



EXECUTION VERSION

PLR Stage 2: Enabling Works Contract

Dated 16 September 2024

Contract Number: IPD-22-12894

Parramatta Light Rail Stage 2: Enabling Works

Transport for NSW (ABN 18 804 239 602) ("**Principal**")

John Holland Pty Ltd (ABN 11 004 282 268) ("**Contractor**")

	Details	10
	General terms	12
1	Definitions, Interpretation and General	12
1.1	Definitions	12
1.2	Interpretation	51
1.3	No bias against drafting party	53
1.4	Provisions limiting or excluding liability	53
1.5	Discretion	53
1.6	Ambiguous Terms	54
1.7	Order of Precedence	55
1.8	Authorities	55
1.9	Independent Certifier Deed	56
1.10	Deed Commencement Date	57
1.11	Not used	57
1.12	Not used	57
1.13	Heavy Vehicle National Law	57
1.14	Statutory Declaration	57
1.15	Audit rights	57
2	Contractor's Activities	58
2.1	Scope	59
2.2	Subcontracts	61
2.3	Compliance with Law, Codes and Standards	66
2.4	Legal Challenge to Approval	73
2.5	Utility Service Works	74
2.6	Crown Building Work	77
2.7	Principal contractor	77
2.8	Security and Guarantee and Indemnity	78
2.9	Replacement Security and Additional Security	81
2.10	Collusive Arrangements	82
2.11	Not used	83
2.12	Third Party Agreements and Utility Service Contractor Agreements	83
2.13	Co-operation with Interface Contractors and Other Contractors	86
2.14	██████████	91
2.15	Prevention of nuisance and interference	91
2.16	Community	92
2.17	Incident Management	92
2.18	Working days and hours of work	94
2.19	NSW Government Aboriginal Procurement Policy	95
2.20	Industrial relations	95
2.21	Commencement of warranties	97
2.22	National security of Critical Infrastructure	97
3	The Site	99
3.1	Access and possession	99
3.2	Temporary Works	102
3.3	Management and control of the Site	102
3.4	Remote Sites and Extra Land	104
3.5	Site Conditions	105
3.5A	Woo-la-ra Leachate System	108
3.5AA	Woo-la-ra Leachate System, Woo-la-ra Landfill and Triangle Transport Landfill	113
3.6	Information Documents and Materials	114

3.7	Valuable Finds	117
3.8	Contamination	119
3.8A	Target Cost Election	127
3.9	Not used	129
3.10	Hazardous Materials	129
3.11	Environmental compliance	130
3.12	Principal's right to access and Inspect	131
3.13	Access to information	133
3.14	Existing Operations	133
3.15	Works to be Constructed on the Asset Lands	135
3.16	Condition Surveys	136
3.17	Waste Disposal	136
3.18	Principal not in control	136
3.19	Native Title Claims	136
3.20	Aboriginal Land Claims	137
3.21	Road Occupancy Licences	138
3.22	Principal's Data	139
3.23	Maritime access requirements	140
4	Compliance	140
4.1	Quality of Work	140
4.2	Management Requirements	141
4.3	Environmental Management	141
4.4	WHS Management	141
4.5	No Relief from Obligations	142
4.6	TAO Compliance	142
4.7	Rail Safety National Law	143
4.8	Contractor's Initial Project Plans	143
5	Design and Design Documentation	144
5.1	Contractor's Design Obligations	144
5.2	ITP and compliance with SPR and the Contractor's Outline Design	146
5.3	Digital Engineering	147
5.4	Contractor's Outline Design and Information from Tenderer's Tender Documents	147
5.5	Preparation and submission of Design Documentation	147
5.6	Third Party Works and Utility Service BAU Works	149
5.7	Certification of Design Documentation and Authority Approvals	149
5.8	Explanation of Design Documentation	149
5.9	Review of Design Documentation	150
5.10	Process for submission and approval of Non Configurable Utility Services	154
5.11	AFC Design Documentation	154
5.12	Contractor not to proceed at own risk	155
5.13	Ownership of Contract Documentation and methods of working	155
5.14	Delivery up of Contract Documentation	158
5.15	Warranty and indemnity	158
5.16	Design meetings	158
5.17	Work method	159
6	Variations	159
6.1	Proposed Variations	159
6.2	Variation Orders	160
6.3	Options	161
6.4	Valuation	162

6.5	Omissions	163
6.6	Daywork	163
6.7	Valuation of daywork	164
6.8	Variations Requested by the Contractor	164
6.9	Determination by the Principal's Representative	165
6.10	Variation approved by the Principal's Representative	165
6.11	Contractor's entitlements	165
6.12	No Variation or Claim	166
6.13	Authority Approvals for Variations	166
6.14	No liability unless Variation Order	167
6.15	Cost of preparing response to Variation Proposal Request	167
7	Construction	167
7.1	Construction	167
7.2	Not Used	168
7.3	Construction warranties	168
7.4	Performance of the Contractor's Activities	169
7.5	Right to inspect	170
7.6	All work included	170
7.7	Setting out	171
7.8	Survey	171
7.9	Cleaning up	172
7.10	Safety	172
7.11	Construction Plant and materials removal	174
7.12	Principal Supplied Items	174
7.13	Ausgrid 132kV Transmission Line Relocation	175
8	Defects	179
8.1	Defects	179
8.2	Defect process	179
8.2A	Urgent Defects	182
8.3	Acceptance of Defect and Valuation	183
8.4	Defects rectification notification	183
8.5	Defects Rectification Methodology requirements	183
8.6	Contractor's risk	184
8.7	Not used	184
8.8	Defects in Third Party Works and Utility Service BAU Works	184
8.9	Not Used	185
8.10	Failure by the Contractor to comply with direction	185
8.11	Rights not affected	185
8.12	Use of defective Enabling Works	185
9	Administration	185
9.1	Principal's Representative	185
9.2	Replacement of the Principal's Representative	186
9.3	Delegation of functions	186
9.4	Independent Certifier	187
9.5	Environmental Representative	188
9.6	Contractor's Personnel	189
9.7	Meetings and reporting	190
9.8	Complaints and notification	190
9.9	Exchange of information between Government Agencies	191
9.10	Financial Assessment	191

9.11	National Greenhouse and Energy Report Act 2007 (Cth)	192
9.12	Documents to be submitted to the Principal	193
9.13	Proof Engineer	196
10	Time and Progress	198
10.1	Rate of Progress	198
10.2	Enabling Works Program Obligations	198
10.3	Contractor not relieved	200
10.4	Compression by the Contractor	200
10.5	Importance of on time completion	201
10.6	Risk	201
10.7	Extension of time	201
10.8	Reduction in time	202
10.9	Unilateral extension of time	203
10.10	Delay costs	203
10.11	Suspension	205
10.12	Direction to Compress	206
10.13	Withdrawal of compression direction	206
10.14	Partial compression	206
10.15	Compression	206
10.16	Principal's right to liquidated damages not affected	207
10.17	Event ceases	207
10.18	Contractor's Entitlements	207
11	Payment	207
11.1	Conditions precedent	207
11.2	Contractor's Activities	209
11.3	Provisional Sums	209
11.4	Reimbursable Work Price	211
11.5	Unfixed Plant and Materials	211
11.6	Initial Payment	212
11.7	Payment Claims	212
11.8	Payment Statements	215
11.9	Payment	216
11.10	Payment on Account	216
11.11	Payment of employees and Subcontractors	216
11.13	Utilities payments	218
11.13A	Contamination payments	220
11.14	Completion Payment Claim	223
11.15	Release after Completion Payment Claim	225
11.16	Final Payment Claim	225
11.17	Release after Final Payment Claim	227
11.18	Interest	227
11.19	Correction of Payment Statements	227
11.20	Costs Allowed by the Contractor	227
11.21	Security of Payment Act	228
11.22	Payment Withholding Request under Division 2A of Part 3 of the SOP Act	229
11.23	Title	230
11.24	No double up	230
11.25	Materials price cost adjustment	230
12	Completion	232
12.1	Portion Completion	232

12.2	Effect of Certificate of Portion Completion	233
12.3	Not used	233
12.4	Enabling Works Practical Completion	233
12.5	Effect of Certificate of Enabling Works Practical Completion	234
12.6	Independent Certifier determination	234
12.7	Not used	234
12.8	Interpretation of Portions	234
12.9	Consequences of Portion Completion	234
12.10	Third Party Works	235
12.11	Additional Portions	236
12.12	Not used	236
12.13	Liquidated Damages	236
12.14	Limit of Liquidated Damages	238
12.15	Final Completion	238
12.16	Effect of Notice of Final Completion	240
13	Care of the Work, Risks and Insurance	240
13.1	Care of the Works	240
13.2	Other Risks	241
13.3	Reinstatement	242
13.4	Works, public liability insurance and pollution liability insurance	242
13.5	Contractor's insurance obligations	242
13.6	General insurance policies	245
13.7	Period of Insurance	246
13.8	Notice of potential Claim	247
13.9	Cross Liability	247
13.10	Loss or Damage to Third Party Property	248
13.11	Risk of deductibles	248
14	Default or Insolvency	248
14.1	Contractor Events of Default	248
14.2	Default Notice	250
14.3	Cure Plan	250
14.4	Prevention Plan	251
15	Step-In	252
15.1	Step-in Events	252
15.2	Step-in Rights	253
15.3	Step-in Powers	253
15.4	Contractor's obligations	254
15.5	Principal's obligations	255
15.6	No liability	255
15.7	Step-out	255
16	Termination	256
16.1	Contractor Termination Events	256
16.2	Notice of a Contractor Termination Event	256
16.3	Termination for Contractor Termination Event	256
16.4	Principal's rights after termination	257
16.5	Principal's Entitlements after take-out	259
16.6	Parties' rights after termination	259
16.7	Contractor's rights after repudiation or wrongful termination	260
16.8	Termination for convenience	260
16.9	Payment with Termination for convenience or frustration	261

16.10	Codification of the Contractor's entitlements	262
16.11	Preservation of rights	262
17	Early notification of issues	262
17.1	Early Warning Notice	262
17.2	The issue resolution process	263
17.3	Prescribed Notices	264
17.4	Additional information	266
17.5	Discussion at ENG	266
17.6	Bar	267
17.7	Evaluation by the Principal's Representative	267
17.8	Principles for evaluation	267
17.9	Other Provisions Unaffected	269
17.10	Agreement	269
18	Issue Resolution	270
18.1	Executive negotiation	270
18.2	Notice of dispute	273
18.3	Bar	274
18.4	Discussions between representatives	274
18.5	Meeting of ENG	274
18.6	Referral to expert determination	275
18.7	Expert determination	275
18.8	Settlement	275
18.9	Referral after expert determination	276
18.10	Exclusion of proportionate liability from determination or award	276
18.11	Limitation Periods	276
18.12	Severance	276
18.13	Jurisdiction	276
18.14	Consolidation and joinder	276
18.15	Survive Termination	277
18.16	Continuation of Work	277
18.17	Urgent Relief	277
18.18	IC Determinations	278
18.19	Character of IC Determination Reviews	279
19	General	279
19.1	Form of notices	279
19.2	Delivery of notices	280
19.3	Delivery of Design Documentation	280
19.4	PDCS	280
19.5	Notices for delivery by hand and the PDCS	281
19.6	Law and jurisdiction	281
19.7	No waiver	281
19.8	Entire agreement	282
19.9	Joint and several liability	282
19.10	Severability	282
19.11	Indemnities to survive	282
19.12	Stamp duty and other fees	283
19.13	Taxes	283
19.14	Confidentiality	283
19.15	Right of set-off	284
19.16	Principal may act	285
19.17	Unlimited discretion	285

19.18	No partnership, joint venture or other fiduciary relationship	286
19.19	Process agent	286
19.20	Indemnity from Contractor	286
19.21	Exclusions from indemnity	289
19.22	Exclusion of Consequential or Indirect Loss	290
19.23	Procedure for third party Claims	291
19.24	Obligations not affected	292
19.25	Contractor's liability caps	292
19.26	Exceptions to liability caps	292
19.27	Effect of insurance	293
19.28	State exclusion	294
19.29	Proportionate liability	295
19.30	Prior work	296
19.31	Design Life	296
19.32	Counterparts	296
19.33	Personal Property Securities Act	296
19.34	Vienna Convention	297
19.35	Not used	297
19.36	Certification	297
19.37	Cost of performing obligations	297
19.38	Amendments	298
19.39	Survival of certain provisions	298
19.40	Longstop for Liability	298
20	General Provisions Relating to GST	299
21	NSW Code of Practice	300
21.1	NSW Code and NSW Guidelines	300
21.2	Primary Obligation	300
21.3	Access and information	300
21.4	Sanctions	301
21.5	Compliance	301
22	Change of Ownership	302
23	Restrictions	303
23.1	Restrictions on assignment	303
23.2	Restrictions on dealings with PLR	303
23.3	Restrictions on related party contracts	303
	Signing Page	304
Schedule 1	Contract Particulars	307
Schedule 2	Payment Schedule	308
Schedule 3	Contractor's Certificate of Remediation Compliance	309
Schedule 4	Form of Confidentiality Undertaking	310
Schedule 5	Certificates of Design Compliance	311
Schedule 6	Certificates of Construction Compliance	312
Schedule 7	Certificates of Completion	313
Schedule 8	Contractor's Certificate of Contract Completion	314
Schedule 9	Contractor's Personnel	315
Schedule 10	Initial Project Plans	316

Schedule 11	Actions in Complying with Planning Approval and Third Party	
Agreements	317	
Schedule 12	Subcontractors - Security of Payment	318
Schedule 13	Consultant Deed of Covenant	319
Schedule 14	Proposed Permanent Light Rail Corridor	320
Schedule 15	Heritage Location	321
Schedule 16	Form of Unconditional Undertaking	322
Schedule 17	Information Documents and Materials	323
Schedule 18	Information from Tenderer's Tender Schedules	324
Schedule 19	Form of Warranty	325
Schedule 20	Form of Statutory Declaration	326
Schedule 21	Property Owner's Certificate	327
Schedule 22	Site and Site Requirements	328
Schedule 23	Form of Subcontractor Deed	329
Schedule 24	Form of Consultant Deed of Novation	330
Schedule 25	Options	331
Schedule 26	Not used	332
Schedule 28	Not Used	334
Schedule 29	Not Used	335
Schedule 30	Deed of Guarantee and Indemnity	336
Schedule 31	Enabling Works Program	337
Schedule 32	Principal Supplied Items	338
Schedule 33	Reference Documents	339
Schedule 34	Independent Certifier Deed	340
Schedule 35	Form of Proof Engineer's Certificate	341
Schedule 36	CCritical Utility Works Completion Dates	342
Schedule 37	Viva Extra Land	343
Schedule 38	Statutory Declaration (Trade Unions)	344

Exhibit A	[REDACTED]	346
Exhibit B	[REDACTED]	347
Exhibit C	[REDACTED]	348
Exhibit D	[REDACTED]	349
Exhibit E	[REDACTED]	350
Exhibit F	[REDACTED]	351
Exhibit G	[REDACTED]	352
Exhibit H	[REDACTED]	353
Exhibit I	[REDACTED]	354
Exhibit J	[REDACTED]	355
Exhibit K	[REDACTED]	356

Details

Parties	Principal and Contractor	
Principal	Name	Transport for NSW a NSW Government agency, a corporation constituted by section 3C of the Transport Administration Act 1988 (NSW)
	ABN	18 804 239 602
	Address	7 Harvest Street Macquarie Park NSW 2113
Contractor	Name	John Holland Pty Ltd
	ABN	11 004 282 268
	Address	Level 9, 180 Flinders Street, Melbourne VIC 3000
Governing law	New South Wales	
Business Day place (s)	Sydney, Australia	
Recitals	A	On 8 December 2015, the NSW Government announced its intention to deliver the PLR.
	B	On 1 June 2022, the NSW Government announced its intention to deliver the Project, being the first phase of PLR Stage 2.
	C	The Principal has been selected by the NSW Government as the proponent for the development and delivery of the PLR.
	D	The Contractor acknowledges the importance of: (i) a whole of Project approach to the Project in order to achieve the Project Objectives;

-
- (ii) completing the Enabling Works for the successful delivery of PLR Stage 2 and the overall PLR Program;
 - (iii) successful outcomes in respect of the public domain and urban design;
 - (iv) the safety of the public and all Project participants during the construction of the Enabling Works;
 - (v) the minimisation of disruption to the community; and
 - (vi) the need to approach the performance of the Contractor's Activities in a co-operative and positive manner.

E The design and construction of the Enabling Works are being delivered under this Deed.

F The Contractor has participated in the Interactive Tender Process (ITP), and as a consequence:

- (i) has reviewed the SPR;
- (ii) understands that the Enabling Works are the first stage of PLR Stage 2 and must integrate with PLR Stage 2; and
- (iii) is aware of the Principal's reliance on the Contractor's delivery of the Enabling Works in accordance with the SPR and the Management Requirements.

G Following completion of a public tender process, the Principal selected the Contractor as the successful proponent to design and construct the Enabling Works in consideration of the Contract Sum in accordance with the terms of this Deed.

H The Principal will rely upon the Contractor to carry out the Contractor's Activities:

- (i) in accordance with this Deed;
- (ii) consistently with the matters set out in these Recitals; and
- (iii) consistently with the Contractor's representation that it has the resources and expertise to perform the Contractor's Activities in accordance with this Deed.

I In reliance on these representations made by the Contractor and on the basis of the reliance by the Principal on these representations, the Principal has engaged the Contractor to perform the Contractor's Activities on the terms of this Deed.

General terms

1 Definitions, Interpretation and General

1.1 Definitions

In this Deed, unless the context otherwise indicates:

Aboriginal Land Claim means any claim or application for a determination of native title under the *Aboriginal Land Rights Act 1983* (NSW) or any similar Law.

Accreditation or Accredited means accreditation (including provisional accreditation) under Part 3 of the Rail Safety National Law (or an exemption from the same).

Act of Prevention means:

- (a) a breach of this Deed by the Principal;
- (b) any other act of the Principal or its Associates or an Other Contractor, except where such act is:
 - (i) expressed as not constituting an Act of Prevention pursuant to the provisions of this Deed;
 - (ii) caused by, contributed to or arising out of the failure of the Contractor to fulfil its obligations under this Deed or any act or omission of an Associate of the Contractor; or
 - (iii) in the exercise by the Principal of its functions and powers pursuant to any Law; and
- (c) a Variation Order, excluding a Variation directed in the circumstances described in clause 8.4 or a Variation approved under clause 6.9(a)(ii).

[REDACTED]

AFC Design Documentation means the Design Documentation which:

- (a) in the Contractor’s opinion, is sufficiently developed and complete that it can be used for the purpose of constructing the relevant part of the Enabling Works and may be submitted for review under clause 5.5;

- (b) is submitted by the Contractor in accordance with clause 5.5 and in respect of which the preconditions to submission set out in clause 5.5 have been satisfied;
- (c) includes all safety performance reports prepared and certified by a TAO that are required under Rail Safety National Law in relation to the Contractor's identification and management of safety risks in relation to the operation of the PLR;
- (d) where relevant, has received a Configuration Change Acceptance Notice;
- (e) is marked by the Contractor "AFC" or "Approved for Construction"; and
- (f) is issued by the Contractor to the Principal for its records.

AFC Design Stage means the AFC design stage as described in the Management Requirements.

AMB Charter means the document which identifies the AMB's objectives, functions, powers and governance, and the duties of Rail Transport Agencies and TAOs in relation to the AMB (as amended from time to time), a copy of which can be found on www.transport.nsw.gov.au/industry/asset-management-branch.

AMB Requirements has the meaning assigned to it in the AMB Charter.

Amendment Report means, in respect of the Project, the Parramatta Light Rail (Stage 2) Amendment Report (CSSI 10035) published by the (former) Department of Planning and Environment on 10 October 2023.

Applicable Cure Period has the meaning given to that term in clause 14.3(d)(i).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]

[illegible][illegible][illegible][illegible]

- [illegible]

- (f) maintenance;
- (g) modification; and
- (h) decommissioning, demolition and disposal,

and includes assurance of such activities including safety.

Asset Lifecycle Works means the aspects of the Enabling Works which relate to the Asset Lifecycle of Transport Assets.

Asset Management Branch or **AMB** means the unit within TfNSW, which sets, controls, maintains, owns and publishes the network and asset standards for NSW Rail Assets as defined in the TAO Charter. Information about the AMB and the network and asset standards can be found on www.transport.nsw.gov.au/industry/asset-management-branch.

Associates means:

- (a) in respect of the Principal, the Principal's Representative and any of the respective employees, agents, contractors, consultants or officers of the Principal and the Principal's Representative, but excludes:
 - (i) the Independent Certifier;
 - (ii) the Environmental Representative;
 - (iii) the Contractor and its Subcontractors;
 - (iv) the Proof Engineer;
 - (v) the Third Parties and any of their respective employees, agents, contractors, consultants or officers; and
 - (vi) employees, agents, consultants and officers of the persons listed in paragraphs (i) to (v) above; and
- (a) in respect of the Contractor, its Subcontractors and any of the respective employees, agents, contractors, consultants or officers of the Contractor and its Subcontractors (excluding the Independent Certifier, the Proof Engineer, and any of their employees, agents, consultants and officers).

Ausgrid means Ausgrid Operator Partnership ABN 78 508 211 731.

Ausgrid Design Documents means the documents identified as such in Schedule 17.

Authority includes any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality (including AMB), and any private electricity, telecommunications, gas or other utility company having statutory rights in relation to the Enabling Works or the Contractor's Activities.

Authority Approval means any licence, permit, consent, approval, determination, exemption, certificate, memorandum of understanding, notification or permission from any Authority or under any Law, or any requirement made under any Law, which must be obtained or satisfied (as the case may be) to:

- (a) carry out the Contractor's Activities including, for the avoidance of doubt, all things required for conducting work within the Site or Permanent Enabling Works Corridor affecting rail operations and all things required for dealing with, transporting and disposing of Contamination or any other spoil or waste; or
- (b) occupy and use for its intended purpose the completed Enabling Works or a completed Portion,

and for the avoidance of doubt includes:

- (c) the Planning Approval;
- (d) the Transitway Declaration;
- (e) the Route Declaration;
- (f) any Environment Protection Licence issued in relation to the Contractor's Activities;
- (g) the Remediation Action Plan; and
- (h) all permits to Work.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Best Industry Practice means (subject to any express provisions of this Deed which impose higher standards) the practices which are adopted by experienced and competent designers, engineers and builders, with respect to works similar to the Enabling Works and activities similar to the Contractor's Activities which, with respect to any objective, may be expected, in the exercise of that expertise, to accomplish that objective in a manner consistent with this Deed regarding quality, safety and environmental protection, including:

- (a) using effective procurement methods;
- (b) complying with all Laws;

- (c) using good quality, new, or where appropriate suitable recycled materials, undamaged equipment and materials for the Enabling Works, which are suitable for the purpose for which they are required;
- (d) ensuring that all workmanship and construction techniques are of the quality and standards as required by this Deed; and
- (e) complying with relevant Codes and Standards.

Business Day means any day other than a Saturday, Sunday, public holidays in New South Wales or 24, 27, 28, 29, 30 or 31 December or 2 January.

[REDACTED]

CCU means the construction compliance unit administered by NSW Industrial Relations.

Certificate of Enabling Works Practical Completion means a certificate issued by the Independent Certifier certifying that the Contractor has achieved Enabling Works Practical Completion in the form set out in Schedule 7.

Certificate of Portion Completion means a certificate issued by the Independent Certifier certifying that the Contractor has achieved Portion Completion of a Portion in the form set out in Schedule 7.

Change in Authority Approval means a change:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) which necessitates a Variation;
- (d) which would not have been reasonably foreseen or anticipated as at the date of this Deed by a party experienced and competent in the delivery of works and services similar to the Enabling Works or the Contractor's Activities (as applicable) in substantially the same form as the Change in Authority Approval; and
- (e) [REDACTED]

Change in Codes and Standards means [REDACTED] a change in the Codes and Standards

(including the introduction of new Codes and Standards relevant to the Contractor's Activities), excluding:

- (a) a change in the Codes and Standards (or the introduction of new Codes and Standards) which, [REDACTED]:
 - (i) was published or of which public notice had been given (even as a possible change in the Codes and Standards); or
 - (ii) a party experienced and competent in the delivery of works and services similar to the Enabling Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated; and
- (b) the circumstances referred to in clause 2.3(i)(iii).

Change in Law means [REDACTED]

- (a) a change in an existing Law (other than a change in an Authority Approval); or
- (b) a new Law (other than a new Authority Approval),
compliance with which:

- (c) has a direct effect on the Contractor carrying out the Contractor's Activities; and
- (d) directly results in an increase or decrease in the Contractor's costs of carrying out the Contractor's Activities, or a delay to the Contractor achieving Portion Completion of a Portion by the relevant Date for Portion Completion in accordance with 10.7,

but excludes:

- (e) a change in an existing Law in respect of Taxes or a new Law in respect of Taxes; and
- (f) a change in an existing Law or a new Law which, as at the date of this Deed:
 - (i) was published or of which public notice had been given (even as a possible change in an existing Law or a possible new Law); or
 - (i) a party experienced and competent in the delivery of works and services similar to the Enabling Works or the Contractor's Activities (as applicable) would have reasonably foreseen or anticipated.

Change of Ownership has the meaning given to that term in clause 22(a).

Claim means any claim, action, demand or proceeding for an increase in the Contract Sum, for payment of money (including damages), for an extension of time or for any other form of relief:

- (a) under, arising out of or in any way in connection with this Deed, including any direction of the Principal's Representative;

- (b) arising out of, or in any way in connection with, the Contractor's Activities or the Enabling Works or either party's conduct prior to the date of this Deed; or
- (c) otherwise at Law, including:
 - (ii) under or for breach of any statute;
 - (iii) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (iv) for restitution, including restitution based on unjust enrichment.

Codes and Standards means:

- (a) the relevant codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed (including the *Disability (Access to Premises – Buildings) Standards 2010*), including specifically those identified in the Management Requirements, SPR and all Reference Documents;
- (b) the Code of Practice for Procurement (January 2005), NSW Government's Aboriginal Procurement Policy in Construction (January 2021), NSW Code, NSW Guidelines, Environmental Management Systems Guidelines (4th edition) (June 2020), Work Health and Safety Management Guidelines for Construction Procurement (6th edition), Training Management Guidelines (February 2009), Quality Management System Guidelines for Construction (December 2019), NSW Government Resource Efficiency Policy (GREP) (2014 updated February 2019), the New South Wales Industrial Relations Guidelines: Building and Construction Procurement published on July 2013 and updated on September 2017 and any other NSW Government guidelines and requirements specified or required by this Deed; and
- (c) if (and to the extent) the codes and standards referred to in paragraphs (a) or (b) are irrelevant, then relevant international codes, standards, specifications, guidelines, rules, procedures or other publications current at the date of this Deed.

Commencement Date means the date identified in Schedule 1.

Commonwealth means the Commonwealth of Australia.

Completion Payment Claim has the meaning given to the term in clause 11.14.

Compliance Auditor means [REDACTED]

Condition Survey has the meaning given to that term in clause 3.16(a).

Confidentiality Undertaking means a confidentiality undertaking in the form provided for in Schedule 4.

Configuration Change Acceptance Notice (or CCAN) means a notice of that name issued by the Configuration Control Board in respect of Design Documentation.

Configuration Control Board means the board established by the Principal to manage configuration changes for the Infrastructure and Services Division of the Principal's programs and projects in accordance with the Technical Supplier Assurance Framework.

Consequential or Indirect Loss means:

- (a) any Loss that does not flow directly and naturally from the relevant breach of this Deed or a duty of care; and
- (b) the cost of capital or other financing costs, any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract (other than this Deed), loss of goodwill, loss of use, loss arising from business interruption, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

Construction Environment Management Plan means the plan which forms part of the Project Plans, which is required to be provided and implemented by the Contractor pursuant to the Management Requirements.

Construction Licences means the licences, sub-licences and access rights specified in Schedule 22 and exhibited in Exhibit J and Exhibit I.

Construction Management Plan means the plan which forms part of the Project Plans, which is required to be provided and implemented by the Contractor pursuant to the Management Requirements.

Construction Plant means equipment, appliances, machinery and things used in the execution of the Contractor's Activities but not forming part of the Enabling Works.

Contamination means the presence in, on or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the environment.

Contamination Classification has the meaning given to that term in clause 3.8(f)(i)(B)(ad).

[REDACTED]

Contamination Disposal Volume has the meaning given to that term in clause 3.8(f)(i)(B)(ad).

[REDACTED]

Contamination Reports means the reports specified in Schedule 17.

Contamination Re-Use Volume has the meaning given to that term in clause 3.8(f)(i)(B)(ad).

Contamination System means:

- (a) the Woo-la-ra Leachate System; or
- (b) any other:
 - (i) leachate collection and drainage system including pumps, manholes, tranches, discharge lines, liquid level monitors, piezometers, pumpstations, atlantis or polyethylene drainage cells, liners, filters, mesh, pumps; or

(ii) collection system and drainage system,

for contaminated water and/or other contaminated materials on, under, above, adjacent to or related to the Site, Remote Sites or Extra Land.

[REDACTED]

[REDACTED]

Contract Documentation means:

- (a) all Design Documentation; and
- (b) all Materials, documents, images, photographs and software plans, manuals and programs relevant to the Contractor's Activities,

prepared or created by the Contractor in connection with the Contractor's Activities or the Enabling Works (whether before or after the date of this Deed).

Contract Sum means the Original Contract Sum as adjusted pursuant to this Deed.

Contractor Background Material means all Materials, documents, images, photographs and software plans, manuals and programs (excluding Third Party Material) that exist at the date of this Deed and were created by or on behalf of the Contractor, or licensed to the Contractor, other than in connection with this Deed (including the Interactive Tendering Process), the Contractor's Activities or the Enabling Works.

Contractor Event of Default has the meaning given to that term in clause 14.1.

Contractor Termination Event means any event specified in clause 16.1.

Contractor's Activities means all things or tasks which the Contractor is, or may be, required to do to comply with its obligations under this Deed, including:

- (a) the design, construction, commissioning and handover of the Enabling Works;
- (b) the provision of Temporary Works and Construction Plant;
- (c) the Utilities Target Cost Scope;
- (d) the Contamination Target Cost Scope;
- (e) anything it is required to do under the Independent Certifier Deed;
- (f) the rectification of Defects; and
- (g) anything incidental or ancillary to the obligations in paragraphs (a) to (f).

Contractor's Certificate of Construction Compliance means a certificate from the Contractor in the form provided for in Schedule 6, certifying that the procurement and construction of the work packages complies with the requirements of this Deed.

Contractor's Certificate of Design Compliance means a certificate from the Contractor, in the form provided for in Schedule 5, certifying that the Design Documentation complies with the requirements of this Deed.

Contractor's Certificate of Final Completion means a certificate from the Contractor in the form provided for in Schedule 8, certifying that Contract Completion has been achieved in accordance with this Deed.

Contractor's Certificate of Portion Completion means a certificate from the Contractor in the form provided for in Schedule 7, certifying that the Contractor considers that Portion Completion of a Portion has been achieved in accordance with this Deed.

Contractor's Certificate of Remediation Compliance means a certificate from the Contractor in the form provided for in Schedule 3, certifying that the Contractor has complied with clause 3.7(f).

Contractor's Outline Design means the design located in Exhibit C.

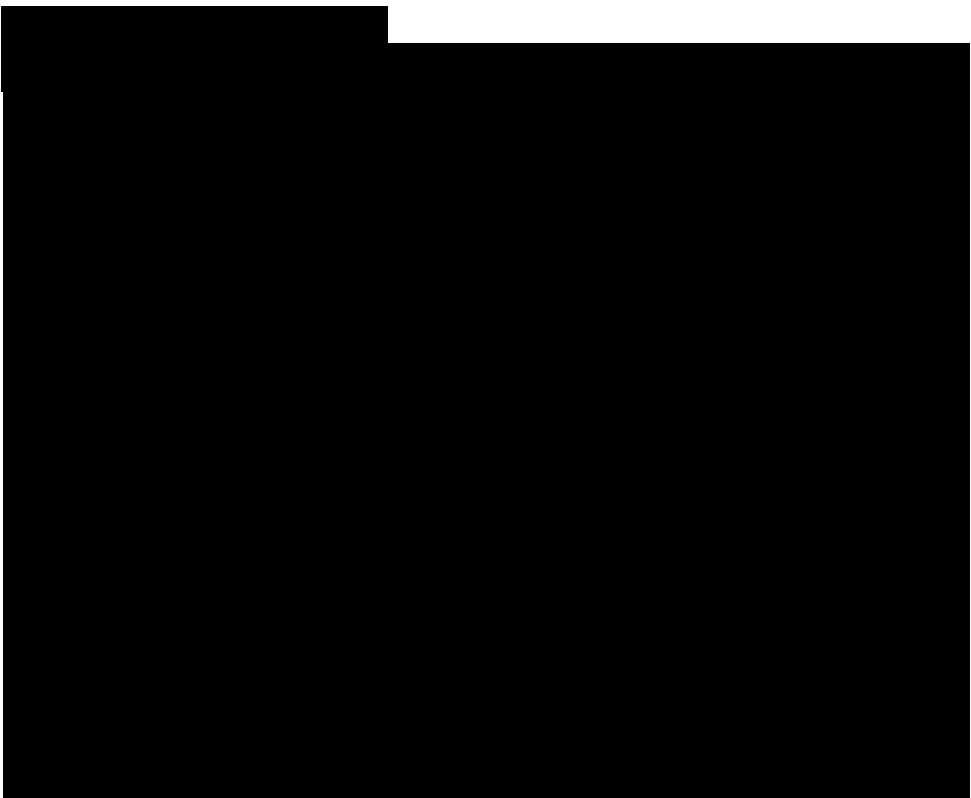
Contractor's Personnel means the personnel described in Schedule 9.

Contractor's Representative means the person notified to the Principal's Representative in accordance with clause 9.6(a)(i) as being the Contractor's Representative.

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

Critical Infrastructure Asset means an asset (including a system) owned or operated by, or the responsibility of the Principal:

- (a) which is a "critical public transport asset" or "critical freight infrastructure asset" as defined in the Security of Critical Infrastructure Legislation; and
- (b) where the business impact of a data breach, loss of availability, fraud or failure due to a cyber incident or breach would constitute a 'catastrophic consequence' (as determined by the Principal's Representative).



Critical Utility Works Completion Date means

[REDACTED]

Critical Utility Works Mandatory Notice means:

[REDACTED]

Crown Building Work has the meaning given to the term 'crown subdivision, building, demolition and incidental work' in section 6.28 of the EP&A Act.

Cyber Security Incident has the meaning given to that term in section 12M of the *Security of Critical Infrastructure Act 2018* (Cth).

Date for Enabling Works Practical Completion means [REDACTED]

[REDACTED]

Date for Portion Completion means [REDACTED]

[REDACTED]

Date of Enabling Works Practical Completion means [REDACTED]

[REDACTED]

Date of Final Completion means:

[REDACTED]

Date of Portion Completion means [REDACTED]

[REDACTED]

Date of Third Party Handback means [REDACTED]

[REDACTED]

DDR Design Stage means the 'DDR design stage' as described in the Management Requirements.

Deed means:

- (a) this document together with all of its Schedules, Annexures and Exhibits, as varied from time to time in accordance with its terms; but
- (b) does not include the Information Documents and Materials.

Deed of Disclaimer means the deed of disclaimer in Exhibit F.

Default Notice has the meaning given in clause 14.2.

Defect means any:

- (a) defect, deficiency, fault, error or omission in the Design Documentation, Enabling Works, Temporary Works or the Contractor's Activities; or
- (b) other aspect of the Design Documentation, Enabling Works, Temporary Works or the Contractor's Activities that is not in accordance with the requirements of this Deed, including non-compliances, non-conformances and non-conformities,

except where, following Portion Completion, it is caused by:

- (c) damage, only to the extent that such damage is not caused or contributed to by the Contractor or its Associates;
- (d) fair wear and tear; or
- (e) a failure to operate and maintain the Enabling Works in accordance with the Asset Information (including the relevant operation and maintenance manuals).

Defects Rectification Methodology has the meaning given to the term in clause 8.2(e).

Defects Rectification Period means the period stated in Schedule 1 and any further or extended rectification periods in respect of a Defect under this document.

Delay Costs means the costs payable pursuant to clause 10.10.

Design Documentation means:

- (a) all design documentation (including all Asset Information, design standards, concrete mix designs, design reports, durability reports, construction descriptions, specifications, models (including CAD and GIS models or any other digital engineering information), samples, prototypes, calculations, drawings, shop drawings, digital records, computer software and all other relevant data) in electronic, computer readable and written forms, or stored by any other means, required by this Deed, required for the performance of the Contractor's Activities, or necessary to be produced by the Contractor or a Designer to design and construct the Enabling Works and Temporary Works and documentation (including certificates and check lists) to evidence that the design documentation complies with the requirements of this Deed; and

- (b) computer software (including both Source Code and object code versions) where the computer software has been specifically created or specifically modified for the purposes of the Contractor's Activities.

Design Life means the periods specified for the Enabling Works (or parts of the Enabling Works) in the SPR, commencing on the Date of Portion Completion of the last Portion of the Enabling Works to achieve Portion Completion and ending on the day after expiry of the period specified in the SPR.

Design Stage means a design stage described in the Management Requirements.

Designer means each Subcontractor engaged by the Contractor to undertake the design of the Enabling Works (or any part) and, to the extent relevant, the Temporary Works (or any part).

Designer's Team means the team of persons (including the Designers) engaged in the design of the Enabling Works and, to the extent relevant, the Temporary Works.

Designers' Certificates of Design Compliance means the certificates from the most senior member of the Designer's Team (and where there is more than one design discipline involved in the relevant package or element, then the most senior member in each relevant discipline) involved in the design of the relevant package or element in the form provided for in Schedule 5 or such other form approved in writing by the Principal certifying that the Design Documentation complies with the requirements of this Deed.

Detailed Early Warning Notice means the notice given under clause 17.3(b).

Digital Engineering Execution Plan means the plan required by the Management Requirements, but not limited to, three dimensional (3D) design development and process management and controls, design coordination and collaboration, related technologies, life cycle asset data formation, document management and digital communications.

Document has the meaning given to that term in clause 9.12.

Draft Cure Plan has the meaning given to that term in clause 14.3(a)(iv).

Draft Prevention Plan has the meaning given to that term in clause 14.4(a)(ii).

Enabling Works means all physical works which the Contractor must design, construct, complete and handover in accordance with this Deed including the Third Party Works, Utility Service Works and Remote Works, and Variations directed in accordance with this Deed.

Enabling Works Lump Sum means the amount specified in Schedule 2, as adjusted in accordance with this Deed.

Enabling Works Practical Completion means the Contractor has delivered to the Principal's Representative:

- (a) the AFC Design Documentation for the Enabling Works;
- (b) the Maintenance Manuals for the Enabling Works;
- (c) the work as executed drawings;
- (d) the Safety Case Documentation which the Independent Certifier has certified under clause 4.7(e);

- (e) the Proof Engineer's Certificate in respect of the AFC Design Documentation for the Enabling Works;
- (f) such other documents in respect of each Portion as specified in Schedule 1; and
- (g) all Portions have achieved Portion Completion.

Enabling Works Program means the program prepared and provided by the Contractor in accordance with clause 10.2, as developed and updated in accordance with clause 10.2 from time to time, copy of which is at Schedule 31.

Endeavour Energy means Endeavour Energy ABN 59 253 130 878.

ENG Meeting has the meaning given to that term in clause 18.1(f)(ii).

ENG Member has the meaning given to that term in clause 18.1. The details of each ENG Member are set out in Schedule 1.

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).

Environmental Consultant means a suitably qualified and experienced environmental consultant with knowledge and expertise in Contamination matters who is:

- (a) engaged by the Contractor in accordance with the Remediation Action Plan;
- (b) a consultant certified through a scheme endorsed under the *Contaminated Land Consultant Certification Policy* (NSW EPA, Version 3, 2022); and
- (c) not an employee of the Contractor.

Environmental Impact Statement or (EIS) means, in respect of the Project, the Environmental Impact Statement (CSSI 10035), inclusive of additional information in support of the EIS (known as "Technical Papers 1-10") published by the Department of Planning and Environment for exhibition on 9 November 2022 and as amended by Amendment Report.

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 issued by an Authority in respect of a matter concerning the Environment.

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

Environmental Representative means the person identified in Schedule 1 as the environmental manager appointed by the Principal, or any replacement notified to the Contractor by the Principal's Representative.

EPA means the NSW Environment Protection Authority.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

EPBC Act Approval means the Federal Authority Approval under the EPBC Act set out in Exhibit E – Part 2 as it may be modified from time to time and in respect of the Enabling Works.

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

[REDACTED]

[REDACTED]

Excepted Risk means any one of:

- (a) war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped powers, martial law or confiscation by order of any government or public authority, in each case occurring within Australia;
- (b) a Terrorist Act occurring within Australia;
- (c) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, in each case occurring within Australia not caused by the Contractor or its Subcontractors or either's employees or agents; or
- (d) any other event so described in Schedule 1.

Executive Negotiation Group or **ENG** has the meaning given to that term in clause 18.1(a).

Executive Negotiation Period means 20 Business Days.

Existing Operations means the activities and operations of Utility Service Providers, Authorities and other persons on, around or affected by the Site.

[REDACTED]

Final Authorisation means a final authorisation issued by the AMB to a legal entity which authorises that entity to carry out the class of Asset Lifecycle work specified in the final authorisation, subject to any conditions of the authorisation, for the purposes of entering into a contract with a Rail Transport Agency.

Final Completion has the meaning given to that term in clause 12.15.

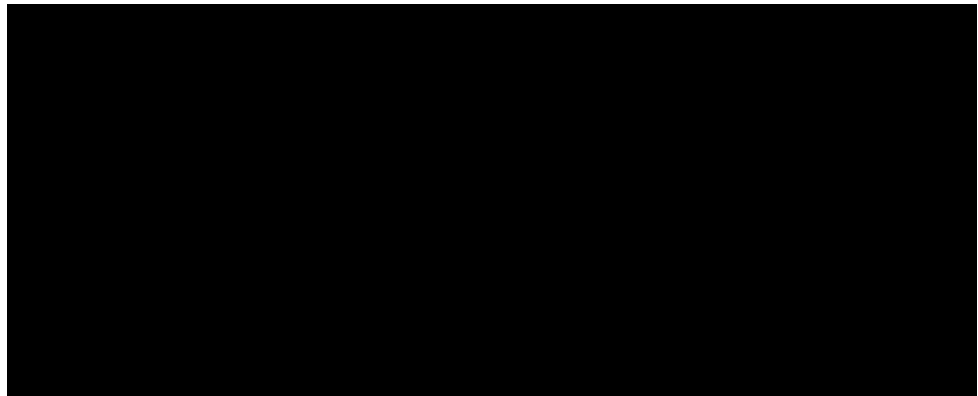
Final Payment Claim has the meaning given to that term in clause 11.16.

Financial Assessment has the meaning given to that term in clause 9.10(a).

Fit for Purpose means:

- (a) when used in the context of the Enabling Works, that the Enabling Works:
 - (i) are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the SPR and the Management Requirements;
 - (ii) are capable of remaining fit for their intended purposes, functions and uses for the Design Life (as specified or reasonably inferred from the SPR and the Management Requirements), provided that the requirement that the Enabling Works are capable of remaining fit for their intended purposes, functions and uses for the Design Life will not apply to the extent that such capability is detrimentally affected by the failure to operate and maintain the Enabling Works in accordance with the Asset Information (including the relevant operation and maintenance manuals); and
 - (iii) otherwise meet the requirements set out in or which can be reasonably inferred from this Deed; and
- (b) when used in any other context, that the products, materials or other things:
 - (i) are fit for their intended purposes, functions and uses as specified in, or reasonably inferred from, the SPR; and
 - (ii) otherwise meet the requirements set out in or which can be reasonably inferred from this Deed.

Force Majeure Event means:



but only where such events or circumstances:

- (f) are beyond the reasonable control of the Contractor;
- (g) are such that a competent contractor would not have been able to prevent or overcome the effect of such events or circumstances on the performance of the Contractor's obligations under this Deed if it had exercised the care, skill, diligence, prudence and foresight reasonably or ordinarily expected of a competent, qualified, skilled and experienced contractor supplying similar works; and
- (h) are not caused or contributed to in whole or in part by a breach by the Contractor of this Deed.

General Conditions means clauses 1 to 23 of this Deed.

General Liability Cap means the amount specified in Schedule 1.

Greenhouse Data means all data, information, records and reports of the type that a registered corporation or any other person may be required or entitled to provide under the NGER Legislation, including as to:

- (a) greenhouse gas emissions, energy production or energy consumption;
and
- (b) reduction of greenhouse gas emissions, removal of greenhouse gases or offsets of greenhouse gas emissions from any greenhouse gas project,

relating to any aspect of any Relevant Matters.

GST or Goods and Services Tax means the tax payable, or notionally payable, on taxable supplies under the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax.

Guarantee and Indemnity means the security provided by Guarantor which appears in Schedule 30.

Guarantor means each person named in Schedule 1.

Hazardous Materials means any natural or artificial substance whether solid, liquid or gas (alone or in combination with any other substance) in structures on, in or under the Site, a Remote Site or Extra Land, which is toxic, flammable or otherwise capable of causing harm to humans or damage to the Environment including asbestos, toluene, polychlorine biphenyls, lead based paints, glues, solvents, cleaning agents, paints, water treatment chemicals and stone containing silica.

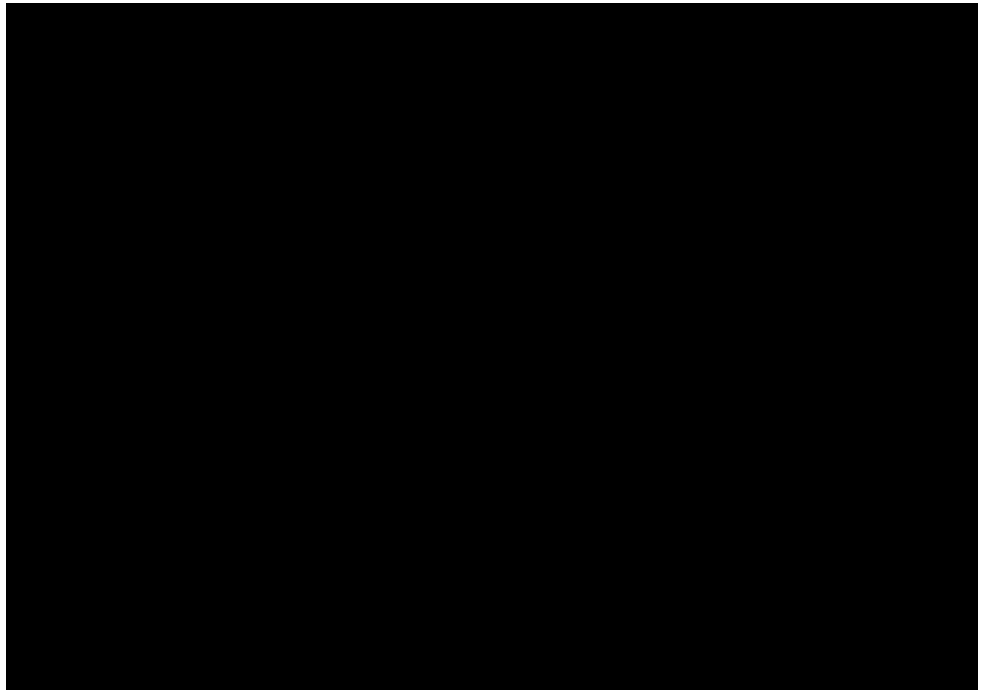
Heavy Vehicle National Law means the *Heavy Vehicle National Law (NSW) No 42a of 2013*.

Heritage Location means a site, location or area as described as a 'heritage location' in the plan attached at Schedule 15.

Hold Point means a verification point identified in the Management Requirements beyond which the relevant part of the Enabling Works may not proceed without the verification and subsequent written authorisation of the Principal's Representative or the relevant person nominated in the Management Requirements.

IC Determinations means all determinations made by the Independent Certifier in connection with this Deed.

Improper Union Arrangement means:



Incident means:

- (a) any work health and safety or environmental or security incident arising from the performance of (or failure to perform) the Contractor's Activities including:
 - (i) a fatality or injury to any person including any incident which must be reported to New South Wales WorkCover Authority;
 - (ii) loss of containment, escape of or migration of Contamination off-Site and into the Environment;
 - (iii) any fire or dangerous event on the Site, a Remote Site or Extra Land;
 - (iv) a security breach;
 - (v) any unauthorised removal of trees;
 - (vi) a non-compliance with an Authority Approval or Third Party Agreement; or
 - (vii) any public complaint; or
- (b) any unplanned and/or undesired event which results in or has the potential to result in injury, ill-health, damage to or loss of property, interruption to operations or environmental impairment arising from the performance of (or failure to perform) the Contractor's Activities,

and includes:

- (c) a near miss, breach of procedure, quality failure and/or injuries to contractors and members of the public; and
- (d) "occurrences" and "notifiable occurrences" under the WHS Legislation and the Rail Safety National Law.

Independent Certifier means the person specified in Schedule 1 and any replacement.

Independent Certifier's Certificate of Design Compliance means the certificates issued by the Independent Certifier in the form contained in Schedule 5 in accordance with clause 5.9(d)(ii)(B).

Independent Certifier Deed means the deed to be executed by the Principal, the Contractor and the Independent Certifier, in the form contained in Schedule 34.

Indicative Waste Classification Report means ID-PLR-R7-Final Contamination Interpretative Report Enabling Works R2, contained in Schedule 17.

Information Documents and Materials means:

- (a) the items specified in Schedule 17; and
- (b) all other documents, core and other samples, exhibits and materials in any format or medium including any electronic form provided to the Contractor prior to or after the execution of this Deed, unless expressly identified as forming part of this Deed,

including anything which is expressly stated by this Deed to form part of the Information Documents and Materials.

Information from Tenderer's Tender Documents means those documents contained in Schedule 18.

Initial Early Warning Notice means the notice provided under clause 17.3(a).

Initial Payment has the meaning given to that term in clause 11.6(a).

Initial Project Plans means the plans contained in Schedule 10.

Insolvency Event means when:

- (a) one party informs the other party in writing, or its creditors generally, that the party is insolvent or is unable to proceed with its obligations under this Deed for financial reasons;
- (b) in relation to an individual, the individual (being a party to this Deed) commits an act of bankruptcy, a bankruptcy petition is presented against the individual, or the individual is made bankrupt;
- (c) execution is levied against a party by a creditor, debenture holders or trustees or under a floating charge; or
- (d) in relation to a corporation any one of the following:
 - (i) notice is given of a meeting of creditors with a view to the corporation entering into a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement);
 - (ii) the corporation enters a deed of company arrangement or scheme of arrangement (other than a solvent scheme of arrangement) or composition with creditors;
 - (iii) an application is made for, a resolution is passed by the directors for the appointment of, or an order is made for, a

- controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator to be appointed to the corporation;
- (iv) a controller, administrator, receiver, receiver and manager, provisional liquidator or liquidator is appointed to the corporation;
 - (v) an application is made to a court for the sequestration or winding up of the corporation and not stayed, dismissed or discontinued within 21 days;
 - (vi) a sequestration order or winding up order is made in respect of the corporation;
 - (vii) the corporation resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up), or a meeting of creditors of a party under administration or a deed of company arrangement resolves that the corporation be wound up;
 - (viii) a mortgagee of any property of the corporation takes possession of that property; or
 - (ix) the corporation ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business, or disposes or threatens to dispose of all or a substantial part of its assets.

Inspection includes auditing, surveillance, monitoring, testing, review, examination and measuring.

Insurances means the insurances required to be effected and maintained in accordance with this Deed.

Intellectual Property Rights means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in Article 2 of the *Convention establishing the World Intellectual Property Organisation 1967*.

Interactive Tender Process (ITP) means the process conducted in the course of the procurement of this Deed during which the Contractor produced the Contractor's Outline Design and Initial Project Plans and reviewed and amended the SPR to satisfy the requirements of the Principal.

[REDACTED]

Interface Contractors' Activities means any activities undertaken by an Interface Contractor in performing the Interface Work.

Interface Work means the work to be executed by Interface Contractors.

Law means:

- (a) Commonwealth, New South Wales or local government legislation, including ordinances, instruments, codes of practice, policy and statutory guidance (but excluding the Building Code of Australia, any other building codes, or Standards Australia codes), requirements, regulations, by-laws and other subordinate legislation;
- (b) principles of law or equity established by decisions of courts; and
- (c) Authority 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 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; or
- (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.

Local Areas means all public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including their associated road reserves, which:

- (a) are adjacent to;
- (b) connect to;
- (c) intersect;
- (d) cross; or
- (e) are in any way affected by,

the Enabling Works or Temporary Works, including those sections of public spaces, parks, pedestrian ways, pedal cycle paths, local roads, state highways, regional roads and main roads, including any associated road reserves, that are made redundant or become service roads as part of the road network.

Loss means:

- (a) any cost, expense, loss, damage, liability or other amount; and
- (b) without being limited by paragraph (a) and only to the extent not prohibited by Law, any fine or penalty,

whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and, for the avoidance of doubt, includes Consequential or Indirect Loss.

Maintenance Manuals means the operation and maintenance manuals and other documents required to be provided for a Portion as specified in the SPR or Management Requirements.

Management Requirements means the documents which appear as management requirements contained in Exhibit A to this Deed and all plans developed in accordance with those documents.

Material means material in any form, including documents (written or electronic), reports, data and software.

[REDACTED]

Mitigation Measure means a measure, action, standard or precaution to mitigate the impact of the Enabling Works.

Monument has the meaning given to that term in the *Surveying and Spatial Information Regulation 2006* (NSW).

Moral Rights means any moral rights including the rights described in Article 6bis of the *Berne Convention for the Protection of Literary and Artistic Works 1886* (as amended and revised from time to time), being “droit moral” or other analogous rights arising under any applicable Law (including the *Copyright Act 1968* (Cth) or any Law outside Australia), that exists or may come to exist anywhere in the world.

Native Title Claim means any claim or application for a determination of native title under the *Native Title Act 1993* (Cth) or any similar Law.

NGER Legislation means the *National Greenhouse and Energy Reporting Act 2007* (Cth), related regulations and legislative instruments.

Nominated Licensed Waste Facility means [REDACTED]

Nominated Peak River Usage Periods has the meaning given to that term in Schedule 1.

Nominated Subcontractor means a Subcontractor identified in Schedule 1, or a Subcontractor included in a list of Subcontractors identified in Schedule 1, to whom the Contractor must subcontract the relevant Nominated Subcontract Work.

Nominated Subcontract Work means that supply of goods or services specified in Schedule 1 that may only be performed by the relevant Nominated Subcontractor.

Non Configurable Utility Services means Utility Services, changes to which are not required to be administered through the Configuration Control Board.

Notice of Dispute has the meaning given to that term in clause 18.2.

NSW Code means the New South Wales Government Code of Practice for Procurement (January 2005), or any substitute for, or update to, such code as contemplated in the NSW Guidelines.

NSW Guidelines means the New South Wales Government's Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (as published by the NSW Treasury July 2013 and updated September 2017).

NSW Instrument of Approval means the NSW Authority Approval under the EP&A Act set out in Exhibit E – Part 1 as it may be modified from time to time and in respect of the Enabling Works.

NSW Rail Assets has the meaning assigned to it in the AMB Charter.

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

Obligations Matrix means a schedule of responsibilities as outlined in Schedule 11.

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

Option means an option referred to in Schedule 25.

Original Contract Sum means the amount set out in Schedule 1.

[REDACTED]

[REDACTED]

[REDACTED]

Overhead Cost means the types of expenses and amounts set out in Schedule 2.

Overpayment has the meaning given to that term in clause 11.21(a)(ii).

Payment Claim has the meaning given to that term in clause 11.7(a).

Payment Schedule means Schedule 2.

Payment Statement has the meaning given to that term in clause 11.8(a).

PDCS means the web based data and collaboration system to be provided by the Principal and used by the Contractor for submission of all documents in accordance with this Deed.

PDR Design Stage means the PDR design stage as described in the Management Requirements.

[REDACTED]

Performance Security means the unconditional undertakings required under clause 2.8(a).

Permanent Enabling Works Corridor means that part of the Land required for the permanent Enabling Works.

Permanent Tenure Rights means the property rights granted to the Principal by a Third Party to enable the operation and maintenance of the PLR Stage 2.

Permitted Change in Ownership means a Change of Ownership described in clause 22(b).

Planning Approval means:

- (a) the Authority Approval set out in Exhibit E as it may be modified from time to time and any other Authority Approvals issued from time to time by either the Principal or the Minister for Planning and Infrastructure (or any successor to the Minister) (acting in their capacity as the determining authority under the EP&A Act) or the Federal Minister for the Environment and Water (or any successor to the Minister) (acting in their capacity as the determining authority under the EPBC Act) in respect of the Enabling Works; and
- (b) any Mitigation Measures, statement of commitments or other requirements that are to be complied with or fulfilled in the documents referred to in paragraph (a), including for the avoidance of doubt in the EIS and the 'Amendment Report'.

PLR means the light rail network to be constructed and operated to connect Parramatta to key areas being transformed by the NSW Government and private investment, including PLR Stage 1 and PLR Stage 2 and any modification or augmentation.

PLR Stage 1 means the 12km light rail system from Westmead to Carlingford via Parramatta CBD and Camellia, including all track, catenary systems, stops, light rail vehicles, the stabling and maintenance yard and the assets.

PLR Stage 2 means the light rail system from Parramatta CBD to Sydney Olympic Park, traversing through precincts of Camellia, Rydalmere, Ermington, Melrose Park, Wentworth Point, Sydney Olympic Park and Carter Street, including all track, catenary systems, stops, light rail vehicles and includes the PLR Stage 2 Enabling Works.

PLR Stage 2 Enabling Works means the bridge across the Parramatta River between Melrose Park and Wentworth Point (being the first phase of PLR Stage 2 to be delivered).

POEO Act means the *Protection of the Environment Operations Act 1997* (NSW).

Portion means a portion of the Site described in Schedule 1 as a Portion or which the Principal's Representative or Principal has determined pursuant to clause 12.11 will be a Portion.

Portion Completion means the stage in respect of a Portion when:

- (a) those Enabling Works are complete in accordance with this Deed and are Fit for Purpose and only have Defects which:

- (i) in the opinion of the Independent Certifier, the Contractor has reasonable grounds for not rectifying prior to the issue of a Certificate of Portion Completion; and
 - (ii) do not prevent the Enabling Works from being Fit for Purpose;
- (b) where those Enabling Works include Third Party Works, either:
 - (i) the requirements of clause 12.10(c) have been satisfied; or
 - (ii) the Contractor has satisfied all requirements for and obtained all required certifications in respect of “practical completion” for those Third Party Works under the relevant Third Party Agreement;
- (c) the Contractor has carried out and passed all tests which:
 - (iii) are required under this Deed to be carried out and passed in respect of those Enabling Works; and
 - (iv) must necessarily be carried out and passed before the Enabling Works can be used for its intended purpose and to verify those Enabling Works are in the condition this Deed requires it to be in at Enabling Works Practical Completion; and
- (d) the other requirements specified in Schedule 1 have been satisfied.

Portion Completion Sunset Date means

Portion (TPA) means a part of the Enabling Works which relates to Third Party Works and that has reached practical completion as determined by the Principal's Representative pursuant to clause 12.10(b).

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

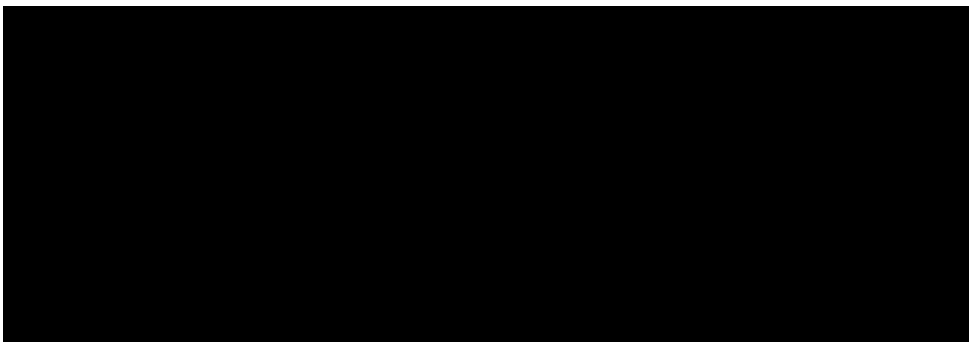
PPS Law means:

- (a) the PPS Act and any regulations made at any time under the PPS Act, as amended from time to time; and
- (b) any relevant amendment made at any time to any other legislation as a consequence of paragraph (a).

Principal means Transport for NSW (ABN 18 804 239 602).

Principal Supplied Items means the items listed in Schedule 1 and Schedule 32.

Principal's Data means:





Principal's Representative means:

- (a) the person nominated in Schedule 1; or
- (b) any other person appointed from time to time by the Principal under clause 9.2,

and includes any appointee under clause 9.3.

Principal's Representative Delegate means:

- (a) the person nominated in Schedule 1; or
- (b) any person appointed from time to time by the Principal's Representative under clause 9.3(a)(i).

Prohibited Subcontractor means:

- (a) any Subcontractor:
 - (i) who has made an admission to the Independent Commission Against Corruption that it has engaged in; or
 - (ii) in respect of whom the Independent Commission Against Corruption has made a finding that it has engaged in, corrupt conduct as defined in the *Independent Commission Against Corruption Act 1988* (NSW); or
- (b) any Subcontractor employing an employee in respect of whom paragraphs (i) or (ii) apply.

Project means the design and construction of the Enabling Works for PLR Stage 2.

Project Aboriginal Participation Plan means the aboriginal participation plan in the Management Requirements.

Project Agreements means:

- (a) this Deed;
- (b) the Independent Certifier Deed;
- (c) the Third Party Agreements; and
- (d) any side deeds or warranties entered into or given under those agreements set out in paragraphs (a) to (c) above.

Project Boundary means the Worksite boundaries identified in Exhibit H. Project Boundary is only to be used for the purpose of administering clause 3.22.

Project Classification and Excavation Map means the document so identified in, and which is required to be provided by the Contractor pursuant to, the Management Requirements and approved by the Principal's Representative pursuant to clause 9.12.

Project Objectives means the project objectives titled "Enabling Works Contract Objectives" set out in section 2.2 of the SPR.

Project Plans means the plans (including all subsidiary plans, supporting documents and information) required to be provided and implemented by the Contractor pursuant to this Deed, including the Management Requirements, as developed, amended or updated from time to time in accordance with this Deed.

Proof Engineer means the person or persons nominated by the Contractor from time to time, to perform the role of the proof engineer as contemplated under this Deed.

Proof Engineer Requirement means the requirements to be met for the person or persons to carry out the role of Proof Engineer, as set out in the Management Requirements.

Proof Engineer's Certificate means the duly signed certification provided by the Proof Engineer in the form set out in Schedule 35.

Property Management Plan means the property management plan as set out in the Management Requirements.

Proposed Permanent Light Rail Corridor means the area described in the volumetric principles in Schedule 14.

Protected Information has the meaning given to that term in section 5 of the *Security of Critical Infrastructure Act 2018* (Cth).

Provisional Sum Work means the work detailed as such in Schedule 2.

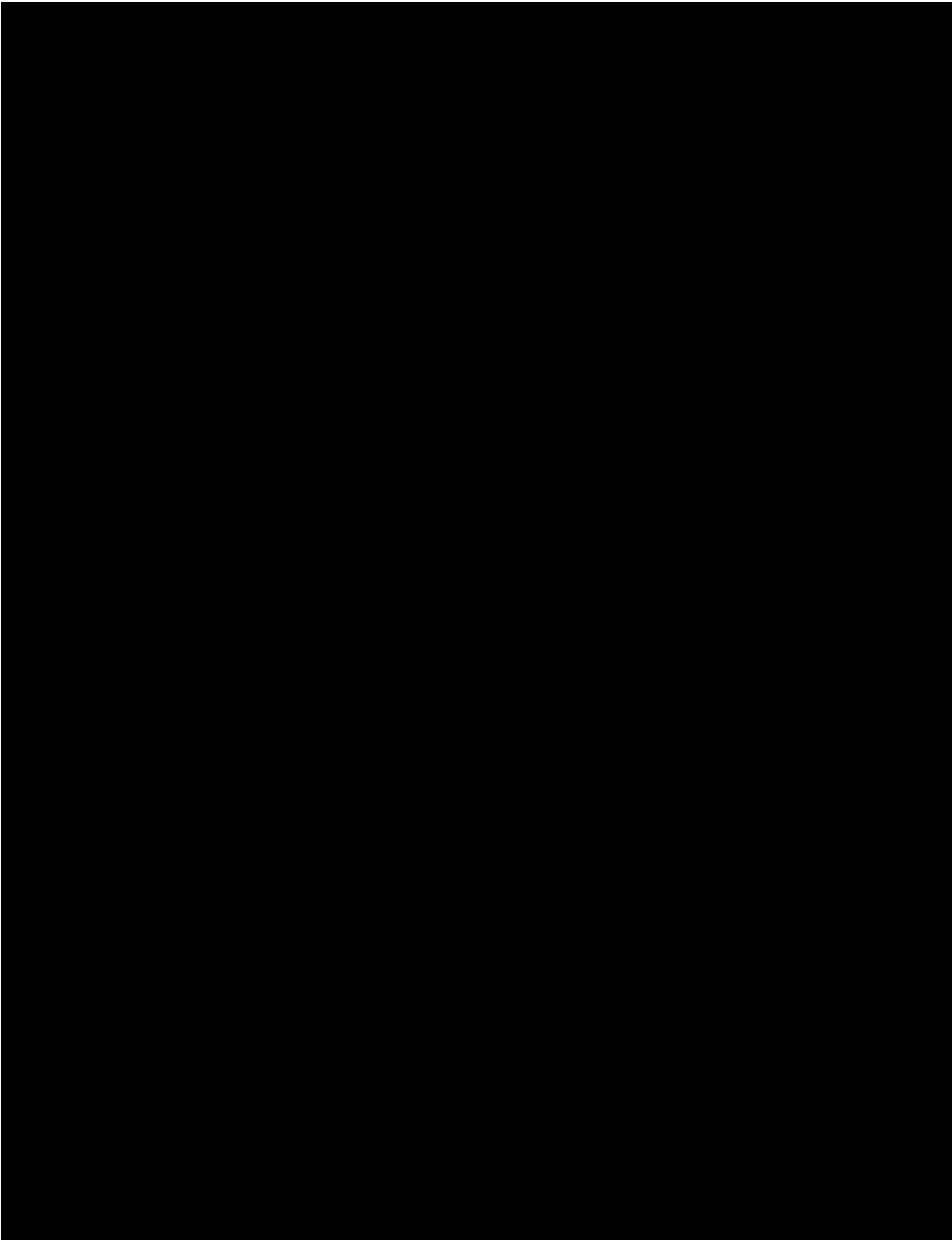
Public Art means any artistic work to be incorporated into, or used during, the design or construction or maintenance of, the Enabling Works. The term 'artistic work' has the meaning given in the *Copyright Act 1958* (Cth).

Public Art Materials means any Intellectual Property in respect of the Public Art licensed or assigned by or on behalf of the Contractor under this Deed.

[REDACTED]

Qualifying Cause of Delay means:

[REDACTED]



Rail Infrastructure Manager (RIM) has the meaning given to that term in the Rail Safety National Law.

Rail Safety National Law (RSNL) 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 Transport Agency means Transport for NSW (and each of its divisions, including the Sydney Co-ordination Office (SCO), Traffic Control (TCS) and AMB), TAHE, Sydney Trains and NSW Trains.

Rail Transport Operator (RTO) has the meaning given to that term in the Rail Safety National Law.



Recipient has the meaning given to that term in clause 20(b).

Reference Documents means all Codes and Standards referred to in this Deed, as publicly available or as provided by the Principal where not publicly available, including those referred to in Schedule 33.

Reimbursable Work means the activities specified in Schedule 2 but only where those specific activities are undertaken:

- (a) by the Contractor's identified personnel stated in Schedule 2 (or such other personnel as may be approved from time to time by the Principal's Representative); or
- (b) using the materials, plant and equipment stated in Schedule 2; and
- (c) excludes personnel for the project management, coordination and supervision of those specific activities.

Reimbursable Work Breakdown Plan means a draft Reimbursable Work breakdown plan submitted by the Contractor under clause 11.4(a) in respect of which:

- (a) the Contractor has received a notice referred to in clause 9.12(d)(iii); or
- (b) the relevant period of time in clause 9.12(d)(iii) has expired and the Principal's Representative has not rejected the draft plan or made any comments on it (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a matter satisfactory to the Principal's Representative as referred to in clause 9.12(c)).

Reimbursable Work Price means the amount calculated in accordance with Schedule 2 which, by this Deed, the Principal is required to pay to the Contractor in respect of Reimbursable Work.

Related Body Corporate:

- (a) in relation to the Principal, means any entity controlled by the Secretary of Transport; and
- (b) in relation to any other person, has the same meaning as in the Corporations Act.

[REDACTED]

Relevant Material means any intellectual property licensed or assigned by or on behalf of the Contractor under this Deed.

Remediation Action Plan or RAP means the plan contained in Exhibit G, as amended from time to time.

Relevant Matters has the meaning given to that term in clause 9.11.

Remote Sites are lands other than the Site on which Remote Works must be constructed.

Remote Works are those parts of the Enabling Works that must be constructed on Remote Sites.

Replacement Certifier means the successor of the Independent Certifier.

Replacement Security has the meaning given to that term in clause 2.9(a).

[REDACTED]

[REDACTED]

Requirement Verification and Traceability Matrix has the meaning given to that term in clause 5.9(d).

Review Period means the applicable period for review of Design Documentation as specified in clause 5.9(b).

Roads Approvals means all consents and approvals to be granted by a Roads Authority, under the *Roads Act 1993* (NSW) or any other Law, required to perform the Contractor's Activities.

Roads Authority has the meaning given to that term in the *Roads Act 1993* (NSW).

Route Declaration means the route or routes in respect of the Enabling Works declared in accordance with the Transport Administration Act.

Safety Case Documentation means all materials relating to the Enabling Works that are required in order for the Principal to obtain accreditation as a Rail Transport Operator under the Rail Safety National Law, including all safety performance reports prepared and certified by a TAO.

Safety Interface Agreements means the safety interface agreements which are required to be in place for the lawful operation of the PLR, including those agreements described in Schedule 17.

Safety Management Plan means the safety management plan as described in the Management Requirements.

Safety Management System means a safety management system as required by section 99 of the Rail Safety National Law.

SDR Design Stage means the SDR design stage as described in the Management Requirements.

Second Statement of Outstanding Claims has the meaning given to that term in clause 11.16.

Security Interest has the meaning given to that term in clause 19.33(a).

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

Security of Critical Infrastructure Legislation means the *Security of Critical Infrastructure Act 2018* (Cth) and any rules or regulations enacted under or in connection with that Act.

[REDACTED]

Significant Subcontract has the meaning given to that term in clause 2.2(b)(iii).

Site means:

- (a) the Asset Lands, Temporary Lands and other places described in Schedule 22; and
- (b) any other lands and places made available to the Contractor by the Principal for the purpose of this Deed,

but excludes the Remote Sites and Extra Land.

Site Access Date means [REDACTED]

Site Audit has the same meaning as given to that term in the *Contaminated Land Management Act 1997* (NSW).

Site Auditor means a person who:

- (a) is, and remains at all times while this Deed is in force, accredited as a site auditor under Part 4 of the *Contaminated Land Management Act 1997* (NSW); and
- (b) is appointed in accordance with the Remediation Action Plan.

Site Conditions means any physical conditions above, upon, under or over the surface, or in the vicinity, of the Site, a Remote Site or Extra Land and includes:

- (a) surface water, ground water, ground water hydrology and the effects of any de-watering;
- (b) physical and structural conditions, above, upon and below the Site, a Remote Site or Extra Land, including old footings, underground structures, buildings, improvements, partially completed structures or in-ground works;
- (c) topography of the Site, a Remote Site or Extra Land, ground surface conditions and geology, including rock and sub-surface conditions or other materials encountered at the Site, a Remote Site or Extra Land;
- (d) climatic and weather conditions including rain, inclement weather, surface water runoff and drainage, floods, water seepage, windblown dust and sand, seasons and physical conditions that are a consequence of climatic and weather conditions;
- (e) all existing systems and Utility Services, above or below ground level and all facilities with which such systems and Utility Services are connected;
- (f) all improvements, including any artificial things, foundations, retaining walls and other structures installed by or on behalf of the Principal or others;
- (g) any Contamination or other spoil or waste;
- (h) any Contamination System; and
- (i) underground strata forming part of the Site, a Remote Site or Extra Land.

SOPA means Sydney Olympic Park Authority (ABN 68 010 941 405).

[REDACTED]

SOPA Remediated Lands Management Plan means the management plan dated May 2022 that describes how SOPA will manage remediated landfills and their associated infrastructure, including the Woo-la-ra Landfill and its associated infrastructure.

SOPA Remediation Notice means the maintenance of remediation notice no. 28040 issued by the NSW EPA under section 28 of the *Contaminated Land Management Act 1997*, including any amendment or variation to that notice by further order or notice issued by the NSW EPA.

Source Code means, in respect of a computer program, the human readable code of that computer program, and includes associated software including scripts and applets (collectively comprised in a complete copy of all of the foregoing in executable code) and all documentation necessary to operate, maintain and modify the executable code copy of that computer program including all technical documentation and specifications in respect of that computer program.

Specified Materials has the meaning given to that term in clause 11.25(a).

SPR means the scope and performance requirements contained in Exhibit B.

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

Statement of Outstanding Claims has the meaning given to that term in clause 11.14(c).

[REDACTED]

Step-in Event has the meaning given to that term in clause 15.1.

Step-in Party means an agent, attorney or nominee of the Principal, and may be more than one person appointed to act jointly.

Step-in Powers has the meaning given to that term in clause 15.3.

Step-in Rights has the meaning given to that term in clause 15.2.

Subcontract includes an agreement for supply of goods or services (including professional services and plant hire) or both.

Subcontractor means a subcontractor engaged by the Contractor and includes a consultant or a supplier of goods or services (including professional services and plant hire) or both.

Supplier has the meaning given to that term in clause 20(b).

Survey Certificate has the meaning given to that term in the *Surveying and Spatial Information Regulation 2006* (NSW).

Survey Plan has the meaning given to that term in the *Surveying and Spatial Information Act 2002* (NSW).

Surviving Clauses has the meaning given to that term in clause 19.39(a).

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

Sydney Water means Sydney Water Corporation.

TAHE means the corporation by the name Transport Asset Holding Entity of New South Wales ABN 59 325 778 353, constituted by Part 2 Division 1 of the Transport Administration Act, known, prior to 1 July 2020 as Rail Corporation New South Wales.

TAO Authorisation means an authorisation issued by TfNSW in the context of the Technical Supplier Assurance Framework to a legal entity which verifies that it has the relevant systems and technical capability in place to carry out the class of Asset Lifecycle work specified in the authorisation, subject to any conditions of the authorisation.

[REDACTED]

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

Tax Invoice has the meaning given to that term in the GST Legislation.

Technically Assured Organisation or **TAO** means a legal entity to whom TfNSW has issued a TAO Authorisation.

Technical Supplier Assurance Framework means the document that outlines the arrangements for the development, implementation and management of technical outcomes for Transport Assets available at <https://www.transport.nsw.gov.au/industry/asset-management-branch>.

Temporary Lands are the lands so identified in Schedule 22.

Temporary Works means any temporary works required to be carried out or provided by the Contractor for the purpose of performing the Contractor's Activities but not forming part of the Enabling Works.

Tender means the response provided by a Tenderer to the Principal's Invitation for Request for Tender which selected Tenderers to submit a tender to undertake the Contractor's Activities.

Tender Form means the tender form submitted by the Contractor as part of its Tender.

Tenderer means an entity or entities that submitted a Tender for the Contractor's Activities.

Terrorist Act has the meaning given to that term in section 5 of the *Terrorism Insurance Act 2003* (Cth) as at the date of this Deed.

TfNSW means Transport for NSW (ABN 18 804 239 602) a NSW Government agency, a corporation constituted by section 3C of the Transport Administration Act.

TfNSW (Maritime) means Transport for NSW (ABN 18 804 239 602) to the extent exercising Authority in respect of maritime activities.

TfNSW (Roads) means Transport for NSW (ABN 18 804 239 602) to the extent exercising Authority in respect of roads.

Third Party means a party to a Third Party Agreement other than the Principal.

Third Party Agreement Matrix means the matrix contained in Schedule 11.

Third Party Agreements means the agreements referred to in Schedule 1 in respect of which:

- (a) where the agreement has been executed by all parties to the agreement, a copy of the agreement; or
- (b) where the agreement has not been executed, a draft of the agreement, appears in Exhibit I.

Third Party Material means any Material incorporated into the Contract Documentation in which the Intellectual Property Rights are owned by a third party.

Third Party Works means works to be performed under Third Party Agreements to the extent the Contractor is responsible for those works in the Third Party Agreement Matrix.

TMC or Transport Management Centre has the meaning given to that term in the SPR.

TPA Defects has the meaning given to that term in clause 8.8(a)(i).

TPA Defects Provisions has the meaning given to that term in clause 8.8(a)(i).

Training Management Guidelines means the document titled “Training Management Guidelines” prepared by the New South Wales Government Department of Premier and Cabinet and dated February 2009, as updated from time to time.

Transitway Declaration means the declaration in respect of the Enabling Works in accordance with sections 52A and 54(1) of the *Roads Act 1993 (NSW)*.

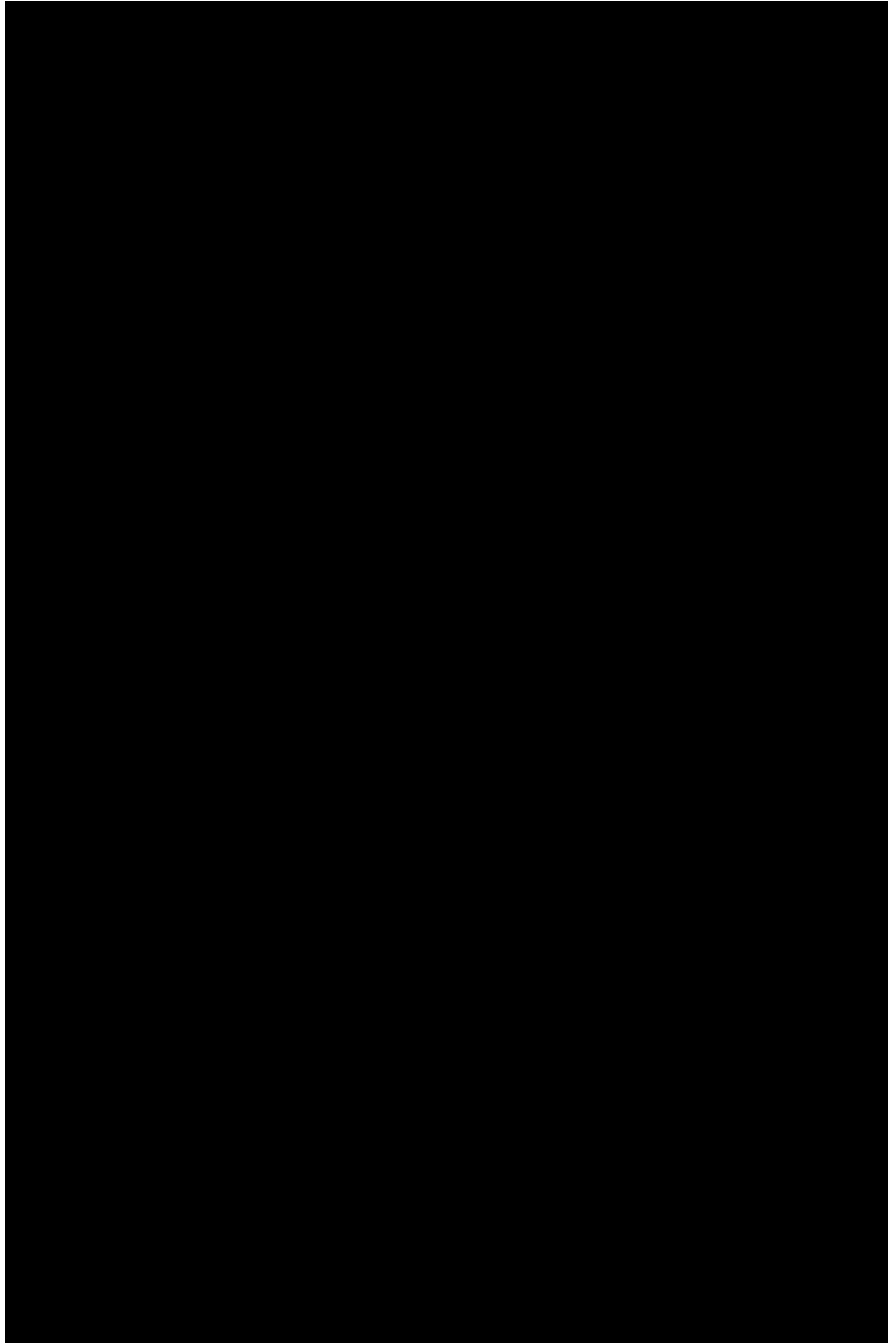
Transport Administration Act means the *Transport Administration Act 1988 (NSW)*.

Transport Assets means those assets which are vested in or owned, managed, controlled, commissioned or funded by the NSW Government, a NSW Government agency or a Public Transport Agency.

[REDACTED]

Unknown Utility Services Event means:

[REDACTED]



Urgent Defect means any Defect which has, or which in the opinion of the Principal's Representative, might have, any of the following effects:

- (a) is a risk to safety of any person;
- (b) contaminates any place;
- (c) materially damages any property; and

- (d) has a material impact on the operation or maintenance of the Enabling Works.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Utility Service means:

- (a) any service (including any redundant service), utility, facility or item of infrastructure, including for the provision of water, electricity, gas, ethane, fuel, telephone, drainage (including piped, open or subsoil drains), sewerage, industrial waste disposal, street lighting, CCTV and electronic communications service;

but excludes:

- (b) any Contamination System.

Utility Service BAU Works means all Utility Service Works excluding the Utility Service Third Party Works.

Utility Service Contractor Agreements means all:

- (a) binding agreements entered into between the Contractor and a Utility Service Provider; or
- (b) purchase orders and works orders generated by a Utility Service Provider and accepted by the Contractor,

in respect of:

- (c) the Utility Service BAU Works (but excluding, for the avoidance of doubt, each BAU Utility Document); and
- (d) the Utility Service Third Party Agreement Works (but excluding, for the avoidance of doubt, each Third Party Agreement).

[REDACTED]

[REDACTED]

Utility Service Provider means those service providers listed in Schedule 1 and includes any successor to a service provider listed in Schedule 1.

Utility Service Third Party Works means those Utility Service Works that comprise Third Party Works.

Utility Service Works means the:

- (a) Utility Service (Contestable) Works;
- (b) Utility Service (Non-Contestable) Works; and
- (c) all other construction, modification, relocation, decommissioning or removal of Utility Services required to perform the Contractor's Activities under this Deed.

Valuable Find means any and all:

- (a) valuable minerals, fossils, or coins;
- (b) articles or objects of value or antiquity; and
- (c) objects or things of scientific, geological, historical, heritage, aesthetic, social, spiritual, cultural, archaeological, anthropological, or other special interest,

found on or under the surface of the Site.

Variation means any change to the Contractor's Activities, the Enabling Works or the Temporary Works including:

- (a) any addition or increase to, or decrease, omission or deletion from, the Enabling Works or the Temporary 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 Enabling Works or the Temporary Works;
- (d) any changes to the boundaries of the Site; or
- (e) changes necessitated by errors contained within any standard form Principal specification that is expressly mandated for use by the SPR,

but for the avoidance of doubt excludes:

- (f) any changes to the Enabling Works or the requirements of the SPR that are required solely as a result of the exercise of an Option by the Principal's Representative under clause 6.3;
- (g) any changes to the Enabling Works or the Temporary Works or the requirements of the SPR that are required to ensure the Contractor complies with its obligations under this Deed or arising out of the failure of the Contractor to comply with its obligations under this Deed;
- (h) any Provisional Sum Work; and
- (i) any Reimbursable Work.

Variation Order means a written document titled "Variation Order" issued under clause 6.2.

Variation Proposal Request has the meaning given to that term in clause 6.1(a).

[REDACTED]

[REDACTED]

Viva Extra Land means [REDACTED]

WHS means work health and safety.

WHS Accreditation Scheme means the Australian Government Building and Construction OH&S Accreditation Scheme established by the *Fair Work (Building Industry) Act 2012* (Cth).

WHS Guidelines means the NSW Government Work Health and Safety Management Systems and Auditing Guidelines (5th edition) (March 2014) or any document issued from time to time which amends or substitutes this document.

WHS Legislation means:

- (a) the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW);
- (b) any rail safety legislation in New South Wales, including the Rail Safety National Law and any rail safety regulations;
- (c) any other legislation in New South Wales or legislation in other States and Territories of Australia addressing work health and safety which applies to the Enabling Works, any other works or activities under this Deed or the Contractor's Activities; and
- (d) any codes of practice and statutory guidelines issued by any government or regulatory body relating to work health and safety as issued or updated from time to time.

Withdrawal Notice has the meaning given to that term in clause 17.10(b)(i)(A).

Witness Point means a point identified in the Management Requirements where the Principal's Representative, or the relevant person nominated in the Management Requirements, may review, witness, inspect, or undertake tests on any component, method, or process of the Contractor's Activities.

Woo-la-ra Landfill means the former landfill site located north of Sydney Olympic Park adjacent to Newington Nature Reserve and covering an area of approximately 23 hectares, as described in section 3.8 of the SOPA Remediated Lands Management Plan.

Woo-la-ra Leachate System means the remediation collection system, drainage system and infrastructure including pumps, manholes, trenches discharge lines, liquid level monitors, piezometers, pumpstations, atlantis or polyethylene drainage cells, liners, filters, mesh, sumps and any other collection system and drainage system for contaminated water and other contaminated materials and capping layer and base layer associated with the Woo-la-ra Landfill as described in the Remediation Action Plan.

Workplace Relations Management Plan means the plan which forms part of the Project Plans which is required to be provided and implemented by the Contractor pursuant to the NSW Implementation Guidelines and the Management Requirements.

Worksite means a parcel of land identified as a worksite in Schedule 22.

Zone means an area of land identified as a zone in the Project Classification and Excavation Map.



1.2 Interpretation

In this Deed unless the context otherwise requires:

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

- (h) headings are for convenience only and do not affect the interpretation of this Deed;
- (i) the obligations of the Principal under and in connection with this Deed are limited to those expressly stipulated in this Deed;
- (j) a reference to:
 - (i) a party, clause, Schedule or Exhibit is a reference to a party, clause, Schedule or Exhibit of or to this Deed; and
 - (ii) a paragraph or a sub-paragraph is a reference to a paragraph or sub-paragraph in the clause in which the reference appears;
- (k) subject to clause 3.6(b), a reference to this Deed includes all Schedules and Exhibits. Any reference in the Management Requirements or SPR to "Contract" shall be read as if a reference to "Deed";
- (l) where any word or phrase is given a defined meaning, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (m) where under this Deed:
 - (i) a direction is required to be given or must be complied with;
 - (ii) payment of money must be made;
 - (iii) an unconditional undertaking must be released; or
 - (iv) a default must be remedied,

within a period of 7 days or less from a specified event, then only Business Days will be counted in computing the number of days;
- (n) for all purposes (other than as set out in clauses 1.2(m) and 1.2(u), or where otherwise designated as a Business Day), "day" means calendar day;
- (o) not used;
- (p) a reference to \$ is to Australian currency;
- (q) a reference to "direction" in the definition of Claim in clause 1.1 will be read as also including certificate, decision, demand, determination, instruction, notice, order, rejection, request or requirement but will not include any failure to reject a document;
- (r) any reference to "information" will be read as including information, representations, statements, data, samples, calculations, assumptions, deductions, determinations, drawings, design, specifications, models, plans and other documents in all forms including the electronic form in which it was generated;
- (s) any reference:
 - (i) in the definition of Authority Approval, Enabling Works Practical Completion, Portion Completion, in clause 1.1 to "intended use" or "intended purpose"; or
 - (ii) to "intended purpose",

will be read as referring to the intended use or intended purpose having regard to:

- (iii) the Principal's present intention that the Enabling Works or part of the Enabling Works will form part of the PLR and be used as part of a fully integrated operating light rail system; and
- (iv) any intended use or intended purpose stated in, contemplated by or ascertainable from the terms of this Deed including the requirement that the Enabling Works, when completed, will be designed and constructed in compliance with all health and safety requirements of the WHS Legislation;
- (t) not used;
- (u) any:
 - (i) extension of time to any Date for Enabling Works Practical Completion stated in days; or
 - (ii) reference to "day",

will include only those days indicated in Schedule 1, or otherwise approved by the Principal's Representative, as working days;
- (v) all indemnities provided for by this Deed are continuing in nature and survive the termination of this Deed;
- (w) any reference to "work" will be read as referring to work or services, as the context permits;
- (x) the Principal has audit and verification rights in respect of each Project Agreement and associated documents and materials.

1.3 No bias against drafting party

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

1.4 Provisions limiting or 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 applicable Law.

1.5 Discretion

- (a) Subject to any express provision in this Deed to the contrary:
 - (i) a provision of this Deed which says that the Principal or the Principal's Representative "may" do or not do something is not to be construed as imposing an obligation on the Principal or the Principal's Representative to do or not do that thing; and
 - (ii) there will be no procedural or substantive limitation upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.

- (b) Without limiting clause 1.5(a), neither the Principal nor the Principal's Representative will be under any obligation to exercise any such discretion, power or entitlement, for the benefit of the Contractor or as required by any other legal doctrine which in any way limits the express words used in the provision of this Deed conferring the discretion, power or entitlement.

1.6 Ambiguous Terms

- (a) The Contractor must review this Deed (including all Schedules and Exhibits) as soon as reasonably practicable after the date of this Deed and, if the Contractor considers that there is any ambiguity, inconsistency or discrepancy in this Deed (including in any Schedule or Exhibit), must notify the Principal's Representative promptly, providing such information as is necessary for the Principal's Representative to consider the matter and give the direction under clause 1.6(b).
- (b) If the Principal's Representative considers, or if the Contractor notifies the Principal's Representative in writing under clause 1.6(a) that it considers, that there is an ambiguity, inconsistency or discrepancy in this Deed (including in any Exhibit), the Principal's Representative must, subject to clause 1.7, direct the interpretation of this Deed which the Contractor must follow.
- (c) If the Principal's Representative's direction under clause 1.6(b) concerns the SPR or the Management Requirements and the Contractor disagrees with the Principal's Representative's interpretation then:
 - (i) within 5 Business Days of its receipt of the Principal's Representative's interpretation the Contractor must notify the Principal's Representative and the Independent Certifier of the disagreement, setting out the basis of the disagreement and its interpretation; and
 - (ii) the issue as to the interpretation of the SPR or the Management Requirements will be referred to the Independent Certifier for determination.
- (d) The Principal's Representative, in giving a direction in accordance with clause 1.6(b), is not required to determine whether or not there is an ambiguity, inconsistency or discrepancy in this Deed.
- (e) Subject to clause 1.6(c) any direction which the Principal's Representative gives in accordance with clause 1.6(b):
 - (i) will not relieve the Contractor from or alter its liabilities or obligations under this Deed or otherwise at Law;
 - (ii) will not entitle the Contractor to make (nor will it make the Principal liable upon) any Claim arising out of or in any way in connection with the direction;
 - (iii) will not limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law; and
 - (iv) will, in respect of a notice given by the Contractor under clause 1.6(a), be given within 28 days of receipt of that notice.

1.7 Order of Precedence

- (a) The documents making up this Deed are complementary and mutually explanatory. The documents are to be read as a single document. Anything contained in one but not in the other will be equally binding as if contained in all.
- (b) In the event of any inconsistency or discrepancy in or between the documents making up this Deed, the following order of precedence will apply:
 - (i) the clauses of this Deed 1-23;
 - (ii) Authority Approvals;
 - (iii) Schedule 1;
 - (iv) the Contractor's Outline Design only to the extent that it includes higher or additional obligations than the SPR;
 - (v) the SPR;
 - (vi) the Information from Tenderer's Tender Documents to the extent that it includes higher or additional obligations than the Management Requirements and other provisions of this Deed;
 - (vii) the Management Requirements;
 - (viii) the requirements of Third Party Agreements;
 - (ix) the elements of the Contractor's Outline Design other than those that impose higher obligations than the SPR or additional obligations to the SPR; and
 - (x) the other schedules and exhibits to this Deed.
- (c) Where there is any other inconsistency, ambiguity or discrepancy between any schedules or exhibits, the schedule or exhibit that deals with the matter most specifically will apply.
- (d) The Information Documents and Materials do not form part of this Deed.
- (e) Notwithstanding the above order, to the extent that higher or more onerous standards or a more extensive scope are specified in any documents, the highest or most onerous standard and the most extensive scope will always apply.

1.8 Authorities

- (a) This Deed will not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of:
 - (i) the Principal or any other Rail Transport Agency to exercise any of their respective functions and powers pursuant to any legislation; or
 - (ii) the AMB to exercise any of its functions and powers pursuant to the AMB Charter, including any functions or powers required to be exercised by the Principal or any Rail Transport Agency pursuant to the Technical Supplier Assurance Framework.

- (b) Without limiting clause 1.8(a), anything the Principal, any other Rail Transport Agency or AMB does, or fails to do or purports to do, pursuant to their respective functions and powers either as TAO or under any legislation or the Technical Supplier Assurance Framework, will be deemed not to be an act or omission by the Principal under this Deed.
- (c) The Contractor:
 - (i) waives any Claims that it may have against the Principal as a result of the exercise by the Principal, any Rail Transport Agency or the AMB of their respective functions and powers either as TAO or under any legislation, the AMB Charter or the Technical Supplier Assurance Framework; and
 - (ii) acknowledges and agrees that:
 - (A) there are many Authorities with jurisdiction over aspects of the Contractor's Activities, parts of the Site, Remote Sites, Extra Land and other areas affecting and affected by the Contractor's Activities;
 - (B) such Authorities may from time to time exercise their statutory functions and powers in such a way as to disrupt, interfere with or otherwise affect the Contractor's Activities (including, the exercise by persons (including individuals) acting on behalf of such Authorities of powers and functions including as necessary for such Authorities to comply with their statutory functions and powers); and
 - (C) subject to the Contractor's express entitlements under this Deed, it bears the full risk of all occurrences of the kind referred to in clause 1.8(c)(ii)(B) and will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with such occurrences or any action it is required to take arising out of such occurrences.
- (d) Nothing in this Deed will restrict, or require the exercise of, any right of the State, directly or through any Authority, to develop, manage or change New South Wales' transport network or make policy decisions in relation to the development and implementation of transport planning in New South Wales as it sees fit.
- (e) Clauses 1.8(a) to 1.8(d) do not limit any Liability which the Principal would have had to the Contractor under this Deed as a result of a breach of a term of this Deed by the Principal but for those clauses.

1.9 Independent Certifier Deed

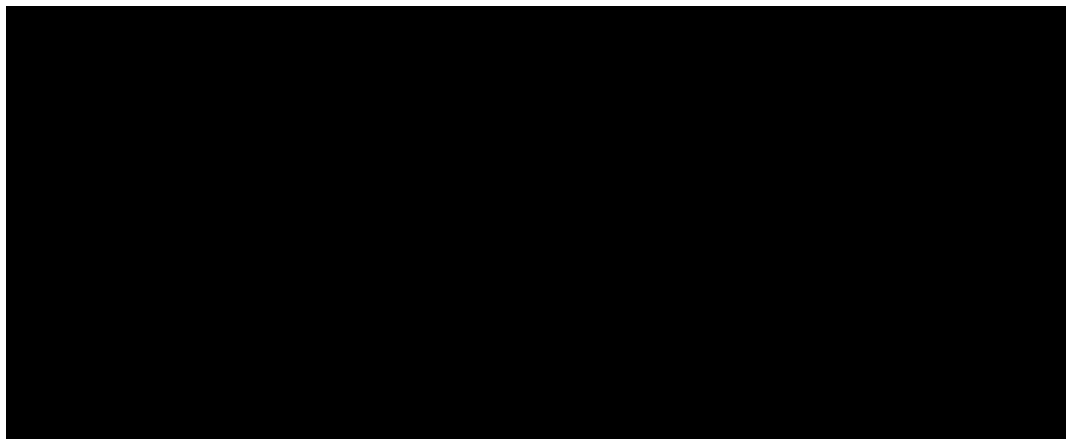
- (a) The Contractor must enter into the Independent Certifier Deed on the same day as the date of this Deed.
- (b) The Contractor must comply with the Independent Certifier Deed.
- (c) To the extent that there is any inconsistency, ambiguity or discrepancy between this Deed and the Independent Certifier Deed then this Deed will prevail.

1.10 Deed Commencement Date

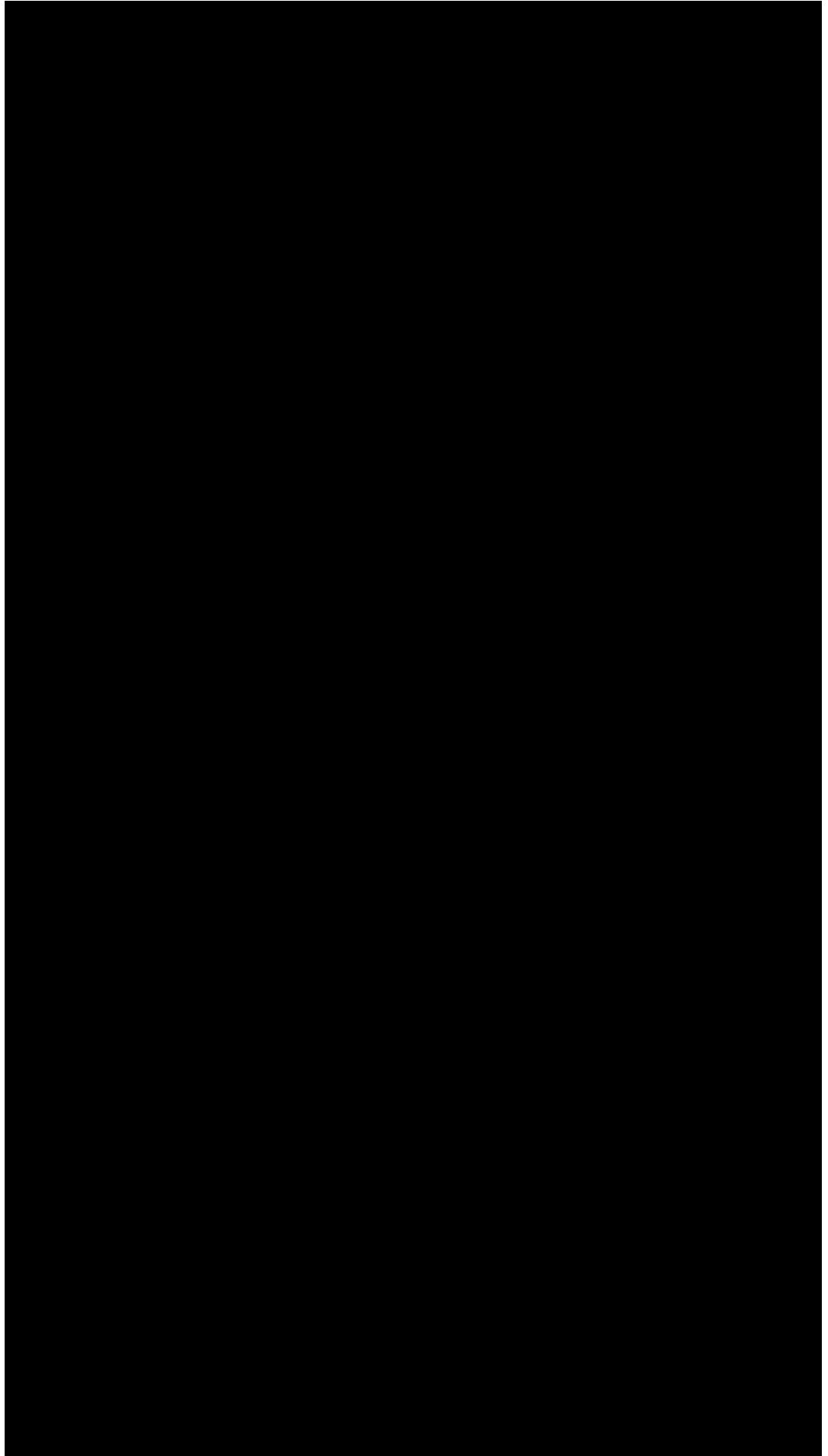
- (a) This Deed will not commence until the Commencement Date, except for the provisions contained in:
- (i) clause 1 (Definitions, Interpretation and General);
 - (ii) clause 2.2 (Subcontracts);
 - (iii) clause 2.8 (Security and Guarantee and Indemnity);
 - (iv) clause 3.6 (Information Documents and Materials);
 - (v) clause 9.9 (Exchange of information between Government Agencies);
 - (vi) clause 13 (Care of the Work, Risks and Insurance);
 - (vii) clause 14 (Default or Insolvency);
 - (viii) clause 16 (Termination);
 - (ix) clause 17 (Early notification of issues);
 - (x) clause 18 (Issue Resolution); and
 - (xi) clause 19 (General),
- which will all commence on the date of this Deed.
- (b) The Commencement Date does not affect the date of this Deed.
- (c) For the purposes of calculating time, the days between the date of this Deed and the Commencement Date shall not be counted.

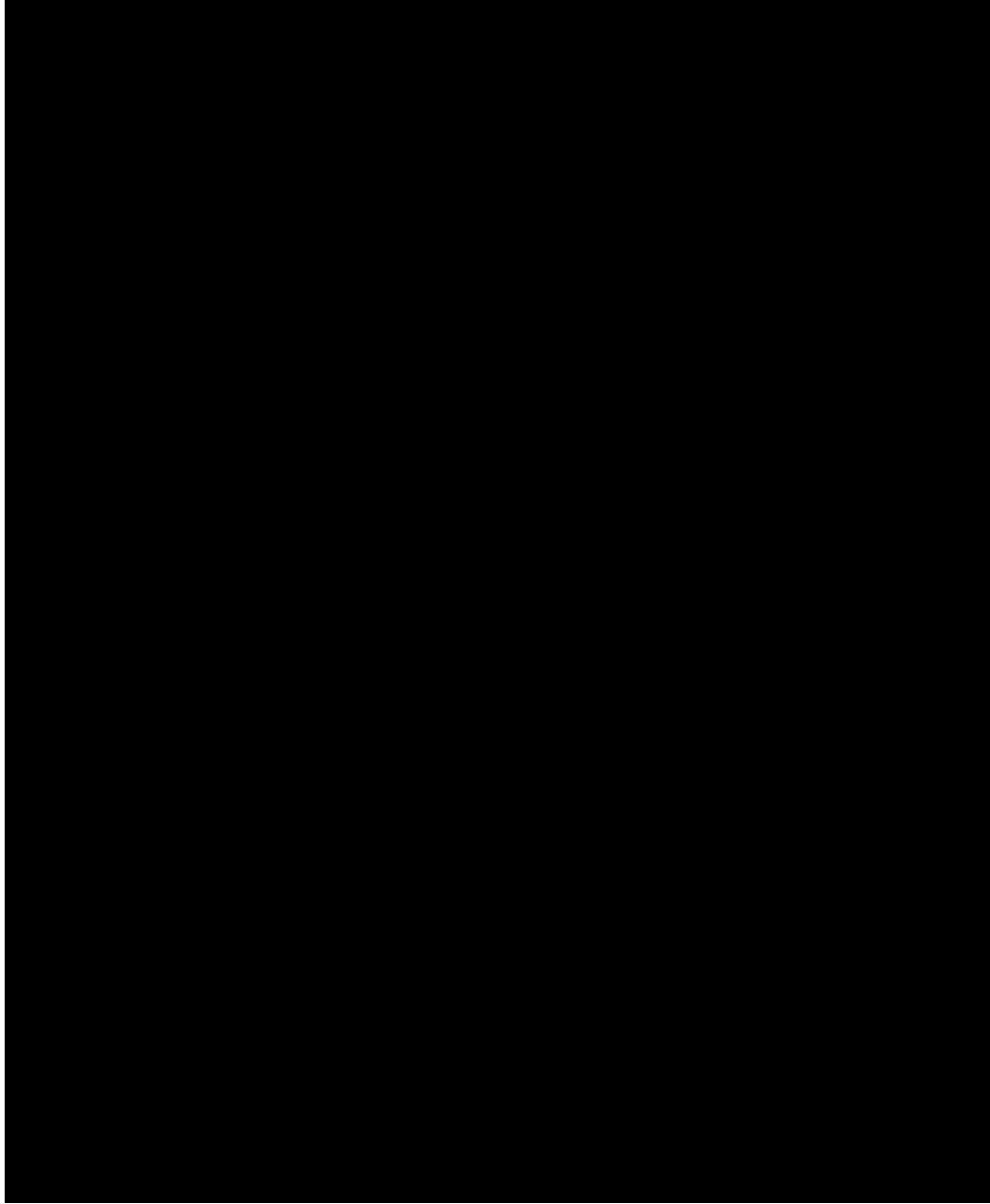
1.11 Not used**1.12 Not used****1.13 Heavy Vehicle National Law**

The Contractor must perform the Contractor's Activities in accordance with and comply with the Heavy Vehicle National Law, including but not limited to the 'chain of responsibility' provisions contained in Chapter 1A of the Heavy Vehicle National Law.

1.14 Statutory Declaration

1.15 Audit rights





2 Contractor's Activities

2.1 Scope

- (a) The Contractor must perform the Contractor's Activities in accordance with and to fulfil the requirements of:
 - (i) all Laws;
 - (ii) this Deed;
 - (iii) the Authority Approvals;
 - (iv) the Third Party Agreements; and
 - (v) the Utility Service Contractor Agreements,

in a manner at least consistent with Best Industry Practice so that the Enabling Works:

- (vi) are Fit for Purpose; and
 - (vii) fulfil the requirements of, and comply with, this Deed.
- (b) The Contractor warrants that:
 - (i) each Portion will be Fit for Purpose upon Portion Completion; and
 - (ii) the Enabling Works will be Fit for Purpose upon Enabling Works Practical Completion.
- (c) The Contractor has allowed for the provision of all work and materials and other things necessary for the performance of all the Contractor's Activities and the completion of each Portion and the Enabling Works, whether or not expressly mentioned in this Deed. All such work and materials and other things necessary for the performance of all the Contractor's Activities and the completion of the Enabling Works:
 - (i) must be undertaken and provided by the Contractor at its own cost;
 - (ii) form part of the Contractor's Activities and will not constitute a Variation; and
 - (iii) will not entitle the Contractor to make a Claim except as expressly provided for in this Deed.
- (d) Where a specific manufacturer's product is specified in this Deed the:
 - (i) Contractor:
 - (A) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the specification of that manufacturer's product; and
 - (B) remains liable for complying with all its obligations under this Deed; and
 - (ii) Principal makes no representation as to:
 - (A) the quality of the specified product;
 - (B) the availability of the specified product;
 - (C) the creditworthiness of the manufacturer of the specified product; or
 - (D) its suitability for the Enabling Works.
- (e) If a specific manufacturer's product is specified in this Deed and either that product is not available or the Contractor wishes to use a different product then:
 - (i) the Contractor must:
 - (A) propose an alternative product and in doing so must provide to the Principal's Representative such information concerning the alternative product as required by the Principal's Representative;

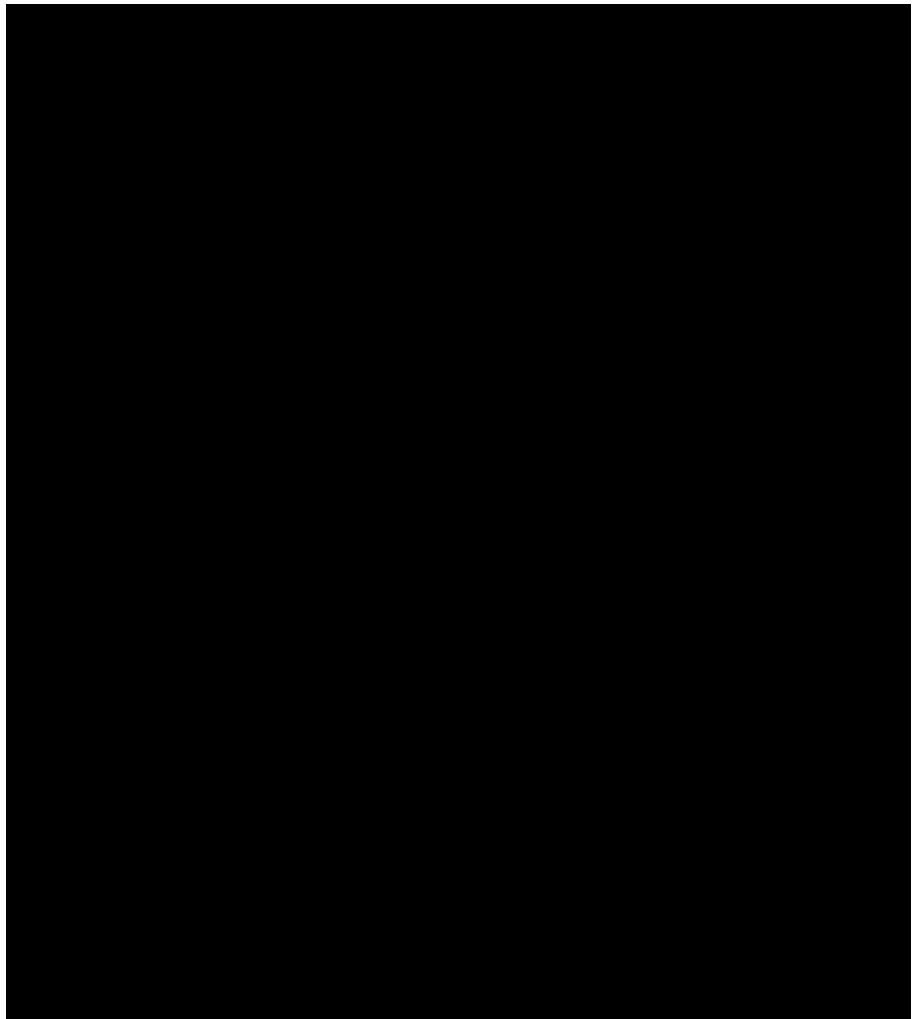
- (B) obtain the written approval of the Principal's Representative to the use of the alternative product; and
 - (ii) the Contractor must bear the additional cost, if any, incurred in providing the alternative product; and
 - (iii) the use of the alternative product,
- will not:
- (A) reduce the Contractor's obligations under this Deed; or
 - (B) entitle the Contractor to make a Claim except as expressly provided for in this Deed.
- (f) Where a standard of quality of manufacture or workmanship is specified in this Deed:
- (i) the standard is a minimum standard;
 - (ii) subject to 2.1(f)(iii), the Contractor warrants that it has performed the work to the specified standard of quality of manufacture and workmanship; and
 - (iii) the performance of the Contractor's Activities in accordance with such specification will not relieve the Contractor of any of its other obligations under this Deed.
- (g) Subject to the express provisions of this Deed, the Contractor accepts responsibility for and the risk of all costs, damages, expenses, losses, liabilities, delays or disruption that it incurs or suffers arising out of or in any way in connection with, the performance of the Contractor's Activities and its obligations under this Deed.

2.2 Subcontracts

- (a) Subject to clause 2.2(b), the Contractor may enter into Subcontracts for the vicarious performance of its obligations under this Deed.
- (b) The Contractor:
 - (i) must:
 - (A) not enter into any Subcontract with a Prohibited Subcontractor; and
 - (B) enter into a Subcontract with each of those Nominated Subcontractors specified in Schedule 1 in respect of the relevant Nominated Subcontract Work;
 - (ii) agrees that, in respect of Nominated Subcontractors:
 - (A) the Contractor:
 - (aa) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, any act or omission of a Nominated Subcontractor; and
 - (ab) remains liable for complying with all its obligations under this Deed, including the

obligations referred to in clause 2.1
notwithstanding the engagement of a
Nominated Subcontractor;

- (B) the Principal makes no representation as to any
Nominated Subcontractor's:
 - (aa) quality of work;
 - (ab) timeliness of work;
 - (ac) availability to perform the relevant Nominated
Subcontract Work;
 - (ad) ability to perform the relevant Nominated
Subcontract Work; or
 - (ae) creditworthiness;



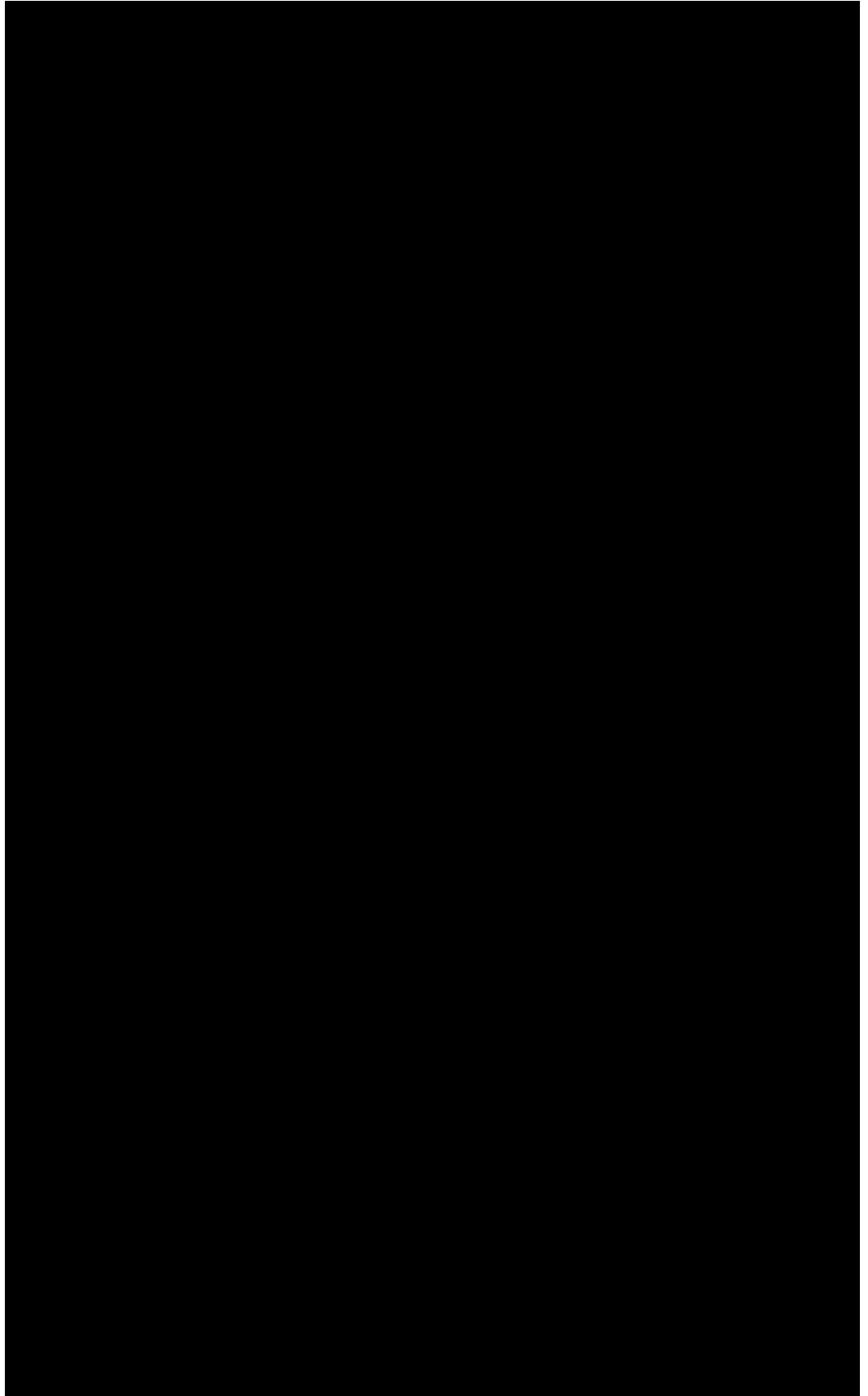
- (vi) must ensure that, if any Law, including in the State or Territory
in which the Enabling Works are situated or the Contractor's
Activities are carried out (as the case may be), requires that:
 - (A) a person:
 - (aa) be authorised or licensed (in accordance with
the WHS Legislation) to carry out any work at
that workplace, that person is so authorised or

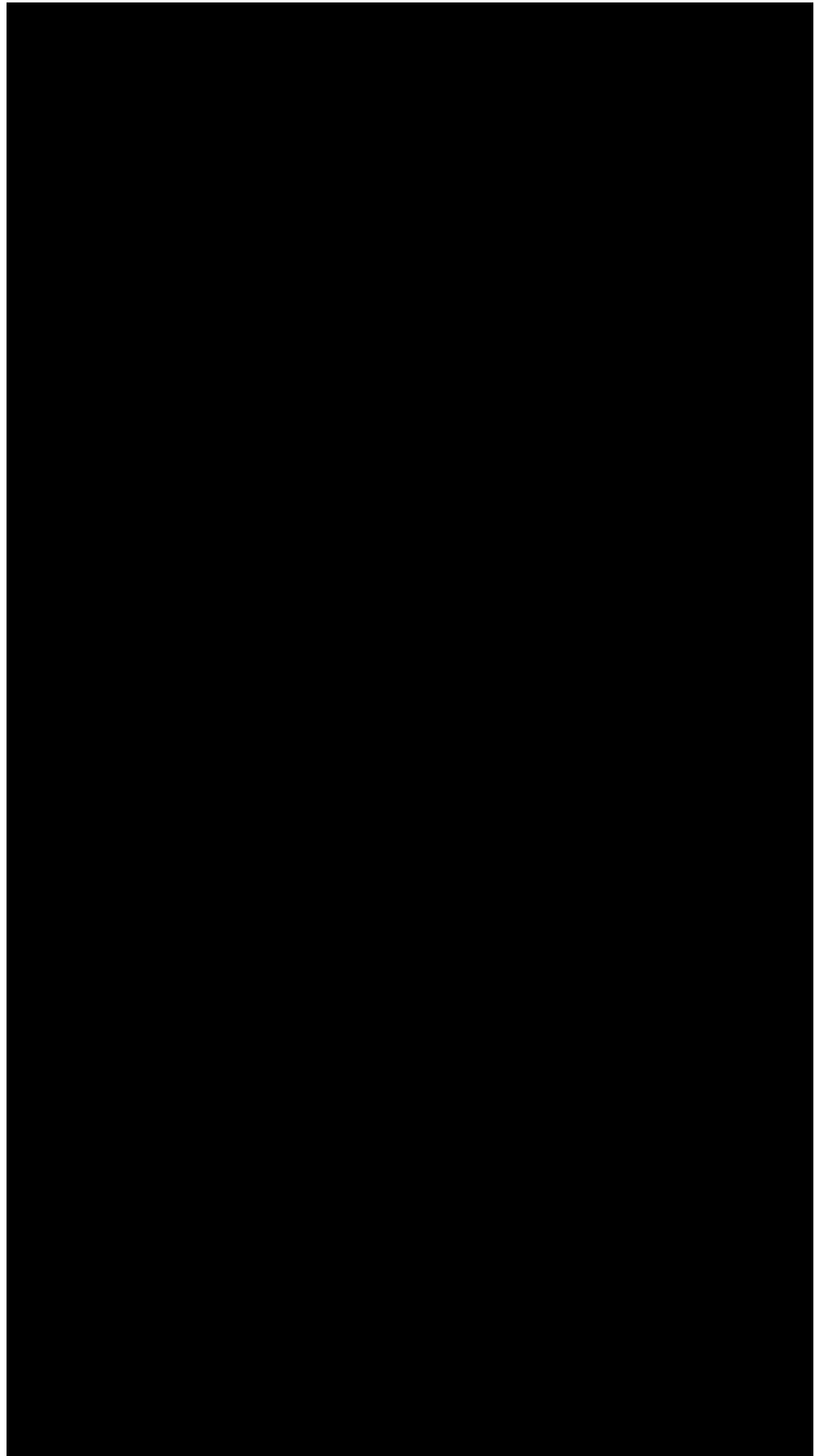
- licensed, and complies with any conditions of such authorisation or licence; and/or
 - (ab) has prescribed qualifications or experience or, if not, is to be supervised by a person who has prescribed qualifications or experience (as defined in the WHS Legislation), that person has the required qualifications or experience or is so supervised; or
 - (B) a workplace, plant or substance (or design), or work (or class of work) be authorised or licensed, that workplace, plant or substance, or work is so authorised or licensed;
 - (vii) must not direct or allow a person to carry out or use plant or substance at a workplace unless the requirements of clause 2.2(b)(iv) are met (including any requirement to be authorised, licensed, qualified or supervised); and
 - (viii) if requested by the Principal's Representative or required by the WHS Legislation, must produce evidence of any approvals, certificates, authorisations, licences, prescribed qualifications or experience, or any other information relevant to work health and safety (as the case may be) to the satisfaction of the Principal's Representative before the Contractor or Subcontractor (as the case may be) commences such work.
- (c) The Contractor must ensure that each Subcontractor (including each Designer) referred to in Schedule 1:
- (i) effects and maintains professional indemnity insurance which:
 - (A) covers the Subcontractor's liability in respect of breaches of professional duty (whether owed in contract or otherwise) by the Subcontractor or its Subcontractors in carrying out the work under the relevant Subcontract;
 - (B) covers the Subcontractor for liability to the Principal or the Contractor for the relevant minimum amount listed in Schedule 1;
 - (C) unless the Subcontractor using its best endeavours is unable reasonably to procure such a term in the policy, includes at least one automatic reinstatement of the total limit of liability per annum after claims have been paid; and
 - (D) remains in place at least until the expiration of a period referred to in Schedule 1 from completion of the relevant Subcontract works or professional services; and
 - (ii) to the extent applicable to the work under the relevant Subcontract effects and maintains insurances as described in clause 13.5(b)(i).
- (d) The Contractor will be:
- (i) fully responsible for the performance of the Contractor's Activities despite subcontracting the carrying out of any part of the Contractor's Activities; and

- (ii) vicariously liable to the Principal for all acts, omissions and defaults of its Subcontractors (and those of the employees, Subcontractors and other agents of its Subcontractors) relating to, or in any way connected with, the Contractor's Activities.
- (e) Whenever requested by the Principal's Representative, the Contractor must give the Principal's Representative details of each of its Subcontracts, including the name and address of the Subcontractor (and its Subcontractors), and the works, goods or services being provided under the Subcontract.
- (f) The Contractor must:
 - (i) without limiting clause 19.29(d), use best endeavours to ensure that each of its Subcontracts that has an initial subcontract price of the amount specified in Schedule 1 or more includes provisions to the effect set out in Schedule 12 and a clause to the same effect as this clause 2.2(f)(i) that is binding on the Subcontractor and provide evidence of this to the Principal's Representative when requested by the Principal's Representative;
 - (ii) where a Subcontractor is to carry out design work or other professional services, unless not required by the Principal's Representative, ensure that Subcontractor executes a deed substantially in the form of Schedule 13 that form to be approved by the Principal in writing prior to execution and provide this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
 - (iii) ensure that each of its Subcontractors (and their subcontractors) executes a Confidentiality Undertaking and provides this to the Principal's Representative within 7 days of the engagement of that Subcontractor;
 - (iv) procure that each of its Subcontractors:
 - (A) engaged under a Subcontract that has an initial subcontract price equal to or greater than the amount specified in Schedule 1; or
 - (B) in respect of the categories of work set out in Schedule 1 (regardless of subcontract price),

executes a deed substantially in the form of Schedule 23 that form to be approved by the Principal in writing prior to execution and provides this to the Principal's Representative within 7 days of being engaged by the Contractor;
 - (v) in respect of all Subcontracts in which it holds retention money from the Subcontractor, comply with all requirements under the *Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015* (NSW);
 - (vi) in respect of all Subcontracts, include provisions which ensure that documentation submitted by Subcontractors comply with all applicable document submission requirements in the Management Requirements; and

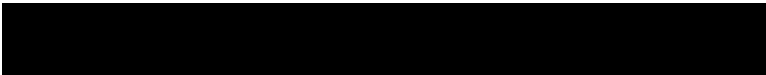
- (vii) in respect of all Subcontracts, include a provision which ensures that the Principal has audit and verification rights in respect of each Subcontract and associated documents and materials.





2.3 Compliance with Law, Codes and Standards

- (a) Subject to clause 2.3(b)(i), the Contractor must, in carrying out the Contractor's Activities:

- (i) ensure that the Enabling Works and the Contractor's Activities comply with all applicable Law;
- (ii) ensure that the Enabling Works comply with the Planning Approval;
- (iii) give all notices and pay all fees and other amounts which it is required to pay in respect of the performance of its obligations under this Deed and give the Principal's Representative copies of all notices it gives to Authorities at the time or before it submits such notices to Authorities;
- (iv) give the Principal's Representative copies of all documents (including Authority Approvals and other notices) that Authorities issue to it;
- (v) at all times conform and comply with, and ensure that the Enabling Works and the Contractor's Activities conform and comply with (subject to clause 2.3(f)) all Codes and Standards; and
- (vi) 

(b) The Contractor must:

- (i) obtain all Authority Approvals required for the:
 - (A) carrying out of the Contractor's Activities; and
 - (B) completion of the Enabling Works in accordance with this Deed,

except:

 - (C) for those Authority Approvals specified in Schedule 1 that either:
 - (aa) were obtained by the Principal prior to the date of this Deed; or
 - (ab) which are to be obtained by the Principal after the date of this Deed,

(the **Principal's Approvals**);
- (ii) prepare and submit:
 - (A) to each relevant Authority all applications and associated documents for the purpose of obtaining all Authority Approvals as required by clause 2.3(b)(i); and
 - (B) to the Principal, copies of:
 - (aa) all applications and associated documents submitted by the Contractor to any Authority;
 - (ab) all documents provided to the Contractor by any Authority, including any Authority Approval;

- (ac) (on a monthly basis) evidence of compliance with the terms of the EPL (if an EPL is required);
 - (ad) any other document the Principal's Representative reasonably directs the Contractor to provide;
 - (ae) all documents submitted to an Authority in respect of the release of a Hold Point under an Authority Approval or any Codes and Standards, which documents must be submitted within a reasonable period of time before the release of the Hold Point; and
 - (af) all documents submitted to an Authority in respect of a Witness Point under an Authority Approval or any Codes and Standards, which documents must be submitted within a reasonable period of time before the review, witness, Inspection, or the undertaking of any tests, methods or processes related to or in any way in connection with the Witness Point, at the same time that document is submitted to the Authority;
- (iii) comply with, satisfy, carry out and fulfil the conditions and requirements of all Authority Approvals (whether obtained by the Contractor or the Principal), including those conditions and requirements that the Principal is required, under the terms of the Authority Approvals, to comply with, satisfy, carry out and fulfil, other than any conditions and requirements of an Authority Approval expressly specified as being the responsibility of the Principal in Schedule 11;
- (iv) in respect of any:
- (A) Authority Approvals which are to be obtained by the Principal after the date of this Deed; or
 - (B) conditions and requirements of Authority Approvals which pursuant to Schedule 11 are to be satisfied or fulfilled by the Principal,
- provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to obtain the Authority Approvals or satisfy or fulfil the conditions and requirements;
- (v) for the purpose of obtaining all Authority Approvals as required by clause 2.3(b)(i), prepare all associated studies and reports required because of the design of the Enabling Works or Temporary Works proposed by the Contractor;
- (vi) as a condition precedent to Enabling Works Practical Completion (but subject to clause 2.3(c)), ensure that it has:
- (A) obtained all Authority Approvals it is required to obtain under this Deed;

- (B) complied with, carried out and fulfilled all conditions and requirements of all Authority Approvals it is required to comply with, carry out and fulfil under this Deed (including obtaining the approval of any person for anything); and
- (C) obtained and supplied to the Principal's Representative certification that the Enabling Works or the Portion, as designed and built, comply with the requirements of the Building Code of Australia to the extent applicable,

including for the avoidance of doubt any Authority Approvals, conditions or requirements which must be obtained, carried out or fulfilled to enable the Contractor, the Principal and any Rail Transport Agency to occupy and use the Enabling Works or Portion for its intended purpose.

(c) If:

- (i) an Authority Approval must be obtained or satisfied by the Contractor as a condition precedent to Portion Completion or Enabling Works Practical Completion;
- (ii) the obtaining or satisfying of the relevant Authority Approval cannot occur until certain Interface Work is performed; and
- (iii) the Contractor has otherwise complied with its obligations in respect of Portion Completion or Enabling Works Practical Completion (as relevant),

then in response to any request from the Contractor:

- (iv) the Principal's Representative:
 - (A) must defer the time for obtaining or satisfying the relevant Authority Approval and omit it as a requirement of Portion Completion or Enabling Works Practical Completion (as relevant); and
 - (B) may impose whatever conditions are reasonable in the circumstances (including any additional reasonable conditions precedent to Portion Completion or Enabling Works Practical Completion (as relevant)); and
- (v) the Contractor:
 - (A) will be relieved of its obligations to obtain or satisfy the relevant Authority Approval as a condition precedent to Portion Completion or Enabling Works Practical Completion (as relevant) in respect of which the Principal's Representative deferred the time for obtaining or satisfying the relevant Authority Approval and omitted it as a requirement of Portion Completion or Enabling Works Practical Completion of the Enabling Works (as relevant) under clause 2.3(c)(iv)(A), however the obligation to obtain or satisfy the relevant Authority Approval will not be omitted from the Contractor's Activities; and
 - (B) must (at its own cost):

- (aa) obtain or satisfy the relevant Authority Approval;
- (ab) comply with any conditions imposed by the Principal's Representative under clause 2.3(c)(iv)(B); and
- (ac) otherwise comply with its obligations under clause 2.3(b)(vi),

when notified by the Principal's Representative that the Interface Work has been completed.

(d) The Contractor:

(i) acknowledges that:

- (A) only the Principal can apply for a modification to the Planning Approval;
- (B) the Principal may, in its absolute discretion refuse to seek such modification or discontinue or withdraw or change an application for such modification at any time and the Contractor will not be entitled to make any Claim against the Principal arising out of or in any way in connection with this clause 2.3(d)(i)(B); and
- (C) the Principal is not obliged to apply for any modification to the Planning Approval on behalf of the Contractor unless the Contractor first submits its proposal for modification to the Principal's Representative for its review and incorporates any comments the Principal may have;

(ii) must not seek to or apply for any modification to the Planning Approval other than via the Principal; and

(iii) must pay the Principal all fees, costs and expenses arising out of, or in any way in connection with, such modification.

(e) In respect of any submissions, surveys, investigations, reports, studies or other documents:

(i) required to be submitted by a term of the Planning Approval; or

(ii) proposed to be submitted by the Contractor in support of any application to amend the Planning Approval,

the Contractor:

(iii) must prepare, carry out and provide to the Principal for its review under clause 9.12 any submissions, surveys, investigations, reports, studies or other documents:

- (A) requested by the Principal's Representative;
- (B) to the standard directed by the Principal's Representative; and
- (C) within the time directed by the Principal's Representative;

- (iv) must provide whatever other assistance and information the Principal's Representative reasonably requests; and
 - (v) agrees that any act or omission (including delay or refusal) by the Principal or the relevant Authority in respect of an application to amend the Planning Approval does not constitute an Act of Prevention.
- (f) If there is a Change in Codes and Standards which the Contractor considers gives rise to a Claim:
- (i) the Contractor must comply with clause 17; and
 - (ii) if the Contractor complies with clause 17, then within the relevant period required in clause 17, the Principal's Representative will either:
 - (A) direct the Contractor to disregard the Change in Codes and Standards; or
 - (B) direct a Variation under clause 6.2(a) in respect of the Change in Codes and Standards after which the relevant adjustments to the Contract Sum will be made under clause 6.4.

If there is any change in the Codes and Standards which does not constitute a Change in Codes and Standards the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.

- (g) If there is a Change in Law which the Contractor considers gives rise to a Claim:
- (i) the Contractor must comply with clause 17; and
 - (ii) if the Contractor complies with clause 17, then within the relevant period required in clause 17, the Principal's Representative will direct a Variation Order under clause 6.2(a) in respect of the Change in Law after which the relevant adjustments to the Contract Sum will be made under clause 6.4; and
 - (iii) the Contractor must comply with the Change in Law.

If there is any change in the Law which does not constitute a Change in Law the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.

- (h) If there is a Change in Authority Approval which the Contractor considers gives rise to a Claim:
- (i) the Contractor must comply with clause 17;
 - (ii) if the Contractor complies with clause 17, then within the relevant period required in clause 17, the Principal's Representative will direct a Variation under clause 6.2(a) in respect of the Change in Authority Approval after which the relevant adjustments to the Contract Sum will be made under clause 6.4; and

- (iii) the Contractor must comply with the Change in Authority Approval.

If there is any change in an Authority Approval which does not constitute a Change in Authority Approval the Contractor must comply with the change and will not be entitled to make any Claim against the Principal arising out of or in any way in connection with the change.

- (i) Other than as set out in clause 2.3(h), and subject to clause 3.7(f) in respect of Contamination, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with:

- (i) any Change in Authority Approval;
- (ii) an Authority Approval obtained or issued or which otherwise takes effect after the date of this Deed;
- (iii) a proposed amendment to the Planning Approval sought by the Contractor;
- (iv) a change in an Authority Approval after the date of this Deed; or
- (v) any:

- (A) assumptions the Contractor makes; or

- (B) failure by the Contractor to adequately satisfy itself,

as to what work methodologies and Temporary Works might be permissible under all Authority Approvals.

- (j) Without limiting the Contractor's obligations under any other clause of this Deed, insofar as the Contractor, in carrying out the Contractor's Activities, is:

- (i) a person conducting a business or undertaking that designs plant, substances or structures to whom section 22 of the *Work Health and Safety Act 2011* (NSW) applies;
- (ii) a person conducting a business or undertaking that manufactures plant, substances or structures to whom section 23 of the *Work Health and Safety Act 2011* (NSW) applies;
- (iii) a person conducting a business or undertaking that imports plant, substances or structures to whom section 24 of the *Work Health and Safety Act 2011* (NSW) applies;
- (iv) a person conducting a business or undertaking that supplies plant, substances or structures to whom section 25 of the *Work Health and Safety Act 2011* (NSW) applies; or
- (v) a person conducting a business or undertaking that installs, constructs or commissions plant or structures to whom section 26 of the *Work Health and Safety Act 2011* (NSW) applies,

the Contractor must comply with the applicable obligations under the WHS Legislation.

- (k) The Principal must obtain the Transitway Declaration by 25 November 2024 in respect of Worksites AL-01, AL-03, AL-04, AL-08, AL-09, AL-10, AL-14.
- (l) If, and only to the extent that, it is required by Law, the Principal must obtain Authority Approval for the Remediation Action Plan by 23 September 2024.

2.4 Legal Challenge to Approval

- (a) If there is a legal challenge, proceedings, or action in relation to the assessment or determination of an application for an Authority Approval or a modification of an Authority Approval, performance of the Contractor's Activities or the Enabling Works, or compliance with any Authority Approval under:
 - (i) the EP&A Act;
 - (ii) the POEO Act;
 - (iii) the EPBC Act; or
 - (iv) any other Law,

the Contractor must:

 - (v) continue to perform its obligations under this Deed unless, as a result of that legal challenge, proceedings or action, it is otherwise:
 - (A) ordered or directed by an Authority;
 - (B) ordered by a court or tribunal exercising lawful jurisdiction; or
 - (C) directed by the Principal or the Principal's Representative; and
 - (vi) if it considers that the legal challenge, proceedings, or action:
 - (A) is in relation to a Principal's Approval; and
 - (B) gives rise to a Claim,

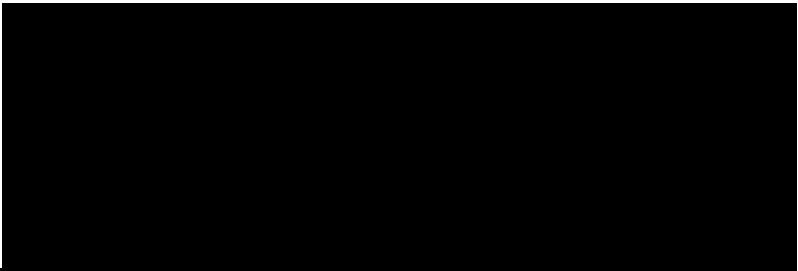
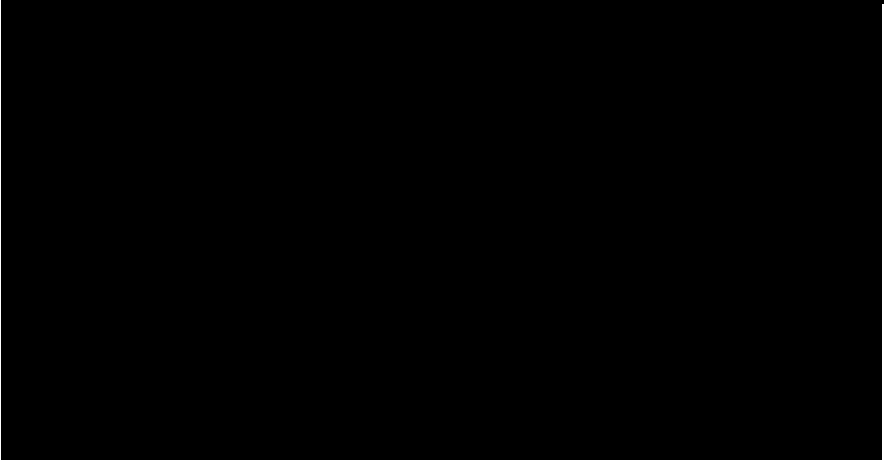
comply with clause 17.
- (b) Subject to clause 2.4(c) and the Contractor's compliance with clause 17, a delay caused by:
 - (i) an order or direction of an Authority referred to in clause 2.4(a)(v)(A);
 - (ii) a court or tribunal exercising lawful jurisdiction order referred to in clause 2.4(a)(v)(B); or
 - (iii) a direction by the Principal or the Principal's Representative referred to in clause 2.4(a)(v)(C),

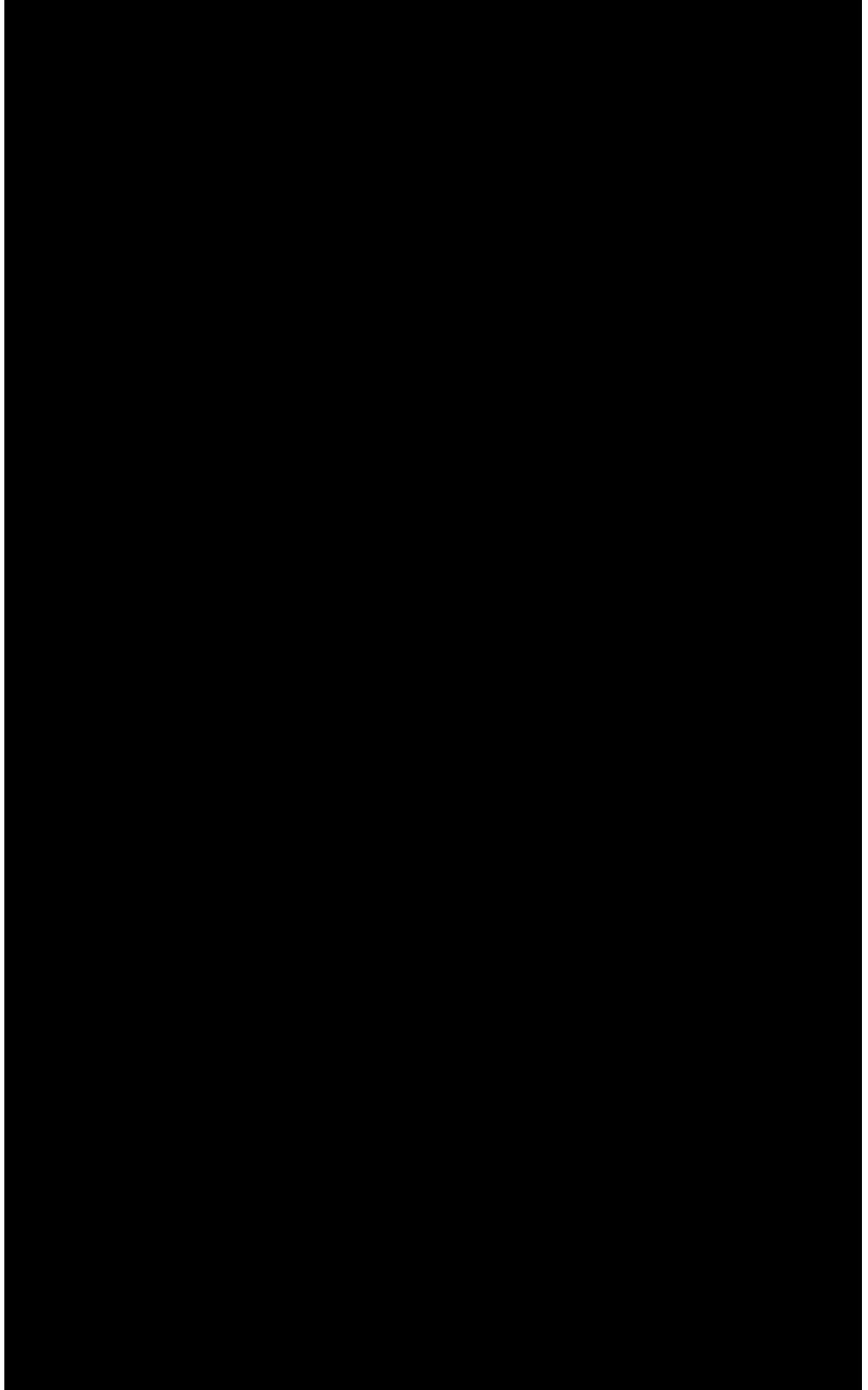
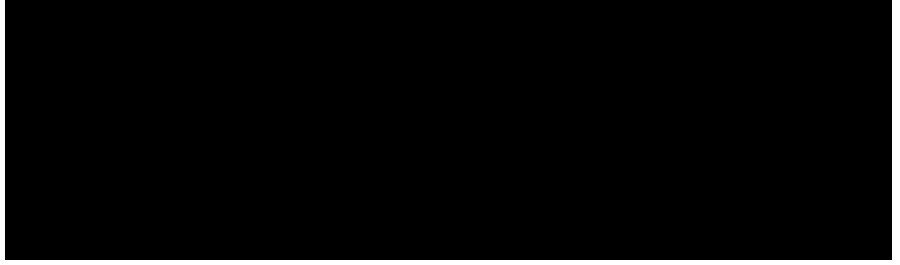
in respect of a Principal's Approval will be a:

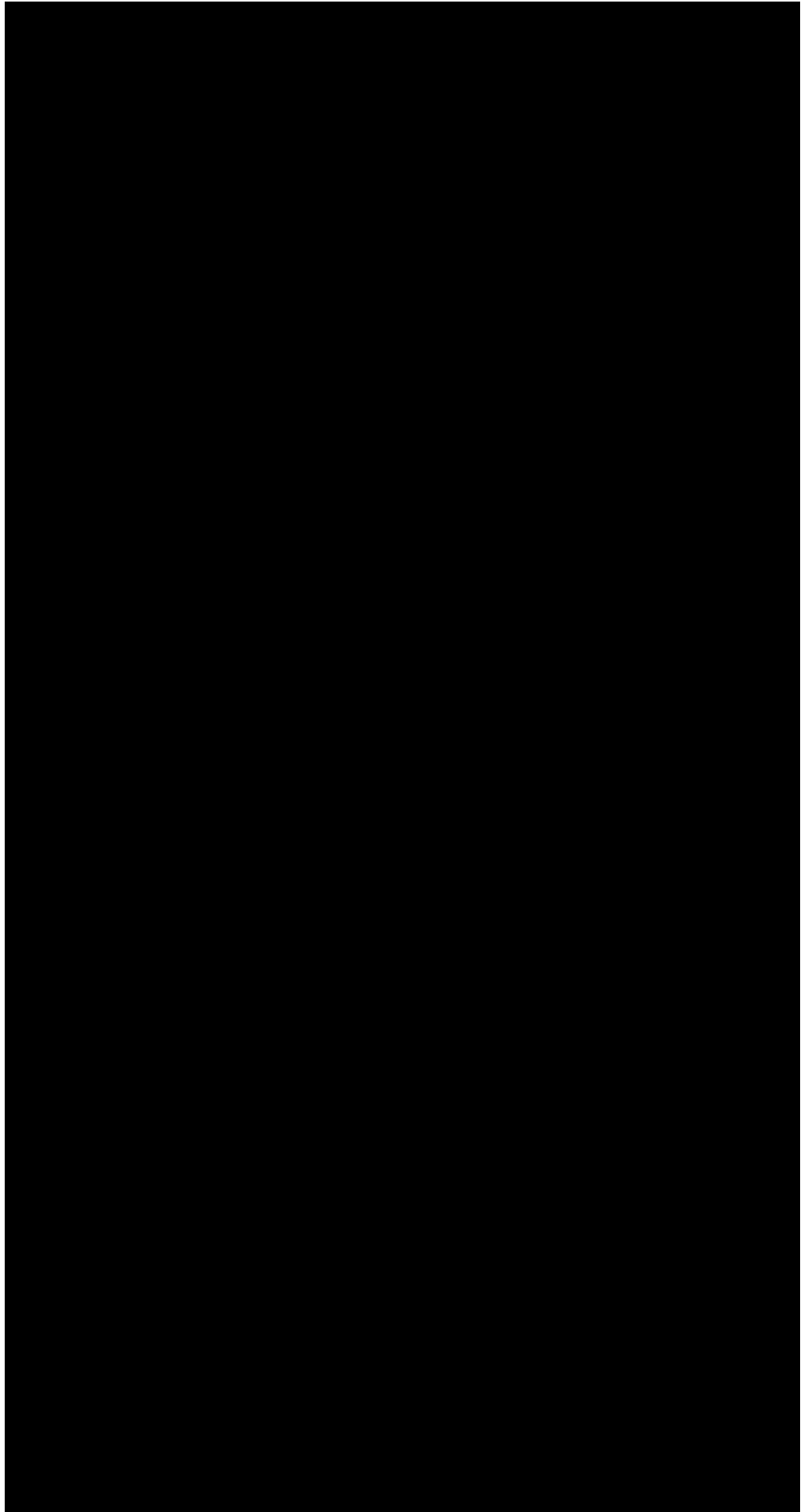
 - (iv) Qualifying Cause of Delay; and

- (v) Relevant Cause.
- (c) Clauses 2.4(b) and 10.10(a) do not apply to the extent that a legal challenge, proceedings or action of the kind referred to in clause 2.4(a) is brought or upheld due to the Contractor's non-compliance with its obligations under this Deed or any Authority Approval including the Planning Approval.

2.5 Utility Service Works

- (a) The Contractor must:
 - (i) undertake any Utility Service Works it needs to perform its obligations under this Deed;
 - (ii) relocate, remove, modify, support, protect, reinstate and provide all Utility Services necessary for the Contractor to comply with its obligations under this Deed;
 - (iii) provide and maintain all signage, line marking, flagmen, barriers and other road traffic devices needed by the Contractor to comply with its obligations under this Deed, including any such devices reasonably required by the Principal's Representative;
 - (iv) except to the extent required to fulfil its obligations under this Deed, ensure that no Utility Services are:
 - (A) damaged or destroyed; or
 - (B) disconnected, disrupted, interfered with or interrupted during normal operating hours,
 by reason of the performance of the Contractor's Activities;
 - (v) cooperate and coordinate with the owners of all Utility Services, and implement their requirements as part of the Contractor's Activities; and
 - (vi) 
- (b) 







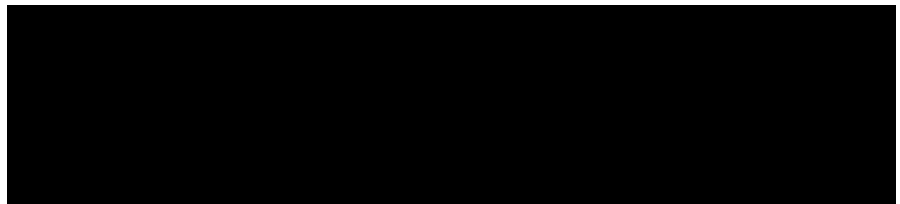
2.6 Crown Building Work

- (a) The Contractor must, in relation to any part of the Enabling Works or Temporary Works that is Crown Building Work (as defined in section 109R of the EP&A Act), certify the Crown Building Work (on behalf of the Principal) as required by section 109R of the EP&A Act.
- (b) Any certification under clause 2.6(a) will not lessen or otherwise affect:
 - (i) the Contractor's other liabilities or responsibilities under this Deed or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor, whether under this Deed or otherwise according to Law.

2.7 Principal contractor

- (a) In this clause 2.7 the terms 'construction project', 'construction work', 'principal contractor' and 'workplace' have the same meanings assigned to those terms under the WHS Legislation and the word "Control" has the same meaning as in Schedule 22. For the purpose of the WHS Legislation and this Deed, the Contractor's Activities and any work by Other Contractors on any part of the Site is taken to be part of the same 'construction project'.
- (b) During the period for which the Contractor is in Control of any part of the Site and to the extent that the Contractor's Activities or any Other Contractors' activities includes construction work:
 - (i) the Principal engages the Contractor as the principal contractor in respect of the Contractor's Activities and all Other Contractors' activities carried out on that part of the Site;
 - (ii) the Principal authorises the Contractor to have management and Control of each workplace at which the Contractor's Activities, and any Other Contractor's activities are to be carried out and to discharge the duties of a principal contractor under the WHS Legislation; and
 - (iii) the Contractor accepts the engagement as principal contractor and agrees to discharge the duties imposed on a principal contractor by the WHS Legislation.

(c)



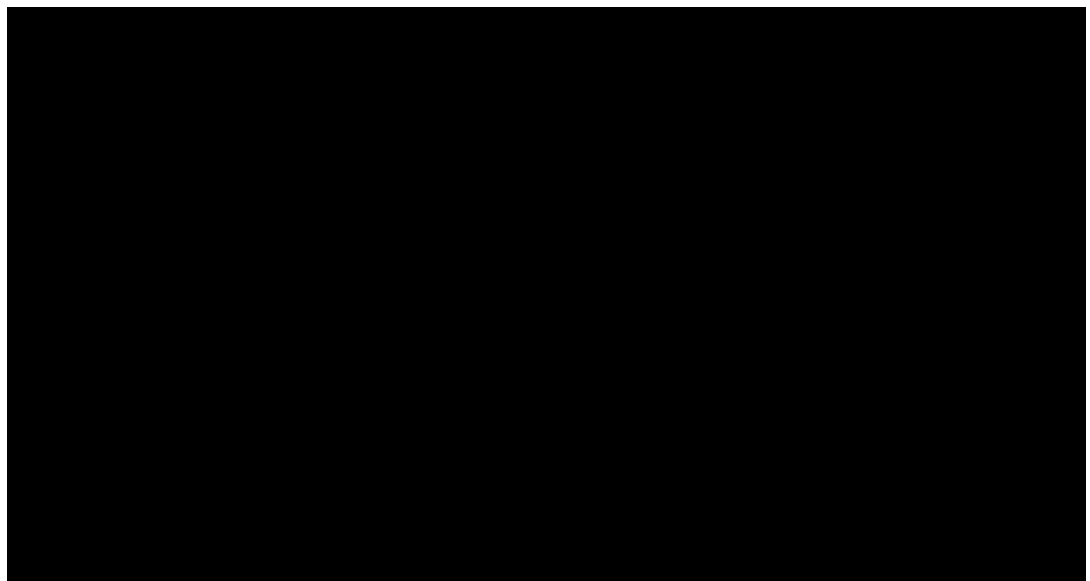
- (d) Where the:
 - (i) Contractor is not specified in Schedule 22 as being; or

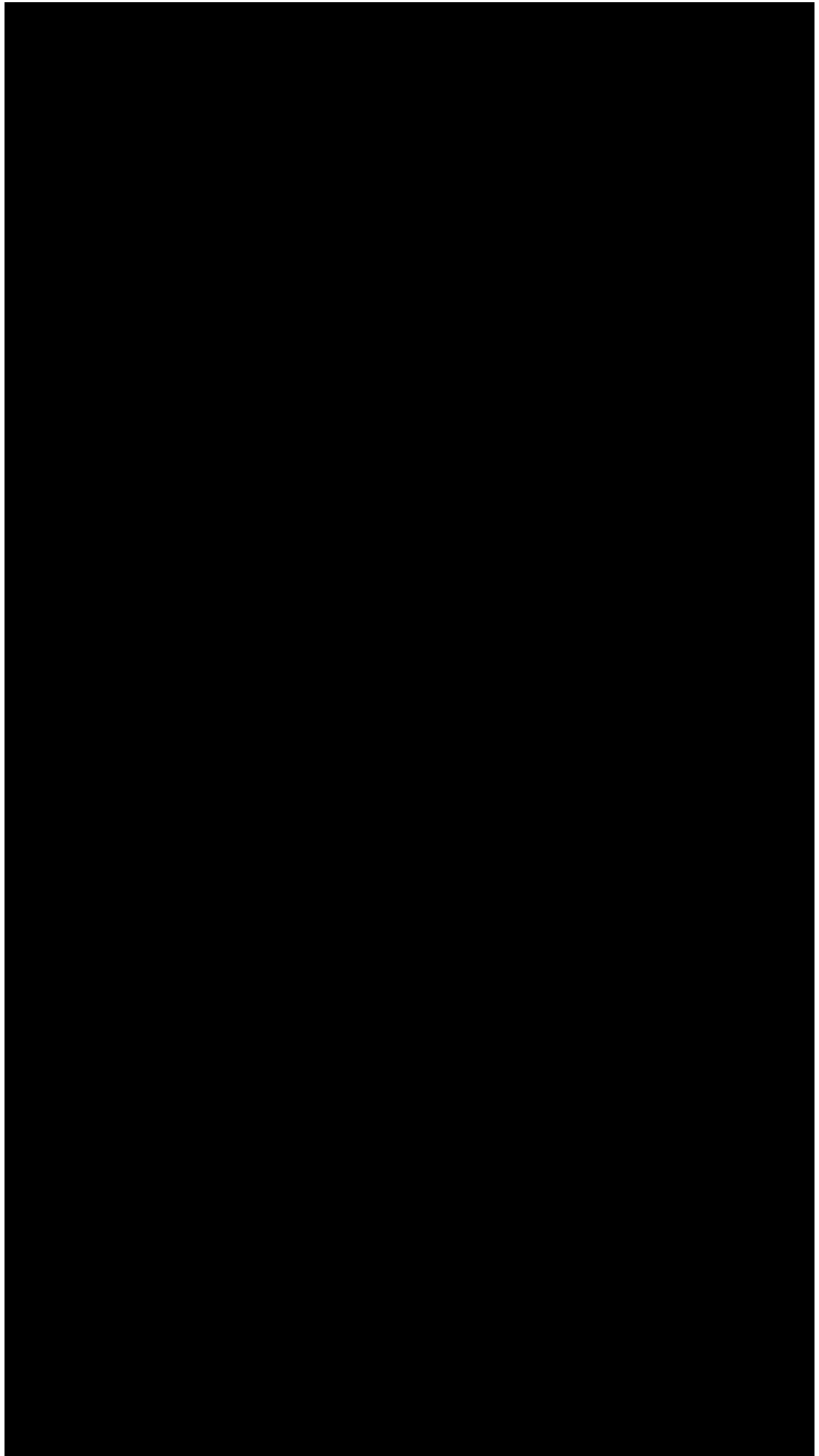
- (ii) the Principal's Representative has not directed that the Contractor is to be,

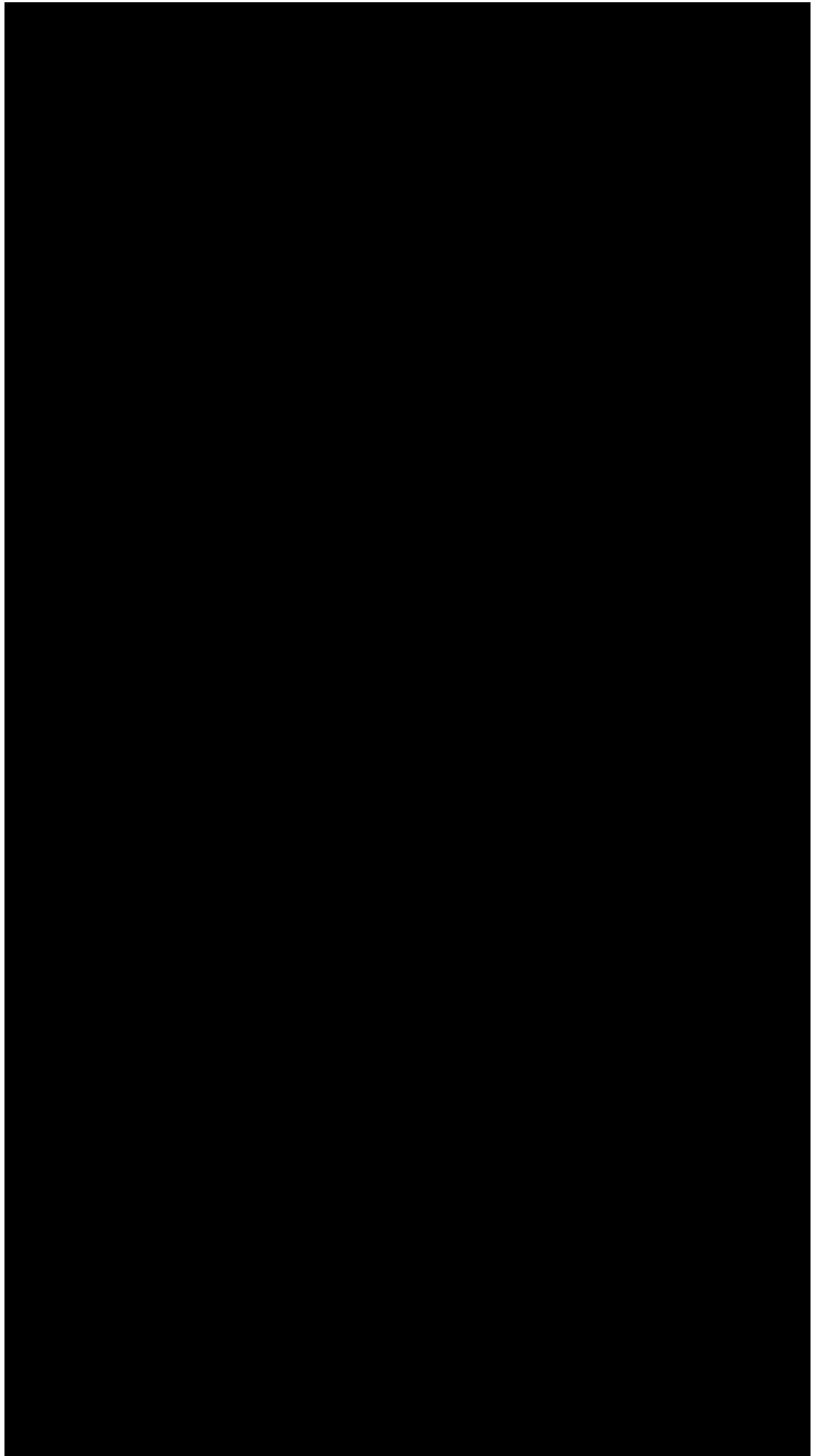
in Control of a part of the Site, the Contractor:

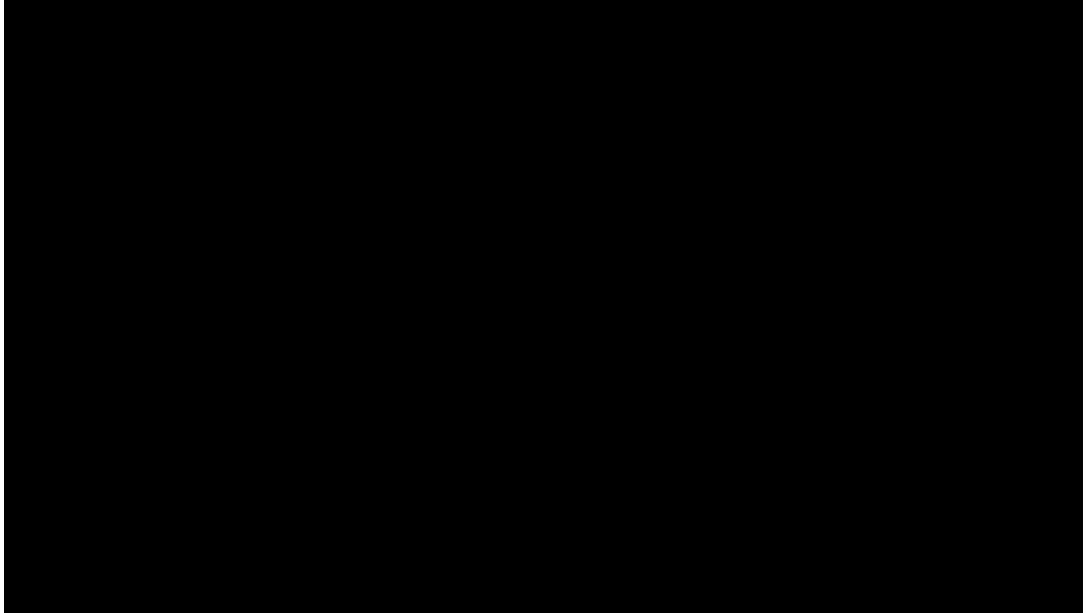
- (iii) acknowledges that either the Principal or the Principal's nominee is in Control of that part of the Site and is the principal contractor in respect of all construction work carried out by or on behalf of the Principal on that part of the Site;
 - (iv) must comply with any exercise by the Principal or the Principal's nominee of such authority as is necessary to enable the Principal or the Principal's nominee to discharge the responsibilities imposed on a principal contractor by the WHS Legislation; and
 - (v) acknowledges and agrees that a reference in this clause 2.7 to an act or omission by a person includes an act or omission by a person in the exercise of its authority as principal contractor as referred to in clause 2.7(d)(iii).
- (e) The Contractor must comply with any direction by the Principal's Representative for the purposes of compliance with a condition or restriction of the Principal's Accreditation under the Rail Safety National Law, except to the extent that compliance with the direction of the Principal is inconsistent with the Contractor's obligations under clause 2.7(b).
 - (f) Without limiting anything else in this clause 2.7, the Contractor must, in respect of Remote Works, Remote Sites and Extra Land, discharge the duties of a principal contractor under the WHS Legislation in respect of such construction work.
 - (g) Where the Contractor is the principal contractor and there are Other Contractors on or adjacent to Site, the Contractor must give the Principal's Representative a copy of all safety related documentation provided by the Contractor or the Other Contractors.

2.8 Security and Guarantee and Indemnity









2.9 Replacement Security and Additional Security

(a) If:

- (i) the Principal holds any Security provided under clause 2.8 which contains an expiry date which is earlier than the date upon which this Deed requires the Principal to return the Security to the Contractor; or
- (ii) the credit rating of the issuer falls below the rating required under clause 2.8(b),

the Contractor must:

- (iii) where clause 2.9(a)(i) applies, on or before the date which is 20 Business Days prior to the expiry date for that Security; or
- (iv) where clause 2.9(a)(ii) applies, within 10 Business Days of the date on which the credit rating falls below the Required Rating,

provide the Principal with replacement Security in accordance with clause 2.8(b) in exchange for the Security which is being replaced (**Replacement Security**).

- (b) If clause 2.9(a) applies in respect of any Security and the Principal has not received from the Contractor the Replacement Security by the date required under clause 2.9(a)(iii) or 2.9(a)(iv), as applicable, then, irrespective of anything contained in, and without limiting the Principal's rights under, this Deed or the Security, the Principal may make a demand under the Security for the entire amount payable under that Security and thereafter retain the proceeds.
- (c) Subject to the Principal's rights under this Deed to use these proceeds, the proceeds from any demand made by the Principal pursuant to clause 2.9(b) will be paid to the Contractor on the same date as the Principal would have been required by this Deed to return the Security from which the proceeds were obtained.
- (d) The Contractor acknowledges that damages will not be an adequate remedy for the Principal if the Contractor fails to comply with its obligations under clause 2.9(a).

(e)

(f)

2.10 Collusive Arrangements

(a) The Contractor:

(i) warrants that, prior to the date of this Deed, the Contractor had no knowledge of the whole or any part of the Tender price of any other Tenderer and had not directly or indirectly communicated the Contractor's Tender price, or any part of such Tender price, to any other Tenderer;

(ii) warrants that, except as disclosed in the Tender and as agreed with the Principal in writing, the Contractor:

(A) has not entered into any contract or arrangement or arrived at any understanding with any other Tenderer or with any trade or industry association to the effect that:

(aa) the Contractor will pay money to or confer any benefit upon any other Tenderer; or

(ab) the Contractor will pay money to or confer any benefit upon any trade or industry association (above the published standard membership fee),

as a result of entering into this Deed or providing a Tender for the Contractor's Activities;

(B) has not made any allowance in the Original Contract Sum on account of a contract, arrangement or understanding of a kind referred to in clause 2.10(a)(ii)(A); and

(C) has not and will not pay any money or confer any benefit on any other Tenderer or any trade or industry association of the kind referred to in clause 2.10(a)(ii)(A); and

(iii) acknowledges that it is aware that the Principal entered this Deed in reliance upon the warranties in clauses 2.10(a)(i) and 2.10(a)(ii).

(b) The Principal and the Contractor agree that if any matter warranted in clauses 2.10(a)(i) or 2.10(a)(ii) is found not to be true or correct, in addition to any other rights that the Principal may have, the Contractor:

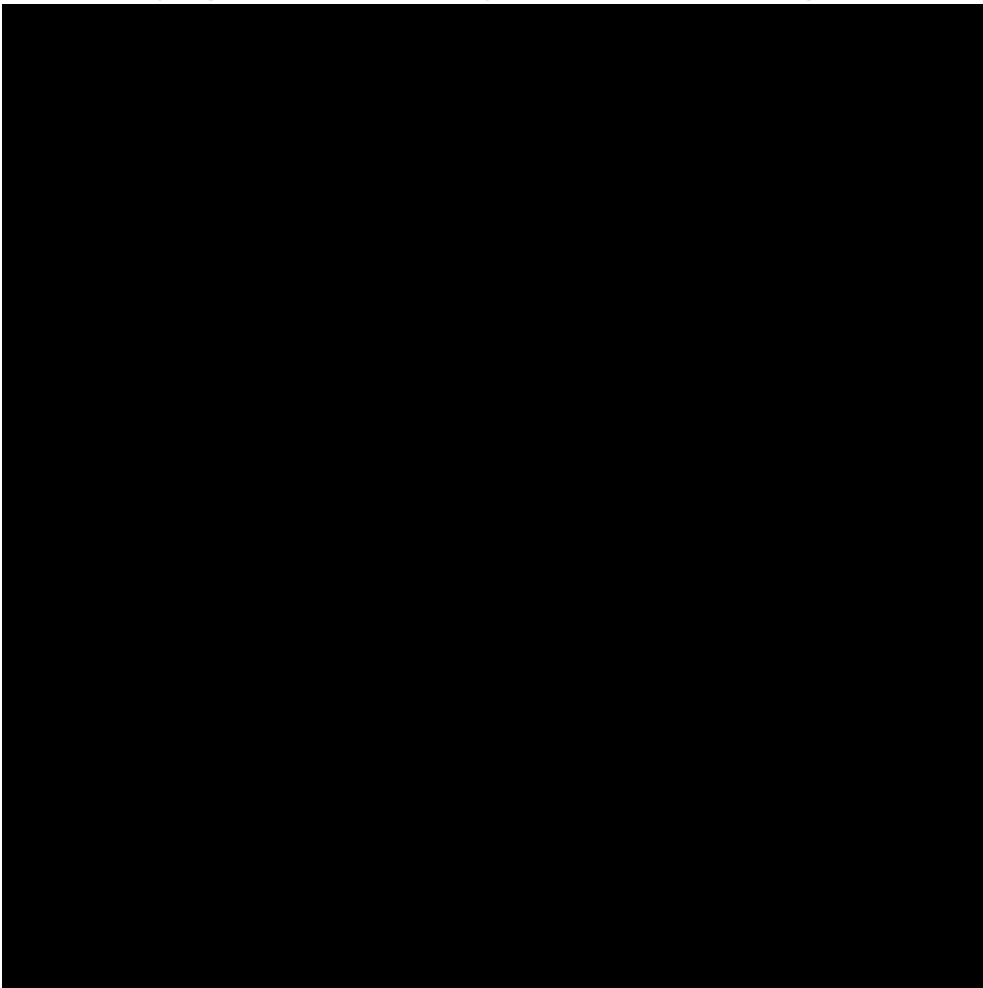
(i) will be in fundamental breach of this Deed (such breach going to the root of this Deed); and

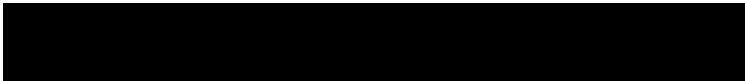
(ii) without limiting the Principal's rights under clauses 14 and 15, must pay to the Principal as liquidated damages the sum equivalent to that allowed or paid or to be paid pursuant to any

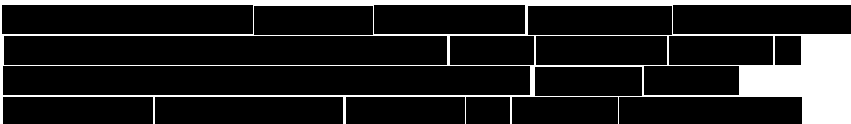
contract, arrangement or understanding referred to in clause 2.10(a)(ii)(A) or 2.10(a)(ii)(C).

2.11 Not used

2.12 Third Party Agreements and Utility Service Contractor Agreements



- (b) The Third Party Works:
 - (i) form part of the Enabling Works;
 - (ii) 
 - (iii) are subject to processes in relation to completion set out in the relevant Third Party Agreements;
 - (iv) must be programmed and constructed in accordance with any programming constraints contained in the relevant Third Party Agreement; and
 - (v) will be subject to the design processes set out in the relevant Third Party Agreement.

- (c) 

[REDACTED]

(d)

[REDACTED]

(e)

[REDACTED]

[Redacted]

(f)

[Redacted]

(g)

[Redacted]

(h)

(i)

(j)

2.13 Co-operation with Interface Contractors and Other Contractors

The Contractor:

(a) acknowledges that,

in respect of Other Contractors:

(i) the Principal may arrange or allow Other Contractors to perform works upon, or adjacent to, the Site at the same time as the

Contractor is performing the Enabling Works. In these instances, the Contractor must accommodate access and egress, including interface co-ordination allowance for the Other Contractors;

in respect of Interface Contractors:

- (ii) the Interface Work will or may form part of the Project;
- (iii) the Contractor's Activities interface with the Interface Work;
- (iv) the Interface Contractors will be executing work on parts of the Site, Remote Sites or Extra Land, or adjacent to the Site, Remote Sites or Extra Land, at the same time as the Contractor is performing the Contractor's Activities;
- (v) in addition to clause 5.9, it will require certain design and work methodology input from the Interface Contractors to coordinate the design of the Enabling Works and Temporary Works with the Interface Work;
- (vi) the Interface Contractors will require the Contractor to provide design and work methodology information to them to coordinate the design of the Interface Work with the Enabling Works and Temporary Works, and this must be provided in a timely manner by the Contractor; and
- (vii) any delay in the performance of the Contractor's Activities or in the Contractor providing information to, or co-operating and co-ordinating with any Interface Contractor, may adversely impact upon, delay or disrupt any one or more Interface Contractors or the PLR in a way which may lead to the Principal suffering or incurring Loss;

(b) must at all times:

- (i) permit:
 - (A) the Interface Contractors to execute the Interface Work; and
 - (B) the Other Contractors to execute the Other Contractors works,

on the applicable parts of the Site, Remote Sites or Extra Land or on any adjacent property to the Site, Remote Sites or Extra Land at the same time as the Contractor is performing the Contractor's Activities;

- (ii) for the purpose set out in clause 2.13(b)(i) ensure the Interface Contractors and Other Contractors have safe, clean and clear access to those parts of the Site, Remote Sites or Extra Land, or property adjacent to the Site, Remote Sites or Extra Land, required by them for the purpose of carrying out their work;
- (iii) protect the Enabling Works, Temporary Works and other improvements on the Site, Remote Sites or Extra Land from accidental damage by the Interface Contractors and / or the Other Contractors and provide means of receiving, storing and protecting goods and equipment supplied by the Interface Contractors;

- (iv) fully co-operate with:
 - (A) the Interface Contractors; and
 - (B) Other Contractors,
 and do everything necessary to:
 - (C) 'ensure the effective coordination of the design and construction of the Enabling Works and Temporary Works with the design and construction of the Interface Work;
- (v) carefully coordinate and interface the Contractor's Activities with the:
 - (A) Interface Work; and
 - (B) Other Contractors works,
 and for this purpose:
 - (C) make proper allowance in the Enabling Works Program for the Interface Work;
 - (D) review all programs provided by the Interface Contractors and confirm that they adequately allow for the Contractor's Activities and the interfaces of the Interface Work with the Contractor's Activities;
 - (E) monitor the progress of the Interface Work;
 - (F) immediately notify the Principal's Representative of any interface or sequence of activities that may affect the commencement, progress or Portion Completion of the Enabling Works;
 - (G) provide the Interface Contractors and Other Contractors with sufficient information about the current and expected Contractor's Activities to assist them to coordinate their Interface Work and Other Contractors works with the Contractor's Activities;
 - (H) cooperate, meet with, liaise, and share information so that the Contractor and the relevant Interface Contractor and Other Contractor each comply with the provisions of the relevant EPL (if applicable); and
 - (I) immediately advise the Principal's Representative of all matters arising out of the liaison with an Interface Contractor that may involve a change to design or construction work under this Deed or otherwise have an adverse effect upon the Contractor's Activities;
- (vi) perform the Contractor's Activities so as to minimise any interference with or disruption or delay to the Interface Work;
- (vii) perform the Contractor's Activities and co-ordinate with the Interface Contractors and Other Contractors to minimise delay to the Enabling Works and Contractor's Activities;

- (viii) coordinate the Contractor's Activities, including work sequencing, construction methods, safety and industrial relations matters with those affecting, and influenced by, Interface Contractors' personnel and work, including providing to the Principal's Representative (in accordance with clause 2.13(b)(ix)) work method statements for those parts of the Enabling Works or Temporary Works which are adjacent to or interface with any Interface Work, at least 15 Business Days prior to commencing the work described in the work method statement;
- (ix) provide for the purposes of clause 2.13(b)(vii) (unless otherwise directed by the Principal's Representative), the number and form of copies of the work method statements specified in Schedule 1;
- (x) work directly with Interface Contractors to complete the design of the Enabling Works and Temporary Works and provide all necessary information to the Interface Contractors in respect of the Enabling Works and Temporary Works to permit the Interface Contractors to complete the design of the Interface Work;
- (xi) work in accordance with:
 - (A) the Project Plans that have been submitted for review under clause 9.12, and, in respect of which:
 - (aa) the Contractor has received the notice referred to in clause 9.12(d)(iii)(C); or
 - (ab) the relevant period of time in clause 9.12(d)(iii) has expired and the Principal's Representative has not rejected the applicable Project Plans or made any comments on them (except, in the case of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.12(e)); and
 - (B) the Management Requirements;
- (xii) attend interface coordination meetings with Interface Contractors and others every 14 days or as specified by the Management Requirements, 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;
- (xiii) when information is required from an Interface Contractor or Other Contractor, give at least 5 Business Days (except in special circumstances), and at all times reasonable, written notice to that Interface Contractor or Other Contractor requesting such information and specifying the date by which such information is required, with a copy to the Principal's Representative;
- (xiv) ensure that any written notice given under clause 2.13(b)(xiii) provides the Interface Contractor or Other Contractor (as

relevant) with the longest possible time for the provision of the information;

- (xv) when any information is requested by an Interface Contractor or Other Contractor, including confirming the compatibility or suitability of the design of, work methods to be used in, or any other aspect of, the Interface Work or Other Contractors work with the Enabling Works or the Contractor's Activities:
 - (A) provide the information to the Interface Contractor or Other Contractor, with a copy to the Principal's Representative, within the time requested by the Interface Contractor or Other Contractor provided that this time is reasonable; and
 - (B) ensure and warrant that the information provided is accurate; and
- (xvi) use its best endeavours to resolve any problems, and work closely and iteratively, with the Interface Contractors, including providing design options, iterations, and 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, Interface Contractors;
 - (D) the compatibility of the Enabling Works and Temporary Works with the Interface Work;
 - (E) coordination in accordance with this clause 2.13(b); and
 - (F) technical issues with the information provided to, or received from, Interface Contractors;
- (c) must, in the event that despite using its best endeavours, and working closely and iteratively with:
 - (i) the Interface Contractors, the Contractor and any Interface Contractor fail to resolve a problem between them:
 - (A) give written notice to the Principal's Representative with a copy to the Interface Contractor describing the problem; and
 - (B) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem; and
 - (ii) the Other Contractors, the Contractor and any Other Contractor fail to resolve a problem between them:
 - (A) give written notice to the Principal's Representative with a copy to the Other Contractor describing the problem; and

- (B) attend any coordination meetings as requested, and to be chaired, by the Principal's Representative, and in good faith work with those present to attempt to resolve the problem;
- (d) must promptly advise the Principal's Representative of all matters arising out of the liaison with the Interface Contractors and/or Other Contractors that may involve a change to design or construction work under this Deed or otherwise have an adverse effect upon the Contractor's Activities;
- (e) acknowledges that conditions similar to those in this clause 2.13 applying to the Contractor will apply to all Interface Contractors and Other Contractors engaged by the Principal, whether working on the Site or on any other site; and
- (f)

2.13A

2.14

2.15 Prevention of nuisance and interference

In performing the Contractor's Activities, the Contractor must:

- (a) prevent nuisance and unreasonable noise, dust, vibration and disturbances; and
- (b) not interfere with the passage of people and vehicles, access to any premises, car parks, boat ramps, roads or pedestrian ways or the operations or activities carried out on or adjacent to the Site, except to the extent and for such period that such interference:
 - (i) is required for unforeseeable reasons of public health or safety, in which case the Contractor must restore the access as soon as possible;
 - (ii) has been agreed between the Principal and a Third Party in a relevant Third Party Agreement; or
 - (iii) has been agreed between residents or businesses adjacent to the Site and the Principal.

2.16 Community

The Contractor:

- (a) acknowledges that the areas where the Contractor's Activities will be performed are of great importance to many people including local residents and businesses, and impact on the community;
- (b) acknowledges that the community, including local residents and businesses adjacent to, or within the vicinity of, the Enabling Works, the Site, the Remote Sites or the Extra Land may carry out activities adjacent to, or within the vicinity of, the Site, the Remote Sites or the Extra Land at the same time as the Contractor;
- (c) must take all necessary precautions to ensure that the Contractor's Activities, including the execution of the Temporary Works, do not unduly interfere with community activities;
- (d) must carry out the Contractor's Activities in a manner that minimises the impact on the community;
- (e) must take all necessary precautions to ensure that the Enabling Works, the Temporary Works, the Site, Remote Sites, Extra Land and the PLR are protected from accidental damage by the community;
- (f) must promptly advise Principal's Representative of any:
 - (i) Contractor's Activities that might have an adverse effect on the community; and
 - (ii) activities of the community that might have an adverse effect on the performance of the Contractor's Activities; and
- (g) must promptly take all reasonable action to mitigate any adverse effect upon any community activities or the safety of the community or any other persons.

2.17 Incident Management

- (a) The Contractor must identify clear guidelines for responding to any Incident arising from the performance of the Contractor's Activities and establish procedures to ensure that the Principal's Representative is

promptly notified of any Incident in accordance with the Management Requirements.

- (b) The Contractor must report an Incident in the following circumstances:
 - (i) should an Incident occur which is reportable under any relevant Law, the Contractor must immediately report the Incident to the relevant Authority and the Principal's Representative in accordance with the Management Requirements; and
 - (ii) should an Incident occur which relates to rail safety, the Contractor must report the Incident to the Principal and any relevant Rail Transport Agency rail management centre or the nearest network control officer.
- (c) In relation to any environmental or safety Incident involving Contamination or other waste that arises during the performance of the Contractor's Activities, subject to clause 3.8, the Contractor must:
 - (i) at its own cost promptly take all appropriate action to manage and dispose of all Contamination or other waste arising from the Incident;
 - (ii) comply with all relevant Laws including any requirements to give notice to a relevant Authority; and
 - (iii) at its own cost 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.
- (d) If the Contractor causes or contributes to the occurrence of an Incident and fails to ensure that the Principal is promptly notified, a Contractor Event of Default will arise.
- (e) Without prejudice to the Principal's other rights under this Deed, if the Principal forms the reasonable view, upon the occurrence (or imminent risk of the occurrence) of an Incident, that the Contractor is not taking adequate measures to manage the Incident or control or eliminate the adverse impact or the risk of such an Incident arising in the future:
 - (i) the Principal may (but has no obligation to) take such actions as it deems necessary to overcome and alleviate the cause and consequences of any Incident; and
 - (ii) if the Principal takes any such action it will be entitled to recover its reasonable costs and expenses from the Contractor as a debt due from the Contractor to the Principal.
- (f) Without prejudice to the Principal's other rights under this Deed, the Principal's Representative may issue a direction under clause 10.11(a) requiring the Contractor to suspend the carrying out of the whole or any part of the Contractor's Activities in the event:
 - (i) of any Incident, involving:
 - (A) a significant spill of Contamination;
 - (B) any accident or release of Contamination which it believes may pose a danger to health, life or property; or

- (C) any actual damage to the Environment or a significant risk of harm to the Environment; or
 - (ii) that any safety incident occurs which leads to, or had the potential to lead to, a fatality or injury to any person (including any Incident which must be reported to New South Wales WorkCover Authority) or damage to property.
- (g) Without limiting any express entitlement of the Contractor in this Deed with respect to Contamination, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim for any cost, expense, Loss, Liability, delay, disruption or penalty arising out of or in connection with:
 - (i) any suspension due to a direction to suspend issued, or for a failure to issue a notice to suspend, in the circumstances set out in clause 2.17(f); or
 - (ii) complying with a direction issued under clause 2.17(f),

in each case only where the suspension or direction is a result of the Contractor's failure to perform its obligations in accordance with this Deed.
- (h) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.17(f), the Contractor must not recommence the Contractor's Activities in respect of the part of the Contractor's Activities to which the notice relates until the Principal's Representative issues a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (i) If the Principal's Representative issues a notice to suspend in the circumstances set out in clause 2.17(f), the Principal's Representative may also direct the Contractor as to the steps which the Contractor must take before the Principal's Representative will issue a direction pursuant to clause 10.11(a) permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend. In these circumstances the Contractor must, at its cost, comply with the direction of the Principal's Representative, and only once the Principal's Representative is satisfied that the Contractor has complied with the requirements of the direction issued under this clause 2.17(i) will the Principal's Representative issue a direction to the Contractor permitting the Contractor to recommence the Contractor's Activities affected by the notice to suspend.
- (j) The Principal will be entitled to recover its reasonable costs and expenses for any action the Principal's Representative deems necessary to avoid the issue of any notice to suspend in the circumstances set out in clause 2.17(f) due to the Contractor's, its agents' or its Subcontractors' wrongful acts or omissions in performing the Contractor's Activities, as a debt due from the Contractor to the Principal.

2.18 Working days and hours of work

The Contractor must observe:

- (a) all relevant Laws; and

- (b) subject to clause 6.12(b), any requirements of the Principal as specified in Schedule 1 or otherwise notified by the Principal's Representative from time to time,

which regulate working days and hours of work.

2.19 NSW Government Aboriginal Procurement Policy

- (a) The Contractor must comply with the NSW Government Aboriginal Procurement Policy as amended from time to time (as at the date of signing of this Deed, the edition dated 23 September 2022).
- (b) The Contractor must implement the Project Aboriginal Participation Plan.
- (c) The Contractor must systematically manage its Aboriginal participation processes in accordance with the Project Aboriginal Participation Plan Aboriginal Procurement Policy.
- (d) The Contractor must demonstrate to the Principal, whenever requested, that it has met and is meeting at all times its obligations under clauses 2.19(a) to 2.19(c) inclusive.
- (e) The Contractor acknowledges that the Principal's Representative may review the Project Aboriginal Participation Plan:
 - (i) prior to the commencement of the Contractor's Activities on the Site; and
 - (ii) periodically during the course of the carrying out of the Contractor's Activities,

including by conducting an on-site verification that the Project Aboriginal Participation Plan is being correctly implemented, that performance targets are being met and that the stated outcomes are being achieved.

2.20 Industrial relations

- (a) The Contractor must in carrying out the Contractor's Activities:
 - (i) assume sole responsibility for and manage all aspects of industrial relations for the Contractor's Activities;
 - (ii) ensure all Subcontractors manage all aspects of industrial relations with their employees appropriately;
 - (iii) ensure that the rates of pay and conditions of employment specified in all relevant industrial, enterprise and project based agreements and awards, and any relevant Law, for all employees engaged in any capacity by any person in connection with the Contractor's Activities, are always observed in full;
 - (iv) keep the Principal's Representative fully and promptly informed of industrial relations problems or issues that affect or are likely to affect the carrying out of the Contractor's Activities or the Other Contractors' activities (including, Interface Contractors' Activities);
 - (v) without limiting clauses 2.3 and 21, comply with all the requirements of the NSW Code and the NSW Guidelines;

- (vi) conduct its industrial relations affairs in accordance with the Workplace Relations Management Plan developed and submitted by the Contractor as part of the Project Plans, in accordance with the Management Requirements;
 - (vii) submit to the Principal's Representative, before beginning any work on the Site, Remote Sites or Extra Land, a statement detailing:
 - (A) the location of time and wage records and other documents that are required to be kept to verify ongoing compliance with all employment and legal obligations;
 - (B) the names of each award or enterprise agreement that is likely to cover the Contractor and Subcontractors involved in the Contractor's Activities; and
 - (C) the names of those responsible for coordinating industrial relations for the Contractor's Activities;
 - (viii) not do, or omit to do, anything that is, or is likely to be, prejudicial to the performance of the Contractor's Activities;
 - (ix) before beginning work on the Site, Remote Sites or Extra Land, submit a statement on the Contractor's letterhead and signed by an authorised person, attesting to the Contractor's compliance, in the preceding twelve months, with all employment and legal obligations, including:
 - (A) payment of remuneration to employees;
 - (B) annual leave provisions;
 - (C) not used;
 - (D)
 - (E) superannuation fund membership and contributions; and
 - (F) over-award payments such as redundancy fund contributions; and
 - (x) continue to provide during the Contractor's Activities appropriate information to verify compliance with the awards, enterprise and workplace agreements and all other legal obligations relating to the employment of people for the Contractor's Activities.
- (b) If the Contractor engages an independent industry or employer association or other specialist organisation to audit and verify compliance with employment and legal obligations, a statement or declaration from that organisation may be submitted instead of the statement by the Contractor under clause 2.20(a)(ix).
- (c) The industrial relations requirements contained in this Deed and the NSW Code, and the NSW Guidelines:
- (i) are in addition to, but are not in substitution for, any requirements of any Law; and

- (ii) do not limit the powers of the Principal or the liabilities and responsibilities of the Contractor.
- (d) The Contractor warrants and acknowledges that it has allowed in the Contract Sum for all the costs and expenses involved with complying with all the requirements of this Deed relating to industrial relations and all relevant awards, enterprise and industrial agreements and project specific agreements and awards.

2.21

2.22 National security of Critical Infrastructure

- (a) The Contractor:
 - (i) acknowledges that the Principal has, or may come to have at any time, obligations under the Security of Critical Infrastructure Legislation;
 - (ii) agrees that it must:
 - (A) retain and provide to the Principal's Representative such records and reports as may be required; and
 - (B) comply with such directions given,

by the Principal's Representative for the purposes of compliance with the Security of Critical Infrastructure Legislation, including (without limitation) complying with any direction:

 - (C) to prepare a risk management plan or program;
 - (D) to implement specific security controls;
 - (E) to do or refrain from doing an act or thing if there is a risk of an act or omission that would be prejudicial to security; or
 - (F) arising out of Part 3 of the *Security of Critical Infrastructure Act 2018* (Cth) to suspend the performance of the Contractor's Activities or for TfNSW to discharge its obligations under Part 3A of that Act; and
 - (iii) agrees that it must strictly comply with any security procedures, security processes and information and cyber security requirements and risk management plans (including reporting requirements) and policies notified to the Contractor by the Principal's Representative from time to time.

- (b) The Contractor acknowledges and agrees that to the extent the Contractor's Activities concern or affect a Critical Infrastructure Asset, the Contractor must, and must ensure that its personnel (including subcontractors):
 - (i) in performing the Contractor's Activities, take all action reasonably necessary to ensure the security of the Critical Infrastructure Asset and not do, or omit to do, any act or thing that would be prejudicial to the security of the Critical Infrastructure Asset;
 - (ii) notify the Principal's Representative in writing immediately upon becoming aware of any actual or suspected Cyber Security Incident in relation to the Critical Infrastructure Asset which has had, is having or is likely to have an impact (whether direct or indirect) on the availability, reliability, confidentiality or integrity of the Critical Infrastructure Asset, including providing details of the Cyber Security Incident and all information in respect of that Cyber Security Incident and its impact on the Critical Infrastructure Asset;
 - (iii) within 10 hours (or such other period notified by the Principal's Representative in its request) of receipt of a request by the Principal's Representative:
 - (A) provide the Principal's Representative with evidence of its compliance with clauses 2.22(a) and 2.22(b)(i) and any other information, records and reports that the Principal's Representative may require to comply with or discharge its obligations under the Security of Critical Infrastructure Legislation, including information requested by the Principal's Representative in relation to a Cyber Security Incident; and
 - (B) as directed by the Principal's Representative in the request, provide access to its premises and records to enable the Principal's Representative to:
 - (aa) investigate any actual or suspected Cyber Security Incident; or
 - (ab) otherwise comply with or discharge its obligations under the Security of Critical Infrastructure Legislation,
 and otherwise provide assistance to the Principal's Representative to enable the Principal's Representative to do those things, provided that such assistance does not compromise the security of the Contractor or its Associates; and
 - (iv) in the event that a Cyber Security Incident has occurred, is occurring or is imminent:
 - (A) immediately take all necessary steps and mitigation measures to reduce and mitigate the impact of any such incident in accordance with the directions of the Principal's Representative; and

- (B) comply with any directions issued by the Secretary of the Department of Home Affairs exercising its powers under the Security of Critical Infrastructure Legislation.
- (c) Nothing in this clause 2.22 requires the Contractor to disclose Protected Information to the Principal's Representative to the extent doing so would cause the Contractor to breach any provision of the Security of Critical Infrastructure Legislation.
- (d) Notwithstanding any other provision of this Deed, the Contractor acknowledges and agrees that the Contractor will be solely liable for, and will have no Claim against the Principal, the Principal's Representative or their delegates, arising out of or in connection with the Contractor's compliance with this clause 2.22.

3 The Site

3.1 Access and possession

- (a) Subject to the Contractor's compliance with this clause 3.1 and any other pre-conditions set out in this Deed, the Principal will grant to the Contractor access to or possession of the Site or a part of the Site on the terms of the Construction Licences and the Transitway Declaration progressively by the Site Access Dates for the purposes of complying with its obligations under this Deed.
- (b) The Contractor acknowledges and agrees that:
 - (i) access to or possession of the Site or any part thereof for the performance of the Contractor's Activities will confer on the Contractor only a right to such management and control as is necessary to enable the Contractor to execute the Contractor's Activities:
 - (A) in accordance with this Deed; and
 - (B) in accordance with Law (including where applicable to discharge its responsibilities under the WHS Legislation, including to discharge its responsibilities as principal contractor);
 - (ii) the Principal is not obliged to give the Contractor access to or possession of any part of the Site until the Contractor has:
 - (A) complied with clause 2.8 of this Deed;
 - (B) submitted the Safety Management Plan, the Construction Environment Management Plan and the Construction Management Plan, as required by the Management Requirements, to the Principal's Representative under clause 9.12 and:
 - (aa) the Principal's Representative has issued the notice referred to in clause 9.12(d)(iii)(C) in respect of each of them; or
 - (ab) the relevant period of time in clause 9.12(d)(iii) has expired and the Principal's Representative has not rejected any of them or made comments on any of them (except, in the case

of comments, where the Contractor has responded to the comments within the required time period and in a manner satisfactory to the Principal's Representative as referred to in clause 9.12(e));

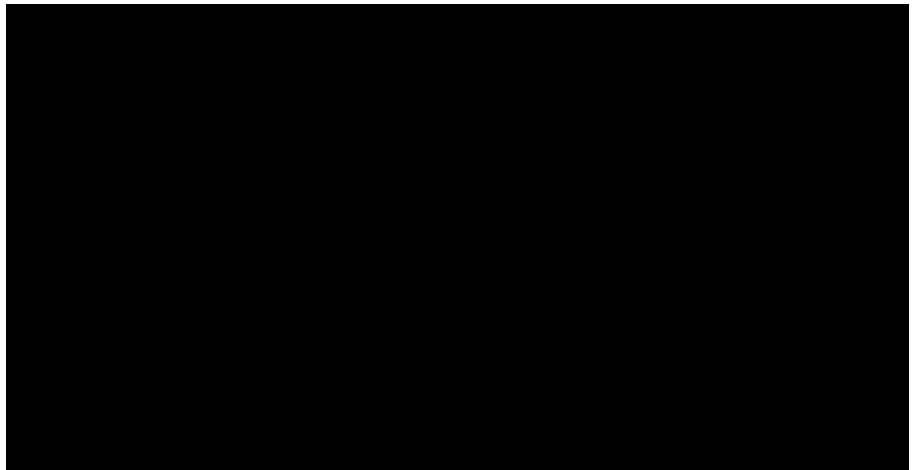
- (C) provided safety and environmental site inductions for the Principal's Representative, the Independent Certifier and representatives of the Third Parties in accordance with the Safety Management Plan and the Contractor's work, health and safety requirements so as to allow the Principal's Representative, the Independent Certifier and representatives of the Third Parties access to the Site on and from the Site Access Date;
 - (D) effected the insurance policies required under clauses 13.5 and 13.6 on the terms set out in this Deed;
 - (E) complied with clauses 13.7 to 13.9 with respect to each insurance policy; and
 - (F) in respect of each Worksite, within the relevant Portion, satisfied any conditions precedent to access in relation to the Worksite as specified in Schedule 22;
- (iii) the Contractor must give the Principal's Representative, the Independent Certifier and representatives of the Third Parties access to the Site on and from the Site Access Date;
 - (iv) notwithstanding anything in Schedule 22 or Exhibit J, the Principal is not obliged to provide, and the Contractor may not be given, exclusive access to or possession to any part of the Site or any leasehold interest in the Site (including where the Contractor is specified in Schedule 22 or Exhibit J as being in control of a part of the Site);
 - (v) the Contractor must and must ensure its Associates and Subcontractors at all times when accessing the Site comply with:
 - (A) the Third Party Agreements;
 - (B) the Construction Licences and Transitway Declaration;
 - (C) the Utility Service Contractor Agreements;
 - (D) the terms of any easements, restrictions on use, covenants, agreements, leases, licences or other similar arrangements benefitting or burdening the land, right of way or other dealing or interest in favour of any Authority or other person, identified in Schedule 22 and contained in Exhibit I; and
 - (E) the directions of the Principal's Representative in relation to accessing the Site; and
 - (F) in respect of each Worksite identified in Schedule 22, the conditions of access and use by the Contractor as set out in Schedule 22;

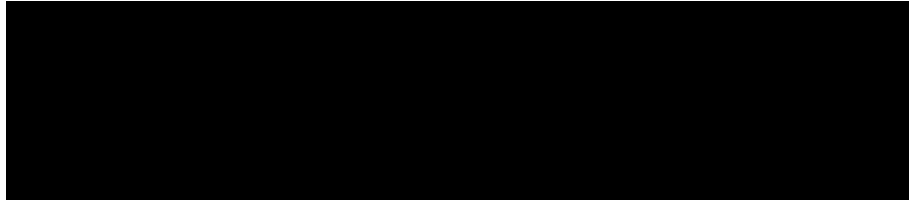
- (vi) the Principal is not obliged to carry out any work or provide any facilities to the Contractor which may be necessary to enable the Contractor to obtain possession or access to the Site or carry out the Contractor's Activities; and
- (vii) the Principal:
 - (A) will engage the Interface Contractors; and
 - (B) may engage other Other Contractors,

to work upon or in the vicinity of the Site, Remote Sites and Extra Land at the same time as the Contractor.
- (c) Failure by the Principal to give access or possession as required by clause 3.1(a) will not be a breach of this Deed but will be a Qualifying Cause of Delay and a Relevant Cause.
- (d) The Contractor's entitlement under clause 3.1(c) will be its sole remedy arising out of or in any way in connection with the Principal's failure to give access or possession as required by clause 3.1 and the Contractor will not be entitled to make any Claim against the Principal arising out of or in any way in connection with this clause 3.1.
- (e) Where:
 - (i) a Portion including Third Party Works has achieved practical completion and a notice has been given under clause 12.10(b);
 - (ii) the land on which those Third Party Works is located is to be handed back to the relevant Third Party; and
 - (iii) the Principal notifies the Contractor that:
 - (A) the area referred to in clause 3.1(e)(ii) is to be handed back to the relevant Third Party under the relevant Third Party Agreement; and
 - (B) the area of the relevant Construction Licence other than the area referred to in 3.1(e)(ii) is still required for the Enabling Works,

then, on the date of the Principal's notification under clause 3.1(e)(iii), the area of the Construction Licence the subject of that notice will be adjusted in accordance with the notice. The date of receipt of the notification under clause 3.1(e)(iii) will be the Date of Third Party Handback in respect of those Third Party Works.

(f)





3.2 Temporary Works

- (a) The Contractor must carry out all Temporary Works required to execute the Contractor's Activities so that the Enabling Works are Fit for Purpose.
- (b) Where any Temporary Works are to be carried out on any property, the Contractor must give written notice to the Principal's Representative identifying such property and describing the Temporary Works to be performed on such property and which must:
 - (i) be given no later than 10 Business Days (or such shorter period as is agreed between the Contractor and the Principal's Representative) prior to the date on which it intends to commence the Temporary Works; and
 - (ii) specify the intended commencement and completion dates for the carrying out of the Temporary Works.
- (c) The Contractor must keep on site a register of all notices given under clause 3.2(b), and make this register available to the Principal's Representative for inspection and copying at all reasonable times.
- (d) Upon being given access to any property for the purpose of carrying out Temporary Works, the Contractor must promptly carry out those Temporary Works in a manner which:
 - (i) minimises inconvenience and disruption to the owners, occupiers and users of the property; and
 - (ii) complies with the requirements set out in this Deed including the SPR and the Management Requirements.
- (e) Except where the SPR specifies the property does not need to be reinstated (including where the Contractor has demolished a building), the Contractor must:
 - (i) reinstate any property upon which any Temporary Works have been carried out to a state that is equivalent to the state it was in immediately prior to the Contractor obtaining access, in compliance with the conditions of the Planning Approval, any Third Party Agreement requirements, any Utility Service Contractor Agreement requirements and any additional conditions required by relevant Authorities; and
 - (ii) otherwise repair any damage or degradation to any part of any property arising out of or in any way in connection with the performance of its obligations under this clause 3.2.

3.3 Management and control of the Site

- (a) At all times after being given access to or taking possession of the Site or a part of the Site under clause 3.1 and before the Date of Third Party Handback, the Contractor:

- (i) without limiting any right of the Principal or the Principal's Representative under this Deed, and subject to clause 2.7 and to Schedule 22, will be responsible for the management and control of the Site;
 - (ii) must control access to, and the security and maintenance of, the Site or that part of the Site (as applicable), except as required by Schedule 22 or where the Principal's Representative advises otherwise;
 - (iii) must ensure public safety on and adjacent to the Site or that part of the Site;
 - (iv) must provide for the continuous safe passage of the public, road and railway system users on existing roads, footpaths, access ways, cycleways and rail tracks affected by the Contractor's Activities in accordance with this Deed;
 - (v) must, subject to clauses 2.12, 3.1(b), 3.3(a)(vii), the Management Requirements, the SPR and any relevant Law, limit access to the Site to its employees, Subcontractors and their employees and Subcontractors, and those with a legitimate interest in being on the Site as part of the Contractor's Activities;
 - (vi) must not impede access or Utility Services to private property without the consent of the Principal's Representative and the relevant owner or occupier;
 - (vii) must provide the Principal's Representative, the Independent Certifier and representatives of Third Parties access to the Site; and
 - (viii) must ensure that existing buildings (including residences, whether occupied or unoccupied) on the Site are preserved and protected from damage (including from theft and vandalism) until (where relevant) they are due for demolition by the Contractor if that forms part of the Contractor's Activities.
- (b) At all times after being given possession of a Remote Site for the purposes of carrying out the Contractor's Activities related to Remote Works and before the Date of Portion Completion, the Contractor:
- (i) will be responsible for the management of the relevant Remote Site;
 - (ii) must (subject to the requirements imposed on the Contractor by the owner or occupier of or persons providing possession of the relevant Remote Site):
 - (A) control access to, and the security and maintenance of, the relevant Remote Site; and
 - (B) provide for the continuous safe passage of the public;
 - (iii) must ensure public safety on and adjacent to the relevant Remote Site; and
 - (iv) must not impede access or Utility Services to the relevant Remote Site without the consent of the relevant owner, occupier or access provider.

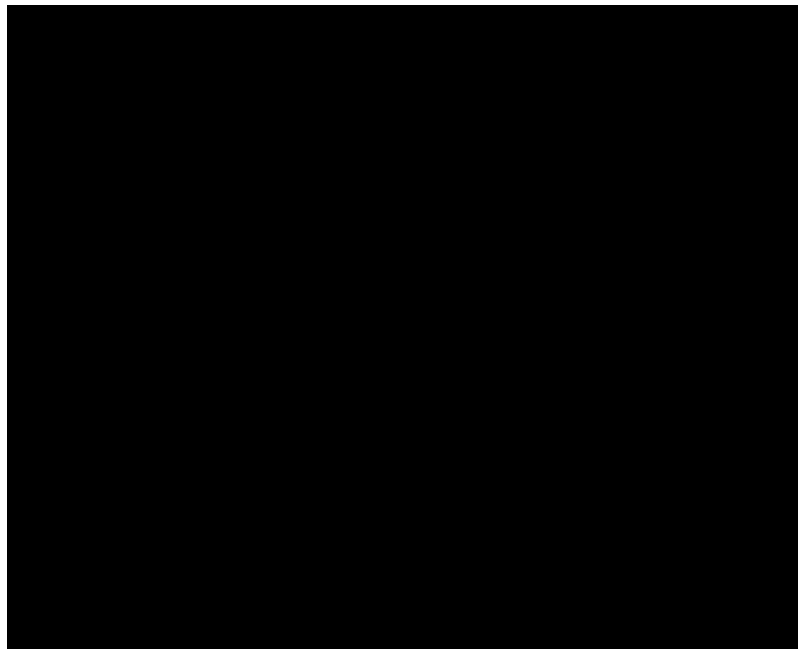
3.4 Remote Sites and Extra Land

- (a) The Contractor acknowledges and agrees that:
 - (i) the Remote Works form part of the Enabling Works or Temporary Works;
 - (ii) the Principal is not responsible for providing (or assisting the Contractor to obtain) access to any Remote Site or Extra Land;
 - (iii) the location of the Remote Sites may not be fixed and, in such cases, must be determined by the Contractor in consultation with the Principal and any relevant entity who is to take the benefit of the Remote Works;
 - (iv) it accepts all risk and responsibility in respect of identifying the location of and gaining access to the Remote Sites necessary in respect of Remote Works and it must procure for itself and at its own cost the occupation or use of or relevant rights over the Remote Sites;
 - (v) it has made and will make adequate allowances in the Enabling Works Program for Remote Works;
 - (vi) it will comply with all directions of the owners, occupiers or persons providing access to the respective Remote Sites or Extra Land, including in respect of any Utility Service connection points; and
 - (vii) it will not be entitled to make, and the Principal will not be liable upon, any Claim in respect of any Remote Works, or failure to gain access to any Remote Sites or Extra Land.
- (b) The Contractor must:
 - (i) procure for itself and at its own cost the occupation or use of or relevant rights over any land or buildings in addition to the Site and Remote Sites, including any land owned by a Rail Transport Agency, which is necessary or which it may require for the purpose of carrying out the Contractor's Activities (**Extra Land**);
 - (ii) at its own cost carry out all activities and procure all Utility Services necessary to make the Remote Sites and Extra Land suitable for use by the Contractor;
 - (iii) as a condition precedent to Portion Completion of the Enabling Works rehabilitate any Remote Sites and Extra Land in accordance with the requirements of all relevant Authorities and other relevant persons;
 - (iv) as a condition precedent to Portion Completion of each Portion, unless not required by the Principal's Representative, provide to the Principal's Representative:
 - (A) a properly executed certificate in the form of Schedule 21 or a release on terms otherwise satisfactory to the Principal's Representative from all claims or demands (whether for damages or otherwise howsoever arising) from the owner or occupier of, and from other persons

having an interest in, any Remote Sites or Extra Land;
or

- (B) if the Contractor demonstrates to the satisfaction of the Principal's Representative (acting reasonably) that the Contractor is unable to obtain a certificate or release under clause 3.4(b)(iv)(A) despite using its best endeavours to do so, a statement signed by the Contractor to the effect that such owner and occupier (where the owner is not the occupier) or other person having an interest in the Remote Sites or Extra Land has failed or refused to execute such a release within 15 Business Days of it being provided by the Contractor to the owner, occupier or other person having an interest in the Remote Sites or Extra Land following the proper completion of the work on that Remote Site or Extra Land; and

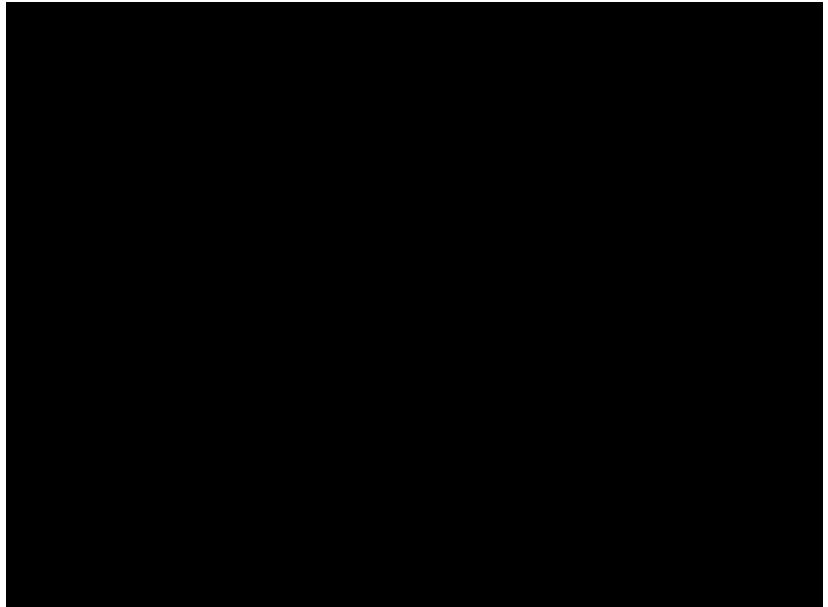
(v)



3.5 Site Conditions

- (a) Without limiting or otherwise affecting clause 3.6(d), the Contractor warrants and for all purposes it will be deemed to be the case that, prior to the date of this Deed the Contractor:
- (i) examined and relied solely upon its own assessment, skill, expertise and inquiries in respect of, all information relevant to the risks, contingencies and other circumstances having an effect on its Tender and its obligations under this Deed which was obtainable by making reasonable enquiries;
 - (ii) was given the opportunity prior to the date of this Deed to itself undertake, and to request others to undertake, tests, enquiries and investigations:
 - (A) relating to the subject matter of Information Documents and Materials and the Site Conditions;
 - (B) for design purposes; and

- (C) for the assessment of its ability to perform the Contractor's Activities;
 - (iii) had a sufficient opportunity to obtain and obtained all necessary legal, geotechnical and other technical advice in relation to the terms of this Deed, the Deed of Disclaimer, the Information Documents and Materials, the Site Conditions, as well as the risks, contingencies and other circumstances having an effect on its Tender, the performance of its obligations and its potential liabilities under this Deed; and
 - (iv) 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 about whether or not to enter into this Deed and assume the obligations and potential risks and liabilities which it imposes on the Contractor.
- (b) Without limiting or otherwise affecting clauses 3.5(c) and 3.6, the Principal makes no representation and gives no warranty to the Contractor in respect of:
- (i) the Site Conditions likely to be encountered during the execution of the Contractor's Activities or otherwise in respect of the condition of:
 - (A) the Site, Remote Sites, Extra Land or their surroundings; or
 - (B) any structures, artefacts or items of archaeological or heritage significance on, under, above or adjacent to, or under the surface of the Site, Remote Sites or Extra Land;
 - (ii) the existence, location, condition or availability of any Utility Service on, under, above, adjacent to or related to the Site, Remote Sites or Extra Land;
 - (iii) the existence, location or condition of any Contamination System on under, above, adjacent to or related to the Site, Remote Sites or Extra Land; or
 - (iv) the feasibility or fitness for purpose of the Contractor's Outline Design or the Information from Tenderer's Tender Documents including, in respect of the constructability of the Contractor's Outline Design or the Information from Tenderer's Tender Documents, having regard to the physical conditions and characteristics of the Site, Remote Sites or Extra Land, including the Site Conditions.
- (c) The Contractor accepts:
- (i) the Site, Remote Sites and Extra Land; and
 - (ii) any structures or other thing on, under or adjacent to the Site, Remote Sites and Extra Land, and any Site Conditions,
- in their existing condition including all sub-surface conditions and defects, and:
- (iii) [REDACTED]



- (iv) must perform the Contractor's Activities in accordance with this Deed, and will not be relieved of its obligations under this Deed irrespective of,

any of the following:

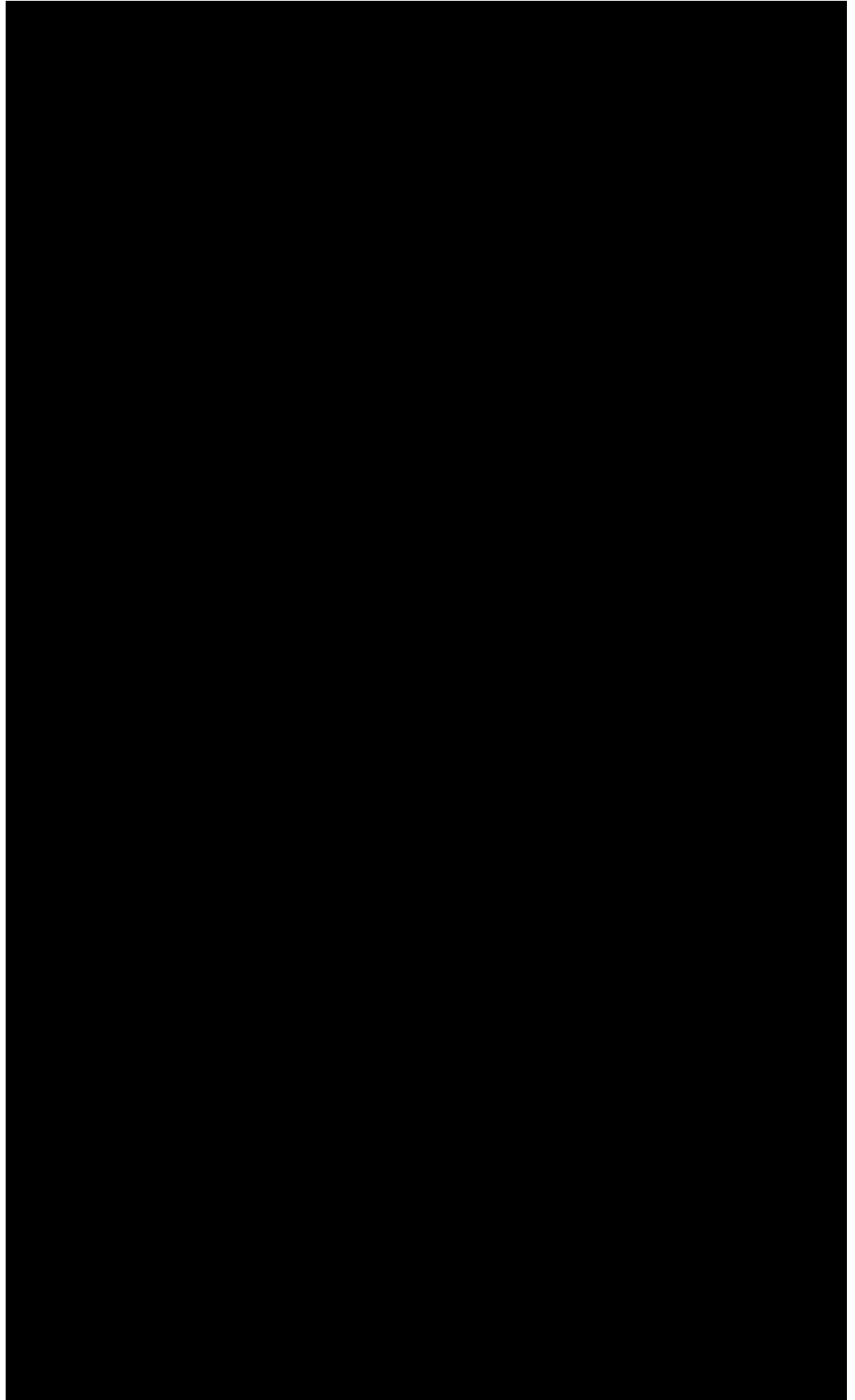
- (v) the Site Conditions encountered in performing the Contractor's Activities;
- (vi) whatever may be the condition or characteristics (including all sub-surface conditions) of:
 - (A) the Site, Remote Sites or any Extra Land, the Environment or their surroundings; or
 - (B) any structure or other thing on, above or adjacent to, or under the surface of, the Site, Remote Sites or any Extra Land, the Environment or their surroundings; and
- (vii) any assumptions, projections, estimates, contingencies or otherwise that the Contractor may have made in relation to the Site Conditions at the Site, Remote Sites or any Extra Land, the Environment or their surroundings or the conditions or the characteristics of any of the matters referred to in clause 3.5(c)(vi),

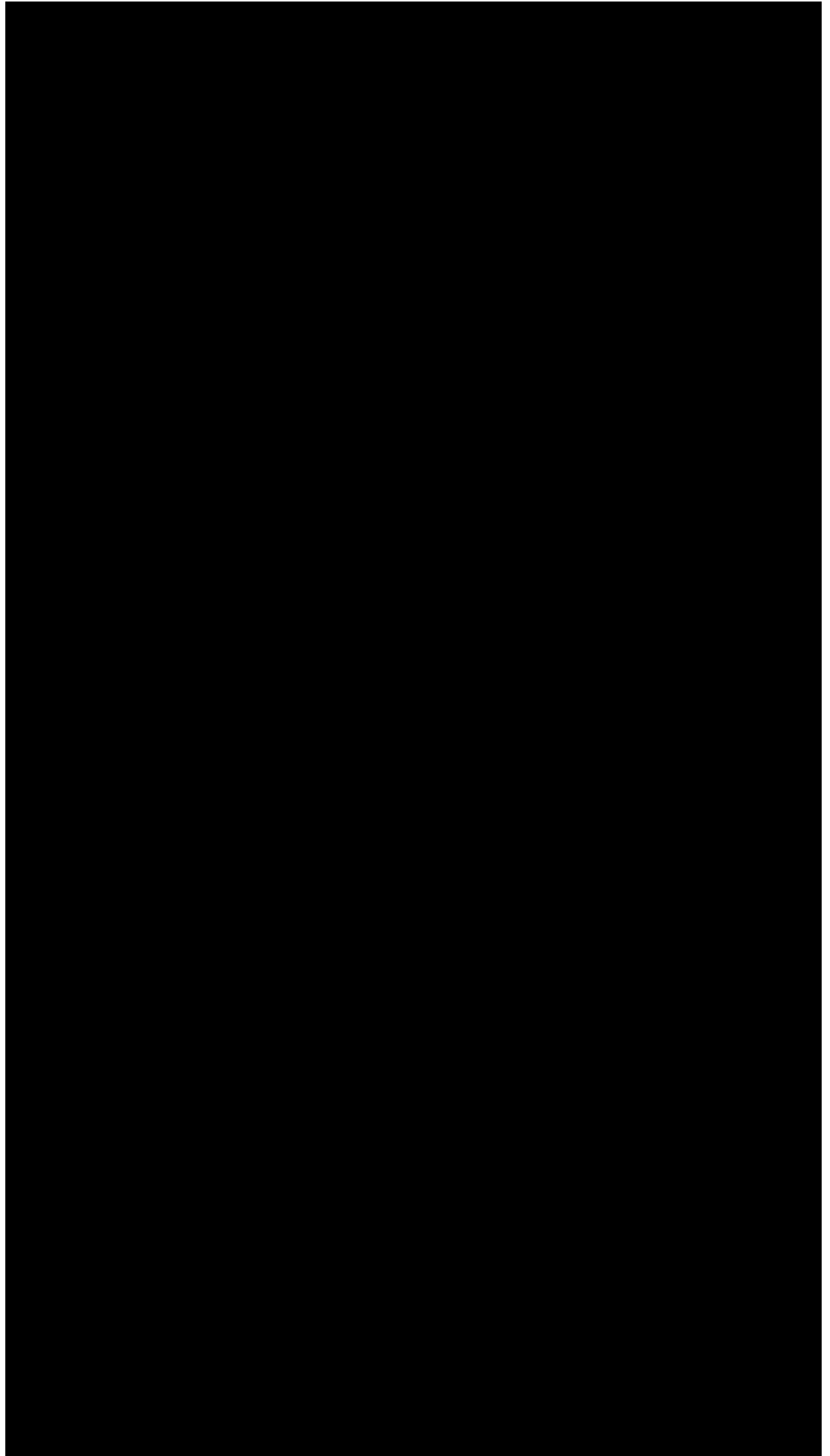
including:

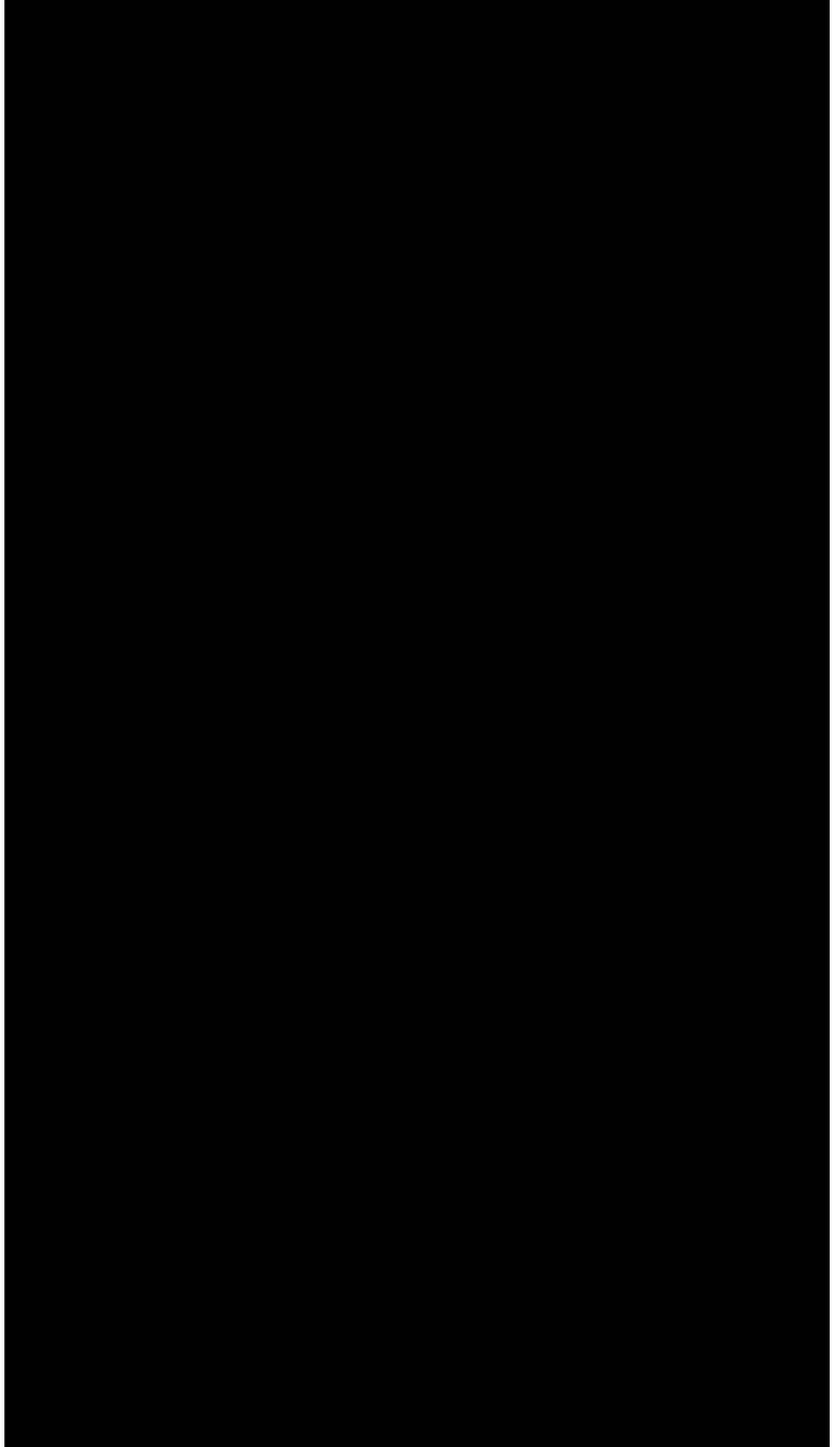
- (viii) the existence of any Contamination or any decontamination or remediation required under clause 3.7(f);
- (ix) the suitability or otherwise of any material or condition upon, under, over or in any way associated with or related to the Site, Remote Sites or Extra Land for use in the Contractor's Activities;
- (x) water, atmospheric, sub-surface and other conditions or characteristics or aspects;
- (xi) all Contamination Systems on, under, above, adjacent to or related to the Site, Remote Sites or Extra Land; and

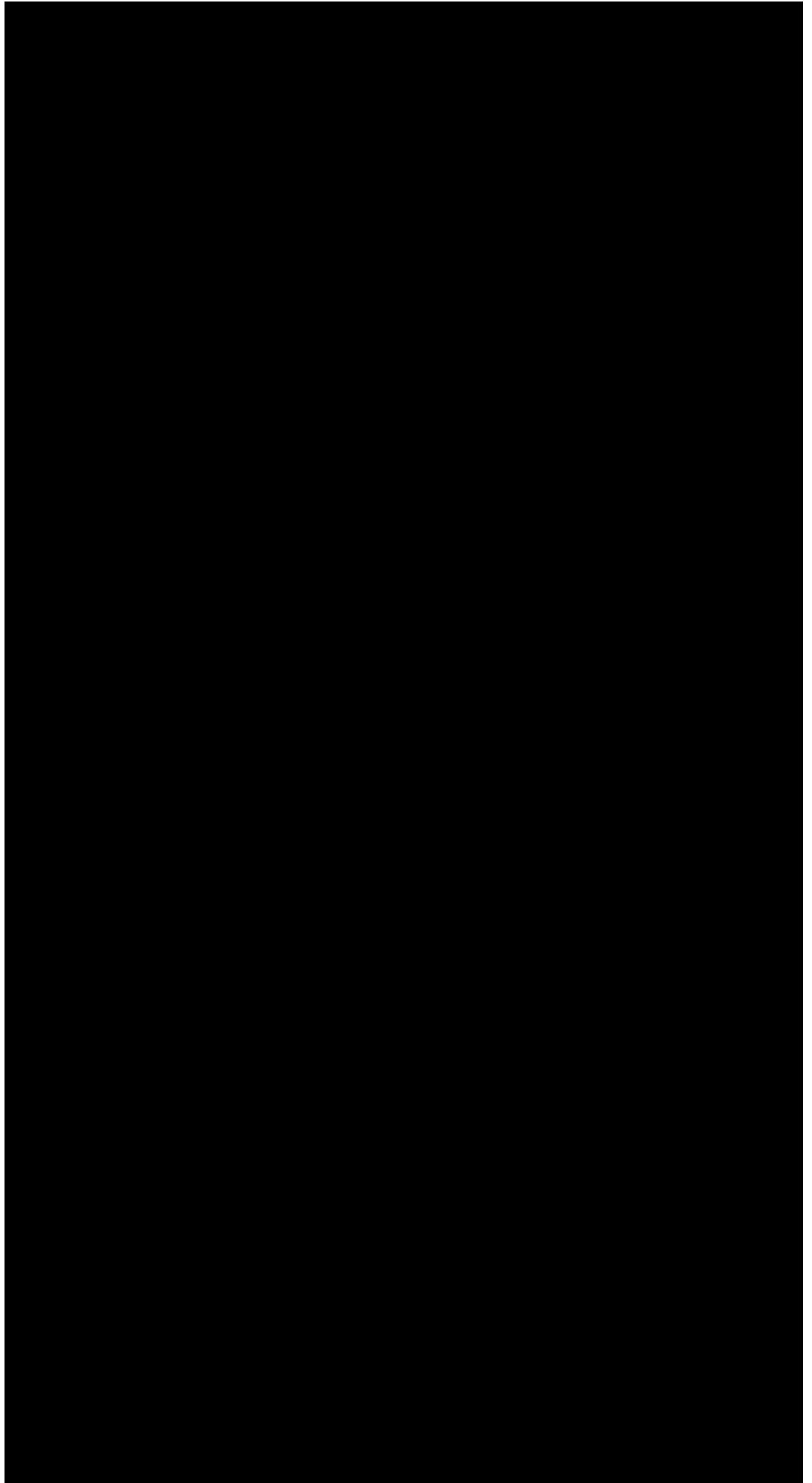
- (xii) all existing systems and Utility Services, above or below ground level and the location of all facilities with which such systems and Utility Services are connected.

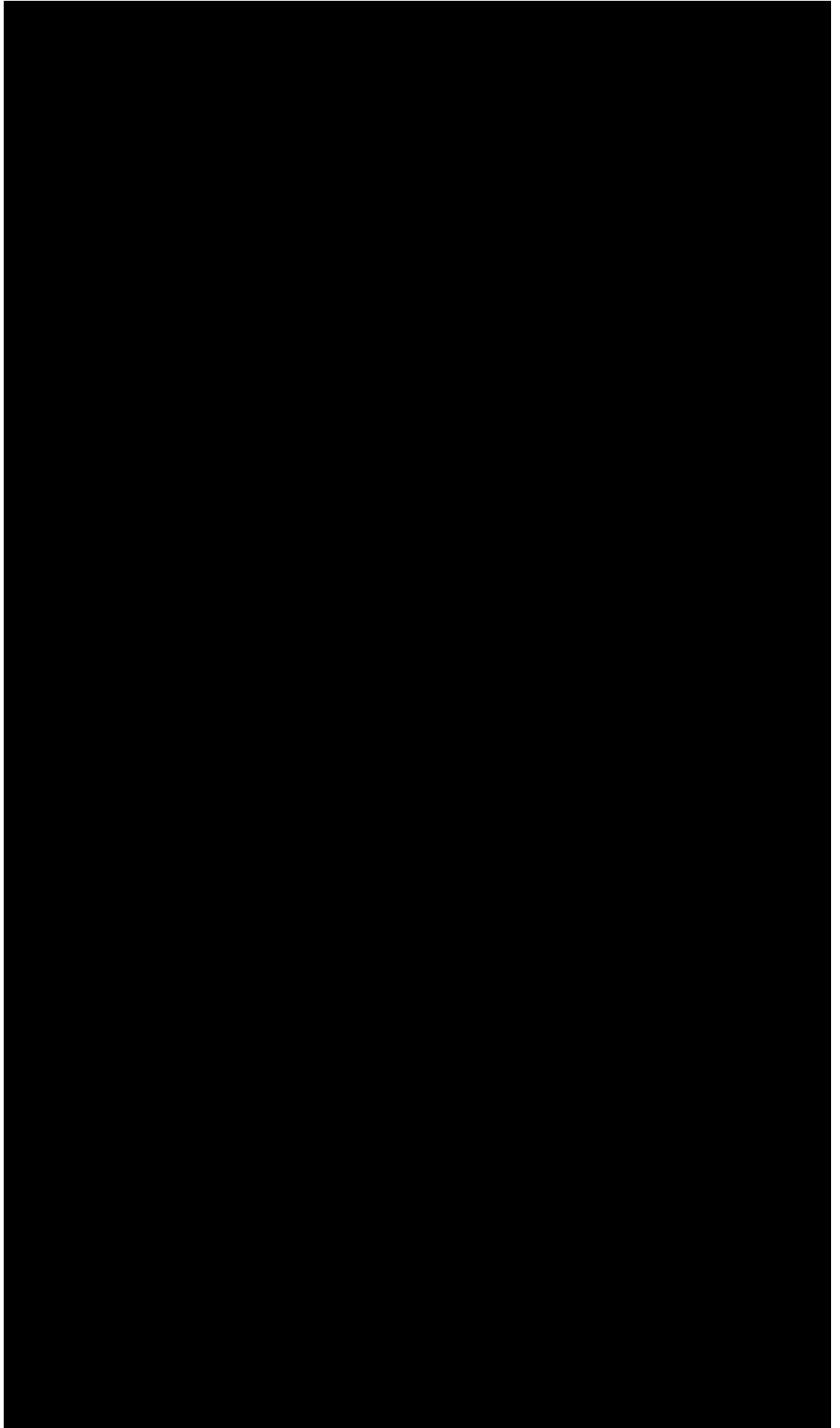
3.5A Woo-la-ra Leachate System

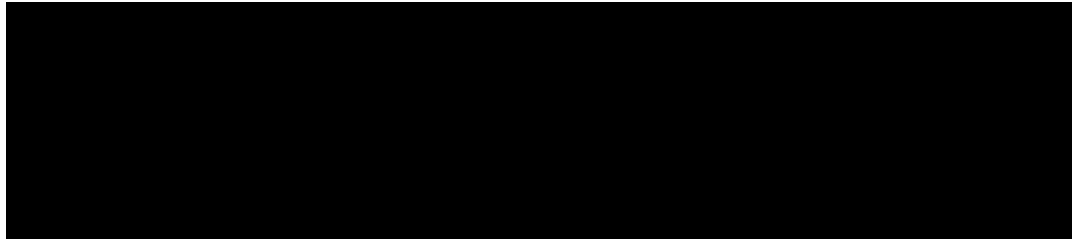




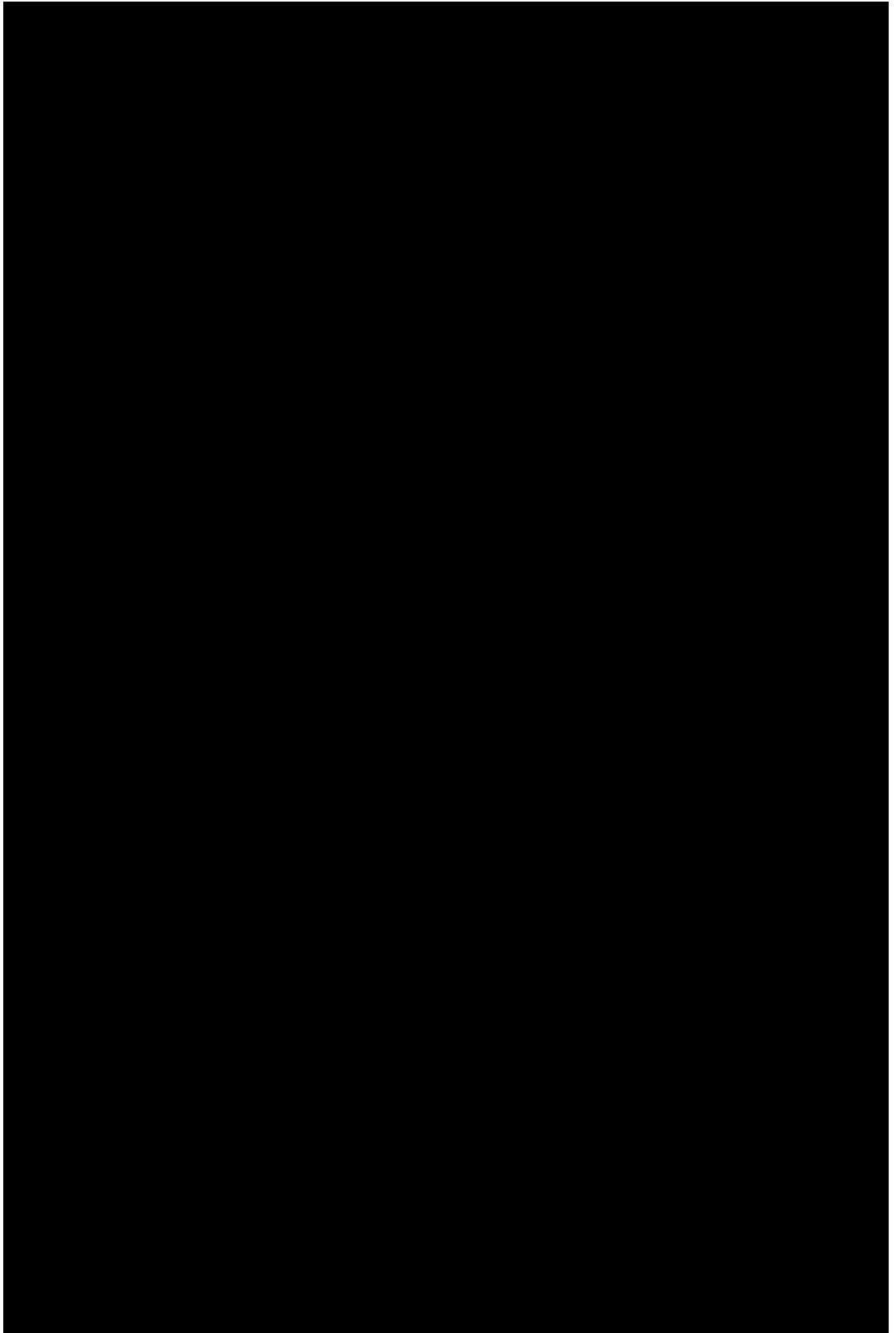


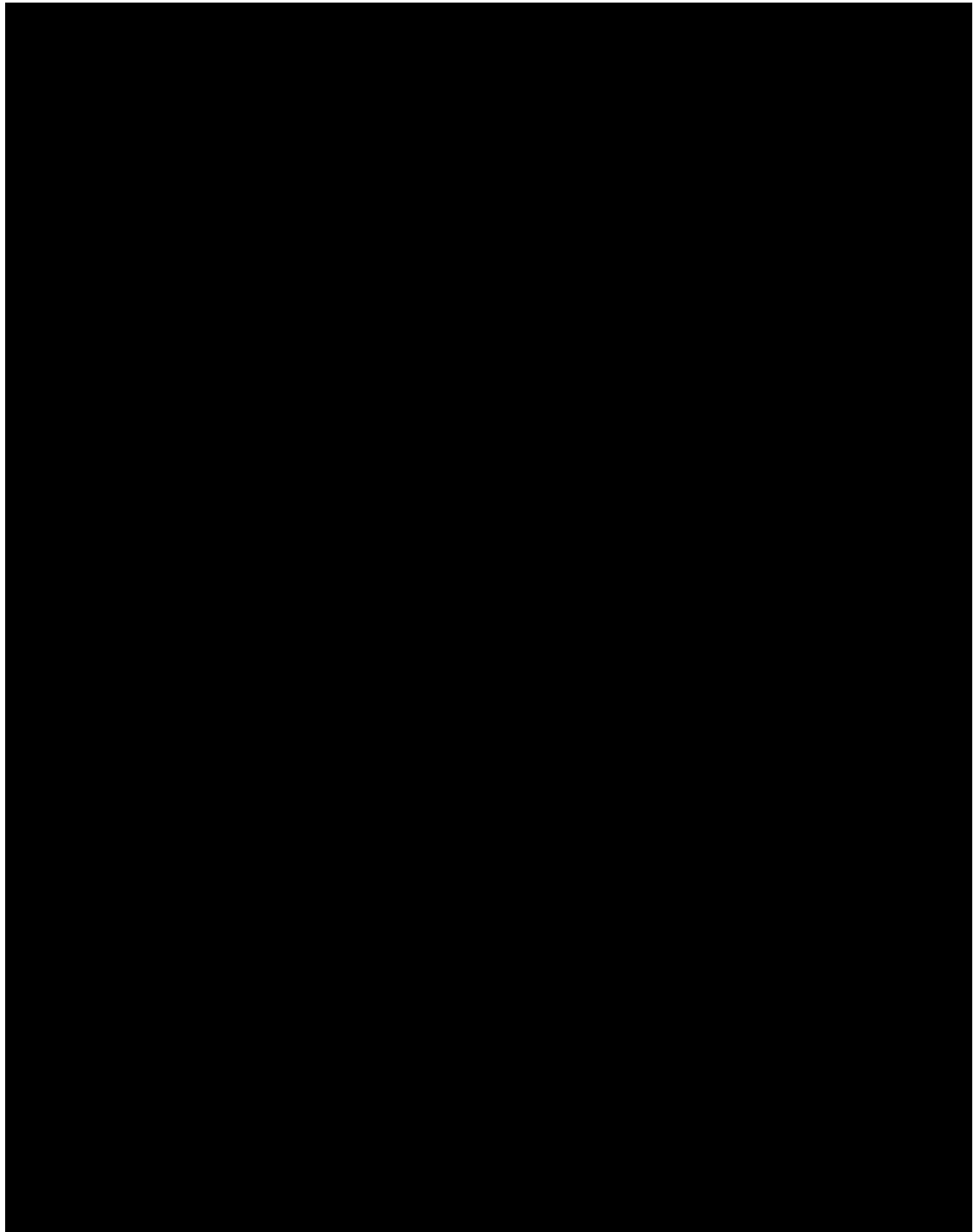






3.5AA Woo-la-ra Leachate System, Woo-la-ra Landfill





3.6 Information Documents and Materials

- (a) Prior to the date of this Deed, the Contractor executed the Deed of Disclaimer and provided this to the Principal after which the Principal provided the Contractor with, or gave the Contractor access to, the Information Documents and Materials, including those listed in Schedule 17.
- (b) Whether or not any Information Documents and Materials or any part thereof form an Exhibit or Schedule to this Deed, the Contractor acknowledges that:

- (i) the Information Documents and Materials or part thereof do not form part of this Deed and that clause 3.6(d) applies to the Information Documents and Materials or part thereof; and
 - (ii) where Information Documents and Materials or any part thereof form an Exhibit or Schedule to this Deed, they do so only for the purposes of identification of that document or part thereof.
- (c) Without limiting clause 3.6(d) or the warranties or acknowledgements in the Deed of Disclaimer or the Tender Form:
 - (i) the Contractor acknowledges that the Principal does not warrant, guarantee, assume any duty of care or other responsibility for or make any representation about the accuracy, adequacy, suitability or completeness of the Information Documents and Materials, and the Information Documents and Materials do not form part of this Deed; and
 - (ii) subject to clause 3.6(f), the Principal will not be liable upon any Claim by the Contractor 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 and Materials to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed; or
 - (B) a failure by the Principal to provide any other information, data or documents to the Contractor.
- (d) The Contractor:
 - (i) warrants that it did not in any way rely upon:
 - (A) any information, data, representation, statement or document made by, or provided to the Contractor, 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, data, representation, statement or document,

for the purposes of entering into this Deed or carrying out the Contractor's Activities but nothing in this subparagraph will limit or otherwise affect the Contractor's obligations under this Deed except to the extent that any such information, data, representation, statement or document forms part of this Deed;
 - (ii) warrants that it enters into this Deed based on its own investigations, interpretations, deductions, information and determinations and that it has reviewed all Information Documents and Materials; and
 - (iii) acknowledges and agrees that:
 - (A) the Contamination Reports and the Indicative Waste Classification Report:

- (aa) were reviewed for the purpose of the Contamination Target Cost regime in clause 11.13A and Schedule 2 only; and
 - (ab) are Information Documents and Materials; and
- (B) it is not entitled to make any Claim arising out of or in connection with the Contamination Reports and the Indicative Waste Classification Reports.
- (iv) acknowledges that it is aware that the Principal has entered into this Deed relying upon:
 - (A) the warranties, acknowledgements and agreements in clauses 3.6(d)(i), 3.6(d)(ii) and 3.6(d)(iii); and
 - (B) the warranties, acknowledgements and agreements in the Deed of Disclaimer and the Tender Form.
- (e) Subject to clause 3.6(f), the Contractor 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 3.6(e)(i)) any costs, expenses, Losses or damages suffered or incurred by the Contractor,
 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 and Materials, as referred to in clauses 3.6(c) and 3.6(d)(i), to or by the Contractor or any other person to whom the Information Documents and Materials are disclosed by the Contractor or a failure by the Principal to provide any information, data or documents to the Contractor (other than information, documents or data which the Principal is required to provide to the Contractor by the terms of this Deed);
 - (iv) any breach by the Contractor of the warranties in clause 3.5 or this clause 3.6; or
 - (v) the Information Documents and Materials being relied upon or otherwise used in the preparation of any information or document, including any information or document which is "misleading or deceptive" or "false or misleading" within the meaning of those terms in sections 18 and 29 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth), or any equivalent provision of State or Territory legislation.
- (f) The acknowledgements, warranties, releases and indemnities referred to in clauses 3.6(a) to 3.6(e) do not affect the Contractor's rights:
 - (i) under clause 3.5(c)(iii); or
 - (ii) to claim an extension of time pursuant to clause 2.5(d).
- (g) The Principal may issue further Information Documents and Materials from time to time.

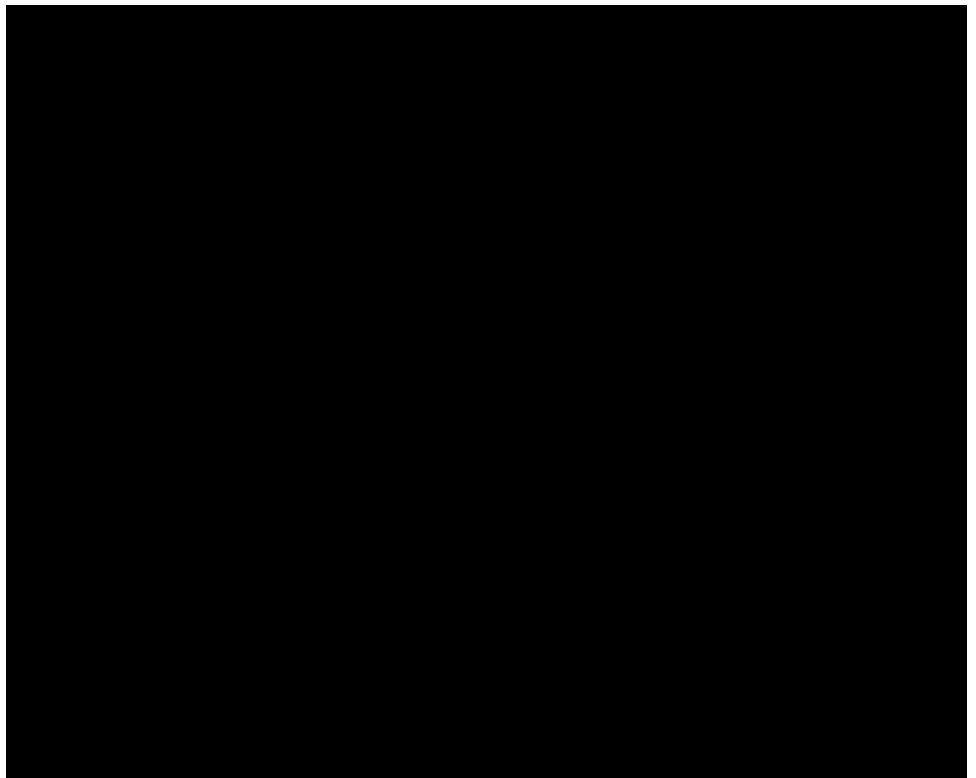
- (h) The parties acknowledge and agree that:
 - (i) the Materials contained in the external hard drive attached to this Deed as Schedule 17 contains all of the Information Documents and Materials in existence as at the date of the Deed;
 - (ii) any additional Information Documents and Materials which are issued will be added to the external hard drive by the parties from time to time.

3.7 Valuable Finds

- (a) As between the Contractor and the Principal, all Valuable Finds will be and remain the property of the Principal.
- (b) The Contractor must without limiting its obligations under clause 17:
 - (i) immediately notify the Principal's Representative if any Valuable Find is found;
 - (ii) ensure that the Valuable Find is protected and not lost, removed, disturbed or damaged; and
 - (iii) comply with any directions of the Principal's Representative in relation to the Valuable Find.
- (c) Subject to clause 3.7(d) and clause 3.7(e), the Contractor will not be entitled to receive payment or make any Claim:
 - (i) for complying with this clause 3.7; or
 - (ii) for any costs incurred arising out of or in any way in connection with any delay or disruption to the Contractor's Activities resulting from a Valuable Find on, in, under the Site, Remote Sites or Extra Land.

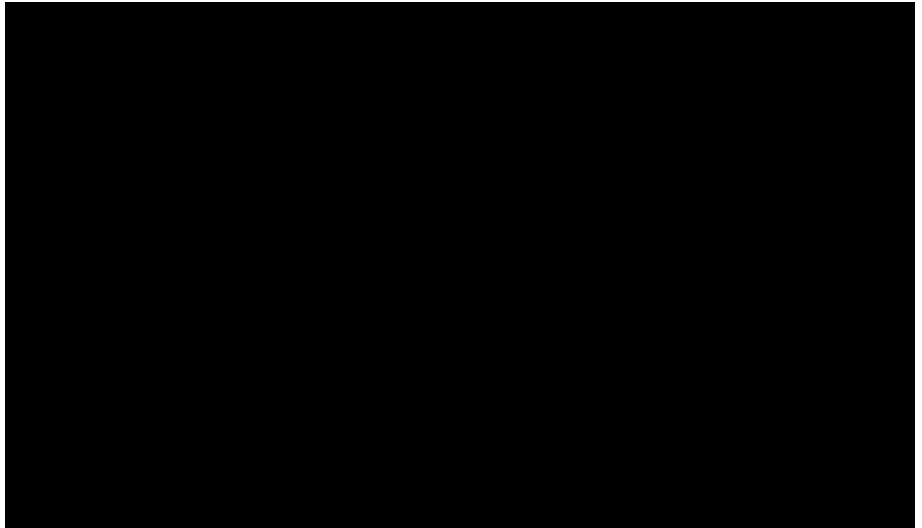
(d)

(e)



(f)





3.8 Contamination

- (a) The parties acknowledge and agree that:
 - (i) the Contractor has been provided with the Contamination Reports, Indicative Waste Classification Report and the EIS;
 - (ii) the Contamination Reports, Indicative Waste Classification Report and the EIS identify Contamination on, in, under or migrating from the Site including in areas under tracks, surface soils generally and locations which have been filled;
 - (iii) there may be Contamination (other than that identified in the Contamination Reports, Indicative Waste Classification Report and the EIS) on, in, under or migrating from the Site including in surface soils generally and locations which have been filled;
 - (iv) despite the Contamination Reports, Indicative Waste Classification Report and the EIS the Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Contamination;
 - (v) subject to clause 3.8(n), part of the Contractor's Activities include taking the appropriate steps referred to in this clause 3.8:
 - (A) in respect of any Contamination identified in the Contamination Reports, Indicative Waste Classification Report and the EIS;
 - (B) in respect of any Contamination the Contractor discovers on the Site, Remote Sites or Extra Land; and
 - (C) regardless of whether:
 - (aa) the Contractor provides the notice and report referred to in clause 3.8(f); and
 - (ab) that Contamination was referred to in (or was reasonably able to be inferred from) the Contamination Reports, Indicative Waste Classification Report and the EIS.
- (b) The Contractor:

(i) must not intermix any excavated material that have different Waste Classifications;

(ii) [REDACTED]

(c) [REDACTED]

[REDACTED]

(e) Without limiting clauses 3.5 and 3.8(a), within the earlier of: 60 Business Days from the date of access to the relevant Worksite where excavation the subject of the Project Classification and Excavation Map occurs; or 60 Business Days prior to the commencement of any excavation on that Worksite, the Contractor must:

- (i) prepare and submit the Project Classification and Excavation Map, as required by the Management Requirements, to the Principal's Representative (with a copy to the Independent Certifier) under clause 9.12;
- (ii) undertake any other investigations it considers reasonable or necessary to delineate the nature and extent of any Contamination on, in, under or migrating from the Site, Remote Sites or Extra Land prior to commencing any part of the Contractor's Activities on the Site, Remote Sites or Extra Land in order to identify the steps necessary to deal with any Contamination as part of the Contractor's Activities; and

without limiting clauses 3.5 and 3.8(a) the Contractor must:

- (iii) not commence any excavation of the Site, Remote Sites or Extra Land until:
 - (A) the Principal's Representative has issued the notice referred to in clause 9.12(d)(iii)(C) in respect of the Project Classification and Excavation Map; and
 - (B) the Contractor has provided the Principal's Representative (with copy to the Independent Certifier) no less than 5 Business Days' notice of the date on which the Contractor anticipates that excavation of the Site, Remote Sites or Extra Land will commence.
- (f) Without limiting any obligation of the Contractor to comply with all relevant Laws, Authority Approvals and any written direction from an appropriate regulatory Authority, the Contractor must, in respect of all Contamination:
 - (i) provide the Independent Certifier (with a copy to the Principal's Representative):
 - (A) with a written notice within 3 Business Days after becoming aware of the existence of any Contamination on, in, under or migrating from the Site, Remote Sites or Extra Land that sets out in sufficient detail:
 - (aa) the nature and scope of the Contamination; and
 - (ab) if the Contamination encountered differs materially from the Project Classification and Excavation Map, the nature and scope of that material difference; and
 - (B) within the earlier of:
 - (aa) 3 Business Days or such longer period as the Principal's Representative agrees (acting reasonably having regard to the nature and extent of the Contamination encountered) after any request from the Independent Certifier following receipt by the Independent Certifier of the notice in clause 3.8(f)(i)(A); or
 - (ab) 3 Business Days or such longer period as the Principal's Representative agrees (acting reasonably having regard to the nature and extent of the Contamination encountered) after the Contractor provides the notice in clause 3.8(f)(i)(A) to the Independent Certifier,
 - the following:
 - (ac) a written report that details the steps the Contractor proposes to take to investigate, remediate, incorporate, dispose of, manage, monitor, contain, destroy, render inert or otherwise deal with the Contamination so that the Site, Remote Sites or Extra Land is remediated to a standard suitable for the proposed use of the Site, Remote Sites or Extra

Land (Remediation Steps) and report to all relevant Authorities if required to do so;

- (ad) a written report that details (to the extent able to be determined at the time) the estimated volume of Contamination to be disposed of from the Site, Remote Sites or Extra Land (**Contamination Disposal Volume**), the estimated volume of Contamination to be re-used on the Site, Remote Sites or Extra Land (**Contamination Re-use Volume**), the classification of that Contamination (including in accordance with the Waste Classification Guidelines) (**Contamination Classification**), and the relevant Zone where that Contamination is;
- (ae) if the Contamination differs materially from the Project Classification and Excavation Map a written report that details the proposed additional site investigations to determine the classification (including in accordance with the Waste Classification Guidelines), location, volume of that Contamination; and
- (af) such further written information as the Independent Certifier may require including (in accordance with clause 3.7(f)(f)(ii)) any investigation report prepared pursuant to clause 3.8(e)(ii);
- (ii) must provide for the purposes of clause 3.7(f)(f)(i) (unless otherwise directed by the Independent Certifier), the number and form of copies of the report and any additional reports and information requested by the Independent Certifier as specified in Schedule 1;
- (iii) must within 1 Business Day of issuing the notice pursuant to clause 3.8(f)(i)(A):
 - (A) permit the Independent Certifier and any nominees of the Principal to attend on the Site, Remote Site or Extra Land to:
 - (aa) inspect the Contamination the subject of the notice pursuant to 3.8(f)(i)(A); and
 - (ab) attend on any testing and measurement of such Contamination; and
 - (B) provide to the Independent Certifier and any nominees of the Principal any reports, test results or other information reasonably requested by the Independent Certifier in respect of such Contamination or, if the information is not available to the Contractor within that period, immediately after the information is obtained by the Contractor,

and the Independent Certifier must attend to undertake such inspection; and

- (iv) not remove or otherwise dispose of the Contamination and must ensure that the Contamination remains onsite until the Independent Certifier makes its determination in accordance with clause 3.8(k). For the avoidance of doubt, this will be a Hold Point until such time as:
 - (A) the Independent Certifier makes its determination in accordance with clause 3.8(k); and
 - (B) the Contractor provides a Target Cost Election Notice to the Principal in accordance with clause 3.8A(iv) (as relevant).
- (g) In respect of a Contamination notice issued by the Contractor pursuant to clause 3.8(f)(i)(A) where pursuant to 3.8(f)(i)(A)(ab) the Contractor has notified the Independent Certifier that the Contamination encountered differs materially from the Project Classification and Excavation Map:
 - (i) the Independent Certifier must, within 3 Business Days of the date of receipt of that notice issued pursuant to clause 3.8(f)(i)(A) determine:
 - (A) whether the Contamination encountered differs materially from the Project Classification and Excavation Map; and
 - (B) if the proposed additional site investigations as detailed in the Contractor's report provided pursuant to clause 3.8(f)(i)(B)(ae) are to be undertaken; and
 - (ii) where the Independent Certifier determines that:
 - (A) the Contamination encountered does differ materially from the Project Classification and Excavation Map; and
 - (B) the proposed additional site investigations as detailed in the Contractor's report provided pursuant to clause 3.8(f)(i)(B)(ae) are to be undertaken,
 then:
 - (C) the Contractor must prepare and submit an amended Project Classification and Excavation Map, as required by the Management Requirements, to the Principal's Representative (with a copy to the Independent Certifier) under clause 9.12.
- (h) Without limiting clause 3.8(g) and any obligation of the Contractor to comply with all relevant Laws, Authority Approvals and any written direction from an appropriate regulatory Authority, in respect of all Contamination the Contractor must, only after:
 - (i) giving the notice to the Independent Certifier referred to in clause 3.8(f)(i)(A) in respect of the Contractor's report(s) and any additional information under clause 3.8(f)(i)(B); or
 - (ii) the Independent Certifier has not within 5 Business Days rejected the Contractor's report(s) and additional information provided under clause 3.8(f)(i)(B) or made any comments on them; and

(iii) the Independent Certifier attending on the Site under clause 3.8(f)(iii) to confirm and certify pursuant to clause 3.8(j) the:

- (A) relevant Zone where the Contamination is located;
- (B) Contamination Classification;
- (C) Contamination Re-Use Volume; and
- (D) Contamination Disposal Volume of,

the Contamination on the Site,

implement the relevant remediation action in accordance with any relevant Laws, Authority Approvals and any direction of an appropriate regulatory Authority where applicable.

(i) Without limiting any obligation of the Contractor to comply with any relevant Law, Authority Approvals and any written direction from an appropriate regulatory Authority, the Contractor agrees that in preparing any report under clause 3.7(f)(i)(B)(ac) it will adopt the following order of priority to decide what remediation action is to be taken in respect of all Contamination on, in, under or migrating from the Site, Remote Sites or Extra Land:

(i) if incorporation of the Contamination into the Enabling Works where it is:

- (A) technically feasible;
- (B) able to be incorporated as part of the Contractor undertaking the programmed Contractor's Activities; and
- (C) in accordance with any relevant Law, Authority Approval and any written direction from an appropriate regulatory Authority,

(Onsite Re-use); and

(ii) if incorporation of the Contamination into the Enabling Works in accordance with clause 3.8(i)(i) it is not:

- (A) technically feasible;
- (B) able to be incorporated as part of the Contractor undertaking the programmed Contractor's Activities; or
- (C) in accordance with any relevant Law, Authority Approval and any written direction from an appropriate regulatory Authority,

(Offsite Disposal Contamination),

then the Contractor must:

- (D) notify the Principal and the Independent Certifier of the:
 - (aa) measures that the Contractor will use to dispose of the Offsite Disposal Contamination;

(ab) estimated volume of the Offsite Disposal Contamination to be taken offsite; and

(ac) to the extent known, classification of the Offsite Disposal Contamination,

with reasonable supporting information; and

(iii) where the Independent Certifier determines offsite disposal and certifies the Contamination Disposal Volume, dispose of the Offsite Disposal Contamination off-site to the Nominated Licensed Waste Facility in accordance with clause 3.17 and, where required, replacing it with fill,

in each case in accordance with any relevant Laws, Authority Approvals, and any written direction from an appropriate regulatory Authority.

(j) The Contractor must provide the Principal's Representative (with copy to the Independent Certifier) with copies of disposal facility receipts (including tip dockets for all loads) in the same form and detail as required to be provided to the Environment Protection Authority for waste tracking, and identifying the waste classification in accordance with the Waste Classification Guidelines.

(k) The parties acknowledge and agree that the Independent Certifier will within 3 Business Days of:

(i) attendance on the Site, Remote Site or Extra Land pursuant to clause 3.8(f)(iii)(A); and

(ii) receipt of the copy of the Contractor's clause 3.8(f)(i)(B) reports,

provide a written certification of the:

(iii) relevant Zone where the Contamination is located;

(iv) Contamination Classification;

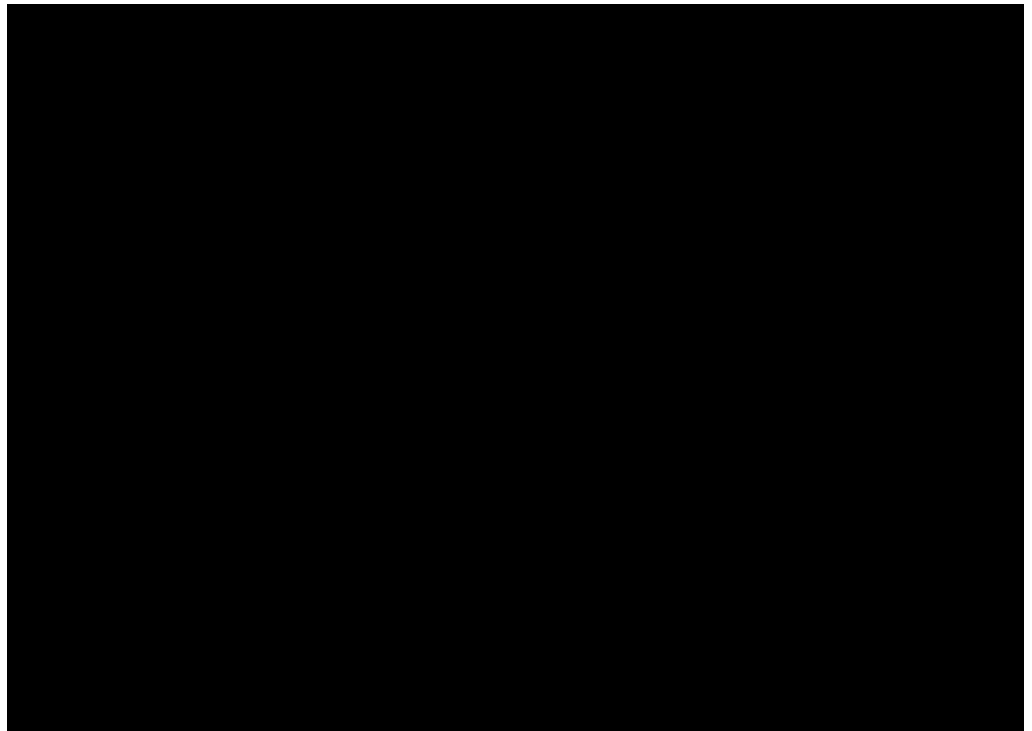
(v) Contamination Re-Use Volume;

(vi) Contamination Disposal Volume; and

(vii) Onsite Re-Use or Offsite Disposal Contamination (as applicable),

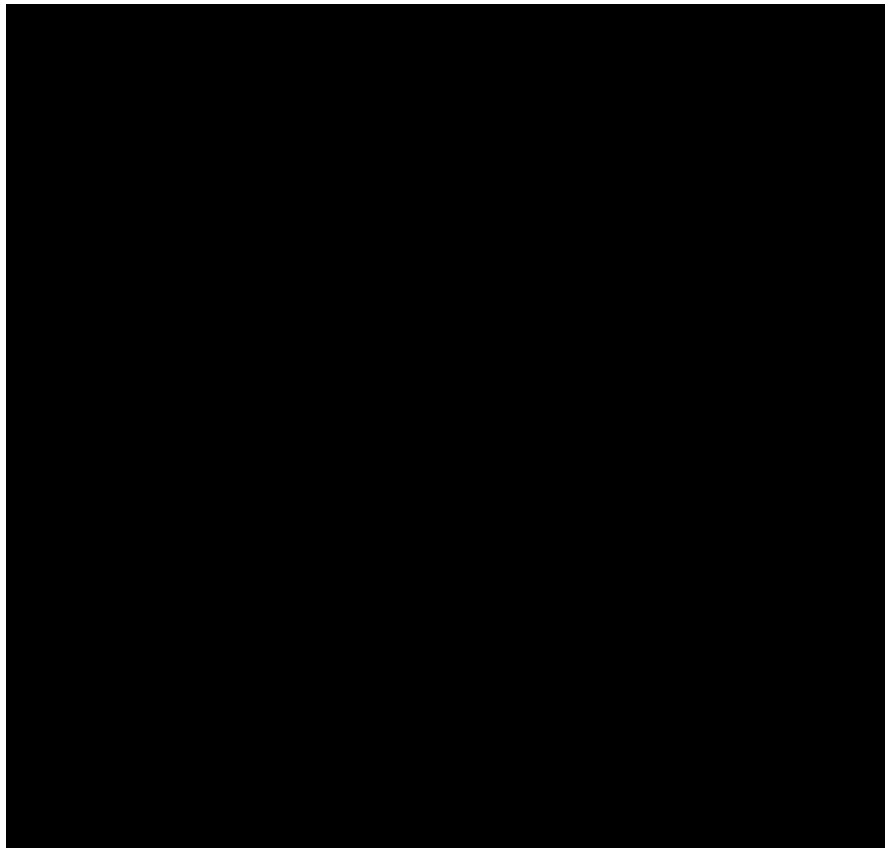
of the Contamination.



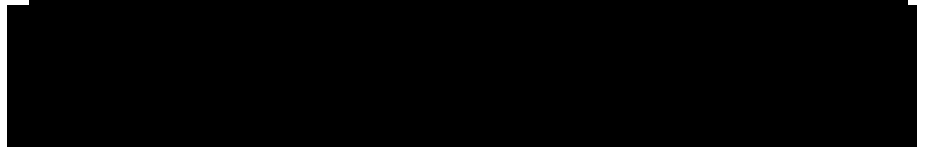


- (o) The Contractor must undertake such remediation works as are required to comply with Law, Authority Approval, the Third Party Agreements or the Utility Service Contractor Agreements.

(p)



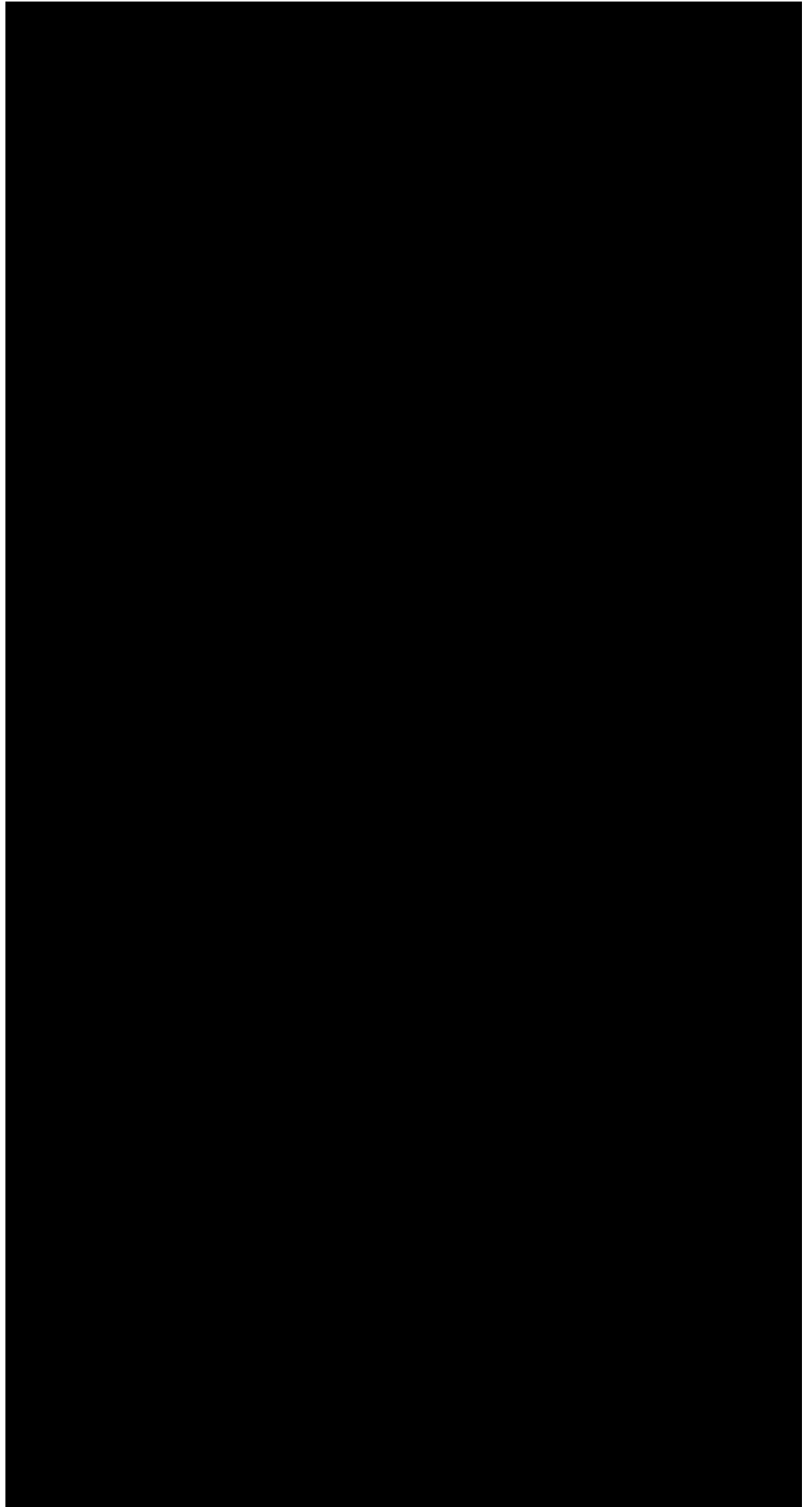
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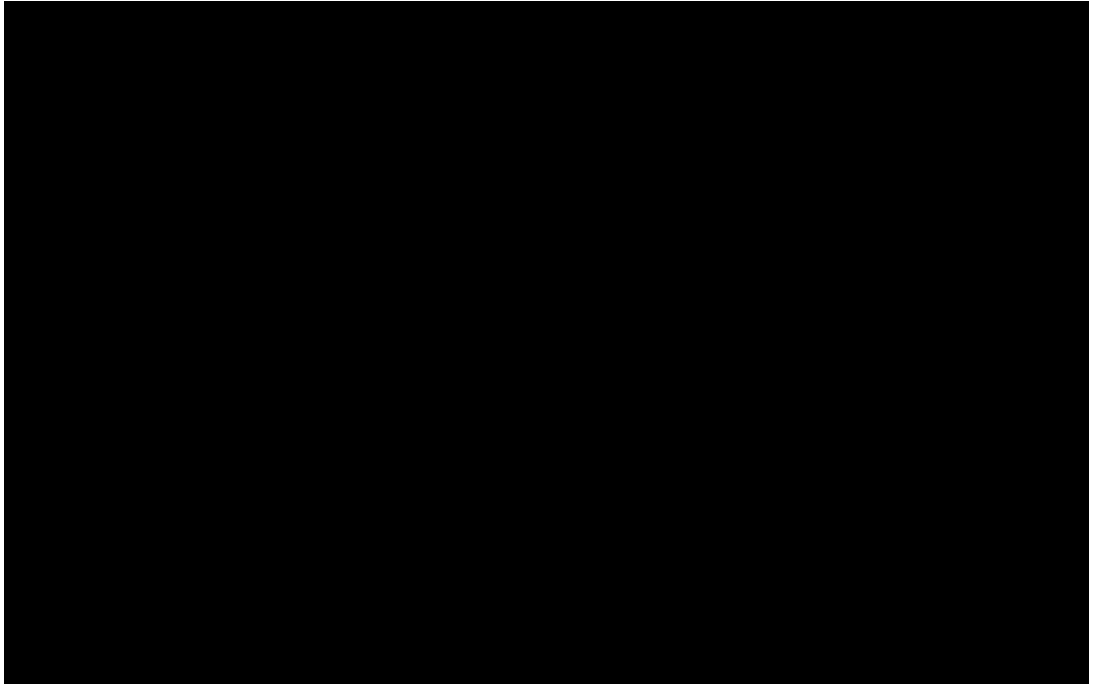


(r)

(s)

3.8A Target Cost Election





3.9 Not used

3.10 Hazardous Materials

- (a) The Contractor acknowledges and agrees that:
 - (i) it is aware that there may be Hazardous Materials in structures which are located on, in or under the Site, Remote Sites and Extra Land; and
 - (ii) the Contractor's Activities include taking the appropriate steps referred to in this clause 3.10 in respect of any Hazardous Material the Contractor discovers on the Site, Remote Sites and Extra Land, regardless of whether the Contractor provides the report and notice referred to in clause 3.10(d)(i) and 3.10(e) (respectively).
- (b) The Principal does not make any representation or warranty (express or implied) as to the nature or extent of any Hazardous Material that may be present in structures on, in or under the Site, Remote Sites and Extra Land.
- (c) The Contractor must provide for the management of any Hazardous Materials in the Construction Environment Management Plan and the Safety Management Plan and take all measures required to protect workers and others from Hazardous Materials in accordance with Law, the WHS Guidelines and the Management Requirements.
- (d) The Contractor must:
 - (i) carry out a Hazardous Materials audit prior to commencing any demolition work or construction work on structures which could potentially contain Hazardous Materials and provide (in accordance with clause 3.10(d)(ii)) the audit report to the Principal's Representative;
 - (ii) provide for the purposes of clause 3.10(d)(i) (unless otherwise directed by the Principal's Representative) the number and form of the audit report, specified in Schedule 1; and

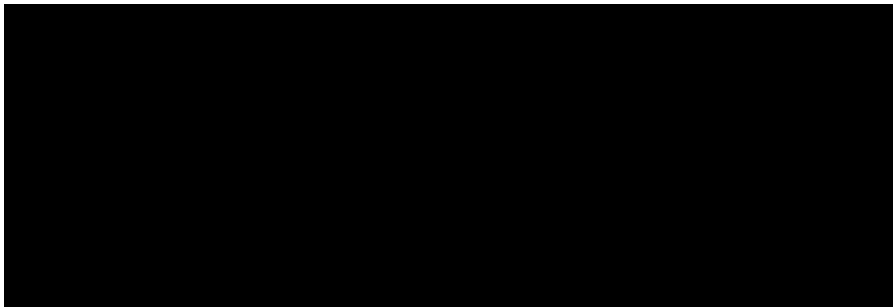
- (iii) if, in performing the Contractor's Activities, it discovers Hazardous Materials that were not referred to in the audit report prepared under clause 3.10(d)(i), then it must report that Hazardous Material to the Principal's Representative.
- (e) Without limiting any obligation of the Contractor to comply with the Authority Approvals, the Contractor must submit a notice for the review of the Principal's Representative containing details of the works necessary to remove and dispose of any Hazardous Materials identified in accordance with clause 3.10(d).
- (f) After:
 - (i) the Principal's Representative has notified the Contractor that it has no further comments to make in respect of the Contractor's notice under clause 3.10(e); or
 - (ii) the Principal's Representative has not rejected the Contractor's notice under clause 3.10(e) or made any comments on it within 15 Business Days,

the Contractor must comply with the notice and remove and lawfully dispose of any Hazardous Materials in accordance with relevant Laws, Authority Approvals and any direction of a relevant Authority where applicable.
- (g) The Contractor acknowledges and agrees that the Contractor will not be entitled to receive any payment or increase in the Contract Sum or to make any Claim:
 - (i) for complying with this clause 3.10;
 - (ii) in respect of carrying out any Hazardous Materials audit;
 - (iii) for an extension of time in respect of any delay arising out of or in connection with the discovery of Hazardous Materials its remediation, removal or disposal or the discharge of its obligations under this clause 3.10;
 - (iv) for any costs incurred arising out of or in connection with any delay or disruption to the Contractor's Activities resulting from the presence of any Hazardous Materials; or
 - (v) in respect of any investigation of structures and any removal and disposal of Hazardous Materials.

3.11 Environmental compliance

The Contractor must:

- (a) not use and must not allow Subcontractors to use the Site, Remote Site or Extra Land, so that:
 - (i) any hazardous substance is abandoned or dumped on the Site, Remote Sites or Extra Land;
 - (ii) any hazardous substance is handled in a manner which is likely to cause an environmental hazard; or

- (iii) any other substance is released from, deposited to, or emanates from, the Site, Remote Sites or Extra Land such that a state of Contamination occurs;
- (b) at all times carry out, and ensure that Subcontractors carry out, the Contractor's Activities in an environmentally responsible manner, in accordance with Best Industry Practice, and so as to protect the Environment and keep the Site, Remote Sites and Extra Land in a good and safe condition;
- (c) comply with all Environmental Notices;
- (d) in performing the Contractor's Activities obtain and comply with all requirements of, and ensure that any Subcontractors obtain and comply with all requirements of, any Authority Approvals required in order to release or emit anything from the Site, Remote Sites, or Extra Land into the air or water or onto the ground or otherwise into the Environment or to emit any substantial noise or vibrations;
- (e) immediately notify the Principal in writing as soon as the Contractor:
 - (i) becomes aware of any non-compliance with the requirements of any Law or Authority Approval regarding the Environment or any Planning Approval in the performance of the Contractor's Activities;
 - (ii) becomes aware of any information, fact or circumstance where, 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 relating to the Environment (without limiting any other obligation of the Contractor in relation to the information, fact or circumstances); or
 - (iii) notifies any Authority of any matter pursuant to any Law relating to the Environment, in which case the Contractor must provide to the Principal a copy of such notification and of any subsequent correspondence with the Authority in relation to the subject of the notification; and
- (f) 

3.12 Principal's right to access and inspect

- (a) The Principal (and any person authorised by the Principal) may, at any time, enter the Site, Remote Sites or Extra Land and any other premises where the Contractor's Activities are being carried out for the purpose of:
 - (i) observing or inspecting the Contractor's Activities;
 - (ii) monitoring compliance by the Contractor with its obligations under this Deed; or

- (iii) exercising any right or performing any obligation which the Principal has under any Project Agreement.
- (b) The Contractor must:
 - (i) from the applicable Site Access Date organise such induction programs, training and other measures required to ensure that the Principal (and any person authorised by the Principal) can have access to the Site, Remote Sites or Extra Land and any other premises where the Contractor's Activities are being carried out without delay;
 - (ii) coordinate the Contractor's Activities so they do not interfere with the exercise by the Principal of its right of entry; and
 - (iii) provide the Principal with every reasonable facility and other assistance necessary for any Inspection by the Principal, including providing access to any relevant systems, registers, manuals, records (including financial records), plans and programs.
- (c) If an Inspection shows that the Contractor has not complied or is not complying with its obligations under this Deed:
 - (i) the Principal's Representative may notify the Contractor of the details of the non-compliance;
 - (ii) the Principal's Representative will specify a reasonable period within which the Contractor must carry out appropriate rectification and/or remedy activities; and
 - (iii) the Principal will not be entitled to be reimbursed by the Contractor for the reasonable costs of the Inspection including any reasonable administrative costs incurred by the Principal in relation to the Inspection.
- (d) The Contractor acknowledges and agrees that:
 - (i) the Principal and the Principal's Representative owe no duty or other responsibility to the Contractor to:
 - (A) inspect the Contractor's Activities; or
 - (B) review any design or construction for Defects (including errors and omissions) or compliance with the requirements of this Deed; and
 - (ii) no Inspection of the Contractor's Activities or review of any design or construction by the Principal or the Principal's Representative will:
 - (A) relieve the Contractor from or alter its liabilities, warranties or obligations under this Deed or otherwise according to Law; or
 - (B) limit or otherwise affect the Principal's rights against the Contractor whether under this Deed or otherwise according to Law.
- (e) Where, in accordance with this clause, the Principal (or any person authorised by the Principal) enters the Site, Remote Sites, Extra Land or

any other premises where the Contractor's Activities are being carried out, the Principal must (or must procure that any person authorised by the Principal) comply with:

- (i) the Safety Management Plan; and
- (ii) any other reasonable requirements of the Contractor in relation to the safety of persons and property and protection of the Environment.

3.13 Access to information

- (a) The Principal may at any time notify the Contractor that it requires access to any information held by the Contractor or its Associates which relates to the Contractor's Activities.
- (b) Upon receipt of a notice under clause 3.13(a), the Contractor must immediately provide the Principal (and any person authorised by the Principal) with access to (including online access if applicable), or a copy of, the required information, except to the extent that the information is subject to legal professional privilege.
- (c) The Principal (and any person authorised by the Principal) may review, copy, retain or otherwise deal with such information.
- (d) Notwithstanding clause 2.3(b)(ii)(B), the Contractor must provide to the Principal's Representative copies of all documents provided by the Contractor or its Associates to Authorities, Third Parties and Utility Service Provider at the same time that the relevant document is submitted to the Authority, Third Party or Utility Service Provider (as applicable).

3.14 Existing Operations

- (a) The Contractor acknowledges that:
 - (i) Ausgrid, Endeavour Energy, Sydney Water, Viva Energy, Jemena, SOPA and any other relevant persons must continue their Existing Operations during the course of the carrying out of the Contractor's Activities;
 - (ii) the access routes to the Site, Remote Sites and Extra Land are used by other persons and will not be available exclusively to the Contractor; and
 - (iii) in using these access routes the Contractor and its Associates must ensure the minimum disturbance and inconvenience to the Existing Operations.
- (b) The Contractor bears the risk of coordinating its access to the Site with any other relevant party (including Ausgrid, Endeavour Energy, Sydney Water, Viva Energy, Jemena, SOPA) that uses the access routes to the Site, Remote Sites and Extra Land.
- (c) Without limiting any other obligations of the Contractor, the Contractor must:
 - (i) comply with the Principal's reasonable directions in connection with:

- (A) the Existing Operations (including access to and use of the Site); and
 - (B) workplace health and safety issues to enable the Principal to comply with, and not place the Principal in breach of, its obligations under any Law relating to workplace health and safety;
- (ii) comply with all policies, procedures and rules of the Principal applying from time to time (as notified by the Principal) in respect of the Existing Operations (including in relation to workplace health and safety and/or the Environment);
- (iii) keep itself informed as to the requirements to comply with and not do anything which may place the Principal in breach of any Law applying to the Existing Operations on the Site;
- (iv) ensure that in carrying out and completing the Contractor's Activities, the Enabling Works properly interface and integrate with, and connect to, the physical infrastructure of the Existing Operations so as to enable the Enabling Works, when completed, to fully comply with the requirements of this Deed provided that, if the Principal requires changes to the levels specified in Table 8 of the SPR or to the extent the Contractor is required to ensure the Enabling Works integrate and connect to levels different to those specified in Table 8 of the SPR, the Principal's Representative must direct a Variation Order under clause 6.2(a) in respect of the change in levels; and
- (v) as soon as reasonably practicable:
 - (A) repair and make good any damage to the physical infrastructure of the Existing Operations to the extent arising out of or in any way in connection with the Contractor's Activities; and
 - (B) when directed by the Principal's Representative, take such action as is required to ensure that its obligations in this clause 3.14(c) are complied with.
- (d) Except to the extent expressly permitted by this Deed, the Contractor and its Associates must:
 - (i) not disrupt, interrupt or interfere in any way with the Existing Operations except to the extent such disruption, interruption or interference is a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this Deed;
 - (ii) not cause any nuisance or inconvenience to the Existing Operations except to the extent such nuisance or inconvenience was a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this Deed; and
 - (iii) program and coordinate the Contractor's Activities under this Deed using Best Industry Practice so as to minimise the effect that the carrying out of the Contractor's Activities has on the Existing Operations.

3.14A



3.15 Works to be Constructed on the Asset Lands

The Contractor must ensure that:

- (a) the Enabling Works (other than those Remote Works constructed on Remote Sites) are constructed within the boundaries of the Asset Lands;
- (b) the Temporary Works (other than the Temporary Works for the Remote Works constructed on Remote Sites) are constructed within the boundaries of the Asset Lands and the Temporary Lands; and
- (c) the Remote Works are constructed within the boundaries of the Remote Sites.

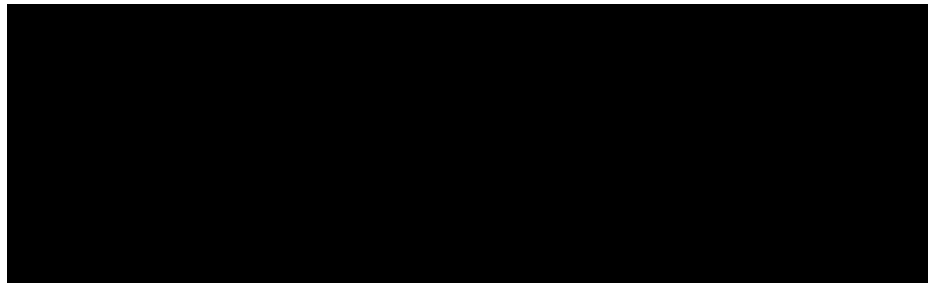
3.16 Condition Surveys

- (a) Subject to clause 3.16(b), the Contractor must identify and prepare a condition survey (**Condition Survey**) of all property that could be affected or damaged by the Contractor's Activities and as required by the Planning Approval, SPR and the Management Requirements (including the Property Management Plan).
- (b) The Condition Survey of any public roads identified under clause 3.16(a) must be prepared in accordance with the SPR and the Roads Approvals.

3.17 Waste Disposal

- (a) The Contractor must remove from the Site, Remote Sites and Extra Land and dispose of any Contamination or other waste pursuant to its obligations under this Deed to the Nominated Licensed Waste Facility in accordance with all relevant Law and Authority Approvals.
- (b) The Contractor must:
 - (i) ensure that any Subcontractor or Associate that carries out the storage, treatment, transport and disposal of the Contamination or other waste from the Site holds all relevant Authority Approvals that are necessary or desirable; and
 - (ii) procure and provide evidence of such Authority Approvals to the Principal's Representative upon request.
- (c) The Contractor must ensure that its Associates, as applicable, are suitably trained in correct and safe methods of loading, unloading and handling any Contamination or other wastes and that they comply with all applicable Laws.

(d)



3.18 Principal not in control

The Contractor and the Principal acknowledge that nothing in this Deed including the right to inspect pursuant to clause 3.12 or any audit by the Principal or the Principal's Representative at any time will be construed to mean or imply that:

- (a) the Principal has any management or control over the Contractor's Activities or the Site, Remote Sites or Extra Land; or
- (b) the Principal has any responsibility for any act or omission by the Contractor or its Subcontractors or agents including compliance or non-compliance with any relevant Laws, Authority Approvals, Third Party Agreements, Utility Service Contractor Agreements or this Deed.

3.19 Native Title Claims

- (a) If there is a Native Title Claim with respect to the Site, Remote Sites or Extra Land, the Contractor must:

- (i) continue to perform the Contractor's Activities, except to the extent otherwise:
 - (A) directed by the Principal's Representative;
 - (B) directed by a Third Party pursuant to the relevant Third Party Agreement;
 - (C) ordered by an Authority, court or tribunal exercising lawful jurisdiction; or
 - (D) required by Law;
 - (ii) where the Contractor:
 - (A) receives a direction as described in clause 3.19(a)(i)(B);
 - (B) is ordered as described in clause 3.19(a)(i)(C); or
 - (C) is required as described in clause 3.19(a)(i)(D),

then the Contractor must, as soon as practicable and no later than 1 Business Day, provide to the Principal in writing a copy and details of that direction, order or requirement; and
 - (iii) at the request of the Principal, or if required to do so under any Law or by order of a court or tribunal exercising lawful jurisdiction, provide all reasonable assistance in connection with dealing with the Native Title Claim (including giving the Principal and any other persons authorised by the Principal access to the Site or that part of the Site which is the subject of the Native Title Claim when reasonably required by the Principal for that purpose).
- (b) For the purposes of clause 3.19(a)(i)(A), the Principal may by written notice direct the Contractor to suspend performance of any or all of the Contractor's Activities until such time as the Principal gives the Contractor further notice.
- (c) Where:
- (i) the Contractor's Activities are delayed by a direction, order or requirement as described in clause 3.19(a)(i);
 - (ii) the Contractor has complied with that direction, order or requirement; and
 - (iii) the Contractor has given a notice under clause 17,
- the Contractor will be entitled to make a claim for an extension of time under clause 10.7 in respect of any delay in achieving Enabling Works Practical Completion by the Date for Enabling Works Practical Completion.

3.20 Aboriginal Land Claims

- (a) If there is an Aboriginal Land Claim with respect to the Site or any part of the Site, Remote Sites or Extra Land, the Contractor must:
 - (i) continue to perform the Contractor's Activities, except to the extent otherwise:

- (A) directed by the Principal's Representative;
 - (B) ordered by a court or tribunal exercising lawful jurisdiction; or
 - (C) required by Law; and
- (ii) where the Contractor:
 - (A) receives a direction as described in clause 3.20(a)(i)(B); or
 - (B) is ordered as described in clause 3.20(a)(i)(C),

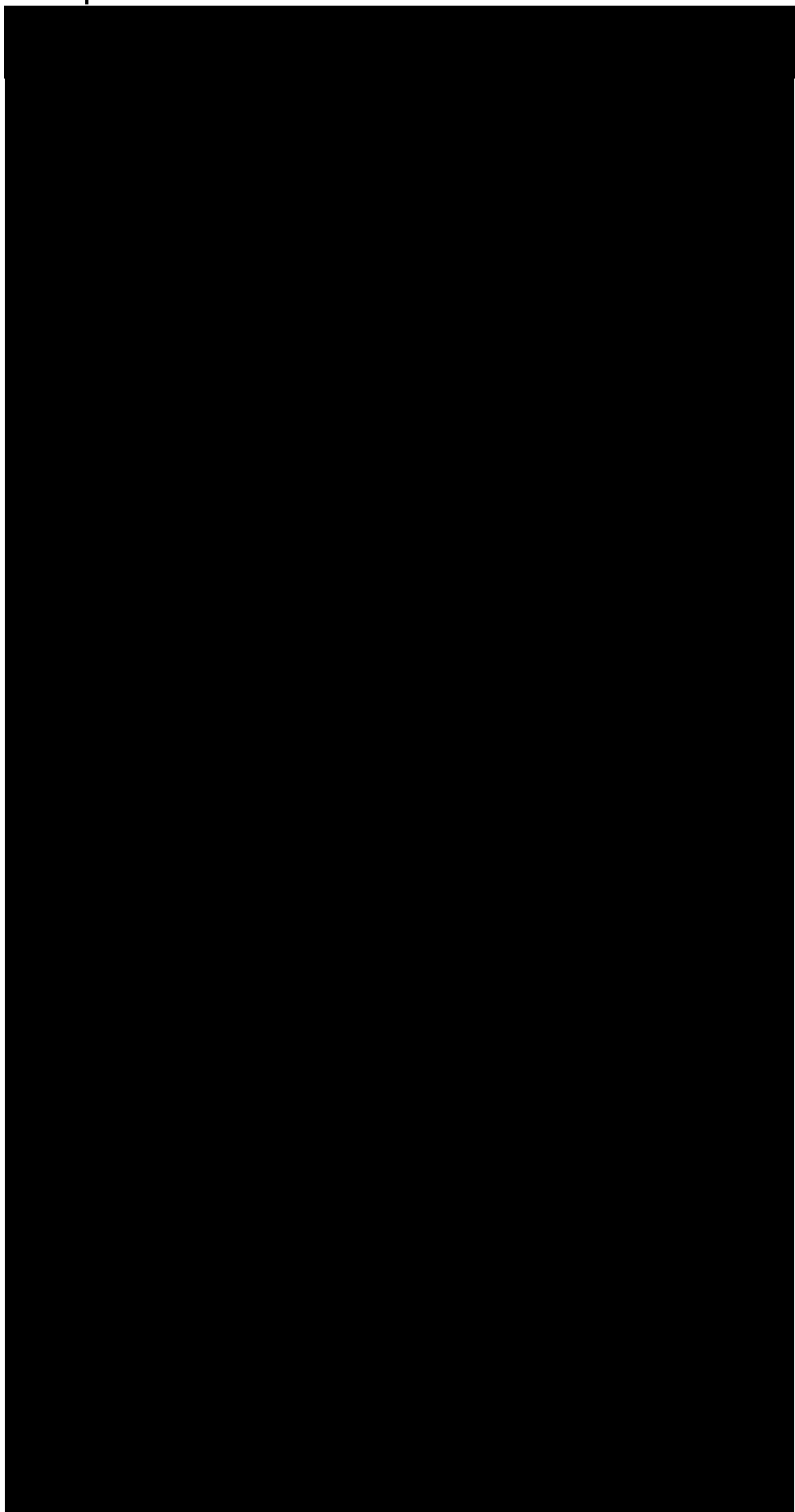
then the Contractor must, as soon as practicable and no later than 1 Business Day, provide to the Principal in writing a copy and details of that direction or order; and
- (iii) at the request of the Principal, or if required to do so under any Law or by order of a court or tribunal exercising lawful jurisdiction, provide all reasonable assistance in connection with dealing with the Aboriginal Land Claim (including giving the Principal and any other persons authorised by the Principal access to the Site or that part of the Site which is the subject of the Aboriginal Land Claim when reasonably required by the Principal for that purpose).
- (b) For the purposes of clause 3.20(a)(i)(A), the Principal may by written notice direct the Contractor to suspend performance of any or all of the Contractor's Activities until such time as the Principal gives the Contractor further notice.
- (c) Where:
 - (i) the Contractor's Activities are delayed by a direction, order or requirement as described in clause 3.20(a)(i);
 - (ii) the Contractor has complied with that direction or order; and
 - (iii) the Contractor has given a notice under clause 17,

the Contractor will be entitled to make a claim for an extension of time under clause 10.7 in respect of any delay in achieving Enabling Works Practical Completion by the Date for Enabling Works Practical Completion.

3.21 Road Occupancy Licences

- (a) The Contractor must obtain all Roads Approvals.
- (b) The Contractor must, in carrying out the Contractor's Activities, comply with the requirements of each Roads Approval.
- (c) The Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain any Roads Approvals.

3.22 Principal's Data





3.23 Maritime access requirements

- (a) The Contractor must obtain approval from TfNSW (Maritime) for all river occupancies and closures required to perform the Contractor's Activities.
- (b) The Contractor must, in carrying out the Contractor's Activities, comply with the requirements of all Approvals, licences and conditions of access of TfNSW (Maritime).
- (c) The Contractor must use best endeavours to ensure that:
 - (i) the part of the Site the subject of an Approval, licences and conditions of access of TfNSW (Maritime) is re-opened to ferries and watercraft in accordance with the requirements of all Approvals, licences and conditions of access of TfNSW (Maritime);
 - (ii) when on becoming aware of an event which:
 - (A) is likely to cause a delay to the scheduled re-opening to ferries and watercraft of any part of the Site watercraft in accordance with the requirements of all Approvals, licences and conditions of access of TfNSW (Maritime); or
 - (B) it anticipates may vary the period of time required for a river occupancy and / or closure,
 notify the Principal in writing of:
 - (C) the event, the expected duration of the event and any anticipated delay; and
 - (D) the anticipated variation to the period of time required for a river occupancy and / or closure; and
 - (iii) it obtains any further approvals from TfNSW (Maritime) for all extensions to river occupancies and / or closures required to perform the Contractor's Activities.
- (d) The Principal will not be liable for any Claim by the Contractor arising out of or in any way in connection with any delay, additional costs or other effects on the Contractor's Activities related to the ability of the Contractor or its Subcontractors to obtain any Approvals, licences and conditions of access required to perform the Contractor's Activities.
- (e) Without limiting clause 3.23(a), the Contractor must, at all times, use its best endeavours to carry out its Contractor's Activities in a manner which maintains river access to ferries and all watercraft especially during the Nominated Peak River Usage Periods.

4 Compliance

4.1 Quality of Work

The Contractor must, in performing the Contractor's Activities, use workmanship, materials and practices that:

- (a) comply with the requirements of this Deed, the SPR, the Third Party Agreements and the Utility Service Contractor Agreements; or
- (b) to the extent that it is not so set out, a standard consistent with Best Industry Practice.

4.2 Management Requirements

The Contractor must comply with the Management Requirements.

4.3 Environmental Management

The Contractor must:

- (a) hold and maintain an environmental management system which complies with the requirements of the Management Requirements for so long as any Contractor's Activities are carried out;
- (b) as part of the Project Plans, document, implement and maintain a contract specific Construction Environment Management Plan for the management of environmental matters in accordance with the Management Requirements;
- (c) carry out the Contractor's Activities in accordance with the Construction Environment Management Plan;
- (d) supervise its Associates activities and ensure that they are complying with all relevant Law, Authority Approvals and Management Requirements in relation to environmental management on the Site, Remote Sites and Extra Land; and
- (e) use, and be able to demonstrate the use of, ecologically sustainable development principles in the design and construction of the Enabling Works, Temporary Works and all other Contractor's Activities.

4.4 WHS Management

The Contractor must:

- (a) for so long as any Contractor's Activities are carried out, hold and maintain a WHS management system that complies with the WHS Guidelines and the Management Requirements;
- (b) as part of the Project Plans, develop, document and implement a contract specific Safety Management Plan in accordance with the WHS Guidelines and the Management Requirements;
- (c) carry out the Contractor's Activities in accordance with the Safety Management Plan;
- (d) create a safe working environment for ensuring the safety of all authorised personnel on the Site, Remote Sites and Extra Land and that no unauthorised individual gains access to the Site; and
- (e) supervise any Subcontractor's activities and ensure that the Subcontractors are complying with all relevant Law, Authority Approvals and the Management Requirements in relation to the WHS management on the Site, Remote Sites and Extra Land.

4.5 No Relief from Obligations

The Contractor will not be relieved from any of its liabilities or responsibilities under this Deed (including under clause 8 or otherwise according to Law) nor will the rights of the Principal whether under this Deed or otherwise according to Law be limited or otherwise affected, by:

- (a) the implementation of, and compliance with, any management system or plan by the Contractor;
- (b) compliance with the Project Plans by the Contractor;
- (c) any release, authorisation, approval or agreement by the Principal's Representative, or any other person acting on behalf of the Principal or the Principal's Representative, particularly those concerning or relating to the Contractor proceeding past any Hold Point or Witness Point or otherwise directed by the Principal's Representative;
- (d) any failure by the Principal, the Principal's Representative or any other person acting on behalf of the Principal or engaged by the Principal to detect any Defect, particularly whilst participating in any Hold Point or Witness Point procedure, including where such a failure is the result of a negligent act or omission; or
- (e) any Inspections arranged by the Principal or the Principal's Representative under this Deed or any related discussions between the Contractor's Representative and the Principal's Representative.

4.6 TAO Compliance

- (a) The Contractor must:
 - (i) hold and maintain its Final Authorisation as a TAO; and
 - (ii) comply and ensure that its Associates and all personnel for which the Contractor is responsible comply with the conditions of the Final Authorisation,

for so long as the Contractor's Activities are carried out.
- (b) The Contractor must (and must ensure that its Associates and all personnel for which the Contractor is responsible):
 - (i) implement and comply with the requirements of any TAO Requirements applicable to the Asset Lifecycle Works;
 - (ii) cooperate fully with the AMB in the performance of the TAO functions;
 - (iii) provide access to premises and resources as reasonably required by the AMB, including so that it can effectively carry out its review, surveillance and audit functions;
 - (iv) comply with the directions, instructions and requirements issued by the AMB;
 - (v) notify the AMB of any matter that could reasonably be expected to affect the exercise of the AMB's functions;

- (vi) provide the AMB with any information relating to its activities or any documents or other things reasonably required by the AMB in the exercise of its functions; and
 - (vii) provide the Principal with such reasonable assistance as may be reasonably required by the Principal to enable the Principal to cooperate fully with the AMB and to implement and comply with AMB Requirements.
- (c) The Contractor must ensure that each Designer has and maintains TAO Authorisation for so long as the Contractor's Activities are carried out.
 - (d) The Contractor acknowledges and agrees that it is not entitled to make (and neither the Principal nor the AMB will be liable upon) any Claim arising out of or in connection with the requirements of AMB and the Final Authorisation.

4.7 Rail Safety National Law

- (a) In addition to the requirements of clauses 4.6(a) to 4.6(d) above, the Contractor must address and perform all safety and protection requirements for the Enabling Works in accordance with the RSNL.
- (b) The Contractor acknowledges and agrees that the Principal will be the Rail Infrastructure Manager (RIM) under the RSNL in respect of the Enabling Works.
- (c) The Contractor must, and must procure that all its Associates comply with the RSNL.
- (d) Nothing in this clause 4.7 detracts or lessens the Contractor's obligations under the WHS Laws or any other Laws.
- (e) The Contractor acknowledges and agrees that it must provide to the Principal the Safety Case Documentation as a condition precedent to Portion Completion.

4.8 Contractor's Initial Project Plans

- (a) Prior to the date of this Deed the Contractor has prepared the Initial Project Plans.
- (b) The Contractor must ensure that all management plans (including the Project Plans and specific management plans) required by and prepared in accordance with the Management Requirements are based on the Initial Project Plans where applicable.
- (c) The requirements set out in the Initial Project Plans are minimum requirements and the Contractor must not reduce or otherwise decrease these requirements in any management plans required under this Deed. In the event of any inconsistency, ambiguity or discrepancy between the requirements of this Deed and the Initial Project Plans, the higher, more onerous or more rigorous requirement will apply.
- (d) Despite the content of the Initial Project Plans, the Contractor agrees that:
 - (i) it remains responsible for ensuring that the management plans prepared in accordance with the Management Requirements will satisfy the requirements of this Deed; and

- (ii) it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of, or the reliance by the Contractor upon, the Initial Project Plans in performing the Contractor's Activities and that such use and reliance will not affect any of its obligations under this Deed.

5 Design and Design Documentation

5.1 Contractor's Design Obligations

- (a) The Contractor must:
 - (i) utilise Best Industry Practice;
 - (ii) subject to clause 5.1(e)(iii), not depart from the Contractor's Outline Design;
 - (iii) to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR, comply with the Contractor's Outline Design; and
 - (iv) satisfy the requirements of:
 - (A) the SPR;
 - (B) the Management Requirements;
 - (C) the Third Party Agreements;
 - (D) the Utility Service Contractor Agreements;
 - (E) all Laws, Authority Approvals, Codes and Standards; and
 - (F) this Deed.

(b)



- (c) If, notwithstanding the warranty in clause 5.1(b), the SPR requires amendment in order to satisfy the requirements of clause 5.1(b)(ii), then:
 - (i) the Contractor must propose any amendments required pursuant to clause 6.8; or
 - (ii) if the Contractor fails to issue a proposal pursuant to paragraph (i), the Principal may issue a Variation Proposal Request and/or a Variation Order,

and in either case the rights of the parties will be determined pursuant to clauses 6.9, 6.10 and 6.11.

- (d) The utilisation by the Contractor of the Contractor's Outline Design in whole or in part:
 - (i) is at its own risk; and
 - (ii) will not:
 - (A) diminish its obligations under this Deed; or
 - (B) give rise to any Claim against the Principal.

- (e) The Contractor:
 - (i) must complete the Design Documentation so that the completed design of the Enabling Works, Temporary Works and any works carried out as part of the Contractor's Activities as represented in the Design Documentation:
 - (A) are Fit for Purpose; and
 - (B) fulfil the requirements of and comply with:
 - (aa) the Contractor's Outline Design to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR;
 - (ab) the SPR;
 - (ac) the Management Requirements;
 - (ad) the Third Party Agreements;
 - (ae) the Utility Service Contractor Agreements;
 - (af) all Laws, Authority Approvals, Codes and Standards;
 - (ag) any Variation directed by the Principal by a Variation Order or approved by the Principal; and
 - (ah) this Deed;
 - (ii) warrants that construction of the Enabling Works, Temporary Works and any works carried out as part of the Contractor's Activities in accordance with the Design Documentation will satisfy or comply with:

- (A) the SPR;
 - (B) the Contractor's Outline Design to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR;
 - (C) the Management Requirements;
 - (D) the Third Party Agreements and the Third Party requirements specified in Exhibit I;
 - (E) the Utility Service Contractor Agreements;
 - (F) all Laws, Authority Approvals, Codes and Standards;
 - (G) any Variation directed by the Principal by a Variation Order or approved by the Principal; and
 - (H) the requirements of this Deed; and
- (iii) must not depart, without the written approval of the Principal's Representative, from the Contractor's Outline Design:
- (A) except where required to develop the Contractor's Outline Design so as to comply with the SPR, the Management Requirements or Third Party Agreements; and
 - (B) in a manner that reduces the architectural and urban design appearance of the Enabling Works.

5.2 ITP and compliance with SPR and the Contractor's Outline Design

- (a) During the ITP the Contractor reviewed the SPR and the Management Requirements and agreed amendments to them with the Principal.
- (b) The Contractor acknowledges and agrees that:
 - (i) the Contractor must not depart from or fail to comply with the SPR, the Management Requirements or the Contractor's Outline Design other than as expressly permitted by this Deed; and
 - (ii) the Contractor will be liable to the Principal for any Loss incurred by the Principal as a result of its failure to comply with this clause.
- (c) The Contractor warrants that it will comply with the SPR and the Management Requirements.

(d)

[REDACTED]

5.3 Digital Engineering

- (a) The Contractor:
 - (i) must comply with the digital engineering requirements specified in the Management Requirements, including the Digital Engineering Execution Plan;
 - (ii) warrants that it has made an allowance for compliance with the digital engineering requirements in the Original Contract Sum.
- (b) Notwithstanding the implementation of the Digital Engineering Execution Plan, the Contractor is responsible for all aspects of the design of the Enabling Works and the fulfilment of its obligations under this Deed.

5.4 Contractor's Outline Design and Information from Tenderer's Tender Documents

- (a) The Contractor acknowledges and agrees that it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of the Contractor's Outline Design.
- (b) To the extent that the Contractor's Outline Design is of a lower specification to the SPR, the Contractor must enhance the Contractor's Outline Design so that as a minimum it satisfies the SPR.
- (c) The Contractor acknowledges and agrees that:
 - (i) it has prepared the Information from Tenderer's Tender Documents;
 - (ii) it provided the Information from Tenderer's Tender Documents as part of the ITP;
 - (iii) the Principal will rely on the accuracy of the Information from Tenderer's Tender Documents; and
 - (iv) it bears absolutely all risks howsoever they may arise as a result of the use by the Contractor of the Information from Tenderer's Tender Documents.
- (d) Unless otherwise agreed with the Principal, the Contractor must undertake the Contractor's Activities in accordance with the Information from Tenderer's Tender Documents unless the Information from Tenderer's Tender Documents is of a lower specification to that identified in the Management Requirements and other provisions of this Deed, in which case the Contractor must as a minimum satisfy the Management Requirements and other provisions of this Deed.

5.5 Preparation and submission of Design Documentation

The Contractor must:

- (a) prepare and submit via the PDCS to the Principal's Representative and the Independent Certifier, with copies to Third Parties, Utility Service Providers and relevant Authorities (as applicable), all Design Documentation at each Design Stage as required by this Deed:
 - (i) by the times or within the periods:
 - (A) in accordance with the Enabling Works Program; or

- (B) in the absence of a time or period in the Enabling Works Program, as required by the Principal's Representative; and
- (ii) under cover of a written notice entitled "Submit for Review", which identifies:
 - (A) the Design Documentation; and
 - (B) the provision of this Deed under which the Design Documentation is submitted;
- (b) in relation to Design Documentation prepared in accordance with clause 5.5(a):
 - (i) ensure all Design Documentation is of a level of detail appropriate for that Design Stage which is sufficient to permit the Independent Certifier, the Principal, the Third Parties, the Utility Service Providers and any relevant Authorities (as applicable) to comment whether:
 - (A) the Design Documentation complies with:
 - (aa) the SPR;
 - (ab) the Contractor's Outline Design to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR;
 - (ac) the Third Party Agreements;
 - (ad) the Utility Service Contractor Agreements;
 - (ae) all Laws, Authority Approvals, Codes and Standards; and
 - (af) this Deed; and
 - (B) the Enabling Works which will be constructed in accordance with the Design Documentation will comply with:
 - (aa) the SPR;
 - (ab) the Contractor's Outline Design to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR;
 - (ac) the Third Party Agreements;
 - (ad) the Utility Service Contractor Agreements;
 - (ae) all Laws, Authority Approvals, Codes and Standards; and
 - (af) this Deed;
 - (ii) include all Design Documentation for the Enabling Works and the Temporary Works that are relevant to that Design Stage;

- (iii) submit all Design Documentation progressively and in a timely manner in accordance with the Enabling Works Program;
- (iv) submit all Design Documentation in a manner which, having regard to the volume of Design Documentation submitted, will allow the Independent Certifier, the Principal, the Third Parties, the Utility Service Providers and relevant Authorities (as applicable) a reasonable opportunity to review the Design Documentation within the applicable Review Period; and
- (v) provide all data, inputs, calculations and outputs in electronic form that enables interrogation, manipulation and re-calculation by the Principal's Representative and the Independent Certifier.

5.6 Third Party Works and Utility Service BAU Works

- (a) Design Documentation that relates to the Third Party Works must:
 - (i) comply with the requirements of the relevant Third Party Agreements (and in respect of the Utility Service Third Party Works, any relevant Utility Service Contractor Agreements); and
 - (ii) where required by the relevant Third Party Agreements and Utility Service Contractor Agreements, be accompanied by the relevant certifications.
- (b) Design Documentation which relates to the Utility Service BAU Works must:
 - (i) comply with the requirements of the relevant Utility Service Contractor Agreements; and
 - (ii) where required by the relevant Utility Service Contractor Agreements, be accompanied by the relevant certifications.

5.7 Certification of Design Documentation and Authority Approvals

- (a) All Design Documentation submitted pursuant to clause 5.5(a) must be accompanied by:
 - (i) the Contractor's Certificate of Design Compliance;
 - (ii) the Designers' Certificates of Design Compliance;
 - (iii) in respect of the AFC Design Documentation, the Proof Engineer's Certificate; and
 - (iv) any other certificates as required by the Management Requirements, for the relevant Design Stage, as specified and in the form in Schedule 5.
- (b) Where the Design Documentation must have Authority Approval prior to being implemented, then the Contractor must with the relevant Design Documentation submit evidence to the reasonable satisfaction of the Principal's Representative of the relevant Authority Approval.

5.8 Explanation of Design Documentation

The Contractor must, whenever it submits Design Documentation pursuant to clause 5.5:

- (a) if required by the Principal's Representative or the Independent Certifier deliver a design presentation workshop 5 Business Days prior to its submission; and
- (b) if required by the Principal's Representative or the Independent Certifier, make available the appropriate design personnel to:
 - (i) explain the Design Documentation; and
 - (ii) provide such information regarding the Design Documentation as the Principal's Representative or the Independent Certifier reasonably requests, including access to the Contractor's and each Designer's quality management system to enable the Independent Certifier to certify compliance with this Deed.

5.9 Review of Design Documentation

- (a) Other than clause 5.9(n), this clause does not apply to the design of Non Configurable Utility Services, which are subject to the process set out in Annexure 3 of the Management Requirements and clause 5.10.
- (b) At the SDR Design Stage and the PDR Design Stage:
 - (i) the Principal's Representative, Third Parties, and any relevant Authority may within:
 - (A) 15 Business Days of submission of Design Documentation in accordance with clause 5.5; and
 - (B) such other period as stipulated in a Third Party Agreement,

(as applicable) (**Review Period**),

review the Design Documentation, and notify the Independent Certifier in writing of:

 - (C) any comments on the Design Documentation which relate to non-compliance;
 - (D) any observations on the Design Documentation,

which the Principal, the Third Party or the relevant Authority (as the case may be) has in respect of the Design Documentation; and
 - (ii) the Independent Certifier will within 5 Business Days of the end of the Review Period prepare and give to the Contractor and the Principal's Representative, with a copy to the applicable Third Parties and relevant Authority:
 - (A) a consolidated register of all comments on Design Documentation which relate to non-compliance with a requirement of this Deed and a proposed action for how and when each comment must be closed out by the Contractor; and
 - (B) a consolidated register of all other comments that the Independent Certifier reasonably considers to be observations or comments that do not clearly relate to a specific obligation of the Contractor under this Deed and

the Independent Certifier's reasons why the comment was not classified by the Independent Certifier as a non-conformance.

(c) At the DDR Design Stage and AFC Design Stage:

(i) the Principal's Representative, Third Parties, and any relevant Authority may within:

- (A) 15 Business Days for the DDR Design Documentation submitted in accordance with clause 5.5;
- (B) 5 Business Days for the AFC Design Documentation submitted in accordance with clause 5.5; and
- (C) such other period as stipulated in a Third Party Agreement,

(as applicable) **(AFC Review Period)**,

review the Design Documentation, and notify the Independent Certifier in writing of comments on Design Documentation which relate to a non-compliance with a requirement of this Deed and a proposed action for how and when each comment must be closed out by the Contractor which the Principal, the Third Party or the relevant Authority (as the case may be) has in respect of the Design Documentation;

(ii) the Independent Certifier will within 5 Business Days of the end of the AFC Review Period prepare and give to the Contractor and the Principal's Representative, with a copy to the applicable Third Parties and relevant Authority:

- (A) a consolidated register of all comments on Design Documentation which relate to non-compliance with a requirement of this Deed; and
- (B) a proposed action for how and when each comment must be closed out by the Contractor:

(d) In the case of requirements nominated by the Contractor for design verification in the Requirement Verification and Traceability Matrix at the PDR Design Stage (as defined by the Management Requirements), and all Design Documentation submitted by the Contractor at the DDR Design Stage and all subsequent Design Stages, the Independent Certifier will:

(i) within the applicable AFC Review Period, undertake an independent review of whether the Design Documentation is complete and complies with this Deed; and

(ii) within 5 Business Days of the end of the AFC Review Period, either:

- (A) give the Contractor and the Principal's Representative a register of comments and actions under clause 5.9(c)(ii); or
- (B) in respect of the AFC Design Stage only, issue an Independent Certifier's Certificate of Design Compliance

for the relevant Design Documentation, to the Contractor and the Principal's Representative.

- (e) Within 5 Business Days of the Independent Certifier issuing a register of comments under clause 5.9(c)(ii)(A):
 - (i) the Contractor must notify the Independent Certifier and the Principal's Representative in writing whether it disagrees with any non-compliance raised or action proposed and the Contractor's reasons; and
 - (ii) the Independent Certifier will maintain a record of all actions taken to close out each non-compliance raised or action proposed.
- (f) If a party disagrees with any non-compliance raised or action proposed pursuant to clause 5.9(c)(ii)(A) or an action to be taken under clause 5.9(c)(ii)(B), then:
 - (i) that party must give the notices required by clause 17.3;
 - (ii) the Principal's Representative must, within the time required by clause 17, give the Contractor, a written direction whether the comment or proposed action must be addressed by the Contractor for the Design Documentation to comply with this Deed;
 - (iii) the Contractor may, if it disagrees with the Principal's Representative's determination, refer the question of whether there is a non-compliance to the Independent Certifier for a written determination of any matter of interpretation of the SPR or the Management Requirements. That referral must be made within 3 Business Days of receipt of the Principal's Representative's written direction pursuant to clause 5.9(f)(ii); and
 - (iv) the Independent Certifier must provide the Principal's Representative and the Contractor with a written determination of its interpretation of the SPR or the Management Requirements within 3 Business Days of a request by the Contractor.
- (g) To the extent that the Contractor does not deliver a notification pursuant to clause 5.9(f)(iii) within 3 Business Days, the Contractor will be deemed to have agreed with the comments and proposed actions from the Independent Certifier and must amend the Design Documentation to reflect them.
- (h) If the Independent Certifier gives the Contractor a register of non-compliances under clause 5.9(c)(ii)(A):
 - (i) the Contractor must promptly amend the relevant part of the Design Documentation which was defective or non-compliant and re-submit it at the current Design Stage in accordance with the proposed actions from the Independent Certifier (or as otherwise determined), along with any other information reasonably required by the Independent Certifier, in accordance with clause 5.5;
 - (ii) the current Design Stage will be a Hold Point for the Contractor; and

- (iii) the process in this clause 5.9 will be reapplied to the amended Design Documentation.
- (i) Certification by the Independent Certifier under this clause 5.9 will not relieve the Contractor of any of its obligations under this Deed.
- (j) Without limiting the Contractor's obligations under the Management Requirements in relation to the design of Temporary Works, for the purposes of this clause 5.9 the Contractor is only required to submit Design Documentation in respect of Temporary Works to the Independent Certifier for review, and the Independent Certifier is only required to review and give an Independent Certifier's Certificate of Design Compliance, to the extent any element of Temporary Works relates to public safety or amenity.
- (k) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Independent Certifier of any errors, omissions or non-compliance with the requirements of this Deed in any Design Documentation submitted under clause 5.5.
- (l) No review of, approval of or comment upon, or failure to review, approve, or comment upon, any Design Documentation prepared by the Contractor, or any other direction by the Principal's Representative in connection with Design Documentation, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 6.2(a);
 - (ii) relieve the Contractor from or alter its Liabilities or obligations, whether under this Deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.
- (m) In considering, reviewing or commenting upon any Design Documentation, the Principal's Representative may:
 - (i) consult with;
 - (ii) take into account any views or requirements of; and
 - (iii) direct the Contractor to comply with the lawful requirements of, any relevant Authority.
- (n) The Contractor acknowledges and agrees that:
 - (i) it has made allowances in the Enabling Works Program for the time required for the review process specified in clause 5, including:
 - (A) all relevant Authorities to review its design;
 - (B) the submission, review, comment, rejection and all other design development processes contemplated by the Third Party Agreements;

- (C) the role of the Independent Certifier under this clause 5, including obtaining the Independent Certifier's Certificate of Design Compliance for each applicable Design Stage; and
- (D) the role of the Proof Engineer under clause 9.13; and
- (ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way connected with any delay in the design development process as contemplated by this clause 5.
- (o) For the purposes of calculating time under this clause 5.9, the days between 24 December and 7 January shall not be counted.
- (p) Unless otherwise directed by the Principal's Representative, the Contractor must provide the number and form of copies of all Design Documentation as specified in the Management Requirements, which is submitted for review under this clause 5.9.

5.10 Process for submission and approval of Non Configurable Utility Services

- (a) The Contractor must comply with the process for submission of designs of Non Configurable Utility Services set out in Annexure 3 of the Management Requirements.
- (b) Without limiting clause 5.10(a), the Contractor must provide a copy of any submission made under Annexure Part 3 of the Management Requirements to the Principal and the Independent Certifier at the time that the submission is made.
- (c) The Contractor acknowledges and agrees that all designs ancillary to or interfacing with Non Configurable Utility Services will be subject to the design review process contained in clause 5.9.

5.11 AFC Design Documentation

- (a) **(Certification of AFC Design Documentation)** The Contractor acknowledges and agrees that:
 - (i) the AFC Design Documentation provided under clause 5.5(a) must be certified by the Proof Engineer providing the Proof Engineer's Certificate;
 - (ii) the Proof Engineer may choose to give or withhold its certification whether or not the Independent Certifier has approved the AFC Design Documentation; and
 - (iii) for the purposes of providing such certification, the Proof Engineer may have regard to the matters in clause 5.9, including any comments, submissions or determinations from the Independent Certifier, the Principal's Representative, Third Party or an Authority has in respect of the Design Documentation.
- (b) **(Amendments to AFC Design Documentation)** Subject to clause 6.8, if the Contractor wishes to amend AFC Design Documentation prior to the Date of Enabling Works Practical Completion:
 - (i) the Contractor must submit the amended Design Documentation to the Independent Certifier and the Proof

Engineer (with a copy to the Principal's Representative) together with an explanation as to why it is seeking to amend the AFC Design Documentation and noting what amendments to other documents may be required, including to the required safety case reports and other materials required for any Accreditation; and

- (ii) clause 5.9 and clause 5.11 will re-apply.

5.12 Contractor not to proceed at own risk

The Contractor must not proceed with:

- (a) any subsequent Design Stage; or
- (b) the procurement or construction of the Enabling Works which will result in:
 - (i) a material change to the Enabling Works; or
 - (ii) a change to any part of the Enabling Works or Design Documentation that relates to Third Party Works or any deliverable under a Third Party Agreement,

unless:

- (c) the Principal's Representative provides its prior written consent; or
- (d) in the case of Design Stages, all notified non-conformances from the previous Design Stage have been closed out by the Contractor or an Independent Certifier's Certificate of Design Compliance has been issued (as applicable) in accordance with clause 5.9; or
- (e) in the case of the procurement or construction of the Enabling Works the applicable Design Documentation has been certified as "Approved for Construction" by the Independent Certifier in accordance with clause 5.9.

5.13 Ownership of Contract Documentation and methods of working

- (a) Nothing in this Deed transfers Intellectual Property Rights in the Contractor Background Material to the Principal.
- (b) Subject to clauses 5.13(a), 5.13(d)(iv), 5.13(d)(v) and clause 5.13(d)(vi):
 - (i) title to and Intellectual Property Rights in or in relation to the Contract Documentation will vest upon its creation in the Principal;
 - (ii) to the fullest extent permitted by Law, the Contractor hereby assigns to the Principal all of its rights, titles, and interests in, and to, all Intellectual Property Rights in or in relation to the Contract Documentation, on the later of creation and the Commencement Date; and
 - (iii) upon request by the Principal, the Contractor must do all things necessary to vest that title and Intellectual Property Rights in the Principal.
- (c) The Principal grants to the Contractor a licence to use and reproduce the Contract Documentation for the Contractor's Activities.

- (d) The Contractor must:
 - (i) ensure that all Subcontracts between the Contractor and all Subcontractors contain provisions to the same effect as clause 5.13(b);
 - (ii) obtain confirmation of the inclusion of such provisions in the form of a signed acknowledgment from such Subcontractors responsible for any Design Documentation;
 - (iii) where requested by the Principal's Representative, obtain such an acknowledgement from other Subcontractors;
 - (iv) where the Contract Documentation incorporates Third Party Material:
 - (A) obtain an assignment of the Intellectual Property Rights in the Third Party Material to the Principal from any third party who owns the Intellectual Property Rights, on the later of creation and the Commencement Date; or
 - (B) if it is unable to obtain the assignment referred to in clause 5.13(d)(iv)(A), grant or have granted to the Principal a non-exclusive, perpetual, irrevocable transferable, royalty-free, licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-license any other third party to do so) the Third Party Material, which licence arises immediately upon the creation of the Contract Documentation, for:
 - (aa) the completion, augmentation and alteration of the Enabling Works; and
 - (ab) any subsequent repairs to, maintenance or servicing of the Enabling Works (as may be augmented or altered); and
 - (ac) the operation and use of the Enabling Works (as may be augmented, altered, repaired, maintained or serviced);
 - (v) where the Contract Documentation incorporates Contractor Background Material, grant or have granted to the Principal a non-exclusive, perpetual, irrevocable transferable, royalty-free, licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-license any other third party to do so) the Contractor Background Material, which licence arises immediately upon the creation of the Contract Documentation, for:
 - (A) the completion, augmentation and alteration of the Enabling Works;
 - (B) any subsequent repairs to, maintenance or servicing of the Enabling Works (as may be augmented or altered); and
 - (C) the operation and use of the Enabling Works (as may be augmented, altered, repaired, maintained or serviced); and

- (vi) in respect of Public Art:
 - (A) obtain an assignment of the Intellectual Property Rights in the Public Art to the Principal from any third party who owns the Intellectual Property Rights, on the later of creation and the Commencement Date; or
 - (B) if it is unable to obtain the assignment referred to in clause 5.13(d)(vi)(A), grant or have granted to the Principal a non-exclusive, perpetual, irrevocable transferable, royalty-free, licence to use, reproduce, make adaptations of, modify or incorporate into other work (and sub-license any other third party to do so) the Public Art Material, which licence arises immediately upon the creation of the Contract Documentation, for:
 - (aa) the completion, augmentation and alteration of the Enabling Works; and
 - (ab) any subsequent repairs to, maintenance or servicing of the Enabling Works (as may be augmented or altered); and
 - (ac) the operation and use of the Enabling Works (as may be augmented, altered, repaired, maintained or serviced);
- (vii) ensure that the Contract Documentation and Intellectual Property Rights created for the purposes of this Deed are not used, adapted or reproduced other than for the purposes of this Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).
- (e) The Contractor represents and warrants that except for amounts included in the Enabling Works Lump Sum, no royalties or other payments are due or payable by the Principal to the Contractor or any other person in respect of the Intellectual Property Rights or the use of or the grant of a right to use those Intellectual Property Rights.
- (f) The Contractor agrees, and will procure the agreement of each author of the Relevant Material and the Public Art Material, that the Principal in its absolute discretion:
 - (i) need not identify the Contractor or any author as the author(s) of the Relevant Material and Public Art Material; and
 - (ii) may:
 - (A) materially distort, destroy, mutilate, alter or in any other way change;
 - (B) add to, delete from, retitle; and
 - (C) reproduce, publish, copy, adapt,

the Relevant Material and Public Art Material (or a substantial part of or adaptation of it) in any way the Principal sees fit in any medium and in any context and with or without other text, data or images and may in any manner engage in conduct that

would, absent the consent, infringe on author's Moral Rights in the Relevant Material and Public Art Material.

5.14 Delivery up of Contract Documentation

If this Deed is frustrated or terminated the Contractor must:

- (a) immediately deliver the original and all but one set and copies of all Contract Documentation (whether complete or not), including fully detailed electronic versions in unlocked native format (with all logic links intact and nothing hidden or protected), then in existence to the Principal; and
- (b) provide such details, memoranda, explanations, documentation and other assistance as the Principal reasonably requires in relation to the Contract Documentation.

5.15 Warranty and indemnity

- (a) The Contractor:
 - (i) warrants, and must ensure, that the Contract Documentation, Enabling Works and Temporary Works (and their use by the Principal), and the performance of the Contractor's Activities (including any methods of working) do not and will not infringe the Intellectual Property Rights or Moral Rights of any person; and
 - (ii)
- (b) For the purposes of clause 5.15(a), the Principal's use of the Contract Documentation includes the Principal's right to reproduce, publish, copy, adapt, communicate to the public, materially distort, destroy, mutilate or in any way change the Contract Documentation or part of the Enabling Works to which the Contract Documentation or any other work provided by the Contractor under this Deed relates:
 - (i) with or without attribution of authorship;
 - (ii) in any medium; and
 - (iii) in any context and in any way it sees fit.

5.16 Design meetings

- (a) The Contractor must attend all design meetings as required by the Management Requirements.
- (b) Without limiting any other provision of this Deed, nothing which occurs during a design meeting or as part of the process for such meetings will:

- (i) relieve the Contractor of its obligations, or constitute a waiver of any of the Principal's rights, under this Deed; or
- (ii) be construed as a direction or notice by the Principal to do or not to do anything and the parties confirm that all discussions on any matters raised at any workshop or meeting or any comments made by the Principal or other participants, will not give rise to any obligation on the part of the Contractor to comply with anything which the members say or do during such workshops or meetings.

5.17 Work method

Whether or not this Deed prescribes a particular work method or a work method is otherwise a part of this Deed or reviewed or approved (expressly or impliedly) by the Principal's Representative, the fact that any work method that the Contractor adopts or proposes to adopt is impractical or impossible or that the Contractor, with or without the approval of the Principal's Representative, uses another work method will:

- (a) not entitle the Contractor to make any Claim against the Principal arising out of or in any way in connection with the work method proving to be impractical or impossible or any change in the work method; and
- (b) not cause this Deed to be frustrated.

6 Variations

6.1 Proposed Variations

- (a) At any time prior to the Date of Portion Completion of the last Portion to reach Portion Completion (but without limiting clauses 8 and 13.3) the Principal's Representative may issue a document titled "Variation Proposal Request" to the Contractor, which will set out details of a proposed Variation that the Principal is considering.
- (b) If the Variation Proposal Request requests that the Contractor provide an estimate of the third party costs that the Contractor will incur in preparing a response to the Variation Proposal Request, the Contractor must provide that estimate to the Principal's Representative within 5 Business Days of receipt of the Variation Proposal Request.
- (c) Within 10 Business Days of the receipt of a "Variation Proposal Request", or at such other time as is approved by the Principal's Representative, the Contractor must provide the Principal's Representative with a written notice in which the Contractor sets out:
 - (i) the adjustment to the Contract Sum (and change to the Payment Schedule in Schedule 2) that the Contractor would claim in respect of the proposed Variation (other than those costs referred to in clause 6.1(c)(ii)) with details of how the amount has been calculated;
 - (ii) the expected effect that the proposed Variation would have on the Enabling Works Program, and the Contractor achieving Portion Completion by the relevant Date for Portion Completion with details of how the effect has been assessed and if the proposed Variation would entitle the Contractor to an extension of time, the amount of its entitlement under clause 10.10 arising from that extension of time;

- (iii) a statement that the proposed Variation:
 - (A) does not conflict with or change the requirements of the SPR or the Contractor's Outline Design or involve changes other than those described in the notice;
 - (B) changes the requirements of the SPR or the Contractor's Outline Design or involves changes other than those described in the notice, in which case the Contractor must explain all the changes and effects, including providing information on the:
 - (aa) scope and limits of the work changes;
 - (ab) design criteria and how they are to be addressed;
 - (ac) effect on relevant reports, drawings and studies;
 - (ad) assumptions;
 - (ae) Authority Approvals, Third Party Agreements and Utility Service Contractor Agreements affected; and
 - (af) environmental and community impacts;
- (iv) sufficient details to allow the Principal to review the reasons, and, if desired, reconsider the need, for the Variation;
- (v) where required by the Principal's Representative, the additional costs that the Contractor anticipates would be incurred by it if a direction was given under clause 10.12 to compress the performance of the Contractor's Activities to overcome part or all of any of the delay in achieving Portion Completion of a Portion by the relevant Date for Portion Completion expected to be caused by the Variation outlined in the "Variation Proposal Request";
- (vi) the effect of the proposed Variation on the Enabling Works; and
- (vii) any other information concerning the proposed Variation that the Principal's Representative requires.
- (d) The Principal will not be obliged to proceed with any proposed Variation that is the subject of a "Variation Proposal Request".
- (e) The Contractor must comply with any requirements in relation to Variations in connection with Third Party Agreements as specified in the Third Party Agreement Matrix.

6.2 Variation Orders

- (a) Whether or not the Principal's Representative has issued a "Variation Proposal Request" under clause 6.1, the Principal's Representative may at any time prior to Enabling Works Practical Completion (but without limiting clauses 8 and 13.3) direct the Contractor to carry out a Variation by issuing a Variation Order, in which the Principal's Representative will state the applicable alternative from the following:

- (i) the proposed adjustments to the Contract Sum and Schedule 2 set out in the Contractor's notice under clause 6.1(c)(i) are agreed and the Contract Sum and Schedule 2 will be adjusted accordingly;
 - (ii) any adjustment to the Contract Sum and Schedule 2 will be determined under clause 6.4(b); or
 - (iii) the Variation is to be carried out as daywork and any adjustment to the Contract Sum will be determined under clause 6.7.
- (b) There is no limitation on the power of the Principal's Representative to direct a Variation, and no Variation or direction to carry out a Variation will invalidate this Deed.
- (c) The Contractor must comply with a Variation Order irrespective of:
- (i) the nature, extent or value of the work the subject of the Variation;
 - (ii) the location or timing (including the impact on any Date for Enabling Works Practical Completion) of the work involved in the Variation;
 - (iii) whether or not it agrees with any or all of the Variation Order; or
 - (iv) any dispute related to the Variation.
- (d) The Contractor's entitlement (if any) to an extension of time and Delay Costs arising out of a Variation directed under clause 6.2(a) will be dealt with under clause 10 and not this clause 6. The valuation of a Variation under clause 6.4 or clause 6.7 will exclude any amount for costs incurred by the Contractor as a result of any delay caused by the Variation or delay in issuing the Variation Order.

6.3 Options

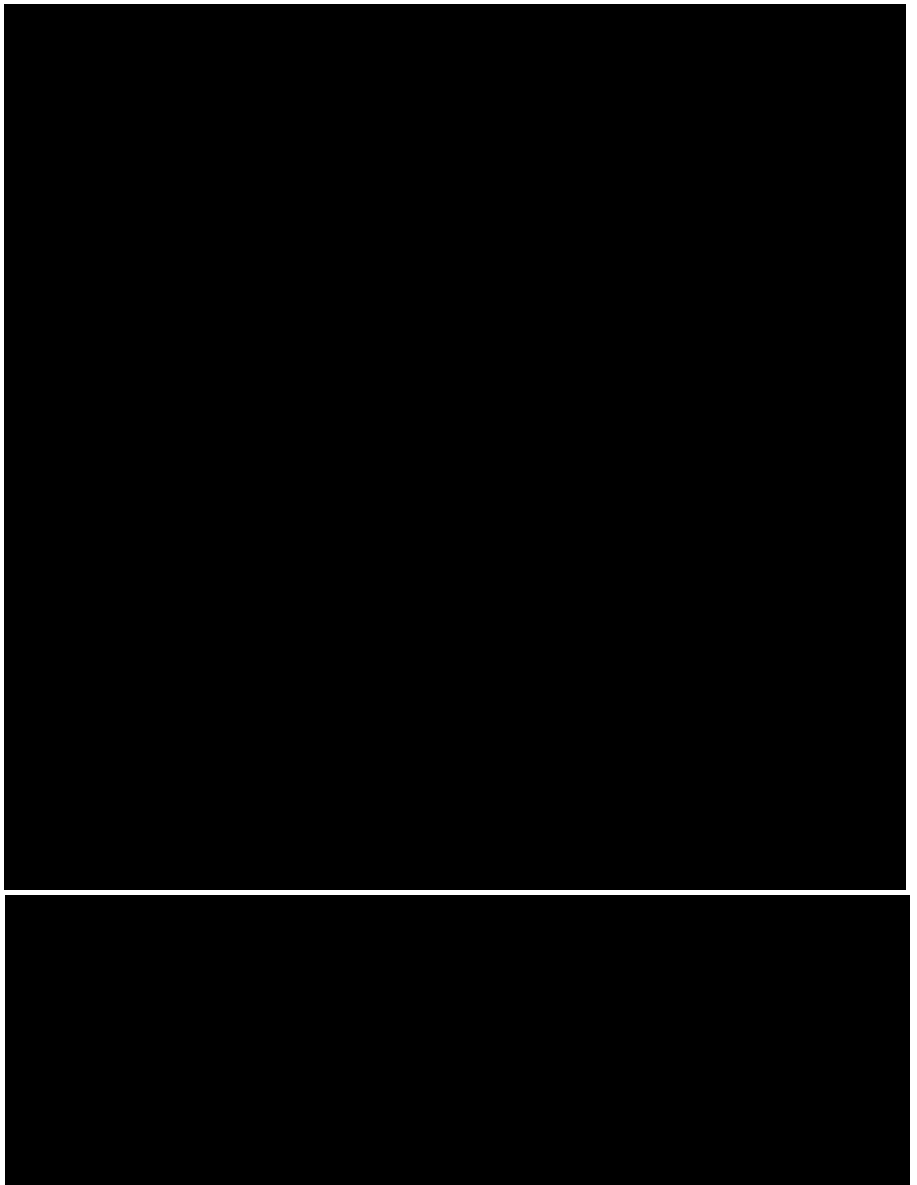
- (a) The Principal's Representative may, by written notice given to the Contractor at any time within the period stated in Schedule 25, exercise any Option. Commencing upon the issue of such a notice by the Principal's Representative, the Principal and the Contractor must perform their obligations under this Deed on the basis that the Contract Sum, the SPR and the provisions of this Deed will be adjusted as set out in Schedule 25 for the relevant Option.
- (b) For the avoidance of doubt:
- (i) the Principal is not under any obligation whatsoever to exercise; and
 - (ii) the Contractor is not entitled to make, nor will the Principal be liable upon, any Claim in respect of the Principal not exercising,
- any Option.
- (c) Where the Principal does not exercise its discretion to exercise an Option, the Principal may, either by itself or by third parties, undertake the work contemplated by the relevant Option.

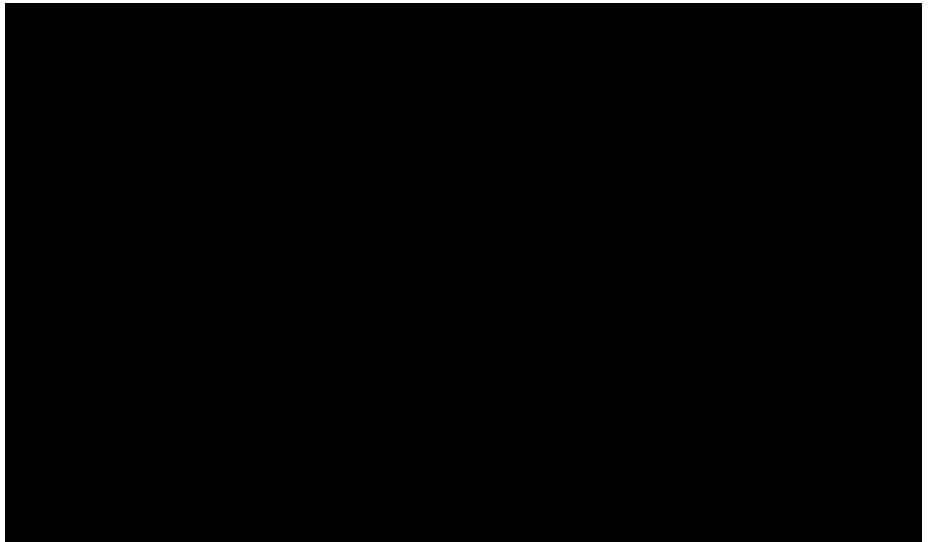
- (d) The exercise of an Option by the Principal's Representative under this clause 6.3 will not:
- (i) relieve the Contractor from its liabilities or obligations (including those arising out of any warranties given under this Deed);
 - (ii) limit or otherwise affect the Principal's rights against the Contractor or the Contractor's rights against the Principal (including those arising out of any warranties given under this Deed); or
 - (iii) entitle the Contractor to an extension of time,
- whether under this Deed or otherwise according to any Law.

6.4 Valuation

Subject to clauses 6.10, 0, 11.3, 17 and 18, the Contract Sum and the Payment Schedule will be adjusted for all Variations that have been directed by the Principal's Representative by:

- (a) to the extent that clause 6.2(a)(i) applies, the agreed amount as specified in the Variation Order;
- (b)





- (c) to the extent that clause 6.2(a)(iii) applies, the amount determined by the Principal's Representative under clause 6.7.

6.5 Omissions

If a Variation the subject of a direction by the Principal's Representative requires the omission or deletion of any part of the Contractor's Activities:

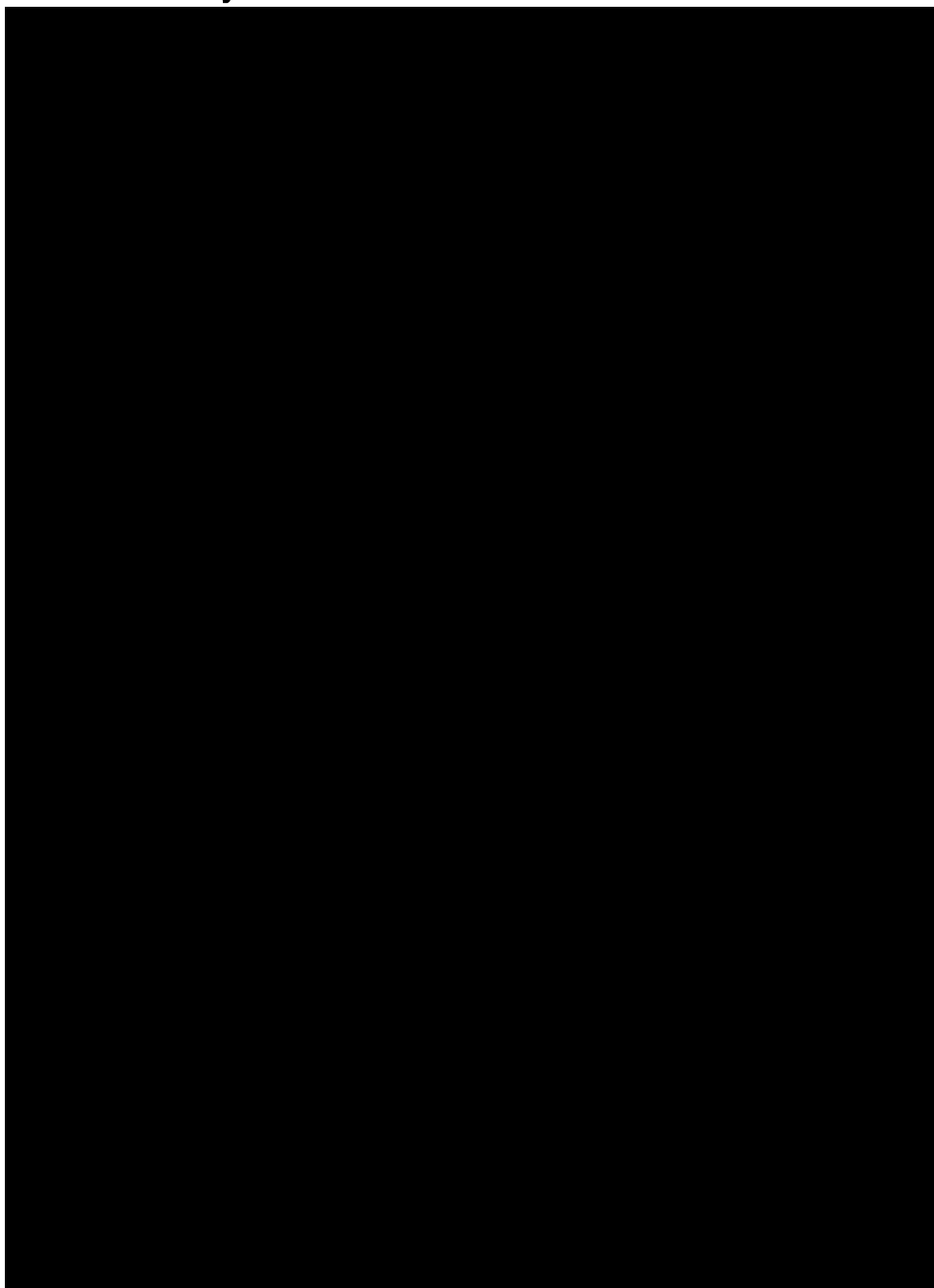
- (a) the Principal may thereafter either perform this work itself or employ or engage any other person or persons to carry out and complete the omitted or deleted Contractor's Activities;
- (b) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with any activities being omitted or deleted from the Contractor's Activities whether or not the Principal thereafter perform these activities itself or employs or engages any other person or persons to carry out and complete the omitted or deleted Contractor's Activities;
- (c) the adjustment to the Contract Sum arising from the work that has been omitted or deleted will be valued in accordance with clause 6.4; and
- (d) the adjustment (if any) to the Date for Portion Completion of a Portion will be assessed in accordance with clause 10.8.

6.6 Daywork

- (a) If the Contractor is given a direction under clause 6.2(a)(iii) to carry out the Contractor's Activities as daywork, the Contractor must:
 - (i) carry out the daywork in an efficient manner; and
 - (ii) after the direction, each day provide the Principal's Representative with a written report in respect of that day signed by the Contractor that:
 - (A) records particulars of all resources used by the Contractor for the execution of the daywork; and
 - (B) includes those particulars reasonably required by the Principal's Representative that evidence the cost of the daywork.

- (b) The Principal's Representative may direct the manner in which the matters referred to in clause 6.6(a)(ii) must be recorded.

6.7 Valuation of daywork



6.8 Variations Requested by the Contractor

- (a) The Contractor may, for its convenience, request the Principal's Representative to direct a Variation. Any such request must be in writing and must contain the following details of the Variation proposed:
 - (i) a full description of the proposed Variation;
 - (ii) the additional or reduced cost or time involved in the Variation and any proposal for sharing any cost savings or increases with the Principal, including the amount;
 - (iii) any benefits that would flow to the Principal;

- (iv) the expected effect upon the future cost of operating and maintaining the Enabling Works;
- (v) the expected effect on the various Enabling Works Programs, including the Enabling Works Program and any Date of Portion Completion; and
- (vi) a statement as required by clause 6.1(c)(iii).

6.9 Determination by the Principal's Representative

- (a) If the Contractor makes a request in accordance with clause 6.8, the Principal's Representative may, in its absolute discretion, give a written notice to the Contractor:
 - (i) rejecting the request; or
 - (ii) approving the request either conditionally or unconditionally.
- (b) The Principal's Representative will not be obliged to exercise its discretion for the benefit of the Contractor.

6.10 Variation approved by the Principal's Representative

- (a) If the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8:
 - (i) unless otherwise agreed in the notice given under clause 6.9, the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the Variation;
 - (ii) if the Contractor's request offered to share savings in cost with the Principal, the Contract Sum will be reduced by the amount offered by the Contractor in its request, or such other amount as may have been agreed between the Principal's Representative and the Contractor prior to any approval under clause 6.9(a)(ii); and
 - (iii) the Contractor will be responsible for ensuring that all parts of the Contractor's Activities that are in any way affected by the Variation comply with the requirements of this Deed.
- (b) Unless and until the Principal's Representative issues a written notice under clause 6.9 approving the Contractor's request under clause 6.8, no Variation will arise out of that request, and the Contractor must at all times:
 - (i) continue to carry out the Contractor's Activities; and
 - (ii) otherwise comply with its obligations under this Deed.

6.11 Contractor's entitlements

This clause 6 is an exhaustive code of the Contractor's rights in any way in connection with any Variation. The Contractor waives all rights at Law to make any Claim against the Principal in any way in connection with any of the matters set out in this clause 6 otherwise than in accordance with the terms of this Deed.

6.12 No Variation or Claim

- (a) Subject to clause 6.12(b) the Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, any change or direction unless the Contractor is directed to implement a Variation pursuant to a Variation Order issued by the Principal under this clause 6 or this Deed expressly provides that a circumstance or event is to be treated as a Variation.
- (b) Where the Contractor considers that any direction or other circumstance that is not a Variation Order issued by the Principal under this clause 6 or a circumstance or event that this Deed expressly provides is to be treated as a Variation:
 - (i) constitutes or involves a Variation; or
 - (ii) entitles it to make a Claim,
 it must if it wishes to make a Claim:
 - (iii) issue a notice in accordance with clause 17; and
 - (iv) continue to carry out the Contractor's Activities in accordance with this Deed including any direction in respect of which notice has been given under this clause, unless otherwise directed by the Principal's Representative.
- (c) If the Contractor does not comply with this clause it will have no Claim arising out of the change, direction or circumstance.

6.13 Authority Approvals for Variations

- (a) Subject to clause 6.13(b), the Contractor must apply for and obtain all:
 - (i) necessary amendments or modifications to any existing Authority Approval; and
 - (ii) new Authority Approvals that may be,
 required for the execution of a Variation.
- (b) Where the amendment or modification to any Authority Approval required for the execution of the Variation relates to the Planning Approval, the Contractor must:
 - (i) carry out and provide to the Principal all surveys, investigations, reports, studies:
 - (A) requested by the Principal's Representative;
 - (B) to the standard directed by the Principal's Representative; and
 - (C) within the time directed by the Principal's Representative; and
 - (ii) provide whatever other assistance and information the Principal's Representative reasonably requests to allow it to obtain the necessary amendments or modifications to the Planning Approval.

- (c) The Contractor must implement the Variation once the Authority Approvals referred to in this clause 6.13 have been amended, modified, or granted to permit the Variation to be implemented.
- (d) If a Variation Proposal Request requests that the Contractor provides an estimate of the third party costs that the Contractor will incur in preparing a response to a Variation Proposal Request, then prior to providing the response, the Contractor must provide that estimate within 5 Business Days of receipt of the Variation Proposal Request.

6.14 No liability unless Variation Order

The Contractor will not be entitled to make any Claim against the Principal arising out of, or in any way in connection with, any Variation, except where:

- (a) the Contractor is directed to implement a Variation pursuant to a Variation Order issued by the Principal under this clause 6;
- (b) the Variation is a deemed Variation under this Deed;
- (c) the Contractor is entitled to recover third party costs pursuant to clause 6.15; or
- (d) following a notice contemplated by clause 6.12(b), it is determined under clause 17 or clause 18 that a Variation has been directed.

6.15 Cost of preparing response to Variation Proposal Request

If:

- (a) the Contractor prepares a response to a Variation Proposal Request in accordance with clause 6.1(c); and
- (b) the Principal does not issue a Variation Order in respect of the proposed Variation,

then the Principal will reimburse the reasonable costs of:

- (c) Designers; and
- (d) Subcontractors carrying out geotechnical investigations or surveys,

properly incurred by the Contractor in preparing the response to the Variation Proposal Request, capped at the amount of any estimate provided by the Contractor in respect of the Variation Proposal Request under clause 6.1(b).

7 Construction

7.1 Construction

- (a) The Contractor must construct the Enabling Works and the Temporary Works and any works carried out as part of the Contractor's Activities using Best Industry Practice and:
 - (i) in accordance with:
 - (A) the SPR;

- (B) the Contractor's Outline Design to the extent that the Contractor's Outline Design includes higher or additional obligations than the SPR;
 - (C) the Management Requirements;
 - (D) the Third Party Agreements and the Third Party requirements specified in Exhibit I;
 - (E) the Utility Service Contractor Agreements; and
 - (F) the other requirements of this Deed; and
- (ii) so that the Enabling Works, the Temporary Works and any works carried out as part of the Contractor's Activities at:
- (A) Portion Completion of each Portion; and
 - (B) the Enabling Works Practical Completion of Enabling Works,

are Fit for Purpose and otherwise fulfil the requirements of this Deed.

- (b) If there is any ambiguity, discrepancy or inconsistency between:

- (i) this Deed; and
- (ii) any Design Documentation which has been certified by the Independent Certifier under clause 5.9(b)(ii),

then unless otherwise directed by the Principal's Representative, the requirements of this Deed will prevail.

- (c) At monthly intervals during the construction work and at Portion Completion of each Portion, the Contractor must submit to the Principal's Representative the Contractor's Certificate of Construction Compliance identifying the work covered, with:
- (i) a register of management plans, method statements, and inspection and test plans;
 - (ii) a register of records of all compliance and other associated test records showing achievement of the acceptance criteria identified in the above inspection and test plans;
 - (iii) a register of deficiency notices; and
 - (iv) a register of concessions granted for non-conforming work.

7.2 Not Used

7.3 Construction warranties

The Contractor warrants that:

- (a) construction will be carried out in accordance with the Design Documentation, and Best Industry Practice;

- (b) it will perform the Contractor's Activities using the workmanship and materials required by this Deed and which are Fit for Purpose; and
- (c) construction carried out in accordance with the Design Documentation, and Best Industry Practice will ensure that the Enabling Works satisfy the requirements of this Deed.

7.4 Performance of the Contractor's Activities

- (a) Without limiting clause 7.1, in performing the Contractor's Activities, the Contractor must:
 - (i) implement Best Industry Practice;
 - (ii) keep the Site clean and tidy and regularly remove from any place where the Contractor's Activities are being performed any waste or surplus material (including Materials) arising from such performance;
 - (iii) in respect of Construction Plant used in performing the Contractor's Activities:
 - (A) use any Construction Plant which this Deed prescribes or otherwise requires the Contractor to use including any Construction Plant referred to in a Project Plan;
 - (B) ensure such Construction Plant complies with, and is maintained by the Contractor in accordance with, all relevant Laws; and
 - (C) provide to the Principal's Representative, upon request, written details of the name and address of the owner of such Construction Plant (where such owner is not the Contractor) held or used by the Contractor under an agreement with the owner of the Construction Plant;
 - (iv) act in a timely and expeditious manner;
 - (v) once it has commenced any construction activities on the Site, regularly and diligently proceed with the construction of the Enabling Works and take all steps reasonably available to it (including resequencing and re-scheduling the commencement of other Contractor's Activities) to minimise any disruption to, impact of the performance of the Contractor's Activities on, or compromising the safety of other users of:
 - (A) Local Areas; and
 - (B) Utility Services;
 - (vi) give priority to the safety of persons or vehicles affected by the performance of the Contractor's Activities;
 - (vii) without limiting clause 2.16, coordinate its activities so as to ensure that no unnecessary interference is caused to members of the public (including the passage of people, vehicles and traffic) or operations of Authorities;
 - (viii) do all things and take all measures necessary to protect people and property;

- (ix) prevent nuisance and unreasonable noise, vibration and disturbance (except to the extent such nuisance, noise, vibration and disturbance is a direct and unavoidable result of carrying out and completing the Contractor's Activities in accordance with this Deed) and comply with the requirements of Authorities; and
- (x) not introduce any new Contamination or new Hazardous Materials or cause an increase to existing Contamination or existing Hazardous Materials.
- (b) The Contractor must take all reasonable precautions to avoid obstruction and damage to any property (including the property of the Principal) and Utility Services arising out of the performance of the Contractor's Activities.
- (c) Not used.

7.5 Right to inspect

- (a) The Principal, the Principal's Representative (and any other persons nominated by the Principal), and the Independent Certifier may at any time:
 - (i) inspect the Contractor's Activities or the Enabling Works; and
 - (ii) seek comments from others in respect of the Contractor's Activities,

and the Principal and the Principal's Representatives may at any time provide comments to the Independent Certifier in respect of the Contractor's Activities and must provide a copy to the Contractor.
- (b) None of the Principal, the Principal's Representative or any of the persons nominated by the Principal pursuant to clause 7.5(a), owes any duty to the Contractor to:
 - (i) inspect the Contractor's Activities and the Enabling Works; or
 - (ii) review any construction or repair for errors, omissions or compliance with the requirements of this Deed if it does so inspect.
- (c) No inspection or review of the Contractor's Activities or the Enabling Works will in any way lessen or otherwise affect:
 - (i) the Contractor's obligations under this Deed (including its obligations under clause 7.1(a)) or otherwise according to Law; or
 - (ii) the Principal's rights against the Contractor whether under this Deed or otherwise according to Law.

7.6 All work included

The Contractor:

- (a) warrants it has allowed for the provision of;
- (b) must undertake and provide; and

- (c) will not be entitled to make, and the Principal will not be liable upon, any Claim except as otherwise provided for in this Deed, relating to the provision of,

all Construction Plant, Temporary Works, labour, materials and other work necessary to execute the Contractor's Activities, whether or not expressly mentioned in this Deed or anticipated by the Contractor, and agrees that all such Construction Plant, Temporary Works, labour, materials and work forms part of the Contractor's Activities.

7.7 Setting out

The Contractor must:

- (a) set out the Enabling Works in accordance with the requirements of this Deed, based on information and survey marks (including any survey peg, bench mark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring work) identified by the Contractor that are suitable for their purposes;
- (b) carry out any survey (including providing all instruments and things) that may be necessary for this purpose; and
- (c) for this purpose keep all survey marks in their true positions.

If the Contractor discovers an error in the position, level, dimensions or alignment of any part of the Enabling Works, the Contractor must immediately notify the Principal's Representative and, unless the Principal's Representative otherwise directs, the Contractor must at its cost rectify the error.

7.8 Survey

The Contractor must, as a condition precedent to Portion Completion of any Portion, and as otherwise required by the Principal's Representative, submit to the Principal's Representative:

- (a) for its review under clause 9.12, a Survey Plan for the Enabling Works or the relevant Portion that:
 - (i) has regard to the setback requirements in the Building Code of Australia;
 - (ii) has regard to any stratum lots whether above or below ground;
 - (iii) has regard to the survey control requirements of any relevant Rail Transport Agency;
 - (iv) shows the location of all Monuments, and their relation to horizontal and vertical boundaries;
 - (v) shows all internal title boundaries;
 - (vi) shows all easements; and
 - (vii) shows the location of the Enabling Works and all Utility Services; and
- (b) a Survey Certificate which complies with all Laws addressed to the Principal and signed by a land surveyor registered under the *Surveying and Spatial Information Act 2002* (NSW) stating that:

- (i) the whole of the Enabling Works or the Portion has been constructed on the Asset Lands;
- (ii) the elements of the Enabling Works or the Portion are in the positions and within the tolerances required by Law and this Deed;
- (iii) the survey information included in the configuration materials provided pursuant to the Management Requirements complies with the requirements of this Deed; and
- (iv) any other matter identified by the Principal's Representative, complies with the requirements of this Deed.

7.9 Cleaning up

In carrying out the Contractor's Activities, the Contractor must:

- (a) keep the Site, Remote Sites, Extra Land and the Enabling Works clean and tidy and free of refuse;
- (b) regularly remove rubbish, litter, graffiti and surplus material from the Site, Remote Sites and Extra Land; and
- (c) as a condition precedent to Portion Completion of a Portion:
 - (i) prepare and submit to the Independent Certifier no later than 60 days prior to each Date for Portion Completion, a "Final Clean Management Plan", setting out the actions to be taken by the Contractor to remove all rubbish, graffiti, surplus materials, Construction Plant and Temporary Works from the Site at Portion Completion; and
 - (ii) carry out a final clean of the Site in accordance with the Final Clean Management Plan approved by the Independent Certifier.

7.10 Safety

- (a) The Contractor must carry out the Contractor's Activities:
 - (i) safely and in a manner that does not put the health and safety of persons at risk; and
 - (ii) in a manner that protects property.
- (b) If the Principal's Representative reasonably considers there is a risk to the health and safety of people or damage to property arising from the Contractor's Activities, the Principal's Representative may direct the Contractor to change its manner of working or to cease working.
- (c) The Contractor must:
 - (i) ensure that in carrying out the Contractor's Activities:
 - (A) it complies with all Laws and other requirements of this Deed for work health, safety and rehabilitation management;

- (B) all Subcontractors comply with the requirements referred to in this clause 7.10 and their respective obligations under the WHS Legislation; and
 - (C) it complies with its obligations under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter;
- (ii) notify the Principal's Representative immediately (and in any event within 12 hours of such matter arising) of all work health, safety and rehabilitation matters arising out of, or in any way in connection with, the Contractor's Activities;
 - (iii) institute systems to obtain regular written assurances from all Subcontractors about their ongoing compliance with the WHS Legislation including the due diligence obligation contained therein;
 - (iv) provide the Principal's Representative with the written assurances obtained pursuant to subparagraph (iii), together with written assurance(s) from the Contractor about the Contractor's ongoing compliance with the WHS Legislation;
 - (v) provide the Principal's Representative with a written report at each meeting in accordance with the Management Requirements on all work health, safety and rehabilitation matters (including matters concerning or arising out of, or in any way in connection with, this clause 7.10), or any other relevant matters as the Principal's Representative may require from time to time, including a summary of the Contractor's compliance with the WHS Legislation;
 - (vi) cooperate with all Other Contractors and the Principal to ensure that all parties are able to comply with their respective obligations under the WHS Legislation;
 - (vii) exercise a duty of the utmost good faith to the Principal in carrying out the Contractor's Activities to enable the Principal to discharge the Principal's duties under the WHS Legislation;
 - (viii) ensure that it does not do anything or fail to do anything that would cause the Principal to be in breach of the WHS Legislation; and
 - (ix) ensure its Subcontracts include provisions equivalent to the obligations of this clause 7.10.
- (d) Without limiting clause 19.16, the Principal may take any action necessary to protect or to prevent or minimise risks to, the Enabling Works, the Environment, other property or the health or safety of people.
 - (e) If the action taken by the Principal is an action which the Contractor was required to take under this Deed but did not take, the amount of any penalty, fine, damage, expense, cost, Loss or Liability that the Principal suffers or incurs arising out of or in any way in connection with:
 - (i) taking the action contemplated in clause 7.10(d); or
 - (ii) the Contractor's failure to take that action,

will, except to the extent prohibited by Law, be a debt due from the Contractor to the Principal.

- (f) The Contractor:
 - (i) acknowledges and agrees that it is accredited under the WHS Accreditation Scheme; and
 - (ii) must comply with all the requirements of, and maintain accreditation under, the WHS Accreditation Scheme while building work (as defined in section 5 of the *Federal Safety Commissioner Act 2022* (Cth)) is carried out.

7.11 Construction Plant and materials removal

Except for the purpose of achieving Portion Completion as contemplated by clause 7.9(c), the Contractor must not remove from the Site or the Contractor's Activities any:

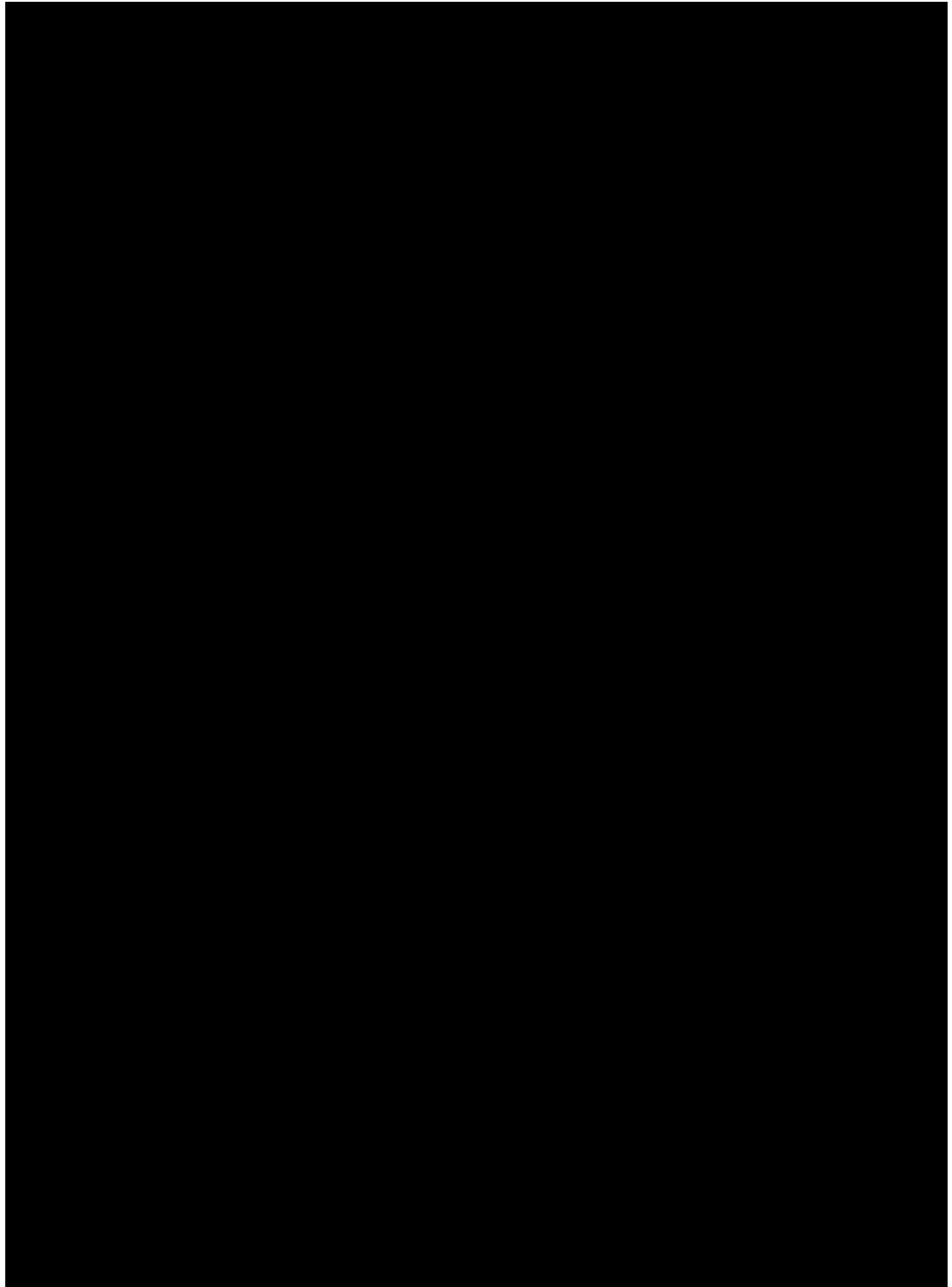
- (a) significant materials or major items of Construction Plant; or
- (b) materials or Construction Plant specified in any written notice issued by the Principal's Representative,

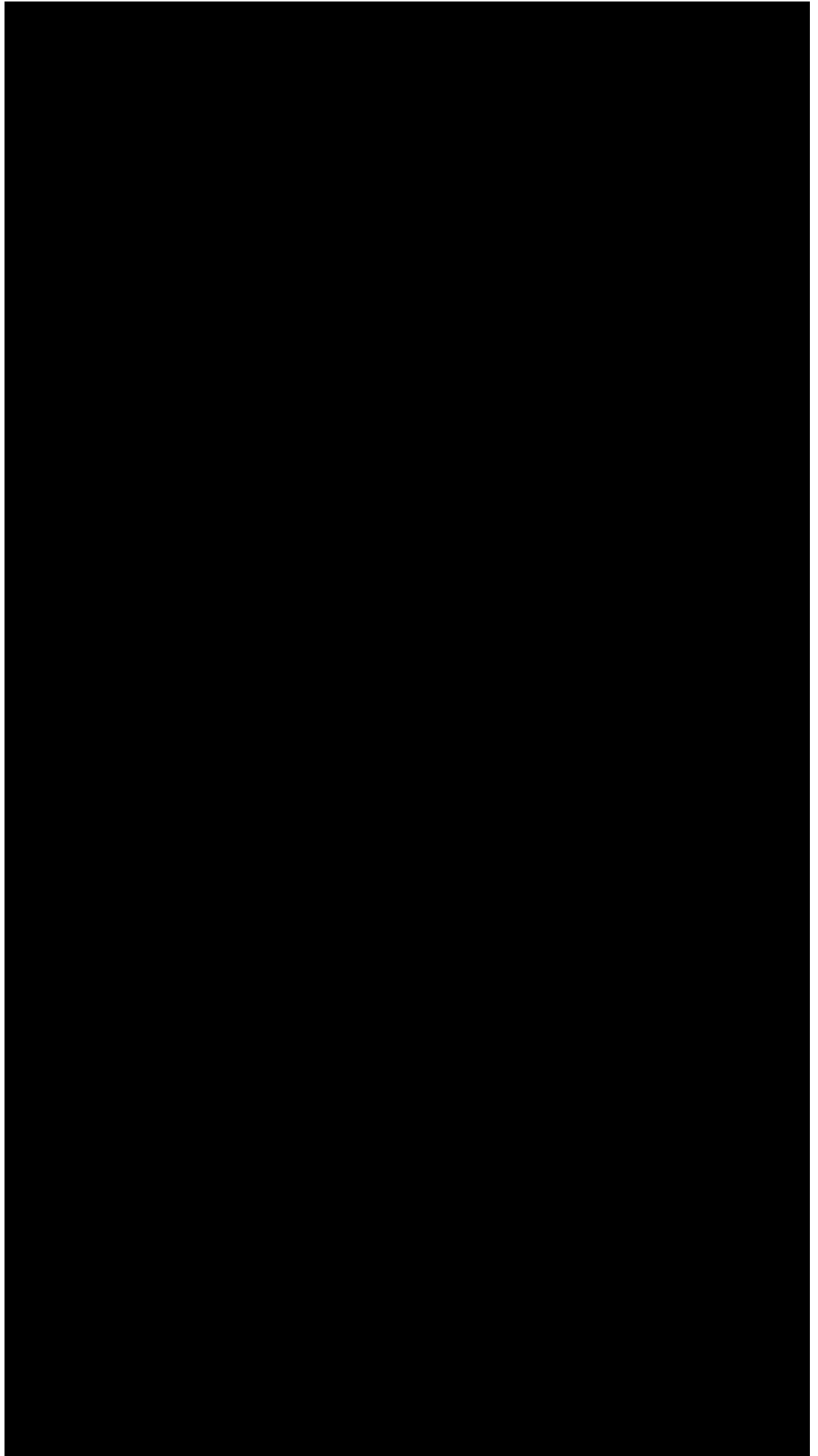
without the prior written approval of the Principal's Representative, which approval will not be unreasonably withheld.

7.12 Principal Supplied Items

- (a) The Principal must:
 - (i) make available the Principal Supplied Items:
 - (A) at its own cost;
 - (B) at the respective places referred to in Schedule 32; and
 - (C) by the respective date referred to in Schedule 32; and
 - (ii) use its reasonable endeavours to procure that the Contractor has the benefit of any warranty obtained by the Principal in respect of any Principal Supplied Item.
- (b) In respect of the Principal Supplied Items, the Contractor:
 - (i) warrants that it has reviewed the SPR and any relevant specification, and made whatever other enquiries and investigations it considers necessary relating to each of the Principal Supplied Items and is satisfied that they satisfy and will allow the Contractor to satisfy the requirements of this Deed;
 - (ii) will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with any Principal Supplied Item except under clause 10.7, if a Principal Supplied Item is not made available by the relevant date set out in Schedule 32;
 - (iii) is not relieved from and remains liable for complying with, all of its obligations under this Deed, despite the Principal making available the Principal Supplied Items; and

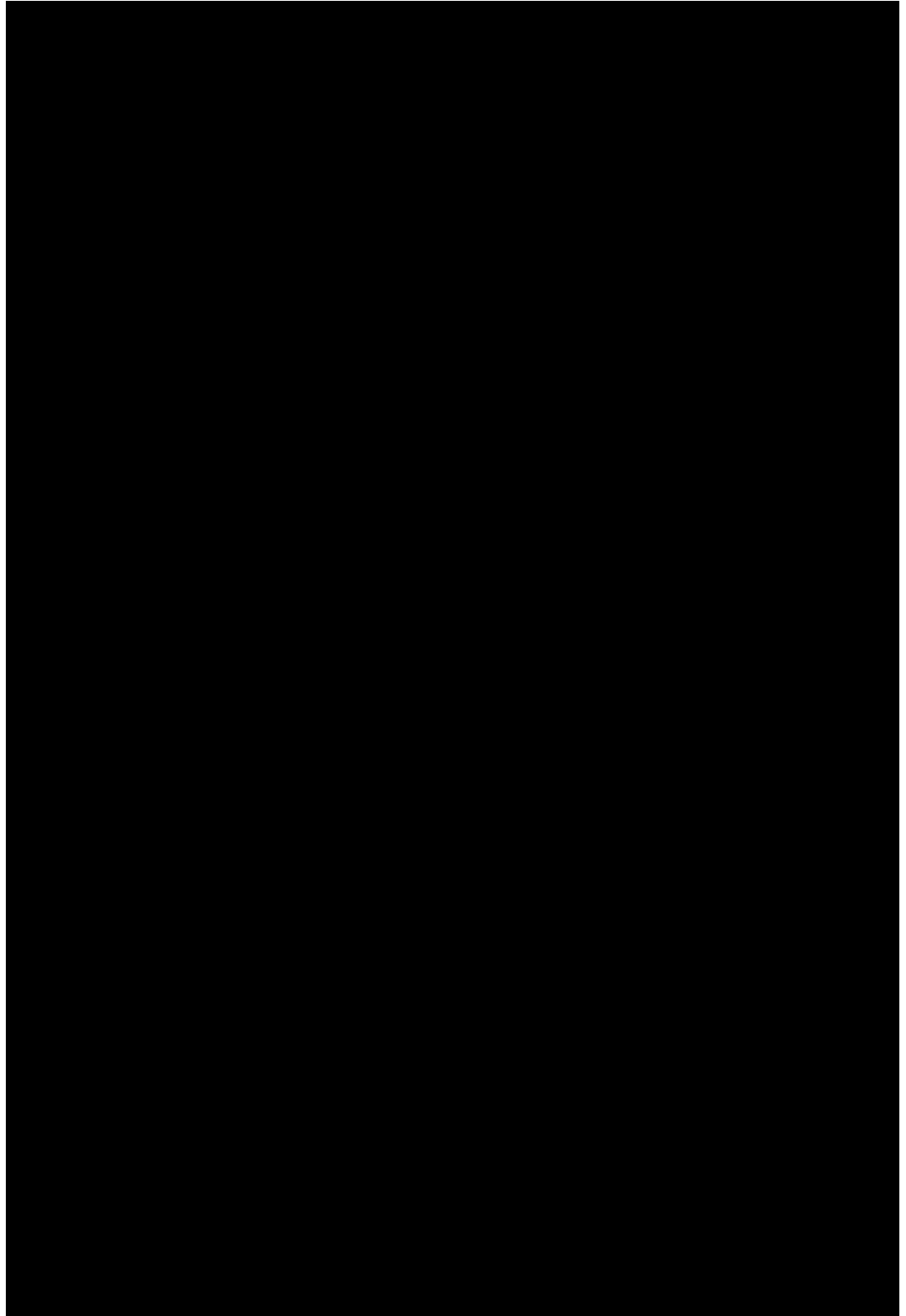
- (iv) acknowledges and agrees that the *Sale of Goods Act 1923* (NSW) does not apply to the Principal's obligations under clause 7.12(a) and the Principal makes no representation as to the quality, performance, merchantability or Fitness for Purpose of the Principal Supplied Items; and
- (c) must:
 - (i) at its own cost and risk, transport each Principal Supplied Item from the respective place referred to in Schedule 32 to the Site, Remote Site or Extra Land (as applicable); and
 - (ii) as part of the Contractor's Activities, incorporate each Principal Supplied Item into the Enabling Works.

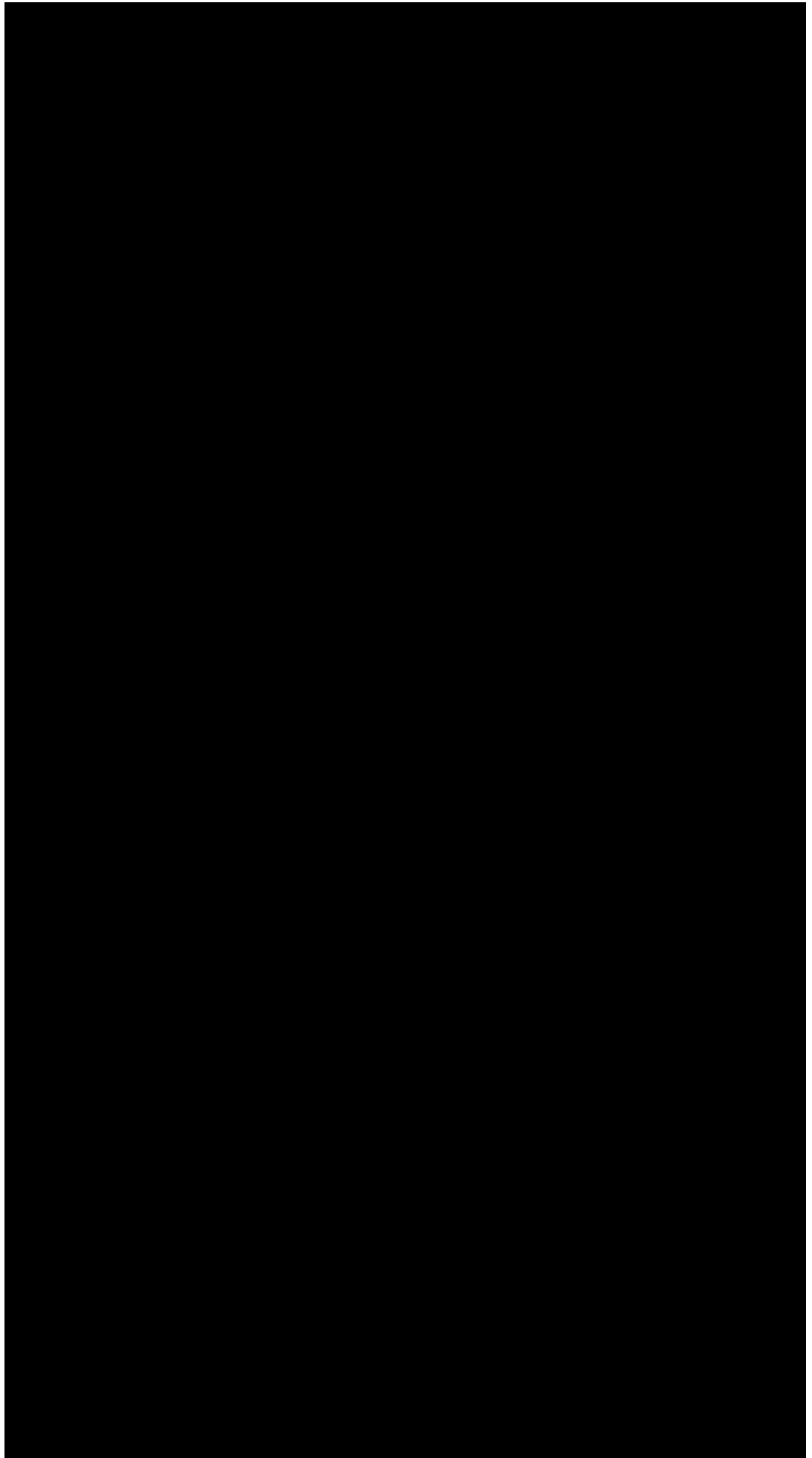


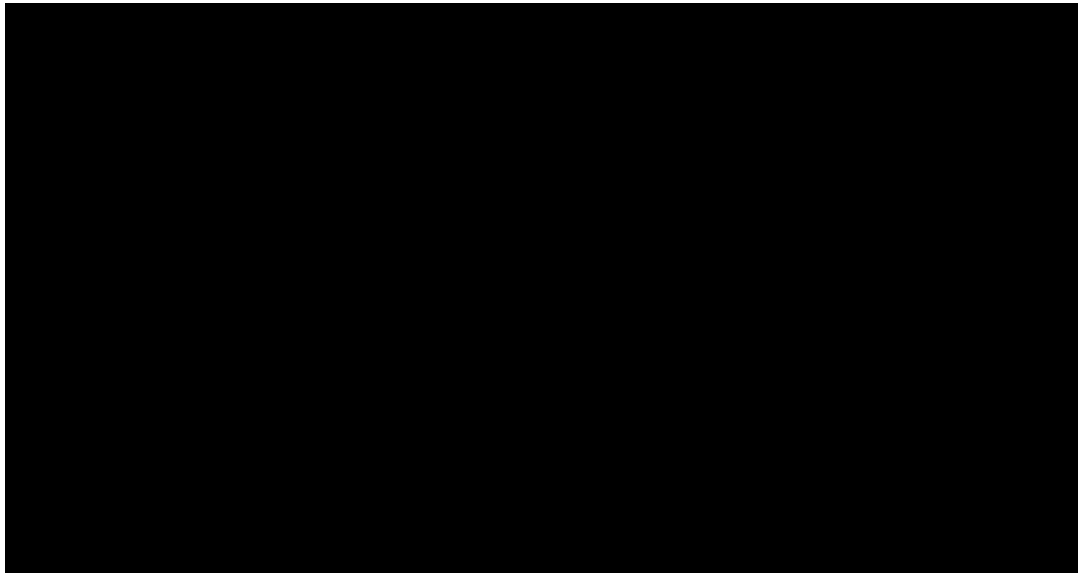




7.14 Viva Energy Gore Bay Pipeline Relocation







8 Defects

8.1 Defects

- (a) Until the expiry of the last Defects Rectification Period, the Contractor must promptly give the Principal's Representative and the Independent Certifier a detailed written report of:
 - (i) any Defects it detects; and
 - (ii) all action proposed to correct a Defect, including the estimated time required.
- (b) Prior to the Date of Portion Completion of each Portion, the Contractor must rectify any Defects (other than Defects referred to in paragraph (a) of the definition of Portion Completion) whether or not the Principal's Representative or the Independent Certifier notifies it of them.
- (c) Without limiting any other obligation of the Contractor to correct Defects, the Contractor must correct all Defects identified in a Certificate of Portion Completion within 20 Business Days of the Date of Portion Completion of the relevant Portion (or such longer period as reasonably required (as is determined by the Independent Certifier or as agreed or determined in accordance with clause 18.2) having regard to the nature of the Defect).

8.2 Defect process

- (a) The Principal's Representative and the Independent Certifier may from time to time, whether before or after the Date of Enabling Works Practical Completion, notify the Contractor of matters they allege are Defects.
- (b) From the Commencement Date until the expiry of the Defects Rectification Period, the Contractor must maintain and give the Principal access to a register which contains:
 - (i) all Defects detected by the Contractor in accordance with clause 8.1(a); and
 - (ii) all alleged Defects as notified by the Principal's Representative, the Independent Certifier in accordance with clause 8.2(a).

- (c) From the Commencement Date until the expiry of the Defects Rectification Period, the Contractor must provide a report within 5 Business Days of the end of each month (commencing in the first month in which a Defect or alleged Defect is detected or notified, as applicable), to the Principal, Principal's Representative and the Independent Certifier of all items contained in the register and identify those matters which the Contractor considers to be defects and those matters which the Contractor considers are not Defects.
- (d) Within 10 Business Days of receipt of the report delivered by the Contractor under clause 8.2(c), the Principal's Representative will notify the Contractor (with a copy to the Independent Certifier) as to:
 - (i) those matters which the Principal's Representative considers to be Defects; and
 - (ii) those matters which the Principal's Representative consider are not Defects.
- (e) The Contractor must:
 - (i) in respect of all matters which, prior to the expiry of the Defects Rectification Period, the Principal's Representative notifies the Contractor under clause 8.2(d) are Defects, prepare a rectification methodology and program (**Defects Rectification Methodology**) and deliver the Defects Rectification Methodology to the Independent Certifier and the Principal's Representative; and
 - (ii) within 5 Business Days of receiving the notice from the Principal's Representative under clause 8.2(d), notify the Principal's Representative and the Independent Certifier if it does not agree that there is a Defect.
- (f) The parties acknowledge that the Defects Rectification Methodology may to the extent appropriate be included within the certified Design Documentation.
- (g) If the Contractor does not issue a notice in accordance with clause 8.2(e)(ii) then the matter will be deemed to be a Defect and the Contractor will be deemed to have released the Principal from all Claims arising out of or in connection with the Defect.
- (h) If the Contractor issues a notice under clause 8.2(e)(ii) then the Principal's Representative will either:
 - (i) confirm to the Contractor that it agrees that there is not a Defect; or
 - (ii) advise the Contractor that the Principal's Representative considers that there is a Defect, in which case the Principal's Representative will direct the Contractor to:
 - (A) proceed with the rectification of the Defect without waiting for a determination of the Independent Certifier; or
 - (B) not proceed with the rectification of the Defect until the determination of the Independent Certifier has been made.

- (i) If the Principal's Representative advises the Contractor pursuant to clause 8.2(h)(ii) that there is a Defect then the issue as to whether there is a Defect will be referred to the Independent Certifier for determination.
- (j) If the Independent Certifier determines that the matter is not a Defect or it is agreed or determined under clause 18.2 that the matter is not a Defect, a direction given by the Principal's Representative under clause 8.2(h)(ii)(A) will be deemed to be a Variation Order.
- (k) The Independent Certifier will review and comment on the Defects Rectification Methodology:
 - (i) where the Contractor does not issue a notice under clause 8.2(e)(ii), within 5 Business Days of receipt of the Defects Rectification Methodology;
 - (ii) where the Contractor issues a notice under clause 8.2(e)(ii) and:
 - (A) the Principal issues a notice under clause 8.2(h)(ii)(A), within 5 Business Days of the Principal's notice; or
 - (B) the Principal issues a notice under clause 8.2(h)(ii)(B), within 5 Business Days of the Independent Certifier's determination that there is a Defect.
 - (iii) For the avoidance of doubt, where the Principal agrees there is no Defect under clause 8.2(h)(i) or where the Independent Certifier determines there is no Defect under 8.2(j), the Independent Certifier is not required to review and comment on the Defects Rectification Methodology.
- (l) The Contractor must undertake the rectification of the Defects in accordance with the Defects Rectification Methodology, as amended to reflect the Independent Certifier's comments in clause 8.2(k).
- (m) When the Defects have been rectified, the Contractor must:
 - (i) organise an inspection of the rectification with the Independent Certifier; and
 - (ii) notify the Principal's Representative in writing of the Independent Certifier's inspection date, and the Principal's Representative may attend that inspection at its election.
- (n) Following the clause 8.2(m) inspection, the Contractor must request the Independent Certifier to certify that the rectification works have resulted in the rectification of the Defect and in doing so must provide to the Independent Certifier all related documentation, including quality assurance records and test results.
- (o) The Independent Certifier, will, within a reasonable time, advise the Principal's Representative and the Contractor whether the Defect has been rectified.
- (p) If the Independent Certifier certifies that the Defect has been rectified or it is agreed or determined under clause 18.2 that the Defect has been rectified then the Contractor must promptly write to the Principal's Representative and request that the Defect is closed and the Principal's Representative must confirm the closure of the Defect in writing.

- (q) If the Independent Certifier does not consider that the Defect has been rectified then the Contractor must continue with the work of rectification and the process in clause 8.2(m) – 8.2(o) will be repeated.
- (r) The closure of a Defect is for administrative purposes only and will not diminish the rights of the Principal or the Liability of the Contractor in respect of the Defects.
- (s) Subject to clause 8.2A, if the Contractor does not comply with its obligations under this clause or the Defect is an Urgent Defect then the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Deed or otherwise at Law, give the Contractor a direction and have the rectification or Variation work carried out by Other Contractors at the Contractor's expense and the reasonable cost of the rectification or Variation work incurred by the Principal will be a debt due from the Contractor to the Principal.
- (t) If the Principal issues a direction in accordance with clause 8.2(s) then the Contractor will remain responsible for the Enabling Works, including the works the subject of the Variation Order.
- (u) The Contractor acknowledges the process in this clause 8.2 is not a matter that will be dealt with through the clause 17 process.

8.2A Urgent Defects

If there is an Urgent Defect to which only paragraph (d) of the definition of Urgent Defect applies:

- (a) the Principal's Representative must, before issuing a direction under clause 8.2(s) or 8.10 to have the rectification or Variation work carried out by Other Contractors at the Contractor's expense:
 - (i) issue a direction to the Contractor requiring the Contractor to provide to the Principal's Representative, within a reasonable time in light of the urgency of the Urgent Defect, a detailed proposal setting out:
 - (A) whether or not the Contractor will be able to correct the Urgent Defect (or any part of it) within a reasonable time; and
 - (B) if the Contractor is able to correct the Defect (or any part of it) within a reasonable time, a detailed estimate of the time that would be taken to correct the Urgent Defect and the estimated cost to the Contractor in undertaking that works; and
 - (ii) if the proposal in clause 8.2A is provided and acceptable to the Principal's Representative, issue a further direction to the Contractor requiring the Contractor to correct the Urgent Defect (and specifying a reasonable time within which this must occur); and
- (b) if:
 - (i) the Contractor does not comply with the Principal's Representative's further direction to the Contractor under clause 8.2A(a)(ii); or

- (ii) the Contractor does not provide a proposal under clause 8.2A(a)(i) or the proposal provided by the Contractor under clause 8.2A(a)(i) is not acceptable to the Principal's Representative,

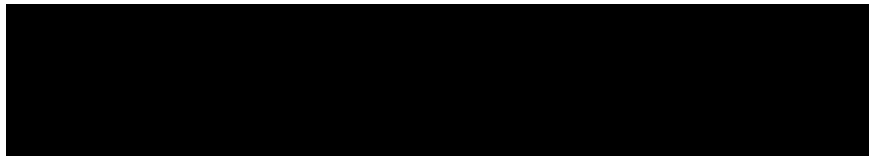
then the Principal's Representative may issue a direction under clause 8.2(s) or 8.10 to have the rectification or Variation work carried out by Other Contractors at the Contractor's expense.

8.3 Acceptance of Defect and Valuation

- (a) The Principal's Representative may advise the Contractor that the Principal elects to accept the work despite the Defect.
- (b) Subject to clause 8.2A, in respect of any Defect:
 - (i) to which clause 8.2(s) applies; or
 - (ii) discovered during a Defects Rectification Period, in respect of which:
 - (A) a direction has first been given under clause 8.4; and
 - (B) the Contractor has failed to comply with the Principal's Representative's direction,

the Principal's Representative may advise the Contractor that an Other Contractor will rectify (or has rectified) the Defect, or any part of it or carry out (or has carried out) a Variation to overcome the Defect or any part of it.

(c)



8.4 Defects rectification notification

If at any time prior to the expiration of any Defects Rectification Period (including for the avoidance of doubt prior to Portion Completion of each Portion), the Principal's Representative discovers or believes there is a Defect or is given notice of a Defect under clause 8.1, the Principal's Representative may, without prejudice to any other rights which the Principal may have under this Deed or otherwise at Law, give the Contractor a direction identifying the Defect and requiring the Contractor to carry out a Variation to overcome the Defect, or any part of it, and specifying the time within which this must be carried out.

8.5 Defects Rectification Methodology requirements

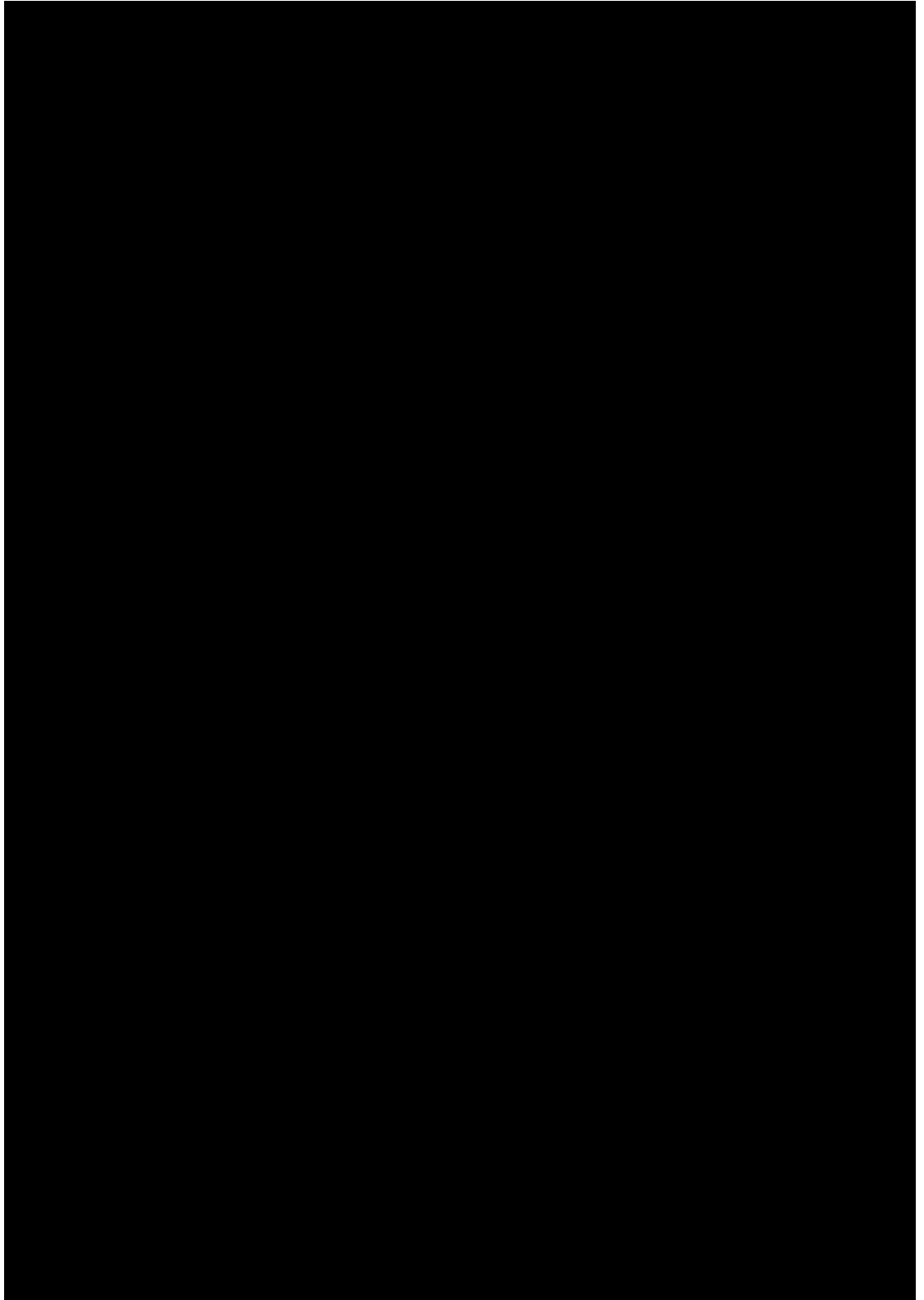
In preparing a Defects Rectification Methodology the Contractor must, and in reviewing a Defects Rectification Methodology the Independent Certifier may, have regard to and incorporate the following matters:

- (a) the requirements of any relevant Authority; and
- (b) the minimisation of the impact on the use of the relevant part and operations of PLR and the Enabling Works.

8.6 Contractor's risk

The Contractor must rectify the Defect (or the part of it), or carry out the Variation (as the case may be) at the Contractor's risk, including in respect of any restrictions on access.

8.7 Not used



8.9 Not Used**8.10 Failure by the Contractor to comply with direction**

- (a) If the Contractor does not comply with a direction referred to in clause 8.2, 8.4, and 8.8(b), the Principal may employ others to carry out that direction.
- (b) The Loss suffered or incurred by the Principal as a result of the Contractor's failure to comply with clause 8.4 or clause 8.8(b) (as applicable) up to the reasonable cost of correcting the Defect will be a debt due from the Contractor to the Principal.
- (c) Subject to clause 8.2A, if:
 - (i) the Contractor does not comply with clause 8.4; or
 - (ii) the Defect is an Urgent Defect,
 then
 - (iii) the Principal's Representative may, without prejudice to any other rights that the Principal may have against the Contractor with respect to the Defect under this Deed or otherwise at Law, give the Contractor a direction and have the rectification or Variation work carried out at the Contractor's expense and the cost of the rectification incurred by the Principal will be a debt due from the Contractor to the Principal.

8.11 Rights not affected

Neither the Principal's rights, nor the Contractor's Liability, whether under this Deed or otherwise according to Law in respect of Defects, will be in any way affected or limited by:

- (a) the rights conferred upon the Principal or the Principal's Representative by this clause or any other provision of this Deed;
- (b) the exercise of, or the failure by the Principal or the Principal's Representative to exercise, any such rights; or
- (c) any notice or direction of the Principal's Representative under this clause.

8.12 Use of defective Enabling Works

During the period for which the Contractor is responsible for the Site, the Contractor must not allow the use of any part of the Enabling Works or Temporary Works which the Contractor knows is defective or unsafe and which threatens the health and safety of people.

9 Administration**9.1 Principal's Representative**

- (a) The Principal must ensure that at all times until Enabling Works Practical Completion there is a Principal's Representative. The Contractor acknowledges and agrees that the Principal's Representative will give directions and carry out all its other functions under this Deed as the

agent of the Principal (and not as an independent certifier, assessor or valuer) and is subject to the directions of the Principal.

- (b) A discretion (including an absolute or sole discretion), or power or decision of the Principal's Representative is validly and properly exercised or made for the purposes of this Deed if it is exercised or made (or if it is not exercised or made) by the Principal's Representative:
 - (i) independently;
 - (ii) after consultation with the Principal and its advisers; or
 - (iii) as directed by the Principal.
- (c) Any control or influence exercised by the Principal over the Principal's Representative does not:
 - (i) affect the valid and proper exercise of any power or discretion (including an absolute or sole discretion) or the making of a decision by the Principal's Representative; or
 - (ii) entitle the Contractor to make any Claim against the Principal's Representative or the Principal, or to challenge the effect or validity of the discretion (including an absolute or sole discretion), power or decision.
- (d) The Contractor must comply with any direction by the Principal's Representative given or purported to be given under a provision of this Deed.
- (e) Except where this Deed otherwise provides, the Principal's Representative may give a direction orally but will as soon as practicable confirm it in writing.
- (f) Neither the Principal's Representative nor any delegate of the Principal's Representative will owe any duty of care to the Contractor. The Contractor waives all rights that it might have and will have no Claim against the Principal's Representative or any delegate of the Principal's Representative that arises out of or in connection with this Deed or the Project. The Contractor acknowledges that the Principal accepts this waiver and promise in its own right and as the agent of the Principal's Representative and any delegate of the Principal's Representative.

9.2 Replacement of the Principal's Representative

- (a) The Principal may at any time replace the Principal's Representative, in which event the Principal must appoint another person as the Principal's Representative and notify the Contractor of that appointment.
- (b) Any substitute Principal's Representative appointed under this clause 9.2 will be bound by anything done by the former Principal's Representative to the same extent as the former Principal's Representative would have been bound.

9.3 Delegation of functions

- (a) The Principal's Representative may:
 - (i) by written notice to the Contractor appoint the Principal's Representative Delegate;

- (ii) not appoint more than one Principal's Representative Delegate to exercise the same function in the same location under this Deed; and
 - (iii) revoke any appointment under clause 9.3(a)(i) by notice in writing to the Contractor.
- (b) The Principal's Representative may continue to exercise a function under this Deed despite appointing a Principal's Representative Delegate to exercise the function under clause 9.3(a)(i).
- (c) All references in this Deed to the Principal's Representative include a reference to a Principal's Representative Delegate appointed under clause 9.3(a)(i).

9.4 Independent Certifier

- (a) The Independent Certifier must be jointly engaged by TfNSW and the Contractor on the terms of the Independent Certifier Deed.
- (b) The Contractor must, on the date of this Deed, execute the Independent Certifier Deed.
- (c) The Principal will bear the costs of the Independent Certifier except to the extent that costs are incurred at the request of the Contractor or as a result of the failure of the Contractor to fulfil its obligations under this Deed.
- (d) The role of the Independent Certifier is specified in the Independent Certifier Deed.
- (e) In certifying Design Documentation, the Independent Certifier is not required to act as a TAO.
- (f) The Independent Certifier is obliged to act independently of the Principal and the Contractor.
- (g) A certification or other determination of the Independent Certifier will not:
 - (i) constitute an approval by the Principal or a Third Party of the Contractor's performance of its obligations under this Deed; or
 - (ii) be taken as an admission or evidence that the matters certified or determined by the Independent Certifier comply with this Deed.
- (h) A dispute in connection with an IC Determination will be determined in accordance with clause 18.18.
- (i) The Principal and the Contractor must endeavour to agree the identity of a Replacement Certifier as the successor to the Independent Certifier within 10 Business Days of termination of the Independent Certifier Deed.
- (j) In the event that the Principal and the Contractor do not agree on the identity of the Replacement Certifier within 10 Business Days of the termination of the Independent Certifier Deed, the Replacement Certifier will be selected by the Principal.

- (k) The Principal and the Contractor must enter into a deed with the Replacement Certifier on terms substantially the same as the Independent Certifier Deed.
- (l) Subject to clause 9.4(m), the Principal undertakes to pay the costs of the Independent Certifier under the Independent Certifier Deed.
- (m) Not used.
- (n) The Contractor acknowledges and agrees:
 - (i) the Independent Certifier is appointed to provide services in connection with the Project;
 - (ii) the termination of the Independent Certifier Deed will affect all parties and stakeholders engaged in the Project;
 - (iii) as a consequence only the Principal may terminate the Independent Certifier Deed, including on the basis of repudiation, or breach of an essential term; and
 - (iv) the Principal will not terminate the Independent Certifier Deed without consulting with the Contractor.

9.5 Environmental Representative

The Contractor acknowledges and agrees that:

- (a) the Principal has appointed the Environmental Representative as required by an Authority Approval;
- (b) the Environmental Representative:
 - (i) is independent of the parties;
 - (ii) shall oversee the implementation of all environmental management plans and monitoring programs required under the Planning Approval, and shall advise the Principal upon achievement of the outcomes contemplated in the Planning Approval;
 - (iii) shall advise the Principal and the Principal's Representative on the Contractor's compliance with the Planning Approval; and
 - (iv) shall have the authority and independence to:
 - (A) direct the Contractor as to; or
 - (B) advise the Principal's Representative to direct the Contractor as to,

reasonable steps the Contractor must take to avoid or minimise unintended or adverse environmental impacts;
- (c) the Contractor must comply with the directions of the Environmental Representative or the Principal's Representative as contemplated by clause 9.5(b)(iv); and
- (d) the Contractor bears the full risk of complying with any directions given by the Environmental Representative or the Principal's Representative as contemplated by clause 9.5(b)(iv) and none of the Principal, the

Principal's Representative or the Environmental Representative will be liable upon any Claim arising out of or in any way in connection with such directions.

9.6 Contractor's Personnel

(a) The Contractor must:

- (i) notify the Principal's Representative in writing of the name of the Contractor's Representative (who at the date of this Deed is the relevant person listed in Schedule 9) and of any subsequent changes;
- (ii) ensure that the Contractor's Representative is appointed and available on a full-time basis and provides due and proper supervision of the performance of the Contractor's Activities at all places (whether on the Site or otherwise) at which the Contractor's Activities are taking place;
- (iii) provide personnel suitably qualified, knowledgeable, experienced and skilled in their roles in performing its obligations under this Deed; and
- (iv) ensure that its Personnel (including those referred to in clause 9.6(b)) as a team carry out the Contractor's Activities in a manner that is professional and co-operative, and recognises the interests and needs of the community in the delivery of the Enabling Works.

(b) The Contractor must:

- (i) either:
 - (A) employ the Contractor's Personnel nominated by the Contractor and listed in Schedule 9 in the positions specified in Schedule 9 or equivalent positions; or
 - (B) where no individuals are specified in Schedule 9 for a position specified in Schedule 9, submit to the Principal's Representative the names of the persons which the Contractor proposes to employ for the roles specified in Schedule 9 for the Principal's Representative's approval, such approval not to be withheld unreasonably. The Contractor must ensure that the persons nominated are suitably qualified and experienced for the relevant position;
- (ii) only replace the individuals referred to in clause 9.6(b)(i):
 - (A) if the individual:
 - (aa) dies;
 - (ab) becomes unable to continue in the position due to illness;
 - (ac) resigns from the employment of the Contractor;
 - (ad) receives a promotion; or

- (ae) becomes the subject of a direction under clause 9.6(d);
- (B) with personnel who are of at least equivalent experience, ability, knowledge and expertise as the individual being replaced; and
- (C) with the Principal's Representative's prior written approval, which will not be unreasonably withheld; and
- (iii) without limiting clauses 9.6(b)(i) and 9.6(b)(ii), ensure that the:
 - (A) positions specified in Schedule 9 as full-time, dedicated positions are full-time, dedicated positions; and
 - (B) individuals who occupy the positions specified in Schedule 9 apply themselves fully to the position to the exclusion of all other work,

for the periods specified in Schedule 9.
- (c) The Contractor warrants that the individuals who occupy the positions in Schedule 9 have and will maintain the levels of authority in Schedule 9. The Contractor must not revoke or amend the authority of any such individual without the prior written consent of the Principal.
- (d) The Principal's Representative may, in its absolute discretion and without being obliged to give any reasons, by notice in writing direct the Contractor to remove any person (including a person referred to in clause 9.6(a) or clause 9.6(b)) from the Site and the Contractor's Activities. The Contractor must then cease to engage that person in the Contractor's Activities and must appoint a replacement.
- (e) The Contractor must ensure that any person the subject of a direction under clause 9.6(c) is not again employed in the Contractor's Activities or on the Site.
- (f) Any direction under this Deed will be deemed to have been given to the Contractor if given to the Contractor's Representative. Matters within the knowledge of the Contractor's Representative will be deemed to be within the knowledge of the Contractor. In executing any certificate or statutory declaration or issuing any notice pursuant to this Deed the Contractor's Representative will be deemed to be the agent of the Contractor.

9.7 Meetings and reporting

The Contractor must comply with the Management Requirements in relation to meetings and reporting.

9.8 Complaints and notification

- (a) The Contractor must immediately notify the Principal in writing if any:
 - (i) complaint is made or any proceedings are instituted or threatened;
 - (ii) letter of demand is issued; or
 - (iii) order or direction is made,

by anyone (including any Authority or any landowner, lessee or licensee on or near the Site, Remote Sites or Extra Land) against the Contractor or any of its Subcontractors or their respective employees in respect of any aspect of the carrying out of the Contractor's Activities, including:

- (iv) Contamination arising out of, or in any way in connection with, the Contractor's Activities;
 - (v) the Contractor's non-compliance with any Authority Approval (or any condition or requirement thereunder), any Third Party Agreement, any Utility Service Contractor Agreement, the Project Plans or any Law regarding the Environment;
 - (vi) the implementation of the Project Plans, including the Contractor's community liaison plan;
 - (vii) the Contractor's use or occupation of the Site, Remote Sites or Extra Land; or
 - (viii) loss or damage of the kind referred to in clause 13.1(a).
- (b) The Contractor must (at its own cost) respond to complaints and enquiries received regarding the Contractor's Activities and that of its Subcontractors in accordance with the Management Requirements.

9.9 Exchange of information between Government Agencies

- (a) The Contractor authorises the Principal, its employees and agents to make information concerning the Contractor (including any information provided under clause 9.10) available to NSW government departments or agencies. Such information may include, but need not be limited to, any information provided by the Contractor to the Principal and any information relating to the Contractor's performance under this Deed.
- (b) The Contractor acknowledges that any information about the Contractor from any source, including but not limited to substantiated reports of unsatisfactory performance, may be taken into account by the Principal and NSW government departments and agencies in considering whether to offer the Contractor future opportunities for NSW government work.
- (c) The Contractor also acknowledges that the Principal has in place processes for assessing the performance of its contractors, that these processes will apply to the Contractor's performance under this Deed and that it will participate in the Principal's "Contractor Performance Reporting" process.

9.10 Financial Assessment

Without limiting or otherwise restricting clause 9.9, the Contractor acknowledges and agrees that:

- (a) the Principal may, during the term of this Deed, either itself, or through the engagement of private sector service providers, undertake ongoing financial assessments (**Financial Assessment**) of the Contractor and any Subcontractors;
- (b) the Financial Assessment may be undertaken at three monthly (or longer) intervals from the Commencement Date; and
- (c) it must, if requested by the Principal's Representative, within 10 Business Days of receiving such request:

- (i) provide any documents, information and evidence; and
- (ii) provide such access to the Contractor's records and books of account,

as is reasonably required by the Principal's Representative under, out of, or in connection with the Financial Assessment.

9.11 National Greenhouse and Energy Report Act 2007 (Cth)

The Contractor acknowledges and agrees that:

- (a) if any of the Contractor's Activities, or the activities of any of the Contractor's Personnel in connection with the Contractor's Activities (the **Relevant Matters**) constitute a "facility" within the meaning of the NGER Legislation, then, for the purposes of the NGER Legislation, the Contractor has operational control of that facility and will comply with any obligations arising in respect of the Principal's activities under the NGER Legislation;
- (b) if, despite the operation of clause 9.11(a), 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 any of the Relevant Matters, and the NGER Legislation provides that such Liability can be transferred by the Principal or the NSW Government or any of its agencies to the Contractor, the Contractor must, on the written request of the Principal, do all things reasonably necessary to ensure the Liability is transferred to the Contractor;
- (c) if the Principal requests it, the Contractor must provide Greenhouse Data to the Principal:
 - (i) to the extent that, in a manner and form that, and at times that, will enable the Principal to comply with the NGER Legislation irrespective of whether the Principal or the Contractor or any other person has an obligation to comply with the NGER Legislation in connection with any Relevant Matters; and
 - (ii) otherwise as requested by the Principal from time to time.
- (d) the Contractor must also provide to the Principal all Greenhouse Data and other information which the Contractor provides to any other person under the NGER Legislation in connection with any Relevant Matters, at the same time as the Contractor provides that Greenhouse Data or other information to that other person;
- (e) the Contractor must:
 - (i) collect and record all such Greenhouse Data as may be required to enable reporting under the NGER Legislation or enable the Contractor to discharge its obligations under this clause 9.11, and keep that Greenhouse Data for at least 7 years after the end of the year in which the Relevant Matters occur; and
 - (ii) permit any persons appointed or authorised by the Principal to examine, monitor, measure, copy, audit and/or verify the Greenhouse Data and co-operate with and provide all reasonable assistance to any such persons (including by doing such things as giving access to premises, plant and equipment,

producing and giving access to documents and answering any relevant questions);

- (f) the Principal may provide or otherwise disclose the Greenhouse Data and any other information which the Principal obtains under this clause 9.11 to any other person, and may otherwise use the Greenhouse Data and other information for any purpose as the Principal sees fit; and
- (g) nothing in this clause 9.11 is to be taken as meaning that the Principal has agreed to perform any statutory obligation that the Contractor may have regarding the provision of Greenhouse Data to any Authority.

9.12 Documents to be submitted to the Principal

- (a) This clause does not apply to the preparation and submission of Design Documentation which is the subject of the process set out in clause 5. The clause does apply to the submission of Design Documentation as required for the CCB process set out in the AMB Charter and any other Materials to be submitted to the Principal under this Deed including the Project Classification and Excavation Map.
- (b) The Contractor must submit the Project Plans, the Design Documentation required for the CCB process as set out in the AMB Charter, the Enabling Works Program, the Asset Information, the Project Classification and any other document, information or model, (each of which in this clause 9.12, will be referred to as a **Document**) which is required to be submitted for the review of the Principal or the Principal's Representative under a provision of this Deed:
 - (i) via the PDCS;
 - (ii) in accordance with the times stated in this Deed, or where no times are stated in this Deed, progressively and in timely manner to ensure that the Contractor's Activities are commenced, progressed and completed by the times required under this Deed, and by the times or within the periods:
 - (A) identified in the Enabling Works Program which is not rejected by the Principal's Representative; or
 - (B) in the absence of a time or period in the Enabling Works Program, required by the Principal's Representative; and
 - (iii) under cover of a written notice entitled "Submit for Review", which identifies:
 - (A) the Document; and
 - (B) the provision of this Deed under which the Document is submitted.
- (c) A Document will be deemed not to have been submitted to the Principal's Representative unless and until:
 - (i) the Document covers, fully details and co-ordinates the whole of discrete areas of work so as to allow the area of work to be fully understood; and

- (ii) the Contractor has otherwise complied with this clause 9.12, in addition to any other requirement of this Deed relating to the submission of that Document.
- (d) The Principal's Representative may:
 - (i) direct that any Document the Contractor:
 - (A) previously submitted is a Document that is to be reviewed under the provisions of this clause 9.12; and
 - (B) is obliged to submit will be reviewed under the provisions of this clause 9.12;
 - (ii) after the submission of a Document that satisfies the requirements of clause 9.12(c), review the Document, or any resubmitted Document, prepared and submitted by the Contractor; and
 - (iii) where a Document is submitted or resubmitted in accordance with a program that has not been rejected by the Principal's Representative:
 - (A) reject the Document (and state its reasons) if in its opinion the Document (or any part) does not comply with the requirements of this Deed;
 - (B) make comments on the Document, or request clarification or additional information; or
 - (C) notify the Contractor that it has no (or has no further) comments to make,

within relevantly, the later of:

 - (D) where a time or period is stated elsewhere in this Deed, including in the Management Requirements for a specific Document, that time or the expiry of that period; and
 - (E) 15 Business Days from submission for all other Documents.
- (e) If any Document is:
 - (i) rejected in accordance with clause 9.12(d)(iii) or deemed to be rejected, the Contractor must submit an amended Document to the Principal's Representative within 10 Business Days after the date of such rejection or deemed rejection and this clause 9.12 will re-apply; or
 - (ii) not rejected and the Principal's Representative responds to the submission with comments, or requests clarification or additional information, the Contractor must respond to the comments or request within 10 Business Days or such other period as may be directed by the Principal's Representative,

if the Contractor:

 - (iii) responds to the Principal's Representative's comments or request within the period referred to in clause 9.12(e)(ii), if the

Principal's Representative is not satisfied with the Contractor's response, the Principal's Representative must within 5 Business Days of receipt of the Contractor's response notify the Contractor that it is not satisfied that the response adequately deals with the comments and clause 9.12(e)(i) will re-apply; or

- (iv) fails to respond to the Principal's Representative's comments or request within the period referred to in clause 9.12(e)(ii) or the Principal's Representative gives a notice under clause 9.12(e)(iii):
 - (A) the Document will be deemed to be rejected; and
 - (B) clause 9.12(e)(i) will re-apply.
- (f) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with the Principal's Representative not detecting and notifying the Contractor of any errors, omissions or non-compliance with the requirements of this Deed in any Document submitted.
- (g) No review of, approval of, comment upon or rejection of, or failure to review, approve, or comment upon or reject, a Document prepared by the Contractor, or any other direction (including any direction given under clause 9.12(h)(ii)) by the Principal's Representative in connection with the Document, will:
 - (i) constitute a direction to carry out a Variation pursuant to clause 6.2, unless it is in a Variation Order and describes the nature of the Variation in accordance with clause 6.2(a);
 - (ii) relieve the Contractor from or alter its Liabilities or obligations, whether under this Deed or otherwise according to any Law; or
 - (iii) limit or otherwise affect the Principal's rights against the Contractor, whether under this Deed or otherwise according to any Law.
- (h) In considering, reviewing, commenting upon, or rejecting any Document, the Principal's Representative may:
 - (i) consult with and take into account any views or requirements of the Independent Certifier, any relevant Authority, Third Party, Utility Service Provider or Interface Contractor; and
 - (ii) direct the Contractor to comply with the lawful requirements of any relevant Authority.
- (i) The Contractor acknowledges and agrees that:
 - (i) it has made allowances in the Enabling Works Program for the time required for the requirements of this clause in relation to the submission and review of Documents; and
 - (ii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way connected with any delay in the design development process as contemplated by this clause 9.12(i).
- (j) The restrictions on the commencement of any part of the Enabling Works in this clause 9.12 are in addition to any restrictions that exist

elsewhere in this Deed, including under any Third Party Agreement or Utility Service Contractor Agreement.

- (k) For the purposes of calculating time under this clause 9.12, the days between 24 December and 7 January shall not be counted.
- (l) Unless otherwise directed by the Principal's Representative, the Contractor must provide the number and form of copies of each Document as specified in the Management Requirements, which is submitted for review under this clause 9.12.

9.13 Proof Engineer

- (a) **(Engagement)** The Contractor acknowledges and agrees that:
 - (i) it must engage the Proof Engineer at the Contractor's cost, to perform the role of the Proof Engineer under this Deed and in accordance with the terms of this clause 9.13;
 - (ii) it must obtain the Principal's prior approval to the identity of the Proof Engineer (including any replacement Proof Engineer), and the Principal's approval may be given or withheld at the Principal's absolute discretion;
- (b) **(Qualifications and experience)** The Contractor warrants to the Principal that the Proof Engineer has:
 - (i) at least the qualifications, experience and expertise described in the Proof Engineer Requirements; and
 - (ii) the requisite experience and skill to undertake the role of Proof Engineer as contemplated under this Deed.
- (c) **(Principal's approval)** Where the Contractor requests the Principal's approval to the identity of any Proof Engineer (including any replacement), the Principal's Representative must provide a response to the Contractor within 20 Business Days from the later of the date of the Contractor's request and the date any other information required by the Principal's Representative is submitted to the Principal's Representative by the Contractor.
- (d) **(Role)** The Proof Engineer's role is to:
 - (i) attend relevant meetings as set out in the Management Requirements and any design meetings held in accordance with clause 5.16;
 - (ii) to review and approve all calculations, plans, and specifications relating to the 'complex bridge design' as defined in the service description of the 'Transport for NSW Technical Services registration Scheme' of all Enabling Works, including to:
 - (A) undertake a full and independent assessment, without exchange of calculations or similar information, of all factors influencing the final integrity of those elements of the Enabling Works and associated Temporary Works, including undertaking design calculations and modelling, reviewing the safety, durability and functional requirements of the identified elements, the Design Documentation and construction methodology and performing an independent dimensional check;

- (B) provide to the Contractor, with copies to the Principal's Representative and the Independent Certifier, a comprehensive report on the assessment required under clause 9.13(d)(ii)(A) with conclusions and in accordance with the requirements of clause 9.13(d)(ii)(A); and
 - (C) independently certify that those Contractor's Activities and any associated Temporary Works:
 - (aa) are adequate and suitable for their intended purpose; and
 - (ab) comply with the SPR,
 - (iii) make determinations on matters this Deed expressly requires be determined by the Proof Engineer.
- (e) **(Capacity)** The parties acknowledge and agree that:
 - (i) the Proof Engineer is obliged to act independently of the Contractor, the Principal and any of their Subcontractors;
 - (ii) the Proof Engineer must not be an employee of the Contractor, the Principal, the Independent Certifier or any of their Subcontractors; and
 - (iii) all advice and comments (including drafts and calculations) provided by the Proof Engineer must be given in writing and given to both the Contractor and the Principal's Representative.
- (f) **(Provision of documents)** The Contractor must provide the Proof Engineer with all information and documents and allow the Proof Engineer:
 - (i) to attend design meetings; and
 - (ii) access to the Construction Site and all places at which the Contractor's Activities are being undertaken, provided that the Proof Engineer must comply with the reasonable directions of the Contractor given in its capacity as Principal Contractor,

all as may be:

 - (iii) necessary or reasonably required by the Proof Engineer or the Principal's Representative, to allow the Proof Engineer to perform its obligations under this Deed; and
 - (iv) requested by the Proof Engineer or directed by the Principal's Representative.
- (g) **(No Claim)** The Contractor acknowledges and agrees that nothing that the Proof Engineer does or fails to do pursuant to the purported exercise of its functions will entitle the Contractor to make any Claim against the Principal, and the Contractor unequivocally releases the Principal against any liability whatsoever arising from the Proof Engineer doing or failing to perform any of its functions.
- (h) **(Proof Engineer is a Subcontractor)** The Contractor acknowledges that the Proof Engineer is a Subcontractor and the terms of clause 2.2 apply to the engagement of the Proof Engineer.

10 Time and Progress

10.1 Rate of Progress

- (a) The Contractor must:
 - (i) deliver the Enabling Works by the Date for Enabling Works Practical Completion;
 - (ii) consistent with its obligations under clause 10.1(a)(i), execute the Contractor's Activities in an orderly and diligent manner with due expedition and without delay;
 - (iii) consistent with its obligations under clause 10.1(a)(i), execute the Enabling Works with due expedition and without delay; and
 - (iv) use its best endeavours (and in doing so apply Best Industry Practice) to deliver Portion Completion of each Portion by the relevant Date for Portion Completion.
- (b) Without limiting clause 10.11(d) or the Contractor's rights under the SOP Act, the Contractor must not suspend the progress of the whole or any part of the Contractor's Activities except where permitted or required under this Deed.
- (c) Without limiting the next paragraphs of this clause 10.1 or clause 10.3, the Contractor must give the Principal's Representative reasonable advance notice of any information, documents or directions required by the Contractor to carry out the Contractor's Activities in accordance with this Deed.
- (d) The Principal and the Principal's Representative will not be obliged to furnish information, documents or directions earlier than the Principal or the Principal's Representative, as the case may be, should reasonably have anticipated at the date of this Deed.
- (e) The Principal's Representative may, by written notice expressly stated to be pursuant to this clause 10.1, direct in what order and at what time the various stages or parts of the Contractor's Activities must be performed. For the avoidance of doubt, no direction by the Principal's Representative will constitute a direction under this clause 10.1 unless the direction is in writing and expressly states that it is a direction under this clause 10.1.
- (f) If compliance with a written direction expressly stated to be pursuant to this clause 10.1 causes the Contractor to incur more or less cost than otherwise would have been incurred, then, subject to the Contractor's compliance with clause 17, the Principal must direct a Variation Order under clause 6.2(a) except where the direction was necessary because of, or arose out of, or in any way in connection with, a failure by the Contractor to comply with its obligations under this Deed. The Variation Order and the Contractor's entitlements (if any) under this clause 10 in connection with the Variation Order shall be the Contractor's sole entitlement, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any other Claim, arising out of or in any way in connection with any direction pursuant to this clause 10.1.

10.2 Enabling Works Program Obligations

- (a) The Contractor has prepared the Enabling Works Program.

- (b) The Contractor acknowledges that:
 - (i) the Principal will rely on the accuracy of the Enabling Works Program for monitoring and assessing the progress of the Project; and
 - (ii) the Principal will suffer Loss if the Contractor provides inaccurate information in relation to the progress of the Contractor's Activities or the Enabling Works Program.
- (c) The Contractor must update, revise and submit to the Principal's Representative an updated Enabling Works Program to allow for delays to non-critical activities, extensions of time granted by the Principal's Representative to any Date for Enabling Works Practical Completion, the actual progress made by the Contractor, Variations and any other changes to the Contractor's Activities but excluding claims for extensions of time to any Date for Enabling Works Practical Completion which have been submitted by the Contractor to the extent that they have not been granted by the Principal's Representative:
 - (i) on a monthly basis to the periods covered by the Enabling Works Program; or
 - (ii) whenever directed to do so by the Principal's Representative.
- (d) The Contractor must prepare and provide for the Principal's Representative's information only versions of all Enabling Works Programs prepared in accordance with clause 10.2 that also allow for those claims for an extension of time to the Date for Enabling Works Practical Completion that have been made by the Contractor in accordance with clause 10.7 but to which the Principal's Representative has not yet responded in accordance with clause 17.7.
- (e) The Contractor must comply with the requirements of the Principal's Representative and its other obligations under this Deed in preparing and using programs, including the requirements in clause 10.1(a).
- (f) The Contractor must:
 - (i) not depart from the Enabling Works Program:
 - (A) in any way that would cause the Contractor to fail to comply with section 1.4 of Schedule 22 without the prior written consent of the Principal's Representative; or
 - (B) in any other respect without reasonable cause;
 - (ii) notify the Principal's Representative of any proposed variation, change, departure from or alteration to any logic, assumption, sequence or other aspect of the Enabling Works Program; and
 - (iii) not used.
- (g) The Contractor must when directed to do so by the Principal's Representative, prepare and submit to the Principal's Representative specific detailed programs and schedules for the Contractor's Activities within 5 Business Days of receipt of such a direction.
- (h) Unless otherwise directed by the Principal's Representative, for all Programs and schedules provided in accordance with this clause, the Contractor must:

- (i) comply with the requirements of the Management Requirements; and
- (ii) provide:
 - (A) 1 colour printed A3 sized original;
 - (B) 3 colour printed A3 copies; and
 - (C) an electronic version in both pdf and unlocked native format (with all logic links intact and nothing hidden or protected) accompanied by all associated files so that they can be reproduced by the Principal's Representative using Primavera P6.
- (i) The Principal and the Contractor acknowledge that the Contractor will update, revise and submit an updated Enabling Works Program within 7 Business Days of the Date of Commencement of this Deed (**Updated Program**). The Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the submission of an Updated Program.

10.3 Contractor not relieved

No submission of, review of or comment upon, acceptance or rejection of, or any failure to review or comment upon or reject, a program (including the Enabling Works Program) prepared by the Contractor, by the Principal's Representative will:

- (a) relieve the Contractor from or alter its liabilities or obligations under this Deed, including the obligations under clause 10.1;
- (b) evidence or constitute the notification of a delay or claiming of or the granting of an extension of time to the Date for Enabling Works Practical Completion, or a direction by the Principal's Representative to compress, disrupt, prolong or vary any, or all, of the Contractor's Activities; or
- (c) affect the time for the performance of the Principal's or the Principal's Representative's obligations under this Deed.

10.4 Compression by the Contractor

If the Contractor chooses to compress the Contractor's Activities or otherwise accelerate progress:

- (a) neither the Principal nor the Principal's Representative will be obliged to take any action to assist or enable the Contractor to achieve:
 - (i) Portion Completion before any Date for Portion Completion; and
 - (ii) Enabling Works Practical Completion before the Date for Enabling Works Practical Completion;
- (b) the time for carrying out the obligations of the Principal or the Principal's Representative will not be affected; and
- (c) the Contractor does so at its own cost and risk.

10.5 Importance of on time completion

The Contractor acknowledges:

- (a) the importance to the NSW Government of minimising disruption on the local community including small businesses; and
- (b) the Date for Enabling Works Practical Completion will only be extended as set out in clause 10.7;

10.6 Risk

Except as expressly provided for in clause 10.7, the Contractor accepts the risk of all delays in, and disruption to, the carrying out of the Contractor's Activities and performance of its obligations under this Deed both before and after the Date for Enabling Works Practical Completion of the Enabling Works.

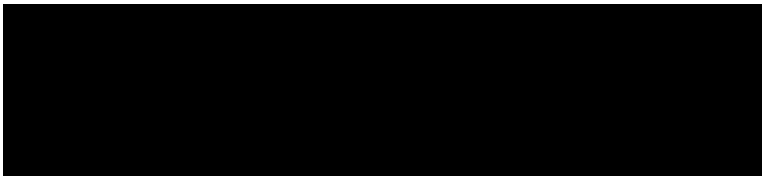
10.7 Extension of time

- (a) If the Contractor is or will be delayed:

- (i) by a Qualifying Cause of Delay in a manner which will delay it in achieving Enabling Works Practical Completion; or
 - (ii) not used,

the Contractor may claim an extension of time.

- (b) The following are conditions precedent to the Contractor's entitlement to an extension of time:

- (i) the Contractor must give the notices and claims required by clause 17;
 - (ii) the cause of the delay must have been beyond the reasonable control of the Contractor;
 - (iii) the Contractor must actually be, or will be, delayed in achieving Enabling Works Practical Completion:
 - (A) by a Qualifying Cause of Delay; or
 - (B) not used;
 - (iv) the Contractor must have taken, and must continue to take, all reasonable steps to mitigate the delay and the Contractor's entitlement to an extension of time shall be reduced to the extent it fails to do so; and
 - (v) 

- (c) If the Contractor fails to comply with the conditions precedent in clause 10.7(b):

- (i) the Contractor will have no entitlement to an extension of time;

- (ii) the Principal will not be liable upon any Claim by the Contractor for an extension of time; and
 - (iii) the Contractor will be absolutely barred from making any Claim against Principal for an extension of time,

arising out of or in any way in connection with the event giving rise to the delay and the delay involved.
- (d) Subject to clauses 10.9(c), 10.9(d), 10.12 and 10.15, if the conditions precedent in clause 10.7(b) have been satisfied, the Principal's Representative must extend the Date for Enabling Works Practical Completion of the Enabling Works by:
 - (i) if the cause of delay is a Variation, by any period stated by the Principal's Representative in a Variation Order; or
 - (ii) otherwise in accordance with clause 17.8.
- (e) The Principal's Representative will reduce any extension of time to the Date for Enabling Works Practical Completion it would otherwise have determined under this clause 10.7 to the extent that the Contractor:
 - (i) contributed to the delay; or
 - (ii) failed to take all reasonably practicable steps necessary both to preclude the cause of the delay and to avoid or minimise the consequences of the delay.
- (f) A failure of the Principal's Representative to grant:
 - (i) a reasonable extension of time to the Date for Enabling Works Practical Completion; or
 - (ii) an extension of time to the Date for Enabling Works Practical Completion within the time required under this Deed,

will not cause the Date for Enabling Works Practical Completion to be set at large, but nothing in this paragraph will prejudice any right of the Contractor to damages.
- (g) When both a Qualifying Cause of Delay and a non-qualifying cause of delay to Enabling Works Practical Completion overlap then, to the extent of the overlap, the Contractor shall not be entitled to an extension of time.

10.8 Reduction in time

If the Principal's Representative directs a Variation that omits or deletes any part of the Enabling Works:

- (a) the Contractor:
 - (i) may (no later than 10 Business Days after the direction) provide whatever information it considers may assist the Principal's Representative to determine; and
 - (ii) must provide whatever programming or other information the Principal's Representative directs (and within the time directed) so that the Principal's Representative can determine,

what (if any) adjustment should be made to the Date for Enabling Works Practical Completion; and

- (b) the relevant Date for Enabling Works Practical Completion of the Enabling Works may be reduced by a reasonable period determined by the Principal's Representative having regard to the impact of the Variation and notified to the Principal and the Contractor within 20 Business Days of the date of the Variation.

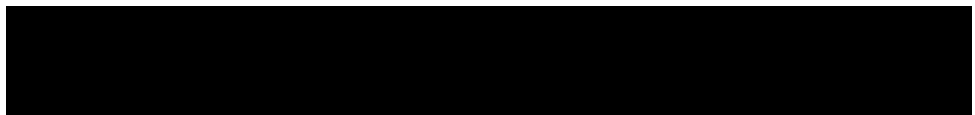
10.9 Unilateral extension of time

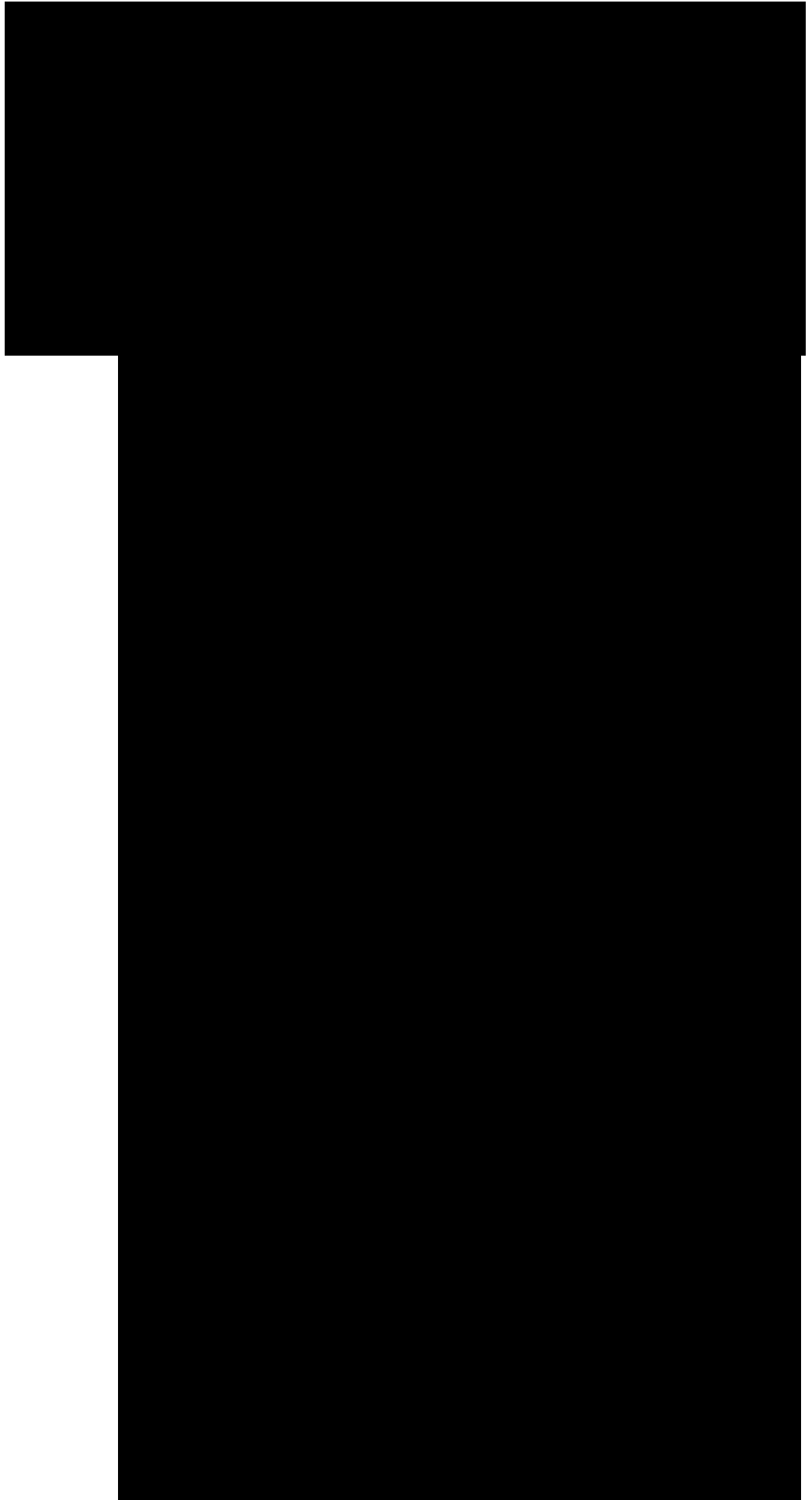
- (a) The Principal's Representative may in its absolute discretion for any reason and at any time, from time to time, by notice in writing to the Contractor and Principal unilaterally extend the Date for Enabling Works Practical Completion of the Enabling Works by any period specified in a notice to the Contractor and Principal.
- (b) The power to extend the Date for Enabling Works Practical Completion under clause 10.9(a):
 - (i) may be exercised whether or not the Contractor has made, or is entitled to make, a claim for an extension of time to the Date for Enabling Works Practical Completion, or is entitled to be, or has been, granted an extension of time to the Date for Enabling Works Practical Completion, under clause 10.7;
 - (ii) may only be exercised by the Principal and the Principal is not required to exercise its discretion under clause 10.9(a) for the benefit of the Contractor; and
 - (iii) is not a direction which can be the subject of a dispute pursuant to clause 18 or in any other way opened up or reviewed by any other person (or any court).
- (c) If the Principal gives the Contractor a direction to compress under clause 10.12 and:
 - (i) it is not reasonably practicable to comply with the direction; and
 - (ii) the direction only applies to part of the delay,

the Contractor's entitlement to any extension of time which it otherwise would have had if a direction to compress had not been given under clause 10.12 will be reduced to the extent that:

 - (iii) it is reasonably practicable to comply with the direction; and
 - (iv) the direction to compress requires the Contractor to compress to overcome the delay.
- (d) If it is reasonably practicable to fully comply with a direction to compress given under clause 10.12 and the direction requires the Contractor to overcome all of the delay, the Contractor will not have any entitlement to an extension of time in respect of the cause of delay in respect of which the direction was given.

10.10 Delay costs





10.11 Suspension

- (a) The Principal's Representative may direct the Contractor to suspend and, after a suspension has been directed, to re-commence, the carrying out of all or a part of the Contractor's Activities. Nothing in this clause 10.11 limits the Principal's rights under clause 2.17.
- (b) If the suspension under clause 10.11(a) arises in the circumstances set out in clause 2.17(f), then clauses 2.17(f), 2.17(g) and 2.17(h) will apply.
- (c) If the suspension under this clause 10.11 arises as a result of:
 - (i) the Contractor's failure to carry out its obligations in accordance with this Deed (including under clause 4.6 or where the Contractor otherwise fails to comply with its obligations in relation to engineering authorisation or AMB compliance in accordance with this Deed or where any process, procedure, test method, calculation, analysis or report required by this Deed has resulted in or will result in a non-conformance), the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension; or
 - (ii) a cause other than the Contractor's failure to perform its obligations in accordance with this Deed, then:
 - (A) subject to the Contractor's compliance with clause 17, a direction to suspend under clause 10.11(a) will entitle the Contractor to:
 - (aa) be paid by the Principal the extra costs reasonably incurred by it as a direct result of the suspension as determined by the Principal's Representative; and
 - (ab) an extension of time to any relevant Date for Enabling Works Practical Completion where it is otherwise so entitled under clause 10.7;

- (B) the Contractor must take all reasonably practicable steps possible to mitigate the extra costs incurred by it and any delay in achieving Enabling Works Practical Completion as a result of the suspension; and
- (C) the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of, or in any way in connection with, the suspension other than as allowed under this clause 10.11(c)(ii).
- (d) The Contractor may suspend the carrying out of all or a part of the Contractor's Activities to avoid an Incident.
- (e) The Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim arising out of or in any way in connection with a suspension by the Contractor under clause 10.11(d).

10.12 Direction to Compress

- (a) If the Contractor makes a claim under clause 10.7, the Principal's Representative may direct the Contractor to compress the Contractor's Activities by taking those measures which are necessary to overcome or minimise the extent and effects of some or all of the delay, which may include taking the measures necessary in order to achieve Enabling Works Practical Completion by the Date for Enabling Works Practical Completion.
- (b) Prior to commencing any such compression the Contractor must give the Principal's Representative an estimate of the costs of taking all such necessary measures.
- (c) The Principal's Representative may give such a direction whether or not the cause of delay for which the Contractor has made its claim under clause 10.7 entitles the Contractor to an extension of time to the Date for Enabling Works Practical Completion.

10.13 Withdrawal of compression direction

The Principal's Representative may at any time by notice in writing withdraw any direction given by it under clause 10.12, after which the Contractor will be entitled to any extension of time to which it may have otherwise been entitled in respect of the cause of delay in respect of which the Contractor made a claim under clause 10.7. Any such extension will be determined having regard to the effect which the compression of the Contractor's Activities taken by the Contractor prior to the withdrawal of the direction has had on mitigating the delay which is the subject of the claim for an extension of time made by the Contractor under clause 10.7.

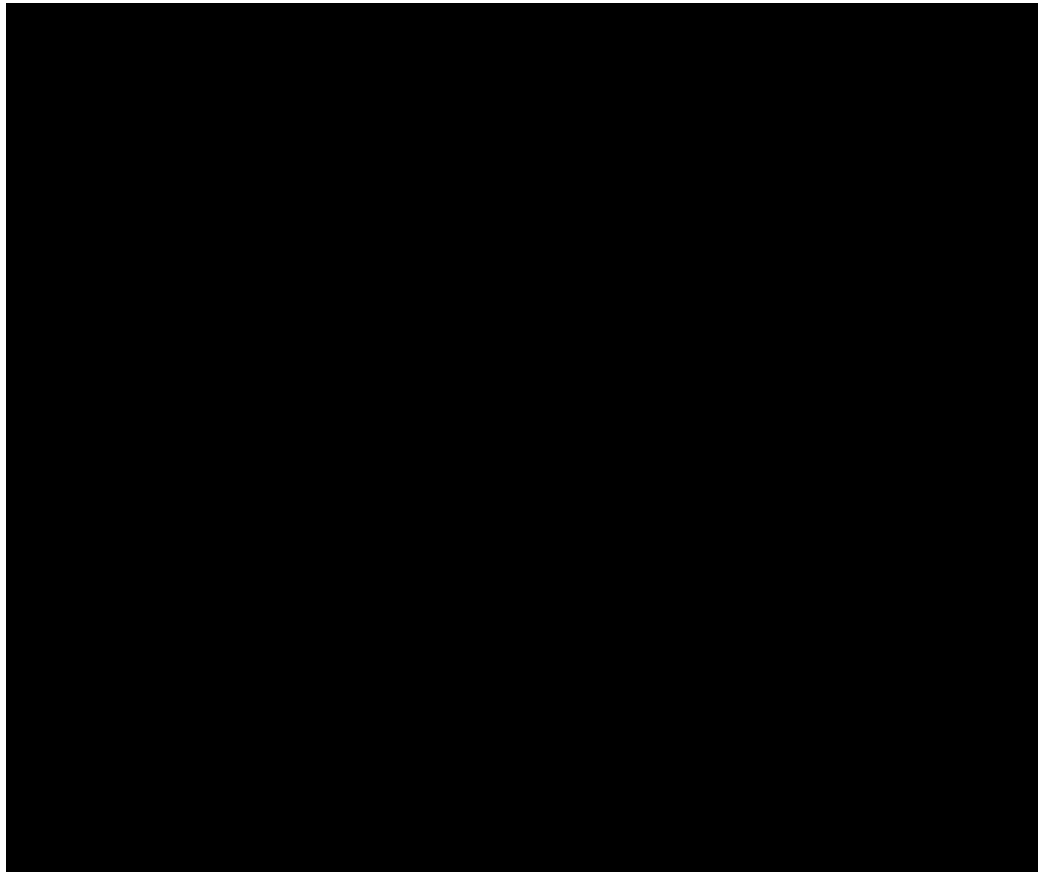
10.14 Partial compression

If the Principal's Representative gives the Contractor a direction to compress under clause 10.12 and it only applies to part of a delay, the Contractor's entitlement to any extension of time to the Date for Enabling Works Practical Completion, which it otherwise would have had, will only be reduced to the extent to which the direction to compress requires the Contractor to compress to overcome the delay.

10.15 Compression

If the Principal's Representative gives a direction to the Contractor under clause 10.12:

- (a) whether or not the Contractor provides a cost estimate under clause 10.12, the Contractor must comply with the direction;



10.16 Principal's right to liquidated damages not affected

The Principal's rights to liquidated damages under clause 12.13 for a failure by the Contractor to achieve Enabling Works Practical Completion by the Date for Enabling Works Practical Completion will not be affected by the Principal's Representative giving the Contractor a direction to compress under clause 10.12.

10.17 Event ceases

If the Contractor becomes able to recommence performing the relevant obligations after the Principal gives the Contractor a suspension notice the Contractor must recommence performance of those obligations.

10.18 Contractor's Entitlements

Unless otherwise expressly stated in this Deed, this clause 10 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any delay, disruption or Act of Prevention and the Contractor waives all rights at Law to claim any relief from its obligations under this Deed otherwise than in accordance with this clause 10.

11 Payment

11.1 Conditions precedent


This clause does not apply to the Initial Payment which is dealt with in clause 11.6. It is a condition precedent to the Contractor's entitlement to make a valid Payment Claim and the Principal's obligation to make a payment under clause

11.9(a) that prior to or with (as required by this Deed) submitting the Payment Claim the Contractor has (in addition to any other conditions precedent to payment specified in this Deed):

- (a) complied with clauses 2.2(f)(ii) and 2.2(f)(iv);
- (b) provided the Principal with the Performance Security required under clause 2.8;
- (c) submitted the initial and updated parts of the Project Plans as required by clauses 4 and 9.12 of this Deed and the Management Requirements;
- (d) provided the Principal's Representative with:
 - (i) a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 20, made out not earlier than the date of the Payment Claim;
 - (ii) the Contractor's Certificate of Design Compliance;
 - (iii) the Designers' Certificates of Design Compliance;
 - (iv) the Contractor's Certificate of Construction Compliance;
 - (v) where applicable the Contractor's Certificate of Remediation Compliance;
 - (vi) where clause 11.22(e) applies, the statement and the evidence (if any) required to be provided by the Contractor pursuant to that clause;
- (e) in relation to any unfixed plant and materials which the Contractor proposes to claim in a Payment Claim, provided the evidence and documents required by, and otherwise satisfied the requirements of, clause 11.5(a);
- (f) effected or procured to be effected the insurances required by clauses 2.2(c) and 13 and (if requested) provided evidence of this to the Principal's Representative;
- (g) submitted the draft Reimbursable Work Breakdown Plan required by clause 11.4(a) and provided any update required by clause 11.4(c);
- (h) provided copies of the current Enabling Works Program updated pursuant to clauses 10.2(c) and 10.2(h);
- (i) in respect of a Relevant Discovery provided the Principal's Representative with a Target Cost Election Notice; and
- (j) done everything else that it is required to do under this Deed before:
 - (i) being entitled to make a Payment Claim; or
 - (ii) receive payment.

Unless the Contractor has complied with the conditions precedent set out above any Payment Claim as the case may be, will be deemed to be invalid.

11.2 Contractor's Activities

- (a) Subject to its right of set off under this Deed and at Law, in consideration for the performance by the Contractor of the Contractor's Activities the Principal will pay the Contractor the Contract Sum in consideration for the Contractor's fulfilment of its obligations under this Deed.
- (b) The Contract Sum is comprised of:
 - (i) in respect of Reimbursable Work, the Reimbursable Work Price (as valued in accordance with clause 11.4);
 - (ii) in respect of the Utilities Target Cost Scope, the Approved Actual Utilities Cost (as adjusted pursuant to clause 11.13(c));
 - (iii) in respect of the Contamination Target Cost Scope, the Approved Actual Contamination Cost (as adjusted pursuant to clause 11.13A(i)(i));
 - (iv) in respect of the Provisional Sum Works the Provisional Sum amounts (as adjusted pursuant to clause 11.3);
 - (v) in respect of the balance of the Contractor's Activities, the Enabling Works Lump Sum.
- (c) 
- (d) The Contract Sum will be:
 - (i) calculated in accordance with;
 - (ii) paid, where applicable, by reference to the price breakdowns specified in; and
 - (iii) be subject to the constraints, processes and limitations specified in,

Schedule 2.

11.3 Provisional Sums

- (a) For each item of Provisional Sum Work, the Principal's Representative:
 - (i) may at any time:
 - (A) direct the Contractor to provide:
 - (aa) a reasonable estimate of the Contractor's costs of carrying out the Provisional Sum Work, including sufficient information to support the estimate; and
 - (ab) details of the amount by which the Contractor proposes the Contract Sum be adjusted; and
 - (B) agree (or negotiate an agreement) with the Contractor in respect of its proposed adjustment to the Contract Sum under clause 11.3(a)(i)(A) for the item of Provisional Sum Work, but nothing in this clause 11.3(a)(i)(B) obliges the Principal's Representative to

agree on an adjustment to the Contract Sum with the Contractor prior to the Principal's Representative exercising its rights under clause 11.3(a)(ii); and

- (ii) will give the Contractor a direction either:
 - (A) requiring the Contractor to proceed with the item of Provisional Sum Work; or
 - (B) deleting the item of Provisional Sum Work.
- (b) Where the Principal's Representative gives the Contractor a notice requiring the Contractor to proceed with an item of Provisional Sum Work, the Contract Sum will be adjusted for the item of Provisional Sum Work by the difference between:
 - (i) the amount allowed for the item of Provisional Sum Work in Schedule 2; and
 - (ii) either:
 - (A) an amount agreed between the Contractor and the Principal's Representative under clause 11.3(a)(i) or otherwise; or
 - (B) if they fail to agree, an amount determined by the Principal's Representative on the basis set out in clause 6.4,

as if the item of Provisional Sum Work were a Variation, provided that the amount determined under this clause 11.3(b)(ii)(B) will not include the percentages referred to in clauses 6.4(b)(i)(C) or 6.4(b)(ii)(A) or the last paragraph of clause 6.7, but will include the relevant percentage in Schedule 2 for Provisional Sum Work.
- (c) Where the Principal's Representative gives the Contractor a direction deleting an item of Provisional Sum Work:
 - (i) the Contract Sum will be reduced by the amount allowed for the item of Provisional Sum Work in Schedule 2;
 - (ii) the Principal may thereafter either carry out the item of Provisional Sum Work itself or engage any other person or persons to carry out the item of Provisional Sum Work; and
 - (iii) the Principal will not be liable upon any Claim by the Contractor arising out of or in any way in connection with the deletion of the item of Provisional Sum Work.
- (d) The parties agree that Reimbursable Work:
 - (i) is an item of Provisional Sum Work;
 - (ii) is not required to be the subject of a direction by the Principal's Representative under clause 11.3(a)(ii) as it forms part of the Contractor's Activities and must be performed by the Contractor; and
 - (iii) will be valued in accordance with Schedule 2 and not in accordance with clauses 11.3(b) and 11.3(c).

11.4 Reimbursable Work Price

The Contractor must, in respect of Reimbursable Work:


- (a) submit a draft Reimbursable Work Breakdown Plan no later than 3 months prior to undertaking any Reimbursable Work for the review of the Principal's Representative. The draft Reimbursable Work Breakdown Plan must include details of:
 - (i) the scope of the Reimbursable Work and how it differs (if it differs) from the Contractor's scope of Reimbursable Work in Schedule 2;
 - (ii) how the anticipated Reimbursable Work Price:
 - (A) has been calculated; and
 - (B) differs from the Provisional Sum amount for such work in Schedule 2;
 - (iii) the anticipated cost of the work to be performed by the personnel described in Schedule 2; and
 - (iv) the anticipated costs of the materials, plant and equipment described in Schedule 2;
- (b) not carry out any Reimbursable Work until a Reimbursable Work Breakdown Plan exists; and
- (c) update the Reimbursable Work Breakdown Plan on a monthly basis, or as otherwise directed by the Principal's Representative, comparing the actual costs incurred in that month as against each of the anticipated costs referred to in clauses 11.4(a)(iii) and 11.4(a)(iv).

11.5 Unfixed Plant and Materials

- (a) The Contractor is only entitled to make a claim for payment for plant or materials intended for incorporation in the Enabling Works but not yet incorporated, and the Principal is only obliged to make payment for such plant or materials in accordance with clause 11.9(a), if:
 - (i) the Contractor provides evidence of:
 - (A) the Principal's ownership of or (that on payment it will have ownership of) the plant or materials;
 - (B) identification and labelling of the plant and materials as the property of the Principal; and
 - (C) adequate and secure storage and protection;
 - (ii) security acceptable to the Principal in the form of the unconditional undertaking in Schedule 16 issued by an institution approved by the Principal, with the Required Rating in an amount equal to the payment claimed for the unfixed plant and materials claimed has been provided by the Contractor to the Principal;
 - (iii) the plant and materials are on the Site or are available for immediate delivery to the Site;

- (iv) the insurance held and the storage arrangements for the unfixed plant and materials are acceptable to the Principal's Representative;
 - (v) the condition of the unfixed plant and materials has (if required by the Principal's Representative) been confirmed in an inspection by the Principal's Representative; and
 - (vi) if the PPS Law applies, the Contractor has done everything required by clause 19.33 to enable the Principal to register a Security Interest in the unfixed plant or materials.
- (b) The only such unfixed plant or materials to be allowed for in a Payment Statement are those that have become or (on payment) will become the property of the Principal. Upon a payment against a Payment Statement that includes amounts for unfixed plant and materials, title to the unfixed plant and materials included will vest progressively in the Principal.
 - (c) The security provided in accordance with clause 11.5(a)(ii) will be released once the applicable unfixed plant and materials are incorporated into the Enabling Works.

11.6 Initial Payment

- (a) The parties have agreed that the Principal will make an initial payment to the Contractor on the terms set out in clause 11.6(b) to clause 11.6(c) (**Initial Payment**).
- (b) 
- (c) The Initial Payment will not be payable until the later of:
 - (i) the delivery of the Performance Security and the Guarantee and Indemnity; and
 - (ii) the delivery of a statutory declaration by the Contractor, or where the Contractor is a corporation, by a representative of the Contractor who is in a position to know the facts attested to, in the form of Schedule 20.
- (d) The process in clause 11.7 does not apply to the Initial Payment Claim.

11.7 Payment Claims

- (a) The Contractor may give the Principal's Representative a claim for payment on account of the Contract Sum and any other amounts expressly payable by the Principal to the Contractor under this Deed (including the Approved Actual Utilities Cost, Utilities Margin, Approved Actual Contamination Cost and Contamination Margin) on the latter of:
 - (i) satisfaction of the conditions precedent to the Contractor's entitlement to make a Payment Claim set out in clause 11.1; and
 - (ii) the following dates:
 - (A) prior to the time for the submission of the Completion Payment Claim, upon the 1st Business Day of each month;

- (B) for the Completion Payment Claim, within the time required by clause 11.14; and
 - (C) for the Final Payment Claim, within the time required by clause 11.16.
- (b) Each Payment Claim must:
 - (i) be in accordance with Schedule 2, the Management Requirements;
 - (ii) include Claims for payment in respect of amounts that have been:
 - (A) evaluated by the Principal's Representative under clause 17;
 - (B) determined by the Independent Certifier under this Deed; or
 - (C) finally determined by dispute resolution under clause 18;
 - (iii) include all the evidence reasonably required by the Principal's Representative of the amount of work completed in accordance with this Deed and the amount payable;
 - (iv) be broken down into elements consistent with Schedule 2 that includes a breakdown in relation to:
 - (A) the Reimbursable Work Price;
 - (B) the Approved Actual Utilities Cost;
 - (C) the Utilities Margin;
 - (D) the Approved Actual Contamination Cost;
 - (E) the Contamination Margin;
 - (F) the balance of Enabling Works Lump Sum, which includes the Provisional Sums;
 - (G) amounts evaluated by the Principal's Representative under clause 17; or
 - (H) amounts finally determined by dispute resolution under clause 18.
 - (v) in respect of Reimbursable Work, provide full detail of the Reimbursable Work which correlates with the Reimbursable Work Breakdown Plan together with evidence of the Contractor's expenditure in respect of the Reimbursable Work;
 - (vi) include evidence of all insurances required to be effected by the Contractor under this Deed to the Principal's Representatives reasonable satisfaction;
 - (vii) not used;

- (viii) include such certificates contained in Schedule 5, as the Principal may require in respect of the Design Documentation from the Contractor or any of its Subcontractors (as relevant);
 - (ix) include a Subcontractor's Statement in the form set out in Schedule 20 which has been duly executed on the date of the relevant Payment Claim;
 - (x) include a supporting statement regarding payment to Subcontractors, in the form required by the *Building and Construction Industry Security of Payment Amendment (Supporting Statement) Regulation 2014* (NSW);
 - (xi) include copies of statutory declarations from each Subcontractor which has performed work the subject of the relevant Payment Claim that its employees engaged in carrying out of the Project have been paid all moneys properly due and payable;
 - (xii) include copies of the Enabling Works Program updated in accordance with clause 10.2(c);
 - (xiii) include a Contractor's Certificate of Remediation Compliance in the form set out in Schedule 3 from the Contractor; and
 - (xiv) include such further information and evidence in respect of the Payment Claim as is reasonably required by the Principal's Representative.
- (c) for each Payment Claim pursuant to clause 11.7(a), set out the amount claimed for work completed to the end of the previous month and details of how the amount has been calculated, using the following methodology:
- (i) for each part of the Contractor's Activities described in the Payment Schedule which has been completed (subject to any minor Defects) the sum of the amounts in the Payment Schedule (adjusted to allow for any additions and deductions to the Contract Sum) for all such completed parts of the Contractor's Activities;
 - (ii) to which is added, for each part of the Contractor's Activities described in the Payment Schedule which has not been completed (with the exception of activities associated with items in the Payment Schedule titled "As-built data and asset management documentation" for which Payment Claims must be made only once complete under clause 11.7(c)(i)) the completed proportion of that part of the Contractor's Activities multiplied by the amount set out for that part in the Payment Schedule;
 - (iii) to which is added any other amounts that may be payable by the Principal to the Contractor pursuant to a provision of this Deed; and
 - (iv) which is reduced, where work is defective or omitted, by the estimated cost of rectifying the Defect or carrying out the omitted work.
- (d) The Contractor may not include in a Payment Claim any Claim which must be:

- (i) evaluated by the Principal's Representative under clause 17;
- (ii) determined by the Independent Certifier under this Deed; or
- (iii) finally determined by litigation under clause 18,

provided that nothing in this clause will prevent the Contractor from including any undisputed portion of any Claim.

- (e) This clause does not apply to the Initial Payment.
- (f) Clauses 11.7(d), 17.1(a)(iii) and 17.2(a) shall not operate to restrict or limit the Contractor's rights at Law.

11.8 Payment Statements

- (a) The Principal's Representative must within 10 Business Days of:

- (i) receiving a Payment Claim which complies with the requirements of clause 11.7 and the Management Requirements; or
- (ii) a Completion Payment Claim under clause 11.14; or
- (iii) a Final Payment Claim under clause 11.16,

issue to the Contractor and the Principal a payment statement (**Payment Statement**) which identifies the Payment Claim, Completion Payment Claim (as applicable) or Final Payment Claim to which it relates, and which sets out:

- (iv) its determination of the value of the Contractor's Activities carried out in accordance with this Deed, using the methodology specified in Schedule 2;
- (v) the amount already paid to the Contractor;
- (vi) the amount (if any) the Principal directs the Principal's Representative that the Principal is entitled to retain, deduct, withhold or set-off under this Deed;
- (vii) the amount (if any) which the Principal's Representative believes to be then payable by the Principal to the Contractor on account of the Contract Sum and which the Principal proposes to pay to the Contractor or the amount which the Principal's Representative believes to be then payable by the Contractor to the Principal; and
- (viii) if the amount in clause 11.8(a)(vii) is less than the amount claimed in the relevant Payment Claim, Completion Payment Claim or Final Payment Claim:
 - (A) the reason why the amount in clause 11.8(a)(vii) is less than the amount claimed in the relevant Payment Claim, Completion Payment Claim or Final Payment Claim; and
 - (B) if the reason for the difference is that the Principal proposes to retain, deduct, withhold or set-off payment for any reason, the reason for the Principal retaining, deducting, withholding or setting-off payment.

- (b) The issue of a Payment Statement by the Principal's Representative does not constitute approval of any work nor will it be taken as an admission or evidence that the part of the Enabling Works or Contractor's Activities covered by the Payment Statement has been satisfactorily carried out in accordance with this Deed.
- (c) Failure by the Principal's Representative to set out in a Payment Statement an amount, or the correct amount, which the Principal is entitled to retain, deduct, withhold or set-off from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise its right to retain, deduct, withhold or set-off any amount under this Deed.
- (d) The Contractor agrees that the amount referred to in the Payment Statement in respect of clause 11.8(a)(vii) for the purposes of section 14(2)(b) of the SOP Act, is the amount of the "scheduled amount" (as defined in that SOP Act) calculated in accordance with the terms of this Deed to which the Contractor is entitled in respect of this Deed.
- (e) The Contractor must, within 2 Business Days after receipt of the Payment Statement issued by the Principal's Representative under clause 11.8 give the Principal's Representative a Tax Invoice (which complies with the GST Legislation) for the amount of the Payment Statement.

11.9 Payment

- (a) Where, pursuant to clause 11.8(a)(vii) the Principal's Representative sets out in a Payment Statement an amount payable by the Principal to the Contractor, subject to clauses 11.1, 11.7, 11.8(e), 11.16 and 19.15, the Principal must, within 15 Business Days of receipt of the Payment Claim to which the Payment Statement relates, pay the Contractor the amount set out in the Payment Statement referred to in clause 11.8(a).
- (b) Where, pursuant to clause 11.8(a)(vii), the Principal's Representative sets out in a Payment Statement an amount payable by the Contractor to the Principal, the Contractor must, within 5 Business Days of the Principal's Representative issuing the Payment Statement under clause 11.8, pay the Principal the amount set out in the Payment Statement referred to in clause 11.8(a).
- (c) This clause does not apply to the Initial Payment.

11.10 Payment on Account

A payment of moneys under clause 11.9(a) is not:

- (a) an admission or evidence of the value of work or that work has been satisfactorily carried out in accordance with this Deed;
- (b) an admission of liability; or
- (c) approval by the Principal or the Principal's Representative of the Contractor's performance or compliance with this Deed,

but is only to be taken as payment on account.

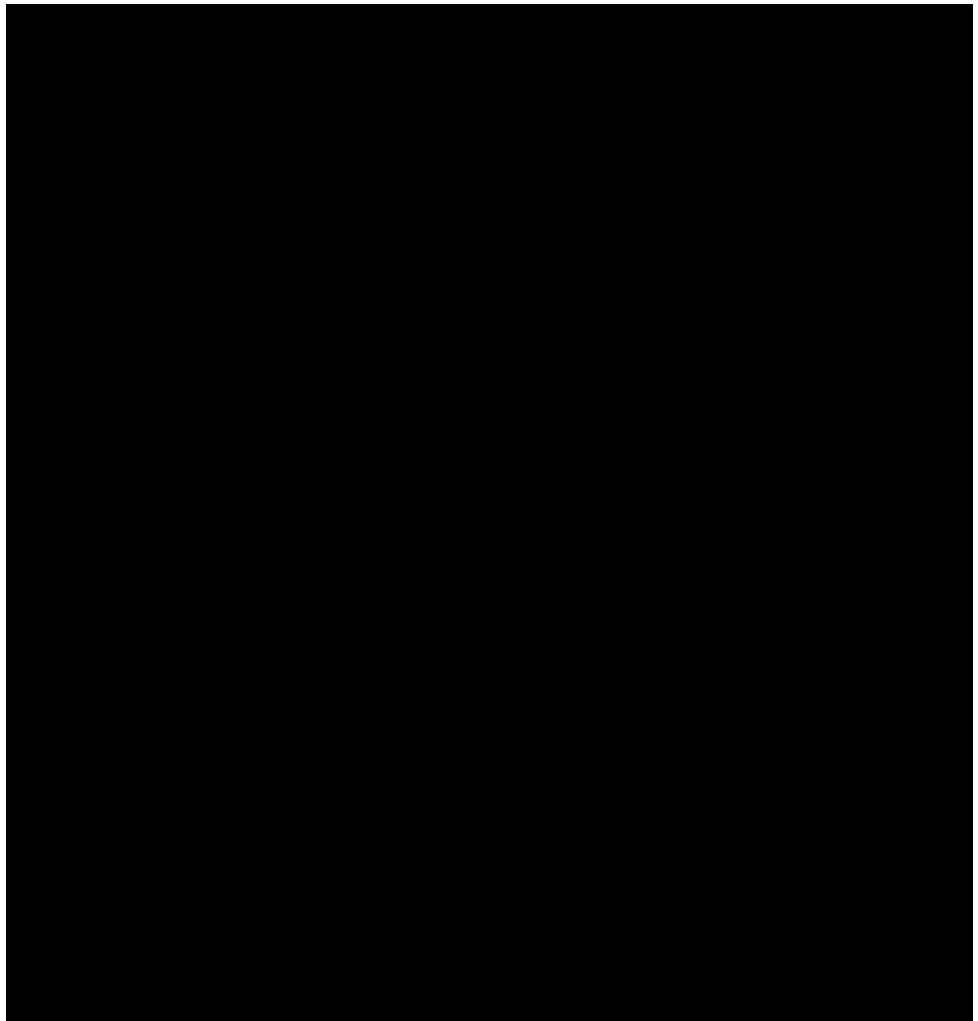
11.11 Payment of employees and Subcontractors

- (a) When submitting any Payment Claim, Completion Payment Claim or Final Payment Claim, the Contractor must give the Principal's

Representative a statutory declaration in accordance with clause 11.1(d)(i).

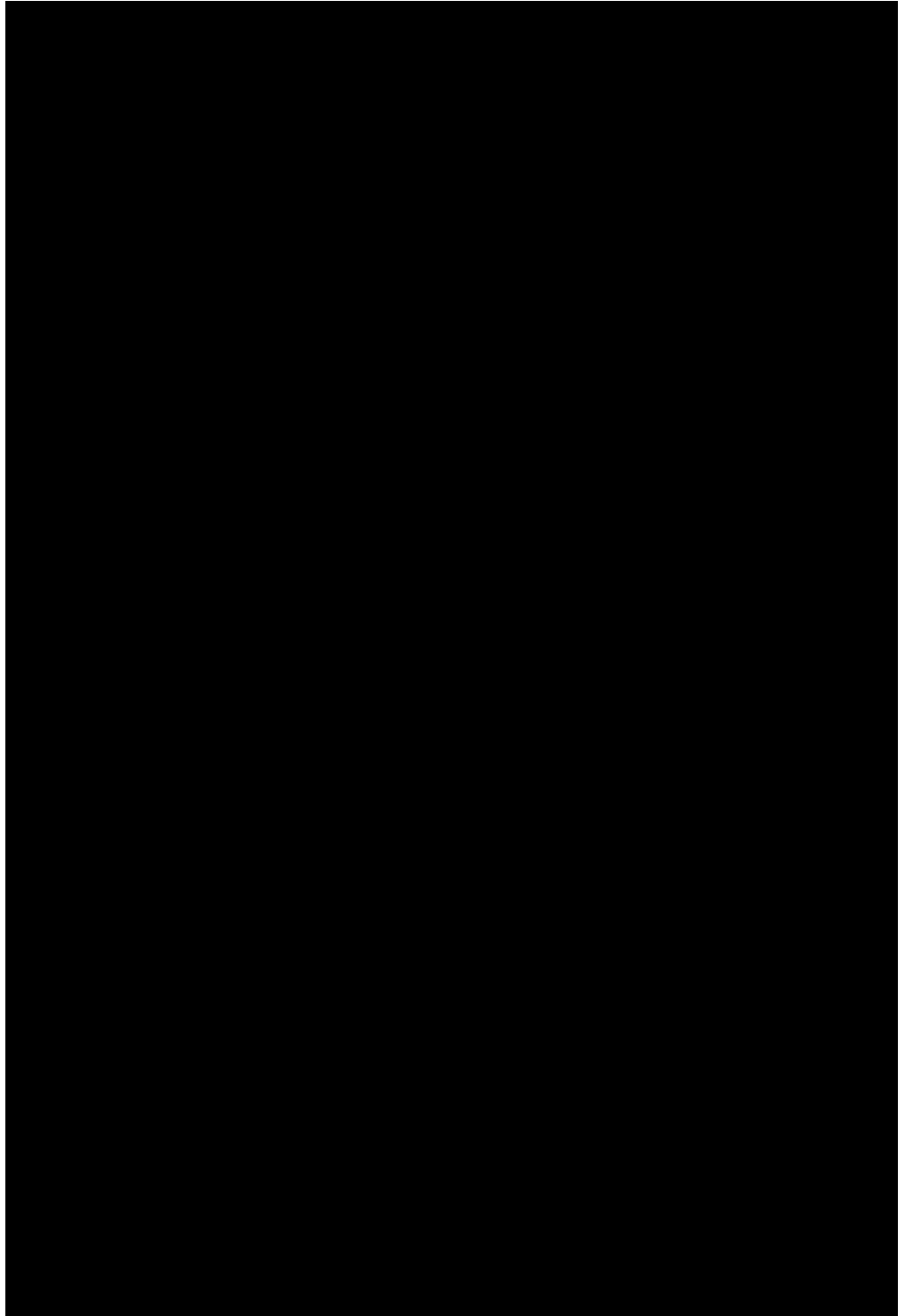
- (b) If any moneys are shown as unpaid in the Contractor's statutory declaration under clause 11.1(d)(i), the Principal may withhold the moneys so shown until the Contractor provides evidence to the satisfaction of the Principal's Representative that the moneys have been paid to the relevant persons.
- (c) If an employee or a Subcontractor obtains a court order in respect of the moneys payable to them in respect of their employment on, materials supplied for, or work performed with respect to, the Contractor's Activities, and produces to the Principal the court order and a statutory declaration that it remains unpaid, the Principal may (but is not obliged to) pay the amount of the order and costs included in the order to the employee or Subcontractor, and the amount paid will be a debt due from the Contractor to the Principal.
- (d) If the Principal receives notice of any Insolvency Event in relation to the Contractor, the Principal will not make any payment to an employee or Subcontractor without the concurrence of the administrator, provisional liquidator, liquidator, trustee or official receiver, as the case may be, of the Contractor.
- (e) Nothing in this clause 11.11 limits or otherwise affects the Principal's rights under section 175B(7) of the *Workers Compensation Act 1987* (NSW), section 18(6) of schedule 2 of the *Payroll Tax Act 2007* (NSW) or section 127(5) of the *Industrial Relations Act 1996* (NSW).

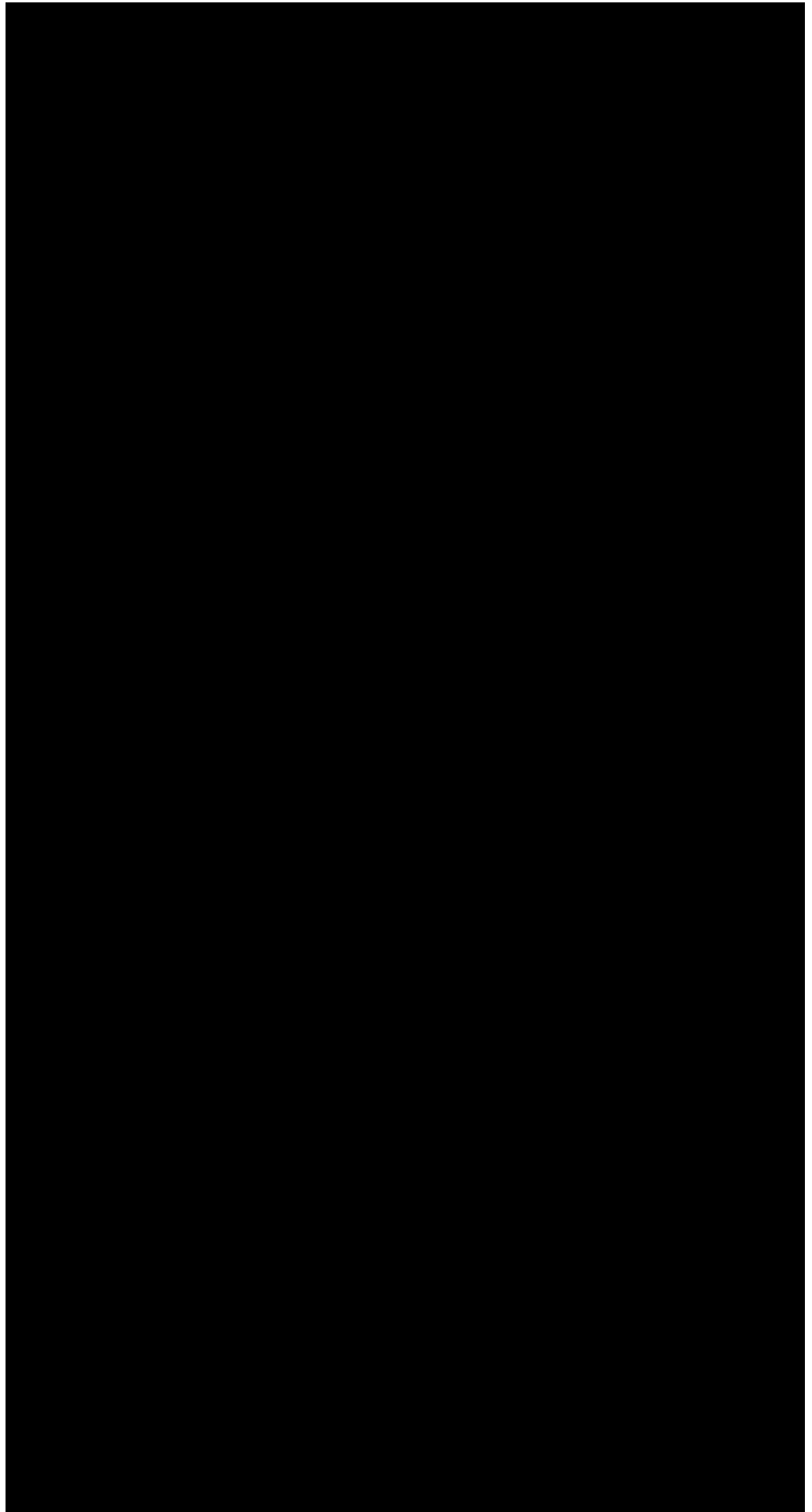
11.12





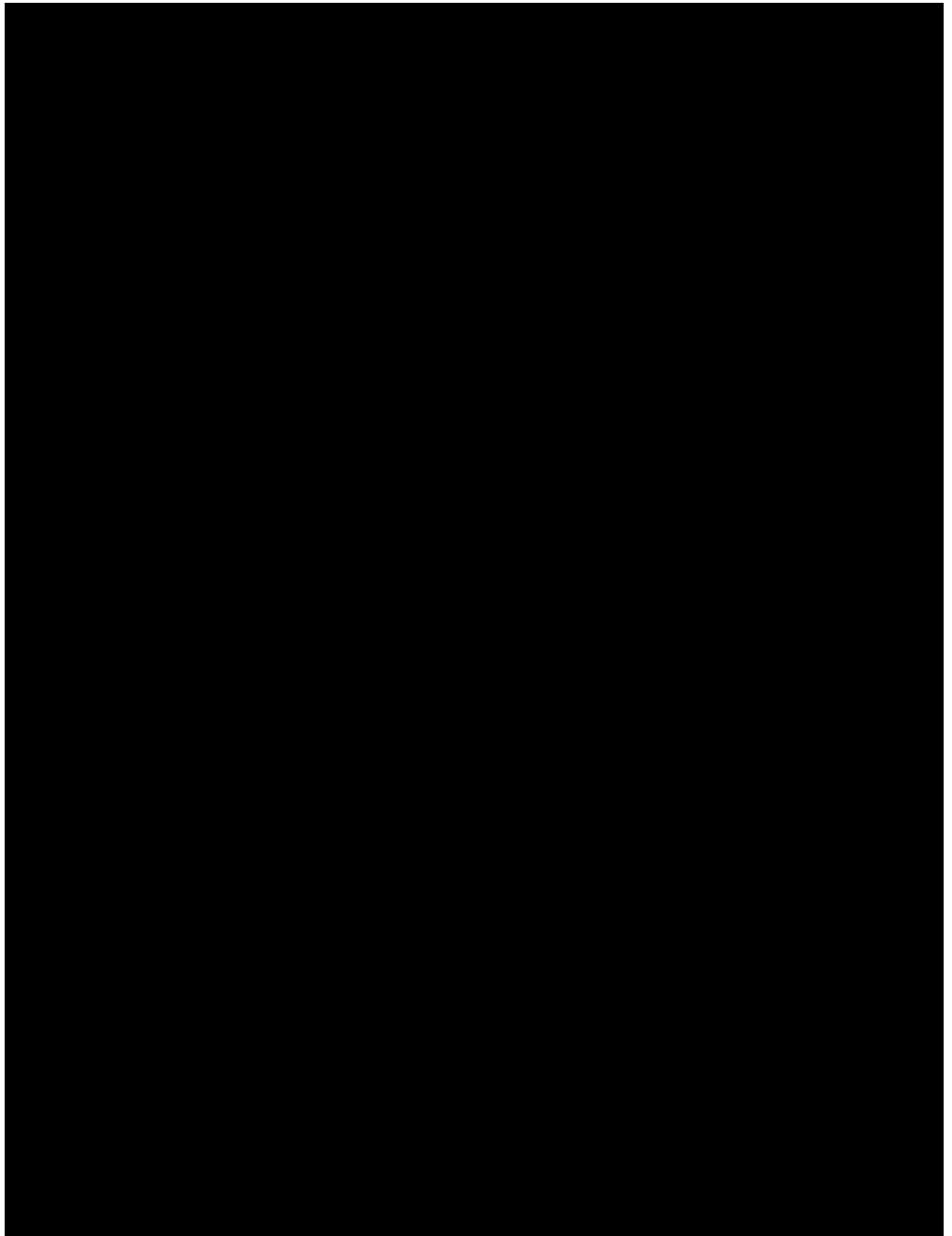
11.13 Utilities payments

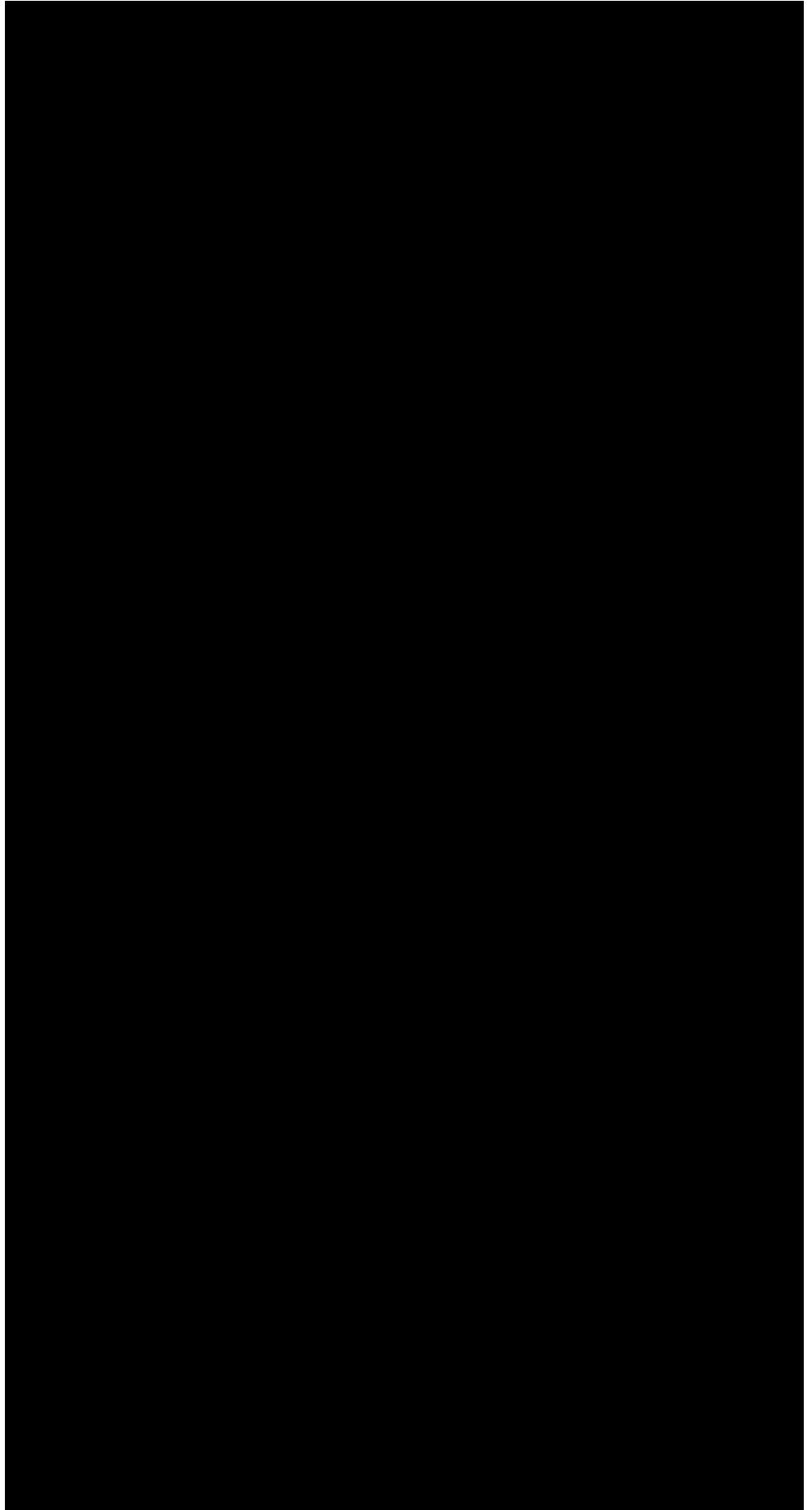


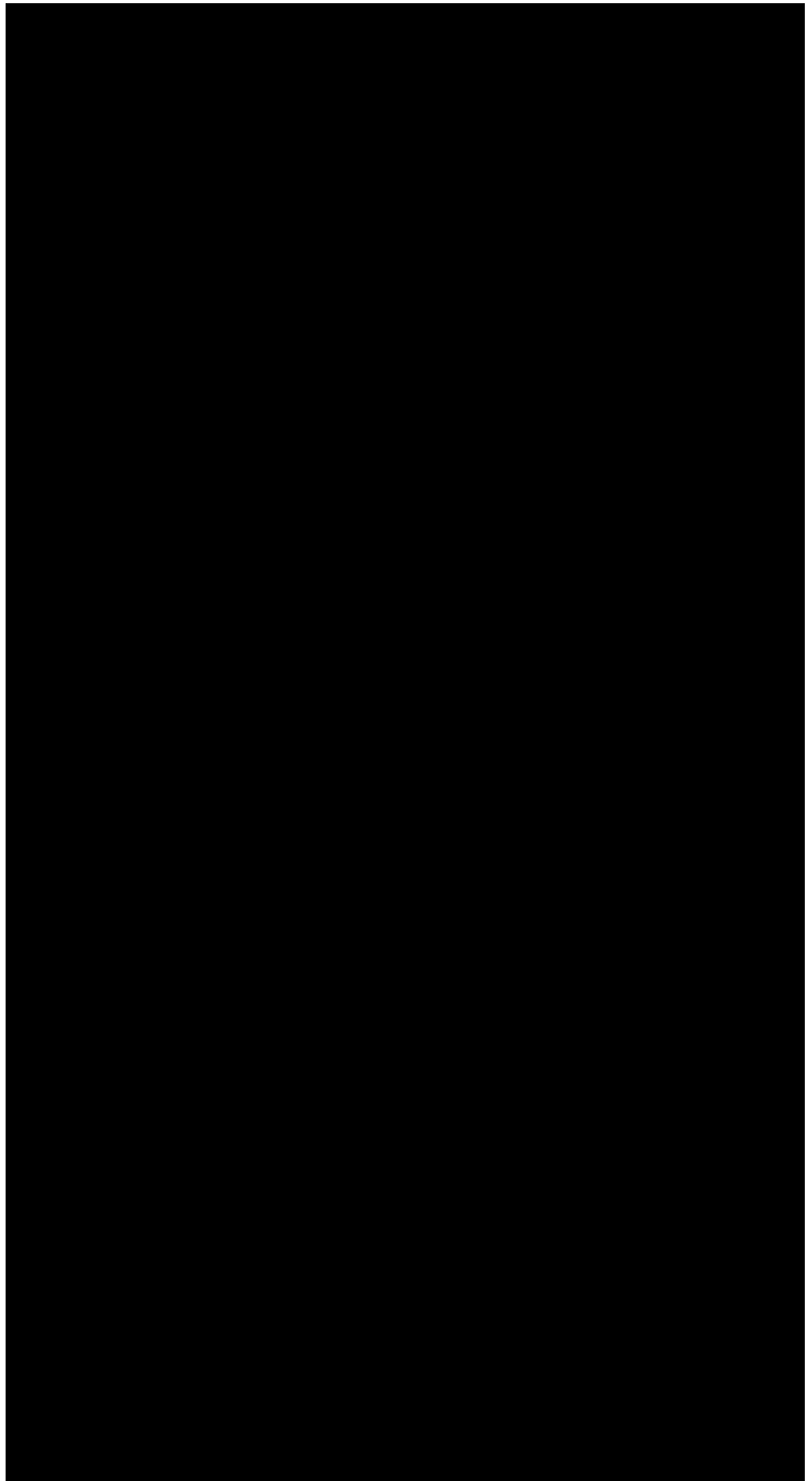


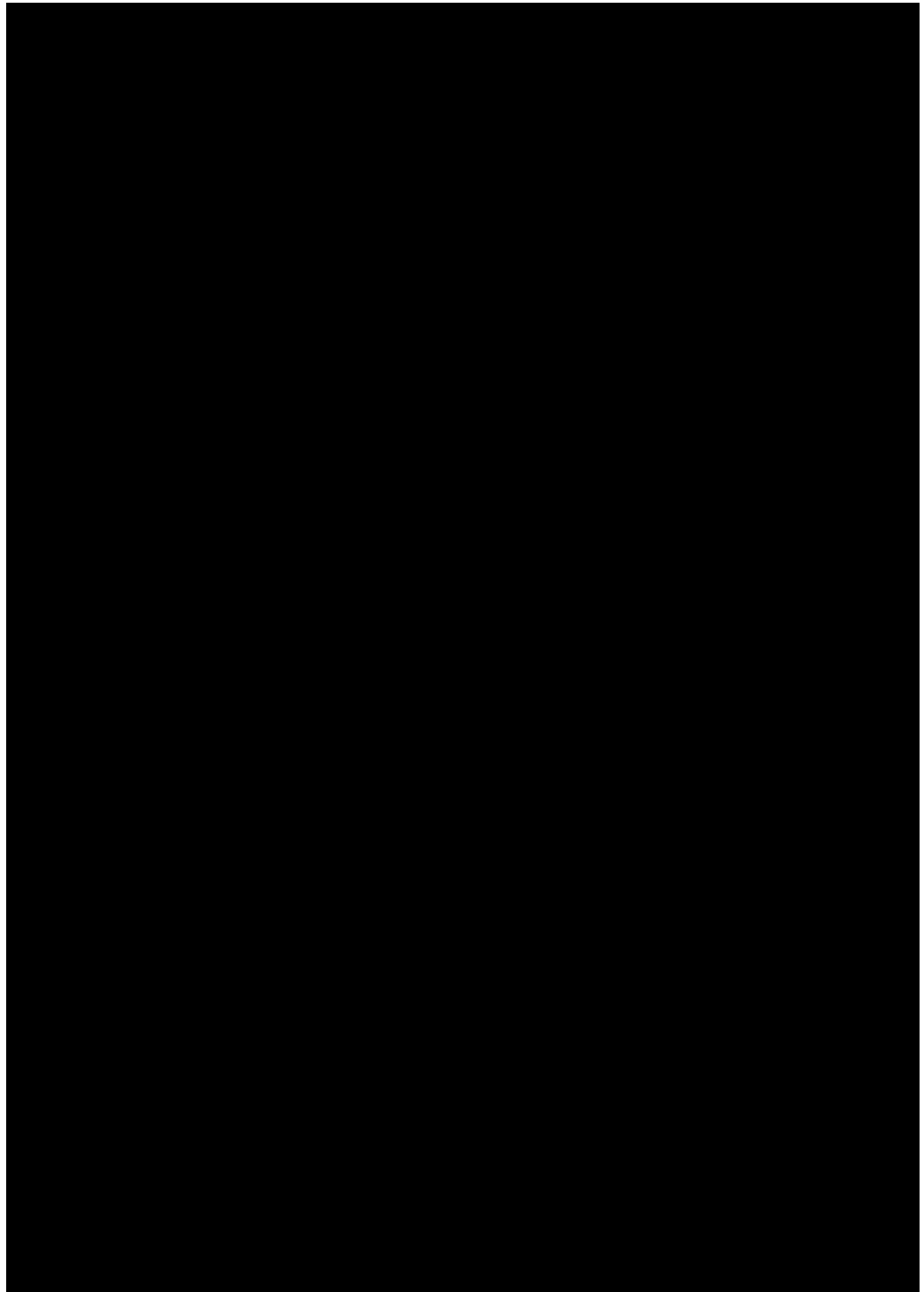


11.13A Contamination payments









11.14 Completion Payment Claim

- (a) No later than 28 days after the issue of the Certificate of Portion Completion for the last Portion to reach Portion Completion, and subject to compliance with clause 11.1, the Contractor may lodge with the Principal's Representative a payment claim marked "Completion Payment Claim" stating:
 - (i) the Contract Sum;
 - (ii) all payments received on account of the Contract Sum;
 - (iii) the balance of the Contract Sum (if any) due to the Contractor, being the Contract Sum less the payments referred to in clause 11.14(a)(ii);

- (iv) [REDACTED]
 - (v) [REDACTED]
 - (vi) [REDACTED]
 - (vii) any other amounts due to the Contractor under this Deed, including any Delay Costs.
- (b) The Completion Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.
- (c) With the Completion Payment Claim, the Contractor must lodge with the Principal's Representative a statement (**Statement of Outstanding Claims**). The Statement of Outstanding Claims must identify all Claims that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim and which:
- (i) have been notified in accordance with clause 17; and
 - (ii) are not resolved.
- (d) The Completion Payment Claim and Statement of Outstanding Claims must address all facts, matters or things arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed up to the date of submission of the Completion Payment Claim in respect of all Claims included in the Completion Payment Claim and Statement of Outstanding Claims which:
- (i) have been notified in accordance with clause 17; and
 - (ii) are not resolved.
- (e) Without limiting clause 11.15, clause 17.6 or any other time bar set out in this Deed, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed which occurred prior to the date of submission of the Completion Payment Claim, which:
- (i) has been made;
 - (ii) could have been made; or
 - (iii) should have been made,
- (f) other than, for the avoidance of doubt, the Contractor's right to: (A) defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor; or (B) make third party claims which are unknown to the Contractor at the time of submission of the Completion Payment Claim and Statement of Outstanding Claims, that is not included in the Completion Payment Claim or the first Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred. The Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims, including clause 17. Subject only to clause 11.15 in respect of the Contractor's right to: (A) defend or set-off by way of counter-claim, a

claim made by the Principal or a Principal Associate against the Contractor; or (B) make Claims against the Principal with respect to third party claims that are unknown to the Contractor at the time of submission of the Completion Payment Claim or Statement of Outstanding Claims, after lodging the Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the Statement of Outstanding Claims or the Completion Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor except as provided in clause 17.

- (g) Despite clause 11.14(f), if subsequent to the lodgement by the Contractor of the Completion Payment Claim, a final determination is made under clause 18 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Completion Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended Completion Payment Claim must be lodged with the Principal's Representative within 28 days after the final determination is made.
- (h) The claims and statements required under this clause 11.14 are in addition to the other notices which the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.
- (i) Without limiting clause 11.14(h), the Contractor cannot include in any claim or statement under this clause 11.14 any Claims that are barred under this Deed including by clause 17.6.

11.15 Release after Completion Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed that occurred prior to the date of submission of the Completion Payment Claim, except for any Claim which has been included in the Completion Payment Claim or Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with clause 11.14 or which is not otherwise barred under clause 11.14(e). Notwithstanding anything else in this clause 11.15, this clause 11.15 and 11.14(e) does not affect the Contractor's right to:

- (a) defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor; or
- (b) make Claims against the Principal with respect to third party claims that are unknown to the Contractor at the time of submission of the Completion Payment Claim or Statement of Outstanding Claims.

11.16 Final Payment Claim

- (a) No later than 28 days after the expiration of the Defects Rectification Period, and subject to compliance with clause 11.1 the Contractor may lodge with the Principal's Representative a Payment Claim marked "Final Payment Claim" stating the Contract Sum, all payments received on account of the Contract Sum and the balance, if any, due to the Contractor. The Final Payment Claim must be accompanied by such information as the Principal's Representative may reasonably require.
- (b) With the Final Payment Claim the Contractor must lodge with the Principal's Representative a Second Statement of Outstanding Claims. The Second Statement of Outstanding Claims must identify all Claims

that the Contractor wishes to make against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed which occurred prior to the date of submission of the Final Payment Claim.

- (c) The Final Payment Claim and second Statement of Outstanding Claims must address all such facts, matters or things arising out of or in any way in connection with the Contractor's Activities, the Enabling Works or this Deed up to the date of submission of the Final Payment Claim in respect of all Claims included in the Final Payment Claim and second Statement of Outstanding Claims that have been notified in accordance with clause 17 and have not been resolved.
- (d) Without limiting clause 11.17, any Claim by the Contractor against the Principal in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed which occurred prior to the date of the Final Payment Claim which:
 - (i) has been made;
 - (ii) could have been made; or
 - (iii) should have been made under the paragraph above,

that is not included in the Final Payment Claim or second Statement of Outstanding Claims will be deemed to have been abandoned by the Contractor and is barred. This bar is in addition to any time bars, releases and requirements in clause 17.6, but does not apply to the Contractor's right to defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor.

- (e) The second Statement of Outstanding Claims is not a Claim. All Claims must be made separately and at the times provided in the respective clauses dealing with Claims. After lodging the second Statement of Outstanding Claims the Contractor is not entitled to make any further Claim (not identified in the second Statement of Outstanding Claims or the Final Payment Claim) whatsoever against the Principal, and the Principal will not be liable upon any further Claim by the Contractor, but this clause does not apply to the Contractor's right to defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor.
- (f) Despite clause 11.16(e), if subsequent to the lodgement by the Contractor of the Final Payment Claim, a final determination is made under clause 18 increasing the Contract Sum or otherwise entitling the Contractor to the payment of money (including damages), the Contractor can lodge an amended Final Payment Claim to take account of the amount of the increase or the payment to which it is entitled. The amended claim must be lodged with the Principal's Representative within 28 days after the final determination is made.
- (g) The claims and statements required under this clause 11.16 are in addition to the other notices that the Contractor must give to the Principal's Representative under this Deed in order to preserve its entitlements to make any such Claims.
- (h) Without limiting clause 11.16(g), the Contractor cannot include in any claim or statement under this clause 11.16 any Claims that are barred under this Deed.

11.17 Release after Final Payment Claim

The Contractor releases the Principal from any Claim in respect of any fact, matter or thing arising out of, or in any way in connection with, the Contractor's Activities, the Enabling Works or this Deed that occurred prior to the date of submission of the Final Payment Claim, except for any Claim which has:

- (a) been included in the Final Payment Claim or Second Statement of Outstanding Claims which is given to the Principal's Representative within the time required by, and in accordance with, clause 11.16; and
- (b) not been barred under another provision of this Deed.

Notwithstanding anything else in this clause 11.17, this clause 11.17 does not affect the Contractor's right to defend or set-off by way of counter-claim, a claim made by the Principal or a Principal Associate against the Contractor.

11.18 Interest

- (a) If any moneys due to either party remain unpaid after the date upon which, or after the expiration of the period within which, they should have been paid, then interest will be payable thereon from, but excluding the date upon which, or the date at the end of the expiration of the period within which, they should have been paid to and including the date upon which the moneys are paid.
- (b) The rate of interest will be the rate from time to time prescribed for judgement debts under the *Uniform Civil Procedure Rules 2005* (NSW). Interest will be compounded at six monthly intervals.
- (c) This will be the party's sole entitlement to interest, including damages for loss of use of, or the cost of borrowing, money.

11.19 Correction of Payment Statements

The Principal's Representative may in any Payment Statement:

- (a) correct any error; and
 - (b) modify any assumptions or allowances made,
- in any previous Payment Statement.

11.20 Costs Allowed by the Contractor

- (a) Except as expressly provided in clause 11.25 of this Deed, it is agreed that the Contractor is not required to pay the long service leave levy in respect of the Contractor's Activities under the *Building and Construction Industry Long Service Payments Act 1986* (NSW) and the Contractor has allowed in the Contract Sum for and will be wholly responsible for the payment of:
 - (i) without limiting clause 20, all customs duties, tariffs and similar taxes (other than GST) and charges paid or payable on all items that are:
 - (A) intended to be used for, or that are to be incorporated into, the Enabling Works; or
 - (B) otherwise used for the Contractor's Activities;

- (ii) not used;
 - (iii) all royalties, licence fees and similar payments for Intellectual Property Rights in respect of:
 - (A) the Contractor's Activities;
 - (B) the Enabling Works; and
 - (C) all Contract Documentation; and
 - (iv) all fluctuations in the value of the Australian dollar against other currencies.
- (b) The Contractor will have no entitlement to any increase in the Contract Sum or otherwise to make any Claim against the Principal in respect of any of those amounts, whatever they may actually be.

11.21 Security of Payment Act

- (a) When an adjudication occurs under the SOP Act, and the Principal has paid an adjudicated amount to the Contractor:
- (i) the amount will be taken into account by the Principal's Representative in issuing a Payment Statement;
 - (ii) if it is subsequently determined pursuant to this Deed that the Contractor was not entitled under this Deed to payment of some or all of the adjudicated amount that was paid by the Principal (**Overpayment**), the Overpayment will be a debt due and payable by the Contractor to the Principal which the Contractor must pay to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iii) if the adjudicator's determination is quashed, overturned or declared to be void, the adjudicated amount then becomes a debt due and payable by the Contractor to the Principal upon demand and in respect of which the Contractor is not entitled to claim or exercise any set-off, counterclaim, deduction or similar right of defence;
 - (iv) the Principal's Representative:
 - (A) is not bound by the adjudication determination;
 - (B) may reassess the value of the work that was valued by the adjudicator; and
 - (C) may, if it disagrees with the adjudication determination, express its own valuation in any Payment Statement; and
 - (v) the Payment Statement referred to in clause 11.21(a)(iv)(C) will be treated as a final determination of the value of the relevant work, subject to the provisions of clause 18.
- (b) Nothing in this Deed will affect, restrict or limit the Contractor's right to:

- (i) refer for adjudication any dispute falling within section 17 of the SOP Act; or
 - (ii) suspend the Contractor's Activities under sections 15, 16 or 24 of the SOP Act.
- (c) For the purposes of section 17(3) of the SOP Act, the Contractor irrevocably chooses the Institute of Arbitrators & Mediators Australia, as the "authorised nominating authority" (as that term is defined in the SOP Act) for any adjudication application it may make under the SOP Act in respect of the subject matter of this Deed.

11.22 Payment Withholding Request under Division 2A of Part 3 of the SOP Act

- (a) Without limiting clause 11.11 or clause 19.15, the Principal may withhold any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act.
- (b) If the Principal withholds from money otherwise due to the Contractor any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act, then:
 - (i) the Principal may plead and rely upon Division 2A of Part 3 of the SOP Act as a defence to any claim for the money by the Contractor from the Principal; and
 - (ii) the period during which the Principal retains money due to the Contractor pursuant to an obligation under Division 2A of Part 3 of the SOP Act will not be taken into account for the purpose of determining:
 - (A) any period for which money owed by the Principal to the Contractor has been unpaid; and
 - (B) the date by which payment of money owed by the Principal to the Contractor must be made.
- (c) The Contractor agrees not to commence proceedings to recover any amount withheld by the Principal pursuant to a payment withholding request served on the Principal in accordance with Division 2A of Part 3 of the SOP Act.
- (d) Any amount paid by the Principal pursuant to section 26C of the SOP Act will be a debt due and payable from the Contractor to the Principal.
- (e) If the Principal withholds money pursuant to a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act and the Contractor:
 - (i) pays the amount claimed to be due under the adjudication application to which the payment withholding claim relates; or
 - (ii) becomes aware that the adjudication application to which the payment withholding claim relates has been withdrawn,

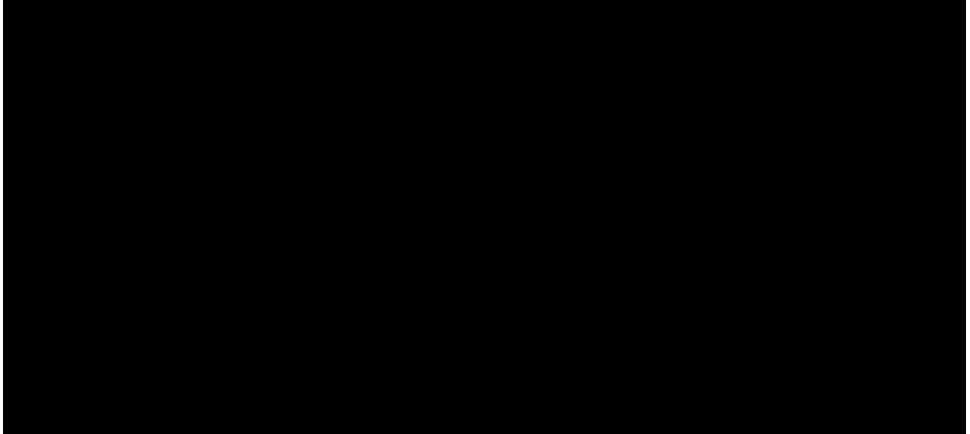
then the Contractor must so notify the Principal and the Principal's Representative within 5 days after the occurrence of the event in subparagraph (e)(i) or (ii) (as applicable) by providing to the Principal

and the Principal's Representative a statement in writing in the form of a statutory declaration together with such other evidence as the Principal or Principal's Representative may require evidencing that the amount has been paid or the adjudication application has been withdrawn (as the case may be).

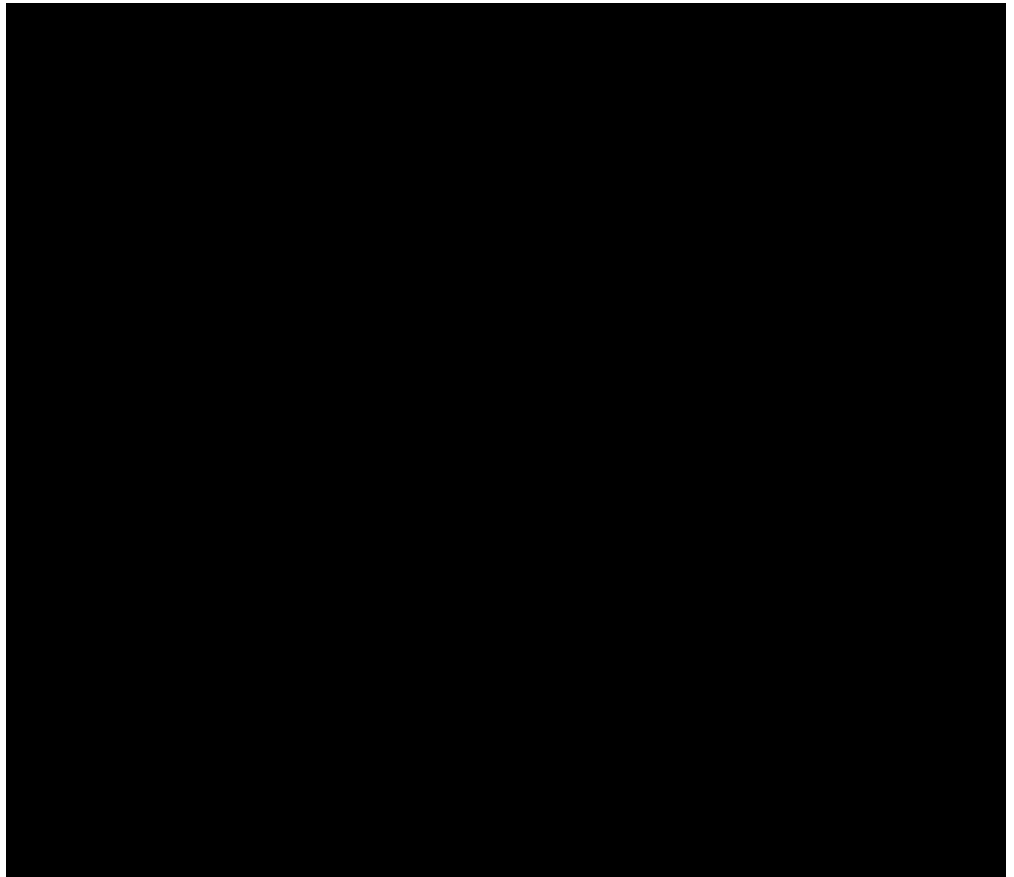
11.23 Title

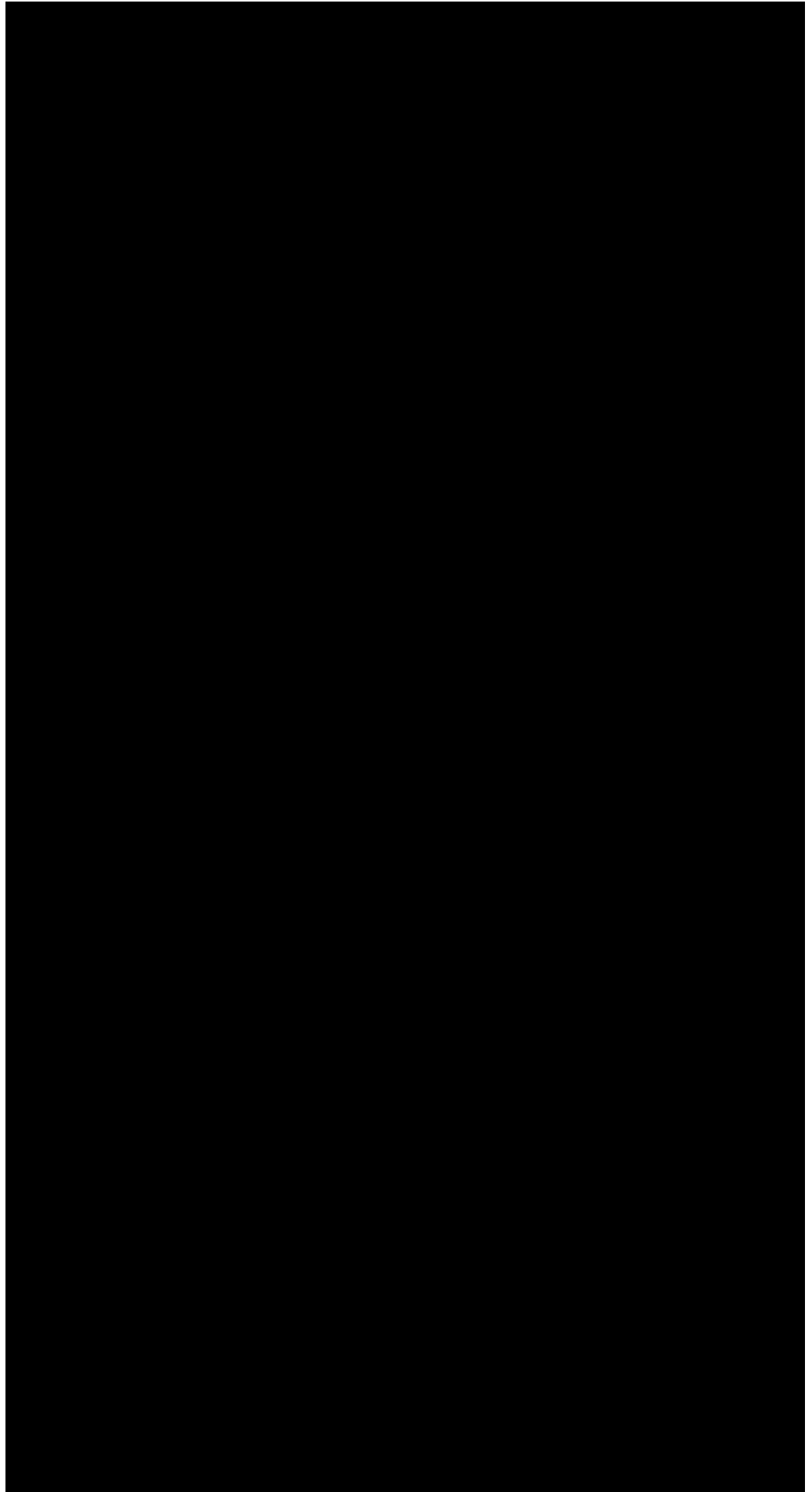
Title in all items forming part of the Enabling Works will pass progressively to the Principal (or, in respect of Remote Works constructed on Remote Sites, to the Principal's nominee being the relevant entity who is to take the benefit of the Remote Works) on the earlier of payment for or delivery of such items to the Site or Remote Site (as applicable). Risk in all such items remains with the Contractor in accordance with clause 13.

11.24 No double up



11.25 Materials price cost adjustment





12 Completion

12.1 Portion Completion

- (a) The Contractor must give the Independent Certifier, the Principal's Representative and any relevant Third Party written notice on each date that is:
 - (i) 90 days;
 - (ii) 30 days; and
 - (iii) 7 days,
 before it anticipates achieving Portion Completion of a Portion.
- (b) Following the receipt of a notice under clause 12.1(a)(ii):
 - (i) the Principal's Representative, Independent Certifier and relevant Third Party must promptly and no later than 20 days after receiving the written notice under clause 12.1(a)(ii) jointly inspect those Works; and
 - (ii) the Contractor acknowledges and agrees that the Principal's Representative and relevant Third Party may make representations to the Independent Certifier of any instance of non-compliance of the Enabling Works with this Deed, including the SPR, the Management Requirements or the Contractor's Outline Design.
- (c) When the Contractor considers it has achieved Portion Completion it must notify the Principal's Representative, Independent Certifier and any relevant Third Party and provide the Independent Certifier with copy to the Principal's Representative an executed Contractor's Certificate of Portion Completion.
- (d) The Principal's Representative and the Independent Certifier must, within 5 Business Days of receipt of the Contractor's Certificate of Portion Completion jointly inspect those Enabling Works.
- (e) Following the joint inspection under clause 12.1(d), the Independent Certifier must within 5 Business Days:
 - (i) if Portion Completion has been achieved, provide to the Principal's Representative, Contractor and any relevant Third Party a Certificate of Portion Completion; or
 - (ii) if Portion Completion has not been achieved, provide a notice to the Contractor and the Principal in which it states the items which remain to be completed before Portion Completion will be achieved.
- (f) If the Independent Certifier issues a notice under clause 12.1(e)(ii) the Contractor must proceed with the relevant Contractor's Activities to bring the relevant Enabling Works to Portion Completion and thereafter when it considers it has achieved Portion Completion it must give the Principal and the Independent Certifier a revised executed Contractor's Certificate of Portion Completion after which clause 12.1(a) to this clause 12.1(f) will re-apply.

- (g) The Contractor acknowledges and agrees that the Principal's Representative may provide comments to the Independent Certifier (with copy to the Contractor) in relation to any non-compliance of the Contractor's Activities with this Deed and whether Portion Completion has been achieved.

12.2 Effect of Certificate of Portion Completion

A Certificate of Portion Completion shall not:

- (a) constitute approval by the Principal of the Contractor's performance of its obligations under this Deed;
- (b) be taken as an admission or evidence that the Enabling Works comply with this Deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

12.3 Not used

12.4 Enabling Works Practical Completion

- (a) The Contractor must give the Principal's Representative and the Independent Certifier written notice on each date that is:
 - (i) 30 days;
 - (ii) 7 days,

before the date on which the Contractor estimates that Enabling Works Practical Completion of the Enabling Works will be achieved.
- (b) When the Contractor considers it has achieved Enabling Works Practical Completion it must notify the Principal's Representative and the Independent Certifier and provide them with an executed Contractor's Certificate of Enabling Works Practical Completion.
- (c) The Contractor acknowledges and agrees that the Principal's Representative may within 5 Business Days of receipt of the Contractor's Certificate of Enabling Works Practical Completion, make representations to the Independent Certifier as to whether the Contractor has failed to deliver to the Principal's Representative those documents required to be provided under the definition of Enabling Works Practical Completion.
- (d) The Independent Certifier must within 2 Business Days of the expiry of the timeframe as set out in clause 12.4(c):
 - (i) if Enabling Works Practical Completion has been achieved, provide to the Principal's Representative and the Contractor a Certificate of Enabling Works Practical Completion; or
 - (ii) if Enabling Works Practical Completion has not been achieved, provide a notice to the Contractor and the Principal in which it states the items which remain to be completed before Enabling Works Practical Completion will be achieved.
- (e) If the Independent Certifier issues a notice under clause 12.4(d)(ii) the Contractor must proceed to bring the Enabling Works to Enabling Works Practical Completion and thereafter when it considers it has achieved

Enabling Works Practical Completion it must give the Principal and the Independent Certifier a revised executed Contractor's Certificate of Enabling Works Practical Completion after which clause 12.4(a) to this clause 12.4(e) will re-apply.

12.5 Effect of Certificate of Enabling Works Practical Completion

A Certificate of Enabling Works Practical Completion shall not:

- (a) constitute approval by the Principal of the Contractor's performance of its obligations under this Deed;
- (b) be taken as an admission or evidence that the Enabling Works comply with this Deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

12.6 Independent Certifier determination

None of the Principal or the Contractor may bring any Claim against each other in connection with the issue or non-issue of the Certificate of Portion Completion.

12.7 Not used

12.8 Interpretation of Portions

- (a) The parties acknowledge that as at the date of this Deed, the Enabling Works comprise three Portions, and that the Principal's Representative may instruct additional Portions in accordance with this Deed.
- (b) The interpretation and application of:
 - (i) Date for Portion Completion;
 - (ii) Portion Completion;
 - (iii) Defects Rectification Period,
 apply separately to each Portion and references in the relevant definitions and clauses to the Enabling Works mean those parts of the Enabling Works comprised in the relevant Portion.
- (c) Not used.

12.9 Consequences of Portion Completion

Upon the issue of a Certificate of Portion Completion by the Independent Certifier:

- (a) the Principal may take possession of, occupy and use the Portion to the extent that the relevant Enabling Works have been certified as having reached Portion Completion; and
- (b) the Principal must allow the Contractor reasonable access to the Portion being occupied and used by the Principal to enable the Contractor to bring the balance of any remaining Portions (if any) to Portion Completion.

12.10 Third Party Works

- (a) Where a Portion includes Third Party Works, but those Third Party Works do not constitute the entirety of that Portion then notwithstanding the provisions of clauses 12.1(a), 12.4(a) and any relevant Third Party Agreement, the Contractor must provide to the Principal's Representative, Independent Certifier, and relevant Third Party written notice on each date that is:
- (i) 90 days;
 - (ii) 30 days;
 - (iii) 7 days; and
 - (iv) any other prior time period required by a Third Party Agreement,
- before that date on which the Contractor estimates that those Third Party Works will reach "practical completion" in terms of the Third Party Agreement;
- (b) If in relation to an element of the Enabling Works which comprises Third Party Works:
- (i) the land on which the Third Party Works are located is to be handed back to the Third Party; and
 - (ii) the Third Party Works have reached "practical completion" in terms of the Third Party Agreement before the Date of Portion Completion;
- then
- (iii) the Principal's Representative must by written notice to the Contractor determine that the relevant Third Party Works will be separated from the remainder of the Enabling Works and will constitute a Portion (TPA).
- (c) The Principal and the relevant Third Party may, after the Contractor is given written notice by the Principal's Representative under clause 12.10(b), by further written notice from the Principal's Representative to the Contractor occupy or use any Portion (TPA) which has reached "practical completion" in terms of the Third Party Agreement.
- (d) If the Principal's Representative gives any such notice under clause 12.10(b):
- (i) the Portion (TPA) will be deemed to have reached Portion Completion and the Defects Rectification Period applicable to the Portion (TPA) will commence from the date the Portion (TPA) is deemed to have reached Portion Completion;
 - (ii) the Contractor will no longer have care and control of or be responsible for the Portion (TPA) that has been returned to the Third Party;
 - (iii) the Date for Portion Completion of the Portion will not be amended;

- (iv) the Date for Enabling Works Practical Completion and the obligation for the Contractor to pay liquidated damages in respect of Enabling Works Practical Completion will not be amended;
- (v) the Principal must ensure that the Contractor is not impeded in the performance of the Contractor's Activities as a result of the hand back of the Portion (TPA) to the relevant Third Party;
- (vi) the creation of Portion (TPA) will not otherwise limit or affect the obligations of the parties under this Deed.

12.11 Additional Portions

- (a) The parties acknowledge and agree that the Principal or the Principal's Representative may, at any time, direct:
 - (i) that additional Portions are added to the Enabling Works; and
 - (ii) that the Enabling Works, including any existing Portion, are divided into separate Portions.
- (b) For each additional Portion directed, the Principal or the Principal's Representative will identify the:
 - (i) Portion of the Enabling Works; and
 - (ii) Date for Portion Completion.

12.12 Not used

12.13 Liquidated Damages

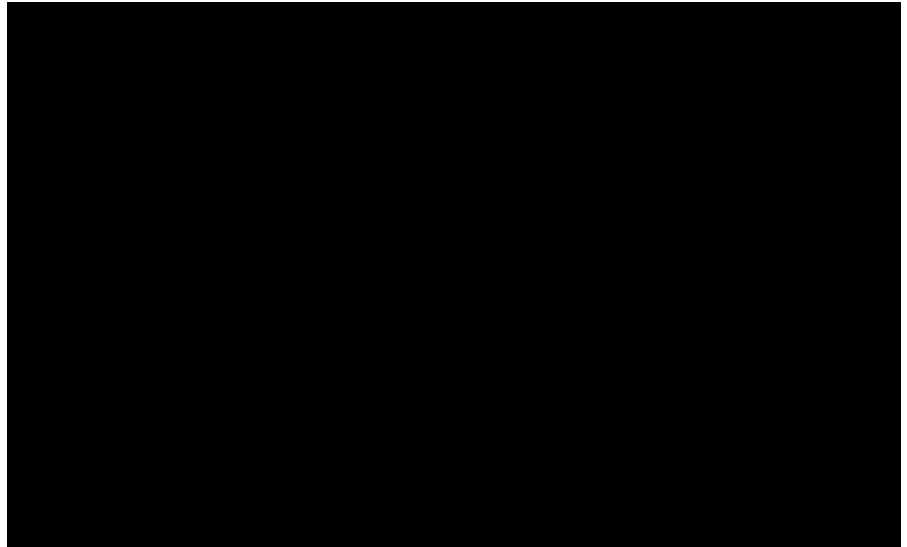
- (a) The Contractor agrees and acknowledges that:
 - (i) the Principal is developing the Project in order to achieve the Project Objectives; and
 - (ii) its failure to achieve Enabling Works Practical Completion by the Date for Enabling Works Practical Completion will not only result in direct losses to the Principal, but will also lead to the failure of the Principal to achieve the Project Objectives and the loss arising from this failure of is not capable of easy or precise calculation.
- (b) If Enabling Works Practical Completion is not achieved by the Date for Enabling Works Practical Completion, the Contractor must pay or allow to the Principal, liquidated damages at the rate specified in Schedule 1 for each day after the relevant Date for Enabling Works Practical Completion until the earlier of:
 - (i) the Date of Enabling Works Practical Completion; and
 - (ii) the date this Deed is terminated.
- (c) The parties agree that the liquidated damages provided for in clause 12.13(b):
 - (i) are a genuine pre-estimate of the anticipated or actual Loss that will be suffered or incurred by the Principal if Enabling

Works Practical Completion occurs after the Date for Enabling Works Practical Completion and the Contractor has freely agreed that these liquidated damages represent proper, fair and reasonable amounts recoverable by the Principal for both its own Loss and for its failure to achieve its policy objectives arising from the failure of the Contractor to achieve Enabling Works Practical Completion by the Date for Enabling Works Practical Completion and do not constitute, and are not intended to be, a penalty; and

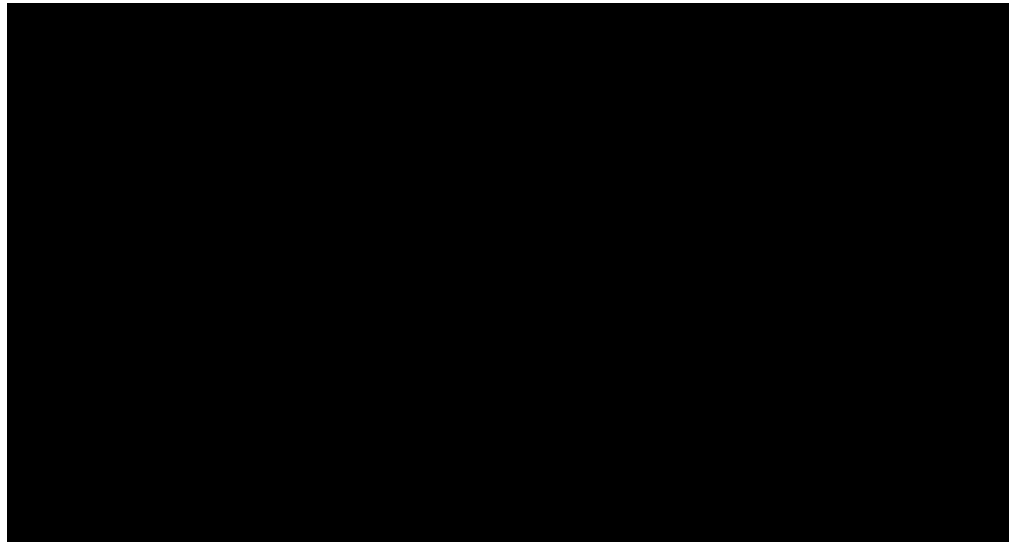
- (ii) will be recoverable from the Contractor as a debt due and payable to the Principal.
- (d) The Principal and the Contractor acknowledge and agree that they are both parties contracting at arms' length, have equal bargaining power, possess extensive commercial experience and expertise and are being advised by their own legal, accounting, technical, financial, economic and other commercial professionals in relation to their rights and obligations pursuant to this Deed.
- (e) The Contractor acknowledges that it agrees to pay the liquidated damages under clause 12.13(b) without any duress, coercion, undue influence or any other form of unconscionable conduct or impermissible or objectionable persuasion on the part of the Principal.
- (f) The Contractor enters into the obligation to pay the amounts specified in clause 12.13(b) with the intention that it is a legally binding, valid and enforceable contractual provision against the Contractor in accordance with its terms.
- (g) The Contractor agrees:
 - (i) to exclude and expressly waives the right of the benefit of, to the extent permissible, the application or operation of any legal rule or norm, including under statute, equity, the prevention principle and common law, relating to the characterisation of liquidated amounts payable under a deed upon a breach occurring as penalties or the enforceability or recoverability of such liquidated amounts; and
 - (ii) that if this clause 12.13 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Principal from recovering liquidated damages, the Principal will be entitled to recover general damages (including loss of revenue and loss of profits from the loss of use of the Enabling Works) as a result of the Contractor failing to achieve Enabling Works Practical Completion by the Date for Enabling Works Practical Completion, but the Contractor's Liability for such damages (whether per day or in aggregate) will not be any greater than the Liability which it would have had if the clause had not been void, invalid or otherwise inoperative.
- (h) The Principal's Representative, when issuing a Payment Statement pursuant to clause 11.8 after the Date for Enabling Works Practical Completion, may include a provisional assessment of the amount then provisionally due by way of liquidated damages then accruing under clause 12.13(b) to the date of the Payment Statement (despite Enabling Works Practical Completion not having occurred).

- (i) No liquidated damages or other damages will be payable by the Contractor for the Contractor's failure to achieve Portion Completion by the Date for Portion Completion.

(j)



12.14 Limit of Liquidated Damages



12.15 Final Completion

- (a) Immediately after the Date of Enabling Works Practical Completion, the Contractor must expeditiously and diligently progress the rectification of Defects and outstanding Contractor's Activities which are required to achieve Final Completion.
- (b) Final Completion will be achieved when:
 - (i) Enabling Works Practical Completion has been achieved under this Deed;
 - (ii) the Defects Rectification Period has expired and all Defects have been corrected by the Contractor or waived by the Principal's Representative;
 - (iii) the Contractor has reinstated all Temporary Works in accordance with the requirements of this Deed;

- (iv) all monies owing by the Contractor to the Principal under this Deed has been paid;
- (v) the Contractor has:
 - (A) obtained all Authority Approvals that it is required to obtain under this Deed which:
 - (aa) were not obtained before Enabling Works Practical Completion; or
 - (ab) are to be obtained prior to Final Completion, and provided such Authority Approvals to the Principal's Representative; and
- (vi) the Contractor has done everything else which this Deed requires the Contractor to have done as a condition precedent or precondition to Final Completion.
- (c) When the Contractor considers that Final Completion has been achieved, the Contractor must give the Principal's Representative written notice two months before it anticipates completing all the work to be completed prior to achieving Final Completion.
- (d) The Principal's Representative and the Contractor's Representative must, within 28 days before the date the Principal's Representative expects Final Completion to occur, but no earlier than 28 days before the end of the latest Defects Rectification Period, jointly inspect the Enabling Works at a mutually convenient time.
- (e) Following the joint inspection under clause 12.15(d), the Principal's Representative must issue a notice to the Principal and the Contractor containing a list of the items that are apparent and it believes must be completed before Final Completion is achieved.
- (f) If the Principal's Representative issues a notice under clause 12.15(e), the Contractor must continue to bring the Contractor's Activities to Final Completion and thereafter when the Contractor considers it has achieved Final Completion, the Contractor must notify the Principal's Representative in writing by means of a Contractor's Certificate of Final Completion in accordance with Schedule 8. Thereafter, the Principal's Representative and the Contractor's Representative must jointly inspect the Enabling Works at a mutually convenient time.
- (g) Following the joint inspection under clause 12.15(f), the Principal's Representative must within 21 days of receipt of a notice under clause 12.15(f), or of receipt of a notice under clause 12.15(h), issue a notice to the Principal and the Contractor:
 - (i) if satisfied that Final Completion has been achieved, stating the date on which the Principal's Representative determines Final Completion was achieved (**Date of Final Completion**); or
 - (ii) if not satisfied that Final Completion has been achieved:
 - (A) containing a list of the items which it believes must be completed before Final Completion is achieved; or

- (B) stating that it believes the Contractor is so far from achieving Final Completion that it is not practicable to issue a list as contemplated by clause 12.15(g)(ii)(A).
- (h) If the Principal's Representative issues a notice under clause 12.15(g)(ii)(A) or clause 12.15(g)(ii)(B), the Contractor must continue to proceed to bring the Enabling Works to Final Completion and thereafter when it considers it has achieved Final Completion of the Enabling Works the Contractor must notify the Principal's Representative in writing after which the second sentence of clause 12.15(f), clause 12.15(g) and this clause 12.15(h) will reapply.

12.16 Effect of Notice of Final Completion

A notice issued under clause 12.15(g)(i) shall not:

- (a) constitute approval by the Principal of the Contractor's performance of its obligations under this Deed;
- (b) be taken as an admission or evidence that the Enabling Works comply with this Deed; or
- (c) prejudice any rights or powers of the Principal or the Principal's Representative.

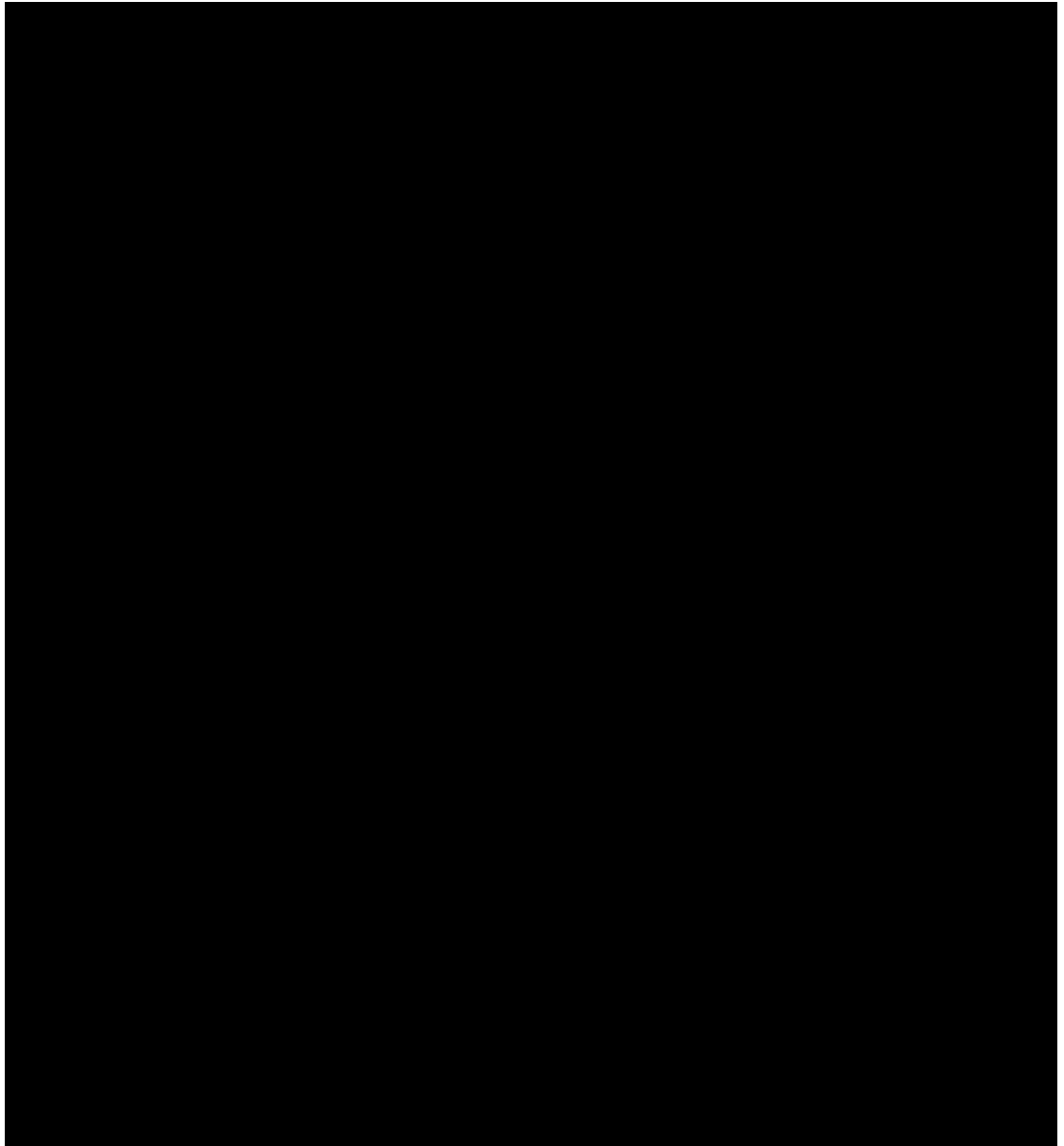
13 Care of the Work, Risks and Insurance

13.1 Care of the Works

Except where it arises from an Excepted Risk, and without limiting the generality of the Contractor's obligations, the Contractor:

- (a) from and including the earlier of the date of commencement of the Contractor's Activities in respect of a Portion and the date on which the Contractor is given access to the Site, or a part of the Site, until, 4:00pm on the Date of Portion Completion for the relevant Portion, will:
 - (i) in respect of each Portion, be responsible for the care of and will bear the risk of [REDACTED] any loss of, or damage to:
 - (A) the Contractor's Activities;
 - (B) the Enabling Works;
 - (C) Temporary Works;
 - (D) Construction Plant;
 - (E) unfixed plant and materials (whether on or off the Site) the value of which has been included in a Payment Statement under clause 11.8; and
 - (F) things entrusted to the Contractor by the Principal or brought onto the Site by the Contractor for the purpose of carrying out the Contractor's Activities; and
 - (ii) provide the storage and protection necessary to preserve these things;

- (b) (after the time after which the Contractor ceases to be responsible under paragraph (a) for the care of a part of the Enabling Works or any other thing referred to in sub-paragraph (a)(i)) will bear the risk of [REDACTED] any loss of or damage to that part of the Enabling Works or other thing, arising from:
 - (i) any act or omission of the Contractor during the Defects Rectification Period; or
 - (ii) any event which occurred while the Contractor was responsible for the care of the relevant part of the Enabling Works or other thing under paragraph (a) in connection with the Contractor's Activities; and
- (c) will be responsible for the care of or for loss or damage to any item under this clause 13 unaffected by:
 - (i) the fact that under Schedule 22, the place in which the item is located is subject to the control of the Contractor or an Other Contractor; or
 - (ii) any other provision of Schedule 22.





13.3 Reinstatement

- (a) During the period during which the Contractor bears the risk of loss or damage, and while the Contractor is responsible for its care, if loss or damage occurs to anything for which the Contractor is responsible under clause 13, the Contractor must:
 - (i) subject to clause 13.3(a)(ii), promptly replace or otherwise make good the loss or repair the damage; and
 - (ii) where the loss or damage arises from an Excepted Risk, without fault or omission on the part of the Contractor, only comply with clause 13.3(a)(i) to the extent directed by the Principal's Representative.
- (b) The Contractor will bear the cost of such replacement, making good or repair except to the extent that the loss or damage arises from an Excepted Risk, in which event this replacement, making good or repair will, to the extent the Loss or damage arises from an Excepted Risk (but subject to paragraph (b)), be treated as if it were a Variation the subject of a direction by the Principal's Representative and clause 6.2 applied.

13.4 Works, public liability insurance and pollution liability insurance

- (a) Upon entering into this Deed, the policies of insurance included in Exhibit D will come into effect and will cover the Contractor, the Principal, the Principal's Representative and all subcontractors employed by the Contractor in respect of the Contractor's Activities.
- (b) This insurance is subject to the exclusions, conditions and excesses noted on the policies and is deemed to satisfy the Principal's obligation to effect insurance. The Contractor acknowledges and agrees that it was provided with a copy of terms of the insurance policies in Exhibit D prior to the date of this Deed and it reviewed and examined the terms of those insurance policies and:
 - (i) has satisfied itself as to the nature and extent of the cover provided by those insurance policies;
 - (ii) acknowledges that the policies of insurance included in Exhibit D do not cover every risk to which the Contractor might be exposed and are subject to deductibles and limits and the Contractor may, if it chooses to do so, at its cost effect appropriate insurance for any risk or liability which is not covered by the policies of insurance included in Exhibit D; and
 - (iii)

[REDACTED]

13.5 Contractor's insurance obligations

- (a) The effecting of insurance will not limit the liabilities or obligations of a party under any other provision of this Deed.

- (b) The Contractor must before the Contractor commences the Contractor's Activities or as otherwise required by this Deed:
 - (i) effect and have in place the following insurance with insurers of the Required Rating:
 - (A) workers compensation insurance, employers indemnity insurance or similar insurance, in accordance with the Laws of any State, Territory or other jurisdiction where the Contractor's Activities are being performed;
 - (B) an insurance policy covering loss or damage to the Construction Plant (whether owned, hired or leased by the Contractor) which provides cover against all physical loss or damage to any such Construction Plant;
 - (C) professional indemnity insurance which covers liability (including to the Principal) arising from a breach of a duty owed in a professional capacity, whether owed in contract or otherwise, by any act or omission of the Contractor or its Subcontractors or Associates in relation to carrying out the Contractor's Activities;
 - (D) motor vehicle insurance covering all mechanically propelled vehicles used in connection with the Contractor's Activities, whether registered, capable of being registered or required under the Law to be registered, extended specifically to cover the transportation of items and substances, and including:
 - (aa) insurance against personal injury or death, as required under all applicable Laws; and
 - (ab) in addition to the coverage provided under clause 13.4, insurance for third party property damage and personal injury or death;
 - (E) if the things the care of which the Contractor is responsible for under clause 13 are in transit (including storage and transhipment) from any place outside of Australia, the Contractor shall effect or maintain (or ensure that its Subcontractors effect and maintain) marine transit insurance on an "all risks" basis, including war, riots, strikes and civil commotion coverage, covering those things until they are delivered to the Site, unpacked, inspected and confirmed as in sound condition;
 - (F) in respect of marine craft greater than 15 meters (owned or not owned) used in connection with carrying out the Contractor's Activities under this Deed, the Contractor shall effect and maintain (or ensure that its Subcontractors effect and maintain) hull and protection and indemnity insurance. With respect to the protection and indemnity insurance, such insurance will be for an amount not less than the amount stated in Schedule 1 for any one occurrence;
 - (G) any insurance that the Contractor is required to obtain by virtue of any Law or Change in Law;

- (H) damage insurance (for replacement value) in respect of all materials being or to be fabricated overseas to be incorporated into or form part of the Enabling Works (provided that the Contractor may procure that this insurance is effected by a Subcontractor); and
- (I) any other insurance that the Principal may reasonably require the Contractor to obtain.

for amounts not less than and with deductibles (if any) referred to in Schedule 1;

- (ii) ensure the Construction Plant insurance and motor vehicle insurance (except for compulsory third party insurance for bodily injury as required by the Law):
 - (A) are policies in the joint names of the Principal and the Contractor, and cover the Principal and the Principal's Representative (including any appointee under clauses 9.2 or 9.3), for their respective rights and interests, and their liabilities to third parties and Liability to each other excluding in respect of the plant, equipment or motor vehicles of the Principal, the Principal's Representatives or parties other than the Contractor;
 - (B) cover loss or damage to property (other than property described in clause 13) and the death of or injury to any person (other than Liability which the Law requires to be covered under a workers compensation insurance or similar insurance policy), arising out of, or in any way in connection with, the Contractor's Activities;
 - (C) in respect of the Construction Plant insurance only, includes a cross-liability clause in accordance with clause 13.9; and
 - (D) is for an amount in respect of any occurrence not less than the amount referred to in Schedule 1;
- (iii) ensure that any insurance policy required by sub-paragraphs (b)(ii)(E) to (I) is in place before the Contractor's Activities covered by such policy or policies commence; and
- (iv) not used;

(bi) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- (c) in relation to the workers compensation insurance or similar insurance:
 - (i) where permitted by Law, extend the insurance policy to provide indemnity to the Principal for its statutory liability to the Contractor's employees;

- (ii) ensure that each of its Subcontractors has such workers compensation insurance or similar insurance covering the Subcontractor's employees; and
- (iii) ensure it insures against Liability for death of or injury to persons employed by the Contractor or its Subcontractors as required by any Law for an amount not less than the amount stated in Schedule 1 (if any) for any one event, subject to the maxima or minima imposed by relevant Law; and
- (d) in relation to marine transit insurance, ensure that the policy:
 - (i) is in the joint names of the Principal and Contractor, and covers the Principal, the Principal's Representative, the Contractor and all its Subcontractors, for their respective rights and interests;
 - (ii) covers replacement value;
 - (iii) includes a cross-liability clause in accordance with clause 13.9;
 - (iv) includes a delayed unpacking clause and a 50:50 clause; and
 - (v) for amounts not less than and with deductibles (if any) referred to in Schedule 1.

13.6 General insurance policies

The Contractor must:

- (a) in respect of any insurance policy (including an insurance policy which clause 2.2(c) of this Deed requires the Contractor to procure to be effected by a Subcontractor) which it is required to effect, or procure to be effected, pursuant to this Deed and where required by the Principal's Representative, provide the Principal's Representative (or other person nominated for this purpose by the Principal's Representative) within 5 days of a request with:
 - (i) a certificate of currency demonstrating that the policy is current and in compliance with the Contractor's obligation to insure (or procure insurance), [REDACTED]
[REDACTED]
[REDACTED] and
 - (ii) not used;
- (b) ensure that except for workers compensation or similar insurance:
 - (i) the Principal receives at least 14 days' notice of any cancellation or material change of any insurance policy effected under clause 13.5;
 - (ii) a notice of claim given to the insurer by the Principal, the Contractor or a Subcontractor will be accepted by the insurer as a notice of claim by the Principal, the Contractor and the Subcontractor; and
 - (iii) where the Contractor receives a notice of cancellation of any insurance policy effected under clause 13.5, give notice to the Principal about that notice at least 14 days prior to the cancellation; and

- (c) ensure that it:
 - (i) does not do anything which prejudices any insurance;
 - (ii) where required, rectifies anything which might prejudice any insurance;
 - (iii) reinstates an insurance policy which the Contractor is required to effect under clause 13.5 if it lapses;
 - (iv) does not cancel, vary or allow an insurance policy which the Contractor is required to effect under clause 13.5 to lapse without the prior written consent of the Principal's Representative;
 - (v) immediately notifies the Principal's Representative of any event that may result in an insurance policy which the Contractor is required to effect under clause 13.5 lapsing or being cancelled, and replaces that insurance policy prior to it lapsing or being cancelled; and
 - (vi) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.
- (d) If the Contractor fails to:
 - (i) provide copies of a certificate of currency of any insurance policy which the Contractor is required to effect together with evidence that the policy is current; or
 - (ii) effect or procure to be effected insurance which is with insurers of the Required Rating,

as required by clauses 2.2(c), 13.5 or 13.6, the Principal may, at its sole discretion and without prejudice to any other rights that it may have, take out that insurance and the cost will be a debt due from the Contractor to the Principal.
- (e) The Principal may refuse payment until the Contractor produces evidence of compliance with its insurance obligations under clauses 2.2(c) and 13.5. The rights given by this clause 13.6 are in addition to any other right.

13.7 Period of Insurance

The insurance the parties are required to have in place under this clause 13 must be maintained:

- (a) in the case of the works and public liability insurance policy required by clause 13.4, so as to provide cover until the later to occur of:
 - (i) the Contractor ceasing to be responsible under clause 13 for the care of anything; and
 - (ii) the Principal's Representative issues a notice under clause 12.15 stating the date on which Final Completion was achieved;

- (b) in the case of the pollution liability insurance policy required by clause 13.4, until the later of:
 - (i) the end of the Defects Rectification Period; and
 - (ii) the date upon which all Defects have been rectified in accordance with this Deed.
- (c) in the case of the Construction Plant insurance:
 - (i) until the Contractor ceases to bear the risk of loss of or damage to anything under clause 13; and
 - (ii) at any time it is being used in connection with the Contractor's Activities;
- (d) in the case of the workers compensation insurance and motor vehicle insurances, until the latest to occur of:
 - (i) the end of the Defects Rectification Period;
 - (ii) the date upon which all Defects have been rectified in accordance with this Deed; and
 - (iii) the Principal's Representative issues a notice under clause 12.15(g) stating the date on which Final Completion was achieved;
- (e) in the case of professional indemnity insurance, before commencing work covered by the policy referred to in clause 13.5(b)(i)(C) until at least the period specified in Schedule 1 after the Date of Enabling Works Practical Completion;
- (f) in the case of marine transit insurance and insurance required under clause 13.5(b)(i)(H), for so long as there is a risk that an event covered by the insurance may occur in relation to the Enabling Works or the Contractor's Activities; and
- (g) in the case of insurance required under clause 13.5(b)(i)(F), during the period required by any Law.

13.8 Notice of potential Claim

The Contractor must:

- (a) as soon as possible inform the Principal in writing of any occurrence that may give rise to a claim in connection with the Contractor's Activities under an insurance policy required by this Deed (except for the professional indemnity insurance policy);
- (b) keep the Principal informed of subsequent developments concerning the claim; and
- (c) ensure that its Subcontractors similarly inform the Contractor and the Principal in respect of occurrences that may give rise to a claim.

13.9 Cross Liability

Where this Deed requires insurance to be effected in joint names the party effecting the insurance must ensure that the insurance policy provides that:

- (a) insofar as the policy may cover more than one insured, all insuring agreements and endorsements (with the exception of limits of liability) will operate in the same manner as if there were a separate policy of insurance covering each named insured;
- (b) the insurer waives all rights, remedies or relief to which it might become entitled by subrogation against any of the parties covered as an insured;
- (c) failure by any insured to observe and fulfil the terms of the policy will not prejudice the insurance in regard to any other insured;
- (d) any non-disclosure by one insured does not prejudice the right of any other insured to claim on the policy; and
- (e) a notice to the insurer by one insured will be deemed to be notice by all insured parties.

13.10 Loss or Damage to Third Party Property

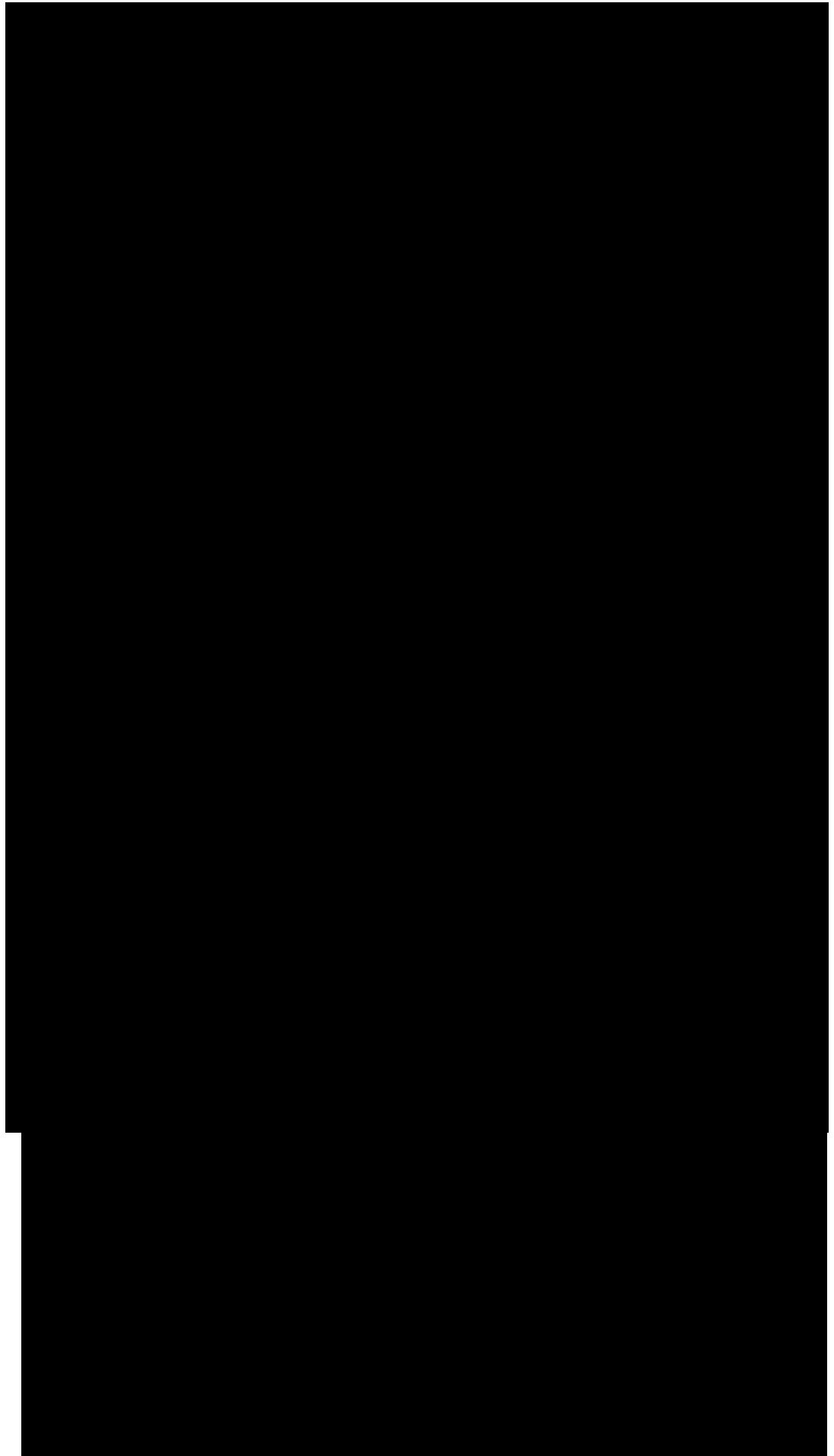
- (a) Without limiting clauses 13 and 13.1, where any loss of or damage to real or personal property (other than the Enabling Works, Temporary Works or Construction Plant) occurs arising out of, or in any way in connection with, the carrying out by the Contractor of the Contractor's Activities or a failure by the Contractor to comply with its obligations under this Deed, the Contractor must, at its cost, promptly repair any such loss or damage.
- (b) Without limiting clause 19.16, if the Contractor fails to carry out any repair work under clause 13.10(a), the Principal may carry out such work and all costs, losses and damages so suffered or incurred by the Principal will be a debt due and payable from the Contractor to the Principal.
- (c) The Contractor must immediately notify the Principal's Representative upon receipt of any letter of demand or notice of claim from or on behalf of any third party or any writ, summons, proceedings, impending prosecution or inquest and immediately forward a copy of any such documents to the Principal's Representative.

13.11

[REDACTED]

14 Default or Insolvency

[REDACTED]



14.2 Default Notice

- (a) If a Contractor Event of Default occurs the Principal may give the Contractor a notice (**Default Notice**):
- (i) stating that it is a notice under this clause 14.2; and
 - (ii) specifying the nature of the Contractor Event of Default.

(b)



- (c) Not used.

14.3 Cure Plan

- (a) If:
- (i) a Default Notice is given; and

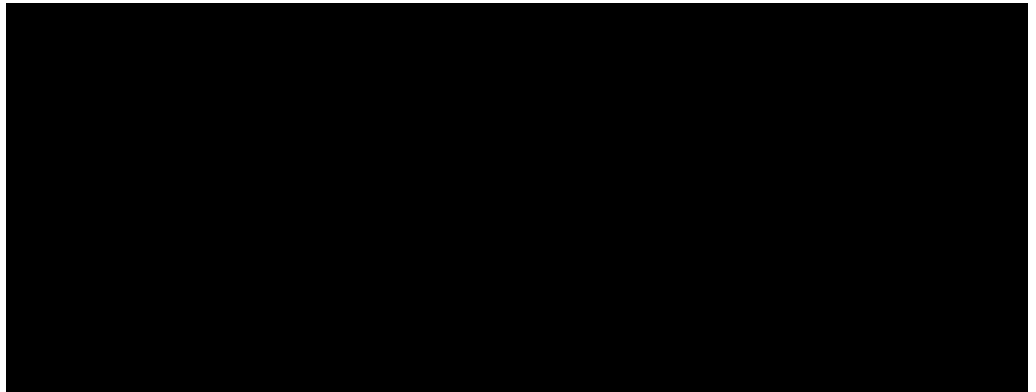
- (iv) prepare and submit to the Principal's Representative a draft plan describing the actions and measures which the Contractor will diligently pursue to remedy the Contractor Event of Default, including the time that will be taken to remedy the Contractor Event of Default (**Draft Cure Plan**).

- (b) The Draft Cure Plan must demonstrate that the Contractor is acting in good faith and is applying measures that are not less than Best Industry Practice in remedying the Contractor Event of Default.
- (c) Within 10 Business Days after receipt of the Draft Cure Plan the Principal's Representative must either:
- (i) approve the Draft Cure Plan by notifying the Contractor; or
 - (ii) reject the Draft Cure Plan by notifying the Contractor and providing reasons to the Contractor for its rejection.
- (d) If the Principal's Representative approves a Draft Cure Plan pursuant to clause 14.3(c)(i) (**Approved Cure Plan**):

- (i) the period of time in the Approved Cure Plan to remedy the Contractor Event of Default is the cure period (**Applicable Cure Period**); and
 - (ii) the Contractor must comply with and implement the Approved Cure Plan and remedy the Contractor Event of Default within the Applicable Cure Period.
- (e) If the Principal's Representative rejects a Draft Cure Plan pursuant to clause 14.3(c)(ii), the Contractor, in consultation with the Principal's Representative, must amend the Draft Cure Plan to meet the Principal's Representative's requirements and submit the amended Draft Cure Plan to the Principal's Representative for its approval, in which case this clause 14.3 will apply to the amended Draft Cure Plan as if it were originally submitted under clause 14.3(a)(iv).

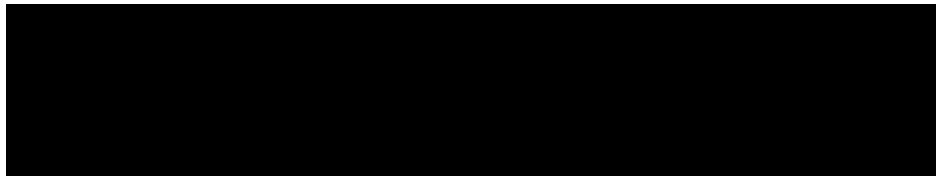


14.4 Prevention Plan



- (b) The Draft Prevention Plan must demonstrate that the Contractor is acting in good faith and is applying measures that are not less than Best Industry Practice in preventing the reoccurrence of the Contractor Event of Default.
- (c) Within 10 Business Days after receipt of the Draft Prevention Plan, the Principal's Representative must either:
 - (i) approve the Draft Prevention Plan by notifying the Contractor; or

- (ii) reject the Draft Prevention Plan by notifying the Contractor and providing reasons to the Contractor for its rejection.
- (d) If the Principal's Representative approves a Draft Prevention Plan pursuant to clause 14.4(c)(i) (**Approved Prevention Plan**), the Contractor must comply with and implement the Approved Prevention Plan.
- (e) If the Principal's Representative rejects a Draft Prevention Plan pursuant to clause 14.4(c)(ii), the Contractor, in consultation in good faith with the Principal's Representative, must amend the Draft Prevention Plan to meet the Principal's Representative's requirements and submit the amended Draft Prevention Plan to the Principal's Representative for its approval, in which case this clause 14.4 will apply to the amended Draft Prevention Plan as if it were originally submitted under clause 14.4(a).
- (f) If:
 - (i) a Default Notice is given;
 - (ii) the Contractor:
 - (A) fails to submit a Draft Prevention Plan in accordance with clause 14.4(a);
 - (B) fails to amend the Draft Prevention Plan to meet the Principal's requirements and submit the amended Draft Prevention Plan in accordance with clause 14.4(e) if the Principal rejects a Draft Prevention Plan pursuant to clause 14.4(c)(ii); or
 - (C) fails to comply with and implement the Approved Prevention Plan; and



15 Step-In

15.1 Step-in Events

Each of the following is a Step-in Event:

- (a) a Contractor Termination Event; and
- (b) an event or circumstance which arises out of or in connection with the Contractor's Activities that poses a serious threat to, or causes or will cause material damage or material disruption to:
 - (i) the safety of any person;
 - (ii) the Environment;
 - (iii) any property; or
 - (iv) the safe and secure performance of the Contractor's Activities.

15.2 Step-in Rights

(a) If:

- (i) a Step-in Event occurs; and
- (ii) the Principal has given notice to the Contractor which complies with clause 15.2(b),

then the Step-in Party may exercise or may appoint nominees (both **Step-in Parties**) to exercise all or any of the Step-in Powers set out in clause 15.3 in an endeavour to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event (**Step-in Right**).

(b) The notice referred to in clause 15.2(a)(ii) must be in writing and must specify:

- (i) the Step-in Event which has triggered the Step-in Right;
- (ii) the Contractor's Activities which the Principal proposes the Step-in Party will perform;
- (iii) the date on which the relevant Step-in Party proposes to commence performing the relevant Contractor's Activities; and
- (iv) the date, if any, on which the relevant Step-in Party proposes to cease exercising the relevant Contractor's Activities.

(c) The Step-in Right is without prejudice to the Principal's other rights in respect of a Step-in Event, including its rights under this Deed (including under clause 16) or at Law.

15.3 Step-in Powers

A Step-in Party may, in performing the Contractor's Activities referred to in the notice under clause 15.2(b), do anything in respect of those activities that the Contractor could do including:

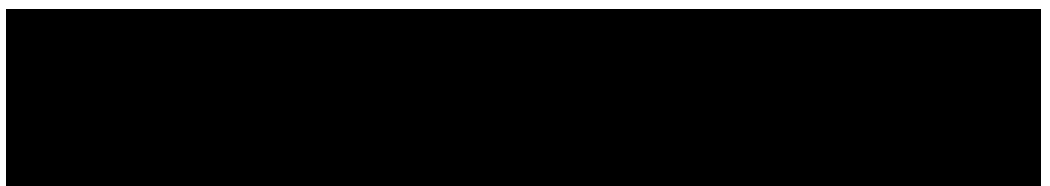
- (a) enter onto and remain in possession of all or any of the Site, the Remote Sites and Extra Land;
- (b) use the Construction Plant;
- (c) use the Design Documentation;
- (d) exercise all or any of the Contractor's rights, and perform all or any of the Contractor's obligations:
 - (i) in connection with the performance of the Contractor's Activities;
 - (ii) under or in relation to a Project Agreement or any other document to which the Contractor is a party; and
 - (iii) under or in relation to any Authority Approval held by the Contractor, as if it were the Contractor, to the exclusion of the Contractor;

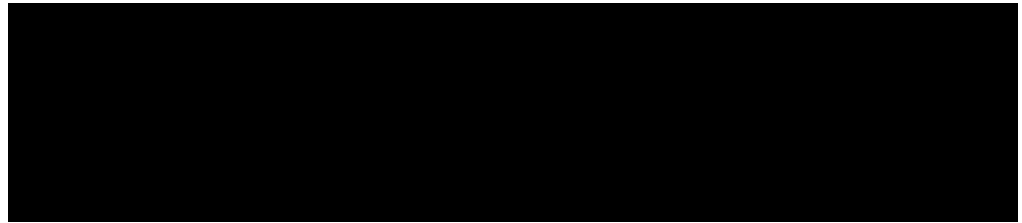
- (e) do anything the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (f) do anything incidental to the matters listed in clauses 15.3(a) to 15.3(e),
- (Step-in Powers).**

15.4 Contractor's obligations

- (a) The Contractor must:
 - (i) cooperate with the Step-in Party in the exercise of the Step-in Powers;
 - (ii) assist the Step-in Party to enable the Step-in Party to perform all or any of the Contractor's obligations under or in relation to any Accreditation or other Approval held by the Contractor;
 - (iii) take any step which the Step-in Party considers necessary or desirable to remedy the Step-in Event or overcome the risk or mitigate any consequences resulting from the Step-in Event; and
 - (iv) ensure that its Subcontractors and Associates do likewise.
- (b) Without limiting clause 15.4(a), the Contractor must:
 - (i) allow the Step-in Party to access and use:
 - (A) all or any of the Site the Remote Sites and Extra Land;
 - (B) the Construction Plant;
 - (C) the Design Documentation;
 - (D) the Contractor's Personnel; and
 - (E) any information the Step-in Party reasonably requires;
 - (ii) to the extent necessary, use best endeavours to procure any consents to disclose employee details and records to the Step-in Party;
 - (iii) assist the Step-in Party in dealing with ONRSR in relation to any Accreditation issues and any other Authorities and Third Parties;
 - (iv) comply with all reasonable directions given by the Step-in Party; and
 - (v) ensure that its Subcontractors and Associates do likewise,

to enable the Step-in Party to exercise its Step-in Powers.





- (e) The Contractor's obligations under this Deed will be suspended to the extent and for such period as is necessary to permit the Step-in Party to exercise its Step-in Rights.
- (f) The Contractor acknowledges that a Step-in Party is not under any obligation to remedy the Step-in Event nor to overcome the risk or mitigate any consequences resulting from the Step-in Event.

15.5 Principal's obligations

The Principal must ensure that each Step-in Party, in exercising the Step-in Powers, uses its reasonable endeavours to perform the Contractor's Activities in accordance with the requirements of this Deed.

15.6 No liability

The Contractor acknowledges that the Principal will have no Liability to the Contractor, and the Contractor will not be entitled to make any Claim against the Principal arising out of or in connection with:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise of a Step-in Power; nor
- (b) any Loss which results, except where it arises from:
 - (i) fraud or wilful default or gross negligence on the part of the Step-in Party or its Associates; or
 - (ii) a Qualifying Cause of Delay.

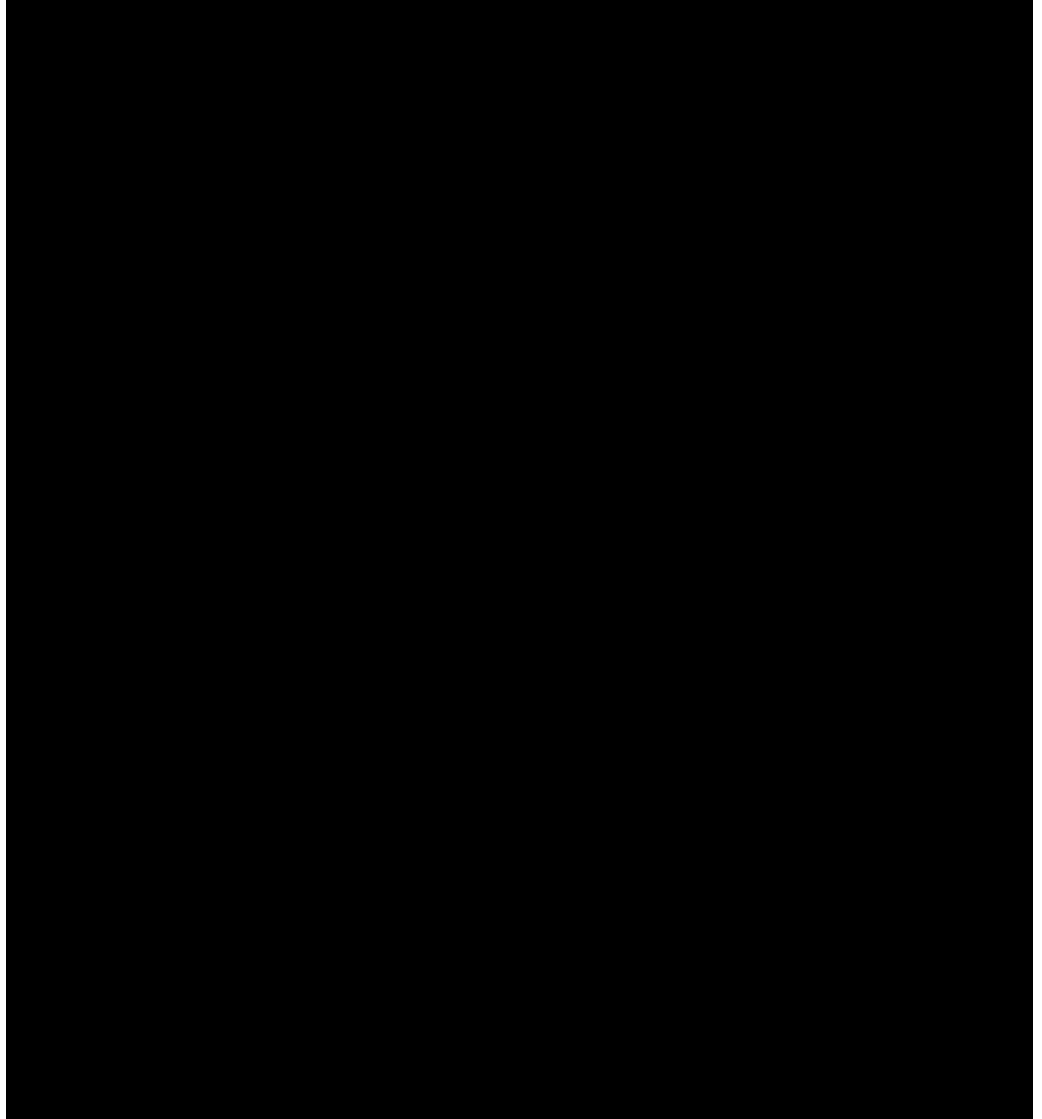
15.7 Step-out

- (a) A Step-in Party must cease to exercise the Step-in Powers as soon as reasonably practicable and, in any event, upon the earlier of:
 - (i) the relevant Step-in Event being remedied (or the risk or consequences resulting from the Step-in Event being overcome) to the satisfaction of the Principal; and
 - (ii) the Principal's Representative notifying the Contractor in writing that the Step-in Party will no longer exercise the Step-in Powers.
- (b) The Principal must give written notice to the Contractor of the date on which the Step-in Party will cease to exercise the Step-in Powers (which notice must be given by the Principal to the Contractor at least 5 Business Days prior to the date the Step-in Party proposes to cease exercising the Step-in Powers).
- (c) The Principal and the Contractor must consult with each other with the intention of ensuring that the transition from the Step-in Party ceasing to exercise the Step-in Powers to the Contractor resuming the performance of the relevant Contractor's Activities is effected without interruption to the Contractor's Activities.

- (d) Upon the Step-in Party ceasing to exercise the Step-in Powers, the Contractor must resume the performance of the relevant Contractor's Activities in accordance with this Deed (unless this Deed has been terminated).

16 Termination

16.1 Contractor Termination Events



16.2 Notice of a Contractor Termination Event

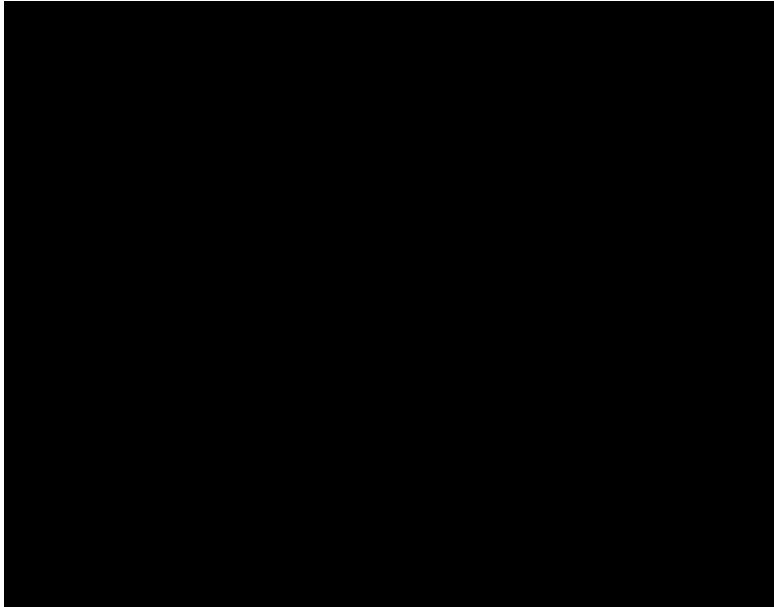
Without limiting the Principal's other rights or the Contractor's other obligations under this Deed or at Law, the Contractor must notify the Principal's Representative immediately upon becoming aware of a Contractor Termination Event or an event or occurrence that, with the giving of notice, or lapse of time, would or is likely to become a Contractor Termination Event.

16.3 Termination for Contractor Termination Event

If a Contractor Termination Event has occurred the Principal may, by notice in writing to the Contractor:

- (a) take out of the hands of the Contractor the whole or part of the work remaining to be completed; or
- (b) terminate this Deed.

16.4 Principal's rights after termination

- (a) If:
 - (i) the Principal exercises its rights under clause 16.3(a), or terminates this Deed under clauses 16.3(b) or 16.8;
 - (ii) the Contractor repudiates this Deed;
 - (iii) the Principal otherwise terminates this Deed; or
 - (iv) this Deed is frustrated under the Law,
 the Contractor:
 - (v) must comply with all directions of the Principal's Representative in connection with the termination;
 - (vi) must allow the Principal, their Associates and their nominees immediate and unfettered access to the Site, Remote Sites or Extra Land or any area affected by the Enabling Works;
 - (vii) must secure and make safe the Site, Remote Sites or Extra Land or any area affected by the Enabling Works;
 - (viii) must novate to the Principal or the Principal's nominee those Subcontracts, leases and licences that relate to the Project that the Principal directs;
 - (ix) 
 - (x) must immediately deliver to the Principal's Representative in such form and manner, including electronic form, as directed by the Principal's Representative:
 - (A) all documents and other things provided by the Principal to the Contractor;

- (B) all Design Documentation and working papers prepared by or on behalf of the Contractor or otherwise within the power or control of the Contractor to the date on which the Principal terminates this Deed (whether complete or not);
- (C) all files, records, certificates, correspondence and reports generated by or on behalf of the Contractor or otherwise within the power or control of the Contractor in connection with the Project; and
- (D) any other documents or information in existence that is to be provided to the Principal under the terms of this Deed prepared by or on behalf of the Contractor or otherwise within the power or control of the Contractor; and
- (xi) must comply with its obligations in relation to successor contractors, and

the Principal:

- (xii) will be entitled to require the Contractor to remove from the Site, Remote Sites or Extra Land or any area affected by the Enabling Works, any Construction Plant and Temporary Works and all materials, equipment and other things intended for the Enabling Works;
- (xiii) may continue to perform or have performed the Contractor's Activities;
- (xiv) may take possession of all things ordered or stored to be used in connection with the Enabling Works;
- (xv) may complete the Enabling Works;
- (xvi) may take possession of such of the Construction Plant, Temporary Works and other things on or in the vicinity of the Site, Remote Sites or Extra Land as are owned or leased by the Contractor and are reasonably required by the Principal to facilitate completion of the Enabling Works; and
- (xvii) must, if it takes possession of the items referred to in clause 16.4(a)(xvi):
 - (A) for the period during which it retains possession of the Construction Plant, Temporary Works or other things pay to the Contractor rent for the use of the Construction Plant, Temporary Works or other things at a market rate to be agreed by the parties or, failing agreement, to be determined by the Principal's Representative; and
 - (B) maintain the Construction Plant, Temporary Works or other things and, subject to any other terms in this Deed, on completion of the work return to the Contractor the Construction Plant, Temporary Works and any things taken under clause 16.4(a)(xvi) which are surplus.

- (b) In addition to the Principal's other rights under this Deed or at Law, if the Principal terminates this Deed at Law or pursuant to clause 16.3 the rights of the parties will be deemed to be the same as if the Contractor had repudiated this Deed and the Principal had accepted the repudiation.
- (c) This clause will survive the termination or frustration of this Deed.

16.5 Principal's Entitlements after take-out

- (a) If the Principal exercises the right under clause 16.3(a), the Contractor will not be entitled to any further payment in respect of the work taken out of the hands of the Contractor unless a payment becomes due to the Contractor under this clause 16.5.
- (b) When work taken out of the hands of the Contractor under clause 16.3(a) is completed, the Principal's Representative will ascertain the cost incurred by the Principal in completing the work and will notify the Contractor of the amount.
- (c) If the cost incurred by the Principal is greater than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due from the Contractor to the Principal. If the cost incurred by the Principal is less than the amount that would have been paid to the Contractor if the Contractor had completed the work, the difference will be a debt due to the Contractor from the Principal.
- (d) Without limiting clause 16.5(c), if the Principal exercises the right under clause 16.3(a), the Principal will be entitled to recover from the Contractor any costs, expenses, losses or damages incurred or suffered by it as a result of, or arising out of, or in any way in connection with, the exercise of such right.
- (e) If the Contractor is indebted to the Principal, the Contractor grants to the Principal a lien over the Construction Plant, Temporary Works or other things taken under clause 16.4(a)(xvi) such that the Principal may retain that property until the debt is met. If after reasonable notice, the Contractor fails to pay the debt, the Principal may sell the Construction Plant, Temporary Works or other things and apply the proceeds to satisfaction of the debt and the costs of sale. Any excess will be paid to the Contractor.

16.6 Parties' rights after termination

Subject to clause 16.11, if the Principal terminates this Deed under clause 16.3, or if the Contractor repudiates this Deed and the Principal otherwise terminates this Deed:

- (a) the Principal will:
 - (i) subject to clause 16.6(b), not be obliged to make any further payments to the Contractor, including any money that is the subject of a Payment Claim;
 - (ii) be absolutely entitled to call, convert and have recourse to any unconditional undertaking held under clause 2.8; and
 - (iii) be entitled to recover from the Contractor any costs, expenses, Losses or damages incurred or suffered by it as a result of, or

arising out of, or in any way in connection with, such termination; and

(b) the Contractor will:

(i) for work carried out prior to the date of termination, be entitled to an amount (determined by the Principal's Representative when the Principal has completed the work) that would have been payable if:

(A) this Deed had not been terminated; and

(B) the Contractor submitted a Payment Claim under clause 11.6 for work carried out to the date of termination; and

(ii) not be entitled to claim for any further payment of money (including for damages) in respect of the termination or for any other reason.

(c) This clause will survive the termination of this Deed.

16.7 Contractor's rights after repudiation or wrongful termination

(a) If the Principal:

(i) repudiates this Deed and the Contractor terminates this Deed; or

(ii) wrongfully:

(A) exercises or attempts to exercise any right or power to terminate this Deed conferred on it by this Deed; or

(B) determines or purports to determine this Deed at common law,

then the:

(iii) Principal's actions will be deemed to have been a lawful termination in accordance with clause 16.8 and the Contractor's sole rights in such circumstances will be those set out in clause 16.9; and

(iv) the Contractor:

(A) will not be entitled to the payment of damages;

(B) will not be entitled to any payment on a quantum meruit basis; and

(C) waives all other rights it has to make a Claim in such circumstances.

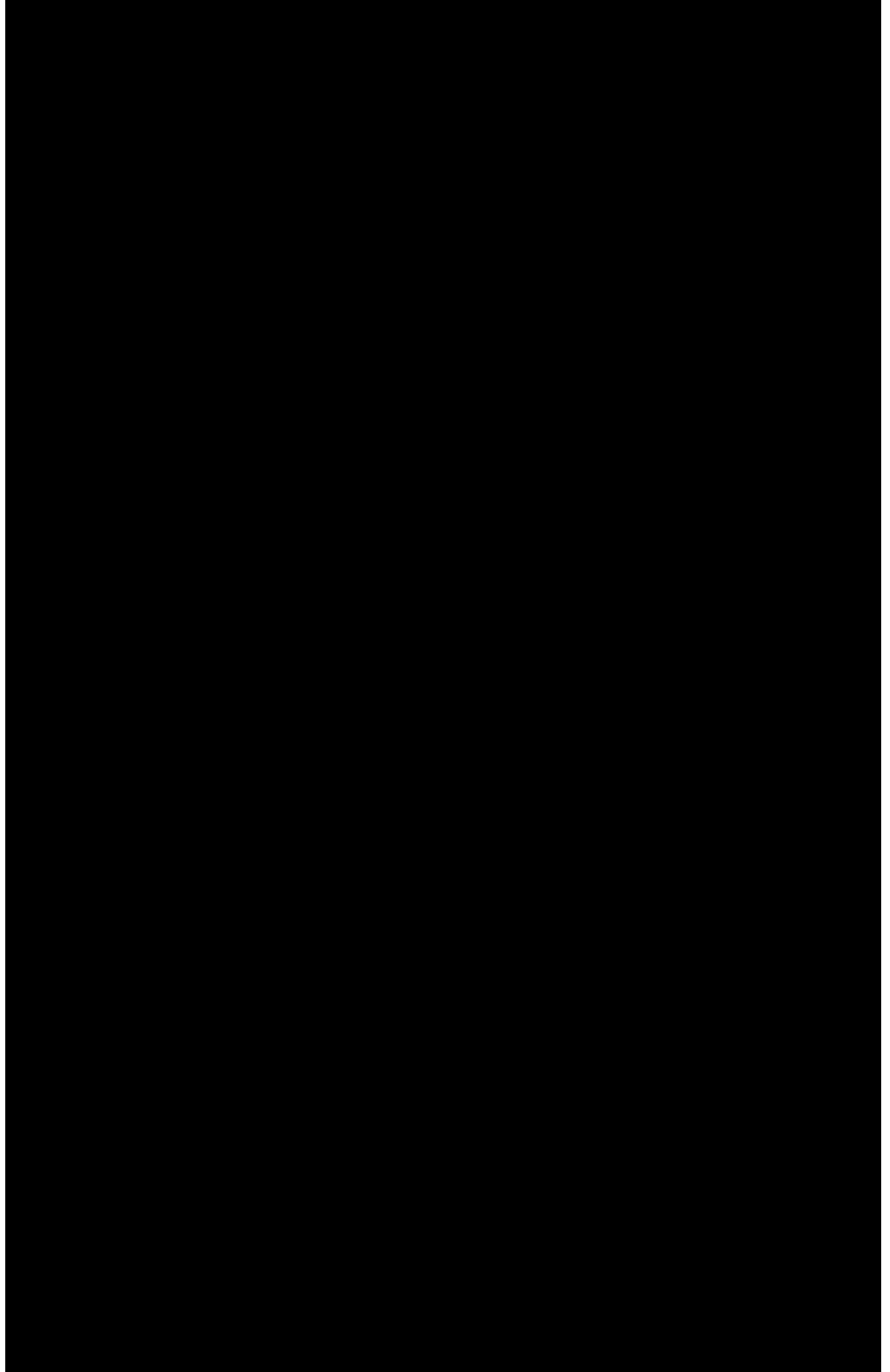
(b) This clause will survive the termination of this Deed.

16.8 Termination for convenience

Without prejudice to any of the Principal's other rights or entitlements or powers under this Deed, the Principal may:

- (a) at any time for its sole convenience, and for any reason, by written notice to the Contractor terminate this Deed effective from the time stated in the notice or if no such time is stated, at the time the notice is given to the Contractor; and
- (b) thereafter, at the Principal's absolute discretion complete the uncompleted part of the Contractor's Activities or the Enabling Works either itself or by engaging other contractors.

16.9 Payment with Termination for convenience or frustration





16.10 Codification of the Contractor's entitlements

This clause 16 is an exhaustive code of the Contractor's rights arising out of or in any way in connection with any termination and the Contractor:

- (a) cannot otherwise terminate, rescind or treat this Deed as repudiated; and
- (b) waives all rights at Law to terminate, rescind or treat this Deed as repudiated,

otherwise than in accordance with this clause 16.

16.11 Preservation of rights

- (a) Unless expressly stated otherwise, nothing in this clause 16 or that the Principal does or fails to do pursuant to this clause 16 will prejudice the right of the Principal to exercise any right or remedy (including recovering damages or exercising a right of set-off under clause 19.15) which it may have where the Contractor breaches (including repudiates) this Deed.
- (b) The rights of the Principal under this Deed are in addition to its other rights at Law.

17 Early notification of issues

17.1 Early Warning Notice

- (a) The parties acknowledge and agree that the objectives of the issue and opportunity resolution process as set out in clauses 17 and 18 are to:
 - (i) enable early identification of potentially contentious issues and opportunities for the parties to resolve them through negotiations, in particular through the establishment of the Executive Negotiation Group pursuant to clause 18.1 which may meet to discuss any issues, Claims, Initial Early Warning Notices, Detailed Early Warning Notices or disputes prior to referral to expert determination, which are the subject of clause 17 or 18 of this Deed and any issues which are not the subject of clauses 17 and 18 of this Deed;
 - (ii) triage categories of issues between the Principal's Representative and the Independent Certifier as the initial makers of determinations; and
 - (iii) restrict the Claims process in clause 11 to:
 - (A) Payment Claims, the Completion Payment Claim and Final Payment Claim; and

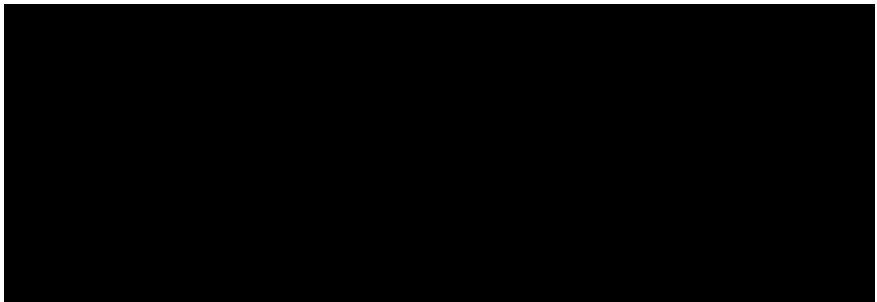
- (B) Claims which have been:
 - (aa) evaluated by the Principal's Representative under clause 17.7; or
 - (ab) finally determined under clause 18.
- (b) All Claims that are made by the Contractor must be made in accordance with and follow the process specified in this clause 17 except for:
 - (i) Payment Claims, the Completion Payment Claim and Final Payment Claim;
 - (ii) Claims which dispute a valuation made by the Principal's Representative under clauses 6.4, clause 6.5 or clause 6.7;
 - (iii) Claims under clause 8.2; and
 - (iv) the review of IC Determinations.
- (c) Claims which dispute a valuation made by the Principal's Representative under clause 6.4, clause 6.5 or clause 6.7 must firstly be referred to Executive Negotiation in accordance with clause 18.1 and then to expert determination in accordance with clause 18.6.
- (d) IC Determinations will be reviewed in accordance with the process in clause 18.18.

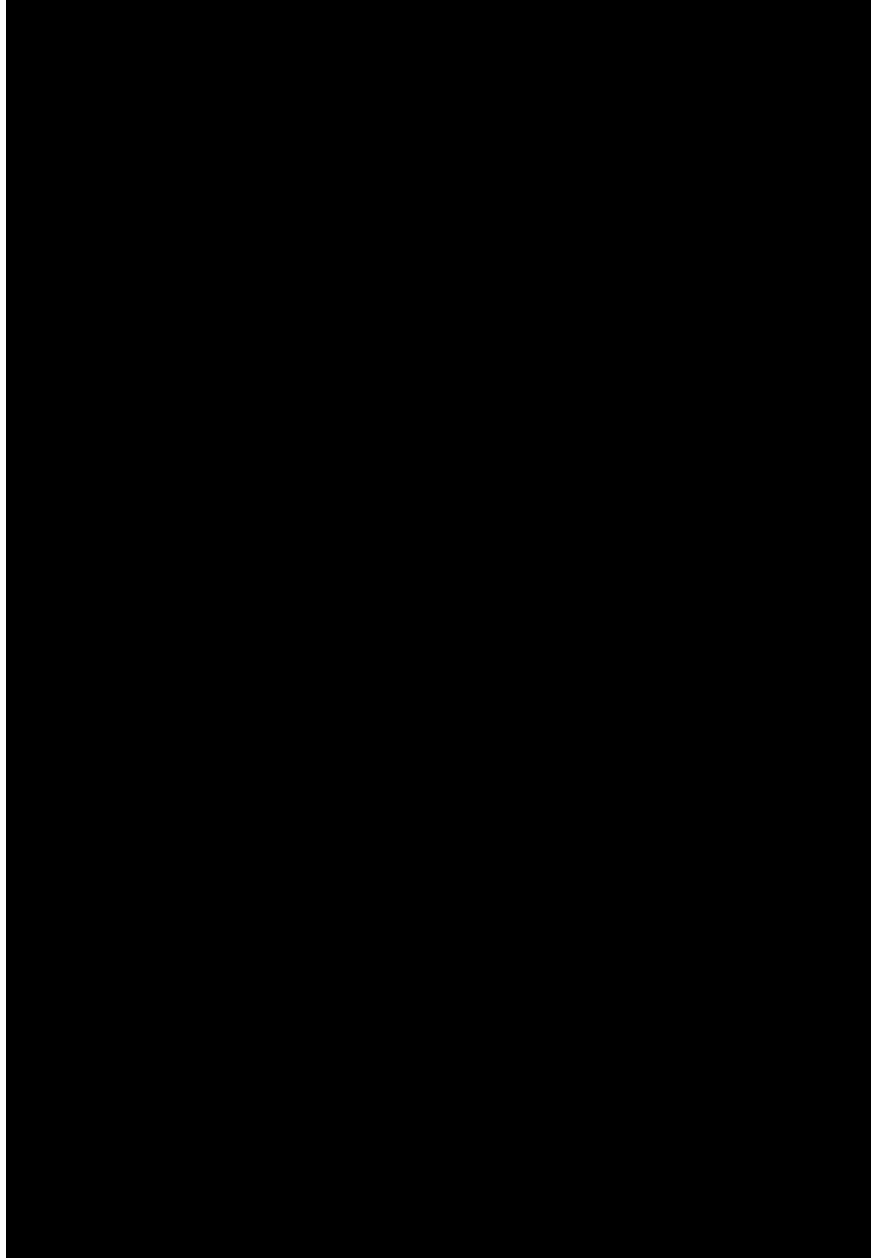
17.2 The issue resolution process

- (a) The Contractor may only make a Claim in a Payment Claim, Completion Payment Claim and Final Payment Claim of any matter which must be:
 - (i) notified and evaluated by the Principal's Representative under clause 17.7; or
 - (ii) referred directly for evaluation in accordance with clause 18.2 (as provided for in clause 17.1(b)(ii));
 if the subject matter of the Claim has been:
 - (iii) agreed in writing with the Principal's Representative;
 - (iv) evaluated by the Principal's Representative under clause 17.7 and not disputed in accordance with clause 18.2; or
 - (v) finally determined in a dispute process initiated under clause 18,

provided that: nothing in this clause will prevent the Contractor from including any undisputed portion of any Claim.

(b)



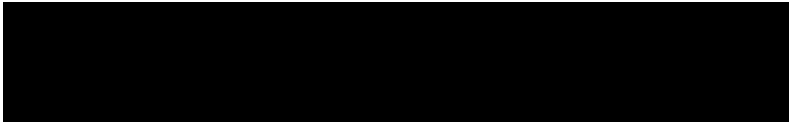


17.3 Prescribed Notices

- (a) The Contractor must within 10 Business Days of first becoming aware or when it ought reasonably to have become aware of the direction, event, circumstance, act, omission, fact, matter or thing which gives rise to a potential Claim or may require an action or direction by the Principal, deliver to the Principal's Representative a written Initial Early Warning Notice which:
 - (i) is expressly identified as an Initial Early Warning Notice under this clause;
 - (ii) sets out general details of the nature, facts, matters and circumstances upon which the Initial Early Warning Notice is based;
 - (iii) sets out the activities being affected; and
 - (iv) identifies whether the matter is likely to affect the cost, completion, progress or quality of the Enabling Works or the PLR,

(Initial Early Warning Notice).

- (b) Within 15 Business Days of first becoming aware or when it ought reasonably to have become aware of the direction, event, circumstance, act, omission, fact, matter or thing which gives rise to a potential Claim or may require an action or direction by the Principal, the Contractor must deliver to the Principal's Representative a Detailed Early Warning Notice which:
- (i) is expressly identified as a Detailed Early Warning Notice or action or direction may be required;
 - (ii) sets out detailed particulars of the issue, including the date or dates, of the direction, event, circumstance, act, omission, fact, matter or thing upon which any Claim is based;
 - (iii) attaches the key documents and other materials that are relied on in support of the Claim;
 - (iv) sets out the legal basis for any Claim, whether based on a term of this Deed or otherwise, and if based on a term of this Deed, clearly identifying the specific term;
 - (v) contains any such other information required by the Principal's Representative;
 - (vi) in the case of an extension of time Claim sets out:
 - (A) the estimated duration of the delay;
 - (B) the mitigation being effected;
 - (C) the activities being affected;
 - (D) the number of days for which the extension of time is claimed together with the basis of calculating that period, including evidence that:
 - (aa) the delay involves an activity which is critical to the maintenance of progress in the execution of the Contractor's Activities and which will delay it in achieving Portion Completion of the Portion in the manner described in 10.7; and
 - (ab) the conditions precedent to any extension of time in clause 10.7(b) have been satisfied;
 - (E) a detailed delay analysis referenced to the Enabling Works Program setting out the Contractor's Activities affected and the logic supporting the Claim;
 - (F) details of the activities affected; and
 - (G) a detailed explanation for delay and such other information required by the Principal's Representative;
 - (vii) in the case of a financial Claim (including a claim for Delay Costs) sets out:
 - (A) an indication of the nature of the pricing, costs or damages being caused or incurred;

- (B) details of the amount claimed and how it has been calculated;
 - (C) the mitigation being effected;
 - (D) where the Claim is to be assessed by reference to a clause in this Deed detailed particulars and quantification of the matters in that clause;
 - (E) where the Claim is for damages, details of the Losses actually incurred; and
 - (F) detailed financial justification for the Claim; and
- (viii) 

(Detailed Early Warning Notice).

- (c) If the Contractor wishes to claim an extension of time on the basis of a Valuable Find under 3.7(e), an Initial Early Warning Notice must, in addition, be given within 2 Business Days of when the Contractor is notified to cease to perform the Contractor's Activities.
- (d) The Principal may, at its absolute discretion:
 - (i) at any time deliver to the Contractor's Representative a written Initial Early Warning Notice; and
 - (ii) promptly following the delivery of an Initial Early Warning Notice, deliver to the Contractor's Representative a Detailed Early Warning Notice.

17.4 Additional information

Within 10 Business Days of the notice received pursuant to clause 17.3(b), the Principal's Representative may request the Contractor to provide additional information and materials to support any Claim and the Contractor must provide that additional information and material as a re-submission of the Detailed Early Warning Notice within such time as reasonably directed by the Principal's Representative.

17.5 Discussion at ENG

- (a) Notwithstanding clauses 17.3 and 17.4, any Initial Early Warning Notices and Detailed Early Warning Notices can be referred to the Executive Negotiation Group at any time by either the Contractor or the Principal.
- (b) If any Initial Early Warning Notice, Detailed Early Warning Notice or Claim is referred to the Executive Negotiation Group, the Executive Negotiation Group will meet and seek to resolve the matter in accordance with the processes contained in clause 18.1 within:
 - (i) 15 Business Days of the date of referral pursuant to clause 18.1(d); and
 - (ii) the timeframe agreed by the parties.

17.6 Bar

If the Contractor fails to comply with any of the requirements imposed on it by clauses 17.3(b) or 17.4 then:

- (a) the Principal will not be liable in respect of any Claim by the Contractor; and
- (b) the Contractor will be absolutely barred from making any Claim against the Principal,

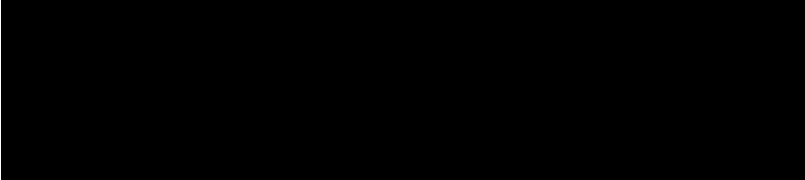
arising out of or in any way in connection with the relevant direction, event, circumstance, act, omission, fact, matter or thing (as the case may be) that is the subject of the failure to comply with any of clauses 17.3(b) or 17.4 to which those clauses apply.

17.7 Evaluation by the Principal's Representative

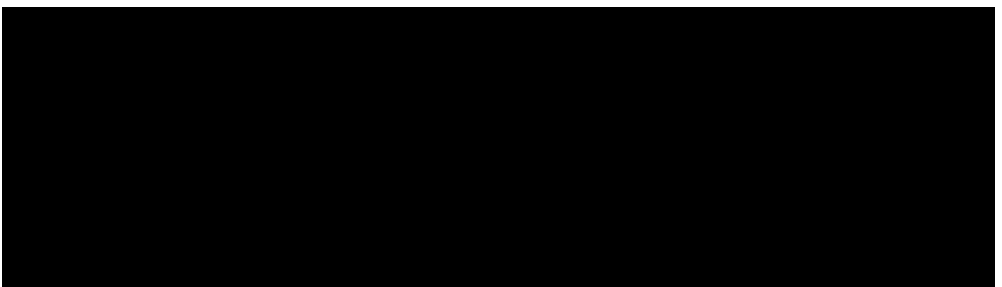
- (a) If the parties have not reached agreement on the matters the subject of a Detailed Early Warning Notice, the Principal's Representative will:

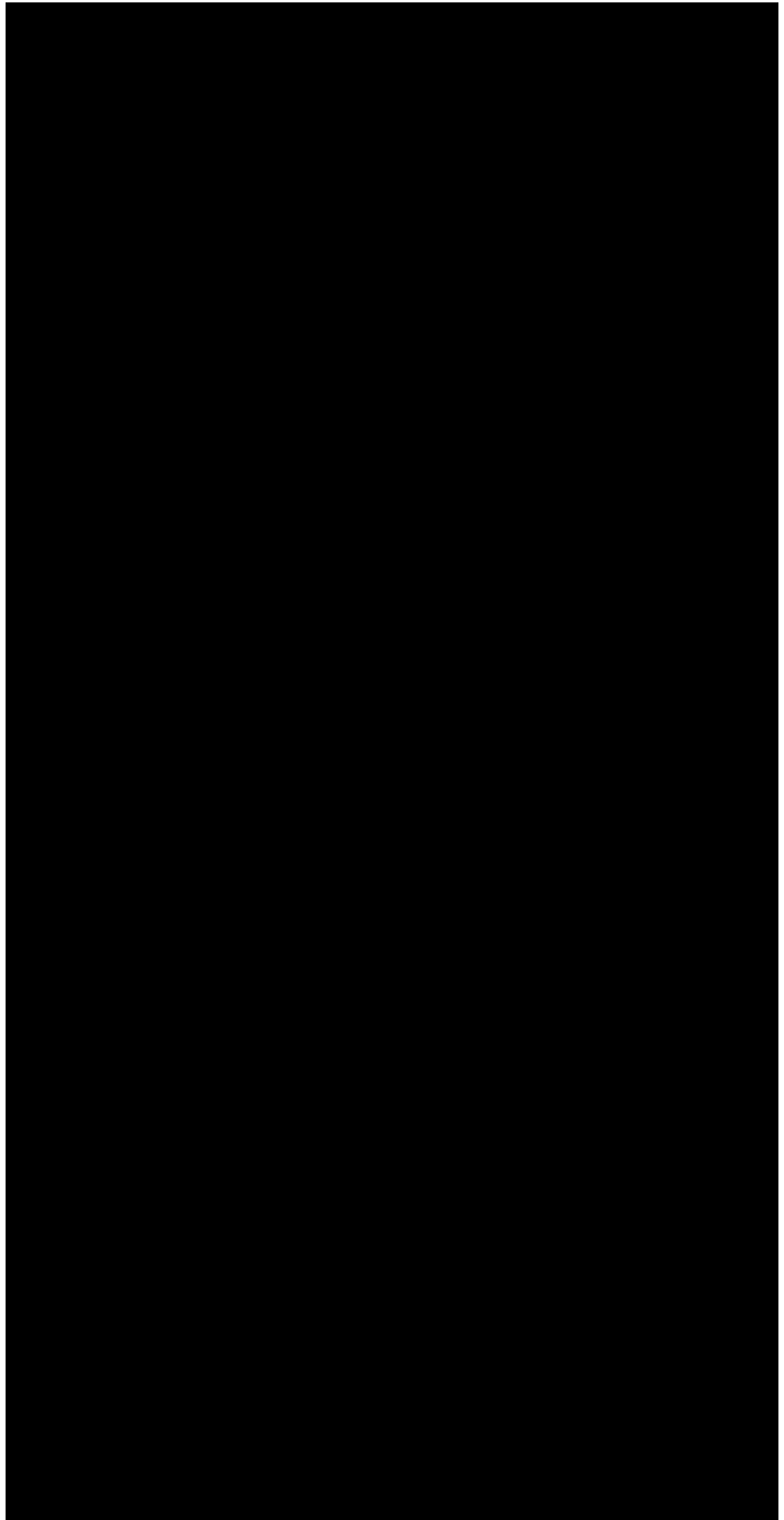
- (i) evaluate the Claim and advise the parties in writing of the evaluation; or
- (ii) agree with the Contractor an extension to the period of time for the Principal's Representative to make an evaluation,

within 25 Business Days of the last to occur of:

- (iii) receipt of the notice under clause 17.3(b);
- (iv) receipt of the additional information and materials requested under clause 17.4;
- (v) 

- (b) If the Principal's Representative does not evaluate the Claim or agree an extension to the period of time to evaluate the Claim within the period specified in clause 17.7(a), the Contractor may issue to the Principal's Representative a request to evaluate the Claim within a reasonable further period or agree an extension to the period of time to evaluate the Claim.
- (c) If the Principal's Representative does not evaluate the Claim within the time requested or agreed under clause 17.7(b) then the Claim will be determined to be zero value (whether in terms of money or time).

17.8 Principles for evaluation



17.9 Other Provisions Unaffected

Nothing in this clause will limit the operation or effect of any other provision of this Deed that requires the Contractor to give notice to the Principal's Representative in order to preserve an entitlement to make a Claim against the Principal.

17.10 Agreement

- (a) The parties will work collaboratively to resolve any matters raised in an Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) including in the Executive Negotiation Group if the matter is referred to the Executive Negotiation Group.
- (b) If agreement is reached by the parties in relation to all or any part of a matter raised in an Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) in the Executive Negotiation Group or otherwise,

then:

- (i) in relation to any Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) brought by the Contractor:
 - (A) the Contractor must promptly issue a written notice to the Principal's Representative withdrawing the matters raised in the Initial Early Warning Notice and a Detailed Early Warning Notice (including a Claim), setting out, in detail, the extent of the withdrawal (**Withdrawal Notice**);
 - (B) the Principal's Representative may confirm the Withdrawal Notice or notify the Contractor that the Withdrawal Notice does not accurately describe the agreement that has been reached; and
 - (C) if the Principal's Representative confirms the Withdrawal Notice then the matters in the Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) will be deemed to be settled to the extent of such confirmation and the Principal will be released from any Liability to the Contractor to the extent of any such release; and
- (ii) if the Principal's Representative does not confirm the Withdrawal Notice by the Contractor then the parties must meet to agree the terms of the Withdrawal Notice.
- (iii) in relation to any Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) brought by the Principal:

- (A) the Principal must promptly issue a Withdrawal Notice to the Contractor;
 - (B) the Contractor may confirm the Withdrawal Notice or notify the Principal that the Withdrawal Notice does not accurately describe the agreement that has been reached;
 - (C) if the Contractor confirms the Withdrawal Notice then the matters in the Initial Early Warning Notice and a Detailed Early Warning Notice (including any Claim) will be deemed to be settled; and
 - (D) if the Contractor does not confirm the Withdrawal Notice by the Principal then the parties must meet to agree the terms of the Withdrawal Notice.
- (c) Not used.
- (d) Not used.

18 Issue Resolution

18.1 Executive negotiation

- (a) **(Establishment):** the Principal and the Contractor acknowledge and agree that they will establish a group for the duration of the Contractor's Activities until Final Completion consisting of:
 - (i) one representative of the Principal; and
 - (ii) one representative of the Contractor,
 (each an **ENG Member** and together the **Executive Negotiation Group** or **ENG**).
- (b) **(ENG Members):** An ENG Member will be a senior executive within each party's organisation. Each party's ENG member is named in Schedule 1. Any ENG Member can invite to any ENG Meeting, representatives of its member organisation with the requisite skills and knowledge to assist in the resolution of any issues, Claim, Initial Early Warning Notice, Detailed Early Warning Notice or dispute, including legal support.
- (c) **(Functions):** The functions of the Executive Negotiation Group will be to assist the parties pragmatically, and on a confidential, without prejudice and non binding basis, to seek the resolution of any:
 - (i) issue that arises at any time on the Project, which has not yet become a Claim or a dispute;
 - (ii) Initial Early Warning Notice, Detailed Early Warning Notice or Claim which has been referred to it in accordance with clause 18.1(d)(i) or 18.1(d)(ii) notwithstanding and without limiting or affecting the terms of clauses 17 and 18;
 - (iii) Notice of Dispute which has been referred to it in accordance with clause 18.1(d)(iii).
- (d) **(Procedure):**

- (i) Any issue can be referred to the Executive Negotiation Group at any time by the Contractor or the Principal.
- (ii) Any Initial Early Warning Notices and Detailed Early Warning Notices can be referred to the Executive Negotiation Group at any time by either the Contractor or the Principal.
- (iii) For all Notices of Dispute, before a dispute is referred to expert determination in accordance with clause 18.6 the dispute must be referred to the ENG for Executive Negotiation for good faith negotiation for a maximum period of 20 Business Days.
- (iv) On referral to the ENG pursuant to clauses 18.1(d)(i), 18.1(d)(ii) or 18.1(d)(iii), the procedure that is to be followed to resolve an issue, Initial Early Warning Notice, Detailed Early Warning Notice, Claim or dispute that has been referred to the ENG is as follows:
 - (A) firstly, the referring party must issue a notice of referral;
 - (B) secondly, the other party must within 2 Business Days of receiving the referring party's notice, issue to the referring party a response to that notice accompanied by a revised version of the referring party's table (in Word format) setting out the responding party's position in the appropriate column;
 - (C) thirdly, within 2 Business Days of receiving the responding party's responsive notice (or such later date as may be agreed by the parties), the ENG must meet and attempt to resolve the issue or Dispute (in whole or in part) acting in accordance with clause 18.1(e) and clause 18.1(f); and
 - (D) finally, if the ENG has been unable to resolve the issue, Claim, Initial Early Warning Notice, Detailed Early Warning Notice or dispute (in whole or in part) by (at the latest) the expiry of the Executive Negotiation Period then the parties may refer the issue, Initial Early Warning Notice, Detailed Early Warning Notice, Claim or dispute for resolution in accordance with clause 17 or 18 (as relevant).
- (e) **(Decisions of the Executive Negotiation Group):**
 - (i) The ENG Members are free to agree or not agree matters at their discretion, but will act collaboratively to find solutions to referred issues, Claim, Initial Early Warning Notice, Detailed Early Warning Notice or dispute that are agreeable to all parties.
 - (ii) Following the ENG Members in-principle agreement or agreement on the terms of a recommendation in respect of an issue, Claim, Initial Early Warning Notice, Detailed Early Warning Notice or dispute, the Principal and the Contractor (as relevant) will:
 - (A) seek all relevant internal and third party approvals; and
 - (B) following receipt of all internal and third party approvals, prepare and issue all required notices or directions in

accordance with this deed and otherwise give effect to the in-principle agreement or recommendation.

- (iii) No in-principle agreement or recommendation agreed by the ENG Members will be binding on the Principal and the Contractor, unless:
 - (A) each of the Principal and the Contractor has obtained all relevant internal and third party approvals and have confirmed this by notice in writing to each other; and
 - (B) the required notices, directions or other relevant contractual documents have been issued in accordance with this deed.
- (f) **(Meetings, administration and procedures):**
 - (i) The ENG Members shall have broad power to determine their own procedural matters, for the management and coordination of the Executive Negotiation Group meetings including setting their own meeting times.
 - (ii) Any ENG Member representing the Principal will chair the meetings of the ENG (the **ENG Meetings**).
 - (iii) The Principal will be responsible for providing and performing all administration in relation to the ENG, including scheduling ENG Meetings, organising venues and circulating agendas and relevant material.
- (g) **(No liability of Executive Negotiation Group):** The ENG:
 - (i) is advisory only and its decisions or recommendations are not binding on the parties; and
 - (ii) does not have any legal responsibilities, liability or right to require any of the parties to act or refrain from acting in any way.
- (h) **(No reliance or Claim):** No party will be entitled to:
 - (i) rely on any statement, opinion, advice, representation, warranty, promise or undertaking made or given by or on behalf of any ENG Member; or
 - (ii) make any Claim against any such group or committee or any ENG Member,

arising in connection with anything which any such ENG Member does or fails to do in his or her capacity as an ENG Member.
- (i) **(Further Information):** A party referring the issues, Claim, Initial Early Warning Notice, Detailed Early Warning Notice or dispute to the ENG must fully respond to any questions which ENG Members may ask that party prior to or during any ENG Meeting and must otherwise provide further information reasonably requested following the ENG Meeting within 5 Business Days of the request.
- (j) **(Party):** For the purposes of this clause 18.1, a reference to “a party” or “the parties” is a reference to each of the Principal and the Contractor.

18.2 Notice of dispute

(a) If a party wishes to:

(i) dispute:

(A) a Payment Statement;

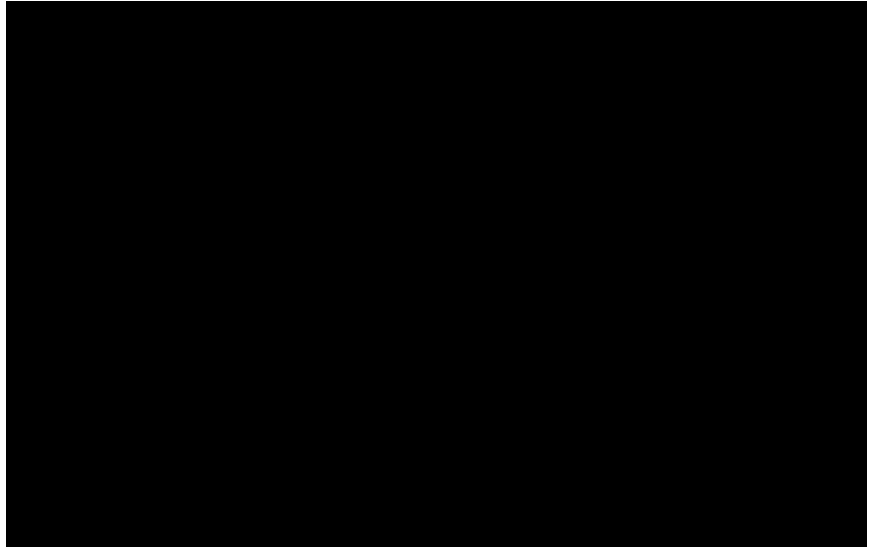
(B) an evaluation of the Principal's Representative under clause 17.7;

(C) a valuation made by the Principal's Representative under clause 6.4; or

(D) 

(ii) make a Claim which is not in respect of a matter that must be dealt with initially through the clause 17 process,

then that party must give a notice in writing to the Principal's Representative and the other party to this Deed (but without giving relief in respect of and in addition to any other time bar specified in this Deed):



(iv) in every other case as soon as is reasonably practicable after the occurrence of the facts matters or circumstances on which the Claim is based,

(Notice of Dispute).

(b) The Notice of Dispute must:

(i) specify the dispute or Claim;

(ii) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and Law or the Claim;

(iii) set out the position which the party believes is correct both in relation to Liability and quantum;

(iv) provide detailed particulars of the quantum of the matters in dispute;

- (v) if applicable, set out any information, bases of claim or other matters that differ from the matters provided to the Principal's Representative under clause 17.3(b); and
- (vi) attach all documents that are relied on in support of the dispute or Claim.

18.3 Bar

If a party fails to comply with any of the requirements of clause 18.2:

- (a) the other party to this Deed will not be liable upon any Claim by that party; and
- (b) that party will be absolutely barred from making any Claim against the other party to this Deed,

arising out of or in any way in connection with the relevant:

- (c) Payment Statement;
- (d) determination of the Principal's Representative under clause 17.7;
- (e) valuation made by the Principal's Representative under clause 6.4; or
- (f) in every other case, the facts matters or circumstances.

18.4 Discussions between representatives

- (a) As soon as practicable after the delivery of a Notice of Dispute, the Principal's Representative and the Contractor's Representative must seek to resolve the dispute within a timeframe agreed by the parties, or, in the absence of agreement within 10 Business Days from the date of service of the Notice of Dispute.
- (b) The parties acknowledge and agree that the either party may, in that party's sole discretion, nominate an alternate representative (other than the Principal's Representative or the Contractor's Representative (as applicable)) to attend on the clause 18.4(a) meetings with the other party's representative.

18.5 Meeting of ENG

Without limiting clause 18.1(c), if:

- (a) the dispute remains unresolved by the Principal's Representative (or alternate representative of the Principal) and the Contractor's Representative in accordance with clause 18.4(a); and
- (b) the issue or dispute has not previously been referred to the ENG,

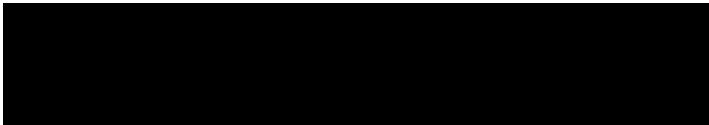
then:

- (c) the ENG must meet and seek to resolve the Dispute in accordance with the processes contained in clause 18.1 within the timeframe agreed by the parties, or, in the absence of agreement within 10 Business Days from the date of completion of the clause 18.5(a) meeting.

18.6 Referral to expert determination

If the dispute has not been resolved within 10 Business Days after the ENG has met to resolve the dispute the subject of a Notice of Dispute in accordance with paragraph 18.5(c) (or such longer period as agreed in writing by the parties), or if clause 18.5 does not apply and the dispute remains unresolved, then the dispute will be referred to expert determination in accordance with this clause 18 unless the parties agree in writing that the dispute is not suitable for an expert to determine.

18.7 Expert determination

- (a) The parties agree that any dispute which is referred to expert determination will be determined in accordance with this paragraph 18.7 and the 'Resolution Institute Rules'.
- (b) The parties acknowledge and agree:
 - (i) to the extent allowed by law, if:
 - (A) 
 - then:
 - (B) despite any other term or condition of this deed, the determination of the expert will be final and binding on the parties except for manifest error of fact or law;
 - (ii) subject to 18.7(b)(i), a party may serve a notice of dissatisfaction on the other party within 10 Business Days of the expert's determination; and
 - (iii) the notice of dissatisfaction must:
 - (A) state that it is given under this paragraph;
 - (B) provide detailed particulars of the party's reasons for being dissatisfied, including the relevant matters of fact and law;
 - (C) (if relevant) specify the alleged reasons why the alleged error of fact or law is manifest;
 - (D) set out the position the party believes to be correct in relation to liability and quantum; and
 - (E) provide detailed particulars of the quantum of the matters in dispute.

18.8 Settlement

Where a notice of dissatisfaction has been given under clause 18.7, the parties may attempt to settle the dispute before the commencement of the litigation or other process (as the case may be). However, unless both parties agree otherwise, if no settlement has been reached within 5 Business Days of the day on which the notice of dissatisfaction was given, the dispute will be taken to be referred to litigation under paragraph 18.9.

18.9 Referral after expert determination

If a notice of dissatisfaction is served under paragraph 18.7(b)(ii), the dispute must be referred to litigation.

18.10 Exclusion of proportionate liability from determination or award

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

- (a) the powers conferred and restrictions imposed on a court (as that term is defined in the *Civil Liability Act 2002* (NSW)) by the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) are not conferred or imposed on him or her; and
- (b) the expert has no power to make any determination or award by applying or considering the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory).

18.11 Limitation Periods

If a limitation period applicable to a cause of action relating to a dispute expires during any of the processes set out in paragraphs 18.4 to 18.7, each party agrees that:

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

18.12 Severance

If at any time any provision of this clause 18 is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, that will not affect or impair:

- (a) the legality, validity or enforceability in that jurisdiction of any other provision of this clause 18; or
- (b) the legality, validity or enforceability under the law of any other jurisdiction of that or any other provision of this clause 18.

18.13 Jurisdiction

- (a) This Deed shall be governed by and construed in accordance with the Laws of the State of New South Wales.
- (b) Each party hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed, and waives any right it might have to claim that those courts are an inconvenient forum.

18.14 Consolidation and joinder

- (a) Where a common question of law or fact arises in relation to:

- (i) a dispute under this Deed (**Deed Dispute**); and
- (ii) a dispute or disputes arising out of any Project Agreement, including questions relating to the existence, validity, interpretation or termination of a Project Agreement (**Other Dispute**),

each party consents to the consolidation of the Deed Dispute with the Other Dispute with respect to the common question of law or fact; and

- (b) each party consents to the joinder of any third party who is a party to the Other Dispute to the Deed Dispute.

18.15 Survive Termination

This clause 18 will survive the termination of this Deed.

18.16 Continuation of Work

Despite the existence of a dispute between the parties, except where this Deed has been terminated, the Contractor must:

- (a) continue to carry out the Contractor's Activities; and
- (b) otherwise comply with its obligations under this Deed.

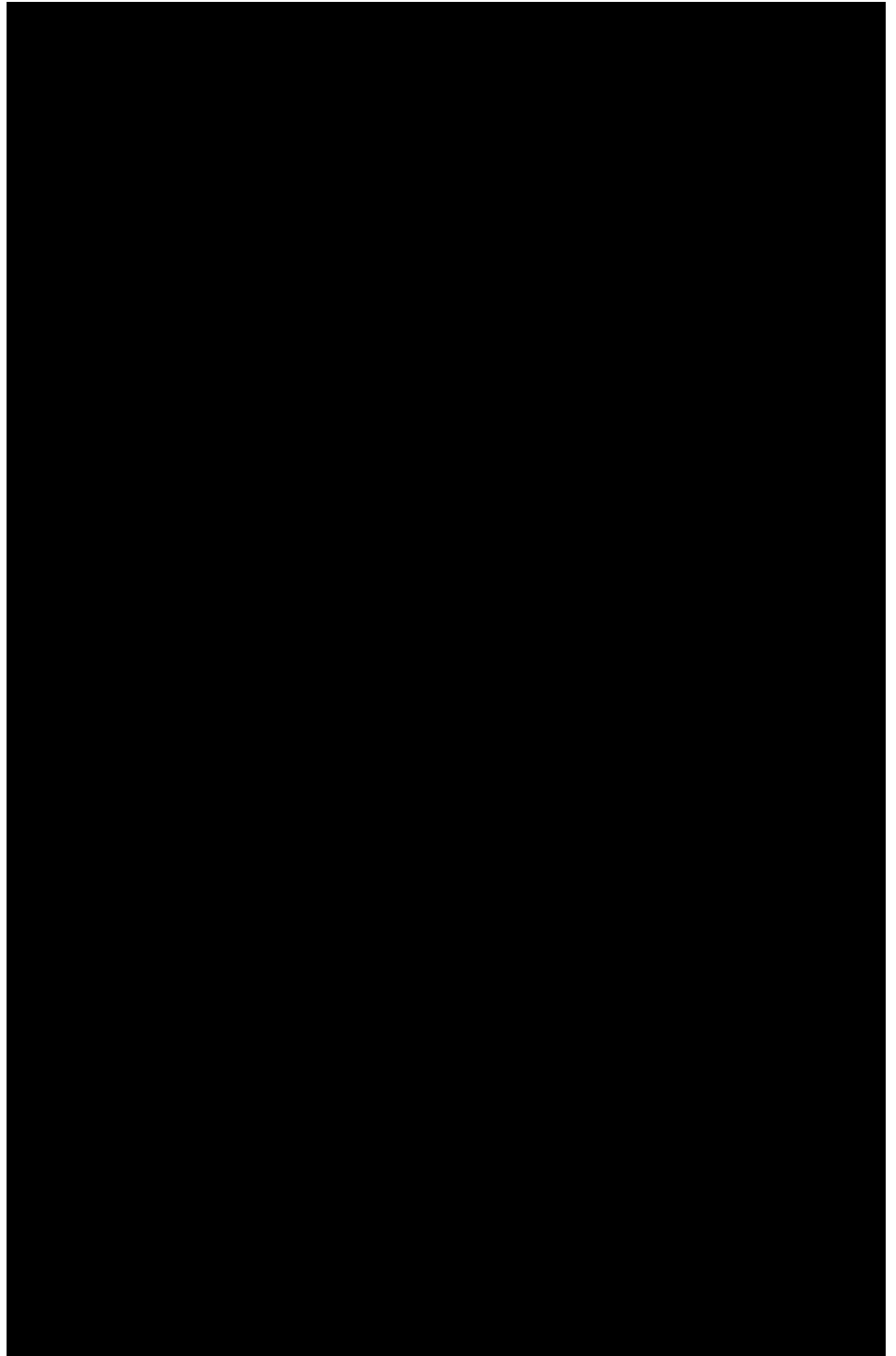
18.17 Urgent Relief

Nothing in this clause 18 will prejudice the right of a party to seek urgent injunctive or declaratory relief from a court.

18.18 IC Determinations

(a) This clause applies only to IC Determinations (**Determinations**).

(b)



(c) If any party wishes to dispute Reviewable Determination, then within 10 Business Days of the issue of the Reviewable Determination that party must deliver to the other parties and the Independent Certifier a notice setting out:

- (i) that it is a notice issued under this clause;
- (ii) a request that the Independent Certifier review the Reviewable Determination;

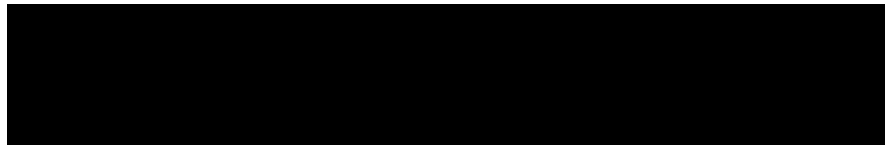
- (iii) comprehensive details of the bases on which the party considers that the Independent Certifier has made an error or an error of fact or Law (as applicable) in relation to the Reviewable Determination and (if applicable) why that error is manifest;
- (iv) the factual and/or legal position that the party asserts is correct; and
- (v) the determination that the party contends should have been made instead of the Reviewable Determination.

(Review Notice).

- (d) Within 15 Business Days of the issue of a valid Review Notice the other parties may make submissions in writing to the Independent Certifier, with copies to all parties in connection with the Review Notice.
- (e) Within 10 Business Days of its receipt of a valid Review Notice the Independent Certifier must review the Reviewable Determination and issue a notice to the parties that:
 - (i) confirms or amends the Reviewable Determination; and
 - (ii) sets out comprehensive reasons for its decision to confirm or amend the Reviewable Determination,

(IC Determination Review).

(f)



- (g) Compliance with the notice requirements set out in this clause are conditions precedent to the entitlement of the parties to dispute an Reviewable Determination and to make submissions under this clause.

18.19 Character of IC Determination Reviews

- (a) In carrying out an IC Determination Review and making any other determination which is final and binding the Independent Certifier will be acting as an expert.
- (b) The parties agree that they have agreed this process on the basis of legal advice and in an endeavour to enjoy the benefits of an economical and expert driven dispute process.

19 General

19.1 Form of notices

- (a) Unless otherwise stated in this Deed, all notices to be given under this Deed must be in writing and marked to the attention of the Principal's Representative or the Contractor's Representative (as applicable) with copy to the Independent Certifier.
- (b) Notices include any approvals, consents, instructions, orders, directions, statements, requests and certificates or other communication to be given under this Deed.

19.2 Delivery of notices

- (a) Notices must be either:
 - (i) delivered by hand to the address stipulated in Schedule 1; or
 - (ii) (subject to clause 19.5) uploaded onto PDCS.
- (b) A notice takes effect:
 - (i) if delivered by hand, upon the day of actual receipt by the addressee; or
 - (ii) in the case of a notice sent through the PDCS, at the time and day the direction has been uploaded onto the PDCS by the sender.
- (c) If a notice takes effect after 5.00 pm on a day, the notice will be deemed to have been received at 9.00 am on the next Business Day.

19.3 Delivery of Design Documentation

In the case of Design Documentation, Design Documentation is deemed to be delivered through the PDCS at the time the Design Documentation has been uploaded onto the PDCS by the sender.

19.4 PDCS

- (a) Subject to clause 19.5, at any time, and from time to time, the Principal's Representative may notify the Contractor that the PDCS will be used for giving notices under or in connection with this Deed. The Principal's Representative's notice will set out:
 - (i) the commencement date for use of the PDCS; and
 - (ii) any other information reasonably necessary for the effective use and service of notices via the PDCS.
- (b) If a party is unable to use the PDCS as a result of the failure of the PDCS, that party must use one of the alternative means of communication set out in clause 19.2.
- (c) With respect to notices sent through the PDCS:
 - (i) all notices must be submitted 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;
 - (ii) only the text in any notice, or subject to clause 19.4(c)(iii), any attachments to such notice which are referred to in the notice, will form part of the notice. Any text in the subject line will not form part of the notice; and
 - (iii) an attachment to a notice will only form part of a notice if it is uploaded to the PDCS in:
 - (A) pdf format;
 - (B) a format compatible with Microsoft Office; or

- (C) such other format as may be agreed between the parties in writing from time to time.
- (d) The Contractor must:
 - (i) ensure that it has internet access which is sufficient to facilitate use of the full functionality of the PDCS;
 - (ii) ensure that relevant personnel log on and use the PDCS and check whether notices have been received on each Business Day; and
 - (iii) at all times, ensure that it has access to personnel trained in the use of the PDCS so as to be able to view, receive and submit communications (including notices) using the PDCS.
- (e) The Principal has no Liability for any Losses the Contractor may suffer or incur arising out of or in connection with its access to or use of the PDCS or any failure of the PDCS, and the Contractor will not be entitled to make, and the Principal will not be liable upon, any Claim against the Principal arising out of or in connection with the Contractor's access to or use of the PDCS or any failure of the PDCS.

19.5 Notices for delivery by hand and the PDCS

The parties acknowledge and agree that notices issued pursuant to clause 18 must be delivered by hand to the other party and by the PDCS, pursuant to this Deed.

19.6 Law and jurisdiction

- (a) This Deed is governed by and will be construed according to the Laws of New South Wales.
- (b) Where clause 18.17 applies:
 - (i) the parties irrevocably submit to and accept, generally and unconditionally, the non-exclusive jurisdiction of the courts and appellate courts of the State of New South Wales with respect to any proceedings that are permitted to be brought at any time under clause 18.17; and
 - (ii) in respect of the jurisdiction referred to in clause 19.6(b)(i) the parties irrevocably waive any objection they may now or in the future have to the venue of any action or proceeding, and any Claim they may now or in the future have that any action or proceeding has been brought in an inconvenient forum.

19.7 No waiver

- (a) Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by Law or under this Deed by the Principal will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by Law or under this Deed.
- (b) Any waiver or consent given by the Principal under this Deed will only be effective and binding on the Principal if it is given or confirmed in writing by the Principal.

- (c) No waiver by the Principal of:
 - (i) a breach of any term of this Deed; or
 - (ii) any other failure by the Contractor 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,

will operate as a waiver of another breach of that term or failure to comply with that requirement or of a breach of any other term of this Deed or failure to comply with any other requirement of this Deed.

19.8 Entire agreement

This Deed and the Deed of Disclaimer constitute the entire agreement and understanding between the parties and will take effect according to its tenor despite, and supersede:

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

19.9 Joint and several liability

The obligations of the Contractor, if more than one person, under this Deed, are joint and several. Each person constituting the Contractor 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.

19.10 Severability

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

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

19.11 Indemnities to survive

- (a) Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Deed.
- (b) Nothing in this clause 19.11 prevents any other provision of this Deed, as a matter of interpretation also surviving the termination of this Deed.
- (c) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Deed.

19.12 Stamp duty and other fees

The Contractor must pay all stamp duties and other fees payable in respect of the execution of this Deed and the performance of its obligations in respect of this Deed.

19.13 Taxes

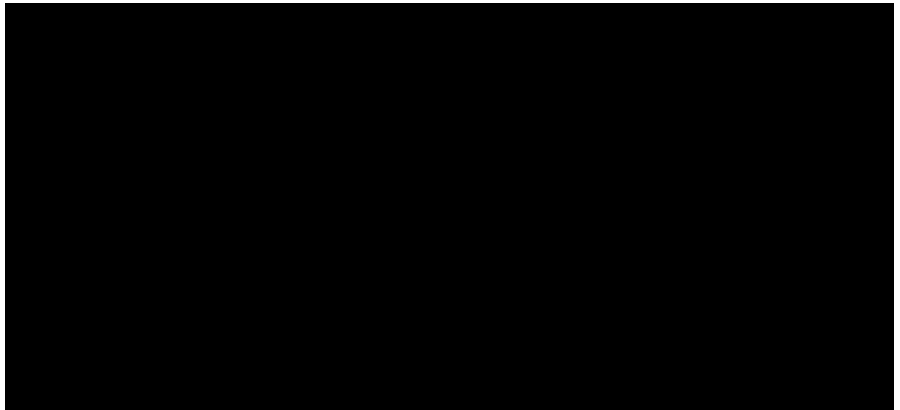
Without limiting clauses 11.20 and 19.20(a)(ix) but subject to clause 20, the Contractor must pay all Taxes that may be payable in respect of the Contractor's Activities, including any customs duty or tariff, and primage applicable to imported materials, plant and equipment required for the Contractor's Activities.

19.14 Confidentiality

- (a) Subject to clause 19.14(b), the Contractor must:
 - (i) keep confidential this Deed and any information relating to the Contractor's Activities and any discussions concerning this Deed;
 - (ii) not use the information referred to in sub-paragraph (a)(i) except as necessary for the performance of the Contractor's Activities; and
 - (iii) ensure that each of its officers, employees and Subcontractors complies with the terms of sub-paragraphs (a)(i) and (a)(ii).
- (b) The Contractor is not obliged to keep confidential any information:
 - (i) which is in the public domain through no default of the Contractor; or
 - (ii) the disclosure of which is:
 - (A) required by Law;
 - (B) consented to in writing by the Principal; or
 - (C) given to a court in the course of proceedings to which the Contractor is a party or to an expert or other person appointed under this Deed.
- (c) The Contractor must:
 - (i) execute and submit to the Principal within 14 days of this Deed a Confidentiality Undertaking;
 - (ii) ensure that all employees of the Contractor that have access to the information described in the Confidentiality Undertaking are aware of and comply with their obligations under the terms of the Confidentiality Undertaking; and
 - (iii) ensure that each Subcontractor, including suppliers and consultants, to the Contractor execute and submit a Confidentiality Undertaking to the Principal.
- (d) The parties acknowledge that:

- (i) the Principal may be required to disclose this Deed (and information concerning the terms of this Deed) under or in accordance with any one or more of the following:
 - (A) the Government Information (Public Access) Act 2009 (NSW) (**GIPA Act**); and
 - (B) to satisfy the disclosure requirements of the New South Wales Auditor General or to satisfy the requirements of Parliamentary accountability;
- (ii) within 15 Business Days of the date of this Deed the Contractor must notify the Principal in writing identifying any provisions of this Deed it considers to be commercial-in-confidence (as defined in the GIPA Act);
- (iii) the Principal will take reasonable steps to consult with the Contractor before disclosing any part of this Deed that the Contractor has notified that it considers to be commercial-in-confidence (as defined in the GIPA Act); and
- (iv) nothing in clauses 19.14(d)(ii) or 19.14(d)(iii) will limit or otherwise affect the discharge of the Principal's obligations under the GIPA Act.
- (e) The Contractor must provide to the Principal any other information which the Principal reasonably requires to comply with its obligations under clause 19.14(d).

(f)



19.15 Right of set-off

- (a) The Principal may deduct from moneys otherwise due to the Contractor in connection with the Project:
 - (i) any debt or other moneys due from the Contractor to the Principal (including any debt due from the Contractor to the Principal pursuant to section 26C of the SOP Act);
 - (ii) any amount that is less than or equal to the amount claimed to be owed under a payment withholding request served on the Principal pursuant to Division 2A of Part 3 of the SOP Act; or
 - (iii) any claim to money which the Principal may have against the Contractor whether for damages (including liquidated damages) or otherwise,

whether under this Deed or otherwise at Law in connection with the Contractor's Activities, the Works or the Deed.

- (b) If those moneys are insufficient, the Principal can have recourse to the Security held under clause 2.8.

19.16 Principal may act

- (a) The Principal may, either itself or by a third party, perform an obligation under this Deed that the Contractor was obliged to perform but which it failed to perform. The costs, Losses, expenses and damages suffered or incurred by the Principal in so performing such an obligation will be a debt due from the Contractor to the Principal.
- (b) 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 Contractor to; 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 its absolute discretion.
- (c) Where the Principal or the Principal's Representative does exercise any such right or power, the Contractor remains responsible for, in control of and retains the risk of all environmental, health and safety issues relating to the Enabling Works.

19.17 Unlimited discretion

- (a) Except as expressly provided in this Deed (including in clause 19.17(c)) no procedural or substantive limitation (including any which may otherwise be implied by Law) is intended to be imposed upon the manner in which the Principal or the Principal's Representative may exercise any discretion, power or entitlement conferred by this Deed.
- (b) Without limiting clause 19.17(a):
 - (i) except as expressly provided in this Deed (including in clause 19.17(c)) neither the Principal nor the Principal's Representative will be:
 - (A) constrained in the manner in which it exercises; or
 - (B) under any obligation to exercise,

any discretion, power or entitlement conferred by this Deed because of the operation of any legal doctrine which in any way limits or otherwise affects the express words used in the provision of this Deed conferring the discretion, power or entitlement; and
 - (ii) any approval or consent referred to in, or required under, this Deed from the Principal or the Principal's Representative may be given or withheld, or may be given subject to any conditions, as the Principal or the Principal's Representative (in their absolute discretion) think fit, unless this Deed expressly provides otherwise.
- (c) Nothing in this clause 19.17 will prevent the implication of a term into this Deed where the implication of the term is required to ensure that this Deed (or a part of this Deed) is not void or voidable due to uncertainty or any other legal principle.

19.18 No partnership, joint venture or other fiduciary relationship

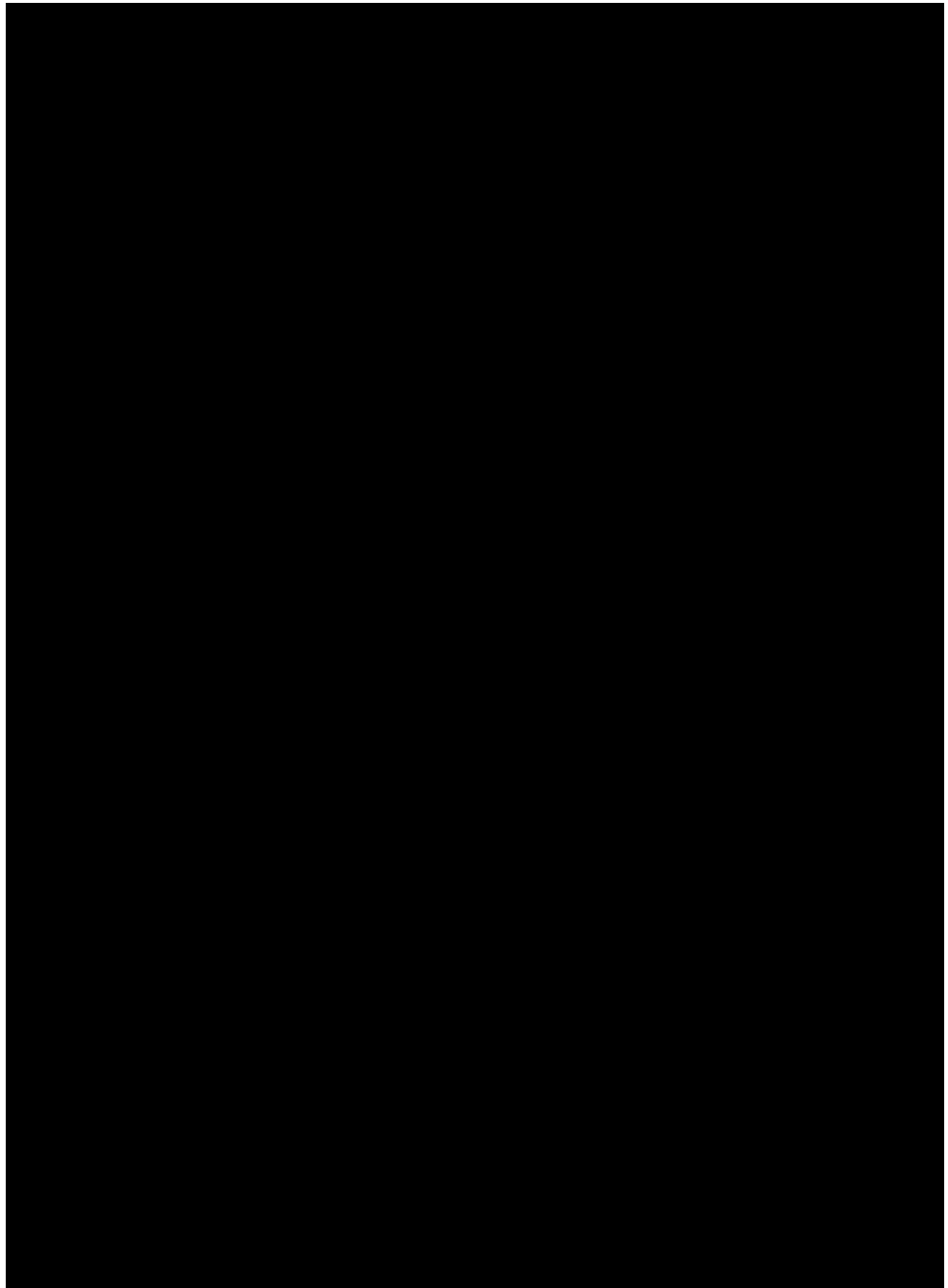
Nothing in this Deed will be construed or interpreted as constituting the relationship between the Principal on one hand and the Contractor on the other hand as that of partners, joint venturers or any other fiduciary relationship.

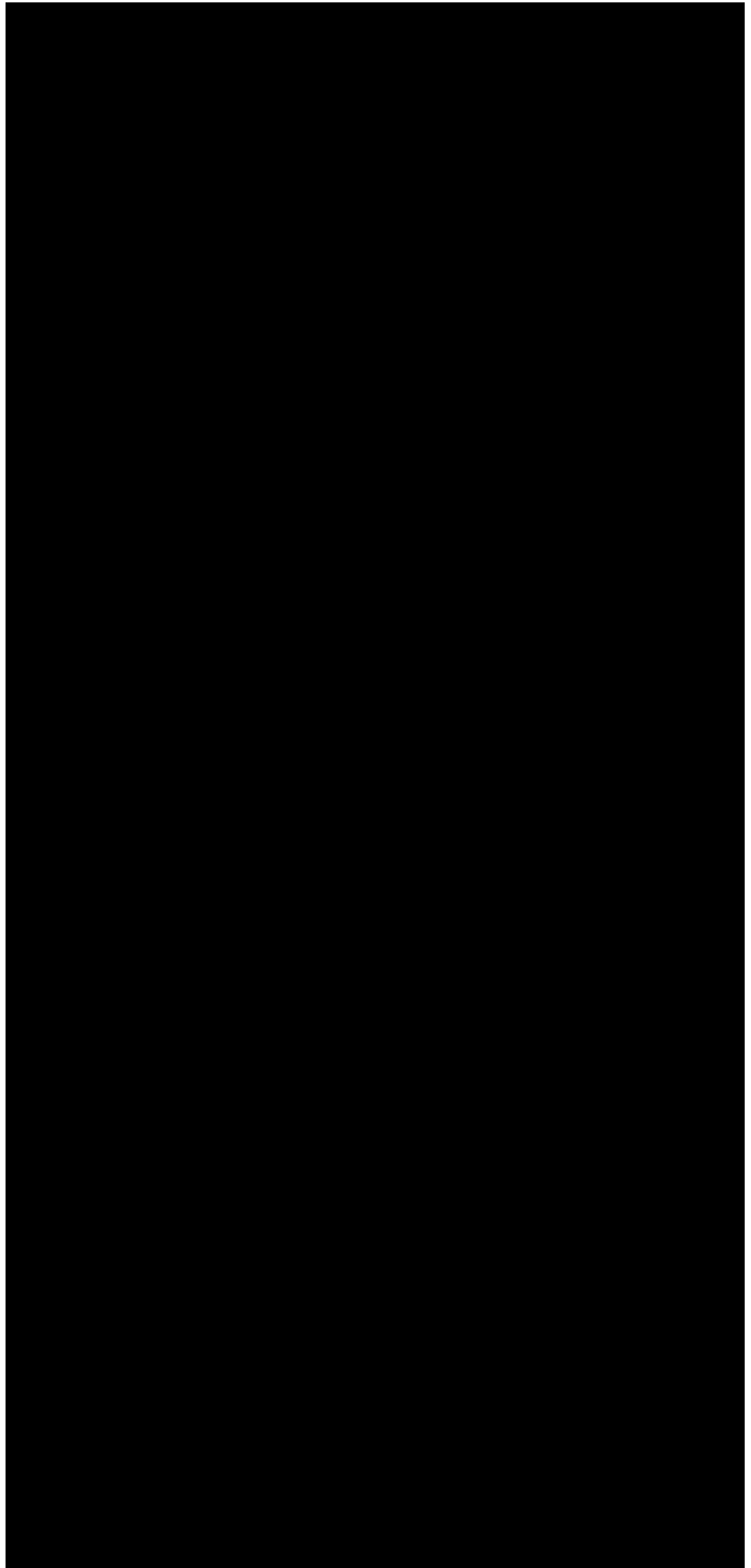
19.19 Process agent

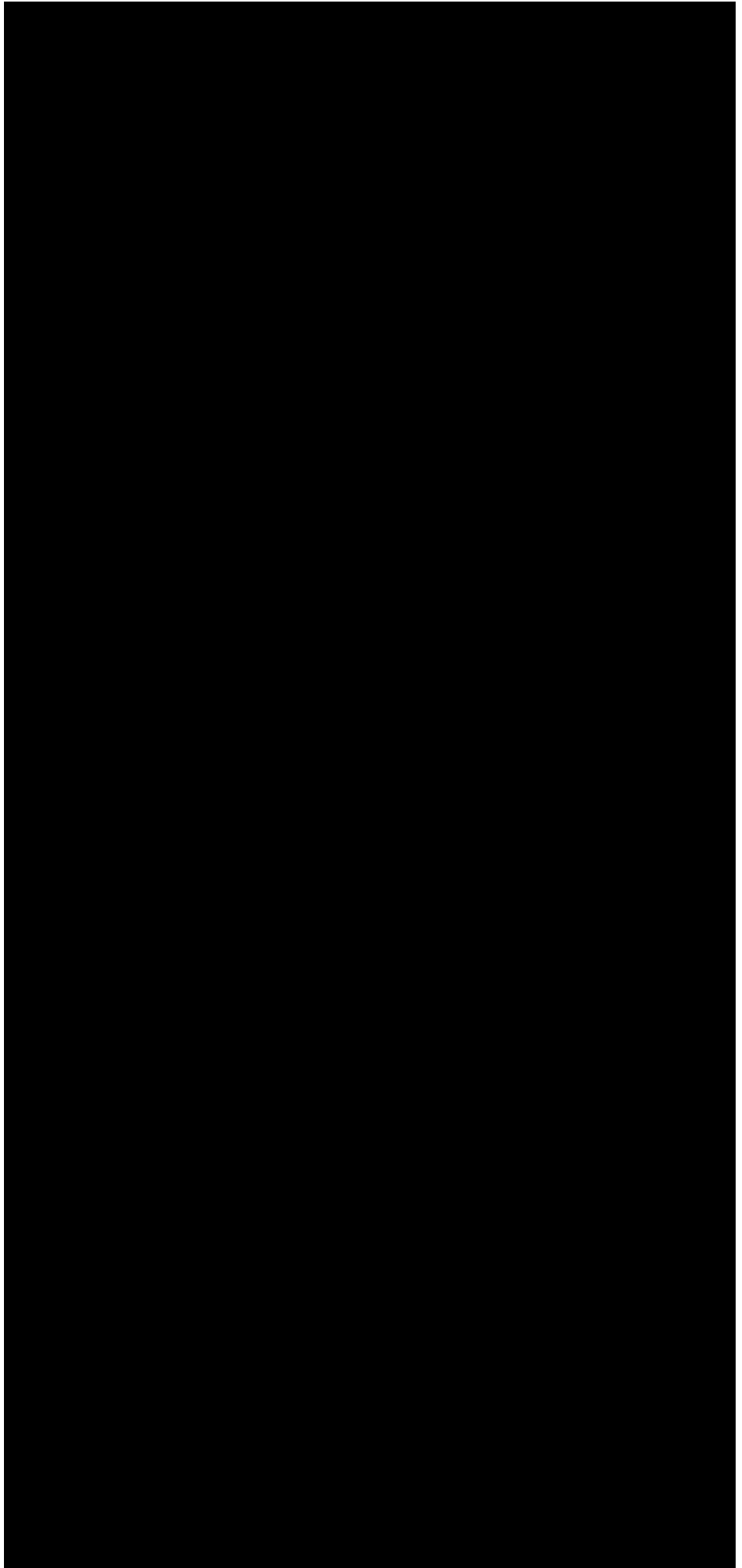
If the Contractor is a foreign company (as defined in the Corporations Act), the Contractor must:

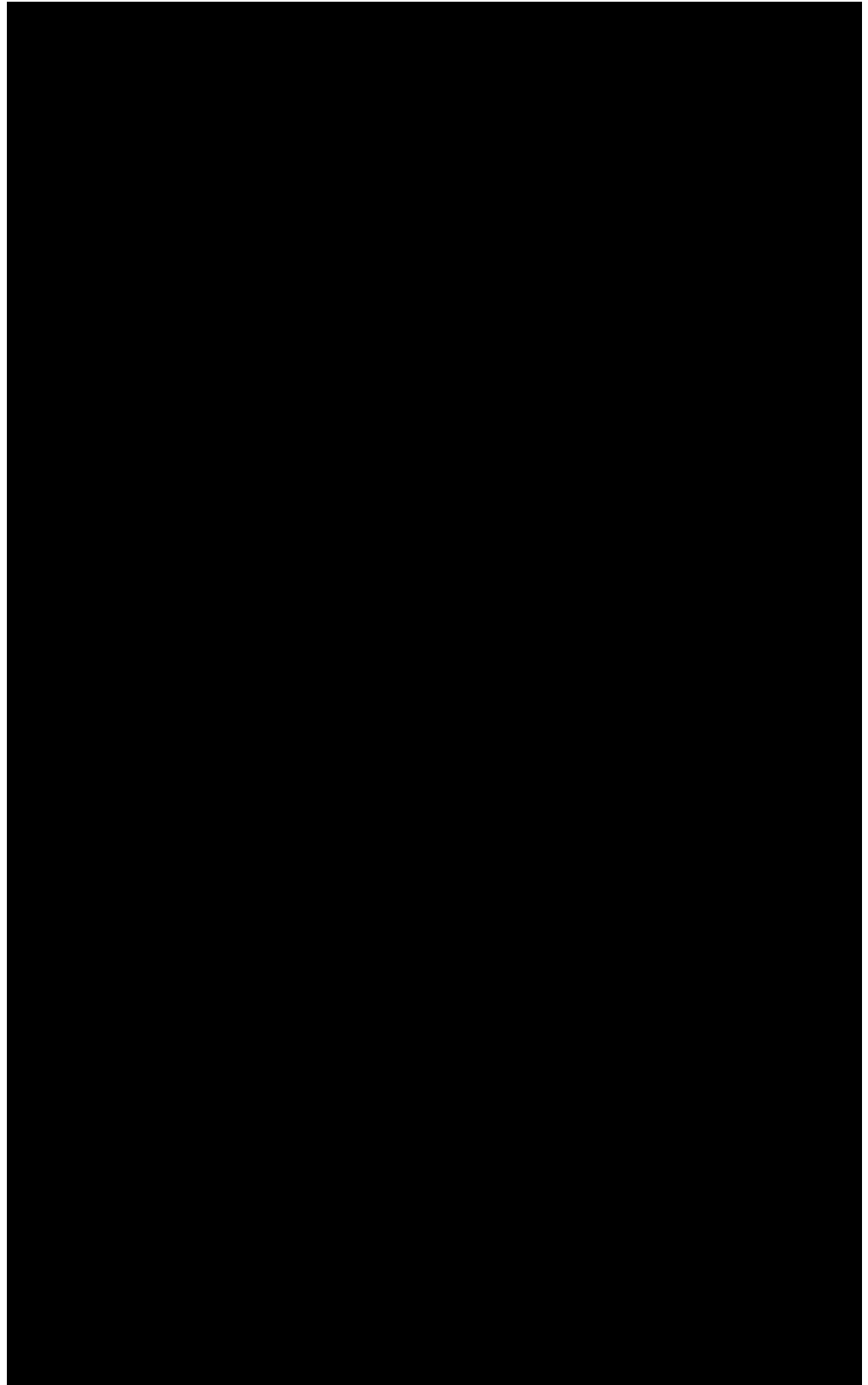
- (a) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this Deed. The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent; and
- (b) obtain the process agent's consent to the appointment.

19.20 Indemnity from Contractor

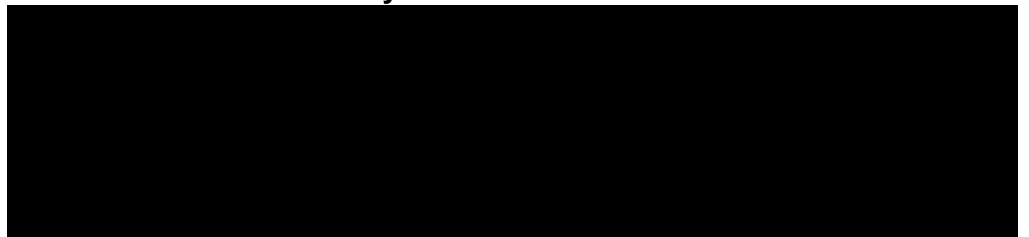


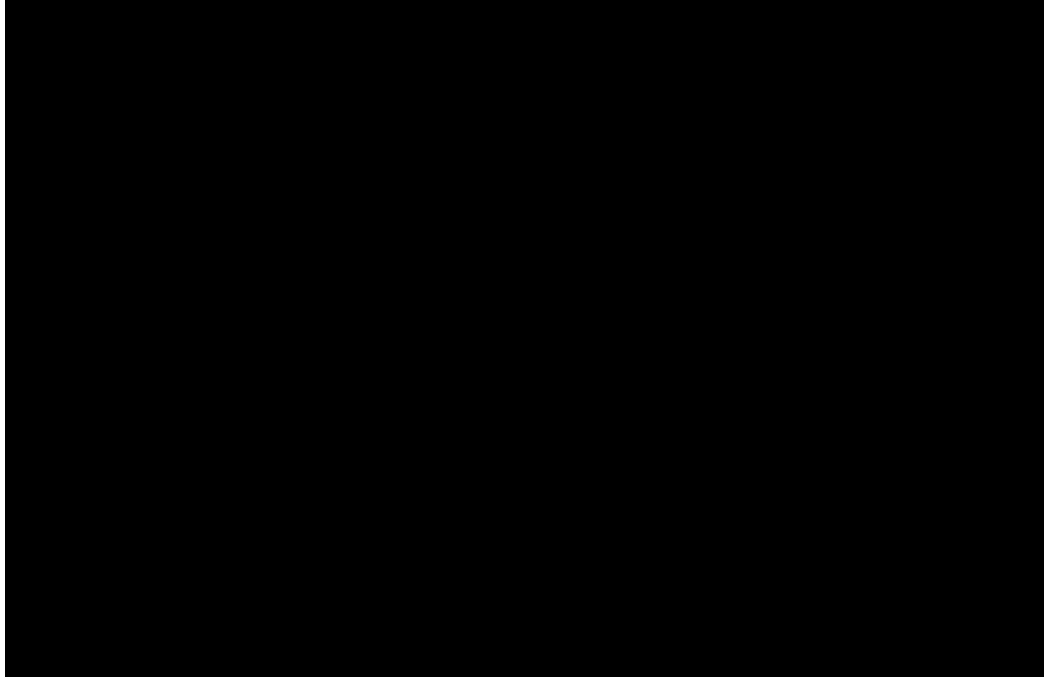




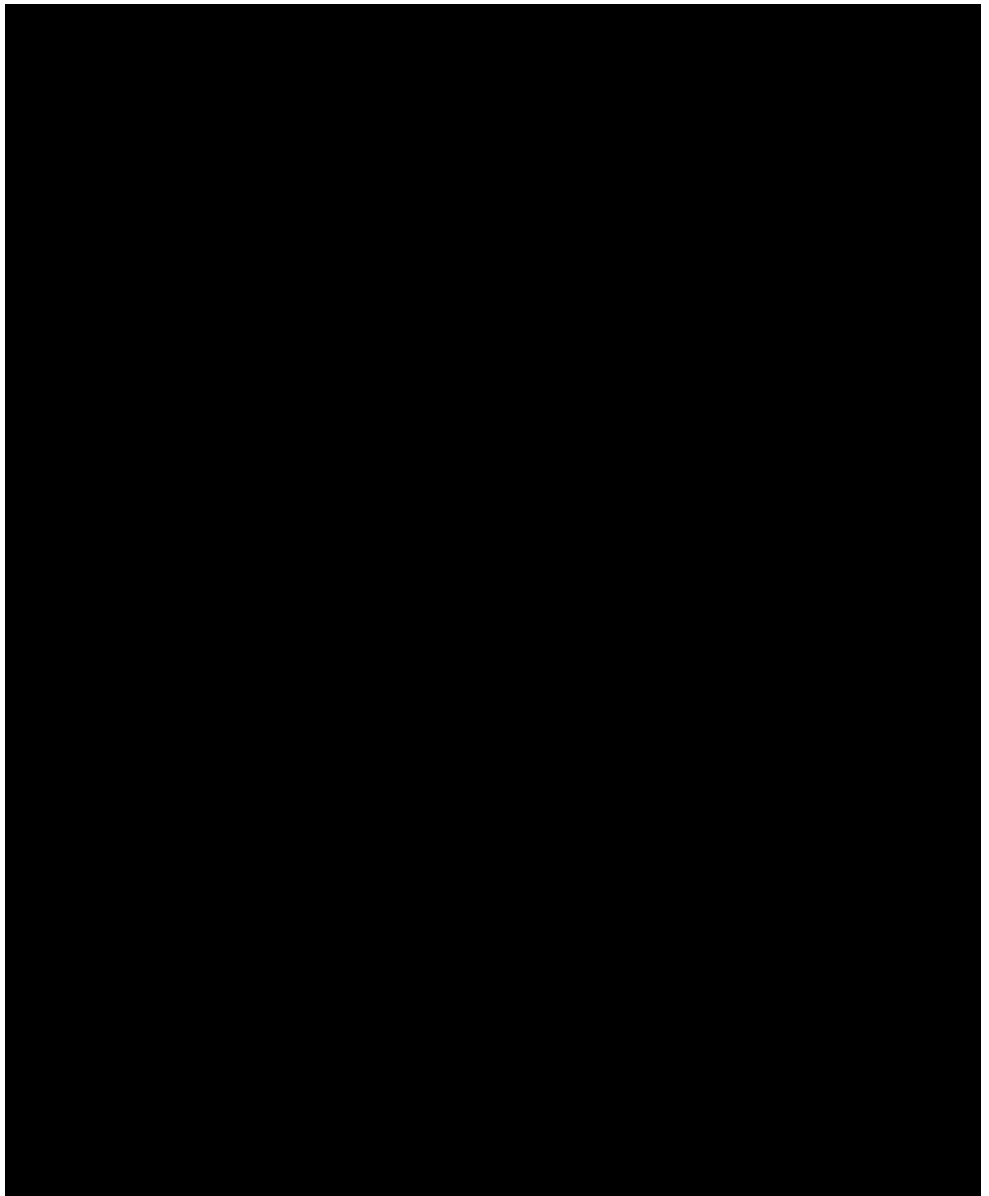


19.21 Exclusions from indemnity



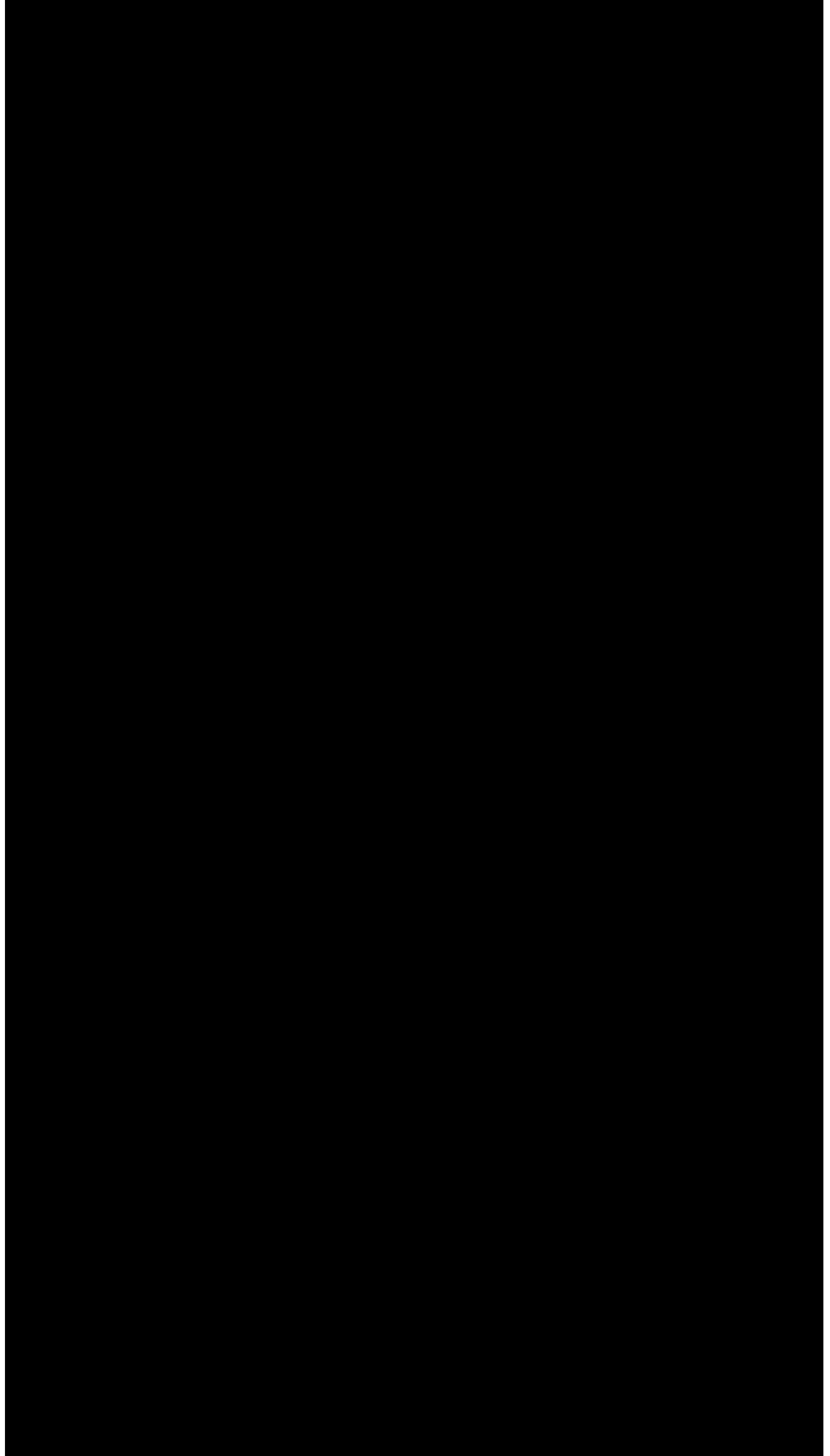


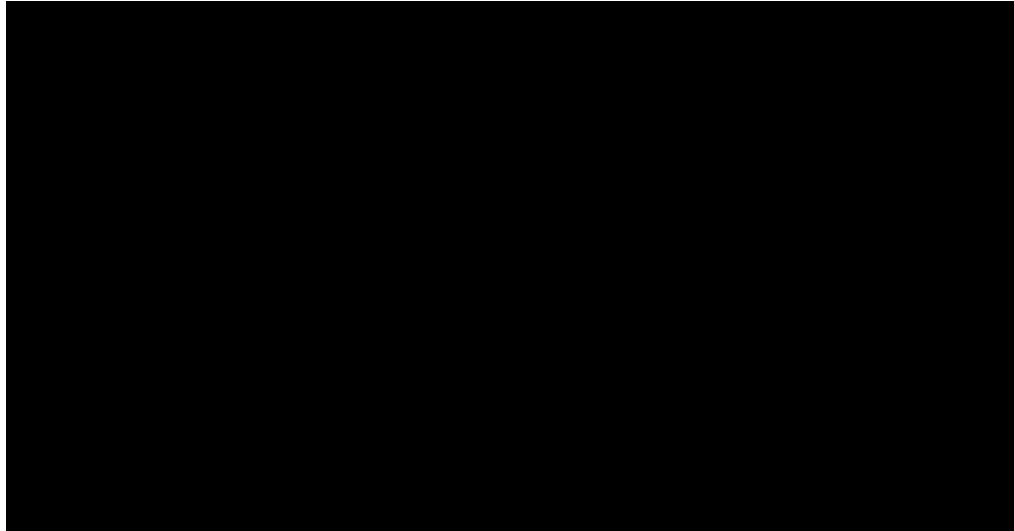
19.22 Exclusion of Consequential or Indirect Loss





19.23 Procedure for third party Claims

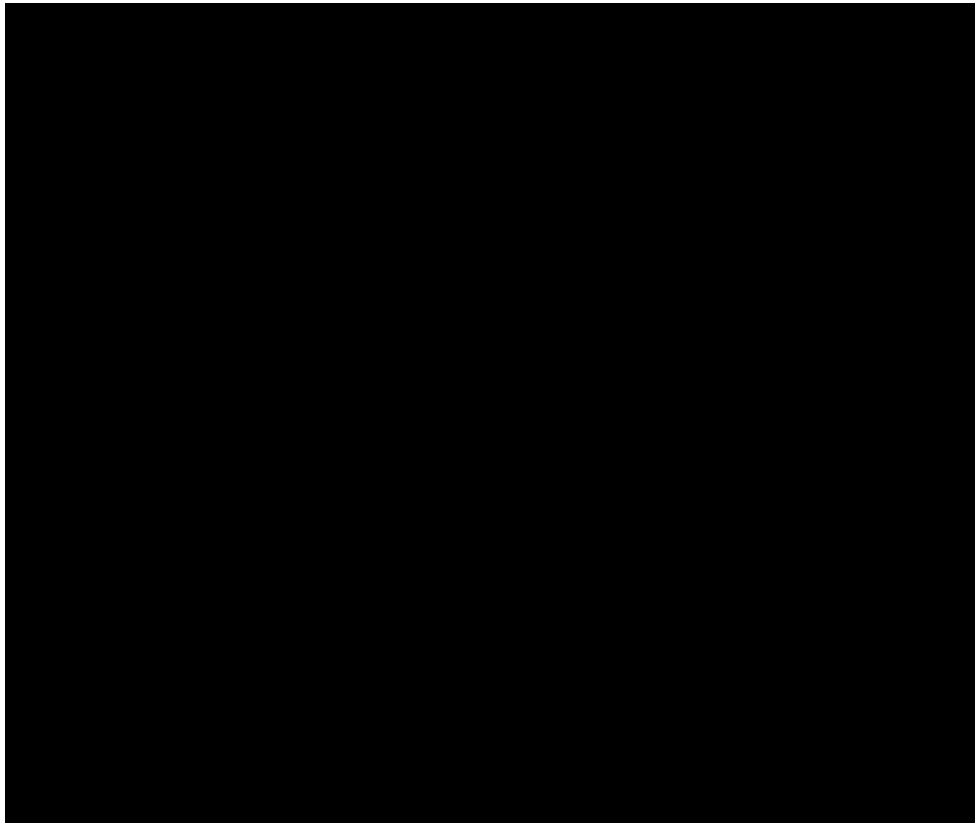




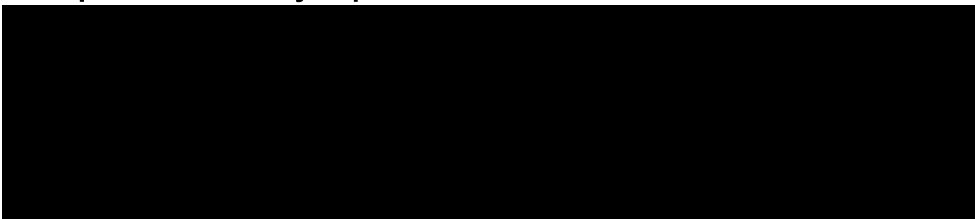
19.24 Obligations not affected

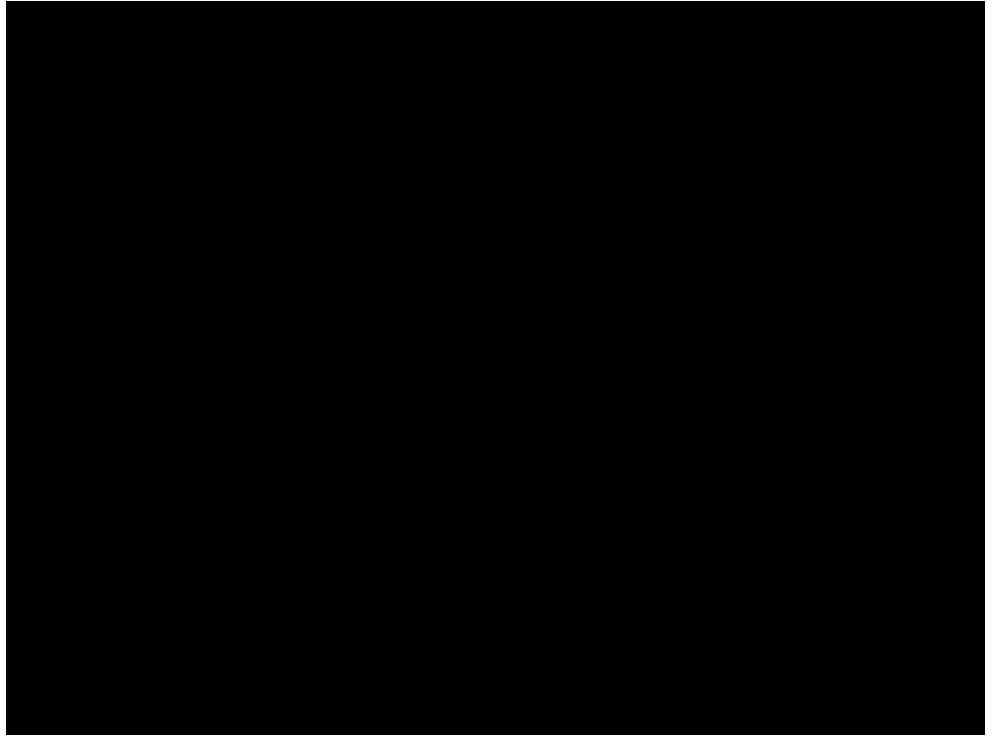
- (a) Clause 19.20 does not limit or otherwise affect the Contractor's other obligations under this Deed or otherwise according to Law.
- (b) The Contractor is not relieved of any obligation to indemnify the Principal under clause 19.20 by reason of effecting insurance or being an insured party under an insurance policy effected by the Principal.

19.25 Contractor's liability caps

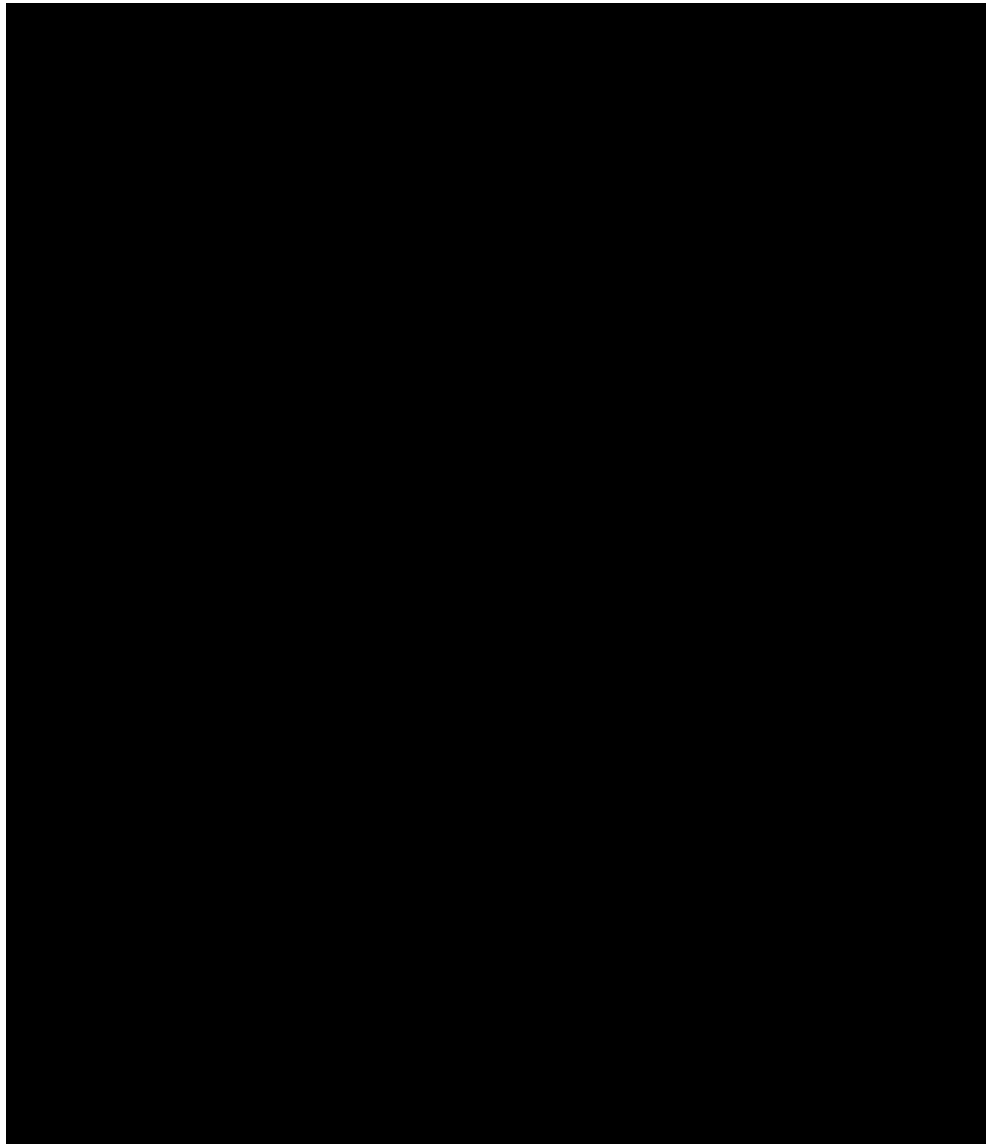


19.26 Exceptions to liability caps

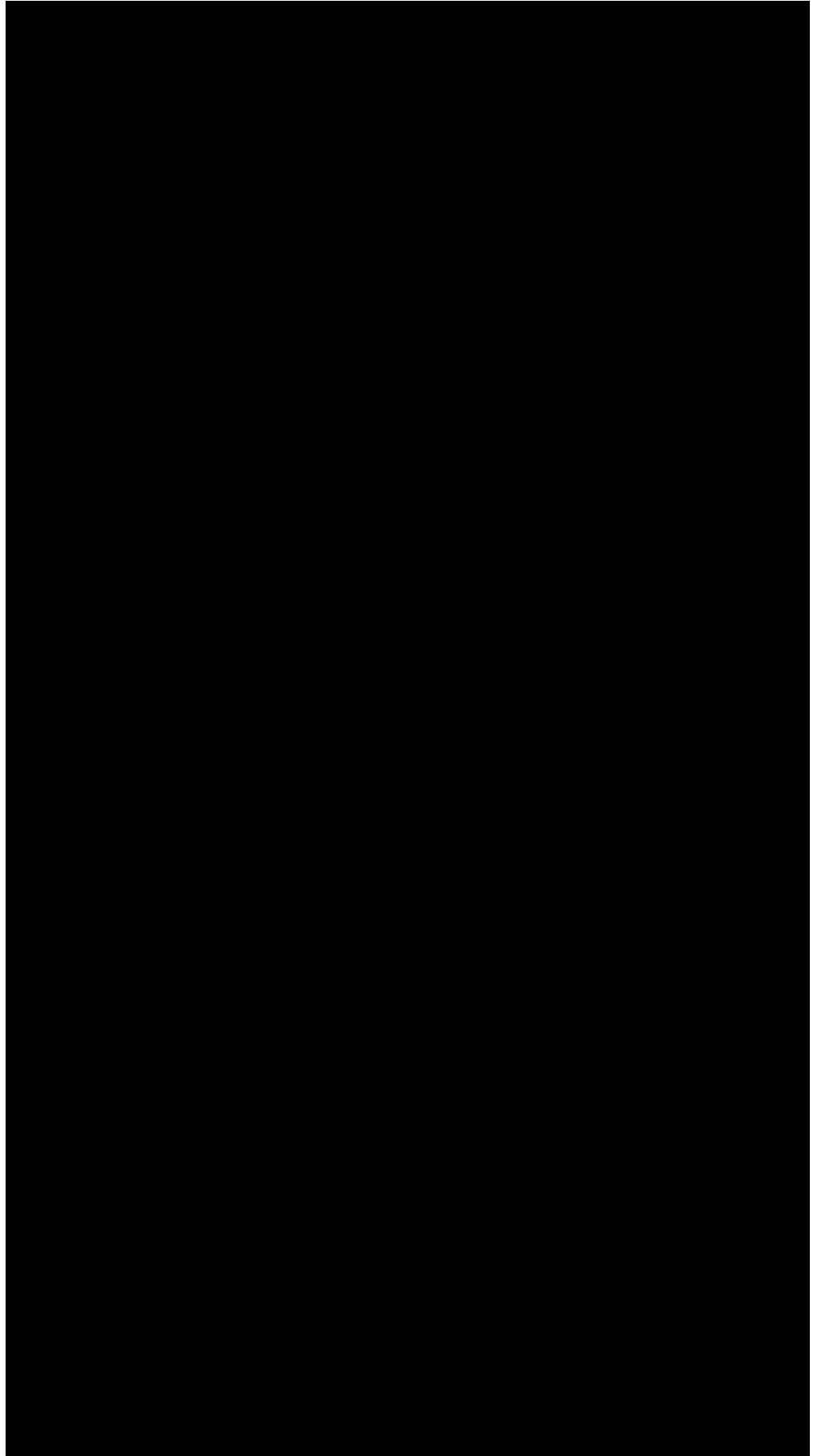




19.27 Effect of insurance

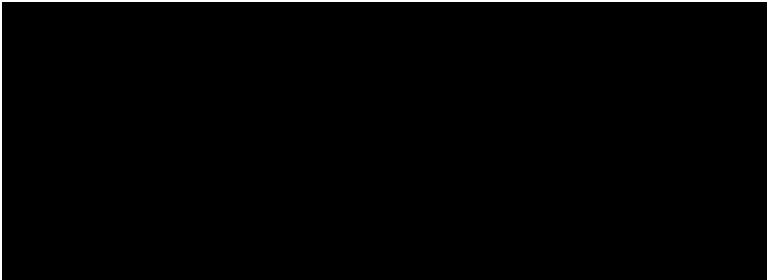


19.28 State exclusion





19.29 Proportionate liability

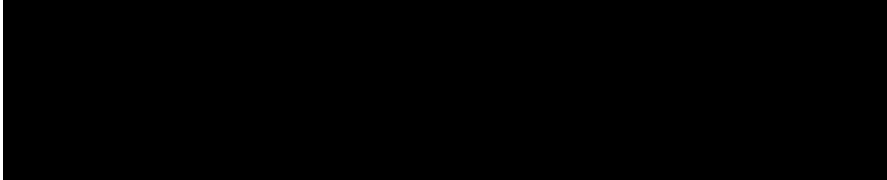

- (a) To the extent permitted by Law, Part 4 of the *Civil Liability Act 2002* (NSW) (and any equivalent statutory provision in any other state or territory) is excluded in relation to all and any rights, obligations or Liabilities of either party to this Deed under or in any way in connection with this Deed whether such rights, obligations or Liabilities are sought to be enforced in contract, tort or otherwise.
- (b) Without limiting clause 19.29(a), the rights, obligations and Liabilities of the Principal and the Contractor under this Deed with respect to proportionate liability are as specified in this Deed and not otherwise, whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, in tort or otherwise.
- (c) To the extent permitted by Law:
 - (i) the Contractor must not seek to apply the provisions of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to any claim by the Principal against the Contractor (whether in contract, tort or otherwise); and
 - (ii) 
- (d) The Contractor must use its best endeavours to:
 - (i) in each Subcontract it enters into for the carrying out of the work under this Deed or for the supply of materials or services, include a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with each Subcontract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise; and
 - (ii) require each Subcontractor or supplier of materials or services to include, in any further contract that it enters into with a third party for the carrying out of the work under this Deed, a term that (to the extent permitted by Law) excludes the application of Part 4 of the *Civil Liability Act 2002* (NSW) in relation to all and any rights, obligations or Liabilities of either party under or in any way in connection with each further contract whether such rights, obligations or Liabilities are sought to be enforced by a claim in contract, tort or otherwise.

- (e) The Contractor must ensure that all policies of insurance covering third party liability it is required by this Deed to effect or maintain (including the professional indemnity policy referred to in clause 13.5(b)(i)(C)):
 - (i) cover the Contractor for potential Liability to the Principal assumed by reason of the exclusion of Part 4 the *Civil Liability Act 2002* (NSW); and
 - (ii) do not exclude any potential Liability the Contractor may have to the Principal under or by reason of this Deed.

19.30 Prior work

The Contractor agrees that the work in connection with the Contractor's Activities carried out by the Contractor prior to the date of this Deed will be deemed to be governed by the provisions of this Deed and will be deemed to be part of the Contractor's Activities and any payments made to the Contractor by the Principal prior to the date of this Deed in respect of the Contractor's Activities will be treated as part payments of the amount required to be paid by the Principal under this Deed.

19.31 Design Life

- (a) The Contractor waives any and all rights it may have under sections 14 and 16 of the *Limitation Act 1969* (NSW) and section 6.20 of the EP&A Act in respect of the design lives of the asset elements referred to in section 7.14.2 of the SPR where those design lives are for periods longer than those provided for in those Acts.
- (b) 
- (c) 
- (d) The parties agree that any action by the Principal on the indemnity in clause 19.31(b) is not a "building action" for the purposes of section 6.19 of the EP&A Act.

19.32 Counterparts

This Deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

19.33 Personal Property Securities Act

- (a) By signing this Deed, the Contractor acknowledges and agrees that if this Deed and the transactions contemplated by it, operate as, or give rise to, a security interest for the purposes of the PPS Law (**Security Interest**), the Contractor shall do anything (including amending this Deed or any other document, executing any new terms and conditions 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 Law for the purposes of:

- (i) ensuring that the Security Interest is enforceable, perfected or otherwise effective and has the highest priority possible under PPS Law;
 - (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) If Chapter 4 of the *PPS Act* applies to the enforcement of the Security Interest, the Contractor 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) The Contractor:
 - (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 Law in respect of the Security Interest; and
 - (iii) undertakes it will not register a financing change statement without the prior written consent of the Principal.
- (d) 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 Law.
- (e) The Contractor 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.

19.34 Vienna Convention

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

19.35 Not used

19.36 Certification

For the purposes of this Deed, a copy of a document will be regarded as duly certified by the Contractor if it is certified as a true copy by a director, secretary or general manager of the Contractor.

19.37 Cost of performing obligations

Each party must perform its obligations under this Deed at its own cost, unless expressly provided otherwise.

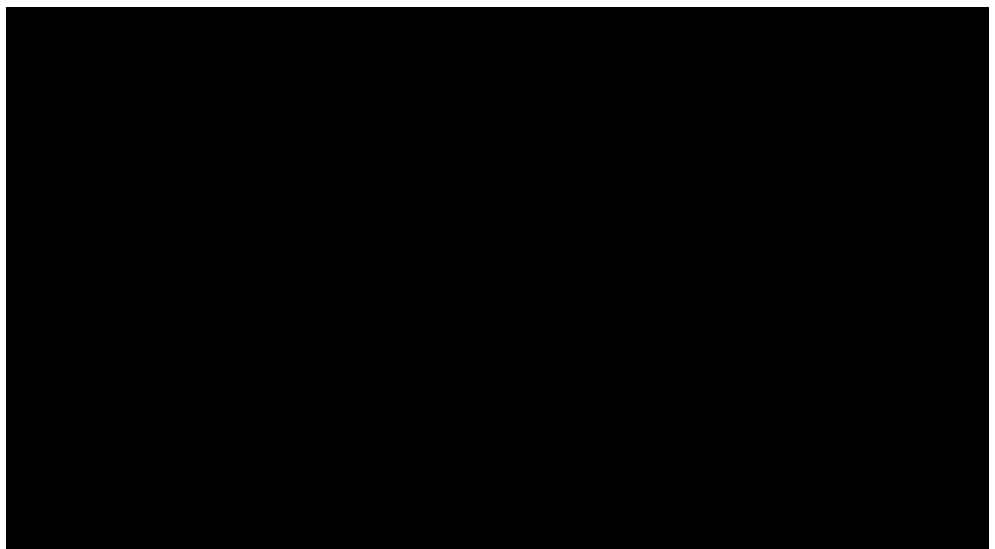
19.38 Amendments

This Deed may only be varied by a deed duly executed by or on behalf of each party.

19.39 Survival of certain provisions

- (a) Without limiting clause 19.39(c):
 - (i) the representations, warranties and indemnities given by the Contractor under this Deed and any other provisions which are expressed to survive termination will survive rescission, termination or expiration of this Deed; and
 - (ii) clauses 1, 2.8, 5.13, 5.14, 5.15, 13.2(a), 16.6, 16.7, 16.9, 16.10, 16.11, 18, 19.1, 19.2, 19.4, 19.5, 19.6, 19.7, 19.8, 19.9, 19.10, 19.11, 19.12, 19.13, 19.14, 19.15, 19.20, 19.21, 19.22, 19.23, 19.29, 19.31, 19.33, 19.34, 19.40, 21.3(a) and the representations, warranties and indemnities given by the Contractor under this Deed and any other provisions which are expressed to survive termination will survive rescission, termination or expiration of this Deed,

(together, the **Surviving Clauses**).
- (b) If this Deed is rescinded or terminated, no party will be liable to any other party except:
 - (i) under the Surviving Clauses; or
 - (ii) in respect of any breach of this Deed occurring before such rescission or termination.
- (c) 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.

19.40 Longstop for Liability

20 General Provisions Relating to GST

- (a) The parties acknowledge that unless otherwise expressly stated all consideration payable or to be provided in this Deed is exclusive of GST.
- (b) If GST is or becomes payable on a supply made by a party (**Supplier**) under or in connection with this Deed, including the Contractor's Activities or the Enabling Works, the party providing consideration for the supply (**Recipient**) must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (c) Any amount payable under clause 20(b) will be paid to the Supplier at the same time as the GST – exclusive consideration for the supply, or the first part of the GST – exclusive consideration for the supply (as the case may be), is paid or provided to the Supplier.
- (d) If any party is required under this Deed to reimburse or pay to the other party an amount (other than any payment on account of the Contract Sum) calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (e) Notwithstanding any other provision of this Deed, where the Recipient is the Contractor, it will not be obliged to pay any amount in respect of GST to the Principal (whether under this clause 20 or otherwise) in respect of a taxable supply made by the Principal unless the Principal issues to the Contractor a Tax Invoice that complies with the GST Legislation in respect of that taxable supply.
- (f) If the GST payable in relation to a supply made by the Supplier under this Deed varies from the additional amount paid by the other party under this clause 20 in respect of that supply, then:
 - (i) the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate); and
 - (ii) the Supplier agrees to issue an adjustment note.
- (g) In this clause 20:
 - (i) unless the contrary intention appears, terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (ii) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.

21 NSW Code of Practice

21.1 NSW Code and NSW Guidelines

In addition to terms defined in this Deed, terms used in this clause 21 have the same meaning as is attributed to them in the NSW Guidelines. The NSW Code and NSW Guidelines are available at www.industrialrelations.nsw.gov.au.

21.2 Primary Obligation

- (a) The Contractor must at all times comply with, and meet any obligations imposed by the NSW Code and the NSW Guidelines.
- (b) The Contractor must notify the CCU and the Principal of any possible non-compliance with the NSW Code and NSW Guidelines and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Contractor engages a Subcontractor, the Contractor must ensure that the contract imposes on the Subcontractor equivalent obligations to those in this clause 21, including that the Subcontractor must at all times comply with, and meet any obligations imposed by, the NSW Code and the NSW Guidelines.
- (d) The Contractor must not appoint or engage another party in relation to the Enabling Works where that appointment or engagement would breach a sanction imposed on the other party in relation to the NSW Code or NSW Guidelines.

21.3 Access and information

- (a) The Contractor must maintain adequate records of compliance with the NSW Code and NSW Guidelines by it, its Subcontractors and related entities.
- (b) The Contractor must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to sites and premises controlled by the Contractor, including but not limited to the Site;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Enabling Works;
 - (v) have access to personnel; and
 - (vi) interview any person,

as is necessary for the authorised personnel to monitor and investigate compliance with the NSW Code and NSW Guidelines, by the Contractor, its Subcontractors and related entities.
- (c) The Contractor, and its related entities, must agree to, and comply with, a request from authorised personnel (including personnel of the CCU) for the production of specified documents by a certain date, whether in person, by post or electronic means.

21.4 Sanctions

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

21.5 Compliance

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

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

22 Change of Ownership

- (a) Subject to clause 22(b), the Contractor must not permit any direct or indirect change to the legal or beneficial ownership of the Contractor (**Change of Ownership**) without the Principal's prior written consent (not to be unreasonably withheld or delayed) and if the Principal has provided its prior written consent, then the Change in Ownership shall be a Permitted Change in Ownership for the purpose of this Deed.
- (b) The Principal's consent is not required for a Change of Ownership resulting from:
 - (i) a transfer of any share or unit or other interest in the nature of equity which is listed on a recognised stock exchange; or
 - (ii) any transfer of a share or unit or other interest in the nature of equity by a person to a Related Body Corporate of that person, provided the Contractor gives the Principal prior written notice of the transfer,

(a Permitted Change in Ownership).
- (c) The Principal will be deemed to be acting reasonably if it withholds its consent to a proposed Change of Ownership where the Principal is of the opinion that:
 - (i) the Contractor has not provided it with full details of the proposed Change of Ownership and any further information requested by the Principal;
 - (ii) not used;
 - (iii) the new owner or owners (or any direct or indirect holding company of the new owner or owners):
 - (A) is or are not solvent and reputable; or
 - (B) has or have an interest or duty which conflicts in a material way with the interests of the Project and is or are involved in a business or activity which is incompatible, or inappropriate, in relation to the Project; or
 - (iv) the proposed Change of Ownership:
 - (A) is against the public interest;
 - (B) would adversely affect the ability or capability of the Contractor to perform its obligations under this Deed and any Project Agreement; or
 - (C) would increase the Liability of, or risks accepted by, the Principal under the Project Agreements.
- (d) The Principal's consent to a Change of Ownership will not relieve the Contractor of any of its obligations under this Deed.

23 Restrictions

23.1 Restrictions on assignment

- (a) The Contractor acknowledges and agrees that the Principal may at any time assign, novate, transfer or otherwise deal with its rights or obligations under this Deed and any Project Agreement without the Contractor's prior approval or consent provided that the proposed assignee, novate 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. The Principal must not otherwise assign, novate, transfer or otherwise deal with its rights or obligations under this Deed without the Contractor's prior written consent (which must not be unreasonably withheld or delayed).
- (b) Except as expressly permitted by this Deed, the Contractor must not assign, novate, transfer, mortgage, charge or otherwise deal with its rights or obligations under this Deed or any Project Agreement, without the Principal's prior written approval.

23.2 Restrictions on dealings with PLR

The Contractor must not:

- (a) create, permit or suffer any Security Interest over;
- (b) lease, licence, transfer, sell, part with possession of, or otherwise deal with; or
- (c) operate or use, or permit any other person to operate or use,

the PLR, PLR Stage 2, the Enabling Works, or any part of the Site, except as approved by the Principal.

23.3 Restrictions on related party contracts

The Contractor must not (and must ensure that Subcontractors do not) enter into any contract relating to Contractor's Activities with a Related Body Corporate (other than on arm's length commercial terms) without the Principal's prior approval.

Signing Page

Executed as a Deed

DATED: 16 September 2024

PRINCIPAL

SIGNED, SEALED AND DELIVERED
for and on behalf of **TRANSPORT
FOR NSW** (ABN 18 804 239 602):

[Redacted Signature]

Signature or witness

David Britton

Print Name

(block letters)

Chief Legal Officer, Transport for NSW

Position held

[Redacted Signature]

Signature or Authorised Delegate

Camilla Drover

Print Name

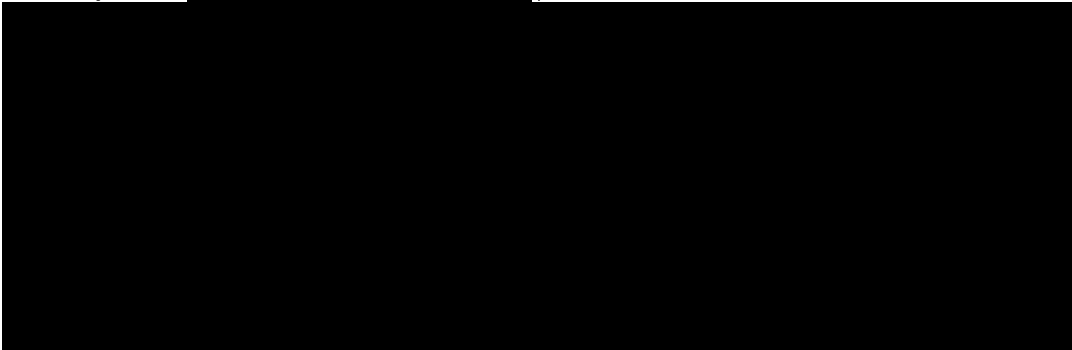
(block letters)

Deputy Secretary, Transport for NSW

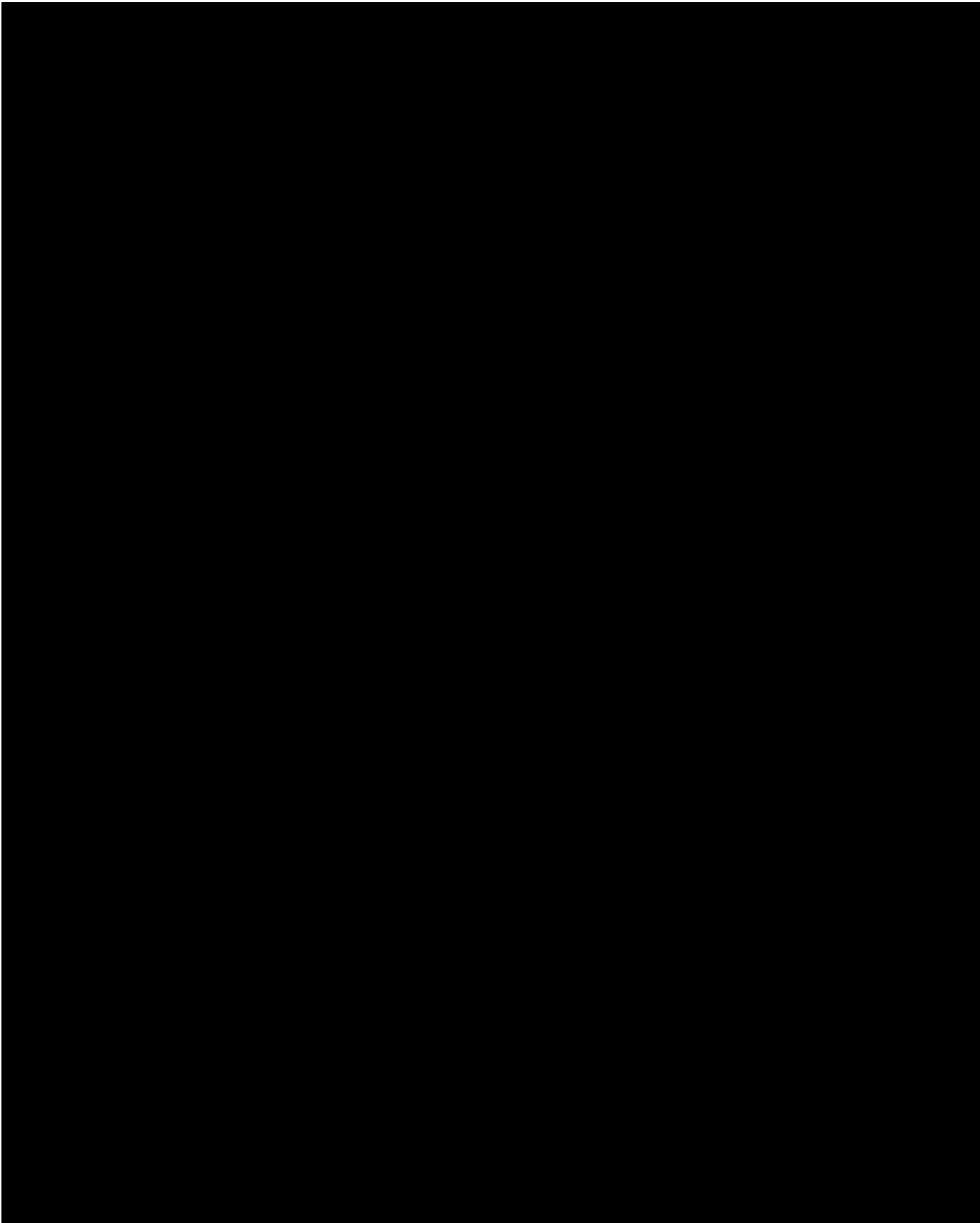
Position held

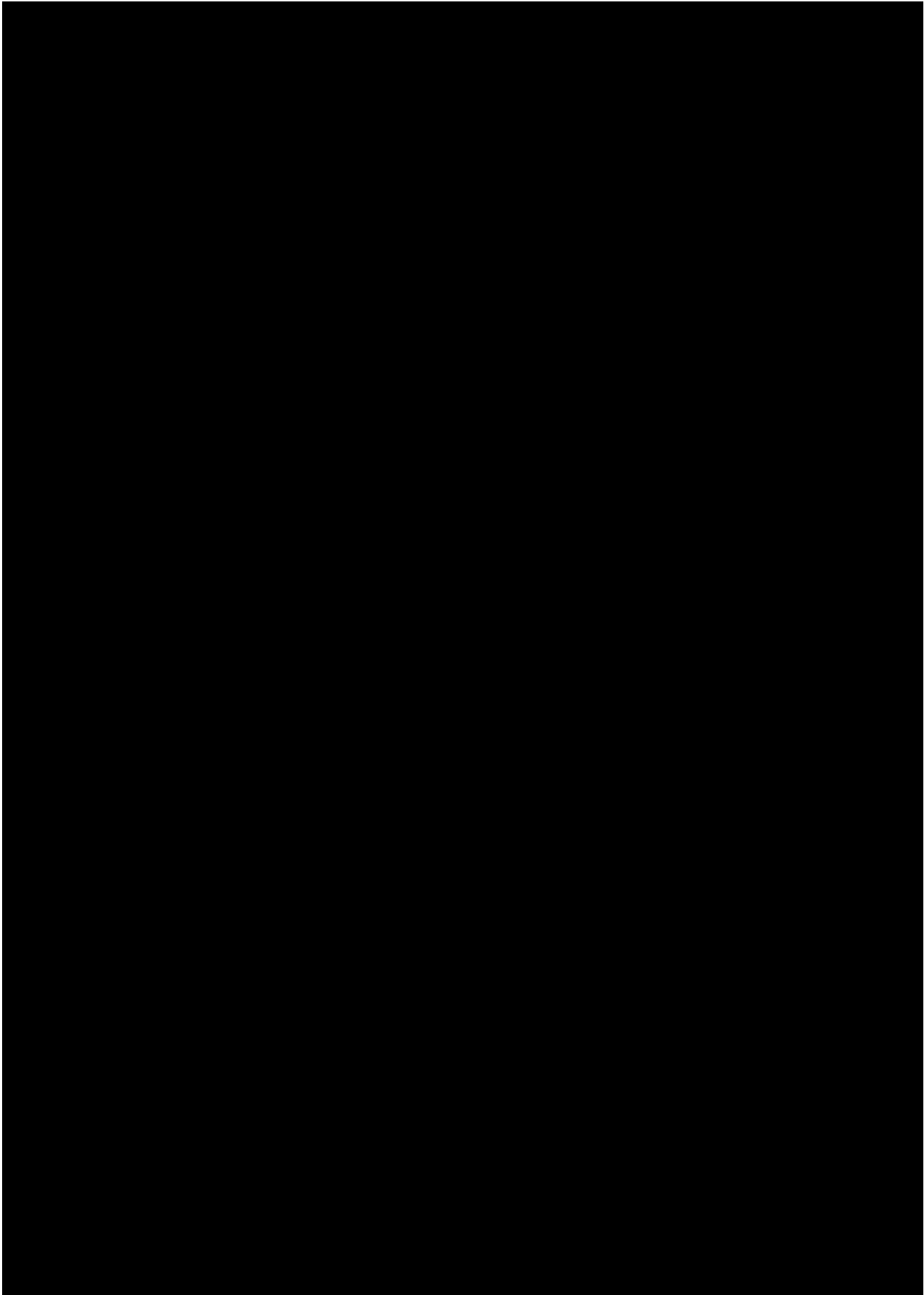
CONTRACTOR

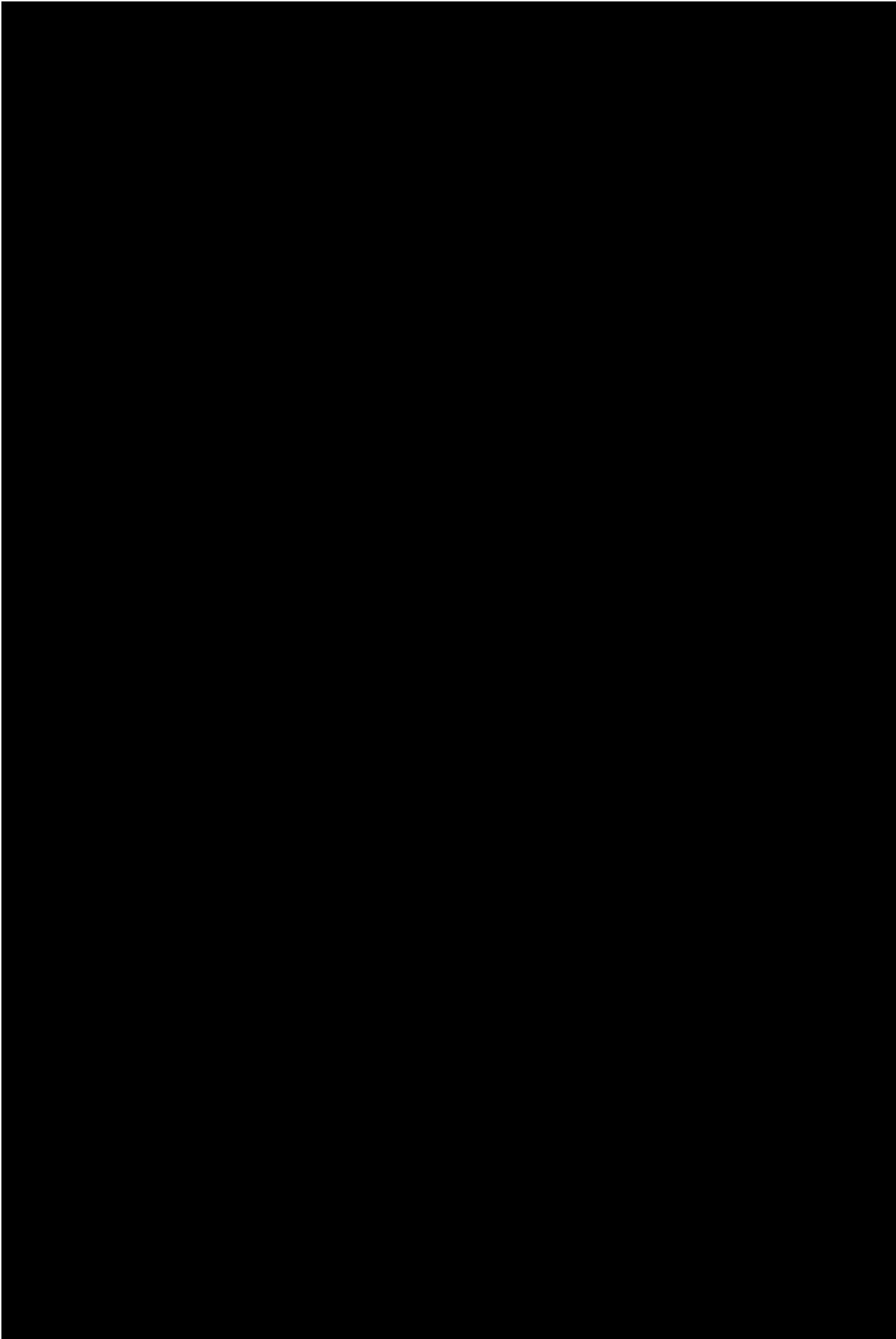
SIGNED SEALED AND DELIVERED by)
)
)
)
as attorney for **JOHN HOLLAND PTY LTD**)
(ABN 11 004 282 268) under power of)
attorney dated)

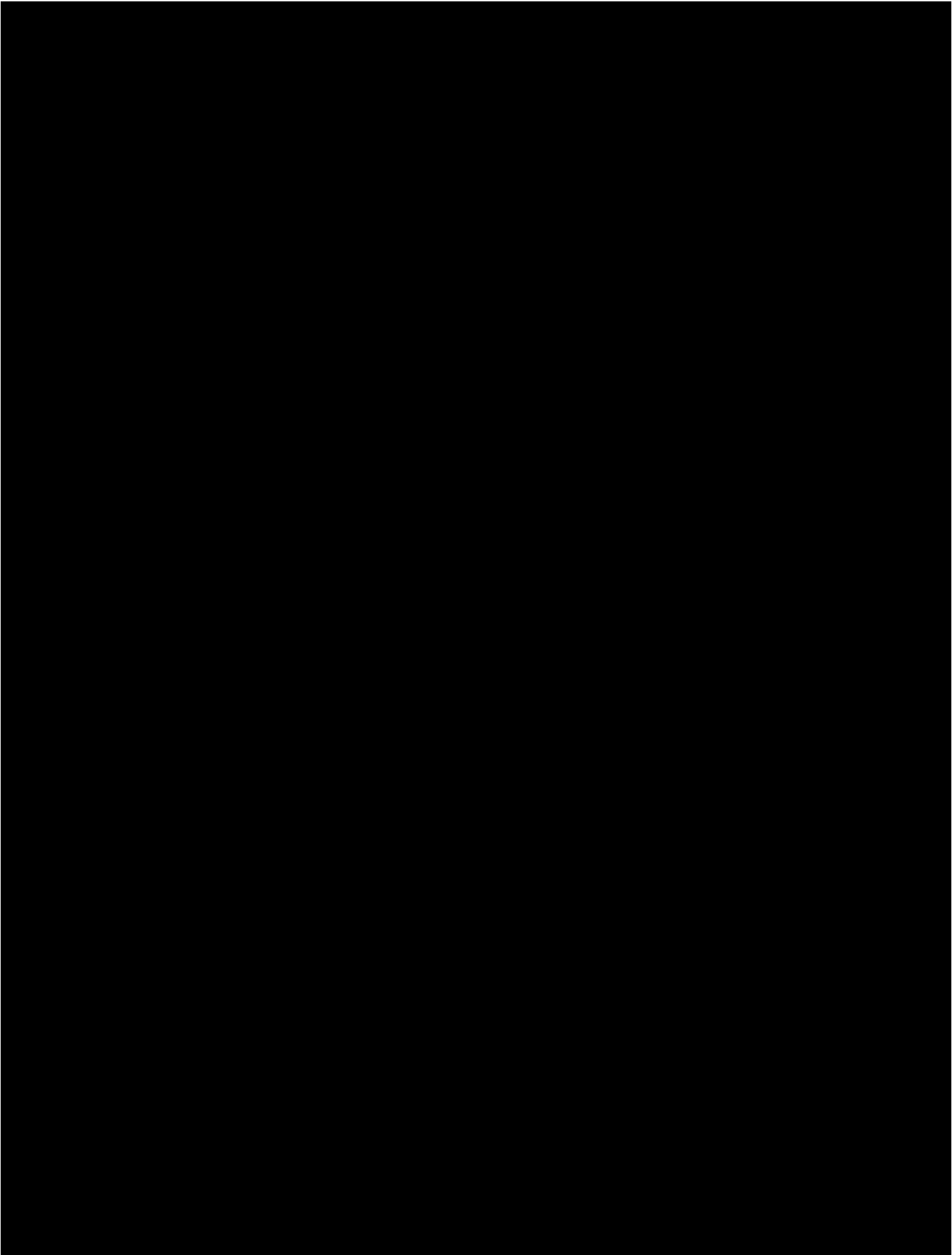


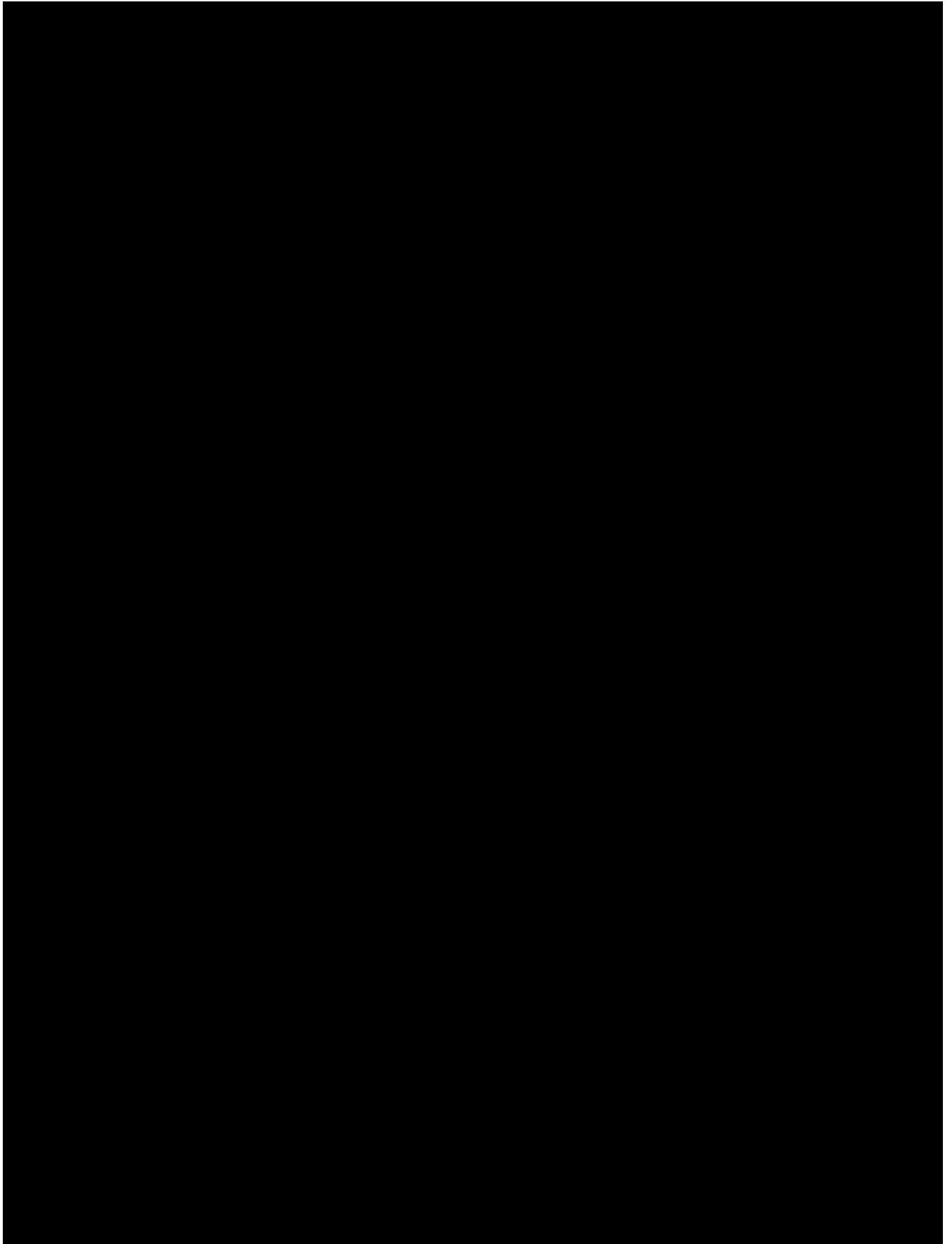
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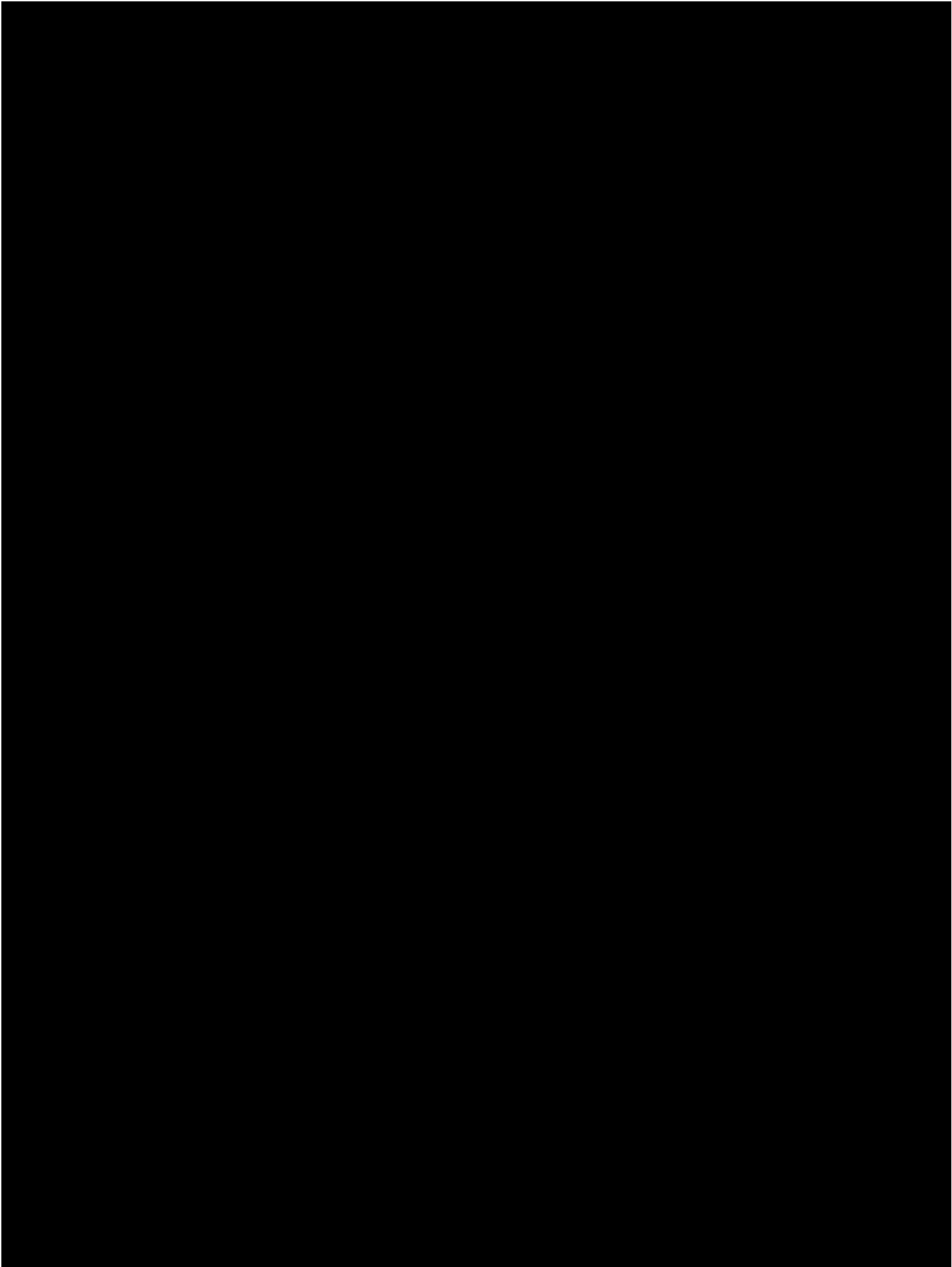


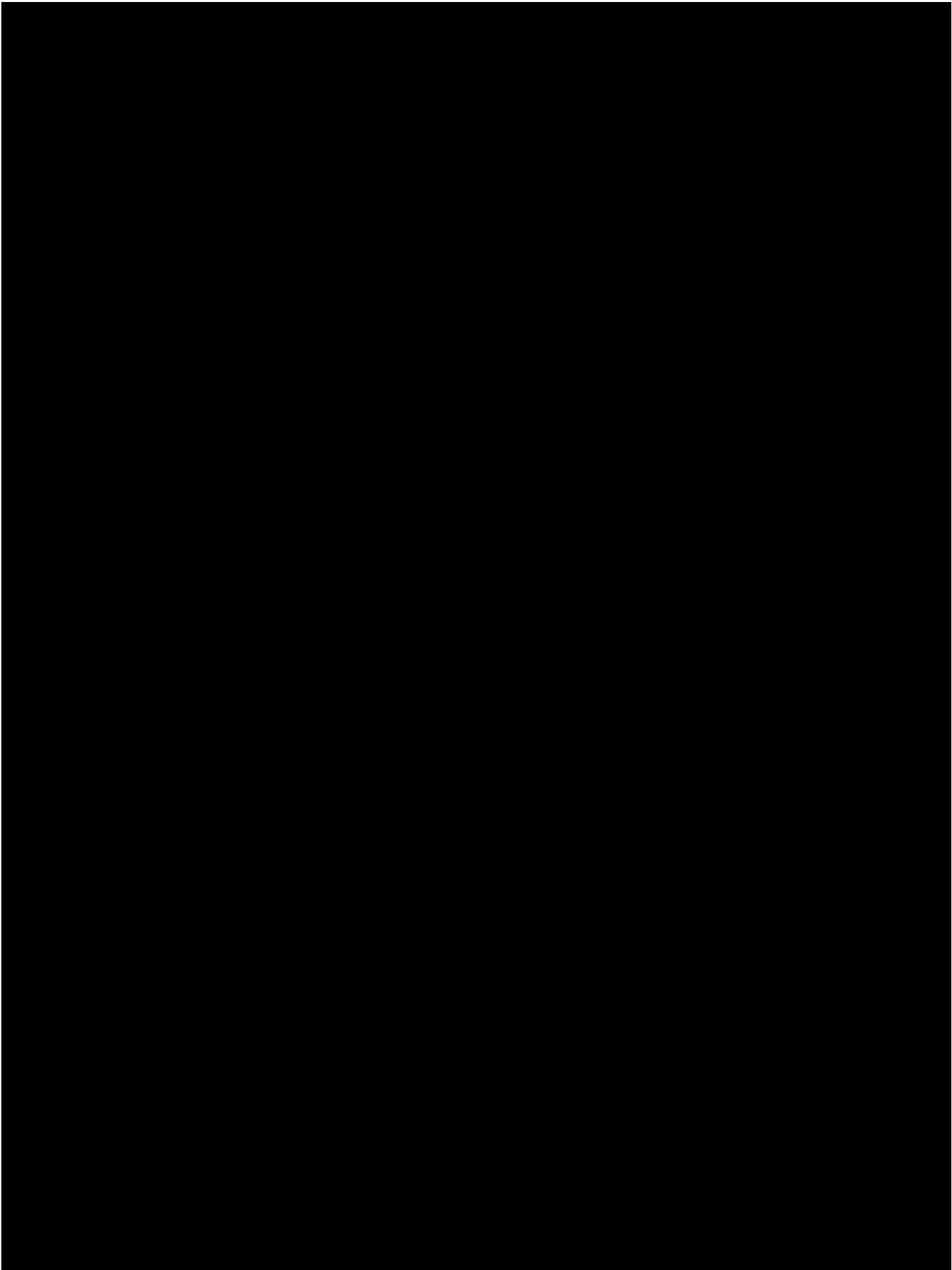


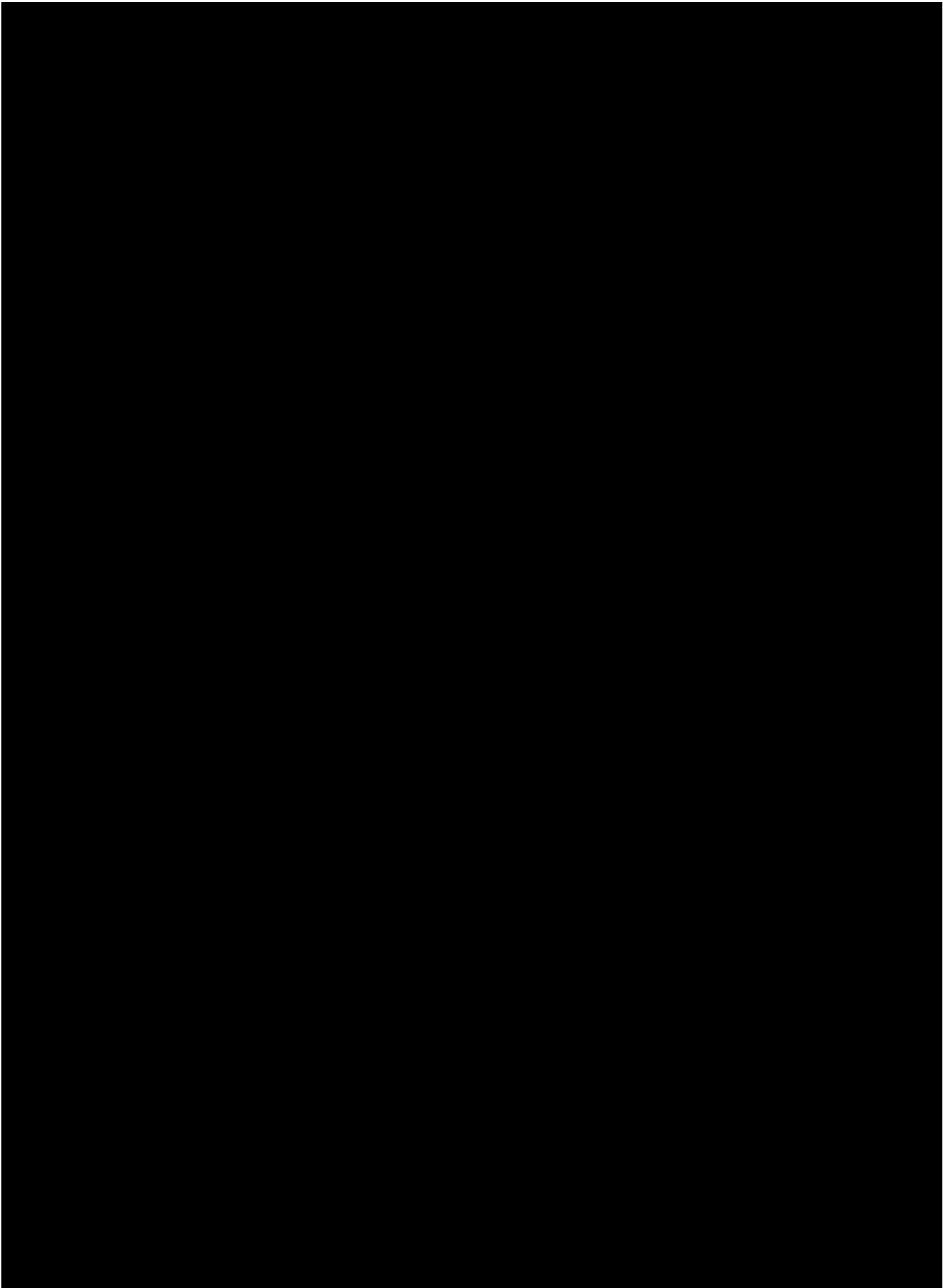


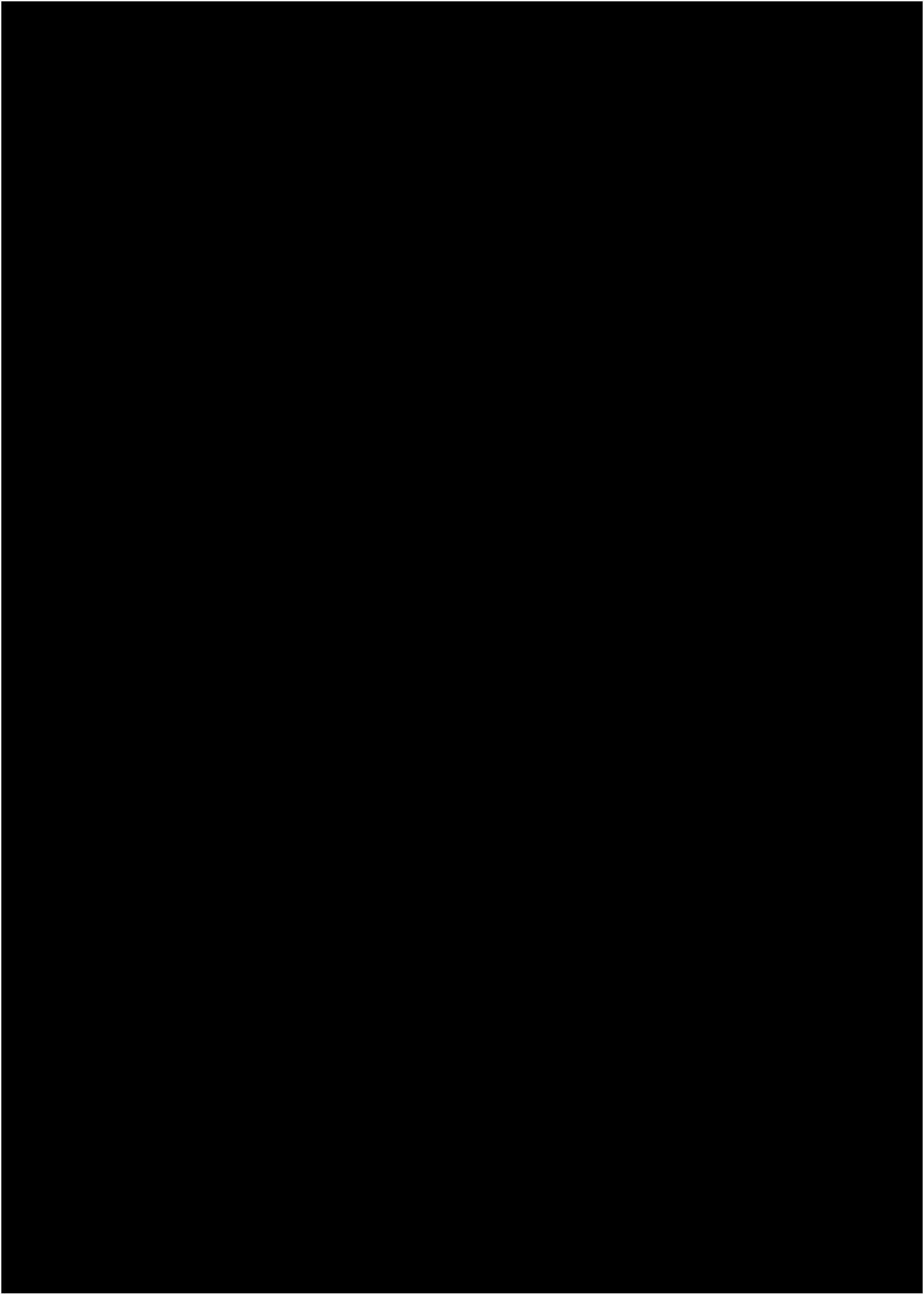


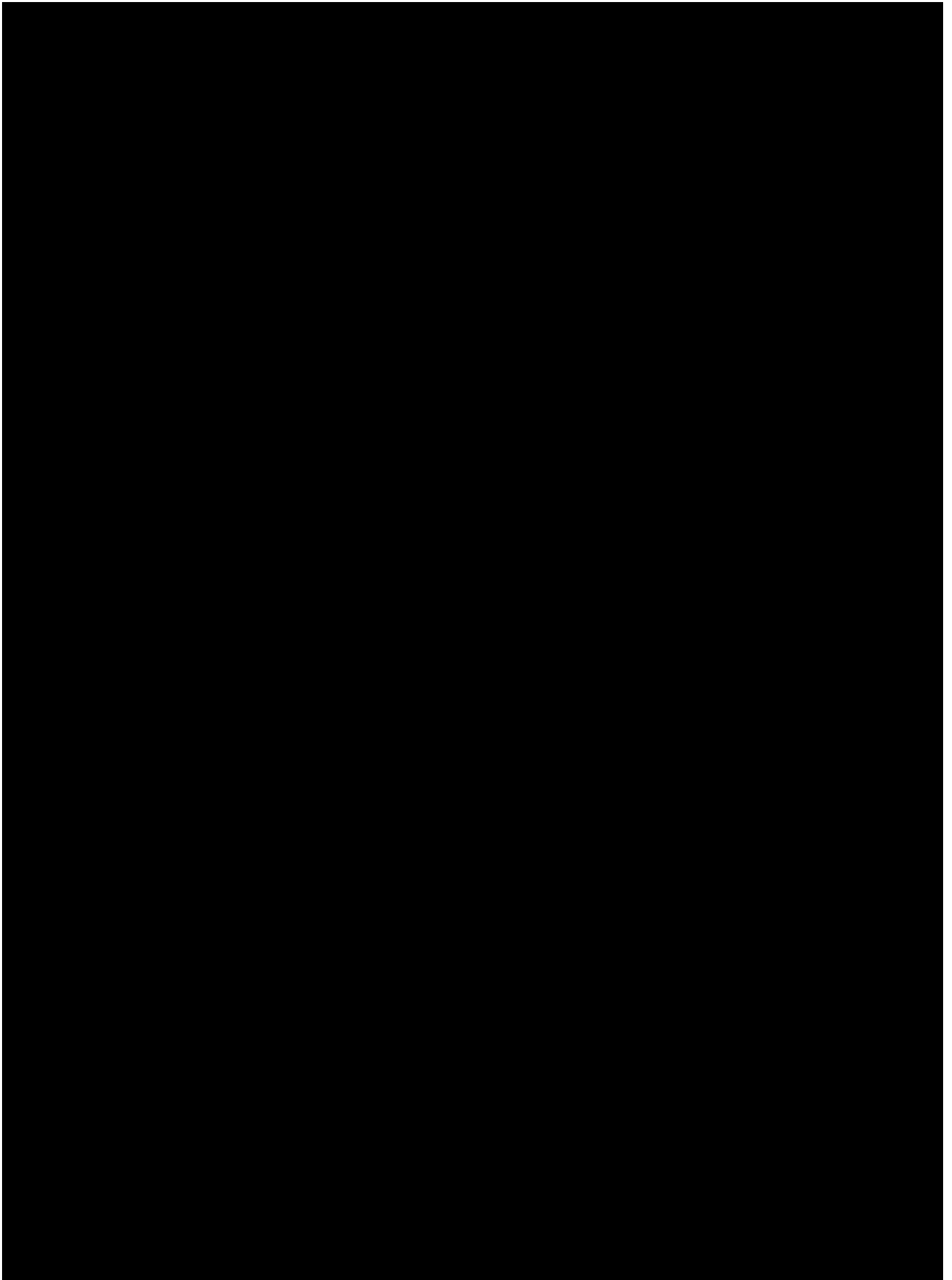




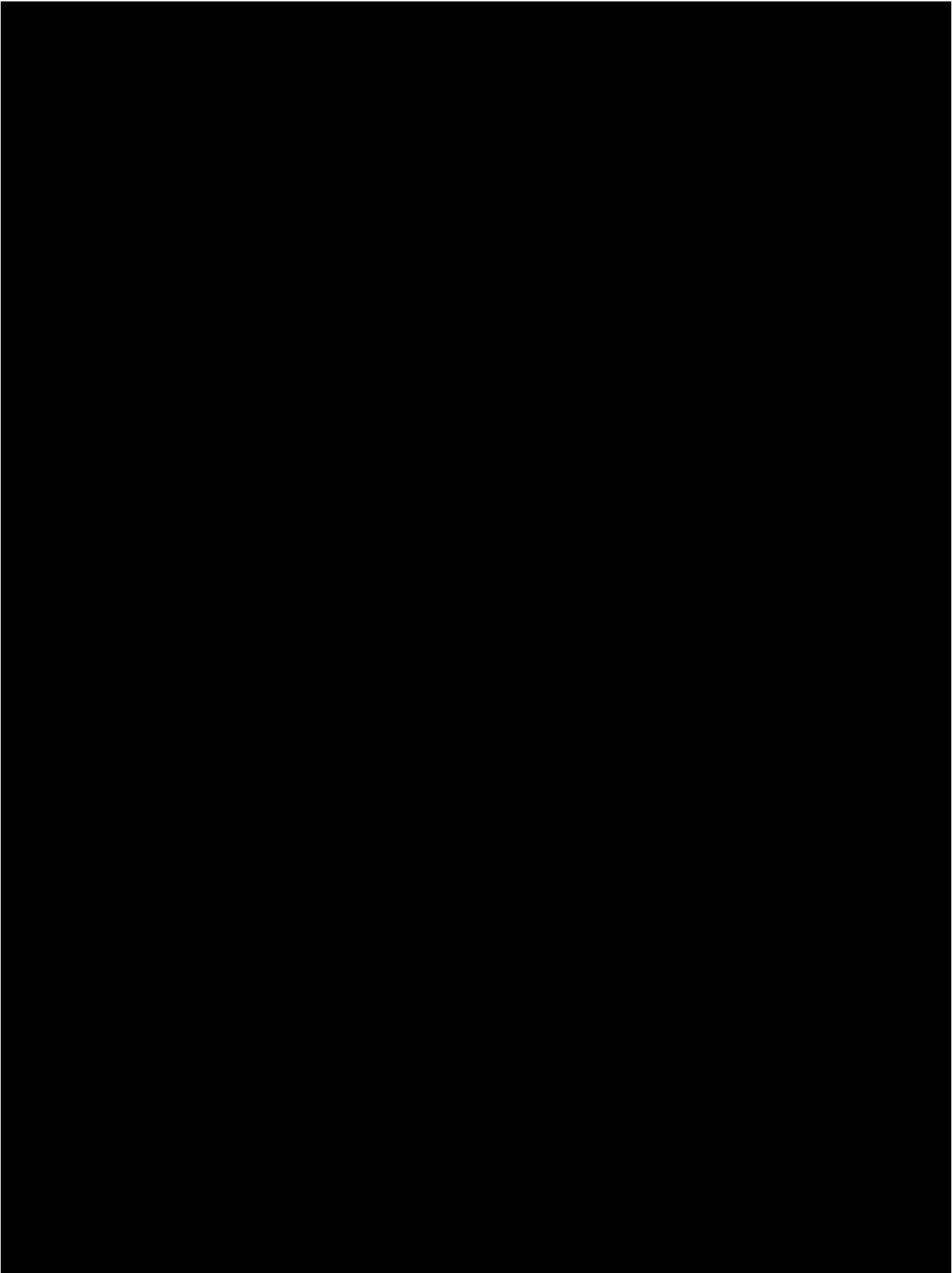


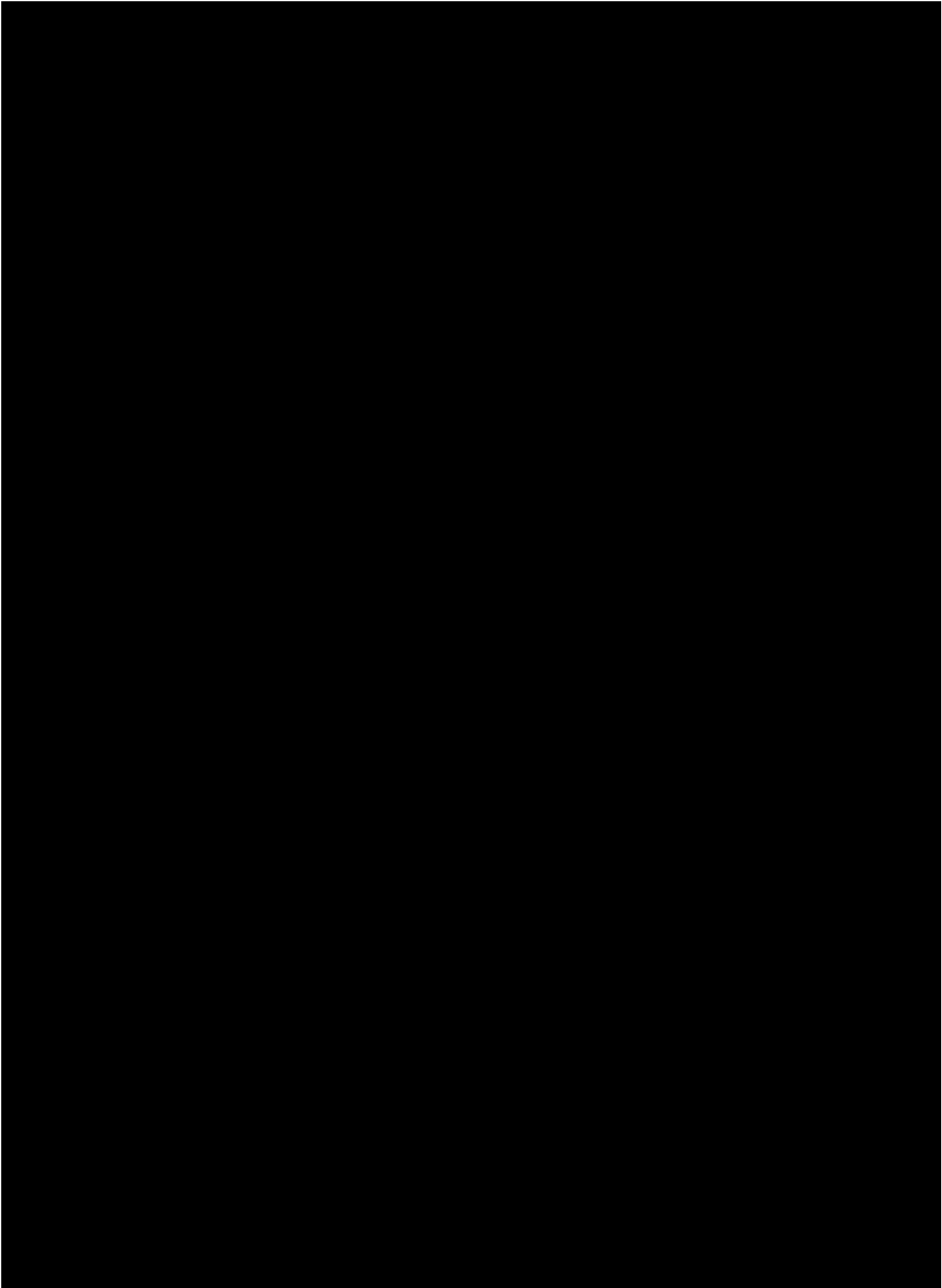


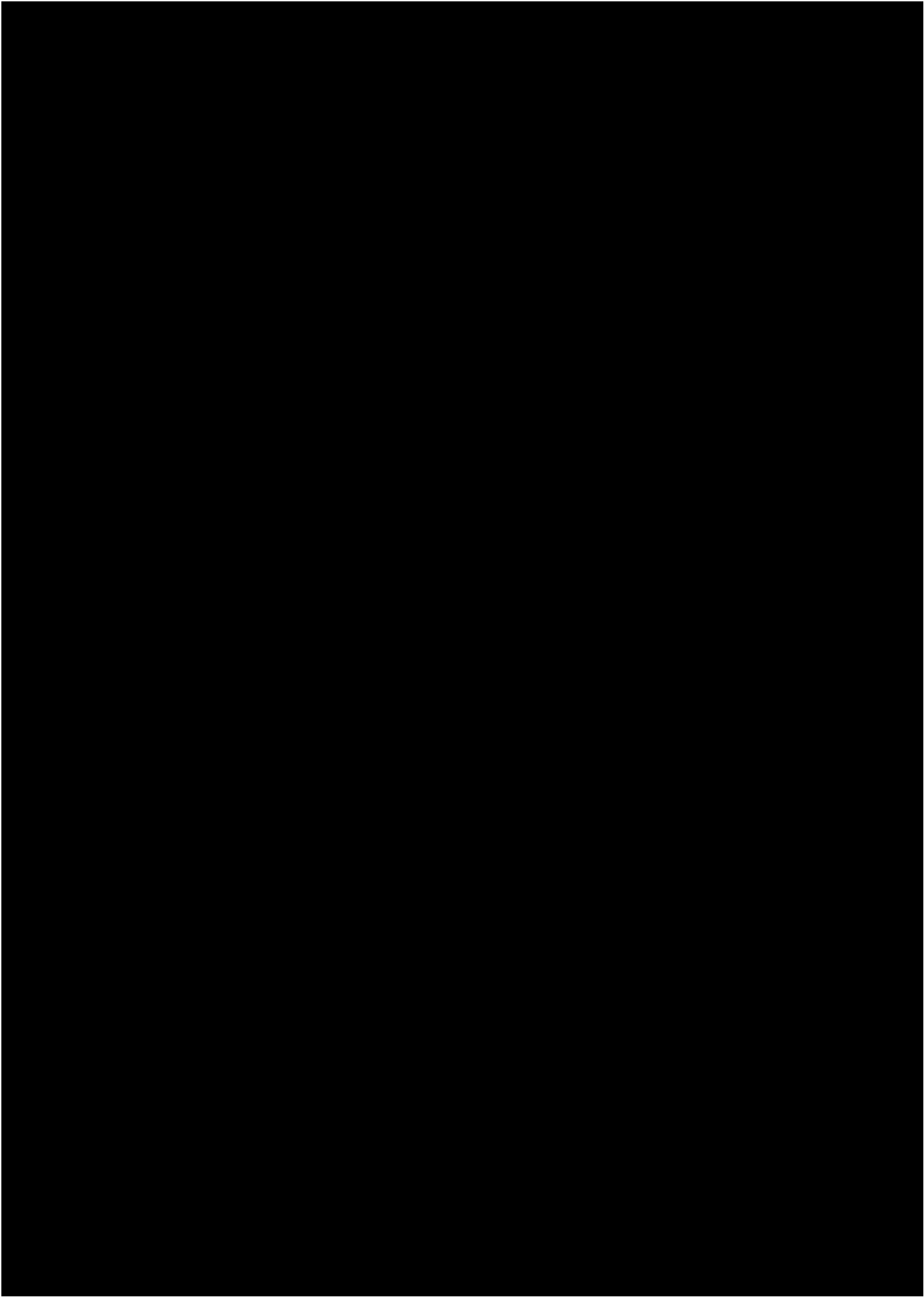


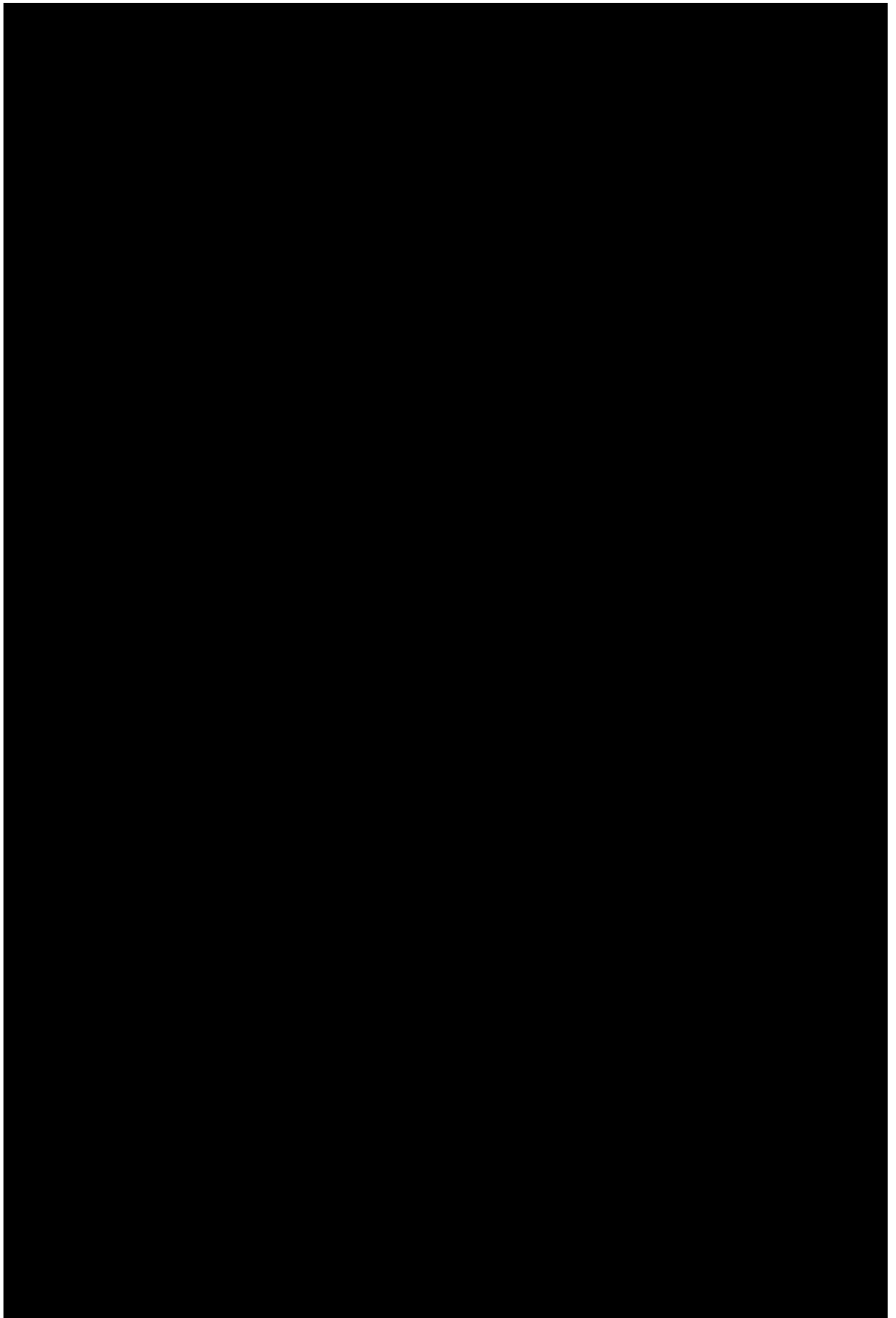


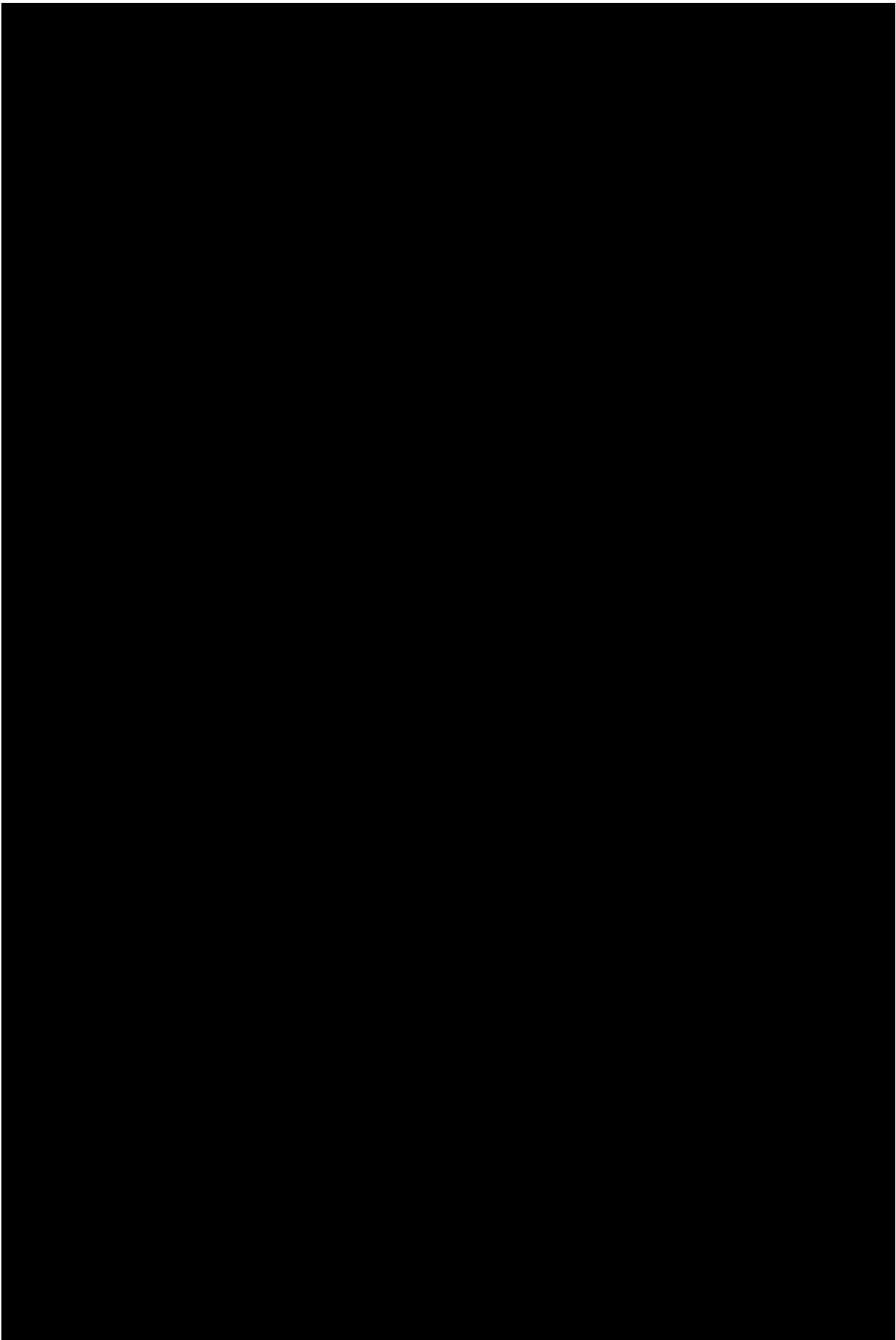
Schedule 2 Payment Schedule

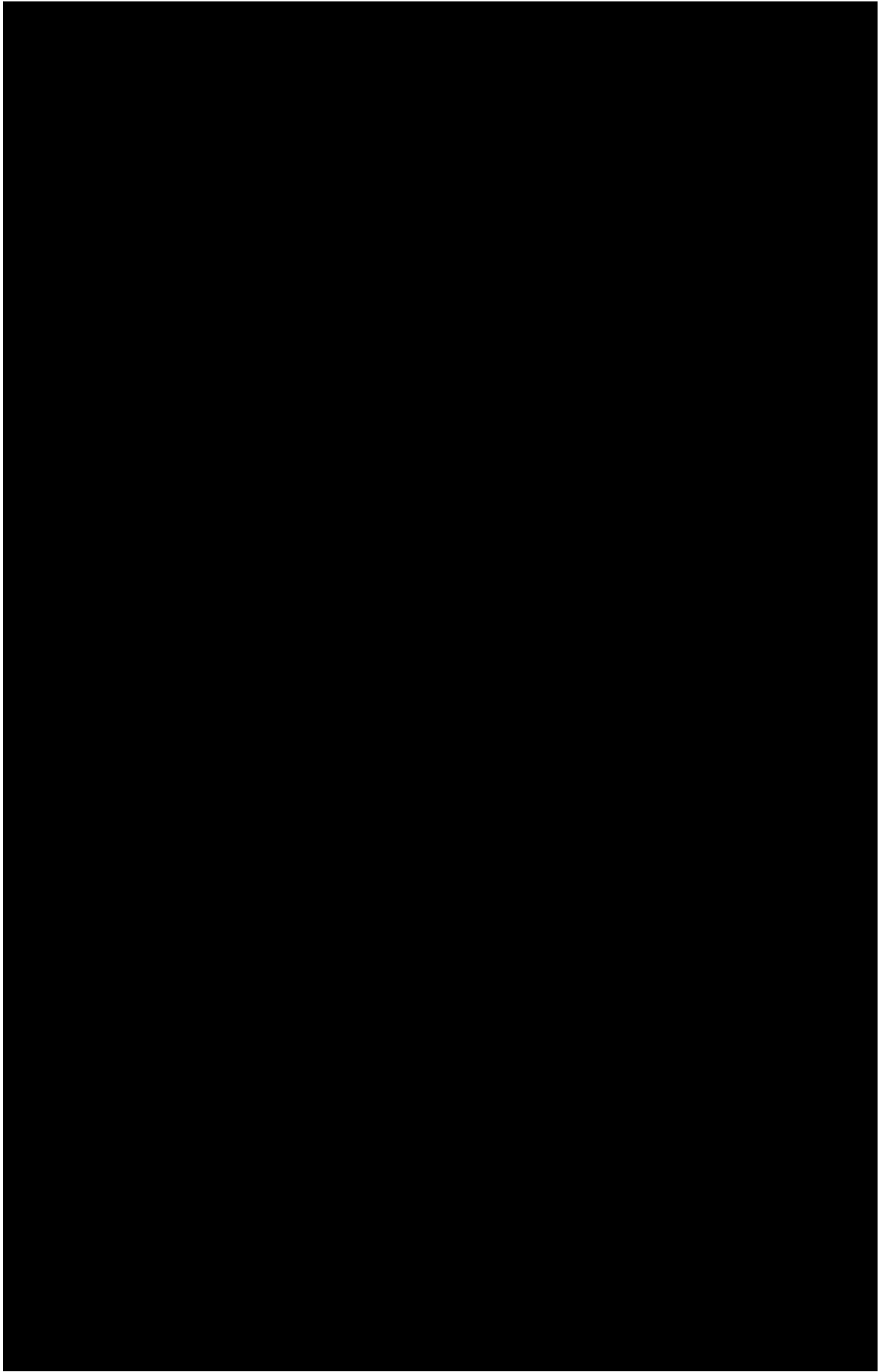


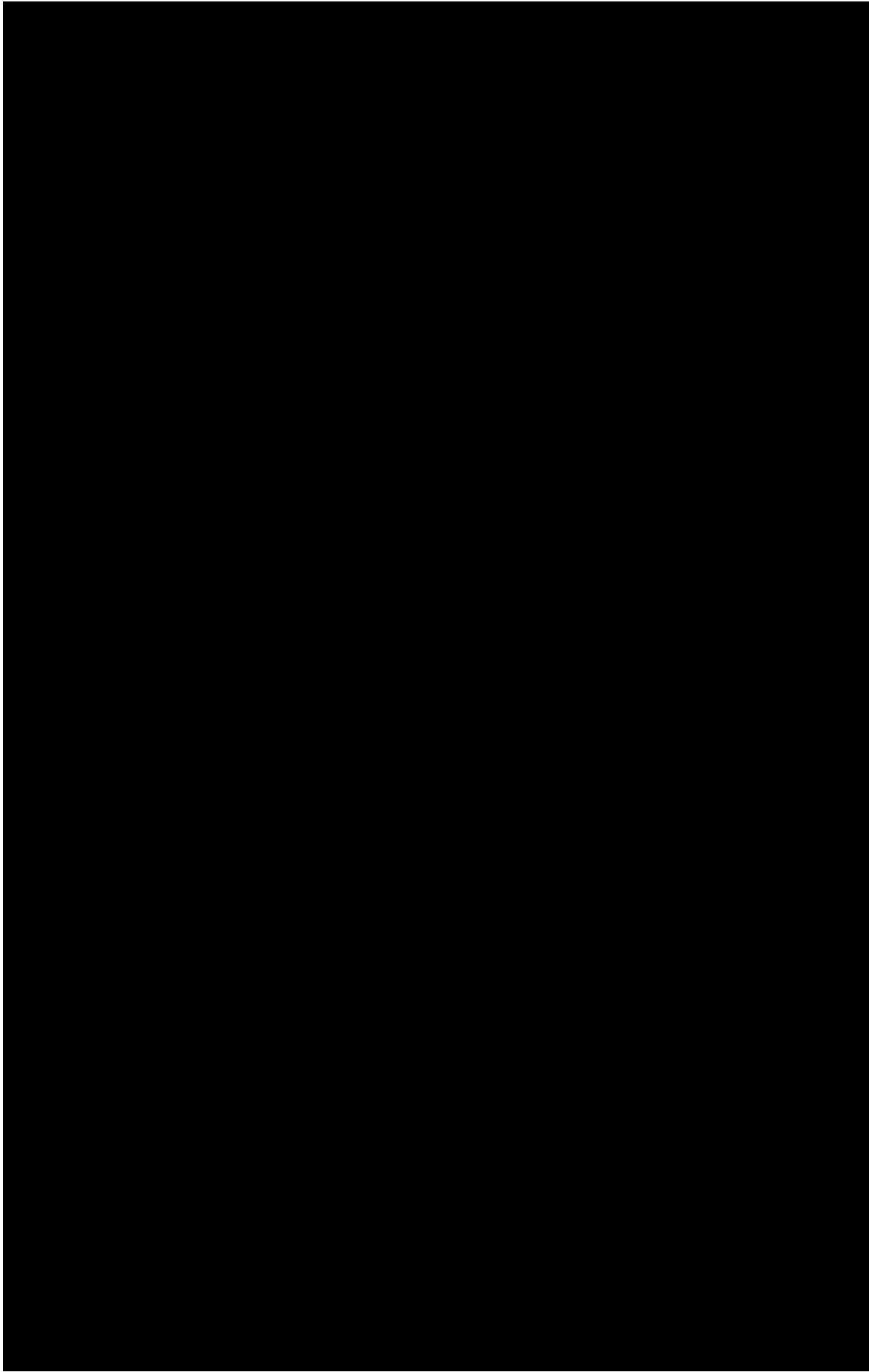


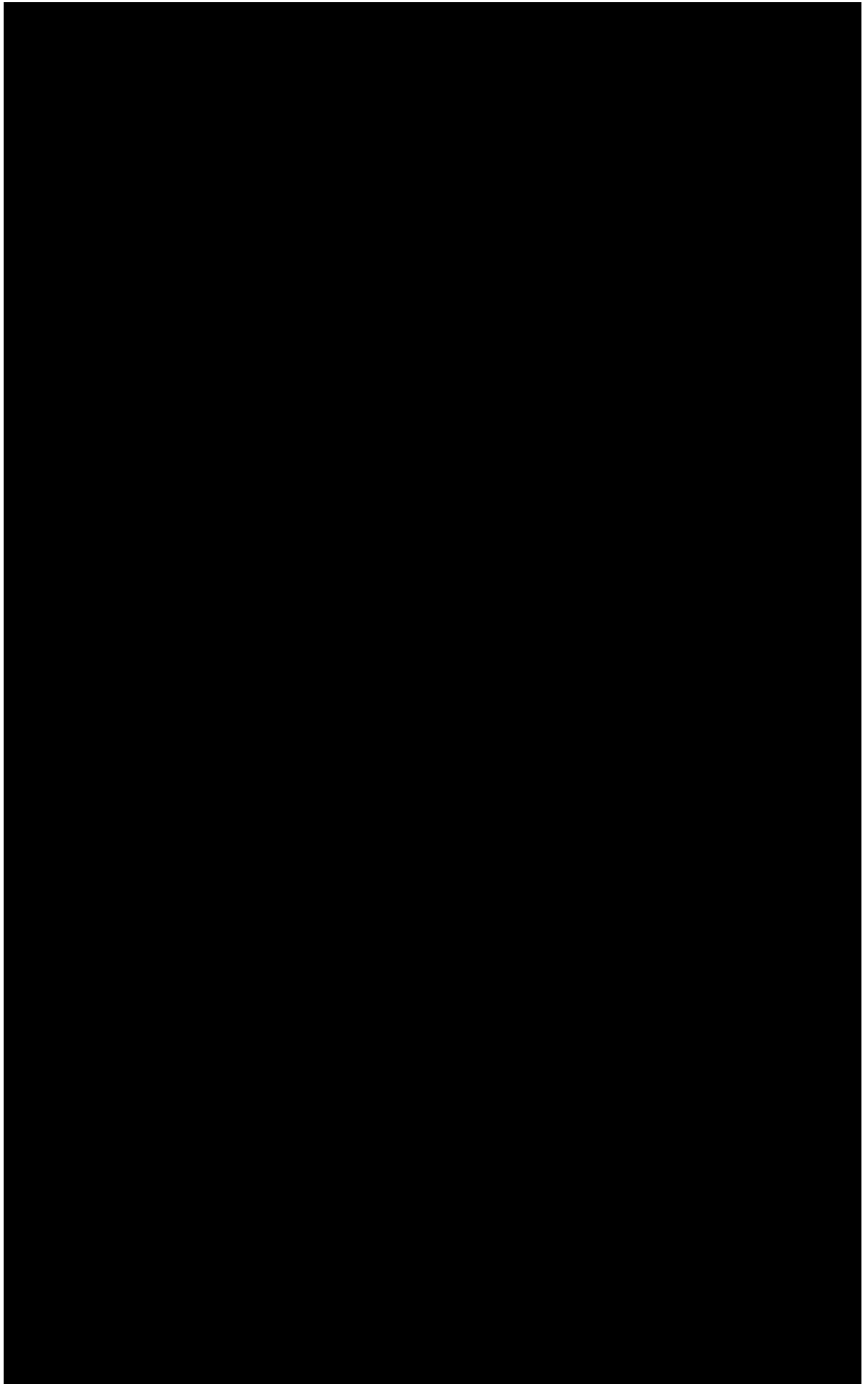


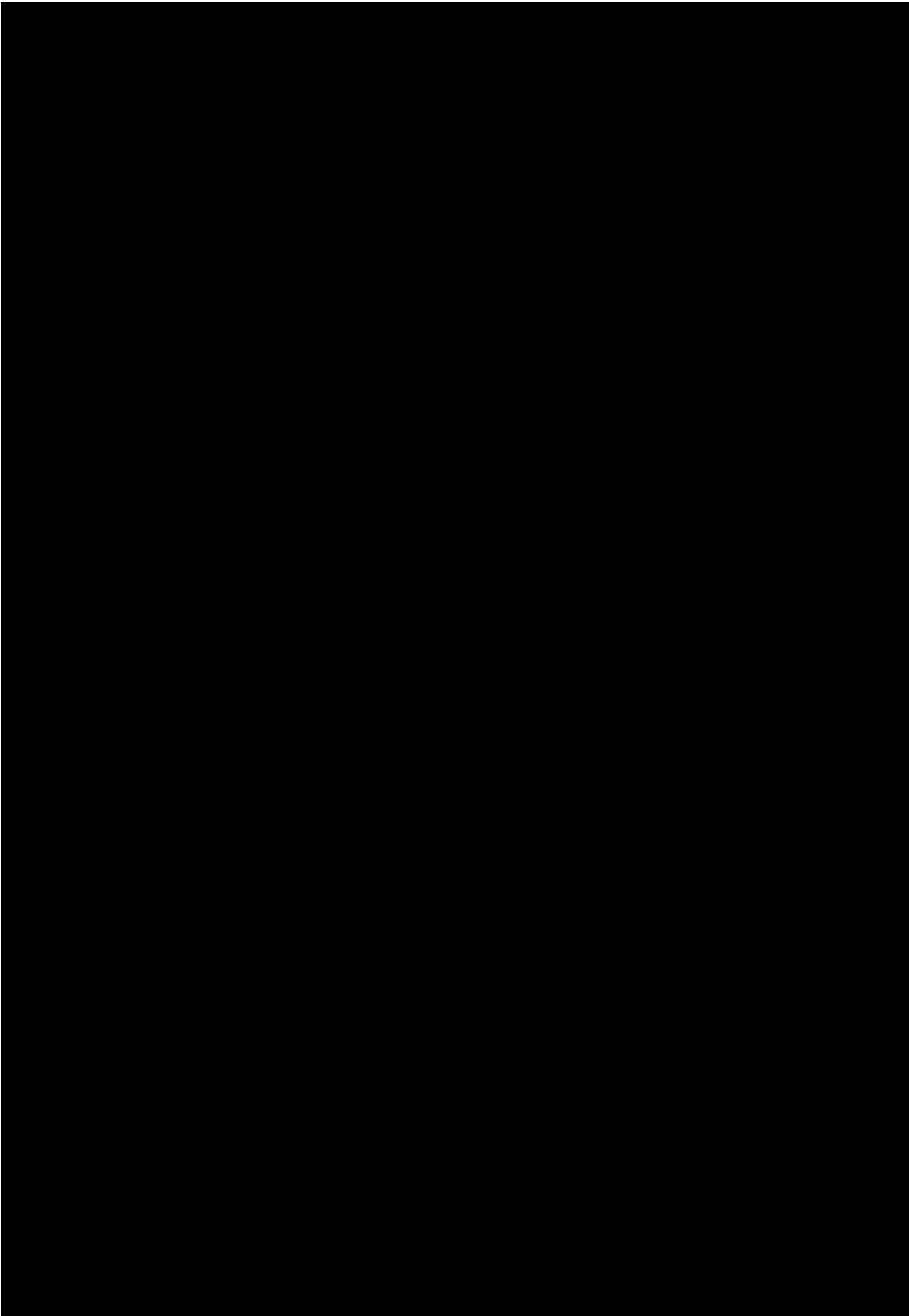


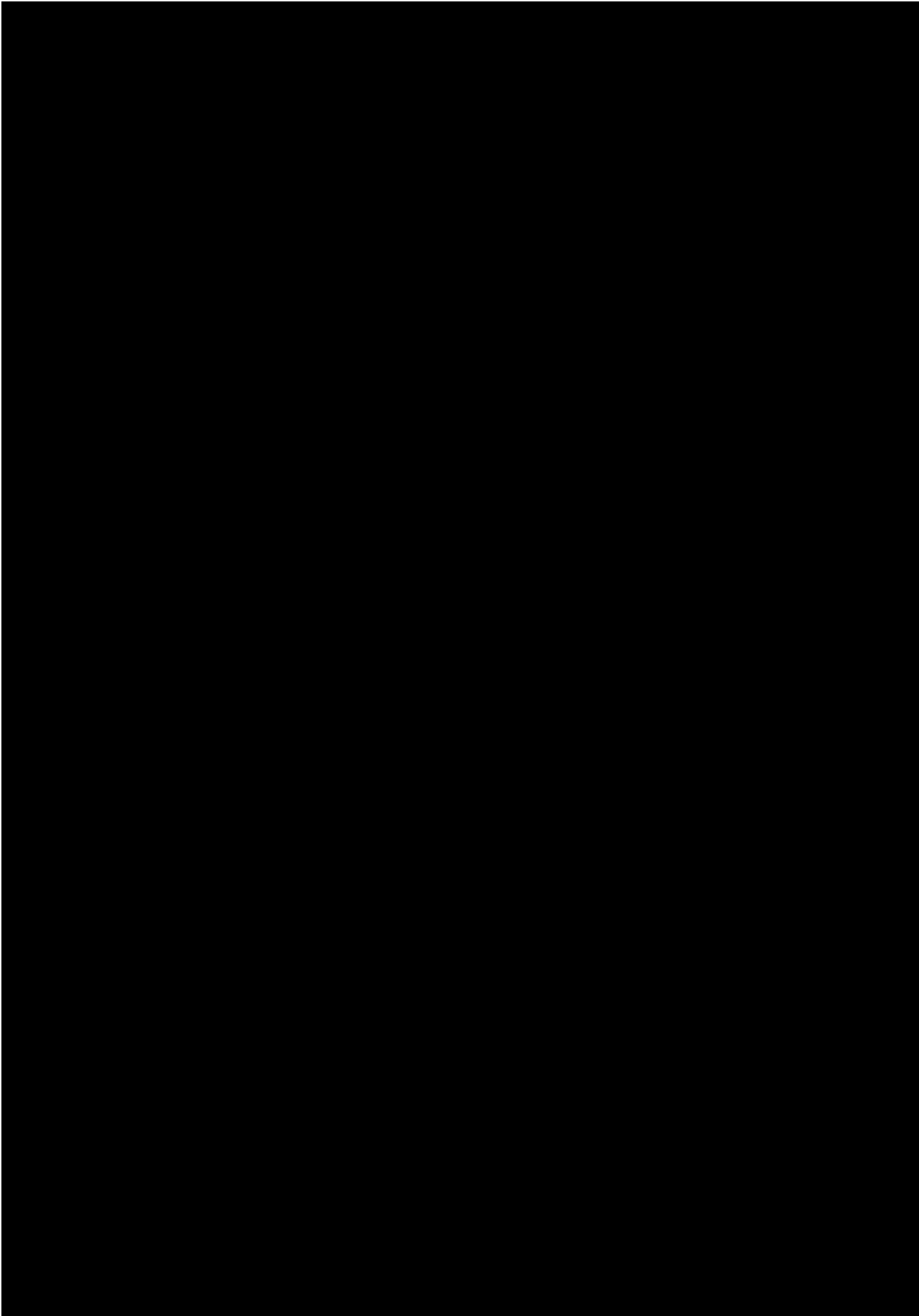


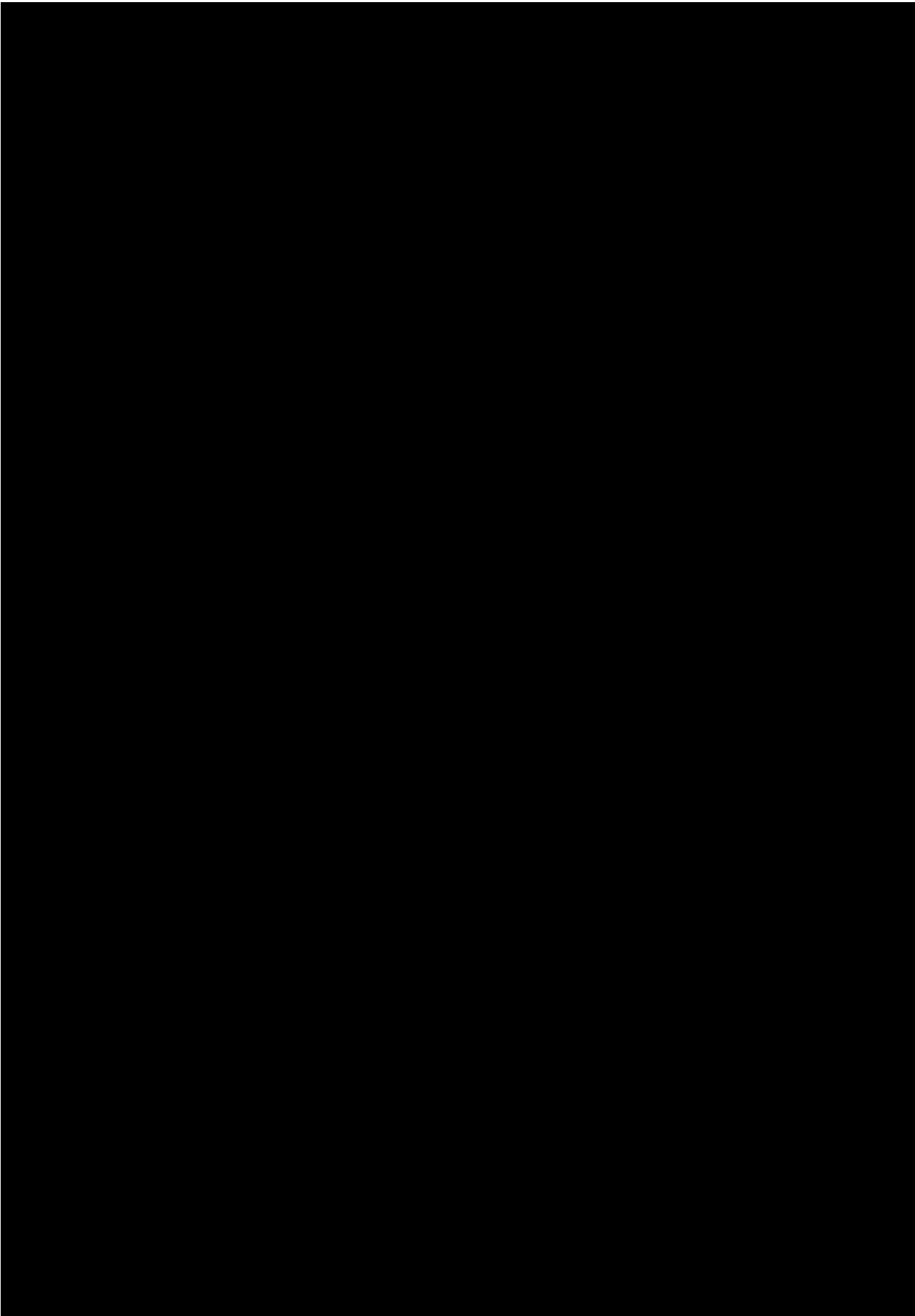


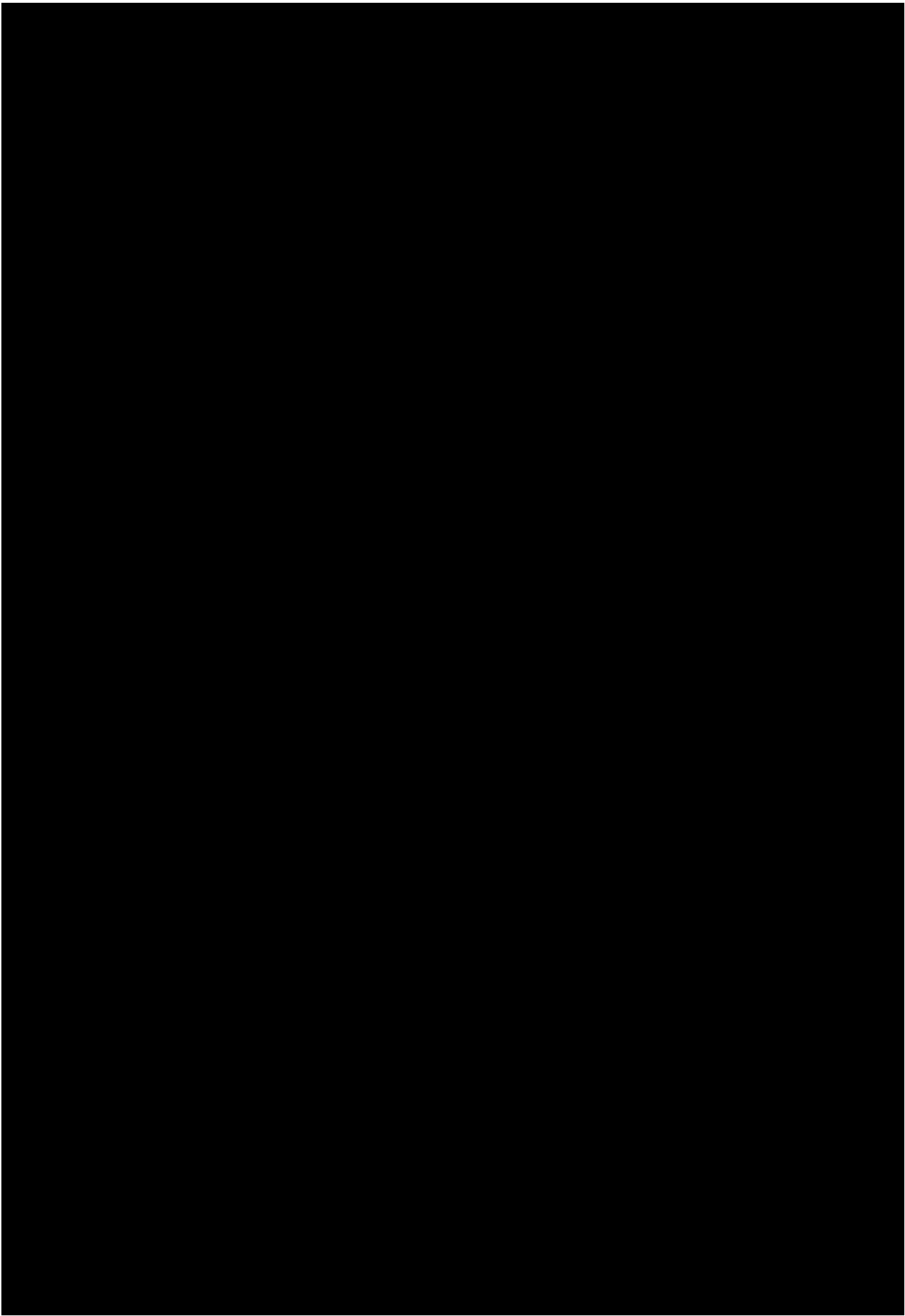


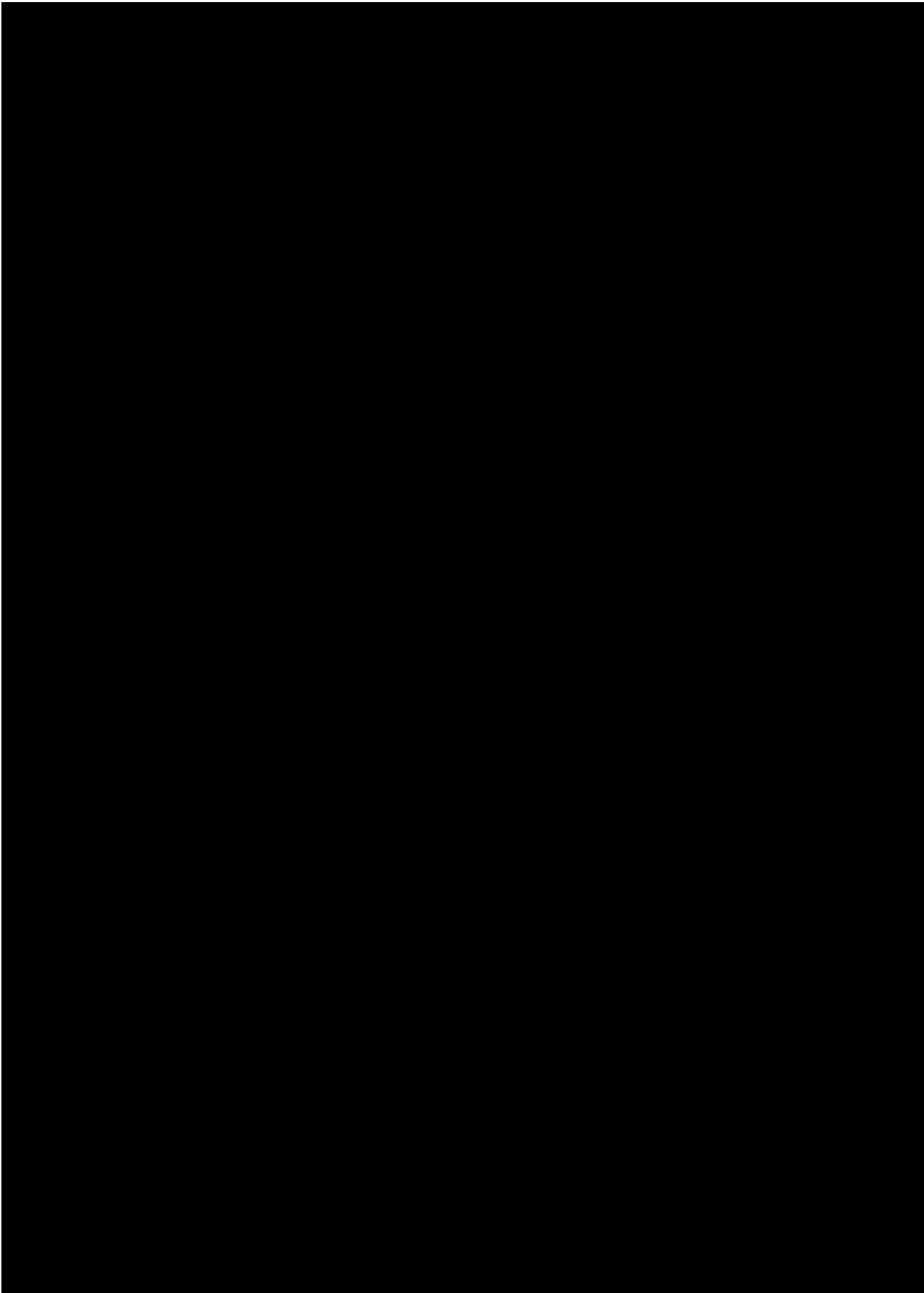


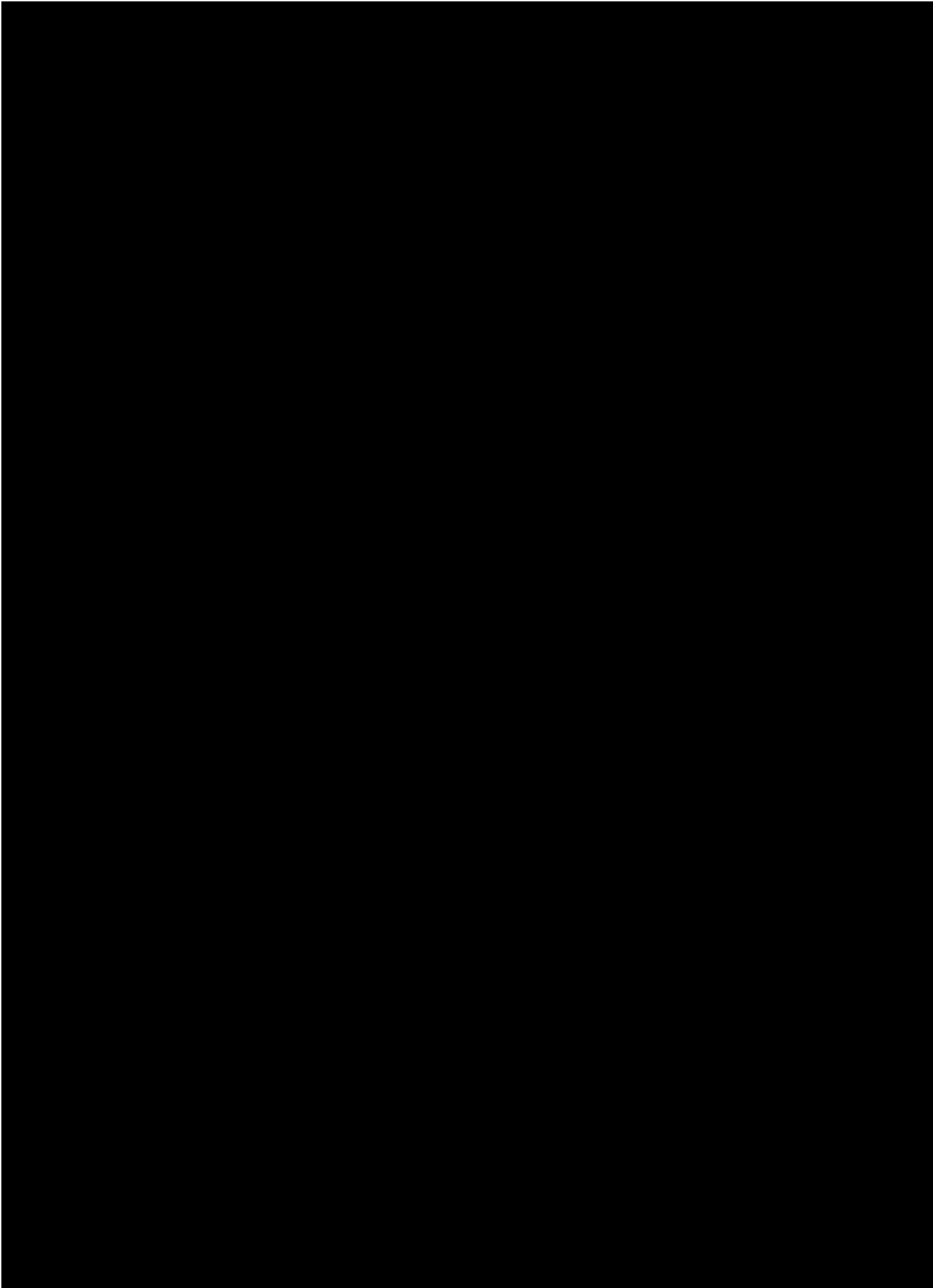


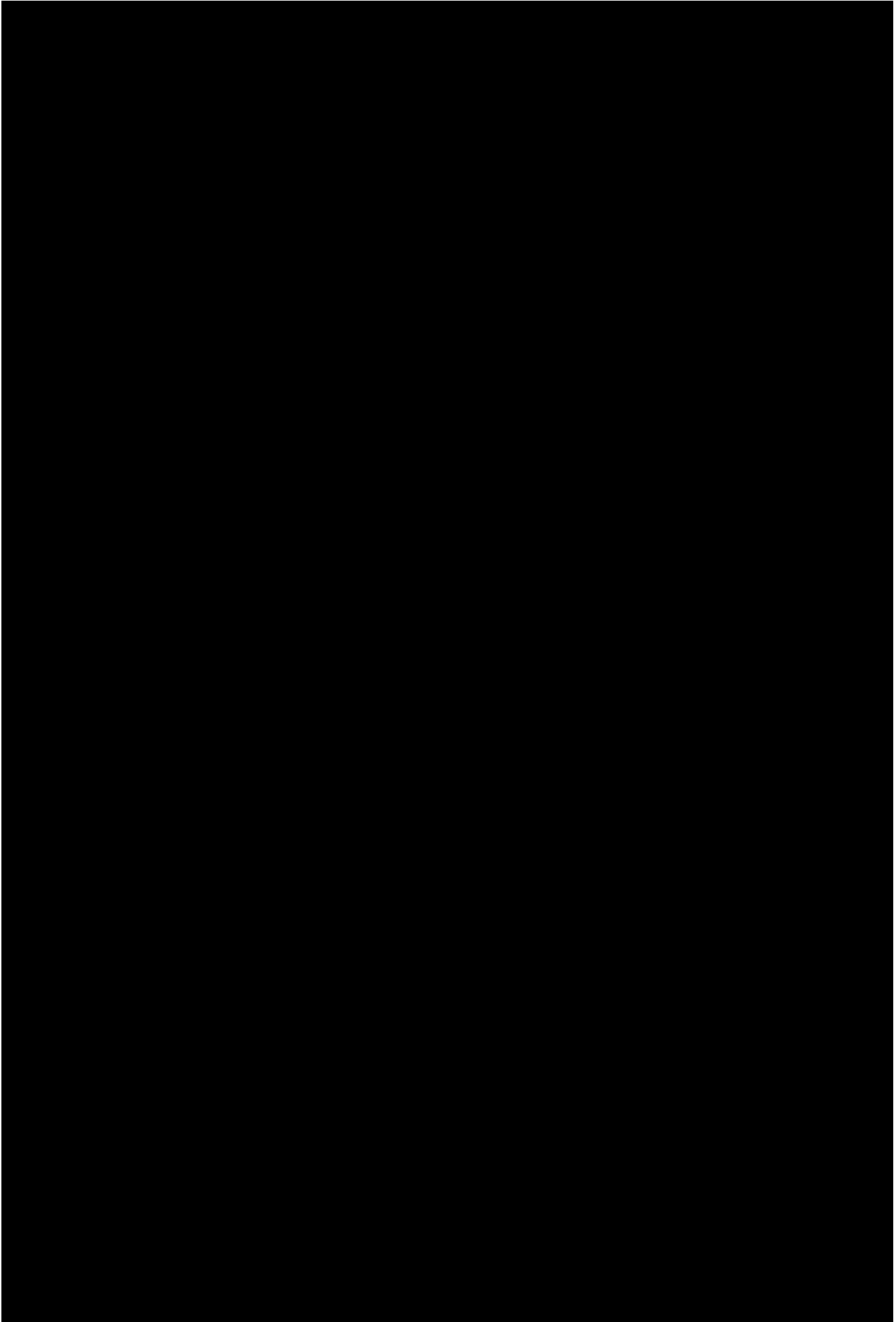


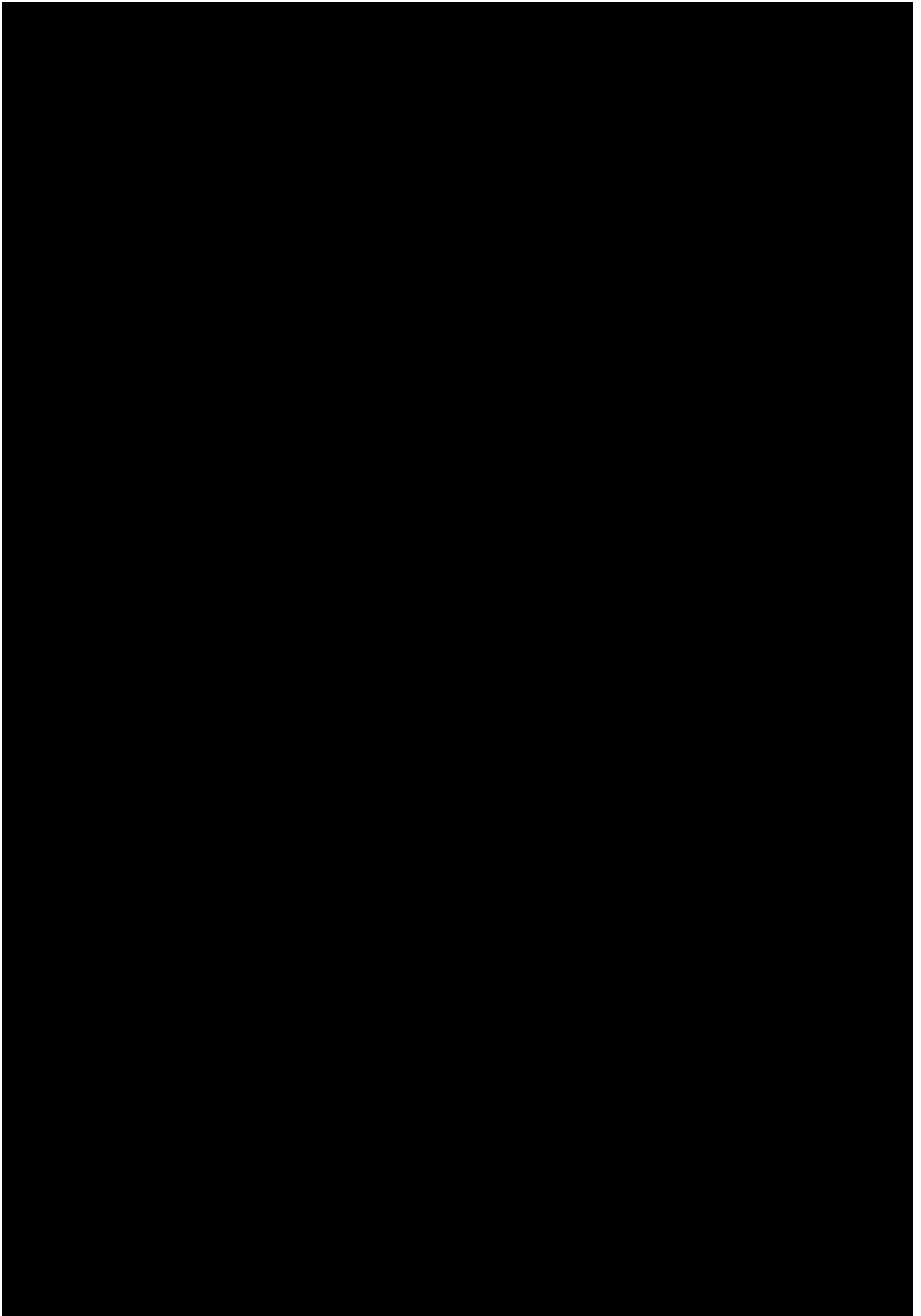


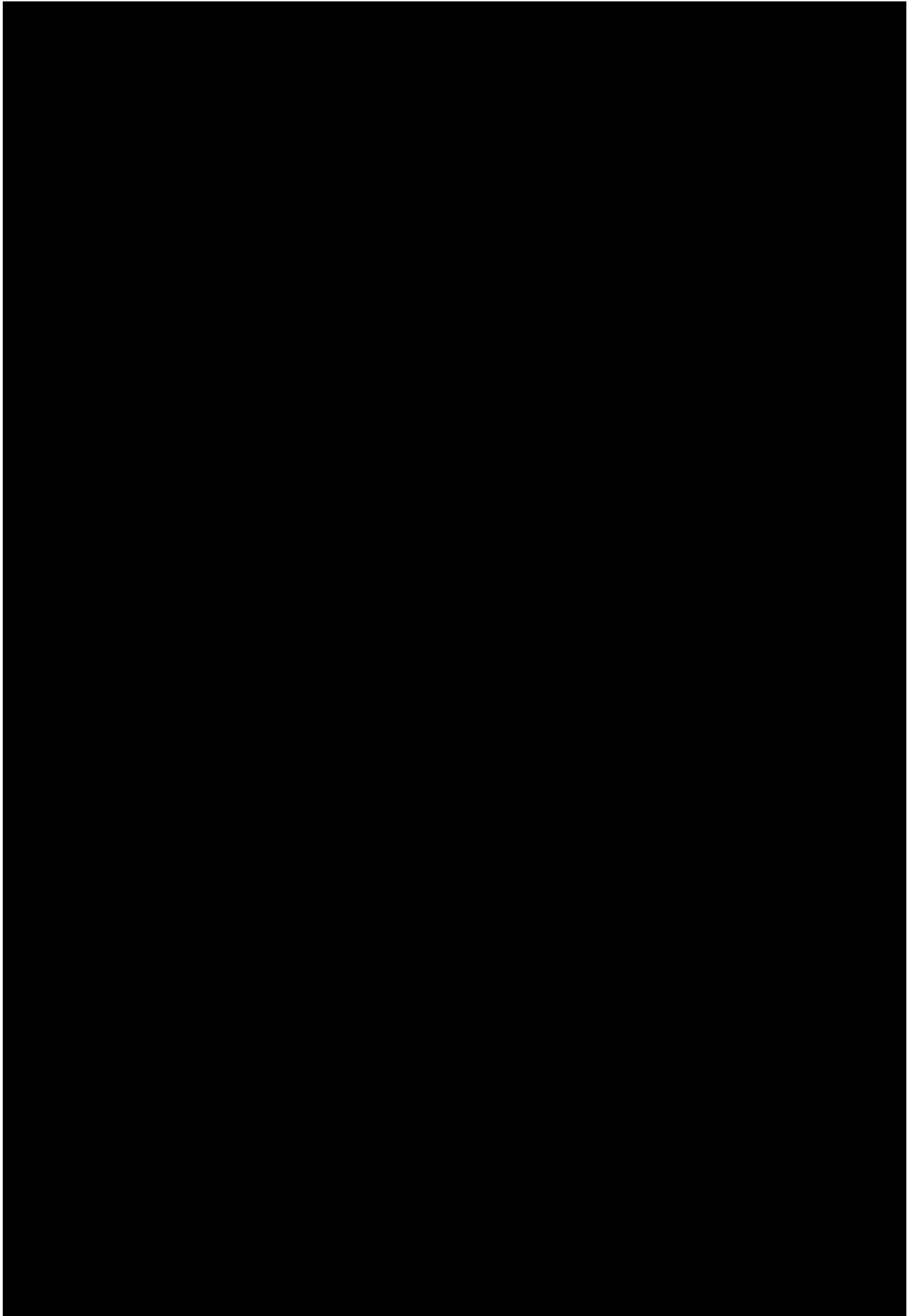


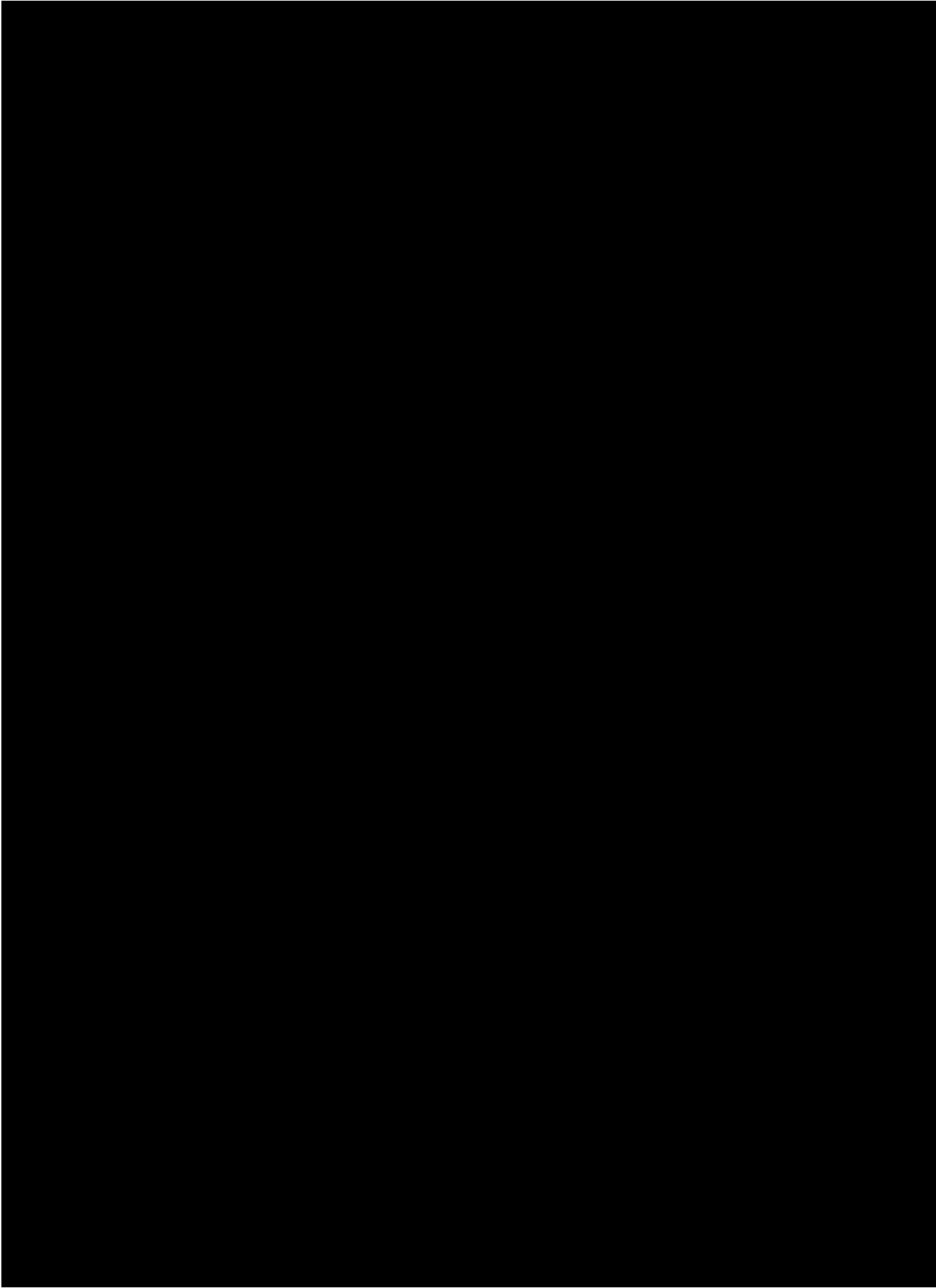


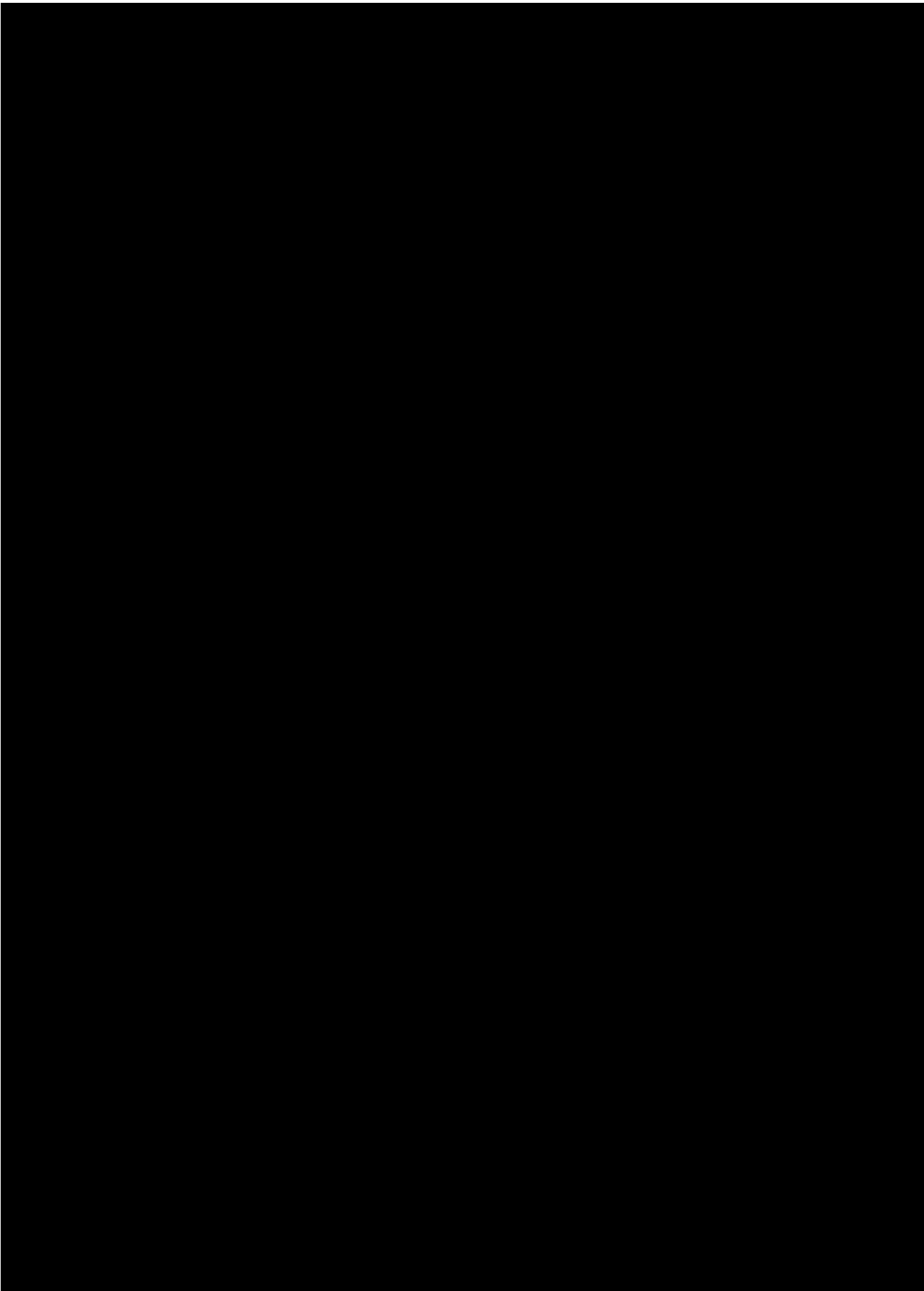


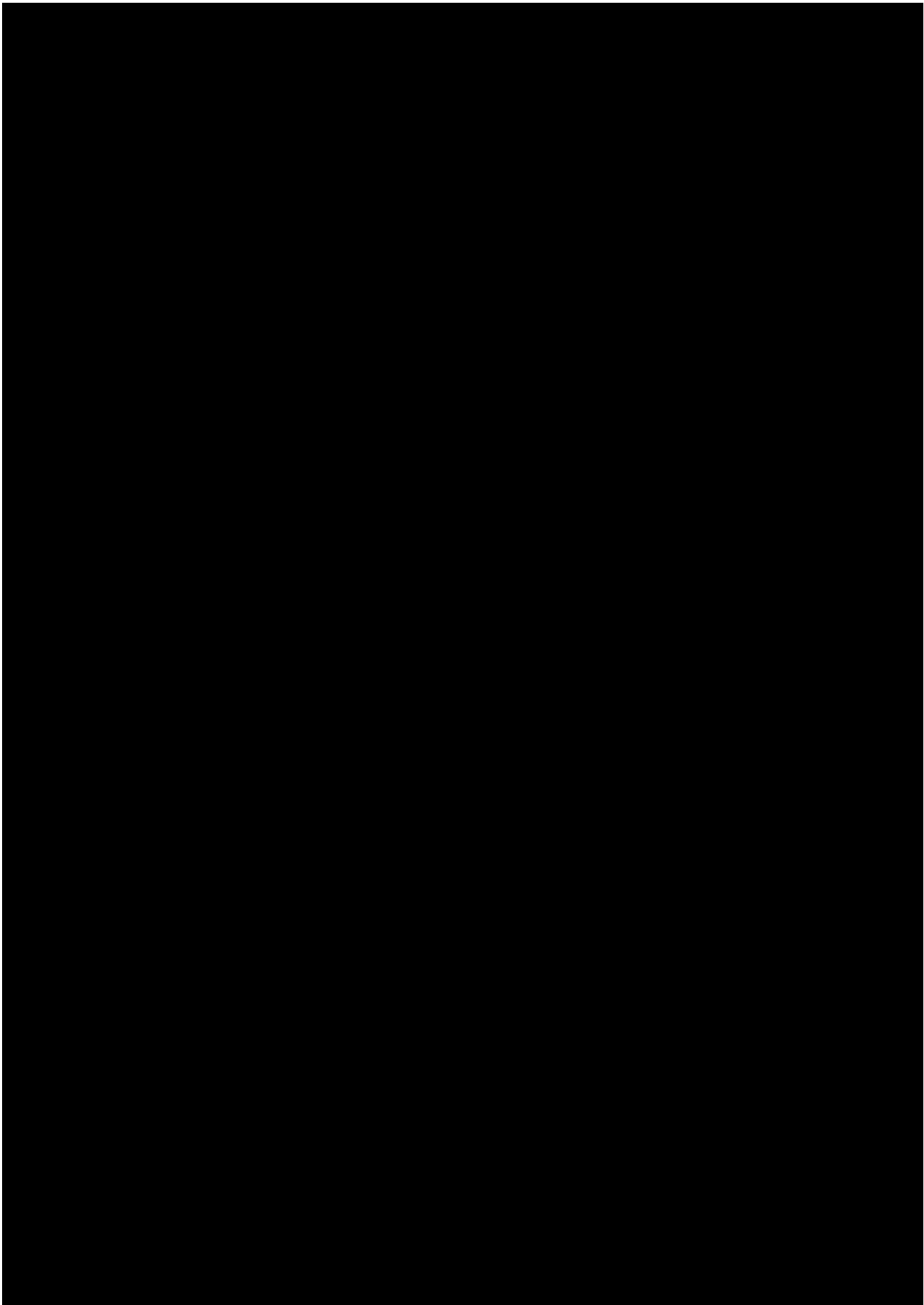


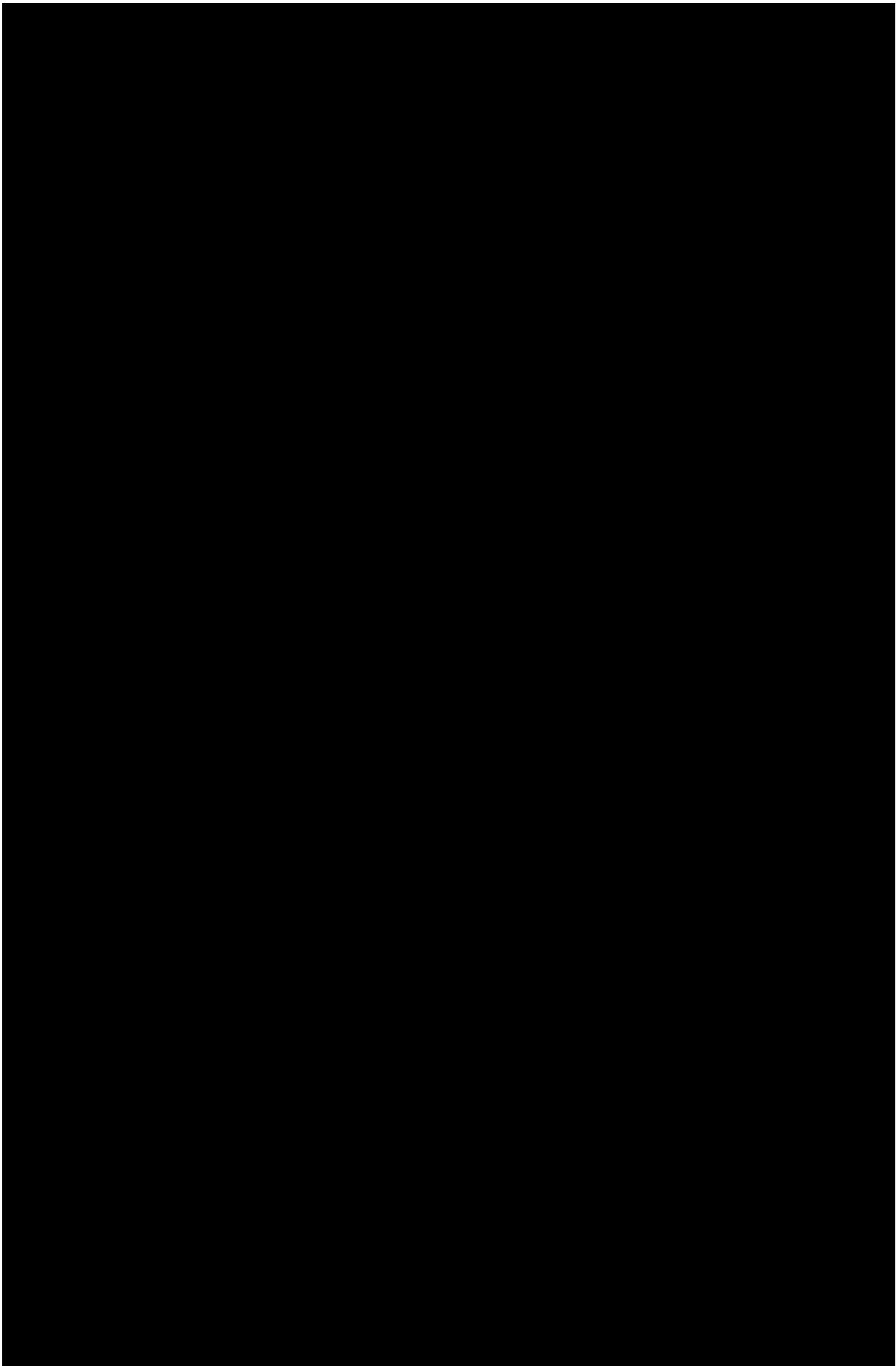


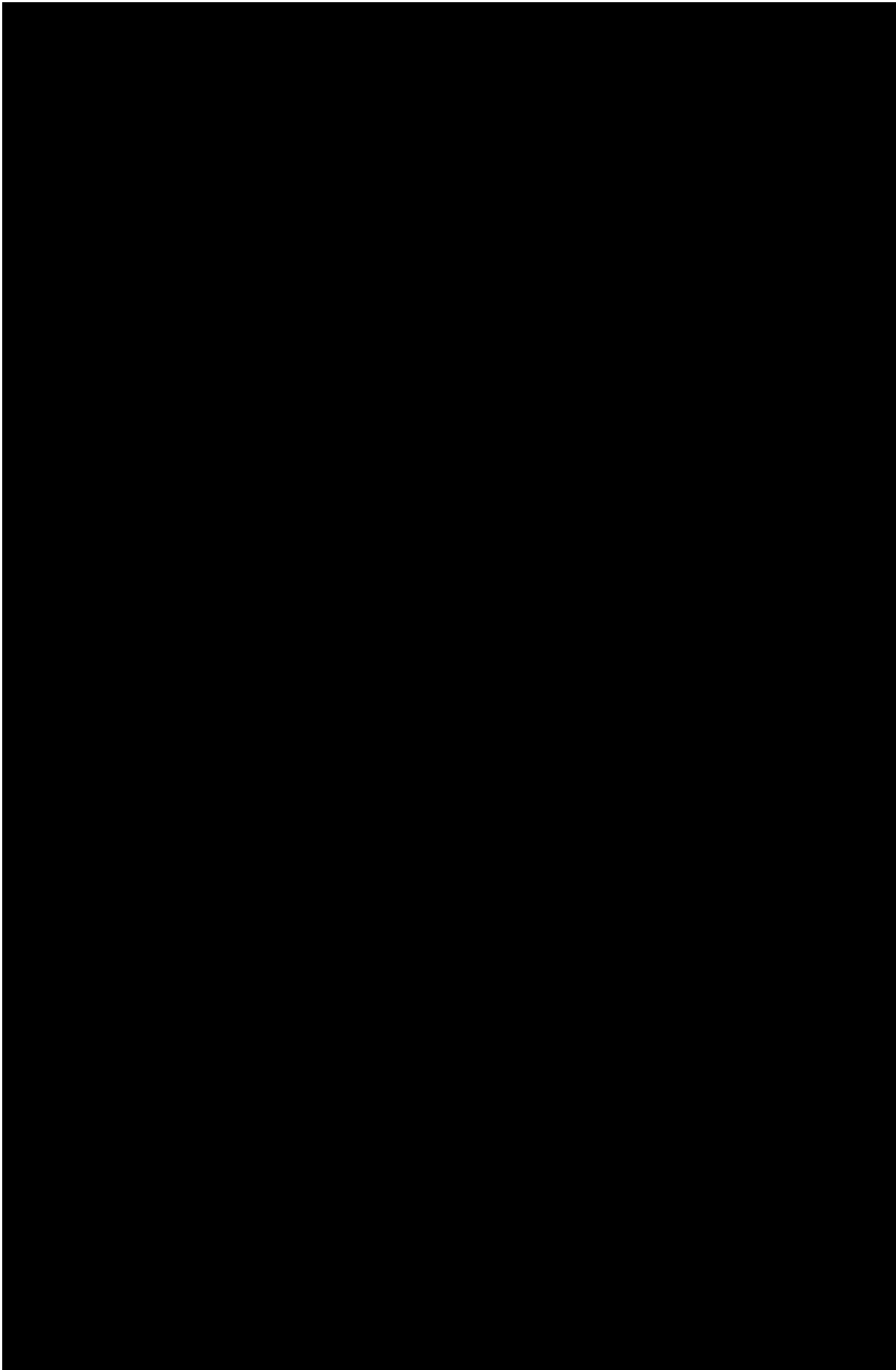


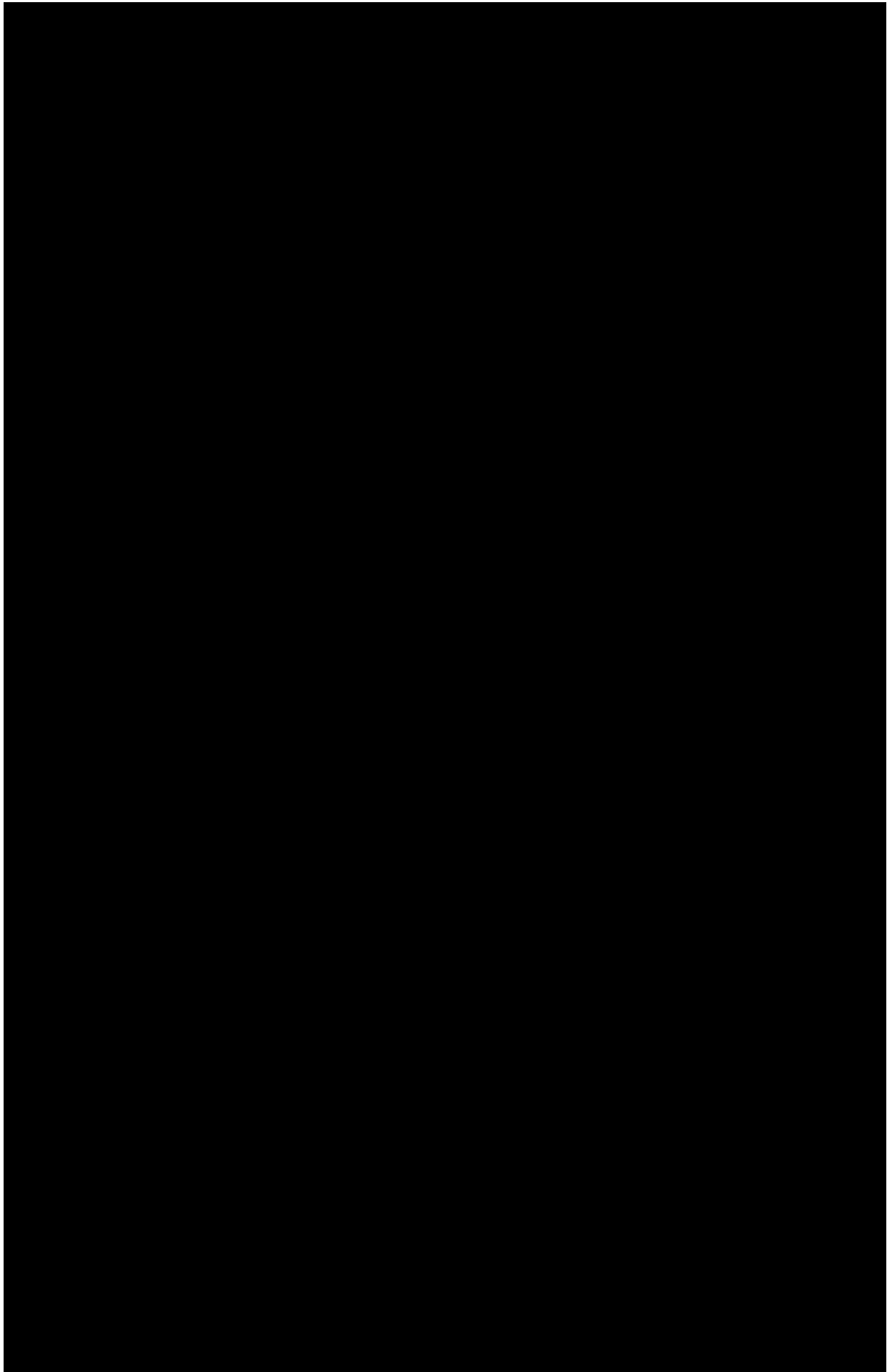


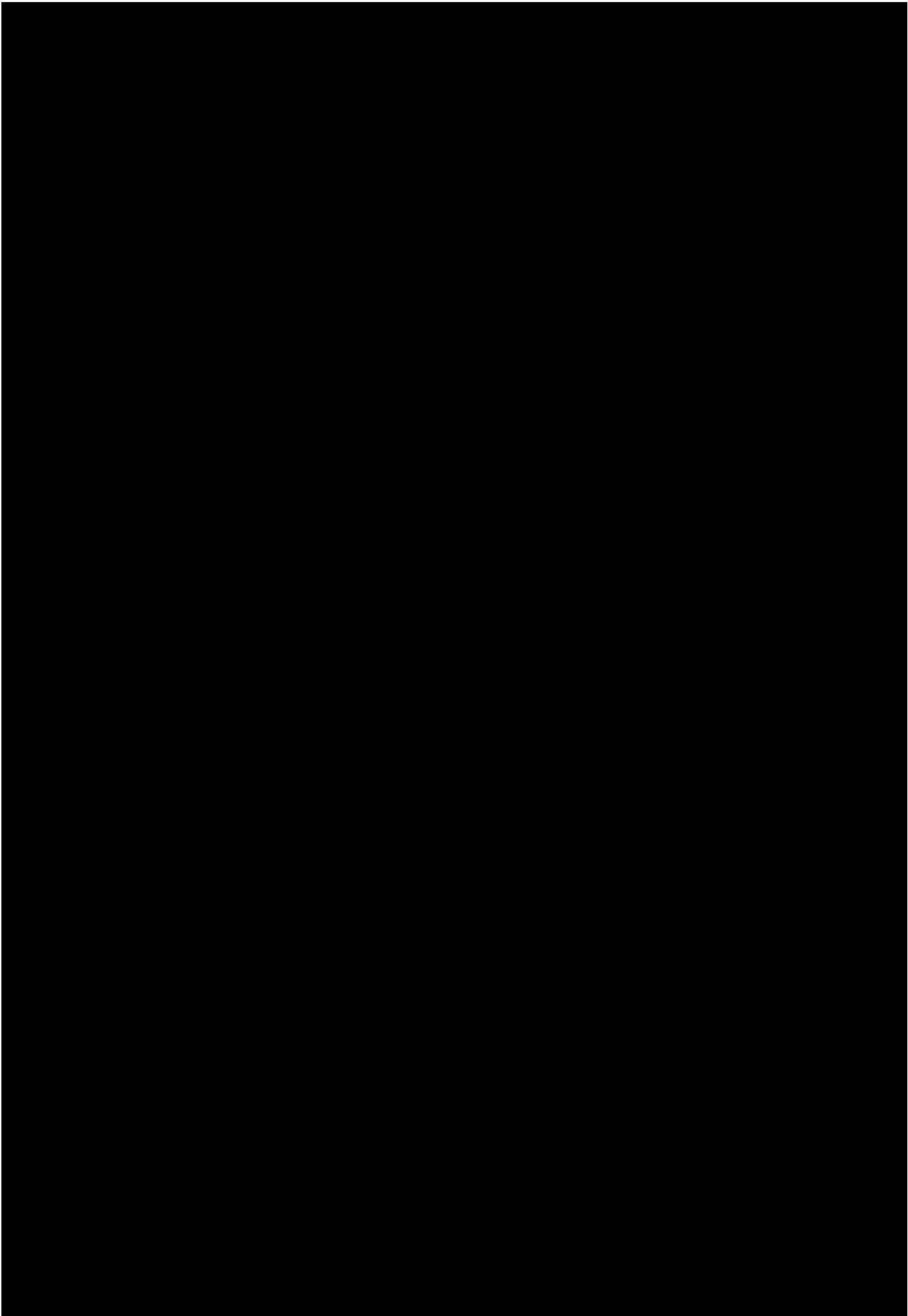


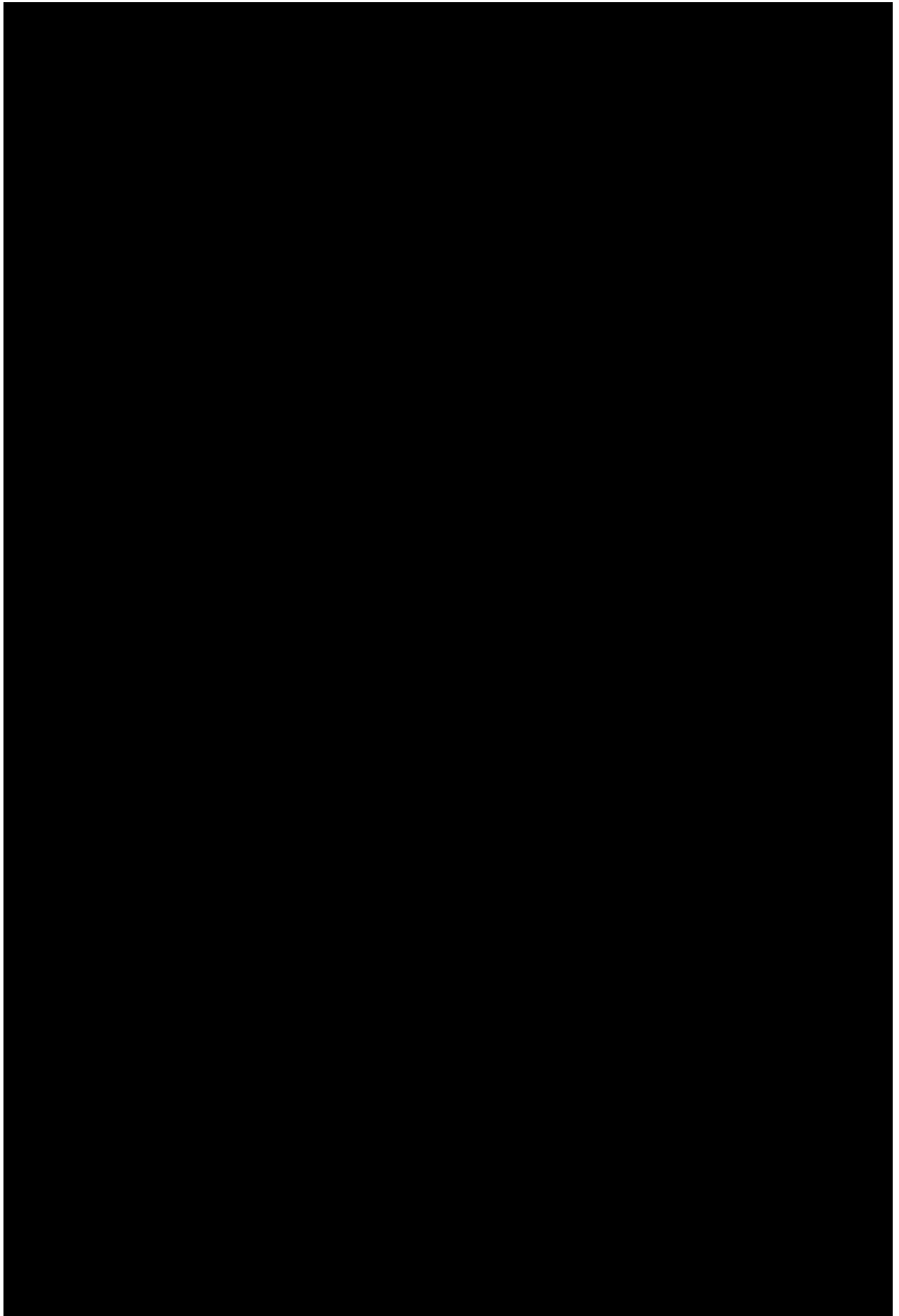


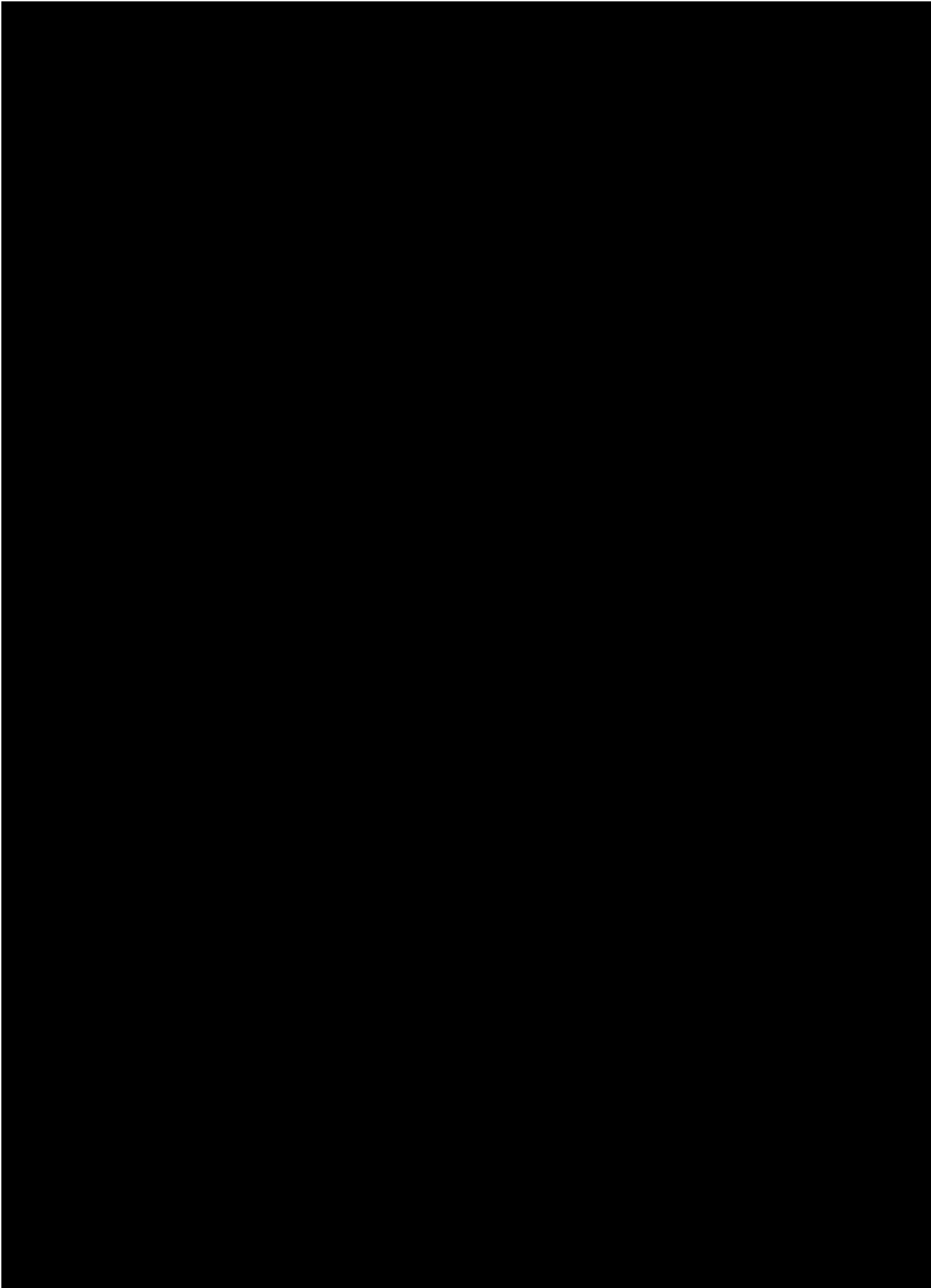


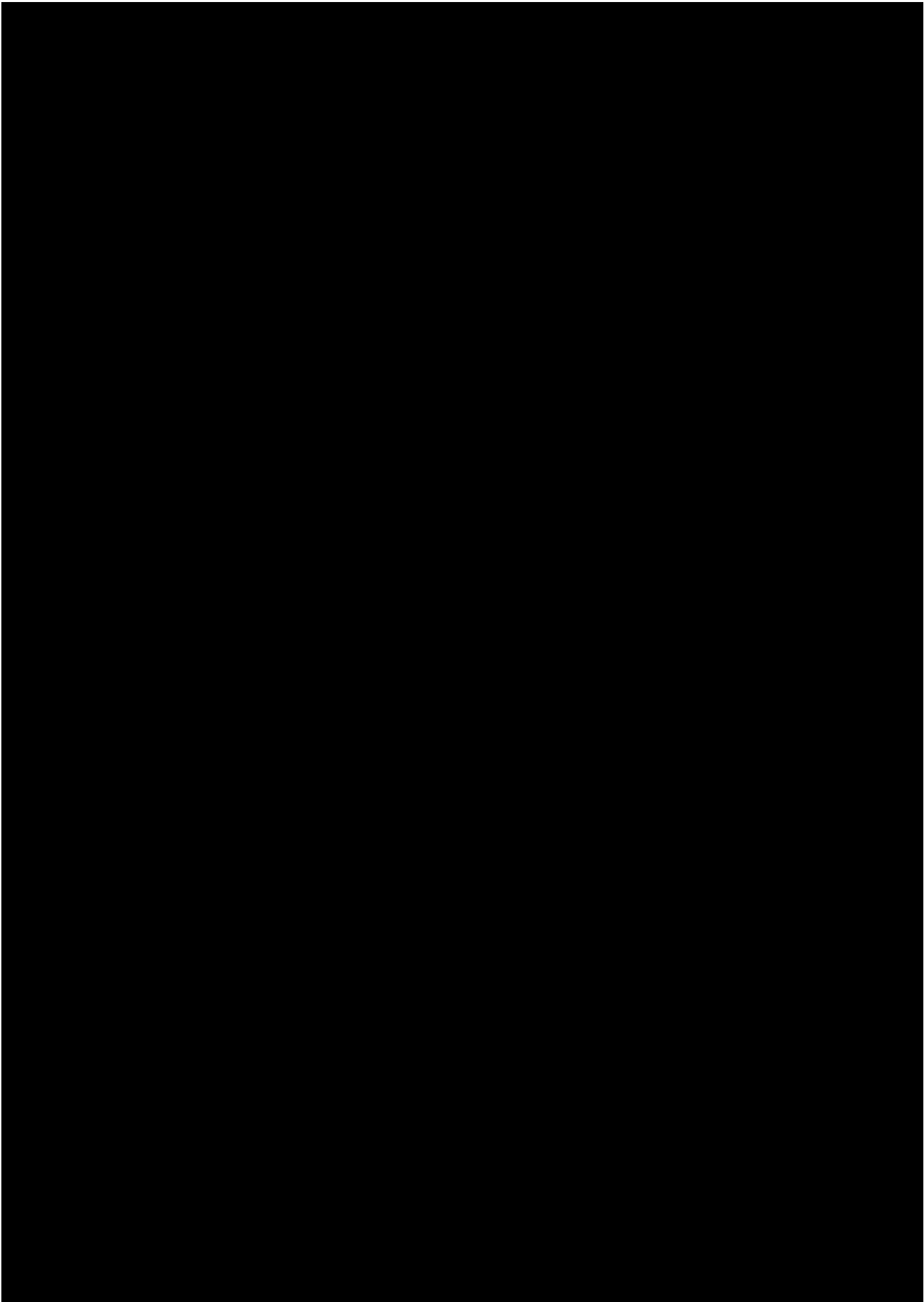


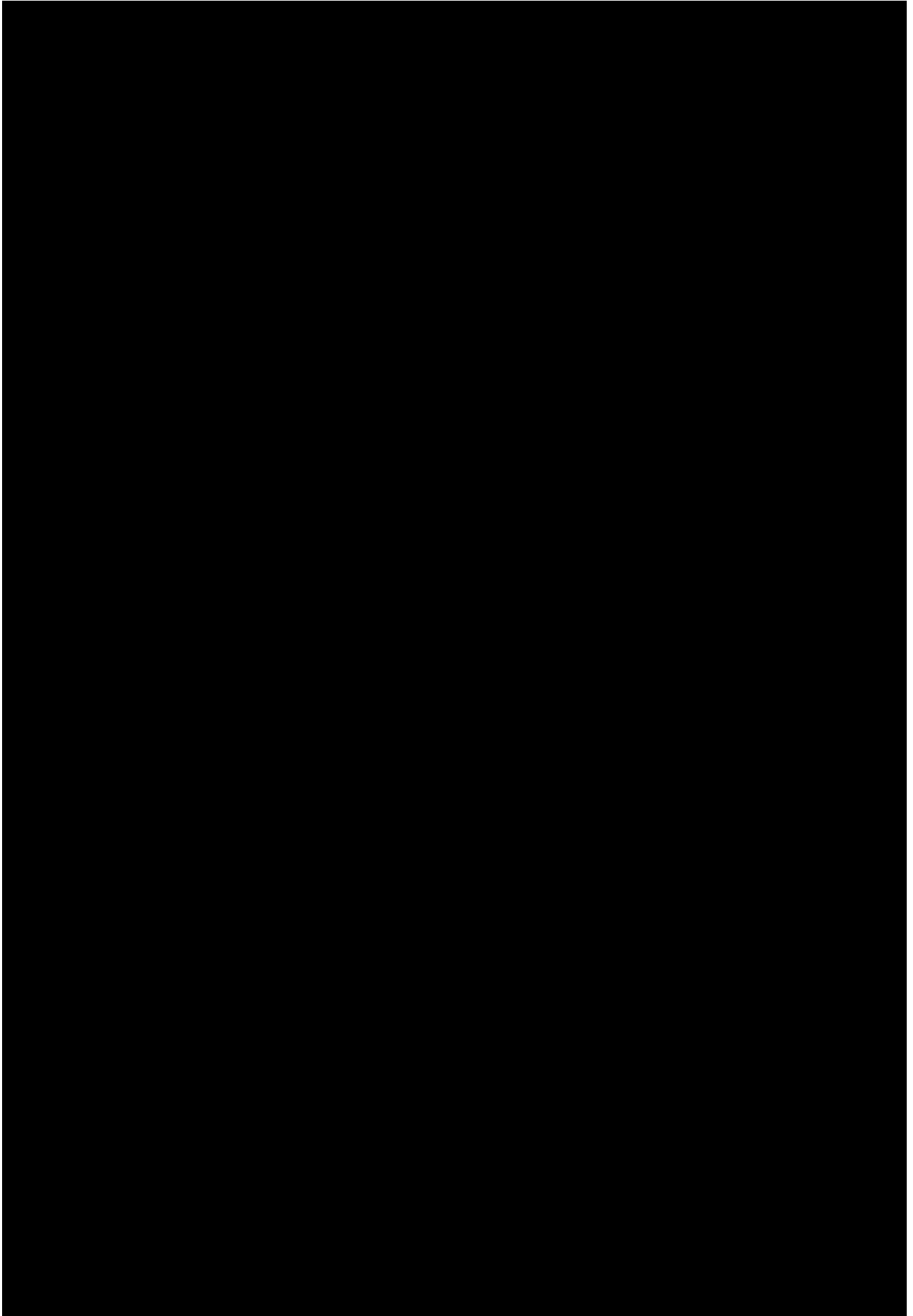


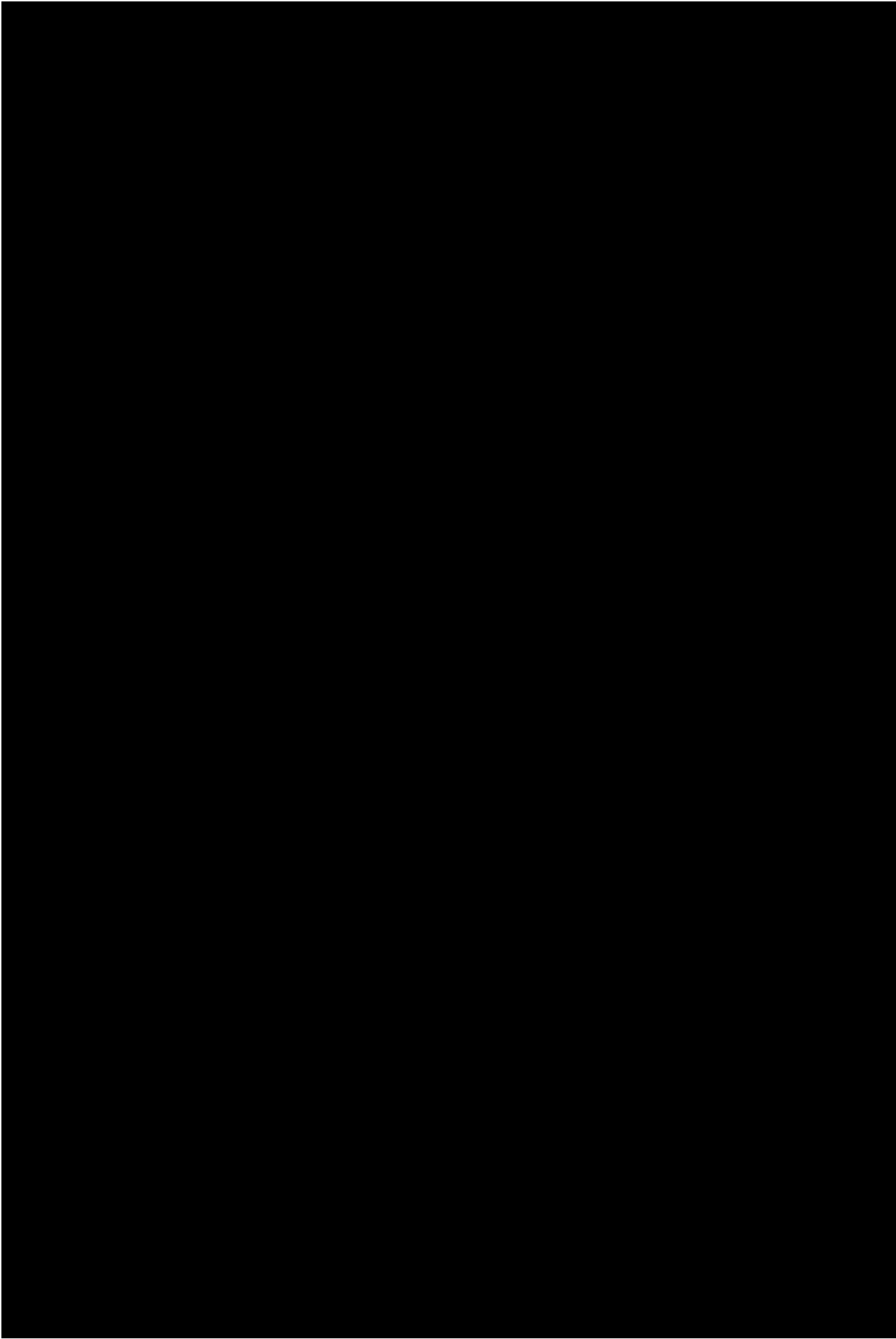


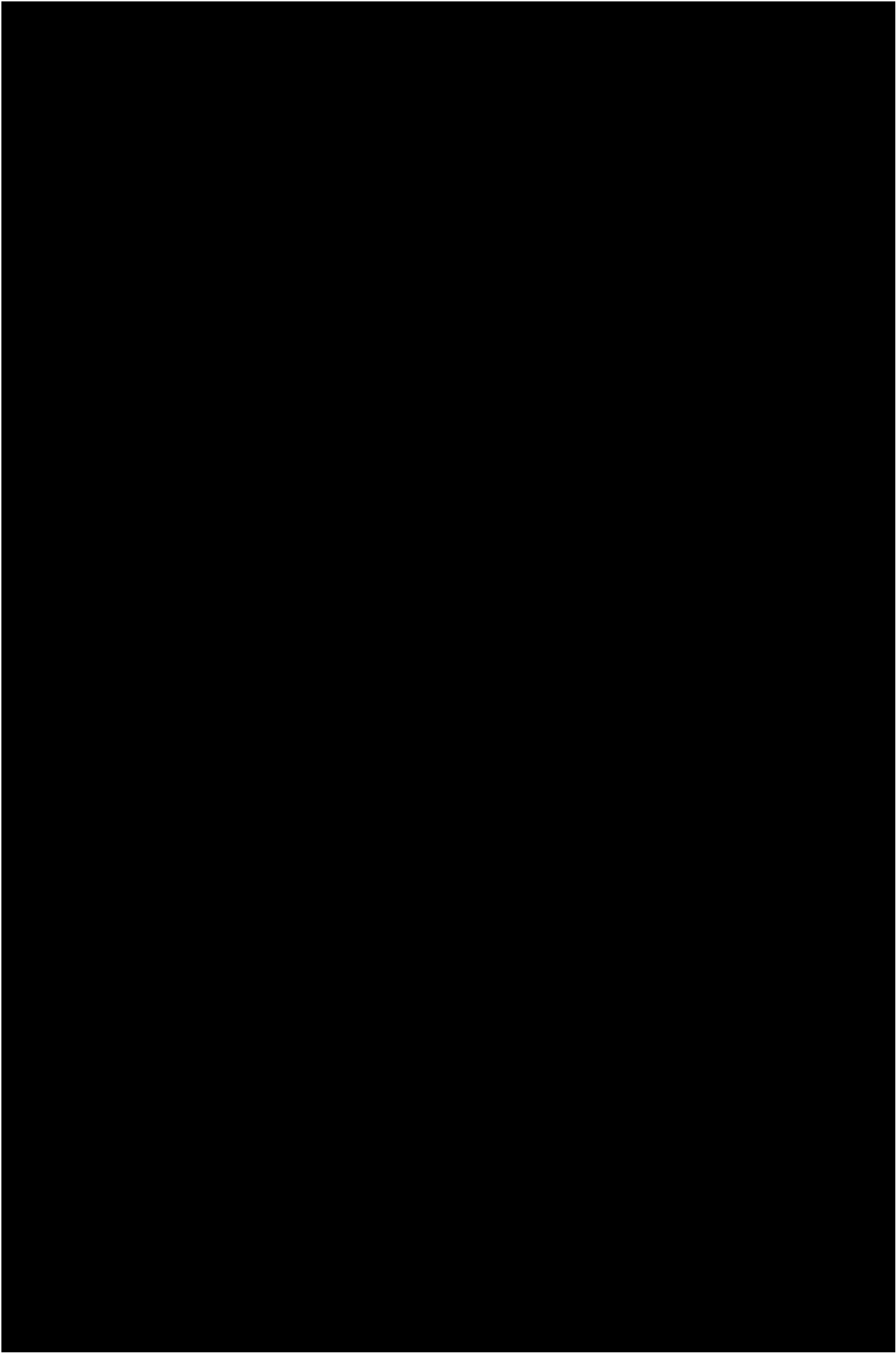


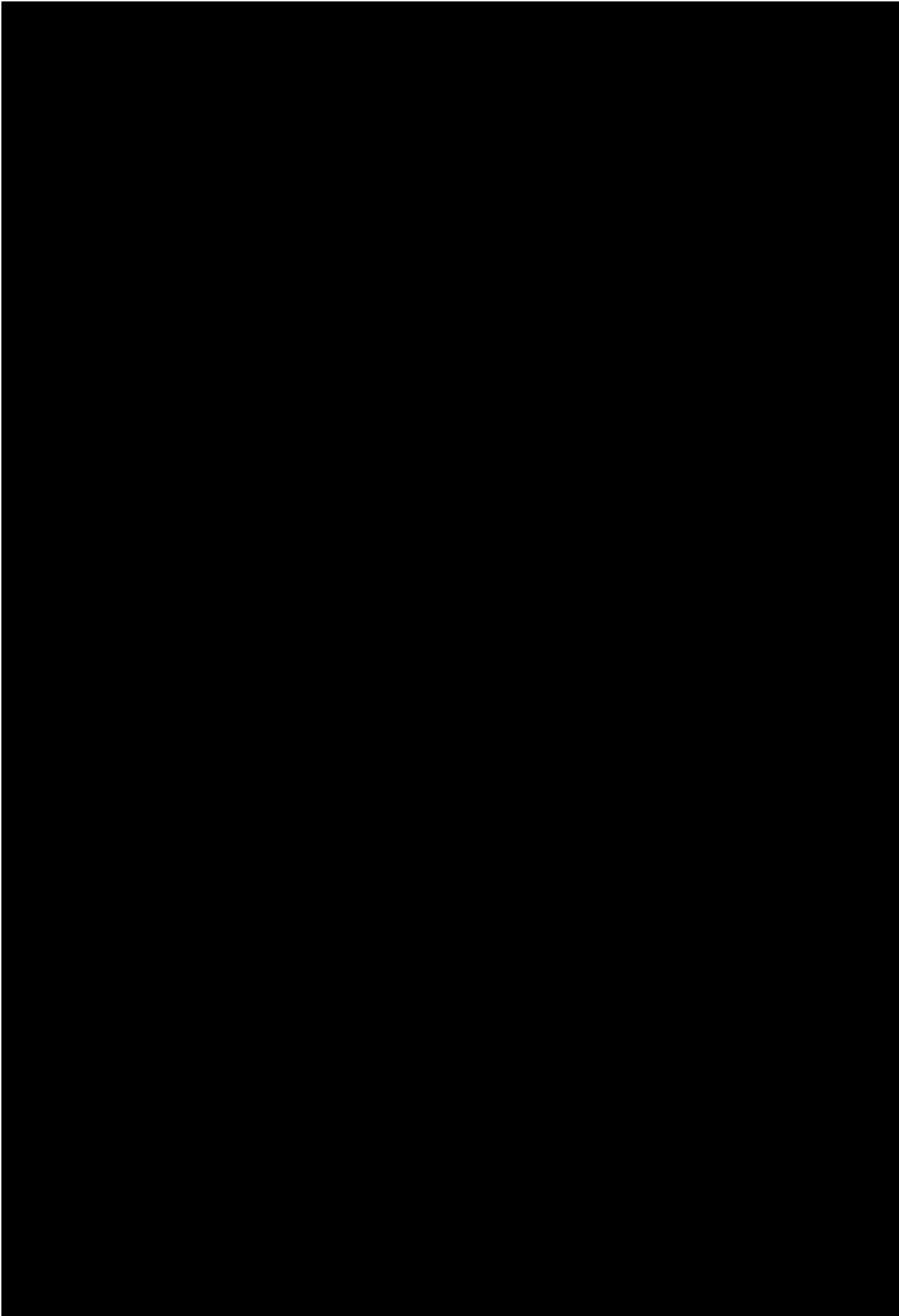


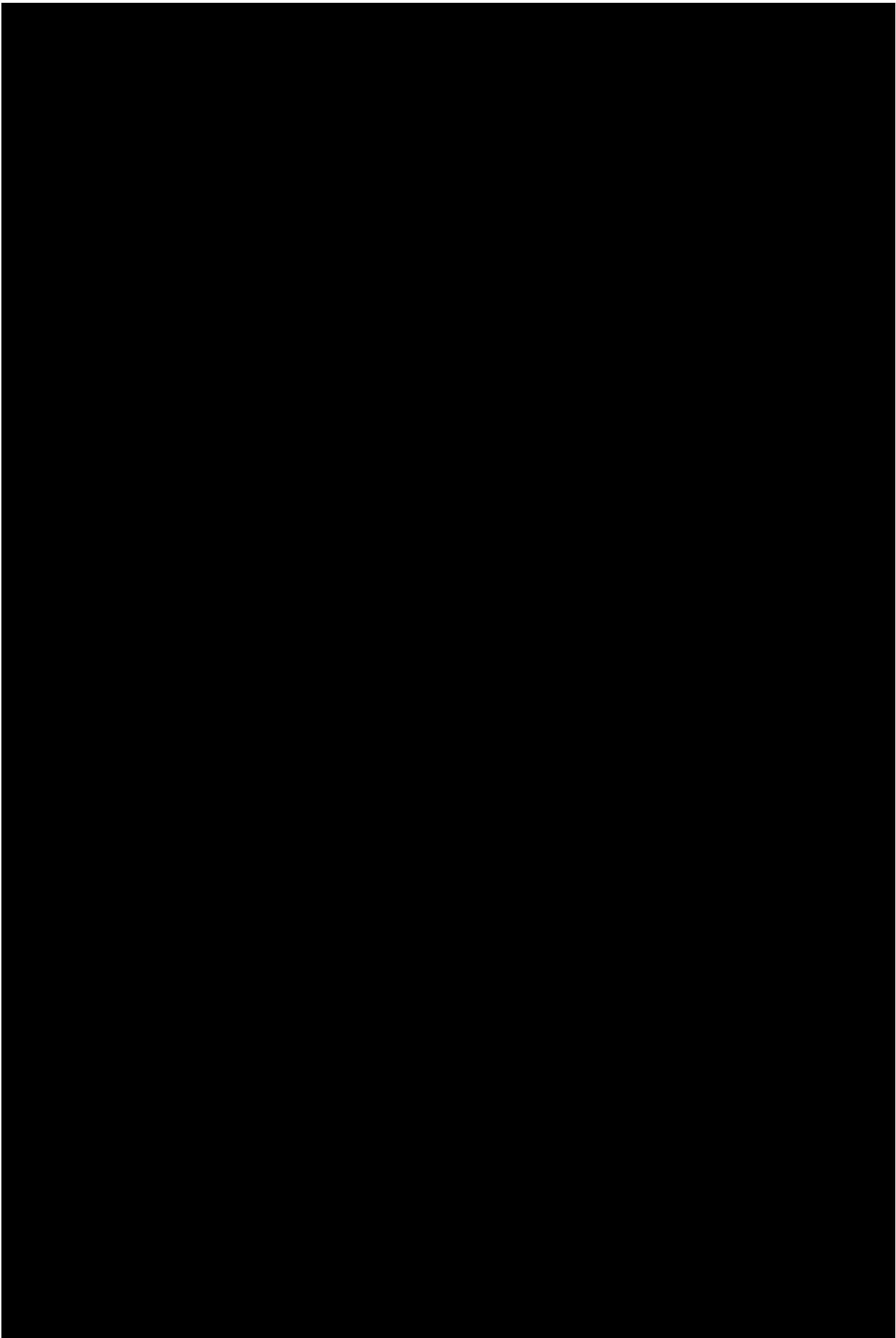


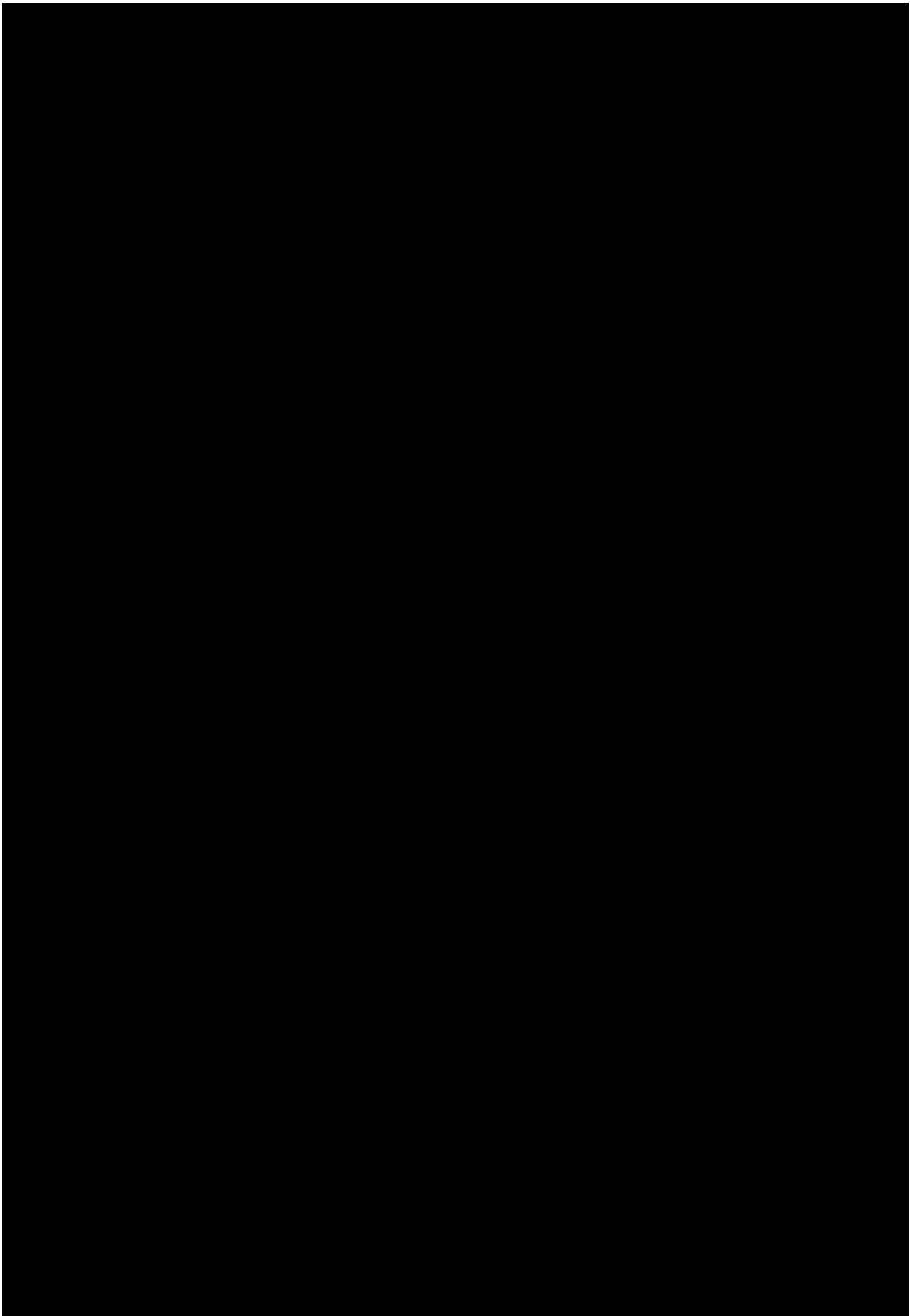


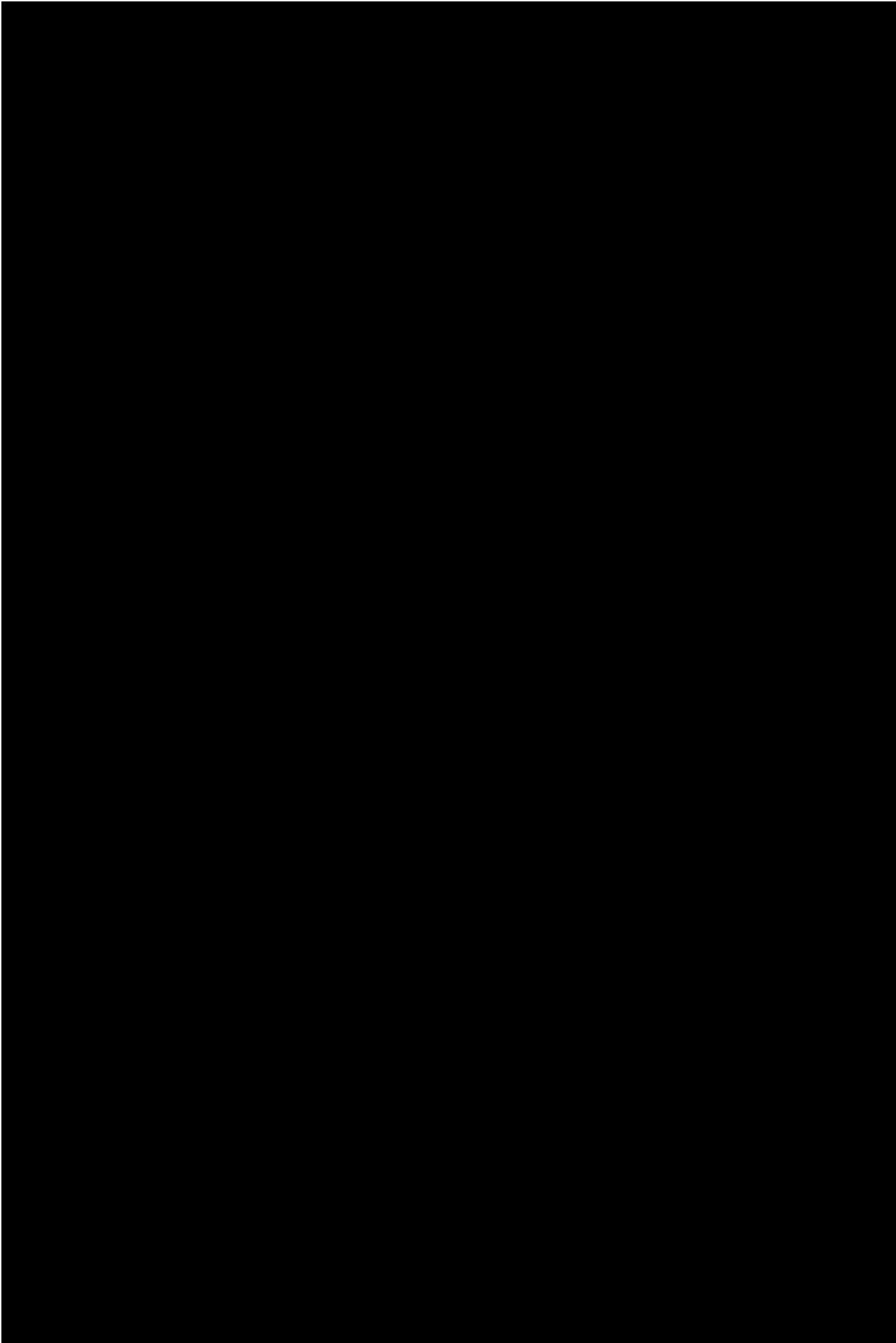


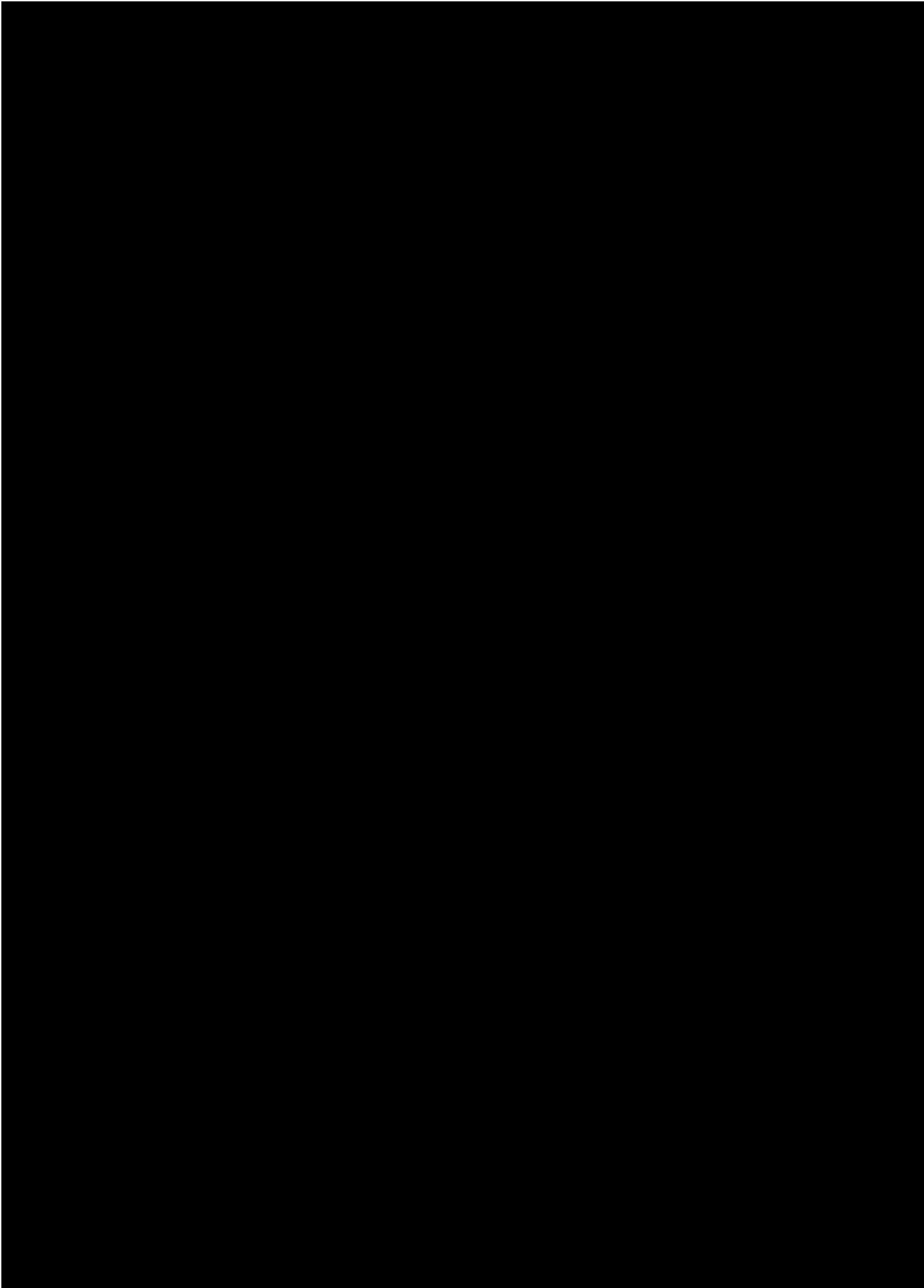


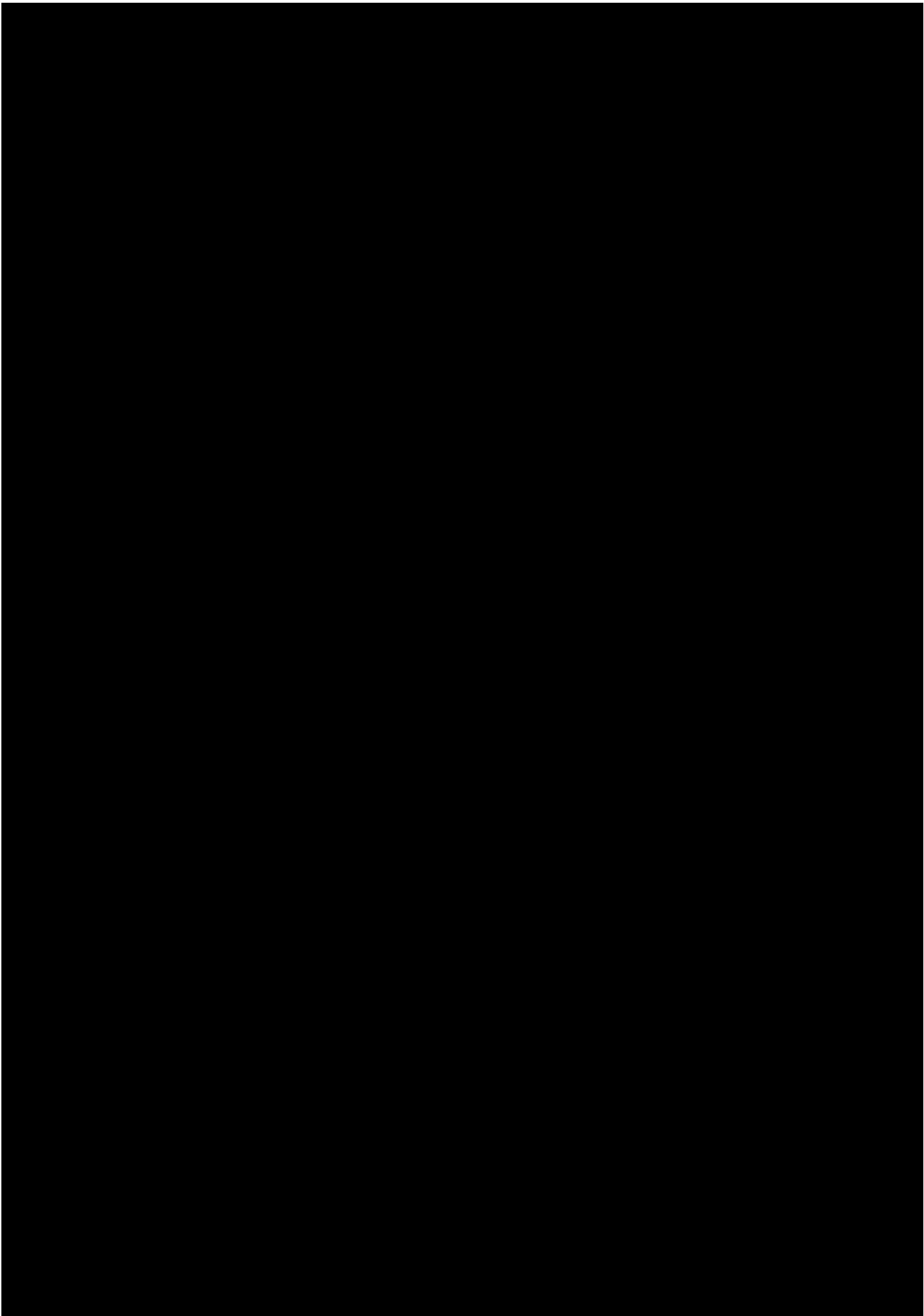


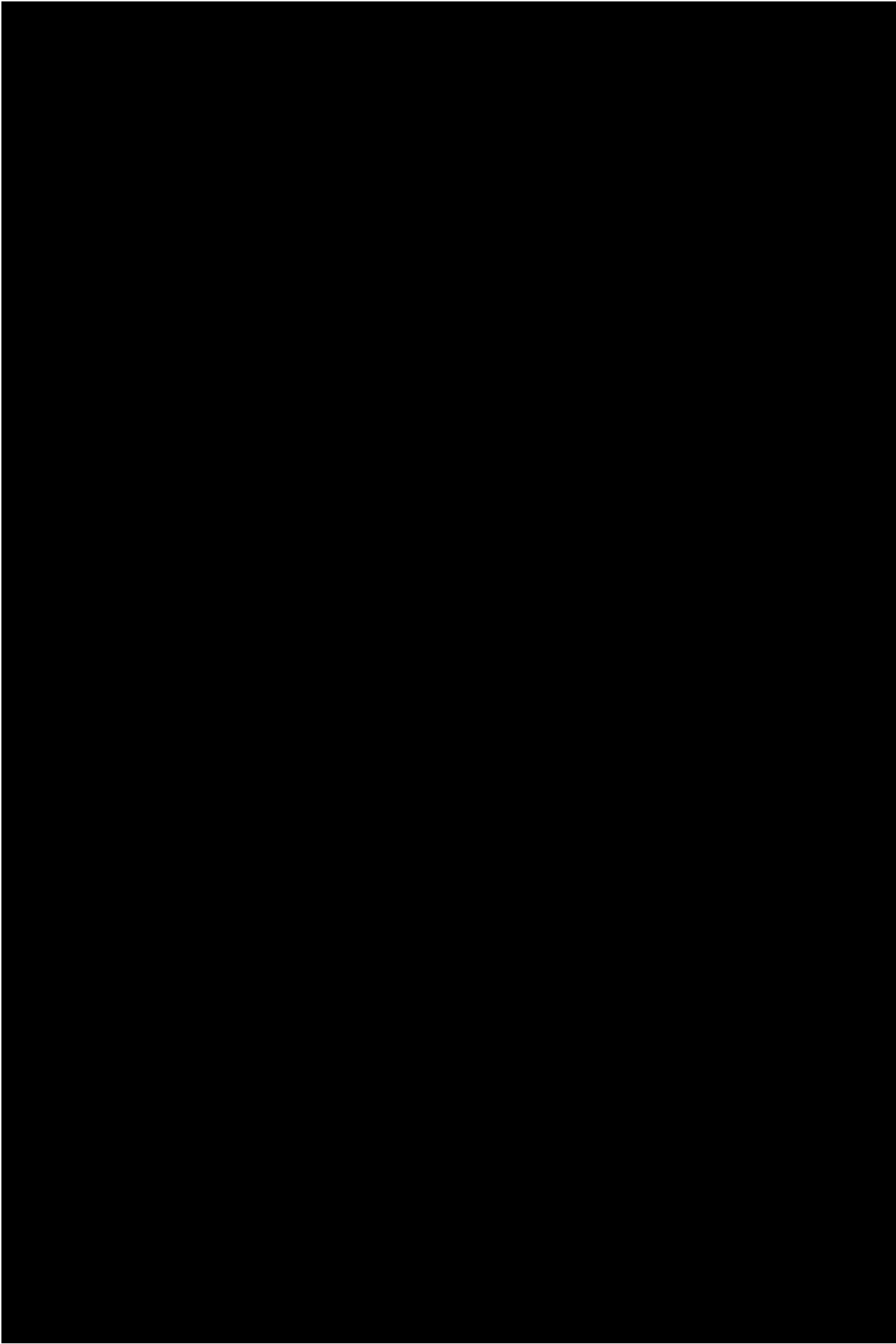


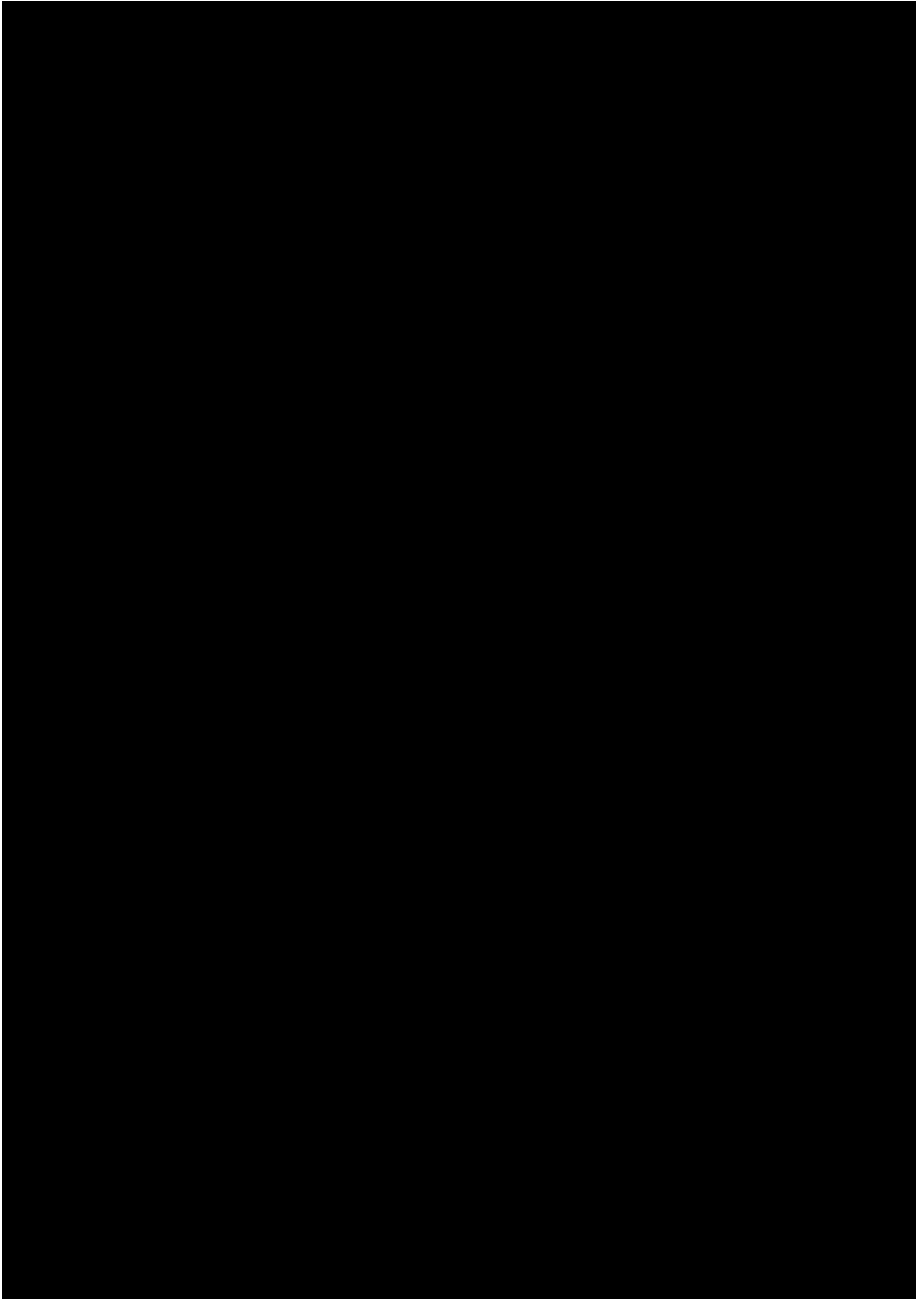


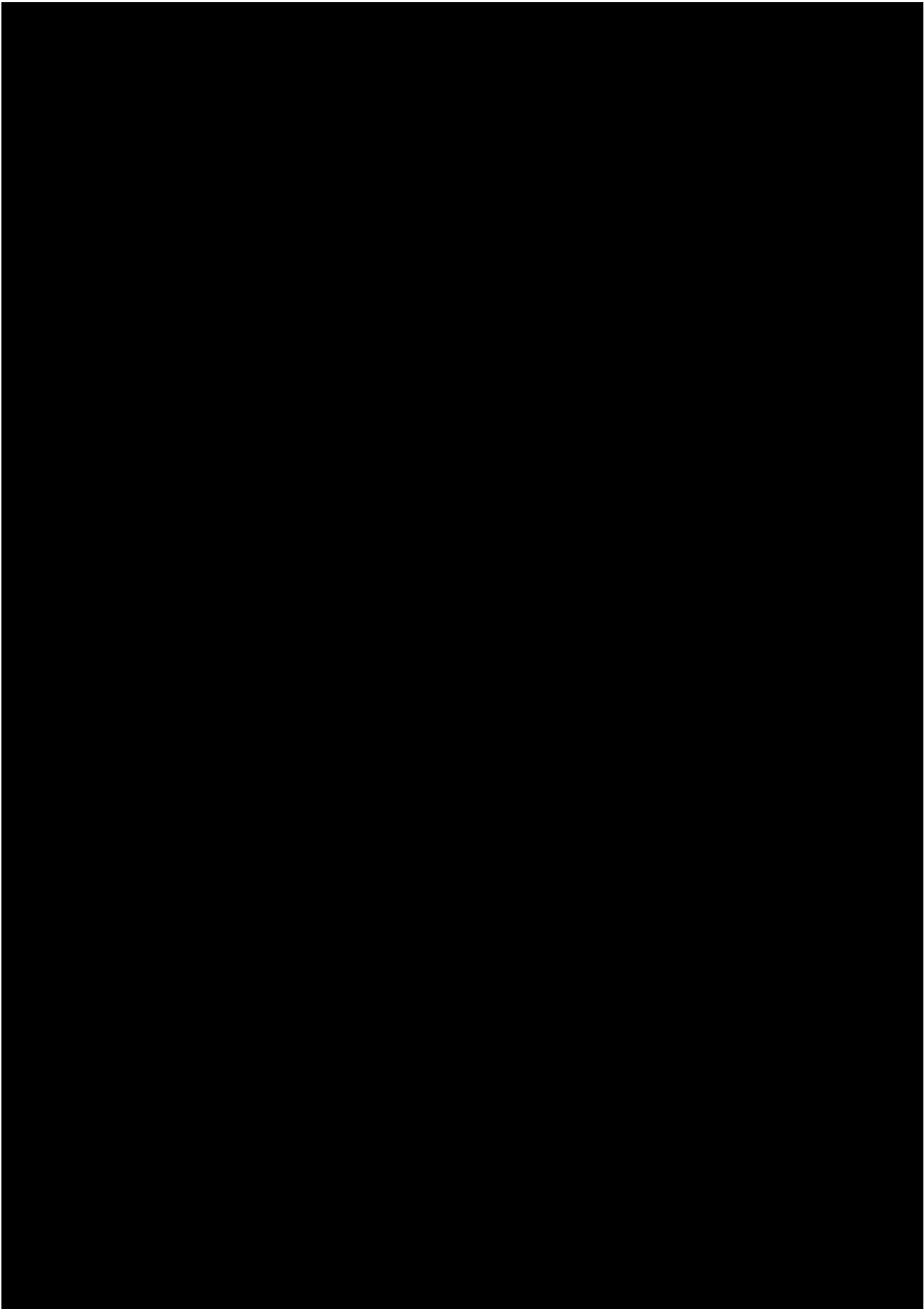


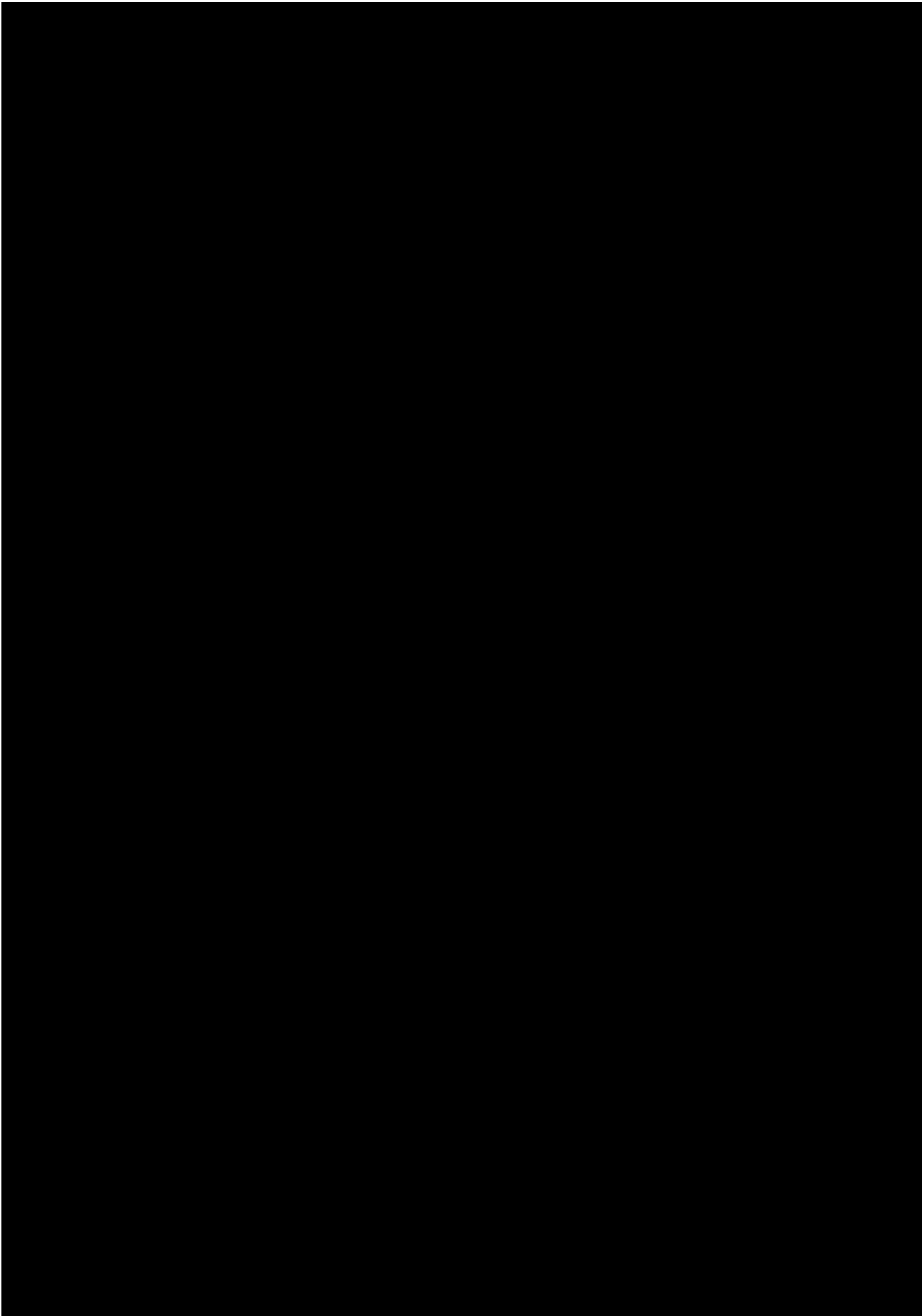


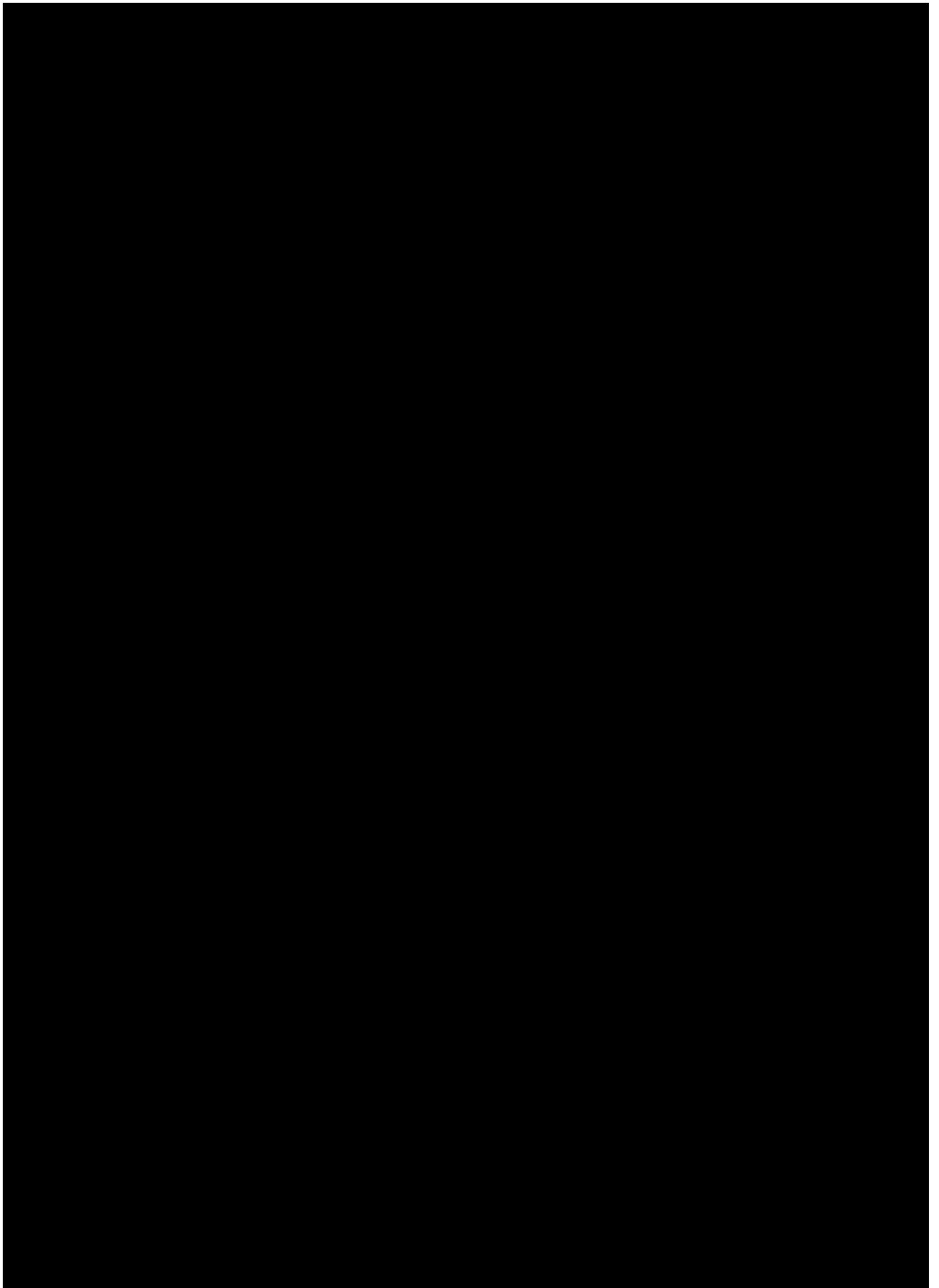


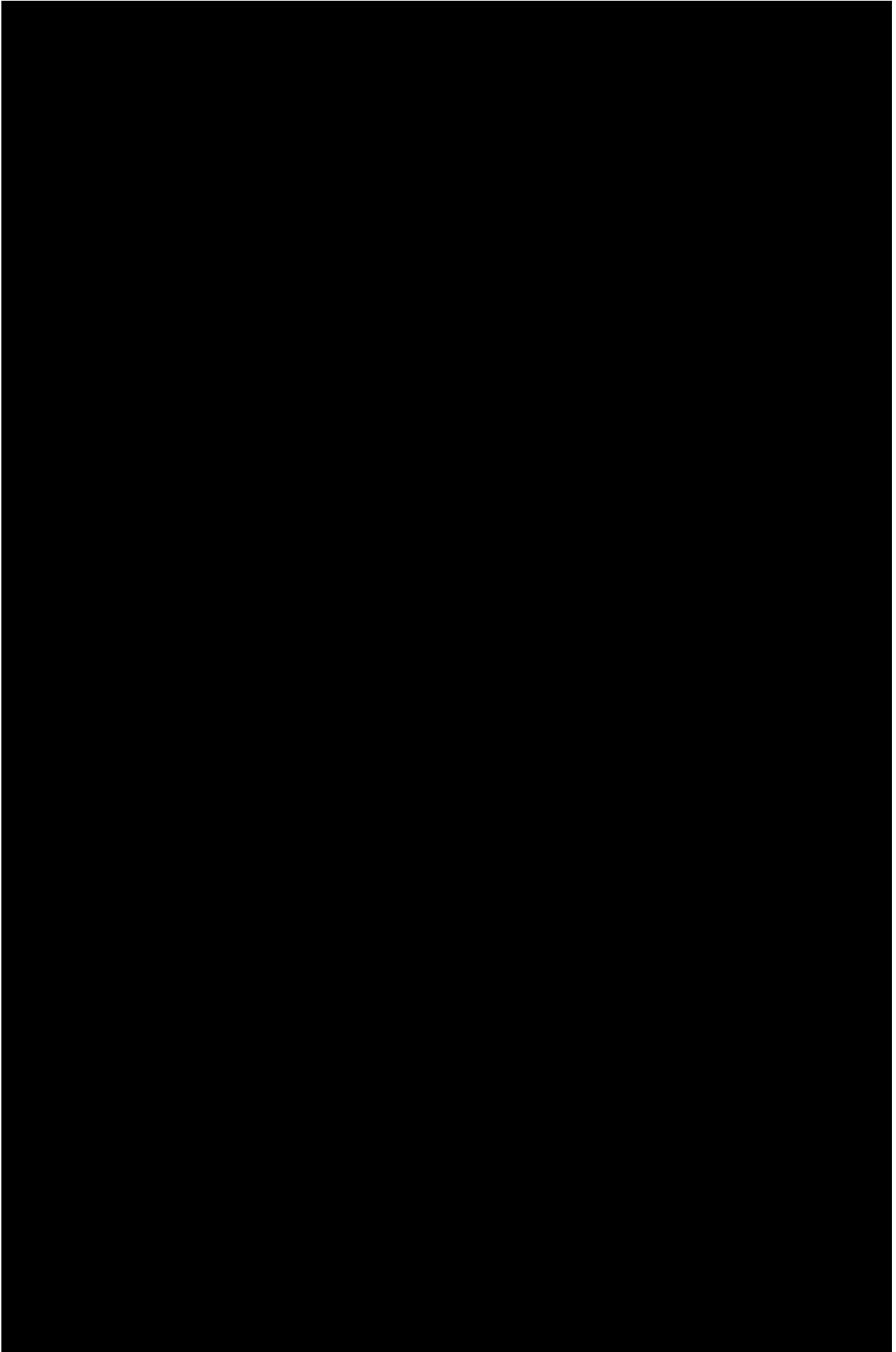


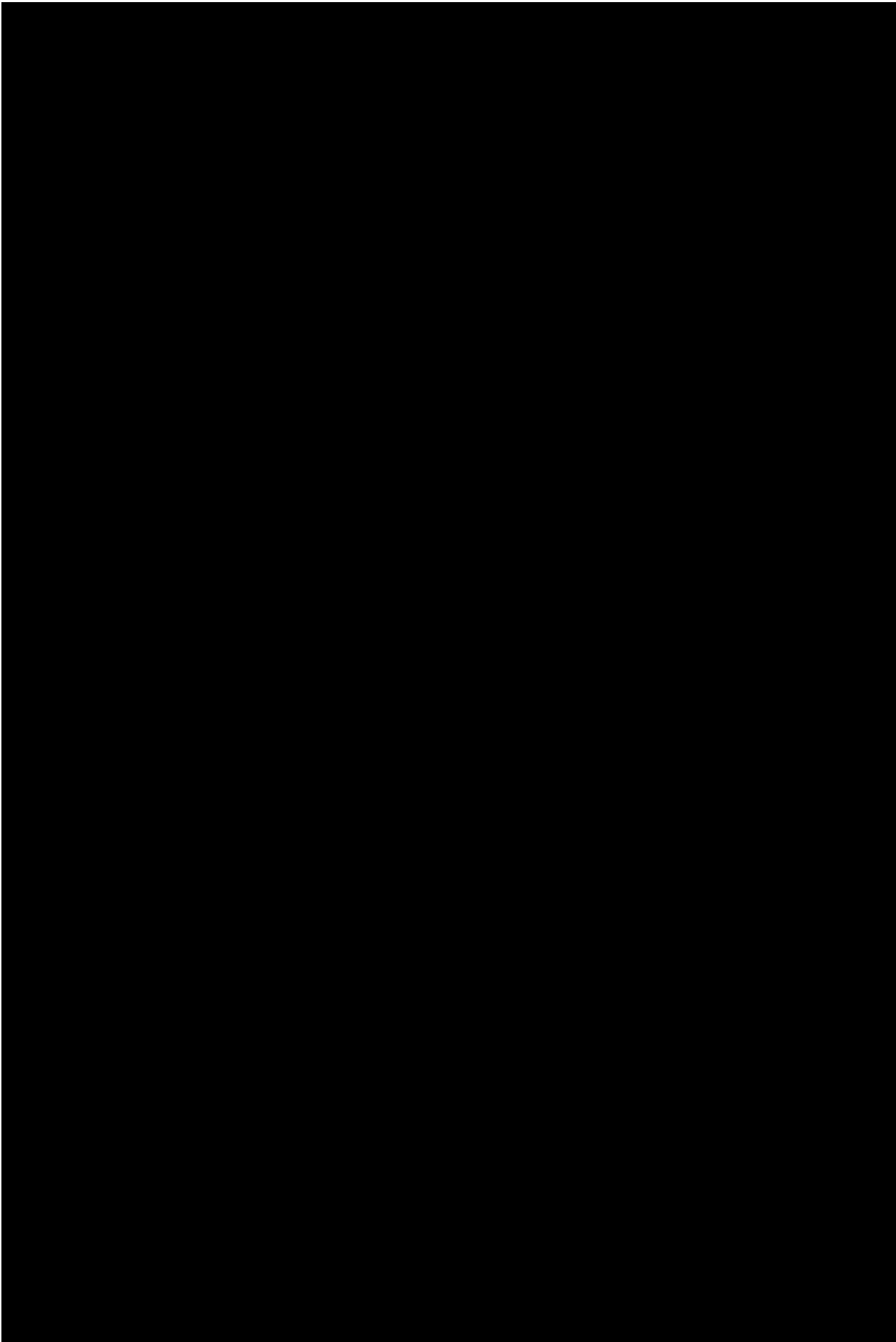


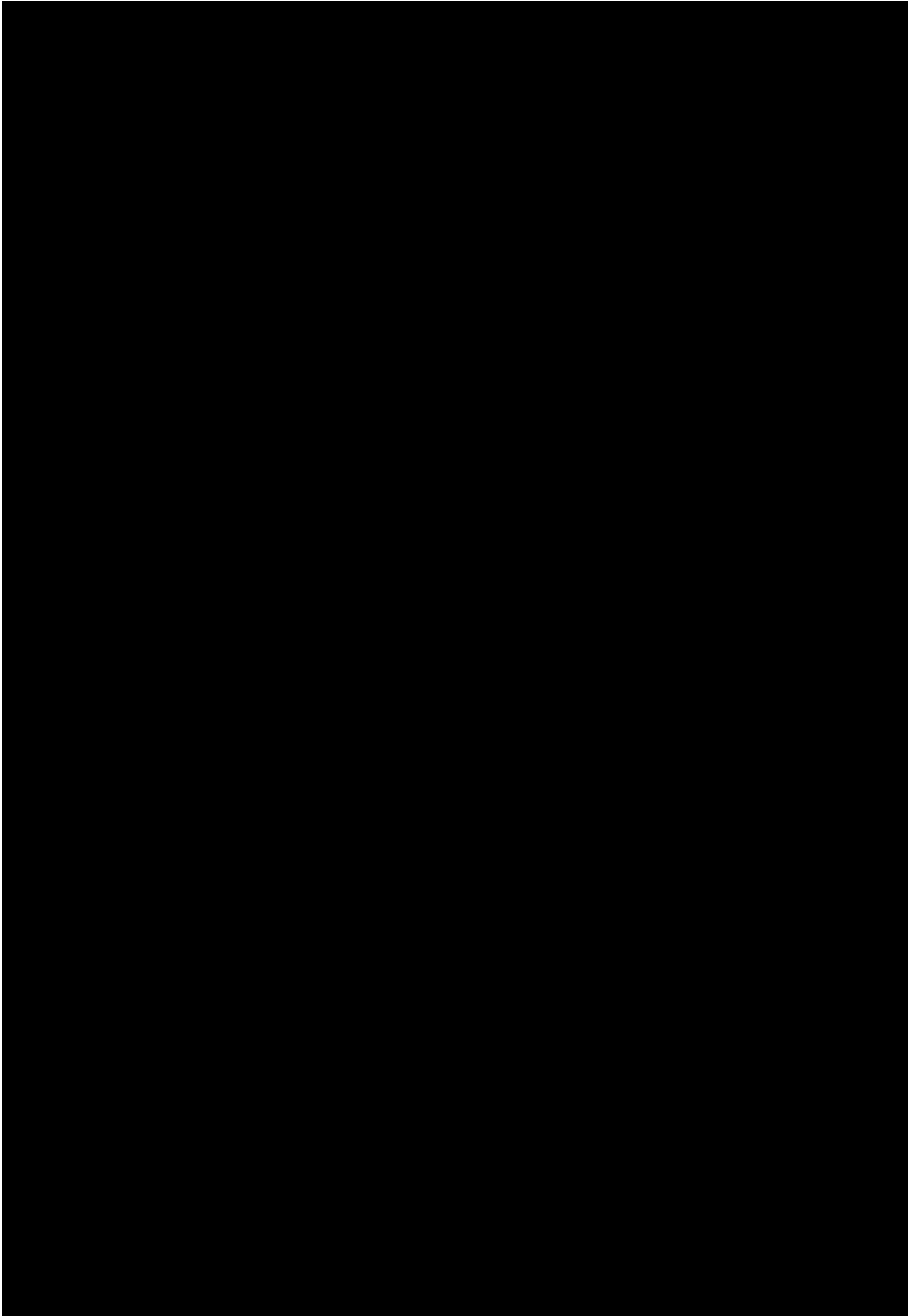


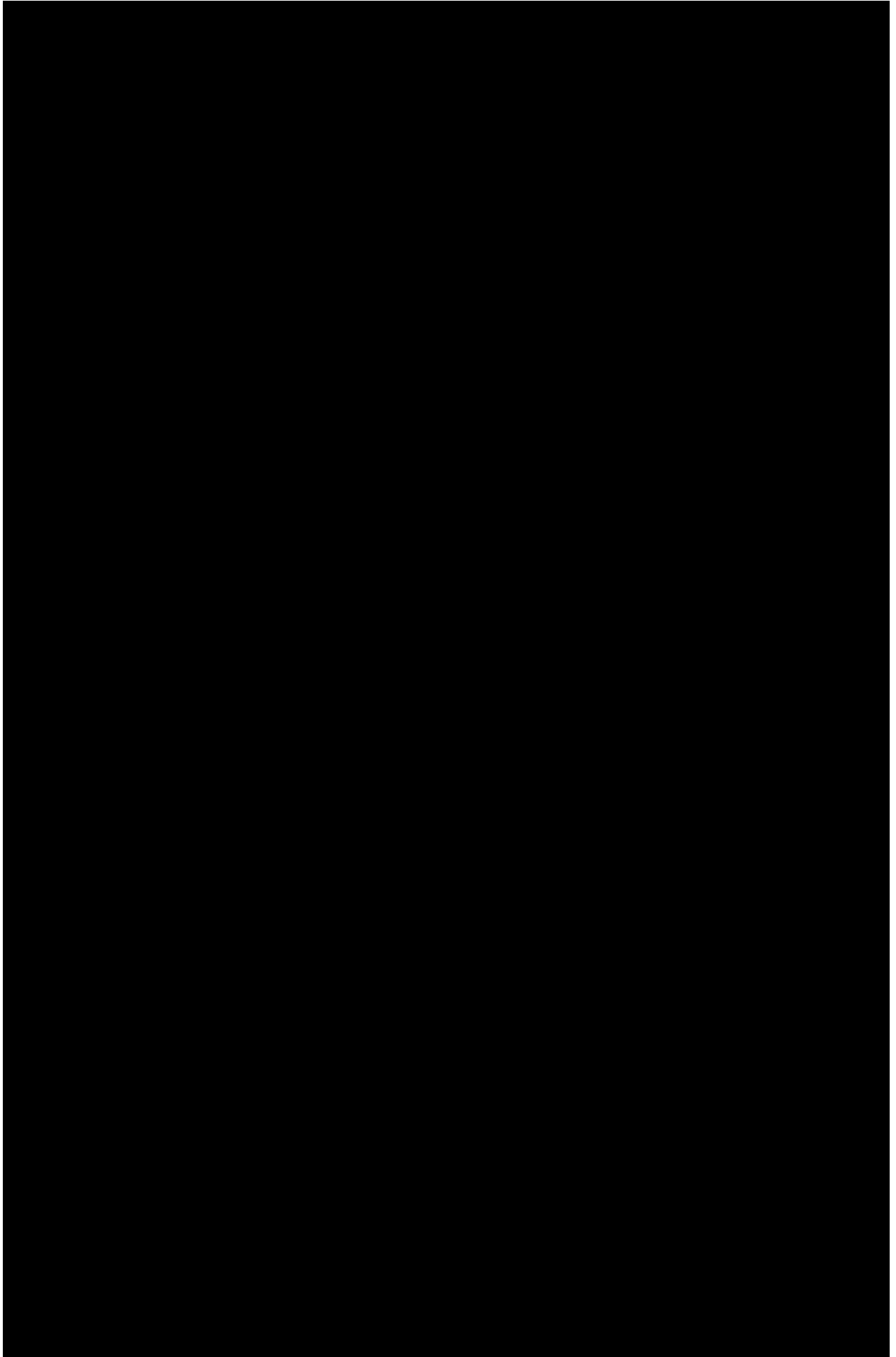


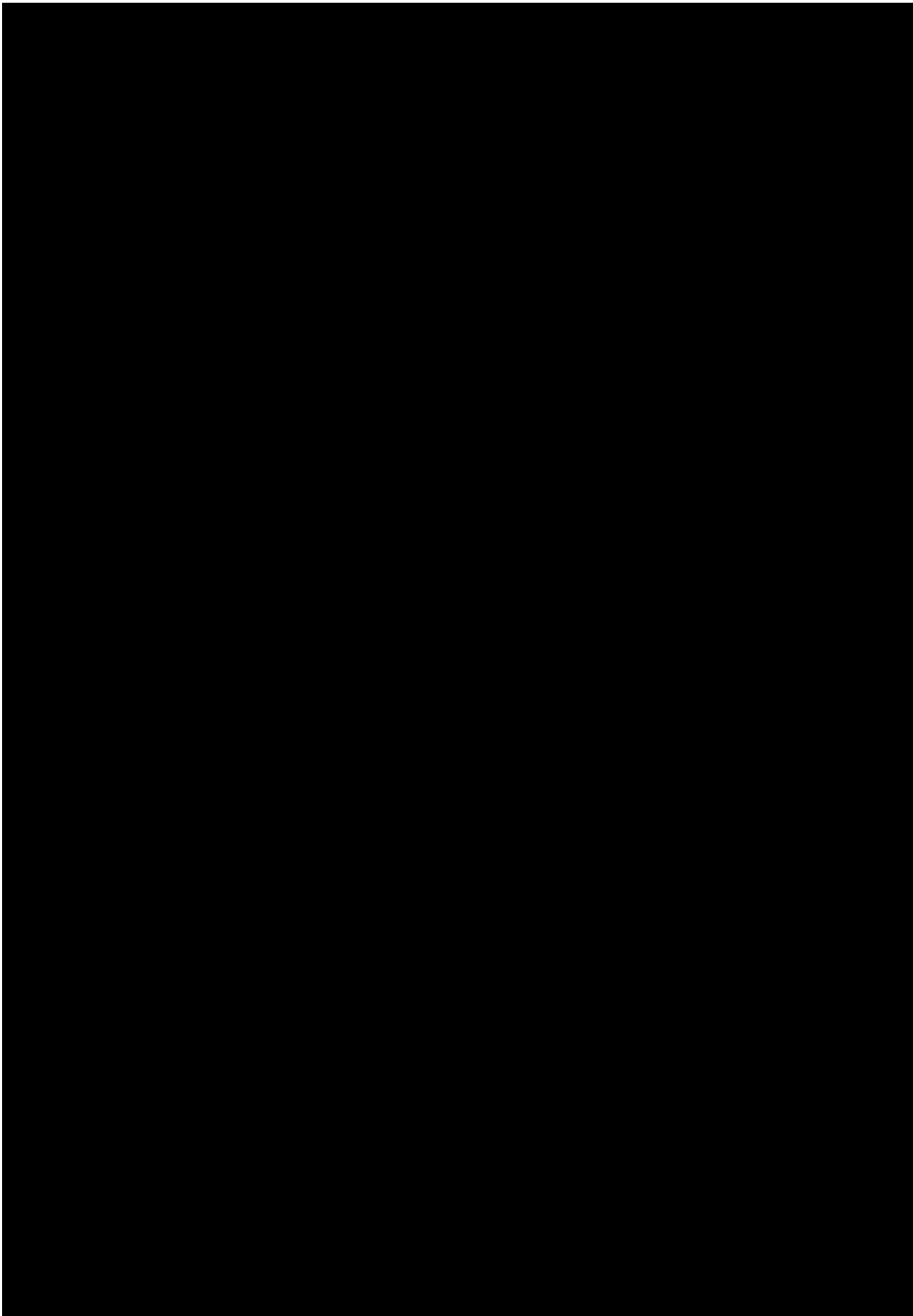


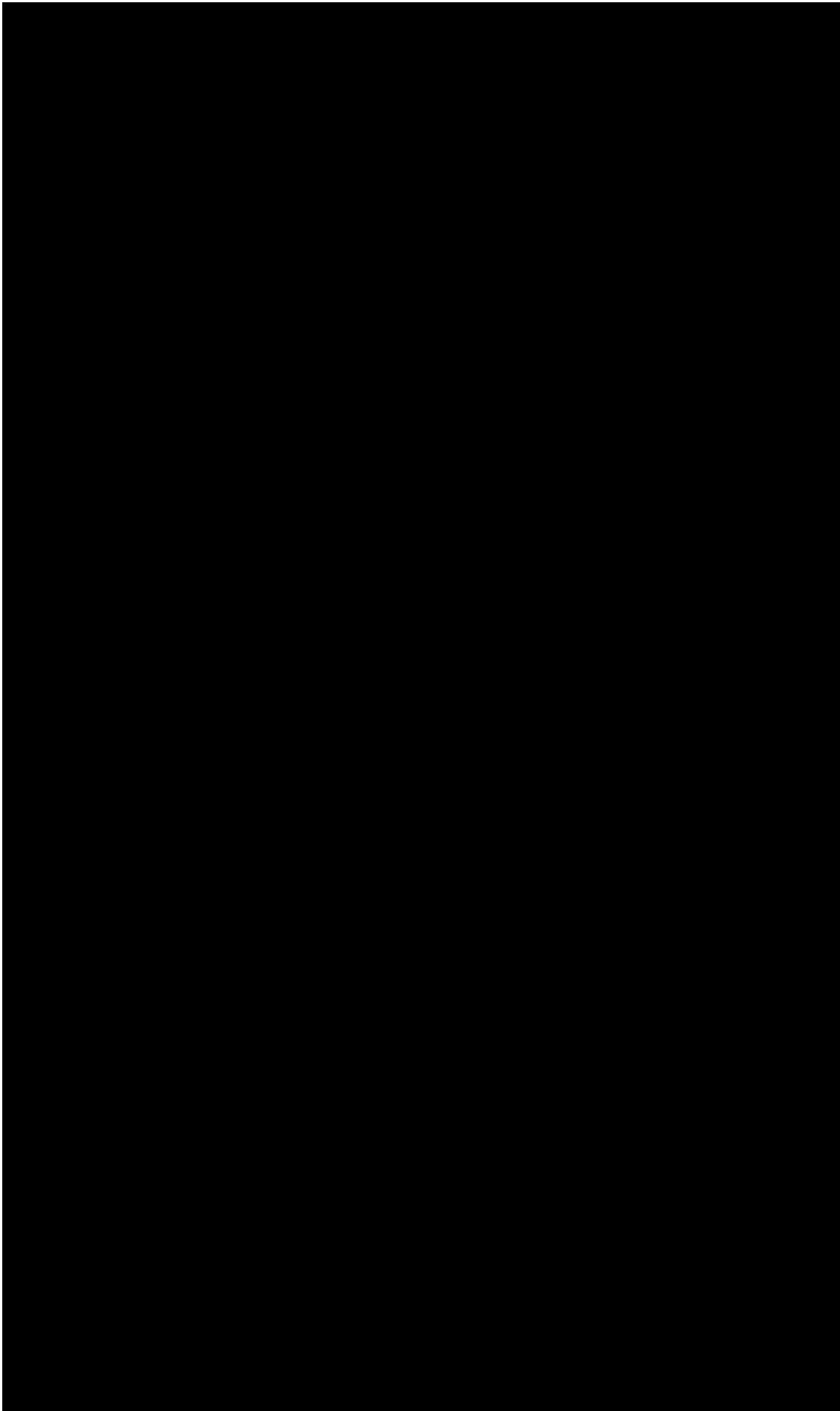












Schedule 3 Contractor’s Certificate of Remediation Compliance

(Clauses 1.1, 3.8, 11.1 and 11.7)

CONTRACTOR'S CERTIFICATE OF REMEDIATION COMPLIANCE	
CONTRACTOR:	
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor hereby confirms that the Contractor has complied with clause 3.8 of the Enabling Works Contract.</p> <p>The Contractor further confirms that this reflects the true status of the Enabling Works.</p> <p>SIGNATURE: _____ DATE: / /</p> <p><i>(Contractor's Representative for and on behalf of the Contractor)</i></p>	

Schedule 4 - Form of Confidentiality Undertaking

(Clauses 1.1, 2.2(f)(iii) and 19.14(c))

To: Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113

We [] the engaged Consultant / Supplier / Contractor / Subcontractor body, undertake to treat as confidential all information received / generated from [] (**Principal**) in respect of work performed by the Principal and all information generated by the Consultant / Supplier / Contractor / Subcontractor body in the course of performing the Contractor's Activities.

The Consultant / Supplier / Contractor / Subcontractor hereby undertakes:

- (a) to disclose that information to its employees only on a need-to-know basis;
- (b) not to disclose that information to any other person without first obtaining the written consent of the Principal;
- (c) not to use that information except as necessary in connection with the Consultant / Supplier / Contractor / Subcontractor body's engagement to perform the Contractor's Activities; and
- (d) to ensure that its employees to whom that information is disclosed will comply with (a), (b) and (c) above.

This undertaking will not apply to information about the Principal which is in the public domain (except where the availability of the information in the public domain is due to any unauthorised disclosure by the Consultant / Supplier / Contractor / Subcontractor, its employees or agents) or which was already known to the Consultant / Supplier / Contractor / Subcontractor.

Any breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor's employee or agent will constitute a breach of this undertaking by the Consultant / Supplier / Contractor / Subcontractor and at the direction of the Principal the Consultant / Supplier / Contractor / Subcontractor must institute proceedings or do whatever the Principal regards as reasonable to prevent or contain the breach.

The Consultant / Supplier / Contractor / Subcontractor undertakes that on request from the Principal it will forthwith return to the Principal all originals and copies of the confidential information, however embodied, supplied by the Principal and destroy all documents containing or prepared using any confidential information however embodied.

The Consultant / Supplier / Contractor / Subcontractor also undertakes to declare to the Principal any conflict of interest that exists or arises during the course of its engagement which may impinge on the objectivity or probity of the work performed. Such declarations are to be made as soon as the conflict of interest issue arises.

This undertaking will remain in force until each part of the confidential information is released by the Principal into the public domain.

Executed as a deed poll

Signing page

Dated:

SIGNED SEALED AND DELIVERED by)
)
)
)
)
 as attorney for JOHN HOLLAND PTY LTD)
 (ABN 11 004 282 268) under power of)
 attorney dated [REDACTED])
)
 in the presence of:)
)
)
)
)
 Signature of witness)

.....
Name of witness (block letters)

.....
By executing this document the
attorney states that the attorney has
received no notice of revocation of the
power of attorney

Schedule 5 Certificates of Design Compliance

(Clauses 1.1, 5.7(a), 5.9(d)(ii)(B), 5.12, 11.1 and 11.7)

The Contractor must submit to the Principal's Representative the following design certificates for each nominated Design Stage at the times set out in the table below:

Required certificates	Design Stage	Timing
Contractor's Certificate of Design Compliance	SDR Design Stage PDR Design Stage DDR Design Stage AFC Design Stage CRR Design Stage (as that term is defined in the Management Requirements) SVR Design Stage (as that term is defined in the Management Requirements)	With submission of Design Documentation
Designer's Certificate of Design Compliance	SDR Design Stage PDR Design Stage DDR Design Stage AFC Design Stage CRR Design Stage SVR Design Stage	With submission of Design Documentation
Independent Certifier's Certificate of Design Compliance	AFC Design Stage CRR Design Stage SVR Design Stage	For AFC Design Documentation, prior to proceeding to construction

1.1 Contractor's Certificate of Design Compliance

CONTRACTOR'S CERTIFICATE OF DESIGN COMPLIANCE	
CONTRACTOR:	
<u>DESIGN PACKAGE (limit of 1 per certificate):</u>	
<u>DESCRIPTION:</u>	
<u>DESIGN DOCUMENTATION:</u> the Design Documentation referenced in the list attached to this certificate.	
Design Stage: SDR/PDR/DDR/AFC/CRR/SVR	
<p>This certificate is given in accordance with the document titled "PLR Stage 2: Enabling Works Contract", as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor certifies that the Design Documentation for the package or part thereof described above has been completed to the extent indicated above in accordance with the requirements of the Enabling Works Contract (including as required by the Management Requirements where applicable), complies with the requirements of the Enabling Works Contract for the applicable Design Stage and the Planning Approval, except for the minor errors and omissions identified in the attached list, and addresses the safety requirements of the Enabling Works Contract and all Laws.</p> <p>The Contractor further certifies that the attached compliance records as required by the Enabling Works Contract reflect the true status of the design package.</p> <p>NAME: _____ (<i>Contractor's Representative</i>)</p> <p>SIGNATURE: _____ for and on behalf of the Contractor.</p> <p>DATE: / /</p>	

Design Documentation the subject of this certificate:

[Attach list]

Attachment – List of minor errors or omissions

No.	Minor error or omission	Action to be taken by Contractor to address minor error or omission
1.	[to be inserted]	[to be inserted]

1.2 Designer's Certificate of Design Compliance

DESIGNER'S CERTIFICATE OF DESIGN COMPLIANCE
<p>DESIGNER:</p>
<p><u>DESIGN PACKAGE (limit of 1 per certificate):</u></p>
<p><u>DESCRIPTION:</u></p>
<p><u>DESIGN DOCUMENTATION:</u> the Design Documentation referenced in the list attached to this certificate.</p>
<p>Design Stage: SDR/PDR/DDR/AFC/CRR/SVR</p>
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Designer certifies, exercising a standard of skill, care and diligence that would be expected of a consultant experienced in design discipline of [*], that the [(delete one) Design Documentation for the package / Design Documentation for the design discipline of [*] for the package] or part thereof described above:</p> <ul style="list-style-type: none">(a) has been completed to the extent indicated in accordance with the requirements of the Enabling Works Contract (including as required by the Management Requirements where applicable);(b) complies with the requirements of the Enabling Works Contract and the Planning Approval, except for the minor errors and omissions identified in the attached list; and(c) addresses the safety requirements of the Enabling Works Contract and all Laws. <p>The Designer further certifies that the attached compliance records as required by the Enabling Works Contract reflect the true status of the design package.</p> <p>NAME:_____ (Design Team Manager)</p> <p>SIGNATURE:_____ for and on behalf of the Designer</p>

DATE: / /

Design Documentation the subject of this certificate:

[Attach list]

Attachment – List of minor errors or omissions

No.	Minor error or omission	Action to be taken by Contractor to address minor error or omission
1.	[to be inserted]	[to be inserted]

1.3 Independent Certifier's Certificate of Design Compliance

INDEPENDENT CERTIFIER'S CERTIFICATE OF DESIGN COMPLIANCE
<p><u>DESIGN PACKAGE (limit of 1 per certificate):</u></p> <p><u>DESCRIPTION:</u></p> <p><u>DESIGN DOCUMENTATION:</u> the Design Documentation referenced in the list attached to this certificate.</p> <p>Design Stage: AFC/CRR/SVR</p>
<p>This certificate is given in accordance with the document titled "PLR Stage 2: Enabling Works Contract", as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>In accordance with clause 5.9(d)(ii)(B) of the Enabling Works Contract, the Independent Certifier certifies that the Design Documentation referenced in the list attached to this certificate:</p> <p>(a) has been prepared by a TAO accredited Designer in accordance with the 'Contractor's System Engineering, Assurance and Design Management Plan' and 'Quality Management Plan' (as each of those terms are defined in the Management Requirements);</p> <p>(b) complies with all requirements of the Enabling Works Contract for the applicable Design Stage, (including the Management Requirements, where applicable, and the Planning Approval) except for the minor errors and omissions identified in the attached list; and</p> <p>(c) is complete and appropriate for the Design Stage identified above based on all information available to the Independent Certifier at the date of this certificate.</p> <p>NAME: _____ (<i>Independent Certifier Representative</i>)</p> <p>SIGNATURE: _____</p> <p>DATE: / /</p>

Attachment – List of minor errors or omissions

No.	Minor error or omission	Action to be taken by Contractor to address minor error or omission
1.	[to be inserted]	[to be inserted]

Schedule 6 Certificates of Construction Compliance

(Clauses 1.1, 7.1(c) and 11.1)

The Contractor must submit to the Principal's Representative the following construction compliance certificates at the times set out in the table below:

Required certificates	Timing
Contractor's Certificate of Construction Compliance	Monthly, with each monthly payment claim

1.1 Contractor's Certificate of Construction Compliance

CONTRACTOR'S CERTIFICATE OF CONSTRUCTION COMPLIANCE
CONTRACTOR:
<u>Element of the Enabling Works the subject of this certificate:</u> [#complete or list in an attachment to this certificate#]
<p>This certificate is given in accordance with the document titled "PLR Stage 2: Enabling Works Contract", as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor certifies that the procurement and construction of the work package or part thereof described above have been completed to the extent indicated above in accordance with the requirements of the Enabling Works Contract and all Laws, Codes and Standards (including the Planning Approval), except for the minor errors and omissions identified in the attached list.</p> <p>The Contractor further certifies that the attached compliance records as required by the Enabling Works Contract reflect the true status of the work package.</p> <p>NAME: _____ (<i>Contractor's Representative</i>)</p> <p>SIGNATURE: _____ for and on behalf of the Contractor</p> <p>DATE: / /</p>

Attachment – List of minor errors or omissions

No.	Minor error or omission	Action to be taken by Contractor to address minor error or omission
1.	[to be inserted]	[to be inserted]

Schedule 7 Certificates of Completion

(Clauses 1.1 and 12)

1.1 Contractor's Certificate of Portion Completion

CONTRACTOR'S CERTIFICATE OF PORTION COMPLETION
CONTRACTOR:
Description of Portion (limit of 1 per certificate):
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor certifies that Portion Completion has been achieved in accordance with the requirements of the Enabling Works Contract and all Laws, Codes and Standards (including the Planning Approval), subject to the register of unresolved issues attached.</p> <p>The Contractor further certifies that:</p> <ul style="list-style-type: none">(a) all Variation Orders (including concessions) are listed in the attached compliance register;(b) all identified Defects (including any non-conformities but excluding Defects accepted as minor by the Principal) have been satisfactorily rectified and their documentation closed out; and(c) the Safety Case Documentation has been provided in accordance with clause 4.7(e) of the Enabling Works Contract. <p>The Contractor further certifies that the attached compliance records as required by the Enabling Works Contract reflect the true status of the Enabling Works.</p> <p>SIGNATURE: _____ (Contractor's Representative) for and on behalf of the Contractor.</p> <p>DATE: _____</p>

1.2 Contractor's Certificate of Enabling Works Practical Completion

<p style="text-align: center;">CONTRACTOR'S CERTIFICATE OF ENABLING WORKS PRACTICAL COMPLETION</p>
<p>CONTRACTOR:</p>
<p>Description of Enabling Works:</p>
<p>This certificate is given in accordance with the document titled "PLR Stage 2: Enabling Works Contract", as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor certifies that Enabling Works Practical Completion has been achieved in accordance with the requirements of the Enabling Works Contract and all Laws, Codes and Standards (including the Planning Approval), subject to the register of unresolved issues attached.</p> <p>The Contractor further certifies that:</p> <ul style="list-style-type: none">(a) all Variation Orders (including concessions) are listed in the attached compliance register; and(b) all required documentation has been submitted. <p>The Contractor further certifies that the attached compliance records as required by the Enabling Works Contract reflect the true status of the Enabling Works.</p> <p>SIGNATURE: _____ (Contractor's Representative) for and on behalf of the Contractor.</p> <p>DATE: _____</p>

1.3 Independent Certifier’s Certificate of Portion Completion

<p style="text-align: center;">INDEPENDENT CERTIFIER’S CERTIFICATE OF PORTION COMPLETION</p>
<p>INDEPENDENT CERTIFIER:</p>
<p>Description of Portion (limit of 1 per certificate):</p>
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>I certify that the Portion Completion of the above Portion has been achieved in accordance with the requirements of the Enabling Works Contract and all Laws, Codes and Standards (including the Planning Approval), subject to the register of unresolved issues attached, and that the Date of Portion Completion is [#insert].</p> <p>I further certify that the attached compliance records as required by the Enabling Works Contract reflect the true status of the Portion.</p> <p>SIGNATURE: _____ <i>(Independent Certifier Representative)</i></p> <p>DATE: _____</p>

1.4 Independent Certifier’s Certificate of Enabling Works Practical Completion

<p style="text-align: center;">INDEPENDENT CERTIFIER’S CERTIFICATE OF ENABLING WORKS PRACTICAL COMPLETION</p>
<p>INDEPENDENT CERTIFIER:</p>
<p>Description of Enabling Works:</p>
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>I certify that Enabling Works Practical Completion has been achieved in accordance with the requirements of the Enabling Works Contract and all Laws, Codes and Standards (including the Planning Approval), subject to the register of unresolved issues attached, and that the Date of Enabling Works Practical Completion is [#insert].</p> <p>I further certify that the attached compliance records as required by the Enabling Works Contract reflect the true status of the Enabling Works.</p> <p>SIGNATURE:_____</p> <p style="text-align: center;"><i>(Independent Certifier Representative)</i></p> <p>DATE:_____</p>

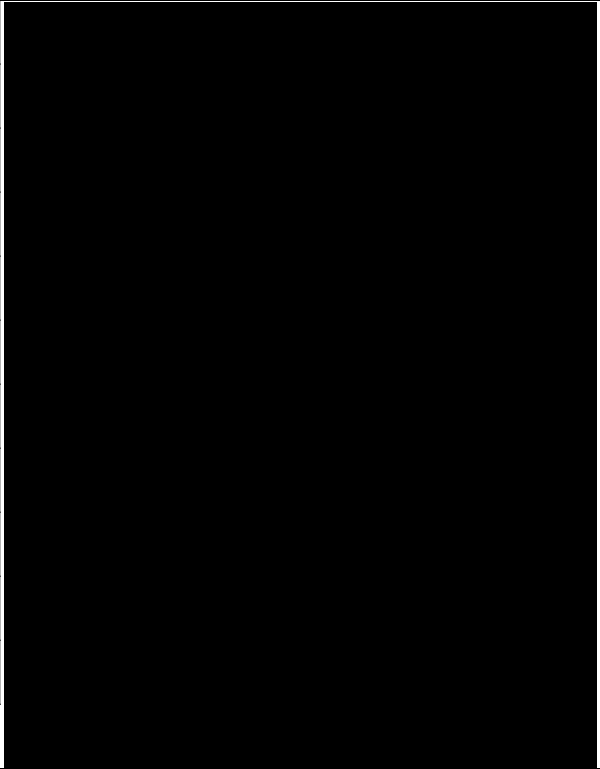
Schedule 8 Contractor’s Certificate of Final Completion

(Clauses 1.1 and 12.15(f))

CONTRACTOR'S CERTIFICATE OF FINAL COMPLETION
CONTRACTOR:
<p>This certificate is given in accordance with the document titled “PLR Stage 2: Enabling Works Contract”, as executed between Transport for NSW (ABN 18 804 239 602) and the Contractor (Enabling Works Contract). Words defined in the Enabling Works Contract have the same meaning in this certificate.</p> <p>The Contractor hereby confirms that Final Completion has been achieved by the Contractor on / / in accordance with the requirements of the Enabling Works Contract (including all Variation Orders detailed in (a) below) between the Principal and the Contractor.</p> <p>The Contractor further confirms that:</p> <ul style="list-style-type: none">(a) all Variation Orders (including concessions) are listed in the attached compliance register;(b) all identified Defects (including any minor non-conformities) have been satisfactorily rectified and their documentation closed out;(c) all required documentation has been submitted; and(d) all deficiency notices regarding system deficiencies have been satisfactorily closed out. <p>The Contractor further confirms that the attached compliance records as required by the Enabling Works Contract reflect the true status of the Enabling Works.</p> <p>SIGNATURE: _____ DATE: / /</p> <p>(Contractor's Representative) for and on behalf of the Contractor.</p>

Schedule 9 – Contractor’s Personnel

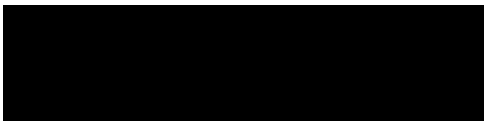
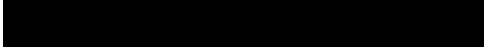
(Clauses 1.1, 9.6, 9.11 and 15.4)

Position	Name
Project Steering Group Representative	
Contractor's Representative	
Project Director	
Commercial Manager	
Engineering Manager	
Construction Manager	
Third Party Interface Manager	
Sustainability Manager	
Work Health and Safety Manager	
Environmental / Approvals Compliance Manager	
Community Relations Manager	
Urban Design Lead	

The requirements for each of the following role are as listed below.

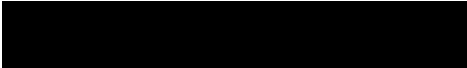

1 Project Steering Group Representative

The Project Steering Group Representative must:

- (a) be a senior executive or manager from the Contractor (or, if the Contractor is a consortium, from the lead consortium member) with experience in providing corporate oversight on projects similar to the Enabling Works;
- (b) have (and the Contractor must be able to demonstrate that the Project Steering Group Representative has) appropriate delegated authority for;
 - (i) 
 - (ii) 
 - (iii) not used; and
- (c) be engaged on an as need basis for the duration of the Contractor's Activities from the Commencement Date until the date which is 6 months after the last Date of Portion Completion.

2 Project Director

The Project Director must:

- (a) possess a recognised qualification relevant to the position and the Contractor's Activities and be experienced in the design, construction and project management of large projects similar to the Enabling Works;
- (b) have (and the Contractor must be able to demonstrate that the Project Director has) appropriate delegated authority for;
 - (i) 
 - (ii) 
- (c) be engaged full-time for the duration of the Contractor's Activities from the Commencement Date until the last Date of Portion Completion; and
- (d) be based on or around the Site during the Contractor's Activities.

3 Construction Manager

The Construction Manager must:

- (a) possess a recognised engineering qualification relevant to the position and the Contractor's Activities and have at least fifteen years' experience in the overall management of large projects similar to the Enabling Works;
- (b) be engaged full-time on or around the Site until the last Date of Portion Completion;
- (c) have appropriate delegated authority to act on behalf of the Contractor in respect of the Contractor's Activities.
- (d) be available as the Principal's Representative's and Independent Certifier's primary contact with the Contractor on quality matters;
- (e) give the Principal's Representative access to information and personnel on quality matters and encourage a culture of disclosure and open discussion in respect of quality at all levels;
- (f) be responsible for an induction and training program for all personnel involved in the performance of the Contractor's Activities;
- (g) be responsible for and have the authority to develop the Quality Management Plan; and
- (h) be given authority by the Contractor to act freely and independently and to stop the progress of the relevant part of the Contractor's Activities when any non-conformance with the quality requirements of this Deed is identified.

4 Commercial Manager

The Commercial Manager must:

- (a) possess a recognised qualification relevant to the position and the Contractor's Activities and have at least ten years' experience in commercial management on projects similar to the Enabling Works;
- (b) not used; and

- (c) be engaged full-time on or around the Site until the last Date of Portion Completion.

5 Engineering Manager

The Engineering Manager must:

- (a) possess a recognised engineering qualification relevant to the position and the Contractor's Activities and have at least fifteen years' experience in the overall management and co-ordination of multi-disciplinary design teams on large projects similar to the Enabling Works;
- (b) at all times have authority to act on behalf of the Contractor in respect of the Contractor's Activities;
- (c) manage and co-ordinate Design Documentation and construction documentation in accordance with the requirements of this Deed;
- (d) be engaged full-time during the period from the Commencement Date until the date which is six months after the last Date of Portion Completion; and
- (e) be based on or around the Site during the Contractor's Activities.

6 Work Health and Safety Manager

The Work Health and Safety Manager must:

- (a) possess and recognised qualification relevant to the position and the Contractor's Activities and have recent relevant work health and safety management experience on projects similar to the Enabling Works;
- (b) have at least fifteen years' experience in work health and safety management, with extensive experience in the preparation and implementation of work health and safety management systems and plans;
- (c) be available as the Principal's Representative's primary contact with the Contractor on work health and safety matters;
- (d) be responsible for a work health and safety induction and training program for all personnel involved in the performance of the Contractor's Activities;
- (e) be responsible for and have the authority to develop and implement the Safety Management Plan;
- (f) be given authority by the Contractor to act freely and independently, to direct that all reasonable steps be taken where safety compliance is at risk and to stop the progress of the relevant part of the Contractor's Activities when any non-conformance with the work health and safety requirements of this Deed is identified; and
- (g) be engaged full-time during the execution of the Contractor's Activities and be based full-time on or around the Site until the last Date of Portion Completion with responsibilities limited to work health and safety management of the Contractor's Activities.

7 Environmental / Approvals Compliance Manager

The Environmental Manager must:

- (a) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in environmental and sustainability management on projects similar to the Enabling Works;

- (b) have at least fifteen years' environmental management experience, with extensive experience in the preparation and implementation of environmental management systems and plans;
- (c) have at least five years' sustainability management experience, with previous experience in the provision of sustainability advice on the design and construction and operations and maintenance contracts similar to this Deed;
- (d) be available as the Principal's Representative's primary contact with the Contractor on environmental and sustainability matters;
- (e) be experienced in regulatory liaison and consultation;
- (f) be responsible for all environmental compliance matters associated with the Contractor Activities;
- (g) be responsible for an environmental management induction and training program for all personnel involved in the performance of the Contractor's Activities;
- (h) be responsible for a sustainability induction and training program for all personnel involved in the performance of the Contractor's Activities;
- (i) be responsible for and have the authority to develop and implement the Construction Environmental Management Plan;
- (j) be responsible for and have the authority to develop and implement the Sustainability Plan (as that term is defined in the Management Requirements); and
- (k) be given authority by the Contractor to act freely and independently, to require all reasonable steps to be taken to achieve environmental compliance, to avoid or minimise environmental impacts and to stop the progress of the relevant part of the Contractor's Activities when any non-conformance with the environmental requirements of this Deed is identified; and
- (l) be engaged full-time during the execution of the Contractor's Activities and be based full-time on or around the Site until the last Date of Portion Completion with responsibilities limited to environmental and sustainability management of the Contractor's Activities.

8 Community Relations Manager

The Stakeholder and Community Relations Manager must:

- (a) possess a recognised qualification relevant to the position and the Contractor's Activities and have recent relevant experience in community involvement on projects similar to the Enabling Works and have an understanding of stakeholder and community attitudes and needs in relation to the Contractor's Activities;
- (b) have at least fifteen years' communications and community relations experience with extensive experience in the management of community liaison, consultation and communications on major infrastructure projects;
- (c) be available as the Principal's Representative's primary contact with the Contractor on stakeholder and community relations matters;
- (d) be experienced in the development and implementation of community involvement strategies and plans;
- (e) be experienced in and have an understanding of NSW government public affairs processes;

- (f) be responsible for a stakeholder and community relations induction and training program for all personnel involved in the performance of the Contractor's Activities;
- (g) be responsible for and have the authority to develop and implement the Communication and Engagement Plan (as that term is defined in the Management Requirements);
- (h) be engaged full-time during the execution of the Contractor's Activities and be based full-time on or around the Site until the last Date of Portion Completion with responsibilities limited to stakeholder and community relations management of the Contractor's Activities; and
- (i) be available at all times:
 - (i) to take a proactive role in the stakeholder and community relations processes relating to the Contractor's Activities as set out in this Deed; and
 - (ii) for contact by stakeholders and the community to answer questions and deal with complaints relating to the Contractor's Activities.

9 Urban Design Lead

The Urban Design Lead must:

- (a) possess a recognised design qualification in the field of architecture or landscape architecture relevant to the position and the Contractor's Activities and have recent experience on projects similar to the Enabling Works;
- (a) have at least fifteen years' experience in urban design within transport infrastructure projects, with extensive experience participating in and leading urban design within a multidisciplinary team, and the management of technical design interfaces including engineering, architecture and landscape architecture;
- (b) Have recent experience in leading the implementation and integration of Designing with Country and Connecting with Country objectives, as well as heritage interpretation and public art.
- (c) be available as the Principal's Representative's primary contact with the Contractor on urban design, bridge architecture, designing with Country, design excellence, public art and heritage interpretation matters;
- (d) be experienced in and have an understanding of NSW government public affairs processes;
- (e) be experienced and have extensive knowledge in stakeholder consultation and collaboration to resolve complex design issues during design development.
- (f) be available to lead and present at stakeholder workshops and Design Review Panel sessions.
- (g) be responsible for and have the authority to develop and implement Urban Design outcomes (as that term is defined in the Management Requirements);
- (h) be engaged during the execution of the Contractor's Activities and be available until the last Date of Portion Completion with responsibilities limited to urban design management of the Contractor's Activities; and
- (i) be available at all times to take a proactive role in the development and delivery of urban design outcomes relating to the Contractor's Activities.

10 Third Party Interface Manager

The Third Party Interface Manager must:

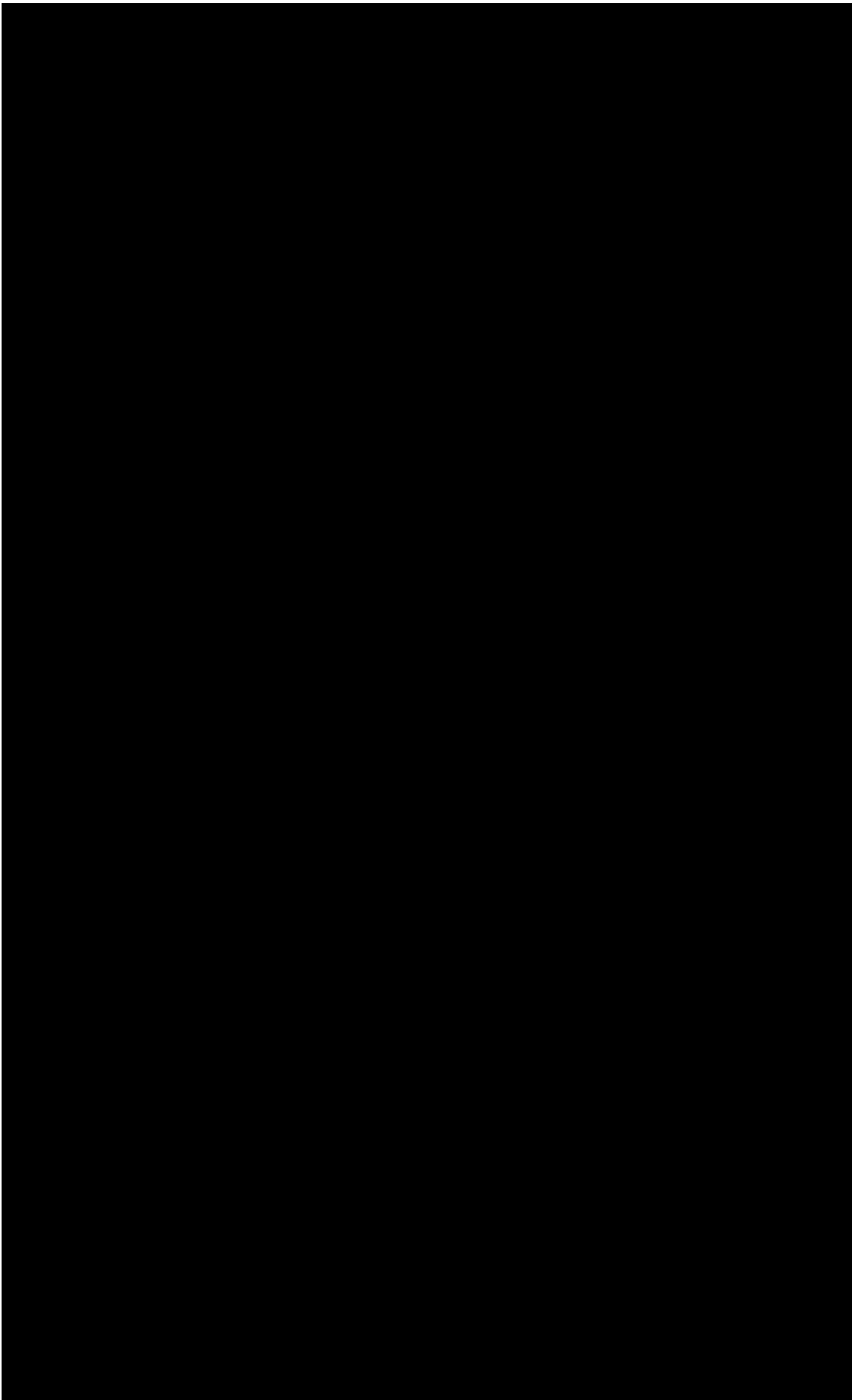
- (a) possess a recognised qualification relevant to the position and the Contractor's Activities, have recent relevant experience in interface management on projects similar to the Enabling Works and have an understanding of third party needs in relation to the Contractor's Activities;
- (b) have at least ten years' extensive experience in the management of third party stakeholders, consultation and communications on major infrastructure projects;
- (c) be available as the Principal's Representative's primary contact with the Contractor on third party interface issues resolution;
- (d) be responsible for liaison between the third party stakeholders and all the Contractor's personnel involved in the performance of the Contractor's Activities;
- (e) be experienced in the design development and certification of designs relating to third party assets;
- (f) be experienced in undertaking quality inspection of third party assets to ensure completion in accordance with this Deed and any relevant third party agreement;
- (g) be engaged full-time during the execution of the Contractor's Activities and be based full-time on or around the Site until the last Date of Portion Completion with responsibilities limited to third party interface management of the Contractor's Activities; and
- (h) be available at all times:
 - (i) to take a proactive role in managing the third parties interface obligations relating to the Contractor's Activities as set out in this Deed and any relevant third party agreement; and
 - (ii) for contact by third party stakeholders to answer questions and deal with interface matters relating to the Contractor's Activities.

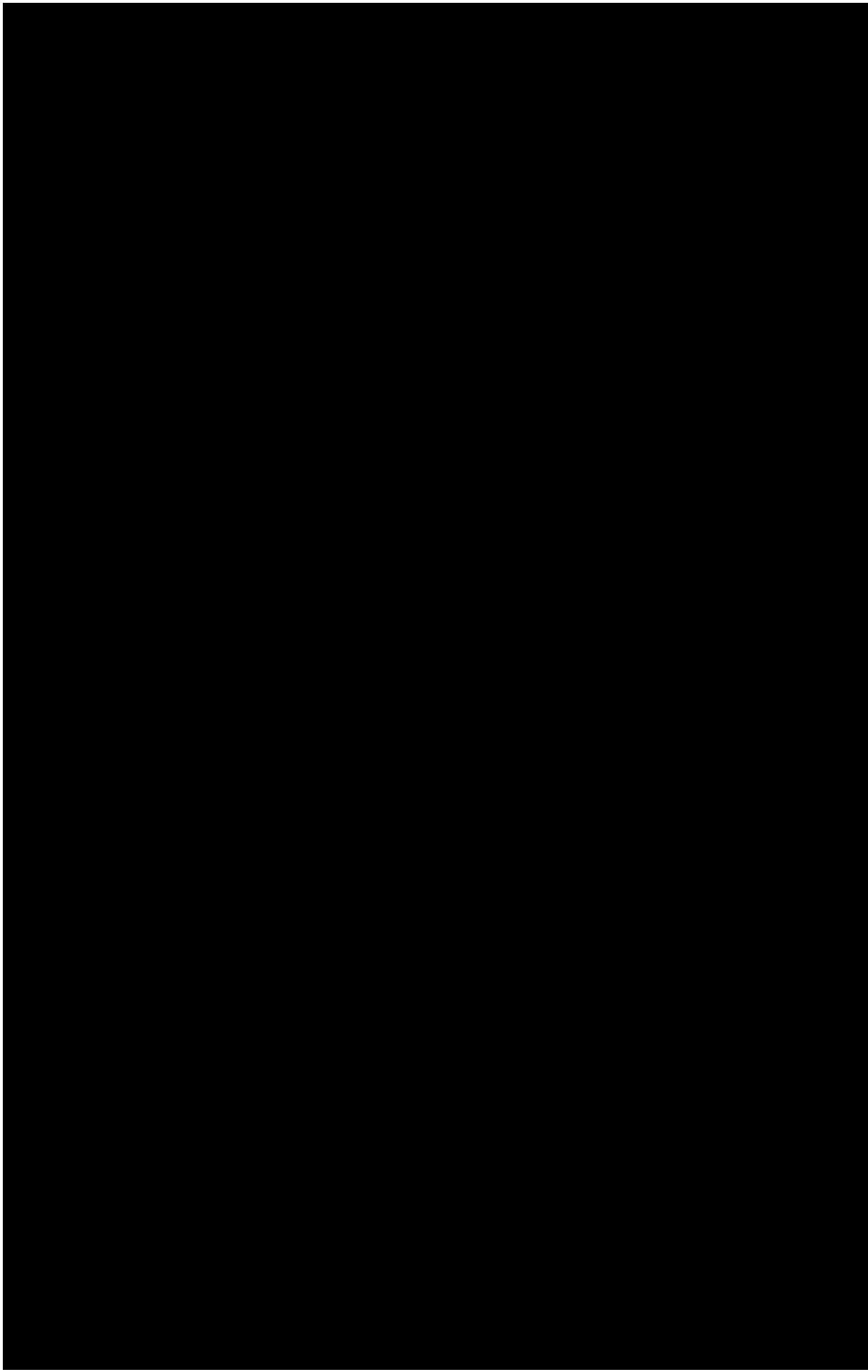
11 Sustainability Manager

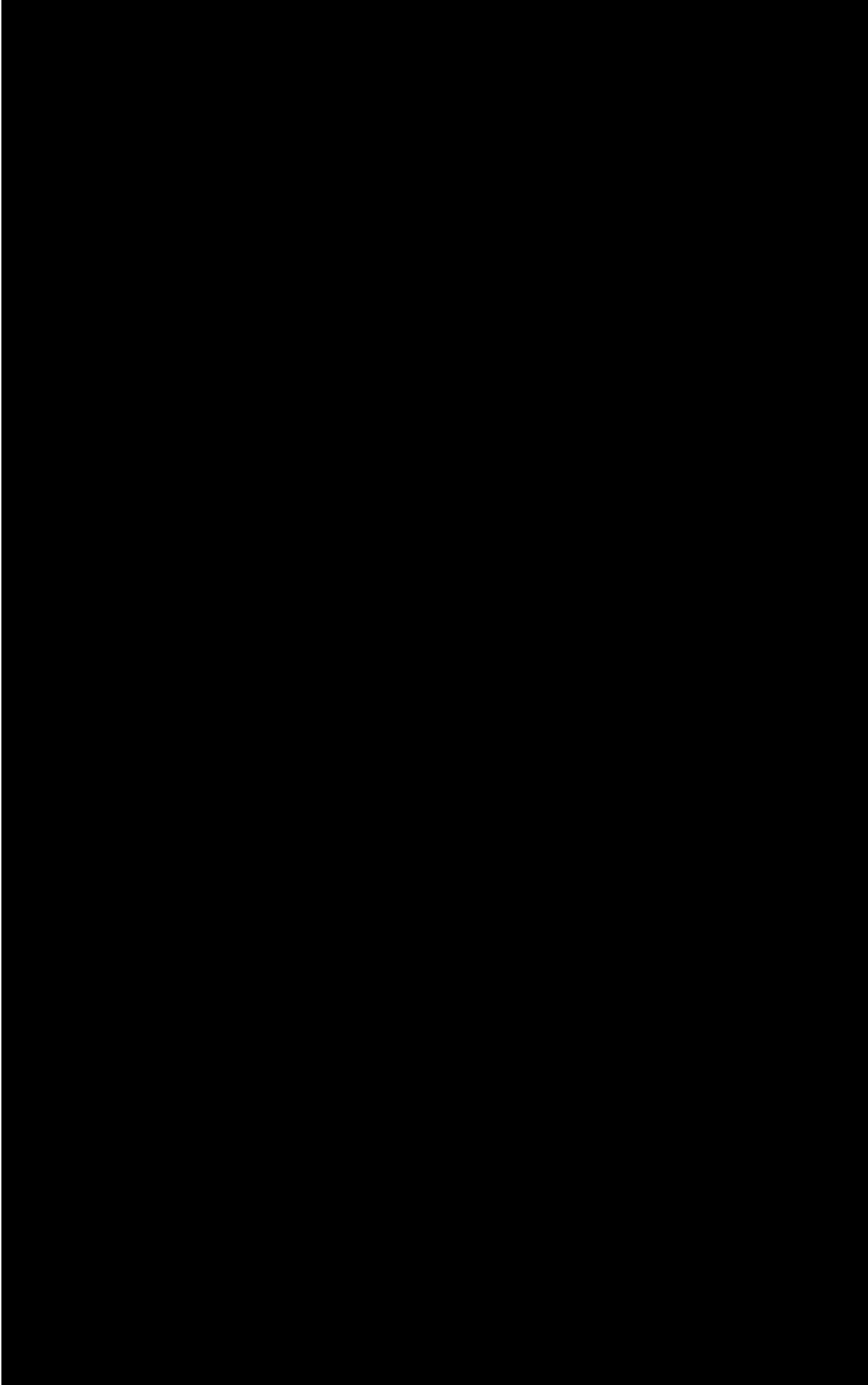
The Sustainability Manager must:

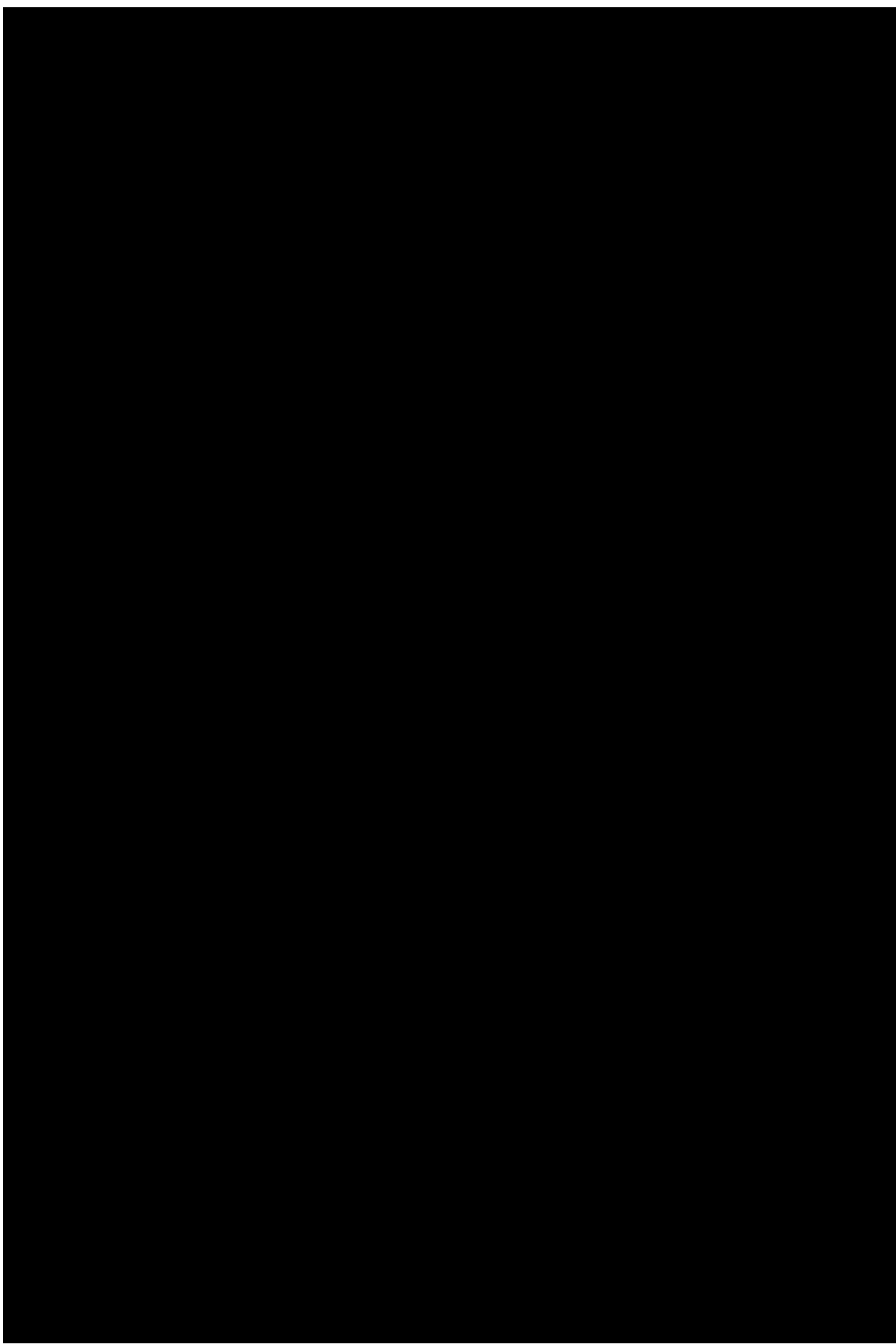
- (a) possess a recognised qualification relevant to sustainability management and have recent relevant experience in sustainability management on projects similar to the Project;
- (b) have at least 5 years sustainability management in similar roles such as management of sustainability in design, construction and operation of infrastructure;
- (c) be an Infrastructure Sustainability (IS) Accredited Professional;
- (d) be available full time as the Principal's primary contact on sustainability matters; and
- (e) be responsible for and have the authority to develop and implement the sustainability requirements in accordance with the requirements of the Deed and the Construction Sustainability Management Plan and sustainability reporting requirements.

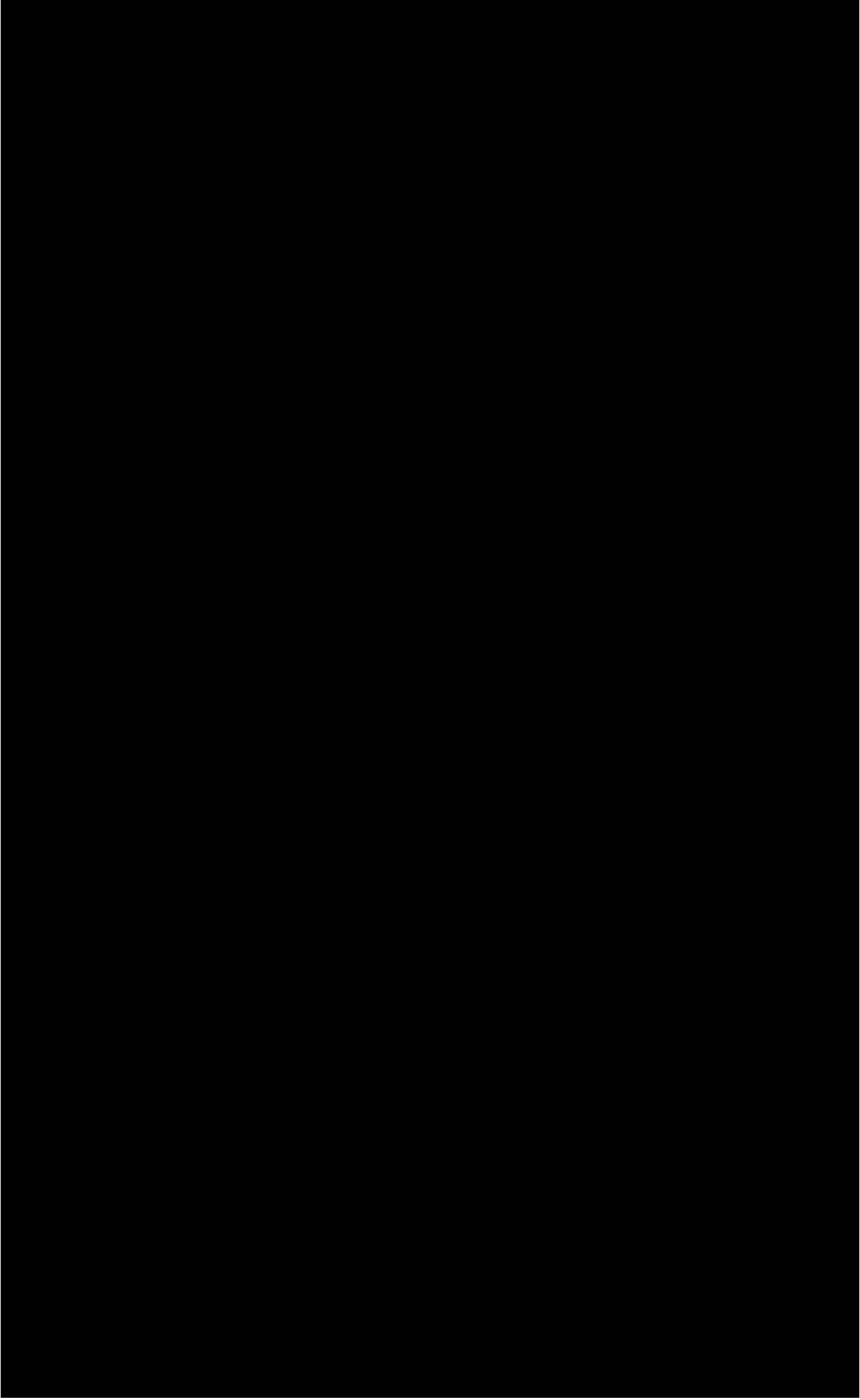
Schedule 10 Initial Project Plans

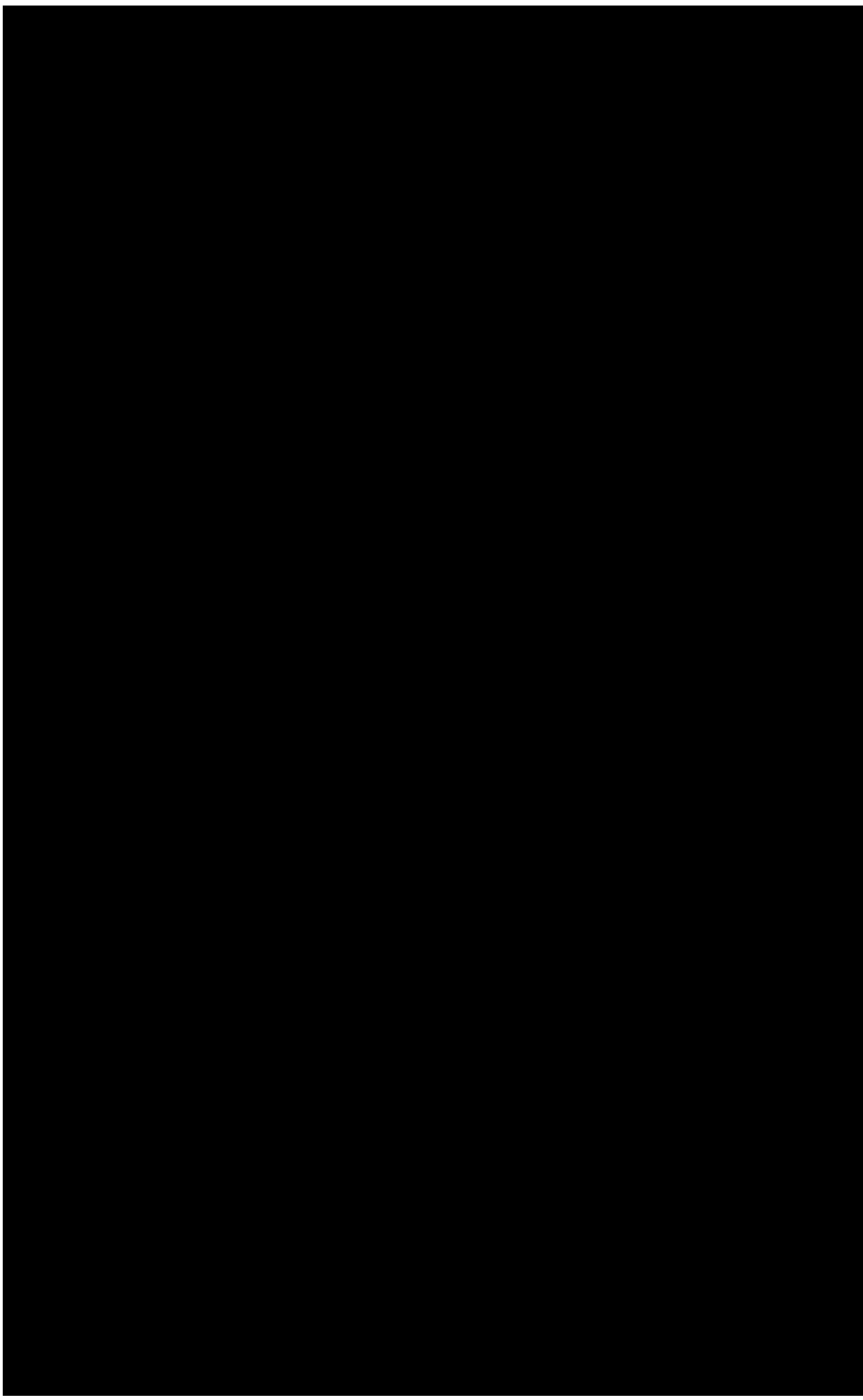


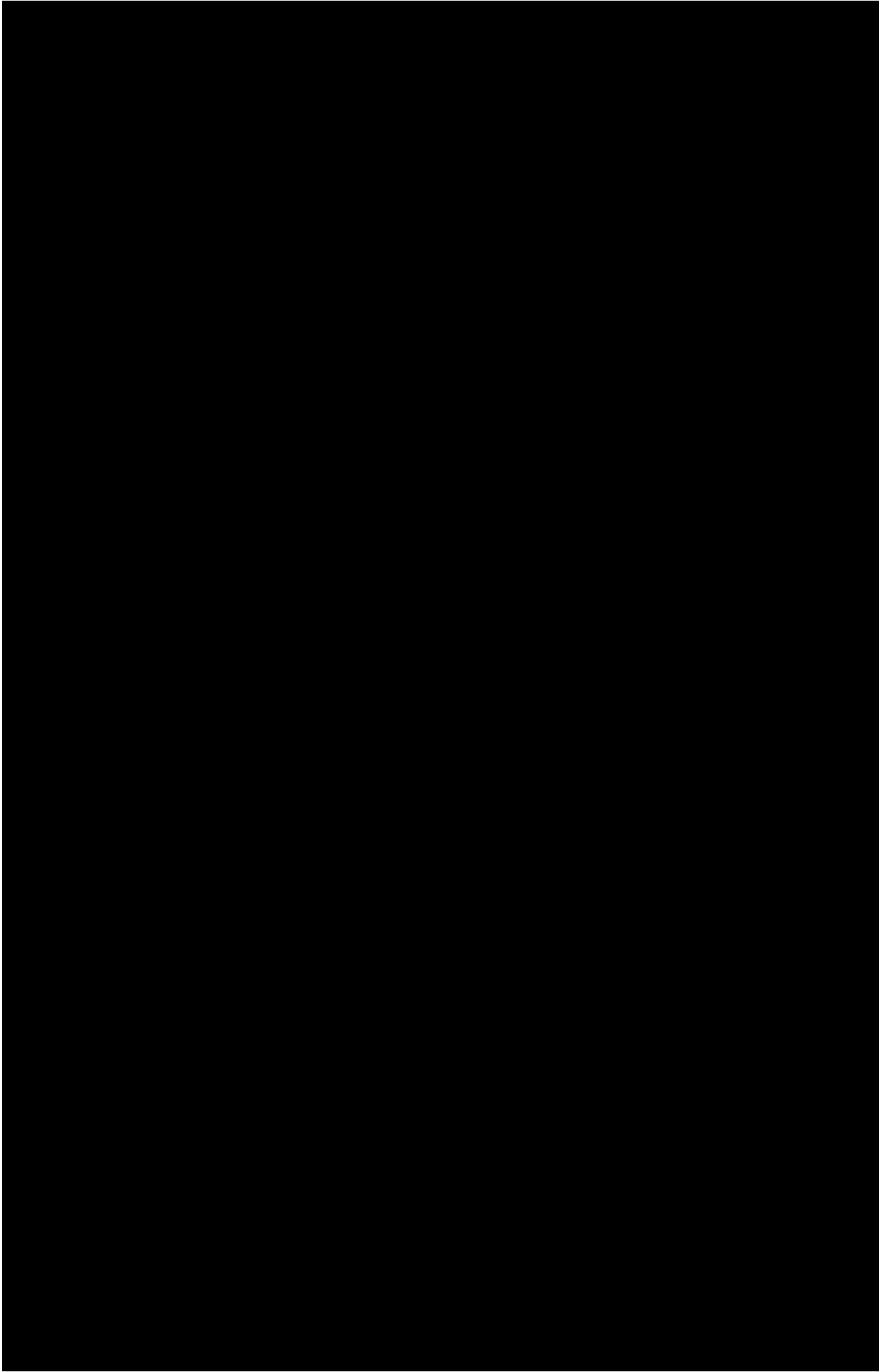


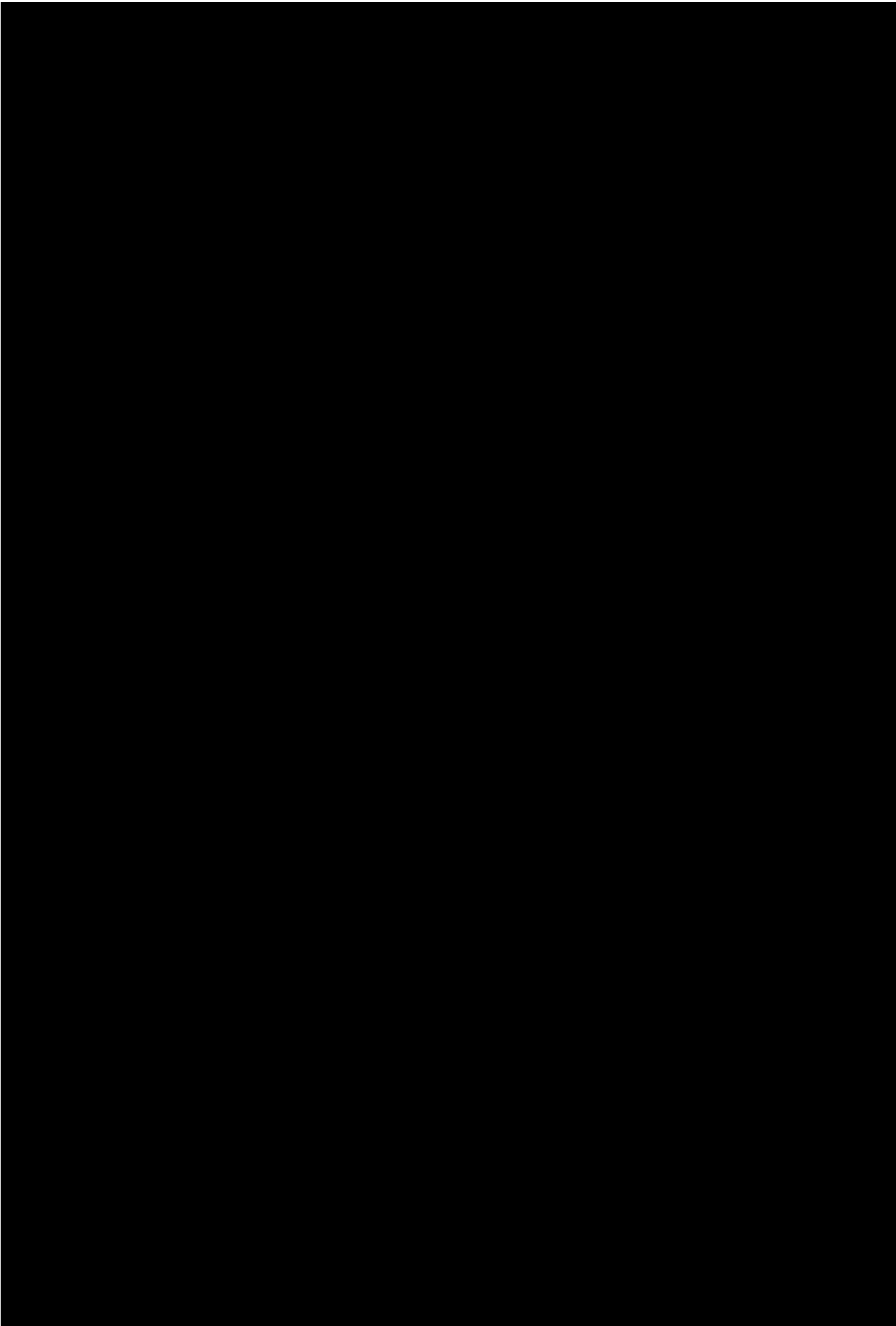


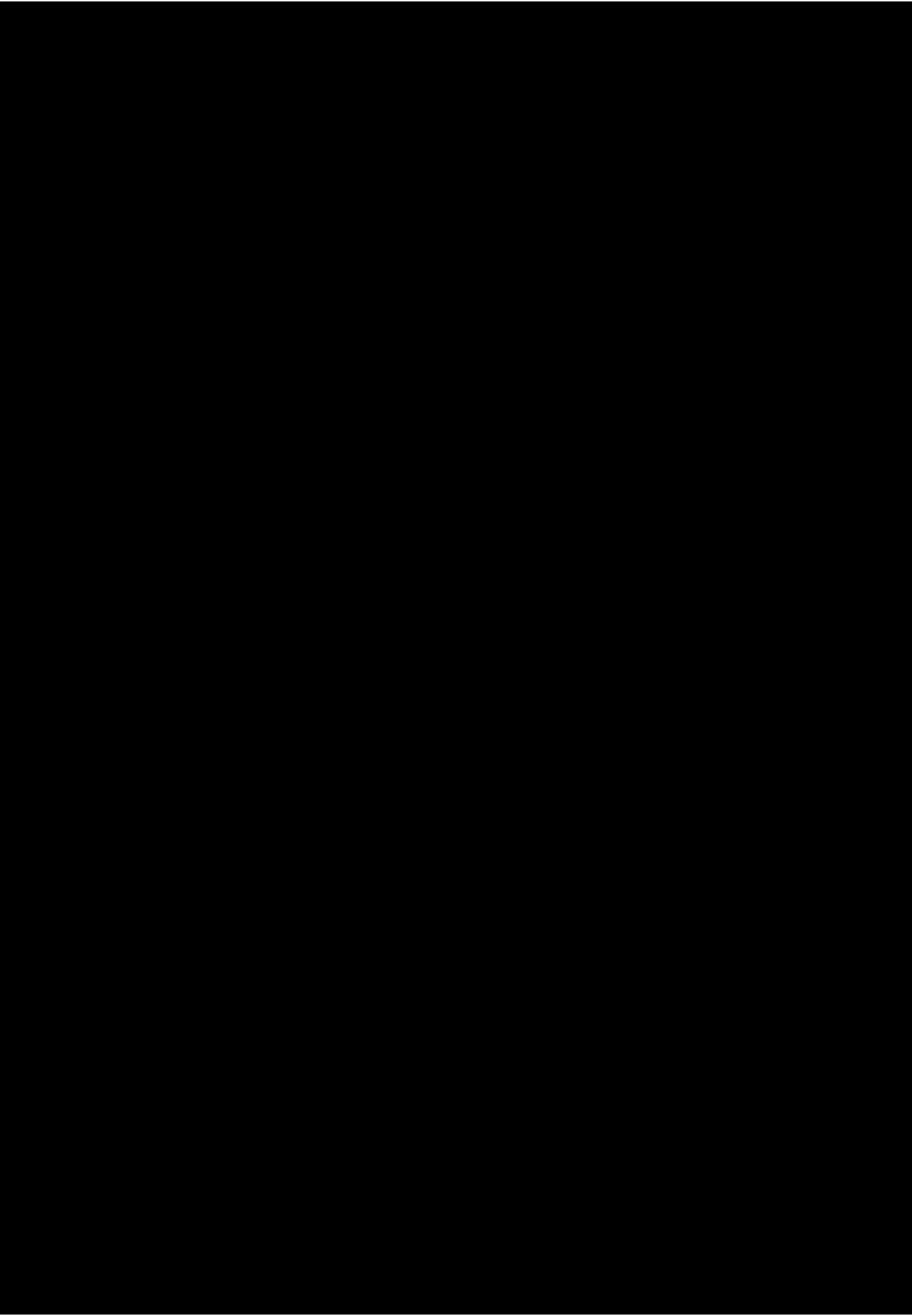


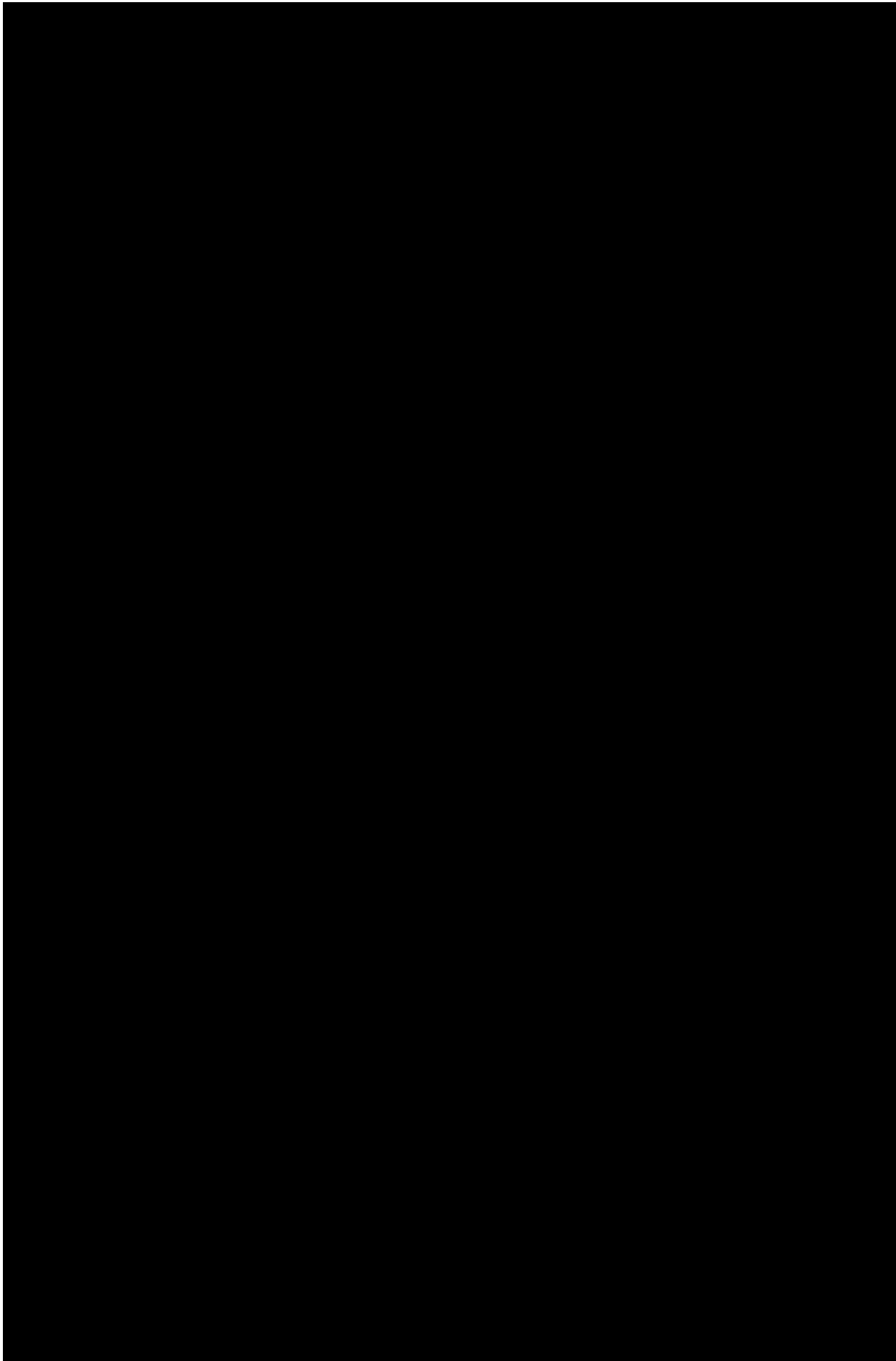


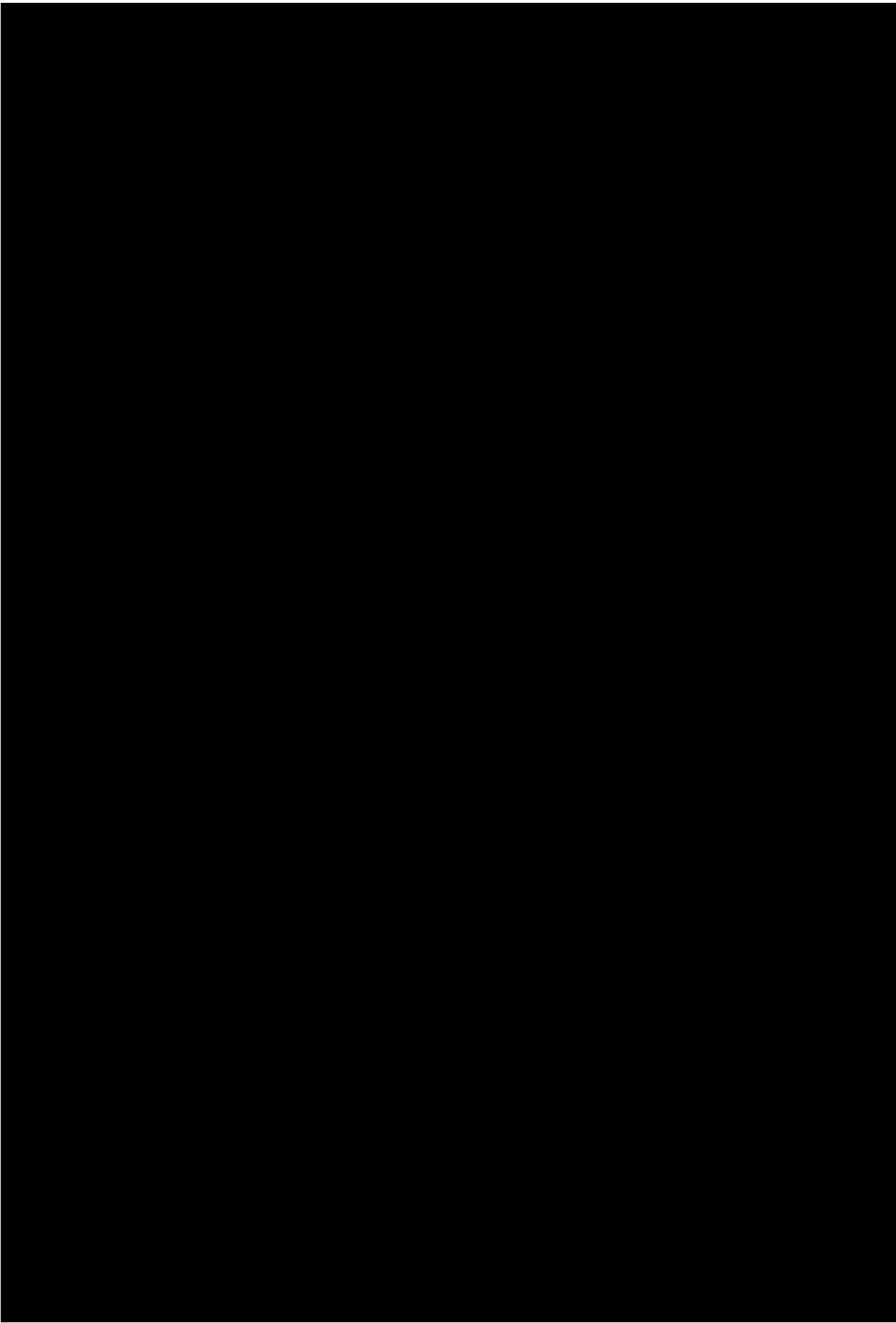


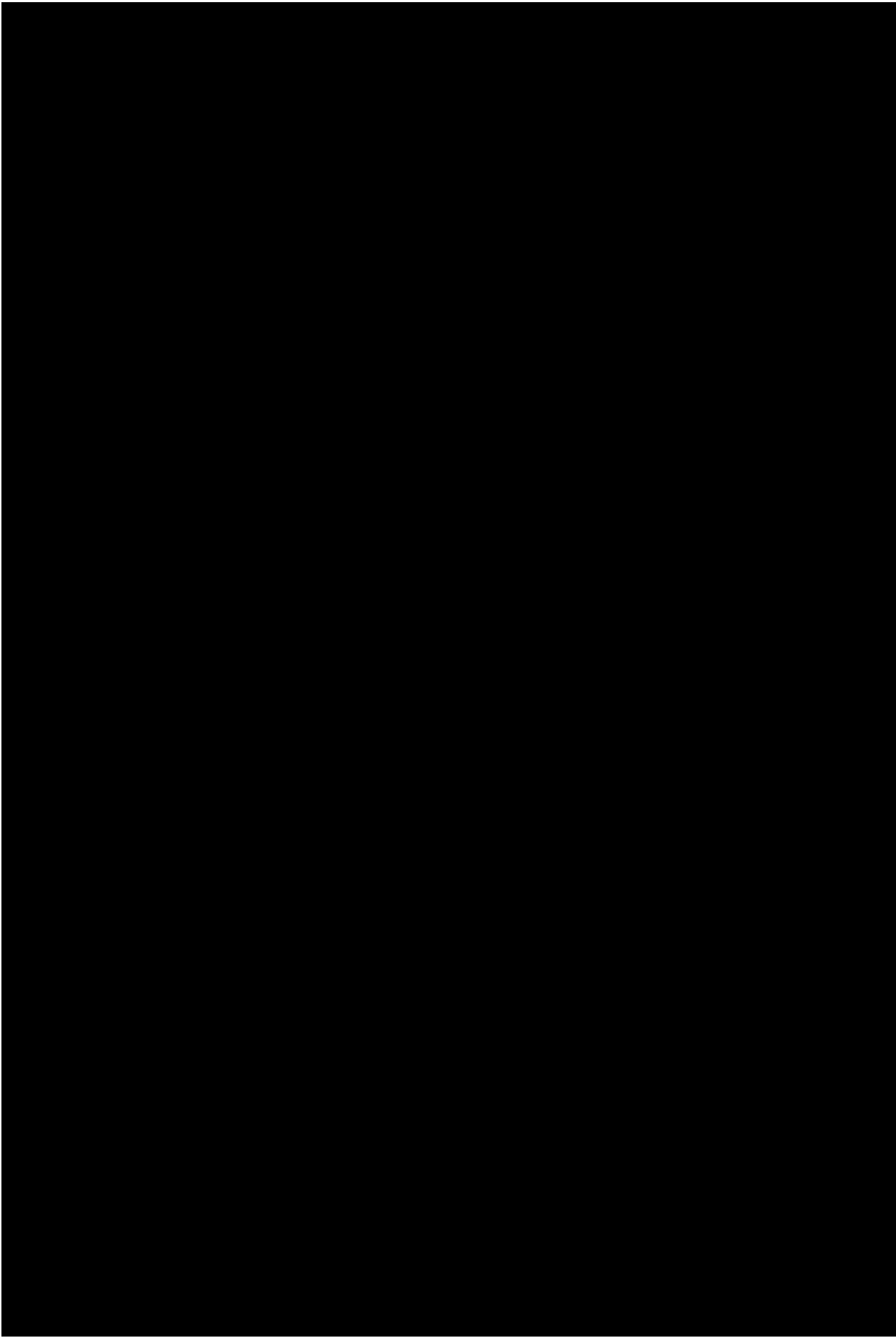


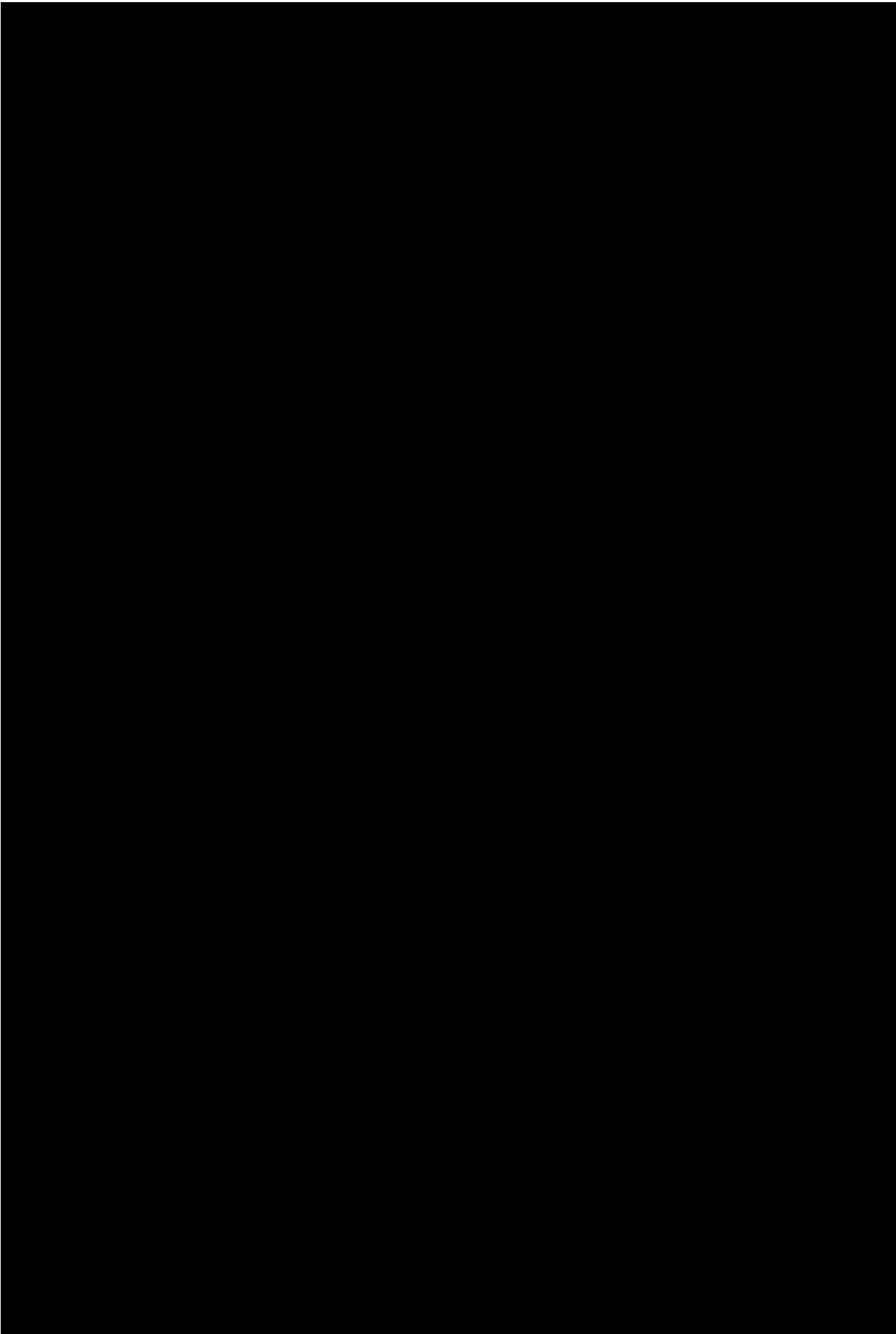


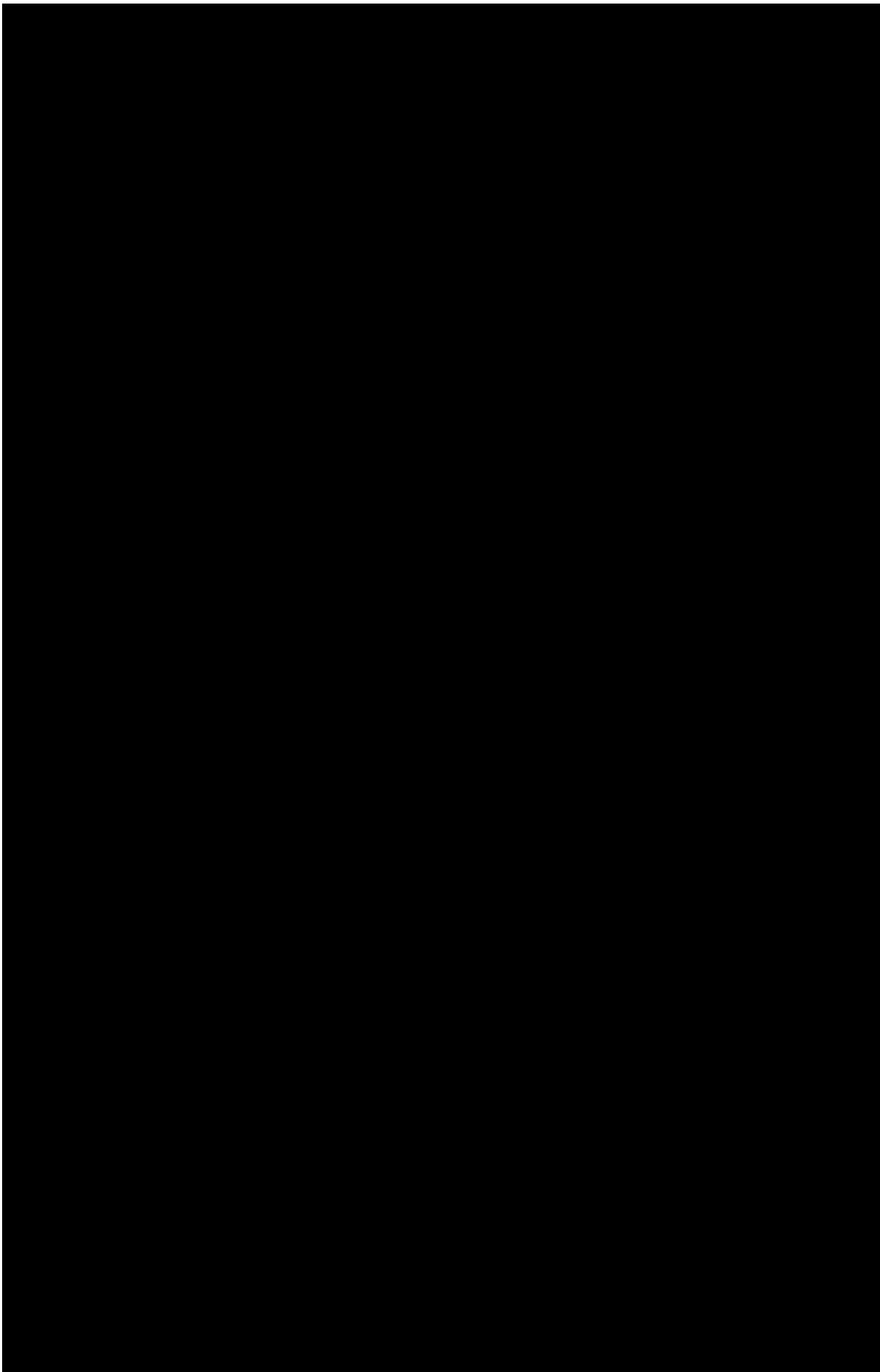


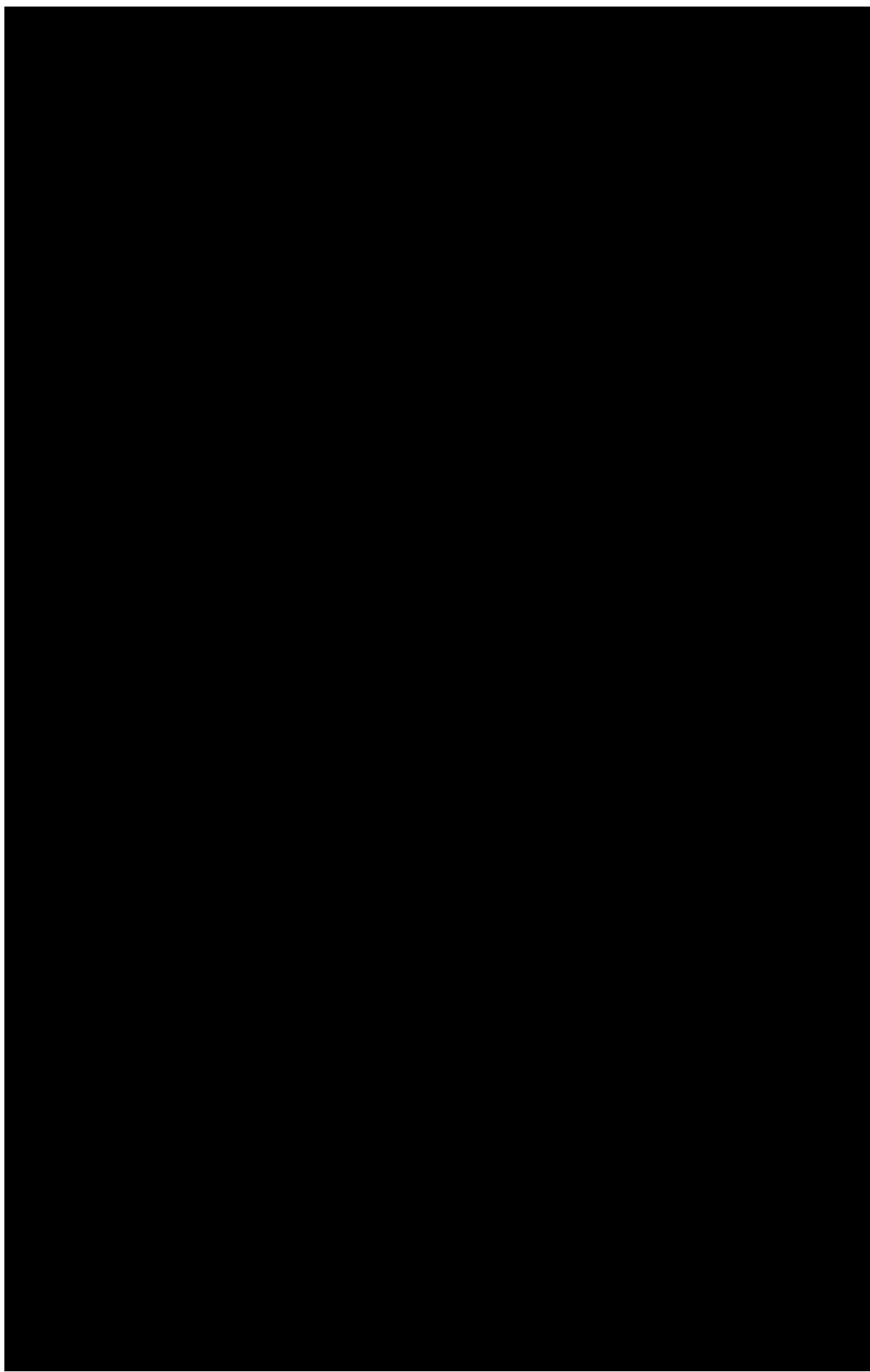


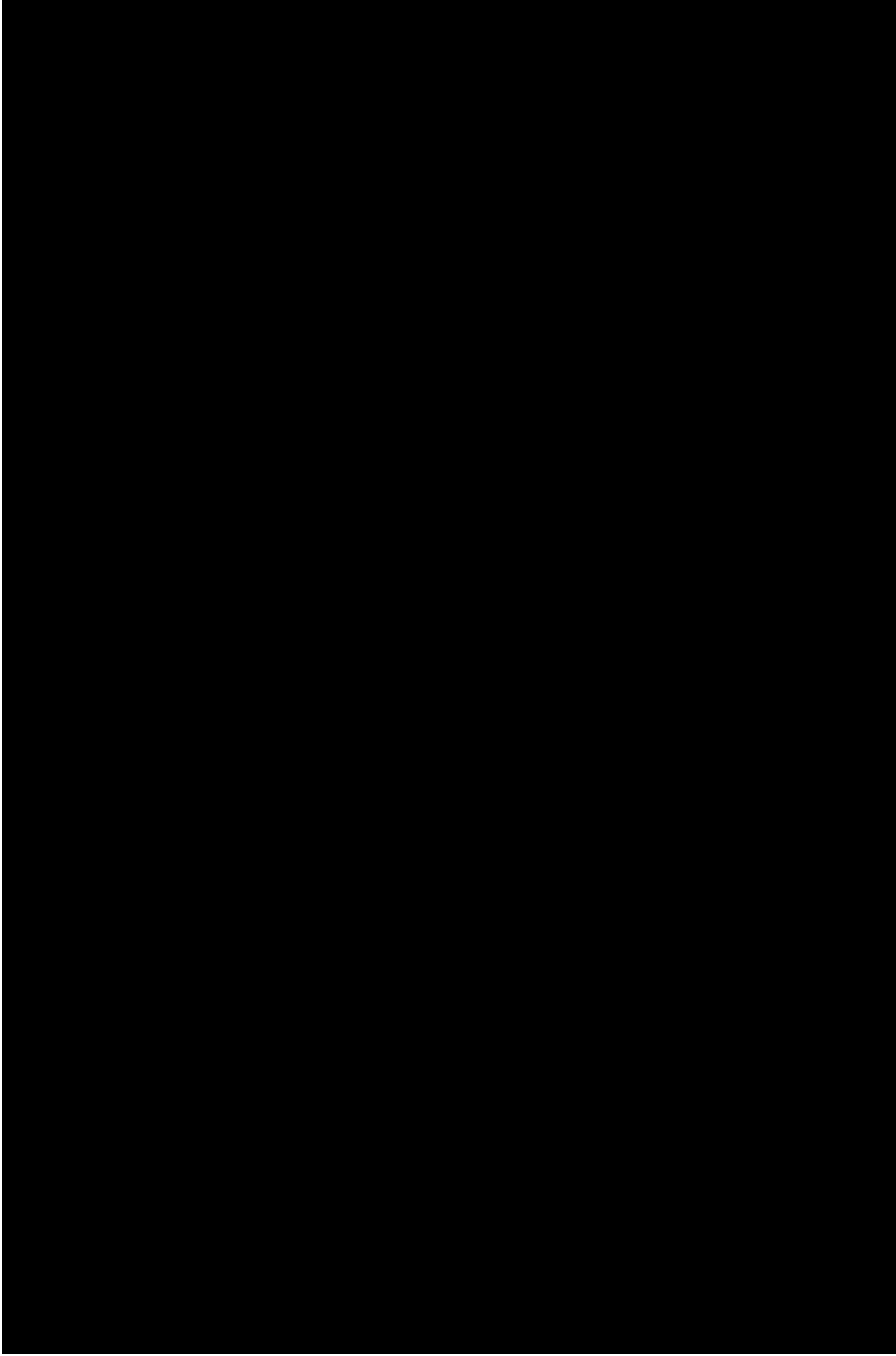


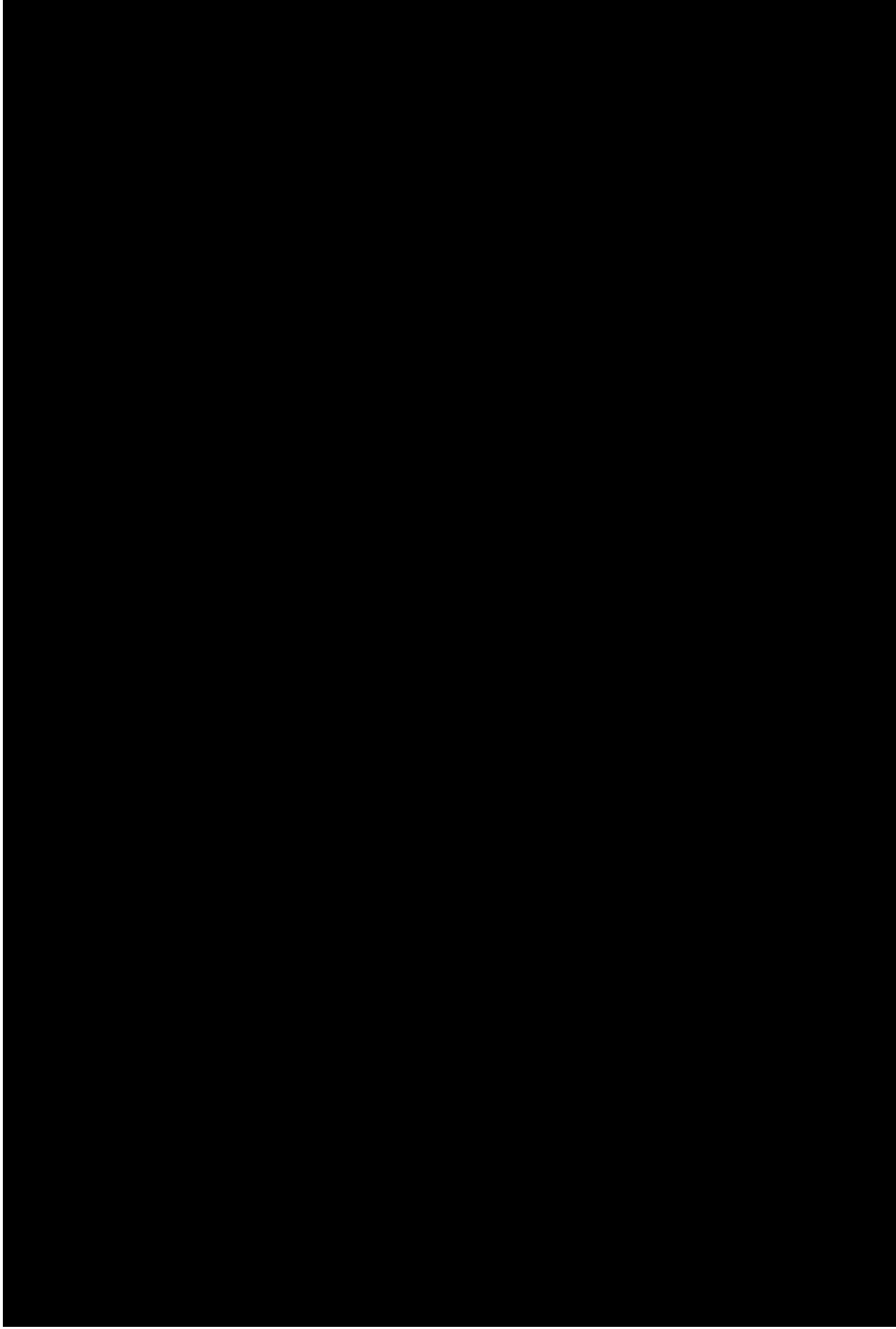


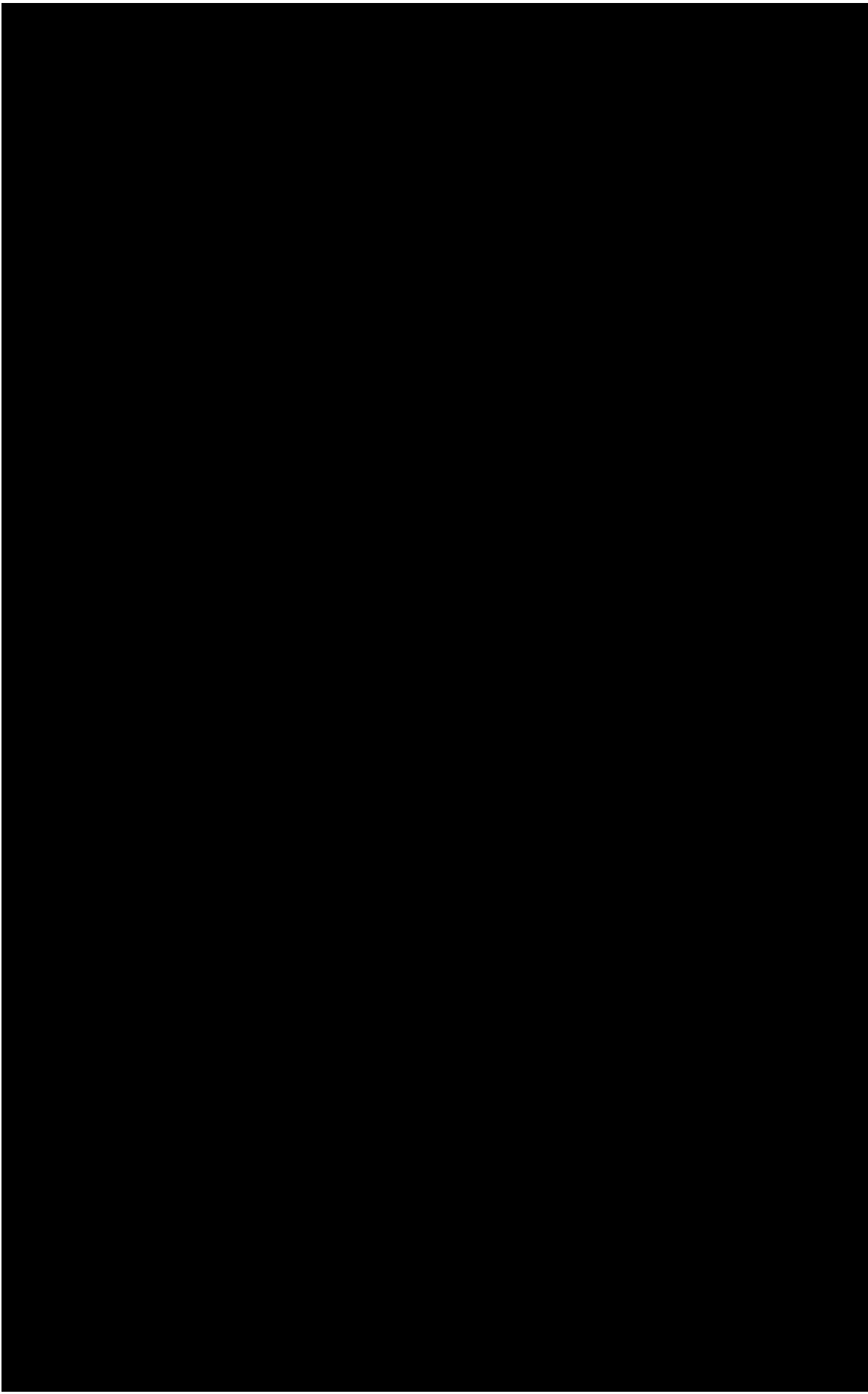


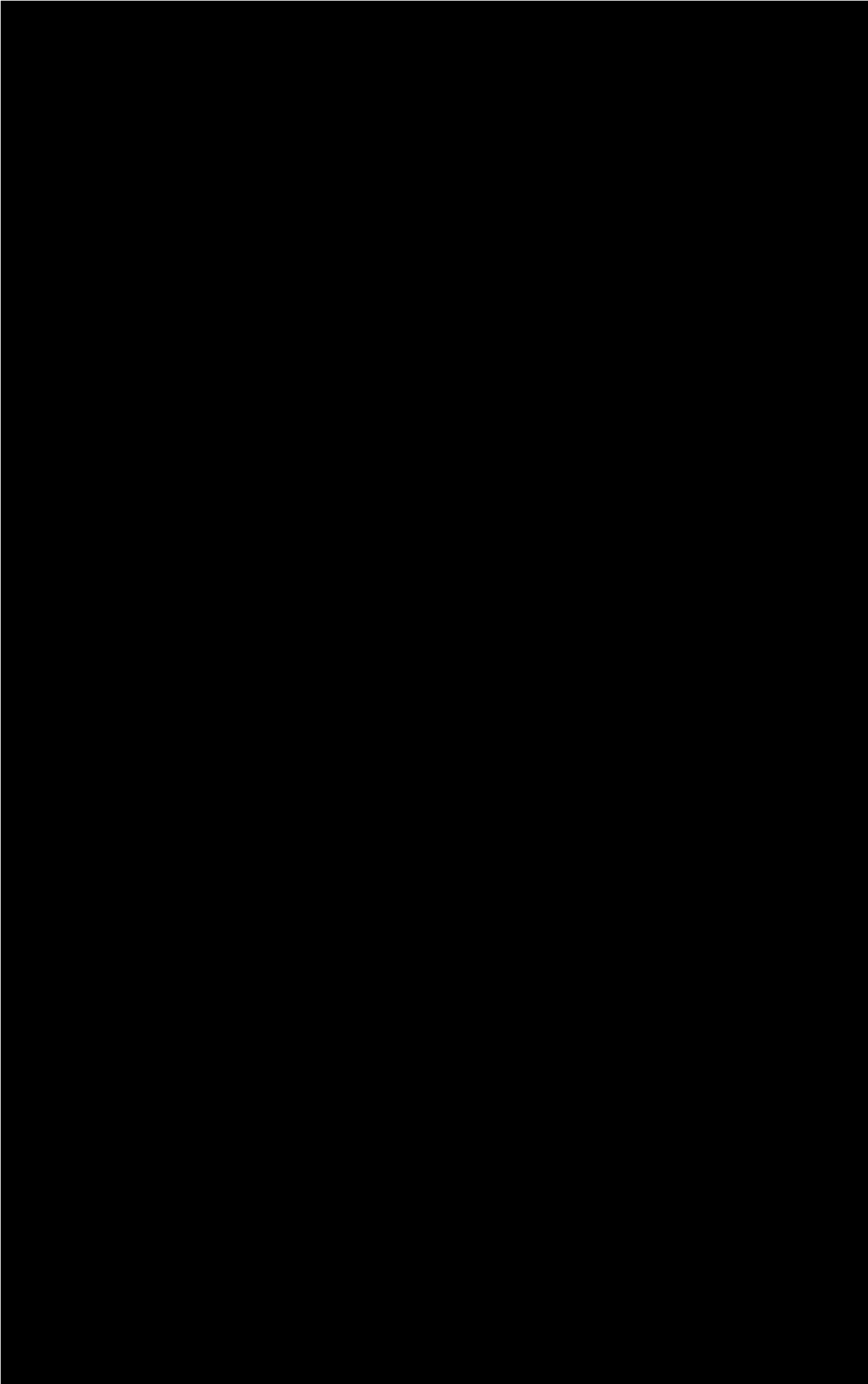


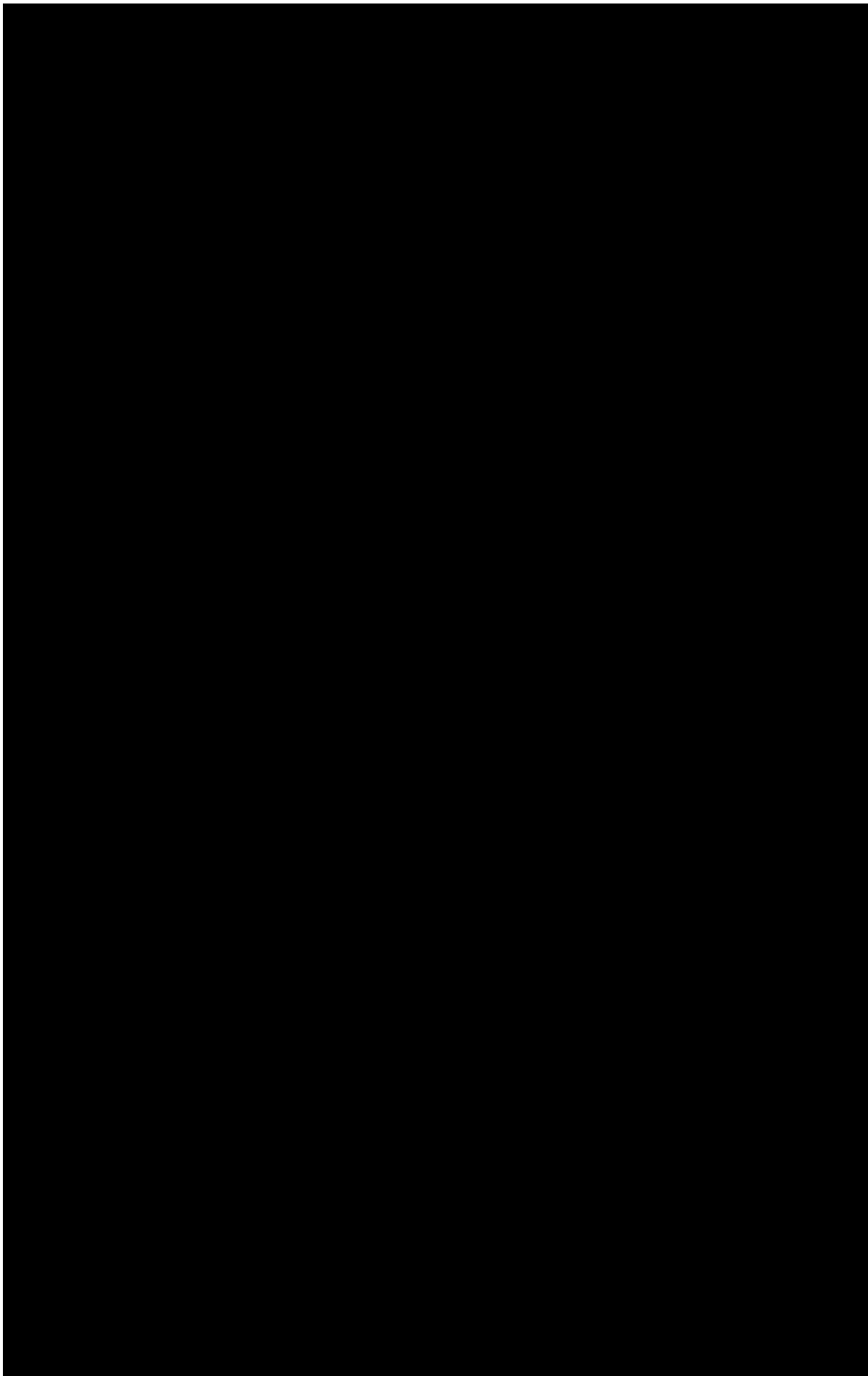


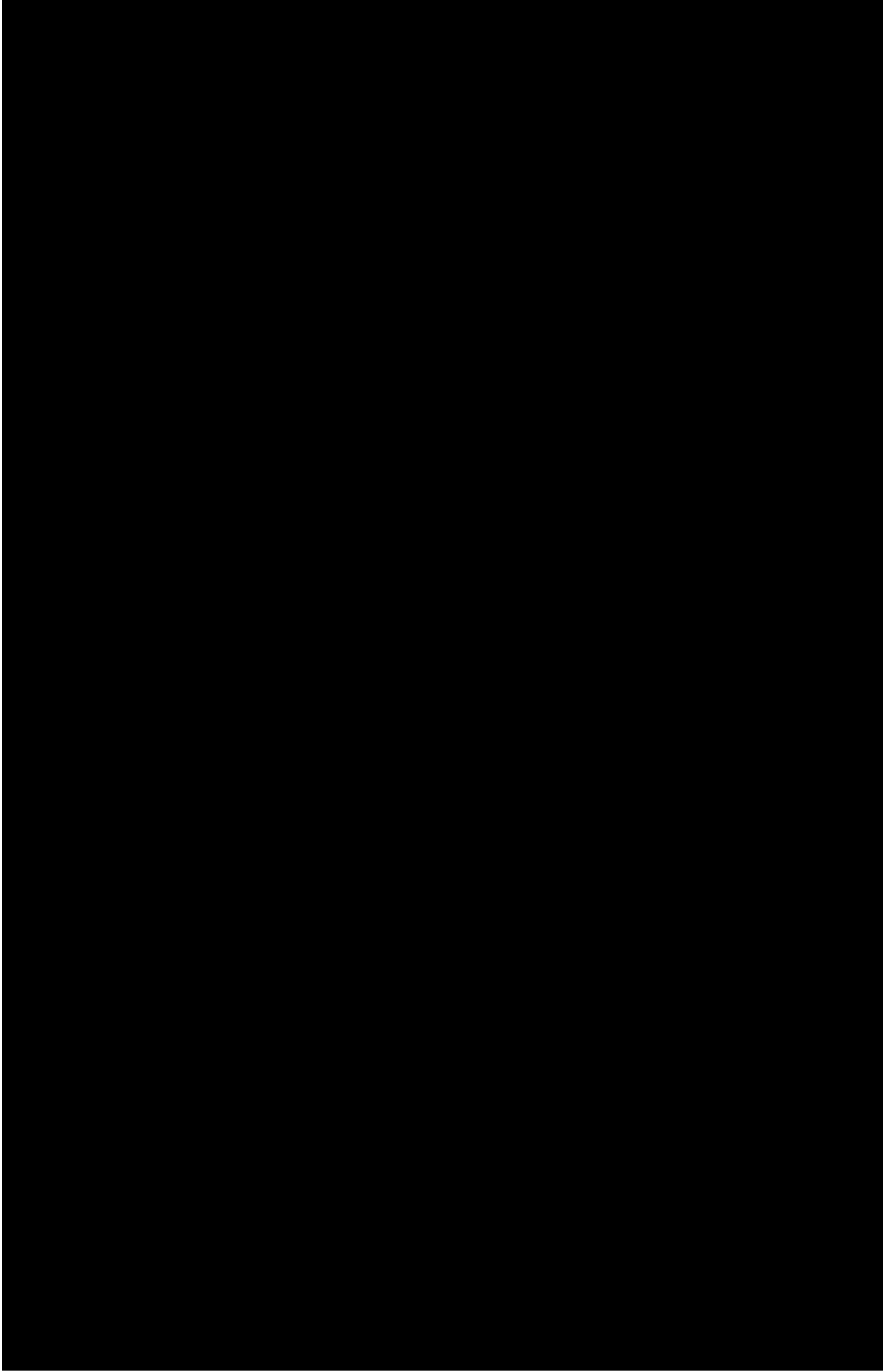


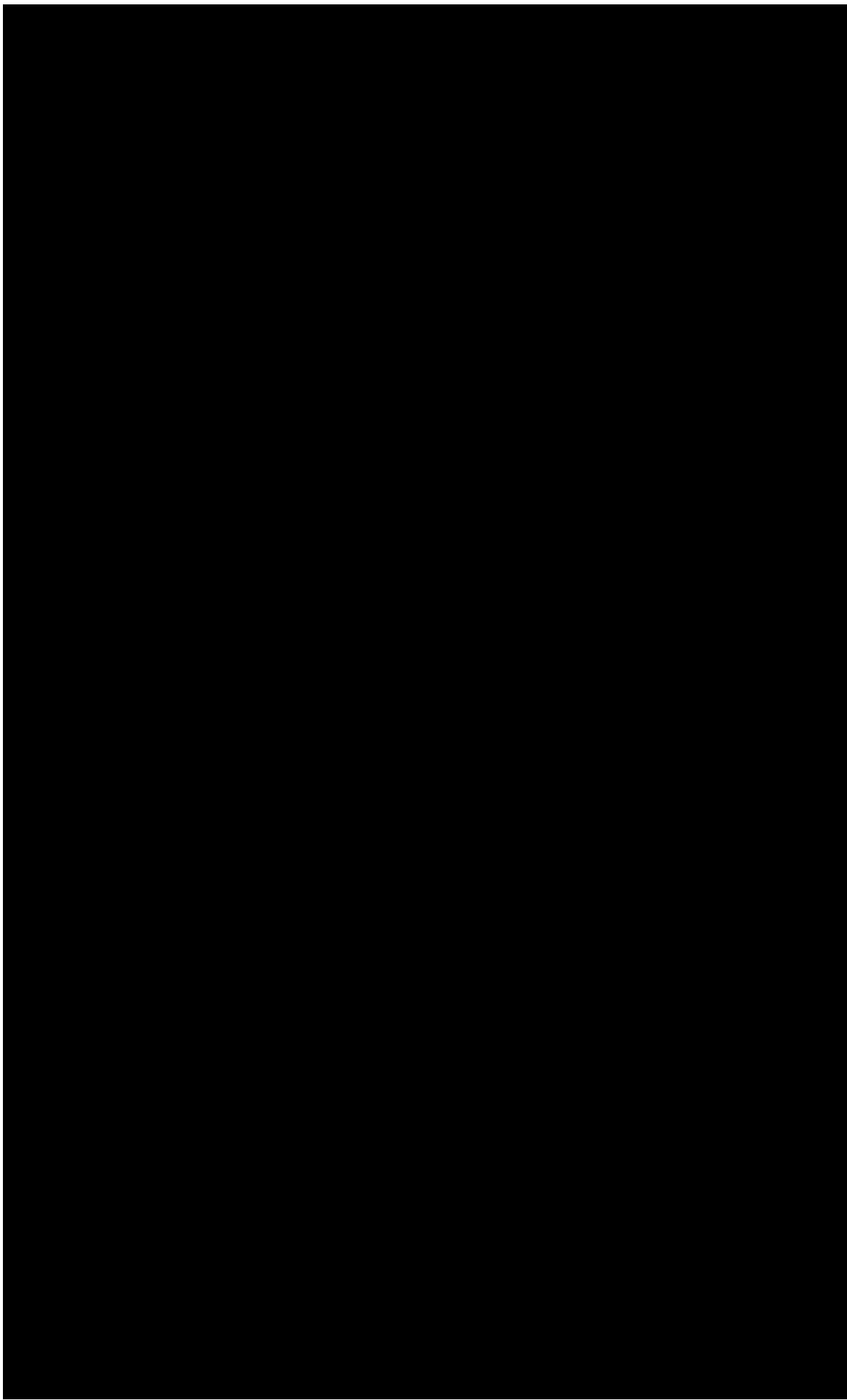


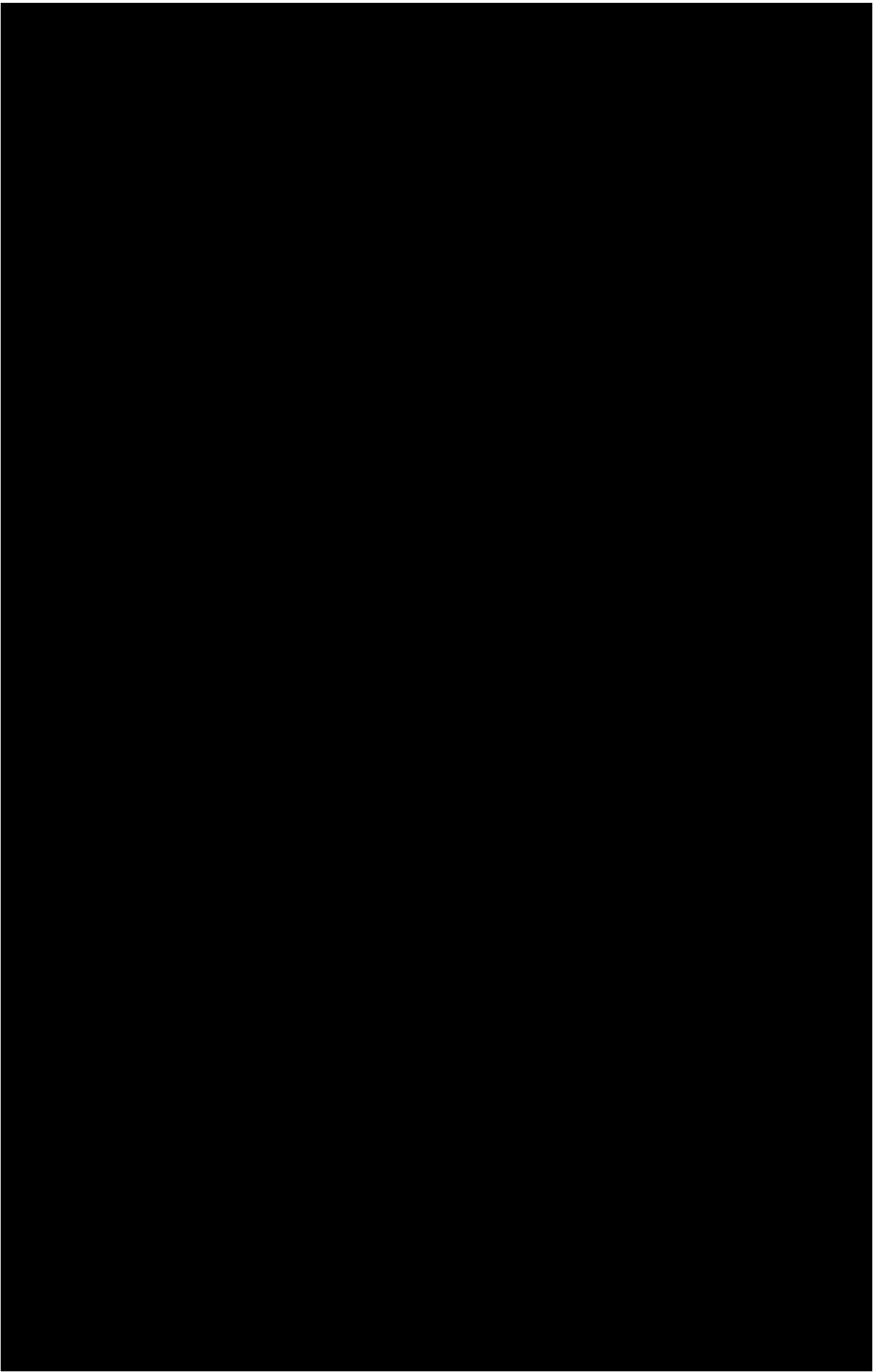


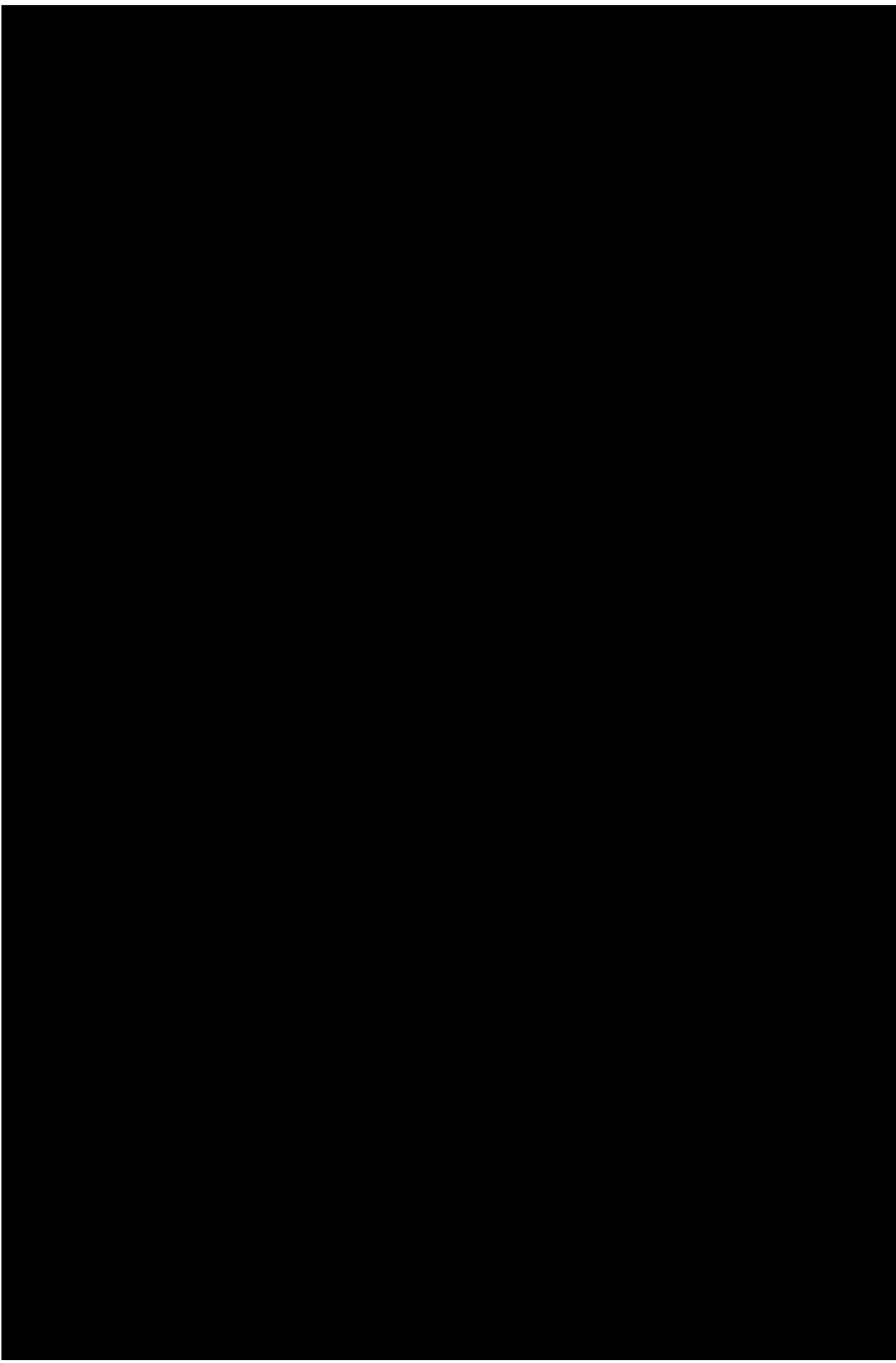


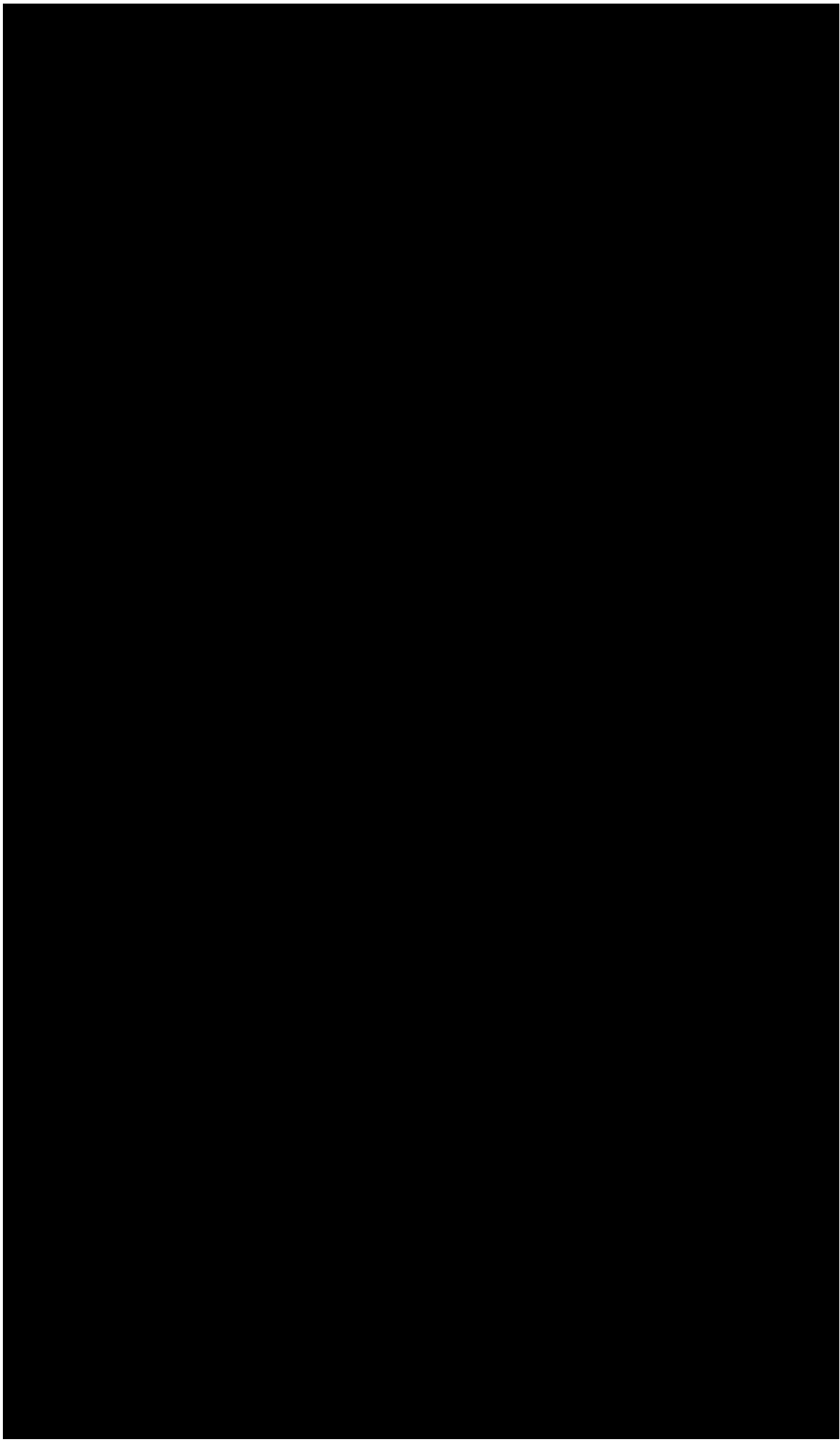


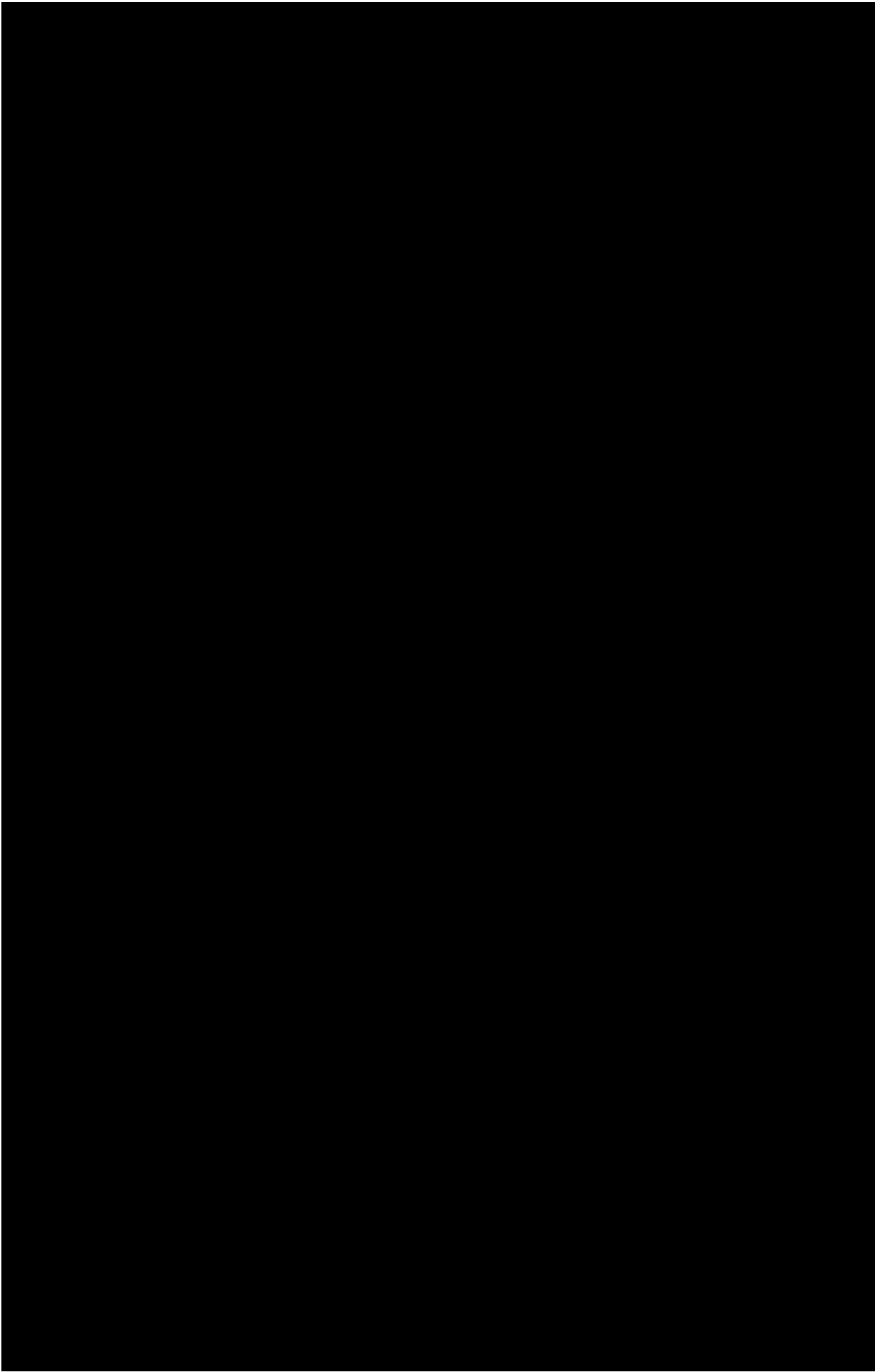


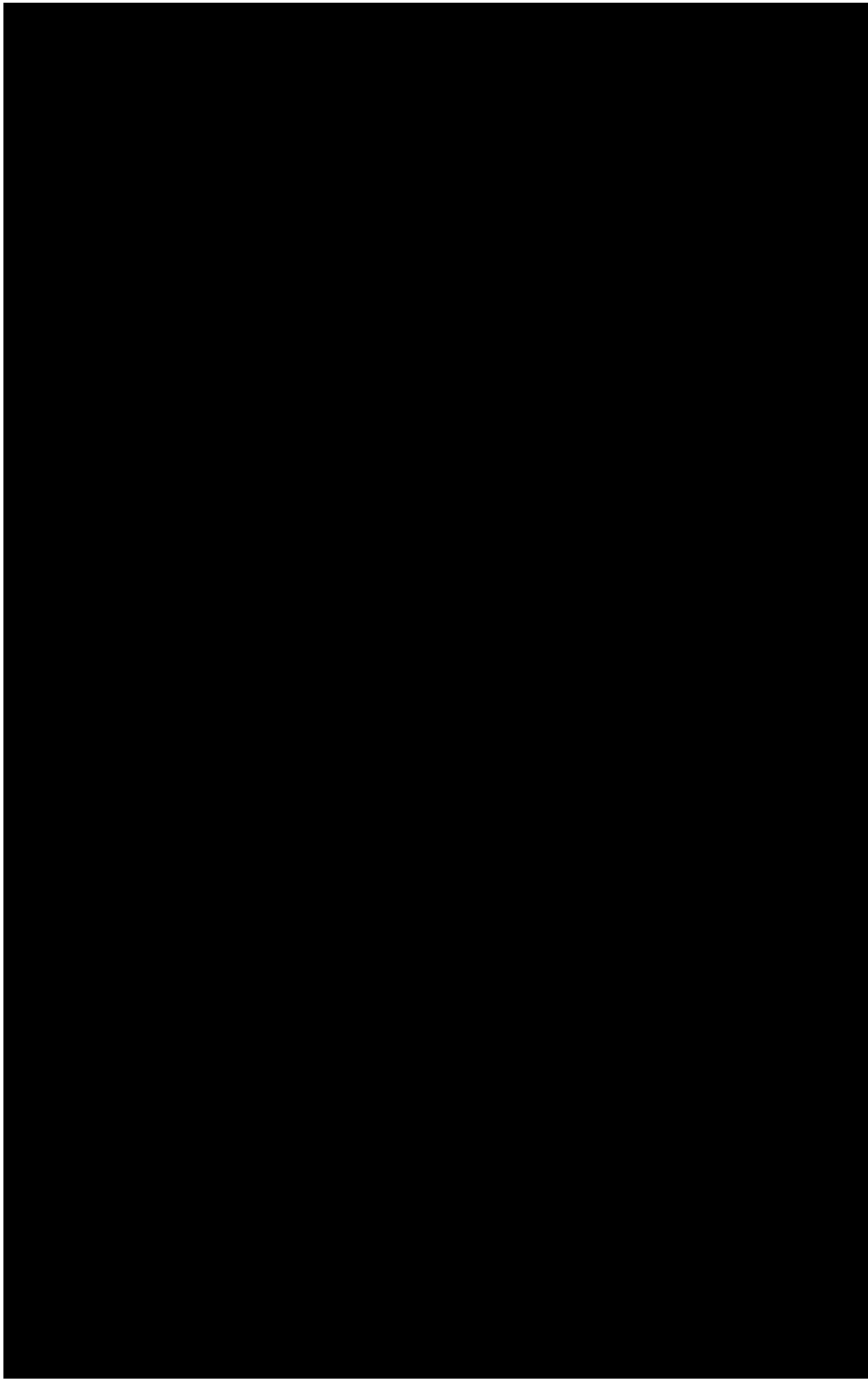


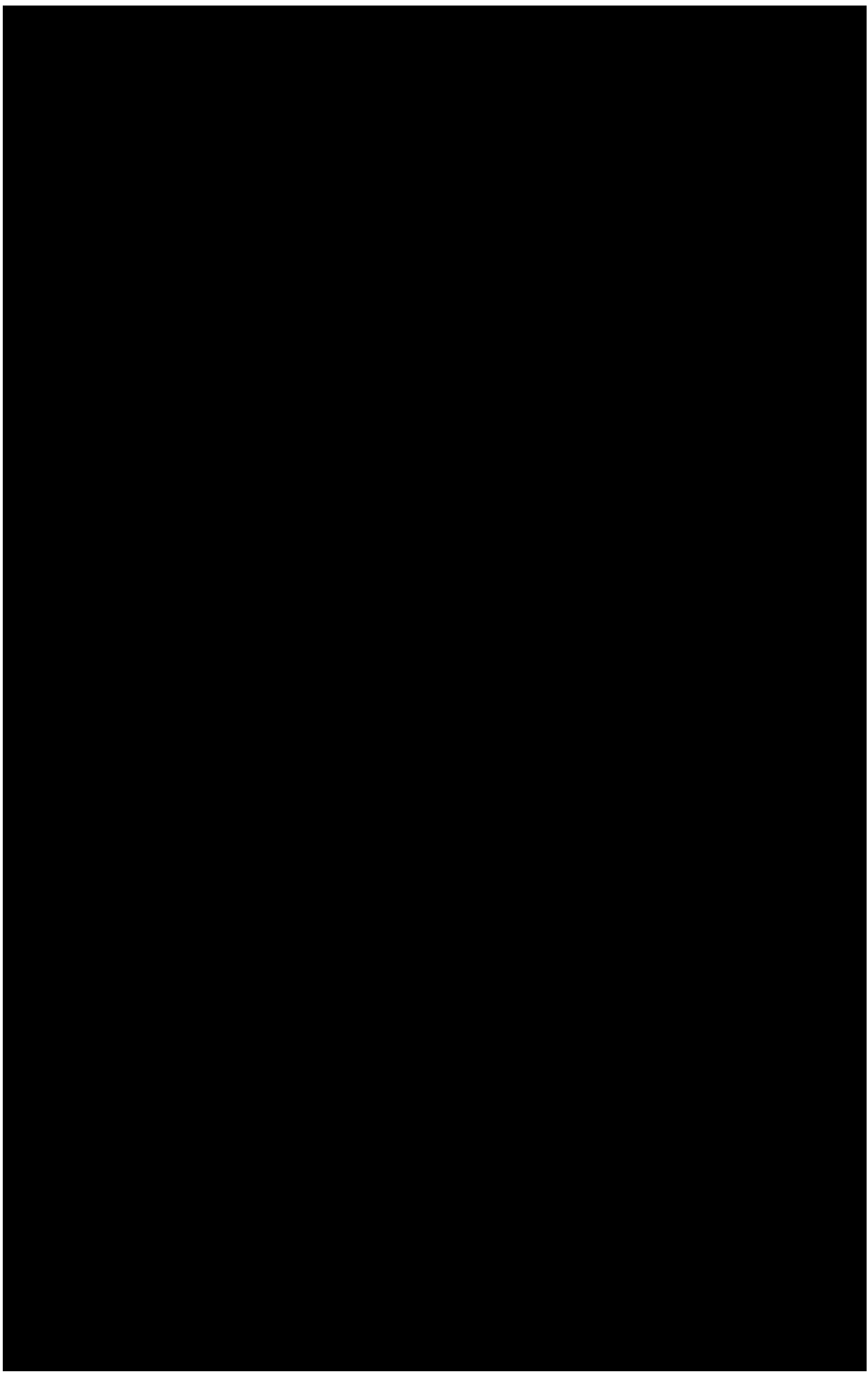


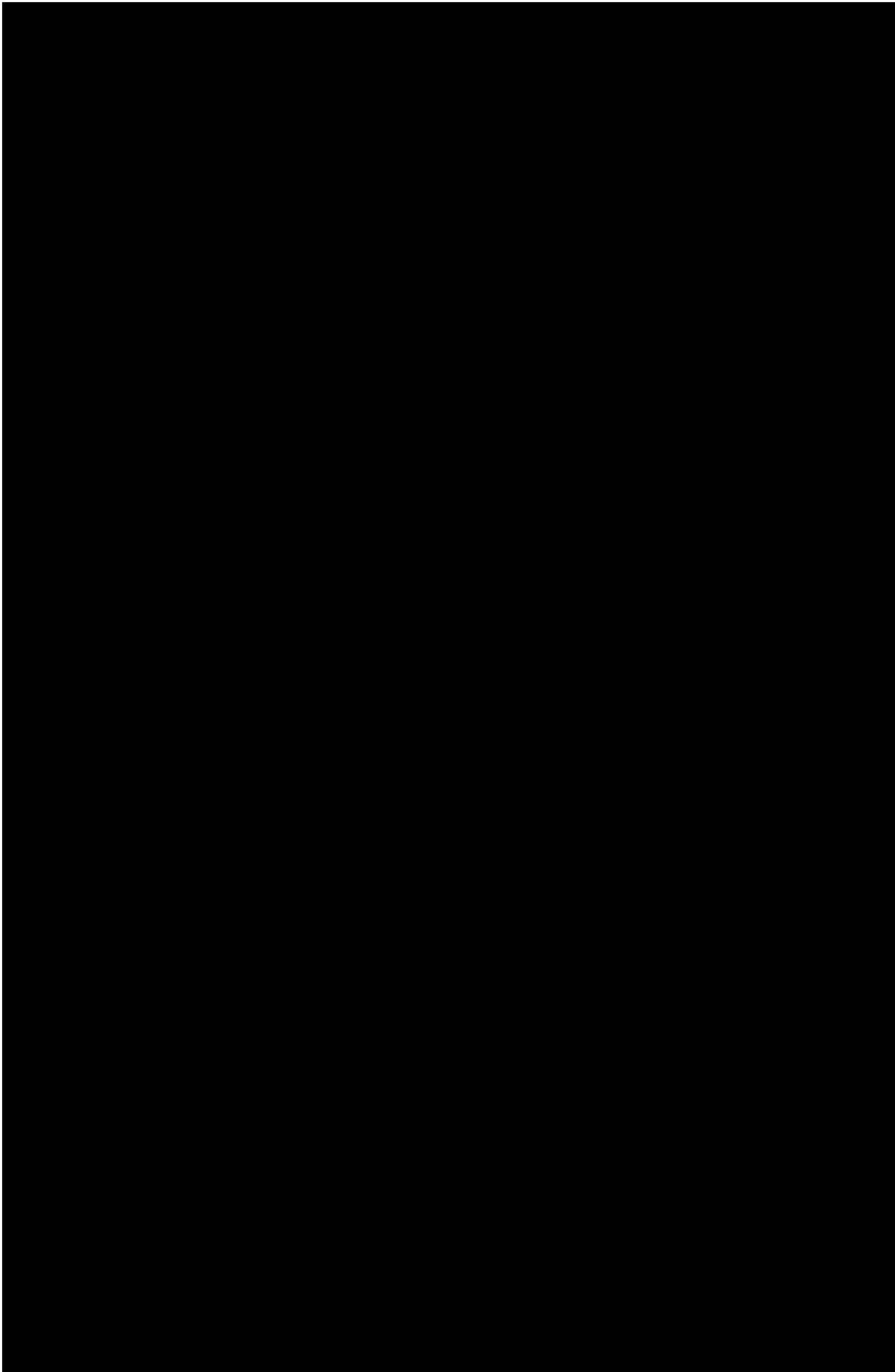


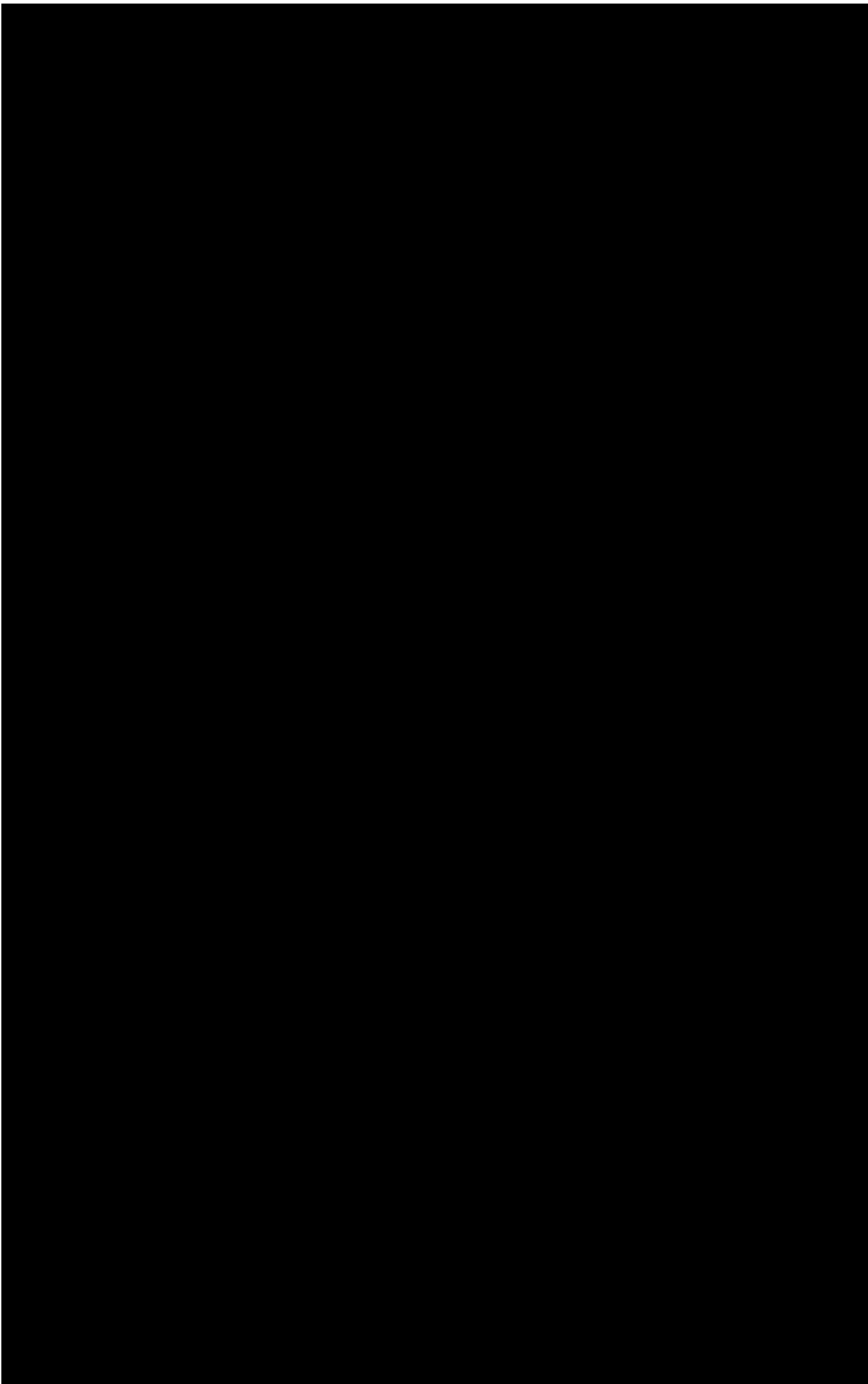


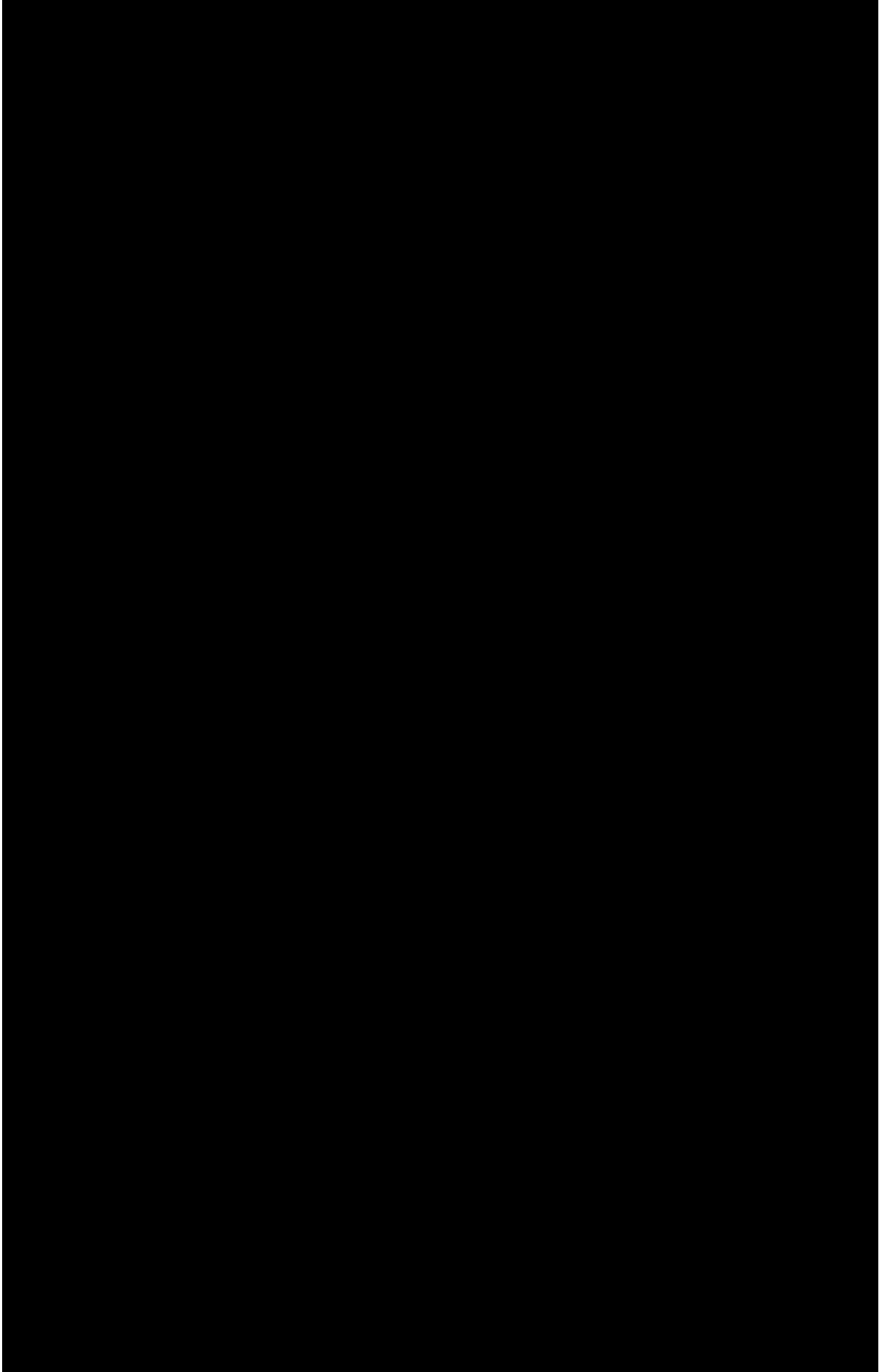


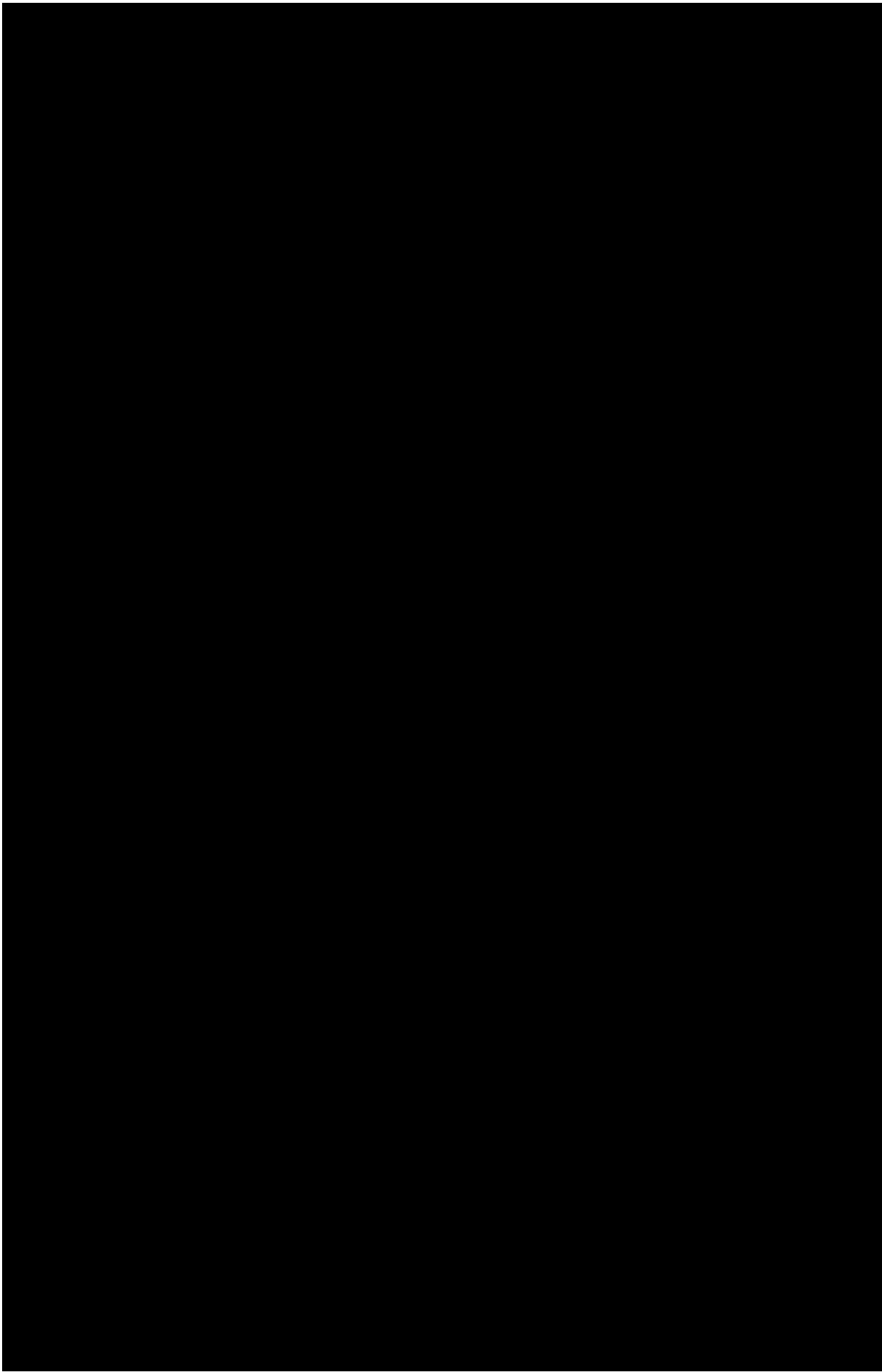


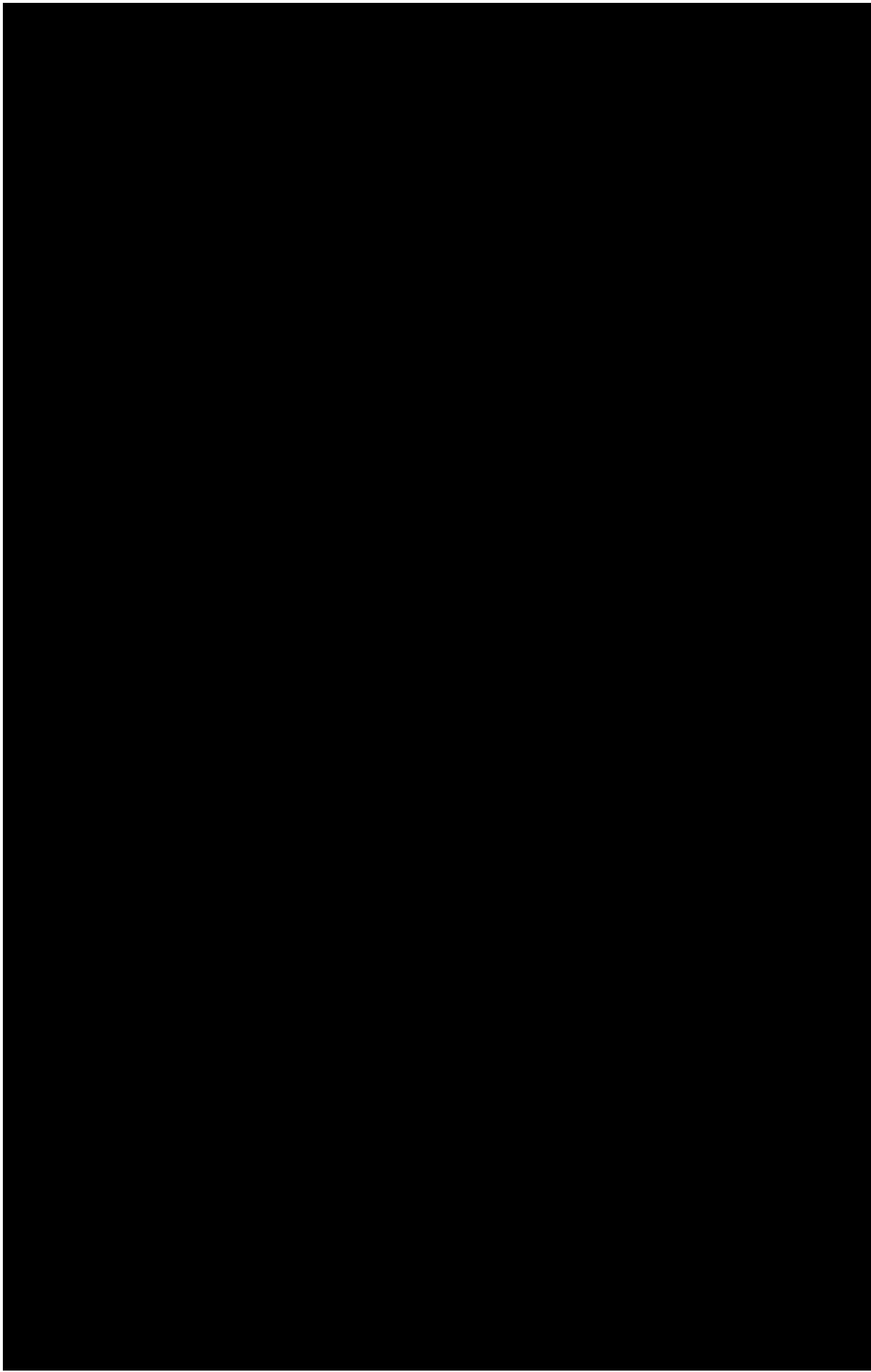


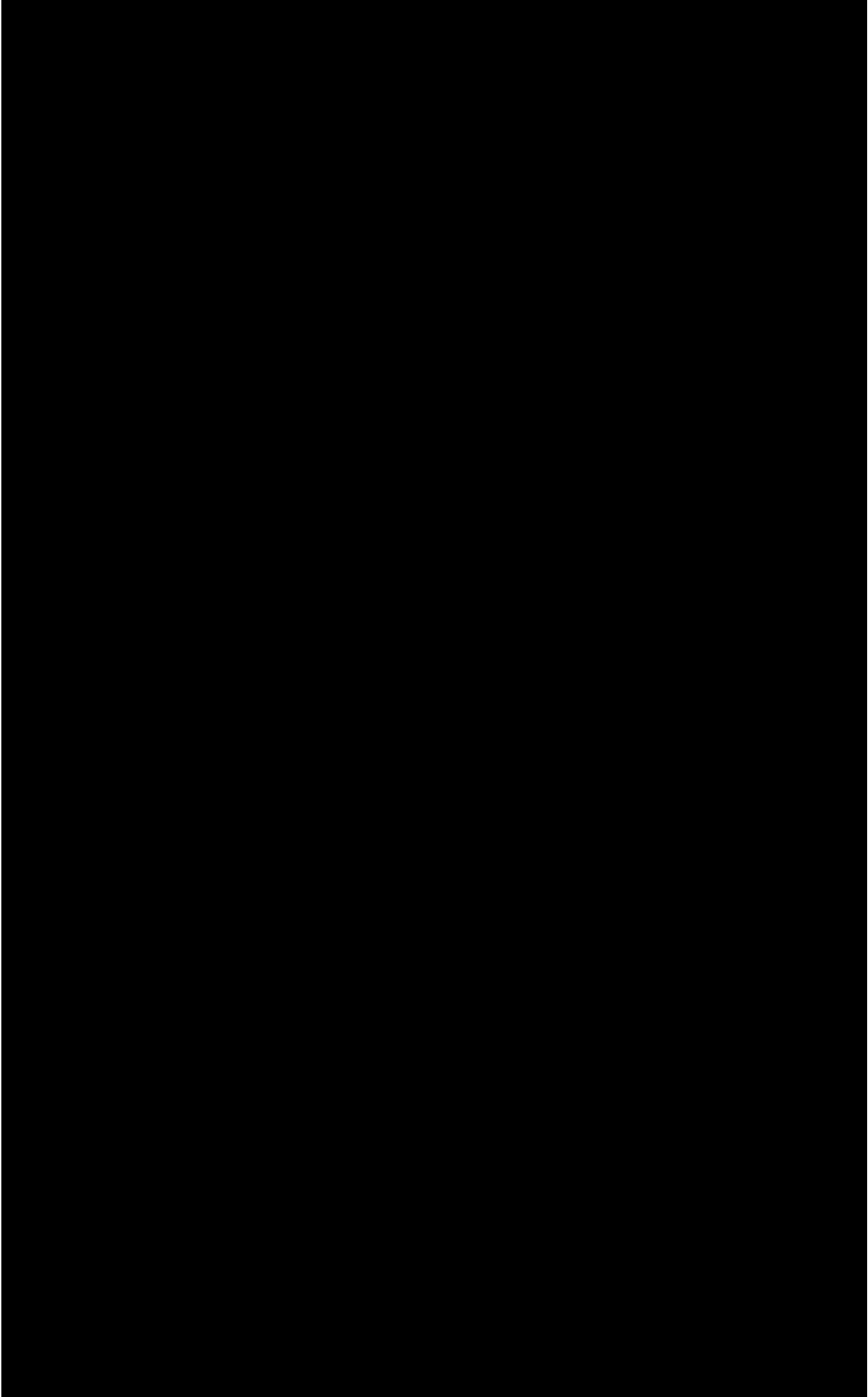


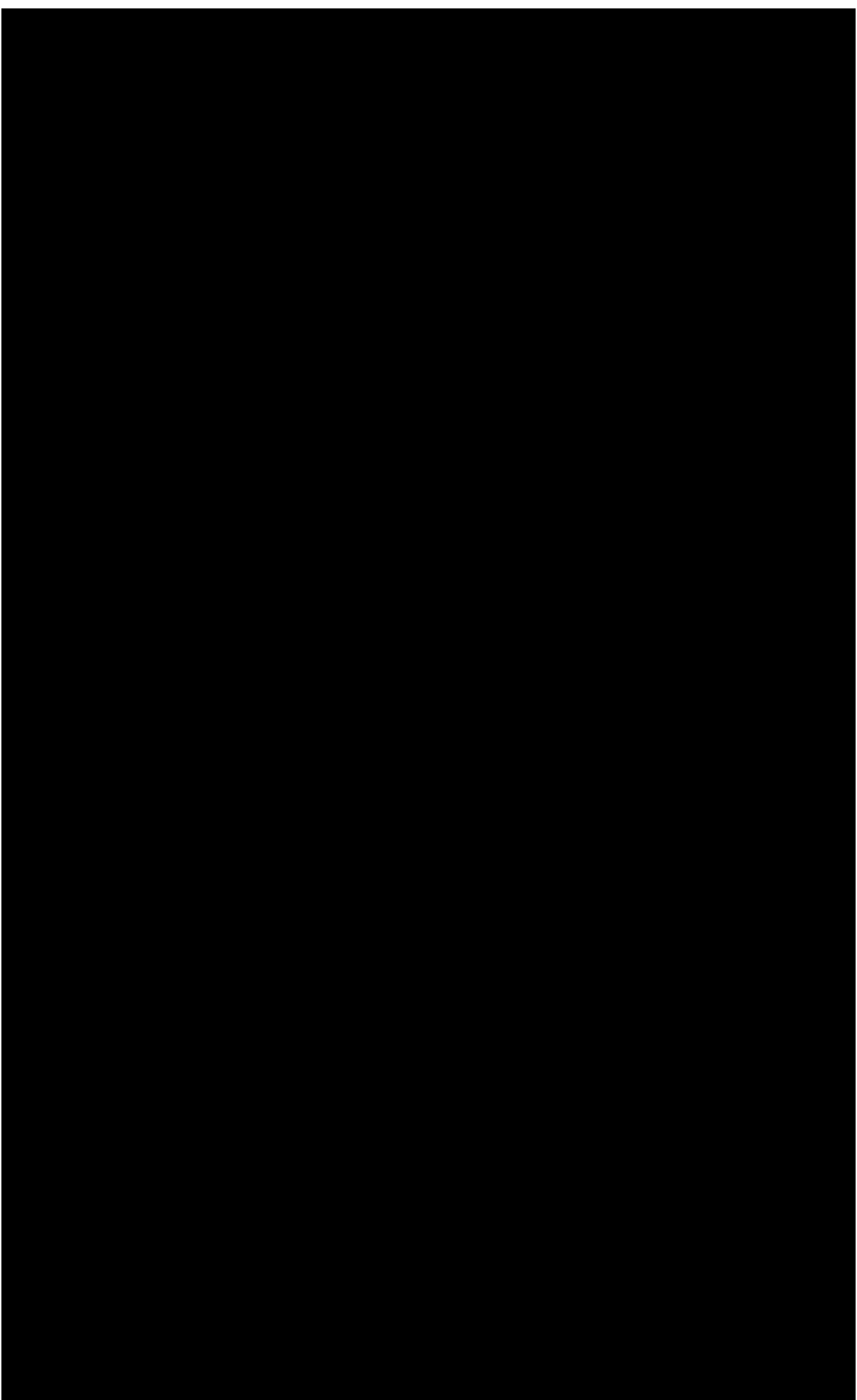


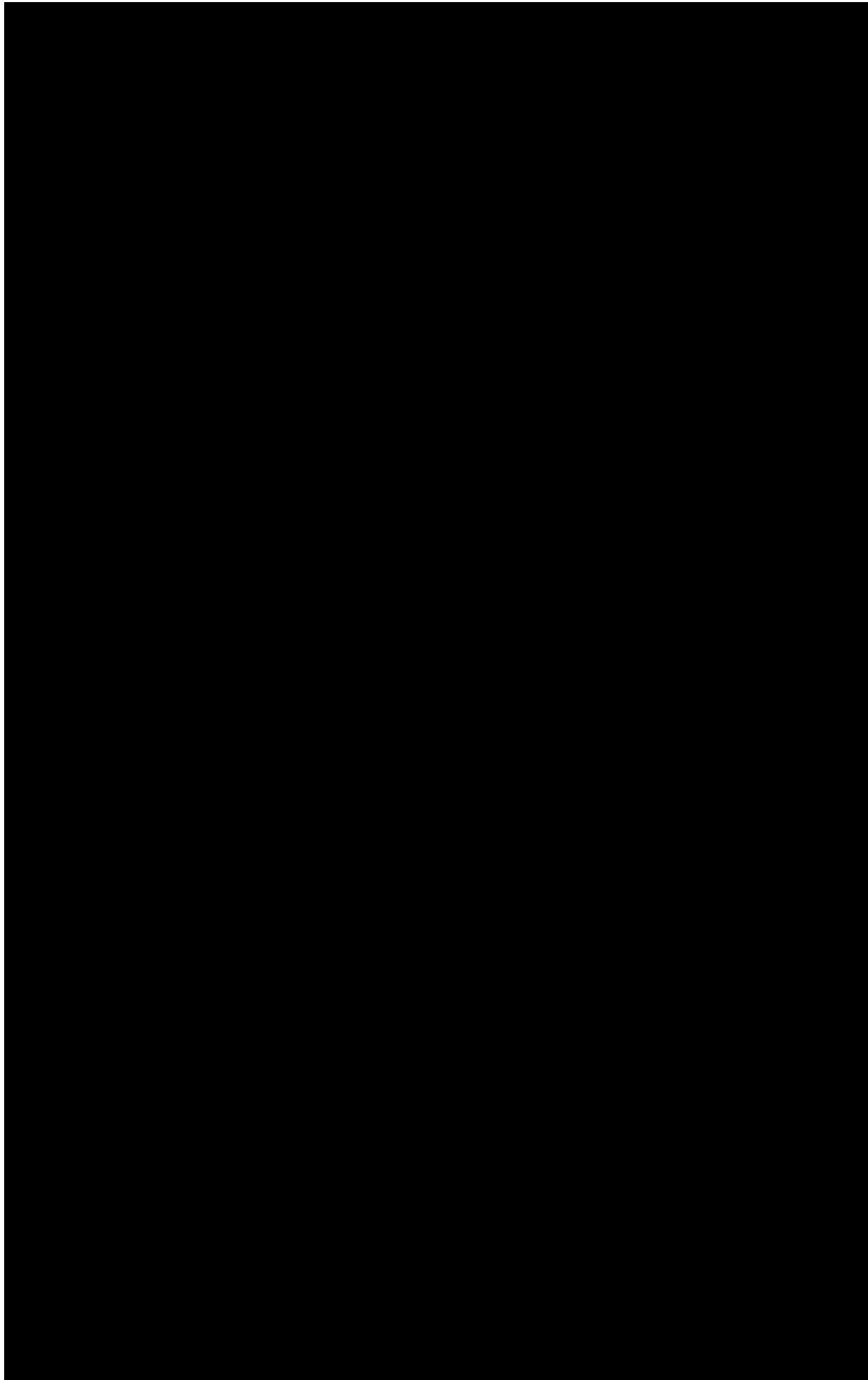


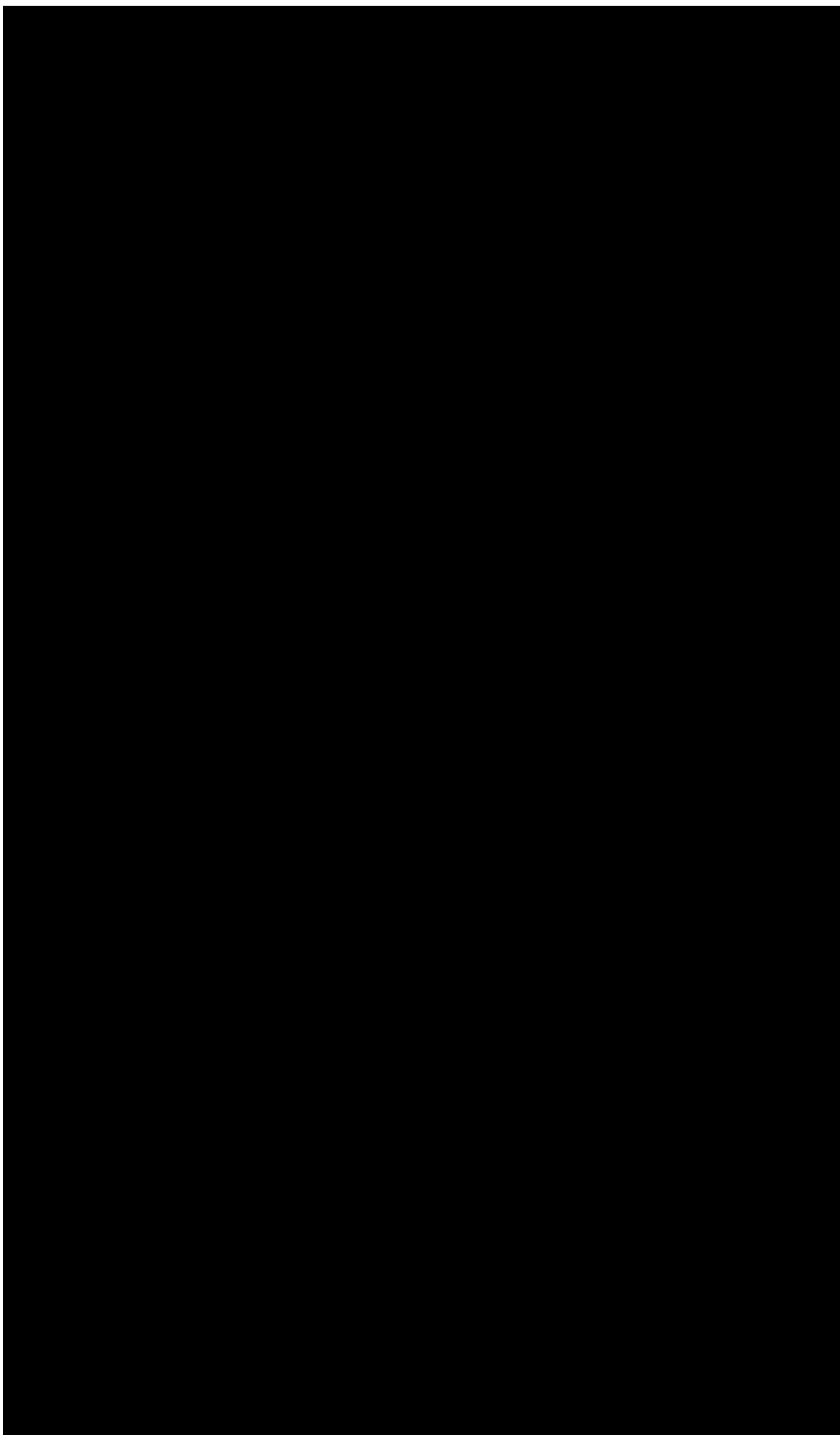


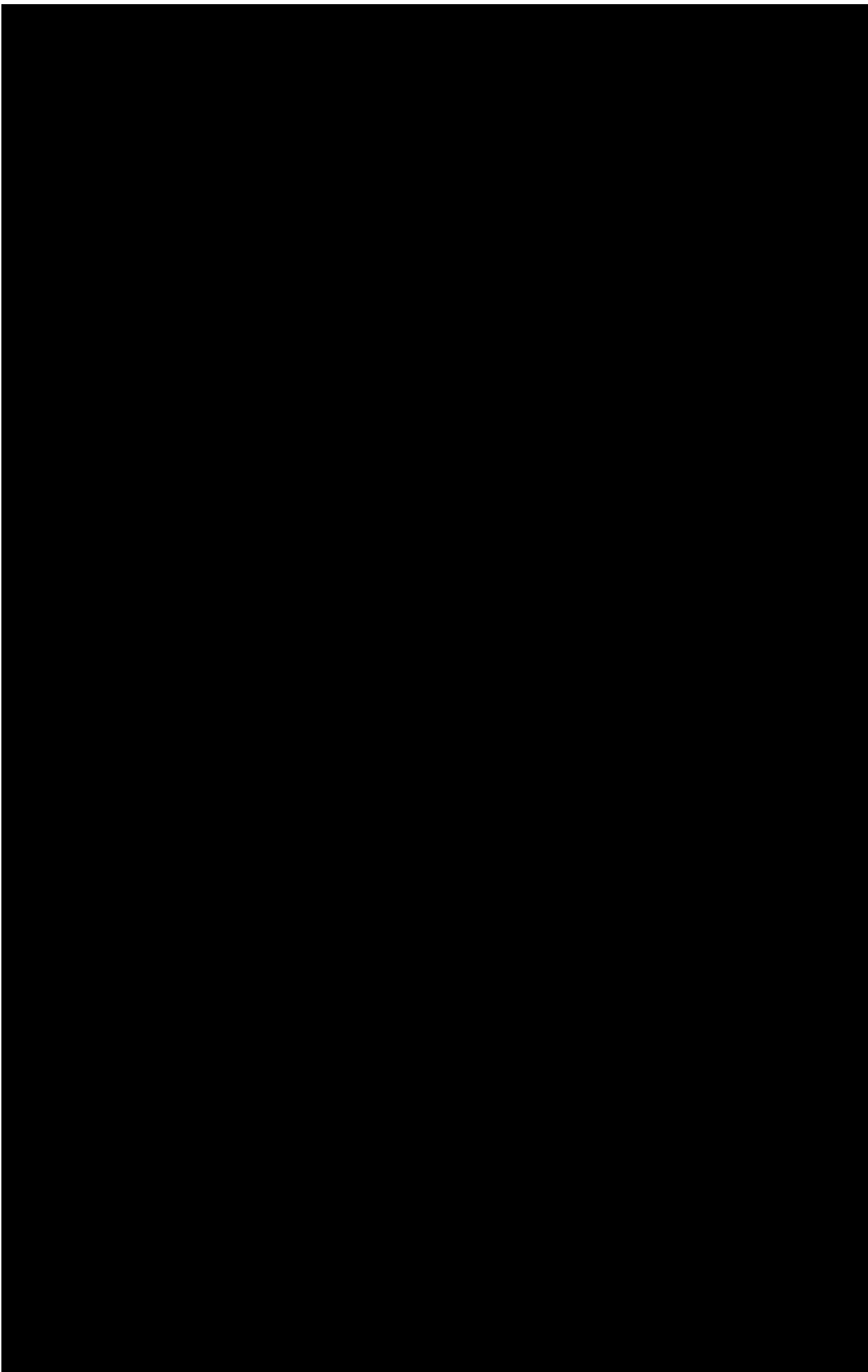


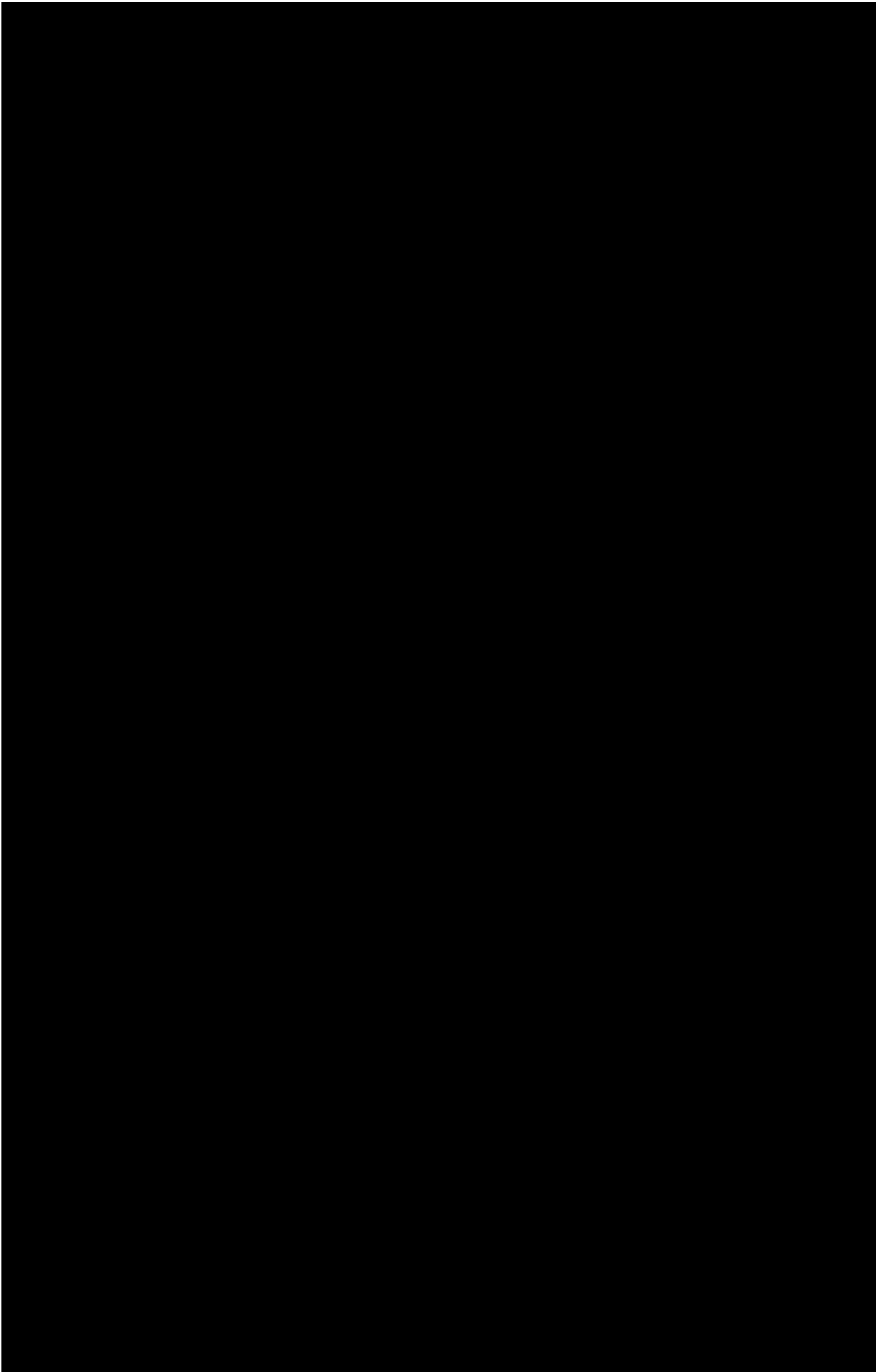


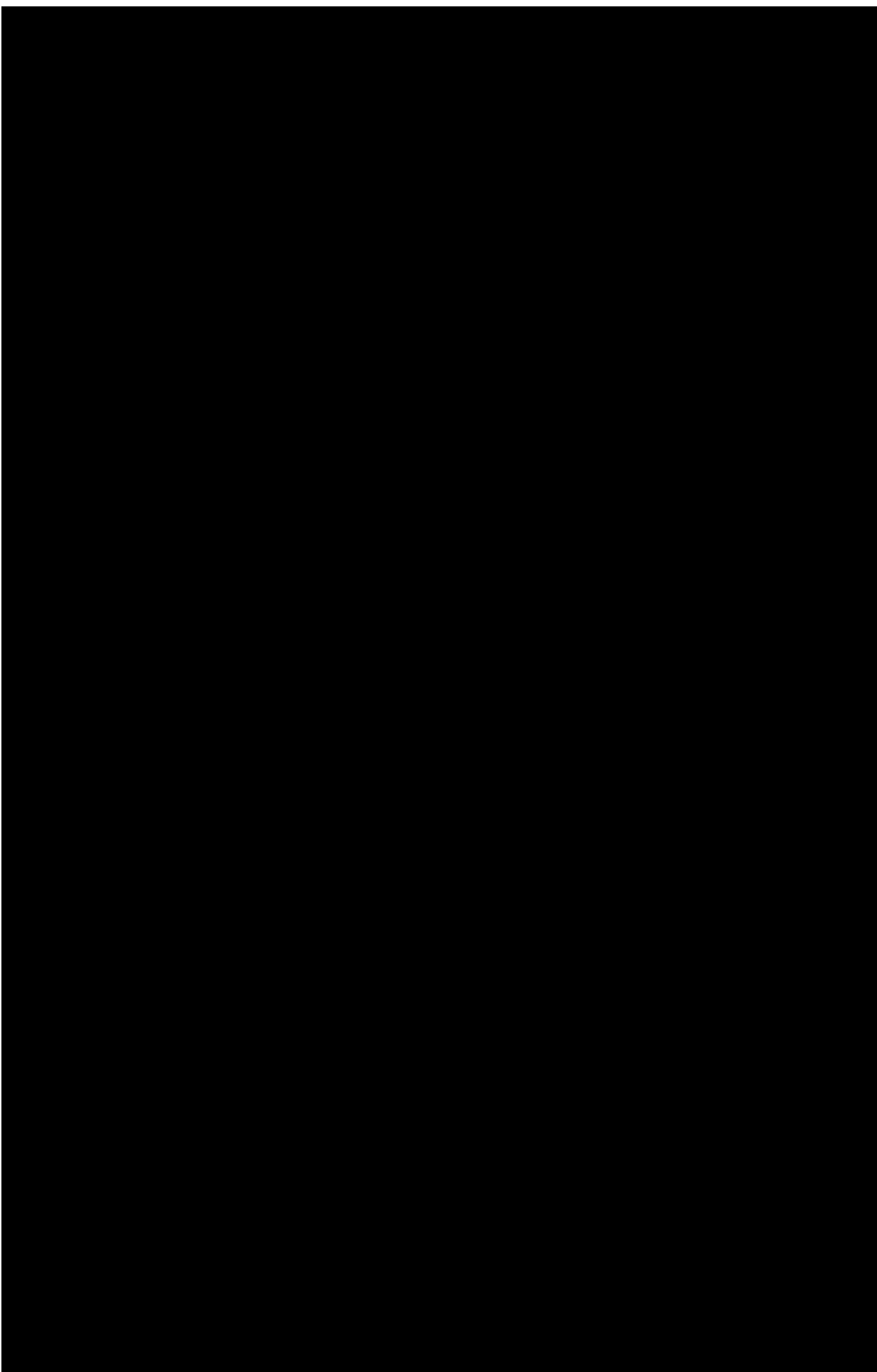


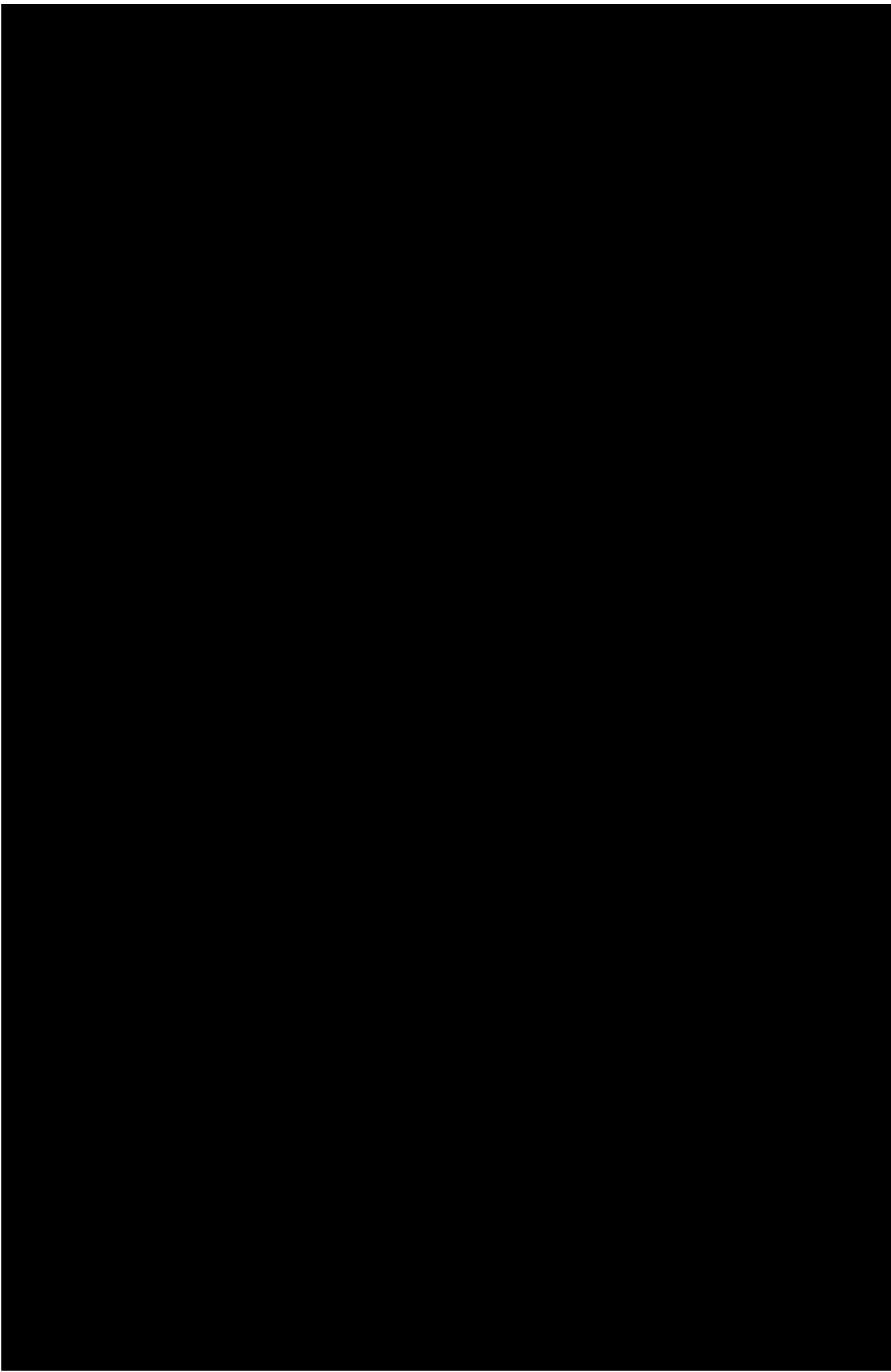


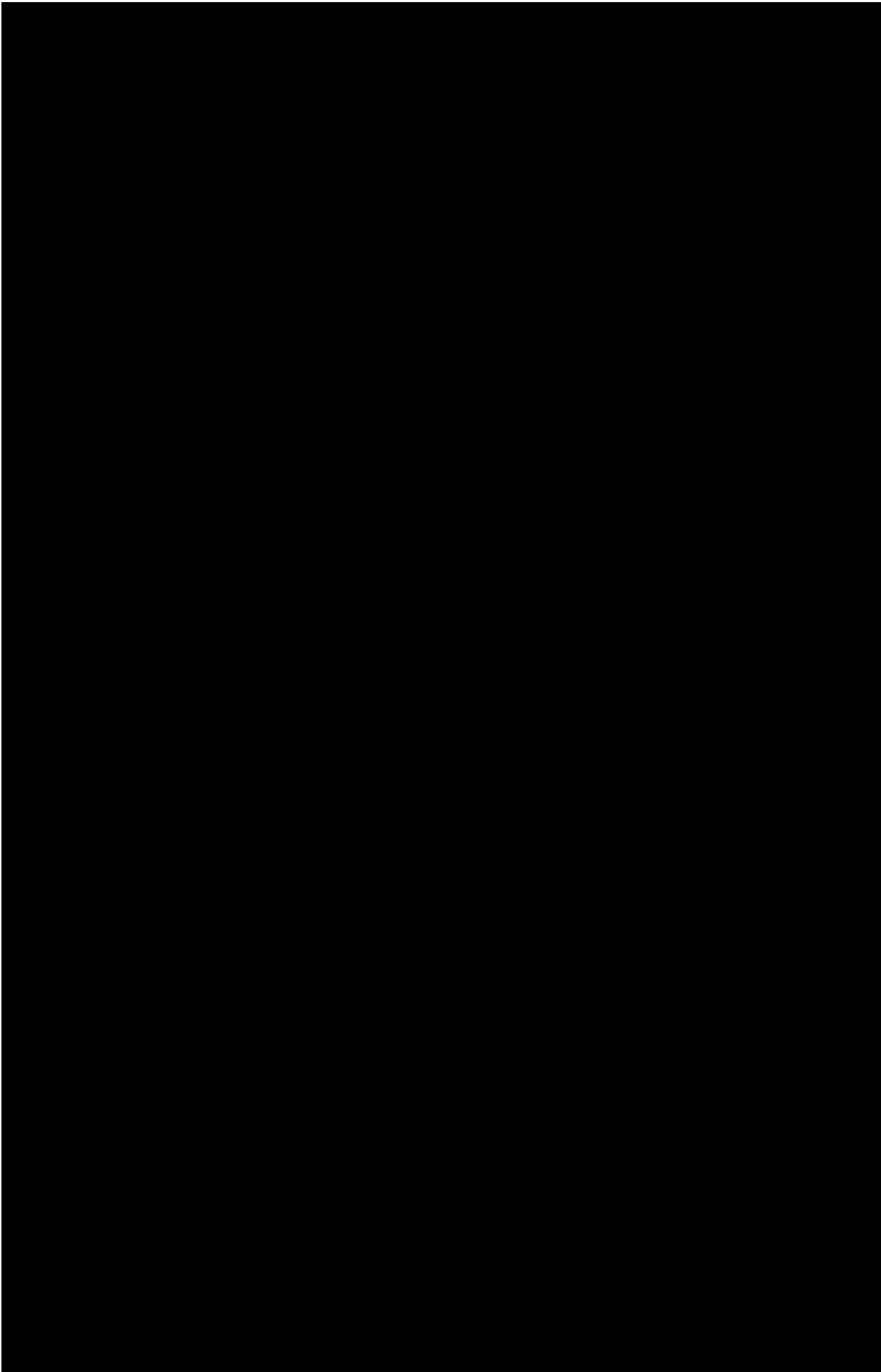


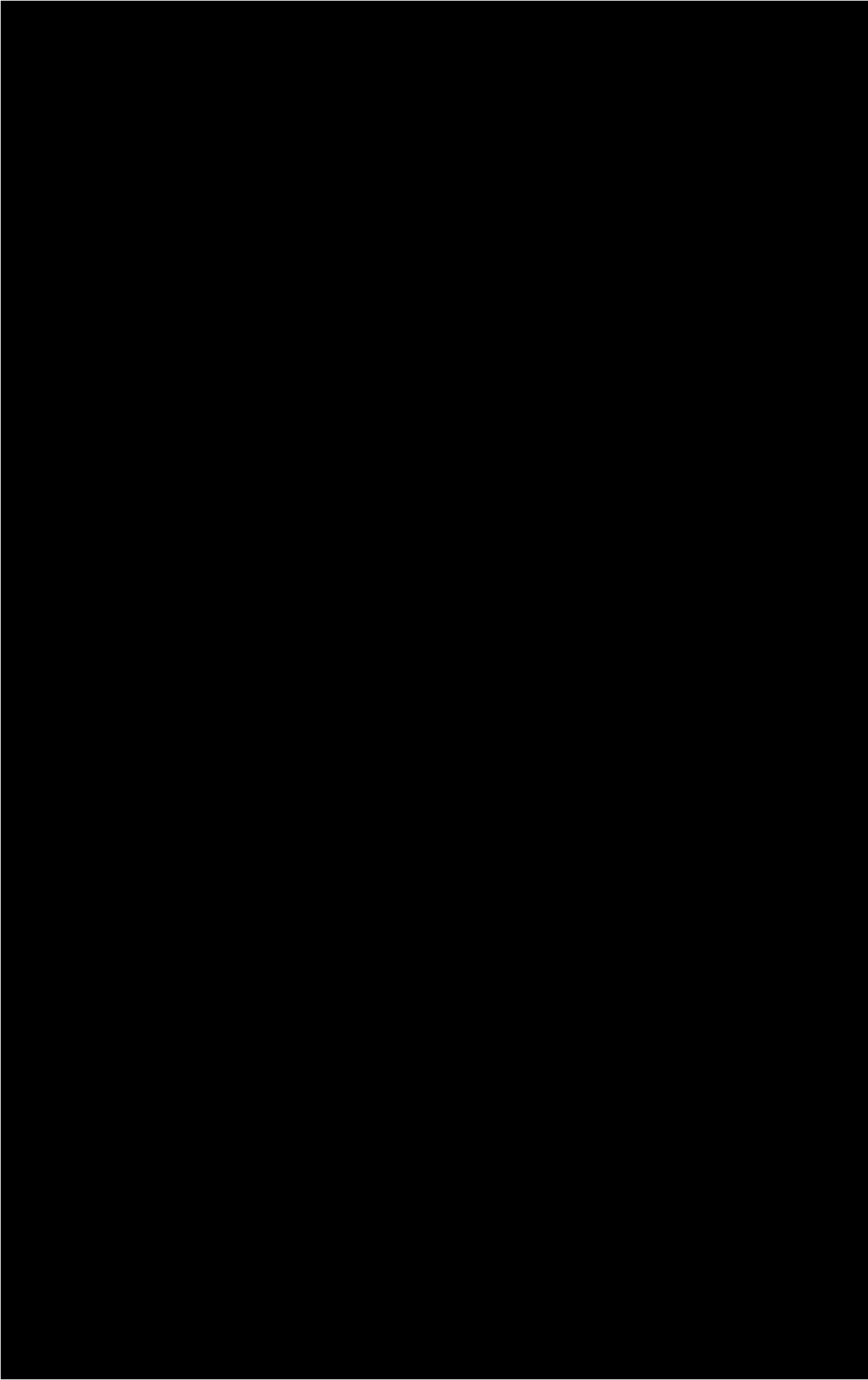












Schedule 12 Subcontractors - Security of Payment

(Clause 2.2(f))

In addition to the terms and other requirements required to be included in each Subcontract under clause 2.2(f) of the General Conditions, the following terms must be included in each Subcontract, and the Subcontracts let by those Subcontractors.

1.1 Options as to Form of Security

- (a) A clause which allows the Subcontractor to lodge an approved unconditional undertaking from a bank or financial institution instead of a cash security or retention moneys as its security for performance of the Subcontract.
- (b) A clause which provides that if the Subcontractor does lodge an unconditional undertaking for the required amount, the Contractor (or Subcontractor as the case may be) must not deduct further retention moneys, and any retention moneys or other cash security then held will be promptly released to the Subcontractor.

1.2 Trust for Cash Security and Retention Moneys

A clause which has the effect that:

- (a) cash securities and retentions under the Subcontract and the cash proceeds of any security converted to cash (other than in exercise of a contractual right of enforcement) is trust money and must be deposited into and held in a trust account with a bank within 24 hours of receipt or conversion;
- (b) the trust money is beneficially owned by the party which provided the security at all times, unless the other party becomes entitled to receive them under the Subcontract;
- (c) the security holder must hold proper records and account to the security provider for the trust moneys; and
- (d) any interest earned by the trust account will not be held in trust, and will be owned by the security holder.

1.3 Payment Provisions

A clause which:

- (a) has the effect of requiring the Contractor (or Subcontractor as the case may be) to pay the Subcontractor regular progress payments for 100% of the value of work (less only retention moneys, if any, paid into the trust account) for which payment is claimed by the Subcontractor and for which the Contractor has claimed payment from the Principal, no later than:
 - (i) in the case of the Contractor's Subcontractors, 7 days; and
 - (ii) in the case of the Subcontractor's subcontractors, 14 days,

after the last day for payment by the Principal to the Contractor for such work;

- (b) states nothing in the clause referred to in clause 1.3(a) of this Schedule 12 is to be read so as to prevent the Contractor from paying the Subcontractor an amount in excess of that claimed from the Principal, or before the time stipulated in that clause; and
- (c) states if anything in the clause referred to in clause 1.3(a) of this Schedule 12 is inconsistent with any other provision in the Subcontract, the provisions of that clause will prevail to the extent of the inconsistency.

A clause that prescribes an interest rate for overdue payments that is not less than the interest rate specified in clause 11.18 (Interest) of the General Conditions.

1.4 Alternative Dispute Resolution

A clause that requires alternative dispute resolution procedures.

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

1.5 Documents to be Provided to Subcontractors

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

- (a) clause 2.2(f)(i) (Subcontracts);
- (b) this Schedule 12; and
- (c) clause 11 (Payment).

Schedule 13 Consultant Deed of Covenant

(Clauses 1.1 and 2.2(f))

This deed poll is made the day of 2023

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113 (**Principal**); and

[Add other beneficiaries as nominated by TfNSW] (Beneficiary)

By: [] (**Consultant**)

RECITALS

- A. The Principal has engaged [insert contractor name] (the **Contractor**) to carry out certain works for the Principal by deed dated [insert] (**Deed**).
- B. The Contractor has engaged the Consultant by agreement dated [] (**Subcontract**) to carry out the professional services to be performed under the Subcontract (**Professional Services**) for the purposes of the performance of the Contractor's obligations under the Deed as they relate to those design services.
- C. Under the Deed, the Contractor is required to procure the Consultant to execute this deed poll in favour of the Principal and Beneficiary.

OPERATIVE

1 Duty of Care

- (a) The Consultant:
 - (i) warrants to the Principal and Beneficiary that:
 - (A) in performing the Professional Services, it will exercise the standard of skill, care and diligence that would be expected of a consultant experienced in the provision of the type of professional services required by the Principal and Beneficiary;
 - (B) the Professional Services will be fit for the intended purposes disclosed in or reasonably able to be inferred from the SPR, which is an exhibit to the Deed; and
 - (C) the Professional Services do not and will not infringe any patent, registered design, trademark or name, copyright or other protected right;
 - (ii) acknowledges that:
 - (A) in performing the Professional Services it will owe a duty of care to the Principal and Beneficiary; and
 - (B) it is aware that the Principal and Beneficiary will be relying upon the skill and judgment of the Consultant in

performing the Professional Services and the warranties given by the Consultant in this deed poll; and

- (iii) must act in good faith and in the best interests of the Principal and Beneficiary and promptly advise the Principal and Beneficiary about any matter in which the Consultant has been instructed by the Contractor to provide the Professional Services in a manner which is, or may result in an outcome which is, not in accordance with the requirements of the Deed, including without limitation:
 - (A) where the Contractor's instructions in relation to design are not consistent with the Deed or may result in the Infrastructure Works not being Fit for Purpose; or
 - (B) where the Contractor's instructions require the Consultant to issue a certificate where the conditions for the issue of that certificate under the Deed have not been satisfied.

(b) The Consultant must:

- (i) fully cooperate with each other consultant and contractor engaged by the Principal (**Other Contractor**);
- (ii) carefully coordinate and integrate the Professional Services with the services and work carried out by each Other Contractor;
- (iii) carry out the Professional Services so as to minimise any interfering with, disrupting or delaying, the services and work carried out by each Other Contractor;
- (iv) without limitation, provide whatever advice, support and cooperation is reasonable to facilitate the due carrying out of the services and work being provided by each Other Contractor;
- (v) ensure title to and Intellectual Property (including any patent, registered design, trademark or name, copyright or other protected right) in or in relation to the Professional Services will vest upon its creation for the purposes of the Deed in the Principal;
- (vi) obtain an assignment to the Principal from any third party who owns any Intellectual Property in the Professional Services;
- (vii) if any Intellectual Property in or in relation to documents, designs and computer programs created for the purposes of the Deed is not capable of being vested in the Principal because the Consultant itself does not own, and is unable at a reasonable cost to obtain ownership of, those rights, provide to the Principal an irrevocable licence to use that Intellectual Property, by sub-licence from the Consultant or direct licence from a third party; and
- (viii) ensure that the Intellectual Property created for the purposes of the Deed is not used, adapted or reproduced other than for the purposes of the Deed without the prior written approval of the Principal (which will not be unreasonably withheld, but may be given subject to terms and conditions).

- (c) The Consultant must indemnify the Principal and Beneficiary from and against:
 - (i) any liability to or claim by any other person; and
 - (ii) all claims against, and costs, expenses, losses and damages, suffered or incurred by the Principal and Beneficiary arising out of, or in any way in connection with:
 - (A) the Consultant's breach of a term of, or warranty under, this deed poll; or
 - (B) any actual or alleged infringement of any patent, registered design, trademark or name, copyright or other protected right.
 - (iii) suffered or incurred by the Principal and Beneficiary arising out of, or in any way in connection with:
- (d) The aggregate of the Consultant's liability to the Principal and the Beneficiary under this deed poll and the Consultant's liability to the Contractor under the Subcontract:
 - (i) will not exceed the liability which the Consultant would have had under the Subcontract if the Consultant had named, in place of the Contractor, the Principal, Beneficiary and Contractor jointly and severally; and
 - (ii) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Subcontract.

2 Notices

- (a) Any notices contemplated by, or arising out of or in any way in connection with, this deed poll must be in writing and delivered to the relevant address, via the PDCS (in accordance with clause 19.4 of the Deed) (or to a party's new address):
 - (i) to the Principal:

7 Harvest Street
Macquarie Park NSW 2113
 - (ii) to the Beneficiary: [Insert details]
 - (iii) to the Consultant: [Insert details]
- (b) A notice sent by post will be taken to have been received at the time when, in due course of the post, it would have been delivered at the address to which it is sent.
- (c) If the Consultant is a foreign company (as defined in the *Corporations Act 2001* (Cth)), the Consultant must within 14 days of the date of this deed poll:
 - (i) appoint a local process agent acceptable to the Principal as its agent to accept service of process under or in any way in connection with this deed poll; and
 - (ii) obtain the process agent's consent to the appointment.

The appointment must be in a form acceptable to the Principal and may not be revoked without the Principal's consent.

3 Miscellaneous

- (a) This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Consultant hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this deed poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- (c) This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal and Beneficiary.
- (d) Terms used in this deed poll which are otherwise not defined will have the meaning given to them in the Deed.

Executed as a deed poll.

Signing page

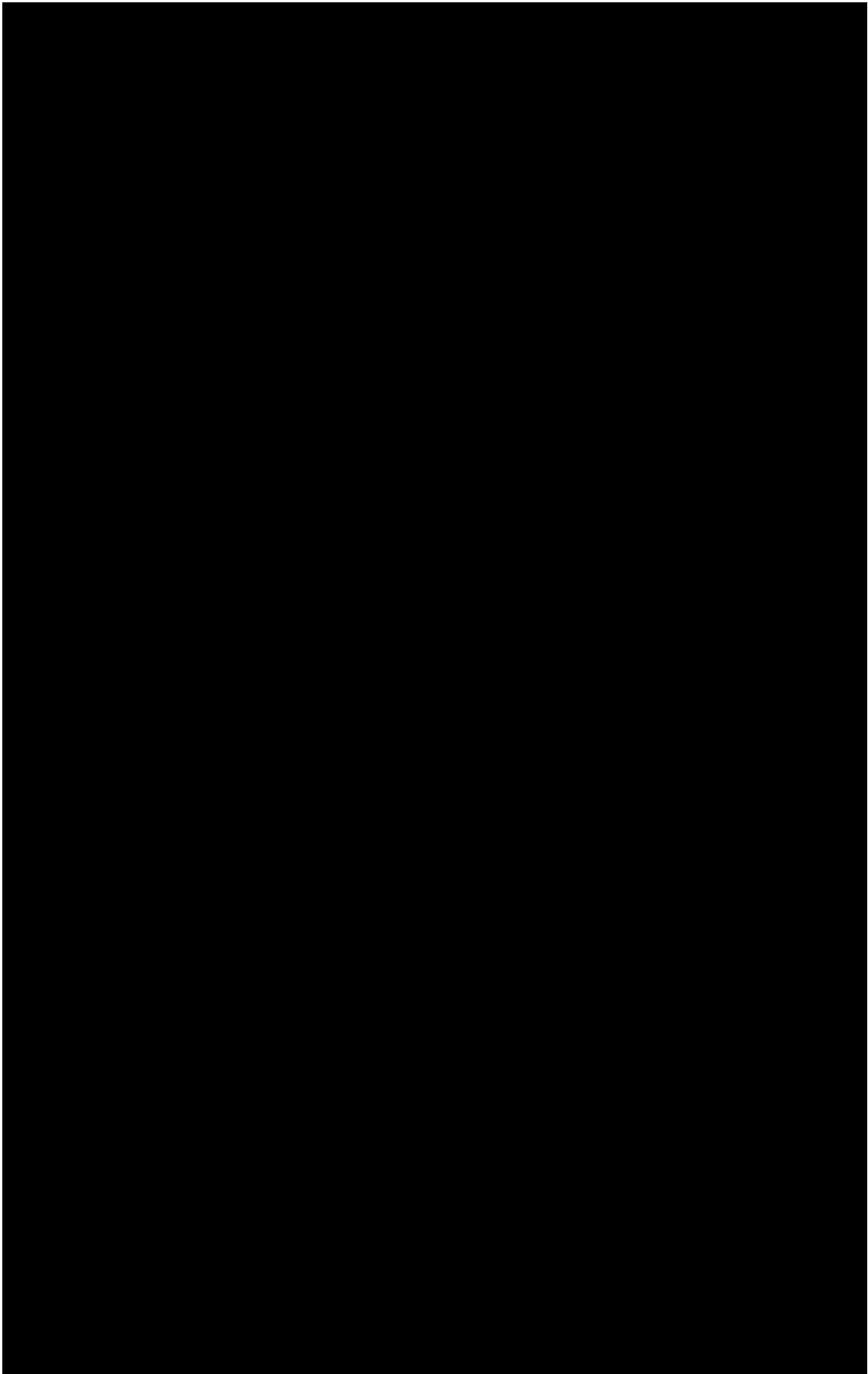
FOR INDIVIDUAL#

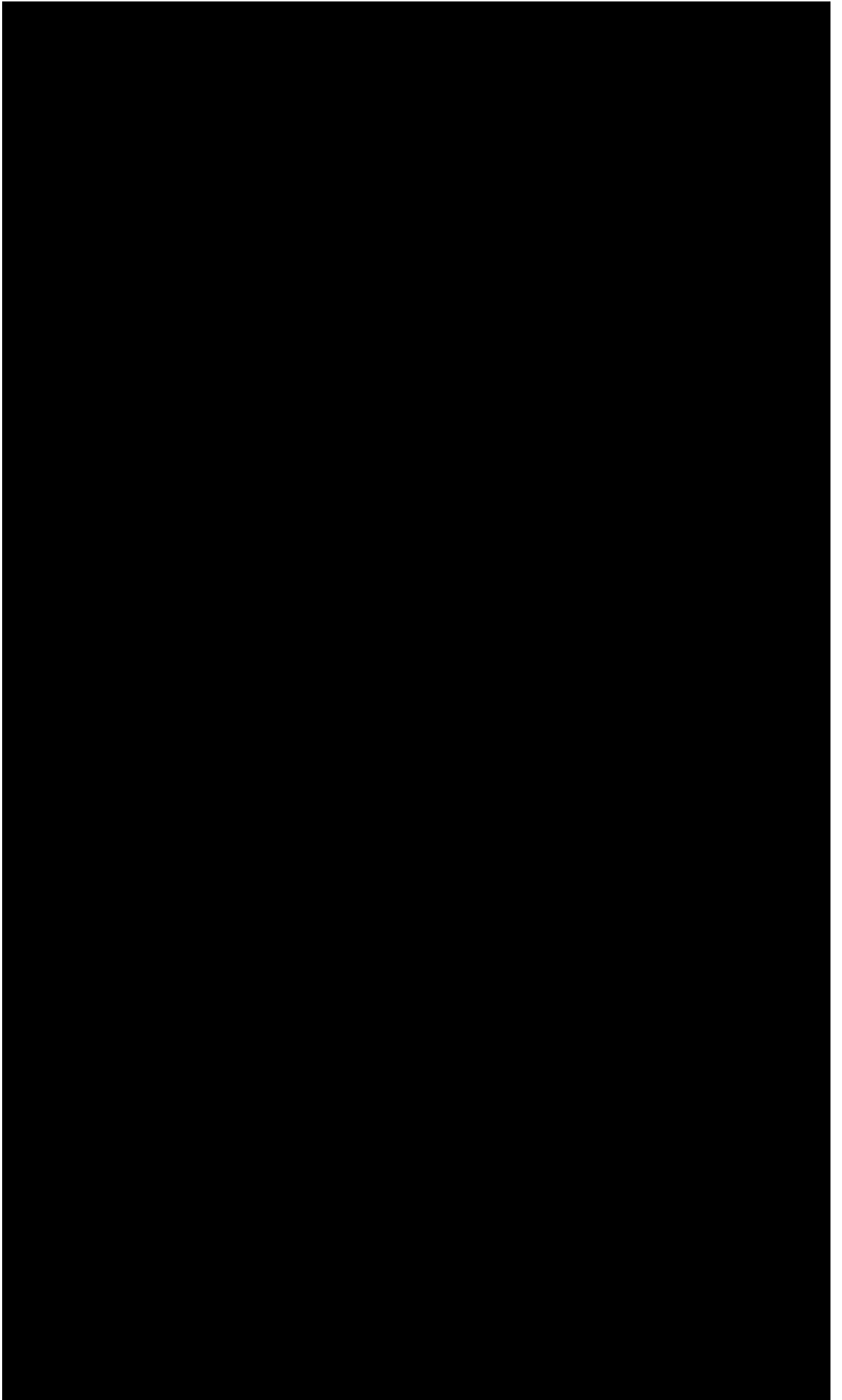
SIGNED, SEALED AND DELIVERED)
by [INSERT] in the presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))
)
)
Signature of [INSERT]

#FOR COMPANY #

EXECUTED by [INSERT] in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)
)
)
.....)
Signature of director)
)
)
.....)
Name of director (block letters))
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Signature of director/company)
secretary*)
*delete whichever is not applicable)
.....)
Name of director/company secretary*)
(block letters))
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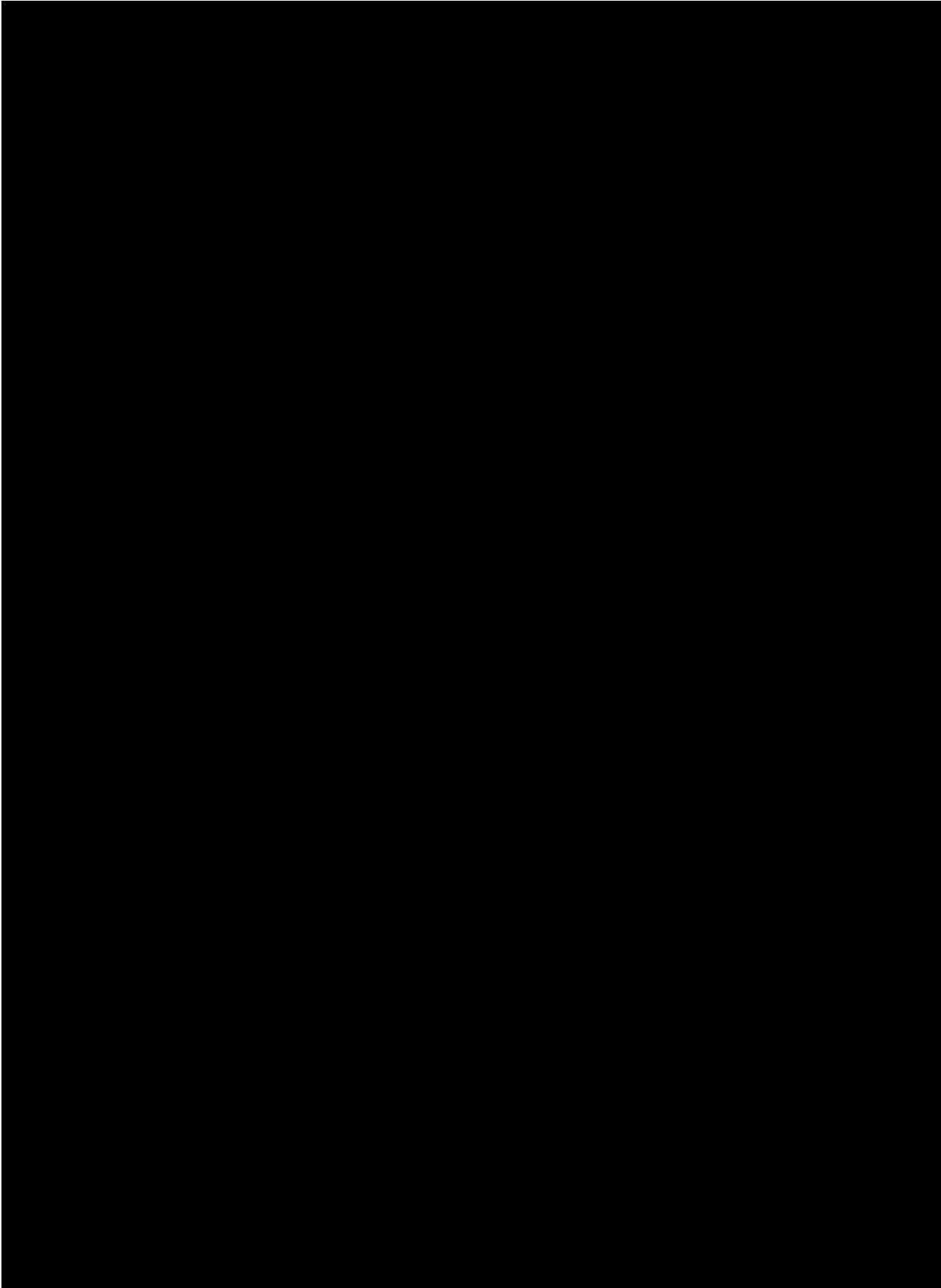
Schedule 14 Proposed Permanent Light Rail Corridor





Schedule 15 Heritage Location

(Clauses 1.1 and 3.7)



Schedule 16 Form of Unconditional Undertaking

Clauses 2.8(b)(iii) and 11.5

This deed poll (*Undertaking*) made the day of 20

In favour of: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113 (***Principal***)

Given by: [] (Institution)

[Note to JH: the Financial Institution must specify an address in Sydney, New South Wales at which the demand under this Undertaking may be made.]

RECITALS

- A. By a deed dated [*] (**Deed**) between [#insert contractor name] (ABN #) (the **Contractor**) and the Principal the Contractor agreed to carry out the Contractor's Activities (as defined in the Deed).
- B. Under the provisions of the Deed, the Contractor is required to provide this Undertaking to the Principal.

INTERPRETATION

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

OPERATIVE

1. At the request of [#insert contractor name] (ABN #), the Institution unconditionally undertakes and covenants to pay to the Principal on demand without reference to the Contractor and notwithstanding any notice given by the Contractor to the Institution not to do so, any sum or sums which may from time to time be demanded in writing by the Principal to a maximum aggregate sum of # (\$ [REDACTED]).
2. The Institution's liability under this Undertaking will be a continuing liability and will continue until payment is made under this Undertaking of the maximum aggregate sum or until the Principal notifies the Institution that this Undertaking is no longer required.
3. The liability of the Institution under this Undertaking must not be discharged or impaired by reason of any variation or variations (with or without the knowledge or consent of the Institution) in any of the stipulations or provisions of the Deed or the Contractor's Activities or acts or things to be executed, performed and done under the Deed or by reason of any breach or breaches of the Deed by the Contractor or the Principal.
4. The Institution may at any time without being required so to do pay to the Principal the maximum aggregate sum less any amount or amounts it may previously have paid under this Undertaking and thereupon the liability of the Institution hereunder will immediately cease.
5. This Undertaking will be governed by and construed in accordance with the laws for the time being of the State of New South Wales.
6. The Institution hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in

connection with this Undertaking, and waives any right it might have to claim that those courts are an inconvenient forum.

Executed as a deed poll.

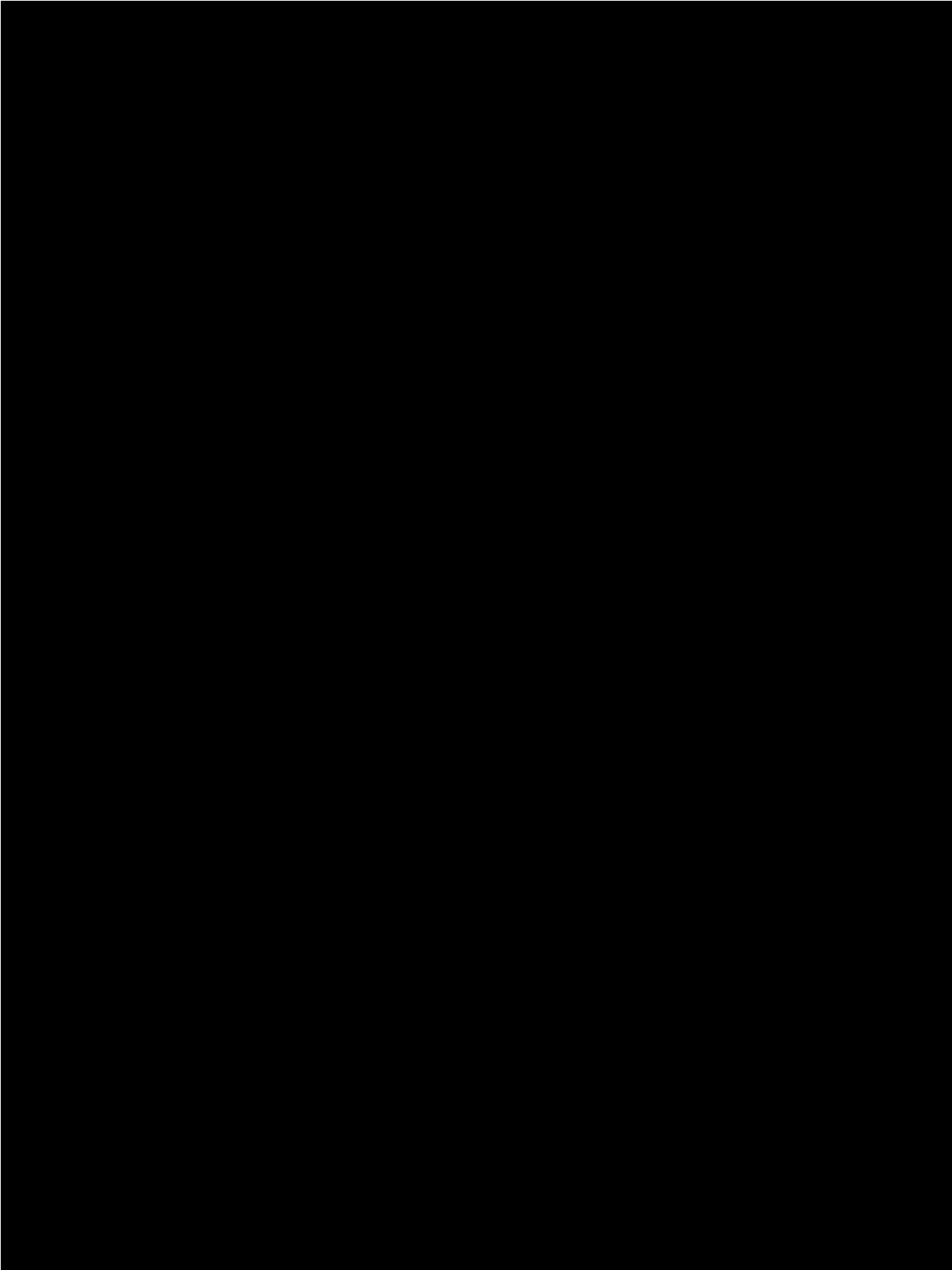
Signing page

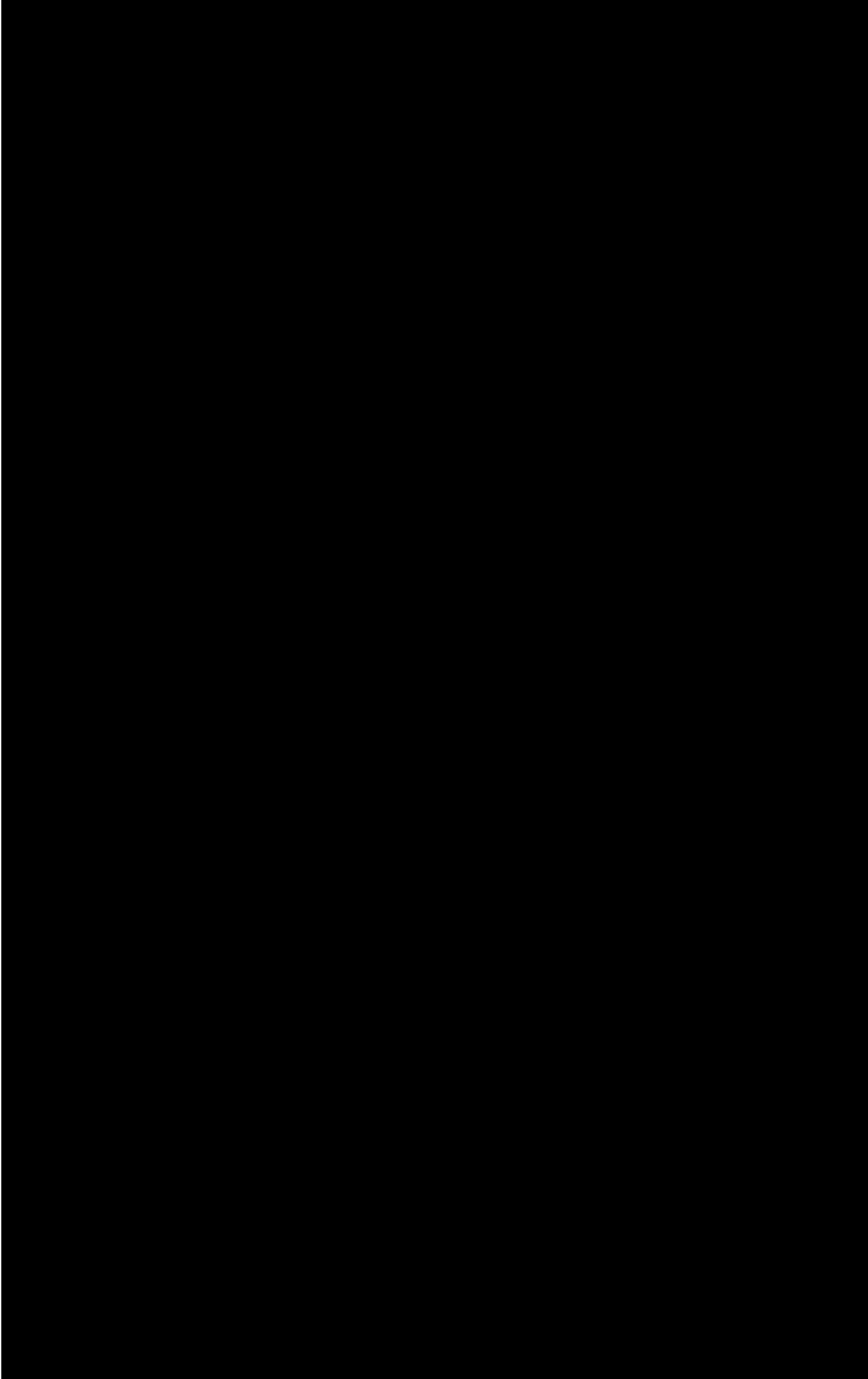
SIGNED SEALED AND DELIVERED by)
)
)
)
)
as attorney for **JOHN HOLLAND PTY LTD** (ABN)
11 004 282 268) under power of attorney dated 10)
January 2023)
)
in the presence of:)
)
)
)
.....)
Signature of witness)

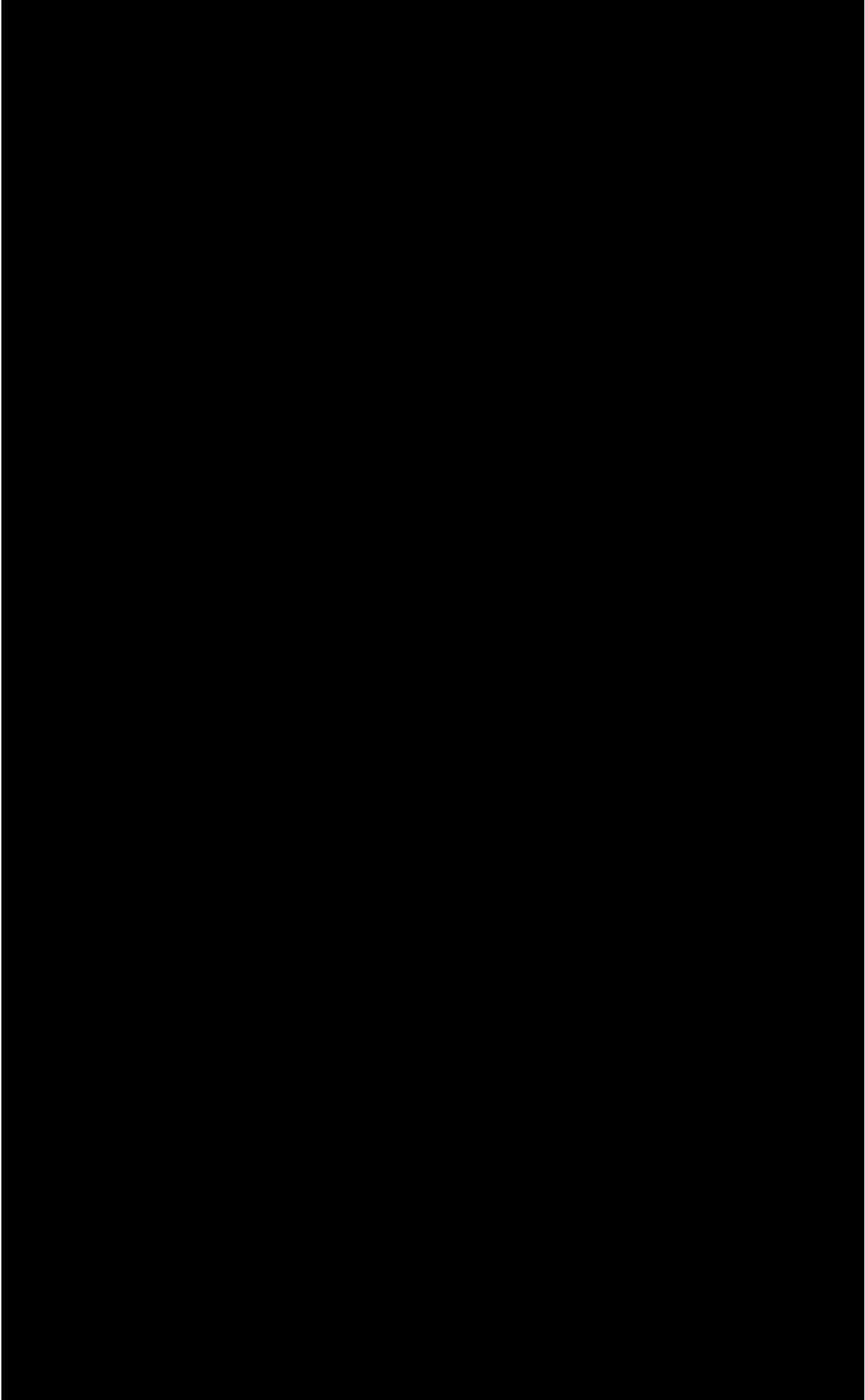
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Name of witness (block letters)

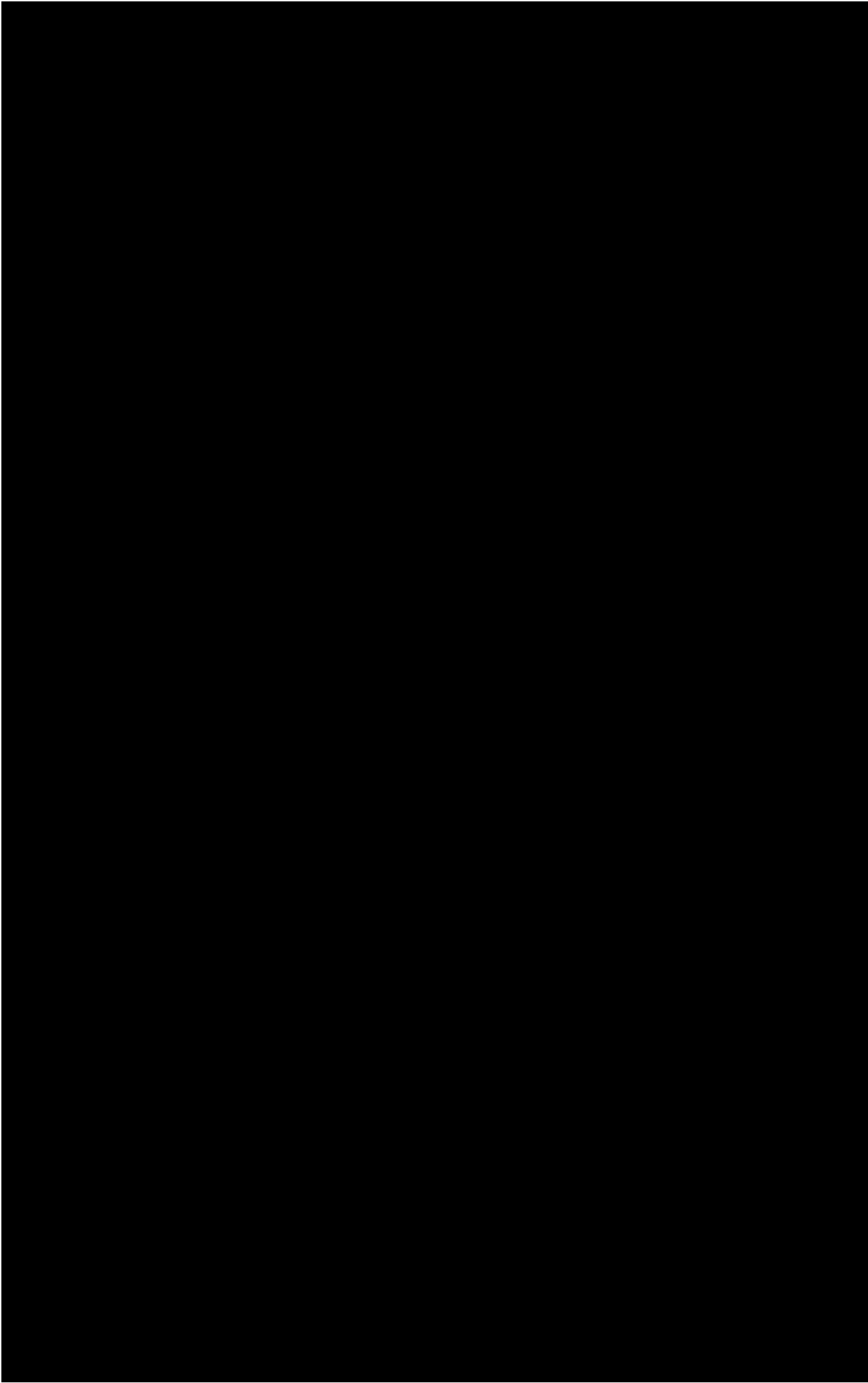
.....
By executing this document the attorney states that the attorney has received no notice of revocation of the power of attorney

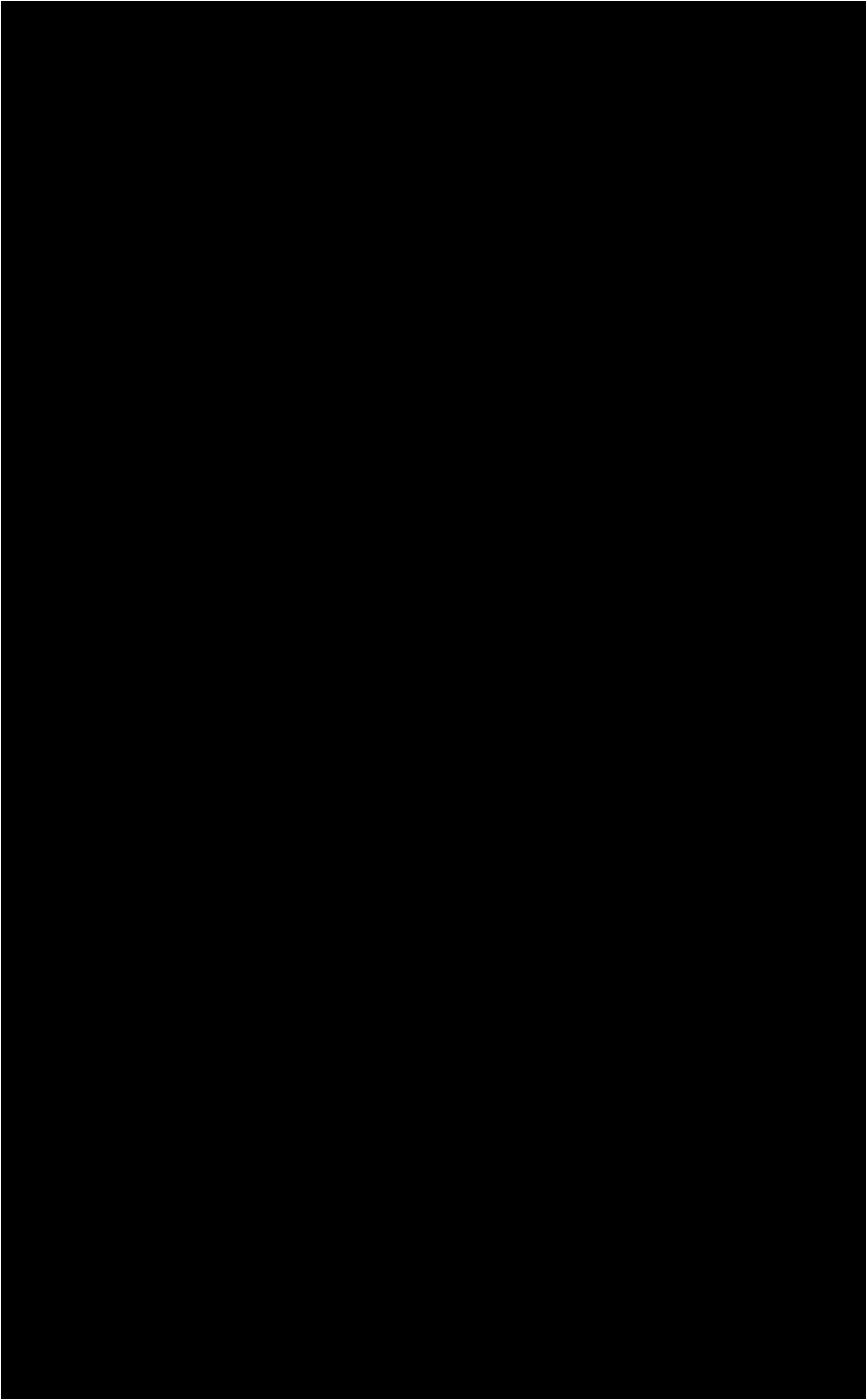
Schedule 17 Information Documents and Materials

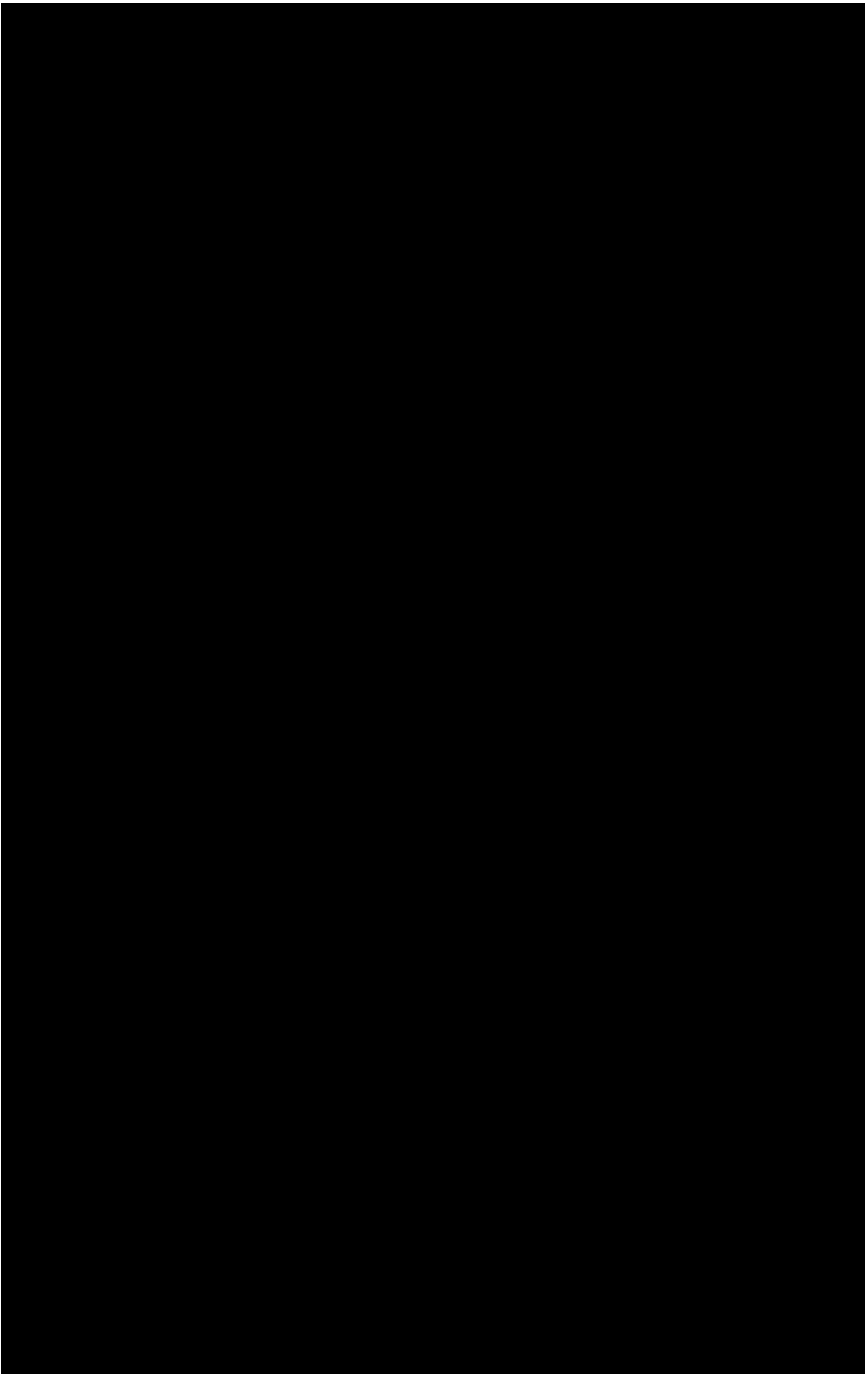


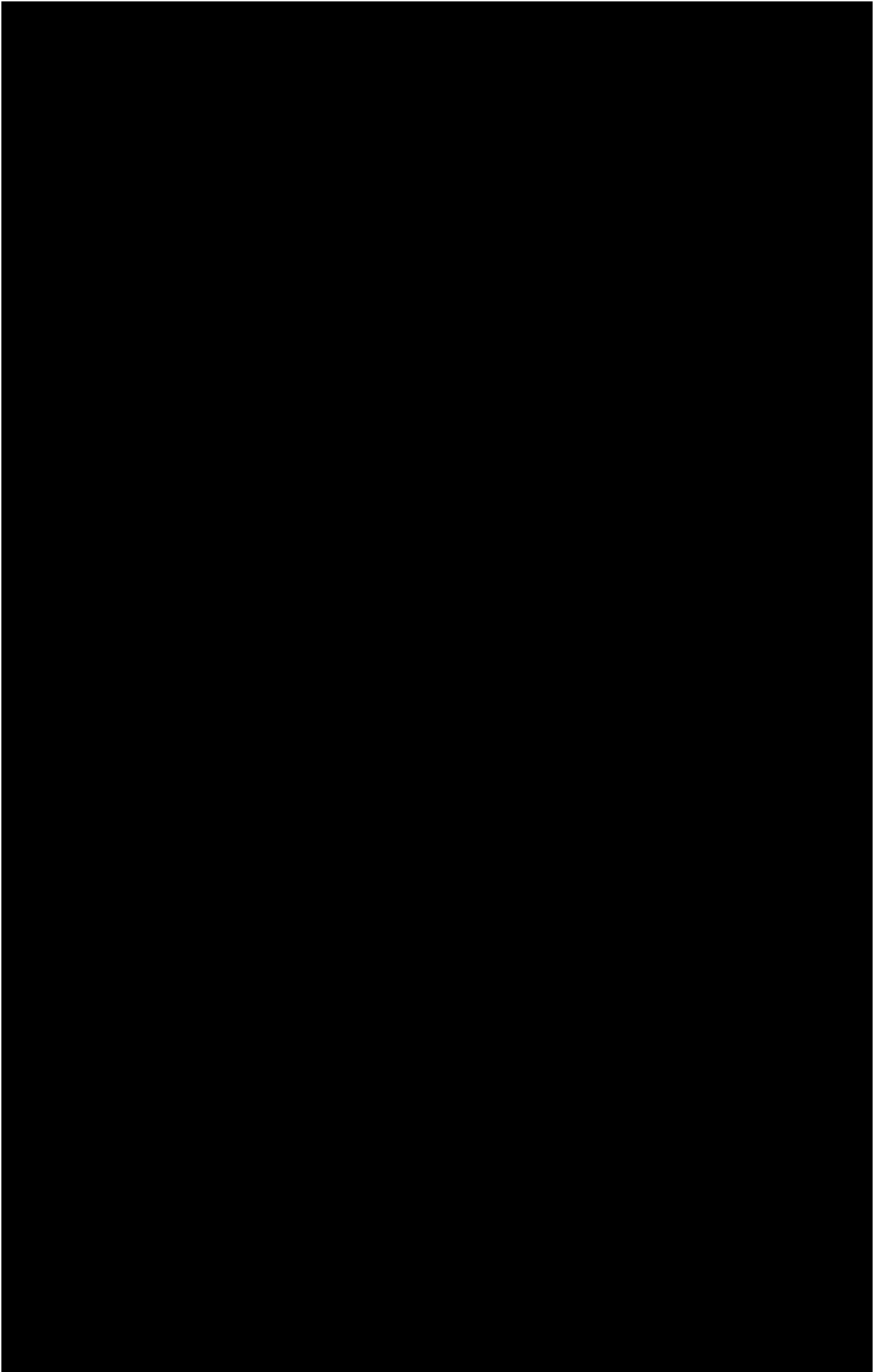


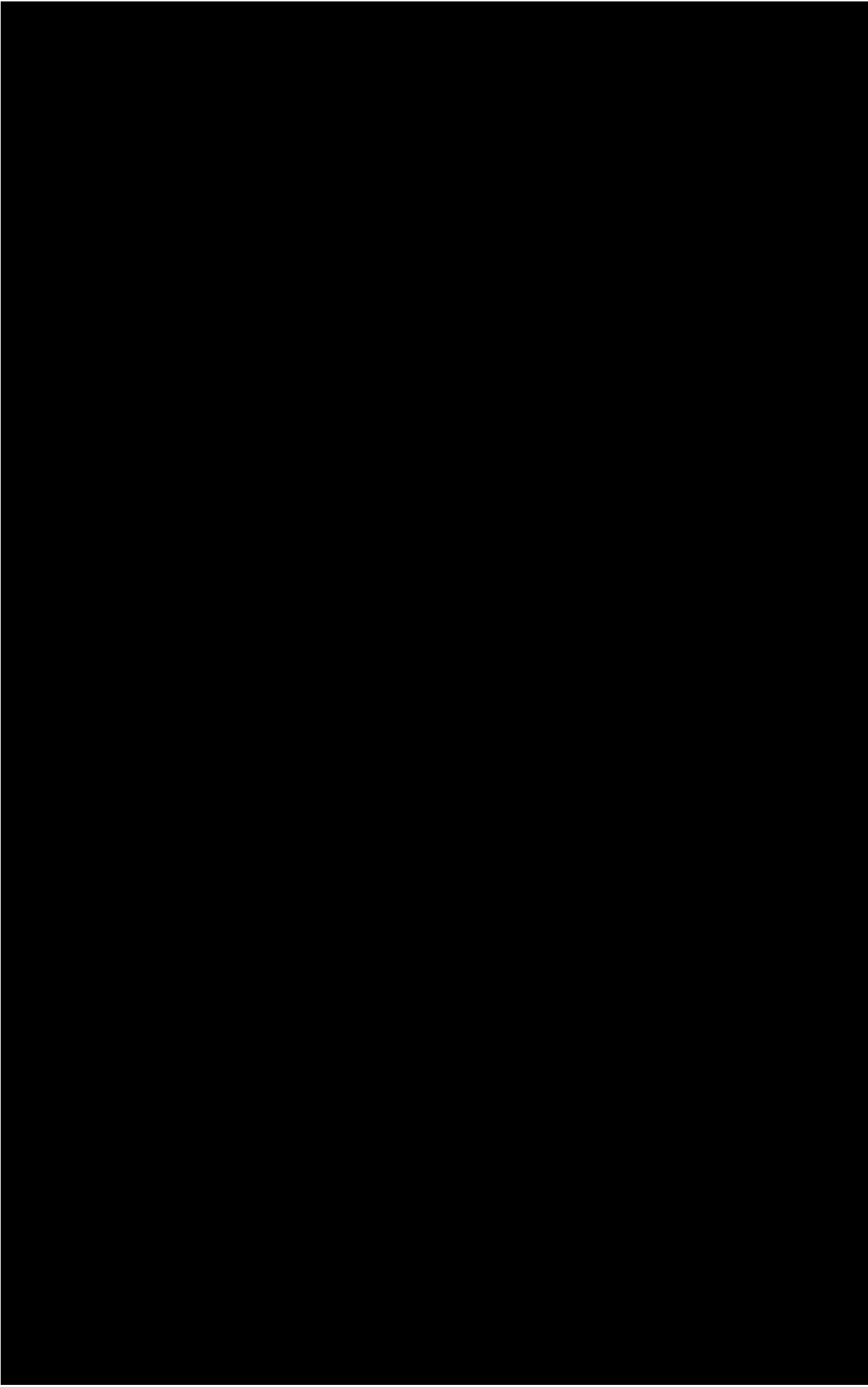


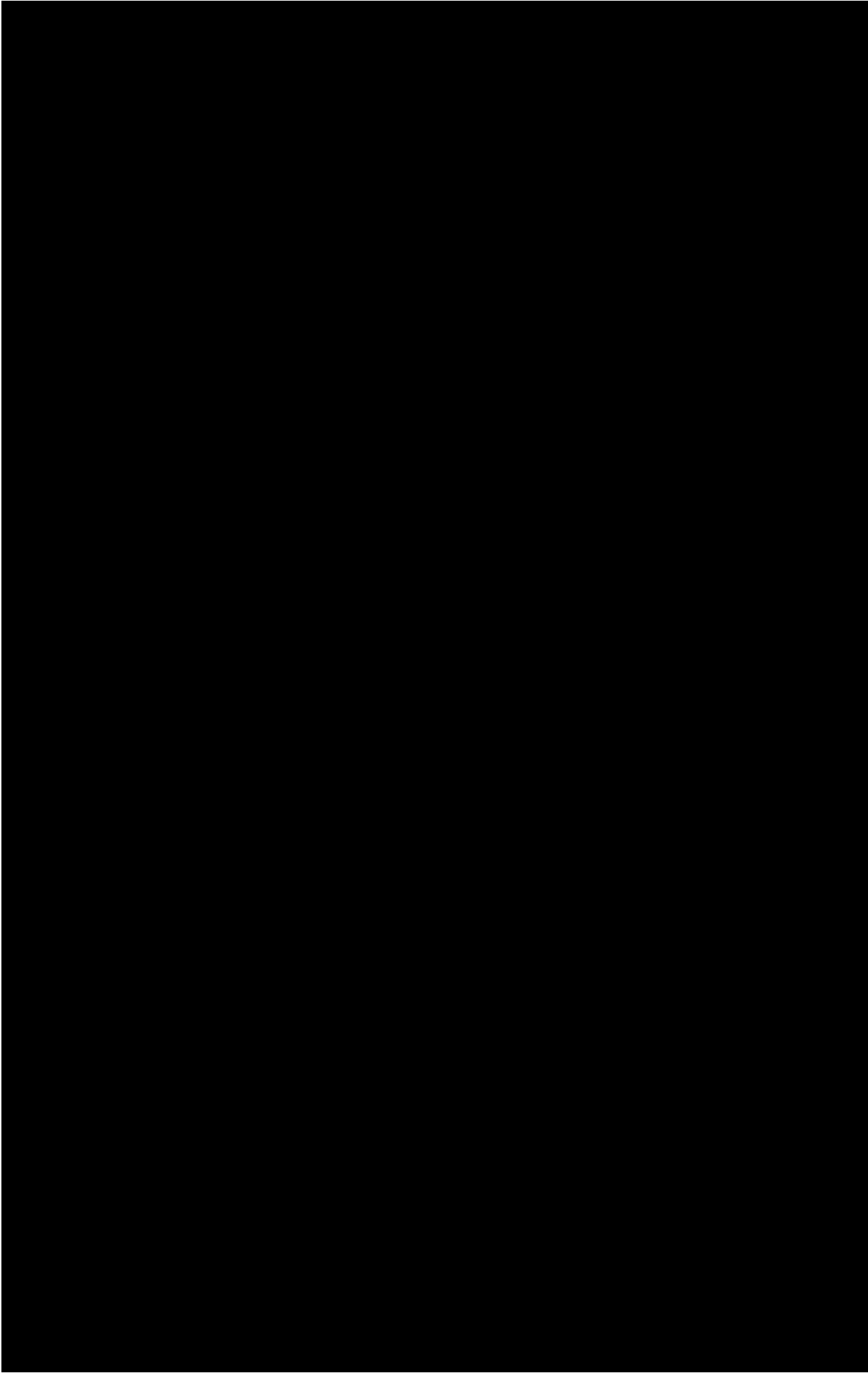


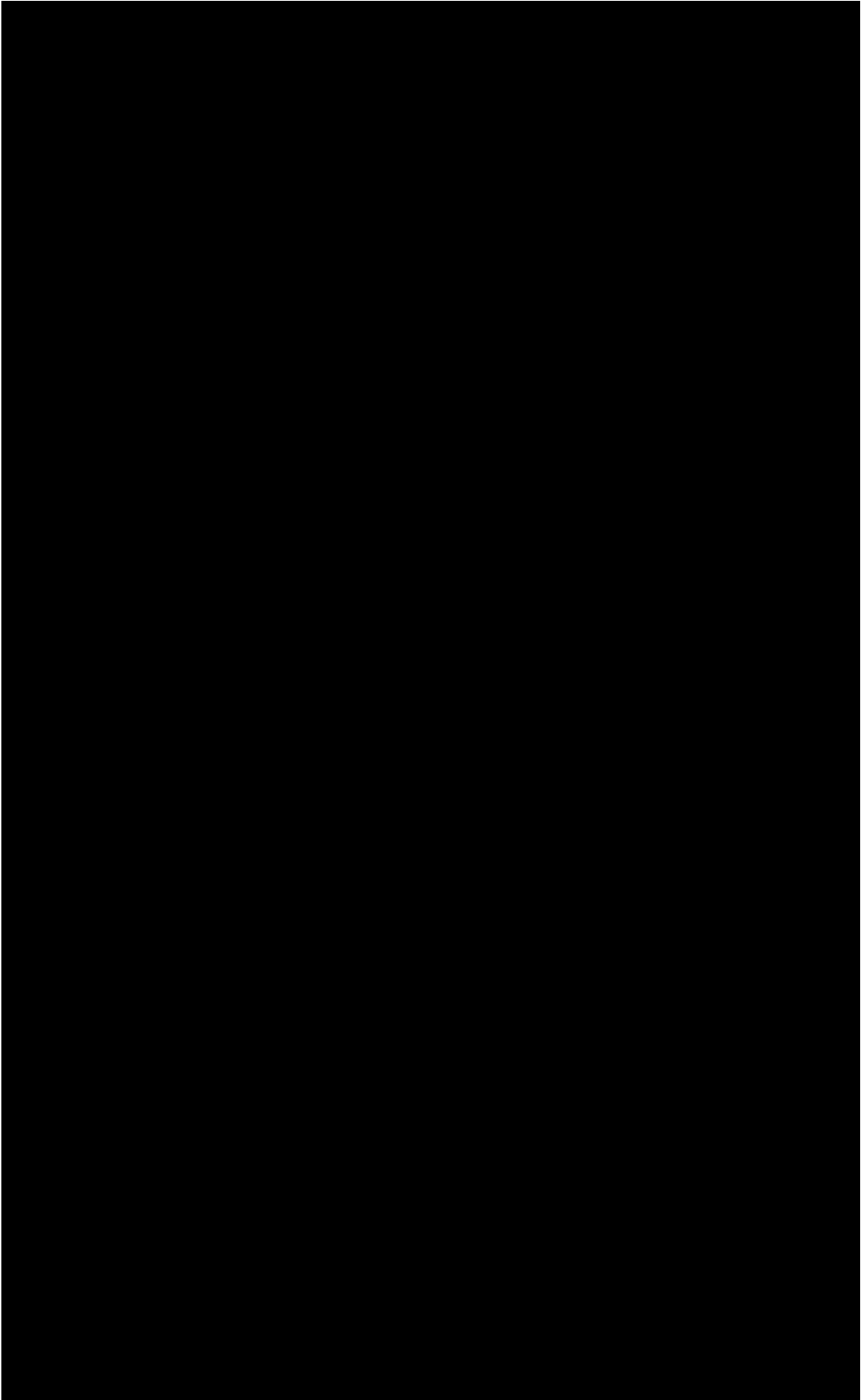


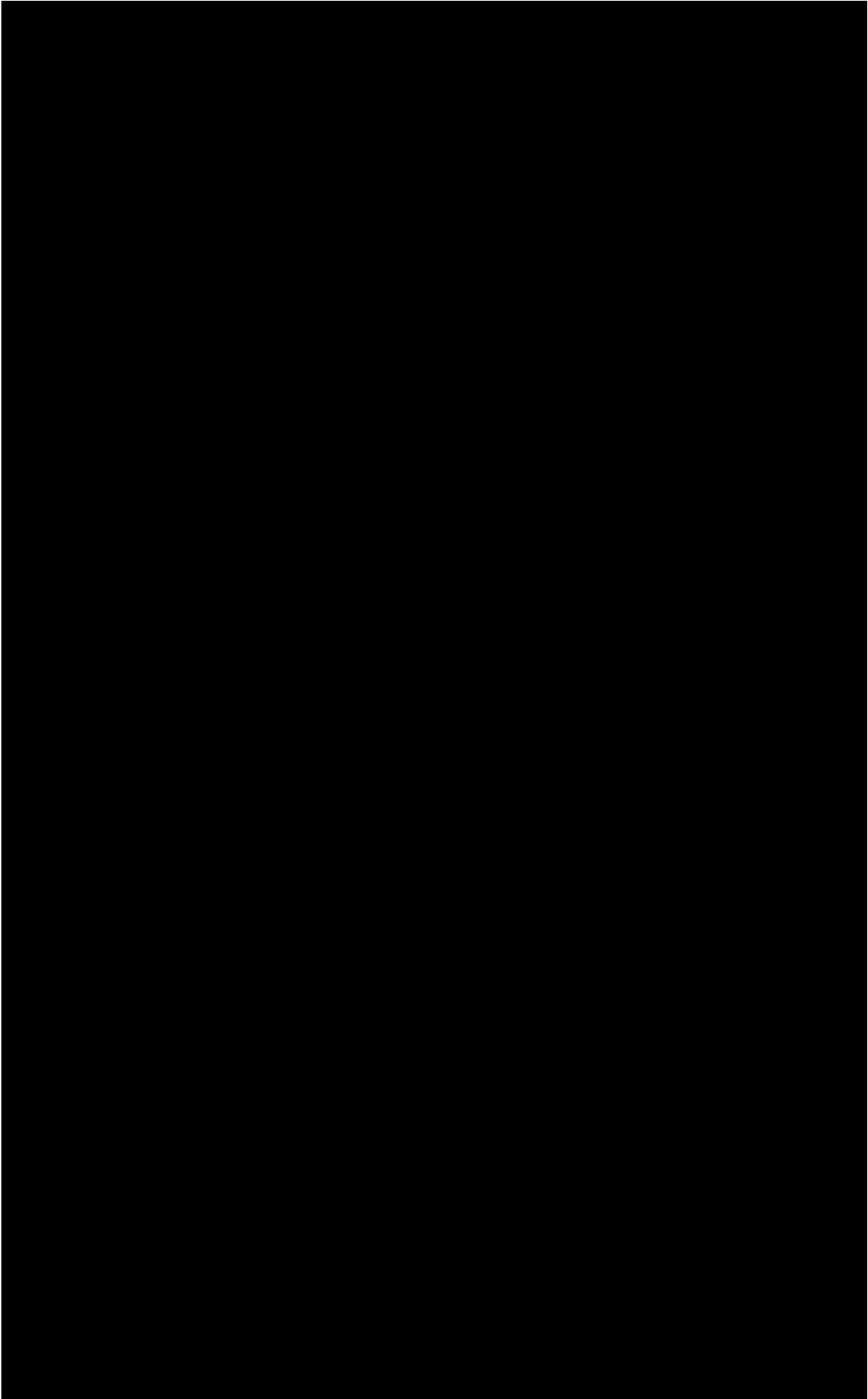


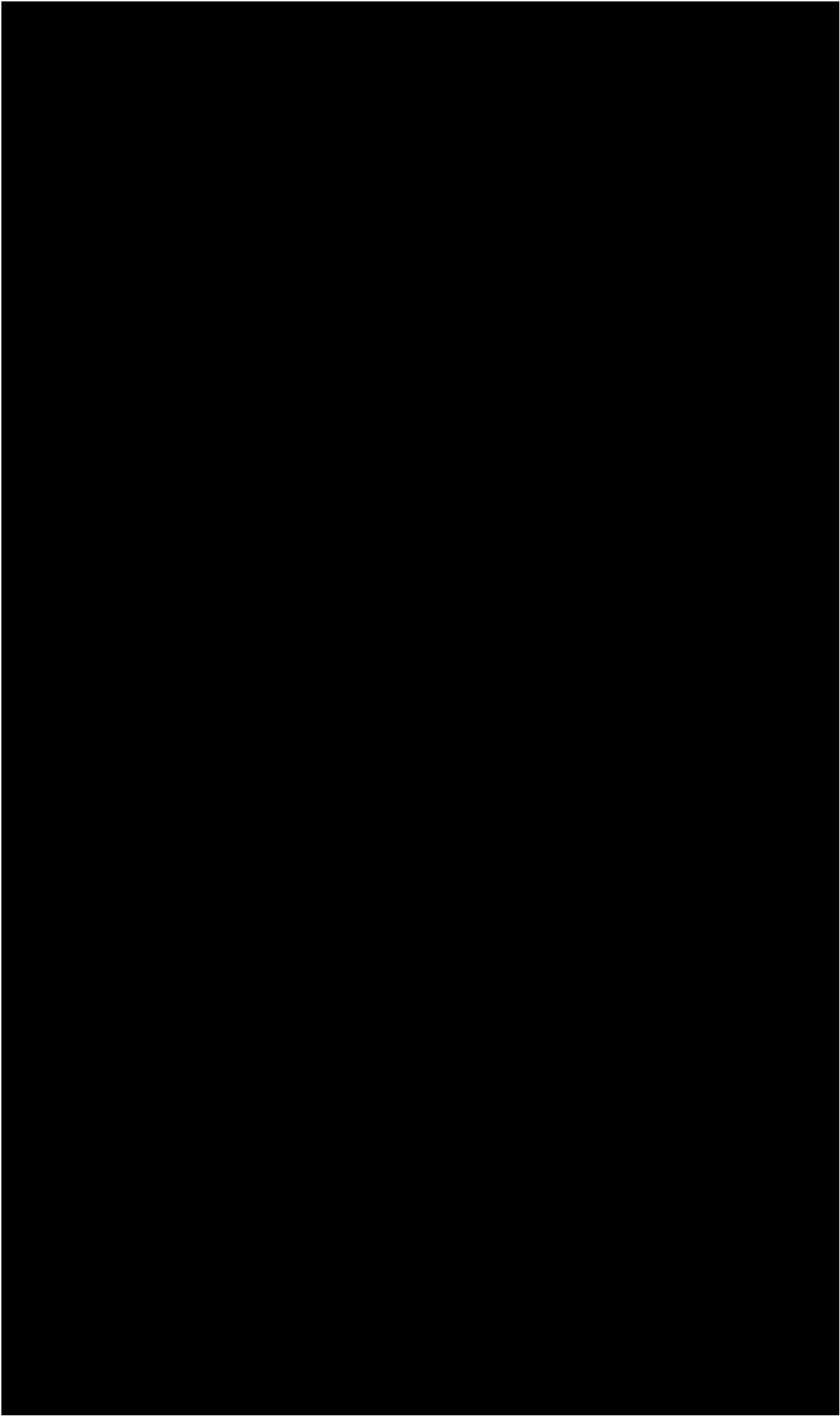


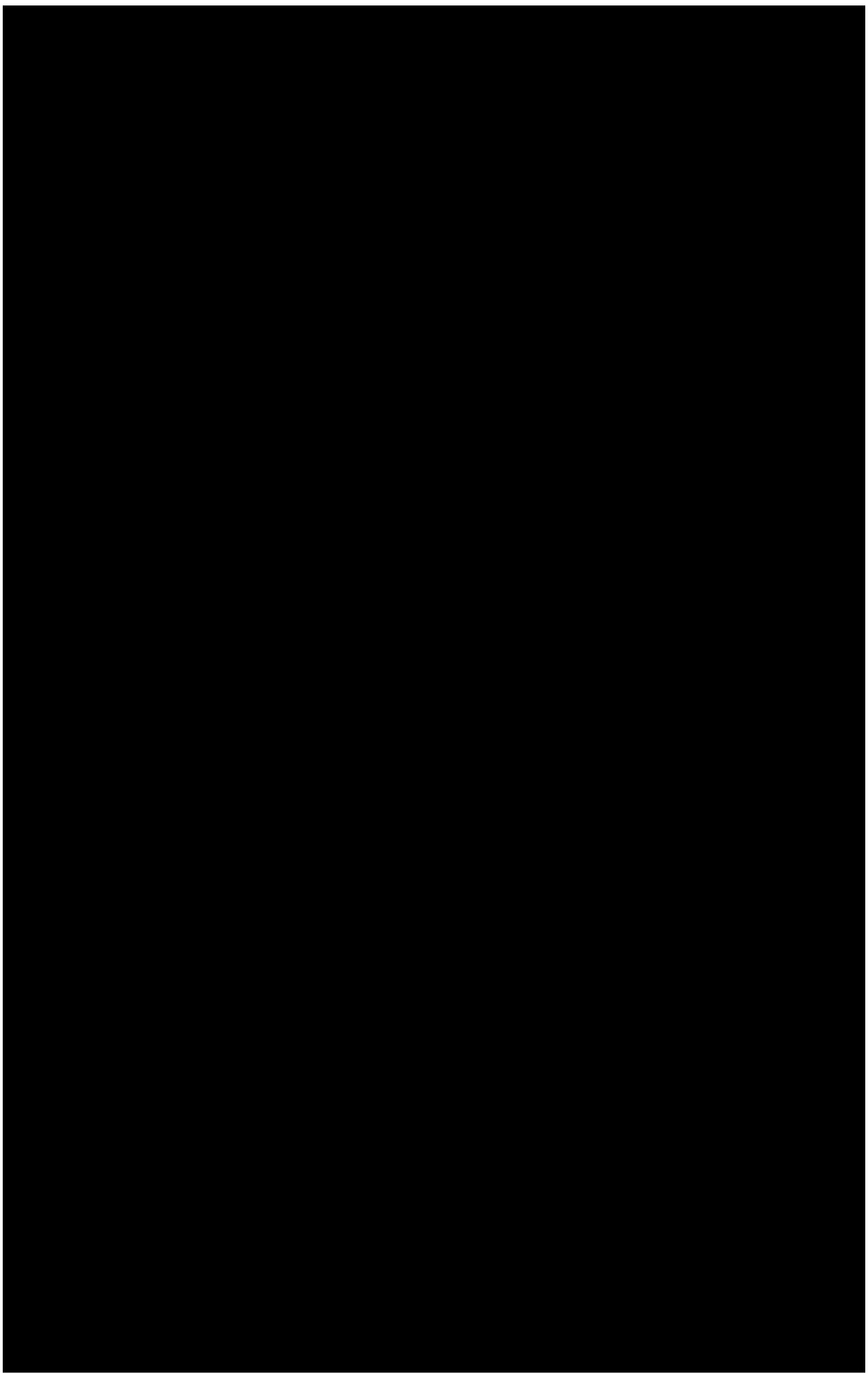


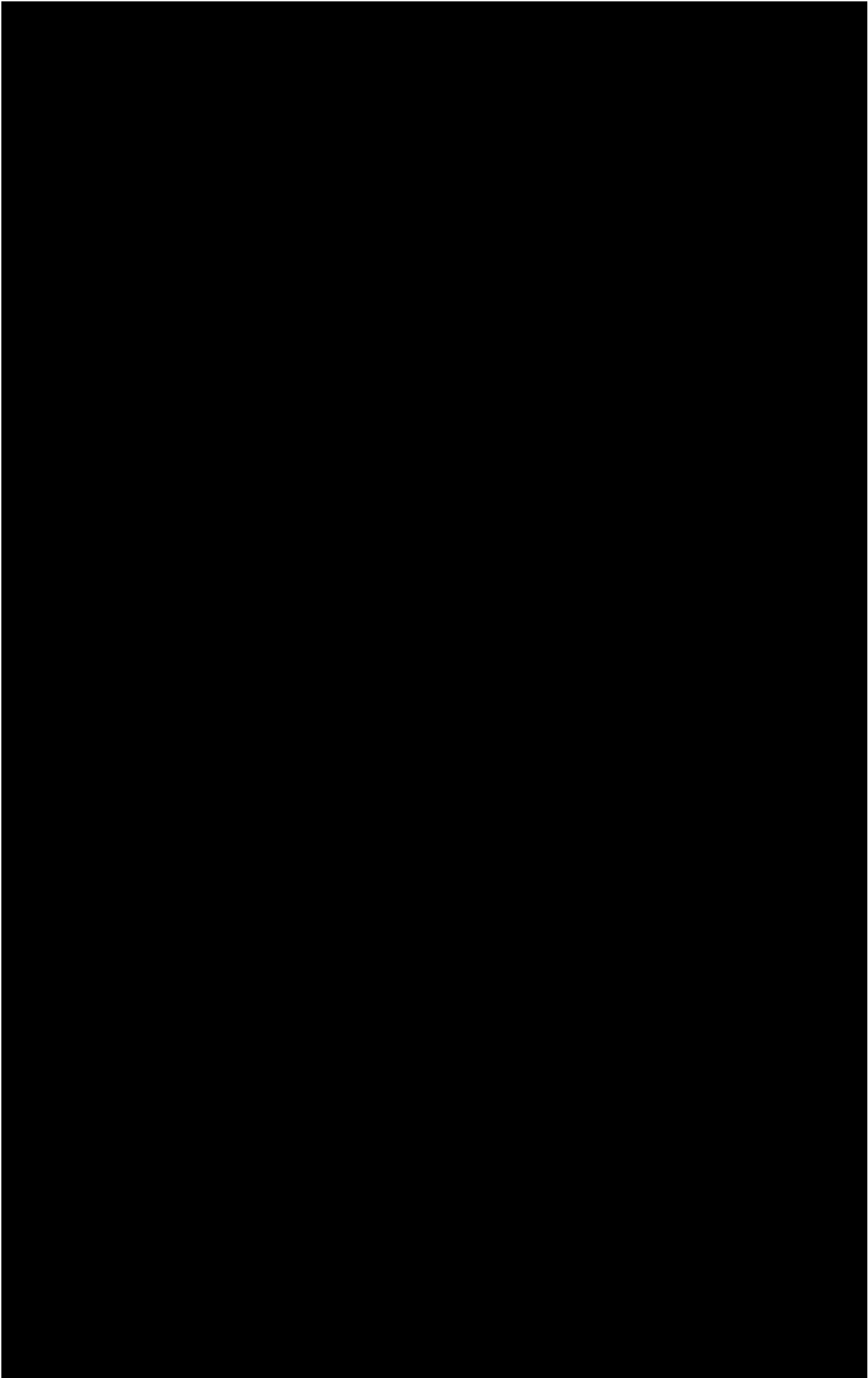


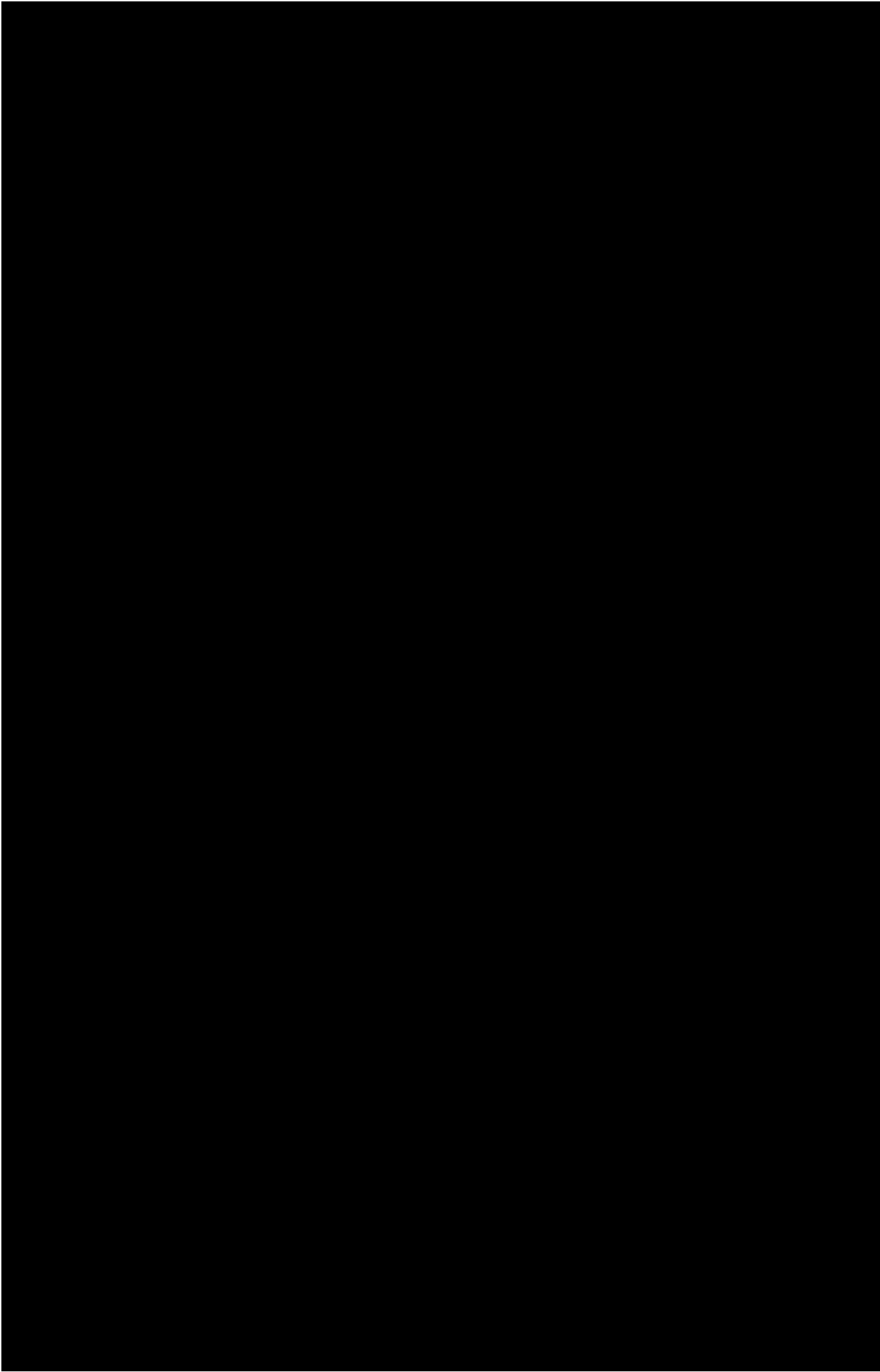


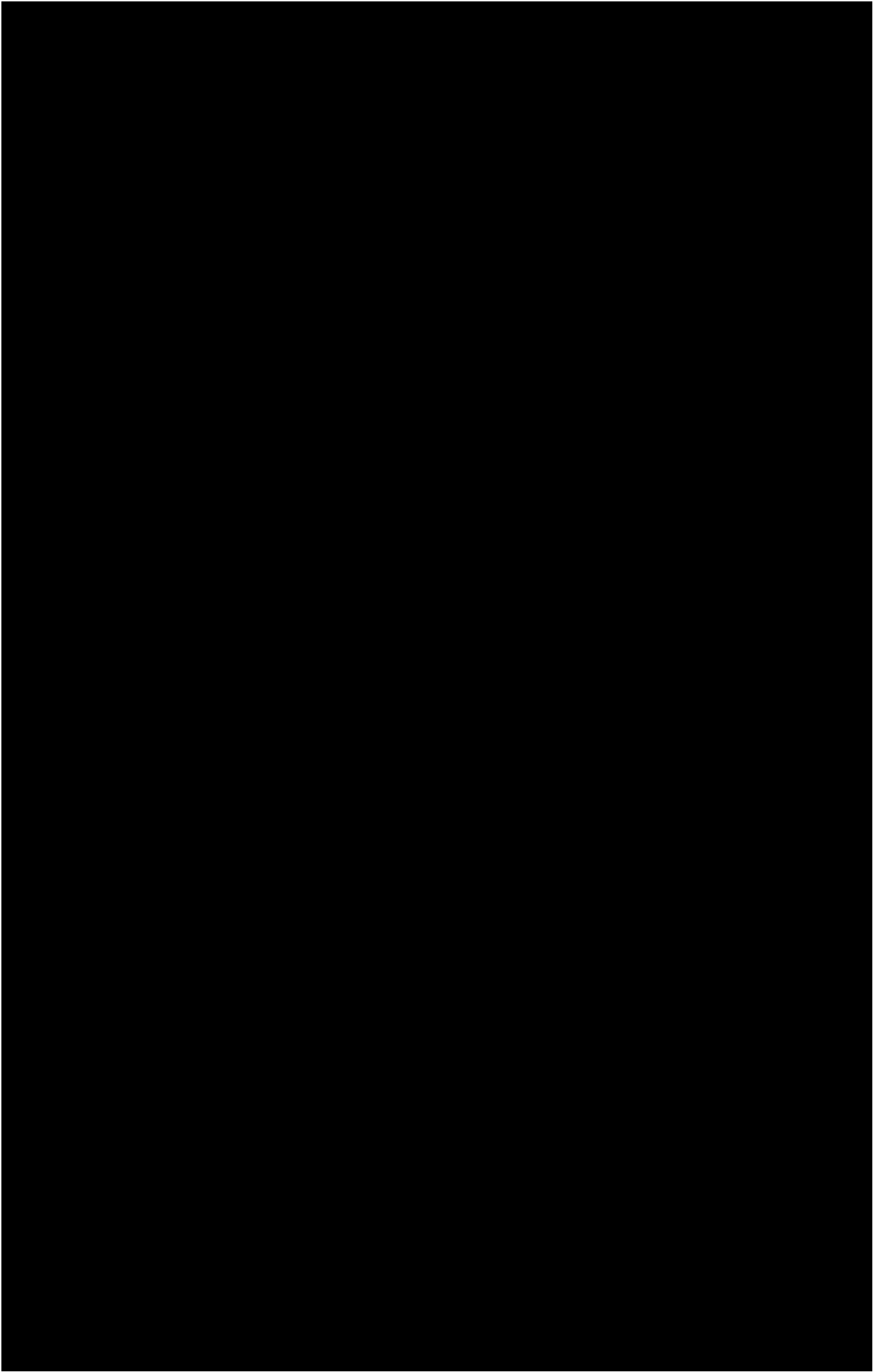


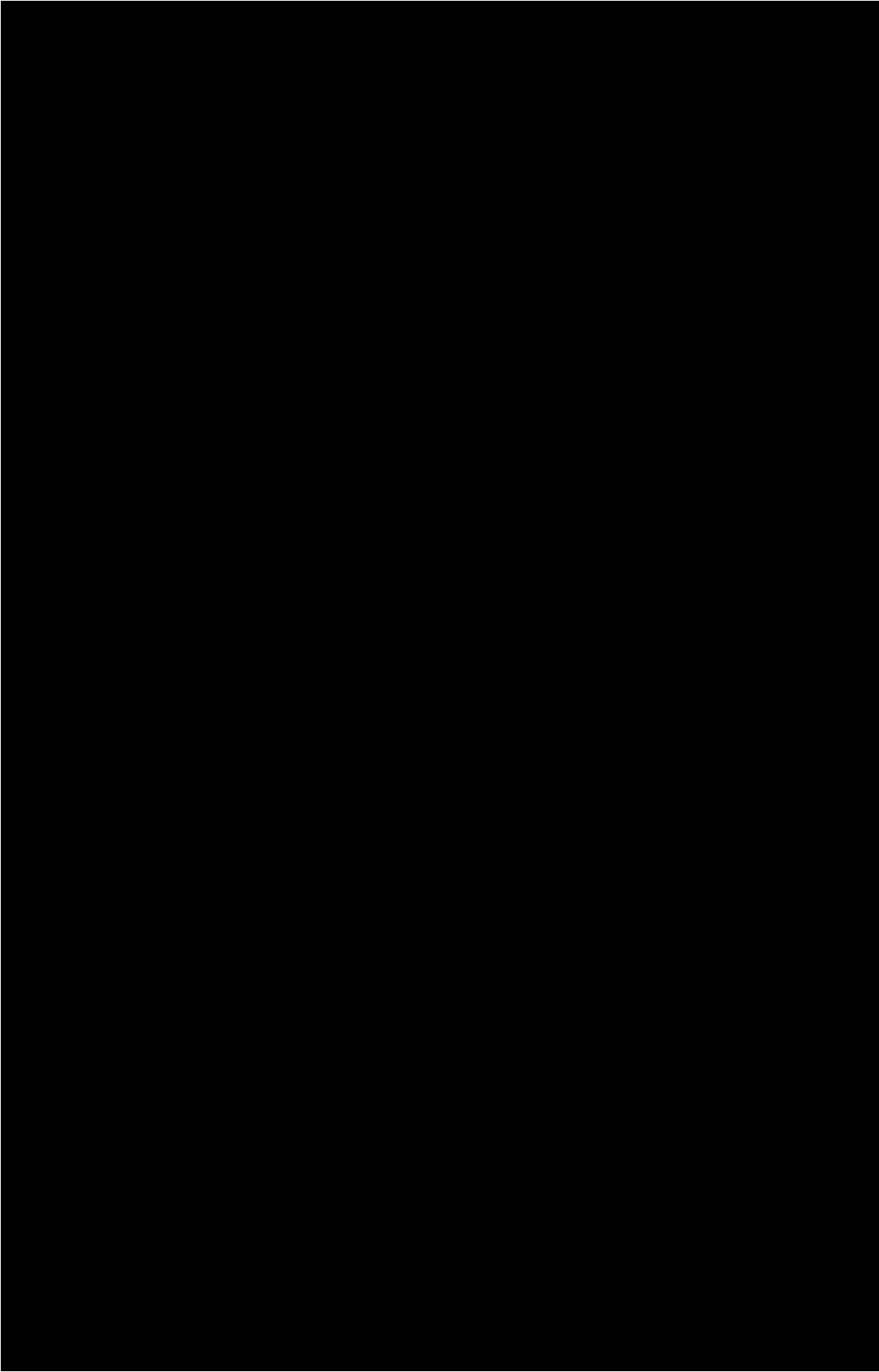


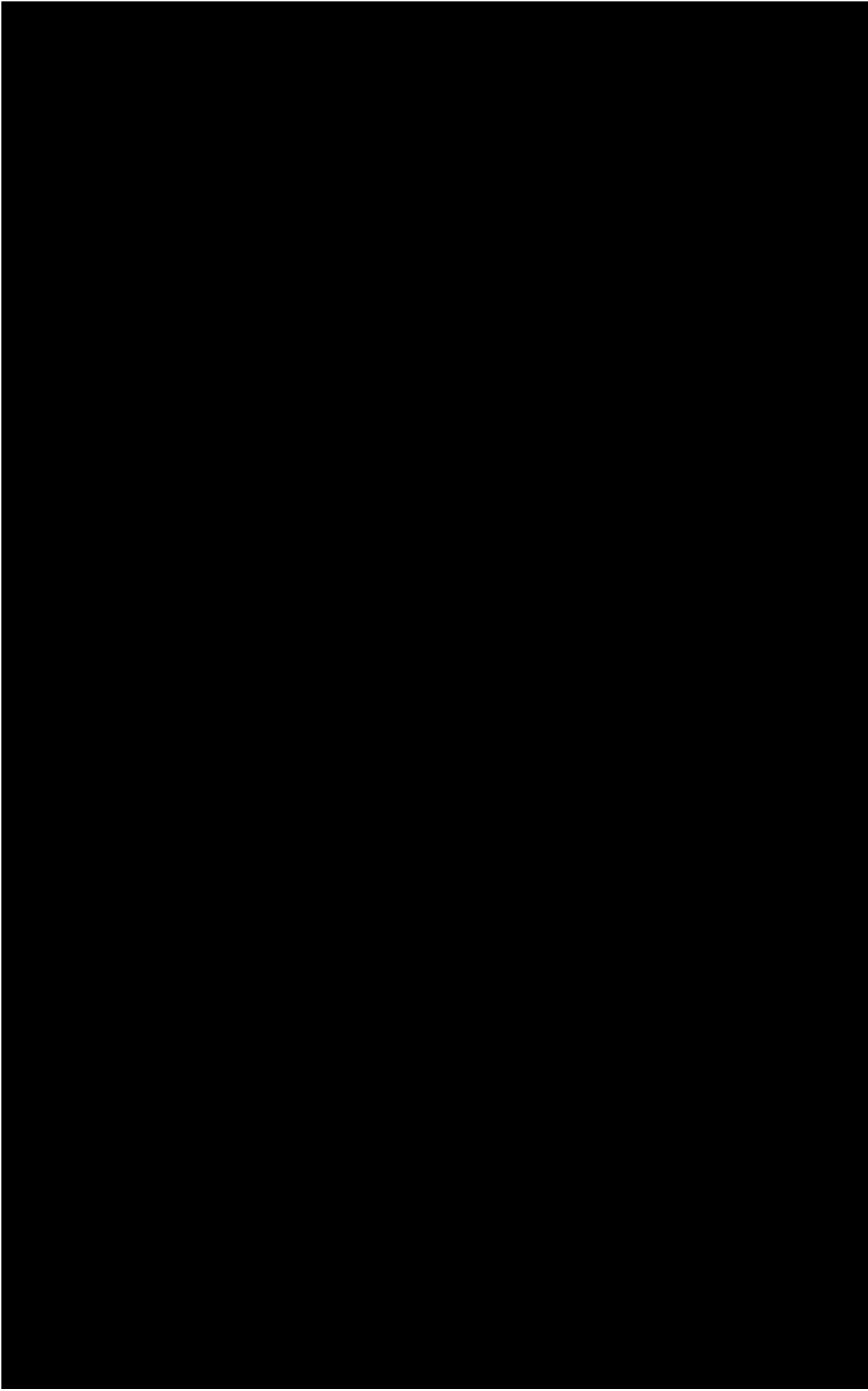


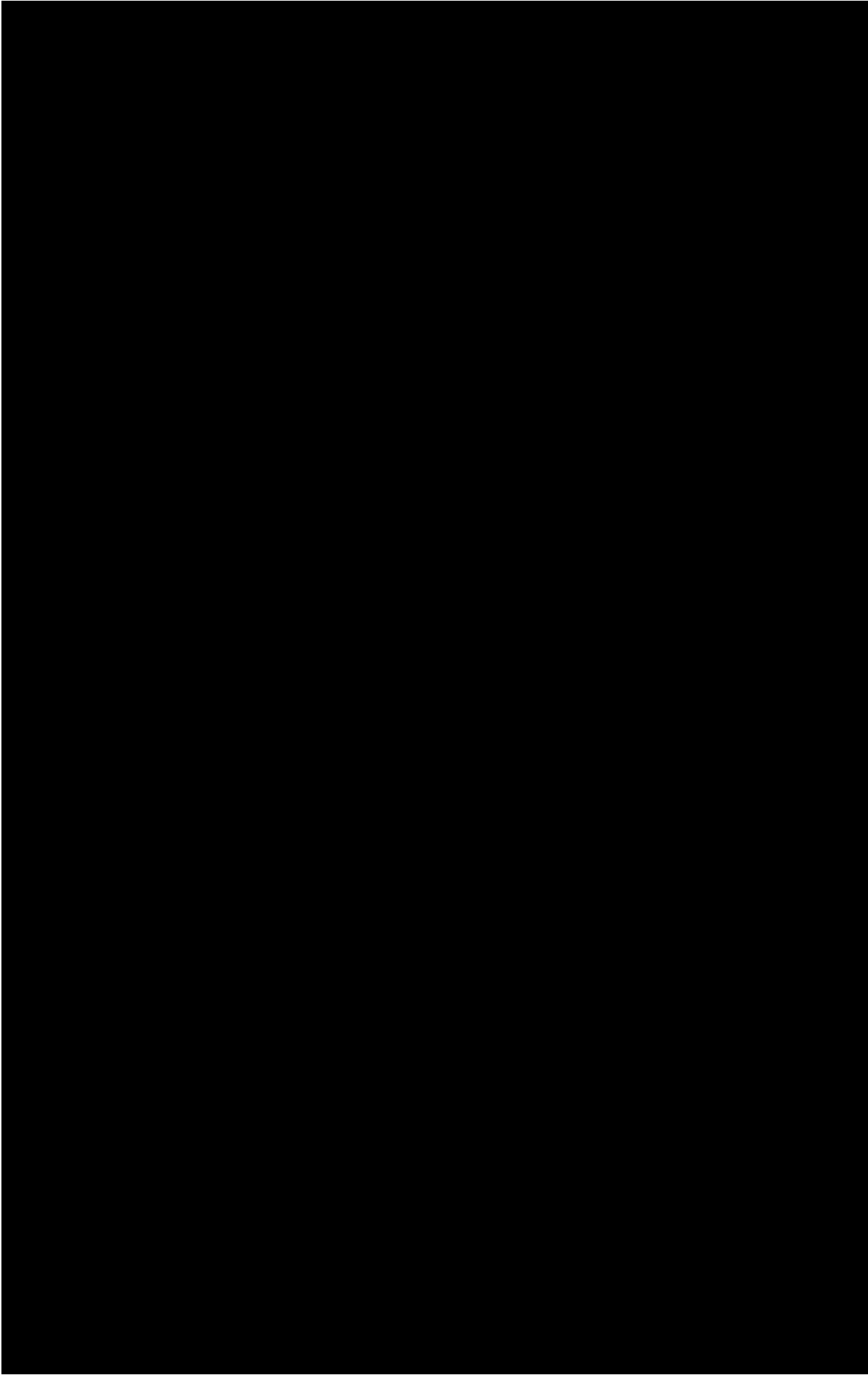


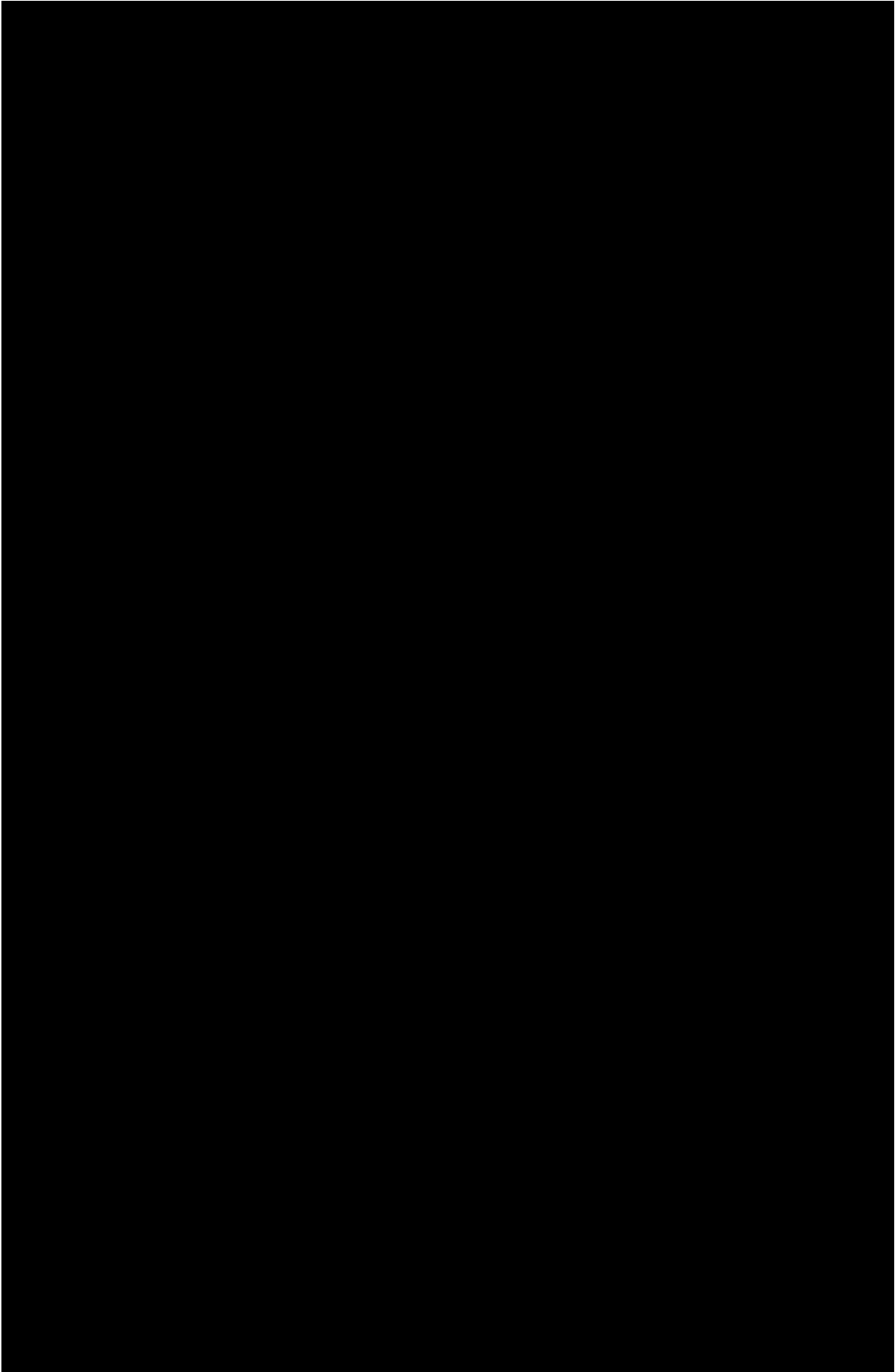


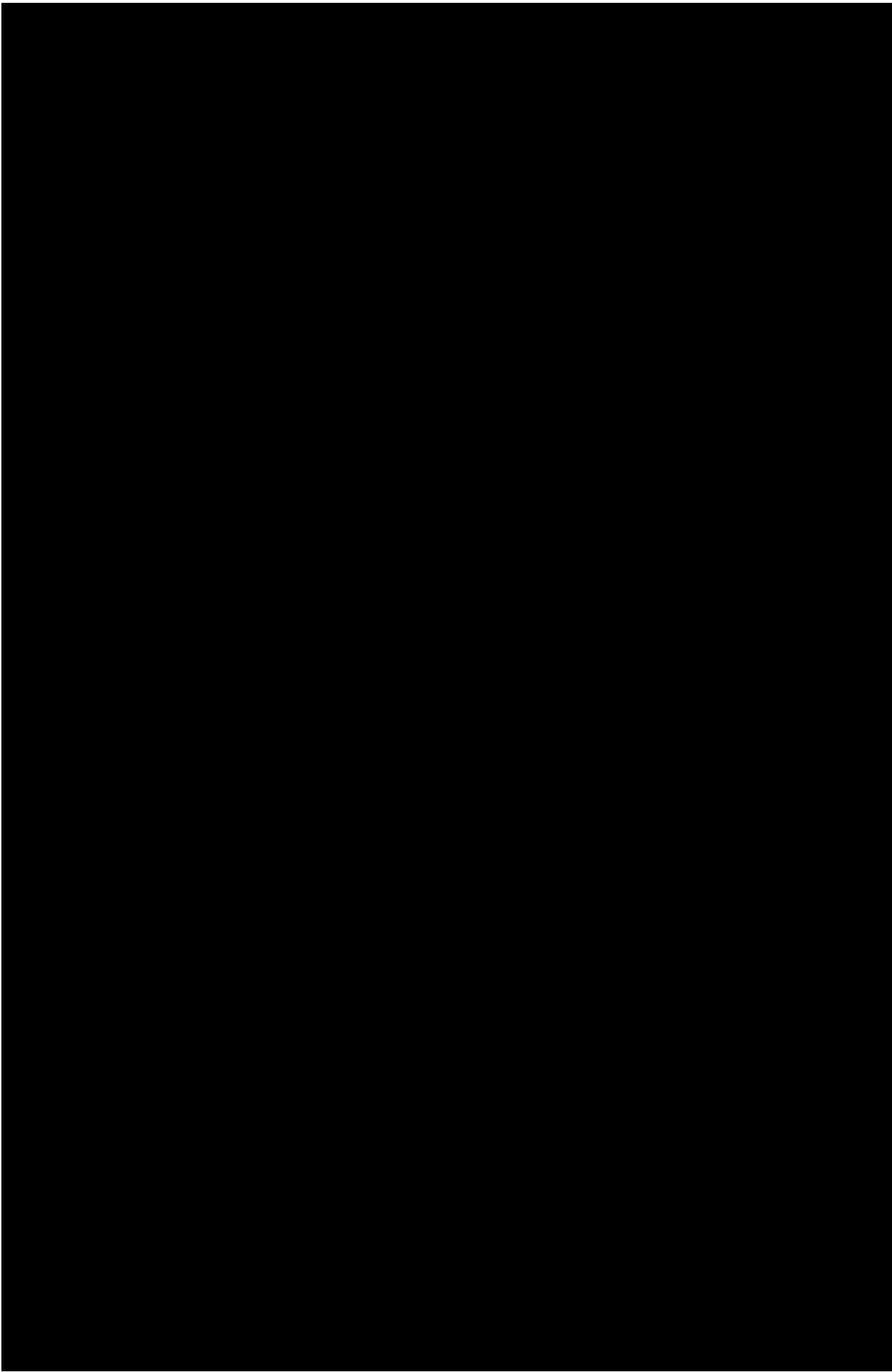


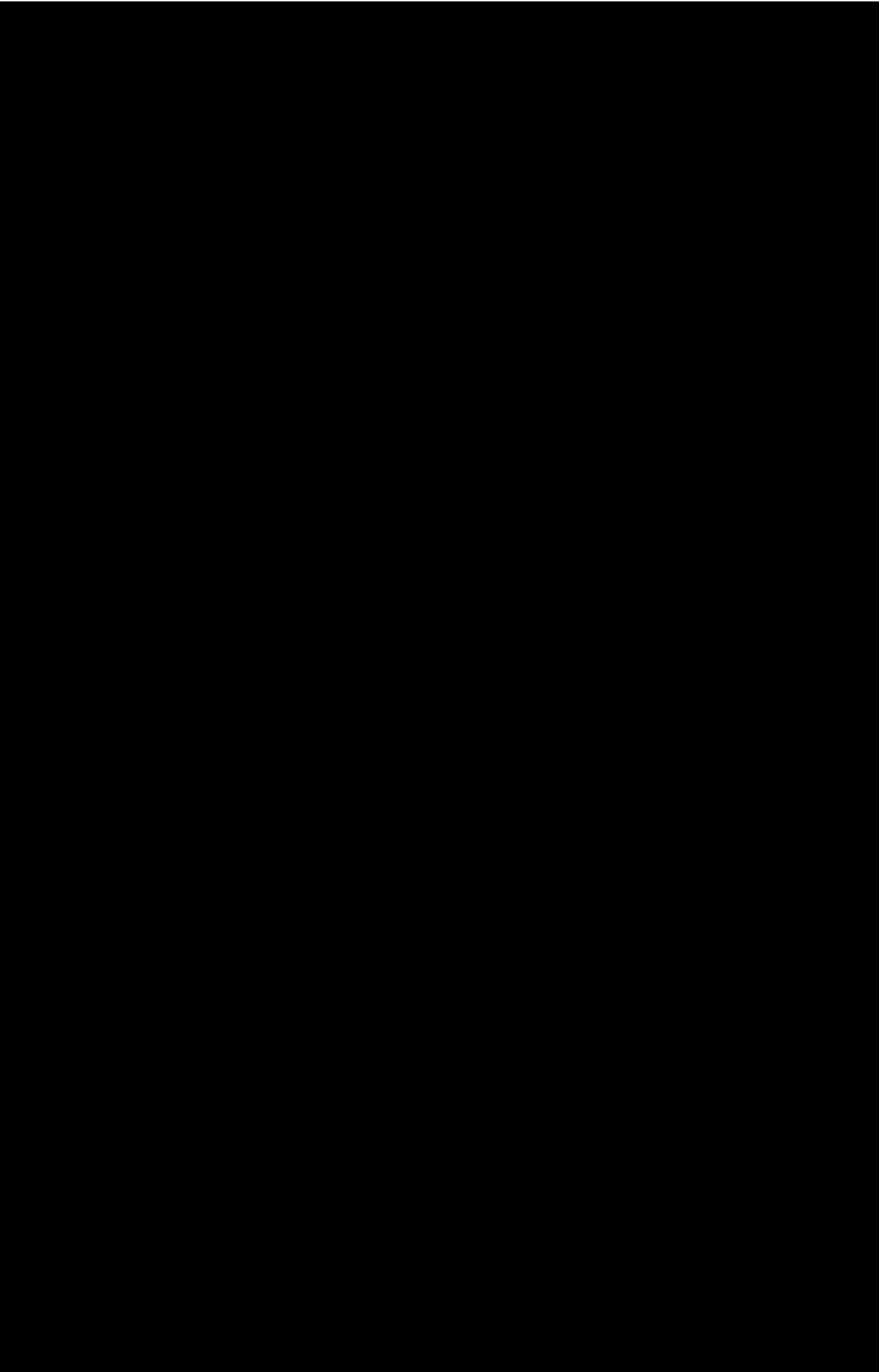


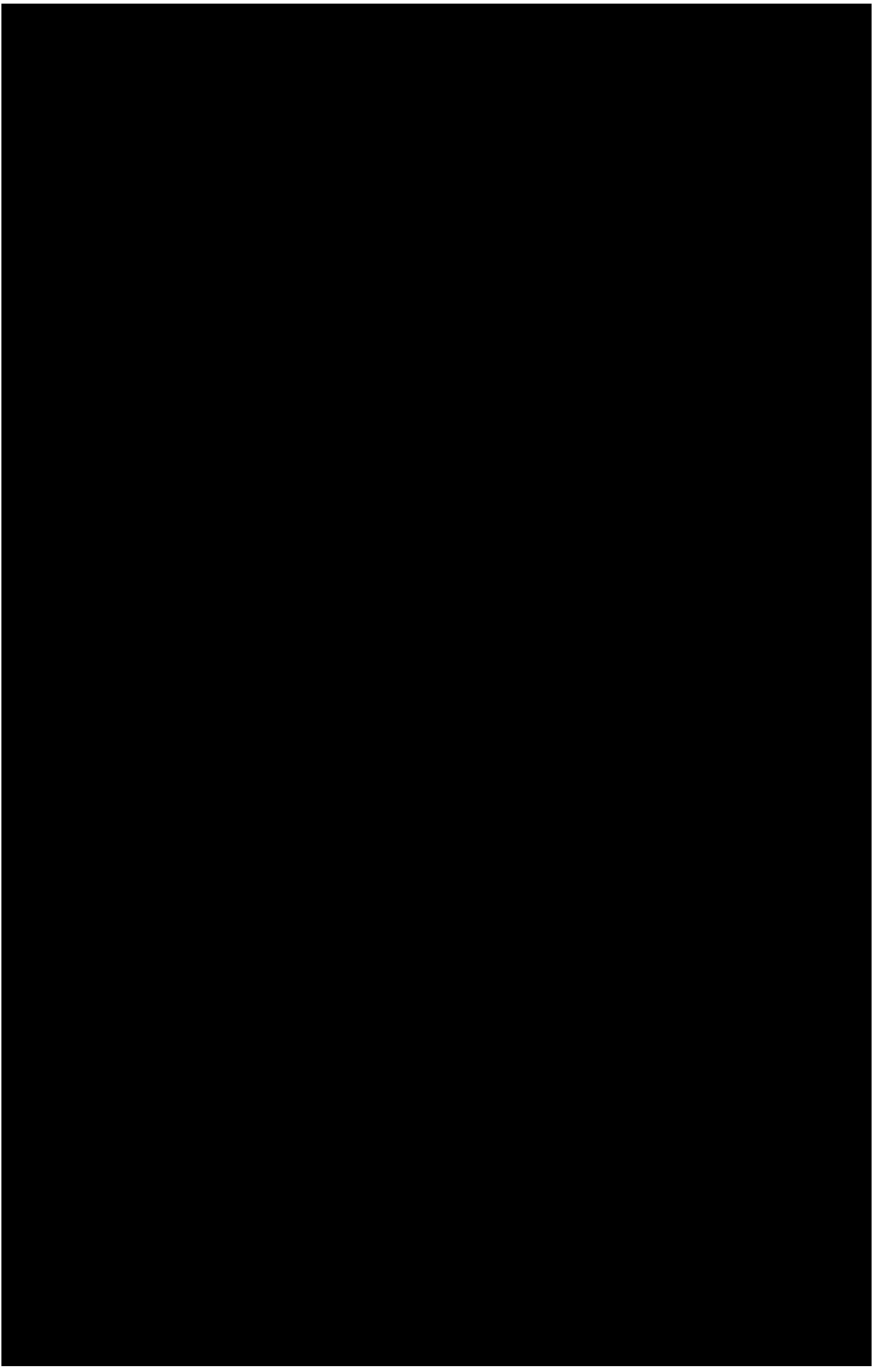


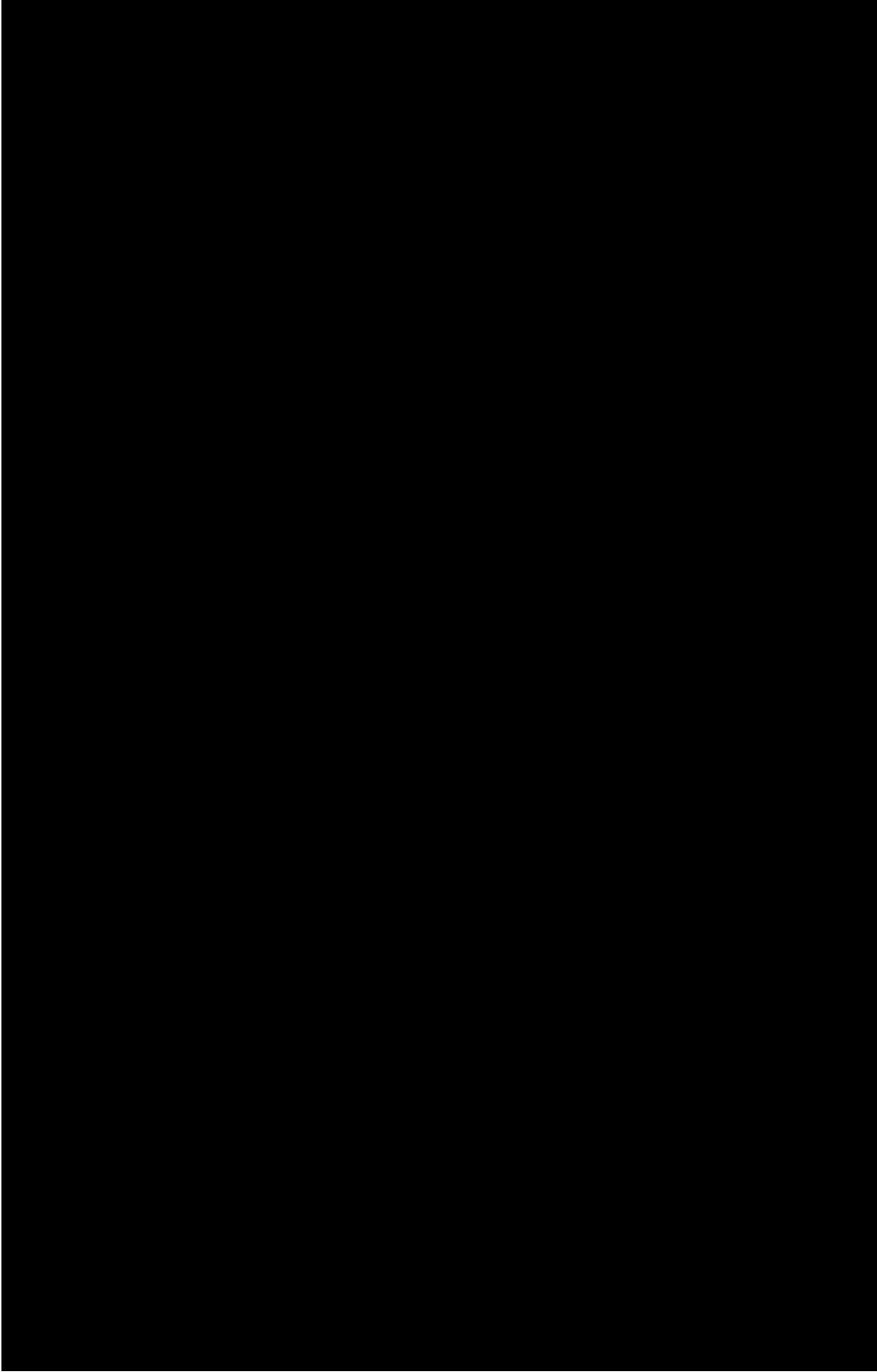


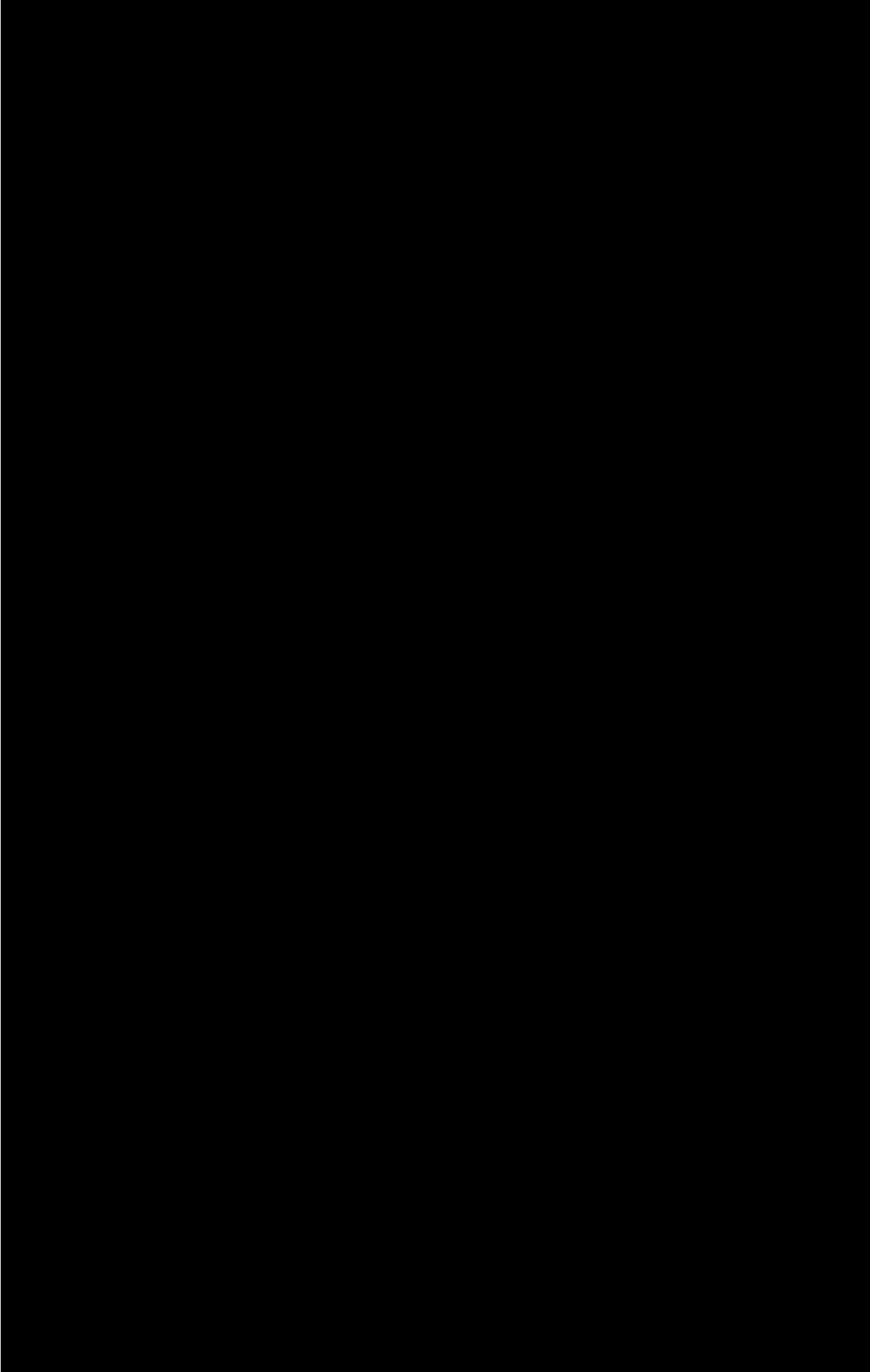


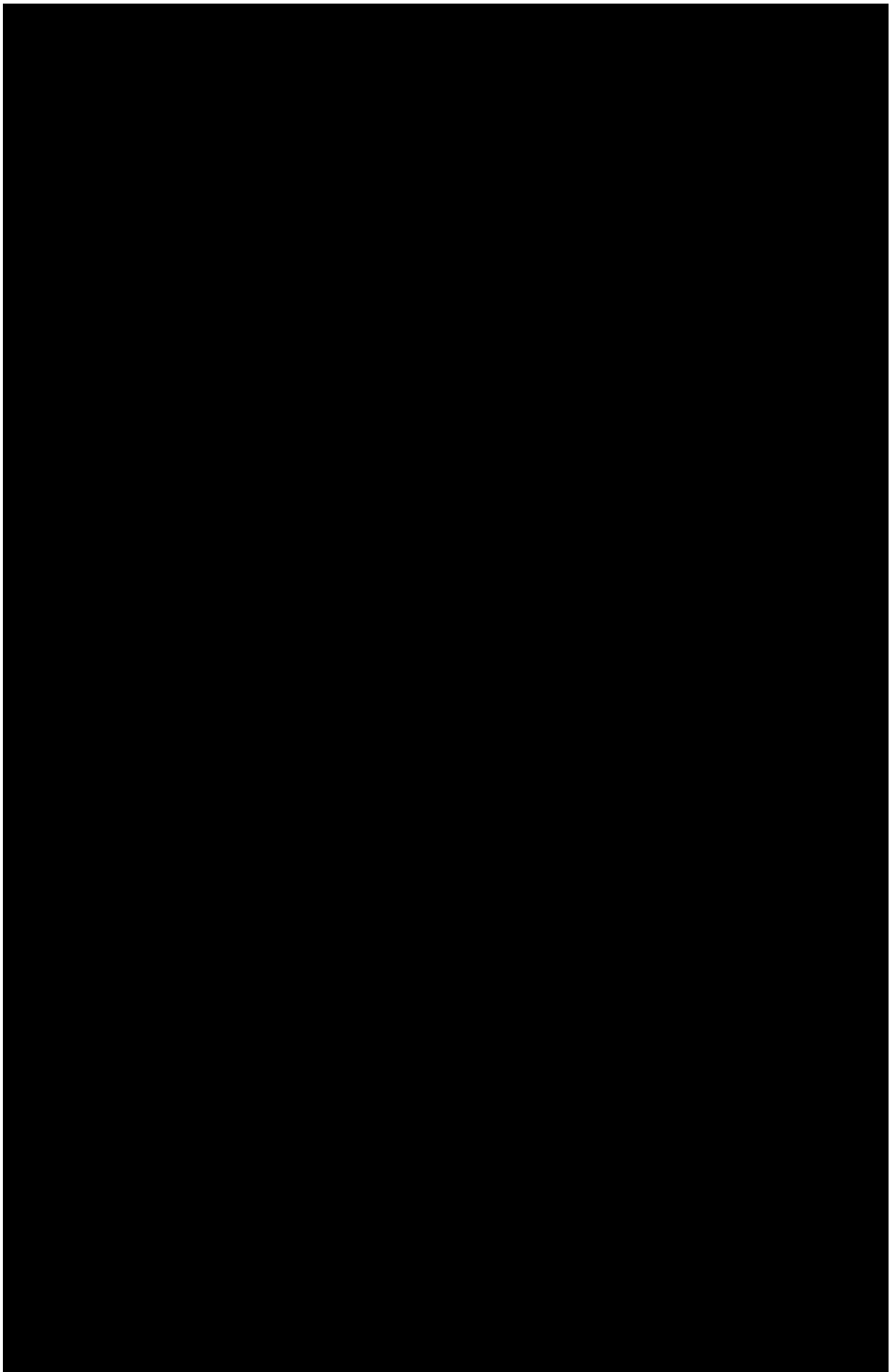


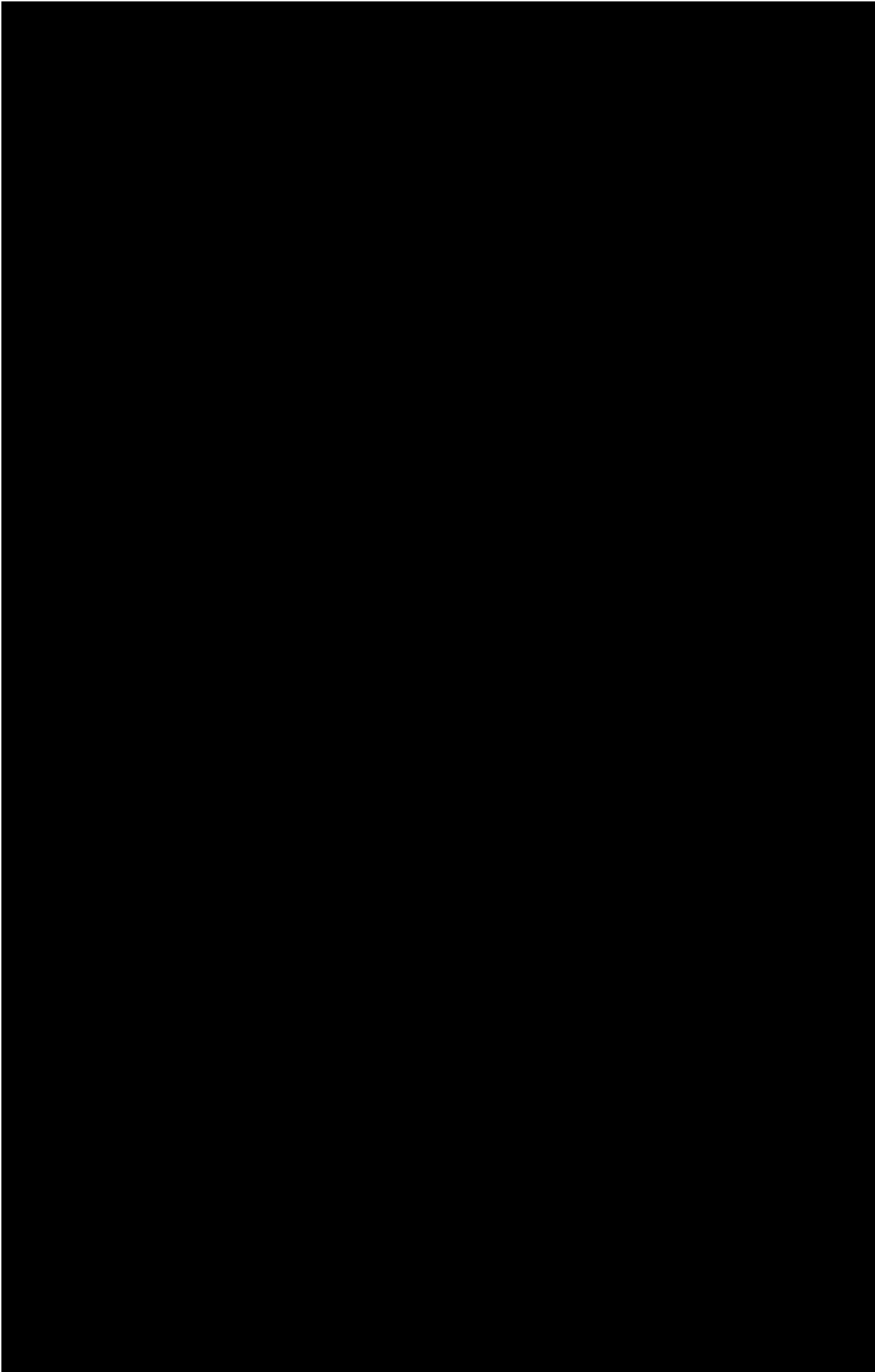


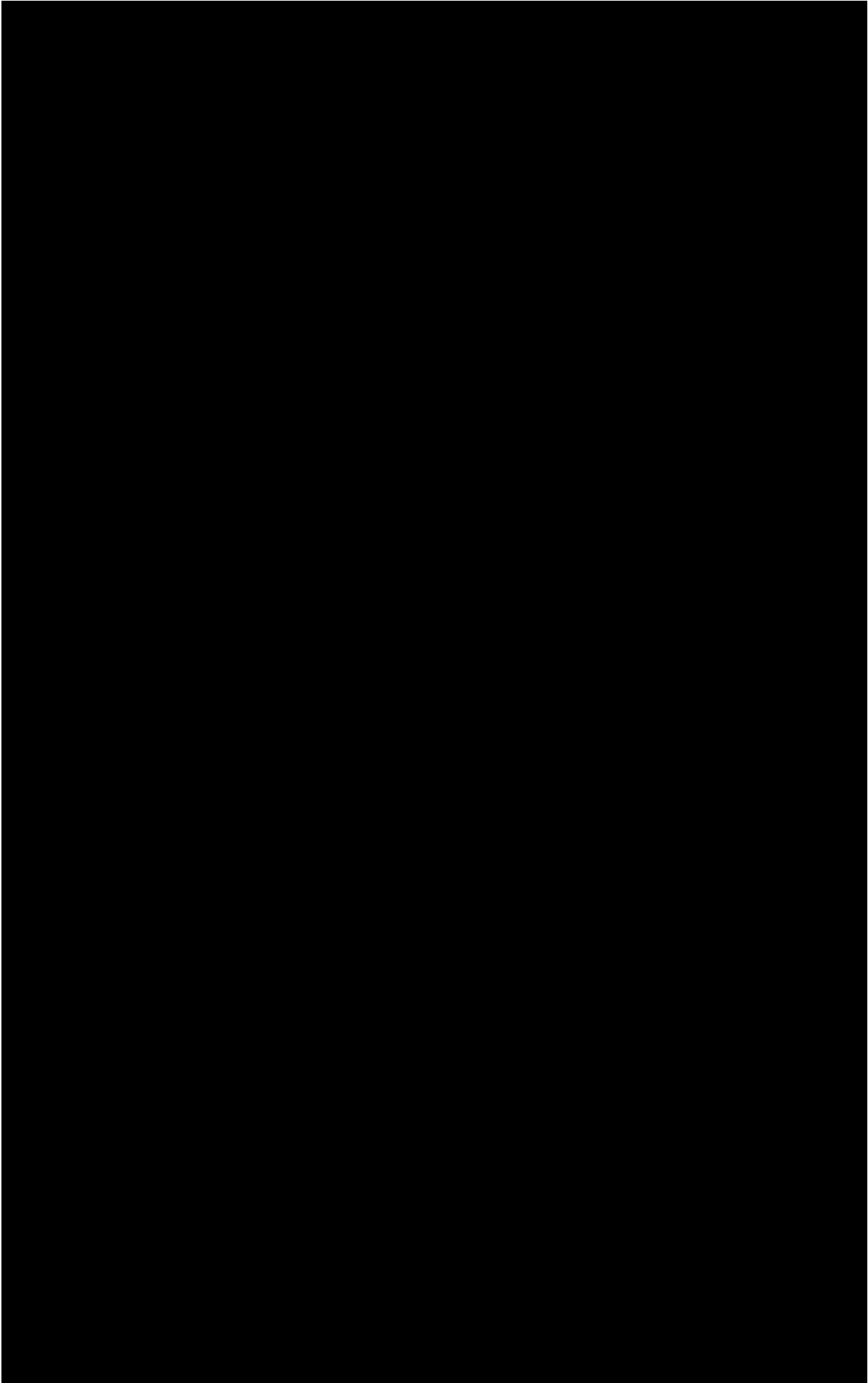


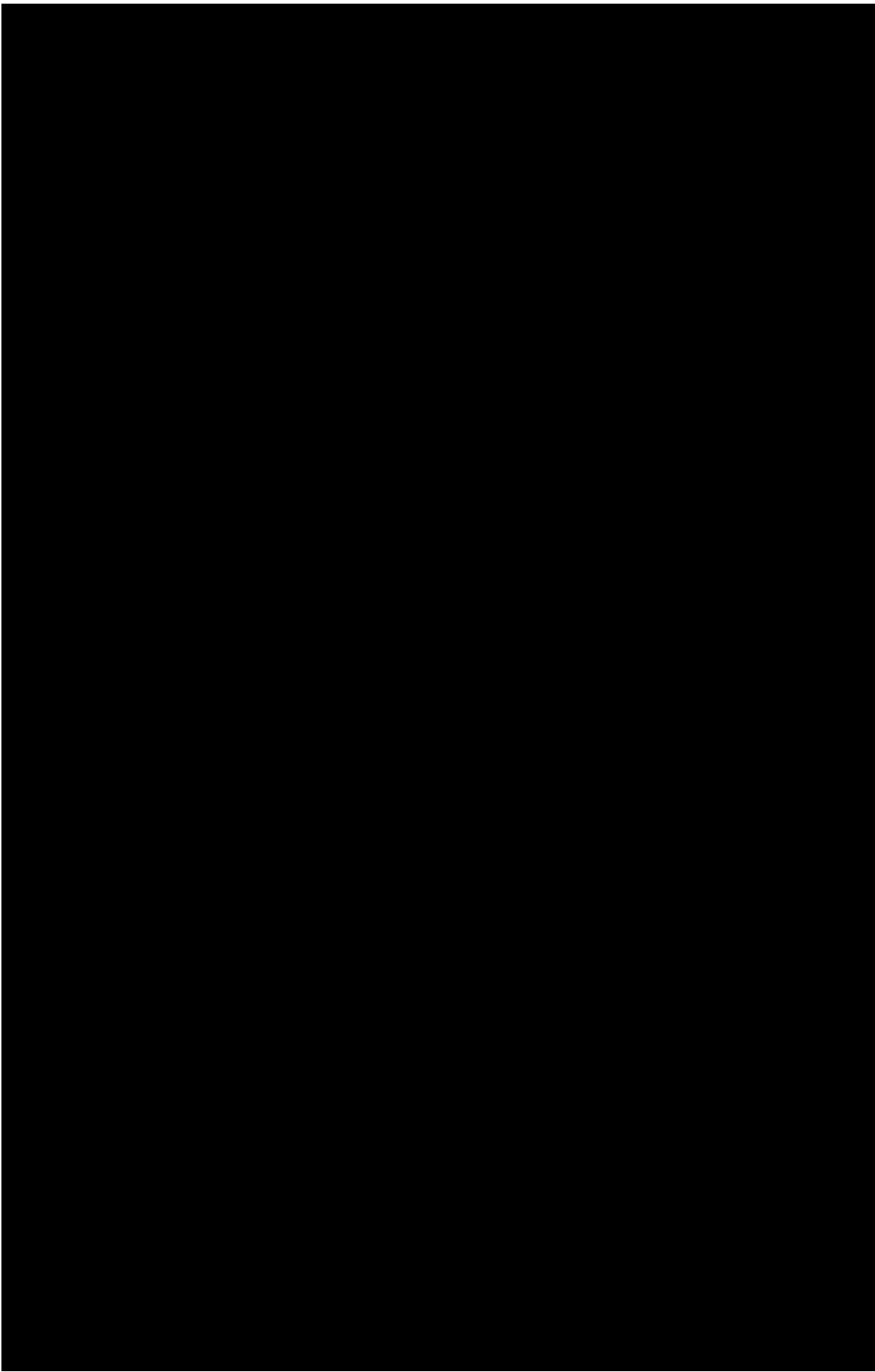


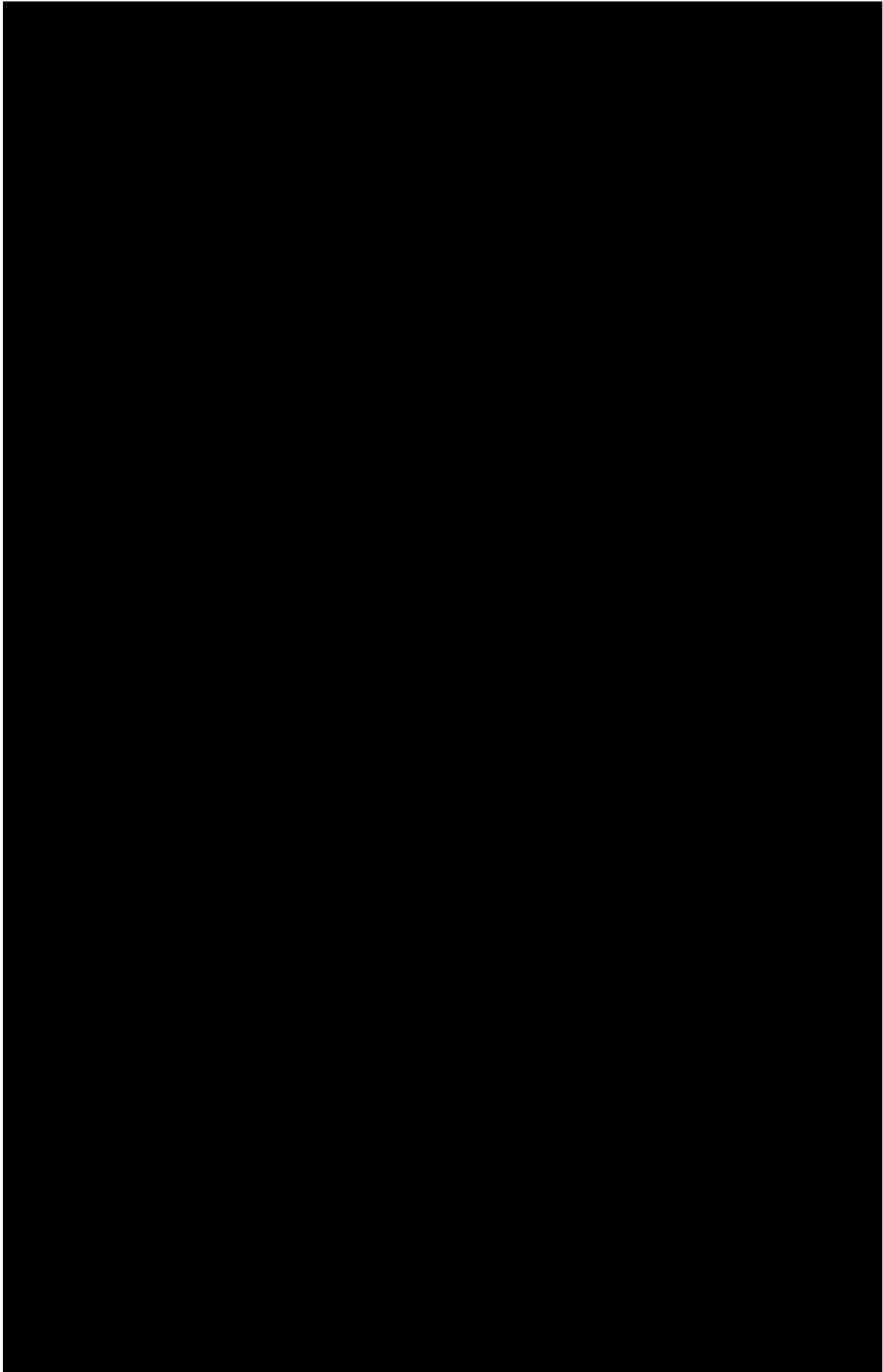


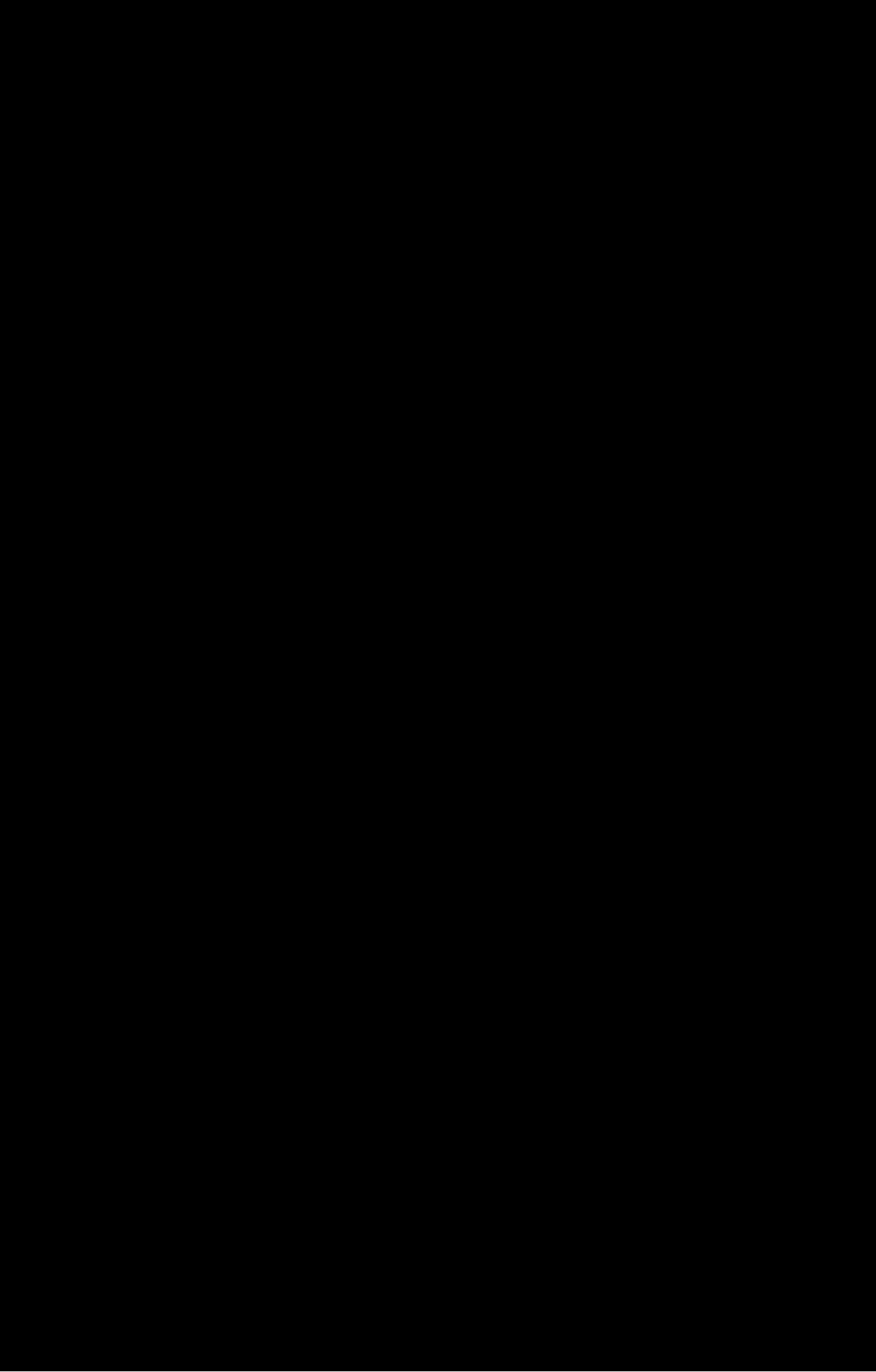


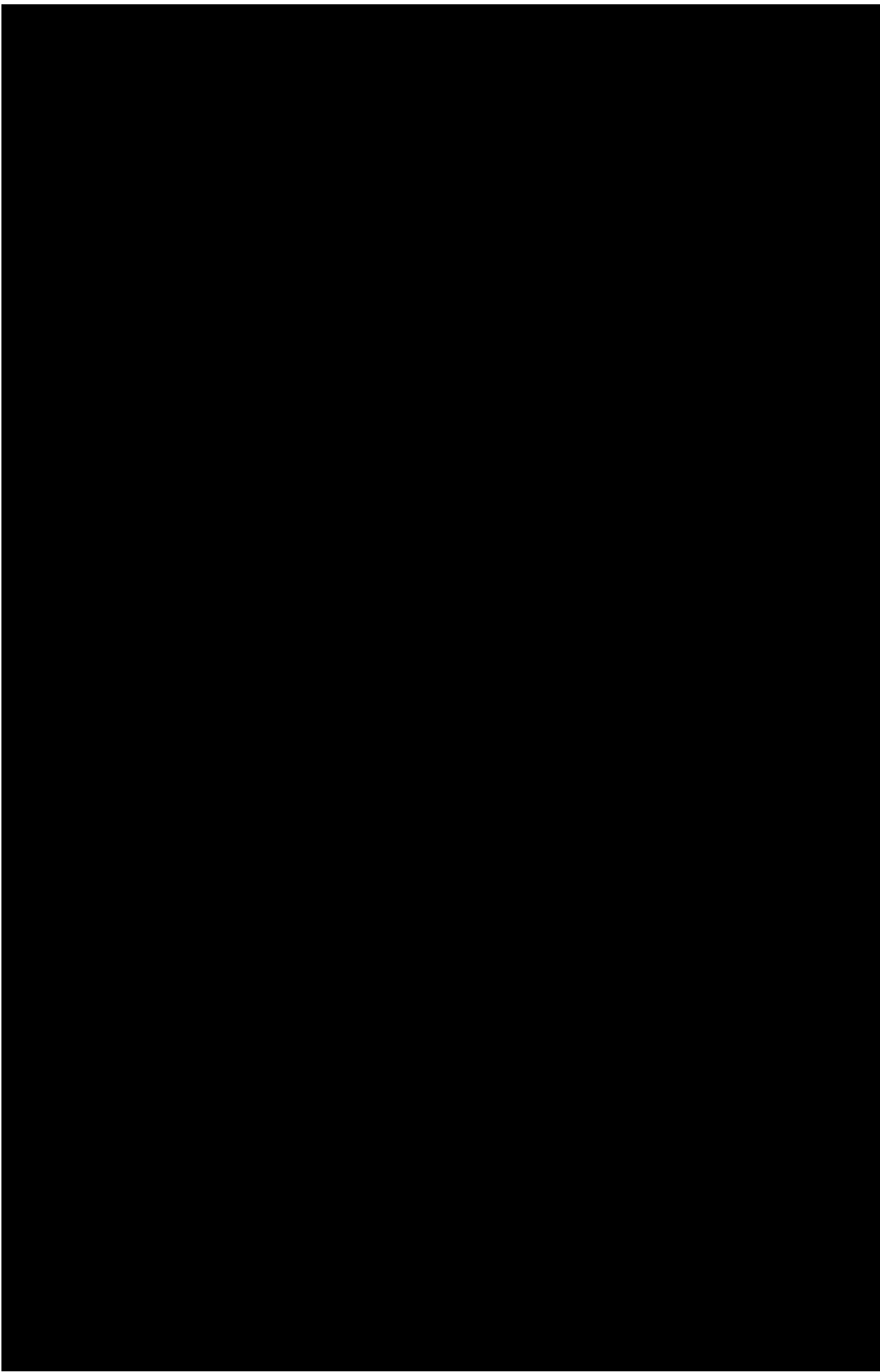


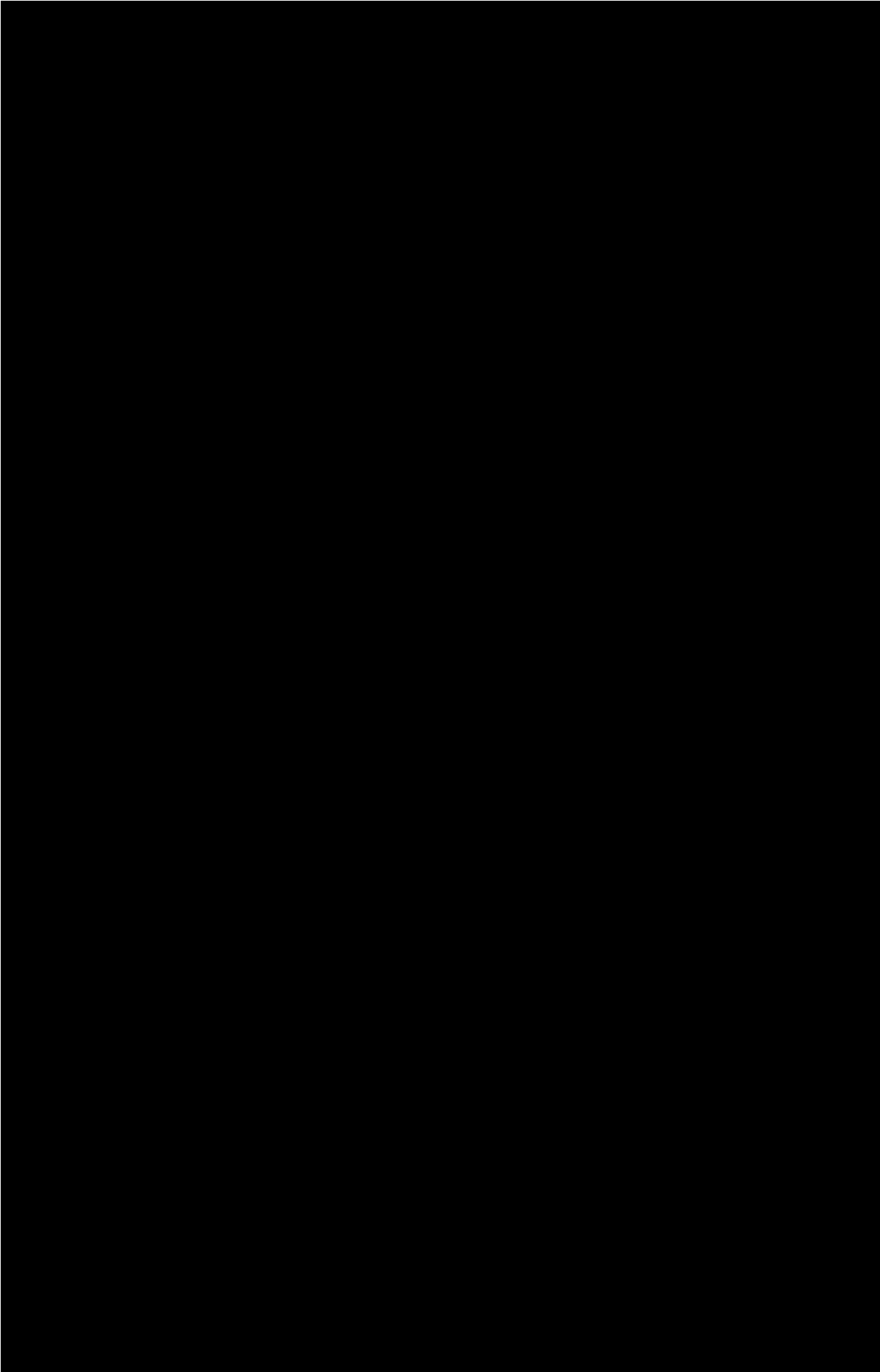


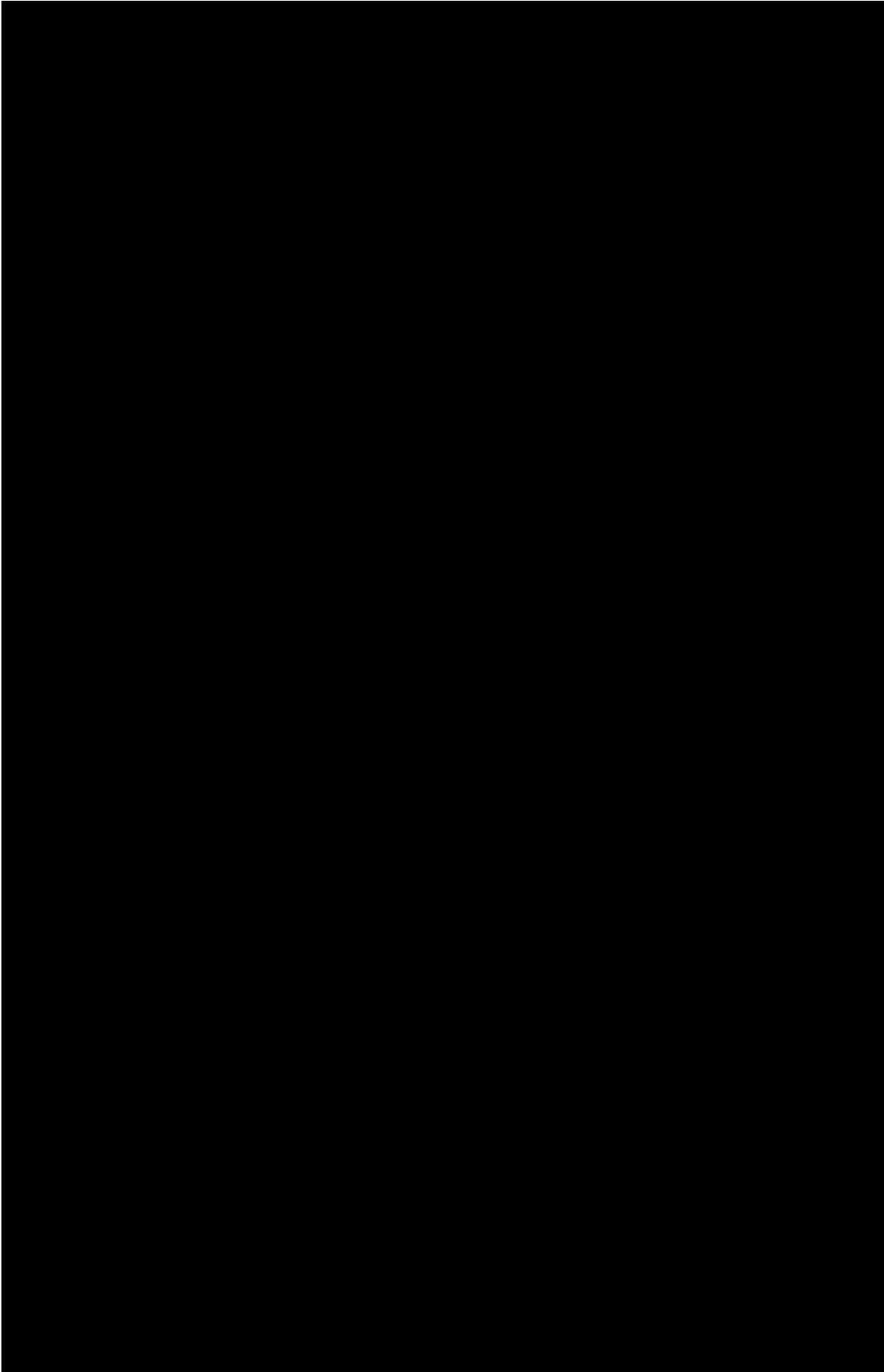


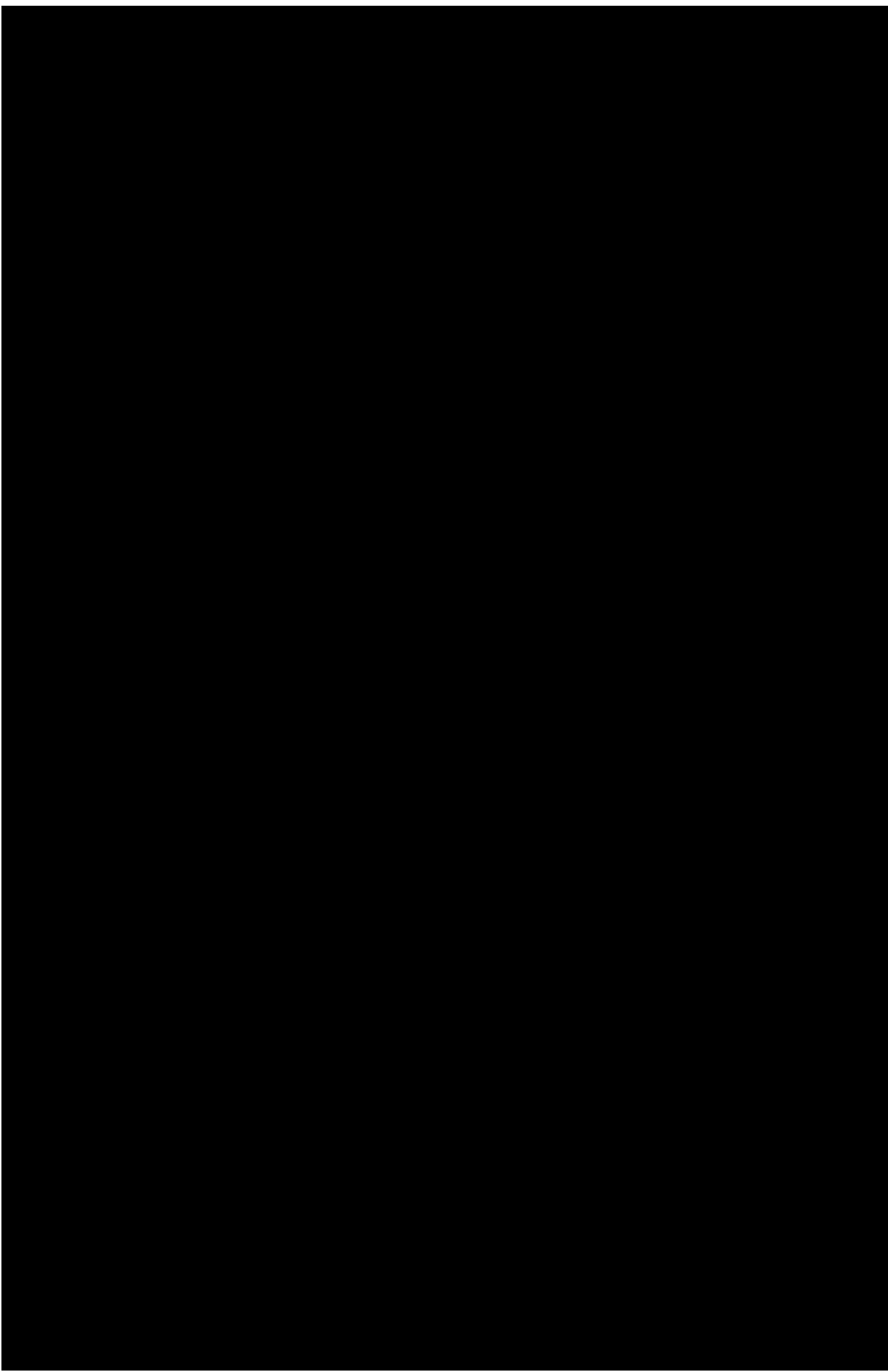




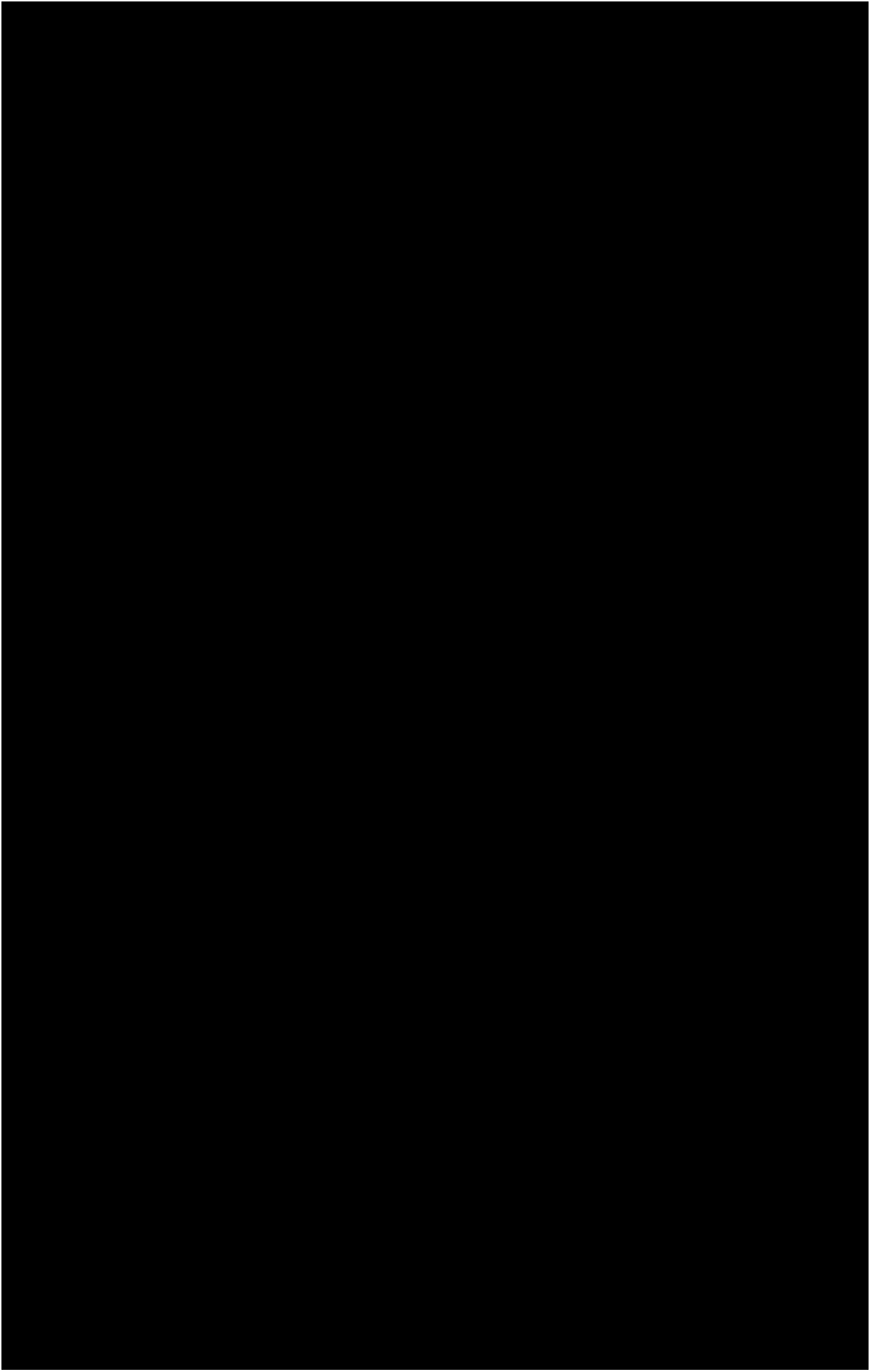


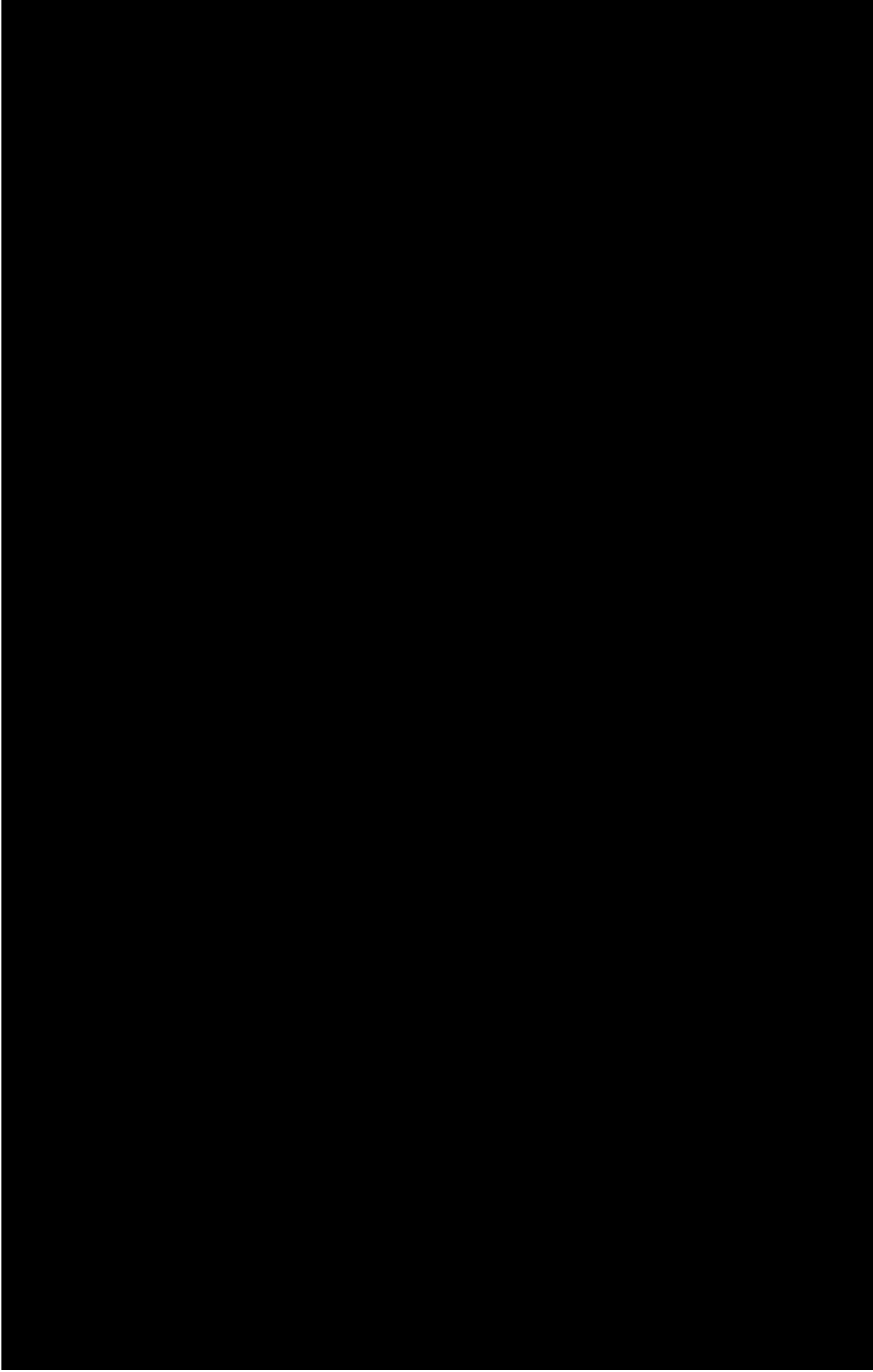


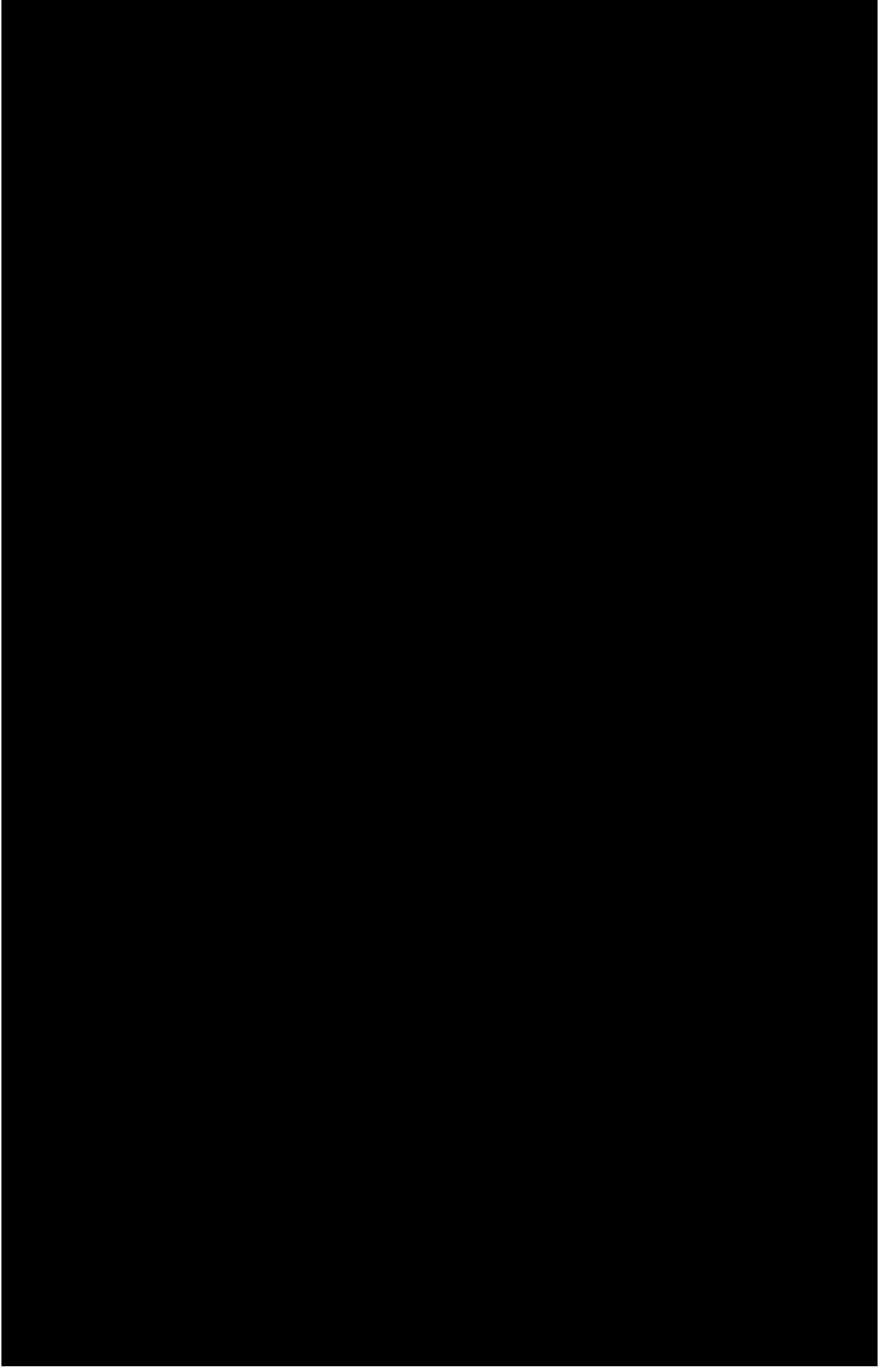


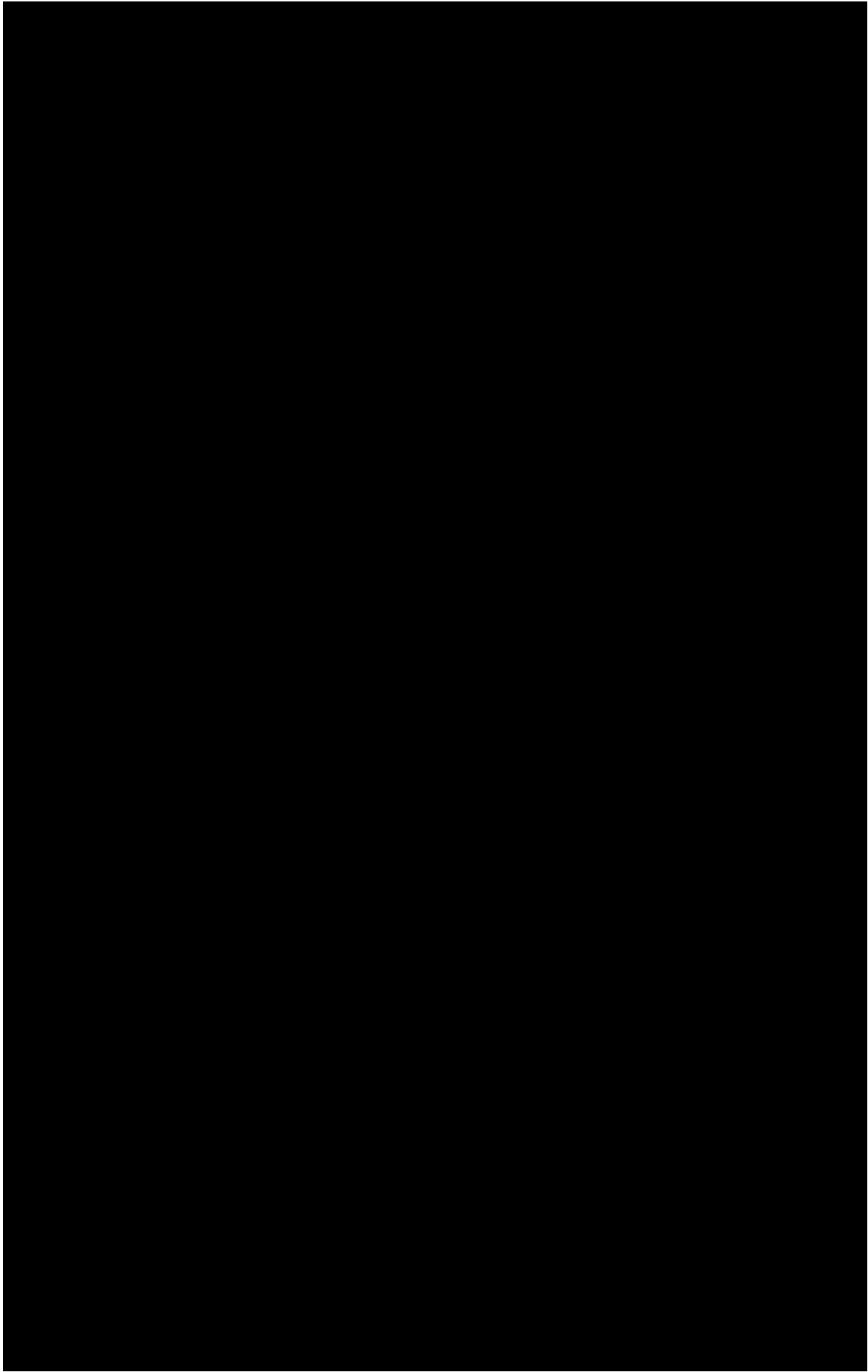


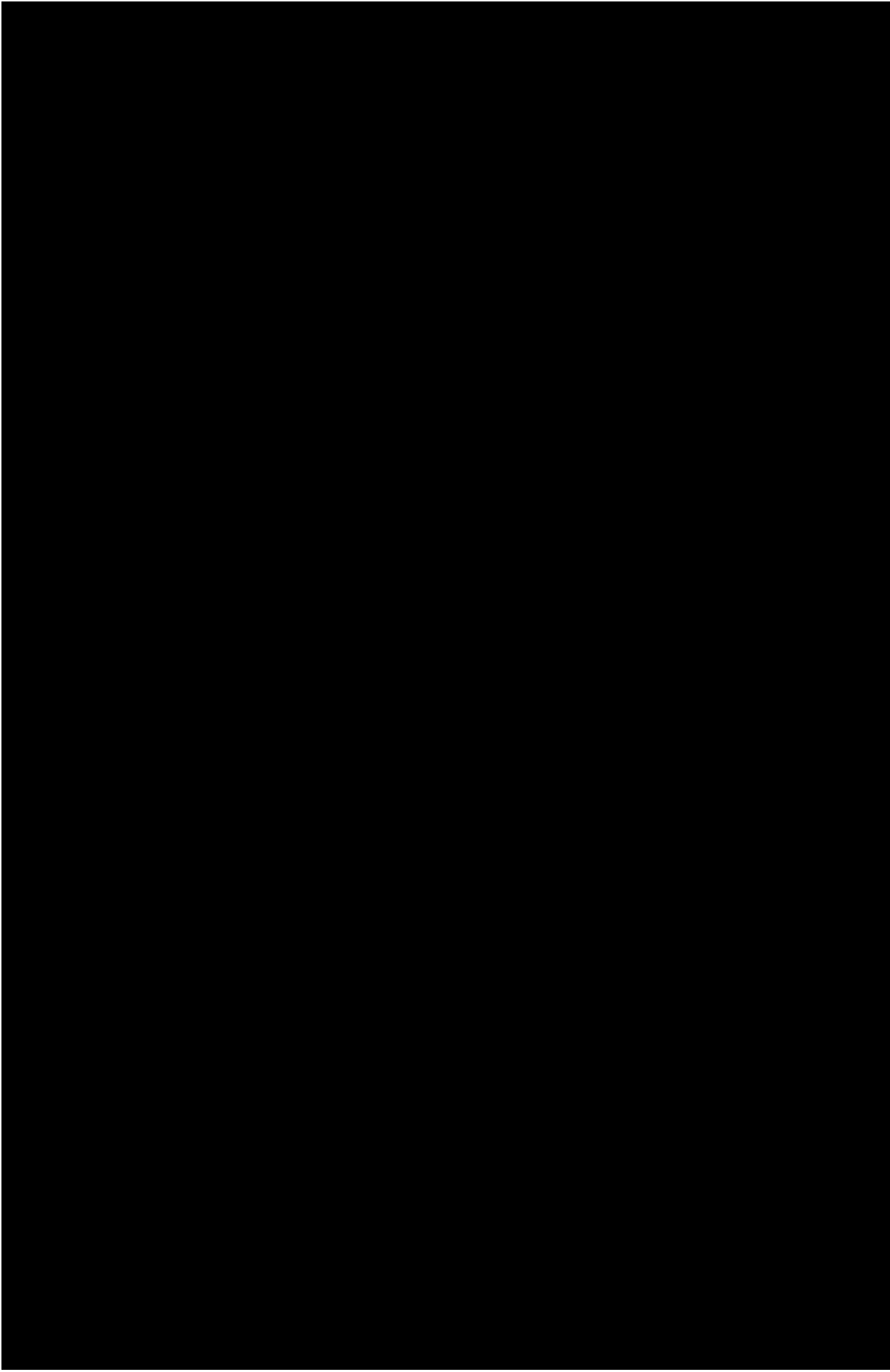
70181958_1	Parramatta Light Rail Stage 2 Enabling Works - Schedules and Exhibits	36
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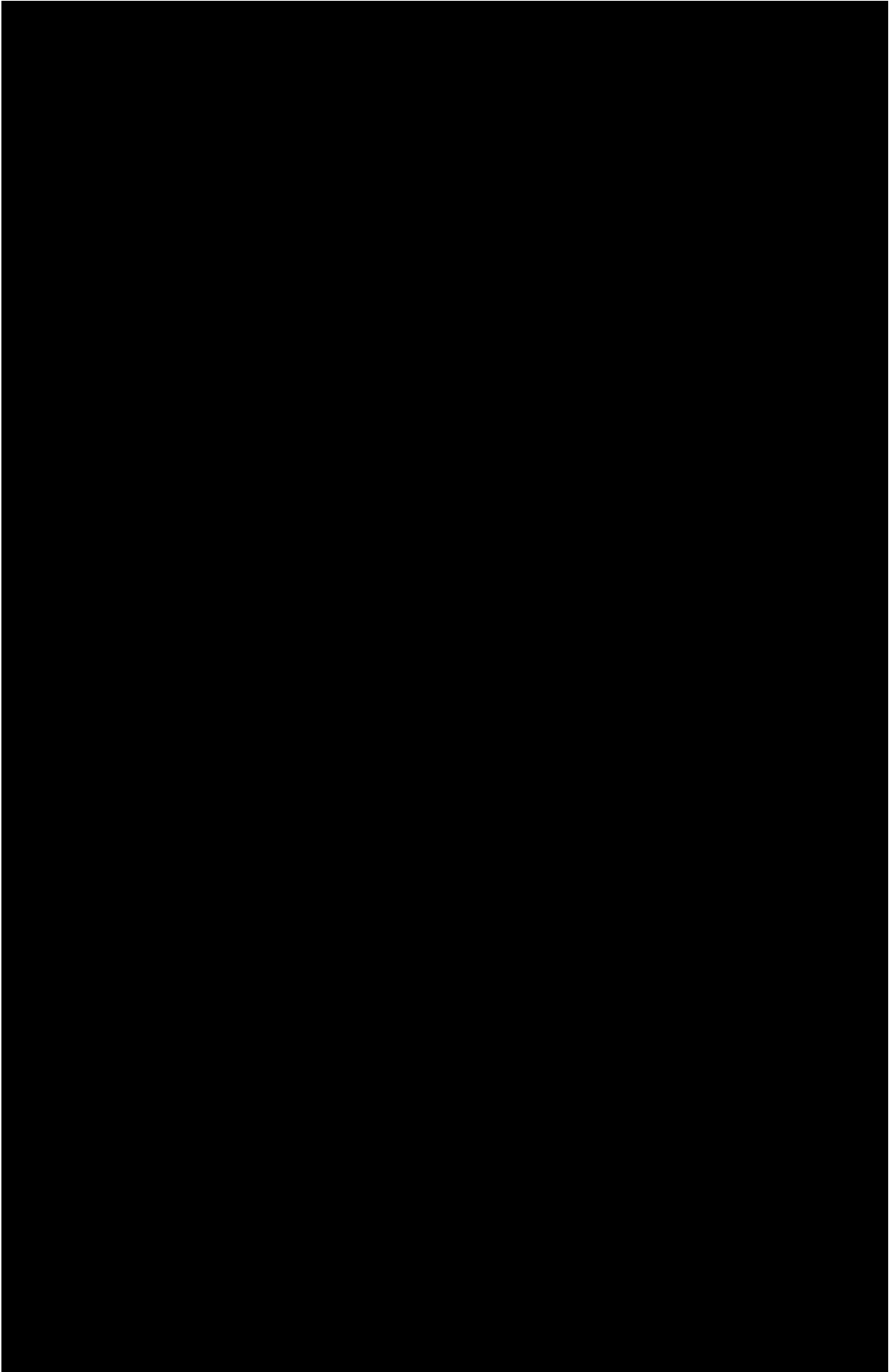


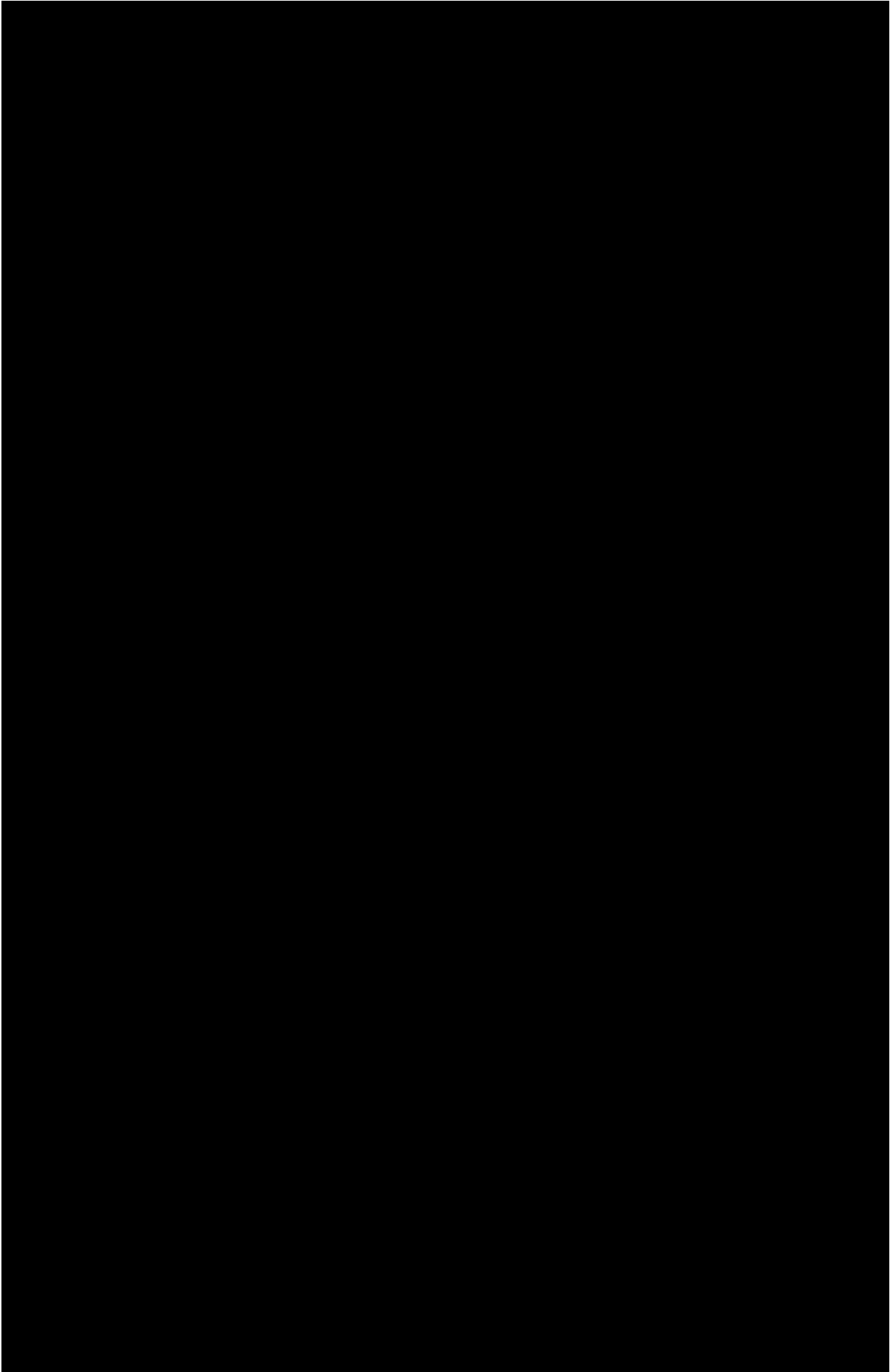


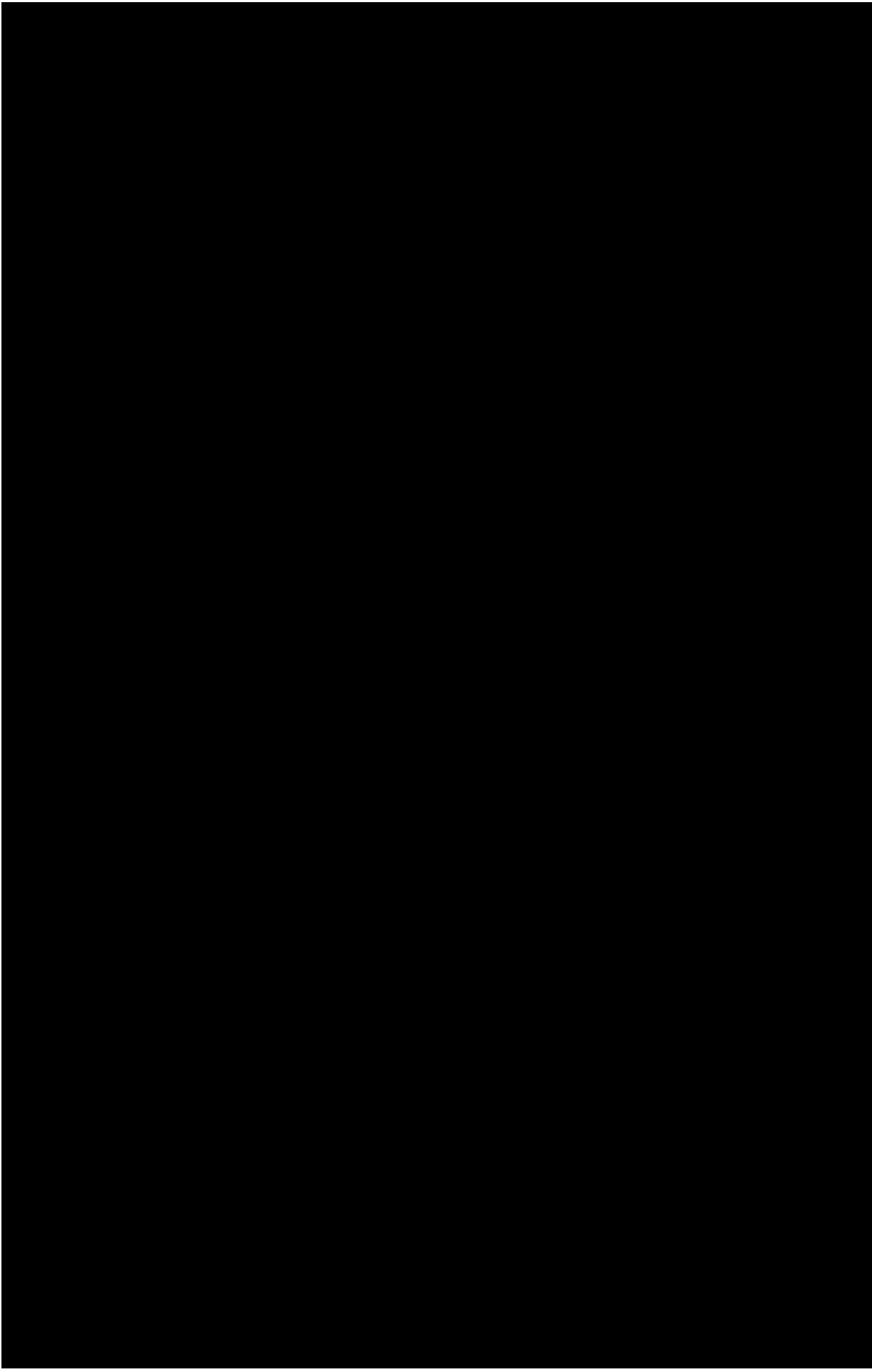


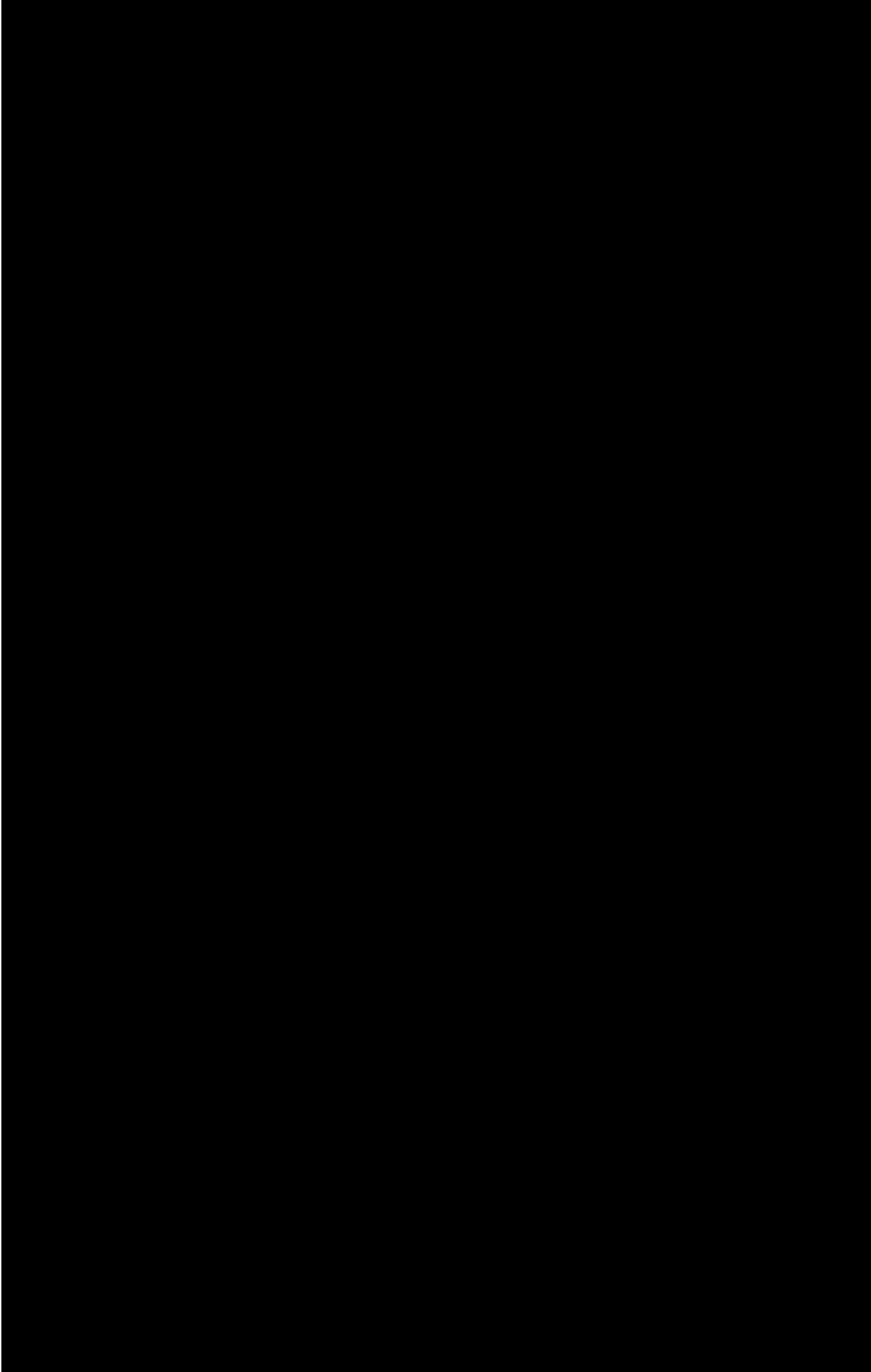


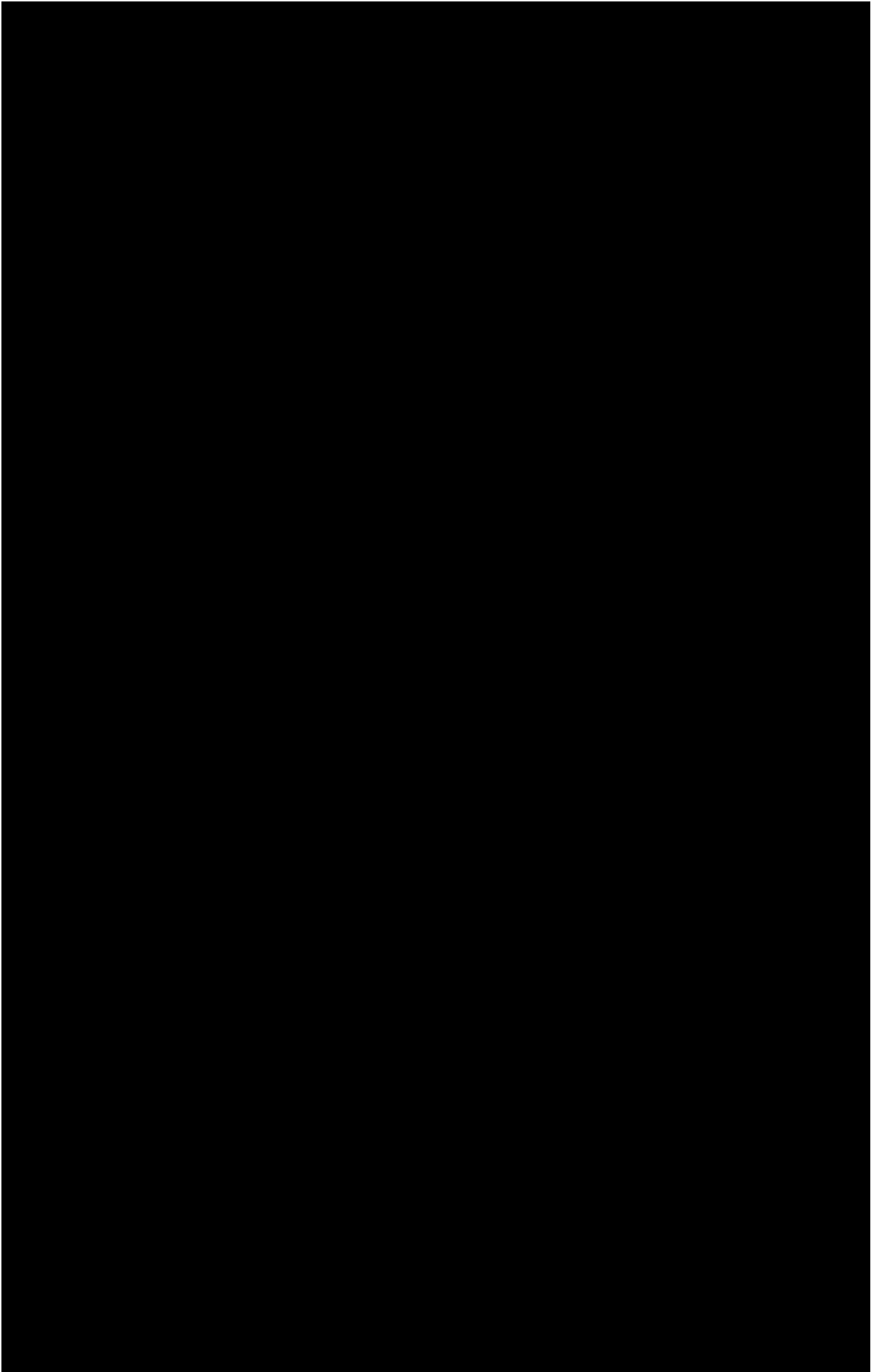


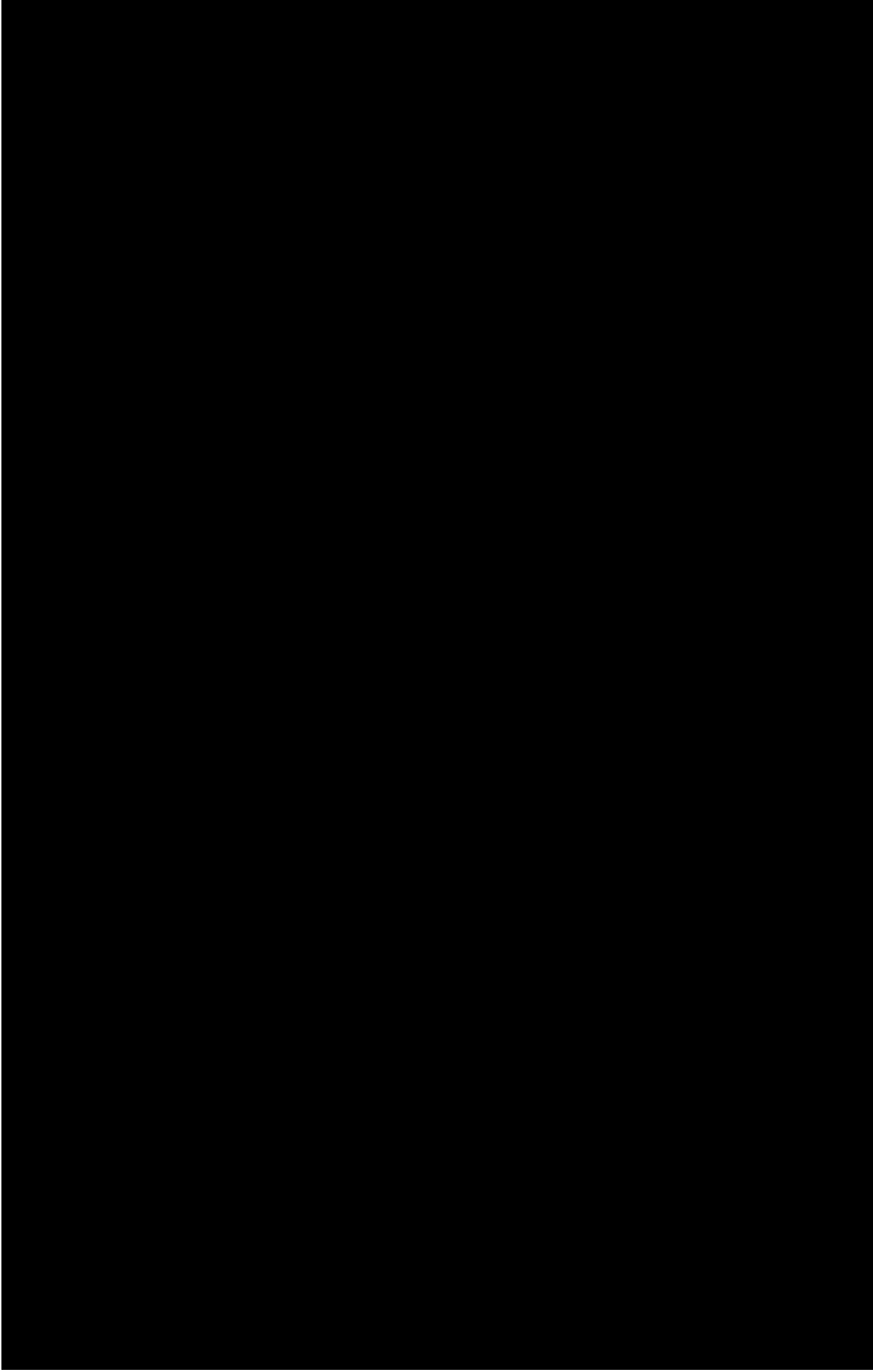


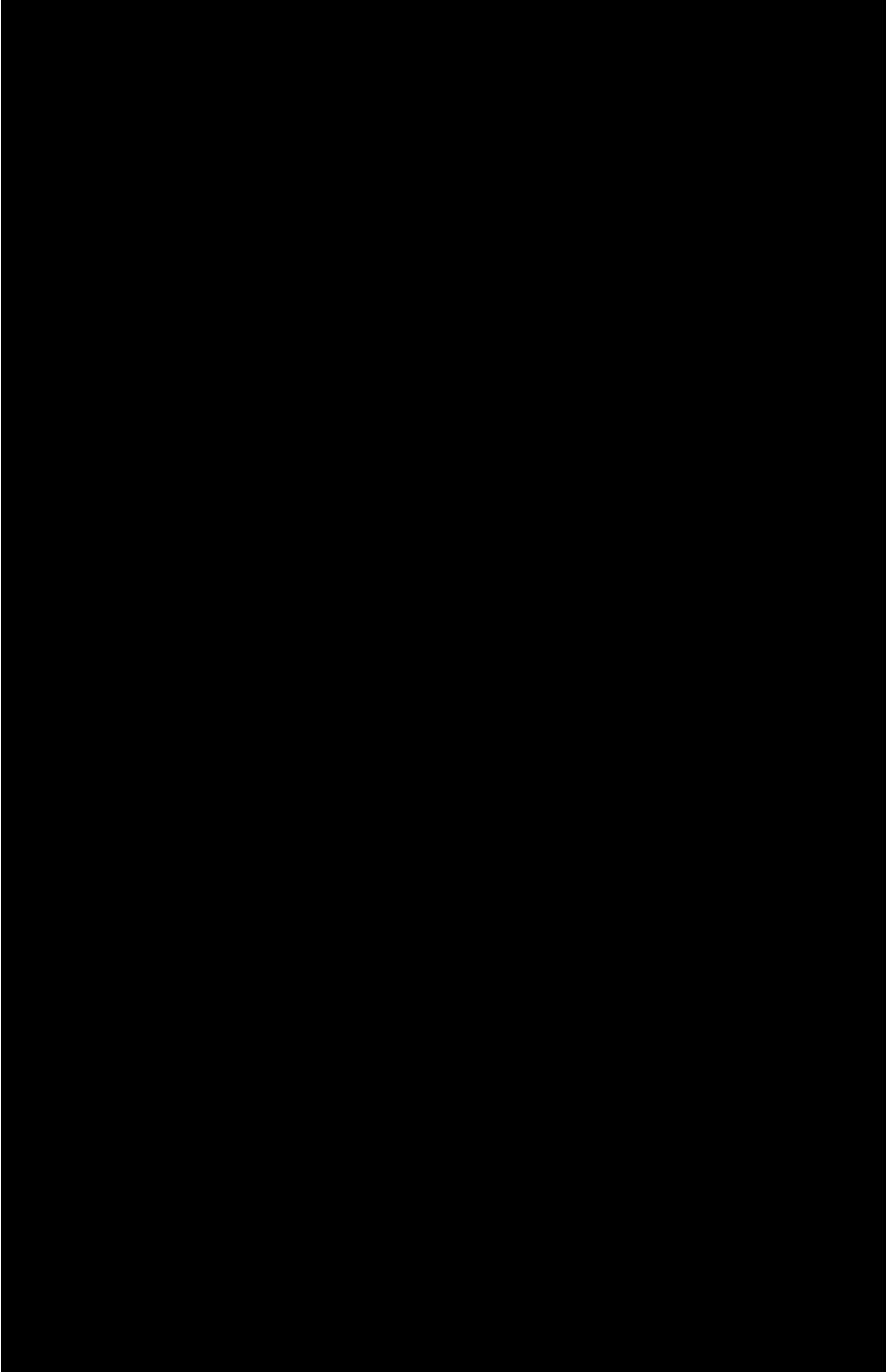


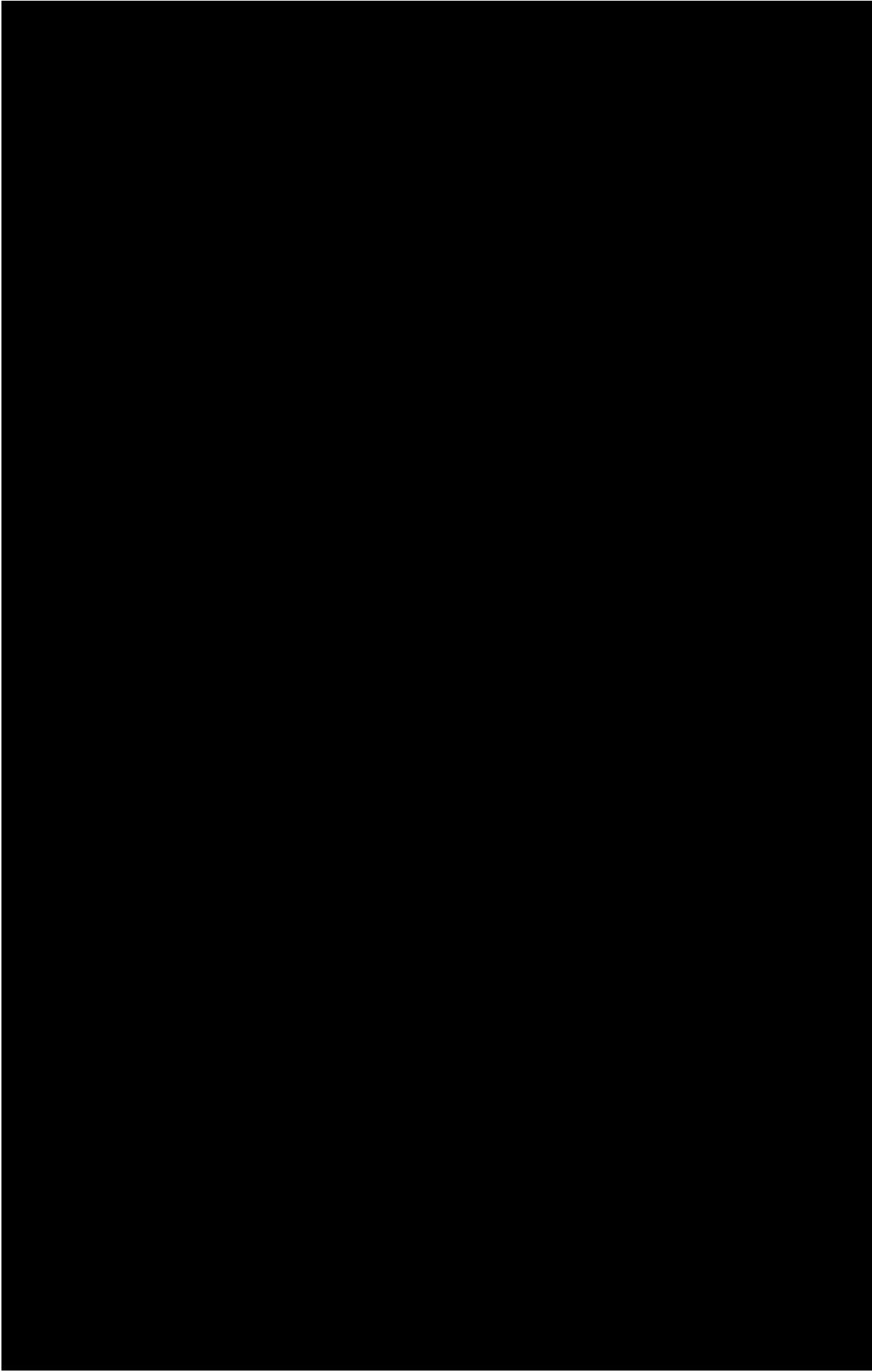


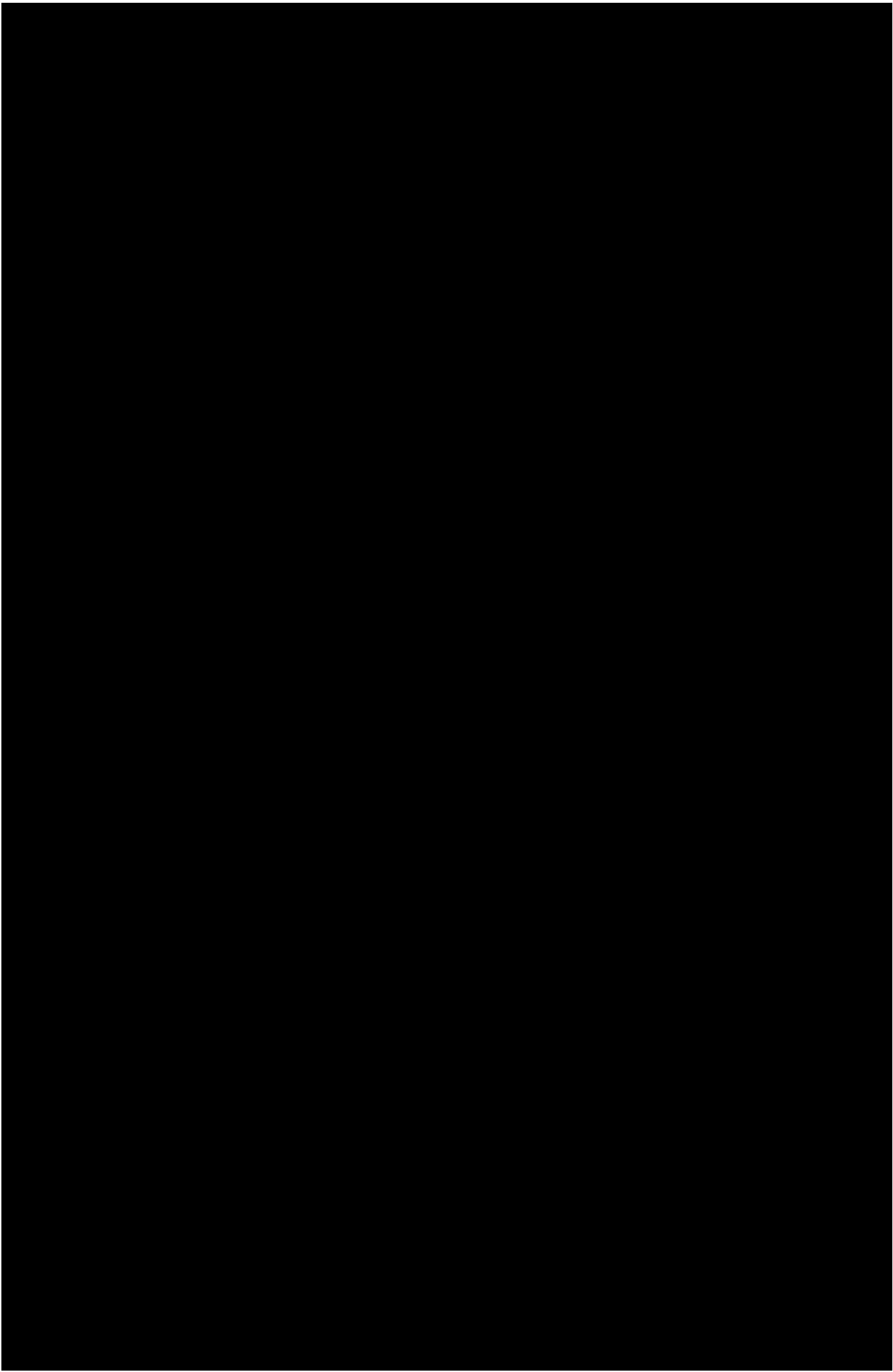


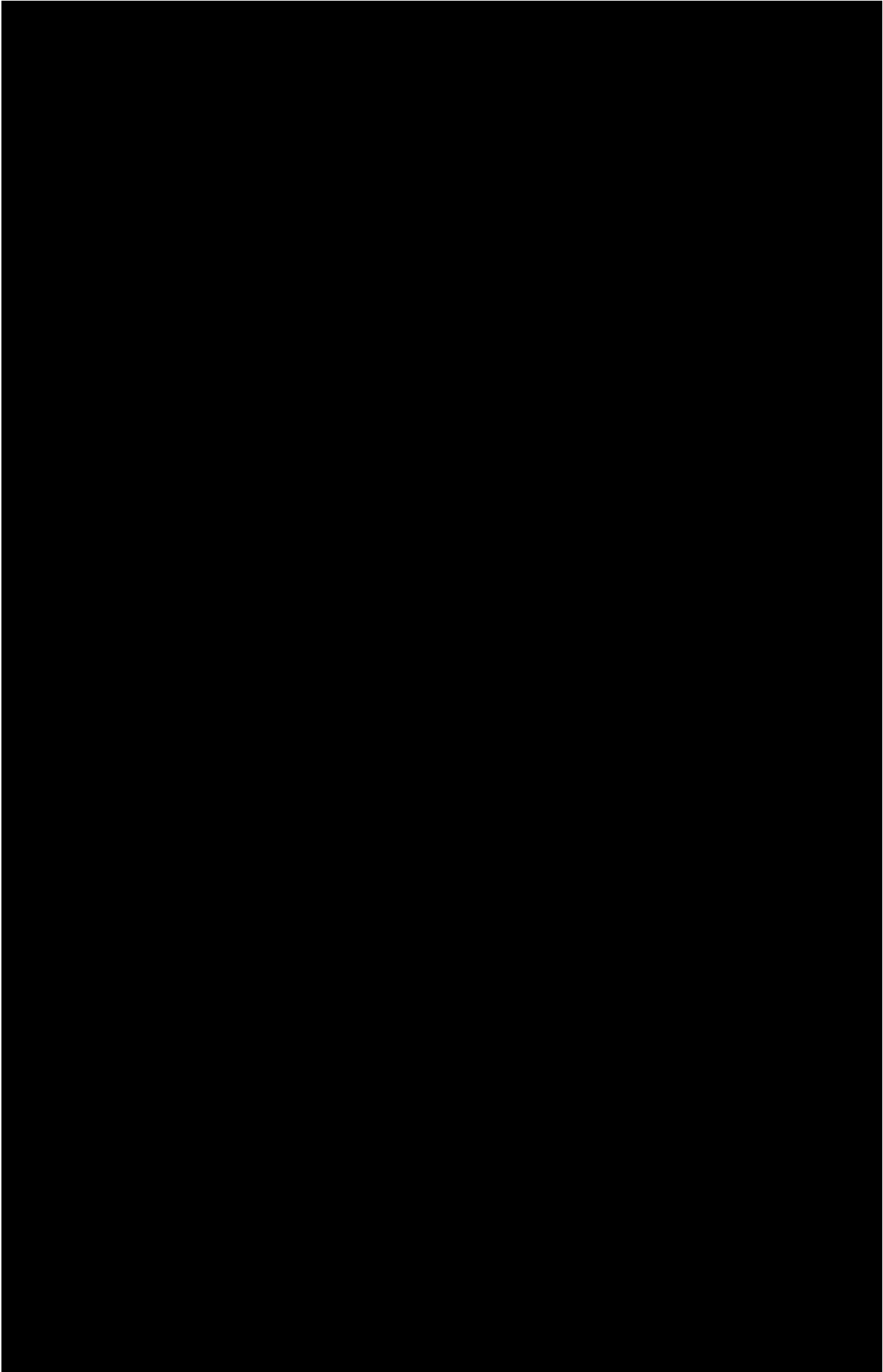


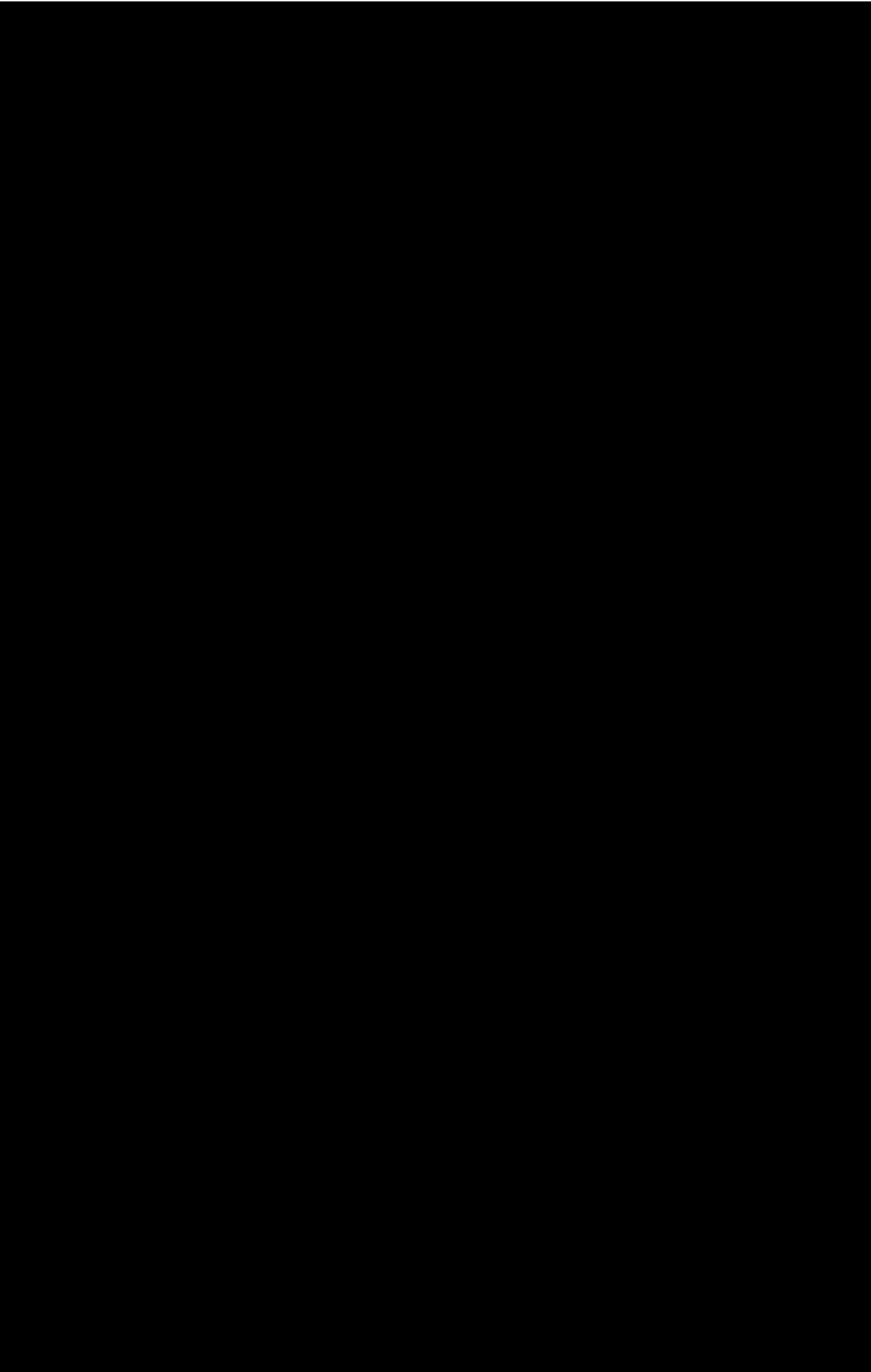


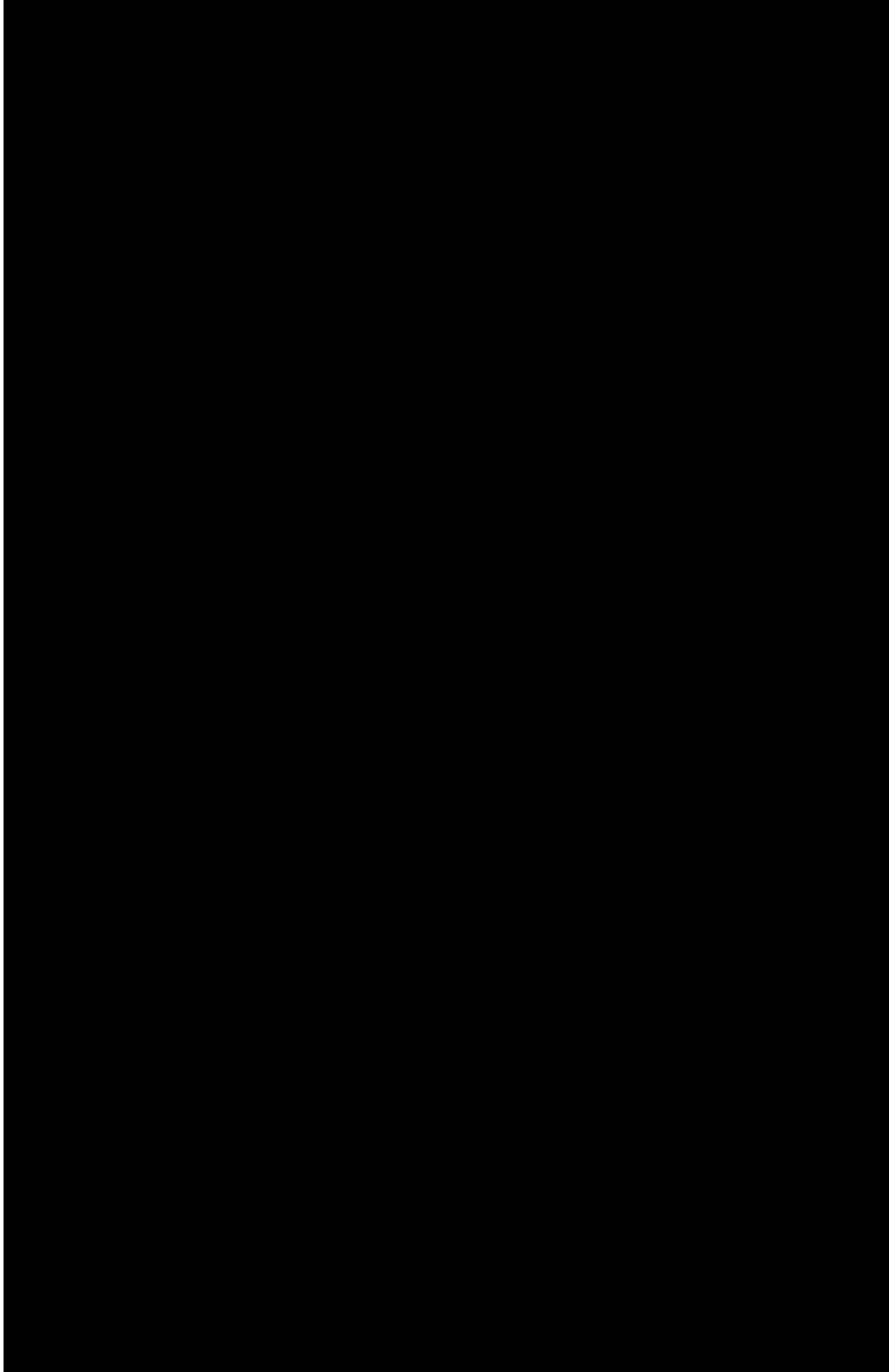


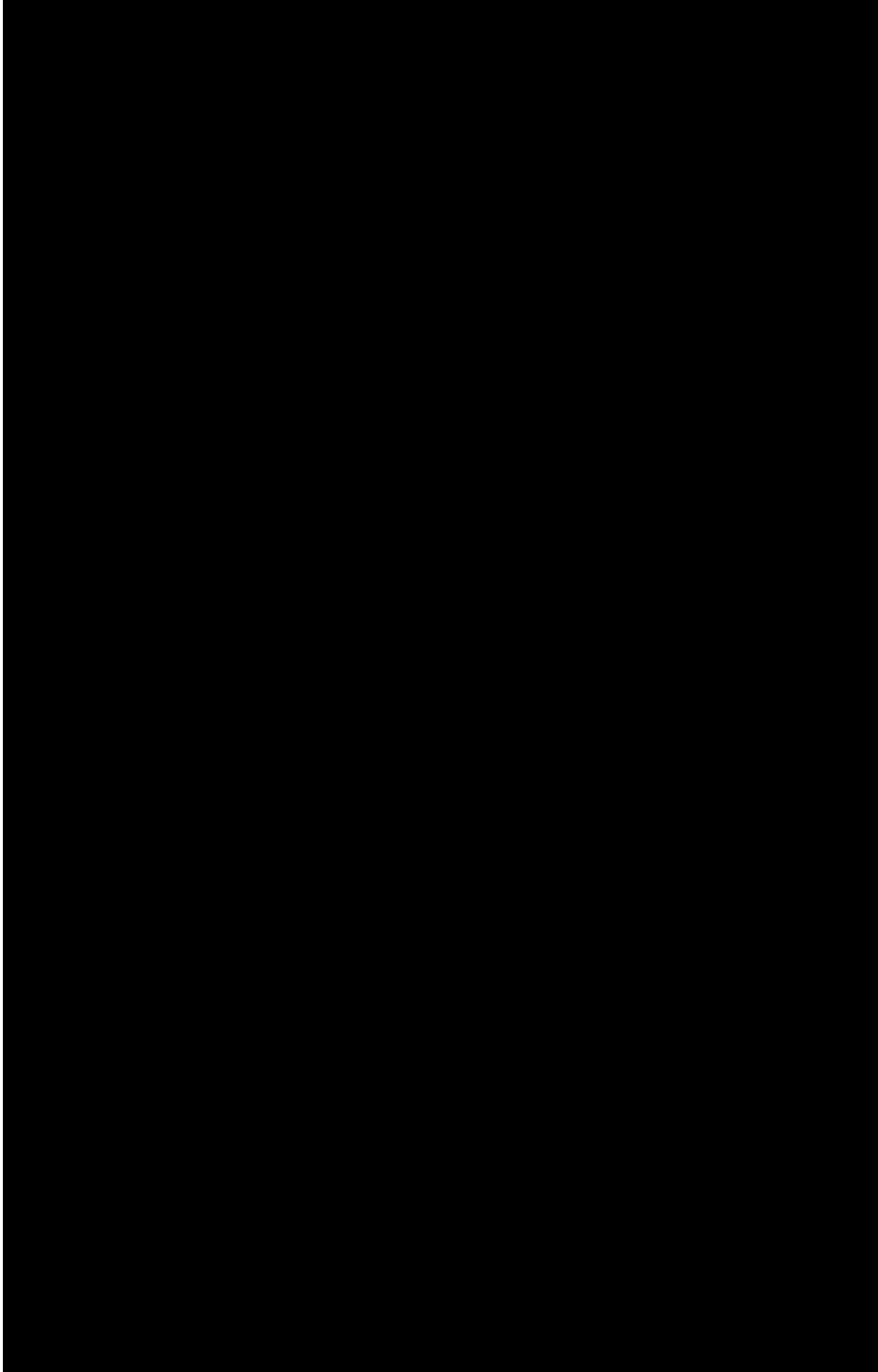


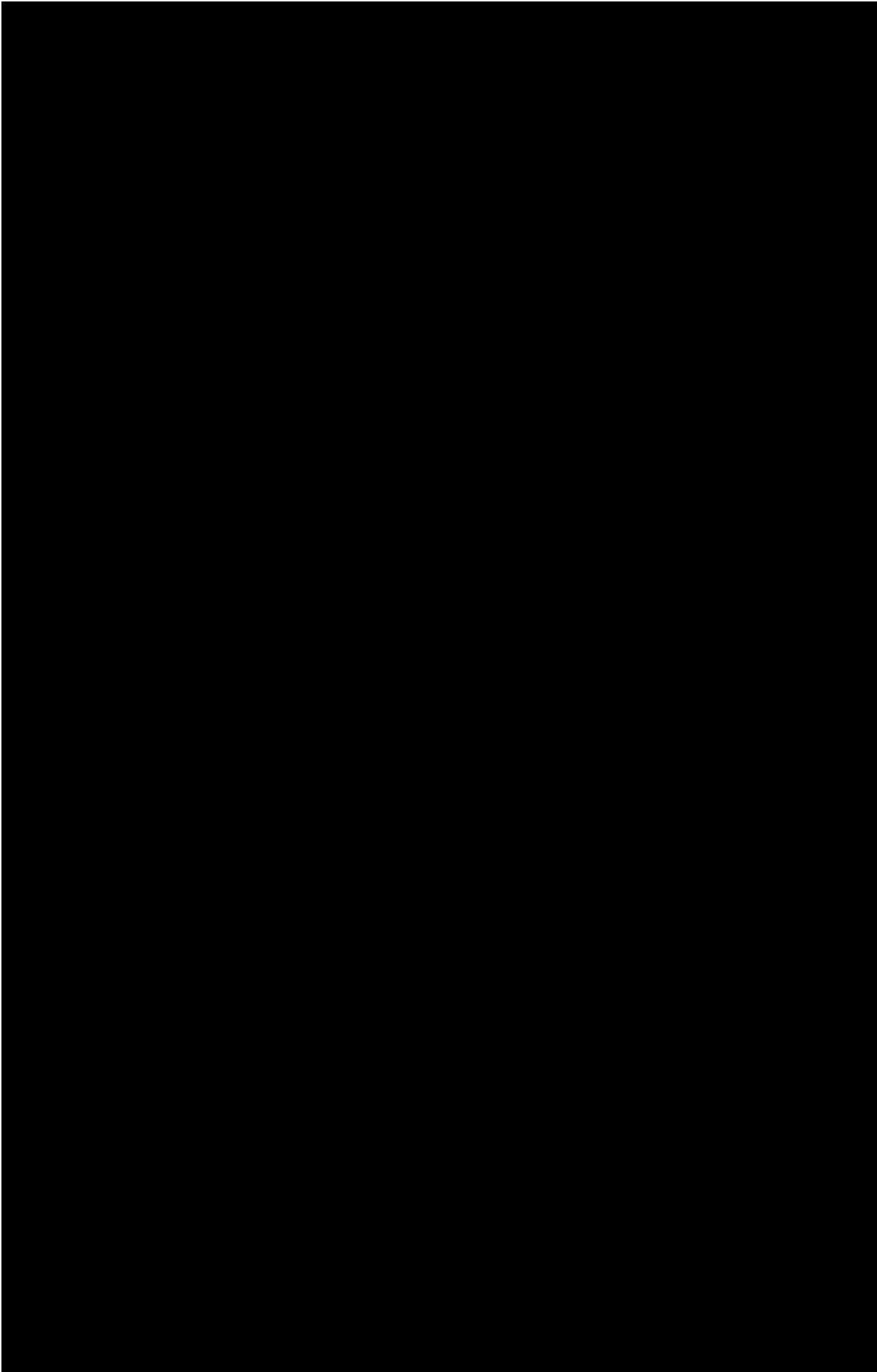


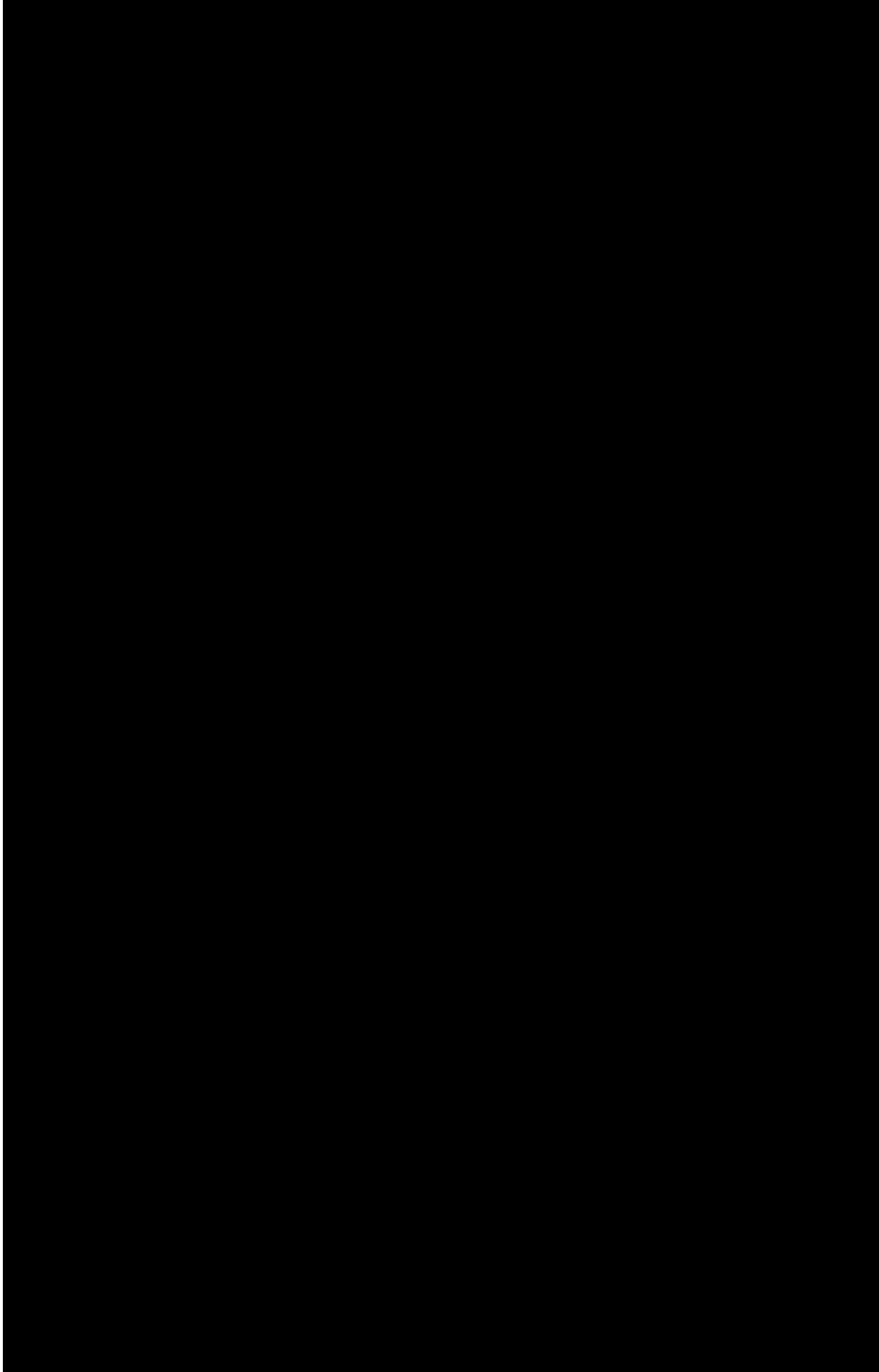


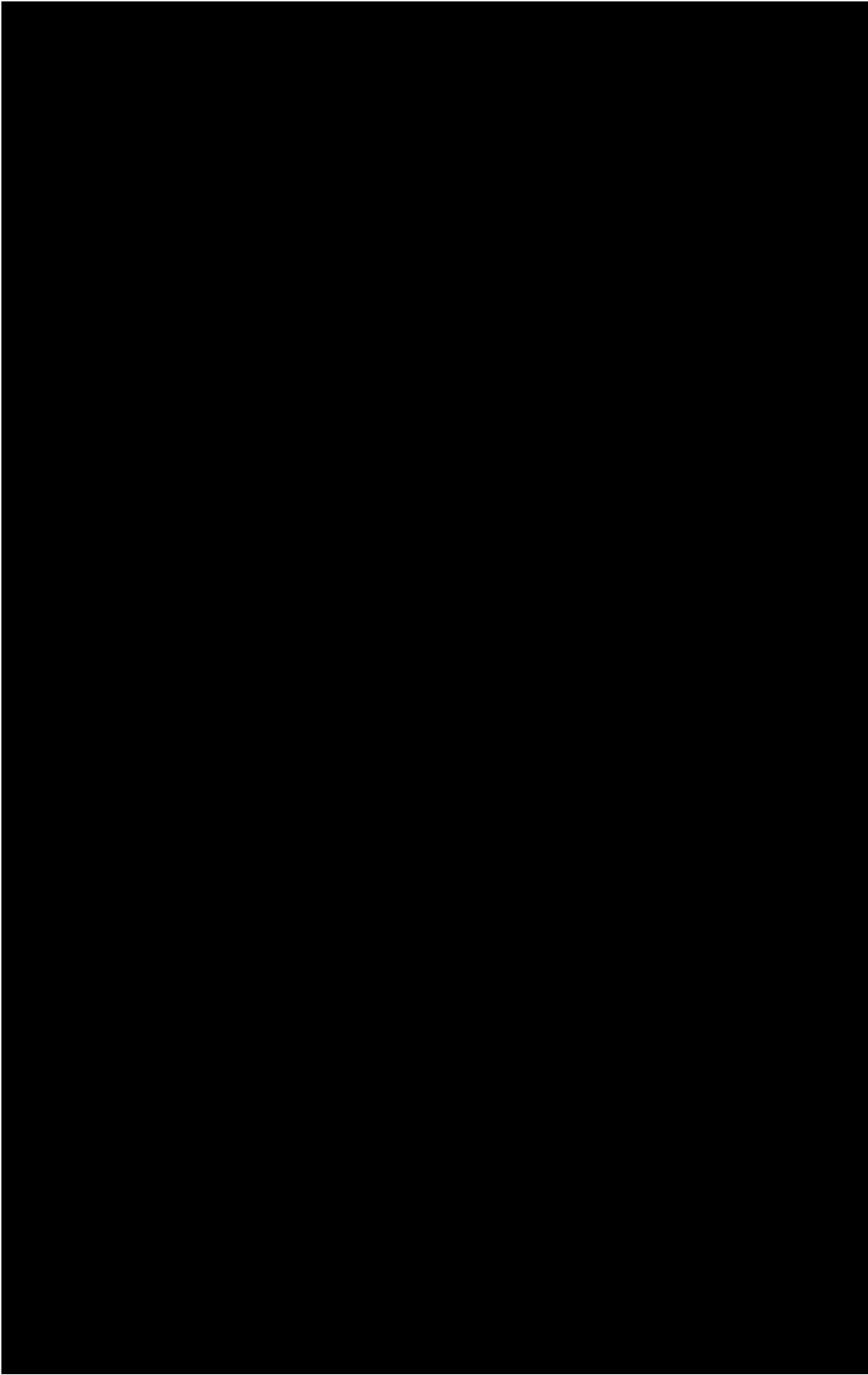


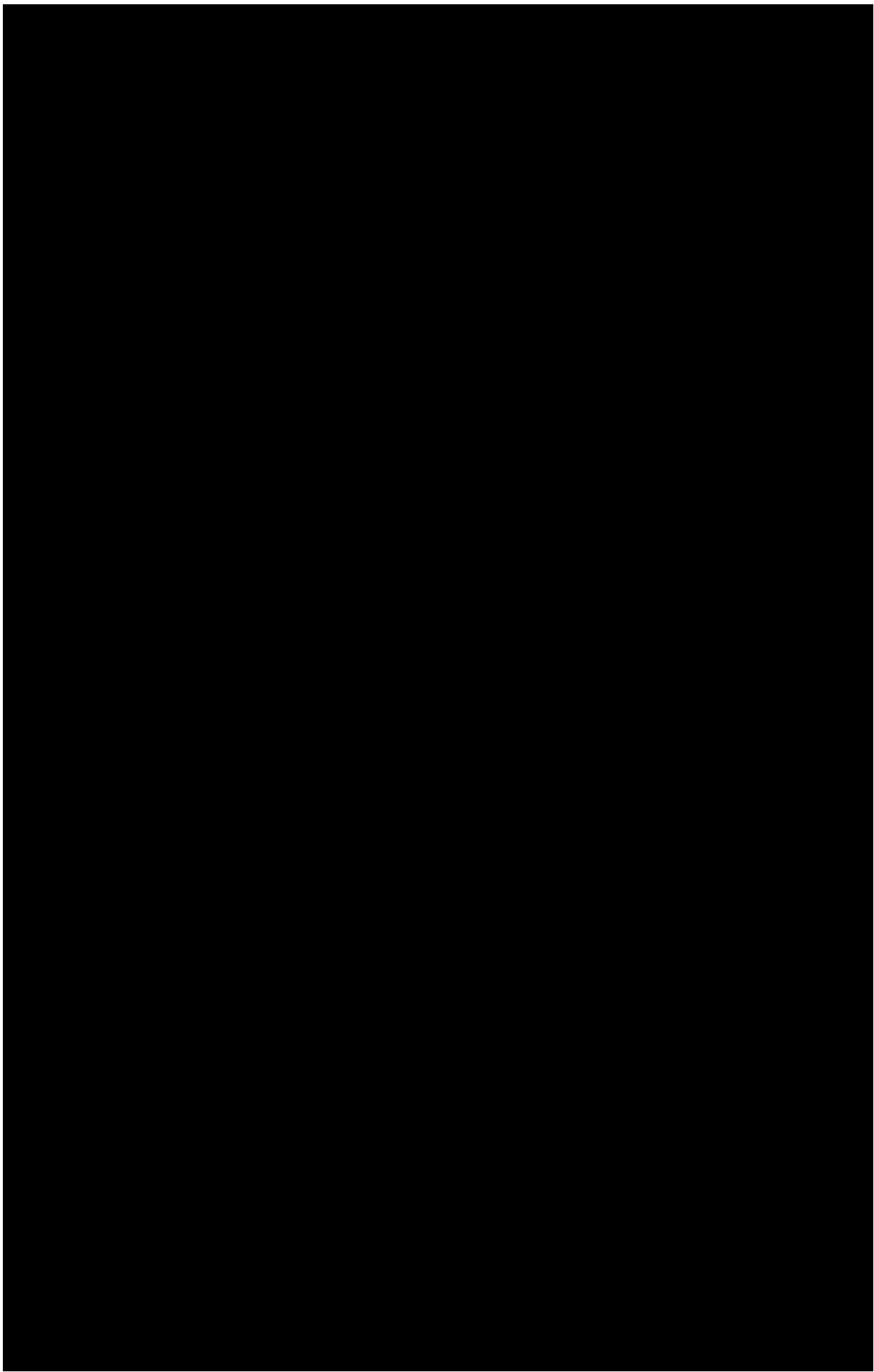


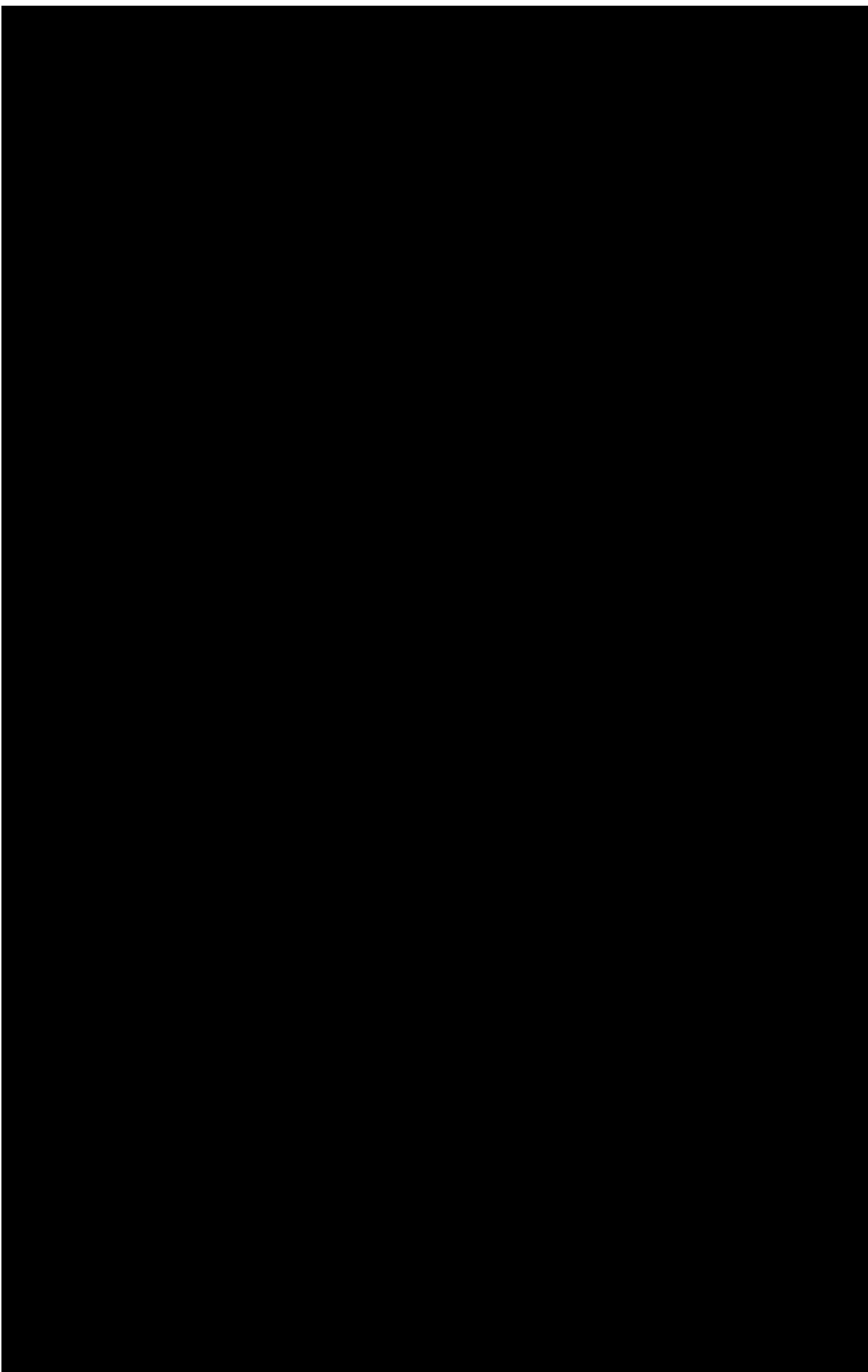


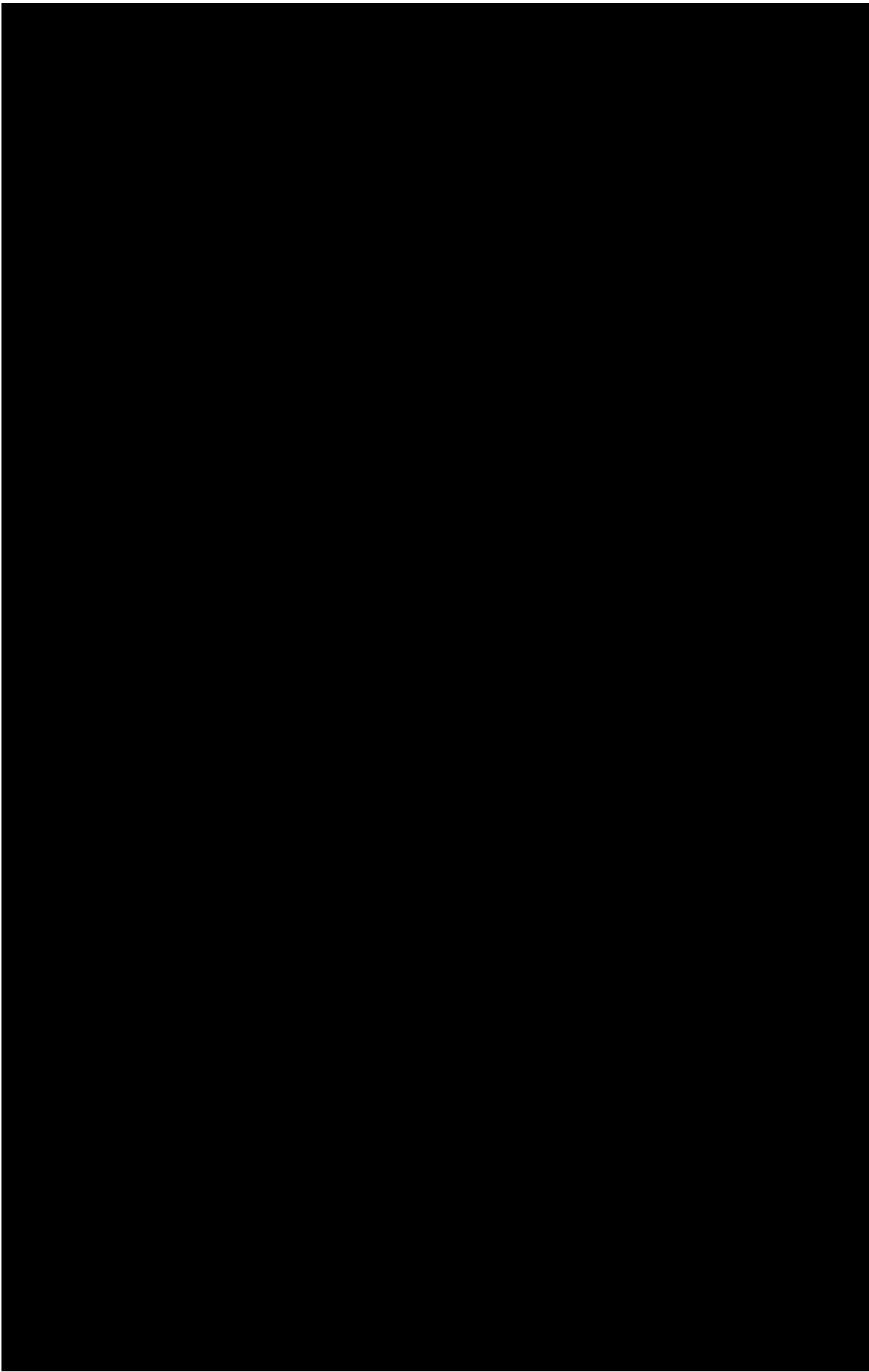


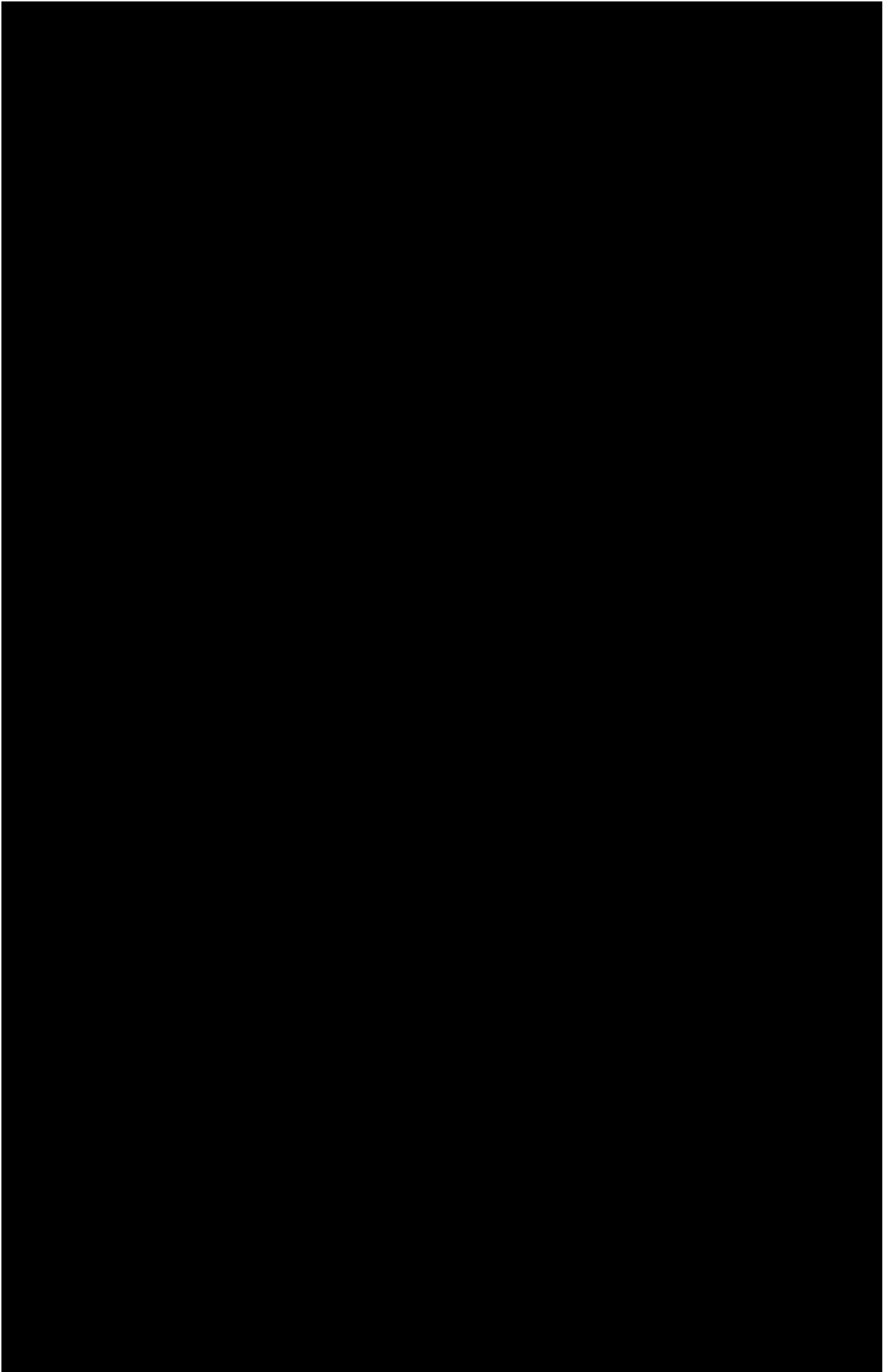


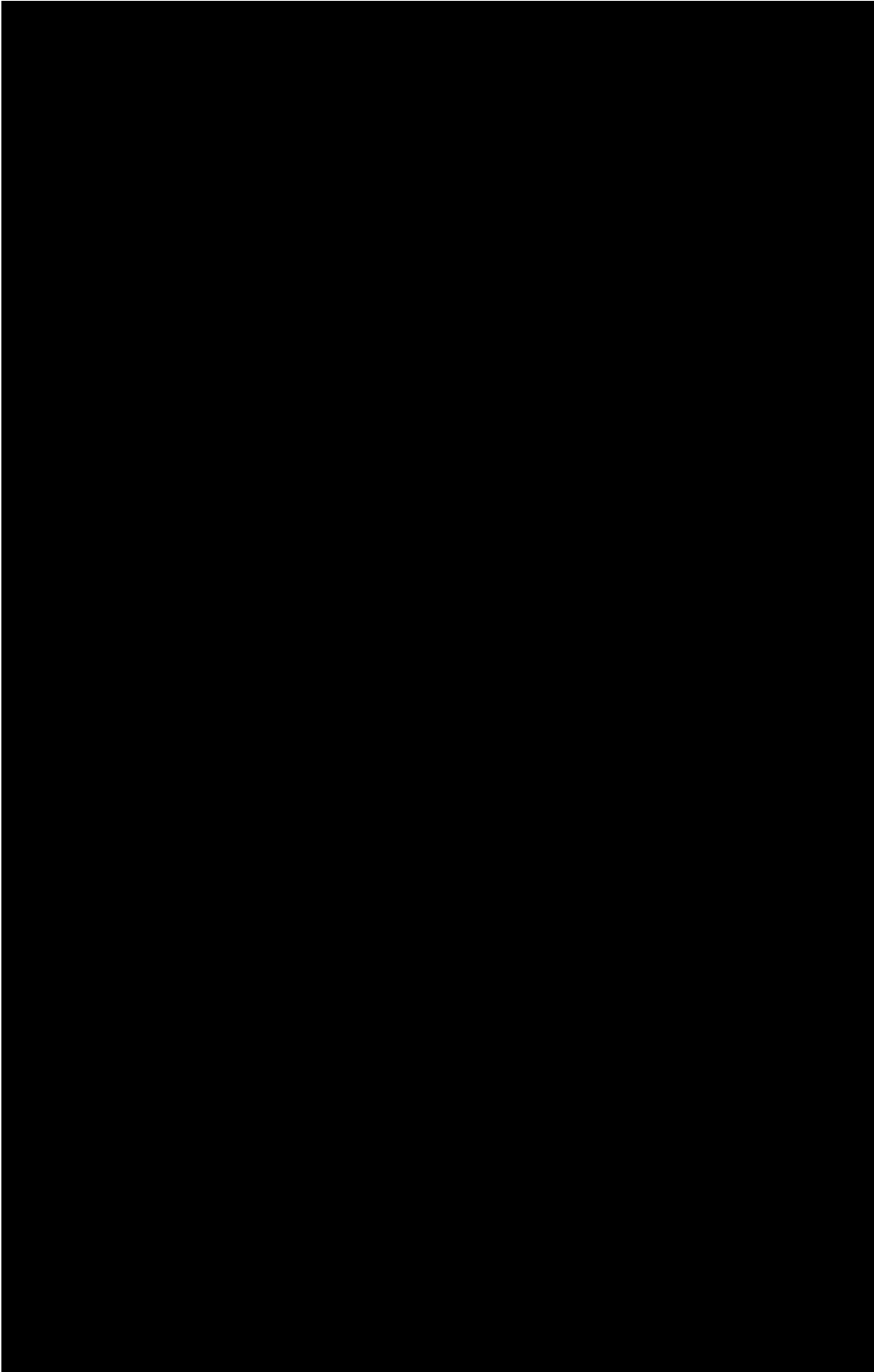


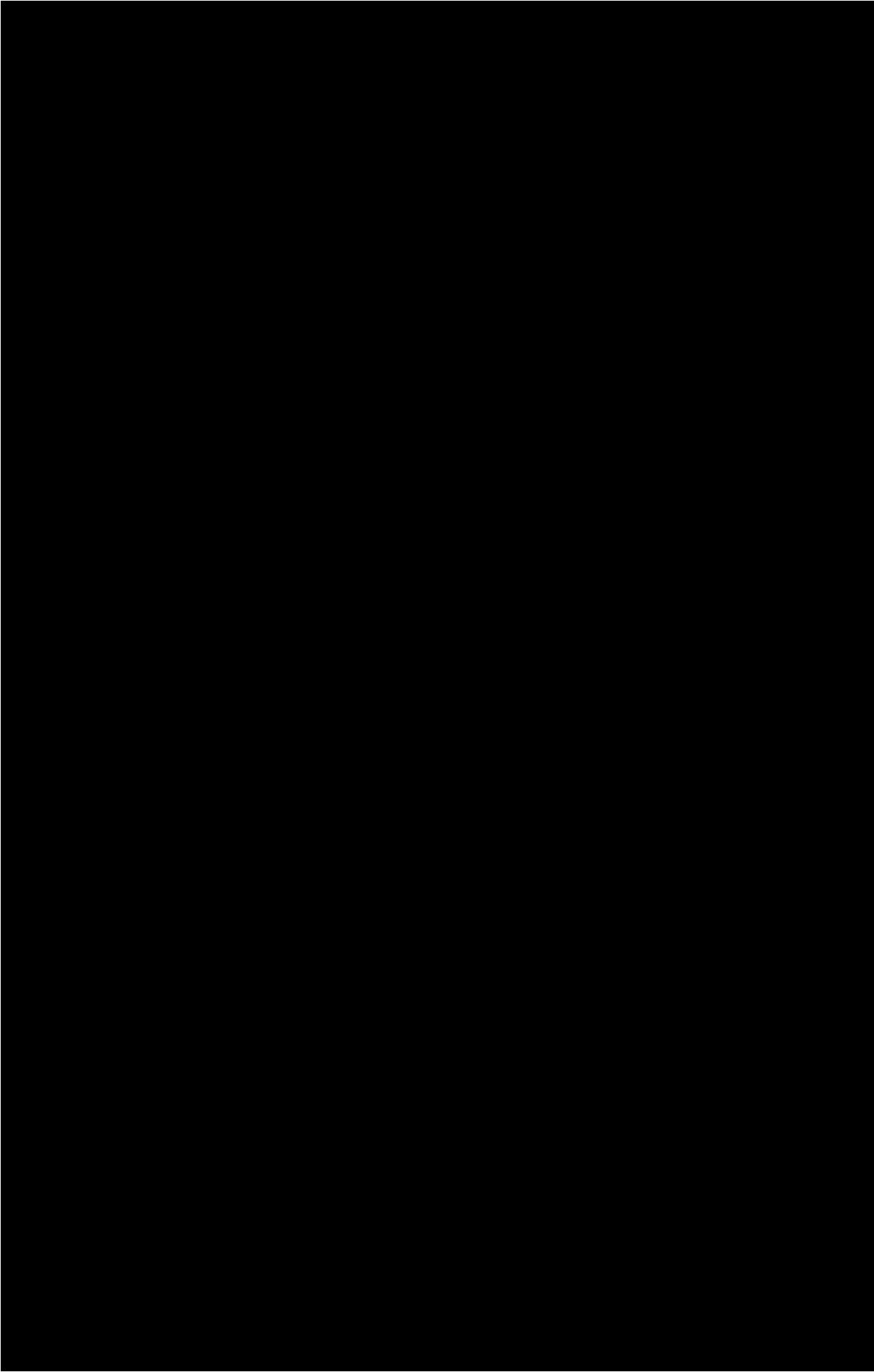


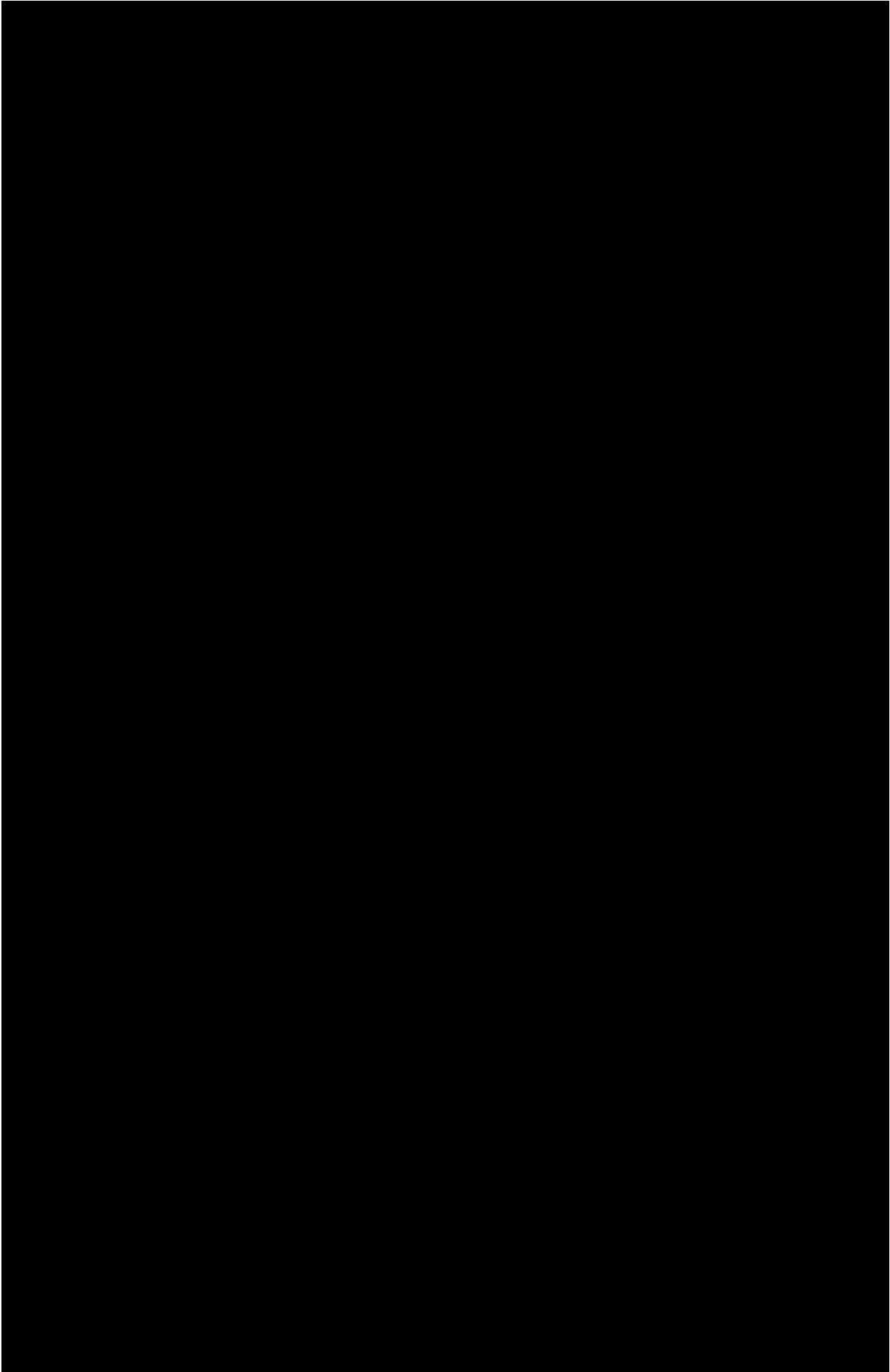


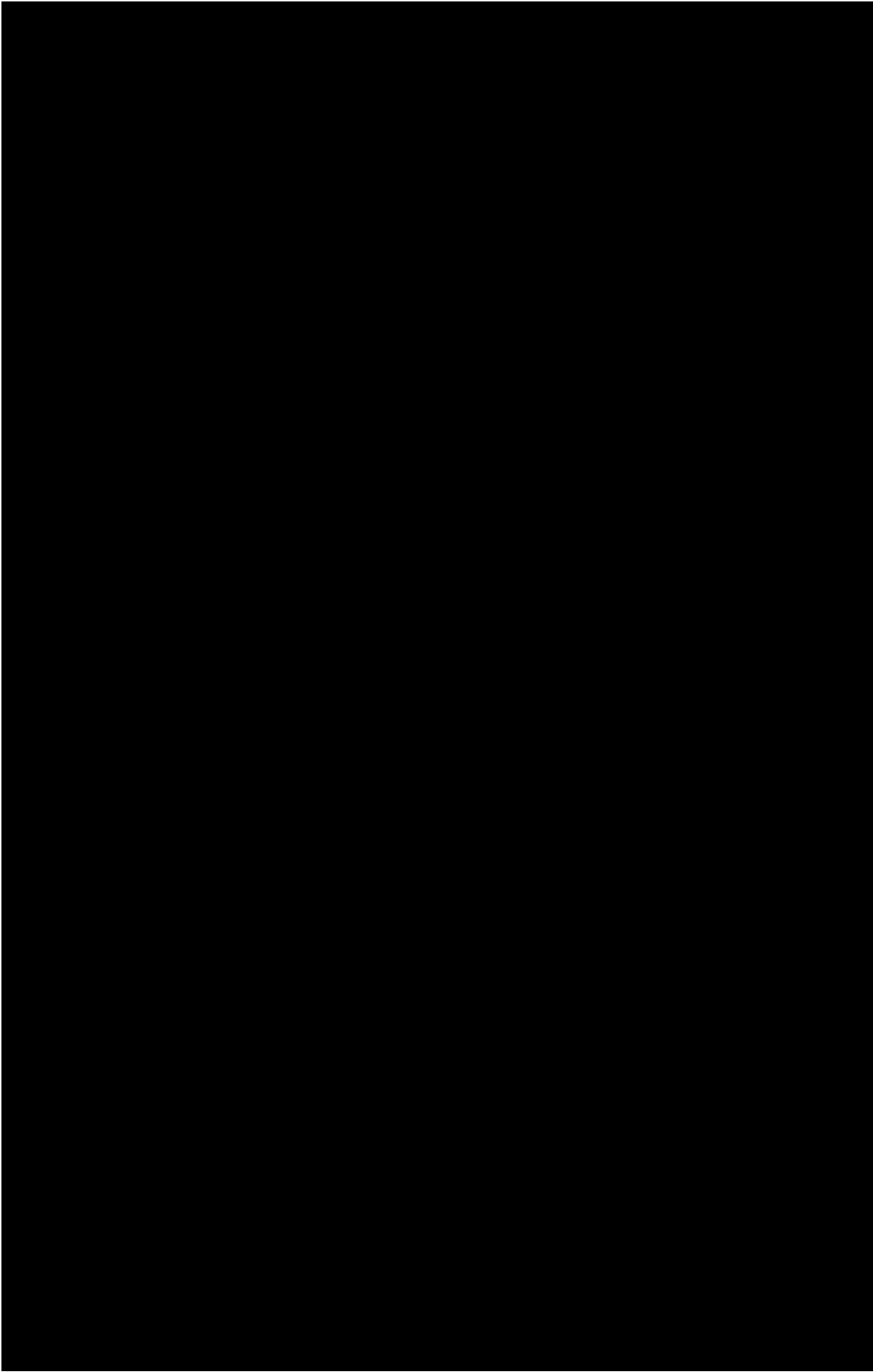


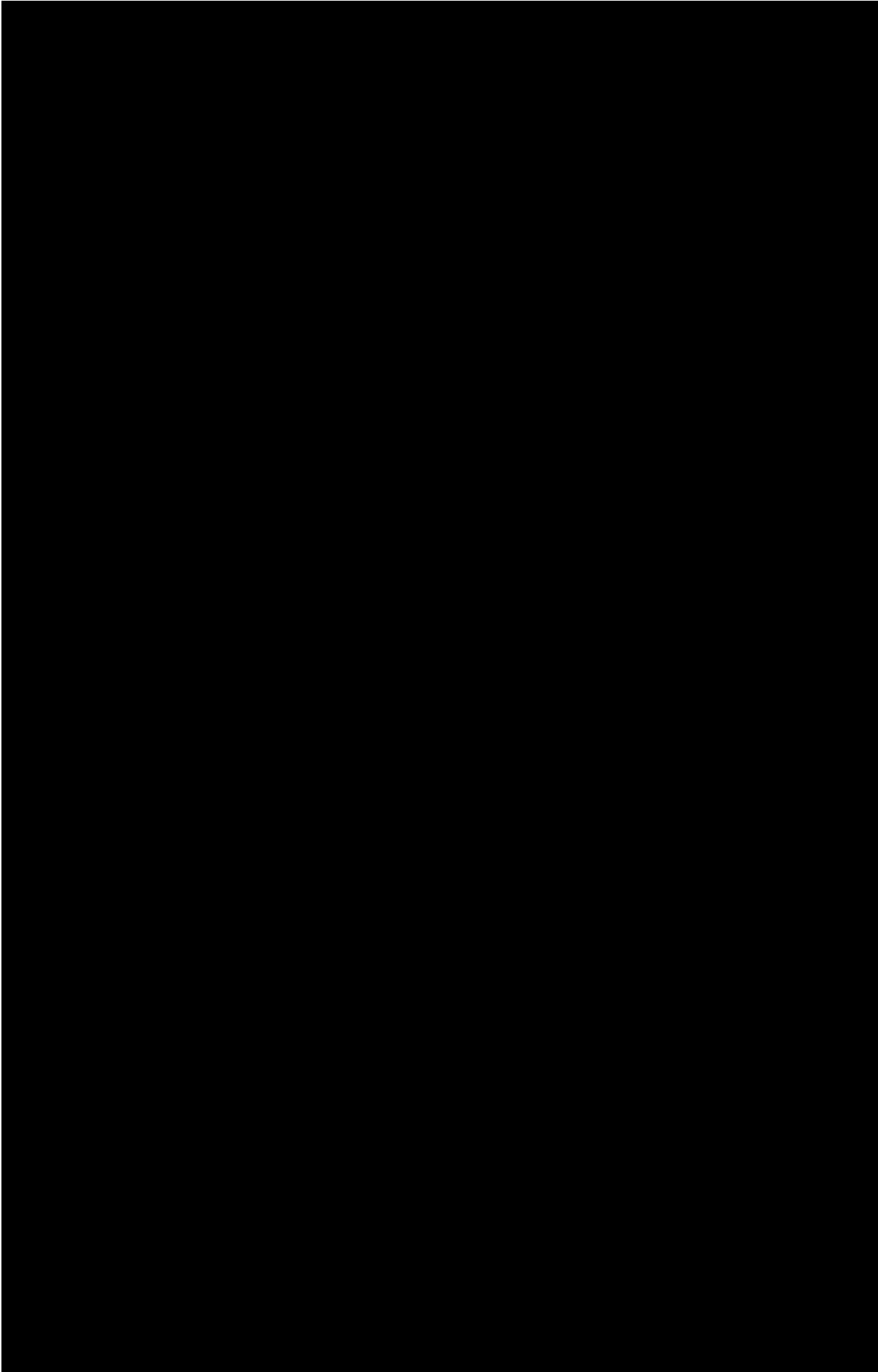


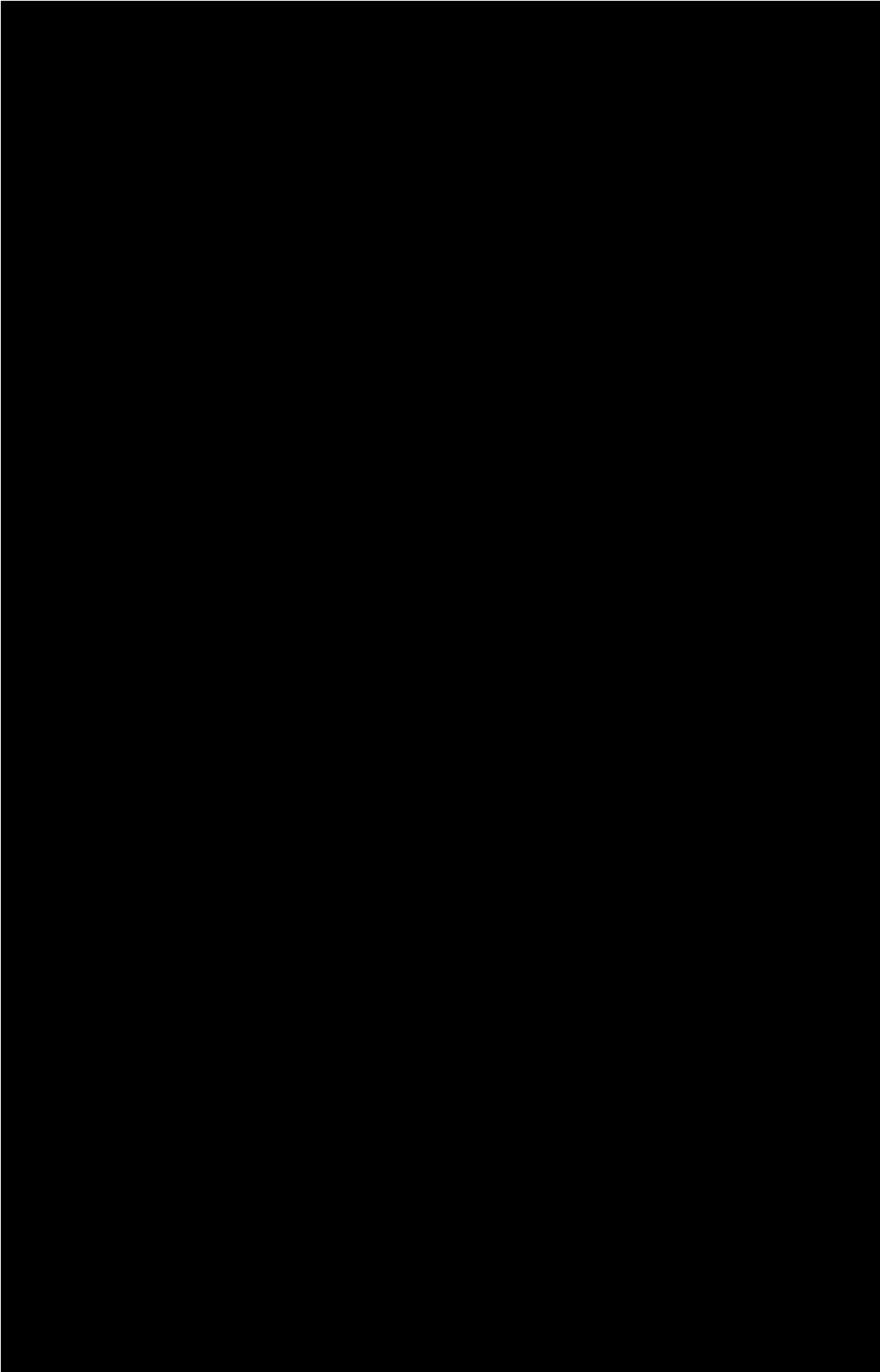


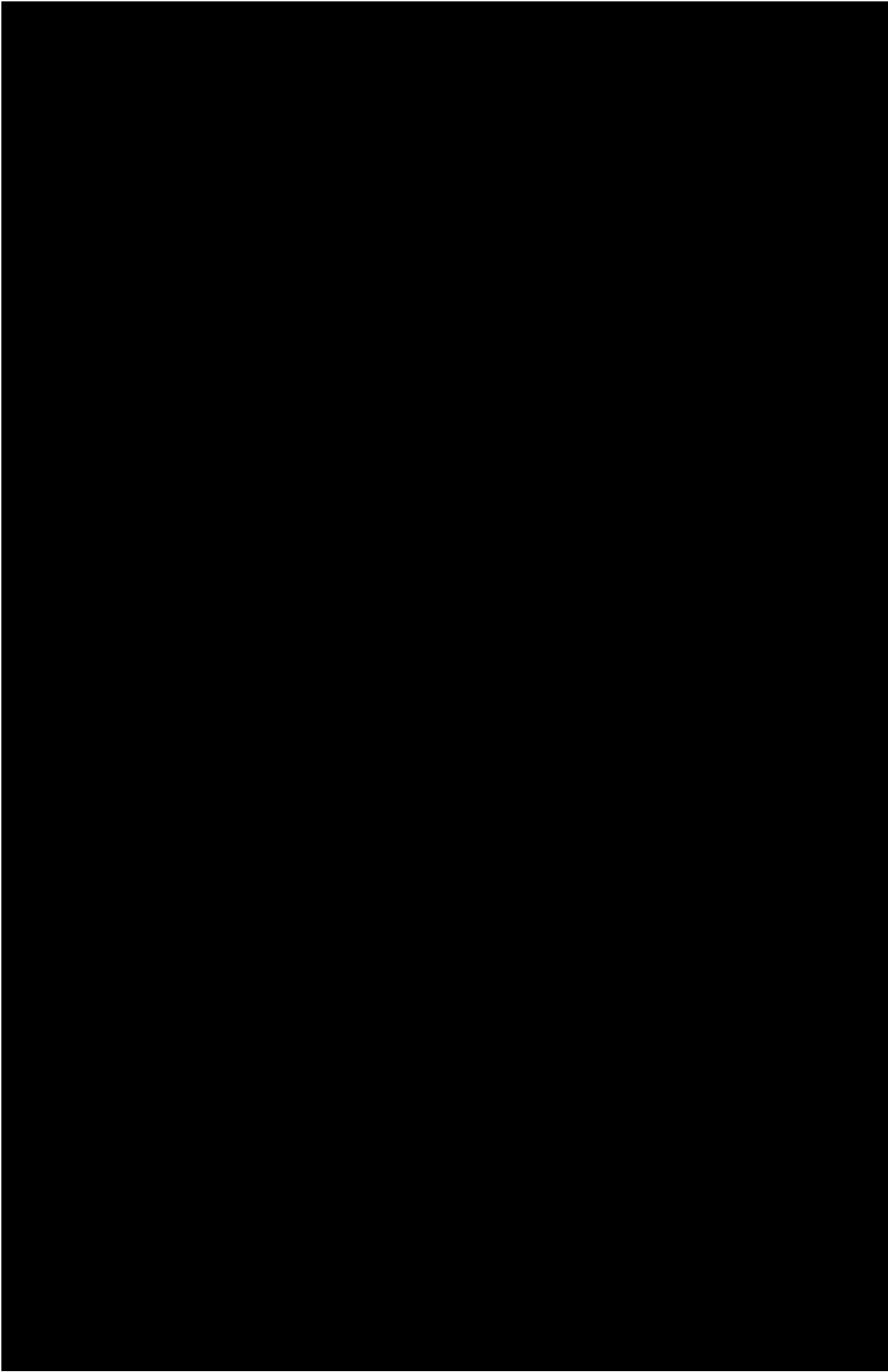


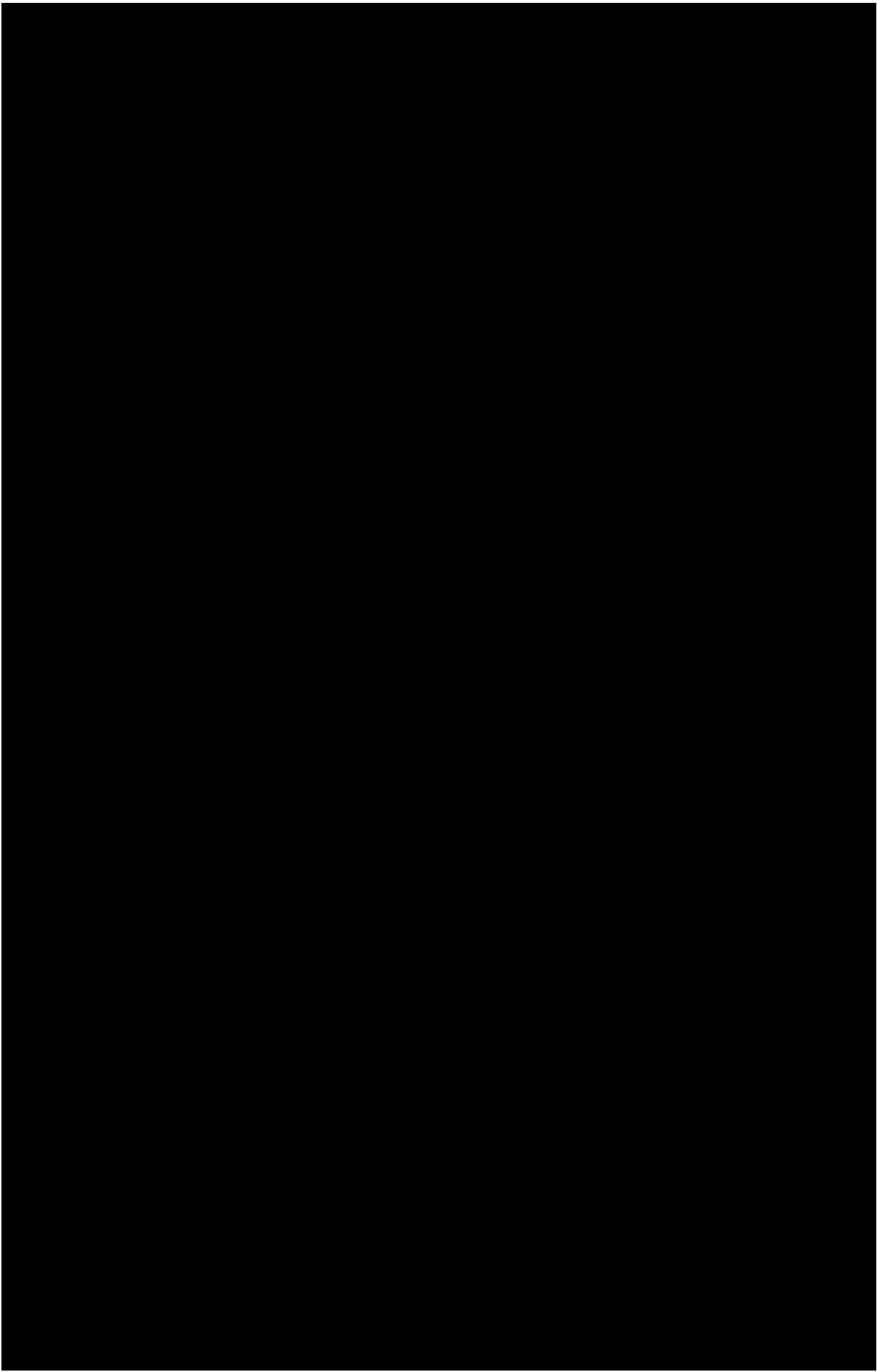


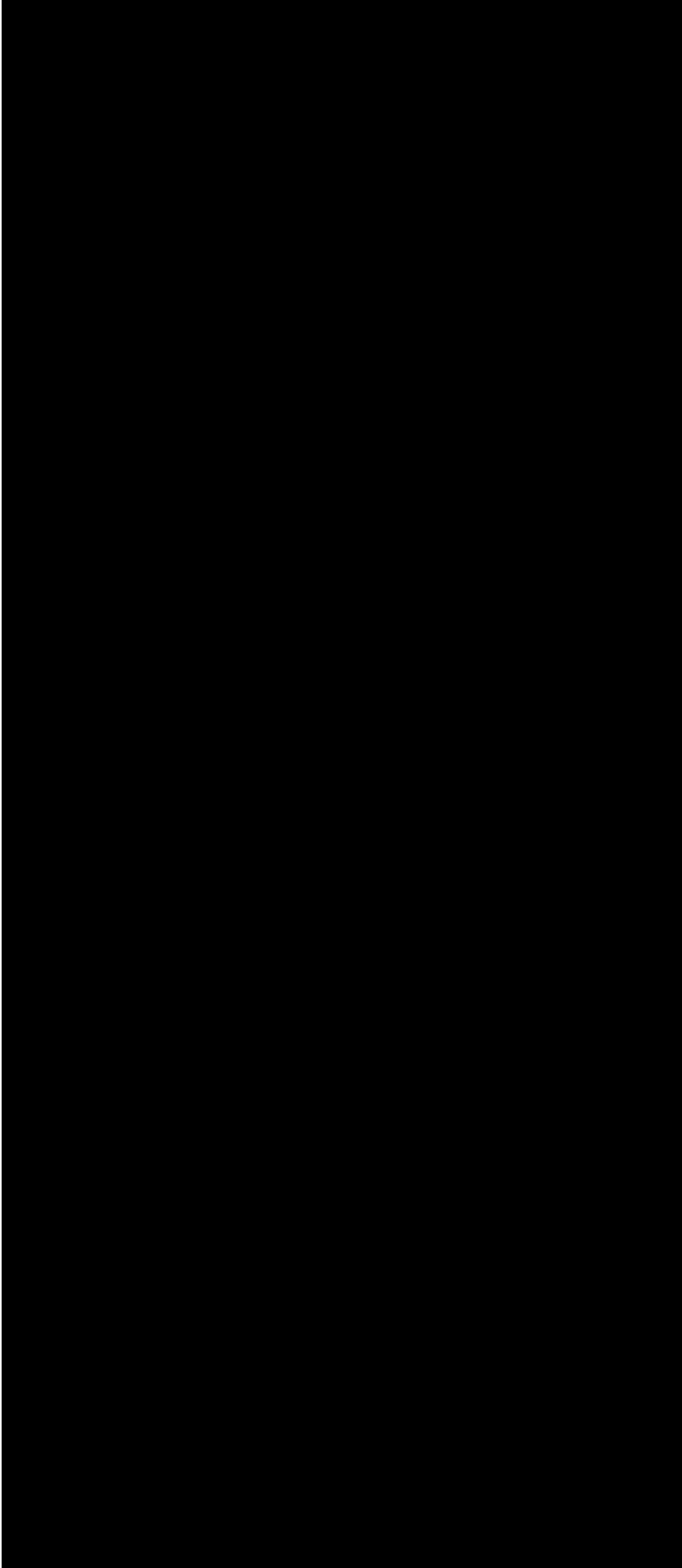






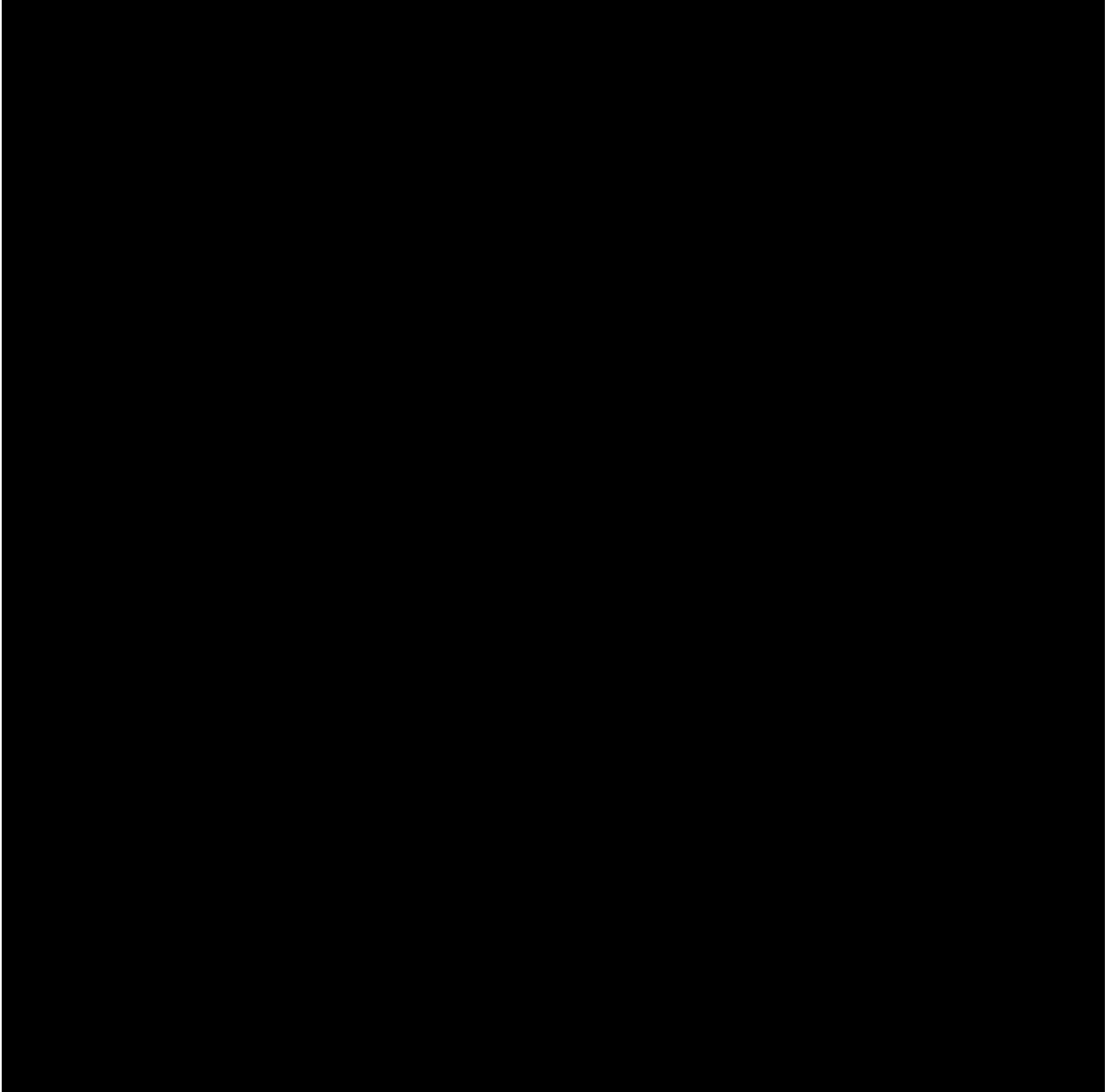


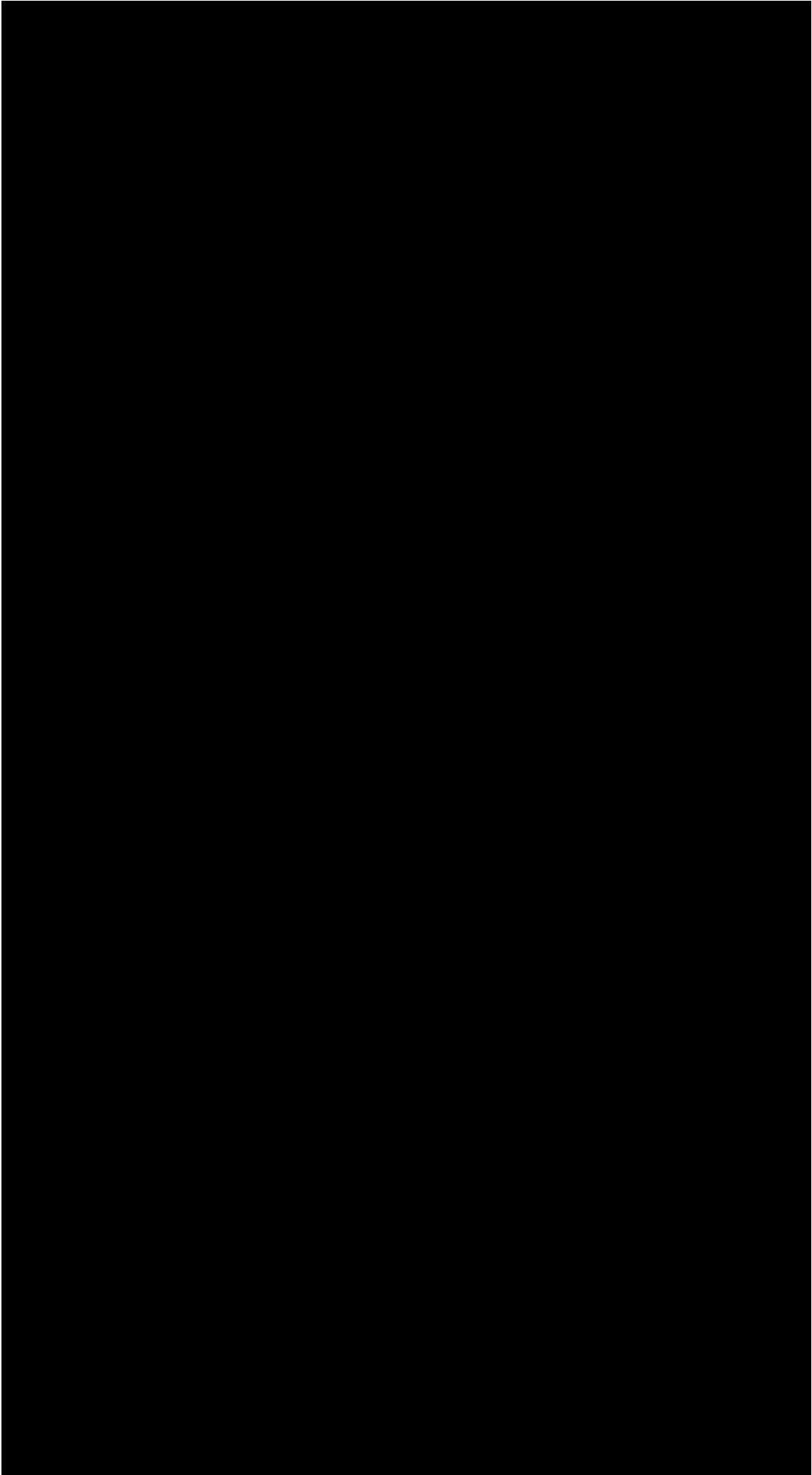




70181958_1	Parramatta Light Rail Stage 2 Enabling Works - Schedules and Exhibits	73
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Schedule 18 Information from the Tenderer's Tender Documents





- (b) shows deterioration of such extent that in the opinion of the Principal or Beneficiary the Equipment ought to be made good or replaced in order to achieve the standard required by the warranty in clause 1(b),

within the period described in Item 7 of the Schedule to this document.

3 Warrantor to bear cost

The Warrantor covenants to the Principal and Beneficiary that it will bear the cost of any work necessary to any part of the Works to enable the requirements of clause 2 to be carried out or to make good the Works afterwards.

4 Principal not liable

The Warrantor acknowledges to the Principal and Beneficiary that nothing contained in this Deed Poll is intended to nor will render either the Principal or Beneficiary in any way liable to the Warrantor in relation to any matters arising out of the Deed or otherwise.

5 This Deed Poll may not be revoked

This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal and Beneficiary.

6 Governing Law and jurisdiction

- (a) This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- (b) The Warrantor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

7 Warrantor's liability not increased

The Warrantor shall have no greater liability to the Principal or the Beneficiary under this Deed Poll as it would have had if the Principal and Beneficiary had been jointly named as a party to the Subcontract in place of the Contractor or Subcontractor (as applicable).

8 Enforcement of this Deed Poll

For the avoidance of doubt this Deed Poll is enforceable by any of the Principal or Beneficiary.

EXECUTED AS A DEED POLL

Signing page

EXECUTED by [WARRANTOR] in)	
accordance with section 127(1) of the)	
Corporations Act 2001 (Cth) by)	
authority of its directors:)	
)	
.....)
Signature of director)	Signature of director/company
)	secretary*
)	*delete whichever is not applicable
.....)	
Name of director (block letters))
)	Name of director/company secretary*
)	(block letters)
)	*delete whichever is not applicable

Schedule

Item 1	Name and Address of Warrantor	[#]
Item 2	Equipment (Recital A)	[#]
Item 3	Contractor (Recital A)	[#]
Item 4	Subcontractor (Recital A)	[#]
Item 5	Deed (Recital A)	[Enabling Works Contract for PLR Stage 2] entered into between the Contractor and the Principal dated <i>insert</i>
Item 6	Detailed Warranty of Warrantor (Clause 1(b))	[#]
Item 7	Period of Years (Clause 2)	[#] years
Item 8	Subcontract (Recital B)	[#]

Schedule 20 Form of Statutory Declaration

(Clauses 11.1, 11.6, 11.7 and 11.11)

Statutory Declaration	Oaths Act (NSW) Ninth Schedule								
<p>I,.....</p> <p>of</p> <p>do hereby solemnly declare and affirm that:</p> <p>1. I am the representative of:</p> <p>(ABN.....)</p> <p>("the Contractor")</p> <p>in the Office Bearer capacity of:</p> <p>2. The Contractor has a contract with the [.....]:</p> <p>..... ("the Contract")</p> <p>3. I personally know the facts which I have set out in this declaration.</p> <p>4. All employees who have at any time been engaged by the Contractor for work done under the Contract:</p> <p>(a) have been paid all remuneration and benefits to the date of this declaration payable to them by the Contractor in respect of their employment on work under the Contract, and</p> <p>(b) have otherwise had accrued to their account all benefits to which they are entitled from the Contractor as at the date of this declaration in respect of their employment on work under the Contract pursuant to any award, enterprise agreement, act or regulation,</p> <p>with the exception of the employees and respective amounts unpaid or not accrued for each employee listed below:</p> <table border="0"> <tr> <td>Employee:</td> <td>Amount unpaid or not accrued:</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> <tr> <td>.....</td> <td>.....</td> </tr> </table>	Employee:	Amount unpaid or not accrued:	<p>insert full name of declarant</p> <p>insert address</p> <p>insert name of Contractor, and ABN if applicable</p> <p>insert position title of declarant</p> <p>Insert name of Principal</p> <p>insert name of Contract</p> <p>insert names and addresses of the unpaid employees, the amounts unpaid, and whether in respect of wages, allowances, holiday pay, long service leave payments and superannuation entitlement etc.</p>
Employee:	Amount unpaid or not accrued:								
.....								
.....								
.....								
<p>5. Attached to and forming part of this declaration, as Annexure A, is a supporting statement for the purposes of section 13(7) of the Building and Construction Industry Security of Payment Act 1999 (NSW).</p> <p>5A. Where the Contractor holds any retention money from a Subcontractor, the Contractor has complied with all requirements under the Building and Construction Industry Security of Payment Amendment (Retention Money Trust Account) Regulation 2015 (NSW), with the exception of the items listed below:</p> <p>.....</p> <p>.....</p> <p>.....</p>									

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

- 2

- (b) under section 18(6) of schedule 2 of part 5 of the Payroll Tax Act 2007 in the form and providing the detail required by that legislation; and
- (c) under section 127 of the Industrial Relations Act 1996 in the form and providing the detail required by that legislation.
12. I personally know the truth of the matters which are contained in this declaration and the attached Subcontractor's Statement.
13. All statutory declarations and Subcontractor's Statements received by the Contractor from subcontractors were:
- (a) given to the Contractor in its capacity as 'principal contractor' as defined in the Workers Compensation Act 1987 (NSW), the Payroll Tax Act 2007 (NSW) and the Industrial Relations Act 1996 (NSW) ("Acts"); and
- (b) given by the subcontractors in their capacity as 'subcontractors' as defined in the Acts.
14. I am not aware of anything which would contradict the statements made in the statutory declarations or written statements provided to the Contractor by its subcontractors, as referred to in this declaration.

And I make this solemn declaration, as to the matter (or matters) aforesaid, according to the law in this behalf made – and subject to the punishment by law provided for any wilfully false statement in any such declaration.

Declared at: on
[place] [date]

.....
[signature of declarant]

in the presence of an authorised witness, who states:

I,, a
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [*please cross out ant text that does not apply]

1. *I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. *I have known the person for at least 12 months OR *I have confirmed the person's identity using an identification document and the document I relied on was
[describe identification document relied on]

.....
[signature of authorised witness] [date]

*The only "special justification" for not removing a face covering is a legitimate medical reason (at September 2018)

Annexure A

Supporting statement by head contractor regarding payment to subcontractors

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

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

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

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

ABN: [ABN]

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

OR

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

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

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

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

Signature: Date:
Full name: Position/Title:

Attachment

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

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

Annexure B**SUBCONTRACTOR'S STATEMENT****REGARDING WORKERS COMPENSATION, PAYROLL TAX AND
REMUNERATION (Note 1 - see back of form)**

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

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

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

Subcontractor: ABN:

(Business name)

of

(Address of Subcontractor)

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

(Business name of principal contractor)

(Note 2)

Contract number/identifier

.....

(Note 3)

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

(Note 4)

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

(Note 5)

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

- (a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick [] if true and comply with (b) to (g) below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick [] and only complete (f) and (g) below. You must tick one box. **(Note 6)**
- (b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated/...../..... **(Note 7)**

- (c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**
- (d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007* (NSW), the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**
- (e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**
- (f) Signature Full name.....
- (g) Position/Title Date/...../.....

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

Notes

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

A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called the **subcontractor**) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.
2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees / workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.
3. Provide the unique contract number, title, or other information that identifies the contract.
4. In order to meet the requirements of section 127 of the *Industrial Relations Act 1996* (NSW), a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

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

Section 127(11) of the *Industrial Relations Act 1996* (NSW) states 'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'
5. Provide the date of the most recent payment claim.
6. For Workers Compensation purposes an exempt employer is an employer who pays less than \$7500 annually, who does not employ an apprentice or trainee and is not a member of a group.
7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.
8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.
9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.
10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the

work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

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

Offences in respect of a false Statement

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

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

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

Further Information

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

Schedule 21 Property Owner's Certificate

(Clause 3.4(b)(iv))

This deed poll is made the day of 20

To: **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest St, Macquarie Park NSW 2113 (**Principal**)

By: [] (Landowner).

Property Address:

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

[Insert description of works on property and property]

2. I/we confirm that our land has been rehabilitated and all damage and degradation on it repaired.
3. I/We release the Principal from all claims and actions which I/we may have arising out of or in connection with the works referred to in paragraph 1.
4. This deed poll may not be revoked or otherwise modified without the prior written consent of the Principal.
5. This deed poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
5. The Landowner hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.

Executed as a deed poll.

Signing page

[Individual]

SIGNED, SEALED AND DELIVERED)
by #INDIVIDUAL’S NAME# in the)
presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))

.....
Signature of #INDIVIDUAL’S NAME#

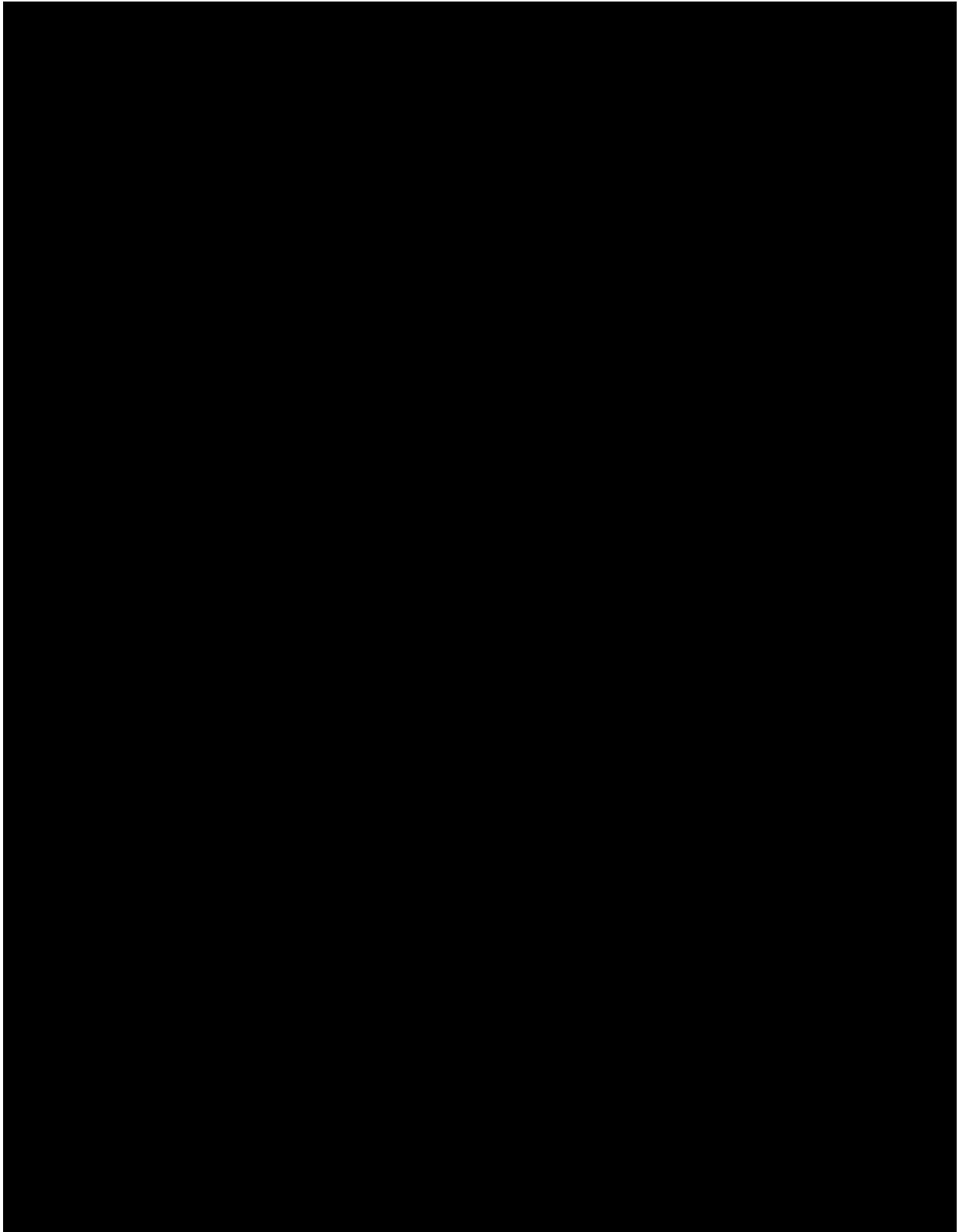
[Company]

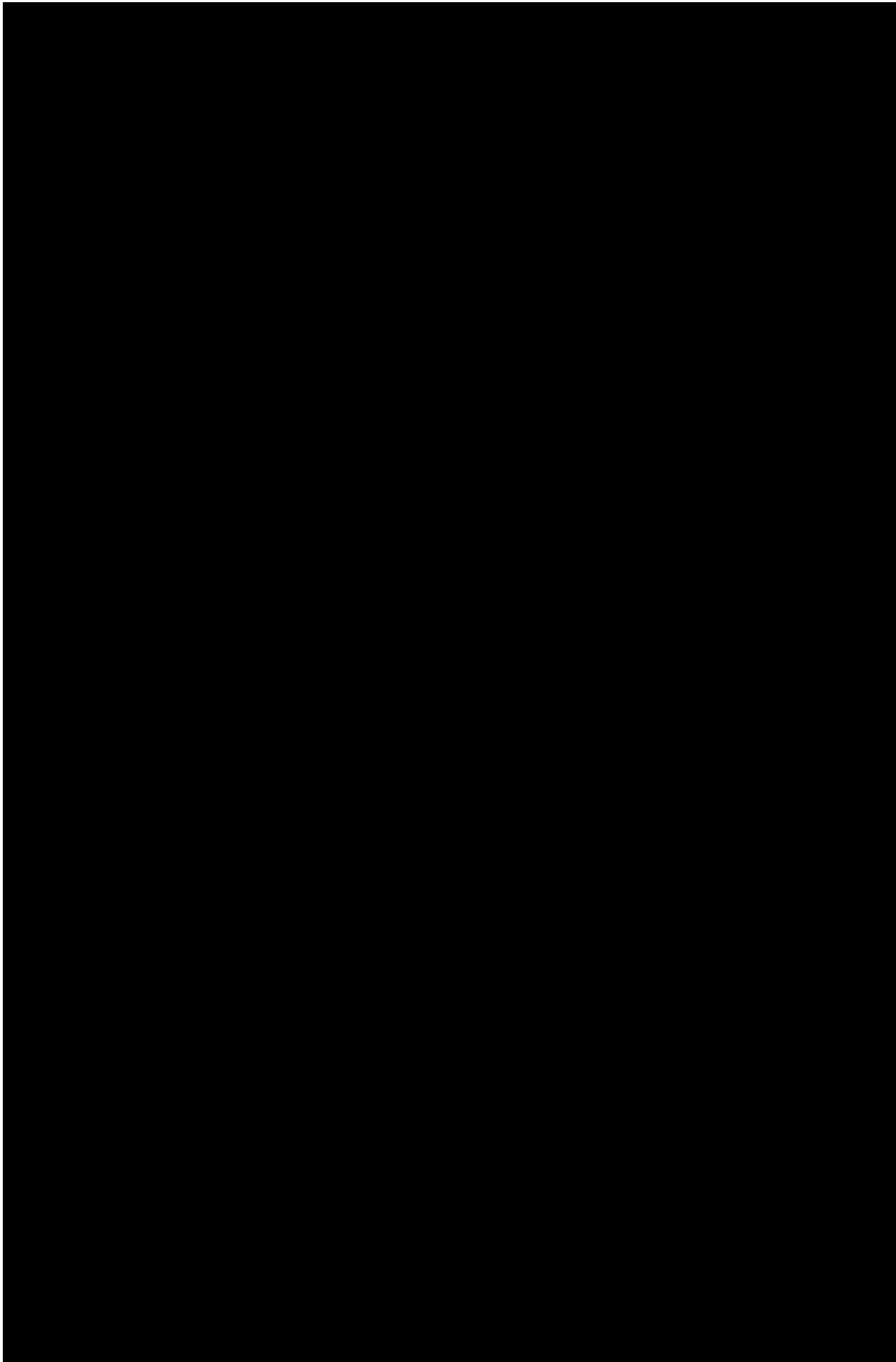
EXECUTED by #COMPANY NAME# in)
accordance with section 127(1) of the)
Corporations Act 2001 (Cth) by)
authority of its directors:)
)
)
.....)
Signature of director)
)
.....)
Name of director (block letters))

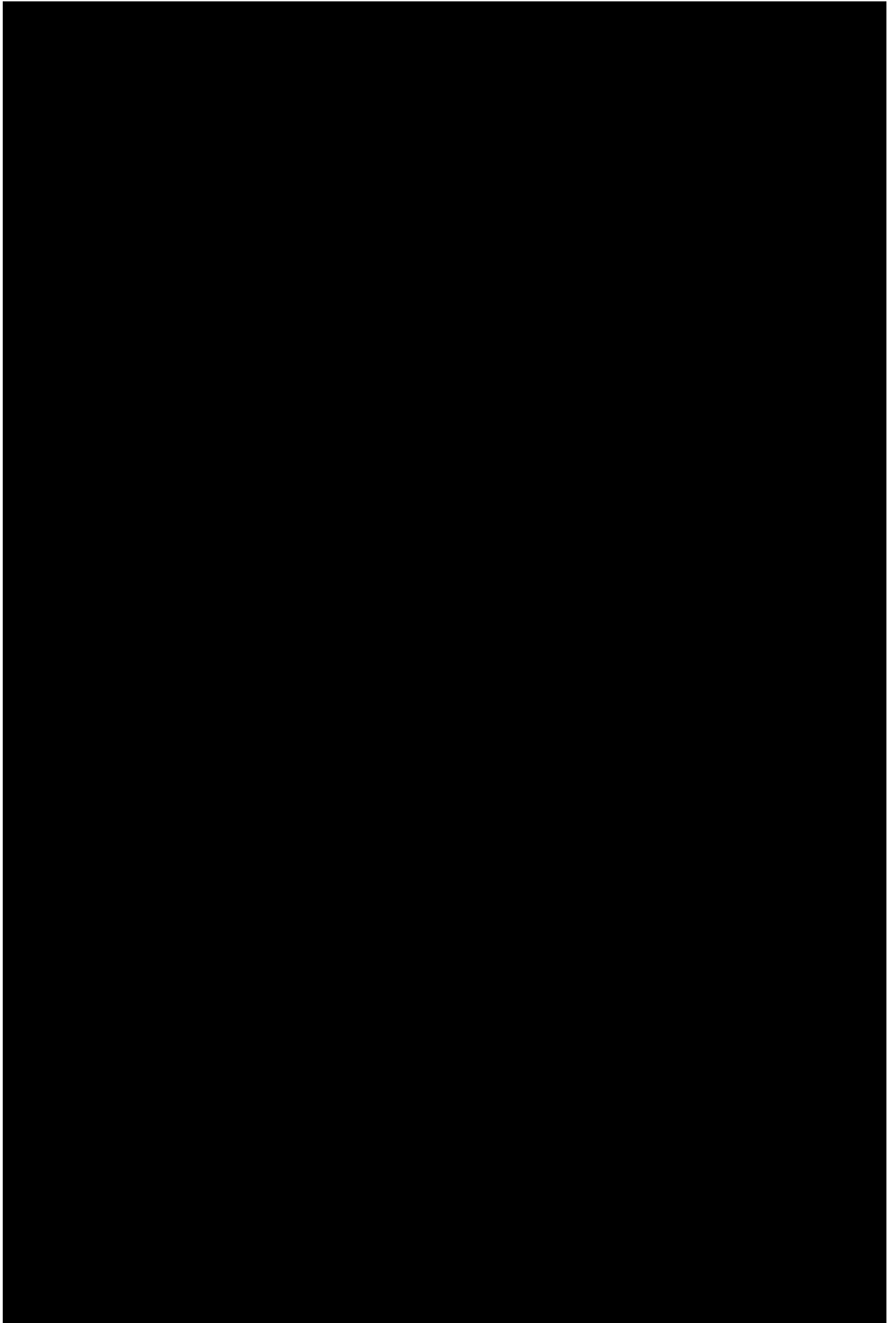
.....
Signature of director/company
secretary*
*delete whichever is not applicable
.....
Name of director/company secretary*
(block letters)
*delete whichever is not applicable

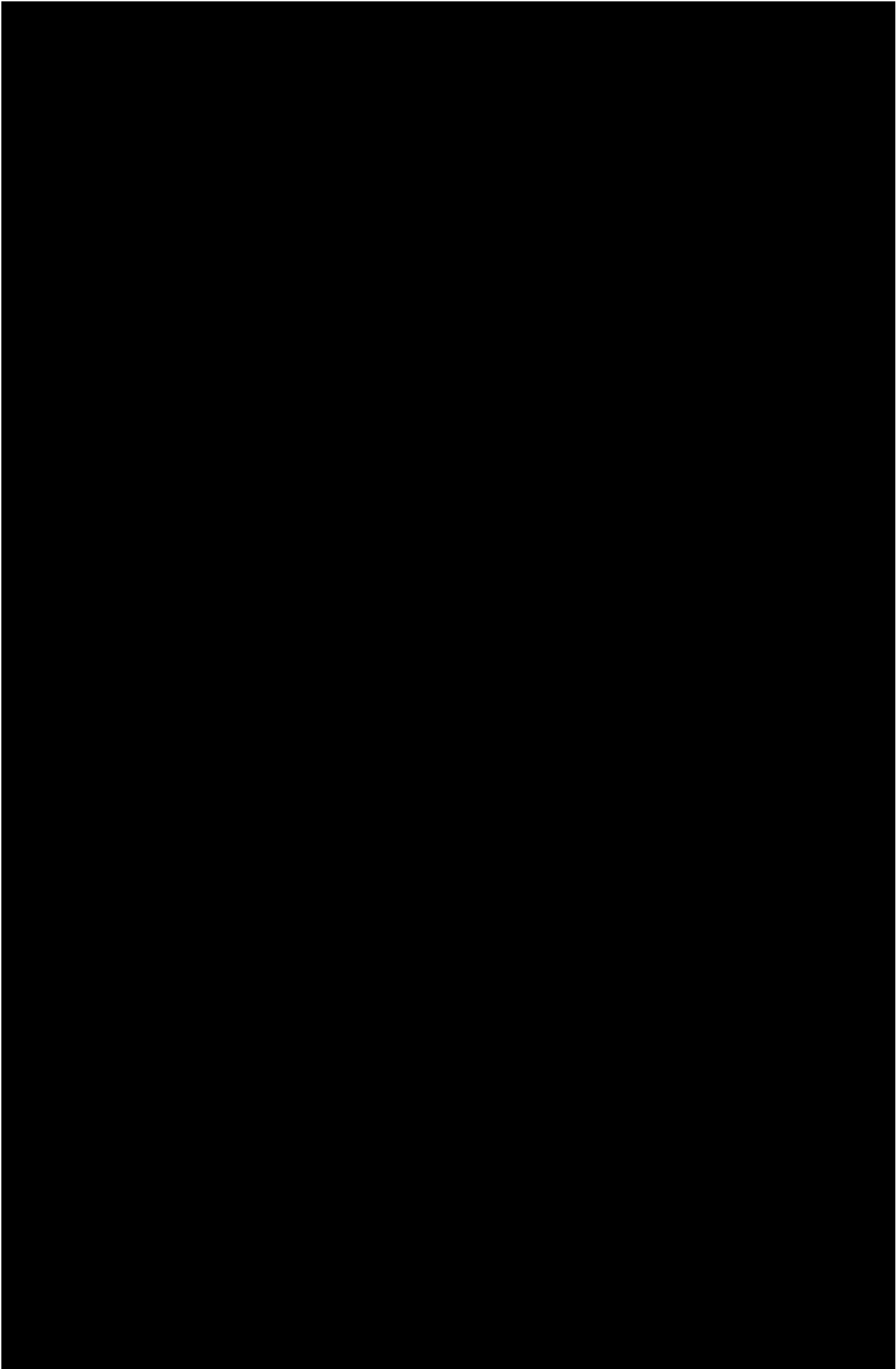
Schedule 22 Site and Site Requirements

(Clauses 1.1, 2.7, 3.1, 3.3, 10.2 and 13.1(c))

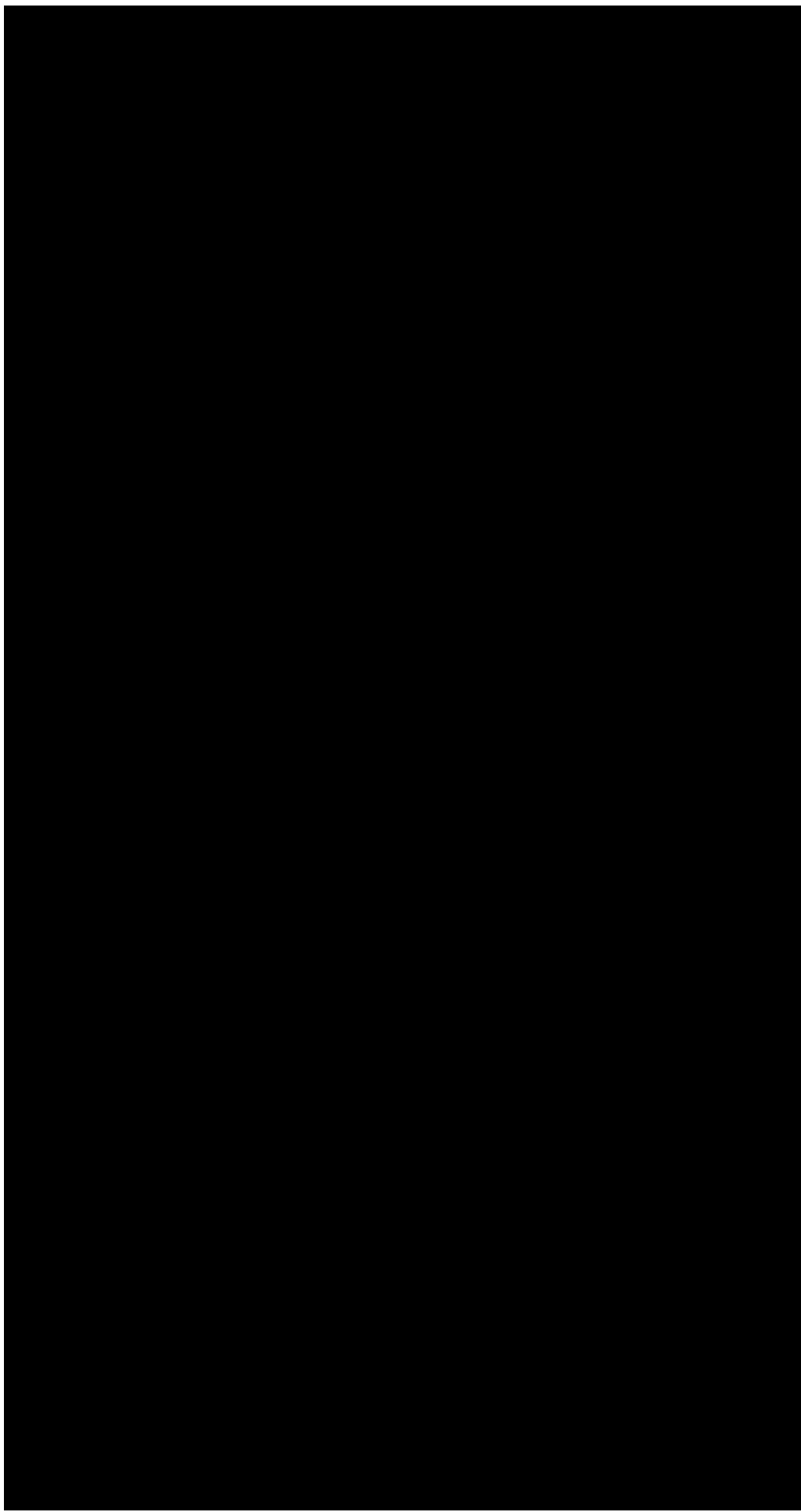


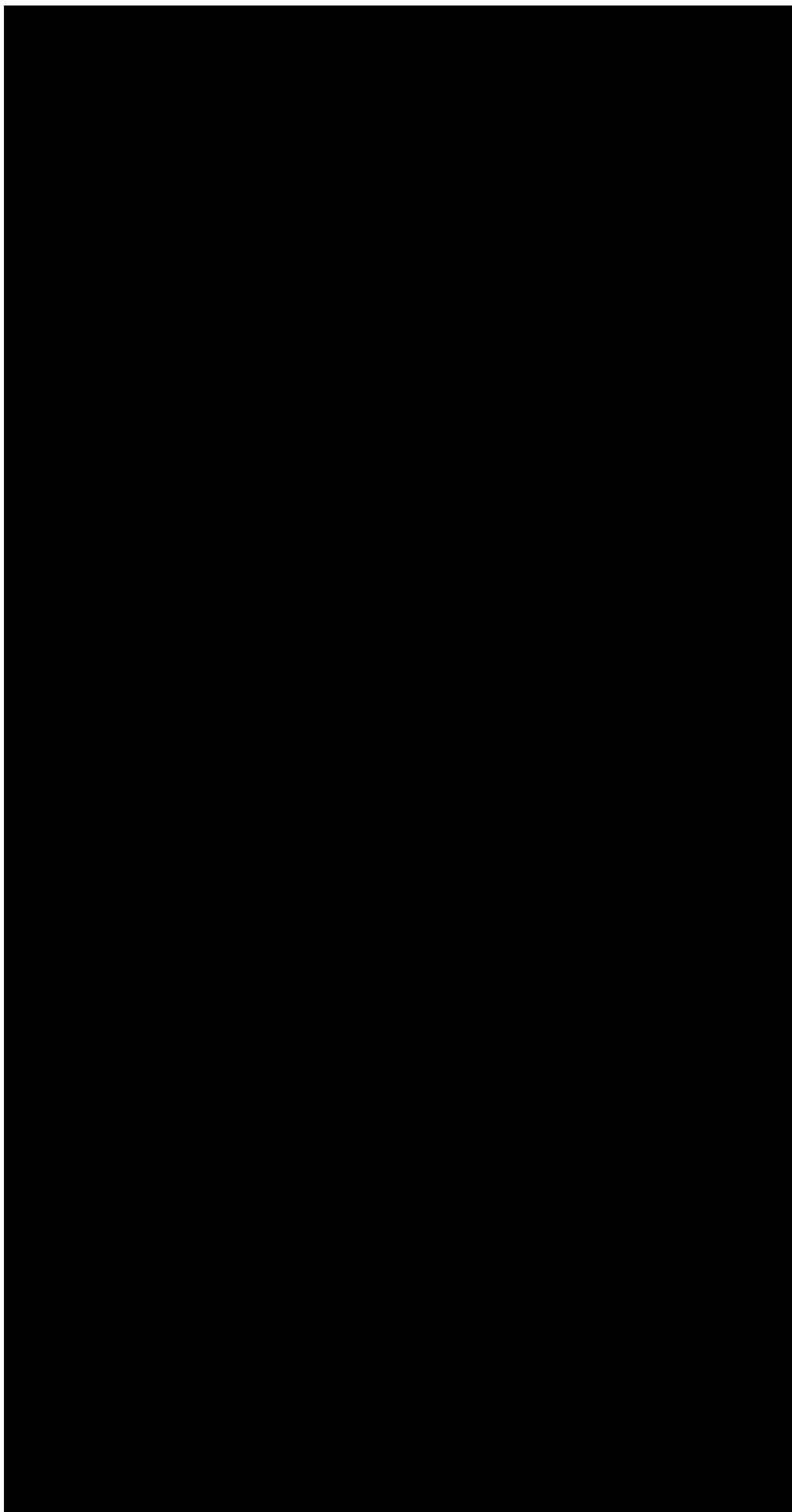












Schedule 23 Form of Subcontractor Deed

(Clause 2.2)

THIS DEED POLL is made on, 20..... by
 ACN..... of
 (the **Subcontractor**).

RECITALS:

- A. **Transport for NSW** (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest St, Macquarie Park NSW 2113 (**Principal**) has entered into a deed with [insert contractor details] (**Contractor**) for the design and construction of certain enabling works for the Paramatta Light Rail (Stage 2) Project (**Works**).
- B. The Subcontractor has an agreement (the **Subcontract**) with the Contractor for the execution and completion of the [] (the **Subcontract Works**) for the Works.
- C. It is a condition of the Subcontract that the Subcontractor executes this Deed Poll.

THIS DEED WITNESSES THAT THE SUBCONTRACTOR HEREBY COVENANTS, WARRANTS AND AGREES with and for the benefit of the persons named in the Schedule as follows:

- 1. It will comply with its obligations under the Subcontract and upon completion of the Works, the Subcontract Works will satisfy the requirements of the Subcontract.
- 2. The persons named in the Schedule may assign or charge the benefits and rights accrued under this Deed Poll.
- 3. The Subcontractor:
 - (a) must if required by a written notice by the Principal sign a deed in the form of the attached Deed of Novation with such substitute contractor as the Principal may nominate; and
 - (b) not used.
- 4. This Deed Poll shall be governed by and construed in accordance with the laws of the State of New South Wales.
- 5. The Subcontractor hereby submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts that may hear appeals from any of those courts, for any proceedings in connection with this Deed Poll, and waives any right it might have to claim that those courts are an inconvenient forum.
- 6. This Deed Poll may not be revoked or otherwise modified without the prior written consent of the Principal.
- 7. The Subcontractor's liability in respect of a breach of a particular obligation under this Deed Poll will be reduced to the extent to which the Subcontractor has

already paid money to or performed work for the Contractor in respect of that breach.

8. The aggregate of the Subcontractor's liability to the Principal under this Deed Poll and the Subcontractor's liability to the Contractor under the Subcontract:
- (a) will not exceed the liability which the Subcontractor would have had under the Subcontract if the Subcontract had named, in place of the Contractor, the Principal and Contractor jointly and severally; and
 - (b) is subject to the same limitations of liability, and qualifications on such limitations of liability, as are specified in the Subcontract

EXECUTED AS A DEED POLL

Signing page

Subcontractor

EXECUTED by [COMPANY NAME] in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by authority of its directors:

Signature of director

Name of director (block letters)

Signature of director/company secretary*

*delete whichever is not applicable

Name of director/company secretary*
(block letters)

*delete whichever is not applicable

Schedule

PERSONS NAMED IN THE SCHEDULE TO THIS DEED POLL

Transport for NSW (ABN 18 804 239 602)

(Attached Deed of Novation)

THIS DEED OF NOVATION is made on [] 20[##] between the following parties:

- (1) [#insert contractor details] (ABN #), of [#insert address details] ("**Contractor**")
- (2) [] ACN [] of [] ("**New Contractor**");
and
- (3) [] ACN [] of [] ("**Subcontractor**").

Recitals

- A. By agreement dated [] (the "**Agreement**"), the Contractor engaged the Subcontractor to, and the Subcontractor agreed to, carry out certain works for the Contractor.
- B. Under clause 3 of the Deed Poll executed on [], which forms part of the Agreement, the Subcontractor must enter into this deed when the Principal under the Deed Poll requires it to do so.
- C. Subject to this deed, the Subcontractor agrees to accept the New Contractor in place of the Contractor for the performance of all the obligations of the Contractor and to release completely and discharge the Contractor from all of its obligations under the Agreement and from all claims and demands in respect of it.

THIS DEED WITNESSES that in consideration, among other things, of the mutual promises contained in this deed, the parties agree:

1. The Subcontractor must perform its obligations under, and be bound by, the Agreement as if the New Contractor was originally named in the Agreement as the Contractor.
2. The Subcontractor:
 - (a) releases and forever discharges the Contractor from its obligations under the Agreement and from all claims and demands in respect of the Agreement; and
 - (b) accepts the liability of the New Contractor in place of the liability of the Contractor in respect of the Agreement.
3. The New Contractor must perform all the obligations of the Contractor under, and be bound by, the Agreement as if the New Contractor were originally named in the Agreement as the Contractor.
4. Upon the execution and exchange of this deed:
 - (a) the Contractor must release any securities given to it by the Subcontractor in accordance with the Agreement;
 - (b) the Subcontractor must give the New Contractor security in the same form and for the same amounts as any security required by the Agreement; and
 - (c) the Subcontractor must ensure that the New Contractor is appropriately noted on all relevant insurance policies as required by the Agreement.
5. The New Contractor must pay all stamp duty and any penalties in respect of this deed.

6. This deed is governed by the laws of New South Wales and the parties agree to submit to the non-exclusive jurisdiction of the courts of that state.

EXECUTED as a deed

Signing page

TfNSW

SIGNED, SEALED AND DELIVERED

for and on behalf of **TRANSPORT**

FOR NSW (ABN 18 804 239 602):

Signature of Authorised Delegate

Signature of Witness

Print Name
(block letters)

Print Name
(block letters)

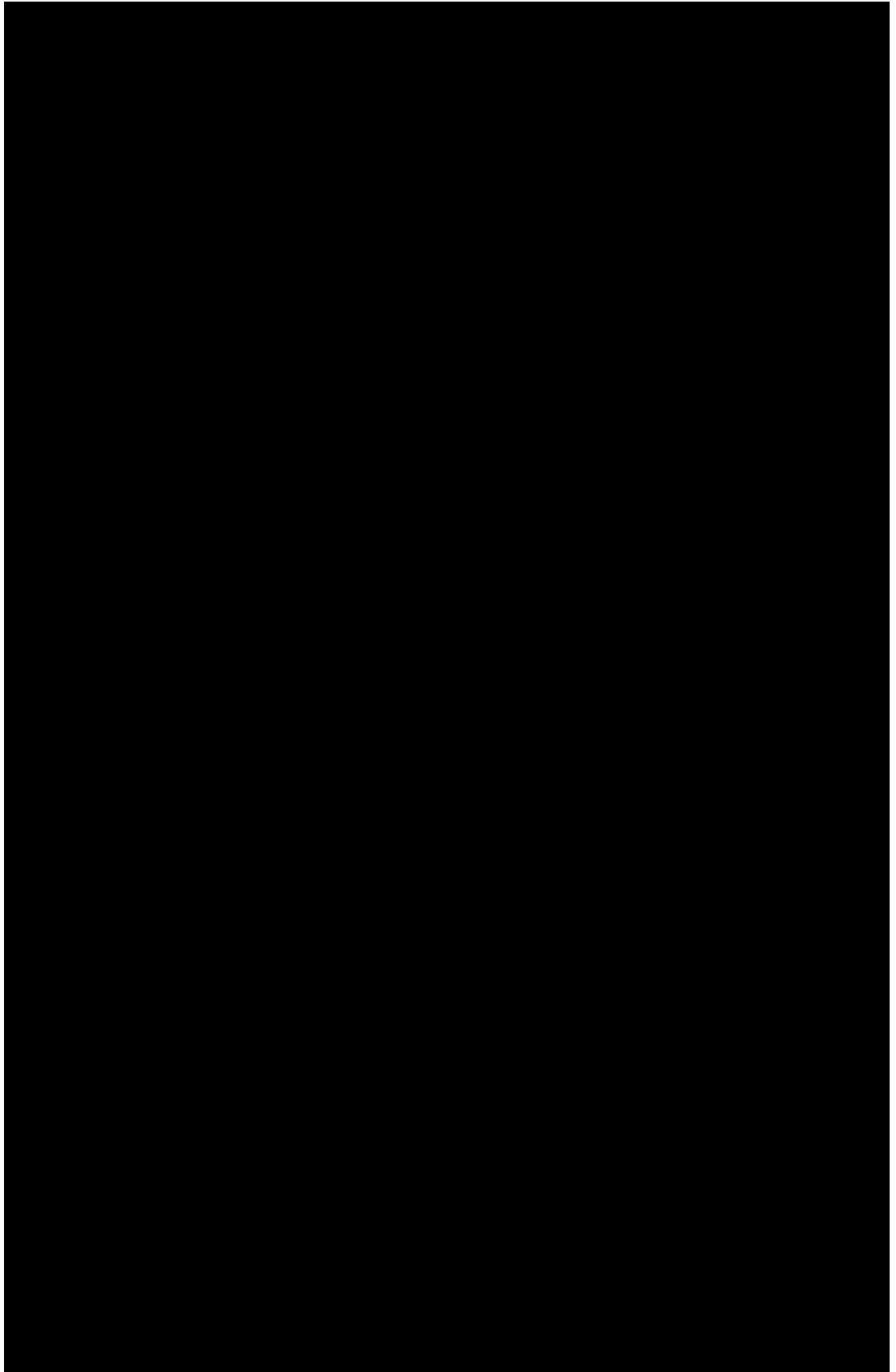
Position held

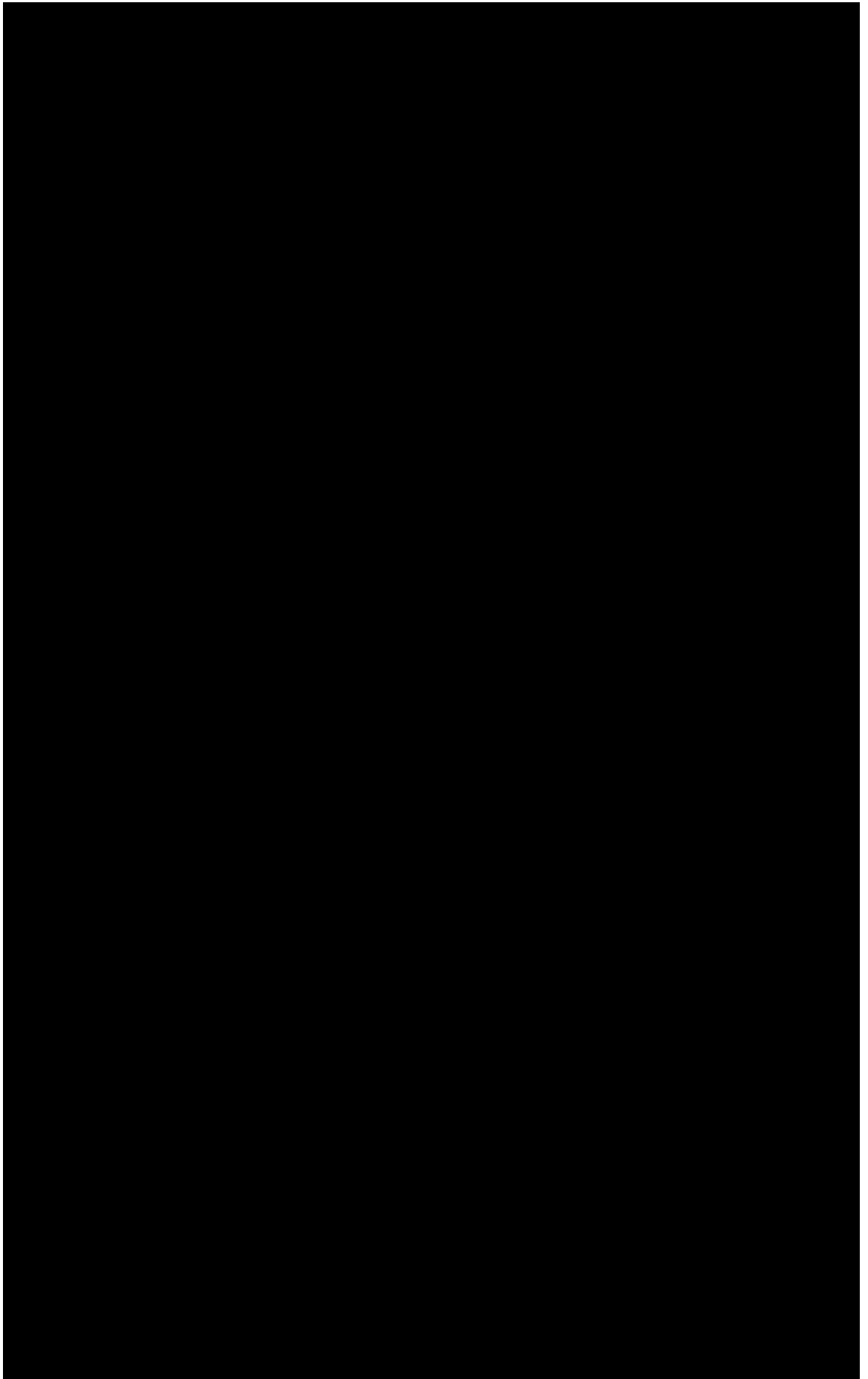
Position held

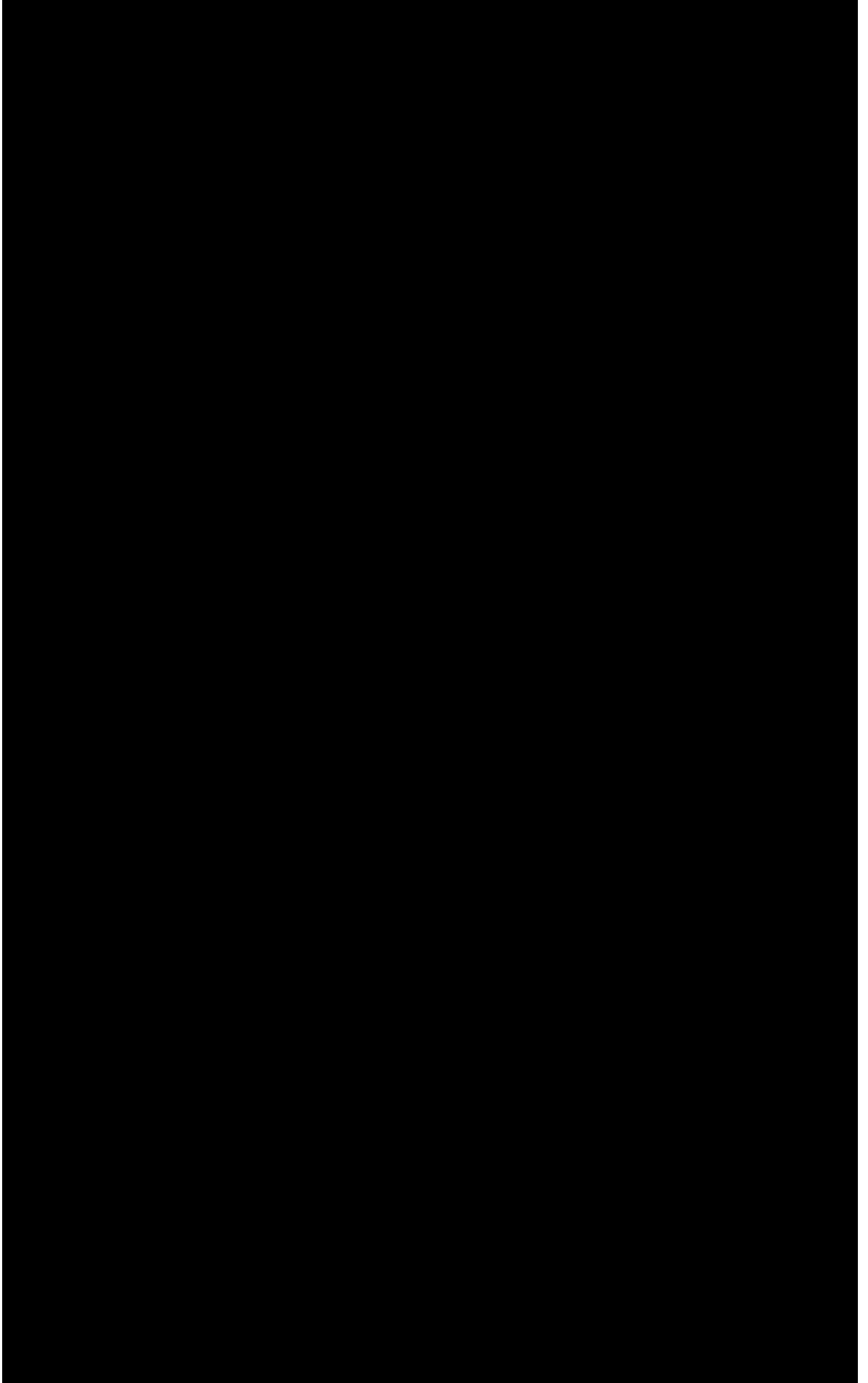
Contractor

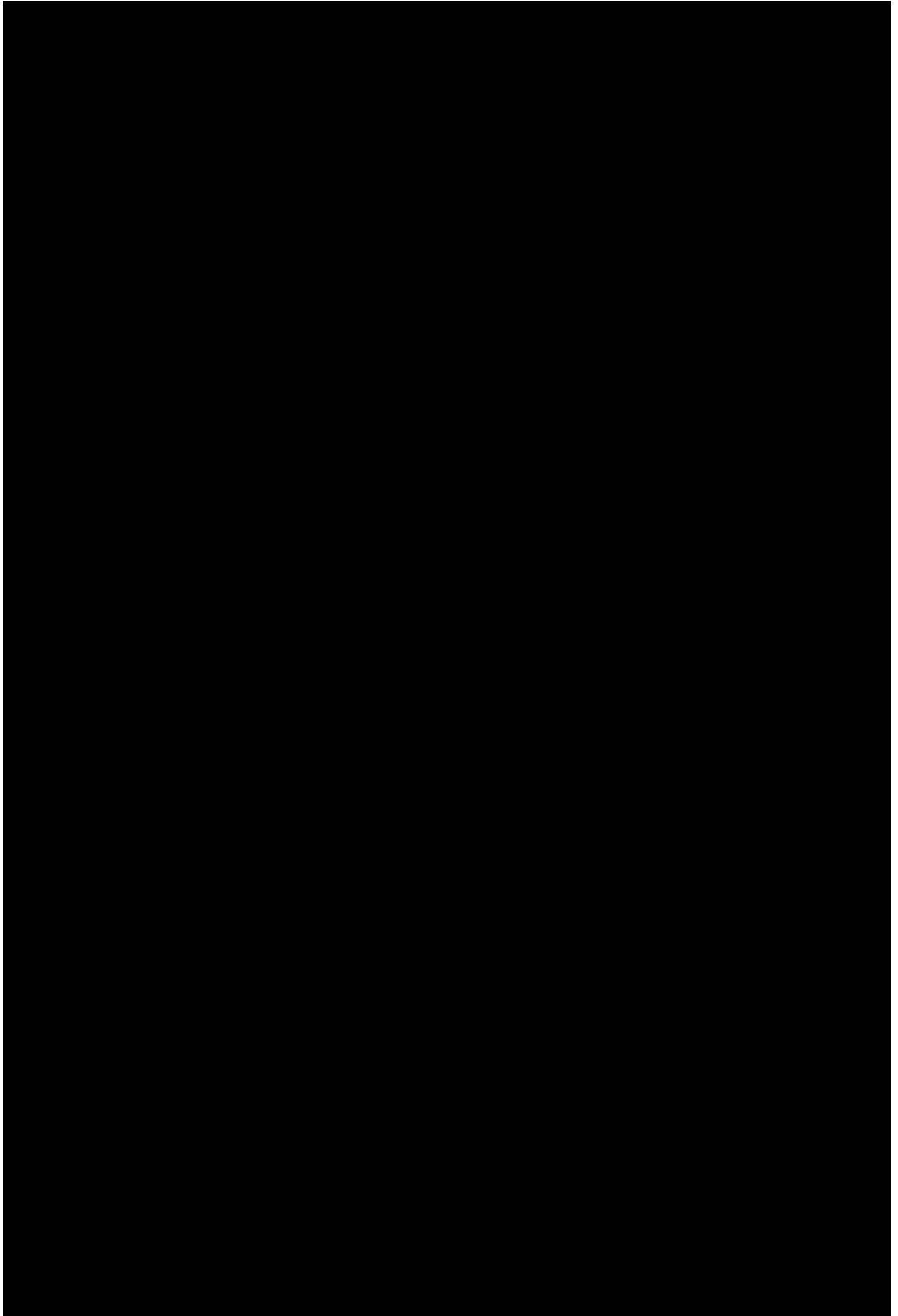
[Note to Tenderers: execution block of the successful Tenderer will need to be inserted]

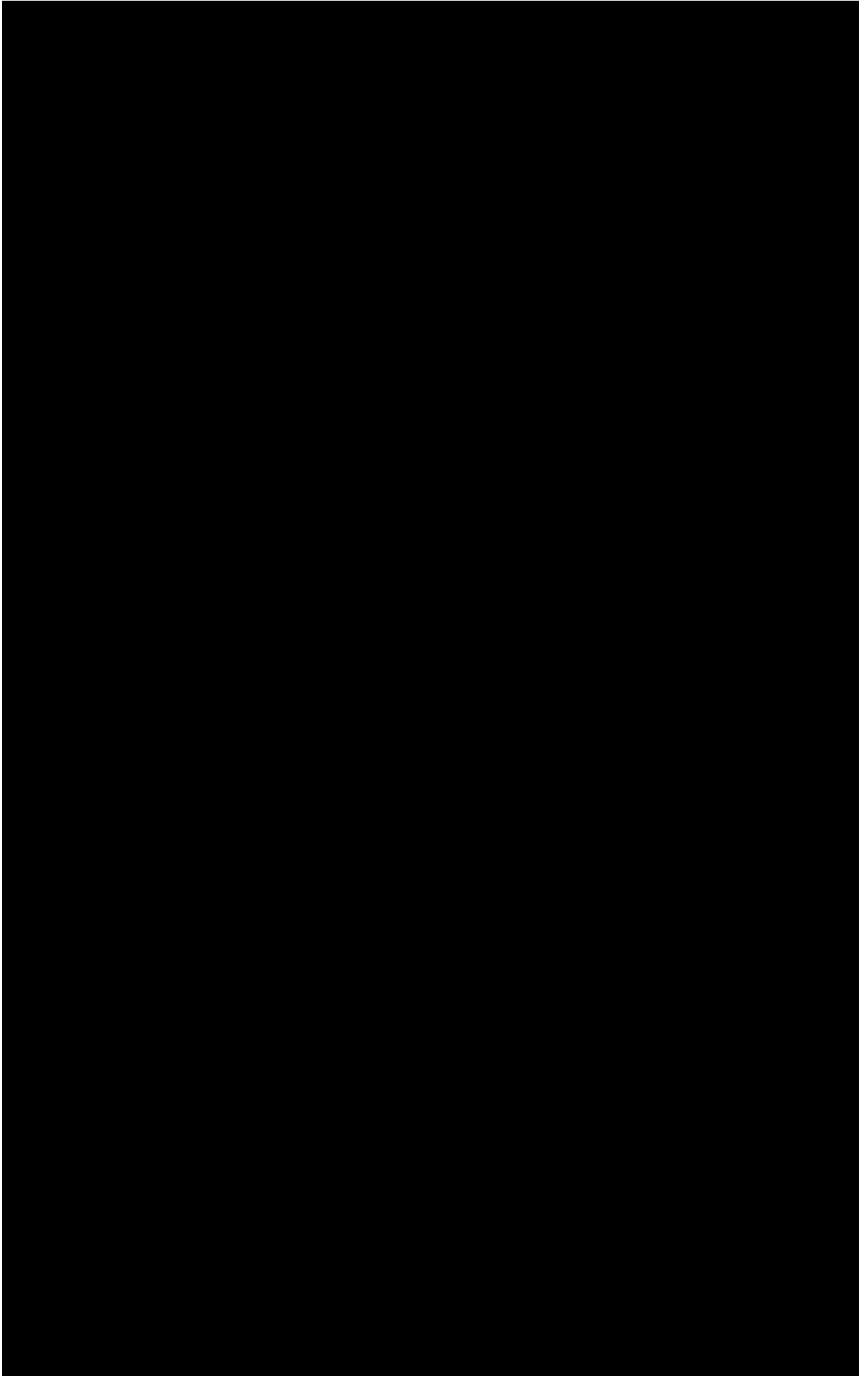
Schedule 24 Form of Consultant Deed of Novation

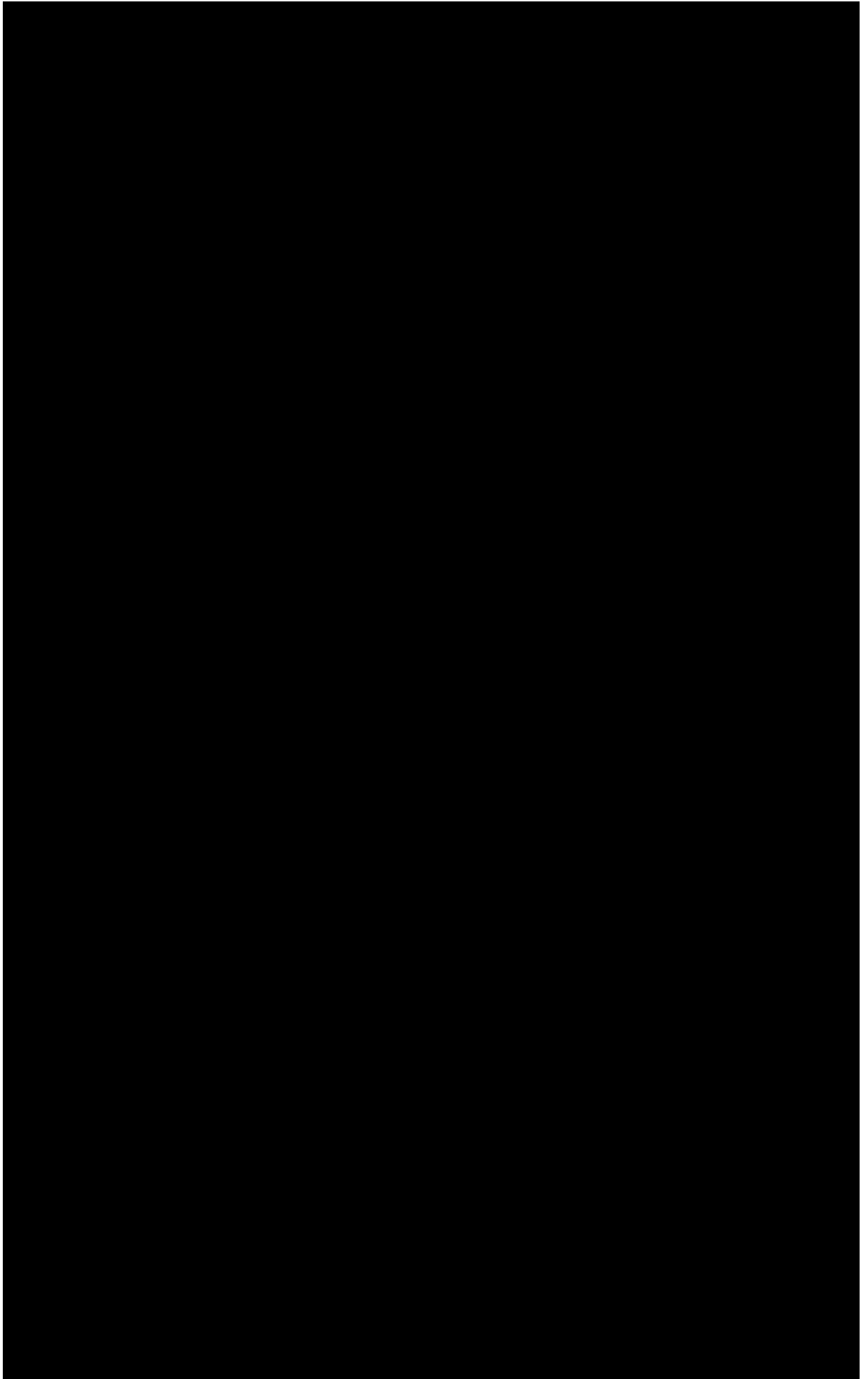


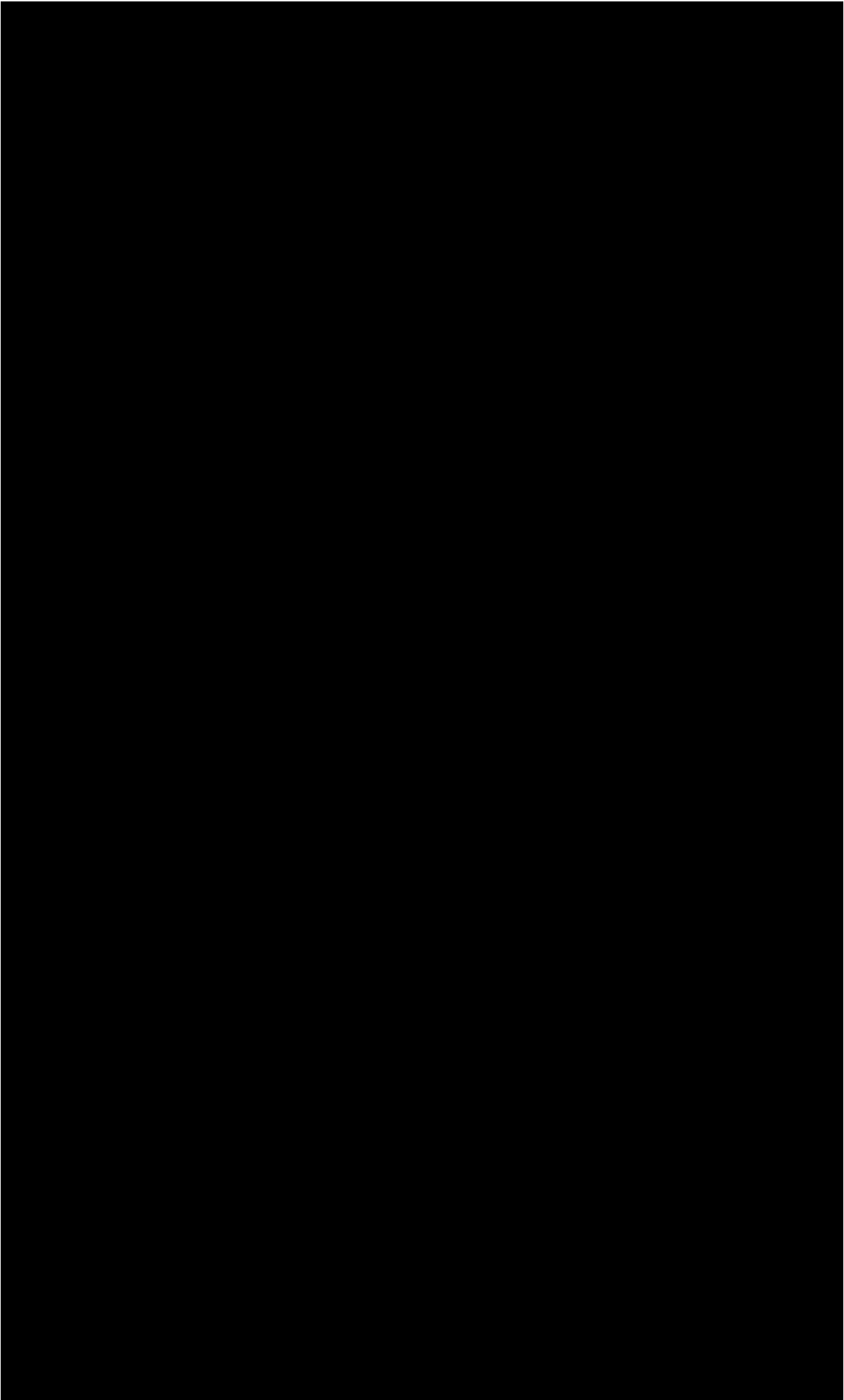


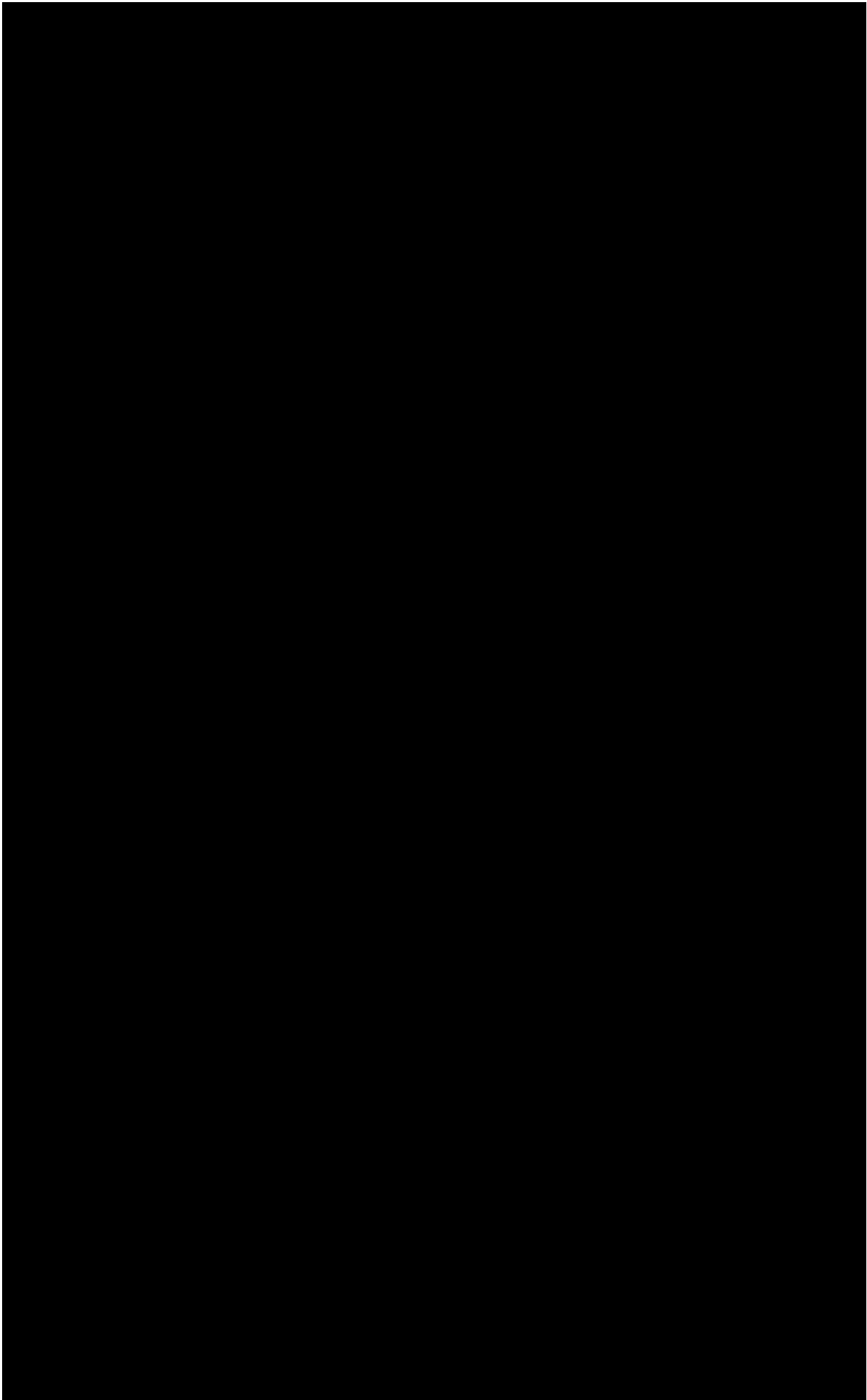


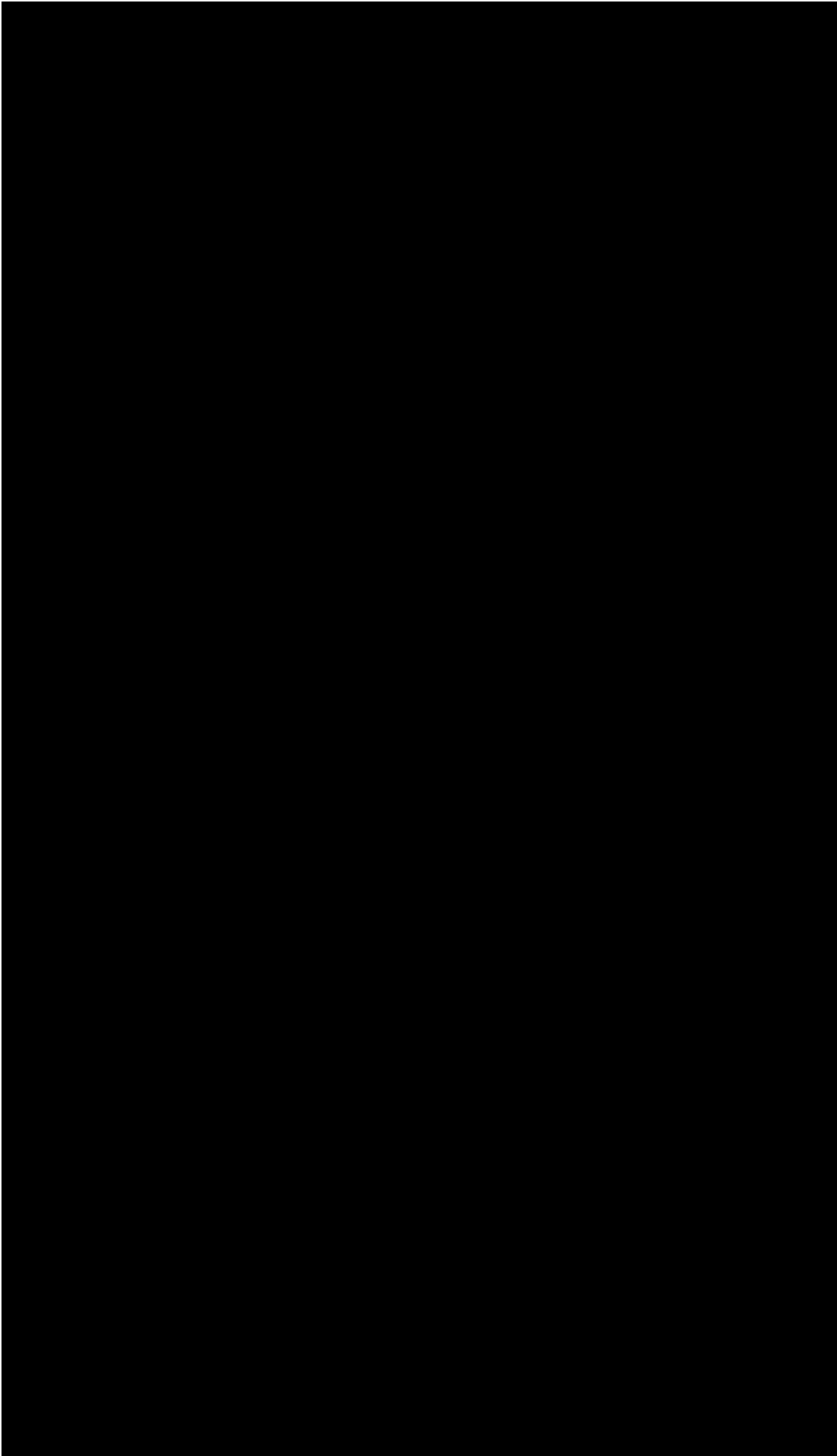


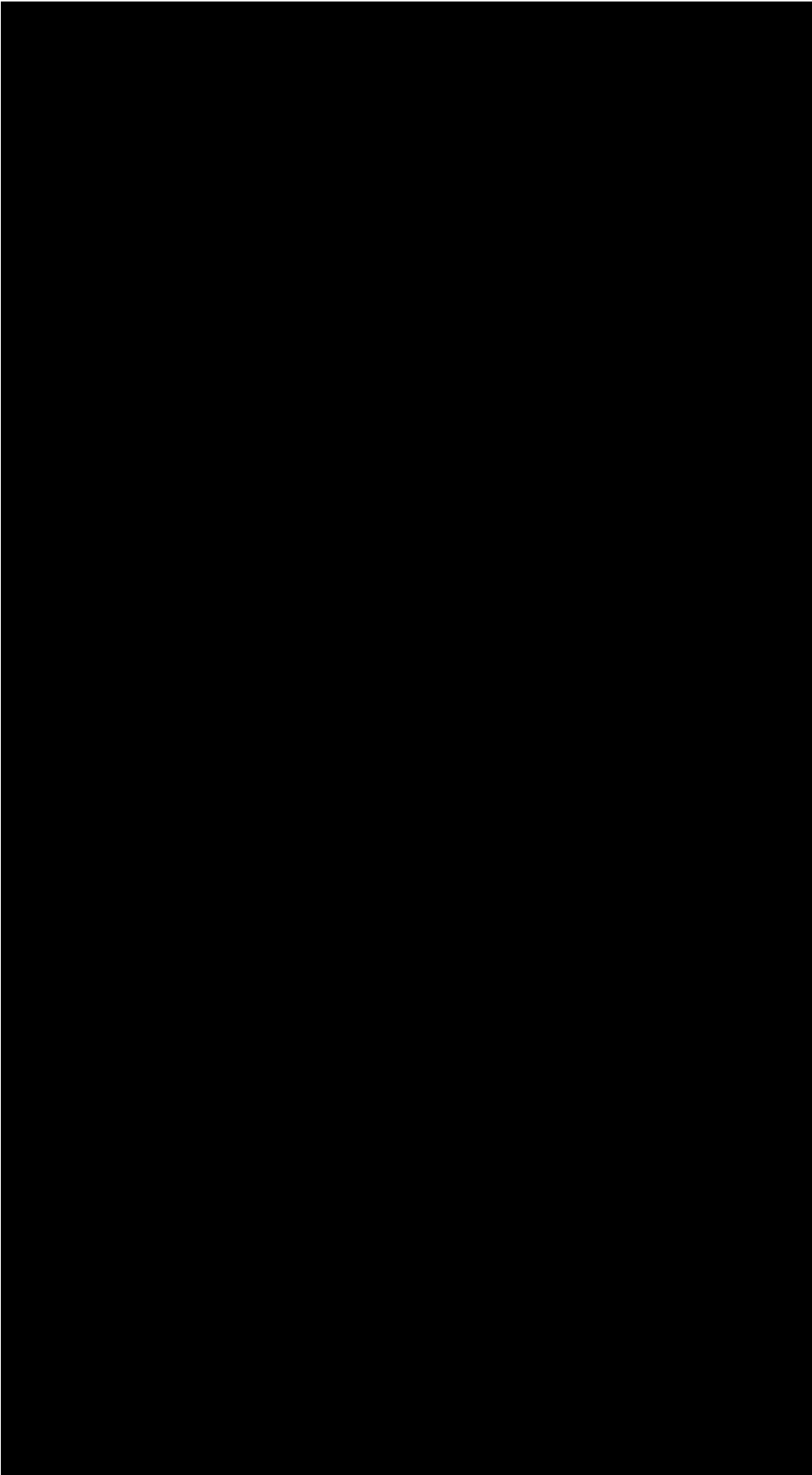


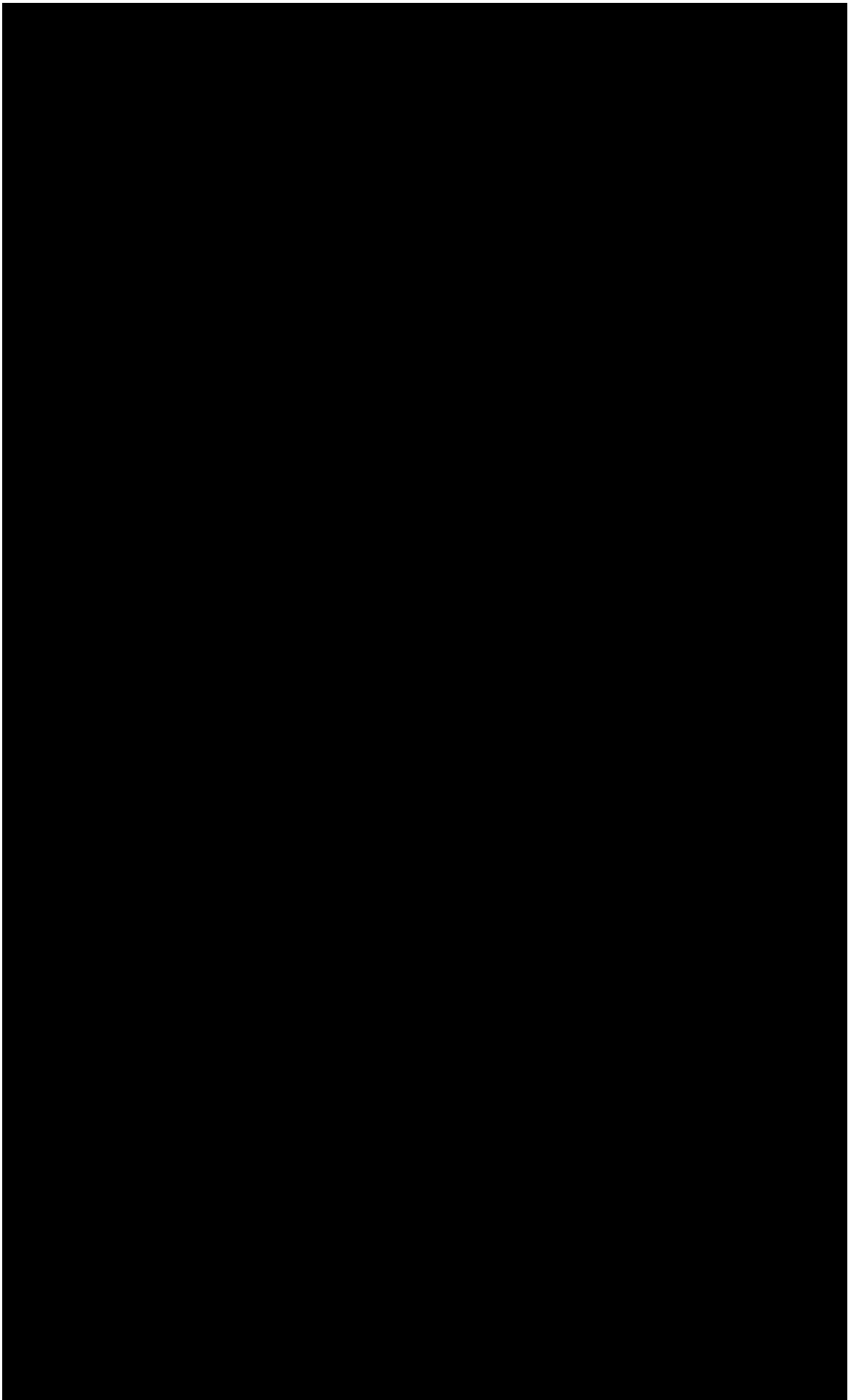


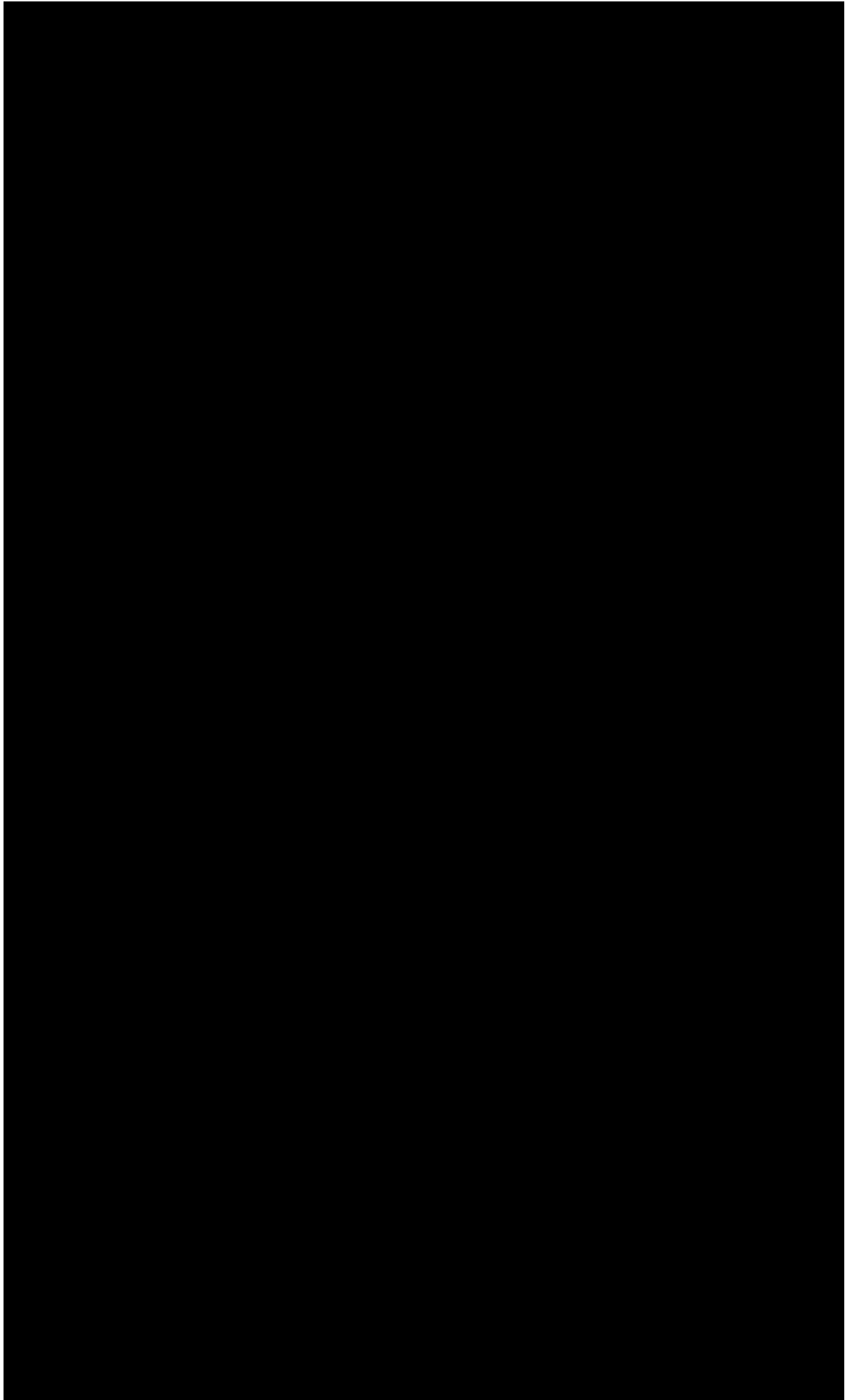


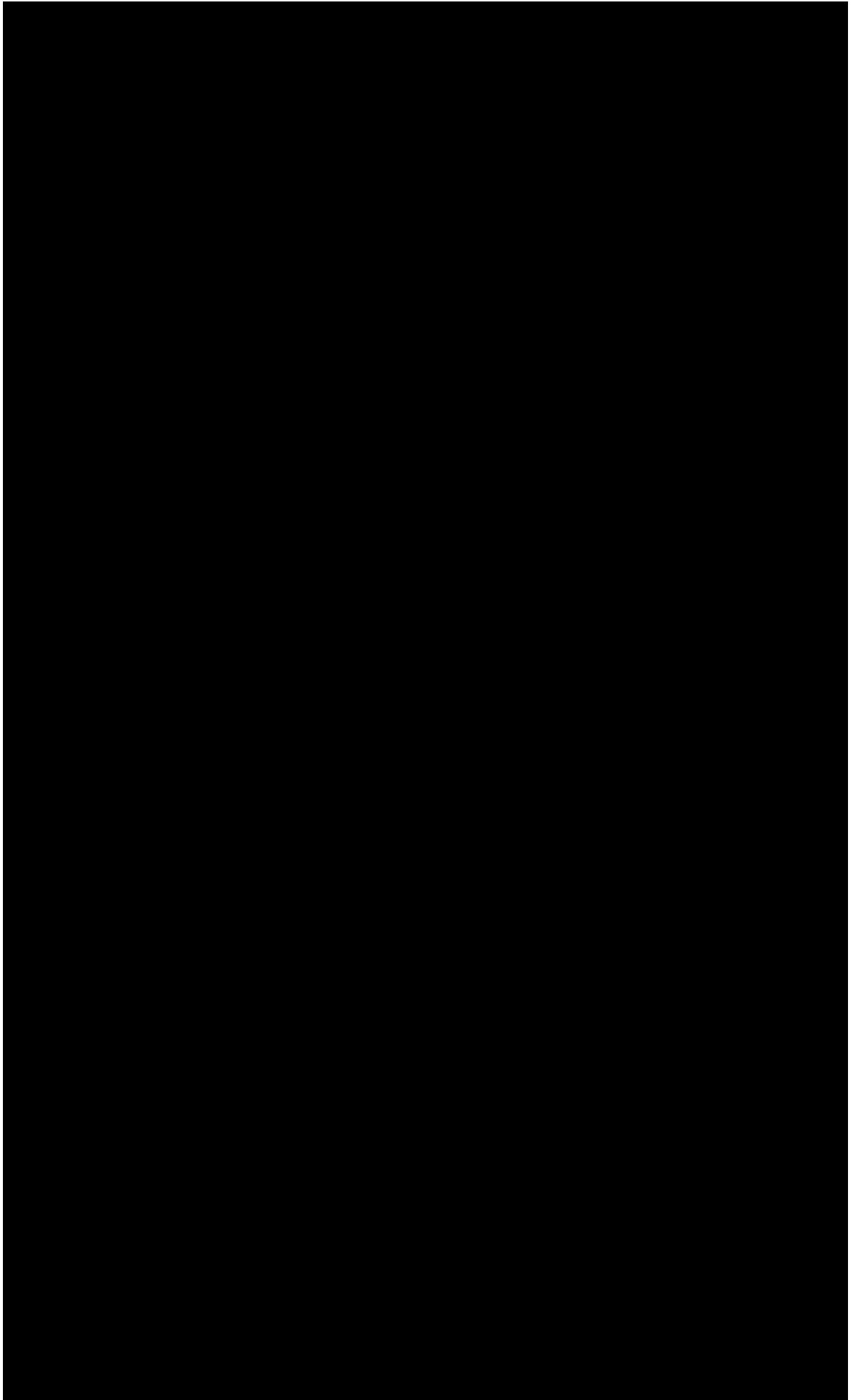


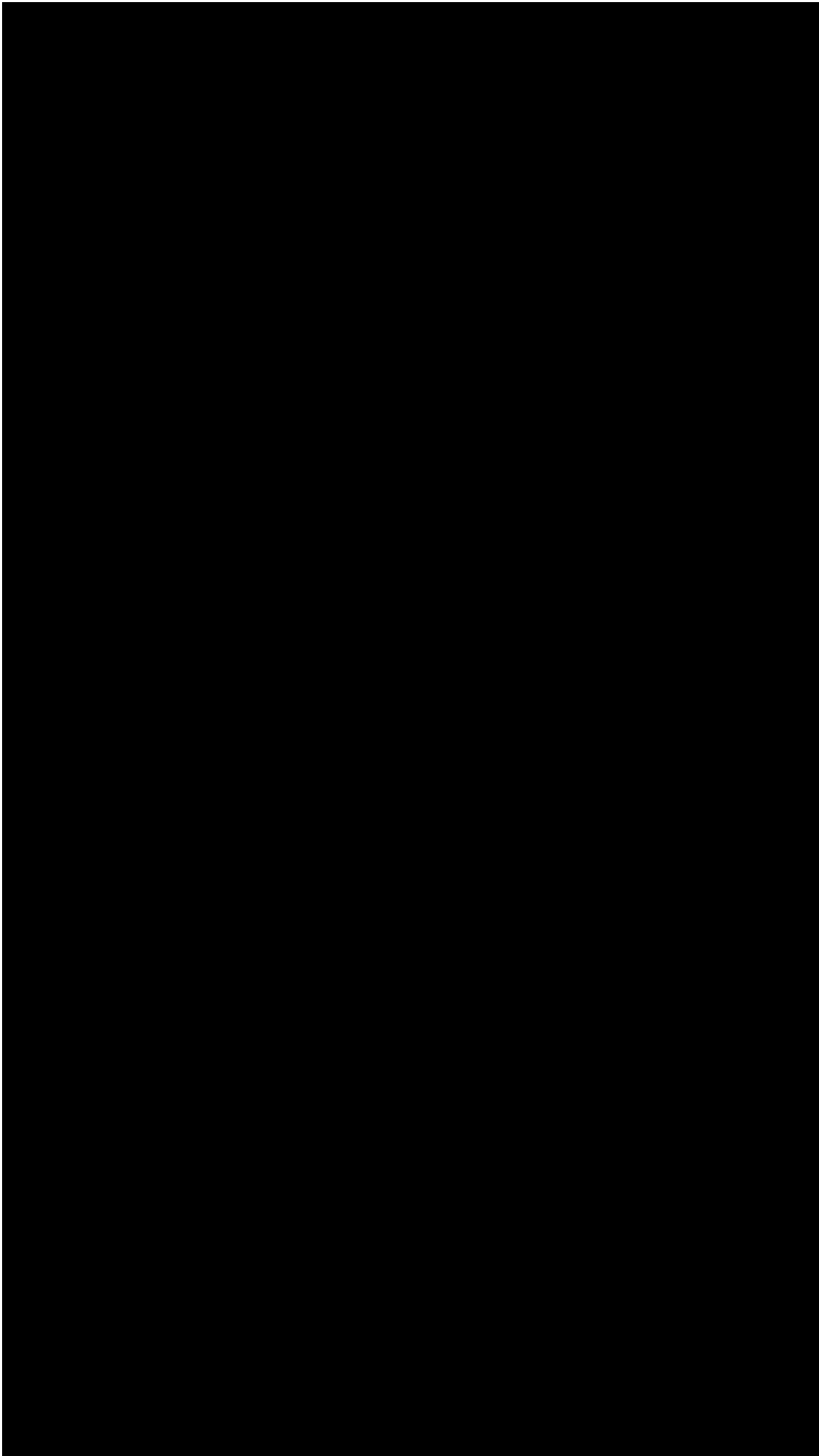


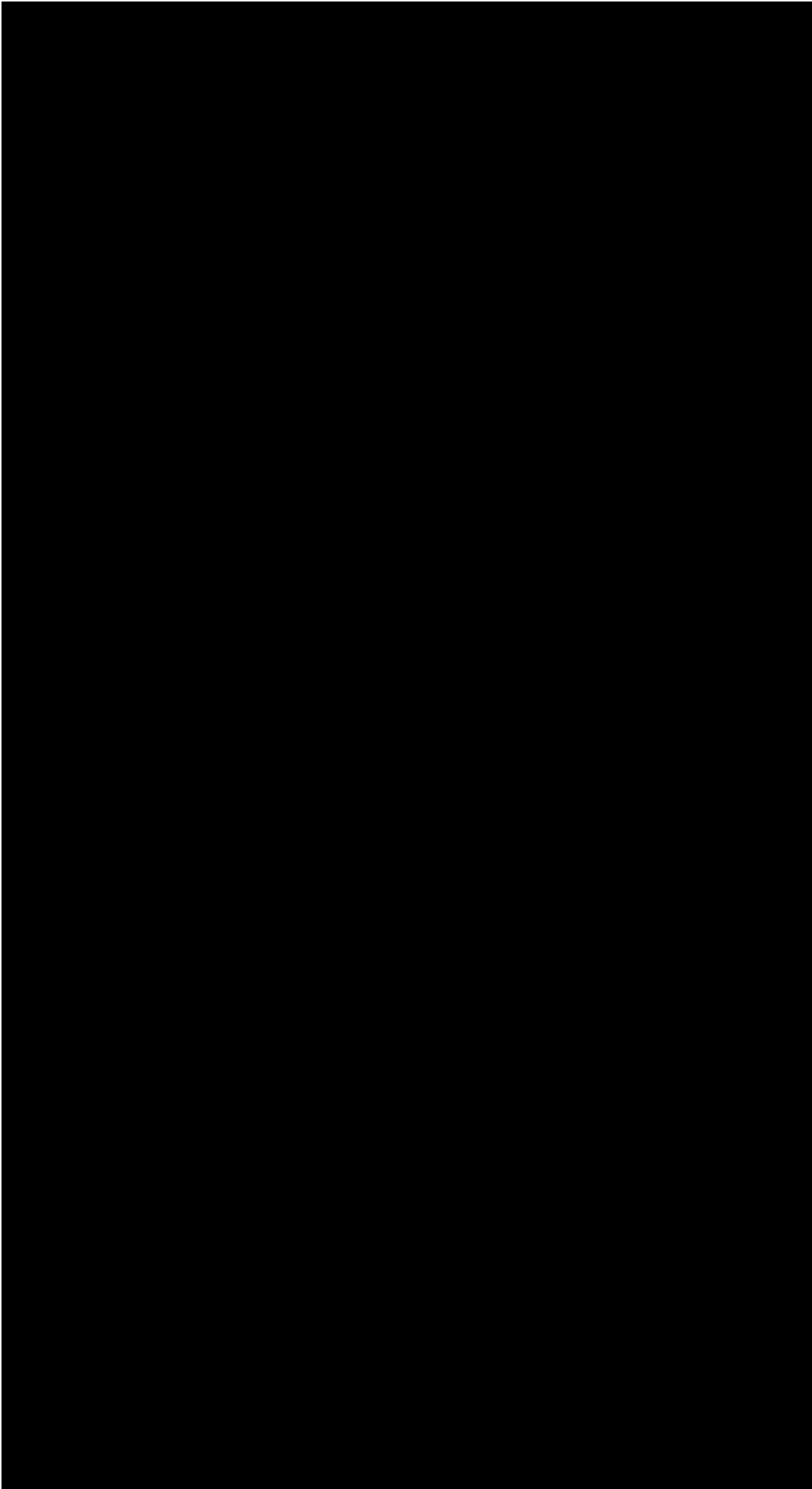


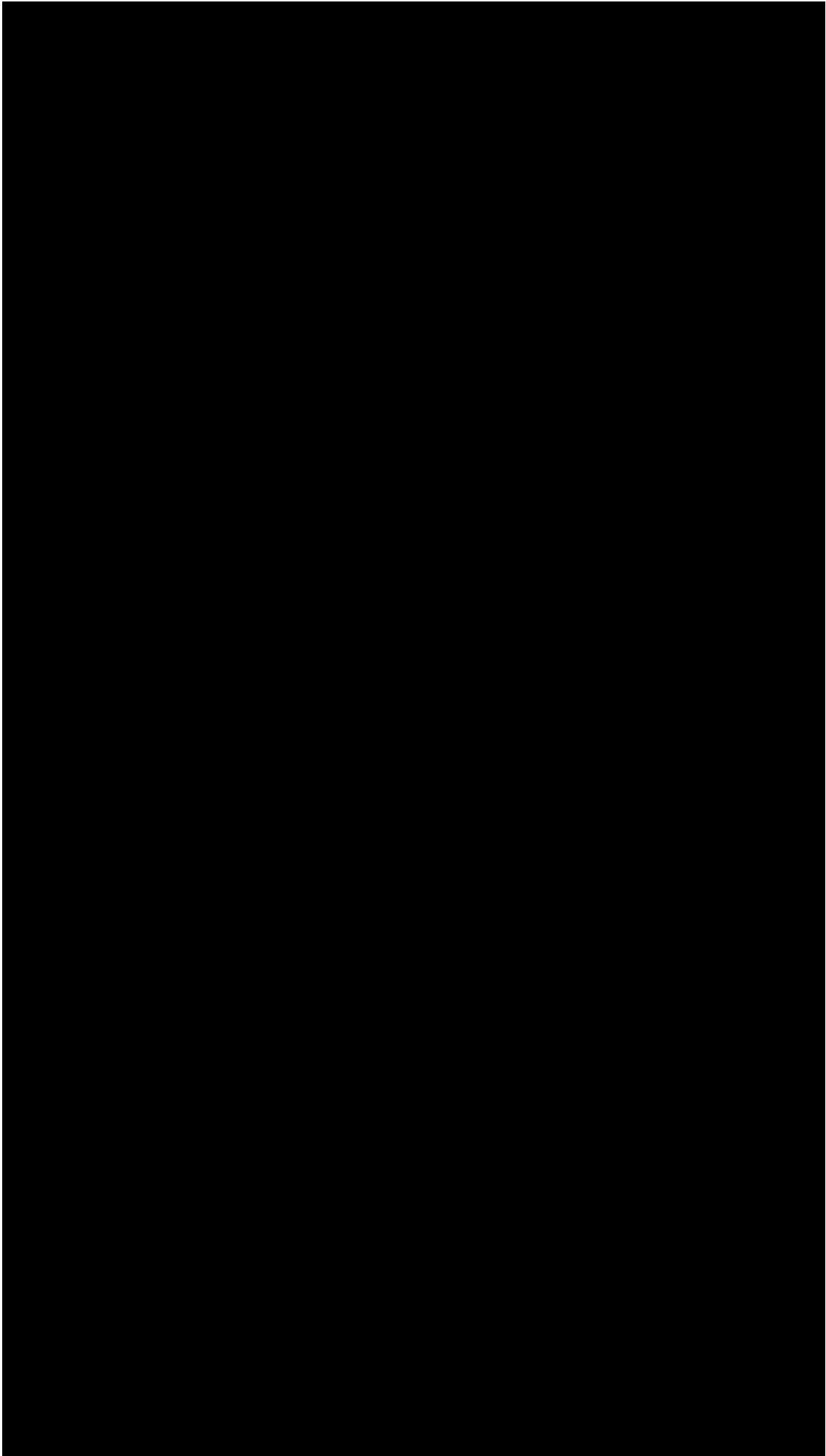




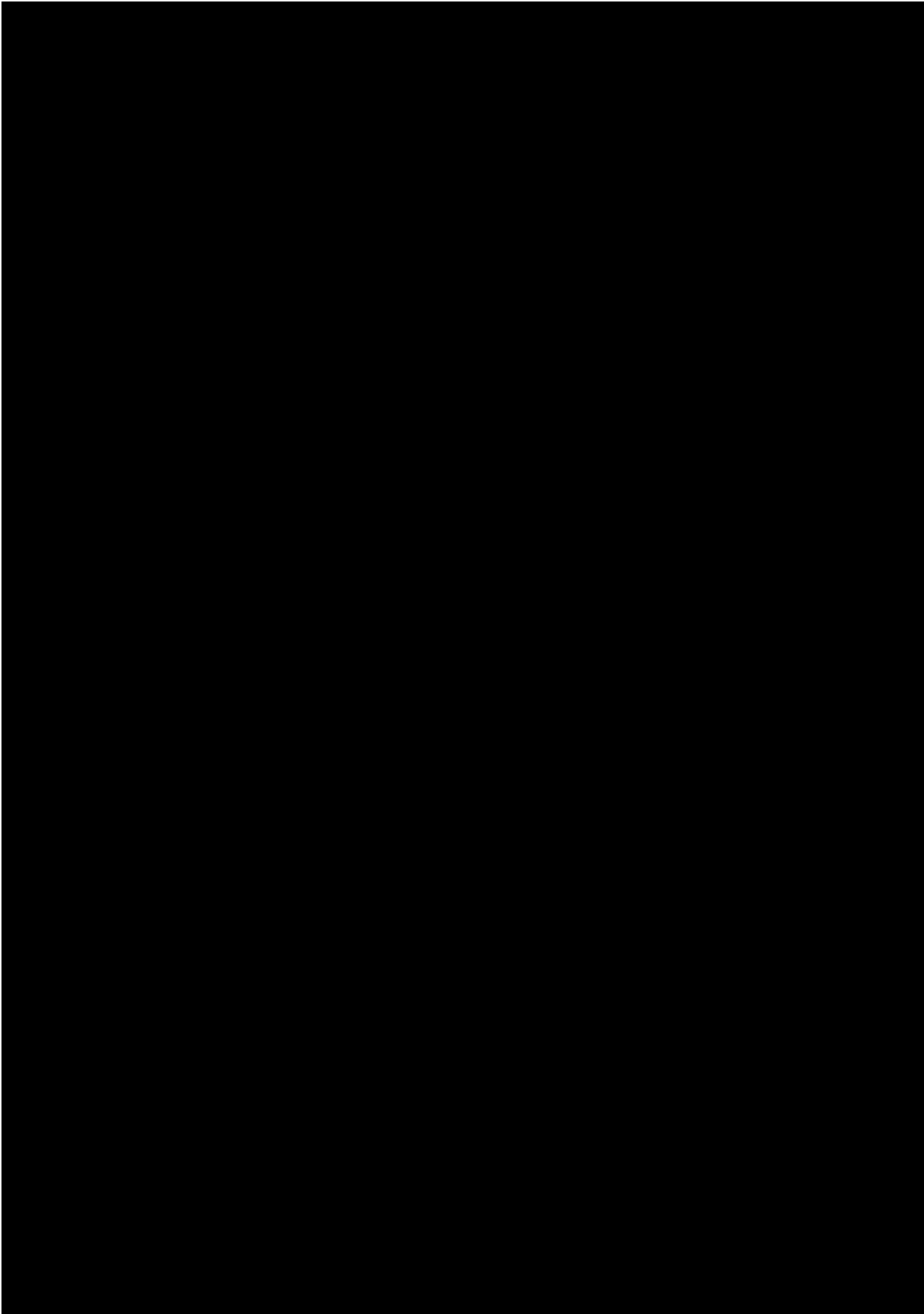


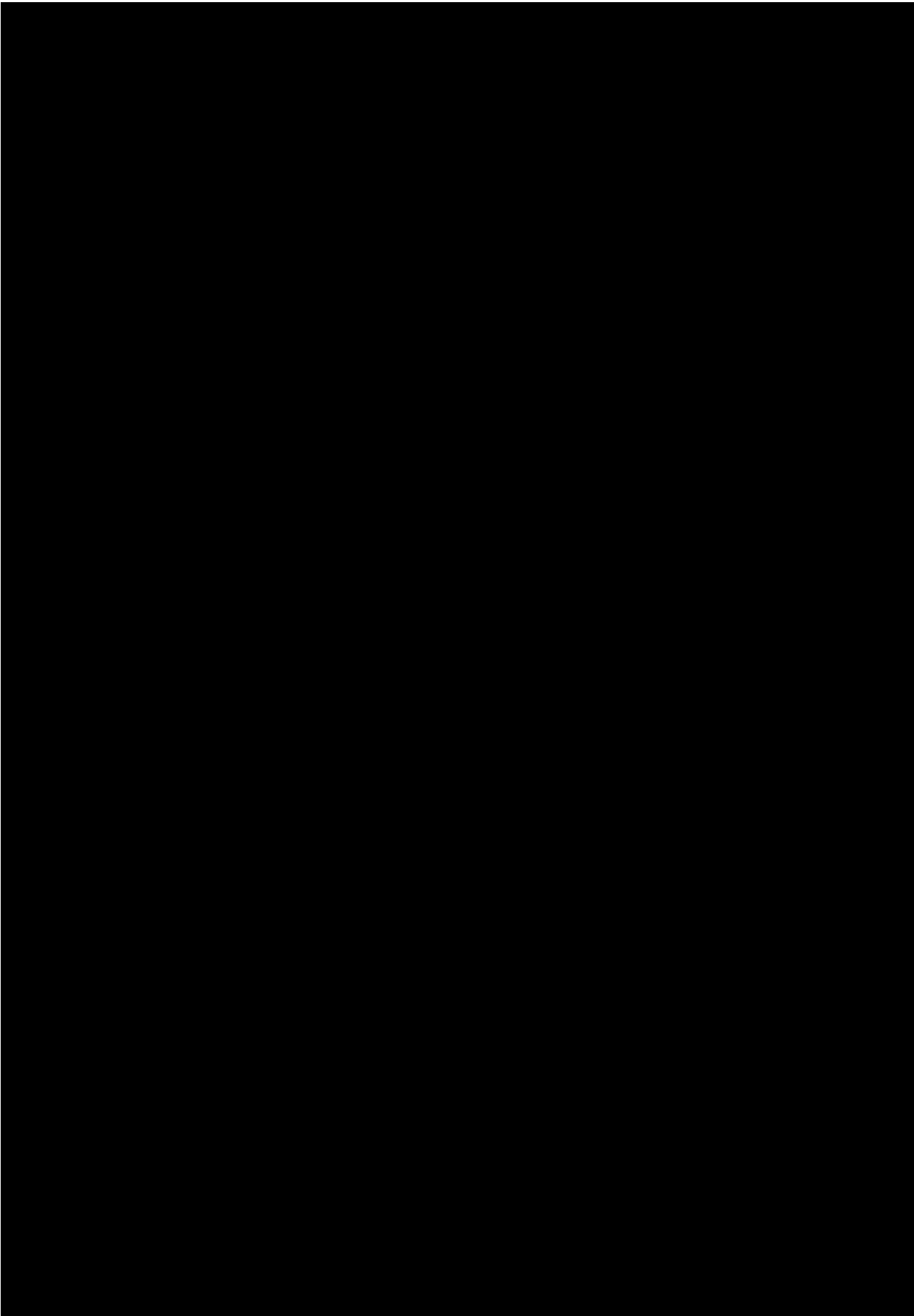


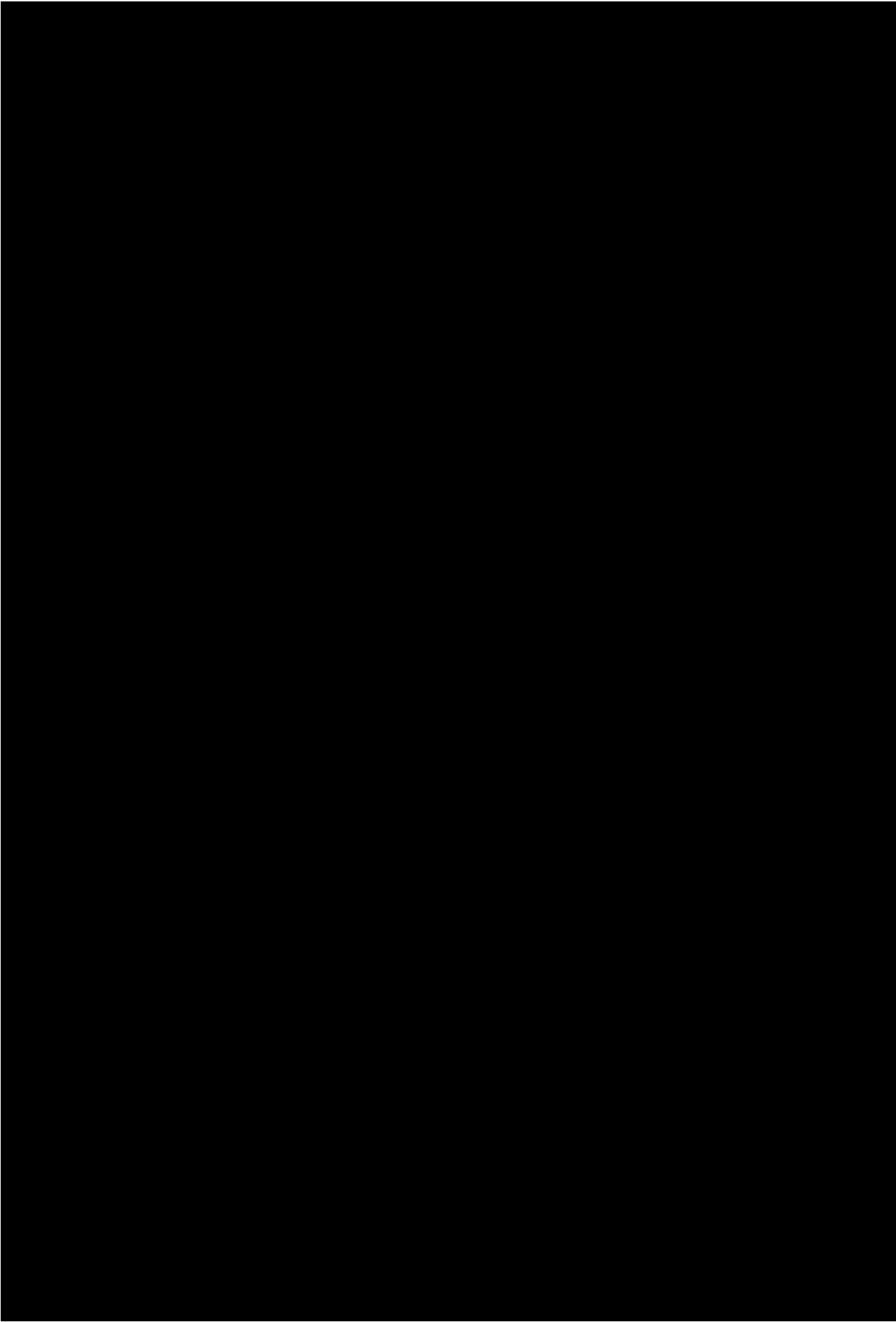


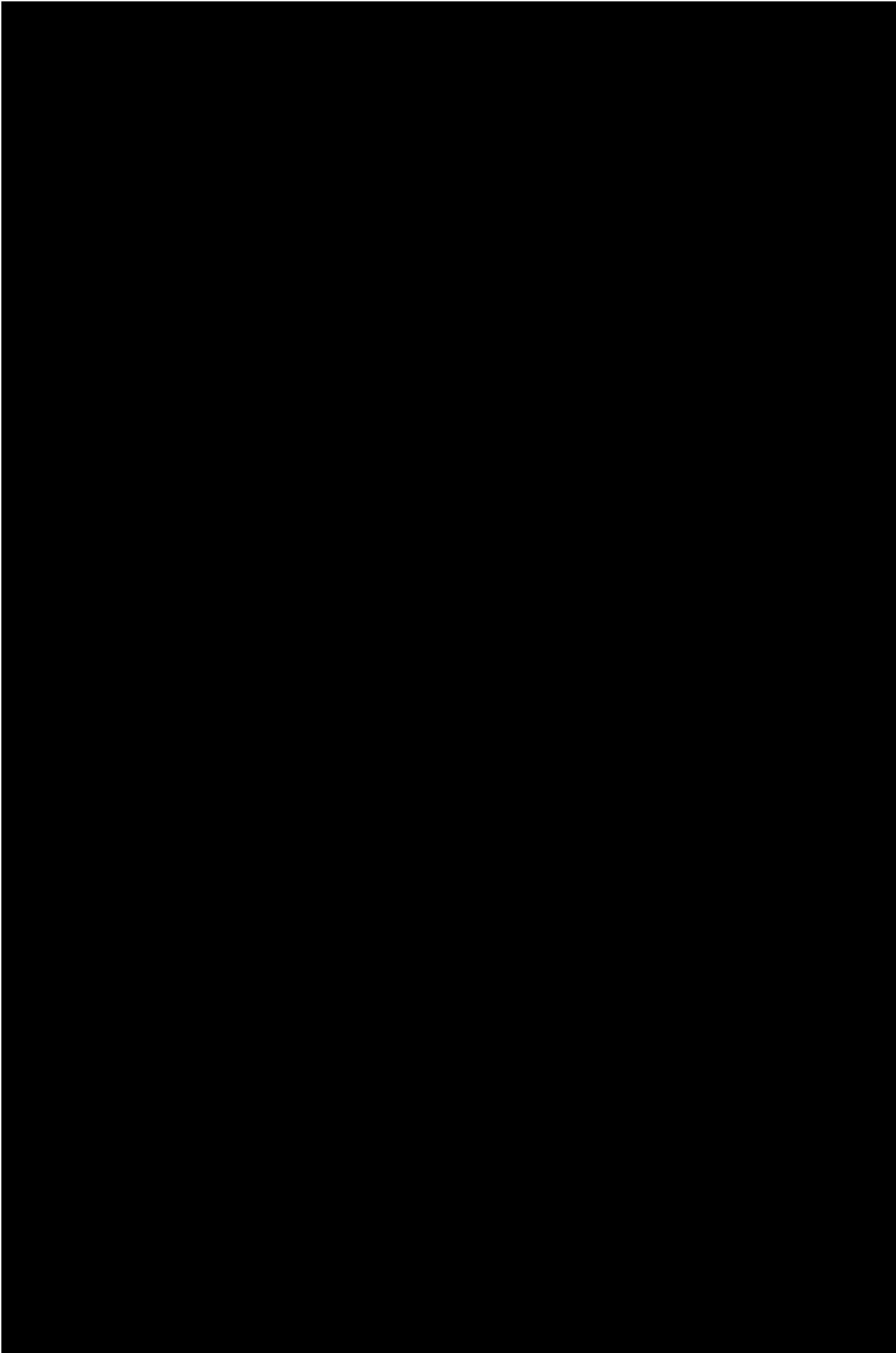


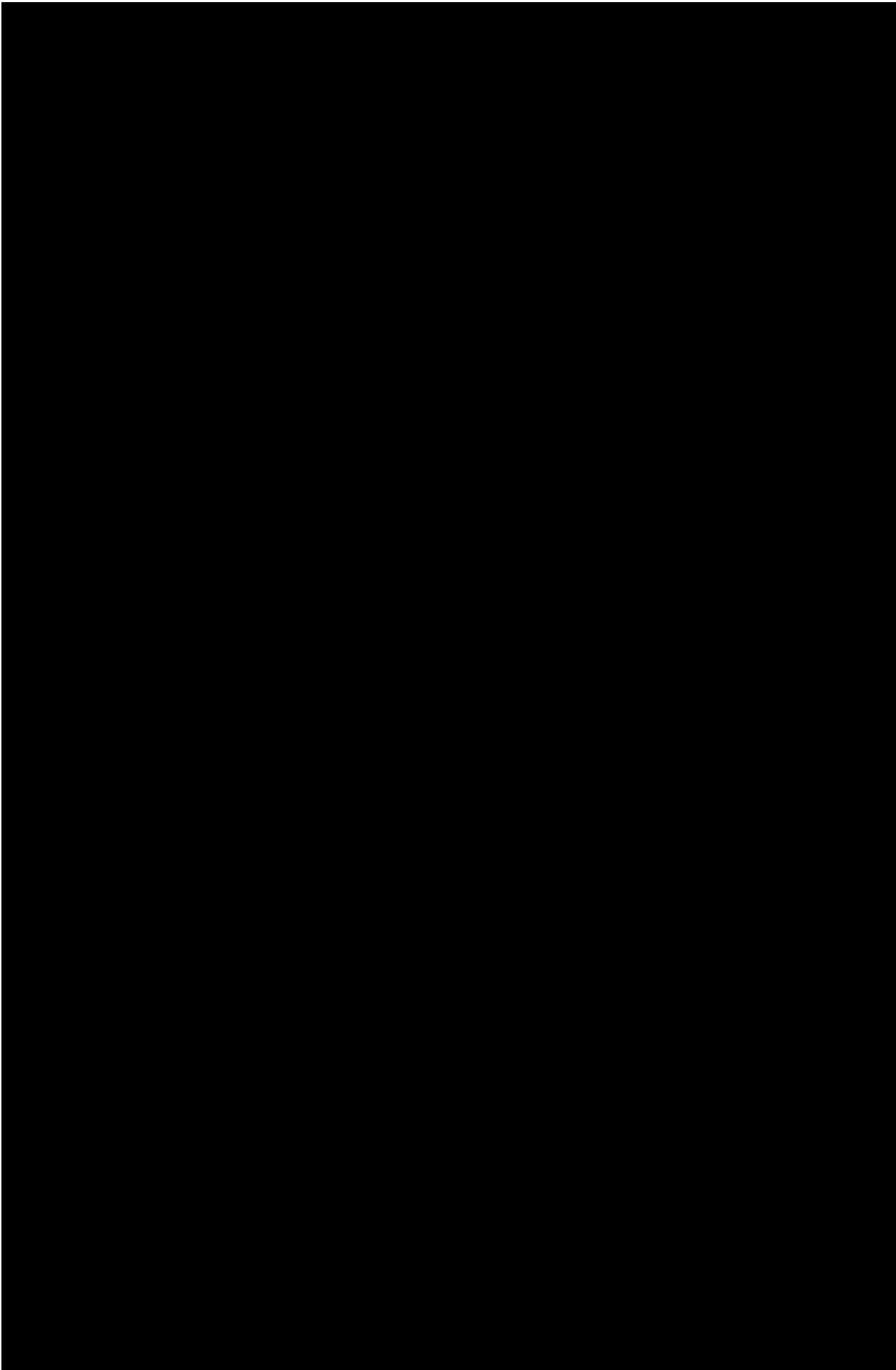
Schedule 25 Options

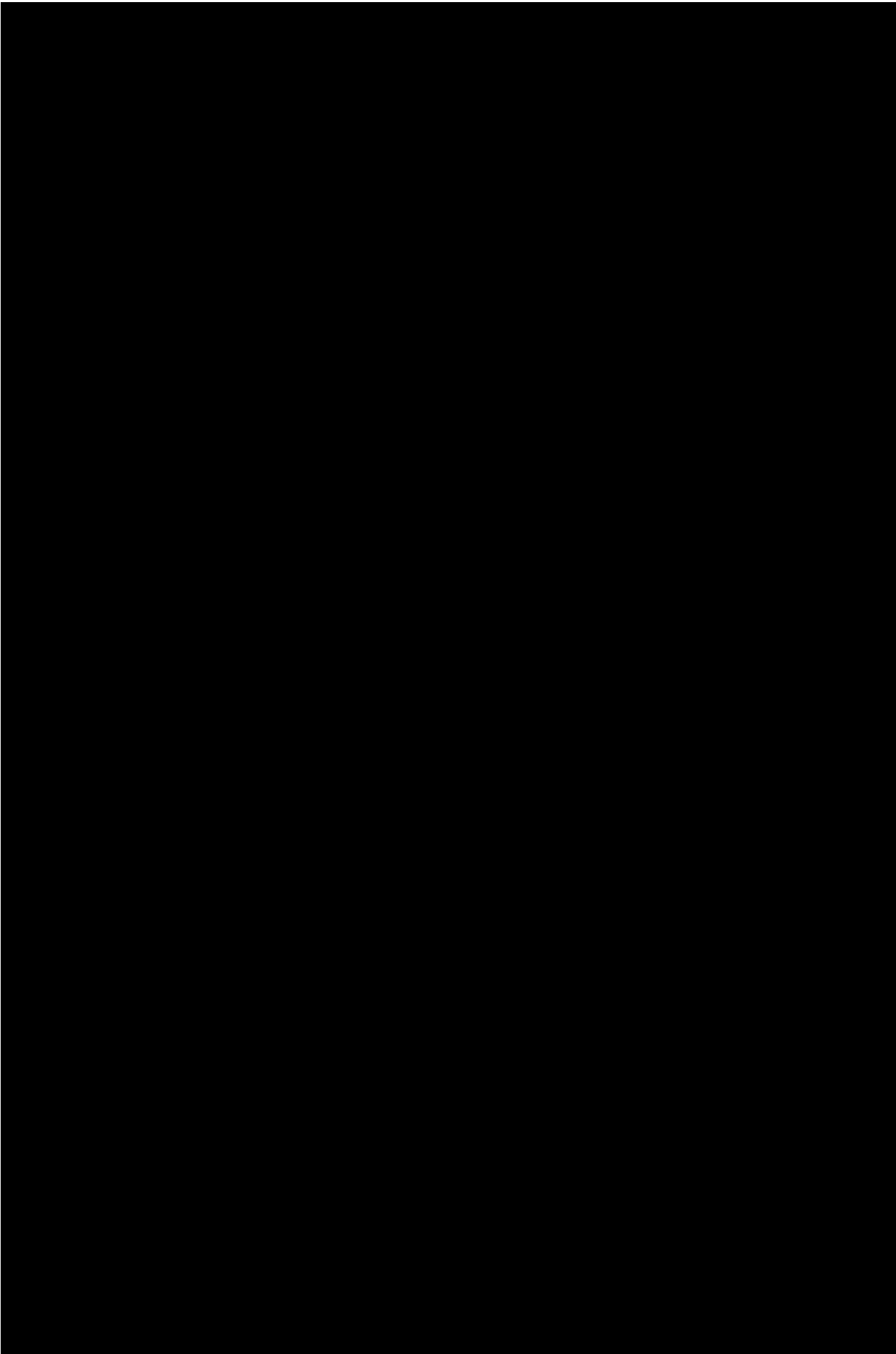


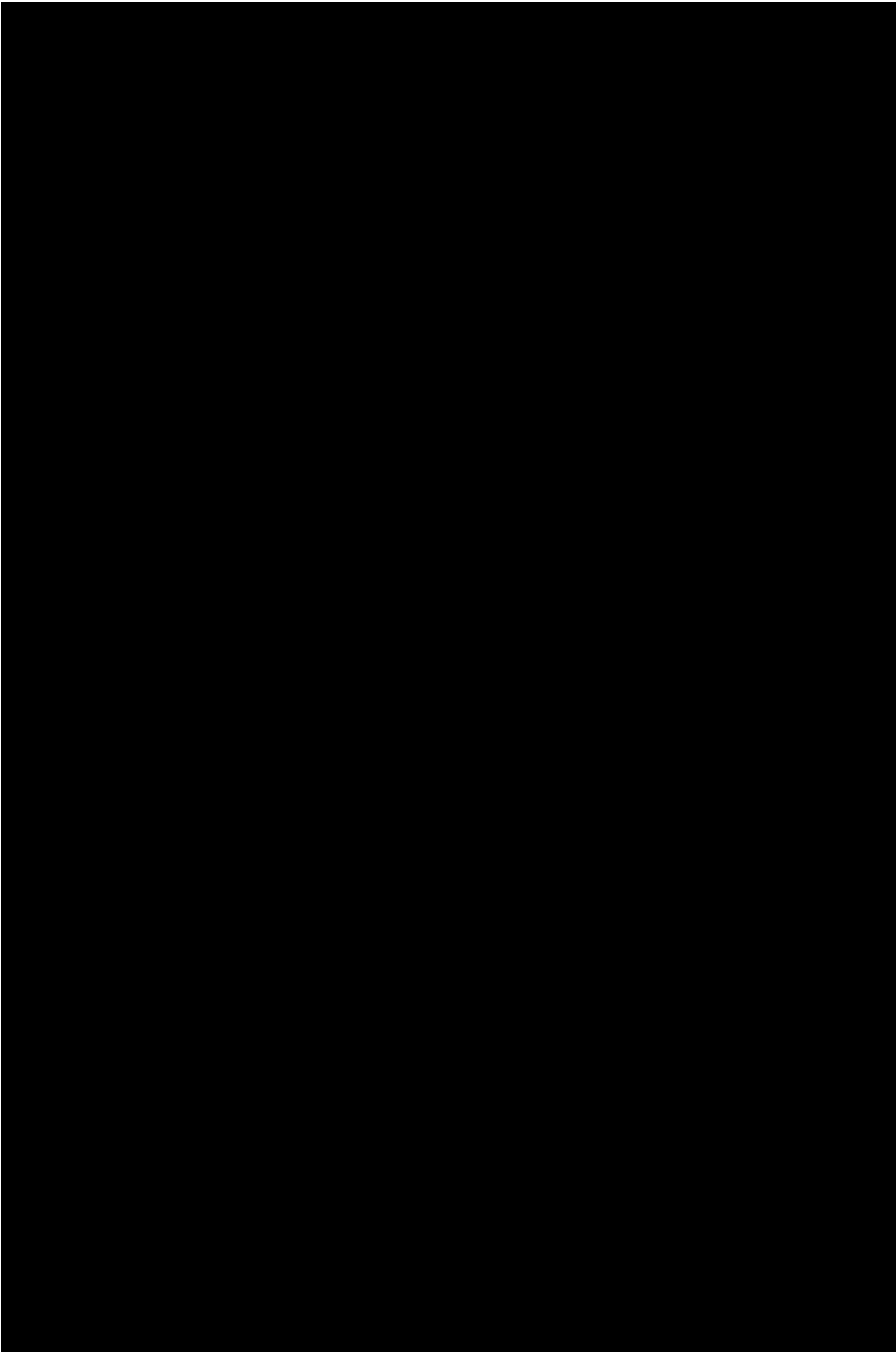


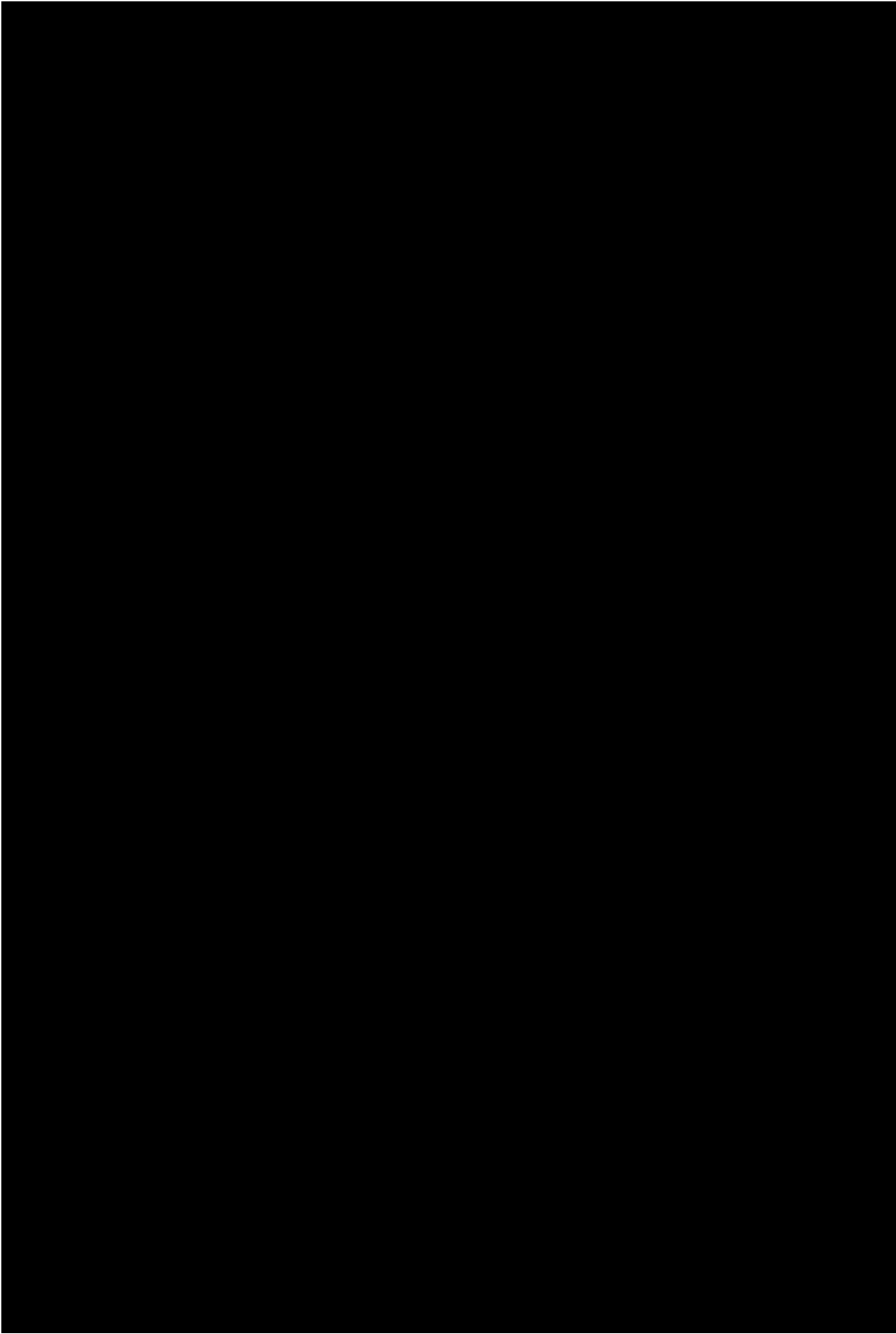


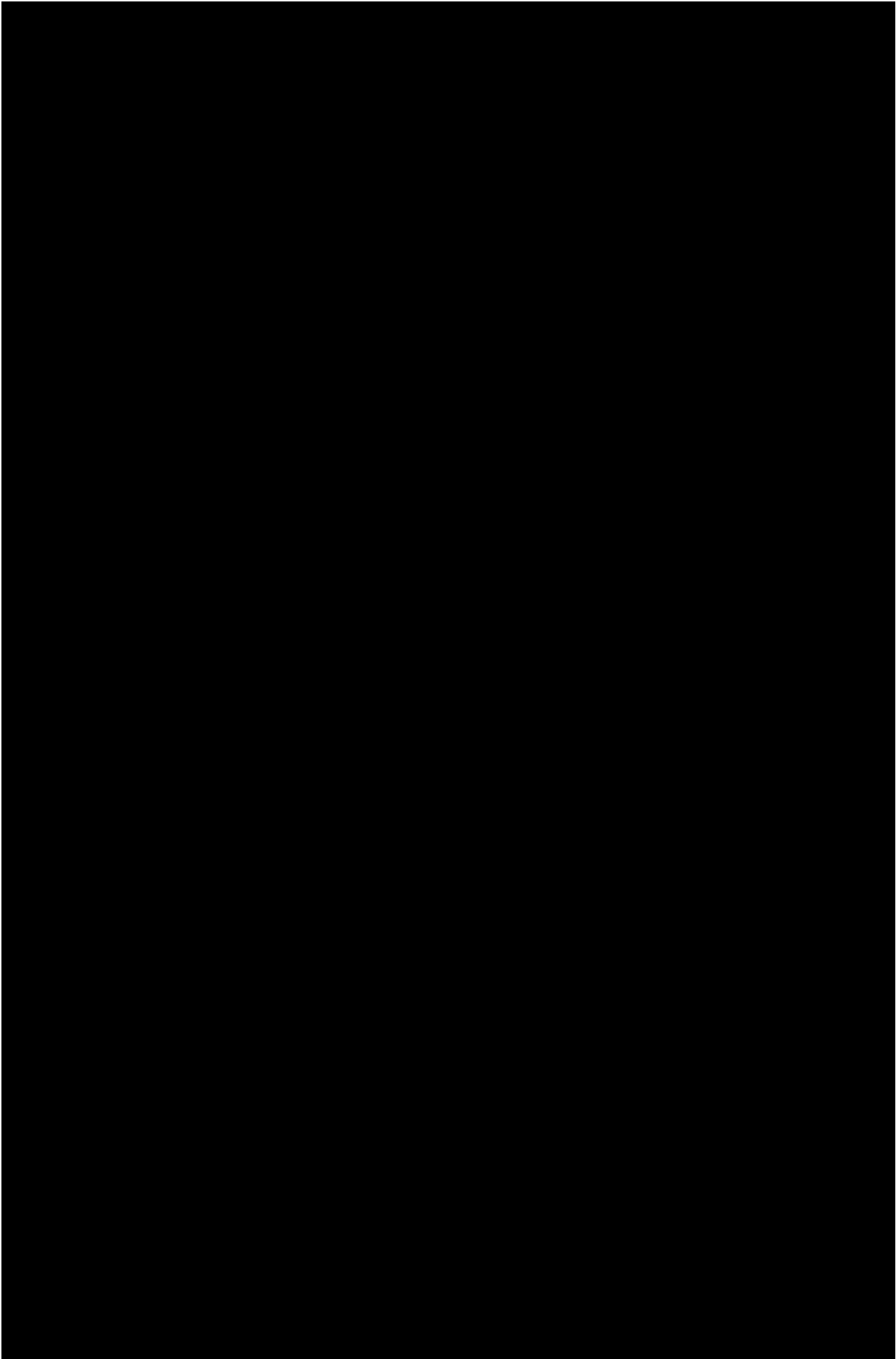


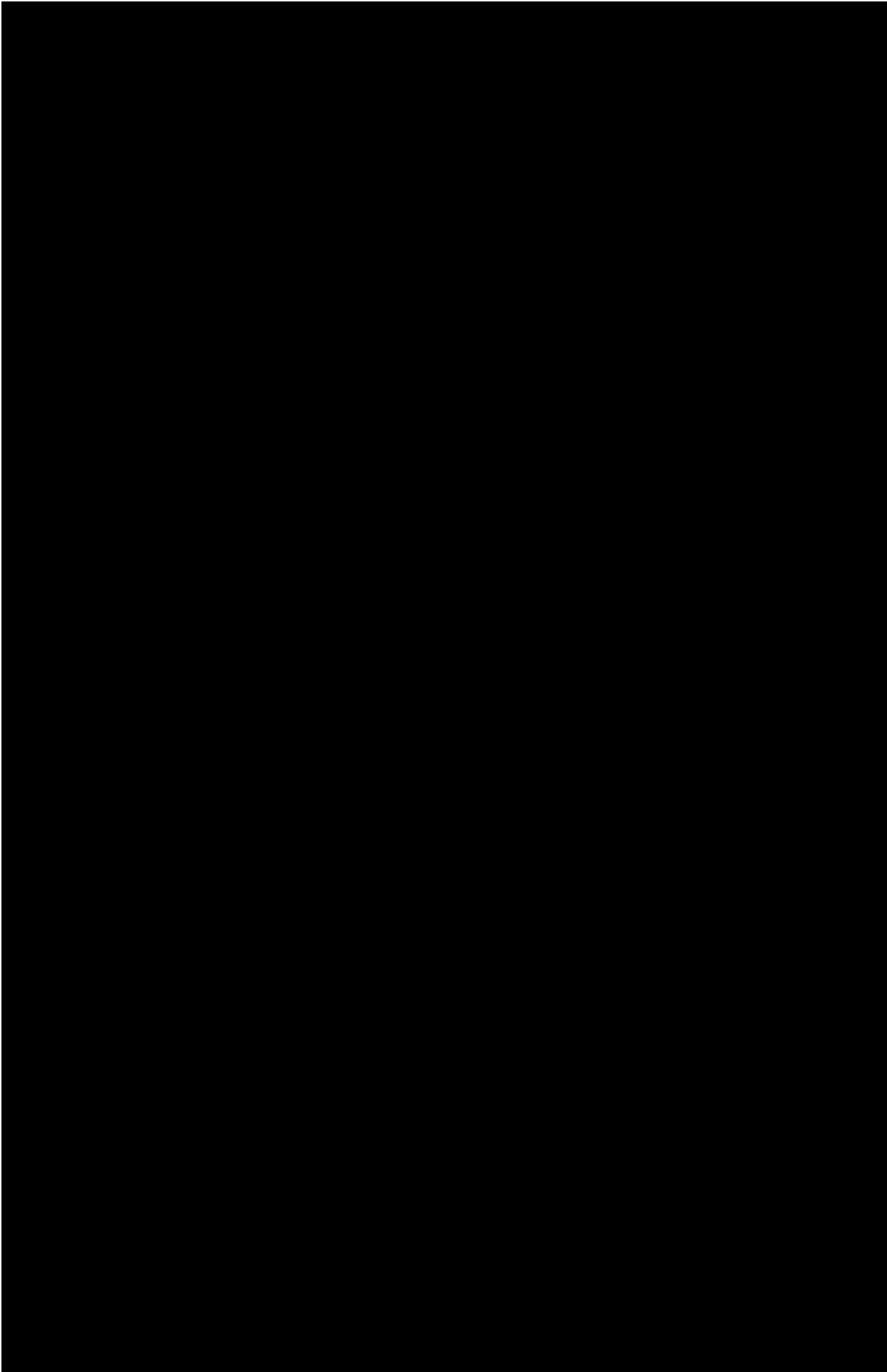


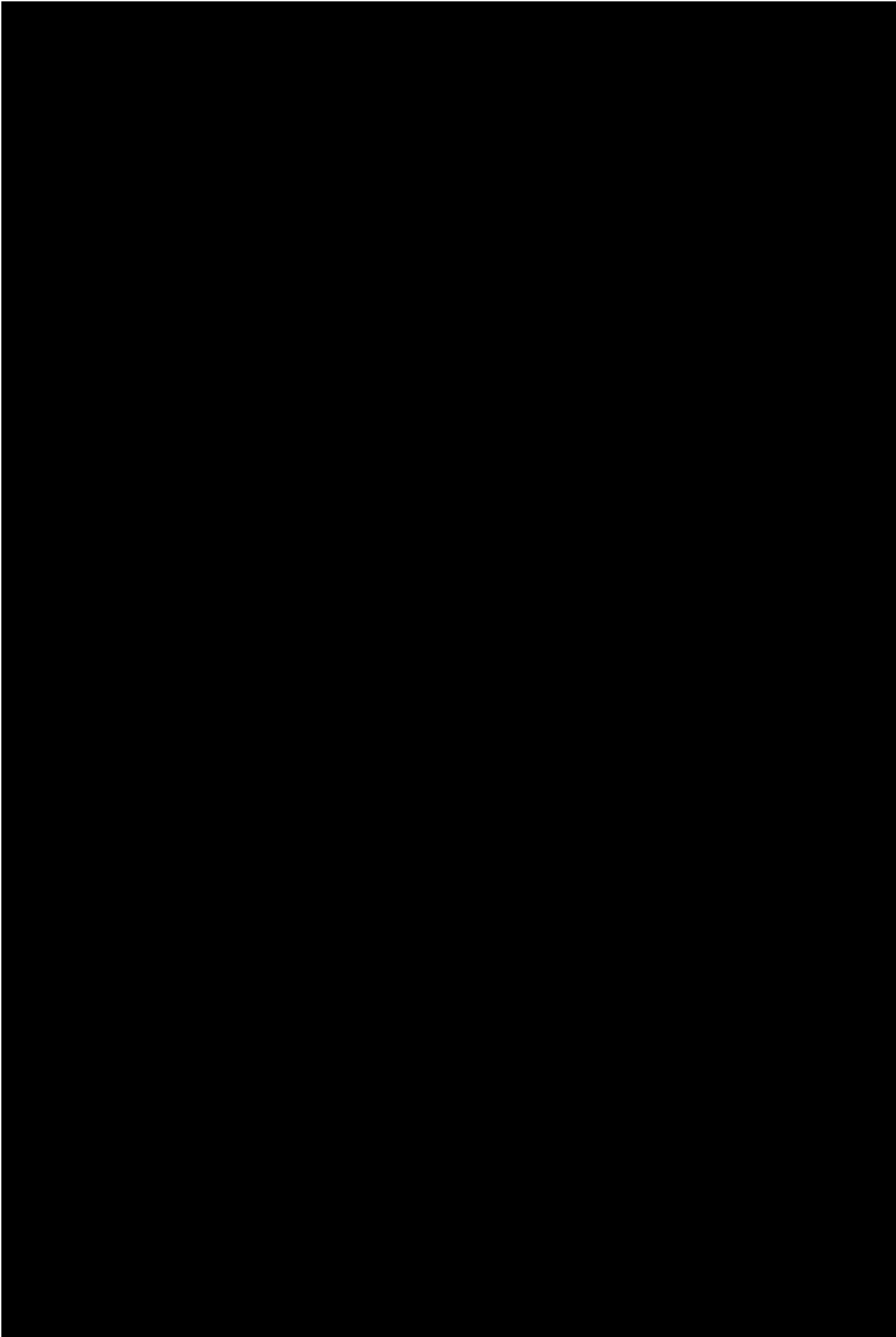


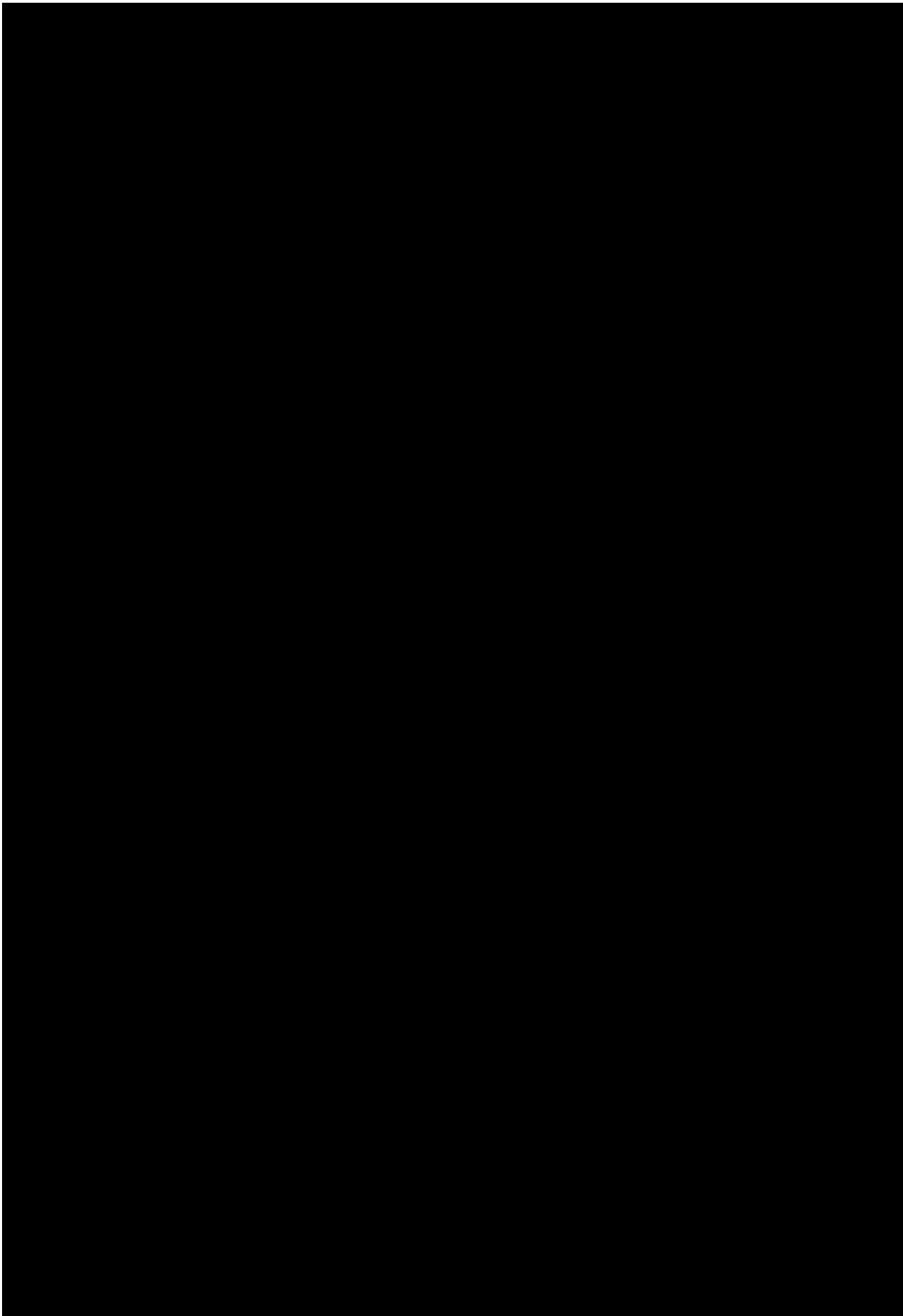


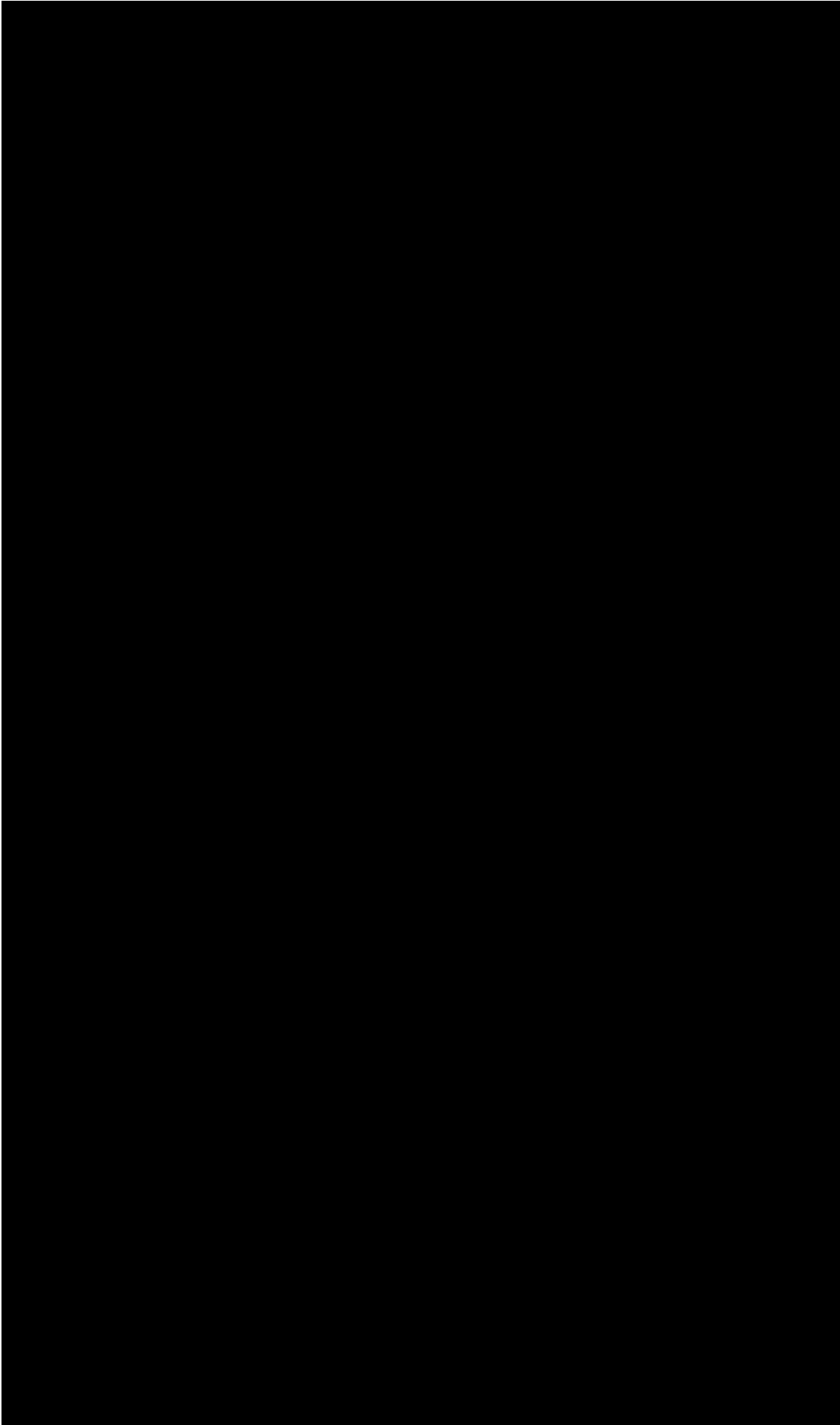


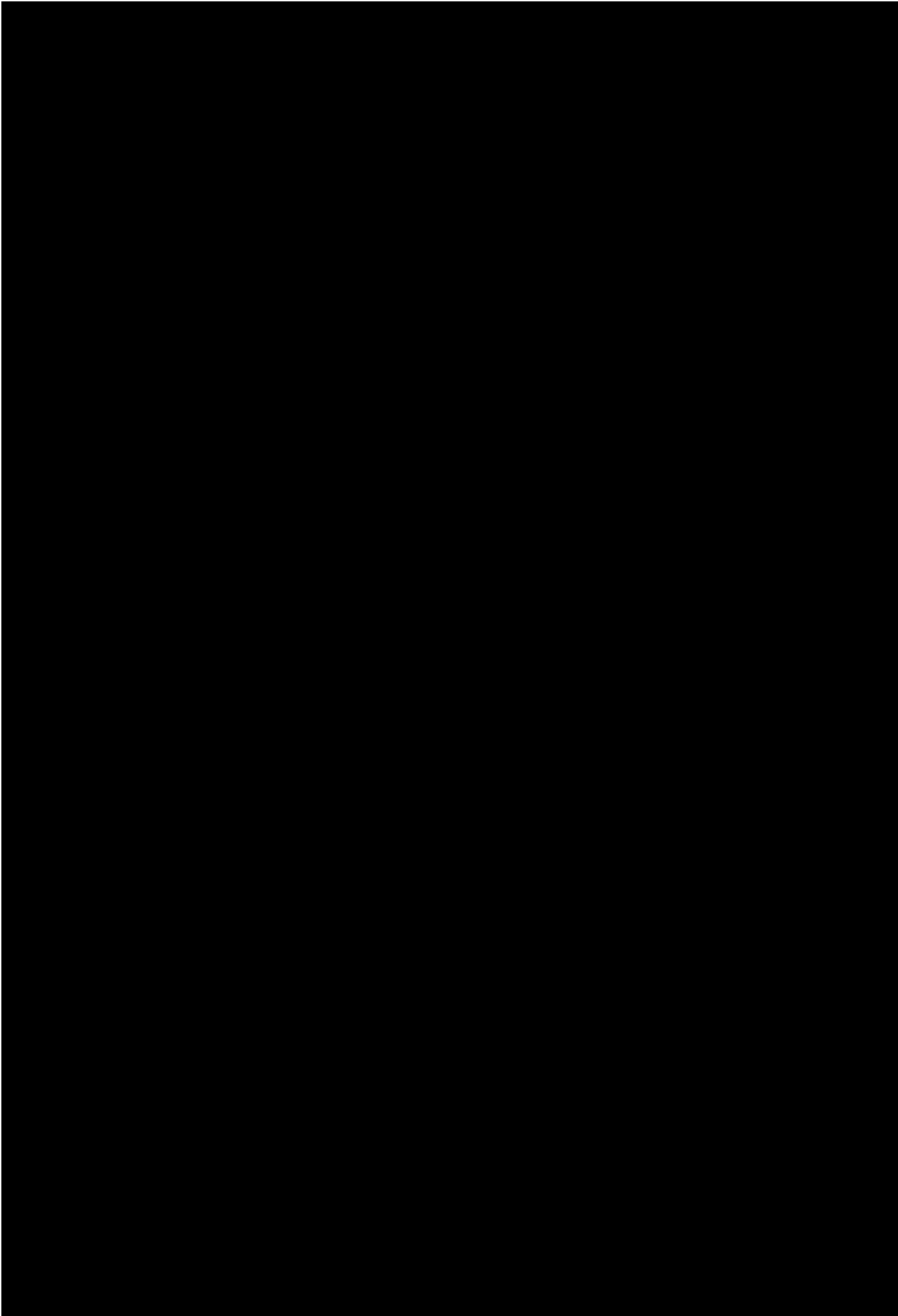


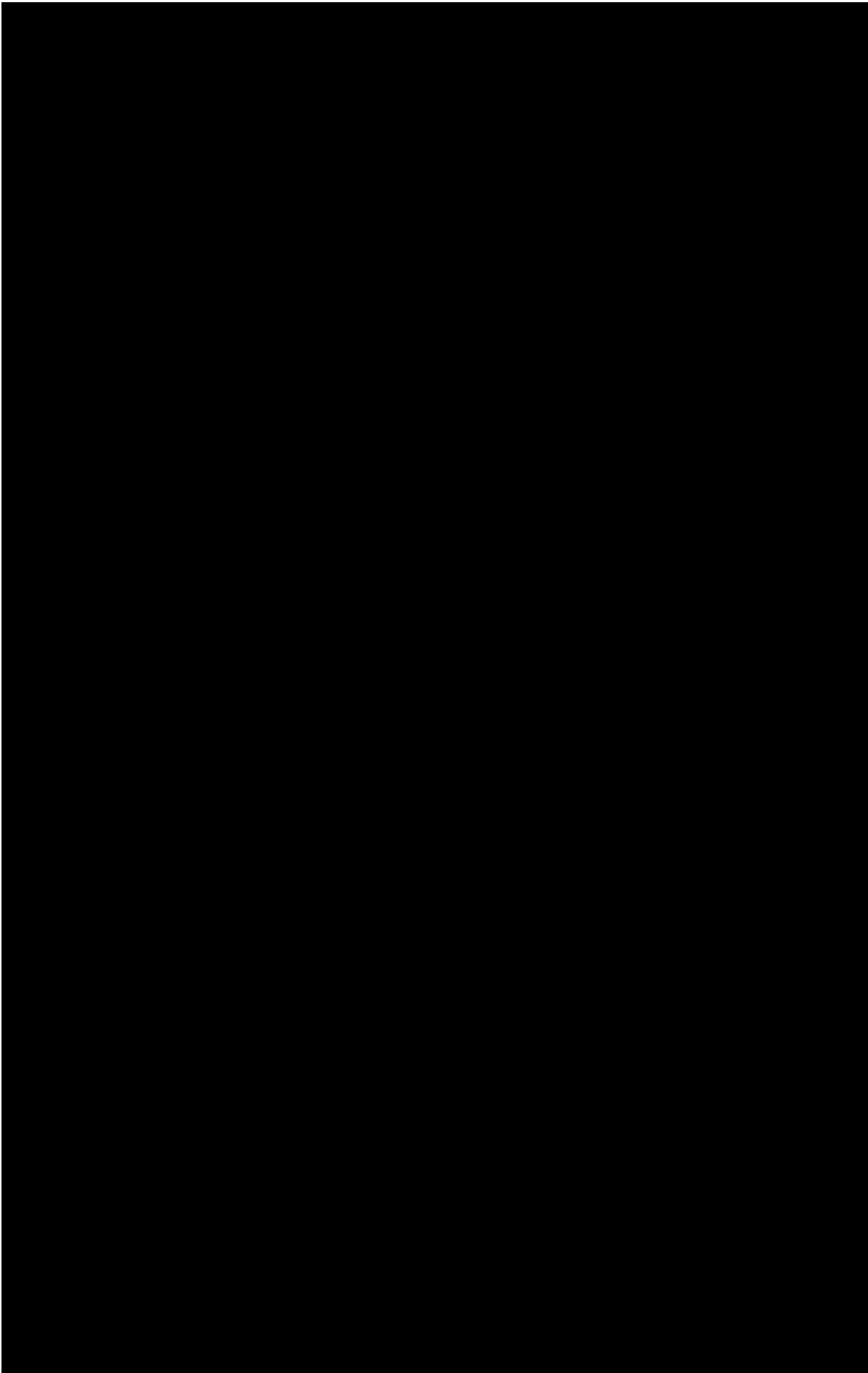


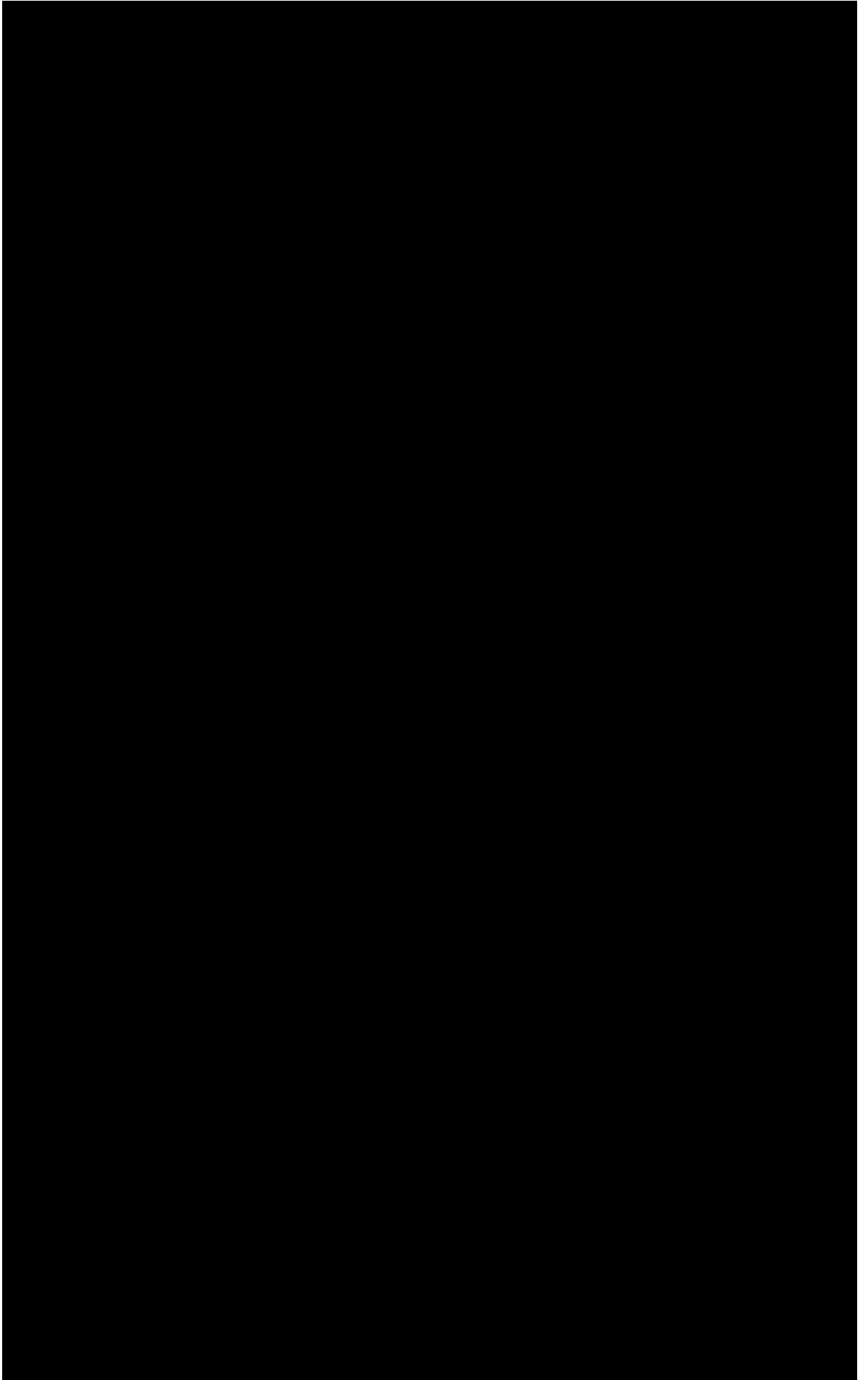


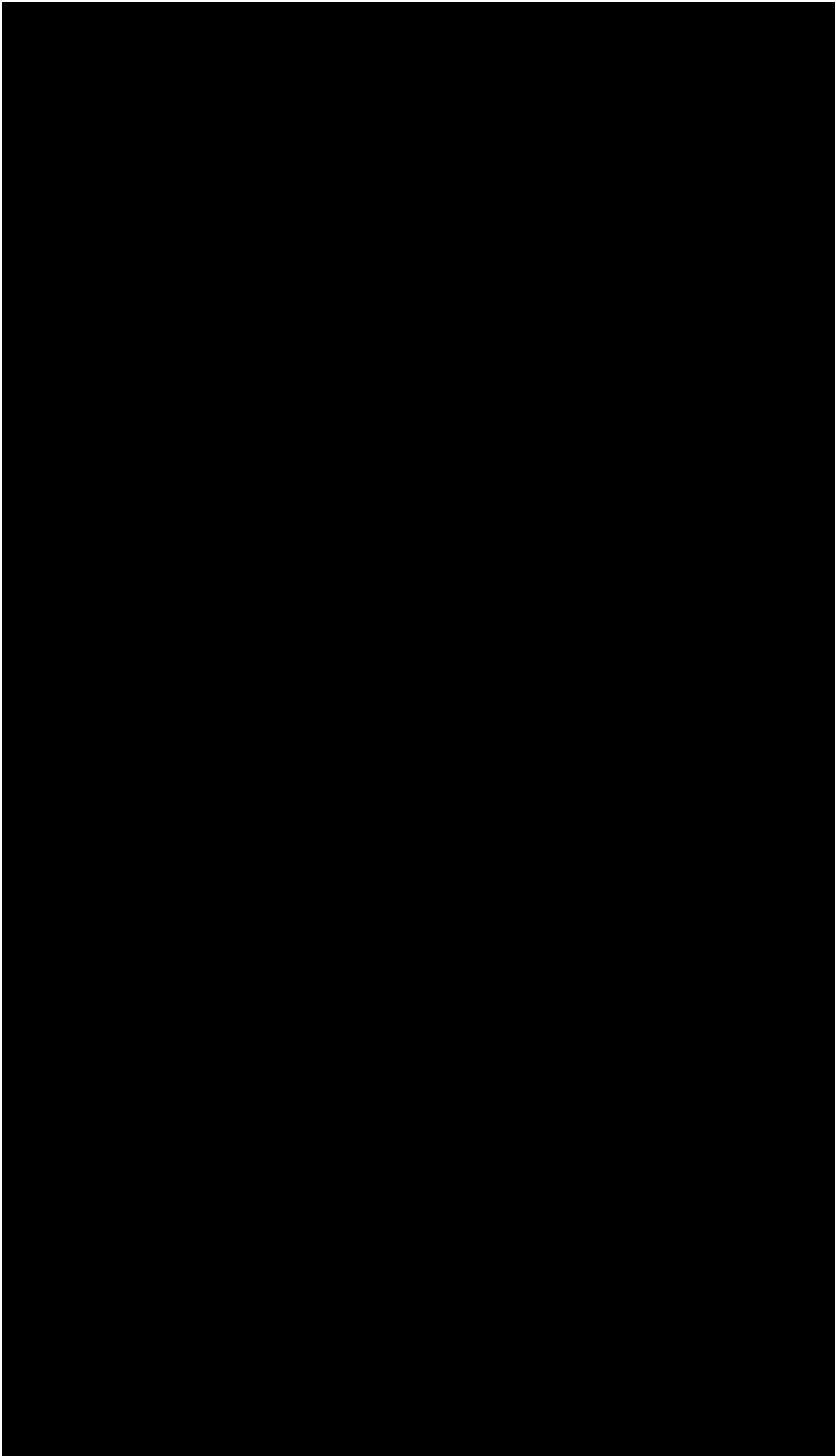


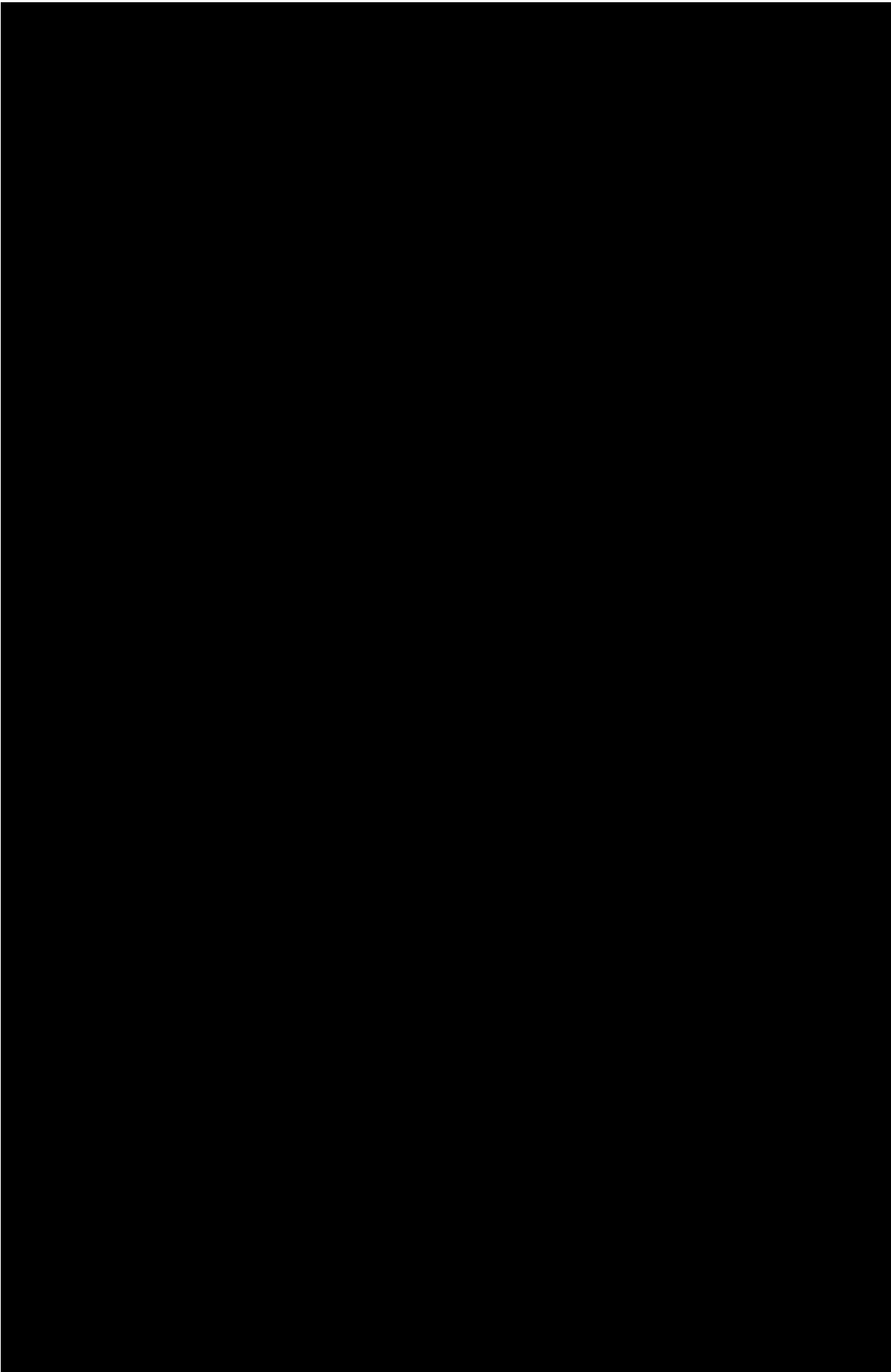


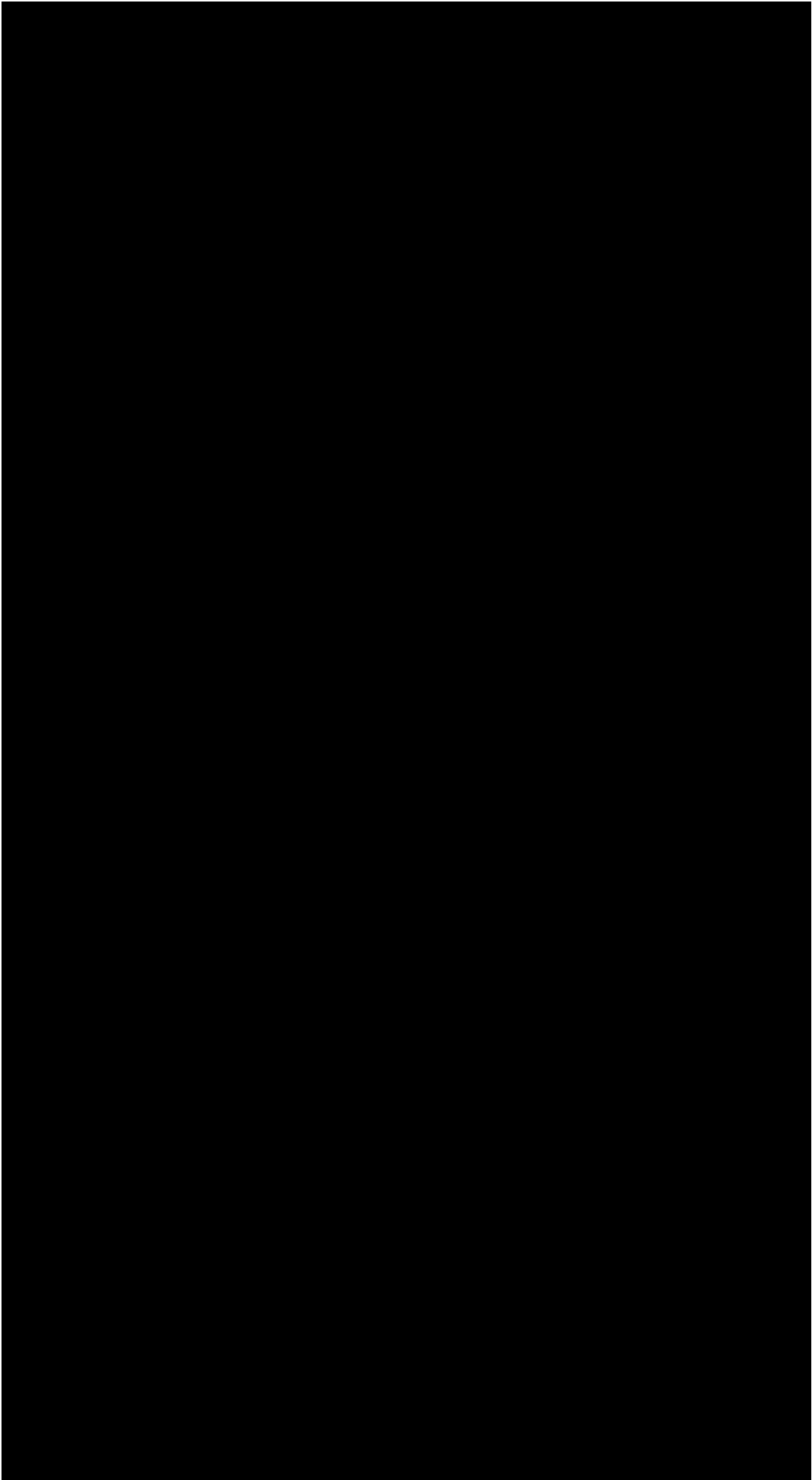


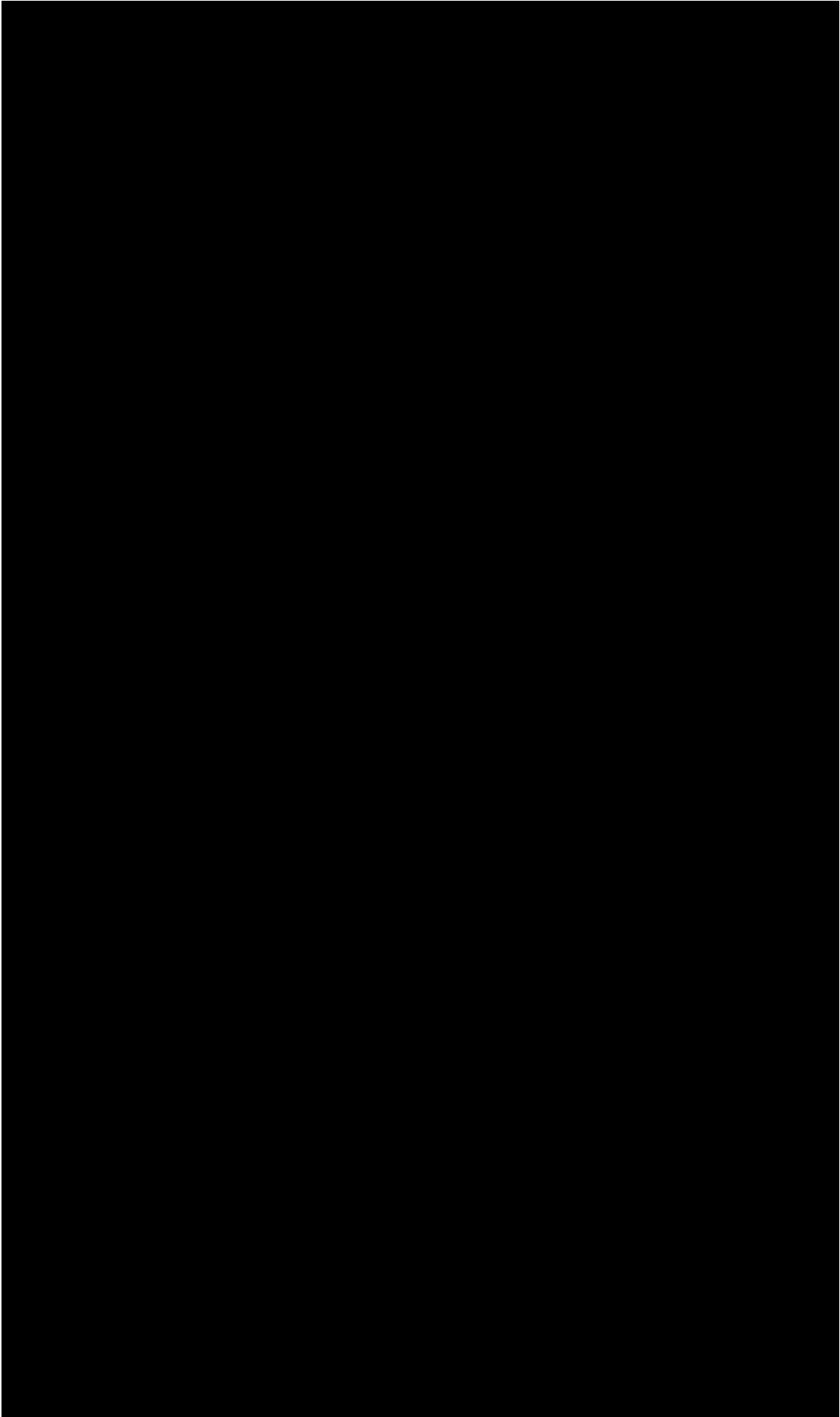


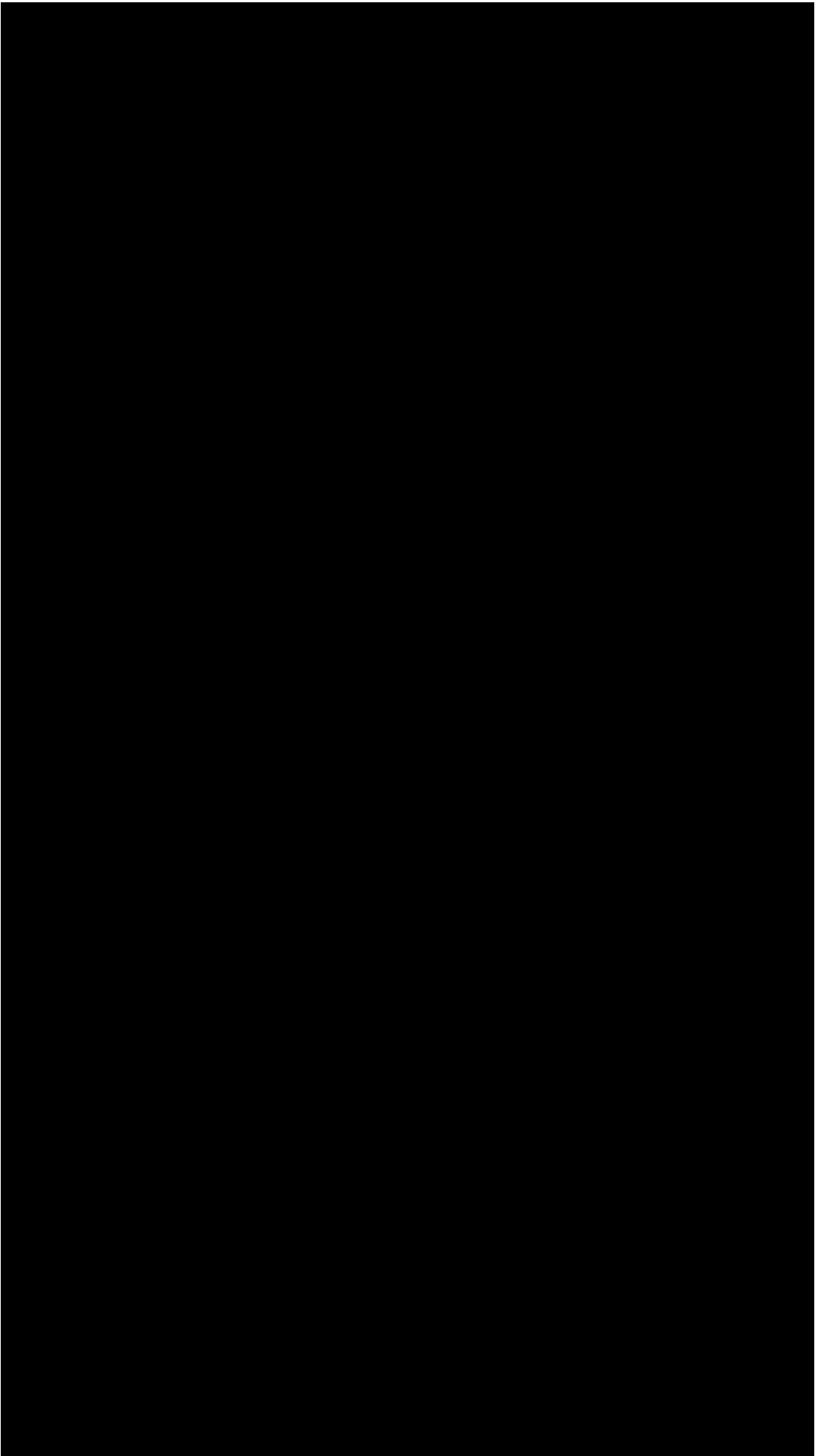


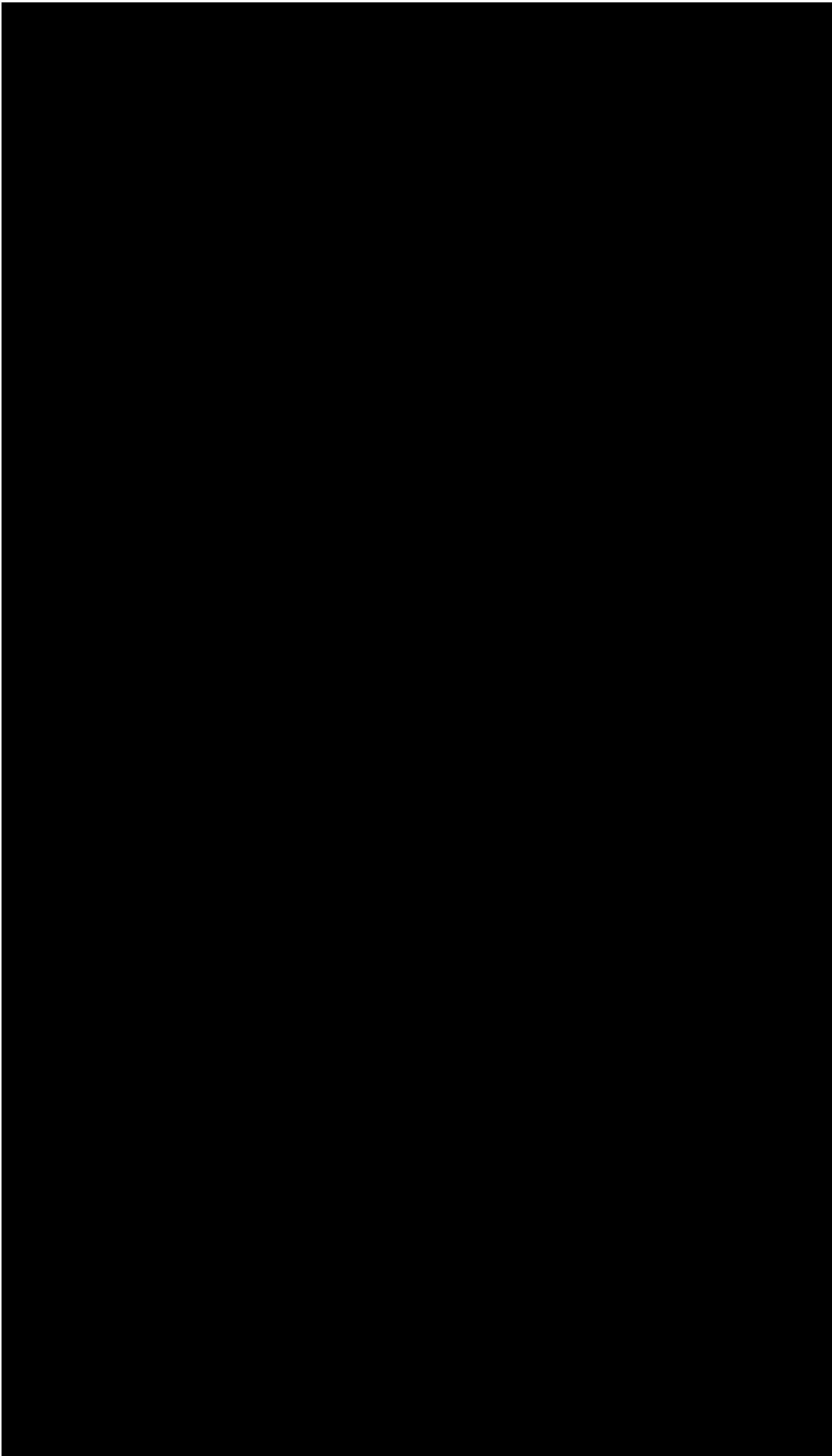


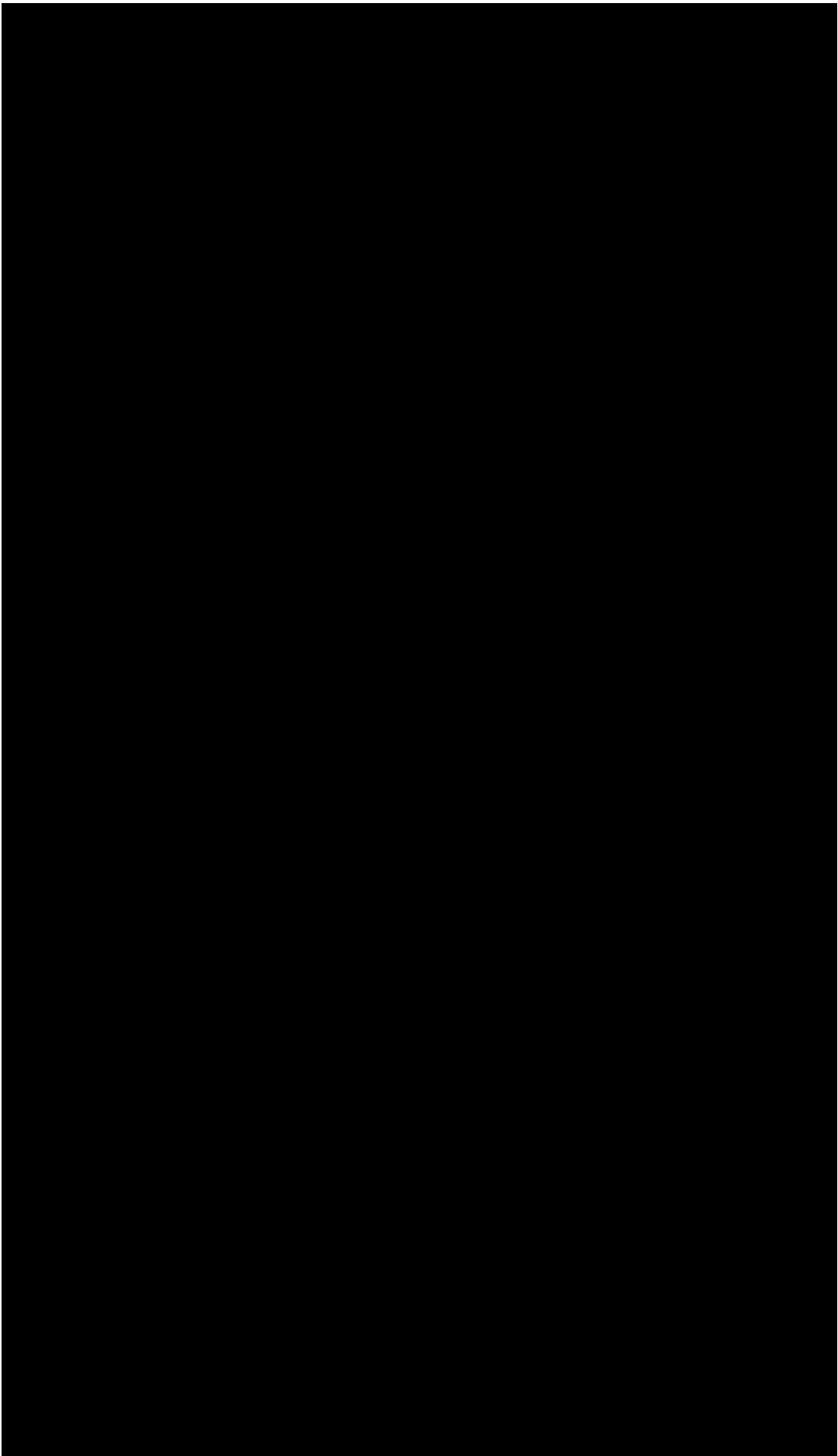


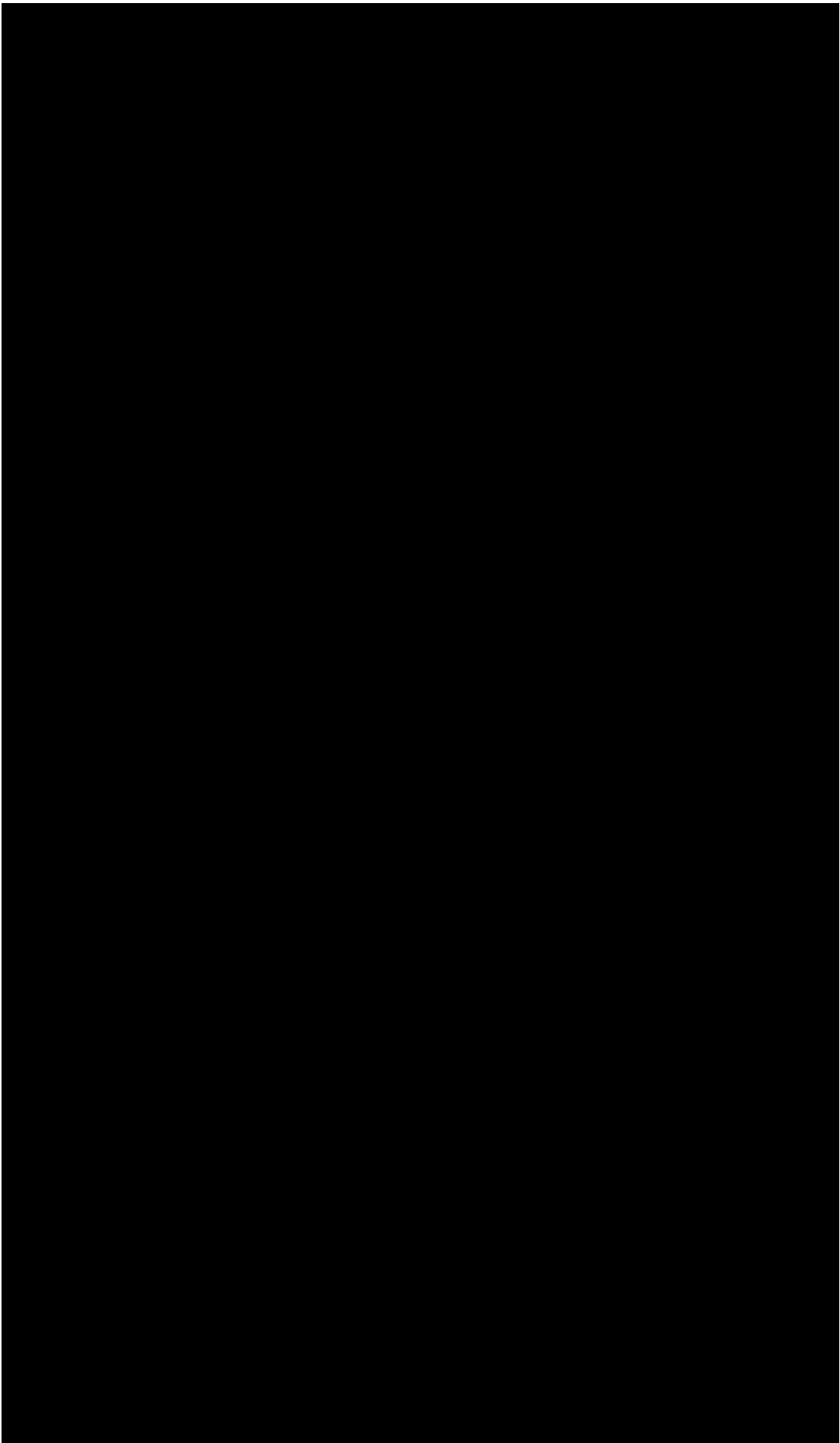




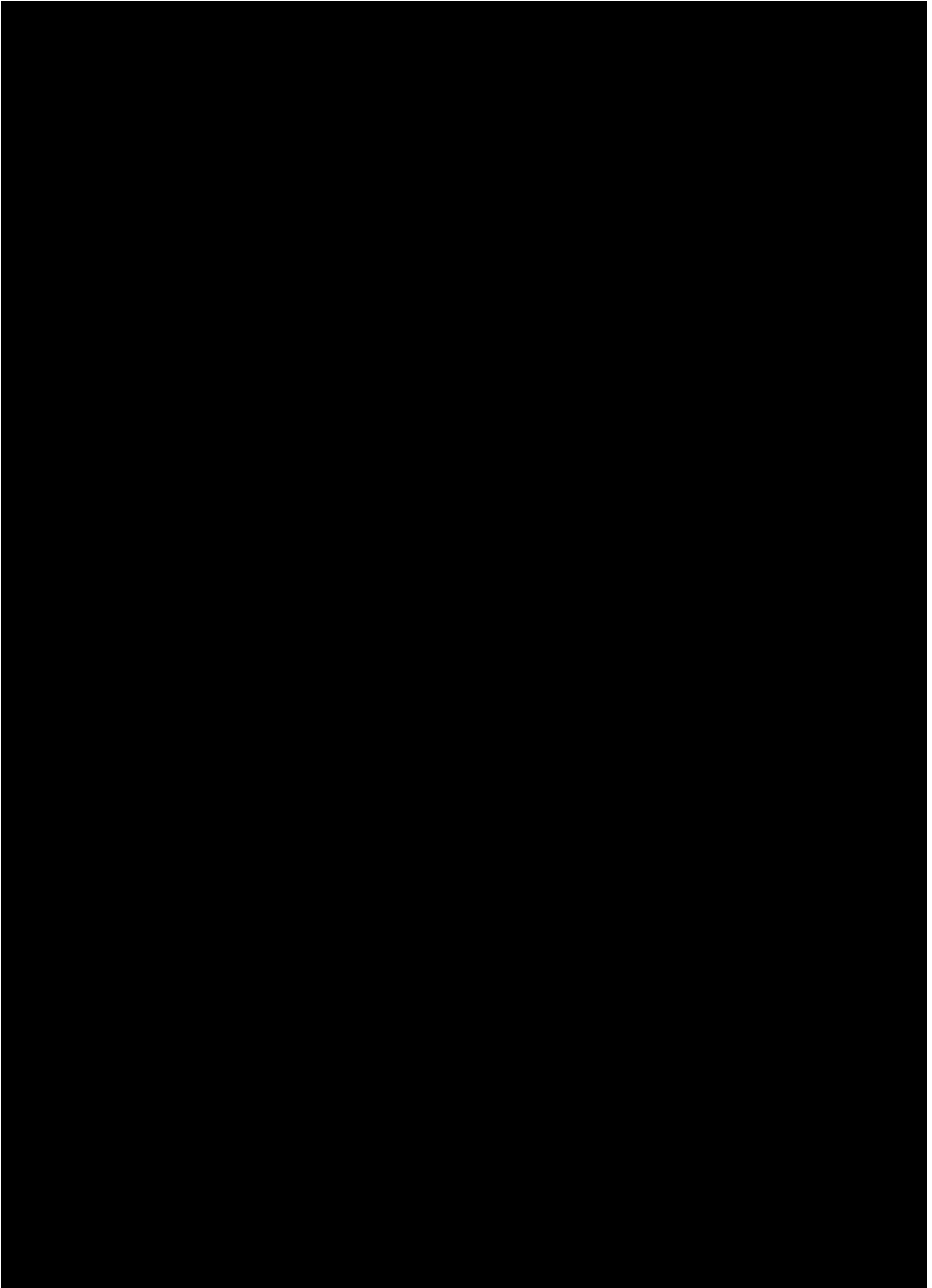


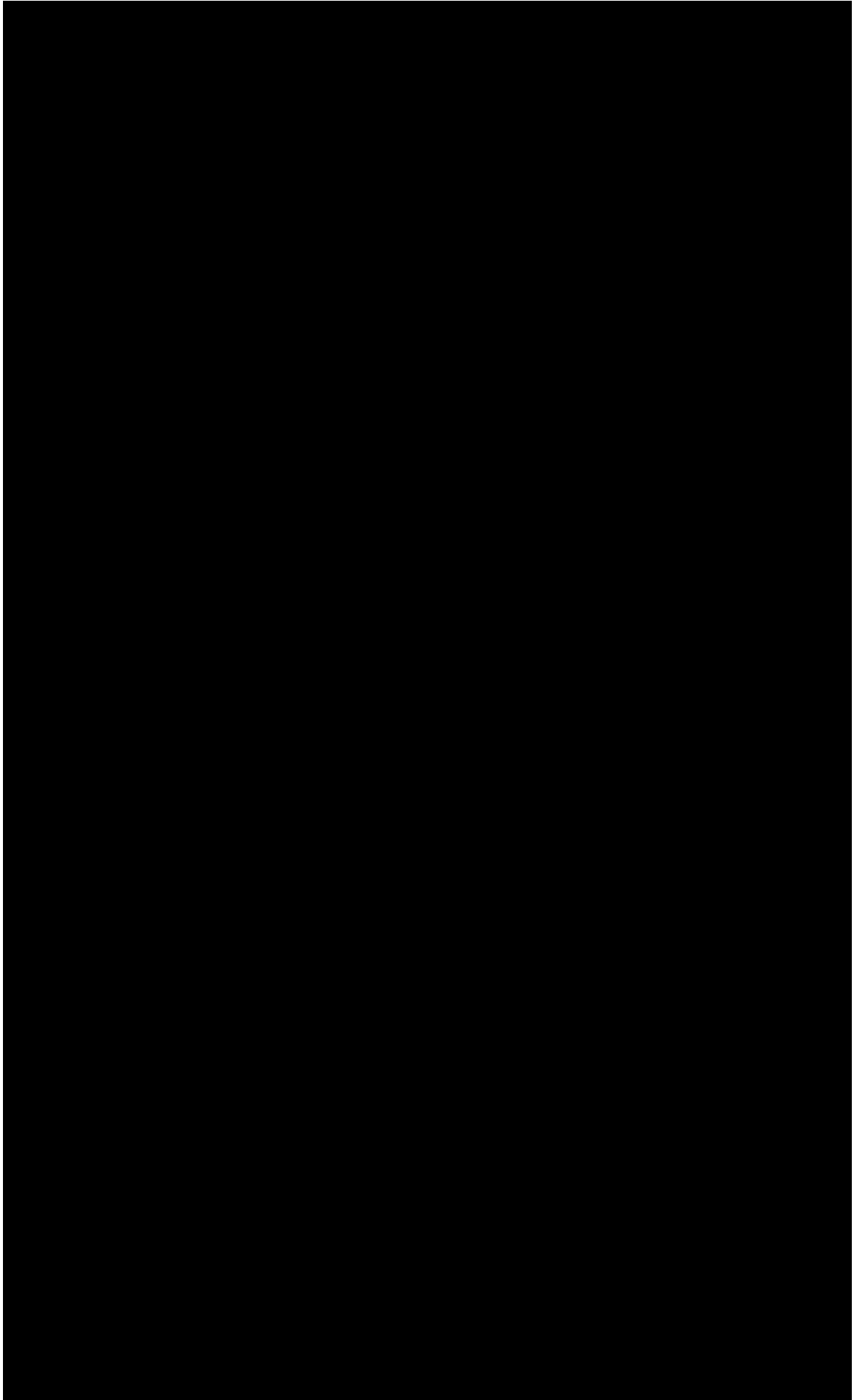


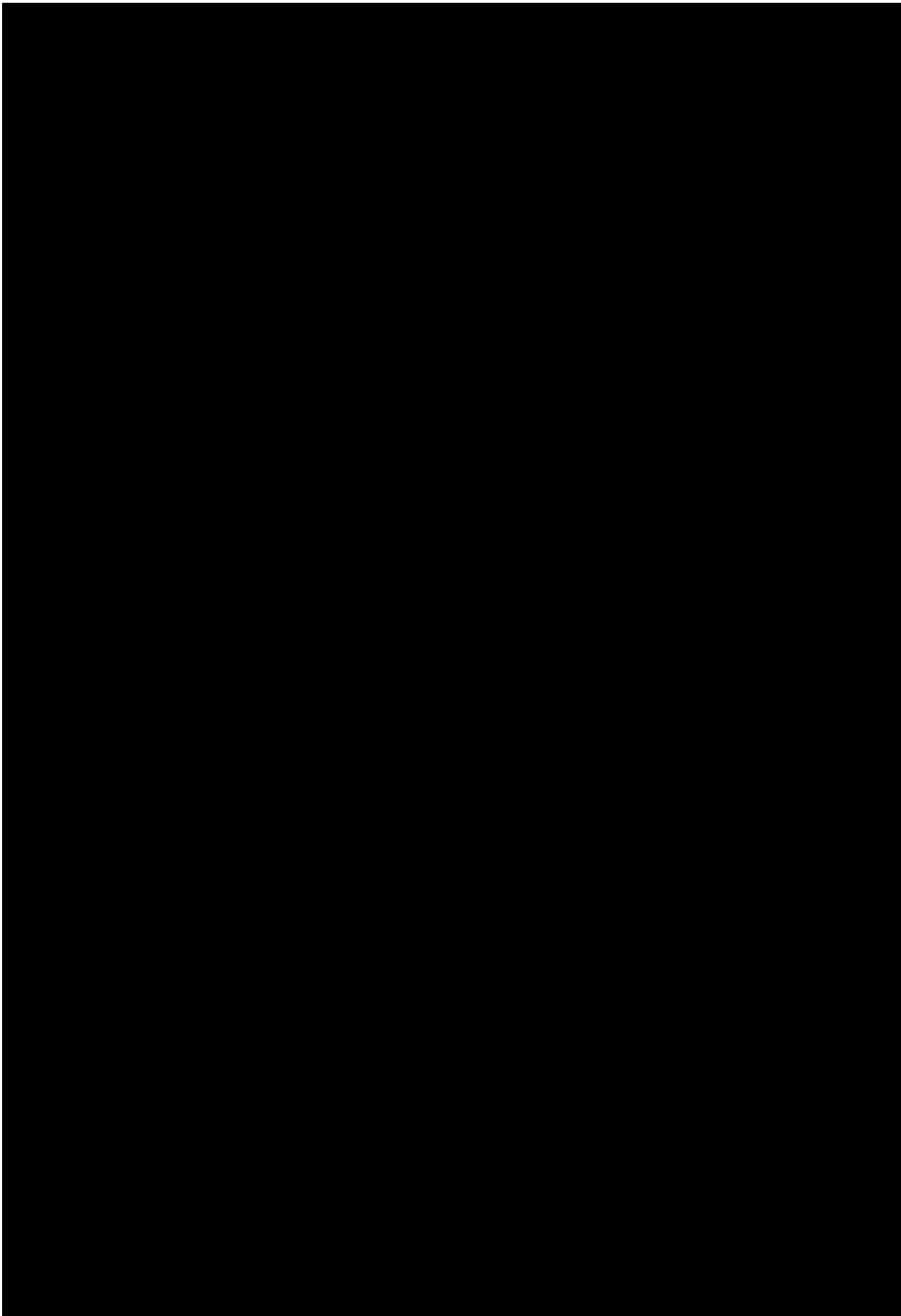


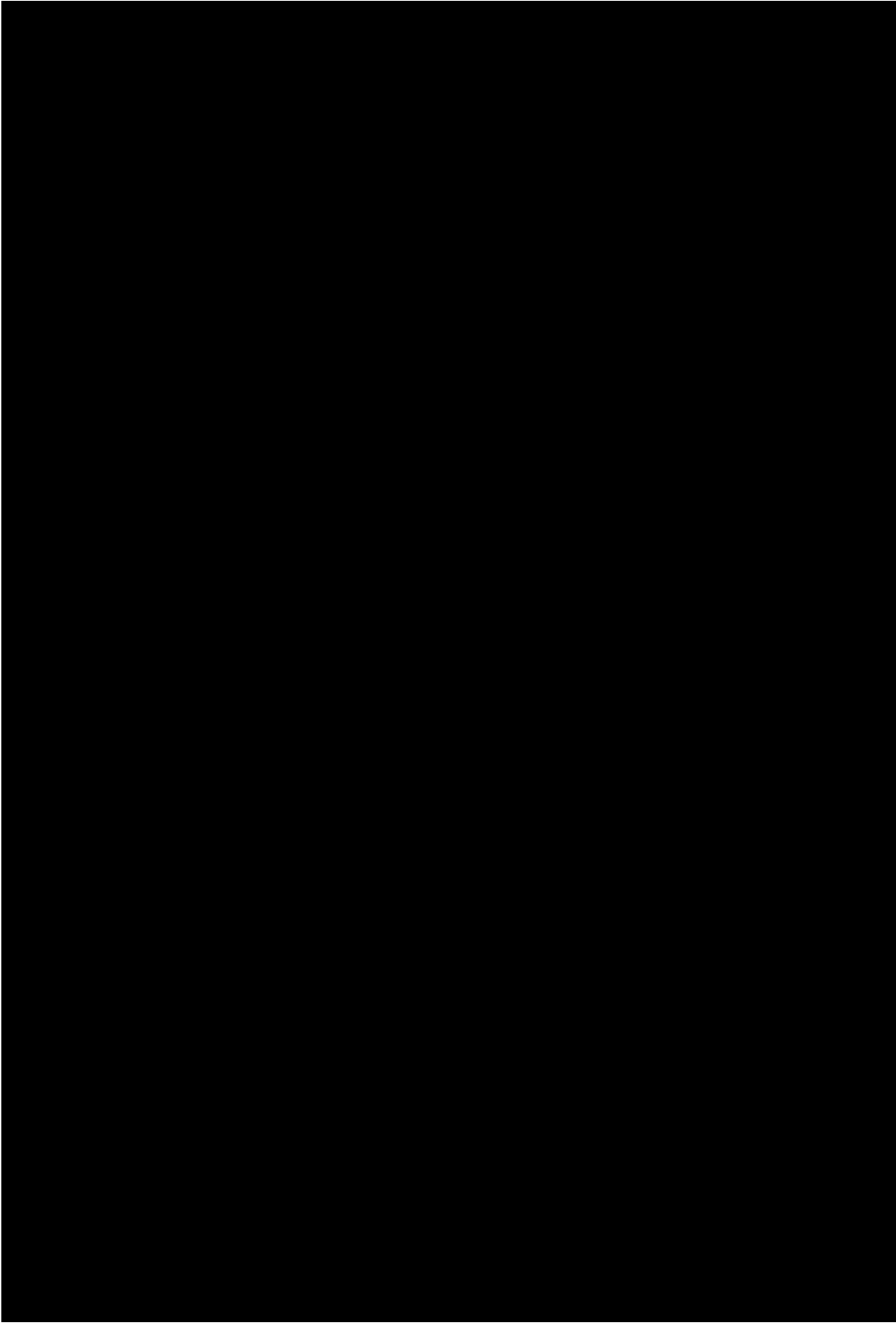


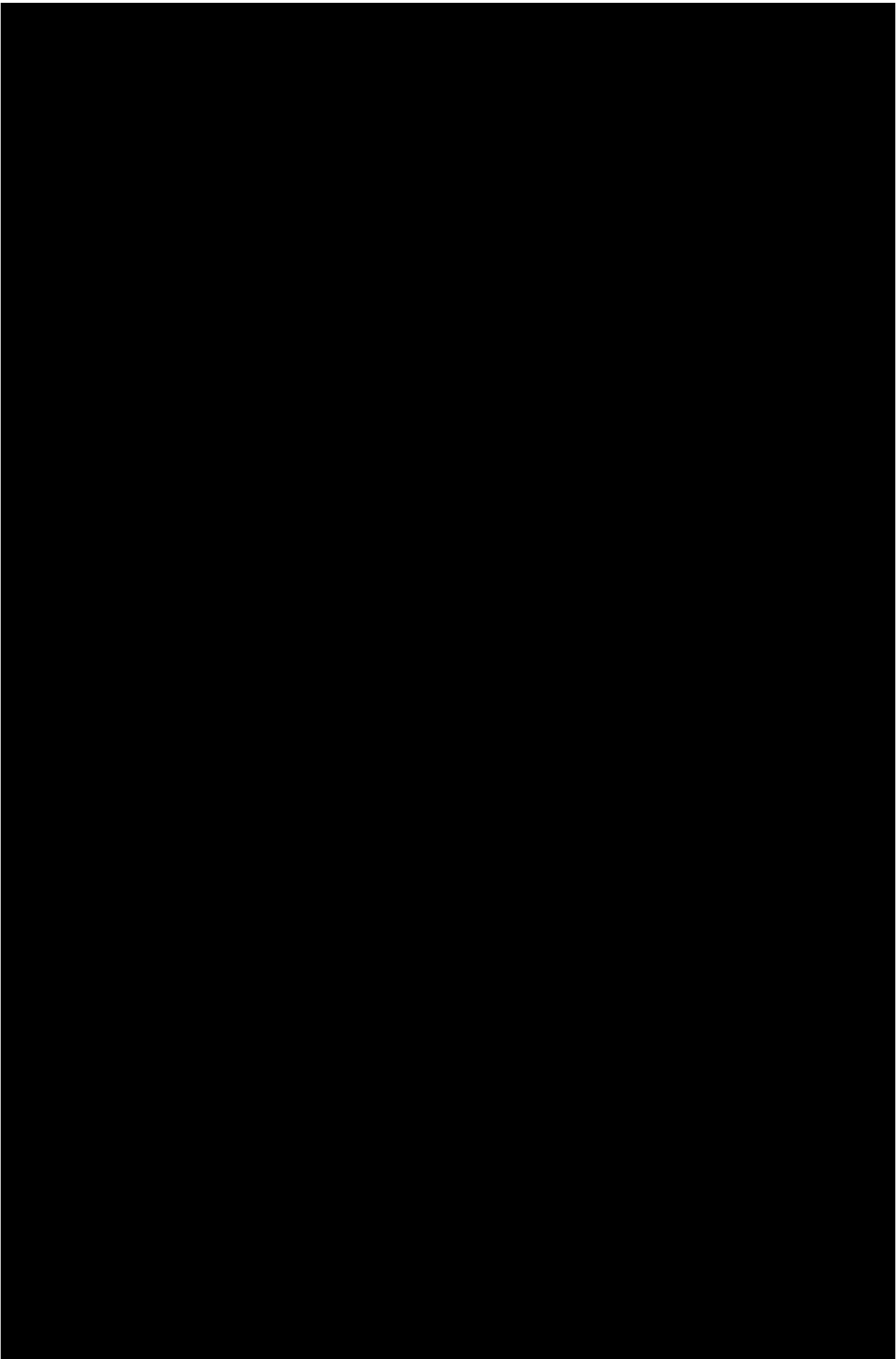
Schedule 30 Deed of Guarantee and Indemnity

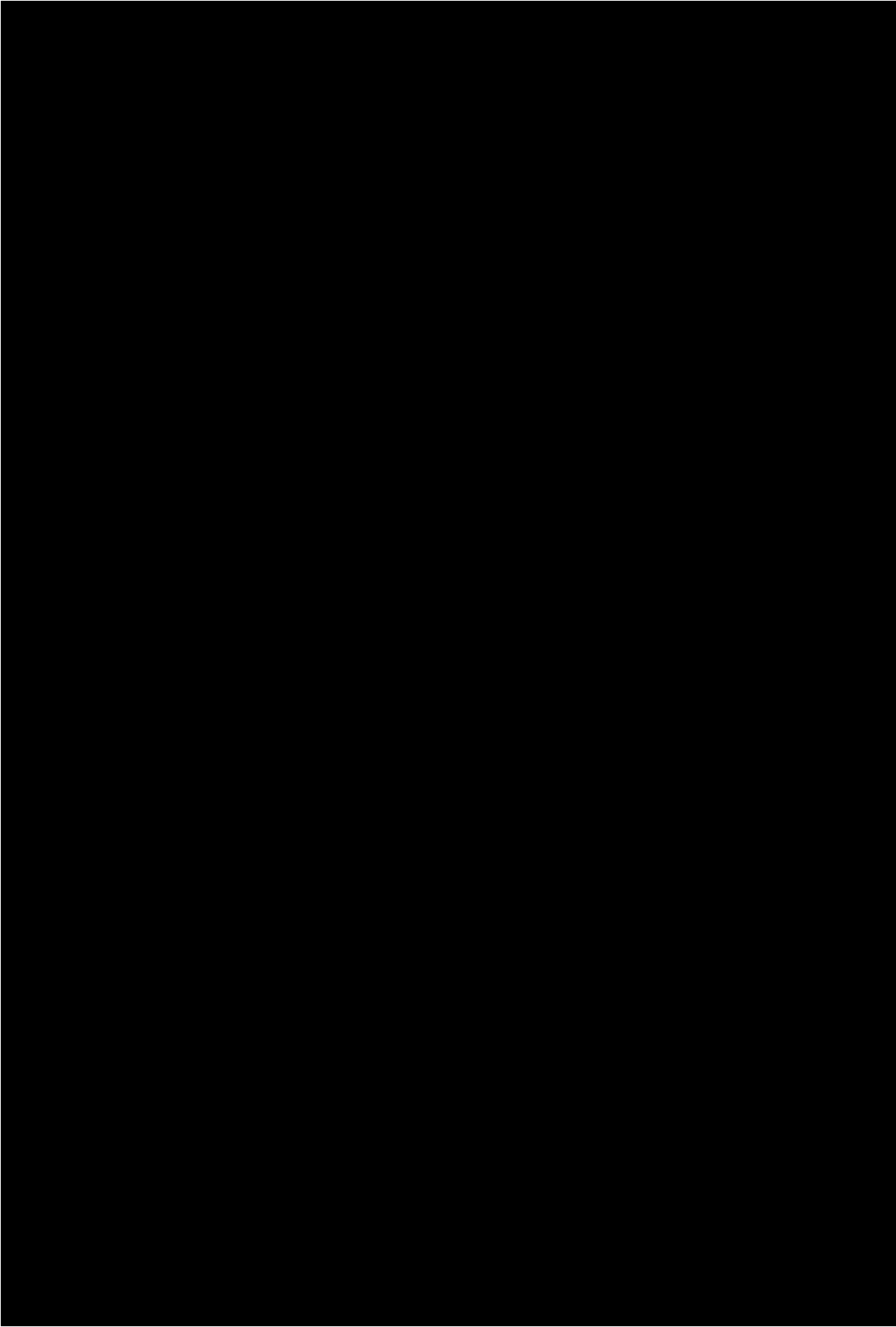


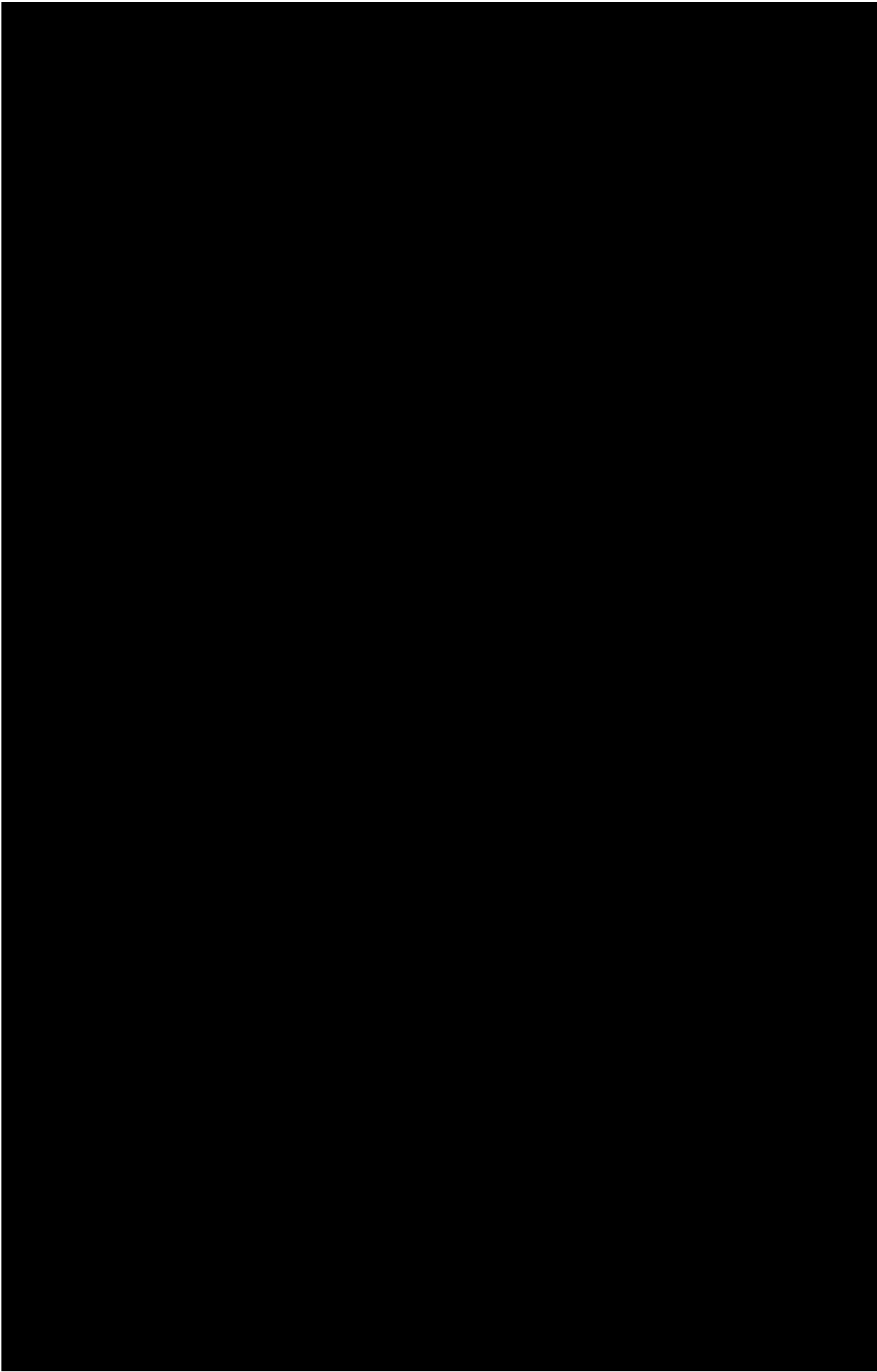


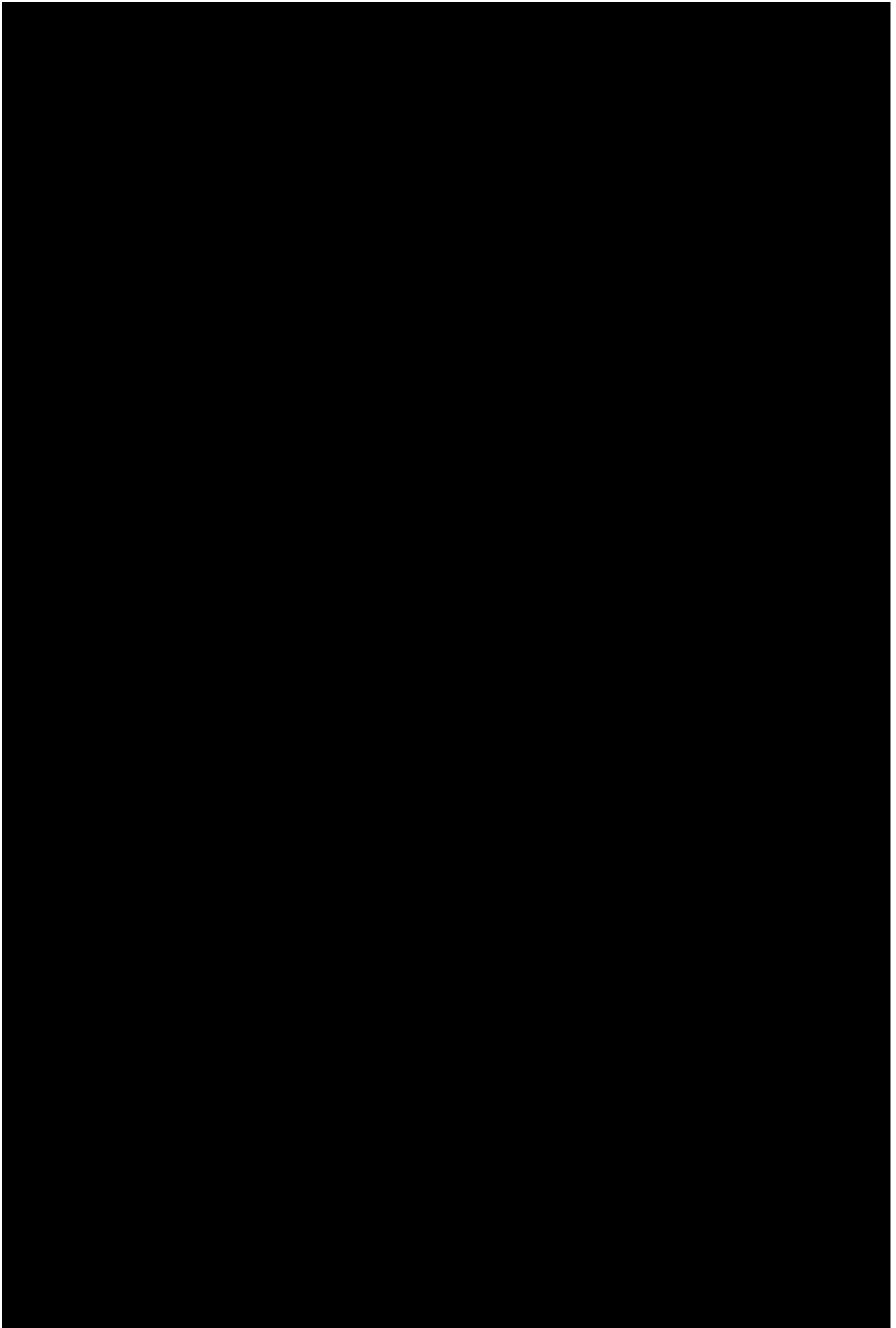


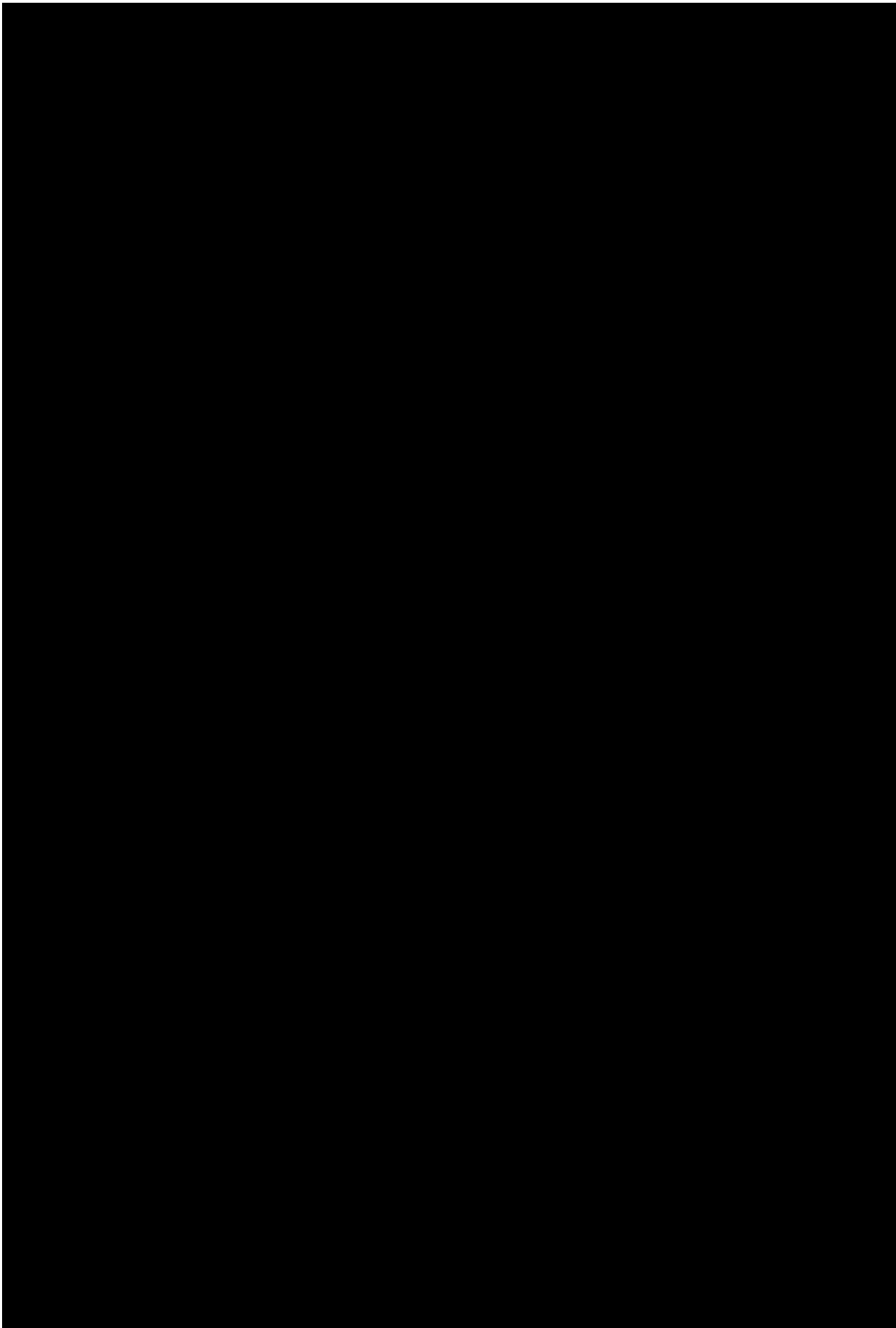


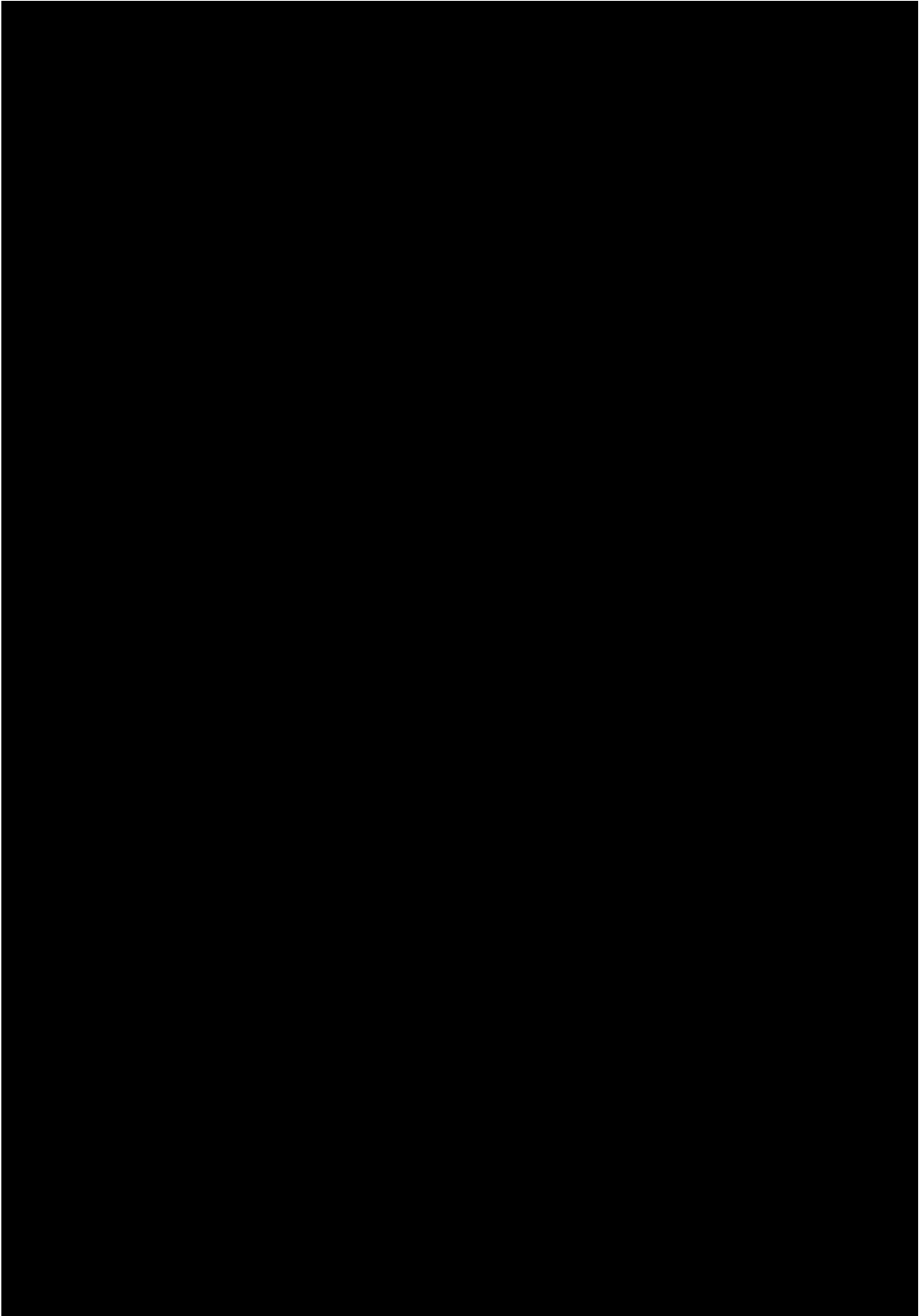


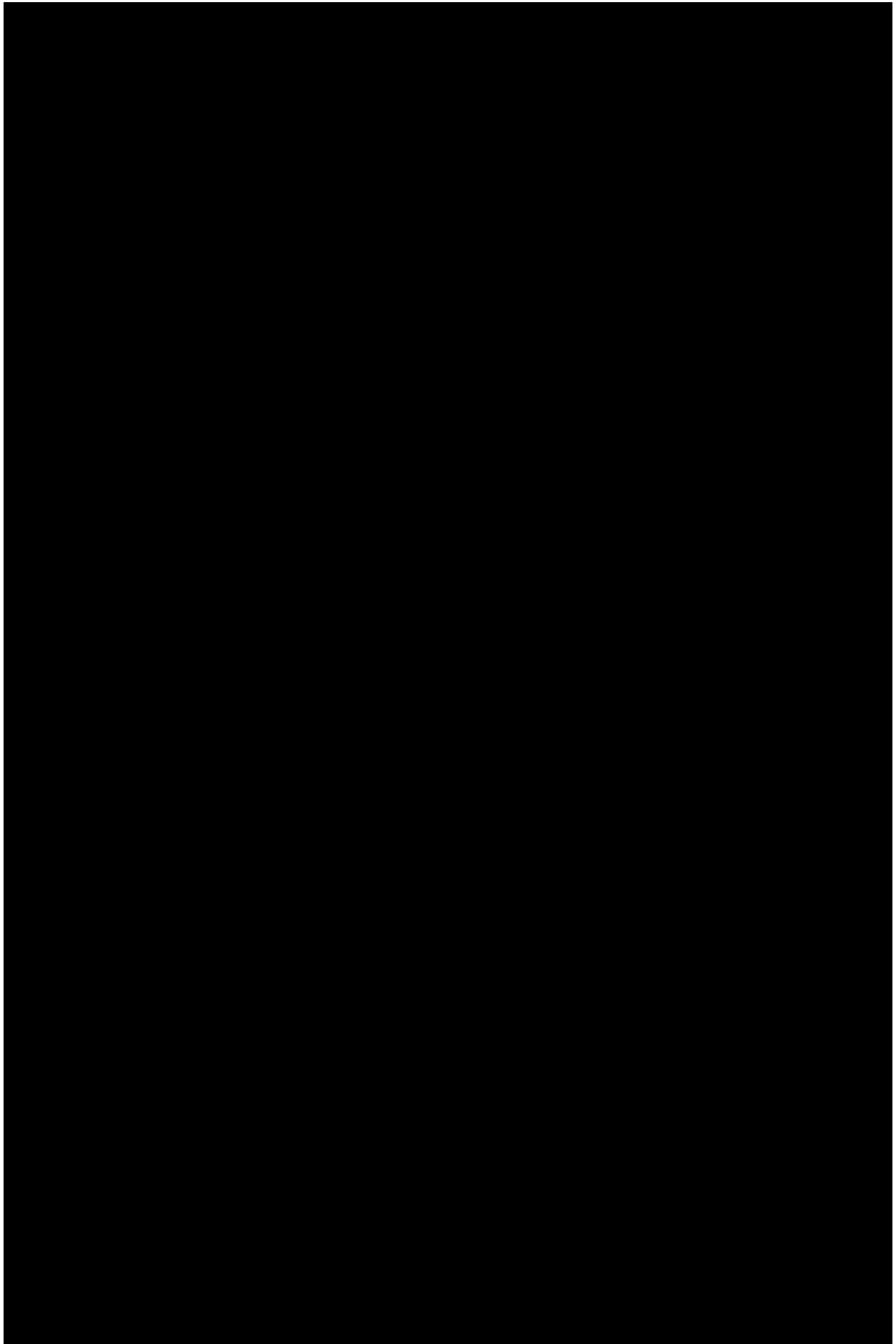


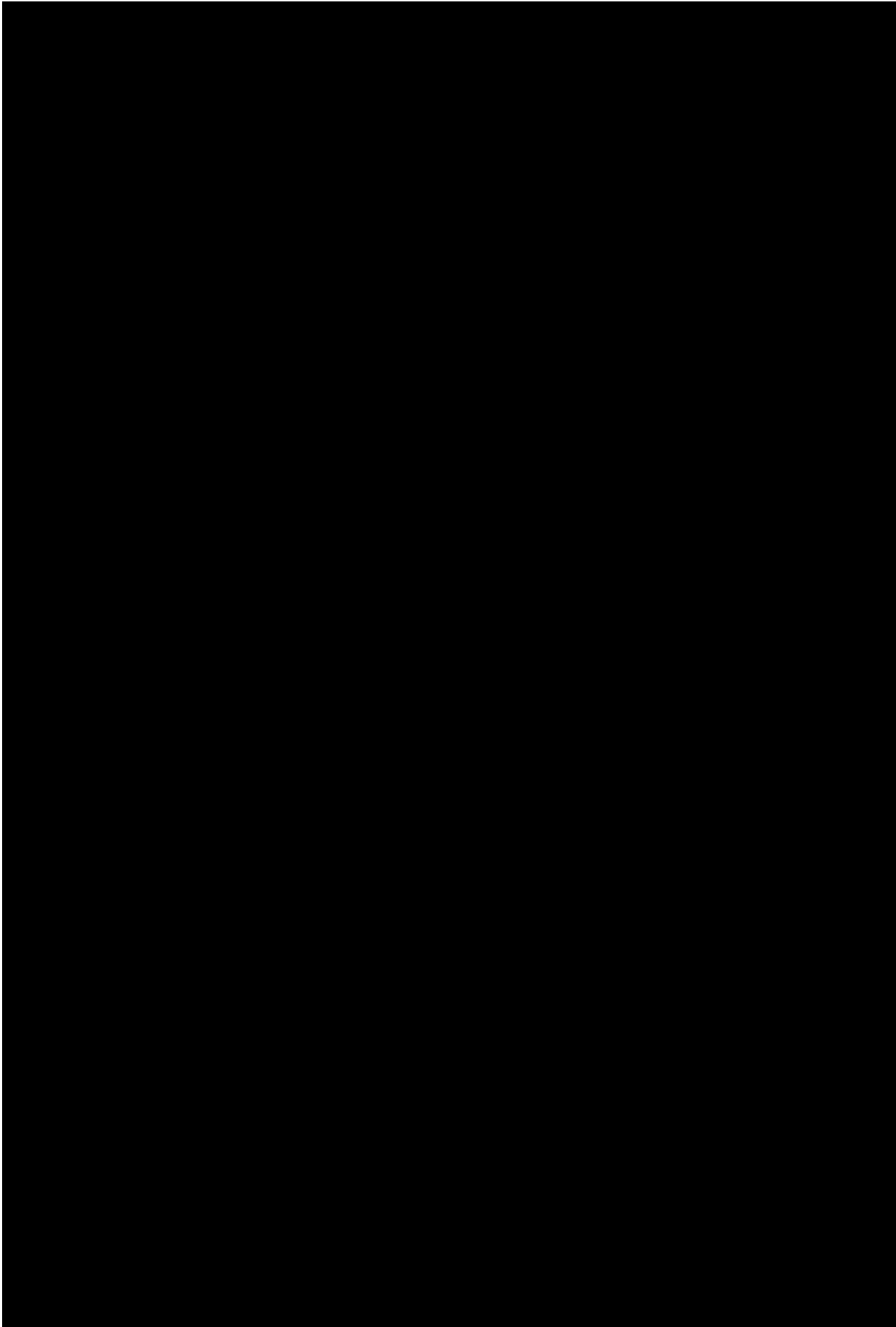


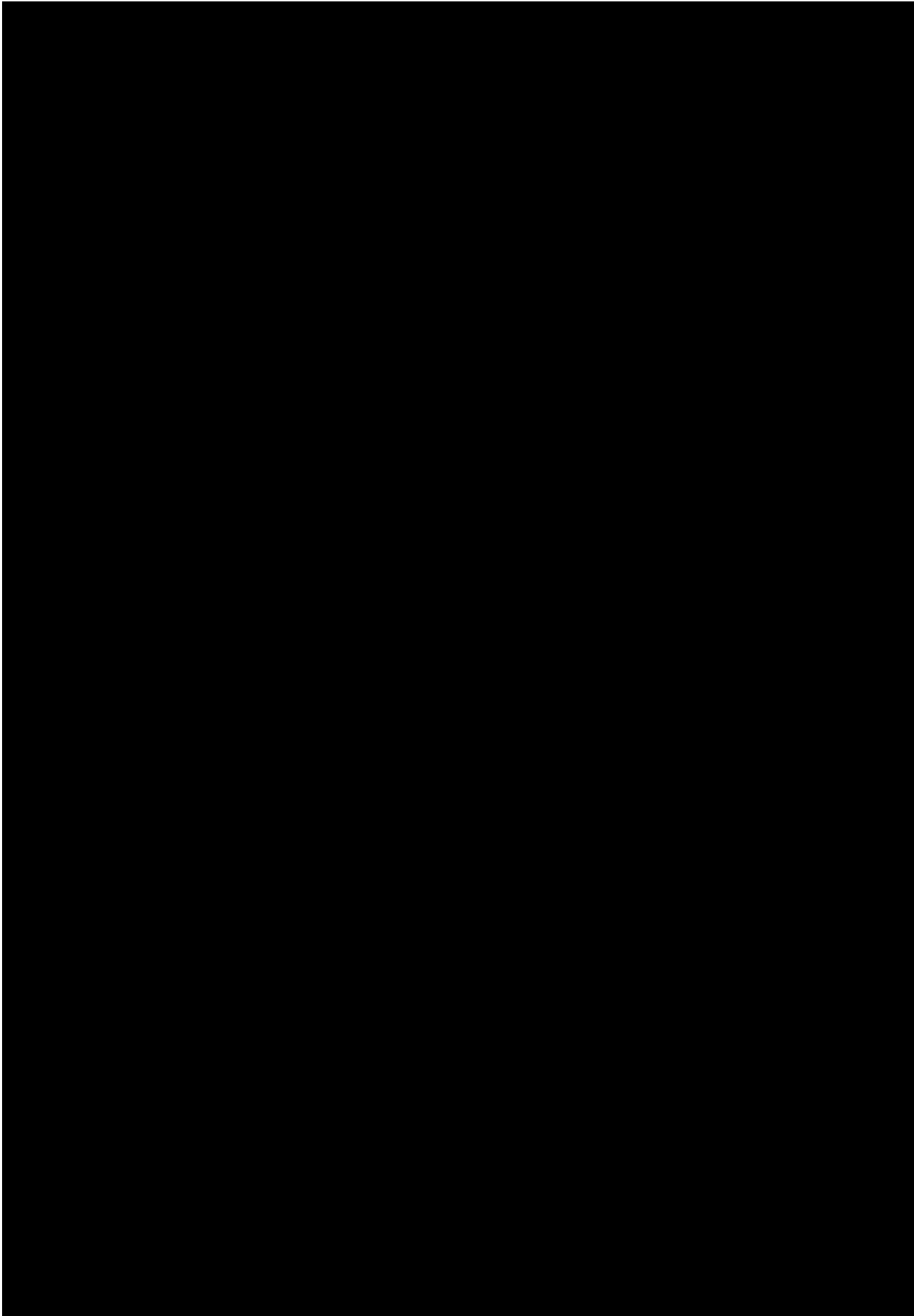


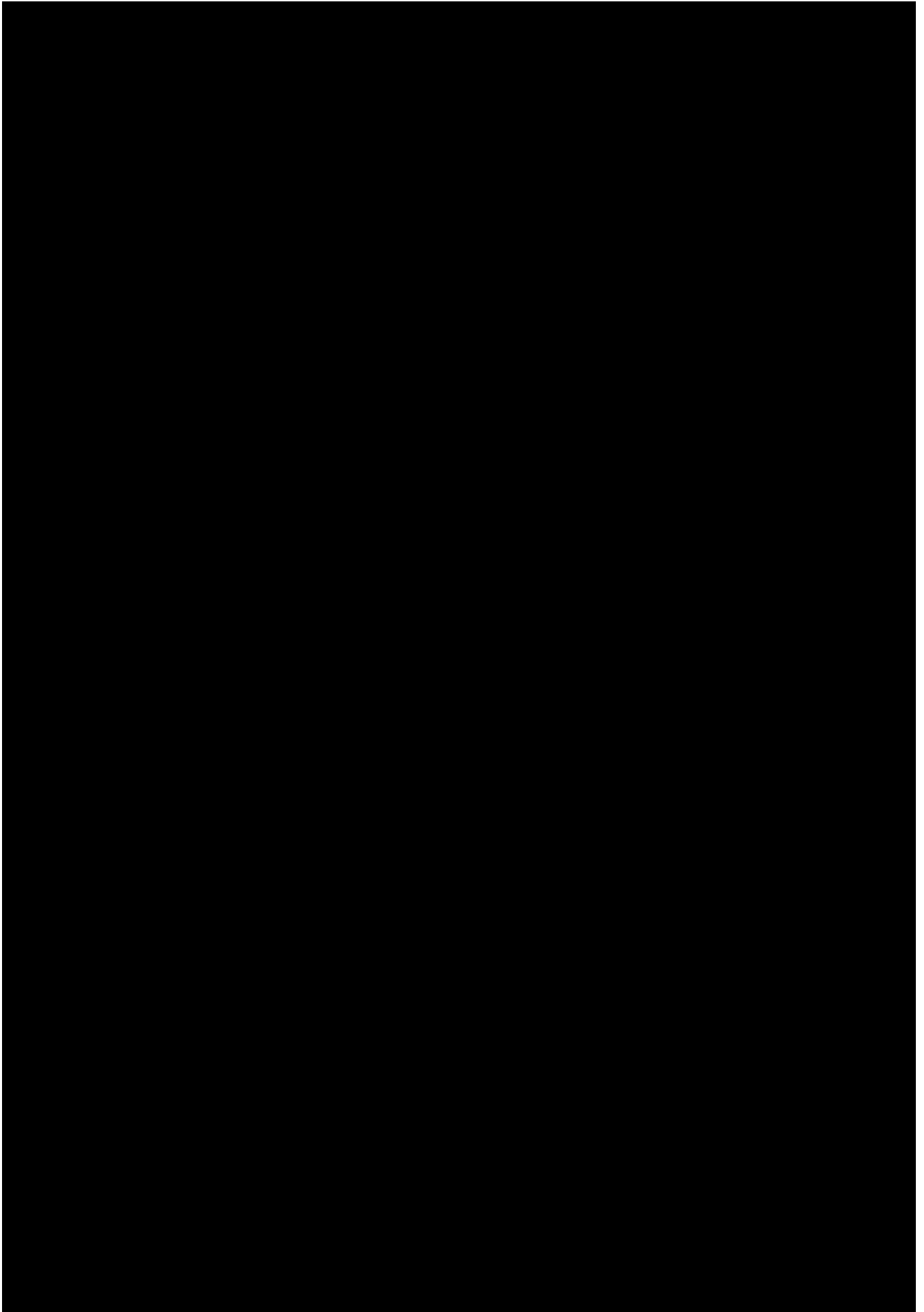


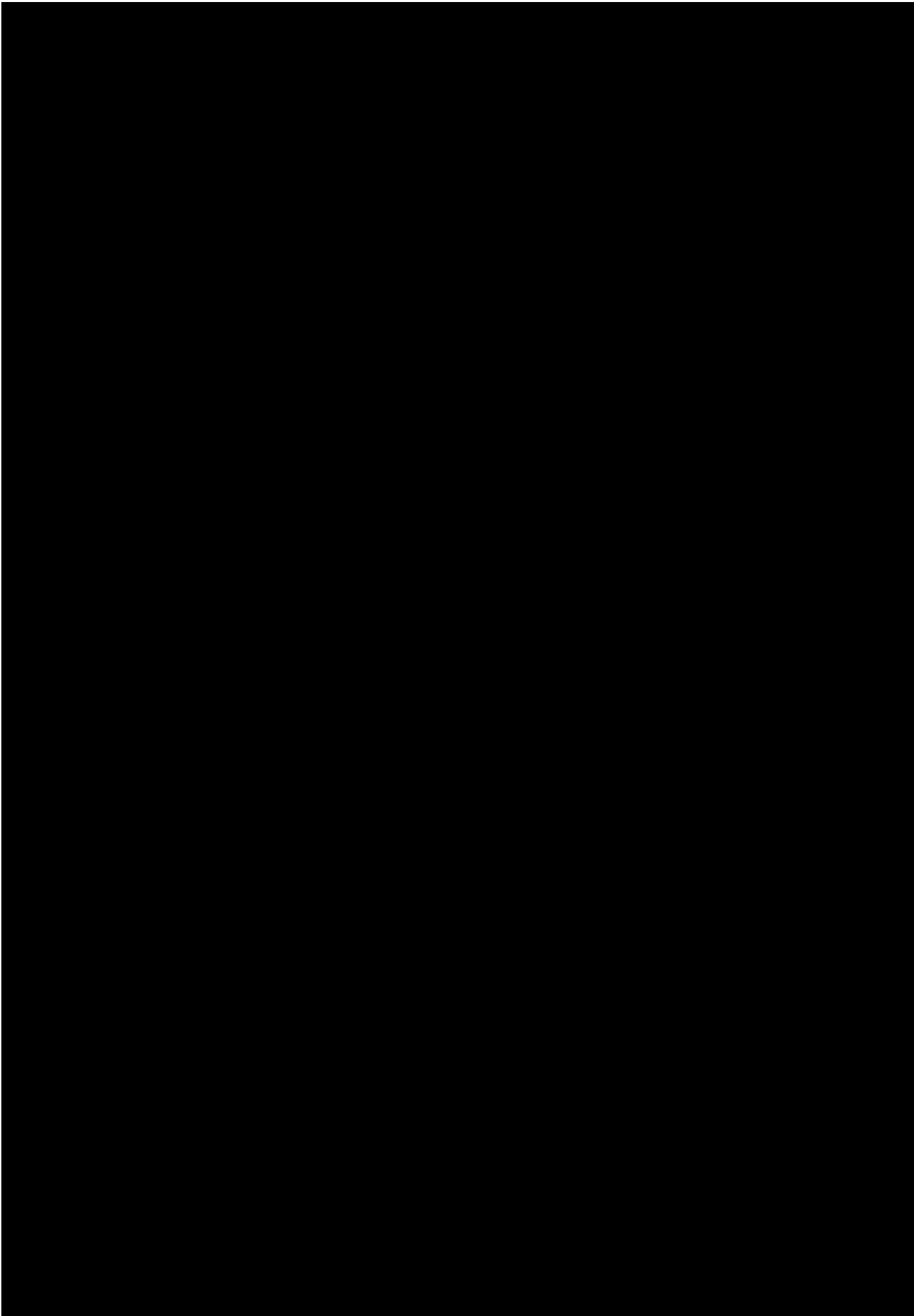


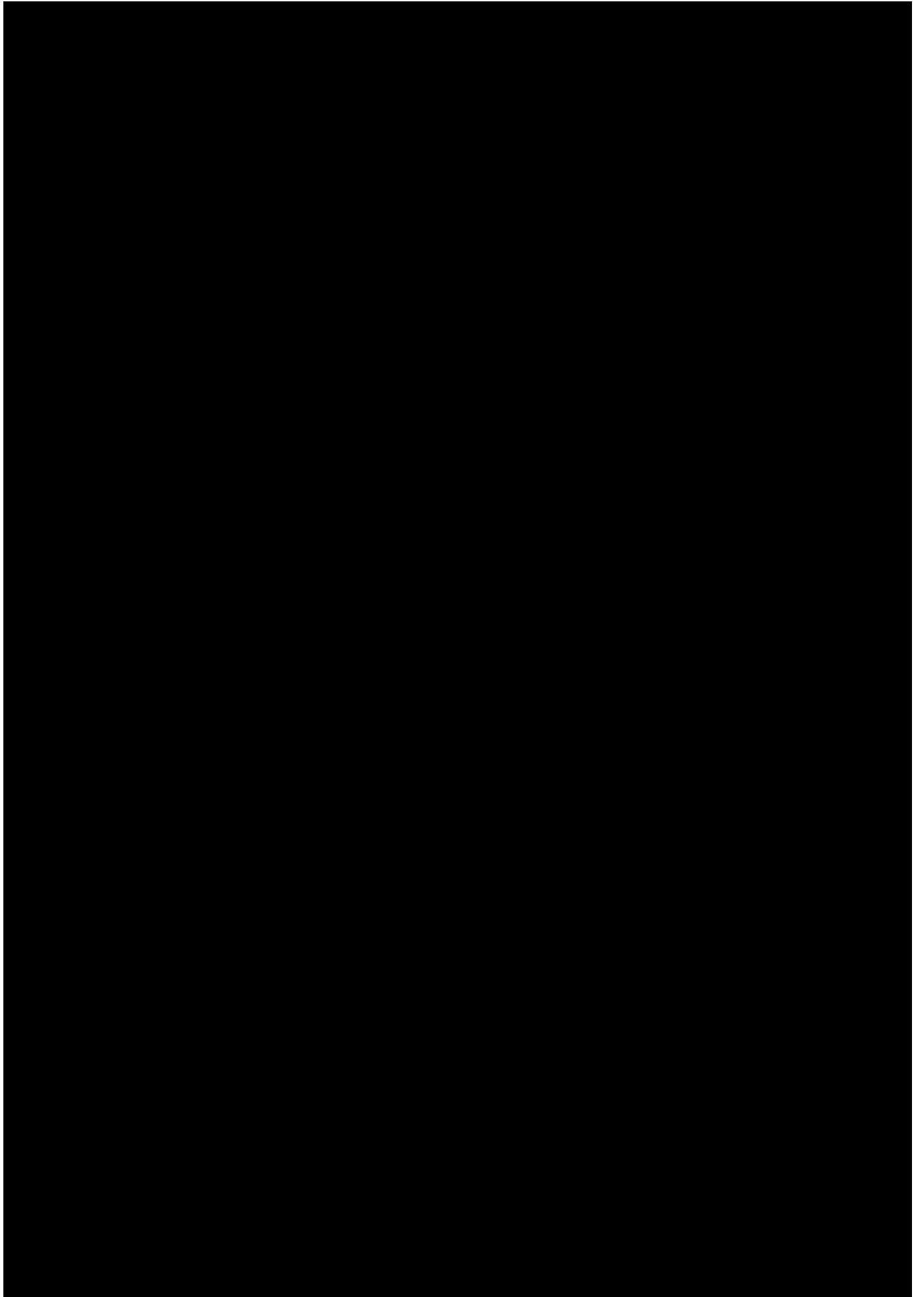


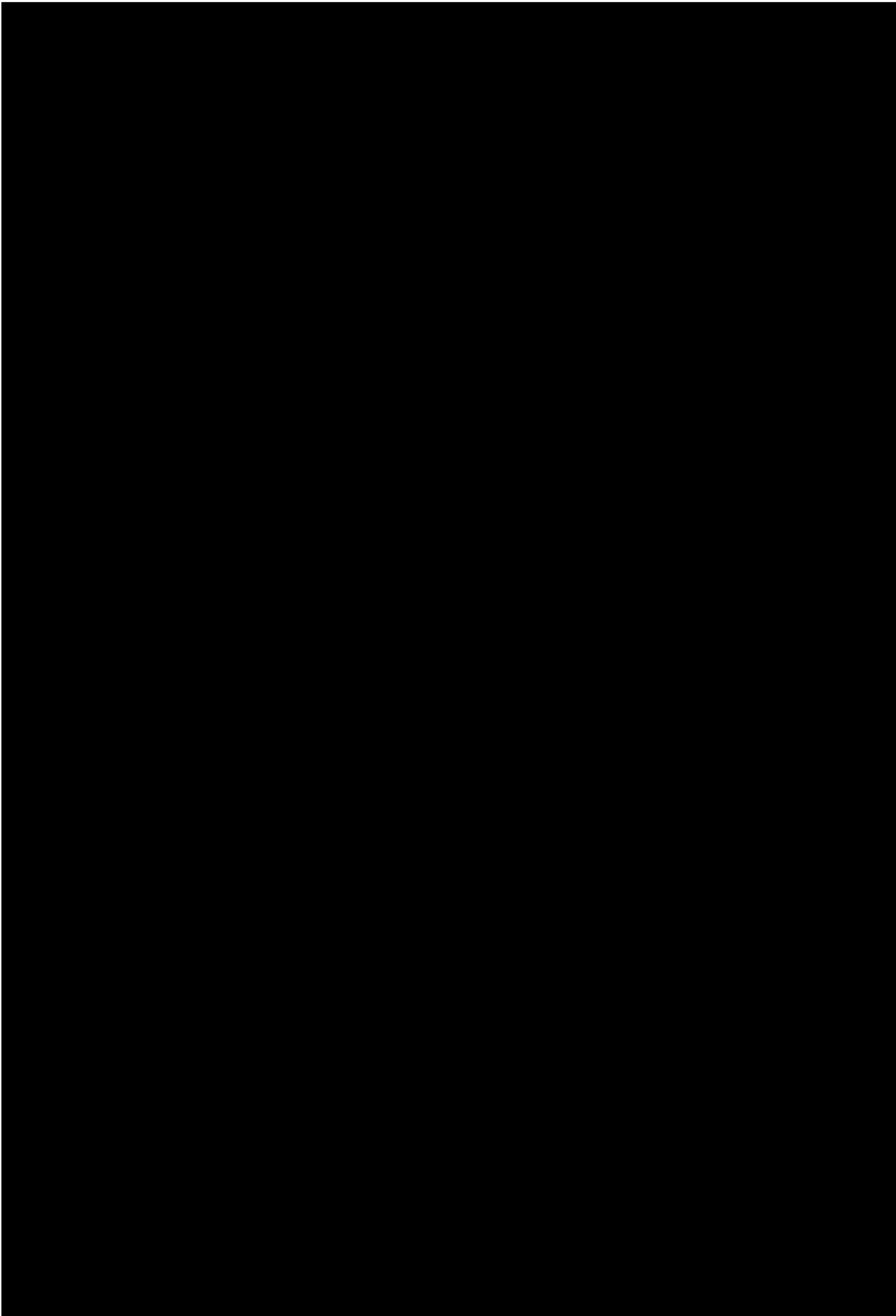


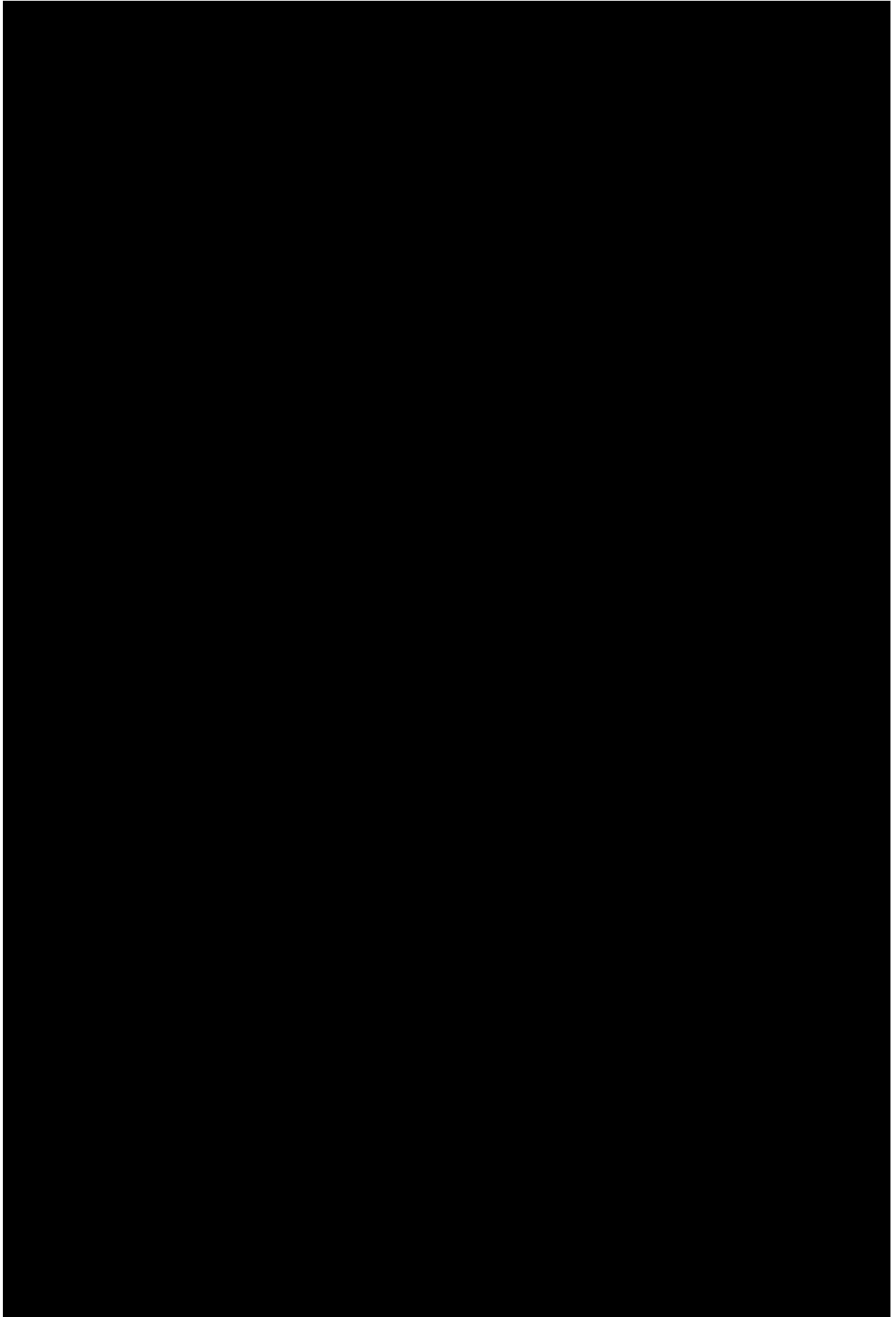


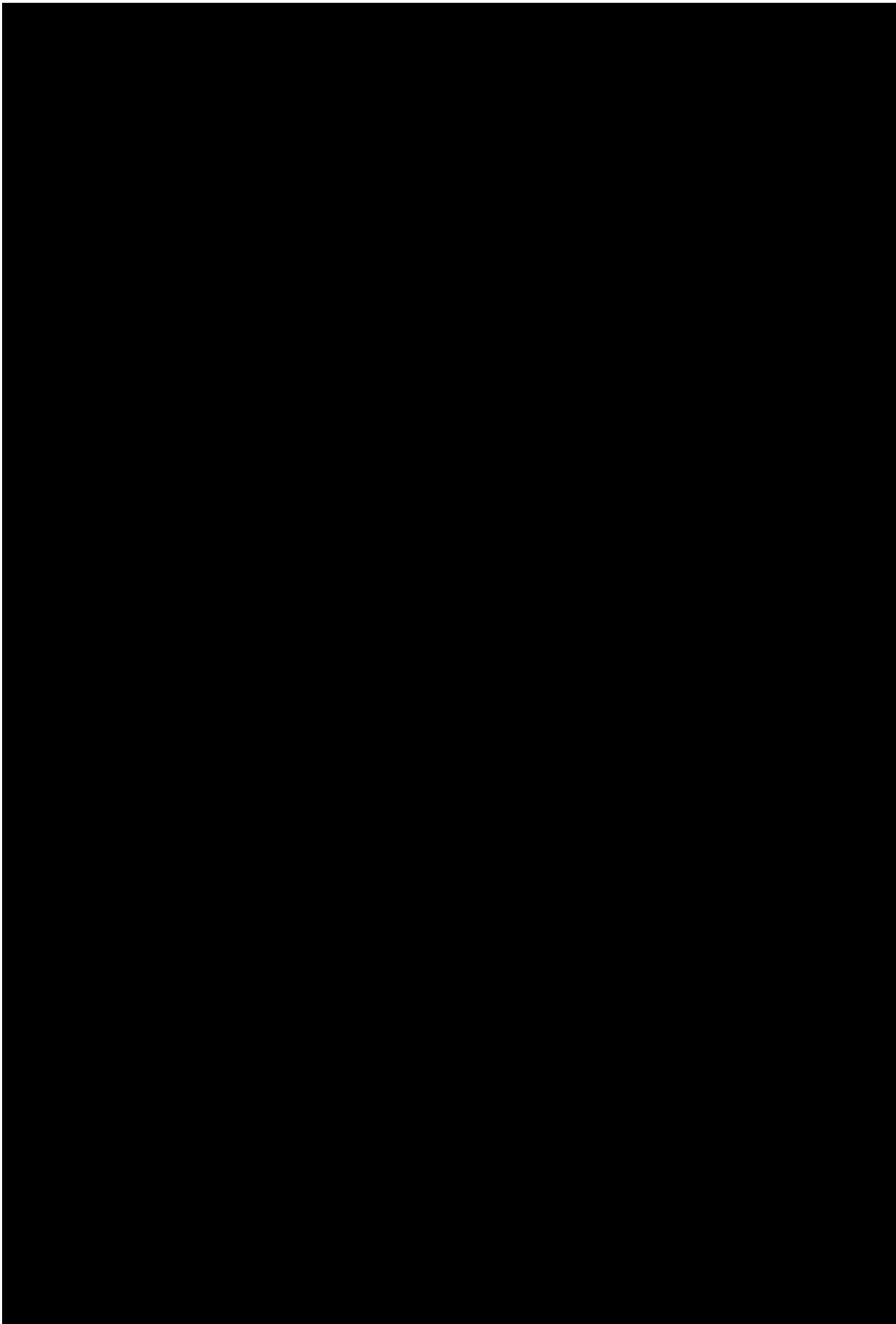


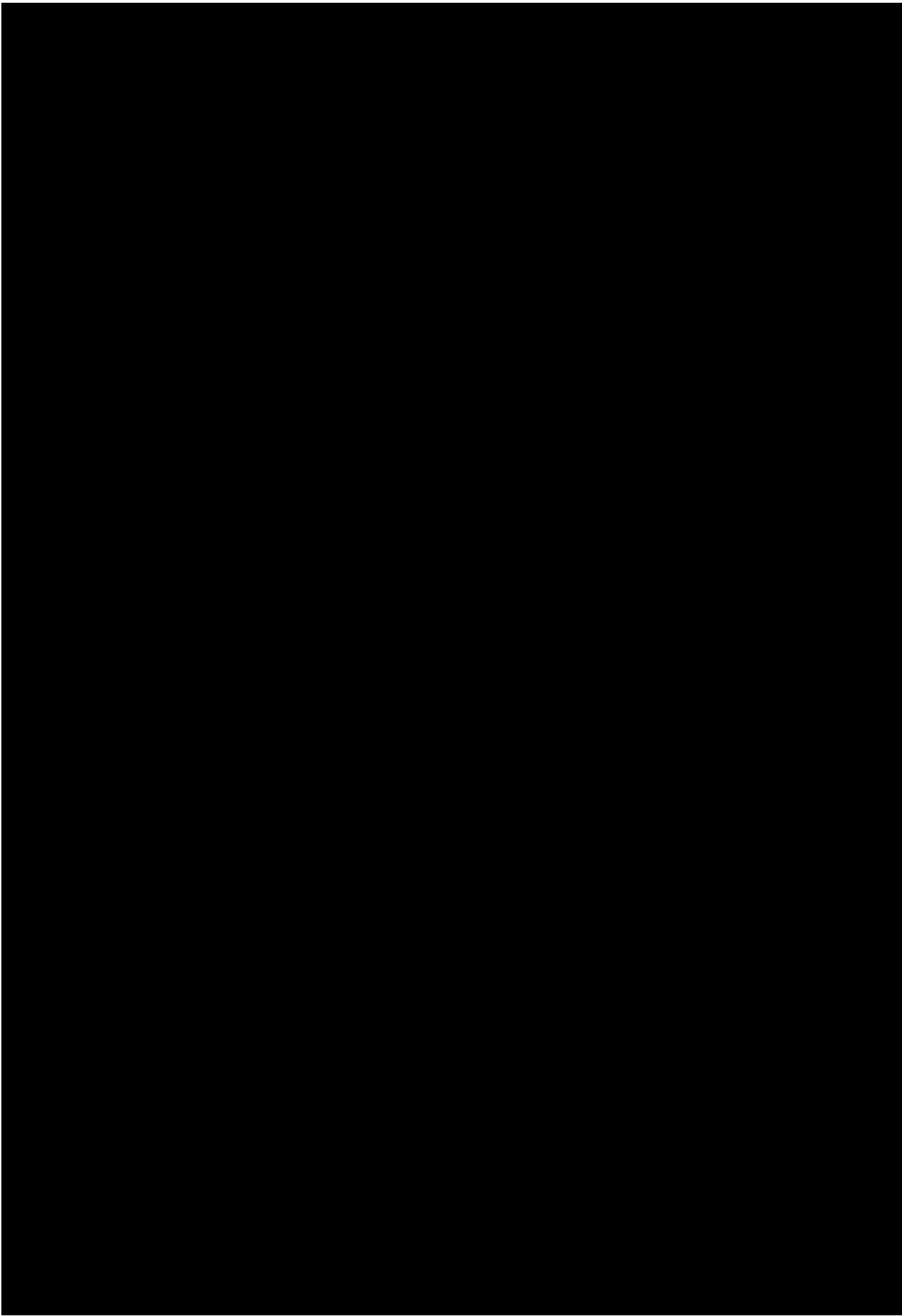


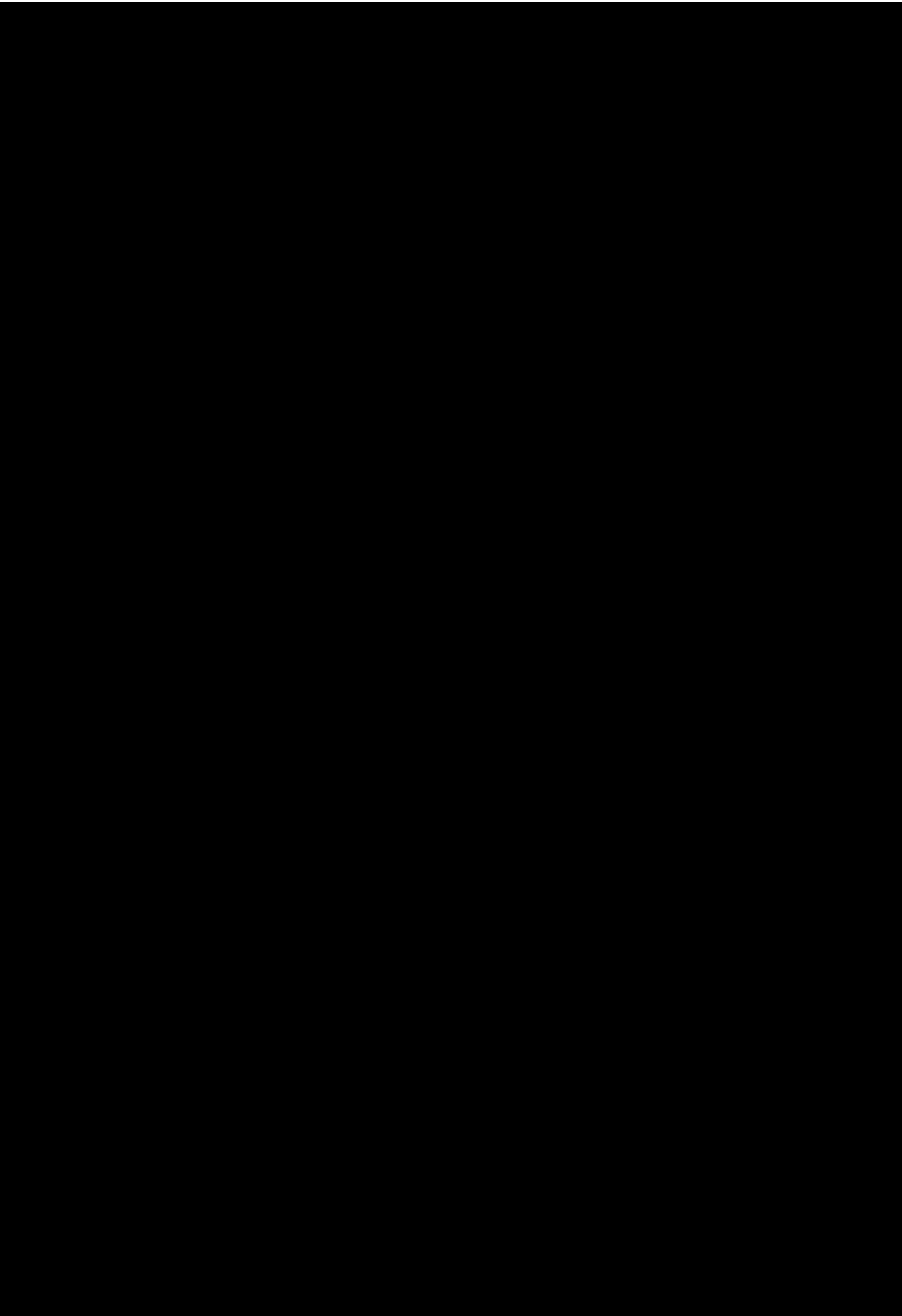


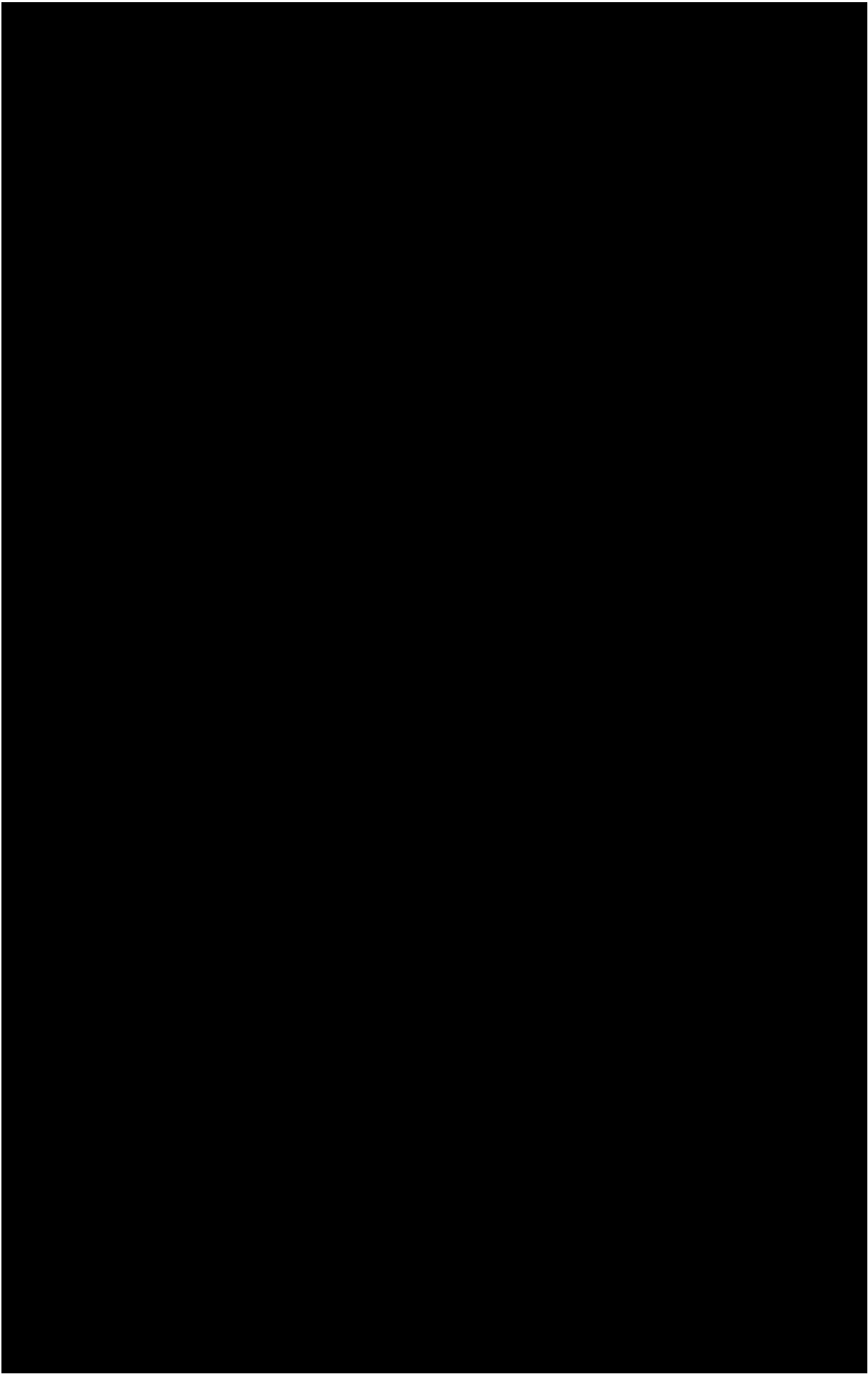


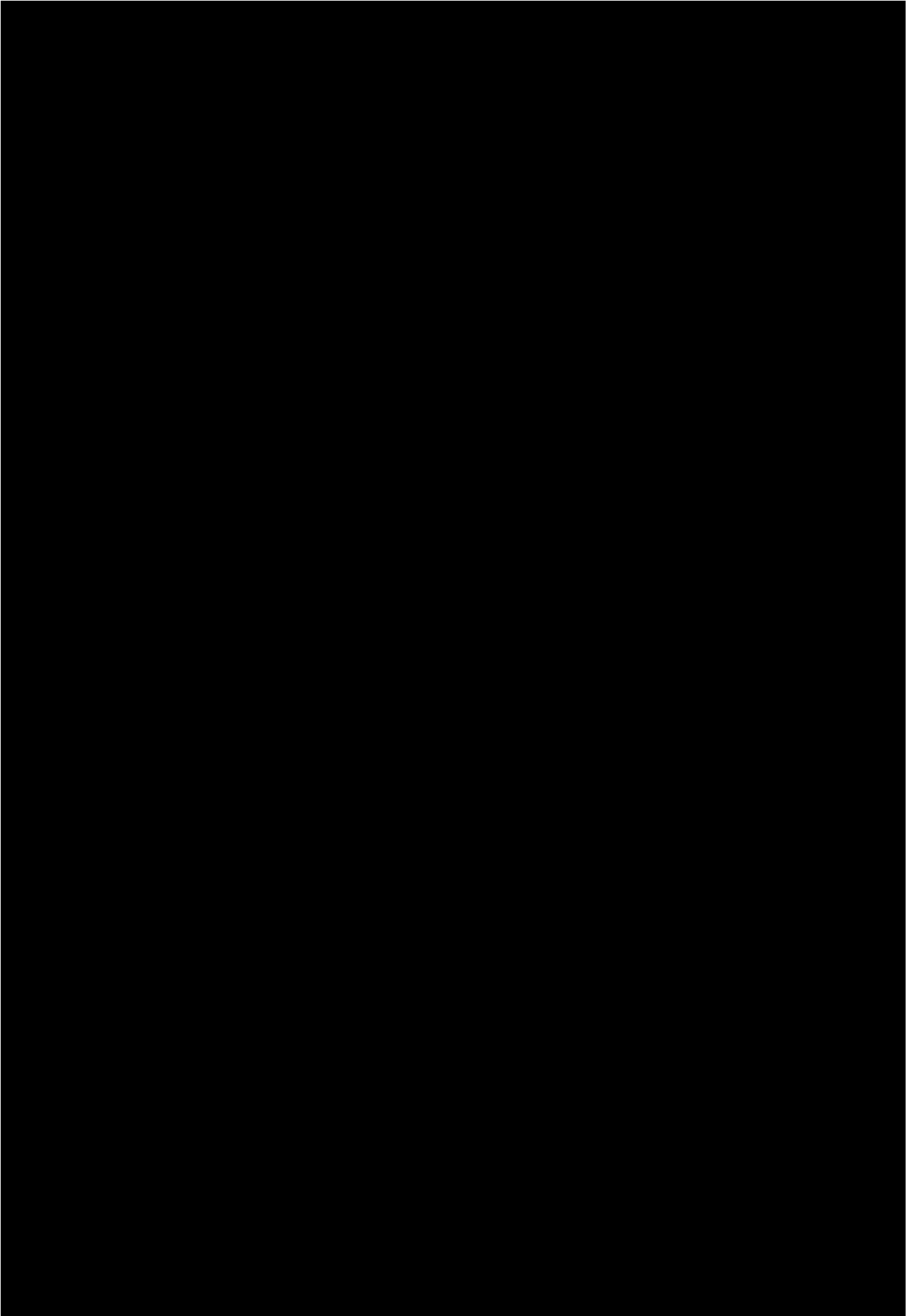


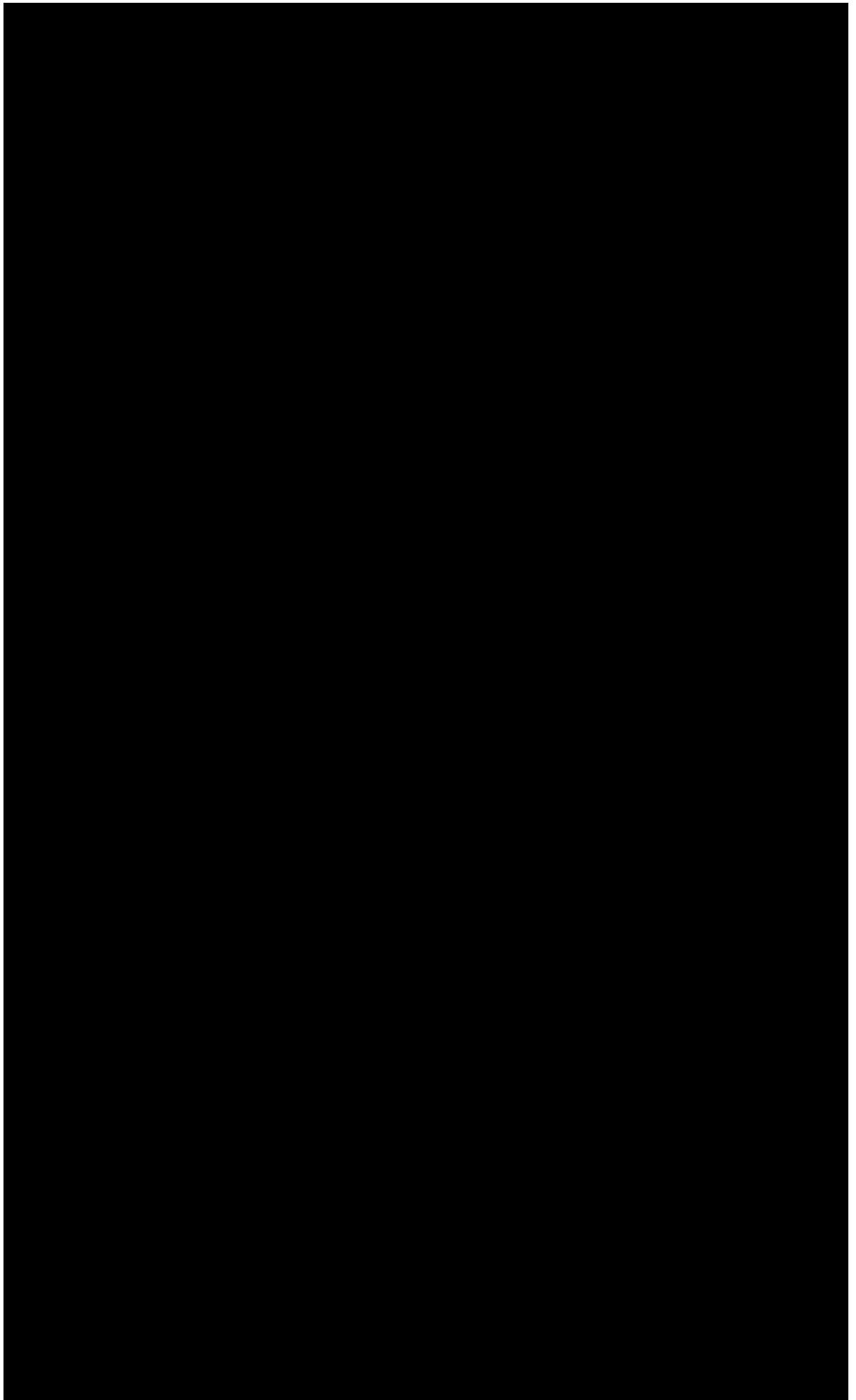




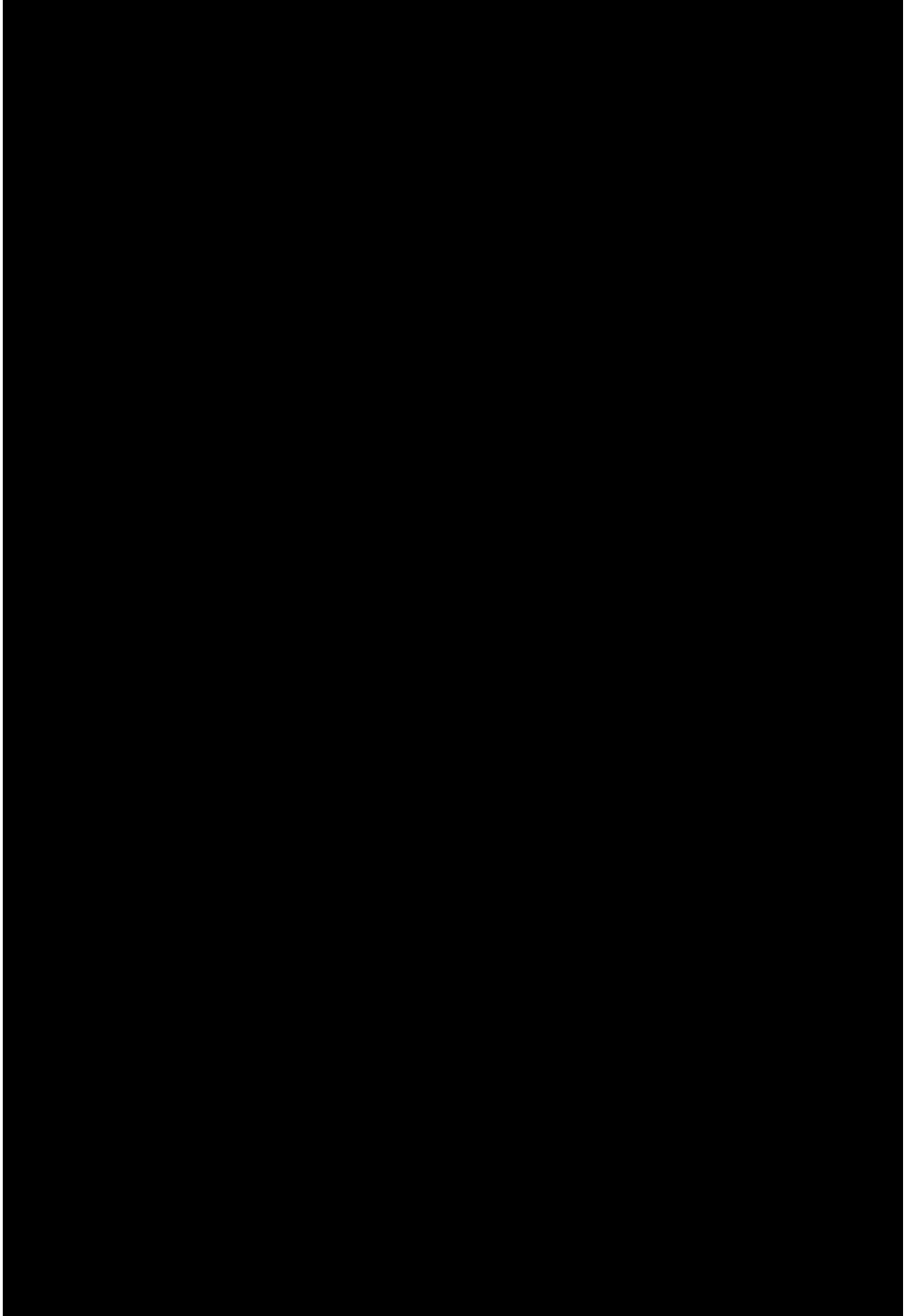








Schedule 31 Enabling Works Program

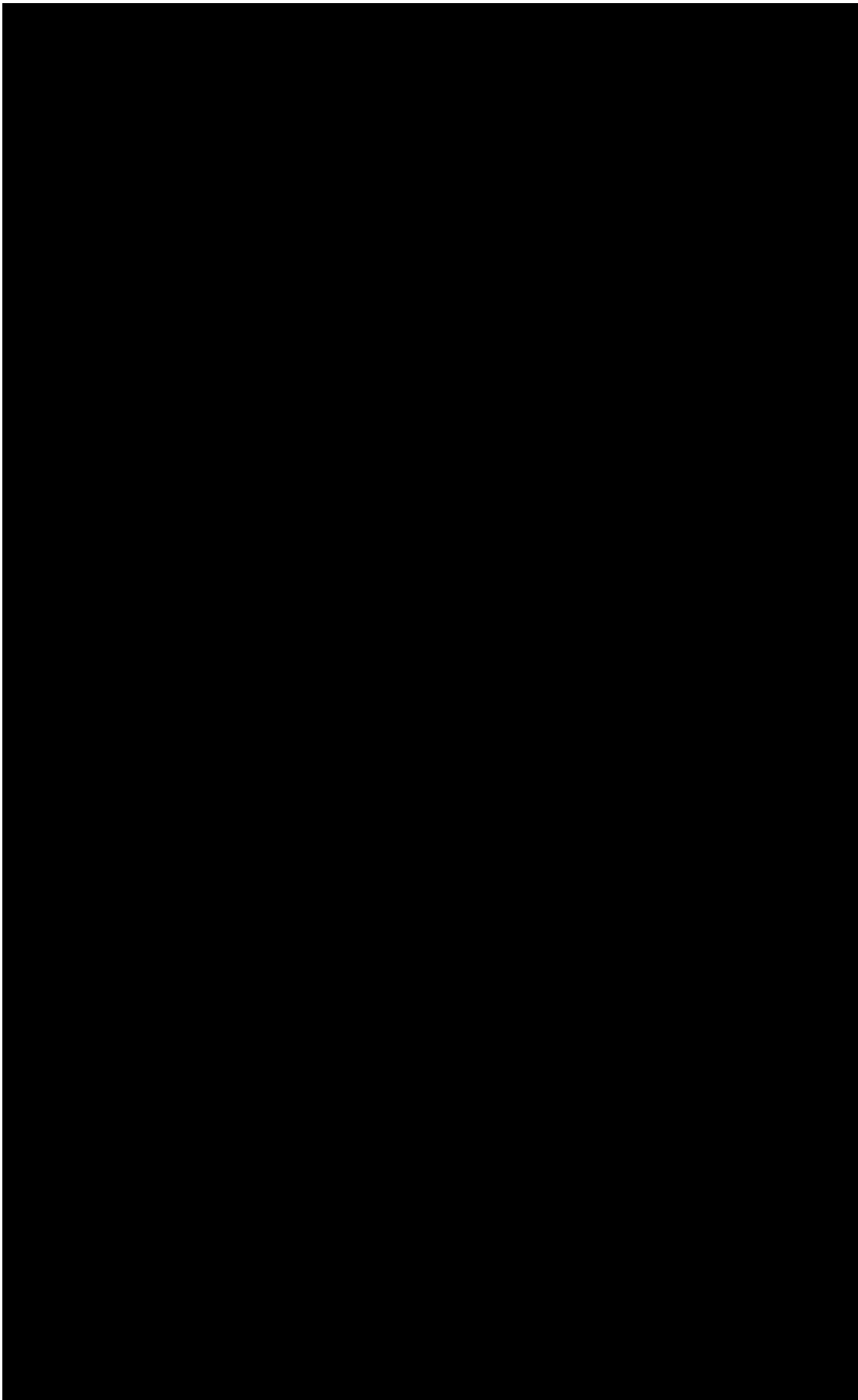


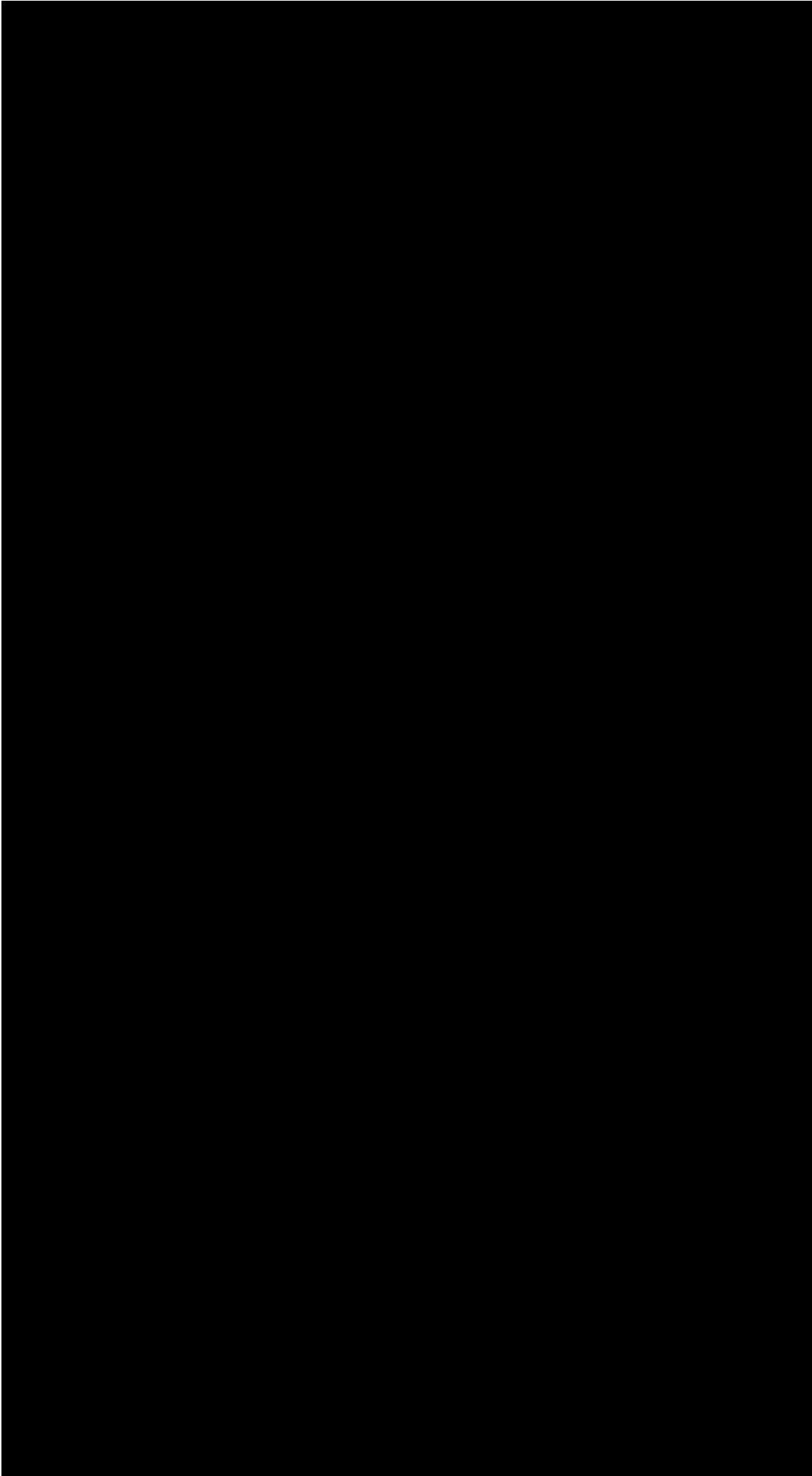
Schedule 32 Principal Supplied Items

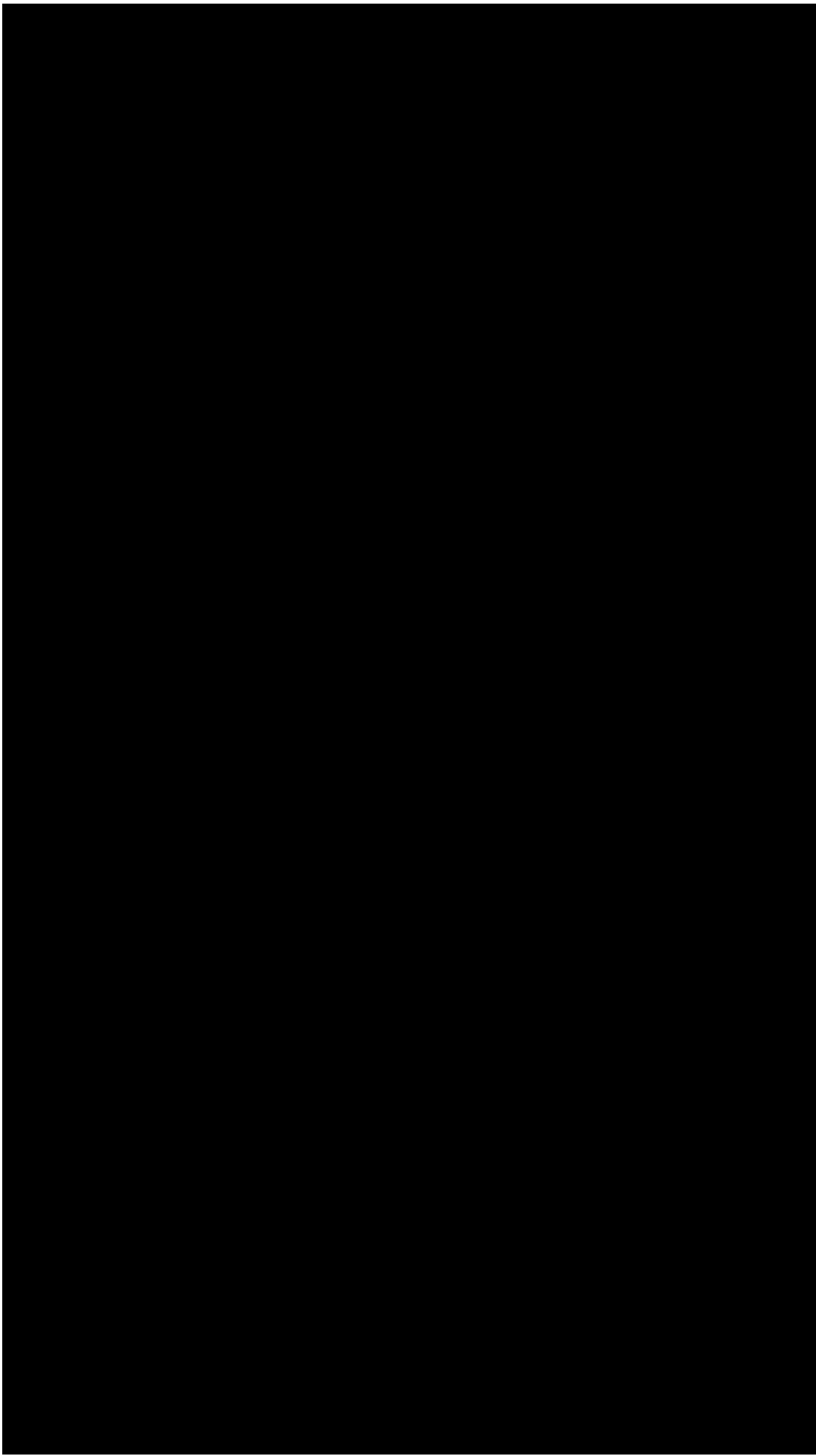
(Clause 7.12)

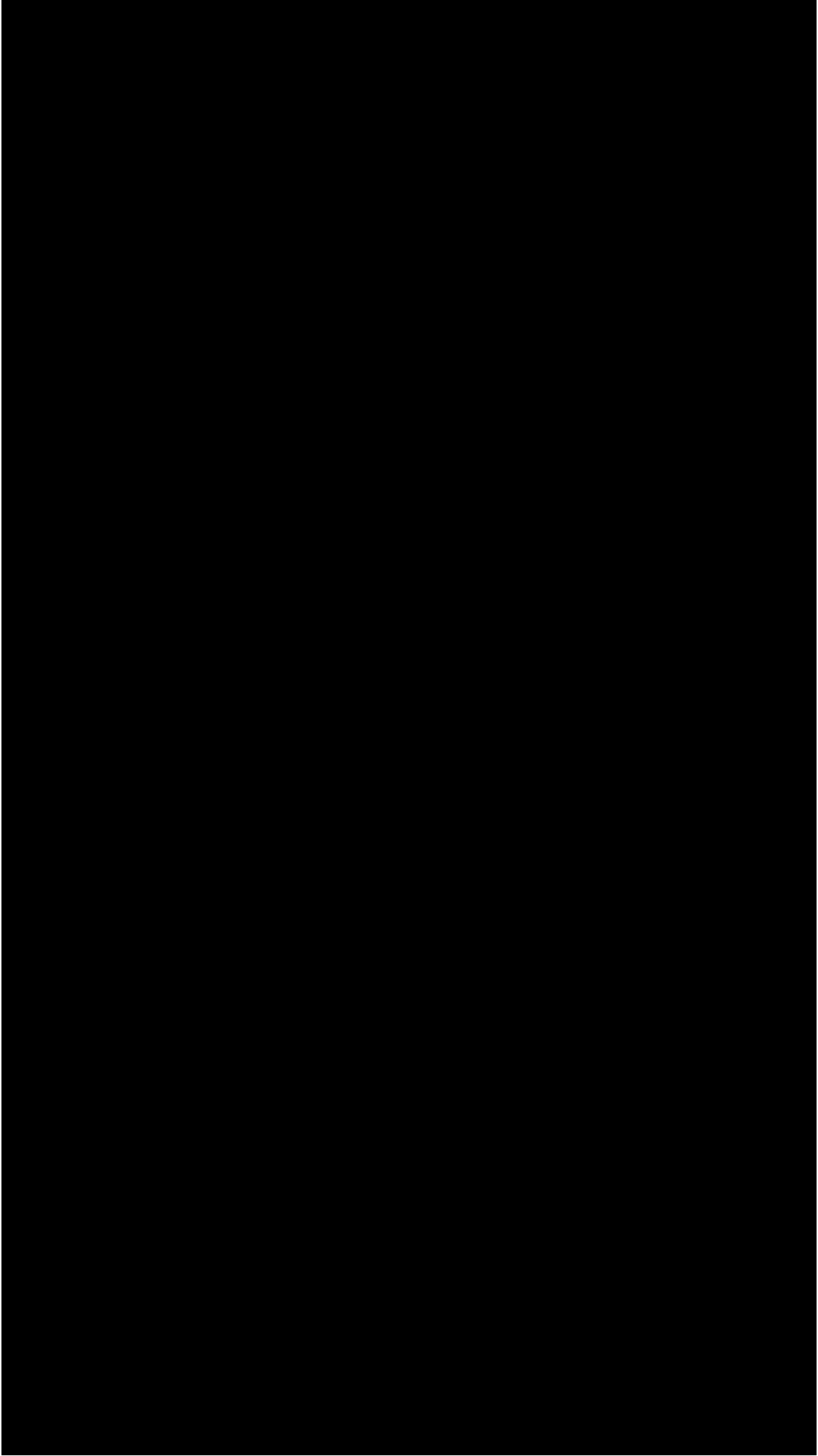
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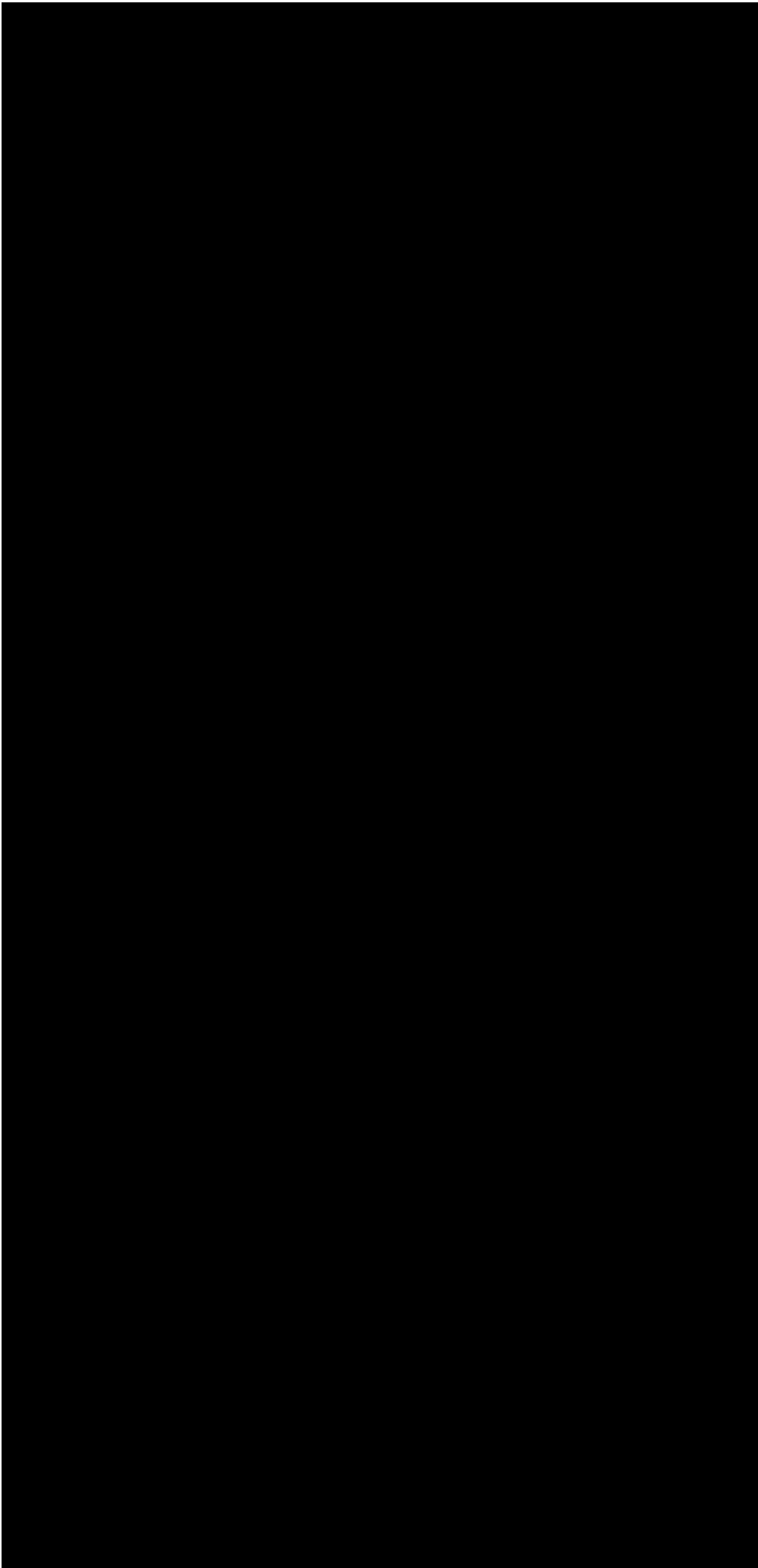
Schedule 33 Reference Documents



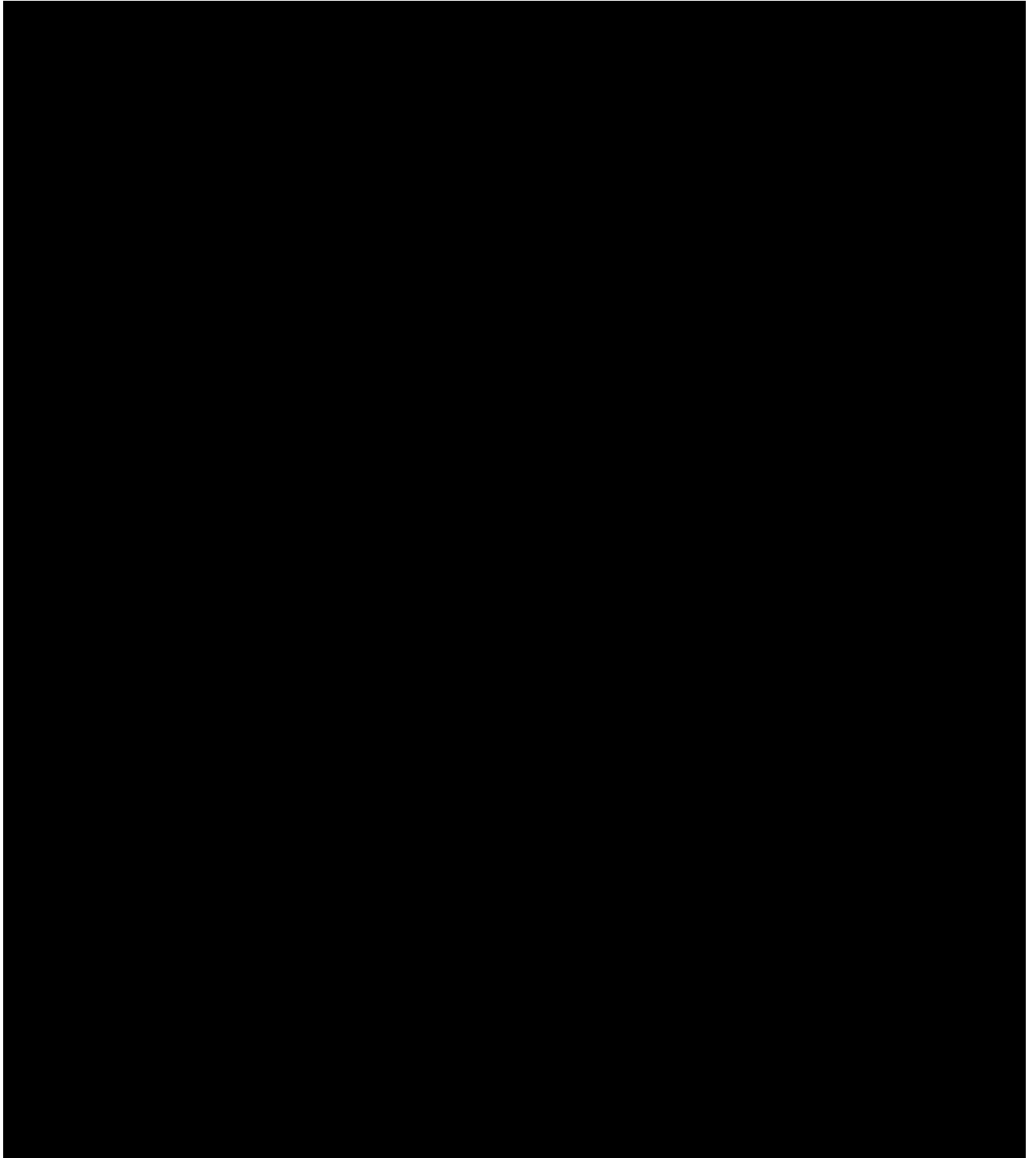


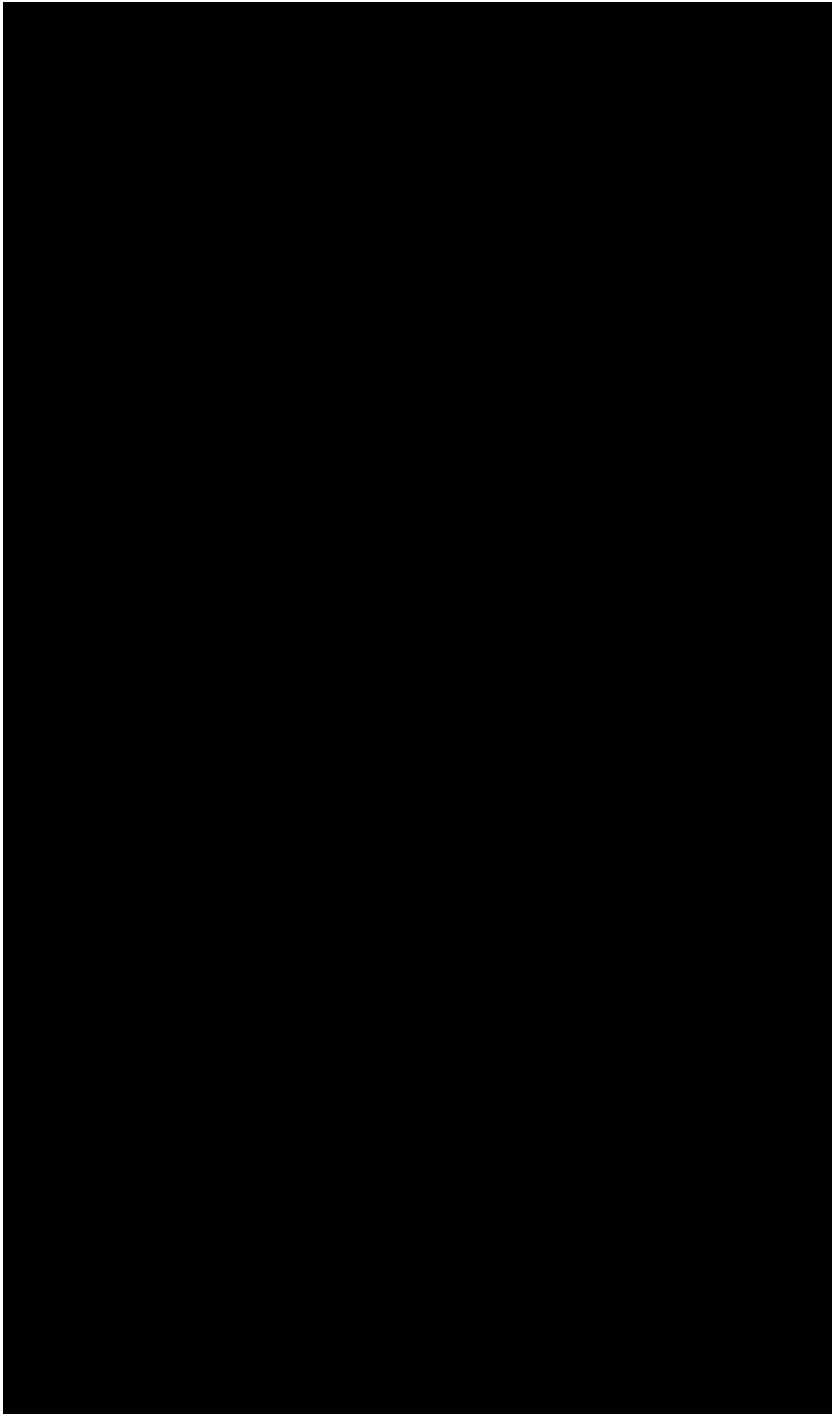


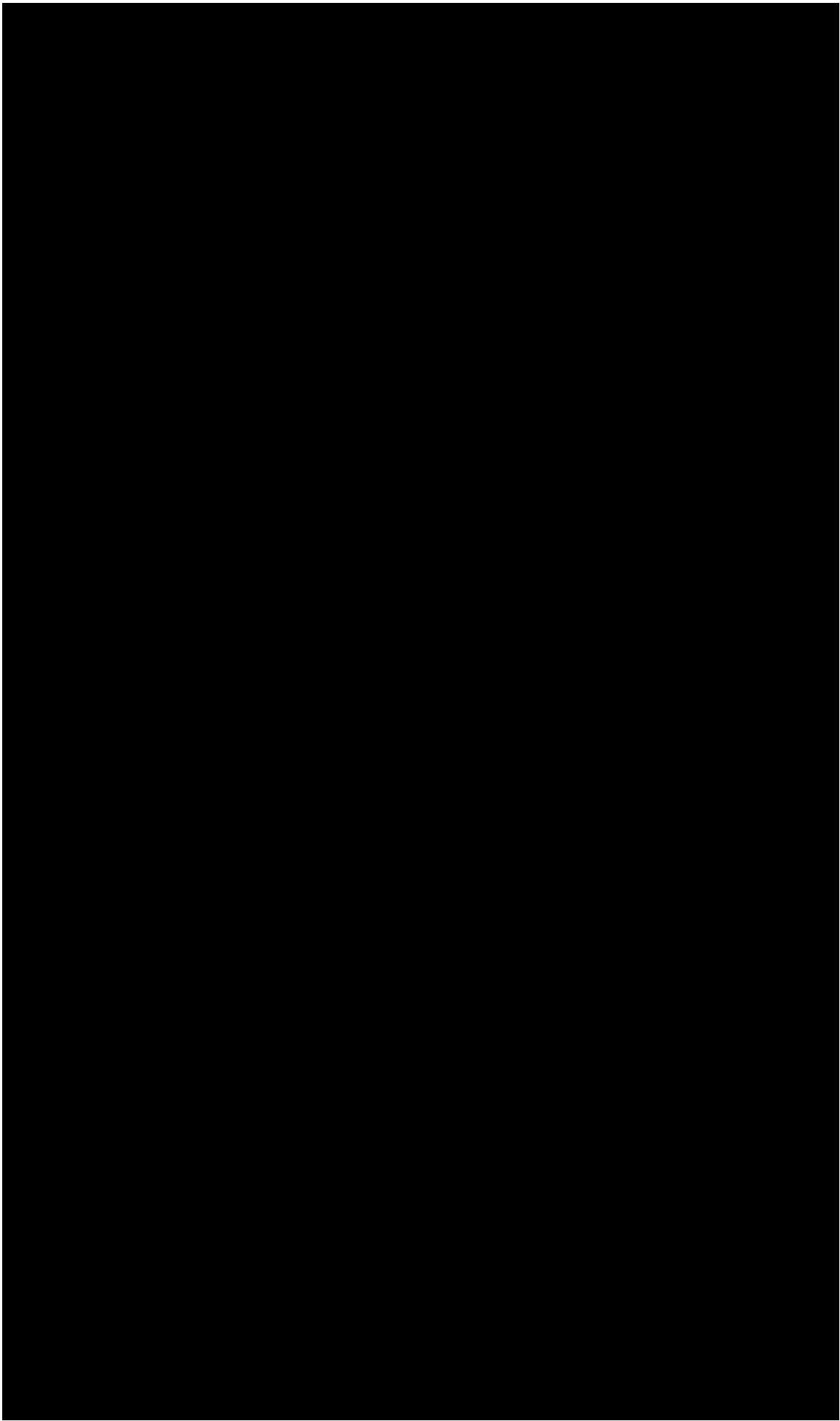


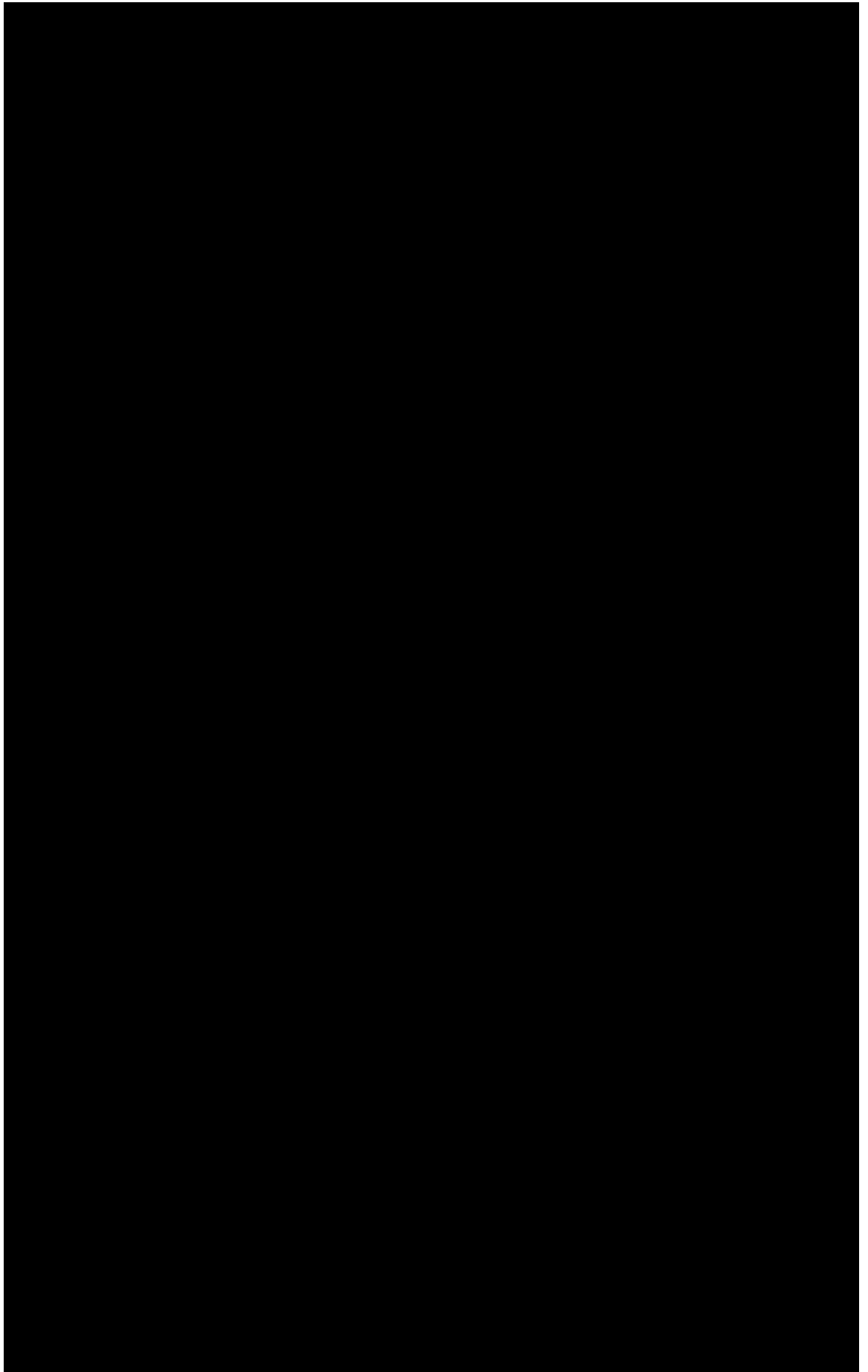


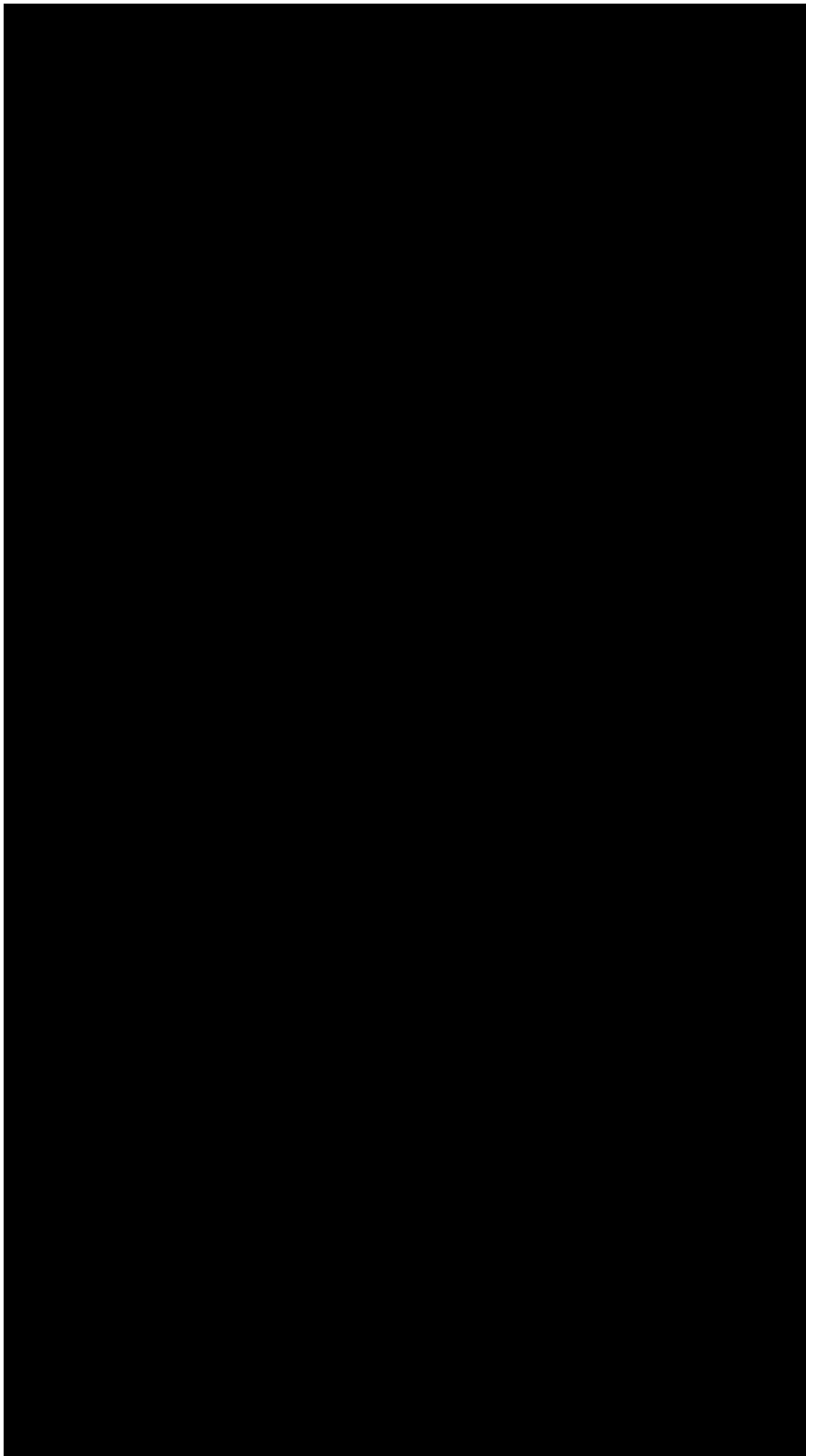
Schedule 34 Independent Certifier Deed

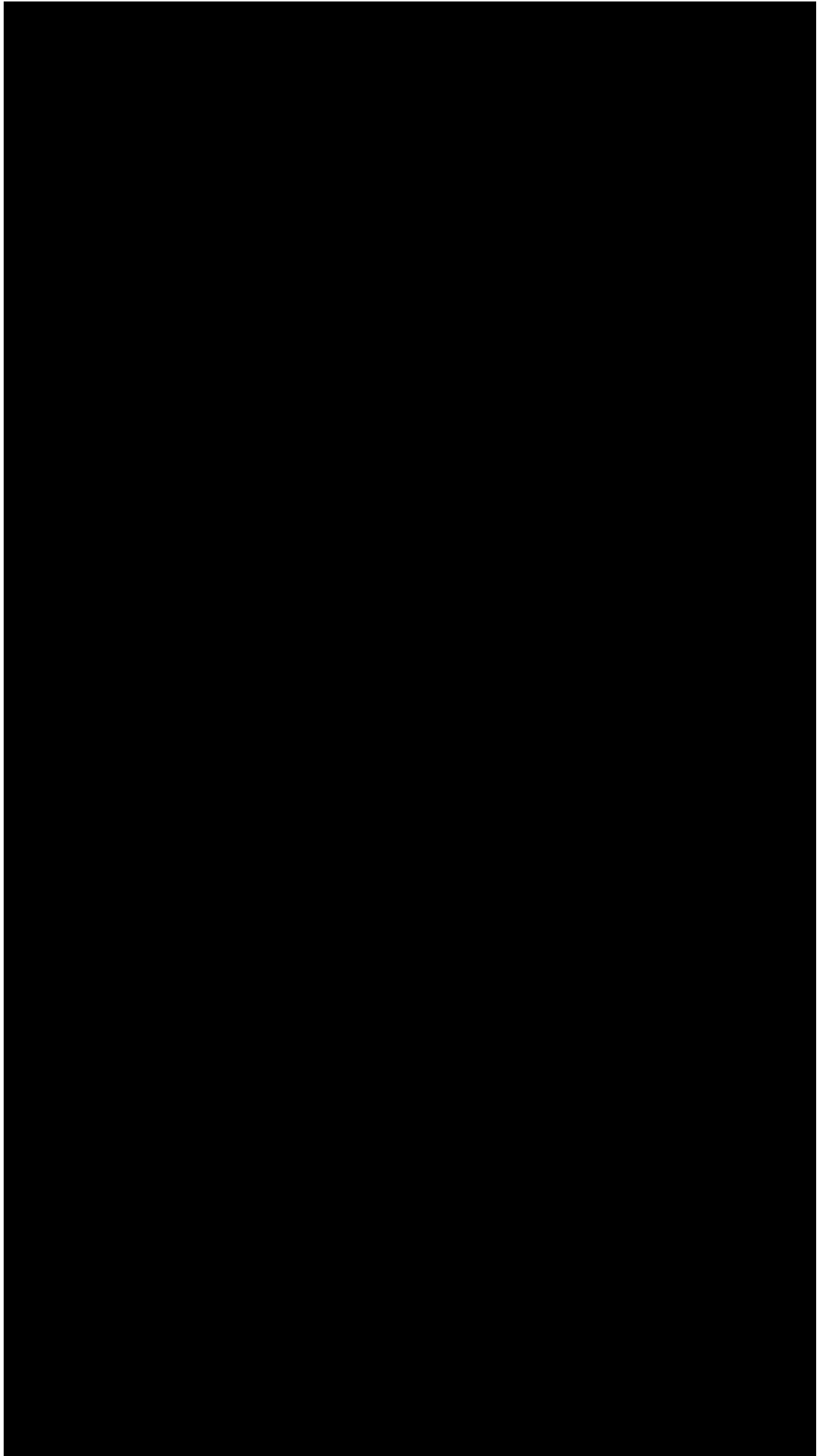


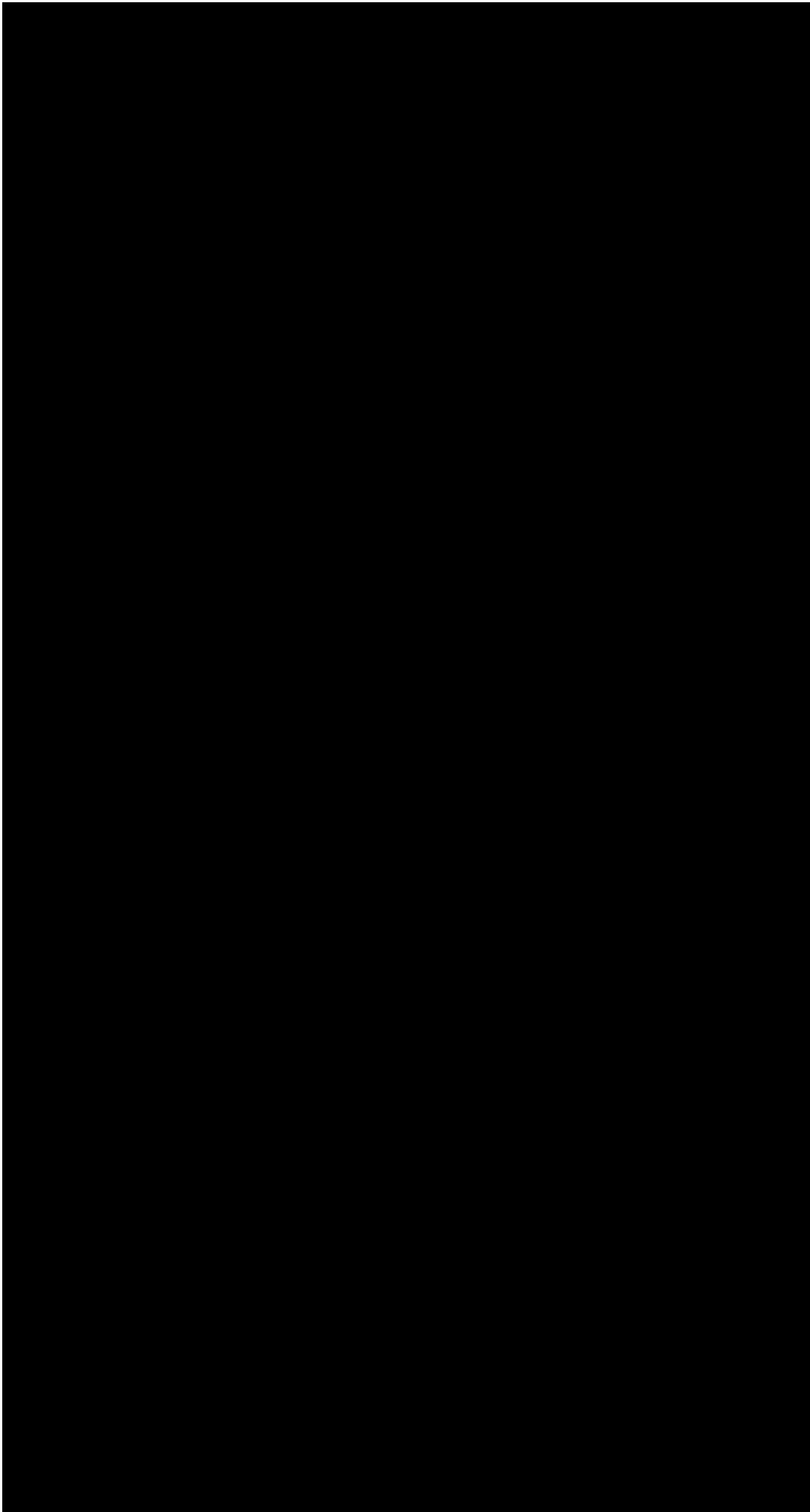


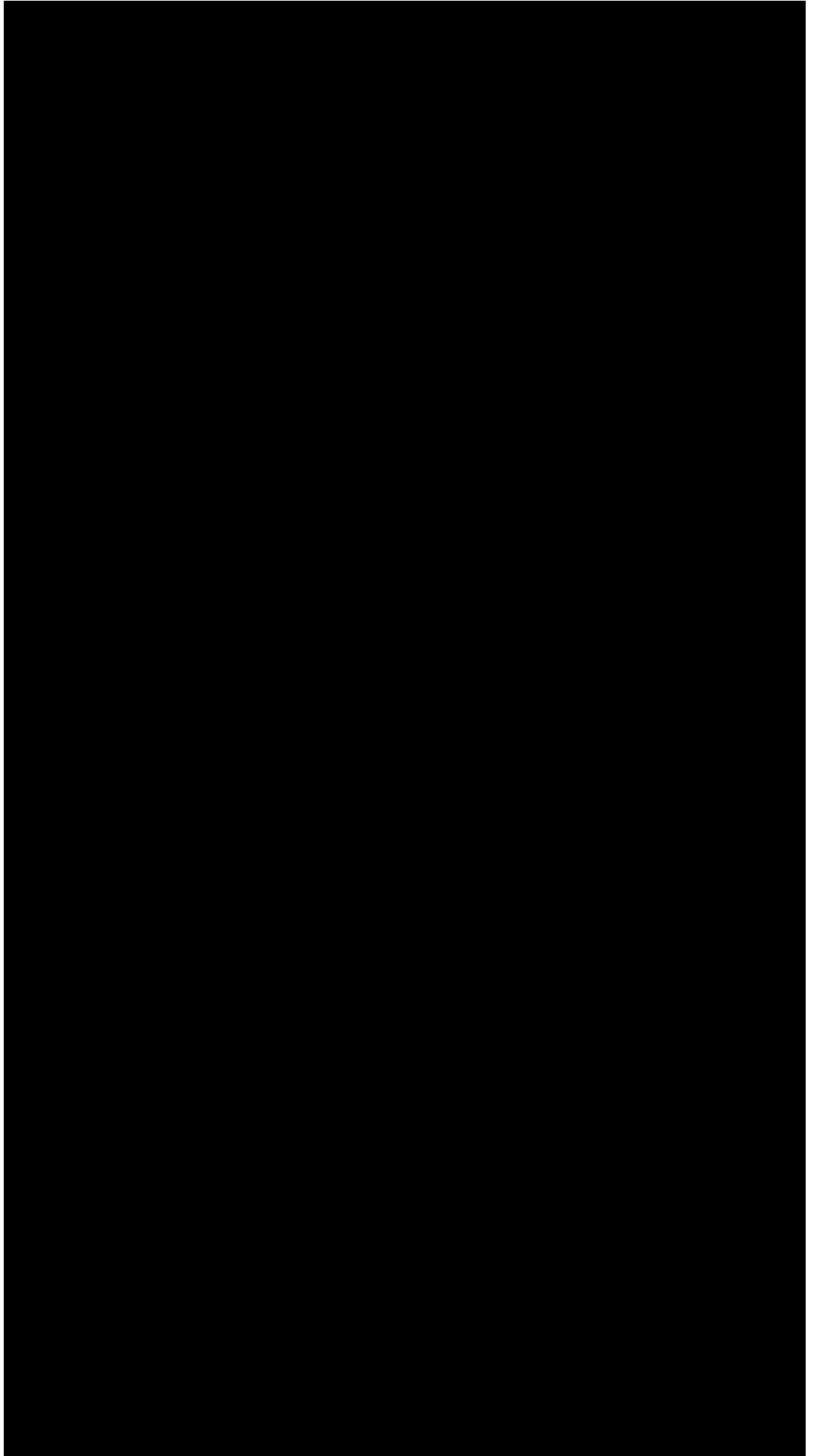


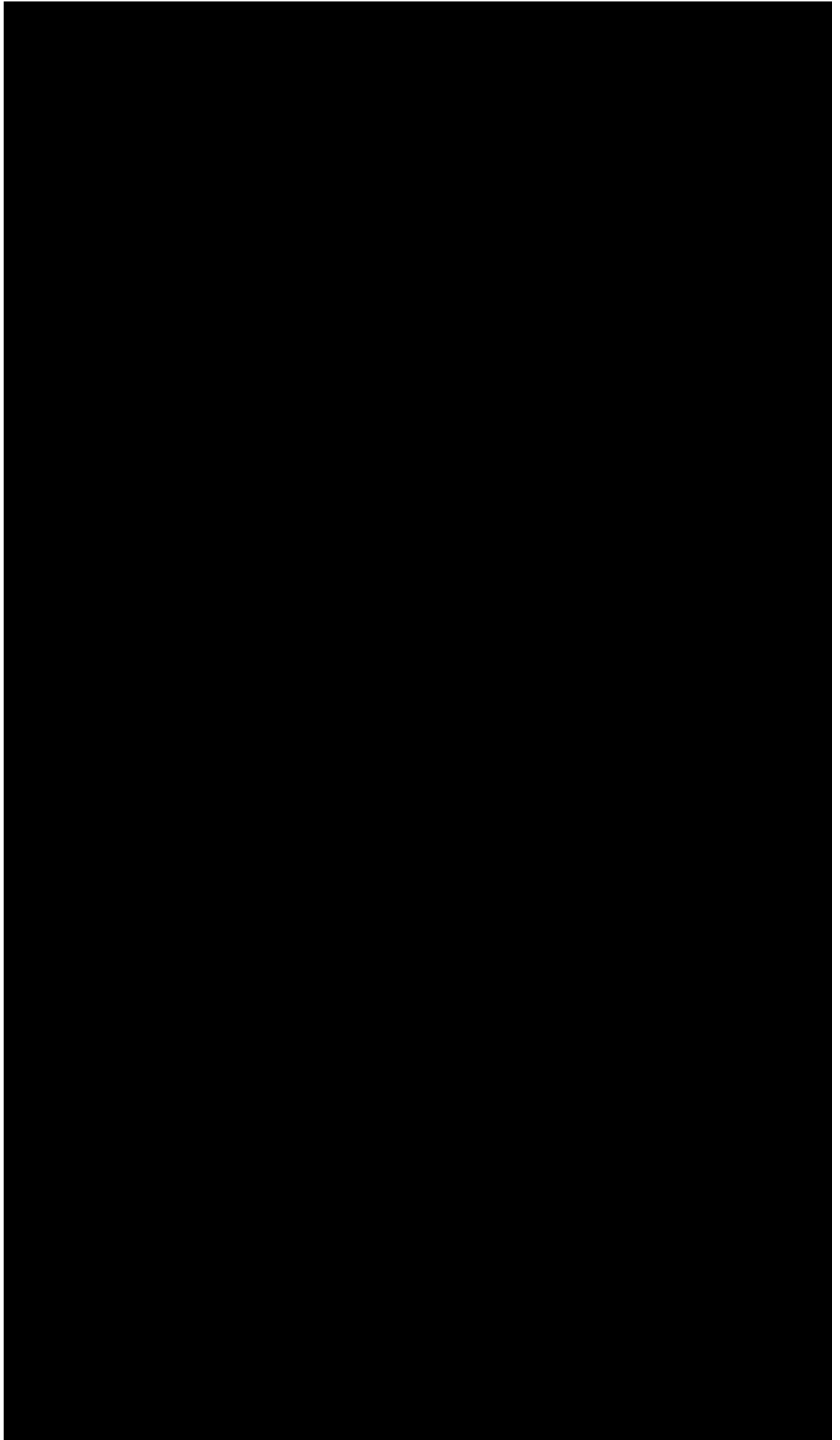


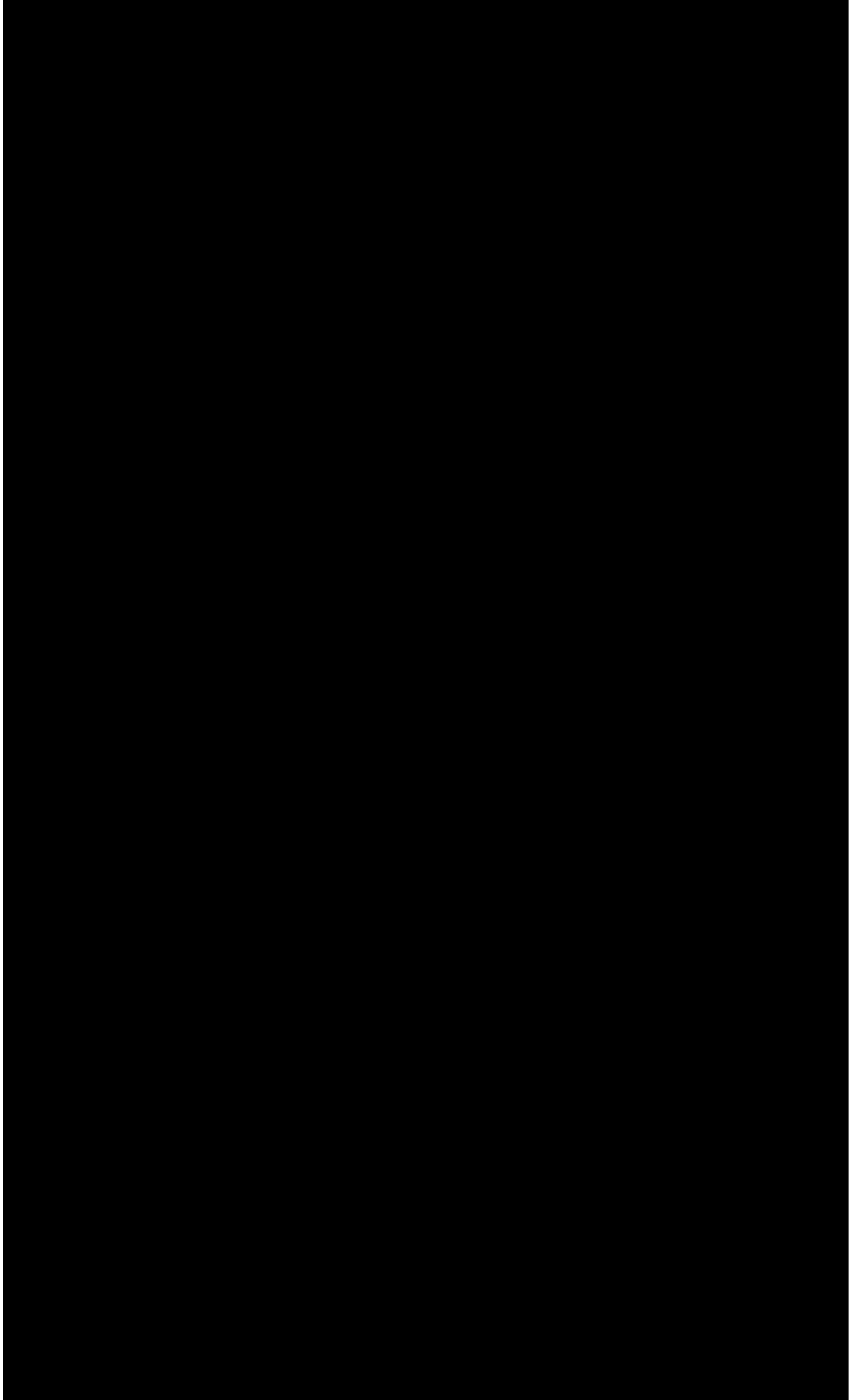


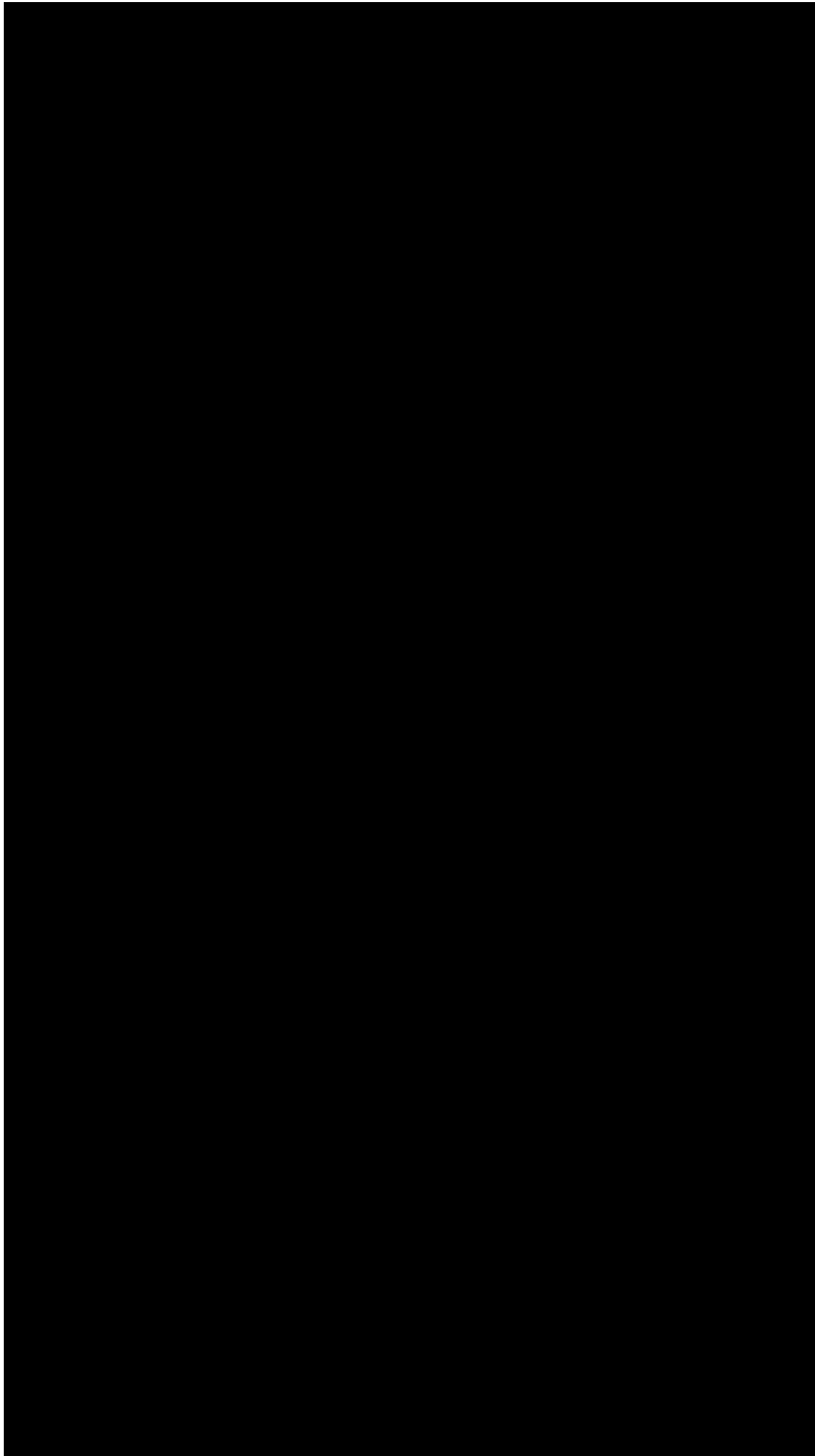


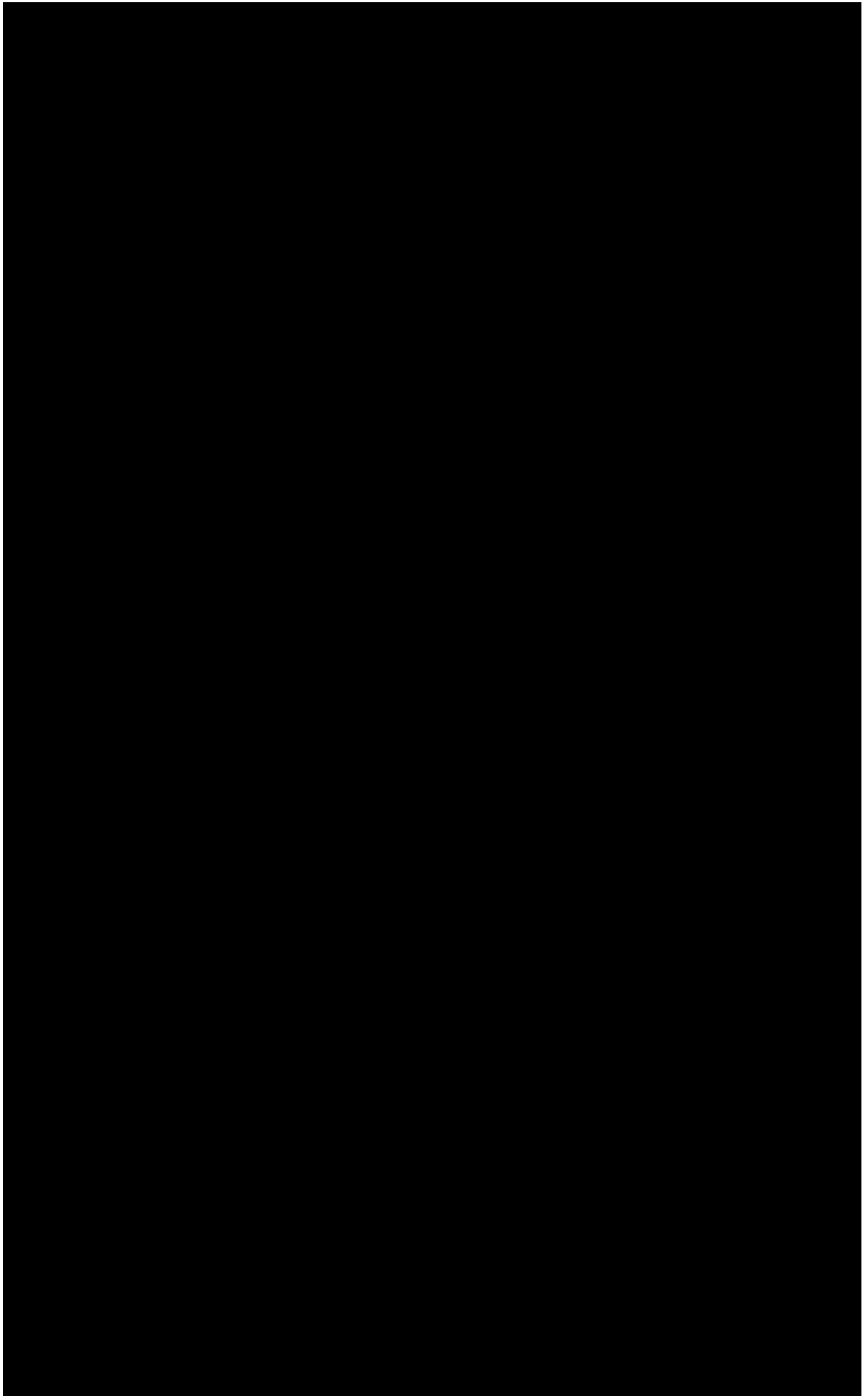


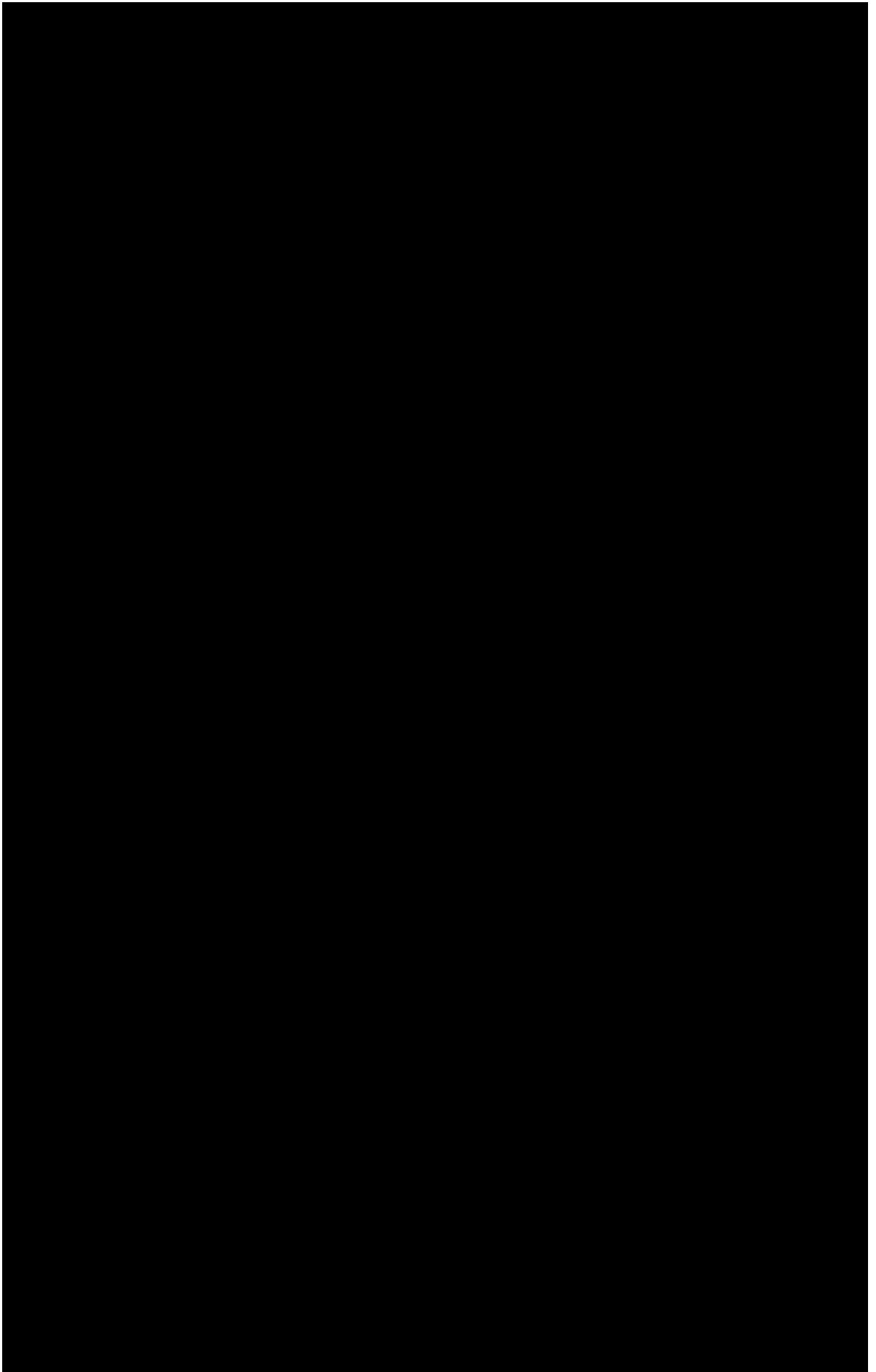


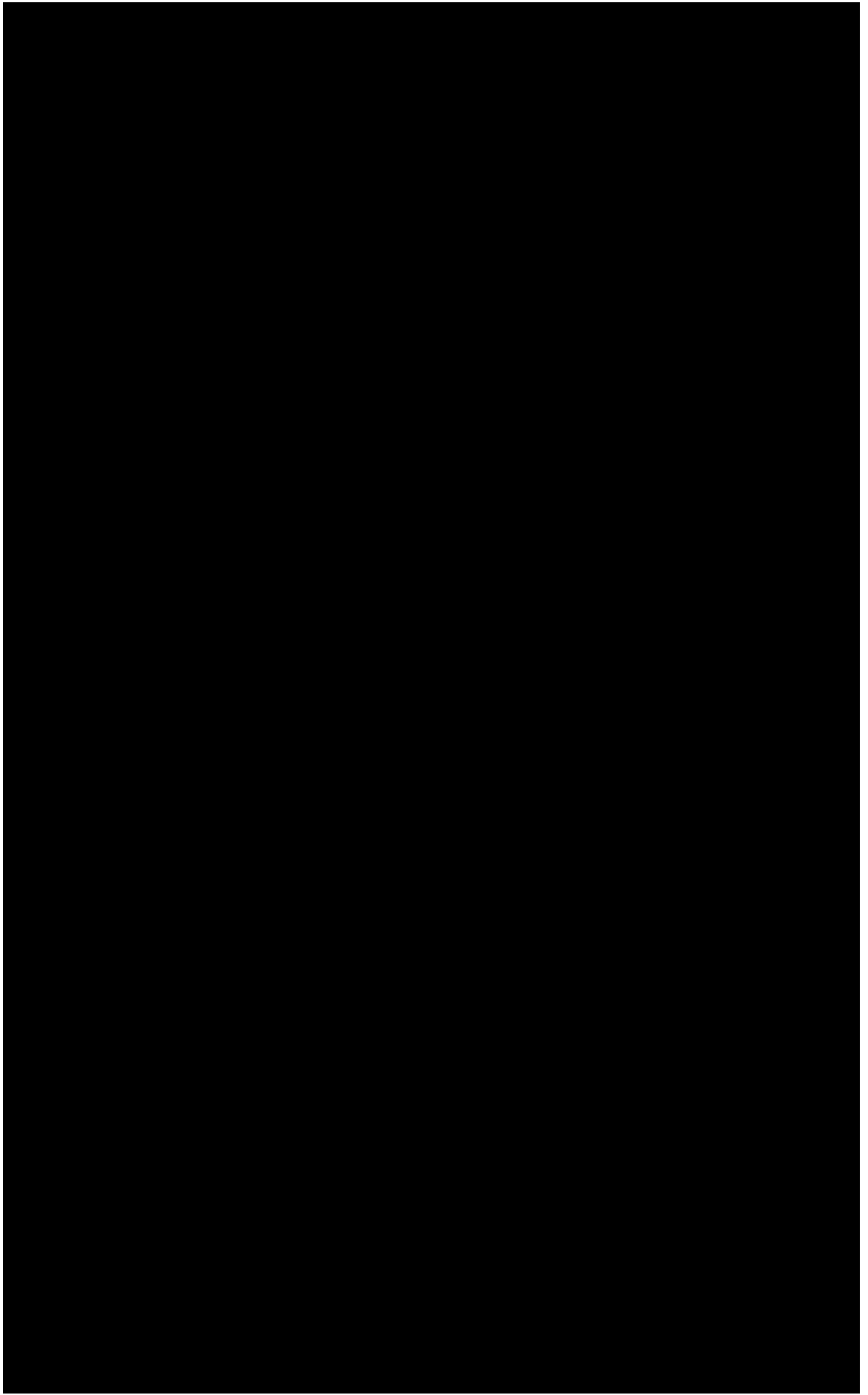


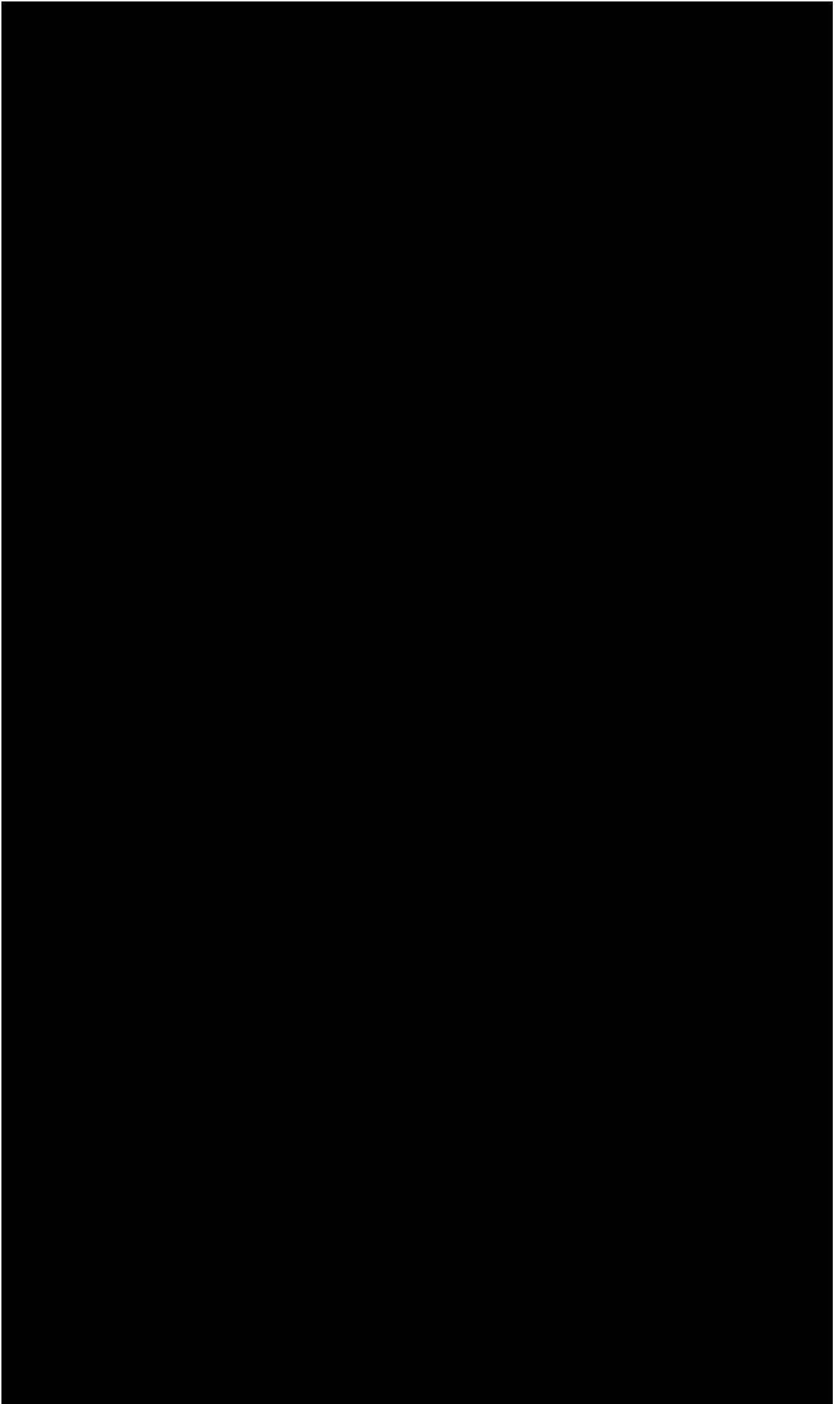


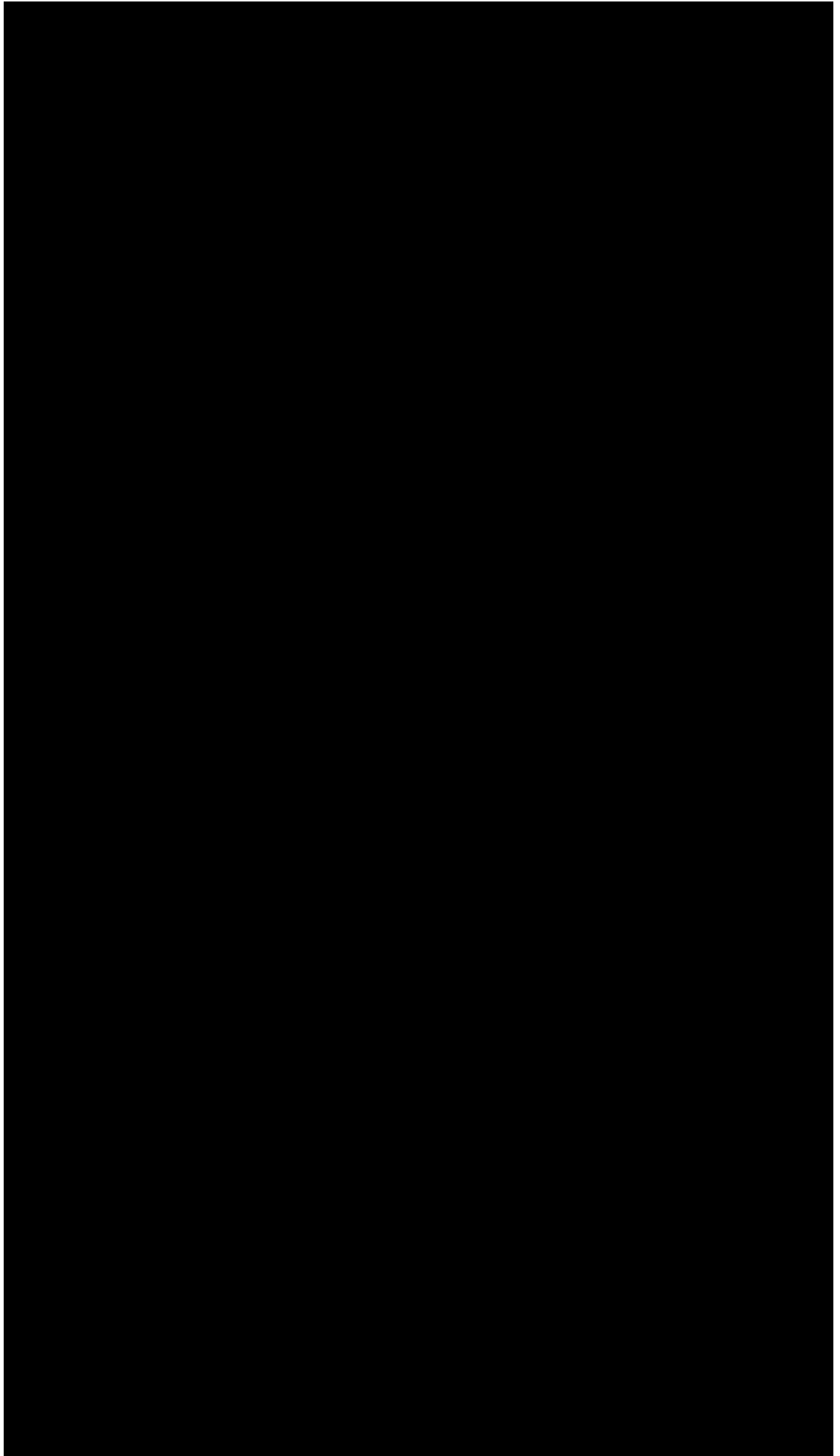


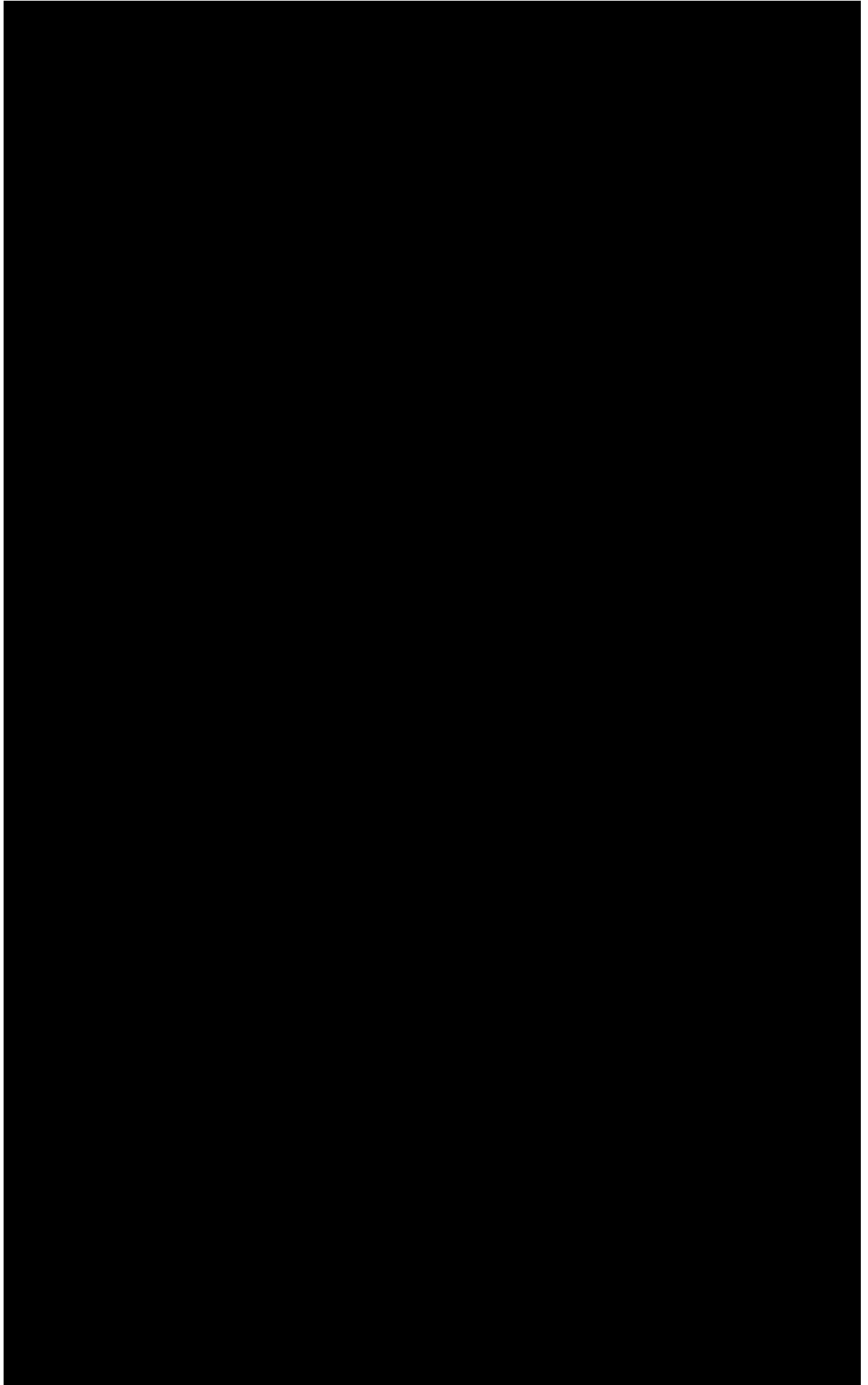


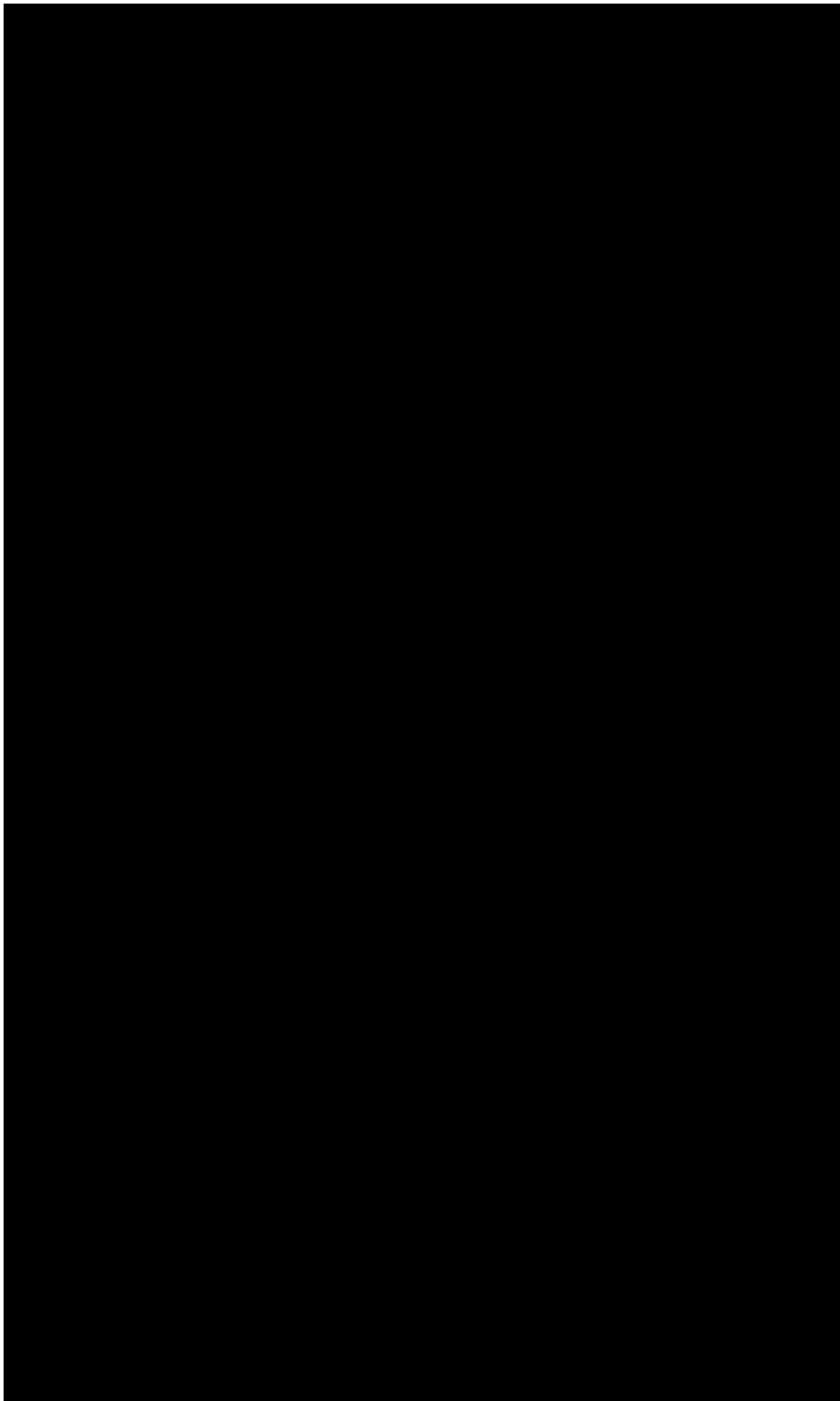


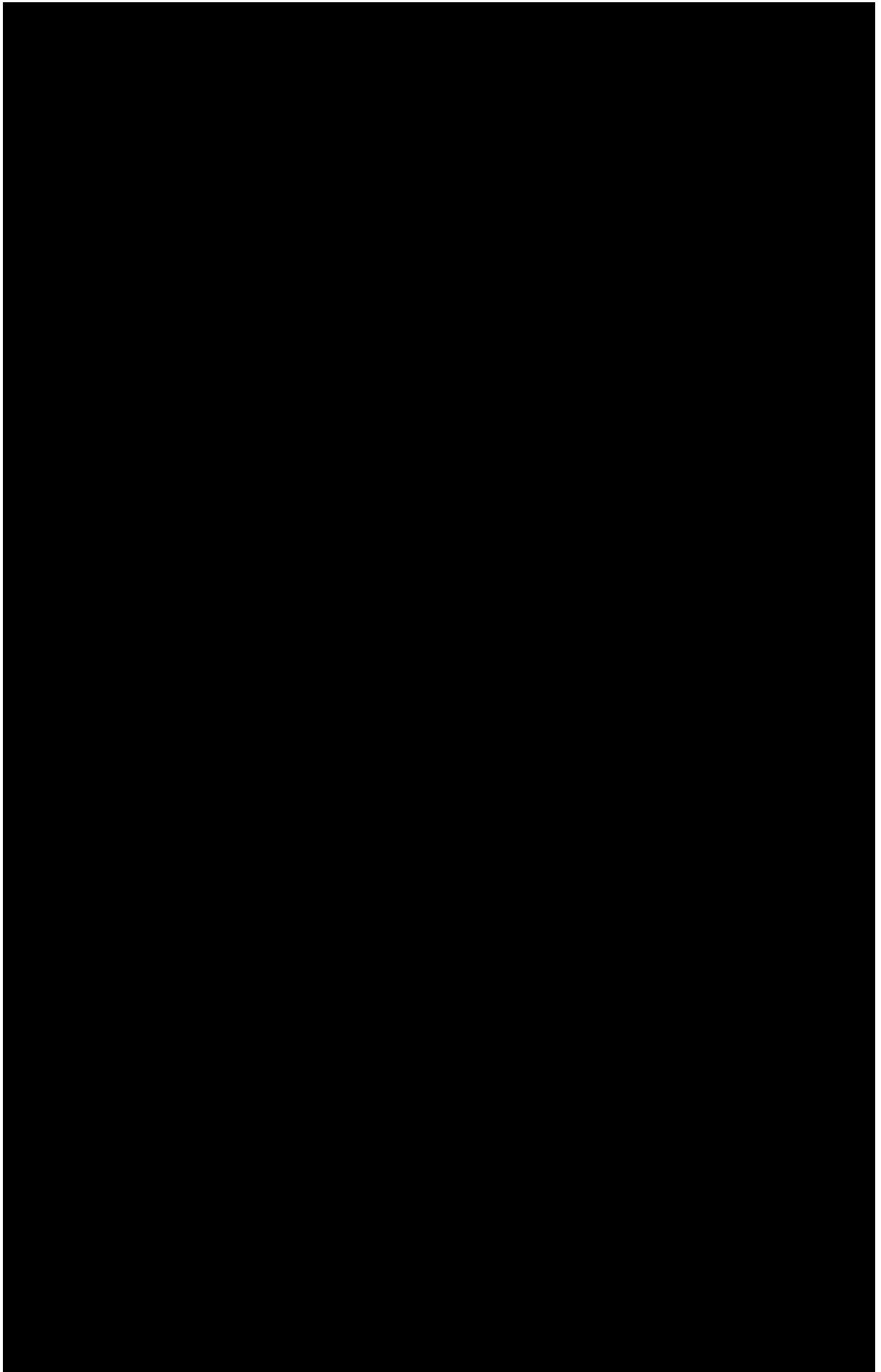


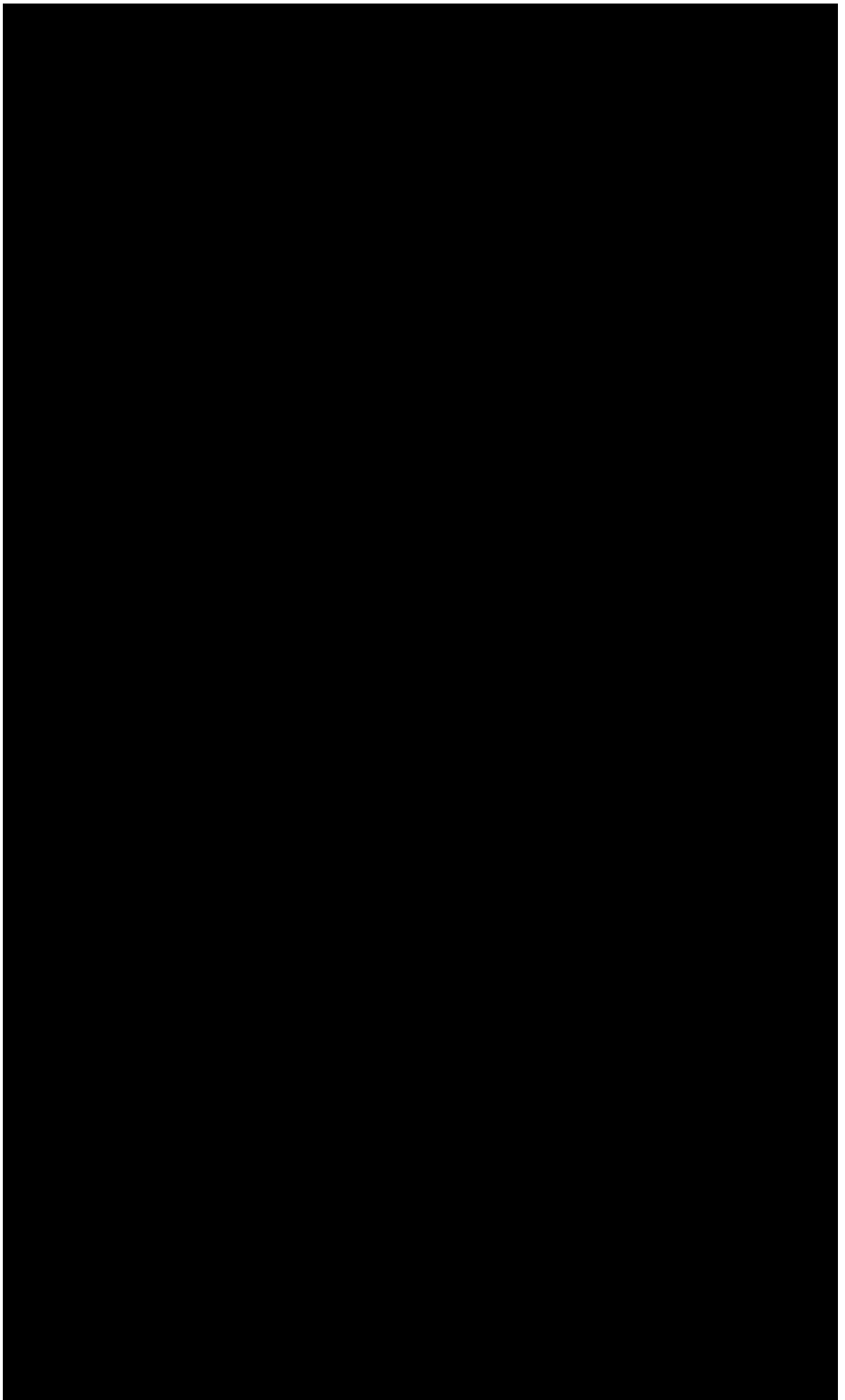


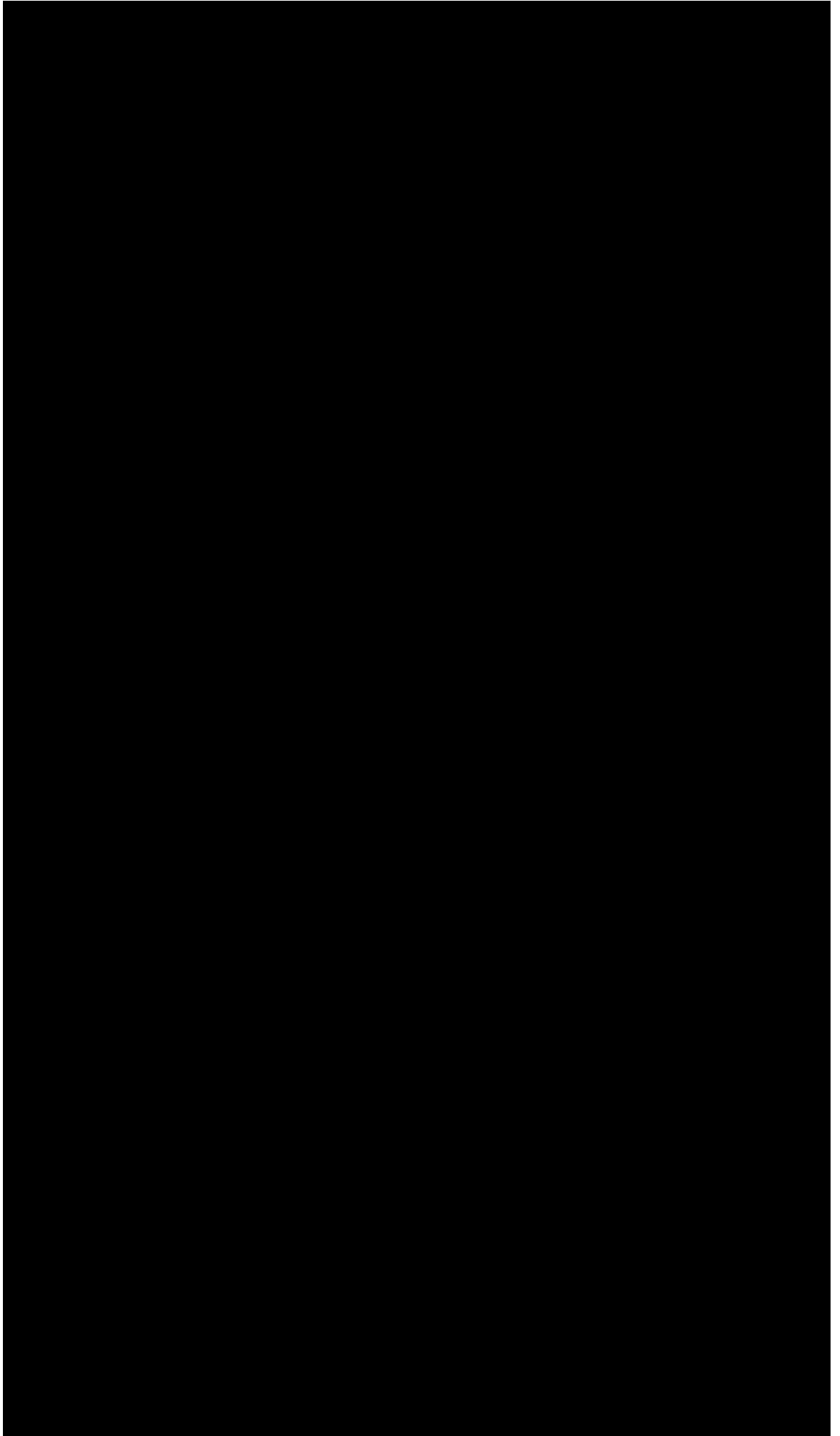


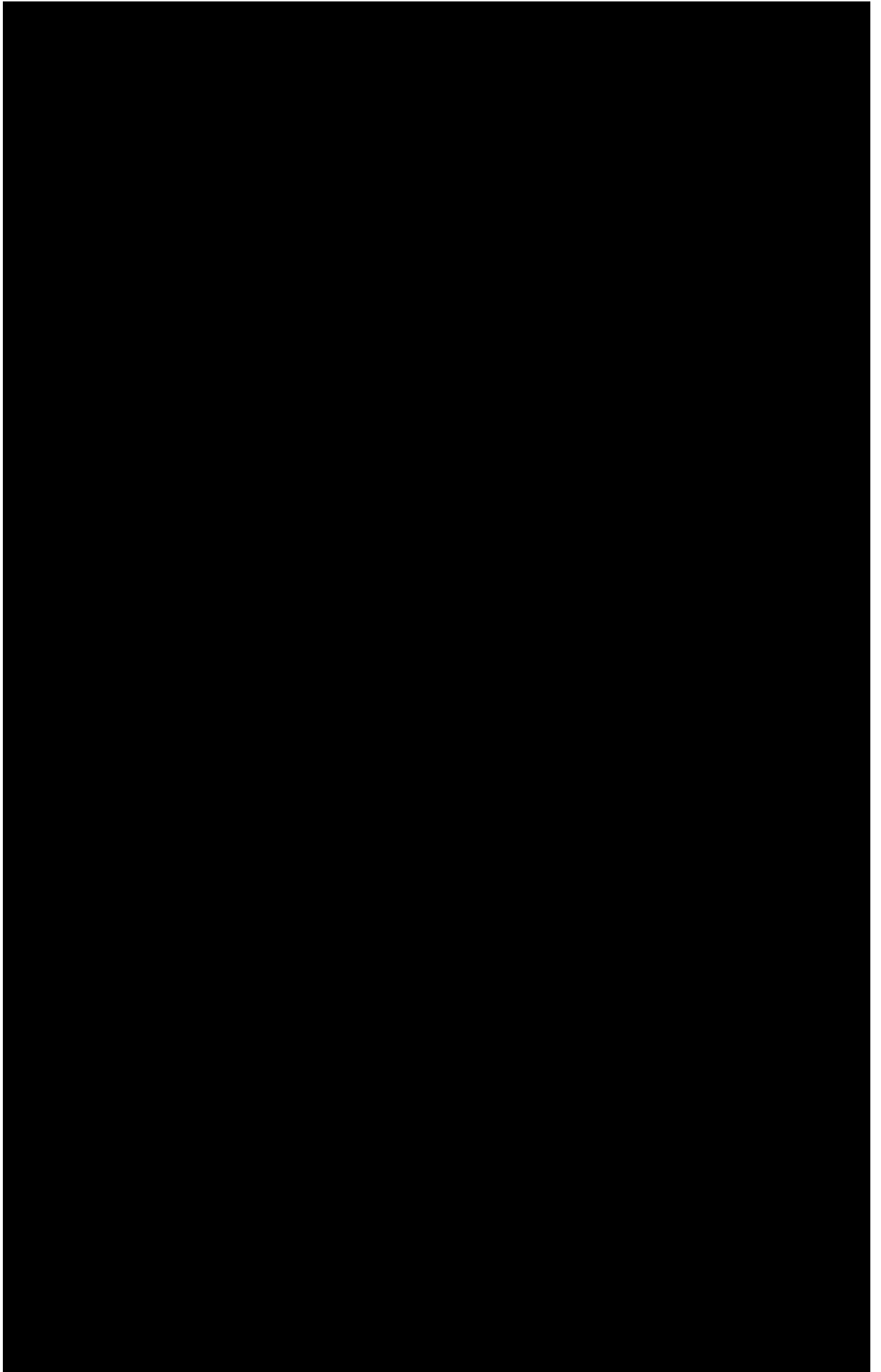


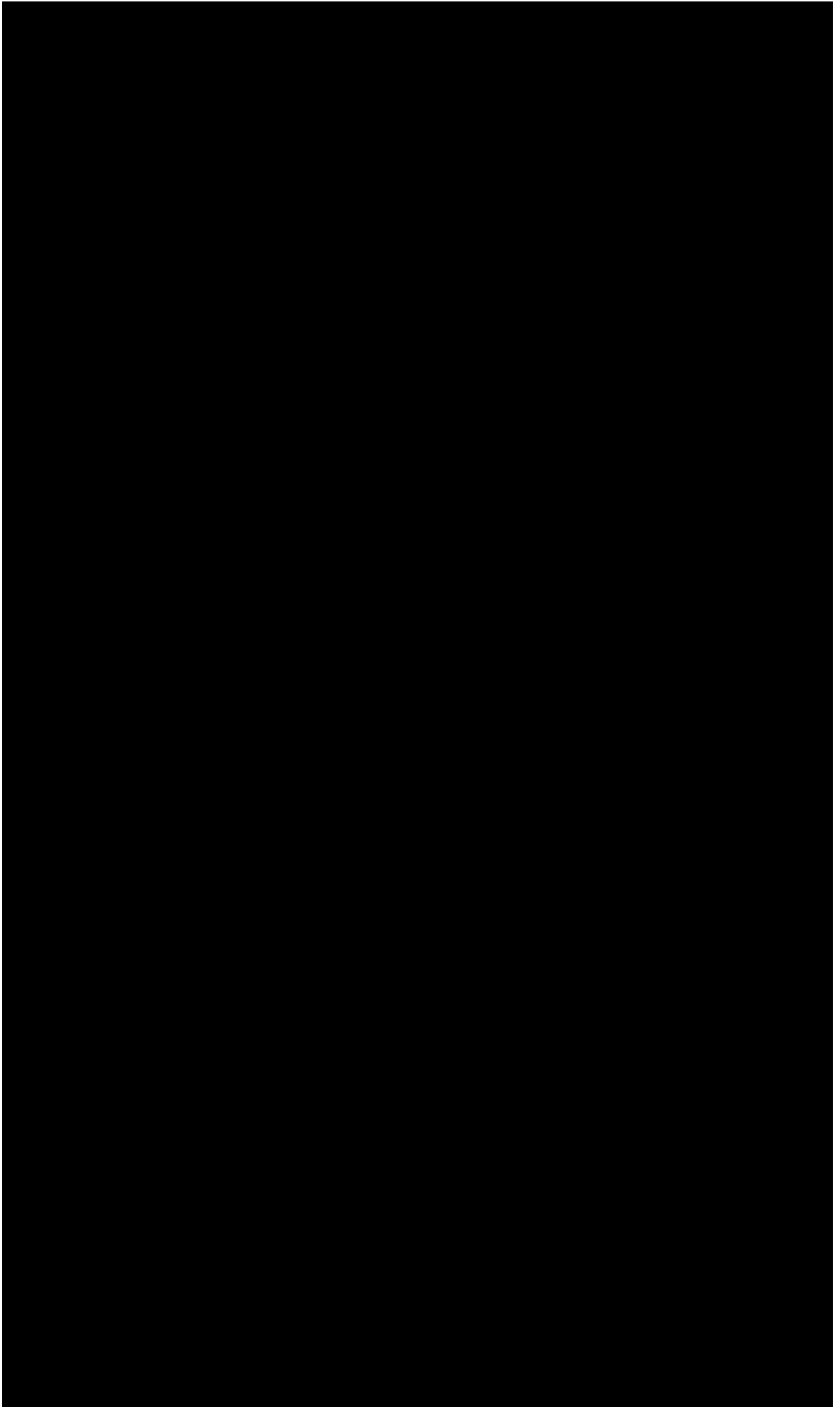


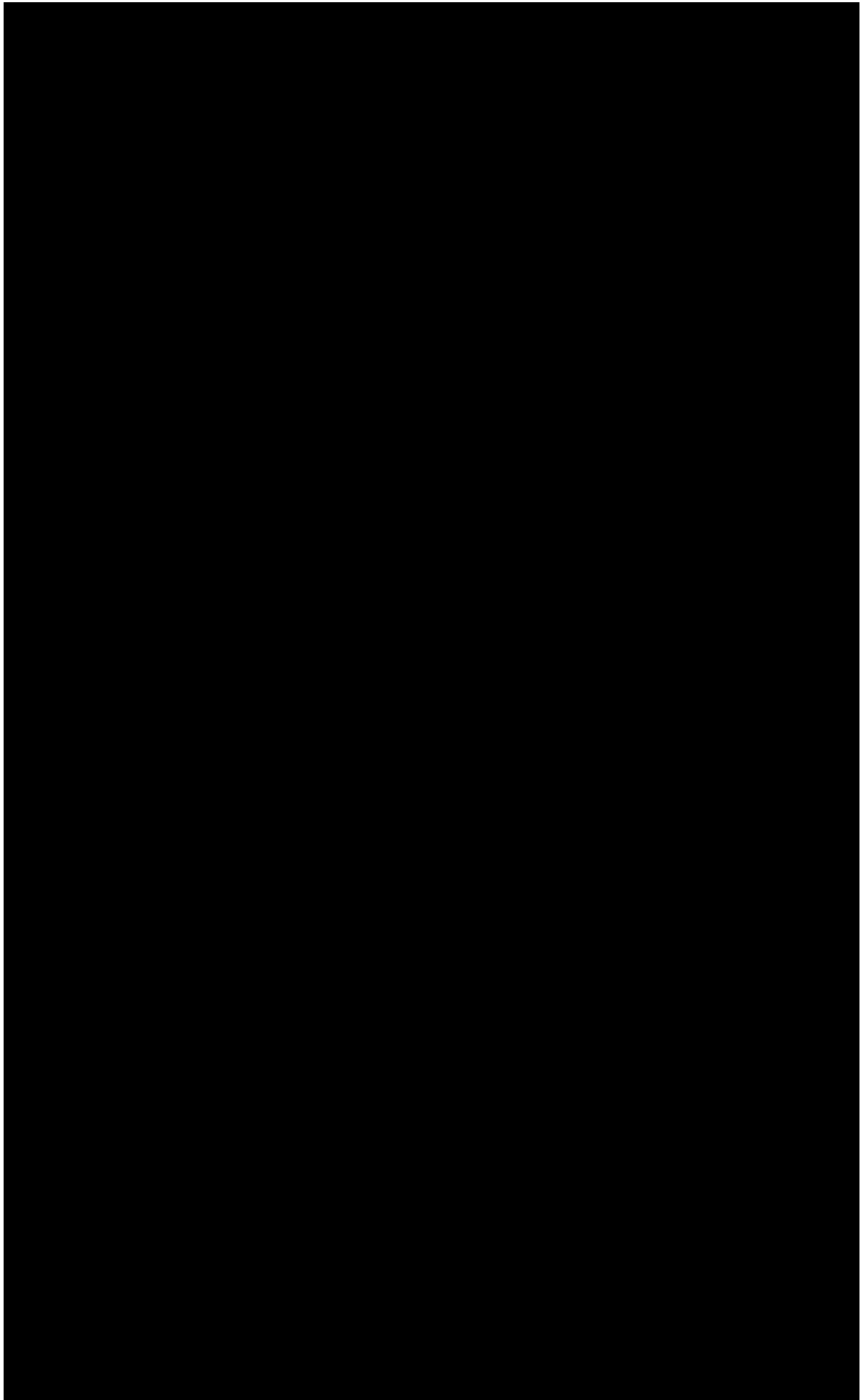


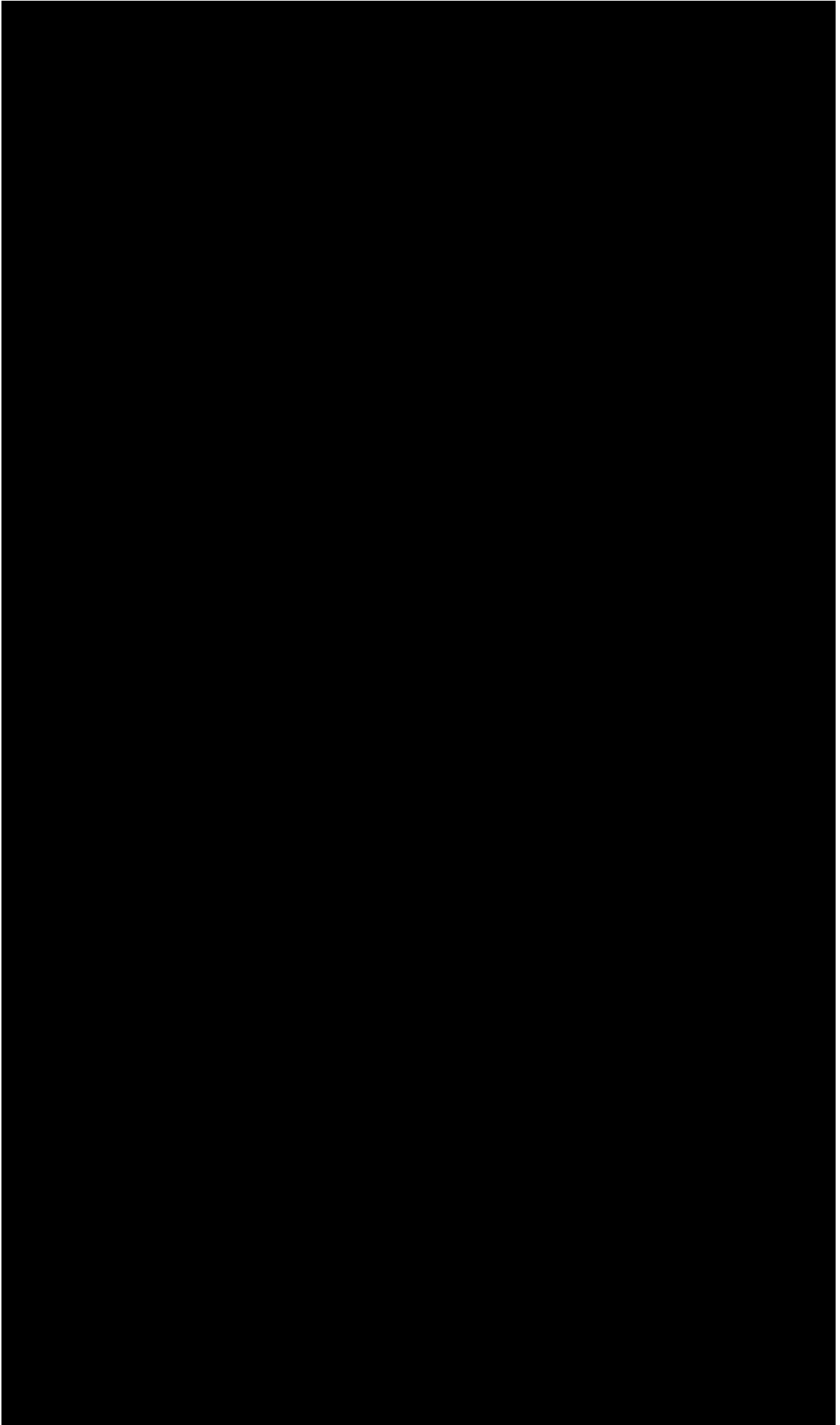


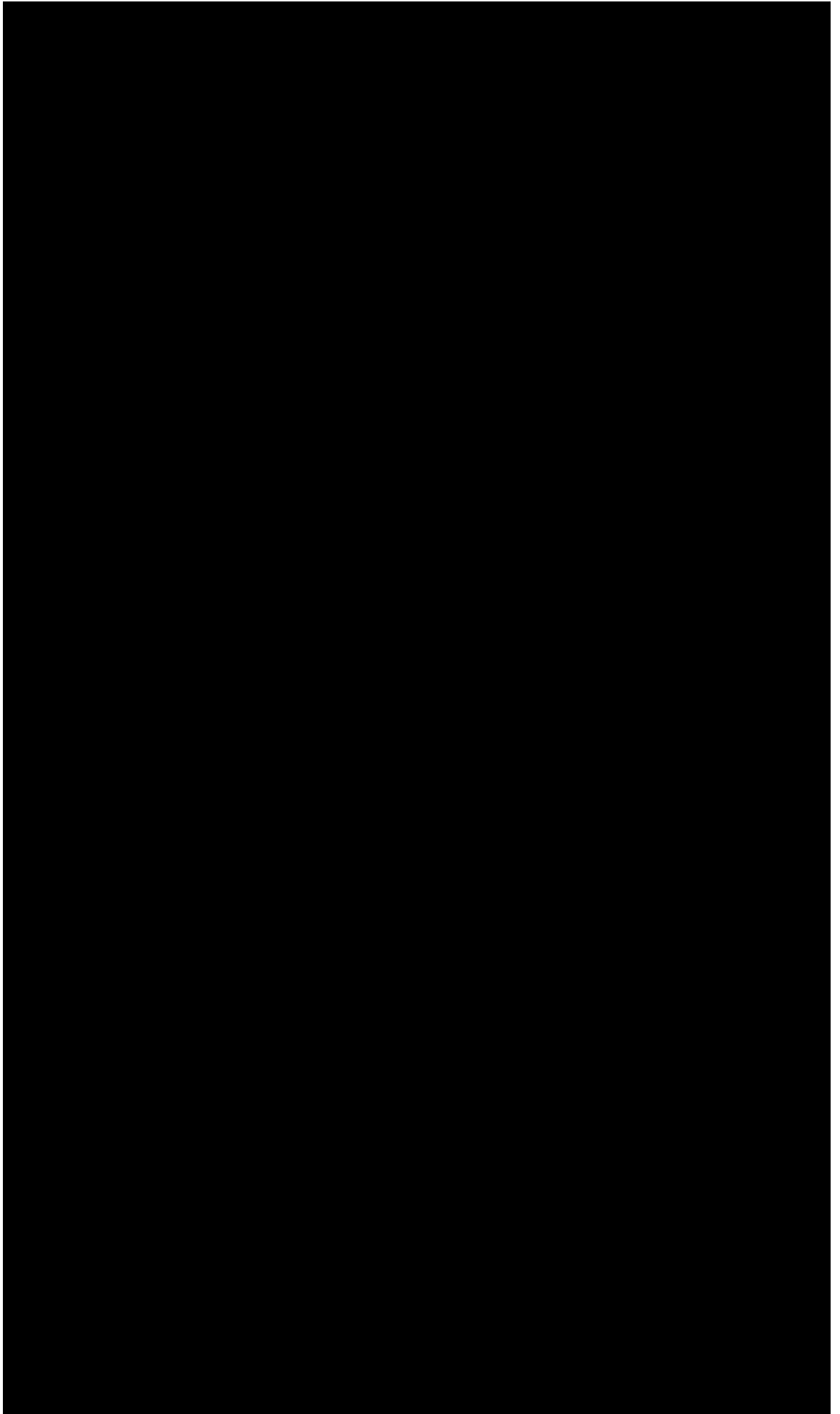


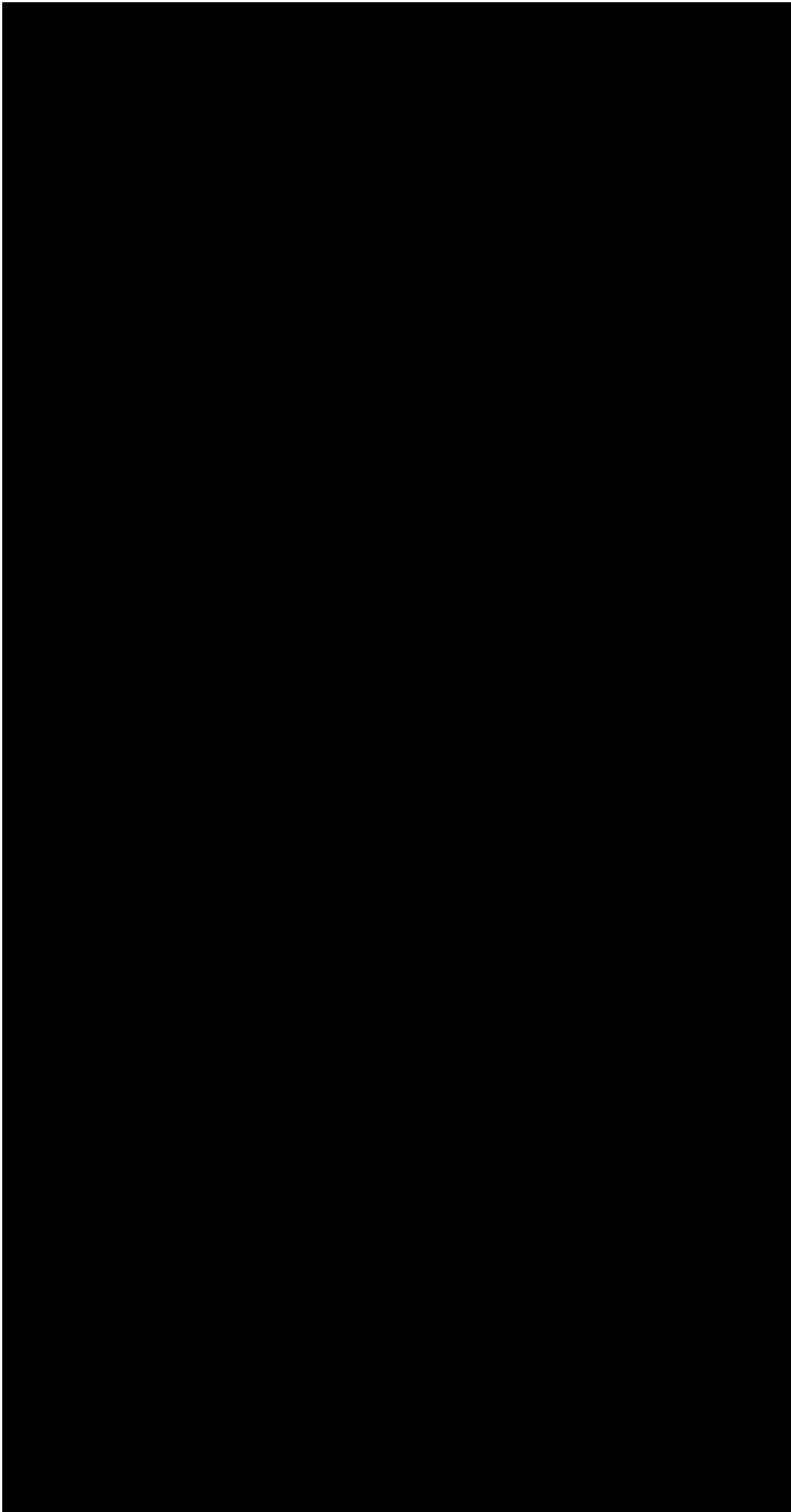


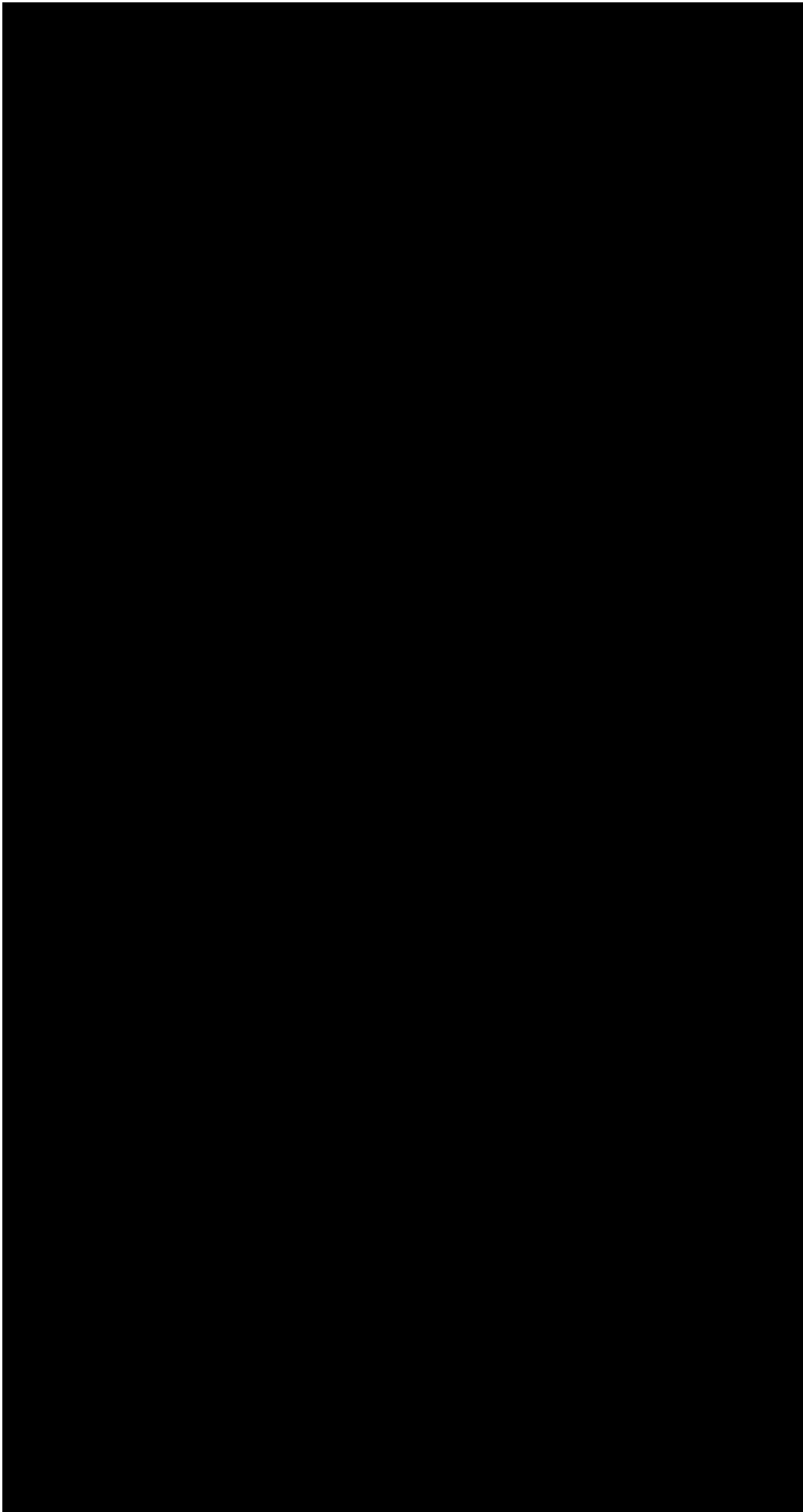


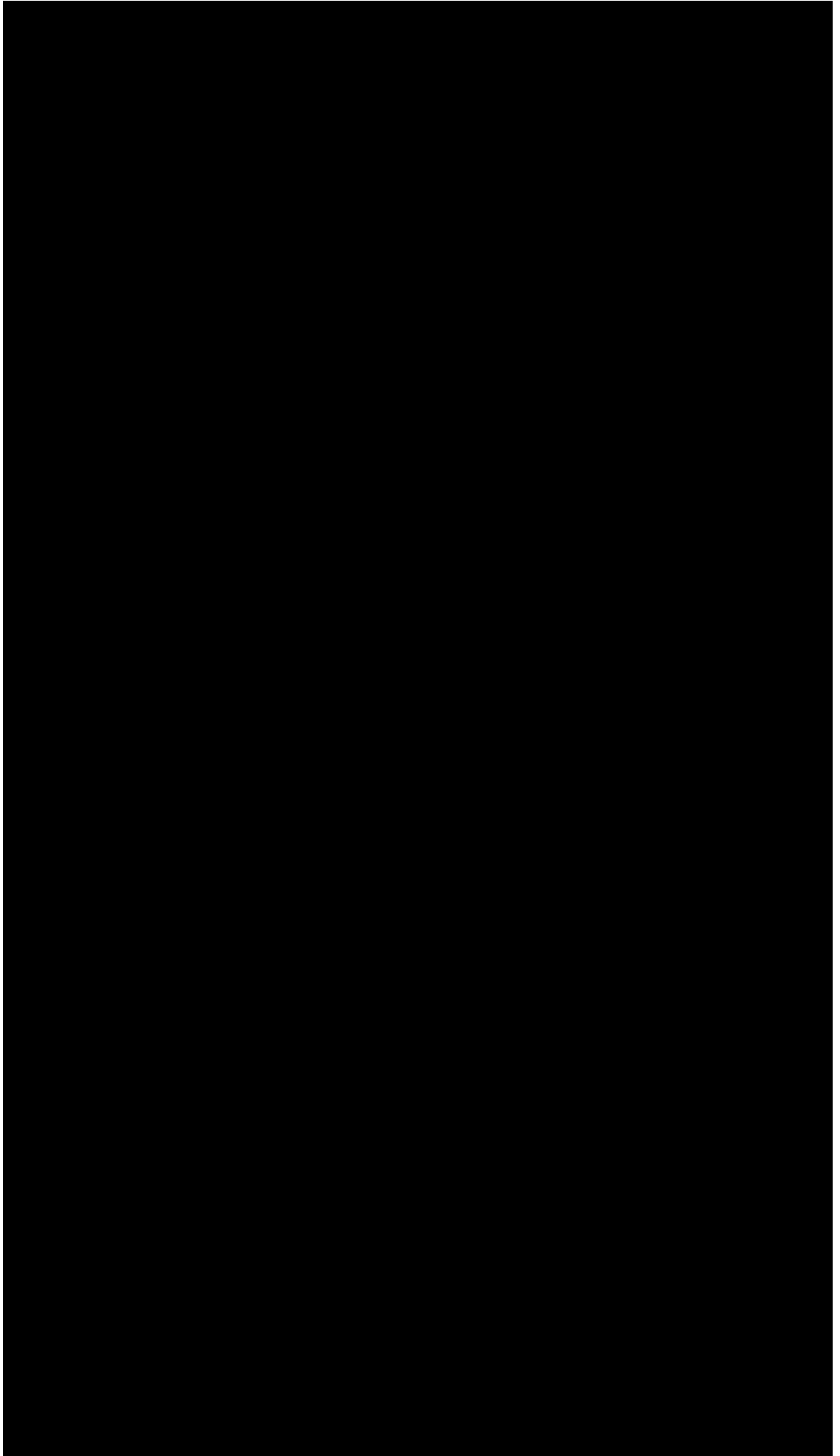


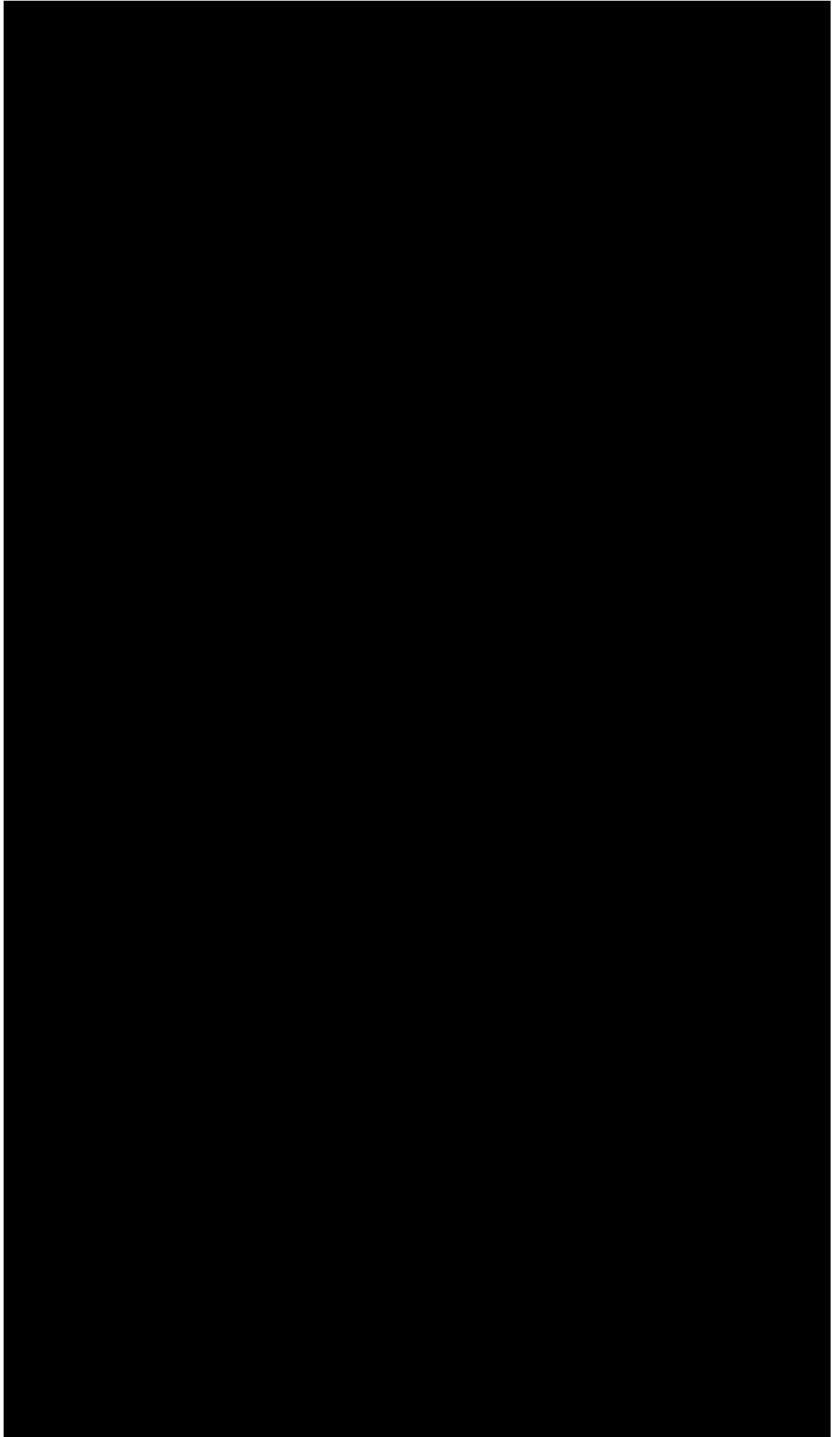


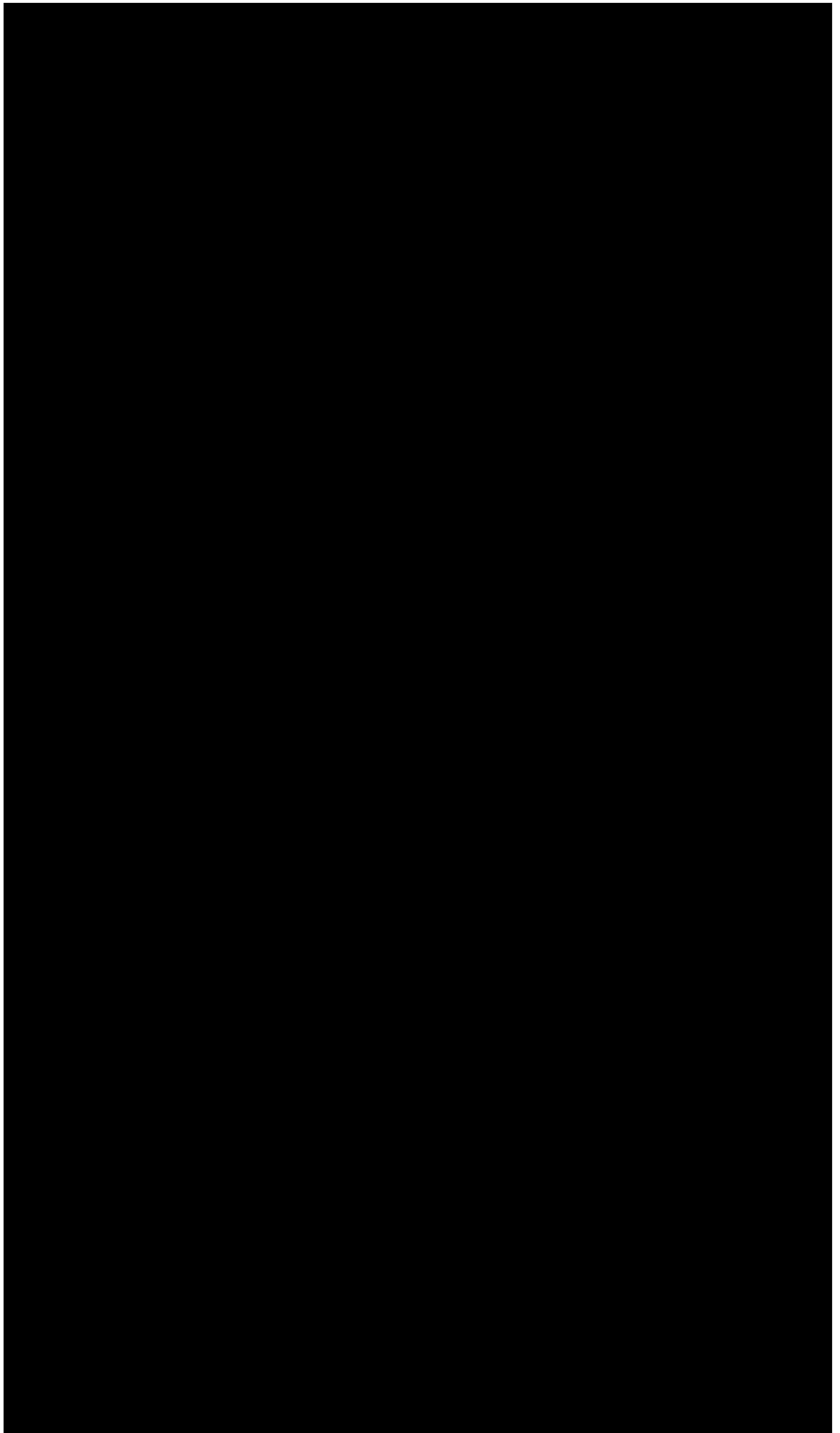


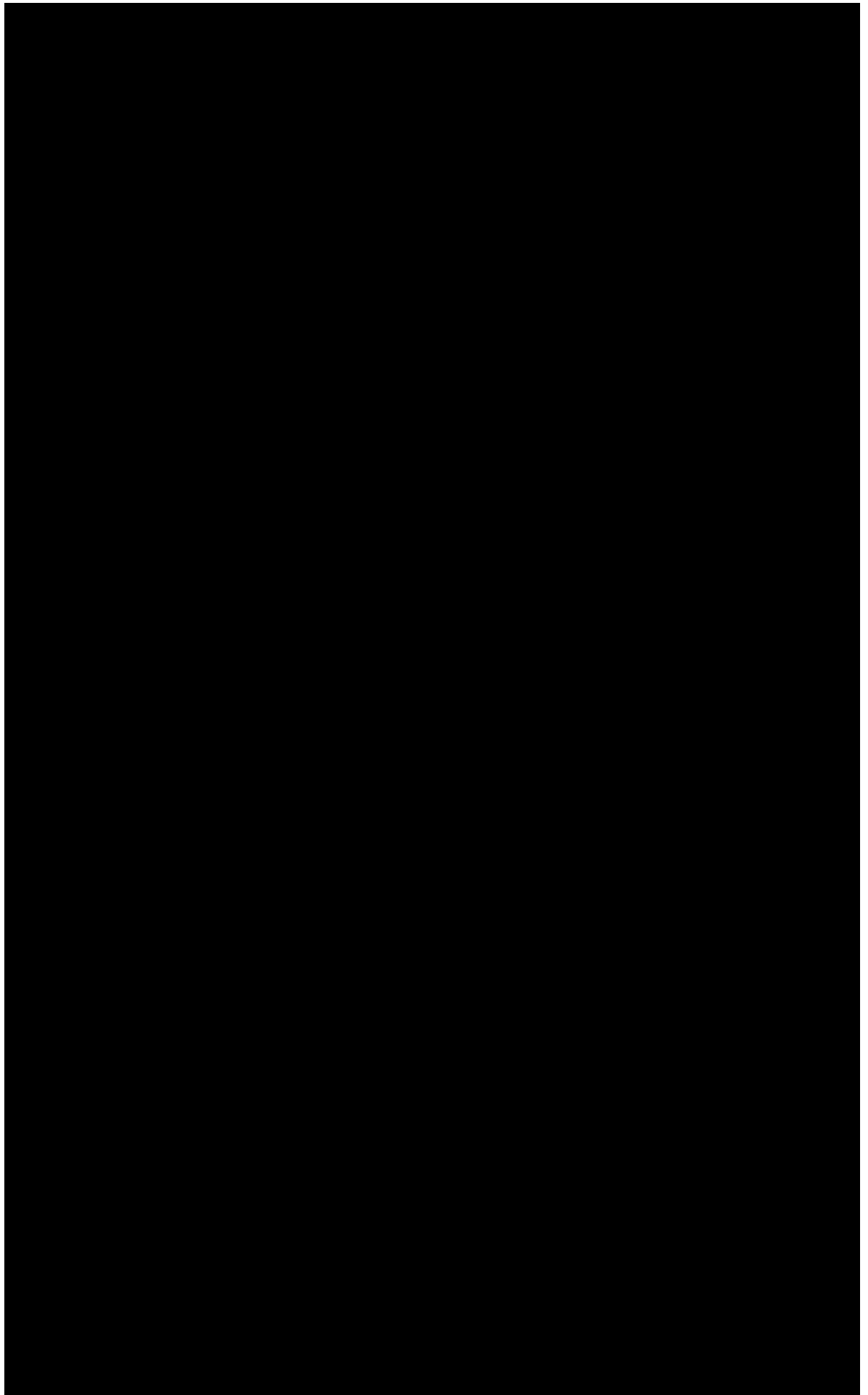


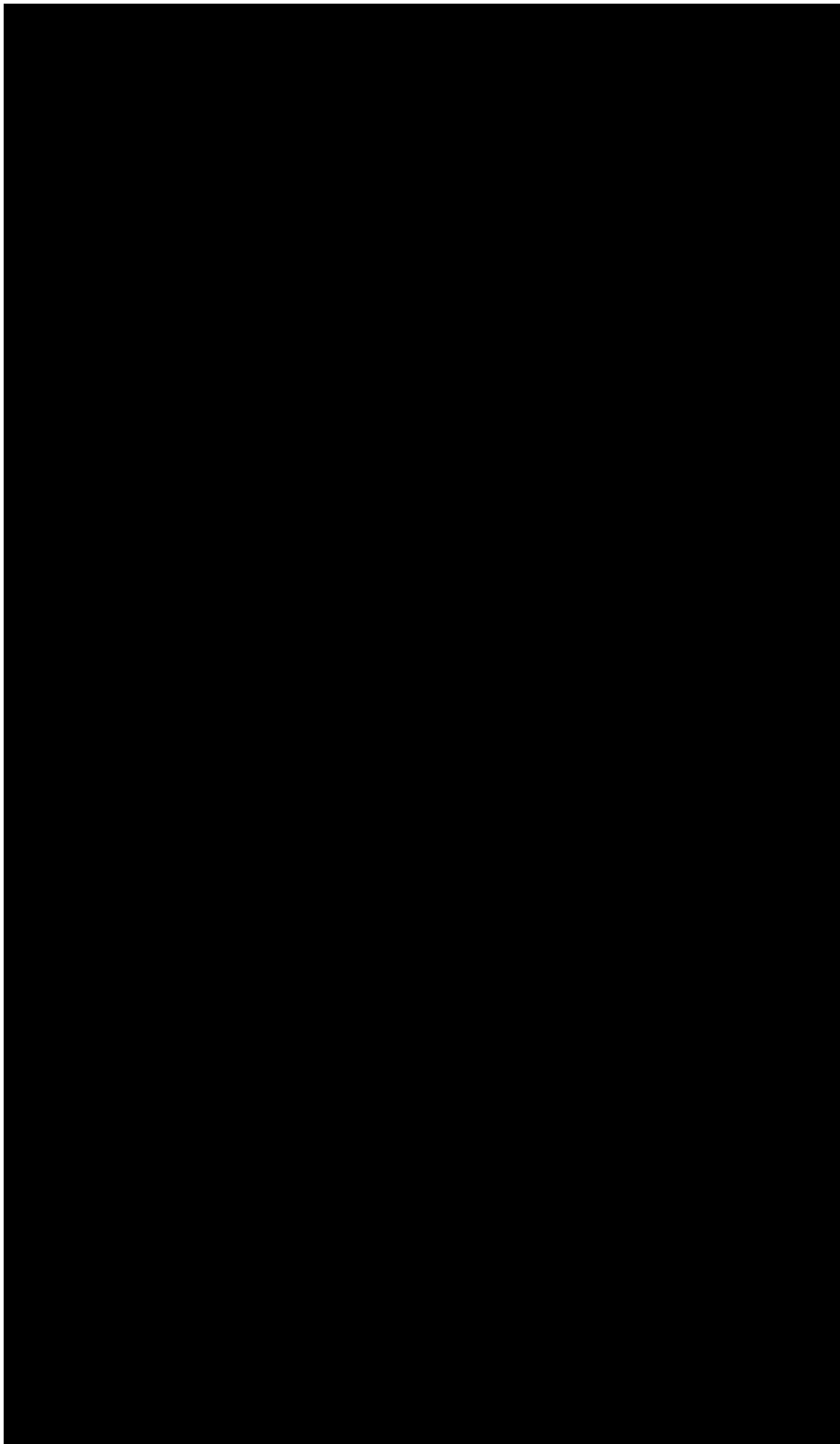


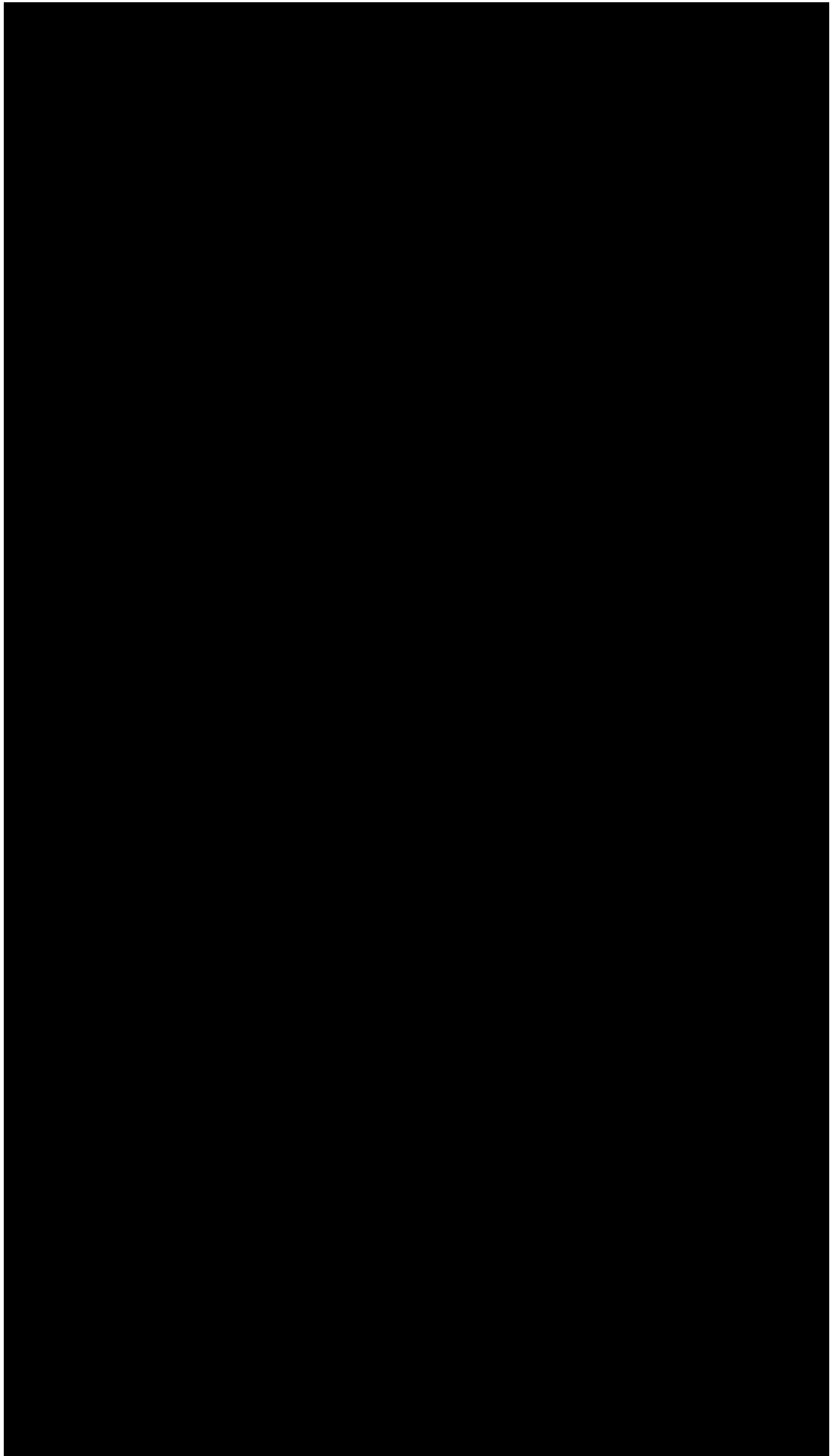


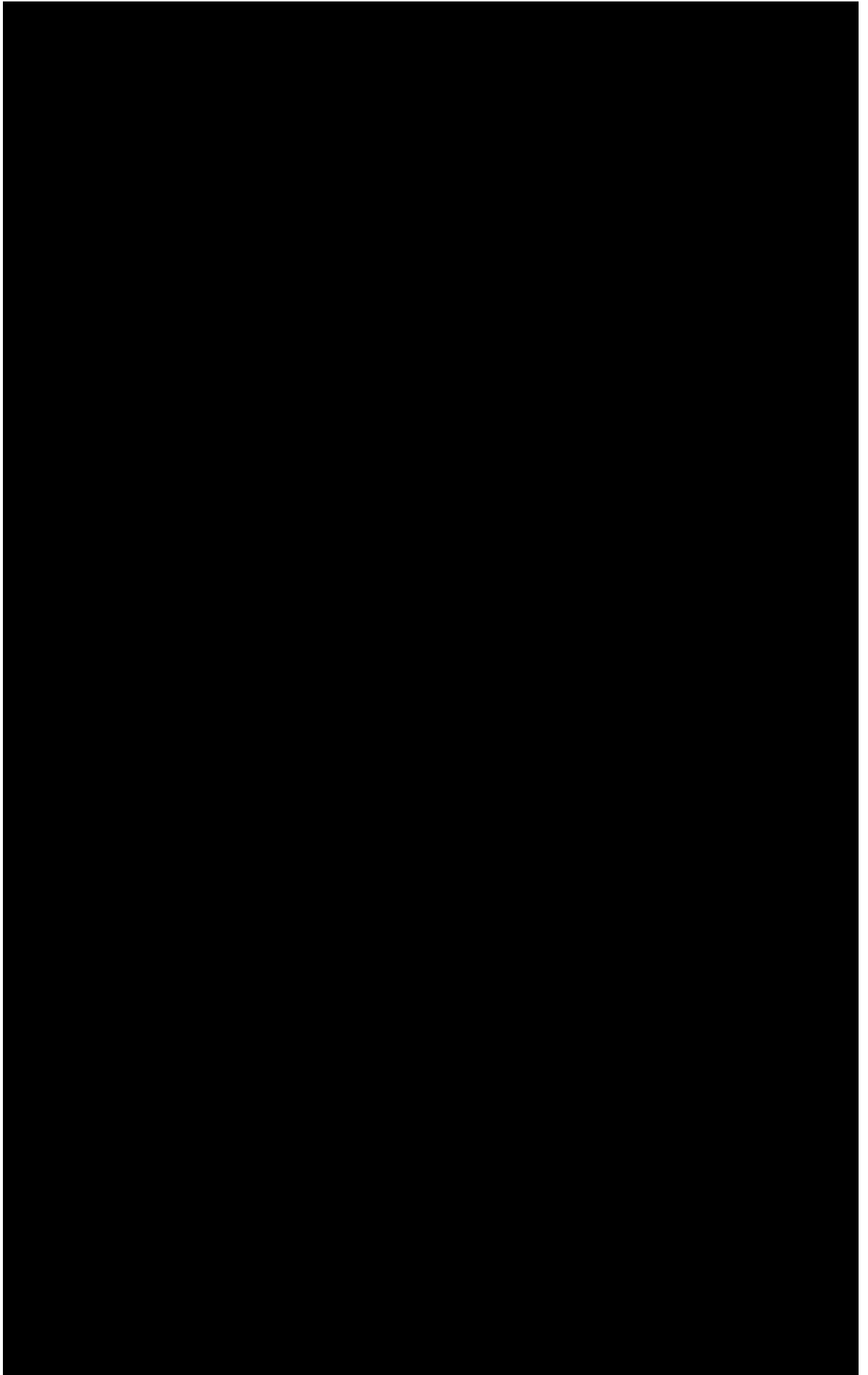


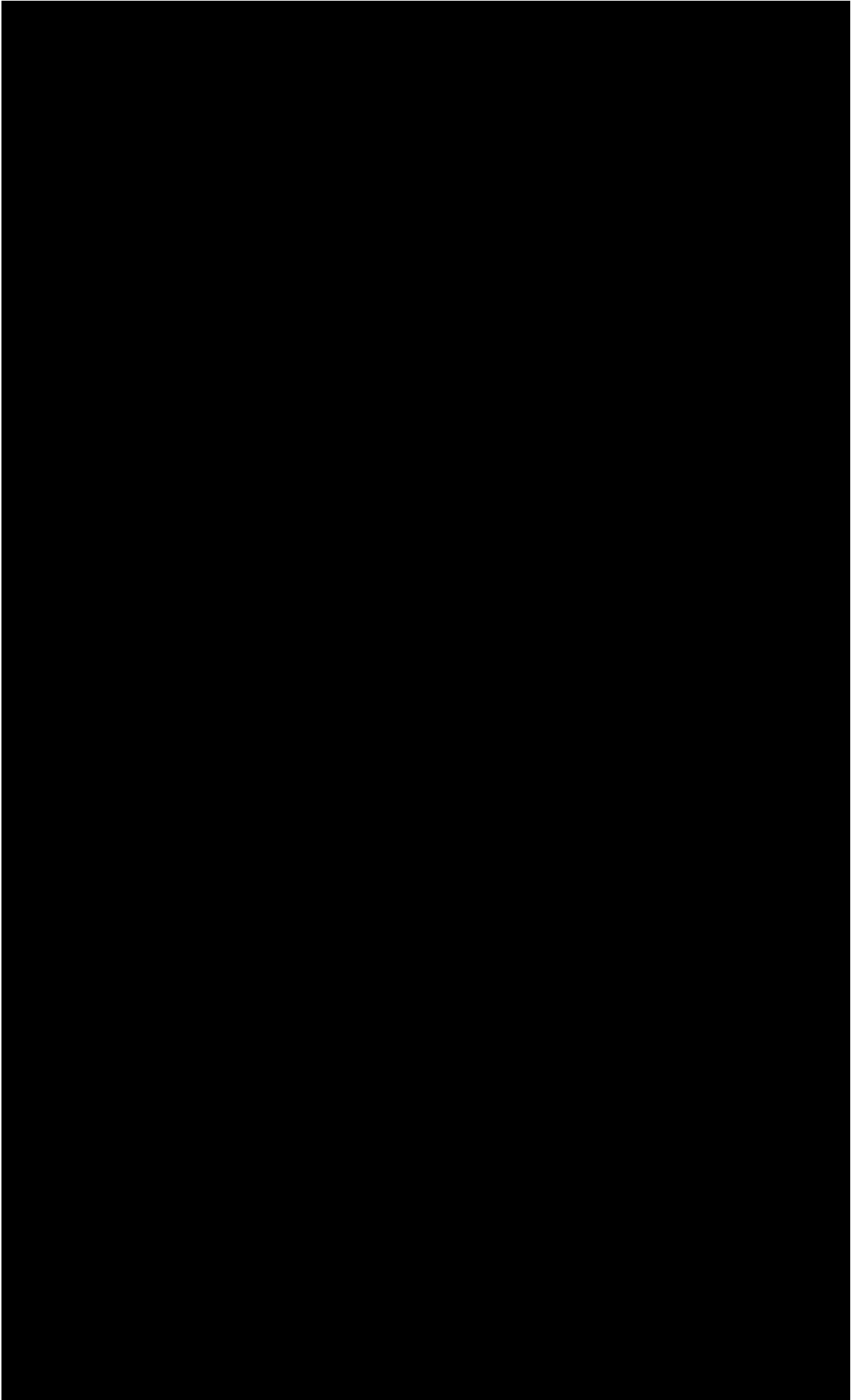


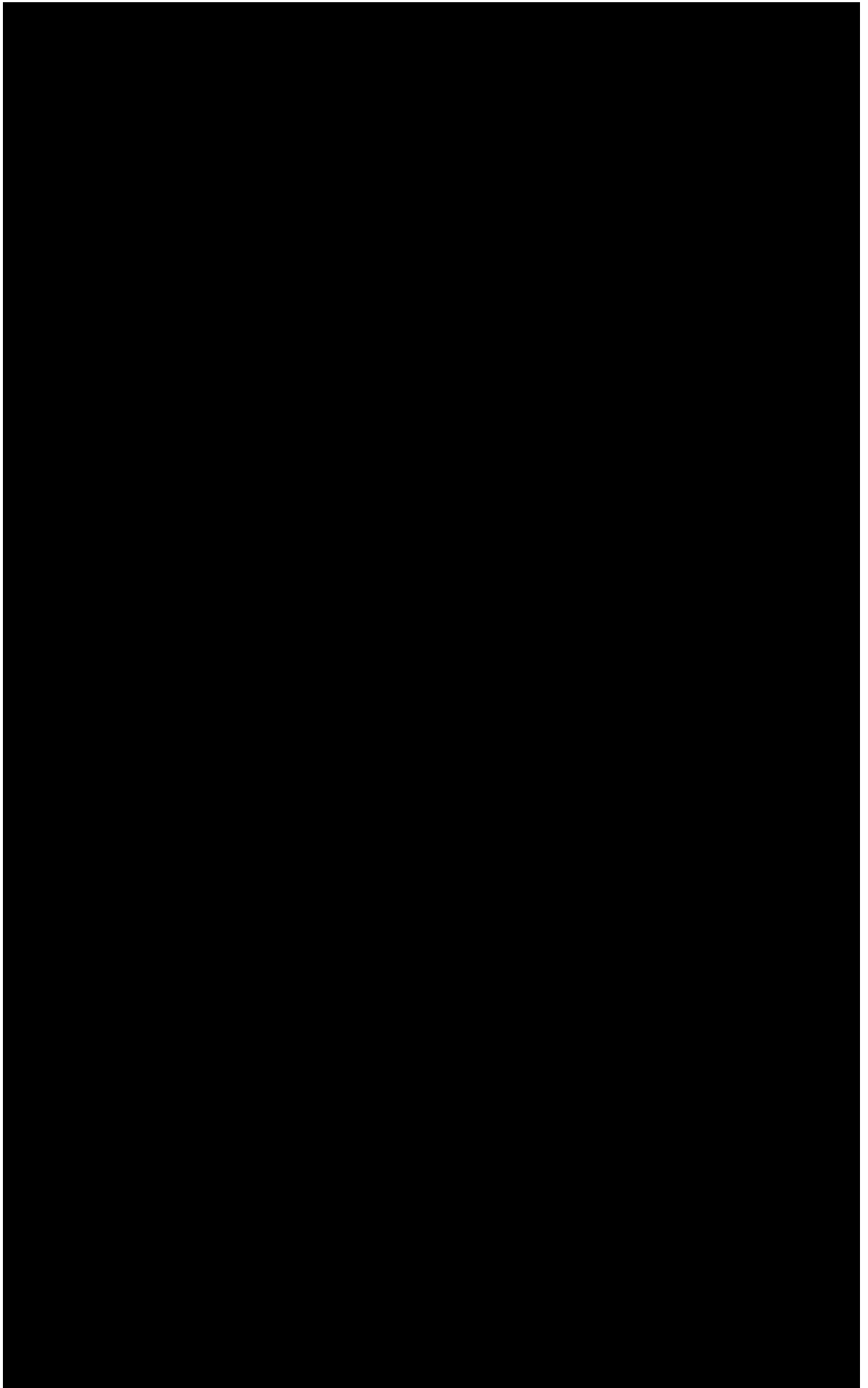


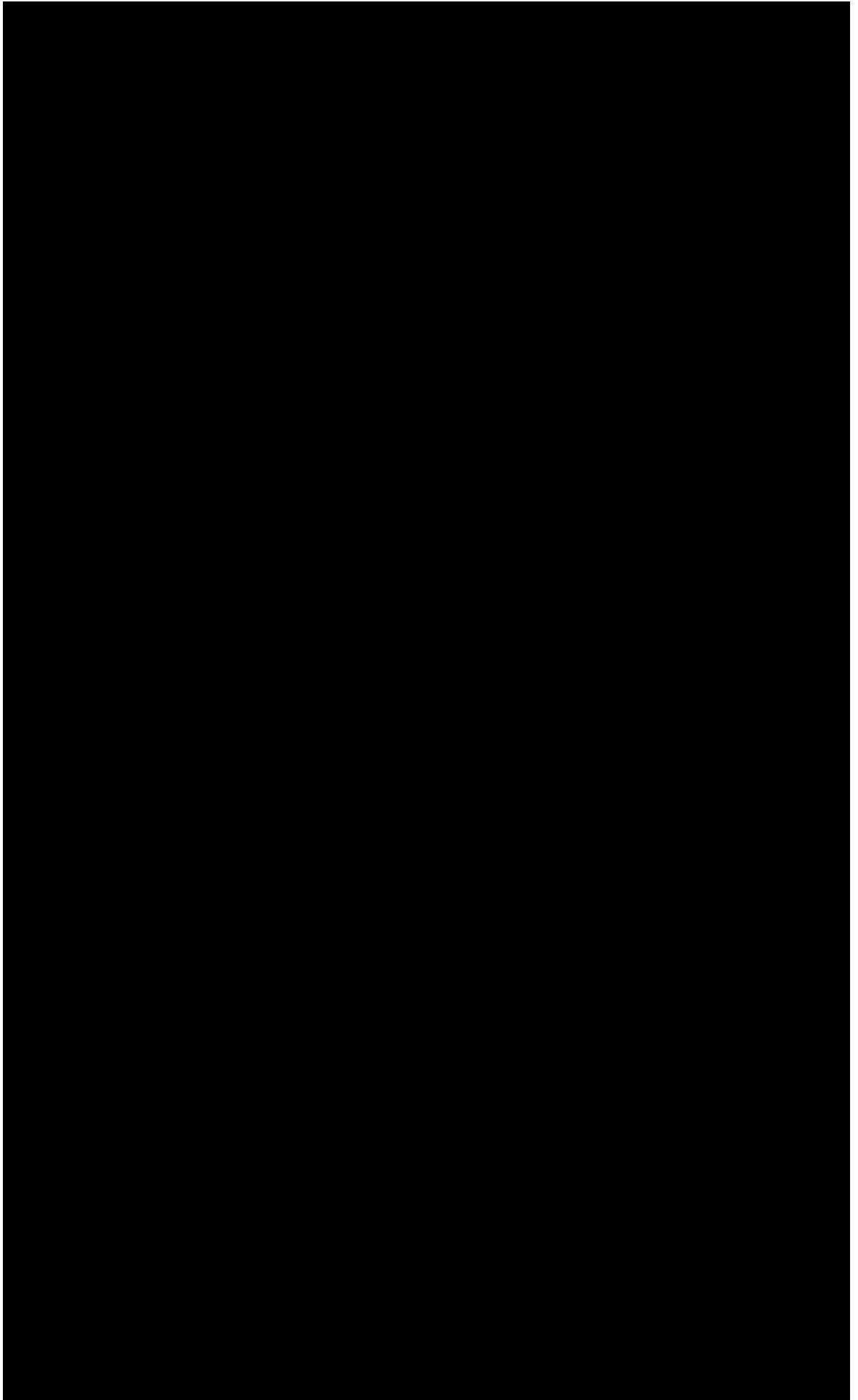


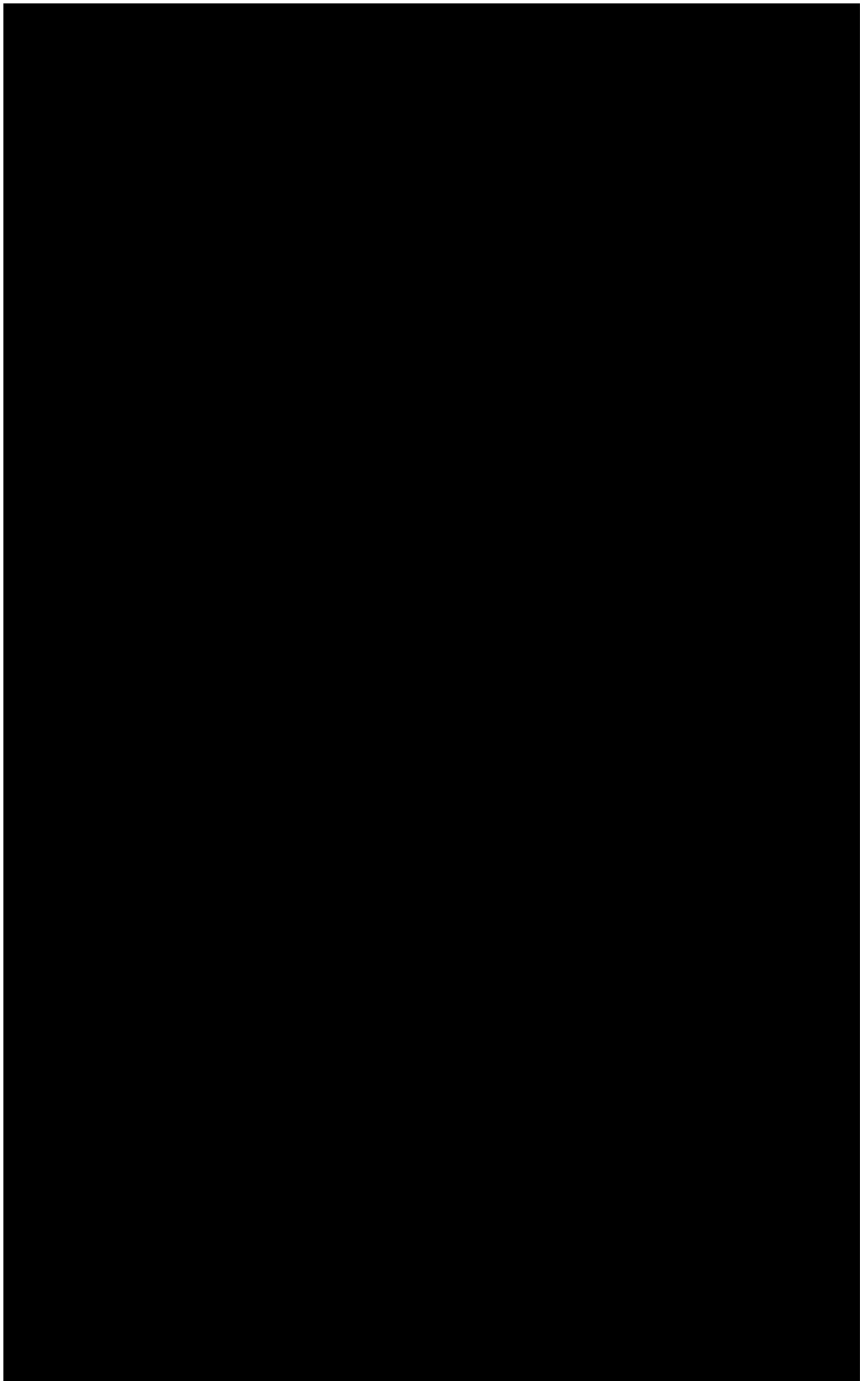


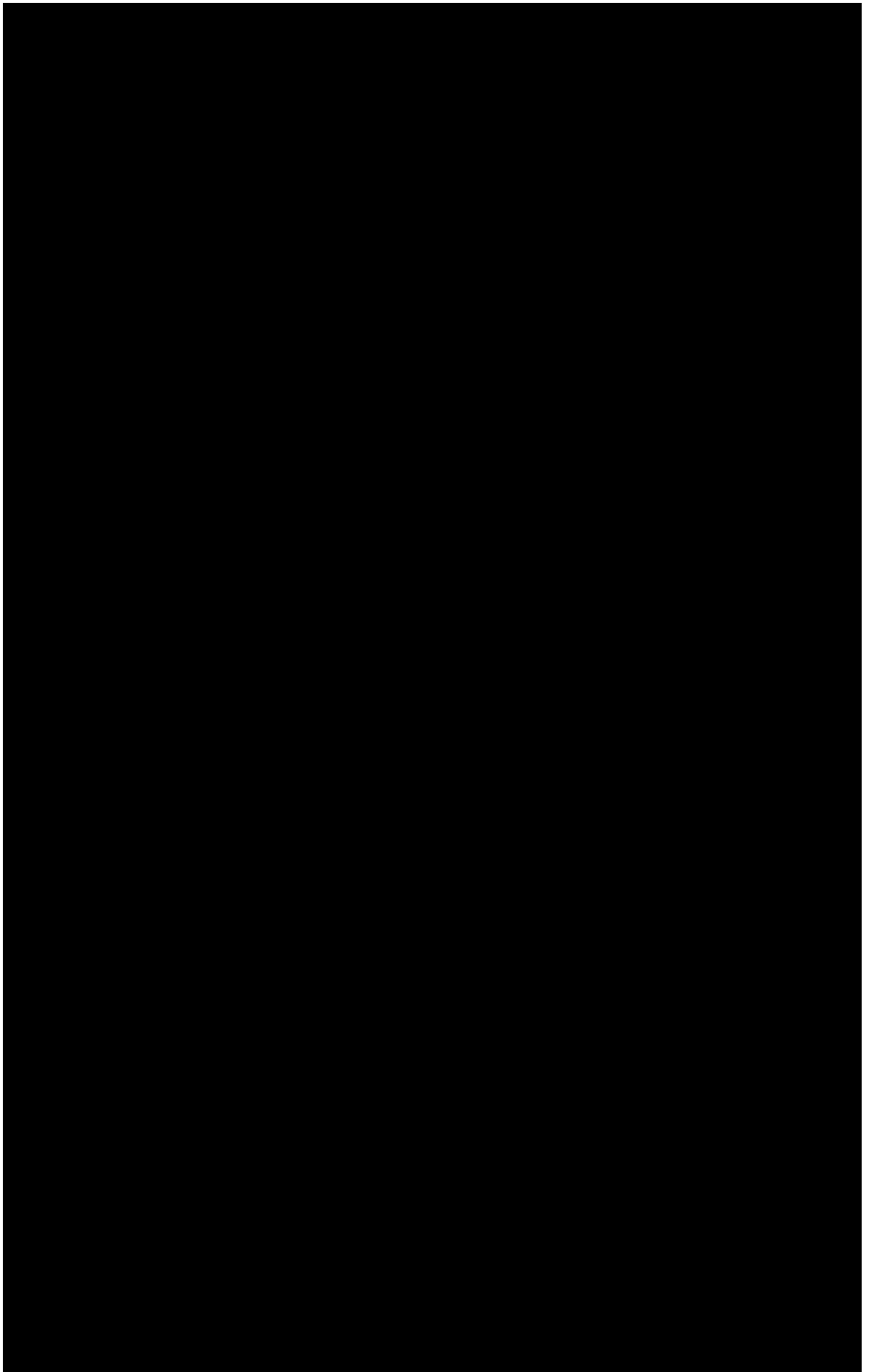


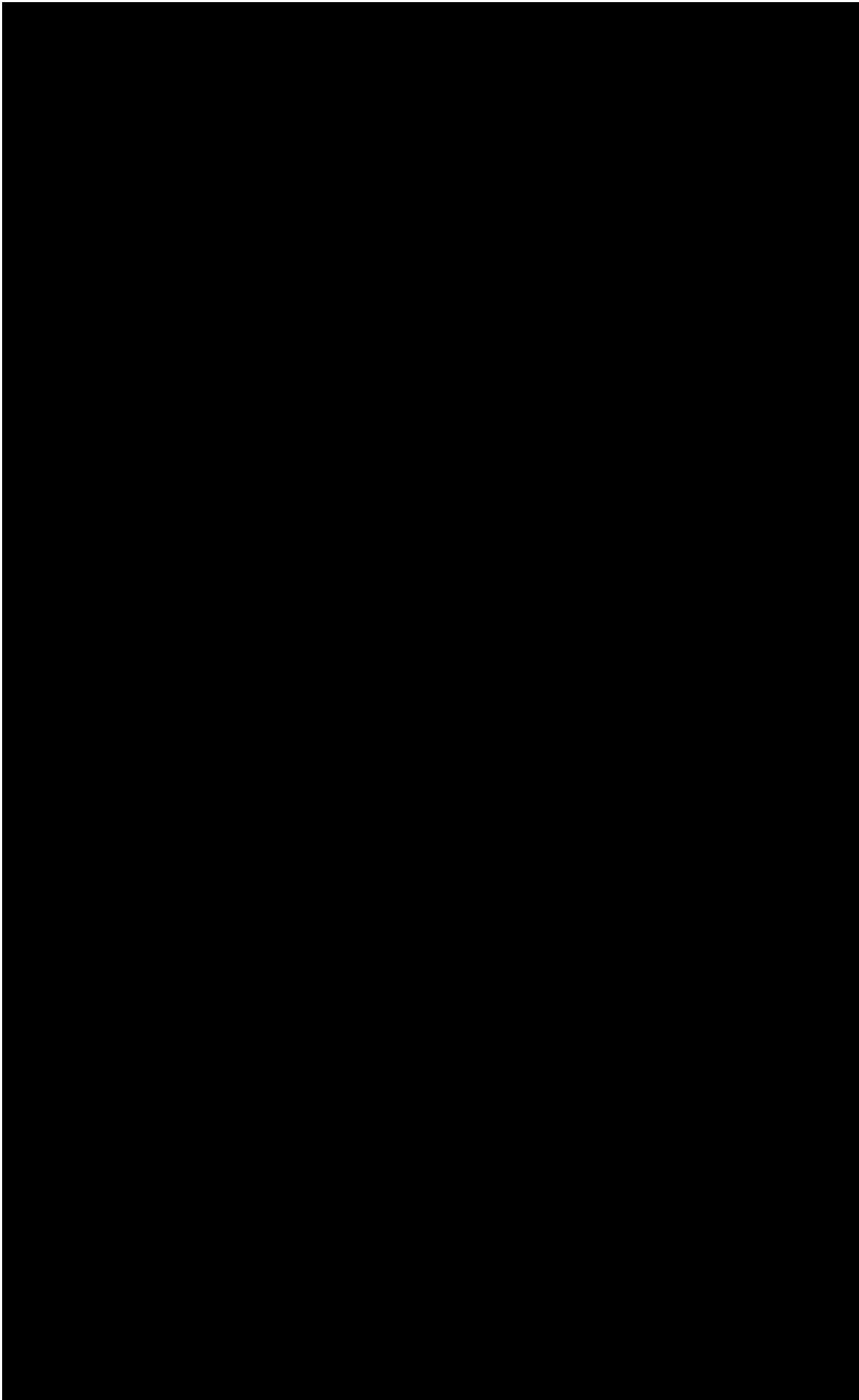


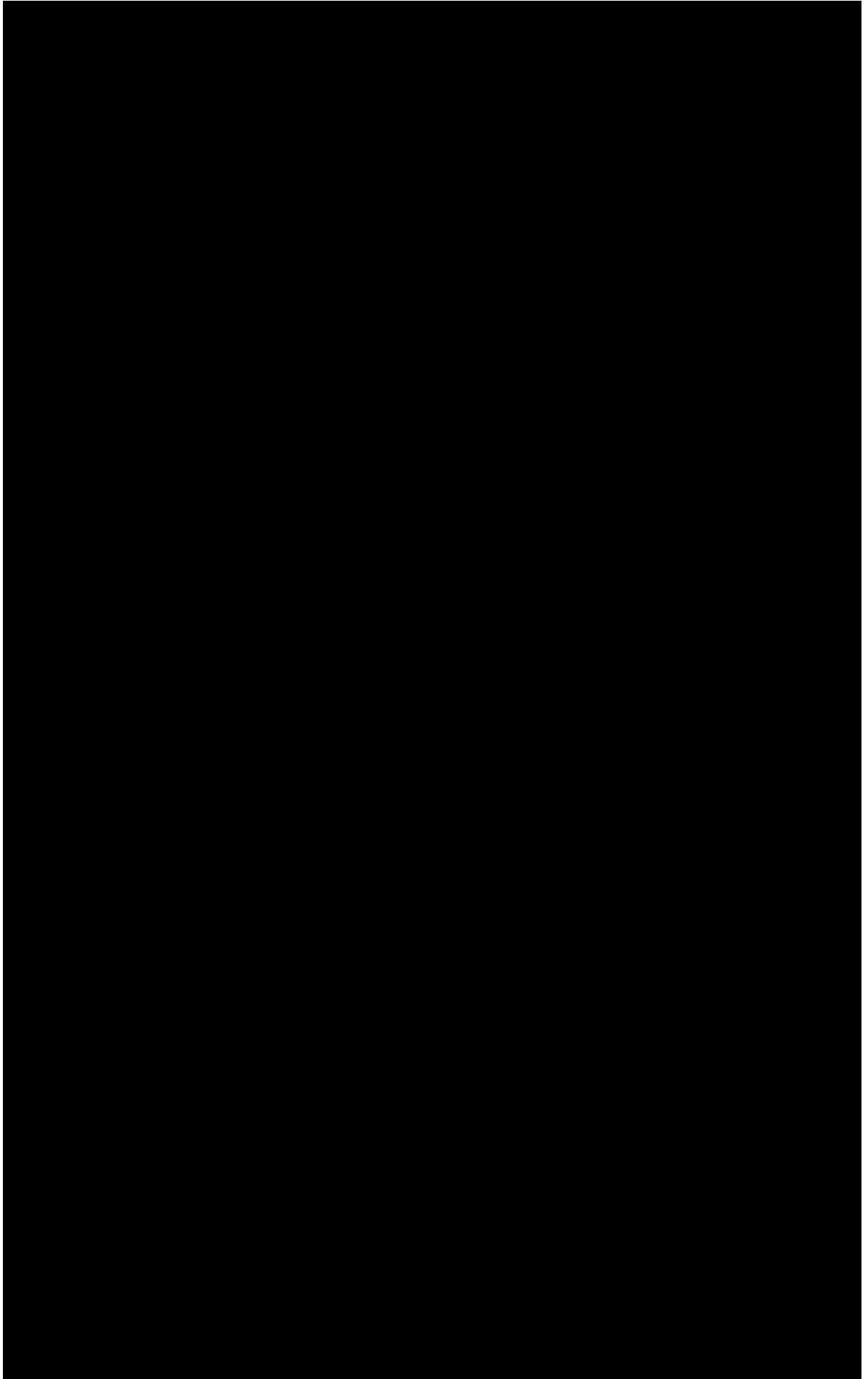


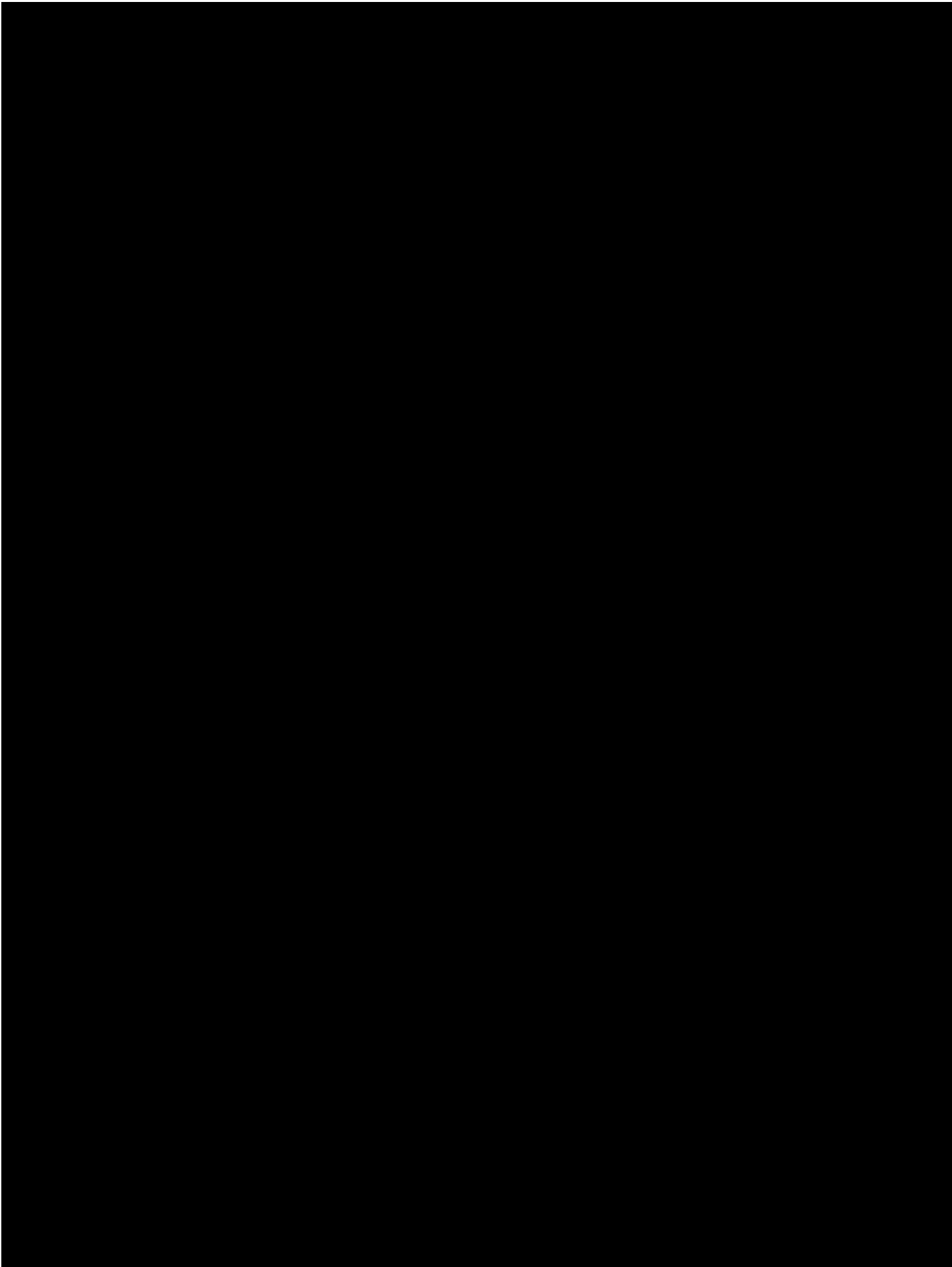


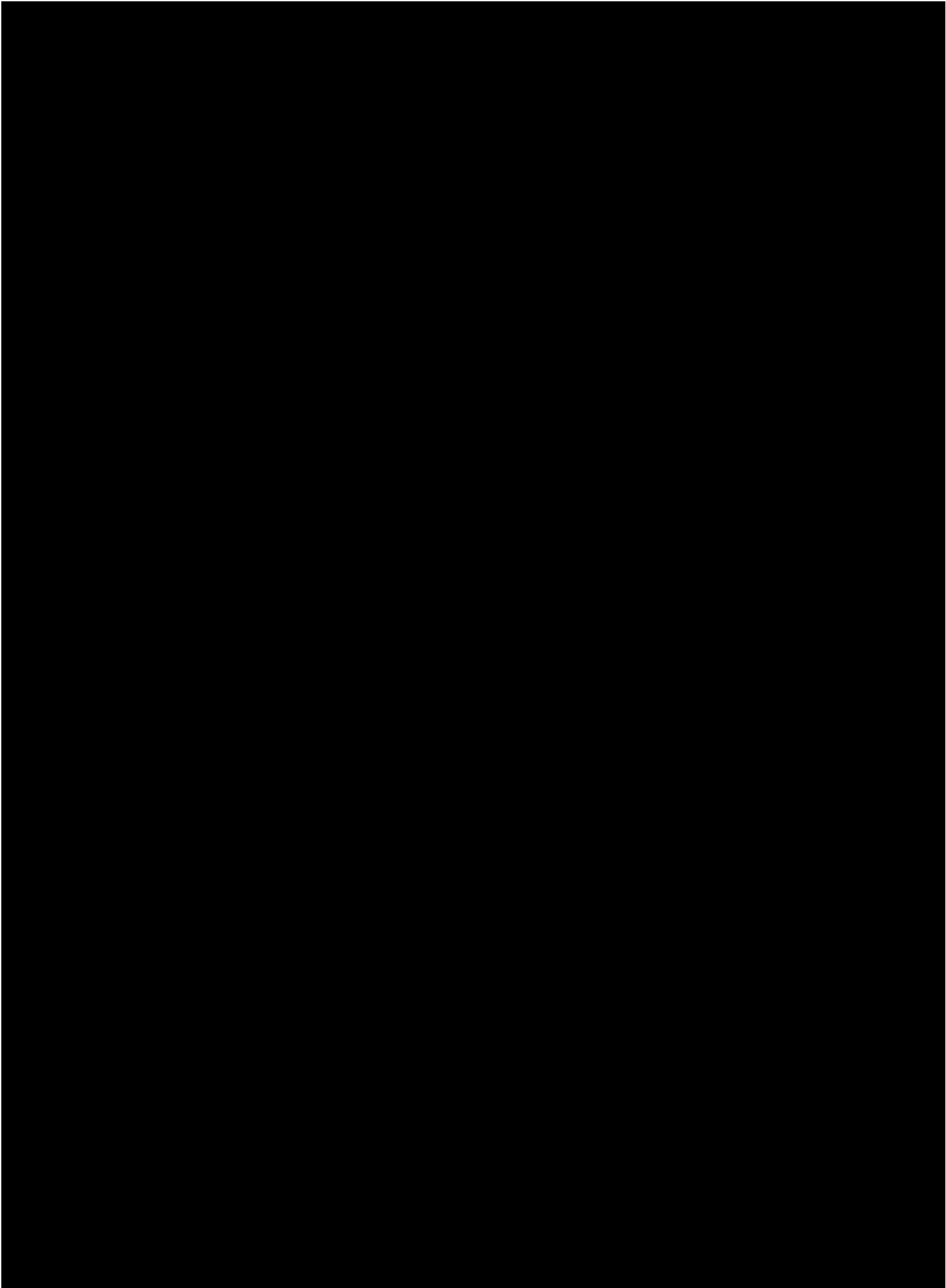


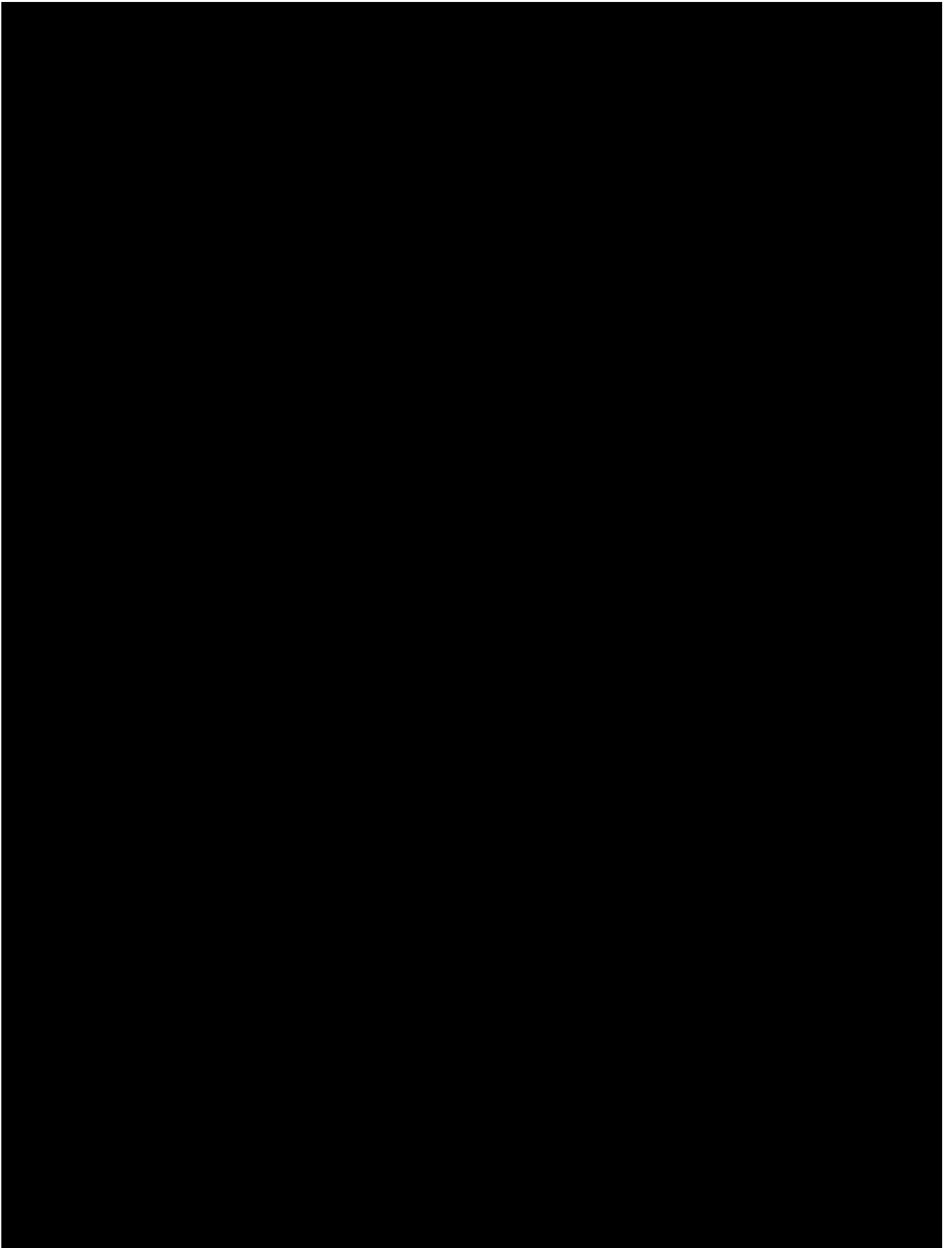


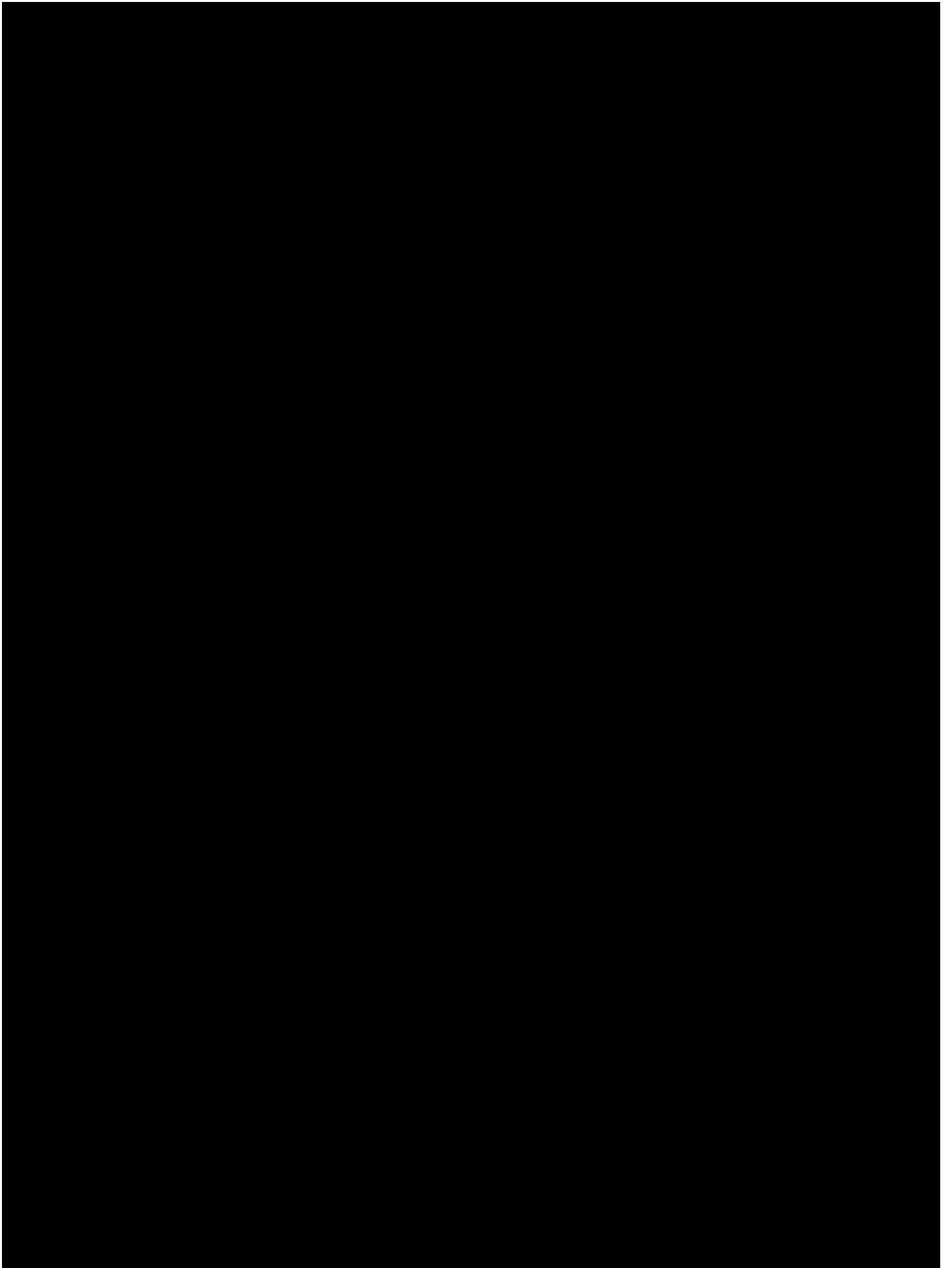


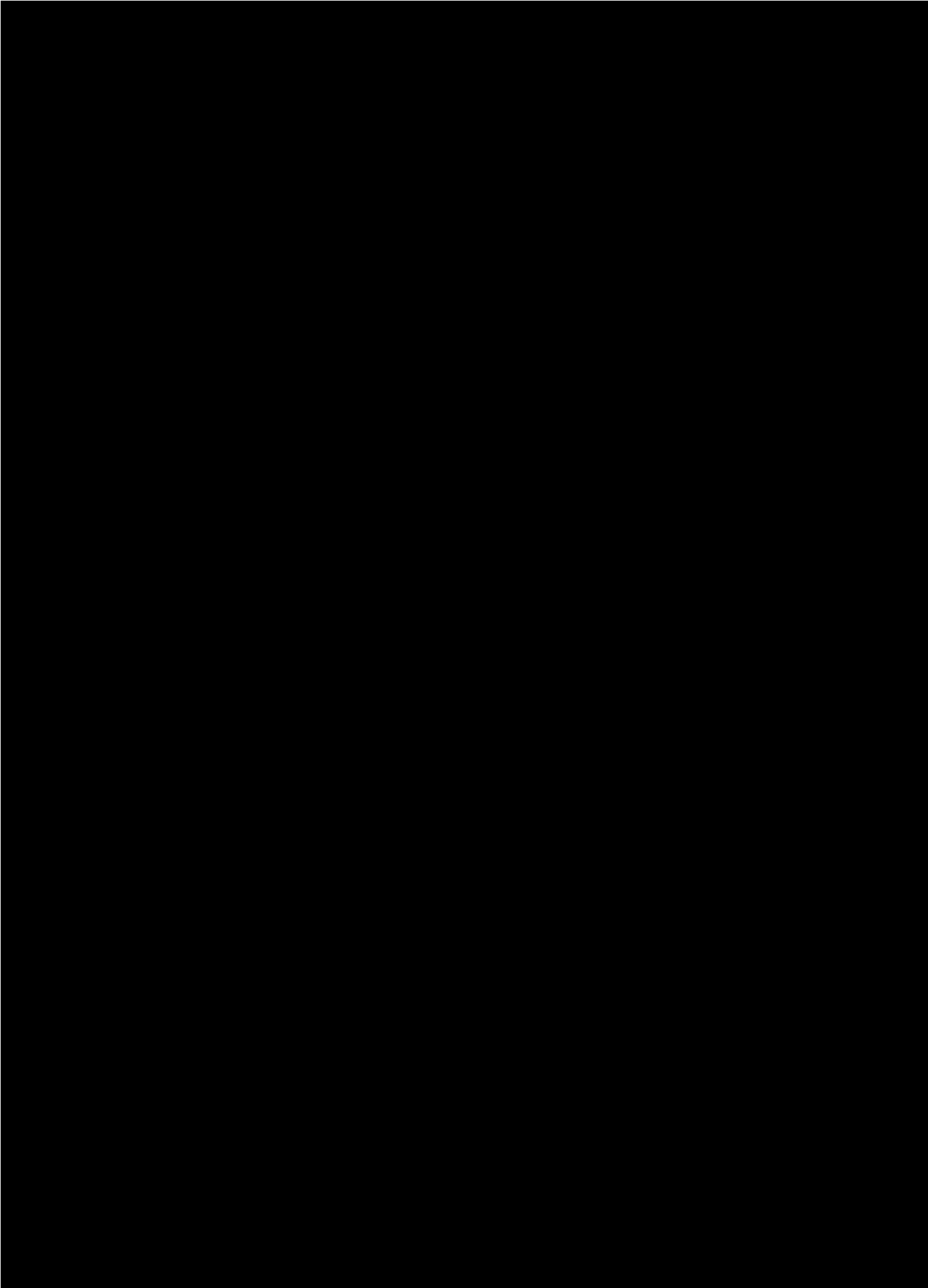


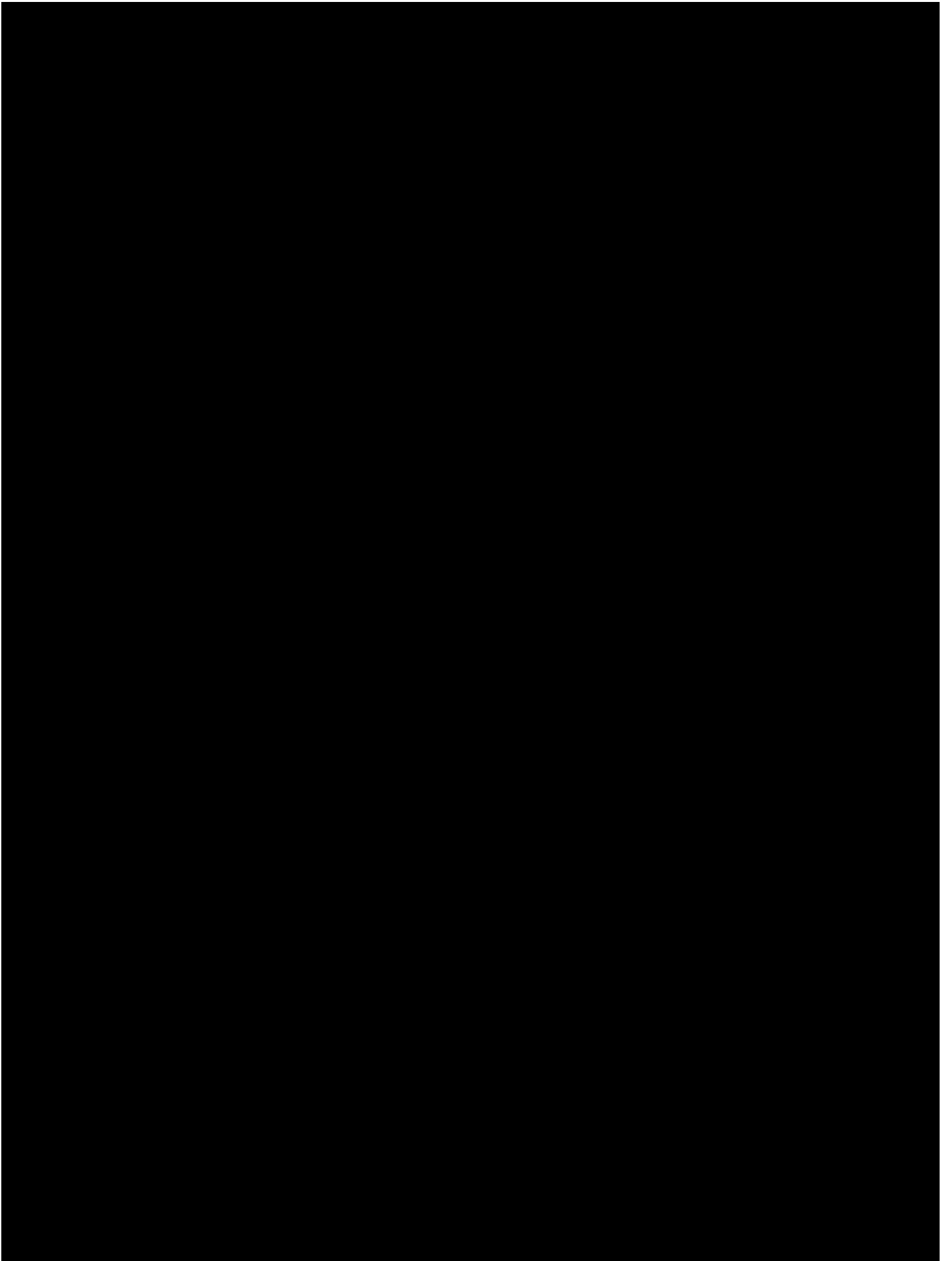


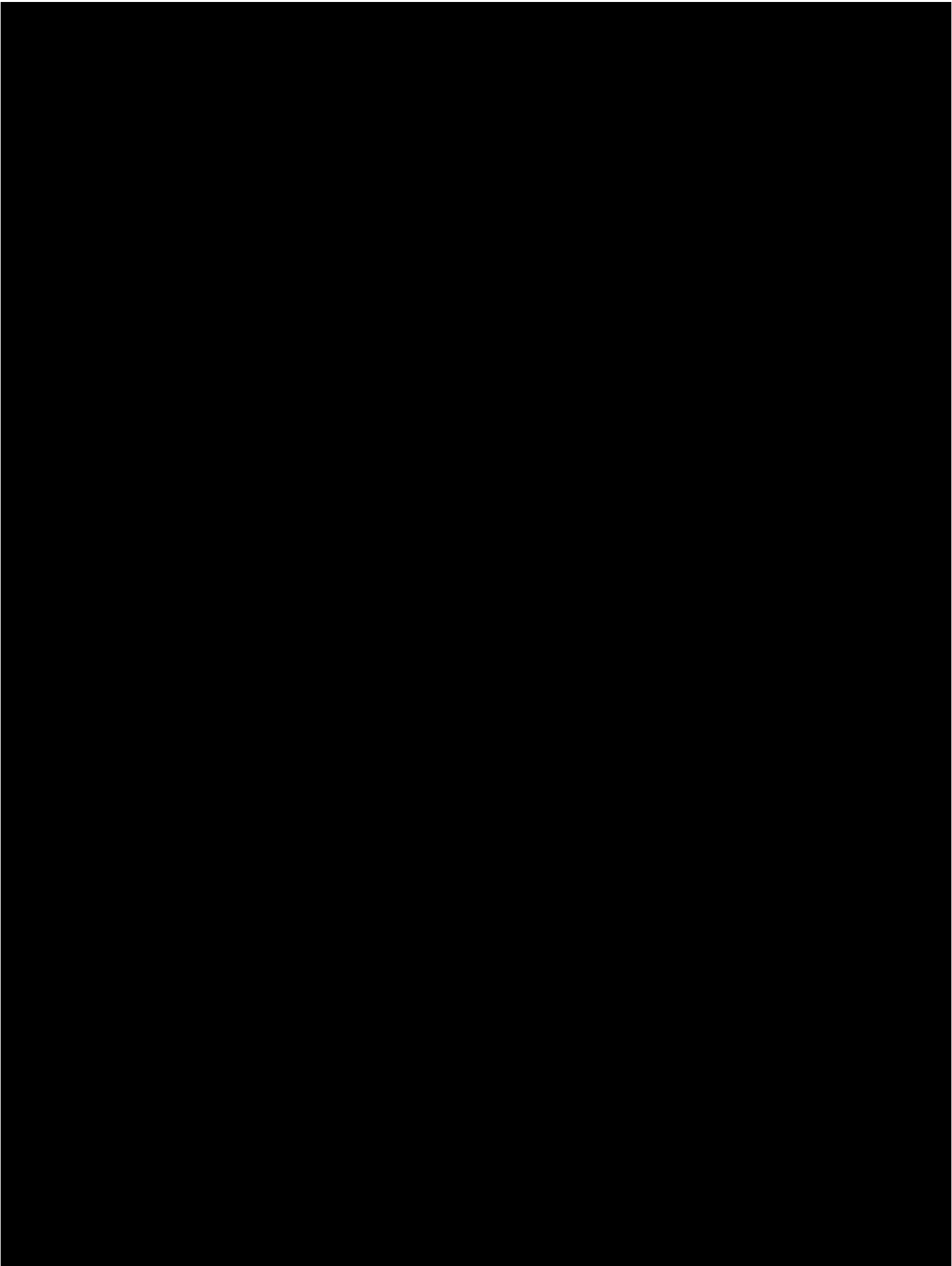


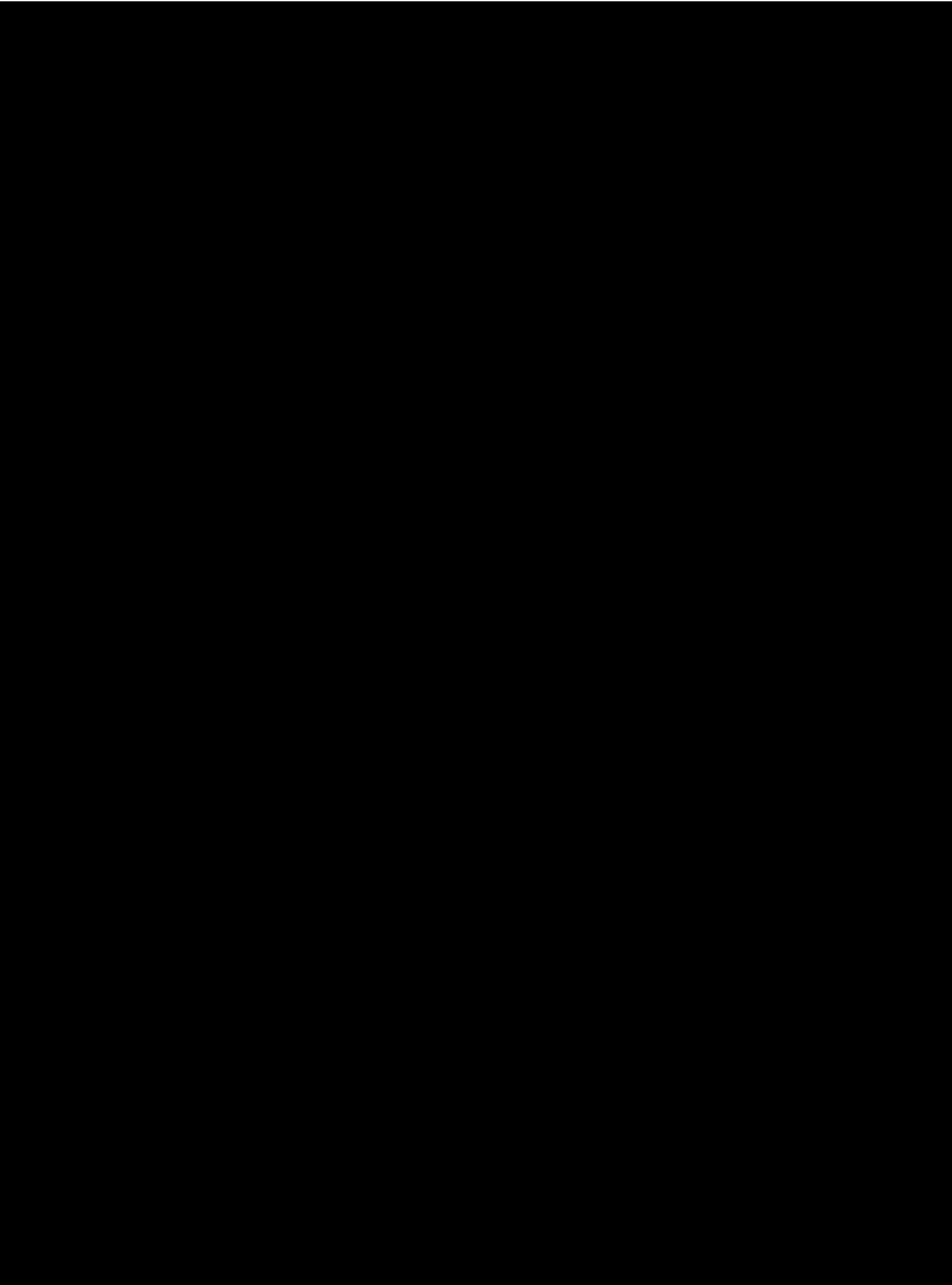


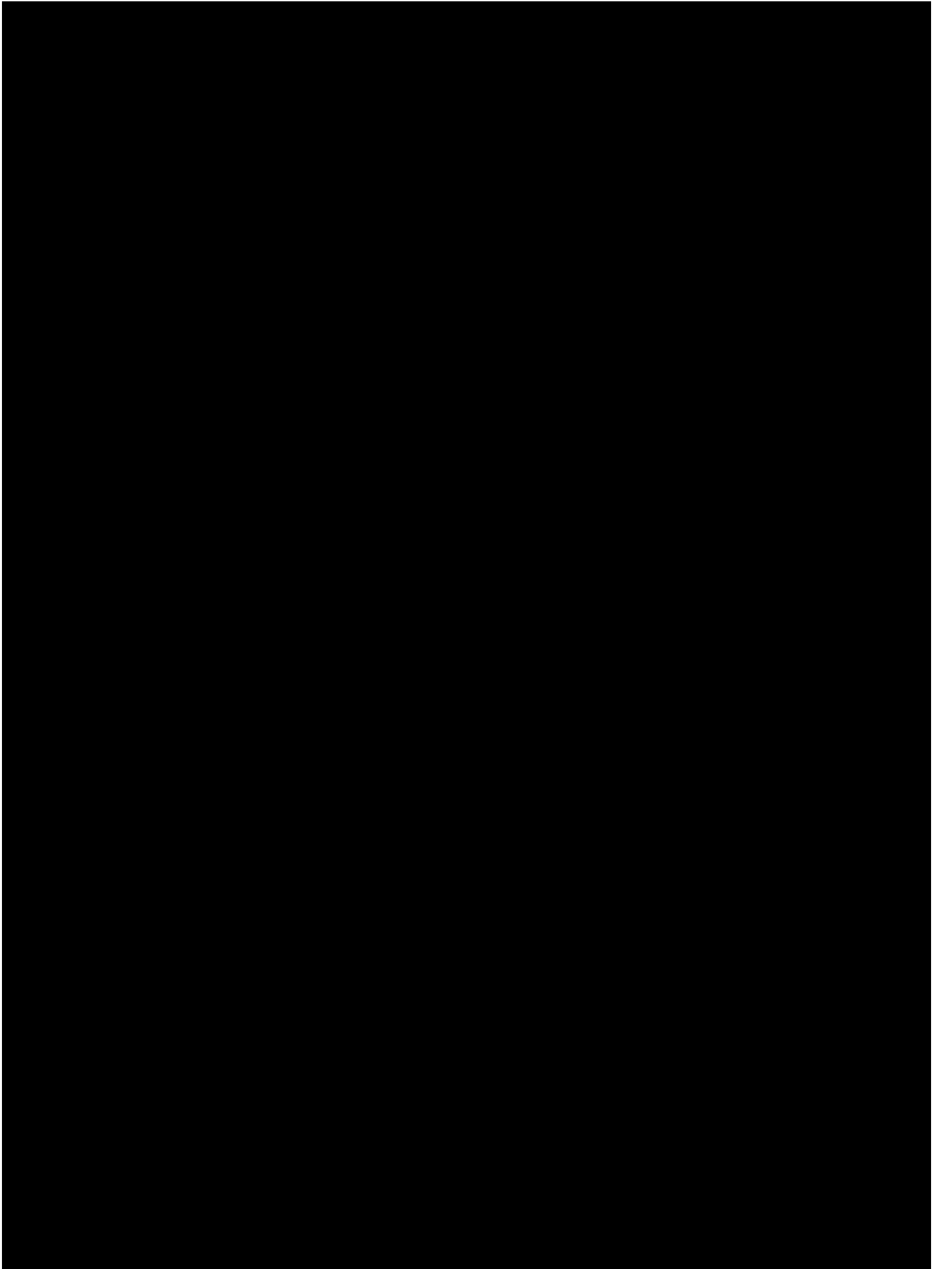


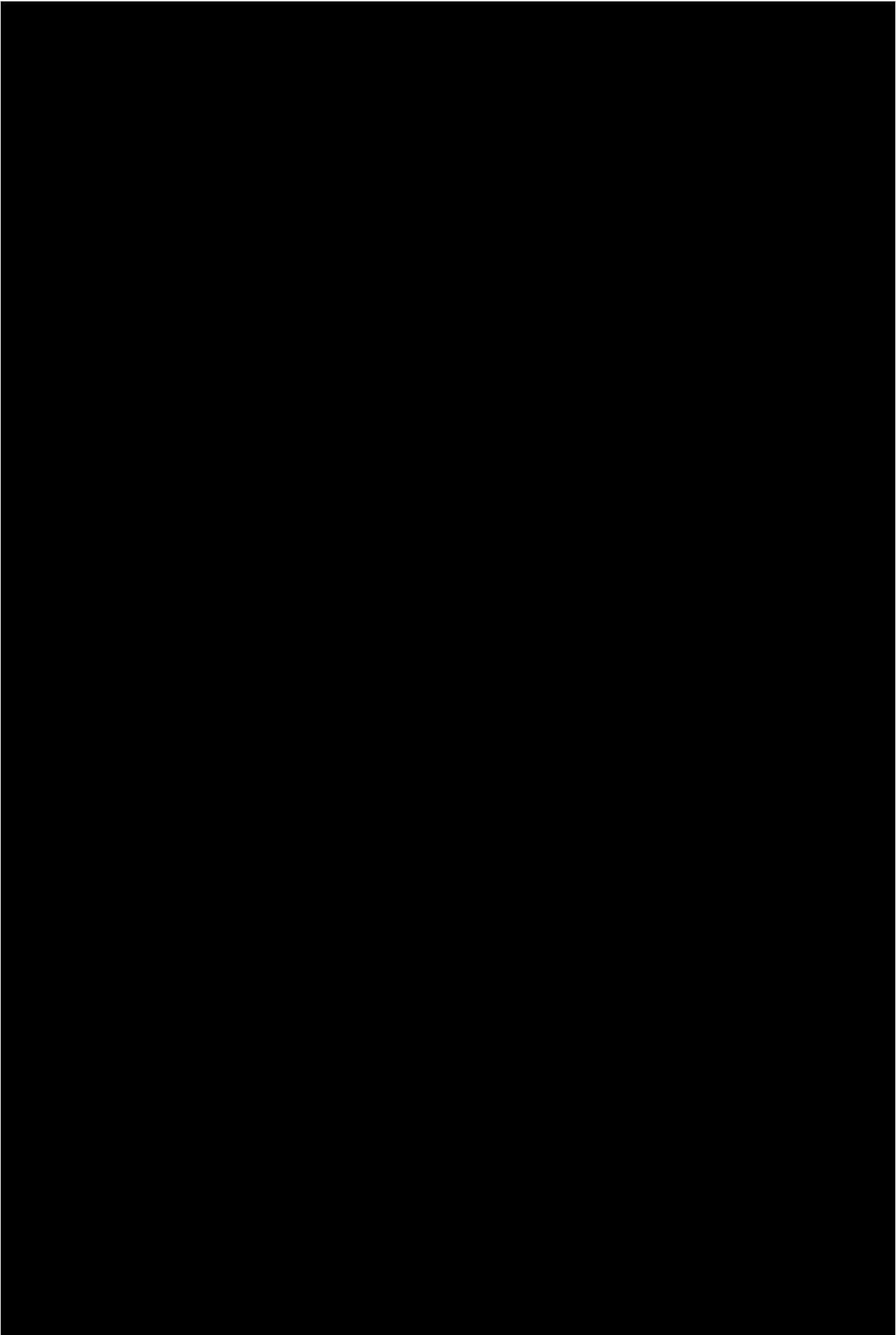


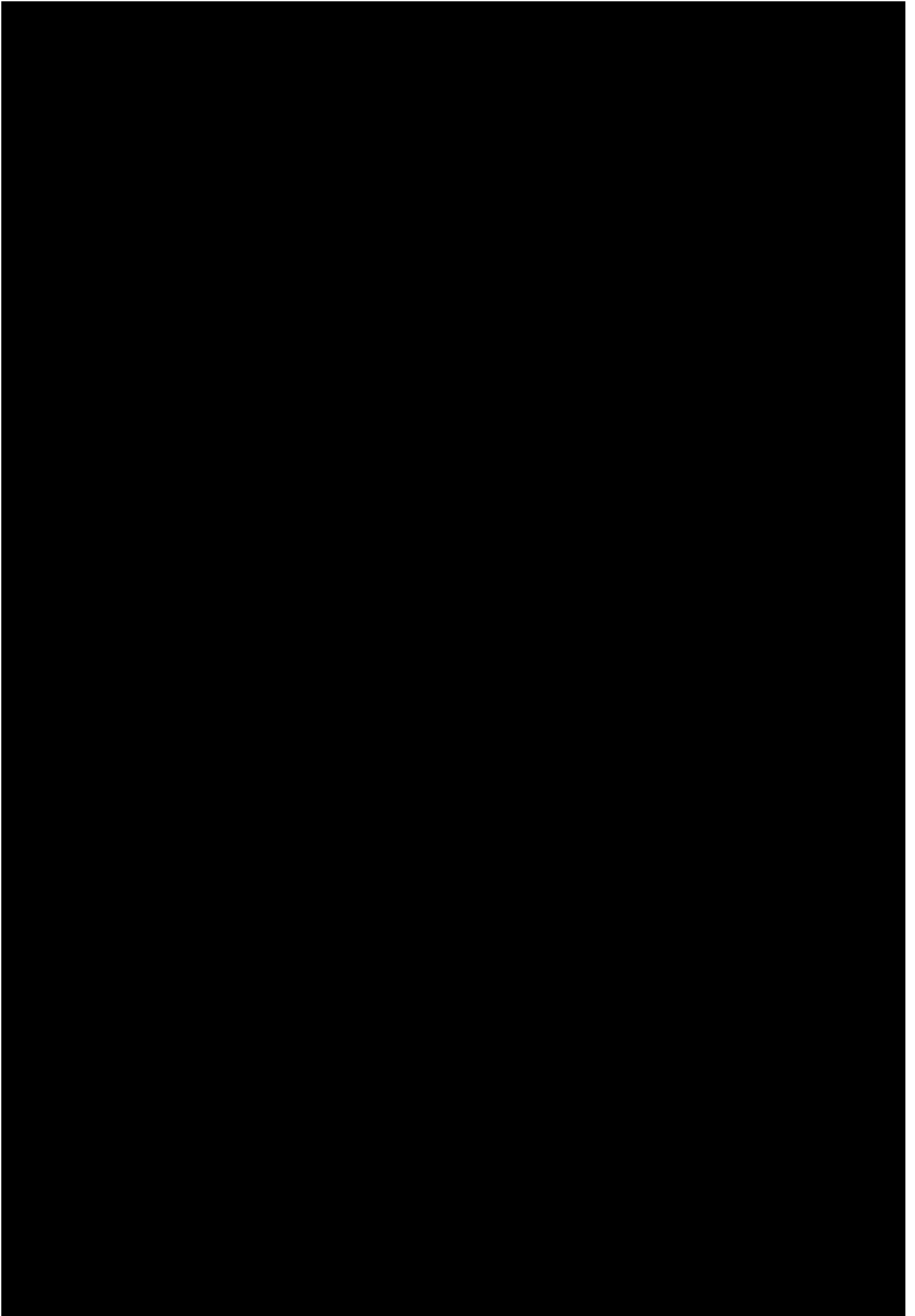


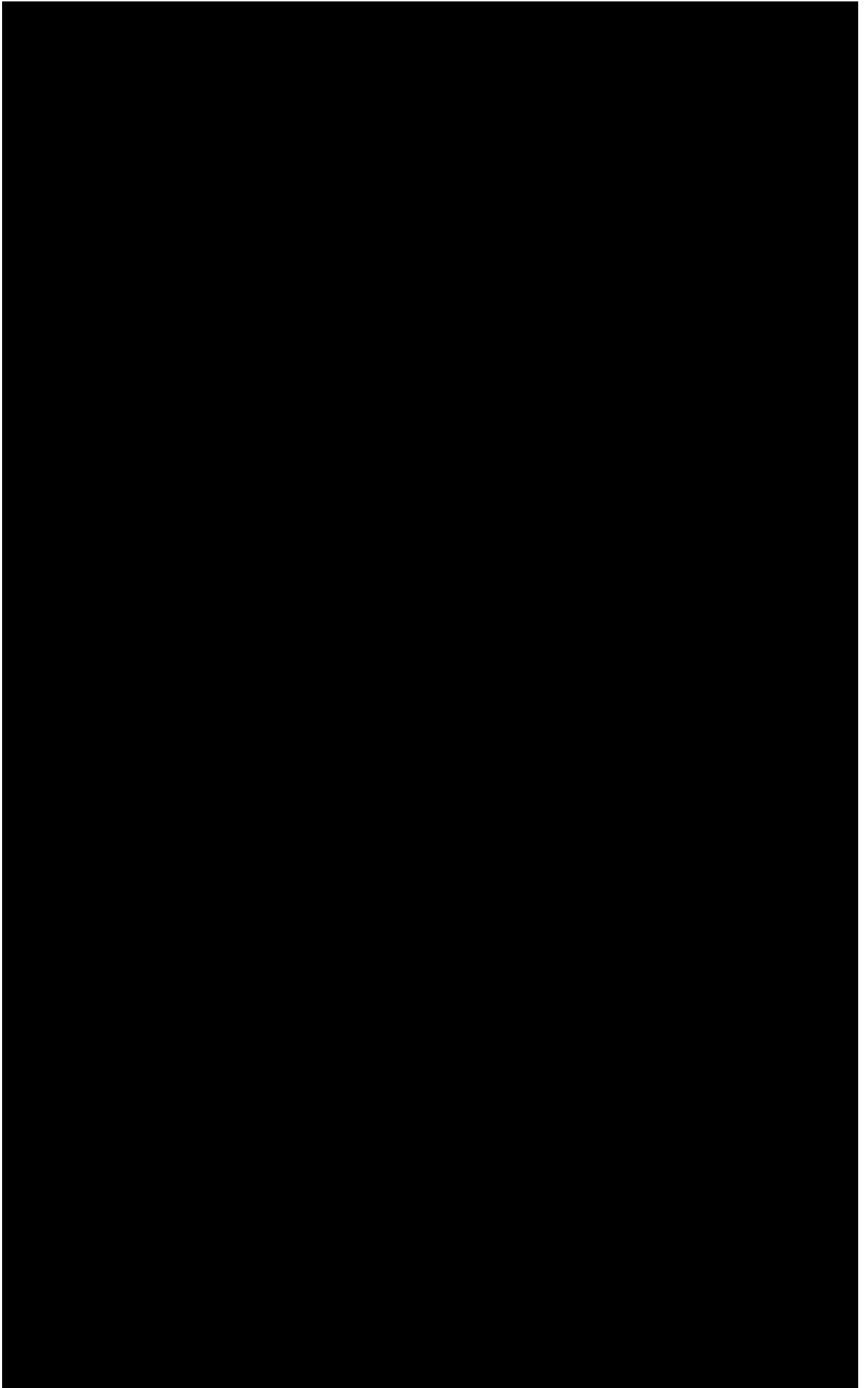


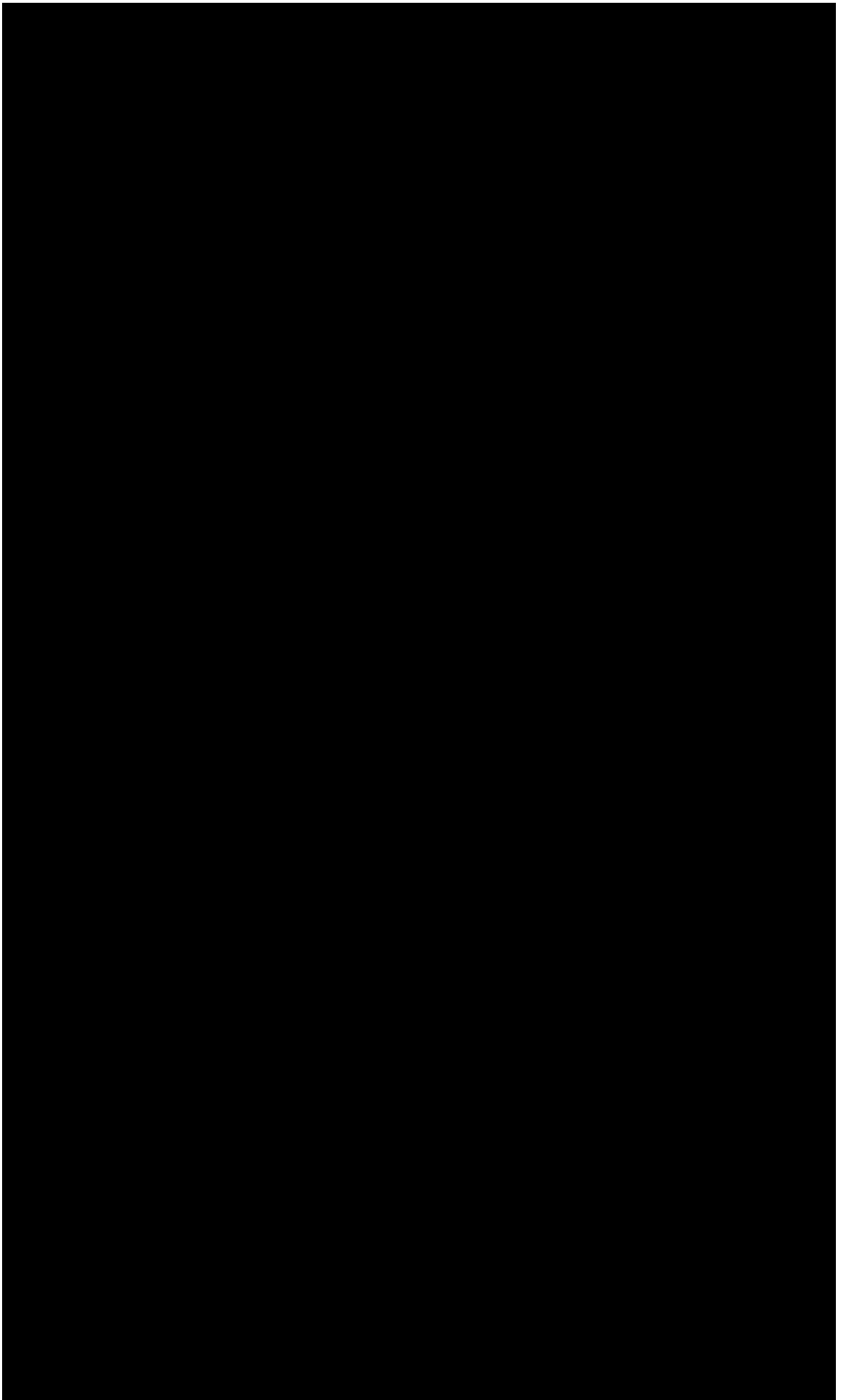


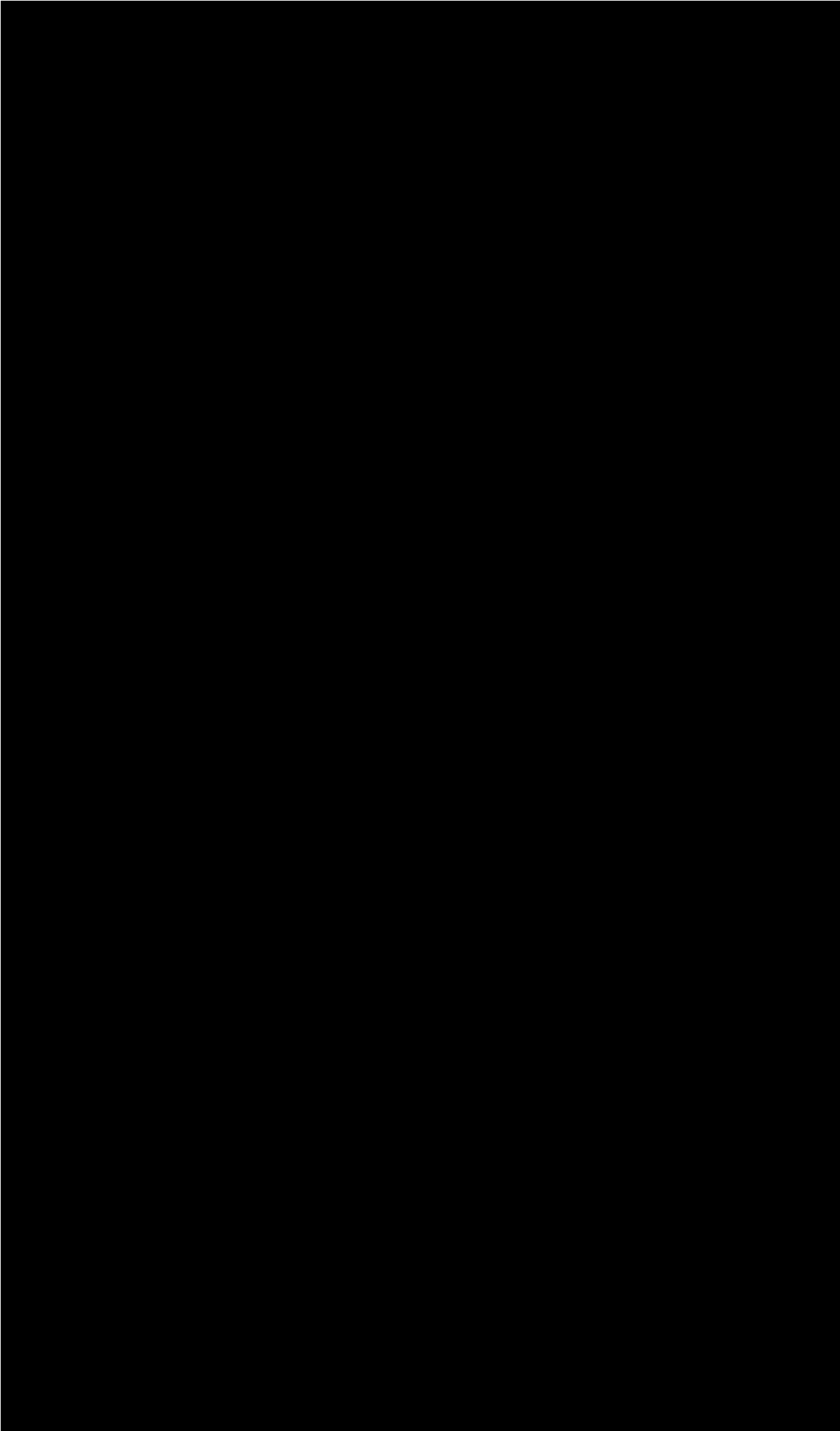


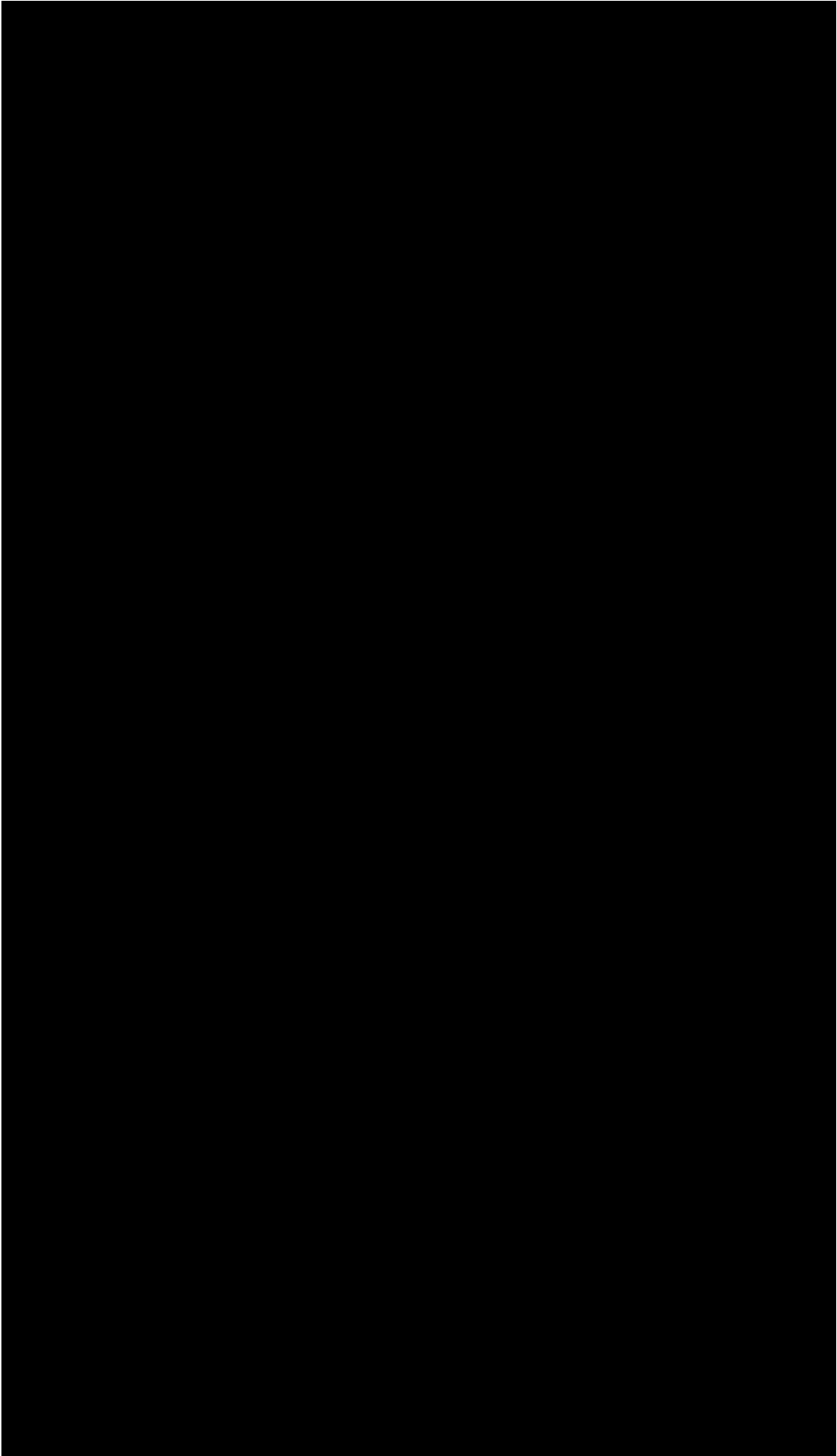


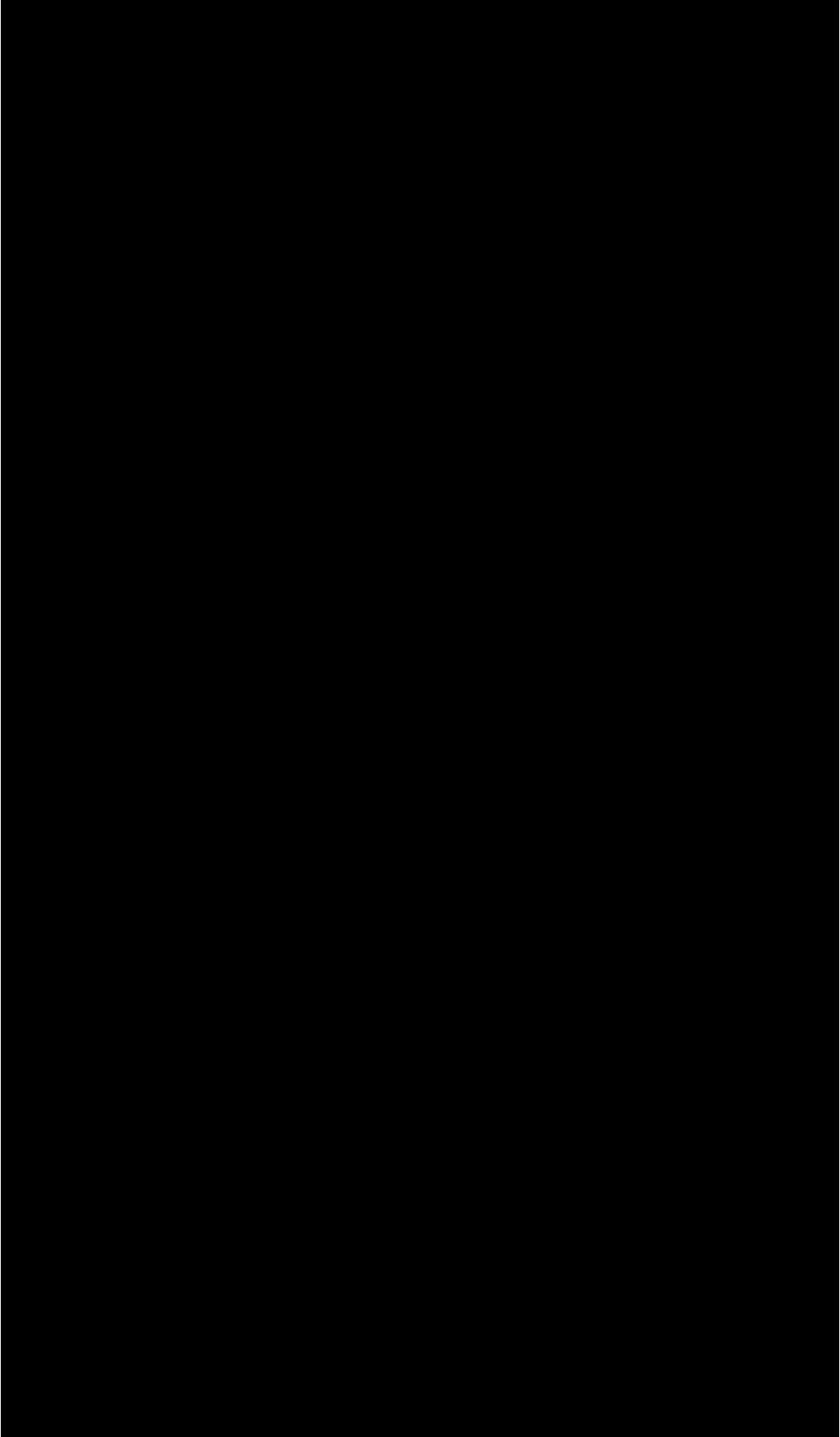


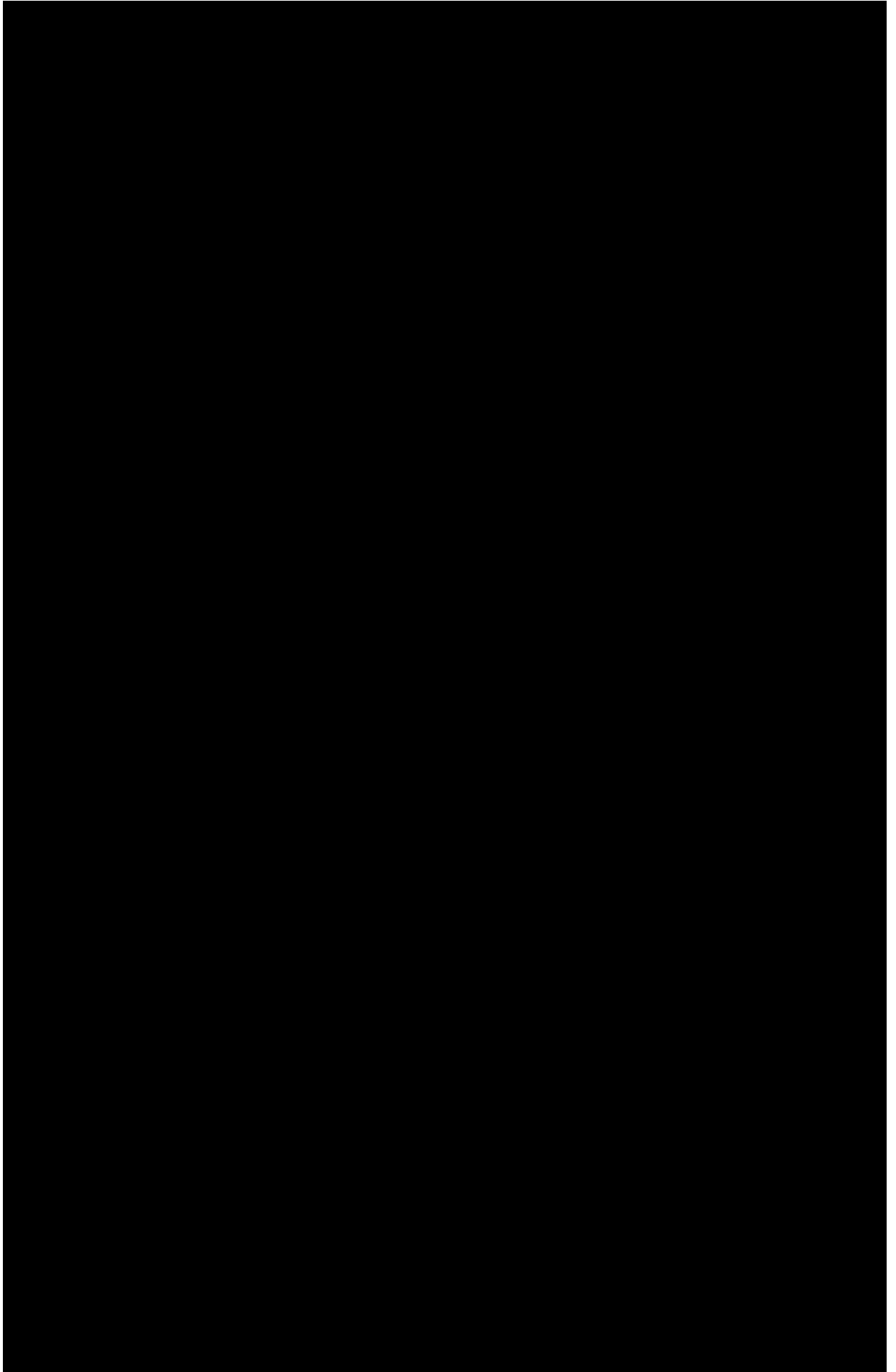


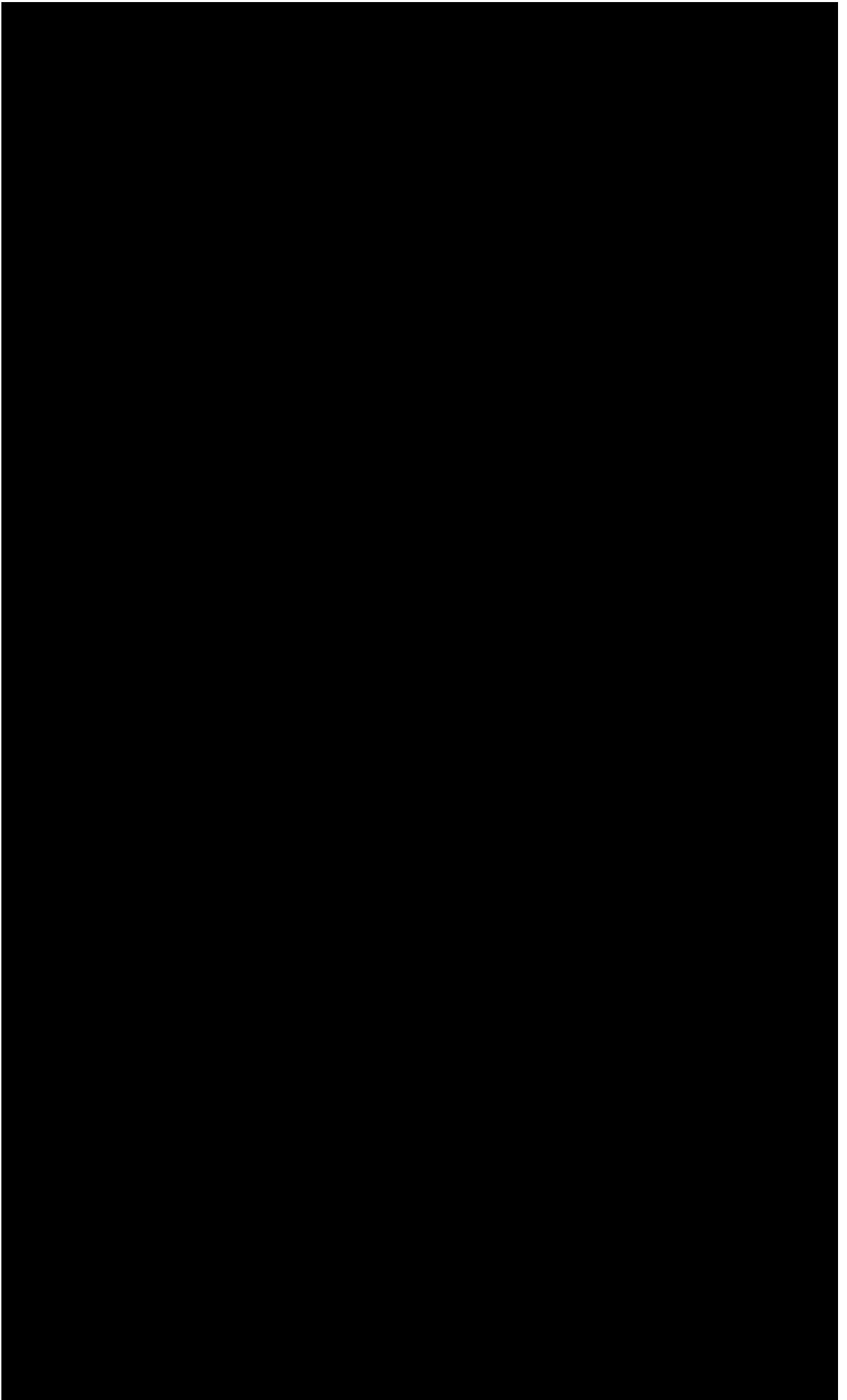


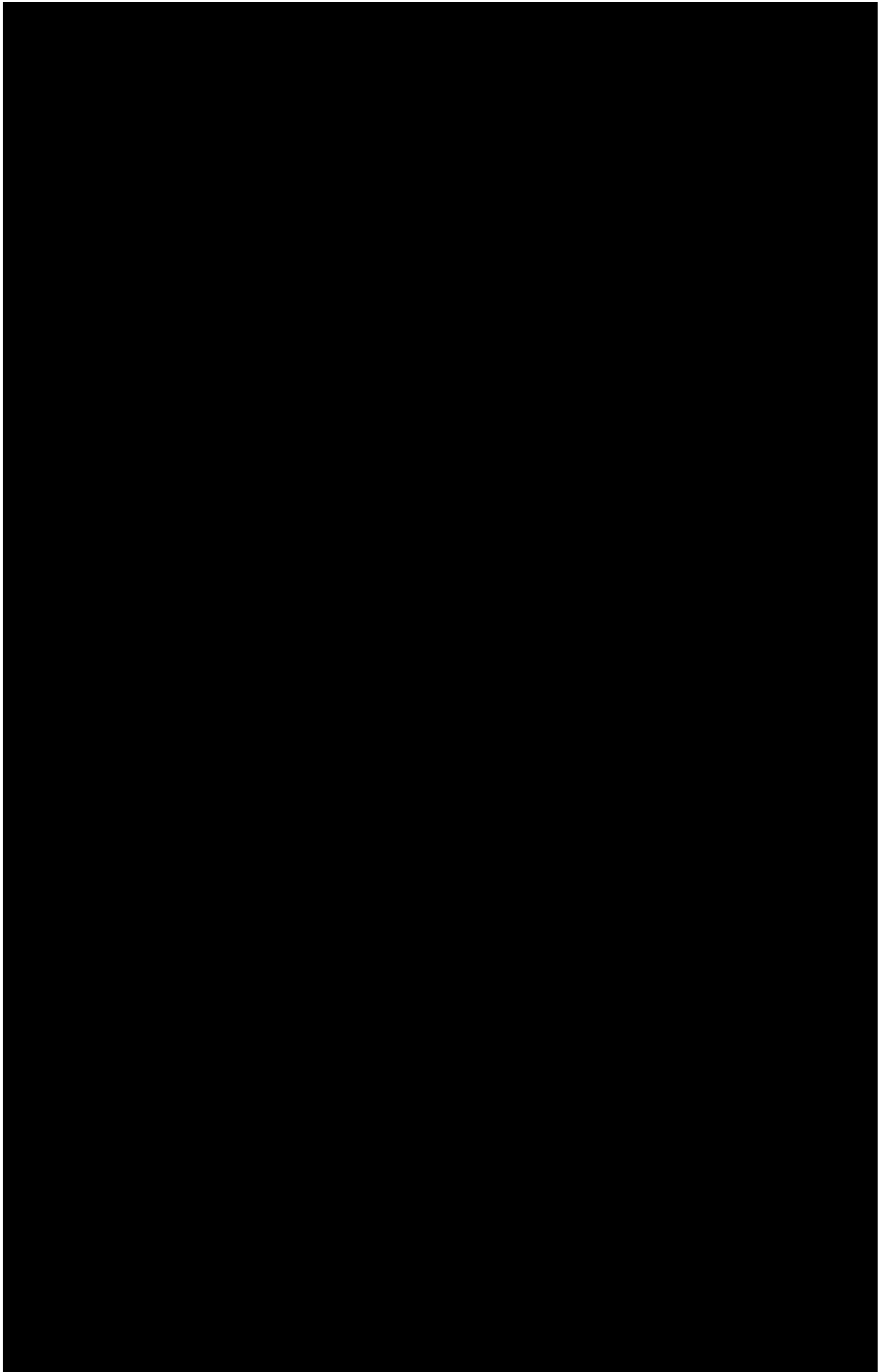


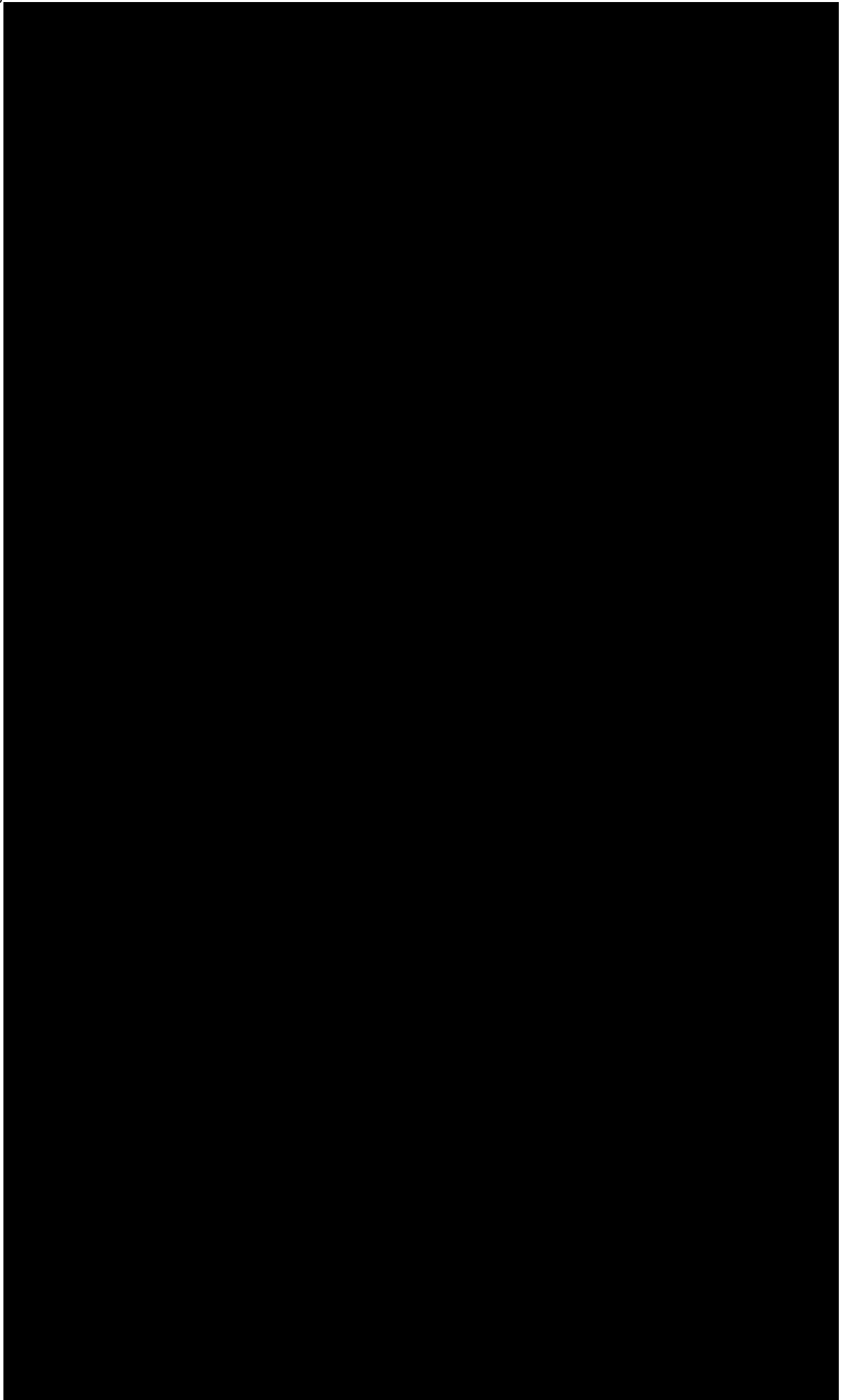




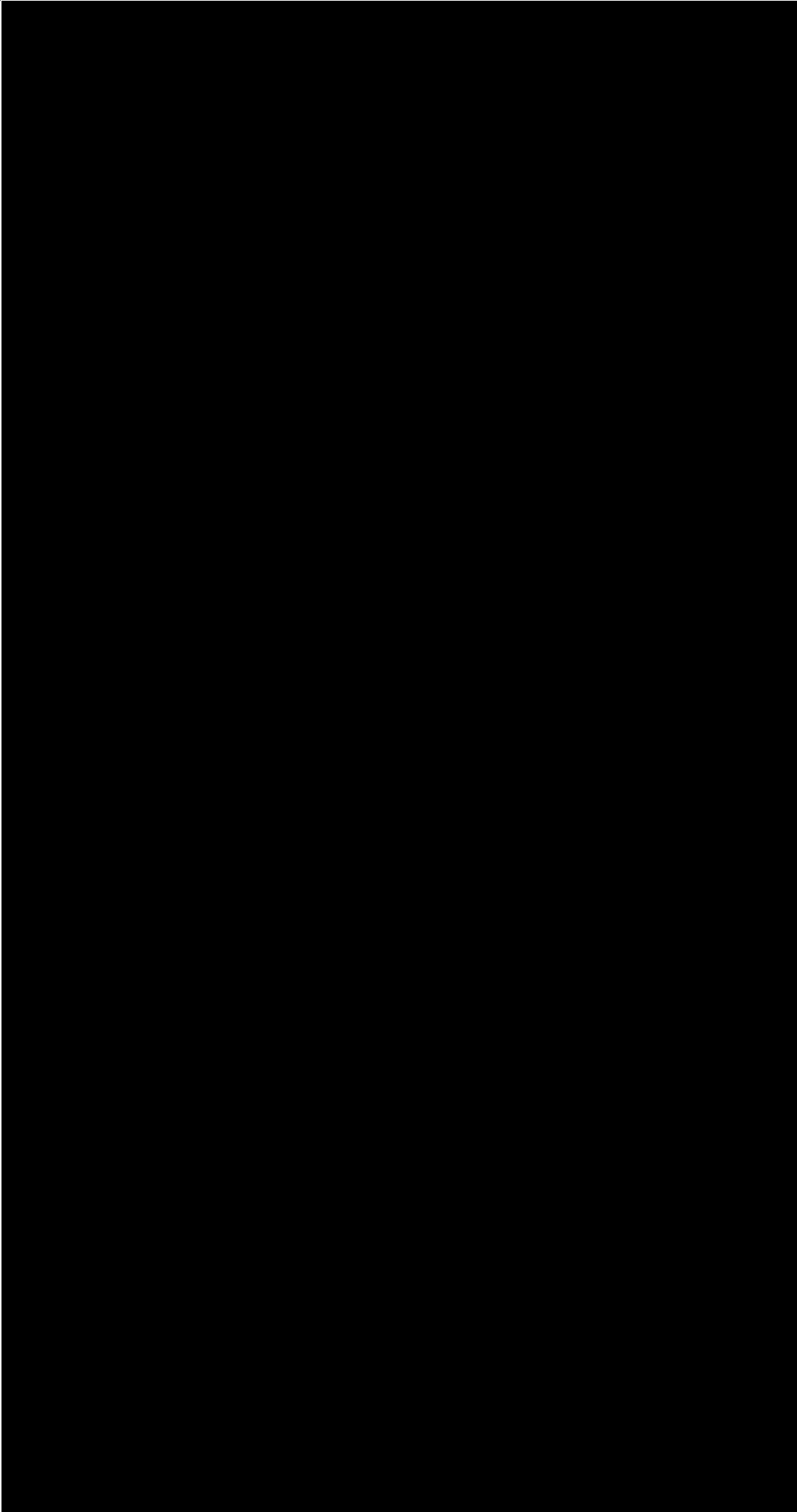


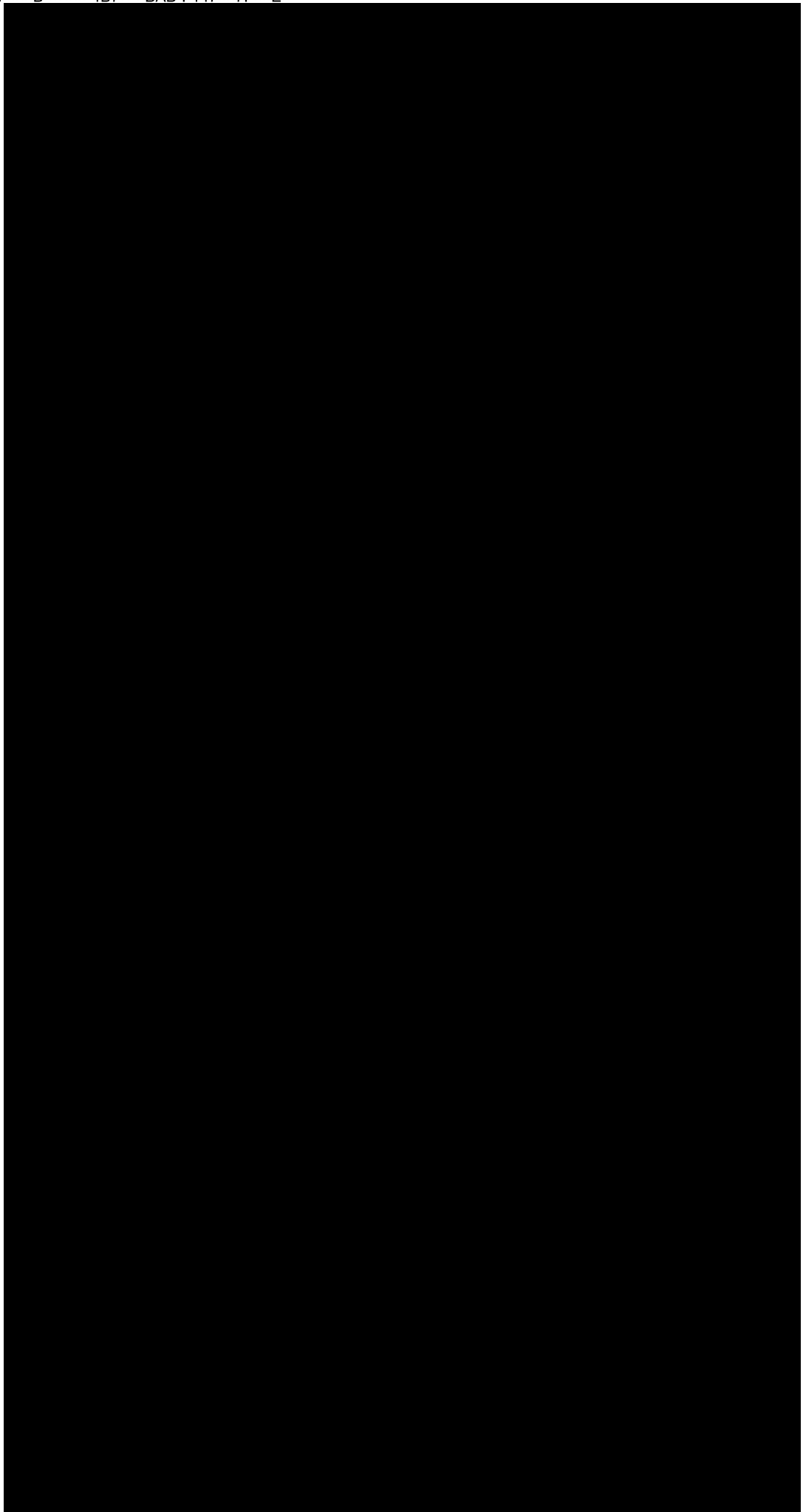


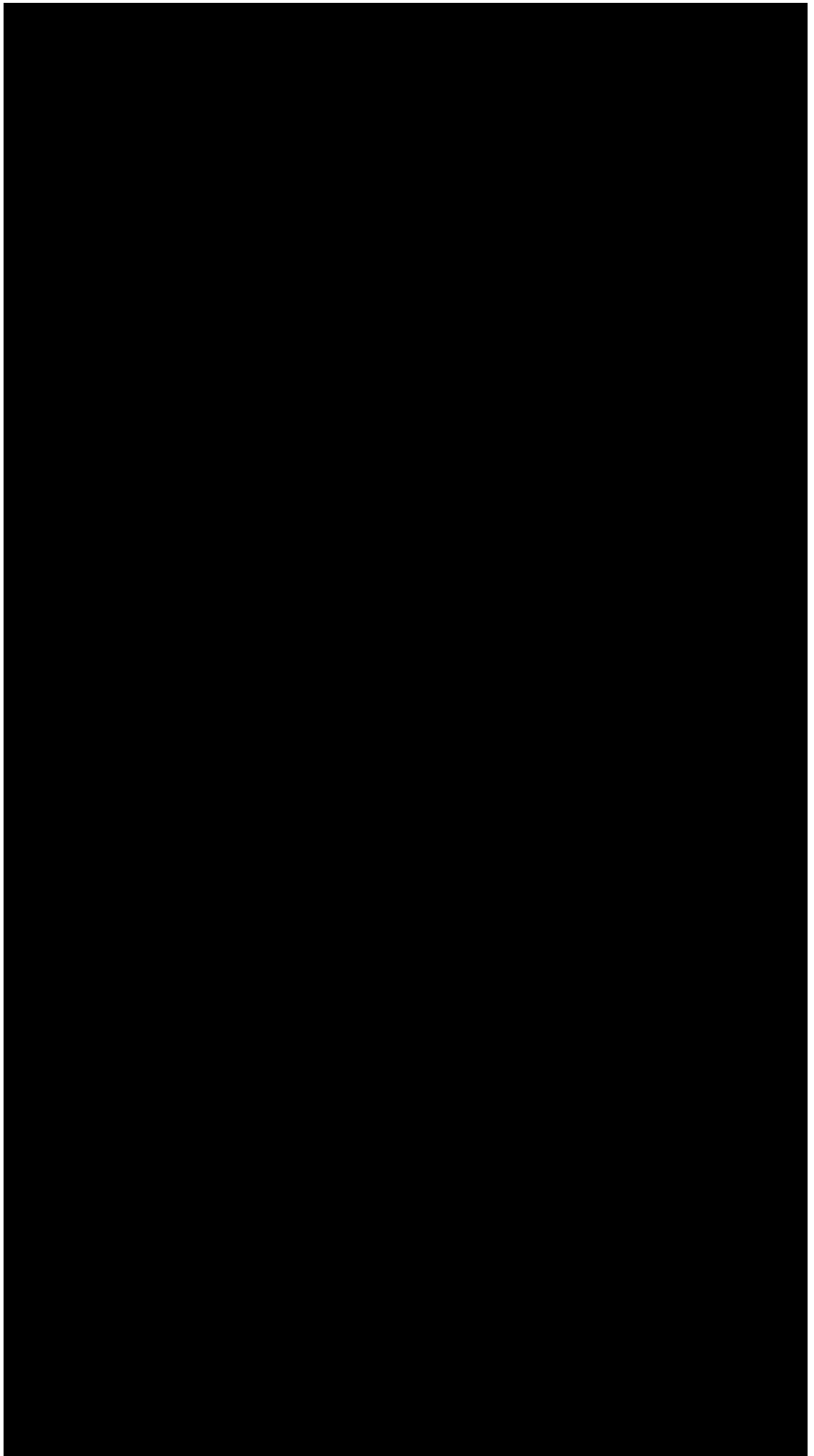


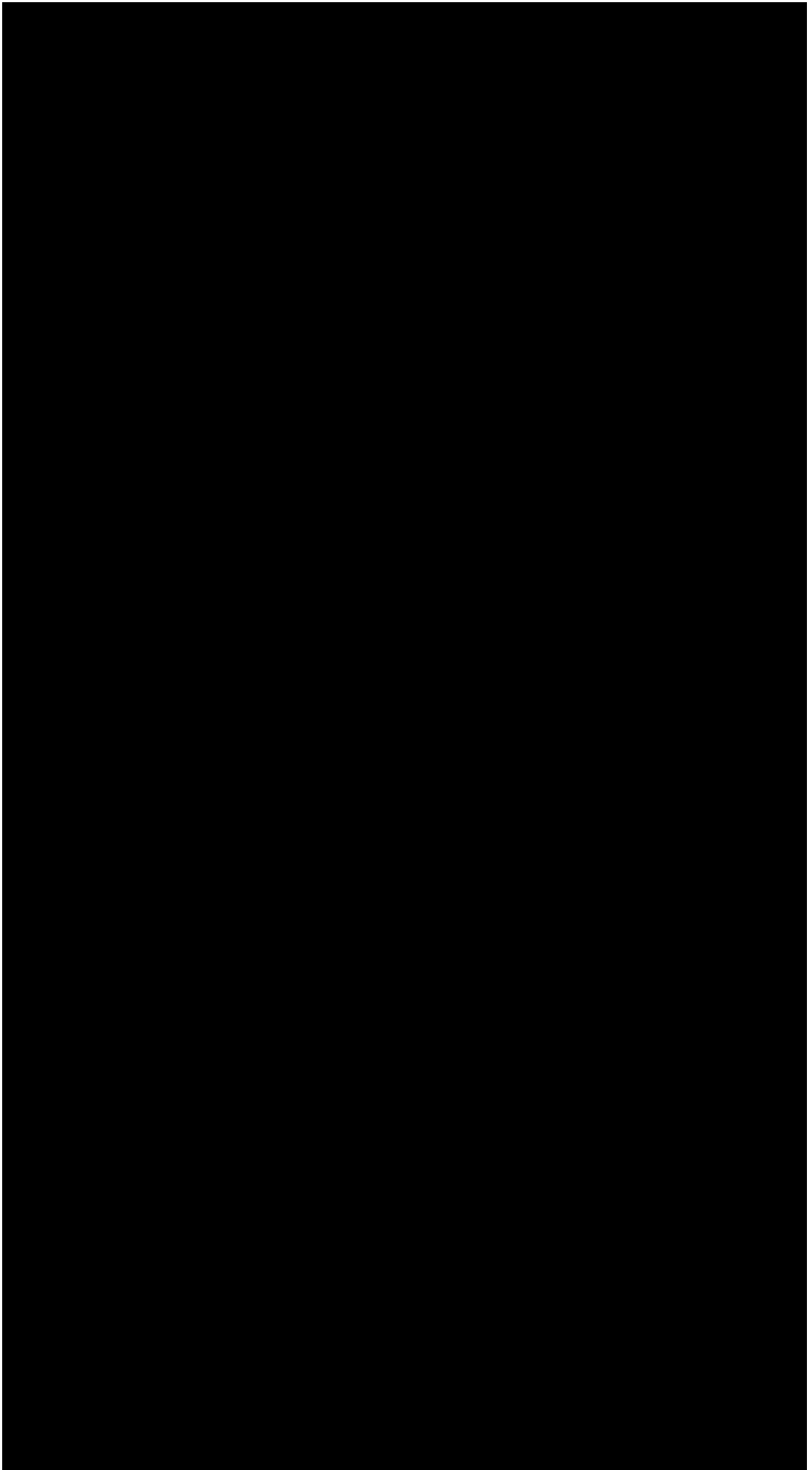


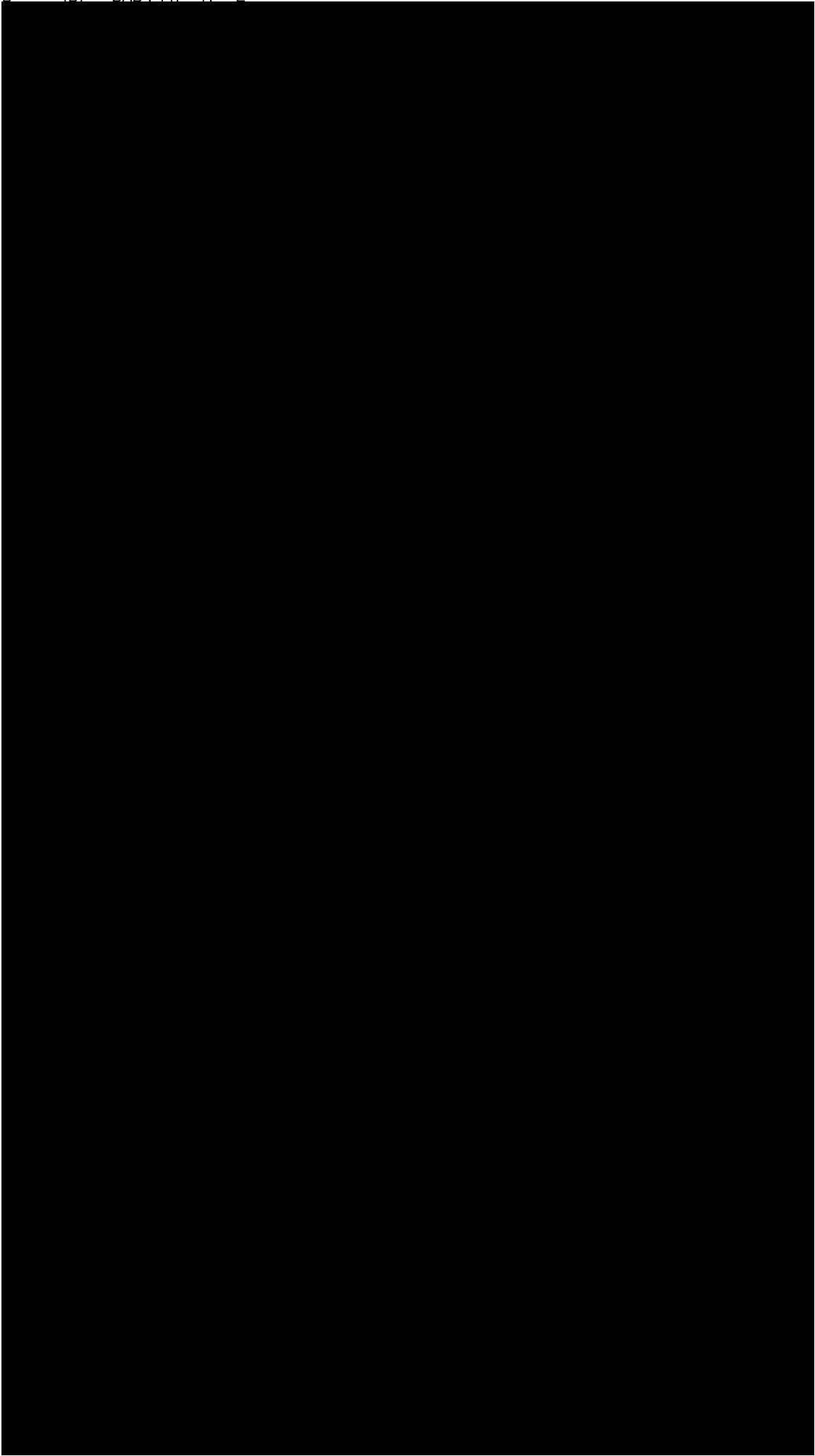
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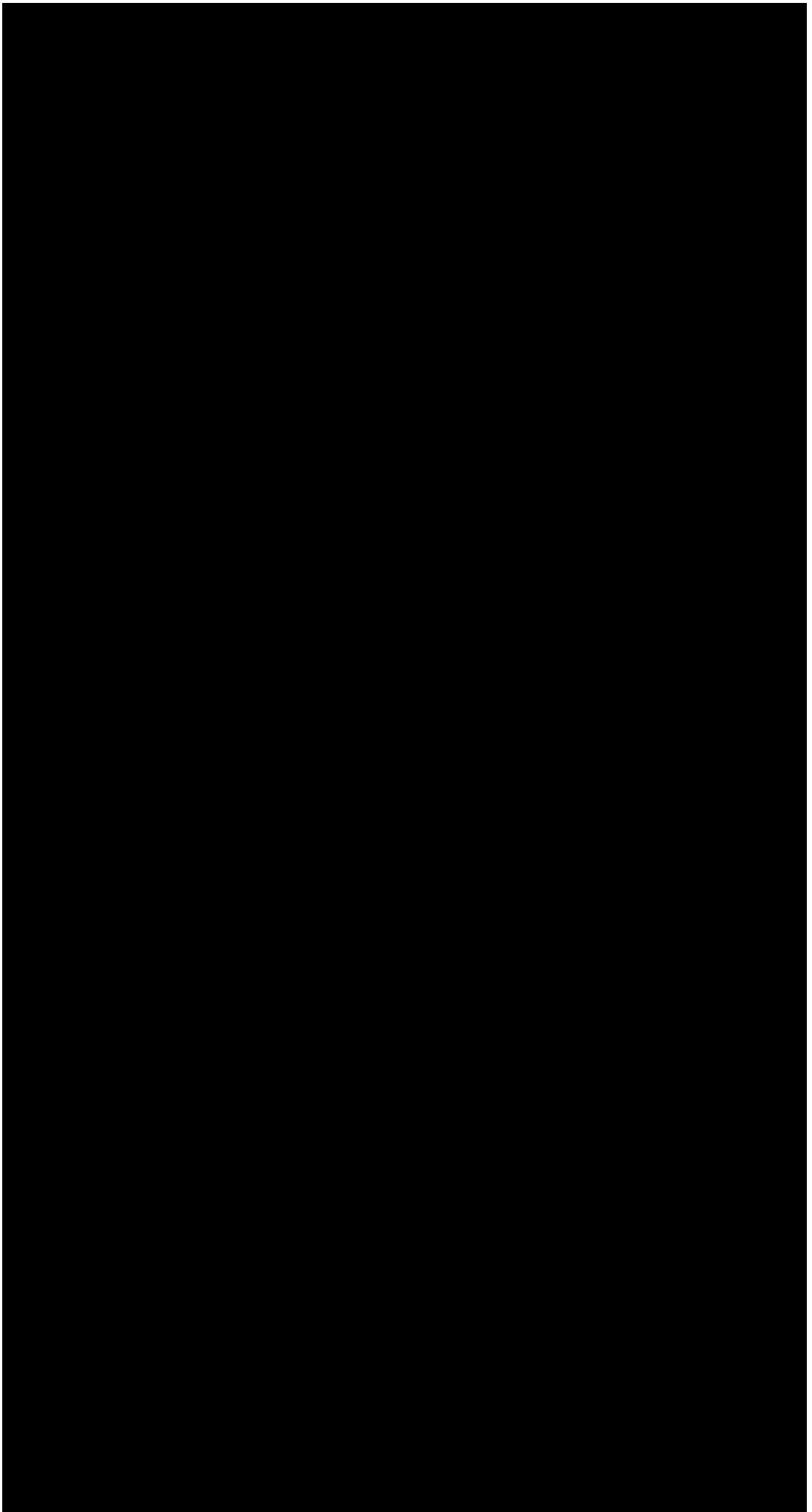


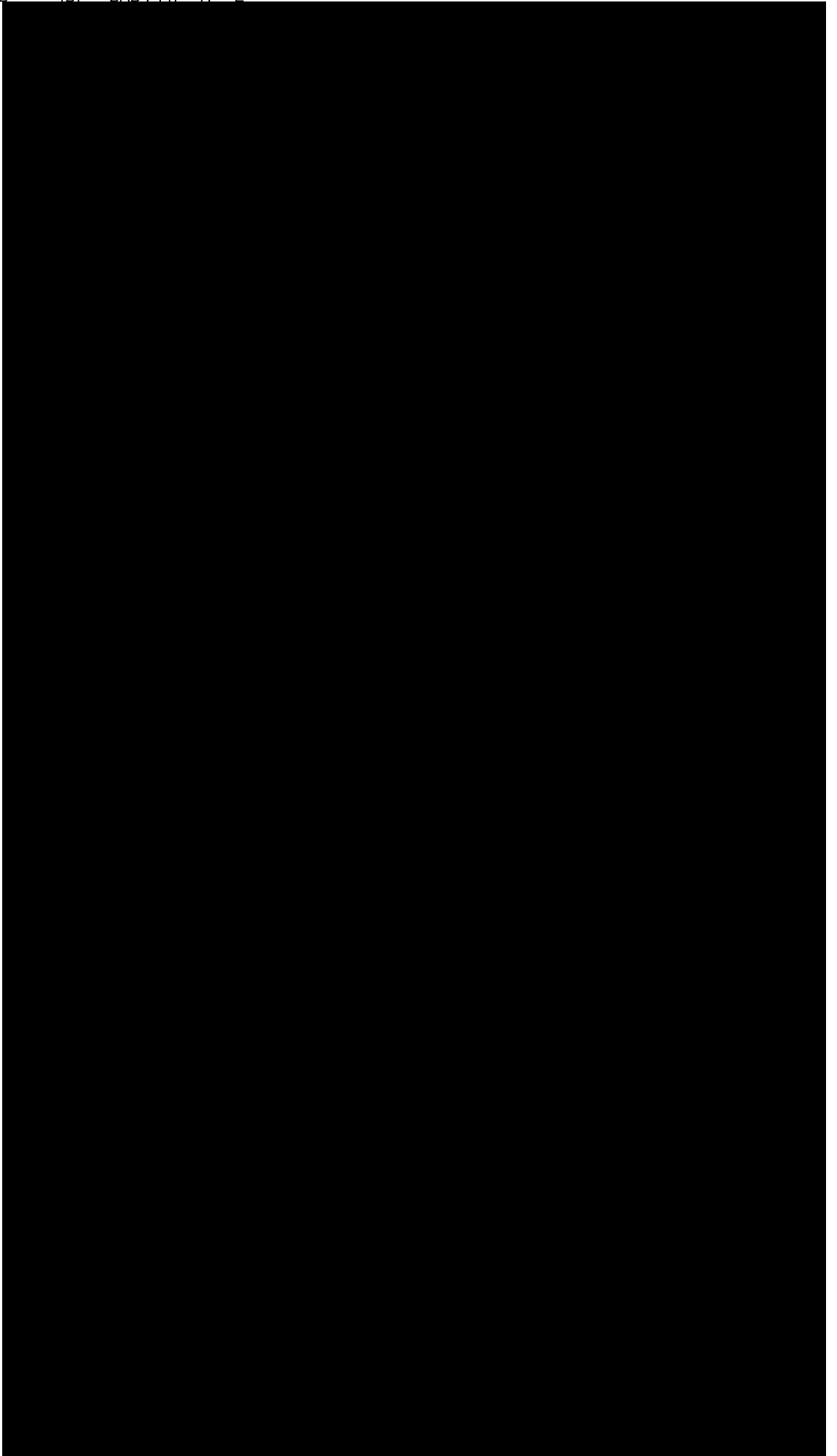


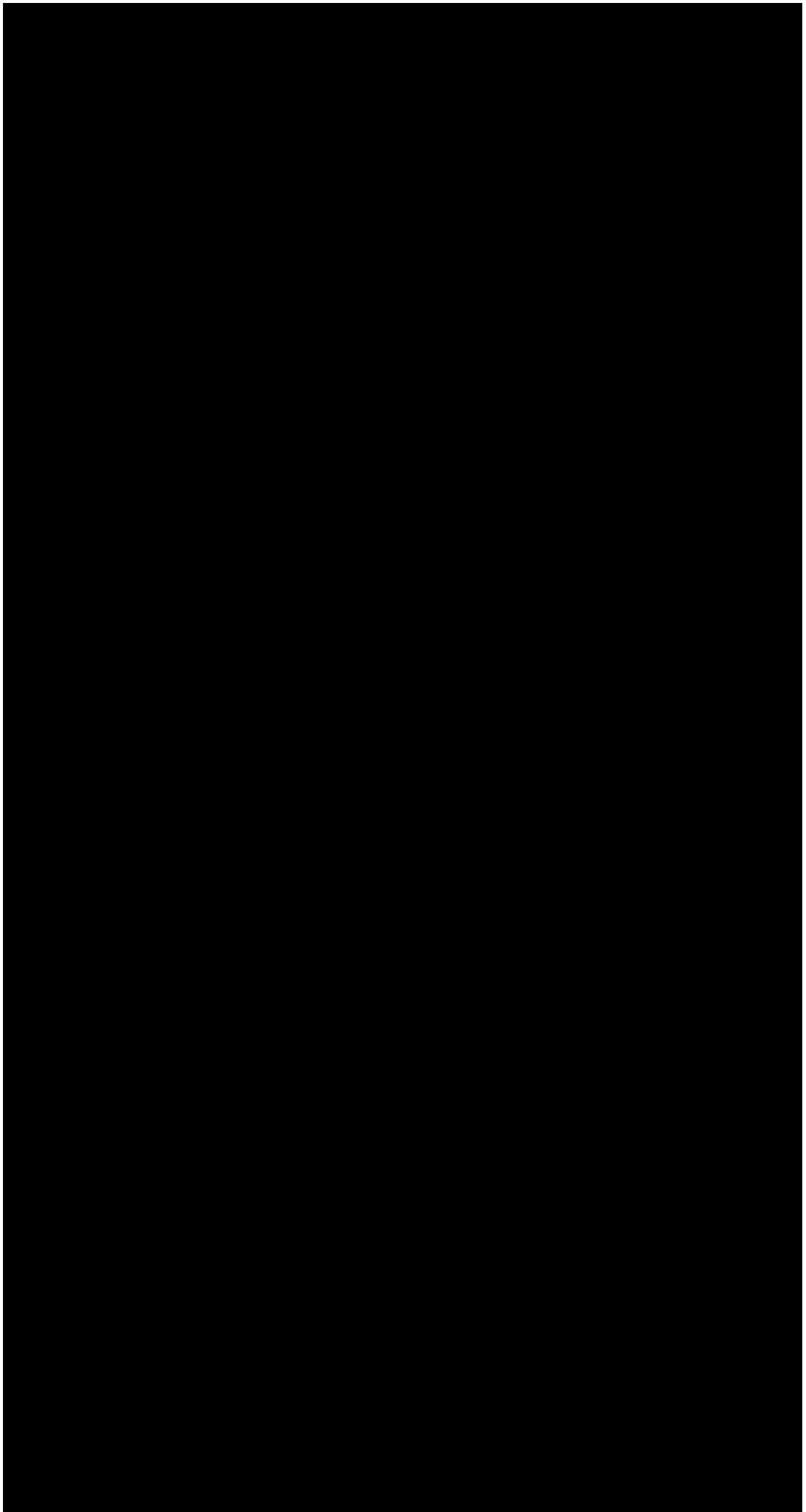


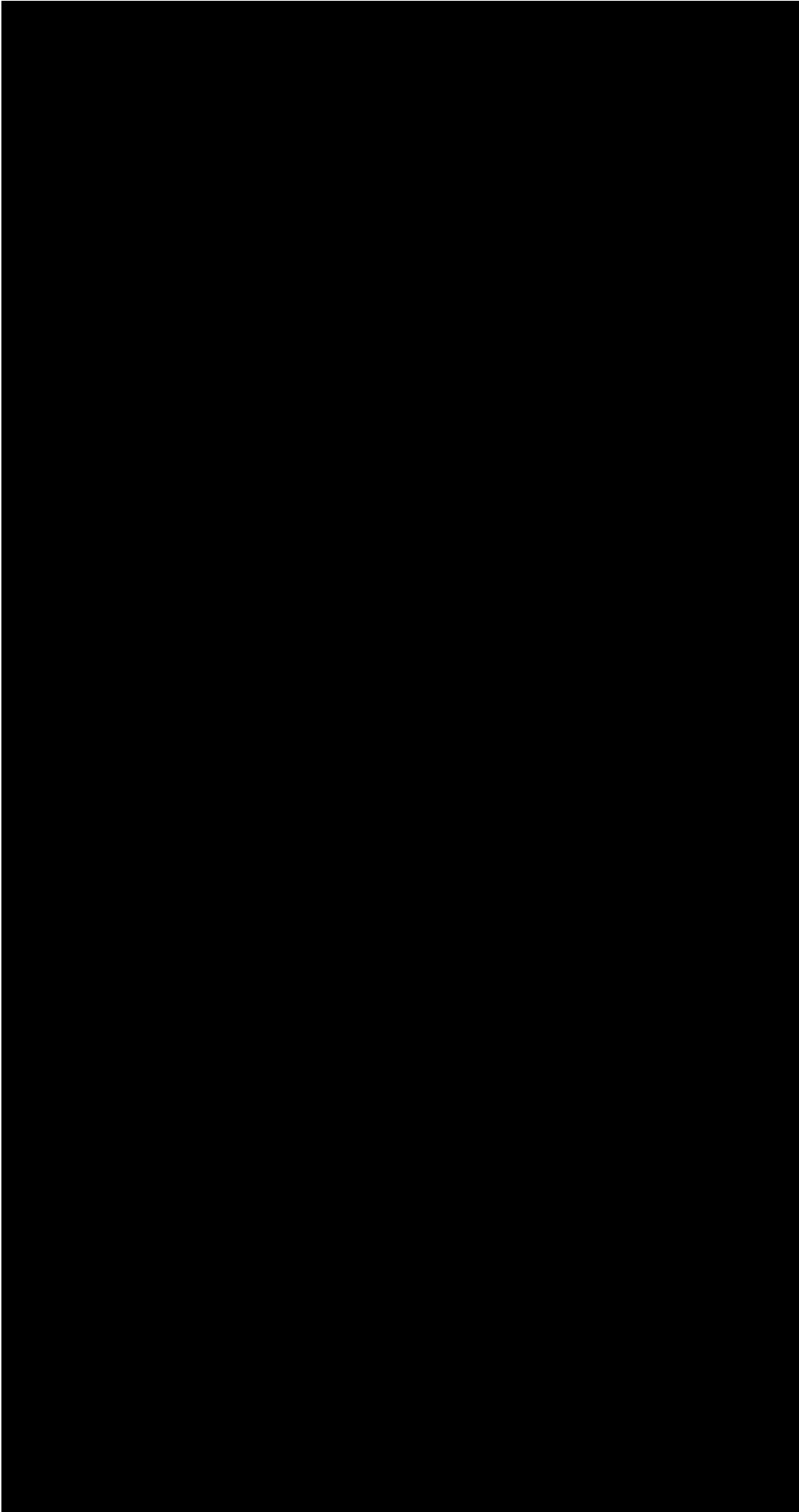


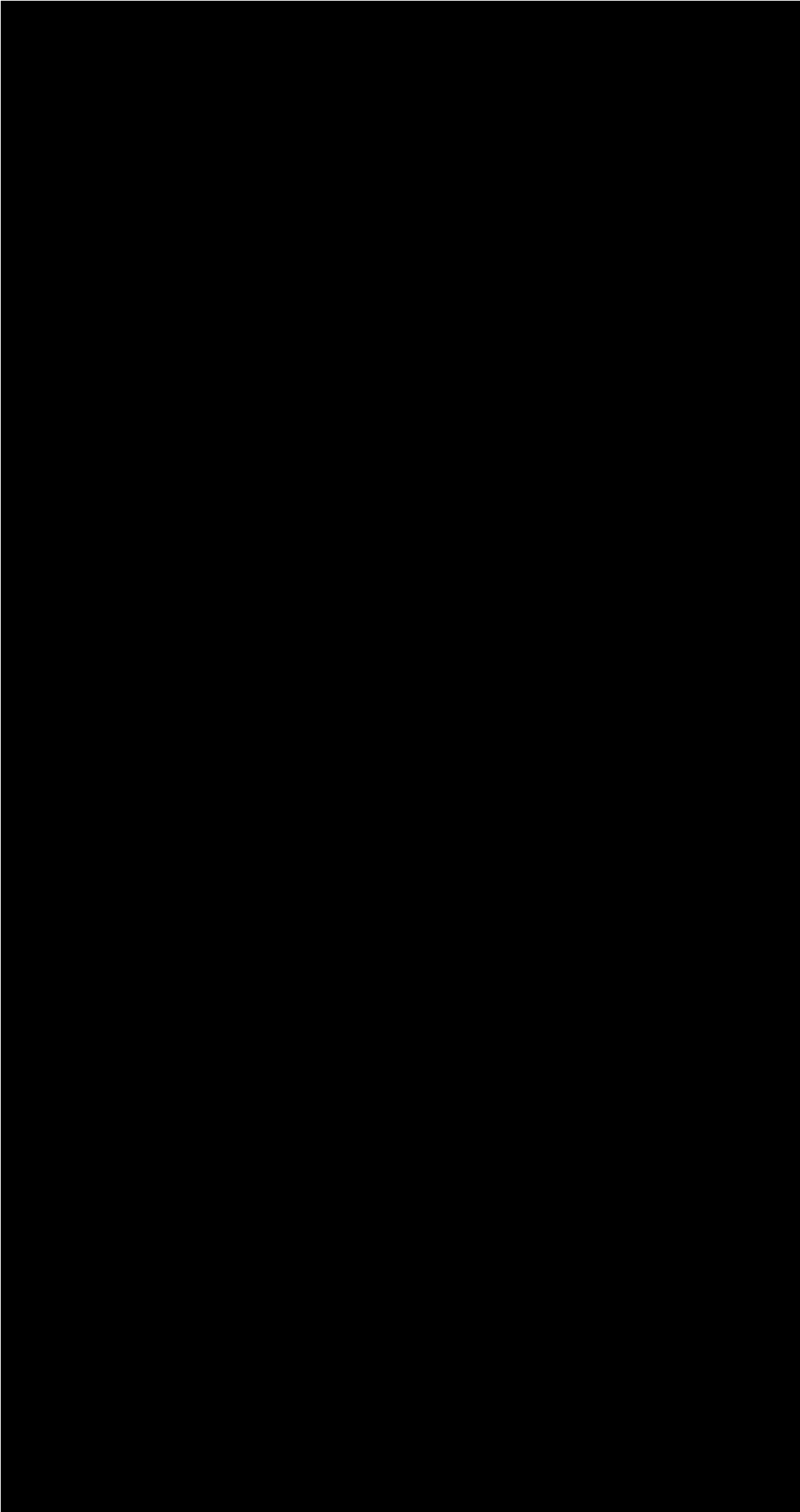


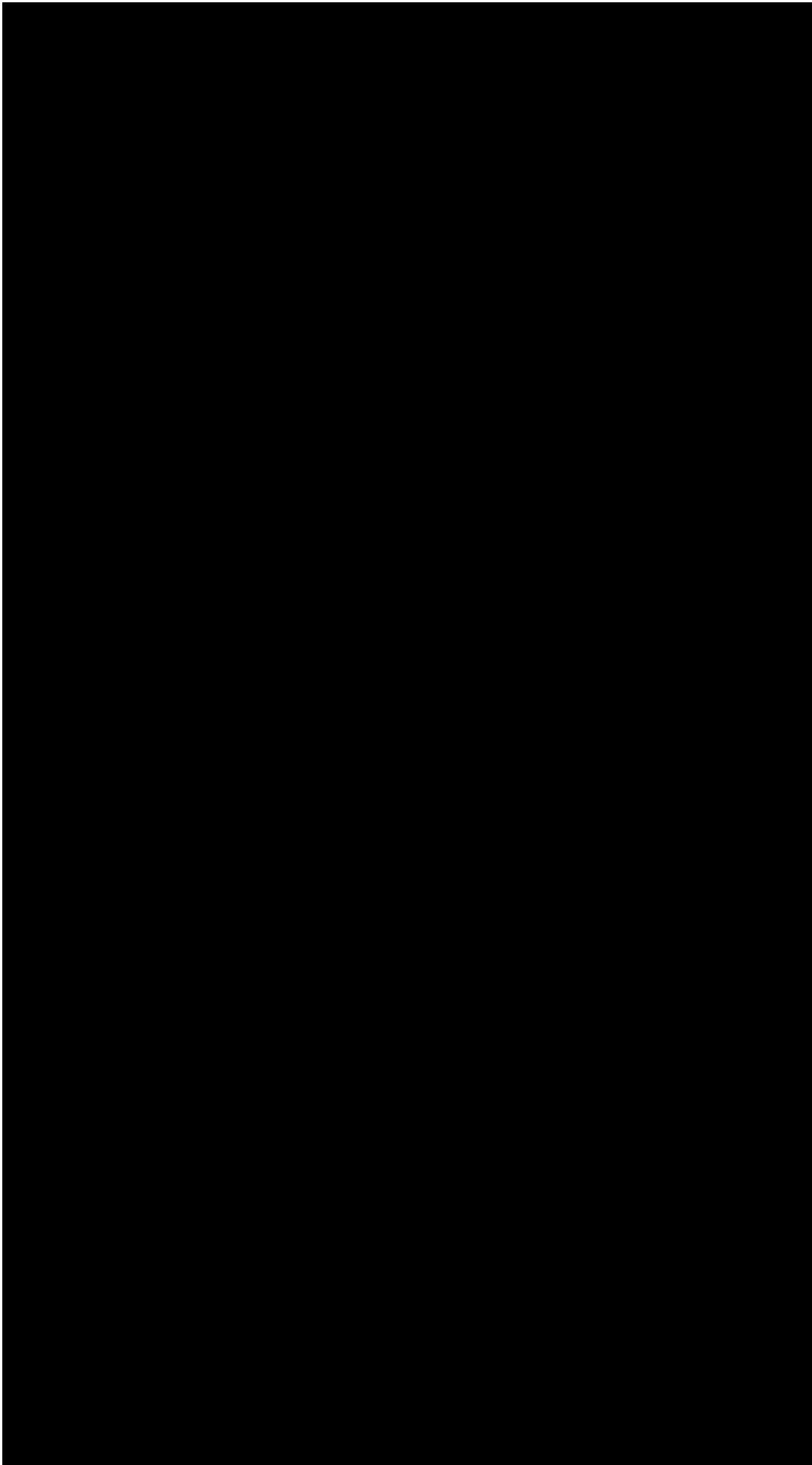


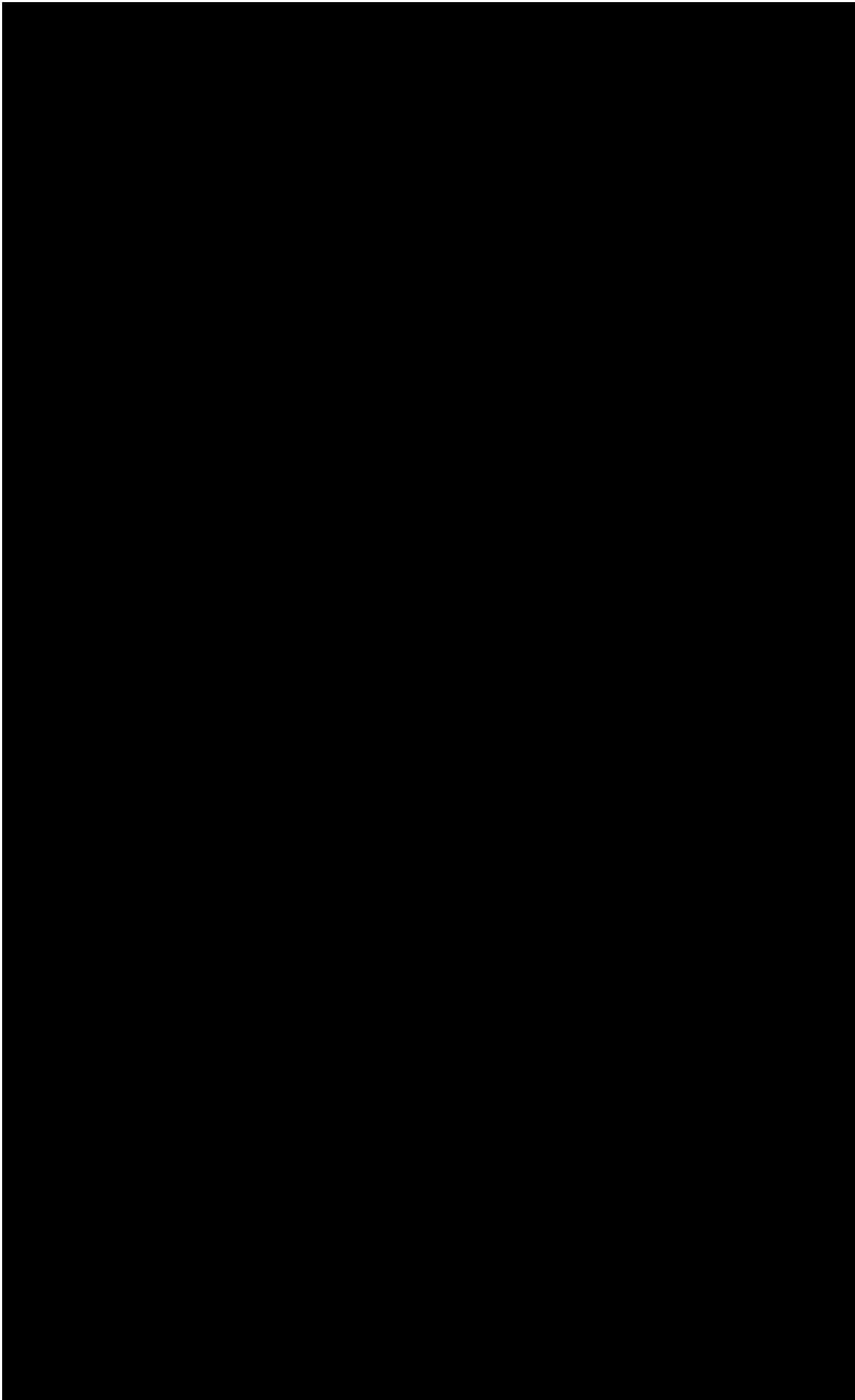


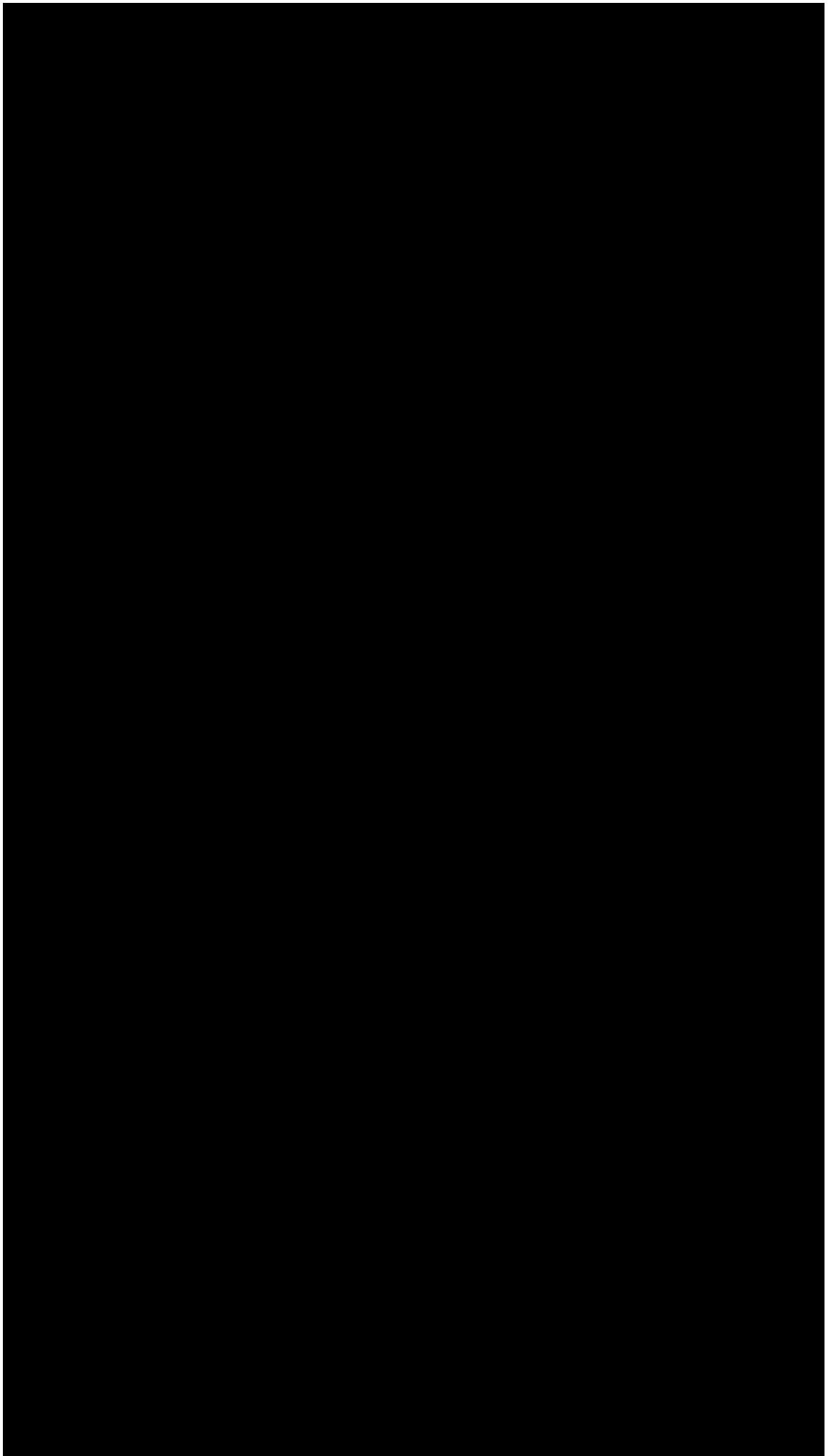


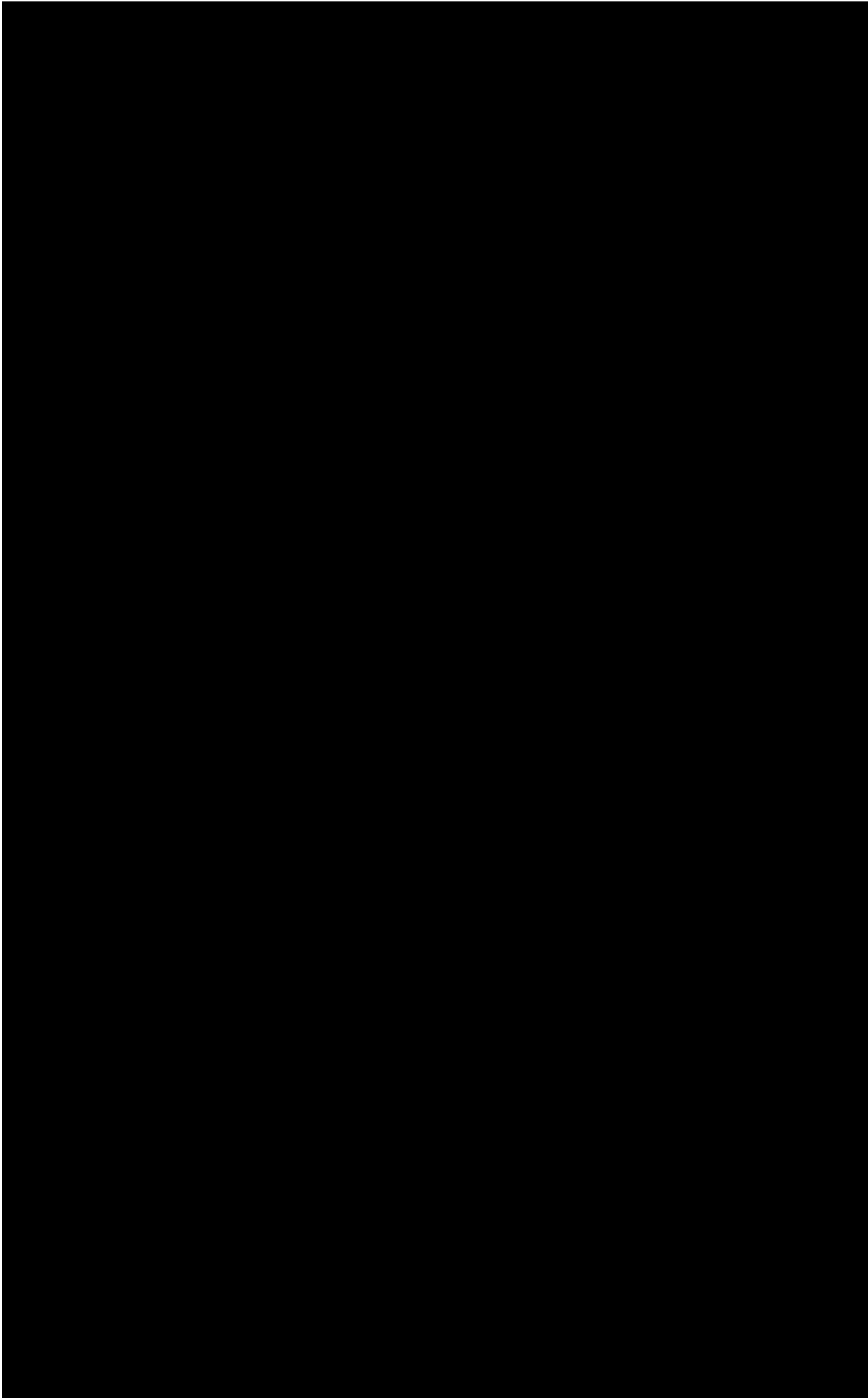


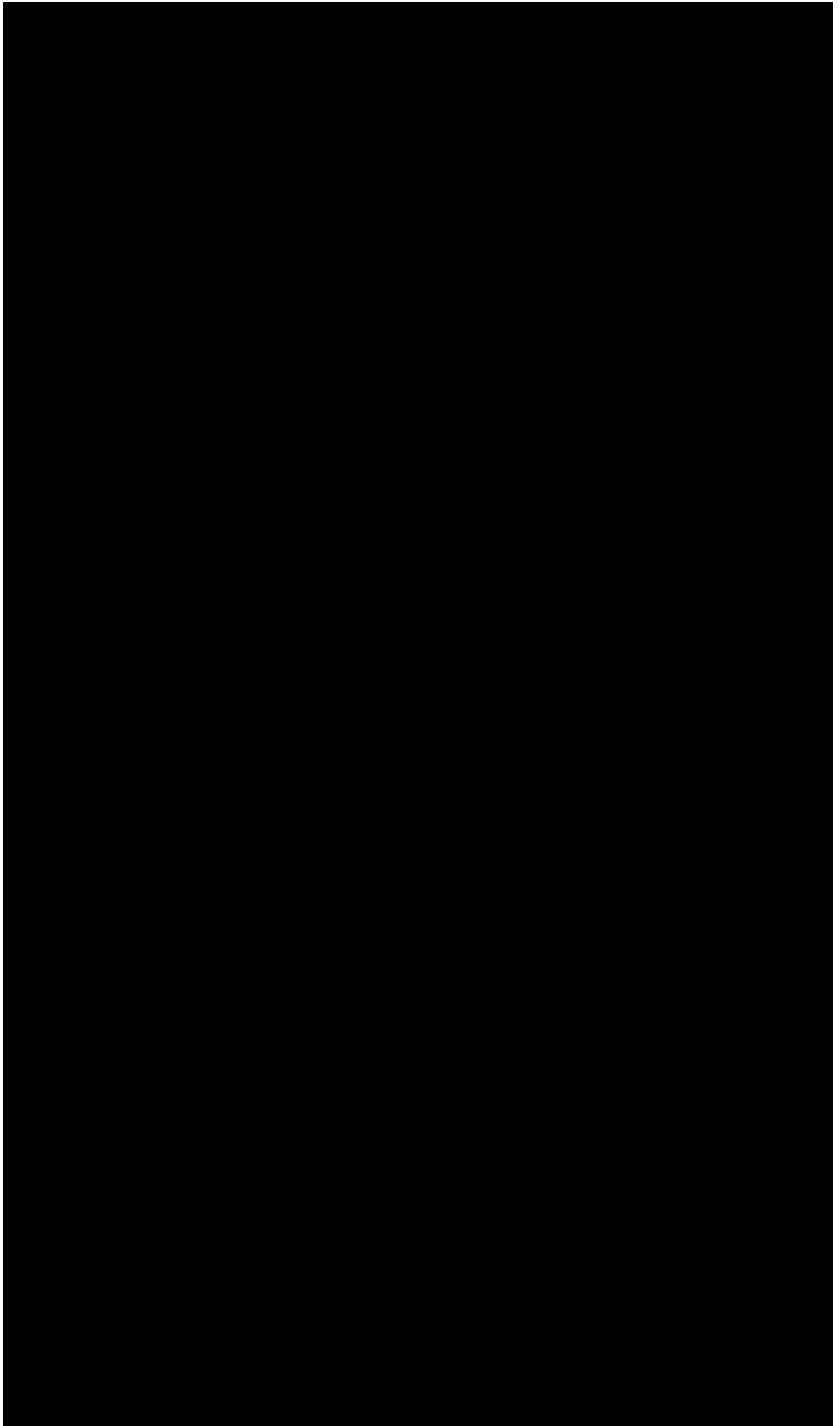


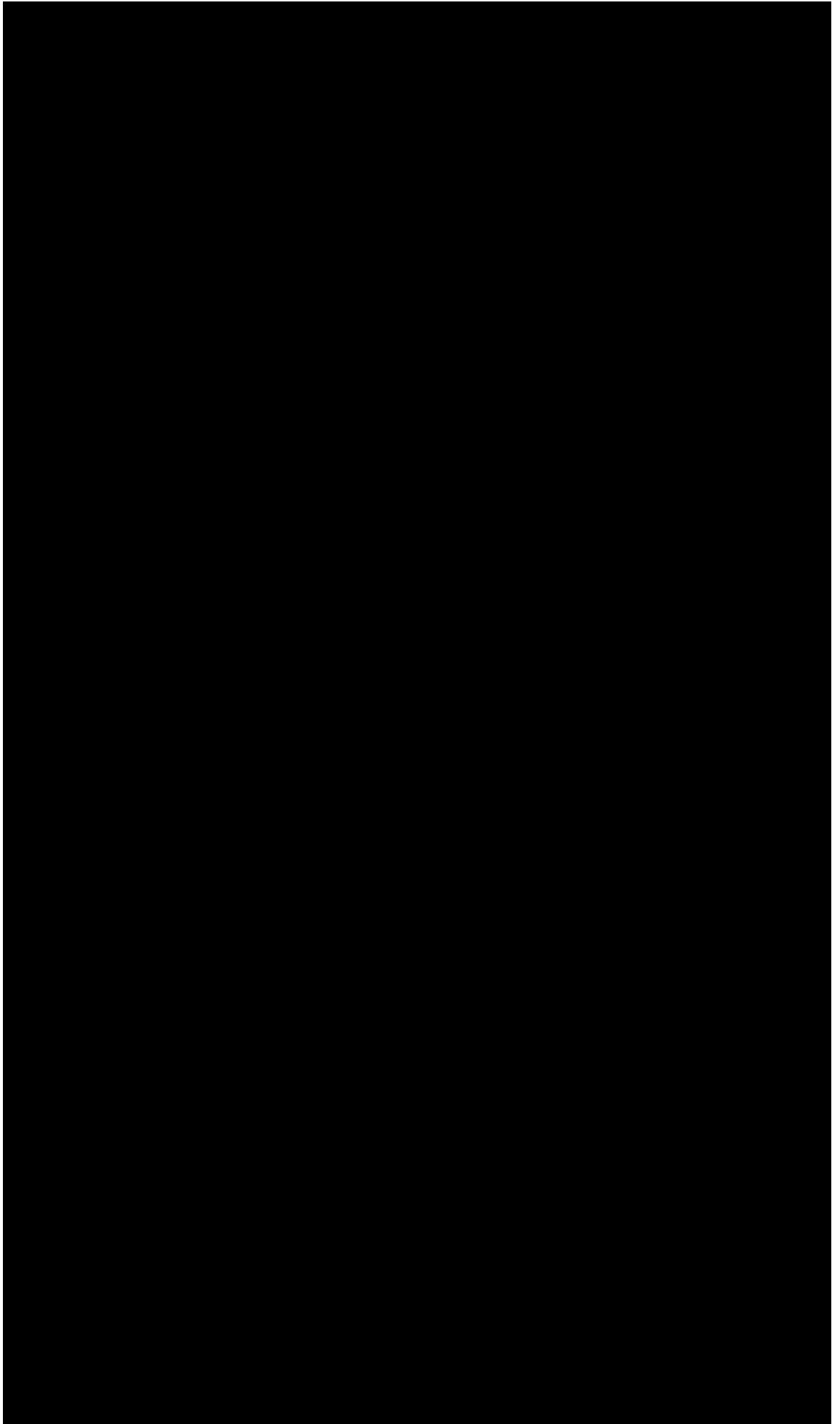


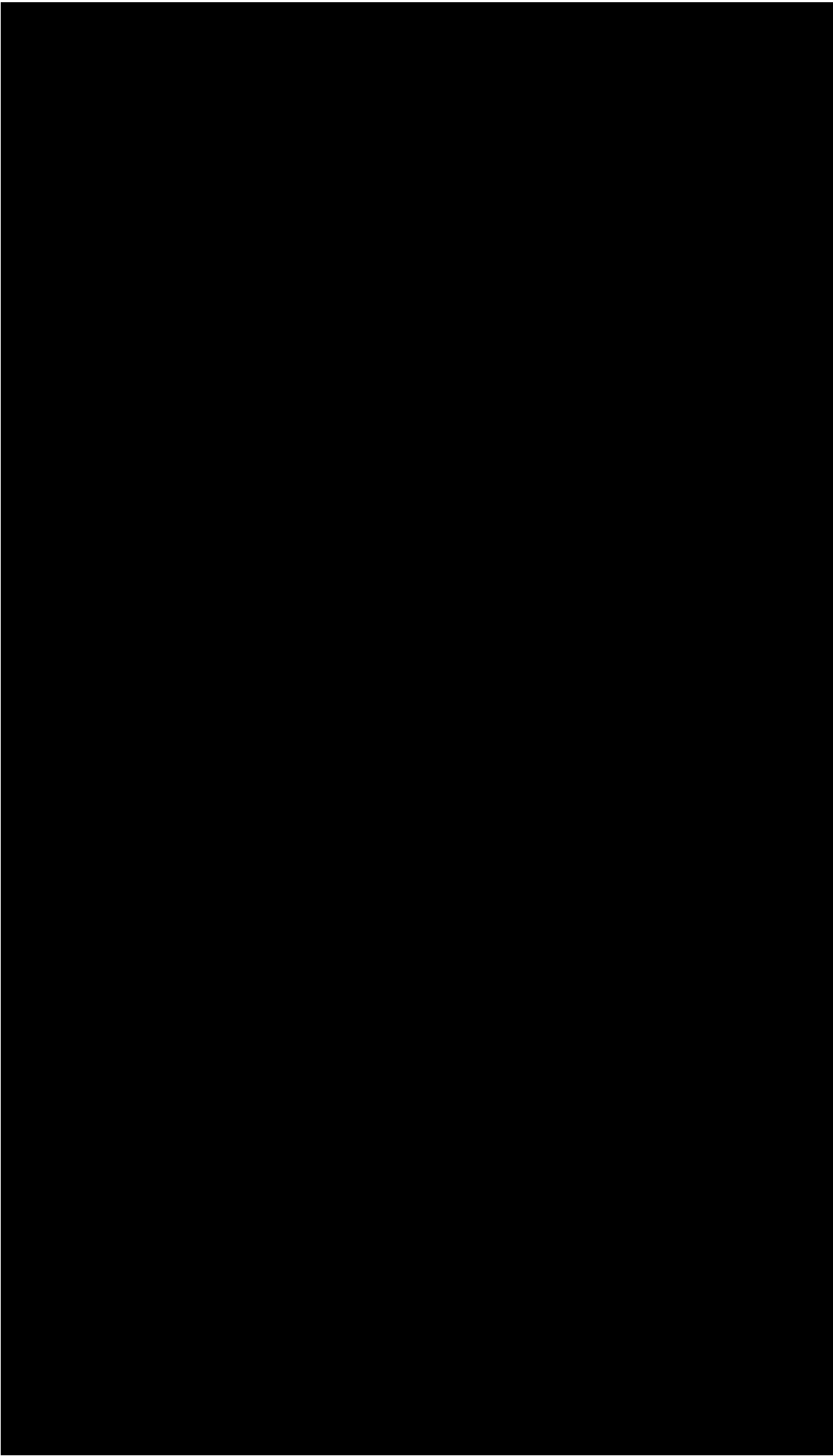


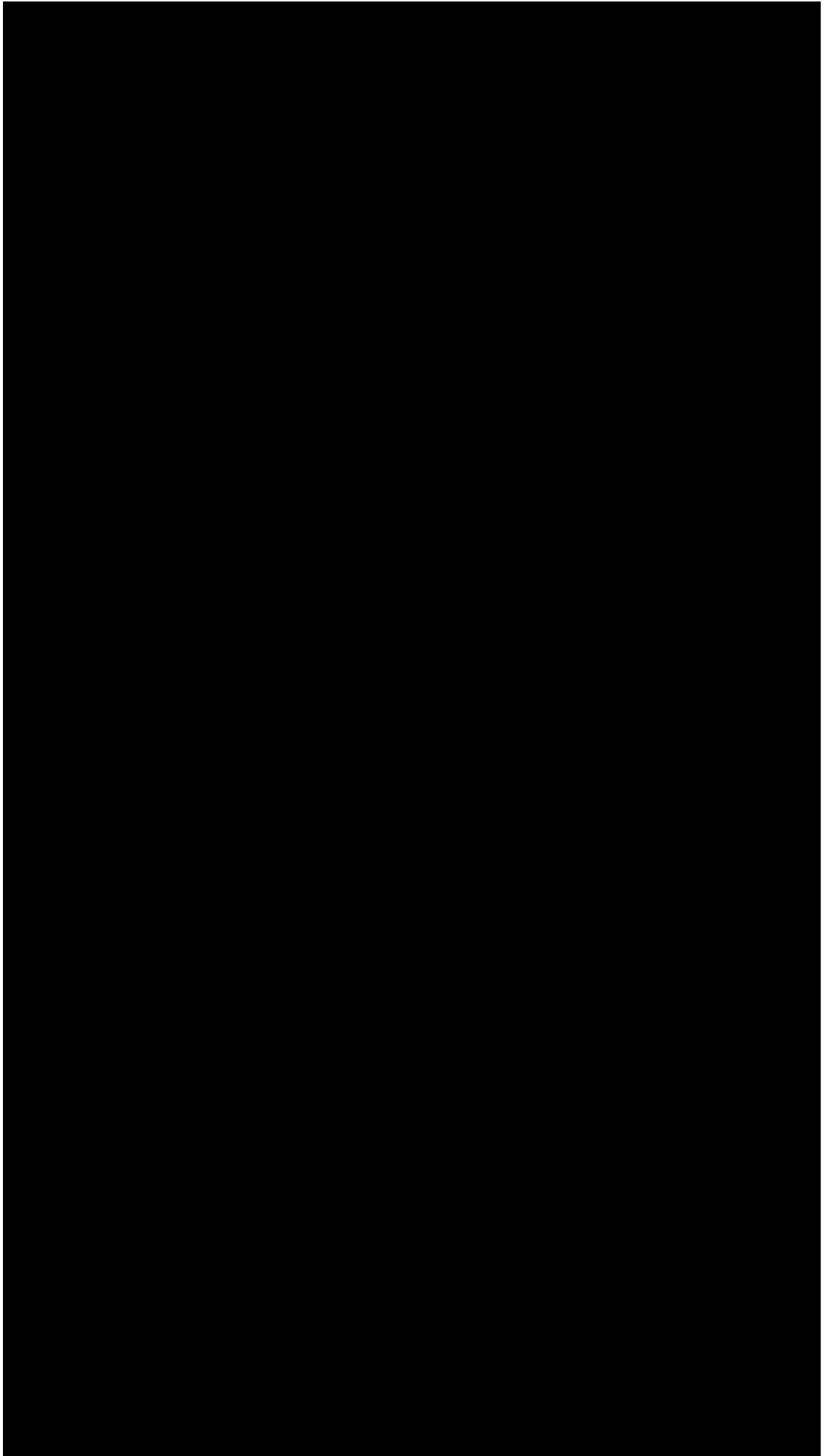


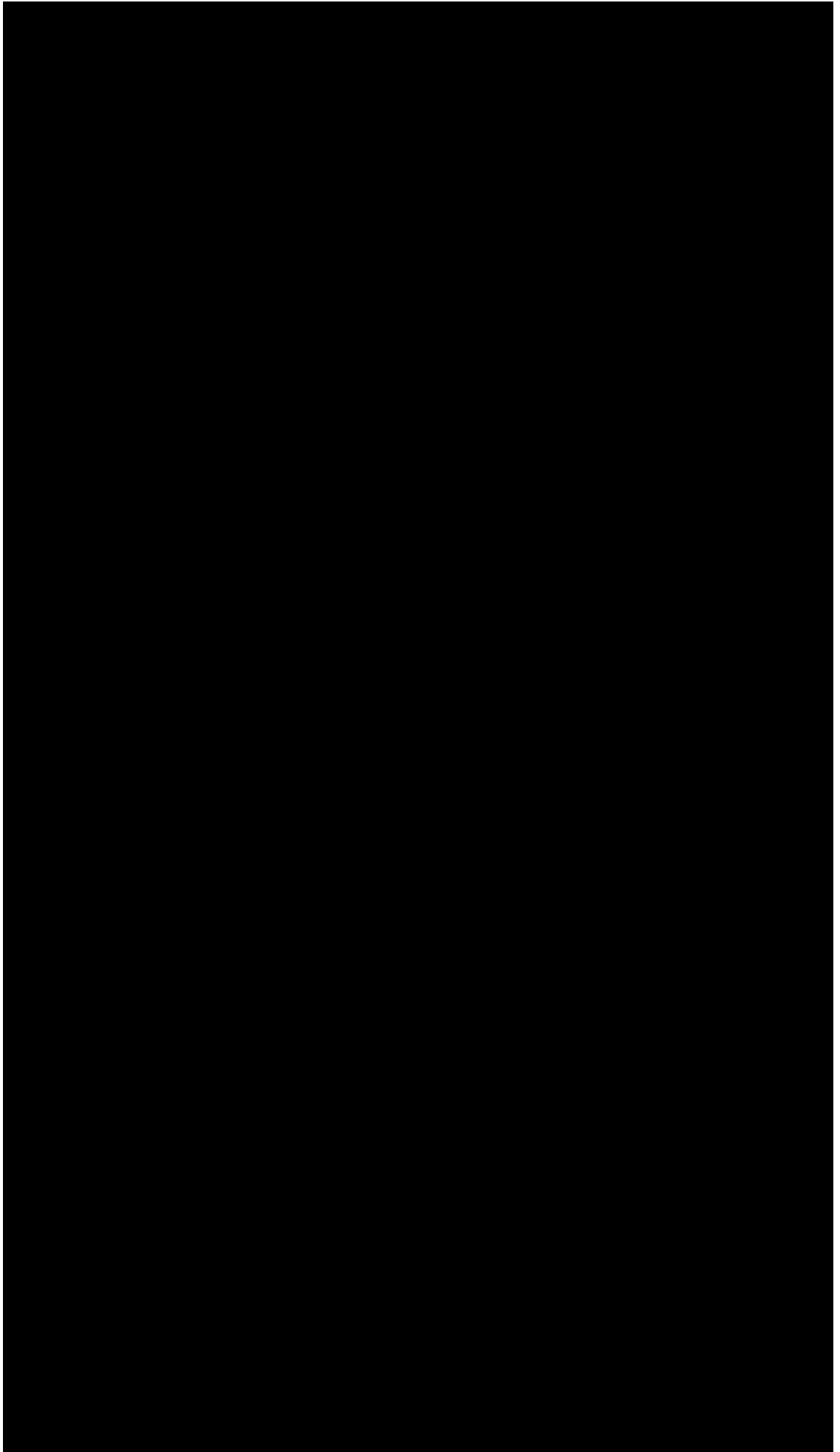


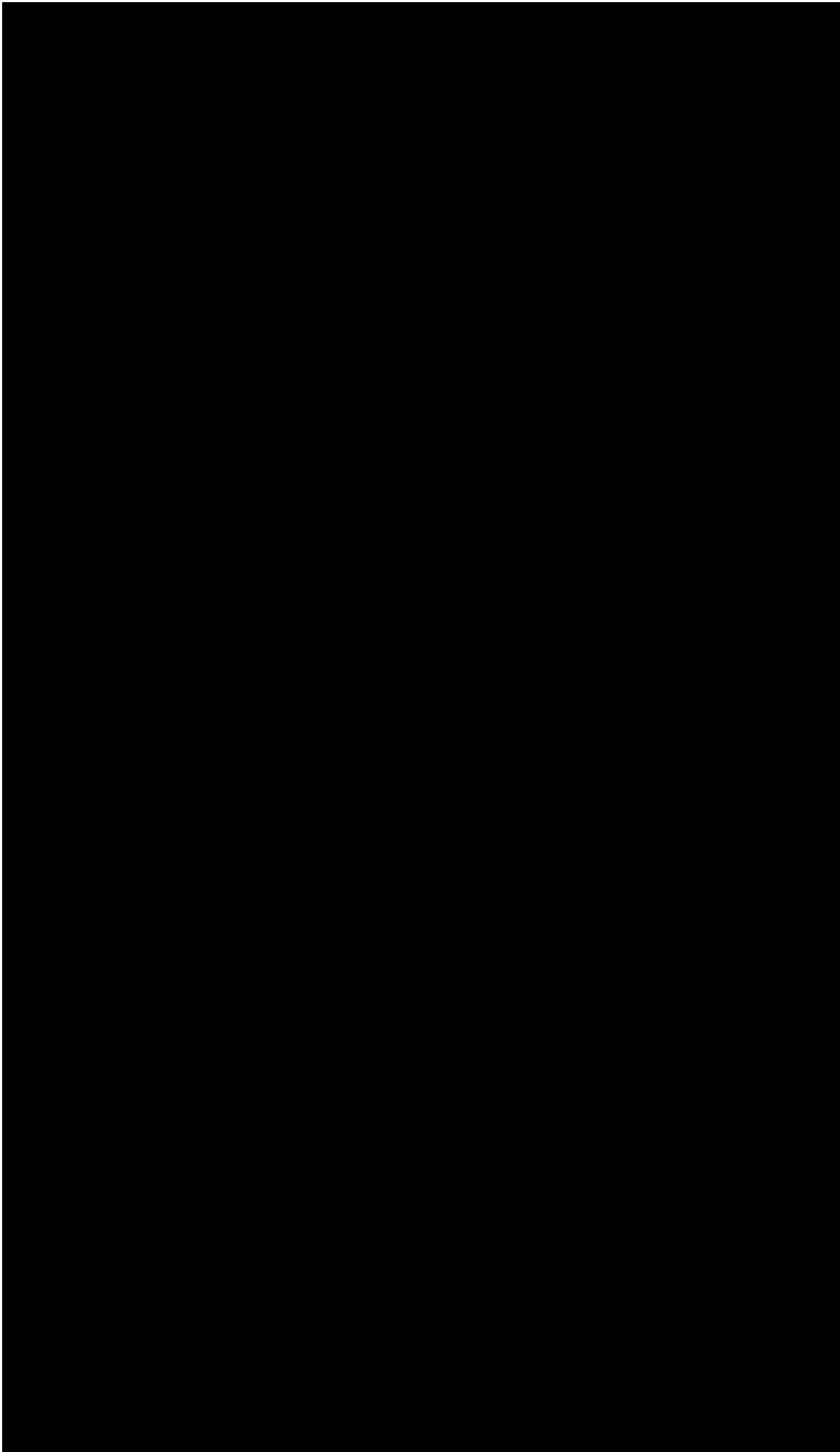












Signing page

Executed as a Deed.

DATED:_____

TfNSW

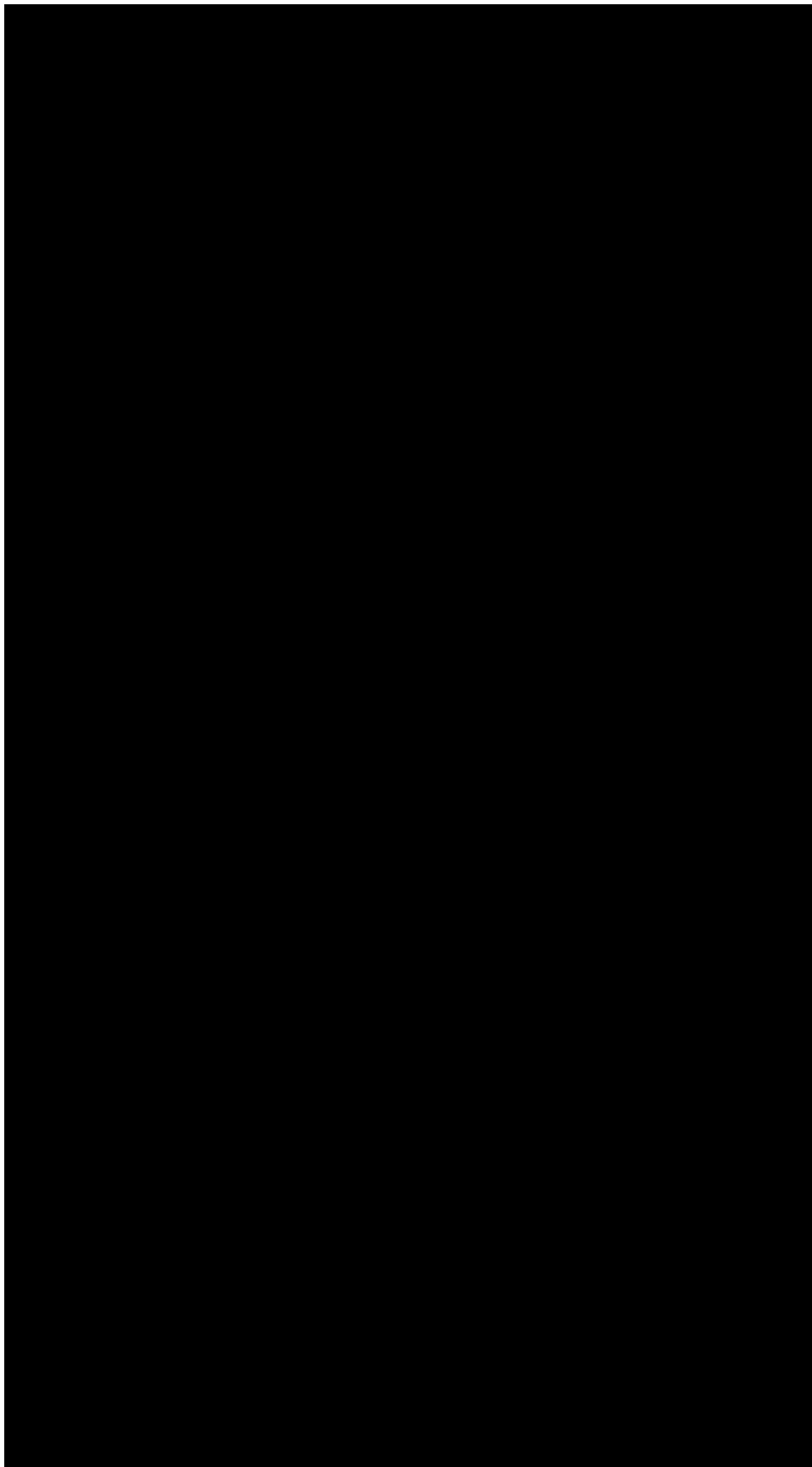
SIGNED, SEALED AND DELIVERED for
and on behalf of **TRANSPORT FOR NSW**
(ABN 18 804 239 602):

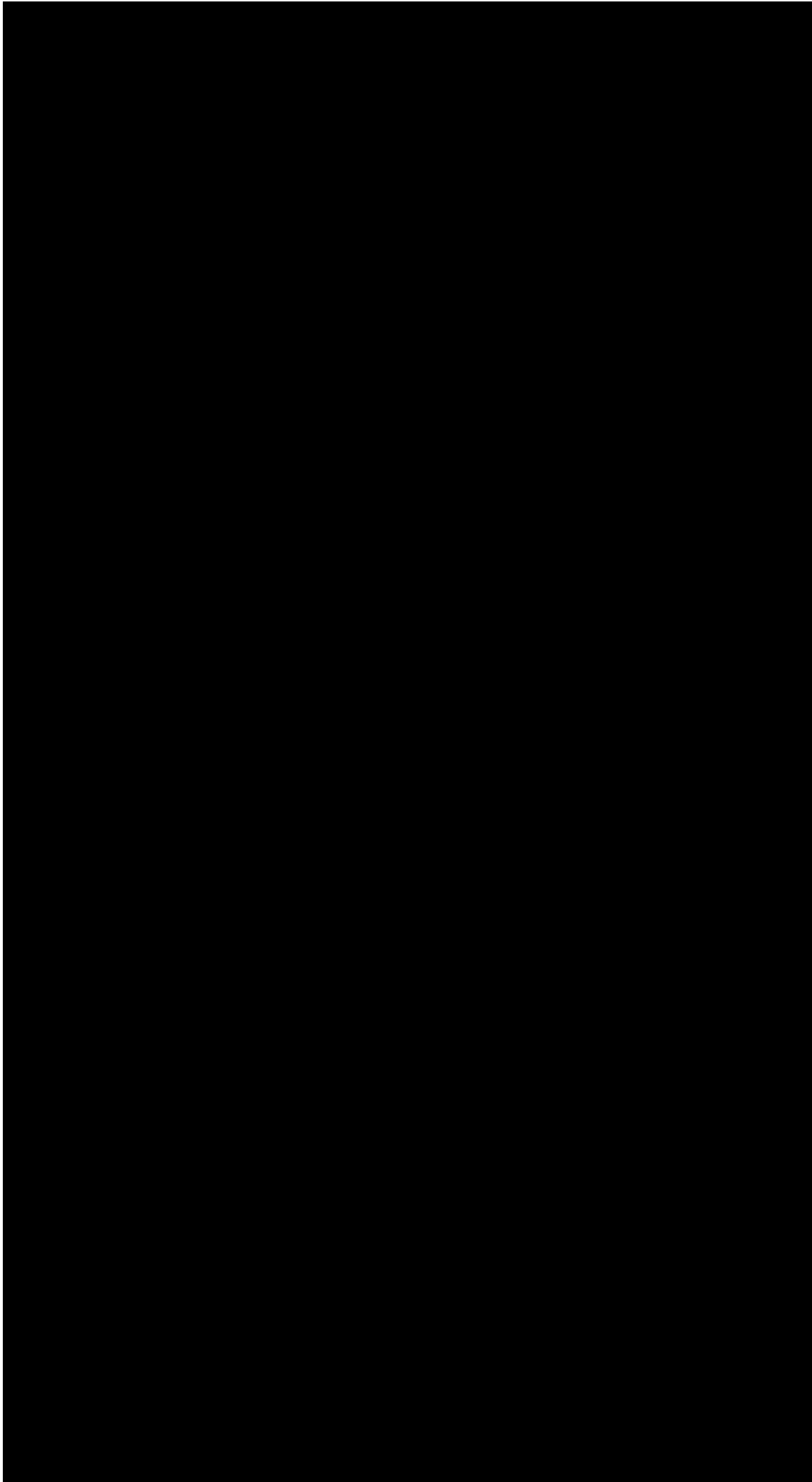
Signature of Authorised Delegate

Signature of Witness

Print Name
(block letters)

Print Name
(block letters)





Schedule 35 Form of Proof Engineer’s Certificate

(Clauses 1.1, 5.7, 5.11. 9.13)

PLR Stage 2: Enabling Works (Project)

Proof Engineer Certification

To: [insert Contractor name] (ABN []) (**Contractor**) of [insert Contractor address]

Copy: Transport for NSW (ABN 18 804 239 602), a NSW Government agency, a corporation constituted by section 3C of the *Transport Administration Act 1988* (NSW), of 7 Harvest Street, Macquarie Park NSW 2113

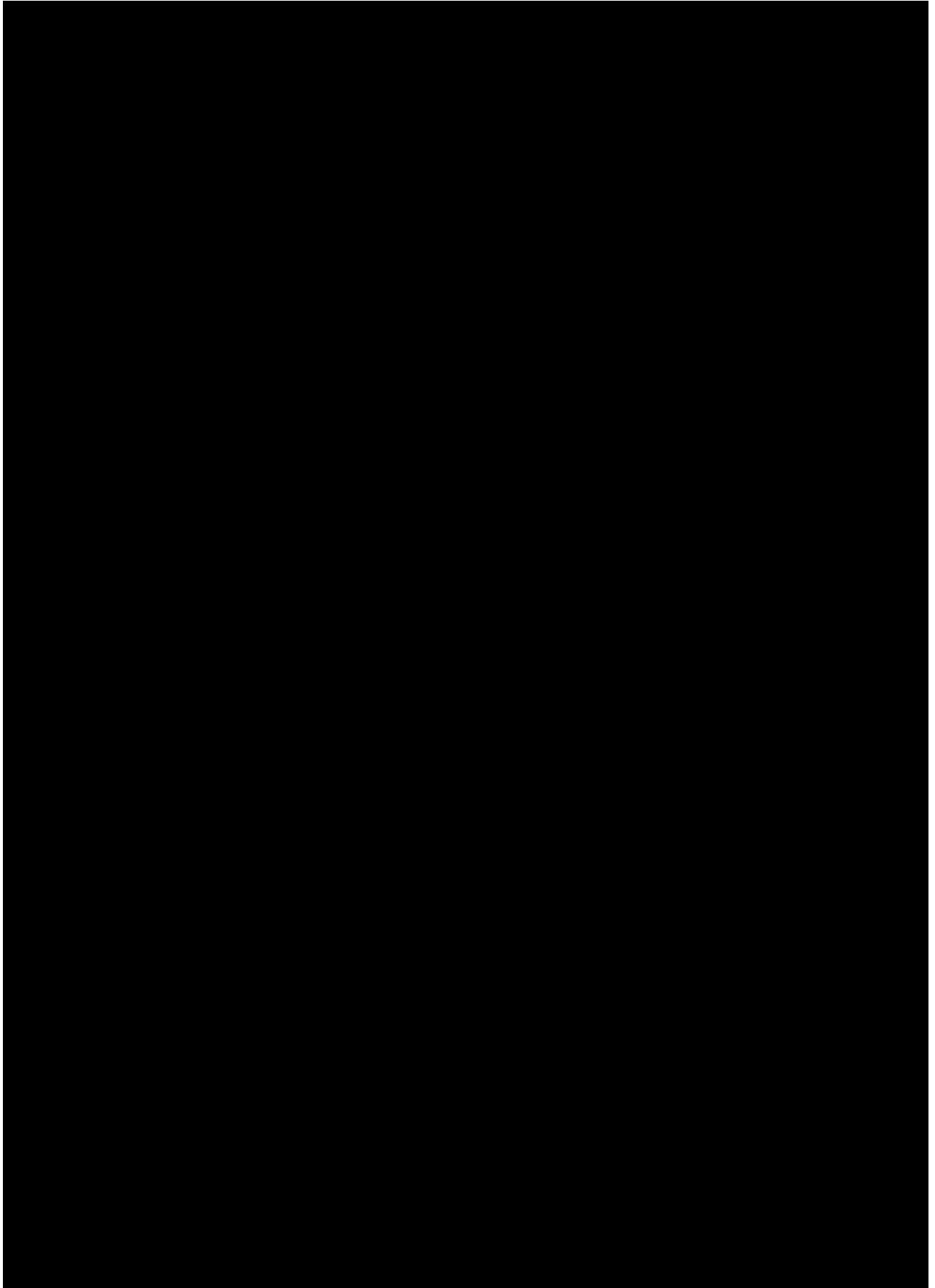
From: [insert Proof Engineer name] (ABN []) of [insert Proof Engineer address]

In accordance with the terms of clauses 5.7(a)(iii) and 5.11(a)(i) of the “*PLR Stage 2 Enabling Works Contract*” dated [*insert date*] with respect to the Project (**Deed**), we hereby certify that the attached [**Note – attach all AFC Design Documentation to which the certificate applies**] AFC Design Documentation:

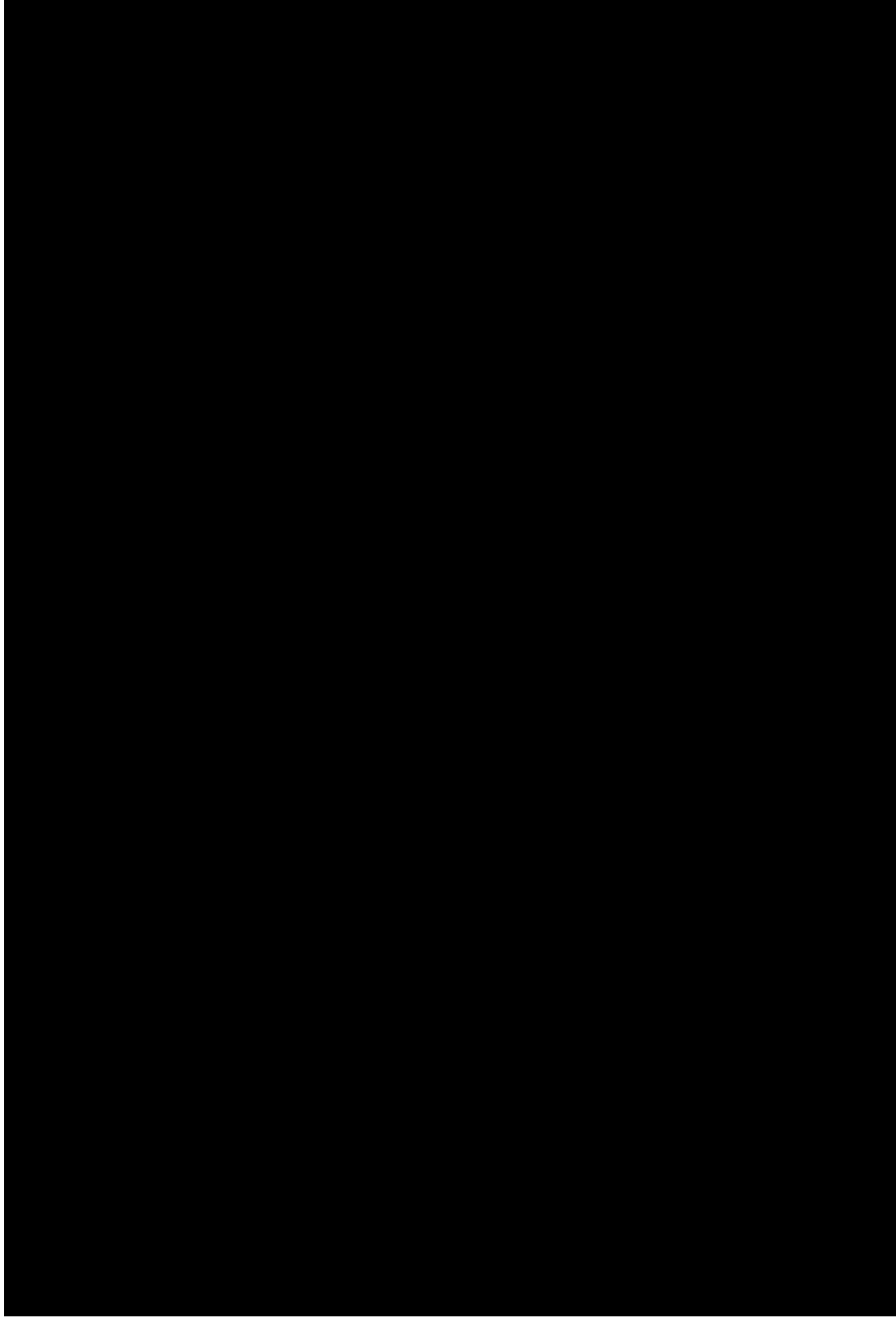
- (a) are adequate and suitable for their intended purpose, as stated in, or implied from or contemplated by the Deed; and
- (b) comply with the SPR.

.....
Signed for and on behalf of
[Insert name of Proof Engineer]

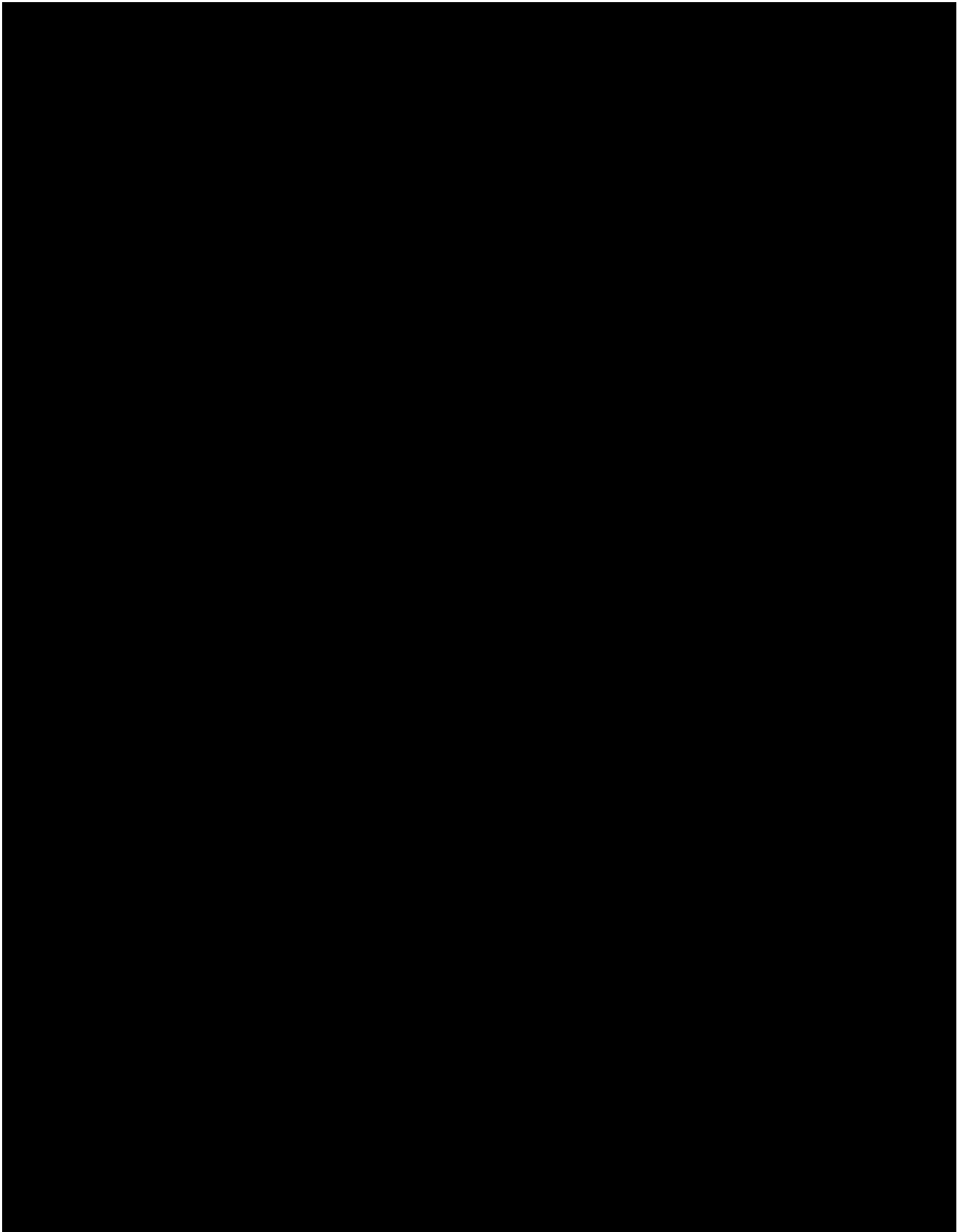
Schedule 36 Critical Utility Works Completion Date

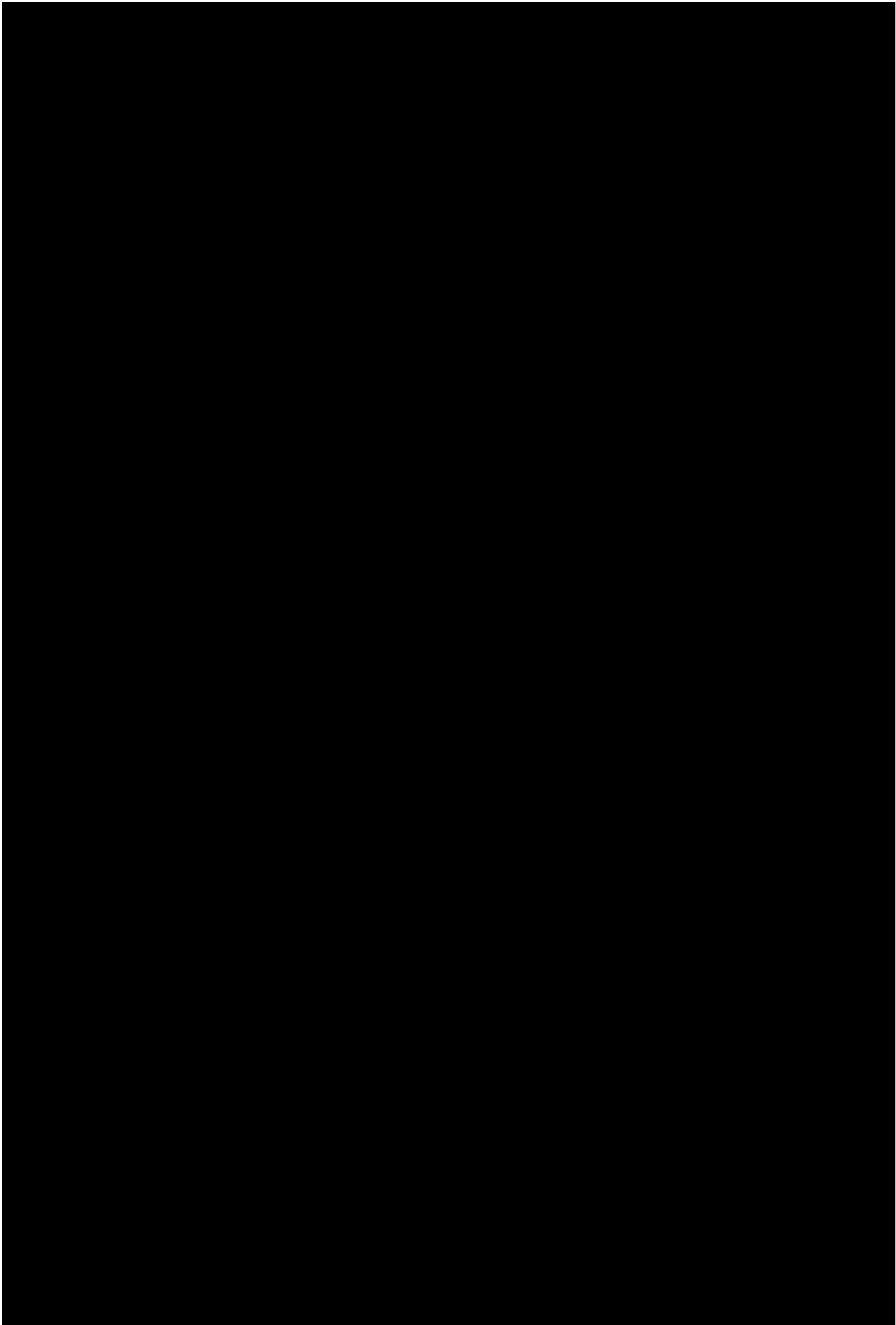


Schedule 37 Viva Extra Land



Schedule 38 Form of Statutory Declaration
(Trade Unions)





List of Exhibits

- EXHIBIT A -
- EXHIBIT B -
- EXHIBIT C -
- EXHIBIT D -
- EXHIBIT E -
- EXHIBIT F -
- EXHIBIT G -
- EXHIBIT H -
- EXHIBIT I -
- EXHIBIT J -

