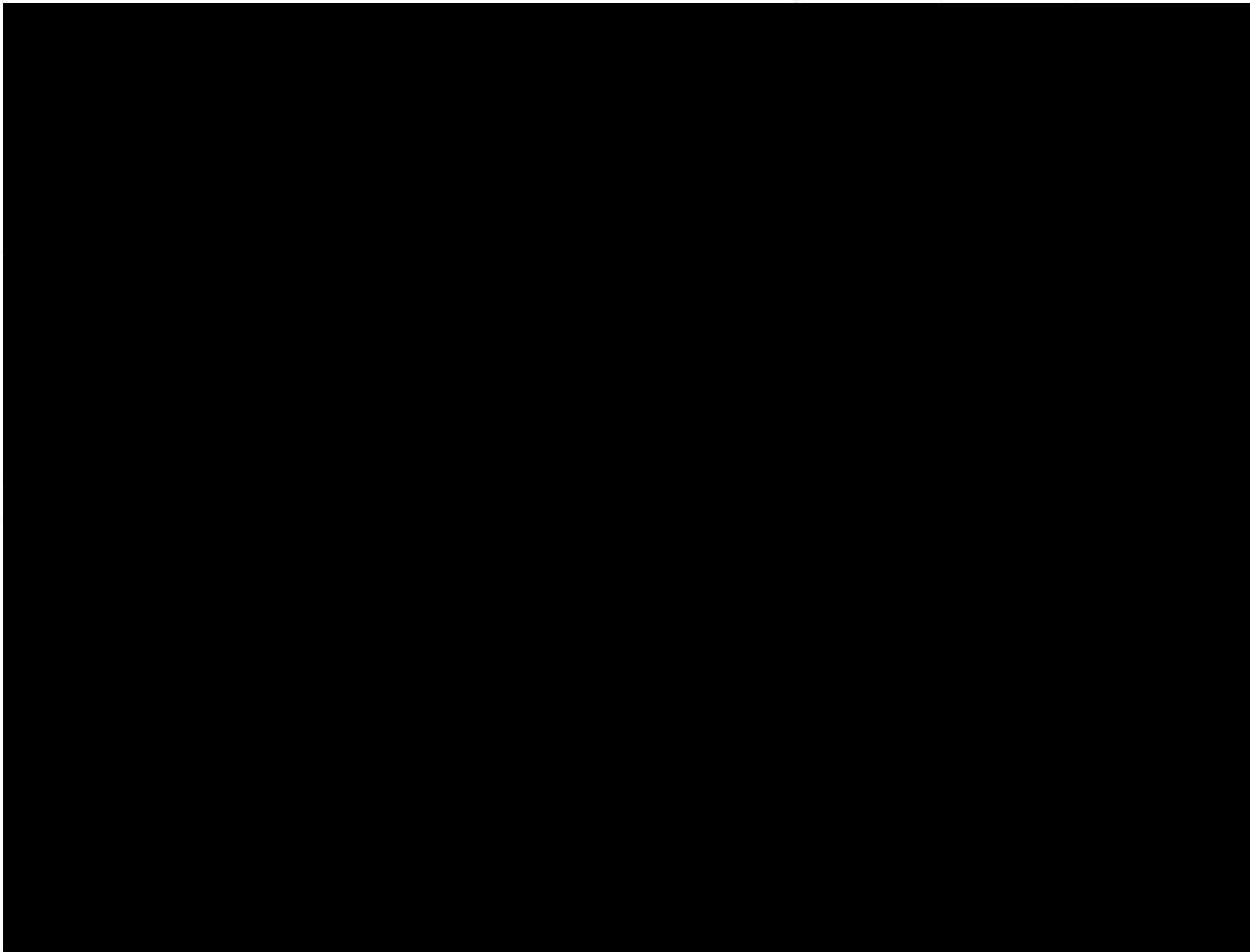




SCHEDULE A22

Project Structure Diagram





SCHEDULE A23

Not used

SCHEDULE A24

Hoarding Area

(Clause 18.4)

